

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

Public Meeting held November 4, 1999

Commissioners Present:

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

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 Order
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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X. ORDERING PARAGRAPHS.....

Before this Commission for disposition is the Recommended Decision of Administrative Law Judges (ALJs) Louis G. Cocheres and Larry Gesoff, issued on August 12, 1999. Also before us are the Exceptions and Reply Exceptions to said Recommended Decision.

I. INTRODUCTION

This Opinion and Order is our resolution of a substantial number of technically complex issues relative to Operations Support Systems (OSS) testing for the dominant incumbent local exchange carrier (ILEC), Bell Atlantic-Pennsylvania, Inc. (BA-PA), in its dealings with competitive local exchange carriers (CLECs). We will refer to these matters, generally, as performance measures. Performance measures are a matter of providing suitable and sufficient direction to the parties for evaluation of BA-PA's OSS operations.

It is important from the outset that this Commission is clearly understood with respect to performance measures: the establishment of metrics and the proposed use of those metrics (diagnostic, incentive, or both). The Commission is most interested in performance, not penalties. Our goal is to properly measure performance and, where necessary, to promote that performance. As in other competitive utility industries, we want choice and competitive access to work. To this end, it should not be necessary for the Commission to serve as the "traffic cop" for every conceivable disagreement between the ILEC and the CLECs. This statement having been made, none should doubt our resolve to see these matters through to an orderly conclusion. This Commission will do what it must in order to see that the promise of choice is fulfilled.

We note that the ALJs' Recommended Decision was crafted and issued before our *Global Order*¹ which, *inter alia*, directed structural separation for the wholesale and retail elements of BA-PA's business. We shall now assess performance measures, at least in part, from the context of structural separation. That is, perhaps, one of the strongest assurances of performance parity that we can have.

The effective date of the performance measures and standards adopted herein shall be the entry date of this Order, with the financial incentives and remedies to be phased in beginning April 1, 2000. We will adopt, in this proceeding, a time frame for administrative oversight of these performance measures, financial incentives, and remedies. This should not be misunderstood as rendering these measures or this Opinion and Order as "interim" in nature. We do recognize, however, that standards we set today may be impacted by technological progress or by the lack of the same. While firm, we do not wish to be inflexible in a way that would thwart our purpose of implementing competitive access and competitive markets by the least restrictive means. Therefore, we are open to reconsideration of limited issues where experience among the parties demonstrates good cause for modification of these standards or their enforcement.

Specifically, we will stand ready to convene a proceeding on our own Motion six (6) months from the effective date of the Order to reconsider such measures, incentives and remedies that are clearly unworkable. The issues to be considered may result from industry reports or the data acquired through diagnostic metrics.

We will further convene a technical conference nine months from the effective date of the Order to consider, in summary fashion, the appropriateness of the measures we adopt today and the effectiveness of incentives and remedies. This technical

¹ *Joint Petition of Nextlink Pennsylvania, Inc., et al., for Adoption of Partial Settlement Resolving Pending Telecommunications Issues, and Joint Petition of Bell Atlantic-Pennsylvania, Inc., et al., for Resolution of Global Telecommunications Proceedings*, Docket Nos. P-00991648 and P-00991649, respectively, (Entered September 30, 1999), (*Global Order*).

conference should be seen as the precursor to the January 1, 2001 investigation referred to below.

We will initiate an Investigation on or immediately after January 1, 2001, to consider, in detail, the appropriateness of the measures we adopt today and the effectiveness of incentives and remedies.

As we review the Recommended Decision, Exceptions, and Reply Exceptions, we are reminded that we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. (*U. of PA v. PaPUC*, 86 Pa. 410, 485 A.2d 1217, 1222 (1984)). Any exception or argument which is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion. Further, while we have not herein delineated with particularity a Party's general agreement with the Recommended Decision, such agreement has been duly noted. Accordingly, to the extent that we do not herein modify or reject the provisions of the Recommended Decision, we shall adopt the findings, conclusions, rationales, and recommendations of the ALJs.

II. HISTORY OF THE PROCEEDING

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 a Joint Petition which began this proceeding. The Joint Petition requested that two (2) issues, (1) OSS Testing and (2) Performance Measures, Standards, and Remedies, be handled as an on-the-record proceeding. This Commission, by Opinion and Order entered on April 30, 1999 (*April 30 Order*), however, granted limited relief, directing only that the Performance Measures, Standards, and Remedies issue be resolved on the record made before an ALJ. In compliance with the *April 30 Order*, BA-PA filed its proposed Pennsylvania Carrier-to-Carrier Guidelines Performance Standards and Reports (proposed PA Carrier-to-Carrier Guidelines), setting forth its proposal of performance measures and standards, on May 14, 1999.

BA-PA is the dominant ILEC in this proceeding. NEXTLINK, MCIW, AT&T, ATX, CTSI, Focal, Hyperion, and RCN are all CLECs, potential CLECs, or affiliates of CLECs. The United Telephone Company of Pennsylvania (United) is an ILEC but is aligned generally with the CLECs in this proceeding. Sprint Communications, L.P. (Sprint), is a United affiliate. By letter dated June 16, 1999, Intermedia Communications, Inc., withdrew from the proceeding.

All Parties wishing to do so had filed their proposals and counter-proposals by May 28, 1999, consistent with the ALJs' directions. Hearings were held in Harrisburg before both ALJs on June 17 and 18, 1999.

Main Briefs were filed individually by BA-PA, AT&T, MCIW, and ATX. Sprint and United filed a joint Main Brief.² CTSI, Focal, Hyperion, and RCN filed a joint Main Brief.³ Reply Briefs were filed by BA-PA, AT&T, Sprint/United, MCIW, and CTSI. BA-PA moved to strike a portion of AT&T's Reply Brief. The ALJs granted BA-PA's Motion. As noted, the Recommended Decision was issued on August 12, 1999.

Exceptions were timely filed by BA-PA, AT&T, MCIW, and Sprint/United. Reply Exceptions were timely filed by BA-PA, AT&T, MCIW, Sprint/United, and CTSI.

² We shall refer herein to Sprint's and United's joint pleadings, arguments, positions, or proposals as "Sprint/United."

³ CTSI, Focal, Hyperion, and RCN were represented by the same counsel and presented their positions in unison. We shall refer herein to the joint pleadings, arguments, positions, or proposals of CTSI, Focal, Hyperion, and RCN as "CTSI."

III. PRELIMINARY ISSUES

A. New York Public Service Commission Proceeding

Prior to this proceeding, the New York Public Service Commission (NYPSC) commenced a similar proceeding to evaluate OSS operations in New York.⁴ Through the NYPSC proceeding, which included OSS testing, the participants therein proposed carrier-to-carrier guidelines for use in New York. The NYSPC has now approved carrier-to-carrier service quality measurements and standards for use in New York (New York guidelines).

1. Parties' Positions

Throughout our proceeding, the Parties have demonstrated an in-depth awareness of the NYPSC proceeding and the progress toward the adoption of guidelines in that forum. They have not always agreed on whether the New York guidelines are, or will be, entirely appropriate for adoption in the Commonwealth. (R.D., *passim*).

2. ALJs' Recommendation

The ALJs made references, as did the Parties, to the NYPSC proceeding but did not choose to adopt any particular metric or standard herein solely on the basis that the NYPSC had adopted such metric or standard. (R.D., *passim*).

⁴ *Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies, et al.*, Case 97-C-0139, *et al.*, (NYPSC proceeding).

3. Exceptions and Reply Exceptions

BA-PA contends that the ALJs erred in not adopting the New York guidelines for use in the Commonwealth. (BA-PA Exc., pp. 33-38, *passim*).

4. Disposition

The NYPSC, having before it a similar record compiled by many of the same Parties to this proceeding, reached many conclusions similar to those reached herein. It is clear that the ALJs and the Parties to this proceeding were familiar with, and conversant in, the particulars of the New York guidelines at their evolving stages. This Opinion and Order is not, however, simply an adoption of the New York guidelines. To the contrary, the Commonwealth is uniquely situated in many respects, and certain issues essential to our marketplace were not addressed by the NYPSC.

We agree with the approach taken by the ALJs, and we shall not adopt the New York guidelines *in toto* as urged by BA-PA. Our proceeding is complete in itself, and all Parties herein were given the opportunity to participate in the compilation of the record and presentation of arguments. The Parties and issues deserve, and have received, the full attention and consideration of this Commission in its adjudicative capacity.

B. Commission's Authority

As a general proposition, BA-PA urges the Commission to reject the ALJs' recommended performance measurements, standards, and remedies and to adopt instead BA-PA's proposed "Pennsylvania Carrier-to-Carrier Guidelines Performance

Measurements, Standards, and Reports”⁵ and proposed financial incentive plan. (BA-PA Exc., p. 1). BA-PA argues that the Commission is precluded from adopting the ALJs’ recommended Service Quality Plan and remedies and is likewise precluded from implementing performance measures, standards, and remedies to which BA-PA does not agree. BA-PA characterizes this proceeding as an investigation which cannot be binding on the Parties without compliance with the procedures for adoption of regulations established by the Commonwealth Documents Law, 45 P.S. §§1102, 1201-1208, and the Regulatory Review Act, 71 P.S. §§745.1-745.15. (BA-PA Exc., p. 2). For this reason, according to BA-PA, the standards and incentives adopted in this proceeding can apply only to the extent that BA-PA accepts them as a condition to a grant to provide interLATA long distance service in Pennsylvania. (BA-PA Exc., p. 2).

BA-PA’s position appears to be that, absent BA-PA’s concurrence, the Commission lacks the authority to adopt and implement performance measures, standards, and remedies in this proceeding. We strongly disagree. Indeed, the Commission’s authority to address the issues of service quality standards and appropriate remedies for noncompliance is derived from both state and federal authority.

We find it interesting that BA-PA raises an objection to the Commission’s authority for the first time in its Exceptions to the ALJs’ Recommended Decision. Although the purpose of this proceeding was clearly announced in our *April 30, 1999 Order*, BA-PA did not voice any objection to our authority to direct the implementation of performance measures, standards, and remedies until after the actual close of the record in this proceeding. Indeed, BA-PA makes no mention of its intention to challenge the

⁵ “Performance measures and standards” and “metrics” are generally interchangeable terms within this Opinion and Order. The performance measures and standards (*i.e.*, metrics) adopted herein will be incorporated into the revised Pennsylvania Guidelines that BA-PA shall be directed to file in compliance with this Opinion and Order.

Commission's authority until after the ALJs recommend in their Recommended Decision that the Commission not adopt BA-PA's proposed PA Guidelines and financial incentives plan in its entirety.

While we find that, on its face, BA-PA's argument is flawed and without merit, we also conclude that BA-PA's objection is procedurally untimely. BA-PA's objection to the Commission's authority to impose performance measures, standards, and remedies was raised neither during this proceeding nor in the post-hearing Briefs. Having failed to address this issue, BA-PA is deemed to have waived its right to challenge the Commission's authority in the first instance. (*See Application of Apollo Gas Company*, Docket No. A-120450, F0003 (February 10, 1994)).

Although BA-PA's failure to properly raise this issue during the evidentiary stages of this proceeding constitutes a waiver of its right to challenge our authority, we will address the merits of BA-PA's Exceptions on this issue.

At the outset, we note that we possess continuing authority over rates charged and all services rendered by jurisdictional utilities. In addition, it is well settled that the Commission has a duty to set just and reasonable rates and to establish fair and adequate terms of service. (*See* 66 Pa. C.S. §§1301, 1501). In our view, the provision of jurisdictional wholesale services and OSS are telephone services⁶ which must comport with these well-established legal precepts. Clearly, the adoption and implementation of

⁶ Quoting telephone rates is a "service" under the Public Utility Code, *AT&T v. PaPUC*, 568 A.2d 1362 (Pa. Cmwlth. 1990).

performance measures and standards rest soundly within the purview of our statutory authority.

We have broad authority to take appropriate action to assure compliance with our Orders and Regulations. (66 Pa. C.S. §501). Similarly, the Commission has the authority to develop and impose remedies for noncompliance with Commission-mandated service quality standards and performance measurements. (*See* 66 Pa. C.S. §3301).

In our *April 30, 1999 Order*, we advised the Parties that service quality plan issues as well as an incentive plan would be explored in this proceeding.⁷ As demonstrated by the record of this proceeding, all Parties were given an opportunity to present pre-filed direct and rebuttal testimonies, to conduct cross-examination of witnesses, and to file Main and Reply Briefs. It is evident that due process rights to notice and opportunity to be heard were provided to all Parties. (*See* 66 Pa. C.S. §§703(e) and (g)).

In addition, the Commission has an affirmative obligation under Chapter 30 of the Public Utility Code to promote the development of local telephone competition in Pennsylvania. (66 Pa. C.S. §3001). Specifically, we have a statutory duty “to ensure that local exchange telecommunications companies do not make or impose unjust preferences, discriminations or classifications for protected telephone service and other noncompetitive services.” (66 Pa. C.S. §3009(b)(2)). The Commission’s development of performance

⁷ In Ordering Paragraph No. 3 of our *April 30, 1999 Order*, we said:

[T]hat portion of the Joint Petition for an Order Establishing a Formal Investigation of Performance Standards, Remedies and Operations Support Systems Testing for Bell Atlantic-Pennsylvania, Inc., requesting that the Commission commence a formal adversarial proceeding to establish performance standards and self-executing remedies is granted to the extent set forth in this Opinion.

measures, standards, and remedies in this proceeding is a very efficient means of fulfilling our Chapter 30 responsibilities in this area.⁸

As we previously mentioned, our authority to impose performance measures, standards, and remedies stems from both state and federal statutory authority.

In 1996, Congress enacted the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110, 110 Stat. 56, codified at 47 U.S.C. §§151, *et seq.*, (TA-96). TA-96 mandated, *inter alia*, the opening of local telecommunications markets to competition. More specifically, under TA-96, ILECs, like BA-PA, are obligated, among other things, “to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis. . . .” (47 U.S.C. §251(c)(3)). The Commission has oversight authority to ensure that ILECs, including BA-PA, provide nondiscriminatory access to their OSS pursuant to Section 251. This Commission’s implementation of performance measures and standards is a legitimate exercise of the Commission’s authority to ensure that BA-PA fulfills its Section 251 obligations.

Similarly, after BA-PA files its Section 271 Application for in-region interLATA toll service authority with the Federal Communications Commission (FCC), the Commission is required, pursuant to Section 271, to file a consultative report with the FCC, which is not binding on the FCC, in which the Commission will express its opinion as to whether BA-PA has complied with the provisions of Section 271. In our *April 30, 1999*

⁸ See *Application of MFS Intelenet of Pennsylvania, et al.*, Docket No. A-310203F002, *et al.*, (October 4, 1995), (*MFS-I*).

Order, we announced our expectations prior to rendering a Section 271 consultative report in favor of BA-PA's Section 271 Application.⁹ Specifically, we said:

BA-PA must understand, however, that absent the existence of such self-effectuating remedies, in a form and in amounts that do indeed prevent competitive backsliding, BA-PA cannot have any reasonable expectation that this Commission will file a favorable Section 271 consultative report with the FCC.

(*April 30, 1999 Order*, p. 16).

BA-PA's contention that the Commission lacks authority to order the implementation of performance measures, standards, and remedies is contrary to its own concession that performance measures, standards, and appropriate, self-executing remedies are a necessary prerequisite to the Commission's review of BA-PA's anticipated Section 271 Application. (BA-PA Exc., p. 4). To the extent that BA-PA concedes that its need to obtain Section 271 approval is the primary, if not the sole, impetus for adoption of performance measures and standards, we can infer its consent to the modifications of its proposed Guidelines in this Opinion and Order.

Our authority to establish performance measures, standards, and self-executing remedies is based on authority delegated to us by TA-96. If an ILEC such as BA-PA chooses not to accept Commission-implemented performance measures, standards, and remedies by its own volition, this Commission has the authority to direct performance measures, standards, and remedies as regulatory requirements pursuant to Section 271. This position is consistent with that of the FCC.¹⁰

⁹ On April 23, 1998, this Commission opened *Investigation into Re: BA-PA's Entry into In-Region InterLATA Services under Section 271 of TA-96*, Docket No. I-00980075. That proceeding was closed on September 30, 1999.

¹⁰ See *In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region*,

C. Extra Record Evidence

Among the primary issues in this matter is the application of remedies to the benchmarks established in this proceeding. The ALJs directed the Parties in this proceeding to submit their respective final proposals on May 28, 1999. However, in its Reply Brief, AT&T filed Appendix B and Table I which purported to outline AT&T's remedy calculations and application of remedies proposals. By letter dated July 21, 1999, BA-PA filed a Motion to Strike Appendix B and Table 1 to AT&T's Reply Brief, arguing that AT&T was attempting to admit extra record evidence through its Reply Brief.

After additional filings were received, the ALJs granted BA-PA's Motion to Strike, emphasizing that the Parties were clearly instructed not to submit extra record evidence in their briefs. (R.D., p. 24; Tr. 297). The ALJs observed that AT&T's evidentiary treatment of benchmark metrics and their thresholds for remedies was brief, vague and insufficient to apprise BA-PA of AT&T's full proposal. (R.D., pp. 27-29). The ALJs rejected AT&T's argument that Appendix B and Table 1 to AT&T's Reply Brief were mere clarifications of evidence previously offered in AT&T's Exhibit D entitled AT&T Communications of Pennsylvania, Inc.'s Submission of Proposals for Performance Measurements, Standards, and Remedies. The ALJs also disagreed with AT&T's assertion that the comments made in AT&T's Rebuttal Testimony of its witness, Mr. Kirchberger, support the detailed calculations for the benchmark remedy thresholds set forth in Appendix B and Table 1.0 to the Reply Brief.

The ALJs did not rely on any material presented in Appendix B and Table 1.0 in reaching any findings or recommendations in the Recommended Decision and urged the Commission to avoid consideration of Appendix B and Table 1.0 to AT&T's Reply Brief.

AT&T excepts to the ALJs' ruling to strike Appendix B and Table 1.0 to its Reply Brief as extra record evidence. According to AT&T, Appendix B was a mere "mathematical extrapolation" of the recommendations made by AT&T witnesses. Alternatively, AT&T proffers that, if the Commission is not inclined to consider the benchmark metric recommendations as described in Appendix B and Table 1.0, the Commission should order the Parties to present a more detailed proposal for applying the AT&T remedies approach to benchmark metrics in the compliance filing/implementation workshop phase of the proceeding. (AT&T Exc., p. 23, footnote 47).

We adopt the ALJs' recommendation on this issue. Our review of the evidentiary record confirms the ALJs' determination that there is a paucity of evidence as presented by AT&T regarding the application of remedies to benchmarks established in this proceeding. The chasm between AT&T's evidence on the remedy thresholds and the detailed calculations provided in its Reply Brief is just too wide to leap. Contrary to AT&T's assertions, BA-PA was under no obligation to clear any confusion about the contents of the AT&T plan. Accordingly, we have not considered Appendix B or Table 1.01 in our deliberations on this case.

D. Definition of Parity

1. Parties' Positions

In this proceeding, BA-PA proposed adoption of the definition of parity as its obligation to provide the CLECs with service that is equal in quality to the service it

provides its retail customers. BA-PA opined that its parity obligation is met when it materially provides the CLECs with the same service quality. (BA-PA M.B., p. 59).

AT&T asserted that “parity” should be defined to “indicate nondiscrimination measured by providing the same service as retail analogs, where they exist, or compliance with a benchmark standard where no retail analog is available.” (AT&T M.B., p. 1, citing *In the Matter of Application of Bell South Corp., et al. for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-271 (October 13, 1998), (*Louisiana*)).

MCIW agreed with AT&T’s definition of parity. MCIW noted that, under the terms of its proposed plan, BA-PA is required to give the CLECs service equal to the service which BA-PA renders to itself. (MCIW R.B., pp. 18-19).

2. ALJs’ Recommendation

The ALJs concluded that there were no material differences among the Parties’ positions on the issue of parity and recommended adoption of AT&T’s definition. (R.D., p. 191).

3. Disposition

We note that no Exceptions were filed to the ALJs’ recommendation. Upon consideration, we determine that, in all areas in this Opinion and Order where we reference “parity” without a specific standard, BA-PA shall have achieved parity if it provides a rate or degree of service to the CLECs which equals 95% of the rate or degree of service that it provides to its comparable retail operations.

IV. GENERAL ISSUES

A. Disaggregation

1. Parties' Positions

BA-PA proposed to disaggregate measurements in three (3) ways: by customer, by service type, and by geographic reporting area. BA-PA argued that CLEC-specific reporting (1) is unnecessary because BA-PA provides CLECs service in a manner which inherently ensures they all will be treated in the same way and (2) would multiply the number of measurements reported without showing whether BA-PA is meeting the applicable standards. (BA-PA St. 1.1, App. A, pp. 13-15; BA-PA St. 1.1, App. B, pp. 9, 18, 68; BA-PA M.B., pp. 8-12; R.D., pp. 29, 31-32).

AT&T and NEXTLINK asserted that, without sufficient disaggregation, the CLECs will not be able to compare the quality of service they receive to BA-PA's retail operations. (AT&T M.B., pp. 3-4; NEXTLINK St. 1. pp. 8-9; R.D., pp. 30-31).

Sprint/United argued for CLEC-specific and state-specific reporting for the Metrics PO-1, PO-2, PO-5, MR-1, BI-2, BI-3, BI-4, BI-5, BI-6, BI-7, and BI-8. (Sprint/United M.B., pp. 3-5; Sprint/United St. 1.0, App. A, p. 6; Tr., pp. 198, 464-465; R.D., pp. 29-30).

MCIW asserted that, without disaggregation among different CLECs along different geographical areas and along different service offerings, BA-PA's poor service in a particular area could be masked by good service in a different area and the poor service would not be fixed, contrary to the requirement that BA-PA provide nondiscriminatory service to all CLECs in its service territory and with all service delivery methods. (MCIW M.B., p. 3; R.D., p. 30).

2. ALJs' Recommendation

The ALJs recommended that BA-PA be required to disaggregate on the basis of CLEC-specific, service-specific, and state-specific measurements. (R.D., pp. 32-33).

3. Disposition

In general, we agree with the ALJs on the issue of disaggregation. In those limited instances where an exception is raised and the evidence supports a contrary determination regarding disaggregation in specific metric, we shall address the issue in the context of our discussion of the applicable metric. Accordingly, if not specifically rejected, *infra*, we shall adopt the recommendation of the ALJs on this issue.

B. Affiliates

1. Parties' Positions

BA-PA proposed that, for each metric for which it reports CLEC-specific results, it will also report results for services it provides to its CLEC affiliates so long as those affiliates operate in BA-PA's region and interconnect with BA-PA. (BA-PA St. 1.1, App. A, pp. 15-16; Tr., p. 78). BA-PA criticized the CLECs' proposal on the grounds that the *BA/NYNEX Merger Order*¹¹ limited the affiliate-reporting requirement to any BA-PA "local exchange affiliate purchasing interconnection." (*BA/NYNEX Merger Order*, App. C, ¶1(b)(ii)). BA-PA further argued that the FCC's OSS Notice of Proposed Rulemaking¹² on reporting requirements, proposed that "an incumbent LEC should report separately on its performance as provided to . . . any of its affiliates that provide local exchange service." BA-PA asserted that these determinations make sense because the purpose of the reports is to detect discrimination that would injure local competition. (BA-PA R.B., pp. 3-4). BA-PA further requested that it be permitted to report service quality information for BA-PA's CLEC affiliates on an aggregated basis only, citing a need for confidentiality. (BA-PA M.B., p. 13; R.D., pp. 34-37).

AT&T argued that there are no BA-PA CLEC affiliates currently meeting these criteria and that BA-PA should be required to report the service quality delivered to all BA-PA affiliates which order services, UNEs, or interconnection from BA-PA to ensure that BA-PA's affiliates do not receive preferential service over CLECs. (AT&T M.B., pp. 5-6; Tr., p. 78). AT&T did not object to the public recording of BA-PA affiliate data on an aggregated basis if BA-PA provides individual affiliate reports to the Commission and if each respective CLEC receives its own report. (AT&T St. 1.1, p. 2; AT&T St. 1.0, Exh. 1, p. 4; AT&T M.B., p. 6; R.D., pp. 34, 37).

Citing commitments made in New Jersey, Sprint/United wanted BA-PA to submit monthly surveillance reports showing its performance for BA-PA affiliates. In this context, Sprint/United proposed that "affiliates" should include any BA-PA affiliate that purchases local service for resale or UNEs from BA-PA. (Sprint/United St. 1, p. 6). Sprint/United suggested the use of protective agreements to address BA-PA's confidentiality concerns. (Sprint/United R.B., p. 6; R.D., p. 34).

¹¹ In the *Application of NYNEX Corp., Transferor, and BA Corporation, Transferee, for consent to transfer control of NYNEX Corp., and its Subsidiaries*, 12 FCC Rcd. 19985 (August 14, 1997); (*BA/NYNEX Merger Order*).

¹² *In the Matter of Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection and Operator Services and Directory Assistance*, 13 FCC Rcd. 12817, 12384-2835, ¶39 (April 17, 1998), (*OSS NOPR*).

MCIW advocated for a broad definition of “affiliate” and would include any BA-PA affiliates and subsidiaries which have access to BA-PA’s OSS. (MCIW M.B., p. 4; R.D., p. 35).

CTSI argued that BA-PA offered no sound basis for its proposed definition. (CTSI M.B., p. 3; R.D., p. 35).

2. ALJs’ Recommendation

The ALJs recommended that BA-PA report the service quality delivered to all BA-PA affiliates and subsidiaries (CLEC and non-CLEC) which order services, UNEs, or interconnection from BA-PA. (R.D., p. 36). Further, the ALJs recommended that BA-PA (1) be permitted to record publicly its affiliate data on an aggregated basis, (2) be required to provide individual affiliate reports to the Commission, and (3) be required to provide each CLEC with its own report. The ALJs agreed that the Commission should (1) review the reports to determine if BA-PA gives preferential treatment to affiliates, and, on that basis, (2) take corrective measures to preclude anti-competitive behavior. (R.D., p. 37).

3. Exceptions and Reply Exceptions

In its Exceptions, BA-PA argues that the broader, CLEC-proposed requirement serves no useful purpose, while imposing significant additional burdens on BA-PA. BA-PA asserts that its narrower view is consistent with the purpose of the service quality plan, since such reporting will assure other CLECs that they are receiving the same quality of service that BA-PA’s own CLEC affiliates receive. BA-PA also argues that the narrower view is consistent with the *BA/NYNEX Merger Order*. (BA-PA Exc., pp. 84-86; R.Exc., pp. 24-27).

Sprint/United argues that the ALJs’ recommendation does not address the consequences if BA-PA provides its affiliates with better service than that provided to the CLECs. (Sprint/United Exc., pp. 3-4; Sprint/United R.Exc., pp. 11-12).

4. Disposition

As noted by the ALJs, BA-PA does not have any affiliates operating under interconnection agreements; therefore, we find that BA-PA’s definition actually provides for no reporting at all. This proceeding must provide this Commission, BA-PA, and the CLEC community with sufficient information upon which to objectively measure the delivery of nondiscriminatory access to CLECs. In order for this metric to provide any meaningful measurement, it must include a broader definition than that proposed by BA-PA.

We agree with the ALJs that it is essential that BA-PA report on the level of service it provides to its affiliates, and we shall adopt the recommendation of the ALJs on this issue. BA-PA shall report the service quality delivered to all BA-PA affiliates and subsidiaries (CLEC and non-CLEC) which order services, UNEs, or interconnection from BA-PA.

C. Audits

The parties agreed that it is necessary to audit the performance measurement process. (R.D., p. 44). There are two (2) sub-issues: the method and timing of audits and the cost of audits.

1. Method and Timing

a. Parties' Positions

BA-PA argued that the KPMG process negates a need for an initial audit. After that, BA-PA proposed that the Commission would decide whether and when additional audits are needed. (BA-PA St. 1.0, p. 31; BA-PA St. 1.1, App. A, p. 31; BA-PA M.B., p. 14; BA-PA R.B., p. 6; R.D., pp. 44, 46).

AT&T argued that the KPMG audit will not provide a comprehensive audit of the final metrics. (AT&T St. 2.1, pp. 11-13; AT&T M.B., pp. 8-9; R.D., pp. 44-45).

Sprint/United supported an initial audit to be submitted to the Commission and an annual audit to be performed by an independent third party on behalf of all CLECs, with a nonproprietary version of each audit distributed to the parties to this proceeding. Further, Sprint/United argued that any CLEC should have the right to a mini-audit of individual performance measures during the year if the CLEC believes the data collection for a performance measure is flawed or that BA-PA is not adhering to the reporting criteria for a performance measure. (Sprint/United M.B., pp. 6-7; Sprint/United R.B., p. 7; R.D., pp. 45-46).

b. ALJs' Recommendation

The ALJs concluded that waiting a year after implementation of the metrics is too long to wait for an audit and that the current KPMG OSS third-party test is not an audit of the performance measurement process. The ALJs recommended that an audit be performed within the context of the third-party OSS test. Alternatively, if this Commission did not wish to coordinate this proceeding with the third-party OSS test, the ALJs recommended that three (3) months after the OSS test is complete, BA-PA should be required to provide performance reports based on the final performance measures and

standards promulgated in this proceeding. They also recommended annual audits after the first audit and mini-audits. (R.D., pp. 46-47).

c. Exceptions and Reply Exceptions

BA-PA argues that the KPMG review of the metrics is sufficient and that another third-party audit would be wasteful and unnecessary. (BA-PA Exc., p. 89).

AT&T and Sprint/United support the ALJs' recommendation. (AT&T R.Exc., pp. 89-91; Sprint/United R.Exc., p. 14).

d. Disposition

We must decide whether the audits should be performed within the context of a third-party OSS test and whether individual CLECs have the right to a mini-audit of individual performance measures under certain conditions. Another way of addressing this issue is to determine whether, as BA-PA contends, the KPMG review of metrics is sufficient.

Given the periodic reviews established by this Opinion and Order, with conferences in six (6) and nine (9) months and a formal Investigation on the Commission's own Motion commencing on January 1, 2001, *supra*, we believe that the KPMG review is sufficient. Having stated this, however, and being aware of the importance of verification, we shall incorporate BA-PA's proposal with the modification that a CLEC does have the right to a mini-audit of individual performance measures, as contemplated by the ALJs, as further discussed in Cost of Audits, below.

2. Cost of Audits

a. Parties' Positions

BA-PA agreed to bear the cost of an audit conducted a year after the measurement process begins. After that, BA-PA asserted that the parties or the Commission could determine who should pay for CLEC-requested audits. (BA-PA St. 1.0, p. 31; BA-PA St. 1.1, App. A, p. 31; BA-PA M.B., pp. 14-15; R.D., p. 47).

Sprint/United argued that BA-PA should bear the cost of the first three (3) annual audits and that BA-PA and the CLECs should bear the costs of subsequent audits. (Sprint/United M.B., p. 7; R.D., p. 47).

b. ALJs' Recommendation

The ALJs recommended that BA-PA bear the cost of the first three (3) annual audits and that BA-PA and the CLECs should bear the costs of subsequent audits. They further recommended that BA-PA bear the cost of the audit performed within the context of the third-party OSS test, or alternatively, the audit performed three (3) months after the OSS test is complete. Finally, the ALJs recommended that the requesting CLEC(s) and BA-PA share the cost of a CLEC-requested audit. (R.D., pp. 47-48).

c. Exceptions and Reply Exceptions

BA-PA argues that this Commission should delay consideration of this issue until it reviews the results of the first-year audit. (BA-PA Exc., p. 89).

d. Disposition

We conclude that BA-PA should bear the cost of the first annual audit. At the time of our first annual review of the performance measures, we shall consider the issue of cost responsibility for subsequent audits. The mini-audits, when requested by the CLECs, shall, however, be at the requesting CLECs' expense.

D. Review of the Metrics

1. Parties' Positions

BA-PA proposed that Commission Staff review the measurements, standards, and incentive payment amounts after completion of the first-year audit to assess whether the measurements and standards were properly implemented, whether all of the measurements are appropriate, whether additional measurements are needed, and whether adjustments are desirable. After this, the Commission should determine when, and if, to conduct the next review. BA-PA asserted that the CLECs' requests for annual reviews indefinitely into the future is premature. (BA-PA R.B., p. 6; BA-PA St. 1.0, pp. 31-32; R.D., p. 48).

AT&T supported annual reviews of the metrics to ensure that (1) BA-PA is reporting the data necessary to determine if it is meeting its nondiscriminatory access obligation and (2) the metrics do not become stale or outdated. (AT&T M.B., p. 11; AT&T R.B., p. 8; R.D., pp. 48-49).

MCIW also proposed a review after the guidelines and incentives have been in operation for one (1) year. (MCIW St. 1.0, pp. 7-8; MCIW M.B., p. 9; MCIW R.B., p. 6; R.D., p. 49).

2. ALJs' Recommendation

The ALJs recommended annual reviews, reasoning that annual reviews would allow the process to remain vital. (R.D., p. 49).

3. Disposition

There were no Exceptions on this issue. We shall adopt the reasoning and recommendation of the ALJs, finding them to be reasonable. We note, however, that we have the inherent right to change this schedule as market or other conditions warrant. To that end, we note that we have even built the opportunity for reviews into this process at six (6) and nine (9) months after the date of entry of this Opinion and Order. (*See* discussion *infra.*)

E. Reciprocity

1. Parties' Positions

BA-PA proposed that the service quality measurements, standards, and remedies apply to all LECs so that they are truly carrier-to-carrier. BA-PA argued that reciprocity is consistent with this Commission's ruling in *NEXTLINK Arbitration*¹³ in which this Commission concluded that the overall objective of allowing competition in the telecommunications industry is to provide quality service without regard to the provider. (BA-PA M.B., pp. 17-18; BA-PA R.B., pp. 7-8; R.D., pp. 51-52).

AT&T argued that performance measures and standards are inapplicable to new-entrant CLECs because the scope of this proceeding addresses BA-PA's, not the CLECs', implementation of performance measures, standards, and remedies for nonperformance. (AT&T M.B., pp. 11-12; AT&T R.B., p. 9; R.D., pp. 52-53).

Opposing reciprocity, Sprint/United argued that ILECs (and other CLECs) do not have to rely on CLECs as a primary or sole supplier for wholesale local services. (Sprint/United M.B., p. 8; R.D., p. 54).

¹³ This Commission, in an arbitration proceeding pursuant to Section 252 of TA-96, 47 U.S.C. §252, addressed certain interconnection issues between NEXTLINK and BA-PA in *Application of NEXTLINK*, Docket No. A-310260, F0002, (*NEXTLINK Arbitration*). Commission Orders were entered on July 15, July 23, August 14, September 21, and November 20, 1998. The cost-based proposal for extended loops (*i.e.*, combination of local loop and interoffice transport) was filed on December 4, 1998. (*See BA-PA v. NEXTLINK & PaPUC*, Docket No. 99-CV-494 (E.D. Pa.)). The formal interconnection agreement between BA-PA and NEXTLINK was filed on June 2, 1999.

Citing pronouncements by the Michigan Public Service Commission,¹⁴ MCIW opposed reciprocity on the grounds that CLECs are not in a position to easily impair the development of a competitive market. MCIW argued that the FCC would not have mandated the full weight of performance measures, standards, and remedies without explicit edict in *BA/NYNEX Merger Order*. (MCIW St. No. 1.1 p. 3; MCIW R.B., pp. 9-10; R.D., p. 54).

CTSI objected to reciprocity for the same reasons given by the other CLECs. (CTSI M.B., pp. 8-9; CTSI R.B., pp. 8-9; R.D., p. 54).

2. ALJs' Recommendation

The ALJs concluded that the realities of the local telecommunications marketplace do not support reciprocity. TA-96 distinguishes between the duties of ILECs and all local exchange carriers (LECs) because the ILECs can control bottleneck facilities upon which their competitors are dependent while new LEC entrants do not have bottleneck facilities upon which BA-PA or other carriers are dependent. The ALJs found no evidence that the CLECs have an incentive to discriminate or provide poor service. They noted that *NEXTLINK Arbitration* is not controlling or dispositive because the only two (2) parties to that proceeding were BA-PA and NEXTLINK. (R.D., pp. 55-57).

3. Exceptions and Reply Exceptions

BA-PA takes exception to the failure of the ALJs to recommend applying the Service Quality Plan to any CLEC that elects to receive measurement reports and incentive payments under the Service Quality Plan. (BA-PA Exc., pp. 90-93).

4. Disposition

The opening of any market is never a one-sided affair. As a proposition of fundamental fairness, we are inclined to agree with BA-PA that service quality measurements and standards should apply to all CLECs. There is, however, a more basic concern as to whether the measurements and standards adopted in this proceeding can be grafted onto the CLECs. With that in mind, we shall adopt BA-PA's position on this issue with the modification that system-specific proceedings for the establishment of measurements and standards be convened for the CLECs on or around July 1, 2000.

¹⁴ *In the Matter of Ameritech Michigan's Submission on Performance Measures, Reporting and Benchmarks pursuant to the October 2, 1998 Order in Case No. U-11654*, May 27, 1999, Mich. PSC Case No. U-11830, p. 39, (*Michigan*).

F. Implementation Date

1. Parties' Positions

BA-PA proposed that the performance measures and standards become effective for inclusion in new and existing interconnection agreements when BA-PA is able to provide interLATA telecommunication service in Pennsylvania pursuant to Section 271 approval. The metric and remedies provisions of those agreements would then be amended automatically whenever this Commission approved revisions to the measures and standards adopted herein. BA-PA argued that its need to obtain Section 271 relief is the primary, if not sole, impetus for adoption of the performance measures and standards. BA-PA noted that performance measures, standards, and remedies are not proposed for any other ILEC (e.g., Sprint/United), even though the other ILECs also have obligations under Section 251. Absent BA-PA's need to obtain Section 271 relief, issues like performance measures, standards, and remedies would have been dealt with in arbitrations of individual interconnection agreements or in a generic proceeding applicable to all carriers. BA-PA further asserted that the performance measures, standards, and remedies addressed herein should not go into effect until it receives its Section 271 approval. Until then, BA-PA argued that it should only have to provide service quality reports in accordance with *BA/NYNEX Merger Order* and with BA-PA's interconnection agreements with CLECs. (BA-PA St. 1.0, p. 30; BA-PA M.B., pp. 13-16; BA-PA R.B., pp. 4-6; R.D., pp. 38-42, 49-50).

AT&T would have the performance measures and standards applicable as of the entry of this Opinion and Order with respect to transactions between BA-PA and all carriers (1) with current or new interconnection agreements, (2) which obtain service from BA-PA's Statement of Generally Available Terms and Conditions (SGAT), or (3) which have opted-in to another CLEC's interconnection agreement with BA-PA. AT&T argued that it is inappropriate to allow BA-PA to further delay the collection and reporting of the data necessary to evaluate whether it is in compliance with TA-96. AT&T suggested that BA-PA be required to incorporate the metrics into the tariffs. AT&T alleged that requiring Section 271 approval as a precondition to performance measures and standards reverses the order in which these regulatory actions should occur. AT&T conceded, however, that the metrics should be imposed upon BA-PA solely in contemplation of BA-PA's Section 271 Application. (AT&T St. 2.1, p. 14; AT&T M.B., pp. 7, 11-12; R.D., pp. 39-40, 49-50).

Sprint/United argued for (1) implementation of the performance measures and standards immediately upon adoption and (2) the performance measures and standards to supersede existing interconnection contracts between BA-PA and the CLECs. (Sprint/United M.B., p. 6; R.D., pp. 39, 49).

MCIW argued for the performance measures and standards to be implemented as soon as possible. (MCIW M.B., p. 5; R.D., pp. 39, 49-50).

CTSI argued for implementation commencing upon entry of this Opinion and Order. (CTSI M.B., p. 5; R.D., pp. 39, 49).

2. ALJs' Recommendation

The ALJs recommended that, as of fifteen (15) days after the date of entry of this Opinion and Order, BA-PA be required to file, and be bound to, the performance measures and standards which this Commission directs, for all carriers (1) with which BA-PA currently has an interconnection agreement, (2) which obtain service from BA-PA's SGAT, or (3) which obtain service by means of opting-in to another CLEC's interconnection agreement. The ALJs viewed the performance measures and standards as one of the conditions precedent to a Commission recommendation that the FCC approve BA-PA's Section 271 Application. Further, the ALJs rejected the arguments that this Opinion and Order should serve as a Commission-directed amendment to existing interconnection agreements or that the performance measures and standards become tariff items. The ALJs noted that this Commission should be able to revisit the performance measures, standards, and remedies or to take whatever other action it deems necessary in the future. (R.D., pp. 42-44, 50-51).

3. Exceptions and Reply Exceptions

BA-PA reiterates its arguments that the performance measures should become effective on the later of (1) the first day of the second full calendar month after an interconnection agreement is amended to include them or (2) the first day of the first full calendar month after the date on which BA-PA is able to commence interLATA service in Pennsylvania. Further, BA-PA does not object to AT&T's proposal but urges that the standards and measures be preserved as an integrated document that is not altered in its substantive provisions by other terms of an interconnection agreement. (BA-PA Exc., pp. 86-87; BA-PA R.Exc., p. 28).

AT&T, Sprint/United, MCIW, and CTSI urge that there be no delay in the implementation of the service quality plan. (AT&T Exc., p. 4; AT&T R.Exc., p. 88; Sprint/United, R.Exc., pp. 13-14; MCIW R.Exc., pp. 24-25; CTSI R.Exc., pp. 3-5 & 8-9).

4. Disposition

We agree with the ALJs that the revised Pennsylvania Guidelines adopted herein shall not amend existing interconnection agreements. With regard to the interconnection agreements, the directed amendment of contracts is an extraordinary measure. Although we have the authority to direct the amendment of such contracts, such

an extraordinary and broad-sweeping measure is not dictated at this stage of the proceedings.

Similarly, we do not see the need to incorporate the revised Pennsylvania Guidelines into BA-PA's tariffs. The revised Pennsylvania Guidelines will be filed by BA-PA in compliance with this Opinion and Order, and, as such, they will be binding on BA-PA and all CLECs, consistent with this Opinion and Order. Enforcement of the measures will occur as specified in this Opinion and Order and in the normal course of this Commission's regulatory administration and operations.

While we agree in general with the ALJs' recommendation, we shall direct BA-PA to file revised PA Guidelines, consistent with this Opinion and Order, within fifteen (15) days after the date of entry of this Opinion and Order. Consistent with our determination set forth in Burn In below, we shall implement the performance measures and standards immediately, unless otherwise explicitly specified, consistent with this Opinion and Order. Those performance measures and standards will be binding, twenty (20) days after the date of entry of this Opinion and Order, on BA-PA and will apply to all carriers (1) with which BA-PA has an interconnection agreement, (2) which obtain service from BA-PA's SGAT, or (3) which obtain service by means of having opted-in to another CLEC's interconnection agreement with BA-PA.

We shall not wait for Section 271 approval, or some other interval, as suggested by BA-PA. The ALJs are correct in stating that the performance measures and standards must be in force before BA-PA can pursue a successful Section 271 Application before the FCC. The FCC has plainly stated that it will not approve Section 271 applications on the basis of proposed future actions by ILECs; showings of open competitive markets must be based on existing conditions. (*See Michigan*).

V. METRICS: PERFORMANCE MEASUREMENTS AND STANDARDS

A. Pre-Ordering Metrics

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

This metric measures pre-order query response time between BA-PA and CLECs. BA-PA interpreted the metric to mean the time it takes to obtain a customer service or ascertain the availability of a telephone number. The CLECs interpreted this measure to mean the measurement of the *additional* time it takes for a CLEC to get a response compared to BA-PA's response time to its affiliates. (R.D., pp. 57-63). For BA-PA this performance is measured directly to and from the OSS (*i.e.*, retail operations) For the CLECs, this performance is measured through an access platform. (Proposed PA Guideline, p. 5). In the context of this Opinion and Order, there are four (4) components to our discussion of this metric: Web Graphic User Interface (GUI) Standard, OSS Response Time, Time Outs, and Report Dimensions.

a. Web GUI Standard

This metric measures the response time for CLEC requests via the Web GUI access platform. Web GUI has inherently longer response times for accessing data than the electronic data interchange (EDI) application-to-application-based access platform in which computers communicate directly with one-another. (R.D., pp. 57-58).

i. Parties' Positions

BA-PA proposed an interim standard for Web GUI pre-order queries of parity with BA-PA retail plus seven (7) seconds. BA-PA claimed that the CLEC proposal of a four (4)-second interval is not technically feasible for Web GUI. BA-PA committed to review this standard after a reasonable amount of performance data is available but would not commit to reduce the retail-plus-seven (7)-seconds interval to the CLECs' demands within a defined time period. BA-PA asserted that smaller CLECs can use EDI if they want a four (4)-second interval. BA-PA maintained that requiring it to improve Web GUI response times to match EDI response times will ultimately hurt the smaller CLECs who need less expensive alternatives, such as Web GUI, to compete in the LEC marketplace. The CLECs who use Web GUI typically do so because they are processing smaller volumes of transactions, and, thus, the three (3)-second longer response times of the Web GUI should not significantly reduce the efficiency of their operations, add appreciably to their cost of operations, or be noticeable to their customers. BA-PA asserted that AT&T's proposal would result in BA-PA having only the more expensive EDI interface available for pre-ordering. BA-PA further suggested that AT&T may be trying: (1) to impose an unattainable standard on BA-PA to delay BA-PA's long distance entry or (2) to compel BA-PA to withdraw a system that is advantageous to AT&T's competitors. (BA-PA St. 1.1, App. A, p. 7; BA-PA St. 1.1, App. B, pp. 3-4 & 6-8; BA-PA M.B., p. 20-22; Tr., p. 62; R.D., pp. 57-59, 62-64).

The CLECs characterized Web GUI as a low-cost, Internet-based, alternative-access platform for those CLECs that want to get into business quickly and with relatively little investment in CLEC systems. Specifically, AT&T, MCIW, Sprint/United, and CTSI proposed a standard of parity with BA-PA retail plus four (4) seconds, *i.e.*, the EDI standard. AT&T and Sprint/United claimed that parity plus seven (7) seconds results in CLECs having a seven (7)-second delay in each query to the OSS interface. Because five (5) separate queries may be made, the interval could require an additional thirty-five (35) seconds for

each customer intake, during which the customer waits on the phone. The CLECs proposed parity plus four (4) seconds because that was adopted in New York and suggested that anything less would be no parity at all. (AT&T St. 1.0, pp. 17-18; AT&T St. 1.1, Exh. C, p. 1; AT&T M.B., pp. 13-14; Sprint/United St. 1.0, App. A, pp. 3-4; MCIW St. 1.0, Att. 2, p. 1; MCIW M.B., pp. 9-10; MCIW R.B., pp. 9-10; CTSI M.B., p. 9; Tr., pp. 80-81; R.D., pp. 57-63).

Sprint/United did not, however, oppose the proposed seven (7)-second response time for the first year (or less if feasible) to give BA-PA adequate time to implement a stable Internet-based system. (Sprint/United St. 1.0 App. A, p. 3; Sprint/United M.B., p. 10; R.D., pp. 61-62).

ii. ALJs' Recommendation

The ALJs recommended a standard of retail plus four (4) seconds within one (1) year of the date of entry of this Opinion and Order. They concluded that any other approach would place the CLECs at a competitive disadvantage. If, in one (1) year, BA-PA believes it cannot reasonably implement a shorter response time, it could then petition for an exception. (R.D., p. 64).

iii. Exceptions and Reply Exceptions

BA-PA claims that the ALJs erred in adopting the four (4)-second standard, even though delayed, and in rejecting the review process. (BA-PA Exc., p. 47; BA-PA R.Exc., pp. 28-32).

MCIW argues that the recommendation should be clarified to state that the four (4)-second standard be adopted at the same time as all other standards in this proceeding. (MCIW Exc., pp. 1-2).

AT&T argues that a request for waiver of the four (4)-second standard should be precluded after the first year. (AT&T Exc., pp. 5-6).

iv. Disposition

Upon consideration, we conclude that an approach consistent with the current and probable technical features of BA-PA's system is appropriate. In the long run, as BA-PA's system advances, a parity-plus-seven (7)-second measure would most likely be no measure at all. Conversely, in the short run, a parity-plus-four (4)-second measure, when there is credible evidence that such a standard may not be feasible and would only generate avoidable penalties, as opposed to desirable incentives, is not an approach we prefer or recommend. Consequently, we conclude that the most technically sustainable interaction between the Parties on this position must require BA-PA to provide Metric PO-1 at parity plus seven (7) seconds for the first year after the revised PA Guidelines become effective. We see no evidence of record that BA-PA cannot provide service at parity plus four (4) seconds thereafter. The pace of competition and technological change, in particular BA-PA's Web GUI, is such that this requirement, expected on or before one (1) year after the effective date of the revised PA Guidelines, promotes competition and monitors for anti-competitive behavior in light of technological feasibility. 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.

b. OSS Response Time

This metric measures the OSS response time. The information basis can be a measurement of either simulated or actual performance.¹⁵ (R.D., pp. 65-66).

¹⁵ According to BA-PA, the simulation process, EnView (formerly Sentinel), emulates the queries of BA-PA retail service representatives and CLEC service representatives, submitting identical queries, ensuring

i. Parties' Positions

BA-PA proposed that measurement of pre-order query response times be performed using its EnView process. (BA-PA St. 1.1, App. A, p. 6; BA-PA St. 1.1, App. B, p. 8; BA-PA M.B., p. 22; R.D., pp. 65-66).

The CLECs claimed that it would be impossible for them to accurately simulate any actual future operating conditions. (R.D., p. 65-67). AT&T agreed that measurement of pre-order query response times could be performed using BA-PA's EnView process. (AT&T M.B., p. 14). Sprint/United proposed that EDI and Web GUI response times should be measured directly. (Sprint/United St. No. 1, App. A, pp. 4-5; Sprint/United M.B., pp. 10-11).

ii. ALJs' Recommendation

The ALJs recommended that BA-PA measure EDI and Web GUI response times directly. (R.D., p. 66).

iii. Exceptions and Reply Exceptions

BA-PA again argues that the Commission should allow use of the EnView method. (BA-PA Exc., pp. 46-47).

While noting that it did not object to use of EnView, AT&T argues that BA-PA failed to prove that EnView accurately mirrors actual data. (AT&T R.Exc., p. 57).

that the measurement results represent an accurate comparison of the response times experienced by BA-PA retail service representatives and CLEC service representatives. (BA-PA St. 1.1, App. B, p. 8).

iv. Disposition

Upon consideration, we conclude that a reasonable resolution reflecting an interim compromise between the Parties is appropriate in light of technological developments in this rapidly changing industry. Consequently, we believe 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 measurements unless BA-PA proves, during that first year, that measuring actual performance is not technically feasible.

We think this approach is particularly beneficial to all the Parties for several reasons. First, EnView has been endorsed by the FCC and by the NYPSC. Second, BA-PA requires additional time to develop the capacity to measure OSS response time based on *actual* measurements. However, competition must not be delayed simply due to technical limits that can, with a reasonable amount of time and resource allocation, be remedied. Consequently, a metric that allows measurement of *simulated* performance for the first year, with the express requirement that measurement of *actual* performance commence on or before one (1) year after the effective date of the revised PA Guidelines, facilitates competition, gives BA-PA the limited time it needs to make the necessary technological changes to accommodate competition, and provides a sound basis for measuring competitive response times.

c. Time Outs

i. Parties' Positions

BA-PA proposed to exclude pre-order queries where the response time is sixty (60) seconds or longer from measurement of pre-order query response times. BA-PA's time out would mean that BA-PA would no longer record the response time after sixty (60) seconds because the system is deemed to have timed out if it did not respond.

The only difference in results would be caused by outages in the access platforms which would be measured under Metric PO-2, OSS Interface Availability. (BA-PA St. 1.1, App. A, p. 6; BA-PA St. 1.1, App. B, p. 5; BA-PA M.B., p. 24; BA-PA St. 1.1, App. B, p. 11; R.D., pp. 67, 69-70).

AT&T argued for the three-hundred-thirty (330) seconds as in New York and requested that the raw data on CLEC time outs (as compared to the time outs experienced by BA-PA retail operations) be supplied in the metric report. (AT&T St. 1.0, Exh. 1, p. 6; AT&T R.B., p. 13; R.D., pp. 68-69).

MCIW noted that under BA-PA's proposal there would be no penalty associated with the number of times the system times out. By setting a short time-out threshold, longer response times are not included and remedies could be avoided. MCIW objected to sixty (60) seconds, especially for Submetric PO-1-05, Average Response Time -- Telephone Number Availability and Reservation. MCIW also proposed a new submetric, PO-1-05, to report the percentage of pre-order queries that time out. (MCIW St. 1.0, Att. 1, p. 9, and Att. 2, p. 1; MCIW M.B., p. 10; R.D., p. 67).

Sprint/United claimed that BA-PA's proposal would provide an unacceptable opportunity for it to discriminate against Sprint/United and other CLECs. Sprint/United asserted that BA-PA's claim that the exclusions are necessary to accommodate transactions that it may never complete is wrong. BA-PA could simply choose not to respond to transactions that take an excessive amount of time since these transactions would be excluded from measurement under BA-PA's proposal. Such potential gaming of the measurement would have negative consequences on customers and CLECs alike. (Sprint/United St. 1.0, App. A, p. 5; Sprint/United M.B., pp. 11-12, R.B., p. 10; R.D., p. 68).

ii. ALJs' Recommendation

The ALJs concluded that excluding transactions taking longer than sixty (60) seconds provides too much of an opportunity for BA-PA to discriminate against CLECs. They recommended that BA-PA adopt a three-hundred-thirty (330)-second standard, consistent with the New York metric. (R.D., p. 70).

iii. Exceptions and Reply Exceptions

Maintaining that sixty (60) seconds continues to be an appropriate interval, BA-PA offers a compromise that the response time would not be recorded after one-hundred-twenty (120) seconds, pending further testing. (BA-PA Exc., pp. 59-61).

iv. Disposition

We agree with the CLECs and the ALJs that sixty (60) seconds is too short. Further, in our opinion, excluding transactions taking longer than one-hundred twenty (120) seconds still provides BA-PA with too much latitude for discriminating against CLECs. Accordingly, we shall, therefore, affirm the ALJs' conclusion and rationale relative to this metric, finding them to be reasonable, and adopt a three-hundred-thirty (330)-second interval.

d. Report Dimensions

The issue is disaggregation of data on a state-by-state basis with a *proviso* that BA-PA's metrics for Pennsylvania and Delaware may be combined, given the technological features of the interface serving Pennsylvania and Delaware.

i. Parties' Positions

BA-PA proposed to combine certain data for Pennsylvania and Delaware. (R.D., p. 71).

AT&T agreed to a combined report for Pennsylvania and Delaware provided that report dimensions for this metric track data for “each state in BA-PA’s service territory” to ensure that BA-PA is treating the CLECs fairly, relative to the service provided in other states. (AT&T St. 1.0, Exh. 1, p. 7; AT&T St. 1.1., Exh. A, p. 4; AT&T M.B., p. 14; R.D., pp. 70-71).

ii. ALJs’ Recommendation

The ALJs recommended that measurement for pre-order response times be performed on a combined Pennsylvania-Delaware basis, as the Parties agreed, and separately for all other relevant states. (R.D., pp. 70-71).

iii. Exceptions and Reply Exceptions

BA-PA takes exception to the recommendation that it report measurements on a state-specific basis for any state other than Pennsylvania. (BA-PA Exc., pp. 58-59).

iv. Disposition

The Parties agree that certain Pennsylvania and Delaware data are inherently aggregated due to the nature of the BA-PA facilities providing the services. This is not the case for data relative to other states. BA-PA has presented no compelling reasons not to adopt the ALJs’ recommendation, and we shall endorse that approach herein. Data for Pennsylvania and Delaware may be combined, but the data for the other relevant states must be reported on a state-specific basis, notwithstanding BA-PA’s underlying reluctance to provide such data.

2. PO-2 OSS Interface Availability

This metric measures the availability to CLECs of BA-PA's EDI and Web GUI for responding to customer inquiries. CLECs are effectively unable to respond to customer inquiries without access to the interface. (R.D., pp. 71-76).

a. Parties' Positions

BA-PA asserted that the EnView measurement methodology is effective in New York. BA-PA pointed out that only MCIW uses the electronic bonding (EB) interface and that trial use began recently. BA-PA claimed that the industry standard for the EB interface for local repair and maintenance has not yet been fully developed, and the interface is subject to change. (BA-PA St. 1.1, App. B, pp. 10, 17-18; BA-PA M.B., pp. 24-25; BA-PA R.B., p. 10; Tr., pp. 155-57; R.D., pp. 73, 75-76).

BA-PA further claimed that downtime is needed to repair its EDI and Web GUI operations and to monitor and improve its EnView system. BA-PA proposed a metric that divides OSS interface availability into Prime Time and Non-Prime Times. Prime Time would be 6:00 AM to 10:00 PM, Monday through Friday, and Non-Prime Time would be 10:00 PM to 6:00 AM, Monday through Saturday, and all day Sunday and holidays. BA-PA proposed to have the OSS interface available 99.5% of the time during Prime Time. While BA-PA proposed to measure performance during Non-Prime Time, BA-PA argued that a performance standard should not apply to Non-Prime Time availability. (BA-PA St. 1.1, App. A, p. 13; BA-PA St. 1.1, App. B, p. 13; BA-PA M.B., p. 25; BA-PA R.B., p. 10; R.D., pp. 71-76).

AT&T supported MCIW's position that EB must be measured. AT&T noted that BA-PA always has access to the interface. Without access to the interface, a CLEC is

unable to respond effectively to customer inquiries. Further, the CLECs, and AT&T in particular, believed that (1) there must be a measured response time for Non-Prime Time, that BA-PA can provide an EB interface despite the relative newness of the

feature, (2) simulated measurements using EnView are inappropriate, (3) reporting on a CLEC- and state-specific basis must be required, (4) trouble logs must be maintained and made available to CLECs, and (5) a process is needed to guide CLEC reports to BA-PA on outages. (AT&T St. 1.0, Exh. 1, p. 10-11; AT&T St. 1.1, Exh. A, p. 8; AT&T St. 1.1, Exh. C, p. 1; AT&T M.B., pp. 15-17; Sprint/United St. 1, App. A, p. 7; Sprint/United M.B., pp. 12-13; MCIW St. 1.1, p. 22; MCIW M.B., pp. 10-11; R.D., pp. 72-76).

b. ALJs' Recommendation

The ALJs recommended that BA-PA measure the EB interface, given the record evidence on its full development and BA-PA's witness' admitted lack of familiarity with the feature. The ALJs also supported actual measurement of OSS interface access instead of the EnView process because EnView only measures outages that happen to cross a test period. The ALJs recommended a two-hour downtime period with actual measurements reported on a state-by-state and CLEC-specific basis. If BA-PA can show in the future that it needs more time for maintenance and repair during Non-Prime Time, it should be permitted to petition for a change to this metric. Since BA-PA agreed to develop a process to access BA-PA's trouble logs and did not develop procedures for CLEC reporting on OSS interface outages, the ALJs recommended that this be done in BA-PA's Compliance Filing. (R.D., pp. 76-77).

c. Exceptions and Reply Exceptions

BA-PA argues the ALJs erred in rejecting its proposed use of EnView. Further, with respect to maintenance and repair, BA-PA argues that this Commission should exclude from the measurement of availability the period from 10:00 PM Saturday through 6:00 AM Monday and all day holidays. (BA-PA Exc., p. 46-47, 60-61; BA-PA R.Exc., p. 32).

AT&T argues that BA-PA has not proven that EnView accurately mirrors actual data. AT&T further challenges the recommendation to allow a longer downtime than BA-PA requested. (AT&T Exc., pp. 6-7; AT&T R.Exc., pp. 57, 68-69).

d. Disposition

The question is whether EnView should be used to measure OSS availability time for EDI and Web GUI. In our opinion, EnView is a reasonable approach; EnView, which is available and which measures the EDI and Web GUI, albeit on a simulated basis, should be used to measure OSS availability time. However, the measurement should be based upon actual data within the same time frame, *i.e.*, one (1) year, as that established in Metric PO-1, above.

Further, we agree with the CLECs that a shorter downtime outage reporting period is appropriate although we also agree with BA-PA that a realistic downtime outage reporting time must be established. A realistic downtime outage reporting time should allow for maintenance, repair, improvement, and adjustment in BA-PA's EDI and Web GUI interfaces for OSS interface availability. Consequently, we shall shorten the Non-Prime Time period to 12:01 AM to 6:00 AM Monday through Saturday, and all day Sundays and holidays.

Moreover, we do agree with the ALJs that the recommendations on reporting, logs, and outages are appropriate and must be required. We find their reasoning and recommendations relative to reporting, logs, and outages to be reasonable, and we shall adopt them.

3. PO-3 Contact Center Availability

This metric measures the percentage of calls, answered within a specified time, to the BA-PA contact centers handling pre-ordering, ordering, and maintenance queries. Contact centers are used as an escalating means of addressing a problem. Generally, the CLECs initiate calls to the contact center after there has been an automated failure of some variety. During the failure, a CLEC does not have access to any back-up personnel to resolve the issue, and service to the CLEC's customer may be delayed or impeded. (R.D., pp. 77-78).

a. Parties' Positions

BA-PA's proposed standard of performance is the standard contained in the Commission's regulations, 52 Pa. Code §63.59(b)(2), for retail business offices: 85% of calls to be answered in twenty (20) seconds. (BA-PA St. 1.1, p. 14; BA-PA St. 1.1, App. B, p. 18; BA-PA M.B., p. 26; R.D., pp. 78-79).

AT&T asserted that BA-PA would have no obligation to answer 15% of all calls because there is no measurement assigned to them. AT&T proposed that the remaining 15% of the calls be responded to within thirty (30) seconds so that CLECs are assured that all calls must be answered within a reasonable time frame. (AT&T St. 1.0, p. 22; R.D., pp. 78-79).

MCIW proposed an additional standard of 100% of calls to be answered in thirty (30) seconds. (MCIW St. 1.0, Att. A, p. 2; R.D., p. 78).

CTSI supported AT&T's position. (CTSI M.B., p. 10-11; R.D., p. 78).

b. ALJs' Recommendation

The ALJs recommended the standard of a thirty-(30) second response time for 95% of the calls. (R.D., pp. 79-80).

c. Disposition

There were no Exceptions taken to the ALJs' recommendation. We find that BA-PA's proposed standard, that 85% of the calls be answered with a recording within twenty (20) seconds, is neither equivalent to our retail service regulation, 52 Pa. Code §63.59(b)(2), nor consistent with *OSS NOPR*. Accordingly, we shall adopt the reasoning and recommendation of the ALJs finding them to be reasonable. The standard shall be 95% of the calls answered within thirty (30) seconds.

4. PO-4 Timeliness of Change Management Notice

This metric measures the timeliness and accuracy of BA-PA's notifications to the CLECs of changes in BA-PA's EDI and Web GUI interfaces due to technological, systemic, and features changes that enhance BA-PA's OSS interface. Change management is the process BA-PA uses to notify the CLECs of changes affecting the interfaces through which BA-PA provides access to its OSS. Without timely notice to change their computer systems, the CLECs' systems will be incompatible, and BA-PA's and the CLECs' use of the OSS interface will be impaired or delayed. (R.D., pp. 80-81).

a. Parties' Positions

BA-PA proposed 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 (*i.e.*, 95% of all notices to be sent on time) applied to (or "averaged" over) the total submetric for purposes of the incentive provisions. (BA-PA St. 1.1, App. B, pp. 20-22; BA-PA M.B., p. 26; R.D., pp. 81-82).

The CLECs supported the five (5) categories but urged this Commission to require disaggregation for reporting in the five (5) categories since they each measure discrete components that an overall average would not reveal. AT&T noted that the different types of change notices, with specific time intervals applying to each, must be reported and measured separately so the CLECs can assess whether BA-PA is meeting its obligation to timely transmit these notifications. (AT&T St. 1.0, Exh. 1, p. 23; Tr., pp. 95-97, 99-100; R.D., pp. 81-82). CTSI supported disaggregation as AT&T proposed. (CTSI M.B., p. 11; R.D., p. 82).

b. ALJs' Recommendation

The ALJs agreed with BA-PA that an overall average was appropriate and recommended the adoption of BA-PA's proposal for this metric. (R.D., p. 82).

c. Exceptions and Reply Exceptions

AT&T argues that applying the 95% standard to the total submetric will mask the untimeliness of notices in particular notifications. (AT&T Exc., pp. 8-9).

d. Disposition

Upon consideration, we agree with the ALJs. An overall measure accounts for the discrete components within the average and provides the Commission and the Parties with an accurate thumbnail sketch of BA-PA's notice procedures. Moreover, the fact that the Parties can always challenge the result of any discrete component, notwithstanding the overall compliance rate of 95%, with a formal complaint underscores the validity of our determination.

5. PO-5 Average Notification of Interface Outage

This metric measures the timeliness of BA-PA's notice of interface outage to the CLECs that the platforms they use to access BA-PA's OSS are unavailable. (R.D., pp. 82-83).

a. Parties' Positions

BA-PA proposed a standard that the average notice time would not exceed twenty (20) minutes. (BA-PA St. 1.1, App. A, p. 17; BA-PA St. 1.1, App. B, p. 23; BA-PA M.B., pp. 26-27; BA-PA R.B., pp. 11-12; R.D., pp. 83-84).

AT&T, MCIW, and CTSI argued that all outages, regardless of duration and for both Web GUI and EB, should be included in this performance standard. (AT&T St. 1.1, Exh. A, p. 13; AT&T St. 1.1, Exh. C, p. 1; AT&T M.B., p. 20; R.D., pp. 83-85; MCIW St. 1.0, Att. 2, p. 3; CTSI M.B., p. 11).

Sprint/United argued that BA-PA should provide CLEC-specific results for this measurement. (Sprint/United M.B., p. 13; R.D., p. 83).

b. ALJs' Recommendation

The ALJs agreed with BA-PA and suggested no changes to this metric, recommending that BA-PA should report all outages within twenty (20) minutes and that outages of less than fifteen (15) minutes could be excluded. (R.D., pp. 5 & 85).

c. Exceptions and Reply Exceptions

AT&T and MCIW urge that the fifteen (15)-minute exclusion be eliminated. (AT&T Exc., pp. 9-10; MCIW Exc., pp. 2-3).

d. Disposition

The issue is whether to adopt a performance standard which requires BA-PA to report all outages within twenty (20) minutes but excludes outages that are less than fifteen (15) minutes. Clearly, the appropriate standard is to require BA-PA to report all outages within twenty (20) minutes. However, we shall grant AT&T's exception on this point and remove the less-than-fifteen-(15)-minute exclusion from this metric. As noted by AT&T, the notification process is not burdensome, but it is necessary to apprise the CLECs of where access difficulty lies.

B. Ordering Metrics

1. OR-1 Order Confirmation Timeliness

This metric measures the time it takes BA-PA to provide the CLECs with confirmation of a CLEC service order. Without an order confirmation, CLEC customers are not assured of whether and when service will be provided. (R.D., p. 85). This was one of the most contentious issues before the ALJs. (R.D., p. 90). Order confirmations are not provided for retail services. (R.D., p. 93). In the context of this Opinion and Order, there are three (3) components to the discussion of this metric: Standard, Hourly Intervals, and BA-PA-to-CLEC Trunk Requests.

a. Standard

i. Parties' Positions

BA-PA proposed to provide order confirmations within the same time frames contained in the New York guidelines, meeting the performance intervals contained in the metric 95% of the time. BA-PA noted that the NYPSC adopted the 95% standard, instead of the 90% standard initially proposed by BA-NY, at the behest of the CLECs. (BA-PA St. 1.1, App. B, pp. 26-27; Tr., p. 121; BA-PA M.B., pp. 27-29; R.D., p. 86).

AT&T, MCIW, and CTSI proposed that BA-PA be required to meet the performance intervals 100% of the time. AT&T also challenged some of the performance intervals. (AT&T St. 1.0, p. 25; AT&T St. 1.1, pp. 9-10; AT&T M.B., p. 20; MCIW St. 1.0, Att. 1, p. 20; CTSI M.B., pp. 11-12; R.D., pp. 86-90).

ii. ALJs' Recommendation

The ALJs recommended an objective standard of timeliness rather than a parity standard because BA-PA does not provide order confirmations to itself. The ALJs recommended that the performance intervals be met 100% of the time. (R.D., pp. 92-94).

iii. Exceptions and Reply Exceptions

BA-PA characterizes the 100% performance standard as perfect service, the expectation of which is unreasonable, and recommends a 95% performance standard because there is no comparable retail operation. (BA-PA Exc., pp. 42-44).

iv. Disposition

This metric is necessary because delay in this matter costs the CLECs both money and goodwill; BA-PA should be required to measure the time in which it provides notice to the CLECs confirming a service order. There is no comparable retail operation; BA-PA does not provide service order confirmations to itself. In setting an objective standard for this metric, we find that an expectation of 100% perfect service is beyond what should reasonably be expected for this metric at this time. Accordingly, we shall require BA-PA to provide order confirmations within the specified time frames (as discussed in Hourly Intervals, below), meeting the performance intervals contained in the metric 95% of the time.

b. Hourly Intervals

i. Parties' Positions

BA-PA proposed that the interval for order confirmation would be seventy-two (72) hours for “complex POTS orders”¹⁶ requiring loop qualifications regardless of service order size (*i.e.*, service orders containing any number of lines). BA-PA proposed to discuss this issue in the future with the CLECs. (BA-PA St. 1.1, App. B, pp. 28-29; BA-PA M.B., pp. 28-29; R.D., pp. 87 & 89).

AT&T asserted that the interval for order confirmation for POTS service for any service order with less than ten (10) lines should be no greater than forty-eight (48) hours if the service order is electronically submitted. (AT&T St. 1.0, p. 25; AT&T M.B., p. 21; R.D., pp. 86-88).

¹⁶ Plain old telephone service (POTS) is the basic single line switched access service offered by LECs to residential and business end users, using loop-start signaling. (BA-PA CLEC/Resale Handbook Series Glossary (August 4, 1999)).

Sprint/United would include project orders with greater than ten (10) lines and would set specific intervals for non-project orders. (Sprint/United St. 1, Exh. A, p. 10; R.D., pp. 89-90).

ii. ALJs' Recommendation

The ALJs rejected the CLECs' proposals for shorter intervals, leaving it at seventy-two (72) hours for complex POTS orders requiring loop qualifications regardless of service order size, finding that the CLECs' proposals would impose a "potentially massive and continuing investment in new systems and personnel at substantial expense" upon BA-PA. The ALJs recommended that, as part of its Compliance Filing, BA-PA should clarify its proposed language concerning the intervals for providing a firm order confirmation on interconnection trunks. (R.D., pp. 93-94).

iii. Exceptions and Reply Exceptions

AT&T, MCIW, and Sprint/United argue for shorter intervals. (AT&T Exc., pp. 11-12; MCIW Exc., pp. 3-5; Sprint/United Exc., pp. 6-10; Sprint/United R.Exc., pp. 4-5).

iv. Disposition

The maximum interval for order confirmation for POTS for any order with less than ten (10) lines shall be forty-eight (48) hours if the order is electronically submitted, as proposed by AT&T. We are not persuaded that any changes required by the forty-eight (48)-hour interval specified herein will be such a "potentially massive and continuing investment in new systems and personnel at substantial expense" as to be unreasonable or to outweigh the benefit of the shortened interval. For orders over ten (10)

lines, and in all other respects, we adopt the ALJs' recommendation that there be no reduction in the BA-PA proposed seventy-two (72) hour interval.

c. BA-PA-to-CLEC Interconnection Trunks

i. Parties' Positions

BA-PA argued that the CLEC proposal to include BA-PA-to-CLEC interconnection trunks in this metric should be denied because (1) it would impose an unreasonable burden upon BA-PA, (2) there is no evidence of its feasibility, and (3) the CLECs have brought their proposal in the wrong proceeding. (BA-PA St. 1.1, App. B, p. 27; BA-PA M.B., pp. 27-29; R.D., pp. 90-91).

AT&T proposed that BA-PA-to-CLEC interconnection trunks be reported in this metric, as opposed to BA-PA's proposal to confine this metric to measure only CLEC-to-BA-PA interconnection trunks. If BA-PA underestimates the BA-PA-to-CLEC trunk needs, then CLEC-bound traffic may be blocked. AT&T proposed to try to detect whether delays in BA-PA's placement of orders for BA-PA-to-CLEC interconnection trunks are problematic. (AT&T St. 1.0, pp. 42-43; AT&T St. 1.0, Exh. 1, p. 17; AT&T St. 1.1, Exh. A, p. 18; AT&T M.B., pp. 22-24; R.D., pp. 88-89).

ii. ALJs' Recommendation

The ALJs recommended that BA-PA implement the measurement of BA-PA-to-CLEC interconnection trunks as part of this metric on an interim basis. (R.D., p. 93).

iii. Exceptions and Reply Exceptions

BA-PA argues that the ALJs' recommendation is impossible to accomplish and, therefore, unreasonable and that it should be rejected. (BA-PA Exc., pp. 42-44).

iv. Disposition

BA-PA shall implement the measurement of BA-PA-to-CLEC interconnection trunks as part of this metric on an interim basis, as recommended by the ALJs. An underestimation by BA-PA relative to the BA-PA-to-CLEC interconnection trunk needs could result in blocked CLEC-bound traffic. Measurement of the BA-PA-to-CLEC interconnection trunks on an interim basis will reveal whether delays in BA-PA's placement of orders for BA-PA-to-CLEC interconnection trunks are problematic.

2. OR-2 Reject Timeliness

This metric measures the time that it takes BA-PA to reject a CLEC service order. (R.D., p. 93).

a. Parties' Positions

BA-PA opposed the CLECs' proposals for the reasons it articulated relative to Metric OR-1. (R.D., p. 94).

The CLECs made the same proposals for Metric OR-2 that they made for Metric OR-1. (AT&T St. 1.0, Ex. 1.0, p. 25; AT&T M.B., pp. 24-25; CTSI M.B., p. 12; MCIW St. 1.0, Att. 2, p. 4; Sprint/United Exh. A, p. 9; R.D., p. 94).

b. ALJs' Recommendation

The ALJs' recommendations here were consistent with their recommendations for Metric OR-1, above. Specifically, the ALJs recommended: (1) a standard of 100%; (2) an interval of seventy-two (72) hours; (3) that, as part of its Compliance Filing, BA-PA should clarify its proposed language concerning the intervals for providing a firm order confirmation on interconnection trunks; and (4) that BA-PA implement the measurement of BA-PA-to-CLEC interconnection trunks as part of this metric on an interim basis. (R.D., pp. 92-94).

c. Exceptions and Reply Exceptions

The Parties positions are consistent with their arguments relative to Metric OR-1 above.

d. Disposition

This metric raises the issue of notice and timely reporting. Consistent with our analysis of Metric OR-1, BA-PA should be required to measure the time in which it provides notice to the CLECs that a service order is rejected. We believe this metric is necessary because a CLEC should have timely notification of the rejection of a service order so as to make the situation right if that can be accomplished. Again, this is a matter of both money and customer goodwill for the CLECs.

We shall modify the ALJs' recommendation and adopt a performance standard of 95%. The maximum interval shall be forty-eight (48) hours. Additionally, BA-PA shall implement the measurement of BA-PA-to-CLEC interconnection trunks as part of this metric on an interim basis.

3. OR-3 Percent Rejects

This metric measures the percentage of orders received by BA-PA that are rejected or queried back to the CLEC. BA-PA proposed no standard for this metric because the metric reflects CLEC performance. No Party objected. The ALJs recommended no changes. (R.D., p. 94).

a. Disposition

This metric measures the percentage of orders received by BA-PA that are rejected or queried back to the CLEC. We will adopt the metric, as proposed by BA-PA, without a performance standard, in that the metric reflects CLEC performance. We have made provisions elsewhere in this Opinion and Order for the exploration of what metrics should apply to the CLECs. (*See Reciprocity, supra.*)

4. OR-4 Timeliness of Completion Notification

This metric measures the timeliness of delivery of notices from BA-PA to the CLECs that CLEC orders for service have been completed. The question here is where the trigger for notice will be placed for metric compliance measurement purposes. (R.D., pp. 94-95).

a. Parties' Positions

BA-PA proposed that compliance be measured from completion of an order in BA-PA's customer record information system (CRIS)¹⁷ and that the standard for this metric should be 97% completed by the next business day at noon. BA-PA asserted that the slight delay in the completion notice causes no harm to a CLEC or its end user. (BA-PA St. 1.1, App. A, pp. 32-33; BA-PA St. 1.1, App. B, p. 47; BA-PA M.B., pp. 30-31; R.D., pp. 95 & 98).

The CLECs claimed that a twenty-four (24)-hour or a seventy-six (76)-hour period is much longer than that provided to BA-PA's own operations, that workforce completions are needed for comparison to BA-PA's notices provided to the CLECs, and that BA-PA's proposal is not parity. (R.D., pp. 95-98).

AT&T and CTSI recommended a standard of fifteen (15) minutes, claiming it models more closely BA-PA's retail operations experience. AT&T argued that workforce completions should be used for identifying order completion and requiring notification to the CLEC. (AT&T St. 1.0, pp. 27-28; AT&T M.B., pp. 25-26; CTSI M.B., pp. 12-13; R.D., pp. 95-98).

MCIW proposed that BA-PA be required to measure the interval for delivery of completion notices not from the time of completion of an order in CRIS to the time of delivery of the notice, but from the time of completion of an order in the Work Force Administration System (WFAS) to the time of delivery of the notice. (MCIW St. 1.0, Att. 2, p. 5; R.D., p. 95).

¹⁷ CRIS is BA-PA's database containing end-user information used for billing. (BA-PA CLEC/Resale Handbook Series Glossary (August 4, 1999)).

Sprint/United disagreed with BA-PA, asserting that BA-PA's proposal discriminates against the CLECs and is inconsistent with FCC orders. (Sprint St. 1, Exh. A, p. 11; citing *Second BellSouth Louisiana Order*, CC Docket No. 98-121 (October 13, 1998), ¶130; R.D., pp. 97-98).

b. ALJs' Recommendation

The ALJs determined that a twenty-four (24)-hour, or next-day, approach would be too long and would harm competition. The ALJs consequently recommended that BA-PA be required to provide completion notices within fifteen (15) minutes after installation work is completed (*i.e.*, WFAS completion). (R.D., p. 99).

c. Exceptions and Reply Exceptions

BA-PA argues that it was an error not to allow notification to take place by noon of the following business day. (BA-PA Exc., pp. 52-55).

d. Disposition

Upon consideration, we believe that a longer time period than fifteen (15) minutes is appropriate although the measure of that what constitutes "notice" must be reformulated to be more pro-competitive. Consequently, we shall require BA-PA to provide notice within thirty (30) minutes of WFAS completion, maintain a log of notice times, and require that notice be triggered from the moment of installation and not, as was proposed, from the moment of placement in BA-PA's CRIS. This longer period (thirty (30) minutes rather than the fifteen (15) minutes recommended by the ALJs) provides BA-PA with a reasonable flexibility period that balances the transient realities of digitally-based competition in telecommunications against the permanent certainties of human organizations.

5. OR-5 Percent Flow-Through

A flow-through order is one which is transmitted electronically from a CLEC through the EB or Web GUI access platform to BA-PA's service order processor (SOP) without manual intervention (such as rekeying) by a BA-PA employee. Flow-through minimizes error and delay in processing CLEC customer orders and equalizes (in terms of time and quality) the starting points for a CLEC's customer orders versus BA-PA's customer orders. (R.D., pp. 99-100). The Parties agree that flow-through is preferable and that BA-PA should report the percentage flow-through of the CLEC orders it receives. (R.D., pp. 103).

a. Parties' Positions

BA-PA proposed measurements that will show the percentage of all CLEC orders and "simple orders" (basic POTS) that flow-through and the percentage of that flow-through. (BA-PA St. 1.1, App. A, p. 34; BA-PA St. 1.1, App. B, pp. 36-37; BA-PA M.B., pp. 31-33; BA-PA R.B., pp. 13-14; R.D., pp. 100 & 102).

AT&T and CTSI argued that BA-PA's refusal to establish a performance standard and its proposed exclusion of this metric from the remedies calculation undermines its pivotal significance and importance for assuring timely and accurate processing of CLEC orders. (AT&T St. 1.0, pp. 29-32; CTSI M.B., p. 13; R.D., pp. 99-102).

MCIW and Sprint proposed that BA-PA accept all orders electronically and establish systems to allow all electronic orders to flow-through to BA-PA's SOP without manual intervention by BA-PA employees. (MCIW St. 1, Att. 2, pp. 5-6; Sprint Exh. A, pp. 12-13; R.D., p. 102).

b. ALJs' Recommendation

The ALJs recommended that BA-PA should report the percentage flow-through of the CLEC orders it receives. They also recommended setting a standard of 100% parity with BA-PA retail services at this time and that the metric should be included in the remedies plan. (R.D., pp. 103-104).

c. Exceptions and Reply Exceptions

BA-PA takes exception to the requirement that it achieve 100% parity with retail and that it be penalized for failing to reach this standard. (Exc., pp. 38-42).

AT&T argues in support of 100% parity and remedies for noncompliance. (AT&T R.Exc., pp. 51-57).

Sprint/United acknowledges that flow-through was a significant issue and must be measured for diagnostic purposes. Sprint/United argues, however, that flow-through is a means, not an end. Timely and accurate provisioning of ordered services is the goal. (Sprint/United Exc., pp. 10-13; Sprint/United R.Exc., pp. 3-4).

MCIW argues that requiring BA-PA to improve flow-through is an incentive to fix the process. (MCIW R.Exc., pp. 18-19).

d. Disposition

We must determine whether this metric is an incentive measure, a measure for diagnostic purposes, or both. Clearly, all Parties agree that flow-through is important. As the ALJs found, the importance of flow-through rates increases as BA-PA's OSS moves forward to accommodate commercial volume levels. (R.D., p. 103). Accordingly, we shall

establish this metric for flow-through as a metric for diagnostic purposes. We shall not include this metric in the remedy process at this time. As stated elsewhere, these performance measures will undergo periodic reviews. Additionally, the Parties have other remedies if a practice is failing to promote nondiscriminatory competitive access. If BA-PA's flow-through is not adequate to support commercial volume levels or if BA-PA fails to promptly improve its flow-through capability to reach the necessary level, we can take the necessary steps to address that problem. In the meantime, establishment of this metric for diagnostic purposes will provide us with the necessary data to monitor this issue.

6. OR-6 Order Accuracy

This metric measures BA-PA's accuracy in processing CLEC orders and the accuracy of Local Service Request Confirmations (LSRCs). This standard measures accuracy of an entire order, including errors that have no service impact. (R.D., pp. 104-105).

a. Parties' Positions

BA-PA asserted that AT&T's request for 100% parity (*i.e.*, "perfect" service) should be rejected. BA-PA proposed a 95% standard, as ordered in New York. (BA-PA St. 1.1, App. A, p. 35; BA-PA St. 1.1, App. B, p. 36; BA-PA M.B., p. 33; BA-PA R.B., p. 13; R.D., pp. 104-105).

AT&T and CTSI proposed a 100% standard for measuring order accuracy. (AT&T St. 1.1, Exh. C, p. 2; AT&T M.B., p. 29; CTSI M.B., p. 13; R.D., p. 104).

b. ALJs' Recommendation

The ALJs agreed with AT&T and recommended parity with BA-PA retail, or 100%, for this metric. (R.D., p 105).

c. Disposition

There were no exceptions on this issue. In the absence of any exception on this issue, we shall adopt the reasoning and recommendation of the ALJs, finding them to be reasonable for this metric.

C. Provisioning Metrics

1. PR-1 Average Interval Offered

This metric measures the average intervals offered by BA-PA for completion of an order to install or disconnect service, *i.e.*, the time between the order application date and an appointment date. A CLEC's commitment to its customer for a service delivery date is built on this interval. (R.D., p. 105).

a. Parties' Positions

BA-PA proposed to report Metric PR-1 but to exclude it from the computation of the remedies metric. Similarly, the New York guidelines contain a standard for these metrics but no incentive payment obligations. BA-PA alleged that it provides the same intervals to CLECs that it offers for retail customers. For services with a standard interval, CLECs can request, and automatically receive, the published standard interval when electronically submitting their orders. For services that are not subject to standard intervals, the customer is quoted an installation interval when applying for service, which can vary from one order to the next based on workload and available BA-PA work-force. (BA-PA St. 1.0, App. A, p. 42; BA-PA St. 1.1, App. A, pp. 42-43; BA-PA St. 1.1, App. B,

pp. 32-33, 41, 44; Tr., pp. 169-172, 174-176; BA-PA M.B., pp. 33-36; R.D., pp. 105, 109-111).

AT&T and CTSI proposed that BA-PA disaggregate the different types of service arrangements and compare the services that it orders itself for its own customers to the services and arrangements that the CLECs order for their customers. Disaggregation should be applied to this metric for all other types of wholesale service. BA-PA's proposed exclusion of orders that were not completed would allow discrimination to be masked because uncompleted orders may be attributable to problems caused by BA-PA. (AT&T St. 1.0, pp. 33-34; AT&T St. 1.1, Exh. A, p. 25; AT&T St. 1.1, Exh. C, p. 2; AT&T M.B., pp. 29-32; CTSI M.B., pp. 14-15; R.D., pp. 106-109).

Sprint/United disagreed with BA-PA's assertion that for some unbundled network elements (UNEs) there is no analogous retail service and recommended parity to BA-PA's retail equivalent service. (Sprint/United St. 1.0, App. A, pp. 13-14; Sprint/United M.B., pp. 17-18; R.D., p. 108).

b. ALJs' Recommendation

The ALJs recommended that this metric contain a performance standard of parity to BA-PA's retail operations and be included in the remedies calculation, including a report on the number of pending, but not yet completed, orders.

c. Exceptions and Reply Exceptions

BA-PA argues that performance standards and remedies should not apply to this metric and, further, that this metric should not include a performance measure of pending orders. In the alternative, if standards are set for UNEs, they should reflect the intervals in BA-PA's Product Interval Guide. (BA-PA Exc., pp. 64-68).

AT&T argues that performance standards and remedies should apply to this metric and, further, that this metric should include a performance measure of pending orders. (AT&T R.Exc., pp. 71-74).

Sprint/United argues that BA-PA's proposal should be rejected. (Sprint/United R.Exc., pp. 9-11).

d. Disposition

We conclude that the provisioning metric should not be exempt from standards and remedies. By including provisioning as a metric, we stress that we are seeking performance through this proceeding, not simply the imposition of penalties. This metric shall be counted for diagnostic purposes initially, with remedies commencing when the three-tier incentive process established in this Opinion and Order takes effect.

2. PR-2 Average Interval Completed

This metric measures the time between the order application date and the actual work completion date. If the actual time period exceeds an established interval, a CLEC's customer experiences delays that the ILEC's customers will not. (R.D., p. 112).

a. Parties' Positions

BA-PA proposed to report this metric but exclude it from the computation of the remedies metric. Regardless of whether a service is subject to a standard interval, any BA-PA failure to install service within the quoted interval will be measured as a missed installation appointment under Metric PR-4. Thus, Metric PR-2 duplicates Metric PR-4 and is unnecessary. BA-PA defined the "completed" date as the date when it completes the

work for the order and asserted that an order should be measured as completed on the date that the physical work was completed and service was installed and working. Further, the CLEC proposal would show BA-PA's performance as out of parity with BA-PA retail even though the CLEC and BA-PA retail end users receive service at the same time. (BA-PA St. 1.1, App. A, pp. 43, 52-56; BA-PA St. 1.1, App. B, pp. 44-46; BA-PA M.B., pp. 36-37; R.D., pp. 113-114).

Using the arguments propounded relative to Metrics OR-1 and PR-1, AT&T asserted that this metric must be subject to a standard and included in the calculation of remedies. AT&T argued that the performance standard for UNEs should be the same parity standard as governs resale and interconnection orders. (AT&T St. 1.0, pp. 35-36; AT&T M.B., pp. 33-34; R.D., pp. 112-113).

MCIW argued that BA-PA should not consider an order completed until BA-PA has notified the CLEC. (MCIW M.B., pp. 13-14; R.D., p. 113).

Consistent with the arguments it propounded relative to Metric PR-1, Sprint/United recommended parity with BA-PA's retail equivalent. (Sprint/United M.B., p. 18; R.D., p. 113).

CTSI urged the inclusion of this metric. (CTSI M.B., p. 15; R.D., p. 113).

b. ALJs' Recommendation

Consistent with their recommendations in Metrics OR-1, OR-4 and PR-1, the ALJs recommended that this metric be subject to a standard and included in the calculation of remedies. The performance standard for UNEs should be comparable to the parity standard governing resale and interconnection orders. The metric should provide that the cut-off time for submission of orders is the same time offered to BA-PA's retail

operations. The metric should define order completion as the time when BA-PA has notified the CLEC of the completion. (R.D., pp. 114-115).

c. Exceptions and Reply Exceptions

BA-PA argues that standards and incentive payments should not apply to this metric. Further, in any case, the date of completion should be the date work is completed, not the date notice is given. (BA-PA Exc., pp. 64-69).

AT&T argues that standards and incentive payments should apply to this metric and that completion should be measured as of the date notice is given. AT&T also would measure the time between actual completion and notice of completion. (AT&T R.Exc., pp. 71-76).

Sprint/United argues that BA-PA's proposal should be rejected. (Sprint/United R.Exc., pp. 9-11).

d. Disposition

As we said with respect to Metric PR-1, we conclude that the provisioning metric should not be exempt from standards and remedies. This metric shall be counted for diagnostic purposes initially with remedies commencing when the three-tier incentive process established in this Opinion and Order takes effect.

We agree with the ALJs relative to the interval issue. The notice period measured by this metric should be defined as terminating when notice is provided to the CLEC as opposed to when BA-PA actually completes an order. That is because there may be a gap of time between completion of a CLEC's request and notice to a CLEC that its

request is completed which could prove harmful to competition. A metric measured from the notice to the CLEC, as opposed to mere installation, prevents that.

3. PR-3 Percent Completed Within Specified Number of Days

This metric measures the percentage of orders completed in a specified number of days for POTS orders, *i.e.*, the time between application and work completion dates for POTS orders with five (5) or less lines, and complements Metric PR-2. (R.D., p. 115).

a. Parties' Positions

Relying on its discussion of Metric PR-1, BA-PA asserted that this metric should not have performance standards or be included in incentives calculations. (BA-PA St. 1.1, App. A, pp. 49-50; BA-PA M.B., p. 37; R.D., p. 115).

Referencing its discussion of PR-1, AT&T disagreed, adding that an order must not be considered complete before BA-PA notifies the CLEC that the order is complete. (AT&T St. 1.0, p. 36; AT&T St. 1.1, Exh. C, p. 2; AT&T M.B., p. 34-35; AT&T R.B., p. 20; R.D., pp. 115-116).

Sprint/United and CTSI recommended parity with BA-PA's retail operations for this metric. (Sprint/United M.B., p. 18; CTSI M.B., p. 15; R.D., p. 116).

b. ALJs' Recommendation

The ALJs recommended that the average completed interval be provided at parity to confirm that BA-PA is providing nondiscriminatory access to its services. They further recommended that this metric should be subject to a performance standard and

included in the calculation of remedies. They recommended that the performance standard for UNEs should be parity with the standard governing resale and interconnection orders. (R.D., pp. 116-117).

c. Exceptions and Reply Exceptions

BA-PA argues that Metric PR-3 duplicates Metric PR-4 and is, therefore, unnecessary. (BA-PA Exc., pp. 64-67).

d. Disposition

This objectively quantifiable metric is important for diagnostic purposes, and, to that extent, we will establish a standard of parity to BA-PA's retail operations (*i.e.*, 95% as previously defined herein). As this metric is a measure of performance rather than the performance itself, it is a purely diagnostic metric. We shall reject the application of remedies to this metric.

4. PR-4 Missed Appointments

This metric measures the percentage of orders completed after the date to which BA-PA commits for reasons attributable to BA-PA. (R.D., p. 117).

a. Parties' Positions

BA-PA proposed 95% parity, as adopted in New York. (BA-PA M.B., p. 37; R.D., p. 117).

AT&T proposed 100% parity, asserting that establishing parity relative to analogs is inherently fair and automatically self-calibrating. AT&T claimed that the

proposed standards are unsupported by any evidence and are discriminatory rigid. (AT&T St. 1.1, Exh. C, p. 2; AT&T M.B., pp. 35 & 36, fn. 13; R.D., p. 117).

Recalling its arguments relative to Metric PR-3, Sprint/United recommended a level of disaggregation mirroring available products. (Sprint/United M.B., p. 18; R.D., p. 118).

CTSI noted that BA-PA's adherence to the 95% standard adopted in New York should not dictate the outcome in Pennsylvania. (CTSI M.B., p. 16; R.D., p. 118).

b. ALJs' Recommendation

The ALJs recommended 100% parity. (R.D., p. 118).

c. Exceptions and Reply Exceptions

BA-PA argues that a standard of 100% is impossible and unreasonable. (BA-PA Exc., pp. 42-44).

d. Disposition

We agree with the conclusion of the ALJs that this is an appropriate metric, but we also agree with BA-PA that 100% parity is unreasonable. A benchmark of 100% parity holds BA-PA to an extremely stringent standard that may have built within it almost unavoidable shortfalls. A reasonable expectation and requirement is a 95% compliance rate, consistent with our definition of parity.

5. PR-5 Facility Missed Orders

This metric measures BA-PA's failures, due to the lack of BA-PA facilities, to meet installation commitments which it has made to CLECs. (R.D., p. 118).

a. Parties' Positions

Countering the CLECs' desire to include canceled orders in this metric, BA-PA claimed that the impact of canceled orders is *de minimis* (99.7% of all orders are completed). BA-PA further asserted that it cannot measure orders that are not completed. BA-PA alleged that including canceled orders would impose an additional measurement cost on BA-PA. (BA-PA St. 1.1, App. B, pp. 59-60; Tr., p. 123; BA-PA M.B., p. 38; R.D., pp. 118-119).

AT&T and CTSI wanted this metric to include pending orders and canceled orders. They agreed that the exclusion of canceled orders would provide BA-PA with an opportunity and incentive to cancel, rather than complete, overdue orders. (AT&T St. 1.0, p. 38; AT&T M.B., p. 36; CTSI M.B., p. 16; R.D., pp. 118-119).

b. ALJs' Recommendation

The ALJs recommended the exclusion of canceled orders from this metric. (R.D., p. 119).

c. Exceptions and Reply Exceptions

BA-PA argues that the recommendation should be modified to further exclude BA-PA-to-CLEC interconnection trunks because such trunks involve no provisioning by BA-PA. (BA-PA Exc., pp. 62-64; BA-PA R.Exc., pp. 35-36).

AT&T argues that the ALJs erred in excluding canceled orders. (AT&T Exc., pp. 12-13; AT&T R.Exc., pp. 69-71).

d. Disposition

We agree with the ALJs that cancellations must be excluded from this metric. A cancellation is an action separate and distinct from an incomplete order. An incomplete order is one that was not canceled and was not met. A canceled order, on the other hand, is one that cannot be completed because it is no longer required. Consequently, BA-PA cannot possibly cause competitive harm by mixing cancellations with incompletions as alleged by the CLECs. Moreover, to the extent that such activity even becomes a remote possibility and is a matter of concern to the CLECs, the CLECs have this Commission's administrative processes available if and when that remote tangential possibility becomes a cognizable reality.

6. PR-6 Installation Quality

This metric measures the troubles reported and found in BA-PA's network on lines, circuits, and trunks within specific intervals following completion of a service order. Specifically, the 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. (R.D., p. 119).

a. Parties' Positions

BA-PA proposed a metric that would not account for hot cuts, *i.e.*, transfers between the ILEC and the CLECs of customers with existing service, claiming there is no evidence of hot cut problems in Pennsylvania at the current time. BA-PA was, however,

willing to adopt separate hot cut metrics in Pennsylvania if and when they are adopted in New York. (BA-PA M.B., p. 38; BA-PA R.B., p. 17; R.D., pp. 120-121).

The CLECs claimed that hot cuts are a problem in New York (and have been specifically identified as a problem of compliance in the New York test) and that the lack of variation in the similar qualities of BA-PA's workforces in Pennsylvania and New York justify a metric. (R.D., pp. 119-121).

Specifically, AT&T made several proposals regarding this metric:¹⁸ First, BA-PA should separately report data on hot cuts in Metrics PR-6-04 and PR-6-05 because of the criticality of the hot cut service and the long-running problems that BA-PA has experienced with provisioning hot cuts. Second, the hot cut data should be reported separately in Metric PR-8. CTSI supported AT&T's position. (AT&T St. 1.0, pp. 38-39; AT&T St. 1.1, p. 8; AT&T St. 1.1, Exh. B; AT&T St. 1.1, Exh. C, p. 3; Tr., pp. 112-115; AT&T M.B., pp. 36-38; CTSI M.B., pp. 16-17; R.D., pp. 119-121).

b. ALJs' Recommendation

The ALJs found no evidence in this record of hot cut problems in Pennsylvania. For the time being, they accepted BA-PA's willingness to provide a hot cut metric in Pennsylvania if New York adopts one. They were concerned, however, that, if any hot cut problems arise in Pennsylvania before New York adopts a hot cut metric, a Pennsylvania proceeding to establish a hot cut metric could be protracted. They recommended, therefore, due to the criticality of hot cuts, that BA-PA separately report data on hot cuts in Metric PR-6-04 and Metric PR-6-05. (R.D., pp. 121-122).

c. Exceptions and Reply Exceptions

¹⁸ Recognizing that AT&T discussed hot cuts relative to this metric and Metric PR-8, Average Days Held on Pending Order, we shall discuss hot cuts here rather than in Metric PR-8.

BA-PA maintains that the new hot cut metrics are unnecessary. (BA-PA Exc., pp. 62-64; BA-PA R.Exc., pp. 36-39).

AT&T argues for a separate hot cut metric when one is finalized in New York. (AT&T Exc., pp. 13-14; AT&T R.Exc., pp. 69-71, 76-77).

MCIW supports a new hot cut metric. (MCIW R.Exc., pp. 21-22).

d. Disposition

This metric is important because technical problems with lines, circuits, and trunks following completion of an order are more likely to be perceived by end-users to be the result of changing vendors and, more specifically, the fault of the competitor. The ALJs concluded that hot cuts must be included as a metric, similar to those set forth in Metrics PR-6-04 and PR-6-05, given their critical role to competition -- especially when customers experience quality of service problems following switches to a competitor of BA-PA's.

Upon consideration, we agree with the ALJs that a hot cut measurement is appropriate although we disagree with the ALJs on the timing of that requirement. Unlike the ALJs, we are unwilling to instantly impose a hot cut measurement in this Opinion and Order. We find merit in AT&T's suggestion that BA-PA implement and comply with a separate hot cut requirement in Pennsylvania when one is finalized in New York. Such an approach, we believe, better marshals BA-PA's resources for complying with those metrics absolutely critical to competition in the immediate future while also reserving resources to address important metrics as they develop. The burden shall be upon the Parties to come forward, at the appropriate time either prior to or after BA-PA's Compliance Filing, with a hot cut metric, and counter-proposal(s) if there is no agreement among the Parties, as to the design of a hot cut metric.

7. PR-7 Jeopardy Reports

This metric measures the percentage of specified orders that are completed or canceled with a jeopardy condition. A jeopardy condition occurs when BA-PA knows, in advance of a committed installation due date, that the due date will not be met. CLECs must be advised of jeopardy status so they can internally prioritize completion of jeopardy orders, as can BA-PA. (R.D., p. 122).

a. Parties' Positions

BA-PA proposed to limit this metric by providing jeopardy notices only for Enhanced Extended Loops (EELs). BA-PA alleged that the New York metric is restricted to EELs and asserted that it is not feasible to extend the metric to measurement of other services. BA-PA asserted that it does not have any measurable, systematic process for providing notices to either retail customers or CLECs of the possibility that BA-PA will miss an installation appointment except for potential appointment misses that result from an absence of available BA-PA facilities that are identified by BA-PA in advance of the installation date and known to be uncorrectable by the appointment date. BA-PA claimed that, except where there is an absence of facilities, the determination that an order is in jeopardy is simply a judgment made by BA-PA's service installation manager, who would then take appropriate steps to redeploy available personnel and other resources in order to meet the appointment date. Such notices would provide warnings of potential appointment misses that do not in fact occur because BA-PA acted to deploy the resources needed to meet the appointment. (BA-PA St. 1.1, App. A, p. 61; BA-PA St. 1.1, App. B, pp. 64-65; BA-PA M.B., p. 38; R.D., pp. 122, 124-125).

AT&T proposed to include other types of service orders in addition to EELs within the metric, claiming that CLECs should have the same ability as BA-PA's retail

operations to know of potential jeopardy conditions so they can prioritize accordingly. (AT&T St. 1.0, p. 39; AT&T St. 1.1, Exh. A, p. 35; AT&T St. 1.1, Exh. C, p. 3; AT&T M.B., pp. 38-39; R.D., pp. 122-123).

MCIW argued that BA-PA's lack of a process to provide jeopardy reports for more than the EELs is not a valid reason for refusing to provide jeopardy reports to CLECs. (MCIW M.B., pp. 14-15; R.D., pp. 123-124).

Sprint/United argued that BA-PA's limited proposal does not meet the CLECs' needs and is inconsistent with FCC orders, citing *Second BellSouth Louisiana Order*, CC Docket No. 98-121 (October 13, 1998). In early 1999, Sprint/United's affiliated ILEC operations implemented a jeopardy process to fulfill its obligations under TA-96 although Sprint/United's affiliated ILEC operations did not originally have an internal process where orders were deemed in jeopardy. (Sprint/United St. 1, App. A, p. 15; Sprint/United St. 1.0, Exh. A, p. 14; R.D., p. 124).

CTSI supported the positions of AT&T and MCIW. (CTSI M.B., p. 17; R.D., p. 124).

b. ALJs' Recommendation

The ALJs recommended that this metric include resale, UNEs, and interconnection trunks. BA-PA's failure to have a process to provide jeopardy notices should not determine whether this metric is necessary and required. (R.D., pp. 125-126).

c. Disposition

There were no exceptions taken to the recommendation on this issue. In the absence of any exceptions on this issue, we shall adopt the recommendation of the ALJs on

this issue, finding it to be reasonable. This metric shall include resale, UNEs, and interconnection trunks. BA-PA's failure to have a process to provide jeopardy notices does not mean that this metric is unnecessary.

8. PR-8 Average Days Held on Pending Orders

This metric is a new metric proposed by Sprint/United which would require BA-PA to develop a measure to track the number of open orders in a hold status, on a disaggregated basis premised upon order type and the number of days the order has been in a hold status. The performance standard would be parity with BA-PA retail results. (R.D., pp. 173-174).

a. Parties' Positions

BA-PA objected to the addition of this metric. BA-PA argued that this metric is duplicative and unnecessary because the substance of Metric PR-8, as proposed by Sprint/United, is already covered by Metric PR-4, which measures the average number of days between the committed due date and the actual work completion date. (BA-PA M.B., p. 52; R.D., pp. 126 & 172).

AT&T agreed to exclude this metric if BA-PA is required to report on the number of pending, but not yet completed, orders in Submetric PR-1-01. (AT&T St. 1.0, Exh. 1, pp. 97-98; AT&T M.B., p. 39; R.D., pp. 126, 173-174).

Sprint/United argued that Submetric PR-4-02 does not capture two (2) critical components: open orders and orders not yet assigned a due date. Sprint/United noted that while most orders are assigned a due date during the initial order processing procedures, due to lack of facilities or other reasons, some orders are not assigned a due date. Sprint/United argued that orders which are delayed but not yet completed should be

reported. Sprint/United argued that its proposal for Metric PR-8 would identify the number of orders that are open and past the due date as well as the length of time the orders have been in a pending or delay status. (Sprint/United St. 1, App. A, p. 106; Sprint/United M.B., pp. 25-26; R.D., pp. 173-174).

b. ALJs' Recommendation

The ALJs agreed with Sprint/United and recommended that BA-PA be required to develop a measure to track the number of open orders in a hold status. The report should be disaggregated on the basis of order type and the number of days an order has been in hold status. The ALJs further proposed that the performance standard should be parity with BA-PA retail. (R.D., pp. 126, 172-174).

c. Exceptions and Reply Exceptions

BA-PA reiterates its earlier contention that Metric PR-8 unnecessarily duplicates Metric PR-4. BA-PA contends that Metric PR-4-02 measures, for all overdue orders when they are completed, the average number of days by which they were over-due. According to BA-PA, Metric PR-8, as proposed, measures those orders that are over-due at the end of the month by greater than thirty (30) and ninety (90) days, which is a subset of the data captured under Metric PR-4-02. BA-PA acknowledges, however, that the only overlap between the two (2) metrics is that Metric PR-8 measures the overdue orders and the orders that never receive a due date or that cancel, which is a small number of orders. BA-PA also argues that implementation of Metric PR-8, as proposed, will result in double penalties for the same late installation. BA-PA states that because of the overlap with Metric PR-4-02, overdue orders that are pending at the end of the month will be measured twice, first in the month in which they are pending but not completed, and then in the month when they are completed. (BA-PA Exc., p. 83).

d. Disposition

We agree with the ALJs. We do not see how this metric would be duplicative of Metric PR-4-02. Moreover, it would seem to be a useful comparative tool. There are actually three (3) metrics that are involved when we read the Parties' arguments and consider the ALJs' resolution of PR-8. They are: (1) Metric PR-8 itself, which, at the end of each reporting period, measures the average number of days that pending service orders have been held (*i.e.*, service orders that still have not been completed); (2) Metric PR-4-02, which measures how late service orders that have been completed were, at the time they were completed (actual number of days between committed due date and actual work completion date); and (3) Metric PR-1-01, which measures the average number of business days between the service order application date and the committed due date (when BA-PA says it will be done).

The Sprint/United proposal, which the ALJs adopted, points out that Metric PR-4 excludes orders that are not complete. Metric PR-4 does not cover the pending orders that Metric PR-8 measures. Also, Metric PR-4 does not cover service orders that do not have a due date yet since one cannot measure a service order under Metric PR-4 until it has a due date. Thus, BA-PA's argument that Metric PR-8 unnecessarily duplicates Metric PR-4-02 is incorrect. Metric PR-1 also excludes service orders not completed in the reporting period. The ALJs appropriately concluded that a metric which covers service orders that are late but not yet completed is not duplicative of the other two (2) applicable metrics. We shall, therefore, adopt the ALJs' recommendation.

9. PR-9 Percentage Installation Troubles Pending Order

This metric measures 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. (Proposed PA Guidelines, p. 86).

a. Parties' Positions

Noting that premature disconnects for UNE hot cuts are covered by Metric PR-4-06, BA-PA maintained that this metric was no longer needed. BA-PA maintained that it did not have the ability to perform this measurement. (PA Guidelines, p. 86).

AT&T did not object to the omission of this metric if its proposals relative to Metrics PR-4-06, PR-8, and MR-2 were accepted. (AT&T M.B., p. 39; R.D., p. 127).

b. ALJs' Recommendation

Because the ALJs recommended that hot cuts be reported separately in Submetrics PR-6-04 and PR-6-05 and that AT&T's proposals relative to Metrics PR-4 and PR-5 be adopted, they concluded that Metric PR-9 need not be adopted. (R.D., p. 127).

c. Disposition

There were no exceptions on this issue. In the absence of exceptions on this issue, we shall adopt the reasoning and recommendation of the ALJs relative to this issue, finding them to be reasonable. Our determinations herein regarding Metrics PR-4 and PR-5 and Submetrics PR-6-04 and PR-6-05 negate the need for this metric.

D. Maintenance and 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 CLEC's submission of a query and the receipt of a response. (R.D., p. 127). For comparable BA-PA retail operations, EnView would monitor system operations by replicating transactions of a BA-PA service representative using the OSS. (Proposed PA Guidelines, p. 53).

a. Parties' Positions

BA-PA proposed that a standard for Web GUI access be determined only after a reasonable amount of performance data is available. BA-PA asserted that AT&T's proposal was premature because, at present, the CLECs are not making substantial use of Web GUI for maintenance transactions. BA-PA argued that this Commission should not set a performance standard until BA-PA has at least three (3) months of data. BA-PA further contended that this Commission should delay setting a performance standard for EB response times until EB becomes a more generally-used, standard protocol and there exists data for at least three (3) months. (BA-PA St. 1.1, App. A, p. 62; BA-PA St. 1.1, App. B, pp. 66-67; BA-PA M.B., p. 40; R.D., pp. 127-128).

AT&T proposed a standard of retail service plus no more than four (4) seconds. AT&T maintained that the measurement should include EB and Web GUI, citing its arguments relative to Metric PR-1. (AT&T M.B., p. 40; R.D., pp. 127-128).

Consistent with its arguments regarding Metrics PO-2 and PO-5, MCIW argued that BA-PA should be required to add EB to this metric. (MCIW M.B., p. 15; R.D., p. 128).

CTSI supported AT&T's and MCIW's positions. (CTSI M.B., p. 18; R.D., p. 128).

b. ALJs' Recommendation

Consistent with their recommendation for Metric PO-1, the ALJs recommended a performance standard of parity with retail service plus no more than four (4) seconds for this metric. The measurement should include EB and Web GUI. If future CLEC use of EB and Web GUI support a different standard, BA-PA could petition to change the metric. Further, the ALJs recommended that the CLEC-specific and state-specific results be reported for this metric. (R.D., p. 129).

c. Exceptions and Reply Exceptions

BA-PA takes exception to the establishment of a performance standard for this metric. BA-PA takes further exception to the requirement of CLEC-specific reporting. (BA-PA Exc., pp. 58-59, 71-72).

AT&T characterizes BA-PA's objection to reporting response times for other states as "unfounded." (AT&T R.Exc., pp. 65-66).

d. Disposition

We concur with the adoption of this metric with the following modification: this is a CLEC-specific standard and the measurement should be at the standard of parity plus four (4) seconds for EB and parity plus seven (7) seconds for Web GUI. The standard of parity plus seven (7) seconds for Web GUI may be revisited in our post-January 1, 2001 investigation, if not sooner.

2. MR-2 Trouble Report Rate

The report rate measures the initial, direct or referred, customer troubles reported, when the trouble disposition is found to be in the network. Subsequent reports are additional customer trouble calls while an existing trouble report is pending, typically seeking a status report or to change or update information originally relayed. (Proposed PA Guidelines, p. 55).

a. Parties' Positions

BA-PA proposed that its performance for interconnection trunks provided to the CLECs be compared to the performance for the Feature Group D trunks provided to interexchange (IXC) carriers, as in New York, because the interconnection trunks and the IXC Feature Group D trunks are physically the same types of trunks. Thus, the IXC Feature Group D trunks are the appropriate BA-PA retail service for comparison when BA-PA's performance with regard to such facilities is measured in connection with CLEC interconnection trunks. BA-PA argued that AT&T's and MCIW's proposals were self-serving. (BA-PA St. 1.1, App. A, p. 97; BA-PA St. 1.1, App. B, p. 69; BA-PA M.B., p. 41; R.D., pp. 129, 131-132).

BA-PA further argued that AT&T's proposal to include, in this metric, trouble reports that either do not exist or are the sole responsibility of the CLECs and their customers is unnecessary as a disincentive to miscoding. With regard to UNEs, this metric largely measures the CLEC's performance in accurately testing for and reporting troubles. Thus, it would be misleading and would serve no purpose to compare the percentage of troubles not found or troubles caused by a problem related to customer provided equipment (CPE) for the CLECs versus BA-PA retail. (BA-PA St. 1.1, App. B, pp. 68-69; R.D., pp. 129, 131-132).

AT&T would add a parity with BA-PA retail standard for Submetric MR-2-05, Percent CPE-related, Tested OK, or Found OK Trouble Report Rate. Fearing that BA-PA would improperly code the disposition of trouble reports in any of these three (3) categories to artificially reduce the number of problems attributed to BA-PA's own network, AT&T sought to preclude masking or understating trouble report rates attributable to BA-PA's network. Reporting this measurement over time, for CLECs and for BA-PA's retail operations, will divulge any irregularities that may arise as a result of miscoded trouble tickets. (AT&T St. 1.0, p. 41; AT&T St. 1.1, Exh. C, p. 3; R.D., pp. 129-131).

AT&T further claimed that BA-PA agreed to AT&T's proposed measurement of the mean time to repair loop troubles for special services in MR-4-02. AT&T claimed that BA-PA's glossary defining Special Services gutted the definition to exclude all access services, trunks, interoffice facilities (IOFs), and EELs. The definitions of Special Services should include access, trunks, IOFs, and EELs. (AT&T St. 1.0, Exh. 1, p. 93; AT&T M.B., p. 40-41; R.D., pp. 129-131).

MCIW disagreed with BA-PA's proposal for maintenance transactions. (MCIW St. 1.0, Att. 2, p. 10; R.D., p. 131).

b. ALJs' Recommendation

The ALJs accepted AT&T's position on this metric and recommended specifying a standard of parity with BA-PA retail for Submetric MR-2-05 for the percentage of trouble reports that were either Tested OK, Found OK, or CPE-related. They further recommended that the level of disaggregation for this metric mirror available products. (R.D., p. 133).

c. Exceptions and Reply Exceptions

BA-PA argues that the ALJs' recommendation is unnecessary, burdensome, and unworkable. (BA-PA Exc., pp. 55-57). Further, BA-PA urges rejection of the ALJs' recommended standards for Submetric MR-2-05. (BA-PA Exc., pp. 72-74). Additionally, BA-PA argues that this metric must be clarified to establish that it does not include BA-PA-to-CLEC interconnection trunks but applies only to the BA-PA facilities that connect such trunks to BA-PA's network. (BA-PA Exc., pp. 62-64; BA-PA R.Exc., pp. 68-71).

MCIW excepts to the use of the IXC Feature Group D trunks as the retail analog for trouble on interconnection trunks. (MCIW Exc., p. 5).

d. Disposition

The ALJs correctly adopted the AT&T position which would add parity with BA-PA retail standard for a submetric for the percentage of trouble reports that were either Tested OK, Found OK, or CPE-related. By properly coding the disposition of trouble reports into the three (3) categories, BA-PA will not be able to artificially reduce the number of problems attributed to its own network.

Further, the Submetric MR-2-05 issue addresses two (2) related metrics. At the heart of this issue is the extent of BA-PA control. The establishment of Submetric MR-2-05 (and Submetric MR-3-03) at the standard recommended by the ALJs is appropriate, at least in part, to preclude BA-PA from including matters in this category which are under its control.

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. (R.D., p. 133).

a. Parties' Positions

BA-PA took the same position for this metric as it did for Metric MR-2. (BA-PA M.B., p. 41; R.D., p. 134).

AT&T and CTSI asserted, for the same reasons articulated in connection with Metric MR-2, that BA-PA should report the intervals associated with trouble reports that are coded as CPE-related, Tested OK, or Found OK. According to AT&T, a missed appointment thus causes an interruption, extends an existing service interruption, or further exacerbates a service quality degradation problem. (AT&T St. 1.0, p. 42; AT&T St. 1.1, Exh. C, p. 3; AT&T M.B., p. 41; CTSI M.B., p. 19; R.D., p. 133).

b. ALJs' Recommendation

The ALJs recommended adoption of AT&T's position on this metric and recommended that BA-PA report the intervals associated with trouble reports that are coded as CPE-related, Tested OK, or Found to be OK. (R.D., p. 134). They further recommended that the level of disaggregation for this metric mirror available products. (R.D., p. 133).

c. Exceptions and Reply Exceptions

BA-PA urged rejection of the standard for Submetric MR-3-03. (BA-PA Exc., pp. 72-74). BA-PA further asserts that the disaggregation on a product level is unnecessary, burdensome, and unworkable. BA-PA argues that it cannot be held responsible for CPE troubles and that the CLECs have the responsibility for testing on UNEs. (BA-PA Exc., pp. 56-57, 72, 74; BA-PA R.Exc., pp. 39-40).

d. Disposition

Consistent with our disposition relative to Metric MR-2, BA-PA must report the intervals associated with trouble reports that are coded as CPE-related, Tested OK, or Found OK. As we stated relative to Submetric MR-2-05, this issue addresses both metrics and the extent of BA-PA control. The establishment of these metrics at the standard recommended by the ALJs is appropriate, at least in part, to preclude BA-PA from including matters in this category which are under its control.

4. MR-4 Trouble Duration Intervals

This metric measures trouble duration. (R.D., p. 134).

a. Parties' Positions

BA-PA proposed to measure trouble duration from the time that the trouble is reported until the time the trouble is “cleared” (*i.e.*, the time at which the problem is corrected), which is consistent with its position on Metric PR-2. (BA-PA St. 1.1, App. A, pp. 68-70; BA-PA St. 1.1, App. B, p. 74-75; BA-PA M.B., p. 42; R.D., pp. 134-135).

Consistent with its arguments regarding Metric OR-1, AT&T would have this metric also report BA-PA-to-CLEC interconnection trunk data. (AT&T St. 1.0, p. 42-43; AT&T M.B., p. 42; R.D., p. 134).

MCIW proposed to modify the metric to measure the time from trouble report to trouble “closure” (*i.e.*, the time at which BA-PA sends the CLEC notice that the trouble has been cleared). (MCIW St. 1.0, Att. 1, p. 66; R.D., p. 135).

b. ALJs' Recommendation

Consistent with their recommendation relative to Metric OR-1, the ALJs recommended that this metric also report BA-PA-to-CLEC interconnection trunk data. Consistent with their recommendation relative to Metric OR-4, they recommended that 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. (R.D., p. 135). They further recommended that the level of disaggregation for this metric mirror available products. (R.D., p. 133).

c. Exceptions and Reply Exceptions

BA-PA asserts that the disaggregation on a product level is unnecessary, burdensome, and unworkable. (BA-PA Exc., pp. 56-57; BA-PA R.Exc., pp. 39-40). BA-PA argues that this metric must be clarified to establish that it does not include BA-PA-to-CLEC interconnection trunks but applies only to the BA-PA facilities that connect said trunks to BA-PA's network. BA-PA further claims that this metric should be measured as of the time the work is completed, not when the completion notice is sent. (BA-PA Exc., pp. 62-64, 68; BA-PA R.Exc., pp. 68-71).

AT&T argues that BA-PA should adhere to the same maintenance and repair intervals whether reporting local or access services. (AT&T R.Exc., pp. 65-66, 75-76). AT&T also asserts that the ALJs should have explicitly directed that the special services definition include access services, trunks, and EELs. (AT&T Exc., p. 14).

d. Disposition

Consistent with our disposition of Metric MR-2, BA-PA must report the intervals associated with trouble reports that are coded as CPE-related, Tested OK, or Found OK. By properly coding the disposition of trouble reports into the three (3)

categories, BA-PA will not be able to artificially reduce the number of problems attributed to its own network.

5. MR-5 Repeat Trouble Reports

This metric measures the percentage of all trouble cleared after which additional trouble is reported within thirty (30) days and found to be network trouble. A repeat trouble is one on the same line, circuit, or trunk as a previous (original) trouble report within the preceding thirty (30) calendar days. (R.D., pp. 135-136).

a. Parties' Positions

BA-PA proposed to report this metric on the basis of a recurrence of a trouble within thirty (30) days of when the original repair was “cleared,” *i.e.*, the date that the original trouble was corrected and BA-PA’s retail operations became aware that the problem has been fixed. BA-PA argued that it is inappropriate to corrupt a metric to accomplish things it was never intended to accomplish, *i.e.*, to force BA-PA to provide timely notification that a trouble is cleared. As with BA-PA’s own retail services, a trouble should be deemed cleared when the work is actually done and the service restored to working order. (BA-PA St. 1, App. A, p. 71; BA-PA St. 1.1, App. B, p. 76; BA-PA M.B., p. 42; R.D., pp. 135 & 137).

AT&T and CTSI argued that this metric will indicate whether an original repair was ineffective and insufficient. AT&T asserted that BA-PA should begin counting the thirty (30)-day period for repeat trouble from the date that the trouble is closed in BA-PA’s records and reported as cleared to the CLECs. If CLECs are being provided timely notice of when troubles are “cleared,” BA-PA should be indifferent to using the “cleared” date since there should be a minimal interval between the “cleared” and “closed”

dates. (AT&T St. 1.0, p. 44; AT&T St. 1.1, Exh. A, p. 41; AT&T St. 1.1, Exh. C, p. 3; AT&T M.B., pp. 42-43; CTSI M.B., pp. 19-20; R.D., pp. 136-137).

b. ALJs' Recommendation

Consistent with their recommendation in Metric MR-4, the ALJs concluded that the time the CLEC is notified that the trouble is cleared is the crucial time for a CLEC and its customer. They recommended that BA-PA count the thirty (30)-day period for repeat trouble from the date that the trouble is reported cleared to the CLEC. (R.D., p. 137). They further recommended that the level of disaggregation for this metric mirror available products. (R.D., p. 133).

c. Exceptions and Reply Exceptions

BA-PA asserts that the recommended level of disaggregation is unnecessary and unworkable. (BA-PA Exc., pp. 56-57; BA-PA R.Exc., pp. 39-40). BA-PA argues that this metric must be clarified to establish that it does not include BA-PA-to-CLEC interconnection trunks but applies only to the BA-PA facilities that connect said trunks to BA-PA's network. (BA-PA Exc., pp. 62-64; BA-PA R.Exc., pp. 68-71).

AT&T argues that BA-PA should adhere to the same maintenance and repair intervals whether reporting local or access services. (AT&T R.Exc., pp. 65-66, 75-76).

d. Disposition

Consistent with our disposition of Metric MR-2, BA-PA must report the intervals associated with trouble reports that are coded as CPE-related, Tested OK, or Found OK. By properly coding the disposition of trouble reports into the three (3) categories, BA-PA will not be able to artificially reduce the number of problems attributed to its own network.

E. Network Performance Metrics

1. NP-1 Percent Final Trunk Group Performance

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. (R.D., pp. 137-138).

a. Parties' Positions

For dedicated final trunks (trunks which carry local traffic from a BA-PA access tandem to a CLEC switch, *i.e.*, BA-PA-to-CLEC trunks), BA-PA proposed that the standard would be missed in a given month if it were the third consecutive month in which the blocking design threshold for a final trunk group was exceeded. BA-PA sought the opportunity to correct a blockage before it becomes a violation regardless of whether the CLECs are required to provide accurate trunk forecasts because even reasonably accurate forecasts have a substantial amount of leeway built into them. BA-PA complained that to compel it to establish trunking capabilities at the upper end of the estimate would cause the substantial unnecessary purchase of unused facilities. Comparing blocking for BA-PA-to-CLEC trunks with dedicated trunks provided by BA-PA to BA-PA retail customers is inappropriate because, according to BA-PA, BA-PA's retail customers

determine the number of trunks that they will elect to buy and thereby set the level of blocking that will occur. (BA-PA St. 1.1, App. A, p. 72; BA-PA St. 1.1, App. B, pp. 79-81; BA-PA M.B., pp. 42-44; R.D., pp. 138, 142-144).

BA-PA proposed that no standard would apply for common final trunks (trunks which carry local traffic between BA-PA end offices and BA-PA access tandems). BA-PA claimed that comparing blocking for BA-PA-to-CLEC interconnection trunks with blocking on BA-PA common final trunks is also inappropriate because the level of traffic flow on BA-PA common final trunks is substantially more stable and predictable than the level of traffic flow on BA-PA-to-CLEC trunks, where the level of traffic flow will be determined by the fluctuations in the CLEC's business. BA-PA common final trunks carry both BA-PA retail customer traffic and CLEC end-user traffic without discrimination and inherently operate at parity. BA-PA also argued against MCIW's proposal to establish a standard for blocking on common final trunks. (BA-PA St. 1.1, App. A, p. 72; BA-PA St. 1.1, App. B, pp. 79-81; BA-PA M.B., pp. 42-44; R.D., pp. 138, 142-144).

AT&T asserted that the appropriate standard is actual performance. AT&T claimed that there has been a substantial blocking problem on BA-PA-to-CLEC trunks, due in part to BA-PA's failure to order sufficient trunks to handle calls from its customers to CLEC customers. BA-PA's control of the level of blockage puts the CLECs at a competitive disadvantage. AT&T would measure the configuration of dedicated final trunks carrying traffic from a BA-PA access tandem to a CLEC switch and of dedicated final trunks from other BA-PA end office switches (non-access tandem switches) carrying traffic to CLEC switches. (AT&T St. 1.0, pp. 44-45; AT&T St. 1.1, Exh. A, p. 44; R.D., pp. 137-141).

MCIW proposed that incentive payments should apply to both dedicated final trunks and common final trunks unless BA-PA can show the same reliance on common final trunks as MCIW. (MCIW St. 1.0, Att. 2, p. 11; R.D., p. 142).

CTSI noted that Submetrics NP-1-01 and NP-1-03 show that BA-PA can recognize blocking within a shorter time than three (3) months. Blocking should be remedied when it is recognized rather than by providing parity once every three (3) months. (CTSI M.B., p. 20; R.D., pp. 141-142).

b. ALJs' Recommendation

The ALJs rejected MCIW's proposal but agreed with AT&T that trunk blockage metric should be measured against a standard and subjected to remedies. Without measurement against a standard, BA-PA would have the opportunity to retrieve customers from a CLEC if BA-PA failed to order sufficient dedicated final trunks. The ALJs concluded that the standard should be parity with BA-PA retail on common trunks. (R.D., p. 144).

c. Exceptions and Reply Exceptions

BA-PA argues that the ALJs erred in rejecting BA-PA's proposal. (BA-PA Exc., pp. 47-50).

AT&T argues that BA-PA's performance must be comparable to the performance of CLEC-to-BA-PA dedicated final trunk groups. (AT&T R.Exc., pp. 58-60).

d. Disposition

We conclude that trunk blockage should not be measured against a standard and subject to penalties. Because common trunks carry both retail and CLEC traffic, there will be parity with retail on common trunks. For individual trunks, however, we shall require BA-PA to provide an explanation (and action plan if necessary) on individual trunk

blocking for two (2) months consecutively. An individual trunk group, however, should not be blocked for three (3) consecutive months. For percent final trunk group blockages, a service inquiry report shall be filed whenever performance is less than 3% for three (3) consecutive months.

2. NP-2 Collocation Performance

This metric measures BA-PA's timeliness in responding to requests for collocation and providing collocation and the average time it takes BA-PA to provide collocation. (R.D., p. 145).

a. Parties' Positions

BA-PA agreed with AT&T that BA-PA should resubmit a collocation metric consistent with this Commission's decision after litigation of the collocation issues in connection with the pending collocation tariff currently under review by this Commission.¹⁹ In the interim, BA-PA asserted that the metric should incorporate the intervals and forecasting requirements of the recently-filed collocation tariff. (BA-PA R.B., p. 19; R.D., p. 145).

b. ALJs' Recommendation

¹⁹ BA-PA's collocation Tariff No. 218 was originally filed to become effective on July 27, 1999, at Docket No. R-00994697, (*Collocation*). It provided for a standard interval for physical collocation of one-hundred-twenty (120) business days. Complaints were filed, and the matter was assigned to the Office of Administrative Law Judge (OALJ). BA-PA voluntarily postponed Tariff No. 218 until November 7, 1999. The *Global Order* required BA-PA to file a compliance filing within thirty (30) days of the entry date of the *Global Order* to revise its Tariff No. 218 and its SGAT so that they fully comply with the FCC's *Advanced Services Order, infra*, and to incorporate certain nonrecurring charges. (*Global Order*, p. 105). Finally, the *Global Order* directed the OALJ to conduct an expedited proceeding to resolve the outstanding collocation matters raised in the Global Proceeding. (*Global Order*, pp. 105-106). On October 26, 1999, BA-PA withdrew the suspended Tariff No. 218. In compliance with the *Global Order*, on November 1, 1999, BA-PA filed a revised Tariff No. 218 in *Collocation*. Tariff No. 218 became effective on one (1) day's notice on November 2, 1999. As of this date, however, the investigation of Tariff No. 218 is continuing as to various remaining issues.

The ALJs concluded that the metric should incorporate the intervals and forecasting requirements of BA-PA's recently-filed collocation tariff. (R.D., pp. 145-146).

c. Exceptions and Reply Exceptions

BA-PA argues that the collocation metric should conform to BA-PA's tariff as approved by this Commission. (BA-PA R.Exc., pp. 41-42).

AT&T argues that BA-PA should be directed to implement a performance standard consistent with *Collocation* as part of the compliance filing in that proceeding. (AT&T Exc., p. 15).

MCIW argues that BA-PA should be required to report on all of the collocation alternatives available to CLECs as ordered in the *Global Order* and *Collocation*. (MCIW Exc., pp. 5-6).

d. Disposition

The collocation metric is set forth in BA-PA's proposed collocation tariff and would require that collocation be completed in ninety (90) days. This issue is, however, the subject of the separate *Collocation* proceeding. Further, the *Global Order* required that BA-PA should meet a ninety (90)-calendar-day maximum provisioning interval from the date BA-PA receives a deposit on collocation space from a CLEC to the date when BA-PA's work is completed. (*Global Order*, pp., 100, 105). In addition, the *Global Order*

adopted the FCC's *Advanced Services Order*²⁰ and, thus, required premises surveys listing facilities that have reached space exhaustion and the posting of such information on the Internet. (*Global Order*, pp. 101-102). Accordingly, the final resolution of this issue will be determined in *Collocation*.

3. NP-3 Switching Performance

The switching index is an overall indicator of switch performance. Machine access measurements are designed to reflect difficulties experienced by the customer in obtaining service from the switching equipment. Machine switching measurements are designed to reflect customers' call attempts or incoming call attempts from another switch that failed during call processing. BA-PA switches handle BA-PA retail and CLEC traffic without discrimination. (Proposed PA Guidelines, p. 87).

All Parties agreed that this metric should not be adopted in Pennsylvania (R.D., p. 146), and the ALJs made no recommendation relative to this metric (R.D., p. 146).

a. Disposition

We note the Parties' unanimous conclusion that this metric not be adopted. We find this to be a reasonable conclusion, and, accordingly, this metric shall not be adopted at this time in Pennsylvania.

F. Billing Metrics

1. BI-1 Timeliness of Daily Usage Feed

²⁰ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, 1st Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48 (released March 31, 1999), (*Advanced Service Order*).

This metric measures 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). The CLECs use usage data to answer customer inquiries, monitor fraud, and bill customers. (R.D., p. 146).

a. Parties' Positions

BA-PA argued for an interval of four (4) business days, giving the four (4) following reasons. first, it is consistent with the standard which the NYPSC approved; second, to meet the four (4)-calendar-day standard, BA-PA would have to process usage records on weekends and holidays, with the additional cost of doing so; third, BA-PA's existing process of producing the DUF is virtually at parity with retail in that BA-PA processes usage from its retail customers and CLEC customers at the same time, with the only additional step for the CLECs being the reformatting of records into an exchange message interface (EMI) format and the transmission of the DUF to the CLECs, activities handled electronically and in very short intervals; and fourth, the CLECs have not shown a need to shorten the delivery time, and a DUF available in four (4) business days is enough time for the CLECs to use the DUF to generate a customer's monthly bill. (BA-PA St. 1.1, App. B, p. 84; Tr., p. 66; BA-PA M.B., p. 46; R.D., pp. 146-148).

AT&T and Sprint proposed four (4) calendar days to avoid an unreasonably long delay for the CLECs' receipt of this information. (AT&T St. 1.0, Exh. 1, p. 78; AT&T St. 1.1, Exh. A, p. 47; AT&T M.B., p. 47; R.D., pp. 146-148).

MCIW proposed two (2) business days. (MCIW St. 1.0, Att. 1, p. 78; R.D., p. 147).

ATX supported measuring DUF transmittals in one (1) or two (2) business days. (ATX M.B., p. 2; R.D., p. 148).

b. ALJs' Recommendation

The ALJs recommended that this metric include access usage information for UNE ports and platforms and be measured in four (4) calendar days. Further, the ALJs recommended CLEC-specific reporting for this metric. (R.D., pp. 148-149).

c. Exceptions and Reply Exceptions

BA-PA argues that use of calendar days will create significant operational difficulties, including weekend and holiday processing, and would provide better service to the CLECs than it provides to its retail operations. (BA-PA Exc., pp. 50-52).

d. Disposition

BA-PA presently performs this work (transmits the data) for itself in business, not calendar days. To require a different standard for service provided to the CLECs would result not only in significant operational difficulties but would essentially require BA-PA to provide better service to a CLEC than to itself. This standard shall be measured in business days.

2. BI-2 Timeliness of Carrier Bill

This metric measures the timeliness of bills sent to carriers. CLECs use this information to audit wholesale bills and compare them to consumer bills by reviewing and matching the DUF against carrier bills and to reconcile carrier credits. (R.D., p.149).

a. Parties' Positions²¹

BA-PA proposed that 98% of carrier bills be transmitted to the CLECs within ten (10) business days of the end of the billing period. BA-PA asserted that under AT&T's proposal to count independent bills as untimely because they are independent, such independent bills will be deemed untimely even if they are rendered on time. BA-PA further argued that AT&T's proposal to measure the interval in calendar days should be rejected for three (3) reasons: first, business days are used in New York; second, reducing the standard to calendar days reduces the performance interval and requires the extra costs of processing bills on weekends and holidays; and third, using business days does not reduce the time the CLECs have to review a bill before paying it because BA-PA's interconnection agreements usually give the CLECs twenty (20) days after receipt to pay bills. (BA-PA St. 1.1, App. A, p. 85; BA-PA St. 1.1, App. B, p. 87; BA-PA M.B., p. 47; BA-PA R.B., p. 20; R.D., pp. 149-151).

AT&T proposed four (4) changes to this metric. First, BA-PA should not be able to count independent bills (subsidiary CLEC account bills which should have been, but were not, included in the main account) as timely. BA-PA should be required to improve its billing system to eliminate the routine issuance of independent bills. Second, bills generated from the carrier access billing (CAB) system should be included in this metric. Third, the standard should be ten (10) calendar days. Last, there should be no exclusion for alternative arrangements made between BA-PA and a CLEC. (AT&T St. 1.0, pp. 46-47; AT&T St. 1.1, Exh. A, pp. 48; AT&T M.B., pp. 48-49; R.D., pp. 149-150).

b. ALJs' Recommendation

²¹ Finding no supporting evidence on the record, the ALJs did not consider ATX's assertion that it must use the Master Carrier Bill in CD-ROM format to reconcile with the DUF in order to timely and accurately bill its local retail customers. (R.D., pp. 151-152). The ALJs further urged this Commission to ignore any exceptions or reply exceptions of ATX "[o]wing to the improper attempts of counsel for ATX to manufacture evidence in this proceeding where none existed." (R.D., p. 157).

The ALJs recommended that independent bills be considered untimely under this metric. They concluded that (1) BA-PA should measure relevant local exchange data because it chooses to include it with IXC billing data and (2) the CLECs should receive the local exchange billing data which the CAB system generates on the same basis as BA-PA's retail operations. Further, consistent with their recommendation in Metric BI-1, the ALJs also recommended a ten (10)-calendar-day interval for this metric. The ALJs additionally concluded that this metric should be clarified to exclude alternative arrangements. Finally, the ALJs also recommended CLEC-specific reporting for this metric. (R.D., pp. 152-154).

c. Exceptions and Reply Exceptions

BA-PA argues that the change from business days to calendar days would create operational difficulties, including weekend and holiday processing, and result in better service for CLECs than BA-PA provides internally. BA-PA further argues that independent billing of a subsidiary account should not render an otherwise timely bill untimely. (BA-PA Exc., pp. 50-52, 74-75).

AT&T supports the ALJs' recommendation and argues that the failure to properly group-bill renders the independently-billed subsidiary bill untimely by definition. (AT&T R.Exc., pp. 60-61, 79-80).

d. Disposition

BA-PA presently performs this work for itself in business, not calendar days. To require a different standard for CLECs would result not only in significant operational difficulties but would essentially require BA-PA to provide better service to the CLEC than to itself. Consistent with our disposition of Metric BI-1, this standard shall also be measured in business days.

We must next determine for this metric whether a subsidiary account, billed “on time” but separately when it should have been billed as part of a main bill, is, in fact, untimely. We conclude that, under these circumstances, the separate (or independent) bills are not, by definition, untimely. While this may be an administrative annoyance to the CLECs, the essence of the metric is whether the bill is timely processed and issued, not whether it is part of a main bill or billed separately.

For all other aspects of this metric, we agree with the ALJs.

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. (R.D., p. 154).

a. Parties’ Positions²²

BA-PA was willing to adopt such a metric measuring the number of individual bill charges that are adjusted. Seeking consistency with New York, BA-PA argued that there should be no standard for this new metric and that it should not be included in calculating remedies. BA-PA argued that service order errors are measured in Metric OR-6, Order Accuracy, and that additional incentives under Metric BI-3 would result in a double penalty. (BA-PA St. 1.1, App. A, p. 86; BA-PA St. 1.1, App. B, p. 90; R.D., pp. 154-156).

AT&T countered that the CLECs are adversely impacted by the financial magnitude of billing adjustments as well as by the number of adjustments. The CLECs must

²² The ALJs excluded ATX’s position on this metric consistent with their treatment of Metric BI-2.

bear the costs of auditing and/or adjusting their customer accounts, as well as incurring the associated customer service costs of explaining the errors. AT&T also proposed that order activity post-completion discrepancies be included in this metric. (AT&T St. 1.0, p. 47; AT&T St. 1.1, Exh. C, p. 4; AT&T M.B., pp. 51-52; AT&T R.B., p. 26; R.D., pp. 154-155).

b. ALJs' Recommendation

The ALJs recommended inclusion of remedies for order activity post-completion discrepancies in this metric, even if several metrics are violated by one failure and even if one failure results in multiple penalties. Further, the ALJs recommended CLEC-specific reporting for this metric. (R.D., p. 149, 156-157).

c. Exceptions and Reply Exceptions

BA-PA argues that post-completion discrepancy measurement will subject BA-PA to a double penalty. (BA-PA Exc., p. 75).

d. Disposition

We agree, in part, with the arguments and logic set forth by BA-PA with respect to Metric BI-3. In short, we shall not exclude these billing adjustments from measurement, but there should be no double penalties as a result of this proceeding for a violation of the same metric. Exclusion would not motivate BA-PA to correct any problems, but assigning multiple penalties for the same failure is not consistent with our asserted goal of fostering performance, not generating penalties.

4. BI-4 DUF Accuracy

This metric measures the accuracy of the DUF which BA-PA transmits to the CLECs. (R.D., p. 157).

a. Parties' Positions

BA-PA argued that AT&T's proposed standard is unreasonably high. The Commission should accept the 95% standard adopted in New York for standards that are not set at "parity." Arguing against "metric proliferation," BA-PA claimed that there was no showing that DUF errors are such a substantial problem as to justify a separate metric. (BA-PA R.B., p. 21). BA-PA further argued that immediate implementation is not possible for many billing metrics, including this one that is not being used presently and will require significant development before implementation. (R.D., p. 159).

AT&T opined the standard should be one (1) content or format error per thousand (1,000) records. AT&T also proposed a new submetric to measure how quickly BA-PA corrects DUF errors. (AT&T St. 1.1, Exh. A, p. 51; AT&T M.B., p. 53; R.D., p. 158).

MCIW proposed to implement this billing metric immediately. (MCIW M.B., p. 17; R.D., pp. 158-159).

CTSI argued that BA-PA should commit to implementation by a date certain. (CTSI M.B., p. 24; R.D., p. 159).

b. ALJs' Recommendation

The ALJs recommended a 95% accuracy standard for this metric. They also recommended that BA-PA implement this metric in its Compliance Filing so that the Parties to this proceeding have ample opportunity to comment to the Commission. (R.D.,

p. 159). Further, the ALJs recommended CLEC-specific reporting for this metric. (R.D., p. 149).

c. Exceptions and Reply Exceptions

BA-PA argues that immediate implementation is not feasible and that, when implemented, the standard should be not more than 95%. BA-PA claims that to implement this metric now would require substantial software programming effort and that it is not possible to predesign the software specifications. BA-PA claims that at least six (6) months lead time is necessary. (BA-PA Exc., p. 76-77; BA-PA R.Exc., pp. 42-43).

AT&T argues that immediate implementation is feasible and that the standard should be one (1) error per thousand (1,000) records. (AT&T Exc., pp. 15-16; AT&T R.Exc., pp. 81-82).

d. Disposition

We conclude that DUF accuracy should be measured. We find, however, that AT&T's proposed standard of one (1) content or format error per thousand (1,000) records is too strict. We agree that the ALJs were correct in recommending a 95% accuracy rate.

The second question is whether BA-PA should create a billing submetric to measure how quickly BA-PA corrects DUF inaccuracies. We shall direct BA-PA to create a billing submetric to measure the speed with which BA-PA corrects DUF inaccuracies. We shall designate the submetric for speed of corrections as a diagnostic metric at this time.

It is clear that implementation of these billing metric should not be unduly delayed during the development process. Therefore, rather than adopt the ALJs'

recommendation that BA-PA submit these metrics in its Compliance Filing, we find that it is more appropriate to require these metrics be implemented six (6) months after the effective date of the revised PA Guidelines.

5. BI-5 Accuracy of Mechanized Bill Feed

This metric measures the accuracy of the mechanized bill feed for CRIS bills. CLECs use the wholesale bills from BA-PA to bill their customers. (R.D., p. 159).

a. Parties' Positions

BA-PA argued that immediate implementation is not possible for this new metric as it will require significant development before implementation. (R.D., p. 159). Consistent with its arguments relative to Metric BI-4, BA-PA urged the rejection of AT&T's proposed standard of 99.9% accuracy. (BA-PA St. 1.1, App. A, p. 88; BA-PA R.B., p. 22; R.D., p. 160).

Consistent with its arguments relative to Metric BI-3, AT&T proposed the inclusion of order activity post-completion discrepancies in this metric. AT&T also proposed a standard of one (1) content or format error per thousand (1,000) records as it did for Metric BI-4. (AT&T St. 1.1, Exh. C, p. 4; AT&T M.B., p. 53; R.D., pp. 159-160).

MCIW and CTSI argued that this metric be implemented immediately. (MCIW St. 1.0, Att. 1; MCIW M.B., p. 17; CTSI M.B., p. 24; R.D., pp. 158 & 160).

b. ALJs' Recommendation

As in Metric BI-4, the ALJs recommended a 95% accuracy standard and that BA-PA implement this metric in its Compliance Filing so that the Parties have an

opportunity to comment to the Commission. (R.D., p. 160). Further, the ALJs recommended CLEC-specific reporting for this metric. (R.D., p. 149).

c. Exceptions and Reply Exceptions

BA-PA argues that 99.9% accuracy is not feasible and that billing errors resulting from service order errors should be excluded from this metric. BA-PA claims that to implement this metric now would require substantial software programming effort and that it is not possible to predesign the software specifications. BA-PA claims that at least six (6) months lead time is necessary and that the standard should be not more than 95%. (BA-PA Exc., pp. 76-77; BA-PA R.Exc., pp. 42-44).

AT&T argues that BA-PA has had sufficient time to be able to implement this metric and that this metric should include order activity post-completion discrepancies. (AT&T Exc., p. 16; AT&T R.Exc., pp. 81-82).

d. Disposition

We conclude that the accuracy of the mechanized bill feed should be measured. We find, however, that AT&T's proposed standard of one (1) content or format error per thousand (1,000) records is too strict. We agree that the ALJs were correct in recommending a 95% accuracy rate.

It is clear that implementation of this billing metric should not be unduly delayed during the development process. Therefore, rather than adopt the ALJs' recommendation that BA-PA submit this metric in its Compliance Filing, we find that it is more appropriate to require this metric be implemented six (6) months after the effective date of the revised PA Guidelines.

6. BI-6 Completeness of Usage Charges

This metric measures the completeness of BA-PA usage charges shown on the CRIS paper bill. (R.D., p. 160).

a. Parties' Positions

BA-PA argued that this metric is properly defined and that AT&T's proposal, that this metric be expanded to evaluate the completeness of usage charges and usage billing errors itemized by date on the CRIS bill, is unnecessary. If an item of usage is initially omitted and then later billed, it should be measured as part of this metric when it is billed, even if outside of the period for timely billing. BA-PA argued that service order errors are measured in Metric OR-6, Order Accuracy, and that additional incentives under this metric would result in a double penalty. (BA-PA St. 1.1, App. B, p. 90; BA-PA R.B., p. 22; R.D., pp. 155-156, 161).

AT&T asserted that there is no inconsistency between this metric and Metric BI-3. The errors to be measured and reported in this metric should be bill errors caused by omissions or incomplete usage charges. (AT&T St. 1.0, Exh. 1, p. 84; AT&T M.B., p. 54; R.D., pp. 160 & 162).

MCIW proposed to implement this billing metric immediately. (MCIW M.B., pp. 17-18; R.D., p. 158).

b. ALJs' Recommendation

The ALJs recommended that this metric evaluate the completeness of usage charges and usage billing errors itemized by date on the CRIS bill. They further recommended implementation of the metric in the same fashion as Metrics BI-4 and BI-5: BA-PA would implement this metric in its Compliance Filing and use CLEC-specific reporting for this metric. They also recommended that BA-PA specify the statistical method associated with this metric in its Compliance Filing. (R.D., pp. 149, 159, & 161).

c. Exceptions and Reply Exceptions

BA-PA argues that, if usage is discovered to have been omitted, the omitted usage will be billed upon discovery and timeliness should be measured then, not in this metric. BA-PA claims that to implement this metric now would require substantial software programming effort and that it is not possible to predesign the software specifications. BA-PA claims that at least six (6) months lead time is necessary. (BA-PA Exc., pp. 76-77).

AT&T argues that BA-PA has had sufficient time to plan for this metric and that usage errors must be measured in this metric to ensure that CLECs receive accurate billing. (AT&T R.Exc., pp. 81-82).

d. Disposition

As we concluded relative to Metric BI-4 and BI-5, we conclude that the completeness of usage charges should be measured. It is clear that implementation of this billing metric should not be unduly delayed during the development process. Therefore, rather than adopt the ALJs' recommendation that BA-PA submit this metric in its

Compliance Filing, we find that it is more appropriate to require this metric be implemented six (6) months after the effective date of the revised PA Guidelines.

7. 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. A fractional recurring charge is a recurring charge for a service subscribed to by a CLEC for a portion of a billing cycle. (R.D., pp. 161-162).

a. Parties' Positions

Consistent with its arguments relative to Metrics BI-3 and BI-6, BA-PA argued that immediate implementation is not possible for this new metric which will require significant development before implementation. BA-PA referred to its discussion in Metric BI-3 for its response regarding post-completion discrepancies and to its discussion in BI-6 for its response regarding statistical method. (BA-PA St. 1.1, App. B, p. 90; BA-PA R.B., p. 22; R.D., pp. 159-162).

AT&T proposed that order activity post-completion discrepancies be included in this metric for the same reasons it articulated relative to Metric BI-3 and that a statistical sampling method should not be accepted for measuring this standard without being scrutinized by interested stakeholders and subjected to advance Commission authorization. (AT&T M.B., pp. 54-55; R.D., p. 162).

MCIW proposed to implement this billing metric immediately. (MCIW M.B., p. 17; R.D., p. 158).

b. ALJs' Recommendation

Consistent with their reasoning relative to Metric BI-3, the ALJs recommended that order activity post-completion discrepancies be included in this metric. The ALJs recommended that BA-PA implement this metric in its Compliance Filing and specify the statistical method associated with this metric, to allow for comment. Further, the ALJs recommended CLEC-specific reporting for this metric. (R.D., pp. 149, 159, and 162).

c. Exceptions and Reply Exceptions

BA-PA claims that to implement this metric now would require substantial software programming effort and that it is not possible to predesign the software specifications. BA-PA claims that at least six (6) months lead time is necessary. BA-PA further argues that post-completion discrepancy measurement will result in a double penalty. (BA-PA Exc., pp. 75-77).

d. Disposition

As we concluded with respect to Metrics BI-4, BI-5, and BI-6, we conclude that the completeness of fractional recurring charges should be measured. It is clear that implementation of this billing metric should not be unduly delayed during the development process. Therefore, rather than adopt the ALJs' recommendation that BA-PA submit this metric in its Compliance Filing, we find that it is more appropriate to require this metric be implemented six (6) months after the effective date of the revised PA Guidelines.

8. 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. (R.D., p. 162).

a. Parties' Positions

BA-PA argued that immediate implementation is not possible for this metric which will require significant development before implementation. BA-PA argued this metric will result in a double penalty. (BA-PA St. 1.1, App. B, p. 90; R.D., p. 159).

Consistent with its prior arguments, AT&T argued for immediate implementation of this metric, including order activity post-completion discrepancies, and the specification of the statistical method. (R.D., p. 163).

MCIW proposed to implement this billing metric immediately. (MCIW M.B., p. 17; R.D., p. 158).

b. ALJs' Recommendation

Consistent with their reasoning relative to Metric BI-3, the ALJs recommended that this metric include order activity post-completion discrepancies and that BA-PA implement this metric in its Compliance Filing and specify the statistical method to allow for comments. Further, the ALJs recommended CLEC-specific reporting for this metric. (R.D., pp. 149, 159, & 163).

c. Exceptions and Reply Exceptions

BA-PA claims that to implement this metric now would require substantial software programming effort and that it is not possible to predesign the software specifications. BA-PA claims that at least six (6) months lead time is necessary. BA-PA further argues that post-completion discrepancy measurement will result in a double penalty. (BA-PA Exc., pp. 75-77).

d. Disposition

As we concluded, however, with respect to Metrics BI-4, BI-5, BI-6, and BI-7, we conclude that the completeness of non-recurring charges should be measured. It is clear that implementation of this billing metric should not be unduly delayed during the development process. Therefore, rather than adopt the ALJs' recommendation that BA-PA submit this metric in its Compliance Filing, we find that it is more appropriate to require this metric be implemented six (6) months after the effective date of the revised PA Guidelines.

There shall be, however, no double penalties as a result of this proceeding for violation of the same metric.

G. Operator Services and Data Bases Metrics

1. OD-1 Operator Service -- 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. Inferior service quality delays the CLEC customer's ability to reach an operator. (R.D., p. 163).

a. Parties' Positions

BA-PA maintained that the standard and incentive payments of this metric are not necessary for two (2) reasons. First, calls for operator services and directory assistance centers from CLEC and BA-PA customers are served without discrimination from the same queue, and data on access to these systems is collected and reported on an aggregate basis. Second, three (3) CLECs currently subscribe to directory assistance

services from the Carrier Call Center, and CLECs may negotiate individual performance standards in their respective agreements with BA-PA. (BA-PA St. 1.1, App. B, pp. 100-101; BA-PA R.B., pp. 22-23; R.D., pp. 163-164).

AT&T proposed parity with BA-PA's retail operator toll service (which it asserted was 85% of calls answered within twenty (20) seconds) and an objective standard of 95% of calls answered within thirty (30) seconds, mirroring the same response times proposed for contact call centers in Metric PO-3. AT&T asserted that BA-PA must measure its performance in this category to confirm that the CLECs have nondiscriminatory access to operator services. AT&T noted that nondiscriminatory access to operator services is one of the fourteen (14) checkpoints on the Section 271 competitive checklist. (AT&T St. 1.1, Exh. A, p. 57; AT&T M.B., p. 57; R.D., pp. 163-164).

b. ALJs' Recommendation

The ALJs agreed with AT&T that speed of answer must be measured for operator services. They recommended a two-step standard: 85% of the calls are to be answered within twenty (20) seconds and 95% of the calls are to be answered within thirty (30) seconds. (R.D., p. 165).

c. Exceptions and Reply Exceptions

Arguing that there is inherent parity, BA-PA argues that the standard should be parity with retail, not the objective standard of 85% within twenty (20) seconds and 95% within thirty (30) seconds. BA-PA further asserts that there is no evidence of record that it is technically feasible for it to measure the CLECs' customers' calls differently from its own retail calls. (BA-PA, Exc. pp. 77-78).

d. Disposition

We do not believe that it is necessary to impose the recommended standard that 85% of the calls be answered within twenty (20) seconds and that 95% of the calls be answered within thirty (30) seconds at this time. BA-PA's proposal (that we, in essence, assume that service is being provided at parity with retail operations because the calls come in to the operators or directory assistance without discrimination from the same queues) is appropriate for the first six (6) months. However, after that time, calls from the CLECs' customers are to be answered at parity with BA-PA retail operator toll and directory services, and BA-PA must achieve a standard such that 95% of the calls are answered within thirty (30) seconds.

2. OD-2 LIDB Routing and OS/DA Platforms

This metric measures the speed with which BA-PA responds to CLEC inquiries to Line Information Data Base (LIDB), Routing, and Operator Services-Directory Assistance (OS/DA) platforms. (Proposed PA Guidelines, p. 76; R.D., p. 165).

a. Parties' Positions

BA-PA alleged that it did not have the capacity to report this data. (Proposed PA Guidelines, p. 76) BA-PA argued against any changes, regardless of whether this metric measures speed of responses or accuracy of updates. The CLECs obtain access to the Master Street Address Guide (MSAG) through a tape or disk, not on an interactive electronic basis. Further, for CLECs' UNE customers, the CLECs put the information in the Automatic Location Identifier (ALI) data base directly, exactly as BA-PA does for its customers, and the CLECs access the data just as BA-PA does. This service is, therefore, inherently at parity. With regard to other items, including E911 and ALI updates, BA-PA takes all the information from the CLEC service orders and processes it in the data bases

just like other CLEC data. Thus, any errors will be detected and measured under Metric OR-6, Order Accuracy. With regard to the time of response to inquiries, the same data bases serve both BA-PA retail customers and CLECs. As a result, again, there is inherent parity. (BA-PA St. 1.1, App. B, pp. 100-102; BA-PA R.B., pp. 23-24; R.D., p. 166).

AT&T and CTSI proposed to include the MSAG, E911 ALI, Directory Assistance and 911 Updates, NXX Loading and Testing, and directory listings in this metric. AT&T argued that BA-PA must prove nondiscriminatory access or risk a contrary finding relative to the Section 271 competitive checklist. (AT&T St. 1.1, Exh. A, p. 58; CTSI M.B., p. 25; R.D., pp. 165-167).

b. ALJs' Recommendation

The ALJs recommended that this performance standard be broadened to include the MSAG, E911 ALI, Directory Assistance and 911 updates, NXX Loading and Testing, and directory listings. (R.D., p. 167).

c. Exceptions and Reply Exceptions

BA-PA urges reversal of the ALJs' recommendation because (1) BA-PA should not be responsible for errors of the municipalities, (2) E911 information on resale customers comes from the CLECs, (3) Directory Assistance updates and Directory Assistance listings appear to be the same function and downstream is measured the same as retail, and (4) NXX errors are measured in Metric MR-2-03. (BA-PA Exc., pp. 78-81).

d. Disposition

We find the ALJs' reasoning that this metric be broadened to include the MSAG, E911 ALI, Directory Assistance and 911 updates, NXX Loading and Testing, and directory listings to be reasonable and consistent with fostering competition in the LEC marketplace. Accordingly, we shall adopt the ALJs' recommendation on this metric.

3. OD-3 Directory Assistance Data Base Update Accuracy

This newly-proposed metric would measure the percentage of total Directory Assistance data base updates that are completed without error. (R.D., p. 175). An update is completed without error if the Directory Assistance data base accurately reflects the new listing, listing deletion, or listing modification as submitted by the CLEC. (Proposed PA Guidelines, p. 89)

a. Parties' Positions

BA-PA claimed that this metric was unnecessary because Sub-metrics OR-6-01 and OR-6-02 measure the accuracy of Directory Assistance updates. (BA-PA St. 1.1, App. B, p. 108; R.D., p. 175).

AT&T and CTSI argued that Metric OR-6 measures focus on the contents and accuracy of orders and not the content as it is entered into a data base. (AT&T St. 1.1, p. 54; AT&T M.B., p. 59; CTSI M.B., p. 27; R.D., pp. 175-176).

b. ALJs' Recommendation

The ALJs agreed with AT&T and recommended inclusion of this metric. (R.D., p. 176).

c. Exceptions and Reply Exceptions

BA-PA asserts that any errors in this area are measured in Metric OR-6. (BA-PA Exc., pp. 78-81).

d. Disposition

We find the ALJs recommendation to include this metric to be reasonable. Metric OR-6 measures focus on the contents and accuracy of orders and not the content of the information as it is entered into a data base. Accordingly, we shall adopt the ALJs' recommendation on this metric.

H. General Metrics

1. GE-1 Directory Proofs

The issue in this metric is the accuracy of the directories.

a. Parties' Positions

BA-PA stated that it provides a listing Verification Report ninety (90) days²³ before the close out date and provides a Directory Listing view of Listings through the Web GUI. (BA-PA St. 1.1, App., p. 94). BA-PA also stated that it does not have the capability to report this performance area and that it has established a process that gives the CLECs an opportunity to review directory listings. BA-PA claimed that it was unaware of any failures of this process. BA-PA maintained that the fact that it does not provide performance

²³ BA-PA reports that this practice was recently changed. BA-PA now provides listing verification reports thirty (30) business days before the close date. (BA-PA Exc., p. 81, footnote 237).

reports for this metric does not necessarily mean that it cannot show nondiscriminatory treatment of the CLECs. (R.D., pp. 168-169).

AT&T proposed that BA-PA provide written documentation of directory errors so that errors can be tracked and audited. AT&T emphasized that errors in customers' directory listings usually cannot be corrected for a year. (AT&T St. 1.0, p. 53). AT&T maintained that verbal notification of errors is inherently unreliable. For these reasons, directory listings should be accurate when first posted. (AT&T M.B., pp. 59-60; R.D., pp. 168-169). AT&T also noted that BA-PA provides its retail operations with the opportunity to review customer directory listings before publication. AT&T added that, without a performance standard and metric to evaluate the service, there is no current mechanism in place to assure that BA-PA is providing this service to the CLECs at parity to BA-PA's retail operations.

CTSI agreed with AT&T that a performance standard and metric for this service is necessary. CTSI referred to a recent incident where a customer's name in a directory listing was changed. CTSI also pointed out that BA-PA's failure to include CTSI customers in the 1998 Harrisburg directory was problematic for the CLEC. CTSI maintained that these incidents reveal that BA-PA's performance in this area needs to be addressed and measured. (CTSI M.B., p. 26; R.D., p. 169).

b. ALJs' Recommendation

The ALJs agreed with AT&T and CTSI that this metric is necessary to ensure CLEC parity. The ALJs recommended adoption of the AT&T proposal to add this metric and the standard of parity to BA-PA's retail operations. (R.D., p. 170).

c. Exceptions and Reply Exceptions

BA-PA excepts to the ALJs' recommendation of a parity standard for this metric. BA-PA agrees to measuring whether the Listing Verification Report was issued in a timely fashion. (BA-PA Exc., p. 81). BA-PA asserts that it is uncertain whether it has an analogous retail activity to which a parity comparison can be made. (BA-PA Exc., p. 82). BA-PA maintains that, if it is unable to identify an analogous retail activity which is consistent with its other proposed metrics in its Compliance Filing, a standard requiring that 95% of Listing Verification Reports be provided on-time should be implemented. (BA-PA Exc., p. 82).

AT&T argues that, if there is no retail analog for the timeliness of delivering Listing Verification Reports, then the objective standard should be 100% of the reports delivered on time. (AT&T R.Exc., pp. 84-85).

d. Disposition

We find that this metric should be added with a standard of 95% of Listing Verification Reports be provided on time. This metric is important because, without a metric and performance standard to evaluate directory proofs, it is not possible to assure CLEC parity.

2. GE-2 Poles, Ducts, Conduits and Rights of Way

This metric measures the percentage of CLEC requests for access to poles, ducts, conduits, and rights-of-way that are processed within thirty-five (35) days. (R.D., pp. 170-171).

a. Parties' Positions

BA-PA stated that it has engineering and construction methods and procedures that include firm time commitments which are consistent with the applicable federal and state requirements. BA-PA asserted that its occupancy process for providing access to its poles, ducts, conduits, and rights-of-ways has operated satisfactorily for many years and that it was unaware of any failures in the occupancy process. BA-PA added that FCC regulations²⁴ governing the occupancy process provide that responses to CLEC requests and confirmation of whether access can be provided should be processed within forty-five (45) days. (BA-PA St. 1.1, App. A, p. 77; BA-PA St. 1.1, App. B, p. 104). BA-PA opined that there is no need to perform measurements of, or to set standards for, the occupancy process. (R.D., p. 171).

AT&T proposed that this metric be added to measure the percentage of CLEC requests for access to poles, ducts, conduits, and rights-of-way that are processed. AT&T agreed that the FCC processing time frame of forty-five (45) days, instead of its proposed thirty-five (35) days, should be used. AT&T, however, disagreed with BA-PA's assertion that it is unnecessary to implement a performance standard for this metric. AT&T argued that, because BA-PA's retail operations have access to its poles, ducts, conduits, and rights-of-way, BA-PA should be required to provide these services at parity with BA-PA's retail operations. According to AT&T, the implementation of a performance standard will afford the CLECs this opportunity. (AT&T R.B., p. 27; R.D., pp. 171-172).

CTSI noted that nondiscriminatory access to poles, ducts, conduits and rights-of-way is one of the fourteen (14) items on the Section 271 competitive checklist. (CTSI M.B., p. 27; R.D., p. 172).

b. ALJs' Recommendation

²⁴ 47 C.F.R. §1.1403(b).

The ALJs recommended adoption of AT&T proposal with a processing time of forty-five (45) days, instead of thirty-five (35) days. (R.D., p. 172).

c. Exceptions and Reply Exceptions

BA-PA excepts to the ALJs' recommendation. BA-PA claims that there is no evidence that its occupancy process does not provide timely responses to requests for occupancy. (BA-PA Exc., p. 82).

d. Disposition

We shall adopt the ALJs' recommendation. It is important that CLECs receive access to these services, and only the implementation of a performance standard will provide this opportunity. We further find that the time frame should be forty-five (45) days. This is consistent with the FCC's position on this issue.

3. GE-3 Bona Fide Request

A Bona Fide Request (BFR) is the process through which a CLEC can request new UNEs from BA-PA. (BA-PA St. 1.1, App. B, p. 108). The process is generally described in a CLEC's interconnection agreement with BA-PA. (R.D., pp. 176-177).

a. Parties' Positions

BA-PA objected to the inclusion of this metric. BA-PA maintained that the process for BFR responses was sufficiently addressed in the individual interconnection agreements with the CLECs. (BA-PA St. 1.1, App. B, p. 108). According to BA-PA, if it fails to meet the time frames prescribed in the interconnection agreements, the CLECs

have remedies available to them under the terms of the interconnection agreements. (R.D., p. 176).

MCIW proposed the inclusion of this metric to measure BFR response times. MCIW asserted that the performance standard for this metric should be 98% in five (5) days. (MCIW St. 1.0, Att. 2; R.D., p. 176).

CTSI argued that, although the process for loop provisioning is addressed in interconnection agreements, BA-PA's loop provisioning performance should be included within the scope of the metric. CTSI also noted that BA-PA's witness conceded that BA-PA's failure to timely respond to a CLEC's BFR could adversely impact a CLEC's ability to provide quality and timely service to the CLEC's end user. (CTSI M.B., p. 28; R.D., pp. 176-177).

b. ALJs' Recommendation

The ALJs recommended inclusion of MCIW's metric to measure BFR response times. The ALJs reasoned that a measurement and remedy for BFR times should be included in this process even though BFR responses are contained in individual interconnection agreements with CLECs. The ALJs further noted that inclusion of this metric would be consistent with the purpose of this proceeding to develop a self-executing measurement and remedy process for service quality. This self-executing process, the ALJs added, would provide for prompt remedies in the event that BA-PA fails to meet the standard rather than forcing the Parties to engage in costly and timely litigation. (R.D., p. 177).

c. Exceptions and Reply Exceptions

In its Exceptions, BA-PA objects to the inclusion of this metric. BA-PA reiterates its earlier contention that the BFR process is adequately addressed in each CLEC's interconnection agreement. (BA-PA Exc., p. 84). BA-PA argues that, because CLECs already have a sufficient means of recourse under their respective interconnection agreements, there is no need to include MCIW's new proposed metric to measure BFR response times. BA-PA points out that MCIW failed to present any evidence that BA-PA has failed to meet the intervals required by the BFR process described in the CLECs interconnection agreements. (BA-PA Exc., p. 84).

d. Disposition

We direct that this metric be included in the performance measures for diagnostic purposes, but we decline to attach remedies to it at this time. MCIW is correct that BA-PA's response times to BFRs are crucial to a CLEC's ability to furnish new services in the marketplace. Accordingly, this metric will be included in the performance measures. However, it is premature to assign a self-executing remedy. Currently, CLECs do have remedies under interconnection agreements in the event of BFR problems. Accordingly, we do not perceive an immediate need to assign remedies at this stage. If, after our reviews of the data from this metric, it appears that there are general problems with the BFR process, we can revisit the remedy issue.

I. New, Unnumbered Metrics

1. Network Outage Notification

This newly proposed metric would measure the timeliness of BA-PA notifying the CLECs when a network outage has occurred. (R.D., p. 177-178).

a. Parties' Positions

BA-PA objected to the addition of this metric. BA-PA noted that Sprint/United has proposed a wholly new metric that was not previously discussed by the Parties. According to BA-PA, Sprint/United failed to show a need for this metric. (BA-PA M.B., p. 53; R.D., p. 178).

Sprint/United proposed this metric to be implemented in BA-PA's Compliance Filing with a standard of parity with BA-PA's retail operations. (Sprint/United M.B., pp. 27-28; R.D., p. 14). Sprint/United maintained that the CLECs as well as the ILECs must be made aware of major network events in order to notify customers and regulatory agencies. (Sprint/United M.B., p. 27). Sprint/United averred that, with timely and detailed information from BA-PA regarding a network incident, the CLECs would have an opportunity to make prudent business decisions concerning their own customer bases and networks. Sprint/United further proposed that parity with BA-PA's retail operation be established as the performance standard for this metric. (R.D., pp. 177-178).

b. ALJs' Recommendation

The ALJs recommended adoption of Sprint/United's proposal. The ALJs further recommended that BA-PA should submit the metric with its Compliance Filing. (R.D., p. 179).

c. Disposition

No Exceptions were filed on this issue. Accordingly, we will adopt the ALJs' reasoning and recommendation, finding them to be reasonable. BA-PA shall include this metric in its Compliance Filing.

2. NXX Loading

This newly proposed metric would establish a quarterly performance measurement to measure the loading and testing of new NXXs. (R.D., pp. 14, 179).

a. Parties' Positions

BA-PA did not address this issue in its Main and Reply Briefs. (R.D., p. 179).

Sprint/United proposed that BA-PA implement this metric in its Compliance filing with a standard of parity with BA-PA's retail operations. (Sprint/United M.B., p. 27; R.D., p. 179). According to Sprint/United, BA-PA has not established a performance report to monitor the accurate and timely loading of new NXXs. Sprint/United argued that accurate and timely loading of NXXs before the Local Exchange Routing Guide (LERG) effective date is crucial to the CLEC's receipt of calls from ILEC customers. (Sprint/United M.B., p. 27). Sprint/United also asserted that accurate and timely loading of NXXs is necessary to ensure that customers are charged correctly for local and toll calls. Sprint/United emphasized that BA-PA's failure to properly load and test new CLEC NXXs by the effective date would adversely affect a CLEC end user's ability to receive incoming calls. (Sprint/United St. 1, App. A, pp. 223-224; R.D., p. 179).

b. ALJs' Recommendation

The ALJs recommended that BA-PA develop a quarterly performance measurement to measure the loading and testing of NXXs by the LERG effective date, at parity with BA-PA's retail operations. The ALJs recommended that BA-PA should include this metric in its Compliance Filing. (R.D., pp. 179-180).

c. Exceptions and Reply Exceptions

BA-PA urges the Commission to reject the ALJs' recommendation. BA-PA contends that errors and delays in NXX loading will be measured under Metric MR-2-03. BA-PA also argues that the CLECs failed to demonstrate why NXX loading should be measured separately from other types of potential central office problems. (BA-PA Exc., p. 81).

d. Disposition

We will adopt the ALJs' recommendation. Accurate and timely loading of new NXXs before the LERG effective date is vital to a CLEC's receipt of calls from ILEC customers. In addition, we note that BA-PA does not dispute Sprint/United's contention that BA-PA has not established a performance report to monitor the accurate and timely loading of new NXXs. We find the ALJs' recommendation to be reasonable. Accordingly, BA-PA shall include this metric in its Compliance Filing.

VI. PERFORMANCE STANDARDS AND MEASURES: STATISTICAL METHOD

A. Modified Z-Statistic

Use of the modified Z-score was originally proposed by the Local Competition Users Group (LCUG) to the FCC in anticipation of the FCC's NOPR regarding performance standards. The modified Z-Statistic is a statistical formula used to ascertain whether data drawn from two (2) separate performance samples (e.g., monthly performance data for the ILEC and monthly performance data for the CLECs) are statistically different, *i.e.*, whether differences in mean results are due to actual differences between the samples or have occurred merely by chance. (AT&T M.B., p. 64; R.D., p. 192). The formula is essentially a comparison of the respective ILEC and CLECs' pools for individual metrics, resulting in a determination as to whether the treatment accorded by the ILEC to itself was similar to the treatment accorded by the ILEC to the CLECs. (R.D., p. 192). The modified Z-score resulting from the comparison represents the statistical certainty that a disparity exists or does not exist. (R.D., p. 192).

1. Parties' Positions

BA-PA proposed a critical value of -1.645 for the modified Z-score. BA-PA maintained that the modified Z-score should be less than -1.645 before it is concluded that BA-PA has not provided parity of service. (BA-PA St. 1.0, p. 22, App. C, Ex. 3; BA-PA M.B., p. 60;). According to BA-PA, a critical value of -1.645 constitutes a 95% level of confidence that BA-PA did not provide the CLECs with the appropriate level of wholesale service quality. (BA-PA M.B., p. 60). With a critical value of -1.645, BA-PA added, the Type I²⁵ error is five percent (5%). (BA-PA M.B., p. 60).

²⁵ A Type I error is the possibility that the ILEC will render service at parity and that the formula will identify it as disparate service.

BA-PA advocated that the modified Z-score should be utilized only to make the threshold determination for parity metrics of whether CLECs have received wholesale services in parity with those provided to BA-PA's retail customers. (BA-PA M.B., p. 64). BA-PA proposed that, once the modified Z-score exceeds -1.645, the actual performance data for the CLEC would be used to calculate the degree by which its services failed to meet the retail service standard. (BA-PA M.B., p. 64; BA-PA St. 1.0, pp. 23, 26-27).

AT&T proposed a critical value of -1.04. AT&T claimed that its proposed critical value better applied statistical principles and was more compatible with the policy objectives of this proceeding. (AT&T R.B., p. 31). AT&T disputed BA-PA's contention that the modified Z-score only be used to determine whether a disparity in service exists. AT&T maintained that the modified Z-score should be utilized to determine not only whether a disparity exists but also the degree of the remedy to be applied. (AT&T R.B., pp. 34-35).

MCIW stated that, while it believed that the appropriate critical value should be -1.04, it would, however, accept BA-PA's proposal to use -1.645 as the critical value. (MCIW M.B., p. 22). MCIW rejected BA-PA's proposal that the modified Z-score only be used to determine whether a disparity of service exists. MCIW explained that its method of using the Z-statistic is the same as AT&T's method. MCIW emphasized that, although its remedies proposal and AT&T's remedies proposal are different, the concepts are the same. MCIW agreed with AT&T that the modified Z-score should also be applied to determine the magnitude of the penalties for those metrics having a parity standard. (MCIW M.B., p. 23).

2. ALJs' Recommendation

The ALJs recommended adoption of BA-PA's critical factor of -1.645. By setting the factor at -1.645, the Commission would have a 95% certainty that statistical analysis will show disparate treatment by BA-PA. By contrast, the AT&T proposal was

determined to place too great an emphasis on a “Type II Error” which refers to an error in which BA-PA could have been found to have been providing service at parity when, in fact, it was providing nonparity service. A critical factor of -1.645 was found to focus on a “Type I Error” which would occur if BA-PA were found to be providing disparate service when, in fact, it was providing service at parity. In arriving at their conclusion, the ALJs noted that even AT&T’s direct testimony pointed to use of the -1.645 critical factor in order to maintain a 95% certainty against Type I errors. (R.D., p. 204.)

In their Recommended Decision, the ALJs also declined to adopt AT&T’s and MCIW’s proposals to use the modified Z-score to set the magnitude of the remedy. The ALJs found that MCIW’s proposal exhibited a misunderstanding of the modified Z-score. The ALJs found that, while the modified Z-score will show whether a disparity has occurred, the size of the modified Z-score will only show the certainty (or lack of certainty) that disparity has occurred. It will not show the magnitude of the disparity. (R.D., pp. 206, 207).

3. Exceptions and Reply Exceptions

BA-PA supports the ALJs’ recommendation. (BA-PA R.Exc., pp. 2-16).

AT&T excepts to the ALJs’ recommended use of the -1.645 critical factor. AT&T argues that their factor, -1.04 , balances the Type I and Type II errors. Conversely, AT&T asserts that use of the -1.645 critical factor results in a “one tailed t-test” which will allow BA-PA to avoid being penalized unless the disparity of service provided is significant enough to be very unlikely due to mere chance. (AT&T R. Exc., p. 36, n. 80). AT&T argues that the insistence on 95% certainty against a Type I Error is appropriate in certain disciplines, such as scientific research which is subject to the most stringent of tests in antiseptic laboratories. (AT&T Exc., pp. 37-38.) However, in this case, AT&T states that the issue is not one of scientific discipline, but one of striking the balance between false

positives and false negatives in determining whether BA-PA is actually engaging in disparate behavior. (AT&T Exc., pp. 38-39).

In its Exceptions, AT&T also argues that the ALJs erred in rejecting its proposal to use the modified Z-score as a determinant of the level of penalty to be imposed for disparate service. (AT&T Exc., p. 30). AT&T claims that “it is a statistical fact that a greater modified Z-score means both greater certainty that discriminatory service is being provided and, other things being equal, larger disparities in the average provision of service and/or the variability of the provision of service between BA-PA and the CLECs.” (AT&T Exc., p. 30).

MCIW objects to the ALJs’ recommendation. MCIW reiterates its earlier contention that the modified Z-score should be used to determine the magnitude of the remedies imposed for disparate service. (MCIW Exc., p. 7). MCIW contends that using the modified Z-score as a determinant of the size of the remedy ensures that the remedy properly corresponds to the magnitude of the harm to the CLECs. (MCIW Exc., p. 7).

4. Disposition

At the heart of this issue is the use of a statistical factor to determine with certainty whether BA-PA is, or is not, providing services at parity to CLECs. Much of the debate below engaged in whether or not a critical factor of -1.645 (BA-PA’s proposed number) or -1.04 (AT&T’s proffered factor) would result in the analysis with the most certainty. The critical factor is a necessary aspect of the modified Z-test because of the randomness inherent in the development of the statistics at issue in the standards and measures here. MCIW concurred with BA-PA’s proposed critical factor of -1.645 but argued that BA-PA emphasized the wrong aspect of the figure.

Our review of this issue leads us to conclude that the ALJs' use of the -1.645 critical factor, and their refusal to adopt the use of the Z-test to set the magnitude of the remedies, is correct. We find that BA-PA's Reply Exceptions provide a fairly succinct statement of the issue and rationale for the refusal to use the modified Z-score as a determinant of remedy magnitude:

The modified Z test is a test of significance. It is used to determine whether or not a difference between two sets of data is due to chance (that is, whether there actually **is** a difference). It is not a test of the size or economic importance of the difference. Accordingly, the Z score, which it [sic] the output of the modified Z test, indicates only whether an observed difference in services is statistically significant or hard to explain away as a chance variation.

(BA-PA R.Exc., p. 3). (Emphasis in original).

With regard to the Parties' arguments relating to use of the -1.645 or -1.04 critical factor, we shall adopt the ALJs' recommendation. We agree with the ALJs that the weight of the evidence argues in favor of 95% certainty against Type I errors. In this regard, we note that the various Parties' testimony all mentioned this standard with favor, and we shall adopt it here. (*See, e.g., AT&T St. 2.0*). We agree with BA-PA, as argued in its Reply Exceptions, that AT&T places too much weight on Type II errors in urging this Commission to engage in a balancing of Type I and Type II errors. (BA-PA R.Exc., pp. 13-16). For these reasons, we agree with the ALJs and adopt a critical factor of -1.645.

In our view, there is no record evidence to support AT&T's and MCIW's proposal that the modified Z-score can be used to determine the magnitude of remedies. Indeed, when asked whether the modified Z-score calculates the level of the severity of disparity, AT&T's witness responded that the Z-score reflected a certainty of the existence of a non-parity and not a measurement of the severity of the disparity. (*See AT&T Exc., pp. 33-34, citing Tr., pp. 393-394*). Accordingly, we shall not use the absolute value of the

modified Z-score to indicate the severity of the magnitude of BA-PA's failure to provide parity.

B. Sample Size

1. Parties' Positions

BA-PA proposed minimum sample sizes for parity metrics using the "mean" standard and using the "percent" standards. (BA-PA M.B., p. 84, citing BA-PA St. 1.0, App. C, Exh. 2). BA-PA also proposed to exclude from the remedies calculation metrics for which the measured sample size is less than ten (10). (BA-PA M.B., p. 85, citing BA-PA St. 1.0, App. C, Exh. 3).

AT&T maintained that its approach could accommodate a sample size as small as ten (10). (AT&T M.B., p. 92).

2. ALJs' Recommendation

The ALJs noted that both AT&T and BA-PA agreed that the smallest sample test size which could be used with the modified Z score is ten (10). The ALJs recommended adoption of ten (10) as the minimum sample size. (R.D., p. 306).

3. Exceptions and Reply Exceptions

MCIW excepts to the ALJs' recommendation. MCIW states that the ALJs failed to address how to deal with samples of less than ten (10) and advocates that the Commission should adopt a permutation test to capture discrimination down to sample sizes of one (1). MCIW asserts that, if smaller sample sizes are not accounted for, BA-PA will avoid any remedies for disparity in services such as collocation and trunks where it is "highly possible" that only a minimal amount of orders will be placed. (MCIW Exc., pp. 14-15).

4. Disposition

At this juncture, we are reluctant to adopt the permutation standards as suggested by MCIW. We have established periodic reviews of the measures and standards as set forth in this proceeding and, if MCIW's concerns remain over time, they can raise them again during the periodic reviews.

We conclude that the ALJs' recommendation is reasonable and consistent with the record evidence. Accordingly, we shall adopt that the ALJs' recommendation and find that ten (10) shall be the minimum sample size²⁶.

²⁶ A sample size of less than ten (10) shall constitute a statistically invalid measurement.

VII. ENFORCEMENT REMEDIES

A. Levels of Incentive Payments

The ALJs directed all Parties to submit their remedies proposals on or before May 28, 1999. Proposed remedies plans were filed by BA-PA, AT&T, MCIW and Sprint/United. CTSI filed a letter indicating its endorsement of AT&T's proposal. The respective remedies proposals were further discussed in the Parties' Main and Reply Briefs. NEXTLINK did not file a brief but instead indicated by letter dated July 6, 1999, to the ALJs that it endorsed the AT&T and MCIW proposals.

1. Parties' Positions

As previously discussed in this Opinion and Order, BA-PA proposed that the modified Z-score be used to determine whether a disparity is present. BA-PA maintained that other methods should be used to determine the need and magnitude of a remedy. BA-PA's witness, Mr. Stapleton, briefly summarized BA-PA's plan as follows:

After BA-PA has identified the metrics for which it did not meet the applicable standard, the next step in the process is to compute the amount of any incentive payment. Under BA-PA's proposal, the amount of the incentive payment will be a function of four factors: (1) the degree by which the standard was missed; (2) the number of times over a six month period that standard was missed; (3) the relative importance of that standard to the CLECs; and (4) the number of standards missed during the reporting period. These four factors are explained below.

BA-PA proposes that the amount of the incentive payment will increase with the degree by which it provided substandard performance. After BA-PA has identified the metrics for which it provided substandard performance, BA-PA will calculate the actual difference between its performance and the Guidelines standard, and then assign "performance points" to

each substandard metric based on the amount of the actual difference. The greater the degree by which the performance standard was missed, the greater the number of performance points assigned, and the larger the incentive payment at the end of the computational process. The use of performance points gives BA-PA an incentive to keep its performance as close as possible to the standard; they make it more costly to miss by a mile than by an inch. Table 1 of Exhibit 2 in Appendix C shows how BA-PA intends to calculate and use performance points.

BA-PA's proposed system will also link the amount of the penalty to the frequency with which BA-PA provided substandard performance for a metric in the last six months. The more frequently the metric was missed in the last six months, the higher the frequency factor. The purpose of the frequency factor, of course, is to encourage BA-PA to fix problems quickly. Table 2 of Exhibit 2 in Appendix C shows the frequency factors that BA-PA proposes to use.

Some services provided by BA-PA will be more important to CLECs than others. BA-PA proposes to account for this by assigning a weight to each metric ranging from 1 (least important) to 4 (most important). A higher "relative importance" will result in a higher incentive payment at the end of the computational process. For the incentive payment calculation to be consistently applied, however, the weight assigned to a metric should be the same for all CLECs. Footnote 2 of Exhibit 2 in Appendix C explains how BA-PA will calculate and apply the weighting factor.

Finally, under BA-PA's proposal, the amount of the incentive credit increases with the number of missed metrics. This gives BA-PA an incentive to guard against missing a large number of metrics, even by a small amount.

Under BA-PA's proposal, a CLEC receiving substandard performance will receive a credit for a percentage of the amount the CLEC owed BA-PA. BA-PA proposes three levels of credits ranging from 5% to 30%. Any credit due a CLEC will be applied to CLEC bills by the conclusion of the second month after the reporting month.

(BA-PA St. 1.0, pp. 22-24) (Emphasis in original).

BA-PA subsequently withdrew the weighting component of its plan. (BA-PA M.B., p. 80; BA-PA R.B., p. 32; R.D., p. 293).

BA-PA proposed that any CLEC receiving substandard performance would receive credit for a percentage of the amount the CLEC owed BA-PA. (BA-PA St. 2.0, pp. 22-24). The amount of the credit under BA-PA's plan would range from 5% to 30%. BA-PA maintained that, under its proposal, the amount of incentive credit increases with the number of missed metrics. BA-PA explained that, even if the -1.645 threshold is met, the question should still remain as to whether a remedy was needed. BA-PA claimed that (1) the amount of the incentive payment should be controlled by the degree of missed metrics; (2) the number of times over a six (6)-month period; and (3) the number of standards missed during the reporting period. (BA-PA St. 2.0, pp. 22-24).

BA-PA contended that its risk should be limited to 30% of its total billed wholesale revenues. BA-PA opined that the 30% limit was sufficient to deter it from providing inadequate service. BA-PA noted that its plan was not the exclusive remedy for the CLECs which also had the option to file complaints before the FCC and the Commission. (BA-PA M.B., pp. 78-79; R.D., pp. 244-245, 277).

AT&T proposed a two-tiered remedies plan. AT&T Tier I remedies would be a form of liquidated damages which, according to AT&T, encompasses BA-PA's unjust enrichment as a result of failing to meet specific service standards, as well as the need to deter discriminatory or illegal conduct. (AT&T M.B., p. 74). Under AT&T's proposal, the amount of the remedy would increase as the value of the modified Z-score increases. AT&T's Tier I remedies would automatically apply when BA-PA fails to meet a specific service measurement, *i.e.*, when the value of the modified Z-score exceeded -1.04. (AT&T M.B., p. 74; R.D., pp. 233-242).

AT&T's Tier I remedies proposal can be summarized as follows:

When the modified Z-score exceeds 1.04, but is equal to or less than -1.645, BA-PA would pay \$2,500, to each affected CLEC per failure occurrence per month. AT&T referred to this as a basic failure.

When the modified Z-score exceeds -1.645, but is equal to or less than 3.000, BA-PA would pay \$5,000, to each affected CLEC per failure occurrence per month. AT&T referred to this as an intermediate failure.

When the modified Z-score exceeds 3.000, BA-PA would pay \$25,000, to each affected CLEC per failure occurrence per month. AT&T referred to this as a severe failure.

When there are three or more consecutive months of failures, BA-PA would pay \$25,000 to each affected CLEC per failure occurrence per month. AT&T referred to this as a chronic failure.

(AT&T M.B., p. 74; AT&T May 28, 1999 Submission, Exh. C).

AT&T proffered that its Tier II remedies should be assessed when BA-PA fails to meet the service standards for a sufficient number of submeasures, based on aggregated CLEC data, if the failures exceed the number of failures attributable to random chance at a 95% level of statistical confidence. (AT&T M.B., p. 75, citing AT&T St. 2.0, p. 11). AT&T proposed that, unlike the Tier I remedy which required payments to a specific CLEC, Tier II payments would be submitted to an industry fund or to the Commonwealth treasury. AT&T advocated that BA-PA be prohibited from receiving any benefit resulting from making the payments or recovering the payments as an exogenous event under BA-PA's alternative regulation plan pursuant to Chapter 30. (AT&T M.B., p. 76). AT&T's proposal required that Tier II remedies be applied in addition to any applicable Tier I remedies. AT&T also recommended that, if system-wide failures are found, the Commission not support BA-PA's Section 271 Application. In the event that systemic

failures are found after FCC approval of BA-PA's Section 271 Application, the Commission, in AT&T's view, should petition the FCC to revoke or to suspend BA-PA's Section 271 authority. (AT&T M.B., p. 76; R.D., pp. 233-242).

AT&T's Tier II remedies proposal can be summarized as follows:

Upon first finding that BA-PA has failed to provide nondiscriminatory performance to the CLEC industry as a whole (based upon aggregated CLEC data), BA-PA would pay Tier I payments plus \$.50 per access line into the industry fund.

Upon two such findings within a 6-month period, BA-PA would pay Tier I payments plus \$1.00 per access line into the industry fund.

Upon three such findings within a 12-month period, BA-PA would pay Tier I payments plus \$2.00 per access line into the industry fund, plus the Commission would not recommend Section 271 approval or if Section 271 approval has already been granted, the Commission will recommend to the FCC revocation of BA-PA's 271 approval.

(AT&T M.B., p. 75).

CTSI supported AT&T's proposal. CTSI noted that a CLEC could suffer short-term harm by the loss of the customer as well as long-term harm for the damage to its reputation. CTSI believed that BA-PA's plan failed to adequately address both concerns. CTSI maintained that the remedies outlined in AT&T's plan would deter BA-PA from providing disparate treatment as well as remedy the resulting harm to the CLECs. (CTSI M.B., p. 34; R.D., pp. 242-243).

MCIW proposed to use the modified Z-score to determine the magnitude of the penalties for those metrics which have parity as the performance standard. MCIW's proposal was based on a three (3)-tier system. MCIW claimed that its approach appropriately matches the magnitude of the remedy to the magnitude of the violation and

the impact it could have on the promotion of local competition. (MCIW St. 1.0, p. 14). Under MCIW's proposal, Tier I penalties would apply when individual CLECs receive service that is not at parity with service BA-PA provides its own retail customers or affiliates, or when a benchmark standard is missed once. (MCIW St. 1.0, p. 14; R.D., pp. 243-244).

In incidences where a parity standard or benchmark standard is missed by a great magnitude or for one (1) month, MCIW proposed Tier II remedies which would increase the amount of the penalties. MCIW claimed that a statistical methodology should be used to determine when Tier II penalties would apply for the parity standards that are missed by a great magnitude. (MCIW St. 1.0, p. 14). According to MCIW, the methodology, *i.e.*, modified Z-score, should be used to determine when a penalty should be applied and the actual level of the penalty. (MCIW St. 1.0, p. 14). MCIW also recommended that, if Tier II penalties are applied, the Commission not support BA-PA's Section 271 Application or, if approval has been granted, that the Commission initiate an investigation into the quality of BA-PA's service. (MCIW St. 1.0, p. 14; R.D., pp. 243-244).

MCIW proposed the assessment of Tier III penalties in addition to Tier I and Tier II penalties when it is shown that BA-PA has provided substandard service overall to the CLEC industry. (MCIW St. 1.0, p. 14). Under MCIW's proposal, BA-PA would pay remedies into a state-created fund that would be used to fund independent audits of BA-PA's performance. MCIW's witness summarized MCIW's Tier III penalties as follows:

If Tier III remedies are invoked, §271 approval should be denied. To determine whether market suppression (Tier III) penalties apply, results for parity and benchmark violations are compiled for the CLEC industry as a whole. If from the aggregated CLEC results, the base remedy or minimum penalty would apply (using the parity and benchmark tables from

Attachment 3, page 5) for more than 5% of the submeasures, then Tier III penalties would apply as follows:

First month of violation	\$0.50/access line/month
Second month of violations within a 12 month period	\$1.00/access line/month
Each additional month of violations (beyond two months) within a 12 month period	\$2.00/access line/ month

If more than 15% of the submeasures are missed for the CLEC industry in the aggregate, then the Commission should investigate and possibly recommend suspension of any existing authority.

(MCIW St. 1.0, p. 15).

2. ALJs' Recommendation

The ALJs concluded that there were significant flaws with each of the Parties' proposals. The ALJs viewed BA-PA's plan as being too complicated. The ALJs determined that it would be difficult for the CLECs, as well as the Commission, to monitor and ascertain whether the remedies were being properly generated. (R.D., p. 258). The ALJs disagreed with BA-PA's contention that a remedy was not necessarily required once the 1.645 threshold had been crossed. The ALJs further emphasized that the basic premise of BA-PA's plan is flawed for three (3) reasons: (1) BA-PA failed to consider that Section 271 mandates that BA-PA provide nondiscriminatory service to the CLECs as a precondition to the granting of its request to provide interLATA service; (2) BA-PA overlooked the agreement among BA-PA and the CLECs that the standard for nondiscriminatory service is parity with BA-PA retail services; and (3) BA-PA failed to acknowledge that, if it provides nonparity service, it should be liable for a remedy. (R.D., pp. 258-259). The design flaws of BA-PA's plan, according to the ALJs, demonstrated

BA-PA's unwillingness to comply with the mandates of TA-96 and its failure to meet the FCC requirement that BA-PA's incentive plan act as a deterrent to ensure that the CLECs receive nondiscriminatory access and interconnection. (R.D., p. 259).

The ALJs further agreed with the CLECs' position that BA-PA's plan was too lenient. The ALJs interpreted BA-PA's proposal as allowing it to underperform by 50%, in any or all metrics, on a monthly basis, but yet requiring the CLECs to pay 100% of the bill, subject only to a maximum 30% credit at the second consecutive month. The ALJs reasoned that, given the time and money expended by the CLECs to pay for the metrics, BA-PA's proposed incentive plan would not economically deter BA-PA from providing disparate service. (R.D., p. 259).

For these reasons, the ALJs recommended against adoption of BA-PA's plan in its entirety. The ALJs recommended a financial incentive plan which can be summarized as follows:

Tier I Payments

- a. If data shows a disparity of 0% to 49.99%, BA-PA must return 50% of the fee charged for that service to affected CLECs in first month of occurrence.
- b. If data shows a disparity of 50% or greater, BA-PA must return 100% of the fee charged to affected CLECs in the first month of occurrence.
- c. The standard described in "b" is repeated for each metric where a disparity occurs.
- d. For metrics for which there is no corresponding fee, BA-PA must take the total individual CLEC monthly fee for metric services and divide

by total number of services and submetrics used by that CLEC in that month. The average metric fee for that month is then used to calculate repayment amounts described above.

Beginning with the second violation of the same metric within two (2) months of the first violation, the ALJs recommended “liquidated damages.”

For the second violation of same metric within two (2) months of the first violation, in addition to returning half or all of the fee charged in accordance with the above proposal, BA-PA must also pay affected CLECs \$2,500 in “liquidated damages” for violation of the same metric.

For the third violation of the same metric within two (2) months of the first violation, in addition to returning half or all of the fee charged in accordance with the above proposal, BA-PA must also pay affected CLECs \$5,000 for violation of the same metric.

For the fourth violation of the same metric within two (2) months of the first violation, in addition to returning half or all of the fee charged in accordance with the above proposal, BA-PA must also pay affected CLECs \$25,000.

The ALJs proposed that liquidated damages be imposed until after two consecutive months without violating the same metric.

(R.D., pp. 268-269).

Tier II Payments

The ALJs recommended that Tier II payments should be imposed when BA-PA fails to provide nondiscriminatory service to the CLEC industry as whole (based on aggregate CLEC data).

For the first metric violation in the same month, BA-PA must make Tier I payments plus pay \$.50 per access line into the Universal Service Fund.

For subsequent violations in the same month, BA-PA must make Tier I payments plus pay \$.10 per access line into the Universal Service Fund.

(R.D., pp. 273-274).

The ALJs recommended that the Commission withhold its Section 271 consultative report until BA-PA's discriminatory conduct has ended for a period of six (6) to twelve (12) months without a single recurrence. (R.D., p. 271). If the Commission's favorable Section 271 consultative report has been given but no FCC action has been taken, the ALJs proposed that the Commission revoke its favorable rating and impose a financial remedy. (R.D., p. 272). The ALJs recommended that the Commission allow the financial remedies to remain in place even if BA-PA's Section 271 Application is granted and/or subsequently revoked since TA-96 does not require the FCC to permit a second consultative report from this Commission. (R.D., p. 272).

The ALJs also recommended that payments made to CLECs and the Universal Service Fund should not be passed on to BA-PA customers as part of an exogenous pass-through. The ALJs further recommended that an escalator clause similar to that in BA-PA's Chapter 30 Plan be implemented in this proceeding to track inflation/deflation because of the concern that growth of the economy could outpace the sizes of the remedies and undermine their effectiveness. The ALJs also suggested that the remedies track the Gross

Domestic Product Index (without a productivity offset) and that the base year be set the same as the effective year date. (R.D. p. 274).

3. Exceptions and Reply Exceptions

BA-PA excepts generally to the ALJs' rejection of its financial incentives proposal. BA-PA asserts that while the ALJs correctly acknowledged that the payments levels contained in the proposals of AT&T and MCIW were too severe, the ALJs' recommended financial incentive plan, if adopted by the Commission, would result in payments, which in some instances, are much higher than those proposed by AT&T and MCIW. (BA-PA Exc., pp. 4-6).

BA-PA also disagrees with the ALJs' conclusion that the its proposal is too complicated. BA-PA repeats its earlier contention that its proposal would ensure that it earn negative profits, if BA-PA violates the performances measures and standards. For this reason, according to BA-PA, its financial incentive proposal is sufficient to deter BA-PA from providing nondiscriminatory access and interconnection and should be adopted by the Commission (BA-PA Exc., pp. 8-13).

In addition, BA-PA argues that the ALJs' recommended remedies plan is flawed and should be rejected in its entirety. The ALJs' plan, in BA-PA's view, fails to adjust for the probability of Type I errors and, as such, would require BA-PA pay penalties even when it has complied with the performance measures and standards. BA-PA urges the Commission to allow a reasonable adjustment for the probability of Type I error. (BA-PA Exc., pp. 19-20).

AT&T contends that the ALJs' proposed remedies plan is flawed for several reasons:²⁷ (1) the ALJs' plan improperly allows BA-PA to violate parity without paying a penalty; (2) the ALJs erred in partially tying the remedy to the CLEC bill; and (3) the ALJs' two tiered plan does not adequately deter BA-PA from discriminating against the CLECs or properly compensate CLECs for BA-PA's discriminatory service provision. (AT&T Exc., pp. 23-44).

AT&T also argues that the ALJs erred in failing to adopt AT&T remedies proposal. AT&T claims that its remedies plan achieves the dual goals of compensating the CLECs for the damages incurred as a result of BA-PA's inadequate service and deterring BA-PA from future discriminatory conduct. (AT&T Exc., pp. 45-50).

MCIW supports the ALJs' rejection of BA-PA's proposal. MCIW argues, however, that the ALJs' plan does not provide appropriate remedies for initial and recurring disparities. MCIW also takes the position that the ALJs' remedy scheme, as recommended, does not deter discriminatory conduct by BA-PA. According to MCIW, the ALJs' recommended remedies plan does not adequately account for all of the harms which could be caused by BA-PA's substandard service to the CLECs. (MCIW Exc., pp. 8-9).

MCIW urges the Commission to adopt its remedies proposal. MCIW contends that, compared to the ALJs' recommended plan, its proposal would ensure that BA-PA has the proper incentive to provide nondiscriminatory service. (MCIW Exc., pp. 11-12).

MCIW also objects to the ALJs' state fund recommendation. Instead of placing BA-PA industry wide discrimination penalties into a Universal Service Fund, as

²⁷ The other reasons articulated by AT&T are discussed in the "Performance Standards and Measures" discussion section of this Opinion and Order.

recommended by the ALJs, MCIW proposes that the penalties be deposited into a separate fund created by the Commission to advance the development of a competitive local market in the Commonwealth of Pennsylvania. Contrary to the ALJs' recommendation, the Commission should, in MCIW's view, withhold a favorable Section 271 consultative report as well as require BA-PA to pay into a fund at the same time. (MCIW Exc., pp. 12-14).

In its Exceptions, Sprint/United states that, while it supports the ALJs' plan in concept, it seeks clarification on certain terms of the ALJs' recommended plan. Specifically, Sprint/United makes the following inquiries:

Whether the term "fee" means monthly charges, non-recurring charges or both?

Whether the penalty would apply to all activity for the month or just the portion which is noncompliance?

How would non-order-type activities be handled?

(Sprint/United Exc., p. 14).

Sprint/United argues that the ALJs' recommendation would result in a penalty that would change every month and differ among the various CLECs in situations concerning the use of a proxy or average cost for those metrics or submetrics not having an associated fee. (Sprint/United Exc., p. 14). Sprint/United adds that, because this approach is neither simple to calculate nor to verify, the Commission should impose a fixed penalty. (Sprint/United Exc., p. 15).

Sprint/United disagrees with the ALJs' recommendation that Tier II payments be deposited into the Universal Service Fund. Sprint/United claims that monetary payments into a public fund alone would not serve as a strong deterrent for Tier II violations.

Sprint/United supports the ALJs' recommendation to withhold a Section 271 consultative report where Tier I and II remedies have been imposed and BA-PA continues to demonstrate a pattern of discriminatory conduct. (Sprint/United Exc., p. 16). In situations where Section 271 authority has already been granted, Sprint/United contends that the alternatives outlined in its Main Brief are a better alternative to the ALJs' recommended plan. (Sprint/United Exc., p. 17, citing Sprint M.B., pp. 7-8).

Sprint/United argues that the ALJs did not go far enough to ensure that the standards and measures become effective immediately. Sprint/United suggests that we should use the results of at least three (3) months of testing under these metrics to determine whether a favorable consultative report on BA-PA's Section 271 Application should be made. (Sprint/United Exc., pp. 4-5).

4. Disposition

As we stated at the outset, this matter should not be about penalties. It should be about performance. However, the BA-PA plan does not go far enough. This proceeding and its outcome is not an opportunity for the CLECs to wring dollars from BA-PA.

With regard to the ALJs' suggested plan, while we appreciate their efforts, we are concerned that, as a proposition of fundamental fairness, any plan should contain remedies that flow to the affected party: if one does not get the service, one should not have to pay. Additionally, while we should consider liquidated damages in an overall incentive plan, a balance must be achieved in our attempt to "incentivize," before we "penalize." Liquidated damages in the amount of \$25,000 are clearly a penalty, and this Commission is reluctant at this time to adopt such a measure.

We will, therefore, implement the following incentive plan:

Tier I

If BA-PA violates a metric within a thirty (30)-day period and a CLEC (and by extension its customer) does not receive a service, then the CLEC is to receive its actual, out-of-pocket payment on a pro-rated basis.

No liquidated damages are available for this first month, but that should not be misconstrued as a waiver of enforcement. In fact, and the provisions of these remedies notwithstanding, this Commission retains full authority to impose penalties available under Section 3301 of the Pennsylvania Public Utility Code, particularly if a CLEC demonstrates intentional violations of a metric by BA-PA.

Tier II

If the complained-of behavior and a metric violation persists beyond thirty (30) days, then the CLEC is to receive its actual, out-of-pocket payment on a pro-rated basis. Beyond thirty (30) days but prior to sixty (60) days, liquidated damages in the amount of \$2,000 per metric violated, per affected CLEC, will also be paid. These liquidated damages are not available to the CLECs unaffected by the performance deficiency. It is not our intent to create a sort of “class award” to the CLECs when not all the CLECs may be adversely affected by the performance deficiency.

If the complained-of behavior and metric violation persist beyond sixty (60) days, then a second liquidated damage penalty of \$4,000 will be imposed per metric violated, per affected CLEC. These liquidated damages are not available to CLECs unaffected by the performance deficiency.

If the complained-of behavior and metric violation persist beyond ninety (90) days, or if more than five (5) different metrics per CLEC are alleged to have been violated,

then the Parties are required to make a filing with this Commission detailing, with specificity, the nature of the problem and all efforts to correct the same. BA-PA will be free to argue such defenses as immateriality. We hasten to add, however, that any argument for the return of damages paid carries with it a high burden of persuasion on the part of BA-PA. By contrast, the CLEC may argue for greater damages up to \$25,000 per month.

All pro-rated payments and liquidated damages “flow” back to the affected CLEC according to federal law rather than to the Commonwealth General Fund.

Tier III

If the violation of the metric complained of is an industry-wide problem within the Commonwealth, then in addition to the remedies described at Tier II, the violation of a metric beyond ninety (90) days may trigger the request by this Commission to the FCC for the authority to restrict BA-PA’s entry into the long distance market on a geographic basis, for a period of time, or both. The Commission will immediately petition the FCC to establish the proper procedure for such a request in order that Tier III controls will be in place prior to BA-PA’s Section 271 Application.

In the event that the FCC refuses to grant a request for preclusion authority or delays consideration of the request, then the Commission may reconsider the establishment of a statewide Universal Service Fund contribution at the levels and according to the formula set forth in the Recommended Decision.

Finally, these performance measures, standards and remedies shall be effective, consistent with the provisions of this Opinion and Order and continue beyond the filing and resolution of any Section 271 proceeding commenced by BA-PA.

B. Section 271 Application

1. Parties' Positions

AT&T maintained that, if system-wide failures were found, the Commission should not support BA-PA's Section 271 Application. AT&T also advocated that, if systemic failures are discovered after BA-PA has been granted Section 271 authority, the Commission should petition the FCC to revoke or suspend BA-PA's Section 271 authority. (AT&T M.B., p. 76).

MCIW asserted that, if Tier II penalties are invoked, the Commission not support BA-PA's Section 271 Application. MCIW added that, if Section 271 authority has already been granted by the FCC, the Commission should initiate an investigation into the quality of BA-PA's service. (MCIW St. 1.0, p. 14).

Sprint/United asserted that, as a Regional Bell Operating Company (RBOC), BA-PA has additional obligations under Section 271. Sprint/United argued that, if an RBOC having Section 271 authority exhibits a repeat pattern of providing disparate service, the RBOC should automatically lose its right to sell in-region interLATA toll service (i.e., sell long distance service to new customers). Sprint/United claimed that in order to regain authority, the RBOC has the burden of demonstrating that its operations have been corrected and that it is now providing parity service. According to Sprint/United, the RBOC's proof of parity service should be supported by a minimum of six (6) consecutive months of performance reports. (Sprint/United M.B., p. 31).

2. ALJs' Recommendation

In discussing the financial incentive/remedy plan, the ALJs suggested that, in the event of violations of metrics, which violations demonstrate a pattern of discrimination against the CLEC industry, the Commission should withhold any favorable consultative

report on BA-PA's Section 271 Application until a period of time (six (6) to twelve (12) months) has elapsed with no sign of a recurrence. (R.D., p. 271). If the Commission has submitted a favorable consultative report, the ALJs recommend "revoking" it and imposing financial remedies. The ALJs go on to recommend that, if the FCC has acted on the Section 271 Application, financial penalties should remain in force since TA-96 does not require the FCC to permit a second consultative report from this Commission. (R.D., p. 272).

3. Exceptions and Reply Exceptions

In its Exceptions, MCIW argues that the Commission should adopt the ALJs' proposal to withhold a favorable Section 271 consultative report. MCIW maintains, however, that BA-PA should be required to pay into the fund if the Commission has not yet made a recommendation on BA-PA's Section 271 Application. (MCIW Exc., p. 13).

BA-PA urged rejection of Sprint/United's proposal. (BA-PA R.Exc., pp. 16-19).

In its Exceptions, Sprint/United argues that the ALJs did not go far enough to ensure that the standards and measures become effective immediately. Sprint/United suggests that the Commission should use the results of at least three (3) months of testing under these metrics to determine whether a favorable consultative report on BA-PA's Section 271 Application should be made. (Sprint/United Exc., pp. 4, 5.)

4. Disposition

We decline to adopt the ALJs' recommendation here and decline to adopt Sprint/United's position as well. However, we have taken both of these approaches into consideration in the determination of the financial incentive plan described in this Opinion

and Order. The roadmap for BA-PA's Section 271 Application process has been set forth in our *Global Order*. Accordingly, we will not provide for a specific number of months' experience under these measures and standards to be considered within the Section 271 consultative process in Pennsylvania. However, as provided for in our financial incentive plan, metric violations of sufficient magnitude will definitely have a negative impact on that proceeding. Also, our action here does not preclude any Party from seeking to introduce evidence from these standards and measures to support, or argue against, a favorable consultative report on BA-PA's Section 271 Application.

C. "Skewed Data": Exogenous Events, *Force Majeure*, and Statistical Validity

The self-executing remedy system is designed to require parity calculation and prompt payment with a minimum of Commission involvement. (R.D., p. 18). As proposed by BA-PA, provisions for exogenous events, *force majeure*, and statistical validity would excuse certain payments under the self-executing remedy system. (R.D., p. 328).

1. Parties' Positions

BA-PA's proposal contained a series of exceptions which permitted BA-PA to exclude data from that used to determine whether BA-PA was providing disparate service. BA-PA maintained that it should be allowed to apply to the Commission for relief from a failure, or apparent failure, to meet a performance standard, if the failure or apparent failure was the result of statistical invalidity of the measurement. (BA-PA M.B., p. 79). Additionally, while its proposal already addressed some potential areas of statistical invalidity, such as clustering, BA-PA emphasized that, if it applies to the Commission for relief from a failure or apparent failure to meet a standard, it should not be required to pay the penalty based on that failure until the Commission issues a ruling on BA-PA's petition for relief. (BA-PA M.B., p. 80). BA-PA claimed that this approach would protect it from

the risk of making a penalty payment to a CLEC and subsequently being unable to recover the payment if the Commission determines that the penalty payment was unwarranted. (BA-PA M.B., p. 80). Further, BA-PA proposed the inclusion of a *force majeure* clause. (BA-PA M.B., pp. 87-89; R.D., pp. 282-283, 324-326).

AT&T objected to BA-PA's proposals. AT&T believed that, because BA-PA's clustered events had the potential of affecting large numbers of CLEC customers, it could potentially mask serious systematic operational failures. (AT&T M.B., p. 82). AT&T argued that BA-PA should not have the discretion to unilaterally exclude performance data from its results as well as hold off paying a remedy based solely on a BA-PA allegation that a clustered event has occurred. (AT&T M.B., p. 82). Specifically, AT&T sought modifications or compromise relative to the following clustering provisions: Event-Driven Clustering: Cable Failure; Location Driven Clustering: Facility Problems; and Time Driven Clustering: Single Day Events.²⁸ (AT&T M.B., pp. 82-83, R. D., pp. 279-281).

Further, AT&T opposed inclusion of the *force majeure* clause in the performance standards, asserting that the clause would allow BA-PA to claim relief from its obligation to meet a performance standard or to pay a remedy in "virtually any event imaginable." (AT&T M.B., p. 95; AT&T R.B., p. 48; R.D., pp. 321-324). Finally, AT&T argued that BA-PA's ability to "ask the Commission" to change a metric should not apply to measurements with absolute standards. Modification to such metrics should only be through a petition to modify a Commission Order, subject to notice and an opportunity for opponents to be heard. (AT&T M.B., pp. 95-96; R.D., pp. 327-328).

²⁸ AT&T's proposed modifications for Location Driven Clustering: Facility Problems and Time Driven Clustering: Single Day Events were subsequently accepted by BA-PA. (See BA-PA St. 1.1, App. B, p. 125).

CTSI objected to BA-PA's proposal that it withhold remedy payments until after the Commission has determined whether the subject data should be properly excluded. CTSI disputed whether BA-PA should be allowed to exclude data related to CLEC cable failures or related to a large amount of single-day ordering. These events, according to CTSI, would occur within the BA-PA retail system. CTSI claimed that the proposed exclusion of data would alter the data results in BA-PA's favor. (CTSI M.B., pp. 35-37; R.D., pp. 281-282).

2. ALJs' Recommendation

The ALJs concluded that the allegations of exogenous events, *force majeure*, and statistical invalidity were, in essence, allegations of "skewed data." (R.D., p. 328). Specifically, the ALJs recommended adoption of the agreement reached herein between AT&T and BA-PA on the language in the Location Driven Clustering: Facility Problems and Time Driven Clustering: Single Day Events. (R.D., p. 285). The ALJs also recommended that BA-PA's proposed language be modified with respect to the Event Driven Clustering: Cable Failure provision to require BA-PA to leave the data in the measurement and make remedy payment before filing a request for relief before the Commission. The ALJs stated that BA-PA should bear the burden of proving that the event met its criteria and that a refund is required. (R.D., p. 285).

The ALJs further recommended that the *force majeure* language be deleted and that BA-PA should timely pay any money calculated as due. The ALJs recommended inclusion of language that allows BA-PA or the CLECs to petition the Commission for a refund of a remedy paid which resulted from skewed data, with the petitioner having the burden of proof. (R.D., pp. 326-327). With respect to the statistical validity issues, the ALJs again concluded that BA-PA should pay the money in a timely fashion and petition for a refund. (R.D., p. 328).

3. Exceptions and Reply Exceptions

BA-PA contends that the ALJs accepted a *force majeure* provision at page 286 of the Recommended Decision in addressing exogenous events and then recommended deleting the provision at pages 326 to 327. (BA-PA Exc., pp. 94-95). BA-PA argues that it is not feasible to anticipate in advance all of the circumstances that could render measurements statistically invalid. (BA-PA Exc., p. 95).

BA-PA excepts to the ALJs' recommendation that BA-PA pay the remedy payment and then seek Commission relief. BA-PA contends that its obligation to make the incentive payment should be tolled until the Commission has decided whether a payment by BA-PA was warranted. (BA-PA Exc., p. 96). BA-PA adds that, compelling it to make incentive payments, which could be substantial, could have an adverse impact on its financial situation and consequently impede its ability to provide service. (BA-PA Exc., p. 96). Contrary to the ALJs' contention that a proceeding to resolve a claim for relief could be lengthy, BA-PA submits that expedited procedures resolving such claims could be implemented. (BA-PA Exc., p. 97). Alternatively, BA-PA suggests that, if the Commission is inclined to accept the ALJs' recommendation, BA-PA should be permitted to pay disputed amounts into escrow pending a Commission determination of the dispute. (BA-PA Exc., p. 97, footnote 273).

AT&T argues that the ALJs properly rejected the *force majeure* provision and properly recommended that BA-PA be required to pay first and then file a claim before the Commission. AT&T adds that the arguments made in BA-PA's Exceptions were previously rejected by the ALJs. (AT&T R. Exc., p. 93).

4. Disposition

We shall adopt the ALJs' recommendation with modification. BA-PA should not be required to make payment for an alleged *force majeure* or exogenous event or for a statistically invalid measurement, but BA-PA must notify the Commission of its intention to withhold payment within five (5) days after the alleged *force majeure* or exogenous event or statistically-invalid measurement. BA-PA must escrow the contested funds. The CLECs may request resolution through ADRP.²⁹

D. Burn-In Period

1. Parties' Positions

BA-PA requested a six (6)-month burn-in period during which it would not be obligated to pay any remedies. According to BA-PA, a reasonable time period will be necessary to confirm the accuracy of the measurements. (BA-PA St. 1.1, App. A, Exh. 1).

AT&T proposed a three (3)-month burn-in period during which no remedies would apply if BA-PA's performance was not at parity. AT&T added that, during this period, BA-PA should be required to submit service quality performance reports and remedies calculations based on the final standards and measures adopted by the Commission in this proceeding. (AT&T M.B., pp. 9-10). AT&T maintained that this three (3)-month burn-in period would provide opportunity for an independent third-party to verify that BA-PA has properly implemented the required performance metrics and remedies. (AT&T M.B., p. 10).

²⁹ See Appendix E of *Global Order* for a description of this Commission's Abbreviated Dispute Resolution Process (ADRP).

Sprint/United supported BA-PA's proposed six (6)-month burn-in period. (Sprint/United M.B., p. 30).

CTSI argued that there was no need for a six (6)-month burn-in period. According to CTSI, the proper solution is to permit CLECs to audit the process to ensure data accuracy. (CTSI M.B., pp. 37-38).

2. ALJs' Recommendation

The ALJs agreed with the CLECs and recommended against a six (6)-month burn-in period. (R.D., p. 290). They noted that BA-PA's own witness stated that BA-PA did not expect to experience significant accuracy problems. Accordingly, the ALJs recommended a three (3)-month burn-in period with reporting requirements as outlined in AT&T Statement 2.1. (R.D., p. 291).

3. Exceptions and Reply Exceptions

In its Exceptions, BA-PA opposes a three (3) month burn-in period. BA-PA repeats its earlier contention that it needs a reasonable period of six (6) months at the initiation of the service quality plan in which to ascertain whether it is missing performance standards and to correct the substandard performance before it is subject to incentive remedy payments. BA-PA claims that it should not be required to make incentive payments before it has had the opportunity to pinpoint deficiencies in its system and correct them. According to BA-PA, this process may take more than the ALJs' recommended three (3) months. (BA-PA Exc., p. 100).

4. Disposition

Based upon our review of the various arguments on this point, we conclude that there should be a six (6)-month burn-in period, which includes an escalation of the application of remedies. First, billing adjustments and credits will not be suspended during the burn-in. CLECs do not have to pay for services not received or provided. We determine that remedies to standards violations will not apply or accrue for the first three (3) months. From month three (3) to month four (4), fifty percent (50%) of any appropriate remedy will be due and owing. From month four (4) to month five (5), sixty percent (60%) will be due and owing. From month five (5) to month six (6), seventy-five percent (75%) of the appropriate remedy will be due and owing. At the end of six (6) months, the full amount of any applicable remedy will be paid. In reaching this determination, we have balanced the goals of the performance measures with the concerns of BA-PA regarding implementation and data gathering and the concerns of the CLECs regarding an appropriate implementation time frame.

E. Missing or Incomplete Reports

1. Parties' Positions

BA-PA maintained that MCIW's proposal should be rejected. BA-PA argued that, while it will make every effort to provide a report to a CLEC by the 25th business day, it should not be penalized when events such as computer problems or power outages, through no fault of its own, prevent it from providing the reports within the prescribed time frame. (BA-PA M.B., p. 86). BA-PA claimed that the Commission would have ample opportunity to deal with any arising problems with late and/or incomplete reports. (BA-PA M.B., p. 86).

MCIW proposed a remedy of \$10,000 a day for each missed reporting date for which BA-PA has not received a specific extension from the Commission. MCIW also proposed the imposition of a penalty of \$500 per missing submetric for each incomplete report. (MCIW St. 1.0, p. 22; AT&T M.B., p. 94).

Sprint/United advocated the imposition of penalties for late and/or incomplete performance reports. Sprint/United maintained that the remedies should increase each day the report is missing and/or incomplete. (Sprint/United M.B., p. 30).

2. ALJs' Recommendation

The ALJs agreed with MCIW that a remedy should be applied to late and/or incomplete performance reports. The ALJs recommended that BA-PA be directed to send the reports and pay the late fee remedy within five (5) business days. The ALJs reasoned that BA-PA could petition the Commission after the payment of the penalty, if necessary.

The ALJs, however, viewed the amount of the remedies proposed by MCIW as too harsh. The ALJs' recommendation can be summarized as follows:

BA-PA should be required to submit performance reports for metric and submetrics within 25 calendar days.

On the 26th day, BA-PA shall pay \$2,500 plus \$250 for each metric and submetric report which is missing or incomplete.

On the 27th day, BA-PA shall pay \$2,500 plus \$500 for each metric and submetric report which is missing or incomplete.

On the 28th day, BA-PA shall pay \$5,000 plus \$500 for each metric and submetric report which is missing or incomplete.

On the 29th day, BA-PA shall pay \$7,500 plus \$500 for each metric and submetric report which is missing or incomplete.

On the 30th day and each day thereafter, BA-PA shall pay \$10,000 plus \$500 for each metric and submetric which is missing or incomplete.

(R.D., pp. 316-317).

3. Exceptions and Reply Exceptions

In its Exceptions, BA-PA argues that the ALJs' recommendation is unlawful, arbitrary, and punitive. (BA-PA Exc., p. 35). BA-PA contends that there is no legal or credible basis for the ALJs' recommendation or their assertion that the penalties are necessary to prevent BA-PA from hiding bad reports. BA-PA concedes that it may, in the early stages of implementation, experience technical problems in generating reports or data. BA-PA believes, however, that it and the CLECs will be unable to "develop a normal supplier-purchaser relationship" if the Commission continues to impose penalties for every aspect of their interaction. (BA-PA Exc., p. 35).

MCIW reiterates its earlier contention that remedies for late and/or incomplete reports are necessary. MCIW argues that failing to report on its performance is a failure to comply with the metrics, and a penalty for that failure should be imposed, as recommended by the ALJs. (MCIW R.Exc., p. 15).

4. Disposition

We are inclined to agree with BA-PA that such an action, based upon the current state of the record, may be unduly punitive and potentially violative of due process. We reject the ALJs' recommendation but emphasize that, in so doing, this does not affect the Commission's ability to take action under Chapter 33 of the Public Utility Code for violations of a Commission Order.

It is clear that timely, accurate reporting by BA-PA is an essential facet of the performance standards process. As BA-PA suggests, we have no reason to anticipate that it will furnish reports in anything other than a timely and accurate fashion. However, there should be no doubt by either BA-PA or the CLECs that this Commission will act expeditiously in the event that timeliness of reporting becomes an issue. Also, in that event, commensurate penalties will apply.

VIII. ADDITIONAL TERMS AND CONDITIONS

A. CLEC Assistance

The issue is whether BA-PA should reimburse the CLECs for their assistance in resolving violated metrics problems. (R.D., p. 21).

1. Parties' Positions

BA-PA opposed reimbursement of the CLECs' costs. (R.D., p. 329).

AT&T argued that the failure to require reimbursement would "squander" any remedy received for BA-PA's service problems. (AT&T M.B., p. 96; R.D., p. 329).

2. ALJs' Recommendation

The ALJs agreed that the CLECs should be required to render assistance and that BA-PA should be required to pay for such assistance, consistent with the self-executing remedies. (R.D., pp. 329-330).

3. Exceptions and Reply Exceptions

BA-PA argues that it should only be obligated to reimburse a CLEC for those costs which the CLEC believes to be unreasonable subject to Commission order. (BA-PA Exc., pp. 99-100).

4. Disposition

BA-PA's contention that a CLEC should bear the expense of service problems initially and then have to go through a recovery procedure to recoup "unreasonable" expenses flies in the face of reason and equity. If a CLEC incurs expenses to help BA-PA trace and correct substandard performance problems, then the cause of that expense would appear to rest with BA-PA, and the CLEC should be reimbursed. This right to reimbursement should, however, be subject to Commission oversight. We shall adopt the ALJs' recommendation subject to the modification that BA-PA may petition the Commission for relief from the reimbursement, for good cause shown, after making a reimbursement payment.

B. Confidentiality

The issue is the degree of protective measures to be applied to confidential data flowing from BA-PA to the CLECs and *vice versa*. (R.D., p. 21).

1. Parties' Positions

BA-PA proposed certain safeguards for its data. (R.D., p. 331).

AT&T asserted that BA-PA proposed disparate treatment of the CLECs' data when in fact the data of both sides should be afforded the same degree of confidentiality. (AT&T M.B., pp. 96-97; R.D., pp. 330-331).

2. ALJs' Recommendation

The ALJs recommended reciprocally equal treatment of confidential data. (R.D., p. 331).

3. Exceptions and Reply Exceptions

BA-PA argues that AT&T's proposal amounts to a change in substantive law related to the privacy of customer information and is, therefore, beyond the scope of this proceeding. BA-PA notes that the service quality performance data would be available to BA-PA regardless of whether the service quality plan were adopted. Further, the service quality performance data is as much BA-PA's information as it is the CLECs'. (BA-PA Exc., pp. 97-99).

4. Disposition

In resolving this issue, we reject the contention that confidentiality issues are beyond the scope of this proceeding, even as we express a degree of frustration at addressing an issue where reason among the parties should prevail. The issue having been raised, we shall adopt the ALJs' recommendation of reciprocally equal treatment with the following notes and modification. Confidentiality arrangements should be worked out among the parties. If necessary, BA-PA may petition this Commission for clarification if it believes that rules for confidentiality unduly restrict business operations, customer service, etc. Again, all parties are urged to reach consensus and to agree upon the scope and applicability of confidentiality in order to avoid such problems.

IX. CONCLUSION

In summary, this Commission is most interested in performance, not penalties. The goal is to properly measure performance and, where necessary, to promote that performance. As in other deregulated utility industries, the Commission's desire is for choice and competitive access to work. To this end, it should not be necessary for the Commission to serve as the "traffic cop" for every conceivable disagreement between an ILEC and the CLECs. This statement having been made, no one should doubt the resolve to see these matters through to an orderly conclusion. This Commission will do what it must do in order to see that the promise of choice is fulfilled.

This Opinion and Order shall be effective as of the date of entry, at which time, BA-PA's Compliance Period shall begin. BA-PA shall have fifteen (15) days after the date of entry of this Opinion and Order within which to file, and serve on all Parties, revised PA Guidelines, based upon our determinations relative to each metric in this proceeding, consistent with this Opinion and Order. The performance measures and standards contained in the revised PA Guidelines shall become effective twenty (20) days after the date of entry of this Opinion and Order. The interim PA Guidelines exist for the sole purpose of the KPMG test. Consistent with our Order *in Contract for Evaluation and Testing of Bell Atlantic - PA Operations Support Systems* at Docket No. M-00991228, (May 3, 1999), the interim PA Guidelines shall lose all effectiveness at the conclusion of the KPMG test and the filing of a Final Report in that proceeding. Although there may be a period during which both sets of Guidelines are effective, the interim PA Guidelines relate only to the KPMG test, while the revised PA Guidelines govern the interactions of the commercial telecommunications industry.

A time frame for administrative oversight of the performance measures, standards, and remedies has been adopted herein. This should not be misunderstood as rendering these performance measures, standards, and remedies, or this Opinion and Order,

as interim in nature. The Commission does recognize, however, that the subject performance measures and standards may be impacted by technological progress or by the lack of the same. While firm, this Commission does not wish to be inflexible in a way that would thwart the purpose of implementing competitive access and competitive markets by the least restrictive means. Therefore, this Commission shall be open to reconsideration of limited issues where experience among the Parties demonstrates good cause for modification of these performance measure, standards, and remedies or their enforcement.

Specifically, this Commission stands ready to convene a proceeding on its own Motion six (6) months from the date of entry of this Opinion and Order to reconsider those performance measures, standards, and remedies that are allegedly unworkable. The issues to be considered may selected based upon industry reports, the data acquired through the diagnostic metrics, or the recommendation of Commission staff.

Thereafter, the Commission will convene a technical conference nine (9) months from the date of entry of this Opinion and Order to consider, in summary fashion, the appropriateness of the performance measures and standards and the effectiveness of the remedies adopted herein . This technical conference should be seen as the precursor to a Commission-initiated Investigation, commencing on or immediately after January 1, 2001. The Investigation shall consider, in detail, the appropriateness of the performance measures and standards and the effectiveness of the remedies adopted herein.

X. ORDERING PARAGRAPHS

IT IS ORDERED:

1. That the Exceptions and Reply Exceptions of Bell Atlantic-Pennsylvania, Inc.; AT&T Communications of Pennsylvania, Inc.; The United Telephone Company of Pennsylvania and Sprint Communications, L.P.; MCI WorldCom; and CTSI, Inc., Focal Communications Corporation of Pennsylvania, Inc., Hyperion Telecommunications, Inc., and RCN Telecommunications Services of Pennsylvania, Inc., are granted, in part, and denied, in part, consistent with this Opinion and Order.
2. That the Recommended Decision, issued on August 12, 1999, of Administrative Law Judges Louis G. Cocheres and Larry Gesoff is adopted as modified, consistent with this Opinion and Order.
3. That the determination of the Administrative Law Judges to grant Bell Atlantic-Pennsylvania, Inc.'s Motion to Strike Appendix B and Table 1 of AT&T Communications, Inc.'s Reply Brief is affirmed.
4. That Bell Atlantic-Pennsylvania, Inc., shall, within fifteen (15) days of the date of entry of this Opinion and Order, file, and be bound by, revised Pennsylvania Carrier-to-Carrier Guidelines: Performance Measures, Standards and Reports, consistent with the provisions adopted in this Opinion and Order.
5. That the revised Pennsylvania Carrier-to-Carrier Guidelines: Performance Measures, Standards and Reports shall become effective twenty (20) days of the date of the entry of this Opinion and Order. All remedies shall be calculated and reported in accordance with the Plan adopted in this Opinion and Order; however, no payments shall be due or made during the initial three (3)-months of the burn-in period

during which time the Parties shall cooperate to make the system as practical, workable, and efficient as possible.

6. Any Competitive Local Exchange Carriers: (a) with which Bell Atlantic-Pennsylvania, Inc., currently has an interconnection agreement; (b) which obtain service pursuant to Bell Atlantic-Pennsylvania Inc.'s Statement of Generally Available Terms and Conditions; or (c) which obtain service by means of having "opted in" to another CLEC's interconnection agreement with Bell Atlantic-Pennsylvania, Inc. shall receive the benefit of the revised Pennsylvania Carrier-to-Carrier Guidelines: Performance Measures, Standards and Reports, filed by Bell Atlantic-Pennsylvania, Inc., pursuant to Ordering Paragraph No. 4.

7. That Bell Atlantic-Pennsylvania, Inc., shall not be required to make payment for an alleged *force majeure* or exogenous event or for a statistically invalid measurement under the self-executing remedies provisions established herein, but Bell Atlantic-Pennsylvania, Inc., must notify this Commission of its intention to withhold payment under such circumstance within five (5) days after the alleged *force majeure* or exogenous event or statistically-invalid measurement. Bell Atlantic-Pennsylvania, Inc., must thereupon escrow the contested funds. The affected competitive local exchange carrier(s) may request resolution through the Abbreviated Dispute Resolution Process, consistent with this Opinion and Order.

8. That on or about July 1, 2000, a systems-specific proceeding for the establishment of measures and standards for Competitive Local Exchange Carriers in Pennsylvania shall be convened upon Commission Motion.

9. That a proceeding shall be commenced upon Commission Motion six (6) months from the date of entry of this Opinion and Order to reconsider any performance measure, standard, or remedy that appear to be unworkable.

10. That a technical conference to consider, in summary fashion, the effectiveness of the financial incentives and remedies, as adopted in this Opinion and Order, shall be convened nine (9) months from the date of entry of this Opinion and Order.

11. That on or about January 1, 2001, an investigation upon Commission Motion shall be instituted, to consider, in detail, the appropriateness of the performance measures and standards and the effectiveness of the incentives and remedies adopted in this Opinion and Order.

12. That an audit of the performance measures and standards adopted in this Opinion and Order shall be conducted one (1) year after the implementation of the performance measures adopted herein. Bell Atlantic-Pennsylvania, Inc., shall bear the cost of said first annual audit. At the time of the first annual review of the performance measures, the issue of cost responsibility for subsequent audits shall be addressed. The cost of any mini-audits of individual performance measures, as may be requested by the Competitive Local Exchange Carriers, shall be borne by the requesting Competitive Local Exchange Carriers.

13. That a copy of this Opinion and Order be served on all Parties participating at Docket No. P-00991643 and posted on the Commission's website.

14. That the record in this proceeding shall be marked closed upon receipt of the compliance filing from Bell Atlantic-Pennsylvania, Inc.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: November 4, 1999

ORDER ENTERED: December 31, 1999