STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 97-C-0271 - Petition of New York Telephone Company for Approval of its Statement of Generally Available Terms and Conditions Pursuant to Section 252 of the Telecommunications Act of 1996 and Draft Filing of Petition for InterLATA Entry Pursuant to Section 271 of the Telecommunications Act of 1996.

CASE 99-C-0949 - Petition filed by Bell Atlantic-New York for Approval of a Performance Assurance Plan and Change Control Assurance Plan, in 97-C-0271.

NOTICE OF PROPOSED RULEMAKING

(Issued August 30, 1999)

INTRODUCTION

NOTICE is hereby given that the Commission is considering the issuance of an order adopting the petition of Bell Atlantic-New York for approval of its Performance Assurance Plan and Change Control Assurance Plan, with proposed modifications discussed below. The Plans, the comments received on the Plans, the proposed modifications to the Plans and the tentative conclusions reached by the Commission are described below.

BACKGROUND

On July 16, 1999, New York Telephone Company, d/b/a Bell Atlantic-New York (BA-NY or the Company) filed a petition seeking approval of its Performance Assurance Plan (the Plan), a formalization of the commitments the company made in Section V of its April 6, 1998 Pre-filing Statement.

BA-NY also seeks approval of its Change Control Assurance Plan, which proposes new metrics for the change control process that is used to implement and inform Competitive Local Exchange Carriers (CLECs) of software changes to BA-NY's interface systems. The Change Control Assurance Plan and the Performance Assurance Plan would be effective upon BA-NY obtaining long distance entry pursuant to Section 271 of the Telecommunications Act of 1996.

In response to a letter notice issued in this proceeding on July 16, 1999, comments on BA-NY's proposed plans were received from the Department of Law (DOL), the Consumer Protection Board (CPB), MCI Worldcom (MCI), Intermedia Communications, Inc. (Intermedia), NEXTLINK New York, Inc. (NEXTLINK), AT&T Communications of New York, Inc. (AT&T) and NorthPoint Communications, Inc. (NorthPoint). BA-NY served and filed a response. The comments are discussed below.

PERFORMANCE ASSURANCE PLAN

Overview

The Plan provides two methods to monitor the effectiveness of key Carrier-to-Carrier Standards[1/] developed in a collaborative process between CLECs and BA-NY. The first, Mode of Entry, monitors the market as a whole, and the second, Critical Measures, monitors specific services deemed crucial to an open market. Each month, $6.25 million will be at risk per method. On an annual basis, assuming no doubling of monthly price adjustments which would increase the risk by $75 million (discussed below), the Plan places a total of $150 million at risk for both methods. Automatic market adjustments are made in the form of credits applied to BA-NY bills to CLECs.

Statistical Tests and Scoring

Both the Mode of Entry and Critical Measures mechanisms rely upon a scoring system that, to a large extent, takes from

[1/] The measures were taken from the Carrier-to-Carrier Guidelines. See Case 97-C-0139, Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies, "Order Adopting Inter-Carrier Service Quality Guidelines (issued February 16, 1999); Case 97-C-0139, Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies, "Order Establishing Permanent Rule" (issued June 30, 1999).

Case 97-C-0139, Carrier to Carrier (C2C) wholesale service quality measurement definitions and standards as inputs.

Most of the underlying statistical framework necessary for evaluating differences in BA-NY and CLEC performance measurements have been defined in recent C2C orders. However, there are a few remaining statistical issues that pertain to the scoring mechanism of the Plan. The Plan draws upon the parity and absolute standard metric evaluation procedures developed in the C2C proceeding.

Two basic types of performance measures underlie the Plan's Mode of Entry and Critical Measures backsliding mechanisms: parity measures and absolute standard measures. Parity measures are evaluated by comparing BA-NY retail and BA-NY wholesale performance and applying statistical tests, while absolute standard measures are judged by pre-defined standards. The C2C orders prescribe specific statistical tests used to determine whether or not parity has been achieved for measures that have BA-NY analogues. The hypothesis tested is whether the underlying average performance for both CLEC wholesale service functions and BA-NY retail service functions is the same. The C2C standards specify a 95% level of confidence before rejecting the assumption that service to CLECs is effectively the same as service to BA-NY's customers. In contrast, absolute standard measurements relate to performance levels for CLEC measurements for which there are no analogous BA-NY retail measurements. To a large extent the results of the CLEC measurements for absolute metrics are evaluated against a standard that has been defined in the C2C proceeding (e.g., performance should be 95% on time) as opposed to being evaluated via a comparison to BA-NY retail. C2C definitions indicate that a level of performance below the objective target fails the standard. C2C requires no test of the statistical validity of an absolute standard result.

If the number of observations used to calculate a performance measurement are small, the C2C orders specify a few additional statistical evaluation procedures that should be made for such parity metric comparisons. The C2C proceeding defines the cutoff points for small sample size comparisons and uses a permutation test procedure for those small sample parity evaluations. Finally, the C2C proceeding outlines a specific "clustering exemption" process that can be invoked, if BA-NY can support a violation of the independence of observation assumption that underlies the statistical tests.

The Plan also requires an additional degree of comparison beyond the basic "met" or "missed" dichotomy of the C2C proceeding. As stated in the April 6, 1998 Pre-filing Statement of BA-NY in 97-C-0271 (Pre-filing), performance scores for parity metrics in the Performance Assurance Plan fall into three groupings: parity achieved, parity in question and parity not achieved. The Pre-filing relied upon the statistical scores (Z or t scores) that are calculated in making the parity determination in order to develop performance scores for the Plan.[1/] In its current filing, BA-NY recognizes that many metric evaluation procedures were resolved in the C2C proceeding since the Pre-filing was presented in April of 1998.

The Plan specifies that those statistical scores greater than -.8225 are assigned a performance score of zero (parity achieved). Statistical scores from -.8225 to, but not including, -1.645 are assigned performance scores of -1 ("parity in question"). The Plan assigns a performance score of -2 (parity not achieved), if the statistical score is equal to or

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[1/] Statistical t scores are developed for measured variable metrics, Z scores for counted variables. Measured variables are based upon observed time intervals, such as mean time to repair. Counted variables are stated as a percentage or rate and are based on the number of occurrences of success or failure as a percentage of a larger base of observations. Examples of counted variables are the percent of appointments missed or the trouble report rate per 100,000 lines. BA-NY has proposed using Z score confidence level cutoffs for evaluating measured and counted variable statistical scores in large sample situations. For small sample sizes, the permutation test will produce a percentile that will be translated into a Z score equivalent.

less than -1.645. The C2C proceeding recognized the statistical score of -1.645 as being the cutoff point for a 95% level of confidence that parity has not been achieved. The C2C proceeding only delineates the parity "met" cutoff point, while the Plan goes further by defining the "parity in question" threshold.

For absolute standards, the Performance Assurance Plan relies upon the C2C standard as the cutoff point for assigning a "-1" performance score. The Plan then goes one step further and proposes cutoff levels for "-2" performance scores that are worse than the C2C standard.

A final detail of the Pre-filing was to allow -1 scores to become 0 scores if the -1 is followed by performance scores of zero in the two following months. This mechanism accommodates the concern that a -1 score provides only a 79.5% level of confidence that BA-NY has not provided acceptable service. The "ones to zeros" provision raises the level of confidence associated with a market adjustment for a parity metric from 79.5% to 89.3%.

The Plan also makes it possible for BA-NY to file exceptions for two types of small sample scoring situations. If BA-NY feels that a small sample parity comparison is invalid due to clustering of the data,[1/] BA-NY can file for an exception for the affected observations to be excluded, provided BA-NY can adequately document and support why the clustering of data invalidates the underlying statistical comparison. The Plan also allows BA-NY a certain number of misses for small sample, absolute standard comparisons. The CLECs are allowed to challenge a BA-NY small sample exception.

Mode of Entry

Mode of Entry monitors service metric results in four categories -- the sale of unbundled network elements (UNEs), the

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[1/] Clustering may exist if one event (e.g. cable cut) disproportionately affects the retail to wholesale performance comparison.

resale of lines (Resale), the provision of interconnection trunks (Interconnection) and the construction of collocation cages (Collocation). In each category, individual metrics are selected and weighted from the Carrier-to-Carrier Standards based on their importance to that category, as it relates to the functioning of the market.

There are four measurement areas or domains. Pre-order metrics measure information crucial to the solicitation of new customers. Ordering metrics monitor the scheduling of services required by competing carriers and promised to new customers; Provisioning metrics measure BA-NY's ability to carry out the schedule so that competing carriers can deliver on their commitments; and, Maintenance and Repair metrics measure BA-NY's responsiveness to troubles associated with a CLEC's customers.

In the UNEs and Resale categories, a Daily Usage Feed measure is also included to assure usage data needed for billing purposes is delivered to CLECs on a timely basis. And finally, in the Interconnection and Collocation areas, network performance metrics are used to measure performance on infrastructure additions supplied by BA-NY.

Under BA-NY's proposed plan, for each category, except Collocation, a market adjustment equal to 10% of the monthly cap is incurred when the sum of all the metrics' weighted performance scores reaches a level where there is 95% statistical confidence that substandard service exists. For Collocation, because the metrics are all absolute measurements not subject to statistical calculations, market adjustments start at the first negative score. The first market adjustment is 10% of the monthly cap and increases by equal increments until the maximum score is reached.

The allocation on an annual/monthly basis for UNEs is $45m/$3.75 million. A market adjustment of $375,000 is incurred when the total weighted performance score goes beyond the deadband, i.e., -.19043. As performance worsens, the adjustment is increased by $177,750 for each of the next 19 increments until the maximum adjustment is reached when the total weighted performance score is -.772 or less.

The allocation on an annual/monthly basis for Resale is $11.25m/$937,500. A market adjustment of $93,750 is incurred when the total weighted performance score reaches -.19077. The adjustment is then increased by $44,438 for each of the next 19 increments until the maximum adjustment is reached when the total weighted performance score is -.729 or less.

The allocation on an annual/monthly basis for Interconnection is $16.25m/$1.354 million. A market adjustment of $135,417 is incurred when the total weighted performance score reaches -.30136. The adjustment is increased by $135,417 for each of the next 9 increments until the maximum adjustment is reached when the total weighted performance score is -1.167 or less.

The allocation on an annual/monthly basis for Collocation is $2.5m/$208,333. A market adjustment of $20,833 is incurred when the total weighted performance score is less than zero but more than -.4. The adjustment is increased by $46,875 for each of the next 4 increments until the maximum adjustment is reached when the total weighted performance score is -1.6 or less.

Market adjustments under the Mode of Entry are paid out to the industry as a whole, based on the categories' product. Market Adjustments for UNEs are allocated based on each CLEC's percentage of the total CLEC lines in service at the month-end; Resale adjustments are based on a ratio of resale lines in service at the month-end; Interconnection adjustments are based on a ratio of minutes of use; and, Collocation, based upon the number of cages completed in the market adjustment month.

If BA-NY performs at the midpoint[1/] between the minimum and maximum market adjustment points in any of the categories for three consecutive months, the market adjustment due for those three consecutive months will be doubled. The doubling provision continues until the total weighted performance score for a month is equal to or greater than the one-quarter point between the minimum and maximum points. A summary of key parameters for market adjustments, as set forth in BA-NY's Plan, is shown below:

	CATEGORY			
	Min.pt.[2/]	1/4 point	Midpoint	Max pt
UNEs	-.190	-.336	-.481	- .772
Resale	-.191	-.326	-.460	- .734
Interconnection	-.301	-.518	-.734	-1.167
Collocation	0	-.400	-.800	-1.6

Finally, when performance scores for three consecutive months are at the maximum for any category, in addition to the doubling of the market adjustment, the UNE - platform offering in the Pre-filing (pp. 8-11) will also be extended for two years.

Critical Measures

There are eleven measures or groups of measures in the Critical Measures part of the Plan, chosen for their overall importance. Some measures are divided into sub-metrics in order to target specific network provisioning services. Similar to

1/ BA-NY updated the Performance Assurance Plan on page 7, to reflect a wording change to properly describe the calculation of the mid-point for the doubling provision.

2/ BA-NY's table and following write-up on p.19 of the Petition and Exhibit 1, p.7, show the minimum for UNEs as - .191 and for Resale as -.190. The correct minimums, as shown in Appendix A, pp. 9-10, are UNEs -.190 and Resale -.191. These minimum thresholds would be revised when new metrics are added to the Mode of Entry categories in order to ensure a 95% level of confidence.

Mode of Entry, $75 million is at risk annually, capped on a monthly, per metric basis. The dollars at risk are allocated to measures according to categories that are similar to the Mode of Entry and are allocated between sub-metrics according to the weights used in Mode of Entry. Each month, metrics and sub-metrics are disseminated into specific data for each CLEC. Market adjustments are automatic when the aggregate metric or sub-metric receives a -1 or -2 performance score. If an aggregate performance score is 0 on an industry basis, then individual carrier results for the current and previous month are examined to determine if a market adjustment is still warranted.

The market adjustment is credited to carriers based on their activity in the measure, and the level of service received, with the exception of the first two measures for Pre-ordering. Those measures, because there is no carrier-specific data, can only cause a market adjustment to be passed back to all carriers.

Annual Review

BA-NY and Department of Public Service Staff (Staff), in consultation with CLECs, would review the results of the Plan on an annual basis and determine if changes are warranted. The experience gained before the review will provide Staff and BA-NY with a perspective on adding, eliminating and adjusting metrics, adjusting weighting, reallocating the dollars at risk, addressing geographic de-averaging, modifying the exception and small sample procedures, adjusting the deadband and calculating bill credits.

COMMENTS

Dollars at Risk

DOL, Intermedia and MCI assert that the $150 million cap is not enough to prevent discrimination. DOL points out that in comparison to BA-NY local market revenues of $5 billion, the cap is not enough to ensure the market remains open. Intermedia asserts that the possible detriment to BA-NY, $150 million, is insignificant compared to a CLEC going out of business. Both

Intermedia and MCI are concerned that BA-NY will view any market adjustment as a cost of business and intentionally discriminate in order to maximize benefits. Additionally, MCI proposes a $10 million per month cap for each CLEC, or, if $150 million is accepted on an annual basis, that no monthly cap be set.

BA-NY responds that $225 million under the Performance Assurance Plan, which includes the Mode of Entry doubling feature, and an additional $10 million under the Change Control Performance Assurance Plan is really the amount at risk. BA-NY also notes that if a $235 million market adjustment were instituted, the company's return on equity would also drop to 4%, and that it is at risk in interconnection agreements with each CLEC for damages as well. Finally, BA-NY compares the Plan's risks with plans in other states.

DISCUSSION

The Performance Assurance and Change Control Plans represent a substantial counterweight to any incentive to thwart competitive entry. These incentives are in addition to those already contained in interconnection agreements. Moreover, the Commission would retain jurisdiction to institute a service proceeding should those plans fail to produce safe and adequate service. We tentatively conclude that for purposes of deterring a degradation of service performance, the commentors, to date, have not provided a sufficient basis for modifying the monetary aspects of the Plans.

Allocation of Dollars and Bill Credits

CPB advocates reviewing the allocation process in light of changes in the market. Specifically, it claims that CLECs are moving away from resale as a market mode of entry and proposes to reallocate dollars based on forecasted lines. Intermedia contends that the allocation of dollars in critical measures favors CLECs utilizing UNE-Platform over facilities-based CLECs, and proposes that dollars be moved from Pre-Order and Ordering to Provisioning and Maintenance and Repair.

Intermedia and CPB also argue that Mode of Entry market adjustments do not take into account the degree and targeting of discrimination in allocating such adjustments to CLECs. CPB proposes to correct this by using "installations in progress" for installation-related market adjustments and on "lines in service" adjusted by the installations in progress for other market adjustments.

MCI requests that market adjustments be applied to any bill regardless of the service billed by BA-NY and requests further explanation of the bill credit mechanism. NEXTLINK believes that the market adjustment should be immediate, not delayed for four months.

BA-NY, responding to CPB's proposed reallocation, states that the initial dollars are based on assumptions that take the current market conditions into account, and that the conditions will be reviewed annually. Regarding Intermedia's reallocation proposal, BA-NY explains it has already addressed this concern by allocating more dollars to UNE-Platform and Hot Cut metrics.

BA-NY counters the degree of discrimination concern by first noting that the Mode of Entry is an overview of a market, and that the critical measures are in place to address CLEC specific disparity problems. Second, BA-NY points out that CPB's proposed remedy is complex and there is currently no reasonable way to accurately assess the number of installations in progress for each CLEC.

DISCUSSION

CPB's proposed reallocation could be considered in the annual review, but we tentatively conclude that it is not appropriate at this time because the dollars have already been allocated based on market conditions. BA-NY adequately addresses Intermedia's proposal. Therefore, we tentatively conclude that the Pre-Order and Ordering metrics in Critical Measures are vital entry points for the market and should not be reduced.

We tentatively conclude that Intermedia's and CPB's concern about CLEC discrimination is unwarranted. Mode of Entry, which is just one part of the overall plan, is designed to gauge the market as a whole by aggregating services across the service domains. CLEC specific service problems are monitored in the Critical Measures component and, in most instances, individual interconnection agreements.

We tentatively conclude that the Plan should be clarified to specify that market adjustments are applied to CLEC bills regardless of the service being billed and that, if a credit is greater than the bill, the credit will be applied in following months.

Although immediate bill credits, as NEXTLINK prefers, would be the optimum payment regimen, sufficient time must be allowed to gather and report the data, calculate total penalties, finalize the amounts due and determine which CLECs are to receive credits and how much. We tentatively conclude that the Plan's time payment schedule is acceptable as submitted.

The Minimum Value (Deadband)

MCI and DOL object to Mode of Entry deadbands. Intermedia suggests a deadband equal to one 20-weight metric tripped at -2 for UNE/Resale, and the 20-weight metric tripped at -1 for Trunks/Collocation.

BA-NY argues that none of the comments offer a sound statistical basis and notes that it took an MCI study into account in proposing its new deadband. BA-NY also observes that MCI's May 1999 recommended deadbands were less stringent than the current Plan.

DISCUSSION

The deadbands produce a 95% level of confidence that wholesale service is out of parity. We tentatively conclude that any non-statistical adjustments to these bands would change the level of confidence associated with the market adjustments, and therefore, should not be adopted.

Maximum value (X factor)

Intermedia and CPB contend the maximum value, which is the performance level where the full market adjustment is assessed, is too large. Intermedia proposes -.5 for UNEs and Resale and -1 for Trunks and Collocation. CPB reasons that, because the market is not deemed to be open, service quality results over past months could be used as the lower limit.

BA-NY argues that Intermedia's maximum has no rational basis, and disputes that its UNE performance over the last two months (which Intermedia would use as the maximum level) has severely impeded competition. BA-NY points to 25% growth in UNE-Platform orders over that period to suggest that the market is open.

BA-NY asserts that CPB has misconstrued its proposed maximum, in that it interpreted the maximum value to be BA-NY's specific performance on all the critical measures in the Plan, not the critical measures applicable to each Mode of Entry. BA-NY also says that CPB's claim that the market is not open is wrong given that there are currently over 850,000 CLEC lines in New York, even without the Performance Assurance Plan.

DISCUSSION

The Pre-filing Statement defines the maximum value as "...the maximum allowable out of parity condition that would significantly limit a mode of entry as a competitively viable option."[1/] In determining the maximum value, one must look to

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[1/] Pre-filing at 39.

both the critical measures within each Mode of Entry and to the weighted average score for the categories within the Resale and UNE Modes of Entry. If all the critical measures in the UNE Mode of Entry failed, the score would be -.7. Performance in this range would appear to pose a serious threat to the CLECs' ability to compete and limit that Mode of Entry as a competitive option. On the other hand, if an entire domain (i.e., pre-ordering, ordering, provisioning, or maintenance and repair) were to fail, that too could significantly impede competition. Therefore, we tentatively conclude that in order to avoid the potential adverse affects of that type of a clustering of poor performance within a domain, a "clustering overlay" should be established.

We tentatively conclude that the maximum out of parity value should be set at .67 for UNE and Resale. This figure represents an out of parity condition for less than all critical measures for these modes. We tentatively conclude that the maximum value for the Interconnection Mode of Entry should be -1, and for Collocation -1.2. Further, we tentatively conclude that the market adjustment increments for Trunks will be 13 and 12 for Collocation, which allows for each metric trip over the minimum to occasion a corresponding change in market adjustment.

To address the circumstance in which poor performance may be unusually concentrated within a given domain, we tentatively conclude that each domain should be reviewed monthly to determine if 75% or more of the domain's weight was tripped. If that occurs, the higher of the clustering overlay or overall market score will be used to determine the market adjustment. For example, if 85% of the total weight in the UNE Pre-Order domain were tripped, the market adjustment would be the amount associated with the increment where 85% would fall between -.19 and -.67, unless tripped metrics in all domains produced a higher market adjustment without the overlay.

In addition to making the maximum value more stringent, it is important to provide an incentive for BA-NY to offer service above the deadband. To enhance the incentive to operate above the deadband, we tentatively conclude that the initial increment for each Mode of Entry should be 20% of the maximum market adjustment.

We tentatively conclude that the above changes provide a good starting point to monitor the market and determine whether conditions for severe "out of parity" service for the market as a whole exist. All aspects of the Plan would be reviewed annually.

Statistics

Intermedia claims that Z statistics undercompensate CLECs with small numbers of observations and that the Z is intended to determine confidence levels, not degree of disparity. DOL argues statistical methodology is inappropriate because the "samples" are actually the entire population, and in previous service quality plans, statistical techniques were not used. MCI supports the Z statistics but wants a -1 to be converted to a -2 if the -1 is consecutive. Several commentors also express concern that aggregation allows poor performance to be masked by good performance.

BA-NY points out that the Carrier-to-Carrier guidelines endorsed the statistical techniques used in the Plan. BA-NY further notes that aggregation in Mode of Entry and Critical Measures actually benefits small CLECs.

DISCUSSION

The C2C orders are based upon the C2C statistical issues working group's treatment of each month's data as being a sample of observations from an underlying process. That said, Intermedia's claim that Z statistics undercompensate CLECs with few observations, is contrary to CLEC arguments for CLEC-specific plans and supports the need for aggregation in Mode of Entry and Critical Measures. Statistical aggregation on a market-wide basis lessens the small sample size inefficiencies encountered in examining individual CLECs. In fact, it is possible under the Mode of Entry that a market adjustment may be warranted, but that on a CLEC-by-CLEC basis the same data would not result in a market adjustment. We tentatively conclude that aggregation provides a better view of overall market conditions.

"0" Performance Scores Offsetting "-1" Scores

Intermedia, DOL, NEXTLINK, and MCI all oppose BA-NY's ability to change a -1 performance score to a 0, if the two months following a -1 are both 0. Intermedia claims it is another form of systematic discrimination and not symmetrical, in that, if a -1 is followed by another -1 in one of the two following two months, the original -1 should be changed to a -2.

DOL states that intermittent poor service is not consistent with fostering competition, and NEXTLINK points out that its customers are not tolerant of poor service and allowing a -1 to be changed doesn't rectify the harm. Finally, MCI argues the offsetting of -1's for absolute measures is not proper, because they are not statistical measures and already have the statistical variation built into the standard.

BA-NY argues that DOL and NEXTLINK provide no reason to change a core principle of the Pre-filing statement. Further, BA-NY argues that it's impossible to tell if a -1 is an indication of poor service. A score of -1 was never intended to contribute to a market adjustment, unless it was affirmed again within the next two months.

On MCI's contention, BA-NY claims absolute measures still have statistical characteristics, the only difference being that absolute measures are not compared to a sample of BA-NY performance. BA-NY concludes that performance standards are set according to unverifiable estimates of process capability that are high and likely to have variations.

DISCUSSION

We tentatively conclude that the ability to reverse a -1 performance score with 0 performance scores in the following two months is an important provision in the Plan and should be retained. A -1 in a parity measure is not viewed as a failure, but a level at which one cannot determine with a reasonable level of certainty that service is truly out of parity. For absolute measures, although a -1 is viewed as being below the service standard, it is in a range where there may not be competitive harm unless that level of performance continues. In cases where BA-NY is "on the edge", we tentatively conclude that the opportunity to correct a -1 is a reasonable incentive for BA-NY to improve service.

It is not apparent that BA-NY will use this incentive as a selective way to target discrimination, as expressed by some commentors. However, over time, if this incentive is abused, remedial action could be taken.

Addition and Deletion of Measures

Intermedia proposes to add three measures to the Performance Assurance Plan. Northpoint requests a metric to measure jeopardy notices and another to measure whether BA-NY is providing xDSL-based information on a parity basis. MCI seeks to retain hot cut and flow through metrics, and to reinstate average interval metrics.

BA-NY opposes adding Intermedia's measures, claiming that metrics are carefully reviewed and that sufficient basis has not been given for their inclusion. On NorthPoint's request, BA-NY points out that neither metric has been developed as yet, and that NorthPoint should pursue its point in the Carrier-to-Carrier subgroup in Case 97-C-0139. BA-NY proposes to exclude hot cut and flow through measures, because they are under development, but notes that the company agrees to include these metrics as soon as they are finalized. With respect to average interval metrics, BA-NY claims they were dropped because they are not fully controlled by BA-NY. Poor performance could result from CLEC behavior and the mix of orders.

DISCUSSION

The selection of metrics for inclusion in the Plan is necessarily limited to those that have been fully developed. As refinements to metrics are made, consideration will be given to their importance in the development of the market as a whole, or to important market segments. We expect the hot cut and flow through metrics will be refined and included in the Plan. The average interval measure may be considered for inclusion in the Plan when CLEC requests for appointments beyond standard intervals can be properly captured and further product disaggregation is possible. We expect that BA-NY will continue working to refine this measure.

BA-NY has also raised a concern about one particular measure in the Plan that it now believes should be reviewed to ensure that its performance results are not adversely affected by events beyond BA-NY's ability to reasonably control. The issue concerns BA-NY's ability to provide timely order confirmations. When competitive carriers submit large volumes of non-flow through orders and create significant spikes in order volumes without notifying BA-NY, we tentatively conclude that an adjustment to the measurement may be appropriate to avoid market adjustments for performance results that are caused by events beyond BA-NY's control. Staff will continue to review this issue, as well as other metric issues, and should endeavor to resolve them as soon as reasonably possible.

Absolute Standards

Intermedia proposes two standard changes. It wants to shorten the number of allowed delay days for collocation cage construction performance levels and change the trunk blockage standard from the number of months blocked to the severity of missing the threshold standard.

BA-NY opposes both modifications, stating that the proposed standard for delay days is unrealistic, and that trunk blockage was established and accepted in the Carrier-to-Carrier collaboration between BA-NY and CLECs.

DISCUSSION

Our objective, and the CLECs' interest, is to have all cages in service as soon as possible. However, BA-NY should be allowed a reasonable time to complete construction before an additional negative score is assessed. Therefore, we tentatively conclude that shortening the delay day standard would not be reasonable, since the company is already measured on the percentage of cages missing the interval.

Exception Process

DOL objects to the small sample and clustering exception, stating that statistical techniques for small samples deal with entire populations, not samples, and that the Carrier-to-Carrier Guidelines were designed to take this into account.

BA-NY claims the exception provision is explicitly set forth in the Carrier-to-Carrier Guidelines, and that it is not proper to hold BA-NY accountable for CLEC misbehavior or invalid samples.

DISCUSSION

The statistical small sample process has already been agreed to by the CLECs in the Carrier-to-Carrier proceeding, and we tentatively conclude that it does not need to be changed. If circumstances beyond BA-NY's control produce unforeseen, unfavorable performance results, we tentatively conclude that BA-NY should be afforded an opportunity to seek an adjustment. The exceptions process is not expected to be invoked frequently and will be revisited in the annual review.

Metric Validation

CPB agrees with BA-NY that "a program to ensure accuracy of service quality reporting is required" and supports the concept of a Quality Assurance Program (QAP). However, CPB believes that the program "cannot be under the sole control of the company." It suggests that BA-NY first file the plan with the Commission for approval and that comment from interested parties be sought prior to approval.

DOL believes that "nothing short of annual disinterested independent audits of BA-NY's service performance data collection and reporting systems will be sufficient to ensure that the local telephone market is irrevocably kept open to competing companies." DOL suggests that the Commission require periodic independent audits of BA-NY's data collection and reporting systems.

DISCUSSION

It is essential that BA-NY report its service results reliably. Therefore, we tentatively conclude that Staff should undertake a metric validation process to ensure the accuracy of service quality reporting. The proposed approach outlined below would require BA-NY to take actions to prevent errors from occurring, and have Staff validating that the service results have been reported in conformance with the measurement definitions. Both of these efforts will provide forums for CLEC input and review of results. Should these efforts not satisfy a CLEC's interest, an independent audit could be initiated, with the understanding that the party which is shown to be incorrect bears the responsibility for the costs of such audits.

Metric replication involves Staff using BA-NY's service quality data, and then independently calculating metric results and comparing the results with published Carrier-to-Carrier reports. Its purpose is to determine whether BA-NY's computer programs and algorithms produce results that comply with the standards and definitions contained in the Carrier-to-Carrier

Guidelines Performance Standards and Reports. This effort is directly analogous to that undertaken by KPMG Peat Marmick, LLP (KPMG).[1] Staff worked closely with KPMG during its metric replication effort and would continue the replication effort for at least six months after BA-NY obtains 271 approval from the FCC. At the conclusion of the six-month period, Staff would reevaluate the need for continued replication, based upon its assessment of BA-NY's internal controls and actual metric replication results. This would provide assurance that the information systems used by BA-NY properly calculate the metrics. Staff would report the results of this effort on a bimonthly basis to the newly formed metric replication subcommittee in the Carrier-to-Carrier proceeding.

While metric replication focuses on the information systems used to calculate metric results, the accuracy of the service quality data is another concern. This involves, for example, whether BA-NY's technicians and representatives are accurately reporting the results of their interaction with, or on behalf of, CLECs. KPMG and Staff found problems in this area during the testing period. For example, technicians were incorrectly coding trouble disposition codes and hot cuts.

CLECs also have some ability to test the accuracy of data, as AT&T's reconciliation of BA-NY's hot cut data has shown. However, BA-NY bears the primary responsibility for ensuring that its employees properly report service quality data. This is similar to the reliance that must eventually be placed on BA-NY's internal controls governing metric replication in the future. As such, we tentatively conclude that BA-NY should take action to prevent and detect such errors, and we will require the development of a Quality Assurance Plan, as suggested by BA-NY, with one modification which will assist in achieving this goal.

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[1] KPMG is the third party consultant retained by BA-NY to its Operation Support Systems in anticipation of the performance evaluation of company's Section 271 application.

BA-NY's proposal limits the QAP activities to Maintenance and Provisioning domains. The QAP should address all domains.

BA-NY should immediately begin preparation of its QAP plans. We intend to order that QAP plans for the first year of BA-NY's operation in the long distance market must be filed within ten days of the issuance of the order in this matter. Parties would have the opportunity to comment on the appropriateness of the target areas and the adequacy of testing. On a semi-annual basis, BA-NY would submit a report detailing the QAP's activities and findings.

Finally, we tentatively conclude that CLECs should be allowed to request an independent audit of metric results in cases where they feel it is warranted. Depending upon the nature of the particular metric result being audited, this could be a costly endeavor. To ensure that audit requests are reasonable, responsibility for the cost of each audit will depend upon whether the results of the audit would change the market adjustment. CLECs can request that an independent audit of metric results be conducted under the general direction of Staff. If BA-NY's metric results are "incorrect" and would increase the market adjustment, BA-NY will be required to bear the cost of the audit and produce corrected reports. If the correction increases a market adjustment, BA-NY shall make such payment including interest. However, if BA-NY's metrics are shown to be correct, the CLEC seeking the audit shall be required to reimburse BA-NY for the cost of the audit.

CHANGE CONTROL ASSURANCE PLAN

Overview

BA-NY proposes including a separate Change Control Assurance Plan (Change Control Plan) to ensure that software changes to its Operations Support System interfaces are executed without impeding CLECs' ability to compete. The Change Control Plan responds to concerns raised by CLECs and KPMG, the third party consultant, about BA-NY's ability to properly manage changes affecting BA-NY's OSS computer interfaces. These interfaces are critical to the CLEC's ability to effectively and efficiently compete in the local service market.

The Change Control Plan focuses on two measures. The first, Percent Change Management Notices Sent on Time, is designed to ensure that BA-NY provides timely notification of interface affecting changes, as well as advance delivery of business rules and computer specifications needed by competitive carriers to effectively respond to scheduled changes. A two-tiered threshold with financial incentives for performance is established -- less than 95% on time in a given month produces bill credits of $250,000 and less than 90% on time produces bill credits of $500,000. An associated "delay days" metric establishes a $25,000/day bill credit for each day notification or documentation is delayed beyond 7 days.

The second measure, Software Validation, is designed to ensure that software changes are implemented (i.e., released into production) successfully.[1/] The Software Validation metric measures the success rate of a standard series of test transactions (test deck transactions). The measure has a two-tiered threshold with financial incentives for performance --

[1/] The standard transactions consist of a series of pre-order and order transaction scenarios and are commonly referred to as the "test deck". By executing the "test deck" transactions, the interface is subjected to a regression-type test which provides a measure of assurance that the new release has both successfully implemented new functionality and not adversely affected existing functionality.

less than 95% success produces $100,000 in bill credits, and less than 90% success produces $1,000,000 in bill credits. An associated "delay hours" metric measures how long it takes BA-NY to correct test deck transactions that fail as a result of the introduction of the change. For any of the standard or "test deck" transactions that do not produce expected results, bill adjustments of $50,000 per day would accrue for each day beyond 48 hours that BA-NY is unable to resolve all failed transactions associated with a change, that do not have a workaround.[1]

Overall, this separate Change Control Plan adds an additional $10 million in new funds for potential bill credits to the $150 million that BA-NY committed to in the Pre-filing Statement. Further, because of the importance of change control to ensuring an open market, $15 million of Mode of Entry adjustments are also at risk in the event BA-NY exceeds the $10 million in any one year. In other words, financial adjustments beyond the $10 million relating to change control would be taken from the Mode of Entry monies that might otherwise be used in the Performance Assurance Plan.[2] The Change Control Plan subjects BA-NY to financial risk of up to $25 million in bill adjustments.

COMMENTS

DOL and AT&T suggest that BA-NY improperly selected only four of the Commission-approved change control performance measures. AT&T and MCI also suggest that the Change Control Plan should not use any monies currently dedicated to the existing Mode of Entry mechanism. AT&T claims that the Change Control

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[1] The specific bill credits associated with each of the measures is detailed in Appendix A of the Change Control Assurance Plan.

[2] To illustrate, if after six months, the $10 million is consumed, additional change control credits would be taken from Mode of Entry categories for UNE and Resale Services. The amounts would first be taken from prior months of unused Mode of Entry monthly caps, and then, if needed, from future months on a proportional basis.

Plan's $25 million in credit funds should be wholly independent of credit funds for the Performance Assurance Plan and independent of any other compensation mechanism. DOL also objects to using Mode of Entry monies for the Change Control Plan and argues that a limitation on BA-NY's exposure is "ludicrous." CPB also opposes the diminution of Mode of Entry incentives for the Change Control Plan.

In addition to PO-5 (Average Notification of Interface Outage), AT&T contends that all of the change control sub-metrics must be included in the plan. AT&T also proposes that the change control plan include mechanisms to ensure that BA-NY adheres to the intent of the Change Management Agreement negotiated in the OSS Collaborative. For example, AT&T would have the plan address BA-NY's commitment to provide CLECs 15 business days to review major OSS interface changes, as well as BA-NY's commitment to provide release management schedules to CLECs. Further, AT&T would have the Change Control Plan address the intent of the Change Management Agreement that all change requests be prioritized in a neutral and mutually beneficial way. AT&T notes that the parties are currently working to develop a collaborative scorecard for rating change request priorities.

MCI opposes BA-NY's proposal to terminate the Change Control Plan at the end of any 12 consecutive-month period in which BA-NY issues no bill credits under the Change Control Plan. MCI also objects to BA-NY being given unilateral decision-making as to whether a new release is actually implemented. Instead, MCI urges such decisions be based on input from CLECs.

BA-NY defends the Plan's exclusion of certain Change Control metrics on the following bases: (1) the metrics are new and have not been extensively tested and (2) results achieved on these other metrics could be affected by extraneous events over which BA-NY has no control. Regarding the issue of $15 million available from the Mode of Entry category, BA-NY states that its Pre-Filing Statement did not exclude measures related to change control mechanisms. BA-NY believes the provision that 12 consecutive months without paying price rebates would terminate the Change Control Plan is warranted, because twelve months without paying rebates would demonstrate consistency in executing required procedures. In addition, BA-NY acknowledges that its best interest would be served by providing good performance and reaching a steady state of good service in its Change Control processes.

DISCUSSION

BA-NY's Change Control Plan provides strong incentives to ensure that adequate resources are dedicated to the implementation of interface-affecting changes. The plan appropriately exposes the company to a financial risk of up to $25 million annually, which is more than any individual critical measure. Therefore, we tentatively conclude that because proper functioning of the OSS interfaces is essential to an open market, the emphasis on change control is warranted. We tentatively conclude that the commentors' concern that the $15 million for change control not be taken from the Mode of Entry plan is not reasonable. First, it is essential that the Change Control Plan have strong financial incentives. Thus, it would be inappropriate to exclude the $15 million from the Change Control Plan. In addition, because it is not expected that the company would be incurring Mode of Entry penalties in each month or that the maximum amount would necessarily be used, the $15 million associated with the Change Control Plan uses existing financial incentives more effectively by increasing the risk that this financial adjustment would be assessed.

We tentatively conclude that concerns about selecting only four of the change control measures are without merit. The Change Control Plan includes the most important change control measures. Indeed, by excluding Type 1 (emergency) change notices from PO-4-01, the plan's standards are even more stringent for BA-NY to meet than those changes that require prescribed advance notification. Also, by imposing a $25,000/day adjustment for any notification or confirmation that is more than 7 days delayed, the need for the remaining on time sub-metrics is obviated.

We tentatively conclude that AT&T's suggestion that all of BA-NY's Change Management Agreement commitments should be enforced through this plan is neither warranted nor practical. It is not warranted because, while this issue is being worked on by the parties, it would be premature. It is not practical because it is difficult to fashion objective criteria for the quality of release management schedules or prioritization.

We tentatively conclude that MCI's concern about the plan's termination is reasonable. The company's ability to operate for twelve (12) consecutive months without issuing change control credits would be a welcomed event. However, to the extent such performance could be attributed to the Change Control Plan, termination without a period of compliance not attributable to the plan would be unwarranted. Finally, we tentatively conclude that MCI's proposal to subject BA-NY decisions concerning the implementation of new releases is answered by the strong incentives built into the Change Control Plan. These incentives should ensure that BA-NY does not implement poor quality new releases.

COMMENTS INVITED

Under the State Administrative Procedure Act, interested parties will have until October 23, 1999 to submit comments, and all such comments will be considered if timely filed. However, because comments on the plans have already been filed, and because this Notice is being issued in advance of publication in the State Register and in order to provide a reasonable opportunity for reply, we urge that comments be filed by October 1, 1999. Bell Atlantic-New York would have until October 8, 1999 to file and serve reply comments. Parties that have previously filed in this matter may reference their comments, as appropriate, but need not resubmit them.

Parties wishing to comment should file 15 copies of their comments with Debra Renner, Acting Secretary, at Three Empire State Plaza, Albany, New York 12223-1350, and also serve copies on each party identified in the active party list for Case 97-C-0271.

DEBRA RENNER
Acting Secretary