

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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| In the Matter of |) | |
| |) | |
| Bell Atlantic Telephone Companies |) | |
| |) | |
| Offer of Comparably Efficient |) | CCBPol 96-09 |
| Interconnection to Providers of |) | |
| Internet Access Services |) | |

ORDER

Adopted: September 30, 1996

Released: September 30, 1996

By the Deputy Chief, Common Carrier Bureau:

1. On June 6, 1996, the Common Carrier Bureau approved the Bell Atlantic Telephone Companies' (Bell Atlantic's)¹ plan to offer comparably efficient interconnection (CEI) for its provision of Internet Access Service (IAS).² Bell Atlantic received approval of its plan, in part, by offering a tariffed service known as Internet Protocol Routing Services (IPRS).³ The Bureau's approval was conditioned on a requirement that Bell Atlantic file intrastate IPRS tariffs in several states, including West Virginia, by September 30, 1996.⁴

2. On September 25, 1996, Bell Atlantic filed an emergency petition for extension of time (*Emergency Petition*) requesting an additional six months to file the IPRS tariff for West Virginia. For the reasons discussed below and subject to the conditions set forth in this order, we grant Bell Atlantic's petition.

¹ For the purposes of this Order, "Bell Atlantic Telephone Companies" includes Bell Atlantic Internet Solutions, Inc., Bell Atlantic-Delaware, Inc., Bell Atlantic-Maryland, Inc., Bell Atlantic-New Jersey, Inc., Bell Atlantic-Pennsylvania, Inc., Bell Atlantic-Virginia, Inc., Bell Atlantic-Washington, D.C., Inc., and Bell Atlantic-West Virginia, Inc.

² *Bell Atlantic Telephone Companies Offer of Comparably Efficient Interconnection to Providers of Internet Access Services*, Order, 11 FCC Rcd 6919 (Com.Car.Bur. 1996), *recon. pending* (*Bell Atlantic CEI Order*). On July 3, 1996, MFS Communications Company, Inc. (MFS) filed a petition requesting the Bureau to reconsider its *Bell Atlantic CEI Order*.

³ IPRS is one of the underlying basic services used by Bell Atlantic's IAS affiliate.

⁴ *Bell Atlantic CEI Order*, 11 FCC Rcd at 6930, ¶ 33.

3. The Commission's CEI rules, among other things, require that a carrier's CEI offering be available and fully operational on the date that it offers its corresponding enhanced service to the public.⁵ In addition, the Commission has required the Bell Operating Companies (BOCs) to notify unaffiliated enhanced service providers in advance about the impending deployment of new basic services used to provide enhanced services and to amend their Open Network Architecture (ONA) plans at least 90 days prior to the initiation of service to the public.⁶ Finally, pursuant to the Commission's ONA rules, Bell Atlantic is required to file both federal and state tariffs for basic ONA services and services underlying its CEI plans.⁷

4. As part of its CEI plan for IAS, Bell Atlantic represented that all the underlying basic telecommunications services needed to provide enhanced IAS would be offered to both affiliated and unaffiliated enhanced service providers at the same time in any given geographical service area.⁸ At the time that the Bureau granted Bell Atlantic's CEI plan, Bell Atlantic had filed a federal IPRS tariff, but had not filed corresponding intrastate IPRS tariffs.⁹ Consequently, Bell Atlantic committed to filing intrastate tariffs for IPRS in all states within its

⁵ See *Bell Atlantic CEI Order*, 11 FCC Rcd at 6928, ¶ 31.

⁶ See *Amendment of Section 64.702 of the Commission's Rules and Regulations*, Report and Order, CC Docket No. 85-229, Phase I, 104 FCC 2d 958, 1068, ¶¶ 221-222 (1986) (*Phase I Order*) (under an ONA regime, a BOC wishing to offer an enhanced service that uses a new Basic Service Element or otherwise uses different arrangements for underlying basic services than those set forth in its ONA Plan must file an amendment to its Plan with the Bureau at least 90 days prior to offering that enhanced service), *recon.*, 2 FCC Rcd 3035 (1987) (*Phase I Recon. Order*), *further recon.*, 3 FCC Rcd 1135 (1988) (*Phase I Further Recon. Order*), *second further recon.*, 4 FCC Rcd 5927 (1989) (*Phase I Second Further Recon.*), *Phase I Order and Phase I Recon. Order vacated*, *California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) (*California I*); Phase II, 2 FCC Rcd 3072 (1987) (*Phase II Order*), *recon.*, 3 FCC Rcd 1150 (1988) (*Phase II Recon. Order*), *further recon.*, 4 FCC Rcd 5927 (1989) (*Phase II Further Recon. Order*), *Phase II Order vacated*, *California I*, 905 F.2d 1217 (9th Cir. 1990); *Computer III Remand Proceedings*, 5 FCC Rcd 7719 (1990) (*ONA Remand Order*), *recon.*, 7 FCC Rcd 909 (1992), *pets. for review denied*, *California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) (*California II*); *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, 6 FCC Rcd 7571 (1991) (*BOC Safeguards Order*), *recon. dismissed in part*, Order, CC Docket Nos. 90-623 & 92-256, FCC 96-222 (released May 17, 1996); *BOC Safeguards Order vacated in part and remanded*, *California v. FCC*, 39 F.3d 919 (9th Cir. 1994) (*California III*), *cert. denied*, 115 S.Ct. 1427 (1995) (referred to collectively as the *Computer III* proceeding).

⁷ *Filing and Review of Open Network Architecture Plans*, Memorandum Opinion and Order, CC Docket No. 88-2, 5 FCC Rcd 3103, 3105, ¶ 13 (1990); *BOC Safeguards Order*, 6 FCC Rcd at 7624, n.212; *BOC ONA Order*, 4 FCC Rcd at 116-71, ¶¶ 224-325. See also *NYNEX Telephone Companies Offer of Comparably Efficient Interconnection to Providers of Enhanced Services*, 11 FCC Rcd 2419 (Com.Car.Bur. 1996); *Pacific Bell and Nevada Bell Petition for Removal of the Structural Separation Requirement and Waiver of Certain Federal and State Tariffing Requirements*, 8 FCC Rcd 3982, 3983-84, ¶¶ 10-11.

⁸ *Bell Atlantic CEI Order*, 11 FCC Rcd at 6929, ¶ 32.

⁹ *Id.*

region, except the District of Columbia.¹⁰ Based upon this representation, the Bureau granted Bell Atlantic a waiver of the Commission's intrastate tariffing requirement to file those intrastate tariffs by September 30, 1996.¹¹ In addition, the Bureau required that Bell Atlantic use the underlying basic telecommunications services, such as IPRS, under the same rates, terms, and conditions that are available to other enhanced service providers, *i.e.*, under the interstate tariff until such time as applicable intrastate tariffs are in effect.¹²

5. In its *Emergency Petition*, Bell Atlantic states that it is ready to comply with the intrastate tariffing requirement in all states except West Virginia.¹³ It claims that, in West Virginia, "there is no present demand for IPRS and none that Bell Atlantic anticipates for at least six months."¹⁴ Bell Atlantic further states that the technology is not in place in West Virginia that would allow it to offer IPRS within the next several months.¹⁵ Bell Atlantic represents, however, that it will file an intrastate IPRS tariff for West Virginia no later than March 30, 1997.¹⁶

6. It is the policy of the Commission that extensions of time are not routinely granted.¹⁷ Upon review of Bell Atlantic's request, however, we conclude that it has shown good cause for extending the date by which it must file an intrastate IPRS tariff for West Virginia. Bell Atlantic represents that there is no current demand for IPRS in West Virginia, and that it has not deployed the technology necessary to provide IPRS in West Virginia. Thus, grant of the extension will not cause a denial of service to providers that need access to Bell Atlantic's IPRS offering. Moreover, extending the filing date to no later than March 30, 1997 will not undermine the Commission's policy of ensuring that affiliated and unaffiliated enhanced service providers have equal access to the underlying basic services used by Bell Atlantic to provide IAS. Bell Atlantic represents that it will not use IPRS for its enhanced IAS in West Virginia

¹⁰ The Bureau granted Bell Atlantic a waiver of the requirement to file an intrastate tariff for IPRS in the District of Columbia because no intrastate access tariff exists in that jurisdiction. *Bell Atlantic CEI Order*, 11 FCC Rcd at 6930, ¶ 33.

¹¹ *Bell Atlantic CEI Order*, 11 FCC Rcd at 6930, ¶¶ 33-34. See *Filing and Review of Open Network Architecture Plans*, Memorandum Opinion and Order, CC Docket No. 88-2, 5 FCC Rcd 3103, 3105, ¶ 13 (1990); *BOC Safeguards Order*, 6 FCC Rcd at 7624, n.212; *BOC ONA Order*, 4 FCC Rcd at 116-71, ¶¶ 224-325.

¹² *Bell Atlantic CEI Order*, 11 FCC Rcd at 6930, ¶ 33.

¹³ *Emergency Petition* at 1.

¹⁴ *Id.*

¹⁵ *Id.* at 1-2.

¹⁶ *Id.* at 2.

¹⁷ See section 1.46 of the Commission's rule, 47 C.F.R. § 1.46.

until after it is generally available to all enhanced service providers.¹⁸ Further, in those areas where Bell Atlantic uses IPRS, it must do so under the same rates, terms, and conditions that are available to other enhanced service providers. Bell Atlantic also represents that it will provide notice to competing enhanced service providers at least 90 days before its IPRS tariff becomes effective in West Virginia in order to permit such providers sufficient time for testing IPRS.

7. Accordingly, we hereby extend the date by which Bell Atlantic must file an IPRS tariff for intrastate service in West Virginia. Bell Atlantic must comply with all of the other requirements and conditions set forth in the *Bell Atlantic CEI Order*.

VI. ORDERING CLAUSES

8. Accordingly, IT IS HEREBY ORDERED that, pursuant to sections 1, 4(i) and (j), 201, 202, 203, 205, and 218 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 201, 202, 203, 205, and 218, and delegated authority thereunder pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, Bell Atlantic's emergency petition to extend the deadline by which it must file an intrastate IPRS tariff for West Virginia to no later than March 30, 1997 IS GRANTED.

9. IT IS FURTHER ORDERED that the extension of time granted herein IS EFFECTIVE upon release of this order.

FEDERAL COMMUNICATIONS COMMISSION



A. Richard Metzger, Jr.
Deputy Chief
Common Carrier Bureau

¹⁸ *Emergency Petition* at 2.