

DT 99-086

BELL ATLANTIC

Special Contract with University of New Hampshire

**Order Denying Motions for Reconsideration, Motions to Vacate,
Motions for Hearing and Motions to Stay Order No. 23,255**

O R D E R N O. 23,348

November 22, 1999

I. PROCEDURAL HISTORY

On June 4, 1999, New England Telephone and Telegraph Company d/b/a Bell Atlantic (BA or the Company) filed with the New Hampshire Public Utilities Commission (Commission), pursuant to RSA 378:18, a petition for approval of Special Contract No. 99-6 (Special Contract) with the University of New Hampshire (UNH). The proposed special contract, executed on March 16, 1999, provides Asynchronous Transfer Mode (ATM) Cell Relay Services to UNH within the State of New Hampshire (State) at a uniform statewide rate over high-speed access lines. Along with the special contract, BA filed a contract overview and cost study information in support of the filing.

On June 25, 1999, The Destek Group d/b/a Destek Networking Group (Destek) filed a letter of Objection and a Request to Intervene in this docket. Destek maintained that special contracts are discriminatory and anti-competitive, that no special circumstances exist in regard to ATM Cell Relay Services, that no competition exists for such services, that UNH

has not filed to become a telecommunications reseller or CLEC and that doing so would jeopardize UNH's tax-exempt standing. Destek proposed that the special pricing of ATM Cell Relay Services be dealt with as a tariffed item specifically for K-12 and libraries.

On July 7, 1999, the Commission issued Order No. 23,255 conditionally approving the proposed special contract. The Commission found that special circumstances exist which require that UNH not wait until a tariff is approved before it could sign up for the service and prepare to implement it, and that one staff analysis showed the contract price exceeded all arguably relevant cost floors of RSA 378:18-b. Furthermore, the Commission allowed the contract to go into effect on the condition that Bell Atlantic file a tariff to offer the same service statewide, on a non-discriminatory basis to any customer requesting a minimum of 30 lines, on the same terms and conditions as the price to UNH in this special contract. Accordingly, the Commission did not open an investigation and interventions were not required.

On July 23, 1999, the Office of Consumer Advocate (OCA) filed a Motion for Reconsideration on the basis that BA failed to meet its burden of proof with regard to the incremental costs of service to UNH or the elements needed to provide that service, and that the Commission's reliance on "disputed cost analysis" without an evidentiary hearing was contrary to established

Commission practice and to basic due process. The OCA also alleged that the Commission Staff member who performed the cost study and recommended approval of the special contract has a conflict of interest because of her service on the Board of the Distance Learning Commission (DLC). The OCA also requested a stay of Order No. 23,255 and a full and open investigation into the UNH special contract.

On August 5, 1999, the Commission General Counsel, by letter to all interested parties, indicated that the Commission determined, pursuant to Puc 201.05, that it was in the public interest and the interest of judicial economy and efficiency to allow all parties until August 18, 1999 to file objections to any or all motions for reconsideration which otherwise would have had to be filed by August 6, 1999.

On August 6, 1999, Vitts Networks, Inc. (Vitts) filed a Motion for Reconsideration based upon BA's "failure to prove that its filing of the UNH contract complies with NH RSA 378:18 and NH RSA 378:18-b". Vitts avers that no special circumstances exist, that access to distance learning and the Internet are already available, that the rates for the proposed service are anti-competitive, that as no ATM tariff exists there is no fixed schedule from which to depart, that the Commission has not followed its practice of suspending a filing and opening an investigation, and that there is no proof that ATM service works well or reliably.

On August 6, 1999, Destek filed a Motion for Reconsideration on the basis that approval of the contract violated the Telecommunications Act of 1996 (TAct), the due process requirements of Part I , Article 14, and Part I, Article 15 of the New Hampshire Constitution and the Fourteenth and Fifth Amendments of the United States Constitution, RSA 541-A:31, the State Constitution's guarantee of free and fair competition, RSA 378:18-b and State and Federal antitrust laws. Destek sought also that the Commission vacate or stay the effectiveness of the Special Contract order and hold a hearing.

On August 18, 1999, the Commission Staff filed its Objection to all the Motions for Reconsideration. Staff maintained that the OCA lacked standing to apply for a rehearing pursuant to RSA 541:3, that the OCA's Motion did not meet the requirements of Puc 203.04, that there was no conflict of interest on the part of Staff, that it is State policy that all students deserve the educational benefits of distance learning, that the Commission did not err in relying upon the analysis prepared by its Staff, that the Commission has not made a practice of suspending proposed special contracts and subjecting them to investigation, that the absence of an existing ATM tariff rate does not create a barrier to establishing a Special Contract for ATM service, that no private rights have been affected requiring a hearing, that service will not be provided at anti-competitive rates, that UNH is not precluded from entering into

this contract, that there is no present negative impact on other telephone consumers and that the Special Contract actually became effective the day before the Commission's order by operation of law.

On August 18, 1999, BA filed its Objection to all the Motions for Reconsideration. BA maintains that the Commission has already ordered the relief sought by Destek, that the Commission acted within its statutory authority in deciding not to hold a hearing, that the constitutional issues raised by Destek are meritless and beyond the scope of the Commission's authority, that the Commission properly analyzed the contract in light of the relevant statutes, that the Special Contract is neither barred by the TAct nor contrary to it and that there was no conflict of interest on the part of Staff advising the Commission to approve the Special Contract.

On August 20, 1999, Rep. John H. Thomas and Rep. Terie T. Norelli, Chair and Member of the House Telecommunications Oversight Committee filed a letter with the Commission suggesting that, while not intending to prejudge whether the instant special contract should be approved, due to possible anti-competitive issues relative to RSA 378:18-b, it would be prudent to hold hearings with regard to this Special Contract.

On August 23, 1999, the Commission deliberated the Motions at its public meeting and unanimously denied the requests to vacate or stay the Order. On September 7, 1999, the

Commission further deliberated the Motions at its public meeting and denied the requests for a hearing, reconsideration and rehearing.

On September 29, 1999, Destek filed a letter Motion to Repeal Order 23,255 - Special Contract 99-6, claiming that BA and UNH plan to sell ATM services to commercial and corporate interests in New Hampshire, that the Commission was misinformed, that the special contract creates predatory pricing, that the contract is anti-competitive and that it shifts the cost of gaining market share onto the NH ratepayer. The Motion was not filed in accordance with Puc 203.04.

II. POSITIONS OF THE PARTIES WITH RESPECT TO THE ISSUES RAISED AND COMMISSION ANALYSIS

1. Issue: Standing to Petition for Reconsideration

a. Office of Consumer Advocate

The OCA's motion did not conform to the requirements of Puc 203.04. The OCA did not clearly and concisely state the specific facts and law which support the motion, Puc 203.04(d)(1), did not certify that it had made a good faith effort to obtain concurrence of all parties and Commission Staff to the motion, Puc 203.04(d)(3) and Puc 203.04(e), and did not identify in the motion the position of such parties or Staff with regard to the Motion. Puc 203.04(f). OCA's Motion does not conform to these requirements, and is, therefore, deficient as a matter of law. However, OCA raises issues substantially similar

to those raised by other parties, and we will consider the arguments together.

The OCA did not specifically address the issue of its standing to move for reconsideration; however, it claimed that it was "...also concerned that this contract, as presently analyzed, may well be casting shortfalls between rate and cost onto other ratepayers..." (OCA Motion p. 6). Staff maintained that the OCA lacks standing to apply for a rehearing pursuant to RSA 541:3 as residential consumers are not directly affected by Commission Order No. 23,255, and the OCA is only authorized to petition, intervene, etc. in any proceeding "in which the interests of residential utility consumers are involved and to represent such residential utility consumers". RSA 363:28, II. Staff avers that the OCA has not shown that the ratepayers it represents will, in fact, be directly affected by this Order, now or in the future, as required by RSA 541:3. Even assuming that such shortfalls may exist, Staff maintains that this Order does not cast them onto other ratepayers. We agree. Any injury suffered by residential consumers represented by OCA would arise only if rates were increased as a result of a subsequent rate setting proceeding. Since such interests are not presently involved, the OCA lacks standing to petition for reconsideration.. See *Appeal of Campaign for Ratepayers Rights*, 142 N.H. 629, 632 (1998). As in the case of other special contracts, our approval of the

contract does not guarantee BA the right to collect any such revenue differentials from other customers. Id. We will, nevertheless, address the issues and arguments raised by OCA.

b. Destek

BA maintains that Destek's Motion should be denied because the Commission ordered the relief sought by Destek in its request for intervention, i.e., pricing of ATM Cell Relay Services as a tariffed item. Order No. 23,255 ordered BA

to file a tariff making ATM services available throughout the State upon the same terms and conditions and at the same prices as in Special Contract No. 99-6, within 90 days from the date of this Order, unless it can demonstrate why good cause exists to charge any other prices or offer such service on any other terms and conditions.

This provision of the order responded to Destek's concerns as stated in its Motion to Intervene. However, Destek raised issues in its Motion for Reconsideration which were not included in its Letter of June 25, 1999. BA also maintains that Destek has not shown that this is a contested case in which its legal rights, duties or privileges are being determined. Destek argues, however, that it "has already and will continue to suffer harm if Order No. 23,255 remains in effect" and that this is a contested case, that its private rights are at issue, and that it will be unable to conduct its business on a level playing field with BA and UNH. Because we reach the substance of Destek's claims, it is not necessary to determine whether this case is a contested

proceeding nor whether Destek's legal rights, duties or privileges are being determined by Order No. 23,255. The Commission's order to BA to file a tariff and the special contract's pricing provisions noted below ensure that any rights Destek may have are adequately protected. We will, nevertheless, address the issues raised in Destek's Motion.

2. Issue: Whether Special Circumstances Exist Pursuant to RSA 378:18

Destek's June 25, 1999 letter maintained that no special circumstances had been proven to exist regarding ATM Cell Relay Services. Vitts, in its motion, argues that the Commission has determined that special circumstances only mean a threat to BA and the general body of captive ratepayers, and that BA has shown no such threat in its filing. The Commission has denied, without prejudice, several proposed special contracts¹ because there was a strong question as to whether the proposed special contract rates met the requirements of RSA 378:18-b after passage of the Telecommunications Act of 1996 (TAct), which arguably

¹Order No. 23,108, *Bell Atlantic*, Docket DR 98-221 (January 21, 1999) (denying without prejudice special contract with McLane, Graf, Raulerson & Middleton); Order No. 23,109, *Bell Atlantic*, Docket DR 98-222 (January 21, 1999) (denying without prejudice special contract with Easter Seal Society of NH); Order No. 23,196, *Bell Atlantic*, Docket DT 99-040 (April 16, 1999) (denying without prejudice special contract with North Atlantic Energy Service); Order No. 23,197, *Bell Atlantic*, Docket DT 99-041 (April 16, 1999) ((denying without prejudice special contract with the City of Dover); Order No. 23,198, *Bell Atlantic*, Docket DT 99-042 (April 16, 1999) ((denying without prejudice special contract with the County of Cheshire).

require the use of a Total Element Long Run Incremental Cost (TELRIC) methodology for calculating costs of unbundled network elements (UNEs) that BA offers for sale to Competitive Local Exchange Carriers (CLECs). We issued Order No. 23,179² establishing a proceeding to investigate the issue of which incremental cost methodology should be used when applying RSA 378:18-b to special contracts, because we were unable at that time to determine whether "incremental cost" as used in RSA 378:18-b allowed the pricing of telephone special contracts at less than TELRIC rates as in the past. In this docket, we found that the proposed UNH special contract rates exceeded TELRIC prices, and, therefore, there was no need to deny the petition on cost floor grounds.

With respect to the question of what constitutes special circumstances under RSA 378:18, nothing in the statute limits their scope to competitive threats to the incumbent. According to BA, the proposed ATM special contract will provide the opportunity for all K-12 schools, the University System of New Hampshire, libraries and other non-educational organizations throughout the State to obtain access to multi-site distance learning facilities as well as high-speed Internet access. The proposed special contract will provide the opportunity for

²*Bell Atlantic - New Hampshire*, Docket DT 99-018 (March 30, 1999) (Investigation into Incremental Cost Methodology to be Used When Applying RSA 378:18-b to Special Contracts)

students to access advanced placement courses and other educational resources, provided by UNH, that are not offered at facilities in their region. In addition, the proposed contract will provide increased professional development opportunities for teachers and administrators. As we stated in Order No. 23,255, denying the proposed special contract now and conducting an investigation could unnecessarily deny school children the benefits of these ATM services and distance learning during the upcoming school year. The UNH applications of the ATM services are more advanced and comprehensive than applications available under existing services whether by CLECs, ISPs, or BA. Based upon the Staff analysis showing that the rates exceeded TELRIC rates, there was no reason to suspend the effectiveness of this special contract.

In addition to these special circumstances, it is the policy of this State that all students, regardless of economic or geographic status, deserve the educational benefits offered by distance learning through state of the art technology. In 1996, the Legislature passed an Act Establishing the Distance Learning Commission. NH Laws of 1996 Chapter 70 (HB 473). The DLC was created "to develop statewide distance learning programs and applications and to assist the department of education in providing the technical assistance to potential distance learning providers". Distance learning "means transmission of educational

information and interaction of geographically dispersed individuals or groups through a single medium or a combination of audio, video, and data." The special contract between BA and UNH promotes this State policy, and it was therefore reasonable for us to determine that special circumstances exist which render this Contract to be in the public interest. Nothing raised in the various motions for rehearing regarding the existence of special circumstances justifies a reconsideration of that finding.

3. Issue: Whether the Proposed Special Contract Rates are Anti-competitive

Vitts avers that customers who may receive distance learning from UNH already have such services via many Internet Service Providers throughout the State, and that the use of statewide average costs for the price floor is inconsistent with RSA 378:18-b. They also maintain that use of an average cost floor fails to meet the test of RSA 378:18-b because, by definition, in high cost areas the average cost will be lower than the incremental cost.

The independent analysis prepared by Staff was designed to review the proposed contract in light of the highest price floor recommended by interveners and Staff making such recommendations in Docket DT 99-018. The calculation was conservative in its approach and showed that the contract price was above TELRIC costs, the highest cost floor supported by both

the OCA and Staff in Docket DT 99-018. The Commission found that the inputs and variables used by the Commission's Assistant Chief Engineer to review the proposed contract were reasonable, the assumptions that were made were conservative, and the proposed rate exceeded the costs. Given the nature of the analysis, it was reasonable for the Commission to decide that approval of the special contract met the tests of RSA 378:18-b.

Nothing raised by the Movants causes us to reconsider our determination that the instant special contract rate is set at a level not less than the incremental cost of the relevant service under RSA 378:18-b. We do not agree with Vitts' narrow interpretation of the statute which would disallow the use of a statewide average rate as proposed, especially where, as here, the proposed contract uses a statewide average rate. Also, we have required the Company to file a tariff for this service, no later than October 5, 1999³. In addition, we note that the special contract contains a provision whereby the rates for service must meet the minimum rates permitted under any applicable law, regulation or order and may be subject to adjustment. Any interested and affected person may raise any cost issues in response to the pending tariff filing, with the potential result of an adjustment to the special contract rates.

³As required, BA submitted the tariff on October 5, 1999. The Commission is in the process of reviewing the submission.

4. Issue: Whether UNH is Barred from Entering into this Special Contract

Destek believes that the provision of telecommunications services by UNH in competition with private parties exceeds the statutory authority provided to the University by RSA 187-A:16. In fact, in addition to the plenary authority conferred upon UNH in that statute, and specifically, section XIII, RSA 187-A:3, RSA 187-A:4, RSA 187-A:10-a and, especially, RSA 187-A:6 II, which provide for distance learning, confer upon the university the authority it requires to provide services at distant locations as contemplated by the special contract, consistent with NH Laws of 1996, Ch. 70 (HB 473). BA's contract with UNH is between a local exchange carrier (LEC) and a customer; what that customer does with the service provided is a concern of the PUC only if UNH chooses to resell the services. Here, UNH is simply providing a service to its remote "campuses" which happen to be located in various schools, libraries and other locations. Although UNH may also utilize the Special Contract to provide distance learning to other groups and organizations, and may thereupon need to file for CLEC certification, the special circumstances of providing service to schools at the start of the current school year is not diminished.

5. Issue: Whether a Tariff Rate for the Proposed Service is Required in Order to Approve a Special Contract Rate

Vitts contends that the proposed ATM service is a new BA service not generally available to all NH customers via a tariff rate, and that BA cannot depart from a tariff that does not exist. Vitts also maintains that a specific tariff rate must be established before a special contract rate can be approved. The statute does not require such a sequence of events. RSA 378:18 provides for special contract "rates other than those fixed by its schedules of general application". The Commission defines special contract as follows:

Puc 1601.01 "Special contract" means rates and charges, including terms and conditions, covering service rendered under prices and conditions which vary from those contained in the filed tariff...

The very non-existence of a tariffed rate for the specific bundle of services in question, or bundled rate for service, may make a special contract the appropriate vehicle to provide the service to specific customers. Therefore, Vitts' argument does not require reconsideration of our Order.

6. Issue: Whether BA Met Its Burden of Proof

As we stated in Order No. 23,255, the lack of detail in the cost study filing hampered our effort to determine whether the proposed rate exceeds the incremental cost of analogous elements. Nevertheless, because of the importance of the proposed service to the modernization of the state's educational

system, Staff drew on information in the filing and in related dockets to develop estimates of the appropriate cost floors for the RSA 378:18-b analysis. This estimate, based on conservative assumptions, shows the proposed rate exceeds, albeit by a narrow margin, the cost of providing ATM service as required under RSA 378:18-b, I and II. That Staff, in order to complete its analysis, had to resort to publically available information not contained in the filing does not require us to reject the filing. In determining whether to reject a special contract filing, given the 30 days available for review under the statute, the Commission must be able to exercise its discretion as to whether sufficient information exists to satisfy us that the statutory price floor has been exceeded. We note further that we are not barred from revisiting this issue should information later reverse this analysis.

7. Issue: Whether Established Commission Practice Required the Commission to Suspend the Special Contract Without Prejudice

While we have denied telephone special contracts without prejudice in the recent past pursuant to RSA 378:18-b when they need more time for analysis, this special contract did not require more time for analysis as Vitts, Destek and OCA maintain. These other contracts were largely denied because the rates at which Bell Atlantic proposed to offer UNEs to CLECs appeared to be higher than the rates at which BA proposed to offer essentially the same services to the special contract customer, i.e., less than TELRIC rates for UNEs necessary to provide a similar service. No specific analysis was performed which showed it to be otherwise. In this docket, the Commission found that the proposed rates exceeded TELRIC prices, and, therefore, there was no need to deny the petition. Contrary to Vitts' assertion that BA did not make a specific claim that a special circumstance exists, RSA 378:18 only requires that the Commission find that special circumstances exist, which it did in its Order. Further, the statute contemplates a speedy review without the need for hearings in every case. There is no provision to "suspend" a special contract. A special contract goes into effect without further PUC action if not rejected within 30 days, albeit the Commission may review compliance of the contract with the statutory refinements at any time.

8. Issue: Whether the Statutes Permitting Special Contracts are Constitutional or Contrary to State or Federal Anti-Trust Laws and Whether Approving the Special Contract Without a Hearing is Constitutional

Destek and OCA claim that the Commission's Order approving the special contract is unconstitutional. Destek also claims that RSA 378:18-b is unconstitutional. Although the OCA does not specify the particular sections of the United States and State constitutions which it claims have been violated, Destek cites Part I, Article 15 and Part II, Article 83 of the New Hampshire Constitution and Article VI of the Fourteenth and Fifth Amendments of the United States Constitution, RSA 541-A, unspecified federal and state antitrust laws and "the common law", and the TAct. This shotgun approach lacks the specific argument required to demonstrate the particular ways in which the constitutional provisions have been violated. See *State v. Chick*, 141 N.H. 503 (1996). BA points out that the Commission's role is to interpret and apply the statutes by which the Legislature empowered the Commission to act, not to determine the constitutionality of those statutes. *Eastern Utilities Associates* 76 NH PUC 236, 254 (1991). It is not necessary to reach this question given the failure of Destek to spell out in what way it claims its constitutional rights are affected or violated by our special contract ruling. BA also maintains that Destek's antitrust argument is groundless based upon RSA 356:8-a,

Exemption for Authorized Activity. We agree. See also, *Florida Avocado Growers v. Paul*, 373 U.S. 132, 83 S.Ct. 1210, 10 L. Ed 2d 148 (1963).

Destek's real interest in this matter is not the provision of distance learning for the citizenry of New Hampshire, but rather its alleged inability to conduct business on a level playing field with BA and UNH because of alleged anti-competitive effects of this special contract. Destek alleges that it currently provides services to schools, and Vitts maintains that the special contract is not needed because school children already have the opportunity to access distance learning. Therefore, according to Destek and Vitts, competition for this service exists. Destek and Vitts cannot maintain this market solely for themselves by denying BA the opportunity to provide UNH with the means to do so itself via remote "campuses" while at the same time claiming that there is insufficient competition. The very nature of competition is that a contract may be awarded to a competitor. Our role, at this time, is to ensure that the proposed rates are not anti-competitive, and this we have done.

BA maintains that the Commission acted within its statutory authority in deciding not to hold a hearing. Neither RSA 378:18 nor RSA 378:18-b require a hearing, and only RSA 378:18 requires a Commission Order, for a special contract to

become effective. BA maintains that it has been Commission policy not to hold a hearing where special contracts are concerned. BA also maintains that no hearing is required because the special contract is not a contested case under RSA 541-A.

We believe that the procedure we have followed is consistent with the requirements of RSA 378:18 and RSA 378:18-b, which do not contemplate the holding of a hearing. In fact, RSA 378:18-b has very short time frames. The Legislature could not have contemplated that a hearing be held in 378:18-b special contracts cases before the Commission determined whether to let the contract go into effect, given this extremely short time period. We do not agree that the state or federal constitutions provide competitors an absolute right to a hearing in these circumstances.

9. Issue: Whether a Staff Member Appointed to the DLC by the Chair of the Commission had a Conflict of Interest in Advising the Commission

We find no merit in the claims that Staff Assistant Chief Engineer Bailey had a conflict of interest in this docket. Ms. Bailey serves as one of 14 members on the Board of the DLC by virtue of her appointment by the Commission Chairperson pursuant to NH Laws of 1996, Chapter 70:4,I,(1) as a "person from a regulatory agency with knowledge and experience in telecommunications regulatory history," representing the Commission. Therefore, the Commission was well aware of her

position on the DLC and there was no need for specific disclosure of this fact in her memorandum to them. This was a public appointment and the information was also listed on the DLC Web page, appended to the OCA Motion. Neither Destek nor the OCA have stated any facts showing that Ms. Bailey was actually, or even appeared to be, biased or predisposed in favor of this special contract. Moreover, it was UNH, not the DLC, which entered into this special contract with BA.

The OCA, and Destek by implication, assert, without specifications, that Ms. Bailey's participation in the analysis of the UNH special contract "is contrary to the NHPUC's standards for the staff advisory role". In fact, Ms. Bailey, at all times, conducted herself in a manner fully consistent with the Commission's Ethics Policy. Ms. Bailey did not violate any of the four overlapping areas of concern (Information, Investments, Influence and Employment) set forth in the Commission's Ethics Policy. She performed her assignment, review of this contract, in accordance with recognized academic and professional standards. Ms. Bailey's role on the DLC in no way compromised her ability to advise the Commission with regard to this special contract. We have confidence in the analysis prepared by our Staff in this docket and also note that we believe Staff has acted in a fair and objective manner in accordance with all the Commission's requirements and rules.

**10. Issue: Whether the TAct Bars
BA From Offering Special Contracts**

Destek claims that the TAct bars BA from offering special contracts in New Hampshire and that any special contract creates discriminatory conditions on the resale of BA telecommunications services. BA maintains that Destek offers no specific support for its contention, relying only upon the general language in §251(b) and §253(a) of the TAct, and that nothing in the TAct prohibits special contracts *per se*. BA also maintains that recent FCC Orders support that position. We agree with BA. While the TAct provides that regulation may not prohibit the ability of competitors to provide service or impose unreasonable or discriminatory conditions, it does not bar the use of special contracts. The Supreme Court has affirmed the FCC's rulemaking authority with regard to provisions of the TAct, *AT&T Corp v. Iowa Utilities Board*, 119 S. Ct 721 (1999), and the FCC has not only not prohibited special contracts but has acknowledged that ILECs must offer such contracts for resale. *Local Competition Order*.⁴ The Movants' proposals would deny UNH the ability to contract for service with its selected provider of

⁴ First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499 ("Local Competition Order"), modified on recon., 11 FCC Rcd 13042 (1996), vacated in part, Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), cert. granted sub nom. AT&T v. Iowa Utils. Bd., 118 S.Ct. 879 (argued Oct. 13, 1998) recently reversed in part, affirmed in part, remanded in part. January 25, 1999.

that service. The tariff which BA has been ordered to file will ultimately be available to all customers and will, as the special contract provides, dictate the rates for this special contract, not the other way around, as Destek avers. As the rates proposed are not anti-competitive, and other special circumstances exist, the proposed special contract meets the tests of both RSA 378:18 and 378:18-b.

With respect to any other arguments that may have been raised by the petitioners and not specifically addressed above, the Commission does not believe that any of those arguments provide the grounds to warrant reconsideration of our Order.

Based upon the foregoing, it is hereby

ORDERED, that the Motions for Reconsideration, Motions to Vacate, Motions for Hearing and Motions to Stay Order No. 23,255, filed by the Office of Consumer Advocate, Destek and Vitts are hereby DENIED.

By order of the Public Utilities Commission of New
Hampshire this twenty-second day of November, 1999.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary