

DT 99-086

BELL ATLANTIC

Special Contract with University of New Hampshire

Order Approving Motion for Protective Order

O R D E R N O. 23,309

October 4, 1999

On June 4, 1999, New England Telephone and Telegraph Company d/b/a Bell Atlantic (Bell Atlantic 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) between Bell Atlantic and the University of New Hampshire (UNH). The Special Contract, executed March 16, 1998, provides Asynchronous Transfer Mode (ATM) Cell Relay Services within the state of New Hampshire at a uniform statewide rate over high-speed access lines. Along with the Special Contract, Bell Atlantic filed a contract overview and cost study information in support of the filing.

Also on June 4, 1999, Bell Atlantic filed, pursuant to RSA 91-A and N.H. Admin. Rule Puc 203.04, 204.05 and 204.06, a Verified Motion for Protective Order (Motion) seeking to exempt from disclosure portions of the Special Contract and the supporting information.¹ Bell Atlantic filed the Information in

¹As this Motion was filed prior to the adoption of Laws of 1999, Chapter 154, it is therefore decided under the previous statute. Chapter 154 added new subdivision RSA 378:43, and grants an exemption for certain telephone utility information from the definition of public records for purposes of RSA 91-A

redacted form as well as full, unredacted copies. Pursuant to Puc 204.05(b), documents submitted to the Commission or Commission Staff accompanied by a motion for confidentiality shall be protected as provided in Puc 204.06(d) until the Commission rules on the Motion for Confidential Treatment.

On July 7, 1999 the Commission issued Order No. 23,255 in which the Commission: (1) stated that certain information for which Bell Atlantic had sought confidential treatment had become generally known during a technical session with a group of Internet service providers in DT 99-020; and (2) conditionally approved the Special Contract. The Order required that: (a) Bell Atlantic file within 90 days of the Order a tariff offering on a statewide and non-discriminatory basis, the same service provided under the Special Contract on the same terms and conditions at the same price, to any customer requesting a minimum of 30 lines, unless it could demonstrate why good cause exists to charge any other prices or offer such service on any other terms and conditions; and (b) the Company refile the Special Contract and include in unredacted form the information which had become public in Docket No. DT 99-022, namely the total number of circuits and the average mileage between customer locations and serving wire centers under the Special Contract.

On August 6, 1999, Bell Atlantic filed a copy of the

(the right-to-know law), effective August 24, 1999.

Special Contract which included the information required to be disclosed in Order No. 23,255, described above. The disclosure of this information effectively modifies the request for a protective order.

The remaining material for which the Company seeks confidential treatment includes the exact number of locations to be served under the Special Contract, the name and location of each customer location to be served, the wire center serving each customer location, the network speed of service and the mileage between each customer location and the wire center serving that location (collectively, the Information). The Information pertains to customer-specific information such as the customer's network size, routing and configuration data, specific service features, and network components and equipment requirements for the customer.

In its Motion Bell Atlantic avers that: (1) the market for the service subject to the Special Contract is competitive; (2) it regularly takes comprehensive measures to prevent dissemination of the Information, the Information is not made available to or known by the public in the ordinary course of its business, and the information is compiled from internal databases that are not publicly available; (3) disclosure of the Information would unfairly provide customers seeking special contracts with an enhanced bargaining position in their quest for lower prices; (4) non-disclosure protects basic exchange rates

from experiencing upward pressure as a result of discounts to customers who gain an unfair bargaining position through access to information which would otherwise be unavailable if Bell Atlantic were an unregulated enterprise; and (5) the costing data quoted for the customer-specific network components and equipment are also subject to the understanding between Bell Atlantic and its vendors that the relevant data will be treated confidentially.

Bell Atlantic submits that the Information contains customer-specific, competitively sensitive data which fall within the exemptions permitted by RSA 91-A:5,IV and that the benefits of non-disclosure, and evidence of associated harm to Bell Atlantic and its customer and the general body of rate payers, outweighs the benefit of public disclosure in this instance.

Bell Atlantic Senior Specialist-Customer Business Service, Stephen Gannon, submitted an affidavit that the representations of fact submitted in support of the Motion are true and accurate, to the best of his knowledge and belief.

Bell Atlantic also states that neither the Commission Staff nor the Office of Consumer Advocate took a position with respect to the Motion at the time of filing.

The Commission has reviewed the Information at issue and determined that any benefit to the public to be obtained by requiring disclosure of the Information is outweighed by the

likely harm to Bell Atlantic, its customers and ratepayers.

We find that the Information contained in the filing for which confidential treatment is sought meets the requirements of Puc 204.06 (b) and (c). Based on Bell Atlantic's representations, under the balancing test we have applied in prior cases, See e.g., Re New England Telephone Company (Auditel), 80 NHPUC 437 (1995); Re Bell Atlantic, Order No. 22,851 (February 17, 1998); Re EnergyNorth Natural Gas, Inc., Order No. 22,859 (February 24, 1998), we find that the benefits to Bell Atlantic of non-disclosure in this case outweigh the benefits to the public of disclosure. The Information should be exempt from public disclosure pursuant to RSA 91-A:5, IV and Puc 204.06.

Based upon the foregoing, it is hereby

ORDERED, the Motion for Protective Order of New England Telephone and Telegraph Company, d/b/a Bell Atlantic - New Hampshire, excluding the information filed by Bell Atlantic on August 6, 1999, is GRANTED; and it is

FURTHER ORDERED, that this Order is subject to the ongoing rights of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this fourth day of October, 1999.

_____ Douglas L. Patch Chairman	_____ Susan S. Geiger Commissioner	_____ Nancy Brockway Commissioner
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Attested by:

Thomas B. Getz
Executive Director and Secretary