DT 99-018

BELL ATLANTIC - NEW HAMPSHIRE

Investigation Into Incremental Cost Methodology to be Used When Applying RSA 378:18-b to Special Contracts

Order Approving Cost Methodology Application

O R D E R N O. 23,357

December 2, 1999

APPEARANCES: Victor D. DelVecchio, Esq. for Bell Atlantic - New Hampshire; Curtis L. Groves, Esq. for MCI WorldCom; Brian Susnock for The Destek Group, Inc.; Jay E. Gruber,Esq. for AT&T Communications; William Homeyer for the Office of Consumer Advocate; and Larry S. Eckhaus, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On December 22, 1998, Bell Atlantic - New Hampshire (BA) filed with the New Hampshire Public Utilities Commission (Commission) pursuant to RSA 378:18, petitions seeking approvals for two Centrex Special Contracts (Special Contracts). See Docket No. DR 98-221 regarding McLane, Graf, Raulerson & Middleton, and Docket No. DR 98-222 regarding the Easter Seal Society of New Hampshire. Under the proposed Special Contracts, BA would provide Centrex line systems comprised of Analog and Integrated Services Digital Network (ISDN) lines. Along with the Special Contracts, BA filed contract overviews and cost study details in support of the filings. BA's cost study avers that the Special Contracts' proposed rates exceed the incremental

costs of the services being provided, pursuant to the requirements of RSA 378:18-b, because they did not purport to exceed BA's Total Element Long Run Incremental Cost (TELRIC),the basis for competitors' wholesale access charges under Staff's stipulation with BA in Docket DT 97-171, reviewing BA's Statement of Generally Accepted Terms (SGAT).

Staff's review of the proposed Special Contracts raised questions as to whether the proposed rates meet the requirement of RSA 378:18-b. On January 21, 1999, the Commission issued Order No. 23,108 and Order No. 23,109, which denied the Special Contracts without prejudice. Among other things, the Commission determined that a separate proceeding should be opened to resolve the threshold question of which incremental cost methodology should be used when applying RSA 378:18-b to Special Contracts.

On February 3, 1999, the Commission issued an Order of Notice establishing this proceeding to address the issue of which incremental cost methodology should be used when applying RSA 378:18-b to special contracts. This proceeding raises inter alia, issues related to whether the public interest would be served by permitting BA to continue pricing special contracts based upon non-TELRIC costing principles, and whether and how residential and small business customers may be protected from subsidizing Special Contract customers.

On March 10, 1999, a Prehearing Conference was held at which the Parties and Staff provided preliminary statements of position and agreed upon a procedural schedule. On March 30, the Commission issued Order No. 23,179 adopting the procedural schedule to govern this proceeding. On that date, Staff requested a modification to the procedural schedule which was approved on April 5, 1999.

Direct Testimony was filed on April 7, 1999 and Rebuttal Testimony was filed on April 23, 1999. Hearings in this docket were held at the Commission on April 29, April 30, May 10, May 11, and May 19, 1999 and briefs were submitted on June 11 by The Destek Group, Inc. (Destek) and June 14, 1999 by BA, AT&T Communications (AT&T), the Office of Consumer Advocate (OCA) and Staff of the Public Utilities Commission (Staff).

II. Positions of the Parties and Staff

A. Bell Atlantic - New Hampshire

BA believes that its proposed long run incremental cost (LRIC) methodology for pricing its special contracts is consistent with the long-standing cost methodology previously approved by the Commission, provides adequate safeguards against alleged competitive misuse, and complies with RSA 378:18-b. BA also believes that it has adequately demonstrated that the public interest would be harmed if it is required to use total element long run incremental cost (TELRIC) principles to set prices or to

serve as the basis for imputation in all special contracts.

B. AT&T Communications

AT&T believes the special contract rates proposed by BA are lower than the wholesale rates charged to competitive local exchange carriers (CLECs) for access to the BA network, resulting in a price squeeze. In other words, by using a non-TELRIC methodology, BA is able to offer special contracts to its retail customers at rates that are lower than the price which CLECs must pay BA at wholesale for the same services, thereby precluding the CLECs from competing with BA for those retail customers. AT&T maintains that the TELRIC standard is the appropriate standard to be used in setting price floors for special contracts.

C. The Destek Group, Inc.

Destek has provided Internet and Wide-Area-Networking services throughout the New Hampshire region since 1994. Destek maintains that special contracts that benefit only one organization serve to minimize or eliminate the ability for other companies to compete in the New Hampshire market and to provide the services covered by the special contracts. Destek also states that RSA 378:18-b is in direct opposition to the requirement for an open and free market and is, therefore, in violation of the Telecommunications Act of 1996 (TAct). Destek Brief at 3. Destek therefore recommends that the Commission suspend all applications for special contracts and move, with the

assistance of the New Hampshire State Legislature, to repeal RSA 378:18-b. Destek Brief at 3.

D. MCI WorldCom

MCI maintains that the public interest would best be served by using a TELRIC methodology. According to MCI, BA's offering services to its retail customers at lower rates than it proposes to offer unbundled network elements to CLECs constitutes a barrier to market entry in violation of the TAct, 47 U.S.C. §253. MCI suggests that BA be required to price its special contracts at least at the sum of the prices of the underlying unbundled network elements (UNEs) necessary to provide service, rather than LRIC. It should be noted that MCI did not submit testimony or a brief in the proceeding, nor did MCI cross-examine witnesses or participate in the hearings.

E. Office of Consumer Advocate

The OCA recommends that TELRIC be used as the price floor for special contracts. OCA maintains that the cost factors and pricing BA uses in special contracts are lower than those used in the SGAT. Essentially, OCA's position is that LRIC is too low to allow competition from CLECs, which must purchase UNEs from BA in order to compete for local service. OCA states that the disparity between the costs yielded by use of the TELRIC and LRIC models creates a price disparity that results in a price squeeze upon CLECs seeking to compete for customers. OCA also

believes that BA's arguments that facilities-based competition might exist are too speculative to form a basis for accepting BA's LRIC pricing as the price floor, and, further, that TELRIC is far less likely to shift costs to other ratepayers than a LRIC-based price floor. OCA recommends that the Commission should consider specific evidence of BA's current market share of local telephone service in New Hampshire before approving any further special contracts.

F. Commission Staff

Staff maintains BA's approach does not meet the requirements of RSA 378:18-b and the TAct and advocates the use of a TELRIC standard. The use of LRIC should be limited to those instances where the incumbent local exchange carrier (ILEC) has provided unequivocal proof that true facilities-based competition exists for that particular customer. The burden of proof in such cases should be substantial. However, when BA controls the essential bottleneck facility, TELRIC must be used. Staff Brief at 7. Staff also maintains that TELRIC must be used because fully effective competition does not exist and special contracts reflect numerous, complicated, customer-specific situations. Staff Brief at 11. Staff also maintained that residential and small business customers would be protected from subsidization if TELRIC is utilized. Staff also recommended that all RSA 378:18-b filings be accompanied by all necessary and sufficient

information required to substantiate the special circumstances rendering departure from the general schedules just and consistent with the public interest. Staff Brief at 19.

II. COMMISSION ANALYSIS

After considering the testimony and evidence offered at the hearings and in the post-hearing briefs, the issues to be resolved center on: (a) whether competition faced by incumbent telecommunications carriers constitutes "special circumstances" within the meaning of RSA 378:18; (b) if so, what type and level of competition is sufficient to permit the use of special contracts under RSA 378:18; and (c) what is the appropriate costing methodology that should be applied to establish the price floor under RSA 378:18-b.

A. Special Circumstances, Public Interest

RSA 378:18 sets out the general standard for all regulated utility special contracts in New Hampshire:

> Nothing herein shall prevent a public utility from making a contract for services at a rate other than those fixed by its schedules of general application, if special circumstances exist which render departure from the general schedules just and consistent with the public interest, and the commission shall by order allow such contract to take effect.

We believe that special contracts may be used by ILECs to respond to competitive pressures. In other words, competition can constitute "special circumstances" which would permit the making of a special contract between an ILEC and a customer. Competition is not, however, the only special circumstance that would satisfy this requirement in RSA 378:18. See, e.g., Bell Atlantic Special Contract with University of New Hampshire, Order Conditionally Approving the Special Contract, Order No. 23,255, July 7, 1999.

Where the special circumstance alleged is the existence of competition, the ILEC must provide a sufficient showing that competition in the target customer's exchange actually exists in order to justify the use of a special contract. There must not simply be some perceived or hypothetical threat of competition, but there must instead exist actual, demonstrable competition. Only actual, ongoing competition will suffice to show the risk of an unfair loss of contribution to the fixed costs of the ILEC.

The parties to this case did not focus on determining the amount of actual observed market entry that would be sufficient to satisfy this threshold requirement. They did, however, offer some insights useful in answering this question, which has enabled us to identify a number of different factors that may be considered. These factors include measurements of overall competition and a case-by-case analysis of the capability

and likelihood of CLECs to compete effectively for providing the service to the customer that is the subject of the special contract.

For example, OCA states that one basis for measuring competition is to determine whether the incumbent continues to serve all, almost all, or a dominant share of New Hampshire local telephone customers or, alternatively, that there is evidence of the incumbent's market share reductions, either on a per-line or revenue basis. OCA Brief at 9. Staff also suggests a market share-based approach for determining the level of competition. See, e.g., Staff Brief at 11, regarding objective quantitative evidence of CLEC penetration into the incumbent's market. We do not believe that the level of CLEC competition on a statewide basis is dispositive of the question of whether competition exists for purposes of applying RSA 378:18. In some exchanges competition may be vigorous, while ILECs retain dominance statewide. Conversely, ILECs could lose significant market share statewide, but retain a virtual monopoly in one or more specific exchanges. Accordingly, the level of CLEC penetration in a target customer's exchange is one possible measure, but not the sole one, of the likelihood and capability of CLECs to compete effectively for the customer's business.

However, regardless of the CLEC market share, if a competitor cannot, in a practical manner, extend service to the

target customer, market share statistics by themselves will not subject the ILEC to the risk of loss of the business. AT&T suggests that the requirement for determining competition should be the presence of a "competitor with a comparable network of ubiquitous facilities already in place." AT&T Brief at 12. We will not hold the ILEC to such an extreme showing. In making a case for the presence of competition sufficient to constitute special circumstances, it would be instructive, but not dispositive, if the incumbent could show that CLECs have access to the specific building and customer premises where the special contract customers are located. However, competitors will typically need access to some parts of the ILEC network, such as the local loop, to provide competitive service. Again, a CLEC need not build out 100% of the facilities needed to connect a customer to the ILEC's central office; the CLEC can still be a competitive threat by buying the necessary network elements from the ILEC to complete the service. Thus, even more useful would be evidence that full service is provided by CLECs in the target customer's exchange to a meaningful number and percentage of customers whose volume and pattern of usage are similar to that of the special contract customer. See OCA Brief at 10, 13.

As noted above, the ILEC may show the presence of a significant CLEC market share for customers of the target usage level and pattern, although there are cases where this general

information cannot demonstrate competition for the particular customer's business. In addition to or in lieu of evidence of market share loss for similar customers in the affected exchange, the ILEC may show that it risks loss of the customer's business by presenting an affidavit from the target customer attesting to CLEC responses made to a solicitation of bids, or to offers made to it from CLECS, or to having engaged in negotiations with CLECs concerning possible alternatives to the ILEC arrangement. Ultimately, however, the test is whether the ILEC faces actual competition for customers possessing the usage levels and patterns of the special contract customer. The ILEC bears the burden of showing this.

Once it is determined that sufficient evidence of special circumstances exists, the next issue becomes whether the special contract is just and in the public interest as required under RSA 378:18. Under the statute, the existence of "special circumstances" does not end the Commission's analysis, but merely begins it. Special circumstances do not override the overarching "public interest" requirement of RSA 378:18.

Historically, special contracts have been used to retain customers who were not satisfied with tariffed rates and who were likely to leave the utility, thereby creating a revenue shortfall that could be borne by remaining customers. The public interest considerations were deemed satisfied by allowing special contract customers to receive discounted rates while continuing to contribute to the utility's fixed costs. Recently, with the introduction of competition, the public interest considerations must incorporate not only lost contributions, but also the impact of the special contracts on the development of that competition.

The correct price floor is a key tool in creating a level playing field between the incumbent and its competitors. A proper price floor can prevent a price squeeze that would make it difficult for competitors to offer services economically. In addition, we must be mindful of the need to prevent an ILEC from pre-empting competition by signing long-term special contracts with customers who otherwise would be candidates for marketing efforts by competitors. Our requirement of a showing of sufficient competition helps to ensure that the ILEC does not use its special contract opportunities to this purpose.[1]

[1] While this issue was not fleshed out in this record, we would expect that all else being equal, the more vigorous the existing competition, the less likely it is that a longer term (i.e. beyond one year) contract will have the effect of preempting competition.

The price floor is also a tool to prevent unnecessary loss of contribution from special contract customers. We note that our approval of a special contract does not constitute a guarantee that tariffed customers will make the company whole for the contribution that is lost by virtue of the contract. But even if ratemaking principles can protect non-special contract customers from the direct consequences of loss of contribution, there are indirect consequences, and we apply the appropriate price floors to prevent unnecessary loss of such revenues. In addition to meeting the standards set forth in RSA 378:18-b discussed below, the ILEC must show that the price it has incorporated into the contract has the effect of maximizing the contribution from the target customer. We would anticipate that the more robust the competition, the lower the price will have to be to maximize such margins.

B. Price Floors

In addition to meeting the terms of RSA 378:18, the ILEC must show that the rates set in the contract meet the applicable price floor test established in RSA 378:18-b. RSA 378:18-b contains price floors specific to telecommunications special contracts. RSA 378:18-b provides as follows:

> Any special contracts for telephone utilities shall be filed with the commission and shall become effective 30 days afer filing, provided the rates are set not less than:
>
> I. The incremental cost of the relevant service; or
>
> II. Where the telephone utility's competitors must purchase access from the telephone utility to offer a competing service, the price of the lowest cost form of access that competitors could purchase to compete for customers with comparable volumes of usage, plus the incremental cost of related overhead.

The price floors of RSA 378:18-b are independent of any price floor implied by the "just and in the public interest" standard of RSA 378:18. In order to apply RSA 378:18-b, one first needs to determine whether the service being offered under the contract falls under RSA 378:18-b, I or II. RSA 378:18-b, II, by its terms, refers to situations where the competitors need to purchase access from Bell Atlantic in order to provide the service in question, either by purchasing UNEs or by reselling the ILEC service (resale). It therefore follows that RSA 378:18-b, I is meant to apply to all situations not covered by RSA 378:18-b, II.

Thus, RSA 378:18-b, I applies to the extent the competitors do not require access from Bell Atlantic in order to provide the service at issue in the special contract. As to these components of the service, long run incremental cost methods may be used to set the price floor for the contract, so long as the level of competition is sufficiently high to make

such a price floor just and in the public interest under RSA 378:18.

The price floor specified in RSA 378:18-b, II applies whenever the competitor must purchase access in order to offer a competing service. This would include the case of a competitor who had to purchase one or more UNEs from the ILEC to offer a competitive service, and the case of a reseller, who purchases the entire underlying service as a package, including the "access" implicit in it.

Under RSA 378:18-b II, the special contract price may not fall below the "lowest cost form of access," plus associated overheads. We believe the overheads referred to in the statute are the retailing costs the incumbent can avoid if a competitor, and not the incumbent, provides the service. We also believe that the lowest cost form of access as used in the statute means the lower of: (a) the reseller's discounted wholesale price, or (b) the sum of the costs of the UNEs required by potential competitors to provide the same service as provided in the special contract.

In the case of resale, the lowest cost form of access to the competitor is the discounted wholesale price. When the statutory adder of the ILEC's avoidable retail provisioning costs are included in the price floor, the ILEC's tariffed rate results. Under this scenario, if a reseller can provide the

retailing aspect of the business more efficiently than the ILEC, it can compete effectively for the customer's business, and the ILEC will not be forced to incur losses as a result of the loss of the retail customer because the ILEC will continue to receive wholesale revenues from the CLEC. In light of the statutory computation of the price floor for a special contract that is responding to competition posed by resellers, it is difficult to envision a situation in which the public interest would be served by allowing the ILEC to serve the customer on any basis other than its tariff.

In the case of facilities-based competition, the question becomes the cost of access to the public-switched network. Under the TAct and the Federal Communications Commission rules and orders implementing it, UNEs are priced based on a TELRIC methodology. Thus, in the case of special contracts that must meet the RSA 378:18-b, II floor, the TELRIC standard is the correct standard to apply for the UNEs used for access, since a UNE purchaser must pay TELRIC-based UNE prices in order to construct a competing service offering.

In developing the estimate for the UNE elements, we must thus determine which elements are necessary for "access." This issue did not receive extensive attention in the hearings in this docket, but nonetheless we must address it because it is not possible to interpret RSA 378:18-b without considering it. In

the simpler case of toll competition, access was the only element that was required by the competitor. Generally, switched access was required to provide toll to lower volume customers and its cost needed to be included in the price floor of the special contracts with such customers. Higher volume toll customers, however, were able to purchase dedicated access from the toll provider and could by-pass an incumbent's network completely. Accordingly, under RSA 378:18-b, I, the incremental cost of toll service is the relevant price floor for high volume toll special contracts.

The problem arises where, as is the case in local exchange competition, access is no longer a single, easily identifiable and easily priced item. It will often be the case, if competition is robust, that more than one facilities-based CLEC is potentially in competition for the target customer's business, but the various CLECs may need to purchase different combinations of UNEs to complete their service to the customer. In this case we must determine which UNEs are considered the UNEs needed for access, and thus included in the price floor calculation priced at TELRIC.[2] Unlike the toll competition

[2] It might be argued that section 18-b does not permit the application of both paragraph I and paragraph II to the same special contract. In this view, paragraph I would apply only in the rare case where the entire service was provisioned by the competitors without purchasing any access elements from the ILEC, and paragraph II would apply to all other cases. But such a

(continued...)

situation, access in local exchange service and other services does not consist of one element or set of elements that remains unchanged regardless of the configuration of facilities operated by the competitor.

One option would be to assume that a hypothetical competitor required the entire set of UNEs that, when bundled, could be the basis for a CLEC's provisioning. This would have the practical effect of requiring the ILEC to use a price floor set at TELRIC for all elements, even if its competitors were likely not to need all such elements to gain access to the network and provide service. This approach would not create a fair competitive environment.

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[2](...continued)
reading would not answer the question of how to price the non-UNE elements of providing the service, since paragraph II speaks only of the "cost of the lowest cost form of access," not of the non-access elements the CLECs provide to supply the service. However, the result would be the same, since the Commission would have to require a reasonable price floor for the non-access elements of the service, in order for such a special contract to meet the section 18 public interest requirement. LRIC would provide such a reasonable price floor in such a case, assuming the ILEC demonstrated that LRIC was the contribution-maximizing price.

The other extreme would be to use a TELRIC-based price to develop the cost floor for the smallest number and cost of UNEs that any hypothetical facilities-based competitor would need to reach the customer. The theory for this approach would be that if at least one competitor can limit its access requirement to that element or those elements, the fact that most others will want to purchase access via additional elements should not limit the ILEC's ability to compete with that one firm using the narrowest set of UNEs. However, this approach risks understating the cost of access to competitors generally, and overstating the likelihood of the kind of competition that the ILEC actually faces.

The statute does not speak in terms of a single competitor or potential competitor, but rather of "the telephone utility's competitors". The price floor is "the price of the lowest cost form of access that *competitors* could purchase to compete for customers with comparable volumes of usage..." (emphasis supplied). Too narrow a reading of the term "access" would also tend to undermine the pro-competition goals of New Hampshire and federal telecommunications policy.

In choosing the list of UNEs that the ILEC must price out at TELRIC in order to capture the cost of "access" for the purposes of RSA 378:18-b, II, then, we look to the cost of the most likely competitive approach to provisioning the service.

Our focus is: what UNE elements would the average competitor likely use to compete for this type of service to customers with this volume of usage in this exchange?

The incumbent will have to show what the typical competitor is likely to choose by way of UNEs, in order to limit the TELRIC basis to those elements. If and to the extent the ILEC is able to demonstrate that the proposed configuration is likely, the non-UNE competitive elements that make up that service provision may be priced out at the lowest contribution-maximizing price, which may be close to LRIC, for the purposes of developing the price floor. This approach is necessary to insure that the ILEC is able to effectively compete while receiving optimum contribution to fixed costs, both of which are in the public interest within the meaning of RSA 378:18.

In order to establish a baseline of required UNEs for Centrex service, the most common special contract service provided in the past, we will require Bell Atlantic to submit a complete and accurate list of network elements required to provide Centrex service by a facilities-based CLEC who elects to provision Centrex solely by combining UNEs. We will then ask all other interested parties to review the list and provide comments on whether the list is complete and accurate. Once we have determined that the list is complete and accurate, we will thereafter require that when BA or any other ILEC submits a

special contract, its cost study must identify which UNEs are included in its price floor calculation and whether each UNE is priced based on a TELRIC price floor, or some other, such as LRIC. If an ILEC does not demonstrate that it has accurately identified those UNEs that a competitor would not have to purchase to provide the service, we will assume that a UNE is necessary and will apply the relevant TELRIC price floor for those elements.

C. Conclusion

The conclusions which we reach here today are not supported solely by their consistency with the statutory mandate of RSA 378:18-b and 18. The statutory pricing requirements also foster sound pricing policy. To the extent that an ILEC possesses essential facilities that competitors are required to purchase in order to provision the service that is the subject of a special contract, the public's interest in promoting fair competition requires that we prevent an ILEC from putting a price squeeze on competitors. Under these circumstances, to allow the use of LRIC as the basis for the price floor, even with the imputation proposed by BA here, would create such a price squeeze, since a competing provider would need to purchase UNEs that are based upon the underlying higher-cost TELRIC methodology.

We agree with AT&T's position that it is "not at all

clear that allowing Bell Atlantic to enter into special contracts priced to cover a very narrowly defined set of incremental costs of serving the particular customer is in the public interest". AT&T Brief at 6. As AT&T points out in its brief, where special contracts are justified on such narrow grounds, "customers with greater needs or fewer options can be forced to pay more than customers not compelled to take service from the monopolist". AT&T Brief at 5. Our underlying concerns again are to encourage the development of competition by applying the appropriate incremental cost method and to protect captive customers from subsidizing competitive options. However, the New Hampshire statutes expressly provide for ILECs to have pricing flexibility within certain boundaries, and the TAct does not preempt the state from permitting such flexibilities.

Given the fact that UNE pricing for required access elements will be based upon TELRIC, we virtually eliminate the possibility that the use of one methodology with regard to special contracts and another with regard to UNEs purchased from a tariff will result in a price squeeze to BA's competitors. We note that special contract customers in such situations will not provide the same level of contribution to joint and common costs as they would if all elements were priced in such cases at TELRIC or at the retail tariff rate. To the extent captive ratepayers are at risk of being left in the position of contributing more

toward joint and common costs than an ILEC's special contract customers, we retain the authority to review the reasonableness of shifting cost responsibility for joint and common costs to remaining customers when we examine such customers' rates. See Appeal of Campaign for Ratepayer Rights, 142 NH 629 (1998). Nothing herein or in any order approving a special contract can be construed as a finding that such a cost shift is warranted. Id.

In order to monitor the impact that special contracts have on an ILEC's revenues, we will order that each ILEC providing service to customers under special contracts file a report with the Commission on or before March 31 of each year. The report shall contain information which describes the revenues that the ILEC would have received from those special contract customers had service been provided under applicable tariffs, and the revenues the ILEC received under the special contracts.

III. MOTION FOR PROTECTIVE ORDER

A. Background

On March 25, 1999 BA filed a Verified Motion for Protective Order seeking, pursuant to RSA 91-A and N.H. Admin. Rule Puc 203.04, 204.05 and 204.06, to exempt from disclosure portions of the Special Contracts and the support information. BA filed the information for which it seeks confidential treatment (the Information) in 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.

By affidavit, BA Senior Specialist, Stephen Gannon, attests that the representations of fact contained in the Motion regarding the Information are true and accurate to the best of his knowledge and belief. The Motion states that neither the Staff nor the OCA took a position with regard to this Motion prior to its filing.

B. The Information Bell Atlantic Seeks to Protect

The Information was provided by the Company in response to Staff March 15, 1999 revised data requests 1-1, 1-3, 1-4, 1-5, 1-7, 1-10, 1-11, 1-12 (in part), 1-13, 1-14, 1-19, 1-20, and

1-22 (in part).

The Information includes the following: Exhibit 1-1, BA's currently effective special contracts; Exhibit 1-3, BA's continuing property records; Exhibit 1-4, various cost data in support of the Special Contracts; Exhibit 1-5, data in support of a lower installation factor relied upon in BA's special contract cost studies; Exhibit 1-7, central office installation factors used for TELRIC and special contract purposes in all other BA states; Exhibit 1-12, for special contract 98-4 (McLane, Graf, Raulerson & Middleton) and 98-5 (Easter Seal Society of New Hampshire), cost details in support of administrative costs; Exhibit 1-13, for special contract 98-4 and 98-5, cost details in support of administrative costs; Exhibit 1-14, for special contract 98-4 and 98-5, additional vendor discount adjustment; Exhibit 1-16, for special contract 98-4 and 98-5, information on why annual carrying charge factors for land and buildings and buildings were omitted; whether carrying changes for land and buildings and buildings are applied to TELRIC costs; details in support of these TELRIC factors; information on whether annual carrying charge factors for land and buildings and building factors for cost studies for new tariff services are the same or different than those in TELRIC cost studies; Exhibit 1-17, information on other customer requests for special contract proposals received by BA to provide

Centrex and/or toll service; Exhibit 1-19, for special contract 98-4 and 98-5, information and calculations to determine line card investments, line term-investments and common switch network investments; Exhibit 1-20 for special contract 98-4 and 98-5, calculations used to determine all outside plant investment made to serve each special contract customer; and Exhibit 1-22, testimony provided in Vermont in support of a special contract filing similar to that provided in New Hampshire under the instant docket.

In its motion, BA avers that (1) the Company regularly seeks to prevent dissemination of the Information, which is not made available to or known by the general public, in the ordinary course of its business; (2) the Information is compiled from internal databases that are not publicly available, are not shared with any non-BA employees for their personal use, and are not considered public information; (3) any dissemination of the Information to non-BA employees is labeled as proprietary; (4) disclosure of the Information would unfairly provide customers seeking special contracts with an enhanced bargaining position through information which would otherwise be unavailable if BA were an unregulated private enterprise; and (5) the Information includes material not reflected in tariffs of general application, such as network size, routing and configuration data, information regarding specific service features, and

pricing and incremental costs and contract terms such as special rates and billing details.

C. Commission Analysis Regarding Protective Treatment

The Information contains competitively sensitive data that falls within the "confidential, commercial or financial information" exemptions from disclosure set forth in RSA 91-A:5,IV and Puc 204.06, including competitively sensitive data for the provision of competitive services, such as targeted market demand forecasts, revenue projections and costs.

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 BA'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.[3]

[3] As 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

(continued...)

Based upon the foregoing, it is hereby

ORDERED, that Special Contracts submitted pursuant to RSA 378:18, shall be analyzed consistent with the above discussion; and it is

FURTHER ORDERED, that Bell Atlantic submit by January 7, 2000, to the Commission and service list a complete list of UNEs that would be required to provide Centrex service by a CLEC with no facilities; and it is

FURTHER ORDERED, that any party wishing to comment on the completeness and accuracy of the list of UNEs provided by Bell Atlantic do so by January 28, 2000; and it is

FURTHER ORDERED, that the Motion for Protective Order of New England Telephone and Telegraph Company, d/b/a Bell Atlantic - New Hampshire, is GRANTED; and it is

FURTHER ORDERED, that the protective treatment provisions of this Order are 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 in light of RSA 91-A, should circumstances so warrant; and it is

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[3](...continued)
from the definition of public records for purposes of RSA 91-A (the right-to-know law), effective August 24, 1999.

FURTHER ORDERED, that Bell Atlantic will be allowed to resubmit the contracts that gave rise to this docket provided that they are accompanied by the showing required by this Order.

By order of the Public Utilities Commission of New Hampshire this second day of December, 1999.

Douglas L. Patch Chairman	Susan S. Geiger Commissioner	Nancy Brockway Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary