

DT 99-164

BELL ATLANTIC

ATM Tariff

Order Approving ATM Tariff

O R D E R N O. 23,389

January 18, 2000

APPEARANCES: Victor DelVecchio, Esq., for Bell Atlantic, Tom Lyle for Vitts Network, Eugene F. Sullivan III, Esq., for Destek Networking Group, Inc., Anne Ross, Esq., for the Office of Consumer Advocate and Barclay Jackson, Esq., for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On July 7, 1999, the New Hampshire Public Utilities Commission (Commission) issued Order No. 23,255 in Docket No. DT 99-086 conditionally approving a special contract between New England Telephone and Telegraph Company d/b/a Bell Atlantic - New Hampshire (Bell Atlantic) and the University of New Hampshire for Asynchronous Transfer Mode (ATM) Cell Relay Service. The special contract provides, via high-speed User Network Interfaces (UNIs), a fast packet cell relay service using Bell Atlantic's ATM network within the State of New Hampshire, at the same uniform statewide rate for each UNI. The Order imposed a condition on Bell Atlantic, requiring that Bell Atlantic file a tariff within 90 days making ATM services available throughout the State upon the same terms and conditions and at the same prices as the special contract.

On October 5, 1999, Bell Atlantic filed an ATM Cell Relay Custom Network Service tariff (ATM Tariff) in compliance with the Order. On October 28, 1999, the Commission received a Motion dated October 26, 1999, from Vitts Networks, Inc., (Vitts) requesting that the Commission suspend the tariff. On November 3, 1999, the Commission issued Order No. 23,335 suspending the proposed tariff for an additional 30 days and setting hearings for November 22 and 23, 1999. On November 18, 1999, the Destek Networking Group, Inc. (Destek) filed a petition to intervene.

On November 18, 1999, Bell Atlantic filed a request to revise the procedural schedule, to suspend the November 22 and 23 hearing dates because of the unavailability of Bell Atlantic's primary witness, and to permit the filing of comments in lieu of hearings. Bell Atlantic also proposed to defer implementation of the tariff for an additional 30 days recognizing the Commission would not likely be able to reschedule the hearings and complete the investigation by December 4, 1999, the date on which the tariff would have gone into effect pursuant to RSA 378:6,IV.

On November 19, 1999, the Commission's Executive Director and Secretary issued a letter stating that the Commission determined that postponement of the hearings would

promote the orderly and efficient conduct of the proceeding, but that written comments should not replace the hearings. Accordingly, a hearing was scheduled for December 15, 1999. In order to assist the Commission in its review of the issues, all parties were required to file summaries of their positions by December 10, 1999.

On November 22, 1999, the Commission received a written summary of the Office of Consumer Advocate's (OCA) position. On December 13, 1999, the Commission received written comments from Bell Atlantic.

On December 15, 1999, the Commission held a hearing to determine whether the tariff complies with the Commission's Order No. 23,255 and to allow all interested parties an opportunity to comment on the tariff and supporting materials. At the hearing, the Commission granted the motions to intervene of Vitts and Destek.

II. POSITIONS OF THE PARTIES AND STAFF

A. Bell Atlantic

Bell Atlantic testified that the ATM tariff it filed provides the same offering of service as contained in the special contract, in accordance with Order No. 23,255. Specifically, like the special contract, the tariff includes a five-year term with a minimum of 30 UNIs at 1.5 megabits per

second and a maximum average local channel length of 19.8 miles. The proposed tariff would be available throughout Bell Atlantic's exchange service area and is also available for resale.

Bell Atlantic also filed a cost study as required, and testified it used conservative assumptions in many of its calculations. Bell Atlantic averred the price of the proposed tariff exceeded the cost, and that the filing fully complied with the Commission's directive. In addition, Bell Atlantic testified that there is an ATM interstate tariff, available today with length of term options and no minimum required number of UNIs, which was not priced on a statewide average basis but rather contained different prices for UNIs within certain mileage blocks. Bell Atlantic explained any customer could purchase this service from the Bell Atlantic interstate tariff as long as the customer's total traffic contains at least 10 percent interstate traffic. In response to questioning, Bell Atlantic stated it planned to introduce an intrastate ATM tariff which mirrors the interstate tariff during the first half of the year 2000, and that it is not adverse to filing such a tariff as quickly as possible. The Company further stated that it was unlikely that many customers would be interested in a purely intrastate ATM

service, even if the number of UNIs or length of commitment were reduced.

B. Vitts

Vitts did not present a witness. In closing arguments, Vitts expressed concern with the price of this tariff in areas where Vitts is not collocated. Vitts urged the Commission to consider ordering Bell Atlantic to amend its interconnection agreements to include enhanced expanded links to assist competitors in expanding their networks to reach customers in central offices where competitors are not collocated. Vitts also asked the Commission to consider modifying the 5-year term required by the tariff and the special contract.

C. Destek

Destek did not present a witness. In closing arguments, Destek encouraged the Commission to require a distance sensitive state-specific ATM tariff from which a provider could purchase, with a pricing structure that includes different rates for different physical UNI lengths, Destek argued that this would be more reflective of costs than a statewide averaged rate. Destek argued such a rate structure would give a provider the opportunity to average its retail price, as Bell Atlantic was permitted to do in the UNH

special contract.

D. OCA

OCA did not present a witness. OCA filed written comments suggesting the tariff be rejected without prejudice until the Commission decides the appropriate cost methodology to be used in evaluating special contracts. In closing arguments, OCA suggested the Commission require a shorter term for the proposed tariff and a more flexible minimum number of UNIs.

E. Staff

Staff did not present a witness. In closing arguments, Staff stated it believed the proposed ATM tariff complied with the requirements of Order No. 23,255 and that the cost study demonstrated the price exceeded a TELRIC price floor. Staff recommended the tariff be approved.

III. COMMISSION ANALYSIS

We have reviewed the record in this proceeding and considered the recommendations of all parties and Staff. After considering the record, we believe the primary concerns identified include the proposed length of the term of the tariff (five years) and the minimum requirement for 30 UNIs. We note that no party contested Bell Atlantic's cost analysis and it appears to be substantially consistent with the special

contract pricing requirements detailed in our Order No. 23,357 (issued December 2, 1999).

After considering the parties' comments with respect to the term and number of UNIs required to purchase service from this tariff, we find that the tariff, as proposed, is consistent with our directive in Order No. 23,255 and we will therefore approve it. However, at a later date we may order Bell Atlantic to file a tariff with greater options for customers, including terms shorter than five years and prices that vary according to the term or other conditions. In order to make an informed decision about whether to require an additional tariff, we will require Bell Atlantic to keep us informed of customer requests for ATM service that cannot be fulfilled by the existing tariff. If this information demonstrates that customers would benefit from availability of intrastate ATM on a term shorter than five years or fewer than 30 UNIs, the Commission will consider the appropriateness of an additional tariff filing. If we find that demand exists, it would be preferable if Bell Atlantic files a tariff with more options rather than file additional special contracts.

Finally, in order to expedite Bell Atlantic's filing of the intrastate ATM tariff that mirrors the interstate tariff, we require that such a tariff be filed either 30 days

after Bell Atlantic introduces the service in another New England state or by June 30, 2000, whichever occurs first.

Based upon the foregoing, it is hereby

ORDERED, that the ATM tariff issued on October 5, 1999, resubmitted on December 1, 1999, is approved as filed; and it is

FURTHER ORDERED, that Bell Atlantic shall notify the Commission of customer requests for ATM service that cannot be fulfilled by the ATM tariff here approved, as discussed above; and it is

FURTHER ORDERED, that Bell Atlantic shall file an intrastate ATM tariff which mirrors its interstate tariff either 30 days after it files the tariff in another New England state or by June 30, 2000, whichever is earlier.

By order of the Public Utilities Commission of New
Hampshire this eighteenth day of January, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary