

DT 99-018

BELL ATLANTIC

Special Contracts

Order on Motion for Clarification and/or Reconsideration

O R D E R N O. 23,493

May 30, 2000

On December 30, 1999, New England Telephone and Telegraph Company d/b/a Bell Atlantic-New Hampshire (BA) filed a Motion for Clarification And/Or Reconsideration of certain portions of the Commission's Order No. 23,357 dated December 2, 1999 (the Order) in this docket.

I. BA's Motion

BA requested that the Commission clarify the following:

- (1) That Centrex UNEs that BA must list, if necessary, should be included in a price-floor calculation in those instances where the Company faces competition from a CLEC that chooses to compete for a particular special-contract customer by purchasing UNEs. BA asked the Commission to clarify that reference to the Centrex UNE list should not be necessary if the competitor does not purchase UNEs from BA, i.e., is facilities-based or would provide an alternative using customer premises switching equipment (CPE),

such as private branch exchange (PBX) or key system equipment;

- (2) That an express representation from BA as to the competitive circumstances surrounding a particular special contract satisfies the "affidavit" or attestation requirement; and,
- (3) That, instead of an annual special-contracts report, the Commission permit BA to submit the requested information when any revenue-requirement analysis is submitted as part of a rate case filing.

II. AT&T's Response

On January 11, 2000, AT&T Communications of New England, Inc. (AT&T) filed in Opposition to BA's Motion. AT&T stated that the Commission's order established a clear procedure for BA to use to determine when it must include TELRIC or, alternatively, the lowest contribution maximizing price in its price floor calculation.

AT&T further argued that BA's request for clarification be rejected because it presumes the results of, without engaging in, the analysis it seeks to clarify, and that BA should not be allowed to simply assume that the typical or average customers will not need UNEs to compete.

AT&T also argued that the Commission should not accept a price floor calculation based on a long run incremental cost (LRIC) analysis that does not include all of the long run incremental costs associated with providing the service or elements of the service at issue.

III. Commission Analysis

We address each of the three issues raised by BA in its filing:

- (1) We believe that the Commission's order is clear with respect to our statement that BA must provide a complete list of the UNEs required to provide Centrex service by a CLEC with no facilities. To the extent that a clarification is needed, the Commission's use of the list provided will be case-specific. We will rely on BA's filing in each case to determine which UNEs on the list should be included in the price floor analysis for that particular case. As stated in our Order, "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."

(Order No. 23,357, at p. 21.)

- (2) Regarding BA's second issue, i.e., its assertion that an express representation from BA as to the competitive circumstances surrounding a particular special contract would satisfy the "affidavit" or attestation requirement, we disagree with BA's conclusion. We believe that the order makes it clear that the proof regarding the level of competition faced in the individual circumstances surrounding a special contract must be mapped out clearly in each instance and that BA's own representation that such competitive circumstances exist is insufficient proof of the actual level of competition that exists for the services sought by BA's potential special contract customer. It is for this reason that the affidavit must come from the target customer, as stated in the Order (Order, at 11). We believe that the intention of the order is clear in this regard and requires no further clarification, but we reiterate the conclusion in

the order that "Ultimately, ... 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." (Order, at 11.) The Commission further notes that while the order makes it clear that the Commission is willing to accept the target customer's affidavit *in lieu of* evidence of market share loss for similar customers in the affected exchange, the strength of competition may be more readily ascertained by providing the affidavit *in addition to* providing evidence of market share loss. We note that, as we observed in Order No. 23,357, the ILEC must show that the special contract price meets the public interest because it maximizes the contribution from the customer, and that the more robust the level of competition, the lower the special contract price may be and still meet this public interest test. We also note that in recent filings, BA has not been addressing the contribution-maximization issue. Therefore, we will require the customer affidavit include the price of at least one competitive offer

to help us assess profit maximization.

- (3) With respect to the third issue raised by Bell Atlantic, while we acknowledge the fact that the data to be provided in the annual reports may be most meaningful and useful in the context of a rate case proceeding, we feel that the time between such proceedings may be too lengthy and that, therefore, some form of interim reporting will allow the Commission to better assess the magnitude of the differential between Special Contract rates and tariffed rates on an ongoing basis. Further, we do not believe that reporting such information will be unduly burdensome to the company and that the benefits to the Commission of having this information on an annual basis outweigh the costs of providing it.

We note that the Company has not complied with our original order in the special contract filings that have been submitted since the issuance of Order No. 23,357 on December 2, 1999 (see, DT 00-014, DT 00-020, DT 00-075, DT 00-076, DT 00-082, DT 00-085, DT 00-099). BA should therefore supplement these filings with the requisite information as spelled out in Order No. 23,357 and as clarified herein.

Based upon the foregoing, it is hereby

ORDERED, that Bell Atlantic must provide a complete list of the UNES required to provide the Special Contract service by a CLEC with no facilities, and it is;

FURTHER ORDERED, that Bell Atlantic provide an affidavit from the target customer attesting to CLEC responses made to a solicitation of bids for the services covered by the special contract in question, and it is;

FURTHER ORDERED, that Bell Atlantic shall meet the annual Special Contracts reporting requirements as specified in Order No. 23,357.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of May, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary