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June 12, 2000

D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 3-G

Consolidated Petitions of New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts, Teleport Communications Group, Inc., Brooks Fiber Communications of Massachusetts, Inc., AT&T Communications of New England, Inc., MCI Telecommunications Company, and Sprint Communications Company, L.P., pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration of interconnection agreements between Bell Atlantic-Massachusetts and the aforementioned companies.

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I. INTRODUCTION

On September 25, 1998, the Department of Telecommunications and Energy ("Department") issued an Order[1] ("Phase 3-E Order") in the Consolidated Arbitrations being held pursuant to the Telecommunications Act of 1996 ("Act").[2] The general scope of the Phase 3-E Order was the issue of performance standards, and remedies for failure to meet those standards, for the provision of service from New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts ("Bell Atlantic") to competitive local exchange carriers ("CLECs"). One aspect of the Order was a conclusion by the Department that Bell Atlantic should provide a "flow-through" measure and remedy as part of its compliance filing. CLEC orders are considered to be "flow-through" orders if they are transmitted electronically to Bell Atlantic and accepted by Bell Atlantic's service order processing system without manual intervention.

Bell Atlantic made a compliance filing on November 13, 1998, in which it indicated that additional analyses were being conducted to identify a measure of flow-through (November 13, 1998 Filing at 3). On December 3, 1999, Bell Atlantic submitted a filing in which it presented a flow-through measure and standard ("Compliance Filing"). On January 18, 2000, AT&T Communications of New England, Inc. ("AT&T") filed comments on the Bell Atlantic submission, and on January 19, 2000, MCI WorldCom, Inc. ("MCI WorldCom") filed comments. Bell Atlantic offered reply comments on February 1, 2000.

In its December 3 filing, Bell Atlantic stated that its proposed flow-through measure and standard is based on the information gathered during the previous year and "the evolving state of competitive local exchange markets, including state and federal decisions affecting the competitive landscape." Bell Atlantic proposed that the flow-through measurement be based on the total number of wholesale orders that flow through as a percentage of valid orders from CLECs received through the electronic ordering interface and processed directly to the legacy service order processing system without manual intervention, divided by the total number of orders submitted by the CLECs that reach confirmation stage. The flow-through calculation, suggests Bell Atlantic, should exclude orders that require manual intervention because of factors beyond its control, such as rejects caused by CLEC errors (Compliance Filing at 1).

Bell Atlantic further stated that there is no close retail analog for flow-through; therefore, it is best measured by an absolute standard. The standard suggested by Bell Atlantic is that flow-through of 55 percent of all wholesale services ordered should be the target level for this metric (id.).

AT&T and MCI WorldCom offer a number of criticisms of Bell Atlantic's proposal. Both parties argue that parity with Bell Atlantic's retail operations, not an "arbitrary" percentage chosen by Bell Atlantic, should be the applicable performance standard for flow-through. Further, they say, disaggregation of the flow-through metric into different types of orders may be necessary to provide meaningful measurements (AT&T Comments at 2-3; MCI WorldCom Comments at 1-4). In any event, argues AT&T, a 55 percent flow-through rate is unacceptable if competition is to develop, and a 95 percent flow-through is more appropriate (AT&T Comments at 3). MCI WorldCom also states that Bell Atlantic should commit to provide notice of jeopardies once jeopardies are provided electronically to CLECs (MCI WorldCom Comments at 3). MCI WorldCom concludes by stating that a single measure of performance metrics, with appropriate remedies, should govern the relationship between Bell Atlantic and the CLECs. Thus, MCI WorldCom states, the Carrier-to-Carrier ("C2C") metrics being developed as part of the Section 271 process should supersede those of the Consolidated Arbitrations once appropriate remedies for the C2C metrics are adopted (id. at 3-4).

Bell Atlantic's response follows two paths. First, Bell Atlantic argues that the measures and standards it has proposed for flow-through are reasonable (Bell Atlantic Reply Comments at 1). Second, it argues that Department actions have made it unnecessary for the Department to consider any flow-through measures in this proceeding because the issue is being fully addressed in the Section 271 proceeding, D.T.E. 99-271. Bell Atlantic notes that, in a Letter Order issued on January 14, 2000, the Department adopted the New York C2C performance guidelines, which include a number of flow-through metrics. In summary, Bell Atlantic states that events have overtaken the Department's evaluation of flow-through in the Consolidated Arbitrations. Thus, argues Bell Atlantic, the Department should use the C2C flow-through measurements and conclude this phase of the Consolidated Arbitrations (id. at 2-3).

We need not address here the particulars of Bell Atlantic's filing or the CLEC's concerns about it because we agree with Bell Atlantic on this latter point. Our investigation of C2C guidelines and flow-through measurements in the Section 271 proceeding provide the most up-to-date and appropriate forum for resolving these issues. The Department has already adopted the C2C guidelines, which are in place now, and those guidelines include a percent flow-through metric. D.T.E. 99-271, Letter Order (January 14, 2000). In addition, the Department is currently addressing penalties and remedies in the Section 271 proceeding, D.T.E. 99-271, where it is developing a performance assurance plan for Bell Atlantic. In our review and implementation of the Section 271 proceeding, D.T.E. 99-271, where it is developing a performance, the Department may address whether Bell Atlantic should be required to pay penalties for any missed percent flow-through performance since the date the C2C guidelines were adopted in Massachusetts.[(3)]

Accordingly, Bell Atlantic's proposed compliance filing in this proceeding with regard to flow-through measures is disallowed, and this phase of the Consolidated Arbitrations on performance standards is closed.

V. ORDER

Accordingly, after due consideration, it is

ORDERED: That Bell Atlantic's Compliance Filing on flow-through measures is disallowed; and it is

FURTHER ORDERED: That Phase 3 of the Consolidated Arbitrations is closed.

By Order of the Department,

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James Connelly, Chairman

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner

1. Consolidated Arbitrations, D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 - Phase 3-E (1998).

2. 47 U.S.C. § 252.

3. Because a percent flow-through metric has not yet been established in the Consolidated Arbitrations, Bell Atlantic has not yet paid any penalties for possible substandard performance in this area.