September 17, 1998

D.P.U./D.T.E. 96-83

Petitions of MCI Telecommunications Company, pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration of an interconnection agreement between MCI and New England Telephone and Telegraph Company, d/b/a Bell Atlantic-Massachusetts.

APPEARANCES: Hope Barbulescu, Esq.
One International Drive
Rye Brook, New York 10573

-and-

Alan Mandl, Esq.
Ottenberg, Dunkless, Mandl & Mandl
260 Franklin Street
Boston, MA 02110
FOR: MCI TELECOMMUNICATIONS CORPORATION
Petitioner

Bruce P. Beausejour, Esq.
John Messenger, Esq.
185 Franklin Street, Room 1403
Boston, MA 02107

-and-

Robert N. Werlin, Esq.
Keegan, Werlin and Pabian, LLP
21 Custom House Street
Boston, MA 02110
FOR: NEW ENGLAND TELEPHONE & TELEGRAPH COMPANY D/B/A BELL ATLANTIC - MASSACHUSETTS
Respondent

ORDER ON BELL-ATLANTIC/MCI INTERCONNECTION AGREEMENTS

I. INTRODUCTION

This is an arbitration proceeding between New England Telephone and Telegraph Company d/b/a Bell Atlantic - Massachusetts ("Bell Atlantic," previously "NYNEX") and MCI Telecommunications Corporation ("MCI") being held pursuant to the Telecommunications Act of 1996 ("the Act"). This proceeding resolves issues so that Bell Atlantic and MCI may complete an interconnection agreement between the parties. These two parties have participated in a consolidated arbitration proceeding with several other competitive local exchange carriers. The Department has issued a number of arbitration awards in that proceeding, although certain issues remain unresolved. See Consolidated Arbitrations, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94.

The Bell Atlantic/MCI arbitration has gone through multiple steps, the most recent of which was an Order on Exceptions issued by the Department. MCI/NYNEX Arbitration, D.P.U./D.T.E. 96-83 (1998) ("Order on Exceptions").[1] In that Order, the Department responded to the parties' exception to rulings issued by the Arbitrator and directed the parties to incorporate those determinations into an interconnection agreement and to file that agreement with the

[1]Late in 1996, the companies participated in a bilateral proceeding conducted by Arbitrator Paul Hartman that was designed to resolve issues relating to their interconnection agreement. On December 26, 1996, the Department issued an order adopting the findings of Mr. Hartman. MCI/NYNEX Arbitration, D.P.U. 96-83 (1996). In that Order, the Department asked Bell Atlantic and MCI to prepare a final agreement based on the arbitration awards. During the course of that effort, the companies requested another arbitration procedure to resolve disputed contract language. The Arbitrator held hearings, and subsequently issued five arbitration awards between July 1997 and February 1998. The parties were given the opportunity to file exceptions to these awards. In its Order on Exceptions, issued May 21, 1998, the Department made findings on the exceptions and adopted the remainder of the Arbitrator's awards.

Department.[2] Several weeks after the Order on Exceptions was issued, the parties informed the Department of an inability to reach agreement on the language of three sections of the interconnection agreement. On June 18, 1998, Bell Atlantic and MCI each filed interconnection agreements containing its version of the disputed terms. On July 1, 1998, Bell Atlantic and MCI each filed comments indicating its understanding of the nature of the disagreements and its proposed contractual language. This Order resolves these remaining issues and permits the parties to file their completed interconnection agreement with the Department.

II. UNE COMBINATIONS PLACEHOLDER

In Phase 4 of the Consolidated Arbitrations proceeding, the Department is considering the appropriate resolution to the issue of unbundled network elements ("UNE") combinations.[3] At a hearing on January 29, 1998, concerning the Bell Atlantic/MCI bilateral arbitration, the Arbitrator and parties recognized the changing nature of this dispute and discussed ways in which it might be handled for purposes of allowing the parties to move to the next step in

---

[2]Pursuant to 47 U.S.C. § 252(e), a state commission to which an interconnection agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

[3]On March 13, 1998, the Department issued an Order in which we determined, inter alia, that we would not challenge an Eighth Circuit Court of Appeals decision by requiring Bell Atlantic to combine UNEs in the exact manner prescribed by the Federal Communications Commission ("FCC") and proscribed by the Eighth Circuit Court. Consolidated Arbitrations, D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 4-E (1998) ("Phase 4-E Order"). The Eighth Circuit struck down an FCC rule requiring incumbent local exchange carriers to combine network elements for competing carriers. Iowa Utilities Board v. FCC , 120 F. 3d 753, 813 (8th Cir. 1997). In the current proceeding on UNE Combinations, the Arbitrator has described the issue to be decided as "whether Bell Atlantic's proposals with regard to UNE combinations are consistent with the Department's March 13th Order [Phase 4-E Order] or whether there are alternative proposals which, while consistent with the Department's Order, might better accomplish the goals of the Act" (Tr. 39, at 5).

formalizing an interconnection agreement (see Tr. 8, at 13-19). On April 3, 1998, during a hearing in the Consolidated Arbitrations, with MCI and Bell Atlantic counsel present, the Arbitrator gave direction on the treatment of the UNE combination issue to Bell Atlantic and AT&T Communications of New England ("AT&T"), requiring the parties to insert a placeholder section that would preserve the rights of both parties while the Department completed its review of the issue (Tr. 31, at 4-5).

Bell Atlantic has proposed language which, it asserts, responds to the Arbitrator's request and preserves the rights of both parties. This is the same language, notes Bell Atlantic, that appears in the interconnection agreement between Bell Atlantic and AT&T, which was approved by the Department on May 18, 1998 (Bell Atlantic Comments at 1-4). MCI asserts that it cannot agree to the Bell Atlantic language because that language provides that Bell Atlantic has no obligation to provide UNE combinations to MCI pending a final decision on the issue (MCI Comments at 2). According to MCI, its proposed language reflects the Arbitrator's January 29, 1998 direction. Bell Atlantic asserts that MCI has misunderstood the nature of the Arbitrator's directive and MCI's language is counter to the Department's Phase 4-E Order in the Consolidated Arbitrations and the order of the Eighth Circuit court. See Consolidated Arbitrations, D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 4-E (1998) ("Phase 4-E Order"); Iowa Utilities Board v. FCC, 120 F. 3d 753, 813 (8th Cir. 1997). Under the Department's Phase 4-E Order, argues Bell Atlantic, it is not obligated to provide UNE combinations to MCI (Bell Atlantic Comments at 3-4).

The Department finds that Bell Atlantic has correctly interpreted the Arbitrator's directive and the status of the case at this time. At the time of the Arbitrator's January 29, 1998

discussion with the parties in this docket, the Department had not yet issued its Phase 4-E Order in Consolidated Arbitrations. The language Bell Atlantic has proposed, which is identical to that found in the approved Bell Atlantic/AT&T interconnection agreement, is consistent with the Phase 4-E Order, memorializes the fact that certain issues with regard to UNE combinations remain to be determined and preserves both parties' rights. The Department directs the parties to include this language in the Bell Atlantic/MCI interconnection agreement.

III. ATTACHMENT I -- PRICING SCHEDULE

Attachment I of the interconnection agreement spells out the charges and fees permitted under the agreement. MCI argues that shortly before the Department's deadline for filing an interconnection agreement, Bell Atlantic submitted a pricing schedule that included many additional items that were not contemplated by either of the parties or the Arbitrator as part of the interconnection agreement (MCI Comments at 3). MCI further argues that Bell Atlantic's pricing schedule unnecessarily includes duplicate line items for certain services (id.). MCI contends that its pricing schedule accurately reflects the proposed charges and should be included in its interconnection agreement (id.).

Bell Atlantic states that MCI's pricing schedule is incomplete in that it excludes references for certain services or arrangements that are specified in the interconnection agreement (Bell Atlantic Comments at 4). Bell Atlantic notes that the pricing attachment is subject to the continuing jurisdiction of the Department and may be modified as ordered by the Department, but that it is critical that the attachment fully set forth the charges under the agreement. Bell Atlantic further asserts that duplication of some items does not harm MCI; instead, the omission of a rate reference in the pricing schedule could have the effect of

precluding Bell Atlantic from charging for services even though the interconnection agreement expressly provides that Bell Atlantic may charge MCI for those services (id. at 4-5). Bell Atlantic maintains that its pricing attachment is complete and should not be modified (id. at 5).

Attachment I of the interconnection agreement is to serve as "an inclusive repository of all the types of charges and fees that are permitted under the agreement." Order on Exceptions, Attachment A, Award of October 7, 1997, at 2. The Arbitrator's intent, and ours in approving his awards, was for Attachment I to be a clear and complete statement of all of the types of charges and fees that are permitted under the interconnection agreement, even if particular amounts have not yet been quantified. While MCI points to alleged examples of charges and fees that are not expressly authorized in the interconnection agreement, we disagree with MCI's interpretation that such fees are not authorized. They are charges which may be assessed associated with items that are authorized by the interconnection agreement. We understand MCI's concern, but it is the interconnection agreement that determines the items for which Bell Atlantic may charge -- not the item's inclusion in the pricing schedule. Bell Atlantic is correct that an occasional duplication in the schedule harms no party. Bell Atlantic is also correct that the inadvertent omission of a rate reference could place it in the awkward position of not being able to charge for an authorized service. Including all items provided for in the agreement in the pricing schedule is appropriate. Accordingly, Bell Atlantic's proposed Attachment I should be included in the parties' interconnection agreement.

IV. DIRECTORY LISTINGS

Under an award issued by the Arbitrator, MCI has the right to have its subscriber directory listings deleted from database listings that Bell Atlantic sells or licenses to third party

yellow page providers. See Order on Exceptions, Attachment A, Award of February 7, 1998, at 1. The parties disagree as to how the award should be stated in the interconnection agreement. Bell Atlantic, noting that MCI had asserted that the matter was addressed to its satisfaction in Bell Atlantic agreements in New Jersey and Virginia, has used language from those agreements in this proposed interconnection agreement. Bell Atlantic states that MCI's proposal for this provision goes beyond the Arbitrator's award and includes unwarranted changes to contract language that already has been resolved. Bell Atlantic further states that MCI's proposal would have MCI retain all revenues associated with the licensing of the listings (Bell Atlantic Comments at 7). According to Bell Atlantic, it is completely appropriate for Bell Atlantic to retain the revenues from licensing because it incurs all of the cost associated with licensing, and because MCI may instead license its own listings directly (id. at 8).

MCI states that it is entitled to all revenues derived from the sale of MCI customer listings. MCI maintains that its proposed provisions relating to this matter were approved by the Arbitrator. MCI states that Bell Atlantic had the opportunity to oppose its language in earlier arbitration sessions but did not (MCI Comments at 2).

The focus of the discussion during the January 29, 1998 arbitration session and of the Arbitrator's award was MCI's request to be able to obtain a deletion of its listings from the Bell Atlantic database if that database should be sold or licensed to a third party (see Tr. 8, at 3-9; Order on Exceptions, Attachment A, Award of February 7, 1998, at 1). In reaching his award, the Arbitrator noted that the Bell Atlantic South agreement cited by MCI appeared to be technically simple to carry out and to respond to MCI's desire to maintain some control over the listings of its customers. The Bell South language satisfies the award, and we direct that it be

used by the parties in their interconnection agreement. We note that use of this language does not preclude MCI from obtaining revenues from the licensing of its listings when it licenses those listings directly to a third party. When, however, the listings are maintained by Bell Atlantic and licensed as part of an agreement between Bell Atlantic and a third party, for the reasons stated by Bell Atlantic, it is appropriate for Bell Atlantic, not MCI, to retain the revenues from that license agreement.

Bell Atlantic notes that MCI has proposed wording changes in several other sections relating to directory listings. Bell Atlantic asserts that the changes go beyond the arbitration awards and are unwarranted (Bell Atlantic Comments at 9-10). MCI does not address these specific provisions in its comments. We find that Bell Atlantic has properly interpreted our rulings, and the parties should not include these changes in their interconnection agreement.

V. ORDER

After due consideration, it is

ORDERED: That the issues under consideration in this Order be determined as set forth above; and it is

FURTHER ORDERED: That the parties incorporate these determinations into a final agreement, setting forth the awarded terms and conditions and file that agreement with the Department within two weeks from the date of this Order.

By Order of the Department,

_____
Janet Gail Besser, Chair

_____
James Connelly, Commissioner

_____
W. Robert Keating, Commissioner

_____
Paul B. Vasington, Commissioner

_____
Eugene J. Sullivan, Jr., Commissioner