

August 14, 1998

D.T.E. 98-67

Investigation by the Department of Telecommunications and Energy of Bell Atlantic-Massachusetts' Fourth Annual Price Cap Compliance filing, filed with the Department on July 1, 1998, tariff revisions to M.D.P.U. No. 10 to become effective August 15, 1998.

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INTERLOCUTORY ORDER ON SUSPENSION OF BELL ATLANTIC-  
MASSACHUSETTS' FOURTH ANNUAL PRICE CAP COMPLIANCE FILING

I. INTRODUCTION

On July 1, 1998, New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts ("Bell Atlantic," "BA-MA" or "Company") filed revisions to its tariff M.D.P.U. No. 10, with the Department of Telecommunications and Energy ("Department") in compliance with NYNEX Price Cap, D.P.U. 94-50 (1995). The filing constitutes the Company's fourth annual filing under price cap regulation. The Department docketed this matter as D.T.E. 98-67. The proposed tariff revisions will become effective on August 15, 1998, unless suspended or disallowed by the Department.

According to Bell Atlantic, the Company has proposed a \$17.2 million reduction in overall revenue, representing a 0.97 percent reduction in intrastate revenues (Compliance Filing at 1). The reduction includes a \$0.6 million decrease in revenues for residential customers, a \$5.8 million decrease in revenues for business customers, and a \$10.8 million decrease in revenues for commercial mobile radio service ("CMRS") providers (id.). The Company's proposal also includes exogenous costs adjustments<sup>(1)</sup> to reflect new inter- and intrastate allocation rules for Other Billing and Collection ("OB&C") Expenses implemented by the Federal Communications Commission, and reciprocal compensation

expenses incurred when Bell Atlantic completes calls originating on Bell Atlantic's network and terminating on another carrier's network (id. at 21-22). The net effect of these adjustments is to lower the level of the revenue reduction from \$32 million to \$17.2 million.

Pursuant to notice duly issued, the Department held a public hearing at its offices on August 5, 1998, to afford the public an opportunity to comment on the Company's compliance filing. The Attorney General of the Commonwealth intervened as of right, pursuant to G.L. c. 12, § 11E. The Department granted the petitions to intervene of AT&T Communications of New England, Inc. ("AT&T"), United States Department of Defense and All Other Federal Executive Agencies, Global NAPs, Inc., MCI Telecommunications Corporation ("MCI"), RNK, Inc., and Sprint Communications Company L.P.

On August 3, 1998, AT&T filed comments with the Department requesting that the Department direct Bell Atlantic to refile its compliance filing to provide for reductions in intrastate switched access rates, and to reflect an overall revenue reduction that does not include an adjustment for exogenous costs associated with reciprocal compensation. On August 3, 1998, MCI filed a Request for Summary Rejection or Suspension of Bell Atlantic's Fourth Annual Price Cap Filing ("MCI Comments"). In its Request, MCI argues that Bell Atlantic has not met the Department's exogenous cost filing requirements for costs associated with reciprocal compensation, that the Department should summarily reject Bell Atlantic's compliance filing due to this defect, and that the Department should direct Bell Atlantic to refile its compliance filing without this exogenous cost adjustment. In the alternative, MCI requests that the Department suspend the Company's tariff and investigate the exogenous cost adjustment in Bell Atlantic's compliance filing. On August 7, 1998, Bell Atlantic responded to AT&T's comments and MCI's request, arguing that the Department should reject the claims of AT&T and MCI and permit Bell Atlantic's Price Cap tariff to become effective immediately subject to further investigation (Bell Atlantic Comments).

## II. SUMMARY OF THE COMPLIANCE FILING

The Company's July 1, 1998, Compliance filing revises M.D.P.U. No. 10 as follows:

### For Residence Customers

- Reduces the Zone 2, per-minute rates for Basic Exchange Service;
- Increases the Customized Intercept Service/Customized Intercept Service-Call Completion monthly per line rates;
- Increases rates for Call Waiting and associated feature packages which include Call Waiting; and

- Increases the Phonesmart Service monthly rate for Caller ID, Caller ID with Name, Call Return and Repeat Dial per activation, Call Return/Repeat Dial capped amount per activation, Call Manager, Call Manager with Name, Call Waiting ID, and Call Waiting ID with Name.

#### For Business Customers

- Reduces the Zone 2, business, per-minute rates for Basic Exchange Service;
- Increases the Phonesmart Service monthly rate for Caller ID, Caller ID with Name, Call Return and Repeat Dial per activation, Call Return/Repeat Dial capped amount per activation; Call Manager, Call Manager with Name, Call Waiting ID, and Call Waiting ID with Name;
- Increases various Analog Private Line monthly channel rates;
- Increases the monthly recurring and nonrecurring charges for DDS, DDS II and Superpath Digital Private Lines services;
- Reduces the rate for Infopath Packet Switched Service; and
- Increases the Late Payment Charge interest rate.

#### For Wireless Cellular Customers

- Replaces the tariffed rates for Type 1 (local) and Type 2 (terminating access) services with per minute rates, in accordance with interconnection agreements with the CMRS providers, resulting in a rate reduction.

#### For Conduit Licenses

- Increases conduit license fees for full and half ducts, in accordance with the Department's order in D.P.U. 91-218.

### III. POSITIONS OF THE PARTIES

#### A. AT&T

AT&T states that it has two main concerns with BA-MA's compliance filing: (1) the proposed rate reductions do not include carrier switched-access rates, and (2) the Company's \$21 million exogenous cost adjustment is unjustified (AT&T Comments at 1).

AT&T states that the Department previously determined that the Company's switched access rates are well above cost; and, therefore, AT&T urges the Department to reject the proposed rate adjustments and direct BA-MA to refile its compliance filing with proposed reductions in switched access rates (id.).

AT&T also states that reciprocal compensation payments pursuant to interconnection agreements do not meet the definition of exogenous cost changes as established by the Department in its original Price Cap Order (id. at 3). Contrary to BA-MA's assertion that reciprocal compensation represent a cost change, AT&T argues that reciprocal compensation is a new source of both payments and receipts that result from voluntarily negotiated contractual arrangements between BA-MA and other carriers (id. at 5). AT&T contends that BA-MA failed to include all other costs and revenue effects in its exogenous cost calculation attributable to the Act, such as the revenues from selling its retail services for resale and from offering unbundled network elements to wholesale competitors (id.). Accordingly, if the Department determines that BA-MA's interpretation of exogenous cost is correct, then the Company must be required to make a total net effect adjustment for all revenue and expenses consequences flowing from the Act (id. at 6).

#### B. MCI

MCI argues that reciprocal compensation is not an exogenous cost because the costs associated with the termination of calls over the network of one carrier that originate on the network of another carrier have been reflected on the books of BA-MA for decades as a result of its voluntary dealings with independent telephone companies (MCI Comments at 3). According to MCI, reciprocal compensation is simply a logical extension of these pre-existing voluntary arrangements (id.). MCI also claims that, long before the passage of the Act, BA-MA entered into voluntary interconnection agreements with Teleport and MFS Communications Company, Inc., and that at the time of the Department's investigation in D.P.U. 94-185, BA-MA was in the midst of negotiations with other carriers on issues including reciprocal compensation (id.). Thus, MCI contends reciprocal compensation is a function of competition and not a function of regulatory, judicial, or legislative changes since the adoption of the Price Cap Plan (id.). In addition, because BA-MA has agreed to reciprocal compensation pursuant to its interconnection agreements, MCI claims that these payments are not expenses beyond the Company's control and do not qualify as exogenous costs under the Price Cap Plan (id. at 5).

MCI also claims that BA-MA's exogenous cost claim is "patently deficient" for several reasons (id.). First, MCI argues that the Company referred to its exogenous cost adjustments as booked revenue, and that if booked revenue is not a cost, it cannot form the basis of an exogenous cost (id.). According to MCI, if booked revenue is determined as exogenous cost, then BA-MA incorrectly has ignored reciprocal compensation revenue and fees that it is collecting from other carriers including collocation and unbundled network elements (id. at 6). Second, MCI contends that because BA-MA has not provided the Department a calculation to verify the exogenous cost, the Department cannot determine whether the claimed exogenous cost affects the Company's annual revenue by at least \$3 million, as required by the Price Cap Plan (id.). Third, MCI claims that recognition of reciprocal compensation as an exogenous cost would result in BA-MA double recovery because the cost of terminating a local call is already recovered through the local service revenue which the Company collects from its end users when they place local calls that terminate over the network of another carrier (id. at 6-7). Fourth, MCI contends that, if the Department were to recognize reciprocal compensation as an exogenous cost, it would be opening the floodgates for recovery of all kinds of other costs as exogenous, such as costs paid for intraLATA access and interLATA access (id. at 7).

### C. Bell Atlantic

BA-MA argues that the Department should reject AT&T and MCI's argument to suspend its compliance filing, and instead allow the rate changes to become effective August 15, 1998 as filed (Bell Atlantic Comments at 3). BA-MA contends that it properly has made an exogenous cost adjustment for reciprocal compensation payments made to exchange carriers (id.). According to the Company, in D.P.U. 94-50, the Department defined exogenous cost changes as those changes beyond the Company's control and not reflected in the GDP-PI that affect the Company's annual revenues by at least \$3 million (id., citing D.P.U. 94-50, at 172-173 (1995)). BA-MA argues that, because reciprocal compensation is a direct result of the requirement in Section 251(b)(5) of the Act, it satisfies the regulatory, judicial, or legislative change uniquely affecting the telecommunications industry, as set forth in D.P.U. 94-50 (id. at 4). BA-MA claims that the GDP and GDP-PI measures do not reflect price increases for intermediate purchases of telecommunications services by businesses as inputs into the production of goods and services, and as BA-MA is an intermediate purchaser of such services, the cost to provide reciprocal compensation for terminating calls are not specifically reflected in GDP or the GDP-PI (id. at 4-5). Moreover, BA-MA claims that the reciprocal compensation expense for the test year also satisfies the \$3 million threshold established for exogenous cost changes (id. at 5). The expenses, BA-MA notes, are based on booked expenses which have been accepted by the Department as sufficient documentation in prior filings (id.).

BA-MA also argues that contrary to MCI's claim, BA-MA's rates reflect the costs of calls carried on the Company's network and does not include cost of terminating local calls on other carriers' networks (id.). The Company also contends that MCI misstates the facts with regards to the treatment of costs for terminating calls over independent telephone companies' ("ICOs") networks (id.). BA-MA states that it does not pay reciprocal



compensation to ICOs in Massachusetts for terminating local traffic, and that unlike reciprocal compensation, any costs associated with the exchange of local traffic between BA-MA and an ICO are already accounted for in BA-MA's retail rates (id. at 7).

Contrary to MCI's assertions, BA-MA contends that it does not voluntarily incur reciprocal compensation expenses, but rather is required by the Act to pay such compensation (id.). The Company asserts that because BA-MA had entered into interim compensation agreements with some carriers, that does not affect BA-MA's reciprocal compensation expenses qualifying as an exogenous cost change because those arrangements were temporary in nature pending the outcome of D.P.U. 94-185 (id.). Moreover, BA-MA contends, the passage of the Act "superseded" D.P.U. 94-185 (id.). Furthermore, contrary to AT&T and MCI's assertion, BA-MA does not seek to recover competitive losses due to the requirements of the Act, which is evident with how BA-MA is treating other requirements under the Act (id. at 8). The Company indicates for example that it loses revenues when it provides the local loop to its competitors rather than providing the service at retail, but has not sought to recoup the revenue it is losing with this service (id.).

The Company urges the Department not to reject its filing nor to direct it to refile a new Price Cap proposal because (1) the filing complies fully with the Price Cap rules, (2) the Company cannot reconstruct and submit a new price cap filing quickly including, possibly, a different set of price changes based on market considerations, and (3) if BA-MA is required to reduce charges which at a later date would need to be increased, these multiple rate changes could create customer confusion and irritation (id. at 8-9).

Finally, BA-MA urges the Department to reject AT&T's claim that the Company should be required to reduce switched access rates (id. at 9). BA-MA notes that AT&T's claim for additional switched access rate reductions has been considered and rejected by the Department in previous price cap filings (id.).

#### IV. ANALYSIS AND FINDINGS

As with prior annual filings, the issue for determination in this Interlocutory Order is whether to allow the rate changes proposed by Bell Atlantic to become effective on August 15, 1998, as filed, or to suspend the proposed changes, in whole or in part, pending further investigation. Pursuant to G.L. c. 159, §§ 19 and 20, the Department is "accorded broad discretion in allowing, suspending and investigating proposed changes to tariffs." See also NYNEX First Annual Price Cap, D.P.U. 95-83, at 14 (1995) (citations omitted).

The Company's filing and the intervenors' comments raise a number of questions about the proposed reciprocal compensation exogenous cost adjustment. In the past, the Department has declined to suspend a tariff where Bell Atlantic has made a sufficient showing to warrant allowing proposed tariff changes. See NYNEX Third Annual Price Cap, D.P.U. 97-67, at 10 (1997). Based on arguments made by intervenors and the

Company's showing to date, we see a need to further investigate the reciprocal compensation exogenous cost adjustment.

However, because the proposed exogenous cost adjustment is one element among many included in the Company's price changes, the Department cannot "suspend" the proposed exogenous cost adjustment alone, without also suspending the proposed rate changes, including the \$17-plus million in revenue reductions. Therefore, in the circumstances of this case, we find it appropriate to provide customers with some revenue reductions now (*i.e.*, the \$17.2 million reduction proposed by the Company) and possibly additional reductions later, based on the results of the full investigation. Because of the potential for further customer benefits, the Department intends to proceed expeditiously in its investigation of this matter. The Department also will address the question of interest payments at that time, if necessary.

Concerning AT&T's switched access rates argument, we note that, as long as it complies with the Price Cap pricing rules, Bell Atlantic has the discretion to decide which rates to change to produce the overall revenue reduction. See D.P.U./D.T.E. 97-67, at 11-12 (1998). AT&T continues to reargue an issue that has been previously decided.

Accordingly, for the reasons stated above, we decline to adopt the suggestions of the intervenors that we reject or suspend the exogenous cost adjustment, or require Bell Atlantic to make a new filing. Bell Atlantic is permitted to put into effect the rate changes as proposed, pending further investigation.

## V. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: That tariff M.D.P.U. No. 10, filed with the Department on July 1, 1997, by New England Telephone and Telegraph d/b/a Bell Atlantic - Massachusetts, be allowed to take effect on August 15, 1998, subject to further investigation, consistent with the procedural schedule established by the Department on August 5, 1998, and to possible adjustment as a result of that investigation.

By Order of the Department,

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Janet Gail Besser, Chair

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James Connelly, Commissioner

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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

1. Exogenous costs are positive or negative cost changes actually beyond the Company's control and not reflected in the GDP-PI (one of the inputs to the price cap formula). Exogenous cost changes may result from regulatory, judicial, or legislative changes uniquely affecting the telecommunications industry. D.P.U. 94-50, at 172-173 (1995).