

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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NYNEX/Teleport Arbitration) D.P.U. 96-73/74

NYNEX/Brooks Fiber Arbitration) D.P.U. 96-75

NYNEX/AT&T Arbitration) D.P.U. 96-80/81

NYNEX/MCI Arbitration) D.P.U. 96-83

NYNEX/Sprint Arbitration) D.P.U. 96-94

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BELL ATLANTIC-MASSACHUSETTS

REPLY COMMENTS ON

UNBUNDLED NETWORK ELEMENT PROVISIONING

Bell Atlantic-Massachusetts ("BA-MA") is filing this Reply to the comments filed by AT&T, FairPoint Communications Corp. ("FairPoint"), MCI WorldCom, and Z-Tel Communications, Inc. ("Z-Tel"), which address BA-MA's Comments of December 1, 1999, concerning the effects of the Federal Communications Commission's ("FCC") *UNE Remand Order* and its *Supplemental Order* on matters still under consideration in this stage of the proceeding. In that filing, BA-MA offered to provide the unbundled network platform or "UNE-P" without restriction for both new and existing serving arrangements, subject only to price changes in certain elements authorized in the *UNE Remand Order* (BA-MA Comments, at 7-11). BA-MA also proposed to amend its Enhanced Extended Loop ("EEL") tariff, which the Department will review in D.T.E. 98-57, to conform with FCC requirements set forth in the *UNE Remand Order* (BA-MA Comments, at 15-16). Although the comments of AT&T and MCI WorldCom are long on rhetoric – indeed, their comments largely consist of a rehash of past allegations that BA-MA's prior position on the provision of combinations has been unjustified and anti-

competitive – they raise few substantive issues concerning BA-MA's positions in the December 1st Comments. FairPoint and Z-Tel likewise raise little of a substantive nature in their comments. There is nothing that the Department has to decide here because the issues have either been resolved or will be addressed in other proceedings, such as D.T.E. 98-57. The few issues that the parties do present are discussed below.

I. BA-MA PROPERLY IDENTIFIED THE IMPACT OF THE *UNE Remand Order* ON THE PROVISION OF EXISTING UNE-P ARRANGEMENTS.

None of the parties raises any issue concerning BA-MA's assessment of the impact of the *UNE Remand Order* on the provision of existing UNE-P arrangements. As BA-MA explained in

its December 1st Comments, the FCC's *UNE Remand Order* principally affects the pricing of the local switching, Operator Services/Directory Assistance, and shared transport components of the UNE-P arrangement in those specific cases where the FCC found that these components were not elements subject to the § 251(c)(3) unbundling requirement (BA-MA Comments, at 7-11). The parties make only two points.

First, AT&T asserts that the Department should "not address the possibility of proposals to revise any UNE-P prices unless and until they are raised before the Department at a later date" (AT&T Comments, at 19). BA-MA proposed precisely the same thing in its December 1st Comments. BA-MA noted that it would attempt first to negotiate market-based rates with CLECs for the elements that did not have to be unbundled under § 251(c)(3), and absent an agreement, the issue would be brought to the Department for resolution. BA-MA also stated that until new rates become effective, BA-MA will continue offering the UNE-P components at the Department-approved TELRIC rates. None of the parties has any cause for complaint with BA-MA's position.

Second, AT&T urges that the Department order BA-MA to establish specific rates, terms and conditions for UNE-P, including timelines for preparing BA-MA switches to handle customized or standardized UNE-P, through negotiation or otherwise (AT&T Comments, at 22-23). Similarly, Z-Tel requests that the Department require BA-MA to file a tariff for UNE-P (Z-Tel Comments at 4). No Department action is required in response to these demands. BA-MA will file a tariff for UNE-P no later than January 15, 2000. That tariff will fully address all terms,

conditions, and charges for the offering. Pending Department review and approval of that tariff, BA-MA will nevertheless provide UNE-P arrangements – as it has been doing for existing arrangements since October 1999.

Moreover, BA-MA has already included provisions in its Interconnection Tariff, that is pending review in D.T.E. 98-57, relating to the Network Design Process ("NDR") by which CLECs may choose either customized or standard options for the local switching UNE. See D.T.E. Tariff No. 17, Part A, Section 1.3.2; Part B, Section 6.4. CLECs have

had ample opportunity in that proceeding to raise any concerns about the NDR process, and the Department should address the matter in that proceeding.

II. BA-MA'S PROPOSAL TO OFFER NEW UNE-P ARRANGEMENTS UNDER THE SAME TERMS AS COMPARABLE EXISTING ARRANGEMENTS FULLY ADDRESSES CLEC CONCERNS.

Although BA-MA stated that it would provide new UNE-P arrangements without restriction on the same terms as existing arrangements, AT&T and MCI WorldCom go to great lengths to explain why the Department should nevertheless issue an order compelling BA-MA to provide unrestricted UNE-P. According to AT&T, a Department order is required because BA-MA "has a sorry track record" regarding UNE-P and that it has even reserved the right to change its commitment "on a whim, at any time" (AT&T Comments, at 14). While AT&T's argument may make for good theater, it is short on substance.

Contrary to AT&T's claim, BA-MA nowhere suggested in its December 1st Comments that it could change the commitment to provide new UNE-P arrangements on a "whim, at any time." What BA-MA *said* is exactly what MCI WorldCom requested; BA-MA should provide new combinations "pending the outcome of the Eighth Circuit's ruling on FCC Rules 51.315 (c)-(f)" (MCI WorldCom Comments, at 13). AT&T's outright misrepresentation of BA-MA's position should be of concern to the Department. AT&T's motive is obvious. By falsely suggesting that BA-MA could pull the rug out from under it, AT&T is fashioning an excuse for competing only in the large business market in Massachusetts, but not in the mass market like other CLECs.

Although no order is necessary here, the Department should at most issue the directive suggested by MCI WorldCom. This protects all parties' interests while the scope of the FCC's combination rules is being resolved.

III. IN D.T.E. 98-57, THE DEPARTMENT IS ALREADY ADDRESSING BA-MA'S TARIFF IN LIGHT OF THE UNE REMAND ORDER.

In its December 1st Comments, BA-MA noted that it would modify its EEL tariff proposal pending in D.T.E. 98-57 in three principal ways in light of the *UNE Remand Order*: (1) remove limitations on loop types that may be provisioned as part of an EEL arrangement; (2) clarify the points to which the dedicated transport element may terminate; and (3) revise the use restriction to apply to cases where the CLEC provides a significant amount of local exchange service to its customer. On December 10, 1999, in response to a Joint Motion by AT&T and MCI WorldCom, the Department ordered BA-MA to withdraw the EEL portion of D.T.E. Tariff No. 17 and to refile it to reflect the *UNE Remand Order*, together with supporting testimony, by December 27. *See* Hearing Officer Ruling on AT&T and MCI WorldCom's Joint Motion. BA-MA withdrew the EEL tariff at the December 13th hearing in D.T.E. 98-57, and the Department has set a

schedule for review of the new tariff, which will provide the parties with an opportunity to conduct discovery and submit testimony.

In their comments, AT&T and MCI WorldCom complain about various provisions in the *withdrawn* EEL tariff and suggest that certain terms should be contained in the revised tariff to be consistent with the *UNE Remand Order* (AT&T Comments, at 23-25; MCI WorldCom Comments, at 16-19). Although BA-MA does not agree with all of their claims, the proper forum for the Department to address EEL-related issues is D.T.E. 98-57, based on the new EEL tariff BA-MA will file on December 27th. Once again, no action is required of the Department in this proceeding.

IV. MCI WORLDCOM'S CLAIMS REGARDING CONVERSION OF SPECIAL ACCESS SERVICES ARE WITHOUT MERIT.

MCI WorldCom complains that BA-MA has refused to convert existing special access services that they currently obtain under access tariffs to UNE pricing. It asserts that it has a right under the *UNE Remand Order* to such conversions and requests that the Department "order BA-MA to immediately allow CLECs to convert loop-transport combinations purchased out of the special access tariff to UNE pricing" (MCI WorldCom Comments, at 19). MCI WorldCom is wrong.

The FCC clearly stated in the *Supplemental Order* that until it specifically addresses the matter in a future rulemaking "IXCs may not convert special access services to combinations of unbundled loops and transport elements, whether or not the IXCs self-provide entrance facilities (or obtain them from third parties)." The FCC went on to note that "[t]his constraint does not apply if an IXC uses combinations of unbundled loop and transport network elements to provide a *significant* amount of local exchange service, in addition to exchange access service, to a particular customer." Thus, contrary to MCI WorldCom's suggestion that it has an unrestricted right to convert existing special access services to UNE pricing, the FCC was careful to limit conversions to those instances in which a significant amount of local exchange service is provided. Since both BA-MA and the IXCs are bound by the FCC's directive, including the limitation on conversions, the Department is not required to take any independent action.

V. BA-MA HAS COMPLIED FULLY WITH THE DEPARTMENT'S PHASE 4-K ORDER, AND NOTHING MORE SHOULD BE REQUIRED.

MCI WorldCom maintains that BA-MA has failed to comply with the Department's directive in the *Phase 4-K Order* for BA-MA "to come up with an additional, alternative or supplemental method for provisioning previously un-combined UNEs in such a way that permits combination by competing carriers, but without imposing a facilities requirement" (Phase 4-K Order, at 26-27; MCI WorldCom Comments, at 20-21). MCI WorldCom's contention is without merit.

In its June 18, 1999, compliance filing, BA-MA proposed to combine not only new UNE-P arrangements but also other uncombined UNEs – which may exist in combined form elsewhere in BA-MA's network – less than the total platform pursuant to the bona fide request ("BFR") process. As BA-MA noted, that process will enable it to examine technical feasibility and to assess the costs associated with engineering, provisioning, and the development of any necessary operational support systems. Costs would be charged to the requesting CLEC. The charges for the individual UNEs that are combined by BA-MA would be at Department-approved rates. This offer is a reasonable response to the Department's directive and does not impose a facilities requirement on CLEC.

With the availability of both new and existing UNE-P arrangements, EEL, and Switch Sub-Platform, CLECs have the major set of UNE combinations that they have requested. For other proposed combinations, BA-MA will examine them upon request via a BFR process that is set forth in interconnection agreements and in the proposed Tariff No. 17. MCI WorldCom's claim that BA-MA has failed to comply with the *Phase 4-K Order* is so lacking in specificity that one can only speculate about what additional arrangement it may want in Massachusetts. The Department should not send BA-MA back to the drawing board to guess at what MCI WorldCom may have in mind. There are ample avenues for MCI WorldCom to make its specific requirements known and to have them addressed. There is nothing more that BA-MA can or should be required to do.

VI. CONCLUSION

The other parties have not shown that BA-MA has failed accurately to identify the impact of the FCC's *UNE Remand Order* and *Supplemental Order* on matters still under consideration in this stage of the proceeding. Moreover, the other parties have failed to point to any portion of BA-MA's December 1, 1999, filing that requires any further action in this case. BA-MA has offered to provide both new and existing UNE-P arrangements under the same terms, to provide these arrangements immediately, and to file a UNE-P tariff within a reasonable period. In compliance with Department requirements, BA-MA will also file revisions to its EEL tariff in D.T.E. 98-57 to reflect the FCC's requirements. All parties to that proceeding, including AT&T and MCI WorldCom, will have an opportunity to examine that tariff and submit testimony concerning it. In short, there is nothing for the Department to decide at this time.

Respectfully submitted,

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