COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

In the Matter of the Interconnection Agreement Negotiations Between AT&T COMMUNICATIONS OF NEW ENGLAND, INC., TELEPORT COMMUNICATIONS GROUP, INC. and NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY, Pursuant to 47 U.S.C. § 252.

D.P.U. 96-80/81 &
96-73/74

COMMENTS BY AT&T COMMUNICATIONS OF NEW ENGLAND, INC., ON BELL ATLANTIC'S PURPORTED "COMPLIANCE FILING" REGARDING HOUSE AND RISER CABLE

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Introduction.

AT&T Communications of New England, Inc. ("AT&T") respectfully requests that the Department reject the house and riser cable ("HARC") "compliance filing" of Bell Atlantic-Massachusetts ("BA-MA"). In the Phase 4-L Order, the Department ordered BA-MA to make a compliance filing reflecting the Department's decisions on HARC. On November 24, 1999, BA-MA presented a flawed "compliance filing" which for the first time proposed a variety of brand new, arbitrary conditions and restrictions upon the use of HARC by competing local exchange carriers ("CLECs").

First, BA-MA's filing is procedurally flawed. It contained unexplained conditions and restrictions that were never part of the HARC cost study that was the subject of

hearings in this docket and of the Phase 4-L Order, and are not even supported by any explanatory testimony at this time. The CLECs have never had an opportunity to conduct any discovery, submit any rebuttal testimony, cross-examine Bell Atlantic witnesses, or present argument regarding these conditions and restrictions.

Second, BA-MA's filing is substantively flawed. Many of the proposed new conditions on HARC violate BA-MA's statutory duty to provide non-discriminatory access to unbundled network elements ("UNEs"), include sub-loop components such as HARC. Other of the conditions make little sense on their face, and would constitute anti-competitive policy and bad operating procedures.

Finally, BA-MA has failed to make its listing of HARC facilities available to CLECs in a commercially reasonable way that they can actually use when making business plans or making orders to Bell Atlantic.

Argument.

I. BA-MA' Filing is Procedurally Flawed, in that It Adds Arbitrary Conditions and Restrictions on HARC that were Never Reviewed by the Department or Subject to Investigation by CLECs.

A. The Issues Raised by BA-MA and Litigated In This Docket Concerning HARC Did Not Encompass the Numerous Conditions and Restrictions Now Proposed by Bell Atlantic.

Bell Atlantic's HARC cost study in this docket did not attempt to specify detailed terms and conditions for the provisioning of HARC. Nor were such terms and conditions discussed in the Department's Phase 4-L Order. Rather, the Phase 4-L Order addressed only the following four issues with respect to HARC:

First, the Department approved the recurring charges proposed by Bell Atlantic for access to HARC. Phase 4-L Order at 58. The proposed HARC non-recurring charges were contained within the large BA-MA non-recurring cost study, to which the Department has ordered many modifications. Id. at 4-31.

Second, the Department eliminated the requirement of a third terminal block, which BA-MA wanted to require between its terminal block and that of the CLECs. Phase 4-L Order at 35-36. This decision means that BA-MA's HARC cost study should be revised to eliminate the cost of this unnecessary terminal block.

Third, the Department rule that CLECs must be allowed to perform HARC cross-connections using their own technicians if they choose, and may not be forced to use BA-MA technicians were the CLEC does not choose to do so. Phase 4-L Order at 35-36. This means that BA-MA needs to revise its non-recurring charges for HARC to propose a reduced set of charges that would apply where the CLEC chooses to perform the HARC cross-connection work itself. BA-MA will also need to revise the non-recurring charges proposed for cross-connection work by Bell Atlantic, to conform to the various decisions made by the Department regarding BA-MA's non-recurring cost study. See Phase 4-L Order at 4-31.

Fourth, the Department required BA-MA to make available to CLECs a listing of the buildings in which Bell Atlantic HARC is available. See Phase 4-L Order at 37.

As explained in Section II, below, BA-MA's purported "compliance filing" goes far beyond the actions that the Department ordered it to take in the Phase 4-L Order. BA-MA is trying to come up with entirely new conditions and restrictions upon CLEC access to HARC, which BA-MA never raised at any time during these proceedings.

This attempt to incorporate entirely new restrictions and conditions in the guise of a "compliance filing" is improper.

B. BA-MA's "Compliance Filing" Supersedes Its Previous HARC Tariff Proposal, Yet Has Not Been Subject to Any Investigation.

BA-MA states that Attachment I contains "terms for access" to HARC "which supplements the terms contained in Part B, Section 12.2 of BA-MA's proposed Interconnection Tariff, D.T.E. - Mass. - No. 17." BA-MA's HARC Compliance Filing, Attachment I, page 1 of 6. A more accurate description would be that the proposed new terms and conditions add substantial new and, in some cases, more restrictive terms and conditions than those contained in Tariff No. 17. It is not clear what effect the HARC terms and conditions proposed by Bell Atlantic in this proceeding for interconnection agreements will have, given the Department's current rule that tariff provisions can supersede corresponding arbitration provisions in interconnection agreements.

BA-MA has recognized that the HARC terms it had previously proposed in Tariff No. 17 are inconsistent with the Department's Phase 4-L Order, and must be revised. In light of this, the Department should instead investigate and finalize proper terms and conditions for HARC in a separate proceeding, to be incorporated into Tariff No. 17, as soon as possible.

II. BA-MA's Filing is Substantively Flawed, In That It Seeks to Impose Unlawful and Improper Conditions or Restrictions on the Use of HARC.

A review of Attachment I to BA-MA's HARC "compliance filing" reveals that many of the conditions or restrictions sought by Bell Atlantic are unreasonable, if not unlawful, and should be rejected.

A. The General Conditions Proposed by BA-MA for HARC Should Be Rejected.

1. BA-MA May Not Refuse to Install New HARC Facilities Where Needed to Serve a CLEC's Customer.

Bell Atlantic now asserts that it will not "build or otherwise provide new or additional facilities, equipment, or rights of way in order to provision House and Riser to a TC [CLEC]." BA-MA's HARC Compliance Filing, Attachment I, at 2. This proposed limitation is unlawfully discriminatory, inconsistent with the manner in which Bell Atlantic provides the entirety of an unbundled loop or other UNE, and inconsistent with Bell Atlantic's non-recurring cost study. This restriction should be rejected by the Department.

First, this restriction is patently unlawful. BA-MA must provide non-discriminatory access to UNEs. 47 U.S.C. § 251(c)(3). This includes the obligation to provide non-discriminatory access to sub-loop components, such as HARC. See FCC's UNE Remand Order,(1) ¶¶ 205-207. When a Bell Atlantic retail customer seeks service that requires BA-MA to "build or otherwise provide new" HARC facilities, Bell Atlantic will do so where technically feasible. BA-MA must provide the same level of service to CLECs.

Second, this restriction is inconsistent with the manner in which BA-MA provides CLECs with access to other UNEs. For example, if a CLEC wishes to lease an unbundled loop ("UNE-L"), it may do so even where BA-MA must rearrange or augment its facilities in order to accommodate the order. In Docket 99-271, Bell Atlantic witnesses have explained that when a customer currently being provided with service over integrated digital loop carrier ("IDLC") migrates to a CLEC, BA-MA will physically transfer the customer to a distinct universal digital loop carrier ("UDLC") facility. E.g., Docket 99-271, Amy Stern, Tr. Vol. 6, at 1029 (Nov. 15, 1999). Similarly, CLECs are entitled to order brand-new loops from BA-MA. E.g., Docket 99-271, Amy Stern, Tr. Vol. 7, at 1443 (Nov. 16, 1999) Bell Atlantic may not place special restrictions on HARC that do not exist for UNE-L or other UNEs.

Third, BA-MA's non-recurring cost study included specific charges premised on the fact that Bell Atlantic may sometimes have to construct new facilities in order to provide HARC to a CLEC. Bell Atlantic included a non-recurring charge for "Building Set-Up" associated with HARC. See BA-MA's Non-Recurring Cost Study, Attachment A, Workpaper V, at 1. This "Building Set-Up" work involves, among other things, "obtaining the building owner's approval to construct facilities to meet the CLEC's

needs for House and Riser Crossconnection services." Id., Attachment A, Exhibit XIV, at 2. Indeed, this is reflected in the very last item of BA-MA's compliance filing, which describes the charges that will be incurred when a CLEC asks BA-MA to "install new House and riser Cable." BA-MA's HARC Compliance Filing, Attachment I, at 6.

In sum, the HARC proposal already reviewed and in large part approved by the Department expressly recognizes that BA-MA may have to construct new HARC facilities in order serve a CLECs needs. It is too late now for Bell Atlantic to reverse course, and impose an unreasonable and unlawful condition upon CLEC access to HARC facilities.

2. BA-MA May Not Refuse to Provide HARC That is Controlled Though Not Owned by Bell Atlantic.

BA-MA proposes to limit its offering of HARC to "locations where [BA-MA] owns, operates and maintains such in-place facilities." BA-MA's HARC Compliance Filing, Attachment I, at 2.

Once again, this is both unreasonable and unlawfully discriminatory. There are situations where Bell Atlantic does not own the HARC facilities in a particular building, but it has entered into a functionally equivalent agreement with the building owner or landlord under which BA-MA controls, operates, and maintains the HARC facilities. Under those circumstances, BA-MA's retail operations will have full access to the HARC controlled (though not actually owned) by Bell Atlantic. CLECs are entitled to the same access.

In sum, BA-MA must provide CLECs with full access to all HARC facilities that Bell Atlantic either owns or controls.

3. BA-MA May Not Force CLECs to Develop an Entirely New Interface For Ordering HARC, that Differs From the Interfaces Used to Order Entire Loops.

BA-MA proposes for the first time that "[a]ll preordering, ordering, and provisioning will be handled through the use of [BA-MA's] Direct Customer Access Service (DCAS) system." See BA-MA's HARC Compliance Filing, Attachment I, at 2.

This is not the way that CLECs access BA-MA's preordering, ordering, or provisioning Operations Support Systems ("OSSs") when they are trying to order complete loops. There, CLECs will either use Bell Atlantic's EDI system or will connect through its Web GUI. EDI and the Web GUI in turn communicate with Bell Atlantic's gateway systems, of which DCAS is a part. DCAS will then send the CLEC order on to a variety of other OSSs, assuming that the order flows through and does not fall out for manual handling by Bell Atlantic personnel.

As the Department is aware, Bell Atlantic has entered into a settlement agreement before the FCC acknowledging its obligation to develop a uniform OSS interface across the Bell Atlantic footprint. Starting in February 2000 Bell Atlantic will be rolling out a uniform OSS interface through new software releases that must comply with the LSOG 4 standards. CLECs will be building their systems to be able to interact with Bell Atlantic's new, LSOG 4 compliant OSS release.

It would be unreasonable to require CLECs to develop an entirely new interface, communicating directly with DCAS, to be able to obtain access to HARC. CLECs should be able to use the same systems to order sub-loop components such as HARC as they will be able to use to order entire loops.

4. BA-MA May Not Now Impose a Service Order Charge for HARC Provisioning, When BA-MA's Non-Recurring Cost Study Showed that the Forward-Looking Cost of Accepting a HARC Order is Zero.

Bell Atlantic proposes that "[t]he House and Riser Cable Service Order Charge applies when a TC [CLEC] orders any House and Riser Cable element." BA-MA HARC Compliance Filing, Attachment I, at 2. In its non-recurring cost study, however,

Bell Atlantic specified that there would not be any such service order charge. See BA-MA's Non-Recurring Cost Study, Attachment A, Workpaper V, at 2 (showing that the service order charge for HARC orders is to be $0.00). Bell Atlantic cannot now, under the guise of a "compliance filing," propose new charges that are at odds with its own cost study.

B. Where BA-MA Performs the HARC Cross-Connects, CLECs Must Still Have Access to the Bell Atlantic "Smart Jack" In Order to Isolate Trouble Reports.

Bell Atlantic says that where it performs the cross-connections needed to provision HARC for a CLEC, the CLEC "is responsible for initiating, testing and sectionalizing (isolating) all of its end user trouble reports." BA-MA's HARC Compliance Filing, Attachment I, at 3. A CLEC cannot try to isolate trouble reports on HARC unless it has full access to BA-MA's loopable device, such as the "Smart Jack" (the common name of an RJ-48C), for testing purposes. The Department should require Bell Atlantic to provide full access to its loop devices, including all Smart Jacks.

C. Where a CLEC Chooses to Perform the HARC Cross-Connections, the Conditions Proposed by BA-MA are Unreasonable and Should Be Rejected.

Bell Atlantic also proposes a number of unreasonable terms and conditions that would apply where a CLEC chooses to perform its own HARC cross-connections. These conditions appear to be designed to create a strong incentive for CLECs to pay BA-MA to do all HARC installation work, despite the Department's explicit order that CLEC technicians can do this work equally well.

1. BA-MA Must Cooperate in Ensuring that a CLEC May Obtain Access Rights to HARC.

Bell Atlantic wants each CLEC to "have the sole responsibility for obtaining all necessary access rights to [BA-MA's] house and riser." BA-MA HARC Compliance Filing, Attachment I, at 3.

2. BA-MA Is Not Entitled to Exercise Control Over CLEC Technicians, and May Not Assess a "Training" Fee.

Bell Atlantic has proposed not only that all CLEC technicians "must be qualified (as specified in FCC Part 68) to complete cross connects on [BA-MA] house and riser facilities," but also that the CLEC "will pay [BA-MA] for the training associated with this certification." BA-MA's HARC Compliance Filing, Attachment I, at 3. This proposed term is both unclear and unreasonable.

First, it is not clear what BA-MA has in mind when it refers to technician qualifications "as specified in FCC Part 68." Part 68 of the FCC's regulations has nothing to do with qualification of technicians. Rather, it relates to the standards that equipment must meet if it is to be connected to the telephone network, and to ensuring that such equipment is compatible with hearing aids. See 47 C.F.R. § 68.1 (describing the purpose of Part 68).

Second, in any case, BA-MA should not be allowed to sign-off on CLEC personnel, and certainly should not be allowed to assess some additional fee (which was never proposed in BA-MA's HARC cost proposals) that must be paid before CLEC technicians would be allowed to do any HARC work. In a virtual collocation arrangement, a CLEC must purchase the relevant equipment and then sell it to BA-MA for $1.00. BA-MA technicians will then install and maintain the equipment. Those BA-MA technicians, like other Bell Atlantic personnel doing substantial work for CLECs, do not undergo some sort of time-consuming and costly extra certification for CLECs. By the same token, BA-MA is not entitled to exercise that sort of control over CLEC technicians merely because they are performing work on HARC that the Department has ruled that are entitled to do.

3. BA-MA's New Requirement of a Building Specific Forecast is Unreasonable.

Bell Atlantic wants CLECs to be required to "provide an annual forecast of the

expected use of [BA-MA] facilities in each building where they will be performing their own cross-connections." BA-MA HARC Compliance Filing, Attachment I, at 3.

This demand is onerous and not reasonable. First, CLECs cannot be expected to predict in advance how many HARC facilities it will need on a building-by-building basis. No company's business or marketing plans could possibly be so detailed. Second, BA-MA has not identified any reason why it would need to have such forecasts, even if they could be created. The Department should reject this new condition.

4. BA-MA Provides No Basis for Requiring CLECs to Provide Notice "In Writing" 10-Business Days Before Placing an Order for HARC, and to Tag the Specific HARC Pair Within 3-Business Days of Doing the Cross Connection.

Bell Atlantic insists that a CLEC must provide surprisingly lengthy advance notice when the CLEC intends to perform its own HARC cross-connections. First, BA-MA wants to be notified "in writing" where a CLEC intends to do its own HARC cross-connect work, and insists that this written notice be provide "at least (10) [sic] business days prior to placing an initial service order." BA-MA's HARC Compliance Filing, Attachment I, at 4. Second, BA-MA wants CLECs to "identify and tag an available pair for cross-connection within three (3) business days prior to the service order Due Date." Id.

Bell Atlantic provides no business justification for either of these requirements. With respect to the first requirement, there is no reason why a CLEC should have to notify BA-MA even before placing a service order for HARC that the CLEC intends to perform its own cross-connections. Similarly, in a world where the CLEC should be able to place all of its orders electronically, there is no justification for requiring the CLEC to inform BA-MA "in writing" that the CLEC will do the cross-connect work. Finally, there is no reason why notification that the CLEC will do the HARC work itself needs to be provided 10 business days in advance of when the work will be done.

With respect to the second requirement, BA-MA provides no explanation of why a CLEC must tag a HARC pair three business days in advance, when the CLEC will be doing the cross-connection work itself.

5. BA-MA's Attempt to Restrict Future Access to HARC by CLECs Does Not Belong in a Phase 4-L Compliance Filing.

Bell Atlantic includes a provision expressly entitling it to seek to have a CLEC's technicians barred from working on HARC were the CLEC "has significantly increased (beyond existing levels) the number of out of service conditions to an existing location; or has continually performed cross-connections on existing customers before issuing orders." This effort by BA-MA to impose undefined performance standards and remedies upon CLECs should be rejected. No proposal of this kind was floated by Bell Atlantic during the arbitration proceedings. Furthermore, the language proposed by BA-MA is so vague and undefined that it raises far more questions than it answers.

III. BA-MA Must Provide its Listing of HARC Facilities In a Commercially Reasonable Manner.

The Department ordered Bell Atlantic to provide CLECs with access to a listing of HARC facilities available in Massachusetts. Phase 4-L Order at 37. The listing provided by BA-MA as Attachment II to its HARC compliance filing is flawed in two significant ways.

First, BA-MA admits that the listing it has provided is incomplete. See BA-MA's HARC Compliance Filing, first page. As Bell Atlantic acknowledges, it must complete the work that its witness volunteered it could do, and that the Department ordered it to do.

Second, the manner in which BA-MA has provided this information prevents it from being used by CLECs in their daily operations. BA-MA has filed its partial listing under the protective order in this docket, meaning that it can only be reviewed by individuals who have signed that order, and that it cannot be used for any purpose other than the conduct of this proceeding. This misses the point. The reason why CLECs have sought this listing of HARC facilities is the same reason that they need access to other pre-ordering information from Bell Atlantic: CLECs cannot make business or marketing plans without knowing in advance what facilities will be available. The listing of HARC facilities must be available on-line, in addition to this written form, to CLECs that may wish to obtain access to BA-MA HARC. Just as Bell Atlantic provides on-line access to the voluminous CLEC Handbook and to a variety or pre-order information, so BA-MA should be required to provide on-line access to a current, accurate listing of available HARC facilities. The paper copy filed under the protective order in this docket is insufficient.

Conclusion.

For the reasons stated above, the Department should:

Reject Bell Atlantic's House and Riser Cable compliance filing;

Order that Bell Atlantic must provide CLECs with HARC facilities that are either owned or controlled by BA-MA, and that it must do so even if BA-MA must build or otherwise provide new facilities;

Order that Bell Atlantic must provide access to the HARC pre-order, order, and provisioning functions of Bell Atlantic Operations Support Systems through the same electronic interfaces that CLECs may use to access these functions for entire loops or other UNEs and UNE combinations;

Order that Bell Atlantic may not impose any service order charge upon HARC orders;

Order that Bell Atlantic must provide CLECs with access to Smart Jacks;

Order that, where a CLEC chooses to perform its own HARC cross-connections: (a) BA-MA must cooperate fully and assist the CLEC in obtaining access to the HARC facilities; (b) BA-MA may neither exercise control over nor assess a fee upon CLEC technicians; (c) BA-MA may not require HARC usage forecasts, either on a building-specific basis or otherwise; and (d) BA-MA may not require notice either in advance of an order nor in writing that a CLEC intends to do its own HARC wiring; and

BA-MA must provide CLECs with ongoing access to an updated, current, and complete list of HARC facilities, in a manner readily accessible by the CLECs business and marketing personnel.

Respectfully submitted,

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Dated: December 21, 1999.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the above document to be served upon the attorney of record for each other party on December 21, 1999.

_____

1. 1 Third Report and Order, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, FCC 99-238, CC Docket No. 96-98 (Nov. 5, 1999).