

Untitled

December 14, 1999

455-5517

VIA FEDERAL EXPRESS

Hon. Mary Cottrell
Secretary
Massachusetts Department of
Telecommunications & Energy
One South Station
Boston, MA 02110

Re: Teleport Arbitration D. P. U. 96-73/74
Brooks Fiber Arbitration D. P. U. 96-75
AT&T Arbitration D. P. U. 96-80/81
MCI Arbitration D. P. U. 96-83
Sprint Arbitration D. P. U. 96-94
COMMENTS OF FAIRPOINT COMMUNICATIONS, CORP. ON
BELL ATLANTIC-MASSACHUSETTS' PROPOSED PROVISIONING
OF UNBUNDLED NETWORK ELEMENTS

Dear Secretary Cottrell:

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Pursuant to the November 24, 1999 electronic mail from the Massachusetts Department of Telecommunications and Energy ("MADTE" or the "Department"), FairPoint Communications Corp. ("FairPoint" or the "Company")(1) hereby files its comments on Bell Atlantic-Massachusetts' ("Bell Atlantic" or "BA-MA") June 18, 1999 filing entitled "Compliance Submission on Unbundled Network Element Provisioning" (the "June 18 Filing") and December 1, 1999 filing entitled "Comments on Unbundled Network Element Provisioning" (the "December 1 Filing") (collectively, the "Compliance Filings").

The Compliance Filings

The June 18 Filing

The June 18 Filing was made pursuant to the Department's Phase 4-K Order in the above-referenced proceedings regarding the arrangements by which telecommunications carriers other than Bell Atlantic may obtain access to unbundled network elements ("UNEs") that have not already been combined in Bell Atlantic's network. In the June 18 Filing, Bell Atlantic proposes to make the combination of Loop and Local Switching UNEs, known as the UNE-Platform ("UNE-P"), available to CLECs under the following enumerated conditions: (2)

(1) BA-MA-combined UNE-P arrangements will be available for residential service in all central offices and for business service only in central offices where no collocation arrangements exist;

(2) BA-MA-combined UNE-P arrangements will be provided with a "Glue Fee"; and

(3) BA-MA-combined UNE-P arrangements will be offered until 2003.

In addition, Bell Atlantic would impose a "Service Order Charge" on CLECs for each account that is switched to UNE-P service from resale. (3) The "Service Order Charge" would equal the highest prevailing tariffed Service Order Charge for the separate purchase of the individual elements ordered. (4) Furthermore, if a CLEC requests UNE-P from Bell Atlantic within six months of having requested resale or retail service from Bell Atlantic, BA-MA proposes to impose on the CLEC a "Quick Flip Charge" equal to the amount that would be charged for an additional relevant "Glue Fee" for a two-year period. (5)

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The December 1 Filing

The December 1 Filing addresses the orders that have been recently released by the Federal Communications Commission ("FCC") regarding UNEs. (6) That Filing was made pursuant to the Department's October 20, 1999 electronic mail, in which the Department requested that the parties address the impact of the FCC Orders on the above-referenced proceedings. Bell Atlantic states in the December 1 Filing that it has "reassessed its position concerning new loop and local switching UNE-P combinations." (7) Specifically, Bell Atlantic has agreed to:

voluntarily provide [the UNE-P] combination even where the loop and local switching elements comprising the UNE-P do not already exist in combined form for a specific customer in its network. BA-MA will offer this combination throughout Massachusetts under the same terms as for existing loop and local switching combinations, subject only to the limitations discussed above with respect to Density Zone 1 switching, Density Zone 1, shared transport, and OS/DA [Operator Services/Directory Assistance]. (8)

Scope of FairPoint's Comments

FairPoint's comments address the impact of the following aspects of Bell Atlantic's Compliance Filings on the provision of UNE-P service in Massachusetts: (1) the condition that UNE-P may be provided to business customers only from central offices ("COs") that do not have a pre-existing collocation arrangement; (2) the Glue Fee; and (3) the Service Order Charge and the Quick Flip Charge.

Collocation Arrangements

In the June 18 Filing, Bell Atlantic proposed to prohibit CLECs from providing UNE-P to business customers that are connected to COs that have a pre-existing collocation arrangement. Bell Atlantic did not explicitly withdraw this proposal in its December 1 Filing.

To the extent that Bell Atlantic's proposal remains intact, it should be rejected by the Department as anti-competitive and an unreasonable barrier to entry or, as a less-favored alternative, limited by the MADTE in the manner described below.

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Bell Atlantic's Collocation Rule Should Be Rejected

One only needs to consider the impact the proposal would have on CLECs such as FairPoint to conclude that the proposal is anti-competitive and erects an unreasonable barrier to entry. Within the next year, data service providers ("DSPs") likely will have established collocation arrangements in many COs throughout Massachusetts in order to offer digital subscriber line services to consumers. Since BA-MA's proposal covers any CO within Massachusetts that has at least one collocation arrangement, any CO in which a DSP has installed collocation equipment would be inaccessible to FairPoint or any other CLEC for the provision of UNE-P to business customers. If BA-MA's proposal were adopted, vital competitive telecommunications opportunities in Massachusetts would be unreasonably restricted.

FairPoint refers the Department to a recent decision by the Pennsylvania Public Utility Commission ("PAPUC") regarding the provision of competitive telecommunications services in the Commonwealth of Pennsylvania. (9) In the Global Telecommunications Order, the PAPUC rejected completely a proposal by Bell Atlantic-Pennsylvania, Inc. ("BA-PA") to restrict the availability of UNE-P for business customers to customers served out of COs with less than two collocation arrangements. The PAPUC determined that BA-PA's proposal was "unacceptable from a public policy perspective" (10) for two reasons:

First, many of these CLEC collocations may have nothing to do with the provision of basic local exchange service, but instead may be used exclusively to provide data services. 84 Just as importantly, BA-PA's effort to favor one (1) form of CLEC entry over another misses the whole point of this proceeding. The terms and conditions that result from this case should not favor or disfavor any particular form of competitive entry. Rather, we should promote entry under all of the forms provided for under the Telecommunications Act -- UNEs, resale, and owned facilities. (11)

The MADTE should take into consideration the PAPUC's well-substantiated rejection of a proposal which is almost identical to the BA-MA collocation restriction now before the Department.

For these reasons, the Department should reject BA-MA's proposal to condition the availability of UNE-P for business customers on the absence of any collocation arrangement at the applicable CO.

In the Alternative, Bell Atlantic's Collocation Rule Should Be Substantially Limited

In the alternative, if the Department does not reject in its entirety Bell

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Atlantic's proposal that UNE-P for business customers be available only in COs that do not have a pre-existing collocation arrangement, the Department should limit the applicability of this service condition based on the following two modifications. First, FairPoint recommends that this condition be confined to COs which are located in the largest city in Massachusetts (i.e., the City of Boston). Second, BA-MA should only be relieved of the obligation to provide UNE-P to COs where there are at least two pre-existing collocations.

Since the number and density of COs is greater in Boston than in any other area of the Commonwealth, competition in Boston would not be unreasonably impaired by the presence of two or more collocations at several COs. The same conclusion cannot be drawn for the other municipalities in Massachusetts. Furthermore, such modifications would be consistent with a recent decision of the New York State Public Service Commission ("NYSPPSC"). (12) In the NY UNE Order, the NYSPPSC concluded that UNE-P will not be available for business customers only if the applicable CO has two or more collocations and is located in New York City. (13)

Glue Fees

As stated above, in the June 18 Filing, Bell Atlantic conditioned the availability of UNE-P to a CLEC upon the CLEC's payment of Glue Fees. Bell Atlantic did not specifically withdraw the imposition of Glue Fees in its December 1 Filing.

To the extent that Bell Atlantic continues to request that the MADTE adopt the BA-MA Glue Fees proposal, the Department should require BA-MA to withdraw its request. Under the June 18 Filing, the Glue Fees "are based on BA-MA's estimate of the collocation expenses that a CLEC will avoid through the purchase of BA-MA combined UNEs." (14) Bell Atlantic has failed to provide any reasonable justification for using this pricing formula.

If BA-MA remains committed to the imposition of Glue Fees and the Department agrees with the applicability of such Fees, Bell Atlantic should be required to calculate any Glue Fees based upon the actual costs that BA-MA would incur by combining UNE-P arrangements rather than the CLECs' forward-looking avoided costs. Such pricing would be consistent with the methodology used to derive the other charges and fees proposed by Bell Atlantic. Accordingly, the Department should require that any Glue Fees refiled by Bell Atlantic must be based upon BA-MA's actual costs.

Service Order Charge and Quick Flip Charge

FairPoint takes no position on the applicability of the Service Order Charge or the Quick Flip Charge to any CLEC other than FairPoint. In its December 1 Filing, Bell

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Atlantic did not expressly withdraw its proposal from the June 18 Filing to administer the Service Order Charge and Quick Flip Charge.

Based upon the facts described below, if Bell Atlantic has not withdrawn the proposed Charges and the MADTE approves those Charges, the Department should direct BA-MA to waive the imposition of the Charges as they otherwise would apply to FairPoint.

The Company's requested relief is based upon misrepresentations that were communicated to FairPoint by Bell Atlantic. BA-MA initially informed FairPoint in July 1999 that UNE-P service would be available in Massachusetts starting September 1, 1999. In reasonable reliance upon Bell Atlantic's representation, FairPoint made substantial investments (e.g., in additional workforce) in order to ensure that the Company would be properly situated to provide UNE-P to potential customers as of September 1, 1999.

It was not until late August 1999, however, that Bell Atlantic notified FairPoint that the availability of UNE-P would be delayed indefinitely. By that time, FairPoint had made service commitments to potential customers which, because of Bell Atlantic's inability to furnish UNE-P, could be satisfied only through resale.

Therefore, but for Bell Atlantic's failure to provide UNE-P to FairPoint by the date designated by BA-MA, FairPoint would not have to pay Service Order Charges for transferring its customers to UNE-P service from resale service or Quick Flip Charges because such transfers would take place within six months of FairPoint's request for resale service. Accordingly, if the Department approves the Service Order Charge and/or the Quick Flip Charge, it should direct Bell Atlantic to waive the imposition of those charges insofar as they would otherwise apply to FairPoint.

Conclusion

For the foregoing reasons, the Department should adopt the recommendations offered by FairPoint in this filing.

Respectfully submitted,

/s/

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Frank J. Miller

cc: Attached Service List

(via first-class mail)

Paul Levy (MADTE - Arbitrator)

(via Federal Express)

Joan Foster Evans, Esq.

(MADTE - Hearing Officer)

(via Federal Express)

Patrick Eudy

(FairPoint Communications Corp.)

John LaPenta

(FairPoint Communications Corp.)

1. FairPoint is a competitive local exchange company ("CLEC") that is authorized to do business in the Commonwealth of Massachusetts. The Company currently is reselling telecommunications services in Massachusetts. In an order entered on October 18, 1999, the Department approved the "Interconnection Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996 by and between New England Telephone and Telegraph Company, d/b/a Bell Atlantic-Massachusetts and FairPoint Communications Corporation," dated June 11, 1999. See Docket No. A-310725 F0002, Opinion and Order (entered October 18, 1999).

2. June 18 Filing, pp. 4-5.

3. Id., p. 5.

4. Id.

5. Id., p. 6.

6. In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (released November 5, 1999) and Supplemental Order, FCC 99-270 (released November 24, 1999) (collectively, the "FCC Orders").

7. December 1 Filing, p. 13.

8. Id. The "limitations" identified by Bell Atlantic are discussed at pages 6 through 11 of the December 1 Filing. It should be noted that BA-MA reserved the right to review this "voluntary commitment" based on an anticipated ruling by the Eighth Circuit Court of Appeals concerning FCC Rules 51.315 (c)-(f). Id. at n.14.

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9. Docket Nos. P-00991648 (Joint Petition of Nextlink Pennsylvania, Inc.; Senator Vincent J. Fumo; Senator Roger Madigan; Senator Mary Jo White; the City of Philadelphia; The Pennsylvania Cable & Telecommunications Association; RCN Telecommunications Services of Pennsylvania, Inc.; Hyperion Telecommunications, Inc.; ATX Telecommunications; CTSI, Inc.; MCI Worldcom; and AT&T Communications of Pennsylvania, Inc. for Adoption of Partial Settlement Resolving Pending Telecommunications Issues) and P-00991649 (Joint Petition of Bell Atlantic Pennsylvania, Inc.; Connectiv Communications, Inc.; Network Access Solutions; and the Rural Telephone Company Coalition for Resolution of Global Telecommunications Proceedings), Opinion and Order (entered September 30, 1999) (the "Global Telecommunications Order").

10. Global Telecommunications Order, mimeo p. 81.

11. *Id.*, mimeo pp. 81-82 (the PAPUC stated in footnote 84 that, "[i]n those cases, the collocation cannot be configured to provide basic local exchange service to small business customers. In fact, many of those collocators do not have assigned telephone numbers or 911 trunks").

12. See Cases 98-C-0690, et al., Proceeding on Motion of the Commission to Examine Methods by which Competitive Local Exchange Carriers can Obtain and Combine Unbundled Network Elements, Opinion and Order Concerning Methods for Network Element Recombination, Opinion No. 98-18 (issued November 23, 1998) (the "NY UNE Order").

13. *Id.*, mimeo pp. 36-39.

14. June 18 Filing, p. 6.