March 24, 2000

D.T.E. 99-42/43, 99-52

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

and

Petition of Greater Media Telephone, Inc. for arbitration, pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish an interconnection agreement with New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts.

D.T.E. 99-52

Petition of Greater Media Telephone, Inc. for arbitration, pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish an interconnection agreement with New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts.

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I. INTRODUCTION

On August 25, 1999, the Department of Telecommunications and Energy ("Department") issued a final Order in the D.T.E. 99-42/43, 99-52, a consolidated arbitration involving MediaOne Telecommunications of Massachusetts, Inc. ("MediaOne"), Greater Media Telephone, Inc. ("Greater Media"), and New England Telephone and Telegraph Company d/b/a/ Bell Atlantic-Massachusetts ("Bell Atlantic") ("MediaOne Order"). On September 24, 1999, the Department issued a final Order in D.T.E. 99-52, a separate arbitration between Greater Media and Bell Atlantic ("Greater Media Order").[1]

In the Greater Media/Bell Atlantic Arbitration, Greater Media filed a Motion for Clarification or Reconsideration on September 7, 1999 ("Greater Media Motion for Clarification"), and on September 27, 1999, Bell Atlantic filed a response to the Greater Media Motion ("Bell Atlantic Response to Greater Media Motion for Clarification"). On September 14, 1999, Bell Atlantic filed a Motion for Reconsideration and Clarification ("Bell Atlantic Motion") and a Motion for Stay ("Motion for Stay"). Greater Media filed on September 17, 1999 an opposition to Bell Atlantic's Motion and Motion for Stay ("Greater Media

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[1] The Department decided six issues common to the three parties in the consolidated arbitration.

Opposition"), and on September 27, 1999, MediaOne also filed an opposition to Bell Atlantic's Motions ("MediaOne Opposition"). Bell Atlantic filed a reply to the Oppositions on September 29, 1999 ("Bell Atlantic Reply"). On October 13, 1999, MediaOne filed a Motion for Extension of Time to File Its Interconnection Agreement ("MediaOne Motion for Extension"), to which Bell Atlantic responded on October 15, 1999 ("Bell Atlantic Response to Motion for Extension").

In the Greater Media/Bell Atlantic Arbitration, the Department issued an Order on September 24, 1999 ("Greater Media Order"). On October 14, 1999, Bell Atlantic filed a Motion for Reconsideration and Clarification to the Greater Media Order ("Bell Atlantic Motion for Reconsideration of Greater Media Order"), and Greater Media responded to this motion on October 20, 1999 ("Greater Media Opposition to Bell Atlantic Motion for Reconsideration of Greater Media Order"). On October 13, 1999, Greater Media and Bell Atlantic filed a Motion for Extension of Time to file an interconnection agreement, which the Arbitrator granted on November 4, 1999.

On November 5, 1999, the Federal Communications Commission ("FCC") released an order[2] identifying the network elements ("UNEs") that must be unbundled by incumbent local exchange carriers ("ILECs") and provided to competitors ("UNE Remand Order"). The Arbitrator requested comments from the parties regarding the effect of that order on the Department's decisions in these arbitrations. Bell Atlantic, MediaOne and Greater Media

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[2] In the Matter of the 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 (rel. November 5, 1999).

submitted initial comments on November 24, 1999 ("UNE Remand Comments"). Bell Atlantic and MediaOne submitted reply comments on December 1, 1999 ("UNE Remand Reply Comments").

Because the issues under Reconsideration and Clarification are common to both the MediaOne/Bell Atlantic and the Greater Media/Bell Atlantic Arbitrations, we address all outstanding motions from both arbitrations in this Order. In addition, we address the effect of the UNE Remand Order on both arbitrations.

II. STANDARD OF REVIEW FOR RECONSIDERATION AND CLARIFICATION

The Department's Procedural Rule, 220 C.M.R. § 1.11(10), authorizes a party to file a motion for reconsideration within twenty days of service of a final Department Order. The Department's policy on reconsideration is well settled. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. North Attleboro Gas Company, D.P.U. 94-130-B at 2 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company, D.P.U. 558-A at 2 (1987).

A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Boston Edison Company, D.P.U. 1350-A at 4 (1983). The Department has denied

reconsideration when the request rests on an issue or updated information presented for the first time in the motion for reconsideration. Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987); but see Western Massachusetts Electric Company, D.P.U. 86-280-A at 16-18 (1987). Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1989); Boston Edison Company, D.P.U. 1350-A at 5 (1983).

Clarification of previously issued orders may be granted when an order is silent as to the disposition of a specific issue requiring determination in the order, or when the order contains language that is so ambiguous so as to leave doubt as to its meaning. Boston Edison Company, D.P.U. 92-1A-B at 4 (1993); Whitinsville Water Company, D.P.U. 89-67-A at 1-2 (1989). Clarification does not involve reexamining the record for the purpose of substantively modifying a decision. Boston Edison Company, D.P.U. 90-335-A at 3 (1992), citing Fitchburg Gas & Electric Light Company, D.P.U. 18296/18297, at 2 (1976).

III. BELL ATLANTIC'S MOTIONS FOR RECONSIDERATION AND CLARIFICATION IN THE MEDIAONE AND GREATER MEDIA ARBITRATIONS

Bell Atlantic's Motion for Reconsideration and Clarification of the MediaOne Order asks for Department action on eight separate issues. In addition, Bell Atlantic's Motion for Reconsideration of the Greater Media Order requests Department reconsideration of two issues based on our reconsideration of the MediaOne Order. We address each issue in turn below.

A. Interconnection Points

In the MediaOne Order at 39, the Department found that Bell Atlantic must provide MediaOne and Greater Media with the requested interconnection unless Bell Atlantic can prove to the Department that the requested interconnection is not technically feasible. In addition, we found that neither the Act nor the FCC's rules require MediaOne or any CLEC to interconnect at multiple points within a LATA to satisfy an incumbent's preference for geographically relevant interconnection points. Id. at 41. Furthermore, we noted that Bell Atlantic pointed to nothing in the Act or FCC rules requiring CLECs to pay the transport costs that Bell Atlantic will incur to haul its traffic between Bell Atlantic's interconnection points ("IP") and the point where Bell Atlantic and MediaOne interconnect, stating that the FCC envisioned both carriers paying their share of the transport costs to haul traffic to the meet point under the interconnection rules. Id. at 42.

Bell Atlantic seeks clarification regarding the delivery of local traffic originating from MediaOne's or Greater Media's end-user customers for termination to Bell Atlantic's end-user customers under their interconnection agreements. Bell Atlantic argues that the Order addresses only traffic originating from Bell Atlantic's customers and terminating to MediaOne's or Greater Media's customers (Bell Atlantic Motion at 4). In addition, Bell Atlantic seeks clarification with regard to transport costs when it sends traffic to a CLEC (id. at 10).

1. Positions of the Parties

a. Bell Atlantic

i. Bell Atlantic terminated traffic

Bell Atlantic argues that the MediaOne Order addresses only one side of the equation, i.e., local calls originating from Bell Atlantic's customers and terminating to MediaOne's or Greater Media's end-user customers (id.). According to Bell Atlantic, the Order is silent on the issue of the IPs[3] Bell Atlantic may designate when it receives local traffic from MediaOne or Greater Media for termination on Bell Atlantic's network (id.). Bell Atlantic maintains that under existing interconnection agreements, each carrier determines the IP or IPs on its network, and each party is responsible for the cost of delivering its originating local traffic to the other carrier's IP for termination to that carrier's end-user customer (id.). Bell Atlantic asks the Department to clarify its Order to provide that Bell Atlantic may continue to designate its IPs at the terminating end office serving its customer or the access tandem connected to the end office serving its customer, and that CLECs must continue to deliver their originating traffic to Bell Atlantic's IPs (id. at 4-5; Bell Atlantic Reply at 3). Bell Atlantic states that as a general rule, it would expect the CLEC to deliver traffic to the appropriate Bell Atlantic tandem IP (Bell Atlantic Reply at 3).

Bell Atlantic asserts that its interconnection agreements with other carriers, as approved

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[3] Bell Atlantic defines an IP as the point on the terminating carrier's network from which the terminating carrier will provide transport and terminate on its network a local call delivered by an originating carrier (Bell Atlantic Motion at 4). According to Bell Atlantic, the IP is the point where reciprocal compensation charges are applied and upon which reciprocal compensation costs are based (id.).

by the Department, establish the right of each carrier to designate the IP locations for terminating local calls on their respective networks (Bell Atlantic Motion at 5). In MediaOne Order at 41, the Department found that MediaOne and Greater Media are entitled to designate a single IP for calls terminating to them. Bell Atlantic asks that it be entitled to designate the IP locations on its own network for delivery of local calls to Bell Atlantic customers from MediaOne or Greater Media customers, which Bell Atlantic argues is consistent with all previously approved interconnection agreements[4] (Bell Atlantic Motion at 6; Bell Atlantic Reply at 3). Bell Atlantic asks the Department to continue the existing arrangements whereby Bell Atlantic would continue to designate its IPs for local calls originating from the CLECs' customers and terminating to Bell Atlantic end-user customers, and CLECs would deliver originating traffic from their customers to Bell Atlantic's designated IP (Bell Atlantic Reply at 3). Bell Atlantic maintains that, contrary to MediaOne's claims, the issue of each carriers' designation of IPs was squarely before the Department in this proceeding and therefore is appropriate for clarification (id.).

Bell Atlantic maintains that for technical reasons, CLECs terminating local calls to Bell Atlantic must deliver those calls to the designated IP to enable Bell Atlantic to complete the call to the end-user customer (Bell Atlantic Motion at 6). Bell Atlantic argues that its designation of

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[4] Bell Atlantic also asks the Department to clarify that the MediaOne Order gives Bell Atlantic the same right as CLECs to specify mid-span fiber meet for interconnection (Bell Atlantic Motion at 6). A mid-span fiber meet is a type of interconnection architecture whereby two carriers' transmission facilities meet at a mutually agreed upon point of interconnection with the point of interconnection in the middle of a fiber ring. Each party builds half a fiber ring and purchases and maintains all the fiber and electronics for its half of the ring. MediaOne Order at 13 n.12.

its IPs for terminating calls on its network conforms with the routing points designated in the reference guide used by all carriers to route calls for termination (id.). In addition, Bell Atlantic contends that it is not technically practicable, in light of the tandem exhaust situation, for a tandem to be modified to recognize all of the numbers in Massachusetts (id. at 6 n.4).

In addition to issues of consistency with existing interconnection agreements, and technical practicality, Bell Atlantic addresses the cost of transport and termination in its Motion. Bell Atlantic argues that the mutual application of the MediaOne Order on delivery of local traffic to IPs is also reasonable because it would ensure that each carrier bears the responsibility for transport associated with delivering its traffic to another carrier's network IP (which includes the cost of providing that transport) for termination to the called party (Bell Atlantic Motion at 7). Bell Atlantic argues that it should not be required to haul traffic from MediaOne's and Greater Media's networks to Bell Atlantic's IP, thus paying for transport twice: from Bell Atlantic's customers to the CLEC IP, and from the CLEC IP to Bell Atlantic's IP (id.). Bell Atlantic contends that this arrangement would be inconsistent with existing interconnection agreements, and with the Department's establishment of reciprocal compensation rates in Consolidated Arbitrations, D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94.

Bell Atlantic maintains that the Consolidated Arbitrations established local switching and tandem rates that are used for reciprocal compensation: the local switching rate is applied when a CLEC delivers traffic to a Bell Atlantic end office, and the tandem rate is applied when a CLEC delivers traffic to a Bell Atlantic tandem (id. at 7-8). According to Bell Atlantic,

neither the local switching rate nor the tandem rate captures the costs to haul local traffic from a CLEC's IP to Bell Atlantic's end office or tandem (id. at 8). Bell Atlantic states that the costs included in the tandem rates in the Consolidated Arbitrations relate to transport and termination only from the tandem to the end office connected to that tandem where the called customer is located, and CLECs are assumed to use their "facility of choice" to carry their customers' local traffic to Bell Atlantic's IP (id. at 8-9). Bell Atlantic argues that transport costs to the terminating party's IP have always been the responsibility of the originating carrier and are not reflected in the reciprocal compensation rates[5] (Bell Atlantic Reply at 4). Finally, Bell Atlantic asks the Department to clarify that the Department is not modifying its Consolidated Arbitrations Phase 4 Order applying a tandem interconnection rate for reciprocal compensation (Bell Atlantic Motion at 8 n.5; Bell Atlantic Reply at 4).

ii. Bell Atlantic originated traffic

Regarding Bell Atlantic's costs to haul traffic to a CLEC IP, Bell Atlantic asks the Department to clarify its Order that, consistent with the Act and the FCC's Local Competition Order,[6] Bell Atlantic is entitled to recover its interconnection costs and that transport costs are

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5 Bell Atlantic states that the interconnection agreement and mid-span meet arrangement applies to local carrier traffic only (Bell Atlantic Motion at 11 n. 8). Bell Atlantic asks that the Department clarify that carrier access traffic should not be covered by the interconnection arrangement (id.). The Department notes that an ILEC must provide interconnection for telephone exchange traffic, exchange access, or both. 47 C.F.R. § 51.305. We are uncertain exactly what Bell Atlantic is requesting when it asks to exclude access traffic, or its reasons for the request.

6 Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325 (rel. August 8,

(continued…)

an integral part of the provision of interconnection (Bell Atlantic Motion at 10). Bell Atlantic disputes the Department's conclusion that ¶ 200 of the Local Competition Order, which allows ILECs to recover interconnection or access costs from requesting carriers, applies to the costs of establishing and maintaining an interconnection arrangement for a CLEC and does not apply to transport costs (id. at 10-11). See MediaOne Order at 43. Bell Atlantic states that the FCC rejected the argument that such transport costs be considered in a technical feasibility analysis (Bell Atlantic Reply at 5). In addition, Bell Atlantic argues that the additional costs to terminate to a CLEC IP that is not "geographically relevant" are not recovered through reciprocal compensation rates because they involve calls originating from Bell Atlantic, not terminating to Bell Atlantic, and a carrier may recover reciprocal compensation rates only when terminating calls (Bell Atlantic Motion at 11). Bell Atlantic asks that the Department clarify its Order that Bell Atlantic may recover extra costs, which it classifies as interconnection costs, from the CLEC for Bell Atlantic's transport of its local traffic to a CLEC's single IP for termination to the CLECs' end-user customers (id. at 10-11).

b. MediaOne

MediaOne argues that Bell Atlantic's Motion for Clarification of the interconnection point issue should be denied, because Bell Atlantic is seeking reconsideration of an issue that the Department has already decided (MediaOne Opposition at 3-4). According to MediaOne, Bell Atlantic is rearguing its position that it should not be responsible for hauling traffic

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[6](…continued)
1996) ("Local Competition Order").

between a meet point and a Bell Atlantic IP, and that its reciprocal compensation rates do not appropriately compensate it for transport and termination associated with mid-span meet interconnection (id.). MediaOne states that the Department addressed this issue, and expressly rejected Bell Atlantic's argument that it should not have to pay for transport costs to haul traffic between its IP and the CLEC's meet point[7] (which is the CLEC's IP) (id. at 4, citing MediaOne Order at 41-45). MediaOne notes that the Department stated that there was no record evidence that indicated that the current reciprocal compensation rates do not adequately compensate Bell Atlantic for transport and termination costs related to mid-span meets (id., citing MediaOne Order at 45 n.46). MediaOne concludes that Bell Atlantic's Motion does not meet the standards for reconsideration or clarification and should be rejected (id. at 4-5).

c. Greater Media

Greater Media also urges the Department to deny Bell Atlantic's Motion concerning the issue of interconnection points (Greater Media Opposition at 2). According to Greater Media, the Department addressed the issue of relative responsibility of the parties for transport[8] (id. at 3). First, regarding Bell Atlantic's request that the Department clarify that it may establish its

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[7] MediaOne argues that there was no ambiguity in the MediaOne Order about Bell Atlantic's ability to designate its own IPs; that issue was not in dispute (MediaOne Opposition at 4). MediaOne frames the issue as a dispute about which party should pay for transport between the meet point and a Bell Atlantic-designated IP (id.).

[8] Greater Media argues that Bell Atlantic relied on extra record evidence, which should not be considered by the Department. Given our disposition of the issues below, extra record evidence presented by Bell Atlantic, regarding tandem routing and the effect of the tandem exhaust problem, and the calculation of reciprocal compensation rates in the Consolidated Arbitrations, does not prejudice either Greater Media's or MediaOne's position on this issue.

own IPs, Greater Media states that Bell Atlantic's request would require Greater Media to pay transport costs to Bell Atlantic's multiple and distant IPs (Greater Media Opposition at 3). Greater Media asserts that the Department expressly rejected Bell Atlantic's arguments that CLECs should be required to transport calls originated by their customers to Bell Atlantic's "geographically relevant" IPs (id.). Second, Greater Media contends that the Department rejected Bell Atlantic's proposal that if the CLECs did not establish their own "geographically relevant" IPs, they would have to pay Bell Atlantic's transport costs (id.). Greater Media contends that Bell Atlantic is really seeking a reconsideration of the Department's Order; that Bell Atlantic's Motion does not meet the standards for reconsideration and therefore should be rejected (id.).

Furthermore, Greater Media alleges that Bell Atlantic's Motion goes beyond reconsideration or clarification, in that it proposes to alter the rates and charges which were negotiated between Greater Media and Bell Atlantic and were not part of the arbitration process (Greater Media Opposition at 4). Greater Media contends that it and Bell Atlantic agreed on a reciprocal compensation rate, and the Department is without authority to decide this issue that was not subject to arbitration between the parties[9] (id.).

2. Analysis and Findings

a. Bell Atlantic terminated traffic

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[9] Greater Media presented the same argument in its Motion for Clarification or Reconsideration. The Department addresses this motion in Section IV., below.

Bell Atlantic's first request for clarification concerns traffic originated by CLECs and terminated by Bell Atlantic. Bell Atlantic asks for clarification of the scope of the MediaOne Order and whether its findings apply to this type of traffic. Bell Atlantic seeks to establish its own IPs, and asks that we clarify that our Order allows Bell Atlantic to establish those IPs, and requires CLECs to transport traffic to those IPs.

Bell Atlantic is correct that the Order is unclear whether our decision in Section V.B.1.f.ii., which addresses IPs and transport costs, applies to traffic terminated by Bell Atlantic. Therefore, we provide the following clarification. In the MediaOne Order at 41, the Department found that MediaOne and Greater Media may designate a single IP for interconnection with an incumbent. In that context, we found that CLECs are not required to pay Bell Atlantic's transport costs between the mid-span meet arrangement and Bell Atlantic's end or tandem offices. Id. at 42. In addition, we found that Bell Atlantic was not entitled to recover for transport costs as part of interconnection costs, because transport costs are not directly attributable to interconnection. Id. at 43. We based these findings on our interpretation of the Act and the Local Competition Order.

Bell Atlantic does not contest our finding that MediaOne and Greater Media may designate a single IP for interconnection. Instead, Bell Atlantic argues for designation of its own IPs, which could be different from the IPs designated by the CLECs, and contends that the CLECs are responsible for transport of CLEC-originated traffic to the Bell Atlantic IPs. Our review of FCC rules requires us to reject Bell Atlantic's proposal to require that CLECs physically transport and deliver calls to Bell Atlantic's IPs.

First, the Department specifically rejected Bell Atlantic's "geographically relevant" proposal in the MediaOne Order. In that Order, we stated that "neither the Act nor the FCC's rules require … any CLEC to interconnect at multiple points within a LATA to satisfy an incumbent's preference for geographically relevant interconnection points." MediaOne Order at 41; see also Local Competition Order at ¶ 209.[10] Bell Atlantic's "geographically relevant interconnection points" proposal was based on the assumption that CLECs must deliver their originating traffic to Bell Atlantic-designated IPs. We do not reconsider that finding here.

Second, Bell Atlantic argues that the right of each carrier to mandate IP locations for terminating local calls is consistent with existing Department-approved interconnection agreements. However, to the extent that those interconnection agreements contain provisions that implement Bell Atlantic's "geographic relevance" proposal, those provisions are negotiated, and not arbitrated, and have no precedential value here.[11] Regarding Bell Atlantic's technical feasibility argument, Bell Atlantic provides no cite to the record for its factual assertions that it must accept calls only at its tandems or end offices. Therefore, for the reasons discussed above, the Department finds that Bell Atlantic's request to mandate IPs, for the purposes of defining responsibility for transport and termination, that are separate from the points at which

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[10] The Local Competition Order at ¶ 209 states that "Section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points."

[11] Indeed, the FCC has stated that "… a state commission shall have authority to approve an interconnection agreement adopted by negotiation even if the terms of the agreement do no comply with the requirements of [Part 51 - Interconnection]." 47 C.F.R. § 51.3.

Bell Atlantic interconnects with CLECs, is not supported by the FCC's rules and is therefore rejected. Of course, this is not to say that CLECs may not choose to self-transport their originating traffic from the physical interconnection point to Bell Atlantic's IP for termination. That choice is for the CLEC to make based on its own calculus of efficiency.

In rejecting Bell Atlantic's proposal to mandate IPs for the purpose of requiring CLECs to haul originating traffic to those IPs, we are left to answer the question of how the recovery of transport costs should be assigned. This question arises whenever a carrier chooses to hand off traffic to a terminating carrier at a location other than the location where the terminating carrier's reciprocal compensation payments begin. For example, in the MediaOne situation, where the parties interconnect and exchange traffic at a mid-span meet, Bell Atlantic would be forced to provide transport of its originating traffic up to the mid-span meet; and for MediaOne originating traffic, Bell Atlantic would have to provide transport from the mid-span meet to the Bell Atlantic end-user customers. In the latter case, reciprocal compensation payments only compensate Bell Atlantic for the portion of the call from Bell Atlantic's end office or tandem switch to the end-user customers; Bell Atlantic's costs to transport CLEC-originated traffic from the mid-span meet to its end office or tandem switch are left "stranded." The FCC has not addressed this question directly. The Department addresses this question in D.T.E. 98-57.[12]

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[12] In D.T.E. 98-57, at 132, the Department noted that though the FCC has not directly addressed the question of transport cost recovery when a CLEC chooses one interconnection point in a LATA, it has provided guidance on how to assign costs that arise from competition. In the Local Number Portability Order, at ¶ 210, the FCC

(continued…)

As we stated in D.T.E. 98-57, at 132, the FCC has provided guidance for competitively neutral recovery of costs to the transport cost recovery question before us in this Order. Transport costs should be assigned in a competitively neutral manner. Id. at 133-134. Carriers are responsible to provide transport or pay for transport of their originating calls, including reciprocal compensation, between their own originating and the other carrier's terminating end-user customers. Id. This is regardless of where the carriers choose to physically interconnect. Id. CLECs may decide where to interconnect with the LEC, but each carrier is responsible to transport its own traffic or to pay the costs of transporting its originating traffic all the way to the terminating end user. Id. Carriers may choose the most efficient method to accomplish this task. Id. In the MediaOne situation, if MediaOne chooses to interconnect with Bell Atlantic only at a single mid-span meet in the LATA, then MediaOne shall arrange or pay for transport of MediaOne-originated calls from the meet point to Bell Atlantic's end or tandem offices. Id.

Finally, Bell Atlantic asks for the right to choose a mid-span meet form of interconnection. In the Local Competition Order at ¶ 220, the FCC stated that Section

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[12](…continued)

stated that "[i]n determining the cost recovery mechanism for currently available number portability measures, we set forth principles with which any competitively neutral cost recovery mechanism should apply. Specifically, we required that (1) a competitively neutral cost recovery mechanism should not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber; and (2) a competitively neutral cost recovery mechanism should not have a disparate effect on the ability of competing service providers to earn a normal return." The FCC also applied these guidelines to recovery of dialing parity costs. Dialing Parity Order, at ¶ 92. D.T.E. 98-57, at 132.

251(c)(2) does not impose on non-incumbent LECs the duty to provide interconnection. Bell Atlantic's choice of a mid-span meet arrangement would force the interconnecting carrier to also choose that form of interconnection. A CLEC may negotiate a mid-span meet form of interconnection, but Bell Atlantic may not impose that form of interconnection on an unwilling CLEC. Therefore, Bell Atlantic's request to have the unilateral right to choose a mid-span meet form of interconnection is denied.

b. Bell Atlantic originated traffic

For traffic originated by Bell Atlantic, Bell Atlantic requests that the Department clarify that it is entitled to recover transport costs that are an integral part of its interconnection costs. As an initial matter, Bell Atlantic is correct that reciprocal compensation rates do not compensate it for transport for calls originated by Bell Atlantic customers and terminated to a CLEC IP that is not "geographically relevant." Bell Atlantic is compensated under reciprocal compensation rules only when it terminates a call for a CLEC. To the extent that our Order was unclear regarding reciprocal compensation and originating traffic, Bell Atlantic's request for clarification is granted.

Bell Atlantic disputes the Department's conclusion that ¶ 200 of the Local Competition Order, which allows ILECs to recover interconnection or access costs from requesting carriers, applies to the costs of establishing and maintaining an interconnection arrangement for a CLEC, and does not apply to transport costs (id. at 10-11). However, the FCC has made it clear that transport and termination are not part of interconnection. See Local Competition Order at ¶ 176 (interconnection under section 251(c)(2) refers only to the physical linking of two networks

for the mutual exchange of traffic, and not the transport and termination of traffic); Local Competition Order at ¶¶ 199-200 (requiring a CLEC to bear the cost of interconnection pursuant to Section 252(d)(1),[13] but does not include transport costs); 47 C.F.R. § 51.5 (definition of interconnection does not include the transport and termination of traffic). Therefore, Bell Atlantic may not recover the costs of transporting its own originating traffic under Section 252(d)(1).

Bell Atlantic's request to "clarify" that Bell Atlantic may recover additional costs from the CLEC for Bell Atlantic's transport of local traffic to a CLEC's single IP for termination to the CLEC customer is not a clarification, but a reconsideration of a point directly addressed in the MediaOne Order at 42. We stated that "nothing in the Act or FCC rules [require] CLECs to pay the transport costs that Bell Atlantic will incur to haul its traffic between Bell Atlantic's IP and the [CLEC IP]." We further stated that the FCC envisioned both carriers paying their share of the transport costs to haul traffic to the [IP] under the interconnection rules. Id. As noted above, each carrier is responsible for transport of its traffic, or for paying the costs of transport, to the terminating end user customer; neither is responsible for the other's originating transport costs. The Local Competition Order supports this view: "[s]ection 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points." Local Competition Order at ¶

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[13] Section 252(d)(1) addresses, inter alia, "just and reasonable rate[s] for the interconnection of facilities and equipment." Pricing for transport and termination are addressed separately in section 252(d)(2).

209. To the extent that Bell Atlantic is asking for reconsideration of a previously decided issue, its arguments do not meet the standard for reconsideration, and are therefore denied.

B. Collocation at MediaOne's Facilities

In its Order, the Department found that MediaOne is not required by the Act to offer Bell Atlantic collocation at its facilities. MediaOne Order at 50. The Department stated that it has the authority under state law to require MediaOne to offer collocation to Bell Atlantic, but declined to do so because such a requirement would conflict with MediaOne's right to interconnect with Bell Atlantic at any technically feasible location it chooses. Id., citing 47 U.S.C. § 252(e)(3).

1. Positions of the Parties

a. Bell Atlantic

Bell Atlantic argues that the Department's ruling on collocation is based on mistake and therefore should be reconsidered (Bell Atlantic Reply at 5). Bell Atlantic argues that contrary to the Department's conclusion, MediaOne's offering of collocation to Bell Atlantic would have no effect on, and not conflict with, MediaOne's ability to bring its traffic for interconnection to its chosen, technically feasible locations (Bell Atlantic Motion at 12). According to Bell Atlantic, because interconnection is a two-way arrangement, varying methods of interconnection between carriers are feasible (Bell Atlantic Reply at 6). Bell Atlantic contends that if it cannot collocate at MediaOne's facilities, Bell Atlantic cannot self-provision the transport facilities necessary for Bell Atlantic's interconnection with MediaOne, forcing Bell

Atlantic to build a mid-span meet arrangement or purchase transport from MediaOne or a third party[14] (Bell Atlantic Motion at 12). Bell Atlantic further maintains that because a CLEC can establish a single IP for receipt of all of its traffic, the concentrated volume of traffic at the single IP may result in capacity problems that could be better addressed by allowing alternative methods for Bell Atlantic interconnection (id. at 13).

Bell Atlantic argues that the Department has the authority to order collocation if it is necessary for reasonable interconnection (id.). Bell Atlantic concludes that it is reasonable for the Department to require that MediaOne provide Bell Atlantic the same opportunity to choose its interconnection method, as Bell Atlantic affords other CLECs in Massachusetts (id.).

b. MediaOne

MediaOne contends that Bell Atlantic's arguments in its Motion are a reiteration of arguments offered by Bell Atlantic in the underlying case, and therefore do not meet the Department's standard for reconsideration (MediaOne Opposition at 5). MediaOne argues that Bell Atlantic bases its argument for mutual collocation obligations on the mistaken notion that the Act imposes equal and reciprocal interconnection obligations on Bell Atlantic and MediaOne (id.). MediaOne highlights that the Act imposes the obligation to interconnect on ILECs and CLECs alike, but, the additional obligation to interconnect at any technically feasible point, and the obligation to permit collocation, are imposed only on ILECs, and not on CLECs (id.).

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[14] Bell Atlantic expresses a concern that if MediaOne does not allow it to collocate at MediaOne's facilities, then MediaOne would not allow third parties to collocate either (Bell Atlantic Motion at 13 n.9). The result of this choice, argues Bell Atlantic, is to eliminate the option of purchasing transport from a third party vendor, and force Bell Atlantic to purchase transport from MediaOne solely (id.).

2. Analysis and Findings

As we stated in the MediaOne Order at 50, the specific obligation to provide collocation applies only to ILECs, such as Bell Atlantic, not to MediaOne, and therefore MediaOne is not required by the Act to offer Bell Atlantic collocation at its facilities. 47 U.S.C. § 251(c)(6).[15]

However, Bell Atlantic argues that the Department has the authority under state law to consider whether to require MediaOne to offer collocation to Bell Atlantic, and we agreed with this proposition in the MediaOne Order.[16] See MediaOne Order at 50. We declined to exercise that authority because of a concern that imposing a collocation requirement on MediaOne would compromise its right to interconnect at any technically feasible location it chooses. Id. In other words, if Bell Atlantic chose to collocate at MediaOne's facility, MediaOne would be forced to accept that type of interconnection in lieu of, for example, a mid-span meet arrangement. Bell Atlantic's choice would limit MediaOne's options. Bell Atlantic argues that MediaOne's offering of collocation to Bell Atlantic would have no effect on MediaOne's ability to bring its traffic for interconnection to its chosen, technically feasible locations, although Bell Atlantic does not elaborate how this could be done. Bell Atlantic has

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15 In addition, contrary to Bell Atlantic's suggestion that the FCC's rules impose reciprocal terms and conditions on ILECs and CLECs, the FCC in the Local Competition Order stated that § 251(c)(2) does not impose on non-incumbent LECs the duty to provide interconnection. Local Competition Order at ¶ 220; see also id. at ¶ 997.

16 Although the Department has authority under 47 U.S.C. § 252(e)(3) to establish and enforce requirements of state law in our review of an interconnection agreement, the FCC rules prohibit the Department from imposing the obligations of section 251(c), including collocation, on a LEC that is not classified as an ILEC, absent certain conditions. 47 C.F.R. § 51.223.

not persuaded us that the premise of our original decision is faulty, or the result of mistake or inadvertence, and should be reconsidered. In addition, Bell Atlantic reargues the a position that the Department rejected in the MediaOne Order, and therefore does not meet the standard for reconsideration. Therefore, Bell Atlantic's request for reconsideration of this matter is denied.

C. Interconnection Activation Date

In MediaOne Order at 48, the Department found that the interconnection activation date for a mid-span meet arrangement shall be no sooner than 60 days, and no later than 120 days, after receipt of an error free trunk order.

1. Positions of the Parties

a. Bell Atlantic

Bell Atlantic asks the Department to clarify that trunk activation intervals for establishing a mid-span meet arrangement established by the Department in the Order should apply to Bell Atlantic and to MediaOne (Bell Atlantic Motion at 14). In addition, Bell Atlantic argues that the interconnection activation period does not begin to run until the mid-span meet arrangement is established and a valid trunk order is received (id.). Bell Atlantic maintains that a valid trunk order must include certain information, including "Connecting Facility Assignment," which is not finalized until the mid-span meet arrangement is completed (Bell Atlantic Reply at 7). Therefore, in Bell Atlantic's view, a valid trunk order is not received, and the interconnection activation period does not begin to run, until the mid-span meet arrangement is complete (id.).

b. MediaOne

MediaOne does not object to a requirement that it commit to the same time periods for

provisioning trunks to Bell Atlantic in a mid-span meet arrangement (MediaOne Opposition at 6).

MediaOne objects to Bell Atlantic's second point of clarification, arguing that the request to delay the start of the interconnection activation period until the mid-span meet is complete is contrary to the Department's decision on this issue and amounts to reconsideration, not a clarification (id.). According to MediaOne, the Department in its Order agreed with MediaOne that its ability to make service expansion plans required an overall date certain by which MediaOne can expect the interconnection process to be complete (id. at 7). MediaOne maintains that it is clear that the Department intended the time period for interconnection activation to begin to run when a valid trunk order was received, and that the Department did not intend that the mid-span meet be complete before the time period began to run (id.).

2. Analysis and Findings

The Department grants Bell Atlantic's request for clarification regarding the reciprocity of trunk provisioning time frames. The trunk activation intervals for establishing a mid-span meet arrangement established by the Department in the MediaOne Order shall apply to Bell Atlantic and MediaOne.

Concerning the event that triggers the running of the interconnection activation period, the Department declines to accept Bell Atlantic's clarification. The Department based its decision to require specific times for establishment of a mid-span meet arrangement on MediaOne's need for certainty in order to finalize business plans. MediaOne Order at 47. The Department intended that MediaOne would be able to plan its network based on a date certain

for activation of a mid-span meet arrangement. Id. at 48. Bell Atlantic's interpretation that the interconnection activation period does not begin to run until after a mid-span meet is established would deprive MediaOne of that certainty and is contrary to the Department's MediaOne Order. Bell Atlantic's request amounts to a request to change our previous decision, and does not meet the standard for reconsideration. Therefore, Bell Atlantic's request is denied.

The Department recognized that there could be circumstances when the parties may not be able to meet the deadline, due to factors beyond their control. See MediaOne Order at 48 n.47. The Department allows Bell Atlantic (and MediaOne pursuant to the above clarification) to petition the Department for relief in appropriate circumstances where there are exceptional circumstances that prevent Bell Atlantic (or MediaOne) from meeting the deadline established in the MediaOne Order. Where the reason preventing adherence to such a deadline is not fairly ascribable to a particular party, the event should not count as nonfeasance or failure on that party's part.

D. Trunking Requirements

In MediaOne Order at 53-55, the Department established a notification requirement and a specific period for remedying trunk blocking[17] on trunk groups between Bell Atlantic and MediaOne. Specifically, the Department stated that when traffic on a carrier's network exceeds the blocking threshold and that carrier can remedy the blocking itself, we direct the carrier to provision additional trunks within fifteen days of when the problem first develops (i.e., when

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[17] Blocking is a condition in a network when, due to heavy traffic, all trunk circuits are busy, or a switching path is unavailable. The Information Age Dictionary, at 31.

the blocking threshold is exceeded). Id. at 54. Moreover, the Department required the carrier to notify the other carrier of the blocking occurrence and corrective action when the new trunks are installed and made operational. Id.

1. Positions of the Parties

a. Bell Atlantic

Bell Atlantic asks the Department to clarify that trunking requirements established in the Order apply to Bell Atlantic and MediaOne (Bell Atlantic Motion at 15). Bell Atlantic argues that there is a mutual obligation for Bell Atlantic and the CLECs to provide interconnection, and because trunking is an integral part of an interconnection arrangement, the trunking requirements should apply equally to Bell Atlantic and CLECs alike (id.).

b. MediaOne

MediaOne states that it proposed in the MediaOne/Bell Atlantic Arbitration that the trunk provisioning obligation be reciprocal, and that the Department's Order imposed the obligation on both carriers (MediaOne Opposition at 8).

2. Analysis and Findings

To the extent that the Department's Order is unclear on this point, the Department grants Bell Atlantic's request for clarification on this point. The Department's directives regarding trunk provisioning, as contained in the MediaOne Order at 53-55, apply to both Bell Atlantic and MediaOne.

E. Interoffice Signaling Through Third Party Vendor

The FCC found in its Local Competition Order that access to call-related databases[18] is crucial to CLECs' entry into the local exchange market and concluded that ILECs should provide "nondiscriminatory access on an unbundled basis to their call-related databases for the purpose of switch query and database response through the SS7[19] network." Local Competition Order at ¶ 484. In the MediaOne Order at 57-58, the Department found that Bell Atlantic had the obligation to provide access to call-related databases at parity to the level of service it provides itself when MediaOne chooses to use a commercial third-party SS7 provider, instead of directly interconnecting their own Common Channel Signaling facilities to Bell Atlantic.

1. Position of the Parties

a. Bell Atlantic

Bell Atlantic opposes the Department's requirement that it provide access to call-related databases at parity when those databases are accessed by a commercial SS7 provider instead of MediaOne directly. Bell Atlantic argues that the Department's Order requiring Bell Atlantic to provide service to an SS7 vendor chosen by MediaOne at parity with the service it provides itself would appear to supersede the contractual terms between Bell Atlantic and the SS7

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18 "Call-related databases are those SS7 databases used for billing and collection or used in the transmission, routing, or other provision of a telecommunications service." Local Competition Order at ¶ 484 n. 1126.

19 "Signaling systems facilitate the routing of telephone calls between switches. Most ILECs employ signaling networks that are physically separate from their voice networks, and these "out-of-band" signaling networks [also known as Common Channel Interoffice Signaling] simultaneously carry signaling messages for multiple calls. In general, most LECs' signaling networks adhere to a Bellcore standard Signaling System 7 ("SS7") protocol." Local Competition Order at ¶ 455.

vendor, and may also conflict with applicable tariff terms and conditions (Bell Atlantic Motion at 16). Bell Atlantic contends that the Order seems to require that Bell Atlantic provide the same level of service to the SS7 vendor chosen by MediaOne to all that vendor's customers, given the technical limitation that does not allow Bell Atlantic to distinguish MediaOne's traffic from other CLEC traffic handled by the SS7 vendor (id. at 17). Bell Atlantic asks the Department to clarify its decision to mitigate interference with the contractual relations between Bell Atlantic and the SS7 vendor (id. at 17).

In its Reply Comments, Bell Atlantic argues that the Department's decision is based on mistake, and therefore should be reconsidered (Bell Atlantic Reply at 8). According to Bell Atlantic, it has no obligation under the Act or FCC orders to provide third party vendors with access to its databases at parity with the level Bell Atlantic provides to itself; Bell Atlantic is only required to provide parity with the CLECs themselves (id.). Bell Atlantic also contends that the Department's decision to require parity for third party vendors conflicts with applicable Bell Atlantic approved federal access tariff (citing FCC Tariff No. 11, Sec. 21) as well as numerous interconnection agreements (id. at 8-9). Bell Atlantic concludes that because the Department's actions go beyond the terms and conditions of an approved tariff and beyond the requirements of the Act, the Department's decision is based on mistake and must be reconsidered (id.).

b. MediaOne

MediaOne argues that Bell Atlantic's request is for reconsideration, not clarification, and because it does not meet the standard for reconsideration, should be denied (MediaOne

Opposition at 9). MediaOne maintains that the Department's decision was based on Bell Atlantic's Section 271 statutory obligation to provide access to databases at parity to all CLECs, and that that obligation is not conditioned upon the CLECs using the ILEC as the sole provider (MediaOne Opposition at 9, citing MediaOne Order at 58). MediaOne contends that if Bell Atlantic is currently evading its statutory duty to provide access to databases at parity through contract or tariff provisions, the solution would be to require Bell Atlantic to meet its statutory obligation for all CLECs (id.).

2. Analysis and Findings

Bell Atlantic first asks for clarification, then reconsideration. Both requests are denied. The Department's decision was not based on mistake. Bell Atlantic is required under Section 271 to provide access to databases by CLECs at parity to access it provides itself. 47 U.S.C. § 271(c)(2)(B)(i); see also Local Competition Order at ¶ 484.[20] CLECs' ability to choose a third party vendor would be severely compromised if service was below what the ILEC can offer because of an agreement between the ILEC and SS7 vendor. Bell Atlantic's interpretation allows it to maintain a virtual monopoly on quality access to databases. Regarding Bell Atlantic's arguments that its agreements with third party SS7 providers must control, if Bell Atlantic were to provide better service to the SS7 provider than its agreement dictates, that level of service would not disadvantage the SS7 vendor, as long as the level of

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[20] The Department notes that the FCC has not addressed the particular issue of parity access to call related databases by third party SS7 vendors. However, as we stated in the MediaOne Order at 58, we find no requirement that the parity requirement is conditioned on CLECs using the ILEC as the provider, rather than a third party commercial provider.

service received by the SS7 vendor is in excess of what the tariff or contract provides.[21] Regarding Bell Atlantic's concern that technical limitations may force it to provide an improved level of service to all customers of a SS7 vendor under our directives, we note that this argument appears for the first time in Bell Atlantic's Motion, and there is no record to indicate the impact of this technical limitation. In sum, Bell Atlantic has failed to meet the standard for clarification or reconsideration, and therefore the Department denies its request.

F. Obligation to Provide UNEs

In its Order, the Department rejected Bell Atlantic's proposal to unilaterally discontinue provisioning UNEs, without notice and a transition period, if Bell Atlantic is no longer required by law to provide those particular UNEs. MediaOne Order at 91. The Department accepted MediaOne's proposal, requiring that the parties negotiate modifications to interconnection agreements and submit such changes to the Department for approval. Id. at 92. Bell Atlantic filed a Motion for Reconsideration or Clarification of the Department's Order on Obligation to Provide UNEs in both the MediaOne and Greater Media arbitrations.

During the pendency of Bell Atlantic's Motions for Reconsideration and Clarification, the FCC released its UNE Remand Order. The UNE Remand Order further defined the unbundling obligations of ILECs, including Bell Atlantic, and set forth the network elements that ILECs must make available on an unbundled basis. UNE Remand Order at ¶ 4. The list

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[21] Bell Atlantic argues that the MediaOne Order contradicts agreements it has with SS7 providers, and FCC tariff terms and conditions. We cannot verify this claim, as neither SS7 agreements, nor the applicable FCC tariff, are part of the record in this matter. We note that many of Bell Atlantic's agreements contain provisions that require modification in the event of a change in regulatory law.

of required UNEs is not the same as the FCC's previous list, on which the parties modeled their draft interconnection agreements that were the subject of the arbitration. The parties submitted comments identifying the changes in the UNE list as they effect these arbitrations, and proposed methods for dealing with this change of law.

1. Positions of the Parties

a. Bell Atlantic

Bell Atlantic asks the Department to reconsider its decision to require Bell Atlantic to continue to provide UNEs in the event the FCC or other applicable law no longer requires that they be provided, and instead adopt a reasonable transition period (Bell Atlantic Motion at 17-19). Bell Atlantic argues that it proposed a reasonable transition period, and that the Department wrongly refused to consider its proposal based on the lack of a record on which to base a decision (id.). Bell Atlantic further argues that the Department made a mistake by refusing to consider Bell Atlantic's transition period proposal, and the Department's refusal was inconsistent with our encouragement of continued negotiations during the case (Bell Atlantic Reply at 9). According to Bell Atlantic, if the Department upholds its decision on provision of UNEs, it should clarify its Order to apply only to existing services, and to indicate that the Order applies to discontinuance of existing UNEs (Bell Atlantic Motion at 19).

Regarding the Motion for Reconsideration or Clarification in the Greater Media arbitration, Bell Atlantic argues that the Department's decision in the Greater Media arbitration was based on its decision in the MediaOne arbitration, not on independent grounds, and therefore the Department should apply its ruling in the MediaOne arbitration to the Greater Media arbitration

(Bell Atlantic Motion for Reconsideration of Greater Media Order at 2).

Regarding the effect of the UNE Remand Order, Bell Atlantic states that the FCC found that local switching in certain central offices and operator services and directory assistance ("OS/DA") are not UNEs, and, therefore, Bell Atlantic is not required to offer access to those systems on an unbundled basis (Bell Atlantic UNE Remand Comments at 1). In addition, Bell Atlantic maintains that it is not required to price OS/DA at TELRIC prices (id.). Bell Atlantic notes that it will continue to provide nondiscriminatory access to OS/DA and directory database services, but will negotiate the applicable rates, terms and conditions (id. at 2). Bell Atlantic argues that the interconnection agreements with MediaOne and Greater Media must be modified to reflect the fact that neither OS/DA nor directory database services are UNE obligations[22] (id.). In its Reply Comments, Bell Atlantic argues that there is no need for negotiation on this point, and the Department should direct the parties to revise the Available Network Elements section to comply with the UNE Remand Order (Bell Atlantic UNE Remand Reply Comments at 1).

b. MediaOne

MediaOne argues that Bell Atlantic has failed to meet the standard for reconsideration of this matter, and the Motion should be rejected (MediaOne Opposition at 10). Regarding Bell Atlantic's alternative request for clarification, MediaOne notes that it does not object to a

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[22] According to Bell Atlantic, the Available Network Elements Section would be changed to reflect the fact that local switching in certain central offices, and Operator Services and Directory Assistance, are not UNEs (Bell Atlantic UNE Remand Reply Comments at 1).

limitation that restricts it from ordering any new UNEs which it does not already purchase from Bell Atlantic, and which the FCC has indicated that Bell Atlantic no longer has to provide (id. at 11 n.7).

Regarding the effect of the UNE Remand Order, MediaOne points out that the UNE Remand Order is not yet effective, and argues that it is not appropriate to change any language in the interconnection agreement until the rules are effective (MediaOne UNE Remand Comments at 2-3). In addition, MediaOne argues that the UNE Remand Order amounts to a change in law, and therefore should be addressed consistent with the Department's Order regarding change of law (id. at 3). Specifically, MediaOne states that the Department's Order requires the parties, when faced with a change in law, to negotiate modifications to the interconnection agreement and submit the changes to the Department for approval; the changes in law provision includes those changes that affect Bell Atlantic's obligation to provide UNEs (id. at 3). MediaOne continues to oppose Bell Atlantic's transition period proposal[23] (id.).

MediaOne identifies two changes that should be addressed by amendments to the interconnection agreement. First, the Available Network Elements Section of the interconnection agreement, which lists the UNEs to be provided pursuant to the agreement, should be revised to be consistent with the list of UNEs set forth in the UNE Remand Order (id. at 4). In addition, MediaOne asks that language be added to the interconnection agreement that provides for unbundling of additional UNEs in the event the Department requires such

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[23] MediaOne notes that Bell Atlantic has not been relieved of its obligation to provide any of the UNEs it currently provides MediaOne, as a result of the UNE Remand Order (MediaOne UNE Remand Comments at 4 n.2).

unbundling in the future (id.). Second, MediaOne contends that although Bell Atlantic is no longer required to unbundle OS/DA services, it must provide nondiscriminatory access to OS/DA, and that the rules that apply to provision of OS/DA are changed (id. at 4-5). MediaOne states that the parties must negotiate these changes, including nondiscriminatory rates, terms and conditions (id. at 5). Finally, MediaOne states that it does not want the interconnection agreement changes to further delay effectiveness of its new interconnection agreement, and urges the Department to allow the parties to submit amendments based on UNE Remand changes after the interconnection agreement goes into effect (id. at 6; MediaOne UNE Remand Reply Comments at 1).

c. Greater Media

Regarding Bell Atlantic's Motion for Reconsideration and Clarification in the Greater Media arbitration, Greater Media opposes Bell Atlantic's Motion, stating that Bell Atlantic has failed to satisfy the Department's reconsideration standards (Greater Media Opposition to Bell Atlantic Motion for Reconsideration of Greater Media Order at 2).

Regarding the effect of the UNE Remand Order, Greater Media argues that Bell Atlantic should continue to provide UNEs pursuant to the existing terms of the interconnection agreement (Greater Media UNE Remand Comments at 5). Greater Media notes that the parties need to conform the list of UNEs in the interconnection agreement to the FCC's new rules (id. at 4). Further, Greater Media contends that any changes to the interconnection agreement from the UNE Remand Order should be addressed through the sections in the

interconnection agreement that require the parties to negotiate changes and to submit them to the Department for approval (id.). Greater Media makes the request, similar to MediaOne, that the parties address the changes resulting from the UNE Remand Order after its interconnection agreement takes effect (id.).

2. Analysis and Findings

Bell Atlantic argues that the Department made a mistake by not considering a reasonable transition period for Bell Atlantic to stop providing UNEs in the event that a change in law relieves it of the obligation to provide particular UNEs. Bell Atlantic misses the mark. The Department's decision to support a renegotiation of an interconnection agreement due to changes in law as a better choice than any type of automatic transition was based on several factors, enumerated in the MediaOne Order at 91-92. First, the Department recognized that parties may disagree on the applicability of a change. Second, the Department has a responsibility to review changes to interconnection agreements, especially where the changes may have material effects on quality of service. Third, the Department expressed concern that customers may be negatively effected by Bell Atlantic's cessation of providing UNEs. Finally, we stated that CLECs should have the opportunity to make alternative arrangements in the event Bell Atlantic will no longer provide certain UNEs under the interconnection agreement. Id.

While it is true that a transition period may address some of these concerns, the Department had no record with which to determine whether 180 days is the appropriate transition period; Bell Atlantic pointed to none, although it wanted the Department to assess this

transition period on the merits. Bell Atlantic's proposed transition period was presented too late in the proceeding. In addition, a transition period (of any length) would not address the first and second points above. Therefore, Bell Atlantic's Motion on this point is denied. However, the Department accepts Bell Atlantic's clarification that our Order applies only to existing services (i.e., those services provided by Bell Atlantic to MediaOne at the time a change in law relieves Bell Atlantic of the obligation to provide particular UNEs).

Regarding the effect of the UNE Remand Order, the parties agree that the UNE list contained in each interconnection agreement must be updated to reflect the FCC's new UNE rules. The parties disagree as to the mechanism to be used to implement the UNE Remand Order provisions. Bell Atlantic states in its reply comments that the Department should direct the parties to revise the list of Available Network Elements to reflect the new FCC UNE list. MediaOne argues that there are rates, terms and conditions that must be renegotiated and included in the interconnection agreement.[24] Because the parties must change more than the UNEs appearing on the Available Network Elements section of their respective interconnection agreements, the Department finds that the parties must negotiate these changes and submit them for Department approval, consistent with the process to be employed if Bell Atlantic is relieved of its obligation to provide a particular UNE. The Department also agrees with MediaOne and Greater Media that this process should not delay implementation of the interconnection agreements. Therefore, the Department will allow the parties to amend their interconnection

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[24] Bell Atlantic, its initial comments, notes that it will negotiate applicable rates, terms and conditions for OS/DA and directory database services.

agreements after they are approved.[25]

G. Application of Pick and Choose Rules

In MediaOne Order at 96-97, the Department found that Bell Atlantic shall provide to MediaOne in Massachusetts, and to any other requesting CLEC, pursuant to the "pick-and-choose" rule, 47 C.F.R. § 51.809, the UNEs that Bell Atlantic makes available in any of its state-approved interconnection agreements, without regard to which state commission approved the interconnection agreement.

In Greater Media Order at 96, the Department applied the same view of the "pick-and-choose" rule to the parties' Tandem Transit provision, and held that Greater Media may request Tandem Transit service on the same terms and conditions as contained in interconnection agreements between Bell Atlantic and other CLECs approved by a state commission.[26]

Bell Atlantic filed a Motion for Reconsideration or Clarification of the Department's Order on applicability of the "pick-and-choose" rule in both the MediaOne and Greater Media arbitrations.

1. Positions of the Parties

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25 MediaOne has indicated that it would agree to true-up any amount associated with OS/DA changes which may be due during the interim period before the new OS/DA charges are approved by the Department.

26 The Supreme Court reinstated the FCC's "pick-and-choose" rule in AT&T Corp. v. Iowa Utilities Board, 525 U.S. 366 (1999). The FCC's rule requires the ILEC to make available any individual interconnection, service, or network element arrangement contained in any agreement to which it is a party. 47 C.F.R. § 51.809(a). The FCC explained that "section 252(i) entitles all parties with interconnection agreements to 'most favored nation' status regardless of whether they include 'most favored nation' clauses in their agreements." Local Competition Order at ¶ 1316.

a. Bell Atlantic

Bell Atlantic asks for clarification of the scope of the applicability of the "pick-and-choose" rule (Bell Atlantic Motion at 19-20). Bell Atlantic asks the Department to limit the application of "pick-and-choose" rules to exclude rates and charges and other conflicting provisions, which would have the effect of overturning Department precedent (id. at 20). Bell Atlantic contends that the Order can be read to permit CLECs to "pick-and-choose" provisions of any interconnection agreement throughout Bell Atlantic-New England even with respect to selecting rates that may differ from Department-approved rates (id.). According to Bell Atlantic, 47 C.F.R. § 51.809 does not address the fact that giving the CLECs discretion to choose services from other jurisdictions allows them to choose rates or contract provisions that may conflict with Department Orders (Bell Atlantic Reply at 10).

Regarding the Motion for Reconsideration or Clarification in the Greater Media arbitration, Bell Atlantic argues that the Department's decision in the Greater Media arbitration concerning the application of the "pick-and-choose" rule to Tandem Transit service was based on its decision in the MediaOne arbitration, not on independent grounds, and therefore the Department should apply its ruling in the MediaOne arbitration to the Greater Media arbitration (Bell Atlantic Motion for Reconsideration of Greater Media Order at 4).

b. MediaOne

MediaOne maintains that Bell Atlantic's Motion seeks to modify the Department's Order, not to clarify it, and its request should be denied (MediaOne Opposition at 11). MediaOne contends that Bell Atlantic's rate shopping concerns are addressed by 47 C.F.R.

§ 51.809(b) and (c), which allow Bell Atlantic to avoid the use of the "pick-and-choose" rule when, among other things, Bell Atlantic can demonstrate that the cost to provide the service is greater than the cost of providing it to the carrier that originally negotiated the provision (id.). MediaOne argues that Bell Atlantic's general concern for potential, undefined conflicts with Department precedent does not meet the standards for reconsideration (id.).

c. Greater Media

Greater Media argues that Bell Atlantic has not met the standard for reconsideration of this issue, and therefore the Department should deny Bell Atlantic's Motion (Greater Media Opposition to Bell Atlantic Motion for Reconsideration of Greater Media Order at 2). Furthermore, Greater Media contends that Bell Atlantic's speculation about future conflicts between Tandem Transit terms chosen by Greater Media and Department precedent, does not afford a basis for reconsideration (id. at 3).

2. Analysis and Findings

Bell Atlantic asks the Department to limit the scope of the "pick-and-choose" rule to exclude (1) rates and charges, and (2) provisions conflicting with Department precedent. Regarding the ability of a CLEC to pick and choose rates and charges from another interconnection agreement, it is clear that rates and charges are not an "interconnection, service, or network element" within Section 251(i) of the Act or the FCC's "pick-and-choose" rules. Each of these terms has specific definitions which do not include rates and charges.[27] In

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[27] Interconnection is defined by the FCC as "the physical linking of two networks for the mutual exchange of traffic." Local Competition Order at ¶ 176. Telecommunication

(continued…)

addition, Rule 51.809(a) makes the distinction between the interconnection, service, and network element arrangement, and the rates, terms and conditions upon which they are provided. Because rates and charges do not fall within the items that may be chosen through the "pick-and-choose" rule, CLECs may not apply the rule to choose different rates and charges than those set by the Department (or, where appropriate, negotiated by the parties). Therefore, Bell Atlantic's request to limit the scope of the "pick-and-choose" rule to exclude rates and charges is unnecessary, or, put differently, merely seeks confirmation of what should be evident to all. Thus, where Bell Atlantic can prove that the choice by a CLEC of an interconnection, service, or network element arrangement would cause it to incur costs that are greater than the cost to provide that interconnection, service, or network element arrangement to the original carrier, the "pick-and-choose" obligation would no longer apply. 47 C.F.R. § 51.809(b).

Second, Bell Atlantic also asks the Department to limit the scope of the "pick-and-choose" rule to exclude provisions that conflict with Department precedent. Currently, parties can negotiate terms that conflict with Department precedent, unless the Department specifically supersedes those negotiated terms. If a CLEC uses "pick-and-choose" to select a negotiated provision from another interconnection agreement, that provision is effective, unless the

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[27](…continued)

service is defined as "the offering of telecommunications for a fee directly to the public, … regardless of the facilities used." 47 U.S.C. § 153(46). Network Element is defined in the Act as "a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment … " 47 U.S.C. § 153(29).

Department supersedes it. Similarly, if the CLEC selects an arbitrated provision from another interconnection agreement, and it conflicts with a Department approved tariff provision, the arbitrated provision prevails. See D.T.E. 98-57 (Phase I), at Section V.A.3. However, Bell Atlantic has the opportunity to propose that one of its tariff provisions supersede an interconnection provision. The Department will grant such a request only in extraordinary circumstances. Id. Therefore, we decline to adopt Bell Atlantic's requested clarification.

H. Licensing

In MediaOne Order at 137, the Department declined to direct Bell Atlantic and MediaOne to license their intellectual property, absent a separate intellectual property licensing agreement granting the parties such rights. However, the Department indicated that MediaOne could "pick-and-choose" the intellectual property provision contained in the MCImetro Access Transmission Services, Inc./Bell Atlantic interconnection agreement. Id. at 138.

1. Positions of the Parties

a. Bell Atlantic

Bell Atlantic argues that the FCC's "pick-and-choose" rule cannot be applied to licensing provisions from other interconnection agreements since the license is not an interconnection service, a resold service, or a UNE pursuant to Section 251 of the Act, and therefore is not subject to the "pick-and-choose" rule (Bell Atlantic Motion at 21, citing 47 C.F.R. § 51.809(a)). Bell Atlantic alleges that the Department's decision to allow MediaOne to select the licensing provision from another interconnection agreement is based on mistake or error of law, conflicts with federal law, and must be reconsidered (Bell Atlantic Reply

Comments at 11).

b. MediaOne

MediaOne claims that Bell Atlantic's Motion should be denied (MediaOne Opposition at 12-13). MediaOne argues that the license that is the subject of dispute is the license related to the parties' use of facilities or equipment associated with the services provided pursuant to the interconnection, and as such are "inextricably linked" with the services provided under the interconnection agreement (id.). The license, concludes MediaOne, therefore falls within the scope of the "pick-and-choose" rule (id.).

2. Analysis and Findings

MediaOne's argument that the licensing provision, because it is "inextricably linked" with the services provided under the interconnection agreement, implies that the licensing provision is a service and therefore falls within the scope of the "pick-and-choose" rule. However, MediaOne provides no support that a provision that is "inextricably linked" to a service must therefore be treated as a service for purposes of the "pick-and-choose" rule. All provisions in an interconnection agreement support interconnection and, by MediaOne's argument, could be deemed "inextricably linked" to interconnection, service or network elements provided pursuant to the interconnection agreement. The Department finds that a licensing agreement is not subject to the "pick-and-choose" rules, and that the Department erred in the MediaOne Order when it stated that MediaOne could "pick-and-choose" the intellectual property provision from another interconnection agreement. The Department therefore grants Bell Atlantic's Motion on this point.

IV. GREATER MEDIA'S MOTION FOR CLARIFICATION OR RECONSIDERATION

Greater Media seeks clarification or reconsideration of one issue in the MediaOne Order. In the MediaOne Order at 45, the Department found that the reciprocal compensation rate to be paid between the parties is the tandem rate.[28] The finding was included in a section addressing consolidated issues, but the MediaOne Order did not specify whether the finding applied to Greater Media. Greater Media contends that it did not request, and the Arbitrator did not consolidate, the issue of reciprocal compensation between Greater Media and Bell Atlantic with the MediaOne/Bell Atlantic Arbitration (Greater Media Motion for Clarification at 2). In addition, Greater Media states that it had reached agreement on a reciprocal compensation rate with Bell Atlantic (id.). Therefore, Greater Media asks that the Department clarify that the reciprocal compensation decision in the MediaOne Order does not apply to the Greater Media/Bell Atlantic interconnection agreement (id.).

Bell Atlantic supports Greater Media's Motion for Clarification (Bell Atlantic Response to Greater Media Motion for Clarification at 1). Bell Atlantic agrees that it reached agreement with Greater Media on a reciprocal compensation rate, and therefore no dispute on the issue was presented to the Department for resolution (id. at 2). Bell Atlantic asks the Department to grant Greater Media's Motion for Clarification (id.).

The Department grants Greater Media's Motion for Clarification, and clarifies that the

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[28] The tandem rate is the reciprocal compensation rate paid when a party hands off traffic to the other party at a tandem, as opposed to end, office. The Department has determined that a CLEC switch should be viewed as a tandem. Consolidated Arbitrations, Phase 4 Order at 69.

holding on the reciprocal compensation rate in MediaOne Order at 45, applies to the MediaOne/Bell Atlantic interconnection agreement. That holding did not and was not intended to reach the Greater Media/Bell Atlantic interconnection agreement.

V. BELL ATLANTIC'S MOTION FOR STAY AND MEDIAONE'S MOTION FOR EXTENSION OF TIME TO FILE ITS INTERCONNECTION AGREEMENT

A. Introduction

In the MediaOne Order at 142, the Department required MediaOne and Bell Atlantic to incorporate the Department's determinations into a final interconnection agreement, setting forth both the negotiated and arbitrated terms and conditions, to be filed with the Department pursuant to Section 252(e)(1) of the Act within 21 days from the date of the Order.[29] This section addresses Bell Atlantic's Motion for Stay and MediaOne's Motion for Extension of Time to File Its Interconnection Agreement.

B. Standard of Review

Neither the enabling statutes nor the Department's procedural rules provide explicitly for a stay pending reconsideration of a Department Order. See CTC Communications Corp., D.T.E. 98-18-A at 4 (1998) (stay granted pending motion for reconsideration due to procedural defects). The Department may grant a stay pending judicial appeal of a Department Order in

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[29] The Greater Media Order also required Greater Media to file a completed interconnection agreement with the Department within 21 days from the date of that Order. Greater Media Order at 125. On October 13, 1999, Greater Media and Bell Atlantic jointly filed a Motion for Extension of Time to file an interconnection agreement, that was granted by the Arbitrator on November 4, 1999.

two circumstances.[30] In the first circumstance, the Department takes the following factors into account: (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will be harmed irreparably absent a stay; (3) the prospect that others will be harmed if the Department grants the stay; and (4) the public interest in granting the stay. Boston Edison Company, D.P.U. 92-130-A at 7 (1993). The second circumstance occurs when: (1) the consequences of adjudicatory decisions are far-reaching; (2) the immediate impact upon the parties in a novel and complex case is substantial; or (3) significant legal issues are involved. Stow Municipal Electric Department, D.P.U. 94-176-A at 2 (1998).

C. Positions of the Parties

1. Bell Atlantic

Bell Atlantic requests that the Department stay the MediaOne Order pending the Department's ruling on Bell Atlantic's Motion for Reconsideration and Clarification until 21 days after the Department's Order on that Motion (Motion for Stay at 1). Bell Atlantic argues that it is unreasonable for the parties to file an interconnection agreement 21 days from the date of the MediaOne Order, and that if the Department grants Bell Atlantic's Motion for Reconsideration and Clarification, it would have a material effect on issues that are to be incorporated into the interconnection agreement (id.). Bell Atlantic also argues that because of the broad implications that the MediaOne Order may have on Bell Atlantic interconnection

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30 Although Bell Atlantic requests a stay pending outstanding motions for reconsideration, and not a judicial appeal, the standard of review cited here is useful for the circumstances of this matter.

agreements in general, it is appropriate for the Department to grant the Motion for Stay (id. at 2). Responding to MediaOne's and Greater Media's opposition, Bell Atlantic asserts that it is likely to prevail on the merits of its Motion for Reconsideration and Clarification, and that both parties would be irreparably harmed if they proceed to negotiate and file a new interconnection agreement before there is a Department Order on the outstanding Motions for Reconsideration and Clarification (Bell Atlantic Response to Motion for Stay at 13).

Regarding MediaOne's Motion for Extension, Bell Atlantic opposes MediaOne's proposal to set a specific deadline for the Department to issue its Order but, instead, advocates three weeks as the appropriate time to enable the parties to reach final agreement (id.). According to Bell Atlantic, during the pendency of the Motion for Reconsideration and Clarification, the existing MediaOne/Bell Atlantic interconnection agreement applies (id.).

2. MediaOne

MediaOne argues that Bell Atlantic's Motion for Stay should be denied because it does not meet the Department's standards for granting a stay pending a Motion for Reconsideration (MediaOne Opposition at 13). MediaOne maintains that the Department has used two tests to determine whether a stay should be granted, that Bell Atlantic offers no proof that it meets either test, and therefore Bell Atlantic's Motion for Stay fails under both tests (id.). Moreover, MediaOne explains that it opposes the Motion for Stay because it is open ended, but would not oppose a short time for the Department to issue its Order on the Motion for Reconsideration and Clarification, and two additional weeks for the parties to incorporate the Order into a final interconnection agreement (id. at 16).

In its Motion for Extension, MediaOne maintains that it is looking to file an interconnection agreement as soon as possible, and to have a specific time established for making that filing (MediaOne Motion for Extension at 2). MediaOne therefore asks that the Department require the parties to file an interconnection agreement two weeks from the date of the Department's Order on the Motion for Reconsideration and Clarification (id. at 3).

3. Greater Media

Greater Media argues that Bell Atlantic has not argued or demonstrated that the issuance of a stay is warranted under applicable law (Greater Media Opposition at 5). According to Greater Media, there are no procedural infirmities that would warrant the granting of a stay, and Bell Atlantic has not even argued that it meets the standards for a stay (id. at 5 n.5). Greater Media further emphasizes the harm to it from a delay caused by a stay, because it will be unable to complete its interconnection agreement with Bell Atlantic (id.). Greater Media urges the Department to deny the Motion for Stay at least as it relates to the consolidated issues that affect the Greater Media/Bell Atlantic interconnection agreement (id. at 6-7).

D. Analysis and Findings

The parties request additional time to complete their interconnection agreements pending the resolution of the outstanding Motions in this matter. In effect, due to the passage of time since the Motion for Stay was filed, the additional time sought has already been allowed. This Order addresses the merits of any outstanding unresolved issues, and therefore we need not take formal action on either Bell Atlantic's Motion for Stay, or MediaOne's Motion for Extension. The parties are directed to file completed interconnection agreements within three

weeks of the date of this Order.

VI. MOTIONS FOR CONFIDENTIAL TREATMENT

On June 30, 1999, Bell Atlantic filed its first Motion for Confidential Treatment in the consolidated portion of this arbitration ("First Motion for Confidential Treatment"). On July 28, 1999, Bell Atlantic filed its second Motion for Confidential Treatment in the Greater Media arbitration ("Second Motion for Confidential Treatment"). No other party responded to either motion.

A. Standard of Review

Information filed with the Department may be protected from public disclosure pursuant to G.L. c. 25, § 5D, which states in part that:

> the [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such protection. Where such a need has been found to exist, the Department shall protect only so much of the information as is necessary to meet such need.

G.L. c. 25, § 5D permits the Department, in certain narrowly defined circumstances, to grant exemptions from the general statutory mandate that all documents and data, regardless of physical form or characteristics, received by an agency of the Commonwealth are to be viewed as public records and, therefore, are to be made available for public review. See G.L. c. 66, § 10; G.L. c. 4, § 7, cl. twenty-sixth. Specifically, G.L. c. 25, § 5D, is an exemption recognized by G.L. c. 4, § 7, cl. twenty-sixth (a) ("specifically or by necessary implication exempted from disclosure by statute").

G.L. c. 25, § 5D establishes a three-part standard for determining whether, and to what extent, information filed by a party in the course of a Department proceeding may be protected from public disclosure. First, the information for which protection is sought must constitute "trade secrets, confidential, competitively sensitive or other proprietary information;" second, the party seeking protection must overcome the G.L. c. 66, § 10, statutory presumption that all such information is public information by "proving" the need for its non-disclosure; and third, even where a party proves such need, the Department may protect only so much of that information as is necessary to meet the established need and may limit the term or length of time such protection will be in effect. See G.L. c. 25, § 5D.

Previous Department applications of the standard set forth in G.L. c. 25, § 5D reflect the narrow scope of this exemption. See Boston Edison Company: Private Fuel Storage Limited Liability Corporation, D.P.U. 96-113, at 4, Hearing Officer Ruling (March 18, 1997) (exemption denied with respect to the terms and conditions of the requesting party's Limited Liability Company Agreement, notwithstanding requesting party's assertion that such terms were competitively sensitive); see also, Standard of Review for Electric Contracts, D.P.U. 96-39, at 2, Letter Order (August 30, 1996) (Department will grant exemption for electricity contract prices, but "[p]roponents will face a more difficult task of overcoming the statutory presumption against the disclosure of other [contract] terms, such as the identity of the customer"); Colonial Gas Company, D.P.U. 96-18, at 4 (1996) (all requests for exemption of terms and conditions of gas supply contracts from public disclosure denied, except for those terms pertaining to pricing).

B. Bell Atlantic's Motions

In its First Motion for Confidential Treatment, Bell Atlantic requests confidential treatment for its responses to information requests M1-1-7, and M1-1-8, which contain Bell Atlantic's internal methods and procedures for implementing interim number portability and local number portability. Bell Atlantic argues that these responses qualify as trade secrets or confidential, competitively sensitive proprietary information under Massachusetts law because they are a blueprint of internal business practices developed and utilized by Bell Atlantic (First Motion for Confidential Treatment at 3). Bell Atlantic states that the methods and procedures describe Bell Atlantic's technical systems, mechanized processes and administrative practices at a level of detail not known outside Bell Atlantic (id.). According to Bell Atlantic, the development of the methods and procedures involved considerable time and effort, the data are not easily duplicated outside Bell Atlantic, and that competitors could use the information to develop their own procedures, thereby giving them an unfair business advantage (id. at 4).

Bell Atlantic also requests confidential treatment of its responses to information requests GMT 1-12 and GMT 1-14, which contain data relating to trunk quantities in service both by tandem and between central offices in Massachusetts (id.). Bell Atlantic alleges that this information constitutes a trade secret or confidential, competitively sensitive proprietary information under Massachusetts law because of its significant business and marketing value to potential competitors (id.). According to Bell Atlantic, because the data is based on volume of traffic and duration of calls by switch, the data can reveal customers' calling patterns between central offices, which competitors can use to determine where to locate its own switches or

promote services, thereby gaining an unfair competitive advantage (id. at 4-5). Bell Atlantic asserts that the information is not available from other non-company sources, and cannot be reasonably developed or duplicated by competitors (id. at 4). Bell Atlantic also contends that there is no compelling need for public disclosure, and that its interest in preserving the confidentially of the data should outweigh any interest in public disclosure (id. at 5).

In its Second Motion for Confidential Treatment, Bell Atlantic requests confidential treatment of RR-GMT-2, which identifies the maximum trunk capacity of each tandem switch, and RR-DTE-6, which identifies those CLECs that voluntarily agreed to use direct end office trunking in Massachusetts. Bell Atlantic argues this information falls within the definition of proprietary information under Massachusetts law, is competitively sensitive, and may assist competitors in their competitive initiatives (Second Motion for Confidential Treatment at 3). Bell Atlantic asserts that is has a legitimate need to maintain the confidentiality of that data which outweighs any benefit in public disclosure of the material (id. at 3-4).

C. Analysis and Findings

Regarding the information request responses that identify Bell Atlantic's internal operating methods and procedures, M1 1-7 and M1 1-8, the Department finds that the information falls within the Department's standard for confidential treatment, and therefore grants Bell Atlantic's request. The Department notes that it has recognized the confidential nature of similar information in other proceedings, and accorded that information nondisclosure treatment. See Tel-Save, Inc., D.T.E. 98-59, Hearing Officer Ruling (October 22, 1998).

Regarding the trunking and tandem office information, Bell Atlantic responses to

information requests GMT 1-12, 1-14, and RR-GMT-2, the Department finds that Bell Atlantic has not demonstrated in its Motion how this information constitutes a trade secret, or competitively sensitive material. The location of Bell Atlantic's tandem and central offices is public information, and the trunking between those offices does not reveal the actual traffic between offices that Bell Atlantic seeks to protect. The most that could be discerned from the information is the maximum traffic that could be routed on those trunks, but competitors could only speculate on actual traffic levels. The Department recently denied a similar request to protect a map of Bell Atlantic's fiber optic network in Massachusetts. See Bell Atlantic M.D.T.E. Nos. 14 and 17, D.T.E. 98-57, Hearing Officer Ruling (November 5, 1999). Bell Atlantic has the burden to prove why the information should be protected, and it has not overcome the statutory presumption in favor of disclosure.[31] Therefore, the Department denies Bell Atlantic's request for confidential treatment of trunking and tandem office information.

Regarding the list of CLECs that voluntarily agreed to use direct end office trunking in Massachusetts, the list identifies CLECs that are not parties to this arbitration. Bell Atlantic did not establish how it would be harmed by disclosure of this information, and the third party

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[31] Consistent with § 5D, the proponent of a request for confidential treatment has the burden to prove why confidential treatment is warranted. Although the Department does not seek to put parties at a competitive disadvantage by disclosing information that is truly competitively sensitive, we are constrained by the statute requiring public disclosure, upon receipt of a proper G.L. c. 66, § 10, request, absent the proper showing of compliance with § 5D. We note that many requests for confidential treatment received by the Department fail to address the requirements of § 5D, and parties would be well advised to limit submission of requests for confidential treatment to documents and data that truly fall within the statutory requirements for nondisclosure protection, and to support those requests fully.

CLECs made no showing of the need for confidential treatment. We may only speculate whether the third party CLECs may be compromised by disclosure of the information. In addition, it is not possible to redact the names of the CLECs without completely eliminating the response. The Department has granted confidential treatment to protect customer-specific or competitor-specific information. See Consolidated Arbitrations, Phase 4-Q Order at 17-18 (granting confidential treatment of Bell Atlantic's house and riser facilities to protect customer information); D.T.E. 98-57, Hearing Officer Ruling (November 5, 1999) (granting confidential treatment of information identifying location by carrier of collocation arrangements in each central office). However, without a showing by any party why this carrier-specific information is similarly situated, and therefore requires protection, the statutory presumption in favor of disclosure is not overcome. Therefore, the Department denies Bell Atlantic's request for confidential treatment of the CLEC specific information in RR-DTE-6.

VII. ORDER

Accordingly, after due consideration, it is

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

FURTHER ORDERED: That Bell Atlantic's Motion for Reconsideration and Clarification of the MediaOne Order is granted in part and denied in part; and it is

FURTHER ORDERED: That Bell Atlantic's Motion for Reconsideration and Clarification of the Greater Media Order is denied; and it is

FURTHER ORDERED: That Bell Atlantic's Motion for Stay is denied; and it is

FURTHER ORDERED: That MediaOne's Motion for Extension is granted; and it is

FURTHER ORDERED: That Greater Media's Motion for Clarification or Reconsideration is granted; and it is

FURTHER ORDERED: That Bell Atlantic's Motions for Confidential Treatment are granted in part and denied in part; and it is

FURTHER ORDERED: That MediaOne and Bell Atlantic incorporate these determinations into a final interconnection agreement, setting forth both the negotiated and arbitrated terms and conditions, to be filed with the Department pursuant to Section 252(e)(1) within 21 days from the date of this Order.

By Order of the Department,

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James Connelly, Chairman

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W. Robert Keating, Commissioner

_____
Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr., Commissioner