

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

INQUIRY BY THE DEPARTMENT PURSUANT)
TO SECTION 271 OF THE TELECOMMUNICATIONS) D.T.E. 99-271
ACT OF 1996 INTO THE COMPLIANCE FILING)
OF BELL ATLANTIC-MASSACHUSETTS)

**SECOND SET OF DISCOVERY REQUESTS
OF THE NEW ENGLAND CABLE TELEVISION ASSOCIATION, INC.
TO BE PROPOUNDED TO BELL ATLANTIC**

Introduction

The New England Cable Television Association, Inc. (“NECTA”) requests that the Department propound the following discovery requests to Bell Atlantic-Massachusetts (“BA-MA” or the “Company”) pursuant to the Department’s procedural order dated June 9, 2000.

Relevance of Requests to NECTA-Specific Issues

As required by the June 9 Order, all of the below requests are targeted to claims advanced by BA-MA that affect the interests of NECTA members as advanced by NECTA to date in this proceeding. In this document, NECTA has chosen to focus on requests which address the extent to which BA-MA is affording unaffiliated attachers adequate and non-discriminatory access to poles, conduits and rights of way owned or controlled by it, as required by checklist item 3. Such matters are critically important to NECTA’s member companies, who require timely access to BA-MA pathways on reasonable terms in order to install or upgrade facilities to provide enhanced video services, high speed internet access through cable modems, and telephony to

Massachusetts consumers. Thus, the Department should forward to Bell Atlantic for response all of these below-listed information requests.

As additional support for its request to obtain responses from BA-MA, NECTA first notes that it propounded numerous information requests to Bell Atlantic last Fall on pole and conduits issues that the Department forwarded to Bell Atlantic for response. The Department's recognition of NECTA's interest in the initial round of discovery confirms our legitimate interest in these matters and supports the additional discovery. Second, BA-MA has cited in its supplemental comments and joint affidavit some communications that have taken place between and among BA-MA and NECTA representatives regarding pole and conduit agreement and provisioning issues. The proposed discovery is needed to respond to BA-MA's comments regarding the status of these communications. Finally, although BA-MA has prohibited NECTA personnel from participating in the monthly licensee meetings that discuss pole and conduit issues, several representatives of NECTA's member companies have attended the monthly meetings. Discovery is needed to respond to Bell Atlantic's claims regarding these meetings.

Requests -- Second Set

- 2-1. Please confirm that BA received a copy of the letter from NECTA dated January 14, 2000 that is affixed hereto as Exhibit A.
- 2-2. Please confirm that BA representatives met with NECTA counsel (Rob Munnelly) and NECTA's expert on pole and conduit attachment issues (Paul Glist) on February 18, 2000.
- 2-3. Please confirm that counsel for BA sent to NECTA and its expert a copy of the letter and attachments dated March 7, 2000 that is affixed hereto as Exhibit B.

- 2-4. Please confirm that BA received a copy of the memo from NECTA's expert, Mr. Glist, dated March 29, 2000 that is affixed hereto as Exhibit C.
- 2-5. With respect to each of the subparts listed below, please (i) confirm that at the February 18 meeting BA committed to take the actions described in the subpart; (ii) identify what (if any) actions BA has taken to date with respect to each such request; and (iii) indicate what information in response to each item (if any) has been communicated to NECTA to date.
- a. In response to a NECTA request for clarification about the nature of rights BA has over jointly owned poles, which comprise the vast majority of poles, BA agreed to review BA joint ownership agreements with power companies to see if there were any constraints on BA's ability to change the status, timetables or rights of attaching parties.
 - b. In response to a NECTA request to change the legacy classification of cable and CLEC attachments from "licensee" to lessee or customer, BA said it preferred to keep the term "licensee" but agreed to consider changing the terms of the pole and conduit attachment agreements to define a new relationship between BA and attaching parties that would give attaching parties greater rights.
 - c. In response to a NECTA request for reciprocal indemnity provisions, BA agreed to put some overall statement into the standard licenses that would define a duty of care from BA to the attaching parties.
 - d. In response to a NECTA request that have access to review the Standard Time Increments ("STI") that are used to develop unit prices proposed by BA to be paid by pole and conduit attachers, so that he could evaluate the reasonableness of the STIs, BA agreed to furnish copies of the STIs to NECTA's expert, Paul Glist.
 - e. In response to a NECTA request for unit cost information regarding BA post-installation inspections, BA agreed to provide NECTA with such information.
 - f. In response to a NECTA request for changes in payment arrangements, BA said it would agree to change the standard agreements to give 45 days rather than 30 days for payment of survey and make ready bills.
 - g. In response to NECTA concerns about the scope of the "emergency work" provisions, BA said it would define the clause to apply only to true emergencies, such as downed poles.
 - h. In response to NECTA requests about changes to notice provision for challenging rent increases, BA said it would consider extending period to six months or, alternatively, expressly referencing in the clause that the notice period can be extended to allow for negotiations.

- i. In response to NECTA concerns about the size and scope of penalties for unauthorized attachments and the adverse incentives such penalties would have on self-reporting of paperwork problems by attaching parties, BA stated it was willing not to make this provision retroactive and to consider whether there should be specific provisions dealing with interset poles, title transfers and automatic licenses.
- 2-6. Has the Company responded to date to the points raised in NECTA's critique dated March 29, 2000 (Exhibit C)? Please describe any oral or written responses and provide copies of any documents provided. Has the Company provided an electronic version of the draft pole agreement for NECTA to mark up, as requested in the March 29, 2000 NECTA memo?
- 2-7. Please explain how the following provisions of the draft pole attachment agreement attached to BA's March 7 letter to NECTA (Exhibit B hereto) comport with BA's obligation to provide attaching parties with just, reasonable and non-discriminatory access to poles, conduits and rights of way owned or controlled by BA:
- a. Sections 3.4.2 and 10.2(b) which provide that non-payment of "any amount due" subjects the entire Agreement to termination.
 - b. The absence of requirements that provide notice and opportunity to cure regarding any alleged areas of non-compliance that might trigger termination.
 - c. The prohibition (absent the filing of a separate pole attachment application) on requests for overlashing a party's cables for the use of affiliates or third parties in Sections 1.11, 7.2.2 and 11.3, as well as the draft overlashing attachment.
 - d. The process for BA approval of overlashing of the party's own cables in Section 7.2.2 and the draft overlashing attachment that includes numerous requirements beyond requiring a self-survey by the attaching parties and compliance with accepted engineering standards.
 - e. Section 6.2 provision which requires submission of written proof that easements have been obtained – even though this obligation is inconsistent with the apportioned easements under common law and with Section 621 of the Cable Act.
 - f. The Section 7.1.11 requirement that attaching parties place tags on their lines – even though BA and the power company pole owners are not required to tag their own lines.
 - g. The Section 10.3.2 clause that requires an entirely new pole attachment application be submitted and processed for any existing attachment found to be out of compliance, even if the defect is promptly cleaned up.
 - h. The Section 15.10 requirement that an alternative resolution process must be exhausted before an attaching party can seek relief

from DTE or courts (as appropriate), even if an emergency situation exists or the informal remedy would be futile.

- 2-8. Please provide copies of all materials produced by or given to BA in the course of monthly licensee meeting process that have not yet been provided during the course of discovery in this case (see DTE-NECTA 1-35).
- 2-9. Please provide an update of any changes to BA pole, conduit and related agreements, attachments and policies that have been made since the last round of discovery in this case.
- 2-10. Provide a narrative description by month of any agreements reached between BA and licensees during the monthly meetings.
- 2-11. Please provide copies of collective bargaining agreements that purportedly impede BA's ability to allow attaching parties to retain their own contractors to do work on BA owned or controlled poles, conduits and rights of way.
- 2-12. Please provide an update as of the date of the last round of discovery (see BA responses to DTE-MCIW1-22, 1-23 and 1-26 and DTE-NECTA 1-24 and 1-25) on the status of BA's discussions with Boston Edison, New England Electric Systems (now National Grid) and/or applicable affiliates concerning their failure to comply with the National Electrical Safety Code and other requirements applicable to communications attachments, including whether BA has initiated litigation against either of its joint pole owners to seek enforcement of applicable legal requirements and, if not, when it plans to do so.

Respectfully submitted,

NEW ENGLAND CABLE TELEVISION
ASSOCIATION, INC.

By its attorneys,

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