COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts - Section 271 of the Telecommunications Act of 1996 Compliance Filing	)))	Docket No. 99-271

RESPONSE OF
RCN-BECOCOM, L.L.C.
TO
SUPPLEMENTAL COMMENTS OF BELL ATLANTIC-MASSACHUSETTS

RCN-BecoCom, L.L.C. ("RCN"), a party to the above-captioned proceedings, herewith responds to the Supplemental Comments of Bell-Atlantic-Massachusetts ("BA-MA"). RCN focuses this response on checklist item number 3 (access to poles, conduits and rights-of-way). Contrary to BA-MA's bland assurances to the contrary, BA-MA does not provide access to poles consistent with the requirements of §§ 224 and 271 of the Communications Act (the "Act"). As demonstrated herein to the contrary, BA-MA maintains a pole access regime which is hostile to attachers and which inhibits and delays the competitive provision of telecommunications and cable service to retail subscribers in the Commonwealth. The Department should find that BA-MA has failed to meet checklist item number 3, and direct BA-MA to reduce barriers to entry if it wishes to secure the Department's support for its § 271 application.

I. BACKGROUND

As the record already reflects, RCN is a CLEC certificated in the Commonwealth to provide telecommunications service. It provides as well high speed Internet access and both franchised cable and Open Video Service ("OVS") in Massachusetts. RCN is actively building its own distribution facilities, consisting of state-of-the-art fiber optic cable which carries all of RCN's services on an integrated basis. Unlike most CLECs, RCN concentrates its competitive service offerings in the residential market. This means that it has greater need than most CLECs

to access large numbers of private and MDU residences, and accordingly requires access to many more poles than most CLECs in Massachusetts.

As detailed in prior testimony of RCN, it has experienced difficulties, delays, and excessive costs in attempting to secure access to BA-MA poles in the Boston suburban area.[1] Recently, RCN has concentrated extraordinary difficulties in building out its distribution plant in Quincy and surrounding communities, principally attributable to BA-MA's unwillingness to cooperate with RCN in respect to pole attachments. These recent difficulties are set forth in detail in the attached Supplemental Statement of Patrick Musseau. As described therein, while BA-MA has made certain efforts to create a public record demonstrating its cooperative attitude, and in certain specific respects has improved or agreed to improve access to its poles, it continues to impose numerous unreasonable restraints on RCN's access to its poles, including excessive delays and costs, discriminatory denial of certain attachment procedures, refusals to hire and/or train sufficient in-house personnel to meet the needs of the CLEC and cable pole attachers, and, most troubling, the imposition of arbitrary limits on the number of poles for the use of which RCN may apply.

In its Supplemental filings and affidavits, BA-MA presents a rosy picture which is built to a great degree on aggregate data carefully and thoughtfully designed and compiled by BA-MA to suit its own purposes. RCN does not have access to those data and does not have the resources to dig beneath the surface, as indeed most CLECS do not. What RCN can contribute to this record is a detailed recitation of the situation it faces in Quincy, which it has every reason to believe is representative of the state of pole access in Massachusetts.[2] That recitation

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[1] *See* Statement of Patrick Musseau On Behalf of RCN-BecoCom, L.L.C., dated November 12, 1999, and transcript of Technical Session held on December 2, 1999, particularly p. 2540 and pp. 2597-2633 *et seq*.

[2] As stated at the December 2, 1999 technical session by Conversant's representative: "Now, we don't have access to that aggregate data really to be able to rebut that, but we do have a story to tell about our individual experience with trying to obtain access to conduit on a nondiscriminatory and commercially reasonable method, and that's all that we're trying to do." Tr. at 2585.

demonstrates simply, forcefully and dramatically, that BA-MA does not provide reasonable or nondiscriminatory access to its poles, that it favors itself in countless ways, and that it is not compliant with applicable provisions of law.

II. THE LEGAL FRAMEWORK

Checklist item number three, set forth in § 271(c)(2)(B)(iii) of the Communications Act, requires BA-MA to provide "[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by [it] at just and reasonable rates in accordance with the requirements of § 224." Section 224, in turn, directs the Federal Communications Commission ("FCC") to implement that section but reserves primary jurisdiction to any state which certifies that it has adopted its own implementing regulations. 47 U.S.C. § 224(c)(1). Massachusetts General Laws, Chapter 166, § 25A, authorizes the Department to adopt regulations concerning access to poles, ducts, conduits, and rights-of-way and the Department has adopted regulations establishing a complaint procedure in the event of disagreement between a pole owner and an attacher concerning the rates, terms and conditions of access.[3] The FCC accepted Massachusetts' regulations as adequate to invoke § 224(c)(1), but did so prior to the 1996 amendment to § 224 of the Act.[4] That amendment added the nondiscriminatory access obligation and granted pole attachment rights to telecommunications companies to the original language of § 224 which was limited to rates and terms, and applied only to cable companies.[5]

In 1998 the Department opened a proceeding to consider the amendment and expansion of its existing pole and conduit attachment regulations, including the adoption of new regulations addressing the nondiscriminatory access provisions adopted in the 1996 amendments to § 224 of

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[3] Docket D.P.U. No. 930; *see* 220 CMR § 45.00.

[4] *See States That Have Certified That They Regulate Pole Attachments*, Public Notice, 7 FCC Rcd 1498 (1992).

[5] *See generally Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, FCC 99-404, at pars. 263-4, *rel.* December 22, 1999, *appeal pending sub nom. AT&T v. FCC* (D.C. Cir.).

the Act.[6] That proceeding remains open and accordingly the Department does not currently have regulations addressing nondiscriminatory access to poles or conduits in Massachusetts.[7] It is nevertheless well within the Department's jurisdiction and indeed is an affirmative obligation under § 271 of the Act for the Department to consider whether BA-MA is currently complying with the nondiscriminatory access provisions of § 224.[8]

Throughout its Supplemental Comments and supporting affidavits, BA-MA premises its contention that it is in full compliance with the 14 point checklist in substantial part on the premise that it was found compliant in New York State by the New York Public Service Commission and thereafter by the FCC,[9] and is providing the same access in Massachusetts and accordingly must be in compliance in Massachusetts.[10] This paradigm, to which BA-MA frequently returns in its recent filings, is a gross oversimplification and is not even factually accurate in respect to the subject matter of this submission, *i.e.*, pole access.[11]

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[6] *Order Instituting Rulemaking to Establish Complaint and Enforcement Procedures to Ensure That Telecommunications Carriers and Cable System Operators Have Non-Discriminatory Access to Utility Poles, Ducts, Conduits, and Rights-Of-Way*, DTE Docket No. 98-36 (1998).

[7] In the affidavit of Gloria Harrington filed on May 14, 2000, BA-MA asserts that it provides nondiscriminatory access to poles and implies that the Department would find that it does so without more if it is in compliance with the Department's regulations. (Harrington, at par.10). This is erroneous as a matter of law, however, since the Department's regulations do not address nondiscriminatory access to poles.

[8] The FCC has indicated that absent state regulation of terms and conditions of nondiscriminatory attachment access, it retains jurisdiction under 224(c)(1). *Local Competition First Report and Order*, 11 FCC Rcd 15,499 at 16,104 (1996). Presumably, this observation, which antedates the filing of any § 271 application by a former bell operating company, is limited to formal complaints filed outside the parameters of a § 271 proceeding.

[9] *See* n. 3, *supra*.

[10] *See, e.g.* Supplemental Comments, subsection C, at 37.

[11] Although checklist item number 3 concerns access to "poles, ducts, conduits and rights-of-way," § 224(a)(4), 47 U.S.C. § 224(a)(4), defines "pole attachment" as "any attachment by a cable television system or provider of telecommunications serve to a pole, duct, conduit, or right-of-way owned or controlled by a utility." Accordingly, RCN's references herein to "pole attachment" encompasses other kinds of attachments to the extent the context requires.

In approving Bell Atlantic's New York § 271 application, the FCC noted that no allegation of discriminatory access to poles had been presented and accordingly, there was no need for the Commission to consider the matter.[12] In New York the principal area in which RCN required access to distribution facilities was in Manhattan in which a monopoly supplier, Empire City Subway, is responsible for all underground conduit. There are few, if any, poles in Manhattan and accordingly access to poles was not a significant concern for RCN or any other CLEC in the New York context. By contrast, RCN's principal mode of distribution of its fiber optic lines in Massachusetts is by attachment to aerial poles. Accordingly, the FCC's approval of Bell Atlantic's New York application has no relevance or precedential value whatsoever to the present application before the Department insofar as BA-MA's compliance with its pole attachment obligations is an issue.

III. RCN'S ACTUAL EXPERIENCE IN QUINCY

As suggested above, RCN is not in a position to analyze other CLECs' pole attachment experiences with BA-MA. It can, however, elaborate on its own, and has already provided the Department with testimony from Mr. Patrick Musseau, who is the Aerial and Underground Licensing Supervisor for RCN throughout New England. Mr. Musseau submitted testimony for the record and appeared on a Technical Session panel, as noted above. In the attached Supplemental Statement Mr. Musseau supplements his earlier testimony by describing RCN's struggles since his prior appearance in this docket to get access to BA-MA poles in the town of Quincy. These real world difficulties belie all of BA-MA's soothing, broad-based assurances that it provides nondiscriminatory access and does so on just and reasonable rates and terms. The reality is quite the opposite: by delays, excessive fees, arbitrary restrictions on pole access

[12] In the New York § 271 proceeding RCN had challenged Bell Atlantic's access policies and practices in regard to access to conduit. *See* n. 5, *supra,* at ¶ 267. Similarly, in its recent approval of SBC's § 271 application involving Texas, no challenge to SBC's pole attachment practices or policies was raised below and that decision is accordingly of no relevance. *See Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance To Provide In-region InterLATA Services in Texas,* FCC 00-238, *rel.* June 30, 2000 at ¶ 245, *appeal pending sub nom. AT&T v. FCC* (D.C. Cir.).

applications and by flatly refusing to treat RCN in a manner equivalent to the way in which it treats itself, BA-MA makes all too clear that its internal corporate culture is hostile to CLECs and cable operators and that the filings made with this Department concerning checklist item number 3 are willful and knowing misrepresentations of the real situation.

Specifically, in the attached Statement, Mr. Musseau notes the following:

- Under the regime under which BA has insisted RCN seek access to the almost 10,000 poles RCN requires to fulfill its franchise obligations in Quincy, it will take 4 years to install its system;
- Through no fault of its own, RCN has been unable to meet the buildout obligations which the town of Quincy imposed on RCN when it granted the company a cable franchise;
- While BA-MA mouths platitudes about cooperating with the City and with RCN, it refuses to diverge in the slightest degree from its pre-ordained policies; it even refuses to allow RCN to use the municipal space reserved for the City of Quincy, even though the Mayor has expressed concern about the slow rate of progress of RCN's build-out.[13]

The problems RCN faces in Quincy, although especially acute because of the large number of poles to which RCN requires access, are representative of those it has experienced and will continue to experience in other communities unless the Department steps in to compel BA-MA to open its poles to more even-handed competitive access. These problems are summarized below.

[13] In its Supplemental Filing, BA-MA claims that it does not generally use reserved municipal duct space for its own purposes but on occasion may do so on a temporary or emergency basis and that "existing municipal duct space is available to all licensees for emergency or maintenance reasons on a similar temporary basis." Supplemental Filing at 48. Given the exigencies in Quincy, an incumbent facing pressure from a municipal government to expedite construction of a competitive distribution system, and which genuinely wished to expedite such competitive service, might have been more forthcoming than BA-MA.

1. Limitations imposed on access to poles. BA-MA will not permit RCN to apply for as many poles as RCN needs to service a large and geographically dispersed clientele of retail residential subscribers. In his prior testimony at the Technical Session held on December 2, 1999, Mr. Musseau indicated that in the town of Quincy RCN requires access to nearly 10,000 poles.[14] RCN further indicated that it needed access to 60,000 poles in the Boston suburban area in the coming year, and had already submitted applications for 10,500 poles.[15] While it proposes to soften the flat ban on the filing of applications to access more than 2000 poles at any one time, BA-MA refuses to deny itself the ultimate discretion how many poles to *allow* RCN to apply for. See the draft modified Pole Attachment Agreement showing proposed revisions filed in response to NECTA's requests, ¶ 4.2.

The retention of this discretion is unlawful, impedes RCN's planning, and makes RCN some sort of second class supplicant seeking favors instead of a certificated CLEC and franchised cable operator asserting its legal rights.[16] BA-MA claims that the limitation to the submission of pole attachment requests to no more than 200 at any one time and the retention of discretion to process no more than 2000 "is intended to prevent a single CLEC from potentially using most or all of BA-MA's resources with an unusually large request." Supplemental Comments at 47. There are numerous flaws in this reasoning. It is not BA-MA's mandate to put limits on the flow of attachment license requests. It is not BA-MA's mandate to act as the traffic cop in respect to which CLEC or cable company first seeks access to any particular pole, nor is it BA-MA's mandate to handicap any one potential attacher as against any other. If BA-MA lacks

[14] Tr. 2599. The average town contains 4500 to 5000 poles. *Id.*

[15] Tr. 2602-2604. At Tr. 2607 Mr. Musseau indicates that RCN has submitted applications for in excess of 9500 poles. This constituted an oral waiver by BA-MA of the 2000 pole limitation which appeared in the master aerial licensing agreement which BA-MA and RCN signed. Tr. 2609-2610.

[16] RCN is hit especially hard by this limitation because, as noted above, it requires more dense distribution networks (and hence more pole attachments) than other CLECs. *See* Tr. 2706 where Mr. Hager, testifying for AT&T, noted that AT&T, which services businesses, is not adversely affected by the 2000 pole limitation.

adequate resources to process the license requests which are filed with it, its obligation is to add additional staff.

Stated differently, it is unlawful for BA-MA under § 224 or 271 of the Act to constitute itself as a bottleneck to the filing of the attachment licenses potential attachers believe they need. Given the costs of filing such licenses, it is virtually inconceivable that a potential attacher would seek to improperly reserve space on BA-MA poles by seeking more licenses than it needs.[17] Again, it is not for BA-MA to artificially determine how many attachments RCN should apply for, or needs. [18] It is simply BA-MA's job to grant such attachments as are requested and paid for in a diligent and workmanlike way, and to acquire, train, and devote adequate human and other resources to fulfilling that task. If it has not done so, and it appears it has not, it is not in compliance with its market-opening obligations under §§ 224 and 271.[19]

There is certainly nothing in this record to suggest that BA-MA artificially limits its own access to its poles.[20] The fact that it owns or co-owns the poles is legally irrelevant; what matters is what actually happens and BA-MA, which bears the burden of proof on this issue as on all other issues, has not provided evidence that it constrains its own access to poles in the manner it

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[17] In his testimony in the December 2, 1999 Technical Session, Mr. Musseau indicated that RCN had withheld some 65 pole attachment applications because it was waiting for BA-MA and Mass Electric to address the 2000 pole limitation and the cost of filing the 65 applications would be $165,000. (Each application encompasses a large number of poles.)

[18] Mr. Musseau testified that when he asked BA-MA why the 2000 pole limitation was necessary in Massachusetts when no such limitation was imposed by Bell Atlantic in Pennsylvania, "[t]he response was that they did not want CLECs to monopolize Bell Atlantic's time for licensing services… ." Tr. 2601.

[19] BA-MA has taken the position that work on its poles or equipment must be carried out by its own employees and that its labor contract requires such a limitation. Supplemental Comments at 44-45 and Checklist Affidavit at ¶ 156. While RCN believes that its pole attachment needs could be adequately met by hiring outside contractors, it understands that BA-MA may be constrained by a binding contract. In such circumstances, however, it is BA-MA's obligation to hire additional union craftspersons to assure that attachers' technical work can be performed promptly. Instead, it hides behind its labor contract limitations.

[20] Indeed, at Tr.2661-2662 Mr. Musseau testified that BA-MA does not have to fill out the same paperwork and file the same applications to expand its own network.

seeks to do in processing RCN's access requests. Nor does the fact that Mass Electric, the co-owner of the poles in Quincy, also maintains a 2000 pole limitation, excuse BA-MA's ongoing violations of the Communications Act. Mass Electric is not subject to § 271 of the Act, but it is as fully subject to § 224 of the Act as is BA-MA. There is nothing in this record to show that BA-MA has made any effort whatsoever to work with Mass Electric to assure that BA-MA can meet its § 271 obligations.[21] The implication that BA-MA is just as happy to hide behind Mass Electric's 2000 pole limitation as to try to secure its removal, is obvious.

Similarly, when RCN sought the opportunity to do exactly what BA-MA has done on certain poles in Quincy, *i.e.*, to box the poles so as to expedite the buildout of its system, BA-MA has flatly refused except in instances where BA has already done so itself. Its reasons for not permitting further instances of boxing reveal both a willingness to treat RCN in a discriminatory fashion and a high degree of hypocrisy. Presumably BA-MA's own boxing is compliant with all applicable codes. One wonders why RCN's boxing would not be similarly compliant.[22] If, on the other hand, boxing by RCN violates an industry code, how could BA-MA have boxed its own wires? Apparently, when boxing suits BA-MA's needs, it boxes, but when RCN needs to box to fulfill its franchise obligations, BA-MA finds it necessary to strictly enforce codes which it has violated itself on frequent occasions.[23] In its Supplemental Filing BA-MA claims that it

[21] BA-MA has indicated that once agreement is reached with attachers on the terms of a revised pole attachment agreement BA-MA would seek the cooperation of pole co-owners and proceed unilaterally if necessary to sign the revised agreements. BA-MA response to DTE request No. 4, forwarding NECTA requests 4-5, at p. 4. While this willingness to approach the issue with co-owners is better than doing nothing, it is worth noting that the implication of BA-MA's response is that, although the problems posed by the pole access agreement have been obvious for some time, BA-MA has not yet made any effort to bring the co-owners into the CLEC/NECTA/BA-MA discussions. This is dereliction of BA-MA's affirmative obligation to open its market to competition.

[22] "Boxing" merely refers to the practice of putting wires on opposite sides of a pole if there is not enough room to attach all the wiring on the same side of any given pole.

[23] As set forth in Mr. Steel's letter to the Mayor, appended to Mr. Musseau's Statement, approximately 20% of the poles in Quincy have already been boxed by the co-owners or by others with the acquiescence of the co-owners.

"does not and will not favor itself over other carriers when provisioning access to poles, ducts, conduits and rights-of-way." Supplemental Filing at ¶ 160. In fact, as the letters attached to the Musseau Statement demonstrate, it does exactly what it claims not to do.

Because of the happenstance that the Quincy situation is current, and that BA-MA's letter to the Mayor appears to have been written by a BA-MA employee who was not informed of the company's public party line on § 271 compliance, it is easy for the Department to see that the particular assertion quoted immediately above is false. More broadly, its falsity should lead to grave concern about the reliability of the many other BA-MA assertions of compliance which are not so neatly refuted by current documentation.

Although BA-MA seeks to justify delays or complications by noting that many of the subject poles are jointly owned with an electric utility,[24] the reality is, as the facts in Quincy make clear, that the co-owner, Mass Electric, is substantially more forthcoming and cooperative than BA-MA. RCN encourages the Department to read carefully the letters recently sent to the Mayor of Quincy by Mass Electric and BA-MA in respect to the question of RCN's access to poles there and which are appended to Mr. Musseau's attached Statement. The BA-MA letter exemplifies the reality that not too far below the surface of BA-MA's seemingly endemic affirmations of good behavior is a glacial, flat, and rather arrogant refusal to cooperate with RCN to expedite its access to the subject poles.

It is this letter, and the attitude it so clearly reflects, which is the reality faced by RCN in Quincy. While CLEC workshops are all very nice, make a useful record of BA-MA's willingness to cooperate, and have even led to implementation of certain minor advances, the bottom line is always that BA-MA is not truly willing to make its poles available to RCN on nondiscriminatory and just and reasonable terms.

[24] *See, e.g.*, Supplemental Comments at 41.

2. The Pole Attachment Agreement

The draft modified Pole Attachment Agreement which has been submitted by Bell Atlantic in response to NECTA's information request, showing certain alterations in the text of the existing agreement, is also well worth careful review since it, like the BA-MA letter to the Mayor of Quincy, demonstrates clearly and forcefully the reality of the situation: BA-MA will, in its own discretion, decide upon the terms of a pole attachment agreement. Those terms, even as somewhat modified and softened by BA-MA after having been challenged by various attachers, remain one-sided to an extraordinary degree. Anyone with experience in commercial negotiations will recognize that two arms-length parties of roughly equal bargaining power would not be likely to agree to the Pole Attachment Agreement now preferred by BA-MA.

In that agreement, BA-MA reserves to itself rights superior to those of the attacher to a degree not necessitated by the circumstances. That is, RCN recognizes that as the owner or co-owner of the poles, BA-MA must have authority to grant new attachment rights. But it is not clear why BA-MA's indemnification obligations to an attacher are so much weaker than those owed by an attacher to BA-MA or why its obligations to avoid damage to an attacher's equipment are so much more limited than the attacher's obligation to protect BA-MA's poles and equipment.[25] In its response to the NECTA information request, BA-MA expresses the view that

[25] Compare indemnification provisions in the draft revised pole attachment agreement concerning the owners obligations to the attacher with the attacher's obligations to the owner in §§ 13.4 and 13.5, and the provisions governing damage by an attacher to a pole owner in §13.2 with the duties of the owner to the attacher in § 13.3. BA-MA's unconscionable overreaching is more broadly illustrated by reference to the information request propounded by NECTA 4-7 as transmitted by DTE in Set # 4, and the answers supplied thereto by BA-MA at pp. 2-4. The Department must keep in mind that the proposed revised pole attachment agreement represents a substantial improvement as compared with the one currently in effect and which RCN was compelled to sign. And yet even the revised agreement reflects BA-MA's unilateral assertions of decision-making authority. In instances where an attacher is unhappy with the outcome of a BA-MA-determined resolution, BA-MA suggests that the attacher simply file a lawsuit or a complaint at the DTE. *See, e.g.*, responses a), b), and c). BA-MA also minimizes the practical consequences of harsh terms by assurances that it would not exercise its rights except in extreme cases. *See, e.g.*, b). Given BA-MA's history and incentives, this is cold comfort and is no basis on which to allow BA-MA to provide InterLATA service.

the terms of the pole attachment agreement are “consistent with normal commercial practices.” BA-MA response, at 2. RCN respectfully disagrees. The terms and the overall tone of the Agreement, even as revised, are consistent with a monopolist which controls an essential facility imposing one-sided and anticompetitive conditions on another party.

Indeed, this kind of disparity appears throughout the pole attachment agreement. In the aggregate these disparities in the terms of the agreement indicate that BA-MA will grant to attachers only the fewest, most constrained rights which it believes it can get away with. It is up to the Department to call BA-MA's bluff in this respect. RCN suggests that, before the Department approves BA-MA's § 271 application, it should require BA-MA to make pole attachments available to potential attachers in a regime which is in principle similar to that applied to BA-MA's collocation and interconnection obligations.

If that requires a delay in resolving BA-MA’s § 271 application while appropriate, even-handed and pro-competitive pole attachment rules are worked out by the regulator, so be it. BA-MA has had almost exactly four and one half years to fulfill the market opening mandate of § 271 of the Act. The picture presented in Mr. Musseau's attached Statement concerning the situation in Quincy is not pretty, and indicates that BA-MA is continuing to drag its feet and to do as little as possible to expedite the introduction of competitive carriers in its operating territory. The present status is not acceptable and should not be approved or countenanced by a favorable recommendation under § 271.

IV. CONCLUSION

In this response to BA-MA's most recent filings, RCN concentrates on the practical inadequacies of BA-MA's current policy and practice in respect to pole attachments, and particularly on the situation in Quincy, which is critical for RCN and indicative of the incumbent's rigid, arrogant, and unyielding determination to hobble new entrants and to maintain its own dominance over access to facilities which are crucial for new competitors. While BA-MA has demonstrated a masterful ability to grind out large volumes of soothing assurances, accompanied by carefully crafted aggregate data to demonstrate that the local market is open, the Department must look behind those generalizations and focus on individual instances in which the truth is likely to be found. RCN is well aware that anecdotal evidence is no substitute for comprehensive analysis. But in the case of Quincy the Department has an unusual opportunity to see how BA-MA really operates. It is, so to speak, "ground truth" and amply demonstrates that BA-MA has not fully opened the local market to competition as required by checklist item number 3. Until BA-MA has done so, the Department should not support BA-MA's § 271 application.

Respectfully submitted,

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July 18th, 2000.

Att A: Supplemental Statement of Patrick Musseau

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of July, 2000, a copy of the foregoing RESPONSE OF RCN-BECOCOM, LLC TO SUPPLEMENTAL COMMENTS OF BELL ATLANTIC-MASSACHUSETTS was served on the following parties via First-Class postage paid U.S. mail and Electronic Mail.

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