

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

SUPPLEMENTAL STATEMENT OF PATRICK MUSSEAU

My name is Patrick Musseau. I am responsible for RCN's aerial and conduit licensing in New England. I have submitted testimony previously in this proceeding and appeared in a Technical Session on December 2, 1999. My credentials are therefore a matter of record. I have been asked to describe the difficulties and delays RCN has experienced in securing access to poles jointly owned by Bell Atlantic-Massachusetts ("Bell Atlantic," or "BA-MA") and Mass Electric ("ME") in Quincy.

1. SUMMARY

RCN's experience in Quincy has been one of frustration and constant delay. In Project Meetings prior to the pole surveys RCN inquired as to several proven methods that could mitigate excessive and unnecessary make-ready work such as "boxing" poles, the use of extension brackets, and making temporary attachment to poles. Bell Atlantic would not allow RCN to use these methods of aerial construction, despite the fact that RCN could demonstrate that such practices were widespread and employed not only by Bell Atlantic, but also by other licensees including CATV and Competitive Local Exchange Carriers (CLECs). We noted that

provisions for pole boxing and the use of brackets can be referenced in the Bluebook, which is the construction standard for building network facilities on Bell Atlantic poles.¹ RCN has been held to different make-ready standards than that of the other attachers and we are being treated unfairly. BA-MA has been reluctant and lackadaisical in resolving the make-ready disputes and addressing issues that have arisen during the surveys, as well as in preventing additional disputes by communicating to field personnel.

2. BACKGROUND

RCN needs to attach to approximately 9,500 poles in Quincy to fulfill its franchise obligations. As a general rule the space on poles is divided into vertical segments. These segments are the electric "supply" space, the neutral space, and the communications space. Communications attachments are typically 12" apart. The Quincy pole surveys began November 8, 1999 with application QCY99001. The application consisted of 137 poles along Hancock Street, a heavily loaded pole line with electric, fire alarm, CATV and several CLEC fiber optic attachments, in addition to telephone attachments in certain sections. The survey team discovered that a CLEC had "boxed" almost every pole on which it was attached on Hancock Street. In addition, the CLEC was allowed to attach to many poles in different relative locations changing from above the CATV attachment to below.² This is significant for two reasons, the first being that Bell Atlantic specifies the exact height

¹ Bellcore-Bluebook Manual of Construction Procedures. **Bluebook Section 3, Clearances, Figure 3-1**

² No telephone facilities were attached to these poles, leaving extra usable space for additional attachments below CATV.

of a new attachment on a pole survey and second, Bell claims, at least in RCN's case, that they do not allow licensees to box poles.

As a practical matter of major significance, the location of the CLEC attachment on poles in Quincy and elsewhere, is inconsistent with the attachment hierarchy adopted as an industry standard. Telephone attachments are placed at the bottom of the "communications space," and are followed by CATV (if present) and then CLEC fiber optic attachments which are typically placed at the top of the "communications space." This licensee was allowed to attach below CATV where ample space existed, and costs for make-ready work to correct clearance violations between the communications and safety space on these poles were not assessed to this licensee. These costs and more are now being levied on RCN.

Field personnel would not acknowledge these inconsistencies when determining the cost responsibility of make-ready work required to make the necessary 12" space required for RCN's facilities. Despite claims that RCN is NOT responsible for correction of existing violations, field personnel have ignored such existing violations when these conditions are present. In addition, Bell Atlantic has also reserved space on poles. In the most extreme cases Bell facilities were not even attached and ample useable space existed.

3. FIELD MEETING

On a daily basis in Quincy RCN's attempts to negotiate fair treatment in the field have proven to be unsuccessful. RCN met with Bell Atlantic Staff on November 22, 1999, and then notified Gloria Harrington on November 24, 1999 that we were disputing make-ready charges and sought to resolve these issues quickly. RCN sent notice to Bell Atlantic again on February 22, 2000 and a meeting was finally held March 20, 2000 when the pole owners finally met with RCN.

By this time RCN had documented several instances of make-ready work being unfairly assessed to RCN. Then RCN received additional survey billing charges from Bell Atlantic in excess of the original survey estimates. These too, by RCN's accounting, were inaccurate. Bell Atlantic informed RCN that the CLEC fiber optic cable boxing the poles would be moved to the side of the pole populated by others. Bell also denied knowing of the extent of "boxing" until RCN brought it to their attention. RCN's city-wide survey revealed that 20% of the poles in Quincy were already "boxed." As for reservation of space, Bell Atlantic stated that they would not allow this practice to continue, but apparently failed to communicate this to the field personnel as it persisted throughout the surveys.

4. MEETINGS WITH THE MAYOR

RCN sought assistance from the City of Quincy for relief as it began to appear that, as a result of BA-MA's delays, inattention, and lack of diligence, we would be extremely hard pressed to fulfill commitments contained in the cable TV license for construction completion within two years. The Mayor of Quincy, James Sheets, called a meeting to inquire as to ways in which Bell Atlantic and Massachusetts Electric could shorten and simplify the construction of RCN's network in Quincy. The meeting was held on March 22, 2000 at City Hall. RCN again proposed ways to expedite make-ready work while maintaining proper safety requirements. On this occasion, Bell Atlantic stated that RCN would be allowed to box poles that were already boxed - - which contradicted statements made two days earlier. As for allowing additional boxing and the use of brackets, Bell Atlantic refused, stating that it was out of their power to change past policies. ME indicated that they could make decisions only after consulting their legal department.

The net result of the meeting was that the Mayor requested that the pole owners respond to RCN's proposals which are documented in Exhibit C (attached). Cooperation was also encouraged as the Mayor stated he wanted his constituents to benefit from residential competition. Massachusetts Electric responded relatively favorably on April 7, 2000, offering alternatives which could facilitate RCN's construction. Bell Atlantic's response, dated May 2, 2000, was completely negative and left no room for compromise. Bell Atlantic's letter, Mass Electric's letter, and RCN's response are attached hereto as Exhibits A, B, and C, respectively.

Despite the disappointing response, RCN persisted and attended another joint meeting on May 5, 2000, by which time the issues had grown larger and there was no resolution in sight. Bell Atlantic field personnel were still “reserving space,” existing violations were not being considered, and RCN's make-ready bill was growing. More promises of cooperation were offered by BA-MA and gestures by RCN to make financial commitments to expedite the surveys and make-ready work were rejected. Bell committed to re-survey poles where RCN alleged “reservation of space.” This, of course, adds to the delay of gaining access to the poles. Bell reaffirmed that RCN would not pay to correct existing violations, but indicated that RCN needed to pay make-ready costs as additional requests by other licensees had been submitted and were consequently being held up by RCN's non payment. Delay followed delay.

At a follow up meeting in Quincy, Mayor Sheets expressed disappointment with the lack of progress since the initial meeting. RCN expressed dismay that despite all the promises to cooperate by the pole owners, there was no concerted effort to re-survey the disputed poles and reassess the make-ready work.

On June 12, 2000 the Quincy Commissioner of Public Works was designated by the Mayor as a key contact to attempt to facilitate matters, and attended the joint meeting with all the interested parties. It was at this time, seven months after the issues first arose, that there was a schedule set to re-survey the original poles which were in question. The survey yielded mixed results, lowering the costs but frequently failing to resolve disputed issues. In the interest of

expediting construction, RCN, like other CLECs who seek access, has paid or is in the process of paying for make-ready work that we dispute in order to move on with the make-ready construction. In our experience disputing make-ready costs only delays the party seeking attachment. It is perfectly acceptable to Bell Atlantic to allow a licensee to dispute make-ready work for as long as possible as the work is not started until paid for. Procedures for disputes are vague and when followed, yield more protracted delays. To date, survey costs alone have been paid for Quincy to BA-MA by RCN in the amounts of \$245,921.39, and to Mass Electric of \$232,150.60, for a total of \$478,071.99.

7. JOINT LICENSEE MEETINGS

RCN attended the first joint licensee meetings to provide input to discuss changes to aerial and underground license agreements and to “provide input” to BA-MA. In my opinion, these meetings were designed to demonstrate to the DTE that BA-MA is in compliance with the checklist item by purportedly allowing input from the parties Bell Atlantic seeks to regulate, when in reality Bell Atlantic routinely ignores suggestions by licensees.

Through these meetings, BA is establishing an even more complex licensing bureaucracy which, if implemented as proposed, would require a prospective licensee to follow a BA prescribed process for any work outside of making a basic service connection. These procedures which insure added delays include:

- (1) new requirements for overloading;
- (2) new licenses for power supplies mounted on poles; and

(3) unprecedented licensing of underground riser conduits on poles

With each new procedure there follows inevitable delays in implementation and actual construction. Bell Atlantic must not be allowed to be the ultimate gatekeeper for those who seek to compete. The procedures of the past no longer work for a burgeoning competitive market place.

8. CONDUIT LICENSING

RCN has several locations pending licensing with Bell Atlantic where collocation with Bell is required as a method to hand off traffic in their Central offices. Bell Atlantic changed the procedures for access into these locations which left RCN, and others, without a way to access Bell Atlantic's "0" manholes. RCN has to submit additional paperwork and was forced to bear thousands of dollars in additional costs to license conduit beyond our original scope of work. This has added seven (7) months of delay to making a CO connection, and has cost RCN significant amounts of money. Bell provided RCN with conduit survey results on May 22, 2000 for various locations in the City of Quincy. RCN was prepared to provide payment for these leases recently but was informed that the results we received were inaccurate and that many sections were no longer available to rent. This is disturbing, as almost two months have passed since we were provided the paperwork.

This concludes my Supplemental Statement. The foregoing is true and correct to the best of my knowledge and belief.

Patrick Musseau
Aerial and Underground License
Supervisor
RCN-BecoCom, LLC

Dated: July 18, 2000

Attachment A: Mass Electric Letter of April 7, 2000

Attachment B: Bell Atlantic – New England Letter of May 2, 2000

Attachment C: RCN letter of May 10, 2000

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