

October 19, 1999

D.T.E. 98-59

Complaint and request for relief of Tel-Save, Inc. against New England Telephone and Telegraph Company, d/b/a Bell Atlantic - Massachusetts, for alleged violation of Section 201(b) and 202 of the Communications Act of 1934, as amended, and alleged violation of M.G.L. Chapter 159, §§ 16 and 17.

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ORDER ON MOTION BY BELL ATLANTIC FOR PARTIAL RECONSIDERATION,
MOTION FOR STAY, MOTION FOR EXTENSION OF THE JUDICIAL PERIOD,
AND MOTION FOR IMPLEMENTATION EXTENSION OF TIME

- INTRODUCTION

On May 21, 1999, the Department of Telecommunications and Energy ("Department") issued its decision in Tel-Save, Inc. against New England Telephone and Telegraph Company, d/b/a Bell Atlantic - Massachusetts ("Bell Atlantic" or "Company"), for alleged violation of §§ 201(b) and 202 of the Communications Act of 1934, as amended, and alleged violation of M.G.L. Chapter 159, §§ 16 and 17 ("Order"). In the Order the Department: (1) required Bell Atlantic to design and develop a secure web page for customers to make preferred interexchange carrier ("PIC") freeze changes (*i.e.*, either establishing or removing a PIC freeze) within 60 days of the Order; (2) required Bell Atlantic to notify all interexchange carriers of the availability of the web page and how to link to it; (3) required Bell Atlantic to notify all customers through a bill insert of the availability of the secure web page within 60 days of the date of its implementation; (4) required Bell Atlantic to develop graphics and text through a collaborative process with the parties in this case; (5) required Bell Atlantic to make all necessary changes to its tariffs to reflect the above findings and to file any necessary compliance tariffs within 30 days of this Order; and (6) directed that changes should be made to the tariffs to reflect a customer's ability to implement or remove PIC freezes for both intrastate, interLATA and intraLATA services (Order at 14-17).

On June 10, 1999, the Company filed with the Department a Motion for Partial Reconsideration, a Motion for Stay, and a Motion for Extension of the Judicial Appeal

Period ("Reconsideration Motions"). In these Motions, Bell Atlantic requests the partial reconsideration of the Department order as it relates to *placing* a carrier or PIC freeze on intrastate telephone services to prevent another party from changing a customer's selected carrier (Reconsideration Motions at 1). Bell Atlantic requests that, in order to comply with FCC verification rules, the Department eliminate the requirement for placing PIC freezes (*id.* at 7).

On June 17, 1999, Tel-Save, Inc. ("Tel-Save"), filed with the Department a Response to Bell Atlantic's Motion for Partial Reconsideration and Motion for Stay and Extension of the Judicial Appeal Period ("Tel-Save Response"). Tel-Save states that because the placing of PIC freezes was not raised or discussed by the parties, it does not oppose the Reconsideration Motions (Tel-Save Response at 1, 2). However, Tel-Save asserts that because the Company seeks reconsideration of only part of the order, there is no justification to stay implementation of the remainder of the order or to extend the Judicial Appeal Period (*id.* at 3). No other intervenors in this case have filed a response to either the Reconsideration Motions or the Tel-Save Response. On June 21, 1999, Bell Atlantic filed tariff revisions to its retail tariff M.D.T.E. No. 15, for effect on July 21, 1999, in compliance with the Department's May 21, 1999, Order. The Department allowed those revisions to take effect.

The Department is aware that Bell Atlantic, Tel-Save, and AT&T Communications of New England, Inc. ("AT&T") exchanged correspondence on July 16, July 19, and August 2, 1999, in an attempt to create a mutually-agreeable web page, as directed by the Department in its Order (Order at 15-16). On July 20, 1999, Bell Atlantic filed a Motion for Extension of Time for implementing the secure web page for customers to change their PIC freeze, as ordered by the Department in its May 21, 1999 order ("Implementation Extension Motion"). In the Implementation Extension Motion, Bell Atlantic contends that creating such a web page by July 20, 1999, as required in the Department's Order, is infeasible and impracticable given the pending motion for partial reconsideration (Implementation Extension Motion at 1). The Department received no responses to the Implementation Extension Motion. On September 30, 1999, Bell Atlantic filed with the Department copies of the prompt-screens that Bell Atlantic proposes to use on its secure web page for removal of the PIC freeze.

II. THE STANDARD OF REVIEW

○ Reconsideration

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).

B. Extension of Judicial Period

G.L. c. 25, § 5, provides in pertinent part that an appeal of a Department final order must be filed with the Department no later than twenty days after service of the order "or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling."⁽¹⁾ See also 220 C.M.R. § 1.11(11). The twenty-day appeal deadline indicates a clear intention on the part of the legislature and the Department to ensure that the decision of an aggrieved party to appeal a final order of the Department be made expeditiously. Ruth C. Nunnally d/b/a L&R Enterprises, D.P.U. 92-34-A at 6 n.6 (1993); see also Silvia v. Laurie, 594 F.2d 892, 893 (1st Cir. 1978). Swift judicial review benefits both the appealing party and other parties and serves the public interest by promoting the finality of Department orders. Nunnally, D.P.U. 92-34-A at 4.

The Department's procedural rule 220 C.M.R. § 1.11(11) states that reasonable extensions of the appeal period shall be granted upon showing of good cause. With regard to determining

what constitutes good cause, the Department has stated:

Good cause is a relative term and it depends on the circumstances of an individual case. Good cause is determined in the context of any underlying statutory or regulatory requirement and is based on a balancing of the public interest, the interest of the party seeking an exception, and the interests of any other affected party.

Boston Edison Company, D.P.U. 90-355-A at 4 (1992). The filing of a motion for extension of the judicial appeal period automatically tolls the appeal period for the movant until the Department has ruled on the motion. Nandy v. Massachusetts Electric Company, D.P.U. 94-AD-4-A at 6 n.6 (1994); Nunnally, D.P.U. 92-34-A at 6 n.6.

C. Motion for Implementation Extension of Time

The Department may, in its discretion and for good cause shown, extend any time limit prescribed by the Department. 220 C.M.R. § 1.02(5). Motions for extension of time must be filed before the expiration of the prescribed time (id.).

III. GROUND FOR MOTIONS FOR PARTIAL RECONSIDERATION, FOR STAY AND EXTENSION OF THE JUDICIAL APPEAL PERIOD, AND FOR IMPLEMENTATION EXTENSION OF TIME

A. Bell Atlantic's Motion for Partial Reconsideration

1. Background

The Department's Order requires Bell Atlantic to implement a web page for customers to either place or lift PIC freezes within 60 days of issuance of its order. Bell Atlantic filed its Reconsideration Motions on June 10, 1999, and Tel-Save filed its Response on June 17, 1999. No other responses were filed with the Department.

2. Positions of Parties

Bell Atlantic contends that requiring it to allow customers to place PIC freezes would violate the FCC's verification requirements for freeze and unfreeze practices as described in CC Docket 94-129 (In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996), Second Report and Order and Further Notice of Proposed Rulemaking (12/23/98), as well as Appendix A, 47 C.F.R. § 64.1190 (Reconsideration Motions at 1, 7). Furthermore, the Company states that neither Tel-Save nor any other party raised the issue of an Internet-based approach for placing PIC freezes (id. at 7). Bell Atlantic notes that this investigation was initiated to examine an electronic method for processing PIC freeze lifts only (id.).

Tel-Save takes no position on Bell Atlantic's Motion for Partial Reconsideration (Tel-Save Response at 2). Tel-Save does not oppose the use of a web page to lift a customer's PIC freeze, but cautions the Department against allowing Bell Atlantic to funnel traffic through its home page, rather than directly to the web page dedicated to lifting PIC freezes (id.). Tel-Save suggests that the Department require Bell Atlantic to allow direct access to the PIC freeze web page through links supplied by other carriers, presumably such as Tel-Save (id. at 2-3).

Tel-Save opposes the motion for stay of the Department's Order and any extension of the appeal period, contending that there is no need for delay in establishing a web page to allow subscribers to lift their PIC freeze (id. at 3). Tel-Save claims that Bell Atlantic already has a web page in place which can be modified to comply with the Department's Order with a minimum of time and effort (id.). Tel-Save contends that extending the time for Bell Atlantic's compliance merely prolongs Bell Atlantic's unreasonable and inconvenient conduct (id.).

3. Analysis and Findings

It was the Department's intent in its original Order that PIC freezes only be allowed to be *lifted* via a secure web page established by Bell Atlantic. However, language was inadvertently placed in the Order indicating that such PIC freezes may also be "established" or "implemented" rather than merely lifted. Because the issue of placing PIC freezes was never raised by the parties and because the Department made an inadvertent finding, we hereby reconsider that finding. Bell Atlantic is required to establish a secure web page only to lift PIC freezes.⁽²⁾ Accordingly, we grant Bell Atlantic's Motion for Partial Reconsideration.

B. Motions for Stay and Extension of Judicial Period

1. Positions of the Parties

Bell Atlantic has requested the Department extend the 20-day period within which to file an appeal of this Order pending resolution of Bell Atlantic's Motion for Partial Reconsideration (Reconsideration Motions at 1). In addition, Bell Atlantic contends that good cause exists to grant a motion for stay of the effect of the Department's Order because the Department's Order mistakenly contradicts the FCC's rules on placing PIC freezes (id. at 3). Tel-Save opposes the motions as unnecessary (Tel-Save Response at 3). Tel-Save contends the motions prolong conduct that Tel-Save finds to be unreasonable and inconvenient (id.).

2. Analysis and Findings

Concerning Bell Atlantic's request for an extension of the judicial appeal period, the Department's procedural rules state that extensions of the judicial appeal period shall be granted upon a showing of good cause. See 220 C.M.R. § 1.11(11); see also Nunnally, D.P.U. 92-34-A. The Department has well-established precedent that the filing of a motion for extension of the judicial appeal period automatically tolls the appeal period for the movant until the Department has ruled on the motion. Nandy, D.P.U. 94-AD-4-A at 6 n.6; Nunnally, D.P.U. 92-34-A at 6 n.6.

Bell Atlantic filed its motion for stay and its motion for extension of the judicial appeal period twenty days after the Department issued its Order. The Department finds that Bell Atlantic has timely filed its motions for stay and extension of the judicial period. Furthermore, the Department finds that Bell Atlantic has demonstrated good cause for an extension of the judicial period and we hereby grant the motion for extension of the Judicial Appeal Period. Because we grant Bell Atlantic's motion for extension of time below, we determine that a ruling on the motion for stay is unnecessary. and, consequently, we decline to rule on the motion for stay.

C. Motion for Implementation Extension of Time

1. Background

On July 20, 1999, the day Bell Atlantic was required to create a secure web page for lifting a subscriber's PIC freeze, Bell Atlantic filed its Implementation Extension Motion. In its Implementation Extension Motion, Bell Atlantic seeks additional time to implement a secure web page based on the filing of its earlier motions for Partial Reconsideration, Stay, and Extension of the Judicial Appeal Period as they apply to the Department's original order in this case (Implementation Extension Motion at 1). The Department received no responses to the Implementation Extension Motion.

2. Positions of the Parties

Bell Atlantic contends that an extension of time to develop the secure web page is necessary because the web page approach ordered by the Department for *placing* a PIC freeze does not secure verification by any of the means required by the Federal Communications Commission ("FCC") (Implementation Extension Motion at 2). Bell Atlantic argues that before it can reasonably proceed with the implementation of the web page, the Company needs to know whether the Department will grant its request to eliminate the requirement for electronically placing PIC freezes (*id.*). If that requirement is not eliminated, the web page will be far more complex to design, develop and implement in part because of the need to comply with mandated FCC verification methods (*id.*). Thus, it would be time-consuming, costly and redundant for Bell Atlantic to proceed with implementation of a web page absent a Department decision on the Company's motion to determine the parameters of the web page (*id.*). In addition, Bell Atlantic states that the date for implementation of the secure web page is not clear from the Department's Order (*id.* at 1, fn. 1). The Company argues that the Department only required the design and development of a secure web page within 60 days of Order issuance, not implementation of such a page (*id.*).

Bell Atlantic claims that assuming the Department grants the Reconsideration Motions, Bell Atlantic would need ten weeks from that ruling date to implement a web page designed to *remove* PIC freezes (*id.* at 2). The Company argues that additional time is necessary because of the various technical, operational, and administrative work efforts involved in implementing an accurate and complete web page application for consumers (*id.* at 3).

Finally, the Company argues that no party will be harmed by the Department's granting its Implementation Extension Motion, as its current methods of placing and removing PIC freezes are reasonable and accessible to all customers (id. at 4).

3. Analysis and Findings

Bell Atlantic asserts that good cause exists for this extension of time because it would be unfairly and unduly prejudiced if it does not have adequate time to properly complete the necessary steps for developing a workable web application for removing PIC freezes. After reviewing Bell Atlantic's request against the backdrop of the Order and the foregoing Motions, the Department agrees that good cause exists for the extension. Accordingly, we grant Bell Atlantic's Implementation Extension Motion. Bell Atlantic shall have until ten weeks from the date of this order to develop and implement a secure web page.

IV. ORDER

Accordingly, after due consideration, it is

ORDERED: That the Motion for Partial Reconsideration filed by New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts regarding the issue of whether Bell Atlantic must allow customers to implement or place a PIC freeze on its web page is hereby GRANTED; and it is

FURTHER ORDERED: That the Motion for Extension of Judicial Period filed by New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts is hereby GRANTED; and it is

FURTHER ORDERED: That the Motion for Implementation Extension of Time filed by New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts is hereby GRANTED.

By Order of the Department,

Janet Gail Besser, Chair

James Connelly, Commissioner

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. G.L. c. 25, § 5 states that "... service shall be presumed to have occurred in the normal course of delivery of [the] mail."

2. Because of these findings, it is not necessary to determine whether our original finding conflicted with FCC rules.

