

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PUBLIC UTILITIES COMMISSION

In re: REVIEW OF BELL ATLANTIC – RHODE ISLAND
TELRIC STUDIES:
UNBUNDLED NETWORK ELEMENTS

DOCKET NO. 2681

ORDER

I. INTRODUCTION.

The Public Utilities Commission (“Commission”) opened this proceeding to address the forward-looking, long run, incremental costs of unbundled network elements (“UNEs”) which Bell Atlantic-Rhode Island (“BA-RI”) must provide competing local exchange carriers (“CLECs”) under the Telecommunications Act of 1996 (“Act”). During the investigation, it became apparent that the Commission would have to resolve the question whether BA-RI was required to provide UNE combinations; BA-RI asserted that it could not and should not be required to do so. For example, Bell Atlantic had indicated its unwillingness to provide CLECs with access to the combination of the loop and switching elements known as the UNE Platform (or “UNE-P”). Bell Atlantic indicated that when a CLEC ordered loop and switching elements, BA-RI intended to dismember that combination of elements, to require the CLEC to collocate physically at BA-RI’s central office, and to rewire the loop and switching elements so that they now ran to a collocation cage where the CLEC could reconnect them. AT&T Communications of New England, Inc. (“AT&T”) challenged this position.

After the United States Supreme Court issued its decision in AT&T Corp. v. Iowa Utilities Board, ___ U.S. ___, 119 S.Ct. 721 (1999) (“Iowa Utilities Board”),¹ the parties sought

¹ In its opinion, the Supreme Court reinstated the Federal Communications Commission (“FCC”) rule, previously voided by the Eighth Circuit, Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. 1997), prohibiting an incumbent local exchange carrier (“ILEC”) from separating UNEs that are

and were given leave to brief the question of whether the Commission had and should exercise legal authority to require BA-RI to provide CLECs with access to UNE combinations, including the UNE-P.

II. POSITIONS OF THE PARTIES.

AT&T, quoting the Supreme Court in Iowa Utilities Board, supra, argues that BA-RI's refusal to make UNE-P and other UNE combinations available to CLECs is "an anticompetitive practice" designed to "impose wasteful costs" on competitors. AT&T also contends that BA-RI's position is unlawfully discriminatory, in that BA-RI provides UNE combinations to itself and its own retail customers, and therefore should not be allowed to deny CLECs similar access. AT&T suggests that the Commission has authority both under federal law and under Rhode Island law to order BA-RI to provide UNE combinations to CLECs. AT&T also asks the Commission to bar BA-RI from assessing any "glue charge" – or any other charge that is not based on the forward-looking, long-run incremental cost of providing UNEs or UNE combinations – for providing a UNE combination.

BA-RI maintains that the Supreme Court's Iowa Utilities Board decision made it clear that it is the FCC, not state commissions, which has jurisdiction to address the issues of what UNEs must be provided under the Act, and whether to order the combination or separating of UNEs. BA-RI notes that the Supreme Court vacated the FCC's rules dictating what facilities

already combined in its network before leasing them to competitors. Iowa Utilities Board, supra, 119 S.Ct. at 737-38. The Court did not reverse the Eighth Circuit's invalidation of FCC rules requiring an ILEC to combine elements that are not currently combined in the ILEC's network, and to combine UNEs with the CLEC's network elements. Moreover, the Supreme Court vacated the FCC's rule defining what network elements must be unbundled, for failure to apply certain limiting standards of the Act. The issue of which facilities are network elements, and therefore subject to §251(c)(3)'s unbundling requirements, was remanded to the FCC for determination in light of these considerations.

must be provided as network elements, and remanded the matter with instructions that the FCC apply the limiting standards of the Act to determine which network elements ILECs must provide to competitors. According to BA-RI, while the Commission should proceed to address the pricing issues raised in this docket, the Commission should refrain from issuing any decisions relating to the identification of individual UNEs or UNE combinations until the FCC has completed its examination of elements and properly determined which must be provided, individually or in combination, according to the statutory standards imposed in the Act.

III. DISCUSSION.

The only matter before the Commission at this time is what impact the Supreme Court's decision in Iowa Utilities Board has on the UNE combination issues raised in this case. We disagree with BA-RI that it is premature for the Commission to act, or that the Commission lacks the power to do so. Competitive entry into the local exchange market in Rhode Island will be facilitated if BA-RI is ordered to make available UNEs in any combination requested by a CLEC. BA-RI's refusal to provide UNE combinations would impose wasteful, unnecessary, and anticompetitive costs and delays upon CLECs trying to serve Rhode Island consumers. In addition, BA-RI's refusal to provide UNE combinations to CLECs is unlawfully discriminatory, as it is undisputed that BA-RI routinely uses UNE combinations to provide service to its own retail customers. For example, BA-RI does not first take apart UNE combinations and then rewire them in a new way before using them to provide service to its own retail customers, and it would be unfairly discriminatory for BA-RI to impose such a burden before allowing a CLEC to use more than one UNE to service a retail customer. Similarly, when a retail customer wants to obtain a new line from BA-RI, BA-RI provisions it to the customer directly, without requiring the use of collocation or any other intermediary facilities. Thus, BA-RI's position is inconsistent

with 47 U.S.C. § 251(c)(3), which expressly requires BA-RI to provide network elements “on rates, terms and conditions that are just, reasonable and nondiscriminatory”.

The Commission is also aware that other state authorities² have ordered incumbent local exchange carriers to provide UNE-P and other UNE combinations to CLECs. In light of the Supreme Court’s decision in Iowa Utilities Board, the Commission believes that BA-RI is already obligated as a matter of federal law to provide access to UNE combinations.³ To the extent that federal law does not completely answer the question, the Commission finds that it has authority under state law, including R.I. Gen. Laws §§ 39-1-1, 39-1-38, and 39-2-1, to order BA-RI to provide CLECs with UNE combinations. The ordering clauses below are based upon this Commission’s authority under both federal and Rhode Island law.

The Commission is not yet prepared to establish final UNE rates for Rhode Island. When it does so, however, it will ensure that all UNE rates, whether in the form of recurring or non-recurring charges, are based on the FCC’s forward-looking, long-run incremental cost methodology.

Accordingly, it is

(16012) ORDERED:

1. Bell Atlantic-Rhode Island shall make available to any CLEC all network elements in any combination requested by a CLEC, including but not limited to (a) the so-called UNE Platform, (b) any other combination of elements that BA-RI combines for itself or its own retail customers, in the same manner that BA-RI would combine the elements for its

² These include Kansas, Washington, Pennsylvania, Vermont, Kentucky, and Connecticut.

³ Moreover, in comments filed with the Massachusetts Department of Telecommunications and Energy on December 1, 1999, Bell Atlantic “reassessed its position concerning new loop and local switching UNE-P combinations. BA-MA will voluntarily provide that combination even

own use or for use by its own retail customers, or in any technically feasible manner requested by a CLEC, or (c) any other combination of network elements in any technically feasible manner requested by a CLEC.

2. Bell Atlantic may not require any CLEC to collocate, in any manner, as a precondition for obtaining access to any UNE or UNE combination, but instead must permit CLECs to use any technically feasible manner of the CLEC's choosing for accessing combinations of network elements.
3. Bell Atlantic may not impose any recurring or non-recurring charge for a UNE or UNE combination that is not based on forward-looking, long-run incremental cost for provisioning the UNE or UNE combination (including the UNE Platform), calculated under the TELRIC methodology.

EFFECTIVE AT PROVIDENCE, RHODE ISLAND PURSUANT TO AN OPEN MEETING DECISION ON AUGUST 3, 1999. WRITTEN ORDER ISSUED DECEMBER 6, 1999.

PUBLIC UTILITIES COMMISSION

James J. Malachowski, Chairman *

Kate F. Racine, Commissioner

Brenda K. Gaynor, Commissioner

*Chairman Malachowski concurs with this decision, but is unavailable for signature.

where the loop and local switching elements comprising the UNE-P do not already exist in combined form for a specific customer in its network.”