STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-132

June 13, 2000

BELL ATLANTIC-MAINE
Request for Approval of Affiliated Interest Transactions for Two Agreements with Bell Atlantic Yellow Pages Company

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY AND INTRODUCTION

In this order we approve, subject to certain conditions regarding future ratemaking treatment, two affiliated interest transactions entered into by Bell Atlantic-Maine (BA-ME or the Company) and its directory publishing affiliate, Bell Atlantic Yellow Pages Company (BAYPC). The new agreements concern the production and distribution of directories by BAYPC to meet BA-ME's statutory obligations.

On February 16, 2000, pursuant to 35-A M.R.S.A. § 707(3), BA-ME filed for Commission approval of two affiliated interest agreements between the Company and BAYPC. Section 707(3)(A) provides that unless the Commission disapproves such contracts or arrangements within 60 days of filing, the contracts or arrangements are deemed approved. However, the Commission may suspend the effective date of the contract or arrangement for an additional 60 days, if necessary to enable the Commission to complete its review of the contract or arrangement. On April 13, 2000, the Commission exercised its authority by suspending the effective date of the contract or arrangement for an additional sixty days from April 16, 2000.

On March 25, 2000, the Office of the Public Advocate (OPA) filed a petition to intervene pursuant to its statutory authority under 35-A M.R.S.A. § 1702. The OPA filed comments on May 25, 2000. The OPA petition to intervene is granted.

II. DESCRIPTION OF THE CONTRACTS

In its petition, the Company seeks approval of two related contracts between BA-ME and BAYPC. One is the Directory Publishing Agreement (DPA) that requires BAYPC to fulfill BA-ME's regulatory obligations with respect to the publication and distribution of telephone directories. *See e.g.*, 35-A M.R.S.A. §§7501, 7501-A, 7502; Chapter 250 (2) (F) of the Maine Commission's Rules; 47U.S.C. §§ 251 (b)(3), 271 (c)(20(B)(vii). This includes publication of alphabetical subscriber listings, publication of light-faced listings in the Yellow Pages for business subscribers and publication of other information in the consumer guide. Under the DPA, directories will continue to be provided in accordance with all applicable rules and guidelines. The second agreement is the Listings License Agreement (LLA) that governs the sale of telephone subscriber listing data by BA-ME to BAYPC. Under the LLA, BA-ME's subscriber listing data is

made available to BAYPC under the same terms and conditions available to non-affiliated publishers.

The Company asserts that the purpose of the DPA is to better reflect the business restructuring prevalent in today's competitive telecommunications marketplace. BA-ME says that competitive market forces, competing local service providers, new technologies for disseminating listings information and new customer needs have dramatically reformed the market, and that the proposed DPA responds to the restructured marketplace. Previous publishing arrangements between the Company and its affiliate had a sharing of revenues from the sale of directory advertising between BA-ME and its publishing affiliate. The proceeds received by BA-ME were then applied by the Commission as an offset to the Company's cost of service in establishing rates for regulated telephone services.

The Company states that while the proposed agreement eliminates the direct contribution from directory advertising to regulated services, there are several reasons why the proposed agreement will have no impact on BA-ME's regulated operations. First, the Company is currently under an Alternative Form Of Regulation (AFOR) in which both the costs and revenues associated with directories are irrelevant to the determination of just and reasonable rates for regulated services. Next, the amended DPA governs only the commercial relationship between BA-ME and BAYPC, and in no way affects the Commission's ratemaking treatment of the directory revenues for BA-ME. The Company states that the Commission can approve the affiliated interest contractual arrangement without ruling on the effects of the amended contract for ratemaking purposes. Finally, the Company asserts that neither BA-ME nor its ratepayers will be affected by the elimination of the cash payments from the directory affiliate for directory advertising. According to the Company, the cash requirements of BA-ME are established and funded at the holding company level and are based on BA-ME's actual cash needs, not the level of cash actually received by the utility.

The Company also states that the LLA was developed by BA-ME to comply with new regulatory requirements. Under Section 222 of the TelAct, all local exchange carriers are required to provide access to their subscriber listings database to all directory publishers (affiliated and non-affiliated) on reasonable and non-discriminatory terms, and the LLA complies with the requirements of the rules adopted by the Federal Communications Commission (FCC) implementing the TelAct provisions. BA-ME asserts that it already makes subscriber listings information available to non-affiliates under identical conditions as offered to BAYPC under the proposed LLA. Through the LLA, BAYPC obtains a license to receive and utilize BA-ME's subscriber listings database in the production of printed and electronic directories. In return, BA-ME is compensated for its listings pursuant to standards established by the FCC.

In summary, the Company asserts that both of the agreements are not adverse to the public interest and should be approved by the Commission.

III. OPA COMMENTS

The OPA, in its filed comments, stated that the proposed agreement appears to be in conflict with the Commission's Order in the *Ceramic Tile Center* case, in which the Commission stated:

> The revenues from directory advertising are generated by virtue of the Company's monopoly over the provision of telephone services. The ratepayers should receive the economic benefit of this service dependent upon the utility business which their rates support.

Public Utilities Commission, Investigation on Complaint of Ceramic Tile Center and Schaefer Construction Company Against New England Telephone Company, Docket No. 80-41, Order, (Dec. 28, 1983) at 15.

The OPA asserts that under the terms of the proposed DPA, the Company appears to be giving up all rights and interest in any revenues generated through the sale of directory advertising. The OPA acknowledges that because BA-ME is operating under an AFOR, there is no opportunity for telephone rates to change as a result of the proposed DPA. However, because the current AFOR will soon end and the Commission policy is that ratepayers should receive the economic benefit of directory advertising, the OPA states that it cannot see any reason for the Commission to approve an agreement in which the Company gives up all rights and interests in revenue generated by directory advertising, particularly when the term of the agreement can be extended indefinitely.

IV. DISCUSSION AND DECISION

The proposed agreements represent a deviation from prior agreements concerning directory publishing and subscriber listings information, and they appear to be a deviation from prior Commission policy. As articulated by the OPA, Commission policy has been that the Company's ratepayers should receive the economic benefit of directory advertising, as well as pay the costs (as part of its rates) associated with the Company's legal obligation to publish directories. The fact that the Company is under an AFOR in which the Company's rates are no longer directly associated with its costs and revenues does mitigate the effect of the net contribution loss from directory advertising. If at some point in the future, the Commission were to establish a baseline revenue requirement or return to traditional cost of service ratemaking, the Commission would be remiss if it approved an agreement that essentially relinquished the contribution toward reducing the Company's overall revenue requirement that historically has been made by directory advertising.

The Company and the OPA discussed the matter informally and submitted a proposed condition to be included as part of the Commission approval of the two agreements. We have reviewed the language of the proposed condition, and we agree with its intent to preserve the Commission's ability to impute for ratemaking purposes some or all of the economic benefit resulting from directory advertising revenues. We adopt the proposed condition as part of our approval of the proposed agreements:

> Bell Atlantic has indicated in its Petition that approval of the proposed agreements is not dispositive of the Commission's authority to determine separately the appropriate ratemaking consideration of directory costs, revenues and investments. (Petition at 4). As expressly provided in Section 707 (3)(D) of the statute, approval by the Commission of the proposed agreements has no effect on the Commission's powers to continue the ratemaking imputation of the economic benefit from directory operations to ratepayers at whatever level the Commission determines just and reasonable. Accordingly, whether the Commission should continue to impute the economic benefit from Bell Atlantic's directory operations to BA-ME's regulated cost of service and, if so, the appropriate level of imputation on a prospective basis, is not at issue in the Commission's approval of the proposed agreements.

Subject to the conditions above, we find the proposed affiliated interest agreements submitted by the Company in this case are not adverse to the public interest and will approve them.

V. ORDERING PARAGRAPH

Therefore it is

O R D E R E D

That the proposed Directory Publishing Agreement and Listings License Agreement submitted by Bell Atlantic-Maine on February 16, 2000, are approved subject to the condition stated in Section IV of this Order.

Dated at Augusta, Maine, this 13th day of June, 2000.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.