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VIA OVERNIGHT DELIVERY

5 November 1998

Ms. Blanca Bayó
Florida Public Service Commisson
Division of Records and Reporting
Capital Circle Office Center
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0872

RE: BELL ATLANTIC CORPORATION and GTE CORPORATION

Joint Application for approval of the merger of Pennsylvania Bell Telephone Company d/b/a Bell Atlantic, and GTE Corporation (Docket No. 98-1252-TP).

Dear Ms. Bayó:

Enclosed are an original and six (6) copies of the *Comments of the Telecommunications Resellers Association* in the above-captioned proceeding.

Questions may be directed to me.

Sincerely,

Telecommunications Resellers Association

Andrew O. Isar

Enclosures

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BEFORE
THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of the Joint Application of BELL ATLANTIC CORPORATION and GTE CORPORATION for Consent and Approval of a Change of Control	)	Case No. 98-1252-TP

COMMENTS OF
THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

INTRODUCTION

The Telecommunications Resellers Association ("TRA")[1], on behalf of its members, files these Comments in response to the joint application for consent and approval for a change of control filed by GTE Corporation ("GTE") and Bell Atlantic Corporation ("BA").

While TRA does not necessarily oppose the proposed merger of GTE and BA, TRA urges the Commission to carefully deliberate the impact of the merger upon the public interest. TRA also urges the Commission to be guided by the considerations the New York Public Service Commission employed in its evaluation of the merger petition filed by Bell Atlantic and NYNEX in 1997. Further, TRA urges the Commission to impose specific pre-merger conditions before approving the proposed merger.

STANDARDS OF REVIEW

When evaluating the proposed merger of GTE and BA, the Commission should be guided by the significant public interest considerations which the proposed merger raises. TRA believes

[1] Founded in 1992, the Telecommunications Resellers Association is the Washington, D.C.-based national organization for resellers of telecommunications Services. TRA represents more than 700 companies involved in the resale of domestic and international long distance, local, wireless, and other enhanced telecommunications services. TRA was created and carries a continuing mandate to foster and promote telecommunications resale, to

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that an effective public convenience standard for gauging the proposed merger should be similar to the standard that the New York Public Service Commission applied when it considered another Bell Atlantic merger, with NYNEX, in 1997. [2] The New York Public Service Commission acknowledged that the public interest standard suggested that the commission had at least four duties in its review:

(1) to ensure that the interests of the ratepayers are served by the merger;

(2) to ensure that the New York Commission can continue effectively to regulate the merged entity;

(3) to assess the impact of the merger on competition; and

(4) to determine what conditions should be placed on the merger to serve the policy goals of the New York Commission, especially the enhancement of competition and the maintenance and improvement of service quality competition.[3]

TRA believes that the Florida Commission also has these duties with respect to the GTE/BA merger. These standards and the assessments they require the Commission to make in this merger case are not those that can be made within the context of another proceeding. The public convenience demands that these issues be addressed *prior* to a decision about the requested merger. All of these inquiries are intertwined with the question of whether the public

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support the telecommunications industry, and to protect the interests of entities engaged in the resale of telecommunications services.

[2] Public Service Law (of New York), Section 100 "in the public interest" Cases Nos. 96-C-0603, 96-C-0599, 96-C-0821 pertaining to the Bell Atlantic/NYNEX merger, Opinion No. 97-B of the New York Public Service Commission, effective May 30, 1997 at pages 14, 15.

[3] *Ibid.*

convenience or interest is served by the proposed merger and cannot logically or strategically be deferred to another proceeding.

TO ENSURE THAT RATEPAYERS AND ALL SUBSCRIBERS ARE SERVED

The Joint Application barely mentions, let alone provides substantive information about, how ratepayers will be better served by the merger. GTE and BA have placed benefits for current customers well below other considerations in their merger application. This factor alone is significant because the absence of appropriate emphasis on better service to subscribers, including competitive local exchange carriers, indicates a lack of intent and or effort to meet the public interest standard. If the Joint Application itself pays very little lip service to this criterion, it appears clear that better service to ratepayers is not a primary motivation for the merger, and it would hardly be a significant concern after a merger, absent substantial incentives from regulators.

TO ASSESS THE IMPACT OF THE MERGER ON COMPETITION

On the other hand, GTE and BA are tremendously concerned about the impact of the merger on competition. But the concerns voiced by GTE and BA regarding competition concern bettering their position to compete. GTE in particular does not, because it cannot, chronicle its efforts to promote competition in the local exchange market in their own service territories. Currently local service competition in the Florida GTE service territory is virtually non existent. There are very few local service competitors and fewer of these are of significant size. The Telecommunications Resellers Association has more than 700 members, many of which are small telecommunications companies. TRA's smaller members today do not have the financial leverage or resources to deal with a large organization such as GTE and its affiliates. In order to

enter into GTE's service territory, TRA's members will be forced to interconnect, only on a "take it or leave it" basis by signing a GTE-drafted interconnection agreement.

From a public policy perspective, this result is doubly tragic. As smaller service providers, TRA's members offer the greatest diversity of competitive alternatives to ILEC offerings. Yet they are the most vulnerable to abuses by large ILEC organizations, such as GTE. GTE after the proposed merger would present even more predatory power.

Moreover, the sheer size of an organization that in a post merger environment would control millions of access lines represents a formidable challenge for small service providers to enter the market at all. Small service providers who do attempt to enter the market and those who want to remain in the market are likely to be crippled, if not mowed down by the huge bureaucratic organization of the merged entities in the absence of Commission effective oversight of their practices.

Furthermore, and very importantly, the approval of the proposed merger will have the opposite effect of promoting competition. It will marry two carriers who are already serving various local telecommunications markets in Florida and thus effectively reduce the field. Given the size of this proposed merger, coupled with the recent approval of the BA/NYNEX merger, a consolidation of the telecommunications industry would occur such as was seen only prior to the break-up of the Bell Companies and AT&T. Rather than opening the field, the result will be a large consolidation that thwarts, rather than promotes, competition.

TO DETERMINE WHAT CONDITIONS SHOULD BE PLACED ON THE MERGER

TRA believes that the Commission should approve the GTE/BA merger only with the imposition of significant pre-conditions that require solid proof that the GTE and BA service territories are actually experiencing competition in the local exchange market. This premise of

pre-conditions assumes that the Commission determines somehow that the merger serves the public interest, including the goals of competition, diversity, and consumer choice.

The emphasis on pre-conditions cannot be stated strongly enough. In other jurisdictions, post merger conditions have been highly unsatisfactory and have the potential to breed more court cases rather than to promote the goal of compliance. The lesson to be learned from the BA/NYNEX merger is that after-the-fact conditions are *not* effective. It would be irresponsible to permit BA, which has already been given the opportunity to keep its post merger promises but has failed to do so, to offer additional post merger condition promises. It is only by insisting that conditions be met *before* a merger is approved that the Commission will have any assurance that the conditions will be met. Furthermore, it is not really possible to undo a merger, especially given that several other state and federal agencies also have approval jurisdiction.

Whether or not both GTE and BA are subject to the checklist provisions of Section 271 of the Telecommunications Act of 1996 (the "Act"), these standards should be met before GTE/BA is permitted to merge. They are the best standards to measure whether an Incumbent Local Exchange Carrier has permitted competition in its service territory. Though there may be arguments about whether the Act applies, it is unnecessary to engage in the arguments about federal jurisdiction. The Commission, pursuant to its general statutory powers can require, as a condition to approving the merger, that GTE and BA meet the Section 271 checklist-like conditions as a matter of appropriate regulatory oversight. Moreover, if GTE does not show substantial improvement in negotiating interconnection agreements, the Commission should initiate an investigation about the difficulties in arriving at equitable interconnection agreements with GTE.

In addition prior to any approval, the Commission should insist that GTE and BA have nearly perfect scores on adhering to performance measures. In particular, assuming that local service providers are able to negotiate interconnection agreements with GTE, a feat that has been difficult to accomplish, GTE's and BA's records of opening their doors to competition through compliance with sections 251 and 252 of the Act should be perfect. GTE and BA should be required to meet the Act's standards or risk suspension of their dividend. In addition, GTE and BA should be directed to resolve all pending service complaints against it.

GTE should also be required to have an Operating Support System ("OSS") operating perfectly with third party verification of that fact. If BA's OSS is to be used, it should be up and operating prior to the approval of the merger, and should be confirmed by a record of meeting performance measures and its competitor's requirements.

Ultimately, GTE and BA must first treat their wholesale CLEC customers in the same manner as it should be treating its own end users—as valued customers. GTE and BA should be required to develop a best practices plan which is capable of third party verification. Further, the best practices plan should be applicable to service improvement and to performing its responsibilities under its interconnection and resale agreements and fulfillment of its obligations under the Act with time lines to be filed with the Commission for its review. Once the best practices plan is approved, if GTE and BA do not meet any of the time lines in the plan, the Commission should suspend its dividend. Only through the development of a "best practices" and approach and subsequent enforcement will the Commission be able to gage whether the merger meets the public interest test consistent with the New York Commission's approach, or whether the Joint Applicants' claims are empty rhetoric devoid of substance.

ISSUES TO BE CONSIDERED BY THE COMMISSION

In its deliberations concerning the Joint Application, TRA urges that, at a minimum, the Commission consider the following issues:

1. Whether the Joint Applicants have met the burden of proving that the merger will promote the public convenience.
2. Whether the merger will promote diversity in the supply of telecommunications services in Florida.
3. Whether the merger will promote consumer choice in Florida.
4. Whether the merger will promote universal service.
5. Whether the merger will decrease the potential for competition in the local exchange market.
6. Whether consolidation of the Joint Applicants is desirable.
7. Whether the merger will have an anti-competitive effect on the interexchange market by increasing the potential for predatory pricing and price squeezes.
8. Whether post-merger conditions work to prevent the anti-competitive effects of the proposed merger.
9. Whether the claimed merger efficiencies would be realized at all or have any real or material benefit to Florida consumers.
10. Whether the merger would allow GTE or BA to used inflated subsidies from Florida ratepayers to fund acquisition premiums or finance competitive ventures elsewhere.
11. Whether the merger would inhibit cost-based switched access.

12. Whether GTE's and BA's past and present conduct relating to competitive issues will promote competition in the local exchange market.

13. Whether the merger jeopardizes the telecommunications policy set forth under Florida Law to ensure the availability of adequate basic local exchange service to citizens throughout the state.

14. Whether the merger threatens the telecommunication policies set forth by the Florida Legislature.

15. Whether the merger will ensure that the interests of ratepayers are served.

16. Whether the merger will ensure that the Commission can continue to effectively regulate the merged entity.

17. Whether the merger will have an unhealthy impact on competition.

18. If the merger is approved, what pre-conditions should be attached to it.

CONCLUSION

TRA has not taken the position that the Commission should deny the proposed GTE/BA merger outright. However, TRA believes that the Joint Applicants should not be able to hide behind rhetoric rather than substantive information to make their case that a merger is in the public interest. Based on the information in the Joint Application, the companies have not yet made their case.

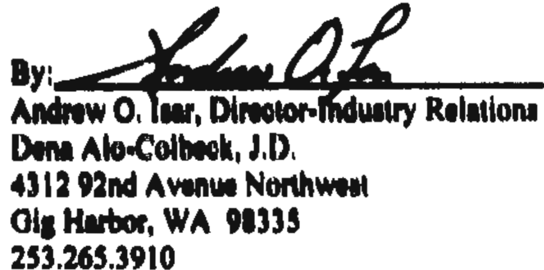
Thus TRA urges that the Commission to take into consideration the dismal experience of non-competition in the GTE service territory and, in particular, hold the Joint Applicants to the same standards set forth in Section 271 of the Act. Because of the poor track record of GTE in cooperating with the open entry policies both at the state and federal levels, a merger approval

should be predicated upon meeting conditions *prior* to a merger that induces the Joint Applicants to open their local exchange service territories to competition.

WHEREFORE, TRA urges the Commission to consider, among other issues, those listed in these Comments, and if it concludes that the Joint Applicants have met their burden of proof that the proposed merger is in the public interest, to attach Section 271-like pre-conditions to the consummation of a merger.

Respectfully submitted on behalf of

TELECOMMUNICATIONS RESELLERS ASSOCIATION



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