

STATE OF INDIANA



INDIANAPOLIS, 46204

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INDIANA UTILITY REGULATORY COMMISSION
302 W. WASHINGTON STREET, ROOM E306

NOV 20 1998

Nov 20 1998
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Hon. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, D.C. 20554

Re: In the Matter of Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer of Control, CC Docket No. 98-184

Dear Secretary Salas:

The Indiana Utility Regulatory Commission files the enclosed comments in response to the October 8, 1998 Public Notice, GTE Corporation and Bell Atlantic Corporation Seek FCC Consent for a Proposed Transfer of Control and Commission Seeks Comment on Proposed Protective Order Filed by GTE and Bell Atlantic, CC Docket No. 98-141.

Included in this filing are an original and 13 copies. Please stamp one copy "received" and return it to the Indiana Utility Regulatory Commission in the self-addressed, stamped envelope that is enclosed.

The contact person for the IURC is as follows:

Sandy Ibaugh, Director
Telecommunications Division
Indiana Utility Regulatory Commission
302 W. Washington Street, Rm E306
Indianapolis, IN 46204

Please contact Joel Fishkin, Senior Telecommunications Analyst, at 317/233-3464 if there are any problems with this filing.

Cordially,

Sandy Ibaugh/JF
Sandy Ibaugh
Director of Telecommunications

Enclosures

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Indiana Utility Regulatory Commission

November 20, 1998

NOV 20 1998

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of Application of GTE)	
Corporation, Transferor,)	
and)	
Bell Atlantic Corporation)	CC Docket No. 98-184
Transferee, For Consent to Transfer of Control)	

**COMMENTS OF
INDIANA UTILITY REGULATORY COMMISSION (IURC)**

In the Public Notice seeking comments on the proposed transfer of control from GTE Corporation to Bell Atlantic Corporation the FCC said "Interested parties may file comments regarding or petitions to deny the applications no later than November 23, 1998." While the IURC does not have formal comments it can file today, we would like to inform the FCC of our proceeding and its respective time line.

On November 18, 1998 the IURC formally opened an investigation of the merger of GTE Corporation and Bell Atlantic Corporation in Cause No. 41332 (see Attachment 1). "The Commission is interested in providing its assessment to the FCC of the proposed merger's likely effects within our jurisdiction." (page 1). In that Order the IURC informed all parties they may intervene and submit questions on or before December 4, 1998. The IURC staff will then compile a list of questions to be asked of GTE and Bell Atlantic on December 15, 1998. On December 18, 1998 the IURC will hold a prehearing conference to determine a schedule.

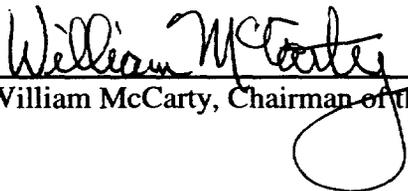
The IURC will work diligently to provide formal comments and recommendations regarding the impact of the merger in Indiana to the FCC after completion of the evidentiary hearing.

INDIANA UTILITY REGULATORY COMMISSION

Submission of Comments to the Federal Communications Commission
November 20, 1998

In the Matter of Application of GTE Corporation, Transferor, and Bell Atlantic Corporation
Transferee, For Consent to Transfer of Control CC Docket No. 98-184

The Indiana Utility Regulatory Commission submits the foregoing comments to the Federal
Communications Commission in response to the FCC's Order on October 8, 1998, in CC Docket
No. 98-184.



William McCarty, Chairman of the IURC

ORIGINAL

Attachment 1
Page 1

STATE OF INDIANA

UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE INVESTIGATION ON)
THE COMMISSION'S OWN MOTION INTO ALL)
MATTERS RELATING TO THE MERGER OF GTE)
CORP. AND BELL ATLANTIC CORP.)

CAUSE NO. 41332

APPROVED: NOV 18 1998

RESPONDENTS: GTE CORP.; BELL ATLANTIC CORP.; GTE NORTH, INC.; CONTEL OF THE SOUTH, INC.; GTE COMMUNICATIONS CORP.; GTE TELECOMMUNICATIONS SERVICES, INC.

BY THE COMMISSION:

This past July Bell Atlantic Corporation and GTE Corporation announced their intent to merge. GTE is the second largest provider of local telephone service in Indiana, while Bell Atlantic is one of a dwindling number of a Regional Bell Operating Companies created from the divestiture of AT&T in 1984. Although the transaction has been generally described as a "merger of equals," upon conclusion of the transaction GTE will be a subsidiary of Bell Atlantic. See Letter from William F. Kreutz, Director - Regulatory & Governmental Affairs, GTE, to William D. McCarty, Chairman, Indiana Utility Regulatory Commission ("Commission")(Oct. 2, 1998). After the merger Bell Atlantic "will have indirectly acquired control of" GTE's regulated subsidiaries in Indiana. *Id.*

On October 2, 1998, GTE and Bell Atlantic filed for regulatory approval of their proposed merger with the Federal Communications Commission ("FCC") and various regulatory agencies in other states "where approval is required." *Id.*; see, e.g., Florida Public Service Commission Cause No. 981252-TP. Given GTE's significant presence in Indiana, operating more that 920,000 local telephone lines, its merger with Bell Atlantic could significantly impact the emergence of competition in the local telephone market. The Commission is interested in providing its assessment to the FCC of the proposed merger's likely effects within our jurisdiction. Because we believe the merger of GTE with Bell Atlantic could affect not only the state of telephone competition in Indiana, but also employment levels, quality of service, and even rates, the Commission now finds that it should open an investigation into the merger pursuant to Indiana Code sections 8-1-2-59.

In addition to invoking our general investigatory authority under I.C. 8-1-2-59, we also find that the proposed transfer of control of GTE Corporation appears to implicate the statutory mandate found in I.C. 8-1-2-83 that this Commission review sales, assignments, transfers, leases or encumbrances of its subsidiary public utilities' franchise, works or system.

We begin our analysis of our state statutory jurisdiction by examining the language of Section 83 of our general enabling legislation. In pertinent part, subsection (a) of that Section provides that “[n]o public utility, as defined in section 1 of this chapter, shall sell, assign, transfer, lease, or encumber its franchise, works, or system to any other person, partnership, limited liability company, or corporation, . . . without the approval of the commission after hearing.” I.C. 8-1-2-83(a). Turning then to the definition of “public utility” in I.C. 8-1-2-1, we find that the term applies to “every corporation, company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever, that may own, operate, manage, or control any plant or equipment within the state for the conveyance of telegraph or telephone messages” Thus, transactions in which a public utility sells, assigns, transfers, leases, or encumbers its franchise, works or system to some other person or entity must be reviewed and approved by this Commission.

GTE has taken the position that “[s]ince the proposed merger is one of two parent corporations . . . [Indiana Utility Regulatory] Commission approval is not required.” Kreutz letter at 2. The public utility authorizations issued by this Commission to GTE’s telephone operating subsidiaries will continue to be held by those subsidiaries. GTE will continue to own these subsidiaries, and after the merger apparently the only structural difference will be that GTE will itself have a corporate parent. The question, then, is whether Bell Atlantic’s acquisition of *indirect* control over GTE’s regulated subsidiaries triggers Section 83(a).

Neither GTE nor Bell Atlantic has provided a brief outlining its justification for seeking regulatory approval in other states but not in Indiana. Parties to other cases, however, have cited a recent Indiana Supreme Court interpretation of Section 83(a) for the proposition that a merger of parent corporations does not trigger our statutory review.

In 1987, PSI, a public utility electric company in Indiana sought federal approval for a corporate reorganization involving the transfer of all common stock in the utility to a newly created holding company. Citing Section 83(a), the Office of Utility Consumer Counselor (“OUCC”) requested that this Commission hear the question of whether the stock transfer should be approved. PSI moved to dismiss, and this Commission granted the motion to dismiss in 1988, whereupon the OUCC appealed. In OUCC v. PSI, the Indiana Supreme Court rejected the OUCC’s contention “that Section 83(a) requires this Commission to conduct a hearing with regard to the creation of, or transfer of shareholders’ stock to, a holding company.” 608 N.E. 2d 1362, 1364 (Ind. 1993).

We cannot reasonably infer from the specific language of Section 83(a) an authorization for the Commission to conduct hearings *for the approval of transfers of individual shareholders’ stock effecting the formation of a holding company*. The contemplated exchange for holding company stock does not involve a sale, assignment, transfer, lease, or encumbrance of PSI franchise, works, or system, all of which PSI will continue to own. Only the shares of PSI stock are being transferred.

Id. (emphasis added). Accordingly, the Court affirmed this Commission's dismissal of the OUCC's petition for a hearing.

In the five years since OUCC v. PSI various public utilities have cited this case for the proposition that this Commission has no authority to approve or disapprove the acquisition of their corporate parents by different corporations. The Commission is aware of these claims because the public utilities nonetheless filed petitions seeking Commission approval to remove any doubt as to our blessing of the transaction. See, e.g., CITE to AT&T/TCG. Our awareness of GTE's position is limited to the correspondence from their Director - Regulatory & Governmental Affairs here in Indiana, William F. Kreutz, to Commission Chairman William McCarty, which we have cited above and which we now find constitutes "prior communications" as described in 170 IAC 1-1.5-5. We now incorporate this letter into the record of this cause. (This Order should serve as the memorandum called for in 170 IAC 1-1.5-6(a)(1)(C), and we further note that no oral *ex parte* communications have been received nor has the Commission or its employees made any oral or written response to the aforementioned written communication.)

Notwithstanding the fact that the authorizations and licenses currently held by GTE's regulated subsidiaries operating in Indiana will continue to be held by those operating subsidiaries, just as the franchise and jurisdictional assets remained with the operating company subsidiary of the PSI holding company in OUCC v. PSI, 608 N.E. 2d at 1365 (DeBruler, J., dissenting), we are concerned that the introduction of different, outside ownership of the parent corporation constitutes the type of transfer contemplated by Section 83(a). After all, transfer of control of the parent to another previously unaffiliated entity necessarily entails transfer of control of the public utility subsidiary. The Commission now finds that the Respondents and any other interested party should file by December 4, 1998 their arguments relating to the applicability of Section 83 to the proposed merger. Specifically, the parties should address whether this Commission should extend the holding of OUCC v. PSI beyond its facts so as to also encompass transfers of holding company stock to a different, pre-existing holding company.

As indicated above, the Commission intends to conduct a hearing pursuant to I.C. 8-1-2-59. After reviewing the parties' arguments, the Commission will determine whether the scope of that hearing should be expanded to also include issues arising out of I.C. 8-1-2-83. In the meantime, any interested parties wishing to intervene in this investigation should file with the Commission by December 4, 1998 any questions such parties wish to propose. The Commission staff then should by December 15, 1998 prepare a list of questions for GTE and Bell Atlantic. The presiding officers should convene a prehearing conference pursuant to 170 IAC 1-1-16 on Friday, December 18, 1998 to arrange a schedule for GTE and Bell Atlantic to respond to the Commission's questions and for any other proceedings in this investigation.

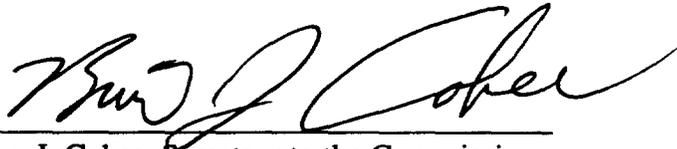
IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

- 1.) An investigation shall be, and hereby is, commenced into all matters relating to the proposed merger between GTE and Bell Atlantic.
- 2.) A prehearing conference shall be convened at 10:00 a.m. EST on Friday, December 18, 1998 in Room TC-10 of Indiana Government Center South, 302 West Washington Street, Indianapolis, Indiana to establish a schedule for the Commission's subsequent hearing of this matter.
- 3.) A copy of this Order shall be mailed to GTE's Indiana subsidiaries, as well as to the Office of Utility Consumer Counselor.

MCCARTY, KLEIN, RIPLEY, SWANSON-HULL AND ZIEGNER CONCUR

APPROVED: NOV 18 1998

I hereby certify that the above is a true and correct copy of the Order as approved.



Brian J. Cohee, Secretary to the Commission