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November 23, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Via Hand Delivery

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
Room 222, 1919 M Street, NW
Washington, DC 20554

Re: Application of GTE Corporation and Bell Atlantic Corporation For Consent to Transfer Control of Certain Licenses and Authorizations, CC Docket No. 98-184 – Notice of Filing Formal Comments

Dear Ms. Salas:

In accordance with Section 1.51(c) of the Commission's rules, enclosed herewith is an original and twelve copies of Supra Telecommunications & Information Systems, Inc. ("Supra Telecom") Notice of Filing Formal Comments and Comments in the above-referenced permit-but-disclose proceeding.

Copies of this Notice and Comments have also been provided to all the parties on the attached Certificate of Service.

Respectfully submitted,

Mark E. Buechele, Esq.
General Counsel

OAR/aml
Enclosure

No. of Copies rec'd 0+12
List ABCDE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Filing Formal Comments and Comments were served via hand delivery delivered this 23 day of November, 1998 to the following parties:

International Transcription Service, Inc.
1231 20th Street, NW
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Mark E. Buechele, Esq.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

RECEIVED

NOV 23 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of:	
GTE CORPORATION, Transferor,	
AND	CC Docket No. 98-184
BELL ATLANTIC CORPORATION, Transferee,	
For Consent to Transfer Control of Corporations Holding Commission Licenses & Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 63, 90, 95 and 101 of the Commission's Rules	

COMMENTS OF SUPRA TELECOMMUNICATIONS REGARDING THE JOINT APPLICATION OF GTE AND BELL ATLANTIC UNDER SECTIONS 214 AND 310(D), FOR THE TRANSFER OF CERTAIN LICENSES AND AUTHORIZATIONS

Dated: November 23, 1998

Submitted By:

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ORIGINAL

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1. EXECUTIVE SUMMARY

Supra Telecommunications & Information Systems, Inc. ("Supra") is part of a global company that has interest in telecommunications, finance and banking, oil exploration and real estate. Supra provides communications services in the United States and is currently certificated in 16 states with applications pending in 19 other states. Supra is determined to becoming a major force in the telecommunications industry by providing new and innovative local, long-distance and information services at lower and competitive rates to customers.

On or about October 2, 1998, GTE Corporation ("GTE") and Bell Atlantic Corporation ("Bell Atlantic") filed joint applications under Sections 214 and 310(d) of the Communications Act [i.e. 47 U.S.C. §§ 214 and 310(d)] seeking Commission approval for the transfer to Bell Atlantic of certain licenses and authorizations controlled or requested by GTE or its affiliates and\or subsidiaries.

Pursuant to a Commission Order dated October 8, 1998, the Commission has ordered that Comments\Petitions regarding the joint application may be filed on or before November 23, 1998. Pursuant to this Order, Supra is submitting the following Comments to the joint application.

As a summary Supra notes that the Telecommunications Act of 1996 ("Telecommunications Act") did not envision the continuous stream of mergers of Regional Bell Operating Companies ("RBOCs") and Incumbent Local Exchange Carriers ("ILECs") which have taken place over the past two years. Supra believes that no matter how the proposed merger is characterized, the proposed merger and transfer of licenses will only serve to further entrench the remaining RBOCs and create further barriers to entry and free competition in the local telecommunications markets. Supra believes that notwithstanding the applicants' expressed desire to become a megalith in order to compete on a global level, as currently framed the proposed merger and transfer of licenses will only serve to delay further competition in the local telecommunications market in contravention to the Telecommunications Act and therefore the public interest would not be served by approving the joint application as currently framed.

Notwithstanding the fact that Supra believes that the public interest would not be served by approving the proposed joint application as currently framed, Supra believes that if certain concessions were made by the joint applicants, that a solution could be reached which meets the professed goals of the applications while fostering competition in the applicable local telecommunications markets. In particular, Supra believes that if the applicants each agreed to divest themselves of approximately twenty percent (20%) of various assets to Supra, that the applicants will still be able to pursue their stated out-of-territory and global strategies, while encouraging competition within the local loop, interconnections and unbundled network elements as envisioned by the Telecommunications Act.

Pursuant to the Commission's Order of October 8, 1998, Supra hereby submits and files the following comments regarding the joint application and proposed merger of GTE and Bell Atlantic. As a small ALEC in a field of giant monopolies, Supra requests that this Commission give adequate consideration to the following comments and Supra's proposal.

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2. LEGAL STANDARDS

The applicants, Bell Atlantic Corporation and GTE Corporation, have requested the FCC to approve the transfer of certificates, licenses and authorizations involved in this proposed merger. According to Title II and Title III of the Communications Act of 1934, as amended, in order to approve or deny this merger the Commission must determine whether the merger serves the public interest, convenience and necessity.[1] The Applicants bear the burden of proof, and must demonstrate to the Commission that the transaction serves the public interest, convenience and necessity.[2] Pursuant to the Clayton Act, the Commission has the authority to review proposed mergers of common carriers and to determine whether the merger violates Section 7 of the Clayton Act.[3] Both the Communications Act and the Clayton Act provide broad remedial powers to the Commission. The Communications Act permits the Commission to impose the conditions that are necessary to serve the public interest, and the Clayton Act permits the Commission to issue a cease and desist order, or to negotiate through a consent order the conditions that the public interest requires.[4] There is ample precedent providing the Commission the authority to impose conditions upon the transfer requested by Bell Atlantic and GTE, which would render that transaction consistent with the public interest.[5]

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[1] 47 U.S.C. §§ 214(a), 303(r), 309(e), 310(d) (1997).

[2] *See e.g.*, 47 U.S.C. § 309(e) (1997) (burdens of proceeding and proof rest with the applicant); *American Telephone and Telegraph Co. and MCI Communications Corporation Petitions for the Waiver of the International Settlements Policy*, 5 FCC Rcd 4618, 4621 ¶ 19 (1990) (applicant seeking a waiver of an existing rate bears the burden of proof to establish that the public interest would be better served by the grant rather than the denial of the waiver request); *United Broadcasting Co.*, 93 FCC 2d 517, 562 ¶ 138 (1978) (renewal applicant met its burden of proof on the designated issues and competing applicant failed to demonstrate its qualifications to be a licensee); *LeFlore Broadcasting Co., Inc.*, 66 FCC 2d 734, 736-37 ¶¶ 2-3 (1975) (on the ultimate issue of whether the applicants have the requisite qualifications to be or to remain Commission licensees, and whether a grant of the applications would serve the public interest, convenience and necessity, as on all issues, the burden of proof is on the licensees); *Carolina Broadcasting Co.*, 18 FCC 2d 482, 483 ¶ 5 (1969) ("Since our rules presumptively serve the public interest, those seeking their waiver have the burden of establishing that the public interest is better served, on the facts presented, by a waiver than by application of the appropriate rules.").

[3] 15 U.S.C. §§ 18, 21 (1997).

[4] 15 U.S.C. § 21(b) (1997). *Cf. California v. American Stores Company*, 495 U.S. 271, 275-76 (1990) (negotiation and consent order issued by FTC pursuant to complaint it filed under Clayton §7); *FTC v. Dean Foods Company*, 384 U.S. 597, 606 (1966) (Clayton Act grants FTC the power to order divestiture in appropriate cases and the courts of appeals jurisdiction to review final Commission action); *Pan American World Airways, Inc. v. United States*, 371 U.S. 296, 312-13 & n.17 (1963) ("Authority to mold administrative relief is indeed like the authority of courts to frame injunctive decrees subject of course to judicial review. . . The power to order divestiture need not be explicitly included in the powers of an administrative agency to be part of its arsenal of authority."); *FTC v. Ruberoid Co.*, 343 U.S. 470, 473 (1952) (FTC has wide discretion in formulating appropriate remedies to deal with violations of the antitrust law); *L.G. Balfour Company v. FTC*, 442 F.2d 1, 23 (7th Cir. 1971) (FTC has the power to order divestiture to restore competition. An order of divestiture is no less proper even where other, less harsh, methods are available); *Western Fruit Growers Sales v. FTC*, 322 F.2d 67, 69 (9th Cir. 1963), *citing* FTC v. Mandel Bros, Inc., 359 U.S. 385, 392-93 (1959) ("An agency is not limited to prohibiting 'the illegal practice in the precise form' existing in the past and 'may fashion its relief to restrain other like or related unlawful acts.'").

[5] *Atlantic Tele-Network, Inc. v. FCC*, 59 F.3d 1384, 1389-90 (D.C. Cir. 1995) (upholding FCC

The Commission's broad remedial powers are established throughout the Communications Act. Section 214(a) of the Communications Act states that a common carrier shall not acquire any line "unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require" the operation of the line.[6] Section 214(c) of the Communications Act authorizes the Commission to attach to that certificate "such terms and conditions as in its judgment the public convenience and necessity may require."[7] Section 310(d) of the Communications Act provides that no construction permit or station license may be transferred, assigned or disposed of in any manner unless there is a finding by the Commission that the "public interest, convenience and necessity will be served thereby."[8] When reviewing a Title III application, if the Commission does not have the evidence to determine whether the transaction is in the public interest, it must either deny the application or designate it for hearing to determine the material issues of fact.[9] If the Commission decides that the application would serve the public interest only if particular conditions are met, then the Commission can grant the application subject to compliance with those specified conditions.[10] Section 303(r) of the Communications Act authorizes the Commission to prescribe any restrictions or conditions that are necessary to carry out the provision of the Act.[11]

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imposition of proportionate return condition on carrier's 214 authorization to provide international service. "[W]e see no basis for concluding that the Commission acted arbitrarily and capriciously when, in the exercise of its judgement of what the public convenience and necessity required, it decided to offset that risk [of the carrier using its ability and incentive to discriminate against competing domestic carriers] by imposing a proportionate return condition."); *GTE Service Corp. v. FCC*, 782 F.2d 263, 268 n.5 (D.C. Cir. 1986) (court affirmed FCC determination to authorize transfers of 214 authorizations to implement breakup of AT&T without imposing certain accounting conditions but rather holding those for a future rulemaking); *Western Union Tel. Co. v. FCC*, 541 F.2d 346, 355 (3rd Cir. 1976) (upholding FCC's imposition of a waiver as a condition to issuance of a 214 certification: the court stated: "The gravamen of the [Western Union] argument is that such an interpretation [allowing the FCC to impose a waiver of contract as a condition] would allow the Commission to do "indirectly" by condition what it is forbidden to do "directly" by tariff, viz., modify or abrogate contracts. The argument fails because of the brute fact that there is a significant difference between a voluntary waiver of rights in order to secure a benefit not otherwise obtainable, and the extinguishment of rights by tariffs which provide no *quid pro quo*" . . . . Far from over-stepping its statutory bounds, the Commission appears to have acted carefully and consciously within the express language of section 214(c)."); *see also Craig O. McCaw*, 9 FCC Rcd 5836 (1994); *Teleprompter Corporation*, 87 FCC 2d 531 (1981).

[6] 47 U.S.C. § 214 (1997).

[7] 47 U.S.C. § 214(c) (1997). *See, e.g., MCI Communications Corp*, 9 FCC Rcd 3960, 3968 ¶ 39 (1994); *Sprint Corp.*, 11 FCC Rcd 1850, 1867-72 ¶¶ 100-133 (1996); *GTE Corp.*, 72 FCC 2d 111, 135 ¶ 76 (1979); *see also, Atlantic Tele-Network, Inc. v. FCC*, 59 F.3d 1384, 1389-90 (D.C. Cir. 1995); *GTE Service Corp. v. FCC*, 782 F.2d 263, 268 (D.C. Cir. 1986); *Western Union Tel. Co. v FCC*, 541 F.2d 346, 355 (3rd Cir. 1976), *cert. denied*, 429 U.S. 1092 (1977).

[8] 47 U.S.C. § 310(d) (1997).

[9] 47 U.S.C. § 309(e) (1997). *See, e.g., Tele-Media Corp. v. FCC*, 697 F.2d 402, 409 (D.C. Cir. 1983); *Southwestern Operating Co. v. FCC*, 351 F.2d 834, 835 n.2 (D.C.Cir. 1965); *Sprint Corp.*, 11 FCC Rcd 1850, 1855 ¶ 33 (1996). *Cf. ITT World Communications, Inc. v. FCC*, 595 F.2d 897, 901 n.9 (2nd Cir. 1979).

[10] 47 C.F.R. § 1.110. *See, e.g., Infinity Broadcasting Corp.*, FCC 96-495 (Dec. 26, 1996) (1996 WL 738831); *Citicasters, Inc.*, FCC 96-380 (rel. Sep. 17, 1996) (96 WL 532324); *Pyramid Communications*, 11

The public interest referred to throughout the Communications Act necessarily encompasses the goal of promoting competition. The Supreme Court of the United States has established that the Title II public convenience and necessity standard and the Title III public interest convenience and necessity standard must be construed by the Commission "to secure for the public the broad aims of the Communications Act."[12] These broad aims are clearly established in Section 1 of the Communications Act, which claims to "make available . . . to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide . . . communication service,"[13] and again in the 1996 Amendments to the Communications Act, which establishes a "pro-competitive, deregulatory national policy framework designed to . . . open all telecommunications markets to competition."[14] Therefore it is clear that the public interest standard necessarily encompasses the goal of promoting competition.

FCC Rcd 4898 (1995); *Tele-Communications, Inc.*, 10 FCC Rcd 2147 (CSB 1995); *Craig O. McCaw & American Tel. & Tel. Co.*, 9 FCC Rcd 5836 (1994), *recon. denied on other grds.*, 10 FCC Rcd 11786 (1995) (hereinafter "*McCaw*"), *affirmed sub nom. SBC Comm., Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir. 1996); *Viacom, Inc.*, 9 FCC
Rcd 1577 (1994).

[11] 47 U.S.C. § 303(r) (1997). *See, e.g., Columbia Broadcasting System, Inc. v. FCC*, 453 U.S. 367, 386 (1981) (rules requiring access to broadcast time by political candidates properly adopted pursuant to 303(r)); *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978) (broadcast-newspaper cross-ownership rules properly adopted pursuant to 303(r)); *Red Lion Broadcasting Co., Inc. v. FCC*, 395 U.S. 367, 379-80 (1969); *U.S. v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968) (303(r) powers permit FCC to order cable company not to carry broadcast signal beyond station's primary market); *United Video, Inc. v. FCC*, 890 F.2d 1173, 1182-83 (D.C.Cir. 1989) (syndicated exclusivity rules adopted pursuant to 303(r) powers).

[12] *Western Union Division, Commercial Telegrapher's Union, A.F.of L. v. United States*, 87 F. Supp. 324, 335 (D.D.C. 1949), *aff'd*, 338 U.S. 864 (1949). *See also, Washington Utilities and Transportation Comm'n. v. FCC*, 513 F.2d 1142, 1147 (9th Cir. 1975); *FCC v. RCA Communications, Inc.*, 346 U.S. 86, 93-95 (1953).

[13] 47 U.S.C. § 151 (1997). These goals date to the original Communications Act of 1934. *See* H.R. Rep. No. 1918, 73d Cong., 2d Sess. 1 (1934).

[14] H.R. Rep. No. 104-458 at 1; Telecommunications Act of 1996, Pub. L. No. 104-104 (preamble), 110 Stat. 56 (1996).

When determining whether a proposed transfer is consistent with the policies of the Communication Act, the Commission applies a broad analytical perspective to examine that transfer's effect on Commission policies encouraging competition.[15] The Commission's analysis of the effect of the transfer on competition is guided by antitrust principles,[16] but not limited by the antitrust laws.[17] The public interest standard and the associated competitive analysis conducted by the Commission is necessarily broader than the standard applied to analyses of the antitrust laws.[18] Under the public interest standard, the Commission considers the trends and needs of the industry in question, the factors that influenced Congress to enact specific provisions for that particular industry, and the complexity and rapidity of change in that industry.[19] The public

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[15] *ABC Cos. Inc.*, 7 FCC 2d 245, 249 (1966). The public interest can also include other factors, such as diversity, spectrum efficiency, "just, reasonable and affordable" rates, national security, etc. *See, e.g., Federal-State Joint Board on Universal Service,* Report and Order, CC Docket No. 96-45, FCC 97-157 ¶¶ 43-55 (May 8, 1997) (public interest factors include principles for the preservation and advancement of universal service and competitive neutrality); *Infinity Broadcasting Corp. and Westinghouse Electric Corp.*, FCC 96-495 ¶¶ 39-48, 91 (rel. Dec. 26, 1996) (public interest benefits of diversity can include improved news, children's programming, and provision of time to political candidates); *Capital Cities/ABC, Inc.*, 11 FCC Rcd 5841, 5885-95 ¶¶ 82-99 (1996) (public interest includes concerns regarding diversity and concentration of economic power); *Market Entry and Regulation of Foreign-Affiliated Entities*, 11 FCC Rcd 3873, 3874-90 ¶¶ 56-72 (1995), *recon. pending*. (additional public interest factors include national security, law enforcement, foreign policy and trade concerns raised by the Executive Branch).

[16] *See FCC v. RCA Communications, Inc.*, 346 U.S. 86, 93-95 (1953) ("There can be no doubt that competition is a relevant factor in weighing the public interest."); *US v. FCC*, 652 F.2d 72, 81-82 (D.C. Cir. 1980) (*en banc*) (quoting *Northern Natural Gas Co. v. FPC*, 399 F.2d 953, 961 (D.C. Cir. 1968)); *see also, FCC v. National Citizens Committee for Broadcasting, et al.*, 436 U.S. 775, 795 (1978). Indeed, the courts have construed our statutory authority to mean that the Commission has discharged its antitrust responsibilities "when [it] seriously considers the antitrust consequences of a proposal and weighs those consequences with other public interest factors." *United States v. FCC*, 652 F.2d at 88; *OTI Corp.*, 6 FCC Rcd 1611, 1612 (1991).

[17] *See United States v. FCC*, 652 F.2d at 88 (the Commission is not responsible for enforcing the antitrust laws); *see also, Teleprompter-Group W*, 87 FCC 2d 531 (1981), *aff'd on recon.*, 89 FCC 2d 417 (1982) (Commission independently reviewed the competitive effects of a proposed merger, even though the DOJ had also reviewed the merger and found the proposed transaction would not violate the antitrust laws); *Equipment Distributors' Coalition, Inc. v. FCC*, 824 F.2d 1197, 1201 (D.C. Cir. 1987). *Cf. Northeast Utilities Service Co. v. FERC*, 993 F.2d 937, 947-48 (1st Cir. 1993) (public interest standard does not require agencies "to analyze proposed mergers under the same standards that the Department of Justice . . . must apply.").

[18] *United States v. FCC*, 652 F.2d at 88 (The Commission's "determination about the proper role of competitive forces in an industry must therefore be based, not exclusively on the letter of the antitrust laws, but also on the `special considerations' of the particular industry.")

[19] *See FCC v. RCA Communications, Inc.*, 346 U.S. at 94-95, 98 (reliance on "independent conclusion[s]" on the "impact upon [the particular industry] of the trends and needs of this industry" is appropriate. "[W]hat competition is and should be in [areas in which active regulation is entrusted to an administrative agency] must be read in the light of the special considerations that have influenced Congress to make specific provision for the particular industry."); *United States v. Storer Broadcasting Co.*, 351 U.S. 192, 203 (1956) (FCC's "authority covers new and rapidly developing fields." As such, the "Communications Act must be read as a whole and with appreciation of the responsibilities of the body charged with its fair and efficient operation. The growing complexity of our economy induced the Congress to place regulation of businesses like communication in specialized agencies with broad powers. Courts are slow to interfere with their conclusions when reconcilable with statutory directions."); *National Broadcasting Co. v. United States*, 319 U.S. 190, 219 (1943) (emphasizing Congress' grant of broad powers to the Commission, in order to safeguard the public interest in a "new and dynamic" area of regulation); *FCC v. Pottsville*

interest analysis must also include a review of the nature and extent of local competition, as exemplified by the fact that Section 271 of the Act specifically applies the public interest standard to, *inter alia*, a review of local market conditions.[20]

The Commission also has concurrent jurisdiction with the DOJ and the FTC under Sections 7 and 11 of the Clayton Act to disapprove acquisitions of "common carriers engaged in wire or radio communications or radio transmissions of energy . . . where in any line of commerce in any section of the country" the effect of that acquisition may be "substantially to lessen competition, or to tend to create a monopoly."[21] Section 7 of the Clayton Act incorporates the policies underlying Sections 1 and 2 of the Sherman Act prohibiting combinations in restraint of trade and actual or attempted monopolization.[22]

Broadcasting Co., 309 U.S. 134, 138 (1940) (The public interest standard "serves as a supple instrument for the exercise of discretion by the expert body which Congress has charged to carry out its legislative policy . . . . Underlying the whole law is recognition of the rapidly fluctuating factors characteristic of the evolution of [industries under the FCC's jurisdiction] and of the corresponding requirement that the administrative process possess sufficient flexibility to adjust itself to these factors." As such, the "Communications Act is not designed primarily as a new code for the adjustment of conflicting private rights through adjudication. Rather it expresses a desire on the part of Congress to maintain, through appropriate administrative control, a grip on the dynamic aspects" of the telecommunications industry.); *United States v. FCC*, 652 F. 2d at 88 (resolution of the sometimes-conflicting public interest considerations "is a complex task which requires extensive facilities, expert judgment and considerable knowledge of the . . . industry. Congress left that task to the Commission. . . ." quoting *McLean Trucking Co. v. United States*, 321 U.S. 67, 87 (1944).).

[20] 47 U.S.C. § 271(d)(3)(C) (1997).

[21] 15 U.S.C §§ 18, 21(a) (1997). Both Bell Atlantic and NYNEX are common carriers.

[22] *See* 15 U.S.C. §§ 1, 2, 18 (1997). *See also, United States v. Penn-Olin Chem. Co.*, 378 U.S. 158, 170-171 (1964); American Bar Association, Antitrust Section, *Antitrust Law Developments* 275 (3d ed. 1992).

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3. COMMENTS ON POTENTIAL PUBLIC INTEREST HARMS

A. Local Service

A primary contention of the applicants' Public Interest Statement is that the applicants need the merger to compete in the local markets of the other Bell companies.[23] The applicants claim they currently lack the ability to compete, and that the proposed merger would allow them to compete quickly against the incumbent Bell companies in their local markets. The applicants' Public Interest Statement asserts that the merger will be pro-competitive because there would be increased competition between the Bell companies in the local markets.[24] These contentions are difficult to comprehend in light of the fact that the applicants are giant companies with vast financial resources. The following chart gives an indication of the applicants' size in relation to each other, the remaining RBOCs and selected long distance carriers referenced by the applicants in their Public Interest Statement.

	Revenue ($millions)	EBIT ($millions)	Net Income ($millions)
COMPANY	**1997**	**1997**	**1997**
Ameritech	15,998.0	3,799.0	2,296.0
SBC	24,856.0	3,170.0	1,474.0
Bell Atlantic	30,193.9	5,341.5	2,454.9
Bell South	20,561.0	5,376.0	3,270.0
GTE	23,260.0	5,611.0	2,794.0
US West	10,319.0	2,210.0	1,180.0
AT&T-TCG	51,813.3	6,835.5	4,349.3
MCI WorldCom	27,004.4	1,773.7	592.7
Sprint	14,873.9	2,451.4	952.5

As is clear from the above referenced chart, of the remaining RBOC's, Bell Atlantic is currently the largest. If, as the largest RBOC, Bell Atlantic cannot now compete in the local markets of the other remaining RBOCs, the market entry impediments have obviously nothing to do with size. If Bell Atlantic, who is three-

[23] Applicant's Public Interest Statement, p. 1.
[24] Applicant's Public Interest Statement, p. 1.

times the size of US West, cannot now enter into that local market, how will being five-times the size change that situation? Clearly, Bell Atlantic's reasons for not competing in the local markets of the remaining RBOCs has nothing to do with size, but rather rate of return. In reality, the RBOCs have created every impediment possible in order to delay competition and in the process, have simply made it too costly a proposition to compete in the local markets of any other RBOC. The reality of the situation is that the current impediments to competition by the RBOCs make it more cost effective to invest capital in other ventures. The solution to the problems is therefore not more mergers, but rather further regulation aimed at eliminating the creative impediments created by the RBOCs in response to the Telecommunications Act.

Indeed, this very Commission is also skeptical of the arguments advanced by the applicants. In discussing the proposed merger, FCC Commissioner Gloria Tristani remarked, "I'm a little skeptical of the notion that a $25 billion company needs to get bigger before it can compete successfully out-of-region."[25] Clearly, without the merger, each applicant has the resources and ability to risk launching campaigns to compete against other Bell companies for local markets; if that in fact is their goal.

As it currently stands, GTE is forced to compete in the markets of the remaining RBOCs by necessity.[26] Therefore, it logically follows that if the merger is denied, GTE will continue having to compete in such markets in order to survive. The applicants' claim that the merger will be pro-competitive because a new competitor will enter the other Bell's local markets is simply untrue. GTE is already competing in those markets, and will continue to do so, even if the merger request is denied.

The applicants claim that the pro-competitive benefits from the merger will far outweigh any minimal loss in potential competition inside Bell Atlantic's region.[27] This is based on an assertion stated in the applicants' Public Interest Statement that neither applicant is a significant potential competitor to the other, therefore their merger would not preclude any significant competition.[28] In Applications of NYNEX Corporation and Bell Atlantic Corporation, 12 FCC Rcd 19985 (FCC 97-286) (1997), this Commission stated that in addressing competition issues, market participants should include not only actual competitors, but "precluded competitors" or firms that are most likely to enter the market, but have until recently been prevented or deterred from market participation by entry barriers which the 1996 Act seeks to lower. In this regard, it is clear that GTE is a competitor and/or potential competitor to Bell Atlantic.

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[25] Remarks of Commissioner Gloria Tristani before the National Association of Regulatory Utility Commissioners, November 8, 1998.

[26] "GTE, faced with an imperative to compete given its island-like service areas in the other Bells' seas, already has established a separate corporate unit to plan for entry into territory close to its own few urban franchise areas." Applicant's Public Interest Statement, p. 7.

[27] Applicant's Public Interest Statement, p. 2.

[28] Applicant's Public Interest Statement, p. 2.

The applicants' Public Interest Statement also asserts that each applicant "needs" the geographic presence that the other possesses.[29] If each applicant truly "needs" the geographic presence that the other possesses, they are each large enough to establish that presence without having to buyout the competition. Allowing the merger will diminish future competition and be contrary to the public interest. The lost consumer welfare due to diminished competition will be a critical failure of government to protect consumers. For all we know, if the merger is denied the applicants might end up in fierce competition some day. If that is a reasonable possibility, wouldn't it be a disservice to consumers if the Commission allowed one applicant to buy the other rather than compete with it? In addition, it should be noted that it has been less than three years since the passage of the Telecommunications Act of 1996, hardly enough time to assume that ILEC-ILEC competition is unrealistic and improbable.[30]

This Commission should also be concerned with the ability of a smaller company to realistically compete at the local level with larger companies. When considering this factor, the merger is clearly anticompetitive and not in the best interest of the public. The increased trend of mergers between ILECs has already stifled overall competition for local services. The growth of one competitor inherently raises the barriers to meaningful competition by smaller competitors, who are not only disadvantaged by the obstacles created by the RBOCs, but who also lack the efficiencies of scale enjoyed by the larger companies. Significant disincentives for smaller carriers to enter local markets already exist, such as requirements of substantial investments and proximate facilities, as well as the difficulty of acquiring customers without established goodwill.[31] In addition, ILECs have little incentive to open up their markets, and in fact have an incentive to refrain from cooperating with ALECs to provide resale, interconnection, and other wholesale services.[32] Why should the Commission expect an ILEC to do its best to help a competitor? Perhaps the Commission has been overly optimistic in the past in allowing mergers between the RBOCs.[33] Despite the Telecommunications Act, it has been Supra's

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[29] Applicant's Public Interest Statement, p. 5.

[30] Remarks of Commissioner Gloria Tristani before the National Association of Regulatory Utility Commissioners, November 8, 1998. See also NYNEX/BellAtlantic, 12 FCC Rcd 19985 at ¶¶ 2-6 (footnotes omitted).

[31] See Declaration of Jeffrey Kissel in Applicant's Public Interest Statement, p. 7.

[32] See also NYNEX/BellAtlantic, 12 FCC Rcd 19985 at ¶¶ 2-6 (footnotes omitted), "An unknown entrant's attempts to build 'goodwill' by providing reliable, high quality service relies heavily on the cooperation of the incumbent local exchange carrier that is providing wholesale services for resale, interconnection, unbundled network elements or transport and termination, and can be frustrated by the ILEC if that carrier engages in discriminatory conduct affecting service quality, reliability or timeliness."

[33] See FCC Commissioner Chong's Comments following the NYNEX/BellAtlantic merger, "we looked at the effects of the merger on competition and made some assumptions that sections 251 and 252 (of the Telecommunications Act, covering interconnection, resale, and collocation) are being implemented and that there are no prohibitions against entry by new competitors. I hope we were not overly optimistic in making these assumptions. If it turns out we were wrong, the next commission may wish to be less optimistic." FCC 97-286.

experience that ILECs act in bad faith and use every possible tactic to delay, stall and hinder ALECs from competing in the local exchange markets.[34] Why should this Commission allow the proposed merger to perpetuate these effects on local markets? The proposed merger is asking the Commission to aid the larger, wealthier companies establish larger markets at the expense of the ALECs' current and future ability to realistically compete and exist in local markets. This pattern will continue to reduce consumer choices and competition, and is not in the public interest.

B. Bundled Services

The Applicant's Public Interest Statement claims that the merger will directly improve competition in the developing national and global markets for a full range of bundled telecommunications products and services.[35] The proposed merger will do nothing more than increase the applicants' monopoly power over the bundled services currently provided. Without real competition in their local markets, RBOCs have no incentive to increase or improve the offerings they provide to the public. Creating a mega-BOC will do nothing to encourage new or better offerings of bundled services. It is a maxim that monopoly power stifles improvements and change; while healthy competition stimulates better product offerings. Given the fact that the proposed merger will only serve to further stifle competition and further monopoly power, any claim of alleged improvement in bundle services is serely suspect and should be closely scrutinized. Notwithstanding the applicant's purported desire to merge in order to compete on a national and global level, the proposed merger will only delay further competition in the local telecommunications market in contravention to the Telecommunications Act. Therefore the public interest would not be served by approving the proposed merger.

C. Long Distance

The applicants contend that the merger will enhance long distance competition by spurring the development of a much needed fourth national network.[36] They explain that the increased traffic volumes made possible by the merger would lead to the expedited deployment of long distance facilities already planned and in future areas not otherwise possible.[37] The applicants also claim that GTE needs access to Bell Atlantic's customer base in order to increase traffic volumes on its planned network. First, GTE concedes that it already has planned a new long distance network. However, the applicants contend that the network needs greater traffic volumes in order to facility deployment of this network. This logic is flawed for the very reason that GTE already has access to

[34] Supra has had considerable difficulty with the unequal OSS provided by BellSouth (the local ILEC in Florida). The ILECs have provided OSS that is impossible to use by the ALECs and has deliberately been designed to create problems for ALECs.
[35] Applicant's Public Interest Statement, p. 9.
[36] Applicant's Public Interest Statement, p. 19.
[37] Applicant's Public Interest Statement, p. 19.

a large number of metropolitan areas throughout the United States. The volume of traffic over GTE's new long-distance network will not be based upon the number of customers which GTE has access to, but rather the competitiveness of its offerings. If GTE cannot be competitive in the long-distance market, it matters little whether or not GTE has access to Bell Atlantic's customers.

The applicants claim that their merged company would assist in creating a much needed fourth national network. GTE is currently comparable in size to both MCI-WorldCom and Sprint. Why must there be a mega-BOC comparable to ATT-TCG before another long-distance network can be deployed. Efficiencies of scale do not require a company to be the largest in the field before there can be incentives to compete. If this were true, and if the public interest benefits from these efficiencies, then wouldn't it be in the public interest to revert back to the pre-1984 Ma Bell days of only one company controlling everything? How far can consolidation go without contravening the pro-competitive purposes of the Telecommunications Act? This trend must stop, and the Commission must realize that these so-called "efficiencies" are fattening the already deep pockets of the RBOCs at the expense of competition and the ultimate consumer. The public interest needs a competitive marketplace, which in turn requires this Commission to stimulate growth of ALECs attempting to compete in local markets. The merger in question will do nothing to foster such competition and will only serve to take us back to pre-1984 days.

D. Wireless and International

According to the Applicants' Public Interest Statement, the merger will enable them to become a stronger and more efficient wireless competitor.[38] Achieving the merger would permit the applicants to take advantage of system-wide efficiencies that are of particular competitive importance now that several wireless providers are national in scope, and because the wireless marketplace is becoming crowded with vigorous competitors.[39] The applicants are not claiming that they need the merger to enter the wireless market, they are only claiming that the merger would allow them to become more successful and obtain greater profits upon entry into the wireless market. The damage to overall competition in the telecommunications market caused by the merger is in no way offset by any minimal benefits which might be achieved in what the applicants already concede to be a competitive market. The consequences of a merger offers no benefits to the public interest in this respect, and only the applicants would benefit from such a boost up into the wireless market. By characterizing the wireless market as "crowded", the applicants conceive that the wireless market is already highly competitive and thus any benefit result from this merger in that market can only be nominal. Since the nominal public benefits in the wireless market do not justify the negative consequences in the other markets, the merger request should be denied.

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[38] Applicant's Public Interest Statement, p. 20.
[39] Applicant's Public Interest Statement, p. 20.

The applicants also claim that the merger would allow them to become competitive among the small number of firms able to meet the growing demand for international services.[40] Clearly, each applicant realizes that there is a growing demand for international services. Each applicant already has a strong national presence, international assets and vast resources. Therefore with the applicants' awareness of the growing international market for their services it is clear that the applicants intend on eventually providing international services, whether or not the merger is approved. Since the international market is concededly an emerging market, it is hard to see how the applicants need to be megalith to participate in that market. It would be a great disservice to the public interest in this country to foreclose competition in our local markets simply to facilitate the applicants' entry into what is admitted to be a new market.[41]

E. Advanced Data Services

The applicants assert in their Public Interest Statement that the merger will facilitate the deployment of GTE's Internet backbone, and therefore add another Internet backbone provider to the market. Accordingly, to the applicants' there are only three large Internet backbone providers who are equal in strength and who currently exchange traffic under peering arrangements. According to the applicants, if one of the three large providers becomes larger than the others, it may discontinue its peering arrangement and thus threatening the backbone. The applicants' argument is tenuous at best. First, the applicants concede that they are not a factor in the Internet backbone market and thus the merger will do little to alleviate the so-called "backbone threat." Second, it is doubtful that any peering arrangements will ever be discontinued because that would only serve to hurt the backbone providers. The applicants themselves admit that the value of a backbone's network increases as the number of customers on the network increases. This concern is tenuous at best and admittedly will not be eliminated by the proposed merger. As in the wireless and international markets, it would be a great disservice to the public interest to foreclose competition in local markets simply to facilitate the applicants' entry into the Internet backbone market and allegedly counter what are tenuous and speculative competitive concerns.

[40] Applicant's Public Interest Statement, p. 9.
[41] Applicant's Public Interest Statement, p. 15.

4

4. IMPLICATIONS OF THE MARGER ON THE PROCOMPETITIVE FRAMEWORK OF THE TELECOMMUNICATIONS ACT OF 1996

According to the 104th United States Congress, the Telecommunications Act of 1996 is:

> *An Act To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.*[42]

As concluded by the Commission in its First Report and Order on Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, ¶ 1:

> *The Telecommunications Act of 1996 fundamentally changes telecommunications regulation. In the old regulatory regime government encouraged monopolies. In the new regulatory regime, we and the states remove the outdated barriers that protect monopolies from competition and affirmatively promote efficient competition using tools forged by Congress. Historically, regulation of this industry has been premised on the belief that service could be provided at the lowest cost to the maximum number of consumers through a regulated monopoly network. State and federal regulators devoted their efforts over many decades to regulating the prices and practices of these monopolies and protecting them against competitive entry. The 1996 Act adopts precisely the opposite approach. Rather than shielding telephone companies from competition, the 1996 Act requires telephone companies to open their networks to competition.*[43]

That Order further stated that:

> *Three principal goals established by the telephony provisions of the 1996 Act are: (1) opening the local exchange and exchange access markets to competitive entry; (2) promoting increased competition in telecommunications markets that are already open to competition, including the long distance services market; and (3) reforming our system of universal service so that universal service is preserved and advanced as the local exchange and exchange access markets move from monopoly to competition. In this rulemaking and related proceedings, we are taking the steps that will achieve the pro-competitive, deregulatory goals of the 1996 Act. The Act directs us and our state colleagues to remove not only*

[42] Telecommunications Act of 1996, Pub. L. No. 104-104 (preamble), 110 Stat. 56 (1996).

[43] Local Competition Order, CC Docket 96-98, ¶ 1 et al. Emphasis added.

statutory and regulatory impediments to competition, but economic and operational impediments as well. We are directed to remove these impediments to competition in all telecommunications markets, while also preserving and advancing universal service in a manner fully consistent with competition.[44]

The Telecommunications Act did not envision the continuous stream of mergers of Regional Bell Operating Companies ("RBOCs") which have taken place over the past two years starting with the Bell Atlantic-Nynex merger. In the Bell Atlantic–Nynex Order (which was just 11 months before the announcement of the Bell Atlantic–GTE merger), the Commission noted that:

We must be especially concerned about mergers between incumbent monopoly providers and possible rivals during this initial period of implementation of the 1996 Act. Competition in the local exchange and exchange access marketplace is still in the earliest stages. This Commission, through its Local Competition Orders, set forth its initial pro-competition rules to implement those provisions of the 1996 Act that are designed to open the local telecommunications marketplace to competition....[45]

The Bell Atlantic-GTE merger is not only anti-competitive, but will also thwart the spirit of the Telecommunications Act. Local competition is in its infancy in the regions controlled by Bell Atlantic and GTE. Although it has been almost three years since passage of the Telecommunications Act, local competition has still not developed. The commission recently found that "incumbent LECs have, at a minimum, a 94 percent market share of the local exchange and exchange access services in every geographic market." MCI – Worldcom Order FN. 508, et al.

GTE on its own part has no incentive to encourage competition in its territories since it is not subjected to Section 271. For that reason, GTE has been very unresponsive to ALECs' and has engaged in a policy of "waiting-them-out." GTE has failed to provide nondiscriminatory access to its operations support systems ("OSS"), reasonable and nondiscriminatory interconnection, reasonable and nondiscriminatory collocation and reasonable and nondiscriminatory access to unbundled network elements. Bell Atlantic made several promises to this Commission in reference to its merger with Nynex which have yet come to bear. Numerous complaints have been filed by ALECs against Bell Atlantic over its refusal to comply with those conditions imposed by the Commission on its merger with Nynex.

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[44] Local Competition Order, CC Docket 96-98, ¶ 3 et al. Emphasis placed.

[45] Bell Atlantic-Nynex Order, ¶ 4 et al. Emphasis placed.

5

5. EFFECTS OF THE MERGER ON THE ABILITY OF THE FCC AND MARKET COMPETITORS TO BENCHMARK THE PERFORMANCE AND ACTIONS OF ILECS

In the Bell Atlantic-Nynex Order, this Commission analyzed the importance of benchmarking to its ability to identify and contain market power. The importance of benchmarking to the Commission and market competitors is beyond dispute. In the Bell Atlantic-Nynex Order this Commission stated as follows:

> *The existence of several Bell Companies as an important regulatory tool has been praised by the DOJ, the Courts, and the Bell Companies themselves. In commenting on the proposed divestiture of local Bell Companies by AT&T ("the divestiture), the DOJ observed that it would consider the impact of the proposed configuration of Bell Companies on the likelihood that the MFJ's non-discrimination requirements would be achieved. Several years later, responding to an appeal of the MFJ's line-of-business restrictions, the U.S. Court of Appeals for the District of Columbia Circuit noted:*
>
> > *There is a lot of evidence that the break-up and other recent developments have enhanced regulatory capability. . . . [T]he existence of seven [R]BOCs increases the number of benchmarks that can be used by regulators to detect discriminatory pricing. . . . Indeed, federal and state regulators have in fact used such benchmarks in evaluating compliance with equal access requirements . . . and in comparing installation and maintenance practices for customer premises equipment.*
>
> *Aside from the DOJ and the courts, the Bell Companies themselves have emphasized the importance of benchmarks, and especially seven benchmarks, as an important regulatory tool. Ameritech stated: "No amount of sophistry can suppress the importance of benchmarks" and that "division of the local exchange networks among seven independent companies has greatly enhanced the detectability of any monopoly abuse and the effectiveness of regulation. Anticompetitive conduct was far less detectable in the predivestiture era . . ." Bell Atlantic stated: "Each BOC serves as a benchmark against which the Commissions can measure the performance and behavior of the next; such comparisons were quite impossible before divestiture." BellSouth stated: "The [seven RBOCs] will also facilitate the detection of questionable competitive practices by allowing each BOC to serve as a benchmark for the others." NYNEX stated: "Without such benchmarks, there was no uncomplicated and ready test for uncovering anticompetitive conduct. Divestiture changed all this. There are now seven*

independent companies. A firm, constant and readily available basis exists for comparing the actions of any one against the actions of another." Pacific Bell stated: ""The ability to discriminate has also been markedly reduced by the post-divestiture emergence of vigorous competition among the BOCs providing real yardsticks against which to evaluate any individual BOC's actions." Southwestern Bell stated that seven benchmarks provide "an effective deterrent against even subtle attempts to abuse any advantage which might arise from the ownership of local exchange communications facilities." U.S. West stated that "lingering concerns about discrimination are unwarranted" after the divestiture because benchmarking would effectively detect any discrimination which might occur when a Bell Company attempts to abuse access to customer or network information. [46]

This Commission further noted in that Order as follows:

Further reductions, however, become more and more problematic as the potential for coordinated behavior increases and the impact of individual company actions on our aggregate measures of the industry's performance grows. We therefore reject suggestions in the record that there would be no issues raised by the consolidation of all Bell Companies into a single company. Accordingly, although we do not find the reduction in major incumbent LECs caused by the proposed merger sufficient to render it against the public interest, further reductions in the number of Bell Companies or comparable incumbent LECs would present serious public interest concerns. [47]

The justifications advanced by the applicants for further reductions in the number of incumbent LECs are pretentious and preposterous. The Commission now faces wholesale consolidation among the incumbent LECs.[48] The implication of these mergers on the entire industry is potentially devastating. What will happen to implementation of the Telecommunications Act? What are the implications of this development on the entire emerging ALEC industry? How will consumers benefit from competition in the local exchange services market and the subsequent reduction in communications rates to be derived from long distance and other integrated services? These are very pertinent questions that the Commission must answer in reviewing this application.

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[46] Bell Atlantic-Nynex Order, ¶¶ 148, 149 et al. Citations omitted. Emphasis placed.

[47] Bell Atlantic-Nynex Order, ¶ 156 et al. Citations omitted. Emphasis placed

[48] See Comments of MCI WCOM, Inc., CC Docket No. 98-141, at 16-17.

6

6. OTHER NEGATIVE COMPETITIVE EFFECTS OF THE MERGER

As stated by the Commission in the recently released Memorandum Opinion and Order in Docket No. 98-25:

> *As the Commission explained in the Bell Atlantic-NYNEX Order, and as we recently affirmed in the WorldCom-MCI Order and the AT&T-TCG Order, we begin our analysis of potential anticompetitive effects by defining the relevant product and geographic markets. We then identify the market participants in those relevant markets, particularly those firms that are most likely to have substantial future competitive significance. After completing these steps, we consider whether the merger is likely to result in either unilateral or coordinated effects that enhance or maintain market power in the relevant markets. Finally, we also consider whether the merger will impair the Commission's ability to implement and enforce the Communications Act's provisions opening markets and constraining market power as competition develops.*[49]

According to the Commission in the Bell Atlantic-Nynex Order, "to determine whether the proposed merger enhances competition, we examine the proposed merger in light of a number of significant changes to the laws governing the provision of telecommunications services made by the 1996 Act."[50] The Commission further stated in that Order that:

> *During the implementation of the 1996 Act, we will attempt to determine the best ways to encourage competition and pave the way for deregulation in local markets. The more independent LECs there are in this process, the more experimentation in different implementation efforts they will likely attempt. Through such experimentation and diversity, we are likely to discover solutions to issues and to resolve problems sooner than we otherwise would. We believe that the process of opening local telecommunications markets to competition and deregulation will likely be slowed by consolidation among incumbent LECs who would otherwise be participating in the process.* [51]

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[49] SNET-SBC Order, CC Docket No. 98-25, ¶ 15. Emphasis placed. See Bell Atlantic-Nynex Order, ¶ 37; Worldcom-MCI Order, ¶¶ 15-22 and AT&T-TCG Order, ¶¶ 15-16.

[50] Bell Atlantic Order, ¶ 38 et al. Emphasis placed.

[51] Id. ¶ 153 et al. Emphasis placed.

A. Local Exchange and Exchange Access Markets Sold to Mass Market Consumers.

The proposed merger will drastically reduce the number of incumbent LECs. GTE and Bell Atlantic, are no doubt, truly comparable companies. A comparison of what the two companies bring to and would benefit from the merger is shown below:

Company	Revenue ($ millions)	EBIT ($ millions)	Net Income ($ millions)	Total Number of Access Lines	% share of the Merger
Bell Atlantic	30, 193.9	5,341.5	2,454.9	26,262K	57
GTE	23,260.0	5,611.0	2,794.0	21,500K	43

In at least five of the fourteen territories of Bell Atlantic, GTE is a significant competitor and has enough assets to be a significant potential competitor to Bell Atlantic. GTE possesses significant financial resources and expertise and has substantial telecommunications assets and brand name reputation to compete effectively with Bell Atlantic. Both GTE and Bell Atlantic currently provide service to the mass market. As noted by the Commission in the Bell Atlantic-Nynex Order:

> *A merger that eliminates a significant market participant may increase the unilateral market power of the acquiring firm as well as other competitors, enabling such market participants acting individually to raise prices, reduce quality, or restrict output profitably. Such effects can occur even under price cap regulation since the removal of an independent alternative may permit a firm in the post-merger market might profitably and unilaterally reduce its level of service quality or innovation, or offer smaller price reductions than it would have offered in the absence of the merger. This is particularly true where the firms in the market are offering products that are perceived by consumers as differentiated, rather than as perfect substitutes.* [52]

B. Local Exchange and Exchange Access Services Sold to Larger Business.

Both Bell Atlantic and GTE dominate the market for local exchange and exchange access services sold to large business customers in all their territories. Both Bell Atlantic and GTE have significant capabilities and incentives to compete in the relevant local business markets of their territories. Accordingly,

[52] Id. ¶ 101 et al. Citations omitted. Emphasis placed.

the merger of Bell Atlantic and GTE will adversely affect the development of competition in this market.

C. Effect of the Reduction in the Number of Large LECs on Local Exchange and Exchange Access Markets.

The proposed merger reduces the number of significant LECs as well as reducing the Commission's ability to constrain market power and implement the 1996 Act's measures promoting competition. According to the Commission in the SBC-SNET Order, "in the Bell Atlantic-NYNEX Order, the Commission explained that consolidation among major incumbent LECs may hinder the development of competition and harm the public interest...." Among the reasons given were: (1) a reduction in the number of separately owned firms engaged in similar businesses will likely reduce this Commission's ability to identify, and therefore to contain, market power; (2) mergers increase the likelihood that cooperation among incumbent LECs can effectively inhibit or delay the implementation of the 1996 Act and other pro-competitive initiatives; and (3) the post-merger incumbent LEC may cooperate less than the pre-merger incumbent LECs would have in enabling competition to grow.[53] All these are true as demonstrated by Bell Atlantic after its merger with Nynex and the same is true of SBC after its merger with Pac-Bell.

D. Domestic Long Distance Services in GTE States and Bell Atlantic's Current In-Region States.

The proposed merger will hurt long distance competition by making Bell Atlantic the incumbent LEC in GTE's current region. Likewise GTE will become the favored long distance carrier in Bell Atlantic's current region.

[53] SBC-SNET Order, ¶ 21 et al. Citations omitted.

7

7. IMPLICATIONS OF GTE'S REPOSITIONING

On November 5, 1998, just about a month after Bell Atlantic and GTE filed their "Application For Transfer Of Control" with the Commission, GTE announced "*its plan to sell or trade about 1.6 million of the 21.5 million total domestic local access lines that the company held at year-end 1997. The properties offered include all GTE wireline exchanges in the states of Alaska, Arkansas, Arizona, Iowa, Minnesota, Nebraska, New Mexico, and Oklahoma - and some of the GTE exchanges in California, Illinois, Missouri, Texas and Wisconsin. This repositioning effort is part of an overall corporate plan announced in April 1998 to generate after-tax proceeds of $2-$3 billion to be re-deployed into other higher growth strategic initiatives. The effort is unrelated to GTE's proposed merger with Bell Atlantic, which was announced July 28. In addition, the company noted that it plans to continue to offer its other products, including long distance and internet access services, in these markets.*"[54] This is clearly in conflict with the applicants' Public Interest Statement filed with this Commission which states as follows: "*with its local telephone facilities broadly dispersed throughout the United States, GTE is the 'enabler' that will allow Bell Atlantic to attack other Bell Company strongholds across the country. One glance at a map of GTE's service territories verifies this fact. GTE shares an MSA or serves neighboring suburbs in several of the most attractive Bell markets outside Bell Atlantic's region, including...*"[55] Please see Attachment E, "Map 4" and "Map 4A".

A review of the GTE's repositioning announcement reveals that GTE is vacating the entire current SBC territory and half of its presence in both US West and Ameritech territories. GTE is not selling any of its assets in BellSouth territory. The implications of this "repositioning effort" by GTE are clear and hint at long-term prospects of merging into one single company. *See Bell Atlantic-Nynex June 23, 1997 Comments, Attachment 2 (Declaration of William F. Baxter) at 3, ¶ 3(c).*

[54] GTE announces specific local telephone exchange properties that it is offering for sale or trade. Copy attached. See www.gte.com/About GTE/news/Repositioning.html. Emphasis placed.
[55] Applicants' Public Interest Statement at pages 1-2. Emphasis placed.

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For customer inquiries:
Please visit our **Customer Care Page**

GTE announces specific local telephone exchange properties that it is offering for sale or trade.

November 5, 1998

IRVING, Tx. - GTE Network Services announced today its plans to sell or trade about 1.6 million of the 21.5 million total domestic local access lines that the company held at year-end 1997.

The properties offered include all GTE wireline exchanges in the states of Alaska, Arkansas, Arizona, Iowa, Minnesota, Nebraska, New Mexico, and Oklahoma - and some of the GTE exchanges in California, Illinois, Missouri, Texas and Wisconsin.

This repositioning effort is part of an overall corporate plan announced in April 1998 to generate after-tax proceeds of $2-$3 billion to be re-deployed into other higher growth strategic initiatives. The effort is unrelated to GTE's proposed merger with Bell Atlantic, which was announced July 28. In addition, the company noted that it plans to continue to offer its other products, including long distance and internet access services, in these markets.

"The offering of these properties for sale or trade is consistent with GTE's strategic objectives and has generated a great deal of interest from other telephone service providers," said John Appel, president-GTE Network Services.

More than 200 prospective bidders who have already expressed interest will soon receive letters providing more detail on the properties GTE is making available.

"Preference will be given to bidders whose proposals involve purchasing or trading an entire regional cluster," Appel said. "We will also consider proposals for individual states within those clusters, but it is unlikely that we will accept offers for individual exchanges."

Appel emphasized that GTE is looking for transaction partners that share the company's strong commitment to customers, employees and communities. Topping the list of requirements is the potential buyers' demonstrated concern for and commitment to the affected employees. "Bidders must assure us that our employees will be treated fairly,"

Appel said.

GTE said its goal is to reach definitive agreements for all of the properties by mid-1999. Transition of the properties to the buyers will occur during the remainder of 1999 and the Year 2000.

About GTE

With 1997 revenues of more than $23 billion, GTE is one of the world's largest telecommunications companies and a leading provider of integrated telecommunications services. In the United States, GTE provides local service in 28 states and wireless service in 17 states; nationwide long-distance service and internetworking services ranging from dial-up Internet access for residential and small business consumers to Web-based applications for Fortune 500 companies; as well as video service in selected markets.

For specific exchange information, please click here. (Download word file)

# # #

Other sites of interest:

Wireline Exchanges - Maps

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8

8. CURRENT ILEC MERGER TRENDS

Since the passage of the Telecommunications Act in 1996, the telecommunications industry has witnessed a surge of mergers among the incumbent LECs. According to this Commission, "*the Act contemplates three paths of entry into the local market -- the construction of new networks, the use of unbundled elements of the incumbent's network, and resale...et al.*[56] The Telecommunications Act does not recognize merger as an "entry strategy" as is now being used by the applicants'.

A graphic review of ILEC merger history reflects the following. First, the Commission approved the merger of Bell Atlantic-Nynex in 1997, CC Docket No. 96-10. Please refer to Attachment C ("Map 2") for a description of the RBOCs definition after the merger. Then the Commission approved the merger of SBC and Pac-Tel during the same year. Please refer to Attachment D ("Map 3") for a description of the RBOCs definition after that merger. That same year, SBC announced its purchase of another incumbent LEC, SNET. The Commission recently approved that merger, CC Docket No. 98-25. While the Commission was still considering the merger between SBC and SNET, SBC announced on May 11th 1998, that it wished to acquire Ameritech. As if that was not enough for the industry to ponder on, on July 27th 1998, Bell Atlantic announced its intention to acquire GTE. It is important to note that competition has developed little in any shape or form despite passage of the Telecommunications Act almost three years ago. The entire ALEC industry (companies that are supposed to compete with the incumbent LECs) has witnessed road blocks after road blocks as a result of obstacles put in their path by ILECs.

On June 24, 1998, Rep. John Conyers of the House Committee on the Judiciary stated at the Oversight Hearing on "the Effects of Consolidation on the State of Competition in the Telecommunications Industry" as follows:

> *The Telecommunications Act of 1996 is supposed to usher in an era of vigorous competition in the local telephone and cable industries. And two years later, the local bell monopolies still control 98% of the local loop, the incumbent cable operators maintain relative monopolies in most of their markets and consumers are experiencing price increases for both cable and local telephone service.*
>
> *We have got some very big problems. I am asking myself if we need to really go into antitrust legislation. I come here with a renewed concern that the regulations and regulators are not vigorous enough. That the industry promises are always seductive. The FCC needs to be doing a lot more in terms of bringing down*

[56] Local Competition Order, CC Docket 96-98, ¶ 12 et al. Emphasis placed.

these current market prices. And I think that the Congress too needs to act.

The Telecommunications Act itself after two years needs to rewritten.

At that same hearing, Commissioner Susan Ness of the FCC stated:

In carrying out its statutory obligation, the FCC examines how the proposed transaction will affect the development of competition in all communications markets. The public interest also requires the FCC to balance the potential pro-competitive effects of a transaction with its anticompetitive effects. In evaluating whether a proposed merger is in the public interest, the Commission considers whether the transaction will, on balance, enhance competition.

The ultimate goal of the competitive analysis of a merger is to determine how the merger will affect the development of competition as the transition to a deregulated environment envisioned by the Telecommunications Act evolves. Thus we must not look at the current significance of merging parties today, but rather their expected significance as the Act is implemented. This is especially important in telecommunications markets.

At that same hearing, Hon. Joel Klein of the DOJ made these comments:

As competition replaces regulation in the telecommunications industry, the merger and alliance activity is likely to continue, and vigorous antitrust enforcement is important if we want to continue to chart a path that will give rise to the important consumer benefits -- including lower prices, greater choices, higher quality, and more innovative product offerings -- that competition makes possible.

This is a challenging time for the Antitrust Division, and I want to talk about the Department's role in reviewing these mergers to ensure that they do not create or facilitate the exercise of market power and lead to increased prices, restricted consumer choice, or reduced innovation. The task of promoting and preserving competition in an industry that is emerging from regulation is an enormous undertaking, and active cooperation among Governmental agencies at all levels that are involved in reviewing telecommunications mergers, within the limits of our confidentiality requirements, is of tremendous benefit to accomplishing this task.

A number of observers are questioning whether all this merger activity is good for the economy and for consumers. Some have remarked that the Telecom Act was passed in order to increase competition, but instead we are seeing a merger wave. To the extent that these statements reflect frustration with the fact that developments in the industry have not followed the sequence or the timetable that some of the Act's supporters predicted, they are understandable. As I have said previously before this committee, I believe the Act provides a workable framework that will bring competition to the local market and eventually benefit America's consumers. It will take time, some patience, and a lot of perseverance. We in the Antitrust Division are committed to working hard and going the distance to make the Act fulfill its competitive promise.

Essentially, we look to see if the proposed merger would eliminate current competition or future potential competition in a way that harms consumers. We investigate and analyze factors such as market concentration, potential adverse effects, ease of entry into the market at issue, and efficiencies likely to be created by the merger. We do this by a thorough analysis of the information contained from a wide range of sources, including the business plans of the merging parties and other players – their anticipated methods of entry, the products to be offered, market share projections, and likely impacts on the market.

When we do identify an anticompetitive aspect to the merger, we are often able to address it through a focused divestiture or, in some cases, a focused injunctive decree that will remedy the problem while permitting the rest of the merger to go forward, so as not to interfere with activity that does not raise concerns. Sometimes, however, there is no workable remedy short of challenging the merger in its entirety.

In industries undergoing rapid change, such as the telecommunications industry, it is particularly important that antitrust enforcers be able to consider not only a merger's likely effects on competition now taking place, but also on competition likely to take place absent the merger. This is especially important where competition has been precluded by law in the past, and where technological change is making competition possible where it was not before.

The FCC applies the "public interest" test under the Communications Act, while the Justice Department applies the "may substantially lessen competition" test of section 7 of the

Clayton Act. Parties seeking FCC approval of a merger have the burden to prove that their merger is in the public interest, which the FCC has interpreted to require proof that the merger will enhance competition, while the Justice Department, as one of the parties in an antitrust enforcement action, has the burden of proof that the merger will substantially lessen competition.

Our job is to do the hard work to actually look at the documents of the players in the market, to look at the anticipated competitive strategies, ***to see where new entrants are going to come from, to see where the opportunities for new entrants are going to come from*** *and to see how globalization is going to affect it.*

A review of the following table comparing the financial size of the various RBOCs and other telecommunications companies is revealing.

	Revenue ($millions)	EBIT ($millions)	Net Income ($millions)
COMPANY	**1997**	**1997**	**1997**
Ameritech	15,998.0	3,799.0	2,296.0
SBC	24,856.0	3,170.0	1,474.0
Bell Atlantic	30,193.9	5,341.5	2,454.9
Bell South	20,561.0	5,376.0	3,270.0
GTE	23,260.0	5,611.0	2,794.0
US West	10,319.0	2,210.0	1,180.0
AT&T-TCG	51,813.3	6,835.5	4,349.3
MCI WorldCom	27,004.4	1,773.7	592.7
Sprint	14,873.9	2,451.4	952.5

From the above table, there is no doubt that the applicants' occupy the first and third positions within the community of incumbent LECs throughout the country. Of equal importance is the pending merger of SBC and Ameritech, the number two and four incumbent LECs. The merger of Bell Atlantic and GTE will create a $53.5 billion empire, while the merger of SBC and Ameritech will create a $40.9 billion empire. The two remaining incumbent LECs will now be BellSouth ($20.6 billion) and US West ($10.3 billion). Obviously, these two corporations will not be able to stand on their own when one considers the fact that "*the real-world conditions necessary to succeed in such out-of-franchise entry that...make meaningful entry possible where the separate companies alone could not succeed.*"[57]

RBOC merger applicants' will always come up with "justifiable reasons" to satisfy their arguments for future mergers. One compelling reason for the future merger of US West with SBC (maybe immediately after the Commission approves the SBC-Ameritech merger) will be the fact that US West stands in-between SBC's territories. At that point, the merger of BellSouth with Bell Atlantic will become compelling because BellSouth will not be able to stand on its own. Then after that round of mergers in 1999/2000, there will be a need for SBC and Bell Atlantic to merge so that the unified company can provide bundled service throughout the United States and compete on a global level; and don't rule out the possibility of AT&T being part of this whole process. Please remember that sometime in 1997, the idea of the merger between AT&T and SBC was mentioned, but quickly shot down when it was described by the former Chairman of the Commission, Mr. Reed Hundt as *"unthinkable."*

[57] Bell Atlantic-GTE Public Interest Statement, Exhibit A, CC Docket No. 98-184. Et al. Emphasis placed.

9. COMPELLING REASONS WHY THE COMMISSION SHOULD NOT APPROVE THE MERGER THE WAY IT IS STRUCTURED

From the arguments stated above, it is clear that allowing the merger to occur would not be in the public interest. When Congress passed the Telecommunications Act, the legislature envisioned that real, vigorous competition would come to the local exchange markets. It was believed that independent companies would emerge in these markets. Yet rather than foster competition, the past two years have shown that the Telecommunications Act has had the opposite effect of encouraging ILECs to simply merge in order to eliminate competition from each other. Rather than competitive local markets, what currently exists is fewer and fewer independent RBOCs which progressively control more and more of the local exchange markets. See attached Maps (Attachments B, C, D, and E). In addition, there exists a great danger that ILECs can use their market power to ensure that only minimal competition develops in local exchange and exchange access telecommunications. This is a very dangerous situation, one that apparently was overlooked by the legislature who trusted the ILECs to cooperate with the ALECs in good faith. This situation has been acknowledged by an ILEC itself in stating, "the dominant incumbent . . . can and will rationally use interconnection negotiations to delay and restrict the benefits of competition. A dominant incumbent can limit both the scale and scope of its competitors, raising their costs and restricting their product offerings."[58]

The Commission has the ability to re-write merger agreements to protect those public interests threatened by a proposed merger, while still attempting to salvage any beneficial aspects of the merger. Sometimes merger conditions have the potential to bring consumers benefits which might otherwise be lost.[59] According to Section 214(c) of the Communications Act, the Commission has the authority to impose conditions on proposed mergers to ensure that they are in the public interest. That section states that the Commission may attach to a transferred license "such terms and conditions as in its judgment the public interest may require."[60] This Commission has the ability to re-write merger agreements to attain a situation which benefits the public interest. In other words, the Commission can approve the merger, benefiting the Applicants by allowing them to proceed with their extensive expansion plans, yet add conditions to the merger as the Commission sees fit, in order to provide specific

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[58] BellSouth New Zealand, Submission: Regulation of Access to Vertically-Integrated Natural Monopolies, A Discussion Paper, September 29, 1995 at 2 and 10.

[59] See Remarks of Commissioner Gloria Tristani before the National Association of Regulatory Utility Commissioners, November 8, 1998.

[60] 47 U.S.C. § 214(c) (1997). *See, e.g., MCI Communications Corp*, 9 FCC Rcd 3960, 3968 ¶ 39 (1994); *Sprint Corp.*, 11 FCC Rcd 1850, 1867-72 ¶¶ 100-133 (1996); *GTE Corp.*, 72 FCC 2d 111, 135 ¶ 76 (1979); *see also, Atlantic Tele-Network, Inc. v. FCC*, 59 F.3d 1384, 1389-90 (D.C. Cir. 1995); *GTE Service Corp. v. FCC*, 782 F.2d 263, 268 (D.C. Cir. 1986); *Western Union Tel. Co. v FCC*, 541 F.2d 346, 355 (3rd Cir. 1976), *cert. denied*, 429 U.S. 1092 (1977).

benefits to the public interest. The Commission must do its best to accomplish a win-win situation for both the applicants and consumers.

Because the proposed merger will do nothing more than create a megalithic monopoly in the local communications markets, increase concentration in these already highly concentrated markets, ultimately stifle future competition and only delay the intents and goals of the Telecommunications Act, the proposed merger, as presented, is not in the public interest. Regardless of the fact that the proposed merger will obviously have negative and adverse effects on competition, particularly in the local exchange markets, Supra is of the position that a modification to the proposed merger can lead to highly competitive results.

10. WHY THE COMMISSION SHOULD APPLY SECTION 214(C) OF THE TELECOMMUNICATIONS ACT, 47 U.S.C. 214(C)

We are at a watershed point in the development of the telecommunications market. The proposed merger at issue and its harmful consequences are even more dangerous in the present day context of the merging mega-BOCs. The state of the telecommunications market is getting closer and closer to coming full circle from the pre-1984 days of Ma Bell's monopoly as fewer and larger companies emerge as the smoke clears in the local markets. The current situation is preventing other businesses and potential carriers from even attempting to enter the market. This situation is a far cry from the freewheeling competitive multi-carrier market envisioned by the Telecommunications Act as amended in 1996. As stated by Commissioner Gloria Tristani on November 8, 1998, "if there ever was a time for the Commission to ensure that consumers' interests don't take a back seat to the interests of telecom giants, it is now. One powerful tool the FCC has to make that happen is the imposition of meaningful merger conditions . . . I would argue that we can best serve consumers by imposing – where appropriate – pro-competition, pro-consumer conditions on mergers. If there are specific, identifiable measures that can make a bad transaction acceptable – measures that would improve consumer welfare – the FCC can and should impose those conditions."[61]

As stated by the Honorable Joel Klein, Assistant Attorney General:

When we do identify an anti-competitive aspect to the merger, we are often able to address it through a focused divestiture or, in some cases, a focused injunctive decree that will remedy the problem while permitting the rest of the merger to go forward, so as not to interfere with activity that does not raise concerns. Sometimes, however, there is no workable remedy short of challenging the merger in its entirety.

[61] Remarks of Commissioner Gloria Tristani before the National Association of Regulatory Utility Commissioners, November 8, 1998.

11

11. SUPRA'S PROPOSAL

Supra is currently struggling to compete with the incumbent LECs. Throughout their application Bell Atlantic and GTE focus on the parties' intent to pursue both out-of-region strategies and global strategies once the proposed merger is approved. Supra has a proposal that will not impact these needs or strategies, while vastly promoting competition in the local exchange market.

A. Description of Supra

Supra Telecommunications & Information Systems, Inc. is part of a global company that has interest in telecommunications, finance and banking, oil exploration and real estate. Supra provides communications services in the United States and is currently certificated in 16 states with applications pending in 19 other states. Supra is determined to becoming a major force in the telecommunications industry by providing new and innovative local, long-distance and information services at lower and competitive rates to customers.

B. The Details Of Surpa's Proposal

In accordance with § 214(c) of the Telecommunications Act, Supra proposes that this Commission should only allow the Bell Atlantic-GTE merger under the following terms and conditions:

i. Sale of Overlapping Wireless Assets.

In four markets, Bell Atlantic and GTE "have overlapping cellular properties: Greensville, South Carolina; El Paso, Texas; Anderson, South Carolina; and Las Cruces, New Mexico. Under the Commission's rules, 47 C.F.R. § 22.942, a single company is prohibited from owning interests in overlapping cellular properties. Accordingly, one of those properties in each market will be divested. In addition, GTE and Bell Atlantic hold attributable interests in overlapping broadband PCS and cellular spectrum in eight PCS MTA markets that, when combined, will exceed the Commission's current spectrum cap (47 C.F.R. § 20.6): Tampa, Miami, New Orleans, San Antonio, Honolulu, Chicago, and Richmond.[62] Supra requests that the Commission direct Bell Atlantic-GTE to divest itself of these assets and sell the assets to Supra. In accordance with § 214 (c) of the Telecommunications Act, the Commission has the power to condition the merger of Bell Atlantic-GTE on Supra's proposal.

ii. Central Offices.

Both companies should be required to divest themselves of approximately twenty percent (20%) of their United States central offices and corresponding local

[62] Bell Atlantic-GTE Public Interest Statement, Exhibit A, page 33, CC Docket No. 98-184. Et al.

loops which tie into those central offices. Such assets should be divested to Supra at fair market value. Third, the central offices divested should be evenly disbursed throughout each applicant's region and in the same mix of rural and urban central offices as currently exists within each applicant's inventory. Fourth, the proportion of central offices which are tandem offices should be offered in the same proportion as currently exists within each applicant's inventory. Fifth, the mix of central offices offered to Supra should be proportional in terms of the number of rural\urban offices and tandem offices. Finally, the central offices will be transferred on the condition that such offices cannot be transferred back to the applicants or any related company or successor company.

C. Benefits Of Supra's Proposal

Supra contends and believes that this divestiture plan will greatly improve competition in the local markets for the following reasons. First, the termination point to the customer (or "the last mile") seems to be the most critical point in terms of reaching the customer. The problems in implementing the Telecommunications Act arise from the fact that the ILECs have no incentive to share access to the customers. The divestiture proposed above will reduce concentration at the customer level and allow for real price competition. Second, Bell Atlantic\GTE's need to access customers serviced by the divested central offices will create an incentive on the part of Bell Atlantic\GTE to act in good faith in opening up the non-divested central offices. Since the customers will still initially be with Bell Atlantic\GTE, the divested offices will have an incentive to allow unrestricted collocation and access to unbundled network elements to both Bell Atlantic\GTE and other ALECs; particularly since everyone will be competing for customers who currently belong to Bell Atlantic\GTE. Bell Atlantic\GTE will have an incentive to reduce rates to consumers serviced by these central offices in order to retain the consumers' business. If Bell Atlantic\GTE has to purchase unbundled network elements under the same terms and conditions as it offers to ALECs, Bell Atlantic\GTE will have an incentive to reduce rates for its own unbundled network elements in order to compete more effectively for the customers serviced by the divested central offices.

Requiring the applicants to divest themselves of twenty percent (20%) of their central offices will not impact the proposed merger or its professed goals. First, the central offices only comprise a fraction of the assets of both companies and therefore a twenty percent (20%) reduction in central offices translates to only a fractional decreased in the total financial net worth of the merged companies. Although the applicants do not state how much "critical mass" is needed to embark on their plan of out-of-territory and global expansion, a reduction of twenty percent of the applicants' United States central offices should not materially impact the financial sum of the companies and thus still allow for the applicants' future expansion plans. In any event, the divestiture will result in the applicants receiving revenue generated by the sale of these offices. Accordingly, the financial end

result will essentially be the same, thus allowing the applicants the financial "critical mass" needed to embark on their future strategies.

Supra has already offered to back the proposed merger on the condition that the applicants divest themselves of various central offices. Supra has also offered to purchase at least twenty percent (20%) of the assets of the merged companies at a fair and negotiated price. Neither company has responded to that offer. Supra stands ready, willing and able to effectuate this plan and its offer to purchase up to twenty percent (20%) of the central offices of SBC\Ameritech. See 11/23/98 Declaration of Olukayode A. Ramos, included hereto as Attachment "A".

Supra believes that its proposal will allow for: (a) the offering of new and exciting telecommunications services to consumers; (b) reduction in rates currently being paid by subscribers for telecommunication services; (c) investment in new data networks for the provision of faster Internet access; (d) greater competition with the RBOCs; (e) creation of a new entity which will work with regulators and ALECs to foster competition in the local loop; and (f) realization of the goals of the Telecommunications Act of 1996. Supra also believes that the above proposal will greatly facilitate the growth of real competition in the local exchange markets and will provide the consumer those benefits of free competition which were originally envisioned in the Telecommunications Act. See 11/23/98 Declaration of Olukayode A. Ramos, included hereto as Attachment "A".

Apart from raising the level of competition in these markets, Commission approval of Supra's proposal will be an important affirmative step in transforming into reality the promise of vigorous competition in all relevant telecommunications services markets as envisioned by the Telecommunications Act. Supra's proposal promises what has not been possible either through regulation or deregulation: a broad-scale attack on the local markets controlled by the incumbent LECs. Not only will Supra be competing with the incumbent LECs, it will also actively encourage ALECs to participate effectively in the whole process by providing ALECs the necessary ingredients they need to compete in the market place.

Supra has run into significant obstacles in its efforts to compete with the incumbent LECs. Supra shares the same types of problems enumerated on page 7 of the applicants' Public Interest Statement and more. In addition to those problems, Supra has issues with incumbent LECs on OSS, Collocation, Interconnection and UNEs. In the BellSouth region, Supra has had to file two formal complaints against the ILEC within a two month period in order to compel compliance with the Telecommunications Act. The adoption of Supra's proposal by the Commission will eliminate part of our problems. The adoption of our proposal by the Commission makes possible the first real facilities-based effort to compete on a broad scale against the incumbent LECs. The national presence and global reach of Supra will add a competitor to the already reduced number of competing companies in the telecommunications industry.

Supra's proposal will benefit consumers and competition a great deal. Unlike most ALECs, Supra is committed to serving all telecommunications consumers, be them residential, small business, large business or government. The company is currently providing skeletal service in all these markets. ***Supra plans to become a major nationwide player in the telecommunications industry by providing new and innovative local and long distance services at lower rates to customers, by bundling all enhanced services like voice mail, caller-id, call waiting, three way calling, etc., free to its customers. Supra will also guarantees that within six months of taking over such assets, the company will reduce telephone bills to consumer subscribers of the acquired assets by approximately twenty percent (20%).*** Supra has a comprehensive plan in place which includes what Supra intends to do with the acquired assets once the Commission grants approval of this proposal.

12. CONCLUSION

Supra respectfully requests that this Commission consider the above referenced comments and enter an Order on the Application of GTE and Bell Atlantic which tentatively denies the parties' proposed merger and the proposed transfer of the licenses and authorizations requested in the application.

Notwithstanding, the above, Supra requests that this Commission give consideration to, and enter an appropriate ruling, which conditions the merger of GTE and Bell Atlantic, and the proposed transfer of the licenses, upon the divestiture of approximately twenty percent (20%) of the applicants' central offices and other assets (including wireless assets) as detailed previously in these comments.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Filing Formal Comments and Comments were served via hand delivery delivered this 23 day of November, 1998 to the following parties:

International Transcription Service, Inc.
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Washington, D.C. 20036

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Mark E. Buechele, Esq.

Attachment A

ATTACHMENT A

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re Applications of:	)	
GTE CORPORATION, Transferor,	)	
AND	)	CC Docket No. 98-184
BELL ATLANTIC CORPORATION, Transferee,	)	
For Consent to Transfer Control of Corporations Holding Commission Licenses & Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 63, 90, 95 and 101 of the Commission's Rules	)	

DECLARATION OF OLUKAYODE A. RAMOS

1. This declaration is based upon direct and personal knowledge.

2. My name is Olukayode A. Ramos. I am the Chairman and CEO of Supra Telecommunications & Information Systems, Inc.; an Alternative Local Exchange Carrier ("ALEC") headquartered in Miami, Florida.

3. I have reviewed the Comments Of Supra Telecommunications Regarding The Joint Application Of GTE Corporation and Bell Atlantic Corporation Under Sections 214 And 310(D), For The Transfer Of Certain Licenses And Authorizations ("Supra's Comments") and am intimately familiar with the problems faced by Supra and other ALECs who have attempted to compete in the local exchange markets.

4. The problems identified in Supra's Comments in reference to Operations Support Systems (OSS), Collocation, Resale and Access to Unbundled Network Elements which are included in Supra's Comments are very real and true and correct. Supra has experienced all of these problems and more in dealing with BellSouth; who as the local

ILEC, has made it very difficult for Supra to compete in virtually every aspect of the local exchange markets in which Supra seeks to enter.

5. I have also reviewed Section 11 of Supra's Comments in reference to Supra's Proposal and Supra's offer (and request) to purchase up to twenty percent (20%) of the central offices and other assets Bell Atlantic and GTE combined. In this regard Supra has already offered to purchase at least twenty percent (20%) of the assets of the merged corporations (including duplications in the wireless networks of these corporations, central offices in every state, fiber routes, and employment of employees directly supporting the exchanges). Supra's offer was made to Mr. Raymond W. Smith, Chairman and CEO, Bell Atlantic Corporation (a copy is attached as Annex A).

6. Supra stands ready, willing and able to negotiate a fair purchase price up to twenty percent (20%) of the central offices and wireless assets of Bell Atlantic-GTE and to raise the capital necessary to effectuate such a purchase. Supra possesses the managerial know-how to manage a sophisticated telecommunications network and a business of the magnitude that is under discussion.

7. Supra stands ready, willing and able to negotiate the employment of all employees directly supporting the acquired assets in the same or comparable positions immediately following the transfer of such assets; offer reasonably comparable benefits packages, including salary, medical, severance and retirement benefits; and assume the terms and conditions of any bargaining unit agreements in effect.

8. Supra has already begun the process of securing ALEC licenses (where it has not yet been certified) in the states affected by the Bell Atlantic-GTE merger.

9. Supra believes that real competition in the local exchange markets can only occur when necessary components of the infrastructure have been distributed among different entities. Accordingly, Supra believes that its proposal will allow for: (a) the offering of new, innovative and exciting telecommunications services to consumers; (b) reduction of at least 20% in rates currently being paid by subscribers for telecommunication services; (c) investment in new data networks for the provision of faster Internet access; (d) greater competition with the RBOCs; (e) creation of a new entity which will work with regulators and ALECs to foster competition in the local loop; and (f) realization of the goals of the Telecommunications Act of 1996.

10. Supra will work with regulators at both the federal and state levels to bring the benefits of competition to consumers as well encourage competitors to enter its territory by creating the right atmosphere for other ALECs.

11. Supra understands and appreciates the extent of regulatory involvement that will be needed to satisfy this request.

12. Supra is committed to providing telecommunications services to all telecommunications subscribers.

13. Supra views the local loop as the key to all forms of telecommunications service. It is our desire to bring the benefits of the Telecommunications Act to the American telephone subscribers who have suffered and endured the pains of dealing with monopolistic service providers for over 100 years. Competition in the local loop is the key to any form of competition in the telecommunications industry. All the service providers including the long distance, wireless, ISPs, CAPs, advanced services, depend upon local service for their existence. Supra will provide true competition with the incumbent LECs if the Commission will make the critical determination to make such competition possible.

14. Pursuant to 28 U.S.C. § 1746 and 47 C.F.R. § 1.16, I, OLUKAYODE A. RAMOS, hereby declare, certify, verify and state under the penalty of perjury that the foregoing is true and correct.

OLUKAYODE A. RAMOS

November 23, 1998
EXECUTED ON (DATE)

STIS
Supra Telecom & Information Systems, Inc.

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August 15, 1998 Annex A.

Mr. Raymond W. Smith
Chairman and CEO
Bell Atlantic Corporation
10955 Avenue of the Americas
New York, NY 10036

WHAT SUPRA WANTS FROM THE BELL ATLANTIC/GTE MERGER

Dear Mr. Smith:

Supra Telecommunications and Information Systems, Inc. ("Supra") is a minority-owned Alternative Local Exchange Carrier (ALEC) duly certificated to perform local and long distance service.

We have an interest in the proposed merger not only because we are currently negotiating comprehensive agreements with both Bell Atlantic and GTE, but also because we will be able to secure the necessary approval you require for the merger. Our ideas include but are not limited to the sale of the following assets to Supra by the combined Bell Atlantic/GTE Corporation:

- At least 20% of the assets of the merged corporations;
- Duplications in the wireless network;
- Central offices in every state. (The number of the central offices to be determined);
- Rental of central offices in every MSA. (The terms of the rental to be determined during negotiations);
- Buildings and other excess/duplicated assets;
- Fiber routes.

Please recall the Federal Communication Commission's Memorandum Opinion and Order number 97-286 dated August 14, 1997 that approved the Bell Atlantic and Nynex merger. The order reads:

> In accordance with the terms of Sections 214(a) and 310(d), before we can approve the transfers of licenses and other authorizations underlying the merger, we must be persuaded that the transaction is in the public interest, convenience and necessity. Applicants

bear the burden of demonstrating that the proposed transaction is in the public interest. The public interest standard is a broad, flexible standard, encompassing the "broad aims of the Communications Act." These "broad aims" include, among other things, the implementation of Congress' "pro-competitive, de-regulatory national policy framework" for telecommunications, "preserving and advancing" universal service, and "accelerat[ing] rapid private sector deployment of advanced telecommunications and information technologies and services."

Our examination of a proposed merger under the public interest standard includes consideration of the competition policies underlying the Sherman and Clayton Acts -- the Commission is separately authorized to enforce Section 7 of the Clayton Act in the case of mergers of common carriers -- but the public interest standard necessarily subsumes and extends beyond the traditional parameters of review under the antitrust laws.

In order to find that a merger is in the public interest, we must, for example, be convinced that it will enhance competition. A merger will be pro-competitive if the harms to competition -- *i.e.*, enhancing market power, slowing the decline of market power, or impairing this Commission's ability to properly establish and enforce those rules necessary to establish and maintain the competition that will be a prerequisite to deregulation -- are outweighed by benefits that enhance competition. If applicants cannot carry this burden, the applications must be denied.

In demonstrating that the merger will enhance competition, applicants carry the burden of showing that the proposed merger would not eliminate potentially significant sources of the competition that the Communications Act, particularly as amended by the Telecommunications Act of 1996, sought to create.

Accordingly, and consistent with the 1996 Act's focus on competition and deregulation, it is incumbent upon applicants to prove that, on balance, the merger will enhance and promote, rather than eliminate or retard, competition. The competition and deregulation Congress sought to foster extends not just to traditional local telephone service, but to related interstate access services, to Commercial Mobile Radio Services ("CMRS"), and to interstate long distance services.

We must be especially concerned about mergers between incumbent monopoly providers and possible rivals during this initial period of implementation of the 1996 Act.

In order to properly evaluate proposed mergers in this evolving marketplace, and to take account of the uncertainties surrounding the pace and extent of the development of competition, we will evaluate the likely effects of the proposed merger on competition both during implementation of the 1996 Act and as that implementation alters market structure in the future.

With respect to the proposed merger of Bell Atlantic and NYNEX, we conclude that the proposed merger will eliminate Bell Atlantic as a likely significant independent competitor in the market to provide local exchange and exchange access services, and bundled local exchange, exchange access and long distance services, to residential and smaller business customers, particularly in LATA 132 and the New York metropolitan area (including northern New Jersey), but not limited to that area.

We conclude that Bell Atlantic did plan to enter LATA 132 and other NYNEX territories, and that Bell Atlantic should be considered a competitor to NYNEX, but for the proposed merger. We base this conclusion on documents showing that, among other things, Bell Atlantic ceased its planning to enter NYNEX territories during the pendency of merger discussions, and on our assessment of Bell Atlantic's incentives and capabilities to compete in the relevant markets.

Cognizant of the uncertainty as to the pace and extent of the lowering of barriers to entry, and taking the merger on its terms alone and without any other considerations, **we believe that Applicants have failed to carry their burden of showing, under the public interest standard, that entry would be sufficiently easy to mitigate the potential harms to competition from merging the leading and no less than fifth most significant participant in the market for providing telecommunications services to residential and small business customers.** Applicants also have not carried their burden of demonstrating, under the public interest standard, that efficiencies generated by the merger will mitigate entirely the potential competitive harms.

On July 19, 1997, however, Bell Atlantic and NYNEX proffered a series of commitments they would be willing to undertake as conditions of the approval of their merger. While this remains a close case, **these conditions allow us, in this case, to find that the transaction, as supplemented by the conditions, will be in the public interest.**

> We believe these conditions create pro-competitive benefits that at least in part mitigate the potentially negative impacts of the proposed merger on competition in LATA 132 and the New York metropolitan area, and that, when extended throughout the Bell Atlantic and NYNEX regions, outweigh any other adverse effects in those areas.
>
> Granting this application subject to conditions does not mean applicants will always be able to propose pro-competitive public interest commitments that will offset potential harm to competition. Nor would these particular conditions necessarily justify approval of another proposed merger for which applicants had not otherwise carried their burden of proof. Different cases will present different facts and competitive circumstances. As competitive concerns increase, it becomes significantly more difficult for applicants to carry their burden to show that the proposed transaction is in the public interest. A merger that in the relevant markets, eliminated a competitor with even greater assets and capabilities than Bell Atlantic would present even greater competitive concerns. For some potential mergers, the harm to competition may be so significant that it cannot be offset sufficiently by pro-competitive commitments or efficiencies. In such cases, we would not anticipate the applicants could carry their burden to show the transaction, even with commitments, is pro-competitive and therefore in the public interest.
>
> We also note that we are concerned about the impact of the declining number of large incumbent LECs, on this Commission's ability to carry out properly its responsibilities to ensure just and reasonable rates, to constrain market power in the absence of competition, and to ensure the fair development of competition that can lead to deregulation.
>
> Because we approve this merger with conditions, thereby reducing the number of independently controlled large incumbent LECs, future applicants bear an additional burden in establishing that a proposed merger will, on balance, be pro-competitive and therefore serve the public interest, convenience and necessity.

Just for one moment, imagine the power of conviction Supra will bring to this transaction to obtain the approval of the regulators---the FCC and DOJ in particular.

All Section 271 applications of the Bell Operating Companies (BOC) have been turned down by the FCC and nearly all the state PSCs. The reason being:

Part II of the Federal Telecommunications Act of 1996 (the Act), P.L. 104-104, 104th Congress 1996, provides for the development of competitive markets in the telecommunications industry. Part III of the Act establishes special provisions applicable to the Bell Operating Companies (BOCs). In particular, BOCs must apply to the FCC for authority to provide interLATA service within their in-region service areas. The FCC must consult with the Attorney General and the appropriate state commission before making a determination regarding a BOC's entry into the interLATA market. See Subsections 271(d)(2)(A) and (B). With respect to state commissions, the FCC is to consult with them to verify that the BOC has complied with the requirements of Section 271(c) of the Act.

According to the FCC, the term "competing provider" in Section 271(c)(1)(A) suggests that there must be an actual commercial alternative to the BOC. The FCC pointed out that this interpretation is consistent with the Joint conference Committee's Report, which stated that "[t]he committee expects the Commission to determine that a competitive alternative is operational and offering a competitive service somewhere in the State prior to granting a BOC's petition for entry into long distance."

If a BOC, however, is relying on a single provider, it would have to be competing to serve both business and residential customers.

We agree with the FCC's interpretation of the Act and believe that Section 271(c)(1)(A) is met if unaffiliated facilities-based carriers collectively serve residential and business customers.

We believe the Act requires facilities-based competition for both residential and business subscribers. The Joint Conference Committee Report states that facilities-based local exchange service must be available to both residential and business subscribers.

In the Ameritech Order, the FCC stated that:

Like the Department of Justice, we emphasize that the mere fact that BOC has "offered" to provide checklist items will not suffice for a BOC petitioning for entry under Track A to establish checklist compliance. To be "providing" a checklist

> item, a BOC must have a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item.
>
> Reading the statute as a whole, we think it is clear that Congress used the term "provide" as a means of referencing those instances in which a BOC furnishes or makes interconnection and access available pursuant to state-approved interconnection agreements [Track A] and the phrase "generally offer" as a means of referencing those instances in which a BOC makes interconnection and access available pursuant to a statement of generally available terms and conditions. [Track B] A statement of generally available terms and conditions on its face is merely a general offer to make access and interconnection available... ¶¶110 and 114.
>
> Section 271(c)(1)(A) states that a BOC meets the requirements of this subparagraph if it has: 1) entered into one or more binding agreements; 2) been approved under Section 252, specifying the terms and conditions under which; 3) provided access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service; 4) residential and business subscribers for a fee; and 5) which service is offered either over the competitors' own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier.

Supra guarantees that all the comments stated above would have been effectively taken care-of by its inclusion in the merger arrangement. Not only will Bell Atlantic be able to complete its merger plans with GTE, Bell Atlantic will successfully apply for Interlata service without complication as the benefits of the merger would have created the model ALEC envisioned by the TA.

We would like to commence with immediate negotiations to clearly delineate the intentions of our corporations to the appropriate regulators. As you are aware, there is a tremendous amount of work involved in this transaction. After the completion of our due diligence, we still have quite a reasonable number of regulatory hurdles to jump.

We suggest that we start by signing the necessary non-disclosure agreement. We have attached a copy of our non-disclosure. If this is not suitable for your purpose, please send your version to us for our consideration and

signatures. Thereafter, we should immediately agree on the assets to be sold to Supra and their relevant pricing.

Let us both take advantage of this unique opportunity as it comes only once in the life of a corporation. Apart from getting the merger approved, Bell Atlantic would have fulfilled its most desired ambition – to compete in the $100 billion long distance market.

Supra provides to Bell Atlantic an opportunity to establish itself as a powerful communications corporation that is truly dedicated to fostering competition by helping an up and coming minority owned business organization. The value of such an image for Bell Atlantic is incalculable in today's environment. As you know, the primary focus of the Congressional Black Caucus at the 105th Congress is to expand and create opportunities between minority and established telecommunication companies as well as the support of regulatory reform to increase opportunities for minority businesses.

Supra has the power, vision, ability, technical know-how and the will to do whatever it takes to get this transaction approved and win the necessary regulatory support.

Sincerely yours,

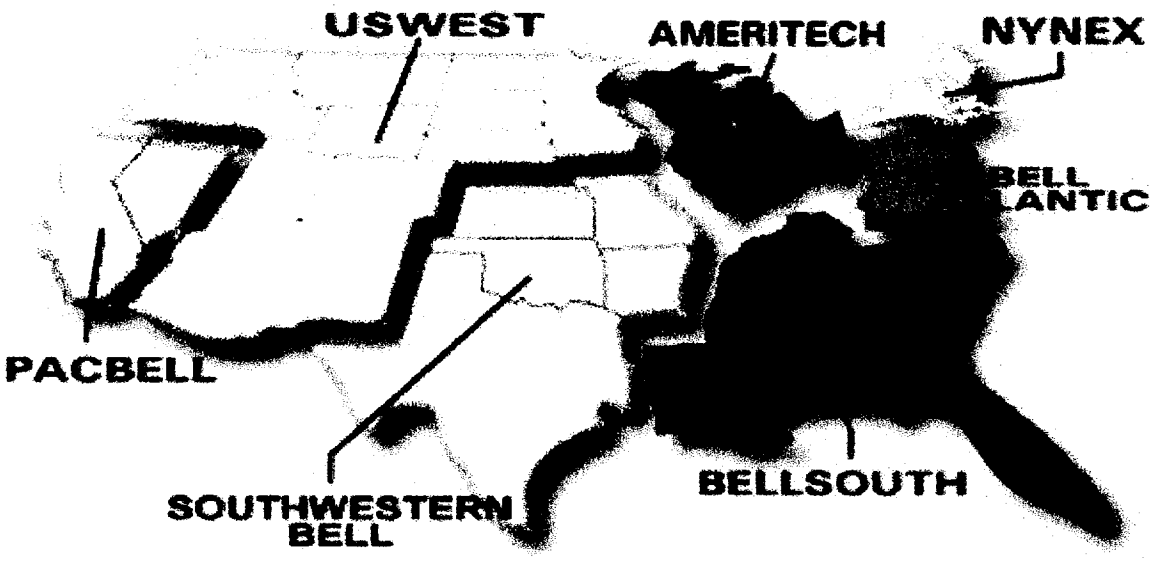
Olukayode A. Ramos
Chairman and CEO

Copy:
✓ Mr. Charles R. Lee
Chairman and CEO
GTE Corporation
One Stamford Place
Stamford, CT 06904

Attachment B

Map 1

Description: Original RBOCs Definition.



– California, Nevada.

USWEST – Washington, Oregon, Idaho, Montana, North Dakota, South Dakota, Minnesota, Iowa, Nebraska, Wyoming, Utah, Arizona, New Mexico, Colorado.

– Texas, Oklahoma, Kansas, Missouri, Arkansas.

Ameritech – Wisconsin, Illinois, Ohio, Indiana, Michigan.

BellSouth – Florida, Georgia, South Carolina, North Carolina, Tennessee, Kentucky, Louisiana, Mississippi, Alabama,

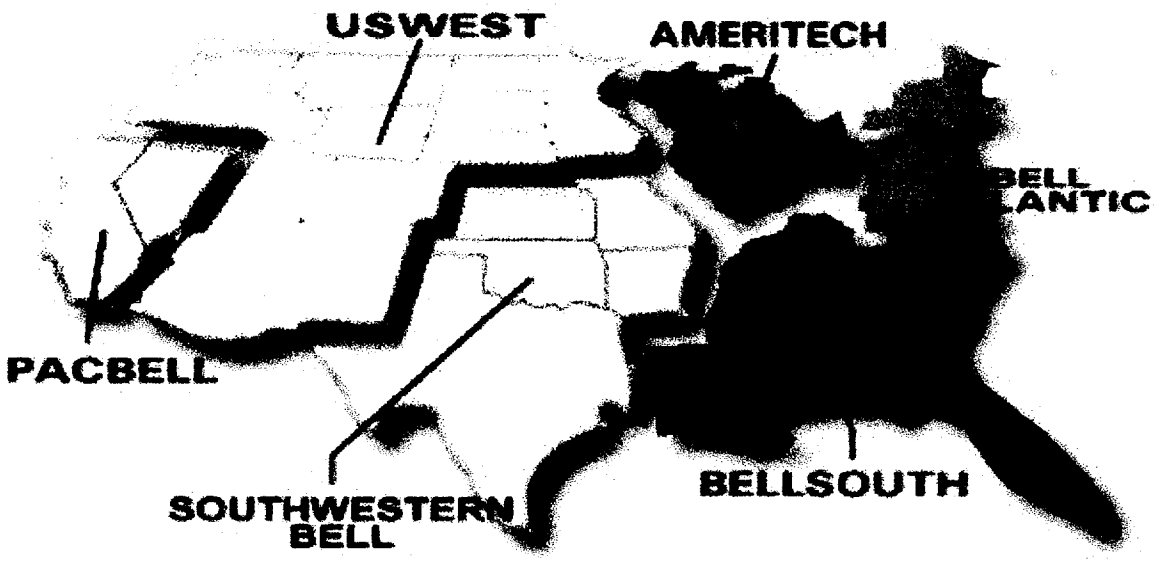
Bell Atlantic – Virginia, West Virginia, Pennsylvania, Maryland, Delaware, New Jersey, Connecticut.

– New York, Maine, Rhode Island, Massachusetts, Vermont, New Hampshire.

Attachment C

Map 2

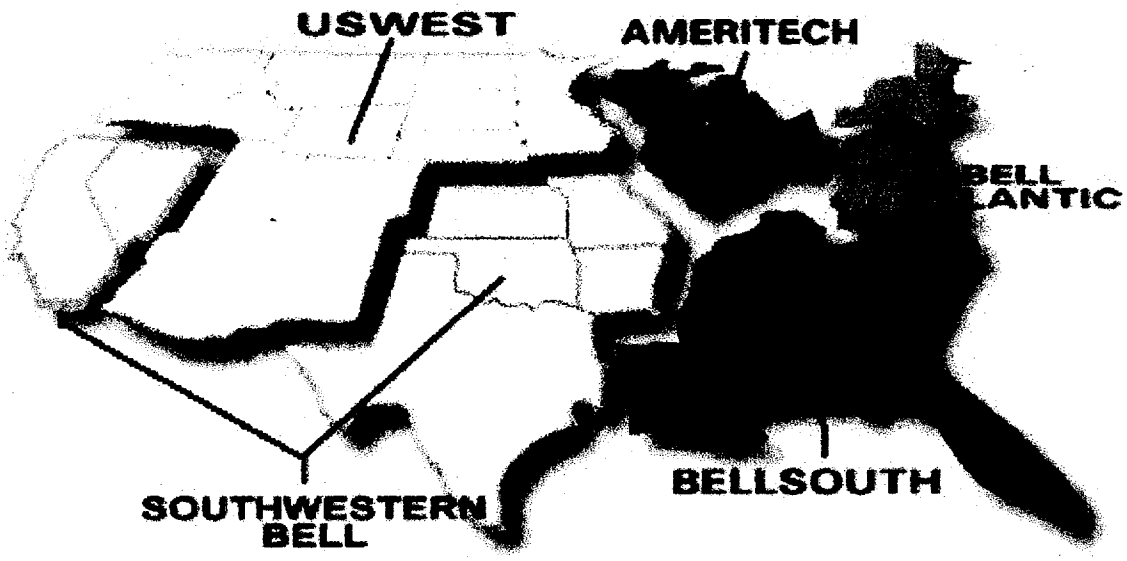
Description: RBOCs Definition After Bell Atlantic/NyNex Merger.



– California, Nevada.
USWEST – Washington, Oregon, Idaho, Montana, North Dakota, South Dakota, Minnesota, Iowa, Nebraska, Wyoming, Utah, Arizona, New Mexico, Colorado.
– Texas, Oklahoma, Kansas, Missouri, Arkansas.
Ameritech – Wisconsin, Illinois, Ohio, Indiana, Michigan.
BellSouth – Florida, Georgia, South Carolina, North Carolina, Tennessee, Kentucky, Louisiana, Mississippi, Alabama,
Bell Atlantic – Virginia, West Virginia, Pennsylvania, Maryland, Delaware, New Jersey, Connecticut, New York, Maine, Rhode Island, Massachusetts, Vermont, New Hampshire.

Map 3

Description: RBOCs Definition After SouthWestern Bell (SBC)/PACBELL Merger.



USWEST – Washington, Oregon, Idaho, Montana, North Dakota, South Dakota, Minnesota, Iowa, Nebraska, Wyoming, Utah, Arizona, New Mexico, Colorado.
– Texas, Oklahoma, Kansas, Missouri, Arkansas, California, Nevada.

Ameritech – Wisconsin, Illinois, Ohio, Indiana, Michigan.

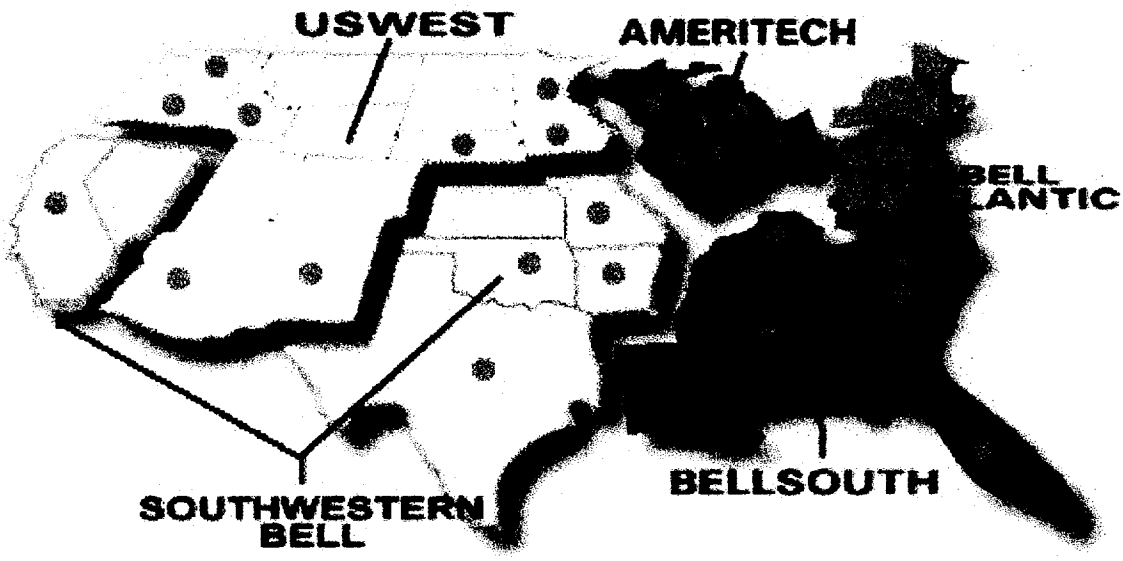
BellSouth – Florida, Georgia, South Carolina, North Carolina, Tennessee, Kentucky, Louisiana, Mississippi, Alabama,

Bell Atlantic – Virginia, West Virginia, Pennsylvania, Maryland, Delaware, New Jersey, Connecticut, New York, Maine, Rhode Island, Massachusetts, Vermont, New Hampshire.

Attachment E

Map 4

Description: RBOCs Definition After Bell Atlantic /GTE Merger, Before GTE Reorganization.



USWEST – Washington, Oregon, Idaho, Montana, North Dakota, South Dakota, Minnesota, Iowa, Nebraska, Wyoming, Utah, Arizona, New Mexico, Colorado.
– Texas, Oklahoma, Kansas, Missouri, Arkansas, California, Nevada.

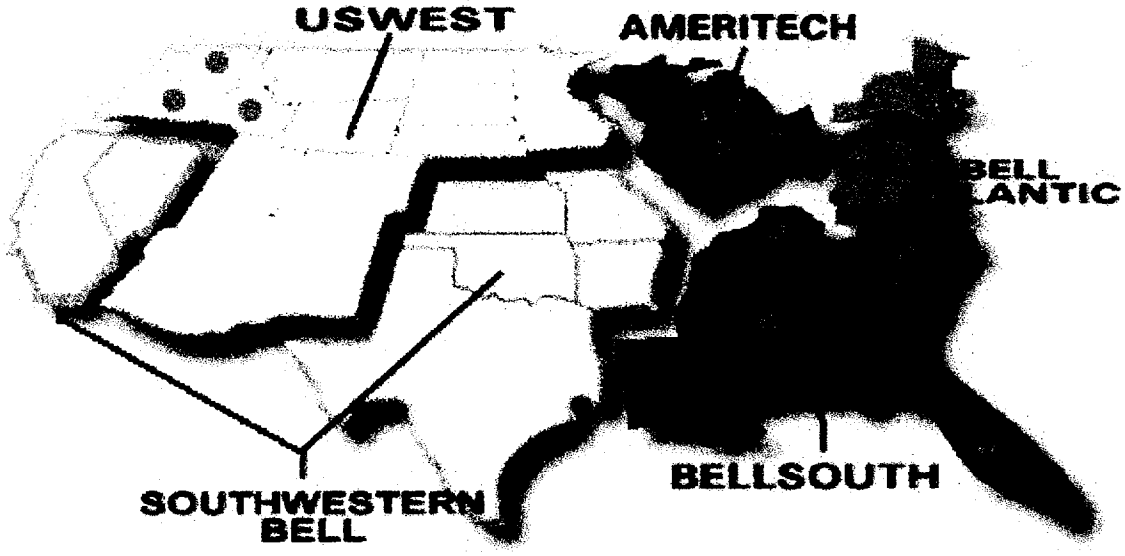
Ameritech – Wisconsin, Illinois, Ohio, Indiana, Michigan.

BellSouth – Florida, Georgia, South Carolina, North Carolina, Tennessee, Kentucky, Louisiana, Mississippi, Alabama,

Bell Atlantic – Virginia, West Virginia, Pennsylvania, Maryland, Delaware, New Jersey, Connecticut, New York, Maine, Rhode Island, Massachusetts, Vermont, New Hampshire. Presence In: Florida, North Carolina, South Carolina, Alabama, Kentucky, Texas, Oklahoma, Arkansas, Missouri, Illinois, Wisconsin, Indiana, Ohio, Michigan, Minnesota, Iowa, Nebraska, New Mexico, Arizona, California, Idaho, Oregon, Washington, Alaska, Hawaii.

Map 4A

Description: RBOCs Definition After Bell Atlantic /GTE Merger, After GTE Reorganization.



USWEST – Washington, Oregon, Idaho, Montana, North Dakota, South Dakota, Minnesota, Iowa, Nebraska, Wyoming, Utah, Arizona, New Mexico, Colorado.
– Texas, Oklahoma, Kansas, Missouri, Arkansas, California, Nevada, Connecticut.

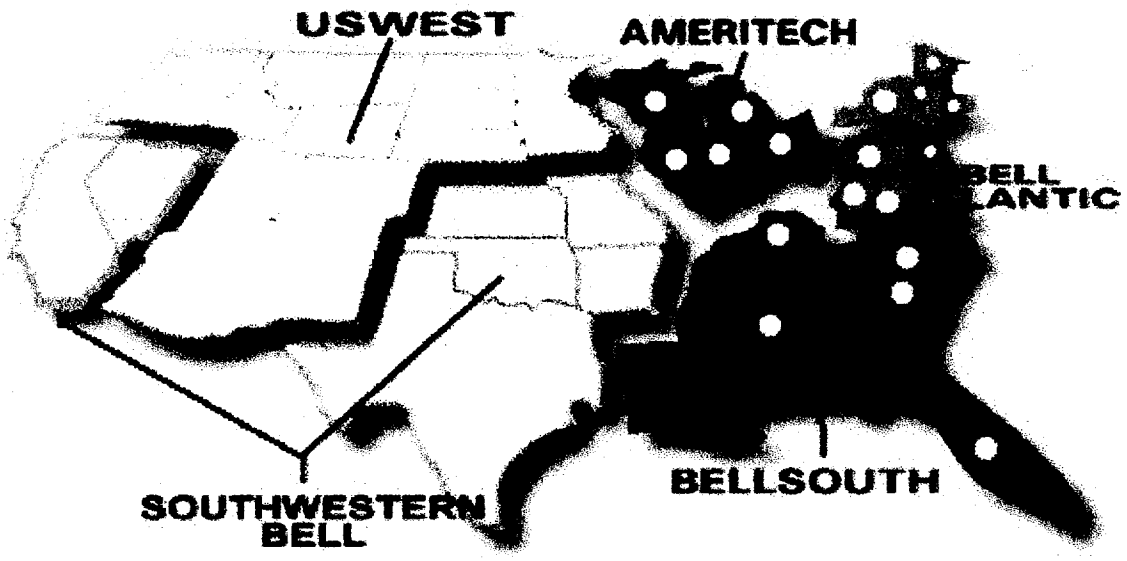
Ameritech – Wisconsin, Illinois, Ohio, Indiana, Michigan.

BellSouth – Florida, Georgia, South Carolina, North Carolina, Tennessee, Kentucky, Louisiana, Mississippi, Alabama,

Bell Atlantic – Virginia, West Virginia, Pennsylvania, Maryland, Delaware, New Jersey, New York, Maine, Rhode Island, Massachusetts, Vermont, New Hampshire. Presence In: Florida, North Carolina, South Carolina, Alabama, Kentucky, Indiana, Ohio, Michigan, Idaho, Oregon, Washington, Hawaii.

Map 4B

Description: RBOCs Definition After Bell Atlantic /GTE Merger, After GTE Reorganization, Supra Telecom Purchase of Assets.



USWEST – Washington, Oregon, Idaho, Montana, North Dakota, South Dakota, Minnesota, Iowa, Nebraska, Wyoming, Utah, Arizona, New Mexico, Colorado.
– Texas, Oklahoma, Kansas, Missouri, Arkansas, California, Nevada, Connecticut.

Ameritech – Wisconsin, Illinois, Ohio, Indiana, Michigan.

BellSouth – Florida, Georgia, South Carolina, North Carolina, Tennessee, Kentucky, Louisiana, Mississippi, Alabama,

Bell Atlantic – Virginia, West Virginia, Pennsylvania, Maryland, Delaware, New Jersey, New York, Maine, Rhode Island, Massachusetts, Vermont, New Hampshire. Presence In: Florida, North Carolina, South Carolina, Alabama, Kentucky, Illinois, Wisconsin, Indiana, Ohio, Michigan, Idaho, Oregon, Washington, Hawaii.
– Arizona, California, Arkansas, Iowa, Minnesota, Nebraska, New Mexico, Oklahoma, Alaska, Illinois, Minnesota, Wisconsin, Indiana, Ohio, Michigan, Alabama, Kentucky, Florida, Virginia, West Virginia, Pennsylvania, New York, Maine, New Jersey, Rhode Island, Massachusetts, Vermont, New Hampshire, Maryland, Delaware, Washington, Oregon, Texas, Alaska.