



Ohio Consumers' Counsel

Robert S. Tongren
Consumers' Counsel

December 22, 1998

Ms. Magalie Roman Salas
Commission Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20544

Re: Docket No. 98-184

Dear Ms. Salas:

Enclosed for filing please find the original and twelve (12) copies of the Reply Comments of the Consumer Groups and affidavit of Susan M. Baldwin and Helen E. Golding, concerning the above-referenced proceeding.

Please date-stamp and return the additional copy in the pre-addressed, postage prepaid envelope to acknowledge receipt.

If you should have any questions or concerns regarding the enclosed, please do not hesitate to contact me at your convenience.

Sincerely,

Terry L. Etter
Assistant Consumers' Counsel

No. of Copies rec'd
List A B C D E

1 + 5

TLE/mvw
Enclosure

77 S. High St., 15th Floor, Columbus, Ohio 43266-0550
614-466-8574/1-800-282-9448 (Ohio only)
Fax 614-466-9475
Internet Address: <http://www.state.oh.us/cons/>

An Equal Opportunity Employer

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

DEC 28 1998

FEDERAL COMMUNICATIONS COMMISSION

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

REPLY COMMENTS OF THE CONSUMER GROUPS

**The Consumer Utilities Rate Advocacy Division
of the Arkansas Attorney General's Office**

The Delaware Division of the Public Advocate

The Hawaii Division of Consumer Advocacy

The Maine Public Advocate

The Maryland People's Counsel

The Missouri Public Counsel

The Ohio Consumers' Counsel

The Citizens Utility Board of Oregon

The South Carolina Department of Consumer Affairs

The Texas Office of the Public Utility Counsel

**The Consumer Advocate Division
of the Public Service Commission of West Virginia**

The Michigan Consumer Federation

The Edgemont Neighborhood Coalition

December 22, 1998

TABLE OF CONTENTS

	<u>PAGE</u>
I. INTRODUCTION	1
II. COMMENTS SUPPORTING THE MERGER DO NOT CONFORM TO THE PUBLIC INTEREST	3
A. Comments of narrow scope	3
B. Comments of general scope	5
III. ENFORCEMENT OF EVEN PRE-MERGER CONDITIONS MAY BE IMPOSSIBLE.	8
IV. COMMENTS OPPOSING MERGER.....	12
V. CONCLUSION.....	14

EXECUTIVE SUMMARY

The comments filed by the various parties in this docket fall into three categories: those which – for many of the same reasons expressed in the Consumer Groups’ initial comments – demonstrate that the merger of Bell Atlantic and GTE is not in the public interest and should not be approved by this Commission; those which express substantial reservations about the merger and propose conditions under which the merger might be approved; and those that support the merger.

Except for a group of free market absolutists, who would likely approve of *any* merger, supporters of the merger tend to believe that the Joint Applicants would provide real head-to-head competition in the local exchange market. This, however, is not the case, as shown by the attached affidavit of Susan Baldwin and Helen Golding. It is clear that, at best, only large business customers would reap any competitive benefit from the merger, at the expense of the Joint Applicants’ current small business and residential customers.

Regarding conditions, the Commission must not rely on post-merger conditions, as it did in Bell Atlantic’s previous acquisition of NYNEX. Instead, if the Commission decides to approve this merger, it must make approval contingent on a set of pre-merger conditions, as suggested by several parties. Yet, even pre-merger conditions cannot change the fact that approval of this merger, as well as the SBC/Ameritech merger, would shrink the universe of LECs that have adequate resources to provide local competition in other RBOCs’ territories. Nothing in the record of this proceeding has shown that even pre-merger conditions would adequately protect the public interest.

In addition, the comments of the merger's opponents present several irrefutable facts:

- Neither Bell Atlantic nor GTE have successfully opened its service territory to any type of meaningful competition.
- Until Bell Atlantic meets the Section 271 checklist, a significant barrier exists to its ability to offer bundled services, a fundamental keystone of the merger.
- The two pending mega-mergers (Bell Atlantic/GTE and SBC/Ameritech) would have a significant and negative impact on the ability of regulators to use and rely on industry benchmarks.

All these factors indicate that this merger is not in the public interest, and should be denied by the Commission.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

**REPLY COMMENTS OF
THE CONSUMER GROUPS**

I. INTRODUCTION

The comments filed by the various parties in this docket fall into three categories. There are those which – for many of the same reasons expressed in the Consumer Groups’ initial comments¹ – demonstrate that the merger of Bell Atlantic and GTE is not in the public interest and should not be approved by this Commission.² Then there are those which express substantial reservations about the merger and propose conditions

¹ The consumer groups filing joint comments and reply comments in this proceeding are the Delaware Division of the Public Advocate, the Hawaii Division of Consumer Advocacy, the Maine Public Advocate, the Maryland People’s Counsel, the Missouri Public Counsel, the Ohio Consumers’ Counsel, the Citizens Utility Board of Oregon, the South Carolina Department of Consumer Affairs, the Texas Office of the Public Utility Counsel, the Consumer Advocate Division of the Public Service Commission of West Virginia, the Michigan Consumer Federation, and the Edgemont Neighborhood Coalition. The Indiana Office of Utility Consumer Counselor and the New Jersey Division of the Ratepayer Advocate had also joined in the initial comments filed in this proceeding. Joining in these Reply Comments, but not in sponsorship of the attached Affidavit, is the Consumer Utilities Rate Advocacy Division of the Arkansas Attorney General’s Office (CURAD), which pursuant to Arkansas Code Ann. §§ 23-4-301 through 307 is authorized to represent the state, its subdivisions, and all classes of ratepayers in hearings before federal courts or agencies concerning utility-related matters. Because GTE is a provider local exchange provider in Arkansas, CURAD has an interest in this proceeding.

² Petitions to deny, which contained many arguments similar to comments opposing the merger, were also filed by AT&T Corporation, MCI WorldCom, Inc., and Sprint Communications Company, L.P.

under which the merger might be approved. Finally, there are a few comments that support the merger.

It is with this latter group that these reply comments begin. By and large, the supporting comments accept the Joint Applicants' claims about this merger uncritically. Their rationale favoring this merger is entirely undercut by the analysis in the attached affidavit of Susan M. Baldwin and Helen E. Golding (Affidavit), which demonstrates that the merger is not in the public interest.

The limitations of the arguments supporting the merger demonstrate clearly that the Joint Applicants have failed to meet their burden of proof that the merger is in the public interest. The risks of the merger far outweigh the public benefits.

In part, the merger should not be approved because there appear to be no enforceable remedial conditions, either pre-merger or post-merger, that would alleviate the risks to the public interest attendant upon the joining of these two behemoth local exchange monopolies. The details of conditions will inevitably be discussed in this proceeding. These Reply Comments respond briefly to some of the conditions proposed by others; the affidavit of Ms. Baldwin and Ms. Golding also discusses the proposed conditions. Affidavit, ¶¶ 95-101.

Finally, these Reply Comments also cite to key portions of others' comments that support the positions taken by the Consumer Groups' initial Comments. Taken altogether, it is clear that this merger should not be approved.

II. COMMENTS SUPPORTING THE MERGER DO NOT CONFORM TO THE PUBLIC INTEREST

Section 214(a) of the Communications Act charges the Commission with the duty to ascertain whether this merger is in the public interest. In discussing the telecommunications merger applications currently before the Commission, Chairman Kennard correctly framed the Commission's responsibility:

Our job is to analyze carefully the facts of each merger, recognizing that each is different; but that each of them are operating in a marketplace that has lots of dynamics and these companies are going to interact. And above all, to make sure that we keep our eye on the ball which is consumers, ensuring that they get the benefits that were promised by the United States Congress; more competition, lower prices, more innovation. We are going to do that.

Transcript of FCC Merger En Banc (October 22, 1998) at 115. However, the comments of those supporting the merger fail to demonstrate how the public in general – and consumers in particular – will benefit from this merger.

A. Comments of narrow scope

The supporting comments easiest to reject out of hand are those of the Competitive Enterprise Institute (CEI). CEI's absolutist free market views define the public interest as freedom from regulation – ignoring the market dominance of Bell Atlantic and GTE. Further, it is difficult to imagine a merger of which CEI would not approve. Yet the threats to competition and the public interest posed by *this* merger cannot be ignored. Affidavit, ¶¶ 28-55 and 62-73. CEI's position eviscerates the statutory duty placed on the Commission.

CEI's fundamental error comes in failing to recognize the *anti-competitive* aspects of this merger. As the Affidavit demonstrates (at ¶¶ 28-42 and at ¶¶ 58-61), this merger reduces competition in significant ways:

- It eliminates GTE as a potential competitor against Bell Atlantic in Bell Atlantic's service territory, and, of course, vice versa.
- It eliminates GTE and Bell Atlantic as competitors against each other *outside* their respective service territories.
- It will extend the incumbent monopoly's market dominance throughout a vast region of this country, serving 39% of the access lines in the United States.
- That market dominance will slow the development of competition within the current Bell Atlantic/GTE region.

Through the use of that dominance, the combined Bell Atlantic/GTE will not pass through to their customers the savings created by the merger in the absence of market discipline or regulatory realignment. Allowing Bell Atlantic/GTE to exploit their market advantage – created through decades of regulation – is not how a free market is created. See Affidavit, ¶¶ 76-83.³

³ The error in CEI's comments is shown by the comments of EMC Corp. (EMC). EMC, already enjoying some benefits of a competitive market, understandably equates the public interest with its own interests. Again, the statutory duty of the Commission requires it to take a broader view, focusing on those with limited or no competitive alternatives.

B. Comments of general scope

While several parties broadly support the merger, fully accepting that the promises of the Joint Applicants will be kept,⁴ the attached affidavit of Ms. Baldwin and Ms. Golding demonstrates that considerable doubt is required in a realistic assessment of the Joint Applicants' arguments. Affidavit, ¶ 37.

For example, Keep America Connected, et al.⁵ (KAC) has missed – or ignored – the fundamental contradictions in the Joint Applicants' arguments. If indeed Bell Atlantic and GTE must combine in order to be able to compete, who will be able to compete with the combined Bell Atlantic/GTE? See Affidavit, ¶ 21.

Certain specific points raised by KAC also require response:

KAC states: “By making consumers – including those living in high-cost or under served areas – more attractive customers, the merger will contribute to addressing the universal service challenge” KAC at 11. Customers in high cost areas are to be made more attractive through bundling of telecommunications services. *Id.* For GTE, at least, the majority of whose customers are in rural areas, and there is currently no real

⁴ The National Consumers' League (NCL) supports the merger because it will create jobs, and because Bell Atlantic and GTE fight telephone fraud. Unfortunately, neither of NCL's grounds is adequate to support this merger; in fact, the two reasons together fall far short, especially given the risks demonstrated in the attached affidavit. It has long been a principle of the consumer movement that the price of products and services must include amounts that provide decent wages and safe working conditions. However, the track record of all of the RBOCs makes quite clear that with deregulation has come a dramatically *diminished* commitment to the work force, that the majority of unregulated subsidiaries are non-union, and that training time has been cut to the detriment of workers and customers alike.

⁵ Keep America Connected is joined by Alpha One, American Council on Education, Harlem Consumer Education Council, National Association of College and University Business Officers, National Association of Commissions for Women, National Association of Development Organizations, The National Trust for the Development of African American Men, National Urban League, North Virginia Resource Center for the Deaf and Hard of Hearing Persons, United Homeowners Association, United Seniors Health Cooperative, and World Institute on Disability.

impediment to bundling services that would be removed through the combination with Bell Atlantic.

KAC also sees value in the merger through adoption of GTE's best practices by Bell Atlantic, and vice versa. *Id.* at 12-16. However, the "best practices" listed by KAC are all those that Bell Atlantic and GTE should be able to adopt independently. The expected incremental benefit from the best practices outlined by KAC does not outweigh the risks. Affidavit, ¶ 10.

Particularly noteworthy is KAC's view that this merger's "head-to-head competition will provide the first real facilities-based competition on a broad scale against other RBOCs." KAC at 16. To begin with, the Joint Applicants make no claims about promoting facilities-based *local* competition.⁶ That being the case, where is SBC/Ameritech in the equation? Applicable to both mergers is the crucial fact that much of the claimed benefit for the merger is based on the applicants' carrying out competitive entry against other RBOCs on a totally unprecedented scale. Why should such a massive effort succeed, when the applicant's previous forays have been at best modest or more typically non-existent? See Affidavit, ¶ 11.

KAC also sees benefit in the merger from the introduction of a "new major league player in the long distance market..." KAC at 17. Yet Bell Atlantic will not be able to "play" in the long distance market until it has received § 271 authority for each of its states. Affidavit, ¶¶ 8 and 51. It has been the behavior of Bell Atlantic and its inability to meet the Section 271 checklist that keeps it on the bench. By the time Bell Atlantic can

⁶ There is a weak claim about facilities-based *long distance* competition. See Affidavit, ¶¶ 53-55.

get into the game, it is to be hoped that the other RBOCs will also have received authority to enter the in-region interLATA market; the addition of GTE to Bell Atlantic by that time will make little incremental difference for the long distance market.⁷

Those supporting this merger fail to recognize – or simply ignore – the fact that the residential and small business customers of Bell Atlantic and GTE will fund the expansion of Bell Atlantic/GTE into markets outside their service territories, primarily for the benefit of large business customers. Whether – or if – residential and small business customers will benefit from the merger is a matter of speculation. See Affidavit, ¶ 9; see also Comments of the Communications Workers of America (CWA) at 2. Further, counter to the supporters’ hopes (see, e.g., CWA at 1), it is not likely that the merger will improve service quality for the Joint Applicants’ current customers. Affidavit, ¶¶ 65-66.

CWA (at 1) similarly makes the broad-brush claim that this merger “advances the pro-competitive goals of the 1996 Telecom Act in local exchange markets for *all* consumer markets.” (Emphasis added.) While that would be a laudable outcome, this assertion goes well beyond even the Joint Applicants’ claims. The biggest gap in the claims is the decided lack of benefits for customers in GTE territory. Even the 21-market entry strategy contains only the promise of chasing large businesses in those markets. Only after recovery of that investment is competition for residential customers even mentioned.

⁷ As the Affidavit shows, GTE has hardly exploited its considerable freedom in the interLATA market. Further, enhancing GTE’s long distance capabilities would effectively reward it despite its inaction in opening up its local market to competition. Affidavit, ¶ 52.

III. ENFORCEMENT OF EVEN PRE-MERGER CONDITIONS MAY BE IMPOSSIBLE

Several commenters have proposed conditions that could be placed on the merger.

Many of the proposed conditions are highly parochial in nature. For example, Supra Telecom and Information Systems, Inc. (Supra) urges the Commission to require Bell Atlantic and GTE to sell approximately 25% of the companies' central offices and corresponding local loops, as well as four wireless operations, to Supra.⁸ See Supra Comments at 31. The Commission should determine whether such proposals are in the overall public interest or merely further the private interest of the commenting party.

Many other proposed conditions concerned resolution of specific disputes between the commenters and the Joint Applicants. For example, the sole proposal by Pilgrim Telephone is that the merged entity be required to offer nondiscriminatory billing and collection services to providers of casual calling services. See Pilgrim Telephone Request for Conditions at 1. Although such proposals may merit some consideration in this proceeding, they miss the broad implications of this merger.

Two governmental entities, the Texas Public Utilities Commission (TPUC) and the Commonwealth of the Northern Mariana Islands (the Commonwealth) also filed specific proposals for conditions. If the Commission finds the merger to be in the public interest, the TPUC proposes three preconditions for the merger: (1) there must be affirmative proof that the GTE-Southwest local markets are irrevocably open to

⁸ It should be noted that the Florida Public Service Commission investigated over 200 complaints against Supra regarding alleged slamming of local service during the last six months of 1997. See *Initiation of Show Cause Proceedings against Supra Telecommunications and Information Systems for Violation of Rule 24-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, and Violation of Rule 25-24.820, Revocation of a Certificate*, Docket No. 971527-TX, commenced January 8, 1998.

competition, (2) Bell Atlantic/GTE must commit to improved service quality, and (3) Bell Atlantic/GTE must have a fully functioning OSS. *See* TPUC Comments at 8. The Commonwealth would condition the merger on Bell Atlantic/GTE's agreeing to fully maintain integrated rates across all affiliated companies and committing at a minimum to the conditions contained in the Bell Atlantic/NYNEX authorization. *See* the Commonwealth's Petition to Condition Grant at 1-2.

In addition, several providers of competitive services have developed other pre-merger conditions. These include:

- The Joint Applicants must demonstrate that they are providing technically feasible combinations of network elements at forward-looking cost-based rates.⁹
- The Joint Applicants should either have a perfectly operating OSS/EDI system throughout their territories,¹⁰ or immediately develop OSS that will enable CLECs and other new entrants to provide service to their end users in parity with service from the ILEC.¹¹
- The Joint Applicants must divest long distance operations in areas in which either company is the ILEC.¹²
- The Joint Applicants should be required to provide 1+ intraLATA dialing parity in all states throughout its combined region by February 1, 1999.¹³
- The Commission should prohibit the practice of using winback programs.¹⁴

⁹ CoreComm Comments at 29; PaeTec Communications (PaeTec) Comments at 8; Freedom Ring Communications (Freedom Ring) Comments at 20-23; State Communications Comments at 18-19.

¹⁰ CoreComm Comments at 29.

¹¹ Freedom Ring Comments at 26-27; Focal Communications (Focal) Comments at 25; State Communications Comments at 22.

¹² CoreComm Comments at 27; Focal Comments at 21.

¹³ Focal Comments at 23-24; Freedom Ring Comments at 24; State Communications Comments at 21.

¹⁴ Focal Comments at 24-25; PaeTec Comments at 9; Freedom Ring Comments at 25.

Proposed post-merger conditions generally center on greater monitoring and reporting requirements than those of the *NYNEX* merger¹⁵ and performance standards regarding interconnection services, UNEs, and resold services to competitors.¹⁶

An important concern raised by numerous parties is the ineffectiveness of post-merger conditions. This is important because of the numerous instances detailing Bell Atlantic's failure to fulfill the terms and conditions of its merger with NYNEX. The Competitive Telecommunications Association (CTA)¹⁷ noted that Bell Atlantic has not fulfilled the compliance conditions from the NYNEX merger; specifically, it has not yet provided uniform interfaces for OSS functions within 15 months of the Bell Atlantic/NYNEX merger. State Communications also argues that market-opening conditions as a post-merger requirement failed in the Bell Atlantic/NYNEX merger. State Communications Comments at 17. State Communications noted that the problem with these or any other post-merger conditions is that once the merger is approved, it cannot be undone if conditions are not met. *Id.* Rather, the only enforcement tool then becomes financial penalties, which are ineffective unless they are so significant as to cause the company to change the improper behavior. Lesser penalties only become a necessary cost of maintaining the status quo. To the extent that Bell Atlantic/GTE could then pass those costs along to their captive customers, the effectiveness of the penalties is

¹⁵ CoreComm Comments at 31-32; Focal Comments at 26-27; Freedom Ring Comments at 28; State Communications Comments at 23.

¹⁶ CoreComm Comments at 30-32; Focal Comments at 27-28; Freedom Ring Comments at 29; State Communications Comments at 23.

¹⁷ CTA Comments at 14-15.

totally voided. Therefore, any Commission order should specify that any fines must come from earnings, not rates, and that the necessary proof be audited in a full and timely fashion.

It is clear that the Commission should not follow the same path that it took in the NYNEX merger, where the merger was approved based on Bell Atlantic's commitments to future action. Ms. Baldwin and Ms. Golding point out that the commitments upon which that merger's approval were based have resulted in little if any progress in spurring competition in the Bell Atlantic region. Affidavit, ¶¶ 98-101. Absent stringent penalties for noncompliance, commitments are generally meaningless, since they can be easily ignored once the merger has been completed.

As an alternative to post-merger conditions, many parties emphasized various general and specific pre-merger conditions as the only tool to make the merger viable. As noted in the accompanying affidavit, the Consumer Groups do not believe that sufficient pre-merger conditions can be imposed to offset the fundamental anti-competitive aspects of the merger as noted above.

For example, based on the current record, there appear to be no pre-merger conditions that could address the fact that, if completed, the Bell Atlantic/GTE and SBC/Ameritech mergers will reduce from six (Bell Atlantic, GTE, SBC, Ameritech, Southwestern Bell, U.S. West) to four the number of LECs that have the resources for entering a service territory with the intent of competing for local service. There also appear to be no conditions that could lessen the fact that the two resulting merged companies would control almost two thirds of all access lines in the United States. Finally, the benchmarking problem could not be addressed by any pre-merger conditions.

IV. COMMENTS OPPOSING MERGER

The comments filed opposing the merger fall into two general categories: those opposing the merger¹⁸ and those arguing that not only is the merger not in the public interest, but that the Application does not even reach the necessary burden of proof to go forward and thus should be denied.¹⁹ A common theme present in all of these comments is that the proposed Bell Atlantic/GTE merger is contrary to the public interest because it does not promote competition, and in fact, the merger would have a *negative* impact on any potential competition for local service.

In reviewing the many comments filed opposing the merger, a number of irrefutable facts stand out and must be emphasized. First of all, approval of the Bell Atlantic/GTE and SBC/Ameritech mergers would result in a reduction in the number of LECS from six to only four, thus reducing the number of potential entrants into any LEC service territory by one-third. Instead of five possible competitors, the number is reduced to three, and two of them pale in comparison of size to the two remaining Mega-Bells.²⁰ SBC/Ameritech and Bell Atlantic/GTE. Thus, the remaining Mega-Bells would face the

¹⁸ See, e.g., comments filed by the Consumer Union and the Consumer Federation of America, the New Jersey Coalition for Local Telephone Competition, Cablevision Lightpath, Inc., CTA, Corecomm, Focal, Telecommunications Resellers Association, PaeTec, Freedom Ring, and State Communications, Inc.

¹⁹ See note 2, *supra*.

²⁰ Both Bell Atlantic/GTE (\$38,303,000,000) and SBC/Ameritech (\$32,207,000,000) would be more than double the size of Bell South (\$14,666,000,000) regarding revenues, and triple the size of U.S. West (\$10,021,000,000). Also, Bell Atlantic/GTE (65,579,000) and SBC/Ameritech (66,878,000) would have more than double the number of access lines of either Bell South (25,732,000) or U.S. West (25,294,000). Source: FCC, Statistics of Common Carriers, Tables 2-9, 2-10.

threat from only one company similar in size and expertise, each other. The Commission cannot ignore this negative impact on competition, especially for local service.

A second irrefutable fact is that neither Bell Atlantic nor GTE have successfully opened their service territories to any type of meaningful competition, as the Affidavit notes at ¶¶ 14-16. The fact that both companies have failed to achieve any appreciable level of open competition in their service territories²¹ does not bode well for the prospects of the merged company making competition a reality, let alone a goal or a priority. Rather, there is ample evidence indicating that the opposite would be true. The merged company would pose an even greater barrier to local competition than the individual companies do on their own. See Affidavit, ¶¶ 39, 58-61.

Third, there is the problem with the Section 271 limitations on Bell Atlantic. Until Bell Atlantic meets the Section 271 requirements or is granted a waiver, a significant barrier exists to its ability to offer bundled one-stop services, the very goal driving the merger. However, Bell Atlantic has taken no formal action to date at the FCC in an attempt to achieve Section 271 approval.

Finally, the two pending mergers would have a significant and negative impact on the ability of regulators to use and rely on industry benchmarks. In fact, if both of the pending mergers were approved, then they would be the only benchmark for each other

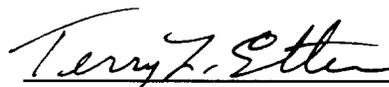
²¹ Bell Atlantic has managed to retain 100% of the residential market in Vermont and West Virginia, and 99.67% of the residential market and 98.78% of the combined residential/business market share in its overall service territory. GTE has retained 100% of the residential market in Illinois, Indiana, Michigan, Ohio, Pennsylvania, and Wisconsin, and 99.60% of the residential market in its service territory and 99.44% of the combined residential/business share (in 15 of the 28 states in GTE's service territory). Source: Second CCB Survey on the State of Local Competition, available at www.fcc.gov (data as of June 30, 1998).

with respect to comparable size, resources and expertise. Obviously a benchmark of one is flawed and unreliable.

V. CONCLUSION

It is clear from the record in this proceeding that approval of the proposed merger is not in the public interest. For residential customers, the merger has the potential to create relatively few benefits in comparison to the potential for harm. In addition, based on the record, it appears that no pre-merger or post-merger conditions can adequately protect the public interest. Therefore, the Consumer Groups urge the Commission to deny the application.

Respectfully submitted,


For the Consumer Groups

Winston Bryant, Attorney General
M. Shawn McMurray, Deputy
Attorney General
Consumer Utilities Rate Advocacy Division
Arkansas Attorney General's Office
323 Center Street, Suite 320
Little Rock, Arkansas 72201-2610
(501) 682-3649

Patricia A. Stowell
Public Advocate
Division of the Public Advocate
820 N. French St, 4th Floor
Wilmington, Delaware 19801
(302) 577-5077

Charles W. Totto
Department of Commerce and
Consumer Affairs
State of Hawaii
250 S. King Street, #825
Honolulu Hawaii 96813
(808) 586-2800

Wayne R. Jortner
Counsel
Maine Public Advocate Office
112 State House Station
Augusta, ME 04333-0112
(207) 287-2445

Theresa V. Czarski
Assistant People's Counsel
Maryland People's Counsel
6 St. Paul Street, Suite 2102
Baltimore, Maryland 21202
(410) 767-8150

Martha S. Hogerty
Michael F. Dandino
Office of the Public Counsel
State of Missouri
Harry S. Truman Building, Suite 250
P.O. Box 7800
Jefferson City, Missouri 65102
(573) 751-4857

Robert S. Tongren
Ohio Consumers' Counsel
Joseph P. Serio
Terry L. Etter
Assistant Consumers' Counsel
77 South High Street, 15th Floor
Columbus, Ohio 43266-0550
(614) 466-8574

Robert T. Jenks, Executive Director
Citizens' Utility Board of Oregon
921 Southwest Morrison, Suite 511
Portland, Oregon 97205-2734
(503) 227-1984

The South Carolina Department of
Consumer Affairs
Philip S. Porter, Consumer Advocate
Nancy Vaughn Coombs, Deputy
Consumer Advocate
Elliott F. Elam, Jr., Staff Attorney
2801 Devine Street
P.O. Box 5757
Columbia, S.C. 29250-5757
(803) 734-9464

Texas Office of the Public Utility Counsel
Rick Guzman
Assistant Public Utility Counsel
P.O. Box 12397
Austin, Texas 78711-2397
(512) 936-7509

Billy Jack Gregg
Gene W. Lafitte, Jr.
Consumer Advocate Division of the Public
Service Commission of West Virginia
700 Union Building
Charleston, West Virginia 25301
(304) 558-0526

Kathleen F. O'Reilly
Michigan Consumer Federation
414 "A" Street Southeast
Washington, D.C. 20003
(202) 543-5068

Ellis Jacobs, Esq.
Dayton Legal Aid Society
333 West 1st Street, Suite 500
Dayton, Ohio 45402
(937) 228-8088

Counsel for Edgemont Neighborhood
Coalition

December 22, 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

DEC 28 1998

FCC MAIL ROOM

In the Matter of)
)
GTE CORPORATION)
Transferor,)
)
AND)
)
BELL ATLANTIC CORPORATION.)
Transferee)
)
For Consent to Transfer of Control)

CC Docket No. 98-184

AFFIDAVIT OF

SUSAN M. BALDWIN

AND

HELEN E. GOLDING

on behalf of the

CONSUMER GROUPS

The Delaware Division of the Public Advocate
The Hawaii Division of Consumer Advocacy
The Maine Public Advocate
The Maryland People's Counsel
The Missouri Public Counsel
The Ohio Consumers' Counsel
The Citizens Utility Board of Oregon
The Consumer Advocate Division of the Public Service Commission of West Virginia
The Michigan Consumer Federation
The Edgemont Neighborhood Coalition

December 18, 1998

TABLE OF CONTENTS

I. INTRODUCTION	1
II. A BASELINE VIEW OF LOCAL COMPETITION	5
Quantitative measures of competition show little progress toward breaking ILEC dominance of the local exchange market	5
Bell Atlantic's and GTE's implementation of the 1996 Act is still far from complete	10
The trend toward further ILEC consolidation poses a direct and possibly irreversible threat to competition and should be halted now	14
Other industry mergers neither justify consolidation on the scale proposed by BA/GTE, nor overcome its anticompetitive impacts	18
III. ANTICOMPETITIVE HARMS ARISING FROM THE MERGER	20
Anticompetitive effects of the merger	20
The merger creates a risk of decreased local competition between GTE and Bell Atlantic in their respective home regions	22
Bell Atlantic and GTE clearly do possess unique advantages as potential entrants in each other's regions	28
The elimination, through merger, of all other viable competitors should not be the quid pro quo for existing large ILECs to commit to out-of-region entry	30
Beyond the issue of whether the post-merger entity would be legally entitled to participate in the markets for long distance and bundled services, its participation would have negative consequences for competition in these markets	35
The Applicants' interpretation of changes in stock prices fails to demonstrate that the merger would be procompetitive	38
Whatever challenges are inherent to bringing in-region competition to GTE's rural customers must be overcome, not excused or exacerbated through the enhancement of GTE's market power	40

IV. OTHER CONSUMER AND COMPETITIVE HARMS RESULTING FROM THE MERGER	43
Home-region customers would involuntarily subsidize the Applicants' pursuit of out-of-franchise markets, development of the bundled services market, and expansion of Internet business plans	43
The Applicants' incentive to achieve their projected merger synergies will impose risks to consumers in Bell Atlantic's new home region	44
The merger would diminish the ability of regulators, competitors and consumers to benchmark ILECs' performance, thus leading to a loss of innovation, service quality, and competition	47
V. CLAIMED BENEFITS OF THE MERGER	51
The benefits that the Applicants contend will occur as a result of the proposed merger include consequences that should be seen instead as risks or that are at best speculative	51
The new Bell Atlantic is constrained neither by competition nor by existing regulatory regimes to flow any merger benefits through to customers of its noncompetitive services	52
The alleged benefits for delivery of new services and improved service quality cannot be credited to the merger	58
The Applicants' proposed merger will in no way increase competition for Internet and other data services, and in fact will open the door for irreparable harm to that competition, to the lasting detriment of consumers	59
VI. RECOMMENDATIONS	63
The proposed merger of Bell Atlantic and GTE is contrary to the public interest and should be denied outright	63
The Commission cannot be confident that any conditions it might impose will be sufficient to elevate the public interest benefits of this merger to a level that offsets the risks and harms to the public interest	64
The threat of further industry concentration and the renewed efforts by these ILECs to obtain premature interLATA relief makes denial of the pending megaILEC mergers even more compelling than it was in prior large ILEC mergers	69

Tables

1	Industry Concentration Resulting from the Proposed Mergers Would Diminish Prospects for Local Competition	22
2	Telco and Directory Segments Comprise the Vast Majority of the Applicants' Revenues	53

Figures

1	Competitive Entry into the Local Market, Nationwide.	8
2	Pre-Mergers: Access Line Shares (1996).	16
3	Post SBC/Pacific Telesis and Bell Atlantic/NYNEX Mergers: Access Line Shares (1997).	16
4	Post Bell Atlantic/GTE and SBC/SNET Mergers: Access Line Shares (1997).	17
5	Post SBC/Ameritech Merger: Access Line Shares (1997).	17

I. INTRODUCTION

1. Our names are Susan M. Baldwin and Helen E. Golding and we are, respectively, Senior Vice President and Vice President at Economics and Technology, Inc. (ETI), One Washington Mall, Boston, Massachusetts 02108. ETI is a research and consulting organization specializing in telecommunications economics, regulation and public policy.

2. Our Statements of Qualifications are provided as Attachment 1 and Attachment 2. We served as project managers for and were major contributors to the comprehensive analyses that ETI has conducted in state proceedings of four separate mergers of Tier I incumbent local exchange carriers (ILEC)¹ that have occurred since the enactment of the Telecommunications Act of 1996 (Act or 1996 Act). We analyzed the merger of SBC Communications Inc. (SBC) and Pacific Telesis Group (Pacific Telesis or PacTel) on behalf of the California Public Utilities Commission's Office of Ratepayer Advocates; the merger of Bell Atlantic Corporation (Bell Atlantic) and NYNEX Corporation (NYNEX) on behalf of the Maine Office of Public Advocate; SBC's acquisition of the Southern New England Telecommunications Corporation (SNET) on behalf of the Connecticut Office of Consumer Counsel; and the merger of SBC and Ameritech Corporation (Ameritech) on behalf of the Ohio Consumers' Counsel and a coalition of government and consumer intervenors in Illinois. We also co-authored an affidavit, on behalf of a coalition of consumer advocates from six states,² that was submitted in CC Docket No. 98-141, the FCC's proceeding regarding the SBC/Ameritech merger. We are presently serving as project

1. Tier 1 LECs are those local exchange carriers with \$100-million or more in "total company annual regulated revenues." *Commission Requirements for Cost Support Material to be Filed with 1990 Annual Access Tariffs*, 5 FCC Rcd 1364, 1364 (Common Carrier Bureau, 1990).

2. The coalition included the Indiana Office of Utility Consumer Counselor, the Michigan Attorney General, the Missouri Public Counsel, the Ohio Consumers' Counsel, the Texas Office of the Public Utility Counsel, and The Utility Reform Network (TURN).

managers to ETI's in-depth analysis of the proposed merger between Bell Atlantic and GTE Corporation (GTE) (collectively, the Applicants) for state proceedings on behalf of the Ohio Consumers' Counsel and the Hawaii Division of Consumer Advocacy.

3. This affidavit has been prepared at the request of the Consumer Groups: the Delaware Division of the Public Advocate, the Hawaii Division of Consumer Advocacy, the Maine Public Advocate, the Maryland People's Counsel, the Missouri Public Counsel, the Ohio Consumers' Counsel, the Citizens Utility Board of Oregon, the Consumer Advocate Division of the Public Service Commission of West Virginia, the Michigan Consumer Federation, and the Edgemont Neighborhood Coalition.

4. The purpose of this affidavit is to respond to comments (and associated affidavits) that support the proposed merger of Bell Atlantic and GTE in this proceeding, CC Docket No. 98-184, before the Federal Communications Commission (FCC or Commission), as well as to reinforce, from a consumer perspective, many of the concerns that other parties have expressed regarding this merger.

5. As noted above, we recently prepared an Affidavit, on behalf of consumer intervenors in CC Docket No. 98-141, regarding the risks to competition and consumers from the proposed SBC/Ameritech merger. Because the Bell Atlantic/GTE (BA/GTE) merger raises many of the same issues, we have relied upon the analysis undertaken in connection with that earlier Affidavit. There are, however, a number of unique issues associated with the present merger; there are also instances where Bell Atlantic and GTE take a different tack than SBC and Ameritech with regard to the benefits they claim will result from the merger.

6. It is likely that in their response to the initial comments in this proceeding, the Applicants will portray their critics as consisting exclusively or at least predominately of competitors. In so doing, the Applicants overlook (perhaps intentionally) the strong concern that has been voiced by consumer advocates throughout the country regarding the impact of this merger (as well as the pending SBC/Ameritech merger) on the development of effective competition. The perspective of residential and small business consumers, while strongly procompetition, is not a mere echo of competitors' interests. The positions taken by consumer advocates represent a very distinct and important perspective on the issues before the Commission in its consideration of the proposals to further consolidate the handful of the nation's remaining large ILECs.

7. Many of the alleged "benefits" promised by Bell Atlantic and GTE hinge on Bell Atlantic's obtaining authority to resume providing in-region interLATA long distance service.³ The merger application is not an application for authority to provide interLATA services and, if it were, would not satisfy the Commission's requirements. As many parties have established and as we also demonstrate, neither of the Applicants has come close to fully implementing the mandates of the Telecommunications Act with respect to opening their local exchange markets to competition.

8. The enormous financial pressure that the Bell Atlantic/GTE megaILEC will face after committing to its ambitious out-of-region expansion will cause it to intensify pressure on the Commission to grant Bell Atlantic Section 271 authority. In fact, Bell Atlantic has already gone so far as to suggest that it would need "interim relief" if it has not obtained Section 271 authority

3. FCC En Banc, October 22, 1998, at 85. Bell Atlantic CEO Ivan Seidenberg stated that "until we get the full bundle, you're not going to see us venture very far from our footprint simply because customers won't take us seriously." The "full bundle" here refers to the combination of local exchange service with long distance service, a "bundle" that Bell Atlantic is not authorized to provide.

region-wide by the time the merger is consummated.⁴ The Commission must not allow this proceeding to circumvent the requirements for in-region interLATA service provision that Bell Atlantic faces under Section 271. As long as effective local competition does not exist, the benefits that the Applicants promise to deliver with respect to long distance and bundled services are likely to be derived from incumbency advantages in the local market and anticompetitive practices made possible by their control of exchange access services.

9. Residential consumers have reason to fear that “competition delayed” will be “competition denied.” As things stand, consumers and small businesses have been and are likely to remain the last direct beneficiaries of competition. While competition is delayed, the ILECs are likely to be driving for increased deregulation, pricing flexibility, and other regulatory concessions that *increase* the ILECs’ ability to leverage their market power in the residential and small business end of the local exchange market. The result of this strategy is to further retard the development of competition throughout the local exchange and exchange services market, and in the emerging market for bundled services. Under such conditions, residential and small business customers will lose twice: first, by being made to directly and indirectly finance the competitive ventures of their ILEC and, second, by having competition further delayed (or perhaps never realized) with respect to the services these customers purchase from the ILEC. This outcome is definitely *not* in the public interest, and can best be avoided by denying the proposed Bell Atlantic/GTE merger.

10. We strongly agree with concerns that have been expressed to the Commission by others that this second Bell Atlantic acquisition of a major ILEC (occurring simultaneously with SBC’s third attempted ILEC acquisition) will further diminish, rather than expand, competition in local

4. Public Interest Statement, at 19, n.14.

telecommunications services, have adverse impacts for the development of competition in the emerging market for bundled services, and not produce compensating benefits for competition and, ultimately, for consumers. Furthermore, we demonstrate that the Applicants' assertion in their filing to the FCC that they cannot compete out-of-region unless the merger occurs contradicts various public statements they made prior to pursuing the merger. We recommend that the Commission deny the Application outright, because post-merger conditions, such as those previously imposed on Bell Atlantic, will not adequately protect the public interest from the foreseeable anticompetitive effects of a Bell Atlantic/GTE alliance. Should the FCC, contrary to our recommendation and that of many other parties to this proceeding, contemplate approving this merger, the FCC should first investigate certain specific items including: (1) the efficacy of the post-merger conditions that it imposed in its approval of the BA/NYNEX merger, (2) the use of pre-merger conditions, generally, as a way to protect consumers from the adverse effect of mergers, and (3) the specific pre- and post-merger conditions that would be necessary to mitigate the potential harms to the public and to increase the chance of benefits flowing through to consumers as a consequence of the BA/GTE merger.

II. A BASELINE VIEW OF LOCAL COMPETITION

Quantitative measures of competition show little progress toward breaking ILEC dominance of the local exchange market

11. Nearly three years ago, the procompetition policy initiatives that were already ongoing at the Commission and in many state jurisdictions were reinforced by a detailed national legislative mandate — the Telecommunications Act of 1996. In order to judge whether the proposed merger is likely to be procompetitive, as the Applicants suggest, or anticompetitive, as many others have claimed, it is important to first have a realistic view of the present competitive conditions for local exchange and exchange access services in Bell Atlantic and GTE's service

territories. It is also relevant, in judging the Applicants' promises and predictions of enhanced competition, to assess their actions and accomplishments over the past three years.

12. Significantly, the Applicants themselves say very little with regard to the state of local competition in their own region, except to represent that (1) there is little to no prospect of competition in GTE's service territories⁵ and (2) although competition is progressing at a satisfactory rate in Bell Atlantic's territories, Bell Atlantic has apparently never considered GTE a "serious potential competitor" therein.⁶ This relative silence on the part of the Applicants should in no way deter the Commission from a careful assessment of the state of competition as it considers the merger's impact because the state of competition directly bears on the merits of the merger. Indeed, as the Commission has recognized, in the nearly three years since the 1996 Act began to remove barriers to competitive entry, local competition has shown itself to be neither easy to attain nor inevitable.

13. Local competition has gotten off to a disappointing start, due in no small respect to the tactics of the major ILECs, including both Bell Atlantic and GTE. The results of the Common Carrier Bureau's Local Competition Surveys⁷ demonstrate that competitive inroads to date have been small and hardly ubiquitous in nature. In the aggregate, within the major ILECs' serving

5. *See, e.g.*, Stallard (Bell Atlantic), at ¶¶ 9; 12-13; Whelan (Bell Atlantic), at ¶¶ 4-5; Public Interest Statement, at 30-31.

6. Stallard (Bell Atlantic), at ¶ 20.

7. Common Carrier Bureau Survey of Local Competition, FCC CC Public Notice regarding responses to the Common Carrier Bureau Survey on the State of Local Competition, March 27, 1998, and Common Carrier Bureau Second Survey of Local Competition, October 28, 1998 ("Second Local Competition Survey") both available at www.fcc.gov/ccb/local_competition/survey/responses. Data are from the Second Local Competition Survey, except for ported numbers, which were reported only in the original (March 27) survey.

areas,⁸ only about 1.5% of lines (or 2.3-million of 159.3-million lines) were being resold on a “bundled” (*total service resale* or *TSR*) basis, less than *two tenths* of one percent (or 221,501 of 159.3-million) of local service lines were being provided over UNE loops purchased by CLECs (see Figure 1). Some ILECs have suggested that these numbers do not fairly reflect the competition they face, because they do not capture facilities-based alternatives provided by competitive access providers (CAPs) and CLECs. A recent affidavit filed with the FCC by MCI strongly suggests that these non-ILEC facilities are not the hidden source of major competition that the ILECs claim.⁹

8. I.e., Ameritech, Bell Atlantic, Bell South, SBC, US West, GTE, and Sprint/United Telephone.

9. Baseman/Kelley (MCI) at ¶ 23, citing Affidavit of Wayne Rehberger, filed with MCI WorldCom Comments in CC Docket 96-262 (Access Reform), October 26, 1998.

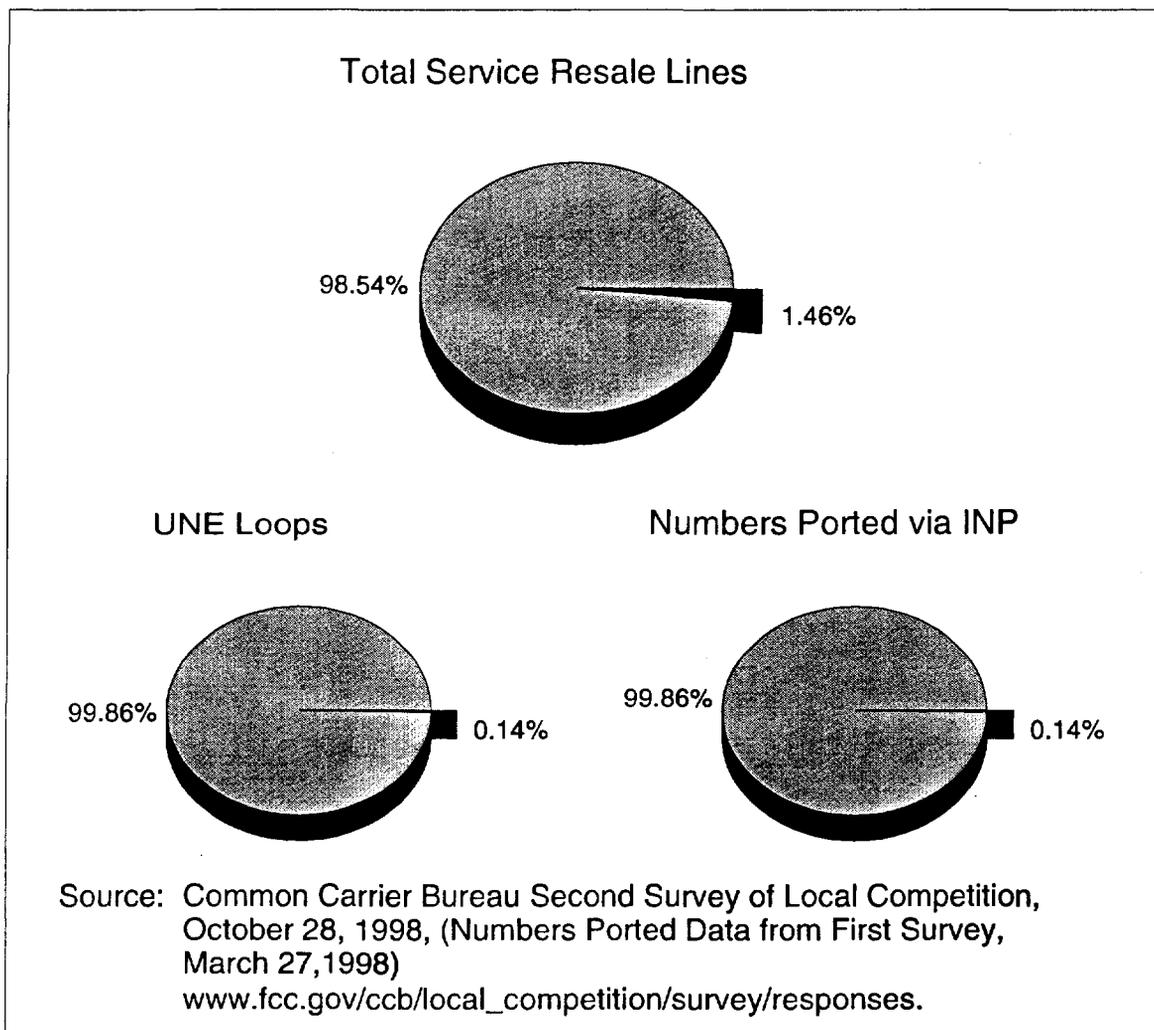


Figure 1. Competitive Entry into the Local Market, Nationwide.

14. Competition in the Applicants' home territories is consistent with, and often below, these national performance levels. Of Bell Atlantic's 40.4-million lines in service (as of June 30, 1998), a mere 431,681, or about 1.1% percent, are provided to competitors for resale, and 60,527, or about 0.15% percent, are provided as UNE loops.¹⁰ In aggregate, this amounts to 1.2% of the

10. FCC Second Local Competition Survey.

access lines in Bell Atlantic's region, below even the extremely unimpressive national average of 1.6%.¹¹

15. While competition in Bell Atlantic's region remains minimal at best, it is even more embryonic in GTE's territories. Based on the fifteen states for which GTE provided data in the FCC's Second Local Competition Survey, competitors across GTE's territories have attained a mere 0.5% share of lines via total service resale, and 0.05% share of lines as UNE loops. In fact, for six of the fifteen states on which it reported data to the Common Carrier Bureau (Illinois, Indiana, Michigan, Ohio, Pennsylvania, and Wisconsin), GTE indicated that it possessed 100 percent share of residential lines (based on UNEs/resale). For another six states, GTE reported a residential market share of either 99.98 or 99.99 percent.¹² These results are lackluster given that nearly three years have passed since GTE became subject to the affirmative obligations of Section 251 of the Telecommunications Act. As the Public Utilities Commission of Texas (PUCT) noted in its Comments in this proceeding: "Although GTE-SW stated that it has 70 effective interconnection agreements on file at the PUCT, we do not believe that to represent any significant amount of actual competition."¹³

16. The Applicants attempt to excuse the poor competitive showing in the GTE region, positing that GTE's territories are simply unattractive to potential competitors: They lack large urban areas, or concentrations of large businesses, that competitors would target first upon entry.

11. *Id.*

12. Hayes (Sprint), at Table 2 ("GTE Market Share of Local Exchange Lines").

13. Texas PUC Comments, at 6.

While most of GTE's service territory is rural,¹⁴ it also serves some suburban and urban locations that could be attractive to competitors.¹⁵ Moreover, if competitors already find portions of GTE's service territory unattractive (whether because of economic conditions or GTE's uncooperative behavior), they are likely to be even more reluctant to attempt entry against the "Bell East" megaILEC, as some have referred to the prospective combination at issue here.

Bell Atlantic's and GTE's implementation of the 1996 Act is still far from complete

17. The local competition statistics discussed above strongly indicate that the market power wielded by Bell Atlantic and GTE has not abated significantly since 1996. The pace of competitive entry is clearly linked to the slow progress these carriers have made toward implementing interconnection and unbundling of their local networks on just and reasonable terms. Despite a compelling incentive to demonstrate compliance with the conditions in Section 271 of the Act, Bell Atlantic has not been able to come to the Commission with a complete Section 271 filing. Rather, to date, in almost three years, it has only tested the waters with draft filings made at the state level (most extensively in New York). A recent filing by AT&T with the New York Public Service Commission regarding Bell Atlantic's compliance with Section 271 suggests that serious problems remain to be resolved.¹⁶ These continuing concerns indicate that,

14. In virtually every state in which it operates, GTE has invoked the "rural carrier" exemption under Section 251(f) and has been repeatedly turned down. See Affidavit of Joyce Beasley (AT&T), at ¶ 8-9, fn. 3, and Exh. 1; accord, MCI Comments, at 13, fn. 8.

15. GTE does serve a number of significant urban markets, including Honolulu, Hawaii; Tampa, Florida; and Orange County, California. Moreover, as others point out (and as the Applicants themselves admit), GTE's current serving territories would permit it easy entry into such major cities as Washington D.C., Pittsburgh, Los Angeles, Dallas, Indianapolis, Seattle, Portland, Orlando, and Jacksonville. AT&T Comments, at 4, 23, and 51.

16. "AT&T Says Bell Atlantic Falls Short on N.Y. Commitments," *Telecommunications*
(continued...)

contrary to Bell Atlantic's optimistic projection (that it will "have [the] needed Section 271 approvals by the time this merger closes"¹⁷), Bell Atlantic is not close to being able to make the definitive showings to state commissions and the FCC that would permit it to obtain Section 271 authorizations throughout its twelve-state operating region any time soon.

18. Moreover, as the Commission explicitly recognized in the *BA/NYNEX Merger Order*,

Even upon hypothetical full implementation of the Telecommunications Act of 1996, significant barriers to entry into the local telecommunications marketplace will remain. Entrants must still be able to attract capital, as well as to amass and retain the technical, operational, financial and marketing skills necessary to operate as a telecommunications provider in the local market. For mass market services, entrants will have to invest in establishing the brand name recognition and, even more importantly, the mass market reputation for providing high quality telecommunications services. These consumer "goodwill" assets take significant amounts of time and resources to acquire. An unknown entrant's attempts to build "goodwill" by providing reliable, high quality service relies heavily on the cooperation of the incumbent LEC that provides interconnection, unbundled elements, resold services or transport and termination, and can be frustrated by the incumbent LEC if that carrier engages in discriminatory conduct affecting service quality, reliability or timeliness. For all these reasons, we cannot at this time simply assume that implementation of the Telecommunications Act of 1996 and the potential for development of competition will eliminate any concerns about potential competitive effects of mergers, particularly the effects on the pace of the development of competition.¹⁸

16. (...continued)
Reports, November 9, 1998, at 16.

17. Public Interest Statement, at 19, n.14.

18. *Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, File No. NSD-L-96-10, Memorandum Opinion and Order, 12 FCC Rcd 19988 (1997), (*Bell Atlantic/NYNEX Merger Order*), at ¶ 42.

The challenges facing new entrants currently will become far more formidable in the wake of an ILEC megamerger on the scale of the transaction currently before the Commission.

19. There are a number of specific concerns that remain with regard to the opening of ILEC networks to new competitors. Major dissatisfaction continues with the inadequacy of ILEC operations support systems.¹⁹ ILECs continue to be unwilling and/or unable to provide combinations of UNEs without unwieldy and expensive physical collocation arrangements.²⁰ Resale discounts in many jurisdictions make competing by total service resale unprofitable, and therefore in the long run impossible.²¹ Moreover, CLECs are having a difficult time sustaining

19. The inadequacy of OSS continues to be a major stumbling block in ILECs' attempts to satisfy the requirements of Section 271. See, *Application of BellSouth Corporation, et al., Pursuant to Section 271 of Communications Act of 1934, as amended, to Provide In-region, InterLATA Services in Louisiana*, CC Docket 97-231, *Memorandum Opinion and Order*, FCC 97-228, February 4, 1998, at ¶¶ 1, 20-58; *Application of BellSouth Corporation, et al., Pursuant to Section 271 of Communications Act of 1934, as amended, to Provide In-region, InterLATA Services in South Carolina*, CC Docket No. 97-208, *Memorandum Opinion and Order*, FCC 97-418, released December 24, 1997, at ¶¶ 101-81; *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-region, InterLATA Services in Michigan*, CC Docket No. 97-137, *Memorandum Opinion and Order*, FCC 97-298, released August 19, 1997, at ¶¶ 128-221. Ironically, the Commission did not reach the issue of OSS compliance with regard to SBC's one Section 271 filing, because of serious threshold deficiencies that made it unnecessary for the Commission to even analyze the specific elements of checklist compliance. See, *Application of SBC Communications Inc. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-region, InterLATA Services In Oklahoma*, CC Docket No. 97-121, *Memorandum Opinion and Order*, FCC 97-228, released June 26, 1997, at ¶ 66.

20. The magnitude of this problem was evidenced at the full-day forum held by the Common Carrier Bureau on June 4, 1998.

21. See, e.g., "Armstrong Says Bell Chokehold Drove AT&T-TCI Merger Agreement, Denies Reports of Deal Changes," *Telecommunications Reports*, July 6, 1998; "Troubles at USN Call into Question Viability of Local Resale at Current Discount Rates," *Telecommunications Reports*, Sept. 14, 1998.

any significant level of entry in the residential and small business markets.²² Indeed, as they explain, in their own out-of-region entry initiatives, the Applicants encountered precisely these same kinds of difficulties and roadblocks, and yet they provide absolutely no assurances to the Commission that their combined market power will enable them to better overcome those barriers or will not enable them permanently to subvert competition within their own territories.

20. The Applicants themselves have complained about the impressive barriers that confront CLECs (that is, when the CLEC shoes are on *their* feet, rather than on their competitors'). In particular, their Application is premised on the hypothesis that out-of-region entry can only truly succeed when attempted on a massive scale and supported by a combination of resources, relationships, and industry experience that other new entrants are highly unlikely to possess. Like most potential competitors, GTE has all but written off the possibility of competing exclusively on the basis of total service resale, stating that "GTECC [GTE Communications Corporation] has...concluded that a resale strategy alone cannot succeed."²³ Bell Atlantic has decided that its best hope of breaking into local service outside its own region is by first offering long distance, and has not had any great measure of success in doing that as yet.²⁴ As the Applicants' own experience shows, the six existing large ILECs have been able to maintain formidable operational and economic barriers to competitive entry. The combination of two or more of these large ILECs provides additional clout to their defenses, by permitting them to coordinate responses to new entry and by giving them a larger revenue pool that can be used to selectively target and eliminate competitors' attempts to enter the home region.

22. "MCI has Stopped Pursuing Residential Customers," *The New York Times*, April 15, 1998.

23. Kissell (GTE), at ¶¶ 4-5.

24. Stallard (Bell Atlantic), at ¶ 10.

21. In sum, there is a direct conflict between the merger philosophy reflected in the Applicants' statements and actions and the established public policy goal of an environment in which local exchange competition is feasible. On the one hand, the Applicants contend that entry barriers for their actual and potential competitors require them to merge before they will be able to launch broad-based out-of-region competitive entry. On the other hand, the Applicants minimize the implications of the merger for competition *within* their service areas by touting the existence of "many well-run and well-capitalized companies" attempting to compete with them — ignoring the fact that none of these potential competitors can match the resources, expertise, and incumbency advantages that BA/GTE would possess.²⁵

The trend toward further ILEC consolidation poses a direct and possibly irreversible threat to competition and should be halted now

22. This is the fifth occasion since the passage of the 1996 Act less than three years ago that Tier I incumbent local exchange carriers have announced and pursued plans to merge. If permitted, it would represent Bell Atlantic's second acquisition of another ILEC. The FCC has approved the SBC/Pacific Telesis merger,²⁶ the Bell Atlantic/NYNEX merger,²⁷ the SBC/SNET

25. Stallard (Bell Atlantic), at ¶ 20.

26. *Application of Pacific Telesis Group Transferor, and SBC Communications, Inc. Transferee, For Consent to Transfer Control of Pacific Telesis Group and its Subsidiaries*, Report No. LB-96-32, Memorandum Opinion and Order, 12 FCC Rcd 2624 (1997).

27. *BA/NYNEX Merger Order*.

merger,²⁸ and has yet to issue an order regarding SBC's proposed acquisition of Ameritech. The Applicants first announced their plans to merge in July 1998.²⁹

23. The most obvious and perhaps one of the most serious outcomes of the proposed merger will be to further reduce the dwindling number of remaining large ILECs (see Figures 2 through 5). As the Commission observed in the BA/NYNEX Merger Order, "Further reductions ... 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. ... [thus] further reductions in the number of Bell Companies or comparable incumbent ILECs would present serious public interest concerns."³⁰ The fact that the Commission has not clearly stated where it will draw the line on ILEC mergers does not in any sense commit the Commission to a policy of never drawing that line. Furthermore, as has been observed, not only should the Commission scrutinize the merits of the two pending mega-mergers individually, but also, it should consider the aggregate impact were the Commission to approve both the SBC/Ameritech and the BA/GTE mergers.³¹

28. *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corporation, Transferor to SBC Communications, Inc., Transferee*, Memorandum Opinion and Order, CC Docket No. 98-25, FCC 98-276, released October 23, 1998 (*SBC/SNET Merger Order*).

29. "Bell Atlantic and GTE Agree to Merge," www.ba.com/nr/1998/Jul/19980728001.html.

30. *BA/NYNEX Merger Order*, at ¶ 156.

31. MCI Comments, at vi.

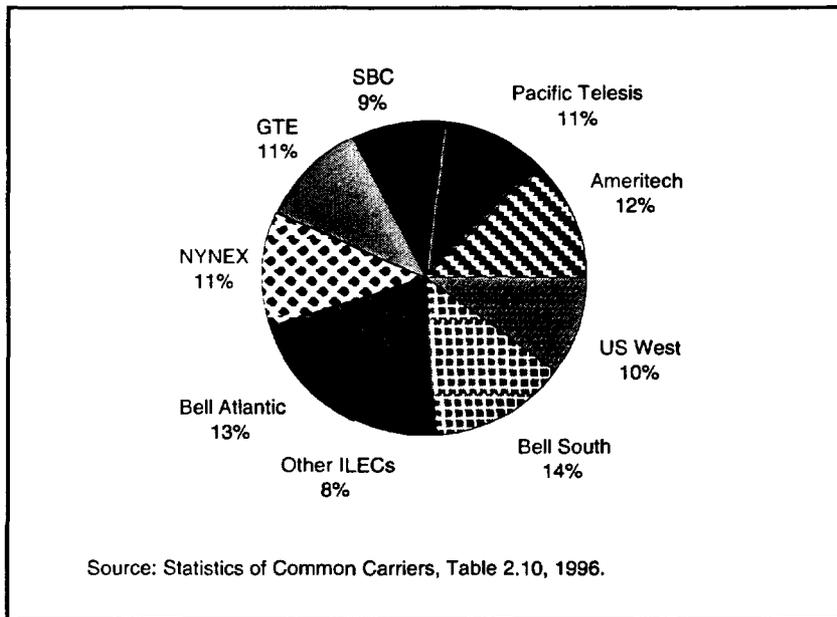


Figure 2. Pre-Mergers: Access Line Shares (1996).

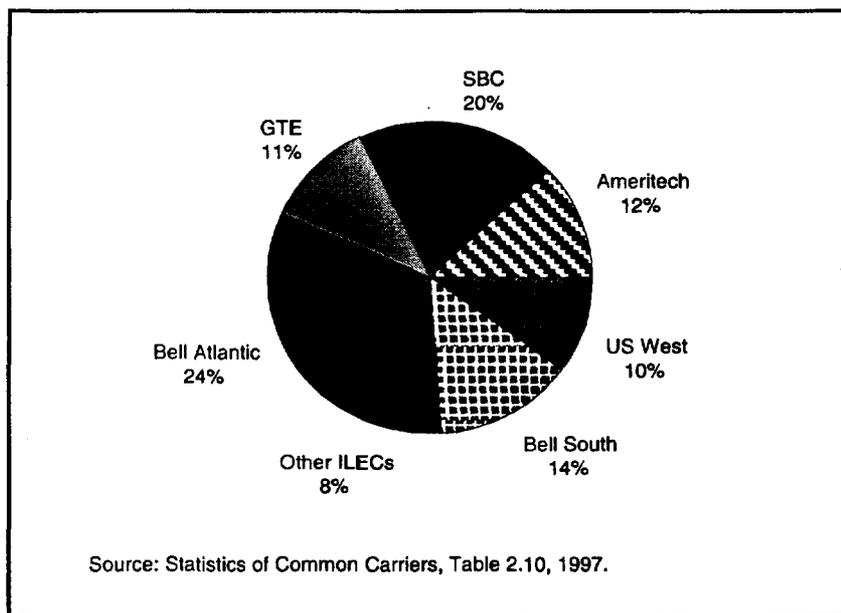


Figure 3. Post SBC/Pacific Telesis and Bell Atlantic/NYNEX Mergers: Access Line Shares (1997).

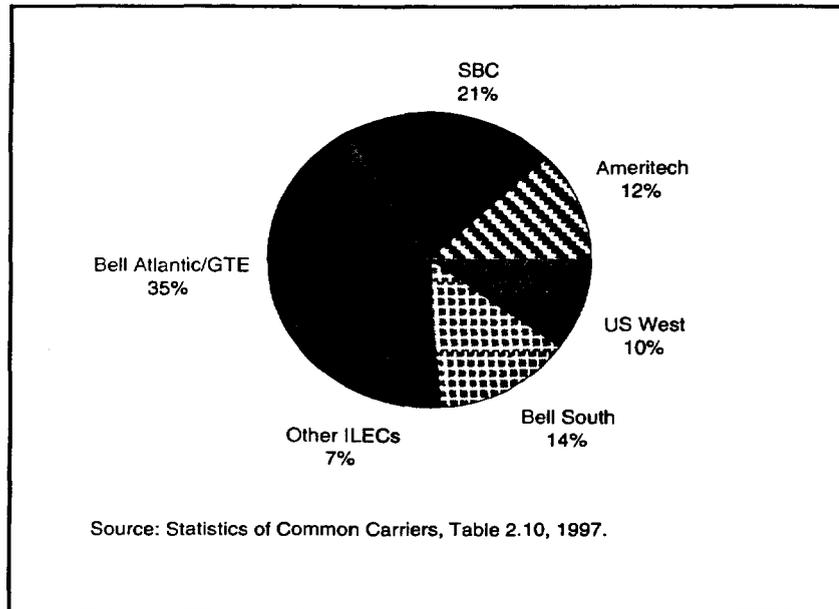


Figure 4. Post Bell Atlantic/GTE and SBC/SNET Mergers: Access Line Shares (1997).

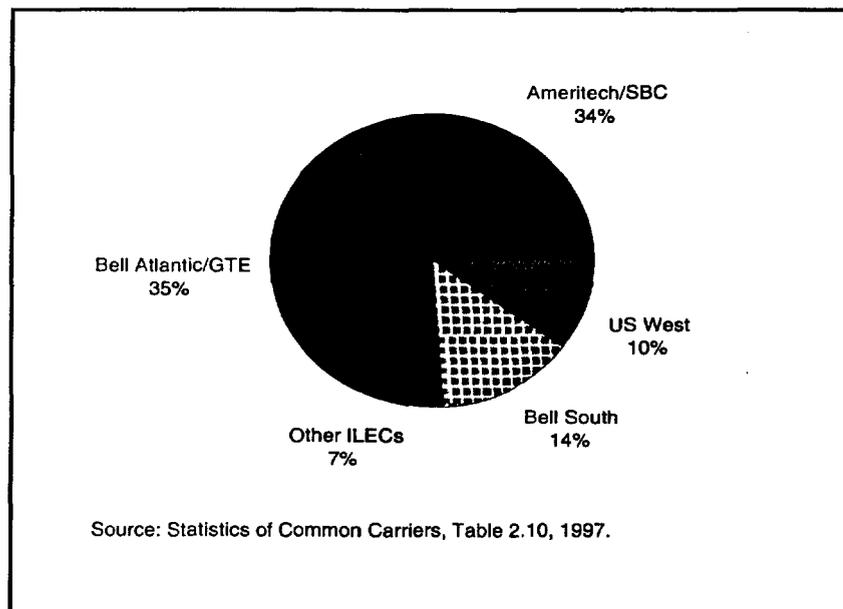


Figure 5. Post SBC/Ameritech Merger: Access Line Shares (1997).

24. Not only would a larger Bell Atlantic tend to precipitate interest in and claims of the necessity for mergers by other large telecommunications companies, this latest of Bell Atlantic's merger proposals is by no means assured to be the last. All of the rationale that Bell Atlantic offers in support of its proposed merger with GTE would also support further aggrandizement of Bell Atlantic through subsequent mergers. If merging with GTE provides the size that Bell Atlantic claims is necessary for it to enter 21 out-of-region markets, would acquiring BellSouth supply the means for Bell Atlantic to set up shop in some number of additional markets (while at the same time alleviating Bell Atlantic from the bother of *competing* in the BellSouth region)? Would Bell Atlantic need another takeover target whenever a telecommunications provider anywhere in the world got larger? Simply put, there is no obvious logical ending point to the Bell Atlantic acquisition strategy.

25. Another plausible extension of the Applicants' claim that the proposed merger is critical for them to compete, is that the remaining Tier 1 ILECs will similarly be driven to merge. The fact that the present merger and the pending SBC/Ameritech merger threaten to be a driving force toward further ILEC consolidation is, in and of itself, a reason for the Commission to consider applying the brakes at this time.

Other industry mergers neither justify consolidation on the scale proposed by BA/GTE, nor overcome its anticompetitive impacts

26. The Applicants also argue that their merger is simply another step in a global, telecommunications industry merger mania, in which they must become bigger in order to attract sufficient capital to survive. In their Public Interest Statement, Bell Atlantic and GTE attempt to portray the field of domestic and foreign telecommunications providers as consolidating towards a

few “new national firms” with “the ability to offer ... bundled services on a national basis.”³² The Applicants argue that the proposed BA/GTE megaILEC will simply be one more such firm. Leaving aside the fact that most of these other providers do not approach the size of the new Bell Atlantic, the point that Bell Atlantic seems to be trying to make is largely irrelevant. Size, in and of itself, is meaningless to the issue at hand, without considering the relative strengths of these providers in local exchange markets. In the time since the 1996 Act, neither size nor national presence has given the large IXCs or other large CLECs, such as cable companies, the capability to successfully enter, let alone unseat the ILECs as dominant providers of local exchange service nor allowed the IXCs to establish a dominant position in the newly emerging market for bundled local and long distance services. Successful entry into other ILEC strongholds depends in large part on the existing customer relationships, specific operational experience, and managerial talent that ILECs themselves uniquely possess, and not necessarily on annual revenues or net income. Unlike any ILEC, and especially any megaILEC such as the post-merger BA/GTE, no IXC or CLEC possesses either the local telephony experience and management talent, or monopoly service relationships with *any* customer, from the smallest residential consumer to the largest multinational corporation.

27. There are also important differences between the post-merger ILEC whose financial stability is derived from a monopoly control over approximately 35 percent of the country’s access lines, and an IXC with comparable revenues derived mainly from competitive enterprises. When AT&T and MCI/WorldCom attempt to raise capital to support new business ventures, they do not have recourse to a vast base of captive customers or to overvalued embedded plant that,

32. Public Interest Statement, at 2.

through depreciation accruals and vestiges of regulatory earnings requirements, can continue to provide a source of cash flow uniquely accessible to the incumbent LECs.³³

III. ANTICOMPETITIVE HARMS ARISING FROM THE MERGER

Anticompetitive effects of the merger

28. The core question before the Commission is the overall effect of the merger on competition. The heart of the Applicants' argument is that their merger, by combining the strengths and overcoming the undocumented weaknesses of the companies individually, will enable the post-merger entity to be a strong national competitor in multiple telecommunications markets. Both Applicants insist that they could not achieve any of the important advances attributed to their merger on their own. These claims have been debunked in several earlier affidavits/comments, which demonstrate conclusively that "each of GTE and Bell Atlantic have greater financial wherewithal than most of the competitive LECs with whom they would be competing in local markets outside their franchised territories."³⁴ More importantly, however, as we also demonstrated with respect to SBC and Ameritech,³⁵ this proposition — that only a

33. The recent USTA petition seeking FCC forbearance from setting depreciation rates, if granted, would give ILECs such as Bell Atlantic and GTE an even larger accumulation of cash than they presently enjoy. USTA Petition for Forbearance from Depreciation Regulation of Price Cap LECs, ASD 98-91, Public Notice, DA 98-1964, released September 28, 1998. The ILECs' persistent ability to set prices that recover overvalued embedded plant could exist only under noncompetitive conditions; the very fact that such a request has been made (notwithstanding its ultimate disposition by the Commission) undercuts all of the Applicants' claims as to the presence of competitive market forces sufficient to constrain their own prices and anticompetitive conduct.

34. Comments of the Telecommunications Resellers Association, at 13. *See also*, Opposition of the Competitive Telecommunications Association, at 8-9; Besen/Srinagesh/Woodbury (Sprint), at 33-39; Baseman/Kelley (MCI), at ¶¶ 71-73, 121; and Levinson (AT&T).

35. Baldwin/Golding Initial Affidavit (Consumer Coalition), Docket 98-141, at ¶¶ 10, 37.

megaILEC (of the proportions of the Bell Atlantic/GTE or SBC/Ameritech combinations) could compete on a national basis and overcome the impediments that the Applicants have identified — casts doubt on the viability of all other potential competitors who might seek to compete in Bell Atlantic and GTE's service territories or in competition with the megaILEC(s) in other local exchange markets nationwide. Indeed, the ILECs' proposition, if true, renders "a fundamental premise underlying the Telecommunications Act ... entirely false."³⁶ The Applicants' CLEC ventures and forays into the long distance, bundled services, and interLATA data transport markets are not in the public interest if they depend on unfair discrimination against competitors in the provision of essential inputs and the direct and indirect cross-subsidization of new competitive ventures using the resources of noncompetitive local exchange businesses.

29. Absent the merger, Bell Atlantic and GTE could compete not only in each other's territories, but also could compete with each other in the markets outside the Bell Atlantic/GTE footprint. The merger diminishes the number of competitors in local markets throughout the country, reducing the number of large ILECs — large companies with a proven track record in serving (and defending) the local market — from six (SBC/Pacific/SNET, Bell Atlantic/NYNEX; Ameritech; Bell South; US West; and GTE) to five (or, if SBC/Ameritech is also approved, four) and to only two (BA/GTE and SBC/Ameritech) if similar size and expertise are considered.³⁷

Table 1, below, compares the relative revenues of these six potential competitors.

36. Comments of the Telecommunications Resellers Association, at 14.

37. Approval of both the SBC/Ameritech and Bell Atlantic/GTE mergers would consolidate 69% of the nation's access lines in the two largest megaILECs. See Figure 5.

Table 1			
Industry Concentration Resulting from the Proposed Mergers Would Diminish Prospects for Local Competition			
Pre-Merger		Post-Merger	
Major ILEC	Revenue (billions)	Major ILEC	Revenue (billions)
Bell Atlantic	\$30.2	Bell Atlantic/GTE	\$53.5
SBC	\$24.9	SBC/Ameritech	\$40.9
GTE	\$23.3	Bell South	\$20.6
Bell South	\$20.6	US West	\$15.2
Ameritech	\$16.0		
US West	\$15.2		

Source: Preliminary Statistics of Common Carriers, Table 1.1, 1997.

30. In assessing whether the merger is likely to have a significant adverse effect on competition, the Commission must weigh the likelihood of actual *de novo* entry by GTE or Bell Atlantic into each other's ILEC franchise areas against the likelihood of entry by other RBOCs into the combined Bell Atlantic/GTE home region assuming that the merger occurs and the 21-city expansion is pursued. As we will show, the probability that GTE or Bell Atlantic would have competed with each other directly, absent the merger, as CLECs or, in time, as providers of bundled and long distance services, is much greater than the speculative possibility of another RBOC venturing to confront "Bell East."

The merger creates a risk of decreased local competition between GTE and Bell Atlantic in their respective home regions

31. The Applicants have attempted to persuade the Commission that neither of them would be an "actual, potential competitor" in the other's home region, absent the merger, and therefore the merger does not diminish competition from existing levels. Unlike any of the other major

ILEC mergers in the recent series, this one would take place between entities operating not simply adjacent to one another, but actually within some of the same states (Virginia and Pennsylvania). Consumers in all Bell Atlantic and GTE states, but especially in these two, face a significant *loss* of potential competition should this merger occur.

32. GTE presently competes with Bell Atlantic. Specifically, as acknowledged by the Applicants, GTE has already taken advantage of its proximity to Bell Atlantic's operating territory to provide service to the Dulles Airport complex and could presumably extend this success to other large businesses in suburban Washington, D.C. GTE also competes directly with Bell Atlantic in the provision of intraLATA long distance services.³⁸ There is also direct evidence that GTE contemplated further expansion within the Bell Atlantic region.³⁹ GTE did more than simply go through the motions of obtaining authorization from PUCs throughout the Bell Atlantic region to provide local service as a CLEC; it assured at least some of those Commissions that it intended to actively exercise this authority.⁴⁰ In fact, GTE Communications Corporation (GTECC) had

38. In Maine, the Public Advocate has raised the prospect of decreased competition in the intraLATA toll market in Maine as a basis for requesting the Maine Public Utilities Commission to open an investigation of the proposed Bell Atlantic/GTE merger. Maine Public Utilities Commission Docket No. 98-808, Comments of Public Advocate, November 3, 1998, at 5-7.

39. For example, a GTE witness stated in June that GTE's CLEC affiliate "intends to offer local service" in West Virginia in the next year, and that GTE's long distance advertising "is done on a nationwide level" as part of a "strategic plan ... to extend [the GTE] brand into other states where we don't have local services." (*WorldCom, Inc., Petition for Consent and Approval to Acquire All Outstanding Shares of Stock of MCI Communications Corporation*, Transcript of Proceedings (Vol. I), West Virginia Public Service Commission Case No. 92-0347-SWF-CN (June 25, 1998) (excerpt attached to MCI WorldCom's Comments), at 121, 123.) GTE also "indicated a desire to enter the local market" in New York. (Opposition of the Competitive Telecommunications Association, at 5, citing *Petition of Bell Atlantic Corporation for Approval of Agreement and Plan of Merger with GTE Corporation*, New York PSC Case No. 98-C-1443 (filed Oct. 2, 1998), at 3, n.2.)

40. *Id.*

applied for CLEC operations in Virginia, only to withdraw it the day before the merger was filed.⁴¹ GTE also made various public statements, prior to the merger's announcement, that its plans for expansion as a CLEC were not dependent on merging with another large ILEC.⁴²

33. The Applicants' responses to these facts attempt to diminish GTE's capabilities as a potential competitor. For example, the Public Interest Statement describes the pre-merger GTE as "dispersed" and "serving primarily suburban and rural customers and a few major urban centers." Yet, in the next sentence, the Applicants portray the post-merger entity as achieving "a nationwide footprint that includes the urban areas and financial centers of the Northeast and *key locations in or near the territory of every other RBOC.*"⁴³ The Applicants do not offer a satisfactory explanation for how GTE's "dispersed" rural and suburban customers and "a few major urban centers" are transformed into "key locations in or near the territory of every other RBOC" simply by virtue of its combining with Bell Atlantic.⁴⁴

41. Competitive Telecommunications Association Opposition, at 5, citing Kissell, at ¶ 15, and Stallard, at ¶ 4.

42. "We're confident about GTE's ability to succeed in the competitive marketplace without entering into a major transaction or combination with another company. In other words, we can go it alone and win." GTE 1997 Annual Report, available at www.gte.com/AboutGTE/annual1997/message1.html.

43. Public Interest Statement, at 9 (emphasis added).

44. Affiant Hubert Stallard of Bell Atlantic says of GTE:

Prior to GTE's withdrawal of its application for certification, GTE and Bell Atlantic signed an interconnection agreement in Virginia. It was one of 31 competitors to have done so. But unlike the 22 other companies that actually have entered the market, GTE never took any further steps to compete. To the contrary, all it did was sign an interconnection agreement virtually identical to an agreement negotiated between Bell Atlantic and another carrier.

I am not aware of anyone at Bell Atlantic who has perceived GTE as a serious potential
(continued...)

34. In fact, it is extremely difficult to accept the Applicants' portrait of GTE as the Rodney Dangerfield of the telecommunications industry — backward and provincial, despite its national presence; unfamiliar to major corporations, despite already having a vendor/customer relationship with many large businesses; unmotivated or ineffectual at launching CLEC efforts in various states, including Virginia and Pennsylvania, despite its success at running a 21.5-million-access line, \$23-billion telecommunications corporation with a return on equity consistently over 35%.⁴⁵

35. GTE's presence within and adjacent to markets already served by Bell Atlantic gives the Applicants the potential to compete with each other. If Bell Atlantic had expanded on its own to serve all or some of the out-of-region ILEC markets it claims the merged entity will serve, it would likely have extended its coverage to serve customers (especially large business customers) located in GTE suburban territories near large urban areas in California, Florida, and Texas, among others. As others observed, Bell Atlantic and GTE are potential competitors (particularly in their contiguous areas): “[j]ust as GTE can compete for large business customers that are in

44. (...continued)

competitor, particularly compared to the many well-run and well-capitalized companies that already are actual competitors....Had GTE chosen to do more than sign an interconnection agreement, its entry would have been insignificant to existing actual competition. (Stallard, at ¶¶ 19-20.)

A similar claim is made with respect to GTE's Pennsylvania interconnection agreement in Mr. Whelan's Declaration, at ¶¶ 7-8.

However, in their Public Interest Statement the Applicants say: “These plans [i.e., the 21-city venture] build on GTE's demonstrated interest in entering the local markets of *the other RBOCs*. (Public Interest Statement, at 7, emphasis added.) The Applicants fail to explain why GTE is only interested in competing with RBOCs other than Bell Atlantic. *See also*: Mayo/Kaserman (AT&T), at ¶ 51.

45. GTE 1997 Annual Report; AT&T Comments, at 11, referencing GTE's 1997 10-K at 15 as the source for the following GTE returns on equity: 36.5% in 1997, 38.1% on 1996, 37.9% in 1995, and 46.2% in 1994.

Bell Atlantic's service area, Bell Atlantic can similarly compete for the business of the same kinds of customers located in or near GTE's service area. It can hardly be argued that Bell Atlantic lacks name recognition among such customers, or that these customers have doubts about Bell Atlantic's technical capabilities that can only be assuaged through an association with GTE."⁴⁶

36. Because its territory is contiguous to GTE's, Bell Atlantic possesses several distinct advantages that would reduce its cost to expand service into those areas relative to other potential competitors. These advantages include: switches close enough to GTE's territory to use to provide service in that territory; the ability to build or lease transport facilities linking Bell Atlantic's existing territory and infrastructure with customers within GTE's area (including the ability to use remote digital loop carrier, which has a range of about 125 miles from a switch); and the advantage conferred by existing advertising in media markets that extend across territorial boundaries, providing brand recognition.⁴⁷ As AT&T observes, the Applicants themselves claim that successful entry can only occur when a carrier possesses "truly proximate facilities" to the area being entered.⁴⁸ This describes the relationship between Bell Atlantic's existing facilities and GTE's existing serving territories.

37. With regard to the issue of their "actual potential competitor" status in each other's operating territories, the Applicants have commented on the speculative nature of the evidence that goes to this determination, in the absence of specific information showing that plans were, in

46. Besen/Srinagesh/Woodbury (Sprint), at 37.

47. *See*: AT&T Comments, at 24.

48. *Id.*, at 25, citing Public Interest Statement, at 7.

fact, being made for such entry.⁴⁹ This criticism belies the fact that the Applicants' own public interest showing is itself constructed entirely from speculative promises (which, for the most part, cannot be enforced) and predictions (which cannot be verified in advance). As the Commission has recognized, the judgment about each of the Applicant's intentions and its potential to enter the other's region as a formidable competitor cannot be made entirely based on the analysis of current and known conditions, since the market in question is in considerable flux.⁵⁰ As the FCC has stated, in distinguishing between the analytical framework addressed in more typical applications of the *Horizontal Merger Guidelines* and the somewhat more fluid framework that must necessarily apply to the analysis of the competitive effects of ILEC mergers:

In some cases, however, the transaction will have a greater effect on future, rather than present, market performance. This is especially true if a merger may be a strategic response to declining entry barriers, in which an incumbent firm is seeking to avoid competition by eliminating a potentially significant future competition. *In the case of local telecommunications markets, competition is only now emerging and a merger between a current monopolist and one of the new competitors may have a substantial adverse impact on future market performance even though the new competitor currently has only a small number of customers.*⁵¹

38. Whether their entry can be shown to have been imminent or whether it would have been somewhat more remote in time, the fact remains that the threat of competitive entry by either of these ILECs into the other's home region would shape the competitive performance of both the ILEC and other entrants. In its *BA/NYNEX Merger Order*, regarding its interpretation of the

49. Public Interest Statement, at 26.

50. The FCC determined that "[i]t is, however, precisely because such competition is just beginning at this time and uncertainties exist that care in evaluating the potential impact of mergers in evolving markets is crucial to ensuring the development of a procompetitive, deregulatory national telecommunications industry structure." *BA/NYNEX Merger Order*, at ¶ 41.

51. *BA/NYNEX Merger Order*, at ¶ 96 (emphasis added).

potential competition doctrine, the FCC stated that “there is case law holding that such entry must be certain” and that “[w]e choose, however, to follow the larger and, in our opinion, more reasonable line of cases holding that entry need only be reasonably likely.”⁵²

39. The Commission should also consider the effect on other new and potential CLEC entrants, in assessing the overall impact of the merger on competition in the home region. The sheer size of the Bell Atlantic/GTE megaILEC, whose in-region market dominance will be fortified by even greater financial/managerial/technical/customer resources and scope of operations, is likely to deter some CLECs who have previously considered or committed to entering one or more of the GTE or Bell Atlantic markets.⁵³ Moreover, Bell Atlantic/GTE will confront more intense financial pressure than ever before to protect its dominance in the consolidated home region, in order to protect the stream of noncompetitive service revenues that are necessary to provide the financial stability underlying its new, risky out-of-region venture.

Bell Atlantic and GTE clearly do possess unique advantages as potential entrants in each other's regions

40. In seeking to minimize their pre-merger capabilities relative to other CLECs, the Applicants raise a series of unconvincing defenses. The Applicants' self-portrait intentionally overlooks the unparalleled experience that these companies, as ILECs, have acquired through their century-long monopoly as providers of local exchange and exchange access services, and

52. *Id.*, at footnote 260, cites omitted.

53. Rather than expanding competition, the prospect of entry by the \$53.5-billion “Bell East” may also discourage some CLECs from entering the 21 out-of-region markets targeted by the Applicants. In the section of this Affidavit addressing the claimed benefits of the merger, we further address the Applicants suggestion that their expansion will jump-start local competition in out-of-region markets.

cannot be reconciled with their extreme confidence in the proposed post-merger expansion. As the FCC previously found with respect to Bell Atlantic, ILECs have “substantial experience serving mass market customers of local exchange and exchange access services.” Also, as the FCC recognized, “an incumbent LEC entering an out-of-region local market would bring particular expertise to the interconnection negotiation and arbitration process because of its intimate knowledge of local telephone operations.”⁵⁴ GTE’s position as an incumbent LEC is further enhanced by already possessing extensive interLATA capabilities. As MCI affiants Baseman and Kelley observe with regard to broadband and data services, “as an established nationwide Internet player, GTE has an interest in using its considerable expertise as a local exchange carrier to induce other ILECs to open their networks to allow broadband competition to develop rapidly.”⁵⁵ Consumers seeking competitive alternatives will reap far greater benefits in an environment in which ILECs compete, rather than simply combine.

41. The RBOCs and GTE (the only independent ILEC of comparable size) are uniquely positioned to bootstrap their monopoly local service relationship with national companies headquartered or otherwise maintaining telecom-intensive operations within the ILEC region into out-of-region markets. This special near-monopoly relationship with large national/multinational customers differs qualitatively from the major accounts relationship that large corporations have with the large IXCs because, unlike for local services, large customers can easily migrate among various competitive suppliers of long distance service. No IXC today enjoys a monopoly relationship with any of its customers, large or small. Also, the unique advantages that GTE and Bell Atlantic derive from their incumbency will not abate any time soon.

54. *BA/NYNEX Merger Order*, at ¶ 107.

55. Baseman/Kelley (MCI), at ¶ 89. We discuss issues related to the provision of Internet and other data services in more detail subsequently in this Affidavit.

42. Moreover, for competition not only to emerge but to endure in the long run, there must be “committed entry,”⁵⁶ whereby entrants are prepared to make a substantial up-front investment which they risk not recovering. “Firms considering entry that requires significant sunk costs must evaluate the profitability of the entry on the basis of long term participation in the market, because the underlying assets will be committed to the market until they are economically depreciated.”⁵⁷ The ILECs have ubiquitous investment, which they have largely depreciated while relying on a highly predictable (indeed, virtually guaranteed) revenue flow from noncompetitive services. By contrast, when CLECs raise capital in order to deploy network operations and facilities, they do so without the advantage of a monopoly customer base.

The elimination, through merger, of all other viable competitors should not be the *quid pro quo* for existing large ILECs to commit to out-of-region entry

43. Neither the Applicants nor those who have filed in their support make a compelling showing that the merger is necessary for their businesses to compete for customers beyond their present ILEC operating territories. The theory that Bell Atlantic and GTE lack the financial resources, know-how, or motivation to be a CLEC out-of-region does not stand up to serious scrutiny. As the affidavit filed by Dr. Stephen Levinson for AT&T clearly demonstrates, each of these large ILECs would be able, on their own, to raise the necessary capital for expansion.⁵⁸ Further, as MCI notes, “[f]or new local entrants without a monopoly base, every region is out-of-

56. As stated in the 1992 Guidelines, committed entry “is defined as new competition that requires expenditure of significant sunk costs of entry and exit.” *1992 Horizontal Merger Guidelines*, 57 Fed. Reg. 41552, at § 3.0.

57. *Id.*

58. Levinson (AT&T), at ¶¶ 10-11.

region, and if CLECs can afford to compete in areas where they do not have a monopoly, then so too can Bell Atlantic and GTE.”⁵⁹

44. Even with respect to GTE, the smaller of these two major ILECs, these claims are unconvincing. GTE’s Mr. Kissell identifies four CLEC “key capabilities” — substantial up-front investment in platform development; contracting with new local and wireless vendors; some facilities-based services; and brand awareness.⁶⁰ Of these four, however, Mr. Kissell himself only argues that GTE lacks and/or does not have sufficient resources to obtain the last one (brand awareness) on its own.⁶¹ Additionally, Mr. Kissell claims that GTE lacks a customer base in out-of-region territories.⁶² While Mr. Kissell focuses on GTE’s alleged deficiencies, elsewhere in their filing, the Applicants underscore GTE’s “expertise, facilities, and determination to be a vibrant competitor.”⁶³

45. Indeed, using its own criteria, GTE is, in fact, in a stronger position than many other potential competitors. GTE’s financial stability as an ILEC, reflected in its extraordinary earnings over recent years, virtually ensures that it could raise the capital necessary to fund the “up-front” investments in platform development and facilities to provide local service.⁶⁴ GTE’s unique experience as an ILEC in constructing and operating local networks should benefit this

59. MCI Comments, at 14.

60. Kissell (GTE), at ¶ 5.

61. *Id.*, at ¶ 6.

62. *Id.*

63. Besen/Srinagesh/Woodbury (Sprint), at 34.

64. Levinson (AT&T), at ¶ 11.

deployment. As an ILEC, GTE should, in fact, have extensive experience with negotiating contracts for interconnection. Its experience with negotiating from the ILEC perspective should be of benefit when on the other side of the negotiating table. Finally, there is not even any solid evidence supporting GTE's claim that it lacks brand-name recognition in the business market or even among residential customers. The Applicants themselves have stated that their strategy relies in part on GTE's "national presence" to make their venture a success.⁶⁵ As to GTE's concern about its lack of large out-of-region customers, as Sprint's affiants observe, GTE can successfully market to these big businesses.⁶⁶

46. Bell Atlantic has failed to demonstrate that it needs this merger to "enable" it to enter markets and serve customers beyond its home region. GTE states that "Bell Atlantic cannot reach these customers alone because it lacks the facilities, platform capability, and marketing and distribution channels required to reach so far beyond its concentrated franchise."⁶⁷ However, as other parties have observed, if relationships with existing customers are vital to entering new territories, there is little to prevent Bell Atlantic from expanding outside its region, following its core high-margin business customers, even if it requires operating on a non-facilities basis until Bell Atlantic is sufficiently "established" in another region to warrant investment in switching and other facilities. Indeed, the framework established by the Act and the Commission specifically envisions competition via resale and unbundled network elements in markets where immediate investment in facilities may not be feasible. To the extent that Bell Atlantic considers competition

65. Public Interest Statement, at 7.

66. Levinson (AT&T), at ¶ 11.

67. Kissell (GTE), at ¶ 8.

impossible, it is because “the incumbent LECs have successfully thwarted the market-opening requirements of the Act — a fact that this merger will do nothing to change.”⁶⁸

47. What really appears to be going on here is a bid by these large ILECs to hold out for unstoppable market dominance as a condition of promising to “compete.” If one believes the Applicants’ contention that even Bell Atlantic — the largest ILEC in the country with more than 40-million access lines and a territory that includes the principal centers of commerce and government — could not compete successfully outside of its region, then who will be left to compete with BA/GTE (or with SBC/Ameritech, for that matter) once these two megaILECs are created? If the Applicants’ assessment of the minimum viable scale for out-of-region local entry is to be believed, then the *only* real potential non-niche competitor in the expanded BA/GTE footprint would be SBC/Ameritech. And in view of the fact that for the past fifteen years, since the 1984 break-up of the former Bell System, *none of the Baby Bells have competed with each other or with GTE for core wireline local services*, it is difficult to imagine, under the *duopoly* condition that will prevail following the two currently-pending mergers, that these two giants will really want to take each other on rather than remain comfortably within their own home territories. Thus, if the Commission accepts the Applicants’ contention that even the existing Bell Atlantic is smaller than the “minimum viable scale” needed to effectively compete, then the prospects for real competition in local telecommunications are indeed gloomy at best.

48. In this same vein, although there are many reasons to be skeptical that BA/GTE and SBC/Ameritech will actually complete the ambitious out-of-region CLEC ventures that they describe in the Applications, we also have analyzed the likely impact on competition under the Applicants’ own view of the future industry structure. Of the 21 out-of-region entries promised

68. AT&T Comments, at 50.

by BA/GTE, nineteen take on SBC either as the incumbent or as the other major CLEC.⁶⁹

Similarly, of the 30 out-of-region markets SBC/Ameritech says it will target for entry, 20 are markets in which it would face off against BA/GTE as either the incumbent or the other viable CLEC.⁷⁰ If, as the companies both insist, competition is not viable except on the massive scale their respective mergers would permit, the level of competition in all of the locations where these two megaILECs face off will be confined to a noncompetitive duopoly.

49. It is indeed curious that only now, after fifteen years of their existence, the RBOCs are first beginning to talk about competing with each other. For these fifteen years, the Baby Bells have been engaging in what amounts to market allocation, tacitly or overtly (it doesn't really matter) agreeing (or acting as if there was an agreement) not to compete with each other in their respective core local wireline service markets. In both this and the SBC/Ameritech Applications, the parties "promise" to compete with each other and with other ILECs, albeit on a limited basis, if their transactions are permitted to go forward. This is, of course, something that they should have been doing all along, and neither has offered compelling evidence that such competition has not been possible up to now. The Applicants here and in the SBC/Ameritech case should have been competing in out-of-region local markets all along, and should certainly not be rewarded for practicing market allocation by now being permitted to become even more powerful and concentrated on the entirely unenforceable promise that if the mergers are allowed they will cease such practices. Before approving these consolidations, the Commission should first satisfy itself as to exactly why no direct competition among ILECs has yet occurred. Further, in assessing the probable impact of these mergers on competition, the Commission

69. Eleven of BA/GTE's CLEC targets are in SBC/Ameritech territory, and eight are in markets in which it would confront SBC as the other major CLEC.

70. Twelve of SBC's targets are served by BA/GTE as ILECs, while there are eight markets where SBC would confront BA/GTE as the other major CLEC.