

should consider whether the pattern of market allocation that has existed under an 8-firm market structure is going to improve, or rather be exacerbated, under a two-firm market structure.

50. In fact, and contrary to what the Applicants promise to achieve, retaliatory out-of-region local entry is far more likely to occur in an industry with less concentration and more players. The Commission's experience with the cellular duopolies bears this out: Until the arrival of PCS and the presence of multiple wireless competitors in the same market area, the two cellular licensees in each MSA or RSA, who were often both affiliates of RBOCs or their descendants, virtually never competed with each other on price. If the national local service market is to be carved up between BA/GTE and SBC/Ameritech and a handful of smaller players who may well be engulfed by one or the other giants in the future, the Commission will need to dust off its dormant regulatory machinery, since competition will cease to be a factor in the local service market.

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

51. The Applicants claim that their merger and accompanying out-of-region expansion will increase not only local competition but also competition for long distance services and the "bundled" offering of local and long distance service. The Application discloses (albeit in no detail) that Bell Atlantic "hopes to have needed Section 271 approvals by the time this merger closes" and further states that if "that process is not complete, applicants will request any necessary transitional relief from the Commission."⁷¹ As a threshold matter, we agree with what

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

numerous parties have argued at length:⁷² Bell Atlantic has not obtained (or even applied for) any authorization from the Commission to offer the in-region interLATA services that are the foundation for its out-of-region expansion.

52. Moreover, although GTE's provision of long distance services is not legally dependent on its compliance with the terms of Section 271, its poor performance to date in implementing the competitive mandates of Sections 251 and 252 of the Telecommunications Act should be considered with respect to its desire to leverage its existing long distance network and Internet backbone by merging with Bell Atlantic. For example, although the Micronesian Telecommunications Corporation ("MTC," GTE's operating affiliate in the Mariana Islands) "has received at least two interconnection requests from prospective CLECs," it "has yet to enter into an interconnection agreement" with any potential competitor.⁷³ An even more pervasive and egregious pattern of anticompetitive behavior is described by Joyce Beasley, who recounts a wide array of practices used by GTE to complicate and delay negotiations between GTE and AT&T to establish terms and rates for interconnection, access to UNEs, and wholesale services. Ms. Beasley concludes that far from the inherent nature of its rural and suburban operating territories, it is "GTE's actions [that] have blocked effective competition in its local markets, denying consumers the improved service, lower prices, and other benefits that competition can provide."⁷⁴ Finally, Kevin Brauer, the President of Sprint's National Integrated Services organization,

72. *See, e.g.*, Comments of Cablevision Lightpath, Inc.; Opposition of the Competitive Telecommunications Association, at 10-11; Comments of AT&T, at 37-41.

73. Petition to Condition Grant of the Commonwealth of the Northern Mariana Islands, at 16.

74. Beasley (AT&T), at 2. *See also* Comments of Freedom Ring Communications, LLC d/b/a BayRing Communications (at 11), which has found that "[w]hile the Act sets out a swift negotiation schedule for achieving such agreements, GTE has perfected methods to make these negotiations difficult, protracted, and costly."

describes what he considers several of the “numerous issues of operational parity that Sprint continues to fight with GTE on a daily basis and that GTE has still not resolved.”⁷⁵ While GTE does not have the same legal incentive as Bell Atlantic, it has the same obligations with respect to interconnection. GTE’s poor performance with regard to implementing the procompetitive requirements of the Act should not be rewarded by bolstering its market power as a result of compounding GTE’s incumbency advantages with those of Bell Atlantic.

53. The Applicants contend that the merger will enable them to deploy “a new national long distance network to compete with the Big Three facilities-based providers.”⁷⁶ The alleged “dearth of long distance networks that are truly national in reach,”⁷⁷ pales in significance to the actual dearth of fully developed local networks serving any particular exchange service market.⁷⁸ Moreover, the merger will not increase the number of national long distance competitors: GTE Long Distance already provides and markets services nationwide, and has reported strong revenue growth for its long distance business.

54. Most importantly, however, serious anticompetitive consequences will flow from permitting Bell Atlantic, through its merger with GTE, to participate in the bundled services market before there is effective competition for local exchange and exchange access service. Competition for a “bundle” of services depends on competition for every piece of that bundle and

75. Brauer (Sprint), at 17.

76. Public Interest Statement, at 3.

77. *Id.*, at 3-4.

78. For that matter, if this merger and that of SBC/Ameritech were both to be approved, the the “count” of RBOCs plus GTE would, since 1996, have fallen from eight to four.

is, in particular, dependent on competition for the “weakest link,” i.e., the local portion of the bundle.⁷⁹

55. As Drs. Mayo and Kaserman point out, the suggestion that the combined Bell Atlantic/GTE entity will be only one of several firms competing, and will therefore enhance rather than impede competition in the “developing national market” for bundled services, “fails to recognize that the pace at which competition grows in this emerging market is critically dependent upon the behavior of the ILECs in providing essential inputs to new entrants on non-discriminatory terms (including both price and quality).”⁸⁰ We also agree with Drs. Mayo and Kaserman that the two ILECs working together have an even greater ability to harm new entrants through discriminatory and exclusionary behaviors than either ILEC would have operating independently.⁸¹ Other parties also criticize the proposition that the merger is more beneficial than harmful to the prospect of developing competition for bundled services.⁸²

The Applicants’ interpretation of changes in stock prices fails to demonstrate that the merger would be procompetitive

56. To further bolster their claims that the merger they propose will increase competition nationally, the Applicants produce the affidavit of Dr. Thomas Hazlett, who presents an analysis of stock prices of selected telecommunications firms on the day of and in days surrounding the

79. Baseman/Kelley (MCI), at ¶ 75.

80. Mayo/Kaserman (AT&T), at ¶ 6.

81. *Id.*, at ¶¶ 6-7, 30-31, 34.

82. *See, e.g.*, Baseman/Kelley (MCI), at ¶¶ 74-75; Signoff (Sprint).

merger announcement.⁸³ Dr. Hazlett takes the position that if the stocks of potential competitors went down on the day the merger was announced, the merger is good for competition (because the market has perceived the merged firm as a better competitor). Conversely, he says, “where a merger results in less competition between firms in a given industry, this prospect will increase profits anticipated by both the merging firms and their rivals -- an effect which should be signaled by positive returns to shareholders at the time news of the merger hits the market.”⁸⁴ One criticism of Dr. Hazlett’s methodology is the fact that stock prices are affected by a host of factors, ranging from the corporate to the national level. Interpreting a given day’s change in a stock price as caused by any single event is, at best, somewhat speculative.⁸⁵

57. The market could well be indicating something very different from what Dr. Hazlett concludes. Indeed, the three IXCs whose stock prices were studied by Dr. Hazlett have made serious attempts to enter the local market, including regions controlled by Bell Atlantic and GTE, and have faced serious difficulties in their endeavors. The financial markets may well perceive the prospect of having these ILECs unite and fortify their control of local markets as having negative repercussions for the long-term financial outlook of these companies. Also, significant vertical relationships between Bell Atlantic/GTE and the IXCs, overlooked by Dr. Hazlett, make the observed decline in stock prices “entirely consistent with ... [the conclusion that] the combined entity would increase the extent to which it attempts to foreclose rivals.”⁸⁶ The Affidavit of Mr. Baseman and Dr. Kelley further confirms that any number of explanations provide equally plausible

83. Hazlett (BA/GTE), at ¶¶ 3-7.

84. *Id.*, at ¶ 5.

85. Baseman/Kelley (MCI), at ¶ 106.

86. Besen/Srinagesh/Woodbury (Sprint), at 21-22.

interpretations of Dr. Hazlett's observed stock price movements. They observe, for example, that the decline in stock price of the large IXCs could well have resulted from the perception that they "will suffer from increased exclusionary behavior that harms both [them] and consumers."⁸⁷ We agree with their conclusion that the change in the stock prices observed would be equally "consistent with both anticompetitive and procompetitive interpretations of the merger, and therefore is of no use in distinguishing between the theories."⁸⁸

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

58. In-region customers of noncompetitive services would almost certainly experience additional harm due to the merger because the combined company would fortify their market power with which to thwart the development of local competition. This is particularly the case in GTE's territories, where as we have already noted competitive entry severely lagged. Compared with a national average CLEC penetration via UNEs and resale of about 1.5%,⁸⁹ CLECs in GTE's areas serve only about 0.6% of lines via those methods. Although it has the legal obligation to do so, GTE has no real incentive to open its network to CLECs. Lacking the carrot of Section 271, GTE has no reason whatsoever to adopt systems and practices necessary to make competition feasible.

87. Baseman/Kelley (MCI), at ¶ 110.

88. *Id.*

89. Calculated based upon the percentage of total lines either provided for resale or sold as UNE loops, FCC Second Local Competition Survey.

59. The merger application seems to present the view that the proposed merger will not diminish local competition in GTE's operating territories simply because, by the very nature of those territories, it is highly unlikely that competition will ever develop there. Described as "predominantly rural or suburban and dispersed service territories,"⁹⁰ the application concludes that neither Bell Atlantic (nor other potential entrants) will likely find GTE territories appealing, and that Bell Atlantic therefore cannot be considered a potential competitor of GTE. Given the procompetitive goals of the Act and the Commission, however, the poor competitive showing in GTE's territory to date mandates a re-examination of policies to spur greater competition there, not the removal of Bell Atlantic, one of the most likely potential competitors, an ILEC operating directly adjacent to a number of GTE territories (including those within Virginia and Pennsylvania).

60. Hawaii is particularly vulnerable to setbacks in achieving local competition: GTE serves as the sole incumbent local exchange carrier, and thus unlike other states where the existence of several ILECs enables state PUCs to benchmark ILEC performance in eliminating barriers to entry (e.g., Ohio, where the PUC can compare the performance of, among others, Ameritech, GTE, and Cincinnati Bell), the Hawaii Commission must rely critically upon GTE's cooperation in opening its market to local competition. This reliance is important given GTE's so-far unsatisfactory record of opening its network to competitors in Hawaii. GTE currently provides 109 lines at wholesale rates for total service resale, or 0.016% of some 704,000 access lines in the state.⁹¹ The percentage of residential lines served through the resale of GTE lines is likely far less or non-existent.

90. Public Interest Statement, at 30.

91. FCC Second Local Competition Survey.

61. Following the merger announcement, several actual or potential competitors have voiced strong concerns that the merger could well eliminate the possibility of increasing that percentage over time. For example, GST Telecom Hawaii stated that “GST’s experience thus far indicates that GTE is not particularly committed to opening the local exchange market in Hawaii to competition. A relevant question to address is the extent to which GTE will become more or less devoted to meeting its statutory and contractual competitive obligations.”⁹² The Commonwealth of the Northern Marianas, which GTE serves, has voiced similar concerns. The Commonwealth expresses the concern that “[i]f the proposed transaction is allowed to close, Bell Atlantic’s substantial size and resources will only solidify GTE’s existing monopoly in the Commonwealth” thus preventing consumers from receiving the benefits of competition.⁹³ Similarly, the Texas Public Utilities Commission reports that “[t]wo CLECs have indicated difficulty...doing business with GTE-SW.”⁹⁴ The Texas PUC reports that it has found “no significant competition and no convincing evidence that GTE-SW has met the requirements of FTA §251.”⁹⁵

92. Application of GTE Corporation and Bell Atlantic Corporation For the Expedited Approval to Transfer Control of GTE Corporation to Bell Atlantic Corporation, *GST Telecom Hawaii’s Motion to Intervene*, Hawaii PUC Docket No. 98-0345, October 21, 1998, at 4.

93. Petition to Condition Grant of the Commonwealth of the Northern Mariana Islands, at iii.

94. Comments of the Public Utility Commission of Texas, at 6.

95. *Id.*, at 7.

IV. OTHER CONSUMER AND COMPETITIVE HARMS RESULTING FROM THE MERGER

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

62. Like SBC and Ameritech, the current merger proponents, Bell Atlantic and GTE, unabashedly count on the merger synergies to allow them to pursue competitive ventures, when the vast majority of those synergies derive directly from the ILECs' noncompetitive businesses. A direct example of this can be seen with the Applicants' plan with respect to GTE Communications Corporation, which currently offers telecommunications (including long distance), data, and Internet services and is building a new network — "Global Network Infrastructure" or "GNI" — to offer Internet backbone service and advanced data services.⁹⁶ The Applicants claim that because "the merged company will benefit from a larger pool of resources and cost efficiencies stemming from the combination, it can accelerate GTE Communications Corporation's (GTECC) transition from resale to a facilities-based service."⁹⁷ While the prospect of more facilities-based competition could be a positive development, this is not the case if the means for achieving this investment is the ability, possessed exclusively by such megalecs as BA/GTE, to tap into a stream of monopoly revenues, augmented by merger synergies that derive from the ILECs' noncompetitive businesses.

63. The Applicants' failure to demonstrate if, when, and how they intend to flow through any share of the anticipated \$4.5-billion in annual merger synergies to their home-region customers,

96. Covey (GTE), at ¶¶ 1-2.

97. Kissell (GTE), at ¶ 12. (GTECC currently resells WorldCom's capacity. Covey (GTE), at ¶ 3.)

combined with their ambitious business plans, is strong evidence of their intention to use home-region funds, personnel and other resources whose existence is directly linked to the Applicants' protected monopoly regulated operations, to compete in new markets, without requiring that the new competitive ventures compensate the monopoly ILECs for the economic value of these resources. Use by the Applicants of book and non-book assets acquired under protected monopoly conditions and underwritten by captive ratepayers without adequate (or any) compensation constitutes cross-subsidization of the competitive activities by monopoly activities, which clearly violates Section 254(k) of the federal 1996 Act. Section 254(k) expressly requires that a "telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition." The Commission's enforcement of this prohibition is key to protecting the competitive viability of other providers (of local, long distance or Internet services) who, unlike the ILECs, cannot tap into an embedded base of customers of noncompetitive services or other resources acquired under protected monopoly status as a means for obtaining "synergies" that would allow them to cut prices for, or otherwise bootstrap the development of, competitive services. Because the Applicants' plans indisputably depend on their ability to use the synergies derived from noncompetitive businesses to support competitive ventures, their proposal is inconsistent with the procompetitive policies that Section 254(k) seeks to protect.

The Applicants' incentive to achieve their projected merger synergies will impose risks to consumers in Bell Atlantic's new home region

64. The Applicants indicate that they will reduce costs by eliminating duplicative staff and information and operation systems, using long distance capacity more efficiently, and reducing their procurement costs, and that they will achieve revenue increases through the deployment of operational best practices, the penetration of vertical services, and the deployment of long-distance

and distributed data services.⁹⁸ The Applicants have a compelling economic incentive to achieve the annual merger synergies of \$4.5-billion that they project will result from the proposed transaction. The Applicants intend to rely on the merger synergies to “provide the resources to fund many of the competitive initiatives” that they describe in their application.⁹⁹ Furthermore, “Bell Atlantic and GTE have publicly committed to Wall Street analysts and their investors that they will achieve these financial efficiencies” which include \$2.5-billion in cost savings and \$2.0-billion in revenue enhancements.¹⁰⁰ The Applicants, however, have provided negligible information as to how these synergies will be achieved, and as to the impact of the cost-cutting measures and the competitive ventures on staffing and capital investment resources for home-region, regulated operations.¹⁰¹

65. The consolidation of operations and the procurement savings resulting from greater purchasing power are two ways that the Applicants indicate that they will reduce costs. Another way to cut costs would be to allow service quality in less competitive markets to deteriorate.

98. Toben (Bell Atlantic), at ¶ 3.

99. Public Interest Statement, at 4.

100. Toben (Bell Atlantic), at ¶ 4.

101. Proxy statements sometimes provide additional detail as to the impact of the merger on the operations of the merging companies. However, unlike SBC and Ameritech, which completed their Joint Proxy Statement in June 5, 1998, well before regulatory proceedings on that proposal began, Bell Atlantic and GTE apparently have not yet furnished their Joint Proxy Statement to their respective stockholders. The Applicants indicate their intention to mail the Joint Proxy Statement. (Agreement and Plan of Merger Dated as of July 27, 1998 among Bell Atlantic Corporation, Beta Gamma Corporation and GTE Corporation (Agreement), at 40.) To the best of our knowledge, the Applicants’ Joint Proxy Statement is not yet available for public review. The absence of this filing limits regulators’ and parties’ access to timely and relevant information about the pending BA/GTE merger, and particularly access to information that includes the Applicants’ representations to their shareholders (as opposed to representations to regulators).

Although the Applicants contend that service quality will improve as a result of the merger,¹⁰² they provide no specifics about which services and which classes of customers will benefit from the anticipated improvement or which regions within their newly enlarged territory the Applicants will target for service improvement. The enlarged company, in its eagerness to woo and to retain large business customers, may well focus its operational and customer assistance service quality efforts on urban customers with large telecommunications demands and overlook other consumers' needs. In the absence of widespread competition in the local exchange market, a carrier does not have an economic incentive to install residential lines in a timely manner, to address trouble reports for customers in rural areas, or to maintain service quality generally for customers without an opportunity to change suppliers. The Applicants have provided no compelling evidence of their economic incentive to maintain or to improve service quality for residential customers and/or for customers in regions of the country with the least prospect for competitive alternatives.

66. The merger would exacerbate existing service quality problems. For example, the Public Utility of Commission of Texas indicated that GTE-SW "has one of the worst customer complaint records of any of the local telephone companies in [its] jurisdiction"¹⁰³ and expressed a concern that the merger could divert resources away from efforts to improve GTE-SW's network. Furthermore, existing service quality standards and penalties are likely inadequate to detect and to prevent the deterioration of service quality provided to residential customers.

102. *See, e.g.*, Toben (Bell Atlantic), at ¶ 5.

103. Comments of the Public Utility Commission of Texas, at 3.

The merger would diminish the ability of regulators, competitors and consumer to benchmark ILECs' performance, thus leading to a loss of innovation, service quality, and competition

67. The proposed merger would diminish significantly the benchmarking ability of regulators, competitors and consumers. The continued separate home-region operation of these two companies as well as the separate entry of Bell Atlantic and GTE into out-of-region markets would provide invaluable benchmarking information for which there is no comparable source. In a market facing effective competition, suppliers of wholesale and retail services have an economic incentive to push the envelope on price, variety and quality because consumers can compare the performance of alternative suppliers, and choose accordingly. In the absence of such competition in the local wholesale and retail market, information about ILECs' differing ways of providing service to CLECs and to customers is valuable to those purchasing the wholesale and retail offerings as well as to the regulators who are charged with monitoring the adequacy of such transactions.

68. While Bell Atlantic and GTE are not presently supplying the same local service in the same geographic market, they are providing the same service in different areas, and share a common requirement to open their networks to competitors. Absent a merger, regulators and competitors can compare Bell Atlantic's proposals to unbundle its network with GTE's proposals to meet the same regulatory requirements. The ability to compare Bell Atlantic's and GTE's efforts at complying with requirements to open up their markets to competition assists competitors and regulators in assessing the sufficiency of their respective efforts, whether those efforts entail assertions as to OSS flow-through rates, UNE costs, ILECs' staffing commitments for their interactions with CLECs, or installation intervals for services supplied to CLECs. As Messrs. Henry and Trofimuk observe:

MCI WorldCom can use, and does use, the willingness or ability of one ILEC to provide a service on particular terms and conditions when it bargains with another ILEC for the same arrangement. For example, MCI WorldCom uses its experience with other ILECs when an ILEC claims that it is not technically feasible to provide a service or capability that another ILEC provides to MCI WorldCom, or that a price proposed by MCI WorldCom is unreasonably low even though other ILECs provide the same capability or service at the same price.¹⁰⁴

69. Customers also benefit from benchmarking. In the late 1980s, when ILECs were beginning to offer ISDN, consumers and regulators, as they evaluated these new offerings within any particular jurisdiction, were informed by the pricing and deployment strategies of other ILECs. Similarly, customers can compare the way in which Bell Atlantic offers Digital Subscriber Line (DSL) to the way that GTE offers DSL. According to Mr. Baseman and Dr. Kelley, "Rapid technological change may well be more likely in a less concentrated industry where parallel paths of innovation lead to more experimentation and a larger number of technological approaches are sampled."¹⁰⁵

70. If the local market were competitive, marketplace forces would create an economic incentive for Bell Atlantic and GTE — should they merge — to adopt the *best* of each other's practices, service variety, prices, technology, and customer service. Because there is no effective competition in either the wholesale or the retail market, and because prospects for such competition in the residential market are particularly remote, BA/GTE would have precisely the opposite incentive, i.e., to adopt the lowest common denominator in the wholesale and the retail service market. Put another way, "what is 'best practice' for the merged firm may not be that

104. Henry/Trofimuk (MCI), at ¶ 5.

105. Baseman/Kelley, at ¶ 41, footnote omitted. Also, see our discussion of the impact of the SBC/Ameritech merger on innovation which raises concerns that are equally applicable to the proposed BA/GTE merger. Baldwin/Golding Initial Affidavit (Consumer Coalition), Docket 98-141, at ¶¶ 89-90.

which advances the interests of consumers.”¹⁰⁶ Residential consumers are most at risk and face the same likely consequence as the one that Mr. Baseman and Dr. Kelley describe for interexchange carriers:

A more likely post-merger outcome is that, with loss of the benchmark, service quality will be lower on average. Neither Bell Atlantic/GTE nor SBC/Ameritech have a large economic incentive to voluntarily improve service to IXCs, who they view as actual or potential competitors.¹⁰⁷

71. Also, during this time of uneasy transition to a local market, comparing the performance of Bell Atlantic and GTE is useful not only in their home regions (in their ILEC capacity), but also as they seek individually to gain a foothold as a CLEC in out-of-region markets. The separate entry into new local markets by Bell Atlantic and by GTE would increase the flow of pertinent information into regulatory proceedings in which arbitrators and regulators are attempting to assess the feasibility and cost of interconnection arrangements, provisioning of unbundled network elements, and resale. Thus, Mr. Baseman and Dr. Kelley observe, “An out-of-region ILEC would be an extremely credible participant in these arbitration proceedings.”¹⁰⁸ As ILECs, Bell Atlantic and GTE possess unique expertise in these areas — expertise that CLECs do not have — and yet also bring differing perspectives to these issues.

72. The value of the benchmarking made possible by comparing the proposals and performance of more than one ILEC is well illustrated by the record in a recent California proceeding establishing costs for unbundled network elements and nonrecurring costs in California. The California Public Utilities Commission reached its decision, in part, by comparing the

106. Besen/Srinagesh/Woodbury (Sprint), at 47.

107. Baseman/Kelley (MCI), at ¶ 39.

108. *Id.*, at ¶ 34.

nonrecurring cost models submitted by SBC (Pacific Bell) and GTE/California, to determine the appropriate method for calculating such costs. Making that comparison provided evidence the Administrative Law Judge (ALJ) used to “reject GTEC’s nonrecurring UNE model as incomplete and not in conformance with long run incremental costing principles of OANAD.”¹⁰⁹ Based on this finding, the ALJ recommended that “Pacific’s cost model, as modified to conform with our policy objectives and to reflect appropriate GTEC specific adjustments, be used to set costs for GTEC.”¹¹⁰

73. Separate and apart from the concern over the effect of the rapidly diminishing number of ILECs on regulators’ benchmarking capabilities, there is also a legitimate concern (identified by the Commission in the *BA/NYNEX Merger Order*) that a reduction in the number of ILECs may tend to “reduce experimentation and diversity of viewpoints in the process of opening markets to competition” and “increase the likelihood that cooperation” among this already tight-knit group.¹¹¹ The FCC stated that “[f]urther reductions, however, become more and more problematic as the potential for coordinated behavior increases and the impact of individual company actions on our aggregate measures of the industry’s performance grows.”¹¹² It is fair to conclude that these changes would be detrimental to the public interest, by making the already difficult process of implementing the procompetitive mandates of the 1996 Act even more difficult to achieve.

109. *Rulemaking on the Commission’s Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks*, R.93-04-003, and *Investigation on the Commission’s Own Motion into Open Access and Network Architecture Development of Dominant Carrier Networks*, I.93-04-002, OSS/NRC Phase, California PUC Draft Decision of ALJ Walwyn (mailed Nov. 25, 1998), at 26.

110. *Id.*

111. *BA/NYNEX Merger Order*, at ¶ 152.

112. *Id.*, at ¶ 156.

V. CLAIMED BENEFITS OF THE MERGER

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

74. The Applicants contend that the proposed merger is in the public interest “because it will promote vigorous competition in telecommunications markets across the country, and make possible genuinely new services and other benefits for consumers nationwide.”¹¹³ The Applicants portray their combined entry into the local, bundled, Internet and data services, and long-distance markets as a benefit because, according to them, their participation in these markets as a merged entity will enhance competition and will enable them to roll out new products and services more quickly than they would be able to do on their own.¹¹⁴ Similarly, the Applicants contend that the merger will also enable them to offer a broader range of wireless and international services than would otherwise be possible.

75. As our previous discussions and the following section on the impact of the merger on the Internet market demonstrate, many of these outcomes, rather than representing the benefits that the Applicants allege, instead pose serious risks for consumers, the development of competition, and regulators. As we and many others demonstrate, the merger would chill rather than spur competition and innovation in telecommunications markets. In fact, there is only a small number of parties other than the Applicants themselves who perceive any benefits from the proposed merger. Such supporters are often more hopeful than substantive in describing how the proposed

113. Public Interest Statement, at 1.

114. *Id.*, at 1-4.

merger will result in the advances in employment, new services, and economic development that the Applicants have promised will result from the merger.¹¹⁵

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

76. The Applicants claim that the synergies are a major benefit of their proposed merger.¹¹⁶ However the Applicants have made no attempt to show that this benefit would flow to consumers. As Table 2 below shows, the Applicants derive the vast majority of the value of their businesses from home region incumbent LEC and adjacent yellow pages operations, and derive the vast majority of their in-region revenues and incumbency advantages from the provision of noncompetitive services to customers in their home regions. As is the case with the proposed SBC/Ameritech merger, these businesses are providing the Applicants with a way to minimize the risk to their shareholders of their competitive strategies, by relying on synergies derived primarily from their regulated monopoly operations. As we have discussed previously, there is no competitive pressure on the Applicants to flow through merger synergies to customers of noncompetitive services. The only other means of compelling this to happen would be regulation. However, the existing regulatory regimes (intrastate and interstate), unless they are modified, will not accomplish this either.

115. *See, e.g.*, Comments of Communications Workers of America (echoing claims of the Applicants, and stating that the merger is likely to stimulate the growth of telecommunications industry employment); Comments of the National Consumers League (the Applicants will pool their abilities to combat telephone fraud, and the merger will create jobs); Comments of the Competitive Enterprise Institute (which states that “the acquisition of GTE by Bell Atlantic will do little to reduce competition”); and Comments of Keep America Connected, Alpha One, American Council on Education, et. al. (which again largely echo the Applicants’ own arguments).

116. Ms. Toben states that the “public interest is indisputably advanced by the use of fewer economic resources to produce the same services.” Toben (Bell Atlantic), at ¶ 5.

Table 2		
Telco and Directory Segments Comprise the Vast Majority of the Applicants' Revenues (millions)		
<u>Bell Atlantic Business Segments</u>	<u>1997 Revenues</u>	<u>Percent of Total Revenues</u>
Telco	\$22,462	74%
Directory/Publishing	\$2,298	8%
Other Services	\$5,434	18%
Total	\$30,194	100%
Telco and Directory Combined		82%
<u>GTE Business Segments</u>		
Telco	\$13,959	60%
Directory/Publishing	\$1,507	6%
Other	\$7,794	34%
Total	\$23,260	100%
Telco and Directory Combined		66%
Sources: Bell Atlantic, GTE 1997 Annual Reports.		

77. By and large, the Applicants' provision of interstate and intrastate services in the regions that the proposed merger encompasses are regulated either under rate of return regulation or under a price cap regime. Rate of return regulation sets rates based on the costs and revenues of the ILEC in an historical test year. Most price cap regimes begin with "going-in" rate levels that are derived in this same manner. Any such historical revenue requirement (or going-in rate level) could not possibly reflect the significantly lower operating expenses and vastly enhanced revenue stream that the merger will yield, and would need to be adjusted in order to reflect these fundamental changes in the post-merger entity.

78. Similarly, the productivity factors incorporated into the federal price cap plan and those in effect in the majority of states are derived from an analysis of the ILECs' historical productivity and will fail to capture the significant productivity gains associated with these extraordinary mega-mergers.¹¹⁷ In establishing the current X factor (adopted in May 1997) at 6.5%, the FCC examined productivity-related data for the years up through 1995.¹¹⁸ Five mergers of Tier 1 ILECs have been proposed or completed since the end point of the FCC's study period used for establishing the current X factor based upon combined ILEC intrastate and interstate operations.¹¹⁹

117. In its decision that approved SBC's acquisition of SNET, the Connecticut Department of Public Utility Control (Department) explicitly recognized the Department's authority, under the statute that governs SNET's price cap regulation, to modify the price cap plan to account for the major unforeseen change resulting from SBC's merger with SNET. Connecticut Docket No. 98-02-20, *Joint Application of SBC Communications Inc. And Southern New England Telecommunications Corporation for Approval of a Change of Control, Decision*, September 2, 1998 ("*Connecticut Merger Decision*"). The *Connecticut Merger Decision* states, "[i]n the opinion of the Department, the SNET/SBC Merger is for purposes of the Alt Reg Plan an unforeseen event. ... Clearly, the proposed restructuring of SNET into separate wholesale (Telco) and retail (SNET America) functions and the proposed Merger constitute unforeseen circumstances, which at the discretion of the Department may trigger a modification of the alternative regulation plan." *Id.*, at 51-52.

118. *In the Matter of Price Cap Performance Review for Local Exchange Carriers, Access Charge Reform*, CC Docket No. 94-1, CC Docket No. 96-262, *Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262*, 12 FCC Rcd 16642 (1997) ("*Second Price Cap Performance Review*").

119. Bell Atlantic submitted its application to the FCC in support of its proposed merger with NYNEX on July 2, 1996, which the FCC approved on August 14, 1997. SBC's announced its proposed acquisition of Pacific Telesis on April 1, 1996 and consummated the merger on April 1, 1997. SBC's proposed acquisition of SNET was announced on January 5, 1998, and received FCC approval on October 23, 1998. SBC's proposed acquisition of Ameritech was announced on May 11, 1998 and is pending FCC approval as is that of the merger of Bell Atlantic and GTE, which was announced on July 28, 1998.

79. The predicted outcome of these mergers (predictions that Bell Atlantic characterizes as “hard, real, and certain”)¹²⁰ would cause real input costs to decline more rapidly (relative to economywide price levels) because the mergers reduce the costs of capital purchases and reduce operating expenses through elimination of duplication, scale, and the adoption of best practices, and would cause output to increase (due to the merged companies’ adoption of a variety of revenue enhancement techniques). Lower input costs and increased output result in increased Total Factor Productivity (TFP) relative to the historic levels upon which the existing X factor has been based.

80. Furthermore, Bell Atlantic emphasizes its confidence in its ability to achieve the predicted merger synergies of \$4.5-billion *annually*. Bell Atlantic’s Vice President and Controller states:

Still more recently, the experience with the Bell Atlantic-NYNEX merger has reconfirmed that these merger efficiencies are real. The very substantial cost savings estimated at the time of the Bell Atlantic-NYNEX merger were subsequently increased and the increased targets are being achieved. For 1998, we projected an increased expense savings of \$450 million, and we are achieving those savings. By 2000, we projected annual expense savings of \$1.1 billion; we are on track to achieve those savings. In addition, for 1998 and beyond, we projected annual capital savings of \$300 million; we are achieving those savings as well.¹²¹

81. In its most recent evaluation of the X factor, the FCC recognized but did not explicitly account for the fact that, because ILECs had relatively recently invested substantially in network improvement to enable the provision of new discretionary services, historical demand for these services did not likely capture future (and substantially greater) levels of demand. The FCC concluded that “physical measures of services should produce conservative measures of

120. Toben (Bell Atlantic), at ¶ 2.

121. *Id.*, at ¶ 7.

productivity and productivity growth.”¹²² The Applicants anticipate \$2.0-billion in revenue enhancements from “the spreading of operational best practices and penetration of vertical services like second lines; improving the value and speeding the widespread deployment of long-distance offerings; and creating better and more widely distributed data services.”¹²³ As the proposed merger is structured, however, the beneficiaries of the Applicants’ ability to increase their sale of overpriced, noncompetitive discretionary services would be the Applicants’ stockholders. Little, if any, value would accrue to the consumers who have funded the capital deployment that enables the Applicants to offer these lucrative services at negligible incremental cost.

82. In the clear absence of market discipline or regulatory realignment, the Applicants need not (and moreover have absolutely no economic incentive to) flow any of the cost savings they project through to consumers of noncompetitive intrastate and interstate services in their home regions. Indeed, the Applicants have provided ample evidence of their economic incentive to use the *annual* \$4.5-billion in merger synergies¹²⁴ to subsidize the substantial expenses and investment associated with entering new markets. Furthermore, should Bell Atlantic decide at a later date to discontinue its pursuit of these new markets, its overriding economic incentive would be to flow any remaining or ongoing synergy benefits to its stockholders. Although a theoretical possibility exists that in the distant future competition could cause “Bell East” to reduce rates for residential

122. The FCC also stated that “[w]e expect that the quantities of vertical services will increase faster than the inputs used to provide those services in the future, because the price cap LECs have only recently deployed the SS7 facilities necessary to provide vertical services widely in their networks.” *Second Price Cap Performance Review*, at ¶ 41.

123. Toben (Bell Atlantic), at ¶ 3.

124. Toben (Bell Atlantic), at ¶ 2. Ms. Toben indicates that the “transition costs of integrating the two companies” have not yet been determined. *Id.* Thus the net synergies during the early implementation years will be less.

and small business customers to reflect its reduced costs and enhanced revenue stream, the possibility is so remote as to be meaningless in the present context. Thus the risks associated with Bell Atlantic's scheme to enter out-of-region markets would be borne primarily by consumers in the enlarged Bell Atlantic home region, *distinctly not Bell Atlantic's shareholders*. By contrast, those stockholders would be the primary beneficiaries of the new business venture — should it succeed.

83. Faced with a similar situation, in its order approving SBC's acquisition of SNET, the Connecticut DPUC stated that: "The magnitude of the changes brought by both the Merger and the restructuring significantly alter the basis for the Alt Reg Plan."¹²⁵ The Department stated further that the Connecticut Office of Consumer Counsel "argues and the Department agrees that the change in SNET's procurement costs and expenses have a material and enduring effect that was not contemplated when the Department established the price cap formula productivity factor" and stated that the "Department does not believe, nor will it permit the Telco to dictate those conditions under which the Alt Reg Plan can or cannot be modified especially when the benefits of such could flow to the Telco's customers."¹²⁶ Following this reasoning, if the FCC accedes to the two pending mega-mergers, it must ensure that a fair share of merger synergies are returned to noncompetitive services through an adjustment in the X factor.

125. *Connecticut Merger Decision*, at 52.

126. *Id.*, at 51.

The alleged benefits for delivery of new services and improved service quality cannot be credited to the merger

84. The Applicants speculate that the merger will provide them with the capital necessary to deploy new Internet services such as Cyber-ID, Site Patrol, and Universal Messaging, and advanced data services such as Frame Relay and ATM.¹²⁷ While the development and deployment of new products and services may yield benefits to consumers (if priced at a reasonable rate and offered at an acceptable level of quality), the Applicants have failed to demonstrate that the separate companies would lack the market incentive and necessary capital to meet consumer demands and to challenge other providers' competing offerings. Furthermore, the Applicants have failed to demonstrate that the merger would increase rather than diminish the prospects for technological innovation.

85. The Applicants also refer to their expectation that the "financial efficiencies" that the merger would yield would allow the merged entity not only to accelerate the deployment of new services and the deployment of CLEC business in out-of-region territories, but also to improve service quality.¹²⁸ As we have previously discussed, the Applicants have done nothing to demonstrate how service quality will improve in a post-merger environment. Contrary to their claim, the Applicants have strong economic incentives to reduce service quality, particularly for residential customers, to achieve projected merger synergies.

127. Public Interest Statement, at 17-18; Curran (GTE), at ¶¶ 4-6.

128. Toben (Bell Atlantic), at ¶ 5.

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

86. The Applicants claim that "the merger will greatly enhance the competitive strength of GTE's Internet backbone and data services and by doing so will promote healthy competition in these critical markets."¹²⁹ As with much of their Application, however, when this rather blithe assurance is examined in greater detail the reality turns out to be far different. In fact, this merger will do very little, if anything, to enhance consumers' competitive choices in terms of Internet and data services. Indeed, by greatly expanding the possibility of anticompetitive discrimination in favor of its own Internet and data services, it will almost certainly *reduce* the level of competition within Bell Atlantic's home region, and by extension in other regions as well.

87. GTE Internetworking is a well-established national player. Indeed, GTE formed its Internetworking subsidiary following its purchase of BBN, the firm that pioneered the forerunner to the Internet itself. GTE has undertaken a steady series of investments to expand its national network,¹³⁰ and, as the Applicants themselves point out, GTE Internetworking already owns the fourth largest of the national backbones.¹³¹ And despite concerns raised during previous merger proceedings, the provision of Internet backbone services is today robustly competitive.¹³² This

129. Public Interest Statement, at 3.

130. Well before the merger announcement, GTE had already embarked upon its ambitious Global Network Infrastructure (GNI) investment plan, which will greatly expand its existing capacity to "17,000 miles of multiple OC-192 (10 Gbps) links complementing its existing...backbone." "GTE Internetworking," *Boardwatch Magazine ISP Directory, Winter '98 - Spring '99*, boardwatch.internet.com/isp/spring99/bb/gtepg2.html.

131. Public Interest Statement, at 3.

132. Indeed, in part because of actions taken in response to those concerns. *See: Application (continued...)*

merger will in no way increase that level of competition. At best, it may provide GTE Internetworking with capital to marginally expand its capacity. However, GTE Internetworking has successfully increased its capacity and level of operations to date without Bell Atlantic, and there is no reason that this merger will significantly increase its ability to continue to do so.

88. While at the level of backbone provision the merger will not expand competition, at the level of consumers' access to Internet and data services, the merger is almost certain to actively *harm* competition. GTE Internetworking currently has approximately 700,000 customers for its nationwide residential and small business dial-up service,¹³³ and is growing at a rate of almost 160% annually.¹³⁴ Particularly relative to GTE's Internet operations, Bell Atlantic has made only the most cursory of forays into the Internet Service Provider (ISP) business. Bell Atlantic brings little to this merger in terms of data infrastructure, institutional knowledge of the industry, or networking sales expertise. While Bell Atlantic may gain from not having to develop an Internet business (and a national infrastructure) from scratch, on the whole there is little benefit in terms of synergies to be reaped from combining the companies' existing operations. The merger will not improve the ability of GTE Internetworking to innovate, develop, or deliver services, either within Bell Atlantic's territory or anywhere else in the country. Neither will it increase customers' competitive choices of ISPs, and, indeed, by combining GTE's Internet service with Bell

132. (...continued)
of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., CC Docket No. 97-211, Memorandum Opinion and Order, FCC 98-225 (rel. September 14, 1998), at ¶¶ 142, 227.

133. "GTE Internetworking," *Boardwatch Magazine ISP Directory, Winter '98 - Spring '99*, boardwatch.internet.com/isp/spring99/bb/gtepg2.html.

134. Compared with 272,000 Internet customers at year end 1997. GTE 1997 Annual Report, at 8.

Atlantic's, it will actually *reduce* the number of ISP choices within the current Bell Atlantic territory.

89. The Applicants contend that consumers of data services will benefit because “[c]ombining with Bell Atlantic's concentrated urban customer base will allow GTE to become a much more potent competitor....”¹³⁵ However, GTE Internetworking is already a strong presence within Bell Atlantic's territory, with both customers and a substantial portion of its infrastructure (including an extensive backbone network and both of its operations support centers) located there.¹³⁶ GTE Internetworking presently has a level of access to Bell Atlantic's business customers at least *equal to* that of any other national ISP (and very likely better than many). Thus the only benefits that might accrue to GTE Internetworking in the wake of the proposed merger arise to the extent that Bell Atlantic is able to discriminate and provide *better* access to its subsidiary as compared with nonaffiliated ISPs.¹³⁷

90. The proposed merger would result in consolidation in the provision of Internet access, and could well lead to reduced competition for such services by giving Bell Atlantic a substantial advantage over any other rivals in its service territory.¹³⁸ If the merged company is allowed to provide Internet service via its own local and national backbone connections within the Bell Atlantic states, it will be the first time that an RBOC has gained that privilege. As Bell Atlantic has itself recognized in other proceedings, such an ability will violate Section 271 provisions

135. Public Interest Statement, at 3.

136. “GTE Internetworking,” *Boardwatch Magazine ISP Directory, Winter '98 - Spring '99*, boardwatch.internet.com/isp/spring99/bb/gtepg2.html.

137. Besen/Srinagesh/Woodbury (Sprint), at 48.

138. Competitive Telecommunications Association Comments, at 13.

preventing in-region provision of interLATA data services.¹³⁹ Above and beyond that crucial point, the local bottleneck to Internet access is of far greater concern than the issue of competition at the level of national backbone networks.¹⁴⁰ The combination of the Bell Atlantic's lock on local loops with GTE Internetworking's end-to-end control over a significant portion of the infrastructure of the Internet will provide the post-merger Bell Atlantic with every reason and opportunity to engage in pricing and other practices that no competing ISP will be able to match. The merger thus poses a direct threat to the competition among ISPs that has thus far driven innovation in the development of Internet services and applications.¹⁴¹ Therefore, it is directly contrary to the interests of consumers.

91. Mr. Baseman and Dr. Kelley raise a closely related issue in their affidavit. Not only does this merger threaten competition for existing Internet Access Services, but also it would significantly strengthen the merged company's chokehold over the last mile link for the provision of advanced services (for example, Digital Subscriber Line, or xDSL).¹⁴² This merger will increase the power of the merged company to dictate the terms under which it will deploy advanced services, and the terms under which it will make facilities available to competitors seeking to provide such services. As a result, it poses a threat to the ability of the market to select the best technology (or technologies) and price levels, to the detriment of consumers.

139. *Petition of Bell Atlantic Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services*, CC Docket No. 98-11 (filed Jan. 26, 1998), at 4. See also Competitive Telecommunications Association Comments at 10-11; Comments of AT&T, at 42-43.

140. See, Baseman/Kelley (MCI), at ¶¶ 90-93, 100.

141. The ISP industry has expressed similar concerns. See: "Bell Atlantic, GTE: Big Bell May Take Toll on Net," *Inter@ctive Week Online*, August 3, 1998 (www.zdnet.com).

142. Baseman/Kelley (MCI), at ¶¶ 87-89.

VI. RECOMMENDATIONS

The proposed merger of Bell Atlantic and GTE is contrary to the public interest and should be denied outright

92. The proposed merger cannot reasonably be found to be in the public interest. As we and others have demonstrated, the merger would result in less actual and potential competition in a variety of telecommunications markets and would (in combination with that proposed by SBC and Ameritech) ensure that only megaILECs are viable as CLECs (and ultimately as providers of “bundled” services). Also, the merger is not consistent with the public interest because what would “enable” the merger to succeed is the Applicants’ ability as ILECs, by the Applicants’ own account, to access merger synergies derived from their unique position as ILECs which provides them an extensive base of customers without significant competitive alternatives. The merger would also impair regulators’, CLECs’ and customers’ ability to benchmark performance among ILECs at a critical juncture in the development of competitive markets and could well destabilize competition for Internet backbone and long distance services. For all of these reasons, it is imperative that the Commission reject the proposed merger of Bell Atlantic and GTE.

93. As described in more detail below, the last time Bell Atlantic merged with another major ILEC, NYNEX Corp., it used the Commission’s *ex parte* process to offer last-minute concessions that, it claimed, would redress concerns about the anticompetitive and anticonsumer impacts of the merger. Others have questioned whether Bell Atlantic even considered these promises to be enforceable,¹⁴³ and the evidence suggests that the conditions have neither fully been fulfilled nor,

143. MCI Comments, at 11.

to the extent that they have, achieved the intended purpose of accelerating sustainable entry by other competitors into Bell Atlantic's in-region local markets.

94. This experience, coupled with the vast risks to competition and consumers posed by the BA/GTE merger, should cause the Commission to deny the merger outright. However, if, contrary to our recommendation and that of many others in this proceeding, the FCC is contemplating the approval of this merger with conditions, the Commission should establish a separate proceeding for the specific purpose of seeking comment on (1) whether the BA/NYNEX post-merger conditions are accomplishing the Commission's objectives, (2) the use of pre-merger conditions, generally, as a way to mitigate concerns about mergers, and (3) the particular pre- and post-merger conditions that should apply to any approval of the BA/GTE merger to minimize the risk to consumers and to maximize the possibility of benefits flowing through to consumers.

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

95. From its past experience, the Commission should have serious doubts about the efficacy of conditions to counteract serious concerns about risks to the public interest from a merger of large ILECs. In balancing the concerns raised by the merger of Bell Atlantic and NYNEX with the potential efficiencies asserted by these two companies, the FCC determined that, absent the *ex parte* filings made by these two companies in July and August 1997, the Commission would have been compelled to conclude that these two applicants had failed to demonstrate that the

transaction was in the public interest.¹⁴⁴ In their *ex parte* filings, Bell Atlantic and NYNEX identified specific commitments that they would undertake as conditions of the FCC's approval of their merger. Based upon its analysis of these conditions and their incorporation in the Commission's order, the FCC determined that the merger of Bell Atlantic and NYNEX could be found to be in the public interest.¹⁴⁵

96. The question the Commission might reasonably ask, in connection with the proposed BA/GTE merger and the related review of the proposed SBC/Ameritech merger,¹⁴⁶ is whether any similar conditions would be sufficient to overcome the serious concerns that have been identified with this substantial consolidation of ILECs. Any response to this question should recognize and account for the fact that the local market is in a state of flux, and that, therefore, any set of conditions needs to facilitate the transition toward a more competitive local market and account for and protect against the incumbent ILEC's overriding economic incentive to protect its market share. Furthermore, it is essential that the Commission, in considering the potential efficacy of conditions, evaluate not only the role of conditions as they might apply separately to each of the two pending mega-mergers, but also examine the aggregate impact of two mergers of megaILECs within a short period of time on the potential for conditions to protect and to enhance the public interest. Enforcing and monitoring conditions on two large ILECs, one that would generally serve consumers in the East and some western regions (i.e., Bell Atlantic) and one that would generally serve consumers in the West and Midwest (i.e., SBC), would be difficult, if not impossible.

144. *BA/NYNEX Merger Order*, at ¶¶ 177-178.

145. *Id.*, at ¶ 178.

146. Baldwin/Golding Affidavit, at ¶¶ 95-100, CC Docket No. 98-141.

97. Among the nine conditions established by the Commission in the BA/NYNEX proceeding (scheduled to sunset in August 2001)¹⁴⁷ include commitments by Bell Atlantic to:

- Submit regular Performance Monitoring Reports (PMR) detailing the company's performance in the ordering, provisioning, and maintenance of resold services, unbundled elements, and interconnection trunks;
- Accept specifications for the establishment and testing of uniform interfaces for carriers to gain access to BA/NYNEX operations support systems;
- Provide alternatives that would reduce competitors' up-front costs (by incorporating them into recurring charges or by allowing non-recurring charges to be paid over a number of months); and
- Ensure, when it proposes rates for interconnection, transport and termination, or unbundled network elements, that such rates are based on the forward-looking, economic cost to provide those items.¹⁴⁸

98. These conditions, which were integral to the FCC's approval of the merger between Bell Atlantic and NYNEX, were intended to eliminate entry barriers and encourage the robust development of competition in the merged Bell Atlantic/NYNEX region. Unfortunately, in the sixteen months since the merger, there has been little indication that competition is any more robust or developed in Bell Atlantic/NYNEX states than it is anywhere else in the country.

147. *BA/NYNEX Merger Order*, at ¶ 193.

148. *Id.*, at Appendix 3.

Indeed, both the Commission and potential competitors have expressed concern with the manner in which Bell Atlantic has complied with certain aspects of the conditions. The Commission has issued two letters regarding the Performance Monitoring Reports submitted by Bell Atlantic, expressing in the second one that it was “concerned ... about the error rates in the submissions Bell Atlantic has filed to date.”¹⁴⁹ MCI has also filed a complaint with the Commission, alleging “numerous instances over the past seven months where Bell Atlantic has completely disregarded the critical market-opening provisions” in the order.¹⁵⁰

99. As the Commission’s own Local Competition Survey results demonstrate, despite the conditions intended to facilitate competition, competition is if anything slightly less advanced in Bell Atlantic’s territory than elsewhere in the country. Other parties have reported that Bell Atlantic considers these conditions a “dead letter,” and that the ILEC “has treated the merger conditions — and the public interest that they are designed to protect — as mere inconveniences to be ignored.”¹⁵¹ Bell Atlantic’s highly questionable treatment of its prior commitments (what another party has referred to as its “cavalier bait-and-switch tactics”¹⁵²) should serve as a warning against the adoption of any similar set of promises as conditions for granting the present merger.

149. Letters from Kenneth P. Moran, Chief, Accounting Safeguards Division, to Ms. Patricia E. Koch, Assistant Vice President, Government Relations - FCC, DA 98-1228 (rel. June 24, 1998); DA 98-711 (rel. April 13, 1998).

150. “Bell Atlantic Continues to Violate Conditions of its Merger Agreement; MCI Calls on FCC to Impose Sanctions,” MCI Press Release, March 23, 1998 (www.mci.com/aboutyou/interests/publicpol/press/980323.html). *See also*: Complaint, *MCI Telecommunications Corp. v. Bell Atlantic Corp.*, File No. E-98-32 (FCC, Mar. 17, 1998).

151. AT&T Comments, at 54-55. *See also* Competitive Telecommunications Association Opposition, at 14; Telecommunications Resellers Association Comments, at 15

152. MCI WorldCom Comments, at 11.

100. Furthermore, although we have not undertaken a detailed analysis of the data that Bell Atlantic has submitted in its PMRs, an initial evaluation raises concerns that the Commission's conditions have not encouraged Bell Atlantic to open its local markets. These concerns focus on the pre-ordering and ordering functions that are especially critical for potential competitors. For example, in the first ten months for which data were available, Bell Atlantic apparently failed to establish operations support systems needed to allow the automated flow-through of orders for POTS UNE loops.¹⁵³ While some progress is reflected in portions of the combined region, it is far from consistent and certainly does not reflect the benefits that the Applicants' claimed could be achieved through sharing of "best practices."¹⁵⁴ Finally, there exists a substantial and consistent disparity between the time required to obtain a Customer Service Record (CSR) for retail customers as compared with CLECs in Bell Atlantic-North.¹⁵⁵ There is no reason that the simplest of database queries should require any more time for competitors than for Bell Atlantic itself. Even if Bell Atlantic's UNE and resale performance seems to show some improvement in

153. With a single exception (in September of 1997, in Massachusetts), in every Bell Atlantic state for each month since it began reporting, Bell Atlantic has reported 0% flow-through for POTS UNEs, or else that it is unable to provide public data because two (or fewer) CLECs placed orders. *Bell Atlantic Performance Monitoring Report*, data file downloaded from FCC, www.fcc.gov/ccb/Mergers/Bell_Atantic_NYNEX/ (downloaded on December 11, 1998), at 7.02. Bell Atlantic has not reported data for this measure after June, 1998.

154. While the flow-through rate for resold loop orders is substantially higher in some Bell Atlantic states, it is by no means consistently so. Indeed, although still below an acceptable level, Bell Atlantic's performance has been substantially better in the former NYNEX territory than in the former Bell Atlantic territory. [In September, 1998 (the most recent month for which data are available), in BA-North states, the flow-through rate for resale orders ranged between 52% and 65%, while in BA-South it ranged between 4% and 15%. *Id.*, at 7.01.] Under a concerted effort to improve, one would expect a substantial convergence between the two halves, as "best practices" were adopted and operations support systems were optimized between the two areas. This has not occurred.

155. Over the thirteen months of data collected, the average response time for retail CSR requests has been 0.13 seconds, while for CLECs the same operation required 3.73 seconds. Comparable retail data are not available for Bell Atlantic-South states. *Id.*, at 1.01, 1.11.

other areas (provisioning and maintenance), these examples indicate that, despite the conditions, entry barriers remain in place precisely where they are most critical.

101. Approval of the merger — an event with far-reaching consequences for the structure of the local telecommunications market — would be an irreversible decision. As the BA/NYNEX merger shows, even if the FCC were to condition its approval of the BA/GTE merger upon certain commitments (presumably intended to offset the harm to the public interest), should Bell Atlantic, after receiving the regulatory go-ahead to consummate the proposed transaction, fail to meet the commitments upon which the FCC conditioned its approval of the merger, there is little that the FCC can do to force compliance. According to MCI, in Bell Atlantic's recent brief filed with the FCC, and in its response to MCI's reply brief in the same proceeding, Bell Atlantic is contending, with reference to MCI's complaint that Bell Atlantic is not meeting the conditions that the Commission set forth in the *BA/NYNEX Merger Order*, that the Commission lacks jurisdiction to enforce certain merger agreements.¹⁵⁶ If Bell Atlantic seemingly has no qualms about challenging FCC's authority to enforce conditions at precisely the time when Bell Atlantic is seeking approval from that same agency of its second proposed merger with a large ILEC, it is hard to imagine the possible level of Bell Atlantic's defiance after a merger with GTE.

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

102. In the *BA/NYNEX Merger Order*, the FCC provided ample notice that imposing conditions would not necessarily remedy concerns for all mergers. The FCC warned future merging companies that:

156. MCI Comments, at 11.

It is quite plausible that there will be some mergers of actual or precluded competitors that will present such significant potential harms to competition that there will be no means to conclude that the transaction serves the public interest, convenience and necessity. The elimination of an even more significant market participant than Bell Atlantic would raise even greater competitive concerns.¹⁵⁷

Bell Atlantic today is a more formidable market participant than it was before it merged with NYNEX. Bell Atlantic's 1996 (i.e., pre-merger) revenues were \$13.1-billion¹⁵⁸ and it served approximately 20.6-million access lines — approximately 13 percent of the nation's access lines.¹⁵⁹ By comparison, Bell Atlantic's 1997 revenues were \$30-billion and it serves nearly 39-million access lines — almost a fourth of the nation's access lines.¹⁶⁰ If Bell Atlantic acquired GTE, its revenues would be \$53.5-billion, and it would serve approximately 35% of the nation's access lines.

103. If the SBC/Ameritech merger also occurs, these two megaILECs would serve approximately 69% of the nation's access lines and even if the remaining large ILECs (Bell South and US West) were to merge (in "retaliation" and in order to acquire a comparable and purportedly essential scale), the BellSouth/US West entity would serve approximately 24% of the market, a level that is comparable to SBC's present share of 20% and Bell Atlantic's present share of 24% but that is far less than the 34% and 35% scale that SBC and Bell Atlantic contend are necessary, respectively, in order to compete in today's telecommunications markets. According to SBC's and Bell Atlantic's logic, US West and Bell South could not survive *even if they merged*

157. *Bell Atlantic/NYNEX Merger Order*, at ¶ 179.

158. *FCC 1996 Statistics of Common Carriers*, at Table 1.1.

159. *Preliminary Statistics of Common Carriers*, Table 1.1 (1997).

160. *Id.*

and thus would presumably need to consolidate either with “Bell East” or “Bell West”, leaving the FCC to enforce conditions on two super-mega-ILECs.

104. Also, when Bell Atlantic was acquiring NYNEX, it was not (or at least did not claim to be) engaged in a broad-scale scheme to pursue out-of-franchise markets, the long-distance market, the Internet market, and the bundled services market. As we have shown, the ILECs’ continued dominance of local exchange and access markets and their ability to tap merger synergies to execute these strategies pose a direct threat to the welfare of residential consumers and to the development of competition. Thus, while post-merger conditions, such as those adopted relative to the Bell Atlantic/NYNEX merger, could, if implemented in a complete and timely manner, provide much-needed assistance toward achieving the goal of promoting competition (e.g., improvements to OSS interfaces, alternative payment schemes for nonrecurring charges, and carrier-to-carrier testing capabilities, etc.), they are not sufficient to overcome the heightened risks to competition that the latest mergers clearly pose.

105. For all of the foregoing reasons, the Commission should deny Bell Atlantic’s and GTE’s request for approval to transfer control of FCC authorizations held by subsidiaries of GTE to Bell Atlantic.

DECLARATION

The foregoing statements are true and correct to the best of our knowledge, information and belief.

Susan M. Baldwin

Susan M. Baldwin

Helen E. Golding

Helen E. Golding

Boston, Massachusetts, December 18, 1998

SWORN TO AND SUBSCRIBED

before me on this, the 18th day of
December, 1998.

Ellen B. Wasserman
NOTARY PUBLIC

My Commission expires:
4/1/99



Attachments

Attachment 1

Statement of Qualifications

SUSAN M. BALDWIN

Susan M. Baldwin, a Senior Vice President at ETI, has been actively involved in public policy for twenty years, fourteen of which have been in telecommunications policy and regulation. Ms. Baldwin received her Master of Public Policy from Harvard University's John F. Kennedy School of Government and her Bachelor of Arts degree in Mathematics and English from Wellesley College.

Ms. Baldwin has far-reaching experience in the public and consulting sectors in the economics and public policy of the telecommunications industry. Ms. Baldwin has testified before the Colorado Public Utilities Commission, Connecticut Department of Public Utility Control, Idaho Public Utilities Commission, Massachusetts Department of Telecommunications and Energy, Nevada Public Service Commission, New Jersey Board of Regulatory Commissioners, Public Utilities Commission of Ohio, Rhode Island Public Utilities Commission, Tennessee Public Service Commission, and Vermont Public Service Board. She has also participated extensively in projects in California, Delaware, the District of Columbia, Hawaii, Illinois, Indiana, New York, Pennsylvania, Washington, and Canada on behalf of consumer advocates, public utility commissions, and competitive local exchange carriers. Ms. Baldwin has authored numerous comments submitted to the Federal Communications Commission on topics including price cap regulation, colocation, and universal service. Among the various subject matters she has examined for state and federal regulatory proceedings are applications for mergers by regional Bell Holding Companies, Section 271 applications, cost studies (embedded and forward-looking), local competition, numbering issues, ISDN, network modernization, depreciation, universal service, rate design, access charges, and alternative regulation.

Among Ms. Baldwin's numerous projects have been the responsibility of advising the Vermont Public Service Board in matters relating to a comprehensive investigation of NYNEX's revenue requirement and proposed alternative regulation plan. She participated in all phases of the docket, encompassing review of testimony, issuance of discovery, cross-examination of witnesses, drafting of memoranda, drafting of decisions, and review of compliance filings. Another year-long project managed by Ms. Baldwin was the in-depth analysis and evaluation of the cost proxy models submitted in the FCC's universal service proceeding. On behalf of the staff of the Idaho Public Utilities Commission, Ms. Baldwin testified on the proper allocation of US West's costs between regulated and non-regulated services. Ms. Baldwin co-managed a project to assist the Office of Ratepayer Advocates (ORA) analyze the California Public Utilities Commission's investigation of the merger of Pacific Telesis Group and SBC Communications, and co-sponsored testimony on behalf of the Connecticut Office of Consumer Counsel on the impact of SBC's acquisition of SNET on consumers. On behalf of AT&T Communications of California, Inc. and MCI Telecommunications Corporation, Ms. Baldwin conducted a comprehensive analysis of the non-recurring cost studies submitted by incumbent local exchange carriers in California. On behalf of the Ad Hoc Telecommunications Users Committee, Ms. Baldwin participated in the Numbering Resource Optimization Group (NRO-WG), and in that capacity, served as a co-chair of the Analysis Task Force of the NRO-WG.

Previously, as the Director of ETI's Publications Group, Ms. Baldwin was responsible for the development and marketing of all regular and special publications. In addition to supervising the management of *Trends in Communications Policy*, the *Intercity Rates Handbook*, and the state *Telephone Rate Reports*, Ms. Baldwin oversaw and contributed to the compilation of ETI's many special reports and tracking services for individual clients.

Ms. Baldwin served four years as the Director of the Telecommunications Division for the Massachusetts Department of Public Utilities (the predecessor to the Massachusetts Department of Telecommunications and Energy), where she directed a staff of nine, and acted in a direct advisory capacity to the DPU Commissioners. (The Massachusetts DTE maintains a non-separated staff, which directly interacts with the Commission rather than taking an advocacy role of its own in proceedings.) Ms. Baldwin advised and drafted decisions for the Commission in numerous proceedings at the DPU including investigations of a comprehensive restructuring of New England Telephone Company's rates, an audit of NET's transactions with its NYNEX affiliates, colocation, ISDN, Caller ID, 900-type services, AT&T's requests for a change in regulatory treatment, pay-telephone and alternative operator services, increased accessibility to the network by disabled persons, conduit rates charged by NET to cable companies, and quality of service.

Under her supervision, staff analyzed all telecommunications matters relating to the regulation of the \$1.7-billion telecommunications industry in Massachusetts, including the review of all telecommunications tariff filings; petitions; cost, revenue and quality of service data; and certification applications. As a member of the Telecommunications Staff Committees of the New England Conference of Public Utility Commissioners (NECPUC) and National Association of Regulatory Utility Commissioners (NARUC), she contributed to the development of telecommunications on regional and national levels.

Ms. Baldwin has worked with local, state, and federal officials on energy, environmental, budget, welfare, and telecommunications issues. As a policy analyst for the New England Regional Commission (NERCOM), Massachusetts Department of Public Welfare (DPW), and Massachusetts Office of Energy Resources (MOER), she acquired extensive experience working with governors' offices, state legislatures, congressional offices, and industry and advocacy groups. As an energy analyst for NERCOM, Ms. Baldwin coordinated New England's first regional seminar on low level radioactive waste, analyzed federal and state energy policies, and wrote several reports on regional energy issues. As a budget analyst for the DPW, she forecast expenditures, developed low income policy, negotiated contracts, prepared and defended budget requests, and monitored expenditures of over \$100 million. While working with MOER, Ms. Baldwin conducted a statewide survey of the solar industry and analyzed federal solar legislation.

While attending the Kennedy School of Government, Ms. Baldwin served as a teaching assistant for a graduate course in microeconomics and as a research assistant for the school's Energy and Environmental Policy Center, and at Wellesley College was a Rhodes Scholar nominee. She has also studied in Ghent, Belgium.

Ms. Baldwin has published articles on telecommunications and energy policy in trade journals and has spoken at industry associations and conferences. These have included the following:

Reports:

“The Use of Cost Proxy Models to Make Implicit Support Explicit, Assessing the BCPM and the Hatfield Model 3.1” (with Dr. Lee L. Selwyn). Prepared for the National Cable Television Association, submitted in FCC CC Docket No. 96-45, March 1997.

“The Use of Forward-Looking Economic Cost Proxy Models” (with Dr. Lee L. Selwyn). Prepared for the National Cable Television Association, submitted in FCC Docket No. CCB/CPB 97-2, February 1997.

“Continuing Evaluation of Cost Proxy Models for Sizing the Universal Service Fund, Analysis of the Similarities and Differences between the Hatfield Model and the BCM2” (with Dr. Lee L. Selwyn). Prepared for the National Cable Television Association, submitted in FCC CC Docket No. 96-45, October 1996.

“Converging on a Cost Proxy Model for Primary Line Basic Residential Service, A Blueprint for Designing a Competitively Neutral Universal Service Fund” (with Dr. Lee L. Selwyn). Prepared for the National Cable Television Association, submitted in FCC CC Docket No. 96-45, August 1996.

“The BCM Debate, A Further Discussion” (with Dr. Lee L. Selwyn and Helen E. Golding). Prepared for the National Cable Television Association, submitted in FCC CC Docket No. 96-45, May 1996.

“The Cost of Universal Service, A Critical Assessment of the Benchmark Cost Model” (with Dr. Lee L. Selwyn). Prepared for the National Cable Television Association, submitted in FCC CC Docket No. 96-45, April 1996.

“Funding Universal Service: Maximizing Penetration and Efficiency in a Competitive Local Service Environment” (with Dr. Lee L. Selwyn). Prepared for Time Warner Communications, Inc., October 1995.

“A Balanced Telecommunications Infrastructure Plan for New York State” (with Dr. Lee L. Selwyn). Prepared for the New York User Parties, December 4, 1992.

“A Roadmap to the Information Age: Defining a Rational Telecommunications Plan for Connecticut” (with Dr. Lee L. Selwyn, Susan M. Gately, JoAnn S. Hanson, David N. Townsend, and Scott C. Lundquist). Prepared for the Connecticut Office of Consumer Counsel, October 30, 1992.

“Analysis of Local Exchange Carrier April 1988 Bypass Data Submissions” (with William P. Montgomery and Dr. Lee L. Selwyn). Prepared for the National Association of State Utility Consumer Advocates, August 1988.

“Strategic Planning for Corporate Telecommunications in the Post-Divestiture Era: A Five Year View” (with Dr. Lee L. Selwyn, William P. Montgomery, and David N. Townsend). Report to the International Communications Association, December 1986.

“Competitive Pricing Analysis of Interstate Private Line Services.” Prepared for the National Telecommunications Network, June 1986.

“Analysis of Diamond State Telephone Private Line Pricing Movements: 1980-1990.” Prepared for Network Strategies, Inc., April 1985.

“Analysis of New York Telephone Private Line Pricing Movements: 1980-1990.” Prepared for Network Strategies, Inc., February 1985.

Publications/Presentations:

“Exploring Solutions for Number Exhaust on the State Level” and “A Forum for Clarification and Dialogue on Numbering Ideas,” ICM Conference on Number Resource Optimization, December 10-11, 1998.

“Consumer Perspectives on ILEC Mergers,” NARUC 110th Annual convention, November 11, 1998.

“FCC En Banc Hearing — Universal Service Methodology,” June 8, 1998, panelist.

“Universal Service: Real World Applications,” 1997 NASUCA Mid-Year Meeting, June 9, 1997.

“Modeling operating and support expenses” and “Modeling capital expenses,” panelist for Federal-State Joint Board on Universal Service Staff Workshops on Proxy Cost Models, January 14-15, 1997, CC Docket 96-45.

“Interpreting the Telecommunications Act of 1996 Mandate for the Deployment of Advanced Telecommunications Services in a Fiscally Responsible and Fully Informed Manner” (with Helen E. Golding), *Proceedings of the Tenth NARUC Biennial Regulatory Information Conference*, Volume 3, September 11-13, 1996.

“Making Adjustments to the BCM2.” Presentation to the Staff of the Federal-State Joint Board on Universal Service, September 16, 1996.

“Converging on a Model: An Examination of Updated Benchmark Cost Models and their Use in Support of Universal Service Funding.” Presentation to the NARUC Summer Committee Meetings, July 22, 1996.

“The Phone Wars and How to Win Them” (with Helen E. Golding). *Planning*, July 1996 (Volume 62, Number 7).

“ETI’s Corrections to and Sensitivity Analyses of the Benchmark Cost Model.” Presentation to the Staff of the Federal-State Joint Board on Universal Service, May 30, 1996.

“Redefining Universal Service.” Presentation at the Telecommunications Reports conference on “Redefining Universal Service for a Future Competitive Environment,” January 18, 1996.

“New Frontiers in Regulation.” Presentation to the New England Women Economists Association, December 12, 1995.

“Local Cable and Telco Markets.” Presentation at the New England Conference of Public Utilities Commissioners 46th Annual Symposium, June 29, 1993.

“Relationship of Depreciation to State Infrastructure Modernization.” Presentation at the *Telecommunications Reports* conference on “Telecommunications Depreciation,” May 6, 1993.

“Crafting a Rational Path to the Information Age.” Presentation at the State of New Hampshire’s conference on the “Twenty-First Century Telecommunications Infrastructure,” April 1993.

“The Political Economics of ISDN,” presentation at the John F. Kennedy School of Government seminar on “Getting from Here to There: Building an Information Infrastructure in Massachusetts,” March 1993.

“ISDN Rate-Setting in Massachusetts.” *Business Communications Review*, June 1992 (Volume 22, No. 6).

“The New Competitive Landscape: Collocation in Massachusetts.” Presentation at TeleStrategies Conference on Local Exchange Competition, November 1991.

“Telecommunications Policy Developments in Massachusetts.” Presentations to the Boston Area Telecommunications Association, October 1989; March 1990; November 1990; June 1992. Presentation to the New England Telecommunications Association, March 1990.

“Tariff Data is Critical to Network Management.” *Telecommunications Products and Technology*, May 1988 (Volume 6, No. 5).

“How to Capitalize on the New Tariffs.” Presentation at Communications Managers Association conference, 1988.

“Auction Methods for the Strategic Petroleum Reserve” (With Steven Kelman and Richard Innes). Prepared for Harvard University Energy Security Program, July 1983.

“How Two New England Cities Got a \$100 Million Waste-to-Energy Project” (with Diane Schwartz). *Planning*, March 1983 (Volume 49, Number 3).

“Evaluation of Economic Development and Energy Program in Lawrence, Massachusetts.” (with Richard Innes). Prepared for U.S. Department of Energy, August, 1982.

“Energy Efficiency in New England’s Rental Housing.” New England Regional Commission, 1981.

“Low Level Radioactive Waste Management in New England.” New England Regional Commission, 1981.

“The Realtor’s Guide to Residential Energy Efficiency.” Prepared for the U.S. Department of Energy and the National Association of Realtors, 1980.

Attachment 2

Statement of Qualifications

HELEN E. GOLDING

Helen E. Golding, Vice President in the Regulatory Policy Group has worked for more than twenty years in the field of communications regulation and public policy. In the public sector, she has worked at both state and federal regulatory agencies; she also has extensive private sector experience in the areas of telecommunications law, strategic planning, and regulatory policy. In addition to her telecommunications industry expertise, Ms. Golding has considerable experience in the public policy and law of the energy industry.

Since the passage of the landmark *Telecommunications Act of 1996*, Ms. Golding has directed work at ETI to evaluate the progress of various Bell operating companies (BOCs) toward meeting the standards of Section 271 of the *Act* (which specifies the conditions for BOC re-entry into the in-region, interLATA services market), as well as ETI's study of the progress toward implementing local competition in the absence of the Section 271 incentive, in the case of The Southern New England Telephone Company. She also directed work analyzing the propriety of Ameritech's application for authorization by the Illinois and Michigan public utilities commissions to provide local exchange service through the same separate subsidiary that Ameritech would employ (subject to FCC approval) to provide interLATA long distance services. Along with Dr. Selwyn, Ms. Golding co-authored evidence in the Canadian Radio and Telecommunications Commission's investigation into forbearance from regulation of toll services provided by the Stentor companies, Canada's equivalent of the pre-divestiture Bell System.

Recently, Ms. Golding has done extensive work on behalf of the Connecticut Office of Consumer Counsel in the Department of Public Utility Control's investigation of SBC's proposed acquisition of SNET. She also co-directed the work done on behalf of the Office of Utility Consumer Counselor in the Indiana Utility Regulatory Commission's investigation of a new alternative regulation plan for Ameritech Indiana and on behalf of the Office of Consumer Counsel in the Colorado Public Utilities Commission's review of a price regulation scheme proposed by US West. Ms. Golding was project manager and a primary contributor in ETI's analysis and preparation of testimony on behalf of the Office of Public Advocate in the Maine Public Utilities Commission's investigation of the proposed NYNEX-Bell Atlantic merger. She also contributed significantly to numerous submissions to the Federal-State Joint Board and FCC in CC Docket 96-45 (Universal Service) and to the New Jersey Board of Public Utilities's docket on state universal service funding.

Prior to the passage of the *Telecommunications Act*, Ms. Golding managed projects on alternative regulation and competition in the states of Maine and Connecticut. She also had extensive involvement in preparing testimony and comments in the alternative regulation proceedings in Ohio and Massachusetts, in competition dockets in New York, New Jersey, Massachusetts and Hawaii, and in state proceedings focusing on universal service in Florida and Tennessee. Ms. Golding also participated in the preparation of detailed filings submitted in the FCC's LEC Price Cap Review proceeding.

Ms. Golding was Assistant General Counsel of the Massachusetts Department of Public Utilities from November 1988 to September 1992. Ms. Golding managed a staff of hearing officers, who conducted adjudicatory and rulemaking proceedings for all regulated utilities. Her position required case management and policy coordination with the Department's numerous technical divisions (organized by industry sector: telecommunications, electric, gas, water, and transportation). Ms. Golding also served as the Commission's chief legal advisor on matters that spanned the Department's broad utility jurisdiction. In addition to overseeing numerous rate cases for all utilities, these proceedings included the tariffing of new services, design of conservation and load management programs, incentive and competitive rates, licensing, financing, siting, and utility management practices.

Immediately prior to joining ETI, Ms. Golding was a member of the Regulatory Practice Group at Rubin and Rudman, a mid-sized Boston law firm, where she specialized in communications, energy, and municipal law, for clients that included communications and cable companies, municipal electric companies, independent power producers, and public authorities.

Prior to becoming Assistant General Counsel at the DPU, Ms. Golding was Regulatory Counsel and Manager of Telecommunications Public Policy for Honeywell Inc., providing legal and strategic planning advice concerning rate and regulatory developments affecting the company as a large user of telecommunications service and as a computer manufacturer. In that position, she also provided counsel on tariff and regulatory matters to the company's alarm and customer premises equipment businesses.

Ms. Golding also worked at the Federal Communications Commission, as a General Attorney in the Common Carrier Bureau, Tariff Division, where she was responsible for tariff review and rulemaking proceedings for domestic and international telecommunications services.

Ms. Golding is a graduate of Boston University School of Law (J.D., 1977) and Bryn Mawr College (A.B. *cum laude*, 1974).

Reports:

"The Connecticut Experience with Telecommunications Competition," (with Dr. Lee L. Selwyn, and Susan M. Gately), February 1998.

"Report on The Southern New England Telephone Company," (prepared with Cablevision Systems Corporation, Patricia D. Kravtin, *et al.*), July 1997.

"The BCM Debate, A Further Discussion" (with Dr. Lee L. Selwyn and Susan M. Baldwin). Prepared for the National Cable Television Association, submitted in FCC CC Docket No. 96-45, May 1996.

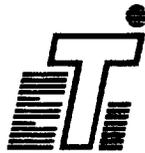
Canadian Radio and Telecommunications Commission, Telecom Public Notice CRTC 96-26, Evidence on Behalf of AT&T Canada, Ltd. *et al.*, (with Dr. Lee L. Selwyn), November 22, 1996.

Publications and presentations:

Overview of current issues in telecommunications law, addressed to the Boston Bar Association, Annual Symposium on Information and Telecommunications Law, February 1998.

Proceedings of the Tenth NARUC Biennial Regulatory Information Conference, Vol. 3, Telecommunications, *Interpreting the Telecommunications Act of 1996 Mandate for the Deployment of Advanced Telecommunications Services in a Fiscally Responsible and Fully Informed Manner*, (with Susan M. Baldwin), September 1996.

"*The Phone Wars and How to Win Them*," (with Susan M. Baldwin), *Planning*, Vol. 62, No. 7 (July 1996).



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