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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

EX PARTE OR LATE FILED

In the matter of	)	
	)	
GTE CORPORATION,	)	
Transferor,	)	
	)	
and	)	CC Docket No. 98-184
	)	
BELL ATLANTIC CORPORATION,	)	
Transferee.	)	
	)	
For Consent to Transfer of Control	)	

RECEIVED
FEB 26 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RCN TELECOM SERVICES, INC.
MOTION FOR LEAVE TO FILE PETITION FOR EVIDENTIARY HEARING

RCN Telecom Services, Inc. ("RCN" or "Petitioner"), through undersigned counsel, and pursuant to 47 C.F.R. § 1.45(c), respectfully files this Motion for Leave to File Petition for Evidentiary Hearing in order to supplement its comments previously filed with the Commission in this proceeding evaluating the proposed application of GTE Corporation ("GTE") for authority to merge into Bell Atlantic Corporation ("Bell Atlantic") (hereinafter the "Merger Application").[1]

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[1] *GTE Corporation and Bell Atlantic Corporation Seek FCC Consent For a Proposed Transfer of Control and Commission Seeks Comment on Proposed Protective Order Filed by GTE and Bell Atlantic*, Public Notice, CC Docket No. 98-184, (rel. October 8, 1998). RCN is concurrently filing with the Commission a separate "Petition For Evidentiary Hearing" in this proceeding.

RCN currently operates in Bell Atlantic territory in Massachusetts, New Jersey, New York and Pennsylvania.[2] Therefore, the proposed merger of Bell Atlantic and GTE directly impacts RCN, and RCN is a party in interest with respect to the Merger Application.

RCN has filed comments and Reply Comments in this proceeding in opposition to the proposed merger on the grounds that it would be anticompetitive and contrary to the public interest.[3] In those filings, RCN alleged that neither Bell Atlantic nor GTE has met its obligations under Sections 251 and 252 of the Act.[4] RCN's initial comments emphasized that RCN has experienced a myriad of discriminatory actions and policies employed by both Bell Atlantic and GTE against competitive local exchange carriers. In its Reply Comments, RCN discussed the comments filed by other commenters, pointing to the numerous, detailed comments opposing the merger application on the same grounds relied upon by RCN, *i.e.,* the highly anti-competitive actions and policies of Bell Atlantic and GTE. RCN also discussed the Commission's statutory obligations under both the Communications Act of 1934 and the Clayton Act and requested that the Commission allow parties to respond to GTE and Bell Atlantic's Reply Comments, and that the Commission hold an evidentiary hearing.

Because the Commission has not allowed initial commenters to reply to Bell Atlantic's Reply Comments in this proceeding, RCN and other CLECs have not had the opportunity to respond to

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[2] RCN's indirect subsidiary Starpower Communications, LLC ("Starpower") operates in Washington, D.C. and Maryland.

[3] *See* Comments of RCN Telecom Services, Inc., CC Docket No. 98-184 (filed Nov. 23, 1998) ("RCN Comments") and Reply Comments of RCN Telecom Services, Inc., CC Docket No. 98-184 (filed Dec. 23, 1998) ("RCN Reply Comments").

[4] *See* Reply Comments of RCN at 6-7.

Bell Atlantic's factual assertions contained in its Reply Comments. Therefore, pursuant to 47 C.F.R. § 1.45(c), RCN respectfully requests that the Commission grant RCN's Motion For Leave to File Petition for Evidentiary Hearing so that RCN can demonstrate the need for an evidentiary hearing on the anticompetitive policies and practices of Bell Atlantic and GTE.

The Commission has the discretion to accept additional pleadings in this proceeding if they are "specifically requested *or* authorized by the Commission."[5] The Commission's October 8, 1998, Public Notice in this proceeding asked interested parties to file "comments regarding or petitions to deny" the Merger Application and subsequently to file "oppositions or responses to these comments and petitions."[6] The public notice did not permit initial commenters to respond to Bell Atlantic's or GTE's Reply Comments, contrary to the Commission's usual practice in contested adversarial matters, and RCN and other CLECs accordingly have not had the opportunity to respond to Bell Atlantic's factual assertions contained in its Reply Comments.

Grant of RCN's request is fully justified because neither RCN nor any other CLEC has had any opportunity to contest Bell Atlantic's factual assertions nor has the Commission established procedures which ensure that an adequate factual record is available to it to evaluate Bell Atlantic's compliance with the provisions of Sections 251 and 252 of the Act.

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[5] 47 C.F.R.§ 1.45(c) (1998) (emphasis added).

[6] *GTE Corporation and Bell Atlantic Corporation Seek FCC Consent For a Proposed Transfer of Control and Commission Seeks Comment on Proposed Protective Order Filed By GTE and Bell Atlantic*, Public Notice, CC Docket No. 98-184 (rel. October 8, 1998). In addition, the Commission's public notice sought comment on the proposed protective order of Bell Atlantic and GTE.

In its Reply Comments, Bell Atlantic denies that it is not satisfying its obligations under the Act.[7] Moreover, at the Commission's *en banc* hearing, Bell Atlantic's spokesman denied that the company is engaged in a pattern of noncompliance with Section 251 of the Act.[8]

However, as seen from RCN's perspective, Bell Atlantic and GTE are engaged in a widespread, deliberate and calculated campaign to thwart competitive carriers' entry into the local market, in violation of §§ 251 and 252 of the 1996 Act. The simple fact is that, with limited exceptions, RCN has encountered slow-roll tactics of one kind or another. Finally, RCN notes that Bell Atlantic's "Responses to Specific Allegations" are little more than platitudes that provide only Bell Atlantic's own assessment of its compliance with the Act, rather than facts for the Commission to draw its own reasoned conclusions.

A factual dispute thus exists that the Commission is obligated to address as part of its analysis whether the grant of Bell Atlantic's and GTE's Merger Application would serve the "public interest, convenience, and necessity." A vital part of this analysis is the determination, based on a complete factual record, whether Bell Atlantic has satisfied its Section 251 and 252 obligations

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[7] Bell Atlantic Reply Comments at 13.

[8] *In re: ILEC Merger En Banc Hearing,* FCC Hearing Transcript, Testimony of James R. Young, Executive Vice President and General Counsel of Bell Atlantic, at 130 (lines 15-17) (December 14, 1998).

under the Act.[9] The accompanying Petition for Evidentiary Hearing sets forth the factual and legal predicate for holding an evidentiary hearing and should be considered by the Commission.

WHEREFORE, RCN, pursuant to 47 C.F.R. § 1.45(c), respectfully requests that the Commission accept RCN's additional pleading contained herein and make it part of the Commission's record of this proceeding.

Respectfully submitted,

RCN Telecom Services, Inc.

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[9] As stated in the Commission's Memorandum Opinion and Order approving the NYNEX and Bell Atlantic merger, the public interest analysis which the Commission is required to undertake "necessarily includes a review of the nature and extent of local competition, as exemplified by the fact that Section 271 of the Act specifically applies the public interest standard to, *inter alia*, a review of local market conditions." *In the Applications of NYNEX Corporation Transferor, and Bell Atlantic Corporation Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, Memorandum Opinion and Order, 12 FCC Rcd 19985 (1997). Thus, the public interest analysis would require the Commission to include an analysis of local competition, including Bell Atlantic's compliance with Section 251 of the Act.

CERTIFICATE OF SERVICE

I, Sharon Gantt, hereby certify that on this 26th day of February, 1999, I served a copy of the *Motion for Leave to File a Petition for Evidentiary Hearing, CC Docket No. 98-184,* on the following parties listed below via messenger or, if marked with an asterisk, by first class postage-paid U.S. mail:

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