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March 1, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
12th Street Lobby, TW-A325
Washington, D.C. 20554

Re: Petition to Deny of the Commonwealth of the Northern Mariana Islands; CC Dkt. No. 98-184

Dear Ms. Salas:

In accordance with Section 1.51(c) of the Rules of the Federal Communications Commission, 47 C.F.R. § 1.51(c), please find enclosed for filing an original plus four (4) copies of the Commonwealth of the Northern Mariana Islands' Petition to Deny in the above-referenced proceeding. An additional copy has also been included for file-stamp purposes.

Questions should be directed to the undersigned.

Sincerely,

Thomas K. Crowe
C. Jeffrey Tibbels,
Counsel for the Commonwealth of the Northern Mariana Islands

Enclosures

No. of Copies rec'd 0+4
List ABCDE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Applications of GTE Corporation	)	
and Bell Atlantic Corporation	)	CC Docket No. 98-184
for Consent to Transfers of	)	
FCC Licenses and Authorizations	)	

PETITION TO DENY

The Commonwealth of the Northern Mariana Islands ("Commonwealth"), by its attorneys, hereby petitions the Commission to deny the grant of the above-captioned applications ("the Applications") for consent to transfer control of the licenses of GTE Corporation ("GTE") and its operating subsidiaries from GTE to Bell Atlantic Corporation ("Bell Atlantic").[1]

I. INTRODUCTION

The Applications as modified by the Proposed Conditions are *prima facie* discriminatory in violation of Section 202(a)[2] of the Communications Act of 1934, as amended ("Act"). Specifically, the Proposed Conditions exclude ratepayers in the Commonwealth by virtue of their location from the safeguards contained in the conditions. Since the Applicants have not-and

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[1] *See* Supplemental Filing of Bell Atlantic and GTE and Proposed Conditions for Bell Atlantic/GTE Merger (Jan. 27, 2000) ("Supp. Filing" and "Proposed Conditions"); *Commission Seeks Comment on Supplemental Filing Submitted by Bell Atlantic Corporation and GTE Corporation*, CC Dkt. No. 98-184, *Public Notice* (Jan. 31, 2000). *See also* Applications for Transfer of Control of GTE Corporation and Bell Atlantic Corporation (Oct. 2, 1998); *GTE Corporation and Bell Atlantic Corporation Seek FCC Consent for a Proposed Transfer of Control and Commission Seeks Comment on Proposed Protective Order Filed by GTE and Bell Atlantic*, CC Dkt. No. 98-184, *Public Notice* (Oct. 8, 1998) ("*October 8th Notice*").

[2] 47 U.S.C. § 202(a) (1999).

cannot-justify such geographic-based differential treatment, the Applications must be denied.

As also shown below, the Applications should also be denied as unlawful under Section 254(b)(3) of the Act since the Proposed Conditions would prevent Commonwealth ratepayers from having access to telecommunications services reasonably comparable to those in urban areas and at rates reasonably comparable to those in urban areas. In short, in acting on the Applications, the Commission must ensure that all ratepayers Nationwide, including those in the Commonwealth, are protected by a single set of regulatory safeguards.[3]

II. THE PROPOSED MERGER CONDITIONS VIOLATE SECTION 202(a) OF THE ACT

The Applications of GTE and Bell Atlantic should be denied as unlawful since they *prima facie* violate Section 202(a) of the Act.

A. The Proposed Conditions Subject the Commonwealth to Disadvantageous Treatment

The Proposed Conditions define the term "GTE States" to include many states in which GTE affiliates operate, but not the Commonwealth. Hence, wherever the Proposed Conditions utilize the term "GTE States" the safeguards being applied simply exclude the Commonwealth by virtue of its location.

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[3] The Commonwealth incorporates by reference its prior Petition to Condition Grant and reply comments made in response to the *October 8th Notice,* but modifies the relief requested as specified herein. *See Petition to Condition Grant* of the Commonwealth in CC Dkt. No. 98-184 (Nov. 23, 1998); Reply Comments of the Commonwealth in CC Dkt. No. 98-184 (Dec. 23, 1998).

Perhaps the most glaring example is that, under the Proposed Conditions, ratepayers in the Commonwealth would not benefit from the Applicants' Enhanced Lifeline Plans,[4] designed to offer discounts and other incentives to increase telephone subscribership. Under the Plans, the Applicants will not require deposits from new enhanced Lifeline customers and will provide discounts equal to the price of "access to the network not including any local usage" in each state of up to $10.20 per month.[5] The Applicants also promise to develop an annual promotional budget to ensure that potential customers are aware of the existence of the Enhanced Lifeline Plans as well as provide a toll-free telephone number for Lifeline inquiries and a toll-free fax number for receipt of Lifeline documentation.[6] The exclusion of the Commonwealth from the Enhanced Lifeline Plans is particularly egregious when viewed in the context of the Commonwealth's extremely low subscribership level and low *per capita* income.[7]

In addition, the Commonwealth is excluded from voluntary Alternative Dispute Mediation,[8] Additional Service Quality Reporting[9] requirements, and will not benefit from the proposed Enforcement Conditions.[10] The proposed voluntary Alternative Dispute Mediation mechanism permits a carrier interconnecting with the Applicants the alternative of avoiding costly

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4 *See* Proposed Conditions at 41-43.

5 *See id.* at 41-42.

6 *See id.* at 42 and Attachment D.

7 *See infra* n.16 and accompanying text.

8 *See id.* at 37 and Attachment C.

9 *See id.* at 43.

10 *See id.* at 44-49.

and time-consuming litigation through alternative dispute resolution. By means of the Additional Service Quality Reporting requirements and the Enforcement Conditions, the Applicants would be required to submit to the Commission quarterly service quality reports, a compliance plan within 60 days of the Merger Closing Date, annual compliance reports, and engage an Independent Auditor to verify Applicants' compliance with the Proposed Conditions.[11] The Applicants, however, have excluded the Commonwealth from all of the above-listed provisions. Indeed, even the Commission itself would be deprived of critical regulatory data under the Proposed Conditions by virtue of the fact that state-by-state quality service reports would not be filed covering the Commonwealth.[12]

Other important components of the Proposed Conditions also exclude the Commonwealth, including but not limited to the Applicants' Carrier-to-Carrier Performance Assurance Plan, OSS Provisions, Collocation Compliance, Performance Measurement Business Rules, and Measurement List.[13]

B. The Applications Are *Prima Facie* Unlawful and Must be Denied

The Proposed Conditions discussed above are *prima facie* unlawful under Section 202(a) of the Act. Hence, the Applications must be denied as a matter of law.

Section 202(a) provides:

> It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities,

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[11] *See* Proposed Conditions at 43-48.

[12] *See id.* at 43.

[13] *See id.* at 26-40 and Attachment A.

> or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.[14]

Any discrimination under Section 202(a) is illegal *per se* unless it is justified[15]

There can be no doubt that the Applicants' Proposed Conditions subject ratepayers in the Commonwealth to "unreasonable prejudice or disadvantage" by excluding them from the safeguards offered under the Proposed Conditions.[16] Stated differently, the definitional restrictions on the geographic availability of the Proposed Conditions would necessarily treat similarly situated customers differently.[17] Applicants have not attempted to–nor would they be able to--justify such blatant discriminatory treatment.[18] Therefore, the Applications must be denied in their present form.

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[14] 47 U.S.C. § 202(a) (1999).

[15] *See In re* Competition in the Interstate Interexchange Marketplace, *Report and Order,* 6 FCC Rcd. 5880, 5901; International Record Carriers, 66 FCC 2d 517,528 (1977).

[16] This discriminatory treatment is all the more egregious in view of the fact that the safeguards which the Proposed Conditions would afford are genuinely needed in the Commonwealth. In particular, local telephone competition is non-existent as GTE's local service affiliate in the Commonwealth has not entered into a single interconnection agreement to date. *See Petition to Condition Grant* of the Commonwealth at 5. In addition, the Commonwealth has one of the lowest subscribership levels in the United States, at 61%. *See* Comments of the Commonwealth in CC Dkt. No. 96-45, at 1-2 and Exhibit at 5 (Dec. 17, 1999). This traditionally low subscribership level, when combined with the Commonwealth's low *per capita* income rate of $6,897 makes it especially important that the Commonwealth not be unlawfully excluded from the safeguards proposed in the conditions. *See id.*, Exhibit at 3.

[17] *See In re* Competition in the Interstate Interexchange Marketplace, *Report and Order,* 6 FCC Rcd. 5880, 5901.

[18] The Commonwealth's territorial status does not constitute a basis for excluding it from the Proposed Conditions. Section 3(40) of the Act defines a "state" to include "the District of Columbia and the territories and possessions." 47 U.S.C. § 3(40) (1999). The Commission has repeatedly stated that the Commonwealth, as a U.S. territory, fits within the rubric of "state"

III. THE PROPOSED MERGER CONDITIONS VIOLATE SECTION 254(B)(3)

The Applications should also be denied as unlawful under Section 254(b)(3) of the Act since the Proposed Conditions would prevent Commonwealth ratepayers from having access to telecommunications services reasonably comparable to those in urban areas and at rates reasonably comparable to those in urban areas.

Section 254(b)(3) provides as follows:

> Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommuncations and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.[19]

By excluding ratepayers in the Commonwealth from many of the critical components of the Proposed Conditions, the Applications fail to ensure access to telecommunications services by ratepayers in the Commonwealth "that are reasonably comparable to those services provided in

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by the plain language of the definition. *See e.g.,* Policy and Rules Concerning the Interstate, Interexchange Marketplace and Implementation of Section 254 (g) of the Act of 1934, as amended, *Memorandum Opinion and Order,* 12 FCC Rcd. 11548, 11550 (July 30, 1997); Policy and Rules Concerning the Interstate, Interexchange Marketplace and Implementation of Section 254 (g) of the Act of 1934, as amended, *First Memorandum Opinion and Order on Reconsideration,* 12 FCC Rcd. 11812, 11813, 11818 (July 30, 1997); *In re* Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, *Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61*, CC Dkt. No. 96-149 and CC Dkt. No. 96-61, FCC 97-142, at ¶ 174 (April 18, 1997); Policy and Rules Concerning the Interstate, Interexchange Marketplace and Implementation of Section 254 (g) of the Act of 1934, as amended, *Report and Order,* 11 FCC Rcd. 9564, 9589 and n. 118 (Aug. 7, 1996). Thus, the Applicants cannot exclude the Commonwealth as a beneficiary of the Proposed Conditions based upon the fact that it is not a state.

[19] 47 U.S.C. § 254(b)(3) (1999).

urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." Specifically, excluding Commonwealth ratepayers from the Applicants' Enhanced Lifeline Plans will virtually ensure that such insular ratepayers will not obtain service at rates reasonably comparable to other nationwide Bell Atlantic/GTE ratepayers in urban areas. The list of other Proposed Conditions which would not apply to the Commonwealth (enumerated *supra* at 2-4) would also help ensure that access to, and rates for, telecommunications services would be less favorable for ratepayers in the Commonwealth as opposed to those in other areas of the GTE/Bell Atlantic service territory.

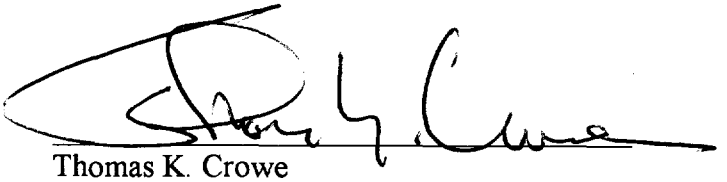
The Commission's future ability to even enforce Section 254(b)(3) of the Act would be compromised were it to approve the Proposed Conditions in their current form since so many of the conditions from which the Commonwealth would be excluded are reporting/compliance provisions. For example, the Carrier-to-Carrier Performance Plan, appointment of an Independent Auditor approved by the Commission, and the Additional Service Quality Reporting requirements are all designed to permit the Commission to assess the Applicants' performance under and compliance with the Proposed Conditions. Without comparative information applicable to the Commonwealth, the Commission is simply not in a position to make the comparative assessments necessary to enforce Section 254(b)(3) in the future.

Therefore, the Commission should declare the Applications to be unlawful under Section 254(b)(3).

IV. CONCLUSION

As demonstrated above, the Applications of GTE and Bell Atlantic 1) present a case of *prima facie* discrimination under Section 202(a) of the Act which cannot be justified, and 2) are unlawful under Section 254(b)(3) of the Act. Hence, the Applications must be denied.

Respectfully submitted,



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COUNSEL FOR THE COMMONWEALTH OF
THE NORTHERN MARIANA ISLANDS

Dated: March 1, 2000

CERTIFICATE OF SERVICE

I, Jessica Baluss, a legal assistant with the Law Offices of Thomas K. Crowe, P.C., hereby certify that copies of the foregoing "Petition to Deny" on behalf of the Commonwealth of the Northern Mariana Islands have been served by first class United States mail, postage prepaid, on all parties of record in this proceeding on this 1st day of March, 2000.

Jessica Baluss

Jessica Baluss