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AT&T

Joan Marsh
Director
AT&T Federal Government Affairs

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FEDERAL COMMUNICATIONS COMMISSION
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May 10, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW, Room TWB-204
Washington, DC 20554

RE: Notice of Oral Ex Parte
In the Matter of GTE Corp. ("GTE") Transferor,
and Bell Atlantic Corp. ("Bell Atlantic") Transferee,
For Consent to Transfer Control
CC Docket No. 98-184

Dear Ms. Roman Salas:

Yesterday, Peter Keisler and Rick Beckner of Sidley & Austin, and I met with Bob Atkinson, Michelle Carey, Johanna Mikes and Don Stockdale of the Common Carrier Bureau and James Bird and Paula Silberthau of the FCC's Office of the General Counsel. The purpose of the meeting was to discuss AT&T's Opposition to BA/GTE's Revised Proposal regarding GTE's InterLATA Operations as filed by AT&T on May 5, 2000. All comments at the meeting were consistent with AT&T's written submissions.

In addition, at the request of the staff, AT&T made available to Staff copies of certain of the authorities cited by AT&T in its opposition. Those authorities are attached to this ex parte for submission into the record.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206 of the Commission's rules.

Sincerely,

Joan Marsh

Attachments

cc: Bob Atkinson
James Bird
Michelle Carey
Johanna Mikes
Paula Silberthau
Don Stockdale

ACCOUNTING STANDARDS

ORIGINAL PRONOUNCEMENTS

VOLUME I

Financial Accounting Standards Board
401 MERRITT 7, P.O. BOX 5116, NORWALK, CONNECTICUT 06856-5116

ACCOUNTING PRINCIPLES BOARD

Opinions

existed at the time of issuance of the convertible security should govern the determination of status as a common stock equivalent, and (b) that the presentation of fully diluted earnings per share data adequately discloses the potential dilution which may exist because of changes in conditions subsequent to time of issuance.

29. Various factors should be considered in determining the appropriate "time of issuance" in evaluating whether a security is substantially equivalent to a common stock. The time of issuance generally is the date when agreement as to terms has been reached and announced, even though subject to certain further actions, such as directors' or stockholders' approval.

No Anti-Dilution

30. Computations of primary earnings per share should not give effect to common stock equivalents or other contingent issuance for any period in which their inclusion would have the effect of increasing the earnings per share amount or decreasing the loss per share amount otherwise computed.[8] Consequently, while a security once determined to be a common stock equivalent retains that status, it may enter into the computation of primary earnings per share in one period and not in another.

Test of Common Stock Equivalent Status

31. *Convertible securities.* A convertible security which at the time of issuance has terms that make it for all practical purposes substantially equivalent to a common stock should be regarded as a common stock equivalent. The complexity of convertible securities makes it impractical to establish definitive guidelines to encompass all the varying terms which might bear on this determination. Consideration has been given, however, to various characteristics of a convertible security which might affect its status as a common stock equivalent, such as cash yield at issuance, increasing or decreasing conversion rates, liquidation and redemption amounts, and the conversion price in relation to the market price of the common stock. In addition, consideration has been given to the pattern of various nonconvertible security yields in recent years, during which period most of the existing convertible securities have been issued, as well as over a longer period of time. Many of the characteristics noted above, which in various degrees may indicate status as a common stock equivalent,

[8]The presence of a common stock equivalent together with extraordinary items may result in diluting income before extraordinary items on a per share basis while increasing net income per share, or vice versa. If an extraordinary item is present and a common stock equivalent results in dilution of either income before extraordinary items or net income on a per share basis, the common stock equivalent should be recognized for all computations even though it has an anti-dilutive effect on one of the per share amounts.

are also closely related to the interest or dividend rate of the security and to its market price at the time of issuance.

32. The Board has also studied the use of market price in relation to investment value (value of a convertible security without the conversion option) and market parity (relationship of conversion value of a convertible security to its market price) as means of determining if a convertible security is equivalent to a common stock. (See discussion of investment value and market parity tests in Appendix B.) It has concluded, however, that these tests are too subjective or not sufficiently practicable.

33. The Board believes that convertible securities should be considered common stock equivalents if the cash yield to the holder at time of issuance is significantly below what would be a comparable rate for a similar security of the issuer without the conversion option. Recognizing that it may frequently be difficult or impossible to ascertain such comparable rates, and in the interest of simplicity and objectivity, the Board has concluded that a convertible security should be considered as a common stock equivalent at the time of issuance if, based on its market price[9], it has a cash yield of less than 66 2/3% of the then current bank prime interest rate.[10] For any convertible security which has a change in its cash interest rate or cash dividend rate scheduled within the first five years after issuance, the lowest scheduled rate during such five years should be used in determining the cash yield of the security at issuance.

34. The Board believes that the current bank prime interest rate in general use for short-term loans represents a practical, simple and readily available basis on which to establish the criteria for determining a common stock equivalent, as set forth in the preceding paragraph. The Board recognizes that there are other rates and averages of interest rates relating to various grades of long-term debt securities and preferred stocks which might be appropriate or that a more complex approach could be adopted. However, after giving consideration to various approaches and interest rates in this regard, the Board has concluded that since there is a high degree of correlation between such indices and the bank prime interest rate, the latter is the most practical rate available for this particular purpose.

35. *Options and warrants (and their equivalents).* Options, warrants and similar arrangements usually have no cash yield and derive their value from their right to obtain common stock at specified prices for an extended period. Therefore, these

[9] If no market price is available, this test should be based on the fair value of the security.

[10] If convertible securities are sold or issued outside the United States, the most comparable interest rate in the foreign country should be used for this test.

securities should be regarded as common stock equivalents at all times. Other securities, usually having a low cash yield (see definition of "cash yield", Appendix D), require the payment of cash upon conversion and should be considered the equivalents of warrants for the purposes of this Opinion. Accordingly, they should also be regarded as common stock equivalents at all times. Primary earnings per share should reflect the dilution that would result from exercise or conversion of these securities and use of the funds, if any, obtained. Options and warrants (and their equivalents) should, therefore, be treated as if they had been exercised and earnings per share data should be computed as described in the following paragraphs. The computation of earnings per share should not, however, reflect exercise or conversion of any such security[11] if its effect on earnings per share is anti-dilutive (see paragraph 30) except as indicated in paragraph 38.

36. Except as indicated in this paragraph and in paragraphs 37 and 38, the amount of dilution to be reflected in earnings per share data should be computed by application of the "treasury stock" method. Under this method, earnings per share data are computed as if the options and warrants were exercised at the beginning of the period (or at time of issuance, if later) and as if the funds obtained thereby were used to purchase common stock at the average market price during the period.[12] As a practical matter, the Board recommends that assumption of exercise not be reflected in earnings per share data until the market price of the common stock obtainable has been in excess of the exercise price for substantially all of three consecutive months ending with the last month of the period to which earnings per share data relate. Under the treasury stock method, options and warrants have a dilutive effect (and are, therefore, reflected in earnings per share computations) only when the average market price of the common stock obtainable upon exercise during the period exceeds the exercise price of the options or warrants. Previously reported earnings per share amounts should not be retroactively adjusted, in the case of options and warrants, as a result of changes in market prices of common stock. The Board recognizes that the funds obtained by issuers from the exercise of options and warrants are used in many ways with a wide variety of results that cannot be anticipated. Application of the treasury stock method in earnings per share computations is not based on an assumption that the funds will or could actually be used in that manner. In the usual case, it represents a practical approach to reflecting the dilutive effect that would result from the issuance of common stock under option and warrant agree-

[11] Reasonable grouping of like securities may be appropriate.

[12] For example, if a corporation has 10,000 warrants outstanding, exercisable at $54 and the average market price of the common stock during the reporting period is $60, the $540,000 which would be realized from exercise of the warrants and issuance of 10,000 shares would be an amount sufficient to acquire 9,000 shares; thus 1,000 shares would be added to the outstanding common shares in computing primary earnings per share for the period.

THE AMERICAN LAW INSTITUTE

PRINCIPLES OF CORPORATE GOVERNANCE: ANALYSIS AND RECOMMENDATIONS

Volume 1
Parts I–VI
§§ 1.01–6.02

As Adopted and Promulgated
BY
THE AMERICAN LAW INSTITUTE
AT WASHINGTON, D.C.
May 13, 1992

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the date of the corporate action giving rise to appraisal rights (or such later date on which notice thereof is first given to shareholders).

Comment:

This definition is new. The term "eligible holder" is used only in Part VII, Chapter 4 (The Appraisal Remedy).

§ 1.18 Employee–Owned Corporation

(a) A corporation is "employee-owned" if, as of the close of its last fiscal year: (1) its current employees were the record holders [§ 1.32] of 80 percent or more in value of its equity securities [§ 1.20], and either: (2) in the case of a large publicly held corporation [§ 1.24], the number of record holders of its equity securities, excluding current employees, was fewer than 2,000, or (3) in the case of any other publicly held corporation [§ 1.31], the number of record holders of its equity securities, excluding current employees, was fewer than 500.

(b) For purposes of § 1.34 and Parts III and III–A (structure of the corporation), the term "employee" does not include a non-officer [§ 1.27] employee of an employee-owned corporation.

Comment:

This definition is new. Its application is restricted to Parts III and III–A. Under this section, directors who are employees, but not officers, of employee-owned corporations do not fall within the limits referred to in §§ 3.05 and 3A.01 through 3A.05 on the composition of the board and the oversight committees of publicly held corporations. The term "any other publicly held corporation" in Subsection (a)(3) refers to any publicly held corporation not described in Subsection (a)(2), and therefore would include both (i) small publicly held corporations [§ 1.35], and (ii) large publicly held corporations that have fewer than 2,000 record holders of equity securities excluding current employees. If an employee-owned large publicly held corporation has fewer than 2,000 but more than 500 non-employee record holders it should be treated, for purposes of Parts III and Part III–A, as if it were a small publicly held corporation.

§ 1.19 Equity Interest

"Equity interest" means an equity security [§ 1.20] in a corporation, or a beneficial interest in any other form of business organization [§ 1.04].

Comment:

This definition is new. As applied to business organizations other than corporations, "equity interest" would include, for example, a partnership interest in a partnership and a beneficiary's interest in a trust. The term "beneficial interest" does not include an interest limited to the power to vote, so that a person who has a mere power to vote in a business organization does not thereby have an equity interest in the business organization. A mere power to vote may, however, be significant under some provisions, such as § 1.08, which defines "control." Thus a trustee's voting right in a corporation's stock is not an equity interest within the meaning of § 1.19, but might, if sufficiently substantial, put the trustee in presumptive control of a corporation under § 1.08.

§ 1.20 Equity Security

"Equity security" means (a) a share in a corporation or similar security, or (b) a security convertible, with or without consideration, into such a security, or carrying a warrant or right to subscribe for or buy such a security, if the warrant or right or convertible security is issued by the issuer of that security.

Comment:

This definition is derived in part from Federal Securities Code § 202(47). See also Rule 3a11-1 under the Securities Exchange Act.

§ 1.21 Family Group

"Family group" means a group of persons [§ 1.28], all of whom act in concert concerning the corporation's affairs, who are either individuals related by blood, marriage, or adoption, or trusts or other organizations created or acting primarily for the benefit of such individuals.

Comment:

This definition is new. Its application is restricted to Part III-A (Recommendations of Corporate Practice Concerning the Board and the Principal Oversight Committees).

§ 1.22 Holder

A "holder" is a person [§ 1.28] having a legal or substantial beneficial interest in an equity security [§ 1.20].