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EX PARTE OR LATE FILED

June 14, 2000

Ex Parte

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

JUN 14 2000

Re: Bell Atlantic and GTE, CC Docket No. 98-184

Dear Ms. Salas:

Covad Communications Company (Covad) urges the Commission to take immediate action to stop GTE from unilaterally enforcing a collocation policy that is having the immediate effect of severely restricting competition throughout GTE's territory. Given the representations GTE has made to the Commission concerning its compliance with FCC rules in the context of its pending merger with Bell Atlantic, GTE's current stance against CLEC collocation is particularly troubling.

In the months following the Commission's March 1999 cageless collocation order, Covad executed a modification to its interconnection agreements with GTE in order to implement the new federal collocation rules. Among those modifications, GTE agreed to provide both Covad access to their collocation space 24 hours a day, seven days a week, without requiring an escort of any kind. By agreeing to this provision, GTE bound itself contractually to the FCC's rule requiring unfettered CLEC access to central office space.[1]

Within the last several weeks, GTE has decided to unilaterally change its practice of permitting CLEC access to central offices. Specifically, GTE has informed both Covad (and other CLECs) that collocation provisioning work can only take place during the overnight hours – either ten p.m. to six a.m. or midnight to four a.m., depending on the central office. Although GTE has advised Covad that it may still enter the offices on a 24/7 basis, GTE has made clear that certain actual work in the central office can only be performed overnight – in short, access to the building does not carry with it the right to actually perform any work there.

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[1] On this point, the Commission's rule, 47 C.F.R. § 51.323(i), is clear: "An incumbent LEC must allow collocating parties to access their collocated equipment 24 hours a day, seven days a week, without requiring either a security escort of any kind or delaying a competitor's employees' entry into the incumbent LEC's premises."

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List A B C D E

In a conference call June 9 with GTE, facilitated by the Enforcement Bureau of the Commission, GTE admitted that this policy change was the result of an incident involving GTE-employed contractors who damaged some central office equipment in Texas in the course of performing work for GTE. As a result, GTE imposed a policy on itself, purporting to restrict installation of GTE equipment to the overnight hours.[2] GTE now contends that it is simply applying that policy in a nondiscriminatory manner to CLECs. Of course, it is obvious that the CLEC that cannot offer service until it installs equipment in the central office – and thus cannot compete with GTE until installation is complete – suffers materially greater harm than GTE, which already has its equipment installed and operational. GTE appears to have stumbled on a means of undoing all the pro-competitive work of this Commission in ensuring that CLECs would have unfettered access to central office collocation space.[3]

On June 9, GTE committed to provide Covad a written response to these concerns by close of business Monday, June 12. A copy of that e-mail "confirmation" is attached to this letter. In this response, GTE shows that its unilateral "modification" of collocation practices will significantly limit the 24/7 access to collocated equipment clearly required by Commission rules. In particular, GTE's new policy will delegate to "local review" and approval the type of activities that would be performed by CLECs, depending on the opinion of the "local review[er]" regarding the "potential to seriously impact customer service." The need to go through this "local review" process will clearly "delay" a CLEC's in ability to access and operate collocated equipment, contrary to Rule 51.323(i). In addition, the restriction on access to equipment located "adjacent" to in-service equipment could capture virtually all work on equipment collocated on a cageless basis – a policy that would eviscerate Rule 51.323(i) as it relates to cageless collocation.

The practical effects of this violation of existing interconnection agreements – and the Commission's rules – are clear. Competitive carriers seeking to serve consumers in GTE's market are forced to provision collocation space during a few hours in the middle of the night – delaying service activation, forcing additional labor costs on CLECs, and denying consumers the benefits of broadband competition for days or even weeks longer than necessary. In addition, CLECs will be subject to unspecified "local review" and approval of significant activities – a virtually unfettered delegation of GTE's obligations to comply with Commission rules.

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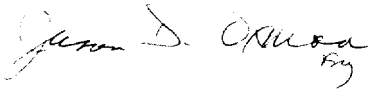
[2] GTE claims that the overnight provisioning policy was always in place, but has never before been enforced. There is no provision in either Covad or NorthPoint's interconnection agreement that states that collocation provisioning must take place during overnight hours – only that each party has 24/7 access to collocation space. The policy to which GTE refers is found only in an internal GTE policy document, the Network Maintenance Window document, which applies to GTE employees and contractors.

[3] On the June 9, 2000, conference call between GTE, Covad, NorthPoint, and the FCC's Enforcement Bureau, GTE claimed that it was only enforcing the overnight policy in cases where CLEC collocation space was located close to the "backplane" of GTE's own equipment. Covad pointed out that it had been forced to provision its collocation space in the Irving West central office in Texas during overnight hours, a central office in which Covad's equipment is collocated two floors away from GTE's. GTE then admitted that its new policy may be enforced on a somewhat inconsistent basis.

GTE has represented to Covad that its new policy will apply across the entire GTE footprint. Covad is concerned that, should the Commission permit this unlawful restriction to remain in place, GTE will extend it to its new merger partner, Bell Atlantic. Covad thus respectfully asks the Commission to take the steps necessary, in the context of the pending merger, or wherever the Commission deems it appropriate, to ensure that the representations GTE has made to the Commission concerning its compliance with federal collocation rules are factually accurate. Competition in GTE's – and probably Bell Atlantic's – territories will suffer serious harm if GTE's unilateral breach of Commission rules and its interconnection agreements is not stopped.

Respectfully submitted,



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Alan F. Ciamporcero, GTE

-----Original Message-----
From: Parker, Tom [mailto:Tom.Parker@gte.com]
Sent: Monday, June 12, 2000 4:14 PM
To: 'Sarah Bradley'; 'Glenn Harris'
Cc: Lachance, Andre (dc); Holford, Marylin
Subject: Maintenance Window

Sarah: This e-mail will confirm our conversation of late Friday regarding modification of GTE's current maintenance window policy. Please note that I am working on a better understanding of cabling requirements. What appears below is my understanding as of Friday. I was not able to hook up with the right engineers today.

As I related on the Friday call, under the modification of the practice, equipment can be placed, assembled, installed or removed in the bays on a 24 X 7 basis. The following activity must be performed between the 10:00 PM to 6:00 AM maintenance window: 1) Activity in the backplane area or adjacent to switching or transmission equipment; 2) Activity involving cable running in the central office. Cabling is defined as pulling cable down the raceways above the bays or otherwise tying down facilities in the vicinity of GTE backplanes; 3) Activity that requires installation or removal (including cabling) above adjacent to or above in-service equipment that has the potential to severely impact customer service requires the development and approval of a method of procedure (MOP) in accordance with section 3 of the practice. Local review of this MOP will determine if this activity must be performed during the maintenance window.

TP