

to annual benchmarks under which they must, pursuant to this condition, spend \$100 million or provide service over at least 50,000 customer lines between the merger closing date and the end of the first year thereafter, and spend \$300 million or provide service over at least 150,000 customer lines by the end of the second year. Furthermore, the Applicants have undertaken to devote at least 20 percent of their expenditures or customer lines specifically towards providing competitive local service to residential customers or towards providing advanced services. These benchmarks likewise are backed by voluntary payments in the amount of 150 percent of any shortfall, and these benchmark voluntary payments will offset any payments that the merged firm is obligated to make for not completing its out-of-region expenditure by the end of the 36 month period following the merger closing.

321. Notwithstanding the differences between the Applicants' out-of-region competition commitment and SBC/Ameritech's "National-Local Strategy" for out-of-territory competitive entry,⁷⁴² we disagree with AT&T's characterization of the Applicants' commitment as a "sham."⁷⁴³ We believe that the Applicants' out-of-region competition commitment is sufficient to ensure that residential consumers and business customers outside of Bell Atlantic/GTE's territory will benefit from meaningful, facilities-based competitive service.⁷⁴⁴ We also anticipate that this condition will stimulate competitive entry into the Bell Atlantic/GTE region by the affected incumbent LECs. Moreover, the Applicants have proposed annual expenditure benchmarks that are backed by payments to the U.S. Treasury for failure to meet the benchmarks. Although the Indiana commission maintains that it will be difficult to ensure compliance with the expenditure requirements,⁷⁴⁵ we are confident that the annual audit of Bell Atlantic/GTE's compliance with all of the conditions should uncover any non-compliance with the out-of-region expenditure commitment.⁷⁴⁶

322. In addition, we agree with the Applicants that we need not implement the Indiana Commission's prescription that at least half of the out-of-region expenditure commitment should be used for "local" service.⁷⁴⁷ Assuming, as the Applicants do, that by "local" the Indiana Commission means traditional voice services, we do not perceive the need to impose such a

⁷⁴² Compare *SBC/Ameritech Conditions*, 14 FCC Rcd at 15026-29, para. 59 (National-Local Strategy) with *Conditions* at paras. 43-48 (Bell Atlantic/GTE out-of-territory competitive entry commitment).

⁷⁴³ AT&T Mar. 1, 2000 Opposition at 29. See United States Hispanic Chamber of Commerce Mar. 1, 2000 Comments at 4 ("USHCC considers the out-of-region expenditure condition a distinct benefit of the proposed Bell Atlantic/GTE merger"); World Institute on Disability Mar. 1, 2000 Comments at 7 ("Bell Atlantic and GTE have committed to spending a substantial sum on out-of-territory competitive entry").

⁷⁴⁴ See LCLAA Mar. 1, 2000 Comments at 2 ("LCLAA believes that the \$500 million out-of-region commitment of the post-merger company will open the door to exactly the kind of facilities-based competition that Congress intended when it enacted the Telecommunications Act of 1996").

⁷⁴⁵ IURC Mar. 1, 2000 Comments at 11.

⁷⁴⁶ See *Conditions* at para. 56.

⁷⁴⁷ But see IURC Mar. 1, 2000 Comments at 11.

restriction.⁷⁴⁸ Indeed, section 706 of the 1996 Act mandates that the Commission encourage widespread deployment of advanced services nationwide,⁷⁴⁹ and the Applicants include advanced services among the services that the merged firm may deploy in attempting to satisfy the out-of-region competition commitment.

323. Similarly, we disagree with AT&T's contention that the "technology neutral" aspect of the out-of-region commitment undermines its benefit.⁷⁵⁰ As the Applicants explain, given the rapid pace of technological change, they expressly fashioned the commitment to be technology neutral in order to allow devotion of resources to evolving technologies.⁷⁵¹ Indeed, imposing additional restrictions could severely limit the Applicants' ability to undertake innovative business strategies or ventures with other firms. Finally, AT&T's concern that the Applicants may satisfy this commitment wholly by "implementing their existing pre-merger plans to offer out-of-region wireless services" is defeated by our clarification that commercial mobile radio services may not count towards satisfaction of the commitment.⁷⁵²

4. Improving Residential Phone Service

324. *Pricing of InterLATA Services.* As a direct benefit to consumers, particularly low-income consumers and low-volume long distance callers, this condition provides that Bell Atlantic/GTE will not charge residential customers a minimum monthly or minimum flat rate charge for long distance service for a period of not less than three years.⁷⁵³ This requirement should not only benefit those customers that make few long distance calls, but also should help to ensure that long distance services continue to be available to all consumers at competitive prices.⁷⁵⁴

325. *Enhanced Lifeline Plans.* Designed specifically to ensure that the benefits of the merger extend to low-income residential customers throughout all of Bell Atlantic's and GTE's regions, this condition requires the merged firm to offer each of its in-region states a plan to

⁷⁴⁸ See Bell Atlantic/GTE Response to Conditions Comments at 29.

⁷⁴⁹ See Pub.L. 104-104, Title VII, § 706, Feb. 8, 1996, 110 Stat. 153, reproduced in the notes under 47 U.S.C. § 157 (Section 706).

⁷⁵⁰ But see AT&T Mar. 1, 2000 Opposition at 29.

⁷⁵¹ Bell Atlantic/GTE Jan. 27, 2000 Supplemental Filing at 28.

⁷⁵² See Conditions at para. 43. But see AT&T Mar. 1, 2000 Opposition at 29.

⁷⁵³ The Applicants originally proposed to extend this benefit immediately in the Bell Atlantic legacy states, and in the GTE legacy states only after AT&T ceased to apply such charges. See Bell Atlantic/GTE Jan. 27, 2000 Proposed Conditions at 40. In response to commenters, however, the Applicants agreed to extend the benefit throughout their combined service area as of the merger closing date. See Bell Atlantic/GTE Mar. 14, 2000 *Ex Parte* Letter at 2. See also IURC Mar. 1, 2000 Comments at 12; PUC of Texas Mar. 1, 2000 Comments at 3.

⁷⁵⁴ See *SBC/Ameritech Order*, 14 FCC Rcd at 14878, para. 400. This requirement does not prohibit the merged firm from offering its customers an optional, voluntary pricing plan that may include a minimum monthly charge, minimum flat rate charge, or a prepaid calling card.

provide discounts on basic local service for eligible customers.⁷⁵⁵ Bell Atlantic/GTE will offer a low-income Lifeline universal service plan modeled after the Ohio Universal Service Assistance (USA) Lifeline plan that Ameritech and Ohio community groups negotiated in 1994 and later revised to adjust to the 1996 Act. It also will incorporate elements from the December 1998 Ohio Commission Order addressing the Ohio USA plan.⁷⁵⁶ Specifically, Bell Atlantic/GTE will offer to provide a discount equal to the price of basic residential measured rate service, excluding local usage, in each state, up to a maximum discount of \$10.20 per month (including all federal, state and company contributions).

326. This condition not only applies to the subscriber eligibility, discounts and eligible services features of the Ohio USA Lifeline plan, but it also includes certain other commitments. Under the condition, Bell Atlantic/GTE will permit a Lifeline customer with past-due bills for local service to restore local service after payment of no more than \$25 and an agreement to repay the balance of local charges in six equal monthly payments. Lifeline customers also will not be required to pay a deposit for toll service if they elect toll restriction service. Bell Atlantic/GTE will allow prospective Lifeline customers to verify their eligibility on a written form, and Bell Atlantic/GTE will give those forms to state agencies that administer qualifying programs so that the agencies can distribute the forms to their clients.⁷⁵⁷ Bell Atlantic/GTE also will negotiate with state agencies administering qualifying programs to procure an on-line verification process. Easing the financial burden for prospective Lifeline customers, Bell Atlantic/GTE will provide both a toll-free telephone number for prospective customers to inquire about or subscribe to the program and a toll-free fax line for customers to send program documentation, and new customers will not be required to pay a deposit to obtain local service. Bell Atlantic/GTE will publicize the program in each state with an annual promotional budget that is proportional to the annual promotional budget in Ohio. In addition to including Lifeline information on customer service center voice response units where technically possible and appropriate, Bell Atlantic/GTE also will automatically upgrade current Lifeline customers to the new program where it is evident that doing so will unambiguously improve the customer's situation. For each state that accepts Bell Atlantic/GTE's offer, the merged firm will maintain the plan for a period of not less than 36 months.⁷⁵⁸

327. We reject the request of the State Advocates that we expand subscriber eligibility criteria to include all households with income below 150 percent of the federal poverty level, and

⁷⁵⁵ See *id.* at para. 401. State commissions are free to accept or reject the plan outlined in these conditions. *But see* State Advocates Mar. 1, 2000 Comments at 15-17 (requesting that the Commission clarify that states may adopt the enhanced Lifeline plan without reducing any benefits offered under existing state plans).

⁷⁵⁶ See *SBC/Ameritech Order*, 14 FCC Rcd at 14878, para. 401.

⁷⁵⁷ We note that Bell Atlantic/GTE will provide these forms in English and such other languages as are prevalent in the applicable service area.

⁷⁵⁸ See Conditions at para. 50j (providing that the obligations in this condition will not take effect until and unless the enhanced Lifeline tariffs are accepted and approved by a state commission) and para. 64 (each condition is designed to yield at least 36 months of benefit).

that we remove restrictions on the purchase of optional services.⁷⁵⁹ As the Applicants respond, states will continue to have the right to establish eligibility requirements for lifeline service as well as determine whether lifeline customers are eligible to subscribe to optional services.⁷⁶⁰ As for the subscriber eligibility requirements themselves, our rules establish eligibility criteria for states that have not established their own, and the eligibility criteria in our rules fall within the criteria in the Ohio USA Lifeline plan.⁷⁶¹ Furthermore, we believe that the eligibility criteria alternative presented by the State Advocates will be difficult to verify. We find that the Applicants' commitment to offer states an enhanced Lifeline plan will provide substantial direct benefits to low-income residential consumers, and thus, we see no need to add further requirements to the condition.⁷⁶²

328. *Additional Service Quality Reporting.* As a safeguard against potential deterioration in Bell Atlantic's or GTE's quality of service as a result of the merger, and to promote affirmative service quality improvements, this condition requires Bell Atlantic/GTE to report additional benchmark and service-quality information.⁷⁶³ First, Bell Atlantic/GTE will report, on a quarterly basis, the quality of service that it provides to customers. Specifically, Bell Atlantic/GTE will develop and file with this Commission, and post on a Bell Atlantic/GTE website or provide to the relevant state commissions, quarterly state-by-state service quality reports in accordance with the National Association of Regulatory Utility Commissioners (NARUC) Technology Policy Subgroup's November 1998 "Service Quality White Paper."⁷⁶⁴ Through this reporting program, Bell Atlantic/GTE will make publicly available in a timely manner key information about its service quality, including installation and repair performance, switch and transmission facility outages, consumer complaints, and answer time performance.⁷⁶⁵ We anticipate that, by providing consumers and states with information about Bell Atlantic/GTE's service quality, this condition will, at a minimum, deter any potential service quality degradation and motivate the merged firm to improve its service quality where possible.⁷⁶⁶

329. Bell Atlantic/GTE will also file reports showing the service quality provided to

⁷⁵⁹ *But see* State Advocates Mar. 1, 2000 Comments at 4-15.

⁷⁶⁰ Bell Atlantic/GTE Response to Conditions Comments at 31.

⁷⁶¹ *See* 47 C.F.R. § 54.400(a).

⁷⁶² *See SBC/Ameritech Order*, 14 FCC Rcd at 14918, para. 502.

⁷⁶³ *See id.* at 14879, para. 403.

⁷⁶⁴ In the Preamble to the Service Quality White Paper, NARUC states that a service quality reporting program will "allow interested parties to assess current service quality levels among the states, and identify increasing or decreasing trends over time." National Association of Regulatory Utility Commissioners, SERVICE QUALITY WHITE PAPER (Nov. 1998); *see also* National Regulatory Research Institute, TELECOMMUNICATIONS SERVICE QUALITY 127-60 (1996) (noting that information facilitates competition on quality).

⁷⁶⁵ *See SBC/Ameritech Order*, 14 FCC Rcd at 14880, para. 403.

⁷⁶⁶ *See id.*

interexchange carriers, which will include data regarding the installation and maintenance of switched, high speed special, and special access services.⁷⁶⁷ By receiving such information on a quarterly basis, the Commission and others can take appropriate action in the event such reports show service quality degradation.⁷⁶⁸ Bell Atlantic/GTE also will continue reporting ARMIS data on an operating-company basis in order to preserve the number of observable points of operating-company behavior for benchmarking purposes.⁷⁶⁹

330. In addition, as described above, we require the merged entity to report, on a disaggregated, company-specific basis,⁷⁷⁰ certain measurements, all but one of which it currently provides as part of the Commission's ARMIS requirements.⁷⁷¹ With respect to its provision of high-speed special access and regular special access services, we require Bell Atlantic/GTE, or any applicable affiliate,⁷⁷² to report: the percent of commitments met; the average interval (in days); the average delay days due to lack of facilities;⁷⁷³ the average interval to repair service (in hours) and the trouble report rate. These measurements should be reported on a monthly basis and made available to the independent auditor.⁷⁷⁴ It is our expectation that this condition will ensure that any attempt by the merged entity to discriminate in favor of Genuity in the provision of these special access services will be readily detectable.

331. *NRIC Participation.* Through this condition, we expect that Bell Atlantic/GTE will demonstrate and further its commitment to maintain reliable, high-quality networks and services, as well as to promote the deployment of advanced services. The Applicants will continue their participation in the Network Reliability and Interoperability Council (NRIC), a committee organized to make recommendations to the Commission on how to ensure "optimal

⁷⁶⁷ See ARMIS 43-05 Service Quality Report, Table 1. In the ARMIS 43-05 Service Quality Report, price cap incumbent LECs report the installation and maintenance of switched access, high speed special access, and special access services provided to interexchange carriers.

⁷⁶⁸ See *SBC/Ameritech Order*, 14 FCC Rcd at 14880, para. 404.

⁷⁶⁹ See *id.*

⁷⁷⁰ The merged entity, therefore, will report on its provision of these services to all companies, including Internet service providers, Internet backbone providers and interexchange carriers.

⁷⁷¹ See 47 C.F.R. § 43.21(g); ARMIS 43-05 Service Quality Report, Table 1 (establishing reporting requirements for special access provided to interexchange carriers).

⁷⁷² For example, these reporting requirements attach to the separate advanced services affiliate if it begins to provision these special access circuits to Genuity.

⁷⁷³ We note that average delay days due to lack of facilities is not currently reported through ARMIS. See ARMIS 43-05 Service Quality Report, Table 1.

⁷⁷⁴ See Conditions at para. 55(f). As provided in the Conditions, Bell Atlantic/GTE shall, in consultation with the Chief of the Common Carrier Bureau, modify these measurements and develop any applicable performance measurement business rules to the extent necessary. Any developed business rules, once approved by the Chief of the Common Carrier Bureau, will be made publicly available.

reliability, interoperability and interconnectivity of, and accessibility to, the public telecommunications networks,” and also to advise the Commission on spectrum compatibility standards and spectrum management practices for the deployment of advanced services technologies.⁷⁷⁵ Bell Atlantic/GTE’s continued participation will provide assurance that the merged firm will review the causes of network outages and advise on spectrum compatibility standards and spectrum management practices in a timely manner, and adopt industry best practices designed to promote reliable, high quality services.

5. Ensuring Compliance with and Enforcement of these Conditions

332. The Commission is firmly committed to enforcing the Communications Act and the public interest standard that forms its foundation. Attaching conditions to a merger without an efficient and judicious enforcement program would impair the Commission’s ability to protect the public interest.⁷⁷⁶ The conditions therefore establish compliance and enforcement mechanisms that not only will provide Bell Atlantic/GTE with a strong incentive to comply with each of its requirements, but also will facilitate the Commission’s oversight of the Applicants’ obligations under these conditions. As a general matter, the conditions place the responsibility of taking active steps to ensure compliance on Bell Atlantic/GTE by: (1) establishing a self-executing compliance mechanism; (2) requiring an independent audit of the Applicants’ compliance with the conditions; and (3) providing self-executing remedies for failure to perform an obligation.

333. *Compliance Program.* For the benefits of the conditions to outweigh the potential public interest harms of the merger, Bell Atlantic/GTE must take aggressive steps to implement every aspect of these conditions and to comply with both the letter and the spirit of its obligations. In our view, the benefits of these conditions depend entirely upon the Applicants’ compliance. Because the conditions that we adopt today are spelled out in detail with their satisfaction measured by objective criteria, and because failing to comply with the conditions could expose Bell Atlantic/GTE to a material loss of revenue, we believe that Bell Atlantic/GTE has a strong incentive to implement an aggressive and effective compliance program.⁷⁷⁷

⁷⁷⁵ Network Reliability and Interoperability Council, *NRIC V Goal* (visited June 13, 2000) <http://www.nric.org>; *Revised Network Reliability and Interoperability Council – V Charter* (effective Jan. 6, 2000). The NRIC is a federal advisory committee chartered to study the reliability of the public telecommunications network. See Network Reliability and Interoperability Council, NRIC NETWORK INTEROPERABILITY: THE KEY TO COMPETITION (1997). See also *Line Sharing Order*, 14 FCC Rcd at 20992-93, paras. 184-85 (establishing NRIC’s advisory function on advanced services spectrum compatibility and spectrum management matters).

⁷⁷⁶ See NEXTLINK Mar. 16, 2000 Reply at 8-9; Allegiance Mar. 1, 2000 Comments at 9-10 (recommending independent audit of compliance); CoreComm Mar. 1, 2000 Comments at 46 (supporting an audit); MCI WorldCom Mar. 1, 2000 Supplemental Comments at 19-20; NorthPoint Mar. 1, 2000 Comments at 10. See also *SBC/Ameritech Order*, 14 FCC Rcd at 14881, para. 406.

⁷⁷⁷ A corporate compliance program is a well-established technique for ensuring that an organization takes active steps to comply with legal and regulatory requirements. The Commission and others have used compliance programs as a tool for addressing potential problem areas. See *id.* at 14881-82, paras. 407-08. See also *SBC* (continued....)

334. As part of the conditions, Bell Atlantic and GTE will establish a corporate compliance program to identify all applicable compliance requirements, establish and maintain the internal controls needed to ensure compliance, evaluate the merged firm's compliance on an on-going basis, and take any corrective actions necessary to ensure full and timely compliance.⁷⁷⁸

Bell Atlantic/GTE will appoint a "Compliance Officer" with sufficient rank and experience to supervise its corporate operations and to ensure that the business units carry out their responsibilities under the conditions.⁷⁷⁹ This Compliance Officer will prepare and publicly file with the Commission an initial compliance plan and an annual compliance report addressing the corporation's compliance with the conditions and the sufficiency of the corporation's internal controls for ensuring continued compliance.⁷⁸⁰

335. We expect that Bell Atlantic and GTE will put into place a reasonably designed, implemented, and self-enforced compliance program that will detect potential noncompliance in time for Bell Atlantic/GTE to notify the Commission and take corrective action before such noncompliance impairs the benefits of these conditions. To provide additional assurances to the public regarding Bell Atlantic/GTE's compliance, however, the Commission plans to conduct targeted audits of various aspects of the Applicants' compliance programs.⁷⁸¹ Only a strong corporate compliance program, in conjunction with the independent audit and other enforcement mechanisms, will enable consumers to realize the full benefit of the conditions.

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Communications, Order, FCC 99-153 (rel. June 28, 1999); *U.S. v. 21st Century Bidding Corp.*, No. 98-2752, 1999 WL 135165 (D.D.C. Feb. 25, 1999).

⁷⁷⁸ Corporate compliance programs should both deter potential misconduct within the corporation, and provide a method for internal policing. Components of a corporate compliance program include, for example, corporate conduct codes, employee training, record-keeping, standard operating procedures followed by employees, individual work assignments, monitoring programs, and internal compliance audits. See Richard S. Gruner, *Designing Compliance Programs*, Practising Law Institute: Corporate Law and Practice Course Handbook Series, 1100 PLI/Corp 151 (1999); Don Zarin, *Doing Business Under the Foreign Corrupt Practices Act: Compliance Programs*, Practising Law Institute: Corporate Law and Practice Course Handbook Series, 943 PLI/Corp 525 (1996).

⁷⁷⁹ We note that, as an additional safeguard, the Board of Directors of Bell Atlantic/GTE will oversee the activities of the Compliance Officer. See *In re Caremark Internat'l Inc. Derivative Litigation*, 698 A.2d 959, 967-70 (Del. Ch. 1996) (establishing a duty for corporate directors to implement an effective compliance program); see also Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees, REPORT AND RECOMMENDATIONS (1999) (recommending actions by corporate boards to improve oversight and monitoring of corporate compliance).

⁷⁸⁰ The Compliance Plan will describe Bell Atlantic/GTE's plan for ensuring compliance with the separate affiliate requirements. See BlueStar et al. Mar. 1, 2000 Comments at 6-7. The Compliance Report also will include a statement of the cost-savings achieved during the course of the calendar year in order to assist the Commission and the public in assessing any efficiencies arising out of this merger. This report will constitute, as required by industry standards, Bell Atlantic/GTE's written assertion regarding its compliance with the conditions contained herein and the effectiveness of Bell Atlantic/GTE's internal control structure over compliance. See American Inst. of Certified Pub. Accountants, COMPLIANCE ATTESTATION, AT § 500.01.

⁷⁸¹ See *SBC/Ameritech Order*, 14 FCC Rcd at 14882, para. 409.

336. *Independent Auditor.* Because the public interest benefit of these conditions depends entirely upon Bell Atlantic/GTE's compliance, the conditions also establish an independent oversight program. Bell Atlantic and GTE will retain an independent auditor to conduct an annual audit to provide a thorough and systematic evaluation of Bell Atlantic/GTE's compliance with the conditions and the sufficiency of Bell Atlantic/GTE's internal controls.⁷⁸² We have ample experience using independent audits to supplement our usual investigative authority,⁷⁸³ and have extensive experience with this method for ensuring compliance with our rules. Independent audits, combined with targeted on-site audits conducted by Commission staff and thorough reviews of the auditor's working papers, have proven largely successful in ensuring compliance with the Commission's rules.⁷⁸⁴

337. Although the independent audit will provide a systematic means of evaluating Bell Atlantic/GTE's compliance, we are aware of inherent limitations in the audit process.⁷⁸⁵ Most notably, an independent audit does not guarantee discovery of noncompliance or illegal

⁷⁸² By "internal control," we mean the process implemented by a company's board of directors, management, and other personnel designed to provide reasonable assurance regarding, in this instance, the company's compliance with the requirements established in this Order and all applicable laws and regulations. See American Inst. of Certified Pub. Accountants, CONSIDERATION OF INTERNAL CONTROL IN A FINANCIAL STATEMENT, AU § 319.06 (1998); COMPLIANCE ATTESTATION, AT § 500.01, n.1 (1999). The independent auditor will examine, for example, Bell Atlantic/GTE's compliance with, as well as its ability to administer, the requirements of the Carrier-to-Carrier Performance Plan to report accurate and relevant performance data. See, e.g., U.S. GAO, ASSESSING THE RELIABILITY OF COMPUTER-PROCESSED DATA, GAO/OP-8.1.3 (Apr. 1991) (providing guidance for auditing computer-processed data). Strong internal controls are necessary both to ensure that Bell Atlantic/GTE takes affirmative steps to comply with the conditions and to counteract its incentive to delay local competition in its region. Managerial philosophy, commitment to employee competence, ethical values, oversight by the board of directors, assignment of authority, and human resources practices work together to provide the discipline and structure necessary for ensuring compliance with the conditions. See American Inst. of Certified Pub. Accountants, ATTESTATION ENGAGEMENTS, AT § 100.11-.12, .33-40; CONSIDERATION OF INTERNAL CONTROL IN A FINANCIAL STATEMENT, AU § 319.

⁷⁸³ See 47 U.S.C. § 220(c) (providing that the "Commission may obtain the services of any person licensed to provide public accounting services under the law of any State to assist with, or conduct, audits"). See also *SBC/Ameritech Order*, 14 FCC Rcd at 14882-84, 14918-21, paras. 410-12, 503-07; *Separation of Costs of Regulated Telephone Services from Costs of Nonregulated Activities*, CC Docket No. 86-111, Report and Order, 2 FCC Rcd 1298, paras. 243-73 (1987) ("Joint Cost Order"), modified on recon., 2 FCC Rcd 6283 (1987) ("Joint Cost Reconsideration Order"), further recon., 3 FCC Rcd 6701 (1988), *aff'd sub nom.*, *Southwestern Bell Corp. v. FCC*, 896 F.2d 1378 (D.C. Cir. 1990). 47 C.F.R. §§ 64.904 (requiring independent audits of cost allocation procedures), 69.621 (establishing an independent audit requirement regarding certain universal service rules). Besides the audits noted above, the Commission has additional experience with independent evaluations of structural, transactional, and nondiscrimination requirements pursuant to the provisions of section 274. See 47 U.S.C. § 274(b)(8); *Accounting Safeguards Order*, 11 FCC Rcd at 17640-43, paras. 220-26.

⁷⁸⁴ See *Computer III Remand Order* at para. 52. See also *Pacific Bell*, Order to Show Cause, 10 FCC Rcd 5503 (1995), *Consent Decree Order*, 11 FCC Rcd 14813 (1996); *US West Communications, Inc.*, Order to Show Cause, 10 FCC Rcd 5523 (1995), *Consent Decree Order*, 11 FCC Rcd 14822 (1996); *The Bell Atlantic Telephone Operating Companies*, Order to Show Cause, 10 FCC Rcd 5099 (1995), *Consent Decree Order*, 11 FCC Rcd 14839 (1996).

⁷⁸⁵ *SBC/Ameritech Order*, 14 FCC Rcd at 14920, para. 505.

acts.⁷⁸⁶ Accordingly, an auditor's report that fails to note any exceptions does not preclude potential enforcement action.⁷⁸⁷

338. Acting pursuant to its delegated authority, the Common Carrier Bureau will approve the independent auditor and oversee the conduct of the independent audit, which will include reviewing the scope and quality of the auditor's work.⁷⁸⁸ The independent auditor's final report, which will be publicly available, will contain sufficient detail for the Commission and the public to understand the extent of the auditor's testing and evaluation procedures. In addition, the findings in the auditor's report, or the review of the auditor's working papers, could form the basis of enforcement actions.⁷⁸⁹ Bell Atlantic/GTE and the independent auditor also will meet for a post-audit conference to assess the conduct of the audit and the need for any modifications to the audit program. Based on these requirements, we find that the conditions provide for effective Commission oversight of the audit process and a mechanism for revising the audit programs and procedures based on our experience over time.⁷⁹⁰

339. In addition to examining compliance with the market-opening conditions described in this section, the Applicants' proposal also calls for the independent auditor to examine their Internet spin-off proposal. In particular, the auditor will examine Bell Atlantic/GTE's implementation of the Internet spin-off proposal, as well as their post-merger dealings with the spin-off entity, Genuity.⁷⁹¹ In this way, the Applicants' proposal ensures that the Commission and the public receive reasonable assurances that the spin-off will occur in strict accordance with the terms specified herein, and that the merged entity will not engage in any post-merger misconduct that could undermine our conclusions in this order.

340. The independent auditor will conduct its examination in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA").⁷⁹² Specifically,

⁷⁸⁶ See American Inst. of Certified Pub. Accountants, COMPLIANCE ATTESTATION, AT § 500.28; see also U.S. GAO, GOVERNMENT ACCOUNTING STANDARDS § 4.17 (1999) (The Yellow Book).

⁷⁸⁷ See MCI WorldCom Mar. 1, 2000 Supplemental Comments at 19 (noting that audits do not guarantee immediate detection of noncompliance); CompTel Mar. 1, 2000 Comments at 4.

⁷⁸⁸ See 47 C.F.R. § 0.91; *Amendment of Parts 0, 1 and 64 of the Commission's Rules with Respect to Delegation of Authority to the Chief, Common Carrier Bureau, and Technical Corrections and Deletions*, Report and Order, 5 FCC Rcd 4601 (1990).

⁷⁸⁹ See *Contel Telephone Operating Companies*, Notice of Apparent Liability for Forfeiture, 6 FCC Rcd 1880 (1991) (initiating an enforcement action based on the review of an independent auditor's working papers).

⁷⁹⁰ See *SBC/Ameritech Order*, 14 FCC Rcd at 14882-83, para. 410.

⁷⁹¹ The independent auditor will examine, for example, execution of the contracts the Applicants' have submitted in this proceeding to ensure that the parties strictly abide by the terms of the agreements. In addition, the independent auditor will examine the full relationship between Bell Atlantic/GTE and Genuity, so that if the merged entity engages in any prohibited or questionable transactions, we can expect disclosure of the pertinent facts and potential enforcement action.

⁷⁹² The Commission's rules already require independent auditors to use generally accepted auditing standards ("GAAS") for conducting audits of an incumbent LEC's compliance with our accounting safeguards. 47 C.F.R. § (continued....)

the independent auditor will conduct a "compliance attestation,"⁷⁷⁹³ which requires issuing a report that "expresses a conclusion about the reliability of a written assertion that is the responsibility of another party."⁷⁷⁹⁴ For most conditions, the independent auditor will conduct this examination using the "examination engagement"⁷⁷⁹⁵ method to evaluate Bell Atlantic/GTE's compliance, and to issue a "positive opinion" (with exceptions noted) in its final report. The conditions, however, require the more thorough "agreed-upon procedures" engagement⁷⁷⁹⁶ to evaluate Bell Atlantic/GTE's compliance with the separate advanced services affiliate requirements. In this way, the conditions emulate the Federal-State joint audit required by section 272(d).⁷⁷⁹⁷

341. The independent audit requirement establishes an efficient and cost-effective mechanism for providing reasonable assurances of Bell Atlantic/GTE's compliance with its obligations under the conditions.⁷⁷⁹⁸ Bell Atlantic/GTE is required to inform the auditor of its progress at meeting the specific deadlines and requirements set forth in the conditions, which will enable the independent auditor to detect potential noncompliance in a timely manner. Pursuant to its obligations as the designated auditor, the independent auditor will notify the Commission immediately of the problem areas and any corrective action undertaken.⁷⁷⁹⁹ By requiring Bell Atlantic and GTE to pay for the audit, the conditions place the costs of compliance on the Applicants instead of their competitors or taxpayers. We note that, pursuant to our regulatory fee schedule, Bell Atlantic/GTE will reimburse the U.S. Treasury for any review and

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64.904(a); see *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, Report and Order, 6 FCC Rcd 7571, 7582-83, para. 24 (1991) (*Computer III Remand Order*).

⁷⁷⁹³ American Inst. of Certified Pub. Accountants, COMPLIANCE ATTESTATION, AT § 500.

⁷⁷⁹⁴ *Id.* at § 100.01. For the purposes of these conditions, we consider Bell Atlantic/GTE's annual Compliance Report to be its written assertion. Consistent with AICPA standards, the independent auditor's report "does not provide a legal determination of [Bell Atlantic/GTE's] compliance" with the specified requirements; however, the auditor's findings may aid the Commission in making such a determination. American Inst. of Certified Pub. Accountants, COMPLIANCE ATTESTATION, AT § 500.03; see also American Inst. of Certified Pub. Accountants, ILLEGAL ACTS BY CLIENTS, AU § 317.03.

⁷⁷⁹⁵ See American Inst. of Certified Pub. Accountants, COMPLIANCE ATTESTATION, AT § 500.27; ATTESTATION ENGAGEMENTS, AT § 100.53 (noting that an examination engagement is used to reduce the attestation risk to a low level).

⁷⁷⁹⁶ See American Inst. of Certified Pub. Accountants, COMPLIANCE ATTESTATION, AT § 500.15-20; AGREED-UPON PROCEDURES ENGAGEMENTS, AT § 600. An agreed-upon procedures engagement is more thorough than an examination engagement because the concept of materiality does not apply to any reported findings. See American Inst. of Certified Pub. Accountants, AGREED-UPON PROCEDURES ENGAGEMENTS, AT § 600.27.

⁷⁷⁹⁷ See 47 U.S.C. § 272(d). See also 47 C.F.R. §§ 53.209-213; *Accounting Safeguards Order*, 11 FCC Rcd at 17628-32, paras. 197-205.

⁷⁷⁹⁸ See *SBC/Ameritech Order*, 14 FCC Rcd at 14884, para. 412.

⁷⁷⁹⁹ AICPA standards recognize occasions in which an independent auditor has a duty to notify others, including regulatory agencies, of problems uncovered during an audit. See American Inst. of Certified Pub. Accountants, ILLEGAL ACTS BY CLIENTS, AU § 317.23-24.

audit work performed by the Commission staff.⁸⁰⁰

342. We recognize that the state commissions have valuable insight into on-going issues and problems in the telecommunications industry,⁸⁰¹ and we stress that the Commission will work closely with the state commissions regarding Bell Atlantic/GTE's compliance with these conditions. Pursuant to long-standing delegated authority, we expect the Common Carrier Bureau to cooperate with state commissions by coordinating compliance and enforcement activities and sharing information gathered in the course of audits.⁸⁰² Moreover, we note that, under the conditions, Bell Atlantic/GTE will ensure that the independent auditor provides access to its working papers to state commissions, thereby ensuring that state commissions can perform their own reviews of the audit work concerning the conditions.

343. *Voluntary Payment Obligations.* For many of the conditions, the Applicants proposed a voluntary incentive payment structure, which could expose Bell Atlantic/GTE to significant financial liability, if the merged firm fails to satisfy an obligation in a timely manner. For example, as described above, under its out-of-region competition commitment, Bell Atlantic/GTE will make voluntary incentive payments, valued at a maximum of \$750 million, for missing the targets specified in the condition. In addition, Bell Atlantic/GTE will incur similar voluntary payment obligations for failing to provide service to competitive LECs that meets the standards of the Carrier-to-Carrier Performance Plan (up to a total of \$1.64 billion over three years, with an offset for early OSS deployment), and for failing to meet the deployment schedule for its OSS enhancements (up to a total of \$20 million). We expect that the size and scope of these potential voluntary payments will provide a strong incentive for Bell Atlantic/GTE to ensure that it fully complies with both the letter and the spirit of the conditions.⁸⁰³ The conditions recognize that Bell Atlantic/GTE is strictly liable for making any and all payments arising out of its nonperformance.⁸⁰⁴ Moreover, failing either to satisfy the underlying obligation or to make timely voluntary payments will subject the Applicants to potential liability in the same way Bell Atlantic/GTE would be liable for violating any other Commission order, rule, or regulation.

⁸⁰⁰ 47 C.F.R. § 1.1105.

⁸⁰¹ See 47 U.S.C. § 410(b) (authorizing the Commission to confer with State commissions regarding telecommunications policy matters and "to avail itself of such cooperation, services, records, and facilities as may be afforded by any State commission").

⁸⁰² See 47 C.F.R. § 0.291(b). To improve operating and administrative efficiency, the Commission delegated authority to the Common Carrier Bureau to coordinate compliance and enforcement activities with state commissions when: (i) there is a shared policy interest, and (ii) the states have processes for protecting confidential information. *Amendment of Parts 0, 1, and 64 of the Commission's Rules with Respect to Delegation of Authority to the Chief, Common Carrier Bureau*, Report and Order, 5 FCC Rcd 4601 (1990); *Delegation of Authority to the Chief, Common Carrier Bureau*, Memorandum Opinion and Order, 50 Fed. Reg. 18487-03 (1985), on reconsideration, 104 FCC 2d 733 (1986).

⁸⁰³ See NEXTLINK Mar. 16, 2000 Reply at 19; NorthPoint Mar. 1, 2000 Comments at 10 (advocating monetary penalties to ensure compliance).

⁸⁰⁴ The Commission may, however, grant a waiver of Bell Atlantic/GTE's voluntary payment obligation if Bell Atlantic/GTE can demonstrate that the failure was due to an Act of God.

344. We expect that Bell Atlantic/GTE will take all necessary measures, such as amending tariffs and interconnection agreements, to give the conditions their full legal effect in a timely manner. Although we note that the Commission may grant an extension of time for a requirement under the conditions, Bell Atlantic/GTE bears a heavy burden of demonstrating good cause.⁸⁰⁵ We expect that this heavy burden of persuasion, coupled with the compliance mechanisms and significant financial exposure, will ensure that the public enjoys the full benefits of these conditions in a timely manner. We also expect that the self-executing remedial measures, such as Bell Atlantic/GTE's voluntary incentive payment obligations, will limit any delay arising from extensive litigation arising from potential violations.

345. *Other Mechanisms.* We emphasize that the enforcement and compliance programs established in these conditions in no way supersede or replace the Commission's enforcement and investigative powers, but merely supplement our usual processes. The Commission may, at its discretion and subject to its normal procedures, take additional enforcement action against Bell Atlantic/GTE for failing to comply with any provision of this Order, including extending the sunset provisions, imposing fines and forfeitures,⁸⁰⁶ issuing cease-and-desist orders, modifying the conditions,⁸⁰⁷ awarding damages,⁸⁰⁸ or requiring appropriate remedial action. In addition, members of the public may pursue a claim in accordance with either section 207 or section 208 of the Act.⁸⁰⁹ We do not expect that any enforcement penalties or compliance mechanisms will become merely an acceptable cost of doing business, and we note that the conditions require all such costs to be excluded from Bell Atlantic/GTE's rates. In this way, the enforcement plan rightly ensures that consumers will not be forced to bear the costs of Bell Atlantic/GTE's mistakes.

346. *Sunset.* Unless otherwise specified, each obligation under these conditions will sunset after 36 months of benefit, which may be tolled or extended by the Commission for a period of time commensurate with any noncompliance by Bell Atlantic/GTE. Maintaining a full three-year period of benefit is critical for the conditions to ameliorate the potential public interest harms of the merger. Thus, in the event that Bell Atlantic/GTE fails to comply fully with its obligations, the Commission may, in its discretion, either on its own motion or in response to a petition, toll the effective sunset date of the relevant condition, and related conditions, to ensure that the public enjoys the full three-year term of the benefits.

347. *Effect of The Conditions.* As discussed above, these conditions are intended to be a floor and not a ceiling.⁸¹⁰ The Applicants must abide by state rules, even though the rules may

⁸⁰⁵ See 47 C.F.R. § 1.3.

⁸⁰⁶ 47 U.S.C. § 503.

⁸⁰⁷ 47 U.S.C. §§ 316, 416(b).

⁸⁰⁸ 47 U.S.C. § 209.

⁸⁰⁹ See CompTel Mar. 1, 2000 Comments at 4.

⁸¹⁰ See NorthPoint Mar. 1, 2000 Comments at 11.

touch on identical subjects, unless the merged entity would violate one of these conditions by following the state rule. The conditions are also not intended to limit the authority or jurisdiction of state commissions to impose or enforce additional requirements stemming from a state's review of the proposed merger.⁸¹¹ To the extent that a requirement in these conditions duplicates a requirement imposed by a state such that these conditions and state conditions grant parties similar rights against Bell Atlantic/GTE, the affected parties must elect either to receive the benefit under either these conditions or state law. For example, Bell Atlantic/GTE will not be required to provide two promotional loop discounts simultaneously for the same loop. If, on the other hand, Bell Atlantic/GTE fails to meet a stated performance standard under the Carrier-to-Carrier Performance Plan for a measurement that is replicated in a state performance plan, Bell Atlantic/GTE would face repercussion under both plans.

348. Although the merged firm will offer to amend interconnection agreements or make certain other offers to state commissions in order to implement several of the conditions, nothing in the conditions obligates carriers or state commissions to accept any of Bell Atlantic/GTE's offers. The conditions, therefore, do not alter any rights that a telecommunications carrier has under an existing negotiated or arbitrated interconnection agreement. Moreover, the Applicants also agree that they will not resist the efforts of state commissions to administer the conditions by arguing that the relevant state commission lacks the necessary authority or jurisdiction.

B. Benefits of Conditions

349. We conclude that, with the conditions that we adopt in this Order, the merger of Bell Atlantic and GTE is likely to be beneficial for consumers and spur competition in the local and advanced services markets. Given that the conditions will substantially mitigate the potential public interest harms of the proposed merger and will result in affirmative public benefit, we conclude that the Applicants have demonstrated that the proposed merger, on balance, will serve the public interest, convenience and necessity.

1. Mitigating Harm from Loss of Potential Competition

350. As noted above, the proposed merger will remove, in many local markets throughout Bell Atlantic's and GTE's territories, a current competitive threat and the significant potential for a future entrant. Armed with the inside knowledge of how to overcome roadblocks to local competition, Bell Atlantic and GTE are especially qualified to compete successfully against other incumbent LECs.

351. We find that, while not substituting fully for the loss of direct competition between Bell Atlantic and GTE, the conditions we adopt will significantly mitigate any potential public interest harms. After the merger, these conditions require the merged firm to open its markets to others while at the same time entering markets outside of its region. Specifically, the conditions require the merged Bell Atlantic/GTE to spend at least \$500 million and/or provide

⁸¹¹ See *SBC/Ameritech Order*, 14 FCC Rcd at 14857, para. 358.

service over at least 250,000 lines as a competitive LEC, offering voice and/or advanced services, in out-of-region markets starting at the merger's closing at completing the commitment within 36 months thereafter. These conditions are punctuated by annual milestones during the commitment period, under which Bell Atlantic/GTE must achieve at least 20 percent of each milestone through providing service to residential customers or providing advanced services. Furthermore, the Applicants have agreed to voluntary incentive payments totaling 150 percent of any shortfall in their expenditures under these conditions. Thus, the merged firm will face notable economic repercussion if it fails to achieve a certain level of entry into out-of-region residential and/or advanced services markets according to a specified implementation schedule. These benefits to some extent counterbalance the loss of direct competition between Bell Atlantic and GTE, particularly if the outcome of Bell Atlantic/GTE's implementation of the conditions is faster retaliation within its home region by the incumbent LECs whose home territories the merged firm invades.⁸¹²

352. Further, by reducing the risk and costs associated with entry into Bell Atlantic and GTE territories, particularly with respect to residential and advanced services markets, other conditions stimulate entry into these markets, thereby offsetting the loss of potential competition between the Applicants resulting from the merger. Several conditions lower the entry barriers in the Bell Atlantic and GTE regions, especially for residential competition. For example, we anticipate that the carrier-to-carrier promotions for residential service will spur other entities to enter these markets and establish a presence in residential markets that can be sustained after expiration of the promotional discounts.⁸¹³ In addition, Bell Atlantic/GTE's most-favored nation obligations, which cover certain arrangements that the company obtains as a competitive LEC outside its region as well as arrangements imported from other in-region states, and its agreement to enter into multi-state interconnection agreements should assist competitors in entering new markets within the Bell Atlantic/GTE region. Similarly, the Carrier-to-Carrier Performance Plan will provide competing carriers with additional protections by strengthening Bell Atlantic/GTE's incentive to provide quality of service at least equivalent to the merged firm's retail operations or a benchmark standard. These conditions and others make competition in Bell Atlantic/GTE's region more likely, thereby offsetting in part the competitive threat that each Applicant posed to the other.

2. Mitigating Harm from Loss of Benchmarks

353. As indicated above, by removing a major incumbent LEC, the merger of Bell Atlantic and GTE would result in fewer sources of diversity and experimentation at the holding company, operating company, and industry level from which regulators and competitors could draw comparisons particularly useful in implementing the 1996 Act's pro-competitive mandates. We doubt that any set of conditions could substitute fully for the loss of one of the few

⁸¹² See *SBC/Ameritech Order*, 14 FCC Rcd at 14877, 14887, paras. 398, 421.

⁸¹³ Thus, we disagree with WorldCom's assessment that "[t]he low caps and restrictions associated with the promotions render any benefits insignificant. The promotional scheme would allow [competitive LECs] to compete (for a limited and uncertain time) for only a small portion of the market using the promotional rate for unbundled local loops and resold services." WorldCom May 5, 2000 Further Supplemental Comments at 7.

remaining major incumbent LEC benchmarks. The harm from diminution of the field for such comparative practices analyses, however, to some extent is mitigated by conditions that entail the spread of best practices throughout the merged firm's service areas, or that require the reporting of information regarding the incumbent's networks and performance that is useful to regulators and competitors.

354. We anticipate that several conditions will require the merged firm to spread best practices throughout its region, viewed as a whole or as two distinct parts based on legacy Bell Atlantic and GTE service areas. Significantly, "best practices," as we use the phrase here, will be identified in full or in part by the Applicants' customers and regulators, not by Bell Atlantic and GTE. In this regard, by affording competitive LECs input into Bell Atlantic and GTE's ultimate OSS commitments under these conditions, the OSS collaborative process should lead to an agreement that represents best practices.⁸¹⁴ Specifically, the stipulation in the conditions that Bell Atlantic/GTE and competitive LECs will seek to reach agreement on issues raised in collaboratives, and that competitive LECs can request a collaborative process where none is specified in the Plan of Record, offers assurance that the merged firm ultimately will take into account practices of certain operating companies that other carriers have found useful or beneficial in establishing the substance and implementation of OSS. In addition, the Applicants' commitment to rely on OSS industry standards for application-to-application interfaces, data formatting specifications, and transport and security protocols entails extending best practices, as determined by industry consensus standards groups, throughout the Bell Atlantic/GTE region.

355. The conditions requiring Bell Atlantic/GTE to continue participation in the NRIC similarly will encourage best practices based on industry concordance. The NRIC, whose composition represents a balancing of industry interests,⁸¹⁵ issues periodic reports concerning the reliability of public telecommunications network services, and regularly compiles detailed lists of industry best practices designed to reduce the number and scope of network outages. Through its continued participation in the NRIC, we fully expect Bell Atlantic/GTE to study and, to every extent possible, implement the industry best practices for network reliability. In this way, we anticipate that Bell Atlantic/GTE will be able to, at a minimum, maintain a high state of reliability after the merger and take aggressive steps to address network reliability in those areas where the company may need improvement.

356. Other examples of conditions that we anticipate will require the merged entity to spread best practices include the uniform OSS change management process, most-favored nation provisions, and Lifeline plan. Bell Atlantic/GTE will adopt in each of its states the current Bell Atlantic change management process originally developed through collaboratives with competitive LECs in New York. As we note above, competitive LECs favor implementation of this change management process, and they may seek to improve it even further through the collaborative process.⁸¹⁶ Both the out-of-region and in-region most-favored nation requirements

⁸¹⁴ As we discuss above, such best practices, for instance, may reflect a balance between maximizing OSS uniformity and not diminishing functionality or flow-through. *See supra* n.651.

⁸¹⁵ *See Line Sharing Order*, 14 FCC Rcd at 20995, para. 188.

⁸¹⁶ *See supra* paras. 286-88.

are designed explicitly to assure carriers some ability to obtain beneficial arrangements, whether specifically requested by Bell Atlantic/GTE as an out-of-region competitor or simply offered by the firm in an in-region state, throughout the merged firm's service area. And the merged firm will offer to each of its in-region states a Lifeline plan based on features of the Ameritech Ohio plan.

357. Aside from the spread of best practices, the conditions also help ameliorate any potential loss of observable information to regulators and competitors. In particular, the Carrier-to-Carrier Performance Plan will generate valuable information for regulators and competitors for use in implementing and enforcing the Communications Act. The Performance Plan is even more beneficial with respect to measuring the performance of the GTE legacy companies because, as a non-BOC, GTE is not subject to a performance plan arising typically from the process of seeking authority to provide in-region, interLATA services under section 271.⁸¹⁷ Moreover, the GTE-specific performance plan in California notwithstanding, GTE may not otherwise be subject to performance plans at the state level. The merged firm will also continue to report ARMIS data separately for each of its operating companies, and will now report such data on a quarterly basis. The requirement that the Applicants develop and file state-by-state service quality reports in accordance with the recommendations of the NARUC Technology Policy Subgroup will facilitate comparative practices analysis by providing additional data for this Commission and state commissions in carrying out their statutory responsibilities and in detecting potential violations of the Communications Act. The Applicants also are obligated under the conditions to provide quarterly state-specific service quality reports regarding the quality of services provided to interexchange carriers, and to file a statement of the cost savings associated with the merger.

358. In addition to spreading best practices and helping to redeem potentially lost, valuable, observable information, some conditions will help to offset the potential loss of future diversity and experimentation resulting from the merger. For example, through their out-of-region competitive entry commitment, Bell Atlantic and GTE could deploy, and experiment in the provision of, different forms of advanced services.⁸¹⁸ Or, Bell Atlantic/GTE could put into service in out-of-region markets some of the \$550 million in dark fiber that Bell Atlantic has committed to lease from Metromedia Fiber Network, Inc., in which Bell Atlantic also has a substantial equity investment.⁸¹⁹ Though the Applicants, notwithstanding the aforementioned examples of what they could do, do not specify precisely how they will fulfill their out-of-region competitive entry commitment, this lack of precision is due to their wanting, as a merged firm, "to be able to invest in the newest technologies available to compete in the local market and

⁸¹⁷ See generally *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953, 4164-65, para. 429 (1999).

⁸¹⁸ See generally *Line Sharing Order*, 14 FCC Rcd at 20915, 20946, 21000, paras. 3 n.5, 71, 197.

⁸¹⁹ See Bell Atlantic/GTE Response to Conditions Comments at 27-28.

provide innovative services and options to its new customers.⁸²⁰

3. Mitigating Harm from Potential Increased Discrimination

359. We find that several commitments will alleviate the concern that the merged firm will use its combined size and market power to discriminate more effectively against its rivals in its in-region markets for local services as well as advanced services. The conditions that we adopt today are carefully targeted at the types of discrimination the merger was otherwise most likely to engender. Moreover, they substantially reduce entry barriers to the merged entity's region.

360. The combined entity's incentive to discriminate, stemming from its larger geographic footprint, is especially likely, if left unchecked, to translate into an ability to discriminate against the provision of advanced services.⁸²¹ The requirements that the merged firm provide such services through a separate affiliate, and comply with reporting and performance obligations, decreases the ability of Bell Atlantic/GTE to discriminate successfully, and thereby neutralizes some of Bell Atlantic/GTE's increased incentive to discriminate with respect to advanced services. Significantly, the merged entity will have to treat rival providers of advanced services the same way that it treats its own separate advanced services affiliate.

361. We expect that some conditions, most notably the line sharing, collocation and UNE compliance audits, also should lead to reduction of the costs and uncertainty of providing advanced services in Bell Atlantic/GTE's region, and thereby remedy to a certain extent any effects of increased discrimination for national competitive LEC entrants. Similarly, the Applicants' commitments to establish uniform advanced services and other OSS interfaces between their service areas in Pennsylvania and Virginia also should reduce somewhat the costs and other barriers that local or advanced services competitors face in entering within these states.

362. The Carrier-to-Carrier Performance Plan also partially alleviates the Applicants' increased incentive and ability to discriminate against rivals following the merger. By requiring the merged firm to report results of 18 performance measures, and achieve the agreed-upon standard or voluntarily make incentive payments, the plan provides heightened incentive for the company not to discriminate in ways that would be detected through the measures. Competing

⁸²⁰ *Id.* at 28. LCLAA also comments specifically on the innovative benefits which may ensue from the Applicants' out-of-region competitive entry conditions:

Bell Atlantic and GTE's determination to enter markets nationwide will eventually guarantee countless consumers access to a range of competitive alternatives for local, long distance, wireless and advanced services . . . Additionally, because this expansion will not be tied to the use of a specific telecommunications technology, the merged company will be free to implement the most advanced solutions as its buildout moves forward and, thus, provide the most capable systems available in the marketplace.

LCLAA Mar. 1, 2000 Comments at 2.

⁸²¹ *See supra* Section VI.D.2.a (increased discrimination in provision of Advanced Services).

carriers operating in or contemplating entry into Bell Atlantic/GTE territory will have an increased measure of confidence that the company will not engage in discrimination that would be detected through such measures. Moreover, if the results reveal unequal treatment, the voluntary payment scheme will create a direct economic incentive for Bell Atlantic/GTE to cure performance problems quickly.⁸²²

363. The Carrier-to-Carrier Performance Plan is designed specifically to permit monitoring for discriminatory conduct in Bell Atlantic/GTE's provision of elements and services utilized in providing advanced services. For instance, the line sharing provisioning measurement or sub-measurement that Bell Atlantic/GTE is required to propose and implement after the merger closing date⁸²³ is designed specifically to address the needs of advanced services providers. For many of the other measures, data will be reported distinctly for DSL loops. The availability of this information will assist entities that are contemplating providing advanced services in the Bell Atlantic/GTE region, as well as helping carriers already operating in the region to monitor and address any potential increased discrimination.

364. As explained above, with Bell Atlantic's new access to customer accounts in GTE's region (*e.g.*, New York business customers with branch offices in Los Angeles), and vice-versa, the merged firm gains an advantage in servicing multi-location business customers. Allowing competitors to import most-favored nation arrangements across Bell Atlantic/GTE's in-region states helps to safeguard against this increased potential for discrimination while reducing the merged firm's advantage of servicing multi-location customers.⁸²⁴ Furthermore, the Applicants have bolstered the strength of the most-favored nation commitments themselves by permitting carriers to opt into arbitrated as well as voluntarily negotiated agreements.

365. The enforcement mechanisms contained in these conditions also will aid in the detection of discriminatory behavior by Bell Atlantic/GTE. In particular, the conditions require the more thorough type of audit, an agreed-upon procedures engagement, for the separate advanced services affiliate provisions. Like the section 272(d) audit, the independent auditor will conduct a systematic and thorough examination into Bell Atlantic/GTE's compliance with the structural, transactional, nondiscrimination and other requirements of the separate advanced services affiliate. By pushing the due date of the independent auditor's separate affiliate compliance report to four months earlier than the due date committed to by SBC/Ameritech,⁸²⁵ the audit provisions in Bell Atlantic/GTE's conditions yield a greater benefit in that they expedite the availability to regulators and competitors of precious information for detection of discriminatory behavior.

⁸²² See *SBC/Ameritech Order*, 14 FCC Rcd at 14890, para. 432.

⁸²³ See *Conditions* at para. 9.

⁸²⁴ See *SBC/Ameritech Order*, 14 FCC Rcd at 14891, para. 434.

⁸²⁵ Compare *id.* at 15034-36, paras. 66-67 (September 1 annual due date under SBC/Ameritech conditions) with *Conditions* at para. 57 (May 1 annual due date under Bell Atlantic/GTE conditions).

4. Additional Benefits from Conditions

366. While these conditions mitigate, in many important ways, the potential public interest harms of the proposed transaction, we also find that the conditions will result in affirmative public interest benefits that tip the public interest balance of the proposed transaction in the Applicants' favor. Collectively, these conditions will, we believe, create momentum for increasing competition and choice in telecommunications markets inside and outside Bell Atlantic's and GTE's territories.

367. As an initial matter, nearly all of the obligations under the conditions apply throughout Bell Atlantic's and GTE's in-region states, and others even extend to markets outside of the companies' traditional service areas. Because our public interest analysis is not limited to potential public benefit within a select geographic area or market, but also considers potential public interest benefits of applying conditions such as those imposed in this Order to a wider area, the breadth of the conditions helps the Applicants in carrying their burden of demonstrating how the merger advances competition.

368. We also find it significant that the conditions in general will last for a 36-month period. As addressed in the conditions, the duration of each commitment is tied to the initiation of the benefit of the condition. In other words, each of the conditions is designed to provide 36 months of benefit once its embedded obligations take effect. So, for instance, Bell Atlantic/GTE must provide unaffiliated carriers in its service areas with access to the OSS interfaces set forth in the conditions and agreed-upon enhancements for at least 36 months after such interfaces and enhancements are deployed. In the fast-changing world of telecommunications industries, these commitments, in our judgment, will last for a sufficient period to have real impact, but not so long as to threaten imposing obsolete responses to future issues.

369. *Fostering Out-of-Territory Competitive Entry.* GTE already has an established and operational competitive LEC with approximately 60,000 local customers outside its local service territory, and has invested significant sums in OSS and other assets needed to compete outside its traditional local service areas.⁸²⁶ While these conditions thus do not alter the basic fact that the parties do not need to merge in order to form out-of-region competitive LECs, the conditions do, however, reinforce the likelihood and increase the magnitude of a post-merger out-of-region entry strategy. These certainly enhance the public interest.

370. *Lower Entry Barriers for Residential Competition.* In broad terms, we anticipate that the conditions will prove beneficial in jumpstarting residential competition by lowering entry barriers for residential competition. For instance, the carrier-to-carrier promotions are designed specifically to induce more entry into residential markets quickly. Other conditions, such as those regarding collocation and UNE compliance, Carrier-to-Carrier Performance Plan, most-favored nation arrangements, and multi-state interconnection agreements will, in our judgment, greatly reduce the costs of entry over the long run. In addition, the commitment to

⁸²⁶ See Bell Atlantic/GTE Jan. 27, 2000 Supplemental Filing at 10; Bell Atlantic/GTE Gould/Young Joint Decl. at paras. 3-4.

reform the process of cabling new multi-tenant dwellings and business properties will increase access to customers by competitors not otherwise relying on the incumbent's wireline network.

371. *Accelerating Advanced Services Deployment.* Several conditions are aimed at increasing the availability of and broadening choices for advanced services for all Americans. The extensive commitments regarding advanced services all help to attain a single overriding goal: to encourage entry into the provision of advanced services by numerous firms, as well as the Applicants, while protecting against the risk that Bell Atlantic/GTE might cripple these services in their infancy by discriminating against rival advanced services providers. The provisions for expediting cost proceedings and immediately making available rates, conditions, and terms for conditioning xDSL loops, for a separate affiliate for the Applicants' provision of advanced services, including advanced services unbundled loop discounts for competitors tied to threshold use by the separate affiliate of certain advanced services OSS interfaces, for a line sharing compliance plan, and for a surrogate line-sharing discount in the event our line sharing rules are overturned in a final, non-appealable judicial decision will reduce the costs, including the risks, of entering these markets. In addition, the out-of-region competitive entry milestones established by the Applicants include a commitment to devote at least 20 percent of the expenditures or deployed customer lines towards providing advanced services or residential competitive local service.

372. *Improving Service to Residential and Low-Income Consumers.* Low-income consumers, in rural and urban areas alike, will realize direct benefits from the enhanced Lifeline plans offered to them and from the assurance that they will share in the benefits of new advanced services offerings. Moreover, through the Applicants' additional service quality reporting, the Commission, states, and consumers will have information needed to monitor the merged firm's service quality on a timely basis.

C. Other Requested Conditions or Modifications to Proffered Conditions

373. *Access to Advanced Services Loop Information.* In approving the merger between SBC and Ameritech, we adopted conditions designed to promote rapid deployment of advanced services by ensuring that carriers have nondiscriminatory access to certain specified information for loop qualification purposes, in order to make informed decisions about whether and how they can provide advanced services to a customer at a given location.⁸²⁷ Certain commenters request that we adopt the same requirements with respect to Bell Atlantic/GTE.⁸²⁸ We agree with the Applicants, however, that such conditions are unnecessary in the instant merger because, subsequent to our adoption of the SBC/Ameritech merger, we addressed this issue in the *UNE Remand Order* and imposed appropriate requirements.⁸²⁹

⁸²⁷ See *SBC/Ameritech Order*, 14 FCC Rcd at 14865-66, paras. 373-74; *SBC/Ameritech Conditions*, 14 FCC Rcd at 14997-98, paras. 19-20.

⁸²⁸ See CoreComm Mar. 1, 2000 Comments at 45 (further seeking implementation of these commitments on the merger closing date); Covad Mar. 1, 2000 Comments at 15-16.

⁸²⁹ See Bell Atlantic/GTE Jan. 27, 2000 Supplemental Filing at 18 n.12; *UNE Remand Order* at paras. 426-431.

374. *Restructuring of OSS Charges.* Other conditions that we adopted in approving the merger between SBC and Ameritech included requirements that the merged firm recover electronic OSS costs on a strict usage basis rather than through a flat monthly fee, thereby eliminating any flat-rate, up-front charge for the right to use the company's standard electronic interfaces for accessing OSS. We explained that such conditions were necessary to that merger because SBC charged a flat monthly fee for access to electronic OSS, and commenting parties feared that SBC would spread this practice to Ameritech's region following the merger.⁸³⁰ BlueStar et al. and NALA request that such conditions likewise be applied to Bell Atlantic/GTE.⁸³¹ Because those factual circumstances are not present in the instant merger, however, we find that such conditions are not warranted here.

375. *UNE Platform.* We adopted, in approving the merger between SBC and Ameritech, carrier-to-carrier promotions pursuant to which SBC/Ameritech would offer end-to-end combinations of all network elements required to be unbundled as of January 24, 1999 (including the UNE platform) to competitive LECs providing residential local service.⁸³² Some commenters maintain that the conditions to the instant merger likewise should include these UNE platform conditions.⁸³³ We agree with the Applicants, however, that we need not attach to Bell Atlantic/GTE conditions relating to UNE platform promotions, because the *UNE Remand Order*, which we adopted subsequent to our approval of the SBC/Ameritech merger, confirms that incumbent LECs are required to make the UNE platform available to competitive LECs.⁸³⁴ Moreover, we decline to adopt, in the context of this merger, other requirements that commenters seek for us to impose on Bell Atlantic/GTE relating to provision of the UNE platform.⁸³⁵ We note that the comprehensive UNE compliance audit that the Applicants have agreed to undergo as a condition to the instant merger should reveal any noncompliance with the Commission's unbundling requirements.

⁸³⁰ *SBC/Ameritech Order*, 14 FCC Rcd at 14870, para. 384.

⁸³¹ See BlueStar et al. Mar. 1, 2000 Comments at 3; National ALEC Mar. 1, 2000 Comments at 7-8.

⁸³² See *SBC/Ameritech Order*, 14 FCC Rcd at 14875, para. 393; *SBC/Ameritech Conditions*, 14 FCC Rcd at 15020-22, paras. 50-52.

⁸³³ See BlueStar et al. Mar. 1, 2000 Comments at 3; CoreComm Mar. 1, 2000 Comments at 29-31 (adding that the UNE platform promotion should incorporate the unbundled loop discount and not be limited to residential POTS or ISDN service); IURC Mar. 1, 2000 Comments at 4, 10-11.

⁸³⁴ See Bell Atlantic/GTE Jan. 27, 2000 Supplemental Filing at 18 n.12; *UNE Remand Order* at paras. 475-490. Cf. *SBC/Ameritech Order*, 14 FCC Rcd at 14875, para. 393 (suggesting that disposition of issues with respect to the UNE platform would be part of the outcome of the *UNE Remand Order*).

⁸³⁵ See CoreComm Mar. 1, 2000 Comments at 30-31 (alleging that Bell Atlantic's UNE platform offerings have been deficient outside of states where it seeks or has sought section 271 approval, and suggesting therefore that the Commission require Bell Atlantic/GTE to offer, throughout its combined region, the same UNE platform offering that Bell Atlantic has made available in New York); Z-Tel Mar. 1, 2000 Comments at 7-11 (asserting that the Commission should require Bell Atlantic/GTE to implement a "best practices" UNE platform product throughout its combined service areas, at least some of which Bell Atlantic/GTE should base on the UNE platform offering in New York, which is "perhaps the most robust UNE Platform offering in the nation").

IX. MOBILE COMMUNICATIONS SERVICES

376. We find that the proposed merger will be pro-competitive in its effects on wireless communications markets. In particular, this merger will promote competition in markets for mobile voice telephone services by extending the reach of a major nationwide service provider in a business in which national coverage is becoming more vital to compete effectively.⁸³⁶ The wireless service areas of the merging parties are largely complementary,⁸³⁷ and the companies employ compatible technologies. Upon consummation of this merger, Verizon Wireless (consisting of the U.S. wireless properties of Bell Atlantic, GTE, and Vodafone) will have a licensed footprint potentially serving 232 million people and 96 of the 100 largest U.S. cities. The new entity will have more than 24 million cellular and broadband PCS and four million paging customers.⁸³⁸

377. Moreover, combining these wireless businesses will likely produce cost savings and operating efficiencies by reducing the Applicants' collective dependence on costly roaming agreements. The combination should also produce system-wide efficiencies through common network engineering, management, purchasing, and administrative functions, leading to earlier and broader deployment of advanced wireless services.⁸³⁹

A. Licenses and Service Offerings

378. On April 3, 2000, pursuant to Commission approval,⁸⁴⁰ Bell Atlantic combined its domestic cellular and other wireless businesses with most of the U.S. wireless and paging operations of Vodafone. The combined entity, doing business as Verizon Wireless, operates cellular and broadband PCS systems in 48 states and the District of Columbia capable of serving 194 million people. Verizon Wireless also provides one-way and two-way paging services in numerous states and holds interests in fixed point-to-point microwave, business radio, and wireless communications service (WCS) licenses.⁸⁴¹

379. GTE operates cellular and broadband PCS systems in 18 states, covering

⁸³⁶ This merger will add GTE's wireless assets to the extensive footprint established by Bell Atlantic and Vodafone AirTouch through the recent formation of their wireless joint venture, now providing service as Verizon Wireless. The other nationwide providers are AT&T Wireless Services, Inc., Sprint PCS, Nextel Communications, Inc., and VoiceStream Wireless Corporation.

⁸³⁷ See Application, Wireless Map, Ex. 3. We note, however, that this map does not include the properties that were recently contributed by Vodafone to the Verizon Wireless venture.

⁸³⁸ See Letter from William D. Wallace, Esq., Crowell & Moring LLP, to Magalie Roman Salas, Secretary, Federal Communications Commission (filed May 4, 2000) (Bell Atlantic/GTE May 4, 2000 *Ex Parte* Letter) at 1.

⁸³⁹ See Bell Atlantic/GTE Jan. 27, 2000 Supplemental Filing at 9.

⁸⁴⁰ *Vodafone AirTouch, Plc and Bell Atlantic Corporation*, Memorandum Opinion and Order, DA 00-721 (WTB/IB rel. Mar. 30, 2000) (*Vodafone/Bell Atlantic Order*).

⁸⁴¹ See Bell Atlantic/GTE May 4, 2000 *Ex Parte* Letter at 2.