

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

GTE Corporation,
Transferor,

And

Bell Atlantic Corporation,
Transferee

For Consent to Transfer Control of
Domestic and International Section 214
and 310 Authorizations and Application
to Transfer Control of a Submarine
Cable Landing License

CC Docket Nos. 98-141 & 98-184

REPLY COMMENTS OF VERIZON¹

None of the comments that support applying the merger conditions to Puerto Rico Telephone Company ("PRTC") makes any showing that the Commission has any legal authority to do so. To the extent that the arguments raised by PRTC's competitors concerning PRTC's performance have any legitimacy, they can and are being addressed by the Telecommunications Regulatory Board of Puerto Rico (the "Board") in the first instance. Regardless of the outcome

¹ The Verizon telephone companies ("Verizon") are the affiliated local telephone companies of Verizon Communications Corp. These companies are listed in Attachment A.

of these disputes, they cannot be resolved by the unprecedented and *ultra vires* act of adding new conditions to the Bell Atlantic/GTE merger order.²

The bulk of the comments consist of claims that PRTC has hindered entry by failing to meet its obligations under section 251 of the Act, charges that PRTC vigorously denies. *See, e.g.*, APCT, 3-18; Worldnet, 22-36; PRTC, 13-16. These claims provide no basis for the Commission to impose the Bell Atlantic/GTE merger conditions on PRTC. Section 252 provides for arbitration of interconnection disputes by the state regulatory commission, with intervention by the Commission only if the state commission fails to act. *See* 47 U.S.C. §252(e)(5). There are no allegations that the Board has failed to act here. Indeed, even PRTC's competitors admit that the Board has responded appropriately to requests for arbitration and enforcement of interconnection obligations. *See, e.g.*, Worldnet, 6-7; APCT, 14-15; *see also* PRTC, 11. Under section 253(d) of the Act, the Commission may preempt a state regulatory commission only if it has taken action that prohibits entry into the telecommunications market. Clearly, just the opposite is the case here. The requests of some commenters for the Commission to intervene in issues that clearly are within the Board's responsibilities are unfounded.

In any event, the comments provide no legal basis for the Commission to impose the Bell Atlantic/GTE merger conditions on PRTC to deal with these unproven allegations. Metro claims (at 8) that PRTC is already included in the merger conditions, citing note 4, which states that "GTE States and Service Area include only those states and service areas where Bell Atlantic/GTE will have incumbent local telephone operations after the Merger Closing Date."

² *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310*

Merger Order, Appendix D, n.4. Metro argues that this incorporates Puerto Rico through Verizon's control of PRTC. This ignores the fact that the definitions of the terms "Bell Atlantic/GTE" and "GTE service area" include only the service areas of the named local telephone companies, which do *not* include PRTC. *See Merger Order*, Appendix D, at 2. Centennial argues (at 4-5) that the PRTC was included in the Merger Conditions, because the Commission stated, in response to concerns about Verizon's control of bottleneck facilities on the U.S. end of international routes (and in particular the GTE purchase of an interest in PRTC), that the merger conditions adequately addressed it. However, what the Commission actually said is that any potential anti-competitive effects of the merger were outweighed by the benefits of the conditions (which specifically *exclude* PRTC) and that the Commission had previously addressed the regulatory treatment of incumbent local exchange carrier provision of U.S. international services. *See Merger Order*, ¶ 399. Neither of these findings implies that PRTC is included in the merger conditions.

Other commenters concede that the merger conditions do not include PRTC, but they argue that there is no legal reason why they should not. *See, e.g.*, Worldnet, 21-22; ASCENT, 11-12. However, they cite no precedent and provide no legal analysis to support the Commission's power under the Act to add new conditions to the *Merger Order*. As Verizon demonstrated in its comments, the doctrine of *res judicata* and the voluntary nature of the merger conditions preclude the Commission from reopening the *Merger Order* to add new conditions. Verizon closed the merger in reliance upon the Commission's decision that it would be subject to the conditions attached to the *Merger Order*, and nothing more. The time for seeking

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reconsideration of the *Merger Order* has long since passed, and Worldnet offers no excuse for its failure to raise any allegations about PRTC either prior to the *Merger Order* or in a timely petition for reconsideration. It is too late to do so now.

Conclusion

For the foregoing reasons, the Commission should reject Worldnet's proposal to add PRTC to the merger conditions.

Respectfully submitted,

By: _____

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THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the affiliated local telephone companies of Bell Atlantic Corporation (d/b/a Verizon Communications), including the telephone companies formerly affiliated with GTE Corporation. These are:

Contel of the South, Inc. d/b/a Verizon South Systems
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of May, 2001, copies of the foregoing “Reply Comments of Verizon” were sent by first class mail, postage prepaid, to the parties on the attached list.

Eric Fitzgerald Reed

* Via hand delivery.

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