

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matters of

Application of GTE Corporation, Transferor,)	
and Bell Atlantic Corporation, Transferee,)	
For Consent to Transfer Control of Domestic)	CC Docket No. 98-184
and International Section 214 and 310)	
Authorizations and Applications to Transfer)	
Control of a Submarine Cable Landing License)	

Applications of Ameritech Corp., Transferor,)	
and SBC Communications, Inc., Transferee,)	
For Consent to Transfer Control of Corporations)	
Holding Commission Licenses and Lines)	CC Docket No. 98-141
Pursuant to Sections 214 and 310(d) of the)	
Communications Act and Parts 5, 22, 24, 25, 63)	
90, 95, and 101 of the Commission's Rules)	

**REPLY COMMENTS OF AT&T CORP. IN RESPONSE TO
VERIZON'S REQUEST FOR WAIVER OF
THE BELL ATLANTIC/GTE MERGER CONDITIONS**

INTRODUCTION AND SUMMARY

AT&T Corp. ("AT&T") hereby submits the following reply to the comments filed in the above-captioned proceeding on Verizon's request to accelerate the termination of its advanced services separate affiliate. In its initial comments, AT&T stressed the importance of obtaining assurances that Verizon will fulfill its statutory obligations and not undermine competition for advanced services before granting Verizon's request. Other commenters echo AT&T's concerns and proffer evidence of Verizon's failure to meet existing requirements that underscores the need for such assurances. Only one commenter -- a supplier of the very equipment Verizon requires this waiver in order to buy -- unconditionally supports Verizon's request. But even those comments demonstrate the need for precisely the type of vigilance and prophylactic action AT&T and other commenters recommend.

The merger conditions contemplated a nine-month transition period following a final, non-appealable decision before Verizon could cease providing advanced services through a separate affiliate. As noted by CompTel, the purpose of the nine month period was to give the Commission time to adopt further requirements necessary to protect competition and the public interest from the harmful effects of the merger once the separate affiliate structure is dismantled.¹ Verizon's request to truncate the nine-month period should not be granted unless the purpose of the transition period has first been fulfilled. Indeed, Verizon's request highlights the need for the Commission to ensure that it has the necessary protections in place -- both for Verizon and SBC -- before the transition period ends, either at the end of the nine-month period or earlier if it grants Verizon's request.

The Commission certainly should not feel compelled to rush to judgment on Verizon's waiver request. As noted by ALTS, the substantial growth in Verizon's data services recently announced by Verizon's co-CEO belies any suggestion of true economic hardship that might warrant approval of Verizon's request before replacement protections are identified and affirmed.²

¹ Comments of the Competitive Telecommunications Association ("CompTel") at 4 (filed June 14, 2001).

² ALTS points to a recent presentation by Verizon co-CEO and President Charles R. Lee, dated June 11, 2001, that reflects substantial growth in the number of Verizon DSL subscribers and continuing optimism in its ability to sustain that growth. As ALTS notes, Mr. Lee's presentation stated that Verizon expects to more than double last year's DSL subscribership -- from 570,000 to 1.2-1.3 million -- by the end of 2001. Comments of the Association for Local Telecommunications Service ("ALTS") at 3-4, 7-8 (filed June 14, 2001) (citing Presentation of Chairman and co-CEO Charles R. Lee presented at the CIBC World Markets Annual Investor Conference, June 11, 2001 at <http://investor.verizon.com>).

I. VERIZON MUST DEMONSTRATE HOW IT WILL COMPLY WITH ITS OBLIGATIONS BEFORE OBTAINING THE REQUESTED RELIEF

WorldCom, ALTS, and CompTel join AT&T in emphasizing that it is critical that the Commission clarify Verizon's statutory obligations and obtain assurances that Verizon will comply with those obligations before granting this request.³ AT&T concurs with CompTel that the appropriate process to obtain such assurances is to require Verizon to submit documentation that demonstrates how it will comply with its legal obligations under section 251(c) once advanced services are transitioned from the affiliate to a non-separated division of Verizon and to obtain public comment before acting on Verizon's request.⁴ Verizon should be required to submit such documentation promptly in order to provide a reasonable period for public comment and Commission consideration.

AT&T also agrees with the commenters that there are a number of specific issues that should be clarified and affirmed before Verizon's request is granted. For example, AT&T urged the Commission to affirm Verizon's obligation to resell DSL service under section 251(c)(4).⁵ CompTel is correct that section 251(c)(4) obligations *presently* apply to Verizon given the *ASCENT* Court's express holding that such obligations cannot be avoided by the offering of such services through an affiliate.⁶ AT&T further concurs in CompTel's recommendations that the following issues be clarified and affirmed before granting Verizon's request:

- (1) Verizon should not be permitted to adopt a different wholesale discount rate for advanced services until it has demonstrated that such a rate is justified by a difference in its avoided costs;

³ Comments of WorldCom, Inc. at 4-7 (filed June 14, 2001); ALTS Comments at 6; CompTel Comments at 4-7.

⁴ CompTel Comments at 5.

⁵ AT&T Comments at 7-10.

(2) Verizon may not require CLECs to enter into separate interconnection agreements for advanced services and voice services; and

(3) Existing auditing and reporting practices and procedures should be revised to account for the fact that advanced services will now be provided by Verizon rather than its separate affiliate.⁷

As CompTel points out, the importance of rigorous auditing and reporting requirements is highlighted by prior audit findings that show Verizon has not complied with other merger conditions.⁸

AT&T also supports WorldCom's sound recommendation that the Commission ensure that any new performance metrics adopted by the New York State Public Service Commission or the California Public Utilities Commission are incorporated into the merger conditions.⁹

Moreover, as shown by CompTel, third party OSS testing should include DSL resale and related performance measures, as was recently ordered by an Administrative Law Judge in Indiana.¹⁰

The only commenter unconditionally supporting Verizon's request is Catena Networks. Catena manufactures integrated POTS and DSL technologies -- the type of equipment that Verizon presumably seeks to purchase with its waiver request in hand. Perhaps unintentionally,

⁶ CompTel Comments at 3.

⁷ CompTel Comments at 5-6.

⁸ CompTel Comments at 7 (noting independent auditor's finding that Verizon granted collocation to its affiliate on preferential terms) (*citing, Report of Independent Public Accountants (Arthur Anderson LLP) - Collocation Examination*, CC Docket No. 98-184, Jan. 29, 2001, p. 2).

⁹ WorldCom Comments at 6-7.

¹⁰ CompTel Comments at 9 (*citing* Petition of Indiana Bell Telephone Company, Inc, d/b/a/ Ameritech Indiana Pursuant to 1.C.8-1-2-61 for a Three Phase Process for Commission Review of Various Submissions of Ameritech Indiana to Show Compliance with Section 271(c) of the Telecommunications Act of 1996, Cause No. 41657, *ALJ Decision of First Request for Expedited Dispute Resolution*, p. 5).

Catena's comments actually provide a powerful argument for ensuring that unbundling and resale obligations remain vigorously enforced with respect to advanced services.

Catena argues that accessing remote terminals in existing digital loop carrier systems is difficult and contends, therefore, that the "integration of voice and high-speed data services on a single linecard is generally the most efficient way to make advanced services available to a wide variety of subscribers served by remote terminals."¹¹ It further contends that, for the embedded base of SLC-5 terminals (which serve roughly 20 million subscribers) Catena's integrated line cards are "the only economical way to provide DSL services."¹² If Catena is correct, the only way new entrants have any possibility of competing for this group of customers is by ensuring, as AT&T has consistently argued,¹³ that the entire loop functionality, including the functionality placed in remote terminals, be unbundled. Otherwise, as Catena admits, there is no economical way to provide DSL service to these customers. Catena's interest in ensuring that Verizon is not "delayed" in its ability to purchase integrated equipment designed to facilitate the provision of DSL service over existing IDLC architectures highlights the need for Verizon clearly to explain how it will provide nondiscriminatory access to competitors so that they are able to provide DSL service over those same architectures.¹⁴

¹¹ Catena Comments at 1.

¹² *Id.* at 2, n.3.

¹³ *See, e.g., In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147, 96-98, Second Further Notice of Proposed Rulemaking ("FNPRM") and Fifth FNPRM, AT&T Comments at 34-68 (filed Oct. 12, 2000), AT&T Reply Comments at 39-80 (filed Nov. 14, 2000) ("Second and Fifth FNPRMs"); *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147, 96-98, Third FNPRM and Sixth FNPRM, AT&T Comments at 7-14 (filed Feb. 27 2001), AT&T Reply Comments at 3-17 (filed March 13, 2001).

¹⁴ Catena's prior comments in other proceedings suggest that its linecards permit a technically feasible unbundling option. *See* Second and Fifth FNPRMs, Catena Comments at 8-11 (filed

II. VERIZON'S COMPLIANCE FAILURES REINFORCE THE NEED FOR ASSURANCES

The need for a clear delineation of Verizon's statutory obligations with respect to advanced services -- and an equally clear statement by Verizon of how it intends to comply -- is bolstered by recent reviews of Verizon's own conduct. In addition to the audit findings recounted above, ALTS identifies other areas of Verizon's noncompliance with its merger conditions. ALTS notes, for example, that an independent auditor found that Verizon was materially out of compliance with the conditions imposed on Genuity.¹⁵ ALTS also identifies various billing discrepancies that continue to plague Verizon's competitors. These include duplicate and inaccurate bills, bills that are so inadequate that the CLEC cannot reconcile the quantity of loops installed and removed, and unfounded billing disputes.¹⁶

CompTel also echoes AT&T's concern that Verizon must allow competing carriers to resell DSL service whether or not Verizon is providing voice service on the line.¹⁷ CompTel notes that Verizon continues to limit the availability of resold DSL to instances in which Verizon is the voice provider, preventing competing carriers that provide voice service through the use of the UNE-platform or resale from reselling DSL service.¹⁸ There is absolutely no technical reason why these arrangements cannot be provided, and Verizon's refusal to resell DSL service in those instances constitutes a blatantly unreasonable restriction on resale in violation of section 251(c)(4) of the Act.

Oct. 12, 2000) (asking the Commission to adopt a virtual collocation model for remote terminals), Catena Reply Comments at 7-8 (filed Nov. 14, 2000) (same).

¹⁵ ALTS Comments at 9-11.

¹⁶ *Id.* at 8-9.

¹⁷ AT&T Comments at 9-10.

¹⁸ CompTel Comments at 4-5 (citing, *e.g.*, Consultative Report on Application of Verizon Pennsylvania, Inc., for FCC Authorization to Provide In-region InterLATA Service in

Verizon's failures to comply with merger conditions and its statutory obligations reinforce the need for vigilance, oversight and direction here. Notwithstanding the failings identified by the commenters, Verizon seems, at least implicitly, to assume that the separate affiliate structure can be dismantled without other protections erected in its place. This would be antithetical to the public interest and is inconsistent with the merger conditions, which allowed the Commission nine months to consider how to develop alternatives that would offset the acknowledged anticompetitive effects of the Bell Atlantic-GTE merger. Thus, the Commission should not grant Verizon's request to dismantle the protections afforded by creation of the separate affiliate until it develops equally strong protections to replace them.

CONCLUSION

The comments in this proceeding bolster AT&T's contention that Verizon's request to lift the separate affiliate requirement cannot be granted until the Commission clearly delineates Verizon's statutory obligations and Verizon provides an equally clear explanation, subject to public review and comment, on how it will fulfill those obligations. Only in this way will the public interest concern in checking the anticompetitive effects of the Bell Atlantic-GTE merger continue to be met.

Respectfully submitted,

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Pennsylvania, PA PUC, Docket No. M-00001435, *Transcript of Further En Banc Hearing*, April 26, 2001, pp. 264, 274-76).

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CERTIFICATE OF SERVICE

I, Alexandria Jungkeit, hereby certify that on this 28th day of June 2001, I caused true and correct copies of the foregoing Reply Comments of AT&T Corp. to be filed on ECFS in CC Docket Nos. 98-141 and 98-184, and to be hand-delivered to the following persons:

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