March 19, 2002

Carol Mattey
Deputy Chief
Common Carrier Bureau
Federal Communications Commission
445 - 12th Street, S.W.
Washington, D.C. 20554

**Re: CC Docket No. 98-184: Application 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**

Dear Ms. Mattey:

This letter is being submitted on behalf of the Association of Communications Enterprises ("ASCENT") in response to *Public Notice*, DA 02-567, released March 12, 2002 ("*Notice*"). In the *Notice,* the Common Carrier Bureau ("Bureau") seeks public comment on the request by Verizon that monies expended by it in its aborted effort to acquire NorthPoint Communications Group, Inc. ("NorthPoint") be counted toward satisfaction of its merger-related obligation to expend at least $500 million entering local markets outside of its legacy service areas. According to Verizon, even though the transaction "never closed," it should "receive credit for those portions of its NorthPoint investment that are attributable to out-of-region . . . facilities expenditures" simply because the investment was made "in good faith with the expectation that the investment would result in the acquisition of customers outside the Verizon operating area."[1] Verizon's request should be summarily dismissed.

1 Letter from Goprdon R. Evans, Vice President, Federal Regulatory, Verizon, to Carol Mattey, Deputy Chief, Common Carrier Bureau, Federal Communications Commission, submitted Mach 7, 2002 in CC Docket No. 98-184 ("Verizon Letter")

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In order to secure Commission approval of its merger with GTE Corporation ("GTE"), Bell Atlantic Corporation ("Bell Atlantic") committed to "spend a total of at least $500 million . . . to **provide** services, including resale, that **compete** with traditional local telecommunications services offered by incumbent local exchange carriers or to **provide** Advanced Services to the mass market . . . outside the Bell Atlantic and GTE Service Areas."[2] At least 50% of this amount was to be used "to **construct, acquire, lease, use, obtain, or provide** facilities, operating support systems, or equipment . . . used to serve [out-of-region] customers," with the remainder to be used to **acquire** [out-of-region] customers."[3] As described by the Commission, the $500 million would be spent by the merged entity "to **provide** competitive local service and associated services outside of the Bell Atlantic and GTE legacy service areas."[4] The Commission cited the resultant out-of -region market entry by the merged entity as a mitigating factor offsetting "the loss of direct competition between Bell Atlantic and GTE," as well as "the potential loss of future diversity and experimentation."[5] Indeed, the Commission noted with approval the view that "Bell Atlantic's and GTE's determination

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2 Application 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 (Memorandum Opinion and Order), 15 FCC Rcd 14032, Appx. D, ¶ 43 (2000) (*subsequent history omitted*) (*emphasis added*) ("Bell Atlantic/GTE Merger Order").

3 Id. at Appx. D, ¶ 43 (*emphasis added*).

4 Id. at ¶ 319 (*emphasis added*).

5 Id. at ¶¶ 351, 358.

to enter markets nationwide will eventually guarantee countless consumers access to a range of competitive alternatives for local, long distance, wireless and advanced services."[6]

Verizon's investment in NorthPoint neither satisfies any of these requirements nor helps to accomplish any of these goals. Whether or not made in good faith, the investment did not result in the provision of out-or-region service, out-or-region competition by Verizon against other incumbent local exchange carriers ("LECs"), or the acquisition of facilities, operating support systems, or equipment used to serve out-of-region customers. As Verizon acknowledges, it "terminate[d] the merger agreement and related financing agreement," and as a result, "[t]he merger never closed" and "Verizon was forced to write off its investment in [NorthPoint]."[7] Accordingly, neither the loss of direct competition between Bell Atlantic and GTE nor the loss of future diversity and experimentation was mitigated. It is not Verizon's "good faith" intent, but its actual entry into out-of-region markets, that will "ensure that residential consumers and business consumers outside of Bell Atlantic/GTE's territory will benefit from meaningful, facilities-based competitive service," and "stimulate competitive entry into the Bell Atlantic/GTE region by [other] incumbent LECs."[8]

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6 Id. at ¶ 358, fn 820.

7 Verizon Letter at 1.

8 Bell Atlantic/GTE Merger Order, at ¶ 321.

ASCENT submits that Verizon's "out-of-territory competitive entry" merger condition can only be met by the actual provision of service in competition with other incumbent LECs. The mere expenditure of money, whether in good faith or not, is meaningless in the absence of competitive entry.[9] The Commission predicated its approval of Bell Atlantic's acquisition of GTE upon the mitigating effect of out-of-region competitive entry, not upon the simple expenditure by Verizon of monies. And it made clear that it was customer lines, not mere dollars, that were the critical focus.[10]

If the proper resolution of this matter were not otherwise abundantly clear, Verizon's conduct with respect to the aborted NorthPoint acquisition confirms that the carrier should not be credited with monies expended in conjunction with the transaction. It bears emphasis that it was Verizon that walked away from the merger,[11] and if allegations made by NorthPoint in pending litigation are proven true, with wrongful intent. To reward Verizon for such conduct would be outrageous, particularly since the result would be detrimental to other competitive LECs.[12]

By reason of the foregoing, the Association of Communications Enterprises urges the Bureau to deny Verizon's request to credit monies expended by it in its aborted effort to acquire NorthPoint toward satisfaction of its merger-related obligation to expend at least $500 million entering local markets outside of its legacy service areas.

Respectfully submitted,

Charles C. Hunter
General Counsel
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[9] For example, Verizon would obviously not be credited with monies expended in conjunction with an acquisition the Commission declined to approve, or in conducting due diligence in conjunction with an acquisition it elected not to undertake.

[10] Id. at ¶ 319 ("Notwithstanding the expenditures, the merged firm will be deemed to have satisfied the out-of-region commitment if it provides service . . . over at least 250,000 customer lines that are used to provide competitive local service in out-of-region markets.").

[11] Verizon Letter at 1.

[12] Verizon's progress toward meeting its out-of-territory competitive entry merger condition affects promotional discounts provided by the carrier for certain unbundled loops and resold services. Bell Atlantic/GTE Merger Order, at ¶¶ 334 - 38.