



PUBLIC NOTICE

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Federal Communications Commission
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Washington, D.C. 20554

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Released: March 12, 2002

COMMON CARRIER BUREAU SEEKS COMMENT ON VERIZON'S REQUEST TO COURT INVESTMENT IN NORTHPOINT TOWARD OUT-OF-REGION MERGER OBLIGATION

CC Docket No. 98-184

Comments Due By: March 19, 2002
Reply Comments Due By: March 22, 2002

On March 7, 2002, Verizon Communications, Inc. (Verizon) submitted a letter to the Common Carrier Bureau (Bureau) regarding its progress in satisfying Condition XVI (Out-of-Territory Competitive Entry) of the *Bell Atlantic/GTE Merger Conditions*.¹ Condition XVI requires Verizon to spend a total of at least \$500 million within 36 months of merger close “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/GTE Service Areas [].”² As described in its March 7, 2002 letter, Verizon seeks to count its investment in Northpoint Communications Group, Inc. (Northpoint) toward satisfaction of Condition XVI, although that merger was never completed. Verizon’s letter is attached to this Public Notice.

The Bureau seeks comment on Verizon’s proposal. Pursuant to the instructions below, interested parties should submit comments no later than **March 19, 2002**. Reply comments should be submitted no later than **March 22, 2002**.

This is a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.³ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally

¹ See GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License, *Memorandum Opinion and Order*, 15 FCC Rcd 14032, at para. 319 (2000) (*Bell Atlantic/GTE Merger Order*); *id.* at Appendix D, paras. 43-48; Letter from Gordon Evans, Vice President, Federal Regulatory, Verizon, to William Caton, Acting Secretary, Federal Communications Commission, CC Docket No. 98-184 (filed Mar. 7, 2002) (Verizon March 7th Ex Parte).

² *Bell Atlantic/GTE Merger Order* at Appendix D, para. 43.

³ 47 C.F.R. §§ 1.200 *et seq.*

required.⁴ Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

Interested parties may file comments by than **March 19, 2002** and reply comments by than **March 22, 2002**. All filings should refer to CC Docket No. 98-184. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.⁵ Comments filed through ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket number, which in this instance is CC Docket No. 98-184. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message: "get form<your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to Ernestine Creech, Accounting Safeguards Division, Common Carrier Bureau, Federal Communications Commission, 445 12th Street S.W., Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case, CC Docket No. 98-184), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: "Disk Copy—Not and Original." Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street S.W., CY-B402, Washington, D.C. 20554.

Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Portals II, 445 12th Street S.W., CY-B402, Washington, D.C. 20554 (telephone 202-863-2893; facsimile 202-863-2898) or via e-mail at qualexint@aol.com.

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.48 and all other applicable sections of the Commission's rules.⁶ We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

For further information, contact Mark Stone at (202) 418-0816.

Action by the Deputy Chief, Common Carrier Bureau.

⁴ See 47 C.F.R. § 1.1206(b)(2).

⁵ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

⁶ See 47 C.F.R. § 1.49.

Gordon R. Evans
Vice President
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March 7, 2002

Ex Parte

William Caton
Acting Secretary
Federal Communications Commission
445 12th St., S.W. – Portals
Washington, DC 20554

**Re: Merger Conditions, Bell Atlantic/GTE Merger Order, CC Docket No. 98-184,
ASD File No. 00-30**

Dear Mr. Caton:

In response to questions from Ms. Matthey, Verizon is providing the enclosed. Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Evans".

Enclosure

cc: T. Dale
C. Matthey
M. Stone

Gordon R. Evans
Vice President
Federal Regulatory



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March 7, 2002

Ms. Carol Matthey
Deputy Chief, Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

**Re: Merger Conditions, Bell Atlantic/GTE Merger Order, CC Docket No. 98-184,
ASD File No. 00-30**

Dear Ms. Matthey:

This letter is to address questions raised by Commission staff regarding whether Verizon's investment in NorthPoint Communications Group, Inc. ("NorthPoint") may be counted toward the merger conditions regarding out-of-region expenditures, and out-of-region facilities expenditures.¹

As you know, Verizon invested in NorthPoint pursuant to a planned merger between the two companies. See generally *Verizon/NorthPoint Joint Application to Transfer Control*, CC Docket No. 00-157 (filed Aug. 24, 2000). Prior to the planned close of the merger, and in accordance with the Merger Agreement, Verizon made an initial payment to NorthPoint of \$150 million. The merger never closed, however, because Verizon exercised its legal right to terminate the merger agreement and related financing agreement due to a material adverse effect in NorthPoint's business, operations, and financial conditions. NorthPoint entered Chapter 11 bankruptcy, and Verizon was forced to write off its investment in the company.

Although Verizon ultimately retained no value for its investment in NorthPoint, based on the plain language of the *Merger Conditions*, Verizon should receive credit for those portions of its NorthPoint investment that are attributable to out-of-region and out-of-region facilities expenditures. Verizon made this investment in good faith with the expectation that the investment would result in the acquisition of customers outside the Verizon operating area. Like any investment a business makes, there is always a risk the investment may not yield the desired outcome.

¹ See *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control*, 15 FCC Rcd 14032, App. D, ¶¶ 35-38, 43-48 ("*Merger Conditions*").

The Merger Conditions define an "Out-of-Region Expenditure" as money Verizon "will spend . . . 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 ('Competitive Local Service') outside the Bell Atlantic and GTE Service Areas ('Out-of-Region Markets'), within the United States." *Merger Conditions*, App. D, ¶ 43 (footnote omitted) (emphasis added). A "Facilities Expenditure" is money "used to construct, acquire, lease, use, *obtain*, or provide facilities, operating support systems, or equipment that are used to serve customers in Out-of-Region Markets." *Id.*, App. D, ¶ 44 (emphasis added). Verizon did "spend" money to "obtain" "facilities, operating support systems, or equipment that are used to serve customers in Out-of-Region Markets." *Id.*, App. D, ¶¶ 43, 44. That the final merger was never completed does not alter the fact of Verizon's payment. As a result, Verizon should receive the appropriate credit for this expenditure.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony Dale". The signature is stylized with a large initial "A" and a long horizontal stroke.

cc: Anthony Dale
Mark Stone