



COMPTEL

The Communications Association of Choice

October 4, 2006

Via Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

EX PARTE NOTICE

RE: WC Docket No. 06-74, 06-125, 06-159

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, COMPTEL hereby gives notice that on October 4, 2006, Julia Strow of Cbeyond Communications, LLC, Jim Falvey of Xspedius Communications and the undersigned met separately with Michelle Carey, Senior Legal Advisor to Chairman Martin, and Ian Dillner, Legal Advisor to Commissioner Tate.

In the meetings, and consistent with the parties' Petitions to Deny and additional comments submitted in the above-referenced proceedings, the parties discussed their opposition to the proposed merger. The parties also discussed the proposed conditions submitted by COMPTEL in its letter dated September 22, 2006.

In addition, COMPTEL pointed out that in prior BOC-to-BOC mergers the Commission, in assessing the public interest factor, held three public forums which allowed the Applicants, state commissions, economist, consumer groups, community organizations and industry participants to express their views on the merger.¹ We emphasized that the Commission should do no less in this proceeding, particularly since this pending merger is significantly larger than those earlier mergers. We provided Mr. Dillner the attached excerpts from previous BOC-to-BOC merger orders outlining the extensive review process the Commission had implemented.

¹ *Application of GTE Corporation and Bell Atlantic For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of Submarine Cable Landing License*, 15 FCC Rcd 14032, Memorandum Opinion and Order, ¶17 (2000); *Application of Ameritech Corp. and SBC Communications Inc For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Section 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission Rules*, 14 FCC Rcd 14712, Memorandum Opinion and Order, ¶39 (1999)

Also, and consistent with comments submitted in the relevant proceeding, the parties mentioned the applicants pending forbearance petitions. In addition, and consistent with comments submitted in the proceeding, the petition filed by Neutral Tandem was raised in the meeting with Mr. Dillner.

Sincerely,
/s/ Karen Reidy
Vice President, Regulatory Affairs

cc: Michelle Carey
Ian Dillner

attachment

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DISPATCHED BY

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of)
)
AMERITECH CORP.,)
Transferor,)
)
AND)
)
SBC COMMUNICATIONS INC.,)
Transferee,)
)
For Consent to Transfer Control of)
Corporations Holding Commission Licenses)
and Lines 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)

CC Docket No. 98-141

MEMORANDUM OPINION AND ORDER

Adopted: October 6, 1999

Released: October 8, 1999

By the Commission: Commissioner Ness issuing a statement; Commissioners Furchtgott-Roth and Powell concurring in part, dissenting in part, and issuing separate statements; Commissioner Tristani issuing a statement.

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29. All evidence suggests that competition has been slow to emerge in the territories of these Baby Bells and that not all geographic areas, and not all types of customers, are receiving the benefits of competition. Furthermore, this merger application comes at a critical juncture when competitive LECs may shortly be able to take advantage of more favorable market conditions resulting from: (1) recent court decisions;⁷⁵ (2) final prices for interconnection, UNEs and resale that have been determined in state cost proceedings;⁷⁶ and (3) extensive section 271 collaborative processes supervised by state commissions. A number of competitive LECs have noted in *ex parte* discussions with Commission staff that their original interconnection agreements with SBC and Ameritech expire this year, and that they are facing negotiation of "second-generation" interconnection agreements that will govern their relationships with these companies (or the combined company) over the next several years. With this background in mind, we turn in the following sections to discussion of the harms that are likely to result from this merger, which is proposed at a critical time in the evolution of local competition that Congress envisioned.

B. The Merger Transaction and Review Process

30. *Proposed Transaction.* Under the Agreement and Plan of Merger (Merger Agreement), dated May 10, 1998, Ameritech would become a first-tier, wholly-owned subsidiary of SBC in a stock-for-stock merger.⁷⁷ Following the merger, SBC would own all the stock of Ameritech, and SBC itself would be owned 57.5 percent by the pre-merger stockholders of SBC and 42.5 percent by the pre-merger stockholders of Ameritech.

31. Together, SBC and Ameritech would serve more than 55.5 million local exchange access lines, representing approximately one-third (31.9 percent) of the nation's total access lines.⁷⁸ SBC and Ameritech as a combined company would have more than 200,000 employees and annual revenues in excess of \$45 billion, based on December 1998 statistics from both companies. In other words, SBC and Ameritech combined would be the second largest telecommunications company in the country behind only AT&T, as measured by revenues. Based on the extensive breadth of SBC's and Ameritech's operations, their proposed merger requires the approval of several government agencies, including the DOJ, state public utility commissions, the European Commission, and this Commission.

⁷⁵ See, e.g., *AT&T Corp v. Iowa Utils. Bd*, 525 U.S. 366 (1999) (upholding Commission's rulemaking authority to carry out local competition provisions of the Telecommunications Act of 1996, upholding "pick and choose" rule, and remanding Commission's application of "necessary and impair" standard of the 1996 Act to network element unbundling rules).

⁷⁶ See, e.g., IURC June 16 Comments at 10-11 & n.25 (reporting that the IURC established a permanent wholesale discount for Ameritech Indiana (21.46 percent) on February 25, 1999, and that final unbundled network element rates had not yet been established for Ameritech in Indiana or Ohio).

⁷⁷ The Merger Agreement specifies that Ameritech shareholders will receive newly-issued shares of SBC at a fixed exchange ratio of 1.316 shares of SBC common stock for each share of Ameritech common stock. Application, Description of Transaction, at 1. See also SBC/Ameritech July 24 Application, Agreement and Plan of Merger.

⁷⁸ See SBC 1998 Annual Report at 3 (Letter from Edward E. Whitacre Jr., Chairman and CEO).

1. Department of Justice Review

32. The DOJ reviewed the proposed transaction as part of the pre-merger review process under the Hart-Scott-Rodino Antitrust Improvements Act of 1976.⁷⁹ On March 23, 1999, DOJ, pursuant to a proposed consent decree, required the Applicants to divest cellular properties in overlapping geographic areas.⁸⁰ This condition was deemed necessary to prevent a substantial lessening of competition as a result of the merger in “markets for mobile wireless services in Illinois, Indiana, and Missouri.”⁸¹ Recognizing further that Ameritech planned to provide wireline service in St. Louis, and that “no one else is providing such service in St. Louis,” DOJ required that Ameritech’s, not SBC’s, cellular assets be divested in St. Louis, and that the purchaser of these assets “has the capability of competing effectively in the provision of local exchange telecommunications services and long distance telecommunications services in the St. Louis area.”⁸² On April 5, 1999, Ameritech announced that it was selling twenty cellular holdings to a joint venture of GTE Consumer Services Inc. (GCSI), a subsidiary of GTE, and Georgetown Partners, which would eliminate all cellular overlaps.⁸³

⁷⁹ See 15 U.S.C. § 18a. DOJ specifically noted that its approval is only one step in the overall merger review process for the proposed transaction. See United States Department of Justice, “Justice Department Requires SBC to Divest Cellular Properties in Deal with Ameritech and Comcast,” Press Release (Mar. 23, 1999) (DOJ Mar. 23 Press Release). DOJ outlined its role in the merger review process as follows:

“The Antitrust Division’s suit was filed under Section 7 of the Clayton Act, which prohibits mergers that may substantially lessen competition, and reflects the Division’s view about the antitrust issues raised by the proposed merger. Other government agencies, including the Federal Communications Commission and the public utility commissions of Illinois, Indiana, and Ohio, are also reviewing the SBC/Ameritech transaction under the laws which those agencies enforce.”

Id.

⁸⁰ *United States v. SBC Communications Inc. and Ameritech Corporation*, Case No. 99-0715, Stipulation and Final Judgment (D.D.C., filed Mar. 23, 1999) (Proposed Final Judgment).

⁸¹ Proposed Final Judgment at 2.

⁸² *Id.* In its Complaint, DOJ referenced a bundled product of local, long distance and cellular services that Ameritech had planned to provide to its residential cellular customers prior to the merger and indicated that “[t]here is no alternative source of such a bundled product in the St. Louis area at present.” *United States v. SBC Communications Inc. and Ameritech Corporation*, Case No. 99-0715, Complaint, at para. 21 (D.D.C. filed Mar. 23, 1999) (DOJ Mar. 23 Complaint). Thus, DOJ acknowledged, “[t]he acquisition would prevent the realization of this new competition.” *Id.*

⁸³ See “Ameritech Sells Cellular Properties to GTE and Georgetown Partners for \$3.27 Billion,” Press Release (Apr. 5, 1999), http://www.ameritech.com/media/release/view/0.1038,2556|1_2.00.htm. See *In re Applications of Ameritech Corporation, Transferor, and GTE Consumer Services, Inc., Transferee. for Consent to Transfer of Control of Licenses and Authorizations*, Memorandum Opinion and Order, DA 99-1677, 1999 WL 635,724 (WTB 1999).

2. State and International Review

33. The proposed merger of SBC and Ameritech also requires the approval of, or notification to, a number of state governing bodies and the European Commission. The status of these proceedings is summarized below.⁸⁴

34. *Ohio.* Pursuant to the laws of Ohio, the Applicants filed for approval of their proposed transaction from the Public Utility Commission of Ohio (PUCO). On April 8, 1999, PUCO approved with conditions the proposed merger pursuant to a stipulated settlement agreement negotiated among several parties. The conditions imposed by PUCO, among other things, require that the Applicants: (1) freeze residential rates through January 2002; (2) compete for residential and business customers in four markets outside of Ameritech's current service territory; (3) improve service quality; (4) increase infrastructure investment; (5) maintain current employment levels for two years; and (6) offer a promotional rate for unbundled loops and resold service for a certain period of time linked to Ameritech's loss of residential access lines to competitors.⁸⁵ PUCO also required the combined entity to make available in Ohio the level of interconnection it obtains as a new entrant outside its service territory or which it provides in another state as an incumbent.⁸⁶ Finally, SBC and Ameritech agreed to meet certain competitive, operations support systems, and service quality benchmarks, or face monetary penalties.⁸⁷

35. *Illinois.* On July 24, 1998, pursuant to Illinois law, the Applicants filed a joint application requesting approval of their proposed reorganization from the Illinois Commerce Commission (ICC). The ICC held numerous formal hearings on the application, and approved the merger on September 23, 1999, subject to several conditions.⁸⁸ The conditions imposed by

⁸⁴ In addition to the state proceedings outlined below, the Public Service Commission of Wisconsin examined the proposed merger for the purpose of filing comments with this Commission. See Comments of the Public Service Commission of Wisconsin, CC Docket No. 98-141 (filed May 19, 1999). In Indiana, the IURC on its own motion, on September 2, 1998, initiated an investigation into the proposed merger to determine whether the IURC had authority to approve the merger. See *Investigation of the Commission's Own Motion into all Matters Relating to the Merger of Ameritech Corporation and SBC Communications Inc.*, Cause No. 41255, Order (IURC Sept. 2, 1998). The IURC ruled on May 5, 1999, that the proposed merger required its approval. See *Investigation of the Commission's Own Motion into all Matters Relating to the Merger of Ameritech Corporation and SBC Communications Inc.*, Cause No. 41255, Order (IURC May 5, 1999). The Applicants appealed this ruling, and the Indiana Supreme Court held that the IURC lacks jurisdiction under state law over a transaction by a public utility's holding company, such as SBC's acquisition of Ameritech. See *Indiana Bell Telephone Co. Inc. v. Indiana Utility Regulatory Comm'n*, 715 N.E.2d 351 (Ind. 1999).

⁸⁵ See *Joint Application of SBC Communications Inc., SBC Delaware Inc., Ameritech Corporation, and Ameritech Ohio for Consent and Approval of a Change of Control*, Public Utilities Comm'n of Ohio Case No. 98-1082-TP-AMT, Opinion and Order, at 18-19, 25-27, 30-31 (Apr. 8, 1999) (*Ohio PUC Merger Order*). The Applicants agreed to enter the local exchange markets in the Cincinnati, Hudson, Delaware, and Lebanon areas.

⁸⁶ *Id.* at 28.

⁸⁷ *Id.* at 10, 15-16, 22.

⁸⁸ See *SBC Communications Inc., SBC Delaware Inc., Ameritech Corporation, Illinois Bell Telephone Company d/b/a Ameritech Illinois, and Ameritech Illinois Metro, Inc.*, Docket No. 98-0555, Order (ICC Sept. 23, 1999) (*ICC Merger Order*).

the ICC address, among other things, performance measurements and associated penalties, enhanced operations support systems, shared transport, most-favored nation interconnection arrangements, residential xDSL service deployment, service outages and associated penalties, network infrastructure investment, 911 practices, and updated cost studies and cost allocation manuals. In addition, for three years, the combined company is required to allocate 50 percent of the net merger-related savings in Illinois to competitors and retail customers. The ICC also relied on a series of voluntarily commitments by the Applicants that, among other things, require the combined firm to retain Ameritech's brand identity and regional employment levels, make charitable and community contributions and establish community enrichment programs in the state (*e.g.*, a consumer education fund, a community technology fund, and community computer centers).

36. *Nevada.* On July 29, 1999, the Public Utilities Commission of Nevada (Nevada PUC) ordered SBC to submit its proposed merger to the commission for review and approval.⁸⁹ SBC thereafter filed a special application with the Nevada PUC seeking either authorization to acquire Ameritech or a finding by the Nevada PUC that it lacks jurisdiction over the transaction.⁹⁰ The Applicants and the Nevada PUC staff subsequently agreed to a settlement agreement that was approved by the Nevada PUC on September 1, 1999. Pursuant to the stipulated agreement, no merger-related transaction costs will be passed on to Nevada ratepayers and, among other things, the merged firm must keep the Nevada PUC apprised of its implementation of any FCC merger conditions, retain the Nevada Bell brand identity, and buy locally where possible.⁹¹

37. *European Commission.* In a June 1998 letter to the Applicants, the European Commission's Merger Task Force confirmed that the proposed merger would not conflict with applicable antitrust guidelines.⁹²

38. *Others.* In addition to these governing bodies, the Applicants sought approval of or made notification to: (i) certain state public utilities commissions in connection with Ameritech's authorizations to provide intrastate interexchange service in all 45 out-of-region states and local exchange service in eight out-of-region states; (ii) certain local franchising authorities in jurisdictions in which Ameritech has received franchises for competitive cable

⁸⁹ See *Petition of the Regulatory Operations Staff for an Order to Show Cause Why SBC Communications Inc. Should Not be Ordered to File an Application for Merger Approval in Compliance with NRS 704.329*, Docket No. 99-4031, Order (Nev. PUC rel. Aug. 2, 1999).

⁹⁰ See *Special Application of SBC Communications Inc. for Authorization to Acquire Ameritech Corporation Pursuant to an Agreement and Plan of Merger or a Finding that the Commission Lacks Jurisdiction over the Acquisition*, Docket No. 99-8010, Notice of Application and Prehearing Conference (Nev. PUC Aug. 10, 1999).

⁹¹ See *Special Application of SBC Communications Inc. for Authorization to Acquire Ameritech Corporation Pursuant to an Agreement and Plan of Merger or a Finding that the Commission Lacks Jurisdiction over the Acquisition*, Docket No. 99-8010, Order (Nev. PUC Sept. 1, 1999) (*Nevada PUC Merger Order*).

⁹² See "European Regulators Signal Clear Path for SBC-Ameritech Merger," SBC and Ameritech News Release (July 23, 1998) (SBC/AIT July 23 Press Release).

systems; and (iii) certain regulatory authorities in select European countries in which SBC or Ameritech holds investments.⁹³

3. Commission Review

39. As noted above, SBC and Ameritech filed joint applications on July 24, 1998, pursuant to sections 214(a) and 310(d) of the Communications Act, requesting Commission approval of the transfer of control to SBC of licenses and lines owned or controlled by Ameritech or its affiliates or subsidiaries. Following the Commission's Public Notice of July 30, 1998,⁹⁴ thirty-five parties filed timely comments supporting or opposing the application, or petitions to deny the application.⁹⁵ Nine parties, including the Applicants, filed reply comments. In addition, the Commission held a series of three public forums at which a number of parties, including (a) the Applicants, (b) states, consumer groups, community organizations, and industry participants, and (c) economists, could present their views on the proposed merger.⁹⁶

40. On October 2, 1998, the Bureau adopted a protective order under which third parties would be allowed to review confidential or proprietary documents that SBC or Ameritech submitted.⁹⁷ Commission staff also requested, and obtained, the Applicants' consent to review the documents that SBC and Ameritech had submitted to DOJ as part of its Hart-Scott-Rodino review process.

41. In January, 1999, Commission staff requested additional documentation and information from the Applicants.⁹⁸ The supplemental request, among other things, sought documents and information on the following subjects: (1) Applicants' out-of-region entry activities; (2) Applicants' brand name awareness; (3) perceived demand for end-to-end telecommunications services; (4) Applicants' investment projects; (5) plans for implementing the Applicants' National-Local Strategy; (6) the profitability of serving out-of-region residential and

⁹³ Application, Description of the Transaction, at 103-4. See also SBC/AIT July 23 Press Release (noting merger approval from the national regulatory authorities of Germany, Denmark and Belgium).

⁹⁴ *SBC Communications, Inc. and Ameritech Corporation Seek FCC Consent for a Proposed Transfer of Control and Commission Seeks Comment on Proposed Protective Order Filed by SBC and Ameritech*, CC Docket No. 98-141, Public Notice, DA 98-1492 (July 30, 1998).

⁹⁵ The parties that filed formal pleadings in this proceeding are listed in Appendix A. In addition to those formal pleadings, we received hundreds of informal comments through *ex parte* submissions.

⁹⁶ See "Commission to Hold En Bancs Regarding Telecom Mergers," Public Notice, DA 98-2045 (Oct. 9, 1998); "Commission to Hold En Bancs Regarding Telecom Mergers," Public Notice, DA 98-2415 (Dec. 2, 1998); "Chief Economist Names Participants on Economic Round Table Regarding Telecom Mergers," Public Notice, DA 99-119 (Jan. 25, 1999).

⁹⁷ *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor, to SBC Communications Inc., Transferee*, CC Docket No. 98-141, Order Adopting Protective Order, DA 98-1952 (Oct. 2, 1998).

⁹⁸ See Letter from Carol E. Matthey, Chief, Policy and Program Planning Division, Common Carrier Bureau, to Dale (Zeke) Robertson, Senior Vice President, SBC Telecommunications Inc. (Jan. 5, 1999) (CCB Jan. 5 SBC Letter); Letter from Carol E. Matthey, Chief, Policy and Program Planning Division, Common Carrier Bureau, to Lynn Shapiro Starr, Executive Director, Federal Relations, Ameritech Corp. (Jan. 7, 1999) (CCB Jan. 7 Ameritech Letter).

small business customers; and (7) the relationship between the companies' National-Local Strategy and section 271 authorizations.⁹⁹ The Applicants filed certain of the Hart-Scott-Rodino documents, and other confidential documents, with the Commission under seal, with a redacted version placed in the public record. The portion of this Order that discusses confidential documents that were used in the Commission's decision-making process has been issued under seal as Appendix B.

42. On April 1, 1999, FCC Chairman William Kennard notified the Applicants that Commission staff had raised a number of significant issues with respect to potential public interest harms and questions about the claimed competitive and consumer benefits of their proposed transaction.¹⁰⁰ Accordingly, Chairman Kennard invited SBC and Ameritech and other interested parties to explore with Commission staff, on a cooperative and public basis, whether it would be possible to craft conditions that would address the public interest concerns raised by the Application.¹⁰¹

⁹⁹ See CCB Jan. 5 SBC Letter; CCB Jan. 7 Ameritech Letter. On May 10, 1999, Sprint alleged that the Applicants had withheld from the Commission certain documentation relevant to the Commission's document request letters. See Letter from Philip L. Verveer, Counsel for Sprint Communications Company, Willkie Farr & Gallagher, to William E. Kennard, Chairman, FCC (filed May 10, 1999). In response, the Commission requested that the Applicants submit certain of the identified documents, which Ameritech subsequently submitted. See Letter from Carol E. Matthey, Chief, Policy and Program Planning Division, Common Carrier Bureau, to Lynn Shapiro Starr, Executive Director, Federal Relations, Ameritech Corp. (May 19, 1999); Letter from Antoinette Cook Bush, Counsel to Ameritech Corporation, to Magalie Roman Salas, Secretary, FCC (filed May 20, 1999)

¹⁰⁰ See Letter from William E. Kennard, Chairman, FCC, to Richard C. Notebaert, Chairman and Chief Executive Officer, Ameritech Corporation and Edward E. Whitacre, Jr., Chairman and Chief Executive Officer, SBC Communications Inc., CC Docket No. 98-141 (Apr. 1, 1999). In that letter, the Chairman specified the following public interest concerns:

- How can the Commission be assured that the merger will not interfere with the companies' willingness and ability to fully open their local markets to competition in accordance with the Communications Act (Act)?
- How can the Commission be assured that the merger would promote the objective of the Telecommunications Act of 1996 to encourage competition in all telecommunications markets?
- How can the Commission be assured that the public will promptly receive the claimed benefits from the proposed "national/local strategy" in view of section 271 of the Act?
- How can the Commission be assured that the merger will not adversely affect the Commission's ability to fulfill its responsibilities under the Communications Act by reducing its ability to "benchmark" the performance and capabilities of telecommunications carriers?
- How can the Commission be assured that the proposed combination will serve the Communications Act's public interest mandate by improving overall consumer welfare?

Id. at 2.

¹⁰¹ See also Letter from U.S. Senators Mike DeWine (R-OH), Herb Kohl (D-WI), Strom Thurmond (R-SC) and Patrick Leahy (D-VT) to William Kennard, FCC Chairman, dated Sept. 16, 1998 (expressing concern by leading members of U.S. Senate Antitrust Subcommittee about telecommunications industry mergers, and urging the Commission to "search for creative, but non-intrusive ways to limit the anticompetitive effects of these deals while emphasizing the procompetitive aspects."). The Senators stated that if a merger is justified on the basis of the prospect of increased competition by the merged parties, then the Commission "should consider how to guarantee that the competitive promises of the merging parties are kept – without unduly interfering in the legitimate business decisions of the respective companies." *Id.* at 1. The Senators suggested that in certain circumstances, this may be

43. Accepting the Chairman's invitation,¹⁰² representatives of SBC and Ameritech held a series of discussions with Commission staff to explore the possibility of the Applicants strengthening their application by agreeing to certain voluntary public interest commitments.¹⁰³ During this time, Commission staff also met with other interested parties who expressed views on the severity of potential public interest harms and possible mitigating conditions.¹⁰⁴

44. On May 6, 1999, the Common Carrier Bureau held a public forum where Commission staff and representatives of SBC and Ameritech reported on the progress of discussions and received further input on the need for, and composition of, any potential conditions.¹⁰⁵ Interested parties also expressed opinions on potential conditions through record submissions.

45. Based on the input received from Commission staff and third parties, SBC and Ameritech supplemented their initial Application by submitting on July 1, 1999 an "integrated package of conditions" which they claimed would satisfy potential public interest concerns and lead to Commission staff support of their Application.¹⁰⁶ More than 50 parties filed timely

best accomplished "by clearly written, easily enforceable conditions for post-merger actions by the parties; in other cases, pre-merger conditions may provide more certainty." *Id.*

¹⁰² See Letter from Edward E. Whitacre, Jr., SBC Communications Inc. and Richard C. Notebaert, Ameritech Corporation, to Honorable William E. Kennard, Chairman, FCC, CC Docket No. 98-141 (Apr. 7, 1999). See also Statement of FCC Chairman William Kennard on Ameritech and SBC Response to the Chairman's Request for a Dialogue (rel. Apr. 7, 1999).

¹⁰³ See, e.g., Letter from Todd F. Silbergeld, SBC Telecommunications, Inc., to Magalie Roman Salas, Secretary, FCC, CC Docket No. 98-141 (April 12, 1999) (indicating discussion of legal standard for merger review, pro-competitive aspects and certain concerns of proposed merger, and general purpose of any conditions); Letter from Todd F. Silbergeld, SBC Telecommunications, Inc., to Magalie Roman Salas, Secretary, FCC, CC Docket No. 98-141 (May 5, 1999) (indicating discussion of potential conditions concerning opening local markets to competition and advanced services, as well as the duration of potential conditions); Letter from Paul K. Mancini, SBC, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 98-141 (June 17, 1999) (indicating discussion of potential conditions concerning OSS, collocation, and performance measures).

¹⁰⁴ See, e.g., Letter from Karen J. Hardie, Ohio Consumers' Counsel, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 98-141 (Apr. 23, 1999) (indicating discussion of residential competition); Letter from Patrick J. Donovan, Swidler Berlin Shereff Friedman on behalf of CoreComm Limited, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 98-141 (Apr. 30, 1999) (indicating discussion of residential rates, burden of negotiating multiple interconnection agreements, collocation expense and delay, access to unbundled network elements, resale, OSS, and enforcement); Letter from A. Renee Callahan, Willkie Farr & Gallagher on behalf of Sprint Communications Company, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 98-141 (Apr. 30, 1999) (indicating discussion of the need for specific incumbent LEC inputs to offer advanced services).

¹⁰⁵ See, e.g., Commission Announces Public Forum on SBC Communications Inc. and Ameritech Corporation, Applications for Transfer of Control, CC Docket No. 98-141, Public Notice, DA 99-810 (rel. Apr. 28, 1999); SBC-Ameritech Public Forum Extended for Second Day, CC Docket No. 98-141, Public Notice, DA 99-837 (rel. May 4, 1999). See also Statement of FCC Chairman William E. Kennard on Conditions for SBC-Ameritech Merger (rel. May 6, 1999).

¹⁰⁶ See Letter of Richard Hetke, Senior Counsel, Ameritech Corporation, and Paul K. Mancini, General Attorney and Assistant General Counsel, SBC Communications Inc., to Magalie Roman Salas, Secretary, FCC, CC Docket No. 98-141 (filed July 1, 1999) (SBC/Ameritech July 1 *Ex Parte*). Specifically, in their reply comments in response to public comment on their proffered conditions, the Applicants state that they will comply with the

comments and 14 parties filed reply comments addressing the Applicants' proposed commitments.¹⁰⁷ SBC and Ameritech subsequently clarified their commitments on August 27, 1999, and in further *ex parte* filings in September.¹⁰⁸

IV. PUBLIC INTEREST FRAMEWORK

46. Pursuant to sections 214(a) and 310(d) of the Communications Act, the Commission must determine whether the Applicants have demonstrated that the public interest would be served by transferring Ameritech's numerous licenses and lines used in interstate or foreign communications to SBC.¹⁰⁹ As discussed below, we must weigh the potential public interest harms of the proposed transaction against the potential public interest benefits to ensure that the Applicants have shown that, on balance, the merger serves the public interest, convenience and necessity.¹¹⁰

47. Section 214(a) of the Communications Act generally requires carriers to obtain from the Commission a certificate of public convenience and necessity before constructing, acquiring, operating or engaging in transmission over lines of communication, or before discontinuing, reducing or impairing service to a community.¹¹¹ In this case, section 214(a) requires the Commission to find that the "present or future public convenience and necessity require or will require" SBC to operate the acquired telecommunications lines, and that "neither the present nor future public convenience and necessity will be adversely affected" by the discontinuance of service from Ameritech.¹¹² Section 310(d) provides that no construction

commitments "to assuage concerns that the merger's benefits will not materialize and to address any remote, speculative possibility that competition in some markets may be threatened." SBC/Ameritech July 26 Reply Comments at 19.

¹⁰⁷ See *Pleading Cycle Established for Comments on Conditions Proposed by SBC Communications Inc. and Ameritech Corporation for their Pending Application to Transfer Control*, CC Docket No. 98-141, Public Notice (rel. July 1, 1999). The parties filing comments and reply comments are listed in Appendix A.

¹⁰⁸ See Letter from Richard Hetke, Ameritech Corp. and Paul K. Mancini, SBC Communications Inc., to Magalie Roman Salas, Secretary, FCC, CC Docket No. 98-141 (filed Aug. 27, 1999) (SBC/Ameritech Aug. 27 *Ex Parte*); Letter from Richard Hetke, Ameritech Corp. and Paul K. Mancini, SBC Communications Inc., to Magalie Roman Salas, Secretary, FCC, CC Docket No. 98-141 (filed Sept. 7, 1999) (SBC/Ameritech Sept. 7 *Ex Parte*); Letter from Richard Hetke, Ameritech Corp. and Paul K. Mancini, SBC Communications Inc., to Magalie Roman Salas, Secretary, FCC, CC Docket No. 98-141 (filed Sept. 17, 1999) (SBC/Ameritech Sept. 17 *Ex Parte*).

¹⁰⁹ 47 U.S.C. §§ 214(a), 303(r), 310(d). See *WorldCom/MCI Order*, 13 FCC Rcd at 18030, para. 8; *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20000, para. 29.

¹¹⁰ See *WorldCom/MCI Order*, 13 FCC Rcd at 18031-32, para. 10.

¹¹¹ 47 U.S.C. § 214(a).

¹¹² 47 U.S.C. § 214(a). See *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996: Petition for Forbearance of the Independent Telephone and Telecommunications Alliance*, CC Docket No. 97-11; AAD File No. 98-43, Report and Order in CC Docket No. 97-11 and Second Memorandum Opinion and Order in AAD File No. 98-43, FCC 99-104 (rel. June 30, 1999) (continuing to require Commission approval for transfers of control, even though blanket section 214 entry certification and streamlined section 214 exit certification have been granted for domestic carriers). In their joint application to transfer control of the domestic section 214 authority held by Ameritech Illinois Metro, Inc., the Applicants also "apply for any authorization the Commission may deem

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of)	
)	
GTE CORPORATION,)	
Transferor,)	
)	
and)	
)	CC Docket No. 98-184
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

Adopted: June 16, 2000

Released: June 16, 2000

By the Commission: Commissioners Ness and Tristani issuing separate statements;
Commissioners Furchtgott-Roth and Powell concurring in part, dissenting in part, and issuing separate statements.

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owned subsidiaries of GTE.²⁷ Following the merger, approximately 57 percent of the shares of Bell Atlantic would be held by the current shareholders, and approximately 43 percent of the shares of Bell Atlantic would be held by the shareholders of GTE. The board of directors of the merged firm would be comprised of an equal number of members from Bell Atlantic's board and GTE's board.²⁸

14. Together, Bell Atlantic and GTE would serve more than 69 million local access lines, representing more than one third of the nation's total access lines.²⁹ As determined from the December 1999 statistics of both companies, the merged entity would have annual revenues in excess of \$58 billion.³⁰ Accordingly, as measured by revenues, a combined Bell Atlantic and GTE would be the second largest telecommunications company in the country behind only AT&T. Based on the extensive breadth of the companies' operations, the proposed merger between Bell Atlantic and GTE requires the review of several government agencies, including the DOJ, state public utility commissions, and this Commission.

C. The Merger Review Process

1. Department of Justice Review

15. The DOJ reviewed the proposed transaction as part of the pre-merger review process under the Hart-Scott-Rodino Antitrust Improvements Act of 1976.³¹ On May 7, 1999, the DOJ filed a civil antitrust complaint alleging that the proposed transaction would violate section 7 of the Clayton Act by lessening competition in the markets for wireless mobile telephone services in ten major trading areas (MTAs), constituting sixty-five metropolitan statistical areas (MSAs) and rural statistical areas (RSAs) in nine states.³² A proposed final judgment was also filed, requiring either Bell Atlantic or GTE to divest its wireless telephone business in the markets where the two companies' businesses overlap.³³ After Bell Atlantic entered into a partnership with Vodafone to form a national wireless business, the DOJ amended the complaint and proposed final judgment to address the additional cellular overlap areas resulting from Bell Atlantic's affiliation with Vodafone.³⁴ The DOJ concluded that the combined

²⁷ *Id.* at 3

²⁸ *Id.*

²⁹ *See Trends in Telephone Service*, Federal Communications Commission (March 2000) at 20-3, Table 20 21; *see supra* paras. 6, 10

³⁰ Bell Atlantic 1999 Annual Report at 6; GTE 1999 Annual Report at 2

³¹ *See United States of America v. Bell Atlantic Corp.*, 99CV-01119, Motion for Entry of Final Judgment (Apr. 20, 2000).

³² *United States of America v. Bell Atlantic Corp.*, 99CV-01119, Motion for Leave to File Supplemental Complaint (Dec. 6, 1999).

³³ *Id.*

³⁴ *Id.*

effect of the Bell Atlantic/GTE and Bell Atlantic/Vodafone transactions would be to lessen competition in the markets for wireless services in thirteen MTAs and ninety-six MSAs and RSAs in fifteen states.³⁵ On April 20, 2000, the parties submitted to the court a proposed final judgment that requires Bell Atlantic, GTE, or Vodafone to divest wireless assets in ninety-six cellular overlap markets.³⁶

2. State Review

16. The proposed merger of Bell Atlantic and GTE also has required the review of or notification to a number of state governing bodies. Twenty-seven states conducted proceedings examining the proposed transaction, each approving it and many imposing conditions.³⁷ Twenty-three additional states declined jurisdiction over the transaction.³⁸ On March 2, 2000, the California Public Utilities Commission granted the Applicants the final necessary state approval for the proposed merger.³⁹

3. Commission Review

17. Bell Atlantic and GTE filed their initial applications for transfer of control on October 2, 1998, requesting Commission approval of the transfer of control to Bell Atlantic of licenses and lines owned or controlled by GTE or its affiliates or subsidiaries.⁴⁰ More than fifty parties have filed timely comments or petitions to deny the application.⁴¹ In addition, the Commission held a series of three public forums at which a number of parties expressed their views on the proposed merger, including the Applicants, states, economists, and consumer groups, community organizations, and industry participants.⁴²

18. On February 24, 1999, in response to concerns raised by Commission staff, Bell Atlantic and GTE filed a *Report on Long Distance Issues in Connection with their Merger and*

³⁵ *United States of America v. Bell Atlantic Corp.*, 99CV-01119, Motion for Entry of Final Judgment (Apr. 20, 2000).

³⁶ *Id.*

³⁷ "Bell Atlantic-GTE Clear Last State Merger Hurdle with Cal.," Washington Telecom Newswire (Mar. 2, 2000).

³⁸ *Id.*

³⁹ *See id.*

⁴⁰ *GTE Corporation and Bell Atlantic Corporation Seek FCC Consent for a Proposed Transfer of Control and Commission Seeks Comment on Proposed Protective Order filed by GTE and Bell Atlantic*, CC Docket No. 98-184, Public Notice, DA 98-2035 (rel. Oct. 8, 1998) (Oct. 8, 1998 Public Notice)

⁴¹ The parties that filed formal pleadings in this proceeding are listed in Appendix A.

⁴² *See* "Commission to Hold En Bancs Regarding Telecom Mergers," Public Notice, DA 98-2045 (Oct. 9, 1998); "Commission to Hold En Bancs Regarding Telecom Mergers," Public Notice, DA 98-2415 (rel. Dec. 2, 1998) (Dec. 2, 1998 Public Notice); "Chief Economist Names Participants on Economic Round Table Regarding Telecom Mergers," Public Notice, DA 99-119 (rel. Jan. 25, 1999) (Jan. 25, 1999 Public Notice).

Request for Limited Interim Relief. With respect to long distance voice services, Applicants requested that the Commission grant a reasonable transition period to permit GTE to transfer to other interexchange carriers its existing customers within Bell Atlantic's region.⁴³ Applicants also requested that the Commission grant interim relief to enable the merged firm to continue providing interLATA data services through GTE's Internet backbone provider, GTE Internetworking, while the merged company pursued section 271 authority for Bell Atlantic's in-region states.⁴⁴ The Applicants subsequently asked that the Commission hold its Request for Interim Relief in abeyance pending later filings addressing the long distance issues.⁴⁵ On April 14, 1999, Applicants requested that the Commission suspend processing of their merger application pending a further submission following Bell Atlantic's filing with the Commission of its application for section 271 relief in New York.⁴⁶

19. Bell Atlantic and GTE renewed and supplemented their initial application by submitting a January 27, 2000 Supplemental Filing, which included their Internet backbone spin-off proposal and a set of proposed merger conditions to which they voluntarily committed.⁴⁷ Bell Atlantic and GTE subsequently clarified the Internet backbone proposal and their proposed merger conditions through subsequent filings made on April 3, 2000,⁴⁸ April 14, 2000,⁴⁹ April 28, 2000,⁵⁰ May 19, 2000,⁵¹ June 7, 2000,⁵² and June 14, 2000.⁵³ On April 28, 2000, the Commission

⁴³ See Letter from Jennifer L. Hoh, Legal Department, Bell Atlantic, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 98-184 (Feb. 24, 1999) (Bell Atlantic/GTE Feb. 24, 1999 *Ex Parte* Letter).

⁴⁴ *Id.*

⁴⁵ See Letter from Steven G. Bradbury, Counsel, GTE, and Michael E. Glover, Counsel, Bell Atlantic, to Thomas Krattenmaker, Federal Communications Commission, CC Docket 98-184 (filed Apr. 8, 1999) (Bell Atlantic/GTE Apr. 8, 1999 *Ex Parte* Letter).

⁴⁶ See Letter from Steven G. Bradbury, Counsel for GTE, and Edward D. Young, III, Counsel for Bell Atlantic, to Katherine Brown, Federal Communications Commission, CC Docket No. 98-184 (filed Apr. 14, 1999) (Bell Atlantic/GTE Apr. 14, 1999 *Ex Parte* Letter).

⁴⁷ See Bell Atlantic/GTE Jan. 27, 2000 Supplemental Filing; Bell Atlantic/GTE Jan. 27, 2000 Proposed Conditions. See also *Commission Seeks Comments on Supplemental Filing Submitted by Bell Atlantic Corporation and GTE Corporation*, CC Docket No. 98-184, Public Notice (rel. Jan. 31, 2000) (Jan. 31, 2000 Public Notice). The parties filing comments and reply comments are listed in Appendix A.

⁴⁸ See Letter from Steven G. Bradbury, Counsel to GTE, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 98-184 (filed Apr. 3, 2000) (Bell Atlantic/GTE Apr. 3, 2000 *Ex Parte* Letter).

⁴⁹ See Letter from Michael E. Glover, Associate General Counsel, Bell Atlantic, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 98-184 (filed Apr. 14, 2000) (Bell Atlantic/GTE Apr. 14, 2000 *Ex Parte* Letter).

⁵⁰ Letter from William P. Barr, Executive Vice President and General Counsel, GTE, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 98-184 (filed Apr. 28, 2000) (Bell Atlantic/GTE Apr. 28, 2000 *Ex Parte* Letter).

sought further comment on the altered spin-off proposal and modified merger conditions.⁵⁴

IV. PUBLIC INTEREST FRAMEWORK

20. Before approving the transfer of control of licenses and lines in connection with the proposed merger, the Commission must determine, pursuant to sections 214(a) and 310(d) of the Communications Act, that the proposed transfers serve the public interest.⁵⁵ In accordance with the Act's public interest standard, we must weigh any potential public interest harms of the proposed transaction against the potential public interest benefits to ensure that, on balance, the merger services the public interest, convenience, and necessity.⁵⁶ In doing so, we examine, *inter alia*, possible competitive effects of the proposed transfers and measure the effect of the merger on both the broader aims of the Communications Act and federal communications policy.⁵⁷

21. Section 214(a) of the Communications Act generally requires carriers to obtain from the Commission a certificate of public convenience and necessity before constructing, acquiring, operating or engaging in transmission over lines of communication, or before discontinuing, reducing or impairing service to a community.⁵⁸ In this case, section 214(a) requires the Commission to find that the "present or future public convenience and necessity require or will require" Bell Atlantic to operate the acquired telecommunications lines and that "neither the present nor future public convenience and necessity will be adversely affected" by

(Continued from previous page)

⁵¹ Letter from Pat Koch, Bell Atlantic, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 98-184 (filed May 19, 2000) (Bell Atlantic/GTE May 19, 2000 *Ex Parte* Letter).

⁵² Letter from Michael E. Glover, Associate General Counsel, Bell Atlantic, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 98-184 (filed June 7, 2000) (Bell Atlantic/GTE Glover June 7, 2000 *Ex Parte* Letter); Letter from Suzanne Yelen, Counsel for GTE, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 98-184 (filed June 7, 2000) (Bell Atlantic/GTE Yelen June 7, 2000 *Ex Parte* Letter).

⁵³ Letter from Michael E. Glover, Associate General Counsel, Bell Atlantic, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 98-184 (filed June 14, 2000) (Bell Atlantic/GTE Glover June 14, 2000 *Ex Parte* Letter).

⁵⁴ *Commission Seeks Comment on Additional Filings Submitted by Bell Atlantic Corporation and GTE Corporation*, Public Notice, CC Docket No. 98-184, DA 00-959 (rel. Apr. 28, 2000) (Apr. 28, 2000 Public Notice).

⁵⁵ 47 U.S.C. §§ 214(a), 303(r), 310(d). See *WorldCom/MCI Order*, 13 FCC Rcd at 18030, para. 8; *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20000, para. 29.

⁵⁶ See *WorldCom/MCI Order*, 13 FCC Rcd at 18031-32, para. 10.

⁵⁷ See *Qwest Communications International Inc. and US WEST, Inc., Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 99-272, FCC 00-91, para. 9 (rel. Mar. 10, 2000) (*Qwest/US WEST Order*).

⁵⁸ 47 U.S.C. § 214(a).

the discontinuance of service from GTE.⁵⁹ Section 310(d) provides that no construction permit or station license may be transferred, assigned, or disposed of in any manner except upon a finding by the Commission that the "public interest, convenience, and necessity will be served thereby."⁶⁰ Accordingly, the Commission must determine that the proposed transfer of licenses from GTE to Bell Atlantic "serves the public interest, convenience, and necessity" before it can approve the transaction.⁶¹

22. The public interest standard under sections 214(a) and 310(d) involves a balancing process that weighs the potential public interest harms of the proposed transaction against its potential public interest benefits.⁶² The Applicants bear the burden of proving by a preponderance of the evidence that, on balance, the proposed transaction serves the public interest.⁶³ In applying this public interest test, the Commission considers four questions: (1) whether the transaction would result in a violation of the Communications Act; (2) whether the transaction would result in a violation of the Commission's rules; (3) whether the transaction would substantially frustrate the Commission's ability to implement or enforce the Communications Act; and (4) whether the merger promises to yield affirmative public interest benefits that could not be achieved without the merger.⁶⁴

23. Our analysis of public interest benefits and harms under parts three and four of the public interest test includes, but is not limited to, an analysis of the potential competitive effects

⁵⁹ 47 U.S.C. § 214(a). See *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996; Petition for Forbearance of the Independent Telephone and Telecommunications Alliance*, CC Docket No. 97-11; AAD File No. 98-43, Report and Order in CC Docket No. 97-11 and Second Memorandum Opinion and Order in AAD File No. 98-43, FCC 99-104 (rel. June 30, 1999) (continuing to require Commission approval for transfers of control, even though blanket section 214 entry certification and streamlined section 214 exit certification have been granted for domestic carriers).

⁶⁰ 47 U.S.C. § 310(d)

⁶¹ *Id.*

⁶² See *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20063, para. 157.

⁶³ *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Telecommunications, Inc., Transferor, to AT&T Corp., Transferee*, CS Docket No. 98-178, Memorandum Opinion and Order, 14 FCC Rcd at 3160, 3169-70, para. 15 (1999) (*AT&T/TCI Order*). See also *WorldCom/MCI Order*, 13 FCC Rcd at 18031, para. 10 n.33 (citing 47 U.S.C. § 309(e) (burdens of proceeding and proof rest with the applicant)); *American Telephone and Telegraph Co. and MCI Communications Corporation Petitions for the Waiver of the International Settlements Policy*, File No. USP-89-(N)-086, Memorandum Opinion and Order, 5 FCC Rcd 4618, 4621, para. 19 (1990) (applicant seeking a waiver of an existing rate bears the burden of proof to establish that the public interest would be better served by the grant rather than the denial of the waiver request); *LeFlore Broadcasting Co., Inc.*, Docket No. 20026, Initial Decision, 66 FCC 2d 734, 736-37, paras. 2-3 (1975) (on the ultimate issue of whether the applicants have the requisite qualifications and whether a grant of the application would serve the public interest, as on all issues, the burden of proof is on the licensees).

⁶⁴ See *SBC/Ameritech Order*, 14 FCC Rcd at 14737, para. 48.

of the transaction, as informed by traditional antitrust principles.⁶⁵ Although an antitrust analysis focuses solely on whether the effect of a proposed merger “may be substantially to lessen competition,”⁶⁶ the Communications Act requires the Commission to apply a different standard. The Commission must make an independent public interest determination that includes an evaluation of the merger's likely effect on future competition.⁶⁷ Because Congress has determined that additional competition in telecommunications markets will better serve the public interest, in order to conclude that a merger is in the public interest, the Commission must “be convinced that it will enhance competition, not merely lessen it.”⁶⁸

24. Where necessary, the Commission can attach conditions to a transfer of lines and licenses to ensure that the public interest is served by the transaction.⁶⁹ Section 214(c) of the Act authorizes the Commission to attach to the certificate “such terms and conditions as in its judgment the public convenience and necessity may require.”⁷⁰ Similarly, section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions, not

⁶⁵ Although the Commission's analysis of competitive effects is informed by antitrust principles and judicial standards of evidence, it is not governed by them, which permits the Commission to arrive at a different assessment of likely competitive benefits or harms than antitrust agencies adduce based on antitrust law. *See FCC v RCA Communications*, 346 U.S. 86, 96-97 (1953) (“To restrict the Commission's action to cases in which tangible evidence appropriate for judicial determination is available would disregard a major reason for the creation of administrative agencies, better equipped as they are for weighing intangibles by specialization, by insight gained through experience, and by more flexible procedure.”) *See also SBC/Ameritech Order*, 14 FCC Rcd at 14738, para. 49, n. 121; *WorldCom/MCI Order*, 13 FCC Rcd at 18034, para. 13 (citing *RCA Communications*, 346 U.S. at 94; *United States v. FCC*, 652 F.2d 72, 81-82 (D.C. Cir. 1980) (*en banc*) (The Commission's “determination about the proper role of competitive forces in an industry must therefore be based, not exclusively on the letter of the antitrust laws, but also on the ‘special considerations’ of the particular industry.”); *Teleprompter-Group W*, 87 FCC 2d 531 (1981), *aff'd on recon.*, 89 FCC 2d 417 (1982) (Commission independently reviewed the competitive effects of a proposed merger); *Equipment Distributors' Coalition, Inc. v. FCC*, 824 F.2d 1197, 1201 (D.C. Cir. 1987); *Northeast Utilities Service Co. v. FCC*, 993 F.2d 937, 947-48 (1st Cir. 1993) (public interest standard does not require agencies “to analyze proposed mergers under the same standards that the Department of Justice . . . must apply.”).

⁶⁶ *See* 15 U.S.C. § 18.

⁶⁷ *See SBC/Ameritech Order*, 14 FCC Rcd at 14738, para. 49; *WorldCom/MCI Order*, 13 FCC Rcd at 18032-33, para. 12; *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 19987, para. 2.

⁶⁸ *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 19987, para. 2.

⁶⁹ *See* 47 C.F.R. § 1.110. *See also WorldCom/MCI Order*, 13 FCC Rcd at 18031-32, para. 10; *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20001-2, para. 30.

⁷⁰ 47 U.S.C. § 214(c). *See WorldCom/MCI Order*, 13 FCC Rcd at 18032, para. 10 n. 35 (citing *MCI Communications Corp.*, File No. I-S-P-93-013, Declaratory Ruling and Order, 9 FCC Rcd 3960, 3968, para. 39 (1994); *Sprint Corp.*, File No. I-S-P-95-002, Declaratory Ruling and Order, 11 FCC Rcd 1850, 1867-72, paras. 100-33 (1996); *GTE Corp.*, File No. W-P-C-2486, Memorandum Opinion and Order, 72 FCC 2d 111, 135, para. 76 (1979)); *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20002, para. 30 n. 59 (citing *Atlantic Tele-Network, Inc. v. FCC*, 59 F.3d 1384, 1389-90 (D.C. Cir. 1995); *GTE Service Corp. v. FCC*, 782 F.2d 263, 268 (D.C. Cir. 1986); *Western Union Tel. Co. v. FCC*, 541 F.2d 346, 355 (3rd Cir. 1976), *cert. denied*, 429 U.S. 1092 (1977)).

inconsistent with law, that may be necessary to carry out the provisions of the Act.⁷¹ Indeed, unlike the role of antitrust enforcement agencies, the Commission's public interest authority enables it to rely upon its extensive regulatory and enforcement experience to impose and enforce conditions to ensure that the merger will yield overall public interest benefits.⁷²

25. Finally, as noted in the *SBC/Ameritech* and *AT&T-TCI Orders*, many transfer applications on their face demonstrate that the merger would yield affirmative public interest benefit and would neither violate the Communications Act or Commission rules nor frustrate the policies and enforcement of the Communications Act.⁷³ Such cases do not require extensive review by the Commission and interested parties. Because that is not the case with respect to this proposed transaction, we analyze the potential public interest harms and benefits of this proposed merger, absent conditions, in the following sections.

V. COMPLIANCE WITH SECTION 271

26. As an initial matter, we first consider whether the Applicants' proposed transaction would result in a violation of the Communications Act. Section 271 of the Act prohibits a Bell operating company or its affiliate from entering the in-region, interLATA market unless and until the BOC demonstrates that its local market is open to competition by satisfying a checklist of market-opening and other requirements set forth in the statute.⁷⁴ Bell Atlantic is comprised of several Bell operating companies,⁷⁵ and, to date, has obtained section 271 authorization only in New York.⁷⁶ GTE is not comprised of any BOCs and thus, prior to the

⁷¹ 47 U.S.C. § 303(r). See, e.g., *WorldCom/MCI Order*, 13 FCC Rcd at 18032, para. 10 n.36 (citing *FCC v. Nat'l Citizens Comm. for Broadcasting*, 436 U.S. 775 (1978) (*Nat'l Citizens*) (broadcast-newspaper cross-ownership rules properly adopted pursuant to section 303(r)); *U.S. v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968) (section 303(r) powers permit Commission to order cable company not to carry broadcast signal beyond station's primary market); *United Video, Inc. v. FCC*, 890 F.2d 1173, 1182-83 (D.C. Cir. 1989) (syndicated exclusivity rules adopted pursuant to section 303(r) powers).

⁷² See *WorldCom/MCI Order*, 13 FCC Rcd at 18034-35, para. 14. In addition to its public interest authority under the Communications Act, the Commission shares concurrent antitrust jurisdiction with DOJ under the Clayton Act to review mergers between common carriers. 15 U.S.C. §§ 18, 21(a). In this case, because our public interest authority under the Communications Act is sufficient to address both the competitive issues raised by the proposed merger and its likely effect on the public interest, we decline to exercise our Clayton Act authority for the proposed transaction. See *SBC/Ameritech Order*, 14 FCC Rcd at 14740, para. 53; *WorldCom/MCI Order*, 13 FCC Rcd at 18032, para. 12; *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 20005, para. 33. See also *United States v. FCC*, 652 F.2d 72, 88 (D.C. Cir. 1980) (en banc).

⁷³ See *AT&T/TCI Order*, 14 FCC Rcd at 3170, para. 16.

⁷⁴ See 47 U.S.C. § 271(a). See also 47 U.S.C. § 271(c) (setting forth the requirements for a BOC to seek authority to provide in-region, interLATA services).

⁷⁵ See 47 U.S.C. § 153(4) (defining "Bell operating company").

⁷⁶ See *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 (1999).