

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application of GTE CORPORATION)	
and BELL ATLANTIC CORPORATION)	
	DOCKET NO. UT-981367
for an Order Disclaiming Jurisdiction or,)	
in the Alternative, Approving the)	AT&T'S BRIEF
GTE CORPORATION – BELL)	
ATLANTIC CORPORATION Merger)	
.....)	

AT&T Communications of the Pacific Northwest, Inc. (“AT&T”) hereby submits this brief in accordance with the Washington Utilities and Transportation Commission (“Commission”) Notice issued on September 28, 1999.

Introduction

AT&T will focus on the effect of the proposed merger on competition, and therefore quality of service, in Washington. AT&T submits that GTE/Bell Atlantic have not adequately addressed these areas that are of concern to all intervenors and the commission, nor have they submitted any evidence for the record regarding how and to what degree this proposed reorganization will benefit, or even fail to harm, Washington consumers. What is on the record are non-quantitative, generalized statements of what could happen in Washington as a result of this reorganization as well as irrelevant statements regarding what has purportedly happened in other states, particularly Vermont. Also in the record, however, are AT&T’s and Sprint’s factual accounts of GTE’s and Bell Atlantic’s anti-competitive dealings and the subsequent negative effects on competition. The evidence submitted by GTE/Bell Atlantic is not sufficient to allow the Commission to determine if this proposed reorganization will be in the public interest, as required by the Telecommunications Act of 1996 and WAC 480-143-050, by promoting competition, diversity and consumer choice.

AT&T contends that, for the reasons set forth in its prefiled testimony, as well as the testimony of Sprint and Staff, the Application filed with this Commission by GTE/Bell Atlantic on May 11, 1999, should not be approved. In the alternative, the Commission should condition the approval upon review of GTE’s and Bell Atlantic’s submission of Washington specific information regarding the impact of the proposed reorganization on the areas of concern outlined herein, as well as commitments to perform systems and service upgrades as the Commission may require. The testimony of the intervenors and state attorneys have cast enough doubt on the probability of the GTE/Bell Atlantic merger benefiting the residents of the state that, at the very least, if this merger is approved, certain safeguards and restrictions should be instituted to protect consumers and competing telecommunication providers. AT&T’s suggestions for such safeguards are listed in the conclusion.

II. Argument

The potential impact of the proposed reorganization on quality of service to consumers should be a primary consideration in deciding the fate of this application. The Commission has no means of evaluating whether customers have been, or will be, satisfied with quality of service both now and following the reorganization. The Commission should at least insure that it has received adequate information prior to approving the reorganization, and should force the merged company to commit to maintaining acceptable levels of quality going forward.

Since there is nothing in the record, except vague references to the sharing of information leading to the use of “best practices,” the Commission cannot determine what practices will address quality of service concerns, much less whether those practices will serve the best interests of consumers.

In her direct testimony, Susan M. Baldwin, state attorney, references the Baldwin/Golding Affidavit, submitted to the FCC and attached to her testimony, in listing the way in which this merger would be inconsistent with the public interest. The following points are included in that list:

- Little progress has been made in breaking the dominance of GTE and Bell Atlantic in their respective local exchange markets. Significant barriers to entry persist.
- The merger will reduce the number of remaining large ILECs, a step the FCC recognizes has a detrimental impact on the public interest.
- Rather than helping to speed up the transition to competition, the trend toward ILEC consolidation represents a move away from the pro-competitive goals set by the Telecommunications Act of 1996.
- The large ILECs have unique advantages that make them more likely than other large telecommunications companies to successfully penetrate other ILECs’ home markets. Reducing their number through mergers diminishes potential competition.
- The Applicants fail to demonstrate that the merger is necessary for them to compete for customers beyond their present ILEC operating territories.
- GTE’s poor performance to date in implementing the competitive mandates of Sections 251 and 252 of the 1996 Act should be considered with respect to its desire to leverage its existing long distance market and Internet backbone by merging with Bell Atlantic.
- The merger would harm in-region customers of noncompetitive services. Home-region customers would involuntarily subsidize the Applicants’ pursuit of out-of-franchise markets, development of the bundled service market, and expansion of Internet business plans.
- The merger would diminish the ability of regulators, competitors, and consumers to benchmark ILECs’ performance, leading to the loss of innovation, service quality and competition.
- The benefits that the Applicants contend will occur as a result of the proposed merger include consequences that should be seen as risks or that are at best speculative.¹

In its pre-filed testimony AT&T (as well as the other intervenors) has addressed most of these points and believes the merger would delay the desired benefits of the 1996 Act and seriously diminish the quality of service in Washington for a long time.

¹ Direct Testimony of Susan M. Baldwin on behalf of the Public Counsel Section Attorney General of Washington, pages 14 and 15.

AT&T, as indicated in its prefiled testimony, has had first hand experience with both GTE and Bell Atlantic in negotiations for interconnection agreements. GTE and Bell Atlantic are both large, incumbent local exchange carriers that appear to be much more concerned about maintaining their market shares than opening their markets to competition. The company does not know how competition will be affected in Washington specifically by the merger; however, the reorganization will surely make GTE a stronger competitor in Washington with increased purchasing power and increased resources with which to attract customers. A larger, more powerful presence in the marketplace, especially when that occurs following a combination of two incumbent carriers with similar agendas and practices, will not encourage, but rather will discourage competitive market entry.

“GTE, the largest independent (non-Bell) incumbent local exchange carrier (ILEC), proposes to merge with Bell Atlantic, the largest of the five surviving Regional Bell Holding Companies (RBOCs), and, at the present time, the country’s largest ILEC.”² As stated in Mr. Stahly’s prefiled testimony, were this merger to be consummated, the merged Bell Atlantic/GTE company would control more than one third of American phone lines and more than one third of total United States phone company operating revenues.³ The advantage the merged company would gain through increased subsidies in switched access rates cannot be denied.⁴ As long as switched access is priced several times higher than cost, the merged company will be able to use its provider advantage, derived from inflated access costs, to control prices and harm and discourage competition. Even if a competitor develops facilities to rival GTE’s efficiency in Washington, it would still be at a disadvantage due to the merged company’s decreased terminating costs in Bell Atlantic territory. The increased subsidies to the merged company in switched access would drive competitors from the interLATA markets.

AT&T and other purchasers of access services, local services for resale and network elements are captive customers in GTE’s territory. GTE service cannot diminish if AT&T, or any emerging competitive service provider, is to continue to thrive and grow in Washington. Under RCW 80.01.040, the Commission is charged with insuring that every Washington telecommunications company offers quality services. The success of CLECs entering markets depends upon the timely provision of high quality, nondiscriminatory interconnection by Bell Atlantic and GTE. Neither Bell Atlantic nor GTE has been particularly cooperative in this regard up to this time; but, the merger will further erode any incentives for cooperation with new entrants by increasing the benefits to the merged company of actions it takes to delay, deny or degrade access. Those benefits, the weakening or elimination of a competitor, accrue from the damage to the CLEC’s reputation in the service area when it is unable to provide high quality, low cost services. These benefits would increase should the territory of the potentially discriminatory provider be increased by the consummation of this merger.

²Id., page 6.

³ Direct Testimony of David E. Stahly on behalf of Sprint Communications Company, L.P., page 12.

⁴ Carl R. Danner purports to disprove this in his prefiled Rebuttal Testimony at page 25, but only skirts the issue. Decreased costs are an indisputable advantage.

III. Conclusion

It is clear from the record in this matter that GTE/Bell Atlantic have not provided adequate Washington specific information for the Commission to determine if the proposed merger is in the public interest of Washington consumers. There has been no extensive study on consumer demand in Washington, the potential effects on competition in Washington following the merger or how business standards or practices may change and benefit Washington consumers post-merger. Also, there has been no commitment made by GTE/Bell Atlantic to increase or even maintain capital expenditures or system upgrades in Washington following the merger. In short, until such information is provided, and the Commission can adequately evaluate the potential effect on Washington consumers and competition in the state, the proposed reorganization should be denied. In the alternative, the provision of Washington specific information and adequate commitments necessary to properly serve customers, both wholesale and resale, should be conditions of approval by the Commission.

As listed in Mr. Ward's testimony, AT&T recommends the following conditions be imposed, should the Commission accept the GTE/Bell Atlantic merger application: (1) require the merged company to continue to invest in its operations in Washington at the current level of commitment of GTE over the next several years; (2) require the merged company to honor its obligations in all interconnection agreements unless modifications are agreed to by all parties; (3) require the merged company to meet the current acceptable levels of quality to both end-user and wholesale customers that GTE currently meets and to document same on a monthly basis.⁵

DATED this 8th day of October, 1999.

Respectfully submitted,

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⁵ Direct Testimony of Chuck Ward, filed August 2, 1999, page 3-5.