

SERVICE DATE

JUN 22 1999

SERVICE DATE

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of )

GTE CORPORATION and BELL )  
ATLANTIC CORPORATION )

for an Order Disclaiming Jurisdiction )  
or, in the Alternative, Approving the )  
GTE CORPORATION-BELL )  
ATLANTIC CORPORATION Merger. )  
..... )

DOCKET NO. UT-981367

SECOND SUPPLEMENTAL ORDER  
ON PETITIONS TO INTERVENE

**PROCEEDINGS:** This case concerns an application by GTE Corporation and Bell Atlantic Corporation in connection with the proposed merger of the two corporations. The Commission is asked to determine whether it has jurisdiction and, if so, to approve the merger. The Commission properly noticed and convened a prehearing conference in this matter in Olympia, Washington, on May 24, 1999, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, Commissioner William R. Gillis, and Administrative Law Judge Dennis J. Moss.

**PARTIES:** Timothy J. O'Connell, Stoel Rives LLP, Seattle, Washington, represents GTE Corporation. Richard Finnigan, attorney, Olympia, represents Bell Atlantic Corporation. Sally G. Johnston, Assistant Attorney General, Olympia, Washington represents Commission Staff (Staff). Simon ffitch, Assistant Attorney General, Seattle, Washington, represents Public Counsel. Mary B. Tribby, attorney, AT&T Corporation, Denver, Colorado, represents AT&T Communications of the Pacific Northwest, Inc.

**LATE-FILED PETITIONS TO INTERVENE:** Sprint Corporation (Sprint) filed its petition to intervene on May 28, 1999. Supra Telecommunications & Information Systems, Inc. (Supra) filed its petition to intervene on July 2, 1999. The Commission required any responses to be filed by June 11, 1999. GTE and Bell Atlantic, as "Joint Applicants," filed separate responses opposing Sprint's and Supra's petitions. Staff filed a response opposing Supra's petition, but Staff "does not oppose Sprint's untimely petition for intervention."

**COMMISSION:** The Commission grants Sprint's petition and denies Supra's petition.

**MEMORANDUM**

**Intervention:** The Commission's intervention rule, WAC 480-09-430, provides that petitions to intervene may not be filed or made once the proceeding is underway, except for good cause shown. In this case, the Commission underscored the importance of timeliness by expressly requiring in its May 12, 1999, Notice of Prehearing Conference that petitions to intervene be submitted in writing before the first prehearing conference (*i.e.*, before 1:30 p.m. on May 24, 1999). If the Commission finds good cause to excuse a late filing, it may grant intervention if the petition discloses a substantial interest in the subject matter of the hearing, or if petitioner's participation is in the public interest. The Commission may make exceptions to its procedural rules in individual cases. WAC 480-09-010.

**Sprint Corporation.** Despite the clear language of our procedural rules, which require written or oral intervention no later than the time of a first prehearing conference in any proceeding, and our unequivocal notice in this proceeding requiring written petitions to intervene before the scheduled prehearing conference on May 24, 1999, Sprint asserts that its May 28, 1999 "intervention request is not untimely." Sprint Petition at 2. Sprint bases its argument, however, on its reading of a *repealed* version of the Commission's intervention rule (WAC 480-09-430) in juxtaposition with our hearings notice rule (WAC 480-09-700).

Our hearings notice rule provides for "at least twenty days" notice in advance of a hearing or prehearing conference, but also gives the Commission discretion to "establish a shorter notice." Sprint, quoting from the repealed version of WAC 480-09-430, relates "that limitations on general interventions to the time of prehearing conferences may be made 'where the commission has given not less than twenty days' written notice of the prehearing conference to all parties . . . ' and has caused the same to be published in a newspaper." Sprint Petition at 2 (emphasis removed). Sprint argues on this basis that the Commission's exercise of the provision for shortened notice in WAC 480-09-700 "should have no bearing on Sprint's intervention." Sprint's legal analysis is misguided, among other reasons, because it depends on language that has no parallel in the current version of WAC 480-09-430.

Though Sprint's petition is tardy, the Commission believes, on the basis of the company's representations, that Sprint is giving close attention to the proposed merger between GTE and Bell Atlantic generally and may be able to bring useful information and perspective to our review at the state level if, at the threshold, we determine that our jurisdiction requires such substantive review. That is, we find Sprint establishes a substantial interest in this proceeding the nature of which makes its participation in the public interest. We accordingly will make an exception here and excuse Sprint's failure to establish good cause for its late filing. WAC 480-09-010. We grant Sprint's petition to intervene.

Although we are granting Sprint's petition despite its failure to show good cause for its tardiness, we wish to impress on Sprint, and others, the importance of staying current with our procedural rules, developing an understanding of our practices under those rules, and acting in accordance with our process requirements as established by the procedural rules and our notices and orders. The option to reject late-filed petitions, or other papers not timely filed, remains open to us in every case.

**Supra Telecommunications & Information Systems, Inc.** We find that Supra, too, fails to establish good cause for its late filing, but do not reject its petition solely for that reason. Instead, consistent with our analysis of Sprint's petition, we focus primarily on the question of whether Supra demonstrates a substantial interest in the proceeding. We find it does not.

Supra's principal place of business is in Florida. According to GTE/Bell Atlantic, Supra is a Florida corporation registered to do business in Washington State, but not incorporated here, as claimed in its petition. More importantly, Supra is not a registered telecommunications provider in Washington State. Instead, Supra relates it "intends to apply for certification by [the] Commission" and is "planning to operate in Washington." Currently, Supra neither is a competitor or potential competitor to GTE or Bell Atlantic in Washington State, nor a customer of these companies in Washington State.

The Commission appreciates Supra's desire to participate, but does not find its petition establishes the requisite degree of interest to meet our requirements under WAC 480-09-430. We do not find the public interest would benefit from Supra's participation. We deny Supra's petition to intervene.

#### ORDER

#### THE COMMISSION ORDERS That:

1. The Petition of Sprint Corporation for Intervention is granted. Sprint Corporation is afforded full rights to participate prospectively in this proceeding as a party. Sprint Corporation, however, is required to take the proceedings as it finds them and is not permitted to broaden the issues or otherwise act in a manner to delay the currently effective procedural schedule, or to act in a manner inconsistent with the processes established for disposition of this case.

2. Supra Telecommunications & Information Systems, Inc.'s Petition for Late Intervention is denied.

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DATED at Olympia, Washington, and effective this 22<sup>nd</sup> day of June, 1999.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

  
MARILYN SHOWALTER, Chairwoman

  
RICHARD HEMSTAD, Commissioner

  
WILLIAM R. GILLIS, Commissioner