BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

FOCAL COMMUNICATIONS	)	
CORPORATION OF WASHINGTON	)	DOCKET NO. UT-013019
	)	
Petitioner,	)	
	)	
v.	)	
	)	VERIZON NORTHWEST'S
VERIZON NORTHWEST, INC.,	)	PETITION FOR
	)	ADMINSTRATIVE REVIEW
Respondent.	)	

PETITION FOR ADMINISTRATIVE REVIEW

Pursuant to WAC 480-09-780(3), Verizon Northwest Inc. files its Petition for Administrative Review of the Administrative Law Judge's Initial Order of October 17, 2001.

I. PRELIMINARY STATEMENT

The issue before the Commission is whether Verizon Northwest must make available to Focal Communications (Focal) the reciprocal compensation arrangement in a North Carolina agreement. This issue is purely a legal one, and is governed by paragraph 32 of the FCC's GTE/Bell Atlantic *Merger Conditions*.[1]

[1]The *Merger Conditions* are set forth in Appendix D to the FCC's order approving the merger, and paragraph 32 is reproduced in its entirety in Exhibit A to this Petition. *See In re GTE Corporation, Transferor and Bell Atlantic, Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations,* CC Docket No. 98-184, FCC 00-221, Memorandum Opinion and Order, Appendix D (June 16, 2000).

1 Paragraph 32 is a "most favored nation" (MFN) provision. It requires Verizon
2 Northwest to make available in Washington "any interconnection arrangement, UNE, or
3 provisions of an interconnection agreement (including an entire agreement) subject to 47
4 U.S.C. Section 251(c)" that any GTE incumbent LEC voluntarily negotiated prior to the
5 Bell Atlantic/GTE merger. According to the FCC, this MFN provision "implements and
6 enforces the 1996 Act's market-opening requirements." (FCC Merger Order, para. 246;
7 see also FCC *Merger Conditions*, Section V).

8 This MFN provision encompasses only those arrangements that are "subject to"
9 Section 251(c) of the Telecommunications Act of 1996 (Act). The FCC focused on this
10 particular subsection – subsection (c) – because this particular portion of the statute spells
11 out the obligations that apply to incumbent LECs. By contrast, subsection (a) sets forth
12 the obligations of all telecommunications carriers, and subsection (b) sets forth the
13 obligations of all local exchange carriers (LECs), including new entrants such as Focal.
14 The subsection (c) obligations are much more extensive than the subsections (a) or (b)
15 obligations, and are intended to help open the local market to competition by opening up
16 the incumbent LECs' networks. For example, subsection (c) requires incumbent LECs to
17 provide interconnection arrangements at any technically feasible point (251(c)(2)) and to
18 provide unbundled network elements (UNEs) (251(c)(3)).

19 The question presented here is whether a reciprocal compensation arrangement is
20 an arrangement that is "subject to Section 251(c)" and therefore is MFN-able under
21 paragraph 32 of the *Merger Conditions*. Clearly it is not. The duty to establish reciprocal
22 compensation arrangements is set forth in Section 251(b), not Section 251(c).[2] The ALJ,
23 therefore, erred in construing paragraph 32 to include Section 251(b) arrangements.

24 Even if the ALJ were correct in construing paragraph 32's MFN provision to
25 include Section 251(b) reciprocal compensation arrangements, any arrangement
26 involving Internet-bound traffic still would not be MFN-able because, as a matter of
27 federal law, Internet-bound traffic is not subject to Section 251(b).[3] The ALJ refused to

[2]Section 251 is reproduced in its entirety in Exhibit B to this Petition.

[3]*See Intercarrier Compensation for Internet-Bound Traffic, Order on Remand and Report and Order*, CC Docket Nos. 96-98 and 99-68, FCC 01-131 at ¶¶ 21, 29 (April 27, 2001) ("*Remand Order*").

address this issue stating that it was not ripe, but Verizon respectfully disagrees. If the time is ripe to construe paragraph 32, then the time is ripe to determine whether that paragraph allows adoption of arrangements governing Internet-bound traffic.

The Commission, however, need not rule on the proper construction of paragraph 32 because this issue is squarely before the FCC. The Commission should await the FCC's decision for at least two reasons. First, the FCC has the final word on what its Merger Order requires, and therefore any decision rendered by this Commission could be nullified by a subsequent FCC decision. Second, Focal is not harmed if this Commission awaits the FCC's decision because (a) the North Carolina agreement contains a "bill and keep" arrangement under which the parties do not receive intercarrier compensation for any traffic and (b) Verizon and Focal have operated under a bill and keep arrangement for several years and continue to do so today. Thus, maintaining the status quo in no way harms Focal.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. The Verizon Northwest/Focal Negotiations

In 1999, Focal opted into the GTE Northwest and AT&T Interconnection Agreement (the "AT&T Agreement"). Pursuant to that agreement, the parties exchanged traffic under a bill and keep arrangement.

On June 23, 2000, Verizon Northwest sent a notice of termination to Focal explaining that the AT&T Agreement would expire on September 24, 2000. Focal did not respond to this notice; therefore, Verizon Northwest followed up with a second notice on July 28. Focal did not respond to this notice until October 4, ten days after the AT&T Agreement expired. In its response, Focal asked to adopt the entire North Carolina agreement between GTE South and Time Warner (the "GTE South/Time Warner Agreement"), claiming that it had the right to do so under paragraph 32 of the *Merger Conditions*.

Verizon Northwest explained that it was not obligated to make all arrangements from the GTE South/Time Warner Agreement available to Focal. Specifically, Verizon Northwest explained that only those arrangements that were "subject to Section 252(c)"

1 were MFN-able. Verizon Northwest did, however, make available to Focal most of the
2 GTE South/Time Warner Agreement, and also proffered a Supplemental Agreement that
3 addressed all Section 252(c) arrangements. The only arrangement Focal objected to was
4 Verizon Northwest's arrangement governing the transport and delivery of Internet-bound
5 traffic.[4]

6 In particular, Verizon Northwest proposed that "no compensation shall be paid for
7 Internet-bound traffic."[5] As Verizon Northwest explained in its cover letter to Focal, this
8 arrangement reflected the FCC's initial order that Internet-bound traffic is not (and never
9 was) "local traffic" subject to the reciprocal compensation provisions of the Act.[6] In
10 other words, Verizon Northwest proffered an arrangement that reflected the applicable
11 law.

12 Focal, however, demanded that it be allowed to adopt the reciprocal compensation
13 arrangement in the GTE South/Time Warner Agreement. This arrangement was
14 negotiated <u>before</u> the FCC completed its rulemaking on the treatment of Internet-bound
15 traffic, and provides that: (1) the parties do not agree on how such traffic should be
16 exchanged and what, if any, compensation is due; (2) the parties recognize that the FCC
17 has issued a notice of proposed rulemaking on this issue; therefore (3) until the FCC
18 resolved this issue, the parties shall exchange Internet-bound traffic but "no
19 compensation shall be paid for [such] traffic." The agreement also provides that when
20 the FCC resolves the Internet-bound traffic issue, the parties will conduct a "true up," if
21 one is needed, back to the effective date of the agreement.[7]

22 After the GTE South/Time Warner Agreement was negotiated, the FCC
23 completed its rulemaking and clarified in its *Remand Order* that Internet-bound traffic is
24 not (and never was) subject to the Act's reciprocal compensation arrangements. In

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[4]Indeed, Focal admits that "the main issue in this case really is compensation for Internet-bound traffic." *See* Initial Order at 4, para. 17.

[5]This provision – Article V, Section 3.2.2.4 – is reproduced in Exhibit C.

[6]*See* Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-96 (rel. Feb. 26, 1999).

[7]This portion of the GTE South/Time Warner Agreement is reproduced in Exhibit D.

reaching this holding, the FCC recognized that the payment of reciprocal compensation for Internet-bound traffic was nothing more than uneconomic "regulatory arbitrage."

Given that the FCC resolved the Internet-bound traffic issue, the GTE South/Time Warner Agreement's "wait and see" provision has no ongoing usefulness. In fact, in light of the FCC's decision, that agreement's reciprocal compensation arrangement can be distilled to one sentence: "No reciprocal compensation shall apply to Internet-bound traffic." As noted above, the reciprocal compensation provision Verizon Northwest offered to Focal is identical; indeed, the heading of this provision is entitled, "No Reciprocal Compensation shall apply to Internet-bound Traffic."[8]

In sum, Verizon Northwest offered Focal everything it wanted except for the now moot GTE South/Time Warner Agreement's reciprocal compensation provision, and Verizon Northwest offered Focal a reciprocal compensation arrangement that is the functional equivalent of the North Carolina provision.

B. The Pending FCC Proceeding on the *Merger Conditions*

When Verizon Northwest did not make available the entire GTE South/Time Warner Agreement, Focal made an informal request to the FCC Common Carrier Bureau seeking an interpretation of the MFN provisions in the *Merger Conditions*. On December 22, 2000, an FCC staff member issued a letter (the *Mattey* letter) setting forth her opinion that the MFN provisions apply to "entire" interconnection agreements.[9]

The *Mattey* letter is a staff opinion rendered on an issue that was presented informally; the letter is neither an action by the FCC itself or by anyone with delegated authority under the FCC's rules. The letter contains no ordering clause, and nothing in the letter indicates that it is binding on any carrier. Indeed, it could not be binding as a matter of law because it was not put out for public comment as required by the Administrative Procedures Act (APA).[10] Other state commissions, including the New

[8]*See* Exhibit C, which sets forth Article V, Section 3.2.2.4 of the Supplemental Agreement.

[9]*See* Correspondence of Carol E. Mattey dated December 22, 2000 to Michael L. Shor, Swidler Berlin Shereff Friedman, LLP, CC Docket No. 98-184, DA 00-2890 (Exhibit D to Focal Petition).

[10]*See* 5 U.S.C. § 553(b)-(d) (requiring, among other things, a 30-day period for public comment).

Jersey Board of Public Utilities, have properly recognized that the *Mattey* letter is not an authoritative statement of the FCC and, as such, is not binding on the parties or on state commissions.

On February 20, 2001, Verizon Northwest sent a letter to the FCC Common Carrier Bureau seeking clarification of the *Mattey* letter, and on March 1 Focal filed its response. On April 20, 2001, the FCC issued a Notice of Inquiry on the precise issue addressed in the *Mattey* letter. Verizon Northwest and Focal filed initial comments on April 30, 2001 and reply comments on May 14. The parties are awaiting a formal FCC ruling on this issue.

C. The ALJ's Initial Order

On October 17, 2001, the ALJ issued his Initial Order in this proceeding holding that Focal was entitled to adopt the entire GTE South/Time Warner Agreement under paragraph 32 of the *Merger Conditions*. The ALJ also held (incorrectly) that the *Mattey* letter "has the same force and effect as actions taken by the FCC and Verizon was clearly bound to comply with its findings as of the date it was written."[11] Because Verizon Northwest did not follow the *Mattey* letter, the ALJ concluded that Verizon Northwest "unfairly deprived" Focal of its rights under the *Merger Conditions*.[12] Verizon Northwest now seeks review of the ALJ's Initial Order.

III. DISCUSSION

A. The ALJ Erred In Construing the FCC's *Merger Conditions.*

This case turns on the proper construction of paragraph 32 of the *Merger Conditions*. This paragraph requires Verizon Northwest to make available in Washington "any interconnection arrangement, UNE, or provisions of an interconnection agreement (including an entire agreement) subject to 47 U.S.C. Section 251(c)" that any other GTE incumbent LEC voluntarily negotiated prior to the Bell Atlantic/GTE merger:

> 32. In-Region Pre-Merger Agreements. Subject to the Conditions specified in this Paragraph, Bell Atlantic/GTE

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[11] Initial Order at 12, para. 52.

[12] *Id.*, para. 53.

1 shall make available: (1) in the Bell Atlantic Service Area
2 to any requesting telecommunications carrier any
3 interconnection arrangement, UNE, or provisions of an
4 interconnection agreement (including an entire agreement)
5 subject to 47 USC §251(c) and Paragraph 39 of these
6 Conditions that was voluntarily negotiated by a Bell
7 Atlantic incumbent LEC with a telecommunications carrier,
8 pursuant to 47 USC §252(a)(1), prior to the Merger Closing
9 Date and *(2) in the GTE Service Area to any requesting*
10 *telecommunications carrier any interconnection*
11 *arrangement, UNE, or provisions of an interconnection*
12 *agreement subject to 47 U.S.C. § 251(c) that was*
13 *voluntarily negotiated by a GTE incumbent LEC with a*
14 *telecommunications carrier, pursuant to 47 U.S.C. §*
15 *252(a)(1), prior to the Merger Closing Date . . . . [S]ubject*
16 *to the Conditions specified in this Paragraph, qualifying*
17 *interconnection arrangements or UNEs shall be made*
18 *available to the same extent and under the same rules that*
19 *would apply to a request under 47 U.S.C. § 252(i) . . . .*[13]

20 The ALJ held that this paragraph requires Verizon Northwest to make available
21 the reciprocal compensation arrangement in the GTE South/Time Warner Agreement
22 even though reciprocal compensation arrangements are subject to Section 251(b) of the
23 Act, <u>not</u> Section 251(c). The ALJ reasoned that the parenthetical "including an entire
24 agreement" negates the conditional phrase "subject to Section 251(c)," the specific
25 provision that only "*qualifying* interconnection arrangements or UNEs shall be made
26 available," and the two explicit limiting uses of the phrase "Subject to the Conditions
27 specified in this Paragraph."[14] Thus, under the ALJ's reasoning, if GTE South had
28 arranged to sell a portion of its truck fleet in North Carolina as part of its agreement there,

[13]Paragraph 32 is reproduced in Exhibit A (emphasis added).

[14]It would seem obvious that the ALJ's conclusion cannot be correct, because if "an entire agreement" without the stated limitations were nonetheless MFN-able, then the twice repeated qualifier, "Subject to the Conditions specified in this Paragraph" would have no meaning.

1 even though that contractual provision is well outside of Section 251(c), Verizon
2 Northwest would have that same obligation in Washington.

3 The ALJ's interpretation is wrong for several reasons. First, the ALJ's
4 interpretation ignores the plain language and essential purpose of paragraph 32. Again,
5 this paragraph is part of the FCC's "market-opening" conditions that address the merger
6 of two incumbent LECs, and for this reason the paragraph focuses on the obligations
7 imposed upon incumbent LECs, namely, the Section 251(c) obligations. The obligations
8 set forth in subsections (a) and (b) apply to all companies, including non-incumbents such
9 as Focal. An MFN commitment is not needed for these obligations because the potential
10 harm to the market from the merger of two incumbents that the FCC sought to eliminate
11 in paragraph 32 is not present.

12 Second, the ALJ's interpretation violates well-settled rules of contract
13 interpretation by rendering the "subject to Section 251(c)" language and the other
14 qualifiers mere surplusage. If the ALJ were correct, then the FCC would not have needed
15 to include the repeated "subject to" limitation in paragraph 32 (which is also found in
16 paragraph 31); instead, it simply would have required Verizon to make available "any
17 interconnection agreement or portion thereof." *See, e.g., Marston Ball v. Stokely Foods*,
18 221 P.2d 832, 835 (1950) (Wash. Sup. Ct. 1950) (noting "familiar canon in the
19 interpretation of contracts that every word and phrase must be presumed to have been
20 employed with a purpose and must be given a meaning and effect whenever possible").

21 Third, the ALJ's interpretation nullifies other language in paragraph 32. For
22 example, in describing how the MFN-able arrangements would be made available,
23 paragraph 32 states that "qualifying interconnection arrangements or UNEs shall be made
24 available to the same extent and under the same rules that [apply] under 47 U.S.C.
25 Section 252(i)." Under the ALJ's construction, the phrase "qualifying interconnection

1 arrangements or UNEs" is meaningless because all arrangements would "qualify" for
2 adoption. Here, too, the ALJ's construction ignores the plain language and intent of the
3 merger condition.

4 Fourth, the genesis of the "subject to Section 251(c)" language in paragraph 32
5 shows that it was intentionally inserted to limit the scope of MFN-able arrangements.
6 Paragraph 32 of the Bell Atlantic/GTE *Merger Conditions* was based on paragraph 43
7 of the SBC/Ameritech conditions. Paragraph 43 permits adoption of any
8 "interconnection arrangement or UNE." This paragraph does not permit adoptions of
9 interconnection agreements, and therefore does not include a reference to Section 251(c).
10 (This is because interconnection arrangements and UNEs are governed by Sections
11 251(c)(2) and (c)(3), respectively, and therefore there was no need to add such a
12 reference to the SBC/Ameritech MFN language.) When Verizon made its first FCC
13 merger filing on January 27, 2000, it included a paragraph virtually identical to
14 SBC/Ameritech paragraph 43. This paragraph, however, was later amended to permit
15 adoption of interconnection agreements, not just interconnection arrangements and
16 UNEs, and at that time the reference to Section 251(c) was added. Clearly, this language
17 is not mere surplusage; it was intentionally inserted to ensure that only Section 251(c)
18 arrangements are MFN-able.

19 Finally, the first sentence in Section 251(c) states that, "In addition to the duties
20 contained in subsection (b), each incumbent local exchange carrier has the following
21 duties . . . ." The ALJ reasoned that the clause "In addition to the duties contained in
22 subsection (b)" incorporates the obligations of subsection (b) into subsection (c), and
23 therefore paragraph 32's reference to Section 251(c) includes subsection (b) obligations
24 as well. The ALJ's construction of the clause is wrong for at least two reasons.

First, the clause simply makes clear that incumbent LECs have obligations "in addition to" the obligation imposed upon other LECs in subsection (b). Indeed, the heading of subsection (c) is entitled "Additional Obligations of Incumbent Local Exchange Carriers," and the sentence that follows simply repeats the heading. This sentence does not "incorporate by reference" the obligations of subsection (b) into subsection (c); instead, they remain separate obligations contained in separate subsections.

Second, the ALJ's interpretation leads to the illogical conclusion that subsection (b) and (c) obligations are MFN-able but not subsection (a) obligations. This is because subsection (c), according to the ALJ, "incorporates by reference" subsection (b); however, neither subsection (b) nor (c) "incorporates by reference" subsection (a). Thus, under the ALJ's analysis, Verizon must make available subsection (b) and (c) arrangements but not subsection (a) arrangements. This result makes little sense. There is no public policy reason for imposing MFN requirements on subsection (b) obligations but not on subsection (a) obligations. There is, however, a strong public policy reason for singling out subsection (c) obligations for special treatment, because only these obligation apply to incumbents. These obligations are the proper focus of paragraph 32.

B. The ALJ Erred In Refusing To Rule On Whether Arrangements Involving Internet-bound Traffic Are MFN-able.

Having ruled (erroneously) that arrangements subject to Section 251(b) are MFN-able under the *Merger Conditions*, the ALJ erred in refusing to rule on whether arrangements governing Internet-bound traffic are likewise MFN-able.

In its briefs, Focal argued to the ALJ that paragraph 32's MFN provisions apply to reciprocal compensation arrangements governed by Section 251(b)(5). The ALJ accepted this argument. Verizon Northwest, however, made a counter-argument: even if

1 Section 251(b)(5) reciprocal compensation arrangements are MFN-able despite the
2 qualifying language in the *Merger Conditions*, those arrangements related to
3 compensation for Internet-bound traffic are not MFN-able because the FCC has held as a
4 matter of federal law that Internet-bound traffic is not subject to Section 251(b)(5). The
5 ALJ refused to consider this argument, finding that it was not ripe.

6 The ALJ's ruling is erroneous. The North Carolina provision that Focal seeks to
7 adopt governs compensation for Internet-bound traffic and, by Focal's admission, that is
8 precisely the reason it has brought this dispute before the Commission. Therefore, the
9 ALJ should have decided whether paragraph 32's MFN provisions apply to such
10 arrangements. In other words, if the time was ripe to construe paragraph 32, then the
11 time was ripe to determine whether that paragraph allows adoption of arrangements
12 governing Internet-bound traffic.

13 If the ALJ had decided this issue, he would have rejected Focal's attempt to
14 import the North Carolina provisions. As noted earlier, FCC's *Remand Order* confirms
15 that Internet-bound traffic is not subject to the reciprocal compensation requirements of
16 Section 251(b)(5). Instead, such traffic is and always has been "information access"
17 traffic that is subject to Section 251(g). The FCC's ruling is binding upon this
18 Commission. Therefore, even if paragraph 32's MFN condition were somehow
19 construed (incorrectly) to apply to Section 251(b)(5) arrangements, the *Remand Order*
20 excludes Internet-bound traffic from Section 251(b)(5) and Focal would be denied the
21 relief it seeks.

22 **C. The ALJ Erred In Refusing to Await the FCC's Interpretation Of Its Own**
23 ***Merger Conditions.***

24 Verizon Northwest asked the ALJ to await the FCC's decision on the very issue
25 presented here. The ALJ refused, stating that a "resolution of the disputed issues in this
26 proceeding without further delay serves the public interest."[15] Verizon Northwest

[15] *See* Initial Order at 5.

1 disagrees – awaiting the FCC's decision will promote the public interest by ensuring
2 against the possibility of inconsistent state and federal decisions.
3 On April 10, 2001, the FCC issued a Notice of Inquiry on the adoption issue
4 presented here.[16] Verizon Northwest and Focal have briefed the issue and are awaiting
5 the FCC's decision. Given that the FCC is in the best position to determine the intent of
6 its *Merger Conditions*, the Commission should await its decision. Otherwise, if the
7 Commission rules one way and the FCC rules the other way, the FCC decision will
8 control and the parties will have to renegotiate (and perhaps relitigate) these or other
9 issues.
10 Furthermore, there is every reason to believe that the FCC will apply the plain
11 language of paragraph 32 and will not allow Focal to adopt the entire GTE South/Time
12 Warner Agreement. For example, in a recent New Jersey proceeding, the
13 arbitrator – former New Jersey Supreme Court Justice Daniel J. O'Hern – adopted
14 Verizon's position in refusing to allow a carrier to adopt an entire agreement from
15 another state:

> 16 Arbitrator O'Hern has determined that Verizon's Most
> 17 Favored Nation (MFN) obligations under the Bell
> 18 Atlantic/GTE Merger Conditions ("the Merger
> 19 Conditions") and under 252(i) do not require the
> 20 importation of each elected provision of the Connecticut
> 21 Agreement. He will state his reasons more fully in his
> 22 decision on the merits of the remaining issues, but recites
> 23 his reasoning here in shorthand form and requests that
> 24 Verizon prepare an order acceptable in form to Cablevision
> 25 Lightpath in form suitable for his facsimile signature.
> 26 Arbitrator O'Hern will recommend to the Board that it find
> 27 the Mattey decision not to be binding in this arbitration.
> 28 That letter opinion was antecedent to a proceeding that
> 29 settled without adjudication. He will further recommend to

[16] *See* FCC Public Notice, *Common Carrier Bureau Seeks Comment on Letters Filed by Verizon and Birch Regarding Most-Favored Nation Condition of SBC/Ameritech and Bell Atlantic/GTE Orders*, DA 01-722 (March 30, 2001) at Exhibit E; Open Proceedings, Federal Communications Commission, 2001 FCC LEXIS 1977, *10 (April 10, 2001) at Exhibit F.

> the Board that it find generally that only provisions of an interconnection agreement governed by Section 251(c) are importable . . . The 252(i) obligations of Verizon are determined by statute and are not part of a carrier's 251(c) obligations.[17]

This decision, of course, is not binding in Washington; nevertheless, its reasoning is compelling, and it supports Verizon Northwest's position that the *Mattey* letter is not binding and is erroneous.

Moreover, Focal will not be harmed if this Commission awaits the FCC's decision. As explained above, Verizon Northwest and Focal have been exchanging traffic under a bill and keep arrangement since 1999. Under this type of arrangement, the parties do not pay any compensation for any traffic, including Internet-bound traffic. Similarly, the parties do not pay any compensation for Internet-bound traffic under the GTE South/Time Warner Agreement. Focal admits that the "main issue" in this proceeding is compensation for Internet-bound traffic, and therefore Focal will not be harmed by continuing with the present bill and keep arrangement until the FCC rules on the adoption issue.[18]

D. The ALJ Erred In Not Following The Commission's Policy Statement That Adoptions Of Agreements Only Become Effective When Approved.

The Commission's long-standing policy, as set forth in its Policy Statement of April 12, 2000, provides that adoptions of agreements under the Act become effective only when they are approved. The ALJ, however, did not follow the Commission's policy; instead, he made Focal's adoption effective December 27, 2000, which is the date he gave to the *Mattey* letter. The ALJ reasoned that the *Mattey* letter "has the same force and effect as actions taken by the FCC and Verizon was clearly bound to comply with its findings as of the date it was written." Because Verizon Northwest did not do so, the ALJ concluded that Verizon Northwest "unfairly deprived" Focal of its rights under the *Merger Conditions*.

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[17] *See Arbitrator's Interim Decision on Verizon's Most-Favored-Nation Obligations Under Sec 251(i) and the Bell Atlantic/GTE Merger Conditions*, State of New Jersey Board of Public Utilities Docket No.TO01080498 (October 25, 2001) at Exhibit G.

[18] Again, given the fact that Verizon Northwest has offered Focal the functional equivalent of the GTE South/Time Warner Agreement, we do not understand why Focal insists on litigating this matter.

1 As discussed earlier, the *Mattey* letter is an informal FCC staff opinion that is not
2 binding on anybody,[19] and Verizon Northwest simply exercised what it believes its rights
3 are under its own *Merger Conditions*. Accordingly, if the Commission allows Focal to
4 adopt the entire GTE South/Time Warner Agreement, then the adoption should become
5 effective on the date it is approved as provided for in the Commission's Policy Statement.
6 In accord with WAC 480-09-780(3), Verizon Northwest proposes the following changes
7 to the Interim Order's Findings of Fact and Conclusions of Law:
8 1. Replace Findings of Fact paragraph 60 with the following:
9 **Focal filed a petition in this proceeding to enforce what it believed are**
10 **its rights under the *Bell Atlantic/GTE Merger Order.***
11 2. Replace Findings of Fact paragraph 61 with the following:
12 **An FCC staff member released a letter on December 22, 2000, setting**
13 **forth her opinion that the Bell Atlantic/GTE Merger Order's MFN**
14 **provisions apply to entire interconnection agreements, without**
15 **limitation to arrangements or agreements that are subject to Section**
16 **251(c).**
17 3. Replace Findings of Fact paragraphs 62 and 63 with the following:
18 **Paragraph 32 of the *Merger Conditions* does not require Verizon to**
19 **make available arrangements or agreements that are not subject to**
20 **Section 251(c); therefore Verizon is not required to make available**
21 **any reciprocal compensation arrangements or any arrangements**
22 **involving Internet-bound traffic.**
23 If, however, the Commission decides not to address this issue and instead awaits
24 the FCC's decision, then Findings of Fact paragraphs 62 and 63 should be replaced with
25 the following:
26 **The issue of whether paragraph 32 of the *Merger Conditions* requires**
27 **Verizon to make available the reciprocal compensation arrangements**
28 **Focal requests is pending in a formal FCC proceeding.**

[19]The New Jersey arbitration decision discussed earlier also recognizes that the *Mattey* letter is an informal opinion that is not binding.

1 4. Strike Conclusions of Law paragraphs 67-70 and replace with the following:

2 **The FCC staff letter of December 22, 2000 is an informal opinion that**

3 **is not binding on the parties or the Commission.**

4 5. Replace Conclusions of Law paragraphs 71-72 with the following:

5 **Verizon has made available to Focal most of the GTE South/Time**

6 **Warner Agreement as well as a Supplemental Agreement that reflects**

7 **the FCC's *Remand Order*. In doing so, Verizon has complied fully**

8 **with the *Merger Conditions*. Contrary to Focal's claim, Verizon was**

9 **not required to make available the entire the GTE South/Time**

10 **Warner Agreement under its *Merger Conditions*.**

11 If, however, the Commission decides not to address this issue and instead awaits

12 the FCC's decision, then Conclusions of Law paragraphs 71-72 should be replaced with

13 the following:

14 **Verizon has made available to Focal most of the GTE South/Time**

15 **Warner Agreement as well as a Supplemental Agreement that reflects**

16 **the FCC's *Remand Order*. The issue of whether Verizon is required to**

17 **make available the entire GTE South/Time Warner Agreement under**

18 **the *Merger Conditions* is pending in a formal FCC proceeding, and the**

19 **Commission will await the outcome of that proceeding. In the**

20 **meantime, the parties shall continue to exchange all traffic under a**

21 **bill and keep arrangement, and neither party shall receive**

22 **compensation for the transport and termination of Internet-bound**

23 **traffic.**

24 6. Strike Conclusions of Law paragraph 73.

25

1 V. **CONCLUSION**

2 Under the plain language of the *Merger Conditions*, Focal is not entitled to adopt
3 the reciprocal compensation arrangement in the GTE South/Time Warner Agreement
4 because this arrangement is not "subject to Section 251(c)" of the Act. Therefore, the
5 Commission must deny Focal's request. Alternatively, the Commission should await the
6 FCC's decision on this precise issue and, until the FCC acts, require the parties to
7 continue exchanging traffic under a bill and keep arrangement.

8 DATED this 5th day of November, 2001.

9

10 Respectfully submitted,
11 **Verizon Northwest Inc.**

12 By Its Attorneys

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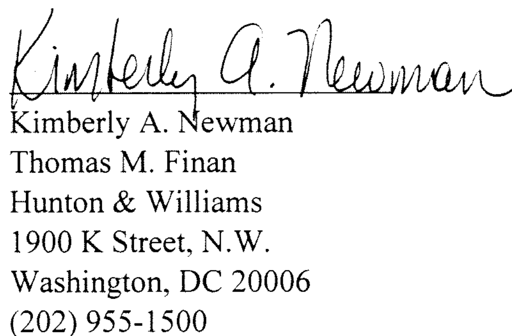
15 

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I have served Verizon Northwest's Petition for
3 Administrative Review upon Ms. Carole J. Washburn, Washington Utilities &
4 Transportation Commission, 1300 S. Evergreen Park Drive SW, Olympia, WA 98504-
5 7250 and Gregory J. Kopta, Davis Wright Tremaine LLP, 2600 Century Square, 1501
6 Fourth Avenue, Seattle, WA 98101-1688, via overnight delivery and electronic mail on
7 November 5, 2001.

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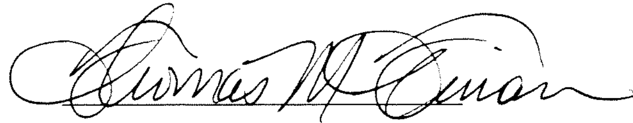
9 

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Regarding the first factor, in an earlier case, we found that a series containing only five episodes could be considered regularly scheduled particularly where, as here, essentially the same series is intended for broadcast on a recurrent basis preceding future elections.[12] Concerning the second factor, AETN appears to exercise complete control over the subject series of presidential profiles. With respect to the third factor, good faith news judgment, there is nothing in the record to suggest that AETN's proposed presidential profiles are intended to advance or harm any particular candidate. Based on the foregoing, we believe that the subject "Biography" programs are exempt from the equal opportunities requirements pursuant to Section 315(a)(2).

9. Finally, we do not find AETN's argument that the programs in question would qualify for a bona fide news documentary exemption to be persuasive. As stated in the language of the bona fide news documentary exemption itself, that exemption explicitly applies only if the appearance of the candidate is "incidental to the presentation of the subject or subjects covered by the news documentary." In this case, the candidates' appearances are not incidental as the candidates themselves are the subjects of the documentaries in question. Neither the explicit terms of the statutory language nor the legislative history of the bona fide news documentary exemption reflect any intention to interpret the "incidental" requirement as being related to whether the appearance concerns the candidate's bid for elective office or any other particular aspect of the candidate's life. Thus, we are unprepared to grant AETN's request to reinterpret the exemption Section 315(a)(3) to include news documentaries, which focus on the life of a candidate but only incidentally discuss the person's candidacy.

10. ACCORDINGLY, for all of the above-stated reasons, AETN's request for a declaratory ruling that profiles of presidential candidates on "Biography," as described in the record, broadcast during the year 2000 presidential campaign are exempt from Section 315(a) of the Act as bona fide news interviews IS GRANTED.

---

[12]. *Request of the Pacifica Foundation*, 9 FCC Rcd 2817 *[75 RR 2d 598]* (1994).

FCC 00-221

In re Application of

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

CC Docket No. 98-184

Adopted: June 16, 2000
Released: June 16, 2000

[CA.214(F), CA.310(D), Gen.110(F)] **Merger of GTE Corp. and Bell Atlantic Corp.; conditions.**

The transfer of control of licenses and lines from GTE Corp. to Bell Atlantic Corp. is approved with conditions; the companies' merger application is granted. Without the conditions, the merger would have had a negative impact on consumers by impeding the introduction of local competition and advanced services in the merged company's markets. The conditions designed to promote advanced services are: a separate affiliate for advanced services; a surrogate line-sharing discount; loop conditioning charges and cost studies; and nondiscriminatory rollout of xDSL services. The conditions designed to open the local markets to competition are: a performance measurement filing requirement; uniform and enhanced operations support systems (OSS); OSS assistance for smaller CLECs; collocation, unbundled network element, and line-sharing compliance; most-favored nation provisions; multi-state interconnection and resale agreements; carrier-to-carrier promotions; offering of unbundled network elements; alternative dispute resolution for interconnection agreement disputes; and access to cabling in multi-unit properties. The conditions designed to improve residential services are: pricing requirements for long distance service; enhanced Lifeline plans; additional service quality reporting; and continued participation in the Network Reliability and Interoperability Council. In addition, GTE/Bell Atlantic must spend at least $500 million to provide competitive local service outside of its service areas, or provide competitive local service to at least 250,000 out-of-region customer lines, within 36 months. In order to avoid a violation of Section 271 of the Act, GTE will transfer its Internet backbone and related assets to a separate public corporation (Genuity) prior to merger closing. But the merged company will maintain an option to reclaim up to 80% control of Genuity if it meets certain conditions relating to obtaining Section

Exhibit A-1

APPENDIX C: SUMMARY OF CONFIDENTIAL INFORMATION

[TEXT NOT AVAILABLE IN PUBLICLY RELEASED VERSION]

This Appendix summarizes documents produced by the Applicants in connection with each Applicant's plans to compete in local exchange and exchange access markets outside its service areas and, in particular, within each other's service areas.

A. Applicants' Plans to Compete Outside Their Traditional Service Areas

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2. Bell Atlantic's Out of Region Plans

APPENDIX D

MARKET-OPENING CONDITIONS

CONDITIONS FOR BELL ATLANTIC/GTE MERGER

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CONDITIONS

As a condition of exercising the grant authorized herein, Bell Atlantic and GTE shall comply with the following enumerated Conditions.[1] Unless otherwise specified herein, the Conditions described herein shall become effective 10 business days after the Merger Closing Date. The Conditions described herein shall be null and void if Bell Atlantic and GTE do not merge and there is no Merger Closing Date.

---

1. All annotations to these Conditions contained in the following footnotes are explanatory notes that have been added in order to facilitate implementation and enforcement of these Conditions.

corresponding compromises between the parties to the underlying interconnection agreement and (2) interconnection arrangements or UNEs voluntarily negotiated or agreed to by a Bell Atlantic or GTE incumbent LEC prior to the Merger Closing Date cannot be extended throughout the Bell Atlantic/GTE Service Areas unless voluntarily agreed to by Bell Atlantic/GTE. The price(s) for such interconnection arrangement or UNE shall be established on a state-specific basis pursuant to 47 USC §252 to the extent applicable. Provided, however, that pending the resolution of any negotiations, arbitrations, or cost proceedings regarding state-specific pricing, where a specific price or prices for the interconnection arrangement or UNE is not available in that state, Bell Atlantic/GTE shall offer to enter into an agreement with the requesting telecommunications carrier whereby the requesting telecommunications carrier will pay, on an interim basis and subject to true-up, the same prices established for the interconnection arrangement or UNE in the negotiated agreement. This subparagraph shall not impose any obligation on Bell Atlantic/GTE to make available to a requesting telecommunications carrier any terms for interconnection arrangements or UNEs that incorporate a determination reached in an arbitration conducted in the relevant state under 47 USC §252, or the results of negotiations with a state commission or telecommunications carrier outside of the negotiation procedures of 47 USC §252(a)(1). Bell Atlantic/GTE shall not be obligated to provide pursuant to this Paragraph any interconnection arrangement or UNE unless it is feasible to provide given the technical, network and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made and with applicable collective bargaining agreements. Disputes regarding the availability of an interconnection arrangement or UNE shall be resolved pursuant to negotiation between the parties or by the relevant state commission under 47 USC §252 to the extent applicable.

b. In the event that any requesting telecommunications carrier seeks to adopt any interconnection arrangement, UNE, or interconnection agreement provisions that are subject to 47 USC §251(c) and Paragraph 39 of these Conditions in the Bell Atlantic/GTE Service Area within any Bell Atlantic/GTE State in the Bell Atlantic/GTE Service Area within any other Bell Atlantic/GTE State that (1) is covered by subparagraph a above (except for the requirement that such agreement be voluntarily negotiated), and (2) was the result of an arbitration conducted and decided in the former state under 47 USC §252 after the Merger Closing Date, then either party may submit the arbitrated provisions to immediate arbitration in the latter state with the consent of the affected state (without waiting for the statutory negotiation period set out in 47 USC §252 to expire).[73]

32. *In-Region Pre-Merger Agreements.* Subject to the Conditions specified in this Paragraph, Bell Atlantic/GTE shall make available: (1) in the Bell Atlantic Service Area to any requesting telecommunications carrier any interconnection arrangement, UNE, or provisions of an interconnection agreement (including an entire agreement) subject to 47 USC §251(c) and Paragraph 39 of these Conditions that was voluntarily negotiated by a Bell Atlantic incumbent LEC with a telecommunications carrier, pursuant to 47 USC §252(a)(1), prior to the Merger Closing Date and (2) in the GTE Service Area to any requesting telecommunications carrier any interconnection arrangement, UNE, or provisions of an interconnection agreement subject to 47 USC §251(c) that was voluntarily negotiated by a GTE incumbent LEC with a telecommunications carrier, pursuant to 47 USC §252(a)(1), prior to the Merger Closing Date, provided that no interconnection arrangement or UNE from an agreement negotiated prior the Merger Closing Date in the Bell Atlantic Area can be extended into the GTE Service Area and vice versa. Terms, conditions, and prices contained in tariffs cited in Bell Atlantic/GTE's interconnection agreements shall not be considered negotiated provisions. Exclusive of price and state-specific performance measures[74] and subject to the Conditions specified in this Paragraph, qualifying interconnection arrangements or UNEs shall be made available to the same extent and under the same rules that would apply to a request under 47 USC §252(i), provided that the interconnection arrangements or UNEs shall not be available beyond the last date that they are available in the underlying agreement and that the requesting telecommunications carrier accepts all reasonably re-

73. Bell Atlantic/GTE will act in good faith in determining whether to agree voluntarily to such arbitrated provisions in the latter state(s) and in determining whether to submit such arbitrated provisions to immediate arbitration in the latter state(s). For example, Bell Atlantic/GTE generally would not require a requesting telecommunications carrier to arbitrate in the latter state(s) a provision that previously was arbitrated and decided in that state(s), except to the extent necessary to preserve its appellate rights or to ask the state to reconsider based on changed or new facts or circumstances. Bad faith attempts by Bell Atlantic/GTE to block or delay adoption in a Bell Atlantic/GTE State of any UNE, whole interconnection agreement, or interconnection agreement provisions arbitrated in any other Bell Atlantic/GTE State after the Merger Closing Date would be considered a violation of this Order and could subject Bell Atlantic/GTE to penalties, fines or forfeitures pursuant to general Commission authority.

74. The performance measures applicable to the state where the agreement will be performed will apply.

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lated[75] terms and conditions as determined in part by the nature of the corresponding compromises between the parties to the underlying interconnection agreement. The price(s) for such interconnection arrangement or UNE shall be established on a state-specific basis pursuant to 47 USC §252 to the extent applicable. Provided, however, that pending the resolution of any negotiations, arbitrations, or cost proceedings regarding state-specific pricing, where a specific price or prices for the interconnection arrangement or UNE is not available in that state, Bell Atlantic/GTE shall offer to enter into an agreement with the requesting telecommunications carrier whereby the requesting telecommunications carrier will pay, on an interim basis and subject to true-up, the same prices established for the interconnection arrangement or UNE in the negotiated agreement. This Paragraph shall not impose any obligation on Bell Atlantic/GTE to make available to a requesting telecommunications carrier any terms for interconnection arrangements or UNEs that incorporate a determination reached in an arbitration conducted in the relevant state under 47 USC §252, or the results of negotiations with a state commission or telecommunications carrier outside of the negotiation procedures of 47 USC §252(a)(1). Bell Atlantic/GTE shall not be obligated to provide pursuant to this Paragraph any interconnection arrangement or UNE unless it is feasible to provide given the technical, network and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made and with applicable collective bargaining agreements. Disputes regarding the availability of an interconnection arrangement or UNE shall be resolved pursuant to negotiation between the parties or by the relevant state commission under 47 USC §252 to the extent applicable.

X. Multi-State Interconnection and Resale Agreements

33. Upon the request of a telecommunications carrier, Bell Atlantic/GTE shall negotiate in good faith an interconnection and/or resale agreement covering the provision of interconnection arrangements, services, and/or UNEs subject to 47 USC §251(c) and Paragraph 39 of these Conditions in the Bell Atlantic/GTE Service Area in two or more Bell Atlantic/GTE States. Such a multi-state generic agreement may include a separate contract with each Bell Atlantic/GTE incumbent LEC. No later than 60 days after the Merger Closing Date, Bell Atlantic/GTE shall make available to any requesting telecommunications carrier generic interconnection and resale terms and conditions covering the Bell Atlantic/GTE Service Area in all Bell Atlantic/GTE States. Pricing under a multi-state generic agreement shall be established on a state-by-state basis and Bell Atlantic/GTE shall not be under any obligation to enter into any arrangement for a state that is not technically feasible and lawful in that state or is inconsistent with provisions in applicable collective bargaining agreements. Any agreement negotiated under this Section shall be subject to the state-specific mediation, arbitration, and approval procedures of Section 252 of the Communications Act. Approval of the agreement in one state shall not be a precondition for implementation of the agreement in another state where approval has been obtained.

XI. Carrier-to-Carrier Promotions: Unbundled Loop Discount

34. Bell Atlantic/GTE shall offer the unbundled loop carrier-to-carrier promotion described below in the Bell Atlantic/GTE Service Area. Bell Atlantic/GTE shall implement this promotion by providing each telecommunications carrier with which Bell Atlantic/GTE has an interconnection agreement in a Bell Atlantic/GTE State, no later than 30 days after the Merger Closing Date, a written offer to amend each telecommunications carrier's interconnection agreement in that state to incorporate the promotion. For purposes of this Section, an offer published on Bell Atlantic/GTE's Internet website that can be accessed by telecommunications carriers shall be considered a written offer.[76] Bell Atlantic/GTE shall establish necessary internal processes and procedures to ensure that Bell Atlantic/GTE's wholesale business units are responsive to telecommunications carriers' requests for the promotion. Bell Atlantic/GTE shall make its written offer in each state at the same time to all telecommunications carriers with which it has existing interconnection and/or resale agreements in that state. The agreement amendments for all carriers in a state that accept Bell Atlantic/GTE's written offer within 10 business days after the initial offer shall be filed for review and approval by the relevant state commission.

35. For an Offering Window period in the Bell Atlantic/GTE Service Area, Bell Atlantic/GTE shall offer, to those telecommunications carriers that have signed an effective interconnection agreement amendment, promotional discounted prices on monthly recurring charges for unbundled local loops used in the provision of local service to residential end user customers that are ordered after the Merger Closing Date. Bell Atlantic/GTE may provide promotional discounts through credits, true-ups, or other billing mechanisms, provided, however, that such credits, true-ups or other

75. *See Local Competition Order*, 11 FCC Rcd 15499 *[4 CR 1]* (1996), ¶¶1309-1323.

76. Links to the offer must be displayed prominently on the initial page of Bell Atlantic/GTE's corporate website for CLECs or as otherwise directed by the Chief of the Common Carrier Bureau to ensure easy accessibility.

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*** CURRENT THROUGH P.L. 107-45, APPROVED 10/1/01 ***

TITLE 47. TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS
CHAPTER 5. WIRE OR RADIO COMMUNICATION
COMMON CARRIERS
DEVELOPMENT OF COMPETITIVE MARKETS

<=1> GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

47 USCS § 251 (2001)

§ 251. Interconnection

(a) General duty of telecommunications carriers. Each telecommunications carrier has the duty--

(1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and

(2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256 [*47 USCS § 255* or 256].

(b) Obligations of all local exchange carriers. Each local exchange carrier has the following duties:

(1) Resale. The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.

(2) Number portability. The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.

(3) Dialing parity. The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

(4) Access to rights-of-way. The duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224 [*47 USCS § 224*].

(5) Reciprocal compensation. The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

(c) Additional obligations of incumbent local exchange carriers. In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:

(1) Duty to negotiate. The duty to negotiate in good faith in accordance with

section 252 [*47 USCS § 252]* the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

§ (2) Interconnection. The duty to provide, for the facilities and equipment of
any requesting telecommunications carrier, interconnection with the local exchange carrier's network--

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 [*47 USCS § 252]*.

(3) Unbundled access. The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 [*47 USCS § 252]*. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

(4) Resale. The duty--

(A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and

(B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

(5) Notice of changes. The duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.

(6) Collocation. The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

(d) Implementation.

(1) In general. Within 6 months after the date of enactment of the Telecommunications Act of 1996 [enacted Feb. 8, 1996], the Commission shall complete all actions necessary to establish regulations to implement the

requirements of this section.
(2) Access standards. In determining what network elements should be made available for purposes of subsection (c)(3), the Commission shall consider, at a minimum, whether--
(A) access to such network elements as are proprietary in nature is necessary; and
§ (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.
(3) Preservation of State access regulations. In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that--
(A) establishes access and interconnection obligations of local exchange carriers;
(B) is consistent with the requirements of this section; and
(C) does not substantially prevent implementation of the requirements of this section and the purposes of this part [*47 USCS* §§ *251* et seq.].

(e) Numbering administration.
(1) Commission authority and jurisdiction. The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.
(2) Costs. The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.
(3) Universal emergency telephone number. The Commission and any agency or entity to which the Commission has delegated authority under this subsection shall designate 9-1-1 as the universal emergency telephone number within the United States for reporting an emergency to appropriate authorities and requesting assistance. The designation shall apply to both wireline and wireless telephone service. In making the designation, the Commission (and any such agency or entity) shall provide appropriate transition periods for areas in which 9-1-1 is not in use as an emergency telephone number on the date of enactment of the Wireless Communications and Public Safety Act of 1999 [enacted Oct. 26, 1999].

(f) Exemptions, suspensions, and modifications.
(1) Exemption for certain rural telephone companies.
(A) Exemption. Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 [*47 USCS* § *254*] (other than subsections (b)(7) and (c)(1)(D) thereof).
(B) State termination of exemption and implementation schedule. The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the State commission. The State commission shall conduct an inquiry for the purpose of

determining whether to terminate the exemption under subparagraph (A). Within 120 days after the State commission receives notice of the request, the State commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 [*47 USCS § 254*] (other than subsections (b)(7) and (c)(1)(D) thereof). Upon termination of the exemption, a State commission shall establish an implementation schedule for compliance with the request that is consistent in §time and manner with Commission regulations.

(C) Limitation on exemption. The exemption provided by this paragraph shall not apply with respect to a request under subsection (c) from a cable operator providing video programming, and seeking to provide any telecommunications service, in the area in which the rural telephone company provides video programming. The limitation contained in this subparagraph shall not apply to a rural telephone company that is providing video programming on the date of enactment of the Telecommunications Act of 1996 [enacted Feb. 8, 1996].

(2) Suspensions and modifications for rural carriers. A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification--

(A) is necessary--

(i) to avoid a significant adverse economic impact on users of telecommunications services generally;

(ii) to avoid imposing a requirement that is unduly economically burdensome; or

(iii) to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.

The State commission shall act upon any petition filed under this paragraph within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.

(g) Continued enforcement of exchange access and interconnection requirements. On and after the date of enactment of the Telecommunications Act of 1996 [enacted Feb. 8, 1996], each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 [enacted Feb. 8, 1996] under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment. During the period beginning on such date of enactment and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission.

(h) Definition of incumbent local exchange carrier.

Exhibit B-4

(1) Definition. For purposes of this section, the term "incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that--

(A) on the date of enactment of the Telecommunications Act of 1996 [enacted Feb. 8, 1996], provided telephone exchange service in such area; and

(B) (i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 C.F.R. 69.601(b)); or

§ (ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i).

(2) Treatment of comparable carriers as incumbents. The Commission may, by rule, provide for the treatment of a local exchange carrier (or class or category thereof) as an incumbent local exchange carrier for purposes of this section if--

(A) such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in paragraph (1);

(B) such carrier has substantially replaced an incumbent local exchange carrier described in paragraph (1); and

(C) such treatment is consistent with the public interest, convenience, and necessity and the purposes of this section.

(i) Savings provision. Nothing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201 [*47 USCS § 201]*.

HISTORY: (June 19, 1934, ch 652, Title II, Part II, § 251, as added Feb. 8, 1996, P.L. 104-104, Title I, Subtitle A, § 101(a), 110 Stat. 61; Oct. 26, 1999, P.L. 106-81, § 3(a), 113 Stat. 1287.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1999. Act Oct. 26, 1999, in subsec. (e), added para. (3).

NOTES:

CODE OF FEDERAL REGULATIONS

Add:

47 CFR Parts 20, 51, 52

RESEARCH GUIDE

Forms:

17 Am Jur Legal Forms 2d (2001), Telecommunications § 245:60.

Law Review Articles:

Meyerson. Ideas of the marketplace: a guide to the 1996 Telecommunications Act. *49 Fed Comm L J 251,* February 1997.

INTERPRETIVE NOTES AND DECISIONS

With respect to local telephone service regulations promulgated by Federal Communications Commission (FCC) under local-competition provisions of Telecommunications Act of 1996 (1996 Act) *(47 USCS §§ 251* et seq.), FCC "unbundling" rule setting forth minimum number of network elements that incumbent local exchange carriers (LECs) had to make available to requesting

AGREEMENT
BETWEEN
VERIZON NORTHWEST INC.,
F/K/A GTE NORTHWEST INCORPORATED
AND
FOCAL COMMUNICATIONS CORPORATION
SUPPLEMENTING TERMS ADOPTED BY FOCAL COMMUNICATIONS CORPORATION
PURSUANT TO PARAGRAPH 32 OF THE BA/GTE MERGER CONDITIONS

THIS AGREEMENT is by and between Verizon Northwest Inc., f/k/a GTE Northwest Incorporated ("Verizon Washington") and Focal Communications Corporation ("Focal"), Verizon Washington and Focal being referred to collectively as the "Parties" and individually as a "Party". This Agreement covers services in the State of Washington (the "State").

WHEREAS, pursuant to paragraph 32 of the BA/GTE Merger Conditions ("Merger Conditions"), released by the FCC on June 16, 2000 in CC Docket No. 98-184, Focal has adopted the terms of the Interconnection Agreement between TWTC and Verizon South Inc., f/k/a GTE South Incorporated in the State of North Carolina ("Verizon South Terms");

WHEREAS, paragraph 32 of the Merger Conditions applies only to interconnection arrangements, Unbundled Network Elements, and provisions of an interconnection agreement that are subject to 47 U.S.C. Section 251(c), and, among other things, is further limited to voluntarily negotiated terms and conditions that are not the product of state-specific pricing or regulatory obligations;

WHEREAS, pursuant to Section 252(a)(1) of the Act, and without waiving any of their rights to challenge the legality of the Verizon South Terms, the Parties now wish to supplement the Verizon South Terms to reflect agreement concerning obligations and relationships that are not covered by Focal's adoption of the Verizon South Terms under paragraph 32 of the FCC Merger Conditions;

WHEREAS, in drafting this Agreement the Parties have not undertaken to update the Verizon South Terms to incorporate intervening changes in law and each party fully reserves its future rights to do so to the extent permitted by the Verizon South Terms;

NOW, THEREFORE, in consideration of the mutual promises, provisions and covenants herein contained, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The Parties have undertaken a joint review of the Verizon South Terms and have identified a number of supplemental terms (reflected in Paragraph 2) that are necessary to establish a contractual relationship between the Parties in relation to terms and conditions that cannot be ported across state boundaries pursuant to FCC merger conditions (e.g., terms and conditions that are neither 47 U.S.C. Section 251(c) requirements nor terms and conditions that are legitimately related to those requirements, terms and conditions reflecting state-specific regulatory requirements, terms and conditions that are the product of arbitration). The Parties acknowledge and agree that their joint review has not been exhaustive, but represents the Parties' mutual best efforts to identify such issues in the interest of avoiding future disputes. By entering into this Agreement, Verizon Washington does not waive any future right that it may have to assert that particular terms and conditions contained in the Verizon South Terms cannot be required in the State of Washington pursuant to the FCC Merger Conditions. If such issues are later identified, the Parties shall, where necessary, promptly negotiate terms and conditions in accordance with applicable law covering the same subject(s). Should the Parties be unable to mutually agree on how such terms and conditions should be reflected, such dispute may be resolved pursuant to the dispute resolution mechanism contained in the Verizon South Terms.

to exchange traffic associated with third party LECs, CLECs and Wireless Service Providers pursuant to the compensation arrangement specified in Section 3.3 herein. In addition, the Parties will notify each other of any anticipated change in traffic to be exchanged (e.g., traffic type, volume).

3.2.2 Compensation Arrangements. The Parties shall compensate each other for the transport and termination of Local Traffic delivered to the terminating Party in accordance with Section 251(b)(5) of the Act (Reciprocal Compensation) at the rates stated in Article XI. When such Local Traffic is delivered over the same trunks as Toll Traffic, any port or transport or other applicable access charges related to the delivery of Toll Traffic to an end user shall be prorated to be applied only to the Toll Traffic. The Parties agree to the initial state level exempt factor representative of the share of traffic exempt from local compensation. This initial exempt factor is set forth in Article XI. This factor will be updated quarterly in like manner or as the Parties otherwise agree. Once the traffic that is exempt from local compensation can be measured, the actual exempt traffic will be used rather than the above factor. This factor is applied to terminating usage to determine the jurisdiction for rate application. The designation of traffic as Local Traffic for purposes of Reciprocal Compensation shall be based on the actual originating and terminating points of the complete end-to-end communication.

Transport and termination of the following types of traffic shall not be subject to the Reciprocal Compensation arrangements set forth in this Section, but instead shall be treated as described or referenced below:

3.2.2.1 Tandem Transit Traffic shall be treated as specified in Section 3.3.

3.2.2.2 For any traffic originating with a third party carrier and delivered by Focal to Verizon, Focal shall pay Verizon the same amount that such third party carrier would have been obligated to pay Verizon for termination of that traffic at the location the traffic is delivered to Verizon by Focal.

3.2.2.3 Switched Exchange Access Service and InterLATA or IntraLATA Toll Traffic shall continue to be governed by the terms and conditions of the applicable Tariffs and, where applicable, by a Meet-Point Billing arrangement in accordance with Section 8.

3.2.2.4 No Reciprocal Compensation shall apply to Internet Traffic. If the amount of traffic (excluding intraLATA Toll Traffic) that Verizon delivers to Focal exceeds twice the amount of traffic that Focal delivers to Verizon as Local Traffic ("2:1 ratio"), then the amount of traffic that Verizon delivers to Focal in excess of such 2:1 ratio shall be presumed to be Internet Traffic and shall not be subject to Reciprocal Compensation. Notwithstanding any other provision in this Agreement, if the Commission, the FCC, or a court of competent jurisdiction, should issue or release an order, or if a federal or state legislative authority should enact a statute, that by its terms (a) expressly supercedes or modifies existing interconnection agreements and (b) specifies a rate or rate structure for reciprocal compensation, intercarrier compensation, or access charges, that is to apply to Internet Traffic, then the Parties shall promptly amend this Agreement to reflect the terms of such order or statute. If such order or statute does not expressly supercede or modify existing interconnection agreements, then Verizon, in its sole discretion, may elect either to continue the provisions set forth herein with regard to Internet Traffic, or to terminate such provisions with thirty (30) days advance written notice. In the event Verizon elects to exercise its termination right, then the Parties shall promptly amend this Agreement to

reflect the terms of such order or statute, and any such amendment shall be retroactive to the effective date of the termination.

3.2.2.5 No Reciprocal Compensation shall apply to special access, private line, or any other traffic that is not switched by the terminating Party.

3.2.2.6 IntraLATA intrastate alternate-billed calls (e.g., collect, calling card, and third-party billed calls originated or authorized by the Parties' respective Customers in Washington shall be treated in accordance with an arrangement mutually agreed to by the Parties.

3.2.2.7 Any other traffic not specifically addressed in this Section shall be treated as provided elsewhere in this Agreement, or if not so provided, as required by the applicable Tariff of the Party transporting and/or terminating the traffic.

3.2.3 Local Designation in Customer Tariffs. Nothing in this Agreement shall be construed to limit either Party's ability to designate the areas within which that Party's Customers may make calls which that Party rates as "local" in its Customer Tariffs.

3.2.4 Traffic Audits. Each Party reserves the right to audit all Traffic, up to a maximum of two audits per calendar year, to ensure that rates are being applied appropriately; provided, however, that either Party shall have the right to conduct additional audit(s) if the preceding audit disclosed material errors or discrepancies. Each Party agrees to provide the necessary Traffic data in conjunction with any such audit in a timely manner.

3.3 Tandem Transit Traffic

3.3.1 As used in this Section 3, Tandem Transit Traffic is Telephone Exchange Service traffic that originates on Focal's network, and is transported through a Verizon Tandem to the Central Office of a CLEC, ILEC other than Verizon, Commercial Mobile Radio Service (CRMS) carrier, or other LEC, that subtends the relevant Verizon Tandem to which Focal delivers such traffic. Neither the originating nor terminating Customer is a Customer of Verizon. Subtending Central Offices shall be determined in accordance with and as identified in the Local Exchange Routing Guide (LERG). Switched Exchange Access Service traffic is not Tandem Transit Traffic.

1. Tandem Transit Traffic Service provides Focal with the transport of Tandem Transit Traffic as provided below.

3.3.3 Tandem Transit Traffic may be routed over the Local trunks described in Section 4.3. Focal shall deliver each Tandem Transit Traffic call to Verizon with Hundred Call Second and the appropriate Transactional Capabilities Application Part (TCAP) message to facilitate full interoperability of CLASS Features and billing functions.

3.3.4 Focal shall exercise its best efforts to enter into a reciprocal Telephone Exchange Service traffic arrangement (either via written agreement or mutual Tariffs) with any CLEC, ILEC, CMRS carrier, or other LEC, to which it delivers Telephone Exchange Service traffic that transits Verizon's Tandem Office. If Focal does not enter into and provide notice to Verizon of the above referenced arrangement within 180 days of the initial traffic exchange with relevant third party carriers, then Verizon may, at its sole discretion, terminate Tandem Transit Service at anytime upon thirty (30) days written notice to Focal.

November 6, 2001

INTERCONNECTION, RESALE AND UNBUNDLING AGREEMENT

BETWEEN

GTE SOUTH INCORPORATED

AND

TIME WARNER TELECOM

Exhibit D-1

the terminating office and shall end at the time of call disconnect by the calling or called subscriber, whichever occurs first.

2.4.2 Minutes of use (MOU), or fractions thereof, shall not be rounded upward on a per-call basis, but will be accumulated over the billing period. At the end of the billing period, any remaining fraction shall be rounded up to the nearest whole minute to arrive at total billable minutes for each interconnection. MOU shall be collected and measured in minutes, seconds, and tenths of seconds.

3. Transport and Termination of Traffic.

3.1 Traffic to be Exchanged.

The Parties shall reciprocally terminate Local, IntraLATA Toll, optional EAS and jointly provided IXC traffic originating on each other's networks utilizing either Direct or Indirect Network Interconnections as provided in Section 4 or Section 5 herein. To this end, the Parties agree that there will be interoperability between their networks. The Parties agree to exchange traffic associated with third party LECs, CLECs and Wireless Service Providers pursuant to the compensation arrangement specified in Section 3.3 herein. In addition, the Parties will notify each other of any anticipated change in traffic to be exchanged (e.g., traffic type, volume).

The Parties have not agreed as to how ESP/ISP Traffic should be exchanged between the Parties and whether and to what extent compensation is due either Party for exchange of such traffic. GTE's position is that the FCC cannot divest itself of rate setting jurisdiction over such traffic, that such traffic is interstate and subject to Part 69 principles, and that a specific interstate rate element should be established for such traffic. TWTC's position is that ESP/ISP traffic should be treated as local for the purposes of inter-carrier compensation and should be compensated on the same basis as voice traffic between end users and that state commissions may continue to rule on the issue of mutual compensation for ESP/ISP Traffic. The FCC has issued a NPRM on prospective treatment of ESP/ISP Traffic. Nevertheless, without waiving any of its rights to assert and pursue its position on issues related to ESP/ISP Traffic, each Party agrees, solely for the purposes of facilitating the completion of this Agreement pending further regulatory action on these issues, that until such issues are resolved, the Parties shall exchange and track ESP/ISP Traffic but no compensation shall be paid for ESP/ISP Traffic exchanged between the Parties and neither party shall bill the other for such traffic. At such time as the law governing the issue of compensation for termination of ESP/ISP Traffic is resolved the Parties will conduct a true-up to apply, effective as of the effective date of this Agreement, the appropriate compensation principles established by such governing law to the ESP/ISP Traffic tracked by the Parties, or if such governing law precludes any compensation, no compensation will apply. The parties further agree that if the FCC issues rules as a result of its NPRM on the prospective treatment of ESP/ISP traffic which do not prescribe a specific compensation scheme or proscribe compensation for ESP/ISP Traffic, but instead establish a process for negotiation or resolution of disputes relating to such compensation, the Parties will follow such process to resolve the issue of compensation for such traffic under this Agreement and will apply the outcome retroactively to the effective date of this Agreement. This interim agreement not to compensate for ESP/ISP Traffic, shall in no manner whatsoever establish any precedent, waiver, course of dealing or in any way evidence either Party=s position or intent with regard to exchange and/or compensation of ESP/ISP Traffic, each Party reserving all its rights with respect to these issues.

PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
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DA 01-722
March 30, 2001

COMMON CARRIER BUREAU SEEKS COMMENT ON LETTERS FILED BY VERIZON AND BIRCH REGARDING MOST-FAVORED NATION CONDITION OF SBC/AMERITECH AND BELL ATLANTIC/GTE ORDERS

CC Docket No. 98-141
CC Docket No. 98-184

Comments Due: April 30, 2001
Reply Comments Due: May 14, 2001

The Commission approved the applications for transfer of control of licenses and lines associated with the proposed mergers of SBC/Ameritech and Bell Atlantic/GTE subject to conditions designed to offset the public interest harms associated with the transactions.[1] Among these conditions is a "most favored nation" (or "MFN") requirement designed to lower barriers to entry and to spread the use of best practices.[2]

The *Bell Atlantic/GTE Merger Order* requires Verizon Communications, Inc. ("Verizon") to make available

> (1) in the Bell Atlantic Service Area to any requesting telecommunications carrier any interconnection arrangement, UNE, or provisions of an interconnection agreement (including an entire agreement) subject to 47 U.S.C. § 251(c) and Paragraph 39 of these Conditions that was voluntarily negotiated by a Bell Atlantic incumbent LEC with a telecommunications carrier, pursuant to 47 U.S.C. § 252(a)(1), prior to the Merger Closing Date and (2) in the GTE Service Area to any requesting telecommunications carrier any interconnection arrangement, UNE, or provisions of an interconnection agreement subject to 47 U.S.C. § 251(c) that was

[1] 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 98-141, *Memorandum Opinion and Order*, 14 FCC Rcd 14712, Appendix C, (1999) ("*SBC/Ameritech Merger Order*"); 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, CC Docket No. 98-184, *Memorandum Opinion and Order*, 15 FCC Rcd 14032, Appendix D (rel. Jun. 16, 2000) ("*Bell Atlantic/GTE Merger Order*").

[2] *See, e.g., Bell Atlantic/GTE Merger Order*, 15 FCC Rcd 14171, para. 300.

> voluntarily negotiated by a GTE incumbent LEC with a telecommunications carrier, pursuant to 47 U.S.C. § 252(a)(1), prior to the Merger Closing Date, provided that no interconnection arrangement or UNE from an agreement negotiated prior the Merger Closing Date in the Bell Atlantic Area can be extended into the GTE Service Area and vice versa.[3]

The *SBC/Ameritech Merger Order* requires SBC Communications Inc.("SBC") to make available

> to any requesting telecommunications carrier in the SBC/Ameritech Service Area within any SBC/Ameritech State any interconnection arrangement or UNE in the SBC/Ameritech Service Area within any other SBC/Ameritech state that (1) was negotiated with a telecommunications carrier, pursuant to 47 U.S.C. § 252(a)(1), by an SBC/Ameritech incumbent that at all times during the interconnection agreement negotiations was an affiliate of SBC and (2) has been made available under an agreement to which SBC/Ameritech is a party.[4]

On February 20, 2001, Verizon asked the Bureau to clarify that the Verizon MFN condition does not apply to provisions of an agreement that address intercarrier compensation for Internet-bound traffic.[5] On March 6, 2001, Birch Telecom, Inc. filed a letter asking the Bureau to interpret the relevant SBC merger condition as permitting it to incorporate a provision relating to reciprocal compensation from an existing agreement with Sage Telecom, Inc., approved by the Texas Public Utility Commission, into current or future interconnection agreements in Oklahoma, Texas, Kansas, and Missouri.[6]

We seek comment on both letters and as to whether there are grounds to waive or modify the relevant MFN conditions.

As a "permit but disclose" proceeding, *ex parte* presentations will be governed by the procedures set forth in Section 1.1206 of the Commission's rules applicable to non-restricted proceedings.[7]

Parties making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is

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[3] *Bell Atlantic/GTE Merger Order* at Appendix D, para. 32.

[4] *SBC/Ameritech Merger Order* at Appendix C, para. 43.

[5] Letter from Gordon Evans, Vice President, Federal Regulatory, Verizon, to Dorothy Attwood, Chief, Common Carrier Bureau at 3 (Feb. 20, 2001).

[6] Letter from John Ivanuska, Vice President, Regulatory & Carrier Relations, Birch, to Carol E. Mattey, Deputy Chief, Common Carrier Bureau, FCC (March 6, 2001).

[7] An *ex parte* presentation is any communication (spoken or written) directed to the merits or outcome of a proceeding made to a Commissioner, a Commissioner's assistant, or other decision-making staff member, that, if written, is not served on other parties to the proceeding or, if oral, is made without an opportunity for all parties to be present. 47 C.F.R. § 1.1201.

generally required.[8] Other rules pertaining to oral and written presentations are set forth in Section 1.1206 (b) as well. Interested parties are to file with the Commission Secretary, Magalie Roman Salas, 445 12th Street S.W., Washington, D.C. 20554, and serve Debbi Byrd of the Accounting Safeguards Division, Common Carrier Bureau, 445 12th Street S.W., 6-C316, Washington D.C. 20554, and International Transcription Service, Inc., 445 12th Street, S.W., CY-B402, Washington, D.C. 20554, with copies of any written *ex parte* presentations in these proceedings filed in the manner specified above.

Interested parties may file comments not later than April 30, 2001. Reponses or oppositions to these comments may be filed not later than May 14, 2001. In accordance with Section 1.51(c) of the Commission's Rules,[9] an original and four copies of all pleadings must be filed with the Commission's Secretary, Magalie Roman Salas, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554. In addition, copies of each pleading must be filed with other offices in the following manner: (1) one copy with International Transcription Service, Inc., the Commission's duplicating contractor, 445 12th Street, S.W., CY-B402, Washington, D.C. 20554, (202) 857-3800; (2) one copy with Mark Stone, Accounting Safeguards Division, Common Carrier Bureau, 445 12th Street, S.W., Room 6-C365, Washington, D.C. 20554; and (3) six copies with Debbi Byrd, Accounting Safeguards Division, Common Carrier Bureau, 445 12th Street, S.W., Room 6-C316, Washington, D.C. 20554.

In addition to filing paper comments, parties may also file comments using the Commission's Electronic Comment Filing System (ECFS).[10] Comments filed through the 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 or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. For 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.

Copies of the applications and any subsequently filed documents in this matter may be obtained from International Transcription Service, Inc., 445 12th Street, S.W., CY-B402, Washington, D.C. 20554, (202) 857-3800. Electronic versions of the applications are also available on the FCC's Internet Home Page (http://www.fcc.gov) and through the Commission's Electronic Comment Filing System. To the extent that parties file electronic versions of responsive pleadings, such filings also will be available on the FCC's Internet Home Page and through the Commission's Electronic Comment Filing System. Copies of the applications and documents are also available for public inspection and copying during normal reference room hours at the Commission's Reference Center, 445 12th Street, S.W., CY-A257, Washington, D.C. 20554.

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

Action by the Deputy Chief, Common Carrier Bureau.

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[8] *See* 47 C.F.R. § 1.1206(b)(2).

[9] 47 C.F.R. § 1.51(c).

[10] *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24,121 (1998).

2001 FCC LEXIS 1977 printed in FULL format.

OPEN PROCEEDINGS

[NO NUMBER IN ORIGINAL]

FEDERAL COMMUNICATIONS COMMISSION

2001 FCC LEXIS 1977

April 10, 2001

ACTION: [*1] NEWS

OPINION:
The following is a listing of current FCC Notices of Proposed Rulemaking and Notices of Inquiry open for public comment, except routine petitions to amend the Table of Allotments. This listing also includes pertinent Public Notices announcing comment subjects and dates. For additional information, contact Marilyn Abraham, Consumer Information Bureau at (202) 418-2374. Please note: as comment and reply comment periods expire, they are deleted from this listing. *Asterisk indicates comment period deadline is past, but reply comment period still is open.

CABLE SERVICES BUREAU

CS 01-07; NOI 01/18/01 (adopted 01/12/01); FCC-01-15

Nondiscrimination in the Distribution of Interactive Television Services over Cable.

The Commission is seeking comment on the initiated proceeding on interactive TV. Comments due: March 19*; replies due April 20. Contact Darryl Cooper at (202) 418- 1039.

PN 03/28/01; DA 01-780

Carriage of Digital Television Broadcast Signals, Amendments to Part 76 of the Commission's Rules, Report and Order and Further Notice of Proposed Rulemaking Published in the Federal Register, March 26, 2001.

Carriage of Digital Television Broadcast Signals, [*2] Amendments of Part 76 of the Commission's Rules, Report and Order and Further Notice of Proposed Rulemaking, FCC 01-22 (CS Docket Nos. 98-120, 00-96, 00-2) regarding cable carriage of broadcast digital television pursuant to mandatory carriege and retransmission consent has been published in the Federal Register, *66 Fed. Reg. 16523, 16532* (March 26. 2001). Comments due May 10; replies due June 25. Contact: Michelle Russo at 418-2358. TTY: (202) 418-7172.

COMMON CARRIER BUREAU

CC 96-61; ORDER 11/17/00 (adopted 11/16/00); DA 00-2586

In the Matter of Policy and Rules Concerning the Interstate, Interexchange

determination that each is an exempt telecommunications company. Comments due April 6*; replies due April 13. Contact: Marty Schwimmer at (202) 418-2320.

CC 96-45; PN 03/27/01; DA 01-757

Petition of Genesis Communications International, Inc. for Declaratory Ruling Regarding Lifeline Assistance Revenues. Pleading Cycle Established.

On November 17, 2000, Genesis Communications International, Inc. filed a Petition for Declaratory Ruling. Genesis requests declaratory rulings regarding: (1) Whether Commission certification of Genesis' eligibility was a prerequisite to obtaining reimbursement from the National Exchange Carrier Association, Inc. for Lifeline discounts given to eligible end users under California's Universal Lifeline Telephone Service program; and (2) whether Genesis was entitled to submit claims and receive reimbursement from NECA on a retroactive basis. Comments due April 26; replies due May 11. Contact: Sheryl Todd at (202) 418-7400, TTY (202) 418-0484.

CC 98-141, 98-184; PN 03/26/01; DA 01-764

Pleading Cycle Established for Comments on Worldnet Telecommunications, Inc. Ex Parte Letter Concerning Bell Atlantic/GTE Merger Conditions.

On February 12, [*10] 2001, WorldNew Telecommunications, Inc. filed an Ex Parte Letter requesting that the Commission reopen the above referenced docket. Comments due April 25; replies due May 10. Contact: Janice M. Myles 202-418-1577.

CC 98-141, CC 98-184; PN 03/30/01; DA 01-722

CCB Seeks Comment on Letters Filed by Verizon and Birch Re: Most-Favored Nation Condition of SBC/Ameritech and Bell Atlantic/GTE Orders.

The Commission seeks comment on both letters and as to whether there are grounds to waive or modify the relevant MFN conditions. Comments due April 30; replies due May 14. Contact: Mark Stone at (202) 418-0816.

CC 98-184; PN 03/30/01; DA No. 01-810

CCB Seeks Comment on Verizon's Request to Eliminate Reporting Requirements Under the Bell Atlantic/NYNEX Merger Order.

The Commission seeks comment on Verizon 's request to cease submitting the Bell Atlantic/NYNEX performance monitoring reports. Comments Due: April 19; replies due April 30. Contact: Mark Stone at (202) 418-0816

CC 96-45; PN 04/02/01; DA 01-814

Smith Bagley, Inc. Petitions to Redefine the Service Area of Table Top Telephone Company on Tribal Lands Within the State of Arizona.

The Common Carrier Bureau [*11] provides notice that Smith Bagley, Inc. has filed a petition, pursuant to section 54.207 of the Commission's rules, requesting the Commission's consent to the Arizona Corporation Commission's

November 6, 2001

Before the
STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

In the Matter of the Petition of Cablevision Lightpath - NJ, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon New Jersey Inc.	)	Docket No. TO01080498

ARBITRATOR'S INTERIM DECISION ON VERIZON'S MOST-FAVORED-NATION OBLIGATIONS UNDER SEC 251(i) AND THE BELL ATLANTIC/GTE MERGER CONDITIONS.

Arbitrator O'Hern has determined that Verizon's Most Favored Nation (MFN) obligations under the Bell Atlantic/GTE Merger Conditions ("the Merger Conditions") and under 252(i) do not require the importation of each elected provision of the Connecticut Agreement. He will state his reasons more fully in his decision on the merits of the remaining issues, but recites his reasoning here in shorthand form and requests that Verizon prepare an order acceptable in form to Cablevision Lightpath and in form suitable for his facsimile signature.

Arbitrator O'Hern will recommend to the Board that it find the Mattey decision not to be binding in this arbitration. That letter opinion was antecedent to a proceeding that settled without adjudication. He will further recommend to the Board that it find generally that only provisions of an interconnection agreement governed by Section 251(c) are importable.

Exhibit G-1

Arbitrator O'Hern will recommend to the Board that it find that "arbitrated" provisions of an interconnection agreement are not importable because the Merger Conditions explicitly state that the obligation to make available the provisions of an interconnection agreement are limited to those that are "voluntarily negotiated." The Merger Conditions merely state that if a party seeks to import a provision arbitrated in another state, "it may immediately seek arbitration in the importing state" without waiting for the pre-arbitration timetable to have run its course. *BA-GTE Merger Conditions Paragraph 31(b).*

Concerning the specific issues before the Arbitrator, he determines:

(1) Measurement and Billing provisions are not importable because they are not subject to Section 251(c) and are "price and state specific performance measures" that are excluded from importation under ¶ __ of the Merger Conditions;

(2) UNE pricing provisions are importable because the Merger Conditions generally provide for retroactive adjustments that will achieve fair pricing. Paragraph 31(a) of the Merger Conditions states generally that when state-specific pricing for UNEs is not available in a state, a requesting carrier may pay the price established in the negotiated agreement, here the CT agreement, "on an interim basis and subject to true up," an event that will occur when the New Jersey Board of Public Utilities concludes pending regulatory hearings concerning UNE pricing.

(3) Insurance Provisions are not subject to 251(c) and are therefore not importable, although the arbitrator fails to see at this moment how the provisions that are suitable for Connecticut operations would not be suitable for New Jersey operations.

(4) The 252(i) obligations of Verizon are determined by statute and are not part of a carrier's 251(c) obligations. The cost-allocation provisions in the Connecticut agreement are state specific and are not importable

(5) Directory Listings as such are covered by a carrier's 251(b) (3) obligations but " price and state specific performance measures" are excluded from coverage under the Merger Conditions and from the coverage of 251(b) or (c). Therefore, directory listings are not importable pursuant to the MFN clause of the Merger Conditions.