

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

December 27, 2000

Mr. Michael L. Shor
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007-5116

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

Dear Mr. Shor:

This letter addresses your November 9, 2000 letter on behalf of Focal Communications Corporation (“Focal”) concerning the most-favored nation (“MFN”) provisions of the *Bell Atlantic/GTE Merger Order*.¹ As explained more fully below, the *Bell Atlantic/GTE Merger Order*’s MFN provisions apply to entire interconnection agreements, so that carriers may import interconnection agreements from one state into another state.

On November 9, 2000, Focal submitted a letter to the Common Carrier Bureau (“Bureau”) requesting an interpretation regarding the proper application of the MFN provisions contained in the *Merger Conditions*.² In its letter, Focal contends that Verizon Communications, Inc. (“Verizon”) incorrectly interprets the MFN provisions by excluding provisions of interconnection agreements related to reciprocal compensation and certain other subjects. Focal further asserts that this interpretation issue has delayed its entry into at least four states in the Verizon service area.³ In its December 6, 2000 response to Focal’s letter, Verizon argues that this *Merger Condition* is limited only to interconnection arrangements and unbundled network elements (“UNEs”) subject to section 251(c) of the Communications Act of 1934, as amended (“the Act”).⁴ Verizon asserts that the language of the MFN provisions excludes certain

¹ Letter from Michael L. Shor, Swidler Berlin Shereff Friedman, LLP, to Carol E. Matthey, Deputy Chief, Common Carrier Bureau, FCC (Nov. 9, 2000) (“*Focal November 9, 2000 Letter*”); see GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License, *Memorandum Opinion and Order*, FCC 00-221 (rel. Jun. 16, 2000) (“*Bell Atlantic/GTE Merger Order*”). The *Merger Conditions* are contained in Appendix D.

² *Bell Atlantic/GTE Merger Order* at Appendix D, para. 32; see *id.* at paras. 300-05 (describing MFN provisions).

³ *Focal November 9, 2000 Letter* at 6-7.

⁴ Letter from Patricia E. Koch, Assistant Vice President, Verizon Communications, Inc., to Carol E. Matthey, Deputy Chief, Common Carrier Bureau, FCC at 2 (Dec. 6, 2000) (“*Verizon December 6, 2000 Letter*”); see *Focal November 9, 2000 Letter* at Attach. 2, 2-3 (submitting Verizon correspondence that asserts that reciprocal compensation, number portability, and certain other subjects fall outside the scope of the MFN provisions).

provisions of interconnection agreements, such as provisions addressing reciprocal compensation and rights-of-way, from the MFN provisions of the *Bell Atlantic/GTE Merger Order*.⁵

In the *Bell Atlantic/GTE Merger Order*, the Commission adopted the MFN provisions to mitigate certain harms arising out of the merger. In particular, the Commission found that the MFN provisions address the harms of the merger by facilitating market entry and spreading the use of best practices throughout Verizon's region.⁶ Pursuant to the *Merger Conditions*, Verizon must allow requesting telecommunications carriers in one state to opt-in to any interconnection arrangement or unbundled network element contained in an interconnection agreement from another state.⁷

The *Merger Conditions* allow competitive local exchange carriers ("CLECs") to import entire interconnection agreements across state lines. Specifically, the *Merger Conditions* allow CLECs to opt-in to any "interconnection arrangement, UNE, or provisions of an interconnection agreement (including an entire agreement)."⁸ The plain language of the *Merger Conditions* permit a CLEC to obtain an entire interconnection agreement under the MFN provisions, so long as the agreement was voluntarily negotiated and meets the timing and location requirements specified in the conditions. Focal thus correctly points out that, in the *Bell Atlantic/GTE Merger Order*, the Commission articulated its understanding of the term "interconnection arrangement" to encompass "entire interconnection agreements or selected provisions from them."⁹

Verizon is incorrect in asserting that the reference to section 251(c) limits a CLEC's opt-in rights under the MFN provisions of the *Merger Conditions*. Specifically, Verizon asserts that subjects addressed by section 251(b), e.g., reciprocal compensation, number portability, and access to rights-of-way, fall outside the scope of the *Merger Conditions* because of the express reference to section 251(c) in the MFN provisions.¹⁰ Section 251(b) is incorporated explicitly into section 251(c) at the outset of that subsection, however, and further in the subsection establishing a duty for incumbent LECs to negotiate agreements in

⁵ *Verizon December 6, 2000 Letter* at 2.

⁶ *Bell Atlantic/GTE Merger Order* at paras. 300-05, 352 (stating that the MFN provisions reduce a CLEC's risk and cost of entry), 356 (stating that the MFN provisions will spread the use of best practices), 370 (noting that the MFN provisions will lower entry barriers for CLECs).

⁷ *Id.* at Appendix D, para. 32; *see id.* at paras. 300-01, 305.

⁸ *See id.* at Appendix D, para. 32.

⁹ *Id.* at para. 300, n. 686; *see Focal November 9, 2000 Letter* at 2.

¹⁰ *See Verizon December 6, 2000 Letter* at 2; *see also Focal November 9, 2000 Letter* at Attach. 2, 2 (submitting correspondence from Verizon to Focal). In each of the MFN provisions, the *Merger Conditions* refer to "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 . . ." *See Bell Atlantic/GTE Merger Order* at Appendix D, paras. 30, 31(a), and 32.

good faith.¹¹ The phrase “interconnection agreement (including an entire agreement) subject to section 251(c)” in the *Merger Condition* merely refers to the type of agreement that is subject to this provision, namely, an interconnection agreement addressing the duties set forth in subsections 251(b) and 251(c). Moreover, the *Merger Conditions* expressly state that the rules and requirements of section 252(i) apply to all requests for interconnection arrangements and UNEs under the MFN provisions of the *Merger Conditions*. The MFN provisions expand the section 252(i) opt-in rights of CLECs by allowing CLECs to import interconnection arrangements (including entire agreements) from one state into another state, thereby reducing the time and expense of negotiating interconnection agreements. Finally, I note that Verizon’s view is not consistent with the underlying purpose of the MFN provisions to facilitate the deployment of competition and to spread the use of best practices. The intent of the *Merger Condition* would be thwarted if a CLEC was forced to negotiate separately an interconnection agreement to obtain provisions relating to section 251(b) duties.

As a final matter, Verizon contends that Focal may not avail itself of certain provisions of interconnection agreements because of Commission precedent, the expiration of the original interconnection agreement, or state regulatory requirements.¹² The MFN provisions contemplate the possibility that Verizon and a requesting CLEC may not completely agree about the availability of certain interconnection arrangements or provisions within an interconnection agreement. Specifically, the *Merger Conditions* provide that “[d]isputes 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 U.S.C. § 252 to the extent applicable.”¹³ To the extent Verizon believes that a requested interconnection arrangement is ineligible under the MFN provisions because, for example, the arrangement may be technically infeasible, the proper course of action is for Verizon to allow the CLEC to opt-in to the entire agreement other than the contested terms. Verizon may then raise its views regarding the contested provision before the state commission instead of unilaterally limiting a CLEC’s options under the MFN provisions.

If you have any questions concerning this matter, you may contact me or Anthony Dale in the Common Carrier Bureau at (202) 418-2260.

Sincerely,

Carol E. Matthey
Deputy Chief, Common Carrier Bureau

¹¹ *Focal November 9, 2000 Letter* at 3; see 47 U.S.C. § 251(c)(1) (establishing an incumbent LEC’s duty to negotiate in good faith the terms and conditions of agreements to fulfill the duties described in sections 251(b) and (c)).

¹² *Verizon December 6, 2000 Letter* at 2-4.

¹³ *Bell Atlantic/GTE Merger Order* at Appendix D, paras. 30, 31(a), 32.

CC: Jeffrey Ward, Corporate Compliance Officer, Verizon Communications, Inc.