

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

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

ORDER

Adopted: April 4, 2002

Released: April 11, 2002

By the Commission:

I. INTRODUCTION AND BACKGROUND

1. In this order, we approve Verizon Communications, Inc.'s (Verizon) request for a temporary suspension of the reporting requirements in Conditions V and XIX of the Bell Atlantic/GTE Merger Order for a three-month period to accommodate Verizon's implementation of OSS uniformity.

2. To mitigate the harms of the Bell Atlantic/GTE merger, the Commission adopted the Carrier-to-Carrier Performance Plan (Performance Plan) as Condition V of the Bell Atlantic/GTE Merger Conditions. The Performance Plan requires Verizon to report each month performance measurements that track the company's progress in opening its local markets to competition.

1 Applications 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, Memorandum Opinion and Order, 15 FCC Rcd 14032 (Bell Atlantic/GTE Merger Order). We refer to the commitments contained in Appendices B and D of the Bell Atlantic/GTE Merger Order as the "Bell Atlantic/GTE Merger Conditions."

2 See Bell Atlantic/GTE Merger Order at Appendix D, Attachment A.

3 See Bell Atlantic/GTE Merger Order at Appendix D, Attachment A, ¶ 3.

incentive to provide good wholesale quality of service, the Performance Plan requires Verizon to make voluntary payments to the U.S. Treasury if its performance, as gauged by the 17 measurements, falls below certain acceptable levels.<sup>4</sup> With Condition XIX, the Commission adopted additional service quality reporting requirements. These require Verizon to report its service quality to its retail and special access customers.<sup>5</sup> Unlike Condition V, Condition XIX does not require Verizon to make voluntary payments for poor service quality.

3. Merger Condition VI requires Verizon, *inter alia*, to make uniform its operations support systems (OSS) in Pennsylvania and Virginia, the two Verizon states that are home to both legacy Bell Atlantic and GTE operations. More specifically, Verizon must, within five years of merger close, “implement uniform, electronic OSS interfaces and business rules (including for pre-ordering and ordering components used to provide digital subscriber line (‘xDSL’) and other Advanced OSS interfaces between the Bell Atlantic and GTE Service Areas in Pennsylvania and Virginia.”<sup>6</sup>

4. On January 10, 2002, Verizon informed the Commission that it could not comply with Condition VI without affecting its compliance with Conditions V and XIX.<sup>7</sup> Verizon represents that its three-month migration of customers in the former GTE region of Virginia and Pennsylvania from former GTE OSS to former Bell Atlantic OSS makes capturing performance data under one set of business rules exceedingly difficult.<sup>8</sup> In Verizon’s words, the “transfer [of Verizon] and customer records from the [legacy] GTE systems to the [legacy] Bell Atlantic systems, mak[es] reporting of data imprecise and extraordinarily complex.”<sup>9</sup>

5. To mitigate performance data problems associated with the migration, Verizon seeks to temporarily suspend the Condition V and XIX reporting requirements for the legacy GTE portions of Pennsylvania and Virginia. More specifically, Verizon proposes a three-month suspension of performance data reporting from March through May 2002 for Virginia and March through May 2003 for Pennsylvania.<sup>10</sup> As to the payment aspects of Condition V, for the three payment periods affected by the reporting suspension before the transition is completed, Verizon proposes to pay an amount equal to any payment obligation for period immediately preceding the suspension of reporting.<sup>11</sup> To further support its request, Verizon adds that CLECs control relatively few lines in the affected regions, and that it has paid

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<sup>4</sup> See *Bell Atlantic/GTE Merger Order* at Appendix D, Attachment A, ¶¶ 8-16.

<sup>5</sup> *Bell Atlantic/GTE Merger Order* at Appendix D, ¶¶ 51-53.

<sup>6</sup> *Bell Atlantic/GTE Merger Order* at Appendix D, ¶ 19(f).

<sup>7</sup> See Letter from Dee May, Assistant Vice President, Federal Regulatory, Verizon, to Dorothy Attwood, Chief, Common Carrier Bureau, Federal Communications Commission, at 1 (Jan. 10, 2002) (*Verizon January 10<sup>th</sup> Letter*); see also *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14161, n.631 (requiring that Verizon measure performance for migrated lines using legacy Bell Atlantic performance measurements and business rules).

<sup>8</sup> Condition VI requires Verizon to convert legacy GTE OSS to legacy Bell Atlantic OSS and to use the legacy Bell Atlantic to capture its performance after conversion. Condition VI does not require a change to the legacy Bell Atlantic systems. See *id.*

<sup>9</sup> *Verizon January 10<sup>th</sup> Letter* at 1.

<sup>10</sup> See *id.*

<sup>11</sup> See *id.* at Appendix A. Thus, if Verizon made a \$2,000 payment in April 2002 for Virginia’s legacy GTE area (based on actual reported performance from December 2001 through February 2002), it would pay \$2,000 in May 2002, \$2,000 in June 2002, and \$2,000 in July 2002. It would make any payments in August 2002 and subsequent months based on performance data gathered after the suspension of reporting. In subsequent discussions with Bureau staff, Verizon proposed that the performance for the same three-month period would be used for the six-of-twelve month payment trigger as well. See *Bell Atlantic/GTE Merger Order* at Appendix D, Attachment A, ¶ 9.

relatively little in voluntary payments for those areas.<sup>12</sup>

6. On February 22, 2002, the Common Carrier Bureau sought public comment on Verizon's request.<sup>13</sup> AT&T filed comments, and Verizon filed reply comments. AT&T does not oppose Verizon's request, but raises other issues.

## II. DISCUSSION

7. In evaluating Verizon's request, we consider whether a temporary suspension of the *Bell Atlantic/GTE Merger Conditions* would serve the public interest.<sup>14</sup> The Commission's goal in adopting the Bell Atlantic/GTE reporting requirements was to provide "a means of ensuring that Bell Atlantic/GTE's service to telecommunications carriers will not deteriorate as a result of the merger and the larger firm's increased incentive and ability to discriminate, and to stimulate the merged entity to adopt 'best practices' that clearly favor public rather than private interests[]." <sup>15</sup> Any change to the *Bell Atlantic/GTE Merger Conditions* must be tailored to promote affirmatively and identifiably the underlying purpose of the condition.<sup>16</sup> We find that Verizon has demonstrated that suspending the *Bell Atlantic/GTE Merger Conditions'* performance reporting requirements, and associated modification of how any voluntary payments are calculated, for a limited three-month period serves the public interest.

8. We agree with Verizon that strict compliance with Conditions V and XIX for a three-month period while it strives to meet Condition VI would be unduly difficult. We are persuaded that Verizon's OSS transition effort would disrupt the data gathering and reporting effort necessary to comply with Conditions V and XIX. Verizon's explanation is reasonable, and AT&T, the only party to comment here, does not question it. We further find that the potential for errors in reporting (and potential effects of such errors on payment obligations) during this brief transition period would significantly undercut the value of these merger conditions in incenting Verizon to provide good service quality to CLECs, long-distance carriers and its end-users. The reporting and payment obligations of Conditions V and XIX encourage Verizon to improve poor performance. Incorrect data and payments would alter those incentives by, for example, incorrectly showing sub-standard performance that would unfairly punish

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<sup>12</sup> See *Verizon January 10<sup>th</sup> Letter* at 2.

<sup>13</sup> See Common Carrier Bureau Seeks Comment on Verizon's Request for a Temporary Suspension of Two Merger Conditions, CC Docket No. 98-184, *Public Notice*, DA 02-419 (rel. Feb. 22, 2002).

<sup>14</sup> See 47 U.S.C. § 416(b); 47 C.F.R. §§ 0.91, 0.291, 1.3; Applications 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, *Order*, DA 01-2203, at ¶ 7 (Com. Car. Bur. rel. Sept. 26, 2001) (finding in the public interest Verizon's request to re-integrate its advanced services affiliate into Verizon ILECs); Applications 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, *Order*, 16 FCC Rcd 15607, 15608, ¶ 4 (2001) (finding Verizon request to cease reporting performance measurements under the Bell Atlantic/NYNEX merger in the public interest); 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, *Second Memorandum Opinion and Order*, 15 FCC Rcd 17521, 17532, ¶ 21 (2000) (*SBC/Ameritech Merger Conditions Modification*) (finding SBC request to modify its merger conditions in the public interest); Application of GTE Corp. and Southern Pacific Company for Consent to Transfer Control of Southern Pacific Communications Company and Southern Pacific Satellite Company, Memorandum Opinion and Order, FCC 84-254 (rel. June 4, 1984).

<sup>15</sup> *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14159-60, ¶ 279 (footnote omitted).

<sup>16</sup> See *SBC/Ameritech Merger Conditions Modification*, 15 FCC Rcd at 17532, ¶ 21.

Verizon or incorrectly showing better performance that would unfairly reward Verizon. Further, data and payment errors could compromise Commission and public efforts to track Verizon's market-opening progress. We note that Verizon does not seek relief from any payment obligation for this limited period, but rather proposes to pay, for the three affected payment periods, an amount equal to any payment obligation for the period immediately preceding the suspension of reporting.<sup>17</sup>

9. We also find it significant that this difficulty arises due to Verizon's efforts to comply with another condition. The Commission recognized that there would be significant public interest benefits if Verizon were to make its OSS uniform in states where there were both legacy Bell Atlantic and GTE systems. Verizon's decision to integrate its OSS on an accelerated timeline should benefit CLECs operating in Pennsylvania and Virginia.

10. We further agree with Verizon that Condition V adequately addresses AT&T's concerns that Verizon be subject to a "single performance plan" after the transition.<sup>18</sup> Condition V states that Verizon will use the legacy Bell Atlantic measurements and business rules to report legacy GTE Virginia and Pennsylvania performance after the transition.<sup>19</sup> Further, the annual caps for legacy GTE will continue to apply in Virginia and Pennsylvania, so that the transition will not affect Verizon's potential liability under Condition V.

11. Finally, AT&T asserts that the relatively small voluntary payment amounts Verizon has paid in Pennsylvania under Condition V reflect the "significant barriers to competitive entry" that CLECs face in that state and that the Commission failed to address in its Pennsylvania section 271 order.<sup>20</sup> We find that AT&T's argument is about matters outside the scope of the instant request.<sup>21</sup>

12. Based on the foregoing factors, we grant Verizon's request. We note that this temporary suspension of the reporting requirements under the Performance Plan does not in any way affect Verizon's existing obligations pursuant to section 251 to provide competitors with just, reasonable, and nondiscriminatory access to OSS. We expect Verizon to work with competitors during the transition to minimize disruptions in service, and we will not hesitate to exercise our enforcement authority as appropriate for any violations of section 251.

### III. ORDERING CLAUSE

13. IT IS ORDERED, pursuant to sections 1-4, 201-205, 214, 251, 303(r), and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 214, 251, 303(r), and 309, that Verizon's January 10, 2002 request IS GRANTED.

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<sup>17</sup> See ¶ 5, n.11 *supra*.

<sup>18</sup> See AT&T Comments at 2.

<sup>19</sup> See *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14161, n.631 (requiring that Verizon measure performance for migrated lines using legacy Bell Atlantic performance measurements and business rules); *Bell Atlantic/GTE Merger Order* at Appendix D, Attachments A-1a & A-2a; *see also* Verizon Reply at 1.

<sup>20</sup> AT&T Comments at 2.

<sup>21</sup> We note that, in the *Pennsylvania 271 Order*, the Commission found that the Act does not require Verizon to make a showing of checklist compliance with respect to the former GTE operating company it acquired in Pennsylvania because the former GTE operating company was neither a BOC nor a successor or assign of Verizon. *See* Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania, CC Docket No. 01-138, *Memorandum Opinion and Order*, 16 FCC Rcd 17419, 17423-24, ¶ 8 (2001).

14. IT IS FURTHER ORDERED, pursuant to section 408 of the Communications Act of 1934, as amended, 47 U.S.C. § 408, that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary