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: September 8, 2003 **Released: September 11, 2003**

By the Commission:

I. INTRODUCTION

1. In this order, we approve \$175.1 million in out-of-region expenditures, including \$73.8 million in facilities expenditures, as counting toward Verizon Communications, Inc.'s ("Verizon's") compliance with the out-of-region expenditure requirements of the *Bell Atlantic/GTE Merger Order*.[1] That order required Verizon to spend \$500 million toward services that compete with incumbent local exchange carriers (LECs) outside Verizon's region, including at least \$250 million on facilities-based competitive service in out-of-region markets.[2] Adding the expenditures approved here to those approved in prior orders, we have approved a total of \$567.9 million in expenditures toward the out-of-region expenditure requirements, including \$251.4 million on facilities, which would fulfill the out-of-region investment requirements of the *Bell Atlantic/GTE Merger Order*.[3]

---

[1] *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, 15 FCC Rcd 14032 (2000) (*Bell Atlantic/GTE Merger Order*, *Bell Atlantic/GTE Merger Conditions*, or *Merger Conditions*). The merger conditions are in Appendix D of the *Merger Order*.

[2] *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14182, ¶ 319 (Appendix D, 15 FCC Rcd at 14319, ¶¶ 44-45).

[3] We note that in this order, as in previous orders approving expenditures, our findings are based on Verizon's representations as to the character of the investments and the amounts actually spent. Verizon's compliance with the out-of-region expenditure requirements of the *Merger Conditions* is subject to examination in an annual independent audit. *See Bell Atlantic/GTE Merger Order,* 15 FCC Rcd 14190-93, ¶¶ 336-341 (Appendix D, 15 FCC Rcd at 14327-28, ¶ 56). Should it be determined in such an audit, or otherwise, that Verizon did not actually make

II. BACKGROUND

2. The *Bell Atlantic/GTE Merger Order* requires Verizon to spend $500 million to provide "Competitive Local Service" outside its territory within three years of the closing of the merger (*i.e.*, by June 30, 2003).[4] The *Bell Atlantic/GTE Merger Order* defines Competitive Local Service as "traditional local telecommunications services that compete with like services offered by incumbent LECs, provision of advanced services to the mass market, and resale."[5] To encourage the growth of facilities-based competition, the *Merger Conditions* require Verizon to spend at least half of the total requisite amount (*i.e.*, $250 million) "to construct, acquire, lease, use, obtain, or provide facilities, operating support systems, or equipment that are used to serve customers in Out-of-Region Markets ('Facilities Expenditure')."[6] Verizon may use the other half of its out-of-region expenditures to "acquire customers for Competitive Local Service in those Out-of-Region Markets ('Customer Acquisition Expenditure')."[7] If Verizon does not establish that it has met these requirements during the three-year period ending June 30, 2003, it must pay the U.S. Treasury 150 percent of the difference between what it spent and what it was required to spend.[8]

3. This order is one in a series of decisions reviewing whether Verizon's expenditures satisfy the out-of-region expenditure requirements of the *Bell Atlantic/GTE Merger Order*. On November 20, 2001, the former Common Carrier Bureau held that Verizon satisfied $297.4 million of the out-of-region expenditure requirements, including $113.4 million towards the Facilities Expenditure requirement, with its purchase of OnePoint Communications Corp. ("OnePoint").[9] On June 24, 2002, the Commission approved Verizon's request to count $90.5 million of its investment in NorthPoint Communications Group, Inc. ("NorthPoint") toward the out-of-region requirements, including $50.2 million towards the Facilities Expenditure requirement.[10] Most recently, on March 13, 2003, the Commission approved $13.95 million of Verizon's synchronous optical network ("SONET") and switched voice expenditure

---

the expenditures described here, or that the expenditures were not as described by Verizon in the record here, nothing in this order precludes a finding that Verizon has not satisfied the *Merger Conditions.*

[4] *See Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14182, ¶ 319 (Appendix D, 15 FCC Rcd at 14318-19, ¶ 43).

[5] *Id.*

[6] *Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14182, ¶ 319 (Appendix D, 15 FCC Rcd at 14319, ¶¶ 44-45). The amounts included in the facilities expenditure must be spent in conjunction with: (1) the provision of Competitive Local Service; (2) the provision of other telecommunications services; or (3) investments in, or contributions to, ventures that provide Competitive Local Service activity in Out-of-Region Markets by those ventures. *Id.*

[7] *Id*.

[8] *See id.*, 15 FCC Rcd at 14182-83, ¶ 320 (Appendix D,15 FCC Rcd at 14319, ¶ 46).

[9] *See* Letter from Carol Mattey, Deputy Chief, Common Carrier Bureau, Federal Communications Commission to Jeffrey Ward, Senior Vice President – Regulatory Compliance, Verizon, 16 FCC Rcd 20315 (2001). OnePoint provided bundled voice, data, and video services to residents of apartment buildings and condominiums. *See* Letter from Patricia E. Koch, Assistant Vice President, Federal Regulatory, Verizon to Dorothy Attwood, Chief, Common Carrier Bureau, Federal Communications Commission at 1 (May 17, 2001).

[10] *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*, Order, 17 FCC Rcd 12271 (2002) ("*NorthPoint Order*").

toward the Facilities Expenditure requirement.[11] Thus, prior to Verizon's current requests, we had determined that Verizon spent a total of $401.85 million, including $177.55 million for facilities, towards the $500 million out-of-region expenditure requirements.[12]

4. In this order, we rule on Verizon's requests to count the following investments toward the *Merger Order* requirements:

> $142.8 million in expenditures, including $ 42.0 million in facilities expenditures, by Verizon Avenue (formerly "OnePoint");[13]
>
> classification of $13 million of investment in NorthPoint's computers and software, originally approved as customer acquisition expenditures, to further qualify as facilities expenditures;[14]
>
> $32.3 million in expenditures, including $31.8 million in facilities expenditures, for SONET investments.[15]

In addition, we rule on Verizon's request to reduce the $90.5 million NorthPoint expenditures that were previously approved to $81.4 million, to reflect the fact that some of the NorthPoint investment that had been approved was actually attributable to NorthPoint's international investments.[16]

III. DISCUSSION

5. To qualify as an out-of-region expenditure, Verizon's spending must have been "to provide services, including resale, that compete with traditional local telecommunications services offered by

---

[11] *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*, Order, 18 FCC Rcd 4813 (2003) ("*SONET Order*").

[12] *SONET Order,* 18 FCC Rcd at 4813, ¶ 1.

[13] *See* Letter from Marie Breslin, Director, Federal Regulatory, Verizon to Maureen Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission (Apr. 11, 2003) ("*Verizon April 11, 2003 Letter*"); Letter from Marie Breslin, Director, Federal Regulatory, Verizon, to Diana Lee, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission (May 9, 2003) (correcting its figures for state-specific fixed asset expenditures submitted in the April 11, 2003 filing) ("*Verizon May 9, 2003 Letter*"); Letter from Marie Breslin, Director, Federal Regulatory, Verizon, to Maureen Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission (May 27, 2003) ("*Verizon May 27, 2003 Letter*").

[14] *Verizon April 11, 2003 Letter* at 2. Initially, Verizon specifically excluded a request for a facilities credit for the NorthPoint computer and software assets and stated that it might provide additional details in a future filing requesting facilities treatment. *See* Letter from Dee May, Verizon to Dorothy Attwood, Chief, Common Carrier Bureau, Federal Communications Commission, at 9-10 & note 12. (Feb. 7, 2002) ("*Verizon February 7, 2002 Letter*").

[15] Letter from Marie Breslin, Director, Federal Regulatory, Verizon, to Maureen Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission (Apr. 30, 2003) ("*Verizon April 30, 2003 Letter*"); Letter from Marie Breslin, Director, Federal Regulatory, Verizon, to Maureen Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission (May 15, 2003) ("*Verizon May 15, 2003 Letter*"). *See Verizon April 30, 2003 Letter* at 1.

[16] *See* Letter from Marie Breslin, Director, Federal Regulatory, Verizon to Maureen Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission (Jun. 9, 2003) ("*Verizon June 9, 2003 Letter*").

incumbent local exchange carriers or Advanced Services to the mass market."[17] In addition, those expenditures must have been made to provide such services outside the former Bell Atlantic and GTE Service Areas.[18] We approve all of Verizon's requests as described at paragraph 4, except that we reject Verizon's request to further classify $13 million in NorthPoint-related expenditures as facilities expenditures because Verizon has not sufficiently established that the NorthPoint spending related to facilities investment.

A. Verizon Avenue

6. We approve Verizon's request to qualify an additional $142.8 million in out-of-region expenditures, including $42 million in facilities expenditures, by Verizon Avenue. As noted above, Verizon acquired OnePoint on December 15, 2000, and renamed the entity "Verizon Avenue." Verizon Avenue provides high-speed Internet and voice services, including local voice service, to apartment buildings, condominiums, and cooperative properties, both in and out-of-region.[19] Verizon Avenue also provides advanced services through its high-speed Internet service and local service that compete with traditional local telecommunications services.[20]

7. Verizon contends that between January 1, 2001 and March 31, 2003, Verizon Avenue spent $142.8 million to provide Competitive Local Service in out-of-region markets.[21] Verizon Avenue's total out-of-region spending included state-specific fixed assets, centralized software fixed assets, state-specific expenses, centralized operating expenses, and pre-paid marketing payments.[22] These five categories are discussed below.

8. State-specific fixed assets. According to Verizon, between January 1, 2001 and March 31, 2003, Verizon Avenue spent $11.2 million on fixed assets in out-of-region markets, of which $10.3 million qualifies as facilities expenditures.[23] Verizon lists the following types of spending in this category: Digital Service Line Access Modules ("DSLAMs") and related network equipment installed in customer multiple dwelling units ("MDUs"); network equipment and facilities used at Verizon Avenue Data Points of Presence ("DPOPs"); outside plant and capitalized labor to survey, install, and maintain DSLAM and DPOP network equipment; and capitalized "gateway" operations support systems (OSS) software used by Verizon Avenue to interface with various incumbent LECs in order to provide competitive local service.[24]

9. Verizon has provided a summary of these fixed-asset expenditures between January 1, 2001 and March 31, 2003, broken down by state and region.[25] Verizon has also provided detailed

---

[17] *See Bell Atlantic/GTE Merger Order*, 15 FCC Rcd at 14182, ¶ 319 (Appendix D, 15 FCC Rcd at 14318-19, ¶ 43).

[18] *Id.* The *Merger Conditions* define the Bell Atlantic and GTE "Service Areas" as the states and service areas in which the various former Bell Atlantic and GTE affiliates had incumbent local exchange operations as of January 27, 2000. *Id.*, 15 FCC Rcd at 14263.

[19] *See Verizon April 11, 2003 Letter* at 3.

[20] *See Verizon April 11, 2003 Letter* at 3-4.

[21] The April 11 submission covered spending between January 1, 2001 and June 30, 2002, and the May 27 filing covered spending between July 1, 2002 and March 31, 2003. Verizon has stated that it reserves the right to detail additional spending and investments in later filings. *Verizon May 27, 2003 Letter* at 1, note 2.

[22] *See Verizon April 11, 2003 Letter*, Exhibit 1; *Verizon May 27, 2003 Letter*, Exhibit 1.

[23] *Verizon April 11, 2003 Letter* at 5-6; *Verizon May 27, 2003 Letter* at 2.

[24] *Verizon April 11, 2003 Letter* at 5-6; *Verizon May 27, 2003 Letter* at 2.

[25] *Verizon April 11, 2003 Letter*, Exhibit 2, *Verizon May 27, 2003 Letter*, Exhibit 2.

spreadsheets for each state, itemizing each expenditure by its exact date, amount, vendor, and whether it qualifies as a facilities expenditure.[26] Based on our review of these detailed documents itemizing Verizon's expenditures, we agree that the expenditures qualify as out-of-region expenditures and that Verizon Avenue spent $11.2 million on fixed assets in out-of-region markets, and that $10.3 million of this amount counts towards the Facilities Expenditure requirement.

10. Centralized software fixed assets. Verizon contends that between January 1, 2001 and March 31, 2003, Verizon Avenue purchased $4.9 million in software to run network operations.[27] The software assets include: Primus Knowledge Systems OSS software, used for provisioning process flows and troubleshooting problems with network systems; Micromuse Netcool OSS software, which provides network surveillance for the Network Operations Center; Bridgewater Widespan DSLAM and Ethernet switch provisioning software and high speed Internet provisioning software; Nightfire "gateway" software for interconnection with various incumbent LECs; Network Tech Dispatch software used for provisioning and repair functions; and lab network software used for testing to ensure data packets flow through the network properly.[28]

11. Verizon must allocate these expenditures between in-region and out-of-region states because the expenditures were for centralized assets. To do so, Verizon uses a "passings" allocator, under which the number of customer units "passed" by Verizon Avenue represents the potential customer base for Verizon's services.[29] For example, when Verizon equips all of the units in a building for its services, all of the units in that building are considered passed.[30] According to Verizon, Verizon Avenue uses passings as a cost allocator for centralized assets and expenses because it accurately reflects the cost of providing service in each area. [31]

12. We have evaluated the passings allocator by comparing it against two other allocation methods. We have compared it with (1) allocating on the basis of the number of customers served within the state and (2) allocating based on the fixed assets in each state. Based on our review, we find that the total costs allocated through the passings allocator are similar to the total costs allocated using the number of customers or the state-specific fixed assets. Therefore, for purposes of this proceeding, we conclude that the passings allocator provides a reasonable approach to allocating Verizon Avenue's centralized costs to out-of-region markets.

13. Using the passings allocator, Verizon attributes $2.6 million of Verizon Avenue's centralized software assets to serving out-of-region markets because the software in question relates to OSS used to serve customers in such markets and was spent in conjunction with the provision of competitive local service.[32] Verizon further contends that $1.5 million of these software assets also qualifies as facilities expenditures.[33] Verizon has provided a detailed spreadsheet, listing and describing

[26] *Verizon April 11, 2003 Letter*, Exhibit 3; *Verizon May 27, 2003 Letter*, Exhibit 3

[27] *See Verizon April 11, 2003 Letter* at 6; *Verizon May 27, 2003 Letter*, Exhibit 3.

[28] *See Verizon April 11, 2003 Letter* at 6; *Verizon May 27, 2003 Letter* at 3.

[29] *Id.*

[30] *See Verizon April 11, 2003 Letter* at 4-5.

[31] *See Verizon April 11, 2003 Letter*, Exhibit 4; *Verizon May 27, 2003 Letter*, Exhibit 4.

[32] *See Verizon April 11, 2003 Letter* at 6; *Verizon May 27, 2003 Letter* at 3.

[33] *See Verizon April 11, 2003 Letter* at 6; *Verizon May 27, 2003 Letter* at 3.

each piece of software, its date of purchase, its asset identification number, and its acquisition price.[34] Based on our review of this detailed documentation provided by Verizon, we agree that these expenditures qualify as out-of-region expenditures and we approve Verizon's request to count both the $2.6 million out-of-region expenditures and the $1.5 million facilities expenditures toward satisfaction of the out-of-region expenditure requirements.

14. State-specific expenses. Verizon contends that between January 1, 2001 and March 31, 2003, it had $46.2 million in expenses in out-of-region states.[35] These expenses, which include cost of goods sold, employee salaries and benefits, taxes and fees, marketing and promotional expenses, payments for resale of local voice service, and building rent and leases, were booked on each state's expense ledger.[36] In support of its claim, Verizon has provided a summary and a state-specific accounting for each expense, including amounts, dates, descriptions, accounting codes, and eligibility as a facilities expenditure.[37]

15. According to Verizon, $5.5 million of these expenses qualifies as facilities expenditures because they were incurred to "lease," "use," or "provide" Verizon Avenue's facilities and network equipment.[38] Verizon lists the following as facilities expenditures: leasing costs for network facilities to transport Internet traffic; leasing costs for space and power at Verizon Avenue's DPOPs; DPOP expenses as well as payments to outside companies to monitor DPOP sites; technician costs to connect a subscriber to Verizon Avenue DSLAMs and troubleshoot subscriber connection problems; and expenses by field technicians who maintain and operate Verizon Avenue's facilities and equipment.[39] Based on our review of this comprehensive submission, we find that these expenditures qualify as out-of-region expenditures. We approve the proposed $46.2 million as out-of-region expenditures, including $5.5 million in facilities expenditures.

16. Centralized operating expenses. Verizon contends that it incurred $79.8 million in centralized expenses, including $24.7 million in facilities expenditures, allocable to out-of-region markets between January 1, 2001 and March 31, 2003. According to Verizon, these expenses were incurred by four of Verizon Avenue's centralized departments: Network Services, Provisioning, Customer Care, and Central Dispatch.[40] Verizon has provided a detailed description of the duties of each of these departments. Verizon also has accounted for each department's expenses, breaking down the spending by in-region and out-of-region states, as well as whether a given expenditure qualifies as a facilities expenditure. As with the centralized software fixed asset category, Verizon has used a

---

[34] *Verizon April 11, 2003 Letter*, Exhibit 5; *Verizon May 27, 2003 Letter*, Exhibit 5.

[35] *See Verizon April 11, 2003 Letter* at 7; *Verizon May 27, 2003 Letter* at 3.

[36] *Verizon April 11, 2003 Letter* at 7; *Verizon May 27, 2003 Letter* at 3.

[37] *Verizon April 11, 2003 Letter*, Exhibits 6-7; *Verizon May 27, 2003 Letter*, Exhibits 6-7.

[38] *See Verizon April 11, 2003 Letter* at 7; *Verizon May 27, 2003 Letter* at 3. The *Bell Atlantic/GTE Merger Order* defines "Facilities Expenditure" as money used not only to "construct," "acquire," and "obtain" facilities and equipment, but also money spent to "lease," "use," or "provide" them. *Merger Conditions*, 15 FCC Rcd at 14319, ¶ 44.

[39] *Verizon April 11, 2003 Letter* at 7; *Verizon May 27, 2003 Letter* at 3.

[40] *See Verizon April 11, 2003 Letter*, Exhibits 8-9. Exhibits 8 and 9 are Verizon's summaries of Verizon Avenue's 2001 and first-half of 2002 out-of-region allocations for these centralized expenses, organized by functional department and by state, based on Verizon Avenue's expense records. These two exhibits also include the monthly passings percentages used by Verizon Avenue to allocate these expenses to each individual state. *Id. See also Verizon May 27, 2003 Letter*, Exhibits 8-9 (Verizon summaries of Verizon Avenue's second-half of 2002 and first-quarter of 2003 out-of region allocations for these expenses.)

"passings" allocator to determine the portion of spending attributable to serving out-of-region markets.[41] Based on our review of Verizon's detailed descriptions, we agree that these expenditures qualify as out-of-region expenditures. We approve the proposed $79.8 million as out-of-region expenditures, including $24.7 million as facilities expenditures.

17. Pre-paid marketing payments. Between January 1, 2001 and March 31, 2003, Verizon Avenue paid $3.0 million in fees or commissions to building developers and owners in exchange for marketing agreements.[42] Verizon contends that these expenditures are out-of-region expenditures because they were made in the course of providing Competitive Local Service in out-of-region markets.[43] In support of its claim, Verizon has provided a state-by-state accounting of these payments, listing the relevant period of time, account name, accounting code, and balance.[44] Based on our review of Verizon's state-by-state accounting, we agree that these expenditures qualify as out-of-region expenditures.

B. NorthPoint

18. NorthPoint was a competitive LEC that provided wholesale symmetric digital subscriber line ("DSL") services to Internet service providers.[45] Under the terms of the Verizon/NorthPoint merger agreement, Verizon was to provide $800 million in cash and assets to NorthPoint in exchange for a 55 percent interest in NorthPoint.[46] Verizon's initial payment under the agreement was $150 million. Verizon subsequently terminated the agreement with NorthPoint, and NorthPoint entered Chapter 11 bankruptcy proceedings.[47]

19. In the *NorthPoint Order*, the Commission approved Verizon's request to count $90.5 million, including $50.2 million for facilities, of its NorthPoint investment as an out-of-region expenditure.[48] We concluded that Verizon's expenditure was a "contribution to, or investment in, [a] venture" that provides Advanced Services to the mass market.[49] We also found that Verizon's method of allocating the total NorthPoint expenditure into out-of-region and facilities categories was consistent with the method the Common Carrier Bureau approved in its OnePoint decision.[50] We concluded that Verizon's expenditure constituted an investment in NorthPoint, and that Verizon itself was not required

---

[41] *See Verizon April 11, 2003 Letter* at 8-9; *id*. at Exhibits 8-9. *See also Verizon May 27, 2003 Letter* at 4; *id*. at Exhibits 8-9.

[42] *See Verizon April 11, 2003 Letter* at 9; *Verizon May 27, 2003 Letter* at 4.

[43] *See Verizon April 11, 2003 Letter,* Exhibit 10; *Verizon May 27, 2003 Letter*, Exhibit 10. Exhibit 10 is a summary of these pre-paid marketing payments, by state, based on Verizon Avenue's asset ledgers.

[44] *Verizon April 11, 2003 Letter,* Exhibit 10; *Verizon May 27, 2003 Letter*, Exhibit 10.

[45] According to the NorthPoint Communications Group, Inc. Form 10-Q filed for the quarterly period ending September 30, 2000, at p. 4: "NorthPoint Communications, Inc. was formed in May 1997 to provide high speed network and data transport services, allowing network service providers, including Internet service providers, broadband data service providers and long distance and local phone companies (collectively, network service providers or NSPs) to meet the rapidly increasing information needs of small and medium-sized businesses, people who work in home offices and telecommuters."

[46] *See Verizon February 7, 2002 Letter* at 7-8.

[47] *See id.* at 8.

[48] *See NorthPoint Order,* 17 FCC Rcd at 12273, ¶ 5.

[49] *Id.*

[50] *Id.*

to provide the Competitive Local Service for the investment to count as an out-of-region expenditure.[51]

20. Proposed reduction in qualifying amount of NorthPoint investment. Following questions from Enforcement Bureau staff, Verizon proposed a $9.1 million reduction of the previously approved NorthPoint out-of-region expenditures to account for NorthPoint investments in international joint ventures, which do not qualify as out-of-region expenditures under the *Merger Order*.[52] Verizon derived the $9.1 million figure, in part, by applying to its NorthPoint investment an international joint venture allocator[53] in addition to its previously approved out-of-region allocator.[54] Verizon applied these allocators to two categories of investment related to the joint ventures: Long-Term Investments and Computers and Software.[55] The shares of international investment for each category were $5.8 million,[56] and $1 million,[57] respectively. The $9.1 million proposed reduction also includes a $2.3 million reduction in OSS services provided to NorthPoint's international joint ventures, which was recorded in Amounts Due from Affiliated Companies.[58] These amounts owed to NorthPoint from international joint ventures do not qualify as spending to provide services within the United States. Based on our review of these calculations, we find Verizon's proposed adjustment to be reasonable. We, therefore, accept Verizon's adjustment, thereby reducing the total NorthPoint-related approved out-of-region expenditures from $90.5 million to $81.4 million.[59]

---

[51] *See id*., 17 FCC Rcd at 12273, ¶ 6.

[52] *Verizon June 9, 2003 Letter* at 1-3; *Bell Atlantic/GTE Merger Conditions*, Appendix D, 15 FCC Rcd at 14318-19, ¶ 43.

[53] *See Verizon June 9, 2003 Letter* at 1-2. Verizon reviewed NorthPoint's public filings (Year 2000 Form 10-Q Reports) and determined that NorthPoint invested $37.7 million in two joint ventures that NorthPoint established in Canada and Europe. *See id*. at 2; *id*., revised Exhibit 14. Verizon concluded that "it appears from the public filings that the $37.7 million in investments was included in the $51 million line item for 'Long-Term Investments' on NorthPoint's third-quarter 2000 balance sheet, which Verizon used to allocate its NorthPoint investment." *See id*. at 1. Verizon proposes that we use an international joint venture allocator of 6.4% to reduce the previously approved $90.5 million NorthPoint-related out-of-region investment. *See id*. at 2. The 6.4% international joint venture allocator is the ratio of the $37.7 million joint venture investment to NorthPoint's total assets of $588.2 million. *See id*. at 2.

[54] The Commission previously approved the out-of-region allocator of 60.25% in the *NorthPoint Order*. *See NorthPoint Order*, 17 FCC Rcd at 12272-73, ¶ 4 (describing the out-of-region allocator as "about 60%").

[55] *See Verizon June 9, 2003 Letter* at 2.

[56] *See id*. at 2. Verizon derived the $5.8 million by applying the international joint venture allocator of 6.4% and the out-of-region allocator of 60.25% to Verizon's previously approved $150 million investment in NorthPoint (6.4% x 60.25% x $150 million). *See id*., revised Exhibit 14.

[57] The ratio of the Computers and Software balance of $112.9 million to NorthPoint's total assets of $588.2 million is 19.2%. *See id*., revised Exhibit 14. Verizon applied this 19.2% and the international joint venture allocator of 6.4% to the $150 million NorthPoint investment (19.2% x 6.4% x $150 million), resulting in $1.8 million. *See id*. Verizon then subtracted from the $1.8 million the associated adjustment to Accumulated Depreciation and Amortization ($.25 million) for the Computers and Software line item attributed to the international investment, resulting in $1.6 million. *See id*. Finally, Verizon applied the out-of-region allocator of 60.25% to the $1.6 million, resulting in $1 million. *See id*.

[58] *See id*. at 2. The Amounts Due from Affiliated Companies balance in NorthPoint's third-quarter 2002 balance sheet was $15.1 million. *See id*., revised Exhibit 14. The ratio of the $15.1 million to NorthPoint's total assets $588.2 million is 2.5%. *Id*. at 2; *id*., revised Exhibit 14. Verizon applied this 2.5% and the 60.25% out-of-region allocator to the $150 million (2.5% x 60.25% x $150 million), resulting in $2.3 million.

[59] The reductions of $5.8 million in the Long-Term Investments, $1 million in the Computer and Software, and $2.3 million in the Amounts Due from Affiliated Companies line items total to $9.1 million. We note that the

21. Proposed classification to facilities expenditures. Verizon contends that we should further classify $13 million of the out-of-region expenditure that it spent for NorthPoint's computers and software assets as facilities expenditures.[60] Subsequently, Verizon proposed an allocator to allocate a portion of the computer and software assets to NorthPoint's international ventures.[61] As described below, we find that Verizon has not adequately established that these expenditures were facilities-related. This disallowance does not, however, affect our conclusion that Verizon has fulfilled the out-of-region requirements of the *Bell Atlantic/GTE Merger Order.*

22. In support of its request to consider NorthPoint spending against the Facilities Expenditure requirement, Verizon relies entirely on an undated, unattributed spreadsheet obtained "[d]uring NorthPoint's bankruptcy proceedings" that Verizon "revised to include descriptions of the particular software."[62] Verizon contends that this spreadsheet lists more than 5,000 line items for software and software development work.[63] According to Verizon, the company reviewed each line item on the spreadsheet to determine the nature and type of each asset. Based on this review, Verizon asserts that NorthPoint used $67.5 million of the software or software development work for OSS, network maintenance, network monitoring, provisioning network management, mapping tools for deployment, or interface software that enabled NorthPoint's ISP customers to process orders.[64]

23. Verizon's assertions are based solely on the above-described revised version of the NorthPoint software asset account, with no additional evidence to support its claim. As an initial matter, Verizon has not shown, through a declaration or otherwise, who created this spreadsheet and when it was created, information that is critical in evaluating its reliability. Nor has Verizon offered any independent support for its claim, or described the method by which it determined that a given software expense was a facilities-based expenditure.[65]

NorthPoint facilities-related spending (for network equipment and collocation) that we previously approved is not affected, since it is unrelated to these international joint ventures.

[60] Verizon derived the $13 million figure by first comparing its asserted amount of facilities-related computer and software spending by NorthPoint ($98.2 million) with the total amount of NorthPoint computers and software spending, as described in the *NorthPoint Order* ($113 million). Verizon then applied this percentage (87%) to the amount of its $150 million investment in NorthPoint related to computers and software ($28.8 million) to determine how much of its overall investment went to facilities-related computers and software investment ($25 million). Verizon then subtracted accumulated depreciation ($3.4 million), and multiplied the resulting figure ($21.6 million) by the out-of-region allocator approved by the Commission in the *NorthPoint Order* (60.25%), thereby determining the out-of-region amount of the facilities-related computer and software. That figure is $13 million.

[61] In its June 9, 2003 letter, Verizon proposed an allocator of 6.4% (the percentage of the $33.7 million international investment over the total assets on NorthPoint's third-quarter 2000 balance sheet) that would allocate approximately $0.8 million of the $13 million figure for operations support systems and related services to international joint ventures. *See Verizon June 9, 2003 Letter* at 2-3.

[62] *See Verizon April 11, 2003 Letter* at 11-12.

[63] *See id.* at 11.

[64] *See id*.

[65] To substantiate the claims for out-of-region expenditures for the Verizon Avenue and SONET expenses, Verizon submitted detailed spreadsheets listing all such expenses. Verizon's claims for the Verizon Avenue and SONET out-of-region expenditures can be audited as part of Verizon's annual merger conditions compliance audit. The spreadsheet containing a list of NorthPoint's software asset account, on the other hand, does not provide sufficient detail to determine whether the software listed would qualify as a facilities expense. Verizon cannot demonstrate whether such software assets were for facilities or non-facilities. Without the necessary detail, supporting documentation, or access to verify such assets, this information cannot be audited.

24. On a related point, even if we assume that the spreadsheet accurately reflects NorthPoint's software asset account, Verizon has not identified which of the 5000-plus entries qualifies as facilities expenditures. For example, the entries for "Consulting Services" and "Management Consulting Services" may be for software development work for OSS, as Verizon contends, or they may be for something entirely unrelated to facilities. We cannot accept Verizon's conjecture that all the consulting services listed were for OSS. We therefore conclude that Verizon has not demonstrated at this time that $67.5 million of the software or software development work listed in Exhibit 11 is a facilities expenditure.

25. Verizon also asks to further classify certain computer assets as facilities expenditures on the basis of an undated, unattributed list of "NorthPoint Communications Fixed Assets by Location As of December 31, 2000"[66] and declaration of Celia Engman, Executive Director, Implementation and Support, Verizon Online/Broadband,[67] These documents, however, do not demonstrate that all of the listed NorthPoint computers were facilities expenditures. Ms. Engman was Verizon's lead representative on the NorthPoint merger transition team.[68] As such, her responsibilities included evaluating NorthPoint's DSL operations, particularly NorthPoint's Information Technology Systems.[69] Ms. Engman states that NorthPoint maintained a state-of-the-art facility in Emeryville, California, that such facility was the nucleus for NorthPoint's DSL network, that Verizon has a document that states that $30.7 million of NorthPoint assets are computers located in the Bay Area, and that, in her opinion, the computers would likely have been used to operate NorthPoint's DSL network, run its OSS, and support other facilities or network-related purposes.

26. But Ms. Engman's declaration has several conspicuous omissions. Ms. Engman, who does not appear to have even reviewed the fixed asset spreadsheet,[70] does not state that NorthPoint actually had $30.7 million of computers. Nor does Ms. Engman allege that the computers listed in the spreadsheet actually ran NorthPoint's OSS, or even that those computers were the same computers she saw on her visits to the NorthPoint facility. Ms. Engman does not provide the dates of her visits to the NorthPoint data center; her visits may have been long before December 31, 2000. Moreover, even if we assume that Verizon has provided us an accurate list of NorthPoint fixed assets on December 31, 2000, we cannot conclude, based on Verizon's submission, that all of the computers listed in Exhibit 12 were facilities expenditures.

27. For the above reasons, we find that Verizon has not demonstrated that $13 million of the NorthPoint investment, approved in the *NorthPoint Order* as an out-of-region expenditure, should qualify as facilities expenditures. We need more than Verizon's conjecture to determine whether these NorthPoint assets were facilities expenditures.

C. SONET

28. In the *SONET Order*, the Commission found that Verizon's SONET investment provided a "service[], including resale, that compete[s] with traditional local telecommunications services offered

[66] *Verizon April 11, 2003 Letter*, Exhibit 12.

[67] *Verizon April 11, 2003 Letter*, Exhibit 13 ("Engman Declaration").

[68] Engman Declaration at ¶ 2.

[69] *Id.*

[70] Ms. Engman states "I am informed that Verizon has obtained a document that lists NorthPoint's fixed assets by location as of December 31, 2000, including its computer inventory. I am also informed that $30.7 million of the computers identified on this list are shown as located in the San Francisco Bay Area." Engman Declaration at ¶ 5.

by incumbent local exchange carriers."[71] The Commission also found that although all of the SONET expenditures addressed in that order were for facilities, only a portion was physically located out-of region.[72] We stated that in the absence of any customer use data, physical location is a reasonable basis for allocating investment. Accordingly, we approved the portion of the investments that was physically located out-of-region, and denied Verizon's request to count the in-region portion toward satisfaction of the merger condition.[73]

29. Verizon now asserts that additional portions of its expenditures in the Dallas, Los Angeles, and Seattle areas were for SONET facilities that are physically located out-of-region. Verizon has asked to count these additional amounts toward its out-of-region expenditure requirements.[74] In support of its request, Verizon has provided summary information, as well as detailed charts, demonstrating that the capital expenditures and associated expenses from November 2001 through March 2003 were for SONET investments physically located out-of-region.[75] Based on Verizon's detailed charts, we agree that these expenditures qualify as out-of-region expenditures. We approve Verizon's request to count an additional $32.3 million in out-of-region expenditures, including $31.8 million in facilities,[76] toward satisfaction of its out-of-region commitments.

IV. ORDERING CLAUSES

30. Accordingly, 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

---

71 *SONET Order*, 18 FCC Rcd at 4815, ¶ 7.

72 *Id.* Verizon states that it uses the SONET facilities to provide special access and transport services that compete with local incumbents' special access and transport services. *Id*. "The SONET facilities are comprised of fiber rings and associated equipment located in Los Angeles, Seattle, and Dallas. Verizon is an incumbent LEC in each city, and the fiber rings straddle the line between the Verizon incumbent territories and those of other incumbent LECs." *Id*., 18 FCC Rcd at 4814-15, ¶ 4. The Commission found that the condition's language and purpose require exclusion of the in-region portion, "given that in-region customers [also] use the facilities, *e.g.*, to communicate with other in-region customers." *See id.*, 18 FCC Rcd at 4816, ¶ 10.

73 *Id.* The Commission approved capital expenditures during July 1, 2000 and October 31, 2001, for the SONET investments physically located out-of-region.

74 *See Verizon April 30, 2003 Letter* at 1 (for spending between November 2001 and December 2002); *Verizon May 27, 2003 Letter* at 1 (for spending between January 2003 and March 2003). Exhibit 1, as attached to the *Verizon April 30, 2003 Letter* and the *Verizon May 27, 2003 Letter*, is a general summary of Verizon's expenditures in all three cities, divided into capital expenditures and expenses. Verizon derived the capital expenditures from work orders from Verizon's Capital Program Management System ("CPMS") which detail capital costs, tracked by location; Verizon derived the expenses from its accounts payable and internal tracking systems. *Verizon April 30, 2003 Letter* at 2-3.

75 Exhibit 2, attached to the *Verizon April 30, 2003 Letter* and the *Verizon May 27, 2003 Letter*, is a summary of Verizon's Dallas area capital spending, organized by physical location and work order; Exhibit 3 contains detail for the Dallas operating expenses, which include collocation and rental fees, lease payments, and operating expenses by employees who manage the Dallas network; Exhibit 4 is a summary of the Los Angeles area capital spending, organized by physical location and work order; Exhibit 5 contains detail for the Los Angeles operating expenses, which include collocation and rental fees, lease payments, and operating expenses by employees who manage the Los Angeles network; Exhibit 6 is a summary of the Seattle area capital spending, organized by physical location and work order (includes spending for one work order from February 2001 that was not included in the previous filing); and Exhibit 7 contains detail for the Seattle operating expenses, which include collocation and rental fees, lease payments, and operating expenses by employees who manage the Seattle network.

76 Exhibit 8, as attached to the *Verizon April 30, 2003 Letter* and the *Verizon May 27, 2003 Letter*, is a summary of the expenditures to modify the OSS in order to accommodate the out-of-region customers in Dallas, Los Angeles, and Seattle.

309, that Verizon Communications, Inc.'s requests to count its NorthPoint, SONET, and Verizon Avenue expenditures toward satisfaction of Condition XVI of the *Bell Atlantic/GTE Merger Conditions* ARE GRANTED IN PART as described herein.

31. IT IS FURTHER 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 *Contingent Petition for Extension of Time*, filed on June 12, 2003, IS DISMISSED AS MOOT.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary