CASE NUMBER:

99-296

Larry D. Callison
State Manager
Regulatory Affairs & Tariffs

GTE Service Corporation
KY10H072
150 Rojay Drive
Lexington, KY 40503
606 245-1389
Fax: 606 245-1721

December 6, 1999

Ms. Helen C. Helton
Executive Director
Public Service Commission
730 Schenkel Lane
Post Office Box 615
Frankfort, Kentucky 40602

Re: Joint Application of Bell Atlantic Corporation and GTE Corporation for Order Authorizing Transfer of Utility Control - Case No. 99-296

Dear Ms. Helton:

The Kentucky Public Service Commission ("Commission"), in its order dated September 7, 1999 in which it approved the Joint Application in the above-referenced matter, imposed certain terms and conditions upon the Joint Applicants, Bell Atlantic Corporation and GTE South Incorporated ("GTE").

Ordering provision #2 required that "GTE shall continue to file on a monthly basis service quality performance reports using the two prior years as a benchmark for performance standards. These reports will be carefully examined to ensure that current standards are maintained or exceeded."

Per discussion with Commission staff on this issue, GTE has calculated the results achieved at a Dispatch Assignment Center (DAC) level for the 1997 and 1998 calendar years, for each of the three Commission objectives that it reports at the DAC level. Those results are enclosed, and will serve as GTE's "new" service standard in those categories, until such time as GTE is allowed to revert to the existing Commission standards. Also enclosed is a listing of the GTE exchanges comprising each of the thirteen Dispatch Assignment Centers in Kentucky.

At the exchange level, GTE will continue to exception report any exchange that fails to meet the current Commission standard four consecutive months, as established in the recent management audit of GTE.

Please bring this filing to the attention of the Commission, and should you have any questions, please to not hesitate to contact me at your convenience.

Yours truly,

Larry D. Callison

Enclosures

c: Mr. Wayne Bates - PSC
Mr. Aaron Greenwell - PSC

PERCENT OUT OF SERVICE TROUBLES CLEARED IN 24 HRS

COMMISION OBJECTIVE: 85.0

		1997YE	1998YE	AVG
	PSC DAC 3100	90.9	90.6	90.7
	PSC DAC 3103	90.8	89.6	90.2
	PSC DAC 3104	87.7	81.4	84.6
	PSC DAC 3105	90.6	86.7	88.7
KY CENTRAL DISTRICT:		90.5	89.2	89.9
	PSC DAC 3200	88.7	88.1	88.4
	PSC DAC 3300	93.5	85.1	89.3
	PSC DAC 3400	89.1	92.8	90.9
	PSC DAC 3500	96.1	92.7	94.4
KY EASTERN DISTRICT:		90.8	88.4	89.6
	PSC DAC 3600	93.3	95.0	94.1
	PSC DAC 3700	94.8	* 79.5	87.1
	PSC DAC 3800	97.8	92.3	95.0
	PSC DAC 3900	94.0	97.0	95.5
	PSC DAC 3901	94.4	97.5	96.0
KY WESTERN DISTRICT:		94.7	91.4	93.1
KY TOTAL STATE:		91.7	89.5	90.6

NETWORK TROUBLE REPORTS/100 LINES

COMMISION OBJECTIVE: **8.0**

		JAN99	FEB99	AVG
	PSC DAC 3100	1.4	1.6	1.5
	PSC DAC 3103	1.8	2.0	1.9
	PSC DAC 3104	2.7	3.2	2.9
	PSC DAC 3105	2.1	2.0	2.0
KY CENTRAL DISTRICT:		1.6	1.8	1.7
	PSC DAC 3200	2.4	2.8	2.6
	PSC DAC 3300	2.0	2.6	2.3
	PSC DAC 3400	2.2	2.4	2.3
	PSC DAC 3500	2.6	3.2	2.9
KY EASTERN DISTRICT:		2.3	2.7	2.5
	PSC DAC 3600	1.7	1.7	1.7
	PSC DAC 3700	2.1	2.8	2.4
	PSC DAC 3800	1.5	2.1	1.8
	PSC DAC 3900	1.9	2.3	2.1
	PSC DAC 3901	2.2	1.5	1.8
KY WESTERN DISTRICT:		1.8	2.0	1.9
KY TOTAL STATE:		1.8	2.1	2.0

PERCENT REGULAR SERVICE INSTALLATIONS IN 5 DAYS

COMMISION OBJECTIVE: 90.0

		JAN99	FEB99	AVG
	PSC DAC 3100	95.5	93.5	94.5
	PSC DAC 3103	95.7	94.3	95.0
	PSC DAC 3104	92.9	92.5	92.7
	PSC DAC 3105	95.4	96.6	96.0
KY CENTRAL DISTRICT:		94.8	93.7	94.2
	PSC DAC 3200	96.5	95.4	95.9
	PSC DAC 3300	95.9	95.3	95.6
	PSC DAC 3400	95.9	94.8	95.4
	PSC DAC 3500	96.5	96.5	96.5
KY EASTERN DISTRICT:		96.2	95.3	95.8
	PSC DAC 3600	97.3	96.6	96.9
	PSC DAC 3700	96.9	96.4	96.6
	PSC DAC 3800	97.7	95.0	96.4
	PSC DAC 3900	97.1	96.7	96.9
	PSC DAC 3901	95.9	98.1	97.0
KY WESTERN DISTRICT:		97.4	97.3	97.3
KY TOTAL STATE:		96.0	95.2	95.6

GTE EXCHANGES BY DAC

EASTERN DISTRICT

MEADS
ASHLAND
CATLETTSBURG
GRAYSON
OLIVE HILL
GREENUP
RUSSELL
SOUTH SHORE
PSC DAC 3200

FLAT LICK
BARBOURVILLE
EVARTS
CUMBERLAND
JENKINS
MT. VERNON
LIVINGSTON
BRODHEAD
EAST BERNSTADT
LONDON
MANCHESTER
ONEIDA
PSC DAC 3300

MT. OLIVET
GERMANTOWN
BROOKSVILLE
LEWISBURG
JOHNSVILLE
AUGUSTA
WASHINGTON
MAYSLICK
DOVER
FERNLEAF
SHARPSBURG
EWING
FLEMINGSBURG
OWINGSVILLE
VANCEBURG
GARRISON
HILLSBORO
TOLLESBORO
SALT LICK
MOREHEAD
PSC DAC 3400

HAZARD
LEATHERWOOD
VICCO
PSC DAC 3500

WESTERN DISTRICT

CECILIA
ELIZABETHTOWN
HODGENVILLE
LEITCHFIELD
SOUTH HARDIN
PSC DAC 3600

ALBANY
MONTICELLO
GLASGOW
SCOTTSVILLE
TOMPKINSVILLE
PSC DAC 3700

SHOPVILLE
EUBANK
SCIENCE HILL
FAUBUSH
WHITE LILY
BURNSIDE
SOMERSET
NANCY
PSC DAC 3800

COLUMBIA
BRADFORDSVILLE
CAMPBELLSVILLE
GREENSBURG
LEBANON
LORETTA
BURKESVILLE
PSC DAC 3900

CALVERT CITY
BARDWELL
ARLINGTON
COLUMBUS
MILBURN
UNIONTOWN
SMITHLAND
CANEYVILLE
CLARKSON
SMITH GROVE
BROWNSVILLE
PARK CITY
MAMMOTH CAVE
BEE SPRINGS
PSC DAC 3901

CENTRAL DISTRICT

LEXINGTON MAIN
LEXINGTON UK
LEXINGTON EAST
LEXINGTON NORTH
LEXINGTON LAKESIDE
LEXINGTON SOUTH
LEXINGTON SOUTHEAST
PSC DAC 3100

MIDWAY
NICHOLASVILLE
VERSAILLES
WILMORE
LEXINGTON ELKHORN
PSC DAC 3103

BEREA
PAINT LICK
BRYANTSVILLE
LANCASTER
LIBERTY
HOUSTONVILLE
PSC DAC 3104

IRVINE
PSC DAC 3105

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
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FRANKFORT, KENTUCKY 40602
www.psc.state.ky.us
(502) 564-3940
Fax (502) 564-3460

Paul E. Patton
Governor

Ronald B. McCloud, Secretary
Public Protection and
Regulation Cabinet

Helen Helton
Executive Director
Public Service Commission

November 10, 1999

Richard N. Sullivan, Esq.
Edward Busch, Esq.
Conliffe, Sandmann & Sullivan
2000 Waterfront Plaza
325 West Main Street
Louisville, Kentucky 40202

RE: Recalling Case No. 99-296
Bell Atlantic/GTE Merger
Petition of AT&T Communications of the South Central States, Inc. for Leave to Intervene

Dear Mr. Sullivan:

Thank you for your interest and concern in the Bell Atlantic/GTE merger proceedings and the petition on behalf of AT&T to intervene in those proceedings. A final order was entered in Case No. 99-296 on September 7, 1999. The application in 99-296 was filed on July 9, 1999. This proceeding was terminated by the Commission's final order entered on September 7, 1999. Accordingly, the case is closed, and AT&T's petition for leave to intervene cannot be addressed by the Commission.

If you would like to discuss this matter further, please feel free to contact staff attorney, Dale Wright, at 502-564-3940, extension 235.

Sincerely,

Helen C. Helton
Executive Director

/rst
cc: File

Larry D. Callison
State Manager
Regulatory Affairs & Tariffs

GTE Service Corporation

KY10H072
150 Rojay Drive
Lexington, KY 40503
606 245-1389
Fax: 606 245-1721

October 18, 1999

Ms. Helen C. Helton
Executive Director
Public Service Commission
730 Schenkel Lane
Post Office Box 615
Frankfort, Kentucky 40602

Re: Joint Application of Bell Atlantic Corporation and GTE Corporation for Order Authorizing Transfer of Utility Control - ~~Case No. 99-296~~

Dear Ms. Helton:

Enclosed for filing with the Kentucky Public Service Commission ("Commission") are an original and ten copies of the Response of Bell Atlantic Corporation and GTE Corporation ("Joint Applicants") in Opposition to Petition of AT&T for Leave to Intervene in the above-referenced matter.

I would be most appreciative if you would bring this filing to the attention of the Commission, and should you have any questions about the enclosed filing, please do not hesitate to contact me at your convenience. Thank you for your consideration in this matter.

Yours truly,

Larry D. Callison

Larry D. Callison

Enclosure

c: Parties of Record
Hon. Richard M. Sullivan

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF BELL ATLANTIC CORPORATION AND GTE CORPORATION FOR ORDER AUTHORIZING TRANSFER OF UTILITY CONTROL	))))	~~CASE NO. 99-296~~

RESPONSE OF BELL ATLANTIC AND GTE IN OPPOSITION TO PETITION OF AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC. FOR LEAVE TO INTERVENE

Bell Atlantic Corporation ("Bell Atlantic") and GTE Corporation ("GTE"), hereby respond in opposition to the Petition of AT&T Communications of the South Central States, Inc. ("AT&T") For Leave to Intervene ("Petition"). The Petition violates the administrative regulations of the Kentucky Public Service Commission ("Commission") and should be rejected for the following reasons:

1. The Petition, filed on October 11, 1999, is untimely. 807 KAR 5:001 Section 3(8) requires that a party file a "timely motion" to seek intervention in a formal proceeding. GTE and Bell Atlantic filed an application requesting approval for the transfer of utility control ("merger") on July 9, 1999. On July 15, 1999, the Commission issued an Order prescribing the procedural schedule for discovery, intervenor testimony, rebuttal testimony, public hearing, and post-hearing briefs. By Orders dated July 22 and July 29, 1999, respectively, intervention was granted to Sprint Communications Company, L.P. ("Sprint") and to the Attorney General of the Commonwealth of Kentucky. A hearing was conducted on August 24, 1999 and briefs were submitted thereafter. The Commission issued an Order on September 7, 1999 approving the

merger with conditions, which was subsequently modified by Commission Order on October 6, 1999. AT&T waited until this proceeding had essentially run its course and did not move to intervene until October 11, 1999, well after any time that could be considered "timely" by the Commission. Accordingly, the Petition must be rejected as untimely under 807 KAR 5:001 Section 3(8).

2. AT&T seeks to intervene in an "informal conference with Commission Staff" under 807 KAR 5:001 Section 3(8). Informal conferences with Staff, however, are not subject to intervention under 807 KAR 5:001 Section 3(8). That section sets forth the procedure for intervention, but only in "any formal proceeding." 807 KAR 5:001 Section 3(8) (emphasis added). The proceeding at issue was described by the Commission in Condition #9 of its Order dated September 7, 1999, as "an informal conference with Commission Staff to begin a dialogue regarding GTE's current revenues." The Commission's authority to establish informal conferences between a party and the Commission Staff is from 807 KAR 5:001 Section 4(4), which provides:

> Conferences with commission staff. In order to provide opportunity for settlement of a proceeding or any of the issues therein, an informal conference with the commission staff may be arranged through the secretary of the commission either prior to, or during the course of hearings in any proceeding, at the request of any party.

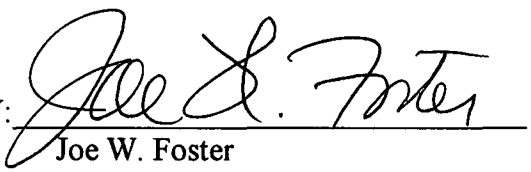
This provision governing informal conferences with Staff, found in section 4, is outside the scope of formal proceedings, and the provisions for intervention into such formal proceedings, specified in section 3. Accordingly, AT&T's attempt to intervene in an informal conference with staff is impermissible and should be rejected.

3. Granting AT&T's Petition would be an unprecedented action by the Commission. It would set a precedent of allowing parties to wait until after discovery, testimony, cross examination and Commission rulings had been completed before it became involved to challenge Commission rulings or thrust itself into the implementation of such rulings. The Commission should not allow such attempts to "game" the system and accordingly, should reject the Petition.

WHEREFORE, Bell Atlantic and GTE respectfully request that the Commission deny AT&T's Petition to admit it AT&T as a party to this proceeding.

Respectfully submitted this the 18th day of October, 1999.

GTE CORPORATION
BELL ATLANTIC CORPORATION

BY: 

Joe W. Foster
4100 N. Roxboro Road
Durham, North Carolina 27704
(919) 317-7656

Their Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response of GTE Corporation and Bell Atlantic Corporation was served on counsel for AT&T Communications of the South Central States, Inc., the Honorable Richard M. Sullivan, 2000 Waterfront Plaza, 325 West Main Street, Louisville, KY 40202, as well as the parties of record in this proceeding, by placing a copy of same in the U. S. Mail, postage prepaid, this the 18th day of October, 1999.

Larry D. Callison

LAW OFFICES

CONLIFFE, SANDMANN & SULLIVAN

PROFESSIONAL LIMITED LIABILITY COMPANY

2000 WATERFRONT PLAZA

325 WEST MAIN STREET

LOUISVILLE, KENTUCKY 40202-4251

(502) 587-7711

TELECOPIER:

(502) 587-7756

October 11, 1999

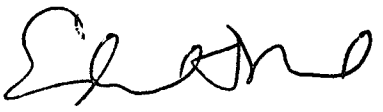
Helen Helton
Executive Director
Public Service Commission
730 Schenkel Lane
Frankfort KY 40601

Re: Petition to Intervene

Dear Ms. Helton:

Enclosed please find one original and ten copies of a Petition to Intervene which I ask that you file for me on behalf of AT&T Communications of the South Central States, Inc. If you have any questions, please contact me right away. Thank you for you assistance in this matter.

Sincerely,



Edward F. Busch

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF	)	~~**CASE NO. 99-296**~~
BELL ATLANTIC CORP.	)	
AND GTE CORP. FOR ORDER	)	
AUTHORIZING TRANSFER	)	
OF UTILITY CONTROL	)	

PETITION OF AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC. FOR LEAVE TO INTERVENE

AT&T Communications of the South Central States, Inc. ("AT&T"), pursuant to 807 KAR 5:001 Section 3(8), hereby petitions the Kentucky Public Service Commission for leave to intervene in the above-captioned matter. In support of its Petition, AT&T respectfully states as follows:

1. AT&T provides interexchange telecommunications services within the Commonwealth of Kentucky pursuant to authority granted by the Kentucky Public Service Commission.

2. The Commission issued an Order dated September 7, 1999, in the above-captioned proceeding which approved the merger of GTE and Bell Atlantic, subject to several terms and conditions. Condition number 9 specifically states:

> **"GTE shall cap its local rates at current levels for a period of three years. In addition, and within 30 days of the date of this Order, GTE shall schedule an informal conference with Commission Staff to begin a dialogue regarding GTE's current revenues."**

3. AT&T requests permission to intervene in this proceeding in order to participate in the conference between GTE and Commission Staff, and any subsequent activities in this

proceeding, to evaluate the reasonableness of GTE's Kentucky intrastate access charges relative to GTE's earnings. AT&T's rights and interests may be substantially affected by decisions made during the course of this proceeding.

4. Petitioner requests that all pleadings and other documents be served upon:

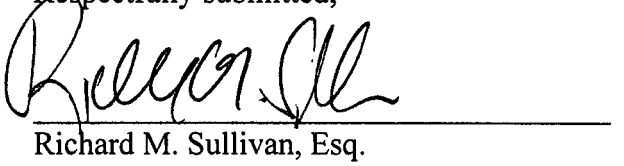
Richard M. Sullivan, Esq.
Edward F. Busch, Esq.
Conliffe, Sandmann & Sullivan
2000 Waterfront Plaza
325 W. Main Street
Louisville, KY 40202

with a copy to:

Jim Lamoureux
AT&T Communications of the
South Central States, Inc.
Suite 8068, Promenade I
1200 Peachtree Street N.E.
Atlanta, GA 30309

WHEREFORE, AT&T respectfully requests that the Commission grant AT&T's Petition and admit AT&T as a party to this proceeding.

Respectfully submitted,



Jim Lamoureux
AT & T Communications of the
South Central States, Inc.
Room 8068
1200 Peachtree Street, N.E.
Atlanta GA 30309
(404) 810-4196 (Phone)
(404) 877-7648 (Fax)

Counsel for Petitioner/Intervener
AT&T Communications of the
South Central States, Inc.

Richard M. Sullivan, Esq.
Edward F. Busch, Esq.
Conliffe, Sandmann & Sullivan
2000 Waterfront Plaza
325 West Main Street
Louisville, KY 40202
(502) 587-7711 (Phone)
(502) 587-7756 (Fax)

Counsel for Petitioner/Intervener
AT&T Communications of the
South Central States, Inc.

October 11, 1999

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was mailed on this 11th day of October, 1999 to the following:

Larry D. Callison
State Manager - Regulatory Affairs
GTE South, Inc.
150 Rojay Drive
Lexington, KY 40503

Hon. John N. Hughes
Attorney for Sprint Communications
124 W. Todd Street
Frankfort, KY 40601

Joe W. Foster
GTE Service Corporation
NC999015
4100 North Roxboro Road
Durham, NC 27704

Hon. John Rogovin
& Hon. Jeff Carlisle
O'Melveny & Myers, LLP
555 Thirteen Street, N.W.
Washington, DC 20004

John Walker
Bell Atlantic Corporation
1320 North Courthouse Road
8th Floor
Arlington, VA 22201

Michael D. Lowe
Bell Atlantic Corporation
1320 North Courthouse Road
8th Floor
Arlington, VA 22201

Hon. Ann Louise Cheuvront
Assistant Attorney General
Office of Rate Intervention
1024 Capital Center Drive
Frankfort, KY 40601

Hon. William R. Atkinson
Hon. Carolyn Tatum Roddy
Attorneys for Sprint Communications
3100 Cumberland Circle- GAATLN0802
Atlanta, GA 30339

Edward F. Busch, Esq.

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

CERTIFICATE OF SERVICE

RE: Case No. 99-296
GTE SOUTH, INC.

I, Stephanie Bell, Secretary of the Public Service Commission, hereby certify that the enclosed attested copy of the Commission's Order in the above case was served upon the following by U.S. Mail on October 6, 1999.

See attached parties of record.

Stephanie D. Bell
Secretary of the Commission

SB/sa
Enclosure

Larry D. Callison
State Manager-Regulatory Affairs
GTE South, Inc.
150 Rojay Drive
Lexington, KY. 40503

Hon. John N. Hughes
Attorney for Sprint Communications
124 W. Todd Street
Frankfort, KY. 40601

Joe W. Foster
GTE Service Corporation
NC999015
4100 North Roxboro Road
Durham, NC. 27704

Honorable John Rogovin
& Honorable Jeff Carlisle
O'Melveny & Myers LLP
555 Thirteen Street, N.W.
Washington, DC. 20004

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Arlington, VA. 22201

Michael D. Lowe
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Arlington, VA. 22201

Hon. Ann Louise Cheuvront
Assistant Attorney General
Office of Rate Intervention
1024 Captial Center Drive
Frankfort, KY. 40601

Hon. William R. Atkinson
Hon. Carolyn Tatum Roddy
Attorneys for Sprint Communications
3100 Cumberland Circle-GAATLN0802
Atlanta, GA. 30339

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF BELL ATLANTIC CORPORATION AND GTE CORPORATION FOR ORDER AUTHORIZING TRANSFER OF UTILITY CONTROL	))))	CASE NO. 99-296

O R D E R

Having considered the motion for modification filed by Bell Atlantic Corporation and GTE Corporation ("Applicants") on September 17, 1999, evidence of record, and being otherwise advised, the Commission HEREBY ORDERS that:

1. The September 7, 1999 Order shall be modified to the extent that ordering paragraph number 10 shall not be applicable to ordering paragraph number 1.

2. Ordering paragraph number 1 of the September 7, 1999 Order shall be effective as of the date of merger close.

3. Applicants shall notify the Commission in writing of the date of merger close.

Done at Frankfort, Kentucky, this 6th day of October, 1999.

By the Commission

ATTEST:

Executive Director

Larry D. Callison
State Manager
Regulatory Affairs & Tariffs

GTE Service Corporation

KY10H072
150 Rojay Drive
Lexington, KY 40503
606 245-1389
Fax: 606 245-1721

September 2, 1999

Ms. Helen C. Helton
Executive Director
Public Service Commission
730 Schenkel Lane
Post Office Box 615
Frankfort, Kentucky 40602

Re: Joint Application of Bell Atlantic Corporation and GTE Corporation for Order Authorizing Transfer of Utility Control - Case No. 99-296

Dear Ms. Helton:

Enclosed for filing with the Kentucky Public Service Commission ("Commission") are an original and ten copies of the Reply Brief of the Joint Applicants, Bell Atlantic and GTE, pursuant to the procedural schedule established by the Commission in the above-referenced matter.

I would be most appreciative if you would bring this filing to the attention of the Commission, and should you have any questions about the enclosed material, please do not hesitate to contact me at your convenience. Thank you for your consideration in this matter.

Yours truly,

Larry D. Callison

Larry D. Callison

Enclosure

c: Hon. Ann Louise Cheuvront - Assistant Attorney General
Hon. William R. Atkinson - Sprint

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Joint Application of Bell Atlantic Corporation and GTE Corporation for Order Authorizing Transfer of Utility Control	))))	**Case No. 99-296**

REPLY BRIEF OF THE JOINT APPLICANTS

I.

Introduction

Joint Applicants GTE and Bell Atlantic file this reply brief in support of their merger application.

The only party to file a brief opposing this merger was Sprint. No one else in Kentucky has stepped forward to oppose this merger -- no consumer groups, no community groups, no other interexchange carriers or CLECs, not even the Attorney General. Sprint's lone opposition is motivated not by what is good for Kentucky, but by what is good for Sprint. Sprint currently dwarfs GTE and Bell Atlantic in Kentucky's long distance market (as well as nationally), and desperately wants to prevent the creation of a stronger competitor. Sprint's self-interested motivation in opposing this merger taints every aspect of its brief, and on that basis alone its arguments should be disregarded.

Sprint's brief offers four unsupported arguments. First, Sprint claims -- despite detailed and uncontradicted evidence to the contrary, and despite the absence of any statutory basis for its view -- that the commitments Joint Applicants have made are not good enough. (Sprint Brief at 1-2). Obviously, nothing Joint Applicants could *ever* say

would be good enough for Sprint, which has adopted a business strategy of blindly opposing this merger in every possible forum. Second, Sprint argues, again with no support in the record, that the Joint Applicants' cost savings estimates are not reliable. (Id. at 11-12.) To the contrary, the detailed pre-filed testimony of Mr. Shuell and Mr. Shore, as well as Mr. Shore's thorough explanation of his allocation methodology at the hearing, fully and specifically responded to the Commission's April 14 directive to provide detailed information regarding costs and savings attributable to GTE South's Kentucky operations. Third, Sprint (once again ignoring the evidence) claims the information about best practices is insufficient. (Id. at 8-9.) Fourth, Sprint's brief repeats the questionable and previously-rejected competition arguments of its in-house witness, Dr. Rearden. (Id. at 13-24.) Each of these warmed-over claims, none of which is connected by the barest thread of evidence to Kentucky, was analyzed and soundly refuted by Dr. William Taylor.

Joint Applicants have made a sincere and good faith effort not only to show that the merger is consistent with the public interest, thereby meeting the requirements of Kentucky law, but also to exceed those requirements by guaranteeing substantial benefits to consumers once the merger is consummated. The record contains uncontroverted evidence establishing that Kentucky consumers will be better off with this merger than without it. Joint Applicants look forward to serving all their current Kentucky customers, to bringing them the many benefits of this merger, and to serving many new customers in Louisville and elsewhere in the state. There is no basis in fact or law to deny this application. Joint Applicants request, therefore, that the merger be approved.

II.

The Commitments Are Specific, Credible and Responsive to the April 14 Order

Sprint 's brief questions the sincerity and good faith of the commitments Joint Applicants have made in the pending application. (Id. at 5-6.) In so doing, Sprint selectively quotes out-of-context from the hearing transcript, and ignores thousands of words of pre-filed and hearing room testimony establishing that the commitments indeed are specific, credible and responsive to the Commission's April 14 Order in Case No. 98-519.

A. The CLASS Commitment

Sprint makes two arguments regarding the CLASS commitment. First, Sprint argues that CLASS services are not "advanced." (Id. at 3-4.) Second, Sprint argues, without explaining why, that the commitment is not really a benefit, because it will apply to only 25,000 customers. (Id. at 4-5.) Both arguments should be rejected.

First, Sprint's focus on whether CLASS services meet the FCC's definition of "advanced" services is a red herring. The FCC definition was issued in an order dated March 31, 1999, in CC Docket 98-147. This Commission's April 14 Order requiring Joint Applicants to "identify specifically those advanced services which will be made available in Kentucky as a result of the merger" never mentioned or cited the FCC definition, which had been issued only two weeks earlier. (April 14 Order, para. 1.) If this Commission had intended to define "advanced services" by reference to the just-released FCC definition, it certainly would have said so in the April 14 Order and put Joint Applicants on notice of that intention, but it did not. In any event, there can be no question that CLASS services are "advanced," as the term is used in ordinary parlance,

when compared to the basic dialtone service currently provided to those 25,000 customers in eastern and southwestern Kentucky who will benefit from this commitment. (Tr. 105 (Reed); Kissell Rebuttal at 5.)

Second, even if the Commission were to view the CLASS commitment as not falling within the definition of "advanced services," Joint Applicants still provided specific information about other advanced services that do meet the FCC's definition. Mr. Kissell testified in specific detail about the advanced, high-speed data services that would be provided in Louisville -- initially to large and medium business customers and eventually to other customers -- within 18 months of the merger. These advanced, high-speed data services include the following products:

- Voice-over IP (internet protocol);
- Virtual private networks;
- Web hosting;
- Intranets;
- Extranets;
- Managed networks;
- Frame relay;
- ATM technology; and
- High bandwidth point-to-point wireless technology.

(Tr. 53-54; 61-63; 70-72 (Kissell).)

Joint Applicants also provided testimony specifically indicating how these services would be provided in Louisville, by using GTE's high-speed fiber network known as the Global Network Infrastructure, or GNI (which runs right through Louisville)

to carry high speed data traffic to and from customers, and using existing wireless switches to route such traffic. Without the merger, GTE will not have enough traffic on the GNI to generate enough capital to provide all these services as quickly as it will be able to with the merger. (Kissell Direct at 7-8; Tr. 193, 208-09 (Taylor).) Thus, the merger will enable such services to migrate to all Kentuckians much sooner than without the merger. (Tr. 71-72 (Kissell).) In addition, Mr. Kissell identified specific examples of new, advanced services in his pre-filed direct testimony (p. 10-11). Accordingly, whether or not one considers CLASS services to be "advanced" for purposes of satisfying the April 14 Order, Joint Applicants have more than adequately addressed the order's request for specific information about other advanced services.

Third, regardless of whether CLASS services fit the definition of "advanced services," the evidence at hearing still demonstrated that such services will benefit eastern and southwestern Kentucky and thus that their availability will further the public interest. While the fact that this roll-out will serve only 25,000 people amply explains why it has not taken place (and without the merger would not occur in the future), it does not minimize the advantages to customers of that deployment. Customers in those areas will soon receive calling features never before available to them -- features like Caller ID, Call Blocking, Call Trace, Selective Call Forwarding and Anonymous Call Rejection. (Kissell Direct at 12-13; Reed Direct at 8.) It simply defies common sense to claim those customers would be better off *without* such services. For example, schools will benefit from CLASS technologies such as Call Trace and Caller ID, which will enhance classroom security in the wake of the recent unfortunate rise in school violence across the country. Customers involved in domestic disputes or experiencing any form

of harassment will find tremendous value in services such as Call Blocking, Anonymous Call Rejection and Caller ID. Even if one residential customer or one school benefits from these services, that alone should be sufficient to tip the balance in favor of this merger.

Moreover, businesses that previously may have been reluctant to locate in those areas of Kentucky for lack of such services will have a greater incentive to do so, further benefiting economic growth and infrastructure development in these very rural areas that most need it. (Tr. 170-72 (Bone); 302-04 (Blanchard).) When new businesses do arrive in rural Kentucky, attracted by the availability of CLASS and other new services, GTE/Bell Atlantic will be ready to provide any additional high-speed services they may require. Mr. Bone further explained in detail how CLASS services have led to improved economic and infrastructure development in rural West Virginia, and there is every reason to expect the same result in Kentucky. (Tr. 170-72 (Bone).)

B. The $222 Million Capital Commitment

Sprint's objection to the $222 million capital commitment is unclear. Sprint appears to be arguing that it should be higher than $222 million, even though the $222 million carries forward GTE's 1999 spending levels for three years after the merger as a guaranteed minimum. Sprint also appear to argue, but without explicitly saying so, that the amount should reflect the higher spending that occurred during 1997 and 1998. (Sprint Brief at 5-6.) That argument, however, completely ignores Mr. Reed's testimony that these higher spending levels were unusually large, owing to the one-time expenses associated with upgrading GTE South's network to 100 percent digital throughout the Commonwealth in those two years. (Tr. 93-94.) The 1999 spending level is in line with

typical expenditures, and is more than adequate to maintain excellent service quality, as demonstrated by the service results Mr. Reed has been able to maintain this year. (Reed Direct at 5-6.) Thus, using the 1999 figure as the basis for the three-year capital commitment is reasonable. Moreover, as Mr. Reed committed on the witness stand, the merged company will consult with the Commission and seek its permission if any unforeseen economic changes occur which might require any change in the commitment. (Tr. 118 (Reed).)

Sprint's attempt to ridicule the capital commitment as money that would have been spent with or without the merger ignores the key point -- the merged company is *guaranteeing* it will spend at least $222 million in its existing Kentucky service areas during the first three years after the merger. (Tr. 23-24 (Kissell).) None of this amount will be used to finance the merged company's entry into Louisville. (Tr. 81-82 (Kissell).) GTE South has never been required to make such a forward-looking commitment in this state. (Tr. 111 (Reed).) Moreover, Sprint's argument is particularly ill-founded and hypocritical, in view of the fact that it has never made *any* financial commitment to Kentuckians to maintain the quality of the long distance and toll service it provides them.

Joint Applicants' capital commitment should reassure the Commission that Kentucky will continue receiving *at least* the same level of financial support from the merged company that GTE South receives from GTE Corporation today. The merger will not relegate Kentucky to a "lesser" status; indeed, given Louisville's presence on the list of 21 planned new markets, Kentucky is certain to receive even more corporate attention and support in the future. Therefore, Sprint's criticisms of the capital commitment should be rejected.

C. The Local Calling Plan Commitment

Joint Applicants committed to expand local calling areas -- well beyond any currently planned expansions -- to cover all of Kentucky as a result of the merger. (Reed Direct at 9-10).) Sprint apparently concedes this is a benefit, as its brief entirely ignores this issue. Expanded local calling plans represent a significant benefit of this merger. No one can deny that the customers who will receive such plans as a result of the merger will be much better off than they would have been without the merger. (Tr. 112, 119, 123-24 (Reed).)

D. Louisville Entry

Sprint criticizes Joint Applicants for not providing more details about precisely how they will enter the Louisville market. (Sprint Brief at 9-10). Sprint's assertions ignore the record, and ignore the practical and legal constraints on developing detailed plans this far in advance of the actual entry. Mr. Kissell testified that within 18 months, the merged company will begin offering advanced, high speed data services to large and medium business customers in Louisville. (Tr. 40-41, 64-67, 75-76 (Kissell).) Mr. Kissell testified this would occur through a combination of facilities and resale-based entry, and that the products and services initially offered would include voice-over IP, virtual private networks, web hosting, frame relay, intranets, extranets, managed networks, and ATM technology. (Tr. 72-73.) Mr. Kissell also testified that although the plans are not yet cast in concrete, they are far more developed than they were at the time of the first hearing in Kentucky. (Tr. 64-67.)

In addition, Mr. Kissell testified that GTE's existing facilities, combined with Bell Atlantic's existing relationships with the East Coast offices of large and medium

Louisville business customers, will give the merged company the crucial asset it needs -- credibility in the marketplace -- to compete against Sprint, Bell South and others in the race to provide these services. (Kissell Direct at 5; Tr. 64-67.) Mr. Kissell then explained that as the merged company is able to build a base of such customers, it will expand the provision of these highly advanced services to small business and other customers in Louisville and elsewhere in Kentucky. (Tr. 52-54, 71-72.) None of this testimony was rebutted.

Sprint's witness at the first hearing in this matter, Dr. Brenner, candidly admitted under oath that the merged company's entry into Louisville would be a benefit. (Tr. 262, Brenner, March 3, 1999, Case No. 98-519 ("March 3 Tr.").) But Sprint's witness at the August 24 hearing, Dr. Rearden, contradicted Dr. Brenner and stubbornly refused to acknowledge the same obvious point. (Tr. 340.) With Sprint's own witnesses contradicting each other, the Commission should accept the unchallenged testimony of Dr. Taylor that the merged company's commitment to compete against Bell South in Louisville represents a significant and tangible benefit of the merger.

III.

Joint Applicants Provided Specific And Reliable Costs And Savings Estimates Attributable To Kentucky

Sprint argues that Joint Applicants' costs and savings estimates are not reliable, because they were made in August 1998, several weeks following the merger announcement. (Sprint Brief at 8-9.) This argument is without merit.

First, Mr. Shuell, who serves as Vice President and Controller for all of GTE Corporation, provided extensive detail about the merger-related costs and savings he and his team estimated both before and after the July 29, 1998 merger announcement.

(Shuell Direct at 5-10; Tr. 240-252.) The August 21 team consisted of highly experienced financial experts from both Bell Atlantic and GTE. (Shuell Direct at 7-9; Tr. 244.) These experts benchmarked the GTE-Bell Atlantic merger against other comparable mergers in formulating their estimates. (Shuell Direct at 8-10.) Sprint has not challenged in any way the reasonableness of this methodology or the qualifications of Mr. Shuell and his team. Mr. Shuell's analysis was also supported by the recent experience both GTE and Bell Atlantic had to draw upon in estimating merger savings and costs -- Bell Atlantic had merged with NYNEX in 1997, and GTE had merged with Contel a few years earlier.

Second, Sprint makes no effort whatsoever to challenge the reasonableness of any of Mr. Shuell's estimates or Mr. Shore's allocation of those estimates to the Kentucky-specific jurisdictional level. The tables attached to Mr. Shuell's and Mr. Shore's testimonies summarize the overall savings and cost numbers that Mr. Shuell and his team of experts formulated for the August 21 analysis, and explain how Mr. Shore allocated those numbers to Kentucky. (Shuell Direct, Schedules A.1-A.4; Shore Direct, Schedules B.1-B.5.) Sprint has completely failed to demonstrate any inaccuracy or methodological problem with any of the numbers.

Third, Mr. Shuell's overall savings and cost estimates were included in the Joint Proxy Statement distributed to GTE and Bell Atlantic shareholders earlier this year. (*See* Exh. 9, p. I-25.) Both companies' shareholders overwhelmingly approved the merger, demonstrating their confidence in the financial projections contained in the Proxy Statement, including Mr. Shuell's savings and cost estimates.

Finally, Sprint's claim that Joint Applicants lack confidence in the savings and costs estimates -- supposedly because they do not want rates to be based on those estimates -- mixes two unrelated issues. (Sprint Brief at 12.) The April 14 Order required Joint Applicants to provide information about *expected* costs and savings not for ratemaking purposes, but for purposes of determining whether the merger is in the public interest. (April 14 Order, para. 6.) This docket is a merger proceeding, not a rate case. Obviously, Joint Applicants have confidence in Mr. Shuell's estimates. The best financial minds from both companies worked on the August 21 analysis. In the real world of ratemaking, however, regulators rely on *actual* test-year financial results, not estimates, no matter how reliable the estimates may be. As Mr. Blanchard explained, to avoid single-issue ratemaking and to consider rate design and universal service issues together with merger savings and costs, the most fair and reasonable course of action would be for the Commission to determine the full impact of actual merger-related savings and costs on GTE South's cost of service once actual results can be measured with precision, following the third year after the merger. (Blanchard Direct at 11-12; Tr. 283-84, 304-05, 316-17.)

IV.

Sprint's Claims About Best Practices Ignore the Record

Sprint argues that Joint Applicants have not provided sufficient information about best practices. (Sprint Brief at 8-9.) Sprint is wrong, for two reasons. First, as Mr. Kissell testified, until the merger is actually completed there are legal and practical constraints limiting the amount of joint planning the two companies can conduct. Tr. 30-31. The Merger Integration Teams have been hard at work identifying potential best

practices, and have made much progress since the first hearing in this case. But it would be impractical and unfair to require the companies to present final, approved business plans before they have completed their merger. (Tr. 30-33.)

Second, Sprint's arguments completely ignore the following evidence demonstrating that Bell Atlantic and GTE indeed presented detailed and specific evidence about best practices:

- Mr. Bone testified about the best practices resulting from the Bell Atlantic-NYNEX merger, such as the technician call-back program, as well as best practices likely to emerge from the GTE-Bell Atlantic merger, such as the service updates sent to Mr. Reed's pager every two hours, and establishing new centers to perform credit screening for new customer accounts (Tr. 137-140; 177-178);
- Mr. Kissell testified about the four volumes of detailed and proprietary best practices information produced to Sprint (Joint Applicants' Responses to Sprint's First Set of Data Requests and Interrogatories, Response No. 4.) Sprint totally ignored this evidence in its brief, of course, because the evidence overwhelmingly demonstrates how much detailed and specific work has been done to identify best practices thus far. Mr. Kissell described this material as a "wealth of information" about best practices. (Tr. 30.) He provided two specific examples, the first concerning the relative volume of incoming calls to GTE's call centers as compared to Bell Atlantic's, and the second concerning intraLATA toll marketing. He explained that these types of best practices could only have been discovered as the result of the

detailed side-by-side analysis that only accompanies a merger, as opposed to information that could be obtained without a merger. (Tr. 30-31).

- Mr. Reed testified about best practices emerging from the GTE-Contel merger, noting that GTE was "amazed as a company how many things that there were that frankly we hadn't even thought of." (Tr. 113-14.) For example, Mr. Reed explained that Contel had previously automated and mechanized its repair answer center process, enabling 15-20% of all repair calls to be diagnosed and fixed directly at the switch while the customer waited on the line. Mr. Reed testified that Contel's practice was a best practice "that we didn't know about until the merger. We have taken that now and deployed that GTE wide as a result of our . . . merger with GTE and Contel." (Id.)

None of this testimony was rebutted. Both GTE and Bell Atlantic know what they are talking about when it comes to best practices, as both have the experience of their mergers with NYNEX and Contel to prove it. Sprint's claims to the contrary are specious.

V.

Sprint's Anti-Competition Claims Are Totally Unfounded

The last half of Sprint's brief simply offers a rehash of the testimony of its in-house witness, Dr. David Rearden. (Sprint Brief at 13-24.) Sprint's entire case relied on his testimony, but at hearing, Dr. Rearden admitted his testimony largely repeated the testimony he previously submitted in Vermont -- meaning he had undertaken no analysis of the Kentucky market whatsoever. (Tr. 324-28.) In the entire 10-page

section of his testimony discussing alleged anti-competitive conduct by GTE, the witness used the word "Kentucky" only twice, in referring to outdated numbers concerning resold lines and UNEs that GTE had leased in Kentucky. (Tr. 327-28.) Even as to that minimal reference to Kentucky, the witness admitted he had no basis to challenge more recent interconnection statistics offered by GTE witness Peterson -- statistics demonstrating that in the scant few weeks since the first hearing in this case, the rate of GTE resold and UNE loops has *doubled.* (Id.; Tr. 224-26 (Peterson).) Moreover, even with respect to those non-Kentucky claims, Dr. Rearden admitted he had no first hand, personal knowledge of any of these alleged events. (Tr. 324-26.) Coupled with the unrebutted testimony of Mr. Kissell that GTE South has lost *more than sixty percent* of its share of the Kentucky intraLATA toll market since implementing equal access (Kissell Rebuttal at 9), whatever feeble factual basis may have existed for Dr. Rearden's testimony was utterly destroyed.

Furthermore, in the so-called price and non-price discrimination portions of his testimony, Dr. Rearden repeated almost verbatim the testimony of Sprint's previous witness, Dr. Brenner -- testimony that has been rejected by other state regulators in previous mergers. (*See, e.g.*, SBC - Pacific Telesis Merger, D. 97-03-067, California Public Utilities Commission, *mimeo* at 66-67; March 3 Tr. 260-61.) Moreover, Sprint's counsel failed to ask Dr. Rearden a single question to attempt to rehabilitate any portion of his testimony, or to rebut anything Dr. Taylor had testified to in the hearing room.

Joint Applicant's witness, Dr. Taylor, systematically refuted each of these claims in his testimony, as well as explaining in detail during the hearing why the merger will

create more competition (and the benefits competition brings) in Kentucky. Dr. Taylor's testimony established the following key points:

- The United States Department of Justice, statutorily charged under the Clayton Act with analyzing *any* anti-competitive effects of mergers in *any* line of commerce or geographic area (which would include Kentucky), found *no* such anti-competitive effects in the local or long distance markets stemming from the Bell Atlantic-GTE merger (Taylor Direct at 14-16; Tr. 196.)
- The price discrimination claims are misleading, unsupported by any empirical evidence, and unsound as a matter of basic economics. GTE's access prices (like Sprint's, in its ILEC territories) are set by regulatory commissions, not unilaterally by GTE. Nothing about the merger changes this fact -- this Commission will have the same authority to set GTE South's intrastate access rates after the merger as it does today. The FCC and every state regulatory commission that has considered Sprint's arguments on the merits in this and prior mergers has consistently rejected them. (Taylor Direct at 23-29; Taylor Rebuttal at 13-19; Kissell Rebuttal at 9-10.)
- The non-price discrimination claims likewise are baseless. Switching technology is not advanced enough to enable GTE to selectively degrade connections to certain lines but not others. Even if it were physically possible to do so, it defies common sense to think GTE could so openly and obviously degrade service without anyone -- competitors, the Commission, or most importantly customers -- ever noticing. (Taylor Direct at 29-34; Taylor Rebuttal at 7-11.)

Finally, Dr. Taylor's testimony demonstrated that the GTE-Bell Atlantic merger is pro-competitive. His testimony established that revolutionary changes are underway in the telecommunications industry. (Taylor Direct at 4-11.) The industry is in the midst of dramatic consolidation and convergence as competitive markets develop and new technologies are discovered. Companies are finding merger partners to remain viable and competitive as the industry enters the 21st Century, and are racing to provide bundled services to both existing and new customers on one bill. As Dr. Taylor notes, this is how Sprint and GTE's other competitors view the telecommunications market (Taylor Direct at 5-8; *see also* Sprint 1998 Annual Report at 4, 6) -- and it is precisely what GTE and Bell Atlantic want to do in Kentucky and elsewhere.

VI.

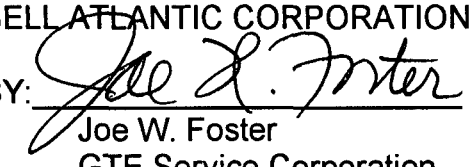
Conclusion

Together, GTE and Bell Atlantic will be able to provide more services, to more Kentuckians, more quickly, and for better value -- both in and out of franchise. The merger is consistent with the public interest, meets all the requirements of Kentucky law, and should be approved.

Respectfully submitted this the 2nd day of September, 1999.

GTE CORPORATION

BELL ATLANTIC CORPORATION

BY: 

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply Brief of GTE Corporation and Bell Atlantic Corporation was served on all parties of record in this proceeding by either sending a copy by overnight delivery, same-day delivery, or by placing a copy of same, properly addressed, in the U. S. Mail, first class postage prepaid, this the 2nd day of September, 1999.

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September 2, 1999

VIA HAND DELIVERY

Helen C. Helton, Executive Director
Kentucky Public Service Commission
730 Schenkel Lane
Frankfort, Kentucky 40602

In Re: Case No. 99-296 – Joint Application of Bell Atlantic Corporation and GTE Corporation for Order Authorizing Transfer of Utility Control

Dear Ms. Helton:

Enclosed please find for filing an original and ten (10) copies of the Reply Brief of Sprint Communications Company L.P. in the above referenced proceeding.

Thank you for your assistance in this matter. Should you have any questions, please feel free to contact me.

Sincerely,

William R. Atkinson

William R. Atkinson

WRA/de
Enclosures
cc: Parties of Record

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Joint Application of Bell Atlantic Corporation and GTE Corporation For Order Authorizing Transfer of Utility	))))	CASE NO. 99-296

REPLY BRIEF OF SPRINT COMMUNICATIONS COMPANY L.P.

Sprint Communications Company L.P. ("Sprint") now files its Reply Brief in order to address certain arguments made by GTE Corporation ("GTE") and Bell Atlantic Corporation ("Bell Atlantic") in their initial Brief filed in connection with this case. Instead of addressing each disputed assertion contained in GTE's and Bell Atlantic's ("Joint Applicants") 60-page initial Brief in this docket, Sprint's Reply Brief will focus on a few of the most serious inaccuracies and mischaracterizations contained in GTE's and Bell Atlantic's arguments. Sprint respectfully requests that the Commission refer to Sprint's initial Brief for a complete presentation of Sprint's positions and arguments in connection with this matter.

I. THE JOINT APPLICANTS' INITIAL BRIEF CONTAINED SEVERAL INACCURACIES REGARDING THE EXACT NATURE OF THE ALLEGED SPECIFIC "BENEFITS" OF THE MERGER

a. The proposed provision of CLASS services

The Joint Applicants state in the Executive Summary of their initial Brief, at i, that their proposed provision of CLASS services after the merger "represents a critical step forward toward constructing a state-of-the-art telecommunications infrastructure

reaching all of Kentucky." Later on in their Brief, at 15, GTE and Bell Atlantic declare "[t]hat this will be a tangible benefit to Kentucky consumers cannot be doubted." Nevertheless, during the hearing in connection with this matter, several Commissioners did in fact express doubts as to the appropriateness and worth of this alleged "benefit", one Commissioner going so far as to state that "Caller ID, in my opinion, is not an improvement to the existing service area". Hearing Transcript (filed August 30, 1999), at 80 (Commissioner Gillis). It seems clear that there are serious reservations regarding the proposed expenditure of $23.7 million for what may be considered at best as a marginal service improvement which would impact only 6% of GTE's residential access lines in Kentucky. Hearing Transcript at 106 (Reed).

Aside from the real worth of the Joint Applicants' offer with regard to CLASS services, there remains, as stated in Sprint's initial Brief, the question of whether CLASS services can, by any stretch of the imagination, be considered "advanced services." See Sprint's initial Brief, at 4. In addition, although GTE's witness Mr. Kissell made vague references regarding other advanced services that would be possibly be made available in Kentucky after the merger,[1] the Joint Applicants did not make any commitment to actually provide these services, and offered no timeline as to when these other advanced services would be available. For a complete discussion of the Joint Applicants' proposed provision of CLASS services, please see Sprint's initial Brief, at 3-5.

b. The estimated merger savings

As the Joint Applicants acknowledge in their initial Brief, the Commission's April 14th, 1999 Order[2] in the prior merger proceeding required GTE and Bell Atlantic to demonstrate how "tangible cost savings" resulting from the merger will be provided "through rate reductions or network upgrades to the Kentucky jurisdiction". Based on the evidence in this proceeding, GTE and Bell Atlantic have not produced a reliable, up-to-date estimate of the cost savings that will actually accrue to the Kentucky jurisdiction. Sprint discussed at length in its initial Brief (at 11-12) the reliability problems with GTE witness Mr. Shuell's estimates of merger savings, including the following: high-level, publicly available financial information was relied upon for GTE's initial estimates of merger savings and costs; specific company data was not used in preparing the initial estimates; and Mr. Shuell has made no attempt to update his original estimates of merger savings and costs. Hearing Transcript, at 241-46 (Shuell). Because the company-wide estimates were used as the starting point for the Kentucky-specific analysis of cost savings, this reliability problem extends to the Kentucky-specific estimates. Hearing Transcript, at 263 (Shore). Accordingly, Sprint asserts that the Commission cannot, with any degree of confidence, rely upon the estimates of merger savings presented in this proceeding.

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[1] See Joint Applicants' initial Brief, at 15-16.

[2] Case No. 98-519, *In the Matter of Joint Application of Bell Atlantic Corporation and GTE Corporation for Order Authorizing Transfer of Utility Control,* Order (issued April 14, 1999) (hereinafter "April 14th Order"), at 4.

c. **The proposed $222 million infrastructure "commitment"**

GTE and Bell Atlantic devote several pages toward the beginning of their 60-page Brief to a summary of their alleged infrastructure "commitment" in this case. See Joint Applicants' initial Brief, at 17-20. Sprint will not lengthen this Reply Brief by rebutting herein each and every contention raised in this portion of the Joint Applicants' argument; for a detailed discussion of conditional nature of the "commitment", and the almost totally undefined set of economic conditions which could substantially impact the "commitment", see Sprint's initial Brief, at 5-7. However, one statement contained in the Joint Applicants' initial Brief must be addressed here. In their Brief, at 19, the Joint Applicants state that "Mr. Reed committed that the merged company would notify the Commission and seek its permission to alter its spending commitment in the event of a change in economic conditions." Mr. Reed's very abbreviated discussion of the procedure for altering the infrastructure commitment after the merger, Hearing Transcript at 118, leaves a host of unanswered questions.

Based on this very brief mention in the oral testimony of one GTE witness, it is unclear, for instance, whether the merged entity would notify the Commission in writing prior to altering its infrastructure spending. It is equally unclear what procedure would be followed in the event that the Commission disagreed with GTE's and Bell Atlantic's assessment of the relevant changed economic condition(s), and whether the merged entity would continue the previously agreed upon infrastructure spending level while the disagreement between the parties was pending. Finally, it is totally unclear from the record whether the previously agreed upon infrastructure spending levels would be resumed in the event that the relevant economic conditions improve or other exogenous

factors independently and significantly improve the merged entity's financial condition. The Commission should not have been put in the position of extracting this critical information from the Joint Applicants; it should have been presented as part of GTE's and Bell Atlantic's case. Indeed, Sprint gave the Joint Applicants a golden opportunity during discovery to thoroughly discuss exactly how the infrastructure commitment would be effected by changed economic conditions, and the Joint Applicants chose not to take advantage of it. See Case No. 99-296, Responses of GTE Corporation and Bell Atlantic Corporation to Sprint's First Data Requests and Interrogatories (filed August 9, 1999), Response to Request No. 13. Sprint respectfully submits that the infrastructure "commitment" proposed by the Joint Applicants in this docket is not definite enough to be considered a positive benefit resulting from the merger.

d. The implementation of "best practices"

At pages 47-51 of their Brief, the Joint Applicants launch into yet another discussion of the kinds of "best practices" that are likely to be identified after the merger. However, as discussed in Sprint's initial Brief at 8-9, precious little detailed information was provided regarding the specific "best practices" that would be adopted, and the anticipated savings produced from the adoption of the "best practices". Without considerably more detailed information than what has been submitted thus far, the Commission should not rely upon the anticipated implementation of "best practices" as a positive benefit resulting from the merger.

At page 48 of their Brief, the Joint Applicants specifically point to Bell Atlantic witness Mr. Bone's comment regarding the implementation of "best practices" after the

Bell Atlantic/NYNEX merger, namely, that "it was real eye opening when we sat down after the NYNEX merger – very recently, less than two years ago, or just about two years ago – and then see what we were doing different and when we put those operations together how we could improve" and that "we would expect the same results with GTE". Hearing Transcript, at 138 (Bone). However, based on a very recent Order issued by the Maine Public Utilities Commission, the effects of the "best practices" that Mr. Bone describes are not readily apparent to the Maine Commission. In fact, the Maine Commission has expressed very serious concerns about Bell Atlantic's service quality in Maine in the wake of the NYNEX merger. See Attachment 1, *Bell Atlantic-Maine Notice of Proposed Merger With GTE Corporation*, Docket No. 98-808, Maine Pub. Utils. Comm'n, Order On Reconsideration (August 25, 1999), at 2:

> During the past year we have become aware of numerous complaints about Bell Atlantic's service provisioning and service quality. We are aware of problems or alleged problems in retail and wholesale service installations, in network congestion, and in the response time and efficacy of repair services. While we have no way of knowing whether these difficulties are attributable to the change in ownership or management that occurred as a result of the NYNEX-Bell Atlantic merger in 1997, we also cannot conclude, absent some further showing by Bell Atlantic, that another merger, resulting in an approximate doubling of the size of the existing parent corporation, would not result in further deterioration in service quality....
>
> We therefore are unwilling at this time to issue a ruling that the proposed Bell Atlantic-GTE merger is exempt from the approval requirement of section 708 or, as BA-ME has suggested, simply approve the merger (emphasis added).

In light of the concerns articulated above, this Commission should view with a healthy amount of skepticism any claims by the Joint Applicants with regard to the "best practices" discovered and implemented as a result of the NYNEX merger.

II. THE JOINT APPLICANTS HAVE INCORRECTLY INTERPRETED THIS COMMISSION'S PRECEDENT REGARDING THE STATUTORY PUBLIC INTEREST STANDARD

GTE and Bell Atlantic state in their initial Brief in these proceedings that "a merger that results in benefits to Kentucky consumers, but no detrimental change in service, is undoubtedly consistent with the public interest." Joint Applicants' initial Brief, at 54. The Joint Applicants go on to state that the Commission has approved a large number of transactions under Sections 278.020(4) and (5) without requiring any positive benefit, that "the Commission has deemed an absence of change to current service to consumers or tariff rates and transparency to consumers as being "consistent with the public interest", and finally, that even if the Joint Applicants had been unable to show any positive benefits of the merger, the Commission could nevertheless find that the proposed merger meets the requirements of KRS Sections 278.020(4) and (5) "because it has repeatedly held that a transaction that results in no change to service received by Kentucky customers is "consistent with the public interest". Joint Applicants' initial Brief, at 56-57. As Sprint pointed out in connection with the prior merger proceedings, the Joint Applicants' contentions in this regard are illogical. But from a legal standpoint, this position appears to be a substantially overbroad interpretation of the Commission's Orders granting merger authority.

In the proceedings that produced two of the Orders featured in the Joint Applicants' initial Brief in connection with this argument,[3] there were, unlike this

[3] Order, Case No. 96-432, *In the Matter of Application of WorldCom, Inc. and MFS Communications Company, Inc. for Approval of Agreement and Plan of Merger, and Related Transactions* (issued December 23, 1997); and Order, Case No. 96-203, *In the Matter of Application for Approval of Transfer of Assets and a Certificate of Public Convenience and Necessity from Target Telecom, Inc. to TTI National, Inc.* (issued July 11, 1996). The WorldCom/MFS Order is quoted at pages 56-7 of the Joint Applicants' Brief, but it appears that a citation was omitted. The Target/TTI Order is discussed at pages 54-55 of the Joint Applicants' Brief.

proceeding, apparently no interventions and no hearings. Accordingly, in uncontested proceedings involving requests for merger authority, it is likely that this Commission did not feel compelled to articulate each and every factor in its decisions granting merger authority. Accordingly, GTE's and Bell Atlantic's reliance on these Orders is unwarranted.

Moreover, GTE's and Bell Atlantic's position is questionable from a common sense viewpoint. If preservation of the status quo were a sufficient showing in Commission reviews of merger applications, then an important part of this Commission's ability to motivate companies to improve service quality, lower rates, introduce new services, and generally improve the lot of Kentucky consumers after the merger would be removed. If companies are, in effect, indirectly told that it is sufficient that things remain the same, then things surely will remain the same. Part of the motivation for companies to generally improve the provision of service to customers will be taken away. Accordingly, Sprint believes that such a result could not be "consistent with the public interest".

III. SEVERAL OTHER STATE COMMISSIONS HAVE RAISED SERIOUS QUESTIONS REGARDING THIS PROPOSED MERGER

Other state regulatory commissions have found problems with Bell Atlantic's and GTE's merger applications. In Virginia, after the staff of the State Corporation Commission concluded in a report that the "merger is anti-competitive in Virginia and as such poses a potential threat to maintaining just and reasonable rates," the Virginia Commission dismissed their merger application without prejudice. See *Joint Petition of Bell Atlantic Corporation and GTE Corporation For Approval of agreement and Plan of Merger*, Case No. PUA980031, Virginia State Corp. Comm'n, Final Order (March 31,

1999). As the Commission is well aware, a similar result occurred in the initial Kentucky merger proceeding. More recently, the Maine Public Utilities Commission declined to approve the proposed merger. See *Bell Atlantic-Maine Notice of Proposed Merger With GTE Corporation*, Docket No. 98-808, Maine Pub. Utils. Comm'n, Order On Reconsideration (August 25, 1999). As noted above, a copy of this brief Order is included as Attachment I to this Reply Brief. As the Joint Applicants note in their initial Brief, at 58, footnote 13, nine other state Commissions besides the Kentucky Commission are currently holding proceedings involving the approval of the proposed merger under relevant state law.

IV. CONCLUSION

Sprint urges the Commission to deny the Joint Applicants' request for merger authority filed in this docket. GTE and Bell Atlantic have not met their burden of proof that the proposed merger is "consistent with the public interest." The Commission should not approve the Joint Applicant's merger application based upon the largely unsubstantiated promises and assertions regarding certain "benefits" that Kentucky consumers will supposedly receive as a result of the proposed merger. The burden of proof that this merger is consistent with the public interest is the Joint Applicants' to carry, and they have failed to meet their burden of proof that Kentucky consumers will receive positive benefits as a result of the merger. GTE's and Bell Atlantic's request for merger authority should be denied.

Respectfully submitted this 2nd day of September, 1999.

Sprint Communications Company L.P.

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-and-

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Attorneys for Sprint Communications
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and exact copy of the within and foregoing Reply Brief of Sprint Communications Company L.P. in Docket No. 99-296 via facsimile as indicated by an asterisk (*) and by United States first class mail, postage pre-paid and properly addressed to the following:

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This 3rd day of Sep., 1999.

Danielle E. Black
Sprint Communications Company L.P.
External Affairs

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-808

August 25, 1999

BELL ATLANTIC-MAINE
Notice of Merger with GTE Corporation

ORDER ON
RECONSIDERATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order we have reconsidered our Interim Order of January 8, 1999. We invite Bell Atlantic-Maine (BA-ME) to provide specific information concerning its service provisioning and service quality, including its ordering and repair practices. At this time, we do not decide that BA-ME is exempt from the approval requirement under 35-A M.R.S.A. § 708 for its proposed reorganization that consists of a merger between Bell Atlantic Corporation with GTE Corporation; we also do not approve the proposed merger.

II. BACKGROUND

On October 2, 1998, the Bell Atlantic operating utility in Maine, New England Telephone & Telegraph Company (NET) d/b/a Bell Atlantic-Maine (BA-ME), filed a letter with the Commission stating that its parent corporation, Bell Atlantic Corporation, was planning to merge with GTE Corporation. 35-A M.R.S.A. § 708 requires approval by the Public Utilities Commission of any "reorganization" of a public utility. A reorganization of a public utility includes the "merger" (among other organizational changes) of any "affiliated interest," including one that owns 10% or more of the public utility. Bell Atlantic Corporation owns 100% of NET.

In the same letter, BA-ME claimed that it was exempt from the section 708 approval requirement because of an exemption provision contained in the Stipulation approved by the Commission on July 16, 1993 in Docket No. 86-224.[1]

On January 8, 1999, we issued an Interim Order stating that we would not rule on the exemption claim, but would wait until after rulings on the merger by the United States Department of Justice (DOJ) and the Federal Communications Commission (FCC). On January 25, 1999, BA-ME filed a Motion for Reconsideration of the

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[1] *New England Telephone and Telegraph Company, Investigation of Reasonableness of Rates*, Docket No. 86-224, Order Approving Affiliated Interest Stipulation (July 16, 1993). The exemption provision exempts BA-ME from needing approval for *all* reorganizations "*except* a reorganization resulting in a change of ownership or control of *NET* . . ." (emphasis added).

January 8th Order. In that motion, BA-ME argued that the Commission had initially raised concerns about the effect of the proposed merger on competition and that those concerns were similar to those being considered by the DOJ and FCC. BA-ME requested the Commission to rule that the merger would be approved if the DOJ and FCC approved it. On March 18, 1999, we issued an order reopening the prior order and stating that we would reconsider the Order following a further round of comment. We asked the petitioners to intervene (the Public Advocate and Sprint) to provide us with specific information that would indicate that the merger would have an impact on competition *in Maine*.

III. DISCUSSION AND DECISION

Neither the Public Advocate nor Sprint presented convincing information that the proposed merger would have a negative impact on competition in Maine. We doubt there would be any such impact primarily because GTE has virtually no presence in Maine. It provides service to a limited number of customers as an interexchange reseller. We have granted authority to provide such service to more than 270 interexchange carriers, many of which are facilities-based. Indeed, if the effect on competition were our only concern, we would have little difficulty approving the merger, although, as discussed below, we believe that Bell Atlantic should be subject in Maine to any merger conditions that may be imposed by the DOJ and FCC.

Nevertheless, we are unwilling to conclude that the stipulation in Docket No. 86-224 exempts Bell Atlantic from the approval requirement of section 708 or, in the alternative, to grant automatic approval of the merger upon DOJ and FCC approval. In either event, an important merger that has the potential to affect the operating utility's operations would occur without review by this Commission.

We are uncomfortable with the alternatives stated above for two reasons. First, if the exemption were found to apply, it would exempt major changes in the ownership of a pubic utility from the section 708 approval requirement. Moreover, under the 86-224 Stipulation, whether a particular reorganization were exempt might well depend on the form of the reorganization rather than on its ultimate substantive effect. In this case, it can be argued that BA-ME's claim of exemption is supported by the language of the Stipulation because the reorganization consists of a merger between its parent corporation (Bell Atlantic Corporation) and GTE Corporation and the surviving corporation would be BA-ME's existing parent, i.e., Bell Atlantic Corporation. On the other hand, if GTE (rather than Bell Atlantic) were the surviving corporation of a parent-level merger, or if the operating utility itself merged with another large corporation, the reorganization clearly would not be exempt.

Second, during the past year we have become aware of numerous complaints about Bell Atlantic's service provisioning and service quality. We are aware of problems or alleged problems in retail and wholesale service installations, in network congestion, and in the response time and efficacy of repair services. While we have no way of knowing whether these difficulties are attributable to the change in ownership or

management that occurred as a result of the NYNEX-Bell Atlantic merger in 1997, we also cannot conclude, absent some further showing by Bell Atlantic, that another merger, resulting in an approximate doubling of the size of the existing parent corporation, would not result in further deterioration in service quality. To the extent that BA-ME's small size already makes it difficult for BA-ME to "get the attention" of the Bell Atlantic managers responsible for ensuring service quality, a merger with GTE could in theory exacerbate the problem, because the relative size of BA-ME would diminish in the much larger corporate organization consisting of the merged Bell Atlantic and GTE.

We therefore are unwilling at this time to issue a ruling that the proposed Bell Atlantic-GTE merger is exempt from the approval requirement of section 708 or, as BA-ME has suggested, simply approve the merger. If it proves necessary to address Bell Atlantic's legal claim that the proposed merger is exempt from approval, and if we conclude that we are inclined to agree with that position, we would consider using the provisions of 35-A M.R.S.A. § 1321 to reopen the Stipulation in Docket No. 86-224 and determine whether to modify or terminate the exemption.[2]

As an alternative to addressing the merits of Bell Atlantic's exemption claim, we suggest that Bell Atlantic should agree that the Commission should consider approval of the merger upon conditions related to service, reliability, quality, and provisioning. If Bell Atlantic agrees, it should file a detailed plan for addressing the problems its Maine customers have experienced. The plan should include detailed provisions for ensuring that:

- Service installation and repair appointments will be scheduled without undue delay and that such appointments will be met,
- When scheduled appointments cannot be met, customers will be notified in advance,
- Installations will not be scheduled by customer service personnel unless they know that sufficient facilities exist in the customers' locations,
- The Company has the capability to quickly diagnose and repair calling anomalies (such as those that have occurred in Houlton and Carthage),
- Customers will not experience incorrect services, installations or repairs because of errors introduced by one or more of the Company's automated service order processing systems,

[2] Independently from the present proposed merger, we may find it advisable to reopen the 86-224 Order Approving Affiliated Interests Stipulation in any event because of our concern that major changes in the ownership of a public utility should be subject to review.

- When a serious service problem occurs, the Company will make available to the Commission, on short notice, the Company personnel best qualified to explain the reason(s) for the problem and how it will be corrected, and

- Switches, line units, switch module links, umbilicals, and trunks will not become overloaded.[3]

Given our concern that Maine may receive less attention from a substantially larger Bell Atlantic, because the State will provide a smaller percentage of the Company's revenues and perhaps also because the Company may face less competition here than in other states it serves, the plan should include one additional element. Specifically, it should establish generally applicable procedures under which the Commission, when confronted with future service quality problems, will be able to secure prompt action from the Company officials empowered to authorize the measures needed to remedy the problem. In short, the plan should set forth clear lines of accountability and specific protocols to ensure that service quality problems will be addressed quickly and competently. The plan should leave no doubt in the minds of Bell Atlantic's Maine ratepayers that the merger will in no way jeopardize their right to an acceptable level of telephone service.

We also suggest that Bell Atlantic agree that any conditions any that the DOJ and FCC may impose should also apply in Maine, so that this Commission will have independent enforcement authority.

If Bell Atlantic presents a reasonable approach to addressing the service-related concerns, and commits as a condition of our merger approval to meet these conditions, we expect that the merger could be approved promptly.[4]

Bell Atlantic should file its plan to address these concerns no later than September 30, 1999.[5]

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[3] For its response to the network congestion problems listed in this last item, and related manifestations such as no dial tone, delayed dial tone, blocked calls and fast busy signals, the Company may file the report that it must file in response to Section X of the July 21, 1999 Order in Docket No. 99-132.

[4] As indicated above, no party has raised sufficient Maine-specific objections to warrant a finding that the merger should be rejected. We are, therefore, satisfied that except for the possible impact on service quality, the merger meets the public interest test in section 708.

[5] If Bell Atlantic determines that it prefers instead to rely entirely upon the Stipulation, or proceed in any way other than what we have proposed here, it should notify the Commission no later than August 31, 1999.

Dated at Augusta, Maine, this 25th day of August, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.

Larry D. Callison
State Manager
Regulatory Affairs & Tariffs

GTE Service Corporation

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606 245-1389
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August 30, 1999

Ms. Helen C. Helton
Executive Director
Public Service Commission
730 Schenkel Lane
Post Office Box 615
Frankfort, Kentucky 40602

Re: Joint Application of Bell Atlantic Corporation and GTE Corporation for Order Authorizing Transfer of Utility Control - Case No. 99-296

Dear Ms. Helton:

Enclosed for filing with the Kentucky Public Service Commission ("Commission") are an original and ten copies of the Post-Hearing Brief of the Joint Applicants, Bell Atlantic and GTE, pursuant to the procedural schedule established by the Commission in the above-referenced matter.

At the hearing in this matter on August 24, 1999, two issues were raised requiring response from the Joint Applicants. Firstly, Commissioner Gillis questioned whether a letter he had received from the 9th Ward Alderwoman for the city of Louisville, Ms. Denise Bentley, in support the merger, was written by either an employee of GTE, or a consultant to GTE. The answer to either question is no.

Secondly, Joint Applicant witness John Peterson was questioned regarding the number of pending interconnection agreements before the Commission, and he answered two. Joint Applicants were asked to provide specifics as to which agreements those are. The actual number of pending agreements before this Commission is three, and they are: Case No. 99-347 (BlueStar Networks, Inc. - 252 "Adoption" of the AT&T agreement); Case No. 99-340 (PV Tel - again a 252 "Adoption" of the AT&T agreement); and finally Case No. 99-295 (Topp Comm, Inc. - resale agreement).

I would be most appreciative if you would bring this filing to the attention of the Commission, and should you have any questions about

the enclosed material, please do not hesitate to contact me at your convenience. Thank you for your consideration in this matter.

Yours truly,

Larry D. Callison

Enclosures

c: Hon. Ann Louise Cheuvront - Assistant Attorney General
Hon. William R. Atkinson - Sprint

RECEIVED
AUG 3 0 1999
PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Joint Application of Bell Atlantic Corporation and GTE Corporation for Order Authorizing Transfer of Utility Control	))))	**Case No. 99-296**

POST-HEARING BRIEF OF THE JOINT APPLICANTS

Executive Summary

The merger between GTE and Bell Atlantic should be approved. At the August 24, 1999 hearing, the Joint Applicants demonstrated a good faith commitment to ensure that the merger provides specific benefits to Kentucky consumers, including the following:

- The merged company will maintain GTE South's current quality of service by investing a minimum of $222 million in GTE South's service areas over the three years following consummation of the merger. While GTE South has made commitments to certain specific expenditures as part of its management audit, it has never before made a forward-looking investment commitment of this magnitude.

- The merged company will spend $23.7 million to expand CLASS services (which include Caller ID, Call Blocking, Call Trace, and so on) to the remaining GTE South service areas that do not currently receive such services. 25,000 consumers in GTE South's most rural service areas -- such as parts of eastern Kentucky -- will directly benefit from this commitment. This commitment represents a critical step forward toward constructing a state-of-the-art telecommunications infrastructure reaching all of Kentucky.

- The merged company will offer Local Calling Plans ("LCPs") in all of GTE South's Kentucky exchanges. Currently, only certain exchanges are slated to receive LCPs. The merger will extend this benefit to all of GTE South's service areas in Kentucky.

- The merged company will enter Louisville and compete with Bell South within 18 months of the consummation of the merger.

- The merged company will provide Kentucky consumers with a full service, in-state provider of long distance, data and packaged services.

The Joint Applicants have also shown that the merger will ensure that GTE's customers in Kentucky will continue to be served by a first tier service provider, which will be better able to maintain and improve service quality and to deploy new technologies in the future. Synergies resulting from the merger will drive down costs of procurement and overhead, and GTE South will benefit from the implementation of best practices across the merged company. The merger will make GTE South a stronger service provider, and this can only benefit customers in all of its service territories.

Finally, the Joint Applicants have shown that the merger will have no detrimental impact on Kentucky consumers. Specifically, the Joint Applicants have shown that:

- The merged company will commit to continue to work closely with the Commission to resolve any issue relating to GTE South's earnings in Kentucky, and can address any eventual cost savings resulting from the merger within the context of the Commission's already established procedures and under the rate of return regulation applicable to GTE South.

- The merger will result in no operational or organizational changes to GTE South, and approval of the merger will not change the rates, terms or conditions of service received by Kentucky consumers.

- The merger will have no impact on interLATA services or cellular services in Kentucky.

In light of these commitments and the other evidence presented by the Joint Applicants, the Commission should approve the merger. The Joint Applicants have

carried their burden of proof as to all relevant Kentucky statutory elements and have fully responded to all six issues identified by the Commission in its April 14 Order.[1] There has been no question in this case about Bell Atlantic's qualifications, or about the legality or propriety of the merger. The evidence presented at the hearing shows unequivocally that the merger is consistent with the public interest: it will have no detrimental impact on Kentucky consumers, and will result in significant, tangible benefits for them. Indeed, in the face of the evidence presented by the Joint Applicants, it is difficult to imagine how Kentucky consumers could possibly benefit if the merger were denied. Kentucky consumers -- including consumers in GTE South's most rural areas such as eastern Kentucky -- will be better off if the merger is approved, and thus the merger is "consistent with the public interest."

[1] Order, *Joint Application of Bell Atlantic Corp. & GTE Corp.*, Case No. 98-519 (Apr. 14, 1999) (the "April 14 Order").

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INTRODUCTION

GTE Corporation ("GTE") and Bell Atlantic Corporation ("Bell Atlantic") (the "Joint Applicants") respectfully request, pursuant to Kentucky Revised Statutes §§ 278.020(4) and (5), that the Kentucky Public Service Commission (the "Commission") approve the merger of GTE and Bell Atlantic.

The Joint Applicants filed their application for approval with the Commission on July 9, 1999, including with it thirteen exhibits containing extensive operational and financial information on each of the Joint Applicants and the merger. Additionally, the Joint Applicants submitted direct testimony from eight[2] senior GTE and Bell Atlantic employees with an average of almost 24 years of service in their respective companies, as well as extensive testimony from a highly respected expert in the field of telecommunications industry economics. The Joint Applicants also provided rebuttal testimony and presented all of their witnesses at a hearing held August 24, 1999.

Under §§ 278.020(4) and (5), the Commission shall approve the acquisition of a utility "if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service" and if "it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest." The Joint Applicants' uncontroverted evidence shows that (1) the merged company will have the financial, technical, and managerial abilities to provide reasonable service; (2) the merger is in accordance with law; and (3) the merger is for a proper purpose.

[2] The Joint Applicants substituted Jeffrey Kissell for William Griswold prior to the hearing, and as such seven GTE and Bell Atlantic witnesses appeared at the hearing.

The Joint Applicants' evidence also shows that the merger is "consistent with the public interest." The Joint Applicants have shown that the merger is a parent company merger that does not entail any reorganization, consolidation, or transfer of the assets of GTE's operating subsidiary in Kentucky, GTE South Incorporated ("GTE South").[3] Approval of the merger will not result in any change to the rates, terms or conditions of GTE South's services, the quality of those services, or this Commission's regulatory authority over GTE South. The Joint Applicants have thus shown that the merger can have no detrimental impact on GTE South's customers.

Moreover, the merger will have no material impact on employment. To the contrary, the unions representing GTE South's hourly workers strongly support the merger because it will result in job creation. The Communications Workers of America have publicly stated that the job the merger will create "will be good jobs" because the merging companies "recognize the value of a high-skill, high quality, productive workforce and good labor-management relations." Joint Application, Exhibit 13, at 6

The uncontroverted evidence at the August 24 hearing proved that the merger will provide Kentucky consumers with significant benefits, as the Joint Applicants have

[3] Several other GTE affiliates also provide telecommunications services in Kentucky: GTE Communications Corporation ("GTECC") is authorized to provide local services as a competitive local exchange carrier ("CLEC") and to provide long distance service; GTE Mobilnet of Clarksville Incorporated, GTE Wireless of the Midwest Incorporated, GTE Wireless of the South Incorporated, and Kentucky RSA No. 1 Partnership provide wireless service in various Kentucky metropolitan statistical areas ("MSAs") and rural service areas ("RSAs"). In accordance with the Commission's Order of January 8, 1998, Administrative Case No. 370, the Joint Applicants notified the Commission of the pending transfer of these affiliates' certificates. *See* Joint Application at 28 n.5.

shown in the detailed information and substantial commitments they made in response to the Commission's April 14 Order.[4]

First, the Joint Applicants committed to extend advanced CLASS services to 100% of GTE South's exchanges in Kentucky within 48 months of the consummation of the merger. Mr. Reed and Mr. Kissell explained at the hearing that, in the absence of the merger, GTE South would not undertake this initiative on its own in view of the extremely high cost of extending CLASS services to the very rural areas where they are not yet provided ($23.7 million) compared to the limited number of customers (about 25,000) this extension will reach. Tr. 59-61 (Kissell); 104-106 (Reed). However, savings from the merger will place GTE South in a better position to absorb this cost. Thus, the merger will result in significant benefits to the most rural areas of Kentucky. *See* April 14 Order, ¶¶ 1, 6.

Second, the Joint Applicants committed that the merged company will invest a minimum of $222 million over the three years following the merger to ensure that the merger has no negative impact on quality of service. GTE South has never made an investment commitment of this magnitude in Kentucky. This commitment, which will allow GTE South to maintain its current level of capital investment in Kentucky, addresses directly the Commission's concern that the merger should have no adverse impact on service quality. *See id.*, ¶ 2.

[4] The April 14 Order required the Joint Applicants to address deployment of advanced services, quality of service, consolidation of GTE South, interLATA services, competition and the allocation of cost synergies to Kentucky operations.

Third, the Joint Applicants will expand local calling plans to the remaining GTE South exchanges that do not currently benefit from such plans. *See id.*, ¶ 2.

Fourth, the Joint Applicants have shown that the merger does not entail consolidation of GTE South with any other operating company. Bell Atlantic has no local telephone operating company in Kentucky -- it only has two subsidiaries that provide resold long distance service to a very small number of customers. Thus, there will be no merger of operating companies in Kentucky following the merger of GTE and Bell Atlantic, and there will be no organizational or structural changes to GTE South. *See id.*, ¶ 3.

Fifth, the Joint Applicants have shown that the merger will have no impact on any interLATA interexchange services offered by GTE or Bell Atlantic affiliates in Kentucky. Under federal law, both GTE and Bell Atlantic are permitted to originate interLATA interexchange services in Kentucky today and the merged company likewise will be permitted to do so after the merger. Nor will the merger in any way alter GTE South's current interLATA local calling routes provided to Kentucky customers. Additionally, the merger will have no adverse impact on cellular customers of GTE and Bell Atlantic affiliates in Kentucky. *See id.*, ¶ 4.

Sixth, the merger will not increase GTE South's market power in Kentucky, nor will it result in any anticompetitive effect that would work to the detriment of GTE South's competitors or Kentucky consumers. *See id.*, ¶ 5. Significantly, the Department of Justice ("DOJ") cleared the GTE/Bell Atlantic merger three weeks after the April 14 Order and chose *not* to raise any objections to the merger based on antitrust or market power issues in Kentucky or anywhere else. As Dr. Taylor explained at hearing, the

DOJ is statutorily charged with determining if the merger would have an anticompetitive effect in any market, and thus would not have cleared the merger if it believed there were material anticompetitive effects in any state, including Kentucky. Tr. 195-196.

Moreover, the merger will have significant procompetitive benefits, given that the merged company will enter Louisville within 18 months after completion of the merger, and will become a significant competitor in the markets for long distance, Internet and packaged services throughout Kentucky. There will be no anticompetitive effects because GTE South will still be subject to the procompetitive regulations of this Commission, the Telecommunications Act of 1996 (the "1996 Act") and the provisions of its interconnection agreements with competitive local exchange carriers ("CLECs"). *See id.*, ¶ 5. Additionally, the merged company will honor all of GTE South's existing interconnection agreements in Kentucky.

Seventh, Messrs. Shuell and Shore provided the Commission with extensive details regarding the $2 billion in cost synergies and $500 million in capital synergies that they estimate will result from the merger, and an allocation of cost synergies to intrastate regulated operations in Kentucky. *See id.*, ¶ 6. The methodology and final results of their analyses have not been challenged in this proceeding. As is noted above, cost synergies allocable to Kentucky intrastate regulated operations will place GTE South in a better position to deploy advanced services in Kentucky, such as the extension of CLASS services mentioned above, and will make GTE South a better service provider and competitor.

As Mr. Blanchard discussed in his prefiled testimony and at the hearing, it is not necessary or advisable to address savings from the merger by ordering an immediate

reduction. Blanchard Direct at 10-12; Tr. 283-288. Savings attributable to Kentucky will flow through to the regulated books of GTE South in Kentucky in the normal course of business under the rate of return process. Moreover, estimates of savings, however reasonable, are estimates, and furthermore are only one of many factors that can impact future earnings. Mr. Blanchard testified that GTE South is committed to working with the Commission to address earnings and rates issues with or without the merger. Tr. 316-317. It would be consistent with this Commission's longstanding practice to address merger savings as part of the Commission's current monitoring process, when such savings are actually realized, and as they may relate to other changes in earnings and costs over time.

Because the Joint Applicants have met the requirements of the Commission's April 14 Order, shown that the merger will have no detrimental impact, and shown that the merger will result in benefits to Kentucky consumers, they have clearly shown that the merger is consistent with the public interest. The merger thus meets the requirements of Kentucky law, and the Joint Application for approval of the merger should be approved.

DISCUSSION

I. THE MERGER IS A PARENT COMPANY MERGER ONLY THAT WILL RESULT IN NO ORGANIZATIONAL CHANGE TO GTE SOUTH.

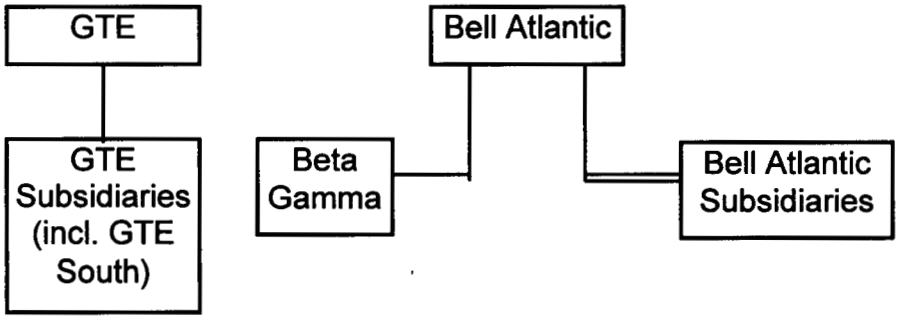
The structure of the merger has been set forth in detail in the Joint Application, the Joint Proxy Statement attached to the Joint Application as Exhibit 9, and in testimony. Joint Application at 9-12; Griswold Direct at 5-10; Tr. 48-50 (Kissell). The parent company merger will not have any significant impact on state-level operations in

Kentucky because it entails no operational consolidation and no change to GTE South. Joint Application at 11-12; Griswold Direct at 8-10; Reed Direct at 5-7, 10-11; Tr. 307-308 (Blanchard). Moreover, the merger will not require any sale of any GTE South assets or exchanges. Griswold Direct at 8; Tr. 81 (Kissell).

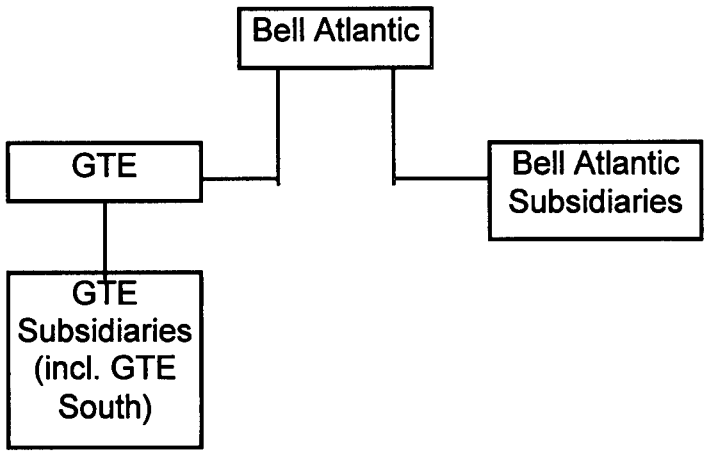
As to the structure of the merger, GTE will merge with Beta Gamma Corporation ("Beta Gamma"), a wholly owned subsidiary of Bell Atlantic that was formed solely for the purpose of facilitating the merger transaction, has no operations or employees of its own, and will cease to exist once GTE merges into it. *See* Joint Application, Exhibit 9, App. A, Agreement and Plan of Merger Dated as of July 27, 1998 ("Merger Agreement"), Art. I, § 1.1. After this merger, GTE will be a subsidiary of Bell Atlantic, and GTE shareholders will receive 1.22 shares of Bell Atlantic stock for every share of GTE stock in a tax-free exchange. *See id.* Art. II, § 2.1. After the exchange, the transaction will be complete and no further legal or structural change to any of GTE's operating subsidiaries is required or contemplated. Joint Application at 9-12; Griswold Direct at 8-9. Thus, after the merger, GTE will continue to have exactly the same relationships to GTE South and its other operating companies that it had before the merger.

A pre-merger organizational chart would thus appear as follows:

Pre-Merger



Post-Merger



The Commission has repeatedly approved mergers with exactly the same type of structure. *See* Order, *Application of WorldCom, Inc. & MFS Communications Co.*, Case No. 96-432 at 2 (Ky. P.S.C. 1996) (Slip Op.) ("*WorldCom/MFS*"); *see also* Order, *Joint Application of GTE Corp. & Contel Corp.*, Case No. 90-278 at 1 (Ky. P.S.C. 1990) (Slip Op.) ("*GTE/Contel*"). The structure of this merger should thus not pose any impediment to approval by the Commission.

Because the merger will have no impact on the organizational structure of GTE South, it will continue as a legal entity separate from any other local exchange carrier. Thus, the merger will not diminish the Commission's regulatory authority over GTE South. Griswold Direct at 10; Blanchard Direct at 6. Accordingly, GTE South will continue to provide service under the tariffs it has on file with the Commission, and will continue to be governed by all applicable rules and regulations of this Commission.

Aside from legal and structural changes, the merger will have no adverse impact on the management structure of GTE South or on its employees. As noted above, Mr.

Reed stated that the merger will not have an impact on the number of hourly workers GTE needs to provide service in Kentucky, and thus the merger will have no material negative impact on hourly employment levels in Kentucky. Tr. 101-102 (Reed); *see also* Griswold Direct at 16-18. As Mr. Reed succinctly stated at the hearing, the best way he could characterize the impact of the merger was "business as usual. . . . I need the same number of phone technicians, cable splicers, installers, toll operators as I did the day before [the merger]. And that will not change." Tr. 101-102.

Nor will the merger cause any management changes that would have a negative impact on GTE South. At the level of corporate headquarters management, GTE and Bell Atlantic will each select half of the Board of Directors of the merged parent company, and Charles Lee, GTE's Chairman and Chief Executive Officer, will be Chairman (through June 2004) and Co-Chief Executive Officer (through June 2002) of the merged company. Joint Application at 11; Griswold Direct at 6-7; Tr. 49-50, 69 (Kissell). Other corporate headquarters changes have not yet been announced, but, as Mr. Kissell explained, GTE and Bell Atlantic's current executives are responsible for the companies' respective current operations. Tr. 49-50. Therefore, in order to maintain current operations, the Joint Applicants have to wait until shortly before consummation of the merger to make any changes in senior management. Tr. 66-67 (Kissell). Ultimately, however, the top executives of the merged company will be a "blend of the senior managers of both companies." Joint Application at 11. Moreover, regardless of what happens to executives at the corporate level, the merger will not result in any adverse change to management of GTE South's Kentucky operations and, as has been

explained above, no other organizational or structural impact. Tr. 102 (Reed); Tr. 307-308 (Blanchard); Griswold Direct at 18.

II. THE MERGED COMPANY WILL HAVE THE FINANCIAL, TECHNICAL, AND MANAGERIAL ABILITIES TO PROVIDE REASONABLE SERVICE.

Section 278.020(4) requires the Commission to find that Bell Atlantic and the merged company have the "financial, technical, and managerial abilities to provide reasonable service." The Joint Applicants' uncontroverted evidence has shown that the merger meets this requirement for two reasons.

First, Bell Atlantic and GTE's qualifications to manage and operate a telecommunications company are manifest. In 1998, Bell Atlantic served 41.6 million access lines across 14 jurisdictions and had operating revenues of $31.6 billion, while GTE served 23.5 million access lines across 28 jurisdictions and had operating revenues of $25.5 billion. *See* Joint Application at 6-8. Both are generally recognized as leading providers of telephone, wireless, and other telecommunications services. *Id.*; Griswold Direct at 11. Thus, the merged company will have the managerial and technical skills of Bell Atlantic and GTE, each of which is clearly capable of providing reasonable service. No party to this proceeding has questioned the qualifications of either Joint Applicant or the resulting merged company.

Second, the merger is a stock transaction. As such, neither the Joint Applicants nor GTE South will incur any form of indebtedness to finance the merger, nor will any GTE assets need to be sold to finance the merger. Joint Application at 10-11; Griswold Direct at 6-18, 10-11; Tr. 81 (Kissell). Finally, the merged company's total assets (from combined assets as of December 31, 1998), will be $99 billion. Joint Application at 12.

For these reasons, it is clear that the merger will in no way impair, and is likely to improve, the financial strength of the merged company and its subsidiaries. No party has challenged this fact.

Therefore, because Bell Atlantic currently has and the merged company will have the "financial, technical and managerial abilities to provide reasonable service," the proposed merger meets the requirements of Section 278.020(4).

III. THE MERGER WILL BE MADE IN ACCORDANCE WITH LAW AND FOR A PROPER PURPOSE.

The merger will close when GTE and Bell Atlantic have obtained all necessary state and federal regulatory approvals, and it will be consummated in a manner that is consistent with all applicable laws. *See* Merger Agreement, Art. VIII. Furthermore, the merger is consistent with and in furtherance of GTE and Bell Atlantic's legitimate business goals and strategies. *See Id.*, Recital 4; Griswold Direct at 11. No party to this proceeding has provided any evidence to the contrary. Accordingly, the merger meets these requirements of Section 278.020(5).

IV. THE MERGER IS CONSISTENT WITH THE PUBLIC INTEREST.

The Joint Applicants have shown that this merger is consistent with the public interest because it will result in significant benefits to GTE South's current customers and Kentucky consumers generally, and will have no detrimental impact. First, the Joint Applicants have provided the Commission with all of the information required by the April 14 Order, and made several commitments to ensure that the Commission's concerns regarding the impact of the merger on Kentucky consumers are fully addressed. Second, the merger will have numerous procompetitive benefits and no

anticompetitive effects. Third, the companies will be able to improve service to Kentucky consumers by implementing best practices throughout the merged company. Fourth, the parent company merger will have no detrimental impact on GTE South or Kentucky consumers. Fifth, approving the merger is consistent with the Commission's own precedent and the persuasive authority of other Commissions.

In explaining why the merged company's entry into Louisville was not the primary, but only one of many, benefits of the merger, Mr. Kissell best summarized how the merger will benefit GTE South's current customers and consumers in Kentucky generally:

> [T]he benefit of bringing two companies together like Bell Atlantic and GTE will result in service quality improvements as a result of best practices. It will drive down the operational costs of GTE, in total, which will eventually be passed on through rate base regulations to Kentucky consumers. . . . I think the absolute worst case the worst thing that could happen as a result of this merger on Kentucky consumers is no change at all. And then if you add in the fact of best practices, lower cost, more expansion of CLASS services, greater focus on sending out the local calling plan, . . . all of those benefits accrue to Kentucky consumers as a result of this merger . . . .

Tr. 80-81. For these reasons, and as is further discussed below, there can be no doubt that this merger is consistent with the public interest, and should be approved by the Commission.

A. The Joint Applicants Have Provided The Commission With The Information Requested In the April 14 Order.

In the April 14 Order, the Commission dismissed, without prejudice, the Joint Applicants' previous application for approval of their merger. The Commission requested that the Joint Applicants address several issues in a new filing, and provide additional information and evidence. April 14 Order at 2-4. The Joint Applicants

provided the required information in their Joint Application, prefiled testimony, responses to data requests and testimony at the hearing. In so doing, they not only provided the information sought by the Commission, but made a number of significant commitments to service in Kentucky. These commitments are contingent on merger approval, and are designed to ensure that the merger will (1) have no detrimental impact in Kentucky and (2) result in direct benefits to Kentucky consumers.

1. Benefits To Kentucky Of The Proposed Merger

a. Commitment To Expand Class Services

The April 14 Order requires the Joint Applicants to identify benefits resulting from the merger, and specifically to identify advanced services that will be made available in Kentucky and services that will be packaged and offered to Kentucky consumers. *Id.*, ¶ 1. Although Sprint argued that CLASS services do not meet the FCC's recently issued definition of "advanced services," the April 14 Order made no reference to the FCC definition and did not define "advanced services" in that way. CLASS services indeed are advanced services for the customers who will benefit directly from this commitment -- the 25,000 customers in rural areas, such as eastern Kentucky, who currently receive only basic dialtone service. Kissell Rebuttal at 5; Tr. 105 (Reed). Those customers will be able to select from an array of customer calling features never previously available in their GTE South serving area. Moreover, small businesses and entrepreneurs in these areas will soon have a far more advanced telecommunications infrastructure to attract their investment dollars.

The financial basis for the commitment was explained by Mr. Shore, who testified that the merger will, after three years, result in $7.2 million per year of net savings

attributable to Kentucky intrastate regulated operations. Shore Direct, Schedule B.5. Accordingly, as Mr. Kissell and Mr. Reed explained, the merged company will extend advanced CLASS services to 100% of GTE South's Kentucky exchanges within 48 months of the consummation of the merger, if the merger is approved. Griswold Direct at 12-13; Reed Direct at 8.

Expansion of CLASS services represents a significant commitment by the Joint Applicants to improve service and infrastructure in some of GTE South's most rural service areas. Although the remaining exchanges without CLASS service amount to approximately 25,000 access lines (6% of GTE South's total in Kentucky), the cost of expanding CLASS services to these remaining areas amounts to $23.7 million. Tr. 104-105 (Reed). This investment is necessary because offering CLASS services requires far more than turning the service on at the switch: as Mr. Reed explained, offering CLASS services requires substantial upgrades in 103 exchanges -- 95 remote switching units and 8 base units – as well as right to use fees, card replacements at the switch, and the provision of SS7 connectivity from host switches to remotes. Tr. 105-106, 126-127 (Reed).

Because of the significant investment required, this expansion will not occur without the merger. As Messrs. Kissell and Reed explained, the areas within Kentucky that currently lack CLASS services are very rural, and the expected revenue from these final exchanges will not cover the costs of the expansion for so long that the investment would not normally be economically viable or attractive for GTE South acting on its own. Tr. 59-61, 67-68 (Kissell); Tr. 105-106, 110-111 (Reed); *see also* Joint Applicants' Responses to PSC's First Set of Data Requests and Interrogatories, No. 1. Moreover, it

is extremely unlikely that any competitors will enter these service areas to provide CLASS services. Tr. 60, 69 (Kissell). Thus, absent some affirmative commitment to bring CLASS services to these remaining exchanges, they will not receive such services for the foreseeable future. However, because the merger will strengthen GTE South's financial position and access to capital, it is reasonable to make a commitment to such expansion as part of this merger proceeding. As Mr. Bone explained, Bell Atlantic expanded CLASS services in West Virginia in very much the same way, stemming from a commitment made in conjunction with its alternative regulatory plan. Tr. 165-167, 184.

That this will be a tangible benefit to Kentucky consumers cannot be doubted. Although some residents in these areas may decide not to purchase CLASS services when available, others will, and will be able to receive the benefits of Caller ID and other such services that are available in the rest of GTE South's service territories. Tr. 67-68 (Kissell); Tr. 164-167 (Bone). Moreover, all of GTE South's service areas – from Lexington to the most rural areas of eastern Kentucky – will receive the same range of basic and advanced telecommunications services over the most up-to-date network facilities available. Tr. 302-304 (Blanchard). Mr. Bone testified that CLASS expansion throughout all of West Virginia was exactly the type of substantial infrastructure investment that has been instrumental in drawing investment and new jobs to some of West Virginia's most rural service areas. Tr. 170-172.

Although CLASS services will definitely be made available throughout Kentucky if the merger is approved, the merger will also make numerous other new and advanced services available. As Mr. Kissell testified, the merged company will enjoy economies

of scale "that will allow the merged company to recover the capital investment required for new, advanced data services faster than GTE or Bell Atlantic could on a stand-alone basis." Kissell Direct at 9. Accordingly, advanced voice and data services, such as Cyber-ID and Universal Messaging, can be made more broadly available in a shorter period of time in Kentucky. Kissell Direct at 9-10; *see also* Tr. 71-72 (Kissell).

b. Packaged Services

The April 14 Order also asked for details regarding the packages of services that the merged company will offer after the merger. April 14 Order, ¶ 1. Mr. Kissell described how the Joint Applicants will offer packages of local, long distance, data, Internet and wireless services to large business, small business and residential customers that are competitive with those currently offered by its major competitors or that are expected to be offered in the near future. Kissell Direct at 10-14. Moreover, Mr. Kissell also explained that GTECC's current packages of local, enhanced and long distance services are examples of the packages the merged company would offer, and Mr. Bone provided further examples by discussing the packages Bell Atlantic currently offers in West Virginia. Kissell Direct at 13-14; Bone Direct at 8-9; Tr. 133-36 (Bone).

Mr. Kissell also explained that the merger will allow GTE to develop and deploy long distance, data and other advanced services faster than it would be able to do on its own, thus making packaged services available to Kentucky consumers. Kissell Direct at 15-16; Tr. 70-72 (Kissell). Mr. Kissell stated at the hearing that the pace of spillover of advanced services to residential and small business customers will be accelerated by the merger, as will the pace of migration of such services to rural Kentucky. Tr. 71-72. Indeed, Mr. Kissell testified that the merger is necessary to ensure that GTE can

provide full packages of services to all of its current and future customers. The cost of building out a long distance and Internet backbone, and of entering new markets, is such that, absent the merger, "it is highly unlikely that GTE will [offer full packages of services] in the foreseeable future" in Kentucky. Kissell Direct at 16.

In summary, the Joint Applicants have shown that the merger will result in significant benefits in terms of new and advanced services in Kentucky. They have done so by making a commitment to provide the same CLASS services in all of GTE South's service areas, including its most rural areas. They have also done so by providing the Commission with specific examples of the types of packages and advanced internet services that the merged company can provide within its current service areas and in new areas it might enter as a result of the complementary strengths and assets the combined companies parent companies will possess. While specific pricing of specific services can only be developed at such time as the merger takes place, the merger will undoubtedly allow GTE South to provide such services to more customers on a more competitive basis than it could possibly do so on its own.

2. Service Quality

a. Capital Investment Commitment

The April 14 Order requires the Joint Applicants to show that service quality will not erode in Kentucky after the merger. April 14 Order, ¶ 2. As Mr. Reed explained, the merger will not impact GTE South's current level of service, given that the merger entails no change to GTE's operations in Kentucky and will not diminish GTE South's obligation to meet the quality of service standards established by this Commission. Griswold Direct at 8-10; Blanchard Direct at 4-7. Moreover, to address the

Commission's concerns regarding quality of service and to further underscore and guarantee GTE South's continuing commitment to service in Kentucky, the Joint Applicants have also committed to invest a minimum of $222 million in Kentucky over the three years following consummation of the merger. Reed Direct at 9. This investment – which does *not* include any funds that would be necessary for the merged company's expansion into Louisville (Tr. 81-82 (Kissell)) – is designed to maintain GTE South's current level of capital spending ($74 million in 1999) for a reasonable period of time, in order to ensure that the merger will not have any adverse impact on service quality. Tr. 317 (Blanchard).

At the hearing, Sprint attempted to call this commitment into question by implying that it is essentially the same as the amount GTE South is spending today and that GTE South could make this commitment regardless of the merger. Tr. 23-24 (Kissell); 94-95 (Reed). Sprint, however, misses the point. The commitment ensures that current service quality levels do not diminish as a result of the merger by maintaining current investment levels. Kissell Rebuttal at 11. Moreover, while GTE South might spend the same amount over the next three years regardless of the merger, there would be no *commitment* to do so absent the merger. Tr. 23-24 (Kissell). GTE South has never been required (even as part of its management audits) to make a forward-looking, guaranteed capital investment of as much as $222 million. Tr. 111 (Reed).

Sprint tried to show that the commitment is not reliable by criticizing the Joint Applicants' statement that the commitment was subject to change "only in the event of a change in economic conditions outside of the merged company's control." Reed Direct at 9; Tr. 24-25 (Kissell); Tr. 116-117 (Reed). This criticism is obviously exaggerated

and misplaced. As Mr. Reed and Mr. Kissell explained, it would be unsound business practice and poor public policy to require specific levels of capital spending regardless of economic conditions. GTE South spends a certain percentage of its annual capital investment keeping up with line growth. If annual line growth decreases because of a change in economic conditions, but GTE South nevertheless spends the same amount budgeted for growth, GTE South would waste this investment. Tr. 26-28 (Kissell). The Commission could not possibly want such a result, and as such the Joint Applicants' narrow caveat is reasonable. *See* Kissell Rebuttal at 11. Indeed, Mr. Reed committed that the merged company would notify the Commission and seek its permission to alter its spending commitment in the event of a change in economic conditions. Tr. 118.

Notably, in Sprint's haste to criticize this unprecedented capital commitment (one that Sprint itself has never made in Kentucky), Sprint ignores the fact that it is a *minimum* amount of investment. As Mr. Reed explained, it is quite possible that GTE South will experience more line growth than is currently anticipated, and as such may find it necessary to invest more money in building out and maintaining network facilities in a given year. Tr. 116-117. Mr. Reed testified that GTE South experienced unexpected line growth this year as a result of the location of a calling center for software customer support in Hazard County, and has thus spent $1 million more on growth this year than was originally anticipated. Tr. 117-118. Moreover, Bell Atlantic's experience in West Virginia – where it has had a virtually identical commitment in dollar terms to that offered here ($225 million over three years) – is instructive. Far from only barely meeting this commitment, Mr. Bone explained that his company has far exceeded the minimum commitment in the past year. Tr. 179-180. As Mr. Bone also

explained without contradiction, Bell Atlantic's service quality in West Virginia has remained strong and steady following the merger with NYNEX, even though that merger had the effect of reducing by half the relative size of the West Virginia company compared to the parent. Bone Direct at 12-13; Bone Rebuttal at 7-8; Tr. 179-180.

b. Local Calling Plan Commitment and Management Audits

The Joint Applicants have also committed to deploy local calling plans ("LCPs") to the remainder of Kentucky exchanges that do not currently benefit from LCPs. Reed Direct at 9-10. As Mr. Reed explained, while GTE South had planned on some expansion of LCPs, it had no immediate plans to offer LCPs in *all* of its exchanges in Kentucky, and the merger will allow GTE South to do so faster than it normally would. Tr. 112, 119, 123-24 (Reed). Thus, the merger will result in a clear step forward in bringing enhanced, affordable services to GTE South's rural Kentucky exchanges.

The April 14 Order also asked the Joint Applicants to explain how GTE South will continue addressing problems identified in its management audit. April 14 Order, ¶ 2. Mr. Reed has addressed this requirement in detail in his direct testimony by discussing GTE South's current capital spending and major programs. Reed Direct at 3-5; *see also* Tr. 93-94 (Reed). None of this expenditure has been or will be impacted by the merger.

3. Merger Of Operating Companies

The April 14 Order requires Bell Atlantic and GTE to "supply information concerning their intention to continue operating separately, the expected time frame to merge their operating companies, and the effect that the merger of operating companies would have on rates and services in Kentucky." April 14 Order, ¶ 3. As has been

explained above, the parent company merger will have *no* organizational impact on GTE South. Furthermore, Mr. Blanchard explained that Bell Atlantic does not have a local exchange operating company in Kentucky, and thus there are no plans to merge GTE South's Kentucky operations with any other operating company. Blanchard Direct at 3. Indeed, there are only two states where GTE and Bell Atlantic both have local exchange operations: Pennsylvania and Virginia. Even in these states, GTE and Bell Atlantic will continue to operate as separate legal entities and the operating companies will continue to provide services under their own respective tariffs. *Id.*

4. Impact Of The Merger On InterLATA Services And Cellular Customers

The April 14 Order requires the Joint Applicants to discuss whether the merger will have an impact on (1) interLATA local calling routes currently provided to GTE South's Kentucky customers; (2) interLATA service currently offered by GTECC to customers in Kentucky; and (3) GTE or Bell Atlantic's cellular customers. April 14 Order, ¶ 4. Mr. Blanchard explained that § 271 of the 1996 Act prohibits Bell Operating Companies such as Bell Atlantic from offering InterLATA services in their current "in-region" territory until they meet a 14-point check list, but this requirement will not apply to the merged company in Kentucky. Blanchard Direct at 8-9. This is because, under the terms of the 1996 Act and as the FCC itself has confirmed, § 271 applies only to Bell Operating Companies in the states in which they operated as of February 7, 1996, the day before the 1996 Act became effective. *See* Order, *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations From: Southern New England Telecommuns. Corp., Transferor, to SBC Communs., Inc., Transferee*, 13

FCC Rcd 21,292 (1998), ¶¶ 35-36. Thus, because Kentucky was not part of Bell Atlantic's region, the merger will have no effect whatsoever on the merged company's ability to continue GTE's current interLATA services to its Kentucky customers. Accordingly, there will be absolutely no impact of the merger on GTE South's 47 local calling routes that cross interLATA boundaries in Kentucky. Blanchard Direct at 9; Tr. 296-297. For the same reason, the merger will have no impact on the ability of GTECC, or on the ability of Bell Atlantic's long distance subsidiaries,[5] to provide long distance service to customers in Kentucky.

Mr. Blanchard also explained that there are no overlaps of Bell Atlantic or GTE affiliated cellular areas in Kentucky. In fact, Bell Atlantic has no cellular properties at all in Kentucky. Thus, while the DOJ required GTE and Bell Atlantic to divest certain wireless properties as a condition to approving the merger, *see* Joint Application, Exhibits 10-12, the merger will have no impact on GTE's current cellular customers in Kentucky. Blanchard Direct at 9-10.

5. Competition

The April 14 Order required the Joint Applicants to address "the consequences their proposed merger will have on competition and telecommunications services in Kentucky," and discuss the impact of any changes on "GTE's ability to provide reasonable service at fair, just, and reasonable rates." The April 14 Order also requires the Joint Applicants to explain why "the merger will not enable the Joint Applicants to exercise inappropriate market power in Kentucky." April 14 Order, ¶ 4.

[5] Bell Atlantic Communications, Inc. ("BACI") and NYNEX Long Distance Company ("NLD"), d/b/a

Given the number of issues related to competition, the Joint Applicants' response to the Commission's requests regarding competition are discussed in full below. *See* Section IV.B, *infra*. In summary, the merger will result in procompetitive benefits and no anticompetitive effects. The merged company's commitment to enter Louisville within 18 months following consummation of the merger will provide consumers there with a strong competitive alternative to Bell South. The merger will do nothing to prevent CLECs from entering GTE South's current service territories, and will in no way diminish the GTE South's market opening obligations under the 1996 Act, this Commission's regulations, or the many interconnection agreements that are currently binding on it. Taylor Direct at 9; Peterson Direct at 9-10; Peterson Rebuttal at 8-9; Tr. 235-236 (Peterson). Indeed, the merged company will honor all of GTE South's existing interconnection agreements – the merger will have no impact whatsoever on the continuing effect of these interconnection agreements, or the market opening obligations that apply to GTE South because of them.[6] Taylor Direct at 9; Peterson Direct at 9-10; Peterson Rebuttal at 8-9; Tr. 235-236 (Peterson). There will thus be no adverse effect on competition in Kentucky, nor will a change in competitive conditions impact on GTE South's ability to provide reasonable service at fair, just, and reasonable rates. Taylor Direct at 11; Blanchard Direct at 10.

Bell Atlantic Long Distance.

[6] Bell Atlantic has no interconnection agreements in Kentucky, but commits that the merged company will honor GTE South's existing interconnection agreements in Kentucky.

6. Costs And Savings

a. Calculation Of Net Merger Savings

The April 14 Order requires the Joint Applicants to provide an analysis of total projected merger costs and savings and to describe all of their assumptions. April 14 Order, ¶ 6. Furthermore, the April 14 Order requires the Joint Applicants to allocate costs and savings to the Kentucky jurisdictional level, including a plan of how "tangible cost savings" will be provided "through rate reductions or network upgrades." *Id.*

Mr. Shuell explained in his testimony that the merger will result in an estimated $2 billion in cost savings and an estimated $0.5 billion in capital synergies across all operations of both companies. Shuell Direct at 27. To achieve these synergies, Mr. Shuell estimated that the merged company will incur $1.8 billion in transaction and implementation costs over the three years following consummation of the merger. *Id.*

Mr. Shore explained in detail at hearing how the Joint Applicants netted merger costs against merger savings and how net savings are properly allocated to intrastate regulated GTE South operations in Kentucky. Tr. 273-278. Although costs of the merger will exceed savings the first year after the merger, Shore Direct, Schedule B.5, the Joint Applicants will not seek any special rate increase to obtain recovery of these first year costs from Kentucky ratepayers, given that savings will exceed costs in the following two years and eventually amount to an estimated net savings of $7.2 million a year allocable to Kentucky. *Id.*; *See also* Joint Applicants' Responses to PSC's First Set of Data Requests and Interrogatories, Response No. 10. The Joint Applicants also provided the work papers on which the analysis of Messrs. Shuell and Shore is based,

thus addressing directly the Commission's requirement that the Joint Applicants explain all of the assumptions underlying their calculations.

The Joint Applicants have committed to invest the Kentucky-specific savings in Kentucky's telecommunications infrastructure, particularly in GTE South's most rural areas such as eastern Kentucky, by deploying CLASS services in all of its local exchanges within 48 months of the consummation of the merger. Cost savings will also make the merged company more competitive – it will be better able to respond to competitive pressure, and will have more flexibility in developing new services. Kissell Direct at 5-6; Tr. 152-154 (Bone). As Sprint's witness, Dr. Rearden, acknowledged at the hearing, "[a]ny firm that can reduce its costs is going to become a stronger competitor." Tr. 330-331. Only by lowering costs and becoming as efficient as possible can GTE (and Bell Atlantic) maximize their ability and flexibility to meet customer needs. Thus, cost savings will result in direct benefits to Kentucky consumers, but will also result in the additional substantial benefit of making GTE South a stronger service provider.

b. A Rate Reduction Is Neither Appropriate Nor Necessary

Nothing in §§ 278.020(4) or (5) requires merging companies to make a rate reduction to ensure that a merger is in the public interest. Nor is it necessary to order a rate reduction to ensure that this merger is in the public interest. GTE South is regulated on a rate-of return basis, and will continue to be regulated as such after the merger. Blanchard Direct at 5, 6-7. GTE South provides the Commission with quarterly surveillance reports, which, in the event of an overearning situation, provides the Commission with the ongoing ability to identify and address overearning. This process

is particularly effective, and most recently resulted in a $10.7 million rate reduction in October, 1997. Tr. 286-87. Savings from the merger, once they are realized, will be no different from any other factor that contributes to GTE South's costs, earnings, and ultimate rate of return. Accordingly, rather than order an immediate rate reduction, it is far more appropriate – and far more consistent with this Commission's practice – to address merger savings once all of the costs of the merger are incurred and the full amount of benefits realized. Blanchard Direct at 11-12; Tr. 304-305; 316-317.[7] Mr. Blanchard suggested that this be done three years after the merger, when the full impact of merger savings and costs can be measured accurately, and can be considered together with other issues such as earnings, universal service funding and rate rebalancing. Tr. 283-84; 288; 301. Doing so will avoid piecemeal or single-issue ratemaking.

The fact that there may be current issues relating to GTE South's earnings entirely apart from the merger only makes it clearer that earnings issues can be addressed according to the Commission's current, effective processes, and an earnings reduction should not be ordered in this docket. Mr. Blanchard explained that there are a large number of issues relating to rates that must be addressed in Kentucky – GTE South's above- and below-cost services need to be reviewed to ensure that they are neither too high or too low, and the impact of the Commission's universal service order must also be addressed. Tr. 285-86. GTE South's most recent surveillance report also

[7] Rate reductions in other states are irrelevant to whether the merger meets Kentucky requirements. Commitments in different states necessarily address issues specific to each state. For example, as Mr. Blanchard stated in response to a specific question from Mr. Willis, a rate reduction in southwest Virginia has been proposed to eliminate a rate disparity in the state left over from the GTE/Contel merger. Tr. 314-316. No similar situation exists in Kentucky, and thus a similar rate reduction would be inappropriate.

indicated that GTE South may be in an overearning position, although it cannot be determined without further investigation whether GTE South is actually overearning or the results are a short-term aberration. Tr. 288-290; 291-292. Regardless, these current earnings issues can easily be addressed by GTE South through dialogue with the Commission, *as can the impact of merger savings when they are realized.* It is also more appropriate to address these issues in discussions with the Commission, given that doing so affords a much greater opportunity to investigate specific issues relating to rates than this relatively narrow merger proceeding. As Mr. Blanchard stated, "the Commission is fully empowered to have a dialogue with us based upon where we are right now. I think this issue where we are today is entirely apart from merger activity. I think the merger should be looked at in its own right and merit and we would look at today's activity with where we are today. So I think we should have a continuing dialogue." Tr. 312.

Furthermore, Sections 278.020(4) and (5) do not require rate reductions or credits to pass through merger savings to Kentucky consumers as a condition for merger approval. The Kentucky legislature has chosen not to include such a requirement in the merger statute, even though other state statutes such as California and Illinois have already done so. *See* § 854(b) Cal. Pub. Utils. Code; 220 ILCS 5/7-204(c). Moreover, the Commission's longstanding practice does not support any such requirement. For example, two recent decisions involving consolidations in the electric utility area fail to impose any rate decrease or credit, even though the applicants calculated expected synergies resulting from their transactions in detail. *See* Order, *Application of Green River Electr. Corp. & Henderson Union Electr. Corp.*, Case No. 97-156 at 3 (Ky. P.S.C. 1997) (Slip Op.) (*"Green River"*) (no sharing of savings required);

Order, *Blue Grass Rural Electr. Coop. Corp. & Fox Creek Rural Electr. Coop. Corp.*, Case No. 97-424 at 2 (Ky. P.S.C. 1997) (Slip Op.) ("*Blue Grass*") (no sharing of savings required, despite the Commission recommending (but not requiring) an eventual rate case to achieve rate parity); *see also* Order, *Application of Cincinnati Gas & Electr. Co. & Cinergy Corp.*, Case No. 94-104 at 4 (Ky. P.S.C. 1994) (Slip Op.) (ordering a rate freeze, but no return of savings, despite estimated savings of $95 million over ten years allocable to Kentucky operations).[8] Indeed, a review of the Commission's merger decisions over the last ten years reveals no cases where the Commission has held that rate reductions are required, regardless of the possibility of cost savings.[9] It would thus be highly unusual for the Commission to require a rate reduction in this case, and unsupported by its precedent.

In sum, then, the benefits the Joint Applicants have discussed above – the CLASS commitment and strengthening GTE South as a service provider – are an appropriate use of merger savings over the next several years. As Mr. Blanchard stated, "rather than try to do something now with an estimate, we would be far better served to come back together in three years time and review operations, review all the other things that have changed and are not predictable today, and based upon the

[8] The Commission's 1997 order in *Louisville Gas & Electric Co. & Kentucky Utilities Co.* does not provide any authority to impose such a requirement under Sections 278.020(4) and (5). *See* Order, Case No. 97-300 at 9-17 (Ky. P.S.C. 1997). In *Louisville Gas & Electric Co.*, merging electric utilities had voluntarily filed an application with the Commission to grant a five year credit to customers' bills reflecting merger savings. *Id.* at 1. The Commission discussed whether the public interest standard had been met in connection with various conditions of the merger, and it approved the merger subject to the condition that the companies implement their voluntary credit, as modified by the Commission. *Id.* at 36-38. The Commission *did not*, however, hold that such a credit is always required under § 278.020, or that it had authority to demand such a credit absent a voluntary proposal to do so.

[9] The cases cited in Section IV.E, *infra*, are broadly representative of the Commission's merger cases decided over the last ten years, and none of them support a requirement that cost savings must be returned.

actual . . . operating results that we are experiencing then, we can take appropriate action." Tr. 316-317.

B. The Merger Will Have No Anticompetitive Effect, And Will Have Significant Procompetitive Benefits.

The April 14 Order required the Joint Applicants to provide information regarding the competitive effects of the merger, and any impact the merger might have on GTE's market power. The Joint Applicants have shown that the merger will result in substantial procompetitive benefits and, as Dr. Taylor testified, is unlikely to "increase concentration or market power in any relevant telecommunications market in Kentucky" or "obstruct or prevent competition in the sale of telecommunications services in the Commonwealth." Taylor Direct at 3. Moreover, the Joint Applicants have shown that Sprint's arguments regarding anticompetitive effects are speculative, unsupported by law, and should be disregarded by the Commission.

1. The Merger Will Have Substantial Procompetitive Effects That Will Provide Important Benefits to Kentucky Ratepayers.

The evidence in this proceeding establishes that the merger will have substantial procompetitive effects that will provide important benefits to Kentucky ratepayers. Indeed, the basic rationale for the merger is to position the merged company as a first tier telecommunications service provider that will have the ability to compete more effectively in the changing telecommunications marketplace, where technological and regulatory barriers that have divided markets by geographic and product lines are rapidly disappearing.

It is commonly known that mergers are one of the best ways to create an effective service provider in the new environment. Dr. Taylor described in detail how

many of GTE's and Bell Atlantic's competitors have positioned themselves to compete in this new environment by combining their networks and financial, technological, operational, and managerial resources. Taylor Direct at 5-8; Tr. 192-194. These competitors recognize that their ability to be sophisticated telecommunications providers of the future depends on a level of financial and technological resources and economies of scale that can best be achieved by merging with other companies that provide synergies. Dr. Taylor also explained what is likely to happen to firms like GTE that do not position themselves to become more competitive: a "regional firm may specialize, may get some customers here, some customers there, but it is not going to be a cutting edge firm and it is not going to be a firm that will be bringing all of the benefits of the information age to its customers." Tr. 192-193.

Sprint itself has recognized that telecommunications firms must consolidate to become national, first-tier providers of telecommunications services. In Sprint's 1998 Summary Annual Report, Sprint's CEO told its shareowners that Sprint is supposedly so well-positioned to compete that others "are merging and marrying in an attempt to avoid being the marketplace or technological old maid." Sprint Annual Report at 4. Similarly, AT&T's CEO has stated publicly that the regional Bell operating companies ("RBOCs"):

> see wisdom in consolidation. The idea that the U.S. can support eight or nine large, vertically integrated communications companies defies the critical mass needed to compete both here and abroad.

C. Michael Armstrong, "'Inflections' Past and Future: New Directions for the Communications Industry," Speech at Harvard Business School Club of New York (Jun. 4, 1998). *See also* Taylor Direct at 5-8.

This merger will create a sophisticated, competitive and responsive telecommunications service provider and will, inherently, have procompetitive effects in Kentucky. Specifically, the merger will have five procompetitive effects.

First, the merged company will enter Louisville within 18 months of the consummation of the merger, which GTE would not be able to do to any significant degree on its own. As Mr. Kissell explained in his testimony, GTE does not currently have the ability to compete broadly and effectively out-of-franchise due to its lack of relationships with large business customers, its lack of brand-name recognition out-of-franchise, and the sheer difficulty involved in operating a CLEC. Kissell Direct at 2-5. As such, GTECC decided in 1998 only to market resale service in GTE's franchise territories. Although GTECC currently plans to enter the San Francisco market in 1999 (where it already has some brand-name recognition due to its wireless offering there), those plans are limited. Kissell Direct at 4.

The merger with Bell Atlantic will, however, dramatically increase GTE's ability to compete out-of-franchise. Because Bell Atlantic currently has relationships with many large business customers that are headquartered in Bell Atlantic's current service territories, the merger will allow GTE to compete more effectively for large business customers who have branch offices around the country. Kissell Direct at 5; Tr. 64-65 (Kissell). GTE will have a new-found credibility with the decisionmakers at these companies, which it currently lacks due to its lack of brand-name recognition and lack of history in providing services to those customers. Tr. 64-66 (Kissell); Tr. 197 (Taylor; "for GTE this is an opportunity to get into a set of customers that they currently don't have"). The merger will give GTE access to Bell Atlantic's expertise in handling large accounts,

which will help GTE win these customers and retain them once acquired. The merger will also give GTE access to Bell Atlantic's financial resources, which will make GTE a more potent competitor out-of-franchise. Kissell Direct at 5-6. Tr. 197 (Taylor). Additionally, the merger will result in significant cost savings, which will increase the merged company's ability to invest in out-of-franchise expansion, and will increase its ability to compete effectively. Kissell Direct at 5-6; Tr. 299-300 (Blanchard). None of these benefits are possible without the merger, and they are all necessary for GTE to enter Louisville (and other out-of-franchise markets) successfully.[10] Tr. 199 (Taylor).

Second, as Mr. Kissell and Dr. Taylor have explained, the merger will facilitate GTE's efforts to develop its Global Network Infrastructure ("GNI") into a nationwide long distance and data network in competition with AT&T, MCI, and Sprint. Taylor Direct at 4, 8-9; Kissell Direct at 7-8; Griswold Direct at 21; Tr. 193 (Taylor). Making the sizable investments to turn the GNI into a ubiquitous long distance and data network requires large volumes of traffic to achieve necessary economies of scale. GTE cannot achieve sufficient traffic to develop a full-fledged, national network by selling only to its own dispersed customer base. However, Bell Atlantic's existing and projected voice and data traffic will provide the scale necessary to deploy the GNI into many more markets than would otherwise be possible, and to deploy the GNI into markets where GTE

[10] A map attached to the Joint Application may have caused some confusion at the hearing regarding the nature of the Joint Applicants' commitment to enter Louisville. Tr. 86-88. The map titled "Wireline Operations," which is Exhibit 7 of the Joint Application, depicts GTE and Bell Atlantic's *current, in-franchise* wireline operations in relation to a few well-known metropolitan areas (including numerous cities, such as New York, Boston, and Baltimore, in which the merging companies already operate as the primary ILEC). This map is completely unrelated to the Joint Applicants' commitment to enter 21 *new, out*

already plans to deploy it in a shorter timeframe. Kissell Direct at 7-8; Tr. 208-209 (Taylor).

Third, the merger will increase competition in the market for Internet services. Although GTE currently provides Internet backbone services, it ranks well behind MCI, Cable & Wireless (MCI's successor), and Sprint in terms of market share. The merger will make GTE a more potent competitor in this market by creating the opportunity to (1) add Bell Atlantic's customer base to its own, thereby expanding the data and Internet traffic on GTE's internet backbone network; and (2) accelerate the transition of GTE's backbone to the GNI. Kissell Direct at 7-8; *see also* Griswold Direct at 21. Kentucky businesses and consumers will benefit from this increased competition.

Fourth, the merger will allow GTE to compete in the market for packaged services, and deploy packaged services throughout its service territories, much faster than it could on its own. This will occur because the merged company will be able to develop all of the components of this type of service faster than either company could on its own. Kissell Direct at 10-11. For example, as was discussed above, the merged company will be able to develop its GNI backbone faster than GTE could on its own, and the existence of this nationwide network will greatly expand the availability of the whole range of advanced long distance and data services. *Id.* The Joint Applicants have provided specific examples of such packaged services – GTECC's tariffed packages of discounts covering a wide variety of services, and Bell Atlantic's packages

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of franchise cities 18 months after consummation of the merger. Louisville is as important a new market for the Joint Applicants as any of the other 20 markets the merged company has committed to enter.

of local, intraLATA and enhanced services. Kissell Direct at 14-15; Bone Direct at 8-9; Tr. 133-136. The merged company will be able to deploy packages like these in Kentucky, and will undoubtedly be able to improve and broaden them.

Fifth, as Dr. Taylor explained, the merger will actually bring the "benefits of competition" to GTE's existing local exchange territories by positioning the company to offer better services at more competitive prices. Tr. 209. Over the short to medium term, this benefit is particularly important in GTE South's more rural exchange areas, where competition is not expected to develop as rapidly as in denser areas.

2. The Merger Will Have No Anticompetitive Effects In Any Kentucky Market.

The merger will have the procompetitive effects listed above, and moreover will have no anticompetitive effects in any Kentucky market. Dr . Taylor testified that "[a]ll of GTE's local interconnection agreements will continue to be in effect after the merger just as they were before the merger. In addition, GTE will continue to be subject to the requirements of the 1996 Act as well as the regulatory requirements of this Commission." Taylor Direct at 9; *see also* Peterson Direct at 9-10. Sprint's arguments to the contrary -- that the merger will remove a potential competitor, result in increased anticompetitive behavior, or result in a price squeeze -- are all extremely speculative, unsupported by law and, in the end, provide no basis to disapprove the merger.

As a threshold issue, the DOJ's decision to not raise any objections to the merger strongly indicates that the merger will have no anticompetitive effects. Dr. Taylor explained at the hearing that the Clayton Act requires the DOJ to determine whether the merger would "substantially lessen competition, or tend to create a

monopoly," with regard to "*any* line of commerce or in any activity affecting commerce in *any* section of the country." Tr. 196 (emphasis added); Taylor Direct at 14-16. The DOJ's analysis thus necessarily included a review of Kentucky and other states, and ultimately found no basis to proceed against possible anticompetitive effects.

The DOJ's determination provides particularly powerful evidence here because none of the arguments advanced by Sprint applies uniquely to Kentucky. Instead, each argument relates to general concerns about anticompetitive effects that, to the extent the merger could have such effects, could take place anywhere in the country. The DOJ's determination therefore provides powerful evidence that the merger will not harm competition anywhere in the country, including Kentucky. *See* Taylor Rebuttal at 3-4 (explaining that the concerns raised by Sprint's arguments are exactly those examined by the DOJ).

a. <u>The Merger Does Not Remove Any Actual Competitors From Any Kentucky Market</u>

The merger will not adversely impact competition by eliminating Bell Atlantic as an actual competitor. *See* Taylor Direct at 18-19. Bell Atlantic does not compete in any Kentucky market except the long distance market, in which it has a negligible number of resale customers. Bone Direct at 4-5.

b. <u>The Merger Will Not Eliminate An Actual Potential Competitor</u>

Sprint has argued that the merger will remove Bell Atlantic as a "potential competitor" in GTE's local exchange markets in Kentucky. Rearden Direct at 15-16. Sprint argues that Bell Atlantic is a "likely" entrant because it has "extensive experience as a supplier of local services," its own Operations Support Systems, a marketing

message based on its "well-known brand name" and knowledge about incumbent local exchange company ("ILEC") operations. Rearden Direct at 16. Sprint's arguments amount to nothing more than speculation as to why Bell Atlantic might be a competitor in any telecommunications market, and fall far short of the rigorous requirements for demonstrating that Bell Atlantic was a potential competitor.

As a threshold matter, Dr Taylor noted that potential competition is rarely, if ever used by federal courts or regulatory authorities as the basis for blocking a merger. Tr. 203-204. Because of the danger of relying on unfounded speculation in such an analysis, the Supreme Court has repeatedly reserved the question as to whether the analysis is even valid under federal antitrust law. *See United States v. Marine Bancorporation*, 418 U.S. 602, 639 (1974); *United States v. Falstaff Brewing Co.*, 410 U.S. 526, 537-38 (1973). Indeed, federal courts and the FTC have repeatedly refused to block mergers solely because of the alleged removal of a possible future competitor. *See Tenneco, Inc. v. FTC*, 689 F.2d 346 (2d Cir. 1982); *United States v. Siemens Corp.*, 621 F.2d 499 (2d Cir. 1980); *FTC v. Atlantic Richfield Co.*, 549 F.2d 289 (4th Cir. 1977); *BOC Int'l Ltd. v. FTC*, 557 F.2d 24 (2d Cir. 1977); *Lektro-Vend Corp. v. Vendo Corp.*, 500 F. Supp. 332 (N.D. Ill. 1980); *B.A.T. Indus., Ltd.*, 104 F.T.C. 852 (1984).

Even accepting that the actual potential competition doctrine is valid and applies here, Sprint must show that: (1) the relevant product and geographic markets are *concentrated*; (2) absent the acquisition, the alleged potential competitor would *likely* have entered the market in the *near future* on its own; (3) entry by the alleged potential competitor carried a substantial likelihood of ultimately producing *deconcentration of the market* or other significant procompetitive effects; and (4) the alleged potential

competitor must be *one of only a few equally likely potential entrants*, since a large number of potential entrants would make the elimination of one competitively insignificant. *See Marine Bancorporation*, 418 U.S. at 632-34; *Tenneco*, 689 F.2d at 352; *B.A.T. Indus.*, 104 F.T.C. at 922-25. Applying this test, Sprint has manifestly failed to make a case under the potential competitor doctrine as it is understood by the federal courts, the FTC and the DOJ.

First, there is no evidence that Bell Atlantic likely would have entered the Kentucky local exchange market in the near future absent the merger, or even within a reasonable time after that. Indeed, all evidence is to the contrary. Bell Atlantic has no plans to enter GTE's local exchange markets in Kentucky apart from its merger with GTE. Bone Direct at 15; Bone Rebuttal at 3-5; Tr. 160-161 (Bone). Sprint has provided no witnesses, reports, plans or other documents to rebut this fact. Although there was some speculation at the hearing that Bell Atlantic might enter eastern Kentucky from its service areas in West Virginia, Mr. Bone, President of Bell Atlantic – West Virginia, testified that no such plans have ever been formulated by Bell Atlantic. Tr. 160-161. Furthermore, as both Dr. Taylor and Mr. Bone explained in detail, Bell Atlantic does not have the network facilities, customer relationships or brand name recognition in GTE's territories in eastern Kentucky (or elsewhere in GTE South's service territories) to be able to compete effectively. Tr. 205-208 (Taylor); Bone Rebuttal at 3-5; *see also* Kissell Rebuttal at 7-8; Tr. 37-38 (Kissell; Bell Atlantic's national name brand recognition of a scant 5% is applicable in eastern Kentucky given the lack of cross-over advertising). Thus, the Joint Applicants have shown that Bell Atlantic is objectively unlikely to enter

GTE's local exchange markets because it could not compete effectively, and also shown that Bell Atlantic has never had a subjective intent to do so.

Sprint's observations regarding Bell Atlantic's alleged "advantages" as a local exchange carrier show, at most, that Bell Atlantic may have the capability to enter GTE's local markets in Kentucky, but by no means show that Bell Atlantic is *likely* to enter. For that matter, Sprint's analysis is so general that it shows equally that Bell Atlantic is capable of entering California, Texas, Florida, Arkansas, Iowa or *any* of the 28 states in which GTE currently provides incumbent local telephone service, or into any of the numerous attractive markets in the territories of the Regional Bell Operating Companies – there is nothing Kentucky-specific at all about Sprint's arguments. Moreover, Sprint's analysis does not indicate when such entry would occur, which is especially problematic given the number of other competitive opportunities Bell Atlantic might pursue before entering eastern Kentucky.

These flaws were noticed by the California Public Utilities Commission ("CPUC") when certain interexchange carriers ("IXCs") objected to the merger of Pacific Telesis and SBC using exactly the same analysis that Sprint has used here. The CPUC flatly rejected the potential competition analysis, stating that although "know-how" and "experience"

> might demonstrate a capacity to compete, it does not demonstrate SBC's interest in a particular market. Moreover, . . . SBC, like many other businesses, has limited resources and has to prioritize its investments, and is not able to invest in every lucrative telecommunications market.

Pacific Telesis Group, 177 P.U.R. 462, 1997 Cal. PUC LEXIS 620 at *98 (Cal. Pub. Utils. Comm'n 1997).

Sprint has used the same potential competition arguments against the Bell Atlantic/GTE merger and been repeatedly rejected. Sprint presented exactly the same case to the Arkansas Commission, which nevertheless approved the merger and stated that "Sprint's objection regarding Bell Atlantic entry into the Arkansas market as a competitor is without foundation and other objections offered by Sprint are highly speculative and not specific to the Arkansas telecommunications market." Order, Docket No. 98-276-U at 9 (Ar. Pub. Serv. Comm'n June 14, 1999) ("Arkansas Order"). The Iowa Utilities Board, also faced with Sprint's potential competition case, also approved the merger, holding that there was "no evidence to refute Bell Atlantic's claims that it had no corporate plans to compete in the local exchange markets in Iowa" and that "[n]either the Board nor, presumably, the current participants in the local exchange service market had any expectation that Bell Atlantic would become a player in the Iowa market in the foreseeable future." Order, Docket No. SPU-98-9 (Ia. Utils. Bd. Mar. 30, 1999) ("Iowa Order"). Sprint has provided no further evidence here, and its potential competition arguments should be similarly rejected.

Second, Sprint has done nothing to show that, even if Bell Atlantic entered GTE South's local exchange markets in Kentucky, it would have a substantial likelihood of deconcentrating the market or causing any other significant procompetitive effect. In fact, Bell Atlantic's entry into GTE's local exchange markets in Kentucky could not possibly have more of a deconcentrating impact than the entry of numerous other potential and actual competitors in GTE South's local exchange markets in Kentucky, such as e.spire, Hyperion, Bell South, Intermedia, ICG, AT&T, MCI WorldCom and Sprint. Taylor Direct at 19-20; Kissell Rebuttal at 7-8; Peterson Direct at 3-5, Tr. 202-

203; 204 (Taylor). Moreover, as Dr. Taylor testified, cellular and cable service providers also have the customer relationships, facilities and brand name awareness to enter the market and compete effectively. Tr. 207-208. Bell Atlantic has none of these advantages and has not even begun to compete in Kentucky. Tr. 205-208 (Taylor). Thus, even if it did choose to enter GTE South's local exchange markets in Kentucky, Bell Atlantic could not add any significant additional deconcentrating effect to what these actual and potential competitors already bring to the market. Bone Rebuttal at 5-7.

Third, Sprint has not shown that Bell Atlantic is one of only a few companies that is a potential entrant into GTE's local exchange markets in Kentucky. As Dr. Taylor explained at the hearing, the federal merger guidelines, adopted by the DOJ and the FTC, provide that the Justice Department is "unlikely" to challenge a potential competition merger "if the entry advantages ascribed to the acquiring firm (or another advantage of comparable importance) are also possessed by *three* or more other firms." 1984 DOJ Merger Guidelines, § 4.133 (emphasis added); Tr. 202-203 (Taylor). *See also Atlantic Richfield Co.*, 549 F.2d at 294 n.8 (assuming only three other entrants, "we do not think the case is one where there are a limited number of buyers or new entrants").

As was noted above, there are unquestionably more than three other firms that possess comparable -- if not superior -- qualities to Bell Atlantic as potential entrants in GTE's local exchange markets in Kentucky. The FCC has rejected potential competition arguments because there were more than three potential competitors in the subject market. In its review of the SBC/PacTel merger, the FCC concluded that

> [p]otential entrants with the same assets are the other major providers of local exchange services in this country, including five other RBOCs, GTE, and Sprint. In addition, recent and potential entrants include AT&T, MCI, LDDS, Cable & Wireless, TCI, and Time/Warner. . . . [T]here are more than a few other potential entrants into the markets in question that are at least equivalent to SBC in competitive capabilities. Certainly, *there are more than the three that DOJ uses as a benchmark* in applying the actual potential competition doctrine.

Applications of Pacific Telesis Grp. & SBC Communs. for Consent to Transfer Control, 12 FCC Rcd 2624 at ¶ 24 (1997) ("SBC/PacTel Order") (emphasis added; footnotes omitted). Similarly, the Commission should also reject Sprint's potential competitor argument out of hand. Bell Atlantic is one of numerous potential entrants into GTE's local exchange markets, and Sprint has provided no evidence whatsoever that Bell Atlantic would be more effective than any of them.

c. The Merger Will Not Lead to Price Discrimination

Sprint claims that the merged company will have an incentive to engage in a so-called "price squeeze," meaning that the merged company could charge higher prices to its long distance rivals for switched access than it charges to its own inter-exchange affiliate. Rearden Direct at 41-55. By doing so, Sprint contends, the merged company will unfairly acquire market share and exercise power in the Kentucky inter-exchange market.

This argument is entirely without merit and irrelevant to this merger. To the extent there is an incentive to engage in a price squeeze, GTE has that same incentive even without the merger because GTE already provides interLATA service. Sprint's "price squeeze" theory thus has no relevance and should be disregarded.

Moreover, even if the price squeeze argument were, somehow, relevant, it is completely speculative. Even though GTE already provides interLATA service, Sprint never explains why GTE is not already engaging in a price squeeze in Kentucky, and there is no evidence that GTE has engaged in such behavior. Kissell Rebuttal at 9. Furthermore, Sprint does not quantify the potential for price squeeze -- rather it simply speculates that a price squeeze will occur.

In fact, GTE cannot currently engage in a price squeeze and will be in no better position to do so after the merger. Dr. Taylor explained that when GTE provides its own toll service, it incurs an opportunity cost because it loses access charges that would normally be paid by the IXCs. Taylor Direct at 23-24. Thus, GTE currently derives no competitive advantage from the fact that access charges are priced above cost, given that any attempt by GTE to price squeeze as described by Dr. Rearden would only exacerbate the cost of self-providing interexchange service. Taylor Rebuttal at 13-14. Even if GTE were willing to bear this cost, it could never do so for long enough to drive well-funded and long established competitors such as AT&T, Sprint and MCI WorldCom out of the market. Taylor Direct at 25-27. Because there is no current incentive to price squeeze, the merger does not make it any more likely that GTE will engage in such behavior. Taylor Rebuttal at 18-19. Additionally, Dr. Rearden's argument that increasing the number of calls that originate and terminate on GTE's network increases the incentive to price squeeze fails against empirical evidence. Even though an extremely high percentage of intraLATA calls that originate in GTE's local exchange areas also terminate in those areas, there has been no evidence that GTE has tried to price squeeze, and in fact competitors have entered the intraLATA toll market and

captured 60% of GTE's market share in only a few years. Kissell Rebuttal at 9; Taylor Rebuttal at 19.

Notably, the FCC has rejected the "price squeeze" argument raised here by Sprint for the additional reason that if a price squeeze were at all effective, it would have to be detectable, and thus preventable. In its decision approving the SBC/PacTel merger, the FCC concluded that "[p]rice discrimination . . . is relatively easy for [the Commission] and others to detect, and is therefore unlikely to occur." SBC/PacTel Order at ¶¶ 51-54. The FCC further reasoned that even if there were a price squeeze, "new entrants or other competitors should be able to defeat that scheme" by purchasing "the interLATA service on a wholesale basis or purchas[ing] unbundled network elements to compete with [the ILEC's] offering." *Id.* at ¶ 54. Dr Rearden's price squeeze argument is the same access charge argument IXCs have raised again and again, in merger after merger, and it can be safely disregarded in this proceeding.

d. <u>The Merger Will Not Lead To Exclusionary Behavior.</u>

Sprint argues that the merger will harm local competition because it will increase GTE's incentive and ability to discriminate against competitive providers of local telephone service. Rearden Direct at 17-41. Dr. Rearden's convoluted theory has no basis in reality and should be dismissed for several reasons.

<u>First</u>, Dr. Taylor explained that local exchange competition takes place in distinct local exchange markets within a given state, and the merger causes no concentration in any markets in Kentucky. Thus, "competing against GTE in Lexington, Kentucky, is neither more nor less difficult if the combined firm also serves Philadelphia or New

York." Taylor Direct at 12. Accordingly, Dr. Rearden's unsupported assumption that a bigger company necessarily engages in more exclusionary behavior is simply incorrect.

Second, Dr. Rearden's assumptions are undermined by the fact that GTE has opened its markets to competition and expends considerable resources to accommodate CLECs. As Mr. Peterson explained, GTE South has 50 interconnection agreements in Kentucky and, across the country, has a total of 934 effective and pending interconnection agreements. Peterson Direct at 3; Tr. 221-222; 229-230 (Peterson). Any new entrant can take advantage of the terms of the effective agreements. Mr. Peterson also described the numerous programs and aids GTE provides to its CLEC customers, and the magnitude of GTE's commitment to complying with its responsibilities under the 1996 Act. Peterson Direct at 5-9; Tr. 230-231 (Peterson).

Moreover, as was clearly demonstrated by Mr. Peterson in response to questions from Sprint's counsel, these efforts are resulting in increased competition. In March, GTE South had sold approximately 2,800 resold lines and 47 unbundled loops, and by the time of the August 24 hearing GTE South had sold 4,923 resold lines and 101 unbundled loops. Tr. 224-226 (Peterson). While Sprint can be expected to argue that these sales still represent a small number of GTE South's total access lines, it cannot be denied that CLECs are purchasing facilities and services from GTE South at an increasing pace, and that there is no reason to believe competition will not continue to accelerate. Indeed, competition is already greater than these numbers would indicate. As Mr. Peterson and Dr. Taylor also explained, Hyperion, e.spire, ICG and Bell South are all deploying their own facilities to compete in GTE South's markets today.

Peterson Direct at 4; Taylor Direct at 19-20. Sprint's focus on raw access line data as a measure of competition or GTE's "openness" is wrong – when placed in context, the data shows that competition has not been hindered in GTE's service areas and is increasing at a rapid rate.

GTE's actions thus refute the claimed incentive and ability to discriminate against CLECs. If anything, they demonstrate precisely the opposite. In this respect, it is worth noting that Sprint provided no credible evidence to the contrary. Dr. Rearden's ten pages of "bad actor" testimony, *see* Rearden Direct at 27-37, are not only irrelevant to this merger, but it was shown at the hearing that Dr. Rearden has no personal knowledge of these issues. Tr. 324-328; *see also* Peterson Rebuttal at 1-4.

Third, regulatory oversight sharply limits any ability the merged company might have to engage in anticompetitive behavior, even if it chose to do so. GTE South is obligated under Section 251 of the Telecommunications Act of 1996 to provide nondiscriminatory access to unbundled network elements, resold services, and other products and services. Moreover, the numerous effective interconnection agreements contain procedures for handling disputes between GTE and CLECs. There are also federal and state regulatory procedures to handle complaints filed by any carrier on any service issue. *See* Peterson Direct at 9-10; Peterson Rebuttal at 8-9. If any carrier believes that GTE has failed to live up to its obligations, that carrier can invoke these methods of redress.

In fact, the multiple obligations to which ILECs are subject show that Dr. Rearden's basic premise -- that after the merger anticompetitive behavior will be impossible to detect -- is completely implausible. An ILEC could never engage in

effective anticompetitive behavior yet ensure that such behavior was somehow "imperceptible to competitors, regulators and courts." Taylor Direct at 31; *see also* Peterson Rebuttal at 8-9 (noting that GTE South is subject to monitoring and legal action by state commissions, state attorneys general, the FCC, the FTC, the DOJ, and hundreds of vigilant competitors).

Fourth, the merger will not reduce the amount of benchmarking information available to regulators or otherwise make it more difficult to detect anticompetitive behavior, if it ever occurred. As Dr. Taylor explains, no ILEC merger has ever reduced the number of data points available to regulators because ILECs are regulated on a state-by-state basis. Taylor Direct at 35-36. GTE's and Bell Atlantic's ILEC affiliates will remain as separate corporate entities in separate locations with separate management and boards of directors. GTE South will still supply the same information to this Commission, and Bell Atlantic's ILECs will continue to provide separate information to other state commissions. *Id.*

Moreover, as Dr. Taylor further explains, the amount of benchmarking information available to regulators will increase as a result of market forces in the near future: as local exchange markets become increasingly competitive, more and more CLECs will enter the market, bringing with them strong incentives and sophisticated abilities to monitor the quality of service they receive and report any exclusionary conduct to regulators. *Id.* at 36-37. Thus, even if, as Dr. Rearden theorizes, the merger will eliminate some degree of benchmarking information, there will be more than enough benchmarking information for regulators to ascertain whether exclusionary conduct is occurring.

At any rate, Dr. Rearden exaggerates the value of information from other ILECs around the country. One of the most important benchmarks for ascertaining whether an ILEC's behavior is exclusionary is the behavior of the ILEC itself, i.e., how it treats its own retail customers compared to how it treats competing carriers. *Id.* at 37-38. The merger obviously will not affect the availability of this information.

C. The Merger Will Allow GTE And Bell Atlantic To Implement Best Practices Across The Merged Company.

As has been discussed above, lower capital and procurement costs will make the merged company, and GTE South as an operating subsidiary, a stronger competitor and better service provider. Moreover, the merged company will be a viable competitor in the local, long distance, data and packaged services markets. In addition to these benefits, the merged company will be able to take the best practices of GTE and Bell Atlantic and implement them across the entire company, making the merged company a better and more efficient provider of services than either company would be on its own. Griswold Direct at 22-24. In addition to best practices, GTE South will also benefit from a larger pool of employees and resources to draw on in the event of an emergency or other extraordinary need. As Mr. Bone testified, "it is simply axiomatic that a larger corporation will be able to benefit from the greater resources and abilities of a broader pool of employees and facilities." Bone Direct at 14.

It is commonly accepted that merging companies always review their respective processes to determine the best procedures and systems to use firm-wide, and implementation of those best practices regularly occurs as a result of mergers. Griswold Direct at 22-24; Bone at 14. For example, best practices resulted out of the

GTE/Contel merger. Mr. Reed testified that "when we went through the GTE/Contel conversion, we were amazed as a company how many things that they were doing that, frankly, we hadn't even thought of." Tr. 113-114. As a specific example, Mr. Reed testified that GTE was able to duplicate Contel's automation of its repair answer center process across the entire company, which resulted in the ability to perform almost instantaneous remote repairs for certain service problems. Tr. 114. Mr. Bone testified that Bell Atlantic adopted NYNEX's technician call back programs, which improved repair and maintenance services, while NYNEX benefited from Bell Atlantic's experience with implementing advanced intelligent network functions that provide valuable services to end users. Bone Direct at 14; Tr. 178. At hearing, he stated that "it was real eye opening when we sat down after the NYNEX merger" and saw "what we were doing different and when we put those operations together how we could improve." Tr. 138.

Best practices have also been generally recognized by regulatory authorities as a real and tangible benefit arising out of the merger of telecommunications companies. When it approved the merger of Bell Atlantic Mobile Systems ("BAMS") and NYNEX Mobile Communications ("NYNEX Mobile"), the FCC noted that the parties anticipated efficiencies from the merger, including best practices, and found that these efficiencies would "improve service to customers by promoting technological innovation and new or improved service offerings for consumers." Order, *Bell Atlantic Mobile Syss. Inc. & NYNEX Mobile Communs. Co.*, 10 FCC Rcd 13368, 13384-85 (1995). The FCC also found that these efficiencies, including best practices, "would be materially more difficult and time-consuming without a merger; and that the efficiencies in management and

uniform marketing, pricing, and sales would be practically impossible without a merger." *Id. See also Joint Petition of New York Tel. Co., NYNEX Corp. & Bell Atlantic Corp.*, Case 96-C-0603, Op. No. 97-8, 1997 N.Y. PUC LEXIS 327 at *55 (N.Y. Pub. Serv. Comm'n May 30, 1997) ("We regard the opportunity permitted by the merger -- through, for example, adoption of best practices -- to secure for New York Telephone's customers service of the same high quality enjoyed by customers in affiliated service territories as a significant benefit of the transaction.").

GTE and Bell Atlantic's merger will be no different, and will also result in benefits from best practices after the merger is consummated. To this end, GTE and Bell Atlantic have devoted a significant amount of time and effort to identifying differences in results between the companies, and are performing the analysis necessary to determine if company-specific practices underlying the difference could be implemented across the two companies. Tr. 30-32 (Kissell); *see also* Joint Applicants' Responses to PSC's First Set of Data Requests and Interrogatories, No. 6. At the hearing, Mr. Kissell provided a very good example of the analysis necessary to identify a best practice, and how it is likely to result in benefits to customers. He testified that the companies have noticed that GTE's call centers appear to receive more calls than Bell Atlantic's call center. Tr. 30-31. This difference may be due to any one of a number of customer service practices: the billing process, using the Internet, and so on. However, the specific difference in practice underlying the difference in result does not "just bubble[ ] up to the surface, it requires detailed analysis." Tr. 31. Once the difference in practice is determined, however, it may lead to a more efficient billing process or an expansion of customer service over the Internet. These would be best practices that directly benefit consumers. Mr. Bone also testified about the possibility that Bell Atlantic's credit

screening system may provide a more efficient way to establish new customer accounts. Tr. 139-140.

At the hearing, Sprint tried to call into question whether the merger would result in best practices by implying through cross-examination that neither company had yet identified any best practices. *See, e.g.*, Tr. 140-141 (Bone); Tr. 268-271 (Shore). Although management at Bell Atlantic and GTE have not yet ordered the implementation of any specific best practices (and indeed it would make no sense to do so until after consummation), Sprint's argument is exaggerated. Identifying best practices takes information sharing and analysis by both companies, as Mr. Kissell described. And Sprint is well aware of the extent to which the merging companies have engaged in this process: in response Sprint's request for information about combined call centers and OSS, the Joint Applicants provided Sprint with thousands of pages of documents responsive to the question, which also show the other areas that GTE and Bell Atlantic's Merger Integration have analyzed and identified potential best practices.[11] Tr. 30 (Kissell).

Sprint also attempted to question best practices by implying that the companies had already identified and implemented all the best practices of which they are aware. Tr. 34-35 (Kissell); Tr. 137-140 (Bone). Sprint's implication is wrong, because it assumes the companies have already completed their analysis and, more generally, that every company freely discloses all its best practices to the world for others to also implement. As Sprint well knows, in the competitive world this argument is silly. One of

[11] As the Joint Applicants have indicated to the Commission and Sprint, the precise contents of these planning documents are proprietary and confidential.

the key ways firms establish and maintain a competitive advantage is by developing a better, *unique* way to serve customers. As Mr. Reed and Mr. Bone both noted, they may be aware of better *results* by other companies, but how they are achieving those results is the essence of competitive advantage. Tr. 113 (Reed); Tr. 137-138 (Bone). Moreover, Mr. Kissell clearly indicated that the best practices analysis specifically within GTE and Bell Atlantic in conjunction with the merger is ongoing, but not yet completed. Indeed, Mr. Reed and Mr. Bone provided a particularly notable example of this at the hearing itself. After Mr. Reed testified that he receives regular updates on service statistics via his pager, Tr. 98-100, Mr. Bone testified that "what I heard about Mr. Reed talking about the way he is updated every two hours, we don't do that. . . . I don't know if it a best practice for us but it is certainly one that I wrote down that we might want to look at." Tr. 139.

The merger affords each company a unique opportunity to review all of its operations and determine whether anything can be improved in light of the way its merger partner conducts operations. The Joint Applicants are serious about pursuing these benefits, and reasonably expect many of the best practices that they are in the process of identifying will result in direct benefits to GTE South's customers.

D. <u>The Merger Will Have No Detrimental Impact.</u>

In Section I, the Joint Applicants explained in detail how the merger is a parent company merger only – it does not entail any operational consolidation or require any change to the services provided by GTE South in Kentucky today. Rates will stay at the same level after the merger that they are at today. Tr. 305 (Blanchard). Thus, the merger will be essentially seamless and transparent to GTE's Kentucky customers with

respect to service and rates. GTE South will still be responsible for achieving the Commission's performance standards and observing all other applicable Commission regulations. Blanchard Direct at 6. The Joint Applicants' commitment to investing $222 million over three years further ensures that the merger has no negative impact on GTE South's current quality of service. Reed Direct at 9.

Thus, as Mr. Kissell testified, "[i]n the worst case I see nothing about the merger that will degrade service quality, that will hamper competition, that will do anything to negatively effect the quality of service provided in Kentucky or the variety of services provided in Kentucky." Tr. 70. Moreover, Mr. Reed testified that "post-merger the business that I'm responsible for and that is managing the customer in Kentucky for installation, repair, preventative maintenance, etc., will not change." Tr. 108. Mr. Reed also testified that "my commitment to the Kentucky Public Service Commission and the rules that we are governed by will not change the day after the merger any more than it did before the merger." Tr. 120.

With respect to other areas of concern, the Joint Applicants have shown that:

- The merger will not require the issuance of any debt, and thus will not impair GTE South's capital infrastructure. Indeed, the merger will undoubtedly strengthen GTE South's capital infrastructure. Griswold Direct at 9.
- The merger will not result in any structural change to GTE South, or any consolidation of the operations, lines, franchises or permits of GTE South. Nor will it result in any change to rates, terms and conditions of GTE South service. Griswold Direct at 8-9; Reed Direct at 6-7; Blanchard Direct at 6.

- The merger will do nothing to diminish GTE South's commitment to provide service to large business, small business and residential customers and to continue to act as a responsible corporate citizen in Kentucky. Griswold Direct at 19.
- The merger will have no material impact on levels of hourly employees, and all existing union contracts will be honored. Tr. 101-102 (Reed). In the longer term, it is anticipated that the merger will generate more job opportunities by positioning the merged company to compete more effectively in the telecommunications market. Thus, the merger is strongly supported by the Communications Workers of America and the International Brotherhood of Electrical Workers. Griswold Direct at 16-18; *see also* Joint Application, Exhibit 13.

Therefore, the Joint Applicants uncontroverted evidence shows that there will be no detrimental impact of the merger and that it will be transparent to GTE South customers. None of the evidence Joint Applicants submitted on these matters has been refuted at the hearing or otherwise.

E. Approving The Merger Is Consistent With This Commission's Precedents And The Precedents Of Numerous Other Commissions

1. The Merger Is Consistent With This Commission's Precedents

The Joint Applicants have shown that the merger will result in benefits for Kentucky consumers and under no circumstances would it diminish service quality or the Commission's authority to regulate service quality. A merger that results in benefits

to Kentucky consumers, but no detrimental change in service, is undoubtedly consistent with the public interest.

Commission precedent clearly shows that the Joint Applicants have met this statutory standard. In interpreting the "consistent with public interest" requirement, the Commission has always held that a general expectation of benefits was sufficient to support approval. When the Commission approved GTE's merger with Contel, the Commission issued a brief, three-page decision, noting that:

> Their operations complement each other's, potentially resulting in better service to the public. The merger should also create operational improvements by the united management skills at the corporate level. The merger should enhance GTE's financial resources and increase Contel Corporation's access to capital. The proposed transaction is to be transparent to Kentucky ratepayers because it occurs at the corporate level. There is currently no plan to change the service offerings, customers, or rates and tariffs of the regulated subsidiaries of Contel. Also, it is anticipated that the present management of the regulated subsidiaries in Kentucky will continue after the merger.

GTE/Contel at 3-4. Three years later, the Commission approved the merger of GTE and Contel's Kentucky subsidiaries under Sections 278.020(4) and (5), noting only that "GTE South has the necessary personnel and equipment, including outside plant facilities, to operate the system in Kentucky. The merger should result in greater administrative efficiency." Order, Joint Application of GTE South, Inc. & Contel of Kentucky, Inc., Case No. 93-361 at 2 (Ky. P.S.C. 1994).

In numerous other cases, the Commission has noted benefits of the merger in a very similar fashion as it did in the GTE/Contel cases. For example, when the Commission approved the acquisition of the assets of Target Telecom, Inc., by WorldCom through its subsidiary, TTI, it only briefly mentioned that

> [a]ll existing customers of Target will be notified in a timely fashion of the transfer to TTI which will provide the same services under the same rates, terms and conditions as currently provided by Target. . . . As a subsidiary of WorldCom, TTI will have access to the technical, managerial and financial resources necessary to provide high quality telecommunications service in Kentucky.

Order, *Application for Approval of Transfer of Assets & a Cert. of Pub. Convenience & Necessity from Target Telecom, Inc. to TTI Nat'l, Inc.*, Case No. 96-203 at 2 (Ky. P.S.C. 1996) (Slip Op.). *See also* Order, *Application for Authority for Rochester Tel. Corp. to Acquire Control of West Coast Telecommuns., Inc.*, Case No. 94-491 at 2-3 (Ky. P.S.C. 1995) (Slip Op.); Order, *Joint Application of Tel. & Data Syss., Inc., & First Kentucky Cellular Corp.*, Case No. 94-398 at 4 (Ky. P.S.C. 1994) (Slip Op.); Order, *Application for Authority to Transfer Control of IDB Communs. Grp., Inc. to LDDS Communs., Inc.*, Case No. 94-335 at 2 (Ky. P.S.C. 1994) (Slip Op.); Order, *Application of LDDS Communs., Inc. & Americall, Inc.*, Case No. 93-160 at 2 (Ky. P.S.C. 1993) (Slip Op.); Order, *Joint Petition of Touch 1 Long Distance, Inc. & LDDS Communications, Inc.*, Case No. 92-533 at 2 (Ky. P.S.C. 1993) (Slip Op.); Order, *Joint Application of GTE Mobilnet Inc. & Cumberland Cellular Partnership*, Case No. 91-180 at 2 (Ky. P.S.C. 1991) (Slip Op.); Order, *Petition of Telesphere Communs., Inc.*, Case No. 90-123 at 2 (Ky. P.S.C. 1990) (Slip Op.).

The showing the Joint Applicants have made is consistent with, and has gone far beyond, what this Commission has required in every one of the above orders. The Commission was satisfied that those transactions were consistent with the public interest because they resulted in no change with respect to customer service and were expected to result in access to greater financial or other resources, or result in greater

efficiency. The Joint Applicants not only expect such benefits, but have clearly demonstrated that such benefits can be achieved given the commitments they have made. Accordingly, this merger meets similar criteria as this Commission applied to earlier transactions, and should similarly be approved.

Notably, a review of the Commission's decisions in approving mergers shows that the Commission has approved a large number of transactions under Sections 278.020(4) and (5) without requiring any positive benefit. Instead, the Commission has deemed an absence of change to current service to consumers or tariff rates and transparency to consumers as being "consistent with the public interest." For example, in 1997, the Commission approved the acquisition of Louisville Lightwave by Hyperion Telecommunications. In its order, the Commission did not discuss any positive benefits, but instead only mentioned that "[Hyperion] will continue to provide all telecommunication services currently provided by Louisville Lightwave. The merger, Joint Applicants state, will have no impact on the quality of service currently provided to the public by Louisville Lightwave or the rates charged therefor." Order, *Joint Application for Transfer of Partnership Interests of Hyperion Telecommuns. of Kentucky, Inc. & TCI TKR of Kentucky, Inc.*, Case No. 97-478 at 3 (Ky. P.S.C. 1997) (Slip Op.).

Similarly, when the Commission approved the merger of WorldCom and MFS, it did not mention any significant positive benefit, but instead merely noted that

> the proposed transaction will not involve a change in the manner in which the Kentucky operating subsidiaries provide telecommunications services. Furthermore, it will not disrupt service or cause inconvenience or confusion to the customers of [MFS], who will be notified of the merger. . . . Joint Applicants state that [MFS] will rely on many of its existing management and operational staff and the expertise of WorldCom and its operating subsidiaries.

WorldCom/MFS at 2. *See also* Order, *Joint Application of Telespectrum, Inc. and Independent Cellular Network, Inc.*, Case No. 96-371 at 2 (Ky. P.S.C. 1996). *See, e.g., Avery Commmuns., Inc.*, Case No. 96-371 at 2 (1996); *Pennsylvania Alternative Communs., Inc.*, Case No. 96-206 at 2 (1996); *Lake Columbia Estates Sewer Sys.*, Case No. 95-175 at 2 (1996); *Internat'l Telemgmt. Grp., Inc.*, Case No. 95-351 at 2 (1995); *WATS/800 Inc.*, Case No. 95-315 at 2 (1995); *Wiltel, Inc.*, Case No. 94-319 at 2-3 (1994); *The Hogan Co.*, Case No. 93-260 at 2-3 (1993); *LDDS Communs., Inc.*, Case No. 92-276 at 3-4 (1992); *USA Mobile Communs., Inc.*, Case No. 92-167 at 2-3 (1992); *BellSouth Mobility, Inc.*, Case No. 92-421 at 2 (1992); *Advanced Telecommuns. Corp.*, Case No. 91-457 at 2 (1992); *LCI Communs., Inc.*, Case No. 89-292 at 3 (1990); *Blue Grass Mgmt. Grp.*, Case No. 89-038 at 3 (1989); *Right Beaver Gas Co.*, Case No. 89-100 at 2 (1989); *Salem Tel. Co.*, Case No. 89-197 at 2 (1989); *McCaw Cellular Communs., Inc.*, Case No. 89-303 at 4 (1989); *Lewisport Tel. Co.*, Case No. 89-306 at 2 (1989).[12]

Therefore, even if the Joint Applicants had made no commitments or otherwise been unable to show any of the numerous positive benefits of this merger, the Commission could find that the merger meets the requirements of Sections 278.020(4) and (5) because it has repeatedly held that a transaction that results in no change to service received by Kentucky customers is "consistent with the public interest."

[12] Because of the large number of citations, Joint Applicants use a shortened form of citation, identify the first named party, the case number, and the year the order was issued. This should suffice to allow the Commission and opposing parties to locate the referenced cases.

2. The Merger Is Consistent With The Persuasive Authority Of Other Commissions.

State commissions in 16 states have approved the merger as of the date of this filing: Arkansas, Colorado, Florida, Iowa, Louisiana, Minnesota, Mississippi, Montana, Nevada, New Jersey, New York, North Carolina, Oklahoma, Tennessee, West Virginia, and Wyoming.[13]

The states that have approved the merger have found that it will not "adversely affect the public interest," *see e.g.*, Order, Docket No. 98-1224-T-PC (W. Va. Nov. 20, 1998), Order, Docket Nos. 74064-TA-98-3, 74091-TA-98-52 (Wy. Oct. 29, 1998), or is otherwise in the public interest. *See, e.g.*, Order, Docket Nos. P-19, SUB 306; P-446, SUB 2 (N.C. Oct. 30, 1998); Order, Docket No. 981252-TP (Fla. Dec. 7, 1998). *See also* Order, Docket No. 98A-436T (Co. Nov. 20, 1998); Letter of Non-Opposition, Docket No. 98A-436T (La. Nov. 10, 1998); Order, Docket No. 98-UA-670 (Miss. Dec. 22, 1998) ("Mississippi Order"); Order, Docket No. 98-10-245 (Mt. Nov. 25, 1998); Order, Docket No. PUD98-547 (Ok. Jan. 6, 1999); Order, Docket No. 98-00871 (Tn. Jan. 19, 1999).

When the West Virginia Public Service Commission approved the merger, it concluded that GTE and Bell Atlantic had "made a proper showing that the terms of the proposed merger are reasonable, that neither [Bell Atlantic] nor GTE are given an undue advantage over the other, and that the proposed merger does not adversely affect the merger in this state." Commission Order, Case No. 98-1224-T-PC at 4 (W.V. Nov. 20, 1998). The Mississippi Commission found that

[13] Given that a large number of states do not have jurisdiction to examine a parent company merger, only 10 states, including Kentucky, are holding further approval proceedings.

> [t]he proposed merger will benefit the consumers of Mississippi. The combined company will be well-positioned to compete and offer competitive choices to residential and business customers. . . . The proposed transfer is in the best interest of the public, because it will benefit customers through the promotion of competition in Mississippi.

Mississippi Order at ¶¶ 8-9. The Arkansas Commission found that

> [t]he evidence presented demonstrates that the merger will allow the new company to offer a full range of telecommunications services. It will also provide the new company the opportunity to realize benefits that could make the merged company more efficient and responsive in the marketplace . . . . The efficiencies that the merged companies may realize have the potential to provide benefits to the customers of GTE which could not be realized without the merger of GTE and BA.

Arkansas Order at 8. It further found that "the merger does not appear to have any detrimental impact on the customers of GTE in Arkansas and there are potential benefits from the merger in increased efficiencies and service offerings." *Id.* at 9.

In short, although this Commission must apply Kentucky statutory requirements in accord with its own precedent, the public utility commissions of 16 states have already approved the merger using similar standards, weighing the same evidence as has been placed before this Commission. The weight of authority holds that the merger is consistent with the public interest, and a similar result should apply in Kentucky.

CONCLUSION

The merger of GTE and Bell Atlantic meets all of the requirements of Sections 278.020(4) and (5): the merged company will have the financial, technical and managerial abilities to provide reasonable service and the merger is in accordance with law, for a proper purpose and consistent with the public interest.

WHEREFORE, the Joint Applicants respectfully request that the Commission approve the merger of GTE and Bell Atlantic.

Respectfully submitted this the 30th day of August, 1999.

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BELL ATLANTIC CORPORATION

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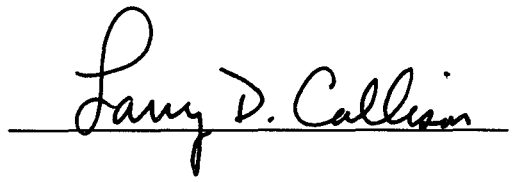
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing brief of GTE Corporation and Bell Atlantic Corporation was served on all parties of record in this proceeding by either sending a copy by overnight delivery, or by placing a copy of same, properly addressed, in the U. S. Mail, first class postage prepaid, this the 30th day of August, 1999.



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August 20, 1999

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730 Schenkel Lane
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Re: Joint Application of Bell Atlantic Corporation and GTE Corporation for Order Authorizing Transfer of Utility Control - Case No. 99-296

Dear Ms. Helton:

Enclosed for filing with the Kentucky Public Service Commission ("Commission") are an original and ten copies of the rebuttal testimony of the Joint Applicants, pursuant to the procedural schedule established by the Commission in the above-referenced matter.

Rebuttal testimony is being submitted on behalf of the Joint Applicants by the following witnesses who previously submitted direct testimony in this matter: Jeffrey C. Kissell, Dennis M. Bone, William E. Taylor and John Peterson.

I would be most appreciative if you would bring this filing to the attention of the Commission, and should you have any questions about the enclosed material, please do not hesitate to contact me at your convenience. Thank you for your consideration in this matter.

Yours truly,

Larry D. Callison

Larry D. Callison

Enclosures

c: Hon. Ann Louise Cheuvront - Assistant Attorney General
Hon. William R. Atkinson - Sprint

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of:	)	
	)	
JOINT APPLICATION OF BELL	)	
ATLANTIC CORPORATION AND GTE	)	CASE NO. 99-296
CORPORATION FOR ORDER	)	
AUTHORIZING TRANSFER OF	)	
UTILITY CONTROL	)	

REBUTTAL TESTIMONY

OF

JOHN PETERSON

ON BEHALF

OF

GTE CORPORATION

AUGUST 20, 1999

DIRECT TESTIMONY OF JOHN PETERSON

Q. PLEASE STATE YOUR NAME, POSITION, AND BUSINESS ADDRESS.

A. My name is John Peterson and I am the Director – Wholesale Contract Compliance in GTE's Network Services organization. My business address is 600 Hidden Ridge, Irving, Texas.

Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS PROCEEDING?

A. Yes. I submitted direct testimony on behalf of GTE Corporation on July 9, 1999.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to address issues relating to competition in GTE's service territories raised by Dr. David Rearden on behalf of Sprint.

Q. AT PAGES 27 TO 37 OF HIS TESTIMONY, DR. REARDEN MAKES ALLEGATIONS OF VARIOUS ANTICOMPETITIVE ACTS IN OHIO, WASHINGTON STATE, AND CALIFORNIA. IS HIS DISCUSSION OF THESE STATES RELEVANT TO THIS PROCEEDING?

A. No. Even if Dr. Rearden's allegations were accurate (which they are not), his allegations are irrelevant to this proceeding. Dr. Rearden does not discuss

any alleged anticompetitive behavior in Kentucky, or explain how GTE has allegedly prevented Sprint from entering the Kentucky market. In this respect, I would note that Sprint does not have an interconnection agreement with GTE in Kentucky, nor has it given any indication that it is interested in entering GTE's local exchange markets in Kentucky.

Furthermore, Dr. Rearden's allegations are irrelevant because they have nothing to do with how *the merger* might impact GTE South's provision of services to CLECs in Kentucky. Nowhere in Dr. Rearden's testimony does he really explain why he is seeking to introduce the 10 pages of alleged "bad acts" in this proceeding. They certainly do not appear relevant to his argument, which is otherwise entirely theoretical, except to show a proclivity on GTE's part to engage in anticompetitive conduct. This kind of "bad actor" testimony does not provide any evidence that the merger itself will result in a single anticompetitive effect.

Clearly, Dr. Rearden is not providing this detail because he wants the Commission to address specific remedies -- in the absence of a problem in Kentucky, there would be no point in making the suggestion. Rather, Dr. Rearden is simply using anecdotal evidence from other states to prejudice the Commission against GTE.

Q. HAS DR. REARDEN PROVIDED RELIABLE EVIDENCE OF SPECIFIC ANTICOMPETITIVE ACTIONS BY GTE?

A. No. Dr. Rearden is in no position to provide reliable evidence regarding specific instances of anticompetitive behavior, as is shown by the fact that exactly the same type of testimony was excluded in the Vermont merger proceedings. Dr. Rearden provided substantially the same testimony about alleged anticompetitive actions in proceedings before the Vermont Public Service Board ("PSB"), and introduced into evidence Sprint's entire FCC filing regarding the merger, including the Brauer affidavit Dr. Rearden mentions at page 32 of his testimony. A transcript of the hearing on March 16, 1999 shows that Hearing Officer Peter Bluhm, Policy Director for the Vermont PSB, ruled that Dr. Rearden could not testify about GTE's allegedly anticompetitive acts because Dr. Rearden admitted that he had no "responsibility or immediate connection to GTE interconnection agreements." Transcript, Joint Petition Of Bell Atlantic Corporation And GTE Corporation For Approval Of Agreement And Plan Of Merger ("Vermont Petition"), Docket No. 6150 at 41 (Vt. Pub. Serv. Bd. Mar. 16, 1999). Moreover, while Mr. Bluhm allowed Sprint's FCC filing into evidence, he specifically excluded Mr. Brauer's affidavit as hearsay. *Id.* at 109-110. Dr. Rearden is in the same position here. He has no direct knowledge of interconnection disputes, and relies on Mr. Brauer for a substantial portion of his testimony in this regard, even though Mr. Brauer himself has not submitted testimony in this proceeding.

Notably, Mr. Bluhm's Proposed Order also shows that Dr. Rearden's allegations are irrelevant, as I noted above. Without commenting on Dr. Rearden's excluded "bad actor" testimony, Mr. Bluhm found that "[e]ven assuming that CLECs as a class and Sprint itself are today harmed by ILEC behavior, the record does not show that the current level of harm will increase." Hearing Officer's Proposal for Decision, Vermont Petition, Docket No. 6150 at 35-36 (June 8, 1999).

Q. IF DR. REARDEN'S ALLEGATIONS WERE RELIABLE, AND IF THEY WERE RELEVANT, WOULD THEY SHOW THAT GTE HAS ACTIVELY TRIED TO PREVENT CLECs FROM ENTERING GTE'S SERVICE TERRITORIES?

A. No, they would not. Dr. Rearden largely complains about service ordering and provisioning problems, which will happen no matter what the intentions of the service provider. The mere fact that there may have been disputes between the two carriers regarding the extremely complex process of interconnecting their networks should not be surprising, and is certainly not evidence of bad faith on the part of GTE.

Q. NEVERTHELESS, DR. REARDEN ASSERTS IN HIS TESTIMONY THAT GTE HAS AN INCENTIVE TO ENGAGE IN EXCLUSIONARY BEHAVIOR AND HAS DONE SO IN THE PAST, AND ALSO ASSERTS AT PAGE 27 OF HIS TESTIMONY THAT GTE HAS "A HISTORY OF STIFLING

COMPETITION IN ITS LOCAL MARKETS." DO YOU AGREE WITH THESE ASSERTIONS?

A. No, I strongly disagree. GTE has done nothing to prevent competitors from negotiating and using interconnection agreements to compete in GTE's service territories. Indeed, as I discuss in my direct testimony, GTE's actions both around the country and within Kentucky indicate that, to the contrary, GTE has opened its markets to competitors. Dr. Rearden assumes that low levels of CLEC penetration equate to anticompetitive behavior on GTE's part. This assumption is incorrect. The factual evidence demonstrates that CLEC penetration is increasing rapidly and full-fledged competition is emerging in GTE markets of all sizes across the country, including Lexington.

Q. IN YOUR DIRECT TESTIMONY, YOU MENTIONED THAT 95 PERCENT OF GTE'S PENDING AND EFFECTIVE AGREEMENTS WERE CONCLUDED WITHOUT THE NEED FOR ARBITRATION. DR. REARDEN DOESN'T THINK THIS IS IMPORTANT BECAUSE HE STATES, AT PAGE 29 OF HIS TESTIMONY, THAT "MANY CLECS, INCLUDING SPRINT, HAVE SOUGHT TO ADOPT AN AGREEMENT THAT HAS ALREADY BEEN APPROVED." IS DR. REARDEN CORRECT?

A. No. Dr. Rearden provides no support for his assumption that the majority of carriers have adopted effective agreements under Section 252(i). Dr. Rearden is, in fact, wrong. Out of GTE's 932 effective and pending

agreements as of June 30, 1999,[1] 670 are with CLECs and, of these, 99 resulted from a CLEC adopting an arbitrated agreement under Section 252(i) of the Telecommunications Act of 1996 (the "1996 Act"). Accordingly, less than 15 percent of the total CLECs with whom GTE interconnects have followed this course.

Q. AT PAGE 28 OF HIS TESTIMONY, DR. REARDEN STATES THAT GTE REFUSES TO ALLOW SPRINT TO PURCHASE "UNEs ALREADY COMBINED BY GTE" AND CHARACTERIZES THIS AS AN "OUTRAGEOUS CONDITION." IS HIS CHARACTERIZATION CORRECT?

A. No, it is not. Dr. Rearden is trying to make GTE appear unreasonable by mischaracterizing GTE's position and the current state of the law. While I am not an attorney, I understand that the Supreme Court's decision in *Iowa Utilities Board v. FCC* held that incumbent local exchange carriers cannot separate network elements that are already combined. However, the Supreme Court also vacated the FCC's list of unbundled network elements. Thus, it makes no sense to discuss platforms or "already combined" elements, until the FCC decides what elements GTE must provide under the 1996 Act. GTE's position is entirely consistent with the Supreme Court decision -- it will continue to provide the vacated list of FCC unbundled network elements, but not in combination, until such time as the FCC

[1] In my direct testimony, I stated that there were 802 approved and 132 pending agreements as of June 30, 1999, for a total of 934. Upon further review, I discovered that two pending agreements were actually amendments to already effective agreements. Therefore, GTE had 932 effective and pending agreements.

ultimately resolves the issue of what network elements must be provided. GTE's position is a reasonable accommodation of the fact that the law is changing.

Q. ON PAGE 27, DR. REARDEN ALSO ALLEGES THAT GTE REFUSED TO ALLOW SPRINT TO ADOPT "PORTIONS" OF THE AT&T AGREEMENT. WAS THIS INAPPROPRIATE?

A. Absolutely not. Dr. Rearden tries to characterize GTE as obstructionist in requiring Sprint to adopt entire interconnection agreements instead of portions of interconnections agreements, but ignores the fact that the governing law has changed twice regarding the ability of CLECs to choose to use already approved interconnection agreements. Although the FCC's August, 1996 First Report and Order implementing the 1996 Act allowed CLECs to "pick and choose" portions of effective interconnection agreements, the United States Court of Appeals for the Eighth Circuit vacated this rule in July, 1997. Thus, the Eighth Circuit agreed with GTE that CLECs were required to adopt entire interconnection agreements, and not just portions of them. The Supreme Court reversed this ruling of the Eighth Circuit in January, 1999. Nevertheless, the law was, until that point, in a state of flux and GTE's position was consistent with the controlling decision for a year and a half. It is thus clearly wrong for Dr. Rearden to charge that GTE was obstructionist by insisting that Sprint adopt whole interconnection agreements.

Q. DR. REARDEN STATES THAT THE MERGER WILL HAVE AN ANTICOMPETITIVE EFFECT BECAUSE THE MERGED COMPANY WILL HAVE A GREATER INCENTIVE TO ENGAGE IN ANTICOMPETITIVE BEHAVIOR, AND WILL BE BETTER ABLE TO DO SO. WILL THE MERGER HAVE AN ADVERSE EFFECT ON COMPETITION IN GTE'S LOCAL EXCHANGE AREAS?

A. No, it will not. As I mentioned at pages 9 and 10 of my direct testimony, the merger will not (1) change GTE's current efforts to facilitate competitive entry into its service territories, (2) impair this Commission's regulatory authority in any way or diminish GTE's obligation to abide by the provisions of the 1996 Act or (3) eliminate or modify GTE's effective interconnection agreements.

Q. DR. REARDEN, HOWEVER, APPEARS TO BELIEVE THAT THE MERGED COMPANY WILL IGNORE ITS LEGAL OBLIGATIONS AND THE COMMISSION WILL BE UNABLE TO DO ANYTHING ABOUT SUCH BEHAVIOR. IS HE CORRECT?

A. No, he is not. Dr. Rearden's argument is entirely speculative and makes incorrect assumptions about how local competition works. For example, Dr. Rearden alleges that increased incentives to engage in anticompetitive behavior are "likely" to lead GTE and Bell Atlantic to engage in such behavior after the merger. Rearden Direct at 37-38. Dr. Rearden, however, does not appear to understand what would happen if the merged company actually

tried to do so. At present, GTE's local operating companies are subject to monitoring by this Commission, other state commissions and the FCC as to their progress in opening markets. Furthermore, if GTE intentionally engaged in anticompetitive behavior, it would be subject to enforcement actions by state attorneys general, the Department of Justice and the Federal Trade Commission. Moreover, GTE would be subject to private enforcement actions by dozens, if not hundreds, of the companies with which it has effective interconnection agreements. While Dr. Rearden tries to argue that it will be harder to detect and prevent anticompetitive behavior after the merger, in the real world the merger will do nothing to remove any of these curbs on possible anticompetitive behavior. Thus, engaging in anticompetitive behavior of the kind Dr. Rearden alleges would inevitably result in a significant financial cost to the merged company, not to mention the damage an enforcement proceeding would do to the merged company's business reputation.

Notably, Dr. Rearden provides no empirical evidence that this type of behavior actually occurs as a result of mergers, nor does he cite to any decisions of this or any other regulatory bodies supporting his analysis. Thus, his argument amounts to little more than speculation about possible harms that have nothing to do with the merger.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of:	)	
	)	
JOINT APPLICATION OF BELL	)	
ATLANTIC CORPORATION AND GTE	)	CASE NO. 99-296
CORPORATION FOR ORDER	)	
AUTHORIZING TRANSFER OF	)	
UTILITY CONTROL	)	

REBUTTAL TESTIMONY

OF

DENNIS M. BONE

ON BEHALF

OF

BELL ATLANTIC CORPORATION

AUGUST 20, 1999

REBUTTAL TESTIMONY OF DENNIS M. BONE

Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.

A. My name is Dennis M. Bone. I am the President and Chief Executive Officer of Bell Atlantic-West Virginia, Inc. My business address is Bell Atlantic-West Virginia, 1500 MacCorkle Avenue, Southeast, Charleston, West Virginia 25314.

Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS MATTER?

A. Yes. I filed Direct Testimony as part of the Joint Application filed on July 9, 1999.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my testimony is, first, to rebut the claim by Dr. David Rearden on behalf of Sprint Communications that the merger between GTE and Bell Atlantic is anti-competitive because it allegedly will eliminate Bell Atlantic as a "potential competitor" from the Kentucky market for local exchange service. This claim is baseless, and is offered for one reason and one reason only: to prevent the combined Bell Atlantic/GTE from being able to compete more vigorously nationwide for customers against Sprint and the other interexchange carriers.

Second, I also briefly respond to Dr. Rearden's general claim that the merger will not help maintain and expand GTE's strong level of investment and service quality in Kentucky. As I explained in my Direct Testimony, our experience in West Virginia following the merger between Bell Atlantic and NYNEX corporation is instructive. We have continued to provide high service quality and to invest in our communities at high levels to meet customer needs. Particularly in light of our strong mutual commitments to serve our customers in rural communities in areas such as Appalachia, there is little question that the combined company will be better positioned to serve Kentucky customers following the merger.

I. THE MERGER WILL HAVE NO ANTI-COMPETITIVE EFFECT ON THE GROUNDS THAT IT ELIMINATES THE THEORETICAL POSSIBILITY THAT BELL ATLANTIC WOULD HAVE SEPARATELY COMPETED FOR LOCAL EXCHANGE CUSTOMERS IN KENTUCKY

Q. WILL THE MERGER BETWEEN BELL ATLANTIC AND GTE HAVE AN ADVERSE COMPETITIVE IMPACT BY ELIMINATING BELL ATLANTIC AS A "POTENTIAL COMPETITOR" IN KENTUCKY'S LOCAL EXCHANGE MARKETS, AS CONTENDED BY DR. REARDEN (PP. 12-13)?

A. No. To the contrary, as noted in my Direct Testimony and explained in further detail by Mr. Kissell, the merger will result in a *stronger, more effective* competitor in the local exchange market in Louisville -- which the combined company has committed to enter within 18 months of the close of the merger -- by combining the assets and expertise of the two companies. One stronger

competitor in Louisville has much more potential to add value for customers than does the theoretical possibility of two, weaker competitors. MCI and WorldCom, in supporting their own now-completed merger application to the FCC, could not have said it better when they noted that:

> For meaningful, facilities-based competition to develop what is required is not more competitors, but *stronger* competitors. The merger will create a more forceful local competitor by combining two companies with complementary advantages. . . . Because the merged company can expand and accelerate the reach of its local facilities and draw on the existing customer based of the two companies, it will be far better able to compete in more locations than would either entity standing alone.[1]

As Mr. Kissell explains, the combined skills and assets of GTE and Bell Atlantic will result in a better competitor in Louisville than Bell Atlantic could have been alone.

Q. HOW DO YOU RESPOND TO DR. REARDEN'S SPECIFIC CLAIM (AT PP. 13-14) THAT, SINCE BELL ATLANTIC HAS EXPERIENCE AS A LOCAL EXCHANGE PROVIDER AND IS ALREADY LARGE AND WELL-FINANCED, THE MERGER REMOVES A SIGNIFICANT POTENTIAL COMPETITOR FROM THE KENTUCKY LOCAL EXCHANGE MARKET?

A. This entire argument is based on the premise that Bell Atlantic would have competed in the Kentucky local exchange market even without the merger. This premise is wrong, especially as it relates to competing against GTE South in its Kentucky local exchange territories. As I stated in my Direct Testimony, Bell Atlantic had no plans to enter into the local exchange market

[1] Second Joint Reply of WorldCom, Inc. and MCI Communications Corporation, *In re Application of WorldCom and MCI for Transfer of Control*, CC Docket No. 97-211, at v (March 20, 1998).

in Kentucky at all, let alone specifically in competition with GTE South in its less dense local service areas. The conjecture by Dr. Rearden to the contrary has no basis in fact, as the cursory way in which he states his claim indicates.

The reality for Bell Atlantic is that we have no facilities today in Kentucky from which to supply service. We have virtually no brand recognition, particularly as a supplier of bundled services, which will be a key element to success in the market in the future. And we have virtually no customers (other than a handful of toll customers on a resale basis). Standing alone, we would have immense hurdles to overcome in establishing a credible position in the Kentucky market, at the same time that we face tremendous demands on our resources in our existing markets to compete and to prepare to offer long distance service to customers.

Thus, launching a competitive initiative in Kentucky – and particularly in GTE South's less dense local exchange areas -- would not be a cost-effective allocation of resources for Bell Atlantic standing on its own. Moreover, our past experience, when we have made even modest attempts to compete for customers outside our traditional footprint, has been sobering. Around the time of the passage of the 1996 Telecommunications Act, Bell Atlantic embarked on an initiative to sell long distance outside its traditional service territory in order to gain experience as a long distance provider. Even though we carefully selected the areas for our major initiatives so that they would

reflect some brand strength and other affinity for Bell Atlantic on which we could build, the results were dismal. We found it extremely difficult to succeed in the long distance market outside our territory. The minimal number of toll customers we have in Kentucky today reflects that very difficulty.

It is precisely because of these difficulties, coupled with the demands on our resources within our home territories, that we have not made plans to compete for local exchange customers outside these territories, in the absence of the merger. In one fell swoop, however, the merger with GTE will overcome many of the challenges we would face independently, and allow us to be a much stronger competitor with much better prospects for success. In a rapidly changing, competitive market, you simply cannot waste resources and energy on gambles which are too expensive and too risky. The merger with GTE makes attractive what otherwise would be a gamble we would not want to make -- a solo foray into Kentucky.

Q. ARE THERE ANY OTHER REASONS WHY THE THEORETICAL ELIMINATION OF BELL ATLANTIC AS A POTENTIAL COMPETITOR IN THE LOCAL EXCHANGE MARKET IN KENTUCKY WILL NOT HAVE AN ADVERSE EFFECT ON COMPETITION?

A. Yes. As the above discussion indicates, on a stand-alone basis Bell Atlantic would not bring any particular strength or advantage to its attempt to compete that would not be more than outweighed by the disadvantages it would

confront. As a result, even were we to try to compete for local exchange customers, we would add nothing of significance to the Kentucky market -- we would be just another entrant. While I am not that familiar with the specifics of GTE South's local exchange markets in Kentucky, I do know that AT&T, MCI WorldCom and Sprint -- as well as Bell South -- all are much better positioned than we are to compete in those markets today: each has existing customer relationships, facilities, and a strong brand presence within the state on which to build.

The testimony by Dr. Rearden is little more than a word-for-word rehash of testimony offered by Sprint coast-to-coast against the merger, concerning national claims and issues (even attaching Sprint's FCC filings), with no effort to analyze the Kentucky market specifically. It is interesting to note that Sprint offered the same types of arguments in opposing the merger in West Virginia. Nonetheless, the West Virginia Commission was one of the first to approve the merger, finding on November 20, 1998 that the merger would "not adversely affect the public interest" in West Virginia; and that "[n]either Sprint, MCI WorldCom nor AT&T [have] shown any West-Virginia-specific effects resulting from the merger that this Commission is best suited to address"; and that "requiring an extensive fact-finding inquiry into [national] issues would be a waste of Commission time and resources."[2] The same conclusion applies equally here, which is the mirror image of the situation in

[2] Joint petition for the approval of the merger of Bell Atlantic Corporation and GTE Corporation, Case No. 98-1224-T-PC (Order issued Nov. 20, 1998), at pp. 7-8.

West Virginia (where it was GTE with a handful of toll customers and no local exchange presence).

II. THE MERGER WILL ALLOW THE COMBINED COMPANY TO BUILD ON THE GTE SERVICE AND INVESTMENT RECORD IN KENTUCKY

Q. DOES THE MERGER RISK THE "EROSION OF SERVICE QUALITY" IN KENTUCKY, AS DR. REARDEN SUGGESTS (AT PP. 7, 10)?

A. No. Although this issue is properly addressed by GTE's witnesses, who will continue in this merger of equals with responsibility for building on GTE South's impressive service record, this concern is belied by our experience with the Bell Atlantic/NYNEX merger. Following our merger with NYNEX, as I pointed out in my Direct Testimony, service quality in West Virginia remained strong and our investment in construction spending has grown substantially. This did not occur as a result of any express commitments or requirements stemming from that merger, but instead was an outgrowth of our continued focus and dedication to serve our customers.

I can state without reservation that being part of a stronger, larger corporation has been good for West Virginia and good for our customers in every way. The alternative -- to have remained part of a smaller and smaller corporate parent relative to AT&T, Sprint, MCI, SBC and other global giants -- would have served only the interests of those competitors, not our customers. The exact same thing holds true with respect to the merger with GTE, both in my own state of West Virginia and in Kentucky. Nothing about this merger

diminishes our customer and service focus; indeed, this merger is about better meeting those customer needs, as reflected in the commitments made in the Joint Application regarding investment and deployment of CLASS services.

Q. ARE THERE OTHER REASONS TO BELIEVE THAT DR. REARDEN'S CONCERN ABOUT THE "EROSION" OF SERVICE QUALITY IN KENTUCKY ARE MISPLACED?

A. Yes. Not only are Bell Atlantic and GTE a complementary "fit" generally, but that particularly holds true for Kentucky and the community of interest it shares with West Virginia and Virginia. The community concerns I address daily on behalf of Bell Atlantic in West Virginia, both as a telecommunications provider and as a responsible corporate citizen, are the same as the concerns which GTE faces in Kentucky. For example, just this past August 12 and 13, I represented Bell Atlantic in the Appalachian Summit, held in Ashland, Kentucky on the first day and Huntington, West Virginia on the second. The purpose of the Summit -- attended by Kentucky's Governor Patton and West Virginia's Governor Underwood, Secretary of HUD Andrew Cuomo, and a host of other political and business leaders -- was to analyze economic initiatives in our two states as they effect the Appalachian region. I participated in a panel to discuss President Clinton's New Market Initiative in the Appalachian region, discussing many of the efforts we have undertaken at Bell Atlantic (which I also discussed in my Direct Testimony here) to create

jobs and bring modern technology to our state. The Summit simply reinforced the strong connection between West Virginia and Kentucky in terms of economic interests and development. For example, another topic I touched on during my presentation was the effort we have made to try to improve air service in the Ashland/Huntington/Charleston corridor in order to improve the business climate.

The merger between Bell Atlantic and GTE will allow the companies to directly address these areas of joint interest and concern in a more coherent and unified manner. We will be able to learn directly from GTE how they have dealt with issues on their side of the border and improve our own capabilities accordingly, and I would hope we would be able to contribute to GTE's knowledge and abilities in the same way. Moreover, since the combined company will have more of Appalachia as a direct area of interest than either company does individually today, it will be even more important that we maintain our commitment to investing in its development.

III. CONCLUSION

Q. ARE THERE ANY CONCLUDING OBSERVATIONS THAT ARE RELEVANT FOR THE COMMISSION'S CONSIDERATION OF THE MERGER?

A. Yes. It is no secret that mergers such as this one are occurring so that these companies can keep up with the changing marketplace. For example, Sprint's

1998 Annual Report characterized the situation by telling shareholders "other companies [are] in a rush of acquisitions, trying to assemble what Sprint has already put in place,"[3] and companies like Bell Atlantic are "merging and marrying in an attempt to avoid being *the marketplace or technological old maid.*"[4] Similarly, AT&T trumpeted the value and necessity of its own successful mergers in its 1998 Annual Report, arguing there are "only a handful of 'super carriers' positioned to serve the needs of multinational customers," and that AT&T believes that it "will come out on top" because it "should have a competitive advantage across the board – on scope, product depth, quality, cost structure and service capabilities."[5] MCI WorldCom's President and CEO, Bernard J. Ebbers, was just as effusive in characterizing the necessity of his companies "three multi-billion dollar transactions in 1998," proclaiming that as a result MCI WorldCom has now "achieved the size and scale necessary, from both a network as well as a sales perspective, to address meaningfully a global market that is over $800 billion today, and growing to approximately $1.1 trillion in two years." (MCI WorldCom 1998 Annual Report, p. 1.)

Bell Atlantic and GTE need to be of a similar size to their major competitors to compete in today's telecommunications marketplace, and we need to do our best to acquire a full complement of skills so we can offer a full array of

[3] Sprint 1998 Summary Annual Report (Letter to Shareholders from William T. Esrey, Chairman and CEO) (available at www.sprint.com).
[4] Sprint 1998 Summary Annual Report (available at www.sprint.com) (emphasis added).
[5] "Straight Talk," AT&T 1998 Annual Report at 22.

services. Otherwise, we may fulfill Mr. Esrey's prediction (and hope) that we will become the "old maids" of the marketplace. That result may serve our competitors' interests, but it will not serve the interest of the public or of competition itself. Unless we can match or nearly match the "size and scale necessary . . . to address meaningfully a global market" (MCI WorldCom's words) that our competitors have, and achieve the cost reductions that Sprint says give it an "enviable competitive advantage," then we will not be one of the "handful of super carriers" (AT&T's words) that will succeed in the national and global market.

Q. DOES THAT CONCLUDE YOUR TESTIMONY?

A. Yes.

Sprint

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August 16, 1999

VIA HAND DELIVERY

Helen C. Helton, Executive Director
Kentucky Public Service Commission
730 Schenkel Lane
Frankfort, Kentucky 40602

In Re: Case No. 99-296 – Joint Application of Bell Atlantic Corporation and GTE Corporation for Order Authorizing Transfer of Utility Control

Dear Ms. Helton:

Enclosed please find for filing an original and ten (10) copies of the Direct Testimony of Dr. David T. Rearden on behalf of Sprint Communications Company L.P. in the above referenced proceeding. Thank you for your assistance in this matter. Should you have any questions, please feel free to contact me.

Sincerely,

William R. Atkinson

William R. Atkinson

WRA/de

Enclosures

cc: Parties of Record

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

DIRECT TESTIMONY OF DR. DAVID T. REARDEN

ON BEHALF OF

SPRINT COMMUNICATIONS COMPANY L.P.

CASE NO. 99-296

August 16, 1999

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1. BACKGROUND.

Q. PLEASE STATE YOUR FULL NAME, POSITION, AND BUSINESS ADDRESS.

A. My name is David T. Rearden. I am employed by Sprint Communications Company L.P. ("Sprint") as a Manager of Regulatory Policy. My business address is 8140 Ward Parkway, Kansas City, Missouri 64114.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND, WORK EXPERIENCE AND PRESENT RESPONSIBILITIES.

A. I received a Ph.D. in economics from the University of Kansas in 1991 with fields of specialization in microeconomics and econometrics and a Bachelor of Arts degree in economics and history from Eastern Illinois University in 1982.

I began working for Sprint Communications Company L.P. in January of 1998. Prior to joining Sprint, I was employed on the Staff in the Utilities Division of the Kansas Corporation Commission. I began at the Kansas Commission in June, 1994 as Managing Research Economist. In that capacity, I provided testimony in both phases of the Kansas Commission's Local Telecommunications Competition Docket (Docket No. 190,492-U). I also provided testimony in several energy-related cases, and analysis of several other issues in both telecommunications and energy fields. In the summer of 1996, I was promoted to Chief of the Rate Design Section and Managing Telecommunications Economist. I supervised five tariff analysts and participated in numerous telecommunications proceedings before the Kansas Commission. Before working at the Commission, I taught economics for two years at the University of

Kansas. I also taught economics two years at Cleveland State University. Subjects taught included microeconomics, mathematical economics, public finance, and econometrics.

My current responsibilities include the development of Sprint's regulatory policy in support of the Long Distance Division and its subsidiaries. The issues typically concern issues such as local market entry, Total Element Long Run Incremental Cost or TELRIC costing and pricing of unbundled network elements (UNEs), universal service, access charges, anti-competitive pricing of interexchange services, RBOC mergers and Section 271 applications. In the development of such policy, I am responsible for coordinating with representatives of Sprint Corporation's local business units to ensure that Sprint's policy positions support all units of Sprint's clients.

I have filed testimony before the public utility commissions of the states of California, Georgia, Kansas, Kentucky, Maryland, Vermont, Wisconsin and Wyoming and before the Telecommunications Regulatory Board in Puerto Rico.

2. INTRODUCTION

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to address concerns I have with the proposed GTE/Bell Atlantic merger. The Kentucky Commission should determine whether the merger promotes the public interest. A key aspect to the public interest question in the State of Kentucky is whether the proposed merger would enhance competition through increased consumer choice and diversity of suppliers.

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

A. I first discuss the Commission's Order in the previous merger docket. I find that GTE's and Bell Atlantic's (hereinafter the "Joint Applicants") response to that Order is inadequate and does not meet the Commission's request for more specific information to demonstrate net benefits of the merger to Kentucky consumers. Furthermore, based on what information is in fact, provided to this Commission, I conclude that the merger would be inherently anti-competitive and that the benefits posited for the merger do not overcome that anticompetitive impact and allow the merger to be in the public interest. The major portion of my testimony concerns the effect on competition in Kentucky.

Q. WHAT IS THE MAIN FINDING OF YOUR TESTIMONY?

A. I find that the proposed Bell Atlantic/GTE merger would have an adverse affect on competition, which would result in adverse effects on rates or quality of

service or both for retail customers. My testimony in part uses an economic analysis similar to that used by the Department of Justice in the antitrust lawsuit against the vertically integrated AT&T/Bell system which began in the 1970s. Specifically, the combined Bell Atlantic/GTE entity's control over a major portion of the local network in several states would enable it to damage competition in both local and long distance markets. Furthermore the proposed merger would eliminate Bell Atlantic as a potential entrant as a local exchange carrier in GTE's service territory. Because of these two factors, the Commission should find that the merger is contrary to the applicable Kentucky statutes.

Q. HAS THE FCC APPROVED THE GTE/BELL ATLANTIC MERGER?

A. No. The Federal Communications Commission ("FCC") has yet to approve the Joint Applicant's merger. In fact, in a recent letter to the FCC, GTE and Bell Atlantic asked the FCC to refrain from considering their application until BA-NY files its 271 application with the FCC. This same letter withdrew a request for a waiver of Section 271 for the existing customers of GTE Internetworking. With the original request and subsequent withdrawal and delay, Bell Atlantic/GTE acknowledged significant Section 271 issues surrounding the merger. They have yet to make a proposal for the applicability of Section 271 to GTE's long distance affiliate.

Q. WHAT IS SPRINT'S POSITION AT THE FCC?

A. The FCC is reviewing the proposed Bell Atlantic/GTE merger in CC Docket No. 98-184.[1] Sprint has filed a Petition to Deny in that proceeding, which was provided as an Attachment to Sprint's responses to the Joint Applicants' Data Request No. 8 in the previous merger docket, Case No. 98-519. As the Commission may recall, Sprint's Petition to Deny outlines five fundamental reasons why the FCC should deny the Bell Atlantic/GTE merger petition.

1. The merger will preclude competition between Bell Atlantic and GTE in local exchange markets.
2. The increase in local markets controlled by the merged entity would have significant anti-competitive effects on local, long distance, and new services markets.
3. The merger will diminish the effectiveness of regulation by reducing the number of available benchmarks.
4. The applicants have failed to describe how they intend to comply with the requirements of Section 271.
5. The claim that the merger permits the merged parties to enter 21 markets when it would not do so otherwise is not credible nor enforceable, and it cannot in any event compensate for the anti-competitive effects of the merger.

[1] In re: Application of GTE CORPORATION, Transferor, and BELL ATLANTIC CORPORATION, Transferee, for Consent to Transfer Control.

Q. WHAT ACTION DID THE KENTUCKY COMMISSION TAKE IN THE PREVIOUS BELL ATLANTIC/GTE MERGER DOCKET (CASE NO. 98-519)?

A. The Commission denied the merger, but allowed the Joint Applicants to refile their petition at any time subject to providing "minimum specific and detailed documentation" on six different topics. (Order, p. 2)

Q. WHY DID THE COMMISSION TAKE SUCH ACTION?

A. The Commission determined that the Joint Applicants had not demonstrated that the proposed merger met the burden of proof for statutory compliance as contained in KRS 278.020(4) and (5): "The generic information about the merger provided to date is not sufficient to permit this Commission to approve it consistent with its statutory mandate to safeguard the public interest of Kentuckians." (Order, p. 2) While the Commission did not deny the merger outright, the Joint Applicants had not met their burden of proof for showing net benefits to Kentucky as a whole. Accordingly, the Commission outlined six areas for which they requested more information and documentation from the Joint Applicants.

Q. WHAT ARE THE SIX AREAS OF CONCERN NOTED IN THE COMMISSION'S ORDER IN CASE NO. 98-519?

A. They are: (1) quantification of benefits to Kentucky; (2) the specific mechanisms and safeguards intended to prevent erosion of service quality; (3) operational details of the merger; (4) effect of the merger on interLATA local calling routes in

Kentucky; (5) The consequences of the proposed merger on competition in telecommunications services in Kentucky, including the effect of the merger on increased market power in local exchange markets; and (6) expected net cost savings by the merged company. As part of the first criteria, the Commission requested specific information on the increased availability of advanced services and the increased ability to bundle services. (Order, pp. 2-3). The following section will discuss issues 1 and 2. The remainder of my testimony will deal with issues 5 and 6, the effect of the proposed merger on competition in Kentucky.

3. JOINT APPLICANTS CONTINUE TO FAIL TO DEMONSTRATE APPROPRIATE ANSWERS TO THE COMMISSION'S CONCERNS REGARDING QUANTIFICATION OF BENEFITS, AND SAFEQUARDS TO PREVENT EROSION OF SERVICE QUALITY.

Q. HOW DID THE JOINT APPLICANTS ADDRESS THE FIRST AREA OF CONCERN, REGARDING QUANTIFICATION OF MERGER BENEFITS TO KENTUCKY CONSUMERS?

A. In their refiled Application, the Joint Applicants offer merger savings and 100% availability of CLASS services in GTE South's service territories in Kentucky within 48 months or four years. In addition, they allege that the merged company could offer bundles of services faster, because new services will be provided faster than they would absent the merger.

Q. HOW DID THE JOINT APPLICANTS ADDRESS THE SECOND AREA OF CONCERN, REGARDING THE SPECIFIC MECHANISMS AND SAFEGUARDS INTENDED TO PREVENT EROSION OF SERVICE QUALITY IN KENTUCKY?

A. The Joint Applicants commit to an investment amount of $222 million over three years following the merger. In addition, they promise to implement more Local Calling Plans within their Kentucky territory. Finally, the Joint Applicants promise to pay attention to their management audit and continue to work towards resolving all concerns in that regard.

Q. DO THE JOINT APPLICANTS OUTLINE OTHER BENEFITS FROM THE MERGER?

A. Yes, they go on to claim several benefits beyond a no detriment standard. They include such things as GTE South-Kentucky being an overall better financial firm after the merger, the combination of the expertise of two firms instead of just one, and increased competitiveness of data, long distance and bundled markets.

Q. PLEASE RESPOND TO THE JOINT APPLICANT'S PRESENTATION ON THE FIRST ISSUE, QUANTIFICATION OF BENEFITS TO KENTUCKY CONSUMERS.

A. The claims made for merger savings are discussed below. However, CLASS services should not be considered advanced services. They have been generally available since the advent of digital switches, for 10-15 years at least.

Of course, a merger is not required to implement such an initiative. It could come about because GTE South found it in its best interest to do so, and indeed, the Commission could have ordered it independent of the merger if it found it in the public interest to do so. Also, since GTE South-Kentucky remains rate-of-return regulated, ratepayers ultimately pay for it in rates. Thus, implementation of vertical features in areas where they are currently not available is clearly not a merger benefit, nor does it constitute an "advanced service" as defined by the FCC. The Joint Applicants offer to implement no services which are "advanced services" under the FCC's definitions.

The merger also cannot be given credit for giving GTE the ability to bundle services together. In the current environment, GTE South already is better able to bundle than either Bell Atlantic or interexchange carriers ("IXCs") and CLECs. The merger does not effect those capabilities. If the merger does aid GTE's bundling, then it's because the merger gives more incentive to GTE to discriminate against its rivals. If bundling can only become profitable due to aggregation of traffic from BA's customers, then that may indicate that the Joint Applicants consider Bell Atlantic to have captive customers. This also implies that the merger is anti-competitive in the sense that GTE merged in order to avoid having to compete for customers.

In any case, these alleged benefits do not overcome the detriments stemming from the anticompetitive effects of the merger.

Q. PLEASE RESPOND TO THE JOINT APPLICANT'S PRESENTATION ON THE SECOND AREA OF CONCERN, THE MECHANISMS AND SAFEGUARDS INTENDED TO PREVENT EROSION OF SERVICE QUALITY.

A. A mere dollar figure of investment does not necessarily address any and all quality of services issues. That is, not all problems identified in the GTE South management audit are solved by infrastructure spending. Often those problems call for additional expenses. Further, the level of infrastructure commitment indicated in the refiled Application is not more than currently planned for 1999 and is below the level of infrastructure spending incurred in the last two calendar years. Thus, the level of the proposed infrastructure commitment is not a merger benefit, since it appears that GTE South-Kentucky has invested more than the proposed amount in the last two years, and would apparently not receive less than that in the future absent the merger. Finally, GTE South does not propose a credible enforcement mechanism for the proposed infrastructure commitment. In particular, there are no clear criteria for when GTE is allowed to fall below the proposed infrastructure commitment amount.

4. SUMMARY OF COMPETITIVE CONCERNS

Q. HOW DID THE JOINT APPLICANTS ADDRESS THE FIFTH AREA OF CONCERN NOTED IN THE COMMISSION'S PRIOR ORDER, REGARDING THE EFFECTS ON COMPETITION IN KENTUCKY?

A. Dr William Taylor provides testimony to outline his views on how the merger does not have anti-competitive effects.

Q. HOW DID THE JOINT APPLICANTS ADDRESS THE SIXTH AREA OF CONCERN, REGARDING KENTUCKY-SPECIFIC COSTS AND SAVINGS ATTRIBUTABLE TO THE MERGER?

A. Mr. Paul R. Shuell and Mr. Stephen L. Shore provide testimony on the calculation of the merger savings and implementation costs. They argue that these savings will help contain 'cost pressures', help the merged entity to deploy CLASS services in Kentucky, and that consequently no prospective rate reductions are in order.

Q. PLEASE RESPOND TO THE JOINT APPLICANT'S PRESENTATIONS ON THE FIFTH AND SIXTH AREAS.

A. The remainder of my testimony consists of a response to and an address of the anti-competitive effects of the merger. At the same time, as discussed below, I believe that the projected merger savings should not be used and cannot compensate for those anti-competitive effects.

Q. HOW WOULD THE MERGER REDUCE THE NUMBER OF COMPETITORS IN THE LOCAL MARKET?

A. The first issue the Commission must consider is the harm to competition the proposed merger caused by elimination of a potential competitor to GTE in Kentucky. Bell Atlantic is a strong provider of local services with extensive

experience providing service in 13 states and the District of Columbia. Bell Atlantic possesses the key attributes to be a successful facilities based player in local services markets outside of its franchised territory. They include local service experience, a working local service systems infrastructure, including OSS, marketing capability/brand name awareness and other attributes. This merger forecloses the possibility of independent entry by Bell Atlantic into GTE territory. I address this issue in more detail below.

Q. HOW WILL THE PROPOSED MERGER HARM COMPETITION IN LOCAL AND LONG DISTANCE MARKETS?

A. The second issue the Commission must consider is that the proposed merger will give the combined Bell Atlantic/GTE entity greater incentives and ability to harm competition in local, long distance, and new services markets than the separate firms would have. A central concern is the potential for the combined Bell Atlantic/GTE company to leverage its monopoly control over the local market in several states to unfairly advantage itself in competitive markets and to harm competition. Control over the local market already gives Bell Atlantic and GTE some incentive to harm competition in local and long distance markets in Kentucky and elsewhere, and their merger would strengthen those incentives. Additionally, when Bell Atlantic/GTE is allowed into the interLATA market, Bell Atlantic/GTE has an increased ability to harm competition in the long distance market by leverage of subsidies in its intrastate and interstate access rates. I anticipate that Bell Atlantic is going to be allowed into the interLATA

telecommunications market in the future. Merging Bell Atlantic, which already is comprised of two of the original seven RBOCs and the largest so-called "independent" increases the ability of Bell Atlantic/GTE to subsidize its interLATA long distance business. As with the impact of this merger on the number of local entry competitors, I address the issue of the proposed merger on the competitive process in more detail below.

Q. HOW CAN BELL ATLANTIC/GTE USE ITS CONTROL OVER NEARLY 100% OF THE LOCAL MARKET TO HARM COMPETITION?

A. As long as Bell Atlantic and GTE retain control over the vast majority of local loops within their regions, they have substantial ability and incentive to harm competition. The proposed merger would create a single phone company controlling more than one-third of America's phone lines. It would have more than $54 billion in total operating revenues, which is more than one-third of total phone company operating revenues. Allowing aggregation of two large local monopolies such as Bell Atlantic/GTE will harm consumers and postpones even farther into the future the benefits Congress intended when passing the Telecommunications Act of 1996 ("Act").

The merged Bell Atlantic/GTE would have increased incentives and ability to harm competition in the interLATA and intraLATA toll markets. As long as switched access is priced several times higher than cost, Bell Atlantic/GTE has a significant artificial cost advantage over other IXCs that they can use to harm

competition in the interLATA market. Thus, Bell Atlantic/GTE's entry into the interLATA market prior to reductions in switched access prices reduces the amount of competition that customers in Kentucky enjoy today, and it thus harms the public interest.

Additionally, Bell Atlantic/GTE can leverage its dominant position in the local market to harm the development of local competition. In the new competitive environment, local services will be bundled with long distance services. Bell Atlantic/GTE's competitive advantage of providing 99% of the switched access in its regions can be leveraged not only in the toll market, but in the local market as well. As local calling areas expand, competitive local exchange carriers ("CLECs") are going to be forced to pay terminating switched access to terminate calls into areas that extend beyond the BOCs' original "local" calling area rather than pay the lower rates for terminating local calling traffic. In short, a merged Bell Atlantic/GTE has increased ability to harm competition in all markets.

Q. DO YOU AGREE WITH DR. TAYLOR'S CHARACTERIZATION OF THE DOJ'S REVIEW OF THE GTE/BELL ATLANTIC MERGER?

A. No. Dr. Taylor suggests that the Kentucky Commission should approve the merger because the Department of Justice ("DOJ") did not challenge the merger. As many parties have discussed in the GTE/Bell Atlantic merger proceedings in other states, the state Commissions operate under a different standard when reviewing mergers. The DOJ uses a very narrow standard for reviewing

mergers. Conversely, the Kentucky Commission must go beyond the review done by the DOJ and look at the broader public interest aspects of the merger. As the Commission is aware, KRS 278.020(5) requires the Commission to find that the proposed merger is "consistent with the public interest" prior to approving the merger.

5. THE PROPOSED MERGER WILL PRECLUDE COMPETITION BETWEEN BELL ATLANTIC and GTE IN LOCAL EXCHANGE MARKETS

Q. WHY WOULD THE ELIMINATION OF BELL ATLANTIC AS A POTENTIAL ENTRANT IN GTE'S LOCAL SERVICE TERRITORY HARM COMPETITION?

A. The local service market in GTE's franchised territory is dominated by GTE with few or no competitive alternatives available to most customers. GTE's market share, as measured by the number of access lines GTE controls in its franchised area, is 99.3%. If CLECs self provision 25% of their loops, that number might fall to 99.0%. The threat of potential entry provides an incentive for GTE to reduce local/access rates or, at least, to restrain requests for increases. Because there are only a limited number of significant potential entrants, the elimination of even one of them can significantly reduce the incentive for such "good behavior" on the part of GTE. By eliminating a potential entrant, the merger enables GTE to charge higher prices than it otherwise could.

Q. WHY IS BELL ATLANTIC A LIKELY ENTRANT INTO GTE'S LOCAL SERVICE TERRITORY?

A. First, Bell Atlantic has extensive experience as a supplier of local services, including experience in the engineering, design, marketing and operation of local telephone networks serving all businesses and residences. Second, Bell Atlantic possesses fully functioning and time-tested OSS and billing systems that are critically important to the provision of local exchange and exchange access services. The significance of OSS has been most apparent in the Section 271 applications rejected by the FCC. Third, Bell Atlantic possesses a clear marketing message based on scores of years of local service provision and a well-known brand name. Fourth, Bell Atlantic is likely to be a particularly potent entrant, because it possesses first-hand knowledge of the kind of input provisioning of which an ILEC is capable. If, for example, GTE attempted to impede Bell Atlantic's entry by claiming that a service demanded by Bell Atlantic could only be provided in a particularly costly way, Bell Atlantic is in an excellent position to evaluate the validity of the claim by virtue of its own ILEC experience.

The extent of potential competition is an important consideration in this proceeding. Claims by the merging parties that the Commission ought to give little weight to potential competition should be rejected. Local exchange entry only recently became possible. The growth of local competition and its benefits to consumers are presently much more "potential" than "actual". It is therefore important for this Commission to recognize that the proposed merger preempts some level of local competition, even when Bell Atlantic has stated that it had no entry plans for GTE's local service territories in Kentucky prior to the merger.

6. THE POTENTIAL FOR ANTI-COMPETITIVE BEHAVIOR BY BELL ATLANTIC FAR OUTWEIGHS ANY MINIMAL BENEFIT OF ITS PROPOSED MERGER

6.1 THE MERGER INCREASES GTE'S INCENTIVE AND ABILITY TO HARM LOCAL COMPETITION

Q. HOW WOULD KENTUCKY CONSUMERS BE HARMED BY THE MERGED FIRM'S INCREASED INCENTIVE AND ABILITY TO DISADVANTAGE RIVALS?

A. The increase in the incentives and ability of the merged firm to disadvantage rivals is likely to lead to increased exclusionary behavior. In turn, this would prevent CLECs from attracting as many subscribers as they could absent the merger and limit the extent to which they can provide an effective level of competition. By limiting competition, the merged Bell Atlantic/GTE can maintain local exchange prices above competitive levels or provide less attractive service than otherwise. Kentucky consumers are thereby harmed. Moreover, as explained below, the proposed merger also gives Bell Atlantic/GTE an increased incentive and ability to disadvantage rivals in its service territories outside of Kentucky. The effects of this behavior would "spill over" into Kentucky, further adversely affecting Kentucky consumers.

Q. PLEASE DESCRIBE THE ANALYSIS ON WHICH YOU BASE THIS CONCLUSION.

A. GTE currently has market power as evidenced by its 99.3% market share in the sale of inputs necessary to CLECs seeking to provide service in GTE's territory. This market power provides GTE with the ability to harm rivals by some combination of raising the price, lowering the quality and/or the availability of these inputs. Bell Atlantic also has the incentive to engage in such exclusionary behavior, since it can profit by disadvantaging rival CLECs in its home territory. The merged Bell Atlantic/GTE's incentives to engage in exclusionary behavior would increase as a result of the merger. That is, post merger, Bell Atlantic/GTE has a greater incentive to engage in exclusionary behavior in GTE's Kentucky territory than GTE does currently. Finally, the merger would increase the ability of GTE to engage in exclusionary behavior by making it more difficult for rivals to demonstrate to regulators that the behavior was a result of intended exclusion rather than unforeseen or uncontrollable forces.

Q. DOES GTE CURRENTLY HAVE MARKET POWER IN THE PROVISION OF INPUTS TO CLECs?

A. Yes. Where it is the incumbent local exchange carrier, GTE has considerable market power in the provision of inputs that CLECs and IXCs need to provide service. ILECs, including GTE, provide an array of wholesale inputs that IXCs and CLECs need in order to provide service; these inputs include Unbundled Network Elements ("UNEs"), the resale of the ILEC's local exchange service, interconnection with the ILEC local network, and originating and terminating switched access. Subscribers to a facilities-based CLEC would also continue to

place a high value on interconnection with GTE's customers. Therefore, even those rivals still would continue to depend on access arrangements with GTE.

GTE and other ILECs in many cases are the only practical suppliers of access or interconnection inputs in their service territories, and therefore they have market power in the sale of these inputs. Indeed, it is the recognition of this market power that serves as the basis for state and federal regulation of access charges, the resale discount of ILECs' service, the provision and prices of UNEs and interconnection.

Q. DO ILECs RETAIN A DOMINANT POSITION IN THEIR SERVICE TERRITORIES?

A. Yes. The lack of competition in the supply of wholesale interconnection or access services is reflected in the monopoly share of retail service possessed by the ILECs in their home territories.[2] Data collected by the FCC document the ILECs' monopoly share.[3] In Kentucky, as noted earlier, GTE controls 99.6% of the access lines in its franchised territory.

Q. DO YOU EXPECT THAT GTE'S MARKET POWER WILL PERSIST FOR THE FORESEEABLE FUTURE?

A. Yes, this market power is likely to persist. GTE and Bell Atlantic can be expected to continue to have substantial shares of local exchange service

[2]This is not to say that the degree of ILEC market power is uniform across all customer segments. Large businesses have more competitive alternatives than do other businesses or residential consumers.
[3] Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, *Local*

business in the near to medium term as a legacy of their pre-competitive history. Further, Section 271 approval is unlikely to end the importance of ILEC facilities for the ability of IXCs and CLECs to compete. IXCs and CLECs will continue to rely on interconnection with the ILECs (including UNEs) to allow their customers to reach the ILECs' local customers.

Q. WHAT ARE THE IMPLICATIONS OF THIS MARKET POWER PERSISTING FOR COMPETITION WITH GTE IN LOCAL SERVICE?

A. GTE has the ability to limit competition from rival suppliers of retail services in the Kentucky territory it serves when CLECs have no effective substitutes, currently or prospectively, for the interconnection inputs supplied by GTE. Absent regulation, GTE might exercise this ability by increasing the prices it charges to CLECs for interconnection or other inputs. Higher input prices directly increase costs for CLECs, and thus limit their ability to capture customers and put competitive pressure on GTE's retail prices. GTE, in turn, could charge higher retail prices than it would otherwise, while its high wholesale prices allow it to capture supracompetitive profits. Alternatively, and particularly because rates for various interconnection inputs are regulated, GTE could instead adopt non-price strategies to raise CLECs' costs or otherwise reduce the attractiveness of their services to consumers. Such strategies would permit GTE to maintain high retail prices and market share. Thus, GTE could generate higher profits at the retail level. In response to successful exclusionary behavior, CLECs must either incur

Competition, December 1998 (henceforth "FCC Local Competition Report"). See Tables 3.1 through 3.5.

higher costs to offer a given quality of service, or offer a lower quality service for the same cost. Either alternative degrades CLECs' offerings and hinders their ability to compete. Indeed, some competing services may not be offered because entrants cannot attract a sufficient number of subscribers at the price at which it can compete.

Therefore, any change that leads to increased exclusionary behavior weakens GTE's CLEC rivals. This, in turn, harms Kentucky consumers through higher local exchange rates, or lower-quality local exchange service, or both.

Q. DO REGULATORY COMMISSIONS HAVE THE JURISDICTION TO PREVENT THE EXCLUSIONARY PRACTICES DESCRIBED?

A. Yes, this Commission and the FCC share jurisdiction over the terms and conditions as well as prices of interconnection to GTE's network. They also have considerable expertise in monitoring the quality of the services provided by GTE. Nonetheless, regulating the provision of the wide range of ILEC services that CLECs are entitled to purchase under the Act is a very difficult task in the face of asymmetric information about the ILEC's operations and costs. It is too optimistic to expect regulation to immediately and completely solve all disputes and prevent all deleterious effects on competitors under these circumstances.

Monitoring and regulating ILEC behavior, including attempts at exclusionary behavior, is inherently difficult. The regulators' task involves not just detecting all behavior that violates existing rules, but also determining allowed or required

behavior. As an example, GTE might deny CLEC rivals' requests for collocation claiming a lack of space. The rivals, in turn, might reply that space could be made available if GTE removed unused or underused equipment from its central offices. A protracted and contentious proceeding to settle the issues is a likely result. In the interim, CLECs are at a competitive disadvantage while the Commission decides the issue, even if GTE is ultimately required to make collocation available.

Monitoring becomes more difficult for regulators when CLECs require novel interconnection arrangements with which regulators have less experience. In particular, the kind of interconnection arrangements sought by Sprint's proposed new service, ION, differs from the standard CLEC arrangements in a number of important ways. State regulators and the FCC will have to judge whether ILECs are responding reasonably to ION's requests for appropriate OSS systems, a judgment with which neither the Commission nor the FCC has direct experience.

In sum, I conclude that GTE has the ability to disadvantage its retail rivals. A parallel analysis indicates that Bell Atlantic also has that ability.

Q. DOES GTE CURRENTLY HAVE THE INCENTIVE AS WELL AS THE ABILITY TO EXCLUDE CLEC RIVALS?

A. Yes. GTE, like other ILECs, has the incentive as well as the ability to engage in exclusionary behavior. ILECs not only sell access or interconnection inputs in upstream markets, but they also compete in downstream markets with the same

CLECs and IXCs to whom they sell inputs needed to reach retail customers. GTE is likely to find that exclusionary behavior in the supply of inputs to CLECs and IXCs protects the profits they earn now and expect to earn in the future at the retail local exchange level. The FCC has clearly expressed its ongoing concern with the incentive and ability of ILECs to frustrate the growth of local exchange competition:

> Because an incumbent LEC currently serves virtually all subscribers in its local serving area, an incumbent LEC has little economic incentive to assist new entrants in their efforts to secure a greater share of that market. An incumbent LEC also has the ability to act on its incentive to discourage entry and robust competition by not interconnecting its network with the new entrant's network or by insisting on supracompetitive prices or other unreasonable conditions for terminating calls from the entrant's customers to the incumbent LEC's subscribers.

The intensity with which GTE, Bell Atlantic, and other ILECs have used legal and regulatory maneuvers to resist the introduction of competition indicates that protection of their current local exchange market positions is valuable.

6.2 THE MERGER INCREASES GTE'S INCENTIVE FOR EXCLUSIONARY BEHAVIOR TOWARD CLECS

Q. DOES THE PROPOSED MERGER CHANGE THE INCENTIVE OR ABILITY OF GTE AND BELL ATLANTIC TO DISADVANTAGE RIVALS?

A. Yes. The merger would increase the incentive for Bell Atlantic/GTE to engage in behavior to exclude CLECs from Kentucky, or to limit their growth. The merger

would also increase Bell Atlantic/GTE's ability to engage in such practices, as I discuss in the next subsection of my testimony. The basis for my conclusions is set forth below.

Q. HOW ARE BELL ATLANTIC/GTE'S INCENTIVES TO COMPETITIVELY DISADVANTAGE ITS LOCAL EXCHANGE RIVALS IN KENTUCKY INCREASED BY THE MERGER?

A. The merger would increase the incentive of Bell Atlantic/GTE to delay, deny, or degrade the provision of interconnection inputs to Kentucky CLECs because the merged firm would realize greater benefits from this behavior than would GTE alone.

When GTE competitively weakens a rival in Kentucky, it may also weaken that rival throughout Bell Atlantic's region. While Bell Atlantic may already benefit from GTE's exclusionary behavior, GTE itself derives no profits from the benefits to Bell Atlantic. Thus, in deciding the extent to which it will harm CLECs in Kentucky, GTE does not take these "spillover" effects on the profits of Bell Atlantic into account.

Following the merger, however, the merged firm does benefit from the effects of its exclusionary activity in Kentucky on competition in Bell Atlantic territory. The merged firm, therefore, incorporates these "spillovers" in choosing the level of effort undertaken to hamper the competitive efforts of CLECs in Kentucky. In sum, the proposed merger makes exclusionary behavior in Kentucky look more

profitable to GTE. And because the gains from exclusion are "internal" to the combined firm, it has an incentive to increase the amount of discrimination it undertakes.

Q. IS AN INCREASE IN THE INCENTIVES TO EXCLUDE CLECs LIKELY TO AFFECT EXCLUSIONARY BEHAVIOR?

A. Yes, it is. GTE and other ILECs already have substantial incentives to try to exclude CLECs. The merger increases those incentives, and that increase could be expected to affect the range and extent of exclusionary behavior. When an ILEC like GTE is deciding the extent of its exclusionary behavior, it weighs the expected costs of that behavior (e.g., regulatory penalties) against the payoffs or gain in profits. The full extent of possible exclusionary behavior is unlikely to be exhibited by an ILEC, due to the resulting increase in the probability of detection by regulators and the associated penalties. The greater gains from exclusion stemming from the merger, however, justify a greater risk of detection. Moreover, as discussed below, this effect is exacerbated by the increased ability of the merged firm to engage in behavior that disadvantages its CLEC rivals because detection becomes more difficult following the merger.

Q. DR. TAYLOR, AT PAGES 29-33 OF HIS TESTIMONY, DISPUTES THAT THE MERGED ENTITY IS MORE LIKELY TO ADOPT DISCRIMINATORY PRACTICES OR THAT THEY ARE MORE EFFECTIVE POST-MERGER. HOW DO YOU RESPOND?

A. Dr. Taylor implies that post-merger, the merged entity is no more able nor has more incentives to engage in exclusionary behavior than pre-merger. For example, he claims Bell Atlantic and GTE have disincentives to discriminate because it is illegal and because it would prevent interLATA entry or a continued presence. However, as discussed in other parts of my testimony, what is legal or not can be the subject of prolonged dispute. And for Bell Atlantic particularly, the interpretation of discrimination for purposes of Section 271 is also the subject of much debate. Behavior which CLECs claim is clearly discriminatory is sometimes portrayed as acceptable behavior by ILECs.

Also, while discriminatory behavior is certainly detectable to some extent, that does not imply that correction is costless or necessarily swift.

Q. DR. TAYLOR ALSO CLAIMS THAT THESE ARGUMENTS ARE PURELY SELF-INTERESTED ON THE PART OF CLECS AND IXCS. HOW DO YOU RESPOND?

A. Sprint, like GTE and Bell Atlantic, does make arguments that protect its interests. But that does not dismiss them. The real test of the applicability of an argument is its logic and coherence. The testimony filed here discusses the issues that Sprint believes are important from a public interest perspective. That these issues coincide with Sprint's interests does not dispose of the applicability of the arguments any more than they do for GTE and Bell Atlantic.

6.3 GTE HAS A HISTORY OF STIFLING COMPETITION IN ITS LOCAL MARKETS

6.3.a GTE HAS PREVENTED THE ADOPTION OF INTERCONNECTION AGREEMENTS

Q. HOW HAS GTE PREVENTED COMPETITORS FROM NEGOTIATING AND USING INTECONNECTION AGREEMENTS TO COMPETE IN GTE'S SERVICE TERRITORIES?"

A. GTE has refused to allow Sprint to adopt many interconnection agreements or has refused to sign the agreements. In other jurisdictions, GTE claims that a large number of interconnection agreements have been "approved" in 28 states; however, GTE has refused to sign many of those agreements. For example, in the recent Ohio merger proceeding, GTE admitted in discovery that it had not signed one single interconnection agreement with a CLEC competitor in Ohio.[4] This, despite the fact that it has been several years since the Commission has issued orders in numerous arbitration proceedings. In the case of the Ohio AT&T agreement, the PUCO issued an arbitration order on December 24, 1996. GTE refused to sign the agreement. Two years later, the PUCO issued an order approving the agreement without GTE's signature.

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4 See Direct Testimony of Hamid Heidary on Behalf of Corecomm Newco. Inc., Case No. 98-1398-TP-AMT; "In the Matter of the Joint Application of Bell Atlantic Corporation and GTE Corporation for Consent and Approval of a Change in Control." Page 5.

Sprint sought to adopt portions of the Ohio AT&T agreement, but GTE refused to allow Sprint to include portions of the draft AT&T/GTE agreement. Instead, GTE told Sprint it had to adopt the AT&T contract in its entirety. However, because of GTE's refusal to sign the AT&T agreement, Sprint and other CLECs could not adopt it. GTE's obstructionist tactics delayed the availability of AT&T's interconnection agreement to other CLECs and thus, delayed the introduction of competition within its territory.

Q. CAN SPRINT AND OTHER CLECS ADOPT THE AT&T AGREEMENTS THAT GTE HAS SIGNED IN OTHER STATES?

A. No, not without additional conditions that GTE has sought to impose which hamper the ability of, if it does not effectively prevent, CLECs from competing in GTE's territory. GTE sent letters to Sprint and other CLECs informing them that they can adopt the AT&T agreement only if they agree to two outrageous conditions. First, GTE refuses to allow Sprint to seek UNE platforms (i.e., to purchase UNEs currently combined by GTE to provide service to its retail customers). Second, GTE refuses to pay reciprocal compensation for local traffic it terminates to a CLEC if that traffic terminates to an internet service provider ("ISP"). As recently as May 6, 1999, Sprint received a letter from GTE informing Sprint that it could adopt the AT&T agreement in the State of Washington only if it agreed to the two above conditions.

GTE has, in effect, reversed its earlier position of adopting contracts in their entirety. Where once GTE required Sprint to adopt AT&T's contract in its entirety, it now seeks to exclude Sprint from two crucial provisions in AT&T's contract. The rebundling of UNEs is crucial for CLECs such as Sprint to compete in GTE's local market. It is preposterous for Mr. Peterson to claim that "GTE has done nothing to stifle competition" when, in fact, GTE seeks to eviscerate the UNE platform, which is one of the most effective means of CLEC competition.

Q. ARE THE NUMBER OF INTERCONNECTION AGREEMENTS THAT GTE HAS NOT ARBITRATED PROOF THAT GTE HAS NOT STIFLED COMPETITION?

A. Most certainly not. The majority of CLECs have seen the enormous amount of time, resources, and money it takes to arbitrate with GTE over every little possible interconnection issue. As a result, many CLECs, including Sprint, have sought to adopt an agreement that has already been approved. Because AT&T had the resources, time, and money to devote to arbitrating an interconnection agreement with GTE, in many states Sprint chose to exercise its right under section 252(i) of the Act to adopt AT&T's interconnection agreement. Unfortunately, GTE has challenged the mechanics of Sprint's adoption of the AT&T agreement in other states in yet another attempt to prevent a competitor from entering its markets.

Q. IS GTE'S PROVISIONING OF A MINIMAL NUMBER OF RESOLD LINES AND UNBUNDLED LOOPS PROOF THAT NUMEROUS CLECS ARE EASILY ABLE TO ENTER THE LOCAL MARKET IN GTE'S LOCAL EXCHANGE AREAS?

A. No. First, based on the latest FCC data, it appears that GTE has sold very few, resold lines or UNE loops to CLECs in Kentucky. On a national basis, GTE's sale of only 100,101 resold loops and 23,147 unbundled loops pales in comparison to its 22 million lines nationwide. When, the number of resold and UNE lines represents less than 1% of all of GTE's lines, the claim that this as irrefutable evidence that GTE's markets are fully open to competition is hardly reasonable. Of the 802 interconnection agreements that GTE claims are "finalized and pending," it appears that only a handful are operable. Regarding the number of CLECs providing service over GTE's resold lines and UNE local loops in Kentucky and elsewhere, there may be only a small number of CLECs nationally that are actually providing local service over those resold lines and unbundled local loops in GTE's territory.

Q. ARE GTE'S APPROVED INTERCONNECTION AGREEMENTS READILY AVAILABLE TO ANY ENTRANT?

A. No. As I stated above. GTE will not let Sprint adopt AT&T's contract unless Sprint first agrees to two damaging conditions. The first condition prohibits Sprint from purchasing UNE combinations and the second denies payment to Sprint for the termination of some of GTE's local traffic. One can hardly say that

any approved agreement is available to any new entrant given the onerous caveats GTE seeks to impose.

Q. HAS GTE USED THE REGULATORY PROCESS TO DELAY THE INTRODUCTION OF COMPETITION INTO THE LOCAL MARKET?

A. Yes. In other jurisdictions, GTE's witnesses have theorized that any discriminatory behavior by GTE would be easy to detect and easy to remedy. It is particularly ironic for GTE to make this claim given that GTE is the master of using regulatory and judicial systems to stonewall the introduction of competition into its territory. While GTE may have a legal right to challenge regulatory commission rulings, GTE has led the charge in opposing the orders which were intended to facilitate competition. As all parties should recognize, regulatory and judicial processes are costly and time-consuming processes. It can take years to work through the process and attain rulings on contentious issues. And even when an order is issued requiring GTE to discontinue its anti-competitive practices and all possible remedies and appeals have been exhausted, GTE still appears not to comply.

The best remedy for any potential anti-competitive behavior by GTE is to prevent GTE from gaining the ability to behave anti-competitively at the outset. Clearly, the proposed merger increases GTE's ability and incentive to discriminate. For this reason, the Commission should deny the merger.

6.4.b GTE HAS ERECTED OTHER ROADBLOCKS TO LOCAL COMPETITION

Q. WHAT OTHER ROADBLOCKS HAS GTE SET UP TO DISCOURAGE CLEC COMPETITION?

A. As I stated earlier. GTE has a history of exclusionary behavior. Sprint has had problems reselling GTE's intraLATA toll service in California as well as problems with PIC change charges for new Sprint customers. In addition, Sprint has had a host of other problems as identified by Mr. Kevin Brauer in his affidavit to the FCC. This affidavit was attached to Sprint's data request responses in the prior merger docket, Case No. 98-519.

Q. WHAT PROBLEMS DID SPRINT HAVE RESELLING GTE'S INTRALATA TOLL SERVICE IN CALIFORNIA?

A. At the inception of the Sprint/GTE Interconnection Agreement in California, Sprint opted to purchase GTE intraLATA toll to resell to Sprint's end-users. By virtue of Sprint purchasing this toll, the billing should have been forwarded to Sprint on a wholesale bill to be reapplied to the end-user's retail bill generated by Sprint. Since the beginning, GTE has continued to send the billing for the intraLATA toll directly to the end-user on a GTE retail bill; thus, maintaining its presence with the customer. For the past two years, GTE has continued to make excuses for these billing errors as well as continually failing to meet the commitment to correct the issue. As a result of these incorrect billings and the confusion created with the customer, several customers were disconnected for

non-payment of the erroneous GTE intraLATA toll bills. On multiple occasions, when Sprint employees contacted GTE to reconnect the customers, they were told that the customer would not be reconnected until the bill was paid even though GTE was at fault for directly billing the customer rather than forwarding the billing information to Sprint. In one particular case, the same customer was disconnected four different times. As a result, the customer brought suit against not only Sprint, but also GTE and the California Public Utilities Commission ("CPUC"). In the judge's ruling, the judge vindicated both Sprint and the CPUC and found GTE solely culpable for the issues and errors.

To date, the issue has not been corrected to Sprint's satisfaction. In fact, all system fixes GTE states have been implemented to address and resolve their billing problems, have not corrected the problem; they have only exacerbated the situation. Each month new customers are calling with complaints of being billed by GTE for the intraLATA toll that should have been billed by Sprint. Sprint has asked GTE to perform monthly audits of all the bills with the hope of detecting and manually correcting the GTE billing errors prior to the customer receiving their bill. Each time this has been requested, GTE has refused. This issue has resulted in a huge commitment of time and resources by Sprint to manage GTE's billing problems. As a result of the continued problem, some customers felt that Sprint could not resolve the issue and have gone back to GTE. GTE is incapable of handling the volumes of traffic that would occur under an environment where CLECs are aggressively competing in the local market. At

present, Sprint and others have stopped offering service to new customers until all of the problems with resale are resolved satisfactorily.

Q. WHAT PROBLEMS DID SPRINT HAVE WITH GTE IN CALIFORNIA REGARDING PIC CHANGE CHARGES FOR CUSTOMERS USING RESOLD GTE LOCAL SERVICE?

A. When one of Sprint's resale customers changed their interLATA or intraLATA PIC, GTE charged Sprint a PIC change charge which Sprint could choose to flow through to its customers. However, GTE also charged Sprint a service order charge for submitting a Local Service Request ("LSR") to change a customer's PIC. GTE has denied Sprint direct access to its retail systems to implement the PIC change itself. Instead, GTE requires Sprint to process all PIC change charges via an LSR that triggered a separate service order charge. Conversely, if the customer were a GTE local customer, GTE would pass on a PIC change charge to the customer, but would not bill itself an LSR. The addition of an LSR charge, in effect, tripled the cost Sprint paid to switch its customers' PIC relative to the cost GTE paid for a PIC change.[5]

While Sprint's contract with GTE clearly sets forth Sprint's obligation to pay for the PIC change charge, it is silent regarding any charge for an LSR. Clearly, GTE's unilateral decision to charge Sprint an LSR in addition to the regular PIC change charge placed Sprint at a disadvantage to GTE and was discriminatory.

[5] I would note the Sprint's local telephone division does not charge CLECs any charge beyond the regular PIC change charge when one of its CLEC resale customers changes their PIC.

After several months of negotiation and discussions of further regulatory proceedings, GTE recently agreed to discontinue charging Sprint a service order charge for PIC change LSRs in addition to the PIC change charge, but refused to refund any past charges it wrongfully collected.

Q. WHAT ARE SOME OF THE ANTI-COMPETITIVE PROBLEMS MR. BRAUER IDENTIFIED WITH GTE?

A. Mr. Brauer identified several anti-competitive actions by GTE in his affidavit to the FCC, some of which I have already discussed above. Although Mr. Brauer's affidavit was submitted in connection with the prior merger proceedings, I will highlight a number of GTE's anti-competitive acts for the benefit of the Commission.

Although GTE has filed an ADSL tariff, it is offering ADSL in a manner that Sprint cannot use for its ION service. ION requires a broadband pipeline directly from the customer's premise to the Sprint network. From that point, Sprint will route voice (local and long distance), data (internet), fax, and video traffic to the appropriate destinations. However, GTE's ADSL tariff requires that the ADSL loop be directly connected to an internet service provider ("ISP") and prohibits direct connection to Sprint as a network service provider. Since Sprint's ION service is more than just a high speed internet link and does not terminate directly to an ISP, but to Sprint's network, GTE will not allow Sprint to use GTE's ADSL service to provide ION.

Mr. Brauer also discussed GTE's refusal to give Sprint access to an automated interface for customer service records ("CSR") in California. Although this problem has been ongoing for over two years, GTE still refuses to give Sprint automated access. Sprint still must request access to CSRs via a written request to GTE. GTE's only commitment is to provide the information back to Sprint via fax within 24 hours. This is a world apart from the instantaneous access that GTE's own customer service representatives have to information on GTE's existing customers.

GTE's requirement that Sprint submit LSRs manually rather than electronically has led to a high number of LSRs being rejected back to Sprint in error. GTE's error of rejecting LSRs that should be accepted continues to cause undue delay in switching customers to Sprint's local service. This gives customers the perception that Sprint is providing poor service quality and causes Sprint to engage in extensive dialogue with its customers to resolve the problems.

GTE has also sought to prevent Sprint from collocating equipment in its central offices that can be used to provide advanced telecommunications services such as ION. Prior to placing equipment in its collocation space, GTE is requiring Sprint to sign an agreement that prohibits Sprint from collocating equipment that contains intelligent router functions (i.e., switching). The "agreement" requires Sprint to only use the equipment for OAM&P (operations, administrative, maintenance, and provisioning) purposes. Under GTE's proposed agreement,

Sprint is prohibited from collocating Digital Subscriber Line Access Multiplexer ("DSLAM") equipment to provide its customers with ION service.

Q. ARE THESE PROBLEMS ONGOING?

A. Yes. GTEC very recently changed its ordering system called WISE without notification to Sprint. This led to orders for changes in customer services being repeatedly rejected. Orders have to be manually entered into the system to avoid the problem. Customers are still being repeatedly disconnected for billing problems in GTEC's systems. This is after promises from GTE that this situation cannot or will not occur anymore. In fact, one disconnect led to a Sprint resale customer's wire pair at the MDF being transferred to a GTEC customer. It was then no longer available to the Sprint customer, and that customer was scheduled to be out of service for at least a week.

6.5 GTE'S INCREASED INCENTIVES TO HARM LOCAL COMPETITION WILL HARM KENTUCKY CONSUMERS

Q. WHAT ARE THE LIKELY EFFECTS ON KENTUCKY CONSUMERS OF INCREASED INCENTIVES TO EXCLUDE THAT WOULD BE GENERATED BY THE MERGER OF GTE AND BELL ATLANTIC?

A. Increased incentives to exclude are likely to lead to increased efforts at exclusion, which harms the development of local competition. Because this increases the difficulty of entering local exchange markets, barriers to entry are

higher than they would otherwise be. Thus, rates for local exchange services typically priced above cost, such as business lines and custom calling features, or new services such as ADSL would be priced much higher than in a competitive market. Additionally, they may not become as widely available to Kentucky consumers as otherwise would be the case.[6]

Q. ARE KENTUCKY CONSUMERS ALSO LIKELY HARMED BY THE BEHAVIOR OF BELL ATLANTIC IF THE MERGER IS APPROVED?

A. Yes. For the same reason that GTE has increased incentives to foreclose rivals after the merger, so too does Bell Atlantic in its service territories. Prior to the merger, when Bell Atlantic engaged in exclusionary behavior toward CLECs in its service territories, it would likely benefit GTE and other ILECs. Prior to the merger, however, Bell Atlantic fails to take these "spillovers" into account. As Bell Atlantic currently has no ownership interest in GTE, it does not share in the increase in GTE's profits. After the merger, however, Bell Atlantic would benefit from the gains to GTE, and thus has increased incentives to undertake exclusionary behavior toward rivals. Thus, the merger adversely affects Kentucky consumers not just directly through increased exclusionary behavior by GTE, but it also adversely affects Kentucky consumers (not only in GTE territory) indirectly through increased exclusionary behavior by Bell Atlantic.

[6] As discussed below, an analogous consequence arises in Bell Atlantic's territory.

Q. DOES THE MERGER AFFECT THE ABILITY OF GTE TO DISADVANTAGE ITS CLEC RIVALS?

A. Yes, the merger would increase the ability of GTE to engage in practices to disadvantage its local exchange rivals. It is not unusual for these rivals to evaluate the reasonableness of an ILEC's explanation of its failure to supply requested access inputs by examining the behavior of other ILECs.

As a result of the merger, one less large ILEC would be available against which to compare GTE's performance. Because so few such ILECs are currently independent pre-merger, this reduction might have a substantial effect on the ability of CLECs to evaluate the responses of GTE to their provisioning requests. Reducing the number of large ILECs leaves a smaller number of "checks" on the reasonableness of any particular ILEC's response to a given interconnection request. Thus, the ability of GTE (and of other ILECs) to engage in anti-competitive behavior would be increased by the merger because the likelihood of detection is reduced.

At the same time, the kinds of practices the merged Bell Atlantic/GTE might adopt would likely differ from those made absent the merger. If GTE offered a practice or service that did not foreclose CLEC entry because GTE found it profitable (or for perhaps regulatory reasons) to do so, CLECs could use that pro-entry behavior as an example of feasibility in other regulatory arenas. Bell Atlantic might then be forced to adopt the GTE practice. GTE has no reason to

consider the effects of the practices it adopts on the profits of Bell Atlantic absent the merger. A merged Bell Atlantic/GTE, however, would calculate the effects of adopting a pro-entry (or not anti-entry) practice on the profits of both GTE and Bell Atlantic. Some practices, which benefit CLEC entry, and which GTE might have adopted, would not be adopted after the merger. This coordination could also reduce the ability of rivals, the Kentucky Commission, and other regulatory agencies to identify and penalize anti-competitive behavior.

Q. DR. TAYLOR, AT PAGES 9-10 OF HIS TESTIMONY, SUGGESTS THAT THE MERGER FACILITATES CLEC ENTRY. IS THIS A VALID ARGUMENT?

A. No. This argument is too optimistic about the effect of the merger because it ignores the effect of the merger on the incentives and ability of the merged company to engage in exclusionary behavior. Thus, while a larger footprint could mean that a single OSS interface could be implemented over a third of the access lines in the country, it is not altogether clear that the merged company can or will implement that interface quickly or efficiently. For example, many months after the Bell Atlantic-NYNEX merger has been implemented, the merged entity still uses separate and distinct OSS systems. Since Bell Atlantic and GTE are currently unfriendly to entry, the bigger footprint of the merged entity holds no more promise of cooperation towards enabling entry in the future. The incentives that the merged entity has to stifle competition simply overwhelm the potential entry enhancing possibilities. Finally, no merger is required to

standardize OSS interfaces. CLECs consistently plead for national standard interfaces to be implemented. Since no merger is required for this action, it seems no more likely post-merger than pre-merger.

7. EFFECTS ON COMPETITION IN LONG DISTANCE MARKETS.

Q. HOW CAN GTE CURRENTLY USE ITS CONTROL OVER THE NEARLY 100% OF THE LOCAL MARKET TO HARM COMPETITION IN TOLL MARKETS?

A. GTE has the ability to harm competition in the interLATA and intraLATA toll markets. As long as switched access is priced several times higher than cost, GTE has a significant artificial cost advantage over other IXCs that can be used to harm competition in the interLATA market.[7] In particular, Bell Atlantic's entry into the interLATA market prior to reductions in switched access prices could very well reduce the amount of competition that customers in Kentucky enjoy today, thus harming the public interest.

Q. HAS THERE BEEN A CONCERN IN THE PAST THAT A BOC MIGHT BEHAVE ANTI-COMPETITIVELY IF IT ALSO PROVIDED LONG DISTANCE?

A. Yes. In the early 1980s, AT&T was divested of its local exchange companies. The Modified Final Judgement ("MFJ") recognized that the BOC/AT&T combination need to be restrained because it had enormous market power because of their monopoly bottleneck control over the provisioning of local switched access. The divesting of AT&T's local and long distance business was

to prevent the combined BOC/AT&T powerhouse from leveraging local access which could have prevented robust long distance competition from ever developing.

In 1982, The District Court found that, "... the overriding fact is that the principal means by which AT&T has maintained monopoly power in telecommunications has been its control of the Operating Companies with their strategic bottleneck position."[8] The Court further found that, "Once AT&T is divested of the local Operating Companies, it will be *unable* either *to subsidize the prices of its interexchange service with revenues from local exchange service* or to shift costs from competitive interexchange services."[9]

The MFJ and the Court recognized that the BOCs needed to be restricted from providing interexchange service in order to foster a competitive interexchange market. "The proposed decree prohibits the divested Operating Companies from providing interexchange service. This restriction is clearly necessary to preserve free competition in the interexchange market."[10] "To permit the Operating Companies to compete in this [interexchange] market would be to undermine the very purpose of this proposed decree - to create a truly competitive environment in the telecommunications industry....[T]he Operating Companies would also retain

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7 I estimate that Bell Atlantic/GTE's average price of interstate and intrastate switched access across its combined 30+ states is roughly 2¢ per minute which is priced 4 - 6 times greater than cost.
8 *See* US v. AT&T, Antitrust & Trade Reg. Rep. (BNA) Vol. 43, No. 1077, Special Supp., at S-38 - S-39 (August 12, 1982).
9 *Id.*
10 *Id.* at pp. S-56

the ability to subsidize their interexchange prices with profits earned from their monopoly"[11].

Q. HAVE CONDITIONS CHANGED SIGNIFICANTLY ENOUGH SINCE THE MFJ TO ELIMINATE THE BOCS' ANTI-COMPETITIVE INCENTIVES?

A. No. Many of the same conditions that existed in 1982 still exist today. Just like in 1982, the BOCs still control nearly 100% of the local access lines in each of the states where they operate as well as a monopoly (or near monopoly) in the provisioning of switched access in their operating territories. Hence, the concerns expressed by the DOJ and the Court are still valid; a BOC retains the ability to leverage its huge market size and market concentration in urban areas to subsidize interexchange prices with profits earned from its monopoly services. Just as in the old vertically integrated AT&T/Bell System, a BOC that enters the long distance market within its region has the same economic incentives to use its monopoly market power in the switched access market to disadvantage its long distance competitors. The same arguments that applied in 1982 hold true today. The proposed Bell Atlantic/GTE merger simply allows Bell Atlantic/GTE to increase the size of the local market it controls in order to capture a larger share of the interLATA market.

Q. HOW CAN BELL ATLANTIC/GTE USE THE SUBSIDIES IN SWITCHED ACCESS RATES TO DRIVE IXCs OUT OF THE INTERLATA MARKETS?

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11 *Id.*

A. Bell Atlantic/GTE's access cost advantage works as follows: If the IXCs and Bell Atlantic/GTE have the same costs for providing the toll network portion of interLATA toll calling,[12] then the only cost difference between them is the price they each pay for switched access to originate and terminate toll calls. The cost to the IXCs for originating and terminating a call in Bell Atlantic/GTE's territory averages approximately 2¢ per minute on each end.[13] However, the cost to Bell Atlantic/GTE for originating and terminating a call in their own territory is estimated to be only ¼ - ½¢ per minute on each end. While it is true that the Bell Atlantic/GTE long distance affiliate will record an entry on its accounting books that it "paid" its Bell Atlantic/GTE local affiliate 4¢ per minute for access, that "cost" is only a paper transaction between affiliates and not a real economic cost for the Bell Atlantic/GTE entity as a whole. Bell Atlantic/GTE is simply shifting dollars from its long distance affiliate to its local affiliate. The 4¢ per minute access cost for Bell Atlantic/GTE's long distance affiliate is a 4¢ per minute access revenue stream for Bell Atlantic/GTE's local affiliate. The local affiliate will also record an expense of approximately 1/4 - 1/2¢ per minute for providing the access minute.

The accounting books that matter most to Bell Atlantic/GTE and its shareholders are the accounting books of the parent corporation which consolidates the revenues and expenses of all its affiliates. The cost that the consolidated

12 It is reasonable to assume that Bell Atlantic/GTE has the same, if not better, cost structure for its intrastate toll networks as the IXCs given that Bell Atlantic/GTE has a more extensive toll network than the IXCs in Kentucky.

Income Statement will reflect is the real economic cost Bell Atlantic/GTE incurs in providing access to itself (i.e., to its long distance affiliate). Based on the above numerical example, this cost is less than 1¢ per minute.

Local Affiliate's Access Revenue	+ 4¢ per minute
Less Local Affiliate's Cost of Providing Access	- 1¢ per minute
Less Long Distance Affiliate's Cost of Buying Access	- 4¢ per minute
Equals Net Cost of Access to BA/GTE Parent	- 1¢ per minute

Hence, the fact that the Bell Atlantic/GTE long distance affiliate is a separate subsidiary with separate accounting records does not eliminate this bottom line advantage to the parent Bell Atlantic/GTE corporation. On average, Bell Atlantic/GTE enjoys a 3¢ per minute switched access cost advantage when competing with the IXCs for interLATA toll traffic for all traffic that originates and terminates to a customer served by the Bell Atlantic/GTE local affiliate![13] In a competitive market where margins are calculated in tenths of cents, Bell Atlantic/GTE's 3¢ per minute cost advantage in switched access can be fatally detrimental to its IXC competitors.

Q. HOW CAN BELL ATLANTIC/GTE USE ITS 3¢ PER MINUTE ACCESS COST ADVANTAGE TO UNDERPRICE ITS IXC COMPETITION?

A. The following table sets forth a numerical example that summarizes Bell Atlantic/GTE's artificial access advantage.

[13] This is the weighted price of Bell Atlantic's and GTE's intrastate and interstate switched access rates for all states

BELL ATLANTIC/GTE'S ACCESS COST ADVANTAGE

Cost of Service	IXC Cost	Bell Atlantic/GTE Cost	Bell Atlantic/GTE Advantage
Access Cost	4 ¢	1 ¢	3 ¢
Toll Network Cost	3 ¢	3 ¢	0 ¢
Total Cost	7 ¢	4 ¢	3 ¢

If the cost of providing the toll portion of interLATA toll calling is approximately 3¢ per minute for both the IXCs and Bell Atlantic/GTE,[14] then IXCs face a cost of 7¢ per minute to provide toll service (4¢ for switched access plus 3¢ for their toll network), while Bell Atlantic/GTE faces a cost of only 4¢ per minute to provide toll service (1¢ for switched access plus 3¢ for their toll network). Even if Bell Atlantic/GTE is required to impute full access charges and has to price its interLATA toll service at 7¢ per minute, it will still enjoy a 3¢ per minute profit margin. The IXCs, on the other hand, will be forced to match Bell Atlantic/GTE's 7¢ per minute price to stay competitive. However, at 7¢ per minute, the IXCs are receiving zero profit[15] and will soon be driven out of the market. This anti-competitive advantage that Bell Atlantic/GTE could exercise is often referred to as the "price squeeze."

they serve.
14 In this example, network costs assume a zero return on equity.
15 In this instance, I define "zero profit" as a situation when the company does not earn a "normal" return. It recovers the cost of debt, but earns a zero return on equity.

The subsidies embedded in access charges allow Bell Atlantic/GTE to capture market share from the IXCs even if Bell Atlantic/GTE is much less efficient. This undermines one of the attractive features of competition; namely lower costs and/or superior product quality drive market success. Thus, Bell Atlantic/GTE's entry into the interLATA market may not increase competition, but may ultimately decrease competition.

Q. DR. TAYLOR DISMISSES THESE ARGUMENTS WITH A DISCUSSION OF PREDATORY PRICING. HOW IS HE MISTAKEN?

A. First, a vertically integrated provider differs from the standard case of predatory pricing, which can have more competitive wholesale markets. In the standard case, individual firms are less likely to have the advantage that exists in the price squeeze example. Second, it is true that in a static sense, the access margin does represent an opportunity cost to the ILEC, and deters anti-competitive pricing. However, in two ways this does not account for all the incentives which ILECs face in setting interexchange prices. One, a lower price from the ILEC is likely to, and is indeed designed to, stimulate quantity demand. In that case, the opportunity cost of incremental minutes is not the full access margin, but the incremental cost of those minutes. It may then be profitable for the ILEC to price below its imputed access revenues per minute. The other reason that a price squeeze could become profitable is when marketing costs are significant. That means that maintaining a retail relationship has value apart from the imputed

access costs. Cross selling is facilitated when a customer remains with the ILEC. For example, ILECs typically price toll plans much lower than basic toll in order to capture market share and stimulate use of their toll network. If the rates in those plans fall below imputed access, then they are anti-competitive. Another example is special contracts for toll. Price breaks might fall below imputed access.

In addition, there is an obvious increase in the incentive to price squeeze after a merger. Simple arithmetic shows that more traffic involves calls which both originate and terminate on the network of the merged company. That means that the access margin is highest for more of the merged company's toll traffic. The high access margin constitutes an incentive to engage in a price squeeze.

Q. WHICH GTE INTRALATA TOLL PRODUCT WAS PRICED BELOW THE IMPUTED COST OF SWITCHED ACCESS AND THUS, CONSTITUTED A PRICE SQUEEZE?

A. GTE's own pricing of intraLATA toll service provides a clear example of the price squeeze and proves that GTE practices such anti-competitive price squeezes in the real world. Last year, GTE filed a tariff in Missouri for its Extended Reach Plan which was an intraLATA toll calling plan that would compete directly with intraLATA toll calling products offered by IXCs, wireless carriers, and CLECs.

GTE proposed to sell "virtually unlimited"[16] intraLATA toll calling for 1 ½ cents per minute to residential customers and 3 cents per minute to business customers.[17] IXCs, wireless carriers, and facilities-based CLECs pay switched access rates as high as 20 cents per minute to originate and terminate intraLATA traffic and thus, could not match GTE's 1 ½ cent per minute price. This enormous cost differential would allow GTE's Extended Reach Plan to significantly harm the development of facilities-based local competition and significantly damage competition in the intraLATA toll market. The Missouri Commission rejected GTE's Extended Reach Plan because it found that GTE's toll service was priced below the cost of imputed access charges and constituted an anti-competitive price squeeze.

Q. HOW COULD GTE SELL INTRALATA TOLL FOR ONLY 1 ½ CENTS PER MINUTE AND STILL COVER ITS COSTS?

A. GTE could not have covered its cost of imputed switched access. It is highly unlikely that GTE was even covering all of the other costs incurred to provide the service such as its TSLRIC of switched access, network costs, marketing, billing, administrative, etc. As shown in the table above, GTE maintains an artificial access advantage over its IXC competitors. However, even that advantage cannot justify a price as low as 1½ cents per minute. It is possible that GTE was

16 See Direct Testimony of Michael V. Chopp on Behalf of GTE Midwest Incorporated, in docket number TT-98-545, In the Matter of GTE Midwest Incorporated's Proposed Revision of Its PSC Mo. No. 1 to Introduce LATA-wide GTE the Extended Reach Plan; page 5, lines 14 –16.

17 Residential customers will pay $27.50 for 30 hours of calling ($27.50/1800 minutes = 1.5278 cents per minute). Business customers will pay $55.00 for 30 hours of calling ($55.00/1800 minutes = 3.0556 cents per minute).

planning to recover the revenue shortfall from the Missouri universal service fund ("USF"), because it sought to classify its toll plan as a local service. The Missouri Staff and others expressed concern that GTE might seek to raid the Missouri USF, and GTE witnesses did not commit to not seeking additional USF funds for the revenue shortfall.

Q. HAVE GTE ECONOMISTS ACKNOWLEDGED THE POSSIBILITY OF A PRICE SQUEEZE?

A. Yes. GTE's own economist, Mark Sievers[18], has testified about the ability of GTE to leverage its above cost switched access rates to price anti-competitively in the intraLATA toll markets. In testimony Mr. Sievers filed on behalf of Sprint as recently as March of 1995, Mr. Sievers testified that:

> "As long as there are no viable competitive access alternatives and as long as GTE Hawaiian Telephones' access charges are inflated with substantial levels of contribution/subsidy, long distance providers can be driven from the market or excluded from the market if they are forced to compete with GTE Hawaiian Telephone and forced to buy essential access services from GTE Hawaiian Telephone at rates inflated with significant contribution or untargeted subsidies."[19]

[18] Mr. Sievers testified on behalf of GTE in the Ohio BA/GTE merger proceeding in Docket No. 98-1398-TP-AMT.
[19] See Direct Testimony of Mark Sievers on behalf of Sprint Communications L.P., March 24, 1995; In the Matter of the Public Utilities Commission Instituting a Proceeding on Communications, Including an Investigation of the Communications Infrastructure of the State of Hawaii; Docket No. 7702; page 21, line 23 – page 22, line 4.

Mr. Sievers goes on to state that GTE doesn't have to price below the imputed cost of switched access to leverage its access advantage. Because of the large contribution margins in GTE's switched access rates, GTE can choose to price at "a level that just covers its access prices plus toll costs. At that level, rivals who match GTE Hawaiian Telephone's pricing strategy have their profits driven to zero and must exit the market."[20]

Q. DOES THE MERGER INCREASE GTE'S ABILITY TO IMPLEMENT A PRICE SQUEEZE?

A. Yes, the merger increases the ability of GTE to implement a price squeeze. If the merger is approved, Bell Atlantic/GTE's market share of access lines in the United States increases to more than one third of all access lines, with a heavier concentration of lines east of the Mississippi River. This concentration of market power allows the combined GTE/Bell Atlantic greater ability to leverage the subsidies in its switched access rates and price below imputed costs.

An ILEC (such as GTE or Bell Atlantic) needs a sufficient base of customers from which to execute a successful price squeeze strategy. By itself, GTE has limited ability to leverage its access subsidies to underprice competitors in the interLATA toll market because its properties are scattered across several states and are less concentrated in any one state than an RBOC's properties. Thus, while GTE can leverage the access subsidies on the long distance calls that

20 Id. Page 22, lines 8 – 11.

originate with its customers, it usually cannot do so on the terminating end of the call because the vast majority of those calls will terminate to a non-GTE customer.[21] However, when GTE combines with Bell Atlantic to capture more than one-third of all access lines in the United States, GTE gains the size and scope necessary to successfully implement a price squeeze. In this scenario, a significant increase in the percentage of interLATA toll calls that originate with GTE's customers will now terminate to a GTE/Bell Atlantic customer. This gives GTE a greater ability to leverage the switched access subsidies on both ends of the call. Inasmuch as a significantly larger percentage of GTE's dollars for terminating switched access will now be going to itself (via the new GTE/Bell Atlantic entity), GTE has a much greater ability to implement a price squeeze.

Q. UNTIL ACCESS PRICES ARE REDUCED TO COST, WILL IMPUTATION RESOLVE THE PRICE SQUEEZE PROBLEM?

A. No. Even if Bell Atlantic/GTE's long distance affiliate is required to impute the cost of access into its prices for interLATA toll service, Bell Atlantic/GTE will still be able to price squeeze IXC competitors out of the market. This is because all of the profits and losses of Bell Atlantic/GTE's long distance division and Bell Atlantic/GTE's local division flow to their corporate parent. The best way for the corporation to maximize its profits may be to price its competitive long distance service close to cost and continue to collect monopoly prices on its non-

[21] GTE did this very thing by offering its local customers a 50% discount of their long distance bill for six months if they switched to GTE Long Distance.

competitive local services such as the high-priced custom calling features. Thus, in order to provide a packaged bundle of local and long distance service, Bell Atlantic/GTE may choose to operate its long distance operations at a loss (provided it still can pass imputation tests) and keep the prices for all local services as high as it can and still enjoy a 3¢ per minute revenue advantage over its long distance competitors.

Although imputation does not stop Bell Atlantic/GTE from exercising a price squeeze, it remains an important and necessary safeguard. Imputation at least sets a minimum price level to prevent extreme predatory pricing such as Extended Reach.

Q. IF IMPUTATION DOES NOT STOP ILECS FROM EXERCISING THEIR ANTI-COMPETITIVE SWITCHED ACCESS PRICE SQUEEZE PRICING ADVANTAGE, WHAT WILL?

A. The only real solution to this problem is to reduce Bell Atlantic/GTE's switched access prices to TELRIC. So when Bell Atlantic/GTE is allowed into the interLATA market, Bell Atlantic/GTE and the IXCs face the same cost for originating and terminating switched access. There are two ways to achieve this result. First, allow CLEC competition to develop to the extent that competitive forces drive the price of switched access down to cost, or second, prescriptively order Bell Atlantic/GTE to reduce switched access prices to TELRIC cost. While

this immediate proceeding was not originally opened to address GTE's switched access rates, those rates are a factor to be considered in the proposed merger.

Q. WHAT ARE THE IMPLICATIONS OF THE ANTI-COMPETITIVE BOC PRICE SQUEEZE PROBLEM?

A. The ongoing danger of Bell Atlantic/GTE's powerful discrimination ability via a price squeeze has three implications. One, the Commission should factor in this danger in evaluating the net benefit or harm to consumers in local and long-distance markets if Bell Atlantic and GTE are allowed to merge. Two, if Bell Atlantic and GTE are allowed to merge, this Commission will have to be vigilant to prevent discrimination, act swiftly in response to complaints about discrimination, and respond forcefully when they detect discrimination. Three, since the danger of discrimination diminishes as CLECs gain greater presence in local markets, protecting competition in long-distance markets provides yet another reason for the Commission insisting that local competition truly be enabled before approving this merger.

Similarly, to the extent that regulation is unable to prevent the merged entity from pricing its long distance services at or below cost, and thus subsidizing its long distance customers with monopoly revenues from its local exchange customers, the Bell Atlantic/GTE merger actually harms local exchange customers, who are forced to subsidize long-distance calling. Such cross-subsidies, in addition to

distorting competition in interLATA markets, amount to regulatory evasion and are contrary to the public interest.

8. RECOMMENDATION AND SUMMARY

Q. DR. REARDEN, WHAT IS YOUR RECOMMENDATION FOR THIS COMMISSION?

A. I recommend that the Commission deny the Joint Applicants' petition for two reasons. First, GTE and Bell Atlantic have clearly failed to provide sufficient evidence that their merger is in the public interest. Second, the merger of GTE with Bell Atlantic should be denied for all of the reasons stated above in my testimony, regardless of the level of detail GTE and Bell Atlantic provide. The merger of two large ILECs does not magically transform an ILEC monopolist into a national carrier that suddenly offers its customers a full range of vertically integrated services. It simply creates a larger ILEC that has even greater ability and incentive to harm competition in the local and long distance markets. If market capitalization were truly the only constraint that allegedly prevents GTE from competing in the national market, then GTE would be better off merging with Nippon Telephone.

Q. DR. REARDEN, WHAT ARE YOUR CONCLUSIONS?

A. Rather than competing outside of its franchised local territories, GTE and Bell Atlantic appear to be attempting to grow to such an impossibly large size as to

crush local competitors in their home territories. GTE and Bell Atlantic clearly understand the value of locking up a large share of the local U. S. market. Such control over the local market would allow the merged Bell Atlantic/GTE to leverage its monopoly bottleneck to advantage itself in the local and long distance markets and would ultimately harm competition.

The concerns voiced by the Department of Justice and Judge Greene at the divestiture of AT&T/Bell still remain today. In 1982, The District Court found that, "... the overriding fact is that the principal means by which AT&T has maintained monopoly power in telecommunications has been its control of the Operating Companies with their strategic bottleneck position." The court further found that, "Once AT&T is divested of the local Operating Companies, it will be unable either to subsidize the prices of its interexchange service with revenues from local exchange service or to shift costs from competitive interexchange services." The same concerns exist today. The DOJ and the Court could have adopted separate affiliates in 1982 rather than divesting AT&T/Bell if they believed that such a safeguard was effective. As demonstrated above, separate affiliates are not a sufficient safeguard to prevent the Baby Bells from discriminating against other carriers in the local and long distance markets. As the Court stated, "... the Operating Companies would also retain the ability to subsidize their interexchange prices with profits earned from their monopoly." Bell Atlantic/GTE are literally one hundred times the size of a majority of their CLEC competitors.

They do not need to merge to "get bigger" to compete with other CLECs. The Commission should not allow Bell Atlantic/GTE to merge. Such a merger is contrary to the public interest and will harm competition in local and toll markets.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

AFFIDAVIT

STATE OF Missouri

COUNTY OF Jackson

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared David T. Rearden, who being by me first duly sworn deposed and said that:

He is appearing as a witness on behalf of Sprint Communications Company L.P. before the Kentucky Public Service Commission in Case No. 99-296, and if present before the Commission and duly sworn, his Testimony would be the same as set forth in the annexed testimony consisting of 57 pages and 0 exhibits.

David T. Rearden

David T. Rearden

SWORN TO AND SUBSCRIBED BEFORE ME THIS 16th DAY OF August, 1999.

NOTARY PUBLIC

SALLY J. WERTS
Notary Public-Notary Seal
State of Missouri
Platte County
My Commission Expires: Oct. 3, 2000

08/16/99 MON 07:50 [TX/RX NO 9089]

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and exact copy of the within and foregoing Direct Testimony of Dr. David T. Rearden on behalf of Sprint Communications Company L.P. in Case No. 99-296 via express delivery (FED EX) as indicated by an asterisk (*), or by United States first class mail, postage pre-paid and properly addressed to the following:

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This 16th day of August, 1999.

William R Atkinson
Sprint Communications Company L.P.
External Affairs

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of:	)	
	)	
JOINT APPLICATION OF BELL	)	
ATLANTIC CORPORATION AND GTE	)	CASE NO. 99-296
CORPORATION FOR ORDER	)	
AUTHORIZING TRANSFER OF	)	
UTILITY CONTROL	)	

REBUTTAL TESTIMONY

OF

JEFFREY C. KISSELL

ON BEHALF

OF

GTE CORPORATION

AUGUST 20, 1999

REBUTTAL TESTIMONY OF JEFFREY C. KISSELL

Q. PLEASE STATE YOUR NAME, POSITION, AND BUSINESS ADDRESS.

A. My name is Jeffrey C. Kissell. I am Vice President of Merger Integration for GTE Corporation. My business address is 600 Hidden Ridge Drive, Irving, Texas 75038.

Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS PROCEEDING?

A. Yes. I submitted direct testimony on behalf of the GTE Corporation on July 9, 1999. Additionally, as was mentioned in a letter filed in this docket on August 2, 1999, I have adopted the direct testimony of William A. Griswold, as he will not be able to attend the hearing scheduled for August 24, 1999.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to address testimony of Dr. David Rearden on behalf of Sprint relating to (1) the benefits of the merger of GTE and Bell Atlantic and (2) the competitive impact of the merger.

Q. HAVE YOU REVIEWED THE DIRECT TESTIMONY OF SPRINT COMMUNICATIONS COMPANY'S WITNESS DR. DAVID REARDEN?

A. Yes, although I must confess to being somewhat confused regarding the relevance of Dr. Rearden's testimony to this proceeding. Although Dr. Rearden attempts to portray his testimony as a "response" to the information contained in the Joint Application and supporting testimony, he instead glosses over the many significant benefits the merged company will bring to Kentucky through its commitments to market expansion, capital deployment and service introductions. Indeed, Dr. Rearden's testimony contains very little discussion and no factual content relating to Kentucky consumers, Kentucky competitors, or even GTE's business in Kentucky. Dr. Rearden has apparently mistaken this proceeding as a California or Ohio complaint proceeding, an access charge ratemaking proceeding or possibly a Missouri Extended Area Service investigation.

Dr. Rearden's testimony is the classic smokescreen. Lacking any credible basis to dispute the tangible benefits this merger will bring to Kentucky, he spends nearly 60 pages raising anything and everything he can to distract this Commission's attention from the real issue -- whether this merger is in the interest of Kentucky consumers. Because Dr. Rearden has utterly failed to controvert any of the facts demonstrating that this merger will benefit Kentucky consumers, his testimony should be disregarded.

Q. PLEASE SUMMARIZE THE BENEFITS THAT WILL ACCRUE TO KENTUCKY RATEPAYERS AS A RESULT OF THIS MERGER.

A. In our application and direct testimony, the Joint Applicants demonstrated that the following benefits will accrue to Kentucky ratepayers as a direct result of the proposed merger:

- Introduction of Class Services to 100% of GTE South's exchanges within 48 months of merger close;
- Competitive entry by the combined companies into Louisville within 18 months of merger close;
- Merger synergies, resulting in a stronger competitor against Bell South in Louisville and elsewhere;
- Introduction of additional local calling plans in Kentucky to meet the expanding communication requirements in the Commonwealth; and
- Continuation of GTE South's substantial investment in Kentucky, including a $222 million minimum capital commitment.

Q. DR. REARDEN ARGUES THE CLASS COMMITMENT IS NOT MEANINGFUL BECAUSE IT WILL BE PAID FOR BY THE RATEPAYERS AS A FUNCTION OF RATEBASE REGULATION, AND IT COULD BE INTRODUCED BY THE COMPANY OR REQUIRED BY THIS COMMISSION WITHOUT THE MERGER. HE ALSO SAYS CLASS SERVICES DO NOT MEET THE FCC'S DEFINITION OF "ADVANCED SERVICES." DO YOU AGREE WITH HIS ARGUMENTS?

A. No. GTE and Bell Atlantic have proposed a substantial and meaningful commitment to introduce CLASS Services into 100% of GTE South's

Kentucky exchanges within 48 months after the merger closes. This commitment is incremental to GTE South's current plans, and reflects our sincere desire to assure that all our customers in the Commonwealth receive tangible benefits from the proposed merger.

Dr. Rearden's assertion that the cost of this expansion will ultimately be recovered from ratepayers is wrong. Dr. Rearden ignores our initial testimony, in which we made clear that the CLASS expansion will be made possible by investing some of the expected merger cost savings directly back into Kentucky. As such, the merger savings will help offset the additional costs of CLASS expansion. Both the cost of CLASS expansion, and the savings resulting from this merger will ultimately be components of GTE South's earnings in Kentucky and subject to this Commission's oversight. However, GTE South has committed to the CLASS expansion in anticipation of the merger savings, without a request for rate relief for these expenditures. Thus, while I agree that GTE South-Kentucky is rate-of-return regulated, rates for ratepayers of GTE South-Kentucky can not be changed without approval by the Kentucky Commission. The Joint Applicants have not asked the Kentucky Commission to change any rates for ratepayers as a result of the expansion of CLASS services.

Finally, whether or not CLASS services meet the FCC's definition of "advanced services" is utterly beside the point. The reality is that, *as a direct result of the merger*, CLASS services will soon be made available to consumers in Eastern Kentucky (and elsewhere) who do not presently have access to them. These services, such as Calling Number ID and Caller ID (Name and Number), Automatic Busy Redial, and Anonymous Call Block, among others, are obviously far more advanced than the services currently available to those customers. Thus, there can be no question that those consumers will have access to more advanced services with this merger than without it.

Q. ON PAGES 8 AND 9 OF DR. REARDEN'S TESTIMONY, HE STATES THAT A MERGER IS NOT REQUIRED TO IMPLEMENT THE EXPANSION OF CLASS SERVICES. HOW DO YOU RESPOND?

A. It is difficult to imagine what would constitute a merger benefit using Dr. Rearden's criteria. Apparently, using Dr. Rearden's criteria, any action taken by the companies which could have been undertaken absent the merger, or could have been ordered by this Commission, does not constitute a merger benefit. Dr. Rearden apparently does not want his merger benefit definition cluttered by Kentucky reality. As was shown in the Joint Applicants' response to Staff data request number one, GTE South had performed an analysis of offering CLASS services to its remaining Kentucky exchanges and determined that the increased

revenues from this expansion would not justify the capital and expense necessary to provide these services. Accordingly, GTE South would not have had any motivation or plans to engage in this expansion, absent material change in the market for these services or the underlying costs. Nor has this Commission shown any indication that it felt the public policy benefits of this CLASS expansion justified the creation of a mandate for these services by Kentucky Local Exchange Carriers. As such, the proposal by GTE South to enable CLASS services in 100% of its Kentucky central offices can only be judged as a meaningful benefit of this merger for Kentucky consumers.

Q. HOW DOES DR. REARDEN ADDRESS THE APPLICANTS' COMMITMENT TO ENTER LOUISVILLE AS A COMPETITOR TO BELL SOUTH WITHIN 18 MONTHS OF MERGER CLOSE?

A. Dr. Rearden is strangely silent on the pro-competitive benefits of the combined companies' commitment to enter Louisville as a competitor to Bell South, given that Sprint's witness in the previous Bell Atlantic/GTE merger hearing, Dr. Brenner, admitted under cross-examination that facilities-based entry into Louisville would be a benefit. Dr. Rearden instead speculates on the potential loss of Bell Atlantic as a competitor to GTE in Kentucky, despite the complete lack of any factual basis for assuming that Bell Atlantic ever intended to do so. Dr. Rearden cannot point to a single Bell Atlantic document, or to any statements by any Bell

Atlantic officials, evidencing any plan or intent to enter Kentucky. Moreover, Dr. Rearden completely fails to refute the testimony of Bell Atlantic's West Virginia President and CEO, Dennis Bone, establishing beyond any doubt that Bell Atlantic had no plans to compete against GTE South in Kentucky. Finally, Dr. Rearden totally ignores the presence in Kentucky of at least four other GTE competitors -- Bell South, AT&T, MCI WorldCom and Sprint -- each of whom has far more brand recognition and and an established customer base in Kentucky than Bell Atlantic.

Q. DO YOU AGREE WITH DR. REARDEN'S ASSERTION THAT THIS PROPOSED MERGER WOULD ELIMINATE A POTENTIAL COMPETITOR FROM THE KENTUCKY MARKET?

A. No. Dr. Rearden grossly overstates Bell Atlantic's capability to enter the Kentucky markets, listing as attributes Bell Atlantic's brand name awareness, a working local systems infrastructure, and others. Dr. Rearden apparently forgets that this brand awareness and local capability is limited to the Mid-Atlantic and New England states. In Kentucky, Bell Atlantic has virtually no brand awareness (less than 5% of consumers outside of Bell Atlantic's territories even recognize their brand name), no infrastructure, and no sales or marketing resources. Bell Atlantic does have working relationships with many of the headquarters locations of Kentucky-based businesses, but has no credible way to service these remote locations. In entering Kentucky, Bell Atlantic would face at least

five entrenched competitors (Bell South, MCI WorldCom, AT&T, Sprint and GTE) with significant customer presence and varying degrees of brand awareness. Dr. Rearden also glosses over the significant obstacles Bell Atlantic would face to modify their existing local systems and processes to be capable of operating as a Competitive Local Exchange Carrier in Kentucky. GTE can speak with experience regarding the cost and complexity of these system and process modifications, and assert that its investment in these systems is one of the benefits GTE brings to the merger. Accordingly, even if Bell Atlantic's market entry into Kentucky were theoretically possible, in reality it simply could not occur in a manner that would significantly change the competitive landscape in Kentucky.

Dr. Rearden also omits any discussion regarding the complementary nature of this proposed merger and the impact of this combination on the creation of a competitor against Bell South in the local arena and against the "Big Three" in the interLATA market. The proposed merger with Bell Atlantic will enhance GTE's stand-alone out of market expansion plans significantly by improving the merged company's cost position and allowing it access to more efficient national advertising and distribution methodologies. This stronger competitor will represent a formidable alternative to Bell South and the Big Three long distance carriers in the marketplace, benefiting all Kentucky consumers.

Q. DO YOU AGREE WITH DR. REARDEN'S ASSERTION THAT "GTE HAS THE ABILITY TO HARM COMPETITION IN THE INTER AND INTRALATA TOLL MARKETS"?

A. No. Dr. Taylor in his direct and rebuttal testimony does a very effective job of debunking Dr. Rearden's assertions regarding GTE's ability and propensity to engage in anti-competitive behavior pre- and post-merger. Dr. Rearden's claim ignores the critical regulatory fact that this Commission regulates the price of intrastate access. Nothing about this merger will inhibit the Commission's ability to detect and punish any illegal price-squeezing. Dr. Rearden's testimony also ignores the empirical facts in the real world. For example, GTE has been in the interLATA long-distance market since early 1996, but Dr. Rearden can point to absolutely no evidence that GTE has been price-squeezing Sprint, AT&T and MCI WorldCom during that time. Moreover, GTE began opening its Kentucky intraLATA markets to competition in 1996, and has already lost over 60% of its market share to competitors in Kentucky. This fact alone destroys Dr. Rearden's speculation about price-squeezing. The only possible responses are both ridiculous -- either GTE has been trying to price squeeze for the last three years but has been unable to do so; or GTE has been very successfully price-squeezing, and no one -- not a single competitor, regulator, or most importantly customer -- has noticed. Neither the FCC nor any state Commission has ever accepted Sprint's baseless price-squeeze theory, even though Sprint has made the

argument time and time again, in merger after merger. This Commission likewise should reject Sprint's discredited and tired theory.

Q. HOW DID DR. REARDEN ADDRESS THE BENEFITS ACCRUING TO KENTUCKY RATEPAYERS FROM MERGER SYNERGIES, AND THE INTRODUCTION OF ADDITIONAL LOCAL CALLING PLANS IN KENTUCKY TO MEET THE EXPANDING COMMUNICATION REQUIREMENTS IN THE COMMONWEALTH?

A. Dr. Rearden made no reference to these benefits in his evaluation of this proposed merger.

Q. HOW DID DR. REARDEN ADDRESS THE $222 MILLION CAPITAL COMMITMENT MADE BY THE APPLICANTS?

A. Using the proverbial "glass is half full" argument, Dr. Rearden focuses on his belief that capital is not the only driver of quality of service, that this amount is somewhat lower than previous years, and that the company has not introduced any "credible enforcement" methodology. Dr. Rearden again ignores the specific actions GTE has undertaken in response to the Management Audit, as detailed by Applicant's witness Mr. Reed, to improve service quality. These are uncontroverted Kentucky-specific facts, not theoretical presumptions. Dr. Rearden's attempt to focus on prior period capital expenditures distracts from the Joint Applicants' quantifiable commitment and ignores the purpose behind the commitment.

In response to the Commission's request for assurances that the merger will not degrade service levels, GTE South has committed to a minimum level of capital commitment for the next three years. The intent of this commitment is to give the Commission a verifiable minimum capital level, which demonstrates the merged company's commitment to Kentucky ratepayers. GTE South on a stand-alone basis has made no such commitment to capital expenditures in Kentucky, and this Commission allows GTE South to determine its annual level of capital expenditure without prior Commission approval. GTE South is, however, still subject to same service standards and audits, and will continue to be subject to these requirements after the merger. Moreover, the Joint Applicants have committed to a $222 million level of investment, which is adequate to assure the Kentucky Commission that the merger will not result in a degradation of service to Kentucky consumers.

The only caveat we have placed on this commitment is the ability to revise this commitment as a result of economic changes outside the company's control. This caveat is reasonable, and consistent with sound management and regulatory practices discouraging uneconomic investment. Dr. Rearden's assertion that this caveat results in an unenforceable commitment minimizes the regulatory oversight provided by this Commission.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes it does.

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of:	)	
	)	
JOINT APPLICATION OF BELL	)	
ATLANTIC CORPORATION AND GTE	)	CASE NO. 99-296
CORPORATION FOR ORDER	)	
AUTHORIZING TRANSFER OF	)	
UTILITY CONTROL	)	

REBUTTAL TESTIMONY

OF

WILLIAM E. TAYLOR

ON BEHALF

OF

GTE CORPORATION AND BELL ATLANTIC CORPORATION

AUGUST 20, 1999

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REBUTTAL TESTIMONY OF WILLIAM E. TAYLOR

I. INTRODUCTION AND SUMMARY

Q. WHAT IS YOUR NAME, BUSINESS ADDRESS AND CURRENT POSITION?

A. My name is William E. Taylor. I am Senior Vice President at National Economic Research Associates, Inc. (NERA), head of its telecommunications practice and of its Cambridge office, located at One Main Street, Cambridge, Massachusetts 02142.

Q. HAVE YOU TESTIFIED PREVIOUSLY IN THIS PROCEEDING?

A. Yes. I filed Direct Testimony on June 30, 1999.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. I was asked by Bell Atlantic Corporation ("BA") and GTE Corporation ("GTE") to respond to the economic issues raised in the Direct Testimony of Dr. David T. Rearden on behalf of Sprint Communications Company L.P. ("Sprint") on July 9, 1999.

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

A. The economic arguments raised by Dr. Rearden in opposition to the Bell Atlantic-GTE merger are flawed, and adopting Dr. Rearden's recommendation would harm consumers in Kentucky. The Kentucky Commission should reject Dr. Rearden's recommendations and approve the merger because it will not harm

local exchange or long distance competition in Kentucky and is in the public interest. I have already addressed many of the economic and policy issues raised by Dr. Rearden in my Direct Testimony in this proceeding. In my rebuttal testimony I discuss the following main points:

- The DOJ has already examined and rejected the principal anticompetitive concerns that are relevant in this proceeding and that are raised in Dr. Rearden's testimony;
- Dr. Rearden fails to consider two key determinants of successful entry into capital-intensive telecommunications markets: existing facilities and existing customer relationships. Unlike Bell Atlantic, which possesses neither in Kentucky, there are multiple existing firms in GTE's territory in Kentucky that do;
- Dr. Rearden's only reason why the merger would increase the ability or incentive of the merged firm to undertake anticompetitive acts — internalizing spillover effects — is equally consistent with the outcome that the merger would reduce those incentives; and
- Dr. Rearden's example which purports to show Bell Atlantic/GTE with a 3¢ per minute switched access advantage is incorrect. When the margin in switched access is (correctly) viewed as an opportunity cost (and therefore a real economic cost) to Bell Atlantic/GTE, Dr. Rearden's example shows the disincentives Bell Atlantic/GTE has to engage in a price squeeze.

II. BA AND GTE ARE NOT ACTUAL OR LIKELY POTENTIAL COMPETITORS IN TELECOMMUNICATIONS MARKETS IN KENTUCKY.

Q. DR. REARDEN CLAIMS [AT 14-15] THAT YOU SUGGEST THAT THE KENTUCKY COMMISSION SHOULD APPROVE THE MERGER BECAUSE THE DEPARTMENT OF JUSTICE ("DOJ") DID NOT CHALLENGE IT. IS DR. REARDEN'S CLAIM CORRECT?

A. No, Dr. Rearden mischaracterizes my testimony. In my Direct Testimony (at 15-16), I noted that:

> [w]hen the Justice Department determines that "there is no reason under the antitrust laws to proceed with further litigation"[1] with respect to the merger, it has examined telecommunications market conditions in Kentucky and other states and concluded that the effect of the merger is *not* substantially to lessen competition or to tend to create a monopoly in any Kentucky telecommunications market.

My testimony states only that the Kentucky Commission should not repeat the economic analysis of the antitrust issues that the DOJ has already performed. The Kentucky Commission can certainly examine other components of the public interest effects of the merger beyond its effect on competition.

However, Dr. Rearden raises three principal economic concerns in his testimony:

- that the merger would remove an important potential competitor to GTE in Kentucky
- that the merger would increase the ability and incentive of BA and GTE to engage in anticompetitive conduct that would reduce competition in local exchange markets in Kentucky, and

[1] *United States of America v. Bell Atlantic Corporation and GTE Corporation*, Civil No: 99-1119 (LFO), (United States District Court for the District of Columbia), Competitive Impact Statement, June 7, 1999 ("Competitive Impact Statement") at 28.

- that the merger would increase the incentives of BA and GTE to undertake a price squeeze to benefit their long distance businesses.

These are precisely the concerns already examined at length and rejected by the DOJ. As I noted in my Direct Testimony (at 15-16), the DOJ uses the economic framework embodied in its Merger Guidelines, which is the same framework used by economists to appraise the effects of a proposed merger on competition. I concluded that (at 18-19):

> Applying this theory to the current case, (i) there is no current, actual competition between Bell Atlantic and GTE in any market and (ii) neither Bell Atlantic nor GTE possesses any particular advantage as a potential entrant into each other's territory. The proposed merger therefore does not increase concentration in a relevant market or eliminate a unique source of potential competition that would otherwise be required to discipline prices. For those reasons, the Justice Department determined that there was no reason to believe that the merger would substantially lessen competition or tend to create a monopoly in Kentucky telecommunications markets and elsewhere.

In addition, the DOJ considered allegations of the same anticompetitive effects raised by intervenors in Kentucky but concluded that the merger was competitively benign and that the settlement of the merger lies "within the reaches of the public interest."[2] The Kentucky Commission can certainly consider other elements of the public interest beyond potential violations of the antitrust laws, but it should be aware that the economic concerns raised in Dr. Rearden's testimony have already been carefully examined and rejected by the Justice Department.

[2] Competitive Impact Statement at 30.

Q. DR. REARDEN (AT 15-16) ASSERTS THAT BELL ATLANTIC IS A LIKELY ENTRANT INTO GTE'S SERVICE TERRITORY IN KENTUCKY AND THAT ELIMINATION OF EVEN ONE POTENTIAL ENTRANT WOULD HARM COMPETITION. DO YOU AGREE?

A. No. Neither Bell Atlantic nor GTE possesses any particular advantage as a potential entrant into each other's territory, and my Direct Testimony (at 7-8) lists some of the likely actual and potential entrants. On page 16, Dr. Rearden lists four reasons why he believes Bell Atlantic to be a likely entrant into GTE local exchange markets: that BA has extensive experience in local markets, that it possesses OSS and billing systems, that it has a marketing message and a brand name and that it has experience as an ILEC provisioning services for CLECs.

None of these characteristics apply uniquely to Bell Atlantic. It is commonly known that CLECs have recruited many of their operational employees from ILECs. OSS and billing systems are readily available from third-party consulting firms. While BA and GTE may have legacy systems in place; CLECs are free to use newer and more efficient systems. While BA has a marketing message and brand awareness in its territory, it has no significant exposure in Kentucky. Contrast BA's marketing exposure in Kentucky with that of AT&T, MCI WorldCom and Sprint. In addition, there are several cable and cellular companies widespread through GTE's territories in Kentucky, all of which have better marketing exposure than BA in the state. The cable companies in GTE's

Kentucky territories include Intermedia (which has a presence in the important Lexington market) and Comcast (active in the Elizabethtown market). Cellular companies operating inside GTE's territories include Cellular One and BellSouth Mobility.

Moreover, Dr. Rearden has forgotten two of the key determinants of successful entry into capital-intensive telecommunications markets: existing facilities and existing customer relationships. Obviously, it is cheaper and less risky to expand capacity on existing facilities than it is to incur sunk costs and invest in new equipment. Similarly, marketing additional services to current customers is far easier, cheaper and more likely to succeed than attempting to convince customers to begin a business relationship from scratch. AT&T, MCI WorldCom and Sprint currently have business relationships with approximately 90 percent of the households in Kentucky. Asking a satisfied long distance (or cable, or wireless) customer to check a box on her bill if she wants local service from her long distance (or cable or wireless) provider is a cheap and effective marketing plan that is available to many potential entrants into GTE's local exchange markets in Kentucky but not to Bell Atlantic.

III. THE MERGER WOULD HAVE NO ANTICOMPETITIVE EFFECTS IN KENTUCKY LOCAL EXCHANGE OR LONG DISTANCE MARKETS

Q. IN SECTION 6.2, DR. REARDEN STATES THAT THE MERGER INCREASES THE INCENTIVE AND ABILITY OF GTE AND BA TO DISADVANTAGE RIVALS. DO YOU AGREE?

A. No. As I observed in my Direct Testimony (at 21):

> [I]ntervenors in other ILEC mergers have raised various arguments that purport to show that the merger will increase both the ability and incentive of the merging parties to engage in various forms of anticompetitive behavior. These forms of anticompetitive behavior include price discrimination—where the ILEC effectively charges itself a lower rate for carrier access than it charges its long distance competitors—and non-price discrimination—where the ILEC effectively raises the costs that CLECs or IXCs incur to compete against it. These arguments have been rejected by regulatory and antitrust enforcement agencies, which have generally concluded that ILEC mergers do not increase the likelihood of price or non-price discrimination. I agree and show below that the merger affects neither the incentive nor ability of Bell Atlantic or GTE to engage in anticompetitive behavior. In particular, the merger does not change BA's or GTE's ability or incentive to forestall local exchange competition or distort competition in the long distance market.

Moreover, Dr. Rearden has raised no new issues in his testimony. The only reason he gives (at 24-25) that the merger would increase the incentives of BA and GTE to engage in anticompetitive behavior is the one discussed in my Direct Testimony (at 28-29): that the merged firm would internalize any "spillovers" from anticompetitive conduct in GTE territory in Kentucky (for example) into BA territory.

Q. DR. REARDEN PURPORTS TO RESPOND TO YOUR ASSERTION THAT THE MERGER WOULD NOT INCREASE THE ILEC'S ABILITY OR INCENTIVE TO ENGAGE IN ANTICOMPETITIVE BEHAVIOR AT 25-26. WITH WHAT PARTS OF YOUR ANALYSIS DOES HE APPEAR TO DISAGREE?

A. At pages 25-26, Dr. Rearden claims that the fact that discrimination is illegal and would prevent BA interLATA entry would not prevent the merged firm from undertaking actions whose legal or regulatory correction would be costly or slow. At page 26, lines 14-22, he also states (unexceptionably) that the self-interested nature of an assertion has no bearing on its accuracy. What he does not address are the substantive reasons why such behavior is unlikely:

- that discrimination cannot simultaneously be effective for retail customers but imperceptible to competitors, regulators or courts;
- that an ILEC would risk driving its largest customers—AT&T-TCG-TCI, MCI WorldCom-MFS-Brooks Fiber and Sprint—to seek other alternatives for exchange access or UNE services; and
- that internalizing spillover effects from anticompetitive acts in one territory is just as likely to reduce the incentive to engage in discriminatory acts, as it is to increase that incentive.

Q. WHAT ARE YOUR CONCLUSIONS REGARDING THE EFFECT OF INTERNALIZING SPILLOVERS FROM ANTICOMPETITIVE BEHAVIOR?

A. Economically, this theory boils down to the assumption that reducing the potential profit of an entrant in one region reduces its profitability of entry elsewhere. Dr. Rearden supplies no empirical evidence regarding the direction or magnitude of this effect in Kentucky.

In addition, there are theoretical problems with these results. First, the economic results derive directly from implausible and arbitrary assumptions about the externalities that result from discriminatory behavior. ILEC discriminatory acts are assumed to be possible, profitable and undetectable. The discriminatory acts are assumed to have consequences outside the ILEC's territory, and it is only this secondary effect that is of concern in this theory. Second, the theory does not necessarily lead to an increased incidence of anticompetitive behavior: equally plausible external effects lead to the opposite policy conclusion — that by internalizing the externality, the merger will lead to less discrimination rather than more. Under the implausible assumption that GTE discriminatory acts in Kentucky raise the cost of CLEC entry in New York, the theory concludes that when BA and GTE territories in New York and Kentucky come under common ownership through the merger and the merged ILEC takes such externalities into account, the gains from anticompetitive acts will be larger so that more discriminatory behavior may take place. However, these external effects are implausible and are just as likely to go in the opposite direction from that assumed by Dr. Rearden.

For example, an ILEC with interLATA authority that degrades originating access to competitors to compete for in-region retail long distance traffic simultaneously degrades the service of out-of-region ILECs who resell IXC long distance services out-of-region.[3] This external effect goes in the opposite direction: BA-

[3] The ILEC cannot distinguish between IXC retail calls and IXC resold calls.

GTE's hypothetical discrimination in Kentucky would penalize its long distance affiliate in New York along with all the IXCs originating traffic in New York and terminating it in Kentucky. All else equal, internalizing this externality through the merger would reduce the merged firm's incentive to discriminate rather than increase it.

Suppose GTE discriminated against a CLEC in Kentucky, preventing or raising its cost of entry. It is just as likely that such discriminatory behavior would lower the probability of successful CLEC entry in Kentucky and raise the probability that the CLEC will choose to enter in a more hospitable environment, for example, in New York. Individual CLECs do not serve every major market in the U.S., and they certainly do not enter all of the cities they intend to serve simultaneously. In this case, the externality from discrimination would again be positive, and internalizing that incentive through the merger would reduce the incentive to discriminate rather than increase it.

In summary, Dr. Rearden's only reason why the merger would increase the ability or incentive of the merged firm to undertake anticompetitive acts — internalizing spillover effects — shows that it is equally likely that the merger would reduce those incentives. Equally likely assumptions — the imposition of a negative externality on a merger partner, for example — would lead to the opposite conclusion from that assumed by Dr. Rearden: that the merger would reduce the offending activity rather than increase it. Moreover, even in theory,

these effects are of second-order in magnitude — *i.e.*, of smaller consequence than the direct effects of the anticompetitive acts — and nothing in Dr. Rearden's testimony suggests otherwise. The record from previous ILEC merger decisions suggests that the FCC concurs:

> [w]e do not believe, that, if SBC/PacTel were to practice unlawful non-price discrimination on these calls, the results would be a substantial reduction in competition or tendency towards monopoly in the relevant market, whether by reduced incentives for entry by CLECs or otherwise. In addition, if SBC/PacTel engages in non-price discrimination, regulatory remedies are available that may mitigate such abuses.[4]

Q. DR. REARDEN ALSO CLAIMS (AT 39-40) THAT THE MERGER WOULD INCREASE GTE'S ABILITY TO DISADVANTAGE ITS CLEC RIVALS BECAUSE THE REGULATOR WOULD HAVE ONE LESS ILEC AGAINST WHICH TO BENCHMARK GTE'S BEHAVIOR. IS THIS CLAIM CORRECT?

A. No. Section IV of my Direct Testimony addressed this claim in detail. Since Dr. Rearden makes no reference to this analysis and raises no new issues of his own, I see no need to amplify my previous testimony.

Q. AT 40, DR. REARDEN DISAGREES WITH YOUR POINT THAT THE MERGER CAN FACILITATE COMPETITION BY REDUCING THE NUMBER OF INDEPENDENT INTERFACES THAT CLECS MUST CONSTRUCT. WHAT ARE HIS REASONS?

[4] *In re Applications of Pacific Telesis Group and SBC Communications Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 2624 (1997) at ¶42.

A. He gives three reasons: that the merged company may be unable or unwilling to use a single interface, that since the merged company is anticompetitive, the reduction in interfaces would not reduce CLEC costs and that no merger is necessary for ILECs to adopt common interfaces.

Q. ARE THESE REASONS VALID IN YOUR VIEW?

A. No. First, in the long run, it is hard to imagine that the merger would not result in a more homogeneous interface for CLECs. It is difficult to generalize from the experience to date because it is dominated by initial conditions: the individual companies have different platforms under construction and are under tight deadlines to meet the requirements of the Telecommunications Act of 1996. As competition goes forward in the long run, it is unlikely that current differences in the interfaces will persist.

Dr. Rearden's second argument is irrational. He asserts (at 40) that:

> [s]ince Bell Atlantic and GTE are currently unfriendly to entry, the bigger footprint of the merged entity holds no more promise of cooperation towards enabling entry in the future. The incentives that the merged entity has to stifle competition simply overwhelm the potential entry enhancing possibilities.

While I certainly disagree with his unsupported assumptions concerning the stifling of competition, the extent to which ILECs do or do not engage in anticompetitive acts has no bearing on the question. Creating a single interface to meet the specifications of one unfriendly ILEC must cost less than creating two unrelated interfaces to meet the specifications of two unfriendly ILECs.

Dr. Rearden's third claim — that a merger is unnecessary to standardize ILEC interfaces — similarly misses the mark. While CLECs may "plead for national standard interfaces," it is surely true in the long run that the totality of systems through which a CLEC interacts with ILECs will be more homogeneous within an ILEC than between ILECs. Fifteen years after the breakup of the Bell System, procedures for reselling long distance services differ across AT&T, MCI WorldCom and Sprint. Competition in long distance markets is sometimes thought to be reasonably effective, and yet no one thinks that such competitive market forces would necessarily require the industry to adopt a single set of long distance interfaces and procedures.

Q. DR. REARDEN ASSERTS [AT 45] THAT BELL ATLANTIC/GTE WILL ENJOY APPROXIMATELY A 3¢ PER MINUTE SWITCHED ACCESS COST ADVANTAGE AND THAT THIS ADVANTAGE CAN BE "FATALLY DETRIMENTAL TO ITS IXC COMPETITORS." WOULD YOU PLEASE COMMENT?

A. Yes. There are several flaws with Dr. Rearden's argument. As described in my Direct Testimony (at 24) the claim — as is being made by Dr. Rearden — that a vertically integrated ILEC does not effectively pay access charges is incorrect. As long as the merged Bell Atlantic/GTE continues to impute the price of switched access in setting the price of its toll services, it will derive no cost advantage from the fact that it supplies carrier access at a price above

incremental cost. In fact, when a LEC's access margin is correctly identified as an opportunity cost, it becomes clear that it has no incentive to implement a price squeeze because doing so would merely reduce its profits. Although Dr. Rearden concedes (at 47) the fact that "in a static sense, the access margin does represent an opportunity cost to the ILEC, and deters anticompetitive pricing," he fails to incorporate this fact into his economic analysis. Dr. Rearden's analysis is duplicated below:

Dr. Rearden's Erroneous Analysis of Bell Atlantic/GTE Access Cost Advantage

Cost of service	IXC Cost	BA/GTE Cost	BA/GTE Advantage
Access Cost	4¢	1¢	3¢
Toll Network	3¢	3¢	0¢
Total Cost	**7¢**	**4¢**	**3¢**

The chart asserts that Bell Atlantic/GTE has a 3-cent cost advantage, and (according to Dr. Rearden) that it has the incentive and ability to use the advantage in an anticompetitive manner. The corrected analysis below shows that Bell Atlantic/GTE has no cost advantage because in calculating profits from providing toll service, it must take account of the access contribution[5] that Bell Atlantic/GTE would lose (*i.e.*, its opportunity cost) if Bell Atlantic/GTE, rather than an IXC, were to carry a toll minute. In this example, when Bell Atlantic/GTE carries a toll call, it gives up 3¢ per minute contribution from carrier access, and any Bell Atlantic/GTE corporate manager concerned about the profit of the firm must treat that foregone contribution as a cost of supplying long distance service. Thus, irrespective of the requirement to impute carrier access charges, rational self-interest forces Bell Atlantic/GTE to

[5] Contribution is defined as the excess of price over incremental cost.

behave as if it actually paid tariffed access charges to a third party. The corrected analysis follows:

Corrected analysis of Bell Atlantic/GTE's "alleged" access cost advantage

Cost of service	IXC Cost	BA/GTE Cost	BA/GTE Advantage
Access Cost	4¢	1¢	3¢
Toll network	3¢	3¢	0¢
Foregone Access Contribution	0¢	3¢	-3¢
Total Cost	**7¢**	**7¢**	**0¢**

From an economic point of view, Dr. Rearden's assertions are unfounded. Consider scenario 1 below, in which an IXC carries 1 minute of toll traffic. In that case, Bell Atlantic/GTE's access revenues are 4 cents and its incremental access costs are 1 cent. In this example, Bell Atlantic/GTE earns no toll revenue, but it incurs no toll cost, so its total corporate profits are 3 cents.

Now consider scenario 2 in which Bell Atlantic/GTE carries the minute and charges 6 cents (*i.e.*, 1 cent less than the IXC price). Bell Atlantic/GTE no longer earns access revenues or contributions. The only revenues to account for are Bell Atlantic/GTE's toll revenues of 6 cents. We have to account for two sources of costs. First, it bears the toll costs of 3 cents. Second, it bears a cost of providing access of 1 cent. Bell Atlantic/GTE's profit consists of toll revenues of 6 cents less toll costs of 3 cents and access costs of 1 cent which amounts to 2 cents. Thus, if Bell Atlantic/GTE was to engage in the price squeeze described above, it would lose

1 cent for every minute it captured from its competitors. Bell Atlantic/GTE's profits in the two scenarios and the difference in profits are as follows:

Financial Impact on Bell Atlantic/GTE From Implementing a Price Squeeze

	IXC carries (scenario 1)	BA-GTE carries (scenario 2)	Change in BA/GTE profit
Toll Revenue	0¢	6¢	6¢
Toll Costs (neg.)	0¢	-3¢	-3¢
Access Revenue	4¢	0¢	-4¢
Access Costs (neg.)	-1¢	-1¢	0¢
Total	**3¢**	**2¢**	**-1¢**

Q. DR. REARDEN ASSERTS (AT 47) THAT THE ACCESS MARGIN DOES NOT ACCOUNT FOR ALL THE INCENTIVES WHICH ILECS FACE IN SETTING INTEREXCHANGE PRICES. WOULD YOU PLEASE COMMENT?

A. Dr. Rearden states that: (1) a lower price from the ILEC is likely to stimulate additional usage, so that the opportunity cost of the incremental (or marginal) minutes is not the full access margin, but the incremental cost of those minutes and (2) when marketing costs are significant, maintaining a retail relationship has value apart from the imputed access costs. These arguments are incorrect for several reasons. First, the opportunity cost of a stimulated minute is not the incremental cost of those minutes, rather, it is the contribution or margin the ILEC obtains from selling (or not selling those stimulated minutes). Second, while it is true that lower prices lead to increases in demand, it is not the case that stimulation will make the ILEC better off by pricing below imputed price. While it may make the ILEC less worse off, it does not tilt the balance in favor of implementing a price squeeze. Dr. Rearden fails to consider the impact these marginal, stimulated minutes have on overall ILEC profits and he ignores the greater impact that the infra-marginal minutes

(*i.e.*, the minutes that are not the result of demand stimulation) have on overall ILEC profits.

Continuing the example from above, for every minute that the ILEC captures from an IXC by pricing 1 cent below its imputed price (at 6 cents), its profits decrease by 1 cent. Suppose the customer's monthly calling was 100 minutes. By pricing toll at 6 instead of 7 cents (and capturing the customer), the ILEC's profit falls by $1. What would be the offsetting gain from stimulating demand? A price change from 7 to 6 cents is approximately a 14 percent decrease and assuming a demand elasticity of -.72,[6] this price reduction would result in approximately a 10 percent increase in demand or a stimulation of 10 minutes. The margin on each stimulated minute is 2 cents (6 cents in revenue less 1 cent in access and 3 cents in toll network costs). In this example, the ILEC would gain only $.20 from serving demand stimulated from a 1 cent price reduction. Clearly, even accounting for the additional contribution that may accrue from demand stimulation, the ILEC still has no incentive to price below the imputed price.

Dr. Rearden's second point is also incorrect as a matter of economics. Dr. Rearden asserts (at 47-48) that:

> [t]he other reason that a price squeeze could become profitable is when marketing costs are significant. That means that maintaining a retail relationship has value apart from the imputed access costs.

[6] Lester D. Taylor, *Telecommunications Demand in Theory and Practice*, Kluwer Academic Publishers, 1994.

He gives examples of cross-selling to illustrate the point. Of course, the ability to sell a package of services to a customer may result in higher profits than if the services were sold separately. However, the imputation price floor for a bundle of services is simply the incremental cost of the bundle plus the foregone contribution from whatever essential facilities competitors need to supply the bundle. Pricing the bundle below that level necessarily reduces profits in the short run, just as the example of a single service (discussed above) shows.

Q. DR. REARDEN ASSERTS (AT 48) THAT THERE IS AN OBVIOUS INCREASE IN THE INCENTIVE TO PRICE SQUEEZE AFTER A MERGER BECAUSE SIMPLE ARITHMETIC SHOWS THAT MORE TRAFFIC INVOLVES CALLS WHICH BOTH ORIGINATE AND TERMINATE ON THE NETWORK OF THE MERGED COMPANY. IS THERE ANY MERIT TO THIS ARGUMENT?

A. Absolutely not. Dr. Rearden's main point is that the access margin is highest for more of the merged company's toll traffic. His point is wrong for several reasons. First, as described in my Direct Testimony (at 27), from an economic perspective, an increase in minutes terminating in-region is competitively irrelevant. Given the requirements in Sections 251 and 252 of the Telecommunications Act, ILECs have no practical ability or incentive to engage in price discrimination against long distance competitors, and control over both the originating and terminating end of a call imparts no additional ability or incentive.[7]

[7] See my Direct Testimony (at 28) for a discussion of the FCC position on this topic in the Bell Atlantic-NYNEX merger.

Second, as described above, access margins are properly viewed as a real cost to the ILEC—costs that it foregoes when providing toll services. If it is the case as Dr. Rearden suggests that the access margin is highest for more of the merged company's toll traffic (and it is not entirely clear why this would be the case) then the opportunity cost to the combined Bell Atlantic/GTE is also higher (than without the merger) implying that Bell Atlantic/GTE will have even less incentive to engage in a price squeeze.

Finally, Dr. Rearden's suggestion that the merger, by increasing the number of calls which both originate and terminate on the network of the merged company, results in an incentive to engage in a price squeeze is contradicted by the performance of the intraLATA toll market in Kentucky. Since GTE started to implement intraLATA presubscription in Kentucky in 1996, competitors have captured a large share of traffic. Clearly the fact that GTE both originates and terminates intraLATA traffic has not had an anticompetitive effect on competitors.

Q. DR. REARDEN STATES (AT 46) THAT EVEN IF BELL ATLANTIC/GTE IS REQUIRED TO IMPUTE FULL ACCESS CHARGES, IT WILL STILL ENJOY A 3¢ PER MINUTE PROFIT MARGIN AND THAT THIS WOULD BE ANTICOMPETITIVE. DO YOU AGREE?

A. No. Even if Bell Atlantic/GTE had the incentive to engage in a price squeeze (which it does not), imputation guards against it. When a vertically integrated company possesses an essential facility, imputation ensures that an equally efficient

competitor is able to survive in the marketplace. The absolute level of an essential wholesale input is irrelevant to the efficiency of the competitive process for the retail service—what matters is the margin between the wholesale rate and the input supplier's final retail price. As long as that margin is at least equal to the input supplier's incremental costs, competition for that service will be efficient—regardless of the size of the contribution obtained from providing the essential facility. As Professor Alfred Kahn and myself have argued:

> [T]he absolute level of the charge is irrelevant to the ability of the non-integrated rival to compete with the LEC. That ability depends, rather, on the relationship or margin between the interconnection charge—whether high or low, monopolistic or competitive—and the prices at which the LEC offers the competitive service.[8]

The fact that the vertically-integrated company makes a contribution on the sale of the essential input (and passes an imputation test) does not impact the competitor's ability to enter and compete. For multiproduct firms, prices above incremental costs (more properly viewed as contribution rather than profit) are necessary in order for firms to recover their shared and common costs. These costs exist due to economies of scale and scope and firms normally recover them in a manner that is consistent with market conditions.

Q. DR. REARDEN ARGUES (AT 51) THAT THE MERGER WILL GIVE BELL ATLANTIC/GTE MORE THAN ONE THIRD OF THE ACCESS LINES IN THE US AND THUS WILL INCREASE MARKET POWER AND INCREASE THE ABILITY

[8] Alfred E. Kahn and William E. Taylor, "The Pricing of Inputs Sold to Competitors: A Comment," *Yale Journal on Regulation*, 11 Yale J. on Reg. 225, Winter 1994, p. 228.

OF THE MERGED COMPANY TO IMPLEMENT A PRICE SQUEEZE. IS THERE ANY MERIT TO THIS ARGUMENT?

A. Absolutely not. As discussed in my Direct Testimony (Section III), the size of a firm does not determine the profit it can earn from exploiting market power or obstructing competition from rivals. Local exchange competition takes place in distinct geographic markets, and Bell Atlantic does not serve any local exchange markets in Kentucky. Dr. Rearden's assertion that the merged company's size results in a concentration of market power (thus providing the merged company greater ability to leverage the subsidies in its switched access rates and price below imputed costs) is wrong. As the DOJ has determined, once overlapping cellular properties are divested, the merger is in compliance with the antitrust laws and lies "within the reaches of the public interest."[9]

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

[9] Competitive Impact Statement at 30.

Larry D. Callison
State Manager
Regulatory Affairs & Tariffs

GTE Service Corporation

KY10H072
150 Rojay Drive
Lexington, KY 40503
606 245-1389
Fax: 606 245-1721

August 9, 1999

Ms. Helen C. Helton
Executive Director
Public Service Commission
730 Schenkel Lane
Post Office Box 615
Frankfort, Kentucky 40602

Re: Joint Application of Bell Atlantic Corporation and GTE Corporation for Order Authorizing Transfer of Utility Control - Case No. 99-296

Dear Ms. Helton:

Enclosed for filing with the Kentucky Public Service Commission ("Commission") are an original and ten copies of the Responses of GTE Corporation and Bell Atlantic ("Joint Applicants") to the information requests contained in the Commission's July 26, 1999 order in the above-referenced matter.

Also enclosed is a Joint Petition for Confidentiality, in which the Joint Applicants seek confidential treatment of their responses to the Commission's data requests numbers 1 and 3.

I would be most appreciative if you would bring this filing to the attention of the Commission, and should you have any questions about the enclosed material, please do not hesitate to contact me at your convenience. Thank you for your consideration in this matter.

Yours truly,

Larry D. Callison

Larry D. Callison

Enclosure

c: Hon. Ann Louise Cheuvront - Assistant Attorney General
Hon. William R. Atkinson - Sprint

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:	)	
	)	
Joint Application of Bell Atlantic	)	
Corporation and GTE Corporation	)	CASE NO. 99-296
For Order Authorizing Transfer of	)	
Utility Control	)	

JOINT PETITION FOR CONFIDENTIALITY

Comes Now GTE Corporation, referred to hereinafter as "GTE" or "Company", and Bell Atlantic Corporation, referred to hereinafter as "Bell Atlantic", or sometimes collectively as "Joint Petitioners", by and through counsel, pursuant to KRS 61.870, et seq., and Kentucky Public Service Commission ("Commission") Rule 807 KAR 5:001. Section 7, et seq., and in support of their Joint Petition herein state as follows:

1. On July 23, 1999, Sprint Communications Company L.P. ("Sprint") filed its First Set of Data Requests and Interrogatories in this matter requesting certain information from the Joint Petitioners. On July 26, 1999, the Commission issued an order directing Joint Petitioners to respond to certain requests for information contained therein ("Commission's First Set"). In their responses to these data requests, the Joint Petitioners have provided certain information with respect to Sprint's data request number 4 and the Commission's data requests numbers 1 and 3 which the Joint Petitioners consider proprietary and confidential and should be afforded such treatment by the Commission.1

1 Generally, Commission Rule 807 KAR 5:001, Section 7, et seq., requires confidential information to be underscored, highlighted or identified by other reasonable means so the Commission can readily identify the confidential information in

2. KRS 61.870, et seq., requires that public agencies within the Commonwealth make available for inspection all public records. Certain exceptions to that general requirement are contained in KRS 61.878. KRS 61.878 (1)(c), et seq., provides an exemption for certain commercial information. In order to qualify for such an exemption under this section of the Act, a party must demonstrate that disclosure of such commercial information would permit an unfair commercial advantage to its competitors unless the information is afforded confidential protection. The procedure for requesting confidential treatment from the Commission is outlined at 807 KAR 5:001, Section 7, et seq.

3. The commercial information for which the Joint Petitioners seek confidential treatment is contained in their response to Sprint's data request number 4 and in their responses to the Commission's data requests numbers 1 and 3. Specifically, Joint Petitioners' response to Sprint's data request number 4 consists of the following confidential material: This response includes internal studies and reports prepared by Bell Atlantic and GTE Merger Integration Team personnel relating to the companies' call centers and related Operations Support Systems. Joint Petitioners' response to the Commission's data request number 1 includes the following confidential material: This response includes revenue projections by year with regard to GTE-Kentucky's deployment of CLASS

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question. Because Joint Petitioners consider all of their response to Sprint's data request number 4 to be confidential and proprietary, and due to the amount of data being provided, they are complying with the Commission's rule by copying all of this response on yellow paper. Also, due to the voluminous nature of the material being provided in response to Sprint's data request number 4, the Joint Petitioners do not intend to file a redacted copy of the material since it is their position that all of the material is, in fact, confidential and proprietary. Because of this, it would be counterproductive to file a redacted copy of this material with the Commission since it would be nothing more than hundreds of pages of blank material. Accordingly, Joint Petitioners request that the Commission grant a waiver of its rule which generally requires the filing of ten redacted copies of the material in question. With regard to their responses to the Commission's data requests numbers 1 and 3, the Joint Petitioners have highlighted this confidential information in yellow for the Commission's review. Joint Petitioners will also file ten redacted copies of their response to the Commission's data requests numbers 1 and 3.

services throughout the remainder of its service territory in the Commonwealth. Joint Petitioners' response to the Commission's data request number 3 includes the following confidential material: This response includes forecasted capital expenditures by various facility categories which will be required to accomplish the deployment of CLASS services in the remainder of GTE-Kentucky's service territory.

4. The detailed information contained in the Joint Petitioners' response to Sprint's data request number 4 and in their responses to the Commission's data requests numbers 1 and 3, a copy of which are included with this Joint Petition, include data that contains proprietary commercial information and, accordingly, GTE and Bell Atlantic request the Commission to afford confidentiality to this information pursuant to the exemption provided in KRS 61.878 (1)(c). The commercial information contained in the Joint Petitioners' response to Sprint's data request number 4 and in their responses to the Commission's data requests numbers 1 and 3 include, but are not limited to, cost studies, capital budgeting and revenue forecasts, and related matters which are highly confidential. Specifically with regard to the response to Sprint's data request number 4, the reports provided are internal planning documents relating to future strategic plans of the merging companies, which were not for outside distribution and would not be subject to such distribution or disclosure in the ordinary course of business. Simply stated, these responses contain data, which if disclosed, would cause irreparable harm to the Joint Petitioners. A competitor could use the information contained in these responses to obtain market information about the Joint Petitioners, including, but not limited to, revenue projections, capital budgeting information, marketing plans and procedures, as well as their cost structure and positions, which the competitor would be unable to obtain otherwise. Armed with this information, a competitor could develop entry and/or marketing strategies that would likely

ensure its success in competing with the Joint Petitioners. Conversely, neither GTE nor Bell Atlantic is able to receive such information about their competitors and their customers. Further, in a competitive market, any information gained about a competitor can be used to that competitor's detriment. Such an unfair competitive advantage skews the marketplace and prevents the development of true competition to the ultimate detriment of the consumer.

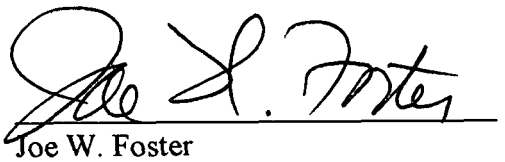
5. Disclosure of confidential information of this nature will be detrimental to the Joint Petitioners because it contains data that is not otherwise available to their competitors. The information sought to be protected herein is not known outside GTE or Bell Atlantic, nor is it provided to the public, its internal use is restricted to only those employees who have a legitimate business reason for reviewing such, and the Joint Petitioners attempt to control the dissemination of this material through all reasonable means. Indeed, by granting the Joint Petition the public interest will be served because competition will be enhanced.

WHEREFORE, GTE Corporation and Bell Atlantic Corporation respectfully request that the honorable Kentucky Public Service Commission issue an order herein granting confidential treatment to the Joint Petitioners' response to Sprint's data request number 4 and to their responses to the Commission's data requests numbers 1 and 3, as described *supra*. Additionally, the parties would respectfully ask that the Commission waive its rule and allow the Joint Petitioners to forego filing any

redacted copies of their response to Sprint's data request number 4 for the reasons previously described herein.

Respectfully submitted this the 9th day of August, 1999.

GTE CORPORATION
BELL ATLANTIC CORPORATION

BY: 

Joe W. Foster
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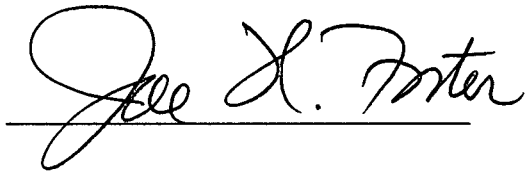
Their Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Joint Petition for Confidentiality of GTE Corporation and Bell Atlantic Corporation was served on all parties of record in this matter by placing a copy of same, properly addressed, in the U. S. Mail, first class postage pre-paid, this the 9th day of August, 1999.



Notes

GTE CORPORATION AND BELL ATLANTIC CORPORATION

RESPONSES TO

PUBLIC SERVICE COMMISSION'S FIRST SET OF DATA REQUESTS AND INTERROGATORIES

KENTUCKY PUBLIC SERVICE COMMISSION
CASE NO. 99-296
FILED AUGUST 9, 1999

Request No. 1:

William Griswold states in his testimony that GTE estimates it will cost $23.7 million to expand CLASS services to 100 percent of GTE's territory. What percentage of this investment will be recovered by revenues from these new services? Explain in percentages of investment per year.

Response:

The attached **PROPRIETARY** and **CONFIDENTIAL** table shows an estimate of each year's annual and cumulative revenue calculated as a percentage of the total initial investment of $23.7 million to determine the time required for revenues to match the initial investment.

Witness: Jeffrey C. Kissell
Michael W. Reed

Notes

GTE CORPORATION AND BELL ATLANTIC CORPORATION

RESPONSES TO

PUBLIC SERVICE COMMISSION'S FIRST SET OF DATA REQUESTS AND INTERROGATORIES

KENTUCKY PUBLIC SERVICE COMMISSION
CASE NO. 99-296
FILED AUGUST 9, 1999

Request No. 2:

Refer to page 2 of the Joint Application. Provide a detailed schedule for the implementation of extending advanced CLASS services to 100 percent of GTE's exchanges in Kentucky.

Response:

The attached two tables provide a detailed listing of all Digital Central Offices ("DCOs") and Remote locations that will be modified, as necessary, to make CLASS services available to all GTE Kentucky customers within four years of merger consummation. An implementation timing schedule by location has not been developed, pending approval of the merger. GTE will take the necessary steps to incorporate the CLASS commitment into its normal capital budget processes, including obtaining local Kentucky management input on location priorities, and integrate this with GTE's other capital needs as described more fully in response to Data Request No. 3.

GTE further responds that preliminarily, GTE is looking at making CLASS services available to approximately 25% of the remaining lines each year, subject to equipment availability, right of way availability, and economically and rationally integrating with other Kentucky service quality and infrastructure priorities so as to avoid conflicts and waste. This is not a commitment, is not an approved plan and is subject to change.

Witness: Jeffrey C. Kissell
Michael W. Reed

TABLE 1: DCO'S	
Location	**Unit**
1) Calvert City	BU
Howard's Grove	RLS1080
Hwy 62 East	RLS450
2) Bardwell	BU
Arlington	RLS1080
Columbus	RLS1080
Milburn	RLS1080
3) Owingsville	BU
Reynoldsville	RLS360
Salt Lick	RLS1080
Stulltown	RLG
Preston	RLS360
Peasticks	RLS360
Stepstone Rd	RLS360
Bethel	RLS1080
Sharpsburg	RLS1080
Sharpsburg	RLS
4) Smithland	BU
Paradise Rd	RLS1080
Lewis Monument	RLS1080
5) Tollesboro	BU
Burtonsville – A	RLG
Burtonsville – B	RLG
Concord	RLG
Fearsville – A	RLG
Fearsville – A	RLG
Ribolt – A	RLG
Ribolt – A	RLG
Salem – A	RLG
Salem – A	RLG
Trinity	RLG
Vanceburg 431	RLS4000
6) Washington	BU
Fox – Hwy AA	RLS1080
Mount Olivet	RLS1080
Fern Leaf	RLS1080
Dover	RLS360
Mays Lick	RLS1080
Orangeburg	RLS360
Lewisburg	RLS360
Germantown	RLS1080
Brooksville	RLS1080
Petra	RLS360
Willow	RLS360
Augusta	RLS1080
Augusta	RLG
Johnsville	RLS1080
7) Garrison	BU
8) Houstonville	BU
Milledgeville Hwy 127	914/S24DU
Hwy 127/Woodrum Ridge	1218-D
Butchertown	1218-D
McKinney	1218-D
Rockyford	1218-D
Jacktown	1218-D
Milledgeville	RLS450

TABLE 2: REMOTES

EXCHANGE NAME	HOST SWITCH	REMOTE NAME
ALBANY DMS10-SSO	ALBANY	KY 738 1
GRAYSN DMS10-HSO	GRAYSN	IRON HILL
LIBRTY DMS10-SSO	LIBRTY	CLEMENTSVILLE
LIBRTY DMS10-SSO	LIBRTY	THOMAS RIDGE
CTLBRG DMS10-BASE	CTLBRG	PETERMAN HILL
ALBANY DMS10-SSO	ALBANY	SPECK ROAD
GRAYSN DMS10-HSO	GRAYSN	HITCHINS
ALBANY DMS10-SSO	ALBANY	IRVIN #1
BURNSD GTD5-BU	BURNSD	WOODSON BEND 1
HSTNVL SC-DCO	HSTNVL	JACKTOWN
GRAYSN DMS10-HSO	GRAYSN	GREGORYVILLE
GREENUP DMS10-BASE	GRENUP	LLOYD
GRAYSN DMS10-HSO	GRAYSN	BECKWITH BRANCH
HSTNVL SC-DCO	HSTNVL	BUTCHERTOWN
LNCSTR DMS10-HSO	LNCSTR	BOONES CREEK
GLASGW SEIM-ESWD	GLASGW	N RACE & US 31E
LNCSTR DMS10-HSO	LNCSTR	POINT LEAVELL
LNCSTR DMS10-HSO	LNCSTR	FALL LICK ROAD
SO SHR DMS10-RSC-S	STHSHR	SILOAM
LIBRTY DMS10-SSO	LIBRTY	ARGYLE
LIBRTY DMS10-SSO	LIBRTY	ATWOOD
GREENUP DMS10-BASE	GRENUP	BROOKFIELD
GREENUP DMS10-BASE	GRENUP	GRAYS BRANCH
MNTICL DMS10-HSO	MNTICL	DENNY 1
HSTNVL SC-DCO	HSTNVL	HIGHWAY 127 SOUTH
HSTNVL SC-DCO	HSTNVL	WOODRUM RIDGE
HSTNVL SC-DCO	HSTNVL	MCKINNEY
COLMBA GTD5-BU	COLMBA	CAMEL RIDGE RD 1
MNTICL DMS10-HSO	MNTICL	KY 92 COOPERSVILLE 1
CMPBVL DMS100	CMPBVL	RED FERN ROAD 1
MNTICL DMS10-HSO	MNTICL	SUSIE
MNTICL DMS10-HSO	MNTICL	SUMPTER 1
CMPBVL DMS100	CMPBVL	WILLOWTOWN
CMPBVL DMS100	CMPBVL	NEW MAC 1
CMPBVL DMS100	CMPBVL	ARISTA 1
CMPBVL DMS100	CMPBVL	KNIFLEY 1
SOMRST GTD5-BU	SOMRST	SHAFTNER 1
MNTICL DMS10-HSO	MNTICL	GREGORY 1
CMPBVL DMS100	CMPBVL	HOBSON 1
CMPBVL DMS100	CMPBVL	MANNSVILLE
CMPBVL DMS100	CMPBVL	SPURLINGTON 1
GRNSBG GTD5-BU	GRNSBG	KY 88
GRNSBG GTD5-BU	GRNSBG	BRAMLETT 1

TABLE 2: REMOTES

EXCHANGE NAME	HOST SWITCH	REMOTE NAME
GRNSBG GTD5-BU	GRNSBG	ROCKY RUN 1
GRNSBG GTD5-BU	GRNSBG	GRAB 1
GRNSBG GTD5-BU	GRNSBG	GRESHAM 1
CMPBVL DMS100	CMPBVL	FOREST HILLS
GRNSBG GTD5-BU	GRNSBG	PLEASANT HILL 1
CMPBVL DMS100	CMPBVL	BASS RIDGE 1
CMPBVL DMS100	CMPBVL	KINDNESS ROAD
CMPBVL DMS100	CMPBVL	ELKHORN 1
CMPBVL DMS100	CMPBVL	TALLOW CREEK 1
GLASGW SEIM-ESWD	GLASGW	COLUMBIA AVE
MNTICL DMS10-HSO	MNTICL	DELTA 1
COLMBA GTD5-BU	COLMBA	BETHAL RIDGE 1
VERSLL DMS100	VERSLL	LEXINGTON ROAD
VERSLL DMS100	VERSLL	MORTONSVILLE
SOHRDN GTD5-RSU	SOHRDN	GLENDALE 1
VERSLL DMS100	VERSLL	TYRONE
VANCBG SC-RLS	VANCBG	BLACK OAK
VERSLL DMS100	VERSLL	CLIFTON
ELZTWN GTD5-BU	ELZTWN	KY 251 & 434
LEXELK AT&T-5ESS	LEXELK	DELANEYS FERRY
ELZTWN GTD5-BU	ELZTWN	RINEYVILLE
VERSLL DMS100	VERSLL	STEELE PIKE
ELZTWN GTD5-BU	ELZTWN	LOCUST GROVE
HDGNVL GTD5-BU	HDGNVL	WHITE CITY
HDGNVL GTD5-BU	HDGNVL	LINCOLN FARM
COLMBA GTD5-BU	COLMBA	SANO 1
VERSLL DMS100	VERSLL	BIG SINK PIKE
COLMBA GTD5-BU	COLMBA	KY 80 & 531 1
COLMBA GTD5-BU	COLMBA	JCT KY 80-SANO
COLMBA GTD5-BU	COLMBA	GLEN'S FORK 1
OLVHLL DMS10-SSO	OLVHLL	UPPER TYGART
CMPBVL DMS100	CMPBVL	DURHAMTOWN 1
CMPBVL DMS100	CMPBVL	SANDY-Y #2
CMPBVL DMS100	CMPBVL	SANDY-Y #1
CMPBVL DMS100	CMPBVL	DUNBAR HILL #1
CMPBVL DMS100	CMPBVL	DUNBAR HILL #2
OWGSVL SC-DCO	OWGSVL	WYOMING
SOHRDN GTD5-RSU	SOHRDN	CASH 1 RM
MOREHD GTD5-BU	MOREHD	HALDEMAN
SOHRDN GTD5-RSU	SOHRDN	UPTON 3 RM
MOREHD GTD5-BU	MOREHD	GLENN WOOD
TMPKVL SEIM-WCU	TMPKVL	KY 163 N 1
SOHRDN GTD5-RSU	SOHRDN	UPTON 1 RM
SOHRDN GTD5-RSU	SOHRDN	UPTON 2 RM
TMPKVL SEIM-WCU	TMPKVL	KY 1049 2
SOHRDN GTD5-RSU	SOHRDN	UPTON 5
SOHRDN GTD5-RSU	SOHRDN	UPTON 4 RM

TABLE 2: REMOTES

EXCHANGE NAME	HOST SWITCH	REMOTE NAME
TMPKVL SEIM-WCU	TMPKVL	KY 1049 1
SOHRDN GTD5-RSU	SOHRDN	CASH 2 RM
CTLBRG DMS10-BASE	CTLBRG	BURNAUGH
CTLBRG DMS10-BASE	CTLBRG	DURBIN
OLVHLL DMS10-SSO	OLVHLL	SOLDIER #3

Notes

GTE CORPORATION AND BELL ATLANTIC CORPORATION

RESPONSES TO

PUBLIC SERVICE COMMISSION'S FIRST SET OF DATA REQUESTS AND INTERROGATORIES

KENTUCKY PUBLIC SERVICE COMMISSION
CASE NO. 99-296
FILED AUGUST 9, 1999

Request No. 3:

Refer to page 2 of the Joint Application. Addressing the proposed $222 million investment over 3 years, provide the following:

a. A detailed schedule of what equipment or services will receive this investment.

b. A detailed schedule of where this money will be invested.

c. A detailed schedule of when this investment will take place.

d. Would GTE invest this money in the Kentucky service area regardless of the applicants proposed merger? Explain.

Response:

A portion of this information is **PROPRIETARY** and **CONFIDENTIAL** and the Joint Applicants have petitioned the Commission to afford it such treatment. The **PROPRIETARY** and **CONFIDENTIAL** information is being provided to Sprint pursuant to the Confidentiality Agreement previously executed by the parties in this matter.

The Joint Applicants have committed to total capital expenditures of at least $222 million over the three years following consummation of the merger.

a-c. Joint Applicants state that GTE has estimated it will initially cost $23.7 million in facility related investments to deploy CLASS services to all remaining GTE Kentucky exchanges within four years of merger consummation. See the attached **PROPRIETARY** and **CONFIDENTIAL** schedule for a breakdown of the $23.7 million estimate. The specific allocation for the remaining $198.3 million has not yet been determined pending approval of the merger. GTE will utilize its existing budget planning processes to determine the distribution of the remaining dollars between the categories of;

Growth - Funds required to support access line growth.

Modernization - Funds to replace existing plant with new technology to provide capability for new services, enhanced quality, and improved efficiency. Includes

support programs to continue digitizing the network as well as technology upgrades to existing digital switches.

Network Support - Network rearrangements in support of customer movement and municipality infrastructure changes, service modifications, and regulatory mandated improvements.

Infrastructure Initiatives - To improve efficiencies and quality of existing telecommunications services. Included are actions to consolidate, centralize or automate essential operations and administrative functions.

Enhanced Services - Products and services which have completed initial introductions and are in the deployment stages or which will be introduced over the next five years.

Other - Includes requirements to provide and maintain plant or equipment necessary to support operational needs, software capitalization, and PUC mandates.

A detailed schedule of a) what specific equipment or services will be purchased, b) where it will be deployed, and c) when this money will be invested has not been determined (other than the CLASS locations shown in response to Data Request No. 2 and the general equipment types listed in the attachment), pending approval of the merger.

Upon merger approval, GTE will take the necessary actions to incorporate the capital commitments into its normal capital budget planning processes. The Commission staff has previously reviewed GTE's infrastructure provisioning guidelines, and GTE periodically reports its results in conjunction with the GTE Management Audit. GTE will meet annually with the Commission to review the actual results of the prior year's programs in meeting its capital commitments and to review its preliminary plans for the current year. GTE needs to maintain capital budgeting and deployment flexibility, within the parameters of its merger commitments, in order to be responsive to the changing marketplace, meet customer expectations, recognize new technology/product and service drivers, and respond to competition, in addition to maintaining existing service quality standards in an economical and stability of work force responsible manner.

d. In the Commission's order dated April 14, 1999, the PSC wanted assurances that

quality service levels would be maintained. The capital commitments in the refiled application address that concern by ensuring that the money invested in Kentucky will continue to be sufficient to maintain quality service levels. The Joint Applicants would not have made such a commitment in the absence of the merger.

Witness: Jeffrey C. Kissell
Michael W. Reed

Notes

GTE CORPORATION AND BELL ATLANTIC CORPORATION

RESPONSES TO

PUBLIC SERVICE COMMISSION'S FIRST SET OF DATA REQUESTS AND INTERROGATORIES

KENTUCKY PUBLIC SERVICE COMMISSION
CASE NO. 99-296
FILED AUGUST 9, 1999

Request No. 4:

Provide the following figures:

a. The percentage of access lines GTE-Kentucky's customers represent relative to the total number of access lines of the merged entities.

b. The percentage of revenue GTE-Kentucky's customers represent relative to the total revenue of the merged entities.

Response:

The Joint Applicants provide the following figures as requested with the assumptions for each outlined within the respective response.

a. The lines used to calculate the percentage are based upon 1998 actual switched and special access lines as reported in the 1998 Annual report for both GTE and Bell Atlantic. The Kentucky access lines are from the 1998 Annual Form T, Schedule VIII. These lines do not include domestic wireless lines; international wireline and wireless lines as well as GTE Communications Corporation local and long distance access lines or Bell Atlantic long distance access lines.

   Based upon the above assumptions, GTE-Kentucky's customers represent 0.97% of the total domestic ILEC access lines of the merged entities.

b. The percentage of revenue GTE-Kentucky's customers represent relative to the total revenue of the merged entities is calculated using the 1998 Kentucky Form T, Schedule VI, page 2, Total Operating Revenues divided by the 1998 Annual Report Total Operating Revenues of GTE and Bell Atlantic.

   Based upon the above assumptions, GTE-Kentucky's customers represent 0.78% of the total operating revenues of the merged entities.

Witness: Jeffrey C. Kissell
Stephen L. Shore

Notes

GTE CORPORATION AND BELL ATLANTIC CORPORATION

RESPONSES TO

PUBLIC SERVICE COMMISSION'S FIRST SET OF DATA REQUESTS AND INTERROGATORIES

KENTUCKY PUBLIC SERVICE COMMISSION
CASE NO. 99-296
FILED AUGUST 9, 1999

Request No. 5:

Refer to page 12 of Mr. Griswold's July 9, 1999 testimony.

a. Provide a detailed schedule of the products and services available through GTE's CLASS services.

b. Provide a schedule of currently planned levels of CLASS services expansion in Kentucky.

c. Would GTE upgrade these switches as described on page 12 of Mr. Griswold's testimony without the proposed merger?

Response:

The Joint Applicants state

a. The advanced CLASS features listed below will be available:
Caller ID Name and Number, Caller ID Number (only), Call Block, Automatic Call Return, Anonymous Call Block, Automatic Busy Redial, VIP Alert, Special Call Acceptance, Special Call Forwarding, and Call Tracing Service.

b. None were planned.

c. There were no plans to upgrade them.

Witness: Jeffrey C. Kissell

Notes

GTE CORPORATION AND BELL ATLANTIC CORPORATION

RESPONSES TO

PUBLIC SERVICE COMMISSION'S FIRST SET OF DATA REQUESTS AND INTERROGATORIES

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Request No. 6:

Refer to page 23 of Mr. Griswold's July 9, 1999 testimony. Explain why GTE needs to wait until the merger between the parent companies is consummated before implementing certain identifiable "best practices."

Response:

Joint Applicants state that "Best Practice" synergies are achieved when one of the merging companies has superior existing practices for a particular function and the other company implements such practices, thereby either reducing the costs of the merged entity and/or enhancing the quality of service provided. The identification of these "Best Practices" requires a detailed review of the processes, systems and policies employed by comparable functions within each organization. Thus, this review takes time to complete. While some best practices will be such that they can be implemented soon after the consummation of the merger, others will take longer. Factors such as systems changes, personnel issues, and training requirements and resource prioritization will impact the timing of "Best Practice" implementation and, as a general rule, preclude the implementation of "Best Practices" prior to consummation of the merger. Further, the implementation of certain "Best Practices" is made feasible only as a result of the combining of the resources of both companies, thus implementation is possible only after consummation of the merger.

One of the advantages of a merger is that the two companies will fully share all of their experiences in running the two companies separately. Otherwise, there is no real incentive for separate companies to share best practices. Separate companies are also understandably reluctant to reveal proprietary, confidential, or business sensitive practices until the merger is consummated. The experience gained by the Joint Applicants as a result of the mergers between GTE & Contel and Bell Atlantic & NYNEX demonstrates a history of implementing best practices within their organizations.

Witness: Jeffrey C. Kissell
Dennis M. Bone

Notes

GTE CORPORATION AND BELL ATLANTIC CORPORATION

RESPONSES TO

PUBLIC SERVICE COMMISSION'S FIRST SET OF DATA REQUESTS AND INTERROGATORIES

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Request No. 7:

Refer to page 11 of John Blanchard's July 9, 1999 testimony. Explain in detail how funding will be appropriated for capital expenditures in Kentucky prior to the realization of merger savings.

Response:

The Joint Applicants will establish capital overlay funding for approved merger commitments. The manner in which the funds will be appropriated and allocated in order to satisfy the commitments, as set out in the application, will be consistent with the manner utilized historically. Actual realization of savings will not be required in order for these commitments to start or to be carried out consistent with statements made in the application. Also, see response to Data Request No. 3.

Witness: Jeffrey C. Kissell
Michael W. Reed

Notes

GTE CORPORATION AND BELL ATLANTIC CORPORATION

RESPONSES TO

PUBLIC SERVICE COMMISSION'S FIRST SET OF DATA REQUESTS AND INTERROGATORIES

KENTUCKY PUBLIC SERVICE COMMISSION
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FILED AUGUST 9, 1999

Request No. 8:

Refer to page 4 of Dr. William E. Taylor's July 9, 1999 testimony. Dr. Taylor states that "in the short run, the larger competitor that the merger would create should be able to obtain better prices for the transport services it resells from its facilities-based competitors." Will the merged company realize these advantages? Explain.

Response:

The Joint Applicants' response is yes. In the short run, the merged company will supply out-of-region long distance service through resale of capacity from facilities-based long distance carriers. Prices for capacity depend on both term and volume. By combining volumes, the merged company would be able to negotiate lower prices for long distance capacity than would be possible without the merger.

Witness: William E. Taylor

Notes

GTE CORPORATION AND BELL ATLANTIC CORPORATION

RESPONSES TO

PUBLIC SERVICE COMMISSION'S FIRST SET OF DATA REQUESTS AND INTERROGATORIES

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Request No. 9:

Refer to page 9 of the July 9, 1999, testimony of Paul R. Shuell. Describe the specific role for each of the eight Merged Integration Teams formed by the Joint Applicants.

Response:

Joint Applicants respond that the responsibilities of the eight Merger Integration Teams are as follows:

Consumer and Small Business includes all aspects of marketing, sales, brand, advertising and customer-facing operations such as call centers. The team will also look at long distance, video and product development for these customer segments.

Large Business, Federal, Wholesale Business, CLEC, Data/Internetworking, Technology and Information Management includes all aspects of the new company's data/internetworking business, including the Global Network Infrastructure, a high-speed data backbone network under construction. This group will also review all aspects of marketing, advertising, sales and customer-facing operations, as well as long distance and product development as they relate to the large business, federal and wholesale segments. In addition, the team will develop plans and structure for technology research and development, and information management.

Telecom Network and Operations will review all aspects of both companies' current vast network, including switching, facilities, special services, sourcing and procurement, real estate and network administration.

Wireless is responsible for developing plans to integrate the two companies' domestic wireless organizations and achieve revenue and other synergies. The team will also be responsible for recommendations to resolve the overlaps in wireless properties.

International and Directories includes all international wireless and wireline activities, and international correspondent relations. This team will also review and develop plans to integrate the directories business of both companies on a worldwide basis.

GTE CORPORATION AND BELL ATLANTIC CORPORATION

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Legal, Regulatory and Government Affairs will examine all aspects of legal, regulatory and governmental affairs activities and develop plans and a proposed structure to handle these responsibilities for the new enterprise.

Human Resources includes all human resources issues, such as compensation, benefits, labor relations, education and training, and the special needs of employees during the transition.

Finance and Headquarters Support includes finance, taxes, strategic planning, mergers and acquisitions, pension fund management, auditing, public relations, employee communications and community affairs.

Witness: Jeffrey C. Kissell
Paul R. Shuell

Notes

GTE CORPORATION AND BELL ATLANTIC CORPORATION

RESPONSES TO

PUBLIC SERVICE COMMISSION'S FIRST SET OF DATA REQUESTS AND INTERROGATORIES

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FILED AUGUST 9, 1999

Request No. 10:

Refer to Stephen L. Shore's testimony of July 9, 1999. According to Schedule B.5, the total net merger savings attributable to GTE in Kentucky is $6.4 million after 3 years. Explain why this figure does not correspond with the $7.2 million figure given by the companies in their Joint Application.

Response:

Joint Applicants state that the total net merger savings attributable to GTE in Kentucky, as shown on Schedule B.5, are $6.4 million after 3 years. This net merger savings number includes merger costs that will be incurred in the third year following consummation of the merger. The $7.2 million figure is the amount of gross savings in the third year following consummation of the merger without the $0.8 million of merger costs that will be incurred in year 3.

Witness: Stephen L. Shore

Notes

GTE CORPORATION AND BELL ATLANTIC CORPORATION

RESPONSES TO

PUBLIC SERVICE COMMISSION'S FIRST SET OF DATA REQUESTS AND INTERROGATORIES

KENTUCKY PUBLIC SERVICE COMMISSION
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FILED AUGUST 9, 1999

Request No. 11:

Refer to the July 9, 1999 testimony of Michael W. Reed. At page 10, line 3, reference is made to tariff filings to be made in 2000 or 2001. Fully explain. (See also the Joint Application page 2.)

Response:

As indicated by Mr. Reed in his testimony, the Joint Applicants are committing to the rollout of an enhanced Local Calling Plan ("LCP") to all of its Kentucky customers if the merger is approved. The enhanced Local Calling Plan would be offered in all of GTE's exchanges in Kentucky, including those that do not have an existing Local Calling Plan. The enhanced LCP would replace the current LCP structure and will better meet our customers needs and expectations, while making the offering easier to understand and explain. One change GTE will propose in its new structure will be to offer a Block of Time premium calling plan, similar to those plans offered by cellular, PCS, and IXC companies, in place of the current unlimited premium calling. Another change contemplated in the restructure would be an expansion in geographic calling scopes, possibly including a LATA-wide calling option, from those in effect with GTE's existing Local Calling Plans. To clarify the timing of when the tariff filing would be made, the Joint Applicants would commit to filing a tariff within 6-9 months of merger consummation to provide enhanced Local Calling Plans to all of its Kentucky customers. Local Calling Plans would be implemented area by area. Estimated implementation timeframes would be provided with the filing of the tariff.

Witness: Michael W. Reed

Larry D. Callison
State Manager
Regulatory Affairs & Tariffs

GTE Service Corporation

KY10H072
150 Rojay Drive
Lexington, KY 40503
606 245-1389
Fax: 606 245-1721

August 9, 1999

Ms. Helen C. Helton
Executive Director
Public Service Commission
730 Schenkel Lane
Post Office Box 615
Frankfort, Kentucky 40602

Re: Joint Application of Bell Atlantic Corporation and GTE Corporation for Order Authorizing Transfer of Utility Control - Case No. 99-296

Dear Ms. Helton:

Enclosed for filing with the Kentucky Public Service Commission ("Commission") are an original and ten copies of the Responses of GTE Corporation and Bell Atlantic ("Joint Applicants") to Sprint's First Data Requests and Interrogatories, as contained in Sprint's July 23, 1999 filing in this matter.

Also enclosed is a Joint Petition for Confidentiality, in which the Joint Applicants seek confidential treatment of their response to Sprint's data request number 4.

I would be most appreciative if you would bring this filing to the attention of the Commission, and should you have any questions about the enclosed material, please do not hesitate to contact me at your convenience. Thank you for your consideration in this matter.

Yours truly,

Larry D. Callison

Larry D. Callison

Enclosure

c: Hon. Ann Louise Cheuvront - Assistant Attorney General
Hon. William R. Atkinson - Sprint

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:	)	
	)	
Joint Application of Bell Atlantic	)	
Corporation and GTE Corporation	)	CASE NO. 99-296
For Order Authorizing Transfer of	)	
Utility Control	)	

JOINT PETITION FOR CONFIDENTIALITY

Comes Now GTE Corporation, referred to hereinafter as "GTE" or "Company", and Bell Atlantic Corporation, referred to hereinafter as "Bell Atlantic", or sometimes collectively as "Joint Petitioners", by and through counsel, pursuant to KRS 61.870, et seq., and Kentucky Public Service Commission ("Commission") Rule 807 KAR 5:001. Section 7, et seq., and in support of their Joint Petition herein state as follows:

1. On July 23, 1999, Sprint Communications Company L.P. ("Sprint") filed its First Set of Data Requests and Interrogatories in this matter requesting certain information from the Joint Petitioners. On July 26, 1999, the Commission issued an order directing Joint Petitioners to respond to certain requests for information contained therein ("Commission's First Set"). In their responses to these data requests, the Joint Petitioners have provided certain information with respect to Sprint's data request number 4 and the Commission's data requests numbers 1 and 3 which the Joint Petitioners consider proprietary and confidential and should be afforded such treatment by the Commission.1

1 Generally, Commission Rule 807 KAR 5:001, Section 7, et seq., requires confidential information to be underscored, highlighted or identified by other reasonable means so the Commission can readily identify the confidential information in

2. KRS 61.870, et seq., requires that public agencies within the Commonwealth make available for inspection all public records. Certain exceptions to that general requirement are contained in KRS 61.878. KRS 61.878 (1)(c), et seq., provides an exemption for certain commercial information. In order to qualify for such an exemption under this section of the Act, a party must demonstrate that disclosure of such commercial information would permit an unfair commercial advantage to its competitors unless the information is afforded confidential protection. The procedure for requesting confidential treatment from the Commission is outlined at 807 KAR 5:001, Section 7, et seq.

3. The commercial information for which the Joint Petitioners seek confidential treatment is contained in their response to Sprint's data request number 4 and in their responses to the Commission's data requests numbers 1 and 3. Specifically, Joint Petitioners' response to Sprint's data request number 4 consists of the following confidential material: This response includes internal studies and reports prepared by Bell Atlantic and GTE Merger Integration Team personnel relating to the companies' call centers and related Operations Support Systems. Joint Petitioners' response to the Commission's data request number 1 includes the following confidential material: This response includes revenue projections by year with regard to GTE-Kentucky's deployment of CLASS

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question. Because Joint Petitioners consider all of their response to Sprint's data request number 4 to be confidential and proprietary, and due to the amount of data being provided, they are complying with the Commission's rule by copying all of this response on yellow paper. Also, due to the voluminous nature of the material being provided in response to Sprint's data request number 4, the Joint Petitioners do not intend to file a redacted copy of the material since it is their position that all of the material is, in fact, confidential and proprietary. Because of this, it would be counterproductive to file a redacted copy of this material with the Commission since it would be nothing more than hundreds of pages of blank material. Accordingly, Joint Petitioners request that the Commission grant a waiver of its rule which generally requires the filing of ten redacted copies of the material in question. With regard to their responses to the Commission's data requests numbers 1 and 3, the Joint Petitioners have highlighted this confidential information in yellow for the Commission's review. Joint Petitioners will also file ten redacted copies of their response to the Commission's data requests numbers 1 and 3.

services throughout the remainder of its service territory in the Commonwealth. Joint Petitioners' response to the Commission's data request number 3 includes the following confidential material: This response includes forecasted capital expenditures by various facility categories which will be required to accomplish the deployment of CLASS services in the remainder of GTE-Kentucky's service territory.

4. The detailed information contained in the Joint Petitioners' response to Sprint's data request number 4 and in their responses to the Commission's data requests numbers 1 and 3, a copy of which are included with this Joint Petition, include data that contains proprietary commercial information and, accordingly, GTE and Bell Atlantic request the Commission to afford confidentiality to this information pursuant to the exemption provided in KRS 61.878 (1)(c). The commercial information contained in the Joint Petitioners' response to Sprint's data request number 4 and in their responses to the Commission's data requests numbers 1 and 3 include, but are not limited to, cost studies, capital budgeting and revenue forecasts, and related matters which are highly confidential. Specifically with regard to the response to Sprint's data request number 4, the reports provided are internal planning documents relating to future strategic plans of the merging companies, which were not for outside distribution and would not be subject to such distribution or disclosure in the ordinary course of business. Simply stated, these responses contain data, which if disclosed, would cause irreparable harm to the Joint Petitioners. A competitor could use the information contained in these responses to obtain market information about the Joint Petitioners, including, but not limited to, revenue projections, capital budgeting information, marketing plans and procedures, as well as their cost structure and positions, which the competitor would be unable to obtain otherwise. Armed with this information, a competitor could develop entry and/or marketing strategies that would likely

ensure its success in competing with the Joint Petitioners. Conversely, neither GTE nor Bell Atlantic is able to receive such information about their competitors and their customers. Further, in a competitive market, any information gained about a competitor can be used to that competitor's detriment. Such an unfair competitive advantage skews the marketplace and prevents the development of true competition to the ultimate detriment of the consumer.

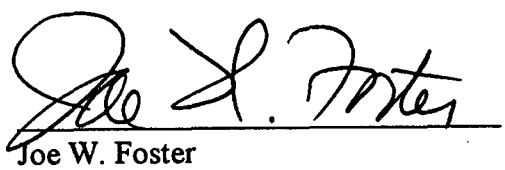
5. Disclosure of confidential information of this nature will be detrimental to the Joint Petitioners because it contains data that is not otherwise available to their competitors. The information sought to be protected herein is not known outside GTE or Bell Atlantic, nor is it provided to the public, its internal use is restricted to only those employees who have a legitimate business reason for reviewing such, and the Joint Petitioners attempt to control the dissemination of this material through all reasonable means. Indeed, by granting the Joint Petition the public interest will be served because competition will be enhanced.

WHEREFORE, GTE Corporation and Bell Atlantic Corporation respectfully request that the honorable Kentucky Public Service Commission issue an order herein granting confidential treatment to the Joint Petitioners' response to Sprint's data request number 4 and to their responses to the Commission's data requests numbers 1 and 3, as described *supra*. Additionally, the parties would respectfully ask that the Commission waive its rule and allow the Joint Petitioners to forego filing any

redacted copies of their response to Sprint's data request number 4 for the reasons previously described herein.

Respectfully submitted this the 9th day of August, 1999.

GTE CORPORATION
BELL ATLANTIC CORPORATION

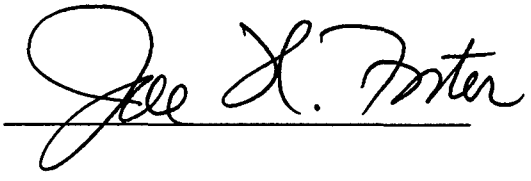
BY: 

Joe W. Foster
GTE Service Corporation
NC999015
4100 N. Roxboro Road
Durham, North Carolina 27704
(919) 317-7656

Their Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Joint Petition for Confidentiality of GTE Corporation and Bell Atlantic Corporation was served on all parties of record in this matter by placing a copy of same, properly addressed, in the U. S. Mail, first class postage pre-paid, this the 9th day of August, 1999.



COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:	)	
	)	
Joint Application of Bell Atlantic	)	CASE NO. 99-296
Corporation and GTE Corporation	)	
For Order Authorizing Transfer of	)	
Utility Control	)	

GTE'S AND BELL ATLANTIC'S RESPONSE TO SPRINT'S FIRST DATA REQUESTS AND INTERROGATORIES TO GTE CORPORATION AND BELL ATLANTIC CORPORATION

GENERAL OBJECTIONS

GTE and Bell Atlantic (the "Joint Applicants") hereby object to Sprint's First Data Requests and Interrogatories to GTE Corporation and Bell Atlantic Corporation on the following grounds, each of which is incorporated by reference to the responses provided below.

(1) The Joint Applicants object to each and every request to the extent that it seeks information or documents subject to the attorney-client privilege, the attorney work product doctrine, or any other such privilege. The Joint Applicants responses below shall not be deemed to be a waiver of any such privilege.

(2) The Joint Applicants object to each and every request to the extent that it seeks information or documents without regard for the date on which such information was generated on the grounds that the request is overbroad, unduly burdensome and irrelevant. The Joint Applicants will produce responsive information and documents for the time period beginning January 1, 1997.

(3) The Joint Applicants object to each and every request to the extent it seeks information that was not generated by, or maintained in the files of, an employee of the Joint Applicants at the Director level or above who is responsible for making the decisions regarding matters within the scope of the request on the grounds that it is overbroad, unduly burdensome and irrelevant.

(4) The Joint Applicants object to each and every request to the extent it seeks information not directly concerning the market for telecommunications services in the State of Kentucky on the grounds that it is overbroad, unduly burdensome and irrelevant. In addition, The Joint Applicants object to such

requests to the extent they go beyond the jurisdiction of the Kentucky Public Service Commission.

(5) The Joint Applicants object to each and every request to the extent it seeks information "relating to" a specified subject matter on the grounds that it is overbroad, unduly burdensome, irrelevant and vague. The Joint Applicants will produce information and documents that directly discuss and were generated for the purpose of considering the specified subject matter.

(6) The Joint Applicants object to each and every request to the extent it seeks documents that were initially created by parties not affiliated with the Joint Applicants or who were not acting at the Joint Applicants' direction or on its behalf (e.g. news articles, investment analysts reports, agency or court filings by other parties).

GTE CORPORATION AND BELL ATLANTIC CORPORATION

RESPONSES TO

SPRINT'S FIRST SET OF DATA REQUESTS AND INTERROGATORIES

KENTUCKY PUBLIC SERVICE COMMISSION
CASE NO. 99-296
FILED AUGUST 9, 1999

Request No. 1:

Please produce all responses by BA and GTE to the discovery requests of other parties in this docket and all documents produced by BA and GTE in response to the discovery requests by other parties in this docket.

Response:

Joint Applicants hereby incorporate their General Objections stated above. Subject to and without waiver of the foregoing objections, the Joint Applicants state that they will produce or provide access to copies of all responses and documents that it has provided in response to the discovery requests of other parties to this matter in the Commonwealth of Kentucky subject to appropriate confidentiality restrictions and proprietary agreements.

Witness: Not Applicable

GTE CORPORATION AND BELL ATLANTIC CORPORATION

RESPONSES TO

SPRINT'S FIRST SET OF DATA REQUESTS AND INTERROGATORIES

KENTUCKY PUBLIC SERVICE COMMISSION
CASE NO. 99-296
FILED AUGUST 9, 1999

Request No. 2:

Please refer to the Joint Applicants' response to Sprint's Data Request No. 4, in Case No. 98-519, filed December 16, 1998. If approved plans for the consolidation of such functions following the merger now exist, please produce all documents relating to the strategy and/or plans of BA to consolidate the operations (including billing, administrative, customer service, marketing, legal, accounting, and Operational Support Systems) of BA and its subsidiaries with the same or similar operations of GTE and its subsidiaries.

Response:

Joint Applicants hereby incorporate their General Objections stated above. Subject to and without waiver of the foregoing objections, the Joint Applicants state that there are no approved plans for the consolidation of functions following the merger, thus there are no documents responsive to this request.

Witness: Jeffrey C. Kissell

GTE CORPORATION AND BELL ATLANTIC CORPORATION

RESPONSES TO

SPRINT'S FIRST SET OF DATA REQUESTS AND INTERROGATORIES

KENTUCKY PUBLIC SERVICE COMMISSION
CASE NO. 99-296
FILED AUGUST 9, 1999

Request No. 3:

Please refer to the Joint Applicants' response to Sprint's Data Request No. 17, in Case No. 98-519, filed December 16, 1998. If such a determination has now been made, please identify any new products and services anticipated to be introduced by the merged entity in GTE territory between January 1, 2000 and January 1, 2003.

Response:

Joint Applicants hereby incorporate their General Objections stated above. Subject to and without waiver of the foregoing objections, the Joint Applicants' Joint Application and the testimony attached thereto states that they anticipate introducing the following new products and services after consummation of the merger, and thus anticipate introducing them between January 1, 2000 and January 1, 2003:

- CLASS services will be expanded to 100% of GTE's local exchange markets in Kentucky within four years after consummation of the merger, thus introducing Caller ID Name and Number, Caller ID (number only), Call Block, Automatic Call Return, Anonymous Call Block, Automatic Busy Redial, VIP Alert, Special Call Acceptance, Special Call Forwarding and Call Tracing Service (*see* Joint Application at 14; Griswold Direct at 12-13; Reed Direct at 8);
- Local Calling Plans (LCPs) will be deployed to the remaining GTE local exchange markets in Kentucky that do not currently have such services (*see* Joint Application at 16; Reed Direct at 9-10);
- It is anticipated that the merged company will be able to introduce packages of local, long distance, data, Internet and wireless services within their current territories and in new territories in Kentucky, which are similar to or even more advanced than current packaged service offerings (*see* Joint Application at 14-15; Kissell Direct at 10-16); and
- It is also anticipated that the merged company will be better able to introduce advanced broadband services within Kentucky such as Cyber-ID and Universal Messaging (*see* Kissell Direct at 9-10).

In general, the Joint Applicants anticipate that the synergies from the merger, as well as the benefits from increased scale and scope and best practices, will place them in a better position to develop and deploy promptly and on a broad basis other new services and as-yet undeveloped services. At this general level, however, and aside

from the specific services listed above, Joint Applicants have not yet made a determination of what products and services are likely to be provided in GTE's territories in Kentucky, and thus it is premature to indicate what new products or services the merged entity plans to offer in GTE territory between January 1, 2000 and January 1, 2003.

Witness: Jeffrey C. Kissell

GTE CORPORATION AND BELL ATLANTIC CORPORATION

RESPONSES TO

SPRINT'S FIRST SET OF DATA REQUESTS AND INTERROGATORIES

KENTUCKY PUBLIC SERVICE COMMISSION
CASE NO. 99-296
FILED AUGUST 9, 1999

Request No. 4:

Please refer to the Joint Applicants' response to Sprint's Data Request No. 23, in Case No. 98-519, filed December 16, 1998. Please identify and produce all documents relating to the locations, budgets and organizational structure of the proposed merged entity's combined local service centers and related OSS systems, if any.

Response:

Joint Applicants hereby incorporate their General Objections stated above. Subject to and without waiver of the foregoing objections, GTE states that no approved plans regarding the locations, budgets or organizational structure of the proposed merged entity's combined local service centers and related OSS systems have been developed. Nevertheless, Joint Applicants are providing various materials which are relevant and responsive to this request. All of this information is **PROPRIETARY** and **CONFIDENTIAL** and the Joint Applicants have herewith petitioned the Commission to afford it such treatment. Since Sprint has previously executed a Confidentiality Agreement with the Joint Applicants in this matter, a copy of the confidential and proprietary data is being provided pursuant to that agreement.

Witness: Jeffrey C. Kissell

GTE CORPORATION AND BELL ATLANTIC CORPORATION

RESPONSES TO

SPRINT'S FIRST SET OF DATA REQUESTS AND INTERROGATORIES

KENTUCKY PUBLIC SERVICE COMMISSION
CASE NO. 99-296
FILED AUGUST 9, 1999

Request No. 5:

Please identify the types of switches used by GTE and BA, and explain whether GTE and BA use the same switches, and if not, discuss GTE's current plans for managing the greater complexity involved in integrating different types of switches.

Response:

The Joint Applicants hereby incorporate the General Objections stated above. In addition, the Joint Applicants object to this request on the grounds that it is overly broad, unduly burdensome and irrelevant to the extent that it seeks information not limited to the effects of the merger on Applicants' operations in Kentucky.

Subject to and without waiving the foregoing objections, Applicants respond as follows: The following are the types of switches that GTE and Bell Atlantic utilize:

GTE	Bell Atlantic
-	1AESS
4ESS	4ESS
5ESS	5ESS
DMS 10	DMS 10
DMS 100	DMS 100
DMS 100/200	DMS 100/200
EWSD	EWSD
GTD-5	-
DCO	-
VIDAR	-

GTE's and Bell Atlantic's networks use common switches. Bell Atlantic, however, has no switches or any other facilities in Kentucky. Therefore, the merger will require no network or operational consolidation in Kentucky. Since all of the switching products are built to industry standards, it is not foreseen that managing the different switch types should increase the complexity of maintaining the network.

Witness: Michael W. Reed
Dennis M. Bone

GTE CORPORATION AND BELL ATLANTIC CORPORATION

RESPONSES TO

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KENTUCKY PUBLIC SERVICE COMMISSION
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FILED AUGUST 9, 1999

Request No. 6:

Please refer to the "Joint Application of Bell Atlantic Corporation and GTE Corporation for Order Authorizing Transfer of Utility Control", Case No. 99-296 (filed July 9, 1999) (hereinafter "Joint Application"), at 14. Please also refer to the following excerpt from the Commission's Order, Case No. 98-519, at 3: "in any refiling [Joint Applicants] must identify specifically those advanced services which will be made available in Kentucky as a result of the merger..." (emphasis added). Please explain how the Joint Applicants' use of the term "advanced CLASS services" on p. 14 of the Joint Application, which apparently includes "advanced services such as Caller ID, Call Blocking, Selective Call Forwarding, Anonymous Call Rejection and Call Trace", differs from the following definition of "advanced services" used by the Federal Communications Commission ("FCC") in its First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-147[1] (released March 31, 1999), at 2, fn. 2:

> For purposes of this order, we use the term "advanced services" to mean high speed, switched broadband, wireline telecommunications capability that enables uses to originate and receive high-quality voice, data, graphics, or video telecommunications using any technology. The term "broadband" is generally used to convey sufficient capacity – or "Bandwidth" – to transport large amounts of information.... Today's broadband services include services based on digital subscriber line technology (commonly referred to as xDSL), including ADSL (asymmetric digital subscriber line), HDSL (high-speed digital subscriber line), UDSL (universal digital subscriber line), VDSL (very-high speed digital subscriber line), and RADSL (rate-adaptive digital subscriber line), and services based on packet-switched technology.

Response:

Joint Applicants incorporate their General Objections stated above. Joint Applicants further object to this data request on the grounds that it is irrelevant: there is nothing in the Commission's Order of April 14, 1999 in Docket No. 98-519 (the "April 14

[1] In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability

Order") that indicates that the Commission equated "advanced services" as used therein with "advanced services" as used by the FCC in its March 31, 1999 First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-147 (the "FCC Order").

Witness: Jeffrey C. Kissell

GTE CORPORATION AND BELL ATLANTIC CORPORATION

RESPONSES TO

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Request No. 7:

Please provide a current organizational chart for GTE Corporation, its subsidiaries and affiliates.

Response:

Joint Applicants hereby incorporate their General Objections stated above. Subject to and without waiver of the foregoing objections, the Joint Applicants state that the current organizational chart for GTE Corporation, its subsidiaries and affiliates is attached.

Witness: Jeffrey C. Kissell

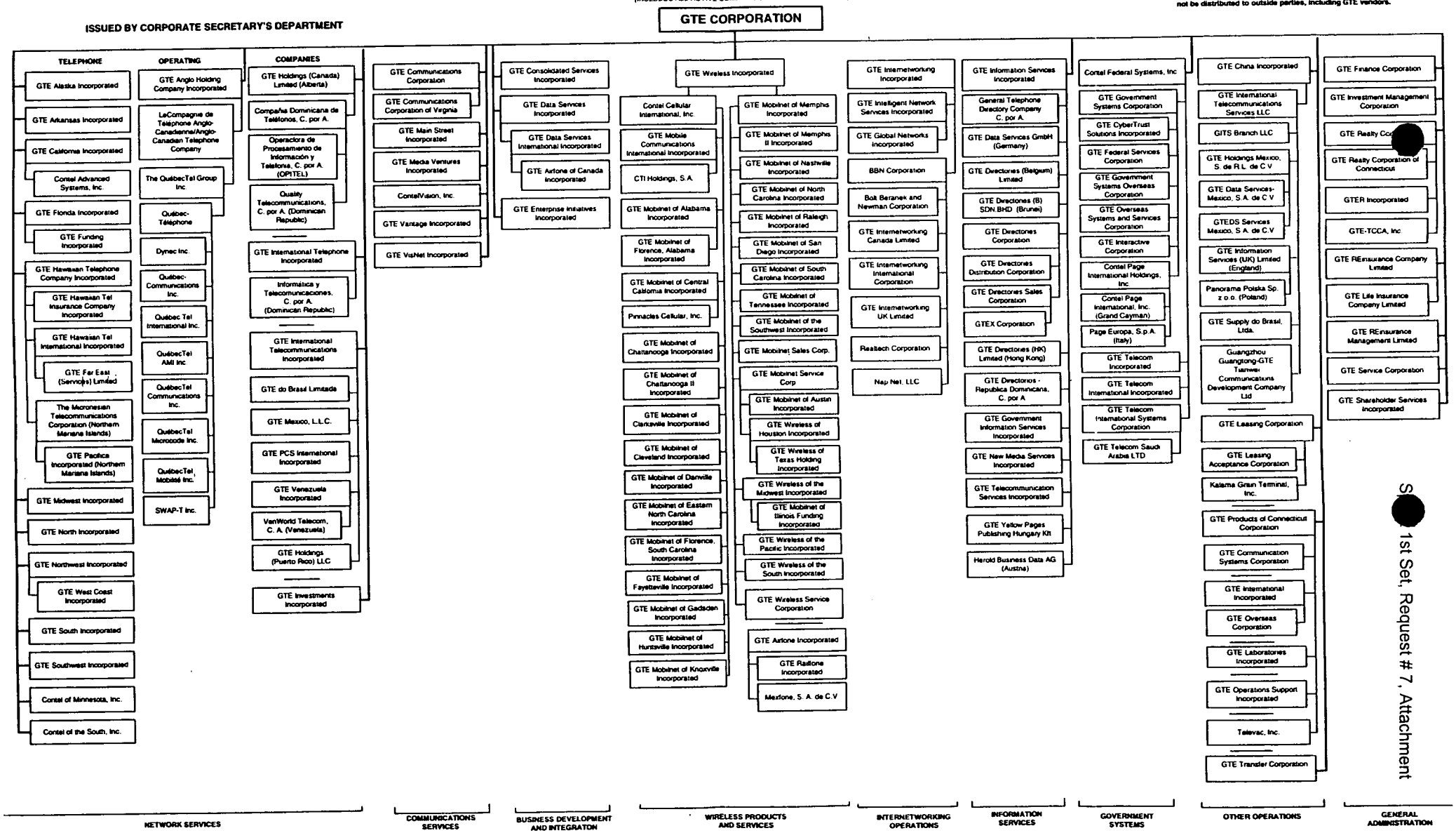
GTE CORPORATION AND SUBSIDIARIES

February 28, 1999

(INCLUDES ALL ACTIVE COMPANIES 50% OR MORE OWNED)

This information is intended only for GTE internal use and may not be distributed to outside parties, including GTE vendors.

ISSUED BY CORPORATE SECRETARY'S DEPARTMENT



S 1st Set, Request # 7, Attachment

GTE CORPORATION AND BELL ATLANTIC CORPORATION

RESPONSES TO

SPRINT'S FIRST SET OF DATA REQUESTS AND INTERROGATORIES

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Request No. 8:

Please refer to the following excerpt from the "Joint Applicants" letter to the FCC in Docket No. 98-184, dated April 14, 1999: "Following the filing of our New York 271 application with you, we will make a further submission that addresses the long distance issues and supports our underlying merger application. We request that you await that submission before you act on our merger application." In light of the aforementioned letter, what is the current status of the GTE/Bell Atlantic merger proceedings at the FCC? Please explain in detail.

Response:

Joint Applicants incorporate their General Objections stated above. Joint Applicants further object on the grounds that the April 14, 1999 letter to the FCC referenced in the request is not part of the record of this docket. The matters addressed in that letter are solely within the jurisdiction of the FCC and are therefore irrelevant to the proceeding before this commission. Subject to and without waiver of the foregoing objections, the proceeding at the FCC, Docket No. 98-184, remains open. Joint Applicants expect that the FCC will issue a final order on the application in that docket after GTE and Bell Atlantic have made the further submission mentioned in their April 14 letter to the Commission. The New York 271 Application is expected to be filed by September.

Witness: Dennis M. Bone
Jeffrey C. Kissell

GTE CORPORATION AND BELL ATLANTIC CORPORATION

RESPONSES TO

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Request No. 9:

Please describe GTE's current plans, if any, for implementing xDSL services in its Kentucky service territories.

Response:

Joint Applicants hereby incorporate their General Objections stated above. Subject to and without waiver of the foregoing objections, the Joint Applicants provide the following response:

GTE has 18 switches providing ADSL service today in Kentucky. The deployment plan for 2000 has not yet been prepared, reviewed or approved. Additional remotes and DLCs in the Lexington LATA are being studied to determine possible deployment opportunities in 2000.

Witness: Michael W. Reed

GTE CORPORATION AND BELL ATLANTIC CORPORATION

RESPONSES TO

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Request No. 10:

Please describe GTE's current policy with regard to the availability of and pricing for combined unbundled network elements ("UNEs") in its Kentucky service territories.

Response:

Joint Applicants incorporate their General Objections stated above. In addition, the Joint Applicants object on the grounds of relevance. The FCC is currently conducting a proceeding in CC Docket No. 96-98 concerning unbundled elements. That issue has nothing to do with the subject matter of this proceeding under Kentucky law. Subject to and without waiver of the foregoing objections, the Joint Applicants provide as an attachment the February 12, 1999 informational letter from Larry D. Callison, State Manager - Regulatory Affairs & Tariffs, to Ms. Helen C. Helton, Executive Director of the Kentucky Public Service Commission, that outlined GTE's position with respect to UNEs in light of the Supreme Court's decision of January 25, 1999.

Witness: John C. Peterson

Larry D. Callison
State Manager
Regulatory Affairs & Tariffs

GTE Service Corporation

KY10H072
150 Rojay Drive
Lexington, KY 40503
606 245-1389
Fax: 606 245-1721

February 12, 1999

Ms. Helen C. Helton
Executive Director
Public Service Commission
730 Schenkel Lane
Frankfort, Kentucky 40602

RE: GTE's Position in Light of Recent Supreme Court Decision Regarding UNE Pricing

Dear Ms. Helton:

As you know, GTE and a number of states challenged the FCC's pricing rules before the Eighth Circuit and, subsequently, the United States Supreme Court on jurisdictional grounds. GTE also challenged a number of other FCC rules. On January 25, 1999, the Court issued its opinion reinstating some of the FCC's rules but striking down its rule defining which UNEs must be made available. (*AT&T Corp. v. Iowa Utilities Board*, __ U.S. __ (1999)).

GTE has 37 interconnection agreements• in effect here in Kentucky that were approved by the Commission pursuant to Section 252 of the Telecommunications Act and the FCC's rules implementing the Act.

As discussed below, the Court's decision affects almost every existing interconnection agreement; indeed, the decision nullifies every provision requiring GTE to provide UNEs unconditionally. Without waiving any of its rights, however, GTE proposes to continue as though the nullified provisions were in effect and preserve the "status quo" until the FCC implements final rules that comply with the Act.

GTE's proposal to maintain the status quo follows our summary of the Court's decision:

• These "agreements" are not agreements in the generally accepted understanding of that term. GTE was required to accept these agreements, which were required to reflect the then-effective FCC rules.

c: Hanchey, Vogelzang

Summary of the Supreme Court's Decision

Three aspects of the Supreme Court's decision are worth noting.

First, the Court upheld on statutory grounds the FCC's jurisdiction to establish rules implementing the pricing provisions of the Act. The Court, though, did not address the substantive validity of the FCC's pricing rules. The Eighth Circuit will decide this issue on remand.

Second, the Court held that the FCC, in requiring ILECs to make available all UNEs, had failed to implement section 251(d)(2) of the Act, which requires the FCC to apply a "necessary" or "impair" standard in determining the network elements ILECs must unbundle. The Court ruled that the FCC had improperly failed to consider the availability of alternatives outside the ILEC's network and had improperly assumed that a mere increase in cost or decrease in quality would suffice to require that the ILEC provide the UNE. The Court therefore vacated in its entirety the FCC rule setting forth the UNEs that the ILEC is to provide (Rule 319). The FCC must now promulgate new UNE rules that comply with the Act.

Third, the Court upheld the FCC rule forbidding ILECs from separating elements that are already combined (Rule 315(b)), but explained that its remand of Rule 319 "may render the incumbents' concern on this point [i.e., sham unbundling] academic." In other words, the Court recognized that ILEC concerns over UNE platforms could be mooted if ILECs are not required to provide all network elements: "If the FCC on remand makes fewer network elements unconditionally available through the unbundling requirement, an entrant will no longer be able to lease every component of the network."

GTE's Proposal

The Court's decision creates uncertainty that will remain at least until the FCC promulgates final UNE rules that comply with the Act and the Eighth Circuit decides the substantive validity of the FCC's pricing rules. Such uncertainty may introduce concern over the continuing growth of competitive telecommunications services. To help assure a competitive marketplace, GTE proposes to eliminate some of this uncertainty (without waiving any of its rights) by agreeing to maintain the status quo until final rules are implemented. Specifically, GTE proposes the following package of interdependent terms:

1. Until the FCC issues new and final rules with regard to vacated Rule 319 that comply with the Act ("New Rules"), GTE will continue to provide all UNEs called for under the agreement even though it is not legally obligated to do so; provided, however, that the other party agrees not to seek UNE "platforms," or "already bundled" combinations of UNEs.

2. If the FCC does not issue New Rules prior to the expiration of the initial term of an existing agreement, GTE will agree to extend to any new interconnection arrangement between the parties the terms of this proposal until the FCC issues its New Rules.

3. By making this proposal (and by agreeing to any settlement or contract modifications that reflect this proposal), GTE does not waive any of its rights, including its rights to seek recovery of its actual costs and a sufficient, explicit universal service fund. Nor does GTE waive its position that, under the Court's decision, it is not required to provide UNEs unconditionally. Moreover, GTE does not agree that the UNE rates set forth in any agreement are just and reasonable and in accordance with the requirements of sections 251 and 252 of Title 47 of the United States Code.

4. GTE's proposal to maintain the status quo applies only to the UNE pricing, unbundling, and UNE platform issues. There may be other terms in an existing agreement (e.g., quality service standards) that GTE or a requesting carrier may want to renegotiate or arbitrate pursuant to their agreements and applicable law.

5. Finally, GTE will enter into any new arrangement with any requesting carrier consistent with the above terms.

In sum, until the legal landscape is settled, GTE's proposal as described above would maintain the status quo, and the parties can proceed with business as usual until the issues presented by the Court's ruling are resolved.

GTE is not asking the Commission to take any action at this time. Rather, GTE is notifying the Commission that it will negotiate "status quo" arrangements with all affected CLECs in accord with the above terms.

Please bring this filing to the attention of the Commission. Should there be any questions, please do not hesitate to call me at (606) 245-1389.

Yours truly,

Larry D. Callison

Larry D. Callison

GTE CORPORATION AND BELL ATLANTIC CORPORATION

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SPRINT'S FIRST SET OF DATA REQUESTS AND INTERROGATORIES

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Request No. 11:

Please explain the Joint Applicants' current position regarding the proper interpretation of the "necessary" and "impair" standards contained in 47 U.S.C. 251(d)(2) that are currently before the FCC in CC Docket No. 96-98, on remand as a result of the Supreme Court's decision in AT&T Corp. et al. v. Iowa Utilities Bd., 119 S.Ct. 721 (1999).

Response:

Joint Applicants incorporate their General Objections stated above. Joint Applicants further object on the grounds that the request is irrelevant to any issue in this proceeding and, as is shown by the request itself, subject to ongoing proceedings at the FCC. Subject to the foregoing objections, the Joint Applicants' current positions regarding the proper interpretation of the "necessary" and "impair" standards are a matter of public record, and are clearly stated in the comments the Joint Applicants have filed in CC Docket No. 96-98. Sprint was served with these filings because Sprint is a participant in that proceeding.

Witness: John C. Peterson
Dennis M. Bone

GTE CORPORATION AND BELL ATLANTIC CORPORATION

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Request No. 12:

Please refer to the Direct Testimony of Michael W. Reed filed with the Joint Application in this matter on July 9, 1999, at 9. How did GTE and/or GTE South derive the $222 million figure as the appropriate minimum level of commitment with regards to infrastructure capital investment in Kentucky for the three years following the merger?

Response:

Joint Applicants hereby incorporate their General Objections stated above. Subject to and without waiver of the foregoing objections, the Joint Applicants state that the capital commitment was derived from a consideration of several factors: (1) near term historical investment levels necessary to achieve desired service quality results; (2) forecasted service and growth requirements for three years following the merger; (3) current year investment projections of approximately $74 million; and (4) estimated annual investment necessary to achieve GTE's CLASS deployment commitment. With heavy weight given to maintaining GTE's excellent service quality results and forecasted service/growth demand, $222 million was deemed to be an appropriate minimum level of commitment for infrastructure capital investment.

Witness: Michael W. Reed

GTE CORPORATION AND BELL ATLANTIC CORPORATION

RESPONSES TO

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Request No. 13:

Please refer to the Direct Testimony of Michael W. Reed, at 9. Please provide examples of "a change in economic conditions outside of the merged company's control" which might affect GTE South's ability to meet the commitment of at least $222 million regarding infrastructure capital investment in Kentucky for the three years following the merger.

Response:

Joint Applicants hereby incorporate their General Objections stated above. Subject to and without waiver of the foregoing objections, the Joint Applicants state that common sense and business experience tells us that regional, national and global economic conditions are subject to change. No one can predict future economic conditions with certainty. Nor can anyone with certainty predict other externalities beyond the company's control. It would defy common sense and reason, as well as decades of regulatory policy, to ignore factors such as these.

Witness: Michael W. Reed

GTE CORPORATION AND BELL ATLANTIC CORPORATION

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Request No. 14:

Please refer to the Direct Testimony of Michael W. Reed, at 9. Please describe the procedure(s) or manner in which the Joint Applicants and/or GTE South will notify the Commission that a "change in economic conditions outside of the merged company's control" has occurred which will affect GTE South's ability to meet the commitment of at least $222 million regarding infrastructure capital investment in Kentucky for the three years following the merger.

Response:

See response to Request No. 13. Joint Applicants incorporate their General Objections stated above. Subject to and without waiver of the foregoing objections, the Joint Applicants will maintain appropriate lines of communication with the Commission over the life of the capital commitment to ensure that it is sufficient to maintain GTE South's quality of service and that the Commission is otherwise satisfied that GTE South is acting in the public interest. These lines of communication would be similar to what GTE South uses today, consisting of frequent visits by GTE South's regulatory representatives and officers, as well as regular financial and operational reporting. Furthermore, while the exact procedures and manner in which the merged entity will operate have not been determined, it is currently expected that a Regulatory Compliance activity will be part of the merged entity's approach to managing its commitments.

Witness: Michael W. Reed
John P. Blanchard

GTE CORPORATION AND BELL ATLANTIC CORPORATION

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Request No. 15:

Please refer to the Direct Testimony of Michael W. Reed, at 9. Please describe in detail the Joint Applicants' and or GTE South's implementation plan regarding the commitment of at least $222 million in infrastructure capital investment in Kentucky for the three years following the merger. Please describe in detail what types of infrastructure will be targeted for upgrade/replacement, and the geographical areas in which these infrastructure upgrades/replacements will take place.

Response:

Joint Applicants hereby incorporate their General Objections stated above. Subject to and without waiver of the foregoing objections, the Joint Applicants provide the attached list for the detail on the CLASS portion of this commitment.

Detailed plans for the remainder have not been completed pending approval of the merger. But these would be distributed between the following categories to maintain all service quality indices:

Growth – Funds required to support access line growth.

Modernization – Funds to replace existing plant with new technology to provide capability for new services, enhanced quality, and improved efficiency. Includes support programs to continue digitizing the network as well as technology upgrades to existing digital switches.

Network Support – Network rearrangements in support of customer movement and municipality infrastructure changes, service modifications, and regulatory mandated improvements.

Infrastructure Initiatives – To improve efficiencies and quality of existing telecommunications services. Included are actions to consolidate, centralize or automate essential operations and administrative functions.

Enhanced Services – Products and services which have completed initial introductions and are in the deployment stages or which will be introduced over the next five years.

GTE CORPORATION AND BELL ATLANTIC CORPORATION

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Other – Includes requirements to provide and maintain plant or equipment necessary to support operational needs, software capitalization, and PUC mandates.

Witness: Michael W. Reed

TABLE 1: DCO'S	
Location	**Unit**
1) Calvert City	BU
Howard's Grove	RLS1080
Hwy 62 East	RLS450
2) Bardwell	BU
Arlington	RLS1080
Columbus	RLS1080
Milburn	RLS1080
3) Owingsville	BU
Reynoldsville	RLS360
Salt Lick	RLS1080
Stulltown	RLG
Preston	RLS360
Peasticks	RLS360
Stepstone Rd	RLS360
Bethel	RLS1080
Sharpsburg	RLS1080
Sharpsburg	RLS
4) Smithland	BU
Paradise Rd	RLS1080
Lewis Monument	RLS1080
5) Tollesboro	BU
Burtonsville – A	RLG
Burtonsville – B	RLG
Concord	RLG
Fearsville – A	RLG
Fearsville – A	RLG
Ribolt – A	RLG
Ribolt – A	RLG
Salem – A	RLG
Salem – A	RLG
Trinity	RLG
Vanceburg 431	RLS4000
6) Washington	BU
Fox – Hwy AA	RLS1080
Mount Olivet	RLS1080
Fern Leaf	RLS1080
Dover	RLS360
Mays Lick	RLS1080
Orangeburg	RLS360
Lewisburg	RLS360
Germantown	RLS1080
Brooksville	RLS1080
Petra	RLS360
Willow	RLS360
Augusta	RLS1080
Augusta	RLG
Johnsville	RLS1080
7) Garrison	BU
8) Houstonville	BU
Milledgeville Hwy 127	914/S24DU
Hwy 127/Woodrum Ridge	1218-D
Butchertown	1218-D
McKinney	1218-D
Rockyford	1218-D
Jacktown	1218-D
Milledgeville	RLS450

TABLE 2: REMOTES

EXCHANGE NAME	HOST SWITCH	REMOTE NAME
ALBANY DMS10-SSO	ALBANY	KY 738 1
GRAYSN DMS10-HSO	GRAYSN	IRON HILL
LIBRTY DMS10-SSO	LIBRTY	CLEMENTSVILLE
LIBRTY DMS10-SSO	LIBRTY	THOMAS RIDGE
CTLBRG DMS10-BASE	CTLBRG	PETERMAN HILL
ALBANY DMS10-SSO	ALBANY	SPECK ROAD
GRAYSN DMS10-HSO	GRAYSN	HITCHINS
ALBANY DMS10-SSO	ALBANY	IRVIN #1
BURNSD GTD5-BU	BURNSD	WOODSON BEND 1
HSTNVL SC-DCO	HSTNVL	JACKTOWN
GRAYSN DMS10-HSO	GRAYSN	GREGORYVILLE
GREENUP DMS10-BASE	GRENUP	LLOYD
GRAYSN DMS10-HSO	GRAYSN	BECKWITH BRANCH
HSTNVL SC-DCO	HSTNVL	BUTCHERTOWN
LNCSTR DMS10-HSO	LNCSTR	BOONES CREEK
GLASGW SEIM-ESWD	GLASGW	N RACE & US 31E
LNCSTR DMS10-HSO	LNCSTR	POINT LEAVELL
LNCSTR DMS10-HSO	LNCSTR	FALL LICK ROAD
SO SHR DMS10-RSC-S	STHSHR	SILOAM
LIBRTY DMS10-SSO	LIBRTY	ARGYLE
LIBRTY DMS10-SSO	LIBRTY	ATWOOD
GREENUP DMS10-BASE	GRENUP	BROOKFIELD
GREENUP DMS10-BASE	GRENUP	GRAYS BRANCH
MNTICL DMS10-HSO	MNTICL	DENNY 1
HSTNVL SC-DCO	HSTNVL	HIGHWAY 127 SOUTH
HSTNVL SC-DCO	HSTNVL	WOODRUM RIDGE
HSTNVL SC-DCO	HSTNVL	MCKINNEY
COLMBA GTD5-BU	COLMBA	CAMEL RIDGE RD 1
MNTICL DMS10-HSO	MNTICL	KY 92 COOPERSVILLE 1
CMPBVL DMS100	CMPBVL	RED FERN ROAD 1
MNTICL DMS10-HSO	MNTICL	SUSIE
MNTICL DMS10-HSO	MNTICL	SUMPTER 1
CMPBVL DMS100	CMPBVL	WILLOWTOWN
CMPBVL DMS100	CMPBVL	NEW MAC 1
CMPBVL DMS100	CMPBVL	ARISTA 1
CMPBVL DMS100	CMPBVL	KNIFLEY 1
SOMRST GTD5-BU	SOMRST	SHAFTNER 1
MNTICL DMS10-HSO	MNTICL	GREGORY 1
CMPBVL DMS100	CMPBVL	HOBSON 1
CMPBVL DMS100	CMPBVL	MANNSVILLE
CMPBVL DMS100	CMPBVL	SPURLINGTON 1
GRNSBG GTD5-BU	GRNSBG	KY 88
GRNSBG GTD5-BU	GRNSBG	BRAMLETT 1

TABLE 2: REMOTES

EXCHANGE NAME	HOST SWITCH	REMOTE NAME
GRNSBG GTD5-BU	GRNSBG	ROCKY RUN 1
GRNSBG GTD5-BU	GRNSBG	GRAB 1
GRNSBG GTD5-BU	GRNSBG	GRESHAM 1
CMPBVL DMS100	CMPBVL	FOREST HILLS
GRNSBG GTD5-BU	GRNSBG	PLEASANT HILL 1
CMPBVL DMS100	CMPBVL	BASS RIDGE 1
CMPBVL DMS100	CMPBVL	KINDNESS ROAD
CMPBVL DMS100	CMPBVL	ELKHORN 1
CMPBVL DMS100	CMPBVL	TALLOW CREEK 1
GLASGW SEIM-ESWD	GLASGW	COLUMBIA AVE
MNTICL DMS10-HSO	MNTICL	DELTA 1
COLMBA GTD5-BU	COLMBA	BETHAL RIDGE 1
VERSLL DMS100	VERSLL	LEXINGTON ROAD
VERSLL DMS100	VERSLL	MORTONSVILLE
SOHRDN GTD5-RSU	SOHRDN	GLENDALE 1
VERSLL DMS100	VERSLL	TYRONE
VANCBG SC-RLS	VANCBG	BLACK OAK
VERSLL DMS100	VERSLL	CLIFTON
ELZTWN GTD5-BU	ELZTWN	KY 251 & 434
LEXELK AT&T-5ESS	LEXELK	DELANEYS FERRY
ELZTWN GTD5-BU	ELZTWN	RINEYVILLE
VERSLL DMS100	VERSLL	STEELE PIKE
ELZTWN GTD5-BU	ELZTWN	LOCUST GROVE
HDGNVL GTD5-BU	HDGNVL	WHITE CITY
HDGNVL GTD5-BU	HDGNVL	LINCOLN FARM
COLMBA GTD5-BU	COLMBA	SANO 1
VERSLL DMS100	VERSLL	BIG SINK PIKE
COLMBA GTD5-BU	COLMBA	KY 80 & 531 1
COLMBA GTD5-BU	COLMBA	JCT KY 80-SANO
COLMBA GTD5-BU	COLMBA	GLEN'S FORK 1
OLVHLL DMS10-SSO	OLVHLL	UPPER TYGART
CMPBVL DMS100	CMPBVL	DURHAMTOWN 1
CMPBVL DMS100	CMPBVL	SANDY-Y #2
CMPBVL DMS100	CMPBVL	SANDY-Y #1
CMPBVL DMS100	CMPBVL	DUNBAR HILL #1
CMPBVL DMS100	CMPBVL	DUNBAR HILL #2
OWGSVL SC-DCO	OWGSVL	WYOMING
SOHRDN GTD5-RSU	SOHRDN	CASH 1 RM
MOREHD GTD5-BU	MOREHD	HALDEMAN
SOHRDN GTD5-RSU	SOHRDN	UPTON 3 RM
MOREHD GTD5-BU	MOREHD	GLENN WOOD
TMPKVL SEIM-WCU	TMPKVL	KY 163 N 1
SOHRDN GTD5-RSU	SOHRDN	UPTON 1 RM
SOHRDN GTD5-RSU	SOHRDN	UPTON 2 RM
TMPKVL SEIM-WCU	TMPKVL	KY 1049 2
SOHRDN GTD5-RSU	SOHRDN	UPTON 5
SOHRDN GTD5-RSU	SOHRDN	UPTON 4 RM

TABLE 2: REMOTES

EXCHANGE NAME	HOST SWITCH	REMOTE NAME
TMPKVL SEIM-WCU	TMPKVL	KY 1049 1
SOHRDN GTD5-RSU	SOHRDN	CASH 2 RM
CTLBRG DMS10-BASE	CTLBRG	BURNAUGH
CTLBRG DMS10-BASE	CTLBRG	DURBIN
OLVHLL DMS10-SSO	OLVHLL	SOLDIER #3

GTE CORPORATION AND BELL ATLANTIC CORPORATION

RESPONSES TO

SPRINT'S FIRST SET OF DATA REQUESTS AND INTERROGATORIES

KENTUCKY PUBLIC SERVICE COMMISSION
CASE NO. 99-296
FILED AUGUST 9, 1999

Request No. 16:

Please refer to the Direct Testimony of Michael W. Reed, at 9. Will the commitment of at least $222 million referenced in Mr. Reed's testimony apply for each of the years following the merger (for a total minimum commitment of $666 million), or is the $222 million figure an aggregate amount for the three years?

Response:

Joint Applicants hereby incorporate their General Objections stated above. Subject to and without waiver of the foregoing objections, the Joint Applicants state that the $222 million is an aggregate amount for the three years.

Witness: Michael W. Reed

GTE CORPORATION AND BELL ATLANTIC CORPORATION

RESPONSES TO

SPRINT'S FIRST SET OF DATA REQUESTS AND INTERROGATORIES

KENTUCKY PUBLIC SERVICE COMMISSION
CASE NO. 99-296
FILED AUGUST 9, 1999

Request No. 17:

Please provide the estimated amount of GTE South's infrastructure capital investment for its Kentucky operations for 1999.

Response:

Joint Applicants hereby incorporate their General Objections stated above. Subject to and without waiver of the foregoing objections, the Joint Applicants state that based on the most current view for 1999, GTE estimates its capital expenditure will be approximately $74 million in Kentucky.

Witness: Michael W. Reed

GTE CORPORATION AND BELL ATLANTIC CORPORATION

RESPONSES TO

SPRINT'S FIRST SET OF DATA REQUESTS AND INTERROGATORIES

KENTUCKY PUBLIC SERVICE COMMISSION
CASE NO. 99-296
FILED AUGUST 9, 1999

Request No. 18:

Please provide the actual amount of GTE South's infrastructure capital investment for its Kentucky operations for the years 1997 and 1998.

Response:

Joint Applicants hereby incorporate their General Objections stated above. Subject to and without waiver of the foregoing objections, the Joint Applicants state that as filed in the Kentucky Annual Report Form T, GTE invested the following amounts for infrastructure investment:

1997	$84,592,675
1998	$85,086,008

Witness: Michael W. Reed

GTE CORPORATION AND BELL ATLANTIC CORPORATION

RESPONSES TO

SPRINT'S FIRST SET OF DATA REQUESTS AND INTERROGATORIES

KENTUCKY PUBLIC SERVICE COMMISSION
CASE NO. 99-296
FILED AUGUST 9, 1999

Request No. 19:

Based upon current plans, will the merged entity use Unbundled Network Elements in order to facilitate the implementation of its competitive out-of-franchise strategy?

Response:

Joint Applicants incorporate their General Objections stated above. Subject to and without waiver of the foregoing objections, Joint Applicants state that while the exact manner in which we expect to compete has not been determined, it is currently expected that the use of unbundled elements by the merged entity will be a part of that competitive approach.

Witness: Jeffrey C. Kissell

GTE CORPORATION AND BELL ATLANTIC CORPORATION

RESPONSES TO

SPRINT'S FIRST SET OF DATA REQUESTS AND INTERROGATORIES

KENTUCKY PUBLIC SERVICE COMMISSION
CASE NO. 99-296
FILED AUGUST 9, 1999

Request No. 20:

Please refer to the Direct Testimony of John Peterson filed in connection with this matter on July 9, 1999, at 5. Please identify how many of the competitive local exchange carriers ("CLECs") with operations in Kentucky are currently using GTE's Wholesale Internet Service Engine ("WISE") for service ordering and access to operations support systems ("OSS"). In answering this request, please state whether it is necessary for GTE to issue CLEC's a password prior to the CLEC's use of WISE for service ordering and access to OSS, and please identify how many CLEC's have obtained such a password, and how many are currently accessing WISE through the use of such a password.

Response:

Joint Applicants hereby incorporate their General Objections stated above. Subject to and without waiver of the foregoing objections, the Joint Applicants state that there are currently 18 CLECs within Kentucky that have access to GTE's "WISE" system and are utilizing it for service ordering and/or access to Operational Support Systems in some capacity.

In order to utilize the WISE service, GTE issues a personal login ID and password to every user who requests access to WISE. It is necessary for GTE to provide the password before they have access to the system. The use of WISE, including obtaining a password, is at each CLEC's discretion. Alternative means for ordering service are also available to CLECs, such as faxing orders to the National Order Management Center (NOMC); or through electronic transmission via dial File Transfer Protocol (FTP), dedicated FTP or internet mail (Network data mover). All of the 18 CLECs mentioned above have access in some form to the WISE system. 14 of the 18 CLECs have utilized the system as recently as July.

Witness: John C. Peterson

GTE CORPORATION AND BELL ATLANTIC CORPORATION

RESPONSES TO

SPRINT'S FIRST SET OF DATA REQUESTS AND INTERROGATORIES

KENTUCKY PUBLIC SERVICE COMMISSION
CASE NO. 99-296
FILED AUGUST 9, 1999

Request No. 21:

Please refer to the Direct Testimony of Paul R. Shuell filed in connection with this matter on July 9, 1999, Schedules A.1 through A.4. Please identify the other jurisdictions, if any, in which GTE has filed the same or similar estimates contained in Schedules A.1 through A.4, and provide copies of those schedules and estimates.

Response:

Joint Applicants hereby incorporate their General Objections stated above. In addition, the Joint Applicants object on the grounds that the information provided to other commissions in other proceedings is not relevant under Kentucky law. Subject to and without waiver of the foregoing objections, the Joint Applicants state that the data presented on Schedules A.1 through A.4 are the same for each jurisdiction in which they have been filed, as the merger savings and merger costs are presented for the proposed merged entity. This data is a matter of public record in the jurisdictions that are listed below. Additionally, the jurisdictions in which these same Schedules have been filed are shown below:

Testimony
California – Supporting Report, Chapter VI Part A sponsored by Paul Shuell
Illinois – direct testimony of Paul Shuell
Virginia – refiled application and direct testimony of Paul Shuell
Pennsylvania – rebuttal testimony of Paul Shuell/Edwin Hall/Steve Shore

Data Request Responses
Hawaii
Indiana
IowaSchedule A.1 only
Nevada
Ohio
Washington

Witness: Paul R. Shuell

State of New York
Department of State } ss:

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

Witness my hand and seal of the Department of State on SEP 17 1998

Special Deputy Secretary of State

DOS-1266 (5/96)

F96127000383

RESTATED CERTIFICATE OF INCORPORATION

of

GTE CORPORATION

CT-07 CT-07

UNDER SECTION 807 OF THE BUSINESS CORPORATION LAW

We, the undersigned, Charles R. Lee and Marianne Drost, being respectively the Chairman of the Board and Chief Executive Officer, and the Secretary of GTE Corporation, hereby certify:

I. The name of the Corporation is GTE Corporation (originally incorporated as General Telephone Corporation).

II. The Certificate of Incorporation of the Corporation was filed by the Department of State on the 25th day of February, 1935.

III. The Certificate of Incorporation is amended to effect the following amendments authorized by the Business Corporation Law:

Article 5 of the Certificate of Incorporation is amended to effect the elimination, from the enumeration and description of shares which the Corporation is authorized to issue, of the designations of (i) all series of the Preferred Stock, the remaining outstanding shares of all such series having been redeemed in accordance with their terms on December 11, 1995 and December 26, 1995, and (ii) the $2.00 Convertible No Par Preferred Stock, the remaining outstanding shares of such series having been redeemed in accordance with their terms on December 26, 1995, by striking Articles 5 [B] through 5 [K] and redesignating Article 5 [L], wherever such designation occurs, as Article 5 [B].

Article 5 [A-1] (3) of the Certificate of Incorporation is amended to remove all mention of the 7.85% Preferred Stock and 7.75% Preferred Stock.

Article 16 of the Certificate of Incorporation is amended to remove all mention of the 4.36% Convertible Preferred Stock.

IV. The text of the Certificate of Incorporation is hereby restated without further amendment or change, to read as herein set forth in full:

CERTIFICATE OF INCORPORATION OF GTE CORPORATION

1. The name of the Corporation is GTE Corporation.

2. The purposes of the Corporation shall be as follows:

A. To acquire and hold securities of telephone and/or other communication corporations and corporations owning securities of telephone and/or other communication corporations.

B. To subscribe for, underwrite, invest in, purchase or otherwise acquire, own, hold, sell, assign, deal in, exchange, transfer, mortgage, pledge or otherwise dispose of, any securities created or issued by any public, municipal, quasi-public or private corporation of any kind wherever organized (including, without limiting the generality of the foregoing, the corporations described in the foregoing paragraph "A"), or by any national, state or local government or by any partnership or individual, and to lend money upon the security of, and acquire and hold as pledgee or mortgagee or otherwise, any such securities, and to issue, in exchange for any such securities, its own securities; while the owner or holder of any such securities, or any interest therein, to

possess and to exercise in respect thereof all the rights, powers and privileges incident to such ownership or interest; to guarantee the payment of dividends on any shares of the capital stock of any corporation in which this Corporation may at any time have an interest, and to become surety in respect of, endorse or guarantee in any lawful manner the payment of the principal of or interest on any bonds, debentures, notes, or other evidences of indebtedness created, issued or incurred by any corporation, partnership or individual, any of whose securities are at any time held by or for this Corporation or in which this Corporation may at any time have an interest, and to become surety for or guarantee in any lawful manner the carrying out and performance of any and all contracts, leases and obligations of every kind of any such corporation, partnership or individual; to lend money to and/or otherwise aid in any lawful manner any corporation, partnership or individual whose securities may at any time be held by or for this Corporation or in which this Corporation may at any time have an interest, and to do any acts and things permitted by law and designed to protect, preserve, improve or enhance the value of any such securities or interest.

C. To improve, manage, develop, sell, assign, transfer, lease, mortgage, pledge or otherwise dispose of or deal with all or any part of the property of this Corporation, and from time to time to vary any investment or employment of funds of this Corporation.

D. To investigate and report with respect to, and to undertake, carry on, aid, assist or participate in the reorganization or liquidation of any corporation in which this Corporation may at any time have an interest, and for that purpose and to the extent then permitted to corporations organized under the Business Corporation Law of the State of New York, to take charge of the properties, manage the affairs and conduct the business of any such corporation; and, in connection with the foregoing, to purchase or otherwise acquire, hold, own, develop, improve, lease, exchange, sell, mortgage, convey or otherwise dispose of and deal in and with lands and leaseholds and any interests and rights in real or personal property wheresoever situated, and also any franchises, rights, licenses or privileges necessary or appropriate for any of the purposes in this paragraph "D" expressed.

E. To acquire the good-will, rights, property, business and franchises, of any person, partnership or corporation whatsoever, now or hereafter engaged in any business which this Corporation may lawfully conduct; to pay therefor in cash or in property or in securities of this Corporation or otherwise, in the manner provided by law; to hold, utilize, enjoy, and in any manner dispose of, the whole or any part of the rights and property so acquired; to assume in connection therewith any liabilities of any such person, partnership or corporation; and to conduct in any lawful manner the whole or any part of the business thus acquired.

F. To borrow money for any of the purposes of this Corporation, and to issue its bonds, debentures, notes or other obligations therefor, and to secure the same by pledge or mortgage of the whole or any part of the property of this Corporation either real or personal, or to issue its bonds, debentures, notes or other obligations without any such security; and to sell, pledge, hypothecate or otherwise dispose of any or all such bonds, debentures, notes and other obligations in such manner and upon such terms and at such prices as the Board of Directors shall determine.

G. To organize, or cause to be organized, under the laws of any state, district, territory, province, country or nation a corporation or corporations for the purpose of accomplishing any or all of the purposes for which this Corporation is organized, and to dissolve, wind up, liquidate, merge or consolidate any such corporation or corporations, or to cause the same to be dissolved, wound up, liquidated, merged or consolidated.

H. To have one or more offices, and to carry on and conduct any or all of its operations and business, and, without restriction or limit as to amount, to purchase, lease or otherwise acquire, hold, own, mortgage, sell, convey, lease or otherwise dispose of, real and personal property of every class and description, in any part of the world.

I. To carry on any other lawful business whatsoever incidental to the accomplishment of the purposes hereinbefore set forth; to do any and all such things as are necessary or convenient to the attainment of the purposes of this Corporation, or any of them, to the same extent as a natural person might lawfully do in any part of the world, insofar as such acts are permitted to be done by a corporation organized under the Business Corporation Law of the State of New York.

The foregoing paragraphs of this Article 2 shall be construed as defining both the purposes and the powers of this Corporation, but the foregoing enumeration of specific purposes and powers shall not be held to limit or restrict in any manner the powers of this Corporation, but is in furtherance of, and in addition to, the general powers conferred upon corporations organized under the Business Corporation Law of the State of New York.

It is intended that none of the purposes and powers specified in the several paragraphs of this Article 2 shall, except as herein otherwise expressly provided, in anywise be limited or restricted by reference to or inference from the terms of any other of said paragraphs, and that each of the purposes and powers specified in this Article 2 shall be regarded as independent purposes and powers.

This Corporation shall not have the power to construct, maintain or operate any public utility.

3. The office of the Corporation is to be located in the City of New York, County of New York, State of New York.

4. The aggregate number of shares which the Corporation shall have authority to issue is 2,020,945,266 shares, of which 9,217,764 shares of the par value of $50.00 each shall be Preferred Stock, 11,727,502 shares without par value shall be No Par Preferred Stock and 2,000,000,000 shares of the par value of $.05 each shall be Common Stock.

5. The designations, preferences, privileges and voting powers of the shares of each class of the Corporation (including all shares of Preferred Stock and No Par Preferred Stock irrespective of series), and the restrictions or qualifications thereof, are as follows:

[A-1] *Preferred Stock.* The shares of Preferred Stock may be issued from time to time in one or more series and, subject to the provisions of the following paragraphs "(1)" to "(4)" inclusive, and to the provisions of Parts [A-2] through [A-5] of this Article 5, the Board of Directors is hereby expressly authorized to fix from time to time before issuance the designations, preferences and privileges of the shares of each series of the Preferred Stock, and the restrictions or qualifications thereof. The Preferred Stock shall rank pari passu with the No Par Preferred Stock referred to in Parts [A-2] through [A-5] of this Article 5 in right of payment of dividends and upon liquidation, dissolution or winding up of the Corporation, as set forth in Part [A-3] of this Article 5. Accordingly, certain preferences and privileges set forth in this Part [A-1] with respect to the Preferred Stock are subject to the further limitations referred to in Parts [A-2] through [A-5] of this Article 5 to which reference is hereby made.

(1) Each series shall be designated so as to distinguish the shares thereof from the shares of all other series. All shares of the Preferred Stock of all series shall be of equal rank and all shares of any particular series of the Preferred Stock shall be identical except as to the date or dates from which dividends thereon shall be cumulative as hereinafter in paragraph "(2)" provided. The shares of the Preferred Stock of different series may vary as to the following preferences and privileges, and restrictions and qualifications thereof:

(a) The annual dividend rate (within such limits as shall be permitted by law) for the particular series and the date from which dividends on all shares of such series issued prior to the record time for the first dividend for such series shall be cumulative;

(b) The redemption price or prices for the particular series;

(c) The amount or amounts per share for the particular series payable to the holders thereof upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation; *provided, however,* that the amount or amounts per share payable to the holder of any Preferred Stock upon any involuntary liquidation, dissolution or winding up of the Corporation shall not be fixed at more than Fifty Dollars ($50) per share;

(d) The terms and amount of any sinking fund provided for the purchase or redemption of shares of the particular series; and

(e) The conversion or other special privileges, and the restrictions or qualifications thereof, if any, of the particular series.

(2) The holders of each series of the Preferred Stock at the time outstanding shall be entitled to receive, but only when and as declared by the Board of Directors, out of funds legally available for the payment of

dividends, cumulative preferred dividends, at the annual dividend rate for the particular series fixed therefor as herein provided, payable quarter-yearly on the first days of January, April, July and October in each year, to the stockholders of record on the respective dates, not exceeding forty (40) days preceding such dividend payment dates, fixed for the purpose by the Board of Directors. The dividends on shares of all series of the Preferred Stock shall be cumulative. In the case of all shares of each particular series, the dividends on shares of such series shall be cumulative:

(a) If issued prior to the record time for the first dividend on the shares of such series, then from the date for the particular series fixed therefor as herein provided;

(b) If issued during the period commencing immediately after a record time for a dividend and terminating at the close of the payment date for such dividend, then from such dividend payment date; and

(c) Otherwise from the quarter-yearly dividend payment date next preceding the date of issue of such shares.

Unless dividends on all outstanding shares of each series of the Preferred Stock, at the annual dividend rate and from the dates for accumulation thereof fixed as herein provided shall have been paid for all past quarter-yearly periods and shall have been declared and paid or provided for the then current quarterly-yearly dividend period, but without interest on cumulative dividends, no dividends shall be paid or declared and no other distribution shall be made on any shares of any class of capital stock of the Corporation ranking junior to the Preferred Stock, and no such shares ranking junior to the Preferred Stock shall be purchased or otherwise acquired for value by the Corporation. The holders of the Preferred Stock of any series shall not be entitled to receive any dividends thereon other than the dividends referred to in this paragraph "(2)" and in paragraph "(1)" of Part [A-3].

(3) The Corporation, by action of its Board of Directors, may redeem the whole or any part of any series of the Preferred Stock, at any time or from time to time, by paying in cash the redemption price of the shares of the particular series fixed therefor as herein provided, together with a sum in the case of each share of each series so to be redeemed, computed at the annual dividend rate for the series of which the particular share is a part from the date from which dividends on such share became cumulative to the date fixed for such redemption, less the aggregate of the dividends theretofore or on such redemption date paid thereon. Notice of each such redemption shall be given to the holders of record of the shares to be redeemed. Each such notice shall be given by mail and may be given in such other manner as may be prescribed by the By-Laws or by resolution of the Board of Directors, at least thirty (30) days and not more than ninety (90) days prior to the date fixed for such redemption. Any notice to be given by mail shall be deemed given when mailed to the holders of the shares of stock being redeemed of record at the time of mailing, at their respective addresses as the same shall then appear on the books of the Corporation; but in the case of notice by mail, no accidental failure to mail such notice to any one or more such holders shall affect the validity of the redemption of any shares of the Preferred Stock so to be redeemed. In case of the redemption of a part only of any series of the Preferred Stock at the time outstanding, the Corporation shall select, pro rata or by lot, as and in such manner as the Board of Directors may determine, the shares so to be redeemed. The Board of Directors shall have full power and authority, subject to the limitations and provisions herein contained, to prescribe the manner in which, and the terms and conditions upon which, the shares of the Preferred Stock shall be redeemed from time to time. If notice of redemption shall have been given, and if on or before the redemption date specified in such notice all funds necessary for such redemption (including any dividend payable on such redemption date) shall have been set aside by the Corporation, separate and apart from its other funds, in trust for the account of the holders of the shares to be redeemed, so as to be and continue to be available therefor, then, notwithstanding that any certificate for such shares so called for redemption shall not have been surrendered for cancellation, from and after the date fixed for redemption, the shares represented thereby shall no longer be deemed outstanding, the right to receive dividends thereon shall cease to accrue and all rights with respect to such shares so called for redemption shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive, out of the funds so set aside in trust, the amount payable upon redemption thereof, without interest, and except such conversion privileges, if any, as may be exercisable after the redemption date; *provided, however*, that the Corporation may, after giving notice of any such redemption as hereinbefore provided or after giving to the bank or trust company hereinafter referred to irrevocable

authorization to give such notice, and, at any time prior to the redemption date specified in such notice, deposit in trust, for the account of the holders of the shares to be redeemed, all funds necessary for such redemption (including any dividend payable on such redemption date) with a bank or trust company in good standing, organized under the laws of the United States of America or of the State of New York doing business in the Borough of Manhattan, The City of New York, having capital, surplus and undivided profits aggregating at least $2,000,000, designated in such notice of redemption, and, upon such deposit in trust, all shares with respect to which such deposit shall have been made shall no longer be deemed to be outstanding, and all rights with respect to such shares shall forthwith cease and terminate, except only the right of the holders thereof to receive, out of the funds so deposited in trust, from and after the date of such deposit, the amount payable upon the redemption thereof, without interest, and except such conversion privileges, if any, as may be exercisable after the date of such deposit. The holders of any such Preferred Stock shall not be entitled to any interest allowed by such bank or trust company on funds so deposited, but any such interest shall be paid to the Corporation. In case the conversion privilege of any share of Preferred Stock of a series having conversion privileges is exercised after funds necessary for the redemption thereof shall have been set apart or deposited in trust as above provided, then out of the funds so set apart or deposited in respect of such share an amount equal to the redemption price thereof, together with an amount equal to accrued dividends on such share from the date of conversion to the redemption date, shall, upon such exercise, revert or be repaid to the Corporation free and clear of any such trust, and the remainder of such funds so set apart or deposited in respect of such share shall be paid to the holder of such share upon such conversion. Nothing herein contained shall limit any legal right of the Corporation to purchase or otherwise acquire any shares of the Preferred Stock.

(4) Before any amount shall be paid to, or any assets distributed among, the holders of shares of any class of stock ranking junior to the Preferred Stock, upon any liquidation, dissolution or winding up of the Corporation, and after paying or providing for the payment of all creditors of the Corporation, the holders of each series of the Preferred Stock at the time outstanding shall be entitled to be paid in cash the amount for the particular series fixed therefor as herein provided, together with a sum in the case of each such share of each series, computed at the annual dividend rate for the series of which the particular share is apart, from the date from which dividends on such share became cumulative to the date fixed for the payment of such distributive amount, less the aggregate of the dividends theretofore or on such date paid thereon. The holders of the Preferred Stock of any series shall not be entitled to receive any amounts with respect thereto upon any liquidation, dissolution or winding up of the Corporation other than the amounts referred to in this paragraph and in paragraph "(2)" of Part [A-3]. Neither the consolidation or merger of the Corporation with any other corporation or corporations, nor the sale or transfer by the Corporation of all or any part of its assets, shall be deemed to be a liquidation, dissolution or winding up of the Corporation.

[A-2] *No Par Preferred Stock.* The No Par Preferred Stock shall rank pari passu with the Preferred Stock referred to in Parts [A-1] and [A-3] through [A-5] of this Article 5 in right of payment of dividends and upon liquidation, dissolution or winding up of the Corporation, as set forth in Part [A-3] of this Article 5. Accordingly, certain preferences and privileges set forth in this Part [A-2] with respect to the No Par Preferred Stock are subject to the further limitations referred to in Parts [A-1] and [A-3] through [A-5] of this Article 5 to which reference is hereby made.

(1) The shares of No Par Preferred Stock may be issued from time to time in one or more series. All shares of No Par Preferred Stock of all series shall rank equally and be identical in all respects except that the Board of Directors is authorized to fix the number of shares in each series, the designation thereof and, subject to the provisions of this Article 5, the relative rights, preferences and limitations of each series and the variations in such rights, preferences and limitations as between series and specifically is authorized to fix with respect to each series:

(a) the dividend rate on the shares of such series and the date or dates from which dividends shall be cumulative;

(b) the times when, the prices at which, and all other terms and conditions upon which, shares of such series shall be redeemable;

(c) the amounts which the holders of shares of such series shall be entitled to receive upon the liquidation, dissolution or winding up of the Corporation, which amounts may vary depending on whether

such liquidation, dissolution or winding up is voluntary or involuntary and, if voluntary, may vary at different dates; *provided, however,* that the amount or amounts per share payable to the holder of any No Par Preferred Stock upon any involuntary liquidation, dissolution or winding up of the Corporation shall not be fixed at more than One Hundred Dollars ($100) per share;

(d) whether or not the shares of such series shall be subject to the operation of a purchase, retirement or sinking fund and, if so, the extent to and manner in which such purchase, retirement or sinking fund shall be applied to the purchase or redemption of the shares of such series for retirement or for other corporate purposes and the terms and provisions relative to the operation of the said fund or funds;

(e) whether or not the shares of such series shall be convertible into or exchangeable for shares of any other class or series and, if so, the price or prices or the rate or rates of conversion or exchange and the method, if any, of adjusting the same;

(f) the restrictions, if any, upon the payment of dividends or making of other distributions on, and upon the purchase or other acquisition of, shares of Common Stock;

(g) the restrictions, if any, upon the creation of indebtedness, and the restrictions, if any, upon the issue of any additional shares ranking on a parity with or prior to the shares of such series in addition to the restrictions provided for in this Article 5;

(h) the voting powers, if any, of the shares of such series in addition to the voting powers provided for in this Article 5; *provided, however,* that no holder of shares of No Par Preferred Stock shall be entitled to more than one vote for each $50 which would be payable to him with respect to such shares upon any involuntary liquidation, dissolution or winding up of the Corporation; and

(i) such other rights, preferences and limitations as shall not be inconsistent with this Article 5.

(2) All shares of any particular series shall rank equally and be identical in all respects except that shares of any one series issued at different times may differ as to the date from which dividends shall be cumulative.

(3) Dividends on shares of No Par Preferred Stock of each series shall be cumulative from the date or dates fixed with respect to such series and shall be paid or declared or set apart for payment for all past dividend periods and for the current dividend period before any dividends (other than dividends payable in shares of Common Stock) shall be declared or paid or set apart for payment on shares of capital stock ranking junior to the No Par Preferred Stock. Whenever, at any time, full cumulative dividends for all past dividend periods and for the current dividend period shall have been paid or declared and set apart for payment on all then outstanding shares of No Par Preferred Stock and all requirements with respect to any purchase, retirement or sinking fund or funds for all series of shares of No Par Preferred Stock shall have been complied with, the Board of Directors (subject to the provisions of paragraph "(2)" of Part [A-1]) may declare dividends on shares of capital stock ranking junior to the No Par Preferred Stock and the shares of No Par Preferred Stock shall not be entitled to share therein.

(4) Upon any liquidation, dissolution or winding up of the Corporation, the holders of shares of No Par Preferred Stock of each series shall be entitled to receive the amounts to which such holders are entitled as fixed with respect to such series, including all dividends accumulated to the date of final distribution, before any payment or distribution of assets of the Corporation shall be made to or set apart for the holders of shares of capital stock ranking junior to the No Par Preferred Stock and after such payments shall have been made in full to the holders of shares of No Par Preferred Stock, the holders of shares of capital stock ranking junior to the No Par Preferred Stock shall be entitled to receive (subject to the provisions of paragraph "(4)" of Part [A-1]) any and all assets remaining to be paid or distributed to shareholders and the holders of shares of No Par Preferred Stock shall not be entitled to share therein. For the purposes of this paragraph, the voluntary sale, conveyance, lease, exchange or transfer of all or substantially all the property or assets of the Corporation or a consolidation or merger of the Corporation with one or more other corporations (whether or not the Corporation is the corporation surviving such consolidation or merger) shall not be deemed to be a liquidation, dissolution or winding up, voluntary or involuntary.

(5) To the extent that any shares of any series of No Par Preferred Stock are hereafter caused to be issued by the Board of Directors of the Corporation and by the terms of any such series the shares of such

series are made convertible into shares of Common Stock, Preferred Stock, or other series of No Par Preferred Stock of the Corporation, the Board of Directors may, by certificate of amendment under the New York Business Corporation Law and in accordance with the provisions of such Law, increase the authorized shares of any such classes or series to such number as will be sufficient, when added to the previously authorized but unissued shares of such class or series, to satisfy the conversion privileges of any such share of No Par Preferred Stock.

[A-3] *Additional Provisions Applicable to Both Preferred Stock and No Par Preferred Stock.*

(1) All shares of every series of Preferred Stock and No Par Preferred Stock shall be of equal rank, preference and priority as to dividends irrespective of whether or not the rates of dividends to which the same shall be entitled shall be the same, and no dividends shall be declared on any series of Preferred Stock or No Par Preferred Stock in respect of any quarter-yearly dividend period unless there shall likewise be declared on all shares of all series of the Preferred Stock and the No Par Preferred Stock at the time outstanding, like proportionate dividends, ratably, in proportion to the respective annual dividend rates fixed therefor, in respect of the same quarter-yearly dividend period, to the extent that such shares are entitled to receive dividends for such quarter-yearly dividend period.

(2) All shares of every series of Preferred Stock and No Par Preferred Stock shall be of equal rank, preference and priority as to the net assets of the Corporation of the proceeds thereof to which the same shall be entitled the liquidation, dissolution or winding up of the Corporation and no payments on account of the distributive amounts relating thereto shall be made to the holders of any series of Preferred Stock or No Par Preferred Stock unless there shall likewise be paid at the same time to the holders of each other series of Preferred Stock and No Par Preferred Stock at the time outstanding like proportionate distributive amounts, ratably, in proportion to the full distributive amounts to which they are respectively entitled as herein provided.

(3) If in any case the amounts payable with respect to any requirements to retire shares of Preferred Stock and No Par Preferred Stock are not paid in full in the case of all series with respect to which such requirements exist, the number of shares to be retired in each series of each such class shall be in proportion to the respective amounts which would be payable on account of such requirements if all amounts payable were paid in full.

[A-4] *Common Stock.* The following provisions are applicable to the Common Stock.

(1) Whenever the full dividends on all series of Preferred Stock and No Par Preferred Stock and on all other capital stock ranking senior to the Common Stock at the time outstanding for all past quarter-yearly dividend periods and for the then current quarter-yearly dividend period shall have been paid or declared and set apart for payment, then such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors may be declared and paid on the Common Stock, but only out of funds legally available for the payment of dividends; *provided, however*, that, so long as any shares of the Preferred Stock shall be outstanding, the Corporation shall not pay any dividends (other than dividends payable in shares of the Common Stock) upon, or make any other distribution upon, or make any payment in the purchase or redemption of, any shares of any class of stock of the Corporation ranking junior to the Preferred Stock, unless, immediately after such dividend payment, distribution, or payment in purchase or redemption (herein referred to as Restricted Payments), both of the following conditions shall obtain:

(a) The aggregate amounts of all such Restricted Payments made by the Corporation subsequent to December 31, 1939, which have been charged to any account other than earned surplus will not exceed $2,000,000; and

(b) The amount of the surplus of the Corporation (whether earned surplus or paid-in surplus or otherwise) remaining legally available for the payment of dividends shall be at least equal to three years' dividend requirements on all then outstanding shares of Preferred Stock.

(2) In the event of any liquidation, dissolution or winding up of the Corporation, all assets and funds of the Corporation remaining after paying or providing for the payment of all creditors of the Corporation and after paying or providing for the payment to the holders of shares of all series of Preferred Stock and No Par Preferred Stock and all other capital stock ranking senior to the Common Stock of the full distributive

amounts to which they are respectively entitled as herein provided, shall be divided among and paid to the holders of the Common Stock according to their respective rights and interests.

[A-5] *General Provisions.* The following provisions are applicable to one or more classes of the Corporation's capital stock, as indicated in each case.

(1) No holder of stock of any class of the Corporation shall have any right, as such holder, to purchase or subscribe for any stock of any class or any obligations convertible into, or any right or option to purchase, stock of any class which the Corporation may at any time issue or sell, but any and all such stock, obligations, rights, and/or options may be issued and disposed of by the Board of Directors to such persons, firms and corporations, and for such lawful consideration and on such terms as the Board of Directors, in its discretion, may determine, without first offering the same or any thereof to the stockholders or any class of stockholders.

(2) (A) Except as otherwise provided in this paragraph "(2)" each stockholder of record shall be entitled to one vote for every share of Preferred Stock and to one vote for every share of Common Stock standing in his name on the stock books of the Corporation on the date for the determination of stockholders entitled to vote. Each holder of record of shares of each series of No Par Preferred Stock shall have such voting rights, if any, as shall be specified by the Board of Directors in the resolutions creating such series, except that no such holder shall be entitled to more than one vote for each $50 which would be payable to him with respect to such shares upon any involuntary liquidation, dissolution or winding up of the Corporation; and provided, further, that in any election of Directors provided for in this paragraph "(2)" and in any vote on any of the matters referred to in part "(H)" hereof, each such holder shall be entitled to one vote per share for each $50 which would be payable to him upon any such liquidation, dissolution or winding up.

(B) If and when dividends payable on the Preferred Stock and No Par Preferred Stock shall be in default in an amount equivalent to four (4) quarter-yearly dividends on all shares of all series of the Preferred Stock and No Par Preferred Stock at the time outstanding, the number of Directors of the Corporation shall thereupon, and until all dividends in default on the Preferred Stock and No Par Preferred Stock shall have been paid, be two more than the full number constituting the Board of Directors immediately prior to such default, and until such dividends shall have been paid as aforesaid, the holders of all shares of the Preferred Stock and No Par Preferred Stock, voting together as one class, shall be entitled to elect two members of the Board of Directors and the holders of the Common Stock, voting separately as a class, shall be entitled to elect the remaining Directors of the Corporation.

(C) If and when all dividends then in default on the Preferred Stock and No Par Preferred Stock at the time outstanding shall be paid (and such dividends shall be declared and paid out of any funds legally available therefor as soon as reasonably practicable), the Preferred Stock and No Par Preferred Stock shall thereupon be divested of any special right with respect to the election of Directors provided in part "(B)" hereof, the voting power of the Preferred Stock, the No Par Preferred Stock and the Common Stock shall revert to the status existing before the occurrence of such default, and the number of Directors of the Corporation shall be reduced by two; but always subject to the same provisions for vesting such special rights in the Preferred Stock and No Par Preferred Stock in case of further like default or defaults in dividends thereon. Upon the termination of any such special right upon payment of all accumulated and defaulted dividends on such stock, the terms of office of all persons who may have been elected Directors of the Corporation by vote of the Holders of the Preferred Stock and the No Par Preferred Stock, as a class, pursuant to such special right shall forthwith terminate.

(D) In case of any vacancy in the Board of Directors occurring among the Directors elected by the holders of the Preferred Stock and the No Par Preferred Stock, as a class, pursuant to part "(B)" hereof, the holders of the Preferred Stock and No Par Preferred Stock then outstanding and entitled to vote may elect a successor to hold office for the unexpired term of the Director whose place shall be vacant. In all other cases, any vacancy occurring among the Directors shall be filled by the vote of a majority of the remaining Directors.

(E) Whenever the holders of the Preferred Stock and the No Par Preferred Stock, as a class, become entitled to elect Directors of the Corporation pursuant to either part "(B)" or "D" hereof, a meeting of the holders of the Preferred Stock and No Par Preferred Stock shall be held any time thereafter upon call by the holders of not less than 1,000 shares of the Preferred Stock and No Par Preferred Stock or upon call by the Secretary of the Corporation at the request in writing of any holder of Preferred Stock or No Par Preferred

Stock addressed to him or her at the principal office of the Corporation. At all meetings of stockholders held for the purpose of electing Directors during such time as the holders of shares of the Preferred Stock and No Par Preferred Stock shall have the special right, voting together as one class, to elect Directors pursuant to part "(B)" hereof, the presence in person or by proxy of the holders of a majority of the outstanding shares of the Common Stock shall be required to constitute a quorum of such class for the election of Directors, and the presence in person or by proxy of the holders of a majority of the outstanding shares of all series of the Preferred Stock and No Par Preferred Stock shall be required to constitute a quorum of such class for the election of Directors; *provided, however,* that the absence of a quorum of the holders of stock of either the Preferred Stock and No Par Preferred Stock as a class or the Common Stock shall not prevent the election at any such meeting or adjournment thereof of Directors by the other such class if the necessary quorum of the holders of stock of such other class is present in person or by proxy at such meeting; and provided further that in the absence of a quorum of the holders of stock of either such class, a majority of those holders of the stock of such class who are present in person or by proxy shall have power to adjourn the election of the Directors to be elected by such class from time to time without notice other than announcement at the meeting until the holders of the requisite number of shares of such class shall be present in person or by proxy.

(F) So long as any shares of the Preferred Stock or No Par Preferred Stock of any series are outstanding, the By-Laws of the Corporation shall contain provisions which, considering the minimum and maximum number of Directors permitted by the Certificate of Incorporation or other certificate filed pursuant to law, will at all times assure the increase in the number of Directors provided for in part "(B)" of this paragraph "(2)" and the decrease in such number provided for in part "(C)" of this paragraph "(2)", in each case at the times and on the conditions there set forth and without the necessity in either case of special action on the Part of the stockholders or the Directors of the Corporation to effect such increase or decrease.

(G) So long as any shares of Preferred Stock are outstanding, the Corporation shall not, without the written consent or the affirmative vote of the holders of at least two-thirds of the total number of shares of Preferred Stock then outstanding, authorize preferred stock having priority with respect to the existing Preferred Stock or otherwise change the relative rights, preferences or limitations of the class of Preferred Stock.

(H) So long as any shares of No Par Preferred Stock are outstanding, the Corporation shall not (a) without the affirmative vote or consent of the holders of at least two-thirds of all the shares of No Par Preferred Stock at the time outstanding (i) authorize shares of stock ranking prior to the shares of No Par Preferred Stock or (ii) change any provision of this Article 5 so as to affect adversely the shares of No Par Preferred Stock; (b) without the affirmative vote or consent of the holders of at least two-thirds of any series of shares of No Par Preferred Stock at the time outstanding, change any of the provisions of such series so as to affect adversely the shares of such series; (c) without the affirmative vote or consent of the holders of at least a majority of all the shares of No Par Preferred Stock at the time outstanding (except as otherwise provided in this Article 5) (i) increase the authorized number of shares of No Par Preferred Stock or (ii) authorize shares of any other class of stock ranking on a parity with the shares of No Par Preferred Stock.

(3) The Corporation may, at any time and from time to time, issue and dispose of any of the authorized and unissued shares of Preferred Stock, No Par Preferred Stock and Common Stock for such consideration as may be fixed from time to time by the Board of Directors, subject to any provisions of law then applicable.

[B] The relative rights, preferences, privileges and limitations of Series A Participating No Par Preferred Stock are as set forth below.

Section 1. *Designation and Amount.* The shares of such series shall be designated as "Series A Participating No Par Preferred Stock", without par value, and the number of shares constituting such series shall be 700,000. Such number of shares may be increased or decreased by resolution of the Board of Directors; provided that no decrease shall reduce the number of shares of Series A Participating No Par Preferred Stock to a number less than that of the shares then outstanding plus the number of shares issuable upon exercise of outstanding rights, options or warrants or upon conversion of outstanding securities issued by the Corporation.

Section 2. *Dividends and Distributions.*

(A) Subject to the prior and superior rights of the holders of any shares of capital stock of the Corporation ranking prior and superior to the shares of Series A Participating No Par Preferred Stock with respect to dividends, the holders of shares of Series A Participating No Par Preferred Stock, in preference to the holders of shares of Common Stock and any other junior stock, shall be entitled to receive, when, as and if declared by the Board of Directors of the Corporation out of funds legally available for the purpose, quarterly dividends payable in cash on the first day of January, April, July, and October in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Participating No Par Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) $10.00, or (b) subject to the provision for adjustment hereinafter set forth, 1,000 times the aggregate per share amount of all cash dividends, and 1,000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock, since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Participating No Par Preferred Stock. In the event the Corporation shall at any time after December 7, 1989 (the "Rights Declaration Date") (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then, in each such case, the amount to which holders of shares of Series A Participating No Par Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event, and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Corporation shall declare a dividend or distribution on the Series A Participating No Par Preferred Stock, as provided in paragraph (A) above immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of $10.00 per share on the Series A Participating No Par Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(C) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Participating No Par Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares of Series A Participating No Par Preferred Stock unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Participating No Par Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Participating No Par Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A Participating No Par Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be no more than 30 days prior to the date fixed for the payment thereof.

Section 3. *Voting Rights.* The holders of shares of Series A Participating No Par Preferred Stock shall have the following voting rights:

(A) Each share of Series A Participating No Par Preferred Stock shall entitle the holder thereof to 2 votes on all matters submitted to a vote of the shareholders of the Corporation.

(B) Except as otherwise provided herein, in the Restated Certificate or by law, the holders of shares of Series A Participating No Par Preferred Stock and the holders of shares of Common Stock shall vote together as one class on all matters submitted to a vote of shareholders of the Corporation.

Section 4. *Certain Restrictions.*

(A) Whenever quarterly dividends or other dividends or distributions payable on the Series A Participating No Par Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Participating No Par Preferred Stock outstanding shall have been paid in full, the Corporation shall not

(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Participating No Par Preferred Stock;

(ii) declare or pay dividends on or make any other distributions on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Participating No Par Preferred Stock, except dividends paid ratably on the Series A Participating No Par Preferred Stock, and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Participating No Par Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series A Participating No Par Preferred Stock; or

(iv) purchase or otherwise acquire for consideration any shares of Series A Participating No Par Preferred Stock, or any shares of stock ranking on a parity with the Series A Participating No Par Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors of the Corporation) to all holders of such shares upon such terms as the Board of Directors of the Corporation, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. *Reacquired Shares.* Any shares of Series A Participating No Par Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of preferred stock, without par value, of the Corporation and may be reissued as part of a new series of preferred stock, without par value, of the Corporation to be created by resolution or resolutions of the Board of Directors of the Corporation, subject to the conditions and restrictions on issuance set forth herein.

Section 6. *Liquidation, Dissolution or Winding Up.*

(A) Upon any liquidation, dissolution or winding up of the Corporation, no distribution shall be made to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Participating No Par Preferred Stock unless, prior thereto, the holders of shares of Series A Participating No Par Preferred Stock shall have received per share (i) in the case of any involuntary liquidation, dissolution or winding up of the Corporation, $100 (the "Involuntary Liquidation Preference"), or (ii) in the case of any voluntary liquidation, dissolution or winding up of the Corporation, the greater of 1,000 times the exercise price per Right and 1,000 times the payment made per share of Common Stock, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment (the "Voluntary Liquidation Preference").

Following the payment of the full amount of the Voluntary Liquidation Preference or the Involuntary Liquidation Preference, as the case may be, no additional distributions shall be made to the holders of shares of Series A Participating No Par Preferred Stock.

(B) In the event there are not sufficient assets available to permit payment in full of the Liquidation Preference and the liquidation preferences of all other series or classes of preferred stock of the Corporation, if any, which rank on a parity with the Series A Participating No Par Preferred Stock, then such remaining assets shall be distributed ratably to the holders of such parity shares in proportion to their respective liquidation preferences.

(C) In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a small number of shares, then in each such case the amount to which holders of shares of Series A Participating No Par Preferred Stock were entitled immediately prior to such event under clause (ii) of Section 6(A) hereof shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event, and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 7. *Consolidation, Merger, etc.* In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case the shares of Series A Participating No Par Preferred Stock shall at the same time be similarly exchanged or changed in an amount per share (subject to the provision for adjustment hereinafter set forth) equal to 1,000 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series A Participating No Par Preferred Stock shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event, and the denominator of which is the number of shares of Common Stock that are outstanding immediately prior to such event.

Section 8. *Redemption.* The shares of Series A Participating No Par Preferred Stock shall not be redeemable.

Section 9. *Amendment.* This Certificate shall not be further amended in any manner which would materially alter or change the powers, preferences or special rights of the Series A Participating No Par Preferred Stock so as to affect them adversely without the affirmative vote of the holders of two-thirds or more of the outstanding shares of Series A Participating No Par Preferred Stock voting separately as a class.

Section 10. *Fractional Shares.* Series A Participating No Par Preferred Stock may be issued in fractions of a share, which shall entitle the holder, in proportion to such holders of fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series A Participating No Par Preferred Stock.

6. The Secretary of State of the State of New York is designated as the agent of the Corporation upon whom process against it may be served, and the post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is One Stamford Forum, Stamford, Connecticut 06904.

7. The duration of the Corporation shall be perpetual.

8. A. The number of directors of the Corporation which shall constitute the entire Board of Directors shall be fixed from time to time by the vote of a majority of the entire Board of Directors, but such number shall in no case be less than nine nor more than twenty-one. Any such determination made by the Board of Directors shall continue in effect unless and until changed by the Board of Directors, but no such changes shall affect the term of any director then in office. Upon the adoption of this Article 8, the directors shall be divided

into three classes (I, II and III), as nearly equal in number as possible, and no class shall include less than three directors. The initial term of office for members of Class I shall expire at the annual meeting of stockholders in April 1987; the initial term of office for members of Class II shall expire at the annual meeting of stockholders in April 1988; and the initial term of office for members of Class III shall expire at the annual meeting of stockholders in April 1989. At each annual meeting of stockholders following such initial classification and election, directors elected to succeed those directors whose terms expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election, and shall continue to hold office until their respective successors are elected and qualified. In the event of any increase in the number of directors fixed by the Board of Directors, the additional directors shall be so classified that all classes of Directors have as nearly equal numbers of Directors as may be possible. In the event of any decrease in the number of directors of the Corporation, all classes of directors shall be decreased equally as nearly as may be possible.

B. Newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or any other cause shall be filled only by the Board of Directors, provided that a quorum is then in office and present, or only by a majority of the directors then in office, if less than a quorum is then in office, or by the sole remaining director. Directors elected to fill a newly created directorship or other vacancies shall hold office for the remainder of the full term of the class of directors in which the new directorship was created or the vacancy occurred and until such director's successor has been elected and has qualified. The directors of any class of directors of the Corporation may be removed by the stockholders only for cause by the affirmative vote of the holders of at least a majority of the voting power of all outstanding voting stock.

C. The By-Laws or any By-Law of the Corporation may be adopted, amended or repealed only by the affirmative vote of not less than a majority of the directors then in office at any regular or special meeting of directors, or by the affirmative vote of the holders of at least eighty percent (80%) of the voting power of all outstanding voting stock at any annual meeting or any special meeting called for that purpose.

D. Notwithstanding any other provisions of this Certificate or the By-Laws of the Corporation (and notwithstanding the fact that a lesser percentage or separate class vote may be specified by law, this Certificate, the By-Laws of the Corporation or otherwise), the affirmative vote of the holders of at least eighty percent (80%) of the voting power of all outstanding voting stock shall be required to adopt any provision inconsistent with, or to amend or repeal, Paragraphs A to D of this Article 8.

E. Notwithstanding the foregoing, whenever the holders of any one or more classes or series of preferred stock issued by the Corporation shall have the right, voting separately by class or series, to elect directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of this Certificate applicable thereto, and such directors so elected shall not be divided into classes pursuant to this Article 8 unless expressly provided by such terms.

9. The Board of Directors shall have power, if the By-Laws so provide, to hold meetings outside as well as within the State of New York.

10. So far as permitted by law, the Board of Directors shall have power also to determine from time to time whether and to what extent and at what times and places and under what conditions and regulations the books, documents and accounts of this Corporation, or any of them shall be open to the inspection of stockholders; and no stockholder shall have any right to inspect any books, documents or accounts of this Corporation, except as conferred by statute or the By-Laws, or authorized by resolution of the stockholders or the Board of Directors.

11. A. **Higher Vote for Certain Business Combinations.** In addition to any affirmative vote of holders of a class or series of capital stock of the Corporation required by law or this Certificate, and except as otherwise expressly provided in Paragraph B of this Article 11, the Corporation shall not engage, directly or indirectly, in a Business Combination (as hereinafter defined) with, or proposed by or on behalf of, a Related Person (as hereinafter defined) or an Affiliate or Associate (both as hereinafter defined) of a Related Person without the affirmative vote of the holders of at least eighty percent (80%) of the voting power of all outstanding voting stock of the Corporation, voting together as a single class.

B.—**When Higher Vote Is Not Required.** The provisions of Paragraph A of this Article 11 shall not be applicable to a particular Business Combination, and such Business Combination shall require only such affirmative vote, if any, as is required by law or any other provision of this Certificate, the By-Laws of the Corporation or otherwise, if all of the conditions specified in any one of the following Paragraphs (1), (2) or (3) are met:

(1) *Approval by Directors.* The Business Combination has been approved by a vote of a majority of all the Continuing Directors (as hereinafter defined); or

(2) *Combination with Subsidiary.* The Business Combination is solely between the Corporation and a subsidiary of the Corporation and such Business Combination does not have the direct or indirect effect set forth in Paragraph C(2) (e) of this Article 11; or

(3) *Price and Procedural Conditions.* All of the following conditions have been met:

(a) The aggregate amount of (x) cash and (y) fair market value (as of the date of the consummation of the Business Combination) of consideration other than cash, to be received per share of Common Stock, Preferred Stock, No Par Preferred Stock or any other class or series of preferred stock of the Corporation (any such class or series of preferred stock being referred to herein as "preferred stock"), in such Business Combination by holders thereof shall be at least equal to the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by or on behalf of the Related Person for any shares of such class or series of stock acquired by it; *provided, however,* that if the highest preferential amount per share of a series of preferred stock to which the holders thereof would be entitled in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the affairs of the Corporation (regardless of whether the Business Combination to be consummated constitutes such an event) is greater than such aggregate amount, holders of such series of preferred stock shall receive an amount for each such share at least equal to the highest preferential amount applicable to such series of preferred stock. The provisions of this Paragraph B(3) shall be required to be met with respect to every class or series of preferred stock, whether or not the the Related Person has previously acquired beneficial ownership of any shares of a particular class or series of preferred stock.

(b) The consideration to be received by holders of a particular class or series of outstanding Common Stock or preferred stock shall be in cash or in the same form as the Related Person has previously paid for shares of such class or series of stock. If the Related Person has paid for shares of any class or series of stock with varying forms of consideration, the form of consideration given for such class or series of stook in the Business Combination shall be either cash or the form used to acquire the largest number of shares of such class or series of stock previously acquired by it. The prices determined in accordance with Paragraph B(3)(a) above shall be subject to an appropriate adjustment in the event of any stock dividend, stock split, subdivision, combination of shares or similar event.

(c) No Extraordinary Event (as hereinafter defined) occurs after the Related Person has become a Related Person and prior to the consummation of the Business Combination.

(d) A proxy or information statement describing the proposed Business Combination and complying with the requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (or any subsequent provisions replacing such Act, rules or regulations) is mailed to public stockholders of the Corporation at least 30 days prior to the consummation of such Business Combination (whether or not such proxy or information statement is required pursuant to such Act or subsequent provisions).

C. **Certain Definitions.** For purposes of this Article 11:

(1) A *person* shall mean any individual, firm, corporation or other entity, or a group of "persons" acting or agreeing to act together in the manner set forth in Rule 13d-5 under the Securities Exchange Act of 1934, as in effect on November 1, 1986.

(2) The term *Business Combination* shall mean any of the following transactions, when entered into by the Corporation or a subsidiary of the Corporation with, or upon a proposal by or on behalf of, a Related Person:

(a) the merger or consolidation of the Corporation or any subsidiary of the Corporation; or

(b) the sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one or a series of transactions) of any assets of the Corporation or any subsidiary of the corporation having an aggregate fair market value of $50,000,000 or more, except for sales of goods and services made in the ordinary course of the Corporation's business, consistent with past practice; or

(c) the issuance or transfer by the Corporation or any subsidiary of the Corporation (in one or a series of transactions) of any securities of the Corporation or that subsidiary, except proportionately to all stockholders of the Corporation or such subsidiary; or

(d) the adoption of a plan or proposal for the liquidation or dissolution of the Corporation; or

(e) the reclassification of securities (including a reverse stock split), recapitalization, consolidation or any other transaction (whether or not involving a Related Person) which has the direct or indirect effect of increasing the voting power, whether or not then exercisable, of a Related Person in any class or series of capital stock of the Corporation or any subsidiary of the Corporation; or

(f) any agreement, contract or other arrangement providing directly or indirectly for any of the foregoing.

(3) The term *Related Person* shall mean any person (other than the Corporation, a subsidiary of the Corporation or any pension, profit sharing, employee stock ownership or other employee benefit plan of the Corporation or a subsidiary of the Corporation or any trustee of or fiduciary with respect to any such plan acting in such capacity) who is the direct or indirect beneficial owner (as defined in Rule 13d-3 and Rule 13d-5 under the Securities Exchange Act of 1934, as in effect on November 1, 1986) of more than ten percent (10%) of the outstanding capital stock of the Corporation entitled to vote for the election of directors, and any Affiliate or Associate of any such person.

(4) The term *Continuing Director* shall mean any member of the Board of Directors who is not a Related Person, an Affiliate or Associate or representative of a Related Person and who was a member of the Board of Directors immediately prior to the time that the Related Person became a Related Person, and any successor to a Continuing Director who is not a Related Person or an Affiliate or Associate of a Related Person and is recommended to succeed a Continuing Director by a majority of Continuing Directors who are then members of the Board of Directors.

(5) *Affiliate and Associate* shall have the respective meanings ascribed to such terms in Rule 12b-2 under the Securities Exchange Act of 1934, as in effect on November 1, 1986.

(6) The term *Extraordinary Event* shall mean, as to any Business Combination and Related Person, any of the following events that is not approved by a majority of all Continuing Directors:

(a) any failure to declare and pay at the regular date therefor any full quarterly dividend (whether or not cumulative) on outstanding preferred stock; or

(b) any reduction in the annual rate of dividends paid on the Common Stock (except as necessary to reflect any stock split, stock dividend or subdivision of the Common Stock); or

(c) any failure to increase the annual rate of dividends paid on the Common Stock as necessary to reflect any reclassification (including any reverse stock split), recapitalization, reorganization or any similar transaction that has the effect of reducing the number of outstanding shares of the Common Stock; or

(d) the receipt by the Related Person, after such Related Person has become a Related Person, of a direct or indirect benefit (except proportionately as a shareholder) from any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by the Corporation or any subsidiary of the Corporation, whether in anticipation of or in connection with the Business Combination or otherwise; or

(e) any increase in the number of shares of Common Stock or preferred stock of which the Related Person is the beneficial owner, except as part of the transaction that results in such Related Person becoming a Related Person and except in a transaction that, after giving effect thereto, would not result in any increase in the Related Person's percentage beneficial ownership of any class or series of Common Stock or preferred stock.

(7) A majority of all Continuing Directors shall have the power to determine, on the basis of information known to them after reasonable inquiry, all questions arising under this Article 11, including, without limitation, the transactions that are Business Combinations, the persons who are Related Persons, the time at which a Related Person became a Related Person, whether a person is an Affiliate or Associate of another, and the fair market value of any assets, securities or other property, and any such determinations of such directors shall be conclusive and binding.

D. **Fiduciary Obligations of Related Persons.** Nothing contained in this Article 11 shall be construed to relieve any Related Person from any fiduciary obligation imposed by law.

E. **Fiduciary Obligations of Directors.** The fact that any Business Combination complies with the provisions of Section B of this Article 11 shall not be construed to impose any fiduciary duty, obligation or responsibility on the Board of Directors, or any member thereof, to approve such business combination or recommend its adoption or approval to the stockholders of the Corporation, nor shall such compliance limit, prohibit or otherwise restrict in any manner the Board of Directors, or any member thereof, with respect to evaluations of or actions and responses taken with respect to such Business Combination.

F. **Board Consideration of All Relevant Factors.** The Board of Directors of the Corporation, when evaluating any offer of another party to (a) make a tender or exchange offer for any equity security of the Corporation, (b) merge or consolidate the Corporation with another corporation, or (c) purchase or otherwise acquire all or substantially all of the properties and assets of the Corporation, may, in connection with the exercise of its judgment in determining what is in the best interests of the Corporation and its stockholders, give due consideration to (i) all relevant factors, including without limitation the social, legal, environmental and economic effects on the employees, customers, suppliers and other affected persons, firms and corporations and on the communities and geographical areas in which the Corporation and its subsidiaries operate or are located and on any of the businesses and properties of the Corporation or any of its subsidiaries, as well as such other factors as the directors deem relevant, and (ii) not only the consideration being offered in relation to the then current market price for the Corporation's outstanding shares of capital stock, but also in relation to the then current value of the Corporation in a freely negotiated transaction and in relation to the Board of Directors' estimate of the future value of the Corporation (including the unrealized value of its properties and assets) as an independent going concern.

G. **Amendment, Repeal, etc.** The affirmative vote of the holders of at least eighty percent (80%) of the voting power of all outstanding voting stock of the Corporation, voting together as a single class, shall be required in order to amend, repeal or adopt any provision inconsistent with this Article 11.

12. In the absence of fraud, no contract or other transaction between this Corporation and any individual, partnership or corporation shall be affected by the fact that any director or officer of this Corporation may be interested in such contract or transaction, whether by reason of being a party thereto or a partner in, director or officer of, or in any other way connected with, such partnership or corporation, if such contract or transaction shall be approved or ratified by the affirmative vote of a majority of the directors present at a meeting of the Board of Directors at which a quorum shall be present, *provided, however*, that the interest of any director or officer in any such contract or transaction shall be fully disclosed at such meeting and that a director who is so interested may not be counted at any such meeting for the purpose of determining the existence of a quorum to consider and vote upon any contract or transaction in which he is so interested and that the vote of such a director may not be counted at any such meeting for the purpose of determining the existence of the affirmative vote of a majority of the directors as aforesaid in favor of the approval or ratification of any contract or transaction in which he is so interested.

No director or officer shall liable to account to this Corporation for any profit realized by him from or through any such contract or transaction of this Corporation by reason of his interest as aforesaid in such contract or transaction if such contract or transaction shall be approved or ratified as aforesaid.

No contract or other transaction between this Corporation and any of its subsidiaries shall in any case be void or voidable or otherwise affected because of the fact that directors or officers of this Corporation are directors or officers of such subsidiary, nor shall any such director or officer, because of such relation, be deemed interested in such contract or other transaction under any of the provisions of this Article 12, nor shall any such director be liable to account because of such relation. For the purpose of this Article 12, the term "subsidiary" shall mean any corporation, more than 50% of whose issued and outstanding shares having ordinary voting power may at the time be owned by this Corporation and/or by one or more subsidiaries as said term is herein defined.

13. No director or officer of this Corporation need be a stockholder therein.

14. A. **Prevention of "Greenmail".** Except as set forth in Paragraph B of this Article 14, in addition to any affirmative vote of stockholders required by law or this Certificate, any direct or indirect purchase or other acquisition by the Corporation of any Equity Security (as hereinafter defined) of any class from any Interested Person (as hereinafter defined) who has beneficially owned such securities for less than two years prior to the date of such purchase or any agreement in respect thereof shall require the affirmative vote of the holders of at least a majority of the voting power of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (the "*Voting Stock*"), excluding Voting Stock beneficially owned by such Interested Person, voting together as a single class (it being understood that for the purposes of this Article, each share of Voting Stock shall have the number of votes granted to it pursuant to Article 5 of this Certificate). Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage may be specified, by law or any agreement with any national securities exchange, or otherwise.

B. **When a Vote Is Not Required.** The provisions of Paragraph A of this Article 14 shall not be applicable with respect to:

(1) any purchase or other acquisition of securities made as part of a tender or exchange offer by the Corporation to purchase securities of the same class made on the same terms to all holders of such securities and complying with the applicable requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder (or any subsequent provisions replacing such Act, rules or regulations);

(2) any purchase or acquisition made pursuant to an open market purchase program approved by a majority of the Continuing Directors (as hereinafter defined); or

(3) any purchase or acquisition which is approved by a majority of the Continuing Directors and which is made at no more than the Market Price, on the date that the understanding between the Corporation and the Interested Person is reached with respect to such purchase (whether or not such purchase is made or a written agreement relating to such purchase is executed on such date), of shares of the class of Equity Security to be purchased.

C. **Certain Definitions.** For the purposes of this Article 14:

(1) *Person* shall mean any individual, firm corporation or other entity, or a group of persons acting or agreeing to act together in the manner set forth in Rule 13d-5 under the Securities Exchange Act of 1934, as in effect on November 1, 1986.

(2) The term *Interested Person* shall mean any person (other than the Corporation, a subsidiary of the Corporation or any pension, profit sharing, employee stock ownership or other employee benefit plan of the Corporation or a subsidiary of the Corporation or any trustee of or fiduciary with respect to any such plan acting in such capacity) that is the direct or indirect beneficial owner (as defined in Rule 13d-3 and Rule 13d-5 under the Securities Exchange Act of 1934, as in effect on November 1, 1986) of more than five percent (5%) of the Voting Stock, and any Affiliate or Associate of any such person.

(3) The term *Continuing Director* shall mean any member of the Board of Directors who is not an Interested Person, an Affiliate or Associate or representative of an Interested Person and who was a member of the Board of Directors immediately prior to the time that the Interested Person became an Interested Person, and any successor to a Continuing Director who is not an Interested Person or an

Affiliate or Associate of an Interested Person and is recommended to succeed a Continuing Director by a majority of Continuing Directors who are then members of the Board of Directors.

(4) *Affiliate* and *Associate* shall have the respective meanings ascribed to such terms in Rule 12b-2 under the Securities Exchange Act of 1934, as in effect on November 1, 1986.

(5) *Market Price* of shares of a class of Equity Security on any day shall mean the highest sale price of shares of such class of Equity Security on such day, or, if that day is not a trading day, on the trading day immediately preceding such day, on the national securities exchange or the NASDAQ National Market System on which such class of Equity Security is traded.

(6) *Equity Security* shall mean any security described in Section 3(a)(11) of the Securities Exchange Act of 1934, as in effect on November 1, 1986, which is traded on a national securities exchange or the NASDAQ National Market System.

15. A director of this Corporation shall not be personally liable to the Corporation or its shareholders for damages, except to the extent such exemption from liability is not permitted under the New York Business Corporation Law as the same exists or may hereafter be amended. Any repeal or modification of this Article or adoption of an inconsistent provision shall not adversely affect any right or protection of a director of the Corporation in respect of any matter occurring, or any cause of action, suit or claim that would accrue or arise prior to such repeal, modification or adoption of an inconsistent provision.

16. Subject to Articles 8 and 11 of this Certificate, the Corporation reserves the right to amend and alter this certificate or to amend, alter, change, add to or repeal any provision contained herein, in the manner now or hereafter prescribed by statute, and all rights conferred upon officers, directors or stockholders are granted subject to this reservation.

17. All references in this certificate to "articles", "paragraphs" and other subdivisions are to the corresponding articles, paragraphs and other subdivisions of this certificate; and, unless the context otherwise requires, the words "herein", "hereof ", "hereby", "hereunder" and other equivalent words refer to this certificate and not to any particular subdivision hereof.

In this certificate, for all purposes hereof, unless there be something in the subject or context inconsistent therewith,

(a) The term "security" means any share of stock, bond, debenture, note, evidence of indebtedness, voting trust certificate, transferable share however evidenced, and, in general, any instrument commonly known as a "security", and any certificate of interest or participation in, scrip or temporary or interim certificate for, receipt or certificate of deposit for, and any warrant, right or option to subscribe for, purchase or otherwise acquire, any of the foregoing; and

(b) The term "corporation" means any corporation, association, joint stock company and similar organization.

The restatement of the Certificate of Incorporation provided for in Section IV above was authorized by resolution of the Board of Directors of the Corporation.

IN WITNESS WHEREOF, we have made and subscribed this certificate this 9th day of December 1996, and we affirm the statements contained herein are true under the penalties of perjury.

Charles R. Lee

CHARLES R. LEE
Chairman and Chief Executive Officer
OF THE BOARD

Marianne Drost

MARIANNE DROST
Secretary

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CT-07

RESTATED CERTIFICATE OF INCORPORATION
OF
GTE CORPORATION

UNDER SECTION 807 OF THE BUSINESS CORPORATION LAW

3cc

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED DEC 12 1996
TAX $
BY:

GTE CORPORATION
ONE STAMFORD FORUM
STAMFORD, CT 06904

BILLED

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961212000404

GTE CORPORATION
Certified Copy of Resolutions

I, MARIANNE DROST, Secretary of GTE CORPORATION, a New York corporation, HEREBY DO CERTIFY that the attached is a true, correct and complete copy of resolutions duly adopted at a meeting of the Board of Directors of said Corporation, held on the 27th day of July, 1998, a quorum being present and acting throughout, and that said resolutions are still in full force and effect.

WITNESS my signature and the seal of said Corporation this 21st day of September 1998.

Marianne Drost
Secretary

GTE CORPORATION
RESOLUTIONS OF BOARD OF DIRECTORS
July 27, 1998

WHEREAS: The Board of Directors of the Corporation (the "Board") deems it to be in the best interest of the Corporation, to enter into a business combination with Bell Atlantic Corporation, a Delaware corporation ("Bell Atlantic"), through the merger of Beta Gamma Corporation, a New York corporation and a wholly owned subsidiary of Bell Atlantic ("Merger Subsidiary"), with and into the Corporation, on the terms and subject to the conditions set forth in the Agreement and Plan of Merger by and among the Corporation, Bell Atlantic and Merger Subsidiary (the "Merger Agreement"), a draft of which has been previously distributed to the directors;

WHEREAS: In connection with the Merger Agreement, the Board deems it to be in the best interest of the Corporation to enter into an option agreement with Bell Atlantic pursuant to which the Corporation shall grant Bell Atlantic an option to purchase up to 10% of its outstanding shares (the "Bell Atlantic Option Agreement"), and another option agreement with Bell Atlantic pursuant to which the Corporation shall receive an option to purchase up to 10% of Bell Atlantic's outstanding shares (the "GTE Option Agreement" and, together with the Bell Atlantic Option Agreement, the "Option Agreements");

NOW THEREFORE BE IT RESOLVED: That the Merger is intended to be a plan of reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder;

RESOLVED FURTHER: That (A) the proposed merger of Merger Subsidiary with and into the Corporation is approved (including for purposes of the Rights Agreement dated as of December 7, 1989 (the "Rights Agreement"), between the Corporation and State Street Bank and Trust Company, and Section 902 of the New York Business Corporation Law ("Section 902")) and (B) the form, terms and provisions of, and transactions contemplated by, (1) the Merger Agreement, a copy of which is filed with the important papers of the meeting, providing for the merger (the "Merger") of Merger Subsidiary with and into the Corporation, pursuant to which each share of common stock par, value $0.05, of the Corporation ("GTE Common Stock") will be exchanged for 1.22 shares of common stock, par value $0.10, of Bell Atlantic (the "Merger Consideration"), all as more fully described and set forth in the Merger Agreement, and (2) the Option Agreements and the options granted and received thereunder, all as more fully described and set forth in the Option Agreements, are approved and adopted (including for purposes of the Rights Agreement and Section 902) in substantially the forms presented to this meeting;

RESOLVED FURTHER: That, having considered, among other things, the following:

(1) the terms and conditions of the Merger Agreement, including the parties' representations, warranties and covenants and the conditions to their respective obligations and the structure of the transaction is a "merger of equals";

(2) the financial condition, results of operations, cash flows and prospects of the Corporation;

(3) the current status of the telecommunications industry, including that it is a consolidating industry;

(4) the benefits of and alternatives to remaining independent;

(5) the strategic fit of the companies and potential synergies;

(6) the financial presentations of Goldman, Sachs & Co. and Salomon Smith Barney and the opinion of each of Goldman, Sachs & Co. and Salomon Smith Barney delivered to the Board to the effect that, as of the date of such opinion and based upon and subject to certain matters stated in such opinion, the Merger Consideration to be received by holders of shares of the GTE Common Stock was fair, from a financial point of view, to such holders;

(7) the fact that the Merger Agreement permits the Board to furnish information and data, and enter into discussions and negotiations, in connection with an unsolicited acquisition or merger proposal, and recommend such unsolicited acquisition or merger proposal to the Corporation's stockholders, if the Board determines that the proposal is superior and, in good faith, after receipt of advice from outside counsel that failure to do so would result in a reasonable possibility that the Board would breach its fiduciary duties;

(8) the fact that the Merger Agreement provides that the Corporation must pay Bell Atlantic a fee of $1.8 billion (representing approximately 2.7% of the total value of the consideration to be paid to stockholders and option holders under the agreement with Bell Atlantic, based on 963,241,244 shares of GTE outstanding on June 30, 1998) in the event the Agreement is terminated following a change in the Board's recommendation and in certain other circumstances;

(9) The fact that the provisions outlined in (5) and (6) apply in the same fashion to Bell Atlantic; and

(10) the terms and conditions of the Option Agreements, including the options granted and received thereunder;

it is the judgment of the Board that the terms of the Merger are fair to and in the best interests of the Corporation's stockholders and the Board unanimously recommends that the stockholders entitled to vote thereon approve and adopt the Merger Agreement and the transactions contemplated by the Merger Agreement;

RESOLVED FURTHER: That each of the officers of the Corporation (each, an "Authorized Signatory"), acting alone, is authorized for, on behalf of and in the name and of the Corporation, to enter into, execute and deliver the Merger Agreement and the Option Agreements, substantially in the forms submitted to and approved at this meeting, with such changes therein or additions thereto or, after the Merger Agreement or Option Agreements have been executed, amendments thereto, as may, upon advice of counsel,

be approved or deemed necessary, appropriate or advisable by the Authorized Signatory executing the same on behalf of the Corporation. The execution and delivery on behalf of the Corporation thereof (or of any amendment) by any such Authorized Signatory shall be deemed to be conclusive evidence of the approval by the Corporation of all such changes or additions;

RESOLVED FURTHER: That the Corporation reserve for issuance upon the exercise of the Bell Atlantic Option Agreement shares of Common Stock, as contemplated by the Bell Atlantic Option Agreement, and upon any exercise of the Bell Atlantic Option Agreement and the related issuance of shares, such shares of Common Stock shall be fully paid and non-assessable; that, in effecting delivery of the Common Stock pursuant to the Bell Atlantic Option Agreement, each Authorized Signatory is authorized and directed in the name and on behalf of the Corporation to execute and deliver the certificates evidencing the Common Stock, by original or facsimile signature; that each Authorized Signatory is authorized to cause the original or a facsimile of the Corporation's seal to be impressed, imprinted or engraved on such certificates, attested by original or facsimile of his or her signature; and that the facsimile signatures of such Authorized Signatory are expressly adopted by the Corporation for the uses and purposes indicated above in connection with the Common Stock, and if any officer whose facsimile signature appears upon any of the certificates evidencing the Common Stock ceases to be such officer prior to the authentication and delivery or disposition of any of such certificates, the certificate bearing such facsimile signature shall nevertheless be valid;

RESOLVED FURTHER: That each Authorized Signatory is authorized and directed on behalf of the Corporation to prepare, to prepare, execute, deliver and file with the SEC a Registration Statement (such Registration Statement as it may hereafter be amended is herein called the "Registration Statement"), providing, among other things, for the registration by the Corporation under the Securities Act of 1933, as amended (the "Securities Act"), of the Common Stock issued under the Bell Atlantic Option Agreement;

RESOLVED FURTHER: That each Authorized Signatory is authorized and directed on behalf of the Corporation to prepare, execute, deliver and file with the SEC any and all amendments to the Registration Statement or the Joint Proxy Statement/Prospectus and any additional documents that any such Authorized Signatory may deem necessary or advisable with respect to the Merger, including, without limitation, pre-effective amendments, supplements, stickers and post-effective amendments, and any other certificates, documents, instruments and papers and to take any and all such further action as may be required by the SEC or deemed necessary, desirable or advisable in the sole discretion of such officer or officers, including appearing before the SEC and its staff, in order that the Registration Statement, as they hereafter may be amended or supplemented, may became and remain effective, and in order that the Joint Proxy Statement/Prospectus shall be kept current, pursuant to the provisions of the Securities Act and the rules and regulations of the SEC promulgated thereunder, for such time as may be required by law, such amendments to be in such form as the Authorized

Signatory executing the same may approve, as conclusively evidenced by his or her execution thereof;

RESOLVED FURTHER: That each Authorized Signatory is appointed and designated as the person duly authorized to receive communications and notices from the SEC with respect to the Registration Statement or the Joint Proxy Statement/Prospectus;

RESOLVED FURTHER: That each Authorized Signatory is authorized and directed in the name and on behalf of the Corporation to make any required regulatory filings and to seek to obtain any required approvals or consents to the Merger and to any and all actions contemplated in connection therewith of all necessary parties including, without limitation, Federal, state, municipal or foreign agencies, lessors, insurers and any other parties pursuant to any agreement, contract, lease, license, permit, easement or other document or instrument under which the Corporation or any of its subsidiaries or affiliates is bound;

RESOLVED FURTHER: That the Board has authorized and approved the amendment of all stock based compensation plans to the extent necessary so that such plans will be consistent with the terms of the Merger Agreement;

RESOLVED FURTHER: That the Authorized Signatories are authorized and empowered in the name and on behalf of the Corporation to execute and deliver any and all other agreements, amendments, documents and instruments and to take any and all other actions as they or any of them in their reasonable discretion deem necessary or advisable for the purpose of consummating the Merger, carrying out the terms of the Merger Agreement or the Option Agreements and otherwise effecting and carrying out the foregoing resolutions, and that the authority of the Authorized Signatories to execute and deliver any such agreements, amendments, documents and instruments and to take any such other actions shall be conclusively evidenced by their execution and delivery thereof, and their taking any such actions;

RESOLVED FURTHER: That each Authorized Signatory be, and is, directed to advise the Board periodically of the steps that have been taken or are proposed to be taken to implement the foregoing resolutions;

RESOLVED FURTHER: That any actions taken or to be taken on behalf of the Corporation consistent with these resolutions are ratified, confirmed and approved in all respects; and

RESOLVED FURTHER: That all actions heretofore taken by any Authorized Signatories which were consistent with the authority granted by these resolutions are ratified, confirmed and approved in all respects.