

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)

O R D E R

On July 9, 1999, GTE Corporation, the parent company of GTE South Incorporated (collectively "GTE"), and Bell Atlantic Corporation ("Bell Atlantic") (collectively "Applicants") filed an application requesting approval for the transfer of utility control (hereinafter "merger") pursuant to which GTE will become a wholly owned subsidiary of Bell Atlantic. A previous application was filed on October 2, 1998 by the Applicants. The Commission denied the previous application without prejudice by Order dated April 14, 1999 (hereinafter "April 14th Order").¹

PROCEDURE

On July 15, 1999, the Commission issued an Order which set forth a procedural schedule providing 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. Applicants

¹ Case No. 98-519, Joint Application of Bell Atlantic Corporation and GTE Corporation for Order Authorizing Transfer of Utility Control.

prefiled the testimony of nine witnesses scheduled to testify at the hearing. Sprint prefiled the testimony of one witness scheduled to testify at the hearing. The hearing was conducted by the Commission on August 24, 1999. All witnesses were subject to cross-examination by the other parties. At the conclusion of the hearing on August 24, 1999, the Applicants requested the right to file reply briefs. The request was granted, and the Applicants and Sprint filed reply briefs on September 2, 1999.

The proposed merger will be accomplished by GTE's merging into Beta Gamma Corporation, a subsidiary of Bell Atlantic. Beta Gamma Corporation has been specifically created to facilitate the merger and, upon the merger's completion, it will cease to exist. GTE will be the surviving entity and will become a subsidiary of Bell Atlantic. GTE shareholders will receive 1.22 shares of Bell Atlantic stock for every share of GTE stock. Bell Atlantic will become the parent corporation.

On July 28, 1998, Bell Atlantic and GTE entered into a merger agreement. The two firms would merge in a transaction valued at approximately \$53 billion at the time of the agreement. As a result of the merger, the Applicants' cellular and other wireless mobile telephone service subscribers will be 13.1 million. The shareholders of GTE approved the merger on May 18, 1999, and Bell Atlantic's shareholders approved the merger on May 19, 1999.

GTE

GTE Corporation is a corporation existing pursuant to the laws of the state of New York with its principal offices located in Irving, Texas. GTE provides local phone service to retail customers in 28 states, including Kentucky, and serves approximately 23.5 million access lines. GTE subsidiaries provide telecommunication services on a

regulated and unregulated basis in several foreign nations. GTE provides local exchange telephone services to approximately 547,288 switched access lines throughout Kentucky. GTE also provides access service and intraLATA toll service between its own exchanges and the exchanges of other local telephone companies. In Kentucky there are several subsidiaries of GTE that provide telecommunication services. GTE Communications Corporation, formerly GTE Card Services, Inc., doing business as GTE Long Distance, is authorized to provide competitive local exchange service and to provide long-distance service as a reseller and as a facilities-based carrier throughout Kentucky. Through three wholly owned subsidiaries, GTE also provides wireless communications in Kentucky. GTE had annual operating revenues in 1998 of \$25.5 billion.

BELL ATLANTIC

Bell Atlantic is headquartered in New York City, New York, and is a corporation existing under the laws of the state of Delaware. Bell Atlantic has two subsidiaries in Kentucky that provide telecommunication services. They are Bell Atlantic Communications, Inc. and NYNEX Long Distance Company, doing business as Bell Atlantic Long Distance. Both are switchless resellers of long-distance service. Bell Atlantic's subsidiaries provide telecommunication services to other states in the northeast and in several foreign countries. Bell Atlantic's regulated local telephone subsidiaries serve a total of approximately 41.6 million access lines in 13 states and the District of Columbia. Bell Atlantic had annual operating revenues of \$31.6 billion in 1998.

STATUTORY PROVISIONS AND APRIL 14TH ORDER

Pursuant to KRS 278.020(4), no person may acquire or transfer control of a utility until the Commission has determined that the acquirer has the financial, technical, and managerial abilities to provide reasonable service. KRS 278.020(5) provides, in pertinent part, that no one may acquire control of a utility unless the Commission has determined that the acquisition is made in accordance with the law, for a proper purpose, and is consistent with the public interest. The Commission may grant any application under this subsection in whole or in part upon terms and conditions as it deems necessary or appropriate. KRS 278.020(5).

The April 14th Order stated that the Applicants would be permitted to refile their application and that the refiling must, at a minimum, address the following specific issues:

1. The advanced services to be made available in Kentucky and, in addition, the plans for bundling or packaging of services in Kentucky as the result of the merger;
2. The mechanisms and safeguards to be employed by the Applicants to ensure that service quality does not erode in Kentucky;
3. The details of the proposed merger, including information regarding the intention that Bell Atlantic and GTE will continue to operate separately and information regarding any anticipated effect upon rates and service in Kentucky;
4. The effects, if any, upon any interLATA local calling routes currently provided by GTE to its Kentucky customers, upon the continuation of interLATA interexchange services offered by GTE Long Distance to its Kentucky customers, and upon cellular customers in Kentucky;

5. The specific effects of the merger upon market power exercised in Kentucky by the Applicants, upon telecommunications competition in Kentucky, and upon GTE's ability to provide reasonable service at a fair, just, and reasonable rate; and

6. The costs and savings attributable to GTE's operations in Kentucky as a result of the merger, including a discussion of any projected net merger-related savings that will accrue on the Kentucky jurisdictional level.

FINDINGS OF FACT

The merged entity possesses total assets of \$99 billion as well as operating revenues of \$57 billion, with a net income of \$6.9 billion. Applicants will employ 255,000 people, and will have 63.2 million domestic access lines and 10.6 million domestic wireless customers. The companies state that this is a merger of parent companies only and will not affect GTE's day-to-day operations in any manner. The net cost savings resulting from the merger allocable to GTE's Kentucky intrastate regulated operations will reach \$7.2 million per year after a three-year period. The Applicants are expected to combine the Best Practices of each, which will result in net cost savings and a more efficient quality of service for Kentucky customers.

The Applicants have committed to extending advanced CLASS services to 100 percent of GTE's exchanges in Kentucky within 48 months after consummation of the merger. This commitment is apparently made to address a concern of the Commission in regard to the deployment of advanced services.² The Applicants stated that they will offer packages of local, long distance, data, Internet, and wireless services to Kentucky customers that are competitive with those currently being offered by competitors.

² Joint Application at 2.

The Applicants assure the Commission that they will invest a minimum of \$222 million in Kentucky over the next three years to ensure that the merger will have no negative impact on service quality.³ Additionally, the Applicants have committed to expand extended area calling plans to the remaining GTE exchanges that do not currently have calling plans.⁴ The Applicants state that GTE's current interLATA local calling routes provided to Kentucky customers will not in any way be altered.⁵

The Applicants have assured the Commission that GTE's market power in Kentucky will neither result in any anti-competitive behavior nor harm Kentucky consumers.⁶ They accurately point out that the Applicants will remain subject to the regulations of this Commission. The Applicants estimate there will be \$2 billion in cost synergies and \$.5 billion in capital synergies as the result of the merger. As a result, the Applicants assert the merger will not in any way adversely affect the rates, terms, or conditions of GTE's services or the quality of those services. Applicants assert, additionally, that the merger will have no adverse impact on cellular customers in Kentucky or Bell Atlantic's affiliates in Kentucky.

The following specific commitments have been made by the Applicants to this Commission:

1. To extend the advanced CLASS services to 100 percent of GTE's exchanges in Kentucky within four years of the consummation of the merger. The

³ Id.

⁴ Id.

⁵ Id. at 3.

⁶ Id. at 3-4.

exchanges to receive these services are in rural areas and serve approximately 25,000 customers at a cost of approximately \$23.7 million.⁷ The Commission believes, however, that this extension of services can, and should, take place in a shorter period of time as hereinafter set out.

2. To enter the Louisville market within 18 months of the merger and provide high-speed data services, including voice-over Internet protocol, virtual private networks, web hosting, intranets, extranets, managed networks, frame relay, ATM technology, I-bandwidth point-to-point wireless technology, and other advanced services. According to the Applicants, this commitment ensures that these services will become available to all Kentuckians at a faster pace than would be accomplished otherwise.⁸

3. To provide a guaranteed minimum of \$222 million in capital commitments in the state of Kentucky for 3 years following the merger.⁹

4. To expand local calling plans to local calling areas across Kentucky which do not now benefit from them.¹⁰

The Applicants have stated that there will be very little, if any, impact on the number of hourly employees. Management audit concerns are being addressed by

⁷ Reply Brief of the Joint Applicants at 3-6.

⁸ Id. at 8-9.

⁹ Reply Brief of the Joint Applicants at 6-7.

The Commission notes that this level of commitment only slightly exceeds GTE's commitment as a stand-alone operation and hopes, given the cost savings and synergies from the merger, that the stated figure is indeed a "minimum" commitment.

¹⁰ Id. at 8.

imminent plans to construct capital projects and to upgrade facilities in various Kentucky exchanges. The Applicants have expressed an intention to honor the terms of their interconnection agreements with competing carriers.

Testimony regarding revenue was produced during the hearing from a witness¹¹ for GTE. The witness recognized that GTE is willing to address the revenue issue and to begin dialogue with Commission Staff concerning GTE's revenues. It is acknowledged by the Applicants and the Commission that the revenue issue is separate and apart from any merger issue.

CONCLUSIONS

The Applicants have provided sufficient evidence to prove that the acquirer has the financial, technical, and managerial abilities to provide reasonable service. The proposed merger is made in accordance with law, and does not violate any statutory prohibition, and is consistent with state law. The proposed merger is for a proper purpose. Based upon the assurances provided, the merger will increase efficiency, reduce costs, boost savings that can be passed on to the consumer, and will improve service. The proposed merger is consistent with the public interest in that it will improve the terms and conditions of services received, the quality of those services, and the overall advancement of telecommunication services in Kentucky.

The Commission, having reviewed the evidence of record and having been otherwise sufficiently advised, HEREBY ORDERS that the application for the approval of the merger of GTE and Bell Atlantic is approved, subject to the following terms and conditions:

¹¹ Testimony of John Blanchard, August 24, 1999, at 284-293.

1. GTE shall extend advanced CLASS services to 100 percent of GTE's Kentucky exchanges within 24 months.

2. 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.

3. GTE shall review and identify "Best Practices" adopted by the merged companies in a report filed every six months that includes actual and updated costs and savings achieved.

4. GTE shall report on a six-month basis the changes in the number of hourly employees, as well as management-level personnel, in Kentucky.

5. GTE shall report specifically and separately any changes in excess of 10 percent of its three-year capital budget for Kentucky.

6. GTE shall report any changes in the reorganization plan of the proposed merger that is the result of any decision of another jurisdiction.

7. The Applicants are put on notice that failure to meticulously honor all interconnection agreements will subject them to penalties as provided by law.

8. In addition to its normal and customary meaning, "advanced services" includes the definition given that term by the Federal Communications Commission. The term "advanced services" means high-speed, switched, broadband, wireline communications capability that enables users to originate and receive high-quality voice, data, graphics, or video communications using any technology. The term

"broadband" is generally used to convey sufficient capacity--or bandwidth--to transport large amounts of information.¹² Using this definition as stated by the Federal Communications Commission, GTE shall file within six months from the date of this Order its plan to provide advanced services in all its Kentucky exchanges as specified in the April 14th Order.

9. GTE shall cap its local rates at current levels for a period of 3 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.

10. The terms and conditions imposed herein are effective upon the date of this Order.

Done at Frankfort, Kentucky, this 7th day of September, 1999.

By the Commission

ATTEST:

Executive Director

¹² CC Docket No. 98-147, Deployment of Wireline Services Offering Advanced Telecommunications Capability, FCC 98-48, released March 31, 1999.