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

In re Application of GTE CORPORATION, Transferor, AND BELL ATLANTIC CORPORATION, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License	)	CC Docket No. 98-184

ORDER

Adopted: March 11, 2003 **Released: March 13, 2003**

By the Commission:

I. INTRODUCTION

1. In this Order, we approve in part Verizon Communications Inc.'s ("Verizon") request to count $20.292 million of its SONET and switched voice expenditure toward its out-of-region expenditure requirements under the *Bell Atlantic/GTE Merger Conditions*.[1] Specifically, we approve $13.95 million of the $20.292 million Verizon requests. We therefore find that Verizon has thus far spent a total of $401.85 million toward the merger condition, including $177.55 million in facilities.

II. BACKGROUND

2. To encourage Verizon to enter other incumbent local exchange carriers' ("incumbent LEC") regions and compete for local customers, the *Bell Atlantic/GTE Merger Order* requires the company to spend $500 million to provide "Competitive Local Service" outside its incumbent territory within three years of the closing of the merger (*i.e.*, by June 30, 2003).[2] The *Merger Conditions* define "Competitive Local Service" as "services, including resale, that compete with traditional local telecommunications services offered by incumbent local exchange carriers or . . . Advanced Services to

[1] *GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14032, 14182, ¶ 319, Appendix B, ¶¶ 43-48 (2000) ("*Bell Atlantic/GTE Merger Order,*" "*Bell Atlantic/GTE Merger Conditions*," or "*Merger Conditions*"). The condition requires Verizon to spend $500 million toward services that compete with incumbent LECs outside Verizon's region.

[2] *Bell Atlantic/GTE Merger Order* at Appendix D, ¶ 43.

the mass market."[3] The *Merger Conditions* require Verizon to spend at least half of the total requisite amount (*i.e.,* $250 million) "to construct, acquire, lease, use, obtain or provide facilities, operating support systems, or equipment that are used to service customers in Out-of-Region Markets" ("Facilities Expenditure Requirement").[4] Verizon may use the other half to acquire customers for Competitive Local Service in those Out-of-Region Markets ("Service Expenditure Requirement").[5] These two mandatory expenditures constitute Verizon's out-of-region expenditure commitments. If Verizon does not satisfy these requirements by June 30, 2003, it must pay the U.S. Treasury 150 percent of the difference between what it spent and what it was obligated to spend.[6]

3. On June 24, 2002, the Commission approved Verizon's February 7, 2002 request to count $90.5 million of its investment in Northpoint Communications Group, Inc. toward the out-of-region requirements, including $50.2 million toward the Facilities Expenditure Requirement.[7] Previously, the former Common Carrier Bureau found that Verizon satisfied $297.4 million of the condition, including an expenditure of $113.4 million for facilities, with its purchase of OnePoint, a DSL provider.[8] Thus, to date the Commission or the staff has determined that Verizon has spent a total of $387.9 million, including $163.6 million for facilities, towards the two out-of-region requirements.

4. In Verizon's February 7, 2002 proposal, it asked that an additional investment of $20.292 million qualify to help satisfy the out-of-region requirements. In particular, Verizon asserts that it spent $18.192 million on synchronous optical network ("SONET") investment and $2.1 million on switched voice services in Los Angeles, Seattle, and Dallas.[9] Verizon asserts that all this investment should qualify as facilities expenditures.[10] The SONET facilities are comprised of fiber rings and associated equipment located in the three cities.[11] Verizon is an incumbent LEC in each city, and the fiber rings straddle the line between the Verizon incumbent territories and those of other incumbent LECs.[12] As a result, portions

[3] *Bell Atlantic/GTE Merger Order* at Appendix D, ¶ 43.

[4] *See Bell Atlantic/GTE Merger Order* at Appendix D, ¶¶ 44-45.

[5] *See Bell Atlantic/GTE Merger Order* at Appendix D, ¶ 43.

[6] *See Bell Atlantic/GTE Merger Order* at Appendix D, ¶ 46. For example, if Verizon spends no more between now and July 1, 2003, it would owe the U.S. Treasury $147.225 million ($98.15 million X 150 percent).

[7] *See GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Order, CC Docket No. 98-184, 17 FCC Rcd 12271 (2002) ("*Northpoint Order*").

[8] *See* Letter from Carol Mattey, Deputy Chief, Common Carrier Bureau, to Jeff Ward, Senior Vice President – Regulatory Compliance, Verizon, 16 FCC Rcd 20315 (Nov. 20, 2001) ("*CCB OnePoint Letter*").

[9] *See* Letter from Gordon Evans, Vice President, Federal Regulatory, Verizon, to Marlene Dortch, Secretary, Federal Communications Commission, filed in CC Docket No. 98-184 (May 24, 2002) ("*Verizon May 24, 2002 Letter*"). In its initial proposal, Verizon stated that the total for the SONET investment is $18.2 million. In a subsequent filing, Verizon stated that the total is $18.192 million. *See* Letter from Gordon R. Evans, Vice President, Federal Regulatory, Verizon, to Marlene Dortch, Secretary, Federal Communications Commission, filed in CC Docket No. 98-184, at 3 (Jan. 16, 2003) ("*Verizon January 16, 2003 Letter*"). We use the $18.192 million amount here for more precision.

[10] *See Verizon May 24, 2002 Letter*.

[11] *See Verizon January 16, 2003 Letter* at 1-2. Verizon states that the investment includes "fiber, fiber rings, nodes, and state-of-the-art switching equipment, including dense wave division multiplexing (DWDM) and synchronous optical network (SONET) devices." *Id*. Verizon states that the equipment is designed to "supply local high-speed data telecommunications services interconnecting out-of-region customer locations with other customer-designated sites." *Id*.

[12] *See id*. at 2.

of the rings and associated equipment lie within Verizon's incumbent region. The Commission did not make a decision on this investment in the *Northpoint Order*; instead it deferred judgment to a later date.[13]

III. DISCUSSION

5. The first issue here is whether Verizon spent the $20.292 million "to provide services . . . that compete with traditional local telecommunications services offered by incumbent local exchange carriers . . . ."[14] The second issue is whether such investment may count toward the out-of-region requirements if it is physically located within Verizon's incumbent region.

6. We approve $13.95 million of Verizon's request to count $20.292 million of its SONET and switched voice expenditure toward its out-of-region expenditure condition. Specifically, we approve $11.85 million of Verizon's proposed $18.192 million SONET investment and all of Verizon's proposed $2.1 million in switched voice investment. We find that the remaining SONET investment (*i.e.,* $6.342 million) does not qualify as "out-of-region" because it is physically located in Verizon's incumbent region. Therefore, we deny Verizon's request to count it toward the condition.

A. SONET Investment

7. We find that Verizon's SONET investment provides a "service[], including resale, that compete[s] with traditional local telecommunications services offered by incumbent local exchange carriers."[15] Verizon states that it uses the SONET facilities to provide special access and transport services that compete with the local incumbents' special access and transport services.[16] For the customers actually and potentially served by the portions of the fiber rings located outside Verizon's incumbent region, Verizon provides alternatives to the incumbents' traditional special access and transport services. We also find, based on Verizon's showing, that all of the SONET expenditures are for facilities.[17]

8. We decline, however, to count all Verizon's SONET investment toward the condition. In its previous filings, Verizon proposed, and the former Common Carrier Bureau agreed, to allocate its investment based on the percentage physically located outside Verizon's incumbent region.[18] Verizon argues that we should not use this approach here.[19] We conclude, however, that in the absence of any alternative methodology or data, physical location is a reasonable basis for allocation in light of past practice.

9. Verizon states that, unlike the OnePoint case, "100% of the investment is being used for

[13] *See Northpoint Order*, 17 FCC Rcd at 20316, n.11.

[14] *Bell Atlantic/GTE Merger Order* at Appendix D, ¶ 43.

[15] *Bell Atlantic/GTE Merger Order* at Appendix D, ¶ 43.

[16] *See* Letter from Gordon Evans, Vice President, Federal Regulatory, Verizon, to Anthony Dale, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, filed in CC Docket No. 98-184, at 2 (July 19, 2002).

[17] *See Verizon January 16, 2003 Letter* at 2 (noting that Verizon previously filed with the Commission, on a confidential basis, "samples of detailed work orders describing the work performed" and "concept diagrams that reflect the general outline of the networks"). This filing is persuasive evidence that Verizon spent the money on construction or acquisition of the facilities, not customer acquisition.

[18] *See CCB OnePoint Letter*; ¶ 3 *supra*; *Verizon January 16, 2003 Letter* at 2, n.4.

[19] *See id*.

out-of-region services."[20] Even crediting this statement as true, it does not change our conclusion. First, while it may be true that all the investment can, at any given time, be used to complete communications from out-of-region customers, it is also true that the same facilities can be used to complete communications originating from in-region customers, either to other in-region customers or out-of-region customers. The fact that all the ring facilities can be used to provide out-of-region services does not change the fact that all the facilities could also be used to provide in-region services. Thus, Verizon's argument does not support a decision that all the investment should count toward satisfaction of the out-of-region requirement. Second, although it admits that the facilities serve in-region customers, Verizon has not proposed a method for dividing the investment between in-region and out-of-region based on the customers served, or on any other basis for that matter. In the absence of a better method than Verizon's proposal simply to allocate all investment to out-of-region, and based on the Common Carrier Bureau's previous approach, we find allocation based on physical location to be reasonable.

10. In a related argument, although the merger condition does not specify a methodology to allocate Verizon's investment between in-region and out-of-region, Verizon states that all its SONET investment should qualify because the investment "is designed" to provide services to out-of-region customers.[21] We disagree with Verizon that its intent governs satisfaction of the condition. Instead, we find that the condition's language and purpose require that we exclude some of the investment given Verizon's statement that in-region customers use the facilities, *e.g.,* to communicate with other in-region customers.[22] The text of the condition requires Verizon to spend its funds "to provide [Competitive Local Service] *outside the [Verizon] Service Areas* [], within the United States."[23] In the absence of any customer use data, physical location is a reasonable basis for allocating the investment. As a result, we deny Verizon's request to count the in-region investment toward satisfaction of the condition.

11. Verizon states that $11.85 million of its SONET investment lies outside its incumbent region.[24] We therefore conclude that Verizon spent $11.85 million towards its out-of-region commitment, including the facilities expenditure requirement.

B. Switched Voice Expenditure

12. We find that the $2.1 million Verizon spent on switched voice investment qualifies as an out-of-region expenditure. We find that the investment is "traditional" local service under the *Merger Conditions* because it is voice service. Further, Verizon represents that all the investment is located outside its incumbent territory.[25] Finally, the investment, for which Verizon received rights-to-use switching capacity, qualifies as a facilities expenditure because it was made "to construct, acquire, lease, *use*, obtain, or provide facilities, operating support systems, or equipment that are used to serve customers

[20] *Id.*

[21] *See id*. at 1.

[22] Verizon's statement that in-region customers use the facilities does not contradict another Verizon statement that it uses "100%" of the facilities to serve out-of-region customers. The facilities are configured in a ring straddling the geographic line between Verizon's incumbent region and the regions of other incumbents. Customers are arrayed on the ring, both in-region and out-of-region. As a result, the entire ring is used for communications that originate with out-of-region customers, *e.g.,* an out-of-region customer sends data to an in-region customer that can be sent either direction around the ring. Similarly, an in-region customer can send data to out-of-region customers using any part of the ring. Thus, the entire ring can be used for service for an out-of-region customer in one transmission and an in-region customer in another.

[23] *Bell Atlantic/GTE Merger Order* at Appendix D, ¶ 43 (emphasis added).

[24] *See Verizon January 16, 2003 Letter* at 3.

[25] *See id.* at 1.

in Out-of-Region Markets."[26]

IV. ORDERING CLAUSE

13. Accordingly, IT IS ORDERED, pursuant to sections 1-4, 201-205, 214, 251, 303(r), and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 214, 251, 303(r), and 309, that Verizon's request to count its SONET and switched voice expenditures toward satisfaction of Condition XVI of the *Bell Atlantic/GTE Merger Conditions* IS GRANTED IN PART as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[26] *Bell Atlantic/GTE Merger Order* at Appendix D, ¶ 44 (emphasis added).