

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

September 22, 2000

Mr. Michael Glover
Senior Vice President & Deputy General Counsel
Verizon Communications, Inc.
1310 North Courthouse Road – 4th Floor
Arlington, VA 22201

RE: *Bell Atlantic/GTE Merger Order*, CC Docket No. 98-184, ASD File No. 00-30

Dear Mr. Ward:

This letter addresses a September 8, 2000 request for clarification sought by Verizon Communications, Inc. (“Verizon”) regarding the *Merger Conditions* adopted in the *Bell Atlantic/GTE Merger Order*.¹ Specifically, Verizon seeks a clarification of the company’s obligation to continue to make available unbundled network elements (“UNEs”) in accordance with certain Commission Orders.²

In the *Bell Atlantic/GTE Merger Order*, the Commission adopted a commitment that requires Verizon to continue to make available UNEs and UNE combinations required in the *Local Competition Third Report and Order* and the *Line Sharing Order* “in accordance with those Orders until the date of a final, non-appealable judicial decision.”³ In the Order, the Commission explained that compliance with this *Merger Condition* includes pricing UNEs in accordance with the forward-looking cost methodology articulated by the Commission in the *Local Competition Order*.⁴ In that Order, the Commission adopted the total element long-run incremental cost (“TELRIC”) methodology. Since that time, Verizon and other parties have contested the merits of the TELRIC pricing methodology, and appeals are currently pending.⁵

In its letter, Verizon requests clarification concerning the effect of this *Merger Condition* in the event the Supreme Court issues a ruling that vacates the TELRIC rules established in the *Local Competition Order*. In particular, Verizon asserts that the *Merger Conditions* do not establish an independent basis for requiring Verizon to use the TELRIC pricing methodology in the event the Supreme Court finds that it is inconsistent with the law of the land.⁶

¹ GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License, *Memorandum Opinion and Order*, FCC 00-221 (rel. Jun. 16, 2000) (“*Bell Atlantic/GTE Merger Order*”). The *Merger Conditions* are contained in Appendix D.

² See Letter from Michael E. Glover, Senior Vice President & Deputy General Counsel, Verizon Communications, Inc. to Dorothy T. Attwood, Chief, Common Carrier Bureau, FCC (Sept. 8, 2000) (“*Verizon Letter*”).

³ *Bell Atlantic/GTE Merger Order* at Appendix D, para. 39.

⁴ See *id.* at para. 316.

⁵ See *Iowa Util. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000), *petition for stay filed*.

⁶ See *Verizon Letter* at 1-2.

The *Merger Conditions* require Verizon's incumbent local exchange carriers ("LECs") to comply with certain Commission rules "until the date of any final and non-appealable judicial decision"⁷ concluding the litigation concerning those rules by invalidating them. The relevant "final and non-appealable judicial decision," for purposes of the obligation to follow the TELRIC pricing rules (as opposed to the obligation to follow the substantive rules in the *Local Competition Third Report and Order* and the *Line Sharing Order*), would be a final decision of the Supreme Court concluding the TELRIC litigation either by denying certiorari outright or by invalidating given pricing rules on the ground that they are inconsistent with the Telecommunications Act of 1996 or the Constitution. In the event of such a decision, the *Merger Conditions* would not independently impose an obligation to follow any finally invalidated pricing rules after the conclusion of that litigation.

Please do not hesitate to contact me if I can be of further assistance. You may also contact Anthony Dale in the Common Carrier Bureau at (202) 418-2260 for further information on this matter.

Sincerely,

Dorothy T. Attwood
Chief, Common Carrier Bureau

CC:

Mr. Jeffrey Ward, Corporate Compliance Officer

⁷ *Bell Atlantic/GTE Merger Order* at para. 316; *see id.* at Appendix C, para. 39.