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December 17, 1998

FILED

DEC 18 1998

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
301 W. High Street, Room 530
Jefferson City, MO 65101

Missouri Public
Service Commission

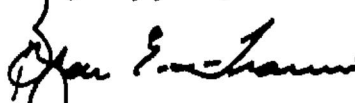
Re: In the Matter of the Proposed Merger Between GTE Corporation
and Bell Atlantic, Case No. TM-99-261

Dear Mr. Roberts:

Enclosed herewith, please find an original and fourteen (14) copies of Memorandum of GTE Midwest Incorporated in Opposition to Office of the Public Counsel's Motion to Open Docket to Establish a Procedural Schedule and to Hold a Hearing in the above-captioned matter. I would sincerely appreciate it if you would see that the enclosed are filed and brought to the attention of the Commission. Also, please stamped one copy "filed" and return it to me in the enclosed self-addressed stamped envelope.

Thank you for your cooperation.

Very truly yours,


Byron E. Francis

BEF:lva

Enclosure

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Service Commission

Case No. TM-99-261

I. INTRODUCTION

On December 9, 1998, the Office of the Public Counsel ("Public Counsel") filed a Motion to Open Docket to Establish a Procedural Schedule and to Hold a Hearing concerning the proposed merger of Bell Atlantic Corporation ("Bell Atlantic") and GTE Corporation ("GTE"), the parent company of GTE Midwest Incorporated ("GTE Midwest"). This Motion should be summarily denied by the Commission on the basis of the Commission's Report and Order in The Matter of the Merger of SBC Communications, Inc. and Ameritech Corporation (copy attached). Like the SBC/Ameritech transaction, the GTE/Bell Atlantic transaction is a merger of unregulated parent companies because neither GTE nor Bell Atlantic are regulated by this Commission. There is nothing in the statutes that confers jurisdiction to examine a merger of two non-regulated parent corporations even though they may own Missouri-regulated telecommunications companies. Significantly, Public Counsel's Motion does not even mention this Commission's Report and Order in the SBC/Ameritech matter. The underlying circumstances are virtually identical and GTE Midwest is of the belief that, in view of its recent pronouncement in that case, the Commission should summarily deny Public Counsel's Motion in this case without requiring

oral argument thereon. GTE Midwest has attached the Affidavit of M. Michael Foster, its President, in support of the factual statements contained in this Memorandum.

II. ARGUMENT

In its Motion, Public Counsel mistakenly infers that it is GTE Midwest and Bell Atlantic which are engaging in the merger when it states that "Bell Atlantic and GTE announced plans to merge," that "GTE is the second largest incumbent local exchange company in Missouri," and that "GTE has over 435,400 access lines in Missouri serving the western portion of the St. Louis Metropolitan area, Columbia, and many rural communities." Public Counsel's Motion at ¶¶ 1, 3 and 4. In fact, it is GTE Midwest's parent company, GTE, which is planning to merge with Bell Atlantic. At closing, GTE will become a wholly-owned subsidiary of Bell Atlantic. Bell Atlantic will be the surviving parent corporation and the stockholders of GTE will receive 1.22 shares of Bell Atlantic for every share owned of GTE. GTE Midwest, the regulated telecommunications company in Missouri, will remain a wholly-owned subsidiary of GTE and will experience no change in the operations of the company after the merger.

Public Counsel then asserts that this merger may cause a shift of GTE's corporate interests and resources from smaller cities and rural Missouri, that GTE personnel and service will be moved out of Missouri, and that cost slashing and a new global and national marketing and service focus may result in reduced quality of service and reduced service for rural Missourians. It then notes that GTE Midwest has recently announced its intention to sell 105 of 219 Missouri exchanges in connection with its sale of 1.6 million of its 21.5 million access lines and that GTE Midwest will dispose of 111,340 of its 435,400 Missouri access lines. None of these allegations provide a sufficient basis for conferring jurisdiction over this merger by this Commission. This

Commission has authority to insure that safe and adequate service are provided by all telecommunications companies and the Commission will have the same authority over GTE Midwest after the merger.

As indicated in the Commission's Report and Order in the SBC/Ameritech matter, none of the statutes cited by Public Counsel support the conferring of jurisdiction by this Commission over this merger. § 386.250(2) RSMo 1997 makes no mention of mergers and confers no jurisdiction on the Commission over mergers. It merely gives general jurisdiction to the Commission over telecommunications facilities, telecommunications services and to all telecommunications companies which are *regulated* by the Commission. Again, the *regulated* company in this instance is GTE Midwest. Similarly, § 386.320 RSMo 1997 provides no basis for jurisdiction over this merger. This section merely gives the Commission general supervisory authority over the property, equipment and books of a *regulated* telecommunications company. This section says nothing about mergers. Moreover, GTE is not a *regulated* telecommunications company and, as stated above, there will be no change in the operations of GTE Midwest after the merger.

Next, Public Counsel cites § 392.300 RSMo 1997 as authority for this Commission to confer jurisdiction over this merger. Again, like the situation in SBC/Ameritech, this merger does not involve the sale, assignment, lease, transfer, mortgage or other disposition franchises, facilities or systems of a *regulated* telecommunications company, nor is it a merger or consolidation, direct or indirect, of the lines, systems or franchises of Missouri-*regulated* telecommunications companies. Rather, it involves the exchange of GTE stock for Bell Atlantic stock and the

subsequent ownership of GTE by Bell Atlantic. GTE Midwest remains a wholly-owned subsidiary of GTE and its operations remain unchanged.


Finally, Public Counsel cites § 392.185 RSMo 1997 for the proposition that the Commission has a duty to promote parity of urban and rural telecommunications services. Again, this section does not mention mergers. Because mergers are specifically mentioned in § 392.300, this section controls the authority of this Commission over mergers and consolidations. *Greenbriar Hills Country Club v. Director of Revenue*, 935 S.W.2d 36 (Mo banc 1996); *Terminal R.R. Assn. of St. Louis v. City of Brentwood*, 230 S.W.2d 768 (Mo. 1950). Because § 392.300 only grants jurisdiction to the Commission in the case of mergers or consolidations of *regulated* companies, there is no statutory basis which confers jurisdiction in this Commission over this merger.

III. CONCLUSION

For the foregoing reasons, GTE Midwest respectfully requests this Commission to summarily deny Public Counsel's Motion to Open a Docket, to Establish a Procedural Schedule and to Hold a Hearing in the matter of the merger of GTE and Bell Atlantic. This proposed merger is governed by this Commission's Report and Order in SBC/Ameritech and the Commission should abide by its decision in that case.

Respectfully submitted,

ARMSTRONG, TEASDALE, SCHLAFLY
& DAVIS

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ATTORNEYS FOR GTE MIDWEST
INCORPORATED

CERTIFICATE OF SERVICE

A copy of the foregoing was mailed, via U.S. Mail, postage prepaid, to Michael F. Dandino, Office of the Public Counsel, 301 West High Street, Box 7800, Jefferson City, MO 65102-7800 and to Dana K. Joyce, General Counsel, Missouri Public Service Commission, P.O. Box 360, Jefferson City, MO 65102, this 18th day of December, 1998.

