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

In the Matter of )  
)  
)  
) File No. EB-00-IH-0113  
) Acct. No. X32080012  
)  
GTE Service Corporation )  
)

CONSENT DECREE

I. INTRODUCTION

1. The Federal Communications Commission (the ``FCC'' or the ``Commission'') and GTE Service Corporation (``GTE'' or the ``Company'') hereby enter into this Consent Decree for the purpose of terminating an informal investigation by Commission staff into whether GTE violated section 251(c)(6) of the Communications Act of 1934, as amended, and section 51.323(k) of the Commission's rules. The investigation focused on whether GTE had failed to offer cageless collocation arrangements as part of its physical collocation offering during the period June 1, 1999 through August 1, 1999.

II. BACKGROUND

2. Section 251 of the Communications Act imposes on GTE, as an incumbent local exchange carrier (``ILEC''), several obligations designed to promote competition in local telephone markets. Among these obligations is the duty, in Section 251(c)(6), to provide, ``on rates, terms, and conditions that are

just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements.'<sup>1</sup> The Commission first adopted rules to implement Section 251(c)(6) in the Local Competition Order issued on August 8, 1996.<sup>2</sup> On March 31, 1999, the Commission strengthened these collocation rules in the Advanced Services First Report and Order.<sup>3</sup>

3. The Advanced Services Order required ILECs to offer three alternative physical collocation arrangements, in addition to the arrangements described in the Local Competition Order.<sup>4</sup> These alternative arrangements include, among other things, cageless collocation, whereby a competitive local exchange carrier ('`CLEC'') obtains physical collocation space without a cage. The Commission codified the alternative collocation requirements at Section 51.323(k) of its rules. Section 51.323(k) became effective on June 1, 1999.<sup>5</sup>

4. Following the release of the Advanced Services Order, CLECs applied for cageless collocation arrangements in various GTE central offices nationwide. In late 1999, the Enforcement Bureau ('`Bureau'') received information that GTE had denied and placed in a hold status until August 1, 1999 requests made by CLECs to collocate using a cageless arrangement, asserting that it could not implement the requirements of the Advanced Services Order until that time.

5. The Enforcement Bureau commenced an informal investigation into these matters on February 25, 2000. In responses submitted to the Enforcement Bureau, GTE stated that from June 1, 1999 to August 1, 1999, it had denied and placed in a ``hold status,''<sup>6</sup> 51 cageless collocation requests submitted by CLECs. Thus, implementation of the requirements of Section 51.323(k) did not occur until August 1, 1999, two months after the June 1, 1999 effective date of these rules. GTE asserts that it took that long to develop the operational requirements to implement the order and takes the position that it reasonably construed the ``as soon as possible'' language contained in paragraph 40 of the Advanced Services Order, to permit implementation after the effective date of the rules.

6. On June 16, 2000, the Commission adopted and released the Merger Order granting applications seeking approval to transfer control of certain licenses and authorizations in connection with a proposed merger between GTE and Bell Atlantic Corporation.<sup>6</sup> The conditions in the Merger Order require, among other things, that GTE provision collocation arrangements subject to a 95% on-time performance standard. The Merger Order provides that, in the event GTE fails to meet the performance requirements during specified time periods after 270 days following the merger closing date, it will be required to make voluntary payments to the United States Treasury.

7. As a matter of corporate policy, GTE represents that it is committed to full compliance with the Commission's interconnection and collocation requirements as effective and further represents that the Company opposes noncompliance with such competitive provisions by any telecommunications carrier.

### III. DEFINITIONS

8. For purposes of this Consent Decree, the following definitions shall apply:

(a) The ``FCC'' or the ``Commission'' means the Federal Communications Commission and all divisions of the Commission, including the Enforcement Bureau.

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(b) ``GTE'' or ``the Company'' means GTE Service Corporation, its ILEC operating telephone companies in the GTE States, as defined in subsection (j) below, and any successors or assigns of GTE Service Corporation or its ILEC operating telephone companies.

(c) ``Parties'' means GTE and the Commission.

(d) ``Order'' or ``Adopting Order'' means an order of the Commission adopting this Consent Decree.

(e) ``Final Order'' means an order that is no longer subject to administrative or judicial reconsideration, review, appeal or stay.

(f) ``Merger Order'' means the Commission order consenting to the transfer of control of authorizations and licenses, in connection with the merger between GTE Service Corporation and Bell Atlantic Corporation adopted and released by the Commission on June 16, 2000 (CC Docket No. 98-184).

(g) ``Relevant Period'' means the period from June 1, 1999 through August 1, 1999.

(h) ``Collocation Inquiry'' means the enforcement action initiated by the Bureau's February 25, 2000 letter of inquiry regarding GTE's response to collocation requests.

(i) ``Effective Date'' means the date on which the Commission releases the Adopting Order.

(j) The term ``GTE States'' shall mean Alabama, California, the Commonwealth of the Northern Marianas Islands, Florida, Hawaii, Idaho, Illinois, Indiana, Kentucky, Michigan, Missouri, Nevada, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington, and Wisconsin, but shall not include the service areas of Bell Atlantic-Delaware, Inc., Bell Atlantic-Washington, D.C., Inc., Bell Atlantic-Maryland, Inc., Bell Atlantic-New Jersey, Inc., Bell Atlantic-Pennsylvania, Inc., Bell Atlantic-Virginia, Inc., Bell Atlantic-West Virginia, Inc., New York Telephone Company, New England Telephone and Telegraph Company where those companies operated as ILECs as of January 27, 2000.

#### IV. AGREEMENT

9. GTE and the Commission agree that this Consent Decree does not constitute either an adjudication of the merits or a factual or legal finding or determination regarding any compliance or noncompliance by GTE with the requirements of the Communications Act, including Section 251 thereof, and the Commission's implementing rules, arising out of any alleged actions or failures with respect to requests for collocation during the Relevant Period. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to

this Consent Decree, the Company does not admit any noncompliance, violation or liability associated with or arising from such actions or failures, including any actions or failures described in the February 25, 2000 letters, in any follow-up correspondence and meetings between GTE and the FCC concerning GTE's response to collocation requests, or in any formal or informal complaints, ex parte communications or other information received by the Commission on or before the effective date of the Consent Decree. Indeed, GTE expressly denies any such noncompliance, violation or liability.

10. In express reliance on the covenants and representations contained herein, the Commission agrees to terminate the Collocation Inquiry at such time as the Commission releases an Order adopting this Consent Decree.

11. The parties agree and acknowledge that this Consent Decree shall constitute a final settlement between GTE and the Commission of the Collocation Inquiry. In consideration of the termination of this Inquiry in accordance with the terms of this Consent Decree, GTE agrees to the terms, conditions and procedures contained herein.

12. GTE admits the jurisdiction of the Commission to adopt this Consent Decree.

13. Notwithstanding any provision in the Merger Order (or any of its appendices) pertaining to GTE's obligation to make voluntary payments thereunder, GTE shall be obligated under this Consent Decree to make voluntary payments for failure to meet, in the GTE States, the collocation performance standards set forth in Metrics No. NP-2-01 and NP-2-05 of Attachment A-2b to Appendix D of the Merger Order consistent in all other respects with the provisions of the Merger Order (and its appendices), except that (a) the beginning date on which GTE's performance shall be used to determine its obligation to make voluntary payments under this Consent Decree shall commence 180 days after the merger closing date, and (b) for purposes of this Consent Decree only, a ``Performance Plan Year'' is the first twelve full calendar months that begin after the 180th day after the merger closing date. In light of GTE's continuing obligation to make voluntary payments under the Merger Order, GTE shall not be obligated to make voluntary payments under this Consent Decree for failure to meet the collocation performance standards for the same months for which it becomes obligated to make voluntary payments under the Merger Order, and GTE's obligation to make voluntary payments under this Consent Decree shall terminate at the conclusion of the first Performance Plan Year (as defined in this Paragraph). Any voluntary payments made pursuant to this Consent Decree shall not be counted toward the annual caps set forth in Attachment A-6 to Appendix D of the Merger Order. Voluntary payments made pursuant to this paragraph of the Consent Decree shall be subject to total caps of one-fourth of the annual caps for year 1 for the GTE States, as set forth in Attachment A-6, and to monthly caps of one-twelfth of the annual caps for year 1 for the GTE States. Nothing in this Consent Decree is intended to have any effect on GTE's obligation to make voluntary payments under the Merger Order.

14. GTE agrees to make a voluntary contribution to the United States Treasury in the amount of two million, seven hundred thousand dollars (\$2,700,000) within 10 calendar days after the Order adopting this Consent Decree becomes a Final

Order. Payment should be made by check or money order drawn to the order of the Federal Communications Commission. Reference should be made on the check or money order to ``Acct No. X32080012.'' Such remittances must be mailed to: Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, IL 60673-7482.

15. The Commission agrees that, based on the facts developed in the Collocation Inquiry and in the absence of material new evidence related to this matter, it will not use the facts developed in this Inquiry through the date of the Consent Decree or the existence of this Consent Decree to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against GTE concerning the matters that were the subject of the Collocation Inquiry. The Commission also agrees that, based on the facts developed in the Collocation Inquiry, and in the absence of material new evidence related to this matter, it will not use the facts developed in this Inquiry through the date of this Consent Decree or the existence of this Consent Decree to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against GTE with respect to its basic qualifications, including its character qualifications, to be a Commission licensee or with respect to compliance with the Commission's rules and policies. Consistent with the foregoing, nothing in this Consent Decree limits the Commission's authority to consider any complaint that may be filed pursuant to section 208 or 251 of the Communications Act, as amended, 47 U.S.C. §§ 208, 251, and to take any action in response to such complaint.

16. GTE waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Order adopts the Consent Decree without change, addition, or modification.

17. GTE and the Commission agree that the effectiveness of this Consent Decree is expressly contingent upon issuance of an Order that is consistent with the Consent Decree and which adopts the Consent Decree without change, addition, or modification.

18. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

19. If the Commission, or the United States on behalf of the Commission, brings a judicial action to enforce the terms of the Order adopting this Consent Decree, neither GTE nor the Commission shall contest the validity of the Consent Decree or Order, and the Company and the Commission will waive any statutory right to a trial de novo with respect to any matter upon which the Order is based, and shall consent to a judgment incorporating the terms of this Consent Decree.

20. GTE waives any claims it may otherwise have under the Equal Access to Justice Act, Title 5 U.S.C. § 504 and 47 C.F.R. § 1.1501, et seq.

21. Any violation of the Consent Decree or the Order adopting this Consent Decree will constitute a separate violation

of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

22. The Parties also agree that any provision of the Consent Decree that would require the Company to act in violation of a rule or order adopted by the Commission will be superseded by such Commission rule or order.

23. This Consent Decree may be signed in counterparts.

FEDERAL COMMUNICATIONS COMMISSION

By: \_\_\_\_\_

Magalie Roman Salas, Secretary

GTE SERVICE CORPORATION

By: \_\_\_\_\_

Geoffrey C. Gould, Senior Vice President-State  
Government Relations

1 47 U.S.C. § 251(c)(6).

2 Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15782 ¶¶ 555-617 (1996) ('`Local Competition Order'') (subsequent history omitted).

3 Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761 (1999) ('`Advanced Services Order'') or ('`Order'') (subsequent history omitted).

4 See Advanced Services Order ¶¶ 41, 42, 44. Prior to the Advanced Services Order, ILECs were required to permit CLECs to collocate using caged physical collocation arrangements or virtual collocation arrangements. In a caged physical arrangement, a CLEC leases, and has direct access to, caged space at an ILEC premises for its equipment. In a virtual collocation arrangement, a CLEC designates the type of equipment to be placed at an ILEC premises, which the ILEC then installs and maintains for the CLEC. See Advanced Services Order ¶ 19, n.27.

5 See 64 Fed. Reg. 23229 (1999). GTE does not agree that the date by which it was required to comply is the same as the effective date.

6 Application of GTE Corp. and Bell Atlantic Corp. 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 (rel. June 16, 2000).

