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January 7, 1999

VIA EXPRESS MAIL
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Director of Records & Reporting
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Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
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990000

Re: **GTE\Bell Atlantic Merger Application, Docket No. ~~981252-TP~~**

Dear Ms. Bayo:

Please find enclosed for filing an original and fifteen (15) copies of Supra Telecommunication & Information Systems, Inc.'s Comments Of Supra Telecommunications Regarding The Joint Applications Of GTE Corporation And Bell Atlantic For Approval Of A Merger And Request For A Hearing On The Matter. Please also find enclosed an extra copy, for which we request that you stamp with the filing date and return in the enclosed postage pre-paid, self-addressed envelope.

If you have any questions or comments, please feel free to contact me at (305) 531-5286.

Sincerely,

Mark E. Buechele

Mark E. Buechele

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of merger of GTE Corporation (holder of LEC Cert. 31 and PATS Cert. 4962 in the name GTE Florida Incorporated, ALEC Cert. 4819 and IXC Cert. 4080 in the name GTE Communications Corporation, and IXC Cert. 4079 in the name GTE Telecommunications Services Incorporated) and Bell Atlantic Corporation (holder of IXC Cert. 4714 in the name NYNEX Long Distance Company d/b/a Bell Atlantic Long Distance and IXC Cert. 4438 in the name Bell Atlantic Communications, Inc.), whereby GTE will become a wholly-owned subsidiary of Bell Atlantic.	)	Docket No.: 981252-TP Dated: January 7, 1999

COMMENTS OF SUPRA TELECOMMUNICATIONS REGARDING THE JOINT APPLICATION OF GTE CORPORATION AND BELL ATLANTIC FOR APPROVAL OF A MERGER AND REQUEST FOR A HEARING ON THE MATTER

Submitted By:

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I. INTRODUCTION & SUMMARY

Supra Telecommunications & Information Systems, Inc. ("Supra") is part of a global company that has interest in telecommunications, finance and banking, oil exploration and real estate. Supra provides communications services in the United States and is currently certificated in 16 states with applications pending in 19 other states. Supra is determined to becoming a major force in the telecommunications industry by providing new and innovative local, long-distance and information services at lower and competitive rates to customers.

On or about July 28, 1998, GTE Corporation ("GTE") and Bell Atlantic Corporation ("BellAtlantic") announced their agreement to combine the two corporations in a merger of equals. Thereafter, on or about October 1, 1998, GTE and BellAtlantic petitioned the Florida Public Service Commission ("FPSC") for approval of the transaction pursuant to Florida Statute § 364.33. On January 4, 1999, the Commission decided to seek comments from interested persons regarding the impacts on competition, market power and economic development of the proposed merger. Pursuant to this Commission's decision on January 4, 1999, Supra is submitting the following Comments to the joint application.

As a summary Supra notes that the Telecommunications Act of 1996 ("Telecommunications Act") did not envision the continuous stream of mergers of Regional Bell Operating Companies ("RBOCs") which have taken place over the past few years. Supra believes that no matter how the proposed merger is characterized, the proposed merger will only serve to further entrench the remaining RBOCs and create further barriers to entry and free competition in the local telecommunications markets. Supra believes that notwithstanding the applicants' expressed desire to become a megalith in order to compete on a national and global level, as currently framed the proposed merger will only serve to delay further competition in the local telecommunications market in contravention to the Telecommunications Act and therefore the public interest would not be served by the approving the joint application as currently framed.

Notwithstanding the fact that Supra believes that the public interest would not be served by approving the proposed joint application as currently framed, Supra believes that if certain concessions were made by the joint applicants, that a solution could be reached which meets the professed goals of the applications while fostering competition in the applicable local telecommunications markets. In particular, Supra believes that if the applicants each agreed to divest themselves of approximately twenty-five percent (25%) of various Florida assets to Florida-based ALECS (with Supra having the first right to purchase such assets), that the applicants will still be able to pursue their stated out-of-territory and global strategies, while encouraging competition within the local loop, interconnections and unbundled network elements as envisioned by the Telecommunications Act.

II. COMMENTS

A. Applicable Standards And Related Showings

GTE and BellAtlantic have sought approval of the requested merger and this Commission has adopted a "public interest" standard in scrutinizing any such requests. The Federal Communications Commission ("FCC") also utilizes the "public interest" standard in deciding whether to approve or disapprove similar requests. In the Applications of NYNEX Corporation and Bell Atlantic Corporation, 12 FCC Rcd 19985 (FCC 97-286) (1997) the FCC stated the following in regards to a similar merger request:

> *[B]efore we can approve the transfers of licenses and other authorizations underlying the merger, we must be persuaded that the transaction is in the public interest, convenience and necessity. Applicants bear the burden of demonstrating that the proposed transaction is in the public interest. The public interest standard is a broad, flexible standard, encompassing the "broad aims of the Communications Act." These "broad aims" include, among other things, the implementation of Congress' "pro-competitive, de-regulatory national policy framework" for telecommunications, "preserving and advancing" universal service, and "accelerating rapidly private sector deployment of advanced telecommunications and information technologies and services." Our examination of a proposed merger under the public interest standard includes consideration of the competition policies underlying the Sherman and Clayton Acts -- the Commission is separately authorized to enforce Section 7 of the Clayton Act in the case of mergers of common carriers -- but the public interest standard necessarily subsumes and extends beyond the traditional parameters of review under the antitrust laws. In order to find that a merger is in the public interest, we must, for example, be convinced that it will enhance competition. A merger will be pro-competitive if the harms to competition -- i.e., enhancing market power, slowing the decline of market power, or impairing this Commission's ability properly to establish and enforce those rules necessary to establish and maintain the competition that will be a prerequisite to deregulation -- are outweighed by benefits that enhance competition. If applicants cannot carry this burden, the applications must be denied.*
>
> *In demonstrating that the merger will enhance competition, applicants carry the burden of showing that the proposed merger would not eliminate potentially significant sources of the competition that the Communications Act, particularly as amended by the Telecommunications Act of 1996, sought to create. When facing a changing regulatory environment that reduces barriers to entry, firms that would otherwise compete directly may, as one possible strategic response, seek to cooperate through merger. As courts have previously recognized, in evaluating whether applicants have demonstrated that the transaction is in the public interest, we consider the transaction in light of "the trends and needs of the industry" as a whole, the factors that "influenced Congress to make specific provision for the particular industry," and the complexity and rapidity of change in the industry. Accordingly, and consistent with the 1996 Act's focus on competition and*

deregulation, it is incumbent upon applicants to prove that, on balance, the merger will enhance and promote, rather than eliminate or retard, competition. The competition and deregulation Congress sought to foster extends not just to traditional local telephone service, but to related interstate access services, to Commercial Mobile Radio Services ("CMRS"), and to interstate long distance services.

We must be especially concerned about mergers between incumbent monopoly providers and possible rivals during this initial period of implementation of the 1996 Act. Competition in the local exchange and exchange access marketplace is still in the earliest stages. This Commission, through its Local Competition Orders, set forth its initial pro-competition rules to implement those provisions of the 1996 Act that are designed to open the local telecommunications marketplace to competition. Together, these orders addressed a range of legal, regulatory, operational and economic barriers to entry. Key portions of these orders recently were vacated, which created even greater uncertainty as to the pace of development of competition. It is particularly difficult to determine at this time exactly how quickly and to what extent existing barriers to entry will decline. As further examples of the current uncertainty, permanent prices for interconnection, unbundled network elements and transport and termination remain to be set in the vast majority of states, and protracted judicial review of both interconnection agreements and state permanent pricing decisions is likely to exacerbate this uncertainty.

The process of lowering barriers to entry is, as noted, only beginning, not nearing completion. We are continuing to identify both the barriers to entry themselves and the best and swiftest means to address those barriers. For example, this Commission is currently considering a petition for rulemaking regarding performance standards and enforcement mechanisms for operating support systems. Creating and enforcing the conditions that will permit competition to develop and flourish is an ongoing task, that requires continuous review and study of market conditions, the behavior of incumbents and rivals, and the relative capabilities of parties to safeguard their respective interests by creating private enforcement mechanisms that ensure compliance and cooperation. We do not believe that the best approach to promote competition is to refrain taking any actions to offset incumbent local exchange carriers' ("incumbent LECs") market power. Such a course would ensure that incumbent LECs could use the market power they possess as a result of their historic monopolies to ensure that only minimal competition develops in local exchange and exchange access telecommunications. In such a case, a central purpose of the 1996 Act, the development of robustly competitive markets that permit broad deregulation by federal and state authorities, would thereby be frustrated.

> *We also recognize that, even were we able immediately to lower the barriers addressed by the 1996 Act, significant barriers to entry into the local telecommunications marketplace, including interstate exchange access services, will remain. Entrants must still attract capital, and amass and retain the technical, operational, financial and marketing skills necessary to operate as a telecommunications provider. For mass market services, entrants will have to invest in establishing brand name recognition and, even more important, a mass market reputation for providing high quality telecommunications services. These consumer "goodwill" assets take significant amounts of time and resources to acquire. An unknown entrant's attempts to build "goodwill" by providing reliable, high quality service relies heavily on the cooperation of the incumbent local exchange carrier that is providing wholesale services for resale, interconnection, unbundled network elements or transport and termination, and can be frustrated by the incumbent local exchange carrier if that carrier engages in discriminatory conduct affecting service quality, reliability or timeliness. For all these reasons, we cannot assume that merely writing the rules called for by the 1996 Act eliminates concerns about potentially harmful effects of some mergers on the development of local telecommunications competition.*

NYNEX\BellAtlantic, 12 FCC Rcd 19985 at ¶¶ 2-6 (footnotes omitted).

The following can be gleaned from the FCC's prior statements in NYNEX\BellAtlantic. First, the burden rests on the joint applicants to demonstrate that the proposed merger is in the public interest. Second, that antitrust issues and the competitive environment should be considered. Third, that at this point in time, the Commission should especially be concerned about mergers between incumbent monopoly providers and possible rivals because competition in the local exchange and exchange access markets is still in the earliest stages. Fourth, that there still exists a great danger that Incumbent Local Exchange Carriers ("ILECs") can use their market power (which were obtained as a result of historic monopolies) to ensure that only minimal competition develops in local exchange and exchange access telecommunications. Finally, even if the FCC and this Commission were able to immediately lower the barriers addressed by the Telecommunications Act, that significant barriers to entry will always exists to ALECs who seek to enter the local telecommunications and interstate exchange markets.

In an analogous situation, the FCC has the right to impose conditions upon a merger that are necessary to serve the public interest and/or to negotiate through a consent order, conditions which the public interest requires.[1] Thus in the Federal arena there is ample precedent providing the FCC the authority to impose conditions upon a transfer or merger which would render that transaction consistent with the public interest.[2] Thus if the FCC decides that the

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[1]*Cf. California v. American Stores Company*, 495 U.S. 271, 275-76 (1990) (negotiation and consent order issued by FTC pursuant to complaint it filed under Clayton §7); *FTC v. Dean Foods Company*, 384 U.S. 597, 606 (1966) (Clayton Act grants FTC the power to order divestiture in appropriate cases and the courts of appeals jurisdiction to review final Commission action); *Pan American World Airways, Inc. v. United States*, 371 U.S. 296, 312-13 & n.17 (1963) ("Authority to mold administrative relief is indeed like the authority of courts to frame injunctive decrees subject of course to judicial review. . . The power to order divestiture need not be explicitly included in the powers of an administrative agency to be part of its arsenal of authority."); *FTC v. Ruberoid Co.*, 343 U.S. 470, 473 (1952) (FTC has wide discretion in formulating appropriate remedies to deal with violations of the antitrust law); *L.G. Balfour Company v. FTC*, 442 F.2d 1, 23 (7th Cir. 1971) (FTC has the power to order divestiture to restore competition. An order of divestiture is no less proper even where other, less harsh, methods are available); *Western Fruit Growers Sales v. FTC*, 322 F.2d 67, 69 (9th Cir. 1963), *citing FTC v. Mandel Bros, Inc.*, 359 U.S. 385, 392-93 (1959) ("An agency is not limited to prohibiting 'the illegal practice in the precise form' existing in the past and 'may fashion its relief to restrain other like or related unlawful acts.'").

[2]*Atlantic Tele-Network, Inc. v. FCC*, 59 F.3d 1384, 1389-90 (D.C. Cir. 1995) (upholding FCC imposition of proportionate return condition on carrier's 214 authorization to provide international service. "[W]e see no basis for concluding that the Commission acted arbitrarily and capriciously when, in the exercise of its judgement of what the public convenience and necessity required, it decided to offset that risk [of the carrier using its ability and incentive to discriminate against competing domestic carriers] by imposing a proportionate return condition."); *GTE Service Corp. v. FCC*, 782 F.2d 263, 268 n.5 (D.C. Cir. 1986) (court affirmed FCC determination to authorize transfers of 214 authorizations to implement breakup of AT&T without imposing certain accounting conditions but rather holding those for a future rulemaking); *Western Union Tel. Co. v. FCC*, 541 F.2d 346, 355 (3rd Cir. 1976) (upholding FCC's imposition of a waiver as a condition to issuance of a 214 certification: the court stated: "The gravamen of the [Western Union] argument is that such an interpretation [allowing the FCC to impose a waiver of contract as a condition] would allow the Commission to do "indirectly" by condition what it is forbidden to do "directly" by tariff, viz., modify or abrogate contracts. The argument fails because of the brute fact that there is a significant difference between a voluntary waiver of rights in order to secure a benefit not otherwise obtainable, and the extinguishment of rights by tariffs which provide no *quid pro quo*" . . . . Far from over-stepping its statutory bounds, the Commission appears to have acted carefully and consciously within the express language of section 214(c)."); *see also Craig O. McCaw*, 9 FCC Rcd 5836 (1994); *Teleprompter Corporation*, 87 FCC 2d 531 (1981).

application would serve the public interest only if particular conditions are met, the FCC can grant the application subject to compliance with those specified conditions.[3] The public interest referred to throughout the Communications Act necessarily encompasses the goal of promoting competition. The Supreme Court of the United States has established that the public interest standard must be construed "to secure for the public the broad aims of the Communications Act."[4] These broad aims are established in Section 1 of the Communications Act, which claims to "make available . . . to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide . . . communication service,"[5] and again in the 1996 Amendments to the Communications Act, which establishes a "pro-competitive, deregulatory national policy framework designed to . . . open all telecommunications markets to competition."[6] Therefore it is clear that the public interest standard necessarily encompasses the goal of promoting competition.

When determining whether a proposed transfer is consistent with the policies of the Communication Act, the FCC applies a broad analytical perspective to examine that transfer's

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[3]*See, e.g.*, *Infinity Broadcasting Corp.*, FCC 96-495 (Dec. 26, 1996) (1996 WL 738831); *Citicasters, Inc.*, FCC 96-380 (rel. Sep. 17, 1996) (96 WL 532324); *Pyramid Communications*, 11 FCC Rcd 4898 (1995); *Tele-Communications, Inc.*, 10 FCC Rcd 2147 (CSB 1995); *Craig O. McCaw & American Tel. & Tel. Co.*, 9 FCC Rcd 5836 (1994), *recon. denied on other grds.*, 10 FCC Rcd 11786 (1995) (hereinafter "*McCaw*"), *affirmed sub nom. SBC Comm., Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir. 1996); *Viacom, Inc.*, 9 FCC Rcd 1577 (1994).

[4]*Western Union Division, Commercial Telegrapher's Union, A.F.of L. v. United States*, 87 F. Supp. 324, 335 (D.D.C. 1949), *aff'd*, 338 U.S. 864 (1949). *See also*, *Washington Utilities and Transportation Comm'n. v. FCC*, 513 F.2d 1142, 1147 (9th Cir. 1975); *FCC v. RCA Communications, Inc.*, 346 U.S. 86, 93-95 (1953).

[5]47 U.S.C. § 151 (1997). These goals date to the original Communications Act of 1934. *See* H.R. Rep. No. 1918, 73d Cong., 2d Sess. 1 (1934).

[6]H.R. Rep. No. 104-458 at 1; Telecommunications Act of 1996, Pub. L. No. 104-104 (preamble), 110 Stat. 56 (1996).

effect on policies encouraging competition.[7] The FCC's analysis of the effect of the transfer on competition is guided by antitrust principles,[8] but not limited by the antitrust laws.[9] The public interest standard and the associated competitive analysis conducted by the FCC is necessarily broader than the standard applied to analyses of the antitrust laws.[10] Under the public interest standard, the FCC considers the trends and needs of the industry in question, the factors that influenced Congress to enact specific provisions for that particular industry, and the complexity

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[7]*ABC Cos. Inc.*, 7 FCC 2d 245, 249 (1966). The public interest can also include other factors, such as diversity, spectrum efficiency, "just, reasonable and affordable" rates, national security, etc. *See, e.g.*, *Federal-State Joint Board on Universal Service,* Report and Order, CC Docket No. 96-45, FCC 97-157 ¶¶ 43-55 (May 8, 1997) (public interest factors include principles for the preservation and advancement of universal service and competitive neutrality); *Infinity Broadcasting Corp. and Westinghouse Electric Corp.*, FCC 96-495 ¶¶ 39-48, 91 (rel. Dec. 26, 1996) (public interest benefits of diversity can include improved news, children's programming, and provision of time to political candidates); *Capital Cities/ABC, Inc.*, 11 FCC Rcd 5841, 5885-95 ¶¶ 82-99 (1996) (public interest includes concerns regarding diversity and concentration of economic power); *Market Entry and Regulation of Foreign-Affiliated Entities*, 11 FCC Rcd 3873, 3874-90 ¶¶ 56-72 (1995), *recon. pending*. (additional public interest factors include national security, law enforcement, foreign policy and trade concerns raised by the Executive Branch).

[8]*See FCC v. RCA Communications, Inc.*, 346 U.S. 86, 93-95 (1953) ("There can be no doubt that competition is a relevant factor in weighing the public interest."); *US v. FCC*, 652 F.2d 72, 81-82 (D.C. Cir. 1980) (*en banc*) (quoting *Northern Natural Gas Co. v. FPC*, 399 F.2d 953, 961 (D.C. Cir. 1968)); *see also, FCC v. National Citizens Committee for Broadcasting, et al.*, 436 U.S. 775, 795 (1978). Indeed, the courts have construed our statutory authority to mean that the Commission has discharged its antitrust responsibilities "when [it] seriously considers the antitrust consequences of a proposal and weighs those consequences with other public interest factors." *United States v. FCC*, 652 F.2d at 88; *OTI Corp.*, 6 FCC Rcd 1611, 1612 (1991).

[9]*See United States v. FCC*, 652 F.2d at 88 (the Commission is not responsible for enforcing the antitrust laws); *see also*, *Teleprompter-Group W*, 87 FCC 2d 531 (1981), *aff'd on recon.*, 89 FCC 2d 417 (1982) (Commission independently reviewed the competitive effects of a proposed merger, even though the DOJ had also reviewed the merger and found the proposed transaction would not violate the antitrust laws); *Equipment Distributors' Coalition, Inc. v. FCC*, 824 F.2d 1197, 1201 (D.C. Cir. 1987). *Cf. Northeast Utilities Service Co. v. FERC*, 993 F.2d 937, 947-48 (1st Cir. 1993) (public interest standard does not require agencies "to analyze proposed mergers under the same standards that the Department of Justice . . . must apply.").

[10]*United States v. FCC*, 652 F.2d at 88 (The Commission's "determination about the proper role of competitive forces in an industry must therefore be based, not exclusively on the letter of the antitrust laws, but also on the 'special considerations' of the particular industry.")

and rapidity of change in that industry.[11] The public interest analysis must also include a review of the nature and extent of local competition, as exemplified by the fact that Section 271 of the Act specifically applies the public interest standard to, *inter alia*, a review of local market conditions.[12]

Given the fact that this Commission utilizes the "public interest standard", Supra believes it would be appropriate for this Commission to likewise utilize the same standards employed by the FCC to determine whether or not a merger is in the public interest and/or whether or not certain terms or conditions should be place upon the merger in order for the public interest standard to be met.

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[11]*See FCC v. RCA Communications, Inc.*, 346 U.S. at 94-95, 98 (reliance on "independent conclusion[s]" on the "impact upon [the particular industry] of the trends and needs of this industry" is appropriate. "[W]hat competition is and should be in [areas in which active regulation is entrusted to an administrative agency] must be read in the light of the special considerations that have influenced Congress to make specific provision for the particular industry."); *United States v. Storer Broadcasting Co.*, 351 U.S. 192, 203 (1956) (FCC's "authority covers new and rapidly developing fields." As such, the "Communications Act must be read as a whole and with appreciation of the responsibilities of the body charged with its fair and efficient operation. The growing complexity of our economy induced the Congress to place regulation of businesses like communication in specialized agencies with broad powers. Courts are slow to interfere with their conclusions when reconcilable with statutory directions."); *National Broadcasting Co. v. United States*, 319 U.S. 190, 219 (1943) (emphasizing Congress' grant of broad powers to the Commission, in order to safeguard the public interest in a "new and dynamic" area of regulation); *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 138 (1940) (The public interest standard "serves as a supple instrument for the exercise of discretion by the expert body which Congress has charged to carry out its legislative policy . . . . Underlying the whole law is recognition of the rapidly fluctuating factors characteristic of the evolution of [industries under the FCC's jurisdiction] and of the corresponding requirement that the administrative process possess sufficient flexibility to adjust itself to these factors." As such, the "Communications Act is not designed primarily as a new code for the adjustment of conflicting private rights through adjudication. Rather it expresses a desire on the part of Congress to maintain, through appropriate administrative control, a grip on the dynamic aspects" of the telecommunications industry.); *United States v. FCC*, 652 F. 2d at 88 (resolution of the sometimes-conflicting public interest considerations "is a complex task which requires extensive facilities, expert judgment and considerable knowledge of the . . . industry. Congress left that task to the Commission. . . ." quoting *McLean Trucking Co. v. United States*, 321 U.S. 67, 87 (1944).).

[12]47 U.S.C. § 271(d)(3)(C) (1997).

B. The Proposed Merger Is Not In The Public Interest

When Congress passed the Telecommunications Act, it was envisioned that real competition would soon come to the local exchange markets. Although it was believed that independent companies would emerge in these markets, because of the amount of capital and expertise necessary to effectively enter these markets, it was anticipated that the RBOCs would be the first competitors into each others' markets. Rather than foster competition, time has shown that the Telecommunications Act has had the opposite effect of encouraging ILECs to simply merge in order to eliminate competition from each other. Rather than competitive local markets, what we now have is fewer and fewer independent RBOCs which progressively control more and more of the local exchange markets.

In *NYNEX\BellAtlantic*, the FCC stated that in addressing competition issues, market participants should include not only actual competitors, but "precluded competitors" or firms that are most likely to enter the market, but have until recently been prevented or deterred from market participation by entry barriers which the 1996 Act seeks to lower.

A primary contention of the applicants' Public Interest Statement filed with the FCC is that the applicants need the merger to compete in the local markets of the other Bell companies. The applicants claim they currently lack the ability to compete, and that the proposed merger would allow them to compete quickly against the incumbent Bell companies in their local markets. The applicants' FCC Public Interest Statement asserted that the merger will be pro-competitive because there would be increased competition between the Bell companies in the local markets. These contentions are difficult to comprehend in light of the fact that the applicants are giant companies with vast financial resources. The following chart gives an indication of the applicants' size in relation to each other, the remaining RBOCs and selected long distance carriers referenced by the applicants in their Public Interest Statement.

Company	Revenue ($millions) (1997)	EBIT ($millions) (1997)	Net Income ($millions) (1997)
Ameritech	15,998.03	799.02	296.0
SBC	24,856.0	3,170.0	1,474.0
BellAtlantic	30,193.9	5,341.5	2,454.9
BellSouth	20,561.0	5,376.0	3,270.0
GTE	23,260.0	5,611.0	2,794.0
US West	10,319.0	2,210.0	1,180.0
AT&T-TCG	51,813.3	6,835.5	4,349.3
MCI WorldCom	27,004.4	1,773.7	592.7
Sprint	14,873.9	2,451.4	952.5

As is clear from the above referenced chart, of the remaining RBOC's, BellAtlantic is currently the largest. If, as the largest RBOC, BellAtlantic cannot now compete in the local markets of the other remaining RBOCs, the market entry impediments have obviously nothing to do with size. If BellAtlantic, who is three-times the size of US West, cannot now enter into that local market, how will being five-times the size change that situation? Clearly, BellAtlantic's reasons for not competing in the local markets of the remaining RBOCs has nothing to do with size, but rather rate of return. In reality, the RBOCs have created every impediment possible in order to delay competition and in the process, have simply made it too costly a proposition to compete in the local markets of any other RBOC. The reality of the situation is that the current impediments to competition by the RBOCs make it more cost effective to invest capital in other ventures. The solution to the problems is therefore not more mergers, but rather further regulation aimed at eliminating the creative impediments created by the RBOCs in response to the Telecommunications Act. Clearly, without the merger, each applicant has the resources and ability to launch campaigns to compete against other Bell companies for local markets (including BellSouth); if that in fact is their goal.

As it currently stands, GTE is forced to compete in the markets of the remaining RBOCs by necessity. Therefore, it logically follows that if the merger is denied, GTE will continue having to compete in such markets in order to survive. In their FCC Public Interest Statement, the applicants' claim that the merger will be pro-competitive because a new competitor will enter the other Bell's local markets. This statement is simply untrue since GTE is already competing in those markets, and will continue to do so, even if the merger request is denied.

In their FCC Public Interest Statement, the applicants claim that the pro-competitive benefits from the merger will far outweigh any minimal loss in potential competition. This assumes that neither applicant is a significant potential competitor to the other. However, in *NYNEX\BellAtlantic*, 12 FCC Rcd 19985 (FCC 97-286) (1997), the FCC stated that in addressing competition issues, market participants should include not only actual competitors, but "precluded competitors" or firms that are most likely to enter the market, but have until recently been prevented or deterred from market participation by entry barriers which the 1996 Act seeks to lower. In this regard, it is clear that GTE is a competitor and/or potential competitor to BellAtlantic.

The applicants' FCC Public Interest Statement also asserts that each applicant "needs" the geographic presence that the other possesses. If each applicant truly "needs" the geographic presence that the other possesses, they are each large enough to establish that presence without having to buyout the competition. Allowing the merger will diminish future competition and would be contrary to the public interest. The lost consumer welfare due to diminished competition will be a critical failure of government to protect consumers. For all we know, if the merger is denied the applicants might end up in fierce competition some day. If that is a reasonable possibility, wouldn't it be a disservice to consumers if this Commission allowed one applicant to buy the other rather than compete with it? In addition, it should be noted that it has been less than three years since the passage of the Telecommunications Act of 1996, hardly enough time to assume that ILEC-ILEC competition is unrealistic and improbable.[13]

This Commission should also be concerned with the ability of a smaller company to realistically compete at the local level with larger companies. When considering this factor, the merger is clearly anticompetitive and not in the best interest of the public. The increased trend of mergers between ILECs has already stifled overall competition for local services. The growth of one competitor inherently raises the barriers to meaningful competition by smaller competitors, who are not only disadvantaged by the obstacles created by the RBOCs, but who also lack the efficiencies of scale enjoyed by the larger companies. Significant disincentives for smaller carriers to enter local markets already exist, such as requirements of substantial investments and proximate facilities, as well as the difficulty of acquiring customers without established goodwill. In addition, ILECs have little incentive to open up their markets, and in fact have an incentive to refrain from cooperating with ALECs to provide resale,

[13]Remarks of Commissioner Gloria Tristani before the National Association of Regulatory Utility Commissioners, November 8, 1998. See also *NYNEX/BellAtlantic*, 12 FCC Rcd 19985 at ¶¶ 2-6 (footnotes omitted).

interconnection, and other wholesale services.[14] Why should this Commission expect an ILEC to do its best to help a competitor? Despite the Telecommunications Act, it has been Supra's experience that ILECs act in bad faith and use every possible tactic to delay, stall and hinder ALECs from competing in the local exchange markets. Why should this Commission allow the proposed merger to perpetuate these effects on local markets? The proposed merger is asking the Commission to aid the larger, wealthier companies establish larger markets at the expense of the ALECs' current and future ability to realistically compete and exist in local markets. This pattern will continue to reduce consumer choices and competition, and is not in the public interest.

The proposed merger will do nothing more than increase the applicants' monopoly power over the services which they currently provide. Without real competition in their local markets, RBOCs have no incentive to increase or improve the offerings they provide to the public. Allowing the creation of a mega-BOC will do nothing to encourage new or better offerings of services. It is a maxim that monopoly power stifles improvements and change; while healthy competition stimulates better product offerings. Given the fact that the proposed merger will only serve to further stifle competition and further monopoly power, any claim of alleged improvement in services is surely suspect and should be closely scrutinized. Notwithstanding the applicant's purported desire to merge in order to compete on a national and global level, the

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[14] *See also NYNEX/BellAtlantic*, 12 FCC Rcd 19985 at ¶¶ 2-6 (footnotes omitted), "An unknown entrant's attempts to build 'goodwill' by providing reliable, high quality service relies heavily on the cooperation of the incumbent local exchange carrier that is providing wholesale services for resale, interconnection, unbundled network elements or transport and termination, and can be frustrated by the ILEC if that carrier engages in discriminatory conduct affecting service quality, reliability or timeliness."

proposed merger will only delay further competition in the local telecommunications market in contravention to the Telecommunications Act. Therefore the public interest would not be served by approving the proposed merger.

Moreover, any claim that the merger will make the applicants stronger and more able to compete in the territories of the remaining incumbent BOCs (such as BellSouth) is incredulous. It is difficult to see how a megalith like BellAtlantic, who will not now compete in the territories of other incumbent BOCs, will do so after the merger. If the cost of invading and effectively competing in another ILEC's territory is too great for the potential return, the promised competition between the remaining RBOCs will simply never emerge and this capital will be directed to other more profitable and less riskier ventures. In reality, the only competition which will emerge will be from companies such as Supra who have the faith, patience and tenacity needed to fight ILECs for the rights and privileges which Congress intended in passing the Telecommunications Act.

ILECs have little incentive to open up their markets. Despite the Telecommunications Act, it has been Supra's experience that ILECs act in bad faith and use every possible tactic to delay, stall and hinder ALECs from competing in the local exchange markets. For example, Supra has had considerable difficulty with the unequal OSS provided by BellSouth. In addition to OSS issues, incumbent LECs have made collocation impossible for ALECs. Indeed, Supra has suffered a great deal in its efforts to physically collocate in the central offices of BellSouth. History has shown that delays in the ILECs collocation procedures are intended to and do create very effective barriers to entry. Indeed, BellSouth articulated the nature and degree of this problem and the ILEC's entrenched advantage when BellSouth sought to compete in the local market of another ILEC, stating as follows:

> *The timing of, terms and conditions for, and pricing of, interconnection determine which firms capture the available rents. Hence, the dominant incumbent, if it fails to accept the benefits which flow from a competitive market, can and will rationally use interconnection negotiations to delay and restrict the benefits of competition. This enables it to perpetuate the rents which it obtains as a successor to a monopoly franchise at the expense of competition and innovation. A dominant incumbent can limit both the scale and scope of its competitors, raising their costs and restricting their product offerings. In addition, it can divert or delay competition and innovation to protect its current revenues and give itself time to prepare and introduce similar products or service by exercising control over standards for connect and local numbers . . . It has very powerful incentives to include monopoly rents in the price of complementary network services in order to perpetuate and increase its monopoly profits. It similarly has very powerful incentives to reduce the ability of its competitors to claim market share.*

BellSouth New Zealand, Submission: Regulation of Access to Vertically-Integrated Natural Monopolies, A Discussion Paper, September 29, 1995 at 2 and 10 (emphasis added).

The above problems with OSS and Collocation are only but a few of the many problems faced by ALECs attempting to break into an ILEC's local exchange market. Other major problem areas include access to unbundled network elements and the fact that no effective competition exists for such elements and therefore ILECs tend to price such elements in a manner which makes it virtually impossible for an ALEC to effectively compete. Given the many problems facing ALECs, it is impossible to believe that after the proposed merger GTE\BellAtlantic will ever attempt to further penetrate the local exchange markets of any of the remaining independent RBOCs (including BellSouth). Breaking into these markets does not require unlimited funding, but rather the will-power and tenacity to challenge the ILECs' abusive and exclusionary practices. Given the fact that the applicants themselves are ILECs who benefit from such practices, they have no incentive to challenge such practices in a legal or administrative forum. Clearly ILECs who benefit from such abusive practices in defense of their own territories, have no incentive to have an adjudicative forum declare those practices void, simply in order to try to compete in another entrenched ILEC's territory. Since the applicants have no incentive to do what it really takes to open up all local markets, it is doubtful that anything will change if the proposed merger is approved. The applicants' capital will undoubtedly be put to a more cost effective use by further fortifying the applicants' own local markets and more vigorously blocking attempts by other ALECs to compete in such local markets.

Any claim that the proposed merger will not impact competition in the local exchange markets is dubious. The merger is simply the fattening of an existing monopoly. Although one might characterize the proposed merger as a horizontal merger by companies that do not effectively compete within each other's geographic territories (i.e. a "Geographic Extension Merger"); even if the proposed merger were as characterized in this manner, and even assuming an existing competitive market (of which there is none), such mergers still have the potential for: (a) the elimination or lessening of actual competition; (b) the elimination or lessening of potential competition; (c) the entrenchment or enhancement of the market power of the acquired firm; and\or (d) the development of conglomerate interdependence and forbearance. See Kalinowski, Antitrust Laws And Trade Regulation, Second Edition (1998) § 32.05[3]. This is particularly true when the acquiring company is a significant seller of the same product in another geographic market and where: (a) absent the acquisition, it might exert an effect on market behavior by threat of entry into the relevant market, or increase competition in that market by entry in a more competitive form; or (b) it is in a position to give the acquired company substantial advertising, promotional, or buying power advantages. Id. Clearly, the proposed GTE\BellAtlantic merger poses these very problems. Allowing the proposed merger as requested, will simply create a further entrenched monopoly which will have less incentive to open up local exchange markets. In any event, the economic consequences of any horizontal merger or acquisition are fairly predictable and are at least twofold causing: (a) increased concentration (i.e. a reduction in the number of firms in the market); and (b) direct and immediate foreclosure of competition, actual or potential, between the acquiring and acquired companies. See Kalinowski, Antitrust Laws And Trade Regulation, Second Edition (1998) § 32.02[3]. A further concentrated market will create an even more likely possibility that these entrenched RBOCs will further create, enhance and facilitate the undue exercise of market power. Id. Without a doubt, the obvious effects of the proposed GTE\BellAtlantic merger will be to lessen competition and make it even more difficult for small ALECs such as Supra to compete for the local exchange market.

Furthermore, as noted by the FCC in *NYNEX\BellAtlantic*:

> *A merger that eliminates a significant market participant may increase the unilateral market power of the acquiring firm as well as other competitors, enabling such market participants acting individually to raise prices, reduce quality, or restrict output profitably. Such effects can occur even under price cap regulation since the removal of an independent alternative may permit a firm in the post-merger market might profitably and unilaterally reduce its level of service quality or innovation, or offer smaller price reductions than it would have offered in the absence of the merger. This is particularly true where the firms in the market are offering products that are perceived by consumers as differentiated,*

rather than as perfect substitutes.[15]

The proposed merger reduces the number of significant LECs as well as reducing the ability to constrain market power and implement the 1996 Act's measures promoting competition. In NYNEX/BellAtlantic, the FCC explained that consolidation among major incumbent LECs may hinder the development of competition and harm the public interest. Among the reasons given were: (1) a reduction in the number of separately owned firms engaged in similar businesses will likely reduce the ability to identify and contain market power; (2) mergers increase the likelihood that cooperation among incumbent LECs can effectively inhibit or delay the implementation of the 1996 Act and other pro-competitive initiatives; and (3) the post-merger incumbent LEC may cooperate less than the pre-merger incumbent LECs would have in enabling competition to grow.

Because the proposed merger will do nothing more than simply create a larger megalithic monopoly in the local communications markets, increase concentration in these already highly concentrated markets, ultimately stifle future competition and only delay the intents and goals of the Telecommunications Act, the proposed merger (as presented) is not in the public interest.

According to the 104th United States Congress, the Telecommunications Act of 1996 is:

> *An Act To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.*[16]

Moreover, the FCC stated in its First Report and Order on Implementation of the Local

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[15] *Id.* at ¶ 101, citations omitted.

[16] Telecommunications Act of 1996, Pub. L. No. 104-104 (preamble), 110 Stat. 56 (1996).

Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 that:

> *Three principal goals established by the telephony provisions of the 1996 Act are: (1) opening the local exchange and exchange access markets to competitive entry; (2) promoting increased competition in telecommunications markets that are already open to competition, including the long distance services market; and (3) reforming our system of universal service so that universal service is preserved and advanced as the local exchange and exchange access markets move from monopoly to competition. . . . The Act directs us and our state colleagues to remove not only statutory and regulatory impediments to competition, but economic and operational impediments as well. We are directed to remove these impediments to competition in all telecommunications markets, while also preserving and advancing universal service in a manner fully consistent with competition.*[17]

The Telecommunications Act did not envision the continuous stream of mergers of Regional Bell Operating Companies ("RBOCs") which have taken place over the past two years starting with the BellAtlantic-Nynex merger. In the BellAtlantic–Nynex Order (which was just 11 months before the announcement of the BellAtlantic–GTE merger), the FCC noted that:

> *We must be especially concerned about mergers between incumbent monopoly providers and possible rivals during this initial period of implementation of the 1996 Act. Competition in the local exchange and exchange access marketplace is still in the earliest stages. This Commission, through its Local Competition Orders, set forth its initial pro-competition rules to implement those provisions of the 1996 Act that are designed to open the local telecommunications marketplace to competition.*[18]

The BellAtlantic-GTE merger is not only anti-competitive, but will also thwart the spirit of the Telecommunications Act. Local competition is in its infancy in the regions controlled by BellAtlantic and GTE. Although it has been almost three years since passage of the Telecommunications Act, local competition has still not developed. The FCC recently found

[17] *Local Competition Order*, CC Docket 96-98 at ¶ 3.

[18] *NYNEX\BellAtlantic*, at ¶ 4.

that "incumbent LECs have, at a minimum, a 94 percent market share of the local exchange and exchange access services in every geographic market." See MCI-Worldcom at footnote 508.

GTE on its own part has no incentive to encourage competition in its territories since it is not subjected to Section 271 of the Telecommunications Act of 1996. For that reason, GTE has been very unresponsive to ALECs and has engaged in a policy of "waiting-them-out." GTE has failed to provide nondiscriminatory access to its operations support systems, reasonable and nondiscriminatory interconnection, reasonable and nondiscriminatory collocation and reasonable and nondiscriminatory access to unbundled network elements. BellAtlantic made several promises to the FCC in reference to its merger with Nynex which have yet come to bear. Numerous complaints have been filed by ALECs against BellAtlantic over its refusal to comply with those conditions imposed by the FCC on its merger with Nynex.

Furthermore, the proposed merger will certainly impact the FCC and this Commission's ability to benchmark. In NYNEX\BellAtlantic, the FCC analyzed the importance of benchmarking to its ability to identify and contain market power. The importance of benchmarking to the FCC, this Commission and market competitors is beyond dispute. In this regard, the FCC stated in NYNEX\BellAtlantic as follows:

> *The existence of several Bell Companies as an important regulatory tool has been praised by the DOJ, the Courts, and the Bell Companies themselves. In commenting on the proposed divestiture of local Bell Companies by AT&T ("the divestiture), the DOJ observed that it would consider the impact of the proposed configuration of Bell Companies on the likelihood that the MFJ's non-discrimination requirements would be achieved. Several years later, responding to an appeal of the MFJ's line-of-business restrictions, the U.S. Court of Appeals for the District of Columbia Circuit noted:*
>
> > *There is a lot of evidence that the break-up and other recent*

> *developments have enhanced regulatory capability. . . . [T]he existence of seven [R]BOCs increases the number of benchmarks that can be used by regulators to detect discriminatory pricing. . . . Indeed, federal and state regulators have in fact used such benchmarks in evaluating compliance with equal access requirements . . . and in comparing installation and maintenance practices for customer premises equipment.*

> *Aside from the DOJ and the courts, the Bell Companies themselves have emphasized the importance of benchmarks, and especially seven benchmarks, as an important regulatory tool. Ameritech stated: "No amount of sophistry can suppress the importance of benchmarks" and that "division of the local exchange networks among seven independent companies has greatly enhanced the detectability of any monopoly abuse and the effectiveness of regulation. Anticompetitive conduct was far less detectable in the predivestiture era . . ." Bell Atlantic stated: "Each BOC serves as a benchmark against which the Commissions can measure the performance and behavior of the next; such comparisons were quite impossible before divestiture." BellSouth stated: "The [seven RBOCs] will also facilitate the detection of questionable competitive practices by allowing each BOC to serve as a benchmark for the others." NYNEX stated: "Without such benchmarks, there was no uncomplicated and ready test for uncovering anticompetitive conduct. Divestiture changed all this. There are now seven independent companies. A firm, constant and readily available basis exists for comparing the actions of any one against the actions of another." Pacific Bell stated: ""The ability to discriminate has also been markedly reduced by the post-divestiture emergence of vigorous competition among the BOCs providing real yardsticks against which to evaluate any individual BOC's actions." Southwestern Bell stated that seven benchmarks provide "an effective deterrent against even subtle attempts to abuse any advantage which might arise from the ownership of local exchange communications facilities." U.S. West stated that "lingering concerns about discrimination are unwarranted" after the divestiture because benchmarking would effectively detect any discrimination which might occur when a Bell Company attempts to abuse access to customer or network information.* [19]

The FCC further noted in NYNEX\BellAtlantic that:

> *Further reductions, however, become more and more problematic as the potential for coordinated behavior increases and the impact of individual company actions on our aggregate measures of the industry's performance grows. We therefore reject suggestions in the record that there would be no issues raised by the consolidation of all Bell Companies into a single company. Accordingly, although*

[19] *NYNEX/BellAtlantic* at ¶¶ 148, 149, Citations omitted.

> *we do not find the reduction in major incumbent LECs caused by the proposed merger sufficient to render it against the public interest, further reductions in the number of Bell Companies or comparable incumbent LECs would present serious public interest concerns.*[20]

The justifications advanced by the applicants for further reductions in the number of incumbent LECs are pretentious and dubious. The FCC now faces wholesale consolidation among the incumbent LECs. The implication of these mergers on the entire industry is potentially devastating. What will happen to implementation of the Telecommunications Act? What are the implications of this development on the entire emerging ALEC industry? How will consumers benefit from competition in the local exchange services market and the subsequent reduction in communications rates to be derived from long distance and other integrated services? These are very pertinent questions that not only must the FCC must answer in reviewing this application, but this Commission as well.

Notwithstanding the fact that the proposed merger will obviously have negative and adverse effects on competition, particularly in the local exchange markets; Supra is of the position that a modification to the proposed merger can lead to competitive results. In this regard, Supra proposes that the proposed merger as presented by the applicants be rejected. Nevertheless, Supra states that a merger which provides for (or requires) the divestiture of at least twenty-five percent (25%) of various assets within the State of Florida might actually benefit competition and be in the public interest.

C. Supra's Proposal

As a condition on the merger, this Commission should require GTE to divest itself of

[20] *NYNEX/BellAtlantic* at ¶ 156, Citations omitted.

approximately twenty-five percent (25%) of its central offices within the state of Florida, together with the corresponding local loops which tie into those central offices and various service\support assets. Such assets should be divested to small and mid-sized Florida-based ALECs at a fair market value, with Supra being given the first opportunity at acquiring those assets. The central offices divested should be evenly disbursed throughout GTE's territories and in the same mix of rural and urban central offices as currently exists within GTE's inventory. To the extent possible, a proportion number of those central offices should also be tandem offices. Finally, the central offices should be transferred on the condition that such offices cannot be transferred back to the applicants or any related company or successor company. Finally, the divestiture should also include a proportionate number of supporting assets such as call centers, repair\service facilities, etc.

Supra contends and believes that this divestiture plan will greatly improve competition in the local markets for the following reasons. First, the termination point to the customer (or "the last mile") seems to be the most critical point in terms of reaching the customer. The problems in implementing the Telecommunications Act arise from the fact that the ILECs have no incentive to share access to the customers. The divestiture proposed above will reduce concentration at the customer level and allow for real price competition. Second, BellAtlantic\GTE's need to access customers serviced by the divested central offices will create an incentive on the part of BellAtlantic\GTE to act in good faith in opening up the non-divested central offices. Since customers may still initially be with BellAtlantic\GTE (through resale of the local loop), the divested offices will have an incentive to allow unrestricted collocation and access to unbundled network elements to both BellAtlantic\GTE and other ALECs; particularly since everyone will be competing for customers who currently belong to BellAtlantic\GTE. BellAtlantic\GTE will have an incentive to reduce rates to consumers serviced by these central offices in order to retain the consumers' business. If BellAtlantic\GTE has to purchase unbundled network elements under the same terms and conditions as it offers to ALECs, BellAtlantic\GTE will have an incentive to reduce rates for its own unbundled network elements in order to compete more effectively for the customers serviced by the divested central offices. Moreover, a divesture of central offices evenly disbursed throughout the GTE territories will allow each central office to expand out into the other's "territory" because the distance from any one central office to business customers and/or new construction projects will be greatly reduced; thus encouraging price competition along the borders of each divested central office.

Requiring the applicants to divest themselves of twenty-five percent (25%) of their central offices within the state of Florida will not impact the proposed merger or its professed goals. The central offices only comprise a fraction of the assets of both companies. Although the applicants do not state how much "critical mass" is needed to embark on their plan of out-of-territory and global expansion, a reduction of twenty-five percent (25%) of the applicants' Florida central offices should not materially impact the financial sum of the companies and thus still allow for the applicants' future expansion plans. In any event, the divestiture will result in the applicants receiving revenue generated by the sale of these offices. Accordingly, the financial end result will essentially be the same for the applicants.

Supra has already offered to back the proposed merger on the condition that the applicants divest themselves of various central offices. Supra has also offered to purchase at least twenty percent (20%) of the total assets of the merged companies at a fair and negotiated price. Neither company has responded to that offer. Supra stands ready, willing and able to effectuate this plan and this proposal to purchase up to twenty-five percent (25%) of the central offices of GTE within the state of Florida.

Supra believes that its proposal will allow for: (a) the offering of new and exciting telecommunications services to consumers; (b) reduction in rates currently being paid by subscribers for telecommunication services; (c) investment in new data networks for the provision of faster Internet access; (d) greater competition with the RBOCs; (e) creation of a new entity which will work with regulators and ALECs to foster competition in the local loop; and (f) realization of the goals of the Telecommunications Act of 1996. Supra also believes that the above proposal will greatly facilitate the growth of real competition in the local exchange markets and will provide the consumer those benefits of free competition which were originally envisioned in the Telecommunications Act.

Apart from raising the level of competition in these markets, a Commission approval of Supra's proposal will be an important affirmative step in transforming into reality the promise of vigorous competition in all relevant telecommunications services markets as envisioned by the Telecommunications Act. Supra's proposal promises what has not been possible either through regulation or deregulation: a broad-scale attack on the local markets controlled by the incumbent LECs. Not only will Supra be competing with the incumbent LECs, it will also actively encourage ALECs to participate effectively in the whole process by providing ALECs the necessary ingredients they need to compete in the market place.

Supra plans to become a major nationwide player in the telecommunications industry by providing new and innovative local and long distance services at lower rates to customers, by bundling all enhanced services like voice mail, caller-id, call waiting, three way calling, etc., free to its customers. Supra is also willing to ***guarantee*** that within six months of taking over such assets, that Supra will reduce telephone bills to Supra consumer subscribers of the acquired assets by approximately twenty percent (20%). Supra has a comprehensive plan in place which includes what Supra intends to do with the acquired assets if the Commission grants approval of this proposal.

III. CONCLUSION

Supra respectfully requests that this Commission consider the above referenced comments and enter an Order on the Application of GTE and BellAtlantic which tentatively denies the parties' proposed merger.

Notwithstanding, the above, Supra requests that this Commission give consideration to, and enter an appropriate ruling, which conditions the merger of GTE and BellAtlantic upon the divestiture of approximately twenty-five percent (25%) of the applicants' central offices within the state of Florida, together with other related support\service assets as detailed previously in these comments.

IV. REQUEST FOR HEARING

Supra believes that the proposed merger and its implications and the proposal set forth herein are of such importance that a hearing on this matter is justified. Accordingly, Supra respectfully requests that this Commission grant a hearing on the proposed merger, these comments, and the proposal advanced by Supra.

Respectfully Submitted,

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V. CERTIFICATE OF SERVICE

I HEREBY Certify that a true and correct copy of the foregoing has been furnished by U.S. Mail upon the parties named below on this 7th day of January, 1999.

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