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FILED

SEP 2 1998

Missouri Public
Service Commission

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

RE: In The Matter of the Merger of SBC Communications, Inc. and Ameritech
Corporation
Case No.: TM-99-76

Dear Mr. Roberts:

Enclosed for filing, in the above-referenced case, is the original and 14 copies of the Office of the Public Counsel's Reply to Staff's and Southwestern Bell Telephone Company's Responses to Motion to Open Docket, to Establish a Procedural Schedule and to Hold a Hearing. Please "file" stamp the extra-enclosed copy and return it to this office. I have also on this date mailed, faxed and/or hand-delivered the appropriate number of copies to all counsel of record.

Thank you for your attention to this matter.

Very truly yours,

Michael F. Dandino
Senior Public Counsel

MFD:rjr

cc: Counsel of Record

Enclosure

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

FILED
SEP 2 1998

Missouri Public
Service Commission

In the Matter of the Merger of SBC)
Communications, Inc. and Ameritech)
Corporation.)

Case No. TM-99-76

**OFFICE OF THE PUBLIC COUNSEL'S REPLY TO STAFF'S
AND SOUTHWESTERN BELL TELEPHONE COMPANY'S RESPONSES
TO MOTION TO OPEN DOCKET, TO ESTABLISH A
PROCEDURAL SCHEDULE AND TO HOLD A HEARING**

COMES NOW the Office of the Public Counsel ("Public Counsel") and states its reply to Staff of the Missouri Public Service Commission's ("Staff") Response and Southwestern Bell Telephone Company's ("Bell") Response and Opposition to Public Counsel's Motion to Open a Docket, Establish a Procedural Schedule and to Hold a Hearing as follows:

1. The Staff concludes that the Commission has the legal authority and jurisdiction to examine, review and act on the SBC/Ameritech proposed merger. The Staff's response specifically highlights Section 392.300, RSMo., (Cum. Supp. 1997) as the applicable statutory provision.

2. The Staff recommends that the Commission not exercise its jurisdiction, but rather act solely as a participant in the pending Federal Communications Commission ("FCC") docket, stating that the FCC proceeding is "the appropriate forum" to examine the merger.

3. Public Counsel strongly disagrees with the Staff's recommendations. The Communications Act of 1934, the Federal Telecommunications Act of 1996 ("FTA") and the case law defining the relative roles of federal and state regulatory authority make it clear that the

primary responsibility and jurisdiction for regulation of local telecommunications service rests with the states. The FTA gives the states jurisdiction to implement, supervise and regulate local competition. State regulators are also charged with the duty and jurisdiction to protect consumers and ensure that local competition develops in a manner consistent with the public interest.

4. The Commission should not abdicate its statutory responsibility and jurisdiction in this merger by limiting its role to a participant in a larger federal proceeding when its primary role is to act as the authoritative state reviewing agency.

5. In the SBC/Pacific Telesis merger, Nevada and California exercised its jurisdiction and achieved significant rate reductions for local ratepayers as part of the cost savings stemming from the merger. These benefits were not obtained in Missouri.

6. The pending FCC proceeding has not deterred the states of Ohio, Illinois, and Indiana from commencing merger proceedings to examine the issues from the state public interest and competition prospective. In these states, Ameritech is the incumbent local service provider; in Missouri it is a CLEC. The Commission should put itself in a position to act as an independent regulator in the state and federal process and not restrict its function solely as a participant.

7. Public Counsel also opposes the Staff's suggestions that "SWBT... meet with the Commission to set forth the rationale behind the SBC/Ameritech merger and to answer the Commission's questions." Public Counsel believes this suggestion is inconsistent with the spirit, if not letter, of the body of administrative law requiring the Commission to make decisions based upon a record and to provide indispensable and necessary parties, such as the public's representatives, with an opportunity to create an evidentiary record, cross-examine and present

rebuttal evidence. Section 536.100, et. seq. RSMo. Public Counsel believes that any such merger justification should be on the record with notice to interested parties and with due process protections.

7. The Staff asks the Commission not to take jurisdiction since SBC has created a "ghost corporation," SBC Delaware, for the sole purpose of the merger. The Staff states without evidentiary support that this merger will not affect the operations of Bell and Ameritech. These observations justify close scrutiny by the Commission rather than a reason to avoid jurisdiction. The Commission should create a record as the evidentiary basis for determining the affect of the merger on company operations and on the public interest.

8. Bell's opposition can be classified as:

(1) Public Service Commission has no jurisdiction because Bell assets are not affected and no change of control of Bell will result.

(2) even if there is jurisdiction, the Public Service Commission cannot do anything because of price cap regulation;

(3) it's a waste of the Public Service Commission's time and resources.

9. (1) Public Counsel suggests that a fair reading of the Public Service Commission statutes cited by Public Counsel and the Staff give the Commission jurisdiction. The statutes should be reasonably, but broadly construed where the protection of the public interest and consumers is the legislative goal.


Bell claims the merger does not affect it; that is debatable. But the assets and control of the certified CLFC Ameritech are put into play by this merger providing an independent jurisdictional basis.

(2) Public Counsel does not believe that the statute governing price cap regulation necessarily prohibits conditions attached to a merger. It certainly does not affect the ability of the Commission to order consumer protection relating to quality of service, affiliated transactions and other issues not limited to rates.

(3) Public Counsel does not believe it is a waste for this Commission to develop a sound factual record from which it can make a determination on the effect of the merger on Missouri ratepayers and on competition. The Public Service Commission will have to make recommendations and comments to federal authorities on the merger; it seems in the best interest of the public that the Commission makes a factual and reasonable inquiry to formulate its position. Also, the Commission does not waste its time and resources when it sets to the task of carrying out its statutory duties and charge to protect the public interest and assure that industry actions are consistent with that interest.

Respectfully submitted,
OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been faxed, mailed, or hand-delivered to the following counsel of record on this 2nd day of September, 1998:

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