

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY  
September 8, 1998**

**CASE NO: TM-99-76**

**Office of the Public Counsel  
P.O. Box 7800  
Jefferson City, MO 65102**


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Anthony K. Conroy/Katherine C. Swaller  
Southwestern Bell Telephone Company  
One Bell Center, Room 3516  
St. Louis, MO 63101**

**General Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102**

**James Mauze'  
Ottsen, Mauze', Leggat et al.  
112 South Hanley, Midvale Building  
St. Louis, MO 63105**

**Enclosed find certified copy of ORDER in the above-numbered case(s).**

**Sincerely,**



**Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge**

**Uncertified Copy:**

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 8th  
day of September, 1998.

In the Matter of the Merger of SBC	)	
Communications, Inc. and Ameritech	)	<u>Case No. TM-99-76</u>
Corporation.	)	

**ORDER SETTING ORAL ARGUMENT**

On May 10, 1998, SBC Communications, Inc. (SBC), SBC Delaware, Inc. (SBC Delaware), and Ameritech Corporation (Ameritech) entered into a merger agreement. Pursuant to the merger agreement, SBC Delaware, a wholly-owned subsidiary of SBC, will merge into Ameritech with Ameritech being the surviving entity. After the merger is effected, both Ameritech and Southwestern Bell Telephone Company (SWBT) will be first-tier subsidiaries of SBC.

On August 21, the Office of the Public Counsel (Public Counsel) filed a Motion to Open a Docket, to Establish a Procedural Schedule, and to Hold a Hearing. Public Counsel notes that SWBT is the largest local exchange company in Missouri, and asserts that Ameritech is certificated in Missouri as a competitive local exchange company<sup>1</sup>. Public Counsel asserts that it is in the public interest for the Commission to give the proposed merger close scrutiny to assure that it provides positive benefits directly to consumers and that it promotes competition in Missouri's local telecommunications market. Public Counsel believes that

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<sup>1</sup> It may be more accurate to state that Ameritech has a subsidiary (Ameritech Communications) that is certificated in Missouri as a competitive local exchange company.

the Commission has jurisdiction pursuant to Sections 386.250(2), 386.320, and 392.300 RSMo.

On August 31, Staff filed a response to Public Counsel's motion. Staff states that the Commission has not asserted jurisdiction over mergers of non-regulated parent companies when there were no changes to the operations of the regulated company, such as is the case with this merger. Staff asserts that the Commission should follow this practice now, and decline to assert jurisdiction. Staff points out that the Federal Communications Commission (FCC) must determine whether the merger is in the public interest, and to that end has opened a case and seeks comment by September 15<sup>2</sup>. Staff believes that the FCC proceeding is the appropriate forum in which to examine the merger. Staff recommends that the Commission request that SWBT meet with the Commission at an Agenda session.

Also on August 31, SWBT filed a response in opposition to Public Counsel's motion. SWBT asserts that the merger will have no impact on its operations or the services it provides in Missouri, and that it will "enhance the competitive telecommunications landscape." SWBT does not believe the Commission has jurisdiction to review the merger between SBC and Ameritech. In essence, SWBT's argument is that since the merger will have no effect on SWBT's plant or the services it offers in Missouri, that the statutes cited by Public Counsel do not confer jurisdiction. SWBT also asserts that since it operates subject to "price-cap regulation," the Commission cannot grant the rate reductions that are part of the relief requested by Public Counsel. SWBT notes, as does Staff,

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<sup>2</sup> The deadline was subsequently extended to October 15.

that the merger will be reviewed by the FCC and the United States Department of Justice, and offers to meet with the Commission to explain the rationale behind the merger and answer Commission questions.

SWBT included with its response an affidavit of Jonathan Klug, Managing Director-Corporate Development for SBC. Mr. Klug's affidavit describes generally the mechanics of the merger and the effect, or lack thereof, on the facilities and services of SWBT in Missouri.

On September 2, Public Counsel filed a reply to the responses of Staff and SWBT. Public Counsel states that it believes that Staff concludes that the Commission does have jurisdiction, pursuant to 392.300 RSMo (Cum. Supp. 1997), to examine, review and act on the merger. Public Counsel strongly disagrees with Staff's recommendation that the Commission not assert its jurisdiction over the merger. Public Counsel asserts that state regulators have the primary responsibility for regulation of local telecommunications service, as well as the duty to protect consumers and ensure that local competition develops consistently with the public interest. Public Counsel notes that other state regulators have asserted jurisdiction over this and other telecommunications mergers, and urges this Commission to do likewise. Public Counsel believes that the Commission should not meet with SWBT as Staff suggests, but rather convene an on-the-record proceeding with notice to interested parties and with due process protections.

The Commission opened this case to receive the motion of Public Counsel. Having considered that motion and the other pleadings, the Commission determines that its analysis of its jurisdiction over this transaction will benefit from oral argument. The Commission will ask Public Counsel, Staff, SWBT and other interested parties to present their

arguments on the Commission's jurisdiction over the merger. The parties should also address what they believe should be contained in the Commission's comments to the FCC regarding this merger.

**IT IS THEREFORE ORDERED:**

1. That an on-the-record proceeding shall be convened on September 30, 1998 at 9:00 a.m. to hear argument on the Commission's jurisdiction over the proposed merger between SBC Communications, Inc. and Ameritech Corporation, and to address the Commission's comments to the Federal Communications Commission.

2. That this order shall become effective on September 18, 1998.

**BY THE COMMISSION**



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

(S E A L)

Lumpe, Ch., Murray, Schemenauer  
and Drainer, CC., concur.  
Crompton, C., absent.

Mills, Deputy Chief Regulatory Law Judge

Alt/Sec'y: Mills / Boyce

9-8 TM-99-76  
Date Circulated CASE NO.

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Lumpke, Chair

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Crumpton, Commissioner

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Murray, Commissioner

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Schemenauer, Commissioner

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Drainer, Vice-Chair

9-8  
Agenda Date

Action taken: 4-CAS

Must Vote Not Later Than \_\_\_\_\_

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

I have compared the preceding copy with the original on file in this office and

I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,

Missouri, this 8th day of September, 1998.

Dale Hardy Roberts

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge