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COMMUNICATIONS Commission

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

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

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Case No. TA-99-76

**COMMENTS OF THE  
TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association ("TRA"),<sup>1</sup> on behalf of its members, hereby files its brief Comments regarding the proposed merger between SBC Communications, Inc. ("SBC") and Ameritech Corporation ("Ameritech").

The Commission is bound by Chapter 392, §392.300 RSMo. And State ex rel. Fee Fee Trunk Sewer, Inc. v. Lutz, 596 SW2d 466, 468 (Mo. App. 1980): State ex rel. City of St. Louis v. PSC, 73 SW2d 393, 400 (Mo. banc 1934) to determine whether the proposed merger between SBC, parent of the fully regulated telecommunications company Southwestern Bell Telephone Company ("SWBT"), and Ameritech, a competitive interexchange and incumbent basic local exchange telecommunications provider is detrimental to the public interest. TRA believes the Missouri public interest standard is substantially similar to the standard that the New York Public Service Commission applied when it considered the Bell Atlantic/NYNEX merger in 1997.<sup>2</sup> The New York Public Service Commission acknowledged that the standard suggested that the commission had at least four duties in its review:

- (1) ensure that the interests of the ratepayers are served by the merger;
- (2) ensure that the New York Commission can continue effectively to regulate the merged entity;

<sup>1</sup> The Telecommunications Resellers Association is a national trade organization representing more than 650 members and 18 Colorado-based members, who offer a variety of value-added telecommunications services including, resold interexchange, wireless, local, Internet and enhanced services. TRA was formed and carries the continuing mandate to promote and foster the development of competition in the telecommunications industry.

<sup>2</sup> Public Service Law (of New York), Section 100 "in the public interest" Cases Nos. 96-C-0603, 96-C-0599, 96-C-0821 pertaining to the Bell Atlantic/NYNEX merger, Opinion No. 97-B of the New York Public Service Commission, effective May 30, 1997 at pages 14, 15.

Attachment A

- (3) assess the impact of the merger on competition; and
- (4) determine what conditions should be placed on the merger to serve the policy goals of the New York Commission, especially the enhancement of competition and the maintenance and improvement of service quality competition.<sup>3</sup>

TRA believes that the Missouri Commission also has these duties with respect to the SBC/Ameritech merger. These standards and the assessments they require the Commission to make in this merger case are not those that can be made within the context of another proceeding. The public interest demands that these issues be addressed prior to a decision about the requested merger. All of these inquiries are intertwined with the question of whether the public convenience or interest is served by the proposed merger and cannot logically or strategically be deferred.

#### **ENSURE THAT RATEPAYERS AND ALL SUBSCRIBERS ARE SERVED**

The proposed merger will not benefit customers or resellers. As the Ohio Consumers' Counsel noted in the Ohio Commission's evaluation of the proposed merger:

One of the benefits of competition is that gains in productivity and reductions in operating costs are flowed through to customers [including resellers]. The companies [SBC and Ameritech] have indicated that they have no intention of flowing cost reductions through to captive customers in Ohio, residential customers least of all. This is a very blunt acknowledgment of the monopoly position in the core markets.<sup>4</sup>

In the SBC/Ameritech Securities and Exchange Commission filing, the companies alleged a "synergy" value of \$16 to \$19 billion dollars for SBC and between \$1.8 and \$2.7 billion to Ameritech. Both companies were silent as to from where these savings were to come. There are only three possibilities, a reduction in costs, including personnel, increased revenue or a combination of the two. It seems evident that at least a portion of the "synergy" value will come

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<sup>3</sup> *Ibid.*

<sup>4</sup> Presentation at the Public Utilities Commission of Ohio Informational Forum on August 26, 1998, Tr. at page 36.

from a reduction in work force, a consequence that will likely worsen the already inferior service that SWBT currently renders.

**ENSURE THAT THE COMMISSION CAN EFFECTIVELY REGULATE THE MERGED ENTITY**

If the SBC/Ameritech merger were to be approved, a very real question would be presented about this Commission's ability to effectively regulate the merged entity. Though the Joint Applicants attempt to characterize this merger as a paper transaction at the parent level, the sheer magnitude of the merged entity will mean that the Commission's actions in any matter affecting Ameritech will affect only a proportionately smaller part of the conglomerate. Given SWBT's already dismal record in responding to end user and carrier concerns, the merger will create an even greater disincentive to comply with the Commission's directives given Missouri's relatively small size in the SBC organization. The even greater remoteness of SBC/Ameritech decision makers located in Texas and Illinois will only exacerbate an already deplorable situation.

## **ASSESS THE IMPACT OF THE MERGER ON COMPETITION**

The association has more than 650 members, many of which are small telecommunications companies. TRA's smaller members today do not have the leverage or resources to deal with a large organization such as SBC and its affiliates or engage in protracted negotiations. As smaller service providers, TRA's members to a large extent offer the greatest diversity of competitive alternatives to incumbent local exchange carrier ("ILEC") offerings. Yet they are the most vulnerable to abuses by large ILEC organizations. Moreover, the sheer size of an organization that in a post merger environment would control approximately 55 million access lines representing approximately 35% of all lines served by Tier 1 carriers in the United States<sup>5</sup> represents a formidable challenge for small reseller companies to enter the market. Small service providers who do attempt to enter the market and those who want to remain in the market are likely to be crippled, if not mowed down by the huge bureaucratic organization of the merged entities in the absence of Commission effective oversight of their practices.

Furthermore, and very importantly, the approval of the proposed merger will have the opposite effect of promoting competition. Given the size of this proposed merger, coupled with the recent approval of the Bell Atlantic/NYNEX merger, a consolidation of the telecommunications industry would occur such as was seen only prior to the break-up of the Bell Companies and AT&T. Rather than opening the field, the result will be a large consolidation that thwarts, rather than promotes, competition.

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<sup>5</sup> Presentation of John R. Hoffman, Senior Vice President-External Affairs, Sprint Corporation at the Public Utilities Commission of Ohio Informational Forum on the SBC/Ameritech Merger to the Commission on August 26, 1998, Tr. at page 36.

## **DETERMINE WHAT CONDITIONS SHOULD BE PLACED ON THE MERGER**

TRA believes that the Commission should deny the SBC/Ameritech merger. However, if the Commission should determine somehow that the merger serves the public interest, including the goals of competition, diversity, and consumer choice, at a minimum the Commission should set pre-conditions on the merger. In TRA's members' experiences, the regional Bell operating companies tend to accept penalties as a cost of doing business and continue to engage in the very behavior that resulted in the penalties in the first place. Moreover, in other jurisdictions, post merger conditions have been highly unsatisfactory and have the potential to breed more court cases rather than the goal of compliance. It is only by insisting that conditions be met *before* a merger is approved that the Commission will have any assurance that the conditions will be met. Moreover, it is not really possible to undo a merger, especially given that several other state and several federal agencies also have approval jurisdiction.

Prior to any approval, the Commission should insist that SWBT have a nearly perfect score on adhering to the service guidelines, 4 CSR 240-32.060 through 4 CSR 240-32.100. In particular, SWBT record of installing service should be perfect. Other problems experienced by resellers, such as (i) the failure to transmit usage data or call records of resold lines to resellers (particularly involving complex service orders) due to an inadequate billing system, (ii) numerous rejections of orders with limited, or more frequently, no explanation of the cause, and (iii) the delays in responding to service troubles reported by resellers should also be corrected prior to merger approval within a reasonable time frame at the risk of Commission action.

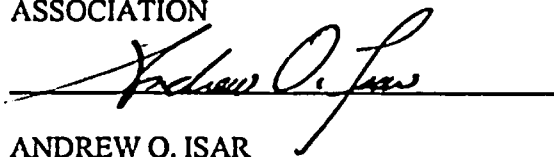
SWBT's attempt to circumvent and/or rewrite the requirements of service standards by tariff provisions which it has attempted to unilaterally impose upon carriers should be resolved in favor of the carriers. In addition, SWBT should be directed to resolve all pending service complaints against it. SWBT should be required to have an operations support system (OSS) operating perfectly with

third party verification of that fact. If Ameritech's OSS is to be used, it should be up and operating prior to the approval of the merger. To the extent that carriers have already invested in electronic interfaces for SWBT's currently insufficient OSS, SWBT should give them credits on their services equal to their electronic interface investment to the extent that those devices require changes or cannot be used with Ameritech's OSS.

Ultimately, SWBT must first treat its wholesale CLEC customers in the same manner as it treats its own end users—as valued customers. Ameritech and SBC should be required to develop a best practices plan applicable to service improvement and to performing its responsibilities under its interconnection and resale agreements and fulfillment of its obligations under the Telecommunications Act of 1996 with time lines to be filed with the Commission for its review. Once the best practices plan is approved, if SWBT does not meet any of the time lines in the plan, the Commission should suspend its dividend. Only through the development of a “best practices” and approach and subsequent enforcement will the Commission be able to gage whether the merger meets the public interest test consistent with the New York Commission's approach, or whether the Companies claims are empty rhetoric devoid of substance.

Respectfully submitted.

TELECOMMUNICATIONS RESELLERS  
ASSOCIATION

A handwritten signature in dark ink, appearing to read "Andrew O. Isar", is written over a horizontal line.

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