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Secretary/Chief Regulatory Law Judge

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August 31, 1998

**FILED**

AUG 31 1998

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

Missouri Public  
Service Commission

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

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and fourteen (14) conformed copies of **STAFF'S RESPONSE TO THE OFFICE OF THE PUBLIC COUNSEL'S MOTION TO OPEN DOCKET, TO ESTABLISH A PROCEDURAL SCHEDULE, AND TO HOLD A HEARING.**

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Cynthia R. Bryant  
Assistant General Counsel  
573-751-7485  
573-751-9285 (Fax)

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Enclosure

cc: Counsel of Record

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

**FILED**

AUG 31 1998

Missouri Public  
Service Commission

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

Case No. TM-99-76

**STAFF'S RESPONSE TO THE OFFICE OF THE PUBLIC COUNSEL'S MOTION  
TO OPEN DOCKET, TO ESTABLISH A PROCEDURAL SCHEDULE, AND TO HOLD A HEARING**

**COMES NOW** the Staff of the Missouri Public Service Commission (Staff), and for its Response to the Office of the Public Counsel's (OPC) Motion To Open A Docket, To Establish A Procedural Schedule, And To Hold a Hearing (Motion), respectfully states as follows:

1. On May 10, 1998, SBC Communications, Inc. (SBC) entered into an Agreement and Plan of Merger with Ameritech Corporation (Ameritech). Under the merger agreement, SBC Delaware, Inc., a wholly-owned SBC subsidiary formed to accomplish the merger, will merge into Ameritech, with Ameritech as the surviving corporation.

2. On July 30, 1998, the Federal Communications Commission (FCC) issued its Public Notice in CC Docket No. 98-141. The FCC seeks comment on the SBC/Ameritech transfer of control by September 15, 1998.

3. As noted in OPC's Motion, this Commission may assert its jurisdiction over a regulated telecommunications company within this State pursuant to Sections 286.250(2), 386.320 and 392.300 RSMo (Cum. Supp. 1997). Specifically, under Section 392.300 RSMo (Cum. Supp. 1997), this Commission has jurisdiction over the sale, assignment, lease, transfer, or mortgage of any franchise, facilities or system necessary or useful in the performance of duties to the public of a

regulated telecommunications company. Further, this Commission has jurisdiction over the merger or consolidation of the franchise, facilities or system of a regulated telecommunications company.

4. This Commission, however, has chosen not to assert its jurisdiction under the following circumstances:

a) Where a merger or a consolidation involves non-regulated parent corporations of a regulated company, and where there is no change in the operations of the regulated company; and

b) where the parent corporation of a regulated company merges or sells assets to a non-regulated entity, and there are no changes in the operations of the regulated company.

5. SBC and Ameritech are non-regulated parent corporations. SBC is creating a ghost corporation, SBC Delaware, for the sole purpose of handling the merger, but this will not affect the operations of the regulated subsidiaries to both corporations. Southwestern Bell Telephone (SWBT) and Ameritech Communications, Inc. (Ameritech Communications), which are both certificated in this State, will continue regular operations.

6. It is Staff's opinion that this Commission should choose not to assert its jurisdiction in this case. SBC and Ameritech must seek approval with the FCC pursuant to Sections 214(a)<sup>1</sup> and

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<sup>1</sup> Section 214(a) states:

No carrier shall undertake the construction of a new line or of any extension of any line or shall acquire or operate any line, or extension thereof, or shall engage in transmission over or by means of such additional or extended line, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line: *Provided*, That no such certificate shall be required under this section for the construction, acquisition, or operation of (1) a line within a single State unless such line constitutes part of an interstate line, (2) local, branch, or terminal lines not exceeding ten miles in length, or (3) any line acquired under section 221 of this ACT:

310(d)<sup>2</sup> of the Federal Communications Act of 1934 as amended by the Telecommunications Act of 1996 (the Act).<sup>3</sup> During this approval process, as noted above, the FCC will seek comments from the public, as well as an evaluation of anti-trust considerations under the Sherman and Clayton Acts. Such evaluations will involve the assistance of the United States Department of Justice. Additionally, SBC and Ameritech bear the burden of demonstrating that the proposed merger is in

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Continued . . .

*Provided further*, That the Commission may, upon appropriate request being made, authorize temporary or emergency service, or the supplementing of existing facilities, without regard to the provisions of this section. No carrier shall discontinue, reduce, or impair service to a community, or a part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor the future public convenience and necessity will be adversely affected thereby; except that the Commission may, upon appropriate request being made, authorize temporary or emergency discontinuance, reduction, or impairment of service, or partial discontinuance, reduction or impairment of service, without regard to the provisions of this section. As used in this section the term "line" means any channel of communication established by the use of appropriate equipment, other than a channel of communication established by the interconnection of two or more existing channels: *Provided, however*, That nothing in this section shall be construed to require a certificate or other authorization from the Commission for any installation, replacement, or other changes in plant, operation, or equipment, other than new construction, which will not impair the adequacy or quality of service provided.

<sup>2</sup> Section 310(d) states:

No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby. . . .

<sup>3</sup>*Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56 (1996).

the public interest, and that the merger will enhance competition without hindering the FCC's policies and goals established by the Act.<sup>4</sup>

It is Staff's opinion that the FCC proceeding is the appropriate forum in which to examine the SBC/Ameritech merger. This Commission will have the opportunity to thoroughly examine nationwide comments submitted to the FCC, and this Commission may analyze and comment on whether the SBC/Ameritech merger is in the public interest and comports with the laws and policies of this State.

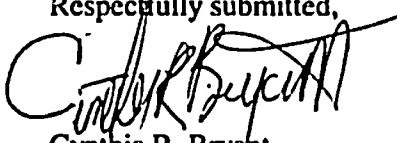
7. Even though the Commission may choose not to assert jurisdiction in this case, Staff recommends that this Commission request SWBT to meet with the Commission in an agenda session to set forth the rationale behind the SBC/Ameritech merger and to answer Commission questions. It is Staff's opinion that this meeting should take place at the Commission's earliest convenience, so that the Commission may have adequate time to respond to the FCC Public Notice of the SBC/Ameritech merger noted above.

**WHEREFORE**, the Staff respectfully requests that this Commission choose not to assert its jurisdiction in the above captioned case, to hold an agenda meeting where SWBT presents the rationale behind the SBC/Ameritech merger, and to reserve official Commission comments for the FCC Public Notice noted above.

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<sup>4</sup>*In re Applications of Nynex Corporation and Bell Atlantic Corporation*, Memorandum Opinion and Order, 12 FCC Rcd. 19985 at 1132 (1997) (Nynex/Bell Atlantic).

Respectfully submitted,



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#### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 31st day of August, 1998.

  
Cynthia R. Bryant

**Service List for Case No. TM-99-76**  
**Revised: August 31, 1998**

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