

TM 99-76  
Transcript

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
3  
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6 TRANSCRIPT OF PROCEEDINGS

7 Hearing

8 September 30, 1998  
9 Jefferson City, Missouri  
10 Volume 1  
11  
12

13 In the matter of the Merger of )  
14 SBC Communications, Inc. and ) Case No. TM-99-76  
15 Ameritech Corporation. )  
16

17 LEWIS MILLS, Presiding,  
18 REGULATORY LAW JUDGE.  
19 SHEILA LUMPE, Chairperson,  
20 M. DIANNE DRAINER,  
21 CONNIE MURRAY,  
22 ROBERT G. SCHEMENAUER,  
23 COMMISSIONERS.  
24  
25

26 REPORTED BY:

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*Missouri  
Public Service Commission*

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1 has a right, has a duty to get into this merger to at  
2 least find out that question.

3 Invite the Commission also to look at the  
4 RBOC merger review in other states. In Massachusetts  
5 in the NYNEX/Bell Atlantic Corporation merger, there  
6 wasn't a statute in Massachusetts that gave any -- the  
7 Commission any specific jurisdiction regarding  
8 mergers. The only merger was the merging companies,  
9 telecommunications company had to notify the  
10 Commission within 30 days of the merger transaction.

11 But yet that agency in its general  
12 supervisory authority found they had jurisdiction to  
13 review the impact on the continuing ability to provide  
14 high-quality services, including continued investment  
15 and upgrade of facilities at reasonable rates, and  
16 continuing development of competition in the state.

17 That's a pretty -- those are two pretty  
18 vital issues, very vital issues. I think this  
19 Commission should look at those issues under your  
20 general supervisory authority. In the Suggestions I  
21 also point out seven other states that in RBOC mergers  
22 have taken jurisdiction.

23 I think it's important, and we're also  
24 looking at public policy and also at the state of the  
25 law, is that when you're looking at mergers in the

1 telecommunications industry, we're looking at a triad,  
2 or kind of a -- if you've got a stool, a three-legged  
3 stool. You have the FCC that looks at it. You have  
4 the U.S. Department of Justice that looks at it, and  
5 you have the local state regulators that look at it.  
6 Each one contributes to the whole process. Each one  
7 gives strength to it.

8 And I think the estates look at it for its  
9 local impact and its effect on local customers, and I  
10 don't think that this Commission -- I think the  
11 Commission under the Federal Communications Act and  
12 local law has clear jurisdictional authority for this.

13 I'd just like to move on briefly to the  
14 public policy questions of the consideration, and I  
15 think -- I think briefly we need to look at these  
16 questions, and there are a dozen, and basically you  
17 have to look at the questions of, given the purpose of  
18 the new SBC that wants to become a major competitor in  
19 the global market, what impact does that strategy have  
20 on Missouri customers? I think the Commission needs  
21 to find out.

22 Will the financial and management sources be  
23 shifted from local service and create a disinvestment  
24 in Missouri to fund and direct the new SBC's climb to  
25 a strong global competitive status?

1 Will SBC and Southwestern Bell rebuild its  
2 efforts to protect its monopoly position and defend  
3 its current territory and market share?

4 Will the revenues needed for global  
5 competition increase pressure to reduce service  
6 quality and customer service and to market and install  
7 high-profit optional services such as caller ID, call  
8 return and other vertical features by hard-sell  
9 tactics and deceptive market practices?

10 There's reports in the press and complaints  
11 filed against SBC after the PacTel merger in  
12 California that some of these practices are occurring.

13 How will the combination of neighboring RBOC  
14 monopolies into the largest American telephone company  
15 promote competition in the local market of  
16 St. Louis, Kansas City, Springfield, Cape Girardeau,  
17 St. Joseph, Blue Springs, Hannibal, Sikeston and other  
18 Missouri Southwestern Bell service areas?

19 How will this giant corporation improve  
20 competition for Missouri residential customers?

21 Will the global strategy and the new SBC  
22 National-Local strategy aimed at the top 30 markets  
23 result in reduced efforts to bring advanced services  
24 and reduce service quality and customer service for  
25 rural areas in Missouri or marginally profitable

1 exchanges?

2 And does the merger of these two de facto  
3 local exchange monopolies promote the terms and spirit  
4 of the Federal Telecommunications Act and Senate Bill  
5 507?

6 What will the regulatory impact be? Will  
7 the sheer size and market power of SBC pose regulatory  
8 difficulties for this Commission and other state  
9 regulators?

10 Will SBC's past hardball approach to  
11 competition and market entry intensify with the new  
12 SBC as it grows in access lines and power? SBC is  
13 known. They are a tough competitor, and they are  
14 very -- they're very tough, and I have to give them  
15 credit for that.

16 In the Chicago Tribune, a member of a  
17 competing company said dealing with SBC Company is  
18 like kicking a whale down the beach. It's a very  
19 difficult proposition, but they -- and if they are  
20 larger, if there's a bigger whale out there, it's  
21 going to be more difficult for competitors to deal  
22 with them to get into the interconnection market and  
23 the local market. This may have a chilling effect on  
24 competition.

25 You also have to look at how the merger will

1 affect universal service. I don't have a ready answer  
2 for any of those questions. I think that's a problem.  
3 The Commission has to look at those.

4 How will the merger affect SBC investments  
5 in this state and job retention? How will it affect  
6 Ameritech, the Ameritech subsidiary, the Ameritech  
7 investments in this state and Ameritech jobs?

8 And then finally, how will the merger, the  
9 cost savings or any efficiencies generated from the  
10 merger directly benefit Missouri ratepayers?

11 I think if the Commission can't answer these  
12 questions now, then that's a perfect reason why they  
13 should open a docket and investigate. If you can't  
14 answer these after today, it once again shows why you  
15 need to investigate. If you can't answer these  
16 questions for the FCC comments by October -- October  
17 15th, that's why you need to open an investigation, do  
18 the fact-finding, and reach an informed decision.

19 Finally, the Office of the Public Counsel  
20 makes a recommendation. It's a little difficult  
21 because of the dearth of facts that have been filed in  
22 this state presented. We've endeavored to try to look  
23 at other states and in the FCC filings to try to get a  
24 flavor of what's proposed and what it means for  
25 Missouri.

1                   And we believe that the proposed merger is  
2                   not appropriate at this time, does not serve the  
3                   legislative goal, the consumer or the public interest.  
4                   As FCC Commissioner Susan Ness said in testimony  
5                   before the U.S. House Judiciary Committee this June,  
6                   that we're a far way from competition in the local --  
7                   in the local area.

8                   I think that this Commission should  
9                   recommend that the FCC and the Department of Justice  
10                  not approve this merger. If for some reason it should  
11                  be approved, the Commission wants -- believe it's  
12                  necessary for it to be approved, there should be  
13                  conditions attached to it, and especially conditions,  
14                  I would recommend looking at the Section 271  
15                  checklist. That way the local market could be opened  
16                  to competitive entry sufficient to allow real  
17                  competition. That's what this is about.

18                  In addition, I think that the Commission  
19                  should demand strict quality of service standards and  
20                  measurements of effective remedies to correct any  
21                  deficiencies. You should also demand -- also demand  
22                  that any savings or cost efficiencies generated by the  
23                  merger be shared with the Missouri ratepayers.

24                  Missouri ratepayers contributed to the  
25                  extraordinary earnings of SBC and Southwestern Bell



1 which makes such a merger even possible, and I believe  
2 that it's only fair and just and reasonable for  
3 Missouri ratepayers who helped fund this to also share  
4 in any benefits.

5 Thank you.

6 JUDGE MILLS: Thank you, Mr. Dandino.

7 Staff?

8 MS. BRYANT: Your Honor, I'd like to before  
9 I get started offer an exhibit.

10 JUDGE MILLS: Thank you. Please give the  
11 court reporter three copies, a copy to each counsel  
12 present and six copies for the Bench.

13 MS. BRYANT: Counsel has theirs.

14 (EXHIBIT NO. 1 WAS MARKED FOR  
15 IDENTIFICATION.)

16 JUDGE MILLS: Let's show Exhibit 1 as a  
17 description of the merging entities. Please proceed.

18 MS. BRYANT: Judge Mills, Chair Lumpe, Vice  
19 Chair Drainer, Commissioners. The question before  
20 this Commission today is whether or not this  
21 Commission has jurisdiction over the SBC/Ameritech  
22 merger.

23 After a careful review of past Commission  
24 actions as of October 17th, 1997, as well as a  
25 thorough review of the SBC/Ameritech merger submitted

1 to the Federal Communications Commission, Staff  
2 concludes that the SBC/Ameritech merger clearly does  
3 not fall within this Commission's jurisdiction.

4 Section 392.300, and I am paraphrasing it as  
5 it pertains to this case, says that a  
6 telecommunications company certificated in this state  
7 must first obtain Commission approval prior to  
8 entering into a merger or consolidation.

9 Now, many questions were raised concerning  
10 the interpretation of Section 392 from the industry.  
11 So on or about October 17th, 1997, this Commission in  
12 an agenda session approved a letter again asserting  
13 its jurisdiction but also stating that there are  
14 certain transactions that clearly do not fall within  
15 this Commission's jurisdiction.

16 As noted on the board to my right, there are  
17 two instances that do not fall within the Commission's  
18 jurisdiction and thus do not require Commission  
19 approval. One is where a merger or consolidation  
20 involves the nonregulated parent corporation of a  
21 regulated company and where there's no change in the  
22 operations of the regulated company.

23 The second instance which does not require  
24 Commission approval is No. 2 over to my right where  
25 the parent of a regulated company merges or sells

1 assets to a nonregulated company and where there is no  
2 change in the operations of the regulated company.

3 The Commission in its October 17th, 1997  
4 letter also noted that where Commission approval is  
5 not required for merger -- for a merger or  
6 consolidation, that those companies submit a letter to  
7 this Commission describing the -- describing the  
8 merger as it took place and notifying the Commission  
9 of the merger's completion.

10 Now turning to SBC and Ameritech. SBC and  
11 Ameritech are two nonregulated parent corporations.  
12 As noted on the board to my right, SBC has created a  
13 straw company, SBC Delaware, to handle the merger.

14 However, as you will note, the merger that  
15 is taking place is identical to No. 1 from the  
16 Commission's October 17th, 1997 letter wherein  
17 Commission approval is not required when two  
18 nonregulated parents are merging and there's no change  
19 in the operation of the regulated entities.

20 SBC's subsidiary, Southwestern Bell, an  
21 incumbent local exchange carrier in this state, will  
22 continue to operate independently without change after  
23 the merger between SBC and Ameritech is consummated.

24 Likewise, Ameritech Corporation's  
25 subsidiary, Ameritech Communications, certificated in

1 this state as a reseller of basic local service, will  
2 continue to operate independently without change after  
3 the merger is consummated.

4 I would like to turn to Exhibit 1, which has  
5 been offered before you, or which has been presented  
6 before you. I've not offered it just yet. And I  
7 would like to direct you to TM-98-168. The Staff did  
8 an analysis of all cases approved by this Commission  
9 as of the letter dated October 17th, 1997.

10 In TM-98-168, which is a merger between MCI  
11 and WorldCom Communications, an application was  
12 submitted on October 17th, 1997, an application for  
13 merger. Subsequently, the parties entered a voluntary  
14 dismissal on November 6th, 1997, citing the  
15 October 17th, 1997 letter, and in that letter stating  
16 that two nonregulated parent corporations were merging  
17 and the regulated subsidiaries remaining the same.

18 Subsequently, a notice closing the case was  
19 issued by this Commission on November 14th, 1997. And  
20 in accordance with the Commission's October 17th  
21 letter, the parties submitted a letter to the  
22 Commission on November 25th, 1997 detailing the  
23 description of the merger and also notifying the  
24 Commission that the merger had been consummated.

25 The second case I would like to point out to

1       this Commission is TM-98-268, which is a merger  
2       between Davel Communications Group and Communications  
3       Central Incorporated, which I will refer to as CCI.  
4       In this case, it is very similar to the case that is  
5       present before us today in terms of the SBC/Ameritech  
6       merger. Davel created a subsidiary to handle the  
7       merger. Again, that subsidiary was nonregulated.

8               In TM-98-268, the application was filed on  
9       December 29th, 1997. Subsequently, the Staff issued a  
10      Staff recommendation on January 13th, 1998, and in  
11      Staff's recommendation again it cited the October 17th  
12      letter stating that Commission approval was not  
13      required where two nonregulated parent corporations  
14      were merging and there was no change in the operation  
15      of the regulated subsidiaries. In TM-98-268 the  
16      regulated subsidiaries would continue to operate  
17      independently.

18             Subsequently, on January 22nd, 1998, this  
19      Commission entered -- or this Commission ordered --  
20      issued an Order dismissing TM-98-268 for lack of  
21      jurisdiction, stating that approval was not required  
22      in this instance.

23             SBC and Ameritech again mirror the two cases  
24      that I've just presented to you. And in closing,  
25      although Staff believes that the SBC/Ameritech merger

1 clearly does not fall within this Commission's  
2 jurisdiction, Staff still encourages this Commission  
3 to actively participate and comment on the  
4 SBC/Ameritech merger before the Federal Communications  
5 Commission and in their comments possibly address  
6 Mr. Dandino's questions.

7           However, before us here today, the Staff is  
8 merely saying what it believes is the appropriate  
9 forum in which to actively participate and review the  
10 SBC/Ameritech merger.

11           Thank you.

12           JUDGE MILLS: Mr. Lane?

13           MR. LANE: Thank you, your Honor. May it  
14 please the Commission? I'm Paul Lane. I'm here on  
15 behalf of Southwestern Bell Telephone Company, and  
16 I'll be addressing the two issues that the Commission  
17 has set for oral argument, the jurisdictional issue  
18 and the question of what, if anything, should be  
19 included in the comments that this Commission files  
20 with the FCC pertaining to the Ameritech/SBC merger.

21           While I'll be making arguments, I do have  
22 some additional people here that may be able to answer  
23 any questions that the Commission has. I'll take just  
24 a moment to introduce them.

25           Ed Eckhart is our Assistant General Counsel

1 with SBC Communications. He's here and is familiar  
2 with activities in other states.

3 From Ameritech, Richard Hetke, H-e-t-k-e, is  
4 here. He's counsel in the anti-trust area and is  
5 familiar with the merger activities that have been  
6 going on around the country.

7 Nancy Wittebort is also an attorney with  
8 Ameritech in the regulatory area, and she's familiar  
9 with the certification of Ameritech Communications  
10 International, Inc. here in Missouri, as well as their  
11 tariffs and issues surrounding that company.

12 Ameritech has also brought Paul Osland,  
13 O-s-l-a-n-d, who's the Director of Corporate Strategy,  
14 and he's familiar with what Ameritech refers to as  
15 Project Gateway, which was their project in St. Louis  
16 involving the cellular company provision of local  
17 exchange service to their cellular customers.

18 And also Alan Ashworth, who is --  
19 A-s-h-w-o-r-t-h, who's the Manager of Corporate  
20 Strategy for Ameritech. I believe he works for  
21 Mr. Osland and is also familiar with the Project  
22 Gateway issue.

23 And I don't know how the Commission wants to  
24 proceed, but if you have questions later, they'll be  
25 available to answer any questions.

1           There are two issues for the Commission to  
2     consider. The first is the jurisdictional issue, and  
3     I'll address that. Let me just correct one or two  
4     items on this chart that the Staff was using. This  
5     would appear that SBC Delaware is a holding company or  
6     a parent of Southwestern Bell Telephone. That is not  
7     accurate. It's also a first tier subsidiary of SBC  
8     Communications, and it was created especially and only  
9     for purposes of this merger.

10           And so this should reflect that Southwestern  
11    Bell Telephone Company is a first tier subsidiary of  
12    SBC Communications, and it should show SBC Delaware  
13    also as a first tier subsidiary of SBC Communications.

14           Over here on the other side we have  
15    Ameritech Corporation as the ultimate parent company.  
16    We have listed Ameritech Communications, Inc. That is  
17    also a company which holds the stock of another entity  
18    called Ameritech Communications International, Inc.,  
19    or ACII as I'll refer to it here. And ACII is the  
20    entity which is certificated by this Commission to  
21    provide local exchange and other services.

22           After the merger takes place, what this  
23    chart would reflect would be SBC Communications at the  
24    top with Southwestern Bell Telephone Company still as  
25    a first tier subsidiary and, in addition, Ameritech



1 Corporation would be a first tier subsidiary like  
2 Southwestern Bell Telephone Company under SBC  
3 Communications.

4 Ameritech will continue to own its interests  
5 in Ameritech Communications, Inc. Ameritech  
6 Communications, Inc. will continue to own its interest  
7 in ACII. So that's the form of the merger that we're  
8 talking about.

9 I have some charts and other information  
10 that I think may be of some assistance to the  
11 Commission, and if you prefer I'll mark them as an  
12 exhibit. Is that the preference?

13 JUDGE MILLS: That will be fine. Thank you.  
14 Let's mark this as Exhibit 2.

15 (EXHIBIT NO. 2 WAS MARKED FOR  
16 IDENTIFICATION.)

17 JUDGE MILLS: Mr. Lane, would you care to  
18 tell us what exactly this is for purposes of  
19 identifying it in the record?

20 MR. LANE: Yes. There's eight tabs in it.  
21 The first tab contains the sections of the Missouri  
22 statutes that Public Counsel has cited in support of  
23 its argument that the Commission has jurisdiction.

24 The second tab contains various Commission  
25 actions and related pleadings that deal with what the

1 Commission has done with jurisdictional issues like  
2 this in the past.

3 Tab 3 is copies of the relevant portions of  
4 Ohio and Illinois statutes governing jurisdiction over  
5 mergers.

6 Tab 4 is some relevant sections from the  
7 Illinois and California statutes concerning the  
8 sharing of, quote, merger savings.

9 Tab 5 is a portion of the public interest  
10 portion of the filing that SBC and Ameritech made with  
11 the FCC that explained the rationale behind the  
12 merger, what the public benefits are from it, and how  
13 it will work when it all goes through.

14 Tab 6 is an affidavit that is from Paul  
15 Osland, who I introduced earlier. His affidavit is  
16 one of the attachments to this public interest showing  
17 that's part of Tab 5.

18 There were, in fact, a dozen affidavits that  
19 were included for the Commission's interest. We have  
20 all of those available if you want all of the  
21 affidavits, but I chose this one in particular because  
22 it discusses the Project Gateway that I mentioned  
23 earlier, which is the ACII offering of local exchange  
24 service in Missouri and tells what was behind that  
25 from Ameritech's perspective.

1           Tab 7 is simply a listing of companies that  
2           have been certificated in Missouri and have had  
3           interconnection agreements approved or arbitrations  
4           conducted.

5           And Tab 8 is a couple of maps, one of which  
6           shows areas in which we -- the combined company will  
7           operate under a National-Local statute that I'll  
8           explain to you in a moment. The other is a map  
9           showing different facilities-based providers in the  
10          St. Louis market.

11          JUDGE MILLS: Thank you. Given that,  
12          although it's not terribly descriptive, I think for  
13          the purposes of the record we will call this  
14          Southwestern Bell Telephone oral argument material as  
15          it's labeled on the front of the book. Please go  
16          ahead.

17          MR. LANE: Thank you, your Honor.

18          Public Counsel claims that there's three  
19          statutory sections that give the Commission authority  
20          to approve or disapprove of the merger. I'd like to  
21          take each of those in order. They're listed under  
22          Tab 1.

23          The first one is Section 386.250, and they  
24          cite to subsection 2 of that, and you can see if you  
25          read that that there's no discussion of any merger

1 authority given to the Commission whatsoever in this  
2 section. It discusses the Commission's jurisdiction  
3 over facilities, services and companies that are  
4 operating in the state.

5 It's not applicable to mergers. It's not  
6 applicable to Ameritech Corporation, SBC  
7 Communications or SBC Delaware. None of those are  
8 telecommunications companies operating in Missouri or  
9 certificated by the Commission.

10 The second section which Public Counsel  
11 cites is Section 386.320. Section 1 of that gives the  
12 Commission some general supervisory powers over  
13 telephone companies. Subsection 2 gives the power to  
14 inspect property, and subsection 3 gives the power to  
15 examine books and records of a corporation subject to  
16 the Commission's jurisdiction.

17 Nothing in 386.320 gives any jurisdiction  
18 over merger activity. Nor is this section applicable  
19 to Ameritech Corporation, SBC Communications or SBC  
20 Delaware. None of them are telecommunications  
21 companies that are subject to this Commission's  
22 jurisdiction.

23 The third statutory section that the  
24 Commission cites is the one that's really the heart of  
25 the issue here, is Section 392.300. This is the

1 specific statute which governs the Commission's  
2 authority over merger activities.

3 And I will say in reference to the other two  
4 statutory sections that we cited that to the extent  
5 one could argue, as Public Counsel does, that they  
6 give some implied authority over merger activities,  
7 the law is very clear that when you have a specific  
8 section dealing with a subject, like 392.300, that it  
9 controls and overrides any, quote, general supervisory  
10 authority given in the other two sections of the  
11 statute.

12 And I would cite to the Commission a recent  
13 case by the Missouri Supreme Court en banc, Greenbriar  
14 Hills Country Club vs. the Director of Revenue.  
15 That's at 935 SW 2nd 36.

16 Now, the real question before the Commission  
17 is whether Section 392.300 applies to this merger, and  
18 the answer is that it does not. Subsection 1 is the  
19 relevant section.

20 The first part of it discusses the  
21 Commission's authority over the sale, assignment,  
22 lease or transfer of franchises, facilities or systems  
23 of either Southwestern Bell Telephone Company or ACII.  
24 There is no sale, assignment, lease or transfer of the  
25 franchises of any -- of either of those two entities.

1           The second portion of Section 392.300.1  
2       deals with merger, consolidation. There is no merger  
3       or consolidation, direct or indirect of the lines,  
4       systems or franchises of Southwestern Bell Telephone  
5       Company or ACII. Each remains separate, and there's  
6       no change in the operations of those entities subject  
7       to the Commission's jurisdiction.

8           And I note in particular the third section,  
9       the third sentence that subsection which provides that  
10      any merger made without an order of approval from the  
11      Commission is void, and I'll come back to that in a  
12      little bit.

13          Subsection 2 clearly isn't applicable. I  
14      don't think Public Counsel claims that it does. That  
15      deals with the acquisition of 10 percent or more of  
16      the stock of either ACII or Southwestern Bell  
17      Telephone Company.

18          Now, the Commission has previously construed  
19      the statute, as Ms. Bryant told you, as not being  
20      applicable to merger activities by parent or affiliate  
21      of a regulated company. Tab 2 of the handout that I  
22      gave you covers that.

23          The third item in there is an October 17,  
24      1997 form letter which, my understanding is, was  
25      approved by the Commission that sets out the

1 Commission's interpretation of the statute.

2 And you can see on the first page there in  
3 the items numbered one and two the Commission says  
4 that it does not have jurisdiction, one, where a  
5 merger or consolidation involves nonregulated parent  
6 corporations of a regulated company and when there's  
7 no change in the operations of the regulated company;  
8 No. 2, where the parent corporation of the regulated  
9 company merges or sells assets to a nonregulated  
10 entity and there are no changes in the operations of  
11 the regulated company.

12 The Commission has consistently since  
13 October of '97 interpreted and applied that analysis.  
14 I've attached two cases, one of which was referred to  
15 by Ms. Bryant in her presentation, that are also part  
16 of Tab 2.

17 And I would echo the comments that she made  
18 that the Commission's determination in Case  
19 No. TM-96-268 is on all fours with the situation that  
20 we're presented here.

21 In that case, Davel -- if that's how one  
22 pronounces it -- was a parent corporation of  
23 Telalasing Enterprises, which was a pay phone and IXC  
24 provider in Missouri certificated by the Commission.  
25 Davel had created a subsidiary called Panther for

1 purposes of the merger, which was merging with a  
2 company called CCI, which in turn was the parent  
3 company of CCG. That company was the certificated pay  
4 phone provider by this Commission.

5 If we substitute SBC for Davel and we  
6 substitute Ameritech for CCI, we're talking about the  
7 exact same situation in that case as was dealt with by  
8 the Commission in TM-96-268. And the Commission found  
9 in that case, and properly so, that there was no  
10 jurisdiction.

11 On page 2, the first paragraph of that  
12 decision, I'll quote from it, the Commission has  
13 determined that where the parent corporation of a  
14 regulated company merges or sells assets to a  
15 nonregulated entity and there are no changes in the  
16 operations of the regulated company, the transaction  
17 does not fall within the Commission's jurisdiction.  
18 Therefore, the transaction does not require Commission  
19 approval.

20 There's no difference between this case and  
21 TM-96-268 -- or 98-268, and the Commission's  
22 determination should be the same.

23 There's also in Tab 2, I've attached a  
24 letter dated August 14th of '98 from 360 Degree Long  
25 Distance, Inc. advising that parents of a regulated



1 entity had merged with a nonregulated entity, Alltel  
2 in that case, and that no approval was required under  
3 the Commission's October 17, '97 interpretation.

4 That was the process that the Commission set  
5 in place. It wanted notification, and many of the  
6 carriers have done exactly that.

7 It's not attached, but my understanding is  
8 AT&T submitted a similar notification letter to the  
9 Commission on February 2nd of '98 pertaining to its  
10 acquisition of TCG. Birch and Value Line submitted a  
11 similar letter on January 23rd of '98, Qwest  
12 Telecommunications and TelTrust on December 7th of  
13 '97, WorldCom and Brooks Fiber on October 24th of '97,  
14 and WorldCom and MCI, part of which is attached also  
15 in Tab 2.

16 The Commission's analysis was correct in all  
17 of those cases. It did not have jurisdiction. But  
18 it's also clear as a legal matter that the Commission  
19 can't treat Southwestern Bell Telephone Company  
20 different than it treats other companies that come to  
21 it for mergers.

22 There's nothing in the statute that says you  
23 have discretion to do it here but you don't have it  
24 over there. The law is that you have -- if you have  
25 the authority and you don't exercise it, then the --

1 if you don't approve it, the transaction's void.

2 If this Commission were to reverse its  
3 interpretation and find that it has jurisdiction over  
4 mergers of this type, it's going to create a lot of  
5 trouble for all these other companies that have  
6 complied with the Commission's views and  
7 interpretations of the statutes and have completed  
8 their transactions in reliance on that.

9 Those transactions are all void if the  
10 Commission changes its mind and says it does have  
11 jurisdiction.

12 The Commission obviously should proceed  
13 cautiously given what it's done in the past, and we  
14 believe that the Commission's interpretation of the  
15 statute is correct and should continue to be followed.  
16 There's certainly no legal basis to treat Southwestern  
17 Bell differently than it treats any other companies  
18 that come to it for merger activity.

19 Public Counsel has pointed out that the  
20 Illinois and Ohio Commissions are reviewing the merger  
21 and says this Commission should do the same, but  
22 Public Counsel doesn't point out that there are  
23 significant differences in the statutes that govern  
24 the Illinois and the Ohio Commissions.

25 I've attached those at Tab 3 of the handout

1 that I've given to you. If I may ask you to look  
2 first at Ohio, Section 4905.402(B) makes it clear that  
3 you may not acquire control of a domestic telephone  
4 company or a holding company controlling a domestic  
5 holding -- telephone company without the approval of  
6 the Commission.

7 So it's abundantly clear that in Ohio the  
8 legislature has said you have jurisdiction not only  
9 over the domestic telephone company but over its  
10 holding company as well.

11 And in subsection A of that in Tab 3 it also  
12 defines what control means and says acquisition of  
13 20 percent or more of the voting stock of the holding  
14 company would be construed as a change in control.

15 And so in Ohio where Ameritech Ohio operates  
16 and Southwestern Bell is acquiring 100 percent of the  
17 stock of Ameritech Corporation, it's clear that the  
18 statute does apply, and that's why the Commission has  
19 appropriately in that case set up a docket to analyze  
20 whether it will or won't approve the merger.

21 Similarly, I've attached the Illinois  
22 statute, Section 7-204(b) and (a). B says, first  
23 sentence, no reorganization shall take place without  
24 prior Commission approval, and subsection A defines  
25 what the Illinois legislature means by reorganization,

1 and it says specifically that reorganization is one  
2 which results in a change in the ownership of the  
3 majority of the voting capital stock of an Illinois  
4 public utility or the ownership or control of any  
5 entity which owns or controls a majority of the voting  
6 stock of a public utility.

7 So again, the statute in that case made it  
8 abundantly clear that the Illinois Commission does  
9 have jurisdiction because Ameritech Illinois is a  
10 subsidiary of Ameritech Corporation. Southwestern  
11 Bell Corporation -- SBC Communications is acquiring  
12 100 percent of the stock of Ameritech Corporation. So  
13 under the specific terms of the statute, that  
14 Commission has jurisdiction.

15 That stands in pretty stark contrast to  
16 Missouri, which is not phrased in those terms of  
17 acquiring jurisdiction through the holding company.

18 Even if the Commission had jurisdiction in  
19 this case, which it, I think, clearly does not, some  
20 of the recommendations that the Public Counsel has  
21 said the Commission should follow are not -- would not  
22 be within the Commission's authority.

23 Specifically, Public Counsel wants to impose  
24 a number of different conditions on the merger before  
25 the Commission were to approve it. But the statute

1 doesn't give the Commission authority to impose  
2 conditions. It either approves or disapproves.

3 And that stands in contrast to another  
4 section of the statute where the Commission is given  
5 specific authority to impose conditions, and that's  
6 Section 392.361, which deals with competitive  
7 classification of services and companies. The  
8 Commission has clear authority under that section to  
9 impose conditions on companies as it grants it  
10 competitive status or grants it service competitive  
11 status.

12 Had the Legislature wanted to give this  
13 Commission the authority to impose conditions like  
14 that, it knew how to do it. It did it in 392.361, but  
15 it didn't do it in 392.300.

16 The second reason is that the Commission  
17 doesn't have any kind of authority to award monetary  
18 damages or flow, quote, merger savings through to the  
19 ratepayers of Missouri.

20 The courts of this state analyzed that issue  
21 in a case State ex rel Fee Fee Trunk Sewer vs. Litz,  
22 which is at 596 SW 2nd 466, Missouri Appellate Court  
23 decision in 1980. And in that case Fee Fee Trunk was  
24 a regulated sewer company by this Commission, and it  
25 was selling its assets to MSD, over which the

1 Commission didn't have jurisdiction.

2 Some of the subscribers or customers of Fee  
3 Fee had apparently paid in some moneys to Fee Fee in  
4 aid of construction, and they filed a lawsuit in  
5 circuit court saying, we get our money back. Don't  
6 approve -- don't let this merger happen. We want our  
7 money back.

8 And it was defended on the basis that that  
9 action was properly before the Missouri Public Service  
10 Commission, and the court reviewed that on appeal and  
11 decided that it was not because the Missouri Public  
12 Service Commission does not have the authority to  
13 award money damages or to flow revenues through like  
14 that to customers of the company as a result of a  
15 merger, and so it let the lawsuit proceed.

16 And I think that stands as instructive for  
17 this Commission in determining whether it would have  
18 the authority to do what Public Counsel suggests even  
19 if it had jurisdiction.

20 And again, the idea I would imagine comes  
21 from some other states where merger savings have been  
22 proposed to be flowed through to ratepayers, but the  
23 statutes in those states are different than Missouri.

24 In Tab 4 I've attached examples of the  
25 Illinois statute and the California statute which give

1 very specific authority under certain circumstances to  
2 flow those type of savings through. In Illinois it's  
3 Section 7-204(c). It says the Commission shall not  
4 approve a reorganization without ruling on the  
5 allocation of any savings resulting from the proposed  
6 reorganization.

7 I also note in there if you see that  
8 subsection (f) makes it clear that the Commission can  
9 impose certain terms and conditions as part of the  
10 merger approval process. Again, we don't have that in  
11 our Missouri statute.

12 And on the next page in the California  
13 statute, Section 854 also makes clear that the  
14 Commission in terms -- when it's approving a proposed  
15 merger, one of the things it's required to do under  
16 subsection (b)(2) is equitably allocate where the  
17 Commission has ratemaking authority of the total  
18 short-term and long-term forecasted economic benefits  
19 as determined by the Commission of the proposed  
20 merger, acquisition or control between shareholders  
21 and ratepayers.

22 Again, there's no similar provision in  
23 Missouri statutes. So even if this Commission had  
24 jurisdiction to approve the merger, it could not  
25 undertake the kind of actions that Public Counsel is

1 recommending here.

2 Finally, the last reason that the Commission  
3 doesn't have authority to impose some of these merger  
4 savings flow through is the price cap statute in  
5 Missouri.

6 As the Commission's aware, Southwestern Bell  
7 now is under price caps, and under Section 392.245.4,  
8 subdivision 5, we may charge any rate not exceeding  
9 the maximum lawful rate, and the maximum lawful rate  
10 under subsection 3 is -- are those rates that were in  
11 effect December 31st of '96.

12 And so all three of those reasons stand as a  
13 barrier to what Public Counsel proposes here in terms  
14 of flowing merger savings through to customers even if  
15 the Commission had jurisdiction.

16 In summary, the Commission doesn't have  
17 jurisdiction over the merger consistent with its prior  
18 decisions, nor does it have discretionary authority to  
19 take jurisdiction over a merger involving Southwestern  
20 Bell but not other entities which have come before the  
21 Commission under notification process. And even if  
22 the Commission had jurisdiction, it can't impose these  
23 conditions that Public Counsel would recommend.

24 Now, if that -- if the Commission's without  
25 jurisdiction to approve the merger, does that mean



1 that it has no control over Southwestern Bell  
2 Telephone Company? Of course not. It still regulates  
3 us. It still has the ability to oversee our  
4 operations consistent with the statute.

5 We've merged with PacTel, and you-all will  
6 be the better judge of that, but I haven't perceived  
7 any change in this Commission's regulation of  
8 Southwestern Bell from before and after the merger  
9 with PacTel.

10 I would anticipate no change in this  
11 Commission's authority and inclination to regulate  
12 Southwestern Bell Telephone Company after this merger  
13 goes through.

14 Let me turn -- I'll spend a little less time  
15 on comments to the FCC. If this Commission desires to  
16 weigh in on the process, I believe that's the  
17 appropriate place for you to file comments, and as has  
18 been noted, those would be due October 15th. I would  
19 ask --

20 MS. LIPMAN: Your Honor, Rachel Lipman on  
21 behalf of Sprint Communications Company LC.

22 I would just like to register a continuing  
23 objection to Southwestern Bell's testimony at this  
24 point in time. Clearly we were excluded from arguing  
25 the jurisdictional issues. I think to the extent that

1 Southwestern Bell now chooses to address the  
2 Commission with respect to the comments that would be  
3 submitted to the FCC, we think that is very improper  
4 unless other parties are permitted to put their  
5 comments in the record.

6 We also think it's premature. We think the  
7 Commission needs to address and rule on the  
8 jurisdictional question before the merits are  
9 continued, before there is a discussion of merits.

10 Thank you.

11 JUDGE MILLS: Thank you. Your objection is  
12 noted. Please continue.

13 MR. LANE: Thank you, your Honor.

14 We have filed a fairly massive pleading with  
15 the FCC. There's two large white binders back there  
16 that I think comprise our filing with the FCC. I know  
17 that would probably be difficult for the Commission to  
18 read in its entirety before determining what comments  
19 to make.

20 But I would ask if you would look at Tab 5  
21 of what we provided, it's fairly lengthy, but it's  
22 what we filed with the Commission that describes the  
23 public interest in support of the merger, and the  
24 Commission ought to be aware of what SBC's views are  
25 of that before it makes its comments to the FCC.

1 I'll just address three issues, and I will  
2 try to keep this fairly brief. Why is SBC and  
3 Ameritech, why are they doing the merger? Second,  
4 what are the benefits to consumers and competition?  
5 And third, what's the impact on competition here in  
6 Missouri?

7 Why the merger? There's no question but  
8 that the economy is becoming global in nature. We see  
9 it in all aspects of the telecommunications industry.  
10 Some of the more recent activities involve mergers  
11 with Alcatel and DCS, with Northern Telecom and Bay  
12 Networks, and with Teleglobe and Excel.

13 The '96 Telecommunications Act has also  
14 caused a change in the landscape for providing  
15 telecommunications services. Competitors will now  
16 have the ability to provide both local and toll  
17 services to customers throughout the nation.

18 To compete, SBC and Ameritech believe that  
19 they need to acquire economies of scale and scope in  
20 order to match these other competitors. That's not  
21 just our view of the need to achieve these economies,  
22 but we see it in the actions of other companies.  
23 We've seen MCI merge with WorldCom, merge with MFS,  
24 merge with Brooks, four large companies that banded  
25 together and now provide service under one name.

1           We see it with AT&T, TCG, TCI, three other  
2       large companies that have banded together to be  
3       providers of service on a nationwide basis.

4           SBC believes it needs that to compete, and I  
5       believe there's valid reasons for that. We are -- as  
6       a company, Southwestern Bell Telephone Company is very  
7       heavily dependent upon our large business customers  
8       for the revenues that we receive. In the  
9       telecommunications industry it's kind of a general  
10      belief that 20 percent of your customers provide 80  
11      percent of your revenues. In our case we've looked  
12      specifically, and our 809 largest business customers  
13      provide almost 20 percent of our revenues.

14           We see companies that come into Missouri and  
15      our other states focus on those business customers,  
16      and without the ability to try to keep those  
17      customers, we will have a loss of our ability to serve  
18      the mid-size business, small business and the  
19      residential customers.

20           We need to have the base of revenues from  
21      that. As the Commission's aware, part of the reason  
22      for that is that those services are priced well above  
23      costs so that others can be priced below.

24           Our view is that if you're going to remain  
25      competitive, you've got to be able to follow those

1 customers throughout the nation and be able to offer  
2 them a single point of contact for all of their needs.

3 There's some evidence or some description in  
4 the public interest filing in Tab 5 that talks about  
5 the number of Fortune 500 companies that operate in  
6 the combined Ameritech/SBC territory. 224, I believe,  
7 of those companies are headquartered in the service  
8 area of the combined companies.

9 And the view of SBC and Ameritech is that  
10 they need to be able to serve 70 to 80 percent of the  
11 sites of those companies in order to be able to  
12 compete for their business. And this merger will give  
13 70 percent site coverage for 178 of those companies.  
14 It will put us in a position to be competitive with  
15 the MCI/WorldComs and with the AT&T/TCG/TCIs and  
16 others that will be providing service.

17 What are the benefits of this from a  
18 consumer's point of view? There's certainly going to  
19 be increased efficiency in our operations, and that  
20 efficiency ultimately flows through to benefit  
21 consumers. We will be able to better compete. We'll  
22 be able to spread the base of development costs for  
23 new services and new technologies over a wider group.  
24 That will enable us to bring more services to the  
25 market than we otherwise would have been able to and

1 on a faster basis.

2 In our merger with PacTel, the two companies  
3 followed a process which they called best practices.  
4 They examined the practices of both companies and  
5 implemented whichever one they thought was better in  
6 dozens of different areas in order to achieve  
7 efficiencies that ultimately benefit customers.

8 And there has clearly been a benefit to  
9 customers from that merger. I notice that Public  
10 Counsel cited a couple of items where it indicated  
11 that service quality had gone down. That is  
12 incorrect.

13 There's been a substantial increase in the  
14 ability of PacTel to meet the Commission's standard of  
15 service requirements, and there's been a substantial  
16 decrease in the time that it takes PacTel now to  
17 maintain lines for customers. We've gone from an  
18 average of seven to ten days down to one to two days  
19 in terms of being able to get lines that are out of  
20 service back in service. All of those things have  
21 been benefits and part of the best practices analysis  
22 that I told you about.

23 Probably a centerpiece of the proposed  
24 merger is SBC's National-Local strategy. You may or  
25 may not have read of it, but the National-Local

1 strategy is, is that in combination with this merger,  
2 that SBC will go out to an additional 30 of the top 50  
3 markets in the country to provide facilities-based  
4 service both to large business customers in a tenant  
5 type relationship and then to medium- sized business  
6 and residential customers on a facilities basis.

7 That will benefit those customers obviously  
8 in these areas where we go into, but we expect it also  
9 to have a reciprocal effect in Missouri.

10 Just as we believe it's necessary to follow  
11 those large business customers and serve the medium-  
12 sized business and residences as an adjunct to that  
13 outside of our territory, when those companies in  
14 whose territory we operate see the impact of our  
15 coming in, we believe that as a responsive matter that  
16 they are going to need to do the same thing and they  
17 will need to come back into our territory in Missouri,  
18 Texas and elsewhere and compete the same way with us  
19 as we are going to compete with them outside of our  
20 region.

21 Now, can we put a time frame on that, how  
22 long it's going to take, what the level of competition  
23 is? No, but we believe that the facts will spell  
24 themselves out and that that type of competition will  
25 occur.

1           The last area I want to address is the  
2           potential competition in Missouri, and the concern  
3           that some have expressed is that ACII will be -- has  
4           been certificated by the Commission to provide local  
5           service in Missouri, and are we going to lose that?

6           I think there's probably two answers to  
7           that. One answer is that the level of competition  
8           that they were going to provide is not very  
9           significant, but secondly, to the extent that it does  
10          or would have any significance, it won't go away if  
11          someone else would step in its place.

12          Let me take the latter first. Ameritech's  
13          view of this has been that they wanted to be in a  
14          position to provide local service to their cellular  
15          customers, and that's what they had proposed to do,  
16          although they have not done so yet.

17          As the Commission may or may not be aware,  
18          the only service that ACII is providing today in terms  
19          of local service is a trial to about 390 of its  
20          employees in the St. Louis area. They're not offering  
21          general local exchange service to the public.

22          And the affidavit of Mr. Osland tells you  
23          some of the problems that they've experienced with  
24          trying to provide service to those customers, and that  
25          affidavit also spells out that it was intended by



1 Ameritech as a defensive measure, that because of  
2 their expectation that Sprint PCS and AT&T Wireless  
3 would be providing basic service to their cellular  
4 customers, that they needed to do the same.

5 As it's turned out, Sprint hasn't done it.  
6 Neither has AT&T Wireless. So Ameritech's interests  
7 have calmed somewhat.

8 But to the extent that that is a legitimate  
9 area where one can expect competition, it will not go  
10 away, and I say that because the FCC's rules prohibit  
11 a company like SBC from owning both the A side and B  
12 side cellular franchises in a given area. And so  
13 since Ameritech has the cellular in St. Louis and so  
14 does Southwestern Bell, one of those two will have to  
15 go away.

16 Whoever buys that will have the same  
17 incentive to offer basic local service to their  
18 cellular customers as Ameritech does today.

19 So while I think reviewing this will tell  
20 you that that may not be the business opportunity that  
21 it was once thought to be, if, in fact, it becomes  
22 that type of opportunity it won't go away as a result  
23 of the merger. The company who buys, whether it's our  
24 franchise or whether it's the Ameritech cellular  
25 franchise, will have the same incentives and ability

1 to do what Ameritech could do today.

2 I'll say one last thing about conditions,  
3 and this, I suppose you could recommend anything you  
4 want to the FCC, and one of the things that Public  
5 Counsel has recommended is that you require -- that  
6 you recommend that we comply with the 271 check list  
7 as a condition of relief.

8 We think that's inappropriate. I don't  
9 think it's probably lawful, but it's inappropriate  
10 because we clearly have the incentive to get into the  
11 long distance business with or without the merger.  
12 The merger is not related to that.

13 And I'd also point out to the Commission  
14 that the FCC has itself ruled on whether 271 should be  
15 a condition of a merger activity in the Bell Atlantic/  
16 NYNEX merger and in the SBC/PacTel merger, and in both  
17 cases they found that 271 was not an appropriate  
18 condition to attach. So I would suggest it's not  
19 appropriate for the Commission to recommend that to  
20 the FCC.

21 We're ready to answer whatever questions you  
22 have, and that's all I have. Thank you.

23 JUDGE MILLS: Thank you.

24 We've been on the record for about an hour  
25 and 20 minutes. I think at this point we'll take a

1 ten-minute recess until 11:30. Thank you.

2 We're off the record.

3 (A recess was taken.)

4 JUDGE MILLS: Let's go back on the record.

5 We took a recess after we had heard the  
6 initial arguments from Public Counsel, Staff and  
7 Southwestern Bell. While we were off the record, the  
8 Commission has reconsidered the position of Sprint,  
9 McLeod and the other group that Ms. Young mentioned  
10 this morning.

11 In the interest of fairness and taking all  
12 the comments that we can, the Commission will allow  
13 those parties to present discussion of what they  
14 believe should be in the Commission's comments to the  
15 FCC.

16 Inasmuch as the Commission's jurisdiction is  
17 a purely legal question, the Commission is not  
18 convinced that those two or three groups have any  
19 special insight into the law. We're not going to take  
20 time in this proceeding this morning to hear arguments  
21 on jurisdiction from those parties.

22 We would like to get your comments on what  
23 you believe should be contained in the Commission's  
24 comments to the FCC. I think we will do that before  
25 we move on to Public Counsel's reply arguments. Since

1 Sprint applied first, and for no other reason, we'll  
2 allow Sprint to go ahead first.

3 MR. WOODSMALL: Your Honor, Rachel Lipman  
4 will be handling this portion. Thank you.

5 JUDGE MILLS: Thank you.

6 Before we go ahead, are there any questions  
7 on that ruling?

8 (No response.)

9 JUDGE MILLS: Thank you. You may proceed.

10 MS. LIPMAN: Commissioners, your Honor,  
11 thank you very much for allowing us to present our  
12 views on this, on the proposed merger of Southwestern  
13 Bell and Ameritech.

14 I would ask at this time that we have an  
15 exhibit marked as Sprint 1. This is testimony that  
16 was given before the United States Senate Commerce  
17 Committee on Judiciary Antitrust and Business  
18 Subcommittee by William T. Esrey, the Chairman and  
19 CEO.

20 Now, while this particular hearing was  
21 occasioned by the Bell Atlantic and GTE merger,  
22 Mr. Esrey has a number of comments that are directed  
23 to the SBC/Ameritech merger and some facts and figures  
24 that may be of interest to you, and we'd ask to have  
25 this marked as an exhibit and admitted.

1 JUDGE MILLS: Thank you. If you would give  
2 three copies to the court reporter, a copy to each  
3 counsel present and six copies to the Bench.

4 MS. LIPMAN: I think we have six copies for  
5 the Bench. I'll provide my one remaining one to  
6 Southwestern Bell. We'll get copies for everyone  
7 else.

8 (EXHIBIT NO. 3 WAS MARKED FOR  
9 IDENTIFICATION.)

10 MS. LIPMAN: May it please the Commission?

11 We believe that the mere size of the  
12 combined entities alone should give you great cause  
13 for concern. Last year, as reported in their Annual  
14 Report, SBC had revenues of \$24.8 billion. This  
15 included \$15.4 billion of revenues from their  
16 regulated teleco operations. Ameritech had revenues  
17 of \$16.0 billion, including \$9.5 billion from  
18 regulated teleco operations. This does not include  
19 SBC's recent acquisition of SNET, adding another  
20 2-billion-plus of annual revenues.

21 So what we're talking about here is a  
22 company that generates \$43 billion in annual revenues  
23 with nearly two-thirds of those revenues coming from  
24 regulated monopoly teleco operations. These are  
25 monopoly operations that have experienced few

1 competitive inroads.

2 Viewing the merger from an access line  
3 perspective is equaling unsettling. The old  
4 Southwestern Bell states, the five states, Kansas,  
5 Oklahoma, Texas, Missouri and Arkansas, comprise  
6 15.3 million access lines. The merger with PacTel  
7 added 17.92 million access lines. The SNET  
8 acquisition resulted in an additional 2.23 million  
9 access lines.

10 Now Ameritech looms on the horizon with  
11 20.55 million access lines. This combination would  
12 control 56 million access lines or 35 percent of all  
13 lines served by the FCC's so-called Tier 1 local  
14 telephone companies.

15 With the GTE merger, GTE/Bell Atlantic  
16 merger also on the horizon they too would control  
17 about a third of the nation's access lines. So you  
18 would have two companies controlling two-thirds of the  
19 nation's access lines.

20 We do not believe that was what was  
21 contemplated by Congress when they enacted the Telecom  
22 Act of 1996. The combined power and muscle of the  
23 SBC/Ameritech combo was frightening to all companies  
24 who have to deal with these companies on a daily basis  
25 as both customers and competitors.

1 All of you are familiar with Sprint's new  
2 ION service which was announced with much fanfare in  
3 June of this year. Bringing this service to market  
4 has been a challenge, in part because of  
5 obstructionist behavior by Southwestern Bell.

6 As you may know, when telephone companies  
7 roll out new services, introduction of that new  
8 service is preceded by alpha and beta testing. Alpha  
9 testing is done in-house. Beta testing is done with  
10 existing customers or, as we call them, friendlies.

11 In the case of Sprint ION, Southwestern Bell  
12 initially attempted to prevent us from testing ION at  
13 Sprint locations in Kansas City. Southwestern Bell  
14 said that Sprint's agreement with them did not  
15 contemplate ION service, and, therefore, testing would  
16 not be prohibited -- would not be permitted.

17 Finally, after much wrangling, Sprint was  
18 permitted limited testing at Sprint facilities.  
19 However, provisioning of service has not been an easy  
20 or seamless process.

21 On August 24, Sprint filed its local resale  
22 tariff in Missouri, a critical component to initial  
23 roll-out of Sprint ION service to beta customers. The  
24 tariff stated an effective date of October 12, a date  
25 that Hallmark and others have been counting on for

1 more than six months.

2 Last Thursday, on September 24, one month  
3 after the tariff was filed, Southwestern Bell filed a  
4 motion to have the tariff suspended, alleging that if  
5 Sprint -- alleging that Sprint would be in violation  
6 of its CLEC certificate if it is permitted to offer  
7 ION service, since initial roll-out only contemplates  
8 service to few -- a couple of these beta business  
9 customers.

10 Now, these are two anecdotal incidents, but  
11 we realize -- and we realize one matter is now pending  
12 before you, but we submit that this is evidence of why  
13 an inquiry into this proposed merger is essential, and  
14 it's further evidence that local markets are far from  
15 open to competition.

16 Public service commissions were originally  
17 established to protect ratepayers from the abuses of  
18 public utility monopolies who had been granted  
19 franchises from the State. In the last decade  
20 ratepayers have not only been the parties -- have not  
21 been the only parties who have ought remedies from the  
22 Public Service Commission.

23 Sprint finds itself in the unenviable  
24 position of being a customer and competitor of  
25 Southwestern Bell and Ameritech. Sprint believes the



1 aggregation of local market monopolies gives these  
2 large companies an increased ability and incentive to  
3 discriminate against rivals and to leverage their  
4 local monopolies.

5 Sprint believes that the Missouri Public  
6 Service Commission and other state public utility  
7 commissions are uniquely positioned and equipped to  
8 ensure that monopoly franchises they granted are not  
9 abused to discriminate against rivals.

10 Bigger is not better in this instance. As  
11 Judge Learned Hand observed more than 50 years ago,  
12 possession of unchallenged economic power deadens  
13 initiative, discourages thrift and depresses energy.  
14 Immunity from competition is a narcotic and rivalry a  
15 stimulant. To industrial progress, the spur of  
16 constant stress is necessary to counteract an  
17 unenviable disposition to let well enough alone.

18 We urge you to take this into consideration  
19 as you prepare your comments to the FCC. I urge you  
20 to take a close look at Mr. Esrey's comments to the  
21 Senate Antitrust Subcommittee, and keep in mind that  
22 this is a transaction that will certainly affect the  
23 landscape for years to come.

24 Thank you very much.

25 JUDGE MILLS: Thank you. Ms. Young?

1 MS. YOUNG: Thank you, Judge Mills. May it  
2 please the Commission?

3 We do appreciate the opportunity to address  
4 you, and I promise this will be very brief and not  
5 burdensome.

6 On behalf of McLeod U.S. Telecommunications  
7 Services, Inc., let me state that from a policy  
8 perspective McLeod believes the Missouri Public  
9 Service Commission should examine the proposed  
10 SBC/Ameritech merger's impact on competition.

11 McLeod's position is that mergers among  
12 monopolists or virtual monopolists do not promote  
13 competition. Therefore, whether at the Missouri  
14 Public Service Commission or in the Commission's  
15 comments before the FCC, McLeod recommends that  
16 conditions that promote competition be included.

17 If the merger is to be approved, these  
18 conditions should be prerequisites to the consummation  
19 of the merger, not conditions that can be accomplished  
20 after the merger has already taken place.

21 On behalf of the Telecommunications  
22 Resellers Association, I prepared a Request for  
23 Participation Without Intervention before the  
24 Commission. Unfortunately, the comments that TRA  
25 proposed to accompany that did not arrive in time for

1 me to bring them this morning as an exhibit. And so I  
2 would request leave to go ahead and provide those to  
3 you later in the day today.

4 Those comments will raise some concerns and  
5 suggest that some prerequisite conditions be imposed  
6 on the merger if it is to approved.

7 That's all I have to say. Thank you.

8 JUDGE MILLS: Thank you. Mr. Dandino, your  
9 responsive argument, please.

10 MR. DANDINO: Thank you, your Honor.

11 It's interesting that the Staff has back-  
12 tracked on their position on jurisdiction. A couple  
13 of weeks ago they filed a reply to our motion saying  
14 that you had jurisdiction but shouldn't exercise it.  
15 Now today they come before you and say you have no  
16 jurisdiction.

17 I also find it very interesting that on  
18 May 2nd, 1997, this Commission in TM-97-274,  
19 application of MCI Telecommunications Corporation,  
20 Inc. and others and Teleconnect Long Distance Services  
21 and Systems Company, Inc. for approval of merger or in  
22 the alternative for a finding of no jurisdiction, this  
23 Commission looked at the same statute we're talking  
24 about here today, 392.300.1, and found that since the  
25 applicant's parent corporation is directly involved in

1 the merger, applicants may be considered to be  
2 indirectly merged or consolidated along with its  
3 parent MCI.

4 Under these circumstances, the Commission  
5 determines the inapplicability of Section 392.300 RSMo  
6 1994 has not been clearly demonstrated. Thus the  
7 Commission declines to find it has no jurisdiction  
8 over the proposed merger between MCI Corporation and  
9 BT.

10 Of course, this is before the October 17th  
11 letter that the Commission -- of 1997, but I would  
12 suggest that in TM-98-406, June 9th, 1998, this  
13 Commission once again took jurisdiction and approved a  
14 merger even though the applicants stated that the  
15 transfer of control would be seamless and would have  
16 no adverse impact on LCIT and USLDI's customers in  
17 Missouri.

18 We'll just point out in that letter of  
19 October 17, 1997, there's two key elements. One, this  
20 is the nonregulated parent and the unregulated  
21 subsidiary, but I think the most -- the key thing to  
22 look at, the absolute key thing is that there's no  
23 change in the operation of the regulated company.

24 Can you say that about Ameritech? Can you  
25 say that to the FCC? I think not. I think this

1 Commission has to look into that. I think you have to  
2 look into whether it's going to change the operation  
3 of Southwestern Bell Telephone.

4 Comments of counsel is not evidence. Their  
5 exhibit that Southwestern Bell has provided, this  
6 exhibit is -- I don't think it has been offered, but I  
7 still think that if you look at this, you can't just  
8 look at this. These are mostly filed pleadings.

9 Yes, there is an affidavit, but it's only  
10 part of the story. This is only part of the story,  
11 and this is exactly the reason why this Commission  
12 needs to look into it. You have Southwestern Bell's  
13 story. You've got one of many affidavits in here.

14 This Commission shouldn't be making these  
15 decisions based on that. You should make decisions  
16 based on a whole record, a complete record. And I  
17 think that's -- I think that's your duty. That's your  
18 duty to the citizens of Missouri. That's your duty to  
19 yourselves.

20 Furthermore, I think because it's a fact  
21 issue, the fact issue of what's going to happen in  
22 Missouri, you have to look at what's going to happen  
23 in Missouri.

24 Southwestern Bell -- when we're looking at  
25 legal argument, Southwestern Bell points out to all

1 the statute and says it doesn't say merger in there.  
2 It doesn't say merger in there. General supervision  
3 certainly is a broad term. Massachusetts' public  
4 utility agency didn't have any problem looking at  
5 mergers when they just had general supervision.

6 And it's kind of a unique situation.  
7 They're saying, well, SBC Corporation is not a  
8 telecommunications company. Ameritech is not a  
9 telecommunications company doing business in the  
10 state. Look behind what's really happening. Look at  
11 what the consequences are to Missouri.

12 Mr. Lane pointed out that if the Commission  
13 changes its decision on this, on whether they have  
14 jurisdiction or not, you're going to void all these  
15 transactions that went on before where you declined  
16 jurisdiction, you did not have these companies apply  
17 for mergers.

18 I think that is a total misreading and  
19 misapplication of what the law -- how the law  
20 operates. Administrative bodies do not operate  
21 necessarily on precedent. They're not bound by stare  
22 decisis.

23 The question of whether you can impose  
24 conditions on the merger, granted it doesn't  
25 necessarily say anything about whether you can impose

1 conditions, but if this Commission says -- but this  
2 Commission in many times when they make a decision  
3 they give it -- and the perfect example is the TRIMS  
4 decision they decided just this week where they  
5 rejected Southwestern Bell's tariff and said, well, if  
6 you change the informational letter and if you don't  
7 apply it to 911, if you don't apply it and follow the  
8 other wise decisions we say in here, we may approve  
9 it.

10 How is that different in a merger, that we  
11 don't like this and this doesn't serve the public  
12 interest, but if you do this, this and this, we may  
13 find it's in the public interest and we may approve  
14 this merger? I think it is no difference.

15 Southwestern Bell hones in on the issue of  
16 savings. I'm not -- savings is but one of those 12  
17 issues I brought up. Savings is only one of the  
18 remedies, and I still think, price caps or not, price  
19 caps deal with rate cases, and I still think that  
20 Southwestern Bell can voluntarily reduce their rates  
21 if they want the merger.

22 But they hone in on the savings, and I think  
23 there's other issues. There's service quality issues.  
24 There's competitive issues, and there's assuring that  
25 there's no barriers to entry.

1           I think those other issues that we've  
2       addressed in our written suggestions need to be  
3       considered. I think the Commission should look --  
4       when they're even putting together their comments for  
5       the FCC, they're going to look at this in piecemeal, a  
6       comment here, a comment there. And I think it's  
7       important that there -- while there may not be time to  
8       have a full evidentiary hearing to base your comments  
9       on, probably this Commission doesn't even need  
10      anybody's input if they want to make comments to the  
11      FCC, but I still think it is important to do so.

12           But it is vitally important that this  
13      Commission don't take a piecemeal approach in trying  
14      to determine how this affects Missouri. I think you  
15      need to take up this issue and make a determination  
16      and come to the table with the FCC and the Department  
17      of Justice as an equal member of that public agency  
18      triad and give your opinion based on evidence, an  
19      informed decision on its effect on Missouri.

20           I ask you to take jurisdiction and to -- and  
21      to hold hearings and give interested parties and the  
22      public an opportunity to participate.

23           One of the first maxims I ever learned in  
24      law school was the law helps those that help  
25      themselves, often the vigilant, sometimes the sleepy,



1 but never the acquiescent. I ask you not to  
2 acquiesce. I ask you on behalf of the consumers of  
3 the State of Missouri and for the competitive  
4 environment of the State of Missouri to take  
5 jurisdiction and make an informed decision.

6 Thank you.

7 JUDGE MILLS: We'll now have questions from  
8 the bench. Chair Lumpe?

9 CHAIR LUMPE: Mr. Dandino, one of the  
10 sections in the statute that was raised was 392.300.  
11 I think at one point you cited something where we --  
12 the Commission said wasn't clear whether we had  
13 jurisdiction in these parent company mergers, and then  
14 we followed up with a letter.

15 I'd like your comments on that section of  
16 the statute. I'd like your comments also on the  
17 reason there was no comment from your office when the  
18 letter was produced or when other similar cases came  
19 before us, the PacTel, the MCI/WorldCom.

20 And the last thing is, and I think you were  
21 somewhat addressing this, can we do all this by  
22 October 15th, this evidentiary hearing and all of  
23 these public hearings, et cetera, to have comments to  
24 the FCC by October 15th? Those three questions are  
25 the ones I have of you.

1 MR. DANDINO: Let me first take -- I'll take  
2 them in reverse order. Can you do them all? I think  
3 you can -- I would separate the FCC comments from, I  
4 think, the investigation and the findings of this  
5 Commission on the proposed merger. I think you have  
6 to because the FCC has not given much time to any  
7 parties to respond to it.

8 I think you can respond to the FCC and  
9 proceed with your own proceeding at the same time. I  
10 don't think they're mutually exclusively.

11 Secondly, why Public Counsel didn't comment  
12 on them? Well, in many cases these are mergers of  
13 interexchange companies, and many times we don't  
14 comment on everything that crosses our desk or even  
15 comment on the letter. Sometimes you have to look  
16 at -- to give a specific example, a specific  
17 situation.

18 This is such a unique situation. These are  
19 two neighboring RBOCs, and they're competitors in the  
20 St. Louis area, in the St. Louis metropolitan area and  
21 other Southwestern Bell exchanges, I would imagine.

22 But it's completely -- I think it's a  
23 completely different situation based on its size and  
24 based on that RBOCs are treated differently under the  
25 Federal Telecommunications Act for a very good reason.

1                   And my comments on the 392.300 is, you know,  
2                   I believe is broad enough to include a review of these  
3                   mergers.

4                   CHAIR LUMPE: Let's say we investigate using  
5                   392.300 as authority and we investigate. What  
6                   relevance is our investigation or our findings if  
7                   we've already commented to the FCC and perhaps our  
8                   investigation shows something different from what we  
9                   commented to the FCC?

10                  What relevance is there then in doing it in  
11                  this sort of fragmented way?

12                  MR. DANDINO: Well, I think it has relevance  
13                  in that if you have jurisdiction to approve or  
14                  disapprove and you disapprove it, then it is not a  
15                  lawful merger to operate in this state. They couldn't  
16                  operate under merged conditions in this state.

17                  And I think it would also have an impact to  
18                  the Department of Justice and to the FCC even if you  
19                  made comments that you've subsequently found out  
20                  additional information and have changed your position.

21                  CHAIR LUMPE: Thank you. Mr. Lane, could I  
22                  ask you a couple of questions, too?

23                  I think the main concern that I have heard  
24                  and that I have had some concerns about is the issue  
25                  of barriers to entry and our role in trying to

1 prohibit barriers to entry and the concern that this  
2 would indeed create a barrier to other competition.

3 The second issue is the savings and the  
4 conditions. Is it your position that unless those are  
5 specifically allowed, we are prohibited from  
6 addressing savings or putting conditions on? And the  
7 last sort of ties in with the first. If it's not a  
8 barrier to entry, how is competition enhanced by this  
9 merger?

10 MR. LANE: Okay. The federal statute that  
11 talks about barriers to entry is designed to say that  
12 carriers can come into the state and operate, that you  
13 can't preclude them from doing that.

14 The statute takes care of that already. It  
15 provides that carriers -- SB 507 made a change in that  
16 and provides that companies can come in and be  
17 certified and operate in the state. And I'm sure the  
18 Commission's aware, and you'll see it in Tab 7, I  
19 believe, of the handout that I gave, that identifies  
20 all of the companies that have come in and been  
21 certified.

22 But in total I think we have 46 CLECs that  
23 have been approved to operate in the state and 23 more  
24 pending, and we have 49 interconnection agreements  
25 signed, 29 of them approved and 82 more that are under

1 negotiation. That tells you that there's not a  
2 barrier to entry into the Missouri local exchange  
3 market, and that is resolved. I may not be  
4 catching --

5 CHAIR LUMPE: Let me follow up on that,  
6 though. There's no barrier to their being  
7 certificated, having the tariff, and maybe that's all  
8 the law requires, but is there in effect a barrier to  
9 their actually providing service?

10 MR. LANE: No, there is not. Any carrier  
11 that wants to provide service is equally able to after  
12 this merger as it is before, and these carriers and  
13 companies that are sitting in the back of the room  
14 today all presumably intend to do so and to come in  
15 and operate.

16 Southwestern Bell Telephone Company's  
17 operations remain the same. This Commission's  
18 jurisdiction over certification and over  
19 interconnection agreements remains the same, and the  
20 Commission will have sufficient and adequate controls.

21 You can't make the companies operate. I  
22 think that's part of the problem that we've seen here  
23 in Missouri, but it does have and continues to have  
24 the authority over the interconnection agreements and  
25 over the certification process.

1 CHAIR LUMPE: Would you address the savings  
2 and conditions issue?

3 MR. LANE: Yes. It is our position that the  
4 Commission does not have -- if it did have approval  
5 over the merger, if it did have jurisdiction -- we say  
6 it doesn't -- this issue arises only if the Commission  
7 finds that it does have the authority to say yes or no  
8 to the merger itself.

9 And our view is, if it says it does, we will  
10 disagree with that, but we would say clearly that the  
11 statute does not give it authority to impose  
12 conditions, some of which Mr. Dandino has mentioned  
13 that he believes appropriate. You do not have that  
14 authority. That's our position.

15 CHAIR LUMPE: I just wanted that clarified.  
16 Thank you.

17 JUDGE MILLS: Vice Chair Drainer?

18 COMMISSIONER DRAINER: Yes. First of all, I  
19 wish to thank the Office of the Public Counsel, Staff  
20 and Southwestern Bell for giving us very well-defined  
21 positions today, and nobody seemed to sit on the  
22 fence. I also wish to thank Sprint and McLeod USA and  
23 the Resellers Association for giving us your positions  
24 with respect to comments to the FCC.

25 Having said that, I only have really a

1 couple questions. Mr. Dandino, to follow up on Chair  
2 Lumpe's questions to you about Public Counsel not in  
3 the past responding on other mergers, I heard you say  
4 that this was unique in that it was the RBOCs. Pac  
5 Bell is an RBOC, correct?

6 MR. DANDINO: That's correct, and --

7 COMMISSIONER DRAINER: Let me finish.

8 MR. DANDINO: Certainly.

9 COMMISSIONER DRAINER: Thank you. And they  
10 did merge with SBC, and did the Office of the Public  
11 Counsel file any comments either with this Commission  
12 or with the FCC?

13 MR. DANDINO: No, we did not. I think there  
14 was one difference is that Pac Bell was not a CLEC in  
15 the state of Missouri in the Southwestern Bell  
16 territory. That's a significant difference.

17 COMMISSIONER DRAINER: To you that is the  
18 significant difference?

19 MR. DANDINO: Yes, Commissioner.

20 COMMISSIONER DRAINER: Would the merger  
21 possibly take away one CLEC?

22 MR. DANDINO: It takes away one CLEC, a very  
23 powerful CLEC.

24 COMMISSIONER DRAINER: That's your position.  
25 So you believe that Ameritech as a CLEC in Missouri is

1 significant and that's the biggest threat?

2 MR. DANDINO: I see it as a bigger threat  
3 than, let's say, the acquisition of Pac Bell.

4 COMMISSIONER DRAINER: Okay. I'm just  
5 trying to understand this, because since there were no  
6 comments on Pac Bell and with Ameritech the Office of  
7 the Public Counsel has taken such a strong position,  
8 and it seems to be because you're telling me that  
9 because Ameritech is a CLEC and it's a CLEC in  
10 Missouri that you feel that threatens possibly the  
11 competitive environment in Missouri?

12 MR. DANDINO: Yes. That's not the only  
13 reason. I think also you almost have to look at the  
14 cumulative effect.

15 You have -- you have seven RBOCs in the  
16 country. It has now been reduced to four, and we have  
17 one that is operating in the State of Missouri that  
18 used to be headquartered in the State of Missouri.  
19 Probably their jewel is Southwestern Bell, and now  
20 they're stretching from Connecticut all the way to the  
21 coast and now want to set out this -- set up this type  
22 of system.

23 And I think that has a significant effect on  
24 Missouri as well as the nation, but I think on  
25 Missouri.



1 COMMISSIONER DRAINER: You think it does,  
2 but we don't know that at this time?

3 MR. DANDINO: That's true. That's exactly  
4 why we need to look at this.

5 COMMISSIONER DRAINER: Then also, in your  
6 opening statement I was curious, you made a statement  
7 about the Pac Bell/SBC merger, and you said that there  
8 were some practices that had happened because of that  
9 merger and we needed to be sensitive to that.

10 Were there -- was there anything that  
11 happened here in Missouri that kind of went over my  
12 head and I missed?

13 MR. DANDINO: No. This was a situation  
14 where what we were saying is that it should be -- it  
15 should be a concern that after the Pac Bell merger  
16 with SBC, information that -- we've seen that there  
17 was increase in some service complaints, and  
18 specifically there had been complaints filed by TURN  
19 (ck) and some other consumer advocate groups.

20 COMMISSIONER DRAINER: In Missouri or  
21 California?

22 MR. DANDINO: In California.

23 COMMISSIONER DRAINER: This is a Pac Bell  
24 issue?

25 MR. DANDINO: In California concerning how

1 they're marketing some vertical services. I have no  
2 information about in Missouri. It raises a concern.

3 COMMISSIONER DRAINER: But there were none  
4 in the Missouri SBC territory that you're aware of?

5 MR. DANDINO: Not that I'm aware of.

6 COMMISSIONER DRAINER: And finally you in  
7 your opening remarks made a statement about the merger  
8 could affect jobs of Ameritech employees, and in  
9 Missouri regulation where does that under the statute  
10 fit into our job here?

11 MR. DANDINO: Well, to be honest, it really  
12 doesn't, you know, but I think it still needs -- I  
13 think if you're looking at the general public  
14 interest, you don't want necessarily that they  
15 eliminate jobs in the state where they cannot -- where  
16 they can no longer service their customers.

17 I think that's more the concern rather than  
18 just a loss of jobs, that bottom line. That's really  
19 not a regulatory. The problem is if they lose jobs,  
20 cut back jobs so it affects service quality, the  
21 inability to follow the Commission's rules, that's the  
22 importance.

23 COMMISSIONER DRAINER: Are you aware of any  
24 service quality issues from the Pac Bell/SBC merger  
25 from the state of Missouri?

1 MR. DANDINO: No, I'm not.

2 COMMISSIONER DRAINER: Okay. Thank you very  
3 much. I have no other questions.

4 JUDGE MILLS: Thank you. Commissioner  
5 Murray?

6 COMMISSIONER MURRAY: Was she finished?

7 JUDGE MILLS: Oh, I'm sorry.

8 COMMISSIONER DRAINER: That's okay. I only  
9 had one other one. I had no other questions for  
10 Mr. Dandino, just Mr. Lane.

11 I just wanted to know if you had any  
12 responses to Mr. Dandino's earlier answers to Chair  
13 Lumpe or myself?

14 MR. LANE: I do have one, I guess, in  
15 response to Chair Lumpe where the -- and I think this  
16 was probably something you were headed to as well, but  
17 is it appropriate to file comments with the FCC and  
18 conduct a proceeding into the jurisdictional issue as  
19 well? And I would say that it is probably not.

20 I don't think you have jurisdiction, and so  
21 I think it's appropriate if you want to make comments  
22 to the FCC. But if you disagree and you think you  
23 have authority over the approval or disapproval of the  
24 merger, I think it would be inappropriate for you to  
25 take a position in advance of having any kind of

1       hearing or decision on that with the FCC.

2               I don't think it's your role to judge the

3 merger, but if it is, it would be inappropriate in my

4 view to step out before you've heard everything in a

5 hearing and tell the FCC your position.

6               COMMISSIONER DRAINER: You're basically

7 saying I need to pick my arena or pick my jurisdiction

8 here, or if we believe we don't have jurisdiction here

9 then we go ahead and file comments?

10              MR. LANE: I think -- right, from the

11 standpoint of what a judge should do in a decision-

12 making role, it would be inappropriate, I think, to

13 step out and make comments to the FCC. But if they're

14 pro, then you come up with a different answer here.

15 If they're con, then you come up with a different

16 answer here.

17              I do think, if you want, it's appropriate to

18 make comments with the FCC because I don't think you

19 have jurisdiction here. And so that's what I would

20 encourage you to do if that's what you want.

21              COMMISSIONER DRAINER: I think you've been

22 very clear that you don't think I have jurisdiction.

23 If you want to say it one more time before I say I'm

24 finished.

25              (Laughter.)

1                   COMMISSIONER DRAINER: All right. Thank you  
2 very much. I have no other questions for any  
3 witnesses.

4                   JUDGE MILLS: Thank you. Now Commissioner  
5 Murray.

6                   COMMISSIONER MURRAY: Thank you.

7                   Mr. Dandino, in that it is the Office of the  
8 Public Counsel's position that this Commission does  
9 have jurisdiction to review the merger, is it also  
10 your position that we have the power to prevent the  
11 merger?

12                  MR. DANDINO: Yes.

13                  COMMISSIONER MURRAY: And can you tell me  
14 the practical effects of a denial of the merger from  
15 this Commission? What would follow if the merger were  
16 otherwise approved, if the FCC approved the merger and  
17 this Commission disapproved it?

18                  MR. DANDINO: I have not thought that far in  
19 advance. I mean, I know at least -- I don't know for  
20 sure, you know. I'd hesitate to tell you exactly. I  
21 think it would create a huge obstacle in it being  
22 approved at the other levels.

23                  COMMISSICNER MURRAY: I think earlier you  
24 said something about the companies in their merged  
25 capacity would not be allowed to operate in the state.

1       So I'd like to follow that reasoning through a minute  
2       or two.

3               If the merger were approved by the FCC and  
4       we have Southwestern Bell and we have AT&T -- AC2  
5       operating in this state as subsidiaries of the parent  
6       companies that would then be merged from the  
7       standpoint of the FCC. Are you saying that  
8       Southwestern Bell and AC2 can no longer operate in the  
9       state?

10              MR. DANDINO: Well, let me say I was  
11       probably -- I probably jumped the gun in responding to  
12       Chair Lumpe on that question, on the merger aspect of  
13       the effects.

14              I think the more appropriate response is  
15       what I did say to you is I'm not really sure how it  
16       would impact. When I answered it I was basically  
17       thinking, well, if you don't have authority and a  
18       merger is void, they couldn't do business here.

19              But I think you're right, it does have  
20       broader implications, broader legal implications and  
21       practical implications. And I can't tell you as I  
22       stand here today what those are and how that would  
23       work.

24              COMMISSIONER MURRAY: But it would be your  
25       recommendation that this Commission proceed in that

1 fashion even though the results of that would be very  
2 unclear?

3 MR. DANDINO: Well, I think that this  
4 Commission should really look into the facts of this  
5 and find out those answers, too. I would make the  
6 recommendation, and I will say it as an advocate, that  
7 I think -- that I think that it's my also impression  
8 that the other -- the other states and the other  
9 actors involved in this would disapprove this, and  
10 that's the position I would take, and that they have a  
11 united front.

12 I have not contemplated how -- what would  
13 happen if we each -- that if every state went a  
14 different direction or the FCC approved it, and the  
15 Department of Justice. I haven't done that analysis.

16 I think that's why this Commission shouldn't  
17 be in a position for a rush to judgment and should  
18 take its time and allow maybe even that issue to be  
19 briefed to this Commission.

20 Q. Let me ask you just a couple of other  
21 questions, and they relate to what you think the  
22 Commission ought to require in order to approve a  
23 merger.

24 You said that one of the questions that  
25 should be asked would be how will the merger directly

1 benefit Missouri customers? Can you cite the source  
2 as to that standard of review for a merger that it has  
3 to affirmatively benefit customers?

4 MR. DANDINO: Isn't that -- excuse me, but I  
5 believe that it is the purpose of -- that consumers  
6 have to be benefited by telecommunications activity.  
7 If there's no benefit for them, then why should it be  
8 approved?

9 COMMISSIONER MURRAY: Well, I'm trying to  
10 distinguish that from the standard that we have to  
11 guard against things that are a detriment to the  
12 public interest versus having an affirmative duty on  
13 any activity that a provider would engage in making  
14 sure this provided some measurable benefit.

15 MR. DANDINO: I believe that the thrust of  
16 the Federal Telecommunications Act and 507 is that  
17 competition will improve things for the consumer, not  
18 keep them at status quo but improve things, not just  
19 not hurt them, but improve matters for them.

20 That's why I see that if this merger does  
21 not provide some specific benefits for the consumer,  
22 then I'm going to say also too if there are -- you  
23 need the benefits to outweigh -- to see if any of the  
24 benefits outweigh any of the detriments to the  
25 consumers in this merger.



1                   COMMISSIONER MURRAY: So in your opinion,  
2                   the FCC or whatever reviewing body should be looking  
3                   for some sort of proof that not only will there be no  
4                   detriment to the consumers from such a merger, but  
5                   there will be benefits that can be proven?

6                   MR. DANDINO: I think it has to be a  
7                   weighing that any detriments outweigh -- or any  
8                   benefits outweigh any detriment. I mean, there's  
9                   possibly going to be some detriment, but if there's  
10                  some benefit that flow to them, let's say savings, you  
11                  know, some guarantee of competition, then that may  
12                  outweigh any detriment of losing one of the CLEC  
13                  providers. I think it's a weighing situation.

14                  COMMISSIONER MURRAY: And on the same --  
15                  kind of the same track, do you think that there has to  
16                  be a finding that a merger promotes competition or  
17                  just that it does not impede competition?

18                  MR. DANDINO: I'm really not sure exactly  
19                  because I'm thinking of at a minimum it shouldn't  
20                  impede competition. The positive aspect, it should  
21                  encourage it. I think that's -- I think if the  
22                  Commission -- once again it goes into the weighing.  
23                  If it doesn't impede competition, that is fulfilling  
24                  one of the goals that there -- you know, that there's  
25                  no barriers to entry.

1 CHAIR LUMPE: Do you have any source that  
2 you can cite that would indicate that there must be  
3 finding that it promotes competition?

4 MR. DANDINO: There is no source -- there's  
5 no source that I'm aware of that this Commission has  
6 to make that specific finding.

7 COMMISSIONER MURRAY: Thank you. I think  
8 that's all my questions for you.

9 I just have one question for Staff, and that  
10 question is, I just want to be perfectly clear on the  
11 record here since the initial response to OPC's motion  
12 to open the docket was that the Commission should  
13 choose not to assert its jurisdiction in this case,  
14 and I want to be perfectly clear that the Staff is  
15 saying here unequivocally that this Commission does  
16 not have jurisdiction in this case.

17 MS. BRYANT: Yes. After a further  
18 consideration of past Commission action as of that  
19 October 17th, 1997 letter, that would be the position,  
20 that the Commission does not have jurisdiction in this  
21 case.

22 COMMISSIONER MURRAY: Thank you. And I  
23 guess I'll just ask Southwestern Bell one question,  
24 and that would be -- and I think it's probably pretty  
25 well been covered by all your statements, but in your

1 opinion, is there any anti-competitive effect of this  
2 merger in the State of Missouri?

3 MR. LANE: No. Our view is that it does not  
4 have any anti-competitive effect. The only impact on  
5 competition at all is the 390 customers of ACII, which  
6 are employees of that company, that are today being  
7 provided resold services of Southwestern Bell by ACII.

8 And you'll see in the affidavits in the  
9 filings what Ameritech's plans were in that regard.  
10 But as I indicated earlier, to the extent that that's  
11 a viable service offering, Sprint PCS, AT&T Wireless  
12 or the purchaser of either the Southwestern Bell  
13 cellular franchise or the Ameritech cellular  
14 franchise, with is a part of the merger, those  
15 entities will all have the same intent and ability to  
16 offer local service in addition to cellular service to  
17 the customers.

18 So I don't believe there will be any  
19 anti-competitive impact. With your permission, I'd  
20 like to give my views on the questions that you asked  
21 Mr. Dandino.

22 COMMISSIONER MURRAY: Go ahead.

23 MR. LANF: You had asked him whether there  
24 had to be a finding of affirmative consumer benefit  
25 and a finding of affirmative competitive benefit for

1 the merger, and I think that it's very clear from the  
2 statute that none of these things are present.

3 Contrast that with what the Illinois statute  
4 says, even that doesn't do it, but it lists specific  
5 criteria that must be met in terms of a merger. Our  
6 courts here have interpreted the Commission's  
7 authority with regard to mergers, and when they have  
8 jurisdiction, what it should consist of.

9 The case that I cited to you earlier, the  
10 State ex rel Fee Fee Trunk Sewer vs. Litz specifically  
11 addresses that on page 468 of the opinion, and it  
12 deals with Chapter 393, but the provisions are similar  
13 to those of 392 with regard to approval of mergers.  
14 And the court said in that case, the obvious purpose  
15 of this provision is to ensure the continuation of  
16 adequate service to the public certified utility.  
17 The Commission may not withhold its approval of the  
18 disposition of assets unless it can be shown that such  
19 disposition is detrimental to the public interest.

20 And so I think from your questions, as I  
21 understood it, you were inquiring whether there had to  
22 be affirmative customer benefit or affirmative  
23 competitive benefit, and the answer is no. It has to  
24 be not detrimental to the public interest. If you had  
25 jurisdiction, the only way you could say no is if it

1 is detrimental to the public interest.

2 COMMISSIONER MURRAY: Thank you. No further  
3 questions.

4 JUDGE MILLS: Thank you. Commissioner  
5 Schemenauer?

6 COMMISSIONER SCHEMENAUER: Thank you. I  
7 think most of my questions have been answered. I do  
8 have a few for Mr. Lane, though.

9 Did I hear you say that because the  
10 Commission failed to formally review or assert its  
11 jurisdiction over some mergers in the past that it  
12 cannot review this merger or assert its jurisdiction  
13 over it?

14 MR. LANE: What I said was the statute is  
15 the same, Commissioner, that the statute doesn't say  
16 you may exercise jurisdiction in some cases and  
17 decline to in others. It does not give you  
18 discretion. If you have jurisdiction, you have to  
19 exercise it or it's void.

20 The Commission has in the past found that it  
21 does not have jurisdiction. That in my view was a  
22 proper determination, and that determination has to be  
23 applied here. You can't interpret the statute to say  
24 I don't have to take a look at these mergers, but I  
25 will choose to affirmatively look at the SBC/Ameritech

1 merger.

2 COMMISSIONER SCHEMENAUER: You don't think  
3 that there was an implied consent to those mergers if  
4 the Commission did not formally review them, and  
5 then -- and then I guess the statement some mergers,  
6 of course, affect the public more than others, and  
7 some of the mergers that it did not review were very  
8 small companies, very small mergers compared to this  
9 one.

10 Wouldn't that have an impact on whether or  
11 not the Commission decided to expend its resources and  
12 review and formally have a hearing on a merger?

13 MR. LANE: Let me address both of those in  
14 reverse order. If I could refer you, Commissioner, to  
15 Section 392.300, which is in the Tab 1. I believe  
16 it's the third sentence says that every such sale,  
17 assignment, lease, transfer, mortgage, disposition,  
18 encumbrance, merger or consolidation made other than  
19 in accordance with the order of the Commission  
20 authorizing the same shall be void.

21 And so there was no order approving the  
22 mergers in any of those other circumstances, and the  
23 statute specifically requires it. So if you -- if you  
24 have jurisdiction, which I don't think you do, it's  
25 no -- there's no question but that you'd have to issue

1 an affirmative order.

2 And so those other transactions, I don't  
3 know what the answer is to what happens now, but I'll  
4 say this, it creates serious problems for a lot of the  
5 companies that are in the room here, in my opinion.

6 The second question that you asked was  
7 whether -- isn't there a difference between some  
8 mergers and others, and I would say sure, that there  
9 is. Now, on the other hand, we've had some rather  
10 large mergers involving AT&T and TCG, two significant  
11 competitors in Missouri. It was approved under the  
12 same form and manner that I -- or that was -- that the  
13 Commission found it had no jurisdiction and simply  
14 accepted the notification. And that I think is  
15 obviously a significantly sized merger.

16 But more to the point I think is that had  
17 the Legislature decided that some mergers were bigger  
18 than others and said, Commission, you have some  
19 discretion. You choose which mergers you want to look  
20 at. If it involves a company with revenues over X,  
21 you may look at it, and if you find that it's below  
22 that level, that obviously would have been an  
23 affirmative choice that the Legislature could have  
24 made, but it's not one that this Commission can make.

25 It has to follow the statute and operates

1 under the powers that the Legislature has given it,  
2 and it hasn't set a distinction between mergers of a  
3 specific size or involving specific companies. It's  
4 the same for all.

5 COMMISSIONER SCHEMENAUER: So you think it  
6 has to be a formal written order. It can't be an  
7 implied consent if the Commission doesn't approve it.

8 Okay. The next question I wanted to ask you  
9 on, we were talking about 392.300. Does Southwestern  
10 Bell have any outstanding stock?

11 MR. LANE: Southwestern Bell Telephone  
12 Company stock is owned a hundred percent by SBC  
13 Communications, Inc. and will remain so after the  
14 merger.

15 COMMISSIONER SCHEMENAUER: Will Ameritech  
16 have any outstanding stock after the merger?

17 MR. LANE: ACII stock will continue to be  
18 held by ACII, whose stock will in turn be held by  
19 Ameritech Corporation, and Ameritech stock will then  
20 be held a hundred percent by SBC Communications.

21 COMMISSIONER SCHEMENAUER: So SBC, one share  
22 of SBC's stock will represent an ownership in  
23 Southwestern Bell and Ameritech?

24 MR. LANE: I think I understand your  
25 question. If you are a holder of stock of SBC



1 Communications, which obviously is a publicly held  
2 company, after the merger you will share in the  
3 benefits of dividends or whatever that come from SBC  
4 Communications from whatever source derived.

5 COMMISSIONER SCHEMENAVER: So, therefore,  
6 your S&P ratings for bond issues and everything will  
7 flow up through SBC whether or not they're Ameritech  
8 bonds, outstanding bonds or Southwestern Bell  
9 Telephone bonds? I mean, they're all going to be  
10 merged together, and that stock will reflect the risk  
11 of Ameritech? If it has engaged in some risky  
12 operations, that will flow through to SBC stock, won't  
13 it?

14 MR. LANE: Two questions. Let me answer  
15 them separately. From a bond holder's perspective,  
16 bonds are issued separately by Southwestern Bell  
17 Telephone Company. It's different and separate from  
18 whatever is done with any other subsidiary of SBC.  
19 And so anybody who holds a bond issued by Southwestern  
20 Bell Telephone Company will remain unaffected by this  
21 merger.

22 And the bond rating for Southwestern Bell  
23 Telephone Company is separate and distinct from the  
24 bond rating for -- actually, there's no bond rating  
25 for SBC Communications, but its other subsidiaries are

1 funded through SBC Capital, I believe, Capital  
2 something. It's another subsidiary that raises money  
3 for -- issues bonds on behalf of subsidiaries other  
4 than Southwestern Bell Telephone Company.

5 I don't know if that addressed your question  
6 or not, but its company operations are separate and  
7 the bonds that are issued are separate and they have  
8 their own separate rating. I assume Ameritech does  
9 the same, but I honestly don't know the answer to  
10 that.

11 COMMISSIONER SCHEMENAUER: But SBC will own  
12 both of those corporations?

13 MR. LANE: Yes.

14 COMMISSIONER SCHEMENAUER: And their stock  
15 will represent an ownership interest?

16 MR. LANE: Yes. The equity interest of --  
17 on the equity side, moving away from the debt side,  
18 yes, clearly SBC Communications will hold all of the  
19 stock of Southwestern Bell Telephone Company just as  
20 it does today and then will now own the stock of  
21 Ameritech Corporation.

22 COMMISSIONER SCHEMENAUER: And I think you  
23 said the stock represents the equity of the  
24 corporation. So the equity of Ameritech, Southwestern  
25 Bell and other subsidiaries are all reflected in SBC's

1 stock; is that correct?

2 MR. LANE: Yes. I think that's fair.

3 COMMISSIONER SCHEMENAUER: Okay. That's all  
4 I have. Thank you.

5 JUDGE MILLS: Are there further questions  
6 from the Commission?

7 CHAIR LUMPE: I'm going to ask one question  
8 of Staff to clarify for me. The position that we do  
9 not have jurisdiction is based somewhat on the letter.  
10 Was it also based on the statute 392.300 or some other  
11 section of the statute?

12 MS. BRYANT: It was based on -- I'd say it  
13 stems from the October 17th, 1997 letter of the  
14 Commission's interpretation of what it believed were  
15 instances wherein it did or did not have jurisdiction  
16 over mergers and consolidations in this case.

17 So it was a combination of the two, the  
18 Commission's letter interpreting Section 300 --  
19 392.300 as well as the Commission's cases subsequent  
20 to that October 17th letter.

21 CHAIR LUMPE: So the letter really was a  
22 response to the interpretation of the statute?

23 MS. BRYANT: Right. From what I understand,  
24 the letter resulted because telecommunications, the  
25 industry was continually calling and inquiring as to

1 whether or not an application needed to be filed prior  
2 to merger. And so in order to answer questions and  
3 concerns of the telecommunications industry, the  
4 Commission issued that letter.

5 CHAIR LUMPE: Thank you. That's all.

6 JUDGE MILLS: Are there further Commission  
7 questions?

8 COMMISSIONER DRAINER: Just one. I would  
9 like to ask the General Counsel for the Staff, and is  
10 it the General Counsel and Staff's position that we do  
11 not have jurisdiction?

12 MR. JOYCE: Yes.

13 COMMISSIONER DRAINER: Based on the statute?

14 MR. JOYCE: Yes, it is. After analysis of  
15 the statute, and, as Ms. Bryant just indicated, the  
16 statutory interpretation led to the letter, and then  
17 the Commission has been applying that letter to its  
18 subsequent cases. But the involvement of the Office  
19 of the General Counsel led to the interpretation in  
20 the letter which the Commission accepted.

21 COMMISSIONER DRAINER: Thank you. I  
22 appreciate the clarification.

23 MR. MILLS: If there are no further  
24 Commission questions, I have some questions and then  
25 we've got a few housekeeping matters to take care of.

1 Mr. Conroy, since you're closest, if I can  
2 get you to move that front chart over there for the  
3 purpose of the question for Public Counsel.

4 Off the record.

5 (Discussion off the record.)

6 JUDGE MILLS: We're back on the record.

7 Mr. Dandino, the first question I have for  
8 you is, do you have an opinion on the Commission's  
9 jurisdiction on the situation outlined on the right  
10 side of that chart as you face it?

11 MR. DANDINO: In that a nonregulated parent,  
12 that a nonregulated company in a nonregulated --

13 JUDGE MILLS: Is acquiring the assets of a  
14 company that does not have any regulated operations in  
15 the state of Missouri.

16 MR. DANDINO: I think it would -- I'd have  
17 to see what all the factual circumstances would be. I  
18 mean, if it's -- on the face of it, it may. It may  
19 not. I -- but because I would -- unless it would  
20 affect it, change the operation of the regulated  
21 company.

22 JUDGE MILLS: So if in this situation if  
23 ACII was not a certificated telecommunications company  
24 in the State of Missouri, would this merger fall into  
25 that second category that's shown on the right side of

1       that chart?

2               MR. DANDINO: Well, I think -- I think it  
3 would. Yeah, it may fall into it. It may very well  
4 fall into it. I think the -- still I think you have  
5 an inquiry of whether it affects the operation of a  
6 regulated company after the merger.

7               JUDGE MILLS: Thank you. I have a couple  
8 other questions for you. One is fairly specific. On  
9 the pleading that you filed yesterday, September 29th,  
10 on page 11, under paragraph 2 you use the term  
11 disinvestment, and you used that again in your initial  
12 arguments. Can you tell me what disinvestment is?

13              MR. DANDINO: I would say that if they had  
14 plans to -- if they had business plans to invest in  
15 Missouri, that they -- or that they had assets in  
16 Missouri or personnel in -- not personnel, but assets  
17 in Missouri, they would move them out of Missouri.  
18 Probably the most -- not the best word to use.

19              JUDGE MILLS: Okay. I think I understand  
20 the point. Thank you. I appreciate that.

21              Also in that pleading, on page 9, you refer  
22 to a case in which Massachusetts took jurisdiction  
23 over the NYNEX/Bell Atlantic merger.

24              MR. DANDINO: That's correct.

25              JUDGE MILLS: Are you aware, were there any

1 appeals taken of the issue of the Department of Public  
2 Utility's assertion of jurisdiction?

3 MR. DANDINO: I don't believe there was, but  
4 I can't tell you that for sure.

5 JUDGE MILLS: Would you look into that, and  
6 if there were any appeals would you file a pleading?

7 MR. DANDINO: I will so advise when I find  
8 out.

9 JUDGE MILLS: Thank you. If you find that  
10 there were none, you need do nothing further.

11 MR. DANDINO: I'll do it in either case.

12 JUDGE MILLS: Thank you. Also, along the  
13 same lines, you cite involvement of other states in  
14 mergers of this type. I'd like you, if you could,  
15 please, to provide the Commission with the Orders of  
16 those regulatory bodies in which they took  
17 jurisdiction as well as copies of the statutes of  
18 those states that allowed them to do so.

19 MR. DANDINO: Sure. That's the ones on page  
20 10, your Honor?

21 JUDGE MILLS: That's the ones on page 10 of  
22 your September 9th pleading.

23 MR. DANDINO: Certainly, we'll provide that.

24 JUDGE MILLS: I believe that's all the  
25 questions I have for you.

1 MR. DANDINO: Thank you.

2 JUDGE MILLS: Thank you. Mr. Lane, a couple  
3 of questions for you. In 392.300, there is a  
4 reference to mergers by indirect means. Can you give  
5 me an example of a transaction that you believe would  
6 fall under that?

7 MR. LANE: I believe that would be intended  
8 to go to a situation, your Honor, where a company may  
9 have ceded all of its management and control over a  
10 company to another through a management contract that  
11 doesn't involve necessarily the sale of the assets or  
12 the sale of the stock, but you enter into a contract  
13 that says you take it, you run it, you get to keep  
14 whatever you make out of it.

15 I think that would be form over substance  
16 and it would be an indirect transfer and that the  
17 Commission would have jurisdiction over that.

18 JUDGE MILLS: Okay. And I believe that's  
19 the only question I have for you.

20 In terms of housekeeping matters, both the  
21 Staff -- well, actually the Staff, Sprint and Bell  
22 have had exhibits marked. I'll go in that order. If  
23 you'd like to offer those exhibits, I'll see if there  
24 are objections to them.

25 MS. BRYANT: Your Honor, at this time I



1 would like to move to offer Exhibit No. 1 into the  
2 record, which is a description of dispositions by --  
3 in TM cases by this Commission as of October 17th,  
4 1997.

5 JUDGE MILLS: Thank you. Are you there any  
6 objections to Exhibit 1?

7 (No response.)

8 JUDGE MILLS: Hearing none, Exhibit 1 will  
9 be admitted.

10 (EXHIBIT NO. 1 WAS RECEIVED INTO EVIDENCE.)

11 JUDGE MILLS: Exhibit 2 is the oral argument  
12 material that was marked by Southwestern Bell  
13 Telephone. Would you care to offer that exhibit?

14 MR. LANE: We'd offer Exhibit 2, your Honor.

15 JUDGE MILLS: Are there any objections to  
16 Exhibit 2?

17 MR. WOODSMALL: Your Honor, Sprint objects  
18 to the extent that Southwestern Bell is offering  
19 affidavits in their material, and that material is of  
20 a factual nature, and none of the parties were  
21 permitted cross-examination.

22 To the extent that it's just statutes,  
23 orders that Southwestern Bell is offering, I have no  
24 problems with that. But when he starts offering  
25 affidavits without proposing a witness or allowing

1 cross-examination, that really brings up some real  
2 problems.

3 JUDGE MILLS: The Commission will allow  
4 the --

5 MR. DANDINO: I just wanted to join in  
6 Sprint's objection.

7 JUDGE MILLS: The Commission will allow the  
8 filing of the affidavits simply because it is part of  
9 a public filing at the FCC and for the purpose of  
10 showing what was filed at the FCC, the Commission will  
11 take it as part of the record.

12 Are there any additional objections to  
13 Exhibit 2?

14 (No response.)

15 JUDGE MILLS: Hearing none, Exhibit 2 will  
16 be admitted.

17 (EXHIBIT NO. 2 WAS RECEIVED INTO EVIDENCE.)

18 JUDGE MILLS: Sprint, would you care to  
19 offer your exhibit, please?

20 MS. LIPMAN: Your Honor, at this time Sprint  
21 would offer Exhibit 3, which is the testimony before  
22 the United States Senate Committee on Judiciary  
23 Antitrust, the statement by William T. Esrey, Chairman  
24 of the Board.

25 JUDGE MILLS: Are there any objections to

1       this exhibit?

2                   (No response.)

3               JUDGE MILLS:   Hearing none, it will be  
4       admitted.

5                   (EXHIBIT NO. 3 WAS RECEIVED INTO EVIDENCE.)

6               JUDGE MILLS:   There has been a fair amount  
7       of discussion of the chart that Staff put on the easel  
8       at the beginning of Staff's argument.   I'd like to  
9       request that Staff reduce that to an 8 1/2 by 11 size  
10      and file that as late-filed Exhibit 4 so that the  
11      record is complete.

12               MS. BRYANT:   We'll do that.

13               MR. LANE:   Both of the exhibits, your Honor,  
14      is that --

15               JUDGE MILLS:   I'll consider that to be part  
16      of the same one.   It may have to be on two pages for  
17      clarity.

18               MR. LANE:   Could I request that the  
19      right-hand side of the exhibit be corrected to --

20               MS. BRYANT:   We will do that.

21               MR. LANE:   -- reflect the actual merger as  
22      it will take place?

23               JUDGE MILLS:   Let me request that, just for  
24      the purposes of making the record absolutely clear,  
25      that the actual chart be filed as well as any

1 corrections thereto based on Mr. Lane's explanation.

2 MS. BRYANT: That's fine.

3 JUDGE MILLS: Thank you. We'll probably end  
4 up with three versions of the same chart. We'll  
5 reserve Exhibit 4 for that. In terms of time frame,  
6 can you get that in fairly shortly, the next few days?

7 MS. BRYANT: Yes, we can.

8 JUDGE MILLS: Okay. Thank you. Of course,  
9 that will be three copies will be sent to the RLJ.  
10 Copies should be sent to all the parties. The parties  
11 will have the opportunity ten days from the time that  
12 it's filed to object to that exhibit if there are any  
13 objections.

14 Are there any further matters that we need  
15 to take up while we're on the record?

16 MS. BRYANT: Your Honor, the Staff would  
17 also like to request if possible to have expedited  
18 treatment on the transcript from this proceeding.

19 JUDGE MILLS: I'll discuss that with the  
20 court reporter off the record. I understand the  
21 reasons for that, and we'll talk about it. Mr. Lane?

22 MR. LANE: Do you contemplate that  
23 Southwestern Bell would have an opportunity to respond  
24 to whatever it is that Mr. Dandino files in response  
25 to your request?

1 JUDGE MILLS: Yes, although I -- yes, you  
2 may, although I don't anticipate that it will contain  
3 any argument but simply copies of other jurisdictional  
4 commissions' decisions and copies of statutes. I  
5 don't want to generate another entire round of  
6 pleadings by asking for that. It's simply for my  
7 convenience to have him provide that to me instead of  
8 me going hunting for it.

9 MR. LANE: Very well.

10 JUDGE MILLS: Thank you. Is there anything  
11 further?

12 Seeing nothing, we'll go off the record.

13 WHEREUPON, the oral argument of this case  
14 was concluded.

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E X H I B I T S

	<u>Marked</u>	<u>Rec'd</u>
EXHIBIT NO. 1 Description of Merging Entities	21	101
EXHIBIT NO. 2 SWBT Oral Argument Material	29	102
EXHIBIT NO. 3 Testimony before the United States Senate Committee on the Judiciary Antitrust and Business Subcommittee	57	103
EXHIBIT NO. 4 Chart	*	

Late-filed exhibit.

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P R O C E E D I N G S

JUDGE MILLS: Let's go on the record.

We're on the record this morning in Case No. TM-99-76 in the matter of the merger of SBC Communications, Inc. and Ameritech Corporation.

We're here for the limited purpose this morning of hearing oral arguments on the question of whether the Commission has jurisdiction over this merger and for the purpose of -- the secondary purpose of eliciting comments from the three parties to this case on the content of the Commission's comments to the FCC in the FCC docket considering this merger.

The parties may make their entries of appearance beginning with Bell, please.

MR. LANE: Thank you, your Honor. My name is Paul Lane, along with Tony Conroy, appearing on behalf of Southwestern Bell Telephone Company. Our address is One Bell Center, Room 3520, St. Louis, Missouri 63101.

JUDGE MILLS: Thank you. Mr. Woodsmall?

MR. WOODSMALL: Appearing on behalf of Sprint Communications Company, L.P., David Woodsmall and Rachel Lipman, 8140 Ward Parkway, Kansas City, Missouri 64114.

JUDGE MILLS: Thank you. And let the record



1 reflect that Sprint has not been granted intervention  
2 of this matter as of yet. Staff?

3 MS. BRYANT: Cynthia Bryant and Dan Joyce  
4 appearing on behalf of the Staff of the Public Service  
5 Commission, P.O. Box 360, Jefferson City, Missouri  
6 65102.

7 JUDGE MILLS: Ms. Young?

8 MS. YOUNG: Thank you. Mary Ann Young,  
9 William D. Steinmeier, P.C., P.O. Box 104595,  
10 Jefferson City, Missouri 65110, appearing on behalf of  
11 McLeod USA Telecommunications Services, Inc. We have  
12 filed an Application for Intervention on behalf of  
13 McLeod USA at this time.

14 I would also like to enter an appearance on  
15 behalf of the Telecommunications Resellers Association  
16 and request on their behalf participation without  
17 intervention pursuant to 4 CSR 240-2.075, which  
18 provides that participation without intervention may  
19 be permitted where the person requesting to  
20 participate provides certain information, and the last  
21 provision there says that they may make a written  
22 request to participate without intervention or enter  
23 an appearance at the hearing.

24 JUDGE MILLS: Thank you. Mr. Dandino?

25 MR. DANDINO: Thank you, your Honor.

1 Michael Dandino, Office of the Public Counsel, Post  
2 Office Box 7800, Jefferson City, Missouri 65102,  
3 representing the Office of the Public Counsel and the  
4 Public.

5 JUDGE MILLS: Thank you.

6 While we were off the record, both Sprint  
7 and McLeod Telecommunications expressed an interest in  
8 offering argument this morning. If you-all would like  
9 to briefly recap that discussion on the record, please  
10 do so.

11 MR. WOODSMALL: Yes, your Honor. David  
12 Woodsmall on behalf of Sprint.

13 On September 8th the Commission issued its  
14 Order setting an oral argument in this matter. The  
15 Commission notes on page 3 and 4 of that Order, quote,  
16 the Commission will ask Public Counsel, Staff, SWBT  
17 and other interested parties to present their  
18 arguments on the Commission's jurisdiction over the  
19 merger. The parties should also address what they  
20 believe should be contained in the Commission's  
21 comments to the FCC regarding this merger.

22 Now, recognizing that the phrase "interested  
23 parties" is nowhere defined in this Commission's  
24 statutes or in the regulations implementing those  
25 statutes, Sprint notified the Commission, the ALJ, and

1 asked what the proper procedure was and was told that  
2 it should go ahead and file a Motion for Intervention.

3 Sprint filed its Motion for Intervention as  
4 well as a motion to move the hearing date due to  
5 religious purposes. That motion to move the hearing  
6 date was denied by the Commission.

7 Nevertheless, Sprint believes that it should  
8 be allowed to participate today as an interested party  
9 because it is vitally interested in the makeup and the  
10 layout of the telecommunications industry as we move  
11 forward.

12 Sprint believes that it is mandated by due  
13 process that the Commission take comment and have a  
14 hearing for purposes of considering this jurisdiction  
15 and that Sprint should be allowed to participate.

16 That would be all I'd add. Thank you.

17 JUDGE MILLS: Thank you. Ms. Young?

18 MS. YOUNG: I would just briefly echo the  
19 comments of Sprint's counsel and indicate that the  
20 Order certainly contemplated that the Commission was  
21 interested in hearing from someone other than the  
22 listed parties, and that it would be inappropriate for  
23 the Commission to cut off that input either as to the  
24 jurisdiction or as to input as to the comments the  
25 Commission may file before the FCC.

1 JUDGE MILLS: Thank you.

2 MR. DANDINO: Your Honor?

3 JUDGE MILLS: Mr. Dandino.

4 MR. DANDINO: Public Counsel would just like  
5 to support McLeod and Sprint's position in this. We  
6 believe it is important for the Commission to have the  
7 broadest possible input, not only on the question of  
8 jurisdiction but also on the comments to the FCC.  
9 Thank you.

10 MR. WOODSMALL: Your Honor, I left out a  
11 very short mention that not only did we file a Motion  
12 to Intervene, we also filed Suggestions in Support of  
13 Public Counsel's motion that initiated this docket.  
14 So our interest has been displayed many times over,  
15 and our position on this has been likewise indicated.

16 Thank you.

17 JUDGE MILLS: Since we've heard from  
18 everyone but Staff and Bell, would either of those  
19 parties care to comment?

20 MS. BRYANT: Your Honor, Staff has no  
21 position on this particular matter.

22 JUDGE MILLS: Thank you.

23 MR. LANE: Your Honor, we would oppose that.  
24 The Commission's Order denied, at this time did not  
25 grant the intervention. They're not a party to the

1 proceeding. The Order that they cite says that  
2 interested parties may appear. They're not a party,  
3 haven't been made so, and it would be inappropriate  
4 under the Commission's rules to permit participation.

5 MR. WOODSMALL: Your Honor, as a quick  
6 rebuttal, I would note the Commission never  
7 established an intervention deadline. The Commission  
8 never asked for intervention. So it's slightly unfair  
9 to say that our intervention wasn't granted. There  
10 was no intervention period provided for.

11 JUDGE MILLS: Thank you. Nonetheless, it is  
12 true that your intervention was not granted. Neither  
13 was the intervention of McLeod. At this point the  
14 Commission believes that for the purposes of hearing  
15 arguments on its jurisdiction and the content of its  
16 comments to the FCC, it is sufficient to hear from  
17 Bell, Staff and the Office of the Public Counsel, who  
18 filed the motion which initiated this case.

19 At a later point in this case, should the  
20 Commission decide that it has and will exercise  
21 jurisdiction over this matter, the Commission will  
22 rule on applications to intervene, likely issue a  
23 notice and allow additional parties the opportunity to  
24 intervene.

25 At this point in the proceeding, however,

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20 Commission decide that it has and will exercise  
21 jurisdiction over this matter, the Commission will  
22 rule on applications to intervene, likely issue a  
23 notice and allow additional parties the opportunity to  
24 intervene.

25 At this point in the proceeding, however,

1 while we're still determining jurisdiction,  
2 intervention has not been granted, and the three  
3 parties I just named will be the ones that will be  
4 presenting arguments this morning.

5 MR. WOODSMALL: Your Honor, I would note  
6 that Sprint will be filing a Motion for Rehearing on  
7 this matter, and request that the Commission hold off  
8 or put off their effective date of any Order until  
9 Sprint is allowed to do that.

10 JUDGE MILLS: Thank you.

11 MS. YOUNG: In addition, I would note that  
12 the Order that we've been discussing earlier indicates  
13 that the deadline for comments to the Federal  
14 Communications Commission is now October 15th.

15 I'm curious as to how a later Order granting  
16 an opportunity to intervene is going to provide a  
17 meaningful opportunity for other interested parties to  
18 provide any input to the Commission for FCC comments.

19 JUDGE MILLS: Thank you.

20 Inasmuch as the Office of the Public Counsel  
21 is the moving party, the procedure this morning will  
22 be for Public Counsel to present its argument first,  
23 followed by the Staff of the Commission, followed by  
24 Bell, and then we will allow reply arguments from the  
25 Office of the Public Counsel.

1 Mr. Dandino, you may proceed.

2 MR. DANDINO: Thank you, your Honor. May it  
3 please the Commission?

4 Public Counsel asked the Commission to  
5 exercise its lawful jurisdiction and carry out its  
6 public policy responsibilities and conduct an  
7 investigation into the Ameritech/SBC merger. We  
8 request the Commission conduct a fact-finding process  
9 through an evidentiary hearing with the opportunity  
10 for discovery, cross-examination and rebuttal  
11 evidence.

12 Public Counsel's reading of the law  
13 demonstrates that a reasonable reading of the statutes  
14 in the application of this law, this Commission has  
15 jurisdiction to review, approve or reject the merger.  
16 Without this jurisdiction, this Commission becomes a  
17 paper tiger in the telecommunications industry,  
18 especially in the new age of mergers and  
19 consolidations.

20 I think in those terms it would be very  
21 detrimental to Missouri's telecommunications industry  
22 and to consumers of Missouri.

23 In addition to its legal authority, Public  
24 Counsel wants to point out to the Commission that it  
25 has public policy responsibilities to carry out the



1 legislative intent and purpose set forth in the  
2 Federal Telecommunications Act of 1996 and SB --  
3 Senate Bill 507.

4 Public -- the Public Service Commission has  
5 a duty to promote competition, ensure quality  
6 telecommunications services at affordable, reasonable  
7 prices in both urban and rural areas, and to eliminate  
8 barriers to entry to competition, to provide for  
9 universal service, to protect consumers and the public  
10 interest.

11 The question before this Commission is how  
12 will this merger affect your responsibilities in  
13 Missouri?

14 In addition to these jurisdictional  
15 questions, Public Counsel has also posed about a dozen  
16 questions and issues for the Public Service Commission  
17 to consider and investigate. Yesterday we filed a  
18 Suggestions in Support of Jurisdiction and Comments  
19 Regarding Ameritech/SBC's Proposed Merger.

20 In that it details those dozen questions and  
21 issues, but I do want to cover them briefly here  
22 today. These questions are not all-inclusive.  
23 They're not the only questions. They're not the only  
24 issues. But these are a starting point for this --  
25 for the proper inquiry into the effect that this

1 merger has on Missouri and the customers of  
2 Southwestern Bell and Ameritech in Missouri.

3 I think you have to look at, looking at  
4 these -- well, first, before I get into those  
5 questions, then finally Public Counsel makes  
6 recommendations on its position before this Commission  
7 and also makes recommendations of what should be the  
8 Commission's recommendation to the Federal  
9 Communications Commission.

10 Let me backtrack to the jurisdictional  
11 question, which is the key question -- first question  
12 you have to decide. And I think looking at  
13 Section 386.250 gives this Commission the  
14 jurisdiction, supervision, powers and duties over all  
15 telecommunications facilities, telecommunications  
16 services, and to all telecommunications companies.

17 Section 386.320.1 gives this Commission  
18 general supervision over all telephone corporations  
19 and telephone lines with the power to examine and keep  
20 informed about their general condition,  
21 capitalization, franchises and, now very important,  
22 the manner in which their lines and property are  
23 owned, leased, controlled or operated not only with  
24 respect to adequacy, security and accommodation  
25 offered by those services, but also with respect to

1 their compliance with all provisions of law, orders,  
2 decisions of the Commission and charter and franchise  
3 requirements.

4 I think this is a broad power, a broad grant  
5 of authority. And to support that position, I invite  
6 the Commission to look at Section 386.610 of the  
7 statutes which provides in pertinent part that  
8 Chapter 6 -- 386 shall be liberally construed with a  
9 view to the public welfare, efficient facilities and  
10 substantial justice between patrons and public  
11 utilities.

12 Case law says that these are remedial  
13 statutes designed to protect the public. Therefore,  
14 they should be given broad and liberal construction.

15 Chapter 392.185 sets out the framework which  
16 this Commission should use and must use to construe  
17 its power and authority and how it -- how it acts in  
18 the telecommunications industry. These are the nine  
19 legislative proposals that guide the Commission's  
20 considerations of all relevant facts that come before  
21 you in telecommunications, including jurisdiction.

22 Now, Southwestern Bell in their response to  
23 our motion raised a number of points about how the  
24 companies are structured and whether it's a regulated  
25 or nonregulated parent or subsidiary, and I don't see

1 anything in the statutes that necessarily limits your  
2 jurisdiction in those matters to review this merger.

3 I think it's also important, you have to  
4 look at what its impact -- you should look at the  
5 impact to Missouri, the consequences to Missouri  
6 rather than just corporate form. If corporate form is  
7 going to control, then they could structure mergers  
8 and consolidations and transfers of property in a way  
9 to defeat this Commission's jurisdiction.

10 And I don't think that's the intention of  
11 the General Assembly to have this Commission's  
12 jurisdiction defeated by corporate form, federal  
13 income tax reasons and just structuring of  
14 transactions.

15 I think the Commission should also realize  
16 that Ameritech, the Ameritech Corporation we have  
17 before you, the one that is going to be incorporated  
18 into SBC in some manner, is a certified competitive  
19 local exchange company.

20 At some point their assets, their  
21 operations, something's going to happen to them, and I  
22 think this Commission has jurisdiction to look into  
23 that. Are they going to continue to operate? Are  
24 they going to be dissolved into the SBC Corporation  
25 and then eliminated as a CLEC? I think the Commission