

scopes and improve their service offerings, the merger of SBC and SNET will promote competition in the CMRS market areas currently served by their subsidiaries and strengthen their ability to compete with the many other incumbent and new CMRS providers in these areas, including Bell Atlantic, AT&T, Sprint, Omnipoint and Nextel.⁴⁸

(b) Local Exchange and Exchange Access

SBC does not provide and has never had any plans to provide local exchange or exchange access service in Connecticut, where there are already many competitive providers, including several very large companies as a result of the market-opening activities undertaken pursuant to Connecticut law and the 1996 Act. Rather, SBC has concentrated its out-of-region activities and new ventures in markets where it has existing facilities, customers, and brand name recognition; specifically, in those areas where it provides cellular service, which does not include Connecticut.⁴⁹

⁴⁸ As noted above, the Commission has previously recognized the benefits which can flow from such clustering of adjacent CMRS systems in its approval of other cellular transfers, most notably the merger of Bell Atlantic Mobile and NYNEX Mobile, the product of which is SBC's and SNET's largest and most pervasive CMRS competitor in New England and adjacent areas.

⁴⁹ For example, in Rochester, New York, pursuant to a
[Footnote continued on next page]

Similarly, SNET has never planned to provide local exchange or exchange access service in any of the seven in-region states in which SWBT, Pacific Bell or Nevada Bell operate.

Thus, the merger will not reduce the number of carriers actually providing, or planning to provide, local exchange service in Connecticut. Rather, the merger is likely to help foster competition in Connecticut in several ways, by expanding the resources available to SNET in order to enable it simultaneously to continue to undertake its market-opening activities, to provide new services to its customers, and to expand and upgrade its networks.

(c) Long Distance Service

The merger will not eliminate any competition in the provision of long distance service between SBC and SNET since neither SBC nor SNET markets, nor had any plan to market, such services in the other's territory. SBC does not market long distance service in its in-region states or in Connecticut. Similarly, SNET does

[Footnote continued from previous page]
waiver granted by the Commission, SBC subsidiaries have been experimenting with the provision of competitive local exchange service, as an adjunct to SBMS's cellular service in Rochester. That experiment does not, however, have any applicability for Connecticut, since SBC has no cellular or other facilities in Connecticut.

not market long distance service outside of Connecticut. Thus, there is no possible adverse impact on competition in any long distance market as a result of the merger. Rather, the merger is likely to produce a number of procompetitive benefits both for SBC's out-of-region long distance business and SAI's long distance business in Connecticut, as described above.

* * *

In addition to the foregoing categories of services -- which represent SNET's principal lines of business, and should, therefore, be the principal focus of the Commission's review of this merger -- the Applicants also provide other, competitive telecommunications services, such international and video services. As in the case of CMRS, local exchange and long distance services, the merger will not produce any anticompetitive effects in these additional service areas.

° International Services

SNET, through its subsidiaries, currently holds four Section 214 authorizations to provide international service, with respect to which the Applicants are simultaneously seeking to transfer control to SBC. Subsidiaries of SBC also hold such authorizations. However, neither SNET nor SBC markets international

services to customers in the other company's territory, nor did they ever have any plans to do so. In particular, SBC has never contemplated offering such service in Connecticut. Thus, the merger will not eliminate any actual or potential competition in this market, in which there are already hundreds of carriers providing such services.

° Video Services

The merger will not adversely affect competition in the market for multichannel video programming distribution ("MVPD"), since neither SBC nor SNET has, nor planned to have, any MVPD operations in the other company's territory. SNET Personal Vision, Inc. operates a cable television system in competition with the incumbent MVPD providers in Connecticut, including Cablevision Systems, TCI (which has announced plans to sell its systems to Cablevision), Tele-Media, Comcast, Cox, US West/ MediaOne, Primestar, DirecTV and Echostar/DISH Network. This merger would simply replace SBC for SNET as the party with ultimate control over SNET's competitive system.

* * *

For the foregoing reasons, the Applicants respectfully request that the Commission promptly and

unconditionally approve these transfer of control applications.

VI. Related Governmental Filings

In addition to this filing, SBC and SNET are taking steps to satisfy the requirements of other governmental entities with respect to the merger.

First, the Department of Justice will conduct its own review of competitive aspects of this transaction, pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18A, and the rules promulgated under that Act. On January 22, 1998, SBC and SNET each submitted to the Department of Justice and the Federal Trade Commission a pre-merger notification form and an associated documentary appendix.

Second, the CDPUC will review the transfer of control. On February 20, 1998, SBC and SNET filed with the CDPUC a joint application, pursuant to Section 16-47 of the General Statutes of Connecticut, requesting authorization for SBC to control SNET. In assessing the merger under Section 16-47, the CDPUC will consider: SBC's financial, technical and managerial qualifications; the ability of SNET's three public service companies to continue providing safe, adequate and reliable service following the merger; and, with

respect to SNET's telephone companies, the effect of the transaction on the location of SNET's operations and employees.

Finally, in those states that require it, SNET and SBC will undertake the necessary steps to transfer to SBC the state authorizations that SNET has obtained in connection with SNET's provision of interexchange services.

The Applicants fully expect that these reviews by the Department of Justice, the CDPUC and other state commissions will confirm that the merger of SBC and SNET is in the public interest and that there will be no reduction in actual or potential competition as a result of the merger.

VII. Additional Authorizations

In addition to seeking the Commission's approval of the transfers of control of the FCC authorizations covered in these applications, the Applicants are also requesting the additional authorizations described below, and they are simultaneously filing an application for a declaration by the Commission, under Section 212 of the Communications Act and Part 62 of the Commission's Rules, that, upon consummation of the merger, all of SBC's post-merger carrier subsidiaries,

(including SWBT, Pacific Bell, Nevada Bell, the SNET Telco and Woodbury), will be "commonly owned carriers."

A. After-Acquired Authorizations

As set forth in the relevant exhibit to each of these transfer of control applications, SNET controls entities which hold a number of FCC authorizations, all of which would be affected by this proposed transaction. While the applications for approval of the transfer of ultimate control of these authorizations are intended to be complete, the licensees involved in this proposed transaction may have on file, and may file for, additional authorizations for new or modified facilities, some of which may be granted during the pendency of these transfer of control applications. Accordingly, the Applicants request that the grant of the transfer of control applications include authority for SBC to acquire control of:

- (1) any authorization issued to SNET's subsidiaries and affiliates during the Commission's consideration of the transfer of control applications and the period required for consummation of the transaction following approval;
- (2) construction permits held by such licensees that mature into licenses after closing and that may not have been included in the transfer of control applications; and
- (3) applications that will have been filed by such licensees and that are pending at the

time of consummation of the proposed transfer of control.

Such action would be consistent with prior decisions of the Commission.⁵⁰

B. Blanket Exemptions to Cut-Off Rules

Pursuant to Sections 22.123(a), 25.116(b)(3), 90.164(b) and 101.29(c)(4) of the Commission's Rules, the Applicants request a blanket exemption from any applicable cut-off rules in cases where SNET's subsidiaries or affiliates file amendments to pending Part 22, Part 25, Part 90 and Part 101 or other applications to reflect the consummation of the proposed transfer of control. The exemption is requested so that amendments to pending applications to report the change in ownership would not be treated as major amendments requiring a second public notice period. The scope of the transaction between SNET and SBC demonstrates that any ownership changes are not made for the acquisition of any particular pending application, but are part of a larger merger undertaken for legitimate business purposes. The grant of such an exemption would be

⁵⁰ See, e.g., SBC/Telesis, *supra*, 12 FCC Rcd. 2624 at ¶ 93; In re Applications of Craig O. McCaw and American Telephone And Telegraph Co., 9 FCC Rcd. 5836 at ¶ 137 n.300 (1994), *aff'd sub nom.*, SBC Communications Inc. v. FCC, 56 F.3d 1484 (D.C. Cir.), *recon. in part*, 10 FCC Rcd. 11,786 (1995) ("AT&T/McCaw").

consistent with previous Commission decisions routinely granting a blanket exemption in cases involving large transactions.⁵¹

C. Unconstructed Systems/Antitrafficking Rules

The overwhelming majority of the FCC authorizations that are the subject of the proposed transfer of control applications consist of constructed facilities. However, certain facilities in the point-to-point microwave service are authorized but not yet constructed. Under Section 101.55(d) of the Commission's Rules, the transfer of control of such facilities does not implicate the Commission's antitrafficking restrictions, because the transfer of these unconstructed facilities is incidental to the larger transaction involving the transfer of control of an ongoing, operating business. Pursuant to Section 101.55(d), this Exhibit and the Plan demonstrate that the proposed transaction is a stock-for-stock exchange based upon the valuation of SNET as a whole. No separate payments are being made with respect to any

⁵¹ See, e.g., Century/PacifiCorp, supra, 1997 WL 640871 at ¶ 45; SBC/Telesis, supra, 12 FCC Rcd. 2624 at ¶ 91; AT&T/McCaw, supra, 9 FCC Rcd. 5836 at ¶ 137; Centel/Sprint, supra, 8 FCC Rcd. 1829 at ¶ 23.

individual FCC authorizations or individual facilities.⁵²

VIII. Financial Qualifications

The financial qualifications of SBC and its subsidiaries are well known to the Commission. SBC unquestionably possesses the requisite financial and other qualifications to control the authorizations covered by these applications, and to operate the systems and facilities which are the subject of these authorizations.

Because the acquisition of control of SNET will be accomplished through stock-for-stock merger, no new capital would be required to complete the proposed transaction.

Finally, as demonstrated by the most recent audited financial statement of SBC, for the year ending December 31, 1996, a copy of which appears at Attachment E to this Exhibit, SBC has sufficient capacity to ensure that the continued operation of SNET's systems serve the public interest, convenience and necessity.

⁵² See, e.g., SBC/Telesis, *supra*, 12 FCC Rcd. 2624 at ¶ 91.

- Attachments:
- A -- Categories of SNET Authorizations
 - B -- Agreement and Plan of Merger
 - C -- Certificated Local Exchange Carriers in Connecticut
 - D -- Intrastate Toll Carriers in Connecticut
 - E -- SBC's 1996 Audited Financial Statements
 - F -- SBC's 1997 Growth Profile
 - G -- Map and Matrix Regarding Cellular Coverage Areas in New England and

ATTACHMENT A

Authorizations Controlled by SNET

- Part 22: Cellular Radiotelephone Service
- Part 25: Domestic Earth Station (Receive-Only)
- Part 63: International Section 214 Authorizations
- Part 90: Business Radio Service
Telephone Maintenance Radio Service
- Part 101: Fixed Point-to-Point Microwave Radio
Local Television Transmission Service

ATTACHMENT B

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER

Among

SOUTHERN NEW ENGLAND TELECOMMUNICATIONS CORPORATION,

SBC COMMUNICATIONS INC.

and

SBC (CT), INC.

Dated as of January 4, 1998

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AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (hereinafter called this "Agreement"), dated as of January 4, 1998, among Southern New England Telecommunications Corporation, a Connecticut corporation (the "Company"), SBC Communications Inc., a Delaware corporation ("SBC"), and SBC (CT), Inc., a Connecticut corporation and a wholly-owned subsidiary of SBC ("Merger Sub").

RECITALS

WHEREAS, the respective boards of directors of each of SBC, Merger Sub and the Company have approved the merger of Merger Sub with and into the Company (the "Merger") and adopted this Agreement:

WHEREAS, it is intended that, for federal income tax purposes, the Merger shall qualify as a "tax-free" reorganization under the provisions of Section 368(a) of the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder (the "Code");

WHEREAS, for financial accounting purposes, it is intended that the Merger shall be accounted for as a "pooling-of-interests"; and

WHEREAS, as an inducement to the willingness of SBC to enter into this Agreement, the board of directors of the Company has approved the grant to SBC of an option to purchase shares of common stock of the Company pursuant to a stock option agreement, substantially in the form of Exhibit A (the "Stock Option Agreement"), and each of the Company and SBC have duly authorized, executed and delivered the Stock Option Agreement; and

WHEREAS, the Company, SBC and Merger Sub desire to make certain representations, warranties, covenants and agreements in connection with this Agreement.

NOW, THEREFORE, in consideration of the premises, and of the representations, warranties, covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE I

The Merger; Closing; Effective Time

1.1. The Merger. Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time (as defined in Section 1.3) Merger Sub shall be merged with and into the Company and the separate corporate existence of Merger Sub shall thereupon cease. The Company shall be the surviving corporation in the Merger (sometimes hereinafter referred to as the "Surviving Corporation") and shall continue to be governed by the laws of the State of Connecticut, and the Merger shall have the effects specified in the Connecticut Business Corporation Act (the "CBCA").

1.2. Closing. The closing of the Merger (the "Closing") shall take place (i) at the offices of Sullivan & Cromwell, 125 Broad Street, New York, New York 10004 at 9:00 A.M. local time on the second business day after the date on which the last to be fulfilled or waived of the conditions set forth in Article VII (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the fulfillment or waiver of those conditions) shall be satisfied or waived in accordance with this Agreement or (ii) at such other place and time and/or on such other date as the Company and SBC may agree in writing (the "Closing Date").

1.3. Effective Time. As soon as practicable following the Closing, the Company and SBC will cause a certificate of merger (the "Certificate of Merger") to be signed, acknowledged and delivered for filing with the Secretary of the State of Connecticut as provided in Section 33-819 of the CBCA. The Merger shall become effective at the time when the Certificate of Merger shall have become effective in accordance with the CBCA (the "Effective Time").