each such area and in all their wireless markets, SBC and Ameritech compete with other providers of cellular, PCS, SMR and other wireless services.[79] See Section IV.C.2, below.

The competitive analysis of wireless overlaps can be abbreviated because SBC and Ameritech will comply with the Commission's rules prohibiting anyone that owns or controls a cellular license from acquiring an ownership interest in another licensee in the same cellular geographic service area. 47 C.F.R. § 22.942. The Commission's spectrum aggregation rules also prohibit a commercial mobile radio service ("CMRS") licensee from having an attributable interest in a total of more than 45 MHz of licensed CMRS spectrum with significant overlap in any geographic area. 47 C.F.R. § 20.6. Applicants will comply with the Commission's rules prior to consummation of the transfer of control of such licenses from Ameritech to SBC as contemplated by this Application.

Indeed, not only will the merger of SBC and Ameritech not eliminate any competition, it will strengthen competition and benefit consumers of wireless service by allowing the merged company to provide wider calling scopes, more consistent features and other consumer benefits. See Section IV.C.2, below.

2. Local Exchange Service to Large Business Customers

Ameritech and SBC compete to a de minimis extent for the provision of local exchange service to large business customers. Ameritech provides resold local exchange service outside its five-state region to only one large business customer. It currently serves, on a resale basis, 398 access lines in California, 118 lines in New York, and 86

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[79] Paging markets are highly competitive with many providers, switching providers is easy and inexpensive, and there are no barriers to entry. See Third CMRS Competition Report at 51. Accordingly, there are no competitive concerns in any paging market.

lines in Texas for this customer. Weller Aff. ¶ 32. This is the product of a pilot project to expand relationships with existing, large in-region customers. Id. Unlike the National-Local Strategy that SBC intends to implement as a result of the merger, Ameritech's plan was aimed at reselling local service only to large business customers and was not designed to be the springboard for a broad-based entry into out-of-region local exchange service. There was limited customer interest in the service and it has not been expanded, because its financial performance was not meeting expectations and the expected margins did not justify a further roll-out. Id.

Large business and government customers enjoy the largest number of options for their local exchange and other telecommunications needs.[80] See Section IV.C.1. These are the customers most avidly pursued by CLECs. See Carlton Aff. ¶ 36. Accordingly, any competitive overlap between Applicants in the local exchange business is de minimis and not a cause for competitive concern. See Schmalensee/Taylor Aff. ¶ 28.

3. Long Distance Service

Neither SBC nor Ameritech is currently permitted to provide interLATA service in its region, except for incidental service, such as that provided to cellular customers. Each has begun to provide long distance service to a small degree outside its region, and

[80] The Commission implicitly acknowledged this in focusing its attention in BA/NYNEX on residential and small business customers. BA/NYNEX at ¶ 53.

there is thus some competitive overlap between them.[81] This overlap is de minimis, however.

The relevant geographic market for long distance service is nationwide.[82] Long distance networks are nationwide in scope, interexchange carriers market their services to customers across the nation and rates are averaged on a national basis. The business is dominated by the major interexchange carriers, AT&T, MCI/WorldCom and Sprint, which share over 80 percent of the market.[83] In contrast, SBC and Ameritech are two very small competitors among hundreds of resellers. As Drs. Schmalensee and Taylor conclude, the effect of the merger on competition between them is too small to trigger any competitive concerns. Schmalensee/Taylor Aff. ¶ 29.

This conclusion would be unaffected if the product market were limited to specific types of customers or if the geographic market were limited to various states,

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[81] To the extent that SBC or Ameritech is providing landline long distance service in the other's region, it will make alternative arrangements for these customers to receive landline long distance service after the merger, if necessary (as, for example, in the case of SBC's cellular customers in Illinois and Indiana, if SBC's Chicago cellular system is not divested as part of SBC's compliance with the Commission's rules regarding ownership of overlapping cellular licenses).

[82] See, e.g., In re Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, Second Report and Order, 12 FCC Rcd. 15756, ¶ 67 (1997) ("LEC Interexchange Order"). In BA/NYNEX, the Commission considered LATA or metropolitan-area based markets to be relevant geographic markets for long distance service, although this does not appear to have been central to the competitive analysis. Given that the only barriers to expansion by a long distance carrier are those imposed uniquely on the RBOCs by section 271 of the 1996 Act, defining the relevant geographic market by LATA seems too narrow. In any event, as discussed below, this will not affect the result in this case.

[83] See FCC Common Carrier Bureau, Long Distance Market Shares: First Quarter 1998 table 3.2 (June 1998), available at <http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-state-link/ixc.html#marketshares> (noting market share in revenues reported to shareholders).

metropolitan areas or LATAs.[84] There is no plausible cause for concern about anticompetitive effects resulting from the merger in any long distance market.[85] To the contrary, as discussed in Section IV.C.4, below, the merger will promote long distance competition.

B. The Merger Will Not Eliminate Any Substantial Potential Competition

In its decision approving SBC's merger with Pacific Telesis, the Commission set out a framework for analyzing mergers between large local exchange carriers that focused on potential competition analysis.[86] Subsequently, the Commission refined that analysis in BA/NYNEX to take account of dynamic factors affecting the industry. In that decision, the Commission focused on identifying "the most significant market participants" as central to its analysis.[87] In this case, the merger of SBC and Ameritech will not eliminate substantial potential competition between them, nor is SBC or Ameritech a "most significant market participant" in any market in which the other is the incumbent LEC.

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[84] SNET's affiliate, SNET America, Inc., provides long distance service to customers in Connecticut, but there is no measurable overlap there with either Ameritech or SBC.

[85] Subsidiaries of SBC and Ameritech also issue calling cards to their customers which can be used in virtually all states where these customers travel. Neither company, however, markets, or had any plans to market, service in the other's territory. Thus, the provision of originating long distance service by either company in the other's territory is the fortuitous consequence of the use of a calling card by a travelling customer. This "competition" is obviously de minimis. See Schmalensee/Taylor Aff. ¶ 29.

[86] SBC/Telesis at ¶¶ 17-18.

[87] BA/NYNEX at ¶¶ 7, 61-62.

1. **Relevant Product Market**

The Commission has defined a relevant product market as "a service or group of services for which there are no close demand substitutes."[88] In BA/NYNEX, the Commission defined three relevant product markets for analysis: local exchange and exchange access service ("local service"); long distance (i.e., interLATA) service; and local exchange and exchange access service bundled with long distance service ("bundled services"). See BA/NYNEX ¶ 50. We will thus discuss the effects in those proposed markets. There are no other markets in which there are any plausible competitive concerns.

In addition, the Commission in BA/NYNEX assessed the effects of the merger in three separate customer segments that were grouped as having "similar patterns of demand": residential customers and small businesses (the "mass market"); medium-sized businesses; and large business/government users. Id. ¶ 53. We will address the potential effects of the merger in each segment as the Commission did in BA/NYNEX.

2. **Relevant Geographic Market**

The Commission has defined a relevant geographic market as aggregating "those consumers with similar choices regarding a particular good or service in the same geographical area." Id. ¶ 54. In BA/NYNEX, the Commission defined a LATA – in that case, LATA 132, essentially covering NYNEX's New York Metropolitan Calling Area – as a relevant geographic market for local exchange, long distance and bundled services. Id. ¶ 55. Following that approach, we focus our analysis on the only two LATAs in

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[88] BA/NYNEX at ¶ 50 (citing LEC Interexchange Order at ¶ 27); cf. Dept. of Justice and Fed. Trade Comm'n, Horizontal Merger Guidelines (issued April 2, 1992) ("1992 Horizontal Merger Guidelines") at § 1.0-1.1.

which there could conceivably be potential competition concerns, the St. Louis and Chicago LATAs. These are the only areas in which one of the merging parties is the incumbent LEC while the other may have given any consideration to entry into local services.[89] See Schmalensee/Taylor Aff. ¶ 27. As discussed below, even in those two areas, the merger will not substantially lessen competition.

The Commission in BA/NYNEX also defined an alternative geographic market comprising the New York metropolitan area, including northern New Jersey, based on the finding that media advertising in New York reached consumers in Bell Atlantic's northern New Jersey service area. Id. ¶ 56. Varying the market definition did not affect the analysis in BA/NYNEX, nor would it in this case if the relevant geographic markets were defined as the Chicago and St. Louis metropolitan areas rather than the corresponding LATAs, as discussed below.

3. Market Participants

In BA/NYNEX, the Commission defined the universe of participants in the relevant market to include actual competitors – those firms currently competing in the relevant market and geographic markets – and "precluded competitors," described as "firms that are most likely to enter but have until recently been prevented or deterred from market participation by barriers to entry the 1996 Act seeks to lower." Id. ¶ 60. In this case, to the extent that either SBC or Ameritech is a precluded competitor in an area

[89] While SBC and Ameritech both provide service in the St. Louis LATA (LATA 520), they serve mutually exclusive territories (SBC in Missouri and Ameritech in Illinois) and are not actual competitors. Neither SBC nor Ameritech had even any preliminary plans to enter the local or bundled services markets in any other areas where the other is the incumbent LEC and, accordingly, there is no reason to analyze such markets further. Cf. BA/NYNEX at ¶ 57 ("Bell Atlantic was planning entry not only in LATA 132, but in other parts of the NYNEX territory as well.").

in which the other is the incumbent LEC, there is no reason to believe that it is a "most significant market participant" as that term was used in BA/NYNEX. Moreover, because there are numerous actual and precluded competitors in each of the relevant product markets (and in each customer segment of those markets) in the Chicago and St. Louis LATAs, there is no cause for competitive concern. See id. ¶ 65.

The Commission recognized in BA/NYNEX that "medium sized businesses are targeted by specialized firms that do not necessarily seek to address the mass market." Id. ¶ 53. In both Chicago and St. Louis there are numerous CLECs serving such customers. See Tables 5, 6, 9-12 at the "Tables" attachment. Those businesses are also served by the major IXCs. Accordingly, as the Commission found in BA/NYNEX, there are numerous market participants in that customer segment of all the relevant product markets, and no reason to believe that either SBC (in Chicago) or Ameritech (in St. Louis) is a significant market participant whose elimination through merger will result in competitive harm.

The same is true for the large business/government user segment. These sophisticated customers purchase telecommunications services, including local, long distance and bundled services, under individually negotiated contracts and are pursued by numerous vendors. Kahan Aff. ¶ 30; see also BA/NYNEX ¶ 53. Here, too, as in BA/NYNEX, there is no reason to believe that the merger will eliminate a significant market participant or otherwise lessen competition.

Thus, in BA/NYNEX, the Commission's analysis focused on the mass market for local and bundled services. In that case, the Commission found that Bell Atlantic was likely to enter the mass market for local and bundled services in New York; that it was one of a few most significant market participants; and, based on the record, it was the most significant competitor to the incumbent, NYNEX. As we discuss in detail below, the record in this case inevitably leads to a different conclusion.

SBC had rejected attempting to enter the Chicago market and cannot be regarded as a significant market participant. In St. Louis, Ameritech developed a limited plan to offer local service (including bundled services) in that one area by reselling SBC service to its existing base of residential cellular customers. The plan was defensive, designed to protect Ameritech's base of existing cellular customers. Ameritech had no plans to offer facilities-based local service, either wired or wireless. It could not be considered a significant market participant in St. Louis and is certainly less significant than such competitors as AT&T/TCG/TCI, WorldCom/MCI/MFS/Brooks/UUNet and Sprint. In any event, the planned divestiture of one of Applicants' cellular systems in St. Louis, permitting the new competitor to pursue the Ameritech resale strategy if it so chooses, will fully resolve any arguable loss of competition there. See Schmalensee/Taylor Aff. ¶¶ 32, 35.

a. Chicago

There are many actual and potential competitors in the markets for local and bundled services in Chicago. See Pampush Aff. ¶ 9, Attachment A; Schmalensee/Taylor Aff. ¶¶ 42-65; Map 25 at the "Maps" attachment; Tables 6, 10 and 12 at the "Tables" attachment; Section IV, below. The Affidavit of Stan Sigman, President of SBC Wireless, Inc., demonstrates that SBC is neither an actual nor a potential competitor in local or bundled services in Chicago because it had no plans to enter those markets.[90] It

[90] The discussion in this section would be no different if the relevant geographic market were defined as the Chicago metropolitan area rather than the Chicago LATA.

certainly is not one of the most significant market participants. See Schmalensee/Taylor Aff. ¶¶ 42, 65. Indeed, in BA/NYNEX the Commission found that non-adjacent out-of-region Bell Companies – like SBC in the case of Chicago[91] – were not among the most significant market participants in New York, and the same conclusion applies here. Id. ¶ 48; see BA/NYNEX ¶ 93. For this reason alone, further analysis of SBC as a competitor in Chicago is unnecessary.

In any event, SBC is not even a potential competitor. SBC considered – and rejected – entry into the local exchange business in Chicago. Beginning in late 1995, SBC considered whether it could provide local exchange service to its out-of-region cellular customers. Sigman Aff. ¶ 3. It selected the Rochester, New York MSA as the pilot market for such a venture and entered the market in early 1997, reselling the service of the incumbent LEC, Frontier. Id. ¶ 7.

SBC's actual experience in Rochester was quite disappointing. SBC won few customers. Moreover, the customers it gained were not buying cellular service or generating other service revenues, and presented collection difficulties. Id. ¶¶ 7-8. SBC thus projected unprofitable operations for an unacceptably long period. Id. ¶ 9. By the fall of 1997, well before and independently of any consideration of this merger, the management of SBC's cellular business decided to discontinue the experiment and stop

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Accordingly, references to Chicago or the Chicago LATA may be understood to refer as well to the Chicago metropolitan area.

[91] While SBC's region is "adjacent" to Ameritech's in the sense that they share a border between Illinois and Missouri, SBC's nearest local exchanges are hundreds of miles from Chicago. SBC sells cellular service in Chicago under the Cellular One brand name, which proved to be ineffective as a brand name for local exchange service in Rochester. Sigman Aff. ¶ 13. Thus, SBC has no more "visibility" in Chicago than Bell Atlantic or BellSouth, and considerably less than the major IXCs.

marketing to new customers, although SBC continues to provide local exchange service to the pilot customers in Rochester in order to preserve their goodwill. Id. ¶¶ 17-18.

Prior to the Rochester experiment, SBC had considered offering local exchange service in its other out-of-region wireless markets, including Chicago. Id. ¶ 10. It never took any steps toward such entry, however. The Rochester experiment led SBC to conclude that its cellular business did not provide a useful base for entering the local exchange business. Id. ¶¶ 11-16. During the summer of 1997, when it became clear that the Rochester experiment was not successful, SBC discontinued its consideration of providing local exchange service in any of SBC's other out-of-region cellular markets, including Chicago.[92] Id. ¶ 17.

In contrast to SBC, the most significant mass market participants would include AT&T/TCG/TCI, WorldCom/MCI/MFS/Brooks/UUNet and Sprint, just as the Commission concluded with respect to New York in BA/NYNEX. See BA/NYNEX ¶ 82; Schmalensee/Taylor Aff. ¶¶ 48-56. AT&T has millions of long distance and wireless customers in Chicago, as well as the best recognized brand name in telecommunications, and it will have direct access to over one million households and tens of thousands of businesses in Chicago through TCI and TCG, respectively. See Map 25 at the "Maps" attachment; Schmalensee/Taylor Aff. ¶¶ 49-52. Indeed, Chicago is one of TCI's major cable clusters. WorldCom/MCI/MFS/Brooks/UUNet also has extensive CLEC facilities in Chicago. Schmalensee/Taylor Aff. ¶¶ 53-54. It and Sprint likewise

[92] SBC also had no plans whatsoever to provide local exchange service in the parts of Illinois outside Chicago in which it provides cellular service, or elsewhere in Illinois or Ameritech's other four states.

have many thousands of customers in Chicago and well-recognized names. Id. ¶¶ 54-55. These firms are clearly more significant competitors to Ameritech than SBC. Id. ¶ 56.[93]

b. St. Louis

As in the case of Chicago, the list of actual and precluded competitors for local and bundled services in the St. Louis LATA is a long one.[94] See Section IV.C.1, below; Schmalensee/Taylor Aff. ¶¶ 43-64; Map 15 at the "Maps" attachment; Tables 5, 9 and 11 at the "Tables" attachment. While Ameritech had proposed an embryonic entry into bundled local and wireless service in St. Louis, the accompanying Affidavit of Paul G. Osland makes clear that that effort was defensive in nature and limited to reselling ILEC service to Ameritech cellular customers. In fact, it resembles somewhat the venture that SBC unsuccessfully attempted in Rochester. It does not make Ameritech a significant market participant in St. Louis.

In early 1997, the management of Ameritech's cellular business unit perceived that its new wireless competitors in St. Louis – including AT&T and Sprint PCS, which have PCS licenses, and Nextel – were in a position to offer local exchange service

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[93] Because Ameritech does not yet have authority to provide interLATA service to its in-region customers, it cannot yet provide bundled services. Other competitors in the market, such as WorldCom/MCI, WinStar, USN and Focal, face no such constraints and are providing bundled service to certain business customers. See Pampush Aff. ¶ 8, Attachment A. These competitors could easily expand their service. For that additional reason there is no potential anticompetitive effect in a market for bundled services.

[94] If the geographic market were defined as the St. Louis metropolitan area rather than the St. Louis LATA, the analysis would be no different. Thus, references to St. Louis or the St. Louis LATA should be understood to refer as well to the St. Louis metropolitan area. Ameritech is the incumbent LEC in some suburban areas in the Illinois portion of the metropolitan area but its territory and SBC's are mutually exclusive and there is no competition between them other than that described in this section. There is no evidence that SBC had any interest in competing in Ameritech's suburban St. Louis exchanges. Any visibility or name recognition that Ameritech had in St. Louis would derive mainly from its wireless presence in St. Louis. Indeed, Ameritech's plans regarding local exchange entry in St. Louis, discussed below, were based entirely on its wireless assets.

bundled with wireless service. Osland Aff. ¶ 4. As a defensive strategy to protect its cellular customer base, Ameritech considered bundling resold local exchange service with its cellular product in St. Louis. Id. The original plan was to resell Southwestern Bell Telephone ("SWBT") service to Ameritech residential and small business cellular customers. Id. ¶ 6. That plan, known as Project Gateway, was scaled back to target only existing residential cellular subscribers (less than half the customer base) due to difficulties with system interfaces and development. Id. Project Gateway did not assume any facilities-based local service and required no use of existing Ameritech wireline facilities. Id. ¶ 7. The proposed service packages were to be priced to attract cellular customers and were neither intended nor expected to appeal to non-cellular customers. Id.

A trial was begun in January 1998, and approximately 390 trial customers (Ameritech employees and their families) have signed up for the service. Id. ¶ 8. The trial identified a number of financial, marketing and operational problems, including a confusing bill format, pricing and order processing problems, and the financial impact of increased competition in St. Louis, which reduced the economic attractiveness of some packages. Id. ¶¶ 8, 11. These issues were under review by Ameritech and had not been resolved at the time the proposed merger was announced. Ameritech's current financial projections for Project Gateway indicate that the project would produce a net income loss for three years and a free cash flow loss for five years. Id. ¶ 9. Ameritech put the project on hold for several reasons, including the financial projections, the issues raised by bill format and rate structure, operational problems, the other demands on the resources of Ameritech Cellular, the failure of wireless competitors to offer bundled service and uncertainties created by the planned merger with SBC. Id. ¶¶ 10-14. Even had Ameritech decided to go forward with Project Gateway, a limited resale offering to its residential cellular customers would not have constituted a significant entry into the local exchange business in St. Louis. Schmalensee/Taylor Aff. ¶ 35. Indeed, Ameritech never had any plan to offer facilities-based local service in St. Louis. Osland Aff. ¶ 7.

Moreover, as in Chicago, the major IXCs are clearly significant competitors in St. Louis. See Schmalensee/Taylor Aff. ¶¶ 48-56. Both AT&T/TCG/TCI and WorldCom/MCI/MFS/Brooks/UUNet have large customer bases and actual CLEC facilities in St. Louis. See Map 15 at the "Maps" attachment. AT&T/TCG also has a large number of existing long distance customers and PCS subscribers. With the addition of TCI, which has a major St. Louis cluster, AT&T will reach 185,500 cable households in SBC's service area.[95] MFS, one of WorldCom's principal CLEC operations, has at least 81 route miles of fiber and at least 38 buildings on-net in St. Louis,[96] which will be combined with many MCI long distance customers. Sprint has both long distance and PCS customers in the market. All three of the major IXCs enjoy equal or greater brand identification in St. Louis and, in light of their existing facilities and customer bases, are clearly more significant market participants than Ameritech. Schmalensee/Taylor Aff. ¶ 56.

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[95] See TCI, Market Profile: St. Louis DMA (visited July 17, 1998), <http://www.tcimediaservices.com/stlouis/index.html>. TCI also serves another 70,000 subscribers in the Illinois portion of the St. Louis DMA, where Ameritech is the LEC. See id.

[96] See New Paradigm Resources Group and Connecticut Research, 1997 CLEC Report: Annual Report on Local Telecommunications Competition 450 (8th ed. 1997).

In any event, Applicants will have to divest one of their overlapping cellular systems in St. Louis. If the Ameritech system is sold, the purchaser will possess the same assets that Ameritech could have used as the base for CLEC entry in St. Louis – its cellular customer base and network – and thus would have the same ability as Ameritech to bundle wireless and local services.[97] Id. ¶ 36.

4. The Merger Will Not Produce Any Adverse Competitive Effects

As demonstrated above, there is no significant direct competition today between SBC and Ameritech (apart from the cellular overlaps that will be cured), and no markets in which SBC and Ameritech are significant potential competitors. As Drs. Schmalensee and Taylor conclude, applying the standards the Commission applied in BA/NYNEX and the framework of the 1992 Horizontal Merger Guidelines, this merger poses no competitive concerns. Schmalensee/Taylor Aff. ¶¶ 65-66. The same conclusion holds under the unilateral effects, coordinated effects and dynamic effects analyses considered by the Commission in BA/NYNEX.[98]

a. Unilateral Effects

The Commission applied a unilateral effects analysis in BA/NYNEX not unlike that in Section 2.21 of the 1992 Horizontal Merger Guidelines. BA/NYNEX ¶ 102. This analysis is applied to mergers in markets for differentiated products and seeks to determine whether one of the merging firms has a leading position while the other is considered by buyers to be the "next best choice," meaning that the merger of the two

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[97] This discussion assumes, for purposes of exposition, that Applicants will divest Ameritech's cellular license in St. Louis. The analysis and result would be no different if SBC's cellular license were divested.

[98] See, e.g., BA/NYNEX at ¶¶ 102, 114, 125.

may permit the merged firm to raise its price with less substitutability constraint than it faced before the merger. See 1992 Horizontal Merger Guidelines § 2.21. Assuming that mass market local or bundled services are differentiated products to which this analysis would apply, the question is whether consumers of those services in the Chicago LATA would consider SBC the next best choice after Ameritech, and whether consumers in the St. Louis LATA would consider Ameritech the next best choice after SBC.

In BA/NYNEX, the Commission found a likelihood of such unilateral effects. That conclusion was based on several critical findings for which there is no supporting evidence here. First, the record showed that Bell Atlantic planned a substantial entry into the New York LATA. Here, SBC had no such plans in Chicago, and we have discussed the limited nature of Ameritech's plans in St. Louis. Second, the Commission found that Bell Atlantic would be an important second choice for mass market consumers in the New York LATA. See ¶¶ 105-06. Here, there is no evidence that either SBC or Ameritech would be an important second choice for the other's local exchange customers.

Rather, the major, national interexchange carriers (including their CLEC affiliates) are the most significant "second choice" competitors. AT&T has expertise in the operation of telecommunications networks, incomparable brand name recognition, substantial infrastructure (augmented by its pending acquisitions of TCG and TCI), and huge customer bases in both SBC's and Ameritech's markets. Schmalensee/Taylor Aff. ¶¶ 49-52. WorldCom/MCI/MFS/Brooks/UUNet also has expertise in operating local telecommunications networks for sophisticated customers, as well as substantial infrastructure, customer base and name recognition in the two companies' regions. Id.

¶¶ 53-54. Sprint has extensive local exchange expertise (through United and Centel) and also many customers and broad name recognition. Id. ¶ 55. Each of these competitors is a far more effective constraint on SBC and Ameritech than either of the merging parties would be on the other. Id. ¶¶ 48-56.

In other words, there is no reason to believe that the merger will remove a significant current constraint on the competitive behavior of either of the merging parties, and it is clear that sufficient future competition – from the major IXCs as well as the myriad of CLECs, niche firms and others that have been very successful at winning profitable business away from both Ameritech and SBC – will continue. Applying the unilateral effects analysis to this merger in these markets leads to the same result as application of the traditional potential competition test – there are and will continue to be enough sources of competition in these markets that the merger will not adversely affect competition or the public interest.

b. Coordinated Effects

There is no reason to believe that the merger will increase the likelihood of coordinated interaction in any of the relevant markets. Indeed, the National-Local Strategy itself plainly refutes any argument that the merger could facilitate coordinated behavior among large LECs. Furthermore, in a market with a large incumbent, all of the other market participants have a powerful incentive to compete and expand output. In other words, whether Ameritech competes in St. Louis or not, AT&T (especially in light of its pending mergers with TCI and TCG), WorldCom/MCI/MFS/Brooks/UUNet, Sprint, the many CLECs and all of the other competitors will continue to try to expand their business and compete vigorously with SBC in order to build their customer bases. Nor is there any reason to believe that such emerging competitors would be likely to collude among themselves or that such coordination would have any impact on the market.

c. Dynamic Effects

The Commission also considers the merger's effect on dynamic market performance and, in particular, whether alternative entry into a local market by an incumbent LEC would affect the process of opening local markets to competition. See BA/NYNEX ¶¶ 125-27. Here, as discussed below, those effects are unambiguously positive. See Carlton Aff. ¶¶ 10-11, 42, 46; Gilbert/Harris Aff. ¶¶ 61-63.

The accompanying Affidavits of Stephen M. Carter of SBC and Terry D. Appenzeller of Ameritech detail the extensive efforts that both companies have made to open their respective local markets to competition. See also Table 1 at the "Tables" attachment. SBC has spent more than $1 billion to date to comply with Section 251 of the Communications Act and the competitive checklist under Section 271, and expects to spend more than $1.5 billion by the end of 1998. Carter Aff. ¶ 10. Ameritech has spent approximately $2 billion to date to do the same. Appenzeller Aff. ¶ 10. Over 3,300 SBC employees and over 1,200 Ameritech employees have worked to fulfill Section 251 and 271 requirements, such as customer service, operations support systems ("OSS"), number portability, trunking, local service centers and computer systems. Carter Aff. ¶ 7; Appenzeller Aff. ¶¶ 8, 9.

CLECs are operating successfully in SBC's and Ameritech's regions, as a result of these efforts. See Tables 1, 3, 4, 7, 8, 11, 12, and 13 at the "Tables" attachment. SBC was the first ILEC to negotiate an interconnection agreement under the 1996 Act. Carter Aff. ¶ 5. To date SBC has negotiated 374 interconnection agreements, 93 percent of which have been signed without arbitration. Id. Ameritech has 175 approved interconnection agreements with 39 carriers. Appenzeller Aff. ¶¶ 15, 30.

Pursuant to these interconnection agreements, SBC has provided more than 350,000 interconnection trunks to CLEC customers and exchanged more than 14 billion minutes of local and Internet traffic with CLEC networks. See Attachment 1 to Carter Aff. CLECs have attached their lines to hundreds of thousands of SBC poles and occupy 8.2 million feet of SBC conduit space. Id. They have received more than 60,000 unbundled local loops and nearly 350 unbundled switch ports from SBC. Id. CLECs are able to access these facilities and interconnect with SBC's local networks using 490 operational physical collocations and 58 virtual collocation agreements. Id.

Similarly, Ameritech has leased approximately 94,600 unbundled local loops to CLECs. Appenzeller Aff. ¶ 48. As of May 1, 1998, competing carriers were physically collocated in 113 and virtually collocated in 166 Ameritech wire centers, with 77 more wire centers scheduled for activation in the third quarter of 1998. Id. ¶ 41. This represents 23 percent of Ameritech's wire centers, but those centers serve 63 percent of the business lines and 50 percent of the residential lines in Ameritech's territory, showing how CLECs have focused on the most important end offices. Pampush Aff. ¶ 14; Appenzeller Aff. ¶ 41. Ameritech also has made available nondiscriminatory access to poles, ducts, conduits and rights-of-way. Id. ¶ 26. Competing carriers are offering service in more than 80 percent of the communities that Ameritech serves, including virtually every community that Ameritech serves in Illinois and Michigan. Id. ¶ 12.

As the process of implementing the 1996 Act continues to unfold, ongoing progress has been made by both companies, and we expect this progress to continue.

Thus, any barriers to local exchange entry that may have existed in the past have been and are continuing to fall.

The merger will not impede progress in implementing the 1996 Act. That process is ongoing and irreversible. Indeed, the overall effect of the merger is to advance that process by enabling SBC's and Ameritech's entry into numerous local markets via the National-Local Strategy and the inevitable responses of others who will enter SBC's and Ameritech's markets.

d. Potential Entry and Expansion

A merger cannot substantially lessen competition in a market if new entry can easily occur in that market.[99] In this regard, expansion by small firms can have the same procompetitive effect as new entry.

In BA/NYNEX, the Commission concluded that there remained barriers to new entry and expansion in the New York LATA. As time goes on and the process of market-opening advances, those types of barriers are disappearing, as is demonstrated by the substantial and effective entry that has occurred into local and bundled services in Chicago and St. Louis. Schmalensee/Taylor Aff. ¶ 43. More such entry is on the way. Pampush Aff. ¶ 7; see also Section IV.C.1, below. If the merger had any potential for raising price, the entry trend would only accelerate.

In fact, this merger will be a tremendous stimulus to new entry in the relevant markets – not because it will reduce competition, but because it will bring new competition to dozens of markets outside the SBC and Ameritech regions. This, in turn,

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[99] See, e.g., United States v. Baker Hughes, Inc., 908 F.2d 981, 987 (D.C. Cir. 1990); Oahu Gas Serv. v. Pacific Resources, Inc., 838 F.2d 360, 366 (9th Cir. 1988); United States v. Waste Mgmt., Inc., 743 F.2d 976, 981-83 (2d Cir. 1984); 1992 Horizontal

will stimulate others to respond both in their own markets and by competing in the markets in which SBC/Ameritech will be the incumbent LEC. Schmalensee/Taylor Aff. ¶ 16; Carlton Aff. ¶ 10; Gilbert/Harris Aff. ¶ 28. The merger thus carries forward the market-opening policies of the 1996 Act by encouraging new entrants in a great many local markets.

Conditions are already conducive to entry in each of the relevant markets. See Schmalensee/Taylor Aff. ¶¶ 37-41; Section IV, below. For example, in local exchange service, entry barriers for resellers are very low. A CLEC may resell retail services either under an approved resale agreement or pursuant to an intrastate resale tariff. Since no substantial network investments are necessary, resellers can and do materialize almost overnight. Moreover, resellers can offer market-wide ("universal") service almost immediately, with little risk. They can challenge LECs as one-stop suppliers and establish primary-provider relationships with minimal investment. Any reseller can readily increase its "capacity" without effective limit. In sum, there is as much potential resale competition as there is ILEC capacity, and there are as many potential competitors as there are potential retailers of any mass-market good or service.

Entrants seeking to deploy capital most profitably use the unbundling alternative for many of their nonstrategic plant needs, but not for switching.[100] SBC and Ameritech themselves plan to rely heavily on unbundled elements in implementing the National-Local Strategy. While many carriers have already bought loops from SBC and Ameritech, only a very few entrants have ordered unbundled switching from SBC and

[100] The avoidance of access charges creates an additional incentive for interexchange carriers to deploy their own switching facilities for local exchange service. See 47 C.F.R.§ 51.509(b) (establishing collection costs and usage – sensitive charges for shared transmission and tandem switching).

none have done so from Ameritech, even though both companies stand ready and able to furnish it at any time.

Although by definition not as low as those for pure resale competition, entry barriers for facilities-based competition on an unbundled basis are quite modest. Schmalensee/Taylor Aff. ¶ 40. New entrants can install and operate powerful switching systems with relatively modest investment, as compared to the much higher cost of deploying an entire network. Tables 7, 8, 11, 12, and 13 (at the "Tables" attachment) depict the extensive facilities-based entry that has already occurred in SBC's and Ameritech's regions. In addition, numerous carriers have excess switching capacity that can readily be used to provide the same local switching services performed in SBC and Ameritech end offices.[101] Interexchange carriers are also adding end-office (Class 5) switches to their networks in the 13 states served by SBC, SNET and Ameritech. Moreover, because trunking costs are low and declining, switches do not have to be located in close proximity to a customer, or to a LEC central office. A relatively small number of switches can thus provide unbundled competitive service to a large geographic area.[102]

C. The Merger Will Not Impair Regulatory Effectiveness

For several reasons, this merger will not impede regulatory effectiveness, through the use of benchmark comparisons or otherwise. First, even at five – Bell Atlantic,

[101] See, e.g., J. Dix and D. Rohde, AT&T Plots Invasion of Baby Bell Turf, Network World, July 8, 1996, at 1 (noting AT&T's effort to use its Digital Link services embedded base of Class 4 switches to provide local service to the company's dedicated access customers).

[102] See Intelcom Group, MFS Gain Strong Buy Recommendation From Investment House, Fiber Optics News, Feb. 26, 1996, available at 1996 WL 2327659 (stating that fiber-based CLECs can serve a 125-mile radius area with a single switch).

BellSouth, GTE, SBC/Ameritech and U S West – the number of large LECs among which to compare and contrast local service performance would remain adequate for the Commission's regulatory needs. As discussed in Section II.E, above, the original number of RBOCs created at divestiture had no regulatory significance. Moreover, as the Commission noted in SBC/Telesis, "nothing in the Communications Act or the antitrust laws requires the present number of RBOCs, or any particular number of them." SBC/Telesis ¶ 32.

In addition to the development of more sophisticated regulatory tools, the increasingly competitive telecommunications environment makes the number of large LEC benchmarks less important. Competition alone will drive the provision of services to the most beneficial mix of quality and price. The Commission itself recognized that in a competitive environment, the use of benchmarks becomes "moot."[103] Indeed, to the extent that benchmark information, such as tariffed rates, service requirements or cost data, is publicly available, it may even inhibit competition.[104] Overall, a reduction by one in the number of large LECs available for benchmark comparisons will not impede regulatory effectiveness.

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[103] See In re International Settlement Rates, Report and Order, 12 FCC Rcd. 19806, ¶ 14 (1997).

[104] See In re Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, Second Report and Order, 11 FCC Rcd. 20,730, at ¶ 37 (1996) (observing that "requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services may harm consumers by impeding the development of vigorous competition, which could lead to higher rates").

IV. THE MERGER IS IN THE PUBLIC INTEREST

In order to approve the transfer to SBC of ultimate control of Ameritech's FCC authorizations, the Commission must find that those transfers are consistent with the public interest, convenience and necessity. As interpreted by the Commission, that determination includes consideration of whether the applicants are qualified to control the licenses being transferred and whether the transaction is consistent with the policies of the Communications Act. BA/NYNEX ¶¶ 29-32; SBC/Telesis ¶¶ 12-13.

A. SBC Is Qualified To Control the Licenses

There is no doubt that SBC is eminently qualified to control these authorizations. SBC's qualifications to operate these authorizations are, of course, well known to the Commission. SBC is the ultimate parent of companies holding numerous FCC authorizations, including the same types of authorizations at issue here.[105]

SBC's qualifications to control these authorizations cannot reasonably be questioned. Indeed, as recently as last year, in connection with its approval of the SBC/Telesis merger, the Commission reviewed "the citizenship, character, and financial and technical qualifications" of SBC. The Commission noted that SBC "is a Commission licensee and communications carrier of longstanding," and it found, as it should find here, that SBC "possesses those qualifications."[106] Similarly, Ameritech is unquestionably qualified as the transferor of the authorizations at issue.

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[105] A list of the categories of FCC authorizations held by subsidiaries or affiliates of SBC is contained in the FCC Form 430 filed herewith.

[106] SBC/Telesis ¶ 11. While some of the parties that filed comments in that proceeding sought to cast SBC in an unfavorable light, the Commission noted that "[n]o party claims that SBC lacks any of the qualifications just mentioned," id., nor could any party to this proceeding plausibly do so in connection with the merger of SBC and Ameritech.

SBC is the parent of SWBT, Pacific Bell and Nevada Bell, which collectively serve over 33 million access lines within SBC's seven in-region states. As the owner of several of the country's largest telephone companies, SBC is well qualified to exercise ultimate control over the authorizations used in Ameritech's local exchange business.

There can also be no issue regarding SBC's qualifications to control the CMRS and other authorizations held by Ameritech's subsidiaries. Through its CMRS subsidiaries – Southwestern Bell Mobile Systems ("SBMS"), Southwestern Bell Wireless ("SWBW") and Pacific Bell Mobile Services ("PBMS") – SBC is the second largest cellular provider in the U.S., with operations in both the five states in which SWBT operates as well as in a number of out-of-region markets. SBMS and SWBW provide high quality, competitive service to their customers and, as a result, have an average market penetration rate that is significantly above the national average. In addition, PBMS is a rapidly expanding PCS provider in California and Nevada, and SBC has committed substantial financial and other resources to ensure that PBMS is meeting the FCC's objectives for PCS to become a new and effective competitor to the existing cellular systems in those states.

SBC's financial qualifications to control and operate Ameritech's authorizations are also beyond challenge. As demonstrated by the audited financial statement of SBC for the year ending December 31, 1997 (a copy of which is attached hereto), SBC has sufficient resources to ensure that Ameritech's operations will continue to serve the public interest, convenience and necessity. Further, since the transaction will be structured as a stock-for-stock merger, no new capital will be required to complete it. Thus, SBC's qualifications should simply not be an issue in these proceedings.

B. Analytical Framework

As discussed above, the Commission has interpreted the public interest standard applicable to proposed license transfers to require an overall balancing of the benefits of a transfer with potential harms to competition. See BA/NYNEX ¶ 2. Beneficial effects in a number of markets, or promotion of the overall policies of the Communications Act, can overcome potential harms to competition in a specific market. Id. ¶14.

In assessing the potential for competitive harm, the analysis begins by defining the relevant product and geographic markets. Next, the Commission identifies the participants in those markets, especially the most significant market participants. The Commission then evaluates the effects of the merger on competition in the relevant market, including potential unilateral or coordinated effects. The Commission also considers the merger's effect on the Commission's ability to constrain market power as competition develops. These potential anti-competitive effects must be balanced against merger-specific efficiencies such as cost reductions, productivity enhancements, or improved incentives for innovation. In addition, the Commission considers whether the merger will support the general policies of market-opening and barrier-lowering that underlie the 1996 Act. Id. ¶37.

Here, as shown in Section III, above, there is no potential for competitive harm. But even if the Commission were to find such a potential in a given market, such as the loss of limited potential competition in St. Louis, the Commission would have to weigh that against the overwhelming procompetitive and other benefits the merger will provide in a great many markets, both within SBC's and Ameritech's regions as well as in telecommunications markets throughout the country and around the globe. As the