Thus, there is no economic sense in which SBC and Ameritech compete for long distance customers or calls originating (for example) in South Carolina despite the fact that they both could offer service there.

30. In summary, the merger would have no effect on concentration in any relevant market and would not be likely to create or enhance market power, slow its decline or facilitate its exercise. Although some of the markets in question may be highly concentrated, the fact that no actual competitor would be removed from any market makes the merger benign with respect to possible increases in market power of actual competitors. In addition, the fact that a market is currently concentrated does not imply that the usefulness of the *Merger Guidelines* is somehow diminished or that future market power will necessarily be a concern. It is well-known that in dynamic markets such as telecommunications in which market position has been created and maintained by regulation, current market concentration is a poor predictor of future market power.[16]

IV. The Merger of SBC and Ameritech Would Not Substantially Reduce Actual Potential Competition.

31. The proposed merger also poses no threat to potential competition in any relevant market. As described above, an analysis of the effect of the merger on potential competition assesses both firms that serve the markets in question and firms that are likely to enter those markets in the future. An *actual* potential competitor is a firm that is likely to enter the market in the future. A merger that eliminates an actual potential competitor is thought to result in competitive harm when (i) the target market is highly concentrated, (ii) there are few other equally significant potential entrants, (iii) entry was reasonably certain but for the merger, (iv) the acquiring firm had alternative means of entry, and (v) those alternative forms of entry

[16] See W.M. Landes and R.A. Posner, "Market Power in Antitrust Cases," *Harvard Law Review*, Vol. 94 (March 1981), pp. 975-976, for an analysis of the effect of regulation on the relationship between market concentration and market power.

would likely have produced deconcentration or other procompetitive effects in the market.[17] Applying these standards to the Bell Atlantic-NYNEX merger, the Commission found that the merger would eliminate one of four potential significant entrants and one that it found to be the second choice alternative for a significant number of customers. On those grounds, it determined that additional conditions were necessary—increasing the ability of competitors to enter and expand quickly—in order that the Bell Atlantic-NYNEX merger not increase the risk of unilateral exercise of market power or coordinated interaction.[18]

32. Application of those standards to the current merger produces the opposite result. Absent the merger, neither SBC nor Ameritech would have entered Chicago or St. Louis on a facilities basis to provide local exchange services.[19] Moreover, as noted, the fact that one of the cellular businesses in both St. Louis and Chicago will be sold to a third party is dispositive because the sale will preserve whatever entry potential is associated with these businesses.

A. SBC entry into Chicago and Ameritech entry into St. Louis was unlikely.

33. Absent the merger, (i) SBC had no plans to enter Ameritech markets and (ii) Ameritech's possible entry into one SBC market (St. Louis) is not of significant competitive concern. Before the merger decision, SBC had no plans to enter any of Ameritech's local exchange markets. According to Mr. Sigman's affidavit, in late 1995, SBC began to consider the possibility of offering resold local exchange service to Cellular One customers out-of-region. The intention was to attract new cellular customers and reduce churn by offering a

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[17] Bell Atlantic-NYNEX Order at ¶138. See also Section 4 of the 1984 *Merger Guidelines*. These policies regarding the effects on potential competition were specifically cited as remaining in effect in the *Statement Accompanying Release of the Revised Merger Guidelines*, April 2, 1992, at 3.

[18] Bell Atlantic-NYNEX Order at ¶108 and ¶123.

[19] SBC had rejected local exchange entry in Chicago, while Ameritech's cellular unit was considering entry in St. Louis on a resale basis only. See the Affidavits of Paul G. Osland and Stanley T. Sigman.

packaged service and to spread customer acquisition costs over a broader base of services. In early 1997, Cellular One entered the Rochester, New York local exchange market as a trial, marketing resold local exchange service to its cellular customers. Simultaneously, SBC Wireless studied the possibility of local exchange entry in other out-of-region markets including Chicago. Certification from the Illinois Commerce Commission was obtained but no interconnection negotiations were undertaken with Ameritech and no firm plans were made for entry. For a number of reasons, the Rochester experiment subsequently proved to be unsuccessful, and by the end of 1997, SBC had decided not to pursue additional customers in Rochester or to attempt local exchange entry in any other out-of-region market including Chicago.[20]

34. Thus, instead of expanding from its wireless platforms, SBC, through its National-Local strategy, plans to leverage from its existing relationships with in-region large business customers. As discussed above, the merger is an important prerequisite to the implementation of that strategy, a strategy which, if successful, will supply additional local exchange competition outside the SBC-Ameritech region and subsequently induce additional local competition inside the SBC-Ameritech region, as other ILECs respond by offering similar packages to their national and multinational business customers.

35. For its part, Ameritech also considered out-of-region entry into a local exchange market from its cellular platform. According to Mr. Osland's affidavit, Ameritech Cellular began to reassess its strategy in St. Louis in 1997 as AT&T, Sprint PCS and Nextel services were introduced to the market. When AT&T, Sprint and MCI filed for certification as local carriers in St. Louis, Ameritech Cellular was prompted to consider a bundled offering (combining cellular and resold SBC local exchange service) to compete against the anticipated bundled services of these new wireless companies. Ameritech had no local exchange facilities in St. Louis and had no intention to construct facilities in the St. Louis region or to use its wireline facilities in Southern Illinois to serve its local exchange customers. The service was targeted to

[20] Affidavit of Stanley T. Sigman, ¶¶ 17-18.

existing residential cellular subscribers, pricing packages were designed, and, in January 1998, Ameritech Cellular began an employee user trial with about 390 employee-customers and their families. The trial proved not to be wholly successful for financial, technical and operational reasons, and the project is currently "on hold."[21] Of course, regardless of Ameritech's plans or intentions, divestiture of either cellular property in St. Louis to satisfy the FCC's cellular license ownership rules means that the merger of SBC and Ameritech will not diminish local exchange competition in St. Louis. Whatever success Ameritech Cellular might have had in marketing resold local and long distance services to its cellular customers could be achieved by its (or SBC Wireless') successor, so that the merger will not reduce the possibility of local exchange competition in St. Louis from a wireless platform.

36. These histories contrast sharply with the conclusions the Commission reached regarding the likelihood of Bell Atlantic entry into LATA 132:

> We find that Bell Atlantic is both a precluded competitor and among the most significant market participants both in the market for local exchange and exchange access, and in the market for bundled local exchange, exchange access, and long distance services for the mass market in LATA 132 and the New York metropolitan area. The basis for this conclusion is that Bell Atlantic was actively seeking to enter those markets using wireline technology and has the capabilities necessary to have an effect on those markets...Bell Atlantic was, until merger discussions were well underway, engaged in planning out-of-region entry into local exchange, exchange access, and long distance services in a number of locations in the NYNEX region, most notably LATA 132. The extent of planning reflected in the documents persuades us that Bell Atlantic would likely have entered LATA 132.[22]

SBC had no specific plans to enter the Chicago local exchange market by reselling Ameritech local exchange service to its cellular customers because that strategy appeared to be unsuccessful in its Rochester trial. SBC had no other plans to provide local exchange services out-of-region. Similarly, Ameritech Cellular's employee trial of the same strategy in St. Louis

[21] Affidavit of Paul G. Osland, ¶¶ 9-13.

[22] Bell Atlantic-NYNEX Order at ¶73.

revealed technical and financial difficulties, and the project has been suspended. Unlike the Bell Atlantic case, neither SBC nor Ameritech was "until merger discussions were well underway, engaged in planning out-of-region entry into local exchange, exchange access and long distance services" in Chicago or St. Louis "using wireline technology," and, had they actually offered to resell ILEC local service to all of their residential cellular customers, it would have been unlikely to have had a significant effect on the Chicago or St. Louis local exchange markets. Finally, regardless of the Companies' plans, the reciprocal divestiture of a cellular property in both Chicago and St. Louis ensures that the merger will not reduce local exchange competition from a wireless platform. Moreover, other wireless service providers in St. Louis are in at least as good a position as Ameritech to provide local exchange services. AT&T, for example, with its large interexchange customer base in St. Louis is in a position to bundle local exchange and long distance services with its wireless service offerings.

B. Entry into local exchange markets is easier than in the past.

37. Over two years have passed since Bell Atlantic-NYNEX filed its Application for Transfer of Control, and during that period, great strides have been made to improve the implementation of the resale, unbundling and interconnection provisions of the Act. These provisions require incumbent LECs to resell all retail services at an avoided cost-based discount and offer unbundled network elements and interconnection to competitors at cost-based rates.[23] Entry and rapid expansion of local exchange competitors has benefited from massive investment in facilities, systems, and training by the ILECs and from industry-wide experience with the procedures. The availability of resale and unbundled elements at cost-based prices eliminates advantages of incumbency and increases the speed with which new entrants can expand and offer facility-based local exchange services to their customers.

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[23] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 15499 (1996) *vacated in part and aff'd in part sub nom. Iowa Utilities Board*; *Order on Reconsideration*, 11 FCC Rcd 13042 (1996); *Third Order on Reconsideration and Further Notice of Proposed Rulemaking*, CC Docket Nos. 96-98, 95-

(continued...)

38. According to Mr. Carter's Affidavit, since 1996, SBC has spent more than $1 billion and assigned 3,300 employees to develop and expand its wholesale businesses. As described in Mr. Appenzeller's Affidavit, Ameritech's efforts have been comparable. Of course, investment and labor are inputs, not outputs, and a better measure of the reduction in entry barriers and increase in competitors' ability to enter local telecommunications markets in SBC and Ameritech territory is the result of that process.

39. As an entry strategy, resale entails the least risk and the smallest investment in sunk costs. It may be the ideal strategy for an entrant that already supplies one service to a group of customers to expand into packaged services, improving its offering to its customers and possibly spreading customer acquisition costs over a wider base of service revenue. Resale of local exchange service is particularly attractive because under the Telecommunications Act, resold local exchange services are priced at an avoided-cost discount off of the price of the retail service. Where retail local exchange services are priced below cost, resale—at an avoided cost discount below the below-cost retail price—may be the least expensive form of entry. CLECs have responded: as of the end of May 1998, SBC resold approximately 630,000 lines compared with 635,000 for Ameritech.

40. The second form of entry into local exchange markets is by combining unbundled network elements ("UNEs") purchased from the ILEC or partly or wholly supplied by the entrant. Using this method, some CLECs have constructed collocation facilities, deployed switches, gained access to end links or local loops, received NXX code assignments, ported numbers and negotiated interconnection arrangements. According to information provided by SBC and Ameritech, over 50 local exchange competitors have purchased more than 150,000 unbundled loops, 300 unbundled switch ports and 500,000 interconnection trunks. SBC and

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(...continued)

185, FCC 97-295 (rel. Aug. 18, 1997); *Iowa Utilities Board* v. FCC, Nos. 96-3321, et al. (8th Cir. July 18, 1997), at Sections VII and VIII.

Ameritech have negotiated approximately 500 interconnection and resale agreements and currently have approximately 1000 collocation arrangements with an additional 700 pending.

41. One final measure of the reduction in barriers to entry into local exchange markets is the observation that in the first quarter of 1998, net business line additions for CLECs as a group exceeded those of the Bell Operating Companies as a group for the first time. From this landmark event, one market analyst concluded that

> the combination of access to low cost capital coupled with a clear regulatory and public policy initiative toward opening up local markets has allowed the CLECs as a group to achieve in less than two years after the Telecom Act what it took MCI and other alternative long distance carriers over 10 years to achieve during the 1970s and 1980s.[24]

It should come as no surprise that the ability of CLECs to enter SBC and Ameritech local exchange markets in 1998 exceeds their ability to enter Bell Atlantic-NYNEX local exchange markets in 1996.

C. SBC and Ameritech have no unique advantages over other possible entrants in each other's local exchange markets.

42. Finally, it is generally recognized in antitrust economics that if three or more firms possess the same or comparable advantages as possible entrants, the merger would be unlikely to have adverse competitive effects. In general, Ameritech has no particular advantages over other potential competitors in St. Louis local exchange markets; similarly SBC has no unique advantage over other possible entrants in Chicago. Unlike Bell Atlantic's possible entry into LATA 132, proximity is no particular advantage or inducement to enter. SBC and Ameritech share only one border (Illinois with Missouri), and St. Louis is the only major market along that border. Unlike the Bell Atlantic case, Ameritech's wireline business does not undertake

[24] J. Grubman, Smith Barney, "Review of First Quarter CLEC and RBOC Line Growth," May 6, 1998.

extensive marketing using the same media as SBC uses to reach its customers in St. Louis.[25] In addition, in both states there is substantial facilities-based competition with both companies' services from other entrants.

43. In St. Louis, as of the summer of 1998, there are 5 local competitors operating about 16 switches. In Chicago, there are at least 13 local competitors operating 43 switches. Across the regions, competitors have installed over 500 local switches in SBC's territory and more than 150 in Ameritech's. Transport is supplied competitively as well. CLECs installed fiber networks exceed 6,500 route miles in SBC's territory and 5,000 in Ameritech's. In St. Louis, MCI-MFS-WorldCom has operated a local network since 1995. TCG serves the entire St. Louis metropolitan area and smaller local networks are operated by Digital Teleport and Intermedia. In Chicago, MCI-MFS-WorldCom, AT&T-TCG-TCI and NextLink all operate their own local networks, which, together with networks planned or under construction by smaller CLECs account for about 648 route miles of fiber.

44. More important, SBC and Ameritech lack the clear advantages of some other formidable potential entrants into local exchange telephone service. IXCs, CAPs and cable companies currently have existing wireline networks, customer relationships and brand recognition in the geographic markets in question. These firms have already incurred the sunk costs of building networks in the region and would benefit from expanding the services offered to their current customers (toll, carrier access and cable television) to include local exchange telephony. Although SBC and Ameritech have cellular facilities and customers in each others' territories, their trials of reselling wireline local exchange service from a wireless base have not been entirely successful. However, even if such entry were likely, the required divestiture of competing wireless franchises ensures that the merger will not reduce the possible effect of this type of entry.

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[25] Bell Atlantic-NYNEX Order at ¶106.

45. By supplying local service, the IXCs, CAPs and cable companies can augment their current offerings to provide one-stop shopping, making it more likely that they will keep their current toll, access and cable customers. Such incremental expansion into local service leverages their already-established brand recognition, reputation, sales relationships and network infrastructure. In the coming convergence of telecommunications technologies and firms, it is more rational to build out from existing lines of business, infrastructures, and customer bases than to enter a new competitive market starting from scratch. The recent announcement of the AT&T-TCI merger reaffirmed this view:

> AT&T Consumer Services will provide the broadest set of consumer communications services – including local, long distance, wireless and international communications, cable television, dial-up and high-speed Internet access services – all under the AT&T brand name...AT&T Consumer Services will own and operate the nation's most extensive, broadband local network platform. Following the merger, the new unit intends to significantly accelerate the upgrading of its cable infrastructure, enabling it to begin providing digital telephony and data services to consumers by the end of 1999, in addition to digital video services.[26]

which is echoed by others in the industry:

> WorldCom, Inc. and MCI Communications Corporation announced today a merger agreement creating a fully integrated communications company that will provide a complete range of local, long distance, Internet and international communications services. The merger creates a new era communications company best positioned to take advantage of growth opportunities in the $670 billion global telecommunications market.[27]

46. In sharp contrast to out-of-region RHCs, these firms have clearly expressed and acted upon their intentions to enter local exchange markets in SBC and Ameritech territories. These CLECs possess networks, customers and brand recognition throughout the SBC and Ameritech

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[26] "AT&T, TCI to merge, create new AT&T consumer services unit," AT&T Press Release, June 24, 1998.

[27] "WorldCom And MCI Announce $37 Billion Merger," MCI Press Release, November 10, 1997.

regions that can be expanded to provide local exchange service, particularly in concert with unbundled links and ports supplied by SBC and Ameritech. Every local exchange customer has a business relationship with an IXC and about 65 percent of households have a relationship with a cable company.

47. Without an effective platform of facilities or customers in the target area, there is no economic reason to expect an RHC (or any other ILEC) to be particularly likely to enter another ILEC's local exchange mass markets at this time or in the relevant future. Market prices for residential local exchange services are not attractive for the ILECs, relative to margins in other telecommunications markets, notably long distance. Further, neither SBC nor Ameritech has significant brand identification or market presence as a local exchange carrier in the other's mass markets, and neither can complement its existing product line in its own market by supplying local exchange services in the other's market. Neither has any existing wireline network infrastructure in the other's territory from which complementary telecommunications services (e.g., long distance or video programming) could be supplied. As discussed, their efforts to resell ILEC local exchange service to their cellular subscribers were not completely successful.[28]

1. IXCs

48. The FCC determined in connection with the Bell Atlantic-NYNEX merger that the three major IXCs—AT&T, MCI and Sprint—were among the most significant participants in the local exchange and exchange access markets. It found that each of these three firms had the capabilities and incentives to acquire rapidly a critical mass of customers.[29] The FCC's determinations in this regard were based on national data, and there is no reason why those conclusions would not be true in Chicago, St. Louis and other areas in SBC's and Ameritech's

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[28] But even if they were successful, the merger—and consequent divestiture of the cellular properties—would not reduce the degree of local exchange competition provided by the cellular licenses.

[29] Bell Atlantic-NYNEX Order at ¶82.

regions. Indeed, events since the FCC ruled on the Bell Atlantic-NYNEX merger strengthen those finding.

49. With its acquisitions of TCG and TCI, AT&T has embarked upon an aggressive strategy of local exchange entry. At recent Senate hearings, AT&T's current Chairman and CEO C. Michael Armstrong testified that the TCI merger

> ...will enable consumers to make phone calls over cable, thereby promising an alternative to the Bell monopolies in areas TCI reaches.[30]

50. As a result of its acquisitions, AT&T has greatly expanded its reach into the local exchange markets for business and residential customers. According to its 1997 Investor Fact Sheet, TCG's network in 1997 included more than 9,600 route miles in 82 major metropolitan markets across the U.S., serving predominantly business customers. For residential customers, TCI connects to approximately 10 percent of the households in the U.S. .and passes an additional 7 percent. Prior to these acquisitions, AT&T had announced plans in April of 1996 to offer business services from five different CAPs, under its own brand name, in 70 cities across the country:

> The CAP agreements will serve notice on the Bell regional holding companies...that AT&T has alternatives for entry into the local services market.[31]

These CAPs are Time Warner Communications, Hyperion Telecommunications, IntelCom Group, WorldCom-Brooks Fiber, and e. spire.[32] Today, these CAPs have multiple facilities throughout the SBC-Ameritech regions: for example, Time Warner has 4 switches each in SBC and Ameritech states, while Hyperion and e.spire have 2 and 14 switches respectively in SBC's region.

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[30] "Panel Discusses AT&T, TCI Merger," Associated Press, July 7, 1998.

[31] "AT&T Unveils Pacts with 5 CAPs as Signal to LECs," *Telecommunication Reports Daily*, April 11,1996.

51. AT&T has competitive facilities in SBC's region in Los Angeles, San Francisco, St. Louis and in Ameritech's region in Chicago, Indianapolis, Detroit, Cleveland, and Milwaukee. Its purchase of TCG gives it a competitive advantage in serving the business market as it now owns all of TCG's switches, competitive facilities and collocation cages, including 90 local switches in SBC territory and 68 in the Ameritech states. TCG serves the entire St. Louis metropolitan area with its own network, while AT&T operates its own network in Chicago as well. Similarly, AT&T's proposed merger with TCI provides a facilities basis on which to compete for residential customers. It intends to upgrade TCI's cable facilities at a cost of $300-500 per household on a pilot basis in 1999 with full deployment in 2000.[33] With the addition of TCI, AT&T will reach over 180,000 cable subscribers in St. Louis and its Missouri suburbs and over a million subscribers in the Chicago area. AT&T also has PCS subscribers in Ameritech and SBC regions.

52. In addition to its network, AT&T possesses a brand name reinforced by years of massive national and world-wide advertising which it will be able to use in bundling facilities-based local, long distance Internet, cellular and cable services together to create an attractive package for customers. As a likely potential entrant, AT&T-TCI-TCG has experience comparable to that of SBC or Ameritech in providing local telecommunications networks and has the advantage of being able to resell any ILEC product that might give the ILEC a competitive advantage. In addition, AT&T-TCG-TCI has the ability to bundle facilities-based long distance service with local, cable and Internet services which neither SBC nor Ameritech can match. In sum, AT&T is clearly a formidable competitor to SBC and Ameritech. It is both more likely to enter the Chicago and St. Louis markets than SBC and Ameritech respectively and has more unique advantages in serving local exchange markets than out-of-region ILECs.

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[32] "AT&T - 70 Cities Pact -2-: For Local Carrier Competition," *Dow Jones News Service*, April 11, 1996.

53. MCI-WorldCom is the second-largest IXC and the largest CLEC. It has facilities in 100 markets,[34] 82 local exchange switches in SBC's region, and 33 in Ameritech's region. In addition, MCI-WorldCom has facilities in 53 foreign cities.[35] Like AT&T, it has a large customer base and brand name recognition based on massive advertising and marketing expenditures to support its long distance business. With its proposed alliance with WorldCom, MCI becomes a formidable competitor for bundled local, long distance and Internet services. Because of the company's size and reach, it can supply local and global telecommunications services to customers across the country and around the world. MCI-WorldCom purchases interconnection trunks and business and residential lines in every state in SBC and Ameritech territory.

54. MCI offers its 'MCI One' package, which combines communications services ranging from Internet access and cellular calling to long distance on one bill. Initially the package did not include local service and was intended for consumers and small businesses.[36] MCI is now in a position to offer such services in SBC's territory in St. Louis. MCI-WorldCom has a large customer base and substantial facilities in St. Louis. In addition, MFS, one of WorldCom's CLEC operations, serves large business customers in St. Louis through its optical fiber network.

55. Sprint Corp. offers local telephone service in 42 states and plans to provide bundled services, including wireless telephone communications, local telephone services, and cable

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[33] Prepared Testimony of C. Michael Armstrong. Chairman and CEO, AT&T Corp. before the Senate Committee on Judiciary Antitrust, Business Rights and Competition Subcommittees, July 7, 1998.

[34] WorldCom Press Release, *WorldCom and MCI announce $37 Billion Merger: $51 in WorldCom Stock per Share: New Era Communications Company Targets Biggest Growth Opportunities*, Nov. 10, 1997.

[35] *Op. Cit.,* WorldCom Press Release, Nov. 10, 1997.

[36] N. Louth, "MCI To Unveil One-Stop Package For Phone Services," *Reuters Business Report*, April 28, 1996.

television, through its partnership with other cable and telecommunications companies. Sprint's CEO, William Esrey, recently announced construction of a packet-switched high bandwidth data network designed to carry voice, data and Internet traffic simultaneously on a single line.[37] This Integrated On-Demand Network ("ION") will be marketed to business and residential customers. Access to customers will use Broadband Metropolitan Area Networks which Sprint will deploy in close to 100 cities by the end of 1999 and XDSL technologies where Broadband Metropolitan networks are unavailable. In addition, Sprint focuses on wireless services, using its PCS network. In the PCS spectrum auction, Sprint paid $2.1 billion to win licenses in 29 markets. Sprint has also begun laying the foundation for its eventual bundled service offerings—telecommunications and cable—by offering cable discounts for customers who sign on with Sprint.

56. In sum, each of the three major IXCs is a more likely entrant into local exchange markets in Chicago than is SBC or in St. Louis than is Ameritech. They have experience, brand reputation, and local and long distance facilities in place along with existing customer relationships.

2. Competitive Access Providers

57. CAPs are CLECs with switches and optical fiber transport facilities that can be expanded to provide facilities-based local exchange service. Possessing facilities and a customer base, CAPs are more likely potential competitors for local exchange services than SBC or Ameritech. Most CAPs grew out of optical fiber metropolitan area networks where they supplied high capacity services to business customers in city centers and arbitraged carrier access charges. By March, 1995, CAPs had captured 10-15% of the national carrier access market, forcing SBC, Ameritech and other RBOCs to lower their access prices by 20-30% annually and improve the quality of their services.[38] With the addition of switches, CAPs have

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[37] "Sprint Unveils Revolutionary Network," PR Newswire, June 2, 1998.

[38] Bernstein Research, *Telecommunications: Convergence and Divergence*, March 1995.

made significant inroads into local exchange markets, particularly in the major urban areas. The largest and most successful CAPs have recently merged with other carriers to form full-service vertically integrated telecommunications suppliers.

58. TCG was the original CAP, and combined with AT&T, it has 90 local switches in SBC's region and 68 in Ameritech's region. By the time (January 1998) that AT&T announced its purchase of TCG for $11.3 billion, TCG was billing itself as the nation's largest competitive local exchange carrier.[39] AT&T-TCG has extensive fiber and collocation facilities across the SBC-Ameritech region, and the partnership appears to make the entities stronger and better poised as competitors to all other CLECs and ILECs.

59. MFS-WorldCom-Brooks Fiber has network facilities in nearly every state in SBC-Ameritech territory including—when combined with MCI—82 local switches in SBC's region and 33 in Ameritech's. On August 27, 1996 MFS was acquired by WorldCom to form what the New York Times described as the "nation's first fully integrated local and long-distance phone company since the breakup of the Bell System in 1984."[40] Subsequently, WorldCom has also acquired Brooks Fiber, another facilities-based local exchange provider and has proposed to merge with MCI. These acquisitions give both companies a competitive advantage relative to out-of-region ILECs with the combination of available facilities, a customer base and the MCI brand recognition.

60. Other CAPs of competitive significance include Intermedia Communications with multiple local switches in both St. Louis and Chicago, NEXTLINK and Mark Twain Communications which have multiple switches in Chicago and St. Louis respectively and approximately 10 additional CLECs which own switches in Chicago or St. Louis. Digital

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[39] "Wall Street Likes AT&T-Teleport, But TCG's Bell Rivals Attack Deal," Telecommunications Reports Daily, January 9, 1998.

[40] Mark Landler, "WorldCom to Buy MFS for $12 Billion, Creating a Phone Giant," *New York Times*, August 27, 1996 at D1.

Teleport maintains an extensive network in St. Louis (470 route miles with 76 buildings on-net), and 7 other CAPs[41] have networks planned or under construction in Chicago.

3. Cable Companies

61. Cable TV operators have used various strategies to provide local telephone service: (i) clustering, (ii) upgrading networks, (iii) branding, and (iv) packaging, particularly with high-speed Internet access services. . In the words of Time-Warner's president.

> Time Warner, like many of the other cable MSOs, has been purchasing, trading and joint venturing its cable systems in scores of markets across the country in order to consolidate assets and operations in more manageable geographic regions... These clusters will be the focus of our cable operations for years to come...[42]

As cable TV firms have clustered to achieve economies of scale, the number of major groupings in the SBC-Ameritech region has decreased. Cable suppliers such as Time Warner, Cox Communications, and Cable Lightpath are upgrading their networks and installing switches to supply traditional local exchange services to residential and business customers, packaging services with long distance supplied by IXCs, and supplying fast Internet access by cable modems. In SBC's region, Cox has installed 4 local switches, MediaOne has 9 and Time Warner has 4. In Ameritech's region, Time Warner has installed 4 switches. Time Warner and Cox have fiber networks in Ameritech and SBC territory, respectively. A number of companies have cable modem operators in SBC and Ameritech regions, including Cox Communications, GTE, MediaOne, Horizon Cable and Time Warner.

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[41] Allegiance Telecom, e.spire, MFN, MGC Communications, Teligent, and 21st Century Telecom.

[42] Prepared testimony of Richard D. Parsons, President, Time Warner, Inc., before the Senate Committee on the Judiciary Subcommittee on Antitrust, Business Rights and Competition, July 7, 1998.

62. TCI serves more than half of the cable subscribers in St. Louis and nearly 95 percent of the cable subscribers in the Chicago area.[43] The company is currently spending more than $1.8 billion to upgrade its cable network to improve service quality and to enable two-way capability for Internet and information services. Across the U.S., TCI connects to approximately 10 households in 100 and passes an additional 7 households.[44] In the SBC-Ameritech region, TCI passes 10.8 million homes and has 7.1 million subscribers served from 127,000 miles of coax and 2,900 miles of fiber.[45] Similarly Time Warner has built over 35 cable clusters of over 100,000 subscribers. Time Warner plans to upgrade 70 percent of its clusters in the next two years and invest over $4 billion in cable system infrastructure improvements.[46]

4. Internet Services

63. With the unprecedented growth in traffic on the Internet, demand for Internet access and for backbone capacity is growing far more rapidly than demand for other communications services. ILECs are relatively small participants in this market. There are estimated to be more than 4,500 ISPs in North America, of which the largest (by revenues) include MCI, UUNet Technologies, Netcom, AT&T and PSInet.[47] Similarly, RBOCs such as SBC and Ameritech do not operate the Internet backbone networks which are dominated by MCI-WorldCom, AT&T and Sprint.[48]

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[43] L. Rackl, "TCI takes Over in Local Cable Market: Purchase gives Firm 93 percent of Chicago Market," *Chicago Herald Daily*, April 18, 1998, at 1.

[44] Prepared Testimony of C. Michael Armstrong. Chairman and CEO, AT&T Corp. before the Senate Committee on Judiciary Antitrust, Business Rights and Competition Subcommittees, July 7, 1998.

[45] Claritas and Warren Publishing, *Cable System Database*, 1997.

[46] "Prepared Testimony of Richard D. Parsons, President, Time Warner, Before the Senate Committee on the Judiciary," Federal News Service, July 7, 1998.

[47] *Boardwatcb Magazine, Directory of Internet Service* Providers, Winter 1998, at 5. *Computerworld*, May 20, 1996 at 68.

[48] The proposed MCI-WorldCom merger threatened to increase concentration in the supply of backbone Internet services, but recent indications are that MCI-WorldCom-MFS-Brooks

(continued...)

64. Cable companies have been converting their networks to digital in order to provide high speed Internet services, and "data CLECs" such as Northpoint Communications and well-established CLECs such as TCG are providing digital subscriber line services to their customers. Though many ILECs provide Internet connections, they are not dominant suppliers, and there is robust competition in the ISP marketplace.

5. Summary

65. In comparison with other telecommunications suppliers in Chicago and St. Louis, SBC and Ameritech would have no unique advantage over other potential entrants in entering each other's local exchange market. Each currently possesses cellular facilities in the other's territory, but (i) neither firm clearly succeeded in reselling local exchange service to its cellular customers and (ii) in any case, rectifying the overlapping cellular licenses will ensure that an independent cellular provider will remain in each market so that potential competition from a cellular provider will not be diminished by the merger. Integrated IXCs such as AT&T-TCG-TCI, MCI-WorldCom-MFS-Brooks Fiber-UUNet and Sprint are certainly more likely entrants into Chicago and St. Louis local exchange markets than are SBC or Ameritech (respectively) since they have facilities, reputations, complete packages of services and customer relationships with every household in the region. Compared with wireless carriers, SBC and Ameritech have no necessary advantage in reselling ILEC local exchange service to their cellular customers, and, on the contrary, will be disadvantaged because they cannot supply interstate long distance services along with wireline local and wireless service. In short, where they lack facilities, a customer base and strong brand recognition, SBC and Ameritech would be less likely than IXCs, CAPs, cable companies or wireless suppliers to offer out-of-region local exchange service in each other's mass markets. In addition, absent the merger, SBC and Ameritech would be no more likely than any other ILEC to enter an out-of-region local exchange market.

(...continued)

Fiber-UUNet will spin off MCI's wholesale and retail Internet services to Cable & Wireless as a condition of the merger in the EC and the US.

V. CONCLUSIONS

66. In our opinion, the proposed merger will produce a net benefit for consumers. There is no economic theory or scintilla of evidence to suggest that the merger poses any threat to actual or potential competition in local exchange, exchange access or long distance telecommunications markets. SBC and Ameritech do not currently compete in any market, and technological, legal and regulatory changes to those markets ensure that there are many actual and potential entrants into those markets better suited to compete with SBC than Ameritech and vice-versa.

67. On the contrary, the transaction would benefit competition and, ultimately, telecommunications customers by (i) encouraging facilities-based local exchange competition among ILECs initially to protect their large business customer base, and (ii) creating a more potent telecommunications competitor in domestic long distance markets, able to compete successfully with national and global multi-service, multi-technology firms. The merger would bring the benefits of increased facilities-based local exchange and long distance competition to consumers. It would expand the base of customers and services from which costs of research and development for new services are recovered and reduce other unit costs by eliminating overlap and redundancies. The higher return from research and development would stimulate a more rapid supply of new products and services. The merger would permit the combination of the best practices of both organizations to improve service quality. In net, the process of competition—both in local exchange and long distance markets—would be enhanced by the transaction and from that improvement, all consumers would necessarily benefit.

Pursuant to 47 C.F.R. §§ 1.743(c), 1.913(c), 5.54(c), the preceding document is a copy of the original signed affidavit, which was filed as an attachment to Exhibit 2 to the Form 490 applying for the Commission's consent to transfer control of Part 22 licenses held by Detroit SMSA Limited Partnership from Ameritech Corporation to SBC Communications Inc. That Form 490 was filed concurrently with this application.