

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of	)	
	)	
The Application for Consent for	)	CC Docket No. 98-141
Transfer of Control to SBC	)	
Communications, Inc. from	)	
Ameritech.	)	

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**COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**INTRODUCTION**

On July 24, 1998, SBC Communications, Inc. (SBC) and Ameritech Corporation (Ameritech) filed joint applications under Section 214 and 310(d) of the Communications Act. The joint applications request the Federal Communications Commission (FCC) approval of the transfer of control to SBC of licenses and authorizations controlled or requested by Ameritech or its affiliates or subsidiaries. After the proposed merger, Ameritech would become a wholly owned subsidiary of SBC. On July 30, 1998, the FCC released an order requesting comments on the proposed merger, setting the deadline of September 15 for submitting initial comments. On September 1, 1998, the Common Carrier Bureau issued an order granting an extension of time for the comments so that initial comments are now due on October 15,

1998. In accordance with this procedural schedule, the Public Utilities Commission of Ohio (PUCO) hereby submits its initial comments on this matter.

## **DISCUSSION**

Ohio Revised Code requires the PUCO to assure that the SBC/Ameritech merger promotes the public convenience and results in adequate service at reasonable rates. On July 24, 1998, the joint applicants petitioned the PUCO to approve their merger in the State of Ohio *In the Matter of the Joint Application of SBC Communications, Inc., and Ameritech Corporation and Ameritech Ohio for Consent and Approval of a Change of Control*, Case No. 98-1082-TP-UNC.

At the PUCO's July 22, 1998 open public meeting, representatives of Ameritech and SBC made a public presentation before the members of the Commission on the merits of the proposed merger. Opponents to the proposed merger were also provided an opportunity to respond to Ameritech and SBC at the PUCO's August 26, 1998 open public meeting. On August 13, 1998, in its proceeding, the PUCO also invited public comment from interested persons on the proposed merger. The PUCO noted in its Entry requesting comments that our review of the filings will determine the nature of any hearing to be held concerning this matter.

On October 15, 1998, the PUCO issued its decision calling for an evidentiary hearing on the proposed SBC/Ameritech merger. Our decision also identifies the issues

that the Commission intends to address at its hearing. Attached to these comments is the PUCO's October 15, 1998 decision. In addition to the attached decision, as progress is made in this investigation and future decisions are issued, the PUCO or its Staff will periodically update the FCC. In particular, the PUCO will forward to the FCC, in CC Docket 98-141, the PUCO's intrastate decision(s) concerning the SBC/Ameritech merger.

#### CONCLUSION

In closing, the PUCO would like to thank the FCC for the opportunity to submit these comments.

Respectfully submitted,

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Application of )  
SBC Communications Inc., SBC Delaware )  
Inc., Ameritech Corporation, and Ameritech ) Case No. 98-1082-TP-AMT  
Ohio for Consent and Approval of a Change )  
of Control. )

In the Matter of the Joint Motion of the )  
American Association of Retired Persons )  
and Edgemont Neighborhood Coalition for a )  
Commission-Ordered Investigation of the ) Case No. 98-1024-TP-UNC  
Proposed Acquisition of Ameritech Ohio by )  
SBC Communications, Inc. and Related )  
Matters. )

ENTRY

The Commission finds:

- (1) On July 24, 1998, SBC Communications Inc., SBC Delaware Inc., Ameritech Corporation, and Ameritech Ohio filed an application seeking approval of a change in ownership of Ameritech Corporation, the parent company of Ameritech Ohio. The joint applicants filed the request in accordance with Section 4905.402, Revised Code. That application has been designated Case No. 98-1082-TP-AMT (98-1082).
- (2) On August 13, 1998, the Commission issued an entry in 98-1082 suspending discovery, scheduling a prehearing conference, and ordering all interested persons to file comments regarding merger-related issues that they believe should be addressed by the Commission when evaluating the merger. The Commission also stated that, after a review of the comments, it would establish the time frames and procedures for any hearing in this matter.
- (3) A number of comments and reply comments were filed in 98-1082. We have reviewed the comments and conclude that, in order to evaluate whether the proposed merger will promote the public convenience and result in the provision of adequate service for a reasonable rate, certain issues should be evaluated.

- (4) In the past, this Commission has stated that the goals of competition, diversity, and consumer choice should be evaluated when considering whether an application is in the public convenience. *In the Matter of the Application of Time Warner Communications of Ohio, L.P. and Time Warner AxS for a Certificate of Public Convenience and Necessity to Provide Direct and Resold Exchange Services, Including Local Exchange and Dialtone Services*, Case No. 94-1695-TP-ACE (August 24, 1995), Opinion and Order at 15. We agree that this application requires us to evaluate competition, diversity, and consumer choice. However, several other important concerns are raised by this proposed merger as well. The proposed merger must “promote” the public convenience and result in the provision of adequate service for a reasonable rate.

After a review of the extensive comments and the wide array of issues they present, we feel the need to appropriately define the scope of issues to be addressed at the hearing to avoid both discovery and the hearing becoming unmanageable and duplicative of other dockets. Accordingly, we intend that the hearing be limited to those issues which could be affected by, or have a direct nexus to, the proposed merger. Upon consideration of the comments, and subject to any further issues identified by staff or the Commission in the hearing process, at this point, we limit the issues to those set forth below. We direct the joint applicants as well as the intervenors to address the following questions in their testimony:

**OPERATIONS SUPPORT SYSTEMS (OSS):** One of the unanswered issues raised by the joint applicants’ filing is the treatment of OSS both during the transition period when corporate reorganization will occur as a result of the merger and thereafter, when the company intends to operate as a single entity. Adequate OSS is critical to effective local competition. Accordingly, the joint applicants need to address what their plans are to address OSS on a merged basis, what improvements are planned to OSS, and when they will be implemented. Both the joint applicants and the intervenors are also requested to address what safeguards should be established by the Commission, if any, to ensure improvement in OSS processing by the merged entity and avoidance of potential diminution in service as the merged entity begins to operate as a single company.

**QUALITY OF SERVICE:** Ameritech experienced an unacceptable diminution in service quality as a result of various reorganizations undertaken by it in the past. In addition to this past history, a merger, by definition, involves a corporate reorganization, changes in management reporting, and centralization of operations and

decision-making. We wish to insure that the size of the new entity does not create the potential for service quality diminution (both for competitors and end users). Is the fact that SBC will be making decisions as to where to invest dollars not just among five Ameritech states but among numerous states and several countries a significant concern? Moreover, concerns have been raised as to whether SBC may, as result of their stated national-local strategy begin to focus more on out-of-state competitive opportunities. As the commenters point out, this could have negative impacts for Ohio, particularly if the national-local strategy does not result in immediate entry by competitors in-region or, if that entry is not uniform throughout the state, among classes of customers and geography. The joint applicants need to specifically address how they can assure that the national-local strategy will produce improved service quality under the pressure of “retaliatory entry” by new competitors, as foreseen by the joint applicants, and not the diminution of service quality if no such competitive entry occurs. Along these lines, the joint applicants and interveners should suggest any benchmarks or different means of service quality enforcement that may be appropriate, if any, other than the Commission’s existing Minimum Telephone Service Standards (MTSS). The parties should also address whether the Commission has adequate tools to measure the overall level of performance of the merged entity in Ohio and, if not, what tools it may need to be able to do so. The MTSS includes a customer-driven system of individual credits. Although beneficial for individual customer problems, are they sufficient to allow the Commission to get the whole picture of the level of service quality of this merged entity in Ohio or are additional reporting tools needed? Why or why not?

**CARRIER-TO-CARRIER ACTIVITIES:** Central to the application before us is the joint applicants’ argument that the national-local strategy will increase the level of competition and promote the public convenience and necessity in Ohio. The Ohio Consumers’ Counsel (OCC) appropriately points out that this strategy is based on many assumptions any one of which, if not correct, could potentially derail the national-local strategy producing benefits for Ohio. The joint applicants need to provide the Commission with better assurances as to how competition would be improved if the national-local strategy does not play out exactly as the joint applicants claim it will. Moreover, the parties should address how the Commission should address contingencies or otherwise promote effective competition, particularly for residential and small business

customers, under this plan. Should the Commission “leverage” the level of interconnection and unbundling SBC receives out of region by requiring that same level of service to be provided in-region? Should the Commission require a framework for residential and small business customers similar to that proposed in New York and Pennsylvania? The Commission requests that the joint applicants and the other parties address whether such safeguards should be established in this case and the nature of any such safeguards. The Commission’s intent would not be to litigate the details of Section 271 relief in this docket but rather, if appropriate, to determine whether a more defined framework would ensure the development of competition for residential and small business customers in case the national-local strategy does not play out exactly as set forth in the joint applicants’ proposal. The joint applicants should address their specific plans for interfacing with competitors to ensure the smooth provision of interconnection and resale services under the Telecommunications Act of 1996 and Ohio law. Finally, SBC is also known for a highly litigious approach to regulatory issues. The joint applicants need to commit to alternative dispute resolution procedures, using the Commission staff, that avoid undue litigation and delay tactics achieved through litigation. Proposals to address these matters are requested from the joint applicants and other parties.

**MARKET POWER:** One of the key issues in this and any other merger of this size is whether the merged entrant has such increased market power as to effectively control prices and eliminate the development of effective competition. Regulation can provide structural tools to mitigate market power and allow the development of effective competition. The parties should address and analyze whether the proposed merger significantly increases the joint applicants’ market power and, if such market power is shown to exist, what mitigative measures the joint applicants should undertake to address this incremental increase in market power.

**COST SAVINGS:** OCC correctly points out there is a trade-off between a traditional proceeding analyzing whether cost savings should be shared among captive ratepayers versus, in its place, concentrating on the development of effective competition which should ensure the pass-through of cost savings through market forces. The Commission’s preference would be to concentrate on the

development of effective competitive markets, but it seeks clarification from the joint applicants as to how the issue of cost savings would be addressed in the future for those customer classes or those areas of Ohio where competition has not developed as the tool for the pass-through of cost savings.

**INFRASTRUCTURE:** The new merged entity, spread over multiple states, will have to make capital decisions on the deployment of infrastructure. By definition, the joint applicants' national-local strategy (which is the heart of their application) suggests an initial concentration on the deployment of infrastructure and capital dollars outside of Ohio. The joint applicants need to address what steps they will take to ensure that the needs of Ohio are not subordinated to those of other markets under the national/local strategy.

**IN-STATE PRESENCE:** The joint applicants need to explain their plans for preserving the existing in-state corporate presence of Ameritech Ohio and, in particular, the level of autonomy and local decision-making which is key to serving local customers. Along those same lines, the joint applicants need to address how their regulatory relationships will ensure that the particular needs of Ohio, as defined by the Commission, are not subordinated to SBC's desire for multi-state uniformity.

**BOOKS AND RECORDS:** The joint applicants need to address the issue of access to necessary books and records among the many companies providing services to or receiving services from Ameritech Ohio, or otherwise operating in markets in Ohio, to ensure that the Commission can carry out its regulatory responsibilities.

**AFFILIATES AND THE MARKETS THEY WERE TO SERVE:** Southwestern Bell Communications Services, Inc. (SBCS), an affiliate of SBC Communications Inc., is certified to provide interLATA services in Ohio. SBC had targeted markets in Cleveland, Columbus and Dayton in order to provide a competitive alternative to Ameritech Ohio. That specific competition will now be lost as a result of the proposed merger. Should the Commission be concerned about the loss of this potential competitor or do the benefits of a new stronger entity outweigh the loss of a more marginal competitor to Ameritech? Moreover, the status of

Ameritech Communications of Ohio, Inc. (ACI) and Ameritech's offering of long distance services through ACI needs to be addressed so the Commission can better understand the merged entities' plans relative to Section 271 relief and competitive entry. In addition, the joint applicants need to explain the status of SBCS in Ohio if the merger is approved and any action that they may request be taken with regard to the ACI certification case.

Those issues not discussed above, or otherwise addressed by the staff in its proposal or the Commission, e.g., access charges, are not within the scope of discovery or hearing at this point.

- (5) The Commission's staff is instructed to analyze and evaluate the application filed in 98-1082 in light of the above issues. The staff shall file a proposal by November 6, 1998, and inform the Commission whether it appears that the proposed merger will promote the public convenience and result in the provision of adequate service for a reasonable rate.
- (6) Between July 28 and September 3, 1998, the following 20 entities filed motions to intervene in 98-1082:

Time Warner Communications of Ohio L.P., d.b.a. Time Warner Telecom (Time Warner Telecom)  
Time Warner Cable  
OCC  
Payphone Association of Ohio  
Ohio Cable Telecommunications Association (OCTA)  
City of Toledo  
AT&T Communications of Ohio, Inc. (AT&T)  
Airtouch Cellular, Inc.  
State Alarm, Inc.  
Nextlink Ohio, Inc.  
United Telephone Company of Ohio (also known as Sprint)  
Sprint Communications Company L.P.  
Empowerment Center of Greater Cleveland  
CoreComm Newco, Inc. d.b.a. Cellular One  
Telecommunications Resellers Association  
MCI Telecommunications Corporation  
MCImetro Access Transmission Services, Inc.  
Iwaynet Communications, Inc.  
ICG Telecom Group, Inc.  
Edgemont Neighborhood Coalition (Edgemont)

The motions to intervene may be quickly summarized as follows:

- (a) Competitive local exchange carriers allege that the proposed merger will impact their current and future carrier-to-carrier relationship with Ameritech Ohio.
- (b) Cable entities allege that the proposed merger will impact them as both customers (regarding pole attachments for cable service) and potential competitors (regarding telecommunications offerings) of Ameritech Ohio.
- (c) Residential consumer groups allege that the proposed merger will impact the development of local competition for residential customers, local telephone service rates, Ameritech Ohio's local presence, the provision of universal service, and the quality of telephone service. The city of Toledo noted that it also seeks to protect its interests in the alternative regulation agreement negotiated with Ameritech Ohio.
- (d) The Payphone Association of Ohio contends that the proposed merger will eliminate a potential supplier of network access service for its members and it could result in Ameritech Ohio's payphone operations being subsidized by noncompetitive services.
- (e) Airtouch Cellular, Inc. contends that the proposed merger will affect the delivery of the telecommunications services to it, under the interconnection agreement it has with Ameritech Ohio, and service to its subscribers, who are connected to Ameritech Ohio's land lines.
- (f) State Alarm, Inc. and Iwaynet Communications, Inc. argue that the proposed merger will affect them since they rely upon Ameritech Ohio's telecommunications services to serve their clients. Iwaynet also notes that an Ameritech Ohio affiliate is one of its competitors and such can affect its receipt of Ameritech Ohio service.
- (g) United Telephone Company of Ohio contends that, as an Ohio incumbent local exchange carrier interconnected with Ameritech Ohio, it has an interest in assuring that

Ameritech continues to provide service in accordance with the law.

- (h) The interexchange carriers state that they have an interest in assuring that the proposed merger does not change the services being provided to them by Ameritech.
- (7) It is clear from the various motions to intervene that various interests are involved, including customers of Ameritech Ohio, competitors of Ameritech Ohio, and entities who interconnect with Ameritech Ohio in order to provide their services. All of these entities allege that the proposed merger could or will impact their interests. Also, many noted that they are not adequately represented by the joint applicants, will not unduly delay this proceeding, and they will contribute to the resolution of this proceeding.

Upon review of the motions to intervene by the above-listed 20 entities, we find that they are reasonable and should be granted.

- (8) Furthermore, we believe that it is appropriate at this time to open discovery in 98-1082. However, discovery is limited to any matter, not privileged, which is relevant to the issues set forth in Finding 4 above. On July 29 and 31, 1998, Time Warner Telecom and Time Warner Cable filed motions to shorten the time frames for responding to interrogatories and requests for production of documents in 98-1082.

We believe that an expedited time frame for responding to certain discovery requests (interrogatories, requests for production of documents, and requests for admission) is appropriate. Therefore, responses to interrogatories, requests for production of documents, and requests for admission should be served within 10 calendar days after receipt of the written discovery request. The parties are reminded of the rule regarding computation of time in Rule 4901-1-07, Ohio Administrative Code, under which three days are added to the prescribed period of time when a pleading or other paper is served by mail. The parties are encouraged to make arrangements for personal delivery (rather than U.S. mail delivery) of discovery requests. The Time Warner companies' motions to shorten discovery time frames in 98-1082 are granted.

- (9) Also, several motions for a hearing have been filed in 98-1082 by AT&T, OCC, OCTA, and Edgemont. Also, two commenters (Appalachian People's Action Coalition and Appalachian Center for Economic Networks) suggested that a hearing be held.

In the requests for a hearing, OCC, AT&T, and OCTA note that this proposed merger could result in the creation of one of the largest telecommunications providers in the world and this request is a most significant regulatory matter. They argue that such a transaction cannot adequately be evaluated by simply reviewing the application submitted by the joint applicants. Likewise, Edgemont states that the Commission cannot make the required findings without a hearing. Rather, OCC, AT&T, OCTA, and Edgemont state that this request warrants an evidentiary hearing in order to determine if the proposed merger will comply with existing laws and policies.

- (10) In light of our determination above regarding the scope of the proceeding in 98-1082, we determine that an evidentiary hearing is appropriate and should be limited to the issues we have identified in Finding 4 above. The evidentiary hearing shall begin at 10:00 a.m., on December 9, 1998, at the offices of the Commission.
- (11) On September 3, 1998, Edgemont filed a request to prohibit all *ex parte* communications. In the alternative, Edgemont suggests a process whereby *ex parte* communications may be held, so long as at least two business days' advance notice (including the subject matter) is provided to the other parties. Further, under the alternative proposal, Edgemont recommends that disclosure of the communication be made to all parties by filing the disclosure with the Commission and serving it upon the parties. Finally under the alternative proposal, Edgemont advocates that all *ex parte* communications be prohibited one week prior to the cut-off date for discovery.

On September 11, 1998, the joint applicants stated that they believe the current codified procedures for *ex parte* communications would be appropriate. On September 28, 1998, Time Warner Telecom, OCTA, AT&T, Sprint Communications Company L.P, CoreComm Newco Inc., and Telecommunications Resellers Association jointly stated their support for Edgemont's request and urged the Commission to not permit *ex parte* communications in this proceeding.

- (12) We consider Edgemont's request to prohibit *ex parte* communications to be appropriate. Although permitted under Section 4903.081, Revised

Code, we will not entertain *ex parte* communications requests during the pendency of 98-1082.

- (13) On September 28, 1998, Time Warner Telecom, OCTA, AT&T, Sprint Communications Company L.P, CoreComm Newco Inc., and Telecommunications Resellers Association jointly filed a motion entitled “Joint Motion for Clarification of Procedures” in 98-1082 and in the request of American Association of Retired Persons (AARP) and Edgemont for a Commission investigation of the merger and other related requests, Case No. 98-1024-TP-UNC (98-1024). In that pleading, the joint movants state that it is unreasonable for the Commission to continue a stay of discovery. This aspect of the September 28, 1998 joint motion is effectively an application for rehearing of the Commission’s August 13, 1998 entry. This aspect of the September 28, 1998 joint motion is untimely and, therefore, will not be considered by this Commission.

Also, the joint movants responded to the joint applicants’ September 11, 1998 letter, in which they “reserve their ability to address the merits of the individual requests for intervention”.<sup>1</sup> The joint movants contend that the applicants cannot defer responses to the various motions without having requested an extension or a stay. Since the applicants have not requested either, the joint movants contend that this reservation of rights should be rejected. Having ruled above upon the pending motions to intervene, we need not address the joint movants’ claim or the joint applicants’ “reservation”.

Finally, the joint movants requested that the Commission either consolidate 98-1082 with 98-1024 or grant the AARP/Edgemont requests filed in 98-1024. Given the above determinations in Finding 4 in 98-1082 as to the nature and scope of our review of the proposed merger, the determination that a hearing is appropriate, and our ruling upon *ex parte* communications, we believe that there is no need to consolidate the two cases or to grant the

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<sup>1</sup> The joint movants made similar reservations in their August 5 and 24, 1998 memoranda contra the then-pending motions to intervene. The joint applicants stated that they were only addressing the motions to intervene as attempts to assert full intervention rights prior to the Commission determining whether any hearing is necessary.

AARP/Edgemont requests in 98-1024. Instead, we believe that the AARP/Edgemont requests in 98-1024 are now moot and that case can be dismissed. As a result, we need not address the pending motions in 98-1024 (to intervene by Time Warner Telecom and to strike and dismiss by Ameritech Ohio).

- (14) On August 18, 1998, counsel for United Telephone Company of Ohio filed a motion to permit the appearance of Lee T. Lauridsen to appear in 98-1082 on behalf of United Telephone Company of Ohio and Sprint Communications Company L.P. Mr. Lauridsen is corporate counsel for Sprint Communications Company L.P. We find this request to be reasonable and, accordingly, Mr. Lauridsen is permitted to practice before the Commission in 98-1082.
- (15) Finally, we find it appropriate to make several other procedural rulings in 98-1082:
  - (a) A discovery cut-off date is reasonable. The last date upon which a party may serve a discovery request shall be 20 calendar days prior to the start of the hearing.
  - (b) All responses to any future motions shall be filed and served within five calendar days of the date that the motion is filed with the Commission.
  - (c) Any direct, expert testimony to be presented by the joint applicants should be filed on or before November 20, 1998.
  - (d) Any direct, expert testimony to be presented by any other party to this proceeding should be filed on or before seven calendar days before the hearing commences.
  - (e) The prehearing conference currently scheduled to be held on October 21, 1998, is rescheduled for November 17, 1998, at 1:30 p.m., at the offices of the Commission

It is, therefore,

ORDERED, That, as a result of the rulings made in this entry, the AARP/Edgemont requests in 98-1024 are now moot and 98-1024 shall be dismissed and closed of record. It is, further,

ORDERED, That the Commission's staff analyze and evaluate the application filed in 98-1082 in light of the issues set forth in Finding 4 and file a proposal by November 6, 1998. In its proposal, the staff shall inform the Commission whether it appears that the proposed merger will promote the public convenience and result in the provision of adequate service for a reasonable rate. It is, further,

ORDERED, That, in accordance with Finding 7 above, all outstanding motions to intervene in 98-1082 are granted. It is, further,

ORDERED, That discovery in 98-1082 is now permitted, but limited to the issues identified in this entry in Finding 4. It is, further,

ORDERED, That the Time Warner companies' motions in 98-1082 to shorten discovery time frames are granted. Responses to interrogatories, requests for production of documents, and requests for admissions should be served within 10 calendar days after receipt of the written discovery request. The last date upon which a party may serve a discovery request shall be 20 calendar days prior to the start of the hearing. It is, further,

ORDERED, That all responses to any future motions shall be filed and served within five calendar days of the date that the motion is filed with the Commission. It is, further,

ORDERED, That the Commission will not entertain *ex parte* communications requests during the pendency of 98-1082. It is, further,

ORDERED, That Mr. Lauridsen is permitted to practice before the Commission in 98-1082. It is, further,

ORDERED, That the prehearing conference currently scheduled to be held on October 21, 1998, is rescheduled for November 17, 1998, at 1:30 p.m., at the offices of the Commission. It is, further,

ORDERED, That the evidentiary hearing in 98-1082 shall be limited, as discussed in Finding 10, and shall begin at 10:00 a.m., on December 9, 1998, at the offices of the Commission. It is, further,

ORDERED, That any direct, expert testimony to be presented by the joint applicants should be filed on or before November 20, 1998. It is, further,

ORDERED, That any direct, expert testimony to be presented by any other party to 98-1082 should be filed on or before seven calendar days before the hearing commences. It is, further,

ORDERED, That a copy of this Entry be served upon SBC Communications Inc., SBC Delaware Inc., Ameritech Corporation, Ameritech Ohio, all interveners, and any interested persons of record in 98-1082 and 98-1024.

THE PUBLIC UTILITIES COMMISSION OF OHIO

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Craig A. Glazer, Chairman

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Jolynn Barry Butler

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Ronda Hartman Fergus

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Judith A. Jones

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Donald L. Mason

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