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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

OCT 15 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re)
)
 SBC Communications, Inc. and Ameritech) CC Docket No. 98-141
 Corporation Seek FCC Consent for a Proposed)
 Transfer of Control and Commission seeks)
 Comment on proposed Protective Order Filed)
 by SBC and Ameritech)

To: Chief, Common Carrier Bureau

PETITION TO DISMISS OR DENY

JSM Tele-Page, Inc. ("JSM"), by its attorneys, and pursuant to 47 USC Section 309(d), hereby petitions that the request for consent for the transfer of the applications included in the referenced proceeding be denied or dismissed. For the reasons set forth below, JSM submits that Ameritech Corporation's ("Ameritech") refusal to comply with established Commission rules and policy should not be rewarded by grant of the instant request.

Introduction and Standing

As the Commission has already recognized, "this proceeding involves broad public policy issues".^{1/} JSM's participation herein is based upon its experience with Ameritech involving one such fundamental public policy issue: interconnection between wireless and wireline facilities. JSM is a long-term paging carrier licensed under Part 22 of the Commission's rules. JSM currently serves

^{1/} See Public Notice entitled *SBC Communications, Inc. and Ameritech Corporation Seek FCC Consent for a Proposed Transfer of Control and Commission Seeks Comment on proposed Protective Order Filed by SBC and Ameritech*, CC Docket 98-141, DA 98-1492 (released July 30, 1998).

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over 10,000 subscribers throughout the state of Wisconsin. It has been utilizing Type-2 reverse billing interconnection arrangements involving subsidiaries of Ameritech for the last decade. Only recently has Ameritech notified JSM that it would no longer continue to offer this form of interconnection. The effect of such discontinuance would be to vastly undermine the quality and price of service that JSM could provide to the rural areas and communities that it serves.

In view of the above, JSM has attempted to persuade Ameritech informally to continue its existing interconnection arrangement. Regrettably, Ameritech has neither demonstrated any meaningful willingness to negotiate interconnection nor provided any cogent explanation as to why the interconnection arrangements sought by JSM should not be provided.^{2/} Rather, Ameritech has argued only that the 1996 Telecom Act somehow precludes the continued provision of the interconnection service that JSM seeks.

Discussion

It is well settled that a wireline carrier's refusal to provide a Commercial Mobile Radio Service ("CMRS") carrier with the type of interconnection that it desires violates FCC interconnection policy and constitutes unreasonable actions.^{3/} Ameritech has not contested FCC policy in this regard, but has simply refused to provide the desired form of interconnection, relying on the 1996 legislation.

^{2/} JSM has also sought informal Commission assistance in this matter. Whereas staff in the Common Carrier Bureau have expressed a willingness to facilitate resolution of this informal dispute, Ameritech has refused even Commission overtures to participate in such efforts.

^{3/} The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Memorandum Opinion & Order, 59 RR 2d 1275, 1283 (App. B) (1986) ("Interconnection Order and Policy Statement"); clarified, Declaratory Ruling, 2 FCC Rcd 2910 (1987), *aff'd on recon.*, 4 FCC Rcd 2369 (1989).

The 1996 Telecom Act provides no support for Ameritech's position. In fact, under sections 251(c) and 251(c)(3), any requesting carrier may choose any method of technically feasible interconnection or access to unbundled elements at a particular point. Section 251(c)(2) imposes an interconnection duty at any technically feasible point. The Commission has interpreted the term "technically feasible", to require that, if a particular method of interconnection is currently employed between two networks, or has been used successfully in the past, a rebuttable presumption is created that such a method is technically feasible for substantially similar network architectures.^{4/}

Not only does the law support JSM's position, but so too does sound public policy. If Ameritech's refusal to provide the interconnection requested by JSM continues, there will be a severe degradation in the quality and affordability of paging to the rural and other communities that JSM serves. Moreover, if JSM were to revise its system in order to accommodate Ameritech's refusal to provide interconnection, the most logical restructuring would involve the use of a substantial number of additional numbering codes.^{5/} The public interest would clearly not be served by either of these eventualities.

It is well settled that, with certain exceptions not here relevant, "a transfer or assignment application cannot be granted when there are unresolved issues concerning the seller's basic qualifications".^{6/} This policy stems from the Section 309 requirement that the Commission

^{4/} **See footnote 3.**

^{5/} A question exists as to whether this option is even available to JSM in view of a current freeze of the availability of area codes in Wisconsin.

^{6/} *Kralowec Children's Family Trust*, DA 97-2470 (Chief, Video Services Division 1997), *Jefferson Radio Co., Inc. v. FCC*, 340 F.2d 781 (D.C. Cir. 1964).

determine that a grant of an application would serve the public interest before the Commission acts on such application. Here JSM submits that Ameritech, through its subsidiary corporations, has unquestionably failed to comply with Commission interconnection policy. When Congress strengthened interconnection obligations through the 1996 Telecom Act, Ameritech argued that such legislation restricted rather than expanded interconnection rights of wireless carriers. Thus, Ameritech's actions violate both longstanding Commission policy and more recent obligations associated with the 1996 legislation. Under such circumstances, no public interest would be served by granting the subject applications, and the Commission is thus not empowered to grant the applications.

Conclusion

As a small carrier, JSM's resources are very limited. Whereas it would have preferred to direct those resources towards serving the public, certain of them have here been diverted in order to assure that non-compliance with Commission rules and policies is not rewarded through grant of the subject applications.

Wherefore, JSM urges the Commission to dismiss or deny the referenced applications.

Respectfully submitted,

JSM TELE-PAGE, INC.

By: _____

Thomas Gutierrez

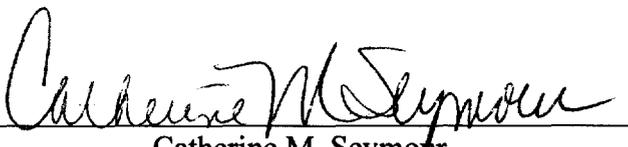
Its Attorney

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October 15, 1998

CERTIFICATE OF SERVICE

I, Catherine M. Seymour, a secretary in the law offices of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 15th day of October, 1998, sent by U.S. mail copies of the foregoing "PETITION TO DISMISS OR DENY" to the following:

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Catherine M. Seymour