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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

REPLY COMMENTS OF THE
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"), by its attorneys, respectfully replies to the comments filed in the above-captioned proceeding.¹ For the reasons explained below, CompTel opposes the request of SBC Communications, Inc. ("SBC") and Ameritech Corp. ("Ameritech") (collectively "Applicants") for approval of a transfer of control in connection with a planned merger between the two corporations.

I. INTRODUCTION

In order to obtain Commission approval, SBC and Ameritech have the burden of showing that their merger serves the "public interest, convenience and necessity."² The Commission recently has emphasized that the public interest standard is both flexible and broad, generally encompassing the pro-competitive and deregulatory goals of the Telecommunications

¹ See 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, *Public Notice*, DA 98-1492 (CCB rel. July 30, 1998.) The Commission extended the filing deadlines by Order, DA 98-1765, released September 1, 1998. Initial comments were filed on October 15, 1998.

² 47 U.S.C. § 310(d); see generally *Applications of NYNEX Corp. and Bell Atlantic Corp. for Consent to Transfer Control of NYNEX Corp.*, 12 FCC Rcd 19985, 19994 (1997) ("BA-NYNEX Merger Order").

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Act of 1996 (“1996 Act”). Specifically, among other issues, the Commission must consider whether a proposed transaction will “open[] all telecommunications markets to competition”³ and “enhance[] access to advanced telecommunications and information services . . . in all regions of the Nation,”⁴ and also “whether the merger will affect the quality of telecommunications services provided to consumers or will result in the provision of new or additional services to consumers.”⁵ Applicants have utterly failed to meet their burden to show that this merger would promote the public interest. Far from jump-starting competition, the combined entity would impede, and potentially eliminate, competition in the markets for local exchange, exchange access, long distance and Internet access services.

CompTel adds its voice to the chorus of commenting parties urging the Commission to “draw the line” and deny this merger. The merger of SBC and Ameritech, which would be the largest to date and valued at \$62 billion (more than twice that of Bell Atlantic/NYNEX), would control approximately one-third of this country’s access lines. If this SBC/Ameritech behemoth is created, and Bell Atlantic merges with GTE, the country would be left with two giant local exchange monopolies. And then, what reason would there be to prevent all the major incumbent local exchange carriers (“ILECs”) from joining to create one virtually nationwide, ubiquitous incumbent local exchange carrier? This is where we are heading. The Commission should not approve this merger unless it is prepared to let the dominoes fall until there is only one standing.

³ *Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control of MCI Communications Corp. to WorldCom, Inc.*, FCC 98-225, CC Docket No. 97-211, ¶9 (1998) (“*WorldCom/MCI Order*”).

⁴ *Applications of Teleport Communications Group, Inc., Transferor, and AT&T Corp., Transferee, For Consent to Transfer Control*, 13 FCC Rcd 15236, ¶11 (1998).

⁵ *WorldCom/MCI Order*, ¶9.

II. THE PROPOSED MERGER WOULD CAUSE IRREPARABLE HARM TO THE DEVELOPMENT OF LOCAL COMPETITION

Since the passage of the 1996 Act, both SBC and Ameritech have retained monopoly control over the local exchange and exchange access markets, as they “continue to wage successful campaigns of massive resistance to the market-opening requirements of the [1996] Act.”⁶ Several parties describe in detail the anti-competitive actions of these companies that continue to frustrate the development of local competition.⁷ As vividly demonstrated by the Commission’s five orders denying Bell Operating Company (“BOC”) Section 271 applications, meaningful local competition has not yet arrived. Indeed, the Commission rejected the Section 271 applications of both SBC and Ameritech because their local markets are not yet open to competition.⁸ To add to this quagmire, the Eighth Circuit’s rulings regarding the provision of unbundled network elements (“UNEs”) that already are combined have undermined the ability of competing carriers to provide broad-based local exchange services, and have increased the cost and complexity of local entry. The previous BOC mergers have not delivered any public interest benefits, but have succeeded only in strengthening the barriers to local competition by allowing the BOCs to pool their resources and entrench their monopolies.

If the Commission authorizes the merger of SBC and Ameritech, local competition will be set back. First, the merger would preclude the most significant source of

⁶ AT&T Comments at 2.

⁷ See, e.g., MCI WorldCom Comments at 3-9; AT&T Comments at 10-19; e.spire Comments at 13-15; KMC Comments at 5-14.

⁸ See *In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd 20543 (1997); *In the Matter of SBC Communications, Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Oklahoma*, 12 FCC Rcd 8685 (1997).

local competition – one BOC against another.⁹ Given their expertise, resources and consumer bases, adjacent ILECs are the most likely to enter each other’s local markets as competitors.¹⁰ In this case, both SBC and Ameritech are poised and likely to compete against each other if the merger is not approved.¹¹ Thus, their merger would foreclose each company’s potentially strongest in-region competitor.

Second, the merger will make it extremely difficult for the Commission, state regulators, and the industry to properly benchmark the ILECs’ performance.¹² In the *BA-NYNEX Merger Order*, the Commission warned that future mergers would be increasingly problematic “as the potential for coordinated behavior increases” and the relative weight of each company’s behavior increases.¹³ This magnification of impact on average industry performance becomes even more dangerous given the prospects for the SBC/Ameritech and Bell Atlantic/GTE mergers. The fewer the number of major ILECs remaining, the greater their incentive to coordinate and cooperate in continued resistance to local competition and the “tendency to fight and delay.”¹⁴

Third, this merger will increase the applicants’ incentive to frustrate and defeat Congress’ market-opening provisions. At the time the 1996 Act was adopted, each RBOC had the prospect of revenues from out-of-region competitive entry to offset the potential loss of in-region monopoly local exchange revenues. However, as the BOCs merge with each other into

⁹ See, e.g., Sprint Comments at 4; AT&T Comments at 22.

¹⁰ See AT&T Comments at 22-24.

¹¹ See, e.g., Sprint Comments at 11; AT&T Comments at 24-28; TRA Comments at 8.

¹² See, e.g., MCI WorldCom Comments at 17-23; Sprint Comments at 32; AT&T Comments at 28-31.

¹³ *BA-NYNEX Merger Order* at 20062.

¹⁴ See McLeod Comments at 9-11.

larger ILECs, the gains from out-of-region entry diminish while their incentive to preserve in-region monopoly profits increases exponentially. With each successive merger, the RBOCs have more incentives and resources to resist complying with the market-opening provisions of the 1996 Act.

III. THE “NATIONAL-LOCAL” STRATEGY OFFERED BY SBC AND AMERITECH AS JUSTIFICATION FOR THE MERGER IS IMPLAUSIBLE

The Applicants’ so-called “National-Local” strategy is nothing but a contrived attempt to disguise a merger that is not in the public interest. This strategy contemplates the facilities-based entry of the combined entity into thirty major U.S. markets outside of the area in which it would be the ILEC. The cornerstone of this strategy is the incredible claim that neither SBC nor Ameritech would or could accomplish this sort of expansion independently, without the merger. Most parties recognize, as does CompTel, that this justification is a ruse.¹⁵ Both SBC and Ameritech have the undoubted ability to “undertake significant out-of-region entry absent a merger.”¹⁶ Competitive local exchange carriers (“CLECs”) have been able to initiate significant efforts to enter the local market without nearly the resources of SBC and Ameritech. One such carrier, e.spire, notes that SBC’s and Ameritech’s out-of-region strategy is no more ambitious than the plans already initiated by CLECs such as itself, MFS, Brooks Fiber and TCG.¹⁷ The proposed merger clearly is not a prerequisite for either company to invest significantly in out-of-region local markets.

¹⁵ See, e.g., MCI WorldCom Comments at 9-15; Sprint Comments at 48; AT&T Comments at 35; McLeod Comments at 2-5.

¹⁶ See AT&T Comments at 38-43.

¹⁷ e.spire Comments at 12 (e.spire has built 32 state-of-the-art fiber optic networks in the past five years and plans to expand further.)

Moreover, SBC and Ameritech have not even made a firm commitment to any specific level or timetable for out-of-region entry.¹⁸ In effect, they are asking the Commission to bless their decision not to compete against each other in exchange for vague expressions of intent to invest in other out-of-region markets. The Commission should not accept such an illusory bargain. The Applicants' "National-Local Strategy" is nothing more than an effort to conceal the extent to which competition will be diminished in their own regions by underscoring the extent to which competition may not be diminished in other regions. That plainly does not justify the merger in the public interest.

IV. THE MERGER WOULD DAMAGE THE LONG DISTANCE MARKET AND THE INTERNET ACCESS MARKET

If the merger is approved and the combined entity receives Section 271 authority, the resulting mega-RBOC would have control over the origination and termination of significantly more interLATA calls than either RBOC controls at present. This increase in calls that originate and terminate in the combined RBOC's region would increase its ability to engage in a cost-price squeeze,¹⁹ thereby harming competition in the long distance market.²⁰ As long as Applicants continue to exercise market power over exchange access and to price access charges significantly above cost, they have the ability to subject any long distance competitor to a cost-price squeeze. As distinguished from the Bell Atlantic-NYNEX merger, the danger of price squeeze is greater here because the merger of SBC and Ameritech involves a much higher

¹⁸ *E.g.*, AT&T Comments at 35-38.

¹⁹ *See BellSouth Corp. v. FCC*, 144 F.3d 58, 67 (D.C. Cir. 1998).

²⁰ *See, e.g.*, MCI WorldCom Comments at 24-25; Sprint Comments at 24; AT&T Comments at 32.

concentration of access lines under common ownership.²¹ The danger of an anti-competitive cost-price squeeze will not diminish until access rates reflect underlying economic costs.

Approval of the merger would also endanger competition in Internet access services. Applicants' bottleneck power over the local exchange could spread to the Internet as a result of the increase in the percentage of Internet users and traffic over which the combined entity would have market power.²² In particular, the Commission should take note that xDSL services may become a significant form of Internet access in the near future, and if so, further concentration among ILECs could result in harm to Internet competition.

²¹ MCI WorldCom Comments at 24.

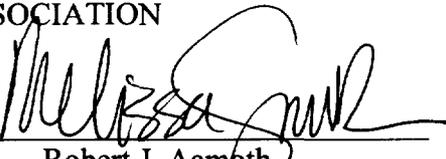
²² *See id.* at 35-45.

V. CONCLUSION

For the foregoing reasons, the Commission should deny the Applications of SBC and Ameritech for authority to transfer control of licenses because the Applicants have failed to show that the merger is in the public interest.

Respectfully submitted,

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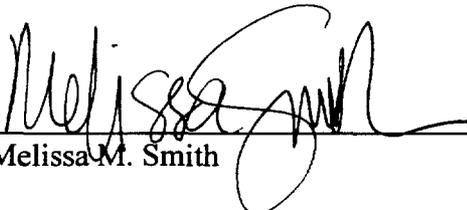
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