

EX PARTE OR LATE FILED



Ohio Consumers' Counsel

Robert S. Tongren
Consumers' Counsel

December 18, 1998

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EX PARTE

FCC MAIL ROOM

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Application of SBC Communications, Inc. and Ameritech Corporation for Authority to Transfer Control of Certain Licenses and Authorizations, CC Docket No. 98-141 – Notice Of Ex Parte Presentation

Dear Ms. Salas:

Pursuant to Section 1.1206 of the Commission's rules, the Ohio Consumers' Counsel hereby submits this notice of an ex parte presentation in the above referenced permit-but-disclose proceeding. On December 14, 1998, Rick Guzman of the Texas Office of the Public Utility Counsel, Martha Hogerty, Missouri Public Counsel, Larry Frimerman, Ohio Consumers' Counsel and Charles Acquard, NASCUA Executive Director met with Chairman William E. Kennard and Kathryn C. Brown, FCC Chief of Staff, to discuss the above referenced proceeding.

During the meeting the various state public counsel representatives presented information regarding "Consumer Perspectives on ILEC Mergers." A copy of this

77 S. High St., 15th Floor, Columbus, Ohio 43266-0550
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presentation is attached. The participants urged the Commission to consider the SBC merger application on the basis of the facts and law presented in the various comments now on file with the Commission. The participants also urged the Commission to carefully consider the facts and other information presented during Monday's En Banc meeting in opposition to the proposed merger.

Copies of the Notice of Ex Parte Presentation have been provided to the above referenced persons. An original and one copy have also been submitted to the Secretary's office.

Respectfully submitted,



Larry Fymerman
Federal Liaison

cc: Don Stockdale, Common Carrier Bureau
Radhika Karmarker, CCB
Bill Dever, CCB
Jennifer Fabian, CCB
Audrey Wright, CCB
To-Quyen Truong, CCB
Tom Krattenmaker, Office of Plans and Policy
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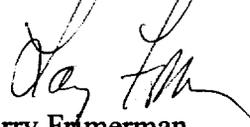
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CONSUMER PERSPECTIVES ON ILEC MERGERS

Ex Parte Presentation

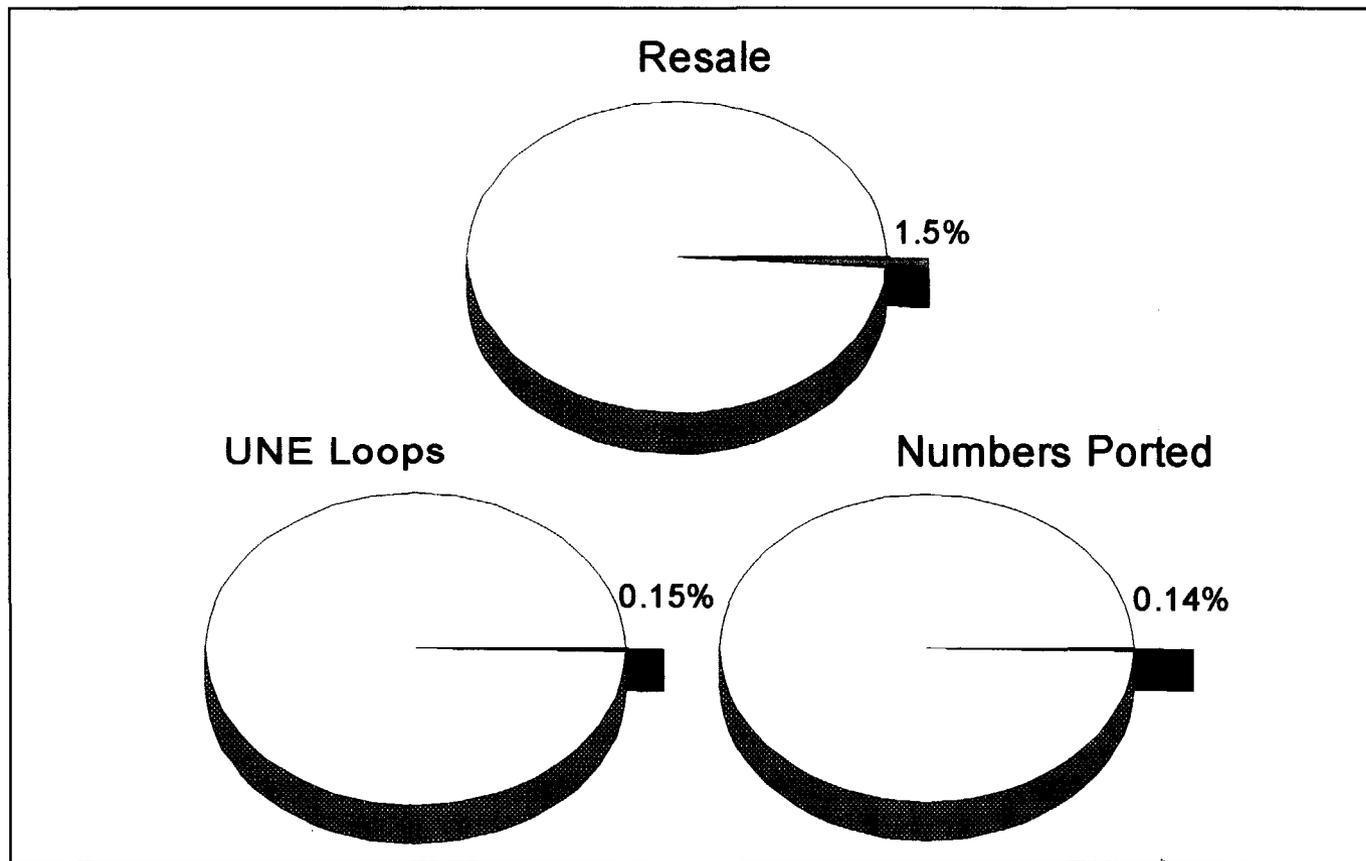
Ohio Consumers' Counsel
Missouri Office of the Public Counsel
Texas Office of Public Utility Counsel

December 14, 1998

Since the passage of the Telecommunications Act of 1996, ILECs have been busier merging with each other than with opening their markets to local competition

<u>Merger</u>	<u>Date of Merger Announcement</u>	<u>FCC Status</u>
SBC/Pacific Telesis	April 1, 1996	January 31, 1997 - approved
Bell Atlantic/NYNEX	April 22, 1996	August 14, 1997 - approved
SBC/SNET	January 5, 1998	October 23, 1998 - approved
SBC/Ameritech	May 10, 1998	Pending
Bell Atlantic/GTE	July 28, 1998	Pending

Competitive Entry into the Local Market, Nationwide



Source: Common Carrier Bureau Second Survey of Local Competition, October 28, 1998,
(Numbers Ported Data from First Survey, March 27, 1998)

www.fcc.gov/ccb/local_competition/survey/responses.

The FCC Has Raised Specific Concerns about Further ILEC Consolidation

The Federal Communications Commission gave ample notice that approval of the Bell Atlantic/NYNEX merger should not be construed as a guarantee that the FCC would approve all future mergers:

Further reductions ... become more and more problematic as the potential for coordinated behavior increases and the impact of individual company actions on our aggregate measures of the industry's performance grows. ...[thus] further reductions in the number of Bell Companies or comparable incumbent LECs would present serious public interest concerns. *In the Application of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, File No. NSD-L-96-10, Memorandum Opinion and Order, released August 14, 1997, at para. 156.

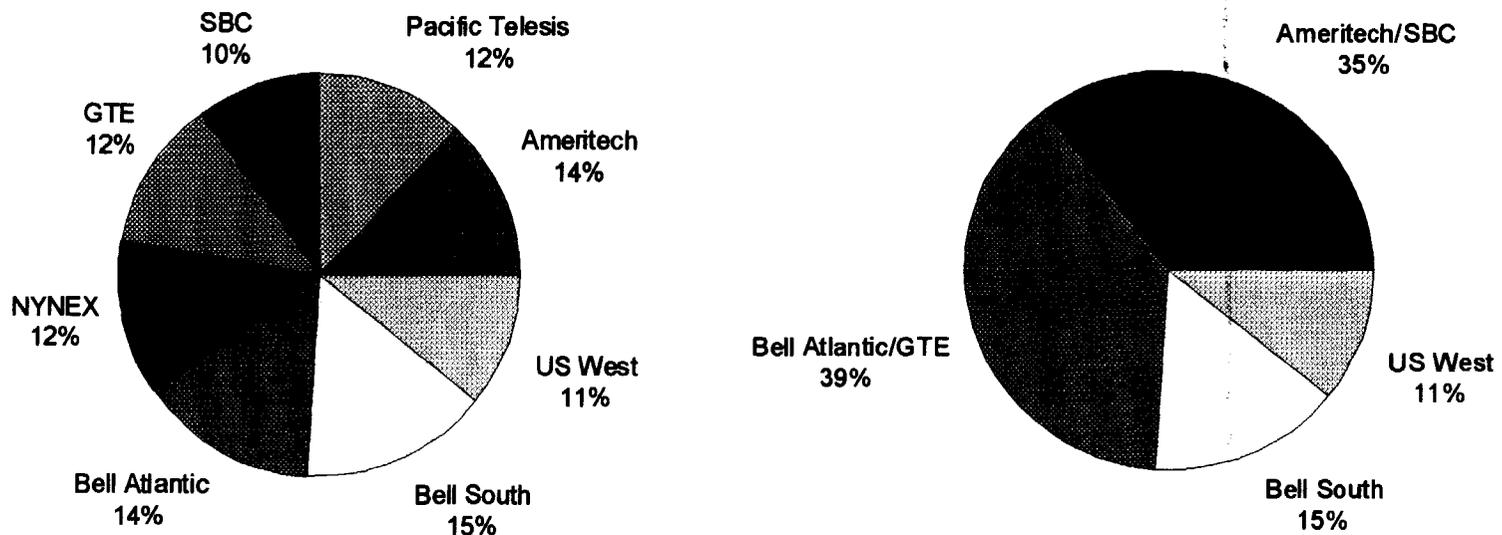
The FCC Has Raised Specific Concerns about Further ILEC Consolidation (cont'd)

The FCC also alerted the industry that:

It is quite plausible that there will be some mergers of actual or precluded competitors that will present such significant potential harms to competition that there will be no means to conclude that the transaction serves the public interest, convenience and necessity. The elimination of an even more significant market participant than Bell Atlantic would raise even greater competitive concerns. *BANYNEX Merger Order*, at para. 179.

Convergence in the Local Telecommunications Market

Approval of all pending mergers would reduce the number of large ILECs from eight in 1996 to four in 1999



Source: Statistics of Common Carriers, Table 2.10, 1996 (access lines).
Preliminary Statistics of Common Carriers, Table 2.10, 1997 (access lines).

Mergers May Jeopardize Local Competition, Reasonable Rates, and Service Quality

- SBC candidly states its intention to divert ILEC resources to support competitive ventures
- Mega-ILEC presence may discourage competitive entry in the local market
- Mergers result in the loss of potential competitors: ILECs bring unique advantages to the local market

Mergers May Jeopardize Local Competition, Reasonable Rates, and Service Quality (cont'd)

- Mergers create pressure to increase revenues and lower costs, thus jeopardizing service quality
- Mergers could result in selective disinvestment, particularly in areas not likely to experience significant competition
- There is no compelling evidence that mergers result in more new services or in more rapid innovation

Proposed SBC/Ameritech Merger Poses Numerous Risks to Consumers

- SBC would raid home-region assets: SBC intends to “rely to a significant extent on managers from SBC and Ameritech to staff the 30-city venture” (Carlton Affidavit, at para. 32).
- SBC asserts that its National/Local Strategy will “jumpstart” competition
 - In fact, the merger would reduce the number of actual potential entrants
 - The merger would eliminate SBC as an actual potential competitor in the five-state Ameritech region

Proposed SBC/Ameritech Merger Poses Numerous Risks to Consumers (cont'd)

- SBC would confront strong financial pressure to recover the \$13-billion premium it proposes to pay for Ameritech through price increases in noncompetitive or minimally competitive services throughout its expanded 13-state home region
- Since acquiring Pacific Bell in 1997, SBC has asked the California PUC to approve numerous rate increases and upward pricing flexibility for services over which Pacific continues to maintain substantial market power

Proposed SBC/Ameritech Merger Poses Numerous Risks to Consumers (cont'd)

- SBC would rely on customers of noncompetitive services to finance out-of-region entry
- SBC and Ameritech acknowledge that “[a] substantial base of current customers and revenues is necessary to maintain earnings growth and spread risk while following customers into out-of-region local markets” Schmalensee/Taylor Affidavit, at para. 16

Contradictory View of Competition in the SBC/Ameritech Merger Application

What the Applicants say:

“...absent the merger SBC does not believe it could undertake the task of competing out-of-region in all the key domestic and international local exchange markets...[b]y implementing the National-Local Strategy, SBC believes that its actions will accelerate the development of competition in all market segments.”
Kahan Affidavit, at paras. 27 and 86.

Contradictory View of Competition in the SBC/Ameritech Merger Application (cont'd)

What the Applicants don't say:

Under this view, the only way to increase competition is to increase concentration.

The Trend Toward ILEC Consolidation Is Not in the Public Interest

- A larger SBC will simply precipitate interest in mergers by other large ILECs — now is the time to put on the brakes.
- Neither competition nor existing price regulation schemes (unless modified) would constrain the merging ILECs to flow through merger benefits to customers of their noncompetitive services.
 - Quantitative measures show little progress toward breaking ILEC dominance of the local exchange market.
 - Five mergers of Tier 1 ILECs have been proposed or completed since the end point (1995) of the FCC's study period used for establishing the current X factor.

It is possible that the risks posed by some mergers are so great that there is simply no set of conditions that can remedy the probability of harm to the public interest.

- The decision to allow two ILECs to merge is irreversible
- Conditions may be difficult to enforce
- Benefits that ILECs promise may be difficult to enforce
- None of the proposed or approved mergers to date have provided consumers with substantive benefits

CERTIFICATE OF SERVICE

I, Terry L. Etter, do hereby certify that on the 18th day of December 1998 copies of the attached document were served by overnight delivery (as indicated) or by first class mail, postage prepaid, to the following persons:

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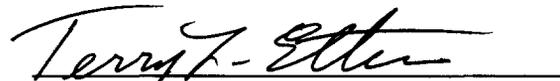
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