



**EX PARTE PRESENTATION**

March 2, 1999

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW - TW-B204  
Washington, DC 20554

EX PARTE OR LATE FILED  
**RECEIVED**  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Re: *In re Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor, to SBC Communications Inc., Transferee (CC Docket No. 98-141)***

Dear Ms. Salas:

Pursuant to Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206, and the public notices in this proceeding,<sup>1</sup> I am writing to respond to the January 25, 1999 *ex parte* presentation of Patrick A. Miles, Jr. ("Ex Parte Presentation") filed on behalf of the City of Westland, Michigan (the "City"). That presentation and, in particular, the allegations set forth in the January 6, 1999 letter by John W. Pestle, an attorney representing several of the jurisdictions where Ameritech New Media, Inc. holds cable television franchises, which was attached to the presentation ("Pestle Letter") -- mischaracterize an amendment SBC Communications Inc. ("SBC") made to Federal Communications Commission ("FCC" or "Commission") Form 394 filed with the City and fail to disclose that SBC has repeatedly assured the City that SBC has no plans to discontinue the provision of cable service by Ameritech New Media, Inc. ("ANM"). Moreover, the Ex Parte Presentation and Pestle Letter fail to inform the Commission that SBC and ANM sent the same Form 394, with the same amended certification, to each of the over 80 jurisdictions where ANM holds cable franchises, and not a single such jurisdiction has rejected the application. In fact, to date, over 70 of the 83 jurisdictions which received the Form 394 application have approved it, either through an explicit resolution or through expiration of the 120-day limit established by the Communications Act and Commission Rules<sup>2</sup>, and almost

<sup>1</sup> See Public Notice, *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 No. 98-141, DA 98-1492, 1998 WL 429689 (July 30, 1998); Public Notice, *Public Notice Revises Ex Parte Procedures*, 13 FCC Rcd. 20331 (1998).

<sup>2</sup> See 47 U.S.C. 537; 47 C.F.R. § 76.502.

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all of the ANM franchise agreements granted since the Form 394s were filed with other jurisdictions contain provisions which preapprove the transaction.

The Ex Parte Presentation and the Pestle Letter are examples of the attempts by Mr. Pestle and his colleagues to gain unfair concessions from SBC as a condition of their clients' consent to the transaction between SBC and Ameritech Corporation ("Ameritech").

SBC Amendment of the Form 394 Certification

The Pestle Letter and the Ex Parte Presentation inaccurately represent the reason for SBC's amendment of the Section V, Part II(c) certification of Form 394. In fact, although the Ex Parte Presentation provides a copy of the amended certification in an effort to support Mr. Miles' contention that SBC's intentions with regard to ANM are "suspect," neither that presentation nor the Pestle Letter provides a copy of SBC's Exhibit 11 to the Form 394 (referenced on that certification page) or later correspondence from SBC explaining the amendment to the certification.

In lieu of the certification, SBC submitted as Exhibit 11 to the Form 394 an affidavit by an SBC Vice President. That affidavit explained that there would "be no transfer of the franchise as a result of the transaction" between SBC and Ameritech and that ANM would "continue to hold the franchise after the transaction." (Exhibit 11 to the Form 394 is attached hereto as Exhibit 1.) It also certified that the transaction between SBC and Ameritech "does not affect Ameritech New Media's obligation as the franchisee to abide by the terms and conditions of the franchise agreement...; to comply with the terms of applicable Federal and state laws or local ordinances and related regulations; or to effect changes required by such franchise agreement, laws, ordinances and regulations, as promptly as practicable, in the operation of the system, if any changes are necessary to cure any violations thereof or defaults thereunder presently in effect or ongoing." In other words, the affidavit essentially tracks the language of the Form 394 certification and provides the City assurances that ANM would meet its ongoing obligations after the SBC-Ameritech transaction.

Moreover, in later correspondence between SBC and the City (and other jurisdictions), which neither the Ex Parte Presentation nor the Pestle Letter mentions, SBC explained its reason for amending the Form 394 certification. In that correspondence, SBC explained to the City that it had amended the Form 394 certification in order to accurately reflect the legal obligations of SBC following the transaction between SBC and Ameritech. As SBC explained, the Form 394 certification is appropriate where a transaction results in the assignment of a cable franchise, *i.e.*, "when a franchise is transferred from one

entity to another.”<sup>3</sup> In contrast to such a situation, SBC explained that after the SBC-Ameritech transaction ANM will remain the franchisee and the obligations referenced in the Form 394 certification will continue to be borne by ANM. Since no assignment of the franchise would take place, SBC explained that ANM would continue to be bound by its franchise obligations and the merger of SBC and Ameritech will not make SBC a party to the franchise agreement. Therefore, SBC explained it would be inaccurate for SBC to claim that SBC will, as the proposed parent company of the franchisee, “use *its* best efforts” to comply with the franchise agreement and local laws. (The relevant portions of this correspondence, including the complete text of SBC’s explanation, are attached as part of Exhibit 2.)

The Pestle Letter and the Ex Parte Presentation fail to disclose SBC’s statements to the City in this regard. Instead, Mr. Pestle incorrectly suggests to the Commission that the amended certification was “an attempt by SBC to insulate its parent company from liability *when it shuts down Ameritech New Media.*” (Emphasis added.) Such a statement not only ignores SBC’s statements regarding the reasons behind the amendment, it also ignores SBC’s statements regarding the continued operation of ANM’s cable systems, as explained below.

*SBC Has No Plans to Shut Down Ameritech New Media’s Cable Operations*

Despite Mr. Pestle’s assertions and the Ex Parte Presentation’s suggestion, SBC has no plans to shut down ANM’s cable operations. In fact, the Pestle Letter and the Ex Parte Presentation fail to disclose to the Commission the repeated assurances SBC has made to ANM’s cable jurisdictions that it has no plans to shut down ANM’s cable operations. Moreover, neither the Pestle Letter nor the Ex Parte Presentation discloses to the Commission SBC’s statements explaining how ANM’s present cable operations differ from SBC’s previous experiences with multichannel video programming distribution (“MVPD”) systems.

In early December 1998, SBC sent a letter to those jurisdictions with which it had filed Form 394s and explained at length the differences between SBC’s prior MVPD experiences and ANM’s present cable activities. SBC assured the jurisdictions that the SBC-Ameritech transaction would not result in any changes in the management or operation of ANM’s cable systems and that SBC had no current plans to make such changes. In fact, SBC stated that “[a]s far as SBC is concerned, it will be ‘business as usual’” between ANM and the jurisdictions after the SBC-Ameritech merger. (A copy of the December

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<sup>3</sup> *In re Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992: Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations and Anti-Trafficking Provisions*, Report and Order and Further Notice of Proposed Rule Making, 8 FCC Rcd. 6828 (1993).

1998 letter is attached as Exhibit 3.) Moreover, in later correspondence between the City and SBC, SBC provided a variety of assurances, including that: (a) "[t]he SBC-Ameritech merger will not alter the obligations of Ameritech New Media to comply with service and equipment requirements of the Franchise and Ordinance," (b) the merger "will not alter the obligations of Ameritech New Media to comply with customer service requirements of the Franchise and Ordinance," and (c) SBC had no current plans that may affect the cable system or the provision of cable services in the City.<sup>4</sup> (The relevant portion of this correspondence, including the full text of SBC's numerous assurances, is included as part of Exhibit 2.)

#### Mr. Pestle's Attempts to Obtain Unfair Concessions

In the end, the Ex Parte Presentation and the Pestle Letter appear to represent another attempt by Mr. Pestle to use the SBC-Ameritech merger to extract unfair concessions from SBC and ANM, concessions which would substantially increase ANM's obligations and costs under the franchise agreement although there would be no change in any relevant circumstances, as a condition of obtaining consent to the SBC-Ameritech transaction. In fact, as a condition for the City's consent to the transaction, Mr. Pestle has sought various concessions from ANM, most of them wholly unrelated to the SBC-Ameritech transaction. Those conditions, set out in a draft resolution by the City of Westland which would approve the SBC-Ameritech transaction (attached hereto as Exhibit 4), include the carriage of PEG transmissions in HDTV format; a capital grant to the City to convert City facilities and equipment to the HDTV format selected by the city; and unreasonable liquidated damages provisions for failure to meet performance specifications. Such actions highlight Mr. Pestle's efforts to use the SBC-Ameritech transaction to exert inappropriate pressure on SBC and ANM in order to have those parties agree to new franchise obligations.

#### *The Commission Should Not Condition the Merger on the Continued Operation of ANM's Cable Systems*

The Ex Parte Presentation suggests that, in order to meet the public interest standard under Sections 214 and 310 under the Communications Act, the

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<sup>4</sup> Moreover, although the Ex Parte Presentation mentions a May 1998 press report stating that SBC Chairman Edward Whitacre was noncommittal on continuing cable competition when questioned by Senator Mark Dewine of Ohio, that press report predates more recent press reports (published after the Ex Parte Presentation) which state that "Senate Antitrust Subcommittee Chmn. DeWine (R-O[ho]) said Jan. 27 [1999] he had been assured by SBC Chmn. Edward Whitacre that SBC will continue Ameritech's cable TV operations if [the] companies' merger is approved." See Capitol Hill, *Warren's Cable Regulation Monitor*, February 1, 1999, available at 1999 WL 6825564.

Commission should condition approval of the SBC-Ameritech transaction on ANM remaining in the cable business, providing cable service under its cable franchises, or continuing to obtain cable franchises, and providing cable service, in additional areas. For the reasons stated in our previous filings with the Commission in this proceeding, the SBC/Ameritech transaction clearly meets the public interest standard and there is absolutely no basis for imposing the conditions proposed by Messrs. Pestle and Miles. Such conditions on a cable operator would appear to be unprecedented, particularly any requirement that ANM or SBC *continue to obtain franchises* in additional areas, and has not been imposed by the Commission as a condition of SBC's merger with Pacific Telesis or SNET. Further, imposition of such a condition at all might well exceed the Commission's authority. From a practical standpoint, enforcement of such a condition would be extremely difficult, if not impossible, and would require the FCC to micromanage business decisions by ANM, Ameritech and SBC. In all events, this type of condition is simply unnecessary since, as explained above, SBC has no plans to shut down ANM's cable operations.

Moreover, SBC's ability to best ensure that the merger increases the efficiencies of SBC and Ameritech operations — and provides benefits to their customers — would be undermined by any condition, such as that proposed by Mr. Pestle and Mr. Miles, that would curtail SBC's ability to make appropriate business decisions in furtherance of such public interest goals.

\* \* \*

Thank you for your attention to this matter. Please let me know if you need further information regarding this filing.

Sincerely,



Wayne Watts  
General Attorney and  
Assistant General Counsel

cc: Rosalind Allen  
Radhika Karmarkar  
Tom Krattenmaker  
Bill Rogerson  
Patrick DeGraba  
Donald K. Stockdale  
Carol Matthey  
Michelle Carey  
William Dever  
Audrey Wright  
Jennifer Fabian  
Johnson Garrett

***EXHIBIT 1***

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EXHIBIT 11

AFFIDAVIT OF JAMES S. KAHAN

STATE OF TEXAS            )  
  ) SS  
COUNTY OF BEXAR        )

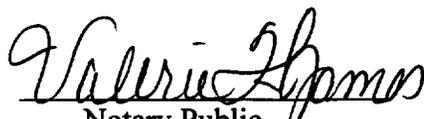
JAMES S. KAHAN, being duly sworn, deposes and says:

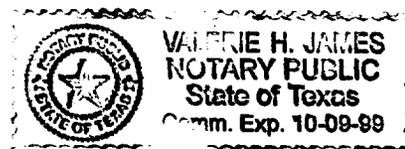
1. My name is James S. Kahan. I am the Senior Vice President for Corporate Development for SBC Communications Inc. ("SBC"). As such, I am authorized to represent the following:
  - a. Although SBC is listed as the "Transferee" in this Form 394, there will be no transfer of the franchise as a result of the transaction described in this Form. Ameritech New Media, Inc. ("Ameritech New Media") will continue to hold the franchise after the transaction. Ameritech New Media currently is a wholly-owned subsidiary of Ameritech Corporation. As a result of the merger with SBC, Ameritech Corporation will become a wholly-owned subsidiary of SBC, but Ameritech New Media will remain a subsidiary of Ameritech Corporation. Although ownership of Ameritech Corporation will change, there will be no change in the ownership, operation or management of Ameritech New Media.
  - b. The transaction does not affect Ameritech New Media's obligation as the franchisee to abide by the terms and conditions of the franchise agreement which is the subject of the attached application; to comply with the terms of applicable Federal and state laws or local ordinances and related regulations; or to effect changes required by such franchise agreement, laws, ordinances and regulations, as promptly as practicable, in the operation of the system, if any changes are necessary to cure any violations thereof or defaults thereunder presently in effect or ongoing.
2. I declare under penalty of perjury that the facts contained in this affidavit are true to the best of my knowledge.

  
James S. Kahan

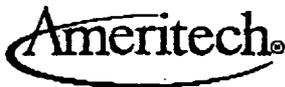
8-28-98  
Date

Subscribed and sworn to before me this 28 day of August, 1998.

  
Notary Public



***EXHIBIT 2***



New Media, Inc.  
Suite 1100 North  
100 South Wacker Drive  
Chicago, IL 60606  
Tel: 312 536-6064  
Fax: 312 536-6556

Donna Garofano  
Vice President  
Public Affairs

December 21, 1998

Mr. Angelo A. Plakas  
City Attorney  
City of Westland  
35330 Nankin Boulevard  
Suite 702  
Westland, MI 48185-7223

Ms. Diane Abbott  
Cable Manager  
City of Westland  
33455 West Warren Road  
Westland, MI 48185

Re: Application for Franchise Authority Consent

Dear Mr. Plakas and Ms. Abbott:

I am writing in response to the November 24, 1998 letter from John W. Pestle, counsel to the City of Westland, Michigan ("Westland"), regarding the Form 394 application filed by Ameritech Corporation ("Ameritech") with Westland. Enclosed are notebooks containing separate responses by Ameritech New Media, Inc. ("ANM") and SBC Communications Inc. ("SBC") to the First Data Requests of Garden City ("Data Requests") enclosed with Mr. Pestle's letter.

We note that most of the inquiries in Mr. Pestle's extensive Data Requests relate to whether the Ameritech-SBC merger will affect ANM's obligation to abide by the terms and conditions of its franchise agreement with Westland. SBC addresses both issues in the letter enclosed at Exhibit A. In that letter, SBC makes clear that the transaction does not impact ANM's obligation as a franchisee to meet its franchise requirements and that, as far as SBC is concerned, it will be "business as usual" between ANM and Westland. Moreover, with regard to the continued operation of ANM's cable systems, SBC states that it has no plans regarding ANM or its prospects, and notes that SBC's previous experiences with multichannel video programming distribution were very different from the efforts Ameritech is now making through ANM. In addition to the letter, Exhibit 11 to the Form 394 filed with Westland contains a sworn affidavit by James Kahan, Senior Vice President for Corporate Development for SBC, wherein he states that the "transaction does not affect Ameritech New Media's obligation as the franchisee to abide by the terms and conditions of the franchise agreement."

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SBC and Ameritech recognize the importance of this issue to Westland. We hope that SBC's letter, along with the sworn statement of SBC's corporate officer, provide Westland the assurances it seeks.

Given such assurances, SBC and Ameritech believe that Mr. Pestle's Data Requests impose an undue burden on SBC and Ameritech to produce each and every possible document — in some cases back to 1993 — in response to inquiries which, in most instances, are unrelated to this issue. It would take an inordinate amount of resources and efforts for the companies to comb their records to produce each and every record Mr. Pestle seeks. Moreover, in certain instances, Mr. Pestle seeks information that is no longer available to SBC because the cable system that is the subject of the inquiry is no longer owned and controlled by SBC. See, e.g., Data Request No. 34. In other instances, Mr. Pestle requests information prepared by entities prior to their acquisition by SBC. See, e.g., Data Request Nos. 39 and 40. We fail to see how documents prepared by entities at a time they were not owned or controlled by SBC are relevant to SBC's qualifications to obtain control of the ANM cable systems.

SBC and Ameritech have included public documents prepared by SBC, Ameritech and ANM that are responsive to Mr. Pestle's inquiries. The parties included those documents which they were able to easily identify. We believe the answers to such inquiries are representative of the information that might be contained in any other documents that might exist. The expense and hours that it would take to ensure that the parties have not missed any other responsive document would far outweigh any potential benefit Mr. Pestle might obtain from such documents in light of the enclosed responses to the Data Requests, the enclosed SBC letter, and certified statements by SBC and Ameritech in the FCC Form 394. We, of course, would be happy to discuss with Westland any additional concerns it might have.

Finally, SBC and Ameritech disagree with Mr. Pestle's suggestion that the 120-day period for Westland to review the FCC Form 394 has not commenced because of SBC's modification to the certification required in Section V, Part II, subsection (c) of the Form 394, and because the parties did not provide a disclosure letter that is mentioned in the Agreement and Plan of Merger. With respect to the certification, SBC explains in response to Question 1 of the Data Request why its certification is proper given that there is no transfer of ANM's franchise.

Moreover, we believe that the Form 394 contained all information required by the Form and franchise. Section I, Part I, Section 2(a) of the Form 394 makes clear that the transferor only needs to provide exhibits to a transfer agreement that are "necessary in order to understand the terms thereof" (emphasis added) and does not require that a transferor provide confidential information. The disclosure letter Mr. Pestle requests does not contain

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information necessary in order for Westland to understand the merger. Moreover, the letter contains proprietary information that is not publicly available. Hence, we do not believe Ameritech was required to file the disclosure letter pursuant to Section I, Part I, Section 2(a) of the Form 394.

Although SBC and Ameritech believe the 120-day period for Westland to review the Form 394 has commenced, they would be happy to discuss with Westland a reasonable extension of the 120-day period if Westland believes additional time is necessary for it to complete its review in light of the number of days after the December 9, 1998 deadline suggested in Mr. Pestle's letter it took for SBC and Ameritech to respond to the Data Request.

We look forward to cooperating with Westland in completing the review process. If you have any questions regarding this letter or the enclosures, please do not hesitate to contact me.

Sincerely,

Handwritten signature of D. Garofano in black ink, appearing as "D Garofano / JB".

cc: Mr. John W. Pestle

***EXHIBIT 3***

Mark Armstrong  
Managing Director

Southwestern Bell Video Services  
1666 Firman  
Suite 100  
Richardson, Texas 75081  
Phone 972 664-2420  
Fax 972 664-2329



December 7, 1998

Mr. Robert Thomas, Mayor  
City of Westland, Michigan  
36601 Ford Road  
Westland, MI 48185

Via Airborne Express 1004978166

Dear Mr. Thomas:

I am writing to follow up on the Federal Communications Commission Form 394 application that Ameritech New Media recently filed with the City of Westland, Michigan. Several franchising authorities have requested further clarification of SBC Communications Inc.'s role in Ameritech New Media's provision of cable service after the transaction is consummated.

Let me assure you that the transaction does not result in any change in the management and operation of the Ameritech New Media cable system in the City of Westland, and SBC has no current plans to change such management and operations. After the transaction, Ameritech New Media will remain the franchisee and will continue to manage and operate the local cable system.

The transaction simply results in a change in the ultimate corporate parent of Ameritech New Media – from Ameritech Corp. to SBC. The transaction does not impact Ameritech New Media's obligation as the franchisee to meet its franchise requirements. As far as SBC is concerned, it will be "business as usual" between Ameritech New Media and the City of Westland after the transfer is consummated.

I also would like to briefly address concerns we understand have been raised by competitors about SBC's past experiences in the multichannel video programming distribution industry. I have been personally involved in some of these efforts and I want to make sure you are aware of the facts. SBC's previous ventures in this area have largely been limited to two out-of-region cable systems (both in the suburbs of Washington, D.C.) and a trial of very expensive "fiber to the curb" technology in Richardson, Texas. In addition, before being acquired by SBC, Pacific Bell had undertaken to provide MMDS wireless video in parts of the Los Angeles area and a statewide hybrid fiber-coaxial broadband network as part of the telephone system, with service initially offered in Santa Clara County and San Jose. The Washington cable systems and the Los Angeles MMDS operation have been sold and continue

Mr. Robert Thomas, Mayor

December 7, 1998

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to operate as before under new ownership. The transfer of the Washington cable systems occurred in conjunction with the negotiation of new franchise agreements that were approved by all of the involved franchising authorities. SBC concluded that the network architecture used in the Richardson trial was not required to meet its customers' total communications needs and discontinued the project on terms approved by the City of Richardson. Pacific Bell's plans for a statewide hybrid fiber-coaxial network proved to be impractical. Since the merger, SBC has concluded negotiations with Santa Clara County and the City of San Jose to surrender the franchises for those service areas, where Pacific Bell only served approximately 8,000 customers. Today, SBC offers DBS service, principally as a component of telecommunications services offered to MDUs. We continue to evaluate other in-region video opportunities.

SBC's previous experiences with multichannel video programming distribution were very different from the efforts Ameritech Corp. is now making through Ameritech New Media. Ameritech's efforts involve wide-scale deployment of cable systems with proven technology in its local telephone service areas, where Ameritech already has vast experience and personnel, strong name-recognition and a proven track record. As the Form 394 notes, SBC has extensive cable TV industry experience. However, SBC has not been involved in an undertaking like Ameritech New Media's or, for that matter, with the statewide cable franchise in Connecticut where the Connecticut Department of Public Utility Control approved SBC's acquisition of SNET, including its cable television operations. As a result, we have no preconceived opinions or plans regarding Ameritech New Media or its prospects. Following the merger, SBC will evaluate the ongoing performance of Ameritech New Media in the same way we evaluate all other business units, on the basis of whether the long-term prospects for the business are likely to create value for our shareholders. So far as we know, this is no different than Ameritech's approach today.

I hope this letter helps to resolve any concerns that you and other franchising authorities might have about SBC's role in the transaction. I would be happy to answer any questions you have about the transaction.

Sincerely,



CC: Mr. Diane Fritz, Clerk, City of Westland  
Cable Manager, City of Westland  
Mr. Angelo A. Plakas, P.C., City Attorney, City of Westland  
Mr. John Prestle, Attorney, Varnum, Riddering, Schmidt, & Howlett LLP

***EXHIBIT 4***

CITY OF WESTLAND

Draft - January 29, 1999

ACCEPTANCE OF TERMS  
AND CONDITIONS TO TRANSFER OF CONTROL  
OF A CABLE TELEVISION SYSTEM AND FRANCHISE  
("ACCEPTANCE AGREEMENT")

Ameritech New Media, Inc. ("Franchisee") is the Franchisee under a Cable Franchise Agreement dated as of October 20, 1997 ("Franchise") with the City of Westland, Michigan ("City") pursuant to Chapter 8.5 of the Westland City Code, sometimes referred to as the Cable Television Ordinance, as amended ("Ordinance"). Ameritech Corporation ("Ameritech"), SBC Communications, Inc., a Delaware corporation ("SBC"), and Ameritech New Media, Inc. make the following agreement with City for the purpose of accepting an Ordinance of the City consenting to the transfer of control of Ameritech New Media, Inc., and its cable system in the City from Ameritech to SBC.

1. Covenants Binding. The promises, covenants, and conditions contained herein inure to the benefit of the City and are binding on Ameritech, SBC and the Franchisee.
2. Franchise Binding. Ameritech, SBC and the Franchisee acknowledge that the transactions described in an Agreement and Plan of Merger dated May 10, 1998 pursuant to which Ameritech will become a wholly owned subsidiary of SBC, will not affect the binding nature of the Franchise and the obligations of the Franchisee provided for therein, and that the consent of the City to the transfer of control does not constitute a waiver or release of any rights or powers of the City.
3. Reliance. Ameritech, SBC and the Franchisee acknowledge that the City has consented to the transfer of control in reliance upon the representations, documents and information provided by them, all of which are incorporated herein by reference.
4. Prior Defaults. Ameritech, SBC and the Franchisee agree that they will not contend directly or indirectly that any defaults or failures to comply with the Franchise, Ordinance or other matters set forth in 47 U.S.C. § 546(c)(1)(A) (Communications Act of 1934, Section 626(c)(1)(A) (collectively "Defaults") occurring prior to the transfer of control are waived, including but not limited to the following:

- 4.1 The ability of the City to obtain redress for prior Defaults, such as recovery of any underpayment of franchise fees or obtain refunds for periods prior to the transfer of control.
  - 4.2 The ability of the City to enforce in the future any Franchise or Ordinance terms which may not have been enforced in the past.
  - 4.3 The ability of the City to consider Defaults occurring prior to the transfer of control in connection with any renewal or nonrenewal of the Franchise.
5. Validity of Franchise. Ameritech and SBC accept and agree to be bound by the terms and conditions of the City Charter, the Ordinance, the Franchise, this Acceptance Agreement and all ordinances applicable to Company's operations after the transfer. Ameritech and SBC do not contend that any provision of this Acceptance Agreement, the Ordinance or Franchise is unlawful or unenforceable, nor are they aware of any ordinance or any provision in the City Charter which they contend is unlawful or unenforceable. The City acknowledges that the Franchise is in full force and effect.
6. Access to Records. The records and reports which are to be submitted to the City or otherwise made available for the City (such as for inspection by the City) pursuant to the Franchise, Ordinance or Charter provisions of the City shall include records maintained by Ameritech and SBC and their Affiliates to the extent necessary for the City to discharge its responsibilities under the Franchise, FCC rules or state or local law, or to insure compliance with the Franchise, Ordinance or this Acceptance Agreement.
7. HDTV. Since the grant of the Franchise the Federal Communications Commission has directed television stations, including those serving City, to broadcast in high definition television format. To ensure that PEG Channel programming is available to subscribers in such format, Franchisee and City agree as follows:
- 7.1 When Franchisee provides five (5) or more channels in one or more of several high definition television (or successor) ("HDTV") formats, as such formats may from time to time be adopted or in effect, for part or all of the day, then the following shall occur:
    - 7.1.1 At any time thereafter upon request from City, the government channel shall be carried on two separate channels, one (1) in conventional 6 MHz NTSC analog format and one (1) in the HDTV format used by

Franchisee for the major local off-air channels provided to subscribers on its Cable System. Franchisee's provision of the government channel in analog format shall cease when there are no other non-PEG Channels provided by Franchisee in 6 MHz NTSC analog format, or earlier if so requested by City. City will reallocate PEG Channels and Users, pursuant to Franchise Section 5.a.(5) such that the total number of PEG Channels shall remain at three (3) throughout the period while the government channel is provided in two different formats.

7.1.2 At any time thereafter City can require Franchisee to cease carrying any other PEG Channel in 6 MHz NTSC analog format and instead to carry it in the HDTV format used by Franchisee for the major local off-air channels provided to subscribers by the Cable System.

7.1.3 At any time thereafter Franchisee shall provide a capital facilities grant to City sufficient for Users to convert all their facilities and equipment (including but not limited to studios, vans, video, audio, lighting, control, storage and editing equipment) to the HDTV format selected by City. At the same time, Franchisee shall modify the facilities provided under Section 5.a.(4) of the Franchise to be fully compatible with the HDTV format used by Users.

7.1.4 Cable System, Users and PEG Channels shall have the meanings set forth in the Franchise.

8. Customer Service. To ensure proper reporting of Franchisee's compliance with FCC customer service standards and to provide meaningful consequences for failure to comply therewith, Franchisee and City agree as follows:

8.1 Franchisee shall provide reports to City quarterly (by the 15th business day of the following quarter) as follows:

8.1.1 The reports shall be in the form and substance acceptable to City, showing on a consistent basis, fairly applied, the matters set forth below so as to measure Franchisee's compliance with the standards of the referenced sections. Such reports shall show Franchisee's performance excluding periods that were not Normal Operating Conditions ("Abnormal Operating Conditions") and if Franchisee contends any such conditions occurred during the period in question, it shall also

describe the nature and extent of Abnormal Operating Conditions and show Franchisee's performance both including and excluding the time periods Franchisee contends such conditions were in effect.

8.1.2 The reports shall measure and report on Franchisee's compliance with the standards set forth in Franchise Sections 6.b.(3)(ii) and 6.b.(3)(iii).

8.1.3 Reports on telephone matters may be for a larger area than City if Franchisee can demonstrate that it is, in fact, representative of the phone service provided within City, such as where a call center receives calls from numerous municipalities with no ability to distinguish between or give preference to calls from one area or City over another.

8.1.4 City, by itself or in combination with other municipalities, reserves the right to audit Franchisee (or any Affiliate of Franchisee) to verify the accuracy of the reports required under this Section. All records (including those of Affiliates) reasonably necessary to conduct the audit shall be made available at a convenient location in the Westland area. If the audit discloses performance that is three (3) percentage points worse than any of the standards of the referenced sections (such as compliance 92% of the time versus 95% of the time) Franchisee shall pay City's costs in connection with the audit within thirty (30) days of submission of an invoice.

8.2 In addition to the other remedies provided for in the Franchise, liquidated damages in the amounts set forth below may be awarded City (individually and on behalf of subscribers) from Franchisee. Franchisee agrees that such sums are reasonable given that the actual damages are difficult of precise ascertainment and that the actual damages are often incurred by City and subscribers, and cumulatively are large, but are so small for each subscriber as to not be worth their while pursuing, and that without provisions such as this Franchisee would be unjustly enriched.

8.2.1 For violations of Franchise Section 6.b.(3)(ii) liquidated damages as follows:

8.2.1.1 First non-compliance:

8.2.1.1.1 \$1.00 per subscriber if Franchisee's performance is equal to or greater than 85% but less than 90%.

8.2.1.1.2 \$2.00 per subscriber if Franchisee's performance is equal to or greater than 75% but less than 85%.

8.2.1.1.3 \$3.00 per subscriber if Franchisee's performance is less than 75%.

8.2.1.2 Second non-compliance with Section 6.b.(3)(ii) within four (4) consecutive calendar quarters: twice the amount set forth in Section 8.2.1.1.

8.2.1.3 Third non-compliance with Section 6.b.(3)(ii) within eight (8) consecutive calendar quarters and each subsequent non-compliance: three times the amount set forth in Section 8.2.1.1.

8.2.1.4 In applying the preceding, if two or more instances of non-compliance with Section 6.b.(3)(ii) involve different levels of non-compliance under Section 8.2.1.1, the amount to be used in determining the liquidated damages shall be the amount for the most recent non-compliance.

8.2.1.5 Notwithstanding the preceding, the liquidated damages for the first and each subsequent non-compliance with Section 6.b.(3)(ii) shall be no less than \$25,000.

8.2.2 For violations of Section 6.b.(3)(iii) liquidated damages as follows:

8.2.2.1 First non-compliance: \$1 per subscriber if Franchisee's performance under Section 6.b.(3)(iii) is greater than 3% but equal to or less than 6%; \$2 per subscriber if Franchisee's performance is greater than 6% but equal to or less than 9%; and \$1 additional for each 3 percentage points higher than 9%.

- 8.2.2.2 Second non-compliance with Section 6.b.(3)(iii) within four (4) consecutive calendar quarters: twice the amount set forth in Section 8.2.1.1.
- 8.2.2.3 Third non-compliance with Section 6.b.(3)(iii) within eight (8) consecutive calendar quarters and each subsequent non-compliance: three times the amount set forth in Section 8.2.1.1.
- 8.2.2.4 In applying the preceding, if two or more instances of non-compliance with Section 6.b.(3)(iii) involve different levels of non-compliance under Section 8.2.1.1, the amount to be used in determining the liquidated damages shall be the amount for the most recent non-compliance.
- 8.2.2.5 Notwithstanding the preceding, the liquidated damages for the first and each subsequent non-compliance with Section 6.b.(3)(iii) shall be no less than \$25,000.
- 8.2.3 For failure to timely submit the quarterly reports required by Section 8.1 above liquidated damages in the amounts set forth in Sections 8.2.1 may be assessed, using a Franchisee performance level of seventy percent (70%).
- 8.2.4 The following shall apply to liquidated damages under this Section 8.
- 8.2.4.1 The dollar amounts set forth above are in 1999 dollars. For years after 1999 they shall be escalated for inflation (computed according to the Consumer Price Index for All Urban Consumers, Detroit 1982-1984=100, with January, 1999 as the base point) to determine the amount of liquidated damages.
- 8.2.4.2 City has approximately 24,000 cable subscribers as of January, 1999 and two cable providers. Because there are two providers, Franchisee may not wish to disclose the number of its subscribers. Liquidated damages shall therefore be computed based upon 24,000 subscribers unless prior to the Council assessing liquidated damages

under Franchise Section 14.d.(3) Franchisee provides City with the number of subscribers it has at the end of the calendar quarter in question, in which case such actual number of subscribers will be used.

8.2.5 Liquidated damages shall be awarded in accordance with the procedures set forth in Franchise Section 14.d.

8.2.6 Normal Operating Conditions shall have the meaning set forth in the Franchise.

9. Clarification. To remove any question on Franchisee's ability to provide certain services as Cable Services under the Franchise and to assure that certain revenues therefrom are included in gross revenues for franchise fee purposes, Franchisee and City agree that the definition of Cable Services in Franchise Section 0.d.(2) includes cable modem service, high-speed data service, game channels, interactive services, enhanced services, information services, Internet access and Internet service (such as that of an Internet service provider).

10. Other Matters.

10.1 Conflict. In the event of any conflict between the terms of this Acceptance Agreement and the Franchise or any City Ordinance, that provision which provides the greatest benefit to the City, in the opinion of the City Council, shall prevail.

10.2 Time Limit. At the City's option this Acceptance Agreement and the City's consent to the transfer of control shall become null and void if the merger and transfer of control of the Franchise is not completed on or before May 30, 1999. Such option may be exercised prior to completion of the Transaction by the City giving written notice to Ameritech and SBC at the addresses designated in the Form 394.

10.3 Cost Reimbursement. Ameritech and SBC will cause the City to be reimbursed for its reasonable costs and attorneys fees incurred in connection with the transfer of control pursuant to Section 11d(5) of the Franchise in the amount of \_\_\_\_\_. Reimbursement under this provision shall not be considered a payment of franchise fees and shall not be passed through to subscribers.

10.4 Affiliate. "Affiliate" means any individual, partnership, association, joint stock company, trust, corporation, or other person or entity who owns or controls, or is owned or controlled by, or is under common ownership or control with the entity in question.

11. Undertaking of SBC. In all respects and without exception, SBC, transferee of ultimate control of Franchisee, shall cause Franchisee to comply with the lawful requirements of the Franchise, including all applicable ordinances, orders, contracts, agreements, commitments, and regulatory actions taken pursuant thereto. These obligations of SBC shall also apply with respect to any successor grantee of the Franchise over which SBC exercises ultimate control.

12. Revised Exhibit H. Franchise Exhibit H - Ownership of Franchisee is hereby amended to provide as follows:

"One hundred percent (100%) owned by Ameritech Corporation, a Delaware Corporation with its principal place of business at 30 South Wacker Drive, Chicago, Illinois, 60606, which in turn is a direct one hundred percent (100%) owned subsidiary of SBC Communications, Inc., a publicly traded Delaware corporation with its principal place of business at 175 E. Houston Street, San Antonio, Texas 78205."

Ameritech Corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

SBC Communications, Inc.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Ameritech New Media, Inc.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

City of Westland

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

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ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF WESTLAND  
CONSENTING TO THE TRANSFER OF CONTROL  
OF A CABLE TELEVISION FRANCHISE  
UPON CERTAIN TERMS AND CONDITIONS

WHEREAS, Ameritech New Media, Inc. ("Franchisee") is the franchisee under a Cable Franchise Agreement dated as of October 20, 1997 with the City of Westland ("Franchise") pursuant to Chapter 8.5 of the Westland City Code, sometimes referred to as the Cable Television Ordinance, as amended ("Ordinance"); and

WHEREAS, Franchisee is a direct wholly owned subsidiary of Ameritech Corporation ("Ameritech"); and

WHEREAS, Ameritech and SBC Communications, Inc., a Delaware corporation, ("SBC") have entered into an Agreement and Plan of Merger dated May 10, 1998 pursuant to which Ameritech will become a direct wholly owned subsidiary of SBC; and

WHEREAS, after the merger the Franchisee will continue to directly own and operate the cable television system in the City authorized by the Franchise and will continue to be wholly owned by Ameritech, but the Franchisee will be controlled by SBC through its 100% ownership of Ameritech; and

WHEREAS, Ameritech and SBC submitted an Application for Franchise Authority Consent to a transfer of control on FCC Form 394 providing certain information with respect to the parties and the proposed transfer; and

WHEREAS, Ameritech and SBC submitted additional information and documents relating to the transaction and its effect on the provision of cable television service within the City; and

WHEREAS, the City is relying upon the foregoing information and documents in acting upon the Application for Franchise Authority Consent; and

WHEREAS, the City has determined that upon acceptance of the terms and conditions set forth herein and in the Acceptance Agreement attached hereto, that the transfer and the transferee meet the requirements of the City Charter, the Ordinance and the Franchise for approval of the transfer; and that approval of the transfer of control will be in the public interest; and

WHEREAS, the City intends to consent to the transfer of control subject to acceptance by Ameritech, SBC and the Franchisee of the terms and conditions set forth herein and in the attached Acceptance Agreement; and

WHEREAS, Ordinance Section 8.5-70(f) provides that "[i]n no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory to the franchise agreement"; and SBC is the successor in interest in control of Franchisee and will cause Franchisee to perform the obligations of the Franchise in order to satisfy the requirements of this provision;

WHEREAS, the City has the authority to grant this consent pursuant to its City Charter by adoption of this Ordinance,

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Westland as follows:

Section 1. The City of Westland does hereby consent to the transfer of control of Ameritech New Media, Inc. and the Cable Franchise Agreement dated as of October 20, 1997 to SBC Communications, Inc., subject to the execution of an Acceptance Agreement in the form attached hereto and incorporated herein as Exhibit 1.

Section 2. This Ordinance shall become effective from and after its passage, and as provided by law, and shall expire on May 30, 1999 if the merger and transfer of control has not been closed by that date.

Section 3. The Mayor, City Clerk, City Attorney and Special Counsel are hereby authorized and directed to take such actions as may be necessary to implement the preceding, including signing the Acceptance Agreement and other appropriate documents.

Section 4. All ordinances or portions of ordinances in conflict herewith are hereby repealed.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk