

1 **PART III. MERGER CONDITIONS AND PROPOSALS FOR REMEDIES.**

2 **Q. WHAT DO YOU RECOMMEND AS MERGER CONDITIONS TO ADDRESS THE**
3 **ISSUES YOU IDENTIFY ABOVE?**

4 **A. My first recommendation is for the PUCO to require that Ameritech strengthen and enhance**
5 **the USA program. USA is the first line of defense against the unaffordability of**
6 **telecommunications service in the home. In addition to improvements in the way the**
7 **program is administered, as discussed in the testimony of William Gruber, PUCO should**
8 **require Ameritech to adopt the following two modifications to its USA program:**

9 1. **Customers should be made eligible for the USA program on an income-basis.**

10 While extending categorical eligibility to consumers is an effective and efficient
11 way to qualify customers for the program, there are many customers who do not
12 participate in such public assistance programs. Research I have prepared with
13 respect to energy efficiency and energy assistance on non-participation in public
14 assistance programs has identified these populations of customers to include, in
15 particular, older persons; and persons who have "become poor" (e.g., divorced,
16 unemployed, retired). A person should be able to establish eligibility based on
17 income irrespective of his or her participation in public assistance.

18 2. **Customers should be allowed to gain access to the benefits of the USA program**
19 **irrespective of whether they subscribe to vertical services. In particular, I**
20 **recommend that subscription to call waiting and caller identification not disqualify**
21 **customers from participation in USA unless such customers have experienced a**
22 **disconnection for nonpayment subsequent to their enrollment in the program.**

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Q. WHAT PROPOSALS DO YOU RECOMMEND THE COMMISSION ADOPT AS MERGER CONDITIONS TO REMEDY THE POTENTIAL HARMS TO LOW-INCOME CONSUMERS?

A. In addition to these efforts to strengthen and enhance the USA program as a merger condition, I recommend the following merger conditions to address the issues I raise above and to mitigate the adverse impacts of those issues:

- ◆ Increasing the provision of low-income service by New Entrant Carriers (NECs). In particular, I propose an "equal access mechanism" based on low-income telephone penetration rates.
- ◆ Establishing a universal service performance measurement system, with specific penalties for a post-merger deterioration in universal service.
- ◆ Implementing a reporting system designed to identify the systematic exclusion of customers based on geographic or socio-economic bases, and
- ◆ Creating a two-part technology diffusion program. First, I propose to expand the community computer center program. Second, I propose to fund a Community Partnership Commitment consisting of technology diffusion and community education initiatives.

A. Equal Access Mechanism.

Q. WOULD YOU PLEASE EXPLAIN YOUR RECOMMENDATION FOR AN

1 **"EQUAL ACCESS MECHANISM" BASED ON LOW-INCOME PENETRATION**
2 **RATES?**

3 A. I agree with the following Staff statement:

4 One way to be more certain that the proposed merger will promote the
5 public convenience is if the merger [. . .] increased the provision of
6 residential service by NECs. Increased residential competition will help
7 balance against any inclination the Applicants would have to concentrate
8 their resources on new competitive business opportunities while allowing
9 captive customers in non-competitive areas to suffer lower quality service.
10 (Staff Report, at 9).

11 My recommended mechanism for "increasing the provision of residential service by NECs"
12 is through the equal access mechanism proposed below:

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14 Q. **PLEASE DESCRIBE THE BASIS FOR YOUR EQUAL ACCESS MECHANISM.**

15 A. It would be unconscionable to allow a merged Ameritech and SBC to take facilities and
16 assets paid for by local ratepayers and switch its focus to non-Ohio competitive services
17 while abandoning the unserved low-income market. Given the discrete identifiable
18 population that is unserved, and the serious adverse consequences of that lack of service, as
19 discussed above, an equal access mechanism is justified.

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21 Moreover, the proposed Equal Access Mechanism recognizes the difference between
22 "offering" service to a market (including offering the USA program), and affirmatively
23 marketing service to that market. I agree that Ameritech "offers" the USA program to its
24 low-income population, meaning that Ameritech will "make available" the USA program.
25 Nonetheless, as the Staff, itself, concluded in its *Review of Ameritech's Universal Service*

1 *Assistance Commitment:* "the Company's goal seems to be to appease the Advisory
2 Committee by tinkering with the USA program while offering as little as possible in the
3 way of meaningful changes as the clock ticks down to the end of the alt reg plan." I
4 recommend that the PUCO adopt a performance-based Equal Access Mechanism system
5 for universal service. To the extent that Ameritech's universal service efforts are
6 ineffective, the Company should pay those companies who will adopt an effective program.

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8 **Q. HOW WOULD YOUR EQUAL ACCESS MECHANISM WORK?**

9 **A.** To implement the EAM proposal, if the penetration rate for low-income consumers stays
10 below the penetration rate for residential consumers as a whole, Ameritech should provide
11 equal access funding. The funding should be calculated on a flat dollars-per-customer basis.

12 The company's assessment should be multiplied by the difference in the total number of
13 low-income customers at existing penetration levels and the number of low-income
14 customers at penetration levels equal to the residential customer class as a whole.

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16 The funding responsibility should be \$100 per customer for the share calculated in this
17 manner. The \$100 figure has an empirical basis. The telecommunications industry
18 generally accepts a "customer acquisition cost" in the range of \$350 to \$450, with the
19 middle of that range being \$400. That acquisition cost is translated into the \$100 figure
20 through application of a 25% churn rate.^{15A} The 25% churn rate will result in a \$100 figure

^{15A} While the low-income churn rate is, in fact, assumed to be at or above 30%, it is set at 25% simply for the sake of introducing a note of conservatism into the calculation.

1 as the \$400 acquisition cost is amortized over the four year life of a customer.

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3 The equal access funding generated through this mechanism should then be distributed in
4 the same fashion as a *cypres* fund is distributed.¹⁶ After determining the annual budget, an
5 administrative board should distribute the dollars, upon application, in support of equal
6 access. Application might be made by an NEC in support of providing service to particular
7 unserved or underserved populations; by community-based organizations in support of
8 providing service to unserved or underserved populations; or by others proposing creative
9 approaches to equal access.¹⁷

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11 Q. CAN YOU ILLUSTRATE?

12 A. Yes. I will use statewide Ohio figures due to the lack of Ameritech-specific data.
13 According to 1990 Census data, there were roughly 521,000 occupied housing units in Ohio
14 with households having annual incomes of at or below 100 percent of the federal Poverty
15 Level. Of those, 18 percent (or roughly 96,000 households) did not have telephone service.
16 In contrast, the Census indicates that there were roughly 4.1 million total occupied housing

¹⁶ *Cy pres* is a legal doctrine which holds that when some portion of the monetary recovery in a consumer law suit cannot be directly distributed to individual class members, the funds should be awarded in a manner that will put the residue to its "next best use" and produce benefits for as many class members as possible. The doctrine frequently results in the establishment of a trust fund. Through such a fund, the money is distributed to private nonprofit organizations entrusted to use the money to benefit the class.

¹⁷ I would recommend that recipients of EAM assistance be required to sign an "assurance" that rates will be maintained within some range of PUCO-determined reasonableness. Providing such assurances is an established mechanism to gain compliance with desired ends without the need for establishing regulations. Such assurances would prevent EAM funds from being used to support phone sharks, a problem that has been addressed in Ohio.

1 units in Ohio, of which 192,000 (5 percent) did not have telephone service. To increase the
2 penetration rate for telephone service within the below Poverty population to the statewide
3 average, therefore, would require the extension of service to an additional 70,000 below
4 Poverty households, calculated as follows:

5 1. $521,396 \times 0.184 = 95,762$

6 2. $521,396 * 0.05 = 26,066$

7 3. $95,762 - 26,066 = 69,696$

8 Using the equal access mechanism I recommend above, the surcharge in this statewide
9 illustration would be \$7.0 million ($69,696 * \$100 = \$6,969,600$).

10
11 **Q. WHAT WOULD THESE EAM FUNDS BE USED FOR?**

12 **A.** Examples of activities for which the Equal Access Mechanism funds could be used would
13 include: (a) creative personal marketing by community-based organizations; (b) subsidized
14 marketing efforts by NECs; (c) means-tested subsidized basic local service for NECs; and
15 the like. I recommend that funds be made subject to the following four criteria:

- 16 1. The need for a timely response to unpredictable circumstances or special
17 opportunities to serve the purposes of the fund;
18
19 2. The level of funding or other participation by private or public sources in the
20 activity being considered for funding;
21
22 3. What resources will be required in the future to sustain the effort;
23
24 4. The long-term effect of a proposed activity with respect to access to basic
25 local telephone service.

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1 Q. DOES YOUR EQUAL ACCESS MECHANISM PROPOSAL HAVE
2 COMPETITIVE IMPLICATIONS?

3 A. Yes. The equal access mechanism proposal helps to address an issue previously raised by
4 both the Edgemont Neighborhood Coalition and the Staff Report. I agree with the
5 following Staff statement, albeit with a somewhat different focus:

6 Staff believes that the merger, as it is currently proposed, may increase
7 Ameritech Ohio's market power dominance and may present a significant
8 additional barrier to the emerging competitive market. . Vigorous
9 competition would challenge the market dominance currently held by
10 Ameritech Ohio and would diminish the opportunity for Ameritech to
11 exercise market power abuse. (Staff Report, at 13).
12

13 In addition to promoting equal access for low-income customers, the proposed equal access
14 mechanism is needed to level the competitive playing field for low-income customers. A
15 company that is providing adequate quality service to low-income customers is incurring
16 acquisition (and service quality) costs not incurred by the merged SBC/Ameritech entity.
17 Through this equal access mechanism, NECs (or others) seeking to provide quality service
18 to the entire market will not be placed at a competitive disadvantage. Either the merged
19 company spends the money in the process of serving low-income customers or it pays an
20 equivalent amount through the equal access mechanism. Competition, therefore, is
21 enhanced thus fulfilling the Staff's recommendation.
22

23 In sum, for the low-income market in particular, my proposed Equal Access Mechanism
24 fulfills the Staff's observation that "in order to diminish the serious concerns of increased
25 market power dominance. . . any approval of the proposed merger must predicate an "Ohio"

1 strategy for local service competition to diminish Ameritech's existing market power."
2 (Staff Report, at 14).

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4 **Q. IS THERE ANY FINAL CONSEQUENCE OF THE MERGER THAT YOUR**
5 **EQUAL ACCESS MECHANISM WILL ADDRESS?**

6 **A.** Yes. I agree with the Staff observation that:

7 . . . if the merged corporation were to reallocate its resources to its
8 competitive business services and the focus on Ohio's competitive customers
9 became diluted by the broadened scope of corporate interests, it is likely that
10 there would be an erosion of Ameritech Ohio's concern for the remaining
11 non-telephone households in the state of Ohio. (Staff Report, at 19).

12 I disagree with the Staff to the extent that the Staff recommends as the only remedy that
13 Applicants "perform a series of studies to determine the various causes of non-telephone
14 households in Ohio." (Staff Report, at 19). I disagree with this "study the problem"
15 approach even though the Staff recommends that these studies "be conducted under the
16 guidance and review of the Staff and the Commission" and "should offer concrete
17 conclusions as to the cause of non-telephone households in the State." (*Id.*). The Equal
18 Access Mechanism I propose above is, instead, the type of "practices and policies that [the
19 Applicants should] implement over a specific period of time and under Commission review
20 for decreasing the number of non-telephone households in Ohio." (*Id.*).

21
22 **Q. WHY IS THIS "EROSION OF CONCERN FOR THE REMAINING NON-**
23 **TELEPHONE HOUSEHOLDS" UNACCEPTABLE?**

24 **A.** The obligation to support universal service is an explicit *quid pro quo* that was exacted in

1 exchange for substantial—and continuing—public benefits. So long as the utility enjoys the
2 fruits of that exchange, it should abide by the obligations that were bargained for as part of
3 the exchange.

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5 In particular, telecommunication utilities have been granted two sets of public perquisites:
6 (1) the right to exercise eminent domain; and (2) the right to use the public's streets, alleys
7 and public ways as transportation corridors. In accepting these public perquisites, these
8 telecommunication companies have dedicated their property so supported to a public use,
9 including the support of universal service.

10
11 **Q. CAN YOU ELABORATE?**

12 **A.** First, utilities are unique in that they are granted the right to use city streets as well as the
13 right to exercise the power of eminent domain. Second, those public benefits have a distinct
14 value, which is positive; indeed, the right to eminent domain is not only *valuable*, but is
15 essential to public utilities. Third, a commitment to universal service is simply the
16 compensation to the public for having provided these public benefits. There has been an
17 exchange of consideration. On the one hand, telecommunications utilities are provided the
18 right to use public streets and to exercise eminent domain. On the other hand, the utilities
19 "pay" for these grants through a commitment to universal service.

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21 **Q. HAS ANYONE ELSE REACHED THIS SAME CONCLUSION?**

22 **A.** Yes. The explicit exchange that has occurred has been recognized in the cable television

1 context as well. According to the Practicing Law Institute within the context of cable
2 television:

3 Local governments are realizing the unique value of public rights-of-way for
4 which they act as trustee. Public rights-of-way are acquired and paid for
5 through government action, usually the exercise of a jurisdiction's eminent
6 domain powers. Thus, the public rights of way are the most valuable
7 property rights in the hands of government. . .Local governments must
8 receive fair compensation for granting use of the rights-of-way. Otherwise,
9 government is merely subsidizing the businesses of private rights-of-way
10 users. . .Traditional users of the public rights-of-way were deemed to
11 provide public compensation in the form of universal service and regulated
12 rates. . .With traditional users of public rights-of-way, compensation for use
13 of the public rights-of-way was passed onto the end consumer through rate
14 regulation and other public benefits like universal service, rather than being
15 paid directly by the governments, the actual owner of the public rights-of-
16 way.¹¹⁸

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18 Q. PLEASE SUMMARIZE.

19 A. In sum, having obtained the benefits of the bargain, Ameritech should be required to help
20 fulfill the responsibility part of the bargain. To allow the proposed merger with the dilution
21 of attention to non-telephone households would be to grant the benefit while forgiving the
22 costs.

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¹¹⁸ Nicholas Miller and Kristen Nven, "What is the Emerging Role of Local Governments in This New World of Telecommunications," in *Cable Television Law 1996: Competition in Video and Telephony*, at 12 - 13 (1996: Practicing Law Institute). See also, Peter Fox-Penner (1997). *Electric Utility Restructuring: A Guide for the Competitive Era*, 329, Public Utility Reports: Arlington, VA ("Others argue that the obligation to provide for universal service is not one imposed upon the industry, but rather an obligation that the utility industry has voluntarily accepted as part of its franchise agreement. This obligation is one that serves as the industry's "payment" for the grant of substantial public benefits provided to it. So long as the utilities enjoy the fruits of that exchange, they must abide by the obligations that were bargained for as part of that exchange.").

1 **B. Universal Service Performance Measurement.**

2 **Q. WOULD YOU PLEASE EXPLAIN THE BASIS FOR YOUR UNIVERSAL**
3 **SERVICE PERFORMANCE MEASUREMENT PROPOSAL.**

4 **A.** In my discussion above, I identify a variety of barriers that the proposed merger will have
5 on customer services provided to low-income consumers: consolidation of facilities and
6 resources, standardization of practices and procedures, reduction in community focus. My
7 Equal Access Mechanism helps to address the impacts on the unserved customer. The
8 universal service performance measurement mechanism I propose here addresses the impact
9 on customers who remain with the merged company, but who receive lesser service in
10 return.

11
12 Ideally, the degradation in service I identify above would not be allowed to happen. To
13 prevent that degradation, however, would probably insert commission regulation into
14 management decisionmaking to an unacceptable degree (e.g., where should community
15 offices be; what should treatment amounts be; when should DPAs be not allowed). It is
16 *perfectly* acceptable, however, for the Commission to insist that the service degradation
17 have no impact on the ultimate delivery of universal service. The proposed mechanism is
18 designed to measure that outcome and to impose sanctions should adverse performance
19 arise.

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21 **Q. PLEASE EXPLAIN THE BASIS OF YOUR PROPOSED UNIVERSAL SERVICE**
22 **PERFORMANCE MEASUREMENT MECHANISM?**

1 A. This proposal describes how an outcome-based criterion regarding universal service might
2 be designed and implemented. The purpose here is not to create a benchmark through
3 which a company's performance is measured *vis a vis* the industry generally. Instead, this
4 indicator is to allow a performance review of whether universal service performance for a
5 particular company is improving or degrading *vis a vis* previous performance. Such a
6 review will allow the Commission to determine whether performance is being sustained in
7 the post-merger environment.

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9 **Q. HOW WOULD THIS MECHANISM OPERATE?**

10 A. An explanation of the overall operation of the mechanism is set forth in Exhibit RDC-4.

11

12 **Q. PLEASE EXPLAIN WHY THERE IS A NEED FOR EACH COMPONENT TO**
13 **YOUR MECHANISM.**

14 A. All five components are necessary to reach the desired results of universal service
15 performance measurement without creating perverse incentives to pursue counter-
16 productive strategies. Consider:

17 ♦ To create rewards for reducing arrears without creating penalties for increasing
18 shutoffs would lead a utility to refuse to negotiate reasonable payment plans with
19 those least able to pay. The utility would then follow with the termination of
20 service. The end sought, however, is not simply the reduction of arrears, but rather
21 the pursuit of universal service.

22 ♦ Similarly, to create an incentive for increasing the number of payment plans without

1 penalizing high proportions of unaffordable plans would lead a utility to place
2 customers on deferred payment arrangements without regard to the chance of those
3 plans to succeed. There is not only a need to get payment-troubled customers on
4 deferred payment arrangements, but to get them on *affordable* plans with a
5 reasonable opportunity for success.

6 ♦ To create an incentive for maximizing the percent of customers on deferred payment
7 arrangements, without creating an incentive to minimize total customers in debt at
8 the same time, may well divert resources from the overall goal of full and timely
9 payment. The first step, of course, is to minimize overall levels of debt. To the
10 extent there is debt, that debt should be made subject to a deferred payment
11 arrangement.

12
13 **Q. PLEASE EXPLAIN HOW THE FINAL SCORE WOULD BE CALCULATED.**

14 **A.** The composite universal service measurement of a utility is calculated by adding the
15 various component scores as set forth in Exhibit RDC-5. The final performance
16 measurement is then the total score divided by the number of factors comprising the score.

17
18 **Q. IS THE INFORMATION UPON WHICH THE PERFORMANCE**
19 **MEASUREMENT IS BASED COMPLICATED TO GATHER AND REPORT?**

20 **A.** No. The performance measurement system is specifically designed to rely on information
21 that is routinely maintained by any public utility, including a telecommunications service
22 provider.

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Q. WHAT SANCTIONS WOULD YOU IMPOSE IF THIS PERFORMANCE MEASUREMENT MECHANISM REVEALED A DECLINE IN UNIVERSAL SERVICE?

A. For the sanctions to be meaningful, they must be reasonably calculated to motivate the company to improve its performance. I believe appropriate evidence of what level of sanction achieves that purpose is the past sanctions imposed for violation of service quality standards. I have reviewed past PUCO decisions with respect to the imposition and penalties and, based on that review, recommend a penalty of \$500,000 for every 1.0-point (or portion thereof) below which universal service degrades from the three year baseline performance. The maximum annual penalty would be \$2.5 million.

Q. WHAT IMPACT WILL BE DOWNTURN IN THE ECONOMY HAVE ON THE ABILITY OF AMERITECH TO MEET ITS UNIVERSAL SERVICE GOALS?

A. There are two responses. First, the goal of the universal service performance measurement is to prevent a deterioration in universal service from a base year. I recommend, both in establishing the base year and in measuring performance relative to that base year on an ongoing basis, the use of a three year rolling average. This use of a three year average will smooth, though not eliminate, dramatic fluctuations based on changes in the economy. Second, this concern of the impacts of an economic downturn on universal service is a common one. In establishing the performance measurement mechanism, however, I specifically considered the impacts of an economic downturn. My conclusion in

1 Pennsylvania was:

2 . . .there is little volatility in universal service performance. None of the 14
3 Pennsylvania utilities experienced wide variability in universal service performance
4 year-to-year. Given the period of time for which data has been collected (8 years), if
5 such volatility were to exist, it would likely have become evident. One conclusion
6 from this might be that total universal service performance is not particularly
7 sensitive to variables that might change from year to year, such as weather and
8 overall economic conditions.

9 I conclude that based on my empirical testing of the universal service mechanism, an
10 economic downturn will not impose particular hardship to the Company.

11

12 Q. PLEASE EXPLAIN THE INTERACTION BETWEEN THE UNIVERSAL
13 SERVICE PERFORMANCE MEASUREMENT MECHANISM AND YOUR
14 OTHER PROPOSALS.

15 A. Effective implementation of the full set of proposals I advance as merger conditions should
16 improve Ameritech's universal service performance.

17

18 Q. HAVE YOU EVER PROPOSED A MECHANISM SUCH AS THAT WHICH YOU
19 PROPOSE HERE?

20 A. Yes. In establishing reporting requirements for universal service programs in a restructured
21 electric industry in 1998, the Pennsylvania PUC largely adopted my recommendations as to
22 universal service performance measurement.

23

24 C. Anti-Redlining Reporting Mechanism.

25 Q. IS THERE A THIRD CONDITION THAT YOU WOULD REQUEST THE

1 business customers, those benefits will be both (a) delayed; and (b) incidental.

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3 At the same time these new technologies are being developed for big business, the low-
4 income population, about which I have spoken throughout my testimony, is being denied
5 access to technology at all. For one substantial part of the population, this denial is a matter
6 of fact: the households have a complete absence of telephones in the home. In addition to
7 my discussion above, Exhibit RDC-7 sets forth a discussion of this lack of access. For
8 another substantial part of the population, the denial is a matter of policy: the households
9 may not, by specific regulation, subscribe to vertical services and still qualify to receive
10 affordability assistance. As I have testified above, this denial of access to technology, in
11 substantial parts of the state (both urban and rural) affects from 20 to 30 percent and more
12 of the population served by Ameritech.

13
14 Accordingly, I recommend a two-part technology diffusion program, consisting of as
15 follows:

- 16 ♦ An expansion of the highly successful computer center program throughout the
17 Ameritech service territory;
- 18 ♦ Implementation of a Community Partnership Commitment, similar in nature and
19 size to the Commitment made a condition of the SBC/Pacific Bell merger in
20 California. This Commitment should involve: (a) implementation of an
21 telecommunications education trust fund; and (b) implementation of a community
22 technology diffusion program similar in nature and size to the program funded as a

1 condition of the SBC/Pacific Bell merger in California.

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3 **Q. PLEASE EXPLAIN WHAT YOU RECOMMEND AS TO EXPANDING THE**
4 **COMPUTER CENTER PROGRAM?**

5 **A. At present, Ameritech has funded 14 computer centers through the Ameritech service**
6 **territory. According to the May 1998 progress report to the PUCO about the Centers:**

7 The centers and the [Ohio Community Computing Center Network] are a true success story.
8 During the last quarter of 1997, there were over 26,000 visits by children and adults to the
9 14 Ameritech funded centers, with over 6,000 using the centers for the first time during that
10 period. Many of the centers have people waiting in line at the door when they open. Most
11 of the centers are located in communities where, without them, there would be no access to
12 this technology.^{15A}

13 Given this success, I recommend that the Computer Center program be expanded in two
14 respects:

- 15 1. I recommend that the number of community computer centers in the cities currently
16 served be doubled within the next three years;
- 17 2. I recommend that a single community computer center be established in the
18 following counties: Lawrence, Galia, Monroe, Jefferson, Perry, Belmont, Highland,
19 and Fayette. These counties are marked by the dual characteristics of a high
20 incidence of extreme poverty and an extremely low telephone penetration rate.

21 Funding these centers at the 1994 levels inflated to 1998 dollars (including an
22 administrative subsidy to the Network) requires a commitment of \$3.8 million over the next

^{15A} *Report on the Implementation of the Community Computer Center Commitment in the Ameritech Alternative Regulation Settlement (May 1998).*

1 three years.

2
3 **Q. PLEASE EXPLAIN YOUR RECOMMENDATION FOR A COMMUNITY**
4 **PARTNERSHIP COMMITMENT.**

5 **A.** The SBC/Pacific Bell merger was specifically conditioned on the implementation of a
6 Community Partnership Commitment, under which PacBell promised to fund an \$80+
7 million in education and community technology projects over the next ten years. I
8 recommend a similar initiative in Ohio.

9
10 **Q. WHY DO YOU RECOMMEND AN \$80 MILLION INVESTMENT IN THE**
11 **COMMUNITY PARTNERSHIP COMMITMENT?**

12 **A.** The reasonableness of the \$80 million commitment has been previously accepted by
13 regulators, consumer advocates, and the industry. In California, the negotiated settlement of
14 the PacBell/SBC merger included an \$82 million commitment (\$52 million to education
15 and \$30 million to technology diffusion). I conclude that the best evidence of the
16 reasonableness of the amount is the fact that it has been agreed to by the various parties in
17 another context and approved as reasonable by the relevant state regulatory commission.
18 The needs of Ohio's low-income consumers are no less than those of California and I
19 conclude that the California agreement presents an appropriate benchmark of
20 reasonableness.

21
22 **Q. PLEASE ILLUSTRATE THE TYPES OF TECHNOLOGY DIFFUSION EFFORTS**

1 **THAT SHOULD BE FUNDED THROUGH THIS COMMITMENT?**

2 A. The following are mere illustrations of the types of diffusion efforts that might be supported
3 through the Community Partnership Commitment in Ohio:

4 1. Community technology centers in HUD-funded public housing. We know the
5 benefits of the computer centers funded through the alternative regulation
6 settlement. Indeed, I have recommended an expansion of that program above.
7 Public housing, however, which nationally serves households living at or below
8 50% of the Poverty Level, presents an ideal opportunity to introduce technology
9 into the low-income community.

10 2. Funding staff, computers and internet access for libraries serving low-income
11 constituencies. According to the 1997 *National Survey of U.S. Public Libraries and*
12 *the Internet*, 72.3 percent of all public libraries had some type of Internet connection
13 in the spring of 1997. This "average," however, is misleading. Library systems
14 serving populations of 25,000 people and more had a better than 90 percent
15 connectivity rate. Those serving populations of 5,000 or less had a connectivity rate
16 of about 56 percent. As part of this type of initiative, as well, program funding for
17 public school staff to supplement the technology provided through the Ohio School
18 Net program would be appropriate.

19 3. Funding communications technology for neighborhood-based organizations. The
20 Urban University and Neighborhood Network (UUNN), a coalition of universities
21 and community organizations in Ohio, found in a recent survey that most such
22 organizations have neither internet access nor believe that they could afford it. This

1 lack is particularly worrisome because it comes at a time the federal government is
2 forcing individuals and communities to become more self-sufficient. The tasks of
3 consumers taking responsibility for their own well-being is greatly complicated by
4 their lack of communication tools.

5 4. Funding should be permitted for a variety of innovative and creative programs to
6 bring technology to bear on the problems of low-income communities. Without
7 stating specific proposals, I recommend that the funds be available, upon
8 application, for creative problem-solving directed toward community building,
9 education, creation of employment opportunities, economic development, and other
10 community-based solutions. The breadth of the endeavors should be limited only
11 by the imagination of the communities that will be served.

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14 **Q. PLEASE DESCRIBE THE TYPES OF EDUCATION PROJECTS YOU PROPOSE**
15 **BE FUNDED THROUGH THIS \$30 MILLION INITIATIVE?**

16 A. As with the community technology projects, the following are mere illustrations of the
17 types of community education efforts that might be supported through the Community
18 Partnership Commitment in Ohio.

- 19 1. Direct consumer education programs, provided through libraries, public housing,
20 schools and other public institutions.
- 21 2. Education programs directed toward school teachers themselves. For school
22 technology programs to be effective, however, the teachers, themselves, must be

1 comfortable with the new technology. Low-income schools have fewer dollars for
2 staff training.

3 3. Education programs directed toward community-based organizations. Community-
4 based organizations might range from community-action agencies, to affordable
5 housing advocates, to homeless shelters and Head Start programs. Because of their
6 strong ties to the local community, these organizations are particularly well-suited to
7 play a leadership role in spreading technology in low-income communities.

8 4. Community mapping programs. It is an accepted tenet of community development
9 that successful community development initiatives must be rooted in the
10 communities' own sense of their goals and needs. Because of this, there is a need to
11 nurture individuals and community-based organizations that already provide help
12 and support in the community, rather than trying to impose technology from the
13 "outside." A community mapping program seeks to find the key community
14 members and organizations that people use to find information. The goal of such a
15 program is to then "deputize" those leaders and train them in communications
16 technology so they can assist their communities.

17
18 **Q. HOW TO YOU PROPOSE THE COMMUNITY PARTNERSHIP FUNDING BE**
19 **PROVIDED?**

20 **A.** I propose that the merged companies provide annual contributions of \$10 million for the
21 first six years, with annual contributions of \$5 million for five additional years. An
22 independent non-profit institution should be established to receive and administer the

1 funding, as well as to decide on funding distribution. The independent non-profit should
2 have a board of directors consisting of technology professionals and community
3 representatives. A majority vote on the board should be assigned to low-income consumers
4 and/or their representatives. Ample models of such independent non-profit organizations
5 exist in the telecommunications, energy and housing arenas. The allocation between
6 education initiatives and technology initiatives will be left to the sound management of the
7 non-profit Board.

8
9 **Q. DOES THIS COMPLETE YOUR TESTIMONY?**

10 **A. Yes it does.**

ROGER D. COLTON
(Activities Regarding Telecommunications)

Roger Colton is a partner in the firm Fisher, Sheehan and Colton, Public Finance and General Economics (FSG) of Belmont, Massachusetts. Roger is an attorney and an economist. He has worked on issues relating to low-income telecommunications needs and consumer protection for more than 15 years.

Roger routinely provides assistance to public officials regarding low-income telecommunications issues. He has testified in a variety of state regulatory commission cases on a variety of telecommunications issues. His clients have included: the Massachusetts Office of Attorney General (impacts of price increases on low-income phone penetration and service quality); Rhode Island Legal Services (consumer protections); the Connecticut Office of Consumer Counsel (credit and collection); the Pennsylvania Utility Law Project (universal service); the Colorado Office of Consumer Counsel (credit and collection); California TURN (AT&T deregulation); and Washington Utility and Transportation Commission (U.S. West deposit practices).

Roger has written widely on telecommunications issues. His publications include:

- o Colton. (1993). "Consumer Information and Workable Competition in the Telecommunications Industry." *XXVII Journal of Economic Issues* 775.
- o Colton. (1990). "When the Phone Company is not the Phone Company: Credit Reporting in the Post-Divestiture Era." *24 Clearinghouse Review* 98.
- o Colton, *Just Like Them: The Impact of Telecommunications Competition on Low-Income and Other Hard-to-Serve Consumers*, presented to *National Meeting of the National Association of Regulatory Utility Commissioners* (1998).
- o Colton, *Universal Residential Telephone Service: Needs and Strategies*, presented to the *105th National Meeting of the National Association of Regulatory Utility Commissioners* (1993).
- o Colton and Sable (1991). *A California Advocate's Guide to Telephone Customer Service Issues*. Prepared with funding from the California Telecommunications Education Trust Fund.
- o Colton. (1989). *Identifying Consumer Characteristics Which are Important to Determining the Existence of Workable Competition in the Interexchange Telecommunications Industry*. Prepared under contract to the Office of Public Counsel of the Florida Legislature.
- o Colton. (1989). *The Interexchange Telecommunications Industry: Should Regulation Depend on the Absence of Competition*. Prepared under contract to the Office of Public Counsel of the Florida Legislature.
- o Colton. (1989). *The Denial of Local Telephone Service for Nonpayment of Toll Bills: A Review and Assessment of Regulatory Litigation* (2d ed.).
- o Colton. (1988). *Customer Service Regulations for Residential Telephone Customers in the Post-Divestiture Era: A Study of Michigan Bell Telephone Company*. Prepared under contract to the

Michigan Divestiture Research Fund.

Proportion of Households Below 100% of Poverty Level Without Telephone Service in the Home (Selected Ohio Counties)	
County	Percent without Telephones
Highland	31%
Lawrence	27%
Seneca	26%
Perry	24%
Fayette	24%
Sandusky	24%
Muskingum	23%
Gallia	23%
Tuscarawas	23%
Coshocton	22%
Miami	22%
Clark	21%
Washington	21%
Madison	20%
Hancock	19%
Geauga	19%
Erie	19%
Montgomery	18%
Columbiana	18%

Persons at or Below 50% of Federal Poverty Level Statewide vs. City/County/MSA				
Below 50%	State	City	County	MSA
Cleveland (Cuyahoga)	6.1%	16.5%	7.5%	6.2%
Toledo (Lucas)	6.1%	10.5%	8.4%	7.4%
Akron (Summit)	6.1%	10.7%	6.1%	6.0%
Youngstown (Mahoning)	6.1%	15.7%	8.2%	7.0%
Columbus (Franklin)	6.1%	8.9%	6.6%	5.7%
Dayton (Montgomery)	6.1%	14.0%	16.2%	5.9%
Households at or Below \$5000 Annual Income Statewide vs. City/County/MSA				
Below \$5000	State	City	County	MSA
Cleveland (Cuyahoga)	6.6%	16.7%	8.1%	6.6%
Toledo (Lucas)	6.6%	10.0%	8.2%	19.6%
Akron (Summit)	6.6%	10.2%	6.3%	6.2%
Youngstown (Mahoning)	6.6%	15.7%	8.7%	7.7%
Columbus (Franklin)	6.6%	8.0%	6.2%	5.8%
Dayton (Montgomery)	6.6%	12.7%	6.4%	6.0%

Households at Designated Income and Poverty Levels City vs. Statewide						
	HHs Below \$5000 Annual Income		Persons Below 50% Poverty Level		Total Population	
	Number	Percent	Number	Percent	Number	Percent
Cleveland	33,323	12.3%	83,222	12.7%	505,616	4.7%
Toledo	13,033	4.8%	35,087	5.3%	332,943	3.1%
Akron	9,215	3.4%	23,931	3.6%	223,019	2.1%
Youngstown	5,806	2.1%	15,071	2.3%	95,732	0.9%
Columbus	20,529	7.6%	56,018	8.5%	632,958	5.8%
Dayton	9,213	3.4%	25,473	3.9%	182,044	1.7%
State	270,387	33.7%	656,554	36.4%	10,847,115	18.3%

GENERAL DESCRIPTION:

The Universal Service Indicator measures a utility's total performance in recognizing and addressing payment troubles. The Indicator further measures the company's total success in keeping customers on deferred payment agreements once negotiated and in avoiding the need to disconnect service.

FORMULA AND DATA SOURCE:

The Universal Service Indicator will involve the composite score of five different factors as follows:

1. **TERMINATION RATE:** Termination rate is calculated by dividing the number of residential service terminations by the number of residential customers. The termination rate enables a comparison of termination practices among companies without regard to differences in company size. The termination rate compares the performance from a specified period to the termination rate for a base period. If the company is at the base period level, it will receive a score of 5. For every .10% divergence from the base period, it will receive a plus or minus rating of 1 respectively. Using a ten point scale, the score would be calculated as follows (with "0" representing no change from the base period):

(0.6+)	10
(0.5)	9
(0.4)	8
(0.3)	7
(0.2)	6
0 - (0.1)	5
0 - 0.1	5
0.2	4
0.3	3
0.4	2
0.5	1
0.6	0

2. **MONEY AT RISK INDEX:** The money at risk index is calculated by indexing the sum of all money in arrears not in payment plans and all money subject to payment plans in a study period to the sum of all arrears not in payment plans and all money subject to payment plans in a base year. If the two sums are the same, the index is 1.0.

If the company is at the level of the base year, it will receive a score of 5. If the base year is 100

and the study year is 110, for example, the index is 1.10.

For every 0.2 divergence from the base year index, the company will receive a plus or minus rating of 1 respectively. Using a ten point scale, the score would be calculated as follows (with "0" representing no change from the base period):

(1.1+)	10
(0.9) - (1.0)	9
(0.7) - (0.8)	8
(0.5) - (0.6)	7
(0.3) - (0.4)	6
0 - (0.2)	5
0 - 0.2	5
0.3 - 0.4	4
0.5 - 0.6	3
0.7 - 0.8	2
0.9 - 1.0	1
1.1+	0

3. **DEFERRED PAYMENT AGREEMENT SUCCESS:** The deferred payment agreement success rate is calculated by dividing the number of deferred payment plans that are completed without renegotiation and without service disconnections by the number of deferred payment plans that a company enters into in a given time period.

The percent of customers who successfully complete deferred payment agreements is an indication of the extent that the company adequately addresses customer's payment problems. A successful completion of a deferred payment agreement involves a household which retires its arrears without need for renegotiation of the agreement and without need of the disconnection of service. Given the mandate to enter into only "reasonable" deferred payment agreements, virtually all of the company's deferred payment agreements should be successfully completed.

The deferred payment agreement success rate compares the performance from a specified period to the success rate in a base period. If the company is at the base period level, it will receive a score of 5. For every four percent (4%) divergence from the base period, it will receive a plus or minus rating of 1 respectively. Using a ten point scale, the score would be calculated as follows (with "0" representing no change from the base period):

(21) - (24)	10
(17) - (20)	9
(13) - (16)	8
(9) - (12)	7
(5) - (8)	6
0 - (4)	5
0 - 4	5
5 - 8	4
9 - 12	3
13 - 16	2
17 - 20	1
21 - 24	0

4. **WEIGHTED ARREARS:** The weighted arrears score is calculated by dividing the total residential monthly arrears not subject to deferred payment agreements by the average residential monthly customer bill. The score, also known as a Bills Behind statistic, is a weighted arrears for all households who are not in deferred payment agreements.

Households that are in arrears to the company, but which have not entered into a deferred payment agreement, represent a risk of loss to the company. Moreover, by entering into a deferred payment plan, the risk that the household will ultimately lose its utility service is lessened. Comparisons of arrears between companies, however, can be misleading because of the difference in bills. For this reason, a weighted arrears statistic is calculated so that the effect of different average bills is taken into consideration.

The weighted arrears factor compares the performance of the company to the average "weighted arrears" rate for a specified period to the average rate for a base period. If the company is at the average, it will receive a score of 5. For every two-tenths (0.2) bill divergence from the average, it will receive a plus or minus rating of 1 respectively. Using a ten point scale, the score would be calculated as follows (with "0" representing no change from the base period):

(1.1+)	10
(0.9) - (1.0)	9
(0.7) - (0.8)	8
(0.5) - (0.6)	7
(0.3) - (0.4)	6
(0.1) - (0.2)	5
0 - 0.1	5
0.2 - 0.3	4
0.4 - 0.5	3
0.6 - 0.7	2
0.8 - 0.9	1
1.0+	0

5. **PERCENT CUSTOMER IN DEBT:** To the extent that customers *do* develop past due bills, a utility should be willing and able either to collect those bills immediately, or to place those customers in reasonable deferred payment agreements. The existence of households in arrears represents a failure in both of these processes. Households that are in arrears, but that have not entered into a deferred payment agreement, represent a serious risk of loss to a utility. One aspect of universal service involves both getting --and keeping-- late-paying customers on deferred payment arrangements.

The percent of customers in debt score is calculated by dividing the total number of residential customers in arrears (but not subject to payment plans) by the total number of residential customers. This component compares the annual performance of a specific company to the average "customers in arrears" rate for a base period. If the company is at the base period level, it will receive a score of 5. For every two percent divergence up or down from the average, it will receive a plus or minus rating of 1 respectively. Using a ten point scale, the score would be calculated as follows (with "0" representing no change from the base period):

(11+)	10
(9)-(10)	9
(7)-(8)	8
(5)-(6)	7
(3)-(4)	6
(0)-(2)	5
0-2	5
3-4	4
5-6	3
7-8	2
9-10	1
11+	0

Line	Measure	Score
1	Termination Rate	
2	Money at Risk Index	
3	Deferred Payment Plan Success Rate	
4	Weighted Arrears	
5	Percent Customers in Debt	
6	Total Score	Sum lines 1 - 5

SECTION 1: NONDISCRIMINATORY ACCESS AND DEPLOYMENT OF TELECOMMUNICATION SERVICES.

- (a) **Prohibition of Discrimination.** -- It shall be unlawful for Ameritech/SBC to refuse to provide access to or deploy retail telecommunications services with either the purpose or effect of discriminating on the basis of race, national origin, income, or residence in a rural area. Evidence of a pattern of under-representation of members of classes protected by this section in the deployment of retail telecommunications services shall constitute the effect of discrimination for the purpose of this requirement.
- (b) **Submission of Plan for Provision of Service.** -- As a condition of receiving or renewing a certificate, license, franchise, permit or other authorization to provide telecommunications service, or to erect any facility for such provision, Ameritech/SBC shall submit to the Commission a plan and periodic reports demonstrating compliance with subsection (a). Plans and periodic reports shall include all relevant tract-level census data in a standard form to be prescribed by the Commission. There shall be an opportunity for public review of said plans and reports; however, the Commission shall adopt procedures for the protection of proprietary information Ameritech/SBC submits in compliance with this section from access by competitors.