

"Rochester Telephone"), and resold pursuant to Rochester Telephone's "Open Market Plan" (the "OMP").<sup>9</sup> Some elements of local service, such as the loops, will probably be provided by resale even after other facilities have been acquired by lease or purchase. In order to succeed under these circumstances, SBMS would have to be at least as efficient as its competitors and be able to offer similar services or packages. To attain the required efficiencies, SBMS needs to begin as soon as possible to use its own cellular facilities, systems, and personnel to provide some services which will be part of the CLLE service.

Thus, the opportunities presented by the entry of existing cellular providers into the provision of CLLE service are numerous and substantial. They include:

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<sup>9</sup> The New York State Public Service Commission approved a Joint Stipulation and Agreement embodying the OPM in an order issued and effective on November 10, 1994. (Opinion No. 94-25; Case No. 93-C0103 - Petition of Rochester Telephone Corporation for Approval of Proposed Restructuring Plan.) The Joint Stipulation and Agreement provided for the development of telecommunications competition in the Rochester, New York area, including competitive local exchange service by facilities based carriers and resellers commencing January 1, 1995. In this regard, the OMP addresses wholesale pricing, number portability, intraLATA presubscription, interconnection standards and reciprocal terminating access.

For a recent FCC discussion of the OMP, see Order, In the Matter of Rochester Telephone Corporation: Petition for Waivers to Implement Its Open Market Plan, FCC 95-96, 1995 WL 101438 at ¶ 2-4 (1995).

- ° The ability of cellular providers to utilize their existing facilities, systems and personnel more efficiently, in order to provide an effective competitive landline alternative to the existing LEC;
- ° The capacity and scope to serve additional customers (including both commercial and residential customers) and broader areas beyond those targeted by CAPs and others), since the existing backbone facilities for the cellular system cover the entire market area and are not confined to the "downtown loop";
- ° The ability to provide one-stop shopping, as well as new services, including basic services, along with enhanced and vertical services, which would not otherwise be available, by integrating wireless and CLLE services and avoiding the need for duplicative wireline and wireless equipment and services; and
- ° The existence of a provider with market presence and experience, giving it the opportunity to succeed and provide real competition.

On the other hand, these opportunities would be diminished, or perhaps even lost, if SBMS and SBMS-NY Services are unable to integrate their facilities, systems and personnel -- due to a misapplication or misinterpretation of the separation requirements of Section 22.903 to this case. Not only would SBMS and SBMS-NY Services be unable to provide new services to a wide range of customers, but also, even if they tried to do so on a non-integrated basis, they could not compete as effectively with other service providers who are not subject to separation requirements.

For example, AT&T is already authorized to provide local exchange service in New York through the same company that provides interexchange service. AT&T also filed an Application for a Certificate of Exchange Service Authority with the Illinois Commerce Commission on May 3, 1995 seeking authority to provide facilities-based and resold exchange telecommunications services, which could then be combined with other services, including PCS, sold by AT&T. Similarly, as noted above, Rochester Telephone has obtained approval from the NY-PSC of its Open Market Plan. Under the OMP, Rochester Telephone will use one affiliated corporation to provide local exchange service and to provide basic network services such as unbundled local loop, switching and transport facilities on a wholesale basis to resellers interested in providing local exchange service. A second affiliate, Frontier Communications of Rochester ("Frontier"), will offer local exchange service (initially on a resale basis) in competition with Rochester Telephone and other providers of local service in Rochester, together with a variety of other services on an integrated basis, including long distance, wireless, and related services. Finally, Time Warner is now offering local telephone service in Rochester on an integrated basis with its cable system in that market.

The declaratory ruling requested here is necessary in order to remove uncertainty regarding the ability of a BOC cellular affiliate to compete out of region on the same plane as others (e.g., IXCs, cable companies, PCS providers, non-BOC cellular providers, etc.) which are now providing, or will soon be providing, such integrated services.<sup>10</sup>

3. SBMS's Proposal For the Integration of Cellular and CLLE Facilities, Systems and Personnel

As discussed above, SBWH has created SBMS-NY Services due to the uncertainty which exists regarding the application of the Commission's separation requirements to the provision of out of region CLLE service by the cellular affiliate of a BOC. Pending action by the Commission, SBMS-NY Services will be staffed and operated

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<sup>10</sup> A ruling such as that requested in this Motion is not needed (nor is one being sought) with respect to the provision of PCS service, since both Section 22.903(g) of the Commission's Rules and the Second Report and Order in the PCS rulemaking proceedings make clear that SWBT and SBMS can directly provide PCS service both in and out of region without a separate subsidiary. See Second Report and Order, In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, 8 FCC Rcd. 7700 at ¶ 126 n.98 (1993) ("PCS Second Report and Order") ("Under our PCS rules . . . BOCs are free to choose whether or not they will provide PCS through their separate cellular subsidiaries."), recon., 9 FCC Rcd. 4957 (1994), Erratum, 1994 WL 382529 (released July 22, 1994), further recon., 9 FCC Rcd. 4441 (1994).

independently from SBMS's cellular systems in New York.<sup>11</sup>

If the Commission agrees with SBMS that the rules permit SBMS to provide out of region CLLE service directly (or through a closely-integrated affiliate), and that separation requirements do not apply to the provision of such service, then SBMS and SBMS-NY Services can begin to provide competitive local exchange service in Rochester under the recently-approved CMP on an integrated basis. SBMS will provide local exchange service through the most efficient combination of resold services and owned or leased facilities. It will obviously be most economically sound if, wherever and whenever able to do so, SBMS shares its cellular facilities, systems and personnel with those of SBMS-NY Services in Rochester.

SBMS anticipates, for example, using its cellular switch to provide local switching and its backbone

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<sup>11</sup> In New York, and probably in each of the other out of region markets where SBMS will provide CLLE service, a separate corporate entity (like SBMS-NY Services) will be formed within the SBWH family to provide the service even with the requested declaratory ruling. However, if the requested ruling is granted, while each entity will have its own books and records and certain limited personnel, their operations will be closely integrated with those of SBMS (and its subsidiaries or affiliates) providing cellular service in each market. Facilities, systems, and personnel will be shared, and the same directors and officers will serve both the cellular and the CLLE entities.

landline and microwave networks now used to connect cell sites) to provide some local transport. Other facilities, such as office space, furniture, fixtures and equipment will be shared, as will administrative systems and personnel. Credit confirmation, billing and collection, customer care and financial control systems will be combined to serve both the cellular and the CLLE businesses. Personnel experienced in the installation, maintenance, repair, sales and marketing of the cellular service will also be assigned responsibility for CLLE service.

As discussed above, without the ability to integrate and to share existing cellular facilities, systems and personnel in providing CLLE service, SBMS would be starting from ground zero, at a competitive disadvantage to such competitors as the incumbent LEC, and its ubiquitous network infrastructure and universal market presence, and other local exchange service providers, such as AT&T and other IXCs, PCS providers, non-BOC cellular providers and cable companies. (See summary at attached Exhibit #2.) Each has an established market and existing infrastructure and business with which to integrate its local exchange service efforts. Under such circumstances, without the requested declaratory ruling, SBMS's ability to provide new services for a wide range

of customers will be compromised and the viability of SBMS as a competitive provider becomes questionable.

Certainly at the commencement of operations, and probably for the next several years, resale of at least the local loop facilities of the incumbent LEC will be needed by providers of CLLE service. Accordingly, in the Rochester marketplace, the OMP approved by the NY-PSC reversed the policy prohibiting the resale of residential local exchange service and now requires Rochester Telephone to make local loops as well as residential service available on a resale basis. To be competitive in Rochester, SBMS must not only package high-value added services with any services purchased for resale, but also, it must create greater efficiencies in connection with any facilities-based service offerings by integrating cellular and local exchange facilities, systems and personnel as much as possible.

These types of integration are essential if SBMS is to be an effective competitor not only with Rochester Telephone, but also with AT&T, Time Warner and other companies which have this capability. Furthermore, as discussed below, there is no reason to constrain SBMS's ability to compete quickly and effectively by applying separation requirements which serve no purpose in this context.

C. "Separate Subsidiary" and Other Separation Requirements Serve No Purpose "Out of Region"

The Commission has long recognized the substantial costs and loss of efficiencies which are caused by the separation requirements. As a result, in deciding whether to require separation (and specific elements of separation), in specific situations, the Commission has balanced those costs with the possible benefits to competition. It has required separation only where the costs were not unduly burdensome and were seen as necessary to address specific competitive concerns.<sup>12</sup>

The existing separation requirements of Section 22.903 derive from the provision, originally by AT&T and

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<sup>12</sup> In deciding to require only AT&T to provide cellular service through a separate subsidiary, the "benefit" of the separate subsidiary requirement was cited as its ability to address concerns regarding cross-subsidies and possible interconnection abuses linked to the control of "bottleneck" LEC facilities, and the "costs" were identified as the duplicative staffs and diseconomies resulting from separate transmission facilities. Memorandum Opinion and Order on Reconsideration, In the Matter of an Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems, 89 FCC 2d 58 at 77 44-45 (1982), further recon., 90 FCC 2d 571 (1982), pet. for review dismissed sub nom. United States v. FCC, No. 82-1526 (D.C. Cir. 1983).

In the case of out of region CLLE service by the cellular affiliate of a BOC, there is no benefit to be derived from a separation requirement since there are no links to "bottleneck" LEC facilities; rather, the separation requirements would simply create unnecessary costs.

subsequently by the BOCs, of LEC service IN REGION -- where AT&T's LECs, and subsequently the BOCs, were viewed as having "bottleneck" monopolies with respect to essential LEC facilities and services.<sup>13</sup> The separation requirements reflected two principal concerns:

<sup>13</sup> The separation requirements as initially applied to AT&T were, by definition, nationwide in scope. When they were extended to the BOCs, their scope was, by definition, limited to where the BOCs operated -- i.e., in region -- where the BOCs controlled the bottleneck facilities. As the Commission explained:

The structural separation requirements of the Computer II rules and the cellular rules were adopted at a time when AT&T comprised a nationwide system of both interexchange and local exchange service providers that serviced virtually 100 percent of all interstate telephone users and approximately 80 percent of all local exchange telephone users.

Report and Order, In the Matter of Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies, 95 FCC 2d 1117 at ¶ 7 (1983), aff'd sub nom. Illinois Bell Telephone Co. v. FCC, 740 F.2d 465 (7th Cir. 1984) ("BOC Separation Order").

And the Commission decided to extend the separation requirements to the BOCs' in region provision of cellular service because:

[T]he potential for anticompetitive abuse against cellular carriers will also exist after divestiture . . . due to the BOCs control over local exchange facilities and, hence, control of access to the network . . . ." Id. at ¶ 48.

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By contrast, out of region there is no "bottleneck" owned or operated by SBMS or any of its affiliates.

- ° cross-subsidization -- i.e., shifting the costs of unregulated services into the revenue requirements for regulated services to justify high rates for regulated services and to allow artificially (and anticompetitively) low rates to be charged for unregulated services; and
- ° possible access/interconnection discrimination -- i.e., utilizing local "bottleneck" facilities to favor the LEC's own services and to harm competitors which require access to the local facilities.

Neither of these concerns is implicated here.

1. Origins of the Separation Requirements

The separation requirements have been discussed and applied most extensively in the context of the BOCs' provision of enhanced services and CPE, as recently summarized in the Commission's Computer III Notice of Proposed Rulemaking.<sup>14</sup> The Commission described similar reasons for the initial creation of the separate subsidiary requirement in the cellular context.<sup>15</sup> The factual underpinnings of these rules and the facts relevant to

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<sup>14</sup> Notice of Proposed Rulemaking, In the Matter of Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, CC Dkt. No. 95-20, FCC 95-48 at ¶ 3-10 (released Feb. 21, 1995) ("Computer III NPRM").

<sup>15</sup> See Report and Order, In the Matter of An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems, 36 FCC 2d 469 (1981) ("Cellular Order"), recon., 39 FCC 2d 58 ("Cellular Reconsideration Order") (subsequent history at note 12, supra).

this Motion are completely different. Indeed, the separation requirements do not apply to these facts.

a. Computer II Rationale for the Separate Subsidiary Requirements

In its Second Computer Inquiry proceeding, the Commission established rules for AT&T to provide enhanced services and CPE.<sup>16</sup> While entry into those markets was expected to provide new services, increased competition, and other public benefits, the Commission sought to protect two fundamental interests: those of captive telephone company ratepayers and those of competitors, existing and prospective, in the enhanced services and CPE markets.<sup>17</sup>

The Commission's first concern was that AT&T might abuse its market power with respect to local exchange and exchange access telephone services.<sup>18</sup> It could, it was believed, cross-subsidize its entry and competition in the enhanced services and CPE markets by shifting costs from its competitive operations into its

<sup>16</sup> See Final Decision, In the Matter of Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384 (1980) ("Final Decision"), recon., 84 FCC 2d 50 (1981), further recon., 88 FCC 2d 512 (1981), aff'd sub nom. Computer and Communications Indus. Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983).

<sup>17</sup> Final Decision at ¶ 208.

<sup>18</sup> Such a concern does not apply to de novo entry out of region by a company which is going to compete against the existing LEC.

telephone rate base. Because it was, at the time, rate of return regulated, such cost shifting would harm both its telephone ratepayers and its competitors in these new markets. The Commission also believed that AT&T could use its control over essential, "bottleneck" local telephone facilities, on which its competitors were dependent to offer their own products and services, in a discriminatory manner to advantage its own enhanced services and CPE operations.

To prevent cross-subsidization and discrimination, the Commission found that the imposition of a separate subsidiary requirement was warranted. The Commission recognized that this would be costly, both in terms of direct costs and lost efficiencies, and even lost services that might not be developed or made available to consumers at all, but it believed that the requirement was nevertheless necessary to prevent possible abuse. See Id. at ¶ 233-264.

By the time of the Third Computer Inquiry, the Commission was in the process of establishing significant "non-structural" safeguards, including cost accounting rules, audit requirements, etc., which were designed to detect and deter attempts at cross-subsidization and to avoid the harsh anticompetitive

effects of artificial separation requirements.<sup>19</sup> The Commission and many states were also moving away from rate-based regulation of basic services and towards incentive or price cap regulation, which dramatically reduced the incentive to shift costs from an unregulated service to the regulated entity. This battery of new protections and changed circumstances was viewed as sufficient to prevent cross-subsidization, to the benefit of both telephone company ratepayers and enhanced services competitors.<sup>20</sup>

The Commission believed that preventing discrimination, the other justification for separate subsidiary requirements, required additional steps. It, therefore, also based its justification for the removal of BOC separate subsidiary requirements on the development and implementation of requirements regarding Comparably Efficient Interconnection ("CEI") and Open Network Architecture ("ONA").<sup>21</sup> Each of the BOCs, including SWBT,

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<sup>19</sup> For a review of the Computer III decisions and the evolution of non-structural safeguards, see Computer III NPRM at ¶¶ 3-10, 15-31.

<sup>20</sup> As noted in note 6, supra, in 1987 the Commission had removed the structural separation requirement for CPE.

<sup>21</sup> Report and Order, In the Matter of Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), 104 FCC 2d 958 at ¶¶ 111-116 (1986) (subsequent history omitted).

submitted CNA and CEI plans which have been approved by the Commission.

The continuing debate over the adequacy of the Commission's new requirements and enforcement capabilities has led, and will apparently continue to lead, to court challenges to Computer III and its implementation.<sup>22</sup> But the Commission has determined that, in light of all of the nonstructural safeguards that are now in place and operating, requirements for fully separated corporate subsidiaries should no longer be imposed on the BOCs' enhanced services and CPE operations.<sup>23</sup>

b. Application of the Separate Subsidiary Requirements in the Cellular Context

The separation requirements have been applied, and revised, in the cellular context. While cellular service is still provided through a subsidiary separated from the BOC, that subsidiary can provide cellular CPE and enhanced services, as well as other Public Mobile

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<sup>22</sup> See e.g., State of California v. FCC, 905 F.2d 1217 (9th Cir. 1990); State of California v. FCC, 4 F.3d 1505 (9th Cir. 1993); State of California v. FCC, 39 F.3d 919 (9th Cir. 1994), cert. denied, 115 S.Ct. 1427 (1995) (the "California Cases").

<sup>23</sup> As a result of the continuing challenges in the California Cases, the Commission has initiated a rulemaking proceeding to review the various nonstructural safeguards against BOC access discrimination and to reevaluate the need for structural separation requirements. See Computer III NPRM at ¶ 2.

Services, both in region and out of region. The cellular industry has also greatly expanded and evolved since its creation over a decade ago. This evolution has created a new set of competitors and has resulted in a fundamental change in the way cellular carriers provide their service.

(i) Pre-MFJ wireless market

When cellular service was initially introduced, the separation requirements were imposed on all wireline carriers.<sup>24</sup> The express motivation for the separation requirements was the same as that applied in Computer II -- i.e., to prevent the dominant wireline carrier from using its monopoly rate base from local exchange service to subsidize its competitive cellular service; and to prevent possible anticompetitive conduct with respect to interconnection by the monopoly provider of local exchange service.<sup>25</sup> In 1982, the FCC removed the separate subsidiary requirement from all wireline carriers except AT&T, noting the significant costs of the requirement to the independent telephone companies.<sup>26</sup>

<sup>24</sup> Cellular Order at ¶ 51.

<sup>25</sup> Id. at ¶¶ 48-51 and Cellular Reconsideration Order at ¶ 45.

<sup>26</sup> See Cellular Reconsideration Order at ¶¶ 44-46.

ii) Post-divestiture Wireless Market

After divestiture, the BOC Separation Order transferred the separate subsidiary requirement to the BOCs. At that time, the BOCs provided cellular service solely in region pursuant to the Commission's wireline allocation scheme.<sup>27</sup> Indeed, until clarified by the D.C. Circuit, many believed that the MFJ precluded the RHCs and their subsidiaries from engaging in any out of region activities at all.<sup>28</sup> Like AT&T before, the BOCs were then the local exchange providers in many markets in which they were also the wireline providers of cellular service, with the presumed ability and incentive to disadvantage their competitors. For example, in discussing the alleged need for separation, the Commission observed that "if the RBOCs are permitted to market . . . cellular services . . . on an unseparated basis, there are opportunities to engage in cross-subsidization" and that "due to the BOCs control over local exchange facilities and, hence, control of access to the network, there is the potential that the BOCs could inhibit access . . . to the nonwireline carrier

<sup>27</sup> See Cellular Order at ¶ 42 n.56.

<sup>28</sup> See United States v. Western Electric Co., 797 F.2d 1082, 1091-92 (D.C. Cir. 1986) (vacating Judge Greene's order barring the BOCs from providing out of region exchange service pursuant to the MFJ), cert. denied, 480 U.S. 922 (1987).

which competes in the same market.<sup>29</sup> These statements, of course, are clearly based on the assumption that the BOCs would be offering cellular service in the same geographic areas where they were the LEC and that they might, therefore, exploit their position in those local exchange markets.

We believe that, by deciding to require structural separation for BOC cellular operations based solely on its Computer II decision -- and without a full review of the implications of structural separation in the context of cellular service -- the Commission did not adequately consider whether there was a need for such rules even for in region BOC cellular service. Indeed, the Commission itself has questioned whether to retain structural separation for such service. For example, in the BOC Separation Order the Commission stated that it would review the appropriateness of structural separation after two years.<sup>30</sup> Moreover, in its 1990

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<sup>29</sup> BOC Separation Order at ¶ 28, 48. The need to avoid cross-subsidization has been the basis for the imposition of structural separation in other areas as well. See, e.g., In the Matter of Application of General Telephone and Electronics Corporation to Acquire Control of Telener Corporation and its Wholly-Owned Subsidiary Telener Communications Corporation, 72 FCC 2d 111 at ¶ 83 (1979), modified, 72 FCC 2d 516 (1979), recon. denied, 84 FCC 2d 18 (1979).

<sup>30</sup> BOC Separation Order at ¶ 61.

Notice of Proposed Rule Making for PCS service, the Commission sought comments on eliminating structural separation for BOC cellular service altogether.<sup>31</sup> Thus, as the Commission has recognized, the need for structural separation for in region cellular service is, at best, questionable.

However, even if the rules make sense in region (which we would dispute), they obviously make no sense when a BOC cellular affiliate offers cellular or any other service out of region. The entire premise of structural separation is that the BOCs have control over local exchange services within their regions, and that structural separation is necessary to prevent the BOCs from abusing that position by either cross-subsidizing their cellular affiliates or by discriminating against competing carriers that need to be interconnected with the local landline system. Whether or not these concerns continue to apply in region, both of these concerns simply do not exist outside the areas in which the

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<sup>31</sup> Notice of Proposed Rule Making and Tentative Decision, In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Service, 7 FCC Rcd. 5676 at ¶ 76 (1992). The Commission ultimately concluded in its Second Report and Order in that proceeding that the record did not yet allow it to make a final decision on this issue (again, with no mention of out of region activities). PCS Second Report and Order at n.98.

BOCs are the incumbent providers of local exchange service.

Indeed, while the Commission originally required that BOCs provide cellular service through subsidiaries separate from the LECs and the Computer II subsidiaries, and initially required that all cellular CPE and enhanced services be provided only through the Computer II subsidiaries,<sup>32</sup> the Commission subsequently reversed that decision and permitted the BOC cellular subsidiaries to market cellular CPE (and enhanced services).<sup>33</sup> The Commission provided a number of reasons for permitting the integration of these activities, including the facts that:

- (1) elimination of the separate subsidiary requirement would foster a more competitive cellular CPE marketplace;<sup>34</sup>

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<sup>32</sup> See BOC Separation Order, and Memorandum Opinion and Order on Reconsideration, Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies, 1984 WL 88997 at ¶ 2 n.4 (June 26, 1984).

<sup>33</sup> As discussed in that Report and Order, and in the NPRM which preceded it, there is no justification for limiting the types of competitive services which the cellular subsidiary can provide, or restricting the manner in which they are provided. See Notice of Proposed Rule Making, 1984 WL 92576 (July 6, 1984) and Report and Order, In the Matter of Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies, 1985 WL 95930 (March 13, 1985).

<sup>34</sup> Id., Report and Order at ¶ 8.

- (2) the separate subsidiary requirement posed serious competitive disadvantages to the BOCs' cellular subsidiaries because they were the only cellular entities that could not offer prospective customers the convenience of dealing with one firm for cellular service and CPE;<sup>35</sup> and
- (3) the costs of separation outweigh the benefits obtained (noting that consumers would likely benefit from efficiencies realized from shared staff, expenses, plant and equipment if the separation requirement was lifted).<sup>36</sup>

In deciding that the BOC cellular subsidiaries could also provide other mobile services in addition to cellular service and CPE, the Commission noted that:

[O]ur present policy [structural separation] will impede competition by preventing one sector of the cellular industry from offering the full spectrum of mobile services and CPE. Furthermore, because competition is impeded, continuation of the policy imposes costs by impeding the growth and development of the mobile services industry generally, and by preventing the industry from realizing joint operating efficiencies.<sup>37</sup>

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<sup>35</sup> Id. at ¶ 9.

<sup>36</sup> Id. at ¶ 18. "Because the RHCs' cellular subsidiaries must compete with companies that offer one stop shopping for service and CPE, separation constitutes a 'cost' in the form of lost business. The transaction costs associated with structural separation therefore interfere with the RHCs' cellular subsidiaries' ability to compete, and the growth of the cellular industry as a whole." Id.

<sup>37</sup> Id. at ¶ 32.

iii) The Current Wireless Market

Unlike when the separation requirements were adopted, the cellular affiliates of the BOCs now provide cellular service both in and outside of the regions in which their BOC affiliates provide local exchange service. Such out of region activities were unanticipated at the time of divestiture.<sup>38</sup>

SBMS has for many years been in vigorous competition with the cellular affiliates of other BOCs and with other non-BOC LECs outside of SWBT's region. For example, SBMS competes with Bell Atlantic in the Washington/Baltimore MSAs, with Ameritech in Chicago (and elsewhere in Illinois), with NYNEX in Boston (and elsewhere in Massachusetts), and with NYNEX and Rochester Telephone in Upstate New York. In fact, two-thirds of SBMS's POPs are outside of SWBT's region.

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<sup>38</sup> Judge Harold Greene recently noted the fact that BOC extraregional activities were unanticipated in the context of his finding that the factual underpinning of the MFJ had changed sufficiently to warrant grant of AT&T's waiver request to acquire McCaw: "As this court noted in 1984, '[n]o one connected with the negotiation, the drafting, or the modification of the decree envisioned that the Regional Holding Companies would seek to enter new competitive markets on a broad scale within a few months, let alone a few weeks after divestiture....' United States v. Western Electric Co., 592 F.Supp. 846, 858 (D.C.C. 1984); see also United States v. Western Electric Co., 673 F.Supp. 525, 582 (D.D.C. 1987) (noting the surprising extent and breadth of the Regional Companies' far-flung enterprises)." United States v. Western Electric Co., 158 F.R.D. 211, 215 n.11 (D.D.C. 1994), aff'd, 46 F.3d 1198 (D.C. Cir. 1995).

Since the basic rationale for the separation requirements -- the prevention of cross-subsidies and possible discriminatory interconnection by the incumbent local exchange provider -- does not apply where the BOC cellular affiliate is providing CLLE service outside of that BOC's region, the separation rules have no meaning or purpose in this context.<sup>39</sup>

2. The Commission Has Previously Recognized That Structural Separation Should Not Be Required for the Out of Region Activities of a LEC

Although simple logic alone shows why structural separation should not be required here, the Commission has, in fact, already stated that the concerns underlying the separation requirements do not apply when a LEC provides service out of region. Specifically, in a 1984 rulemaking proceeding, the Commission determined that telephone common carriers need not file applications under Section 214 of the Communications Act for permission to construct lines for either cable services or non-common carrier services outside of the telephone

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<sup>39</sup> Consistent with the Commission's recent Report and Order, In the Matter of Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications, 1995 WL 94463 at ¶¶ 20-24 (1995), SBMS would, of course, adhere to the joint cost and affiliate transaction rules applicable to CMRS providers with LEC affiliates.

company's region.<sup>40</sup> Moreover, the Commission also ruled that structural separation was not necessary for such services when they were provided out of region.

In its NPRM in the Section 214 proceeding, the Commission explained that the rationales for requiring Commission authorization under Section 214 for the construction of new lines were: (1) to prevent any improper addition of costs to the rate base for regulated services and (2) to prevent discrimination.<sup>41</sup> These, of course, are virtually the same concerns that led the Commission to require structural separation for BOC cellular operations. In the Section 214 proceeding, however, the Commission expressly concluded that those rationales do not apply out of region:

Requiring prior authorization of a carrier's facilities under Section 214 can serve to limit duplicative, unnecessary, or inefficient facilities that would inflate the carrier's rate base and lead to higher charges to users of common carrier services. We also have used scrutiny under Section 214

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<sup>40</sup> Section 214 of the Communications Act of 1934, 47 U.S.C. § 214 (1988), requires carriers to obtain Commission authorization prior to the construction, acquisition, or operation of any line.

<sup>41</sup> Notice of Proposed Rulemaking, In the Matter of Blanket Section 214 Authorization for Provision by a Telephone Common Carrier of Lines for its Cable Television and Other Non-Common Carrier Services Outside its Telephone Service Area, 96 FCC 2d 623 at ¶ 4 (1984). The title of this proceeding, which refers to services offered "Outside [the carrier's] Telephone Service Area" clearly reflects the Commission's understanding that out of region activities require different treatment.

to enforce the policies of Title II of the Communications Act, such as non-discrimination in common carrier services. These reasons for regulatory scrutiny of a carrier's facilities do not pertain when a carrier constructs channels for its own cable television service or lines for a non-common carrier service outside of its own telephone service area.<sup>42</sup>

In its Report and Order adopting the proposed regulations, the Commission also expressly found that structural separation was not necessary for out of region activities. One of the commentators had responded to the NPRM by suggesting that if the Commission decided not to require applications under Section 214 it should instead require structural separation for the out of region cable television operations of a telephone common carrier. The Commission rejected this suggestion, stating "[w]e see no reason why a rule eliminating any requirement for such applications should engender the need for structural separation."<sup>43</sup>

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<sup>42</sup> Id. (emphasis added).

<sup>43</sup> Report and Order, In the Matter of Blanket Section 214 Authorization for Provision by a Telephone Common Carrier of Lines for its Cable Television and Other Non-Common Carrier Services Outside its Telephone Service Area, 98 FCC 2d 354 at ¶ 7 (1984). The Commission did require that a telephone common carrier offering such services out of region record the costs of those services on separate books of account from those of its common carrier services.

See also Third Report and Order, In the Matter of TELEPHONE COMPANY-CABLE TELEVISION Cross-Ownership Rule, Sections 63.54-63.58, CC Dkt. No. 87-266, FCC 95-203  
[Footnote continued on next page]

The same result is appropriate here. Just as in the Section 214 blanket authorization proceeding, when a LEC operates out of region there is no danger of either discrimination or improper shifting of costs. Accordingly, as the Commission recognized in that proceeding, there is no reason to impose structural separation here.

3. PCS Providers Are Not Subject to the Separate Subsidiary Requirements

As in the case of out of region cable line service by a LEC, the Commission recently determined not to require structural separation for providers of Personal Communications Services, whose services will be identical or equivalent to those offered by cellular providers. Each will offer wireless telephone services, each will market to the same customers, and each service will be used as the basis for an integrated package of wireless and landline telephone service. But for the fact that the services operate on different frequencies, there are few, if any, substantive differences between the services.

Nevertheless, in establishing the regulatory framework for PCS, the Commission specifically declined to apply the separation requirements to the provision of

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[Footnote continued from previous page]  
(released May 16, 1995), for a discussion of in region cable service by a LEC.

PCS by local exchange carriers, including the BOCs.<sup>44</sup>  
The Commission made it clear that a BOC may choose to provide PCS: (a) directly through the LEC itself or (b) through its separate cellular subsidiary.<sup>45</sup>

The Commission has recognized that allowing the LECs to provide PCS service will result in a number of significant benefits to consumers. In deciding against imposing a separate subsidiary requirement for PCS, the Commission noted that "allowing LECs to participate in PCS may produce significant economies of scope between wireline and PCS networks." Id. at ¶ 126. The Commission noted that these economies would promote the development of PCS and "will yield a broader range of PCS services at lower costs to consumers." Id. The Commission discussed other benefits to consumers of integration:

In addition, allowing LECs to provide PCS service should encourage them to develop their wireline architectures to better accommodate all PCS services. We also conclude, based on the record, that the

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<sup>44</sup> See PCS Second Report and Order at ¶ 126 n.98.

<sup>45</sup> Id. A misapplication of the separation requirements to the provision of CLLE service by SBMS would create a bizarre anomaly, even in region. For example, SWBT is a LEC in various locations in Oklahoma and SBMS provides, and will provide, two forms of CMRS service in Oklahoma: cellular service in Oklahoma City and PCS in Tulsa. Section 22.903 appears to preclude the integration of LEC and CMRS (cellular) service in Oklahoma City, while the PCS rules permit the integration of LEC and CMRS (PCS) service in Tulsa.

cellular-PCS policies indicated above are adequate to ensure that LECs do not behave in an anticompetitive manner. Thus, no new separate subsidiary requirements are necessary for LECs (including EOCs) that provide PCS. Indeed, by seriously limiting the ability of LECs to take advantage of their potential economies of scope, such requirements would jeopardize, if not eliminate, the public interest benefits we seek through LEC participation in PCS.<sup>46</sup>

In addition to recognizing the benefits of integrating landline and wireless service in the context of PCS, the Commission has recognized the need for regulatory symmetry for other wireless providers in its Commercial Mobile Radio Services (CMRS) proceeding.<sup>47</sup> By granting this Motion, the Commission can make it clear that cellular providers may also offer to consumers the benefits of an integrated package of wireless and landline services. Indeed, as the PCS orders demonstrate, there are sound public policy reasons to allow

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<sup>46</sup> Id. (Citation omitted).

<sup>47</sup> The CMRS proceeding was initiated to create a "comprehensive regulatory framework for all mobile radio services." First Report and Order, Implementation of Sections 3(n) and 332 of the Communications Act: Regulatory Treatment of Mobile Services, 9 FCC Rcd. 1056 at ¶ 2 (1994). In its CMRS proceeding the Commission acknowledged Congress' clear intent to create regulatory symmetry among similar mobile services and noted that "examining and establishing the proper mix of safeguards" to foster competition through regulatory symmetry is an important issue. See Second Report and Order, Implementation of Section 3(n) and 332 of the Communications Act: Regulatory Treatment of Mobile Services, 9 FCC Rcd. 1411 at ¶ 2, 218-219 (1994), Erratum, 9 FCC Rcd. 2156 (1994), recon. pending.

integration of local exchange and wireless services even in region, and that, with respect to this Motion, there are no reasons to limit such integration out of region or to disadvantage a cellular provider vis-a-vis a PCS provider with respect to the ability to offer packages of services, including wireless and CLLE.

D. The Provision of Competitive Landline Local Exchange Service by a Cellular Affiliate of a BOC "Out of Region" Is Consistent with the Commission's Rules

As explained above, the public interest will be served by, and there is no policy justification for limiting, the provision of competitive landline local exchange service by a cellular affiliate of a BOC outside the BOC's region. Indeed, in light of today's technology and marketplace, there are substantial public benefits to be derived from the integration of wireless and CLLE services.

1. There are No Benefits, and Only Detriments, From Separation Requirements in this Context

There is widespread agreement among national and state legislators and regulators that technological advances, and marketplace and regulatory developments, have set the stage for competition in the provision of local exchange service. Vigorous competition has resulted and will continue to result in new services, reduced prices and technological advances to a greater

extent than through regulation. The more quickly full, fair competition is allowed, the sooner the advantages of competition will accrue to the public at large. While entirely new competitive local exchange carriers will eventually arise, it is more likely that immediate and effective competition with incumbent LECs will first be provided by existing telecommunications providers expanding their service offerings to include local exchange service. These telecommunications providers have the infrastructure and the technical, financial and managerial resources to compete effectively and quickly with the incumbent LEC.

Thus, in the short to mid-term, vigorous competition is most likely to arise if cellular affiliates of the BOCs are allowed fully to integrate out of region competitive local exchange service with their out of region cellular facilities, systems and personnel, as set forth above, in order quickly to bring the benefits of competition to the public.

In Rochester, the NY-PSC has approved Rochester Telephone's OMP and the proposed restructuring of Rochester Telephone, which included introduction of competition in the provision of local exchange service. Under the OMP, Rochester Telephone's business and residential local exchange service will be provided to prospective resellers at a specified "wholesale rate." In addition,

facilities-based carriers, including cellular and LEC providers, will exchange traffic at an agreed upon rate for local transport and local switching.

In anticipation of and response to the OMP, a number of carriers have obtained certification to provide local exchange service in the Rochester service area -- including both facilities based and resale service -- such as AT&T and other IXCs, and Time Warner Communications.<sup>48</sup> The AT&T entity which is already certified to provide local exchange service in Rochester is the same company which provides its IXC service. AT&T is integrating its personnel, facilities and operations to provide these services, and it is anticipated that AT&T will integrate its PCS operations in Buffalo and Rochester with its LEC and IXC operations in those markets. Similarly, Time Warner has begun integrating its

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<sup>48</sup> At the present time, the NY-PSC has indicated that it will certify competitive local exchange carriers in all markets and is currently in the midst of a proceeding to define the extent of regulation of such competitively provided local exchange service and the incumbents. In addition, there is a separate proceeding with respect to continuing regulation of New York Telephone Company, the largest incumbent LEC in the state. Rochester Telephone's CMP, however, will remain unique to its service area.

existing cable operations in Rochester with its telephone services in that market.<sup>49</sup> And, of course, Rochester Telephone -- through the newly-formed Frontier Communications -- plans to provide a variety of "integrated service packages -- long distance, local service, wireless, and related technologies -- and charge for those services on a single bill for each customer."<sup>50</sup>

Denial of the ruling requested in this Motion will seriously compromise the ability of SBMS viably to compete against these telecommunications companies in the provision of local exchange service in Rochester and other out of region markets. Likewise, being required to sell cellular service on a stand-alone basis when other competitors can provide integrated packages of wireless and landline service will, over time, impair SBMS's ability to compete in the cellular market as well.

In order to compete with such providers, which are able to integrate their developing local exchange business with substantial existing facilities, systems

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<sup>49</sup> See "So, You Want to Get Into Telephony? Before you do, take a look at Time Warner's strategy in Rochester, N.Y., site of the nation's first cable/telephony plant," Cablevision, June 5, 1995 at p. 24.

<sup>50</sup> See "Frontier's Business Plan Targets Integrated Services," Telecommunications Reports, May 1, 1995 at p. 25.

and personnel, SBMS requires the same ability to integrate the provision of local exchange service with its wireless properties in Rochester and elsewhere. In light of AT&T's recent filing in Illinois and the other developments discussed in the attached Exhibit #2, SBMS expects the same circumstances to occur in other out of region markets where it provides cellular service.<sup>51</sup>

2. The Uncertainty Regarding the Applicability of Section 22.903 in this Context

Nothing in Section 22.903 (or any other rule of which we are aware) would preclude SBMS-NY Services (and similar subsidiaries of SBWH) from providing CLLE service on a stand-alone basis upon receipt of applicable state certifications. However, as discussed above, an improper reading of Section 22.903 -- which fails to consider the purposes underlying the rule and the marketplace circumstances which existed when the separation requirements were adopted -- might suggest that SBMS itself may not be able to do so, and/or that the degree of planned integration between SBMS and SBMS-NY Services

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<sup>51</sup> It is not unreasonable to anticipate that AT&T, Sprint (and its PCS consortium), PCS PrimeCo and others will seek to provide these same integrated services in competition with SWBT and SBMS in SWBT's in region territories. These companies, including PCS PrimeCo which is made up of four BOCs, will have no separation requirements. Similarly, no separation requirements should be imposed on SWBT and SBMS by § 22.903, particularly where they provide competitive services. This factor alone justifies the elimination of § 22.903 in region as well.

may not be consistent with the rule, in the absence of the requested declaratory ruling. Since the rule was clearly drafted to require structural separation between a BOC's in region cellular activities and its affiliated LEC operations, and since separation makes absolutely no sense out of region, we believe that the proper interpretation of the rule is that it does not prevent SBMS and SBMS-NY Services from integrating their activities to provide those benefits out of region.

Unfortunately, since the Commission did not consider out of region activities when the rule was drafted (or when it was more recently rewritten), the broad language that it used to ensure separation of in region activities can be read to cover out of region activities as well.<sup>52</sup> Under this reading, SBMS and SBMS-NY Services might not be permitted to work together in the manner described above to offer the public low cost and efficient CLLE services or an integrated package of wireless and landline services. SBMS would have to operate at a competitive disadvantage vis a vis Rochester Telephone, AT&T, Time Warner and SBMS's other competitors.

Since nothing in Section 22.903 expressly prohibits SBMS from providing CLLE service out of region, and

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<sup>52</sup> See "Introduction" section of this Motion, supra.

since such a strained reading of that rule has no rational basis, there is no reason to read the rule so broadly. Rather, to the extent that the language of the rule may be broad enough arguably to require separation of out of region activities, we submit that the breadth of that language merely reflects the Commission's efforts to ensure that there would be no loopholes with respect to in region service, the only kind of service then contemplated. Thus, while the prohibition may continue to apply in region (although we dispute that it should), a declaratory ruling is appropriate here to make clear that the Commission's separation rules do not, and were never intended to, apply to the out of region activities addressed in this Motion.

E. A Declaratory Ruling is Appropriate in this Case and Should Promptly be Granted

Section 1.2 of the Commission's Rules provides that the Commission may on motion, or on its own motion, "issue a declaratory ruling terminating a controversy or removing uncertainty." 47 C.F.R § 1.2. A declaratory ruling is appropriate in this case to remove uncertainty

regarding the applicability of the separation requirements under Section 22.903 and any other rule or requirement) to competitive, out of region local exchange service by the cellular affiliate of a BOC.<sup>53</sup>

As demonstrated above, the underlying purposes of Section 22.903 -- i.e., the prevention of cross-subsidization between regulated and unregulated activities and the prevention of possible anticompetitive discrimination in the provision of access and interconnection to monopoly landline facilities -- are not even implicated by this proposed out of region service. In fact, grant of this Motion will promote the Commission's goal of expanded competition in the local exchange. It will allow a strong competitor to utilize existing facilities, systems and personnel to meet the needs of a broader range of customers for high quality, economical local exchange service and integrated services. Issuance of the declaratory ruling is in the public interest because it

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<sup>53</sup> The FCC issues declaratory rulings where it finds that the public interest will be served by the requested ruling.

Additionally, the introductory paragraph of Section 22.903 provides that a BOC must use a separate subsidiary for the provision of cellular service only "unless otherwise authorized by the FCC." For the reasons provided in this Motion, it is without question appropriate for the Commission to recognize the permissibility of the integrated provision of cellular and CLLE service by a cellular affiliate of a BOC out of region.

will allow SBMS to "make efficient use of [its] existing infrastructure to speed service" and will enable SBMS's existing and future customers "to avail themselves of a competitive alternative".<sup>54</sup> To the contrary, application of the separation requirements of Section 22.903 to this case would cause undue hardship and frustrate SBMS's ability to provide an efficient, effective competitive service to a wide range of customers.

Section 22.903 was never intended to apply to the out of region provision of CLLE service by the cellular affiliate of a BOC. This Motion merely seeks confirmation of that interpretation, an interpretation which is plainly in the public interest. Moreover, the Congressional mandate for regulatory symmetry among similar mobile services further supports grant of this Motion.

Finally, SBMS urges prompt action on this Motion. We believe that prompt action is not only appropriate but necessary, in order to promote the Commission's policy of encouraging competition in the local exchange and wireless markets, and to allow SBMS to compete effectively in local exchange markets that are rapidly becoming more competitive. As discussed above, such

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<sup>54</sup> See Declaratory Order, In the Matter of Partitioning Plan of Bay Springs Telephone Company, PCS PrimeCo, L.P. and Peterson County Communications, L.P., 1995 WL 237334 at ¶ 6 (Chief, Wireless Telecommunications Bureau, April 18, 1995).

competition by numerous companies, including, LECs, IXCs, cable companies, and others is already underway in Rochester, New York and is about to unfold quickly in other markets. These companies are integrating facilities, systems, and personnel so as to offer packages of wireless, local exchange, interexchange, video and other services.

Unless the Commission promptly issues the proposed declaratory ruling, SBMS will be severely disadvantaged in the market for integrated wireless and landline services, and the provision of new customer services by a robust competitor will be delayed and, if delayed, may not materialize.

CONCLUSION

For the foregoing reasons, SBMS respectfully requests that this Motion be granted promptly.

Respectfully submitted,



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June 21, 1995



ECONOMICS AND  
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**APR 20 1999**

BEFORE THE  
STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

**FCC MAIL ROOM**

SBC COMMUNICATIONS INC., )  
SBC DELAWARE INC., )  
AMERITECH CORPORATION, )  
ILLINOIS BELL TELEPHONE COMPANY, )  
d/b/a AMERITECH ILLINOIS, and )  
AMERITECH ILLINOIS METRO, INC. )

Docket 98-0555

)  
)  
Joint Application for approval of the )  
reorganization of Illinois Bell Telephone )  
Company, d/b/a Ameritech Illinois, and the )  
reorganization of Ameritech Illinois Metro, Inc. )  
in accordance with Section 7-204 of The Public )  
Utilities Act and for all other appropriate relief. )

DIRECT TESTIMONY OF CHARLOTTE F. TERKEURST  
ON BEHALF OF  
THE GOVERNMENT AND CONSUMER INTERVENORS (GCI)

The People of the State of Illinois  
The People of Cook County  
Citizens Utility Board

GCI Exhibit 2.0

October 28, 1998

DIRECT TESTIMONY OF CHARLOTTE F. TERKEURST  
ON BEHALF OF THE GOVERNMENT AND CONSUMER INTERVENORS (GCI)

Docket 98-0555

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1 National Association of Regulatory Utility Commissioners representatives on federal and  
2 State efforts to implement the new requirements.

3  
4 I was Manager of the Telecommunications Department at the Missouri Public Service  
5 Commission in 1991-1993. That Department addressed most aspects of  
6 telecommunications regulation in Missouri, including tariff filings, rate design,  
7 depreciation, and quality of service oversight.

8  
9 From 1980 until 1991, I was employed by the California Public Utilities Commission  
10 (CPUC), where I held several positions on the technical energy staff, as an advisor to a  
11 Commissioner, and as an administrative law judge. As an advisor, I dealt with both  
12 energy and telecommunications issues, including state implementation of AT&T's  
13 divestiture. As an administrative law judge, I handled telecommunications matters,  
14 including cases addressing alternative regulation and intraLATA competition for Pacific  
15 Bell Telephone Company and GTE California, and regulatory flexibility for AT&T. For  
16 five semesters, I taught a graduate course entitled "Legal and Regulatory Aspects of  
17 Telecommunications" at Golden Gate University.

18  
19 I have filed testimony or appeared before commissions in the states of California,  
20 Colorado, Illinois, Indiana, Kentucky, Missouri, Ohio, and Texas. I hold a Bachelor of  
21 Science degree in mathematics from the University of Mississippi and a Master of  
22 Science degree in electrical engineering from the University of Illinois at Champaign-

1 Urbana. I have also taken engineering and economics classes at the Los Angeles and  
2 Berkeley campuses of the University of California. A detailed description of my  
3 qualifications and experience is attached to my testimony as Attachment 1.  
4

5 Q. On whose behalf are you testifying in this proceeding?

6 A. I am presenting testimony on behalf of the Government and Consumer Intervenors (GCI),  
7 consisting of the Attorney General of the State of Illinois on behalf of the People of the  
8 State of Illinois, the Cook County State's Attorney on behalf of the People of Cook  
9 County, and the Citizens Utility Board (CUB).  
10

11 B. Summary of testimony

12 Q. Please summarize the testimony you are presenting in this matter.

13 A. The proposed merger between SBC and Ameritech raises grave concerns in a number of  
14 areas. I examine, in particular, quality of service issues (addressed in Section 7-204(b)(1)  
15 of the Public Utilities Act); regulatory issues (Section 7-204(b)(5)); effects on  
16 competition (Section 7-204(b)(6)); the flow-through of merger benefits (Section 7-  
17 204(c)); and merger terms and conditions (Section 7-204(f)). The supposed benefits of  
18 the merger must be weighed against the risks. In this case, the risks of the merger, as it is  
19 proposed, outweigh the benefits.  
20

21 While the proposed merger undoubtedly would have the potential for significant cost  
22 savings and synergies, as the entities consolidate their operations and reap the benefits of

1        their enhanced purchasing power, the Applicants exaggerate the benefits of the merger to  
2        consumers. The merger as proposed also threatens to undermine the significant progress  
3        this Commission has made toward opening local markets to competition, maintaining  
4        quality of service and informed choices for all customers, ensuring that network  
5        investment in the basic infrastructure continues, advancing Illinois' efforts in telephone  
6        number administration, and protecting basic service rates for residential consumers  
7        during the transition to effective competition.

8  
9        Many of the supposed benefits of the merger may be obtained through steps short of an  
10       acquisition and in ways that would not carry with them the broad risks inherent in the  
11       merger. Further, operating efficiencies, innovations, and the development of new  
12       products and services could be achieved more reliably through the opening of SBC's and  
13       Ameritech's local markets and the development of robust competition.

14  
15       There is significant concern that SBC may allow the quality of service and the level of  
16       network investment in Ameritech states to deteriorate and use the resulting cost savings  
17       for investments elsewhere. In addition, SBC has made clear that it plans to raid the  
18       employee resources of Ameritech to staff the expansion plans in other states. As another  
19       concern, the multi-state consolidation and broad out-of-region expansion plans would  
20       inevitably divert management attention from the provisioning of basic service in Illinois.

21

1 Contrary to the Applicants' claims, the reduction in the number of large local exchange  
2 carriers could tend to reduce innovation and the development of other "best practices"<sup>1</sup>  
3 that could then diffuse throughout the country. This would tend to delay, rather than  
4 expedite, the introduction of new products and services. Additional mergers, spawned by  
5 this merger would exacerbate this reversion to "Bell-shaped" monolithic research and  
6 development efforts.

7  
8 The Commission should make clear that misleading and overly aggressive marketing  
9 practices should not be considered to be "best practices" for importation in Illinois. Any  
10 revenue enhancements, which SBC touts as a central benefit of the proposed merger,  
11 should not come as the result of misleading customers. Particularly with the lack of  
12 widespread competitive alternatives, local exchange companies must be mindful of their  
13 continuing public utility role in educating customers. The importation of abusive  
14 marketing practices, which have been alleged in California, would lead to customer  
15 dissatisfaction and would force the Commission to micromanage SBC's marketing  
16 practices.

17  
18 In Section III.A of this testimony, I describe the minimal amounts of local competition  
19 that currently exist in the Ameritech and SBC regions. While competitive gains in

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<sup>1</sup> SBC uses the term "best practices" to refer to "the best ideas and practices developed through years of experience by the telephone and wireless subsidiaries of four different companies--SBC, Ameritech, Telesis and SNET—in addition to ideas developed through working with numerous foreign carriers." Merger of SBC Communications Inc. and Ameritech Corporation, Description of the Transaction, Public Interest Showing and Related Demonstrations (FCC Merger Filing), filed with the FCC, July 24, 1998, at 46.