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April 29, 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**BY HAND DELIVERY**

**EX PARTE**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, S.W., Room 8B201  
Washington, D.C. 20554

EX PARTE OR LATE FILED

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

Dear Ms. Salas:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206(b)(2), Antoinette Cook Bush of Skadden, Arps, Slate, Meagher & Flom LLP, counsel to Ameritech Corporation ("Ameritech") hereby submits this notice of an ex parte presentation in the above-referenced permit-but-disclose proceeding. On April 28, 1999, Ms. Bush, Lynn Starr, Executive Director, Federal Relations, of Ameritech, and Michael Kellogg of Kellogg, Huber, Hansen, Todd & Evans met with Christopher Wright, General Counsel, and Suzanne Tetreault.

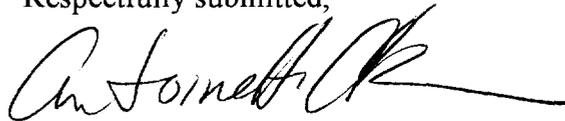
The substance of the presentation made by Ms. Bush, Ms. Starr and Mr. Kellogg is attached hereto.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Antoinette Cook Bush". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Antoinette Cook Bush  
Counsel for Ameritech

cc: Christopher J. Wright  
Suzanne Tetreault

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Washington, D.C. 20554

**EX PARTE**

Re: Applications of SBC Communications Inc. and  
Ameritech Corp. For Transfer of Control (CC Docket  
No. 98-141)

Dear Ms. Salas:

We are taking this opportunity to respond to the arguments of the Alarm Industry Communications Committee ("AICC") in its ex parte letter dated April 13, 1999 (the "Letter").

AICC contends that the Commission should impose as a condition for the approval of the application for transfer of control a requirement that SecurityLink from Ameritech, Inc. ("SecurityLink") be divested in its entirety prior to the consummation of the merger of SBC and Ameritech. AICC's request is based on its unsupported argument that Ameritech, which all parties and the Commission agree is permitted to engage in the provision of alarm monitoring services under Section 275 of the Communications Act of 1934, as amended, will somehow lose its grandfathered status if it merges with SBC. AICC cites neither case law nor statutory support for its reading of Section 275, and nothing in Section 275 itself lends any support to such a conclusion.

Most of the arguments advanced by the AICC have been put forth before and fully answered by SBC and Ameritech.<sup>1</sup> The definitive response is that AICC's argument is contrary to the plain language of Section 275(a)(2). Section 275(a)(1), on which AICC relies, provides that "[n]o Bell operating company or affiliate shall engage in the provision of alarm monitoring services before [February 9, 2001]."<sup>2</sup> However, Section 275(a)(2), whose language AICC refers to but never quotes, provides that "[p]aragraph (1) does not prohibit or limit the provision, directly or through an affiliate, of alarm monitoring services by a Bell operating company that was engaged in providing alarm monitoring services as of November 30, 1995, directly or through an affiliate."<sup>3</sup> The clear language of Section 275(a)(2) creates a permanent exception to the prohibition in Section 275(a)(1) for any Bell operating companies ("BOCs") that were engaged, directly or through an affiliate, in providing alarm monitoring services as of that date. It is undisputed that the Ameritech Bell operating companies,<sup>4</sup> through their affiliate, SecurityLink's corporate predecessor, were providing alarm monitoring services prior to November 30, 1995, and indeed the Commission has found that Ameritech, and by implication its BOCs and SecurityLink, are exempted under Section 275(a)(2).<sup>5</sup> After Ameritech and SBC merge, the relationship among those companies will not change.

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<sup>1</sup> See Joint Opposition of SBC Communications Inc. and Ameritech Corporation to Petitions to Deny and Reply Comments, CC Docket No. 98-141, at 88-91(Nov. 16, 1998) ("Reply").

<sup>2</sup> 47 U.S.C. § 275(a)(1).

<sup>3</sup> 47 U.S.C. § 275(a)(2).

<sup>4</sup> Those are Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company and Wisconsin Telephone Company, and their successors. See 47 U.S.C. § 153(35).

<sup>5</sup> *Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services*, 12 FCC Rcd. 3824 at ¶ 33 (1997). The Commission's finding that "Ameritech" qualified for "grandfathered" treatment under 275(a)(2) necessarily included not only Ameritech but SecurityLink and the various Ameritech Bell operating companies.

Ameritech will continue to exist (albeit as a subsidiary of SBC), the Ameritech Bell operating companies will continue to exist as subsidiaries of Ameritech, and SecurityLink will continue to be an affiliate of those companies. Therefore, the grandfather clause in Section 275(a)(2) will continue to apply by its plain language.

AICC's contrary argument -- that the general prohibition on BOCs providing alarm monitoring services somehow overrules the specific exemption -- is contrary to principles of statutory interpretation and directly refuted by the language of Section 275(a)(2). It is, of course, a well-settled legal maxim that where Congress has enacted a statute containing both general and specific language, the specific language prevails in the event of any apparent conflict.<sup>6</sup> AICC's argument is also directly refuted by the language of Section 275(a)(2), which states that "[p]aragraph (1) does not prohibit or limit the provision, directly or through an affiliate, of alarm monitoring services by a [grandfathered] Bell operating company . . . ." There is no question that this exception applies to the Ameritech BOCs today and that it will continue to apply to them after the merger. Since the SBC BOCs will be affiliated with the grandfathered Ameritech BOCs after the merger, the plain language of Section 275(a)(2) will permit the SBC BOCs to retain Ameritech's affiliation with SecurityLink.

This conclusion is consistent with the Act and Commission precedent. Specifically, as a successor to Ameritech's interests, SBC is permitted by Section 275 to own SecurityLink. Section 153(4) defines the term "Bell operating company" as one of the companies named in Section 153(4)(A) and "any successor or assign of any such company that provides wireline telephone exchange service . . . ."<sup>7</sup> When a company acquires a Bell operating company, it becomes the "successor or assign" of the acquired BOC under Section 153(4)(B).<sup>8</sup> SBC's indirect acquisition of the Ameritech BOCs is no

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<sup>6</sup> See Basic v. United States, 446 U.S. 398, 406 (1980); Security Pac. Nat'l Bank v. Resolution Trust Corp., 63 F.3d 900, 904, cert. denied, 517 U.S. 1103 (9th Cir. 1995).

<sup>7</sup> 47 U.S.C. § 153(4)(A), (B).

<sup>8</sup> See In re Implementation of the Non-Accounting Safeguards of Sections 271 & 272 of the Communications Act of 1934, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 21905, ¶ 69 n. 149

(continued...)

different. Upon consummation of the merger, SBC will be a successor to Ameritech's interests, including the Ameritech BOCs' grandfathered rights under Section 275(a)(2) to provide alarm monitoring services.<sup>9</sup>

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<sup>8</sup> (...continued)  
(1996) ("Non-Accounting Safeguards Order") (stating that when one BOC acquires another, pursuant to 47 U.S.C. § 153(4)(B), "the surviving BOC shall become the successor or assign of the acquired BOC"); see also In re Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, Memorandum Opinion and Order, 12 FCC Rcd 20543 ¶ 349 n.896 (1997) (noting that section 153(4) explicitly states that "'Michigan Bell Telephone' and its successor (Ameritech Michigan) is a 'Bell operating company'" (quoting 47 U.S.C. § 153(4)); id. ¶ 373 (recognizing that "any successor or assign of a Bell operating company" is subject to the section 272 requirements in the same manner as the BOC") (quoting Non-Accounting Safeguards Order, 11 FCC Rcd. at 22054). Cf. 47 U.S.C.A. § 251(h)(1) (defining "incumbent local exchange carrier" as including a person or entity that became a successor or assign of a member of the exchange carrier association on or after February 8, 1996); In re Deployment of Wireline Services Offering Advanced Telecommunications Capability, Memorandum Opinion and Order and Notice of Proposed Rulemaking, CC Docket No. 98-147, FCC 98-188, 1998 WL 458500, ¶ 113 (released Aug. 7, 1998) (tentatively concluding that if an incumbent local exchange carrier sells or conveys to an advanced services affiliate central offices or real estate where there is telecommunications service equipment being used, then the affiliate would become an assign of the incumbent).

<sup>9</sup> To effect the merger SBC will create a new wholly-owned subsidiary, and Ameritech will merge into and with the newly-formed subsidiary with Ameritech surviving under the control of SBC. See SBC/Ameritech Merger Applications, Agreement and Plan of Merger (attachment to Applications). The Communications Act could not be clearer: Ameritech and its successors and assigns satisfy the conditions of Section 275(a)(2). See also 47 U.S.C. § 153(4) (defining Bell operating company). Even if the Ameritech BOCs

(continued...)

AICC's second argument is that SBC could not have bought SecurityLink on a standalone basis. This fact is true but irrelevant. SBC is buying Ameritech and its subsidiaries, including the Ameritech BOCs and SecurityLink. The grandfathered rights run to the Ameritech BOCs, not SecurityLink. Those rights are not lost by the Ameritech BOCs in the event of a merger or transfer of control, and the rights run to all of their affiliates (including SecurityLink and, after the merger, SBC entities). "Control" by a particular party is simply not a statutory condition for grandfathering, and nothing elsewhere in the Act prohibits the transfer of control of SecurityLink to SBC. The application of Section 275(a)(2) is simple – a Bell operating company or its affiliate were either providing alarm monitoring services in 1995 or they were not.

AICC also argues that the merger will somehow "significantly expand" the exception in Section 275(a)(2) to the in-region SBC states, thus effectively gutting the prohibition in Section 275(a)(1). This argument, too, is incorrect. It certainly has no basis in the language of the Act and particularly the language of Section 275(a), which imposes no size limitation on alarm monitoring entities, whether BOCs or their affiliates, or on the geographic area in which grandfathered entities can provide alarm monitoring service. The fact is that no expansion of the exception will result from the merger because SecurityLink already operates in each of the 50 states, including the SBC states, plus the District of Columbia and Puerto Rico. Congress made no exception in Section 275 between in-region and out-of-region states. The grandfather clause runs to specific BOCs and any party affiliated with those BOCs. By its plain terms, therefore, it will apply to the SBC BOCs after the merger.

AICC's letter adds one final, but irrelevant, twist to the argument it made last October. AICC now argues that this situation is analogous to that in the Bell Atlantic/GTE merger. Specifically, AICC claims that GTE will lose its ability to provide interLATA service in the Bell Atlantic states until the interLATA restrictions on Bell Atlantic are lifted under Section 271 of the Act. AICC argues that the same reasoning should apply here: under Section 275, Ameritech should lose its authority to provide

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<sup>9</sup> (...continued)  
were folded into SBC or one of its operating entities after the merger, the exception in Section 275(a)(2), not the prohibition in Section 275(a)(1), would continue to apply to SecurityLink because the SBC entity would be the "successor or assign" of the Ameritech BOCs under § 153(4).

alarm monitoring services until SBC gains that authority through the expiration of the prohibition in Section 275(a)(1).

In fact, the Bell Atlantic/GTE analogy demonstrates precisely why the AICC's argument is wrong. Section 271 does not grant GTE or any other ILEC authority to provide interLATA service; indeed it does not even refer or apply to non-BOC ILECs such as GTE. Rather, the prohibition in Section 271 applies to the BOCs and precludes the BOCs and their affiliates from providing in-region interLATA services. Once GTE becomes affiliated with Bell Atlantic, GTE will also be subject to the prohibition in the in-region Bell Atlantic states. In contrast, Ameritech BOCs and their affiliates enjoy specific permission under Section 275(a)(2) to provide alarm monitoring services, either directly or through an affiliate. Once SBC and Ameritech merge, the SBC BOCs will be affiliated with Ameritech and thus enjoy the same privilege under Section 275(a)(2). If the statutory disabilities extend to new affiliates (as in Section 271), then so too must the statutory benefits (as in Section 275). Thus, the conclusion to be drawn from the Bell Atlantic/GTE analogy is precisely the opposite of that argued for by AICC.

The AICC's argument should be given short shrift for all the reasons set forth above and in the Applicants' Reply. Congress carved out an express exception in Section 275(a)(2) to the general prohibition of BOC provision of alarm monitoring precisely to ensure that the 1996 Act would not result in forced divestitures. There is no reason in law or policy to force such a divestiture here.<sup>10</sup> Thus, AICC's request for

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<sup>10</sup> AICC suggests that it will somehow be detrimentally affected because SecurityLink will be affiliated with 13 BOCs after the merger instead of the five with which it is presently affiliated. The fact is that AICC's members will face in SecurityLink the same competitor before as after the merger, so the merger does not place the AICC members in any worse position. The same competitive safeguards will be available under Section 275, and the number of affiliated BOCs is truly a red herring, since in the four years that SecurityLink and its predecessor have been in the alarm services business not one of AICC's thousands of members has filed a complaint alleging misuse of the local loop bottleneck by an affiliated BOC.

Ms. Magalie Roman Salas  
April 28, 1999  
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divestiture of Ameritech's alarm monitoring business should be denied.

Sincerely,

*Antoinette Cook Bush*

Antoinette Cook Bush *MS*

cc: Christopher Wright  
Thomas Krattenmaker  
Robert Atkinson  
Carol Matthey  
Michelle Carey  
William Dever