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May 18, 1999

VIA HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Applications for Consent to the Transfer of Control of
Ameritech Corporation to SBC Communications, Inc.
CC Docket No. 98-141

Dear Ms. Salas:

Pursuant to Section 1.1206 of the Commission's rules, the Alarm Industry Communications Association ("AICC"), by its undersigned counsel, hereby gives notice that on May 17, 1999, Robert Bonifas, President, Alarm Detection Systems, Inc., Danny Adams, Partner, Kelley Drye and Warren, LLP and the undersigned met with Sarah Whitesell, Legal Advisor to Commissioner Gloria Tristani, to discuss the above-captioned proceeding. The attached letter, which was distributed at the meeting, summarizes the presentation.

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In accordance with Section 1.1206(b), an original and one copy of this notice is being provided.

Sincerely,



Steven A. Augustino

SAA:pab

Enclosures

cc: FCC staff members listed above

DUPLICATE

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April 13, 1999

VIA HAND DELIVERY

Mr. Thomas Krattenmaker
Mr. Robert Atkinson
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Applications for Consent to the Transfer of Control of
Ameritech Corporation to SBC Communications, Inc.
CC Docket No. 98-141

Dear Messrs. Krattenmaker and Atkinson:

On April 1, 1999, Chairman Kennard sent a letter to the CEOs of Ameritech Corporation ("Ameritech") and SBC Communications, Inc. ("SBC") concerning their pending application for transfer of control of licenses and authorizations held by Ameritech. In the letter, the Chairman informed the parties that the application raised "serious concerns" regarding its consistency with the public interest. The Chairman instructed the companies to discuss with you conditions that may address the public interest concerns raised by SBC's proposed acquisition of Ameritech.

I am writing on behalf of the Alarm Industry Communications Committee ("AICC") to discuss one issue requiring a merger condition in this case. Specifically, if the merger is consummated as proposed by SBC and Ameritech, SBC would unlawfully be providing alarm monitoring services in contravention of Section 275 of the Communications Act, as amended. 47 U.S.C. § 275. Moreover, SBC's acquisition would eviscerate Section 275's intended transition period for alarm monitoring and render the statute meaningless for an area encompassing nearly one-third of the nation's access lines. Therefore, as a condition precedent to consummation of the merger, the Commission must require that Ameritech divest ownership

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of its wholly-owned alarm monitoring subsidiary, SecurityLink from Ameritech, Inc. ("SecurityLink").

Section 275(a)(1) establishes a broad prohibition on a Bell Operating Company ("BOC") engaging, directly or through an affiliate, in the provision of alarm monitoring services for five years from the date of the 1996 Act. The purpose of this provision is to provide a transition period during which, it was expected, local competition would develop sufficiently that alarm monitoring providers would not be dependent upon the BOC's bottleneck facilities to provide service. As the FCC and the Court of Appeals have recognized, Section 275(a)(1) applies to SBC and the SBC BOCs.

As a result, Section 275 indisputably prohibits SBC, directly or through an affiliate, from "engaging in the provision of alarm monitoring services." 47 U.S.C. § 275(a)(1). This restriction prohibits, for example, SBC from:

- owning or operating an alarm monitoring service entity;
- obtaining more than a 10% equity interest in an alarm monitoring service entity;
- reselling alarm monitoring services;
- "intertwining its interests" with an alarm monitoring service entity; or
- obtaining a "financial stake in the commercial success" of an alarm monitoring service entity.¹

Clearly, Section 275(a)(1) prohibits SBC from purchasing SecurityLink directly from Ameritech. In addition, the Act clearly prohibits SBC from intertwining itself with SecurityLink, such as by reselling SecurityLink services or obtaining various financial interests in SecurityLink's business. Yet, despite these prohibitions, if SBC obtains control of Ameritech, SBC would achieve the exact same result: it would have direct control over SecurityLink's operations and receive the financial benefit of SecurityLink's provision of alarm monitoring services.

SBC and Ameritech claim that, because SBC is purchasing all of Ameritech, it becomes a "successor or assign" to Ameritech's grandfathered status pursuant to Section 275(a)(2). Specifically, Section 275(a)(2) permits a BOC that was engaged in the provision of alarm monitoring as of November 30, 1995 to continue providing its alarm monitoring services, subject to limitations. 47 U.S.C. § 275(a)(2). The Commission has held that only Ameritech

¹ *Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services*, 12 FCC Rcd 3824, 3840-42 (1997) (*Alarm Monitoring Order*).

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met the requirement of Section 275(a)(2).² For several reasons, SBC and Ameritech may not rely on this grandfathering provision to avoid divestiture.

First, the Commission has explicitly concluded that this provision “has no applicability to non-grandfathered BOCs” such as SBC.³ Instead, the relevant provision for SBC is Section 275(a)(1), which prohibits the provision of alarm monitoring services “directly or through an affiliate.”

Second, the rights under Section 275(a)(2) are not transferable interests. They cannot be assigned by Ameritech to another entity. Ameritech, for instance, could not sell SecurityLink to SBC, because the interest does not pass with SecurityLink. The grandfathering, to the extent it exists, is provided only to the Ameritech BOCs. Thus, even if Section 275(a)(2) were construed to continue to apply to the five Ameritech operating companies, that still would not permit the SBC BOCs – which are subject to a different provision – to provide alarm monitoring services.

Third, acceptance of SBC and Ameritech’s “successor or assign” argument would significantly expand the grandfathering provision of Section 275(a)(2). At the time Section 275 was enacted, Ameritech had recently obtained control of SecurityLink. All of the other BOCs, including SBC, had no alarm monitoring interests at all. Thus, the effect of the Act was to prohibit the combination of an alarm provider and the dominant local exchange carrier in all but five Ameritech states (and, by application of Section 275(a)(2), to limit Ameritech to “growth by competition”). If SBC and Ameritech are not required to divest SecurityLink, Section 275 will have been nullified for three of the original seven Regional Bell Operating Companies, expanding to 12 states and nearly one-third of the nation’s access lines the situation where the second largest alarm company is affiliated with the dominant local exchange carrier. Such a significant expansion of the exception would undermine Section 275’s transition period and render Section 275(a)(1) meaningless for the SBC BOCs. A BOC cannot simply escape statutory prohibitions by acquisition of an unconstrained affiliate.

That transfer of such restrictions is prohibited is further supported by actions in the other pending Bell Company merger proceeding now facing the Commission. In the Bell Atlantic-GTE merger proposal, GTE, by operation of the 1996 Act, is permitted to provide interLATA interexchange services, while its proposed merger partner, Bell Atlantic, is prohibited pursuant to Section 271 of the Act from providing interLATA services. Even though Bell Atlantic would become a “successor or assign” to GTE if the merger is consummated, both Bell Atlantic and GTE recognize that Bell Atlantic *does not* succeed to GTE’s interLATA authority. Instead, it is Bell Atlantic’s restriction, not GTE’s, that would govern the resulting combination.

² *Id.* at 3839.

³ *Id.* at 3843.

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Accordingly, Bell Atlantic and GTE jointly proposed that existing interLATA customers of GTE must move to another carrier (and requested only a brief waiver so that customers would not have service disconnected before they could switch).⁴ Importantly, the parties recognize that the provisions applicable to GTE do not even allow it to continue to provide service to its own customers, within GTE service territory, much less provide service to GTE customers in Bell Atlantic territory.

As in the Bell Atlantic-GTE example, the presence of the Ameritech grandfathering provision does not trump the restriction applicable to SBC. Thus, although (like GTE) Ameritech is authorized to provide alarm monitoring services now, that does not mean that a company with a more restrictive provision, such as SBC, may evade its own restriction through a combination with Ameritech. Both provisions must be considered, and in this case, that would result in recognition of the fact that SBC is prohibited from engaging in the activities of its proposed affiliate, SecurityLink. Accordingly, divestiture of SecurityLink is necessary in order to comply with Section 275(a)(1).

AICC's proposed remedy is long-standing and accepted response to situations such as these. Divestiture is a common condition applied to cure regulatory violations, particularly in the context of proposed mergers. It has been used by the Commission to remedy prohibited cross-ownership interests,⁵ unauthorized transfers of control,⁶ and violations of Section 214's requirements.⁷ Divestiture also was agreed to in the MCI-WorldCom merger to address potential public interest concerns raised by that merger.⁸ Even in the application under consideration, SBC and Ameritech propose divestiture of certain cellular properties to comply with the Commission's rules.⁹ Divestiture is the appropriate remedy for the Section 275 violation as well.

⁴ See Letter from S. Bradbury, GTE and M. Glover, Bell Atlantic, to Thomas Krattenmaker, FCC, filed in CC Docket No. 98-184, February 24, 1999.

⁵ See, e.g., *Lake Telephone Company*, 41 F.C.C.2d 335 (1973); *Fort Mill Telephone Company*, 25 F.C.C.2d 748 (1970).

⁶ See, e.g., *The Petroleum V. Nasby Corporation*, 10 FCC Rcd 6029 (1995); *Spanish International Communications Corporation*, 2 FCC Rcd 3336 (1987).

⁷ See, e.g., *Comark Cable Fund III d/b/a CCI Cablevision v. Northwestern Indiana Telephone Company, et al.*, 100 F.C.C.2d 1244 (1985); *Eagle Telecommunications, Inc.*, 54 Rad. Reg. 2d (P&F) 1124 (1983).

⁸ See *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, FCC 98-225, ¶¶ 151-56 (Sept. 14, 1998).

⁹ Merger Applications at 59-60.

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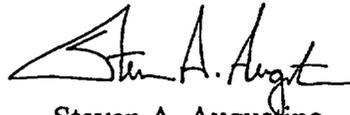
Finally, AICC notes that the Commission has pending before it several cases in which it is considering divestiture of Ameritech's unlawful asset purchases.¹⁰ Ameritech has argued in each of the proceedings that it would be difficult and/or unfair to identify the customers (and assets) it unlawfully acquired and require divestiture only of those customers (and assets). The divestiture necessary to comply with Section 275 in this proceeding, however, affects the entire alarm business of SecurityLink. Therefore, although AICC disputes Ameritech's arguments regarding divestiture in connection with its unlawful acquisitions, it is noteworthy that none of the concerns are raised in this proceeding. Indeed, divestiture of SecurityLink in its entirety effectively would moot the questions pending in the Show Cause proceedings.

¹⁰ See *Enforcement of Section 275(a)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Against Ameritech Corporation*, Memorandum Opinion and Order on Remand and Order to Show Cause, FCC 98-226 (rel. Sept. 25, 1998), ¶ 1 ("Second Show Cause Order"); *Enforcement of Section 275(a)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Against Ameritech Corporation*, Memorandum Opinion and Order to show Cause, FCC 98-148 (rel. July 8, 1998), ¶ 1 ("First Show Cause Order"). The Commission also has yet to act in response to Ameritech's unlawful purchases of the Republic and Rollings alarm monitoring assets. See Fourth Emergency Motion of the Alarm Industry Communications Committee for Orders to Show Cause and to Cease and Desist, CCBPol 97-11 (filed Oct. 8, 1997).

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For all of the above reasons, AICC submits that the Commission must require SBC and Ameritech, before they may consummate their proposed merger, to divest ownership of SecurityLink to an independent, non-affiliated entity.¹¹

Sincerely,



Steven A. Augustino
Counsel to the Alarm Industry
Communications Committee

SAA:pab

cc: Magalie R. Salas (2 copies for file)
Chairman William Kennard
Commissioner Susan Ness
Commissioner Gloria Tristani
Commissioner Michael Powell
Commissioner Harold Furchtgott-Roth

¹¹ Further, divestiture must be made to a truly independent entity. *See* Motion to Require Full Disclosure of Relationship with Smith Alarm, CC Docket No. 98-141 (filed December 3, 1998) (discussing concerns about potential "sham" divestiture).