

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
Applications for Consent	)	
to the Transfer of Control of Licenses and	)	
Section 214 Authorizations from	)	CC Docket 98-141
	)	
AMERITECH CORPORATION,	)	
Transferor	)	
	)	
to	)	
	)	
SBC COMMUNICATIONS INC.,	)	
Transferee	)	

**COMMENTS OF THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN**

**I. Introduction**

On July 24, 1998, SBC Communications Inc. (SBC) and Ameritech Corporation (Ameritech) filed applications with the Federal Communications Commission (FCC) to transfer control of Ameritech's FCC authorizations to SBC. On July 30, 1998, the FCC issued a public notice in CC Docket No. 98-141 requesting petitions to deny or comments regarding the application and oppositions to the petitions or responses to the comments. The Public Service Commission of Wisconsin (Wisconsin Commission) filed ex parte comments in this proceeding on May 19, 1999, expressing a number of concerns.

On July 1, 1999, SBC and Ameritech (Applicants) submitted proposed conditions to the FCC in connection with their application to transfer licenses and authorizations. These proposed

conditions are intended by the Applicants to address and mitigate concerns about claimed competitive and consumer benefits of the combination expressed in a letter from FCC Chairman William E. Kennard dated April 1, 1999. On July 1, 1999, the FCC issued a public notice in this proceeding establishing a pleading cycle for comments on conditions proposed by SBC and Ameritech for their pending application to transfer control.

## **II. Comments of the Wisconsin Commission**

The Wisconsin Commission believes that in general the proposed conditions address the concerns expressed in its May 19, 1999, comments. These proposed conditions address the following areas of concerns expressed in the Wisconsin Commission's comments:

1. Performance measures, benchmarks, and reporting obligations as they relate to interconnection and resale.
2. Testing of the operational support systems (OSS) and verification of commercially feasible access thereto, as related to interconnection and resale.
3. Deployment of advanced technology.
4. Adequacy of information available through the FCC's Automated Reporting Management Information System (ARMIS) for purposes of benchmarking the performance of the merged company to other similar companies.
5. Factors to consider in making a determination about the public interest mandate including promotion and preservation of competition, consumer choice, promotion of universal service, and promotion of telecommunications services in geographical areas with diverse income populations.

6. Service quality to retail customers.
7. Compliance reporting.

In addition to these areas, the proposed conditions also address the offering of unbundled network element (UNE) platforms and tariffs providing for shared transport to competitors.

While the Wisconsin Commission finds that the conditions improve the level of satisfaction of public interest concerns respecting the transaction, it does have a few specific comments or concerns regarding the conditions. As a result of these concerns and in response to the July 1, 1999, public notice, the Wisconsin Commission submits the following comments for the FCC's consideration in determining whether it is in the public interest to approve the merger subject to conditions. These comments address the following areas: (A) state authority; (B) annual compliance audit requirement; (C) in-state presence; (D) advanced services deployment; and (E) § 706 docket.

#### **A. State Authority**

In considering the proposed conditions, the Wisconsin Commission requests that the FCC clarify that its intent is not to preempt or supersede specific state authority provided in the Communications Act of 1934 as amended by the Telecommunications Act of 1996 (Communications Act) and pursuant to state law. In giving its consent to transfer of control of licenses and § 214 authorizations from Ameritech to SBC, the FCC will make a determination as to a number of conditions. These conditions involve a number of sections of the Communications Act including §§ 152(b), 221, 251, 252, 253(b), 254, and 271. In these sections, the Communications Act gives states certain authority or reserves to the states traditional areas of local concern. The Wisconsin Commission is also concerned that the specific

enforcement mechanisms in the proposed conditions may preempt or supersede this state authority or unnecessarily cause blurring of appropriate jurisdictional boundaries.

Paragraph 63 of the proposed conditions recognizes that the specific enforcement mechanisms established by the proposed conditions do not supersede the FCC's enforcement powers under the Communications Act. Paragraph 69 of the proposed conditions recognizes that the proposed conditions shall supplement but not replace similar conditions imposed by state commissions that have the authority to approve such mergers. Similarly, recognition should be given to state authority in states that have no jurisdiction to approve such mergers but do have general authority in areas covered by the proposed conditions.

The Wisconsin Commission requests that the FCC consider adding an ordering provision recognizing state authority under the Communications Act and general authority under state law. The Wisconsin Commission suggests the following language be reflected in the final FCC decision:

The Conditions, including specific enforcement mechanisms, are not intended to abrogate, supersede, limit, or otherwise replace state authority under the Communications Act or appropriate state law.

Examples of areas where there are concerns that application of the proposed conditions may supersede state authority under the Communications Act include:

1. Establishing interim uniform cost-based prices for conditioning xDSL loops.
2. Developing OSS application-to-application interfaces, graphical user interfaces, and OSS business rules.

3. Conditions for providing xDSL and advanced services deployment on a nondiscriminatory basis.
4. Phase-in period for OSS with respect to xDSL and advanced services deployment.
5. Filing of interim proxy rates with respect to xDSL and advanced services deployment.

Examples of areas where there are concerns that application of the proposed conditions may unnecessarily or impermissibly supersede state authority pursuant to the state law include:

1. Furnishing of advanced services by a separate affiliate.
2. Service quality standards.

In fact, the Wisconsin Commission has pending a data service affiliate certification proceeding examining these very issues.

## **B. Annual Compliance Audit Requirement**

Paragraph 62d of the proposed conditions provides that Applicants shall annually engage an independent auditor to verify compliance with the proposed conditions. Applicants shall submit preliminary audit requirements, including the proposed scope of the audit and the extent of compliance and substantive testing. According to this condition, an agreed-upon-procedures (AUP) engagement audit shall be used to audit compliance with the condition requiring a separate affiliate to provide advanced services. The proposed condition recognizes that an AUP engagement audit requires that both the FCC and Applicants must consent to the audit methods and procedures to be used, and that the independent auditor must accept those methods and procedures.

Since these separate affiliates will be certified by and require approval of each applicable state commission, the Wisconsin Commission requests that the FCC consider including each state commission in the planning and audit process. This is similar to the process being followed for biennial audits of separate affiliates under § 272 of the Communications Act.

In addition to including state commissions in the audit process, the Wisconsin Commission wants to point out that under an AUP engagement audit, according to American Institute of Certified Public Accountants (AICPA) standards, the primary user, the FCC, is responsible for the nature, timing, and extent of the audit procedures. In agreeing to an audit process for compliance with the advanced services separate affiliate requirement, the FCC should make sure that having Applicants develop the scope and extent of the compliance and substantive testing is consistent with applicable AICPA standards.

### **C. In-state Presence**

In its May 19, 1999, comments, the Wisconsin Commission expressed the concern that as a result of the merger in-state headquarters will be closed and jobs will be lost within the state and region. The concern is that as a result of these actions, Ameritech's ability to provide adequate service to all of its customers and competitors in a timely manner may be negatively affected. In addition, state commissions are concerned that the goals of reducing costs and eliminating duplicate staff may conflict with the commitment to not reduce the number of employees. While SBC has made commitments regarding in-state headquarters and employee levels, this may not necessarily insure adequate and timely service.

The Wisconsin Commission, therefore, repeats its suggestion that in determining what conditions it may want to impose in approving the merger, the FCC may want to make sure that

there will be sufficient controls in place to ensure that Applicants will maintain adequate technical, financial, and managerial resources in their service areas.

#### **D. Advanced Services Deployment**

The Wisconsin Commission has the following two concerns regarding the deployment of advanced services:

1. The duty of non-discrimination respecting competitors should apply across all of the 13 states in an SBC/Ameritech entity, or as to all competitors seeking services from each state operating company.

2. The interim rate levels for advanced services should not intrude into areas of local exchange service provisioning subject to price setting by the states pursuant to state law and § 252 of the Communications Act.

Paragraphs 21 through 23 regarding OSS and loop pre-qualification generally, are unclear as to whether the duty of non-discrimination respecting competitors applies across all of the 13 states in an SBC/Ameritech entity, or as to all competitors seeking services from each state operating company. The Wisconsin Commission believes the FCC means the latter, and should so clarify. The duty of non-discrimination should not recede to the lowest level among the 13 states when in some of those states high quality is technically feasible and may be reasonably required from the incumbent LEC.

The interim rate levels proposed for line conditioning (§ 24), line sharing (§34b.), and OSS discounts (§ 35), appear to intrude into areas of local exchange service provisioning subject to price setting by the states pursuant to § 252 of the Communications Act. Furthermore, there is no record that demonstrates that these rates are economically viable or compatible with the

requirements of § 252 or any applicable state law. While it may be appropriate as a condition of the merger that the Applicants submit such rates and discounts in tariffs and interconnection agreements filed with state commissions, the determination of the ultimate acceptability of those submitted rates and discounts is nonetheless the responsibility of the state commissions under their state laws and the provisions of § 252.

**E. § 706 Docket**

The FCC has pending before it in a Notice of Proposed Rulemaking (NPRM) in CC Docket 98-147 (FCC 98-188), the issues of “Deployment of Wireline Services Offering Advanced Telecommunications Capability” (§ 706 NPRM). Comments and reply comments were submitted by numerous parties in the Fall of 1998. Concerns were raised by many commenters, including several State Commissions, regarding the efficacy of a separate subsidiary approach to advanced services deployment by ILECs. Those concerns included: the need for coordinated joint State and Federal responsibility to implement § 706; universal service implications, disinvestment in the public switched network; compliance with separate subsidiary requirements; interconnection deficiencies that could stymie advanced services; creation of new monopoly power; and preemption of state authority to regulate telecommunications services. Without addressing those concerns in an order in the § 706 NPRM the proposed merger conditions implement the separate subsidiary requirements put forth for comment in that docket. While the proposed conditions appear to have addressed, to varying degrees, some of these concerns, there is no order of the FCC that relates the actions taken in these conditions and the proposals in the § 706 NPRM.

#### **IV. Conclusion**

As the Wisconsin Commission noted in its original comments, the FCC has a difficult decision to make. It must decide whether the merger transaction combining two of the largest local exchange carriers is in the public interest and if any conditions should be imposed. While the Wisconsin Commission believes that, overall the conditions ameliorate many concerns expressed by the FCC and this Commission with respect to potential public interest harms and questions about the claimed competitive and consumer benefits of the merger, there are still important issues, as discussed above, that the FCC should consider in making its final decision regarding the merger.

Dated at Madison, Wisconsin, July 15, 1999.

By the Commission:

/s/ Lynda L. Dorr

Lynda L. Dorr

Secretary to the Commission

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