

**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 Ameritech)
Corporation, Transferor, to SBC)
Communications, Inc., Transferee.)
)

CC Docket No. 98-141

**COMMENTS OF
THE OHIO CONSUMERS' COUNSEL
ON PROPOSED CONDITIONS**

I. Introduction

Pursuant to Public Notice DA 99-1305, Robert S. Tongren, in his capacity as the Ohio Consumers' Counsel (OCC) on behalf of the residential telephone consumers of the State of Ohio¹, offers these comments on the conditions agreed to by SBC Communications, Inc. (SBC), Ameritech Corporation (Ameritech), and the Commission Staff, intended to lead to Commission approval of the merger at issue here. The OCC submits that the adoption of these conditions -- subject to some adjustment and in combination with conditions imposed in the Ohio proceeding -- would allow the OCC to

¹ See Ohio Revised Code Chapter 4911.

withdraw his previously-filed objections to the merger. With those conditions, the merger may be in the public interest, as required by law for Commission approval.²

On July 24, 1998, SBC and Ameritech filed the joint applications under consideration in this docket, seeking approval of the transfer to SBC of Ameritech's licenses. This transfer was necessitated by the planned merger of Ameritech into SBC, a transaction that would yield the largest local exchange carrier in the United States.³ On July 30, 1998, the Commission requested public comment on the merger.

The OCC participated in a coalition of consumer advocates that filed comments which -- in brief -- raised numerous concerns about the merger, argued that the merger as proposed was not in the public interest, and asserted that it appeared that there were no conditions that could be imposed that would make the merger in the public interest.⁴ The OCC also participated in *ex parte* meetings with Commissioners and Commission staff, to the same effect.

The OCC was also an intervenor in the proceeding at the Public Utilities Commission of Ohio to review the merger.⁵ Under Ohio law, in order to approve the

² 47 U.S.C. § 214(a), 310(d).

³ Of similar scope is the proposed merger between Bell Atlantic (BA) and GTE, also pending at the Commission. The degree of conditions proposed here for SBC and Ameritech suggests strongly that similar conditions would be required to make the BA/GTE merger in the public interest.

⁴ See Comments of the Consumer Coalition (Indiana Office of Utility Consumer Counselor, Michigan Attorney General, Missouri Office of the Public Counsel, Ohio Consumers' Counsel, Texas Office of the Public Utility Counsel, The Utility Reform Network), October 14, 1998; Reply Comments of the Consumer Coalition (Indiana Office of Utility Consumer Counselor, Missouri Office of the Public Counsel, Ohio Consumers' Counsel, Texas Office of the Public Utility Counsel, The Utility Reform Network), November 13, 1998.

⁵ *In the Matter of the Joint Application of SBC Communications Inc., SBC Delaware Inc., Ameritech Corporation, and Ameritech Ohio for Consent and Approval of a Change of Control*, PUCO Case No. 98-1082-TP-AMT ("the Ohio Merger Case").

acquisition of an Ohio telephone company -- in this case, Ameritech Ohio -- by another -- in this case, SBC -- the Ohio Commission must find that the acquisition “promotes the public convenience” and “results in adequate service at just and reasonable rates.” Ohio Revised Code § 4905.402. In the Ohio proceeding, the OCC filed comments and testimony that asserted that the acquisition as proposed did not meet the Ohio statutory standard.

In the end, however, after weeks of intensive discussions, the OCC was a key party to a Stipulation that imposed numerous conditions on the acquisition. Along with the other signatories, the OCC recommended that the Ohio Commission approve the transaction. The Stipulation required Ameritech Ohio to take affirmative steps to open up its markets to competition -- specifically competition for residential consumers. The Stipulation provided specific benefits for residential consumers, and provided specific protections as well. The provisions of the Stipulation are referred to herein as “the Ohio Conditions.”⁶ By Opinion and Order issued April 8, 1999 (“the Ohio Merger Case Order”), the Ohio Commission approved the Stipulation, with some modifications, and thus approved the acquisition for Ohio.⁷

On July 1, 1999, the Applicants submitted to this Commission documents setting forth a “package” of conditions (“the Proposed Conditions”). It was represented that the package would “satisfy [Staff]’s public interest concerns and lead them to support the

⁶ As noted herein, many of the Ohio Conditions are quite similar to those proposed at the Commission by SBC, Ameritech, and the Commission Staff (“the Proposed Conditions”).

⁷ P.U.R.4th, Slip Opinion. OCC’s participation in the Stipulation was specifically predicated upon “the specific circumstances of Ohio state law and the Ohio regulatory environment....” Participation in the Stipulation was thus not binding on the OCC with regard to federal law and the federal regulatory environment. Further, the OCC’s participation in the Ohio Stipulation was not binding in any way on other members of the Consumer Coalition in which the OCC had participated at this Commission.

merger.” Letter (July 1, 1999) to Magalie Roman Salas from Richard Hetke (Senior Counsel, Ameritech) and Paul K. Mancini (General Attorney and Assistant General Counsel, SBC), at 1. Also on July 1, the Commission issued the public notice calling for comments on the package.⁸

As set forth herein, the OCC’s position -- based on the limited review possible in the time allowed -- is that the July 1 package of Proposed Conditions, if reinforced as set forth herein and taken together with the Ohio conditions, provides sufficient benefit to, and adequate protection for, Ohio residential consumers so as to allow the OCC’s objections to the Commission’s approval of this merger to be withdrawn. The OCC awaits the comments of other parties in order to provide a final assessment of whether the merger in fact meets the federal statutory standard.

II. What is needed for the merger to be in the public interest?

A. The Commission’s Standards

As the Commission has stated, “[t]he legal standards of Section 214(a) and 310(d) require [the Commission] to weigh the potential public interest harms against the public interest benefits and to ensure that, on balance, the merger serves the public interest....”⁹

The Commission has focused on the competitive side of the public interest, holding that

⁸ It is somewhat disturbing that the Commission originally allowed only six business days for initial comments on a 37-page single-spaced proposal with sixty-some pages of attachments, without any showing of a need for haste. As acknowledged in the July 1 letter, the negotiations that led to the package occurred over a period of three months. This problem is exacerbated -- not diminished -- for the OCC, given the need to compare, contrast, and attempt to reconcile the Commission Staff package and the Ohio stipulation package. (Note also that the Applicants face further state proceedings in Illinois and Indiana. Illinois Commerce Commission Docket No. 98-0555; Indiana Utility Regulatory Commission Cause No. 41255.) The extension of the deadline by less than a week (Order, July 7, 1999) helps, but not enough.

⁹ SBC/SNET, CC Docket 98-25, Memorandum Opinion and Order (October 15, 1998), ¶ 13.

“it is incumbent upon applicants to prove that, on balance, the merger will enhance and promote, rather than eliminate or retard, competition.”¹⁰ The Commission has done so in the context of conditions proposed by applicants in a merger case. Bell Atlantic/NYNEX, ¶36.

Commission approval in SBC/SNET was given in the context of the prior Connecticut Commission (DPUC) imposition of standards on the merger. SBC/SNET, ¶ 12. Note that there the only state whose territory was being taken over was Connecticut. Here, the Commission must recognize that the Ohio Commission has also imposed conditions on the merger, but those conditions will only be available in Ohio. Hence the Commission must carefully examine the conditions submitted to it *absent the Ohio conditions* to determine whether the merger with the conditions meets the public interest, in order to approve the merger.¹¹ The OCC, however, looks to the federal conditions *together with* the Ohio conditions as the basis for withdrawing objections to the merger.

B. OCC Interpretation

As discussed in the Consumer Coalition’s Comments, the merger as originally proposed was not in the public interest because

1. It posed threats to competition;
2. It posed threats to rates and service quality, particularly of captive residential consumers; and

¹⁰ Bell Atlantic/NYNEX, File No. NSD-L-96-10, Memorandum Opinion and Order (August 14, 1997), ¶ 3.

¹¹ See below for a discussion of the elements of the Ohio Conditions that are not part of the current Proposed Conditions.

3. It promised no direct benefits for consumers, particularly residential consumers.

In the view of the OCC, in order for this merger to be found to be in the public interest, all three of these possibilities must be reversed. That is, conditions imposed upon the merger must:

1. Enhance competition
2. Ensure good service quality at just and reasonable rates, particularly for residential consumers; and
3. Provide additional benefits for consumers, particularly for residential consumers.

The Proposed Conditions are discussed below in the context of these principles. The Commission's focus on competition in prior cases, it is submitted, read the "public interest" standard too narrowly. The conditions at issue here -- although containing many pro-competitive conditions -- are also limited in that sense.

III. Does this package meet the public interest test?

A. The interrelationship between these proposed "national" conditions and the state-specific conditions

The package of Proposed Conditions filed at the Commission contains numerous provisions intended to make the merger meet the "public interest" test. The Ohio Conditions contained provisions designed to ensure that the merger -- for Ohio -- would "promote the public convenience." Although these terms are not synonymous, there is

enough overlap that conditions designed to address either criterion would likely cover similar areas.

The Applicants have recognized this. In ¶ 69 of the Proposed Conditions, it is stated that “[t]hese conditions shall supplement, but shall not be cumulative of, substantially related conditions imposed under state law.”¹² On the other hand, where *dissimilar* conditions have been imposed by a state, if the FCC approves this merger, *both* will apply within that state. Further, where similar conditions appear in both the FCC and state findings, consumers and competitors should, without “cumulating” the conditions, be able to select the more favorable condition of the two.

The OCC, then, for Ohio, expects to be able to see from the merger a broader scope of conditions and benefits than might otherwise be achieved in either jurisdiction.¹³ It is, in fact, the combination of merger conditions that allows the OCC to withdraw the previously-filed objections to the merger lodged as part of the Consumer Coalition.

¹² The specific examples set out in ¶ 69, that “carriers requesting unbundled local loops for residential service under promotional terms offered pursuant to state approval of the merger would not be able to invoke the promotional discounts on unbundled loops required by these conditions” and that “any unbundled local loops provided by SBC/Ameritech for residential service under a substantially similar merger-related PUC imposed promotion in a given state would be deducted from the number of local loops required to be provided in that State under Section 17(a)(7) of these conditions” make this clear.

¹³ Without adequate time to completely review the FCC conditions, it is impossible to say definitively whether there might be conflicts between the Ohio conditions and those proposed at the FCC. One area of possible conflict appears, however, in the area of “performance parity.” Paragraphs 1 and 2 and Attachment A indicate that the 20 performance measures (with sub-measures) to be adopted arose out of the Texas collaborative process. On the other hand, the Ohio order requires SBC/Ameritech to adopt 79 out of 105 performance measures that also derived from Texas. P.U.R.4th Slip Opinion; Ohio Merger Case Order at 10. The OCC has filed a request with the PUCO to require SBC and Ameritech to reconcile such differences. (It should also be noted that the Ohio order requires the development of a collaborative process to improve the performance measures. *Id.* The impact that such state-specific process have on the apparently fixed set of standards embodied in the FCC conditions has not been determined.)

B. How do the conditions at issue here meet the public interest?

Competition: A primary concern of the OCC and others was that the merger would stifle competition. The Proposed Conditions primarily focus on means by which to open up the combined companies' local service markets to competition.

From the OCC's perspective, among the most important Proposed Conditions are those that provide promotional incentives for competition for residential consumers throughout the Applicants' territories. ¶¶ 45-49. As the Commission well knows, local exchange competition has thus far been concentrated in the business category. The requirement that the Applicants offer discounts on unbundled loops serving residential customers, along with increased discounts on resale of residential services, should serve to "jump start" residential competition. Such discounts also appear in the Ohio Conditions.¹⁴ The Proposed Conditions also add the "UNE Platform" (UNE - P) to the mix (¶ 48); this provides another substantial option and incentive for those seeking to provide residential service in the applicants' territory.¹⁵

Another area in which competition is promoted through the Proposed Conditions is in enhanced carrier-to-carrier relationships. Primary among these is the "performance parity" condition, which establishes standards with penalties for the merged companies to

¹⁴ P.U.R.4th Slip Opinion; Ohio Merger Order at 18-19.

¹⁵ Parties who opposed the Ohio conditions argued that such discounts for residential service were unlawfully discriminatory. In a well-reasoned opinion, the PUCO dismissed those arguments. P.U.R.4th Slip Opinion; Ohio Merger Order at 19-20.

meet. ¶¶ 1-2.¹⁶ There are also numerous provisions focusing on Operations and Support Systems (OSS). ¶¶ 8-19.¹⁷

In their applications, SBC and Ameritech touted the benefits of their “National-Local Strategy.” Description of Transaction, Public Interest Showing and Related Demonstrations (July 24, 1998) at 11-12. Absent the above market-opening conditions, the National-Local Strategy would have allowed SBC and Ameritech to maintain their at-home monopolies while cherry-picking other RBOCs’ territories.

The Proposed Conditions also significantly improve the public benefits of the National-Local Strategy itself. The Proposed Conditions set out a definite timeline for entry into 30 markets nation-wide. Further, and very importantly, the merged companies are required to offer service to residential as well as business customers.¹⁸ Equally importantly, the Proposed Conditions contain a definite penalty if the merged companies fail to meet conditions for entry into the new markets. Such a penalty is lacking in the Ohio Conditions.¹⁹

¹⁶ As noted above, it is unclear how this provision fits in with similar provisions in the Ohio Conditions. The need for reconciliation, however, does not diminish the value of this Proposed Condition.

¹⁷ The Ohio Conditions require the merged companies to be responsible for a market power assessment for Ohio. P.U.R.4th Slip Opinion; Ohio Merger Order at 22. A similar requirement on the federal level would be a valuable tool.

¹⁸ The Ohio Conditions also require that service to residential customers in four out-of-region Ohio markets be at reasonable rates. This prevents the companies from empty gestures such as offering service to residential customers at two or three times the incumbent’s rates. The OCC submits that such an obligation on the federal level would make this condition far more credible.

¹⁹ The lack of penalty in the Ohio Conditions for failing to accomplish out-of-region entry is particularly significant because the Ohio Conditions require entry into three Ohio markets that are not in the Proposed Conditions’ list of 30 markets. (Those being the Mason/Lebanon exchanges of Sprint, the Delaware exchange of GTE, and the Hudson/Twinsburg exchanges of Western Reserve Telephone Company.) Notably, the Proposed Conditions’ 30 markets are all major urban markets, mostly belonging to RBOCs. In contrast, the Ohio Conditions bring competition to non-urban exchanges of independent carriers. It would not be appropriate for the merged companies to ignore the three Ohio markets because of the penalties for

Service quality: just and reasonable rates

Apart from the encouragement of competition within the SBC and Ameritech service territories, the Proposed Conditions do very little to ensure that the companies provide adequate service to their own customers. The presence of competitors who resell the companies' services, or who lease major facilities from the companies, does not in itself give much assurance of service quality.

The Proposed Conditions *do* require the companies to report their service quality. ¶ 54. The reports will be of little use, however, unless they are publicly available. They will be of even less use unless a baseline (pre-merger) is established in order to allow assessment of improvements (or declines) in service quality. Further, the OCC would expect the Commission to take appropriate action if it appears that service quality across the combined regions (or any portion thereof) is slipping. The Act specifically requires adequate service at just and reasonable rates for the universal service package. The merger should not be allowed to allow that portion of the Act to be ignored.²⁰

Despite some parties' proposals, the Commission did not impose service quality conditions on the SBC/SNET merger. The exercise of restraint was justified by SNET's expected withdrawal from the retail market. SBC/SNET, ¶¶ 42-43. Neither SBC nor Ameritech have given any indication of such a withdrawal. Hence it is vital that they be

missing the Proposed Conditions' markets. The OCC will be carefully monitoring progress in the three additional markets, and will seek enforcement of the Ohio conditions if necessary.

²⁰ The Ohio Conditions provide for specific penalties for declining service. Ohio Merger Order at 14-17. This is a special concern in Ohio. Ameritech Ohio currently operates under a price cap plan that was intended to disincent poor service quality. *In the Matter of the Application of The Ohio Bell Telephone Company for Approval of an Alternative Form of Regulation*, PUCO Case No. 93-487-TP-ALT, Opinion and Order (November 23, 1994), 1994 Ohio PUC LEXIS 956 ("Ameritech Ohio Alt. Reg. Order") at 67. Despite this, Ameritech Ohio's service quality continues to decline. Last year's service quality adjustment was the largest of the three annual price cap filings.

held to high service quality standards, particularly for their many customers who will not see any form of competition in the near future.

On the issue of just and reasonable rates, the incentives for residential competition within the companies' territories will also be of some assistance. The OCC recognizes that much of the area of just and reasonable local rates may be outside the Commission's purview. (For instance, in Ohio the cap on Ameritech Ohio's residential basic service rates was extended for one year.)²¹

One thing the Proposed Conditions do to ensure just and reasonable rates is in the lifeline commitment. ¶ 60. As explained in the next section, however, this commitment may lack sufficient substance.

Another provision in this area is the condition that, once the merged companies obtain interLATA service authority pursuant to 47 U.S.C. § 271, they will not impose a minimum charge for interLATA service. ¶ 59. Such charges take advantage of those with the lowest usage, those who are also least likely currently to have a competitive alternative. To the extent that the incumbent in the SBC and Ameritech territories does not impose such a minimum charge, this will make it harder for other carriers to do so.

Other benefits

As previously noted, the primary benefit of the Proposed Conditions appears to be in the competitive arena. If Ameritech's and SBC's local service markets are truly opened to competition (especially for residential customers), this should bring the concomitant benefits of competition to those consumers. As also noted, the Proposed Conditions also

²¹ The OCC expects to address the issue of the pass-through of merger savings in Ameritech Ohio's alternative regulation plan review, which will commence next year. Ameritech Ohio Alt. Reg. Order at 75. Unless such savings are passed through to consumers, the merger will not have been in the public interest.

contain provisions that should help to ensure adequate service at just and reasonable rates.

On the other hand, to the extent that there are lingering concerns about possible negative effects of this merger, those concerns can be balanced by conditions that provide specific benefits to SBC and Ameritech customers. For instance, the Ohio Conditions provide for \$1.32 billion in infrastructure investments in Ohio over a three-year period.²²

The Ohio Conditions also require that when asynchronous digital subscriber line (ADSL) service is deployed in Ohio, it will target residential customers in a non-discriminatory fashion.²³ The Proposed Conditions mirror the majority of that commitment. ¶¶ 20-24. This should benefit residential customers.²⁴

Finally, in Ohio the merged companies have agreed to make contributions to three funds that will benefit consumers: a Consumer Education Fund, a Community Technology Fund, and a Community Computer Center Fund.²⁵ The adoption of these benefits were part of the Ohio Commission's determination that the merger -- with conditions -- was in the public interest.²⁶

²² P.U.R.4th Slip Opinion; Ohio Merger Order at 25.

²³ *Id.*

²⁴ However, as outlined in the Low Income Coalition Comments filed today, there are problems with this commitment as laid out in the Proposed Conditions. The OCC urges the Commission to recognize and correct these concerns.

²⁵ P.U.R.4th Slip Opinion; Ohio Merger Order at 31. As noted therein, the Community Computer Center Fund is a continuation of a program adopted in the Ameritech Ohio alternative regulation case; the other two funds are new. *Id.*

²⁶ As discussed in the Low Income Coalition Comments, this Commission should consider requiring Ameritech and SBC to take action to bridge the digital divide through similar commitments.

IV. Lifeline -- a special case

The OCC has long been a strong supporter of adequate programs to provide assistance to low income consumers who might otherwise be without the use of a telephone. For Ameritech Ohio, that support resulted in the provisions of the alternative regulation plan that established Ameritech USA.²⁷

The OCC is gratified that part of the package currently before the Commission is a requirement that the Applicants provide an “enhanced” lifeline program throughout the SBC and Ameritech states. ¶ 60. The OCC is particularly gratified that the enhanced lifeline program is to be modeled on the Ameritech USA program from Ohio. *Id.*

That gratification -- expressed on behalf of low income consumers outside of Ohio -- is tempered by the knowledge that a commitment in terms of “subscriber eligibility, discounts, and eligible services” (*id.*), such as those embodied in the initial agreement on Ameritech USA, is not enough to ensure that the benefit of an enhanced lifeline program will in fact be seen by a significant number of residential consumers.

The USA program in Ohio provides for many conditions beyond eligibility, discounts, and eligible services. In fact, to the extent the program is beginning to be effective, it is because of very specific agreed upon and PUCO-mandated requirements that Ameritech:

- a) Spend at least \$122,000 per year publicizing the program, employ marketing professionals and develop and implement a comprehensive marketing plan.
- b) Automatically enroll all those who are eligible in the USA program.

²⁷ Ameritech Ohio Alt. Reg. Order at 13-14.

- c) Report on the program's progress and work with an advisory committee. The committee is composed of consumer and low income representatives, Public Utilities Commission of Ohio (PUCO) staff and company representatives. It monitors the program and advises on ways to increase effectiveness.
- d) Provide adequate staffing to handle surges in USA calls resulting from increased publicity.
- e) Provide a dedicated 800 toll free number for USA enrollment and a dedicated workgroup to handle those calls and enroll applicants.
- f) Promote the program on Ameritech bills and offer reasonable repayment plans for local arrearages to USA applicants.
- g) Employ community organizations to engage in grassroots outreach.
- h) Use self-verification of eligibility while establishing an on-line eligibility verification process.
- i) Carry out mass mailings in cooperation with the agencies that administer qualifying benefits program to those who receive benefits.
- j) Provide written applications and other promotional materials for use by social workers and others.
- k) Install USA direct telephones in welfare department waiting rooms throughout the service territory.
- l) Provide a USA message on the VRU menu heard by callers to the business office.

These are just some of the elements of the USA plan as it is in effect today. The entire plan is found not only in the September 20, 1994 agreement establishing Ameritech's USA program which SBC/Ameritech reference in their proposal (§ 60) but also in a PUCO Opinion and Order in Case No. 93-487-TP-ALT, *In the Matter of the Application of the Ohio Bell Telephone Company for Approval of an Alternative Form of Regulation*, (December 30, 1998), 1998 Ohio PUC LEXIS 713.

By limiting SBC/Ameritech's obligation to the subscriber eligibility, discounts and eligible services part of the USA program, the FCC would allow SBC/Ameritech to

offer a program that lacks most of the features that are making the Ohio program effective. Indeed, experience in Ohio has shown that in the absence of very specific enrollment goals or equally specific requirements to promote the program, facilitate enrollment, and automatically enroll people who are categorically eligible, the program will not succeed.

Unfortunately, the Proposed Conditions on lifeline also lack substance. For instance, Ameritech Ohio USA eligibility is presently identical to the FCC's lifeline/link-up eligibility with the exception of two very small Ohio specific programs (Ohio Energy Credits and Disability Assistance). (Participants in Ohio Works First, formerly AFDC, are also eligible but this population overlaps entirely with food stamps and Medicaid, programs included in FCC's lifeline.) The offer to adopt USA eligibility is hardly an enhancement of lifeline and link-up.

With regard to eligible services, USA Plan 1 which uses a company contribution to offer a \$10.20 monthly discount, does not allow customers to take extra services like call waiting unless they have a medical need. The FCC's link-up and lifeline programs contain no such restriction. Experience in Ohio has shown that many low income customers want call waiting since they tend to have more generations living under the same roof and have less access to a telephone at work. If the Company is proposing to impose USA Plan 1 service limitations then, far from being an enhancement, the Proposed Conditions restrict what is presently available.

Indeed, the only real enhancement to the current FCC programs in SBC/Ameritech's proposal is the offer to adopt the Ameritech Ohio USA discount. Unfortunately, in the absence of an enrollment goal or the requirement that

SBC/Ameritech promote the program and facilitate enrollment, SBC/Ameritech may respond to this financial commitment just as Ameritech did in Ohio: by limiting outreach and making enrollment difficult.

The problems with the Ameritech Ohio USA program have been extensively documented and litigated. That litigation resulted in an order from the Ohio Commission ordering Ameritech Ohio to do those things that are necessary to operate an effective lifeline program. PUCO Case No. 93-487-TP-COI, Opinion and Order (December 30, 1998), 1998 Ohio PUC LEXIS 713.

The history of USA can be summarized briefly. On September 20, 1994, Ameritech Ohio, PUCO Staff, and consumer parties signed an agreement establishing the USA program. The PUCO adopted the agreement. Unfortunately, Ameritech Ohio did little to implement the program. On May 20, 1996, the company and consumer parties signed a second agreement which enhanced the USA program by requiring the company to spend at least \$122,000 per year promoting the program, establish reasonable repayment plans for arrearages and set up an 800 number and dedicated workgroup. In the face of continued low levels of performance, on September 4, 1997 the OCC and other consumer parties filed a motion with the Ohio Commission to require Ameritech Ohio to show cause why the company should not be found in violation of the USA commitment. After extensive discovery and an evidentiary hearing that lasted six days the Commission issued its Order which found among other things:

- . Ameritech planned to do very little to publicize the USA program. *Id.* at 28.
- . Ameritech repeatedly sought to scale back the little publicity it eventually agreed to do because it did not want to increase its staffing to accommodate the expected response. *Id.* at 29.
- . That Ameritech maintained a complicated enrollment process which required

applicants to be transferred numerous times to enroll. *Id.*

Ameritech maintained needlessly burdensome verification requirements. *Id.*

Ameritech delayed offering reasonable arrearage payment plans. *Id.* at 30.

The Commission concluded:

The record in this proceeding demonstrates that Ameritech did not approach the key aspects of the USA program with an intent of making the program well known and effective. In our view of the record, we believe that Ameritech either dragged its feet or structured its approach in a manner that stunted the effectiveness of the USA program. We cannot conclude from such consistent and repeated actions that, overall, Ameritech has met the spirit of its commitment.

Id. at 28.

The Commission then ordered Ameritech Ohio to take a number of specific steps to implement the program. Since the Commission issued this Order, the company has greatly increased its efforts and just reported that enrollment this year is proceeding four times as fast as last year.

It is only now, after clear requirements related to publicity and enrollment were imposed, that the program is beginning to perform in a way that can contribute to increased telephone penetration. The “USA Lifeline Plan” in effect today is for more than the eligibility, discounts and eligible services negotiated in November of 1994. The plan in effect today represents the hard-learned lessons of the past four and a half years. If these lessons are ignored, it is likely that the FCC will find that this opportunity to increase telephone penetration will not succeed.

Under such conditions, consumers outside the State of Ohio will benefit from an enhanced lifeline program, as Ohio consumers now will be able to. Yet it also appears that -- despite having served as models for the “lifeline condition” -- Ohio consumers

may, in the long run, end up worse off than those in states that has not adopted enhance lifeline programs prior to the merger.

Paragraph 60 provides that not later than 30 days after merger closing, the Applicants will file a request to establish an Ameritech USA-type program with all state commissions other than Ohio. It is understandable that Ohio is excluded, since we already have such a program. Paragraph 60 also provides that the enhanced lifeline program will be offered in each state for at least three years after the request is filed, which will be after the merger closing date. Assuming a merger closing date of January 1, 2000, the other states' lifeline programs will last at least until January 1, 2003. In Ohio, however, continuation of Ameritech USA only until January 1, 2002 was imposed as a merger condition.²⁸ The Commission should add the condition that the Applicants must provide an enhanced lifeline program in Ohio as least as long as the first other state program adopted as a result of the July 1 conditions.

V. CONCLUSION

This Commission has the difficult task of deciding whether this merger is in the public interest. As originally proposed, the OCC -- and many other parties -- had substantial concerns that the merger did not meet the statutory test.

Briefly put, in order to be in the public interest, a merger of large local exchange companies has to address the pro-competitive goals of the 1996 Act. The merger must allow adequate service at just and reasonable rates. The merger should also provide additional benefits to consumers, particularly residential consumers.

²⁸ P.U.R.4th Slip Opinion; Ohio Merger Order at 30.

The Proposed Conditions -- as proposed -- do much to satisfy the public interest test. If modified as recommended herein (particularly with regard to lifeline and service quality reporting), they will do more to satisfy the test.

When the Proposed Conditions -- as modified -- are combined with the Ohio conditions, the public interest benefits are substantial enough to cause the OCC to withdraw objections to the approval of this merger. It will be up to the Commission to determine whether the Proposed Conditions -- as modified -- are sufficient to meet the public interest test. The OCC suggests that the Proposed Conditions -- as modified -- may be sufficient.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Comments of the Ohio Consumers' Counsel on Proposed Conditions was served by first class mail, postage prepaid, or hand-delivered on the parties identified below this 19th day of July, 1999.

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