

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

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In re Applications of)
)
Ameritech Corp.,)
Transferor,)
)
and)
)
SBC Communications, Inc.,)
Transferee,)
)
For Consent to Transfer Control of Corporations)
Holding Commission Licenses and Authorizations)
Pursuant to Sections 214 and 310(d) of the)
Communications Act and Parts 5, 22, 24, 63, 90, 95,)
and 101 of the Commission's Rules)

CC Docket No. 98-141

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF THE NATIONAL ALEC ASSOCIATION ("NALA")

The National ALEC Association ("NALA"), pursuant to the Commission's Public Notice released July 1, 1999,^{1/} hereby comments on the proposed conditions to be imposed on SBC Communications, Inc. ("SBC") and Ameritech Corporation ("Ameritech") in connection with their pending application to transfer licenses and authorizations. For the reasons stated below, NALA submits that the proposed conditions are too limited in nature to foster competition in the local exchange market and should be revised consistent with the proposals herein.

Background

NALA is an organization comprised of fifteen alternative local exchange carriers

^{1/} Pleading Cycle Established for Comments on Conditions Proposed by SBC Communications Inc. and Ameritech Corporation for their Pending Application to Transfer Control, Public Notice, CC Docket No. 98-141, DA 99-1305 (rel. July 1, 1999). The FCC extended the comment deadline in this proceeding to July 19, 1999. See In re Ameritech Corp., For Consent to Transfer Control, Order, CC Docket No. 98-141 (rel. July 7, 1999).

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("ALECs") dedicated to providing local telephone services to residential consumers throughout the United States.^{2/} NALA members provide local telephone service to residential consumers unwanted by traditional telephone companies. These consumers are unwanted because they may have poor credit histories, cannot provide a security deposit, had telephone service disconnected in the past, have past due balances, or lack sufficient identification. In many cases, the service provided by NALA members offers the only option for local phone service, including access to 911 emergency service, for millions of American consumers.

The only economically feasible way for NALA members to provide this service is to resell the flat-rate local services offered by the ILECs, including SBC and Ameritech. Unlike other resellers that compete with ILECs for customers, NALA members actually increase the volume of traffic routed over ILEC networks by serving customers who would not otherwise have telephone service. Too often, however, as discussed in more detail below, ILEC actions and inactions have created significant obstacles for NALA members.

While NALA supports the proposed conditions on the SBC/Ameritech merger to the extent they minimize these obstacles, in many respects the proposed conditions fall short. If NALA members are to continue to provide service to the unserved segment of the population in the SBC/Ameritech region, the FCC must act consistently with the suggestions listed below.

^{2/} NALA consists of the following members: Cellular Rentals, Inc.; 1-800-Reconnex, Inc.; USA Telecom; EZ Talk Communications, L.L.C.; First Line Communications; CCI Telecom; Southwest Teleconnect; Spartan Communications Corporation; Comm South Companies, Inc.; Telcom Plus; Local Line America; ANNOX; One Point; Pre-Tell Communications; and Phones For All.

I. The Proposed Promotional Resale Discount Must Be Increased to 50-60% and Be Extended Beyond Three Years

SBC/Ameritech's commitment to offer a promotional resale discount of 32% for a period of three years will do little to facilitate competition in the local exchange market. The present discount levels offered in the SBC/Ameritech region, which vary from 14-25%, are far too low for carriers to make a profit.^{3/} The additional percentage increase is far too little to spur competition. By analogy, resellers of paging services often enjoy resale discounts of as much as 60 percent. Resellers of local services cannot sustain a profit with such slim margins given their significant accounting, billing, and marketing expenses. Accordingly, NALA urges the Commission to require SBC/Ameritech to offer a resale discount in the 50-60 percent range and to ensure that this discount level continues indefinitely.

II. The Waiver of OSS Charges Must Be Extended Beyond Three Years and Be Applied to Orders Not Submitted Electronically

While NALA supports SBC/Ameritech's commitment to waive charges for use of its standard electronic interface for accessing OSS, the FCC must ensure that these charges are waived indefinitely. SBC/Ameritech's proposed three-year waiver is not nearly long enough to facilitate competition in local exchange markets. The three year period appears arbitrary, without any basis or evidence supporting OSS charges after the three year period.

Second, many small resellers, including NALA members, which seek to bring competition to the local exchange market simply do not have the resources or expertise to submit orders to ILECs other than by manual means, such as by fax. The proposed conditions, however, specifically state that the waiver of OSS charges does not extend to orders submitted by

^{3/} See Ken Branson, Is Local Resale a Sinking Ship?, Phone Plus, May 1999; Ernest B. Kelly III, Realizing Their Own Worst Nightmare, Phone Plus, May 1999.

nonelectronic means. Such an omission is particularly burdensome considering that SBC charges far more for manual orders.^{4/} Accordingly, NALA urges the FCC to require SBC/Ameritech to extend the OSS charge waiver to manual orders.

III. SBC/Ameritech Should Not Be Permitted to Recover the Costs of Developing and Providing OSS to CLECs Through the Pricing of UNEs or Resold Services

What SBC/Ameritech sacrifices by waiving OSS charges, it recovers by retaining the right to charge for the costs of developing and providing OSS to CLECs through the pricing of UNEs or resold services. The insignificance of SBC/Ameritech's commitment to waive OSS charges should be readily obvious to the Commission. In order for the waiver of OSS charges to retain any relevance, the Commission must prohibit SBC/Ameritech from recovering the costs of OSS through the pricing of UNEs or resold services.

IV. SBC/Ameritech Should Be Required to Resell Blocking of Directory Assistance and Directory Assistance Call Completion

NALA members provide prepaid local phone service to those customers cut off from the ILECs because ILECs have deemed such customers too risky to serve. Blocking of all usage- or event-based charges, including access to directory assistance ("DA"), is crucial to the prepaid local services industry. Because prepaid carriers offer local phone service at a rate that does not change each month, the service does not include calls for which charges are assessed on a per minute or per call basis.

In California, NALA members can purchase toll blocking service from SBC. This service, however, does not block DA or DA Call Completion service, which permits the caller to obtain a phone number and, for an additional charge, be connected to that number. Accordingly,

^{4/} For example, SBC in Texas charges \$13.95 to \$25 per conversion order submitted manually, while it charges \$3.33 to \$5 per conversion order submitted electronically.

a prepaid customer can dial DA and request automatic call completion to place a toll call, thereby circumventing the toll blocking service.^{5/} NALA urges the Commission to require SBC/Ameritech to resell DA blocking and DA call completion blocking throughout its region.

NALA also objects to SBC's practice in California of requiring resellers to purchase "Branding and Customized Routing for Directory Assistance and Operator Assistance." SBC's Pacific Bell subsidiary has interpreted Section 226(b) of the Communications Act to require that it answer all operator services/directory assistance ("OS/DA") calls with the reseller's brand name. NALA members, however, block OS and would like to block DA. Accordingly, by requiring that resellers purchase the branding and customized routing service, Pacific Bell is imposing an unnecessary cost on resellers.

V. SBC/Ameritech Should Be Required to Resell Voice Mail Services

The growth of competition in the local exchange market has been impeded by resellers' inability to resell voice mail. Some State PUCs, including those in the SBC/Ameritech region, have held that voice mail is not a "telecommunications service" and, therefore, ILECs are not required to resell this service pursuant to Section 251(c)(4) of the Act.^{6/} The issue of whether

^{5/} NALA notes that the inability to block outgoing toll calls using DA call completion may render an ILEC ineligible for universal service support. The ability to block all outgoing toll calls--regardless of the manner in which those calls are completed--is consistent with a federal universal service policy that promotes toll blocking for Lifeline customers. In order to receive federal universal service support, a carrier must offer each of the services identified in Section 54.101(a) of the FCC's Rules, including toll limitation services, to qualifying low-income consumers. 47 C.F.R. § 54.101(a). Nothing in the FCC's definitions of "toll blocking," "toll control," or "toll limitation" confines those terms to calls that begin with 1+, 0+, 0, or an access code such as 10-10XXX. 47 C.F.R. § 54.400.

^{6/} See, e.g., Complaint of RCN Telecom Services of Massachusetts, Inc., D.T.E. 97-101 (Mass. Dep't of Telecommunications & Energy, 1998); MCI Telecommunications Corp., 1997 Ill. PUC LEXIS at 40 (Feb. 5, 1997); Petition for Arbitration of an Interconnection
(continued...)

ILECs must resell voice mail service is currently the subject of a proceeding before the FCC.^{2/}

Without voice mail, competitive local carriers cannot offer potential customers the same package of services ILECs offer. Even if voice mail is not subject to the resale requirements of the Act, however, it makes plain business sense for the ILECs to resell voice mail to prepaid local carriers. By making voice mail available through resellers to customers the ILECs would not otherwise serve, ILECs would receive revenues they would not otherwise enjoy. NALA urges the FCC to require SBC/Ameritech to resell voice mail services as a condition for approval of the merger.

VI. SBC/Ameritech Must Commit to Reform Their Billing Processes

Many NALA members have encountered considerable problems with the billing practices of SBC. When a NALA member requests that SBC suspend or disconnect a customer's service due to nonpayment, SBC should stop billing for service to that customer beginning immediately after such request. In many states, however, SBC continues to charge the NALA member for service until the ILEC actually performs the suspension or disconnection. Accordingly, SBC often charges NALA members for service to a customer that should have been suspended or disconnected. NALA urges the Commission to require SBC/Ameritech to commit to reforming their billing practices by not charging resellers for service to a customer from the time the reseller requests discontinuance of service to that customer.

^{6/} (...continued)

Agreement Between AT&T Communications of the Pacific Northwest, Inc. and US West Communications Inc., 1997 Wash. LEXIS 49 (July 11, 1997); Petition of MCI Telecommunications and MCImetro Access Transmission Services of Virginia, Inc., Case No. PUC960113 (Va. Corp. Comm., May 8, 1997).

^{2/} See Public Notice, "Petition for Declaratory Ruling of the Telecommunications Resellers Association," DA 98-520 (March 17, 1998).

NALA members also object to SBC's practice in California of charging a reseller a fee when it requests suspension of a customer's service due to nonpayment. SBC does not charge its own end user customers a suspension fee for nonpayment. NALA urges the Commission to require SBC/Ameritech to only charge the reseller when the suspended customer's service is restored, not at the time of suspension.

Finally, NALA urges the Commission to require SBC/Ameritech to afford resellers sufficient time to review and audit bills after receipt before requiring payment. For example, some NALA members have received bills from SBC that were due seven days later. Such a short timeframe does not allow resellers to review and audit their bills.

VII. SBC/Ameritech Must Commit to Improve Their Dispute Resolution Processes

The resale agreements NALA members have with SBC have detailed dispute resolution procedures. Like most ILECs, however, SBC permits disputed charges to linger for months, and even years, without resolution. As a result, the reseller's outstanding balance grows on a monthly basis while it accrues late fees. In one instance, SBC threatened disconnection of a NALA member's service although the only overdue balance related to disputed charges. NALA urges the Commission to require SBC/Ameritech to commit to make good faith efforts to resolve billing disputes with resellers in a timely fashion, preferably within 60 days of when SBC is notified of such dispute.

VIII. SBC/Ameritech Should Commit to Post Their Tariffs on the Internet

NALA members have become frustrated with their inability to have simple questions answered in a timely fashion by the representatives of SBC and Ameritech. Often, these questions may be answered by referring to SBC's or Ameritech's local tariff. NALA requests that the FCC require SBC and Ameritech post their current local tariffs on the Internet as a

condition for approval of its merger.^{8/} Such a requirement will enable resellers to have easy access to SBC/Ameritech tariffs, thus eliminating the need to rely on SBC/Ameritech representatives for vital information.

^{8/} NALA notes that the FCC has recently required nondominant interexchange carriers to post the rates, terms, and conditions governing their services on the Internet. See Policy and Rules Concerning the Interstate, Interexchange Marketplace, Second Order on Reconsideration and Erratum, CC Docket No. 96-61, FCC 99-47 (rel. March 31, 1999).

Conclusion

Therefore, based on the foregoing, NALA urges the Commission to act in a manner consistent with the views expressed in these Comments.

Respectfully submitted,

NATIONAL ALEC ASSOCIATION

A handwritten signature in cursive script that reads "Chad Hazam". The signature is written in black ink and is positioned above a horizontal line.

Chad Hazam

President

National ALEC Association

2150 Herr Street

Harrisburg, PA 17103

(717) 564-0603

July 19, 1999

Mark C. Rosenblum, Esq.
AT&T
Room 3252G3
295 North Maple Avenue
Basking Ridge, NJ 07920

Mr. Danny E. Adams
Alarm Industry Communications Committee
Kelley Drye & Warren LLP
1200 19th Street, NW
Suite 500
Washington, DC 20036

Citizens for a Sound Economy Foundation
Matt Kibbe
Executive Vice President
1250 H Street, NW
Suite 700
Washington, DC 20005

Communications Workers of America
George Kohl
Senior Executive Director
501 Third Street, NW
Washington, DC 20001

Competition Policy Institute
Mr. Ronald J. Binz
President
1156 15th Street, NW
Suite 520
Washington, DC 20005

Competitive Telecommunications Association
Genevieve Morelli, Esq.
Executive Vice President
1900 M Street, NW
Suite 800
Washington, DC 20036

Consumer Coalition
Rochelle Cavicchia, Esq.
77 South High Street
15th Floor
Columbus, OH 43266-0550

Consumer Federation of America and Consumers Union
and AARP
Mary Ellen Fise, Esq.
General Counsel
1424 16th Street, NW
Suite 604
Washington, DC 20036

Corecomm Newco. Inc.
Eric J. Branfaman
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW
Suite 300
Washington, DC 20007

Edgemont Neighborhood Coalition
Ellis Jacobs, Esq.
Dayton Legal Aid Society
333 West 1st Street
Suite 500
Dayton, OH 45402-3031

e.spire Communications, Inc.
Mr. Riley M. Murphy
133 National Business Parkway
Suite 200
Annapolis Junction, MD 20701

Focal Communications Corporation
Renee Martin, Esq.
200 North LaSalle Street
Chicago, IL 60601

Hyperion Telecommunications, Inc.
Janet S. Livengood, Esq.
Director of Legal and Regulatory Affairs
DDI Plaza Two
500 Thomas Street
Suite 400
Bridgeville, PA 15017-2838

Indiana Utility Regulatory Commission
Chairman William McCarty
302 West Washington Street
Room E306
Indianapolis, IN 46204

ISM Tele-Page, Inc.
Thomas Gutierrez
Lukas, Nace, Gutierrez & Sachs, Chartered
1111 Nineteenth Street, NW
Suite 1200
Washington, DC 20036

KMC Telecom Inc.
Mary C. Albert
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW
Suite 300
Washington, DC 20007-5116

Kansas Corporation Commission
Chairman John Wine
1500 SW Arrowhead
Topeka, KS 66604-4027

Keep America Connected
Angela D. Ledford
P.O. Box 27911
Washington, DC 20005

Level 3 Communications, Inc.
Terrence J. Ferguson, Esq.
Senior Vice President and Special Counsel
3555 Farnum Street
Omaha, NE 68131

MCI Worldcom, Inc.
Lisa B. Smith, Esq.
1801 Pennsylvania Avenue, NW
Washington, DC 20006

McLeodUSA Telecommunications Services, Inc.
David R. Conn, Esq.
6400 C Street, SW
Cedar Rapids, IA 52406-3177

Michigan Consumer Federation
Frank J. Kelley, Esq.
Attorney General
Office of Attorney General
State of Michigan
525 West Ottawa Street
Lansing, MI 48909

Missouri Public Service Commission
Cynthia R. Bryant, Esq.
Assistant General Counsel
P.O. Box 360
Jefferson City, MO 65102

National Association of Telecommunication
Officers and Advisors (NATOA)
Mr. Frederic Lee Ruck
Executive Director
1650 Tysons Boulevard
Suite 200
McLean, VA 22102

Ohio, Public Utilities Commission
Steven T. Nourse
Assistant Attorney General
180 East Broad Street
7th Floor
Columbus, OH 43215

Paging and Messaging Alliance of the Personal
Communications Industry Association (PCIA)
Robert L. Hoggarth, Esq.
Government Relations
500 Montgomery Street
Suite 700
Alexandria, VA 22314-1561

Parkview Areawide Seniors, Inc.
Joseph P. Meissner
Cleveland Legal Aid Society
1223 West 6th Street
Cleveland, OH 44113

Pilgrim Telephone, Inc.
Walter Steimel, Jr.
Hunton & Williams
1900 K Street, NW
Suite 12
Washington, DC 20006

Rainbow/PUSH Coalition
Janice Mathis, Esq.
930 East 50th Street
Chicago, IL 60615

Shell Oil Company
Merle C. Bone
Chief Information Office
Houston, TX 77252

South Austin Community Coalition Council
Kenneth T. Goldstein
Krislov & Associates, Ltd.
222 North LaSalle
Suite 2120
Chicago, IL 60601

Sprint Communications Company, L.P.
Phillip L. Verveer
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036

Supra Telecommunications & Information Systems, Inc.
David D. Dimlich, Esq.
2620 SW 27th Avenue
Miami, FL 33133

Telecommunications Resellers Association
1620 I Street, NW
Suite 701
Washington, DC 20006

Texas Public Utilities Commission
Stephen F. Davis
Chief, Office of Policy Department
1701 North Congress
7th Floor
Austin, TX 78711

Texas, Office of Public Utilities Counsel
Suzi Ray McClellan, Esq.
Public Counsel
P.O. Box 12397
Austin, TX 78711-2397

Time Warner Telecom Corporation
Brian Conboy
Willkie Farr & Gallagher
1155 21st, NW
Washington, DC 20036

Total-Tel USA Communications, Inc. and
Telemarketing Investments, Inc.
John R. Gerstein
Ross, Dixon & Masback, LLP
601 Pennsylvania Avenue, NW
North Building
Washington, DC 20004

Arnold & Porter
Philip W. Horton
555 Twelfth Street, NW
Washington, DC 20004

Skadden, Arps, Slate, Meagher & Flom LLP
Antoinette Cook Bush
Counsel to Ameritech
1440 New York Avenue, NW
Washington, DC 20005-2111

Mr. Martin E. Grambow
Vice President and General Counsel
SBC Telecommunications, Inc.
1401 I Street, NW
Suite 1100
Washington, DC 20005

Janice M. Myles
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
Room 5-C327
445 12th Street, SW
Washington, DC 20554

International Transcription Services, Inc.
1231 20th Street, NW
Washington, DC 20036

CERTIFICATE OF SERVICE

I, Chad Hazam, hereby certify that on this 19th day of July 1999, served a true copy of the foregoing "**COMMENTS**" by first class United States Mail, postage prepaid, upon the parties listed in the attached service list.


Chad Hazam