

July 19, 1999

Ms. Magalie Roman Salas  
 Secretary  
 Federal Communications Commission  
 445 12<sup>th</sup> Street, SW, Rm. TW-A325  
 Washington, DC 20554

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JUL 19 1999

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

Re: CC Docket No. 98-141

Dear Ms. Roman Salas:

Pursuant to the Federal Communications Commission (FCC) pleading cycle in the above-referenced docket announced on July 1, 1999, the undersigned organizations hereby file these comments related to the "Proposed Conditions for FCC Order Approving SBC/Ameritech Merger" proffered by SBC Communications Inc. and Ameritech.

We remain opposed to this merger between two Regional Bell Operating Companies (RBOCs), each of which holds a virtual monopoly over local telephone service in its service territory. We believe that the Department of Justice should have exercised its anti-trust authority to reject the merger. The Department of Justice refused to do so, however and failed to impose obligatory, strong conditions to ameliorate the merger's anti-competitive aspects.

Review of the proposed union, under a public interest test, then moved to the Federal Communications Commission. We have been heartened by the seriousness with which the FCC has undertaken its mission. Nonetheless, we continue to believe that the merger is not in the public interest, because of its inherently anti-competitive nature. Because of its failure to meet the public interest test, we believe that the FCC should reject this merger. That being said, if the FCC approves the merger, we believe that it should impose significant, meaningful conditions on the merger to reduce some of its negative, anti-competitive elements.

With the publication of the Proposed Conditions by SBC-Ameritech, the restructuring of basic telephone service under the Telecommunications Act of 1996 ("Act") has taken a dramatic turn that recognizes what residential consumers have perceived all along: the Act has failed to deliver competition to the local phone market. The regulatory structure has been unable to force the opening of local markets, and the incentive structure of the Act has been unable to induce entry into out-of-region local markets by major local exchange companies. Rather than compete, the RBOCs have opted to consolidate.

Should this merger be approved, the Proposed Conditions must be strengthened to attempt to rectify a situation in which the Act has failed. We think that the conditions to the merger should be stronger, clearer, and more readily enforceable. We believe that our suggested modifications to these Proposed Conditions —summarized in this letter and more fully explicated in the attached excerpted affidavit of Dr. Mark N. Cooper (which was filed as testimony in the merger review proceeding in Indiana on behalf of one of the undersigned groups)— constitute reasonable means to make this merger less bad for consumers.

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In an effort to create a set of conditions that can reduce the harm to the public interest, we suggest improvements that will 1) impose stronger market-opening conditions; 2) make it more attractive for competitors to enter markets; 3) make it more painful for incumbents to keep their markets closed; 4) tie the competitive fate of states or markets where companies want to compete to those where it does not; and 5) ensure consumer protections. We describe each of the suggestions below. The modifications and additions to the conditions that we recommend are summarized in the attached Exhibit. Some of the main points in our recommendation include the following.

**1. Impose stronger market-opening conditions**

- To ensure parity for competitive local exchange carriers, a test of the operating support systems (OSS) should be conducted prior to entry into in-region long distance. This test should be independent, scientific, comprehensive and at commercial scale.
- The Act envisioned vigorous state involvement in the market-opening process. In that spirit, conditions should be incorporated into section 251, 252, and 271 proceedings in the states. SBC-Ameritech should agree or be required to amend its interconnection agreements to incorporate the terms of the conditions into, and to file the conditions as part of, any section 271 application. This will give states the authority to oversee the implementation of the conditions within their borders.
- State authorities should also have enforcement powers or the right to file complaints on an expedited basis.

**2. Make it more attractive for competitors to enter markets**

- Use "Most Favored Nation" (MFN) clauses across state boundaries to force SBC-Ameritech to make available, at least in its own region, any of the market-opening conditions it avails itself of outside the region. It seems reasonable to insist that all of the market-opening conditions it uses as a competitor out of region should be made available to competitors who enter SBC-Ameritech's home region.
- To preserve parity among states across the service territory, any terms and conditions available in any SBC-Ameritech state should be available (under MFN) in every other SBC-Ameritech state.
- Require a new UNE pricing proceeding prior to the termination of UNE discounts to reflect the Supreme Court decision upholding the forward looking economic cost concept, the development of an FCC cost model and substantial merger cost savings claimed by the companies
- Require SBC-Ameritech to offer Extended Local Loops and other best practices the FCC identifies that ensure more rapid and extensive competition in residential markets

**3. Make it more painful for incumbents to keep their market closed (i.e., add stiff penalties)**

SBC-Ameritech will be able to enjoy the advantages of an approved merger almost immediately. Most of the Proposed Conditions and penalties proposed by companies, however, will unfold slowly over the course of one to three years.

- SBC-Ameritech should be required to file all plans to comply with the conditions before the merger closes (about 5 months).
- SBC should not enjoy entry into the long-distance market until the liquidated damages provisions of the proposed conditions are operative (about 9 months after closing).

**4. Tie the competitive fate of states or markets where companies want to compete to those where it does not.**

The Proposed Conditions would make out-of-region entry mandatory and require service to be offered to both business and residential customers. The build-out requirements attempt to ensure that competition is stimulated in important markets. The Proposed Conditions also require SBC-Ameritech to make service available to all residential and business customers in the markets it enters. Further, it requires entry into a major urban market for each of the RBOCs. It requires extensive entry – by forcing service to be offered in at least ten central offices in at least fifteen urban areas. However, the Proposed Conditions do not require that SBC-Ameritech offer attractive tariffs to residential customers, make significant efforts to sell services to residential customers, or sign up even one residential customer.

- The Proposed Conditions focus only on forcing SBC-Ameritech to compete in distant markets, but fail to recognize that there are in-region local markets controlled by other companies where competition would be beneficial as well. SBC-Ameritech should be required to enter at least one new market in each of its home states at the same level as it is required to enter out-of-region markets.
- Conditions should require SBC-Ameritech to demonstrate a good faith effort to attract residential customers, and permit the FCC to impose penalties where SBC-Ameritech fails to achieve a determined level of residential penetration.
- SBC-Ameritech should be required to meet at least half of its build-out commitment with new facilities, and not simply be allowed to buy competitive local exchange carriers (CLECs).

Forced out-of-region entry is a negative from the point of view of in-region customers. The Proposed Conditions deliver competition in out of region areas, but draws company resources from the in-region area and does little to stimulate competition at home.

- States can act to ensure that their ratepayers are not harmed, but rather benefit from this merger aspect.

- No future mergers between SBC-Ameritech and other RBOCs should be allowed.
- Other pending mergers between RBOCs should carry similar conditions, as should any other future mergers.

**5. Ensure Consumer Protections**

The Proposed Conditions address issues concerning the Lifeline program (automatic enrolment, flat rate discounts), advanced services in urban and rural areas and low-volume users. Clarifications are necessary to ensure that consumers' best interests are protected. Specific recommendations include:

- **Lifeline.** Consumers who prefer measured service should be given a discount. The discount should be equal to the percentage discount offered for flat-rate service. The minimum reduction should be \$5.25, which captures the federal share without state matching.
- **Low-Income/Rural.** This condition should require one low-income urban and one low-income rural central office to be include in the initial ten offices. This would ensure that services are extended to the low-income community as part of the mandatory conditions. It would also improve the mix of business and residential lines served
- **Low-Volume Users.** No PICC charges should be added to the bottom of consumers' bills.

Finally, we would like to comment on the treatment of any costs associated with these conditions. To the extent that there are costs associated with the competitive conditions (e.g. fines paid by SBC or discounts taken on unbundled network elements), these will not be recovered from ratepayers but presumably will be recovered through merger synergies. To the extent that there are costs associated with the expansion of the lifeline program, these will be funded by state universal service funding mechanisms.

The Telecommunications Act of 1996 had failed to deliver to consumers a competitive local telephone environment, and the consolidation of the RBOCs has led only to a continuation of the status quo. While we cannot endorse the merger of SBC and Ameritech, we do believe that a strengthened, enforced version of the Proposed Conditions will help lessen the damage of this merger to the public interest.

Respectfully submitted by

Citizen Action of Illinois  
Citizens Action Coalition of Indiana  
Citizens Utility Board (Illinois)  
Connecticut Citizen Action Group  
Consumer Federation of America  
Consumers Union (Washington and Southwest Regional Offices)

Michigan Consumer Federation  
Missouri Office of the Public Counsel  
Ohio Citizen Action  
Texas Office of Public Utility Counsel  
The Utility Reform Network

## Attachments

**Citizens Action Coalition of Indiana**, founded in 1974, is a not for profit organization of over 300,000 individual members in Indiana. For more than two decades CAC has worked to empower citizens, promote economic and environmental justice and advocate public policies protective of consumers and the environment.

**Citizen Action of Illinois** is the state's largest public interest organization. Along with its tens of thousands of individual members, Citizen Action's 75 affiliated citizen organizations represent a diverse coalition of community groups, senior citizens, labor unions, minorities, health professionals, people with disabilities, social service agencies and progressive public officials. Citizen Action has long advocated for consumers on utility regulatory policy, both in the legislature and before state and federal agencies.

**Citizens Utility Board** was founded by the Illinois state legislature in 1983 to represent the interests of residential customers in utility matters before regulators, legislators, and the courts. CUB is an independent organization, funded entirely by the voluntary contributions of its 150,000 members and devoted exclusively to advocacy on behalf of residential consumers of electricity, gas, and telecommunications services.

**Connecticut Citizen Action Group** is Connecticut's oldest and largest consumer watchdog organization.

**Consumer Federation of America** is the nation's largest consumer advocacy group, founded in 1968. Composed of over 250 state and local affiliates representing consumer, senior citizen, low-income, labor, farm, public power, and cooperative organizations, CFA's purpose is to represent consumer interests before the congress and the federal agencies and to assist its state and local members in their activities in their local jurisdictions.

**Consumers Union** is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finance; and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumer's Union's income is solely derived from Sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees.

The **Michigan Consumer Federation** was founded in 1991 to serve as an advocate for consumer interests in legislative and regulatory arenas. Its member organizations represent over 450,000 Michigan residents.

The **Missouri Office of the Public Counsel** is a state agency established pursuant to §386.700 R.S.Mo. 1994, one of whose functions is to represent consumers of telecommunications services.

**Ohio Citizen Action** is a statewide consumer and environmental organization that campaigns on public health, pollution prevention and utility, insurance and campaign reform. Founded in 1975, it is a non-profit, non-partisan organization with 150,000 dues-paying members.

**Texas Office of Public Utility Counsel** is the Texas state consumer agency designated specifically by State law to represent residential and small business consumer interest of the State. The agency advocates those interests before Texas and Federal regulatory agencies as well as the courts.

The **Utility Reform Network (TURN)** is a non-profit consumer advocacy organization that represents the interests of California's residential and small business customers of telecommunications utilities.

**SUMMARY OF RECOMMENDED ADDITIONS AND MODIFICATIONS TO SBC PROPOSED CONDITIONS**

<b>CONDITIONS RECOMMENDED BY PUBLIC INTEREST GROUPS IN STATE AND FEDERAL PROCEEDINGS</b>	<b>SBC PROPOSED CONDITIONS</b>	<b>CONSUMER GROUP ADDITIONS AND MODIFICATIONS</b>
<b><u>OPEN OWN MARKET</u></b>		
Best of breed selected from all on table.	One fifth of Texas for performance; FCC for collocation; Collaboratives	100% of Texas; extended loop; FCC should add other best practices
Best practices applied company-wide	Multi-state requests; restricted in-region MFN	Broaden in-region MFN
OSS test	None, liquidated damages provide discipline	Independent, scientific, comprehensive, commercial
Xtra-quarter	None	Merger closes after all plans are accepted by FCC (5 months); no 271 relief until liquidated damages are effective (9 months)
Drop litigation (UNE-P, STS)	Yes	
Recompute TELRIC	Discount	Use FCC model or have new UNE proceeding completed before discounts terminate
Arms length transactions	xDSL subsidiary	
<b><u>PROMOTE COMPETITION</u></b>		
Company-wide OSS	Uniform interfaces, multi-state requests	
Company-wide 271		
MFN	Newly invented conditions spread to region	All conditions used outside of region spread in-region
Eliminate anticompetitive practices	None	State issue
Marketing		Ban abusive marketing and pressure sales
CPNI		

<b><u>NATIONAL LOCAL</u></b>		
MFN	Newly invented conditions spread to region	All conditions used outside of region spread in-region
Timetables/penalties	Build out requirement/penalties	Require entry into new, in-region markets; add a residential target and penalty; require at least half of the build out to be new
<b><u>BENCH MARKING</u></b>	Oversight terminates in 45 months	Oversight terminates when conditions accomplish goals
Reporting	Yes; quality reporting	State issue
Monitoring	Audit	State authorities have oversight role (1) PUC can enforce fines or have special standing; (2) AG's People's Counsels have standing to bring complaints
Escalate penalty	Liquidated damages, build-out penalty	
<b><u>PUBLIC INTEREST</u></b>		
Lifeline	Unclear – may mean automatic enrolment and discount; no minimum bill for three years	Clarify, automatic enrollment; discount for flat rate; waive SLC in all cases; \$5.25 minimum discount, provide discount for measured service; no PICC
DSL deployment	Twenty percent of central offices after 20.	Twenty percent of each ten offices.
Price cap adjust	None	State rate issue: Share in merger synergies

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.**

**RE: In the Matter of Applications for Consent to the     )  
Transfer Of Control of Licenses and Section 214     )     CC Dkt. No. 98-141  
Authorizations from Ameritech Corporation, Transfer, )  
to SBC Communications Inc., Transferee.             )**

**AFFIDAVIT OF MARK N. COOPER**

**STATE OF MARYLAND**

**COUNTY of Montgomery**

I, MARK N. COOPER, being of lawful age and duly sworn upon my oath, do here  
depose and state as follows:

My following statement was filed on behalf of Consumer intervenors before the Indiana  
Utility Regulatory Commission in Cause NO. 41255 and is submitted to the Federal  
Communications Commission in the above noted Docket.

1 **I. BACKGROUND**  
2

3 Q. PLEASE STATE YOUR NAME.

4 A. My name is Dr. Mark N. Cooper.  
5

6 Q. ARE YOU THE SAME MARK COOPER WHO PREVIOUSLY FILED  
7 TESTIMONY IN THIS PROCEEDING?

8 A. Yes.  
9

10 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

11 A. I have reviewed the conditions that SBC has offered to comply with in the process  
12 of seeking approval for its merger with Ameritech.  
13

14 Q. PLEASE DESCRIBE THE BACKGROUND FOR THESE CONDITIONS.

15 A. With the publication of Proposed Conditions for FCC Order Approving  
16 SBC/Ameritech Merger (the Proposed Conditions) by SBC-Ameritech, the restructuring  
17 of basic telephone service under the Telecommunications Act of 1996 (the Act or the  
18 1996 Act) has taken a dramatic turn. The regulatory structure created by the 1996 Act  
19 has been unable to force the opening of local markets and the incentive structure of the  
20 Act has been unable to induce entry into out of region local markets by major local  
21 exchange companies. With the effort to eliminate the monopoly in local telephone  
22 service floundering, the FCC has apparently decided to take a more activist role in market  
23 opening.

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1 Federal authorities have abandoned the tools that have the greatest chance of  
2 promoting broad-based competition: strict antitrust and economic regulation that would  
3 have prevented mergers among incumbent LECs. Instead, federal officials appear  
4 destined to allow the providers of basic telephone service to merge into a tight oligopoly  
5 of regionally dominant firms, but in over three years since the passage of the Act they  
6 have been unable to foster competition, particularly for residential customers. From the  
7 outset, the effort to open local markets has been hampered by the Department of Justice  
8 (DOJ), which has accepted the mergers rather than rejecting them outright, and then  
9 failed to impose any conditions on the main line of business of these entities, plain old  
10 telephone service. From the outset, the Federal Communications Commission (FCC),  
11 which has never blocked such a merger under the Communications Act, set a course that  
12 would place conditions on the mergers, but allow them to go forward.

13 Although both federal agencies took a vigorous stand on the question of market  
14 opening and section 271 compliance, the resulting juxtaposition of huge local companies  
15 dominating large parts of the country and weak legislative requirements for market  
16 opening has doomed local competition. As the scale of the mergers mounted, the  
17 Chairman of the FCC expressed growing concerns about concentration in the industry.  
18 The SBC-Ameritech merger brought forth a statement of strong concern about the merger  
19 from the Chairman after the Commission had taken thousands of pages of evidence. The  
20 FCC staff was told to meet with interested parties to discuss the anticompetitive and  
21 public policy concerns raised by the merger. The result is a lengthy set of highly  
22 technical proposed conditions that the companies claim “comprehensively address all of

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1 the Chairman's concerns and provide additional assurances that the merger will bring  
2 immediate and substantial benefits to the public."

3

4 Q. HOW DOES THIS AFFECT STATE AUTHORITIES?

5 A. As a result, state telecommunications regulators and antitrust officials are faced  
6 with a difficult choice with regard to the SBC-Ameritech merger. Public utility  
7 commission staffs, attorneys general, and people's counsels, who traditionally deal with  
8 telecommunications regulation at the state level, not to mention consumer interveners,  
9 have offered extensive evidence in state proceedings and at the FCC that the mergers are  
10 too anticompetitive to be in the public interest. Most of these parties have said the  
11 merger should not be approved, but have gone on to identify conditions that should be  
12 imposed, if regulators conclude that they must allow the merger to occur. Basically they  
13 have said, "we do not think this merger can be good for consumers or that regulators can  
14 fix it, but these conditions would make it less bad."

15 In order to determine what next steps are in the public interest, it is important to  
16 understand the economic and legal conditions that have brought us to this state of affairs  
17 in the industry. The merger wave has proceeded because the DOJ has taken a very  
18 narrow view of its authority under the Sherman and Clayton Acts and the FCC has taken  
19 a narrow view of its authority under the Communications Act. This is overlaid on a  
20 congressional plan to introduce competition that appears to be inadequate to the task.  
21 The monopolistic basis of the industry in the ubiquitous public switched network and the  
22 urge to merge unleashed by the 1996 Act are simply too strong for the competitive

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1 incentives and regulatory requirements established by the Act. Because the law is so  
2 weak and the anticompetitive forces so strong even the most able and well-intentioned  
3 regulators would have had difficulty in creating a competitive market, especially for  
4 residential ratepayers.

5

6 Q. WHAT IS YOUR OVERALL CONCLUSION ABOUT THE PROPOSED  
7 CONDITIONS?

8 A. The Proposed Conditions reflect these institutional weaknesses. They address  
9 every concern raised by consumer intervenors as a "fall-back" position, if the merger was  
10 inappropriately approved (see Exhibit 1, which provides a list of conditions  
11 recommended by consumer intervenors in federal and state proceedings). However, even  
12 under the most optimistic of circumstances, all they could ever have accomplished was to  
13 make things less bad. I remain convinced that the merger is not in the public interest, but  
14 it is also clear that conditions can improve the public interest picture. However, a lot  
15 more work needs to be done on the Proposed Conditions before we can reach even this  
16 weak conclusion about their value to the public.

17

18 Q. WOULD THE CONDITIONS IMPROVE THE CHANCES OF A  
19 COMPETITIVE MARKET DEVELOPING?

20 A. With considerable improvement they could.

21

22 Q. HOW CAN THE CONDITIONS PROMOTE THE PUBLIC INTEREST?

1 A. With the Telecommunications Act floundering badly and assuming that the failure  
2 of local competition has been caused by the refusal of incumbent local companies to open  
3 their own market and their refusal to attack local markets outside of their own regions,  
4 several steps can be taken to rectify the situation.

5 Impose stronger market opening conditions.

6  
7 Make it more attractive for competitors to enter markets.

8  
9 Make it more painful for incumbents to keep their markets closed (i.e. add  
10 stiff penalties).

11  
12 Tie the competitive fate of states or markets where companies want to  
13 compete to those where they do not.

14  
15 The merger conditions attempt to address each of these areas. At the heart of the  
16 proposal are efforts to reduce the anticompetitive impact of the merger. After the merger  
17 closes, SBC-Ameritech would take further steps to comply with sections 251, 252 and  
18 271 of the Telecommunications Act of 1996. If the merged SBC-Ameritech does not  
19 implement the market opening merger conditions it pays penalties. The additional  
20 specific steps that SBC-Ameritech agree to take were not specified in the Act, although  
21 they have been on the table in state proceedings as the actions necessary to comply. The  
22 penalties were not part of the Act and they are substantially larger than any the FCC  
23 could impose under its normal powers.

24

25 Q. CAN THEY ENSURE A VIGOROUSLY COMPETITIVE MARKETPLACE,  
26 ESPECIALLY FOR RESIDENTIAL CUSTOMERS?

27 A. Not by a long shot.

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1

2 Q. DO THEY OFFER IMPORTANT PUBLIC INTEREST GAINS IN THE LOW  
3 INCOME AREA?

4 A. Yes, if appropriately implemented.

5

6 Q. ARE THESE GAINS WORTH THE RISK OF CREATING A TIGHT  
7 NATIONAL OLIGOPOLY IN TELECOMMUNICATIONS MARKETS FOR  
8 RESIDENTIAL TELEPHONE SERVICE?

9

10 A. No, but when faced with a bad situation, regulators at the federal and state levels  
11 can make a bad situation less bad.

12

13 Q. ARE THERE ANY IMPORTANT CONSUMER AND PUBLIC  
14 INTEREST ISSUES THAT THE PROPOSED CONDITIONS DO NOT DEAL  
15 WITH, WHICH CAN BE ADDRESSED AT THE STATE LEVEL?

16

17 A. Yes, including investment, rates, service quality, marketing and employment.

18

19 Q. WHAT DO THE PROPOSED CONDITIONS TELL US ABOUT VIGOROUS  
20 EFFORTS TO PROTECT THE PUBLIC INTEREST?

21 A. There were many individuals inside and outside of government at the federal and  
22 state levels that urged regulators to simply approve the merger without imposing  
23 conditions. They would simply let the corporations do whatever they want, assuming  
24 that private corporate interests are synonymous with the public interest. There are even  
25 some who are trying to strip or restrict the power of government to protect the public  
26 interest by scrutinizing and modifying corporate mergers.

1           We now discover that it is possible to force corporations to strike a better balance  
2 between their private interest and the public interest. Keep in mind, what is on the table  
3 is only SBC's offer. The FCC and the states can improve these conditions to strike an  
4 even better balance. Those regulators who have insisted on taking a thorough look at the  
5 mergers have been vindicated already. If they persist in driving a hard bargain they can  
6 improve a bad situation considerably.

7

8           **II. PROCEDURAL CHANGES**

9

10       Q.     ARE THERE IMPORTANT CHANGES IN THE PROPOSED PROCEDURE  
11 FOR IMPLEMENTING THE CONDITIONS THAT WOULD PROMOTE THE  
12 PUBLIC INTEREST?

13       A.     Yes. Regardless of what specific conditions are implemented, there are several  
14 important procedural changes that are necessary to improve the chances that the  
15 conditions will promote the public interest.

16

17       **A. STATE AUTHORITIES MUST HAVE A PROMINENT ROLE IN**  
18       **ENFORCEMENT OF THE PROPOSED CONDITIONS**

19

20       Q.     WOULD A ROLE FOR STATE AUTHORITIES HELP ENSURE THAT THE  
21 CONDITIONS ARE IMPLEMENTED IN A MANNER THAT PROMOTES THE  
22 PUBLIC INTEREST?

23       A.     Yes, charged with protecting the public interest, and confronted with a high  
24 probability that federal authorities will allow a bad merger to be consummated, state

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1 authorities should seek a prominent role in the enforcement of the Proposed Conditions.  
2 The Telecommunications Act envisioned vigorous state involvement in the process, but  
3 the dramatic wave of mergers has embedded individual state companies in increasingly  
4 large multistate holding companies. Because of the merger trend in the industry, the fate  
5 of competition will be determined in national markets. The Proposed Conditions now  
6 recognize this new industry structure and seek to impose a regional and national layer of  
7 conditions on the company. The state should seek enforcement authority under the  
8 Proposed Conditions.

9 Even if the proposed conditions were an ideal set of requirements to be placed on  
10 SBC-Ameritech after the merger goes forward, which they are not, there is serious doubt  
11 about whether the FCC would be able to enforce the agreement. Bell Atlantic-NYNEX  
12 made a similar commitment to post merger conditions and little happened. When the  
13 FCC received formal complaints about Bell-Atlantic NYNEX breaking its promises, the  
14 FCC did nothing.

15 Similarly, when the FCC completed an audit of the local telephone companies,  
16 which showed irregularities in accounting for assets that cost consumers billions of  
17 dollars of overcharges, the FCC did nothing. It sat on the audit for months, while the  
18 companies complained about the results. When finally pressured to release it, the FCC  
19 asked for comments. The audit, like the Bell Atlantic-NYNEX complaint, has  
20 disappeared into the black hole of FCC inaction.

21 The public is now asked to accept a similar set of promises and audit requirements  
22 as a response to a merger that has massively anticompetitive effects, subject only to the

1 oversight of an agency that lacks the resources to effectively oversee the traditional  
2 activities it is supposed to regulate, not to mention these new areas. There are two ways  
3 in which the enforcement authority can be improved – a state role in enforcement and  
4 clear definition of what is intended in the conditions.

5 State authorities (public utility commissions, attorneys general, and people’s  
6 counsels) should be involved in several ways.

- 7 • The Proposed Conditions should be incorporated into the state section 251,  
8 252 and 271 proceedings. SBC should agree/be required to amend its  
9 interconnection agreements to incorporate the terms of the Proposed  
10 Conditions and to file the Proposed Conditions as part of any section 271  
11 application. This step will give states the authority to oversee the  
12 implementation of the Proposed Conditions within their borders.  
13
- 14 • Incorporating the merger conditions in the section 251, 252, 271 process  
15 would not give the states the authority to enforce penalties, however. As  
16 proposed by SBC, the power to impose penalties would reside only at the  
17 federal level. The FCC should allow states to be directly involved in  
18 enforcement and imposition of penalties. This could be accomplished in one  
19 of two ways.  
20
- 21 • If a public utility commission finds SBC not in compliance in an evidentiary  
22 proceeding, the fines would be imposed.  
23
- 24 • In the alternative, state authorities would have standing to file complaints  
25 against SBC at the FCC for failure to live up to the conditions.  
26
- 27 • Complaints brought by state authorities should be handled on an expedited  
28 basis.  
29
- 30 • In cases where the Public Utility Commission has conducted an evidentiary  
31 hearing as the basis of its complaint, the burden of proof should fall on the  
32 company.  
33

34 Q. HOW DO YOU PROPOSE TO ACHIEVE CLARITY IN THE CONDITIONS?

1 A. One of the problems that resulted from the Bell Atlantic merger conditions was a  
2 lack of clarity in what was intended. The potential for a similar problem exists in this  
3 case. In particular, SBC proposes to allow the merger to close before it even outlines its  
4 plans for key activities, such as OSS enhancements, business rules, and xDSL  
5 provisioning.

- 6 • The FCC should not allow the merger to close until it has had a chance to  
7 accept these basic plans, which are so vital to successful implementation. A  
8 list of key terms and conditions should be drawn up for inclusion in these  
9 planning documents. Based on the SBC proposal, this condition would  
10 require another five months before the merger closes. If SBC desires to speed  
11 up the process, it could shorten the planning horizon.

12  
13 I believe that this is a compromise between the choices that have been presented  
14 to the Commission. The companies argue that no delay in closing the merger should be  
15 required. Critics of the merger would like to see an extensive set of preconditions. This  
16 proposal uses a set period and requires a concrete plan to be on the table before the  
17 merger closes.

18

19 **B. TIMING OF ENTRY INTO LONG DISTANCE**

20 Q. SHOULD THERE BE A RELATIONSHIP BETWEEN THE MERGER  
21 CONDITIONS AND ENTRY INTO INTERLATA LONG DISTANCE?

22 A. Yes. A second area in which an important procedural change can be made  
23 involves section 271 proceedings. The merger closes first and SBC-Ameritech begins to  
24 enjoy the merger advantages immediately. Most of the conditions imposed by the FCC  
25 unfold slowly over the course of one to three years (see Exhibit 2).

1 Even though the teeth (i.e. penalties) in the plan do not become operative for  
2 some time, there are no requirements that SBC-Ameritech forebear from asking for entry  
3 into long distance until that time. In essence, SBC-Ameritech could be in long distance  
4 long before the procompetitive benefits of the proposed conditions are enforceable.

5 The liquidated damages provisions of the performance parity plan do not kick in  
6 for nine months. The audit results on the collocation conditions are not due until the  
7 tenth month. The penalties for failing to meet the out-of-region build-out requirement do  
8 not become effective until after a year. Other implementation dates are even farther out.

9 The DOJ has declared that liquidated damages are the essential ingredient of  
10 enforcement in the highly complex world of telecommunications interconnection  
11 agreements. Regulators should affirm this position.

- 12 • SBC-Ameritech should agree not to seek section 271 entry into long  
13 distance until the liquidated damage provisions of the Proposed  
14 Conditions are effective. SBC could shorten the waiting period by  
15 agreeing to be bound by penalties in a shorter time.  
16

17 This would probably force SBC to wait longer than it wants in a couple of states,  
18 but the competitive problem to which the Proposed Conditions responds will not be  
19 addressed until the liquidated damages are operative.

20 I believe that this is a reasonable compromise between the SBC position that there  
21 is no relationship between section 271 and the merger and the position taken by many  
22 others (e.g. the Attorneys General of the five Ameritech states) that the merger should not  
23 be allowed to close until after section 271 entry has been allowed.

24

25 **C. TERMINATION OF OVERSIGHT**

---

1 Q. WHAT IS YOUR CONCERN ABOUT THE TERMINATION OF OVERSIGHT  
2 OF THE PERFORMANCE PARITY PLAN?

3 A. The performance parity plan terminates in 45 months, regardless of the condition  
4 of the telecommunications market. I believe the plan should not terminate unless the  
5 Commission finds affirmatively that it has accomplished its goal. I pointed out in my  
6 direct testimony that the standard to which mergers are held are higher than the open  
7 market standards in the 1996 Act. Mergers should be held to effective competition  
8 standards. It is 41 months since the 1996 Act was signed and not much has happened in  
9 the residential market. There is no magic number or date certain; actual results are what  
10 counts.

11

12 **III. PROMOTING IN-REGION COMPETITION**

13

14 **A. USING MOST FAVORED NATION CLAUSES TO OPEN IN-REGION**  
15 **MARKETS**  
16

17 Q. WHAT IS THE LOGIC BEHIND USING MOST FAVORED NATION  
18 CLAUSES TO ATTEMPT TO IMPROVE THE PROSPECTS FOR COMPETITION IN  
19 THE IN-REGION MARKETS?

20 A. While SBC-Ameritech claims it will be vigorous competitors outside their service  
21 territory, consumer advocates have argued that the merger denies consumers an important  
22 potential competitor. Consumers in the SBC states lose the potential for Ameritech to  
23 enter; consumers in the Ameritech states lose the potential for SBC to enter. The claim

1 that SBC could not compete outside of its region until after it acquired Ameritech is not  
2 very convincing.

3 The idea of a most favored nation clause across state boundaries is to force SBC-  
4 Ameritech to at least make available in its own region any of the market opening  
5 conditions it avails itself of out of region. It seems reasonable to insist that all of the  
6 market opening conditions it uses as a competitor out-of region should be made available  
7 to competitors who enter SBC's home region.

8

9 Q. WILL THE MOST FAVORED NATION CLAUSE AS PROPOSED  
10 ACCOMPLISH THAT OBJECTIVE?

11 A. Unfortunately, the most favored nation language as proposed renders it useless  
12 and perhaps counterproductive. The idea behind allowing most favored nation clauses to  
13 cross state borders was to ensure that captives of the larger regional monopoly get the  
14 benefit of market opening activities that SBC takes advantage in its out of region activity.  
15 As currently written, SBC, which has kept its markets closed tightly, can have its CLEC  
16 enjoy the better terms that are already available in out-of region markets, but does not  
17 have to apply any of those conditions back into its region competitors. Only if SBC  
18 negotiates new conditions that were not available out-of-region before it entered does it  
19 have to make those available at home. In this sense, SBC is rewarded for its past  
20 intransigence. It gets the advantage others have negotiated out of region without having  
21 to give the same opportunities to competitors in its own region.

22 • The out-of-region MFN should apply to any condition SBC invokes, not just  
23 new conditions it invents.

1

2 Q. IS THERE A SIMILAR PROBLEM WITH THE IN-REGION MOST  
3 FAVORED NATION CLAUSE.

4 A. The in-region MFN is similarly flawed. The idea behind allowing MFN within  
5 the region is to spread the better market opening conditions uniformly across the region.  
6 More concessions may have been made in one state than another (perhaps because SBC  
7 had a greater desire to obtain 271 relief in one state than another). Allowing the MFN  
8 across state boundaries within the region equalizes the competitive opportunities across  
9 states.

10 Moreover, by controlling more states within the larger region, SBC gains an  
11 advantage in dealing with multi-state customers (the big footprint issue raised in the  
12 merger proceedings). It controls access to more facilities operating by companies within  
13 its region. By allowing competitors to MFN across in-region state lines, this advantage is  
14 reduced.

15 Unfortunately, the way the language in the Proposed Conditions is written, SBC  
16 has an incentive to stop making concessions because only newly minted agreements will  
17 spread between the in-region states. For example, the concessions made in Texas in the  
18 past will not spread to Oklahoma. The historical experience with Bell Atlantic is  
19 instructive in this regard. After Bell Atlantic made significant concession in New York  
20 (the pre-filing statement), it explicitly disavowed those concession in Pennsylvania and  
21 New Jersey. We have spent a year and a half fighting to get to the same starting point in  
22 those states.

1           The solution is simple.

- 2           • Any terms and conditions that are available in any SBC-Ameritech state  
3           should be available for an MFN into every other SBC-Ameritech state.  
4

5   **B. PERFORMANCE PARITY**

6

7   **Q. WHAT IS THE ROLE OF PERFORMANCE PARITY IN MARKET OPENING?**

8   A.     Performance parity has become one of the most important issues in market  
9   opening. Congress required that incumbent local exchange companies treat entrants at  
10   parity with the way they treat their own internal operations, affiliates and customers in a  
11   number of technical and rate areas. In order to implement this clear mandate of the  
12   Congress, the DOJ and the FCC have insisted that performance measurement be  
13   developed to demonstrate parity and that performance penalties be in place to prevent  
14   deterioration in the treatment of competitors. This requirement has been resisted by the  
15   incumbents, but a number of measures have emerged as critical to ensuring parity. About  
16   one-fifth of the list developed in Texas has been incorporated into the Proposed  
17   Conditions.

18

19   **Q.    IS THERE A PROBLEM WITH THE PERFORMANCE PARITY PROPOSAL?**

20   A.     Yes. It would appear that SBC has proposed to be subject to a federal  
21   performance penalty on about one-fifth of the conditions it has agreed to be subject to in  
22   Texas. The states are free to require the full slate of Texas conditions or more.

- 23           • I believe that the FCC should insist on a best practices slate of conditions that  
24           is comprehensive and subject them all to the penalties.

1

2 Q. IS THERE ANOTHER PROBLEM WITH THE PROPOSED CONDITIONS?

3 A. Yes. Although agreeing on the list has proven difficult, actually achieving parity  
4 has proven even more difficult. As a result, independent tests of the operating support  
5 systems (OSS) have been required in some states. They have been resisted in others.

6 • An independent, scientifically valid, comprehensive and commercial scale test  
7 of the operating support system should be conducted prior to entry into in  
8 region long distance.

9

10 An independent test would show that the system can work and would help to  
11 eliminate problems. The test in New York has proven extremely helpful in this regard.

12 The test must be independent. That is, the testing agency should have no  
13 commercial interest in the product (operating support system) being tested.<sup>1</sup>

14 The test must be scientific. This means that in addition to culling a sample of  
15 orders placed by competitors, the testing agency should place a number of orders itself  
16 and the incumbent firm should not be able to ascertain which orders are tests and which  
17 are from competitors.

18 The test should be comprehensive, covering all major types of service orders.

19 The test should be at commercial scale. If the system is going to crash the  
20 moment real competition gets going, the public will be hurt and competition will suffer a  
21 major setback in the long term.

22

23 **C. DISCOUNTED UNBUNDLED NETWORK ELEMENTS**

1

2 Q. HOW DO DISCOUNTED UNES STIMULATE COMPETITION?

3 A. A second stimulus to in-region competition is a short-term discount on resale and  
4 unbundled network elements (UNEs). Discounts off existing tariffs will be offered at  
5 32% of resale and 25% of unbundled network elements. These discounts will last for at  
6 least two years.

7 The number of residential customers who could be served on these discounted  
8 UNEs is large, a total of 2.7 million. The discount is short lived, however, and their  
9 relevance is suspect. The problem is that the UNE prices that are being discounted are  
10 problematic.

11 Most UNE rates were set when the legal status of the FCC's pricing methodology  
12 was in doubt. The FCC's authority to prescribe an approach to pricing was being  
13 challenged by the incumbent local exchange companies (ILECs) and state commissions.  
14 At the same time that the FCC over control over pricing was being challenged, the state  
15 commissions arbitrating interconnection agreements between ILECs and competitive  
16 local exchange companies (CLECs). In cost proceedings the commissions were  
17 wrangling with both ILECs and CLECs over price levels. The results were compromises  
18 in UNE prices that fail to make entry into local service viable.

19 Three major changes have occurred since most UNE prices were set. First, the  
20 FCC's authority has been affirmed. Second, the FCC has developed a model to estimate  
21 UNE costs and the results of the initial runs of that model indicate that the so-called

---

<sup>1</sup> The collocation audit requirement prohibits a firm that has an interest in "all" of the

---

1 “discounts” may not even rectify past pricing mistakes. In this context, short-term  
2 discounts do not solve the problem (see Exhibit 3). Third, the mergers involve large  
3 projections in cost savings, many of which should affect the cost of UNEs. Savings in  
4 capital costs and network operations should lower the cost of UNEs. The growth in  
5 second lines, which are much lower cost than first lines, which is projected to result from  
6 the merger (and other factors) lower the average cost of loop (an especially important  
7 UNE for residential customers).

8

9 Q. DID YOU CONDUCT AN ANALYSIS OF THIS ISSUE?

10 A. Yes. To examine this issue, I have extracted the cost for the UNE that will affect  
11 residential service most – loop prices – from the FCC’s Synthesis Proxy Cost Model  
12 (SPCM) and compared these to the current prices for these UNEs in each of the states. As  
13 the exhibit shows, at least part of the discount is nothing more than a reduction in price  
14 embodied necessary to bring these to UNE prices down to UNE costs. This is without  
15 taking into account the reductions in costs that have occurred as a result of the merger  
16 and other factors.

17 Exhibit 3 also shows a comparison between the claimed embedded costs of local  
18 service (which is where the incumbent LECs started the cost analysis) and the forward-  
19 looking economic cost of service as calculated by the SPCM. This comparison  
20 underscores the extremely large differences between views of cost, differences that can  
21 now be resolved because of court decisions and the development of analytic tools.

---

systems from executing they audit. The word should be “any.”

1

2 Q. HOW CAN THIS PROBLEM BE SOLVED?

3 A. A number of possible steps could be taken to rectify the situation.

4 • The companies could be required to adopt the FCC cost model. The model  
5 would then be applied in state specific contexts.

6

7 There is almost no chance that the companies would agree to this.

8 • At a minimum, it makes sense to require another UNE pricing proceeding  
9 before the discounts terminate.

10

11 Not only have many of the legal and conceptual issues been resolved, but the

12 companies claim massive cost savings will result from the mergers. Some of these

13 including large amounts of network cost savings and reduced capital expenditure should

14 certainly be reflected in the cost of UNEs on a going forward basis.

15

16 **D. EXTENDED LOOP SHOULD BE MADE AVAILABLE**

17 Q. ARE THERE OTHER BEST PRACTICES THAT SHOULD BE

18 INCORPORATED INTO THE CONDITIONS?

19 A. Yes. Beginning with the New York collaborative and Prefiling Statement, it

20 became clear that finding mechanisms to allow entry into the residential market that

21 reduces the number of central offices in which competitors must collocate is important to

22 advancing competition in the residential market. Extended loops allow entrants to

23 transport signals to a single central office in a wider area and provide local services. The

24 concept has been developed in other Bell Atlantic states (e.g. the global collaborative in

25 Pennsylvania). It should be included as a merger condition.

1

2 **E. OTHER BEST PRACTICES**

3 Q. DO THE PROPOSED CONDITIONS REPRESENT A FULL SLATE OF BEST  
4 PRACTICES?

5 A. I do not believe so. I recommend that the FCC identify best practices across the  
6 SBC-Ameritech service territory and use those as conditions.

7

8 **IV. STIMULATING COMPETITION IN OUT-OF-REGION MARKETS**

9

10 Q. HOW DOES OUT-OF-REGION COMPETITION FACTOR INTO THE  
11 CONDITIONS?

12 A. Consumer advocates have been skeptical of the national-local strategy, to say the  
13 least. SBC's promise to compete outside of the region for primarily large business  
14 customers and the claim that this would cause retaliatory entry into the home region have  
15 given little comfort to those representing residential customers for a variety of reasons  
16 that I have outlined in my direct testimony.

17 First, retaliatory entry has not been the historic response of incumbent local  
18 companies. SBC is the best example. SBC is the only RBOC that was under significant  
19 attack from a sister RBOC (Ameritech up and running in St. Louis, with certificates in  
20 several other SBC states). It never retaliated. Although it identified Chicago as an  
21 attractive market, it chose to merge with the incumbent rather than compete there. The

---

1 natural response by other incumbent LECs will be to consolidate their local monopolies,  
2 just as SBC has done.

3 Second, the assumptions and conditions that SBC claims make its national/local  
4 strategy necessary are illogical and inconsistent. The merging companies claim that they  
5 are already beset with competition in their home service areas, but allowing them to  
6 merge will “jump start” local competition elsewhere. The most obvious contradiction in  
7 the national/local claim about competition stems from the fact that, by its own reasoning,  
8 there would be few, if any, viable competitors in the market. If the home court advantage  
9 is as important as the merging partners claim, then allowing one company to lock up half  
10 the business lines in the country would create a huge obstacle to any second, national  
11 local competitor.

12 The proposed conditions would make out-of-region entry mandatory and require  
13 service to be offered to both business and residential customers. The build-out  
14 requirements are an effort to ensure that competition is stimulated in important markets.  
15 It also requires that SBC make service available to all residential and business customers  
16 in the markets it enters. Further, it requires entry into a major urban market for each of  
17 the Regional Bell Operating Companies (RBOCs). It requires extensive entry – by  
18 forcing service to be offered in at least ten central offices in at least 15 urban areas in 18  
19 months. SBC would then be required to enter another 15 areas within 30 months. The  
20 latter target – 30 areas in roughly three years – was the business plan put forward by  
21 SBC-Ameritech at the time the merger was proposed. The near term requirements are the  
22 more binding constraints.

---

1           The central concern with these conditions is that the company will focus on the  
2 central offices with the largest numbers of business lines and not expend much effort in  
3 selling residential lines. If SBC goes to the urban markets that are already the most  
4 competitive and focuses its efforts on the business sector, which is already the most  
5 competitive, there is little public interest benefit.

6

7 Q.     HAVE YOU ANALYZED THE IMPACT OF THESE CONDITIONS?

8 A.     To gain insight into the magnitude of this problem, I conducted an analysis of the  
9 central offices in 9 states using the FCC Synthetic Proxy Cost Model. I identified the ten  
10 RBOC central offices in each state with the highest percentage of business lines. I then  
11 calculated the total number of business lines in those offices and the percentage of all  
12 business lines in the state in those offices. I also calculated the total number of  
13 households served in those offices and the percentage of all households in the state (in  
14 these offices (see Exhibit 4).

15           The nine states were chosen as follows. First, there are three states where the  
16 Proposed Conditions require SBC to enter within a year (MA, FL, WA). These are  
17 included. Next I identified the metropolitan areas in the top ten largest metropolitan  
18 areas out-of-region that SBC is most likely to enter. I then analyzed the switches in all  
19 states represented in those areas. This would put SBC in the 13 largest metropolitan  
20 areas. The population in those 13 areas is approximately 95 million, about one third of  
21 the national total. Including in-region metropolitan areas, SBC-Ameritech would be in  
22 24 of the top 30 metropolitan area representing a population of almost 120 million. A

---

1 total of 23 of the 50 markets identified in Attachment F to the Proposed Conditions are  
2 included in these 9 states. Thus, SBC could easily meet the early build out requirement  
3 from this group.

4  
5 Q. WHAT DID YOU FIND?

6 A. The analysis shows that SBC could meet its build out requirement with, on  
7 average, business lines outweighing residential lines by a factor of two to one.  
8 Nevertheless, SBC would be offering service to a substantial number of residential  
9 customers, approximately 2 million. It would be offering service to approximately 4  
10 million business lines.

11 SBC would be a very large CLEC. With the full penetration of 30 markets SBC  
12 would be offering service to 8 million business lines and 4 million residential households.  
13 As SBC works its way through the later stages, it would serve relatively more residential  
14 customers.

15 To the extent that the business customers in these central offices are already the  
16 most likely to have competition, the build out requirement adds only the residential  
17 customers. But the conditions do not have any requirements that SBC offer attractive  
18 tariffs to residential customers, make significant efforts to sell services to residential  
19 customers, or sign up even one residential customer.

20

21 Q. HOW COULD THIS PROBLEM BE SOLVED?

22 A. There are a number of ways to fix this problem.

- 
- 1           • The FCC could require SBC to enter central offices that reflect a more  
2           even mix of business and residential lines.  
3
- 4           • More importantly, it could require SBC-Ameritech to demonstrate a  
5           good faith effort to attract residential customers.  
6
- 7           • The FCC could consider penalties for failing to achieve a given level  
8           of residential penetration.  
9

10          I believe that a combination of these elements might be most effective.

- 11          • SBC could be allowed to choose the central offices it enters, but then would  
12          be required to achieve a level of service to business and residential customers  
13          that reflects the relative size of these two markets in the offices.  
14

15          Ultimately, successful stimulation of competition will not be determined by the  
16          first ten central offices, but the services and marketing practices that are pioneered there.

17          In the long term, residential customers will be better served by forcing SBC to think  
18          about the residential market out of region, than targeting specific offices. If penalties are  
19          assessed for failing to serve residential customers, then SBC would have an interest in  
20          developing services and marketing campaigns oriented toward that market and selecting  
21          at least some central offices that are attractive residential targets.

- 22          • The FCC should adopt a second penalty for failure to achieve representative  
23          residential penetration. For example, reflecting the greater difficulty of  
24          penetrating the residential market the penalty could be set at half the build out  
25          penalty and could begin six months after the initial penalty.  
26  
27

28          Q.     DOES THE BUILD-OUT REQUIREMENT ENSURE INCREASED  
29          COMPETITION?

30          A.     Actually, it does not. SBC could simply buy up out-of-region CLECs to meet the  
31          build out requirement. Not only would this not add more competition out of region, but

1 also it could actually diminish in-region-competition. If SBC buys the facilities of out of  
2 region competitors, it might weaken their interest in competing in-region, or eliminate  
3 them as potential in region competitors.

- 4 • SBC should be required to meet at least half of its build out commitment from  
5 new facilities.

## 8 **B. OUT OF REGION ENTRY MAY HURT IN-REGION CONSUMERS**

9  
10 Q. IS THERE A THREAT TO IN-REGION CUSTOMERS AS A RESULT OF  
11 THESE EFFORTS TO FORCE OUT-OF-REGION COMPETITION?

12 A. Yes. The forced out of region entry, which the Proposed Conditions impose, is a  
13 negative from the point of view of in region customers. It delivers competition in other  
14 areas, draws company resources out of the region, and does little to stimulate competition  
15 at home. SBC's claim that other companies would have to retaliate and enter its region  
16 never made any sense in this industry and certainly not for residential customers.

17 States can do several things to seek to ensure that their ratepayers are not hurt and  
18 eventually benefit from this aspect of the merger process:

- 19 • Direct commitments on investment within the state can be required so that  
20 in-region consumers do not become cash cows to fund out-of-region  
21 entry.
- 22 • Further mergers between Regional Bell Operating Companies should not  
23 be allowed.
- 24 • In-region state authorities should declare that they expect to be the  
25 beneficiaries when out-of region companies merge, by being identified as  
26 the markets into which those companies must move on terms similar to  
27 those applied to SBC-Ameritech.  
28  
29

---

1  
2           Since the FCC is changing the paradigm for industry structure, it should be made  
3 clear that all future mergers involving incumbent monopolists will require specific  
4 commitments about local service entry. SBC-Ameritech states should be special targets  
5 of conditions placed on the Bell Atlantic-GTE merger, any mergers involving other  
6 RBOCs, and even mergers involving cable companies (who qualify as local/regional  
7 monopolists). Since it is clear that local competition will not come without mandatory  
8 regulatory commitments, the FCC must require them for all mergers especially in SBC-  
9 Ameritech states.

10  
11 Q.     BEYOND STATING CONDITIONS ON FUTURE MERGERS, ARE THERE  
12 ANY CONDITIONS THAT CAN BE PLACED ON THE CURRENT MERGER TO  
13 CORRECT THIS PROBLEM?

14 A.     Yes, there is also one major improvement that could be made in the national local  
15 strategy. There are over 13 million lines within the SBC-Ameritech service territory that  
16 are served by major ILECs. Exhibit 5 presents an analysis of the central offices. In eight  
17 of the 13 states there are between 175 and 518 wire centers to choose from, service  
18 between 400,000 and 4.1 million lines. Nevada has a large number of people served but  
19 a small number of wire centers. For these states,

- 20           • SBC should be required to enter at least one new in-region market in each  
21           state.
- 22
- 23           • Because these are much smaller markets, the scale of entry should be measured  
24           differently. SBC should be required to enter wire centers that serve at least 10  
25           percent of the lines of non-RBOC incumbents in in-region states.
- 26

1           This would not only spread the benefits of forcing competition within the region,  
2   but it also correct the obvious big city bias in SBC's business plan, which its Proposed  
3   Conditions ratify.

---

1 **V. THE LOW INCOME PROGRAM**

2

3 Q. DO THE PROPOSED CONDITIONS ADDRESS LOW INCOME ISSUES?

4 A. Yes. the Proposed Conditions have several benefits targeted at low income/low  
5 volume consumers. Each of these seems valuable, but they must be clarified.

6

7 **A. THE LIFELINE PROGRAM**

8 Q. WHAT IS THE LIFELINE PROPOSAL?

9 A. The lifeline program proposed is difficult to understand. It makes reference to the  
10 program in Ohio, which has been changing over the years. I think it means that the  
11 company would propose to all public utility commissions in its service territory that  
12 lifeline programs be run on an automatic enrollment basis. The discount would be equal  
13 to the difference between the state's measured service price and its flat rate service price  
14 (up to \$10.20 per month). In other words, consumers would be automatically enrolled in  
15 a program that allows them to buy flat rate service at the measured service price.

16 Several immediate improvements come to mind.

- 17 • Consumers who prefer measured service should also be given a discount.  
18 The discount should be equal to the percentage discount offered for flat  
19 rate service.  
20
- 21 • The minimum reduction should be \$5.25, which captures the federal share  
22 without state matching.  
23
- 24 • In all cases, the federal subscriber line charge of \$3.50 should be waived  
25 (i.e. discounted).  
26

---

1 Exhibit 6 gives an example assuming a flat rate of \$10.50 and a measured service  
2 rate of \$5.25. Including the subscriber line charge, flat rate monthly service costs \$14.00  
3 (\$10.50 + \$3.50). Measured service costs \$8.75 (\$5.25 + \$3.50). The discounted lifeline  
4 rate should be \$5.25 for flat rate service (no SLC and flat rate service at the measured  
5 service price. The discount on rates is 50% (plus waiver of the SLC). For measured  
6 service the lifeline price would be \$2.62 (.5 x \$5.25 and waiver of the SLC). If this is not  
7 what has been intended in the Proposed Conditions, they should be modified to mean  
8 this.

9 In at least two Ameritech states the legality of lifeline programs is problematic. I  
10 believe that in Indiana the ban on lifeline programs in electricity does not apply to  
11 telecommunications because the facts are different (there are clear network externalities  
12 associated with telecommunications service). In Indiana and Illinois, I believe voluntary  
13 programs funded by corporate stockholders are permissible. Some of the merger gains  
14 could be used, voluntarily, to fund a lifeline program. Finally, states could certainly  
15 capture the federal government share of discounts, as they now do in the link-up program.

16 The expansion in enrollment that would result from automatic enrolment would  
17 be substantial. Exhibit 7 shows an estimate of the increase in enrollment that will result  
18 from company-wide automatic enrolment, assuming the SBC-Ameritech states achieve  
19 the same take rate as New York. The increase would be over 3 million subscribers.  
20 However, it should be noted that two of the states (Ohio and Texas) have already  
21 committed to automatic enrollment, although the programs have not taken effect. The net

1 increase from extending the automatic enrollment program to the other states would still  
2 be over half a million households. .

3

4 **B. ADVANCED SERVICES FOR LOW-INCOME URBAN AND RURAL**  
5 **AREAS**

6 Q. WHAT IS THE PROPOSAL FOR LOW-INCOME ADVANCED SERVICES?

7 A. Under the Proposed Conditions, SBC-Ameritech would be required to deploy  
8 xDSL in low-income areas after it has entered twenty wire centers in a state. It would be  
9 required to deploy such services in 10 percent (2) low-income urban wire centers and 10  
10 percent (2) low-income rural centers.

11 Unfortunately, the requirement to serve low-income customers with advanced  
12 services will never be activated because it is badly written. SBC is required to enter only  
13 ten wire centers in any area. Thus, SBC would only be half-way to triggering the low-  
14 income requirement when it has met its build-out requirement. SBC is likely to have  
15 exhausted the attractive business wire centers and met its build out requirements long  
16 before it triggers the low-income build out requirement.

- 17 • This condition should be restated to require one low-income urban and  
18 one low-income rural central office to be included in the initial ten  
19 offices. This would ensure that services are extended to the low-income  
20 community as part of the mandatory conditions. It would also change the  
21 mix of business and residential lines served.

22

23

24 **C. BAN ON MINIMUM BILLS FOR LOW VOLUME USERS**

25

---

1 Q. IS THE BAN ON MINIMUM BILLS FOR LOW VOLUME USERS  
2 IMPORTANT?

3 A. Yes. Exhibit 8 shows that low volume users, many of whom have stayed on  
4 AT&T's basic rate schedule, have suffered a major increase in their average charge per  
5 minute with the introduction of minimum bill requirements.

6 I believe that a long period in which one set of firms is not imposing this  
7 minimum bill requirement will shake up the long distance market and perhaps drive this  
8 practice out of existence.

9 • I would like to see a similar commitment from SBC-Ameritech not to put  
10 PICC charges on the bottom of consumer's bills.  
11

12 Q. PLEASE SUMMARIZE YOUR RECOMMENDATIONS.

13 A. Exhibit 9 presents a side-by-side of the SBC Proposed Conditions and my  
14 recommended modifications and additions. Without these changes, I believe that the  
15 conditions on the merger would not be effective.

16

17 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

18 A. Yes.

1 EXHIBIT 1:  
2 EX PARTE OF DR. MARK N. COOPER AT THE FCC ON BEHALF OF  
3 THE CONSUMER FEDERATION OF AMERICA  
4  
5

6 May 5, 1999  
7  
8

9 Ms. Magalie Roman Salas  
10 Secretary  
11 Federal Communications Commission  
12 445 12<sup>th</sup> Street, S.W.  
13 Washington, D. C. 20554  
14

EX PARTE

15 Re: CC Docket Nos. 98-141  
16

17 Dear Ms. Salas:  
18

19 The Consumer Federation of America (CFA) requests that this letter be entered into the  
20 record of the above proceeding. In accordance with Section 1.1206(a)(1) of the  
21 Commission's rules, two copies are being submitted to the secretary of the FCC.  
22

23 Dr. Mark Cooper, Director of Research at the Consumer Federation of America, met with  
24 Robert Atkinson and Bill Dever pursuant to the Commission's investigation into potential  
25 conditions on the SBC/Ameritech merger.  
26

27 Dr. Cooper expressed CFA's continuing opposition to the merger because of its  
28 anticompetitive effects, as outlined in comments already filed with the Commission.  
29

30 Noting that virtually all consumer and public interest groups had recommended that the  
31 merger be rejected, Dr. Cooper then outlined conditions that consumer groups and public  
32 interest intervenors had identified as addressing some, but not all, of the problems  
33 associated with the merger. The conditions Dr. Cooper identified included the  
34 following:  
35

36 OPEN OWN MARKET

37 Best of breed selected from all on table.

38 Best practices applied company-wide

39 OSS test

40 Independent

41 Blind

42 Commercial

43 Comprehensive

44 Xtra-quarter

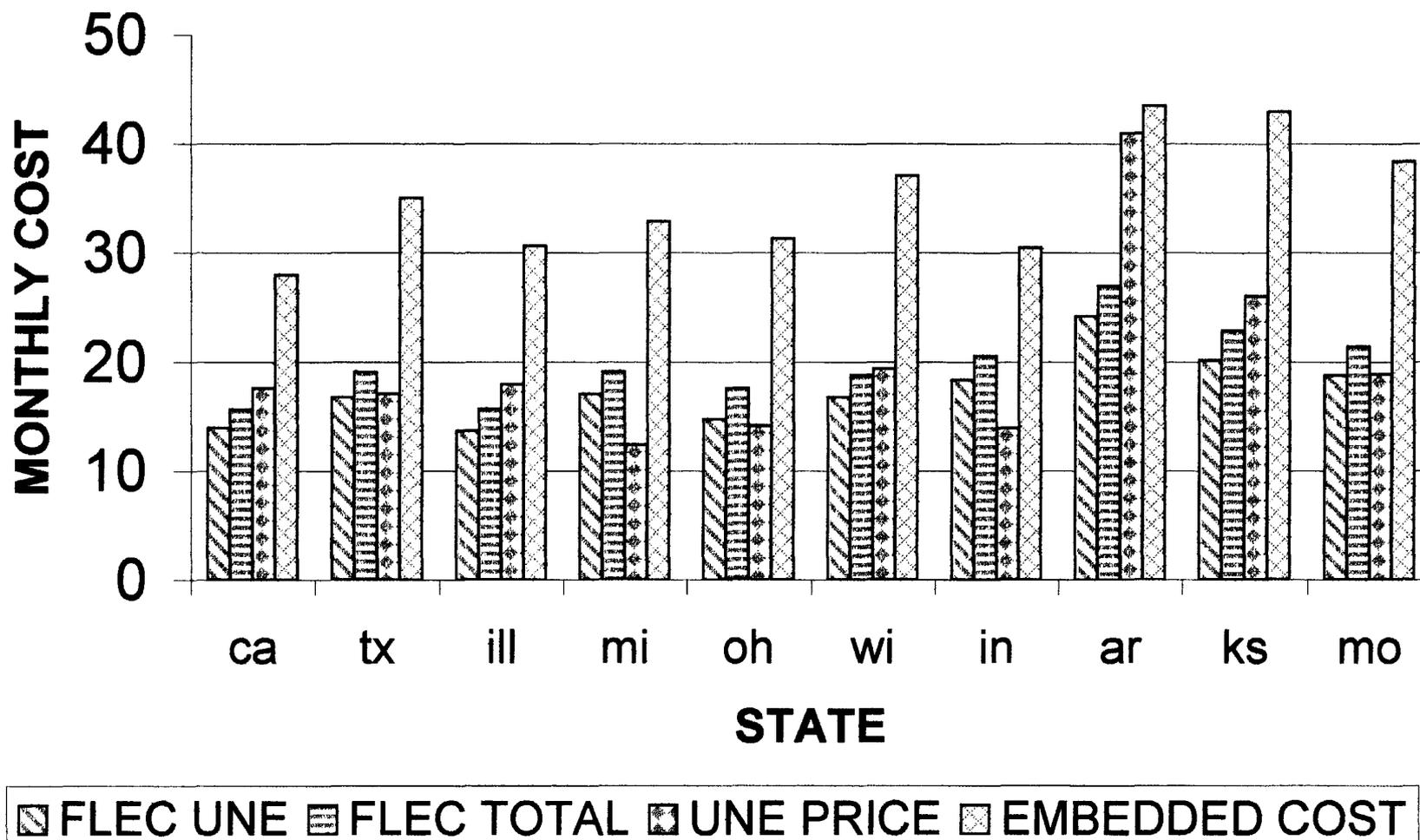
- 1 Drop litigation
- 2 UNE-P
- 3 STS
- 4 Recompute TELRIC
- 5 Efficiency gains
- 6 Uniform across company
- 7 Arms length transactions
- 8 Structural separation
- 9 Divestiture
- 10
- 11 PROMOTE COMPETITION
- 12 Company-wide OSS
- 13 Company-wide 271
- 14 MFN
- 15 Eliminate anticompetitive practices
- 16 Marketing
- 17 CPNI
- 18
- 19 NATIONAL LOCAL
- 20 MFN
- 21 Timetables and penalties
- 22
- 23 BENCHMARKING
- 24 Reporting
- 25 Monitoring
- 26 Escalating penalties
- 27
- 28 PUBLIC INTEREST
- 29 Lifeline – automatic enrolment company-wide
- 30 DSL deployment
- 31 Price cap adjustments
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Sincerely,

Mark N. Cooper



### EXHIBIT 3: COMPARISON OF FORWARD LOOKING COSTS TO UNE RATES AND EMBEDDED COSTS



SOURCE: FLEC = FCC Synthesis Proxy Cost Model; UNE prices = Board of Public Utilities Docket No. TX98010010, SR #15, March 1998. Embedded = NARUC Ad Hoc Working Group, High Cost Support, April 27, 1998



EXHIBIT 4  
ESTIMATE OF MANDATORY BUILD OUT  
NATIONAL LOCAL STRATEGY

AREA	BUSINESS LINES		HOUSEHOLD	
	#	%	#	%
MA	218	16	63	3
FL	160	29	170	11
WA	216	33	180	12
NY	543	15	98	1
PA	316	16	144	4
GA	355	29	254	11
VA	233	19	105	6
NJ	223	12	139	4
MD	224	19	101	5
TOTAL	2488		1254	
AVG PER WIRE CENTER	27.6		13.9	
TOTAL AT 150 WIRE CENTERS	4146		2090	
AT 300 WIRE CENTERS	8292		4180	

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1 EXHIBIT 5:  
2 IN-REGION, MAJOR NON-RBOC AREA FOR BUILD -OUT COMPETITION  
3

4 STATE	CENTRAL OFFICES	LINES SERVED (MILLION)
7 CA	271	4.1
8 OH	471	2.3
9 TX	518	2.1
10 ILL	502	1.2
11 IN	204	.9
12 NV	22	.9
13 MI	191	.7
14 WI	194	.4
15 MO	176	.4
16 OK	31	.1
17 AR	NA	NA
18 CT	NA	NA
19 KS	NA	NA
20		
21		

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1 EXHIBIT 6  
2 EXAMPLE OF LIFELINE DISCOUNT CALCULATION

	FLAT RATE SERVICE		MEASURED SERVICE	
	FULL	LIFELINE	FULL	LIFELINE
7 Local rate	\$10.50	5.25 <sup>1</sup>	\$5.25	\$2.62 <sup>3</sup>
9 SLC	3.50	0 <sup>2</sup>	3.50	0 <sup>2</sup>
11 TOTAL	14.50	5.25	8.75	2.62

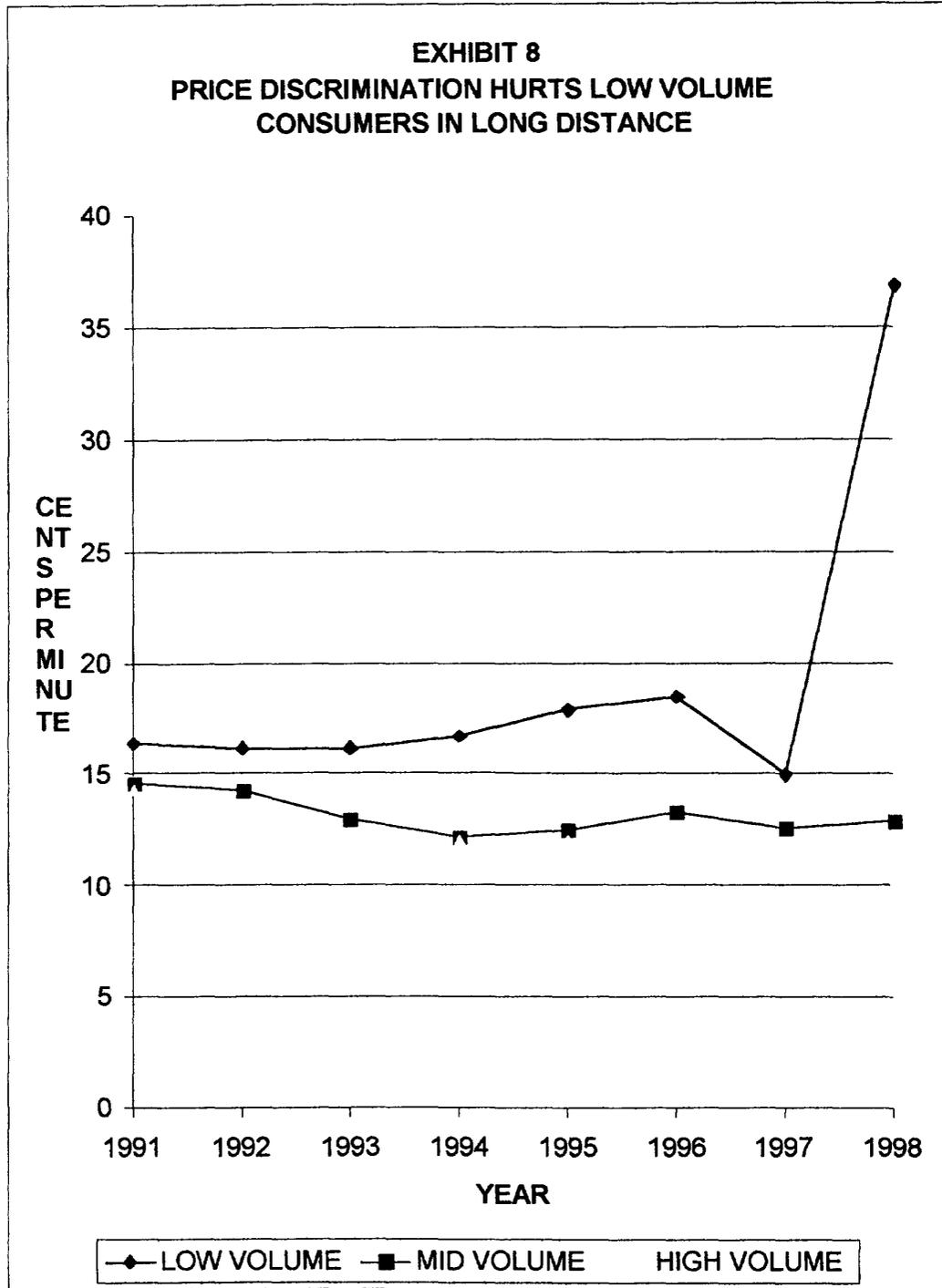
- 12  
13  
14 1) Local flat rate service equal to measured service rate.  
15 2) SLC waived  
16 3) Measured service discount equals same percentage as flat rate service discount  
17 (\$5.25/\$10.50=50%).

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1 EXHIBIT 7  
2 THE IMPACT OF IMPROVED LIFELINE PARTICIPATION

3  
4  
5 STATE HOUSE LIFELINE PARTICIPATION  
6 HOLDS ACTUAL PROJECTED INCREASE  
7 (000,000) 1998 @ NY TAKE (000)  
8 (00) (000)  
9  
10 AK 1 9 100 91  
11 CA 11.1 3122 3122 0  
12 CT 1.2 58 120 62  
13 IL 4.4 36 440 404  
14 IN 2.2 15 220 205  
15 KS 1 4 100 96  
16 MI 3.6 132 360 228  
17 MO 2.1 8 210 202  
18 NV 0.6 3 60 57  
19 OH 4.3 70 430 360  
20 OK 1.3 2 130 128  
21 TX 6.9 216 690 474  
22 WI 1.9 54 190 136  
23 TOTAL 41.6 354 6172 3156  
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25 NY 6.7 682

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SOURCE: Federal Communications Commission, Reference Book of Rates, Price Indices and Expenditures for Telephone Service, June 1999.

1 EXHIBIT 9:  
 2 SUMMARY OF RECOMMENDED ADDITIONS AND MODIFICATIONS TO SBC PROPOSED CONDITIONS  
 3

CONDITIONS RECOMMENDED BY PUBLIC INTEREST GROUPS IN STATE AND FEDERAL PROCEEDINGS	SBC PROPOSED CONDITIONS	CONSUMER GROUP ADDITIONS AND MODIFICATIONS
<b>OPEN OWN MARKET</b>		
Best of breed selected from all on table.	One fifth of Texas for performance; FCC for collocation; Collaboratives	100% of Texas; extended loop; FCC should add other best practices
Best practices applied company-wide	Multi-state requests; restricted in-region MFN	Broaden in-region MFN
OSS test	None, liquidated damages provide discipline	Independent, scientific, comprehensive, commercial
Xtra-quarter	None	Merger closes after all plans are accepted by FCC (5 months); no 271 relief until liquidated damages are effective (9 months)
Drop litigation (UNE-P, STS)	Yes	
Recompute TELRIC	Discount	Use FCC model or have new UNE proceeding completed before discounts terminate
Arms length transactions	xDSL subsidiary	

1

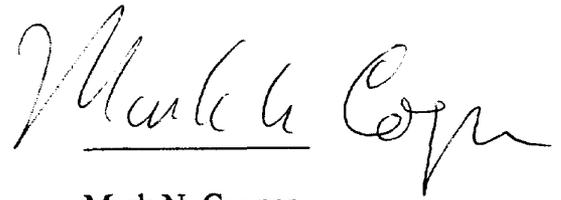
<b><u>PROMOTE COMPETITION</u></b>		
Company-wide OSS	Uniform interfaces, multi-state requests	
Company-wide 271		
MFN	Newly invented conditions spread to region	All conditions used outside of region spread in-region
Eliminate anticompetitive practices	None	State issue
Marketing		Ban abusive marketing and pressure sales
CPNI		
<b><u>NATIONAL LOCAL</u></b>		
MFN	Newly invented conditions spread to region	All conditions used outside of region spread in-region
Timetables/penalties	Build out requirement/penalties	Add a residential target and penalty; require at least half of the build out to be new
<b><u>BENCH MARKING</u></b>		
	Oversight terminates in 45 months	Oversight terminates when conditions accomplish goals
Reporting	Yes; quality reporting	State issue
Monitoring	Audit	State authorities have oversight role (1) PUC can enforce fines or have special standing; (2) AG's People's Counsels have standing to bring complaints
Escalate penalty	Liquidated damages, build-out penalty	
<b><u>PUBLIC INTEREST</u></b>		
Lifeline	Unclear – may mean automatic enrolment and discount; no minimum bill for three years	Clarify, automatic enrollment; discount for flat rate; waive SLC in all cases; \$5.25 minimum discount, provide discount for measured service; no PICC
DSL deployment	Twenty percent of central offices after	Twenty percent of each ten offices.

	20.	
Price cap adjust	None	State rate issue: Share in merger synergies

1

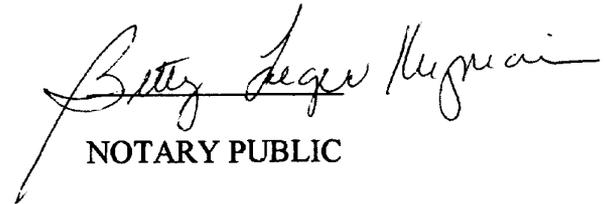
**[Signature Page Follows]**

The information contained in this affidavit is true and correct to the best of my knowledge and belief.



Mark N. Cooper

Subscribed and sworn before me this 19<sup>th</sup> day of July, 1999.



NOTARY PUBLIC

My Commission expires:

October, 2000