

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 98-141

In re Applications of)
)
AMERITECH CORP.,)
Transferor)
)
and)
)
SBC COMMUNICATIONS INC.,)
Transferee)
)
For Consent to Transfer Control of Licenses and)
Authorizations pursuant to Sections 214 and 310(d))
of the Communications Act and Parts 5, 22, 24, 25,)
63, 90, 95 and 101 of the Commission's Rules)

REPLY COMMENTS OF CABLEVISION LIGHTPATH, INC.

Cablevision Lightpath, Inc. ("Lightpath"), through its attorneys, hereby submits this response to the comments filed in the above-captioned proceeding on the conditions proposed by SBC Communications Inc. ("SBC") and Ameritech Corporation ("Ameritech") in connection with their merger (collectively, "SBC/Ameritech").¹ Lightpath files this reply principally to support the comments from various parties seeking clarification of the proposed SBC/Ameritech condition to offer interconnection agreements on a region-wide basis.² Through this condition, the Federal Communications Commission ("Commission") can secure the competitive

¹ See Pleading Cycle Established for Comments on Conditions Proposed by SBC Communications Inc. and Ameritech Corporation for their Pending Application to Transfer Control, *Public Notice*, DA 99-1305 (CCB rel. July 1, 1999) ("Public Notice DA 99-1305"), as amended by In re Applications of AMERITECH CORP., Transferor, and SBC COMMUNICATIONS INC., Transferee, for Consent to Transfer Control of Licenses and Authorizations pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules, *Order*, DA 99-1342 (CCB rel. July 7, 1999).

² Proposed Conditions for FCC Order Approving SBC/Ameritech Merger, attached to Public Notice DA 99-1305, at ¶ 53. See comments of Competitive Telecommunications Association, at 36-38.

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efficiencies of region-wide agreements for all carriers. This condition is especially appropriate in light of the new efficiencies that SBC/Ameritech will enjoy as a result of the merger. Finally, in the area of performance standards and remedies,³ the Commission should also clarify that (1) the performance standards and remedies in the proposed conditions supplement, rather than replace, current contractual arrangements between carriers; and (2) any caps on overall liabilities are imprudent and, at a minimum, should be waived in appropriate circumstances.

BACKGROUND

Lightpath is a full-service, facilities-based competitive local exchange carrier ("CLEC") that has authority to provide local exchange service in Ohio, Connecticut, New York, New Jersey, and Massachusetts. Lightpath currently serves thousands of residential and commercial customers in parts of New York and Connecticut, and intends to roll out its telephone and data services to other areas as it upgrades its facilities. Lightpath will be directly affected by the conditions proposed by SBC/Ameritech because it must rely on SBC/Ameritech to provide timely and adequate carrier-to-carrier services in Lightpath's service territory.⁴

Given its experience with negotiating interconnection agreements with Bell Atlantic in Connecticut, New York, New Jersey and Massachusetts, Lightpath has first-hand knowledge of the expense, delay, and frustration that accompanies a Bell operating company's ("BOC's") refusal to adopt terms and conditions in an interconnection agreement on a region-wide basis --

³ Public Notice DA 99-1305, at ¶¶ 1-2, 63-67 & Attachments A-1 through A-6. *See* comments of MCI Worldcom, Inc., at 16-17; NorthPoint Communications, Inc., at 27-29; Competitive Telecommunications Association, at 38-42.

⁴ Lightpath has entered into an Interconnection Agreement with Ameritech in Ohio and has an Interconnection Agreement with SBC's subsidiary, the Southern New England Telephone Company, in Connecticut. *See* Application of Ameritech Ohio for Approval of an Agreement Pursuant to Section 252 of the Telecommunications Act of 1996, Public Utilities Commission of Ohio, Case No. 99-173-TP-NAG (filed Feb. 19, 1999); Application of Southern New England Telephone Company for Approval of an Interconnection Agreement with Cablevision Lightpath - CT, Inc., Connecticut Department of Public Utility Control, Docket No. 98-06-08 (July 15, 1998).

and how mergers can exacerbate the difficulties. For instance, Lightpath expended hundreds of thousands of dollars and considerable other resources negotiating a pro-competitive interconnection agreement with Bell Atlantic in New York. Among other pro-competitive provisions, Bell Atlantic voluntarily agreed to a set of specific performance standards backed by self-executing, incident-based financial remedies.⁵ Lightpath then sought to use the same agreement as a template in New Jersey, Massachusetts, and Connecticut, making adjustments as necessary for state-specific requirements. While Bell Atlantic initially embraced this proposal, it subsequently refused to use the New York agreement as a template. Instead, Lightpath was forced to waste time and incur considerable additional expense to renegotiate in each state provisions that were previously negotiated as part of its New York agreement, and that were unaffected by New Jersey, Massachusetts, or Connecticut rulings. Indeed, in New Jersey, Lightpath was forced to arbitrate Bell Atlantic's refusal to accept, as part of an interconnection agreement, a meaningful set of performance standards and remedies. Lightpath eventually prevailed, but not before having to spend hundreds of thousands of dollars in legal fees and expend other valuable resources.⁶

The great irony here is that Bell Atlantic, during its own merger proceeding (relating to its merger with NYNEX), had made various interconnection commitments that led everyone involved to believe that the merger would lead to improved interconnection agreements and processes. However, as Lightpath's own experience demonstrates, the opposite occurred. The pro-competitive New York agreement described above was negotiated with NYNEX, pre-

⁵ One clear advantage of such company-specific, incident-based standards and remedies is that the CLEC does not have to rely on Bell Atlantic to assess performance.

⁶ See Comments of Cablevision Lightpath, Inc., dated March 8, 1999, regarding Bell Atlantic's Progress Report on Compliance with Bell Atlantic/NYNEX merger Order Conditions, File No. AAD 98-24 DA 99-296.

merger. Post-merger, Bell Atlantic refused to adopt that same agreement in other states (adjusted for state-specific rulings).

DISCUSSION

The instant merger review process provides the Commission with a unique opportunity to simplify inter-carrier negotiations through the use of region-wide agreements and to prevent the anti-competitive actions of Bell companies that have become all too familiar to Lightpath when incumbents merge. Specifically, to avoid any anti-competitive interpretations of the merger conditions, Lightpath respectfully requests the following clarifications:

- 1) Any existing or future interconnection agreement entered into by SBC/Ameritech in a state, either through voluntary negotiation or arbitration, shall be made available on a region-wide basis throughout the SBC/Ameritech territory subject to state specific pricing, without any need for further negotiation or arbitration.
- 2) The performance standards and remedies adopted as a part of these conditions supplement, and do not replace, performance standards and remedies contained in existing interconnection agreements. Also, any overall liability caps can be waived in appropriate circumstances.

As currently drafted, SBC/Ameritech's liberal proposal on region-wide agreements could be construed too narrowly. For example, these commitments could be construed to prevent CLECs from utilizing, as a template for a region-wide agreement, agreements that have been adopted prior to the SBC/Ameritech merger. Perhaps, more important, these commitments could be construed to allow SBC/Ameritech, having "negotiated" a region-wide agreement to then subject that agreement to a state-specific arbitration process. This would obviously defeat the entire purpose of a region-wide agreement. SBC/Ameritech should commit to adopting such region-wide agreements on an expedited basis, so that the efficiencies of streamlined agreements are not undermined by delay.

Similarly, and of equal importance, SBC/Ameritech should clarify that its proposed commitments for parity-based performance standards are not exclusive and can be supplemented by more exacting performance standards and remedies adopted in interconnections agreements, such as the company-specific, incident-based standards and remedies in the Lightpath agreement in New York with Bell Atlantic. Lightpath's experience supports other parties' comments that parity measurements and parity-based intervals are insufficient to ensure the timely provision of carrier-to-carrier provisions, and will only be more so once the incentive of long distance entry is removed over the next several years. For example, parity measures allow incumbents to perform poorly in certain areas, or for certain carriers, or for a certain amount of time, so long as on balance, their performance meets some minimum threshold. Without such clarification, moreover, the adoption of the proposed conditions could have the unintended effect of compromising CLEC negotiating positions. Finally, the Commission should reject any absolute cap on overall liabilities for poor performance. Such caps undermine the objective of establishing performance standards and remedies as an incentive for SBC/Ameritech to perform. There should be no absolute pre-defined limit that SBC/Ameritech could view as the "price of anti-competitiveness." Any cap on liability should be subject to waiver in appropriate circumstances.

CONCLUSION

By seeking a more definite commitment from SBC/Ameritech that it will extend existing agreements on a region-wide basis, subject to adjustment for state-specific requirements, the Commission has the opportunity to ensure that the merger of SBC and Ameritech promotes rather than undermines the development of local competition. Region-wide agreements permit CLECs to quickly enter the market without suffering delays from the renegotiation or arbitration

of numerous provisions and help provide CLECs with the certainty necessary to continue their infrastructure investments and roll out of competitive services.

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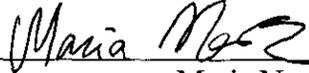
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CERTIFICATE OF SERVICE

I, Maria Nestoros, hereby certify that the foregoing Comments of Cablevision Lightpath, Inc., were served via first class mail, on this 26th day of July, 1999.



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