

August 5, 1999

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: CC Docket No. 98-141, DA 99-1305
In the Matter of Ameritech Corp. and SBC Communications, Inc.
For Consent to Transfer Control

To the Secretary:

Enclosed herewith for filing with the Commission are an original plus eight copies of the Comments of the Public Utility Commission of Texas in the above captioned matter. Also attached is the Motion to Accept Late-Filed Comments. We are providing copies to ITS and the Common Carrier Bureau. We are also providing an electronic copy of these comments via your ECFS interface.

Sincerely,

Stephen J. Davis, Chief
Office of Policy Development

cc: ITS, Inc.
Janice Myles, Common Carrier Bureau

jurisdictional responsibilities under the federal Telecommunications Act.³ We have approved negotiated agreements and have arbitrated issues when negotiations have not reached successful conclusions. Indeed, the FCC and its staff have participated in our meetings and have displayed an extremely cooperative approach to implementation of the Act. The Texas PUC is concerned that the Applicants' Proposed Conditions may be interpreted to supplant, rather than enhance, terms and conditions that have been previously adopted in Texas or in other states in which SBC and Ameritech operate. A more reasonable approach is to ensure that the conditions adopted as part of the merger agreement represent the minimum standards, beyond which state regulators may go when they deem appropriate.

The Proposed Conditions contain a sunset provision of three years after the merger closing date. The Texas PUC respectfully suggests that the three-year expiration of these conditions may not be sufficient time to ameliorate the market concentration concerns of the FCC. For other conditions, however, the interval may give the incumbent carrier too much protection. The Texas PUC respectfully requests that the FCC examine the sunset provision of the proposal, to carefully sort out the competitive impact and the benefit to customers, prior to its final decision.

II. Most-Favored-Nation Provisions

The in-region most-favored-nation ("MFN") provisions⁴ contained in the Proposed Conditions require SBC/Ameritech to make available to any requesting telecommunications carrier in any SBC/Ameritech state any interconnection arrangement or UNE that was *voluntarily negotiated* by SBC. The MFN proposal would specifically exclude arrangements that have been developed through arbitrations under 47 U.S.C. § 252. It is unclear whether the proposal would exclude the Proposed Interconnection Agreement ("PIA") that has been developed in the Texas PUC's § 271 review. We believe that the MFN provisions should extend to language that has been approved as a part of state regulatory decisions concerning RBOC

³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§ 151 *et seq.* ("Act").

⁴ Proposed Conditions, ¶ 52.

entry into long distance services under 47 U.S.C. § 271, since the RBOC would be voluntarily agreeing to such language as a condition of § 271 approval.

The Texas PUC would also note that the Proposed Conditions do not sufficiently address the MFN process for interconnection arrangements, UNEs, or resale provisions for an individual state in which no rate for a comparable arrangement, element, or service has been established. We recommend, in such a situation, that carriers be allowed to MFN into another state's rates on an interim basis, until the host state's rates are fully developed.

III. Digital Subscriber Lines

The issue of digital subscriber lines ("DSLs") is extremely important to the Texas PUC, as it represents a major step in deploying advanced services to all Americans in furtherance of section 706 of the Act. We will only be able to comment generally regarding our concerns on this issue, however, as we are involved in pending proceedings addressing DSL within our jurisdiction.

The Texas PUC is currently examining several of the specific issues included in the Applicants' proposed conditions, including the charges for loop conditioning, the availability of loop make-up information and OSS for DSL, and the provision of DSLAM functionality and access to advanced services equipment to competitors for DSL applications. There should be no federal preemption of state regulators' rulings that allow competitive access to the incumbent's network and systems.

The Proposed Conditions for DSL services diverge from various decisions made by the Texas PUC during its § 271 proceeding and pending arbitrations under § 251. For example, the uniform interim rates for DSL loop conditioning represent a significant departure from the approach taken by the Texas PUC in interim agreements. The Proposed Conditions also allow SBC/Ameritech to provide access to loop pre-qualification information by either electronic or non-electronic means.⁵ The Texas PUC and other states may wish to more strongly encourage SWBT or Ameritech to provide loop make-up data via electronic means. These are only two

⁵ Proposed Conditions, ¶ 23.

examples of situations in which it appears that the Proposed Conditions may restrict the states' ability to address competitive safeguards. We urge the FCC to closely evaluate the Proposed Conditions to see that such restrictions are eliminated.

IV. Operations Support Systems

The Proposed Conditions contain a three-year waiver of charges for electronic access to specified OSS functions, but retains SBC/Ameritech's right to recover OSS costs through the pricing of UNEs or resold services. The Texas PUC supports the waiver of charges for electronic access during the three-year interim period. As competition emerges and carriers gain experience with the process, the volume and cost of electronic access will become more certain. However, the FCC should be aware that UNE rates in Texas have been developed without inclusion of OSS costs, and we would oppose any automatic flow-through of those OSS costs to the UNE rates. The impact of recovery of OSS costs through UNE and resold services pricing should be carefully examined.

V. Performance Measures

Most of the performance measurements, benchmarks, liquidated damages and voluntary payments structure, and statistical methods used in the Proposed Conditions are said to be based on those developed in the Texas PUC's collaborative process involving the Southwestern Bell Telephone Company ("SWBT") application for in-region interLATA relief under 47 U.S.C. §271. However, there are some noteworthy exceptions. The following examples show some of the instances where the Proposed Conditions contain methods that were initially *proposed* by SWBT in the §271 process, but not the methods *adopted* by the Texas PUC as a result of analysis by staff and other parties.

In Attachment A (Federal Performance Parity Plan) of the Proposed Conditions, paragraph I.3.c, the Applicants indicate that they have not included the percentage (20%) limit on outliers, as was done in Texas.⁶ However, it is important to include a measure of not only the

⁶ The reference to Measurement # 5 in Attachment A, paragraph I.3.c appears to be in error, and should refer to Measurement # 2(b).

percentage of missed due dates, but also the extent of delays – measured either as the average delay days for missed due dates, or the percentage exceeding the benchmark.

Another deviation from the Texas parity plan can be found in the Z-Tests described in Attachment A-3, Calculation of Parity and Benchmark Performance and Liquidated Damages and Voluntary Payments. The fifth bullet point under “Z-Tests” describes the computation for benchmark measurement results that are expressed as averages or means, and includes a denominator (\bullet_{DIFF}) based on CLEC data variance. The Texas PUC reviewed and rejected this proposal by SWBT in our §271 analysis, with concerns that it would be in SWBT’s interest to show a wide variance in CLEC data to produce a lower Z factor. To correct that potential problem, the Texas PUC set the denominator at the numerical value of 1.0, thus making $z = (DIFF)$ in that calculation.

Another difference between the Proposed Conditions and the Texas performance measures involves the calculation shown in the sixth bullet under “Z-Tests” on Attachment A-3 for benchmark measurement results that are expressed as percentages or proportions. For this measurement, it was noted that results for CLECs with large numbers of observations will show better performance than CLECs that have only a few occurrences or orders. The Texas PUC addressed this inequity by setting the denominator of the calculation at a numerical value of 1.0, resulting in a formula where $z = (\text{benchmark} - P_{CLEC})$.

VI. Structural Separation for Advanced Services

The Texas PUC generally supports the concept of a separate advanced services affiliate, but we urge further review of the language in the Proposed Conditions⁷ that gives the incumbent LEC and its advanced services affiliate exclusive access to certain functionality associated with advanced services equipment. The advanced services affiliate should not be given exclusive access to functionalities that might be used to impair competition or give an unfair competitive advantage to the incumbent’s affiliate. The advanced services affiliate of the ILEC should have no different rights to collocation space in any ILEC facility than do CLECs. Further, any

⁷ Proposed Conditions, ¶ 27c.

structural separation should not preclude the ability of a CLEC to collocate advanced services equipment at sites other than the ILEC central offices.

VII. Conclusions

The Texas PUC encourages the FCC to ensure that customers realize benefits from the pending merger of SBC and Ameritech. While the Proposed Conditions contain numerous competitive safeguards, we have identified several specific issues that should be addressed before they are adopted. We encourage the FCC and its staff to continue dialogue with Texas and other states before completing this process. We appreciate the opportunity to provide comments in this important proceeding.

Respectfully submitted,

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August 5, 1999

Pat Wood, III
Chairman

Judy Walsh
Commissioner

Brett A. Perlman
Commissioner