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**Advanced
TelCom
Group, Inc.**

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September 28, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ex Parte Presentation

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

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

Dear Ms. Salas:

On September 17, 1999, SBC and Ameritech filed with the Commission revised proposed merger conditions, which included substantive changes to the merger conditions filed originally on July 1, 1999, and modified on August 27 and September 7, 1999. Advanced TelCom Group, Inc. ("ATG") is an Integrated Communications Provider providing local and long distance voice, high speed Internet and other data services over advanced digital networks. ATG currently has operations in California, Nevada, Oregon, and Washington. ATG intends in the near future to begin operations in a number of areas in which SBC or Ameritech operate as the incumbent local exchange company. Accordingly, ATG has a direct and substantial interest in the Commission's review of the proposed merger of SBC and Ameritech and in the conditions that have been proposed by SBC and Ameritech to obtain Commission approval of the merger.

ATG has prepared written comments, in response to the SBC/Ameritech filing of September 17, 1999, which are attached. In addition to those comments, ATG has the following procedural observations.

The September 17, 1999 filing purports to be a clarification of previous drafts of proposed conditions to which the merging companies would agree as a condition of being permitted to proceed with the merger. In fact, the September 17, 1999 filing includes terms which dramatically alter the previously proposed terms and conditions. These

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**ATG Comments on 9/17/99
Proposed Conditions for FCC Order
Approving SBC/Ameritech Merger**

Submitted September 28, 1999

Introductory Paragraphs

The second paragraph of introductory statements indicates that the Conditions are not intended to "...limit state authority to adopt rules, regulations, performance monitoring programs, or other policies *that are not inconsistent with these Conditions.*" These conditions should not limit state jurisdiction over interconnection agreements, performance measurement, penalties, or any other matter, irrespective of whether or not the state decisions are inconsistent with the Conditions. The Conditions should only bind SBC and Ameritech. To the extent the FCC or a state commission or legislature imposes more stringent requirements than are set forth therein in areas within their respective jurisdictions, those requirements should apply to SBC/Ameritech as they would to any other ILEC. If state or federal requirements are less favorable to competitors, then SBC/Ameritech should be bound to the requirements agreed to in the Conditions.

Separate Affiliate for Advanced Services

Par. 3. This paragraph limits SBC/Ameritech's obligations to comply with Sections 272(b), (c), (e), and (g) of the Act (affiliate requirements). Those sections would not apply during the 6-month transition period set forth in 3(c)(3) of the Conditions, and would not apply to the extent they are otherwise inconsistent with the provisions of paragraph 3. This is one of several examples in which the Conditions waive various requirements of the Act and/or the FCC rules. SBC and Ameritech should not be given exemptions from the law and FCC rules as part of their merger approval; rather, additional conditions should be imposed to ensure that the merger does not diminish opportunities for development of effective competition.

Further, paragraph 3 predetermines that the separate advanced services affiliate will not be deemed a successor or assign of a BOC or incumbent LEC for purposes of Sections 153(4) and 251(h) of the Act and that the incumbent LEC's obligations under Sections 251, 252, and 272 will not be transferred or assigned to the affiliate, even if ILEC assets are assigned or transferred from the ILEC to the affiliate. This predetermination should be eliminated from the Conditions, because it limits the ability of the FCC (and potentially states) to determine in the future that the affiliate is a successor of the ILEC and therefore obligated under those sections, if the activities of the affiliate and the BOC/ILEC warrant such a determination. The facts surrounding the makeup and activities of the affiliate are not known at this time, making it impossible to predetermine whether it should be considered a successor or assign of the incumbents.

Par. 3(a). The joint marketing provisions in this paragraph and elsewhere in the Conditions should be eliminated. These provisions substantially dilute any benefits from

establishing a separate affiliate for advanced services, by greatly increasing opportunities for SBC/Ameritech to leverage their monopoly positions in the local exchange markets to their competitive advantage in the advanced services markets. To the extent that any joint marketing is permitted, SBC/Ameritech should be required to abide by the rules and regulations established by the FCC and state commissions, rather than given the broad discretion to joint market that is embodied in the Conditions.

There are numerous additional elements contained within the Conditions which further diminish any value from establishing a separate affiliate for advanced services and which should be eliminated from the Conditions. For instance, Par. 3(b) allows the ILEC to provide billing and collection in a manner different than is offered to unaffiliated providers; under Par. 3(f), the affiliate is allowed to use the ILEC's name, trademarks, or service marks exclusively; under 3(g), employees of the affiliate can be located in the same building and on the same floors as employees of the ILEC on an exclusive basis; under 3(h) during a 12-month transition period the ILEC can receive and process trouble reports from the affiliate on an exclusive basis; and under 4(l) the ILEC can perform a variety of activities exclusively on behalf of the affiliate related to customer service. These and other provisions, in effect, allow the affiliate to remain closely tied to, and able to use the resources of, the ILEC. Further, because later provisions of the Conditions suggest that the affiliate will be subject to minimal or no regulation by either the FCC or state commissions, and given the exemption from assignment and successor obligations set forth in Par. 3 (discussed above), the establishment of a separate affiliate under the terms of these Conditions is no better and perhaps worse than simply leaving the provision of advanced services within the scope of the ILEC operations.

Par. 3(c)(3) of the Conditions allows all of the requirements for separation of the advanced services affiliate to be waived for a 6-month transition period. This would apparently allow, for instance, the affiliate to use OSS interfaces not available to unaffiliated providers and allow the ILEC to perform all of the network planning and engineering functions outlined in Par. 4(a) (e.g., obtaining collocation space) on an exclusive basis during that 6-month window. This could have devastating effects on the ability of competitive providers of advanced services to effectively compete in this market, by allowing SBC/Ameritech to "jump start" its entry into the market using the resources (including employees, customer data bases, systems, central office space, etc.) of its monopoly operations. These arrangements could enable SBC/Ameritech to subsidize its advanced services affiliates with revenues from monopoly local exchange operations; for instance, by undervaluing assets that are transferred to the affiliate and/or failing to allocate appropriate costs to the affiliate for work performed by ILEC employees.

Par. 12. Sunset Provisions for the Advanced Services Affiliate. These provisions relieve SBC/Ameritech's obligations under the Conditions to maintain an advanced services affiliate after a time certain or under a variety of possible circumstances. For instance, under 12(b), if legislation is passed which prohibits the FCC from requiring ILECs to establish separate affiliates for advanced services or the FCC substantially changes its rules affecting affiliate relationships, SBC/Ameritech would be relieved of its separate

tariffs are more likely to be favorable to competition than negotiated agreements, this restriction severely diminishes the usefulness of this Condition. Second, the paragraph does not recognize the expedited "opt-in" provisions contemplated under Section 252(i) of the Act and the FCC's interpretation thereof. SBC/Ameritech should agree to permit CLECs to opt into approved agreements on an expedited basis by notifying the ILEC of its intention. Third, the paragraph includes language that would require a CLEC seeking to obtain a particular element or arrangement available under an existing agreement to accept "all reasonably related terms and conditions as determined in part by the nature of the corresponding compromises between the parties to the underlying interconnection agreement." This qualification gives SBC/Ameritech virtually unfettered latitude to attach extraneous terms and conditions to a requested element or arrangement and thereby effectively deny the CLEC any reasonable opportunity to utilize the benefits of this pick-and-choose provision.

Offering of UNEs

Paragraph 53 would allow SBC/Ameritech to discontinue providing particular UNEs or combinations ordered by the FCC at such time a final, non-appealable judicial decision is reached providing that such UNEs or combinations are not required to be provided by SBC/Ameritech. In return for approval of the merger, SBC/Ameritech should agree that it will continue to provide UNEs and combinations ordered by the FCC, irrespective of future court decisions.