

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of)
)
AMERITECH CORP.,)
Transferor,)
)
AND)
)
SBC COMMUNICATIONS INC.) CC Docket No. 98-141
Transferee,)
)
)
For Consent to Transfer Control of)
Corporations Holding Commission Licenses and)
Authorizations Pursuant to Sections 214 and)
310(d) of the Communications Act and)
Parts 5, 22, 24, 25, 63, 90, 95 and 101)
of the Commission's Rules)

RESPONSIVE COMMENTS OF
THE MICHIGAN PUBLIC SERVICE COMMISSION (MPSC)

I. Introduction.

On July 1, 1999 the Federal Communications Commission (FCC) established a pleading cycle for comments on the proposed conditions of SBC and Ameritech filed in connection with their pending application to transfer licenses and authorizations. The pleading cycle was amended by order of the Deputy Chief of the Common Carrier Bureau establishing that comments on the proposal be filed by July 19, 1999 and responses by July 26, 1999. In compliance with that schedule, the Michigan Public Service Commission (MPSC) herein files its response to comments on the SBC/Ameritech proposed merger conditions.

II. All States Should Receive Benefits of Merger.

Michigan endorses the FCC Local and State Government Advisory Committee Recommendation No. 17, Statement of Principles To Be Considered in Analyzing Proposed Telecommunications Merger, and in particular the following component:

"The merger should equitably allocate the total benefits between all of the affected state and local communities. No single community should receive the majority of the benefits.

For example, as individual states and local communities reach settlement agreements with parties proposing mergers, it is critical that all benefits be distributed equitably throughout the communities affected by the proposed mergers. Some state and local governments are far along in implementing deregulation and competition, while others have not yet started. It may be the case that those state and local communities who have not yet implemented deregulation and competition may have more leverage with the merger parties because they may have more to offer. Thus, merger agreements may result in a

division between communities that gain major benefits, and others that do not. To meet the public interest standard, a proposed merger should be evaluated by the entire array of settlements and benefits offered, with a focus on equitable distribution of the benefits nationwide."

III. State Authority.

The Michigan Commission requests that conditions for approval of the SBC/Ameritech merger clearly specify that in cases where separate state jurisdiction exists over an item discussed in the subject merger conditions, that state decisions on similar conditions continue to be recognized as binding. In addition, the Michigan Commission proposes that the state decisions to be recognized include both those issued in state proceedings on the proposed merger as well as those issued in proceedings not related to the merger application. Specifically, the Michigan Commission is in agreement with the Comments of the Public Service Commission of Wisconsin wherein it is proposed that the FCC clarify that it is not its intent to preempt or supersede state authority over issues which might otherwise be addressed in the subject merger proposal. In addition the Michigan Commission agrees with Wisconsin's proposal that specific recognition be given to state authority in states that may have no jurisdiction to approve the merger itself, such as is the case in Michigan, but do have authority in areas covered by the proposed conditions. For example, the Michigan Commission has addressed both the issues of availability of shared and common transport and has also conducted proceedings on the issue of performance standards to be utilized in judging nondiscriminatory interconnection between competitive providers and Ameritech. The FCC should specifically recognize and allow states to enforce decisions pursuant to state authority.

IV. Annual Compliance Audit Requirement; Federal-State Oversight

Michigan concurs with the comments of the Public Service Commission of Wisconsin that the FCC should include the state commissions in the planning and audit process as proposed in paragraph 62 of the proposed conditions document.

Michigan also endorses the "Resolution on Development and Application of FCC Merger Conditions" adopted by the National Association of Regulatory Utility Commissioners at its recent San Francisco meeting (see attached). The FCC should incorporate these recommendations as conditions for approval of the SBC/Ameritech merger.

V. The Out-of-Region Local Services (National-Local Strategy) May Result in Customer Inequities.

In its merger proposal, SBC/Ameritech makes commitments to enter several out-of-region markets. Parties, including the Texas Office of Public Utility Counsel, express concern that such commitments be offered at prices and levels of quality that make the offerings viable competitive alternatives. MCI Worldcom, in fact, has asserted in its comments that SBC/Ameritech could, under the terms of the merger proposal, charge more for local service than the ILEC.

Michigan's concern is the opposite. We believe the real potential exists for SBC/Ameritech to concentrate its resources, at least in the near future,

on building a competitive presence in these new markets to the detriment of its existing customers in markets where they have a dominant presence.

We note that no such new competitive program has been required of other RBOCs who could operate in the SBC/Ameritech service areas.

Michigan already has experience where various service offerings in other Ameritech states are priced considerably below identical offerings in Michigan. To avoid exacerbating this situation, Michigan recommends the FCC qualify the SBC/Ameritech out-of-region commitments to provide "most favored nation" status for existing in-region customers. Upon the request and review of state commissions services which are to be offered and priced by the CLEC, SBC/Ameritech should also be available to customers of the ILEC, SBC/Ameritech. We note the FCC has already provided such "most favored nation" status as regards negotiated interconnection agreements. The protection afforded to competitive carriers by this provision should also be granted to business and residential customers via our recommendation.

We would agree that over the long-run, competition will provide the best protection for existing customers since other competitors will undoubtedly enter in markets which are dominated by SBC/Ameritech. Our concern primarily lies with the transition period.

Date: July 26, 1999

Respectfully submitted,

John G. Strand, Chairman

David A. Svanda, Commissioner

Robert B. Nelson, Commissioner

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ATTACHMENT

Resolution on Development and Application of FCC Merger Conditions

WHEREAS, The Federal Communications Commission recently released for comment conditions proposed by two companies to apply to their pending application to transfer control; and

WHEREAS, The FCC has issued conditions in previous mergers and will likely see more mergers filed before it in the future; and

WHEREAS, The conditions in the this most recent merger attempt to address some of the concerns that State commissions have expressed about the proposed merger, including, but not limited to, local competition, deployment of advanced services, service quality, and regulatory benchmarking; and

WHEREAS, The proposed conditions will have a significant impact on each state in which the companies provide service-both today and in the future; and

WHEREAS, These conditions, if implemented, create a complicated set of timelines, penalties, and reporting requirements that differ across the companies' service territories; and

WHEREAS, State commissions are delegated a significant role in implementing some of these provisions, as determined by the FCC and the companies, yet are provided no role in the FCC's process in the development of performance standards or auditing procedures; and

WHEREAS, The conditions, if approved, appear to give sole authority to the companies in determining and/or implementing the terms of many of the conditions; and

WHEREAS, Many of the compliance documents to be prepared by the companies will only be filed with the FCC and/or will receive confidential treatment, which could, in some cases, limit the ability of State commissions to monitor compliance at the state level; and

WHEREAS, It is not clear whether the proposed conditions impose penalties that will supplement or be cumulative to state-imposed penalties; such that any payments made by the companies to a State commission for non-compliance with a requirement substantially similar to a requirement in the FCC conditions will be considered a payment toward the penalties required by the FCC conditions or vice versa, and

WHEREAS, Many of the proposed conditions expire after three years, therefore raising questions about future enforcement and decision-making authority of those terms as well as the jurisdictional role of the State commissions and the FCC; and

WHEREAS, State commissions, give their unique understanding of the issues in their respective states and territories , can provide the FCC with invaluable guidance into the development of, and means to determine compliance with, the terms of many of the proposed conditions: NOW THEREFORE BE IT

RESOLVED, The Board of Directors of National Association of Regulatory Utility Commissioners (NARUC) assembled at its 1999 Summer Committee Meetings in San Francisco, California, encourages the FCC to provide states and territories an expanded role in determining the performance benchmarks, and current and future compliance with such benchmarks, described in the merger conditions filed by SBC/Ameritech and in subsequent merger filings; and be it further

RESOLVED, NARUC encourages the FCC to provide states and territories, which have not independently acted on the proposed merger, the ability to jointly determine the terms of the proposed conditions rather than granting sole

authority to the merging companies, and be it further

RESOLVED, NARUC proposed that a post-merger joint federal-state oversight team could achieve such results; and be it further

RESOLVED, That if the FCC delegates implementation of some merger conditions to the State commissions, NARUC recommends that the FCC

1. Share all compliance reports and supporting information with state commissions in a timely fashion; and

2. Clearly separate the federal conditions from any state-imposed conditions, so any penalties imposed at the state level are not weighed against any federal penalty requirements; or vice versa; and

3. Consider the addition of a merger condition that merging entities will not utilize legal procedures or otherwise oppose the efforts of State commissions to enforce the agreed upon merger conditions by arguing that State commissions lack the necessary authority or jurisdiction; and be it further

RESOLVED, NARUC encourages the FCC to consider these recommendations not only as they relate to the recently proposed merger conditions, but also any conditions developed for subsequent mergers of telecommunications carriers.