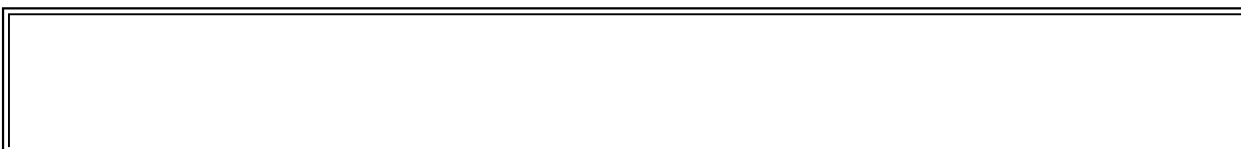


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Merger of SBC)

Communications, Inc. and Ameritech) **Case No. TM-99-76**

Corporation.)



REPORT AND ORDER

Issue Date: October 8, 1998

Effective Date: October 20, 1998

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Merger of SBC)

Communications, Inc. and Ameritech) **Case No. TM-99-76**

Corporation.)

APPEARANCES

Paul G. Lane, General Attorney-Missouri, and Anthony K. Conroy, Attorney at Law, One Bell Center, Room 3520, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

David L. Woodsmall and Rachel Lipman, Attorneys at Law, 8140 Ward Parkway, 5E, Kansas City, Missouri 64114, for Sprint Communications Company L.P.

Mary Ann Young, Attorney at Law, William D. Steinmeier, P.C., P.O. Box 104595, Jefferson City, Missouri 65110, for McLeodUSA Telecommunications Services, Inc. and Telecommunications Resellers Association.

Michael F. Dandino, Senior Public Counsel, P.O. Box 7800, Jefferson City, Missouri 65102, for Office of the Public Counsel and the Public.

Dan K. Joyce, General Counsel, and Cynthia R. Bryant, Assistant General Counsel, P.O. Box 360, Jefferson City, Missouri 65102, for Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Lewis R. Mills

REPORT AND ORDER

Procedural History

This case was opened to receive a Motion to Open a Docket, to Establish a Procedural Schedule, and to Hold a Hearing filed by the Office of the Public Counsel (Public Counsel) on August 21, 1998. In that motion, Public Counsel requested that the Commission open a docket to consider the proposed merger of SBC Communications, Inc. (SBC), SBC Delaware, Inc. (SBC Delaware), and Ameritech Corporation (Ameritech). Pursuant to the merger agreement, SBC Delaware, a wholly-owned subsidiary of SBC, will merge into Ameritech with Ameritech being the surviving entity. After the merger is effected, both Ameritech and Southwestern Bell Telephone Company (SWBT) will be first-tier subsidiaries of SBC. Public Counsel noted that SWBT is the largest local exchange company in Missouri, and asserted that Ameritech is certificated in Missouri as a competitive local exchange company. Public Counsel asserted that it is in the public interest for the Commission to give the proposed merger close scrutiny to assure that it provides positive benefits directly to consumers and that it promotes competition in Missouri's local telecommunications market. Public Counsel believed that the Commission has jurisdiction pursuant to Sections 386.250(2), 386.320, and 392.300.

On August 31, SWBT filed a response opposing Public Counsel's motion. SWBT asserted that the merger will have no impact on its operations or the services it provides in Missouri, and that the Commission does not have jurisdiction to review the merger. In essence, SWBT's argument was that since the merger will have no effect on SWBT's plant or the services it offers in Missouri, that the

statutes cited by Public Counsel do not confer jurisdiction. Also on August 31, Staff filed a response to Public Counsel's motion. Staff stated that the Commission has not asserted jurisdiction over mergers of non-regulated parent companies when there were no changes to the operations of the regulated company, such as is the case with this merger. Staff asserted that the Commission should follow this practice now, and decline to assert jurisdiction. On September 2, Public Counsel filed a pleading responding to the Staff and SWBT. By order dated September 8, the Commission set for oral argument the questions of jurisdiction and the content of its comments to the Federal Communications Commission (FCC).

On September 14, Sprint Communications Company L.P. (Sprint) filed an Application to Intervene and a Motion to Change Date of Oral Argument, and on September 15, Sprint filed suggestions supporting Public Counsel's position. On September 18, SWBT filed a pleading opposing Sprint's intervention. By order of September 23, the Commission denied Sprint's motion to change the date of oral argument and expressly reserved ruling on Sprint's intervention.

On September 25, McLeodUSA Telecommunications Services, Inc. (McLeod) filed an Application to Intervene. On September 29, Public Counsel filed additional suggestions in support of its position. On September 30, the Telecommunications Resellers Association filed an Application to Participate without Intervention, and comments generally supporting Public Counsel's position.

Oral Argument

On September 30, Public Counsel, Staff, and SWBT presented their arguments on the questions of the Commission's jurisdiction and the content of its comments to the FCC. Sprint and McLeod, although they had not been granted intervention, were allowed to address the issue of the contents of the Commission's comments to the FCC. The Telecommunications Resellers Association, although offered the opportunity at oral argument to address this issue, did not do so.

Public Counsel argued that 386.250 gives the Commission jurisdiction over all telecommunications facilities, telecommunication services, and telecommunications companies. Public Counsel also argued that 386.320.1 gives the Commission general supervision over all telephone corporations and telephone lines and the manner in which their lines and property are owned, leased, controlled or operated not only with respect to adequacy, security and accommodation offered by those services, but also with respect to their compliance with all provisions of law, orders, decisions of the Commission and charter and franchise requirements. Public Counsel noted that, pursuant to 386.610 and case law, Chapter 386 should be construed broadly with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities. Public Counsel argued that 392.185 sets out the framework that should guide the Commission's consideration of its jurisdiction, and stated that merging companies should not be able to structure the corporate form of mergers in such a way to defeat the Commission's jurisdiction.

Staff stated that 392.300 provides that a telecommunications company certificated in Missouri must first obtain Commission approval prior to entering into a merger or consolidation. Staff stated that, based upon its review of past Commission cases and actions, the SBC/Ameritech merger does not fall within the Commission's jurisdiction. Staff reiterated its belief that the FCC proceeding is the appropriate forum in which to examine the merger.

SWBT argued generally that the sections of the statutes cited by Public Counsel do not apply to this proposed merger. SWBT stated that 386.250 makes no mention of mergers, and confers no jurisdiction on the Commission over mergers. SWBT also claimed that Ameritech, SBC Communications, and SBC Delaware are not covered by this section, as none are telecommunications companies operating in this state or certificated by this Commission.

SWBT made the same arguments about 386.320, pointing out that this section gives the Commission general supervisory powers, and power to inspect property, books, and records of corporations subject to the Commission's jurisdiction.

SWBT then discussed 393.200, which it claimed gives the Commission explicit authority over mergers and thus controls and overrides any general authority given by the other two statutory sections. SWBT argued that this section also does not apply to the SBC/Ameritech merger. SWBT noted that the merger does not involve the sale, assignment, lease or transfer of franchises, facilities or systems of Missouri-regulated telecommunication companies, nor a merger or consolidation, direct or indirect, of the lines, systems or franchises of Missouri-regulated telecommunication companies.

SWBT also pointed, as did Staff, to the Commission's consistent treatment of mergers of this type, particularly the Commission's decision in Case No. TM-96-268. SWBT argued that the Commission's past treatment was appropriate, and should be followed in this merger.

SWBT argued that the decisions made with respect to this and similar mergers by regulatory commissions in other states should not control this Commission's determination of whether it has jurisdiction, and that Public Counsel's citation of those decisions should not be relied upon. SWBT asserted that the statutes defining the jurisdiction over mergers of those other commissions are not identical to Missouri's.

Discussion

The Commission has reviewed the arguments of the parties, the Missouri statutes cited by parties, and the structure of the proposed merger. The Commission determines that there is nothing in the statutes that confers jurisdiction to examine a merger of two non-regulated parent corporations even though they may own Missouri-regulated telecommunications companies. The Commission's past approach to mergers of this type has been the proper one, and will be followed here. Since the Commission has no jurisdiction over this merger, it will close this case. The applications to intervene, and the application to participate without intervention will be denied.

The Commission will not address, in this order, the suggestions presented at the oral argument about the Commission's comments to the FCC. The Commission appreciates the remarks of those entities that addressed this topic, and will bear them in mind as it deliberates what comments, if any, it should make to the FCC concerning this merger.

IT IS THEREFORE ORDERED:

1. That the Motion to Open a Docket, to Establish a Procedural Schedule, and to Hold a Hearing filed by the Office of the Public Counsel on August 21, 1998 is denied.

2. That the applications to intervene of Sprint Communications Company L.P. and McLeodUSA Telecommunications Services, Inc. are denied.

3. That the applications to participate without intervention of the Telecommunications Resellers Association is denied.

4. That this order shall become effective on October 20, 1998.

5. That this case may be closed on October 21, 1998.

BY THE COMMISSION

Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Murray and Drainer, CC., concur.

Schemenauer, C., absent.

Dated at Jefferson City, Missouri,

on this 8th day of October, 1998.