BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Application of SBC Communications Inc., SBC Delaware Inc., Ameritech Corporation, and Ameritech Ohio for Consent and Approval of a Change of Control.	)))))	Case No. 98-1082-TP-AMT

OPINION AND ORDER

The Commission, considering the application, the evidence in the record, the proposed stipulation, the arguments of the parties, and the applicable law, concludes that this matter should proceed to a ruling without further hearings and hereby issues its Opinion and Order.

APPEARANCES:

Paul K. Mancini, Joseph E. Cosgrove, and Wayne Watts, SBC Communications Inc., 175 East Houston Street, 12th Floor, San Antonio, Texas 78205 and Kevin M. Sullivan, Anthony J. LaCerva, James F. Lang, and Peter A. Rosato, Calfee, Halter & Griswold, 1400 McDonald Investment Center, 800 Superior Avenue, Cleveland, Ohio 44114-2688, on behalf of SBC Communications Inc. and SBC Delaware Inc.

Michael T. Mulcahy, Ameritech Ohio, 45 Erieview Plaza, Cleveland, Ohio 44114, Daniel R. Conway, Porter, Wright, Morris, & Arthur, 41 South High Street, Columbus, Ohio 43215-6194, and Christian F. Binning and Matthew A. Rooney, Mayer, Brown, & Platt, 190 South LaSalle Street, Chicago, Illinois 60603-3411, on behalf of Ameritech Corporation and Ameritech Ohio.[1]

Robert S. Tongren, Ohio Consumers' Counsel, by Thomas J. O'Brien, David Bergmann, Terry Etter, and Rochelle Cavicchia, Associate Consumers' Counsel, 77 South High Street, 15th Floor, Columbus, Ohio 43266-0550, on behalf of the residential customers of Ameritech Ohio.

Ellis Jacobs, Legal Aid Society of Dayton, 333 West First Street, Suite 500, Dayton, Ohio 45202-3042, on behalf of the Edgemont Neighborhood Coalition.

Joseph Meissner, Empowerment Center of Greater Cleveland, 1223 West 6th Street, Cleveland, Ohio 44113, on behalf of the Empowerment Center of Greater Cleveland and Parkview Areawide Seniors Inc.

Betty D. Montgomery, Attorney General of the State of Ohio, Duane W. Luckey, Chief of the Public Utilities Section, by Steven T. Nourse and Thomas W. McNamee,

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1 Ameritech Ohio was formerly known as The Ohio Bell Telephone Company.

Assistant Attorneys General, 180 East Broad Street, 7th Floor, Columbus, Ohio 43215, on behalf of the staff of the Public Utilities Commission of Ohio.

Bruce J. Weston, 169 West Hubbard Avenue, Columbus, Ohio 43215-1439, on behalf of the American Association of Retired Persons.

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David J. Chorzempa and William A. Davis III, AT&T Corporation, 222 West Adams Street, Suite 1500, Chicago, Illinois 60606 and Benita Kahn, Vorys, Sater, Seymour and Pease, LLP, 52 East Gay Street, Columbus, Ohio 43215, on behalf of AT&T Communications of Ohio Inc.

Stephen M. Howard, William S. Newcomb Jr., Philip F. Downey, and Joseph C. Blasko, Vorys, Sater, Seymour and Pease LLP, 52 East Gay Street, Columbus, Ohio 43215, on behalf of the Ohio Cable Telecommunications Association.

Jeffrey L. Small, Chester Wilcox & Saxbe LLP, 17 South High Street, Suite 900, Columbus, Ohio 43215-3413, on behalf of State Alarm Inc. and Iwaynet Communications Inc.

Denise C. Clayton, NEXTLINK Ohio Inc., Two Easton Oval, Suite 300, Columbus, Ohio 43219, on behalf of NEXTLINK Ohio Inc.

Lee T. Lauridsen and David Woodsmall, Sprint Communications Company L.P., 8140 Ward Parkway, Kansas City, Missouri 64114, on behalf of Sprint Communications Company L.P.

Joseph R. Stewart, United Telephone Company of Ohio, d.b.a. Sprint, 50 West Broad Street, Suite 3600, Columbus, Ohio 43215, on behalf of United Telephone Company of Ohio, d.b.a. Sprint.

Mary C. Albert and Eric J. Branfman, Swidler, Berlin, Shereff, & Friedman LLP, 3000 K Street N.W., Suite 300, Washington, D.C. 20007-5116, on behalf of CoreComm Newco Inc.

Sally W. Bloomfield, Bricker & Eckler LLP, 100 South Third Street, Columbus, Ohio 43215-4291, on behalf of CoreComm Newco Inc. and the Telecommunications Reseller Association.

Jane VanDuzer, MCI Telecommunications Corporation, 205 North Michigan Avenue, Suite 3700, Chicago, Illinois 60601 and Judith B. Sanders, Bell, Royer & Sanders Co., LPA, 33 South Grant Avenue, Columbus, Ohio 43215-3927, on behalf of

MCI Telecommunications Corporation and MCImetro Access Transmission Services Inc.

Boyd Ferris, Ferris & Ferris, 2733 West Dublin-Granville Road, Columbus, Ohio 43235-2798, on behalf of ICG Telecom Group Inc.

Henry T. Kelly, O'Keefe, Ashenden, Lyons & Ward, 30 North LaSalle, Suite 1400, Chicago, Illinois 60602, on behalf of the Payphone Association of Ohio.

Thomas Hill, Kegler, Brown, Hill, & Ritter Co. LPA, Capitol Square, 65 East State Street, Suite 1800, Columbus, Ohio 43215, on behalf of Time Warner Cable.

OPINION:

I. Background

On July 24, 1998, SBC Communications Inc., SBC Delaware Inc., Ameritech Corporation, and Ameritech Ohio (hereinafter collectively referred to as the joint applicants) filed an application seeking approval of a change in ownership of Ameritech Corporation, the parent company of Ameritech Ohio. On August 13, 1998, the Commission suspended discovery and scheduled a prehearing conference. Additionally, the Commission directed all interested persons to file comments regarding issues that should be addressed by the Commission in evaluating the merger application. Comments were filed on September 3, and reply comments were filed on September 14, 1998.

On October 15, 1998, the Commission issued another entry in this proceeding. Among other things, the Commission determined that review of the merger application would be limited to certain issues identified by the Commission and that the Commission staff should analyze the application as it relates to those issues and file a proposal. Additionally, the Commission permitted discovery to recommence, rescheduled the prehearing conference, and scheduled an evidentiary hearing. On November 6, 1998, the staff of the Commission filed its preliminary proposal regarding the merger application and the issues identified by the Commission. On November 17, 1998, the prehearing conference was held.

The following entities were granted intervention in this proceeding:

Airtouch Cellular Inc.
American Association of Retired Persons (AARP)
AT&T Communications of Ohio Inc. (AT&T)
City of Toledo
CoreComm Newco Inc., d.b.a. Cellular One (CoreComm)
Edgemont Neighborhood Coalition (Edgemont)
Empowerment Center of Greater Cleveland (Empowerment)

ICG Telecom Group Inc.
Iwaynet Communications Inc.
MCImetro Access Transmission Services Inc.
MCI Telecommunications Corporation
NEXTLINK Ohio Inc. (NEXTLINK)
Ohio Cable Telecommunications Association (OCTA)
Ohio Consumers' Counsel (OCC)
Parkview Areawide Seniors Inc. (Parkview)
Payphone Association of Ohio
Sprint Communications Company L.P.
State Alarm Inc.
Telecommunications Resellers Association
Time Warner Cable
Time Warner Communications of Ohio L.P., d.b.a. Time Warner Telecom (Time Warner Telecom)
United Telephone Company of Ohio (also known as Sprint)

The city of Toledo and Airtouch Cellular Inc. subsequently withdrew.

After two continuances, the evidentiary hearing began on January 7, 1999, in order to address the nine topics delineated by the Commission on October 15, 1998.[2] During the first phase of the proceeding, 27 witnesses provided testimony. The joint applicants presented the testimony of six witnesses. AT&T presented four witnesses. Time Warner Telecom, NEXTLINK, AARP, and State Alarm each presented one witness. The Sprint companies (Sprint Communications Company L.P. and United Telephone Company of Ohio), CoreComm, and OCC each presented three witnesses. Edgemont, Parkview, and Empowerment jointly sponsored the testimony of four witnesses. The hearing adjourned on January 25, 1999, in order to allow the parties to continue prior settlement discussions.

On February 23, 1999, a settlement and recommendation was filed in this matter. The agreement, which is intended to resolve all of the issues in this case, was signed by some of the parties to this proceeding (the joint applicants, the staff, OCC, Edgemont, Parkview, Time Warner Telecom, and CoreComm). By Time Warner's and CoreComm's signatures, they agree not to oppose approval of the application, based upon the terms of the stipulation (Jt. Signatory Ex. 1, at 5; CoreComm Initial Brief at 1). they have not agreed that the stipulation promotes competition, addresses the Commission's nine issues, or satisfies the requirements of Sections 4905.402, 4905.49, or 4905.491, Revised Code (Jt. Signatory Ex. 1, at 3).

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[2] The Commission identified the following topics as being relevant to its consideration of the application: operations support systems, quality of service, carrier-to-carrier activities, market power, infrastructure, in-state presence, books and records, cost savings, and affiliates and the markets they serve.

On February 24, 1999, the examiner scheduled the hearing to resume in order to address the issue of the reasonableness of the proposed stipulation and recommendation. Specifically, the question addressed by the parties at this phase of the proceeding was whether the proposed stipulation reasonably addresses the nine topics identified by the Commission's October 15, 1998 entry, satisfies the requirements of Section 4905.402, Revised Code, and, if deemed applicable, satisfies the requirements of Sections 4905.49 and 4905.491, Revised Code. The evidentiary hearing resumed on March 10, 1999. In support of the proposed stipulation, the joint applicants presented the testimony of two witnesses and the staff presented the testimony of three witnesses. In opposition to the stipulation, AT&T sponsored the testimony of one witness, the MCI companies (MCImetro Access Transmission Services Inc. and MCI Telecommunications Corporation) sponsored one witness, and the Sprint companies sponsored one witness. At the conclusion of the testimony for this phase of the proceeding, the examiner ordered the record to remain open until receipt of briefs and questioning by the Commissioners, if any. Briefs were filed on March 22 and 26, 1999. No public witnesses came forward to present testimony in this proceeding. However, the Commission has received a large number of letters, some supporting and some objecting to the proposed merger and stipulation.

II. Summary of the Merger Transaction

Under the proposed transaction, SBC Delaware Inc., a wholly-owned subsidiary of SBC Communications Inc. (SBC), will merge with Ameritech Corporation (Ameritech). Ameritech will be the surviving corporation and, thus, become a wholly-owned subsidiary of SBC Communications Inc. Ameritech Ohio will remain a wholly-owned subsidiary of Ameritech Corporation. Each holder of qualifying Ameritech common stock will receive 1.316 shares of SBC common stock, resulting in Ameritech holding approximately 44 percent of SBC's issued common stock. One estimate of the amount SBC is paying to purchase Ameritech is $62 billion (Tr. XVII, 200; MCI companies Ex. 1, at 4). Following the merger, SBC has projected billions in cost savings (Tr. XV, 39). Ameritech Ohio will continue to conduct business in Ohio. The joint applicants have described the merger transaction as being transparent because the change of control will occur at the holding company level (Application at 11-12).

Concurrent with the execution of the merger agreement, SBC committed to do the following six items after consummation of the merger:

(1) maintain Ameritech Corporation's headquarters in Chicago and state headquarters in each of Ameritech's traditional states;
(2) continue to use the Ameritech name in each state;
(3) continue Ameritech's historic levels of charitable contributions and community activities;

(4) continue to support economic development and education in Ameritech's region consistent with Ameritech's established commitments in these areas;
(5) insure that, as a result of the merger, employment levels in Ameritech's region will not be reduced due to the transaction; and
(6) continue to invest capital necessary to support Ameritech's network consistent with its past practices.

Jt. Applicants Ex. 1 at Attach. 5.

The applicants argue that fundamental market forces have driven the joint applicants to agree to merge (Tr. I, 57). SBC and Ameritech state that they desire to create a company with the scale, scope, and resources to effectively compete as a national player in the changing telecommunications marketplace (Tr. I, 165, 173; Tr. II, 135-137; Tr. XIV, 18-19). They contend customer demand, particularly by large and mid-sized business customers, and the move toward a global marketplace have placed SBC and Ameritech, as only regional telecommunications companies, in such a position as to risk losing customers and earnings (Tr. I, 58, 159, 210). According to SBC, this merger will enable SBC to have the necessary scale and scope to pursue and implement a strategy that will allow SBC to offer an integrated bundle of local exchange, long distance, cellular, internet, and high-speed data services to large, medium, and small businesses and residential customers (Tr. I, 53, 56-58, 81, 99, 164-165, 173; Jt. Applicants Ex. 1, at 77). The merger and accompanying strategy are the most viable means, in SBC's view, of achieving a national-global position in a manner that is financially acceptable to SBC's shareholders (Tr. I, 168, 174-177). The driving force of SBC's strategy is to enable it to maintain/gain 70 to 75 percent of large business customers' telecommunications revenues throughout the nation (Tr. I, 64, 179; Tr. II, 44-45).[3] Under this "national-local" strategy (NLS), SBC will enter 30 other U.S. markets outside of its post-merger local telephone region and offer the integrated bundle of services initially to large business customers, and later to small businesses and residential customers (Tr. I, 117-118). The end result desired by SBC would be a broad-based presence in the top 50 U.S. markets, which would be a platform for the development of a national, state-of-the-art voice and data network and for interconnection with international operations, from which SBC can compete against other incumbent local exchange companies (ILECs) and interexchange carriers (IXCs).[4]

III. Discussion

A. Procedural Allegations

[3] The headquarters of approximately 40 percent of the Fortune 500 companies are located in SBC's and Ameritech's local service territories (Tr. I, 99).

[4] SBC anticipates that the competitive response for the large and medium-sized business customers will largely be from other ILECs, while the competitive response for the other customers will be from the IXCs (Tr. I, 88, 143).

Before turning to the merger and proposed stipulation, we will discuss AT&T's and AARP's allegations that the procedure in this proceeding was inappropriate.[5] We disagree with their contentions. The examiners were well within their authority to adjourn the hearing as they did so that settlement discussions might continue. Once the stipulation was executed, it was clear that consideration of the proposed merger under the terms of the stipulation was also on our plate. We believe it was appropriate for the hearing to resume for the receipt of evidence regarding whether the proposed stipulation appropriately addresses our previously identified topics, the requirements of Section 4905.402, Revised Code, and, if deemed applicable, the requirements of Sections 4905.49 and 4905.491, Revised Code. Additionally, the fact that the proposed stipulation is not executed by all parties, or even a simple majority of the parties, does not determine its fate, regardless of AT&T's desires. Stipulations that are not signed by all parties in a case are, nevertheless, entitled to careful consideration, particularly when sponsored by parties representing a wide range of interests and when endorsed by the staff. *Cincinnati Gas & Electric Company*, Case No. 82-485-EL-AIR (March 30, 1983). See also, *Cleveland Electric Illuminating Company*, Case No. 88-170-EL-AIR (January 31, 1989).

The Ohio Supreme Court has also held that the Commission can give substantial weight to stipulations entered into by some, but not all, of the parties in a proceeding. *Akron v. Pub. Util. Comm.*, 55 Ohio St. 2d 155 (1978); *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St. 3d 123 (1992). Moreover, the record illustrates that the stipulation is the result of negotiation sessions open to all parties (Tr. XVII, 176-178). See also, Time Warner Br. at 4-5; MCI companies Reply Br. at footnote 4. Additionally, we are not convinced that the existence of other agreements entered into by some of the parties around the time of the stipulation justifies outright rejection of the proposed stipulation. The fact that the examiners required the disclosure of all side agreements demonstrates the Commission's interest in ensuring the integrity and openness of the process. We would be extremely concerned and will take action if additional side arrangements with the companies exist but have not been disclosed. We feel that the terms of the stipulation and the evidence in the record should be fully weighed. Lastly on this point, we disagree with AT&T's and AARP's contention that the examiners improperly precluded additional discovery following the execution of the stipulation.[6] We are not convinced that a new round of discovery was required following the stipulation. Based upon the foregoing, we conclude that all parties were given a fair opportunity to present evidence in this case.

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5 Because of the time allowed to prepare for the second phase of this proceeding, AT&T also argues that its due process rights were denied when the examiner ruled that certain documents would be provided to parties under limited circumstances (AT&T Initial Br. at footnote 15). The joint applicants contend that the documents were available and there was time for review (Jt. Applicants Reply Br. at 11-12). We believe that AT&T had an appropriate opportunity to prepare for the second phase of the hearing, including access to the "copy prohibited" documents.

6 We note that it is inconsistent for AT&T and AARP to argue that they were improperly denied the opportunity to conduct additional discovery and also complain that the hearing was being improperly delayed for settlement discussions and the parties were afforded too much time for those discussions.

B. Scope of Review

Section 4905.402, Revised Code, states that no person shall acquire control, directly or indirectly, of a domestic telephone company or a holding company controlling a domestic telephone company unless that person obtains the Commission's prior approval. To obtain that approval, that person must file an application "demonstrating that the acquisition will promote public convenience and result in the provision of adequate service for a reasonable rate, rental, toll, or charge." If, after review of the application and any necessary hearing, the Commission is "satisfied that approval of the application will promote public convenience and result in the provision of adequate service for a reasonable rate, rental, toll, or charge, the Commission shall approve the application and make such order as it considers proper."

Also, we point out that Section 4927.02(A), Revised Code, sets forth the telecommunications policy of this state.[7] We will also consider this state's telecommunications policy in our evaluation of the proposed stipulation. Moreover, we are mindful of our previous statement that the goals of competition, diversity, and consumer choice should be evaluated when considering whether an application is in the public convenience.[8] *In the Matter of the Application of Time Warner Communications of Ohio, L.P. and Time Warner AxS for a Certificate of Public Convenience and Necessity to Provide Direct and Resold Exchange Services, Including Local Exchange and Dialtone Services*, Case No. 94-1695-TP-ACE (August 24, 1995), Opinion and Order at 15.

We note that Rule 4901-1-30, Ohio Administrative Code (O.A.C.), permits the presentation of stipulations, such as this one. In considering the reasonableness of a stipulation, the Commission has previously recognized a need to analyze the following criteria:

(1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

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7 Section 4927.02(A), Revised Code, states that the telecommunications policy of this state is to: (1) ensure the availability of adequate basic local exchange service to citizens throughout the state; (2) maintain just and reasonable rates, rentals, tolls, and charges for public telecommunications service; (3) encourage innovation in the telecommunications industry; (4) promote diversity and options in the supply of public telecommunications services and equipment throughout the state; and (5) recognize the continuing emergence of a competitive telecommunications environment through flexible regulatory treatment of public telecommunications services where appropriate.

8 Similarly, the Federal Communications Commission (FCC) has stated that, when it reviews a merger to determine if it is in the public interest, the FCC must be convinced that the transaction will, on balance, enhance and promote competition. *NYNEX Corporation and Bell Atlantic Corporation*, 12 F.C.C.R. 19987-19988 (1997). Such a review by the FCC extends beyond the traditional parameters of review under the antitrust laws. *Id*. Accord, *Tele-Communications, Inc. and AT&T Corp.*, CS Docket No. 98-178 (February 17, 1999).

(2) Does the settlement, as a package, benefit ratepayers and the public interest?
(3) Does the settlement package violate any important regulatory principle or practice?

Cincinnati Gas & Electric Company, The Dayton Power and Light Company, and Columbus & Southern Ohio Electric Company, Case No. 84-1187-EL-UNC (November 26, 1985), and *Cleveland Electric*, *supra*. Furthermore, the Ohio Supreme Court has endorsed the Commission's efforts in using these criteria to resolve cases in a method economical to ratepayers and public utilities. *Consumers' Counsel*, *supra*. Moreover, the court stated that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. *Id.*

This Commission has the ability and, in fact, the responsibility to modify or reject those stipulated provisions which may violate an important regulatory principle or are otherwise not in the public interest. In considering the reasonableness of the stipulation filed on February 23, 1999, the Commission will rely upon the record made in this case, the final positions of the parties with respect to their signing the stipulation, and any pending objections to the stipulation. Accord, *In the Matter of the Application of The Ohio Bell Telephone Company for Approval of an Alternative Form of Regulation*, Case No. 93-487-TP-ALT (November 23, 1994). A comprehensive review and analysis is necessary to ensure the Commission's ability to protect ratepayers (including those who are not signatories to the agreement) and to ensure the policies which are consistent with our statutory responsibilities are not compromised as a result of the proposed merger.

As noted, the first criterion is that the settlement should be a product of serious bargaining among capable, knowledgeable parties. There is no dispute that the signatory parties are capable and knowledgeable of the issues presented in this case.[9] Also, there were lengthy negotiations. In addition, these parties represent a wide range of interests. We note that all parties have had an opportunity to present their views during the hearing, including the opportunity to present witnesses after the stipulation was filed. With regard to the second and third criteria, varying arguments have been raised in the context of the particular provisions of the stipulation. We will consider those two criteria as we review and analyze the individual elements of the stipulation below.

IV. Terms of the Stipulation and Positions of the Parties

The stipulation addresses most of the topics identified by the Commission in its October 15, 1998 entry. Also, the stipulation addresses several other matters.

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[9] Staff and NEXTLINK specifically acknowledged that the stipulation satisfies this criteria (Staff Initial Br. at 3-4; NEXTLINK Reply Br. at 2).

A. Operations Support Systems (OSS)[10]

In the "issues entry", the Commission stated a concern regarding the plans to address OSS during the transition period and thereafter. Also, the Commission asked what safeguards might be established to ensure improvements after the merger. The stipulation contains several provisions that address OSS.

1. Collaboratives

Under the stipulation, SBC/Ameritech will establish two collaboratives, whose membership include the staff and new entrant carriers (NECs). The first collaborative will investigate the integration of SBC's and Ameritech's OSS and the implementation of the improvements within 180 days of the merger closing, unless economically or technically infeasible (in which case substitute measures will be considered) (Jt. Signatory Ex. 1, at 7-8). The second collaborative will investigate, for a minimum of one year, the implementation in Ohio of at least 105 Texas OSS and facilities performance measures, their associated standards/benchmarks, and remedies, unless economically or technically infeasible (in which case substitute measures will be considered) (*Id.* at 9-11). The standards/benchmarks will be implemented within 180 days of the merger closing (*Id.* at 11). SBC/Ameritech will pay $17.5 million to NECs providing end-user services in Ameritech Ohio's service territory and $2.5 million to the technology fund, if it has not implemented at least 79 of the current Texas OSS and facilities performance measures and related standards/benchmarks within 270 days of the merger closing or April 1, 2000, whichever is later (*Id.* at 11-12). SBC/Ameritech will also provide NECs with advance information on OSS improvements, consistent with the change control process used in Texas (Tr. XIV, 191). Any remedies that are agreed upon in Texas will be implemented in Ohio, if the collaborative participants agree (Jt. Signatory Ex. 1, at 13). Also, the collaborative will consider any proposed remedies, regardless of what is developed in the Texas collaborative (*Id.*).

The joint applicants, the staff, and OCC all contend that the stipulation's OSS provisions will allow Ohio to "jumpstart" OSS in Ohio, under tight time frames (Jt. Applicants Initial Br. at 20-21; Jt. Applicants Reply Br. at 49; Staff Initial Br. at 7-8; OCC Initial Br. at 9). The end result will be an enhanced system for measuring performance and improved access to OSS, thereby allowing NECs to offer services more efficiently in Ohio (Jt. Applicants Initial Br. at 21; Jt. Applicants Ex. 24, at 6). OCC contends that OSS measurements are a substantial improvement over the status quo because they will be implemented and not contingent upon some future events (OCC Reply Br. at 9). A number of arguments have been raised in opposition to the OSS collaborative provisions. We will address each below.

The supporting parties are correct in noting that the quick implementation of numerous OSS improvements and measurements will be a significant improvement

[10] OSS involve the pre-ordering, ordering, provisioning, billing, and repair and maintenance functions used in providing local exchange services.

upon the current status of OSS in Ohio. Currently, Ameritech Ohio has no measurements and has not been willing to implement them (Tr. XVII, 128). The OSS provisions of the stipulation will bring a significant number of OSS improvements, measurements, and standards/benchmarks to Ohio, without further delay and without litigation (which likely would occur if the Commission investigated this issue). The MCI companies contend that Ameritech Ohio should have already implemented these OSS measurements or would have by April 2000 (MCI companies Initial Br. at 32). Similarly, NEXTLINK and the Sprint companies state that Ohio has gained nothing other than the process that SBC has been required to follow elsewhere (NEXTLINK Initial Br. at 16; Sprint companies Initial Br. at 50). These arguments ignore that fact that the stipulation assures NECs that either improvements, measurements, and standards/benchmarks will be implemented in Ohio in the very near future or the NECs will be compensated. These OSS improvements, measurements, and standards will benefit NECs and their customers. Moreover, the payment provision provides the incentive for the improvements, measurements, and standards/benchmarks to be implemented.

Additionally, as the joint applicants note, the collaborative process will allow all NECs to be involved with the improvements, measurements, standards/benchmarks, and remedies. The commitments in this area do require that implementation be economically and technically feasible. Some of the opposing parties argue such language is a large loophole (AARP Initial Br. at 26; NEXTLINK Initial Br. at 16). However, we consider that condition to be reasonable and acceptable. Adoption of a best practice or an OSS measurement from Texas may not be wise in all circumstances. Since neither the companies, the NECs, nor this Commission have explored the gamut of questions associated with the merged entity's OSS, we think it is prudent to not include a blanket requirement that all best practices and all measurements be implemented (Tr. I, 151-152; Tr. IV, 46-47). The stipulation appropriately envisions consideration of reasonable substitutes. Quite simply, we consider this approach to be practical.

Furthermore, the opposing parties argue that the stipulation is insufficient because it does not contain remedies for missing implemented OSS standards/benchmarks (Tr. XV, 247; NEXTLINK Initial Br. at 17; AT&T Reply Br. at 22). Remedies for the 105 Texas measurements and standards/benchmarks delineated in the stipulation do not yet exist. The criticism boils down to a matter of timing. There is every reason to believe that there will be remedies developed in Texas by the time these measurements are actually implemented in Ohio. Moreover, the Ohio collaborative can explore appropriate remedies, which could be put in place by the time that the standard/benchmark becomes effective in Ohio (Tr. XV, 248-250). We do not consider this omission to render the proposed terms meaningless or unreasonable.

AT&T contends that several of the measurements relate to the unbundled network element (UNE) platform and shared transport (AT&T Reply Br. at 23). AT&T questions the value of such measurements when the joint applicants have refused to even provide the UNE-platform and shared transport (*Id.*). Generally speaking, we

agree with the concept that it is not appropriate for measurements and standards/benchmarks to be implemented when the company will not honor requests for the item involved for that measurement. Nor do we consider it appropriate to "water down" the intent behind the OSS provisions in this stipulation by putting into place measurements which have no bearing upon the OSS activities associated with service to NECs. To ensure that nothing along that line will dilute the incentive built into the stipulation to improve OSS, we conclude that, for purposes of the payment provision in the stipulation (Section IV.D.6.) only, SBC/Ameritech may not count any measurements and standards/benchmarks as having been implemented unless it is willing to honor requests for the involved element(s) or service involved for that measurement. At this time, we are not deciding that any particular measurement cannot be counted. However, we encourage the collaborative participants to monitor this concern.[11]

The MCI and Sprint companies and NEXTLINK contend that the payment provision will not assure that all performance measurements are implemented; it will only impose a penalty if 79 are not implemented (MCI companies Initial Br. at 32; Sprint companies Initial Br. at 51; NEXTLINK Initial Br. at 17). Those companies are correct in pointing out that the payment provision is triggered only if 79 measurements are not implemented. However, the preceding paragraph of the stipulation requires the company to implement all measurements. Thus, to the extent that all measurements are not implemented, SBC/Ameritech will violate the terms of the stipulation and appropriate actions may be taken. It is critical to our consideration that nothing in the stipulation affects or interferes with the right of the Commission to take prompt action to ensure compliance and resolve issues and complaints notwithstanding the collaborative processes set forth in the stipulation. Although we will certainly honor the spirit of a collaborative process, if that process becomes bogged down or if any party's action becomes obstructional or if the exigencies of a particular situation require a more rapid response, the Commission can step in to resolve actual complaints or set standards as necessary to provide adequate service both under the Ohio Revised Code and the Federal Telecommunications Act. In short, we accept the collaborative as an additional, but not exclusive, means to resolve issues associated with OSS standards and compliance.

The MCI and Sprint companies, AT&T, and NEXTLINK point out that there is nothing in the stipulation that addresses testing of OSS or testing of standards/benchmarks for novel types of interconnection (MCI companies Ex. 1, at 4-5; Sprint companies Initial Br. at 51; AT&T Initial Br. at footnote 26; NEXTLINK Initial Br. at 18). The joint applicants appear to infer that those topics may be brought forth during the collaborative process because the stipulation allows NECs to present "recommendations on substitute measures or modified timelines" (Jt. Applicants Reply

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[11] We note that, under the stipulation, SBC/Ameritech will serve its measurement implementation report upon all NECs with whom Ameritech Ohio has an approved interconnection agreement (Jt. Signatory Ex. 1, at 11). Thus, not only will collaborative participants receive the company's statement as to the progress of measurement implementation, all affected entities will receive the statement.

Br. at 52). We do not feel that the stipulation's language is necessarily that broad. Accord, Tr. XVII, 189-190, 201-202. Yet, we consider the concerns for testing of OSS and testing of standards/benchmarks for novel interconnection to be important. Therefore, in order to avoid a possible interpretation dispute, the collaborative process shall consider the concerns for third-party and carrier-to-carrier testing of OSS and testing of standards/benchmarks for novel interconnection. The Commission considers independent third-party testing of OSS systems a critical component of ensuring their adequacy. We direct the collaborative to consider this issue and provide notice that we will also move forward in this area, if the collaborative does not after a reasonable period of time.

AT&T next argues that the change control process (used for notifying NECs of changes to electronic interfaces for ordering local services) is not workable because it did not alleviate problems in California (AT&T Reply Br. at 23-24; AT&T Ex. 4). Thus, some of the difficulties relayed by AT&T during the hearing will not be avoided. It is far from clear that integration of Ameritech will be the same as what transpired following SBC's acquisition of Pacific Telesis and, therefore, we are unwilling to accept that the same types of problems that were experienced in California will necessarily occur in Ohio. Nevertheless, we envision the collaborative process to assist in resolving concerns over OSS changes. Additionally, we note the joint applicants' continued statement that the terms in Ameritech Ohio's effective interconnection agreements will be honored, which was at least the root of some of AT&T's problems in California (Application at 10; Jt. Applicants Ex. 1, at 56-57; Jt. Applicants Initial Br. at 10). We will require such adherence to all terms of the existing interconnection contracts.

Lastly, we believe these OSS measurements will provide some consistency across at least two states in SBC's service territory. In the past, Ameritech's OSS has been the same region-wide (Tr. XVII, 212). With this aspect of the stipulation in place, it is feasible the OSS measurements will be applied throughout the Ameritech states, thereby extending the application of the improvements and measurements and providing uniformity for Ameritech's multi-state NECs. On balance, we consider these OSS provisions to promote the public convenience.

2. Other OSS-Related Provisions

For 12 months following the merger closing, SBC/Ameritech will make a dedicated team available at no cost to small NECs in Ohio for training and assistance (but not provisioning) (Jt. Signatory Ex. 1, at 8). For those small NECs who signed the stipulation, the dedicated team will be available within 30 days after the Commission's final decision approving the merger (*Id.* at 9). OCC notes that this commitment will address the disproportionate financial barrier faced by small NECs and help them to be effective competitors (OCC Initial Br. at 9-10). AT&T contends that this provision is discriminatory because the availability of the dedicated team is predicated solely upon who was willing to sign the stipulation (AT&T Initial Br. at footnote 11). AT&T also takes issue with the manner in which "small NEC" is defined in the stipulation

(AT&T Ex. 17, at 12-13; Tr. XVI, 228-230; Tr. XVII, 73).[12] We believe that a zero-cost, dedicated assistance team for small NECs will prompt those NECs to seek the assistance they require at a time when we are attempting to jump-start competition in Ohio. We do not believe that the definition of small NEC is unacceptable. Also, we believe that the 12-month period for the signatory NECs and other NECs may not vary significantly given the timing of this decision today. In any event, all small NECs will have a 12-month opportunity to seek assistance at no cost. Overall, we consider these provisions reasonable and in the public convenience. We note that the small NECs have been afforded special consideration in the past. The FCC, in approving the NYNEX/Bell Atlantic merger, conditioned such approval upon (among other things) a requirement that small NECs be afforded special payment options. *NYNEX*, *supra* at 20073-20110.

For a period of 12 months following the merger closing, SBC/Ameritech will not move the Ameritech NEC service centers located in Wisconsin and Michigan (Jt. Signatory Ex. 1, at 9). Also, SBC/Ameritech will not reduce Ameritech's level of NEC services personnel for four years following the merger closing (*Id.*).[13] OCC states that, as part of the OSS commitments, this will provide stability and advance the likelihood of increased and expanded local competition in Ohio (OCC Initial Br. at 9-10). No party stated any opposition to these two provisions. Like OCC, we consider them to assist NECs and facilitate the NECs' ability to serve end users.

From the date of the stipulation to the close of the merger, Ameritech Ohio agrees to use its reasonable best efforts, in good faith, to resolve current OSS disputes (Jt. Signatory Ex. 1, at 9). Additionally, for four years following the merger closing, Ameritech agrees to seriously consider and promptly address a NEC's request for a change in an assigned account manager (*Id.*). Finally for this area, Ameritech Ohio will not propose a new nonrecurring charge for accessing or utilizing Ameritech's OSS systems for two years after the close of the merger (*Id.* at 14). No parties stated any opposition to these terms. Again, we consider them to benefit NECs and potentially avoid litigation at the Commission. In the end, these other OSS provisions allow NECs to focus upon serving their end users, which promotes the public convenience.

B. Quality of Service

As part of the Commission's "issues entry", it indicated a concern that the size of the new entity not create the potential for service quality diminution for both

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12 A small NEC is defined as "any NEC that, when combined with all of the NEC's affiliates and the NEC's joint ventures that provide telecommunications services, has less than $300 million in total annual telecommunications revenues, excluding revenues from wireless services, as reported to the Securities and Exchange Commission or in other documents mutually agreeable to such NEC and SBC/Ameritech" (Jt. Signatory Ex. 1, at 4-5).

13 The number of Ameritech Ohio NEC service employees as of the date of the stipulation was 9 and the number of NEC service employees in the rest of the Ameritech family as of the date of the stipulation was 79 (Jt. Applicants Ex. 28).

competitors and end users. Also, the Commission stated a concern for SBC focusing on out-of-state competitive opportunities, to the detriment of Ohio. The Commission sought input on service quality evaluation and enforcement mechanisms. The stipulation states that Ameritech Ohio will improve its service quality by meeting or exceeding a service quality test, providing quarterly reports, and conducting a series of studies as to the causes of non-telephone households in its service territory (Jt. Signatory Ex. 1, at 24-26).

As for the quarterly reports, the MCI companies argue that this requirement is less stringent than the reporting that Ameritech Ohio must do under its alternative regulation plan (MCI companies Initial Br. at 50). The MCI companies are correct that the alternative regulation plan requires monthly reports on certain activities, while the instant stipulation would require quarterly reports. However, there is a difference in the information that is contained in the alternative regulation plan monthly reports and the information that will be contained in the quarterly reports under this stipulation. Additionally, this stipulation does not alter the fact that the alternative regulation plan reports are still required. Thus, we do not agree with MCI's claim that the instant stipulation will result in less stringent reporting by Ameritech Ohio.

Regarding the studies of non-telephone households in Ameritech Ohio's service territory, we believe that such information will enable the Commission, as well as others, to see how adequate service can be provided to those who have no telephone service. As OCC points out, ensuring that all customers have access to a telephone has long been important to this Commission and the provision for studying non-telephone households will directly promote the public convenience (OCC Initial Br. at 18). We note that NEXTLINK likewise agrees that the non-telephone household studies are benefits to Ohio consumers (NEXTLINK Reply Br. at 8).

The remaining opposition to the service quality section of the stipulation revolves around that service quality test. The service quality test in the stipulation is a weighted evaluation of Ameritech Ohio's performance in seven areas:

(1) business office average speed of answer;
(2) repair reporting center average speed of answer;
(3) out-of-service repairs cleared within 24 hours;
(4) new access lines installed within five days;
(5) repair premises appointments and outside commitments met;
(6) installation premises apointments met; and
(7) compliance with Commission decisions and rules regarding educating customers about availability of credits, optional services, assistance eligibility, and payment plan options for certain customers.

(Jt. Signatory Ex. 1, at 43). The test will require Ameritech Ohio to pay a maximum of $16.67 million if it fails the test any one of the three years following six months after the merger closing (*Id.* at 46). Ninety percent of any payment amount will be credited to Ameritech Ohio's end user customers, with the remaining ten percent provided to the education fund (*Id.* at 47). The latter is discussed in more detail later. Several opposing parties argue that the stipulation's test requires Ameritech Ohio to comply with less stringent quality standards than other LECs in Ohio (NEXTLINK Initial Br. at 21; AT&T Initial Br. at 36; AARP Initial Br. at 30-31; MCI companies Initial Br. at 49). Those opposing parties allege that, since several of the subparts of the service quality test would not be met if 90 to 92 percent of the time that activity is not accomplished (as opposed to 100 percent of the time as contained in the MTSS), this stipulation lowers the standards for Ameritech. We disagree. As the joint applicants, staff, and OCC note, the stipulation does not alter the MTSS (Jt. Applicants Initial Br. at 26; Jt. Applicants Reply Br. at 34-37; Staff Initial Br. at 11; OCC Reply Br. at 17). Ameritech Ohio will still be required to comply with all aspects of the MTSS. Thus, if Ameritech Ohio does not install a new access line within five days, it will be required to provide the customer with a credit. Our approval of this stipulation is not intended to eliminate or modify that crediting requirement. In fact, this stipulation also includes a provision to increase the amounts of MTSS credits (which is addressed in greater detail later in this decision). This aspect of the stipulation will not require less MTSS compliance. This aspect of the stipulation provides an automatic, additional benefit directly to Ameritech Ohio's customers if the merger reduces Ameritech Ohio's performance (as measured by those items in the stipulation). Thus, as a result of this test, it is entirely possible that customers who did not experience a particular MTSS incident will receive a credit.

We are also not persuaded by the contention (AT&T Initial Br. at 39-40) that the likelihood of the payment being triggered is small or that the payment amount is not significant enough (*Id.* at 41; Sprint companies Initial Br. at 52; State Alarm Br. at 18 and 21; AARP Initial Br. at 41; MCI companies Initial Br. at 51). It is very clear that we have never imposed or approved a higher service quality payment and, thus, we consider the payment and test to provide a real incentive (Tr. XVI, 57). For purposes of an evaluation of Ameritech Ohio's performance for the three years following the merger, the stipulation includes an additional payment based on a weighted evaluation of overall performance in seven areas.[14] That potential payment is an added inducement, beyond the MTSS, to Ameritech Ohio to not forego service quality following the merger. Plus, there is reserved in the stipulation the right of the staff and the Commission to fully investigate Ameritech Ohio's service quality (Jt. Signatory Ex. 1, at 24; Tr. XVI, 42-43, 56, 126). If the staff or this Commission concludes that there may be a service quality problem following this merger, we will investigate. For these reasons, we disagree with the contention that these provisions require less of Ameritech Ohio than the current MTSS or do not include an incentive for Ameritech Ohio to improve

[14] We note that the repair and installation measurements are evaluated on a geographical, not statewide, basis (Jt. Signatory Ex. 1, at 45-46).

service to its customers. We find this aspect of the stipulation to promote the public convenience and help to ensure adequate service at reasonable rates.

C. Carrier-to-Carrier Activities

The Commission indicated a concern that competition be improved, if the NLS did not "play out" as envisioned, and a concern for resolving future disputes through alternative dispute resolution (ADR) procedures. The stipulation contains several provisions that address carrier-to-carrier activities.

1. ADR

SBC/Ameritech and the staff agree upon a new ADR process (Jt. Signatory Ex. 1, at 26-28). The joint applicants note that this ADR process is available to all NECs and, once a resolution is reached with one NEC, it will be available to similarly situated NECs (Jt. Applicants Initial Br. at 34). The criticism leveled against this provision is that the process will not necessarily end with a binding result and, thus, not necessarily avoid further litigation (AARP Initial Br. at 25). Of note, some of the opponents have pointed to competitive problems encountered in the past with both Ameritech and SBC (AT&T Exs. 8, 8.1, 9, 11, and 11.1; NEXTLINK Ex. 4). We believe that the ADR provision in the stipulation will assist in resolving future disputes. The process is quick, detailed, and, in the staff's view, an improvement over current processes set forth in the interconnection agreements (Tr. XVI, 15). We view this ADR process as another avenue available to NECs and SBC/Ameritech, under which less litigation may result. In particular, we note that multi-party mediation is permitted and, thus, may avoid duplicate efforts. As staff noted, it is correct that the ADR process will not always bring binding results, but it is a workable option for solving disputes (Staff Initial Br. at 11). In our view, this aspect of the stipulation will enable parties to focus more on reaching quick resolutions to problems, as opposed to pursuing litigation. That is a public benefit.

We point out that our approval of this process is not intended to preclude or dictate the form in which carriers pursue resolution of disputes. However, SBC/Ameritech has agreed upon this process and shall follow it. Our approval of this process will not preclude multi-NEC litigation, even if one or more of those NECs attempted to resolve a common issue under this ADR process. To effectuate the stipulation's term that resolution of issues will be made available to similarly situated NECs, SBC/Ameritech shall not include a confidentiality clause in a written settlement agreement resulting from this ADR process. We believe that a settlement agreement can be written so as not to include confidential customer information, for instance, and still reflect the resolution of the matter.[15] Furthermore, we believe that neither the stipulation nor the record adequately addresses how other NECs may learn of prior mediated disputes (Tr. XVI, 22-23, 31). It appears that the merged entity will have to

[15] If this requirement were to truly become problematic, the parties should work with the Commission staff to finalize a settlement agreement so as to avoid redacted and unredacted versions.

establish and follow an internal procedure so that resolution of common issues will be made available to similarly situated NECs. However, we conclude that copies of all settlement agreements reached under this ADR process should be provided to our staff (Chief of the Telecommunications Section in the Legal Department) so that a record may be maintained and this particular commitment can work. This will assist in ensuring that resolution of issues will be made available to future disputes with similarly situated NECs.[16]

Finally, with regard to this topic, we note that during the second phase of the hearing, Time Warner Telecom and SBC/Ameritech were seeking again to resolve a dispute regarding customer service records (Jt. Signatory Ex. 1, at 37). No witnesses could confirm that resolution was forthcoming and, thus, it appears that those parties would follow the ADR process outlined in this stipulation (Tr. XIV, 122-123; XV, 134; XVI, 25). In light of the provision in the stipulation under which SBC/Ameritech agree that resolutions of issues will be made available to similarly situated NECs, any ADR resolution of the CSR dispute shall be made available to similarly situated NECs and the settlement terms shall be provided to our legal department. This directive eliminates any ambiguity that may exist regarding the existing CSR dispute (Tr. XV, 131-134, 147). Additionally, we conclude that, since the CSR dispute triggered and has followed the stipulation's ADR process, we shall declare this ADR process available for all NECs at this time, rather than awaiting the merger closing.

2. Promotions

The stipulation contains three promotions that Ameritech Ohio will offer to NECs for services used to provision residential services. The first promotion is to offer, for $5.34, unbundled loops (UNE-loops) not purchased as part of an Ameritech Ohio local switching combination. The stipulation includes a time period in which the promotion is available,[17] a time period during which the promotional rate applies,[18] and a cap of 24,000 qualifying UNE-loops will be available for the discount in five geographic regions. This offer is on a "first come, first served" basis. Similarly, the stipulation includes a promotion for services resold to NECs for their residential customers. This promotion also has a time period in which it is available,[19] a time

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16 Of course, if no resolution is reached and litigation is pursued, those proceedings would be public.

17 The time period for the UNE-loop promotion is either: (1) four years; (2) one year if Ameritech Ohio loses 200,000 residential access lines in that time frame; or (3) three years if Ameritech loses 115,000 residential access lines and Ameritech Ohio (or an affiliate) receives in-region, interLATA authority in Ohio (Jt. Signatory Ex. 1, at 29). This offering window can be extended for certain NECs that have pending collocation requests with Ameritech Ohio as of the date of this decision, the collocation is not completed within 90 days, and if the unbundled loops are ordered during the offering window, but not provisioned before its close (*Id.* at 29-30).

18 The UNE-loop promotional rate will be applied for a period of 36 months from the date the UNE loop is installed and operational or for as long as that loop remains in service at the same location and for the same NEC, whichever is shorter (Jt. Signatory Ex. 1, at 30).

19 The time period for the resale offer is either: (1) three years or (2) one year if Ameritech Ohio loses 200,000 residential access lines in that time frame (Jt. Signatory Ex. 1, at 31-32). This offering window

period during which each qualifying resold service promotional rate applies,[20] and varying resale rates.[21] The third promotion relates to collocation. SBC/Ameritech will: (1) install collocation requests within 90 days of the request, (2) refund the prepaid amount if installation is not completed in 90-120 days, (3) not require the construction of a cage, (4) allow a 50 square feet minimum, and (5) reduce the prepaid rates (Jt. Signatory Ex. 1, at 35-36). These terms are available for three years, except that, for NECs installed in a central office for at least eight months and who purchase more than 80 percent of their UNE-loops in that central office for business customers, the collocation promotion will not be available for further collocation in that central office (*Id.* at 35).

These provisions of the stipulation engendered the most discussion and opposition. On the one hand, there is the argument that these provisions are unlawfully discriminatory and insufficient to enhance competition in Ohio. On the other hand, there is the argument that the provisions are lawful and beneficial. AT&T has raised the argument, and others have agreed, that the promotions are unlawfully discriminatory because they will result in prices: that are not based upon cost differences; that vary depending upon the type of end user customer; that vary depending upon the form of entry chosen by a carrier; and that vary depending upon time (AT&T Initial Br. at 9-20; AT&T Reply Br. at 4-21; MCI Initial Br. at 40-47; Sprint companies Initial Br. at 40-42; State Alarm Brief at 19-20; AARP Initial Br. at 16-20). AT&T points to the Telecommunications Act of 1996 (1996 Act) and the FCC's decision and rules implementing that legislation to support its claim that Ameritech Ohio's loop and collocation prices must conform with the TELRIC methodology and that the promotional wholesale rates must conform with the FCC's wholesale discount methodology. We find, however, that the stipulation's promotional rates are just that – promotions. They are not intended to be the required cost-based "TELRIC" or "wholesale" rates, as delineated by the 1996 Act or the FCC. Ameritech Ohio already has cost-based, nondiscriminatory interconnection and UNE rates[22] and wholesale rates established under the TELRIC methodology and the wholesale discount methodology, respectively. Nothing in this stipulation (and our approval thereof) will alter those established rates. Thus, we conclude that the duty placed upon Ameritech Ohio by the 1996 Act (as well as the

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can be extended for certain NECs if the resold service is ordered during the offering window and seeks installation in 30 days, but is not installed before the close of the offering window (*Id.* at 32).

20 The promotional resale rate will be applied for a period of 36 months from the date the resold service is installed and operational or for as long as the resold service remains in service at the same location with the same telephone number and for the same NEC, whichever is shorter (Jt. Signatory Ex. 1, at 30).

21 From 30 days following the Commission's final appealable order to the end of 12 months thereafter, the promotional resale rates shall be increased from the current rates by 50.6 percent (becoming 30.56 percent and 32 percent) (Jt. Signatory Ex. 1, at 32). For the next 12 months thereafter, the promotional resale rates will be increased from the current rates by 25 percent (becoming 25.36 percent and 26.56 percent) and, for the remainder of the promotional period, the promotional resale rates will be increased from the current rates by 10 percent (becoming 22.32 percent and 22.38 percent) (*Id.*).

22 For some items, we are in the process of finalizing TELRIC rates. In the interim, Ameritech Ohio is using those TELRICs, but awaiting our final order.

accompanying rules of the FCC and this Commission) is fulfilled and unaffected by the stipulation. We note that this conclusion does not bind the Commission in any way in its future consideration of Ameritech's TELRICs or the appropriateness of certain combinations and the pricing thereof.

We have found no indication in any of the arguments made in this proceeding that Congress or the FCC considered the concept of interconnection, UNE, and wholesale promotions. Accordingly, the propriety of these promotional rates must be evaluated in light of the policies of the 1996 Act, this state's telecommunications policy, and our other state law. We believe that promotions can serve pro-competitive ends if properly constructed.[23] The instant proposed promotions are designed to encourage NECs to institute or expand current operations in Ohio for residential services. These promotions are intended to "jumpstart" residential competition in Ohio by lowering the hurdles currently experienced by NECs (Tr. XV, 185, 193). Thus, in our view, the promotions in the stipulation seek to promote diversity and options in the supply of public telecommunications service, which is fully consistent with the policies of the 1996 Act and Section 4927.02(A), Revised Code.

Next, we must consider whether the terms of the promotions outweigh any possible anti-competitive effects. We agree with AT&T's statements that the promotions will, in effect, allow some NECs to purchase some resold services, for instance, at one rate while other NECs purchase at a different rate. That is because the promotion is targeted to services used to provision only residential service, as opposed to all local telecommunications services. We also agree with AT&T's statement that the promotions will allow some NECs to purchase at new rates for a period of time. That is because the promotions are not intended to be permanent. We do not consider these variations to outweigh any potential anti-competitive effects. Moreover, we note that AT&T's witness acknowledged that promotional terms that are targeted and temporary can be reasonable (Tr. XVII, 83-84, 88-89).

Several of the parties in opposition to the stipulation have also argued that the promotions will not affect competition in Ohio because of their terms (AT&T Ex. 17, at 14; AT&T Initial Br. at 27-35; AT&T Reply Br. at 24-27; MCI companies Initial Br. at 40, 45-47; Sprint companies Initial Br. at 47-50; State Alarm Br. at 20; AARP Initial Br. at 16-18; NEXTLINK Initial Br. at 18-19). In fact, AT&T's witness Gillan provided estimates of monthly savings for NECs as a result of the promotions for UNE-loops and resale (AT&T Ex. 17, at 17-21). He concluded that the monthly savings per loop and per resold service were unlikely to affect the market in Ohio (*Id.*). We do not agree with AT&T's contention that these promotions are inconsequential as there is a possibility that, overall, NECs will experience significant savings. Nevertheless, if AT&T were correct, then the result is that the promotions have not fulfilled their intended benefit.

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[23] We note that in New York, the Public Service Commission approved special offerings of the UNE platform (the loop and port combined together). *Methods by Which Competitive Local Exchange Carriers can Obtain and Combine Unbundled Network Elements*, Case Nos. 98-C-0690, et al. (November 23, 1998).

Essentially, if AT&T is correct that these promotions are insignificant (and we do not concede that point), then the promotions would have no or little anti-competitive effect.

Since we disagree that the promotions must be found to be inconsequential, we shall consider the terms of the promotions. As we have noted, there is little competition for local, residential customers in Ohio or in Ameritech Ohio's service territory. However, the resale promotion is certainly available to assist NECs with substantially higher discount rates (even though they decrease over time) for a period of time. CoreComm, which is currently providing residential service on a resale basis, is ideally situated to take advantage of this promotion from its beginning (Corecomm Ex. 1, at 2). Also, we note that CoreComm will be moving to a facilities basis in the near future and potentially could benefit from the collocation and UNE-loop promotions as well (*Id.*).[24] Additionally, we point out that one trigger for closing the offering windows associated with the UNE-loop and resale promotions is Ameritech losing a certain number of residential access lines. Those numbers (200,000 or 115,000) are a significant increase over the current rate of lost residential lines in Ohio (*e.g.*, in September 1998, Ameritech Ohio had lost 5,600 residential access lines [Jt. Applicants Ex. 36]). Thus, we find it entirely reasonable that the promotions can and will assist in "jumpstarting" residential competition in Ohio. Overall, we conclude that the terms of the promotions in the proposed stipulation will not result in unjust, unreasonable, or unduly disparate treatment and, therefore, are consistent with Ohio law.

We also find it appropriate to address the mechanics of determining the number of lost residential access lines under the competitive line growth test. During the hearing there was conflicting testimony regarding how residential lines would be counted (Tr. XIV, 208-209; Tr. XV, 163-164, 167; Tr. XVI, 18; Tr. XVII, 166-167). We will not allow SBC / Ameritech to count residential lines that were lost, but regained by the time that the test is done. This would amount to double-counting. The stipulation clearly notes that there is no intention to double-count any residential access lines (Jt. Signatory Ex. 1, at 33). Furthermore, we note our agreement with our staff that inclusion of lines resold to centrex resellers is improper for calculating lines lost under the competitive line growth test and, thus, for closing the offering window (Tr. XVII, 63-64; Staff Reply Br. at 9). Finally, Ameritech Ohio shall include the terms and conditions of these promotions in its interconnection agreements, if they are part and parcel to the terms under which that NEC will interconnect with Ameritech Ohio.

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[24] We cite to CoreComm as one NEC who is likely to benefit from these promotions because it is the only NEC who presented evidence in this proceeding that is serving residential customers in Ohio. AT&T and MCI appear to argue that the promotions are not sizeable enough for them (AT&T Initial Br. at 27-34; MCI Ex. 1, at 6-7; Tr. XVII, 201). Even so, we believe that there are other NECs that wish to serve residential customers and that will benefit from these promotions.

3) Other Carrier-to-Carrier Provisions

SBC/Ameritech has agreed to: (1) work to finalize its MTSS recourse tariff provisions and any resulting amendments to existing interconnection agreements; (2) comply with rules and interconnection agreement provisions that address non-disclosure of NECs' confidential and proprietary business information; (3) offer an 18-month installment payment option for nonrecurring charges associated with residential UNEs and resale services; (4) waive, for three years following the close of the merger, a NEC's first bona fide request (BFR) initial processing fee; (5) implement the ten-digit trigger capability relating to local number portability in the Columbus metropolitan service area by April 1, 2000, and elsewhere by July 1, 2000;[25] (6) offer all NECs the interim LNP-processing arrangements offered to Time Warner Telecom on November 25, 1998; (7) review and report ways, if any, to reduce the time to issue a pole attachment permit, install cable, and provide access to ducts and rights-of-way; and (8) reduce by ten percent the time between a request to review pole attachment and conduit records and the accessibility of those records (Jt. Signatory Ex. 1, at 29, 36-39).

With regard to these provisions in the stipulation, it was noted that not all NECs would benefit from the waiver of the BFR processing fee, depending upon the terms of their interconnection agreement with Ameritech Ohio (Tr. XV, 78-79). MCI acknowledges that the ten digit trigger provision will assist local exchange competition (Tr. XVII, 214-215). These provisions will assist NECs and other competitors (either economically and/or procedurally) in their provision of services and/or in interfacing with Ameritech. We see these provisions as beneficial and in the public convenience.

D. Market Power

The Commission indicated a concern that the merger might increase market power and, if so, questioned what measures should address such increase in market power. Under the stipulation, Ameritech Ohio will provide the staff with an assessment of competition and market power for a period of seven years, unless Ameritech Ohio loses 200,000 residential access lines within four years of the closing of the merger, at which time, Ameritech is only obligated to perform the assessment over a four-year time frame (Jt. Signatory Ex. 1, at 40). The assessment will cover several telecommunications services markets, and include market share and customer survey information (*Id.*). In the event that Ameritech Ohio does not demonstrate that it lost 200,000 residential access lines within four years of the closing of the merger, it will pay $15 million to its end users and NECs, $2.5 million to the education fund, and $2.5 million to the technology fund (*Id.* at 47-49). Payment will not be required, however, if Ameritech Ohio has received in-region, interLATA 271 authority under the 1996 Act, or if 271 is repealed and Ameritech Ohio can demonstrate that it has lost at least 115,000 residential access lines (*Id.* at 47).

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[25] This particular obligation will not terminate, even if the joint applicants were to withdraw the merger application (Jt. Signatory Ex. 1, at 38).

The joint applicants and staff believe that, with the stipulation, the staff will achieve its goals of: (1) mitigating market power and facilitating the development of local competition (via, for example, the OSS performance measures and promotional discounts), (2) testing market power on a going-forward basis, and (3) having an enforcement mechanism if it is shown that SBC/Ameritech's market power has stifled competition (Jt. Applicants Initial Br. at 48-49; Staff Initial Br. at 18-19; Staff Ex. 4, at 7).[26] The staff adds that the company's entry in the four other markets will help decrease market power concerns in those four areas (Staff Initial Br. at 19). OCC notes that the stipulation will provide the staff with a measuring tool from which it can assess the relative success of the other pro-competitive commitments in the stipulation (OCC Initial Br. at 15; OCC Reply Br. at 14).

The opposing parties do not believe that the stipulation is sufficient regarding market power. NEXTLINK and AT&T contend that the Commission will be provided a biased view of the market since only Ameritech will provide the information (NEXTLINK Initial Br. at 9; AT&T Initial Br. at 42). Additionally, NEXTLINK states that the Commission should be concerned that Ameritech Ohio's compilation of the market assessment information is handled appropriately because so much of the information is competitively sensitive, *i.e.*, will Ameritech Ohio glean information from its wholesale unit (NEXTLINK Initial Br. at 9). AT&T argues that the Commission should be concerned because the stipulation does not provide an effective remedy to mitigate any increase in Ameritech Ohio's market power as a result of the merger (AT&T Initial Br. at 42-43). In AT&T's view, the $20 million payment for not losing at least 200,000 residential access lines in four years is too small and has no bearing on market power for the small and large business local services market (*Id.*). The MCI companies argue that the market assessment report is information that the Commission otherwise could have gathered (MCI companies Initial Br. at 49). The Sprint companies contend that the merger will provide SBC with a permanent competitive advantage and increase anti-competitive incentives, while the assessment reports will do nothing to lessen that market power or its anti-competitive effects (Sprint companies Initial Br. at 42-45).

We note that all of the market power mitigative measures contained in the stipulation are not solely included in Section XII. The stipulation includes other market power mitigative measures to open competition and lessen the potential for abuses. Because of the potential for an increase in market power following this merger, the stipulation and this opinion and order provide for certain mitigation measures. These include the establishment of up-front standards for OSS compliance and the prompt resolution of recourse issues associated with MTSS. Moreover, the statement of witness Kahan acknowledging the weakness of SBC attempting to deprive NECs in Ohio of interconnection arrangements it itself obtains in other jurisdictions

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[26] The joint applicants do not believe that concerns about market share and market power have relevance to this proceeding because there is no actual competition between SBC and Ameritech Ohio, which the merger could affect (Jt. Applicants' Reply Br. at 24, 32).

and the Commission's response to same in this order will serve as an additional check on potential abuses of market power in-region through SBC's control of bottleneck facilities. All of this evidence in the record and the stipulation provisions address some of the market power barriers to entry into both business and residential markets in Ohio. Moreover, the stipulation provides for the development of an additional margin or discount to serve that customer class where Ameritech today and SBC/Ameritech in the future has the most market power --- namely, service to the residential class. By adding margin to serve these customers through promotions for UNE-loops, collocation, and the wholesale rates, the stipulation is further enticing NECs to enter the residential market and, by design, attempting to create a contestable market for residential competition during its period. We will only address in a section 271 proceeding whether this and the company's other actions have been sufficient to justify section 271 relief. But, we do find the items set forth in the stipulation, as well as this order, to be sufficient at this time to address the otherwise increased market power that would occur absent these items. Thus, the Sprint companies' criticism is without merit. We agree with the joint applicants, staff, and OCC that the market assessment information is just one piece of the stipulation's terms for this issue. It is, nevertheless, a very important piece on a going-forward basis. Ameritech Ohio's assessment is not the only source from which the Commission will monitor the Ohio telecommunications market. We note that our staff correctly plans to analyze the information that it receives from Ameritech, verify it, and further monitor the market (Tr. XVII, 161).

We do agree with NEXTLINK that there is a concern as to the gathering of the information that must be provided under the market assessment provisions. Some of the information will be Ameritech Ohio's estimates (Tr. XIV, 212; Tr. XV, 134). However, Ameritech Corporation has some actual competitive information by virtue of the wholesale functions (location of NEC networks and numbers of customers, for instance). The details by which Ameritech Ohio will compile the market assessment information are not set forth in the stipulation and Ameritech Ohio has not determined exactly how that information will be gathered (Tr. XV, 135). Those facts do not convince us that the provision should be rejected. However, we believe that it is necessary for our staff to work with SBC/Ameritech to devise an acceptable process by which the market assessment information is gathered for the reports, while safeguarding proprietary information. We do not want Ameritech Ohio personnel to improperly access sensitive data about their competitors with which those same Ameritech Ohio employees may later rely in their other duties for Ameritech Ohio. That would simply be inappropriate behavior. On balance, we conclude that the market power assessment provisions are reasonable, but our staff should work through the details of the process with the company.

E. Infrastructure

The Commission indicated a concern that the capital decisions of the merged entity could result in the needs of Ohio being subordinated to those of other markets.

Under the terms of the stipulation, SBC / Ameritech will invest at least $1.32 billion in Ameritech Ohio's local service infrastructure and network over the three years following the year in which the merger closes (Jt. Signatory Ex. 1, at 14; Tr. XIV, 75-76). During that same period, Ameritech Ohio will provide an annual report to the staff, detailing each of the networks operated by SBC (Jt. Signatory Ex. 1, at 14-15). Additionally, SBC / Ameritech has agreed, when asymmetrical digital subscriber line (ADSL) service is deployed, it will be deployed in such a manner as to offer it in at least certain target central offices and to residential customers, in a non-discriminatory fashion (*Id.* at 15-16). SBC / Ameritech will provide an annual report regarding retail residential services that are not available throughout Ameritech Ohio's service area (*Id*. at 16).

The MCI and Sprint companies contend that the stipulation's infrastructure commitment is the status quo and nothing more than what would have been made regardless of this stipulation (MCI companies Initial Br. at 33; Sprint companies Initial Br. at 53). Also, the MCI companies point out that the ADSL provisions address a service not yet provided by Ameritech Ohio, while not obligating Ameritech Ohio to provide it (MCI companies Initial Br. at 34). AT&T argues that the commitment will simply be beneficial to Ameritech Ohio because, at a time when competition for large business customers is intensifying, Ameritech Ohio can still meet this commitment by spending the money for those business customers (AT&T Reply Br. at 28). Also, AT&T argues that there is nothing in the stipulation to enforce this commitment (*Id*.). The staff points out that this stipulation commitment extends the obligation set forth in Ameritech Ohio's alternative regulation plan (Staff Reply Br. at 19). The joint applicants respond by arguing that the stipulation provides a commitment to Ohio beyond what previously existed and reflects their agreement to provide the highest quality telecommunications services in Ohio (Jt. Applicants Reply Br. at 54).

There is no doubt that the infrastructure provisions provide an additional investment commitment beyond what currently exists. While the dollar amounts may be comparable with the recent past, these provisions ensure that the infrastructure investment will not drop for another three years. Further, SBC confirmed the dollars will be spent on the network and infrastructure used in the provision of local exchange services, not other services (Tr. XIV, 75-76). This assures that Ameritech's local network will not "stand still" during a time in which we are encouraging local competition and assures that just and reasonable local exchange service can be provided. We also consider the reporting provisions to enable the Commission staff and other parties to monitor investment for not only Ohio, but also to compare the investment levels with SBC's other states. As the staff has noted, this information will provide a basis from which the Commission can identify and eliminate any shifting of investment to the detriment of Ohio (Staff Initial Br. at 22). AT&T correctly points out that there is not an enforcement provision if SBC / Ameritech do not actually invest as they have agreed. However, we (as well as several other parties) will be monitoring this matter through the reports and can, thus, enforce this provision, if it is not met.

Additionally, we consider the ADSL provisions to be in the public convenience as well. While SBC is not committing to roll ADSL out in Ohio if this merger occurs, it considers the product to be important (Tr. II, 85, 86-89; Edgemont Ex. 1). ADSL is being marketed on a very large scale in SBC's territory in California (Tr. II, 50-51, 70, 76, 80-81). SBC will determine any additional rollout of ADSL in light of the FCC's new rules for providing advanced services and any state decisions relevant to the service (Edgemont Ex. 1; MCI companies Initial Br. at Attach.).[27] Despite the legal/regulatory uncertainty that has existed for offering this type of service, we consider the establishment of a nondiscriminatory framework for deploying a new service to be beneficial because it will allow a fair deployment of ADSL or similar service. We agree with SBC that the nondiscriminatory terms are just and will allow the deployment to occur across Ameritech Ohio's service territory (not just for certain areas or limited customers) (Tr. XIV, 78). We fully expect, in light of SBC's interest in ADSL and experience in California, that ADSL (or another service with the same capabilities) will be offered in Ohio in the very near future. Thus, we do not consider this aspect of the stipulation to be inconsequential.

F. In-State Presence

The Commission was concerned with the post-merger level of autonomy and local decision-making, as well as how the needs of Ohio would not be subordinated to SBC's desires for multi-state uniformity. The stipulation states SBC/Ameritech will: maintain a state headquarters in Ohio for at least five years after the merger closing, maintain the number of full-time equivalent employees for two years, improve its customer-interfacing employees expertise, and regularly report the numbers of customer-interfacing employees for two years (Jt. Signatory Ex. 1, at 21-22). Additionally, SBC/Ameritech will offer basic local exchange service to both residential and business customers at reasonable rates in four other markets in Ohio (*Id.* at 22-24).

NEXTLINK and State Alarm contend that only status quo will occur because there is no promise to "grow" employment and the employee level commitment is only for a two-year period (NEXTLINK Reply Br. at 8; State Alarm Br. at 20). OCC argues that these provisions will maintain the number of employees and improve their expertise so that adequate service can be provided, not degraded. The joint applicants note that the state headquarters will be maintained for a minimum of five years, which is beyond what SBC had originally agreed (Jt. Applicants Initial Br. at 61-62). Moreover, the joint applicants point out that the stipulation ensures not only the staffing levels, it ensures experienced and qualified staff will interface with end user customers and NECs. We consider the staffing provisions to be in the public interest.[28]

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[27] The FCC recently issued rules to allow carriers to deploy new advanced services on a faster, more cost-effective basis. *Deployment of Wireline Services offering Advanced Telecommunications Capability*, CC Docket No. 98-147, (March 18, 1999). Thus, many of the legal/regulatory uncertainties associated with the deployment of ADSL may now be resolved.

[28] The number of Ameritech Ohio employees as of the date the stipulation was signed was 7,808 (Jt. Applicants Ex. 28).

We recognize that SBC is interested in growth and we believe that these terms will enable adequate service to be provided and improved for both Ohio end user customers and NECs (*Id.* at 63; Jt. Applicants Ex. 24, at 12). Plus, these terms will allow a number of decisions to be handled on a local basis. AARP is incorrect in stating that the stipulation's employee provisions do nothing that could not be done through a data request (AARP Initial Br. at 41). Simply put, AARP is evaluating the employee report provision without considering the fact that employee levels will be maintained for a period of time. The reports will provide the details of the employee levels on a continual basis for those two years. Taken together, these provisions are beneficial to Ohio.

NEXTLINK, the MCI companies, and AARP argue that the provisions regarding the four other markets are fraught with problems. NEXTLINK contends that this provision simply creates the opportunity to increase Ameritech's market power in Ohio, as opposed to providing a competitive option for the subscribers in those areas (NEXTLINK Initial Br. at 9-10). Also, NEXTLINK points out that one of those four areas is already within SBC's NLS and, thus, that aspect of the stipulation is simply fulfilling SBC's business plan (*Id.*). Additionally, they argue that, because there are several significant conditions that must be met before the offering will occur in those four markets, it is likely that consumers will not benefit (NEXTLINK Initial Br. at 9-10; MCI companies Initial Br. at 38; AARP Initial Br. at 20-25). The MCI companies also argue that the commitment is short-lived and, thus, it is questionable whether consumers will benefit (MCI companies Initial Br. at 39). The joint applicants and staff respond by noting that the conditions are reasonable given the fact that the company cannot provide service without certification, rights-of-way, and interconnection agreements (Jt. Applicants Reply Br. at 52-53; Staff Reply Br. at 19). OCC points out that the four market commitment is significant because the company will make a good faith effort to serve the residential market, not just the business segment, which was SBC's initial plan in the Cincinnati market (OCC Initial Br. at 13-14). OCC further notes that, after 36 months, the marketplace will impact the company's activities in those areas (*Id.*).

We recognize that several conditions must be fulfilled before SBC/Ameritech can offer local exchange service in the other four markets as envisioned by the stipulation. We believe it was appropriate to acknowledge the existing legal requirements for certification, rights-of-way, and interconnection agreements. The opposing parties correctly point out that the satisfaction of those conditions are necessary for the competitive alternative to begin offering services in those four markets. However, that does not change the fact that a <u>good</u> <u>faith</u> <u>effort</u> to provide competitive services to both residential and business customers in four areas has been agreed upon in this stipulation. Certainly, those conditions cannot be considered insurmountable, particularly since we have certified a number of carriers and reviewed numerous interconnection agreements. Similarly, we are confident that rights-of-way requests have been made and received by other carriers. We are committed to our role in realizing the creation of the competitive alternative so that the customers in those four markets can have further

diversity in the near future. We find it ironic that some of the opposing parties are arguing against this portion of the stipulation, while also arguing against the merger because it will allegedly result in the loss of SBC as a potential competitor. We view this aspect of the stipulation as creating a new competitor in those non-Ameritech regions in Ohio. That competitor may be a strong entity because of its affiliation with SBC, but we find that attribute to further enhance the success of the competitive marketplace for local exchange services in Ohio. We are hopeful that, along with the other terms of this stipulation, local competition within Ameritech Ohio's territory and outside its territory will grow. In fact, the MCI companies acknowledge that entry by an existing ILEC into another territory will have dramatic competitive effects (MCI companies Initial Br. at 29). In our opinion, the four markets will assist in promoting local competition and customer choice and, thus, we conclude that this aspect of the stipulation is in the public convenience.

We will, however, require as part of our approval of this stipulation that Ameritech Ohio offer to NECs in Ohio any interconnection terms SBC or Ameritech obtains in the four other areas in Ohio or elsewhere in the nation. Our basis is quite simple. As SBC/Ameritech seek to enter other regions (which SBC has already began), they will seek terms that are considered essential to serve customers in a given market (Tr. II, 138; Tr. XIV, 34-35). We believe that, since they are essential, other carriers seeking to serve customers in Ohio may be interested in them and Ameritech Ohio should offer them. We acknowledge that there may be technical infeasibility issues but, otherwise, interconnection should be made available under the same terms and conditions. We disagree with the joint applicants' contention that such a requirement is unnecessary (Jt. Applicants Ex. 1, at 56-57; Tr. II, 1501-151; Jt. Applicants Initial Br. at 35). SBC has basically acknowledged that this requirement is appropriate since SBC/Ameritech already wants a level of interconnection in the four markets that is similar to what Ameritech offers in its current territory (Tr. XIV, 70-71, 106-107, 135-136, 222; Jt. Signatory Ex. 1, at 23). SBC itself expects the same opportunity to compete (Tr. XIV, 108). In particular, SBC senior executive Mr. Kahan explicitly acknowledged that, if SBC received a certain level of interconnection or UNEs out-of-region, it could not credibly deny the same level of interconnection in-region ("we're sure not going to be able to deny offering it here because it certainly will be possible somewhere else.") (Tr. XIV, 70-71).

Additionally, SBC has a current policy to allow NECs to select terms from its other interconnection agreements under section 252(i) of the 1996 Act (Tr. I, 221). We will further require Ameritech Ohio to offer interconnection under the same terms and conditions as offered in other SBC states. Given that SBC is willing to implement in Ohio the measurements it provides to NECs in Texas, SBC is basically willing to "carry over" other interconnection terms for Ohio. To assist the Commission in understanding the interconnection terms received or provided in other states, SBC/Ameritech shall provide copies of interconnection agreements upon Commission request.

G. Books and Records

The Commission was concerned whether, post-merger, it would have access to the necessary books and records of the entities providing services to or receiving services from Ameritech Ohio, or otherwise operating in markets in Ohio. The stipulation states that SBC/Ameritech will provide access to books and records of any affiliate that engages in transactions with any SBC/Ameritech affiliate that operates in Ohio as a public utility (Jt. Signatory Ex. 1, at 39-40). If access cannot be provided in Ohio, SBC/Ameritech agree to pay reasonable and necessary travel expenses for the Commission staff (*Id.*).

The joint applicants, staff, and OCC all agree that this provision of the stipulation fulfills the Commission's concern (Jt. Applicants Initial Br. at 66-67; Staff Initial Br. at 22; OCC Reply Br. at 20). The MCI companies argue that the stipulation does nothing more than recognize Ohio statutory requirements (MCI companies Initial Br. at 47). We agree with MCI. Even so, by ensuring that the Commission will not only have access to books and records in Ohio, but also will be able to access necessary records wherever located, this provision will avoid future disputes between the Commission and the companies regarding access to necessary books and records. We consider such terms to be beneficial for Ohio because they will allow the Commission to ensure compliance with accounting, record keeping, and reporting requirements. In turn, the public benefits from such compliance.

H. Affiliates

The Commission was concerned whether the loss of an actual competitor in Ohio's interLATA services market and the loss of a potential competitor in the local services market would outweigh the benefits of a new and stronger entity. Also, the Commission inquired about the plans in Ohio for one of Ameritech's affiliates. The stipulation states SBC/Ameritech will withdraw the service provided by SBC's interexchange affiliate, Southwestern Bell Communications Services Inc. (SBCS), as well as the two application requests filed by Ameritech Communications, Inc. (Jt. Signatory Ex. 1, at 40). Also, at least 90 days prior to seeking in-region, interLATA 271 authority under the 1996 Act, SBC/Ameritech agree to seek the required intrastate certification and file 271 information with the Commission (*Id.*).

The joint applicants contend that the loss of SBCS will not affect competition for interexchange services because SBCS conducted a very limited activity in Ohio (Jt. Applicants Ex. 4, at 32-33; Jt. Applicants Initial Br. at 68). Similarly, the joint applicants and OCC state that SBC was not an actual competitor and had no plans to compete in the Ohio local exchange market (Jt. Applicants Ex. 1, at 72; Tr. I, 181; OCC Reply Br. at 8). Staff states that, under the conditions in the stipulation, Ohio will gain a strong competitor in areas with virtual monopolies, as well as provisions to open Ameritech Ohio's local market for both residential and business customers (Staff Initial Br. at 23).

OCC similarly remarks that the pro-competitive benefits of the stipulation far outweigh the loss of one theoretical entrant (OCC Reply Br. at 8).

None of the opposing parties address the withdrawal of SBCS. However, the MCI and Sprint companies take issue with the joint applicants' statement that Ohio will not lose a potential competitor in Ohio's local exchange market. They point to SBC's other activities and the NLS to indicate that SBC believes it must be a national player, it has the capabilities, and to be a national player includes serving the Cincinnati market (MCI companies Initial Br. at 24-30; Sprint companies Initial Br. 16-21). Those opposing parties allege that the loss of SBC is detrimental to local competition in Ohio, noting that it is essential to maintain as many potential competitors as possible when attempting to open a monopoly to competition (Sprint companies Initial Br. at 19).

Upon review of the arguments, we consider the affiliate provisions to be reasonable. We believe it is appropriate that the interexchange service provided by SBCS be withdrawn, as well as the two pending applications filed by Ameritech Communications, Inc. In each of those instances there are legal conflicts which will be avoided. On balance, we find that the pro-competitive and beneficial terms of the stipulation outweigh the concerns of potentially not having SBC compete against Ameritech Ohio in providing local exchange services in this state. We do not find it necessary to determine that, in fact, SBC would have offered services in Ohio. We find that the merger, under the terms of the stipulation, will provide pro-competitive benefits to Ohio in the very near term that outweigh the possible loss of SBC as a potential competitor in Ameritech Ohio's local services market at some unknown time in the future. In our view, the stipulation provides concrete benefits to Ohio quickly, while it remains unclear if and when SBC would have entered Ohio to compete against Ameritech Ohio.

I. Other Provisions

SBC / Ameritech agree to extend the cap for Ameritech Ohio's Cell 1 core residential services and the universal service assistance (USA) program until at least January 9, 2002, unless Ameritech Ohio becomes subject to an earnings review (Jt. Signatory Ex. 1, at 17). Ameritech Ohio agrees to withdraw its pending residential late payment charge proposal, without prejudice to it requesting exogenous treatment pursuant to its alternative regulation plan (*Id.*). Additionally, Ameritech Ohio agrees not to propose another such charge until it proposes a new alternative regulation plan or its existing plan expires, whichever comes first (*Id.*).

Commencing six months after the merger closing and continuing for 24 months, SBC / Ameritech will credit end users under the MTSS at 125 percent (Jt. Signatory Ex. 1, at 18). The credits due for installation premises and repair premises appointments missed will be automatically applied (*Id.*). Similarly, commencing six

months after the merger closing and continuing for 24 months, SBC / Ameritech will credit NECs under the MTSS recourse section at 150 percent (*Id.*).

SBC / Ameritech agree to establish two $2.25 million funds within three months of the merger closing. The first fund will be to inform and educate customers in Ohio of their rights concerning telecommunications and information services, MTSS, Commission policy, programs, and optional payment plans (Jt. Signatory Ex. 1, at 19). The second fund will be to help assure that rural and low-income areas in Ohio have access to advanced telecommunications technology (*Id.* at 20). In both cases, committees (with representatives from Ameritech Ohio, the staff, and consumer groups) will control the funds, subject to Commission approval (*Id.* at 19-20).

Over three years, SBC / Ameritech agree to provide an additional $1 million to the existing Community Computer Centers program and to make $2 million in charitable contributions in Ohio each 12-month period following the merger closing (Jt. Signatory Ex. 1, at 20-21). Ohio-based employees will have input regarding the beneficiaries of the charitable contributions (*Id.*). The final term in the stipulation that we have not addressed is that SBC / Ameritech agree to refrain from engaging in marketing practices that are fraudulent, deceptive or misleading (*Id.* at 21).

For some of these other commitments (i.e., community computer centers and USA program), we previously determined that similar commitments would further the policy of this state to ensure innovation in the telecommunications industry, provide benefits for customers, and were in the public interest. *Ohio Bell Telephone*, *supra*, Opinion and Order at 26. The terms contained in this stipulation will ensure that such innovation can continue. Nothing in our approval of the provisions regarding the USA program will preclude the Commission from addressing issues that may arise or issuing further orders on that matter. We likewise consider the education and technology funds to achieve those same goals throughout Ohio, despite AARP's claim that current provisions of the MTSS require customer education and the MCI companies' contention that the dollar amounts are modest (AARP Initial Br. at 42; MCI companies Initial Br. at 37). NEXTLINK agrees that the education and technology funds are benefits to Ohio consumers (NEXTLINK Reply Br. at 8). We wish to emphasize with the education and technology funds that any disbursement and expenditure of funds must be pre-approved by this Commission, except for the technology fund's program design and implementation expenses (which do not exceed $50,000) (Jt. Signatory Ex. 1, at 20). We fully expect the committees to cooperate by filing appropriate requests in advance and by considering alternatives in light of the Commission's rulings. We reserve the right to suspend the 30-day time frame set up in the stipulation for these filings so that we may have appropriate time to consider them. While the wording of the stipulation is somewhat vague as to the extent of the Commission's role, we are putting the parties on notice that we intend to take an active role in considering fund expenditures and disbursements. We believe that our clarification is in accord with what several parties envision (Tr. XIV, 200-201; Tr. XV, 159-160; Tr. XVI, 36).

We consider these committees to be advisory to the Commission only and not to displace the full authority of the Commission. Moreover, we do not envision that any of the stipulating parties or participants on the committees would be receiving, directly or indirectly, funding for education efforts. Furthermore, both advisory committees, and particularly the technology board, must develop an ethics code to prevent any conflicts of interest, real or perceived, relative to the voting on funds for which one of the participants may be receiving a benefit. This does not preclude the party from making recommendations to the Commission on the appropriate use of the funds and providing whatever local perspectives they have that would be helpful to the Commission in rendering its decision.

AARP and the MCI companies contend that the one-year rate cap extension is a gesture because Ameritech Ohio's current alternative regulation plan provides for a freeze until a new plan is adopted (AARP Initial Br. at 43; MCI companies Initial Br. at 34). In this respect, AARP states that the stipulation will not promote reasonable rates without a sharing in the expected benefit of reduced costs (*Id.* at 42). OCC notes that the rate cap provision precludes Ameritech Ohio from asking for an increase prior to 2002 (OCC Reply Br. at 19-20). We believe that the rate cap provision in this stipulation is acceptable since it precludes Cell 1 core residential rate increase requests (beyond the existing cap) for a defined period of time. The current alternative regulation plan does not include that guarantee.

The MCI companies argue that withdrawal of the late payment proposal is not a benefit because the contested application had little likelihood of being approved (MCI companies Initial Br. at 35). OCC counters, stating that withdrawal of the request is a benefit (OCC Reply Br. at 20). Again, we agree with OCC. Residential customers are assured, for at least a period of time, that Ameritech will not seek a consumer residential late payment charge. During that period of time, those customers who pay a bill late will not face a late fee. In our opinion, this term provides a benefit.

As for the marketing provision, AARP, AT&T, and the MCI companies argue that it is nothing more than confirmation of current Commission rules (AARP Initial Br. at 35; AT&T Initial Br. at 41-42; MCI companies Initial Br. at 37).[29] AARP alleges that SBC engages in abusive marketing in other jurisdictions and that the stipulation is clearly insufficient to remedy this concern (AARP Initial Br. at 34-35). OCC contends that this provision provides an enforcement avenue since it is part of a binding contract, above and beyond applicable regulations (OCC Initial Br. at 22). The joint

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[29] Additionally, AARP has argued that the examiners erred in admitting AARP Exhibit 2 under seal and in not admitting AARP Exhibit 3 (AARP Initial Br. at 4; AARP Reply Br. at 6). The joint applicants support the ruling (Jt. Applicants Reply Br. at 13-14). AARP Exhibit 2 is a compilation of SBC's internal marketing policies and practices in Texas. The examiners found that the compilation is sensitive and demonstrates the company's strategic approach to selling services. AARP Exhibit 3 is portions of Ameritech Ohio's response to interrogatory questions regarding documents that Ameritech has relating to certain picketing that occurred in 1998. No foundation for admission was established and the witness to whom questions were addressed had no knowledge (to refresh or otherwise probe) on this subject. The rulings are sustained.

applicants disagree with AARP's examples of abuses and argue that this proceeding is the wrong forum for developing marketing rules (Jt. Applicants Reply Br. at 40-42). AARP, AT&T, and the MCI companies believe that something more is needed. The commitment is reasonable. By that conclusion, however, we do not wish to imply that we will not ensure compliance. We, of course, will closely monitor Ameritech Ohio's activities in this regard in order to ensure compliance with the stipulation and our rules. This Commission will not tolerate unfair marketing practices by Ameritech Ohio.

The MCI and Sprint companies contend that the charitable contribution provision represents nothing more than recent expenditures and has no bearing on whether the merger will promote competition (Sprint companies Initial Br. at 53; MCI companies Initial Br. at 37). The MCI and Sprint companies are narrowly defining the public convenience. We note that the commitment to provide $2 million in charitable contributions is now a binding agreement, even if that amount is similar to what has been contributed in the past. The public in Ohio will benefit from this commitment. Additionally, we note that the $2 million shall not be counted towards any prior commitments, such as the distance learning commitment. We agree with our staff that this commitment should be separate and apart from any commitments that may have been previously agreed upon by Ameritech Ohio (Tr. XVI, 38-39).

Several parties criticized the stipulation's two MTSS credit provisions. The MCI companies argue that the MTSS recourse credit provision is irrelevant because Ameritech has not given recourse credits in the past (MCI companies Initial Br. at 35-36). AT&T and the MCI companies contend that, not only is Ameritech Ohio not complying with Commission requirements (by not paying the recourse credits), it is unwilling to commit that they will ever be paid (*Id*.; AT&T Initial Br. at 39). Ameritech Ohio has an ongoing dispute with NECs regarding the manner in which such credits may be claimed (Tr. IX, 40-41). AARP contends that the stipulation is inadequate on this point because the credit provisions only apply prospectively, apply for a short time, do not cover all instances in which credits are appropriate, and do not penalize for crediting misconduct (AARP Initial Br. at 36-38). Accord, AT&T Initial Br. at footnote 31. In particular, AARP points to certain data in the record to claim that Ameritech Ohio has improperly failed to provide credits to end user customers when it missed outside repair commitments (*Id*.). The joint applicants, staff, and OCC point out that the value of the credits will be greater with this provision (Jt. Applicants Reply Br. at 39-40; Staff Reply Br. at 19; OCC Reply Br. at 12). Furthermore, OCC claims that the MTSS credit provisions will require Ameritech Ohio to incur the increased expense of automatic credits for its end user customers so as to induce the company to improve its on-time record (OCC Initial Br. at 20). The joint applicants have agreed to automatically apply MTSS credits to end user business customers, as well as residential customers, for installation premises and repair premises appointments missed by Ameritech Ohio (Tr. XV, 120-121, 170-171; Jt. Applicants Initial Br. at footnote 110). This is an extension of the provision as written in the stipulation, with which we agree.

We consider the two MTSS credit provisions to bring additional benefits to Ameritech Ohio's end users and interconnecting NECs because those provisions will provide a higher credit amount, if Ameritech fails to meet the MTSS standards. Additionally, in some circumstances, Ameritech Ohio's end users will no longer have to request the credit before receiving it. These provisions will realize direct benefits to customers when Ameritech Ohio does not meet the minimum standards. We agree, in part, with AT&T's and the MCI companies' criticism of the provision relating to the recourse credits because, for NECs, an increase in amounts due is not a benefit when payment is not made. Nevertheless, we believe that NECs will benefit from this aspect of the provision for two reasons. First, when received, the recourse credits will be greater than without this stipulation. Second, Ameritech Ohio has committed to finalize its recourse tariff and any interconnection amendments (Jt. Signatory Ex. 1, at 29). In fact, we point out that Ameritech filed, on April 5, 1999, a modified proposal for its tariffs.[30] While that proposal still requires our approval, we note that we are moving forward toward completion and will endeavor to do so in the very near future (and, thus, prior to the time that the MTSS recourse provision in this stipulation would become effective). We believe that such action will assist in eliminating the delays to date (although it will not resolve the need for amending the interconnection agreements and may not fully resolve the existing dispute). We wish to make clear that we do not condone Ameritech Ohio's refusal to pay the recourse credits to NECs. We have noted our dissatisfaction on this issue and we reaffirm our prior directives to Ameritech Ohio to provide the credits.[31] Nothing in our approval of these provisions or this stipulation should be construed as condoning or acquiescing in Ameritech Ohio's past actions.

Additionally, we do not agree with AARP's criticisms. We find the prospective nature of the credit provision and its two-year effective time period to be acceptable. AARP's criticisms of these parts of the stipulation are really claims that they do not provide sufficient benefit to Ohio. We feel that the credit provisions are reasonable. Also, we disagree with AARP's claim that the data in the record conclusively demonstrates that Ameritech Ohio has improperly failed to provide credits to end user customers when it missed outside repair commitments. We further point out that, while the stipulation requires automatic crediting for a two-year period, prior rulings have required some MTSS credits to be provided automatically. For those credits, neither our approval nor the terms of this stipulation will alter the requirement. For example, Ameritech agreed, in settling prior litigation, to automatically credit all affected customers when it fails to meet the MTSS for premises installation appointments (Tr. XVI, 54-55). Similarly, if installations are not done within five days or service is not repaired in 24 hours, automatic credits shall be provided (*Id.* at 51-52). Nothing in this stipulation will alter the automatic nature of those credits. We make this clarification

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30 *In the Matter of the Application of Ameritech Ohio to Revise its Ameritech Tariff, PUCO No. 20, to Add Minimum Telephone Service Standards Terms and Conditions*, Case No. 97-1729-TP-ATA.

31 On May 13, 1998, we directed Ameritech Ohio to process claims received from the NECs. I*n the Matter of the Amendment of the Minimum Telephone Service Standards as Set Forth in Chapter 4901:1-5 of the Ohio Administrative Code*, Case No. 96-1175-TP-ORD, Entry on Rehearing at 6.

because of AARP's claim that the automatic provision is short-lived, State Alarm's contention that the stipulation is contrary to existing obligations, and Ameritech Ohio's resistance to the removal of the two-year term (AARP Initial Br. at 38; State Alarm Br. at 22; Tr. XV, 121). As to the lack of a penalty in this area, the stipulation specifically reserves the Commission's right to address any service quality or customer service problems while the stipulation is in effect (Jt. Signatory Ex. 1, at 24). Therefore, we conclude that, if misconduct in crediting should arise, approval of this stipulation will not preclude our staff or us from investigating and correcting misconduct.

Based upon the foregoing, we conclude that the other commitments in the stipulation are beneficial to end user NECs and will promote the public convenience.

V. Conclusion

Some parties point out that other classes of customers appear to receive less benefit from the proposed stipulation than residential customers do. However, irrespective of whether we or others might have allocated the benefits differently than the proposed settlement presented to us, we believe it is our duty to consider whether the overall stipulation is reasonable, in the public interest, and meets the requirements of Section 4905.402, Revised Code.

Having looked at the proposed stipulation and the many objections, the proposed stipulation, in total, will bring a variety of benefits to all classes of customers (end users, NECs, and other competitors) and does not violate any regulatory principles or practices. We believe that the merger, under the terms of the proposed stipulation as clarified herein, will promote the state's telecommunications policy, competition, diversity, and customer choice. We further believe that the merger, under the terms of the proposed stipulation as clarified herein, will promote public convenience and result in the provision of adequate service at reasonable rates, rentals, tolls, or charges as defined in Section 4905.402, Revised Code. Moreover, we find that our clarifications will ensure balance to all customers, including nonsignatory parties. Accordingly, we find that the proposed merger application and the stipulation entered into by the joint applicants, the staff, OCC, Edgemont, Parkview, Time Warner Telecom, and CoreComm, to the extent discussed and clarified herein, should be adopted.

As a result of our decision today, the Commission shall continue to closely scrutinize Ameritech Ohio's activities and maintains full regulatory oversight over the matters in this stipulation. Nothing in our approval of the merger or stipulation (as set forth in this decision) obviates the MTSS or our authority to change them or add additional requirements (even in the context of a complaint proceeding). The stipulation is a supplement to our authority under the Ohio Revised Code and does not impair our authority, either procedurally or substantively.

We note also that Ameritech Ohio is required to maintain the necessary data and records under which it will compile the reports required by this decision. In

particular, SBC/Ameritech shall keep specific accounts (and provide same to the staff) which indicate activity and expense levels prior to the merger and thereafter. Furthermore, it is essential that the record keeping efforts be done in compliance with current requirements. Accord, Tr. XVI, 115-117; State Alarm Ex. 1, at 8. Along that line, we note that, during the hearing, Ameritech Ohio indicated that it does not mechanically track or have available data regarding the numbers of missed installation appointments for which credits were given (AARP Ex. 5). In accordance with the MTSS (Rule 4901:1-5-03, O.A.C.), such tracking is required in order to show performance and compliance. Ameritech Ohio will have to maintain the data and records to show when it credited missed installation appointments under the stipulation too. We direct Ameritech Ohio to take the appropriate actions to meet this current obligation. Furthermore, we instruct our Consumers Services Department staff to follow-up on this issue to verify that Ameritech Ohio is, in fact, tracking the number of missed installation appointments and, in such circumstances, crediting the customers appropriately.

As indicated above, our review of the stipulation and the application was conducted on an issue-by-issue basis. In future years, the Commission will remain the final arbiter of the intent, meaning, and application of the stipulation and this opinion and order. Additionally the Commission will be the final arbiter regarding fulfillment of the commitments contained in the stipulation (including the implementation of OSS measures and standards/benchmarks). In any dispute as to the meaning of the two documents, this opinion and order shall be deemed controlling. We also wish to stress that the Commission will be reviewing the joint applicants' progress in implementing the merger and we intend to hold the joint applicants to their commitments contained in the stipulation. To that end, we agree with NEXTLINK's suggestion that a post-approval compliance proceeeding be conducted (NEXTLINK Initial Br. at 23). We believe that such follow-up should begin concurrent with Ameritech Ohio's price cap filing on May 1, 2000. Therefore Ameritech Ohio shall file, on the same day it files its updated price cap index documentation, a detailed analysis of the post-merger activities, compliance with this stipulation, and compliance with this decision. At that time, the Commission will establish a procedure for its post-merger review.

We wish to clearly state that our approval of the merger is expressly contingent upon the terms in the proposed stipulation. If approval of the stipulation is overturned and the merger has <u>not</u> closed, this Commission has not approved the merger. If any term contained in the stipulation is declared null and void and the merger has already closed, we reserve the ability to obtain the value of such commitment in some other manner. Lest there be any question, this reservation of right is also a fundamental basis upon which we are approving this stipulation.

Additionally, there are a few outstanding motions. First, both AT&T and the Sprint companies requested protective orders with respect to portions of their witnesses' prefiled testimony. Specifically, AT&T seeks confidential treatment for the unredacted versions of the prefiled testimony of Kathleen L. Whiteaker and Robert F.

Falcone because that testimony contains pricing information, which is confidential business information, and other information which is under seal with the Commission in other cases. Both of these documents were filed with the Commission on December 10, 1998. Ameritech Ohio supports AT&T's request. The Sprint companies seek a protective order for the unredacted version of David E. Stahly's prefiled testimony, which was filed on January 8, 1999. Each of those three witnesses' unredacted, prefiled testimony was admitted into the record in this proceeding under seal. The Commission finds that AT&T's and the Sprint companies' motions for protective order are reasonable and should be granted.

On January 4, 1999, AT&T requested a protective order for keeping portions of the deposition of Dr. Robert G. Harris under seal. AT&T has filed this request because the joint applicants have alleged that a small portion should be marked confidential. AT&T, without agreeing or supporting the claim of confidentiality, has made the request in accordance with Rules 4901-1-21(N) and 4901-1-24(D), O.A.C. No response to this protective order request was filed. Upon review of the involved portions of Dr. Harris' deposition, we conclude that it involves certain sensitive market penetration data. We find the request to be narrowly tailored and reasonable. Accordingly, this request for a protective order should be granted.

Moreover, during the hearing process, a number of documents were admitted on a confidential basis. In accordance with Rule 4901-1-24(F), O.A.C., protective orders prohibiting disclosure shall automatically expire 18 months after the date of this opinion and order. Any party wishing to extend this confidential treatment should file an appropriate motion at least 45 days in advance of the expiration date of this protective order. The Docketing Division of the Commission should maintain, under seal, the following documents for 18 months from the date of this opinion and order:

(1) the unredacted versions of the prefiled testimony of Kathleen L. Whiteaker and Robert F. Falcone (both filed on December 10, 1998);
(2) the unredacted version of David E. Stahly's prefiled testimony filed on January 8, 1999;
(3) AT&T Exhibits 2, 3, 8, 11.1, and 18;
(4) Sprint Exhibit 4.1;
(5) AARP Exhibit 2;
(6) Joint Applicants Exhibits 23, 29 and 41;[32]
(7) Staff Exhibit 1;
(8) Edgemont Exhibit 5; and
(9) Dr. Harris' deposition pages (filed on January 4, 1999)

[32] Joint Applicants' Exhibit 41 was not admitted into the record in this proceeding. Rather, it was proffered on a confidential basis, following the denial of its admission (Tr. XVII, 223-226). Our decision to allow this document to remain under seal at the Commission should not be construed as altering the ruling from the examiners.

On March 10, 1999, Cincinnati Bell Telephone Company (CBT) filed a motion for leave to intervene in this proceeding. CBT seeks to intervene for the limited purpose of clarifying the procedures and timelines by which ILECs (other than Ameritech Ohio) will be permitted to compete throughout the state of Ohio. CBT specifies that it has no position on whether the joint petition or stipulation should be approved by the Commission. CBT states that the stipulation raises issues that are of interest to all ILECs in Ohio and, if the Commission were to adopt it, the Commission must also clarify the procedures and timelines by which other ILECs will be permitted to compete in Ohio. CBT contends that the current local service guidelines require the establishment of a separate affiliate for the provision of out-of-territory competitive local services and preclude altogether the offering of local service by an affiliate within an ILEC's current territory. CBT argues that the Commission should give other ILECs a corresponding opportunity to compete within or outside their current local service areas. On March 17, 1999, the joint applicants filed a memorandum contra CBT's motion. The joint applicants argue that the issues raised by CBT are not relevant to this proceeding or the proposed stipulation. Also, the joint applicants state that, in this change of control proceeding, the Commission should not address generic revisions to the local service guidelines or generic requirements for ILEC certification requests.[33]

CBT concedes that it has no position on the petition or the stipulation. Based upon those statements, we believe that CBT has no substantial interest in this proceeding that would justify its intervention, given the issues under consideration in this case. Further, CBT has not demonstrated, under Rule 4901-1-11, O.A.C., any basis to justify intervention at this late stage. Moreover, we believe CBT's concern would be more appropriately raised in our generic investigation of competitive issues. *In the Matter of the Commission's Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*, Case No. 95-845-TP-COI.

Lastly, we note that there is an outstanding request from AT&T for reconsideration and/or clarification of the examiner's December 18, 1998 entry, which addressed the manner in which the "copy prohibited" documents would be handled before and during the hearing. The joint applicants filed a memorandum contra on January 4, 1999. We note that, on December 29, 1998, and at the beginning of the hearing, the examiner addressed in part the concerns set forth in AT&T's December 22, 1998 motion. As noted in footnote 5, we agree with the examiner's December 18, 1998 ruling and we do not believe that AT&T's due process rights were denied. We conclude that any further ruling on AT&T's request for reconsideration and/or clarification is unnecessary.

If there are any other arguments that were raised by the parties, but not specifically addressed herein, they are rejected. Lastly, we note that the hearing was held open for the receipt of briefs and any questioning by the Commissioners. Further

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[33] The joint applicants do agree with CBT's assertion that ILECs should be able to obtain the necessary certification to operate outside their current service areas under the same rules and procedures as NECs, without any unique restrictions. Nevertheless, the joint applicants contend that the question is not one for this case.

hearings are not required in this matter. Accordingly, we close the hearing record in this case, effective with the issuance of the final order on rehearing, unless a stipulating party withdraws its consent for the stipulation as set forth in the stipulation (Section III. E).

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) On July 24, 1998, the joint applicants filed an application seeking approval of a change in ownership of Ameritech Corporation, the parent company of Ameritech Ohio.

(2) On October 15, 1998, the Commission determined that review of the merger application would be limited to the nine specific issues identified by the Commission and that the Commission staff should analyze the application as it relates to those issues and should file a proposal. Additionally, the Commission permitted discovery, rescheduled the prehearing conference, and scheduled an evidentiary hearing.

(3) On November 6, 1998, the staff of the Commission filed its preliminary, independent proposal regarding the merger application and the issues identified by the Commission.

(4) On November 17, 1998, the prehearing conference was held as rescheduled.

(5) Twenty-two entities were granted intervention. Two of them, the City of Toledo and Airtouch Cellular, Inc., later withdrew from this proceeding.

(6) The evidentiary hearing began on January 7, 1999, in order to address the nine topics delineated by the Commission on October 15, 1998. During this phase of the proceeding, 27 witnesses provided testimony. The hearing recessed on January 25, 1999, in order to allow the parties to continue prior settlement discussions.

(7) On February 23, 1999, a settlement and recommendation was filed in this matter. The agreement, which is intended to resolve all of the issues in this case, was signed by the joint applicants, the staff, OCC, Edgemont, Parkview, Time Warner Telecom, and Corecomm.

(8) The evidentiary hearing resumed on March 10, 1999. In support of the proposed stipulation, the joint applicants presented the testimony of two witnesses and the staff presented the testimony of three witnesses. In opposition to the stipulation, AT&T, MCI, and the Sprint companies each presented the testimony of one witness.

(9) At the conclusion of the testimony for this phase of the proceeding, the examiner ordered the record to remain open until receipt of briefs and Commissioner questioning, if any.

(10) Briefs were filed on March 22 and 26, 1999.

(11) This application is subject to the jurisdiction of the Commission pursuant to Section 4905.402, Revised Code.

(12) The proposed merger and stipulation should be adopted as provided and to the full extent set forth in this opinion and order. The stipulation is a product of serious bargaining among capable, knowledgeable parties. The merger, under the terms of the proposed stipulation, will benefit ratepayers and the public interest and does not violate any regulatory principle or practices. Additionally, the merger, under the terms of the stipulation, will promote the state's telecommunications policy, competition, diversity, and customer choice. Finally, the merger, under the terms of the stipulation, will promote public convenience and result in the provision of adequate service at reasonable rates, rentals, tolls, or charges as defined in Section 4905.402, Revised Code.

(13) The Commission retains continued oversight authority over this merger and stipulation and their ongoing implementation in accordance with this opinion and order.

(14) Further hearings are not required in this matter and the hearing record in this case should be closed, effective with the issuance of the final order on rehearing, unless a stipulating party withdraws its consent for the stipulation as set forth in the stipulation (Section III. E).

ORDER:

It is, therefore,

ORDERED, That the proposed merger and accompanying stipulation and recommendation filed on February 23, 1999, are approved, to the extent described and clarified in this opinion and order. In the event of a future conflict with respect to interpretation of the stipulation and this decision, the language contained in this opinion and order shall be deemed controlling. It is, further,

ORDERED, That AT&T's December 10, 1998 and January 4, 1999 motions for protective order and the Sprint companies' January 8, 1999 motion for protective order are granted. It is, further,

ORDERED, That CBT's March 10, 1999 motion for leave to intervene in this proceeding is denied. It is, further,

ORDERED, That AT&T's December 22, 1998 motion for reconsideration and/or clarification is moot. It is, further,

ORDERED, That the Docketing Division of the Commission should maintain, under seal, the following documents for 18 months from the date of this Opinion and Order: (1) the unredacted versions of the prefiled testimony of Kathleen L. Whiteaker and Robert F. Falcone (both filed on December 10, 1998); (2) the unredacted version of David E. Stahly's prefiled testimony filed on January 8, 1999; (3) AT&T Exhibits 2, 3, 8, 11.1, and 18; (4) Sprint Exhibit 4.1; (5) AARP Exhibit 2; (6) Joint Applicants Exhibits 23 and 29; (7) Staff Exhibit 1; (8) Edgemont Exhibit 5; and (9) Dr. Harris' deposition pages (filed on January 4, 1999). It is, further,

ORDERED, That the joint applicants comply with the terms of the stipulation approved in this case, all of the terms and language of this opinion and order, and all Commission directives that may be issued pursuant to this opinion and order. It is, further,

ORDERED, That our approval of this application and stipulation, to the extent set forth in this opinion and order, does not constitute state action for the purposes of antitrust laws. It is not our intent to insulate the companies from the provisions of any state or federal laws that prohibit the restraint of trade. It is, further,

ORDERED, That, except as provided in the stipulation or as specifically provided for or clarified in this opinion and order, nothing shall be binding upon the Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That further hearings are not required in this matter and the hearing record in this case shall be closed, effective with the issuance of the final order on rehearing, unless a stipulating party withdraws its consent for the stipulation as set forth in the stipulation (Section III. E). It is, further,

ORDERED, That a copy of this opinion and order be served upon SBC Communications Inc., SBC Delaware Inc., Ameritech Corporation, Ameritech Ohio, all intervenors, and any interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

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Craig A. Glazer, Chairman

_____ _____
Jolynn Barry Butler Ronda Hartman Fergus

_____ _____
Judith A. Jones Donald L. Mason

GLP;geb

Entered In The Journal
April 8, 1999

Gary E. Vigorito
Secretary

Signed by Commissioners
Glazer
Butler
Fergus
Mason