STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

SBC COMMUNICATIONS INC., SBC DELAWARE INC., AMERITECH CORPORATION, ILLINOIS BELL TELEPHONE COMPANY d/b/a AMERITECH ILLINOIS and AMERITECH ILLINOIS METRO, INC.	)	
	)	**ICC DOCKET NO: 98-0555**
Joint Application for Approval of the Reorganization of Illinois Bell Telephone Company d/b/a Ameritech Illinois, and the Reorganization of Ameritech Illinois Metro, Inc. in Accordance with §7-204 of the Public Utilities Act and for All Other Appropriate Relief	)	

BRIEF ON EXCEPTIONS
OF INTERVENOR ACI CORP.

NOW COMES Intervenor, Accelerated Connections, Inc. d/b/a ACI Corp. ("ACI"), by and through its attorneys, SORLING, NORTHRUP, HANNA, CULLEN AND COCHRAN, LTD., Scott C. Helmholz, of Counsel, and BLUMENFELD & COHEN, Joan L. Volz, of Counsel, and for its Brief on Exceptions, pursuant to §200.830 of the Commission's Rules of Practice, states as follows:

EXCEPTION NO. 1:

INSERT the following on Page 48 of the Hearing Examiners' Proposed Order, at the end of the first sentence under "ACI's Position":

> ACI asserts that Joint Applicants' proposal to make available only terms and conditions they voluntarily agreed to does not promote competition to the extent the Commission could achieve if it were to broaden the requirement to include all state orders, arbitrations and decisions regarding Joint Applicants' interconnection offerings and procedures throughout their territories. ACI states the Commission need not spend its limited resources relitigating lengthy evidentiary hearings, such as those in Texas, regarding loop standards and availability of loop make-up data. Further, requiring each CLEC to negotiate with Joint Applicants for terms and conditions already obtained

through arbitration or court orders elsewhere will delay the development of competition.

ACI also recommends the Commission require Joint Applicants to develop within 45 days of the date of this Order, in collaboration with Staff and other parties, an xDSL capable loop offering that is not length or technology restrictive. ACI maintains that CLECs should not be charged for loop conditioning, (e.g., removal of load coils and bridged taps) and other special construction. ACI points to satisfactory advanced services loops available elsewhere and proposes we adopt a definition, such as that mandated in Connecticut (Docket No. 98-11-10, July 8, 1999), as the "default" definition if the process is not completed within the 45-day time period.

ARGUMENT IN SUPPORT OF EXCEPTION NO. 1:

ACI's Exception No. 1 more accurately summarizes ACI's position than the single sentence appearing in the Hearing Examiners' Proposed Order. Both the record in this proceeding and basic common sense make clear that allowing CLECs the opportunity to "import" terms and conditions required as a result of either favorable court orders or arbitration awards obtained through lengthy and costly litigation in other states will eliminate a procedural roadblock and expedite the delivery of competitive telecommunications products and services in Illinois. The Commission has authority to impose such a condition to protect CLECs' interests as "public utility . . . customers" under §7-204(f).

The unrebutted testimony of ACI witness Jo Gentry established that Ameritech's current loop definitions contain unreasonable length and technology restrictions that hinder and delay ACI's delivery of advanced services to Illinois consumers. (Gentry, p. 8, lines 3-13). To remedy these impediments, Exception No. 1 incorporates a discussion of ACI's proposed condition concerning a pro-competitive xDSL-capable loop definition. ACI's proposal would require Joint Applicants to negotiate an xDSL-capable loop definition within 45 days of this Order. In the

absence of agreement, the recently-adopted Connecticut Department of Public Utility Control definition would take effect. (Connecticut Department of Public Utility Control, Advisory Letter Ruling, Docket No. 98-11-10, July 8, 1999). Finally, the language proposed in ACI's Exception No. 1 reflects its

position that no justification exists for Ameritech's imposition of charges for loop conditioning and special construction.

EXCEPTION NO. 2.A:

INSERT the following language on Page 48 in supplement to the section labeled "ACI's Position":

> ACI also proposes that the price of any particular term or condition "imported" from another state continue to apply on an interim basis subject to a true-up proceeding to address Illinois-specific cost issues.

EXCEPTION NO. 2.B:

INSERT the following language on Page 50 of the Hearing Examiners' Proposed Order, in the third full paragraph, starting after the fourth sentence:

> We believe that these concerns are satisfied by ACI's proposal for adopting the "exporting" state's price term on an interim basis, subject to a true-up proceeding to address Illinois-specific cost issues.

ARGUMENT IN SUPPORT OF EXCEPTION NO. 2.A and 2.B:

Exceptions 2.A and 2.B provide more detail on ACI's position regarding the pricing of "imported" UNEs, terms and conditions. Price negotiations create yet another opportunity for Joint Applicants to delay providing interconnection services and facilities CLECs require to compete. The proposed exception removes this reason for delay. The proposed exception effects a compromise

solution to Staff and Joint Applicants' concerns that the Commission avoid the "automatic" adoption of foreign state price terms, and CLECs' desire for the prompt elimination of procedural barriers to competitive entry. The Connecticut Department of Public Utility Control recently chose this same solution in a contested tariff proceeding between ACI, MCI and SBC's Southern New England Telephone Company. (Advisory Letter Ruling, Docket No. 98-11-10, July 8, 1999).

EXCEPTION NO. 3:

INSERT the following language on Page 50 of the Hearing Examiners' Proposed Order, in the third full paragraph, starting after the fifth sentence:

> "SBC" includes any affiliate or subsidiary thereof upon closing date of this merger, including, but not limited to its affiliated interests resulting from the acquisition of Ameritech Corporation, its affiliates and subsidiaries as well as any companies acquired or otherwise controlled by SBC, its affiliates or subsidiaries resulting from future transactions upon which this Commission may exert jurisdiction.

ARGUMENT IN SUPPORT OF EXCEPTION NO. 3:

Exception No. 3 makes clear that the proposed merger conditions will apply to interconnection terms and conditions that pertain to any of Joint Applicants' present or future ILEC affiliates. Without such a clarification, there may be ambiguity around the condition's application to Ameritech and its affiliates.

EXCEPTION NO. 4:

On Page 51 of the Hearing Examiners' Proposed Order, in the first sentence of the second full paragraph, STRIKE the following language:

> . . . and significantly aid us in resolving any disputes that may arise in specific cases.

and INSERT the following in lieu thereof:

> as well as those terms which are in the public interest to offer, but may not yet be available, in other SBC agreements. We endorse Intervenor ACI's position that the Joint Applicants develop, in collaboration with Staff and other parties, an xDSL-capable loop offering within the next 45 days that is not length or technology restrictive. In a TELRIC pricing environment, CLECs should not be charged for loop conditioning (e.g., removal of load coils and bridged taps) or other special construction. To provide the benefits that advanced services can bring as soon as possible to Illinois consumers, we believe the collaborative process should begin immediately and, with respect to this particular UNE, should conclude in 45 days. If the parties fail to reach agreement within 45 days, Joint Applicants must immediately begin offering the xDSL-capable loop ordered by the Connecticut Department of Public Utility Control on July 8, 1999 in Docket No. 98-11-10.

ARGUMENT IN SUPPORT OF EXCEPTION NO. 4:

Jo Gentry's unrebutted testimony establishes that Ameritech's loop definitions contain length and technology restrictions that unreasonably hinder a CLEC's ability to order the "clean" loops necessary to provision DSL. (Gentry p. 7, lines 6-7; p. 8, lines 4-7). ACI's proposal alleviates this competitive roadblock. By setting the "default" definition as the xDSL-capable loop adopted by the Connecticut Department of Public Utility Control, this Commission ensures the prompt elimination of this impediment to the delivery of advanced services.

Even when loops are ordered which otherwise meet Ameritech's length limitations, Ameritech frequently attempts to impose exorbitant "special construction" charges that render the loops economically out-of-reach. If any bridged taps, load coils, repeaters or BRITE cards must be added to or removed from the loop, Ameritech charges non-TELRIC "special construction" charges. (Gentry, p. 8, lines 13-21). Conditioning is a routine practice incumbents provide their own retail customers at no charge (Gentry, p. 9, lines 8-12; see also, Direct Testimony on

Reopening of David R. Conn, McLeod USA Exhibit 1, at p.5). The practice of charging CLECs for loop conditioning/deconditioning is therefore unquestionably discriminatory and contravenes the public policy expressed in §13-103(d) that ". . . consumers of telecommunications services and facilities . . . should be required to pay only reasonable and *non-discriminatory* rates and charges." (emphasis added). Further, special construction or loop conditioning charges are especially unwarranted in a TELRIC pricing environment because an efficient forward-looking network includes xDSL-capable facilities that require neither conditioning nor special construction.

EXCEPTION NO. 5.A:

On Page 70, as a new section following the second full paragraph under "MCIW's Position", INSERT:

ACI's Position

ACI contends that Joint Applicants should immediately provide access to loop make-up data currently existing in Joint Applicants' OSS and associated databases such as LFACS (Gentry, p. 14, lines 11-13). This information is already provided by SBC's Pacific Bell subsidiary on a pre-ordering basis at no charge. (Gentry, p. 14, lines 21-22).

EXCEPTION NO. 5.B:

INSERT on Page 72, beginning immediately after the first sentence under "Commission Analysis and Conclusion":

> We note, however, that Joint Applicants' responses to OSS do not adequately address all issues related to advanced services, specifically Intervenor ACI's request that Joint Applicants immediately make available on a pre-ordering basis data regarding loop characteristics and makeup. The record demonstrates such information is available. Therefore, in addition to Joint Applicants proposed OSS commitment, which otherwise satisfies our concerns, we believe Joint Applicants should provide access to such database(s) and information required for the pre-ordering process to determine loop characteristics and make-up. With such inclusion, we find Joint Applicants' proposed OSS commitment is acceptable.

EXCEPTION NO. 5.C:

On Page 72, STRIKE the second and third sentences in the first paragraph, under "Commission Analysis and Conclusion:

> We also find that Joint Applicants' proposed OSS commitment satisfies our concerns and is acceptable in its present form. In particular, we conclude that the OSS commitments will bring a procompetitive benefit to CLECs and end users in Illinois that would not exist absent the merger.

ARGUMENT IN SUPPORT OF EXCEPTIONS NO. 5.A., 5.B. and 5.C.:

Exceptions No. 5.A, 5.B and 5.C correct the Hearing Examiners' Proposed Order's omission of any discussion of ACI's proposal that the Commission mandate that Joint Applicants immediately begin providing CLECs with access to loop make-up data. ACI's proposed condition derives from the unrebutted testimony of Jo Gentry cited in the exception. (Gentry, p. 14, lines 11-13 and 21-22). ACI's proposal provides immediate although only partial access to existing data. There is no reason to delay partial access until full electronic access is available. Partial access will have an immediate

positive customer impact and bring the benefits of competition to additional consumers who, under current operating practices, may not learn of their loop problems until after the due date for their service. (Gentry, p. 13, lines 3-6).

EXCEPTION NO. 6:

INSERT on Page 77, as a new paragraph beginning after the end of the sentence ending at the top of the page:

> ACI did not address the unbundled network platform issue. ACI witness Jo Gentry testified that the advanced services loops offered by Ameritech in Illinois are outdated, unnecessarily restrictive and hamper the deployment of advanced services. Further, ACI testified that Ameritech charges anticompetitive special construction charges in connection with provision of loops that it does not charge its retail customers. (Gentry, p. 8, lines 13-21; p. 9, lines 8-12). ACI suggests the Commission either prohibit special construction charges or mandate that Joint Applicants treat CLECs and retail customers equally. (Gentry, p. 9, lines 9-14).

ARGUMENT IN SUPPORT OF EXCEPTION NO. 6:

This exception constitutes a summary of ACI's factual position. The record contains ample support for a condition that eliminates special construction charges to protect the interests of CLECs and foster the development of competition.

EXCEPTION NO. 7:

On Page 78, INSERT the following as a new paragraph beginning immediately above the first full paragraph:

> **Joint Applicants' commitments, however, do not sufficiently address the availability of an xDSL-capable loop offering, nor is this issue being addressed in current dockets. The current xDSL loop UNEs offered in Illinois should be updated and unnecessary restrictions removed. We adopt ACI's proposal that the Joint Applicants develop, in collaboration with Staff and other parties, an xDSL-capable loop offering within the next 45 days that is not length or**

technology restrictive. In a TELRIC pricing environment, CLECs should not be charged for loop conditioning (e.g., removal of load coils and bridged taps) or other special construction. **To provide the benefits that advanced services can bring as soon as possible to Illinois consumers, we believe the collaborative process should begin immediately and, with respect to this particular UNE, should conclude in 45 days. If the parties fail to reach agreement within 45 days, Joint Applicants must immediately begin offering the xDSL-capable loop ordered by the Connecticut Department of Public Utility Control on July 8, 1999 in Docket No. 98-11-10.**

ARGUMENT IN SUPPORT OF EXCEPTION NO. 7:

Jo Gentry's unrebutted testimony establishes that Ameritech's loop definitions contain length and technology restrictions that unreasonably hinder a CLEC's ability to order the "clean" loops necessary to provision DSL. (Gentry p. 7, lines 6-7; p. 8, lines 4-7). ACI's proposal alleviates this competitive roadblock. By setting the "default" definition as the xDSL-capable loop adopted by the Connecticut Department of Public Utility Control (Advisory Letter Ruling, Docket No. 98-11-10, July 8, 1999), this Commission ensures the prompt elimination of this impediment to the delivery of advanced services.

Even when loops are ordered which otherwise meet Ameritech's length limitations, Ameritech frequently attempts to impose exorbitant "special construction" charges that render the loops economically out-of-reach. If any bridged taps, load coils, repeaters or BRITE cards must be added to or removed from the loop, Ameritech charges non-TELRIC "special construction". (Gentry, p. 8, lines 13-21). Conditioning is a routine practice incumbents provide their own retail customers at no charge (Gentry, p. 9, lines 8-12; see also, Direct Testimony on Reopening of David R. Conn, McLeod USA Exhibit 1, at p.5). The practice of charging CLECs for loop conditioning/deconditioning is therefore unquestionably discriminatory and contravenes the public policy expressed in §13-103(d) that ". . . consumers of telecommunications services and facilities . . . should be required to pay only reasonable and *non-discriminatory* rates and charges."

(emphasis added). Further, special construction charges are especially unwarranted in a TELRIC pricing environment because an efficient forward-looking network includes xDSL-capable facilities that would not require special construction.

EXCEPTION NO. 8:

INSERT on Page 96, immediately after the conclusion of "Staff's Position":

ACI's Position

Intervenor ACI contends that CLECs are "public utility . . . customers" within the meaning of §7-204(f) by virtue of their purchase of unbundled network elements, collocation, and transport from the ILEC, and consequently, suggests we have ample authority thereunder to impose conditions that protect the interests of CLECs. To the extent §7-204(f) contains any ambiguity on this point, ACI contends we must consider the General Assembly's public policy declarations favoring the prompt development of competitive telecommunications in §§13-102(e), 13-103(a), and 13-103(f) as militating in support of CLEC-protective conditions.

ARGUMENT IN SUPPORT OF EXCEPTION NO. 8:

Exception No. 8 is a summary of ACI's position on the issue of the nature and scope of the Commission's authority to impose conditions under Section 7-204(f). ACI's Initial Brief points out that CLECs unquestionably constitute "public utility . . . customers" within the meaning of Section 7-204(f) by virtue of their purchase of interconnection services and facilities from the ILECs. Therefore, CLECs and their interests constitute, by direction of the General Assembly, a proper subject for any protective conditions this Commission elects to impose on Joint Applicants' merger.

EXCEPTION NO. 9:

In the third "bullet" point on Page 139, STRIKE the word "not" and the phrase "since costs may and do vary by state, and pricing in each state reflects

state pricing policies and costs", ***and INSERT the following language so that the revised point reads as follows:***

> Ameritech Illinois shall be required to offer to CLECs in Illinois UNEs, services, facilities or interconnection agreements/arrangements at the same rates or prices as SBC makes such offerings in SBC in-region territories subject to a true-up proceeding to address Illinois-specific cost issues.

ARGUMENT IN SUPPORT OF EXCEPTION NO. 9:

Price negotiations create yet another opportunity for Joint Applicants to delay providing interconnection services and facilities CLECs require to compete. The proposed exception removes this reason for delay. The proposed exception effects a compromise solution to Staff and Joint Applicants' concerns that the Commission avoid the "automatic" adoption of foreign state price terms, and CLECs' desire for the prompt elimination of procedural barriers to competitive entry. The Connecticut Department of Public Utility Control (Advisory Letter Ruling, Docket No. 98-11-10, July 8, 1999), in the decision cited above, recently chose this same solution in a contested tariff proceeding between ACI, MCI and SBC's Southern New England Telephone Company.

EXCEPTION NO. 10:

In the second paragraph of the fourth "bullet" point on Page 139, STRIKE the following language from the sentence beginning "In addition . . .":

> the Commission also finds that excluding from the automatic requirements of this condition interconnection arrangements that are imposed upon SBC by arbitration retains for

and INSERT the following underscored language so that the revised sentence reads as follows:

> In addition, this Commission <u>preserves</u> its ability to review Illinois interconnection agreements <u>and modifications</u> from an Illinois perspective, rather than adopting the policies of other states.

ARGUMENT IN SUPPORT OF EXCEPTION NO. 10:

The proposed exception clarifies and emphasizes this Commission's continuing jurisdiction with respect to interconnection agreements and/or modifications thereto in Illinois. Allowing CLECs to "import" particular UNEs, terms or conditions obtained through orders of other state commissions or courts in no way prevents this Commission from exercising final authority over their implementation in Illinois.

Respectfully submitted,

Accelerated Connections, Inc.
d/b/a ACI Corp., Intervenor,

By: _____
One of Its Attorneys

SORLING, NORTHRUP, HANNA, CULLEN
AND COCHRAN, LTD.
Scott C. Helmholz, of Counsel
Suite 800 Illinois Building
P. O. Box 5131
Springfield, IL 62705
Telephone: (217) 544-1144

BLUMENFELD & COHEN
Joan L. Volz, of Counsel
13525 265th Street
Welch, MN 55089

0226219.006 8/17/1999SCHcrs