Attachment B

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

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

MEMORANDUM OPINION AND ORDER

Adopted: October 6, 1999 **Released: October 8, 1999**

By the Commission: Commissioner Ness issuing a statement; Commissioners Furchtgott-Roth and Powell concurring in part, dissenting in part, and issuing separate statements; Commissioner Tristani issuing a statement.

TABLE OF CONTENTS

Page

greatest number of low-income households. Similarly, at least 10 percent of the urban wire centers where the merged firm or its separate advanced services affiliate deploys xDSL service in each in-region state will be low-income urban wire centers. These requirements will become enforceable for any given state 180 days after the merger closes and after SBC/Ameritech and/or its advanced services affiliate has deployed xDSL service in that state in at least 20 urban wire centers (to activate the urban requirement) or 20 rural wire centers (to activate the rural requirement). After the respective effective date, SBC/Ameritech will provide nondiscriminatory deployment of xDSL services for at least 36 months thereafter. SBC/Ameritech will consult with the appropriate state commission, within 90 days of the merger's closing, to classify all SBC/Ameritech wire centers in that state as urban or rural.[702] Furthermore, to assist in monitoring the merged firm's equitable deployment of xDSL, SBC/Ameritech will publicly file a quarterly report with the Commission describing the status of its xDSL deployment, including the identity and location of each urban and rural wire center where it has deployed xDSL.[703]

2. Ensuring Open Local Markets

377. *Carrier-to-Carrier Performance Plan.* As a means of ensuring that SBC/Ameritech's service to telecommunications carriers will not deteriorate as a result of the merger and the larger firm's increased incentive and ability to discriminate and to stimulate the merged entity to adopt "best practices" that clearly favor public rather than private interests, SBC/Ameritech will publicly file performance measurement data for each of the 13 SBC/Ameritech in-region states with this Commission and the relevant state commission on a monthly basis. The data will reflect SBC/Ameritech incumbent LECs' performance of their obligations toward telecommunications carriers in 20 different measurement categories. These categories cover key aspects of pre-ordering, ordering, provisioning, maintenance and repair associated with UNEs, interconnection, and resold services. Many of the twenty measurement categories are divided into numerous disaggregated sub-measurements, thereby tracking SBC/Ameritech's performance for different functions and different types of service.[704] Furthermore, the list of measurements reported by SBC/Ameritech under this condition is not static. This list is subject to addition or deletion, and the measurements themselves are subject to modification, by the Chief of the Common Carrier Bureau, through a joint semi-annual review with SBC/Ameritech.[705]

378. Under this condition, SBC/Ameritech will either achieve the stated performance goal for the agreed-upon measures in each state or, if SBC/Ameritech fails to provide service that meets the stated performance goal, make a voluntary incentive payment to the U.S. Treasury in

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702 *See* Edgemont July 19 Comments at 12 (criticizing that the Applicants had "sole control" over classifying wire centers in the initial July proposal).

703 *See* SBC/Ameritech Sept. 29 *Ex Parte* at 1.

704 Following the Texas PUC's observation that certain statistical calculations in the July Proposal differed from the Texas plan, the Applicants altered the statistical methodology to correspond more closely with the Texas plan. *See* Texas PUC Aug. 5 Comments at 4-5.

705 Other elements of the plan are also subject to periodic review and modification by the Chief of the Common Carrier Bureau, including certain aspects of the payment calculation mechanism.

an amount varying according to the level and significance of discrimination detected. These voluntary incentive payments are subject to monthly state-specific caps that total, across all states, as much as $250 million in the first year, $375 million in the second year, and $500 million in the third year (*i.e.*, a total of up to $1.125 billion over three years), with a credit for amounts paid to states and competitive LECs under state-imposed performance monitoring plans or under liquidated damages provisions of interconnection agreements.[706] As discussed below, SBC/Ameritech's potential liability may be reduced by up to $125 million in the third year if SBC/Ameritech completes and deploys OSS enhancements before their target date, depending upon the enhancement and how early it is completed.

379. The specific performance measures that SBC and Ameritech will implement are based primarily upon performance measures developed in a Texas collaborative process involving SBC's application for in-region, interLATA relief. The performance measures in California and Nevada will be reported using rules that were developed in a collaborative process in California. Rather than develop a new set of measures for this merger proceeding, we find that relying upon these performance measures and corresponding business rules, which may be modified over time, will achieve the goals of the Carrier-to-Carrier Performance Plan and conserve time and resources. We emphasize that use of such measures in this merger review proceeding is not meant to affect, supplant, or supersede any existing or future state performance plan. The adoption of these measures in the present merger context does not signify that these performance measures would be sufficient in the context of a section 271 application.

380. These limited performance measures are intended to offset or prevent some of the merger's potential harmful effects; they are not designed or intended as anti-backsliding measures for purposes of section 271. The present performance plan must be viewed in the context of the entire set of proposed safeguards that comprise the overall merger conditions package. As SBC and Ameritech explain, this merger-related Carrier-to-Carrier Performance Plan is designed to cover the "range of activities that have the most direct and immediate impact

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[706] In addition to criticizing the complexity of the voluntary payment structure set forth in the Applicants' July proposal, several commenters objected that the payment caps were inadequate to discourage the merged firm from providing substandard service to competitors. *See, e.g.*, AT&T July 19 Comments, App. A at 41; ALTS July 19 Comments at 4; MCI WorldCom July 19 Comments at 20-24, 32; Sprint July 19 Comments at 59-60. Since their initial proposal, the Applicants increased the merged firm's total payment exposure to $1.125 billion from the initially-proposed level of $1 billion. In addition, the Applicants substantially simplified the voluntary payment structure by eliminating two of the three "tiers" of payments, and multiplying the per-occurrence or per-measure voluntary payment figure for the remaining tier by a factor of three. Finally, the Applicants provided that they will increase the payments for performance measurements where observations are particularly low, as well as for specific sub-measurements representing low-volume, nascent services. For these measurements and sub-measurements, the per-occurrence and per-measurement payments will again be tripled. *See* SBC/Ameritech Aug. 27 *Ex Parte* at 5-6. We find that this "low-volume" multiplier will help to ensure that the Applicants' proposed incentive mechanism will offer meaningful protections where service volumes are low. Particularly in light of these modifications, we find that the voluntary payment structure and cap are sufficient to address the limited purposes of the Carrier-to-Carrier Performance Plan – to neutralize the merged firm's increased incentive and ability to discriminate and to remedy other merger-specific potential harms such as the loss of a major incumbent LEC benchmark. *See infra*, Section V (Analysis of Potential Public Interest Harms).

Appendix C

CONDITIONS

INDEX TO CONDITIONS

PROMOTING EQUITABLE AND EFFICIENT ADVANCED SERVICES DEPLOYMENT

ENSURING OPEN LOCAL MARKETS

FOSTERING OUT-OF-REGION COMPETITION

IMPROVING RESIDENTIAL PHONE SERVICE

ENSURING COMPLIANCE WITH AND ENFORCEMENT OF THESE CONDITIONS

4c. Measurement	
Percent SWBT Caused Missed Due Dates - UNE	
Definition:	
Percent of UNEs (8db loops are measured at an order level) where installations are not completed by the negotiated due date.	
Exclusions:	
• Specials and Interconnection Trunks • Excludes UNE Combos captured in the POTS or Specials measurements • Exclude orders that are not N, T, or C • Excludes customer caused misses	
Business Rules:	
The Due Date starts the clock. The Completion Date is the day that SWBT personnel complete the service order activity, which stops the clock. If the completion date is after the Due Date, the order is flagged as a miss. This measurement is reported at a circuit level for all UNEs with the exception of 8db loops, which are reported at an order level to facilitate comparison with POTS retail.	
Levels of Disaggregation:	
UNEs contained in the UNE price schedule, and / or agreed to by the parties.	
Calculation:	Report Structure:
Count of UNEs (8dB loops are measured at an order level)with missed due dates excluding customer caused misses ÷ total number of UNEs (total orders for 8db loops) *100	Reported for CLEC and all CLECs
Benchmark:	
Parity:	Retail Comparison
1. 8.0 dB Loop with Test Access and 8.0 dB Loop without Test Access	POTS (Res/Bus and FW)
2. 5.0 dB Loop with Test Access and 5.0 dB Loop without Test Access	VGPL
3. BRI Loop with Test Access	ISDN
4. ISDN BRI Port	ISDN
5. DS1 Loop with Test Access	DS1
6. DS1 Dedicated Transport	DS1
7. Subtending Channel (23B)	DDS
8. Subtending Channel (1D)	DDS
9. Analog Trunk Port	VGPL
10. Subtending Digital Direct Combination Trunks	VGPL
11. DS3 Dedicated Transport	DS3
12. Dark Fiber	DS3
13. DSL Loops	DS1

4d. Measurement	
Percent Mechanized Completions Returned Within one Day Of Work Completion	
Definition:	
Percent Mechanized Completions Returned Within one Day	
Exclusions:	
None	
Business Rules:	
Days are calculated by subtracting the date the SOC was returned to the CLEC minus the order completion date.	
Levels of Disaggregation:	
None	
Calculation:	Report Structure:
(# mechanized completions returned to the CLEC within 1 day of work completion ÷ total mechanized completions) * 100	Reported for CLEC and all CLECs for the electronic interfaces (EDI and LEX).
Benchmark:	
97%	