

**DIRECT TESTIMONY OF JAMES D. EHR
ON BEHALF OF AMERITECH ILLINOIS**

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2

I. INTRODUCTION AND PURPOSE OF TESTIMONY

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4 **Q. Please state your name and business address.**

5 A. My name is James D. Ehr. My business address is 2000 W. Ameritech Center Drive,
6 Location 4E60, Hoffman Estates, IL 60196.

7

8 **Q. By whom are you employed and in what capacity?**

9 A. I am currently employed by Ameritech Corporation ("Ameritech") in the position of
10 Director of Performance Measures, as part of Ameritech's Long-Distance Compliance
11 organization. In this position, I support Illinois Bell Telephone Company, d/b/a
12 Ameritech Illinois ("Ameritech Illinois"), and the four other Ameritech operating
13 companies (collectively, "Ameritech").¹

14

¹ Illinois Bell Telephone Company, an Illinois corporation, is a wholly owned subsidiary of Ameritech Corporation, which owns the former Bell operating companies in the states of Michigan, Illinois, Wisconsin, Indiana, and Ohio. Ameritech Corporation is a wholly owned subsidiary of SBC Communications Inc. ("SBC"). Illinois Bell Telephone Company offers telecommunications services and operates under the names "Ameritech" and "Ameritech Illinois."

14

15 **Q. What are your duties and responsibilities in that capacity?**

16 A. I am responsible for overseeing the processes and systems used by Ameritech to measure
17 and report on the performance of its operations support systems ("OSS"). I have
18 participated as Ameritech's representative in several collaborative workshops on
19 performance measurements with state commissions and competing carriers throughout
20 the Ameritech region.

21

22 **Q. How long have you served in that capacity?**

23 A. I have served in this capacity since June of 2001.

24

25 **Q. What is your telecommunications experience?**

26 A. Prior to assuming my present position with Ameritech, I worked as a Solutions
27 Consultant in the Network Software Solutions ("NSS") organization within SBC Services
28 Inc. from October 1999 through May 2001. In that position, I was responsible for
29 management of network results reporting programs and projects. This included direct
30 management responsibility for the RRS and AskMe applications. RRS is the primary
31 application for Ameritech's wholesale network performance measurements (installation
32 & maintenance), while AskMe is the primary application for those same measurements in
33 the Southwestern Bell Telephone System ("SWBT") region. In addition, I was the NSS
34 organization's lead for planning and strategy processes.

35

36 Prior to October 1999, I was a member of the Network Systems organization
within Ameritech's Information Services (IS) organization. In that role I was the IS lead

37 for strategy and planning for all Ameritech IS network OSSs. Additionally, I managed
38 multiple IS projects and programs, including the design of network decision support and
39 reporting applications. Overall, I have had 15 years experience in external affairs and
40 information services within the telecommunications industry with Ameritech and other
41 companies, and 18 years overall experience in the analysis, design, development,
42 implementation and management of information systems projects and applications.

43

44 **Q. What is your educational background?**

45 A. I earned a Bachelor of Science - Management Information Systems degree from
46 Oakland University, Rochester, Michigan, in 1984 and a Masters of Business
47 Administration degree from the University of Central Florida, Orlando, Florida, in 1994.

48

49 **Q. Have you previously testified before the Illinois Commerce Commission ("ICC")**
50 **regarding Ameritech Illinois' Performance Assurance Plans?**

51

52 A. Yes. I presented testimony in Docket No. 01-0623 (McLeodUSA Arbitration
53 proceeding), and Docket No. 01-0539 (Wholesale Service Quality Standards
54 rulemaking). I also presented testimony in Docket Nos. 02-0596 and 02-0650, in which
55 the issues are virtually identical to those presented here.

56

57 **Q. What is the purpose of your Direct Testimony?**

58 A. The purpose of my direct testimony is to respond to the testimony of Mr. Samuel
59 McClerren and Dr. James Zolnierrek of the Commission's Staff regarding the "11-State"

60 performance assurance plan included in the interconnection agreements between
61 Ameritech Illinois and Easton and Royal Phone, which are now before the Commission
62 for approval.

63
64

65 **II. BACKGROUND**

66 **A. Performance Measurements, Standards, and Remedies**

67 **Q. What is a “performance assurance plan”?**

68 A. The first element of a performance assurance plan is a set of *performance measures*: data
69 that summarize the results of certain wholesale and retail operations (such as the time to
70 install service) for a reporting period (typically, each month). The second element
71 consists of the *performance standards* that are used to evaluate the results of
72 performance. We can describe these first two elements as the “performance monitoring”
73 aspects of a performance assurance plan. The third element is a performance “remedy
74 plan,” a system of automatic payments that are assessed in the event performance fails to
75 meet specified standards.

76

77 **Q. Please describe the first aspect of Ameritech Illinois’ current performance**
78 **assurance plan: performance measurements.**

79 A. Ameritech Illinois reports on 150 measures, along with some variations of those
80 measures that are provided to CLECs pursuant to their specific interconnection
81 agreements. They apply to each of the three modes of competitive entry set forth in the
82 1996 Act – interconnection with competitor-owned facilities, unbundled network
83 elements, and resale – along with several other wholesale services. The measures are

84 generally broken down, or disaggregated, into separate measurement categories for each
85 applicable product or service (e.g., resale, unbundled loops), customer type (e.g.,
86 residential, business), and certain other characteristics (e.g., whether or not the order
87 requires the “dispatch” of field personnel) to provide a more meaningful comparison.
88 The 150 performance measures are divided into nearly three thousand wholesale
89 reporting categories. There are some variations in the calculation methodology or
90 reporting categories for some measures, based on the terms of carrier-specific
91 interconnection agreements.

92

93 **Q. How are the results of these measurements assessed?**

94 A. The data in these performance measures are typically compared against *standards*, or
95 target levels. Many wholesale functions correspond to an analogous function in
96 Ameritech Illinois’ retail operations. In those cases, the retail outcome is the standard
97 level for wholesale performance in that reporting period; in other words, the standard is
98 “parity” between wholesale and retail. Where there is no meaningful retail analog, a pre-
99 set “benchmark” has been established. Finally, in some cases performance data is simply
100 reported for informational purposes, without a formal assessment against a standard.
101 These measures are called “diagnostic” measures.

102 We test compliance with most performance standards (in particular, those based
103 on “parity”) by using generally-accepted methods of statistical analysis. Without delving
104 into the particulars of those tests, they are designed to achieve 95 percent confidence – in
105 other words, on average 5 percent of the tests will give a “false alarm” based solely on
106 random variation even where there is parity between wholesale and retail processes.

107

108 **Q. What happens if performance falls short of the applicable standard?**

109 A. The applicable performance remedy plan, if any, defines the rules under which Ameritech
110 Illinois makes automatic, self-executing payments to CLECs, or to the State or federal
111 government as applicable, for performance shortfalls.

112

113 **Q. Is a remedy plan the only way to motivate good performance or assure compliance**
114 **with legal and contractual obligations?**

115

116 A. No. Even if there was no performance remedy plan at all, Ameritech Illinois has
117 significant incentives to continue to provide good service and satisfy its obligations. First
118 and foremost, Ameritech Illinois is in the business of providing telecommunications
119 services to all of its customers and intends to provide a good quality of service to those
120 customers, whether they are retail or wholesale. The reported performance measures give
121 our managers objective targets to strive for, and it gives them (as well as CLECs, our
122 wholesale customers) a way to monitor and evaluate how they are doing. In other words,
123 measuring performance and reporting the results to management and the outside world is
124 itself a way to motivate good performance.

125

126 Second, Ameritech Illinois fully intends to comply with the laws and rules of the
127 federal government regarding non-discriminatory access. These include Sections 251,
128 252 and 271 of the Telecommunications Act of 1996. There are numerous mechanisms
129 under federal law to enforce these obligations, starting with the fact that the FCC could
deny or suspend long-distance relief under Section 271. Finally, as this Commission

130 knows, the State of Illinois and the ICC have numerous methods to ensure that Ameritech
131 Illinois complies with applicable obligations under state law.

132

133 **B. The "11-State" Performance Assurance Plan.**

134 **Q. What is the source of the "11-State" performance assurance plan?**

135 A. The performance measures and standards of the 11-State plan were modeled on those
136 used by Southwestern Bell Telephone Company ("SWBT") in Texas. The 11-State plan
137 assesses remedies based on a subset of 39 key performance measures out of the over 100
138 that were developed in Texas. Ameritech Illinois, along with the other four Ameritech
139 operating companies and SWBT, agreed to implement the plan as a condition of the
140 FCC's approval of the merger between SBC and Ameritech in 1999. The "11 states" are
141 the five states in the Ameritech region (Illinois, Indiana, Michigan, Ohio, and
142 Wisconsin), the five states served by SWBT (Arkansas, Kansas, Missouri, Oklahoma,
143 and Texas), and Connecticut. (The plan originally included California and Nevada, and
144 was previously known as a "13-state" plan.)

145 I attach excerpts from the FCC order approving the merger as Schedule 1 to my
146 testimony. Attachment A-2a to that order lays out the measures and standards, and
147 specifies how they are to be calculated. Attachment A-3 specifies the rules for
148 calculating remedies. As you can see, the FCC's order was very specific about the
149 measures, standards, and remedies to be implemented, and it sets very detailed rules.
150 Note that the FCC order refers to 20 performance measurements. In some cases, we
151 divided those into separate performance measurement numbers, based on product or
152 service category. For example, the fourth measurement (missed due dates) in the FCC's

153 order corresponds to three separate measurements in our reports: Performance
154 Measurement Nos. 28 (for resale and UNE-P "POTS"), 45 (for resale "specials") and 58
155 (unbundled network elements). Thus, the 20 generic measurements referenced by the
156 FCC correspond to 39 measurements in our current reports.

157

158 **Q. Are there other performance assurance plans available in any of the 11-States?**

159 A. We are willing to negotiate carrier-specific plans with individual CLECs in any state.

160 Also, some, but not all, of the state commissions in the 11 states have approved generic
161 plans of their own. Staff's testimony discusses the Illinois "Condition 30" plan, which I
162 describe below. There are also state-ordered remedy plans in effect in Michigan and
163 Ohio, as well as the five SWBT states. There is currently no state-ordered remedy plan in
164 Wisconsin: The Wisconsin commission ordered Ameritech Wisconsin to implement such
165 a plan in late 2001, but that order was stayed before going into effect and then vacated by
166 a Wisconsin court. Also, until very recently there was no state-ordered remedy plan in
167 Indiana: The Indiana Utility Regulatory Commission just issued an order establishing
168 such a plan on October 16, 2002.

169 The 11-State plan gives CLECs, particularly those seeking to operate in several
170 states, an additional option: a plan that applies even in states where there is no state-
171 ordered remedy plan. It also provides certainty, as the CLEC does not have to participate
172 in or wait for the outcome of regulatory and judicial proceedings. It also gives them the
173 benefit of a single, uniform set of measures and remedies that apply evenly across all 11
174 states.

175

176 **C. The "Condition 30" Performance Assurance Plan.**

177 **Q. What is the source of the "Condition 30" performance assurance plan?**

178 A. The Condition 30 plan also uses measures and standards that were modeled on those
179 developed in Texas. Ameritech Illinois implemented the Texas plan as a condition of the
180 ICC's approval of the merger between SBC and Ameritech in 1999. Pursuant to the same
181 merger condition, Ameritech Illinois, Staff and interested CLECs engaged in a
182 collaborative process to address potential changes to the Texas plan. The participants
183 agreed to modifications of the performance measurements and standards, but were unable
184 to reach agreement with respect to the performance remedy plan. The agreed-to
185 performance measurements and associated business rules, along with the Texas remedy
186 plan, became effective September 12, 2000. The performance remedy plan issue became
187 the subject of a separate proceeding in Docket No. 01-0120. (While that docket was
188 ongoing, the Texas plan was still in place.) In that proceeding, the Commission ordered
189 Ameritech Illinois to implement several changes to the plan. Ameritech Illinois has filed
190 an appeal from that order, but in the interim has implemented the changes.

191

192 **III. RESPONSE TO STAFF TESTIMONY REGARDING 11-STATE REMEDY**
193 **PLAN.**

194 **A. Overall Assessment Of Staff's Position.**

195 **Q. Staff claims that the 11-State plan is contrary to the public interest. Before**
196 **proceeding to the specific testimony of Mr. McClerren and Dr. Zolnierrek, do you**
197 **have a general response?**

198

199 A. Yes. Most of Staff's testimony has nothing to do with the issue it purports to address.
200 Instead, Staff Witnesses McClerren and Zolnerek spend most of their time on a different
201 issue: whether the 11-State plan is different from the Condition 30 plan, or whether it
202 would result in lower payment amounts. As I see it, the question here is not whether the
203 11-State plan is better than or even as good as the Condition 30 plan or any other plan in
204 some abstract sense, or whether the 11 State plan results in higher or lower payments.
205 Ameritech Illinois and Easton and Royal Phone have already agreed to the 11-State plan.
206 The question is whether the plan they agreed to is so bad – that it would lead Ameritech
207 Illinois to perform so badly – that the Commission should reject their agreements as
208 contrary to the public interest. Neither Staff witness really attempts a serious analysis of
209 the 11-State plan under that standard. Mr. McClerren simply speculates that the 11-State
210 plan “might” lead to poor performance (see page 3, line 50 of his testimony). Dr.
211 Zolnerek does not analyze the substance of the plan at all; instead, he simply cites Mr.
212 McClerren's positions and adds more extreme rhetoric. For example, he states that
213 “relaxation of any particular provision of the Commission Ordered Remedy Plan could
214 prove fatal to a carrier's ability to compete” (page 24 lines 459-460 of testimony in
215 Docket No. 02-0651 and page 22 lines 426-427 of testimony in Docket No. 02-0654) or
216 “will inhibit if not prohibit the carrier from competing with Ameritech” (page 14 lines
217 240-241 of testimony in Docket No. 02-0651 and page 12 lines 207-208 of testimony in
218 Docket No. 02-0654). Dr. Zolnerek provides no facts to back up these dire predictions.

219 **Q. What are the problems with Staff's speculation?**

220 A. First, there is no need to attempt any abstract or theoretical analysis of how different
221 provisions of the plan might work. Instead, there is a very practical and simple way to

222 evaluate real-world performance under the 11-State plan. As it happens, there are two
 223 states – Indiana and Wisconsin – where there has been no generic state-ordered plan in
 224 effect. Thus, in those two states the vast majority of interconnection agreements that
 225 have been approved by the state commission contain either the 11-State plan or no plan at
 226 all. All you have to do is look at Ameritech’s performance in those two states and see
 227 how it compares to performance in the states, including Illinois, which have generic state-
 228 ordered plans.

229 Table 1 below depicts the wholesale performance in each of the five states in the
 230 Ameritech region for the year 2002. It shows the percentage of all wholesale
 231 performance standards that are subject to remedies that Ameritech met in each month.

232 Table 1 clearly shows that the wholesale performance of Ameritech Indiana and
 233 Ameritech Wisconsin has been excellent – over 90 percent of all remedied measures met
 234 – and either comparable to or better than wholesale performance in the other Ameritech
 235 states.

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TABLE 1: COMPARISON OF AMERITECH WHOLESAL PERFORMANCE					
	Percent Measures Met ²				
Month	Indiana	Michigan	Ohio	Wisconsin	ILLINOIS
August 2002	96.5%	93.1%	95.5%	94.9%	94.6%
July 2002	95.6%	92.3%	93.6%	93.9%	94.4%
June 2002	95.5%	93.1%	93.5%	94.6%	93.5%

² Percent Measures Met in Table 1 provides the percent of measures subject to either Tier 1 and or Tier 2 remedies as defined in the state commission approved performance measurements, for each state, for which the Ameritech operating company met or exceeded the standard of comparison. The same number of measures (150) has been implemented across all five states, with a few minor differences in measures or standards. While Wisconsin and Indiana did not have state-ordered remedy plans in place, the approved performance measurements are still classified as "remedied" vs. "non-remedied" in a manner consistent with the other Ameritech states.

May 2002	93.5%	91.4%	91.3%	90.1%	93.0%
April 2002	93.0%	90.8%	91.6%	91.0%	94.1%
March 2002	95.1%	91.5%	92.8%	93.2%	93.7%
February 2002	93.3%	93.1%	94.9%	93.3%	94.6%
January 2002	93.6%	92.5%	91.9%	92.3%	92.9%
8-Month Average Percent Met	95%	95%	93%	92%	94%

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Q. Are there any other global problems with Staff's position?

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A. There are two additional global reasons why Staff's contention is wrong. First, Staff is overlooking the origins of the 11-State plan. It is not something Ameritech Illinois pulled out of thin air. It was implemented pursuant to the FCC's 1999 order approving the merger between SBC and Ameritech. The FCC's order laid out the 11-State plan in great detail, and it made that plan a condition of merger approval. Further, the 11-State plan has been around for over two years, and it has been incorporated in numerous

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255 interconnection agreements that have been approved by state commissions throughout the
256 Ameritech region – including this Commission. In order to accept Staff’s position that
257 the 11-State plan is contrary to the public interest, this Commission would essentially
258 have to say that the FCC (which has had a great deal of experience in reviewing
259 wholesale performance), this Commission, and other state commissions in the region, all
260 made a lot of terrible mistakes.

261 Second, Staff’s assessment of the 11-State plan is overlooking the fact that the 11-
262 State plan is not the only plan in effect in Illinois, or even the predominant one. Many
263 CLECs operating in Illinois, including those that do the most volume of business, have
264 adopted the Condition 30 plan. This includes AT&T, TCG, WorldCom, McLeodUSA,
265 RCN, Z-Tel, Globalcom, XO, Nuvox, Novacom, Forte, and MPower. Ameritech Illinois’
266 wholesale processes and electronic systems do not distinguish among CLECs. The same
267 electronic systems are available to all CLECs, and Ameritech Illinois uses common
268 processes for all CLECs. Thus, carriers like Easton and Royal Phone will use the same
269 systems, and the same processes, that are provided to CLECs that have the Condition 30
270 plan. Whatever marginal benefit that plan might have in motivating improvements to
271 wholesale processes and systems, that benefit will be shared by all CLECs regardless of
272 whether they adopt the Condition 30 plan, choose the 11-State plan instead, or operate
273 without any remedy plan at all. And to the extent Easton or Royal Phone end up deciding
274 that the Condition 30 plan is better, they can still “opt in” to that plan<sup>as specified in Section 5.5
of the Condition 30 plan
ordered by the Commission.</sup>

275 **Q. What if the 11-State plan were to become the predominant plan in Illinois?**
276

277 A. As it stands now, that would happen if either (a) CLECs that now have the 11-State plan
278 end up succeeding and becoming the predominant carriers in Illinois, or (b) the majority
279 of CLECs that now have the Condition 30 plan^{, who generate the majority of competitive activity,} voluntarily agree to "opt out" of that plan
280 and into the 11-State plan. Either of these outcomes would disprove Staff's contentions
281 that the 11-State plan is undesirable or even "fatal" to carriers.

282

283 **B. Responses To Specific Staff Arguments.**

284 **Q. Let's proceed to the specific contentions of Staff Witnesses McClerren and**
285 **Zolnierek. First, how do you respond to Staff Witness McClerren's statement (page**
286 **11 lines 232-233) that the 11-State plan "only requires Ameritech Illinois to pay**
287 **remedies on twenty (20) performance measures," not on the "remaining 120**
288 **performance measures that have been approved by the Commission" (page 12 lines**
289 **242-243)?**

290

291 A. First, I should correct Mr. McClerren's numbering. As I mentioned above, while the
292 FCC order that served as the origin of the 11-State plan referred to 20 measures, those 20
293 measures were further subdivided into 39 measures in the 11-State plan. Of the 150
294 measures reported under the Condition 30 plan, over 60 are diagnostic measures or are
295 not subject to remedies even under the Condition 30 plan.

296 Second, turning to the substance of Mr. McClerren's position, while it is true that
297 fewer performance measures are subject to remedies under the 11-State plan than under
298 the Condition 30 plan, Mr. McClerren fails to show why that makes a real difference to
299 performance or the public interest. Not all measures are of the same importance to all
300 carriers, and in fact many measures are not even applicable to all carriers. Different
301 carriers make their own business decisions about the products and processes, and thus the

302 associated performance measures, that are most important to them. The Commission
303 itself recognized this fact in Docket No. 01-0120, as the plan ordered in that docket
304 classifies measures as “high”, “medium”, or “low” priority (with higher payment
305 amounts for the higher-priority measures).

306 Most importantly, as Mr. McClerren himself acknowledges, we still report
307 performance on all 150 measures to carriers that use the 11-State plan, so they can see
308 how that performance stacks up against the applicable standard and against CLECs in the
309 aggregate. Thus, Easton and Royal Phone can evaluate the results of any measure that is
310 not among the 39 subject to 11-State remedies, and decide (a) whether the measure is of
311 sufficient volume and importance to warrant remedies, and (b) whether it is dissatisfied
312 with Ameritech Illinois’ performance on that measure. To the extent the answer to both
313 questions is yes, either carrier can discuss the matter further with us, and if we are unable
314 to resolve the matter by agreement the carrier can opt into the Condition 30 plan and
315 receive remedies on additional measures.

316 **Q. Staff Witness McClerren also complains that the 11-State plan does not assess**
317 **remedies in the first three months that a measure is in place or that the**
318 **participating CLEC obtains the related product or service. He contends that this**
319 **would “undermine” the collaborative process by which performance measures are**
320 **developed and updated (page 13 line 276). Please comment.**

321

322 **A.** I disagree with his objection, and I am surprised by his argument that the three-month
323 period would undermine the collaborative process. The three-month period gives
324 Ameritech Illinois and the CLEC time to fully implement and fine-tune their processes
325 with respect to a new product or service. It is perfectly sensible to defer remedies during
326 this “start-up” period; in fact, during the industry collaboratives that Mr. McClerren

327 mentions, the parties commonly agree that new measurements or product categories are
328 “diagnostic” (thus, not subject to remedies) for the first few months. To the extent that
329 the start-up period excludes remedies for a particular CLEC (as opposed to a new
330 measure, product, or service) remedies would still apply for other CLECs, and the “new”
331 CLEC would receive service through the same systems and processes.

332 **Q. With respect to the amount of remedies, Staff Witness McClerren contends that the**
333 **11-State plan “appears to preclude any Tier 2 payments” to the State (page 10 line**
334 **208), and that “there would be no Tier 2 payments for any breach of a performance**
335 **measure as it relates to” the carrier adopting the 11-State plan (page 10 lines 211-**
336 **212). Is that correct?**

337

338 **A.** Mr. McClerren’s testimony is misleading, in a way that obscures the most important
339 points. First, the 11-State plan does not preclude *all or any* Tier 2 payments, as Mr.
340 McClerren’s testimony seems to suggest. The Condition 30 plan provides for Tier 2
341 payments, and Ameritech Illinois will continue to make such payments pursuant to the
342 Commission’s order unless and until that order is stayed, reversed, or otherwise modified.
343 Second, those Tier 2 payments are not affected by an individual carrier’s choice of the
344 11-State plan, because they are based on aggregate activity for all CLECs, whatever
345 remedy plan an individual CLEC might choose, and even if the CLEC chooses to not
346 participate in any remedy plan. Tier 2 was not designed to assess payments for
347 performance shortfalls that relate to individual carriers. As Mr. McClerren himself
348 acknowledges (page 5 line 103), it was designed for “performance shortfalls that are
349 industry-wide.” So long as the Condition 30 plan remains in effect, Tier 2 payments will
350 still be assessed on industry-wide shortfalls, in accordance with the Commission’s intent,
351 and the amount of Tier 2 payments will be unaffected.

352 **Q. Staff Witness McClerren also complains about the monthly “cap” on annual**
353 **remedies under the 11-State plan (page 16 lines 329-346). How do you respond?**

354

355 A. First, I should again start by correcting Mr. McClerren’s rhetoric with facts. Mr.
356 McClerren suggests (page 16 lines 342-344) that the cap may “prohibit” Easton or Royal
357 Phone “from collecting any damages, or remedy payments, when Ameritech Illinois
358 payments to all CLECs in Illinois exceed \$510,000” in a given month. That is not true.
359 The 11-State cap does not encompass “payments to all CLECs in Illinois.” It is based on
360 payments to CLECs that have the 11-State plan. Payments to CLECs under another plan,
361 like the Condition 30 plan, do not count against the 11-State cap. Further, if payments to
362 11-State carriers do exceed the 11-State cap, that does not mean that a carrier is denied all
363 payments; rather, the \$510,000 monthly cap would be pro-rated equitably among the
364 applicable CLECs.

365 Second, as with Staff’s other positions, Mr. McClerren’s argument lacks the
366 proper perspective. His point is that the 11-State cap (approximately \$6 million per year)
367 is less than the cap under the Condition 30 plan. That is not a valid comparison. The 11-
368 State cap applies only to remedies paid to CLECs that have the 11-State plan (which, by
369 definition, includes only Tier 1, and only some CLECs), while the Condition 30 cap was
370 designed to include payments to CLECs and the State under the Condition 30 plan (which
371 has two Tiers, and which accounts for the majority of CLECs and business volume).

372 The real question is whether the 11-State cap is contrary to the public interest.
373 Mr. McClerren provides no economic or empirical analysis on that issue. To the
374 contrary, practical experience clearly shows that the 11-State plan as a whole – even
375 where it has been the predominant plan, as in Indiana and Wisconsin – has not adversely

376 affected performance. With regard to the cap in particular, there is another practical
377 illustration that refutes Staff's position. In the twelve months ended August 31, 2002,
378 Ameritech Illinois' Tier 1 payments under the Condition 30 plan were approximately
379 \$3.2 million, well below the annualized 11-State cap of \$6.1 million. (In fact, Tier 1 and
380 Tier 2 *combined* were approximately \$6.4 million, only slightly higher than the 11-State
381 cap.) Tier 1 payments under the Condition 30 plan reached the 11-State monthly cap of
382 \$510,000 only once in that twelve-month period – even though the Condition 30 plan
383 encompassed more carriers, with more volume. The reason, as I showed above, is that
384 Ameritech Illinois performed at a high level, meeting or beating over 90 percent of its
385 numerous performance standards. Given that level of performance, and given that the
386 11-State plan involves significantly fewer carriers and volume than the Condition 30
387 plan, Staff's complaints about the 11-State cap on payments to participating CLECs are
388 unfounded.

389 **Q. Staff Witness McClerren also complains about the lack of an annual audit of**
390 **performance results under the 11-State Plan (page 17 lines 357-365). How do you**
391 **respond?**

392
393 A. As Mr. McClerren himself points out, the Commission's Order in Docket No. 01-0120
394 already establishes an annual audit of performance results. That audit will encompass the
395 same systems and process used to produce performance results under both the Condition
396 30 plan and the 11-State plan. To the extent a CLEC participating in the 11-State plan
397 wants additional assurance or has specific concerns, the 11-State agreement allows the
398 CLEC to request a targeted "mini-audit." Again, Staff presents no real evidence that

399 these are inadequate; Staff merely assumes that anything different from the Condition 30
400 plan is contrary to the public interest.

401 **Q. Staff Witness Zolnierек contends that Ameritech Illinois does not make the**
402 **Condition 30 plan available, while Staff Witness McClerren suggests that Ameritech**
403 **Illinois is not negotiating with respect to the Condition 30 plan. How do you**
404 **respond?**

405
406 A. The Condition 30 plan is part of a published tariff, and the Commission's Order in
407 Docket No. 01-0120 is a matter of public record. Any CLEC that wants the Condition 30
408 plan can request it, and will receive it upon request. A CLEC that has the 11-State plan is
409 free to "opt in" to the Condition 30 plan at any time, as long as it remains in effect.

VI. CONCLUSION

410
411 **Q. Does this conclude your Direct Testimony?**

412 A. Yes.

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.

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APPENDIX A: Public Record Filings

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- A. Each Applicant's Plans to Compete Outside Its Home Region
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APPENDIX C: Conditions

I. INTRODUCTION

1. In this Order, we consider the joint applications filed by SBC Communications Inc. (SBC) and Ameritech Corporation (Ameritech) pursuant to sections 214(a) and 310(d) of the Communications Act of 1934, as amended (Communications Act),¹ for approval to transfer control of licenses and lines from Ameritech to SBC in connection with their proposed merger.² Before we can grant their applications, SBC and Ameritech (collectively, Applicants) must demonstrate that their proposed transaction will serve the public interest, convenience, and necessity.³ After lengthy discussions with Commission staff and consideration of public comments in this proceeding, SBC and Ameritech supplemented their initial application by attaching to it proposed conditions representing a set of voluntary commitments.

2. We conclude that approval of the applications to transfer control of Commission licenses and lines from Ameritech to SBC is in the public interest because such approval is subject to significant and enforceable conditions designed to mitigate the potential public interest harms of their merger, to open up the local markets of these Regional Bell Operating Companies (RBOCs), and to strengthen the merged firm's incentives to expand competition outside its regions. We believe that the proposed voluntary commitments by SBC and Ameritech substantially mitigate the potential public interest harms while providing public interest benefits that extend beyond those contained in the original applications.

3. Specifically, we conclude in this Order that the proposed merger of these RBOCs threatens to harm consumers of telecommunications services by: (a) denying them the benefits of future probable competition between the merging firms; (b) undermining the ability of regulators and competitors to implement the pro-competitive, deregulatory framework for local telecommunications that was adopted by Congress in the Telecommunications Act of 1996; and (c) increasing the merged entity's incentives and ability to raise entry barriers to, and otherwise discriminate against, entrants into the local markets of these RBOCs.⁴ Furthermore, the asserted benefits of the proposed merger, absent conditions, do not outweigh these significant harms, as described herein.

¹ 47 U.S.C. §§ 214(a), 310(d).

² See Merger of SBC Communications Inc. and Ameritech Corporation, Description of the Transaction, Public Interest Showing and Related Demonstrations (filed July 24, 1998) (SBC/Ameritech July 24 Application).

³ See 47 U.S.C. §§ 214(a), 310(d). See also *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18026-27, 18030-32 at paras. 1, 8-10 (1998) (*WorldCom/MCI Order*); *Applications of NYNEX Corporation Transferor, and Bell Atlantic Corporation Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, File No. NSD-L-96-10, Memorandum Opinion and Order, 12 FCC Rcd 19985, 19987, 20000-04 at paras. 2, 29-32 (1997) (*Bell Atlantic/NYNEX Order*).

⁴ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 *et seq.* (1996 Act).

4. The proposed conditions, however, change the public interest balance. We expect that with these conditions, competition in the provision of local exchange services, including advanced services, will increase both inside and outside the merged firm's region. Accordingly, assuming the Applicants' ongoing compliance with the conditions described in this Order, we find that the Applicants have demonstrated that the proposed transfer of licenses and lines from Ameritech to SBC serves the public interest, convenience, and necessity.

II. EXECUTIVE SUMMARY

5. To implement the dismantling of the Bell System, seven Regional Bell Operating Companies were created in 1984. After the mergers of SBC with Pacific Telesis and Bell Atlantic with NYNEX, five RBOCs remain. The instant proceeding concerns the proposed transfer of licenses and lines attendant upon a proposed merger of two RBOCs, SBC and Ameritech. We conclude that, with the conditions adopted by this Order, the Applicants have demonstrated that the proposed transfer of licenses and lines from Ameritech to SBC will serve the public interest, convenience, and necessity. We also make the following determinations in support of this conclusion:

- **Harms** – The proposed merger of these RBOCs threatens to harm consumers of telecommunications services in three distinct, but interrelated, ways.
 - 1) The merger will remove one of the most significant potential participants in local telecommunications mass markets both within and outside of each company's region.
 - 2) The merger will substantially reduce the Commission's ability to implement the market-opening requirements of the 1996 Act by comparative practice oversight methods.⁵ Contrary to the deregulatory, competitive purpose of the 1996 Act, this will, in turn, increase the duration of the entrenched firms' market power and raise the costs of regulating them.
 - 3) The merger will increase the incentive and ability of the merged entity to discriminate against its rivals, particularly with respect to the provision of advanced telecommunications services. This is likely to frustrate the Commission's ability to foster advanced services as it is directed to do by the 1996 Act.
- **Benefits** – The asserted benefits of the proposed merger do not outweigh the significant harms, detailed above. Specifically:

⁵ This Commission, the states, and competing firms often compare the practices of one major incumbent local exchange carrier against the other incumbents to inform regulatory or competitive decisions.

- 1) The Applicants have failed to demonstrate that the merger is necessary in order to obtain the benefits to local competition of the National-Local Strategy, a plan in which the merged firm will enter 30 out-of-region markets as a competitive LEC.
 - 2) Only a small portion of the Applicants' claimed cost-saving efficiencies, including procurement savings, consolidation efficiencies, implementation of best practices, faster and broader roll-out of new products and services, and benefits to employees and communities, are merger-specific, likely and verifiable.
 - 3) The only merger-specific benefits to product markets other than local wireline telecommunications markets, such as wireless services, Internet services, long distance and international services, and global seamless services for large business customers, relate to a somewhat increased pace of expansion and modest reductions in unit costs. Any benefits in these regards are both speculative and small.
- Conditions – On July 1, 1999, the Applicants supplemented their application by proffering a set of voluntary commitments that they agreed to undertake as conditions of approval of their proposed transfer of licenses and lines. Following a period of public comment regarding their proposed conditions, the Applicants substantially revised their commitments on August 27, 1999, and continued to refine those commitments in filings with the Commission on September 7, September 17, and September 29, 1999. Assuming satisfactory compliance, implementation of the attached final set of conditions will further the following goals:
 - 1) promoting advanced services deployment;
 - 2) ensuring that in-region local markets are more open;
 - 3) fostering out-of-region competition;
 - 4) improving residential phone service; and
 - 5) enforcing the Merger Order.

These commitments are sufficient to tip the scales, so that, on balance, the application to transfer licenses and lines should be approved.

- Wireless – SBC and Ameritech are required by the U.S. Department of Justice, and as a condition of this Order, to divest one of the cellular telephone licenses in seven Metropolitan Statistical Areas and seven Rural Service Areas where the two companies have overlapping cellular geographic service areas.

- International – The public interest will be served by transferring control of Ameritech's international section 214 authorizations to SBC, subject to the condition that SBC subsidiaries be classified as dominant international carriers in their provision of service on the U.S.-South Africa and U.S.-Denmark routes.
- Alarm Monitoring – Section 275 of the Communications Act does not require that the Ameritech BOCs lose their grandfathered right to be affiliated with an entity that is engaged in the provision of alarm monitoring services merely because the Ameritech BOCs will become affiliates of the SBC BOCs, which are not grandfathered. A forced divestiture of Ameritech's alarm monitoring subsidiary would be contrary to the intent of section 275.
- Cable – Section 652 of the Communications Act does not prohibit SBC from acquiring Ameritech's existing in-region cable overbuild operations.
- Service Quality – Any post-merger service quality concerns are adequately addressed by the Applicants' proffered commitments.
- Character/Requests for Hearing – Petitions to deny the applications do not raise a substantial or material question of fact that would warrant an evidentiary hearing regarding whether SBC or Ameritech possesses the requisite character to engage in a transfer of control of Commission licenses, or regarding any other matter related to this transaction.

III. BACKGROUND

A. The Applicants

6. *Ameritech Corporation.* Ameritech, one of the original seven RBOCs⁶ formed as part of the divestiture of AT&T's local operations, is the primary incumbent local exchange carrier (LEC) serving Illinois, Indiana, Michigan, Ohio, and Wisconsin. Ameritech, through its operating companies,⁷ serves more than 20 million local exchange access lines, and had 1998 operating revenues in excess of \$17.1 billion.⁸

⁶ In this Order, we use the term "BOC" to refer to a Bell operating company as defined in the Communications Act, 47 U.S.C. § 153(4), and the term "RBOC" to refer to the original seven regional holding companies created by the breakup of AT&T. See *United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131 (D.D.C. 1982).

⁷ Ameritech's five local exchange operating companies are: Illinois Bell Telephone Company, Indiana Bell Telephone Company, Inc., Michigan Bell Telephone Company, The Ohio Bell Telephone Company, and Wisconsin Bell, Inc. See SBC/Ameritech July 24 Application, Description of the Applicants and Their Existing Business, at 2.

⁸ See Ameritech 1998 Annual Report (Selected Financial and Operating Data).

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

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

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).

on [competitive LECs] and their customers," and is not intended "to cover each and every facet of local competition, to supplant state performance programs, nor to preempt state consideration of performance measures for section 271 purposes."⁷⁰⁷ Indeed, we expect – and we encourage – each state to adopt rigorous and extensive performance monitoring programs in connection with section 271 proceedings. Under these conditions, therefore, SBC/Ameritech's obligations under the plan in a given state will terminate upon the company's authorization to provide in-region, interLATA service in that state. The condition will expire otherwise 36 months after the payment obligation arises in the state.

381. *Uniform Enhanced OSS.* Effective, nondiscriminatory access to OSS is critical for achieving the 1996 Act's local competition objectives. This condition will guard against discriminatory treatment by the merged entity to its rivals, as well as reducing the costs and uncertainty of providing competing services. Under this condition, SBC and Ameritech will establish, in consultation with competitive LECs, uniform OSS interfaces and systems across their combined 13 in-region states that are based on the best practices (from their competitors' perspective) of the two companies.

382. Specifically, the companies will develop and deploy uniform application-to-application interfaces⁷⁰⁸ (e.g., EDI), uniform graphical user interfaces, uniform business rules or software solutions to ensure that local service requests submitted by other carriers are consistent with SBC/Ameritech's business rules, and a uniform change management process, which will be deployed in each SBC/Ameritech state unless rejected by that state. In general, for each obligation, the merged firm will: (1) prepare a plan of record outlining the steps that will be taken in unifying the OSS of each operating company (Phase I); (2) collaborate with participating competitive LECs to reach agreement on the interfaces, enhancements, business requirements, and change management process to be implemented (Phase II); and (3) develop and deploy the agreed-upon interfaces, enhancements, and business requirements within a specified period of time (Phase III). Phases I and III are associated with voluntary incentive payments to encourage rapid deployment. SBC and Ameritech will either meet the planning (Phase I) and deployment (Phase III) requirements within the prescribed time period, or make voluntary incentive payments to the U.S. Treasury of \$10,000 per business day per state, or up to \$110,000 per day across all 13 states, for a missed target date. The total voluntary payments will not exceed \$20 million per obligation across all states. Once deployed, the Applicants will maintain the enhancements and additional interfaces for not less than 36 months.⁷⁰⁹ The Applicants also will provide direct access to SBC's Service Order Retrieval and Distribution system and Ameritech's and SNET's equivalent service order processing systems, as well as enhancements to SBC's existing electronic bonding interface for maintenance and repair. Under

⁷⁰⁷ SBC/Ameritech July 26 Reply Comments at 40.

⁷⁰⁸ In response to comments regarding the need to define the term "uniform interfaces," the Applicants incorporated a definition that encompasses suggestions by commenters. See, e.g., MCI WorldCom July 19 Comments at 31.

⁷⁰⁹ See Covad July 22 Comments at 31 (noting that, under the Applicants' July proposal, SBC/Ameritech could spend two years designing an interface and then stop providing it one year later). See also SBC/Ameritech Aug. 27 *Ex Parte* at 6.

IX. ORDERING CLAUSES

582. Accordingly, having reviewed the applications and the record in this matter, IT IS ORDERED, pursuant to Sections 4(i) and (j), 214(a), 214(c), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214(a), 214(c), 309, 310(d), that the applications filed by SBC Communications and Ameritech Corporation in the above-captioned proceeding are GRANTED subject to the conditions stated below.

583. IT IS FURTHER ORDERED pursuant to Sections 4(i) and (j), 214(a), 214(c), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214(a), 214(c), 309, 310(d), that the above grant shall include authority for SBC to acquire control of:

- a) any authorization issued to Ameritech's subsidiaries and affiliates during the Commission's consideration of the transfer of control applications and the period required for consummation of the transaction following approval;
- b) construction permits held by licensees involved in this transfer that mature into licenses after closing and that may have been omitted from the transfer of control applications; and
- c) applications that will have been filed by such licensees and that are pending at the time of consummation of the proposed transfer of control.¹¹⁴⁰

584. IT IS FURTHER ORDERED that as a condition of this grant SBC and Ameritech shall comply with the conditions set forth in Appendix C of this Order.

585. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), grant of the SBC/Ameritech Application is subject to the condition that, before or on the same day as the closing of the SBC/Ameritech transaction, Ameritech assign to GTE Ameritech's interest in cellular licenses in those areas identified herein where SBC's and Ameritech's interests currently overlap and that are the subject of the Wireless Telecommunications Bureau's *Memorandum Opinion and Order*, DA 99-1677, granting consent to such assignment.

586. IT IS FURTHER ORDERED that the Section 214 authorizations granted to Ameritech Communications, Inc. (ACI), File Nos. ITC-96-441 and ITC-97-289, are amended, effective upon consummation of Ameritech's merger with SBC, to apply dominant carrier regulation, as specified in Section 63.10 of the rules, to ACI's provision of the authorized services on the U.S.-South Africa route.

¹¹⁴⁰ See *AT&T/McCaw Order*, 9 FCC Rcd at 5909 n.300; *WorldCom/MCI Order*, 13 FCC Rcd at 18153.

587. IT IS FURTHER ORDERED that the following Section 214 authorizations granted to subsidiaries of SBC are amended to apply dominant carrier regulation, as specified in Section 63.10 of the rules, to their provision of the authorized services on the U.S.-Denmark route effective upon consummation of Ameritech's merger with SBC: Pacific Bell Communications, File No. ITC-96-689; SBC Global Communications, Inc., File Nos. ITC-96-692 & ITC-98-423-T/C; Southwestern Bell Communications Services, Inc., File No. ITC-97-770 (renumbered ITC-214-19971108-00689); SNET America, Inc., File No. 96-172; SNET Diversified Group, Inc., File No. 96-538.

588. IT IS FURTHER ORDERED that pursuant to Section 212 of the Communications Act and Part 62 of the Commission's rules, 47 C.F.R. Part 62, all of SBC's post-merger carrier subsidiaries will be "commonly owned carriers" as that term is defined in the Commission's rules.

589. IT IS FURTHER ORDERED that all motions to accept late-filed comments filed in CC Docket No. 98-141 are GRANTED.

590. IT IS FURTHER ORDERED that all petitions to deny the applications of SBC and Ameritech for transfer of control, and all requests to hold an evidentiary hearing, are DENIED for the reasons stated herein.

591. IT IS FURTHER ORDERED that SBC and Ameritech's request for a blanket exemption from any applicable cut-off rules in cases where Ameritech's subsidiaries or affiliates file amendments to pending Part 22, Part 24, Part 25, Part 90 and Part 101 or other applications to reflect the consummation of the proposed transfer of control is GRANTED.

592. IT IS FURTHER ORDERED that pursuant to section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, this Memorandum Opinion and Order is effective upon adoption.

Appendix C

CONDITIONS

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ATTACHMENT B: Model Collocation Attestation Report

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ATTACHMENT D: Alternative Dispute Mediation

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ATTACHMENT A

CARRIER-TO-CARRIER PERFORMANCE PLAN

1. SBC/Ameritech shall provide the Commission with performance measurement results,⁵⁷ on a monthly basis in an Excel spreadsheet format, demonstrating SBC/Ameritech's monthly performance provided to the aggregate of all CLECs in the SBC/Ameritech Service Area within each of the 13 SBC/Ameritech States, as compared to SBC/Ameritech's retail performance (where applicable) or as compared to a benchmark. SBC/Ameritech shall also provide the Commission, state commissions in the SBC/Ameritech States, and CLECs with access to SBC/Ameritech's Internet website, where these parties can obtain performance measurement results demonstrating SBC/Ameritech's monthly performance provided to the aggregate of all CLECs, as compared to SBC/Ameritech's retail performance (where applicable). SBC/Ameritech shall also provide the CLECs with access to SBC/Ameritech's Internet website where a CLEC can obtain performance measurement results demonstrating SBC/Ameritech's monthly performance provided to that same CLEC on an individual basis. All such CLEC-specific data shall be made available, subject to protective agreements, to the Commission on SBC/Ameritech's Internet website, and will be made available for review, subject to protective agreements, by state commissions in the SBC/Ameritech States.

2. SBC/Ameritech's implementation of the Plan does not limit either the Commission's or the states' authority regarding performance monitoring, in the context of applications for in-region, interLATA relief under 47 U.S.C. § 271 or otherwise.⁵⁸

3. The performance measurements, benchmarks, and statistical methods utilized in the Plan were based upon those developed in the Texas and California collaborative processes involving SBC/Ameritech's applications for in-region interLATA relief. The performance measurement business rules in Attachment A-2a differ from those approved by the Texas state commission in the following respects:⁵⁹

- a. The Plan requires payments to be made to the U.S. Treasury on Measurements #4d, 7, and 13b at the Low level, while in the Texas plan no payments to the Texas State Treasury are made on these measurements;

⁵⁷ The Commission understands that these "performance measurement results" shall consist of data collected according to the 20 performance measurements discussed in this Attachment, and listed in Attachments A-1a and A-1b.

⁵⁸ The Commission notes that SBC/Ameritech's Plan constitutes the Applicants' voluntary proposal for monitoring and remedying the specific potential public interest harms identified in the merger. In contrast, performance programs being developed by state commissions, particularly in the context of section 271 proceedings, serve a different purpose and may be designed to cover more aspects of local competition in order to prevent backsliding on requirements enumerated in section 271. See Order, Section VII.B. (Adopted Conditions).

⁵⁹ The fact that these modifications were made should not be interpreted as reflecting the Commission's preference for these modifications over the business rules approved by the Public Utility Commission of Texas.

- b. The benchmark for Measurement #1 in the Plan does not require the average of the remainder to be within 20% of the benchmark;
- c. Measurement #16 in the Plan includes additional disaggregation for LNP and LNP with loop;
- d. The benchmark for Measurement #19 is 99% in the Plan, and 99.5% in the Texas plan; and
- e. A benchmark is included for Measurement #2 in the Plan, but is yet to be determined in the Texas plan.

The performance measurement business rules in Attachment A-2b are those approved by the California state commission.

4. SBC/Ameritech and the Chief of the Common Carrier Bureau shall jointly review the 20 measurements on a semi-annual basis, to determine whether measurements should be added, deleted, or modified. SBC/Ameritech shall provide the Chief of the Common Carrier Bureau with notice of any changes to the design or calculation of these measurements adopted by the Texas or California state commissions. SBC/Ameritech shall incorporate such changes into the Plan in Texas and California, unless directed not to do so by the Chief of the Common Carrier Bureau within 5 days of receiving notice of such changes. The Chief of the Common Carrier Bureau shall, at the next semi-annual review, determine whether and when SBC/Ameritech shall implement such changes adopted by the Texas state commission in the remaining SBC/Ameritech States except for California and Nevada, and whether and when SBC/Ameritech shall implement such changes adopted by the California state commission in Nevada.

Performance Measurements

5. In each SBC/Ameritech State, the Plan shall consist of 20 measurements of performance that may have a direct and immediate impact upon a CLEC's end user customer.⁶⁰ The 20 performance measurements are designed to demonstrate whether SBC/Ameritech is providing parity or benchmark performance in its Service Areas to each CLEC. Attachments A-1a and A-1b provide a list of the 20 performance measurements, and Attachments A-2a and A-2b provide a description of the definitions, exclusions, business rules, levels of disaggregation, calculation, and reporting structure for each of the 20 performance measurements.

6. Where SBC/Ameritech provides a CLEC with a service that has a retail analog, the performance SBC/Ameritech provides to its own retail operations within a state shall be compared with the performance SBC/Ameritech provides to the CLEC within the same state to determine if parity exists. Where SBC/Ameritech provides a CLEC a service for which there is

⁶⁰ The Commission reiterates that SBC/Ameritech's selection of these 20 measurements for the purposes of this merger-related Plan has no necessary bearing on the appropriate scope of a performance assurance plan designed in the section 271 context.

no retail analog, the performance SBC/Ameritech provides to the CLEC within a state shall be compared with a benchmark.

7. Generally accepted statistical analyses – i.e., modified Z-tests and a critical Z-value – shall be utilized to determine whether SBC/Ameritech is in parity or has met the benchmark. Attachment A-3 provides a description of how these statistical analyses shall be used.

Voluntary Payments

8. The Plan shall also consist of voluntary payments to the U.S. Treasury, with monthly and annual caps for the SBC/Ameritech Service Area (allocated on a per state basis). The 20 performance measurements are categorized as being in either the High, Medium, or Low payment level. Attachments A-5a and A-5b provide a list of the 20 performance measurements and the payment level that applies each year. Attachment A-4 provides a table of the voluntary payments, setting forth the per occurrence and per measurement payments at the High, Medium, and Low levels, and the caps for those measurements where voluntary payments are made on a per occurrence basis with a cap. Attachment A-6 provides the per state monthly and annual caps that apply each year. The obligation to make these voluntary payments in all SBC/Ameritech States except Connecticut attaches 270 days after the Merger Closing Date. The obligation to make these voluntary payments in Connecticut attaches 15 months after the Merger Closing Date.

9. SBC/Ameritech shall make voluntary payments to the U.S. Treasury if SBC/Ameritech fails to provide parity or benchmark performance to the aggregate of all CLECs operating in the SBC/Ameritech Service Area in an SBC/Ameritech State on any measurement⁶¹ for either (1) 3 consecutive months, or (2) 6 months or more in a calendar year, as determined by use of the modified Z-tests and a critical Z-value. Voluntary payments for each SBC/Ameritech State shall be made on a per occurrence or per occurrence with a cap basis for measurements listed in Schedule A and on a per measurement basis for measurements in Schedule B of Attachments A-1a and A-1b, applying the statistical analyses and the calculations described in Attachment A-3, the payment level for the measurements in Attachments A-5a and A-5b, and the per-occurrence and per-measurement voluntary payment amounts set forth in Attachment A-4. The voluntary payments shall be calculated on the rolling average of occurrences or measurements, as appropriate, where SBC/Ameritech has failed to provide parity or benchmark performance for 3 consecutive months.⁶² If SBC/Ameritech fails to provide parity or benchmark

⁶¹ The Commission understands that the word "measurement" in this context does not refer to the 20 measurements listed in Attachment A-1a and A-1b, but instead refers to each disaggregated sub-measurement into which the 20 performance measurements are divided. Accordingly, the Commission understands that this Plan will not merely aggregate the various sub-measurements and levels of disaggregation into one score for each of the 20 performance measurements, and then assess whether a voluntary payment is due. Instead, the Commission understands that SBC/Ameritech shall make a voluntary payment as required for any disaggregated sub-measurement. For example, the Commission understands that the number of repeat trouble reports for residential POTS service within a state would represent a distinct disaggregated sub-measurement, and that payment would be due if SBC/Ameritech's performance under this disaggregated sub-measurement is below par for three consecutive months.

⁶² The Commission understands that SBC/Ameritech would make a voluntary payment in the event it fails to

performance in an SBC/Ameritech State for 6 or more months in a calendar year, the voluntary payments shall be calculated as if all such months were missed consecutively.⁶³

10. In order to ensure that CLECs which order low volumes of certain resold local services and UNEs and that CLECs operating in emerging markets receive parity and benchmark performance, SBC/Ameritech shall increase the voluntary payments calculated in accordance with Paragraph 9 above for measurements 4a-c and 5-13 ("qualifying measurements") and for sub-measurements involving UNE combinations, resold ISDN, ISDN UNE loop and port, BRI loop with test access (i.e., ISDN), and DSL loops within the qualifying measurements where applicable ("qualifying sub-measurements").⁶⁴ For these 25 qualifying measurements and 36 qualifying sub-measurements, the voluntary payments calculated using the 3 month rolling average described in Paragraph 9 above shall be multiplied by a factor of 3 under the following circumstances and pursuant to the following methodology. The provisions of this Paragraph 10 only apply in the event that a voluntary payment is owed for a qualifying measurement or qualifying sub-measurement per the provisions of Paragraph 9 (i.e., this Paragraph only applies in the event that SBC/Ameritech has failed to provide parity or benchmark performance on a qualifying measurement or qualifying sub-measurement for 3 consecutive months or in 6 or more months in a calendar year.)

a. Qualifying Measurements. If, for the 3 months that are utilized to calculate the rolling average, there were 100 or more observations on average for the qualifying measurement, then no increase in voluntary payments is owed pursuant to the provisions of this Subparagraph, but the provisions of Subparagraph (b) may apply. If, for the 3 months that are utilized to calculate the rolling average, there were more than 10 but less than 100 observations on average for the qualifying measurement, then (1) SBC/Ameritech shall calculate the voluntary payments to the U.S. Treasury for that qualifying measurement in accordance with Paragraph 9 and shall treble the amount of such voluntary payments for that qualifying measurement, and (2) the provisions of Subparagraph (b) shall not apply with respect to any qualifying sub-measurements within the qualifying measurement.

provide parity of benchmark performance for three consecutive months, and another payment if the failure continues for a fourth consecutive month, and so on. In each case, the payment would be calculated according to the rolling average of occurrences for the last three consecutive out-of-parity months. For example, if SBC/Ameritech is out-of-parity on a measurement for January, February and March, it would make a payment based on the January-February-March average; if it is also out-of-parity for the same measurement in April, it would make another payment, based on the February-March-April average.

⁶³ By assessing the payments "as if all such months were missed consecutively," the Commission understands that four payments would be made in a year where a measure is out-of-parity for six months (and five payments in a year where a measure is out-of-parity for seven months, and so on).

⁶⁴ The Commission recognizes that the use of the terms "qualifying measurement" and "qualifying sub-measurement" may generate some confusion (in particular, because the terms "measurement" and "sub-measurement" are not used consistently, *see supra* note 61). The Commission interprets the term "qualifying measurement" as applying to the following 25 measurements and sub-measurements: 4a, 4b, 4c, 5a, 5b, 5c, 6a, 6b, 6c, 7a, 7b, 7c, 8, 9, 10a, 10b, 11a, 11b, 11c, 12a, 12b, 12c, 13a, 13b and 13c. The Commission interprets the term "qualifying sub-measurements" as applying to the 36 disaggregated sub-levels of these "qualifying measurements" that correspond to the following resale services and UNEs: UNE combinations (applicable to 4a, 5a, 6a, 7a, 10a, 11a, 12a, and 13a); resold ISDN, and ISDN UNE loop and port (applicable to 4b, 5b, 6b, 7b, 11b, 12b, and 13b); and BRI loop with test access, and DSL loops (applicable to 4c, 5c, 6c, 7c, 11c, 12c, and 13c).

b. Qualifying Sub-Measurements. If, for the 3 months that are utilized to calculate the rolling average, there were 100 or more observations on average for the qualifying sub-measurement, then no increase in voluntary payments is owed pursuant to the provisions of this Subparagraph. If, for the 3 months that are utilized to calculate the rolling average, there were more than 10 but less than 100 observations on average for the qualifying sub-measurement, then SBC/Ameritech shall calculate the voluntary payments to the U.S. Treasury for that qualifying sub-measurement in accordance with Paragraph 9 and shall treble the amount of such voluntary payments for that qualifying sub-measurement. Per the provisions of Subparagraph (a), the provisions of this Subparagraph do not apply to any qualifying sub-measurements within a qualifying measurement for which treble voluntary payments are owed.

c. When SBC/Ameritech and the Chief of the Common Carrier Bureau jointly review the 20 measurements on a semi-annual basis in accordance with Paragraph 4, the Chief of the Common Carrier Bureau may substitute, on a one-for-one basis, the sub-measurements associated with any other existing service or UNE within measurements 4a, 4b, or 4c for the initial set of qualifying sub-measurements.⁶⁵ During this semi-annual review, the Chief of the Common Carrier Bureau may also increase the number of qualifying sub-measurements by including, from the list of qualifying measurements, the sub-measurements associated with new services and/or UNEs as qualifying sub-measurements. The Chief of the Common Carrier Bureau may add a maximum of 3 such new services and/or UNEs over the duration of the Plan.⁶⁶

11. The monthly and annual caps on the total amount of voluntary payments for which SBC/Ameritech shall be liable, as provided for in Attachment A-6, may be reduced by an amount up to \$125 million in the third year of the Plan if SBC/Ameritech completes the OSS enhancement commitments provided for in Paragraph 15(c), Paragraphs 26-28, and/or Paragraph 31 by a date that is sooner than the target dates for the OSS commitments specified in such Paragraphs, as follows:

a. The monthly and annual caps on the total amount of voluntary payments for which SBC/Ameritech shall be liable may be reduced by an amount up to \$45 million during the third 12 month period if SBC/Ameritech completes the OSS enhancement commitments provided for in Paragraph 15(c) early. If SBC/Ameritech completes Phase 3 of Paragraph 15(c) within the SBC/Ameritech Service Area in all SBC/Ameritech States except Connecticut earlier than 14 months after the Merger Closing Date, excluding any time that is spent in completing

⁶⁵ The Commission understands that the Chief of the Common Carrier Bureau may elect to substitute, for example, all "qualifying sub-measurements" relating to resold ISDN (*i.e.*, 4b, 5b, 6b, 7b, 11b, 12b, and 13b) with the corresponding sub-measurements relating to another resold service or UNE (such as resold DS1 service, or a new resold service which SBC/Ameritech may offer in the future).

⁶⁶ The Commission understands that, by selecting 8 dB loop, DS1 Loop and Dark Fiber as such "new services and/or UNEs," the Chief of the Common Carrier Bureau would effectively add to the "multiplier" provision of the Plan a total of 21 new qualifying sub-measurements (*i.e.*, the disaggregated sub-measurements corresponding to these UNEs under 4c, 5c, 6c, 7c, 11c, 12c, and 13c). Under this example, the Chief of the Common Carrier Bureau would be unable to add more new services and/or UNEs to the "multiplier" provision (as the limit of three would be spent), but could still substitute services and/or UNEs, as set forth in Paragraph 10c and note 65.

Phase 2 beyond the 30 days allotted for reaching a written agreement with the CLECs, the annual caps shall be reduced by \$10 million if 30 days early, \$15 million if 60 days early, \$20 million if 90 days early, \$25 million if 120 days early, \$35 million if 150 days early, and \$45 million if 180 days early.

b. The monthly and annual caps on the total amount of voluntary payments for which SBC/Ameritech shall be liable may be reduced by an amount up to \$40 million during the third 12 month period if SBC/Ameritech completes the OSS enhancement commitments provided for in Paragraphs 26-28 early. If SBC/Ameritech completes Phase 3 of Paragraph 28 within the SBC/Ameritech Service Area in all SBC/Ameritech States except Connecticut within less than 24 months after the Merger Closing Date, excluding any time that is spent in completing Phase 2 beyond the 30 days allotted for reaching a written agreement with the CLECs, the annual caps shall be reduced by \$5 million if 30 days early, \$10 million if 60 days early, \$15 million if 90 days early, \$20 million if 120 days early, \$30 million if 150 days early, and \$40 million if 180 days early.

c. The monthly and annual caps on the total amount of voluntary payments for which SBC/Ameritech shall be liable may be reduced by an amount up to \$45 million during the third 12 month period if SBC/Ameritech completes the OSS enhancement commitments provided for in Paragraph 31 early. If SBC/Ameritech completes Phase 3 of Paragraph 31 within the SBC/Ameritech Service Area in all SBC/Ameritech States within less than 30 months after the Merger Closing Date, excluding any time that is spent in completing Phase 2 beyond the 30 days allotted for reaching a written agreement with the CLECs, the annual caps shall be reduced by \$5 million if 30 days early, \$10 million if 60 days early, \$15 million if 90 days early, \$20 million if 120 days early, \$30 million if 150 days early, and \$40 million if 180 days early.

d. Any required reductions in the annual cap during the third 12-month period pursuant to Subparagraphs (a)-(c) above shall be prorated across all 13 SBC/Ameritech States and apportioned to monthly caps utilizing the same ratios used to develop the tables in Attachment A-6.

12. The amount of payments otherwise due each month under this Plan in a state shall be offset by the sum of (1) the amount of any payments made by SBC/Ameritech to private or public parties (including, but not limited to, CLECs, state commissions, state governments, public interest funds or groups, or other entities) each month under any state-approved local interconnection performance monitoring or performance measurement plan in that state, and (2) the amount of payments made by SBC/Ameritech related to performance measurements paid to CLECs each month in that state under the terms of an approved local interconnection agreement with SBC/Ameritech. Provided, however, that the amount of any payments made to affiliates of SBC/Ameritech shall not be used in calculating the offset.

13. Performance measurement results for each month shall be available to the Commission, state commissions and CLECs by the 20th day of the following month. If SBC/Ameritech becomes liable for voluntary payments to the U.S. Treasury, such payments shall be made 30 days after the performance measurement results become available. If such payments

are made, SBC/Ameritech shall provide notice to the Commission within 5 business days after the payment is made.

14. SBC/Ameritech shall not be liable for voluntary payments to the U.S. Treasury if SBC/Ameritech's failure to provide parity or benchmark performance is caused by an Act of God, or a *force majeure* event. If SBC/Ameritech determines through "root cause analysis" that it failed to provide parity or benchmark performance for any reason listed above, SBC/Ameritech may seek a waiver from the Chief of the Common Carrier Bureau relieving SBC/Ameritech from voluntary payments to the U.S. Treasury. SBC/Ameritech shall have the burden of proof to make the required showing, and shall have a right of appeal to the Commission. If SBC/Ameritech seeks such a waiver, SBC/Ameritech shall place the voluntary payments at issue into an interest bearing escrow account. If SBC/Ameritech fails to carry its burden of proof, the amount of voluntary payments paid into the escrow account, including any accrued interest, shall be remitted to the U.S. Treasury. If SBC/Ameritech carries its burden of proof, the amount of voluntary payments paid into the escrow account, including any accrued interest, shall be returned to SBC/Ameritech.

15. Voluntary payments made by SBC/Ameritech under the Plan shall not be reflected in the revenue requirement of an SBC/Ameritech incumbent LEC.

16. The measurements and benchmarks under the Plan bear no necessary relationship to the standard of performance that satisfies SBC/Ameritech's legal obligations in a particular state, and payments under the Plan shall not constitute an admission by SBC/Ameritech of any violation of law or noncompliance with statutory or regulatory requirements with respect to the provision of local facilities or services to SBC/Ameritech's wholesale or retail customers.

Attachment A-1a

**SBC/AMERITECH PERFORMANCE MEASUREMENTS
(EXCEPT CALIFORNIA AND NEVADA)**

**Schedule A – Performance Measurements Subject to Per Occurrence or Per Occurrence
With Cap Voluntary Payments:**

OSS

1. % FOC Received Within "X" Hours (per occurrence with cap)
2. Average Response Time For OSS Pre-Order Interfaces (per occurrence with cap)
3. Order Process Percent Flow Through (per occurrence with cap)

Provisioning

4. SBC Caused Missed Due Dates
5. Installation Trouble Reports Within "X" Days
6. Mean Installation Intervals
7. Average Delay Days For SWBT Caused Missed Due Dates
8. Average Installation Interval – DSL
9. Average Response Time For Loop Qualification Information

Maintenance

10. % Missed Repair Commitments
11. % Repeat Reports
12. Mean Time To Restore
13. Trouble Report Rate

Interconnection

14. Average Trunk Restoration Interval For Service Affecting Trunk Groups
15. % Trunk Blockage (per occurrence with cap)

Local Number Portability

16. % Pre-Mature Disconnects (Coordinated Cutovers)

Collocation

17. % Missed Collocation Due Dates

Billing

18. Billing Timeliness (per occurrence with cap)

Schedule B – Performance Measurements Subject to Per Measurement Voluntary Payments:

OSS

19. OSS Interface Availability

Interconnection

20. Common Transport Trunk Blockage

Attachment A-1b

SBC/AMERITECH PERFORMANCE MEASUREMENTS
(CALIFORNIA AND NEVADA)

Schedule A - Performance Measurements Subject to Per Occurrence or Per Occurrence
With Cap Voluntary Payments:

OSS

1. Average FOC/LSC Notice Interval (per occurrence with cap)
2. Average Response Time (To Pre-Order Queries) (per occurrence with cap)
3. Percentage Of Flow-Through Orders (per occurrence with cap)

Provisioning

4. (a-c) Percent Of Due Dates Missed
(d) Average Completion Notice Interval
5. Percentage Troubles In 30 Days For New Orders
6. (a-b) Average Completed Interval
(c) Percent Completed Within Standard Interval
7. Delay Order Interval To Completion Date (For Lack of Facilities)
8. Average Completed Interval - (DSL)
9. Average Response Time For Loop Make-Up Information - (New)

Maintenance

10. Percentage Of Customer Trouble Not Resolved Within Estimated Time
11. Frequency Of Repeat Troubles In 30 Day Period
12. Average Time To Restore
13. Customer Trouble Report Rate

Interconnection

14. Average Trunk Restoration Interval For Service Affecting Trunk Groups - (New)
15. % Trunk Blockage-(New) (per occurrence with cap)

Coordinated Conversions

16. Coordinated Customer Conversion As A Percentage On Time

Collocation

17. % Missed Collocation Due Dates - (New)

Billing

18. Billing Timeliness (per occurrence with cap)

Schedule B - Performance Measurements Subject to Per Measurement Voluntary Payments:

OSS

19. Percentage Of Time Interface Is Available

Interconnection

20. Percent Blocking On Common Trunks

Attachment A-2a

SBC/AMERITECH PERFORMANCE MEASUREMENT BUSINESS RULES
(EXCEPT CALIFORNIA AND NEVADA)

OSS

1. Measurement
Percent Firm Order Confirmations (FOCs) Returned Within "X" Hours
Definition:
Percent of FOCs returned within a specified time frame from receipt of a complete and accurate service request to return of confirmation to CLEC
Exclusions:
<ul style="list-style-type: none">• Rejected (manual and electronic) orders• SWBT only Disconnect orders• Orders involving major projects mutually agreed to by CLECs and SWBT.
Business Rules:
FOC business rules are established to reflect the Local Service Center (LSC) normal hours of operation, which include M-F, 8:00 AM to 5:30 PM, excluding, holiday and weekends. If the start/time is outside of normal business hours then the start date/time is set to 8:00 AM on the next business day. Example: If the request is received Monday through Friday between 8:00 AM to 5:00 PM; the valid start time will be Monday through Friday between 8:00 AM to 5:00 PM. If the actual request is received Monday through Thursday after 5:00 PM and before 8:00 AM next day; the valid start time will be the next business day at 8:00 AM. If the actual request is received Friday after 5:00 PM and before 8:00 AM Monday; the valid start time will be at 8:00 AM Monday. If the request is received on a Holiday (anytime); the valid start time will be the next business day at 8:00 AM. The returned confirmation to the CLEC will establish the actual end date/time Provisions are established within the DSS reporting systems to accommodate situations when the LSC works holidays, weekends and when requests are received outside normal working hours. For UNE Loop and Port combinations, orders requiring N, C, and D orders, the FOC is sent back at the time the C order is distributed.

LEX/EDI

For LEX and EDI originated LSRs, the start date and time is the receive date and time that is automatically populated by the interface (EDI or LEX) with the system date / time on the SM-FID once all ordering edits are satisfied and the service order has a distribution date and time in SORD. The end date and time is recorded by both LEX and EDI and reflect the actual date and time the FOC is returned to the CLEC. This data is extracted daily from LEX and EDI and passed to the DSS (Decision Support System) where the end date and time are populated and are used to calculate the FOC measurements. For LSRs where FOC times are negotiated with the CLEC the ITRAK entry on the SORD service order is used in the calculation. The request type from the LSR and the Class of Service tables are used to report the LSRs in the various levels of disaggregation. The Class of Service tables are based on the Universal Service Order practice.

VERBAL or MANUAL REQUESTS

Manual service order requests are those initiated by the CLEC either by telephone or FAX. The receive date and times are recorded and input on the SM-FID on each service order in SORD for each FOC opportunity. The end times are the actual dates and times the paper Faxes are sent back to the CLEC. FAX end times are recorded and input into the DSS systems via an internal WEB application. Each FOC opportunity is dynamically established on the WEB application via our interface to SORD and the LSC must provide an end date and time for each entry, which depicts the date and time the FOC was actually faxed back to the CLEC. If a CLEC elects to accept an on-line FOC and does not require a paper FAX the FOC information is provided over the phone. In these instances the order distribution time is used in the FOC calculation on the related SORD service order to the appropriate SM-FID entry. These scenarios are identified by data populated on the ITRAK-FID of the service order. The ITRAK-FID is also used when FOC times are negotiated with the CLEC. The LSC will populate the ITRAK-FID with certain pre-established data entries that are used in the FOC calculation.

Levels of Disaggregation:

Manually submitted:

- Simple Res. And Bus. < 24 Hours
- Complex Business (1-200 Lines) < 24 Hours
- Complex Business (>200 Lines) < 48 Hours
- UNE Loop (1-49 Loops) < 24 Hours
- UNE Loop (> 50 Loops) < 48 Hours
- Switch Ports < 24 Hours

Electronically submitted via LEX or EDI:

- Simple Res. And Bus. < 5 Hours
- Complex Business (1-200 Lines) < 24 Hours
- Complex Business (>200 Lines) < 48 Hours
- UNE Loop (1-49 Loops) < 5 Hours
- UNE Loop (> 50 Loops) < 48 Hours
- Switch Ports < 5 Hours

LNP

Manually submitted:

- LNP Only (1-19) < 24 Clock Hours
- LNP with Loop (1-19) < 24 Clock Hours
- LNP Only (20+ Loops) < 48 Clock Hours
- LNP with Loop (20+ Loops) < 48 Clock Hours
- LNP Complex Business (1-19 Lines) < 24 Clock Hours
- LNP Complex Business (20-50 Lines) < 48 Clock Hours
- LNP Complex Business (50+ Lines) < Negotiated with Notification of Timeframe within 24 Clock Hours

Electronically submitted via LEX or EDI:

- Simple Residence and Business LNP Only (1-19) < 5 Business Hours
- Simple Residence and Business LNP with Loop (1-19) < 5 Business Hours
- LNP Only (20+ Loops) < 48 Clock Hours
- LNP with Loop (20+ Loops) < 48 Clock Hours
- LNP Complex Business (1-19 Lines) < 24 Clock Hours
- LNP Complex Business (20-50 Lines) < 48 Clock Hours
- LNP Complex Business (50+ Lines) < Negotiated with Notification of Timeframe within 24 Clock Hours

Calculations:	Report Structure:
$\frac{(\# \text{ FOCs returned within "x" hours}}{\text{total FOCs sent)} * 100$	Reported for CLEC and all CLECs. This includes mechanized from EDI and LEX and manual (FAX or phone orders)

Benchmark:

All Res and Bus 95% / Complex Bus 94% / UNE Loop (1-49) 95% / UNE Loop (>50) 94% / Switch Ports 95%.

2. Measurement	
Average Response Time For OSS Pre-Order Interfaces	
Definition:	
The average response time in seconds from the SWBT side of the Remote Access Facility (RAF) and return for pre-order interfaces (Verigate, DataGate and EDI where the pre-order functionality is integrated) by function.	
Exclusions:	
None.	
Business Rules:	
The clock starts on the date/time when the request is received by SWBT and the clock stops on the date/time when the SWBT has completed the transmission of the response to the CLEC. The measurement is at the SWBT side of the LRAF. Response time is accumulated for each major query type, consistent with the specified reporting dimension, and then divided by the associated total number of queries received by SWBT during the reporting period. The response time is measured only within the published hours of interface availability. Published hours of interface availability are documented on the CLEC web site. (SWBT will not schedule system maintenance during normal business hours (8 AM to 5:30 PM Monday through Friday).	
Levels of Disaggregation:	
<ul style="list-style-type: none"> • Address Verification • Request For Telephone Number • Request For Customer Service Record (CSR) • Service Availability • Service Appointment Scheduling (Due Date) • Dispatch Required • PIC 	
Calculation:	Report Structure:
$\frac{\Sigma[(\text{Query Response Date \& Time}) - (\text{Query Submission Date \& Time})]}{\div (\text{Number of Queries Submitted in Reporting Period})}$	Reported on a CLEC and all CLECs basis by interface for DATAGATE and VERIGATE
Benchmark:	

	DataGate:	Verigate:
Address Validation	4.5 sec.	4.5 sec.
TN Selection	4.5 sec.	4.5 sec.
CSR Summary 1-30 Lines	10 sec.	10 sec.
CSR 31 Lines or more	24 hrs.	24 hrs.
Service Availability	5.5 sec.	8.0 sec.
Due Date	2.0 sec.	2.0 sec.
Dispatch	11 sec.	11 sec.