



Federal Communications Commission  
Washington, D.C. 20554

Adopted: December 20, 2001  
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Ms. Caryn Moir  
Vice President – Federal Regulatory  
SBC Telecommunications, Inc.  
1401 I Street, NW, Suite 400  
Washington, DC 20005

RE: *SBC/Ameritech Merger Order*, CC Docket No. 98-141, ASD File No. 99-49

Dear Ms. Moir:

This letter addresses issues arising from the June 2001 semi-annual review of SBC Communications, Inc.'s (SBC) performance measurements under the *SBC/Ameritech Merger Order*.<sup>1</sup> As discussed below, I approve SBC's proposed business rules changes with modifications and address an issue regarding Southern New England Telephone, Inc. (SNET) performance standards.

1. Background

The Commission adopted the Carrier-to-Carrier Performance Plan (Performance Plan) in the *SBC/Ameritech Merger Order*.<sup>2</sup> The Performance Plan requires SBC to report performance measurements data to the Commission each month, and to make payments to the United States Treasury should it fail to meet certain performance standards. The Performance Plan requires SBC and the Common Carrier Bureau (Bureau) to meet semi-annually to discuss additions, deletions, and modifications.<sup>3</sup>

The Performance Plan measurements are based on those adopted by the Texas and California commissions. Specifically, for the SBC states except California and Nevada, SBC reports data based on 20 measurements adopted by the Texas Commission.<sup>4</sup> For California and Nevada, SBC reports data based on 20 measurements adopted by the California Commission.<sup>5</sup> Both Texas and California have their own on-going reviews to update the measurements, and the Performance Plan establishes a process by which those changes can flow through to the federal Performance Plan counterpart measurements. In particular, when the underlying state commission makes changes, SBC must notify the Bureau

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<sup>1</sup> 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 98-141, *Memorandum Opinion and Order*, 14 FCC Rcd 14712 (1999) (*SBC/Ameritech Merger Order* or *Merger Order*).

<sup>2</sup> See *Merger Order*, Appendix C, Attachment A.

<sup>3</sup> See *Merger Order*, Appendix C, Attachment A at ¶ 4.

<sup>4</sup> See *Merger Order*, Appendix C, Attachment A at ¶ 4.

<sup>5</sup> See *Merger Order*, Appendix C, Attachment A at ¶ 3.

immediately.<sup>6</sup> SBC may implement those changes for the anchor state if the Bureau does not object within five days of notification.<sup>7</sup> At the next semi-annual review, the Bureau may decide whether the same changes should be made for the other states tied to that state.<sup>8</sup> For example, if the Texas Commission adopts changes to its measurements, SBC must notify the Bureau immediately. The Bureau would then have five days to object to the changes; if it does not, SBC may make the changes for the Texas data in the Performance Plan. At the next semi-annual review, the Bureau would decide whether SBC should also make the changes for the remaining Southwestern Bell states, the Ameritech states, and SNET.

Pursuant to the *Merger Order*, however, states for which SBC has received section 271 authority are removed from the Performance Plan.<sup>9</sup> As a result, Texas data are no longer subject to the Performance Plan, even though Texas-approved changes may affect data for the SBC states that remain subject to the Plan (except California and Nevada).

SBC and the Bureau met on June 27, 2001 to discuss issues related to the most current semi-annual review. At that meeting, SBC proposed to implement performance measurements changes adopted by the Texas Commission (called “version 2.0”) for the Southwestern Bell states subject the Performance Plan at that time, i.e., Arkansas and Missouri. As a follow-up, on November 16, 2001 SBC proposed to implement version 2.0 for the Ameritech states and SNET, but with modifications to account for regional differences.<sup>10</sup> SBC also raised an issue related to SNET performance measurements. Finally, SBC proposed a means to true-up erroneous voluntary payments. I address each proposal below except the true-up proposal, which will be the subject of a future letter.

## 2. Version 2.0 Business Rules Changes

As an initial matter, I note that SBC’s request to implement the version 2.0 changes in Arkansas and Missouri is now moot. On November 16, 2001, the Commission approved SBC’s section 271 application for those states, thereby removing those states from the Performance Plan.<sup>11</sup>

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<sup>6</sup> See *Merger Order*, Appendix C, Attachment A at ¶ 4.

<sup>7</sup> See *Merger Order*, Appendix C, Attachment A at ¶ 4.

<sup>8</sup> See *Merger Order*, Appendix C, Attachment A at ¶ 4.

<sup>9</sup> See *Merger Order*, Appendix C at ¶ 24.

<sup>10</sup> See Letter from Al Syeles, Executive Director, SBC, to Mark Stone, Attorney, Federal Communications Commission (filed Nov. 27, 2001) (*SBC November 27<sup>th</sup> Letter*) (including proposed changes to the business rules in redline format). SBC later modified its proposed changes to respond to Bureau staff requests and to correct errors. See Letter from Michelle Thomas, Executive Director, Federal Regulatory, SBC, to Magalie Roman Salas, Secretary, Federal Communications Commission (Dec. 12, 2001) (revising SBC’s November 16, 2001 business rules submission pursuant to Common Carrier Bureau staff requests); Letter from David Cartwright, Director, Federal Regulatory, SBC, to Mark Stone, Attorney, Federal Communications Commission (Dec. 17, 2001) (correcting one error in SBC’s December 12, 2001 business rules filing).

<sup>11</sup> See *Merger Order*, Appendix C at ¶ 24; Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri, CC Docket No. 01-194, *Memorandum Opinion and Order*, FCC 01-338 (rel. Nov. 16, 2001).

SBC should, however, make the version 2.0 changes in the Ameritech states and SNET as described below. The Bureau has reviewed these changes, the most significant of which are summarized in the Attachment to this letter, and finds that they will improve the Performance Plan. The changes will, *inter alia*, further disaggregate results to account for new services and modify performance standards based on SBC's past performance.<sup>12</sup> SBC should make these changes by January 1, 2002.<sup>13</sup>

SBC provides three reasons to tailor the business rules to Ameritech and SNET: (1) to adapt performance standards and exclusions to Ameritech and SNET states; (2) to change the company name in the business rules from "SWBT" to "Ameritech" or "SNET" as appropriate; and (3) to delete references to systems that exist in the Southwestern Bell states but not Ameritech or SNET, as appropriate.<sup>14</sup> SBC should make the changes as it proposed on November 16, 2001 and thereafter,<sup>15</sup> except where SBC has proposed to tailor the business rules' performance standards or exclusions to Ameritech and SNET.<sup>16</sup>

I agree that it makes sense to modify the business rules to replace the name "SWBT" with "Ameritech" or "SNET," as appropriate. I also think it reasonable to modify the business rules to reflect the differing systems in the Ameritech and SNET states. Both of these are ministerial changes to the business rules that will clear up any potential ambiguity, making it easier for SBC to administer the Performance Plan.

SBC's other proposal, i.e., to adapt performance standards and exclusions to Ameritech and SNET, would, however, involve a substantive change to the Performance Plan. In my view, this proposal is inconsistent with both the text and intent of the *Merger Conditions*. Specifically, the *Merger Conditions* require the Bureau to decide "whether and when [SBC] shall implement such changes *adopted by the Texas state commission* in the remaining [Ameritech states and SNET] . . ."<sup>17</sup> The *Merger Conditions* do not say that SBC will tailor the changes to other states; rather the one set of changes must, if approved by the Bureau, be implemented in the other states as the Texas Commission adopted them. I note that the Bureau has in the past rejected the approach proposed by SBC.<sup>18</sup> While ministerial changes, such as changing company names to "Ameritech" or "SNET" and recognizing regional systems differences, are reasonable, tailoring performance standards and exclusions to each region, or state, would be inconsistent

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<sup>12</sup> "Disaggregations" and "performance standards" are sub-sets of the larger group of business rules that SBC proposes to change here. "Business rules" also include exclusions.

<sup>13</sup> See *SBC November 27<sup>th</sup> Letter* at 1 (proposing to implement changes by January 1, 2002).

<sup>14</sup> See *SBC November 27<sup>th</sup> Letter* at 1-4

<sup>15</sup> See *supra* n.10.

<sup>16</sup> For example, SBC proposes to (1) relax installation intervals in the SNET region for performance measurement 8, *Average Installation Interval – DSL* and (2) exclude "customer requested due dates greater than 1 business day" in the SNET region for performance measurement 6a, *Mean Installation Interval – POTS*.

<sup>17</sup> *Merger Order*, Appendix C, Attachment A at ¶ 4 (emphasis added).

<sup>18</sup> See Letter from Carol Matthey, Deputy Chief, Common Carrier Bureau, Federal Communications Commission, to Marian Dyer, Vice President, Federal Regulatory, SBC (May 30, 2000) (expressing concern about SBC's use of Ameritech-specific performance standards and exclusions).

with the intent of the *Merger Conditions*.<sup>19</sup> The Commission adopted the Performance Plan as part of a package of conditions designed to mitigate competitive harms resulting from the SBC/Ameritech merger.<sup>20</sup> The Commission chose to adopt the performance standards used by the Texas Commission for most of the SBC states, including Ameritech and SNET. Granting SBC's request would allow it to substantively change the standards the Commission adopted to mitigate SBC's increased ability and incentive to discriminate.

### 3. SNET Issue

SBC asks the Bureau to relax two performance standards for measurement 8, *Average Installation Interval – DSL*.<sup>21</sup> In particular, SBC asks the Bureau to extend installation intervals for non-conditioned loops from 5 days to 9 days and conditioned loops from 10 days to 15 days.<sup>22</sup> SBC argues that the more generous standards are appropriate because they reflect the tariffed intervals in Connecticut. I disagree.

This request is simply a manifestation of SBC's proposal to tailor the Texas-based performance standards to SNET, which is addressed above. For the same reasons discussed in section 2 above, I disagree. Moreover, I address SBC's additional arguments, made in recent weeks, to support its performance measurement 8 proposal specifically.<sup>23</sup>

First, SBC cites paragraph 482 of the *Merger Order*, in which the Commission rejected a commenter's criticism that the Performance Plan "does not require parity across measurements between different states."<sup>24</sup> SBC argues that "parity" here applies to performance standards, and that the Commission must have meant that it was not requiring uniform performance standards across the SBC states. Further review of the comment, however, reveals that the Commission was rejecting an argument related to the staggered requirement of reporting performance data and payments, not performance standards.<sup>25</sup> This passage is therefore inapposite.

Second, SBC cites paragraph 483 of the *Merger Order*, which grants SBC additional time to "implement the payment obligations" at SNET.<sup>26</sup> SBC argues that the phrase "implement the payment obligations" is

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<sup>19</sup> See *SBC November 27<sup>th</sup> Letter* at 1-4

<sup>20</sup> See, e.g., *Merger Order*, 14 FCC Rcd at 14887, ¶ 421.

<sup>21</sup> See Letter from Al Syles, Executive Director, Federal Regulatory, SBC, to Mark Stone, Attorney, Federal Communications Commission at 2 (Aug. 2, 2001) (*SBC August 2<sup>nd</sup> Letter*).

<sup>22</sup> See *id.*

<sup>23</sup> SBC laid out its position in an electronic mail from Al Syeles, Executive Director, Federal Regulatory, SBC, to Anthony Dale, Attorney, Federal Communications Commission, on November 16, 2001.

<sup>24</sup> See *Merger Order*, 14 FCC Rcd at 14910, ¶ 482.

<sup>25</sup> Specifically, the commenter complained that the Performance Plan's reporting and payment requirements should not be staggered across SBC regions, but instead begin at the same time across all the states. See Comments of Indiana Utilities Regulatory Commission in CC Docket No. 98-141 (filed July 16, 1999) at 5. The commenter did not address performance standards.

<sup>26</sup> See *Merger Order*, 14 FCC Rcd at 14911, ¶ 483.

Commission recognition that SNET could use Connecticut-specific performance standards. In light of the Commission's policy goals in adopting uniform standards, however, the more natural reading of the phrase is that SNET would require more time to bring its performance into line with the Texas standards, especially in light of SBC's then-recent acquisition of SNET.<sup>27</sup> The grace period thus reinforces the conclusion that the Commission intended that Texas standards apply to SNET. If the Commission had intended SNET to simply abide by the Connecticut standards (as they appear in the tariffs or elsewhere), a grace period presumably would not have been necessary.

Third, SBC cites paragraph 31 of the *Merger Conditions*, which describes the business rules for local service requests.<sup>28</sup> Paragraph 31 states that these business rules may vary depending on state regulatory requirements and product differences. SBC has, however, confused two different types of business rules. The business rules for local service requests are entirely different than business rules for performance measurements data gathering and reporting. Indeed, the business rules for completing and submitting local service requests to SBC's ILECs has no effect on the performance data.

Finally, at the beginning of the adopted Performance Plan, the Commission enumerated the five instances in which the Performance Plan business rules deviate from those adopted in Texas.<sup>29</sup> If the Commission intended to tailor the performance standards to individual states other than Texas, this would have been the natural place to do so, but it did not. For these reasons, I decline to adopt SBC's proposal.

If SBC disagrees with any of this letter's guidance, it may file an application for review with the Commission pursuant to section 1.115 of the Commission's rules.<sup>30</sup>

Please do not hesitate to contact me if I can be of further assistance. You may also contact Mark Stone in the Common Carrier Bureau directly at (202) 418-0816 for further information on this matter.

Sincerely,

Carol E. Matthey  
Deputy Chief, Common Carrier Bureau

CC: Al Syeles, SBC  
David Cartwright, SBC

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<sup>27</sup> See *id.*

<sup>28</sup> See *Merger Order*, Appendix C at ¶ 31.

<sup>29</sup> See *Merger Order*, Appendix C, Attachment A at ¶ 3. CLECs submit local service requests (or "LSRs") to SBC to order local services such as unbundled network elements.

<sup>30</sup> 47 C.F.R. § 1.115.

**Attachment**  
**Summary of SBC Proposed Changes**

- Performance Measurement 1 (*Percent Firm Order Confirmations (FOCs) Returned on Time for LSR Requests*)
  - Standard for all electronically submitted orders is 95% within 60 minutes.
  - Critical-z no longer applies.
- Performance Measurement 1.1 (*Percent Firm Order Confirmations (FOCs) for xDSL-capable Loops and Line Sharing Returned Within “x” Hours*)
  - Added measurement.
- Performance Measurement 4(d) (*Percent Mechanized Completion Notifications Returned Within One Day of Work Completion*)
  - Critical-z no longer applies.
- Performance Measurement 5(c) (*Percent Installation Reports (Trouble Reports) Within “x” Calendar Days, Where “x” is 10 Calendar Days for 8db Loops and 30 Calendar Days for all other UNEs*)
  - Change standard for 8db loops from 30 calendar days to 10 calendar days.
- Performance Measurement 6(c).1 (*Percent Installations Completed within the Customer Requested Due Date for LNP With Loop*)
  - Added measurement.
- Performance Measurement 7(a) (*Average Delay Days for SWBT Caused Missed Due Dates – POTS*)
  - Deleted exclusion for SBC-delayed orders as a result of lack of facilities.