

CONSENT DECREE

I. Introduction

1. The Enforcement Bureau (the “Bureau”) of the Federal Communications Commission (the “Commission” or the “FCC”) and SBC Communications, Inc. (“SBC”) hereby enter into this Consent Decree for the purpose of terminating an informal Bureau investigation into SBC’s compliance with the Merger Conditions imposed by the Commission in *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*, 14 FCC Rcd 14712 (1999) (“SBC-Ameritech Merger Order”).

II. Background

2. On October 8, 1999, the Commission approved, subject to explicit conditions, the transfer of licenses and lines from Ameritech Corp. (“Ameritech”) to SBC in connection with the merger of the two companies. To offset the potential harms arising out of the merger, SBC proposed, and the Commission adopted, a series of conditions intended to enhance local competition and to strengthen the incentives of SBC to expand competition outside its territories (the “Merger Conditions”).

3. Specifically, Condition VII of the *SBC-Ameritech Merger Order* requires SBC to file publicly monthly performance measurement data under a Carrier-to-Carrier Performance Assurance Plan (“Performance Plan”).¹ The Performance Plan requires SBC to report, on a monthly basis, its performance in 20 different categories or metrics that are broken down into sub-metrics and that address functions that can affect SBC’s local competitors and their customers. These categories cover key aspects of pre-ordering, ordering, provisioning, maintenance and repair, and billing associated with unbundled network elements (“UNEs”), interconnection, and resold services. Under the Performance Plan, SBC must make voluntary payments to the U.S. Treasury if it fails to meet the performance standards established in the Plan. SBC is subject to voluntary payments of up to \$1.125 billion over three years for continued poor performance.² Such payments are voluntary performance measurements payments and are not fines, penalties, or forfeitures.

4. In addition, Condition XXVII of the *SBC-Ameritech Merger Order* requires SBC to engage annually an independent auditor to examine SBC’s compliance with the Merger Conditions. The annual audit is intended to provide a thorough and systematic evaluation of SBC’s compliance with the Merger Conditions and the sufficiency of SBC’s internal controls.

5. On March 15, 2001, the Bureau issued an *Order of Forfeiture* for SBC’s failure to report certain performance data in its monthly performance reports in accordance with published

¹ *SBC-Ameritech Merger Order* at Appendix C, ¶¶ 23-24 and Attachment A.

² *Id.* at Appendix C, ¶ 23.

business rules in the Performance Plan.³ The Bureau ordered SBC to forfeit \$88,000 for data inaccuracies submitted by SBC for the period from January through November 2000.

6. On August 30, 2002, Ernst & Young (“E&Y”) completed its audit report addressing SBC’s compliance from January 1, 2001, through December 31, 2001, with certain of the merger conditions (“E&Y Audit Report”). The Audit Report stated that certain of the data in SBC’s monthly performance filings contained performance reporting errors.⁴ The Audit Report noted a variety of causes of such errors, primarily involving programming and data entry errors, incorrect classification of data, and improper inclusion and omission of certain data from calculations. Errors in performance reports can affect the amount of SBC’s voluntary payments for failing to meet performance levels specified in the Performance Plan. SBC has reported to the Commission similar performance reporting errors and restatements in reports filed for the January 2002 through February 2003 time period.

7. SBC asserts that, despite its best efforts, some material and immaterial data discrepancies are inevitable, primarily as a result of the sheer volume and complexity of the data that must be collected, reviewed and reported and the short timeframe in which the monthly performance reports must be prepared. The Bureau’s view is that SBC has not taken sufficient measures to minimize discrepancies in its reported data.

8. In the spring of 2002, the Bureau initiated an Investigation into SBC’s potential non-compliance with the *SBC-Ameritech Merger Order* during the time period covered by the 2001 E&Y Audit Report and continuing through 2002. In particular, the Bureau’s Investigation focused on SBC’s compliance with the Performance Plan requirements in Condition VII of the *SBC-Ameritech Order*.

III. Definitions

9. For the purposes of this Consent Decree the following definitions shall apply:

- (a) “Commission” or “FCC” means the Federal Communications Commission.
- (b) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
- (c) “SBC” means SBC Communications Inc. and any subsidiaries.
- (d) “Parties” means SBC and the Bureau.
- (e) “Adopting Order” means an Order of the Bureau adopting the terms and conditions of this Consent Decree.
- (f) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (g) “Investigation” means the investigation initiated by the Bureau regarding

³ SBC Communications, Inc. Apparent Liability for Forfeiture, *Order of Forfeiture*, 16 FCC Rcd 5535 (Enf. Bur. 2001), *aff’d*, *Order on Review*, 16 FCC Rcd 12306 (2001).

⁴ Audit Report at 6 and Attachment A.

the matters discussed in paragraph 6 above, concerning SBC's conduct for performance reports filed for the months January 2001 through February 2003.

IV. Agreement

10. SBC agrees and the Bureau warrants that it has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree and any Order adopting the Consent Decree.

11. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between SBC and the Bureau of the Bureau's Investigation. In consideration for the termination of the Bureau's Investigation in accordance with the terms of this Consent Decree, SBC agrees to the terms, conditions and procedures contained herein and in the accompanying Compliance Plan. To help ensure SBC's future compliance with the Act, the Commission's rules, and the *SBC-Ameritech Merger Order*, SBC agrees to implement the specific measures contained in the Compliance Plan attached hereto and incorporated by reference, effective 45 days after the release of the Order.

12. SBC and the Bureau agree that this Consent Decree does not constitute either an adjudication of the merits, or any factual or legal finding or determination of noncompliance by SBC with the requirements of the Act, as amended, with the Commission's rules, or with the requirements of the *SBC-Ameritech Merger Order*. The parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, SBC does not admit or deny any noncompliance, violation, or liability associated with or arising from any alleged actions or failures, or in any informal complaints, *ex partes*, or other information the Commission received on or before the Effective Date of this Consent Decree.

13. SBC agrees that it shall make a voluntary contribution to the United States Treasury in the amount of \$250,000 (two hundred fifty thousand dollars) in connection with its compliance with the Performance Plan from January 2001 through February 2003. This amount shall be paid within 30 days of the date on which the order adopting this Consent Decree becomes final. Such contribution shall be made, without further protest or recourse, by certified check, cashiers check, wire transfer, or money order drawn to the order of the Federal Communications Commission, and shall be mailed to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482, or be submitted by wire transfer according to instructions provided by the Bureau. Reference should be made on the check or money order to "Acct. No. 200332080011."

14. In express reliance upon the covenants and representations contained in this Consent Decree, the Bureau agrees to terminate the Investigation.

15. The Bureau agrees that, based on the facts developed in this Investigation and in the absence of material new evidence related to this matter, it will not use the facts developed in this Investigation through the Effective Date of the Consent Decree or the existence of this Consent Decree to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against SBC concerning its compliance with the Performance Plan required by the merger conditions. The Bureau also agrees that, based on the facts developed in the Investigation, and in the absence of material new evidence related to this matter, it will not use the facts developed in this Investigation through the Effective Date of this Consent Decree or the existence of this Consent Decree to institute on its own motion any proceeding, formal or

informal, or take any action on its own motion against SBC with respect to its basic qualifications, including its character qualifications, to be a Commission licensee or with respect to compliance with the Commission's rules and policies.

16. Nothing in this Consent Decree shall prevent the Commission from adjudicating complaints filed pursuant to section 208 of the Communications Act, as amended, 47 U.S.C. § 208, against SBC or its affiliates for alleged violations of the *SBC-Ameritech Merger Order*, or for any other type of alleged misconduct, regardless of when such misconduct took place. If any such complaint is made, the Commission's adjudication of that complaint will be based solely on the record developed in that proceeding. Nothing in this Consent Decree shall prevent the Commission from instituting new investigations or enforcement proceedings against SBC pursuant to sections 4(i), 403 and 503 of the Communications Act in the event of any alleged future misconduct.

17. In the event that SBC is found by the Bureau to have engaged in a violation of the *SBC-Ameritech Merger Order* subsequent to the release of the Adopting Order, the Bureau reserves the right to consider the conduct described in paragraph 6 above in determining an appropriate sanction. If such conduct is considered by the Bureau in determining an appropriate sanction, SBC will not be estopped from litigating the issues of whether such conduct or the facts involved in such conduct actually violated the Act or the Commission's rules, the merits of SBC's conduct, or the relevance or weight to be given such conduct under section 1.80 of the Commission's rules.

18. SBC's decision to enter into this Consent Decree is expressly contingent upon issuance of an Order that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition or modification.

19. SBC waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Order adopts the Consent Decree without change, addition, or modification.

20. SBC waives any rights it may have under any provision of the Equal Access to Justice Act, 5 U.S.C. § 504.

21. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, this Consent Decree shall become null and void and may not be used in any manner in any legal proceeding.

22. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither SBC nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and SBC and the Commission will waive any statutory right to a trial *de novo* with respect to any matter upon which the Adopting Order is based, and shall consent to a judgment incorporating the terms of this Consent Decree.

23. SBC agrees that any violation of the Consent Decree or the Adopting Order will constitute a separate violation of a Commission order, entitling the Commission to exercise any rights or remedies attendant to the enforcement of a Commission order.

24. This Consent Decree may be signed in counterparts.

For the Enforcement Bureau
Federal Communications Commission

For SBC Communications Inc.

David H. Solomon
Chief

James Smith
Senior Vice President-Federal Regulatory
SBC Telecommunications, Inc.

Date

Date

**COMPLIANCE PLAN OF
SBC COMMUNICATIONS INC.**

Pursuant to the foregoing Consent Decree, SBC Communications Inc. (“SBC”) will establish a formal compliance program, which will consist of the following remedial actions:

1. Implementation of Control Process

SBC will implement the following enhancements to the controls and processes for managing the integrity of the data it reports monthly to the FCC pursuant to the Performance Plan adopted in the *SBC/Ameritech Merger Order*: (1) review data at key stages of production to facilitate data continuity; (2) validate data and perform trend analysis to identify and investigate material outlying results; (3) review results to assess implementation of new or changed requirements; and (4) maintain data files as required for document retention purposes.

The performance of SBC data providers and data reporters will be reviewed to assess their ability to deliver performance data pursuant to the Performance Plan adopted in the *SBC/Ameritech Merger Order* in a timely and accurate manner, and their errors will be identified and analyzed for error prevention activities in order to reduce their recurrence.

SBC will have implemented these controls and processes within 45 days of the Effective Date of the foregoing Consent Decree.

2. Regulatory Compliance Group Oversight.

SBC’s Regulatory Compliance Group and a designated steering committee will review the performance reporting conducted by SBC pursuant to the Merger Conditions set forth in the *SBC/Ameritech Merger Order* and the processes and controls implemented pursuant to this Compliance Plan. The steering committee will be comprised of SBC senior management personnel from across applicable SBC regions. The primary goals of the steering committees will be to ensure that there are reasonable assurances that the performance as measured and reported by SBC pursuant to the Performance Plan adopted in the *SBC/Ameritech Merger Order* is materially equivalent to the performance that SBC has actually delivered. The steering committee will oversee the processes and controls implemented pursuant to this Compliance Plan. The steering committee will oversee the following principal efforts:

- Examine SBC’s processes for reviewing reporting accuracy and assessing whether SBC appropriately captures, processes and reports performance information in accordance with the applicable business rules pursuant to the Performance Plan adopted in the *SBC/Ameritech Merger Order*.
- Conduct analysis of sample metrics data sets and change controls between data providers and data reporters to assess metric accuracy and business rule compliance pursuant to the Performance Plan adopted in the *SBC/Ameritech Merger Order*.

- Review monthly performance and data accuracy and identify issues and appropriate corrective actions pursuant to the Performance Plan adopted in the *SBC/Ameritech Merger Order*.

SBC will have implemented these activities within 45 days of the Effective Date of this Consent Decree.

3. True-Up Process

SBC will establish a process for performing a true-up of any errors in the calculation of any voluntary payments required under the Performance Plan no later than 90 days after the Effective Date of this Consent Decree. No later than 180 days after the Effective Date of this Consent Decree, SBC will apply its true-up process to any errors for the performance measurement reports filed in the twelve-month period immediately preceding the date of this Consent Decree.

4. Submission to the Enforcement Bureau

SBC will include in its Annual Compliance Report submitted pursuant to Merger Condition XXVI of the *SBC/Ameritech Merger Order*, a report on the implementation of the controls and processes set forth in this Compliance Plan.

5. Compliance audit

An assessment of whether the Company has implemented the controls and processes set forth in this Compliance Plan, and performed any necessary true-ups to any voluntary payments as set forth in the True-up Process, will be included in the annual independent audit conducted pursuant to Merger Condition XXVII of the *SBC/Ameritech Merger Order*.

6. Term of Consent Decree

The terms of this Compliance Plan will expire when the related Merger Conditions expire in accordance with the terms of the *SBC/Ameritech Merger Order*, or subsequent orders by the Commission or its delegated authority concerning the merger. The terms of the Compliance Plan shall no longer apply to SBC performance data for a state once performance reports for that state are no longer required under the terms of the *SBC/Ameritech Merger Order*. To the extent any state is removed from the Performance Plan within 45 days of the Effective Date of this Consent Decree, the terms of this Compliance Plan shall not apply to SBC performance data for such state.