FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
December 11, 2000

Ms. Sandra Wagner
Vice President – Federal Regulatory
SBC Telecommunications, Inc.
1401 I Street, NW, Suite 1100
Washington, DC 20005

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

Dear Ms. Wagner:

In the *SBC/Ameritech Merger Order* the Commission adopted a carrier-to-carrier performance plan that requires SBC to make payments to the U.S. Treasury should it fail to meet certain performance standards.[1] The carrier-to-carrier performance plan was developed, *inter alia*, to ensure that SBC incumbent local exchange carriers (ILECs) provide the same quality of service to competitive local exchange carriers (CLECs) as they provide to themselves. Under the plan, a parity test or a benchmark test is used to determine whether SBC has met specific performance standards. Generally, the parity test is used where SBC provides similar services on a retail basis and to CLECs; the benchmark test is used where there is no retail analogue for the service that SBC provides to CLECs. Under either test, if SBC were to fail to meet a performance standard for three consecutive months (or six of 12 months in a calendar year), it must calculate a payment based upon a formula incorporating three factors: (1) the number of occurrences for the performance measurement; (2) the extent to which SBC failed to meet the standard; and (3) a specified value that reflects the relative importance of the performance measurement.[2] These payments provide a strong financial incentive for SBC to improve its service.

In recent months SBC and Bureau staff have discussed implementation issues relating to the carrier-to-carrier performance plan. Several questions have been raised during these discussions on how the parity and benchmark performance tests are to be applied and how the payment calculations are to be made. This letter provides guidance regarding these questions.

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[1] 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 14,712, Appendix C, ¶¶ 23-24 (1999) ("*SBC/Ameritech Merger Order*" or "*Merger Order*"); *see id.* at Appendix C, Attachment A.

[2] *Id.* at Appendix C, Attachment A, A-116 – A-117.

Payment Calculations

1. Where SBC's total payments under the *Merger Conditions* exceed the *Merger Conditions'* cap, should SBC apply state payments (as credits) to the total payment amount or to the capped amount?

SBC should apply payments it makes under state performance measurement plans as a credit to the related payment cap set forth under the *Merger Conditions*.[3] An example is illustrative: Assume that under the Merger Conditions, SBC fails to meet specified performance standards established for Illinois in December 2000, and as a result owes a total of $3 million. The *Merger Conditions*, however, cap SBC's payments for Illinois at $2.53 million per month.[4] If SBC is also liable under the Illinois performance plan for $1 million, SBC should deduct the $1 million it pays under the Illinois plan from the $2.53 million cap imposed by the Merger Conditions. SBC's net payment to the U.S. Treasury would then be $1.53 million.[5]

2. Under what type of state performance measurements plans may SBC claim payment credits?

SBC may take credits for amounts paid under state performance plans that monitor SBC's service to CLECs.[6] SBC should not claim credits for state-imposed payments, bill credits or price-cap reductions associated with its quality of service to end-users.[7]

3. Should the second component of the payment calculation – the extent to which SBC misses the performance standard – be limited to 100% regardless of whether SBC misses this performance standard by a higher percent?

No. Under the *Merger Conditions*, there is no limiting factor, or cap, imposed on the element of the calculation that measures the extent to which SBC misses a performance standard. Indeed, capping this factor, which could exceed 100% in cases where SBC seriously underperforms, would be inconsistent with the Commission's objective to provide an incentive to SBC to provide excellent service to the CLECs.

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[3] *Id.* at Appendix C, Attachment A, ¶ 12. *See also id.* at ¶ 378 (payments are subject to state-specific caps "with a credit for amounts paid to states and competitive LECs under state-imposed performance monitoring plans or under liquidated damages provisions of interconnections agreements.") (footnote omitted); *see id*. n.706 (citing SBC/Ameritech Aug. 27 1999 *Ex Parte* stating that caps are applied with a credit for payments made under state performance plans).

[4] *Id*. at Appendix C, Attachment A, A-124.

[5] At this time, SBC has indicated that it may incur payment obligations under state commission plans only in Arkansas, Illinois, and Ohio. SBC may also claim credits for payments made under interconnection agreements.

[6] *See SBC/Ameritech Merger Order* at ¶ 378. SBC may also deduct payments made under interconnection agreements. *See id*.

[7] *See, e.g., id.* (allowing SBC credits "for amounts paid to states and competitive LECs under state-imposed performance monitoring plans []); *id.* at ¶ 377 (stating that the goal of the performance plan is to "ensur[e] that SBC/Ameritech's service to *telecommunications carriers* will not deteriorate as a result of the merger []." (emphasis added)); *id*. n.706 (noting commenters' objection that caps are "inadequate to discourage [SBC] from providing substandard service to *competitors*." (emphasis added)).

4. If SBC is required to make a payment for failure to meet a standard (*i.e.*, failing to meet the monthly 'ideal value' for that standard for three consecutive months),[8] how should the second component of the payment calculation – the extent to which the performance standard was missed – for parity measurements expressed as averages or means be calculated for purposes of determining SBC's payment obligation?

Under the *Merger Conditions*, the calculation of the second factor for parity measurements expressed as averages or means (the extent to which the performance standard was missed) should be made by comparing each of the three months' actual measurements to the 'ideal value' specified for the most recent month (*i.e.*, the third month).[9]

5. If a performance measurement is disaggregated into more than one performance measurement during the period under review (*i.e.*, a three consecutive month period), how should the three-month comparison of the original performance measurement be conducted for purposes of determining whether SBC has incurred a payment obligation for failure to meet that performance measurement?

A comparison of a performance measurement for three consecutive months, where during this period a performance measurement has been disaggregated into separate performance measurements, should be conducted by re-aggregating the relevant measurements, as necessary, to conduct valid comparisons. For example, if performance measurement X is disaggregated into performance measurements X_1 and X_2 in the second month, then for purposes of three consecutive month review period, these measurements should be re-aggregated (combined) into the original performance measurement X in the second and third months. This would permit a valid comparison for all three months.

The re-aggregation of the performance measurement for the period under review is only to be undertaken for purposes of determining whether SBC has incurred a payment obligation for failure to meet the original performance measurement. The disaggregated performance measurements remain separate for all other purposes. Thus, in the above example, it would not be necessary to re-aggregate the X_1 and X_2 measurements in the fourth and subsequent months because these measurements will remain disaggregated for valid comparisons in the months following the initial disaggregation of the performance measurement.

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[8] The "ideal value" represents the minimal level of service SBC could provide CLECs within a given month and state without owing payments. The ideal value is calculated by translating the "critical-z" into the units being measured by the performance measurement (*e.g.*, days, hours, percentages).

[9] *Id.* at Appendix C, Attachment A, A-116 – A-117.

Conducting Parity Tests

6. Should SBC use the sample variance convention or the population variance convention[10] to determine the SBC retail variance under the parity test?

We have found that for the vast majority of measurements that are subject to the parity test, the sample size of SBC retail data is large enough so that the difference in variance computed by the two conventions is *de minimis*. We note that Texas has adopted the sample variance convention; while California has adopted the population variance convention. Since the results of these two conventions are likely to be nearly identical, SBC may use the sample variance convention for states that follow the Texas requirements (Arkansas, Kansas, Missouri, Oklahoma, Illinois, Indiana, Michigan, Ohio, and Wisconsin) and the population variance convention for states that follow the California requirements (California and Nevada). This approach is consistent with the approach in the *Merger Order* for handling changes to the performance measurements[11] and should ease the compliance burden for SBC.

7. In conducting parity tests, should SBC use the variance computed for ILEC to CLEC data in months where there are no SBC retail data?

Under the *Merger Conditions*, parity tests must be based on the SBC retail variance. If for a given month there are no data for which to calculate this variance, SBC should use the SBC retail variance of an adjacent month, preferably the next most recent month. For example, if no data are available for month one, SBC should use the SBC retail variance for month two.[12]

8. When determining whether SBC meets the parity test for certain measurements that are expressed as ratios, how should SBC calculate the z-score?

Some performance measurements subject to the parity test are expressed as ratios, *e.g.*, trouble report rates.[13] As required by the *Merger Conditions*, SBC should subtract the ILEC ratio from the CLEC ratio to calculate the z-score.[14]

General

9. Should SBC report z-scores (and calculate payments) for performance measurements with few data points?

Yes. The *Merger Conditions* set forth a test that applies specifically to performance

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[10] The sample variance is the sum of the squared deviations from the mean, all divided by the sample size minus one. The population variance is the sum of the squared deviations from the mean, all divided by the population size.

[11] The *Merger Order* requires SBC to calculate z-scores based on a variance (*i.e.*, a measure of the variability or "spread" of the data). *Id*. at Appendix C, Attachment A, A-112.

[12] Normally, SBC would calculate separate CLEC and ILEC variances. If, however, there are no ILEC trouble reports, the variance will be 0 and no z-score can be calculated.

[13] Trouble report rates can be calculated by dividing the number of trouble reports by the number of circuits in operation.

[14] *Id*. at Appendix C, Attachment A, A-113.

measurements with fewer than 30 data points.[15]

10. Should SBC allow CLECs to independently verify SBC's statistical calculations in cases for performance measurements where there are only a few data points?

Yes. The *Merger Conditions* require SBC to allow CLECs to validate the results of SBC's performance tests.[16] These conditions make no exceptions where the performance test involves few data points.

11. Where should SBC send payments?

Payments should be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, and sent to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673- 7482. SBC should place the *Merger Order*'s FCC number and docket number on the check as well.[17]

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. Mattey
Deputy Chief, Common Carrier Bureau

CC: Ms. Christine Jines, SBC Telecommunications, Inc.
Ms. Cassandra Carr, SBC Telecommunications, Inc.

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[15] *Id*. at Appendix C, Attachment A, A-112.

[16] *Id*. at Appendix C, Attachment A, A-114.

[17] *Id*. at Appendix C, Attachment A, ¶ 13.