FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Adopted: January 11, 2000
Released: January 12, 2000

Ms. Janette Luehring
Chief of Telecommunications
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, KS 66604

Dear Ms. Luehring:

This letter responds to your request for guidance on interpreting certain conditions in the *SBC/Ameritech Merger Order*.[1] In your letter of January 3, 2000, you requested clarification of the *Merger Conditions* as they relate to the interconnection agreement between an SBC/Ameritech incumbent local exchange carrier ("LEC") and its advanced services affiliate. Specifically, you ask whether the "Surrogate Line Sharing Charges" that the incumbent LEC charges its affiliate may be posted on an Internet site instead of contained within the interconnection agreement. In addition, you asked whether information about the line sharing arrangement between the two companies must be contained in the interconnection agreement.

The *SBC/Ameritech Merger Order* requires SBC/Ameritech incumbent LECs and their advanced services affiliates to negotiate, and file for approval with the appropriate state commissions, interconnection agreements that set forth the "terms, conditions, and prices for the provision of interconnection, telecommunications services, and network elements that the affiliated incumbent LEC shall provide to the separate Advanced Services affiliate for the purposes of the separate affiliate's provision of Advanced Services."[2] In addition, such interconnection agreements "shall be sufficiently detailed to permit telecommunications carriers to exercise effectively their 'pick-and-choose' rights under 47 U.S.C. § 252(i) and the Commission's rules implementing that section."[3]

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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*, FCC 99-279 (rel. Oct. 8, 1999) ("*SBC/Ameritech Merger Order*").

[2] *SBC/Ameritech Merger Order* at Appendix C, para. 5(a).

[3] *Id.*

The *SBC/Ameritech Merger Order* further allows SBC/Ameritech incumbent LECs to provide "Interim Line Sharing" to their separate advanced services affiliates subject to certain provisions.[4] With respect to Surrogate Line Sharing Charges, the *Merger Conditions* state: "The SBC/Ameritech incumbent LEC shall establish and make available through interconnection agreements with the separate Advanced Services affiliate . . . surrogate charges for the costs incurred in making available an unbundled local loop capable of providing Advanced Services . . . in combination with voice grade services [i.e., 'Surrogate Line Sharing Charges'].'"[5]

In accordance with the *Merger Conditions*, the interconnection agreement between SBC/Ameritech incumbent LECs and their advanced services affiliate must contain information about the Interim Line Sharing arrangement, even though SBC/Ameritech incumbent LECs may provide such arrangements to their affiliates on an exclusive basis for the interim period. Despite inclusion of information about Interim Line Sharing arrangements in the relevant interconnection agreements, we recognize that competing carriers will not be able to opt into such arrangements because of operational and technical issues discussed more fully in the Commission's *Advanced Services Third Report and Order*.[6] Still, inclusion of information about the Interim Line Sharing arrangements is necessary to show that the affiliates operate at arm's length, and to inform the Commission, state commissions, and the public about important operational aspects of the relationship. Moreover, inclusion of the Interim Line Sharing arrangements is necessary to satisfy the "sufficiently detailed" requirement for interconnection agreements between SBC/Ameritech incumbent LECs and their advanced services affiliates.

The plain language of the *Merger Conditions* requires the Surrogate Line Sharing Charges to be contained within the interconnection agreement filed with the appropriate state

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[4] *Id.* at Appendix C, para. 8. The *Merger Order* permits SBC/Ameritech to provide line sharing to its advanced services affiliate on an exclusive basis until SBC/Ameritech provides line sharing to unaffiliated carriers in the same geographic area. The *Merger Order* refers to this as "interim line sharing." *See id.* at paras. 369-70.

[5] *Id.* at Appendix C, para. 8(b). Calculation of the Surrogate Line Sharing Charge is set forth in the *Merger Conditions*.

[6] Consistent with the Commission's rules, an incumbent LEC's pick-and-choose obligations do not apply when: (1) the cost of providing the target service or element is greater than the costs negotiated in the original interconnection agreement; and (2) technical infeasibility prevents such an arrangement. 47 C.F.R. § 51.309(b). The Commission recently found that certain operational and technical barriers temporarily prevent incumbent LECs from immediately providing line sharing to competing carriers. *See* Deployment of Wireline Services Offering Advanced Telecommunications Capability, *Third Report and Order in CC Docket No. 98-147*, FCC 99-355, para. 161 (rel. Dec. 9, 1999) (establishing requirement to implement line sharing within six months after addressing technical and operational issues) (*"Advanced Services Third Report and Order"*). Once the technical and operational barriers are resolved, competing carriers will be able to pick-and-choose from available line sharing arrangements. The Order was published in the Federal Register on January 10, 2000. *See id.*, 65 Fed. Reg. 1331 (Jan. 10, 2000).

commissions. Failure to include the Surrogate Line Sharing Charges in the interconnection agreement would be inconsistent with the text of the *Merger Conditions* and could impair the ability of unaffiliated third parties to exercise their rights under the *SBC/Ameritech Merger Order* and the Commission's rules.

Please do not hesitate to contact me if I can be of further assistance. You may also contact Anthony Dale in the Common Carrier Bureau directly at (202) 418-2260 for further information on this matter.

Sincerely,

Lawrence E. Strickling
Chief, Common Carrier Bureau

SWB
January 25, 2000

TABLE OF CONTENTS

DOCKET NO. 21939

SOUTHWESTERN BELL TELEPHONE COMPANY'S RESPONSE TO DSL CLECS' MOTION

RECEIVED
00 JAN 25 PM 2:46
PUBLIC UTILITY COMMISSION
FILING CLERK

SWBT's Response Page 2

Addenda

Attachment A – Letter to David H. Solomon 7

Attachment B – Letter to BusinessWeek 26

Original + 22

5

DOCKET NO. 21939

INTERCONNECTION AGREEMENT BETWEEN SBC ADVANCED SOLUTIONS, INC. AND SOUTHWESTERN BELL TELEPHONE COMPANY AS APPROVED ON OCTOBER 13, 1999 IN PROJECT NO. 16251, ORDER NO. 55, APPROVING THE TEXAS 271 AGREEMENT (T2A)	§ § § § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS

SOUTHWESTERN BELL TELEPHONE COMPANY'S RESPONSE TO DSL CLECS' MOTION

TO THE HONORABLE COMMISSIONERS and ADMINISTRATIVE LAW JUDGE VILANO:

Comes Now, Southwestern Bell Telephone Company ("SWBT") and files this response to the Motion of Rhythms, NorthPoint and Covad (collectively, the "DSL CLECs"), consistent with PUC Proc. R. § 22.78. SWBT received the Motion of the DSL CLECs on January 18, 2000.[1]

The Motion of the DSL CLECs is based on a premise that ignores the review and resolution by the Federal Communications Commission ("FCC")[2] of the very issues raised in the Motion. The FCC has created a process to establish how line sharing can be accomplished; that process should be allowed to continue. As a result, the Motion should be denied.

[1] SWBT normally does not respond to issues related to whether a particular CLEC's negotiated interconnection agreement is appropriate. However, because the instant Motion raised questions as to whether SWBT has or will meet its obligations under the Federal Telecommunications Act (the "Act"), a response is warranted.

[2] *Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations*; Memorandum Opinion And Order; Adopted: October 6, 1999, Released: October 8, 1999, CC Docket No. 98-141 ("*Merger Order*") and *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunication Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*; Third Report and Order in CC Docket No. 98-147; Fourth Report and Order in CC Docket No. 96-98, Adopted: November 18, 1999, Released: December 9, 1999 ("*Line Sharing Order*").

The DSL CLECs point to the exclusive arrangement through which SBC Communications Inc. affiliates can share lines in the provision of voice and ADSL services.[3] There is an exclusive arrangement at this time, but it is interim. The FCC has fully addressed the situation, and has done so after hearing the concerns of the DSL CLECs.[4] Indeed, the DSL CLECs' own Motion quotes the FCC's approval of this exclusive arrangement: "SBC/Ameritech incumbent LECs may provide such arrangements to their affiliates on an *exclusive* basis for the *interim* period...." (emphasis added).[5] Thus, for an interim period, exclusive arrangements between SWBT and its affiliates are permitted. For a full explanation of the issue, see attached Letter from Charles E. Foster to David H. Solomon, Chief of the FCC's Enforcement Bureau (Attachment A). This letter was in response to the issues raised by the FCC's Common Carrier Bureau letter to the Kansas Commission, which were subsequently raised by the Enforcement Bureau.

During this interim period, the FCC requires a 50 percent "surrogate line sharing discount" be available to CLECs, among other things. SWBT currently makes this discount available to the DSL CLECs. The FCC has also addressed how line sharing will be accomplished on a permanent basis and ordered that the details surrounding how to institute line sharing

[3] At this time, ADSL is the only DSL technology for which line sharing is useful.

[4] *See Line Sharing Order*, Appendix A-2, listing Covad, NorthPoint and Rhythms as commenting parties. *See* also, letter to BusinessWeek from Elizabeth A. Fetter, President of NorthPoint, applauding the *Merger Order* for its pro-competitive impact on the DSL marketplace, attached as Attachment B, as well as footnote 687 of the *Merger Order*, citing Comments of the Association for Local Telecommunications Services ("ALTS"), observing that surrogate charge for line sharing is an adequate substitute for line sharing until line sharing is instituted.

[5] DSL CLECs' Motion, at page 8, citing a FCC Letter to the Kansas Corporation Commission.

be negotiated within the next few months.[6] SWBT is currently engaged in these negotiations. To facilitate this process, SWBT and its incumbent local exchange affiliates are hosting a forum for CLECs on January 25, 2000, in California, to address how carriers can participate in a line sharing trial.

In the meantime, the FCC permits SWBT and its data affiliate, SBC Advanced Solutions Inc. ("ASI"), to share lines between SWBT's voice services and ASI's DSL services. Once the details of line sharing have been negotiated, ASI and all DSL CLECs will have the same line sharing terms and conditions available to them on a nondiscriminatory basis.[7] Under the *Line Sharing Order*, SWBT must make available such line sharing within 180 days of December 9, 1999, the release date of the *Line Sharing Order*.

With regard to compensation, SWBT is paid by ASI for the use of SWBT's line at a rate that is no less than what non-affiliated CLECs pay (i.e., equivalent to the "surrogate" discount), consistent with paragraph 370 of the *Merger Order*. Further, these payments are recorded as required by the FCC's cost allocation requirements, consistent with Section 272(b)(5) of the Act.[8]

From the FCC's orders, it is clear that the interim exclusivity is addressed by the surrogate discount available to CLECs. That is, the FCC recognized the disparity, recognized the complexities of sharing lines among non-affiliated companies, and established a process by which the DSL CLECs would gain an immediate financial benefit

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[6] See *Line Sharing Order* at para. 13, footnote 19, explaining that six months are needed to adopt the ILECs back office systems to the two-carrier line sharing requirements established by the FCC.

[7] *Merger Order*, paras. 369, 460, 476, and Appendix C, Conditions, para. 3d.

[8] *Merger Order*, para 466 and footnote 857.

prior to the permanent resolution of line sharing issues.

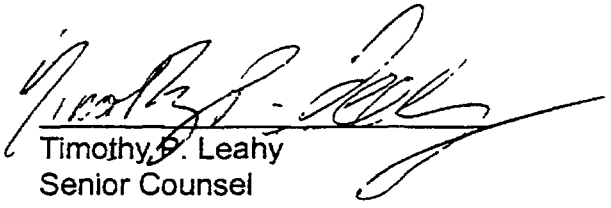
To accommodate any remaining policy concerns, SWBT and ASI will supplement their interconnection agreement to include terms relating to the "surrogate" line sharing arrangement currently available to the DSL CLECs, along with a description of the interim arrangement available to ASI. However, all the information related to these arrangements is already publicly available via Internet posting, consistent with the requirements of Section 272 of the Act.[9]

For these reasons, there is no legal or policy basis for the DSL CLECs' Motion. Certainly, there is absolutely no basis for a finding that SWBT has acted inappropriately under any circumstance. Indeed, SWBT's actions have been consistent with the interconnection agreement approval process established by the Commission and with relevant FCC Orders. SWBT respectfully suggests that the Commission deny the DSL CLECs' motion in all respects.

[9] *See* http://www.sbc.com/PublicAffairs/PublicPolicy/Regulatory/AdvSol-Telephone.html.

Respectfully Submitted,

ANN E. MEULEMAN
General Counsel-Austin



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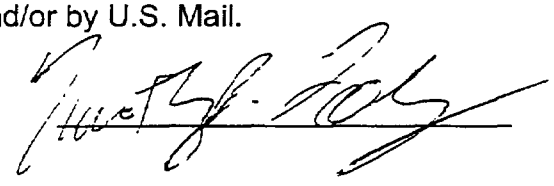
CERTIFICATE OF SERVICE

I, Timothy P. Leahy, Senior Counsel, for Southwestern Bell Telephone Company, certify that a copy of this document was served on all parties of record in this proceeding on the 25th day of January, 2000 in the following manner:

By hand delivery, facsimile and/or by U.S. Mail.



ATTACHMENT A

Charles E. Foster
Group President

SBC C[illegible]
175 E. Houston Street
San Antonio, Texas 78205
Phone 210 351-5100

January 20, 2000

Mr. David H. Solomon
Chief
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W., Room No. 8C757
Washington, D.C. 20554

Dear Mr. Solomon:

This will respond to your letter of January 13, 2000, regarding the interconnection agreement between Southwestern Bell Telephone Company ("SWBT") and SBC Advanced Services Inc. ("ASI") in Kansas.

You raise two issues: (1) whether so-called "Interim Line Sharing" between SWBT and ASI must be included in the companies' interconnection agreement, and (2) whether the discounted "Surrogate Line Sharing" arrangement that SWBT offers to unaffiliated providers of advanced services – but not to ASI – must be included in ASI's interconnection agreement. As the attached legal memorandum explains, the language and logic of the SBC/Ameritech merger conditions establish that the answer to both questions is "No."

SBC attaches paramount importance to complying with the merger conditions. Here, CLECs and regulators are receiving every benefit contemplated by those conditions. CLECs have been offered Surrogate Line Sharing at the prescribed 50-percent discount; ASI is contractually obligated to pay the same amount for its Interim Line Sharing under written agreements; and CLECs and regulators can review Interim Line Sharing transactions between ASI and SWBT through publicly posted documentation. Far from being a potential violation of the merger conditions, this is a case where SBC is living up to both the letter and the spirit of the conditions.

I trust that the accompanying discussion of the legal and factual basis for the ASI/SWBT agreements in Kansas will resolve your enforcement concerns. Moreover, as the attached paper explains, SBC had committed prior to receiving your letter to steps that resolve the Staff's policy interest in additional disclosure through interconnection agreements. Specifically, SBC will add detail regarding the Surrogate Line Sharing Charges and Interim Line Sharing to approved ASI/SWBT interconnection agreements.

Should you have any remaining questions about this matter, I look forward to answering them.

Sincerely,

C. E. Foster

8

INCLUSION OF TERMS GOVERNING INTERIM LINE SHARING AND SURROGATE LINE SHARING IN AFFILIATE AGREEMENTS UNDER THE SBC/AMERITECH MERGER CONDITIONS

In a letter dated January 13, 2000, the Chief of the FCC's Enforcement Bureau suggested that SBC may have violated the SBC/Ameritech Merger Conditions[1] by failing to include terms and conditions relating to "Interim Line Sharing" and "Surrogate Line Sharing" in the interconnection agreement between Southwestern Bell Telephone Company ("SWBT") and SBC's separate advanced services affiliate in Kansas.[2] The January 13 Letter was triggered by a letter from the Chief of the Common Carrier Bureau, which provided a similar interpretation of the Merger Conditions to the Kansas Corporation Commission ("KCC") staff.[3] This paper demonstrates that the interpretation of the Merger Conditions offered in both letters is unsupported by the language of the Merger Conditions, and refuted by the logic of those Conditions.

Nothing in the Merger Conditions requires that Interim Line Sharing arrangements be included in interconnection agreements, as opposed to other affiliate agreements. Including Interim Line Sharing in interconnection agreements would actually render Interim Line Sharing unworkable. As defined by the Merger Conditions, Interim Line Sharing is an exclusive arrangement available only to SBC's advanced services affiliate. But CLECs would argue that Interim Line Sharing could not be exclusive if it were included in a state-approved interconnection agreement, because the terms and conditions of such agreements must be made available on a nondiscriminatory basis. Contrary to the January 13 Letter, moreover, there is no issue of "withh[o]ld[ing] information" from CLECs. Even though Interim Line Sharing is not included in the Kansas interconnection agreement, Interim Line Sharing is provided pursuant to a written affiliate agreement that is publicly disclosed.

The discounted "Surrogate Line Sharing" arrangement that SWBT offers to *unaffiliated* providers of advanced services is not provided to SBC's advanced services affiliate. As the name suggests, this benefit for CLECs is a "surrogate" for the affiliate's exclusive Interim Line Sharing. SWBT has directly alerted CLECs to the availability of Surrogate Line Sharing. Additionally, the Merger Conditions regarding Surrogate Line Sharing, including calculation of Surrogate Line Sharing Charges, have in fact been incorporated by reference into the interconnection agreement between SWBT and its advanced services affiliate for the benefit of interested advanced services providers. The Kansas interconnection agreement thus ensures that

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[1] *See* Memorandum Opinion and Order, *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control*, CC Docket No. 98-141, FCC 99-279 (rel. Oct. 8, 1999) ("Merger Order"); *id.* Appendix C ("Merger Conditions").

[2] *See* Letter from David H. Solomon, FCC, to Charles Foster, SBC, Jan. 13, 1999 ("January 13 Letter").

[3] Letter from Lawrence E. Strickling, FCC, to Janette Luehring, KCC, DA 00-52 (rel. Jan. 12, 2000) ("Strickling Letter")

unaffiliated advanced services providers will pay no more to use a loop than SWBT's own advanced services affiliate pays to share a loop.

It must be emphasized that CLECs in Kansas (and other states) are receiving all of the rights and benefits the Merger Conditions require SBC to provide. CLECs have been offered amendments to their interconnection agreements to implement the 50 percent Surrogate Line Sharing discount. This gives them the same rate SBC's advanced services affiliate (SBC Advanced Services Inc., or "ASI") will pay for Interim Line Sharing. Consistent with the Merger Conditions, the Interim Line Sharing arrangement and payments are publicly disclosed in an affiliate agreement between ASI and SWBT.

Notwithstanding SBC's compliance with the Merger Conditions, however, SBC last week agreed to include in ASI's approved interconnection agreements the amount of the Surrogate Line Sharing Charges and detail regarding Interim Line Sharing. SBC made this accommodation in response to the policy views of the FCC staff, prior to receiving the January 13 Letter. This step by SBC should put to rest any policy issues surrounding the current Kansas agreement. As explained below, there are no legitimate legal issues.

1. Terms and Conditions for ASI's Interim Line Sharing

Nothing in the language of the Merger Conditions requires that ASI and SWBT include Interim Line Sharing in their interconnection agreement. Doing so would be directly inconsistent with the exclusive nature of this arrangement. And it would serve no purpose, because Interim Line Sharing is already fully disclosed through the Merger Conditions themselves and an affiliate agreement that is posted on the Internet.

Section I of the Merger Conditions provides for establishment of separate advanced services affiliates in SBC's in-region states. Paragraph 3 of this section sets out the general rule that the separate advanced services affiliates will operate in accordance with most of the rules applicable to separate long distance affiliates under 47 U.S.C. § 272, except where the Merger Conditions otherwise provide. One specific exception to section 272's rules is Interim Line Sharing. Interim Line Sharing involves SBC's provision of the incumbent LEC's voice-grade service and the separate affiliate's ADSL service over the same access line, prior to the time that SBC's incumbent LECs offer similar line-sharing capability to unaffiliated advanced services providers. Interim Line sharing is *not* required to be made available on an equal basis to all advanced services providers; to the contrary, the Merger Conditions expressly define Interim Line Sharing as a transitional arrangement that is permissible "on an exclusive basis," "until line sharing is provided to unaffiliated providers of Advanced Services within the same geographic area." Merger Conditions ¶ 3d; *see* Merger Order ¶¶ 369, 460, 476.

Because Interim Line Sharing is, in the Commission's words, a "discriminatory" arrangement between the SBC incumbent LECs and SBC's separate advanced services affiliates, Merger Order ¶ 476, this arrangement is properly not included in the state-approved interconnection agreements between the incumbent LECs and the advanced services affiliates. Under 47 U.S.C. § 252(i), "[a] local exchange carrier shall make available any interconnection,

service, or network element provided under an agreement approved under [section 252] . . . to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." *See also* 47 C.F.R. § 51.809. Thus, if terms and conditions for ASI's Interim Line Sharing were put in a state-approved interconnection agreement, it would be argued that section 252(i) would require SWBT to offer this arrangement on a nondiscriminatory basis. Under that view, Interim Line Sharing would cease to be "exclusive" and "discriminatory," as the Commission intended. Moreover, applying section 252(i) would effectively require SWBT to provide generally available line sharing arrangements – which the Merger Order expressly did not do. *See* Merger Order ¶ 477 ("We reject the suggestion of several carriers that we require the merged firm to make line sharing available immediately to competitors. . . . We find it more suitable to address these complex issues in the context of the ongoing industry-wide rulemaking [on line sharing] rather than this merger proceeding.").[4]

Paragraph 466 of the Merger Order confirms that Interim Line Sharing is not to be included in interconnection agreements with advanced services affiliates. This paragraph provides in part: "[T]he interconnection agreement [between an SBC incumbent LEC and its advanced service affiliate] itself will be made publicly available pursuant to the requirements of section 252, and SBC/Ameritech must provide *all* . . . services and facilities [available to the advance services affiliate under the interconnection agreement] to unaffiliated parties on a nondiscriminatory basis" (emphasis added). Since Interim Line Sharing is, by definition, an "exclusive" and "discriminatory" arrangement, including terms and conditions for Interim Line Sharing in interconnection agreements with advanced services affiliates would create a tension with paragraph 466.

Conversely, paragraph 5a of the Merger Conditions indicates what arrangements *should* be included in incumbent LEC/separate affiliate interconnection agreements. Specifically referencing 47 U.S.C. §§ 251 and 252, paragraph 5a provides that the agreements should contain "terms, conditions and prices for the provision of interconnection, telecommunications services, and network elements that the affiliated incumbent LEC shall provide to the separate Advanced Services affiliate," and that these terms, conditions, and prices will be subject to the pick-and-choose rule of section 252(i). Merger Conditions ¶ 5a. Interim Line Sharing does not fit within this language. Interim Line Sharing is not a form of interconnection, a telecommunications service, or an unbundled network element ("UNE"). It is, as the Merger Order explains, an arrangement that "allows two different service providers to offer services over the same line, with each provider utilizing different frequencies to transport voice or data over that line."

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[4] The Strickling Letter (at 2 n.6) acknowledges that section 252(i)'s pick-and-choose rule would not apply to Interim Line Sharing arrangements, but suggests that this is due to technical feasibility issues. Mr. Strickling's letter misses the point that the Merger Conditions do not require SBC incumbent LECs *ever* to provide line sharing to unaffiliated carriers, even if it is technically feasible. Merger Order ¶ 477. As paragraph 4n(1) of the Merger Conditions explains, the conditions established a "transitional" pricing mechanism in lieu of actual line sharing, with the duration of this transitional mechanism being "dependent upon when the Commission requires SBC/Ameritech to provide line sharing to unaffiliated telecommunications carriers." Only the *Line Sharing Order* – not the Merger Conditions – would support a requirement actually to provide line sharing to CLECs once it becomes technically feasible. Third Report and Order, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, FCC 99-355 (rel. Dec 9, 1999).

Merger Order ¶ 365 n.681. Although the data portion of a line was defined – subsequent to the Merger Order and the filing of ASI's interconnection agreement – as a network element that must be unbundled under section 251, *Line Sharing Order* ¶ 25, this is not what the Merger Order requires. Interim Line Sharing does not give SBC's advanced services affiliates UNE-type rights, *see* 47 C.F.R. § 51.307-51.315, and Interim Line Sharing is not priced at UNE rates, *see* Merger Conditions ¶ 8b. Likewise, as explained above, Interim Line Sharing is not subject to the pick-and-choose requirements of section 252(i), which paragraph 5a incorporates by reference.

The fact that Interim Line Sharing is not included in interconnection agreements does not mean that it is exempt from public disclosure. Paragraph 3d of the Merger Conditions speaks of recording the separate affiliate's exclusive use of the incumbent LEC's equipment "under a written agreement," without suggesting that this "written agreement" must be an interconnection agreement approved under sections 251 and 252 of the 1996 Act. The Merger Order further explains that an SBC incumbent LEC "will conduct all transactions with its advanced services affiliate" – other than facilities and services covered by an interconnection agreement – "on an arm's length basis, with transactions reduced to writing and timely posted on the company's Internet website in accordance with the Commission's [Non-Accounting Safeguards] rules." Merger Order ¶ 466 & n.857; *see also* Merger Conditions ¶¶ 3 & 3i.

SBC has complied with its disclosure obligations in Kansas and other states by making affiliate agreements publicly available, as can be seen by reviewing the ASI affiliate agreements on SBC's website. *See* <http://www.sbc.com/PublicAffairs/PublicPolicy/Regulatory/AdvSol-Telephone.html>. But as the above analysis shows, nothing in the Merger Conditions requires that Interim Line Sharing arrangements must be included in interconnection agreements between SBC's advanced services affiliates and incumbent LECs. The assertion that SBC may have failed to "compl[y] with the express terms of the Merger Order," January 13 Letter at 2, is unfounded.

2. Terms and Conditions for CLECs' Surrogate Line Sharing

Surrogate Line Sharing arrangements likewise do not need to be included in the ASI/SWBT interconnection agreement. That would be facially nonsensical, for SWBT provides Surrogate Line Sharing to CLECs, not to ASI. SBC has satisfied the Merger Conditions by incorporating terms and conditions for Surrogate Line Sharing into the ASI/SWBT agreement by reference, and making CLECs a direct offer to include Surrogate Line Sharing in *their* interconnection agreements. CLECs thus have full notice of this arrangement, as contemplated by the Commission.

While Interim Line Sharing is an exclusive relationship between the SBC incumbent LECs and their advanced services affiliates, the Merger Conditions ensure unaffiliated advanced services providers "a benefit comparable" to Interim Line Sharing: a 50-percent, Surrogate Line Sharing discount on charges for full unbundled local loops that are used to provide data services to customers of SBC incumbent LEC voice-grade services, in a manner that would be compatible with line sharing. Merger Order ¶ 329; Merger Conditions ¶¶ 8, 14. The discounted Surrogate Line Sharing Charge makes up, in a competitive sense, for unaffiliated providers' inability to

share lines with the SBC incumbent LEC. This discounted charge puts unaffiliated providers on a level playing field with SBC's own advanced services affiliate, which pays the incumbent LEC the same charges as compensation for its right of Interim Line Sharing. Merger Conditions ¶¶ 369-370.

The Merger Conditions state that interconnection agreements should include terms and conditions for items the incumbent LEC "shall provide to the Separate Advanced Services affiliate." Merger Conditions ¶ 5a. Since the advanced services affiliate does not use Surrogate Line Sharing, terms and conditions for Surrogate Line Sharing were not explicitly included in the ASI/SWBT interconnection agreement. At the same time, however, paragraph 8b provides that Surrogate Line Sharing *Charges* – which determine what the affiliate will pay as its Interim Line Sharing Charge – should be "establish[ed] and ma[d]e available" through interconnection agreements with affiliated as well as unaffiliated advanced services providers. SWBT and ASI have complied with this requirement in Kansas and other states.

With respect to unaffiliated advanced services providers, SWBT (and other SBC incumbent LECs) issued an announcement on October 27, 1999, explaining what the Surrogate Line Sharing discounts are and how CLECs can obtain them. A copy of SWBT's electronic letter is provided as Attachment 1. This notification fulfilled SWBT's obligation, under paragraph 14 of the Merger Conditions, to offer the Surrogate Line Sharing Charge discounts for inclusion in CLECs' interconnection agreements.[5] Given this direct notification, it is not necessary for CLECs (or the FCC) to rely upon the ASI/SWBT interconnection agreement as a form of indirect notification.

The ASI interconnection agreements, including the agreement filed with the KCC on October 5, 1999, likewise comply with paragraph 8b. Although the Kansas agreement does not detail the Interim or Surrogate Line Sharing arrangements for the reasons explained above, the full terms of the Merger Conditions are incorporated by reference in section 1.2 of Appendix FCC Merger Conditions This includes the percentages for calculating Surrogate Line Sharing Charges given in paragraph 8b of the Merger Conditions, which can be applied to the lowest arbitrated loop prices in the State of Kansas (which may change from time to time, but are a matter of public record). Appendix FCC Merger Conditions to the Kansas Agreement is provided as Attachment 2 hereto.

3. Clarifying Changes to the ASI Interconnection Agreements

As explained above, SBC already provides the full measure of public disclosure contemplated by the Merger Conditions. There is no merger violation or enforcement issue, much less a question of withholding information that might be useful to CLECs, as suggested in the January 13 Letter (at 1).

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[5] SBC also offers interested CLECs a multi-state, generic interconnection agreement that contains terms and conditions for the Surrogate Line Sharing Discount. *See* Merger Conditions ¶ 44 ("Multi-State Interconnection and Resale Agreements").

Nonetheless, both the January 13 Letter and the Strickling Letter raise a policy concern regarding inclusion of additional terms and conditions – which are already found in ASI's affiliate agreements, CLECs' interconnection agreements, and the Merger Conditions – in ASI's interconnection agreements as well. Because ASI's interconnection agreements with SBC incumbent LECs generally were filed with state commissions prior to release of the final Merger Conditions on October 8, 1999, they incorporate by reference, rather than reciting, the specific terms for calculating Surrogate Line Sharing Charges that were subsequently set forth in the Commission-approved Merger Conditions. Yet SBC has committed, even before receiving the January 13 Letter, to amend approved ASI interconnection agreements to include the Surrogate Line Sharing Charges that the SBC incumbent LECs offer unaffiliated CLECs in applicable areas.[6] These are the same charges that ASI will be paying for its Interim Line Sharing, as the amended agreements will state. The ASI interconnection agreements also will be amended to include a description of Interim Line Sharing. This new language will make clear that Interim Line Sharing will be provided outside the ordinary section 251 and 252 processes, on an exclusive basis, and without pick-and-choose rights under section 252(i), as noted in the Strickling Letter (at 2).

No similar amendments are necessary in the five Ameritech states. The SBC advanced services affiliate in those states (Ameritech Advanced Data Services ("AADS")) purchases stand-alone unbundled loops from the SBC incumbent LECs and does not engage in Interim Line Sharing. *See* Merger Conditions ¶ 14a. For the Staff's reference, a copy of the AADS interconnection agreement for Michigan is available at <http://www.ameritech.com/corporate/regulatory/index.html>.

Conclusion

The ASI/SWBT interconnection and affiliate agreements, and SWBT's Surrogate Line Sharing offerings for CLECs, represent successful implementation of the Merger Conditions. There is no violation of the Merger Conditions and no issue that warrants further consideration by the Enforcement Bureau.

[6] The ASI states are Arkansas, California, Connecticut, Kansas, Missouri, Nevada, Oklahoma, and Texas. In Texas, however, ASI has opted into the standard Texas 271 Agreement ("T2A"), and will include appropriate language regarding Surrogate Line Sharing as part of a broader contract amendment to be filed in the future.

Accessible

Southwestern Bell

"Notification of Promotions Related to the SBC/Ameritech Merger – Arkansas, Kansas, Missouri, Oklahoma, Texas"

Date: October 27, 1999

Number: **CLEC99-157**

Contact: Southwestern Bell Account Manager

As a condition of exercising the FCC's grant authorizing the SBC and Ameritech merger, the SBC/Ameritech incumbent LECs are required to comply with several merger conditions. Described herein, are more details of five (5) promotional offerings made on October 15 related to the merger conditions. This document is a summary of this promotion. The FCC Conditions represent the legal offer of all promotional discounts. Consult the CLEC Handbook for information on how to order this, and all other promotions related to the SBC/Ameritech merger. For further information please access our web site: https://clec.sbc.com *(click on SBC/Ameritech Merger Information, enter ID/Password).*

I. Promotional Discount for Resale

SBC/Ameritech will provide a promotional residential discount rate in accordance with the SBC/Ameritech Merger Conditions filed at the FCC in Dkt No. CC 98-141. The Residential Promotional Discount will begin November 7, 1999. To participate in the SBC/Ameritech Promotional Discount program, a CLEC will need to have a new contract in place, which includes this promotion, or a CLEC will need an amendment to its current interconnection agreement with SWBT, Pacific Bell, Nevada Bell, and/or SNET as appropriate.

The Residential Promotional resale discount rate is 32 percent off of the retail rate. This is a promotion aimed at new end users, and the CLEC's existing residential end users are **not** eligible for this promotional discount. The Promotional rate will be available for each end user for 3 years from the date the residential class of service is started, or the period during which the resold service remains at the same service location and for the same CLEC, whichever is shorter.

The Promotional Resale Discount applies:

1. to new residence class of service access line orders placed during the offer period. To receive the discount the line is ordered as a separate line and not as a bill on or bill with.
2. to the new residence services and products available for resale and purchased for the promotional discounted residential class of service access line during the offer period.

Pricing

The 32% discount will continue to be offered for new end users until SBC/Ameritech meets Merger commitments and benchmarks on a state by state level. A modified promotional discount of 1.1 times the state approved resale discount will replace the 32% resale discount and become effective for qualifying CLEC residential end users in the course of the promotion. SBC/Ameritech will send subsequent accessible letters advising you of the changes.

To request access to the Resale discount promotion, a CLEC must:

1. amend their existing Interconnection Agreement with appropriate language from the "Appendix FCC Merger Conditions." An order form is available at our web site https://clec.sbc.com *(click on SBC/Ameritech Merger Information, enter ID/Password, click on Amendment Request Form).*
2. request the Resale Promotion discount on the order (if desired).
3. on a quarterly basis, certify to SBC/Ameritech and the appropriate state commissions that the promotional discount is being used accordance with the FCC's Proposed Merger Conditions.

Additional Information for the Resale Promotion

1. The requests, for new promotional discounted residence class of service access lines, are to be placed as a separate line order and not as a bill on or bill with. If more than one line for the same end user is being requested during the resale promotional period, then these promotional discounted lines may be billed together.
2. Additional listings are not included as a part of the promotional offer.
3. The FCC Conditions represent the legal offer of all promotional discounts. Consult the CLEC Handbook for information on how to order this, and all other promotions related to the SBC/Ameritech merger. Please visit our web site at https://clec.sbc.com where a complete copy of the merger conditions, contract language and an order form is available.

II. Promotional Offering for UNE Platform (UNE-P)
(Southwestern Bell, Pacific Bell, and Nevada Bell only. SNET's UNE-P offering will be covered under a separate Accessible Letter notification).

SBC/Ameritech will provide a promotional offering for UNE-P to enable the telecommunications carriers to provide residential POTS service and residential Basic Rate Interface ISDN service. The official terms and conditions under which the platform will be offered are specified in the FCC Conditions.

The promotional offering will be available to CLECs on November 7, 1999. The FCC Conditions are the primary source document for these conditions. However, in general, the promotional offering period will end at the earlier of the following:

- Three years after the commencement of the Offering Window period (i.e. November 7, 2002).
- The month following the date when the sum of resold lines in service at the Promotional Resale Discounts plus the quantity of Promotional End-to-End Combinations in service reaches the maximum allowable quantity set forth for each state.

For each promotional UNE-P ordered, the term of the discount will be 3 years. For example, if a CLEC orders promotional UNE-P at the end of year two of the promotion, they would receive the discount for the following 3 years.

The Promotional UNE Platform Offering Includes End-to-End Combinations of:

- Residential POTS service.
- Residential Basic Rate Interface (BRI ISDN).

Pricing

The price for the promotional UNE platform shall be negotiated or established by the appropriate state commission in accordance with the pricing rules that apply to UNEs pursuant to 47 U.S.C. & 252 (d)(1). The promotional UNE platform shall not be available in combination with unbundled loops obtained under any other promotion, including the Promotional Discounts on unbundled local loops.

To request the promotional UNE Platform offering, CLECs must:

1. Amend their existing Interconnection Agreement with appropriate language from the "Appendix FCC Merger Conditions." An order form is available at our web site https://clec.sbc.com *(click on SBC/Ameritech Merger Information, enter ID/Password, click on Amendment Request Form).*
2. Request the Promotional UNE Platform offering on the order.
3. On a quarterly basis, certify to SBC/Ameritech and the appropriate state commissions that all promotional UNE Platforms provided are being used in accordance with the FCC's Proposed Merger Conditions

III. Promotional Discount for Basic Unbundled Residential Loop

SBC/Ameritech will provide promotional rates for access to unbundled 2-Wire Analog Loop(s) for use by CLECs in providing local service to residential end users. The terms and conditions under which the discount will be offered are specified in the SBC/Ameritech Merger Conditions.

The discount offer will be available to CLECs on November 7, 1999. The period during which CLECs may order residential loops at the discount will vary by state jurisdiction and is dependent on satisfaction of certain conditions set forth in the merger agreement between SBC/Ameritech and the FCC. The FCC Conditions are the primary source document for these conditions. However, in general, the promotional discount period will end at the latter of the following:

- two years following the Merger Closing Date (i.e. October 8, 2001);
- SBC begins providing in-region interLata long distance service; or
- SBC initiates national local services to residential customers in each of 15 out-of-region markets.

In addition, the promotion may end once each state processes orders for a specified number of loops using the discount.

For each loop with a promotional discount, the term of the discount will be 3 years. For example, if a CLEC orders a loop at the end of the two-year promotion, they would receive the discount for the following 3 years. At the end of 3 years, the loop discount will be removed, to be replaced by contract rates then in effect.

The Promotional Discount applies:

1. to Residence Loops only.
2. to loops ordered after the promotion begins.
3. to monthly recurring charges only (non-recurring charges remain the same)
4. for UNE 2-wire analog loops only used for CLEC end users (not DSL loops).
5. for a maximum of three years, or when the loop is terminated, whichever occurs first.
6. to the basic loop UNE only.

Pricing

Attachment C of the FCC Conditions contains the prices, by state and by zone.

To request access to the discount promotion, CLECs must:

1. amend their existing Interconnection Agreement with appropriate language from the "Appendix FCC Merger Conditions." An order form is available at our web site https://clec.sbc.com *(click on SBC/Ameritech Merger Information, enter ID/Password, click on Amendment Request Form)*
2. request the residence loop discount on the order
3. on a quarterly basis, certify to SBC/Ameritech and the appropriate state commissions that all unbundled loops provided with the promotional discount are being used in accordance with the FCC's Proposed Merger Conditions.

IV. Discounted Surrogate Line Sharing Charges

SBC's incumbent LECs will offer the Surrogate Line Sharing discount for UNE local loops in accordance with paragraph 8 *(Provisioning Interim Line Sharing to the Separate Advanced Services Affiliate)* of the SBC/Ameritech Merger Conditions. The effective date for this discount is October 22, 1999, and this discount will last until SBC's incumbent LECs begin providing line sharing to unaffiliated providers in that same geographic area. This discount is for ADSL[1] local loops only and will be applied as follows:

- discount 50% of the lowest monthly recurring charge per zone per state
- discount 50% of the lowest non-recurring line or service connection charge per state

[1] For any other technology, the separate Advanced Services affiliate may meet the compatibility standard by showing that the technology (i) would be compatible with the incumbent LEC's voice grade service and (ii) is compatible with the filters specified in Annex E to ANSI standard T1.413-1998.

- bill 100% of the lowest nonrecurring service order charges (i.e., there is no discount for service order charges)

The discount is only available where the SBC/Ameritech incumbent LEC either provides Interim Line Sharing for new activations of ADSL service to a separate Advanced Services affiliate or utilizes Interim Line Sharing to provide new activations of ADSL service provided by the incumbent LEC in the same serving wire center as the unaffiliated provider's Advanced Service. A list of SWBT, Pacific Bell, Nevada Bell, and SNET wire centers that qualify for this discount can be found at the following URL address: https://clec.sbc.com

Providers of Advanced Services must satisfy the following conditions to qualify for the discount:

1. Providers of Advanced Services must amend their existing Interconnection Agreement with the appropriate language from the "Appendix FCC Merger Conditions" An order form is available at our web site: https://clec.sbc.com *(click on SBC/Ameritech Merger Information, enter ID/Password, click on Amendment Request Form).*
2. Providers of Advanced Services must purchase the unbundled local loop to provide Advanced Services only and must not use the unbundled loop to provide any voice grade service;
3. Providers of Advanced Services are serving an end user customer to whom the incumbent LEC provides voice grade service, on either a retail or wholesale basis, at the same premises;
4. Providers of Advanced Services are serving within a spectral mask that would, if line sharing were available, be compatible with the incumbent LEC's voice grade service and the filters used by the incumbent LEC to provide Interim Line Sharing; and
5. Providers of Advanced Services must on a quarterly basis, certify to SBC/Ameritech and the appropriate state commission that they are using all unbundled local loops provided at the Surrogate Line Sharing Charges in accordance with the FCC's Proposed Merger Conditions.

To obtain the Surrogate Line Sharing charges, a telecommunications carrier must provide written notification to SBC/Ameritech identifying the unbundled loops that it is using or will use to provide a qualifying Advanced Service. For unbundled loops ordered on or after October 22, 1999, such notification must be provided on the Local Service Request (LSR) at the time the order is placed per the ordering instructions located in the CLEC Handbook (https://clec.sbc.com). For unbundled loops in service prior to October 22, 1999, the Surrogate Line Sharing Charges will only apply to unbundled loops for which such notification is received by November 22, 1999. For notifications received by November 22, 1999, the discount will be applied retroactive back to October 22, 1999. A separate form is attached as a template for Providers of Advanced Services to complete and certify any embedded base customers that qualify for the surrogate line sharing discount. Please return the completed form to your Account Manager This form may be returned by mail or email. *(Note: please return this form after signing the Appendix FCC Merger Conditions)*

V. Advanced Services OSS Discounts

SBC/Ameritech will, subject to telecommunications carrier's qualification and compliance with the provisions of the FCC Conditions, provide telecommunications carrier a discount of 25%

from recurring and nonrecurring charges (including 25% from the Surrogate Line Sharing Charges, if applicable) that otherwise would be applicable for unbundled local loops used to provide Advanced Services in the same relevant geographic area under the conditions and for the period of time outlined in the FCC Conditions. SBC/Ameritech shall make this OSS discount available November 7, 1999, and the discount shall continue until SBC/Ameritech has developed and deployed OSS options for pre-ordering and ordering xDSL in satisfaction of the FCC's Proposed Merger Conditions.

Telecommunications carriers must satisfy the following conditions to qualify for the discount:

1. the telecommunications carrier must amend their existing Interconnection Agreement with the appropriate language from the "Appendix FCC Merger Conditions," and
2. the telecommunications carrier must order an unbundled local loop in accordance with normal ordering procedures to provide Advanced Services, such as an xDSL compatible loop.

As this discount is applicable to all Advanced Services, upon receipt of the CLEC's signed FCC Merger Conditions Amendment, SBC will automatically apply the OSS discount to the Advanced Service accounts and orders

Like the telecommunications carrier that receive the Surrogate Line Sharing discount, telecommunications carriers that obtain OSS discounts on unbundled local loops shall, on a quarterly basis, certify to SBC/Ameritech and the appropriate state commission that all unbundled local loops on which they are receiving the OSS discounts to provision an Advanced Service is being used in compliance with the provisions of the FCC's Proposed Merger Conditions.

Additional Information:

This document is a summary of these promotions. The FCC Conditions represent the terms of the legal offer of all promotional discounts. Consult the CLEC Handbook for information on how to order promotions related to the SBC/Ameritech merger.

CLEC Name: _____

Embedded Loops that Qualify for the Surrogate Line Sharing Discounts		
AECN/OCN	CIRCUIT ID	BAN # OR ACC'T #