

Before the
Federal Communications Commission
Washington, D.C. 20554

2001 MAR 15 P 12:00

In the Matter 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)

FILED

CC Docket No. 98-141

File No. ASD 99-49

ORDER

Adopted: March 2, 2001

Released: March 7, 2001

By the Commission: Commissioner Furchtgott-Roth concurring and issuing a statement.

1. In this Order, we modify the *Merger Conditions* adopted in *SBC/Ameritech Merger Order*¹ so that any payment arising from any failure of SBC Communications, Inc. (SBC) to meet the Out-of-Region Competition commitments would be paid to the United States Treasury in accordance with the Miscellaneous Receipts Act.²

2. The Commission and SBC have negotiated the terms of a Consent Decree that would modify the Merger Conditions accordingly. A copy of the Consent Decree is attached hereto and is incorporated by reference.

3. We have reviewed the terms of the Consent Decree. We believe that the public interest would be served by approving the Consent Decree.

4. Accordingly, IT IS ORDERED, that pursuant to sections 4(i), 4(j), 214, 309, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 4(i), 4(j), 214, 309, and 316, the Consent Decree,

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 (1999) (*SBC/Ameritech Merger Order* or *Merger Order*).

² Pub.L. No. 97-258, 96 Stat. 948 (codified as amended at 31 U.S.C. § 3302).

incorporated by reference in and attached to this Order, is hereby ADOPTED.

5. Accordingly, IT IS FURTHER ORDERED, that the Secretary SHALL SIGN the Consent Decree on behalf of the Commission.

6. IT IS FURTHER ORDERED that *Merger Condition XXI* (Out-of-Region Competition Commitment) is MODIFIED to the extent indicated in the Consent Decree and shall become effective 30 days after the release of this Order.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

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CONSENT DECREE

I. INTRODUCTION AND BACKGROUND

1. The Federal Communications Commission (the "Commission") and SBC Communications Inc. ("SBC" or "Company") hereby enter into this Consent Decree for the purpose of modifying Condition XXI of the *SBC/Ameritech Merger Order*³ ("Condition XXI") so that any payments that may arise under that condition would be paid to the United States Treasury in accordance with the Miscellaneous Receipts Act,⁴ instead of to a state-designated fund.

2. Conditions were proposed by SBC and adopted by the Commission when it approved SBC and Ameritech's license transfer application. Among other conditions in the *SBC/Ameritech Merger Order*, the Commission adopted SBC's proposed commitment to compete in local telecommunications markets outside its region.⁵ Condition XXI established payment obligations in the event SBC fails to meet its commitments to provide facilities-based local exchange service in markets outside of its region.⁶

³ 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 (1999) ("*SBC/Ameritech Merger Order*").

⁴ Pub. L. No. 97-258, 96 Stat. 948 (codified as amended at 31 U.S.C. § 3302).

⁵ *SBC/Ameritech Merger Order* at Appendix C, para. 59.

⁶ *Id.* For example, SBC would have to pay \$110,000 per day for each missed competitive entry requirement. *Id.*

Condition XXI requires SBC to make such payments to a state-designated fund to provide telecommunications services to “underserved areas, groups or persons.”⁷ The appropriate state public utilities commissions would manage any such funds if the commission(s) accepted such a role.⁸

II. DEFINITIONS

3. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) The “Commission” or “FCC” means the Federal Communications Commission and all divisions of the Commission, including the Common Carrier Bureau.
 - (b) “SBC” or “the Company” means SBC Communications Inc. and any subsidiaries and affiliates, including its incumbent local exchange carriers (“LECs”) in SBC states and any successors or assigns of SBC Communications, Inc. or its incumbent LECs.
 - (c) The “Parties” to this agreement are SBC and the Commission.
 - (d) “Order” or “Adopting Order” means an order of the Commission adopting this Consent Decree.
 - (e) “Final Order” means an order that is no longer subject to administrative or judicial reconsideration, review, appeal, or stay.
 - (f) The “SBC States” are Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.

III. AGREEMENT

4. The Commission and SBC agree to modify Condition XXI, paragraph 59.d., as set forth in Appendix A to this Decree, to provide that any contributions that may be required by that paragraph shall be paid to the United States Treasury in accordance with the Miscellaneous Receipts Act, instead of to a state-designated fund to provide telecommunications services to underserved areas, groups, or persons. The Parties further agree that the purpose of this Consent Decree is to modify Condition XXI of the *SBC/Ameritech Merger Order* in order to conform to the requirements of the Miscellaneous Receipts Act.

5. The Parties agree that any payments that may be made by SBC pursuant to Condition XXI of the *SBC/Ameritech Merger Order* would constitute “money for the government” within the meaning of the Miscellaneous Receipts Act.⁹

⁷ *Id.* at Appendix C, para. 59(d).

⁸ *Id.*

⁹ Congress in 1849 enacted the original Miscellaneous Receipts Act to ensure that federal monies are deposited into the United States Treasury from which they may be removed only pursuant to the congressional appropriation process. Specifically, “an official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim.” 31 U.S.C. § (continued....)

6. The Parties further agree that modifying Condition XXI of the *SBC/Ameritech Merger Order* so that voluntary payment obligations are made to the United States Treasury will not affect the substance of Condition XXI or the goal of SBC's commitment to engage in out-of-region competition. The condition will remain unchanged in all other respects. The Commission and SBC agree that changing the recipient of payment will impose no additional burden or financial obligation on SBC.

7. 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 Order adopting this Consent Decree, provided the Order adopts the Consent Decree without change, addition, or modification.

8. The Commission and SBC agree that the effectiveness of this Consent Decree is expressly contingent upon issuance of an Order that is consistent with the Consent Decree and which adopts the Consent Decree without change, addition, or modification.

9. 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.

10. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Order adopting this Consent Decree, neither SBC nor the Commission shall contest the validity of the Consent Decree or Order.

11. Any violation of the Consent Decree or Adopting Order will constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

12. The Commission and SBC agree that this Consent Decree does not constitute an adjudication, finding, or determination concerning SBC's compliance with the *SBC/Ameritech Merger Order*, including Condition XXI, the Communications Act of 1934, as amended, and the Commission's implementing rules.

13. The Parties agree that this Consent Decree shall become effective thirty days after the release of the Adopting Order.

14. This Consent Decree may be signed in counterparts.

(Continued from previous page) _____
3302(b). The underlying purpose of the Miscellaneous Receipts Act is to preserve congressional control of the appropriations power. See *Scheduled Airlines Traffic Offices, Inc. v. Department of Defense*, 87 F.3d 1356, 1362 (D.C. Cir. 1996).

FEDERAL COMMUNICATIONS COMMISSION

By: Magalie Roman Salas

Magalie Roman Salas, Secretary

SBC COMMUNICATIONS INC.

By: Lori A. Fink

Lori A. Fink, General Attorney, External Affairs

APPENDIX A

Subparagraph 59.d of the SBC/Ameritech Merger Conditions shall be amended to read as follows:

d. Not later than 3 business days after the deadline set forth in Subparagraph c, SBC/Ameritech shall file a notice regarding its satisfaction of the relevant requirements with the Secretary of the Commission. If an SBC/Ameritech Out-of-Region Entity fails to satisfy any of the 36 separate requirements for each out-of-territory market on or before the deadline set forth in Subparagraph c, SBC/Ameritech shall make a one-time contribution of \$1.1 million for each missed requirement (up to a total contribution of \$39.6 million per market and \$1.188 billion if SBC/Ameritech Out-of-Territory Entities fail to satisfy all 36 requirements in all 30 markets) to the U.S. Treasury. Payments made under this Subparagraph for a failure to satisfy any of the 36 entry requirements shall constitute full satisfaction of the relevant entry requirement.¹⁰ SBC/Ameritech's payments under this Subparagraph shall not be reflected in the revenue requirement of an SBC/Ameritech incumbent LEC. Disputes regarding SBC/Ameritech's satisfaction of the deadlines set forth in Subparagraph c shall be resolved by the Chief of the Common Carrier Bureau, whose decision shall be appealable to the Commission.

¹⁰ SBC/Ameritech's failure to make any payments required by this Condition would be considered a violation of the *SBC/Ameritech Merger Order* and could subject SBC/Ameritech to penalties, fines, or forfeitures, pursuant to general Commission authority.

**CONCURRING STATEMENT OF
COMMISSIONER HAROLD FURCHTGOTT-ROTH**

Re: SBC/Ameritech Merger Order, Consent Decree, CC Docket No. 98-141.

I did not support imposing any of these conditions on these license transfer transactions. Under my analysis, therefore, there would be no need for any determination regarding where funds raised from "violations" of these conditions would be deposited, and I did not consider this issue at the time the order was adopted. To the extent that these conditions are enforced against SBC, however, I agree with the Commission that any payments must be made in accordance with the Miscellaneous Receipts Act. I find it dismaying that this legal obligation was not correctly understood by the Commission earlier, when it fashioned these requirements.