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### FCC Complaints Concerning RBOC Merger Violations

RBOC	MERGER AUDIT	COMPLAINANT	DATE	ISSUE(S)	STATUS
Verizon	N/A	Covad	March 5, 2001	Verizon's unilateral elimination of an FCC-mandated discount for loops used to provide advanced services.	Open
Verizon	Collocation, Unbundled Network Element and Line-Sharing Audits (filed January 29, 2001)	WorldCom	March 20, 2001	<ol style="list-style-type: none"> <li>1. Verizon failed to comply with several of the FCC's collocation requirements and discriminated to the advantage of its advanced services affiliate (i.e., Verizon did not charge the affiliate collocation fees or bill the affiliate for collocation space)</li> <li>2. Verizon did not correctly bill wholesale customers for network facilities.</li> <li>3. Verizon did not demonstrate to the relevant state commissions that it was necessary for Verizon to reserve dark fiber in its network.</li> <li>4. Verizon provided its own employees with detailed loop information on an electronic basis, whereas Verizon only provided non-affiliated carriers with this information on a manual basis.</li> </ol>	Open, except for collocation violations (September 14, 2001 Consent Decree)
Verizon	Genuity Audit (June 1, 2001)	AT&T	June 28, 2001 and August 8, 2001	<ol style="list-style-type: none"> <li>1. Verizon is Genuity's sole supplier of debt capital, in violation of merger conditions that limit Verizon's holdings to no more than 25 percent of the total outstanding debt of Genuity.</li> <li>2. Verizon is providing Genuity with preferential treatment due to its failure to (a) charge Genuity commercially reasonable rates; and (b) bill and collect outstanding debts from Genuity.</li> </ol>	Issue 3 was closed by In the Matter of Verizon Communications Inc., File No. EB-01-IH-0519(rel. August 20, 2002); Issues 1, 2, and 4 are outstanding.

FCC Merger Enforcement Chart  
July 3, 2002

				<p>3. Verizon withheld information from the auditor.</p> <p>4. Verizon's management did not provide an assertion regarding Verizon's discrimination in favor of Genuity in the provision of high-speed access and regular special access services because Verizon unilaterally decided that this was not required.</p>	
Verizon	Genuity Audit (filed June 1, 2001)	WorldCom	June 26, 2001	Same as issues 2-4 above.	See above.
Verizon	Advanced Services Affiliate & General Merger Conditions Audits (filed June 18, 2001 and June 1, 2001, respectively)	CompTel	August 6, 2001	<p>1. Verizon provided its advanced services affiliate with free line-sharing for the period July 2000-April 2001.</p> <p>2. Verizon provided its advanced services affiliate with access to operations support systems that were not available to other carriers.</p> <p>3. Verizon misreported or failed to report carrier-to-carrier performance data.</p> <p>4. Verizon failed to provide other carriers accurate and timely wholesale discounts mandated by the merger conditions.</p>	Issue 3 was closed by In the Matter of Verizon Communications Inc., File No. EB-01-IH-0519(rel. August 20, 2002); Issues 1, 2, and 4 are outstanding.
Qwest	Qwest-US WEST Merger Audit (April 16, 2001)	AT&T	May 1, 2001	Qwest provided in-region, interLATA private line services to 266 customers, which violates both the US WEST-Qwest merger conditions and Section 271 of TA-96.	Open
Qwest	Qwest-US WEST Merger Audit (April 16, 2001)	WorldCom	May 14, 2001	Same as above	Open
Qwest	Qwest-US WEST Merger Audit (April 16, 2001)	CompTel	May 16, 2001	Same as above	Open

FCC Merger Enforcement Chart  
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Qwest	Qwest-US WEST Merger Audit (April 16, 2001)	Touch America	October 29, 2001	Same as above. However, Touch America notified the FCC that Arthur Andersen did not contact Touch America concerning the audit and would not incorporate Touch America's concerns.	
Qwest	Qwest-US WEST Merger Audit (Year 2) (March 11, 2002)	AT&T	May 2, 2002	Same as the Year 1 Audit references above, though the scope of the violations increased in Year Two.	Open
Qwest	Formal complaint concerning Qwest's failure to comply with the provisions of its divestiture agreement, as required by the Qwest-US WEST merger conditions	Touch America (formal complaint); also, Touch America letter re: Merger Audit, October 29, 2001	File No. EB-02-MD-004 (Feb. 11, 2002) (revised and refiled March 1, 2002).	Same as above, plus other accusations, such as Qwest's failure to divest facilities, etc.	Open
Qwest	Qwest-US WEST Merger Audit (Year Two) (March 11, 2002)	Touch America	May 3, 2002	Touch America asks the FCC to issue an order directing Qwest to provide Touch America with all customer, circuit and CPNI associated with the customer accounts identified as Touch America customers in the Year Two Merger Audit.	Open
SBC	SBC-Ameritech Merger Audit (Year One)	Advanced Telcom Group (ATG)	December 29, 2000	<ol style="list-style-type: none"> <li>1. SBC failed to treat its advanced services affiliate on an arm's length basis (shared office space, shared executives, etc.)</li> <li>2. SBC filed collocation applications on its affiliate's behalf.</li> <li>3. SBC failed to comply with Rule 51.321(h) of the FCC's collocation rules concerning timely reporting of exhausted collocation space.</li> </ol>	In the Matter of SBC Communications, Inc. Apparent Liability for Forfeiture, File No. EB-00-IH-0326a, released May 24, 2001 (collocation violations); other merger violations remain unresolved.

FCC Merger Enforcement Chart  
July 3, 2002

				4. SBC developed an ordering system on behalf of its advanced services affiliate.	
SBC	Letter requesting revisions to the data reported through the Carrier-to-Carrier Performance Plan	CompTel	June 7, 2001	CompTel requested the following revisions to the publicly reported wholesale performance data: <ol style="list-style-type: none"> <li>1. The FCC should post voluntary payments with the wholesale performance data rather than burying it in ECFS.</li> <li>2. Voluntary payments should be disaggregated by state and by measure.</li> <li>3. SBC should be required to report gross monthly voluntary payments.</li> <li>4. SBC should report state offsets to its payments under the FCC Merger Conditions.</li> </ol>	Open
SBC	SBC-Ameritech Merger Audit (Year Two) (September 4, 2001)	CompTel	January 24, 2002	<ol style="list-style-type: none"> <li>1. SBC failed to comply with the provisions of the Carrier-to-Carrier Performance Plan;</li> <li>2. SBC failed to provide required promotion discounts to non-affiliated carriers, including CompTel member ATG;</li> <li>3. SBC failed to comply with the FCC's collocation rules and overcharged ATG for collocation space.</li> </ol>	Open, with the exception of the 100 percent cap on the percentage by which SBC misses a performance benchmark under the Carrier-to-Carrier Performance Plan, which was permitted by CCB's February 6, 2002 letter to SBC.
SBC	SBC-Ameritech Merger Audit (Year Two) (September 4, 2001)	ATG	February 4, 2002	ATG notified the FCC that SBC finally credited ATG for the promotional discount required on IDSL lines by the merger conditions, 19 months late and only after CompTel and ATG filed the January 24 letter.	Open

FCC Merger Enforcement Chart  
 July 3, 2002

SBC	Section 272 Biennial Audit (Texas) December 17, 2001	AT&T	February 12, 2002	AT&T asked the FCC to require SBC to publicly file a non-redacted audit report, consistent with the Commission's order on the Verizon 272 Audit Report.	Open
SBC	SBC Request for an Extension of Its Deadline for Implementation of the Uniform and Enhanced OSS Interface	WorldCom	March 15, 2002	WorldCom asked the FCC to impose the "voluntary incentive payments" associated with Paragraph 382 of the Merger Order if SBC misses its 18 month implementation deadline.	Closed per CCB's March 22, 2002 letter; no sanctions.

FCC Merger Enforcement Chart  
 July 3, 2002

**FCC ENFORCEMENT ACTIONS**

<b>COMPANY</b>	<b>VIOLATIONS</b>	<b>DATE</b>	<b>SANCTIONS</b>	<b>CITE</b>
SBC	Failure to comply with section 51.312(h) of the FCC's rules, which requires timely notice of premises where collocation space has been exhausted, as identified by the collocation audit required by the SBC-Ameritech Merger Conditions.	February 25, 2002	\$84,000 (reduced from \$94,500)	File No. EB-00-1H-0326a Order on Review
SBC	Failure to accurately report wholesale performance data under the Carrier-to-Carrier Performance Plan required by the SBC/Ameritech Merger Conditions. (reporting period 10/8/99 through 12/31/99 for TX, OK, KS, MO, AK, CA, and NV)	May 29, 2001	\$88,000	File No. EB-00-IH-0432, Forfeiture Order
Verizon	Failure to comply with section 51.312(h) of the FCC's rules, which requires timely notice of premises where collocation space has been exhausted, as identified by the collocation audit required by the Bell Atlantic-GTE Merger Conditions. (reporting period 7/1/00 through 10/31/00)	September 14, 2001	\$77,000 plus remedial actions to ensure compliance with the rule.	File No. EB-01-1H-0236 Consent Decree

FCC Merger Enforcement Chart  
 July 3, 2002

SBC	Failure to provide shared transport in the Ameritech states as required by the SBC-Ameritech Merger Conditions.	January 18, 2002	\$6,000,000	File No. EB-01-IH-0030 Notice of Apparent Liability
Verizon	Verizon must allow Global NAPs to adopt its Rhode Island interconnection agreement with Verizon in Massachusetts and Virginia under the multi-state MFN requirement in the Bell Atlantic-GTE Merger Conditions	February 28, 2002	No damages; Global NAPs must file the Rhode Island agreement with the Virginia and Massachusetts commissions.	File No. EB-01-MD-010 Memorandum Opinion and Order
Verizon	Verizon failed to provide the independent auditor with certain historical performance data for an audit of Verizon's compliance with the Bell Atlantic-GTE Merger Conditions (June 20, 2000 through December 31, 2000). Verizon also misreported performance data for the same period, which affected Verizon's voluntary payments for failing to meet performance targets.  Verizon also failed to provide the independent auditor with several agreements between Genuity and Verizon.	August 20, 2002	Consent decree with \$260,000 payment to the U.S. Treasury. Verizon also must implement a remedial compliance program.	File No. EB-01-IH-0519 Order



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## FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

February 6, 2002

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RECEIVED

Ms. Caryn D. Moir  
Vice President – Federal Regulatory  
SBC Telecommunications, Inc.  
1401 I Street, NW, Suite 400  
Washington, DC 20005

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

Dear Ms. Moir:

This letter responds to SBC Communications, Inc.'s ("SBC") January 4, 2001 letter regarding performance measurements payments under the *SBC/Ameritech Merger Order*.<sup>1</sup> With this letter, I further explain the Common Carrier Bureau's ("Bureau") views on the method for calculating payments under the *Merger Order*.

In the *SBC/Ameritech Merger Order*, the Commission adopted the Carrier-to-Carrier Performance Plan ("Performance Plan") that requires SBC to make payments to the United States Treasury should it fail to meet certain performance standards.<sup>2</sup> The Performance Plan prescribes the steps SBC must follow to calculate payments.<sup>3</sup> Before making its first payment, SBC orally asked the Bureau for direction on eleven payment issues arising from the Performance Plan. On December 11, 2000, the Bureau provided SBC a letter setting forth how the relevant payment provisions should be interpreted.<sup>4</sup> On January 4, 2001, SBC indicated it disagreed with the Bureau's interpretation on four issues.<sup>5</sup> As explained below, based on my further review, I conclude that SBC's position on three issues is reasonable and accordingly modify my prior guidance. On one issue, I decline to modify my prior interpretation, but note that the practical impact of the issue may be dwindling.

<sup>1</sup> Letter from Sandra Wagner, Vice President, Federal Regulatory, SBC, to Carol E. Matthey, Deputy Bureau Chief, Common Carrier Bureau, FCC (Jan. 4, 2001) ("*SBC January 4th Letter*"); Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules, CC Docket 98-141, *Memorandum Opinion and Order*, 14 FCC Rcd 14712 (1999) ("*Merger Order*").

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

<sup>3</sup> *See id.*

<sup>4</sup> *See* Letter from Carol Matthey, Deputy Chief, Common Carrier Bureau, to Sandra Wagner, Vice President, Federal Regulatory, SBC (Dec. 11, 2000) ("*Bureau Payment Calculation Letter*").

<sup>5</sup> *See SBC January 4th Letter.*

1. For measurements expressed as averages, should the "performance gap" – the extent to which SBC misses the performance standard – be capped at 100% if SBC misses the performance standard by a higher percent?<sup>6</sup>

The Performance Plan does not, on its face, cap the difference between the level of service SBC provides to CLECs and the relevant performance standard (i.e., the "performance gap"). Accordingly, the Bureau instructed SBC to follow the formula spelled out in the *Merger Order*.<sup>7</sup> SBC disagrees with this guidance for two reasons. First, SBC contends that an uncapped performance gap will require the company to pay on more than the actual volume of activity. Second, SBC states that the Texas Commission subsequently imposed such a cap on the state's performance plan, and therefore the Bureau should modify its interpretation of the relevant provisions in the merger conditions.<sup>8</sup> As explained below, I conclude there are public policy benefits in permitting SBC to make calculations under this provision in a uniform manner with the Texas plan, and therefore I authorize SBC to cap the performance gap at 100%.

The *Merger Order* establishes a four-step method for calculating payments for this type of measurement (i.e., a measurement expressed as an average):<sup>9</sup>

- 1) SBC calculates the "ideal value," which is the minimum level of service SBC could provide CLECs without owing payments;<sup>10</sup>
- 2) SBC calculates the percentage difference between the ideal value and the service it gave CLECs (i.e., the "performance gap").<sup>11</sup> For example, if SBC provisions circuits to CLECs in nine days and calculates an ideal value of three days, the performance gap would be 200% (the difference of six days divided by the ideal value of three days);<sup>12</sup>

<sup>6</sup> See Issue Number 3 in the *Bureau Payment Calculation Letter* at 2-3.

<sup>7</sup> See *Bureau Payment Calculation Letter* at 2-3.

<sup>8</sup> *SBC January 4<sup>th</sup> Letter* at 3.

<sup>9</sup> In fact, there are three steps. Because the third step has two stages, I describe the process in four steps here. Stated simply, the formula is a function to the dollar value of the measurement multiplied by the number of data points multiplied by the average quality of SBC's performance.

<sup>10</sup> See *Merger Order* at Appendix C, Attachment A, A-116, at "Step 1" for measurements expressed as averages or means. The "ideal value" is SBC's term. SBC calculates the ideal value by translating the "critical-z" into the units being measured by the performance measurement (e.g., days, hours, and percentages). The ideal value is based partly on the service SBC provides its own retail customers (or a benchmark standard if SBC does not provide the service on a retail basis). See *Merger Order* at Appendix C, Attachment A, A-116. For simplicity, I use a one-month example; in fact, SBC's payments are based on chronic failures of either three consecutive months or six of twelve months in a calendar year. See *Merger Order* at Appendix C, Attachment A, ¶ 9.

<sup>11</sup> See *Merger Order* at Appendix C, Attachment A, A-116, "Step 2." This step requires SBC to "[c]alculate the percentage difference between the actual average and the [ideal value] . . ."

<sup>12</sup> Stated differently, in this example it took SBC three times longer to provision CLEC circuits than its retail circuits (nine days versus three).

- 3) SBC multiplies the performance gap by the number of data points.<sup>13</sup> Continuing with the example, SBC would multiply 200% by the number of times it provisioned circuits to CLECs, e.g., 150 provisioned circuits to yield 300;<sup>14</sup> then
- 4) SBC multiplies the product of Step 3 by a fixed-dollar amount based upon the measurement's designation in the Performance Plan as "High," "Medium," or "Low."<sup>15</sup> In the example, SBC would multiply 300 by the pre-set dollar amount, e.g., \$900 for a "Medium" measurement. SBC's final payment amount for this measurement would thus be \$270,000.

SBC first argues that the performance gap calculated in the second step should be limited to 100%. To do otherwise, SBC claims, would require the company to pay on more than the actual number of data points, i.e., applying a 200% performance gap to 150 data points would cause the company to pay on 300 data points.<sup>16</sup> Capping the performance gap at 100% would reduce the example payment to \$135,000.<sup>17</sup>

I find this argument unpersuasive. Failing the performance standard by a wide margin, which is often within SBC's control, creates a large performance gap. A large performance gap does not mean SBC pays on more than the actual number of data points, as SBC argues. Rather, SBC would simply be paying for a larger disparity on the specified number of occurrences.<sup>18</sup>

SBC also suggests that the Bureau should accept its position because the Texas Commission subsequently modified the Texas plan to cap the performance gap at 100%.<sup>19</sup> As SBC notes, part of the Performance Plan was modeled on the Texas plan. While the Commission was explicit that it was not bound to any future state change,<sup>20</sup> the fact that the Texas Commission chose to modify this aspect of the state performance plan warrants a consideration of whether there are public policy benefits in applying the calculation in the same fashion for the federal plan. The Commission is committed to the goal of

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<sup>13</sup> Although SBC's *January 4th Letter* uses the term "occurrences," SBC stated orally to Bureau staff that it uses "occurrences" and "data points" synonymously. SBC and the Bureau thus agree that the "total number of data points" refers to the total volume of CLEC activity for the measurement, e.g., the number of circuits provisioned to CLECs.

<sup>14</sup> In other words, 150 provisioned circuits times 200% to yield the number 300.

<sup>15</sup> See *Merger Order* at Appendix C, Attachment A, A-116 at "Step 3."

<sup>16</sup> *SBC January 4th Letter* at 3.

<sup>17</sup> In other words, 100% performance gap times 150 data points times the \$900 pre-set dollar amount.

<sup>18</sup> See *Merger Order*, 15 FCC Rcd at 14867, ¶ 377; see also *id.* at ¶ 378 (stating that SBC's payments will vary according to the "level and significance of the discrimination detected").

<sup>19</sup> *SBC January 4th Letter* at 3.

<sup>20</sup> *Merger Order* at Appendix C, Attachment A, ¶ 4 (stating that the Bureau will decide if state changes should be made to the Performance Plan).

working closely with the states in developing and applying national performance measurements as a general matter, and I believe that objective should guide our interpretation and application of the relevant merger conditions in this instance. I conclude that administrative efficiency would be served if SBC were permitted to apply this payment calculation in a fashion that mirrors the Texas performance plan. Accordingly, SBC may follow the 100% cap approach for measurements expressed as averages under the federal performance plan.

**2. Should SBC report z-scores and calculate payments for performance measurements with 10 or fewer data points?<sup>21</sup>**

The Performance Plan does not, on its face, exclude any performance measurements from either reporting or payment based on volume. Accordingly, I stated in the *Bureau Payment Calculation Letter* that SBC should report and pay on measurements with 10 or fewer data points.<sup>22</sup> SBC disagrees. Specifically, SBC argues that the Performance Plan's trebling of damages for volumes between 10 and 100 suggests by implication that volumes of 10 or fewer should be excluded.<sup>23</sup> SBC also has orally indicated its concern that it not be required to make payments for situations in which there are so few data points that a meaningful statistical conclusion cannot be made. Second, SBC suggests that the Texas Commission's exclusion of such low volume measurements in its state plan should guide the Bureau's decision.

At the outset, I note that the business rules expressly describe in detail the types of data SBC should exclude.<sup>24</sup> Nowhere among these exclusions are low-volume measurements. The fact that the Performance Plan trebles damages for volumes between 10 and 100 does not mean that the Commission wished to exclude volumes of 9 or fewer, given that the Commission was clear to exclude other data. To do so would be inconsistent with the Performance Plan's goal of completely capturing SBC's performance (except for limited, explicitly stated circumstances) and, where necessary, establishing payment obligations.<sup>25</sup> Second, the Performance Plan already addresses low-volume situations. The Commission adopted a specific statistical test for use with measurements with "29 or fewer" observations.<sup>26</sup> One-time low-volume situations will not, of themselves, lead to payment; instead, SBC would only make payments in low-volume situations when it misses the established standard three months in a row (or six months in a year). This aspect of the Performance Plan should protect SBC from having to make payments for random events.

SBC states that the Texas Commission clarified the Texas plan to exclude low-volume measurements for payments to the state.<sup>27</sup> As noted above, however, changes at the state level are not

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<sup>21</sup> See Issue Number 9, *Bureau Payment Calculation Letter* at 4-5.

<sup>22</sup> See *Bureau Payment Calculation Letter* at 4-5.

<sup>23</sup> See *SBC January 4th Letter* at 5-6.

<sup>24</sup> See *Merger Order* at Appendix C, Attachment A, A-12 - A-111.

<sup>25</sup> See *Merger Order*, 15 FCC Rcd at 14867, ¶ 377 (stating that the goal of the Performance Plan is to ensure that quality of service to CLECs will not deteriorate as a result of the SBC/Ameritech merger).

<sup>26</sup> See *Merger Order* at Appendix C, Attachment A, A-112 - A-114.

<sup>27</sup> *SBC January 4th Letter* at 6.

automatically made to the federal Performance Plan. Moreover, as SBC concedes, the Texas Commission excluded low-volume measurements only for payments directly to the state, not for payments to CLECs.<sup>28</sup> This is an important distinction between the two plans. The Texas Commission is still assured that SBC has an incentive to improve performance even in low-volume situations under its plan. If we were to accept SBC's proposal to exclude low volume measurements here, there would be no such assurance under the federal plan. I therefore believe this is an instance where the benefits of applying divergent federal and state approaches could outweigh the potential administrative costs. For these reasons, I decline to modify my prior interpretation. I note, however, that the effect of this issue may, as a practical matter, be less significant in light of the increase in CLEC activity over the last year. As CLEC business increases, measurement volumes increase, and SBC should encounter fewer low-volume situations.

3. 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), 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?<sup>29</sup>

The Performance Plan states that SBC should compare the level of service SBC provides CLECs (the "actual CLEC service") for each of the three months analyzed to the ideal value for the most recent month (i.e., the third month).<sup>30</sup> The Bureau instructed SBC to use this methodology in the *Bureau Payment Calculation Letter*.<sup>31</sup> SBC nevertheless observes that the Performance Plan's approach could result in a negative performance gap and payment amount because the months are not comparable.<sup>32</sup>

SBC suggests that a more appropriate approach would be to compare each month's actual CLEC service to the ideal value for the same month.<sup>33</sup> Upon further review, I agree that SBC's suggested approach will avoid the unintended results SBC describes and is consistent with the Performance Plan's methodology for other types of measurements.<sup>34</sup> SBC therefore may use its proposed approach on this issue.

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<sup>28</sup> *Id.* Under the Texas plan, payments fall into two tiers, i.e., payments to the Texas Commission and payments to CLECs.

<sup>29</sup> See Issue Number 4, *Bureau Payment Calculation Letter* at 3.

<sup>30</sup> *Merger Order* at Appendix C, Attachment A, A-116 – A-117. As described above, the ideal value is the minimum service SBC could give CLECs without being liable for payments. In addition, the relevant period of analysis could be six or twelve months.

<sup>31</sup> See *Bureau Payment Calculation Letter* at 3.

<sup>32</sup> *SBC January 4th Letter* at 4. For example, assume the ideal value for September is three days. Assume further an actual CLEC service level of two days and one day for July and August, respectively. The performance gaps for July and August would be negative (two days minus three days and one day minus three days).

<sup>33</sup> *SBC January 4th Letter* at 3-4.

<sup>34</sup> See *Merger Order* at Appendix C, Attachment A, A-116 – A-117 (prescribing the month-to-month comparison for measurements expressed as percentages, ratios, and proportions).

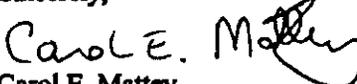
4. In conducting parity tests, should SBC use the variance computed for ILEC-to-CLEC data in months when there are no SBC retail data?<sup>35</sup>

The Performance Plan is silent on this issue. In the *Bureau Payment Calculation Letter*, I stated that SBC should use the SBC retail variance of an adjacent month, preferably the next most recent month.<sup>36</sup> SBC disagrees, stating instead that it should instead calculate a pooled variance estimate using the SBC and CLEC results for the current month.<sup>37</sup> Because the Performance Plan does not directly address this issue and SBC's proposal is reasonable, I conclude SBC may use its proposed approach on this issue.

I appreciate the opportunity to work through these issues with you and your staff. If SBC disagrees with our interpretation of the *Merger Conditions*, it should file an application for review with the Commission pursuant to section 1.115 of the Commission's rules.<sup>38</sup>

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

Sincerely,

  
Carol E. Matthey  
Deputy Chief, Common Carrier Bureau

CC: Al Syeles, SBC

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<sup>35</sup> See Issue Number 7, *Bureau Payment Calculation Letter* at 4.

<sup>36</sup> See *Bureau Payment Calculation Letter* at 4.

<sup>37</sup> *SBC January 4<sup>th</sup> Letter* at 5.

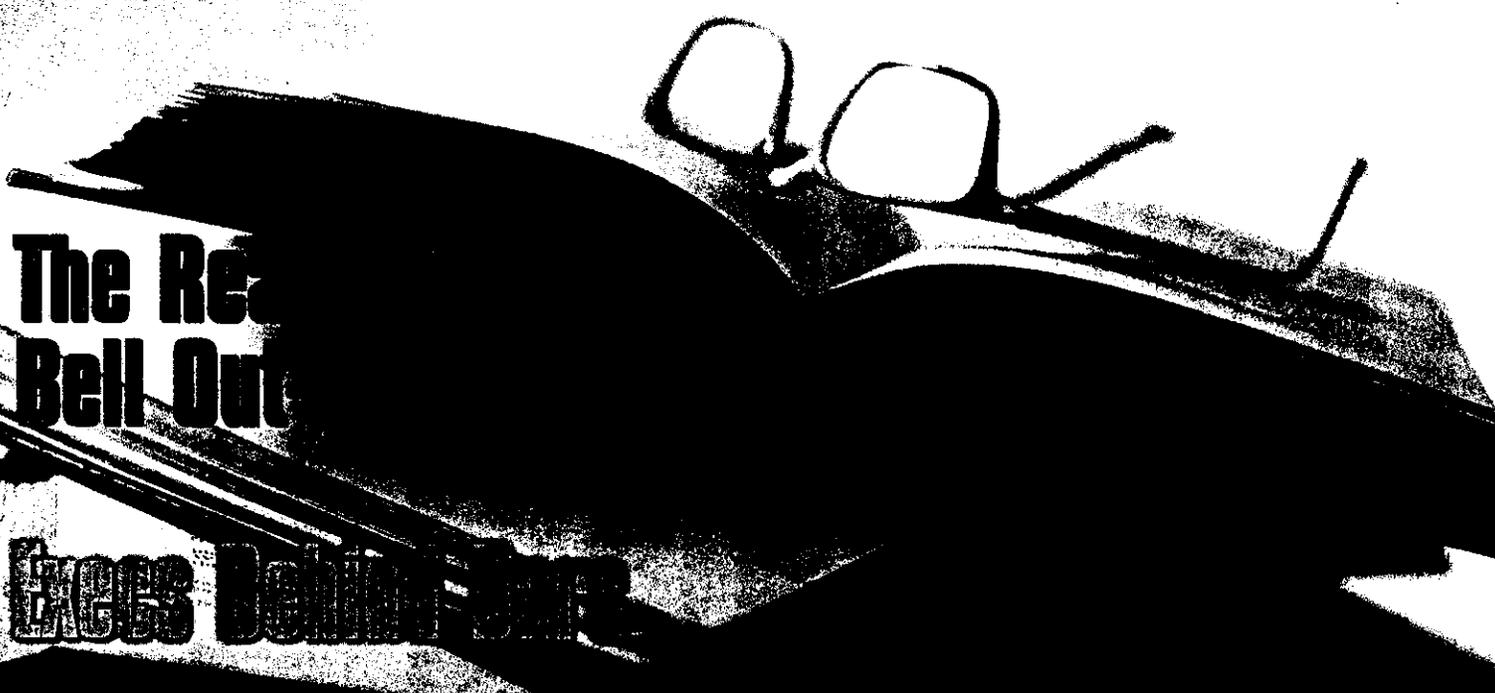
<sup>38</sup> 47 C.F.R. § 1.115.



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# THE REAL STORY ON BELL OUT-OF-REGION COMPETITION

By Fred Dawson

With the gates opening to long-distance entry by the Bell companies in state after state, the beginnings of competition among the big telcos are evident in many places. Nevertheless, don't try to convince opponents of deregulation that this means anything.

The likelihood of the RBOCs ever really competing against each other has become so entwined with the debate over FCC policy assumptions that many opponents of those policies are ignoring or, in some cases, denying the reality of recent signs that such competition has begun. The argument goes: FCC rules fostering facilities-based over nonfacilities-based competition won't benefit the public because the Bells will never compete with each other. But this commitment to the belief that the Bells won't compete obscures the opportunity to make another argument, which is that, as long as the existing rules supporting access to unbundled network elements remain on the books, the Bells will be far more likely to compete with each other than if those rules are eliminated or radically modified.

Recent news stories highlight the widely held belief that inter-Bell competition has not begun. For example, an article appearing July 23 on *BusinessWeek* Online, cited SBC Communications Inc.'s alleged failure to meet its commitment to compete out of territory as a condition of its merger with Ameritech as evidence the "Bells seem to have kept competition at arm's length since their formation in 1984." The article notes SBC claims it has met the requirements, then quotes TeleTruth, which in March called on Congress to investigate claims SBC had reneged on its commitment. "No one in authority has held SBC accountable for ignoring their commitments and obligations," said TeleTruth founder and chairman Bruce Kushnick at that time.

The perception persists. "Nobody in their right mind could assert SBC has attempted to compete out of region," says Jonathan Askin, general counsel for the Association for Local Telecommunications Services.

In fact, SBC had met the terms of its commitment to launch facilities-based local voice services in 30 markets by the second quarter of this year, says John Winston, assistant bureau chief at the FCC's Enforcement Bureau. "They have complied," Winston says. "That's all I have to say on the matter."

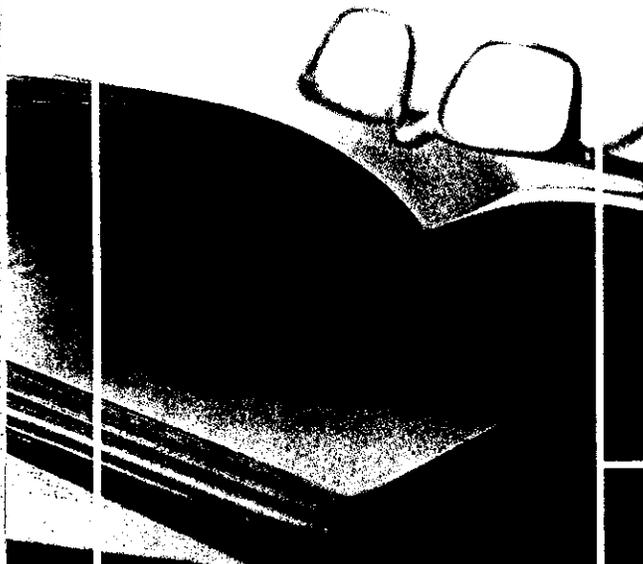
Actually, the number of markets launched to date is 32, says SBC spokeswoman Wendy Flanagan. But she readily admits the marketing effort SBC has mounted so far is minimal compared to what it intends once the conditions are right for competing as a national carrier, which means getting final approval on long-distance service in its territories and a return to more solid ground in the general economy.

"Our first priority was to fulfill our merger commitment, but our goal remains to be a national end-to-end provider of telecommunications services," Flanagan says. "That requires that we have relief from restrictions on providing long-distance services."

In late 2000, SBC began its out-of-territory initiative by offering high-end voice and data services to the enterprise market and targeting the mass market with switched voice. The company changed course in early 2001, when it declared that it was scaling back marketing efforts out of territory and only would offer switched voice pending changes in the regulatory and economic climate. SBC sees the enterprise market as top priority once it's in a position to provide the full suite of long-distance, data and local voice services to customers no matter where they are, emphasizes Flanagan.

"We continue to offer the high-end enterprise services in markets where we were offering them at the outset, but, elsewhere, we've focused on offering just voice for now," Flanagan says. "But as we build out our facilities in these markets we're putting in the equipment that's needed to support the enterprise service requirements."

SBC won't say how many voice services customers it has in the 19 states plus Washington, D.C., it serves outside its operating territories. "There may be as many as several hundred thousand customers in any given market at this point," Flanagan says. SBC has installed its own switches in these markets and operates over its own metro infra-



"Our first priority was to fulfill our merger commitment, but our goal remains to be a national end-to-end provider of telecommunications services."

SBC spokeswoman  
Wendy Flanagan

structures, although it relies on use of incumbents' local loops for last-mile delivery. Flanagan says the marketing effort is limited to Yellow Pages advertising and promotion of services via the SBC Telecom Web site.

SBC's reluctance to serve the lucrative high-end market for ATM, frame relay and other advanced services until it wins clearance on long distance contrasts with the strategy in play at Verizon Communications Inc., which has launched facilities-based enterprise services in Dallas, Los Angeles and Seattle in direct competition with SBC and Qwest Communications International Inc. Here again a merger commitment is involved, although Verizon officials say this is not the motivation for a strategy that makes good business sense and fits in with the carrier's long-term growth plans. Verizon's move into these cities, which began a year ago with Dallas, was intrinsic to the GTE merger plan. GTE offered a foundation on which to build facilities extensions into the central urban areas because it had operations on the fringes of many big cities, says Kevin Ireland, Verizon's enterprise solutions group spokesman.

"This tends to be a lower cost approach to getting into these markets than would be the case if we were building from scratch," Ireland says. "We're currently assessing what additional cities to go into and hope to announce some more soon."

Not everyone is convinced Verizon is doing anything but meeting a merger commitment. There also is a perception the FCC again is allowing a carrier to skate by without really meeting the requirements. ALTS, for example, protests the commission's willingness to allow Verizon to count \$90 million of a \$150 million preliminary investment in bankrupt DSL CLEC NorthPoint Communications Inc. toward the Bell's commitment to spend \$500 million on out-of-territory services within 36 months of the merger. Verizon made the investment as part of an intended acquisition but subsequently backed away from the buyout.

"There's no getting around the fact that Verizon's pullout from its plan to acquire NorthPoint brought NorthPoint down, which eliminated one of the major potential competitors to the RBOCs," Askin says. "Yet Verizon gets credited for investing in out-of-territory competition in that deal by the FCC." Verizon may have satisfied "some absurdist literal reading of its merger commitment," Askin says, however, the way the investment has been interpreted "has made a mockery of the FCC process and the bargain that Verizon struck."

One thing is clear: Verizon means business in the markets it has launched so far. Networks in all three markets use DWDM technology to support delivery of a broad portfolio of Internet access, managed data, ATM, frame relay and SONET-protected services that can be bundled with long distance, Ireland notes. "Local switched voice will be the last thing we offer," he says. "What we're doing is driven by market demand, and our goal right now is to grow our market reach by expanding our customer base, not just plop in a voice switch to meet a merger commitment."

Once the company is established in the high-end market, it will be in a position to leverage that presence into the smaller business and consumer markets, with voice services as part of the service mix, assuming the local regulatory conditions and market demand are in line with that strategy, Ireland says. "Also, down the road, given the pace of improvement in voice over IP technology, we may find there's no need to install circuit switches, which will allow us to move into voice by leveraging the data infrastructure we already have in place," he adds.

While the starting point for competing out of territory is markedly different from SBC, Verizon also sees long-distance entry as crucial to full-scale aggressive pursuit of a national service strategy. "Once we're approved for long distance in all our states, we'll go after the bigger companies who need national frame relay, national ATM and other types of connectivity," he says. "We already are approved in six states, and the rest are just around the corner."

Verizon has experimented with a variety of approaches to establishing its infrastructures out of territory. They began using a leased fiber from Metromedia Fiber Network Inc. in Dallas and moved to a mix of leased and

owned facilities in Seattle and finally to strictly owned facilities in Los Angeles. "L.A. has proved to be our most successful model so far and is well ahead of the others from a sales standpoint," Ireland says. The company has installed high-capacity video switching and transport equipment to accommodate demand from media concerns, he adds.

With Qwest well established as a competitive carrier outside former US West territories, the only Bell company not competing in other Bell markets is BellSouth Corp. And, BellSouth spokesman Jeff Battcher says that's the way things will be for the foreseeable future. "We're concentrating on our markets in the nine states we presently serve," Battcher says. While the company now is locked into that strategy, "things in this industry change so fast, it's hard to say if that will always be the case," he adds.

Battcher says the possibility of competition from Verizon and SBC is of no great consequence in influencing BellSouth's agenda. "We're accustomed to competition and don't look on them as especially different," he says.

As for Qwest, BellSouth has a close relationship that emphasizes cooperation rather than competition, Battcher notes. BellSouth uses Qwest as its wholesale provider for long-haul transport and local access out of territory and has a "teaming" agreement with the carrier in markets where BellSouth hasn't yet entered the long-distance business. There, when Qwest comes in to offer long-distance services, BellSouth provides local connectivity services as part of the package. The deal works in reverse in Qwest's home territories.

Soon Qwest and BellSouth will be competing with each other for long-distance customers in BellSouth's territories, which means the close marketing affiliation likely will go away. What that will mean to BellSouth's willingness to go into local markets as a local service provider out of its current territories remains to be seen.

While three of the four Bell companies say expansion into other markets is key to their long-term strategies and point to current out-of-territory efforts as proof of those intentions, many observers claim the last thing these companies want is to open the door to all-out competition among themselves.

Instead, the detractors say, any small measure of inter-Bell competition is meant to persuade FCC regulators that policies undermining nonfacilities-based competition will clear the way for facilities-based competition among the giants left standing in the wake of the telecom meltdown.

"There's no hope for competition among the big players," flatly states Mark Cooper, director of research at the Consumer Federation of America. "The only thing they'll do is buy each other out."

Cooper cites FCC Chairman Michael Powell's comments when he first took over as FCC chairman, in which Powell said, "I fundamentally disagree with the idea that deregulation is something to be handed out only after competition is found to exist," as the driving philosophy behind a policy initiative that inevitably leads to "the remonopolization of the industry." Powell, who recently was quoted in *The Wall Street Journal* as saying the telecom industry was in a state of "utter crisis," bears some responsibility for contributing to that crisis, Cooper says. Powell proposed rules "that would enable the dominant firms in the cable and telephone industries to lock out competitors," Cooper asserts.

Regulatory issues aside, there's every reason to be skeptical about any flowering of competition among the Bells in light of their falling fortunes in the current downturn, says Allan Tumolillo, COO at Probe Research. Tumolillo says the recent hit the Bells took in the stock market has increased the odds significantly that the worst-case telecom scenario outlined in a recent Probe report would come to pass. The Bells lost almost \$70 billion of their market capitalization (about 25 percent) between June 28 and July 22, when stocks in general were in freefall, Tumolillo notes. They have lost nearly 60 percent of their market value since reaching five-year highs in mid '99, he adds.

Tumolillo says the "catastrophic" scenario would occur if one of the four RBOCs is forced into bankruptcy and there's no other company strong enough to replace it. "I put the chance of that happening at 10 percent in the report, but now we're seeing signs of pain that might be raising the chances of this happening," Tumolillo says. "If, for example, one of these companies were even accused of accounting fraud, its stocks could drop precipitously." ■



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- Access Advantage Plus, a high-capacity line which allows business customers to combine PBX trunks, basic phone lines, data services, Internet access, and long distance service over a single high-speed facility.

Residential customers who choose SBC Simple Solutions will get their first month of local phone service FREE, with no installation charges. Through SBC Long Distance, consumers can also add long-distance service for as low as 8-cents a minute, with no monthly fees or restrictions. SBC Telecom's main office is located at One Ravinia Drive in Atlanta. In addition to hosting a local staff of sales and technical professionals, Atlanta will serve as the southeast regional headquarters for SBC Telecom's network operations.

SBC, a true integrated communications provider, is simplifying the lives of its Atlanta customers by providing one contact and one phone number for both sales and service, (678-587-0517). It is the reliability, quality, and leading edge technology in its products and services that recently led Fortune Magazine to name SBC the "World's Most Admired Telecommunications Company" for the fourth consecutive year, and "America's Most Admired Telecommunications Company" for 2000.

In October 1999, SBC announced it would expand service into 30 new markets outside of its traditional service region - the first time a former Bell operating company will compete for local business and residential customers on a national scale. When the national expansion is completed, SBC will compete in 50 of the nation's top markets, reaching 180 million people - about two-thirds of the U.S. population.

Atlanta was chosen by SBC as an expansion market because it is home to many of America's leading businesses. "This city's skilled work force, high concentration of high-tech businesses, and quality of life make it a perfect fit for SBC," said Vic Bolton, regional vice president, external affairs, SBC Telecom. We are truly excited to be a part of this dynamic city and look forward to being a good corporate citizen of Atlanta."

*SBC Communications Inc. (www.sbc.com) is a global communications leader. Through its subsidiaries' trusted brands - Southwestern Bell, Ameritech, Pacific Bell, SBC Telecom, Nevada Bell, SNET and Sterling Commerce - and world-class network, SBC and its affiliated companies provide a full range of voice, data, networking and e-business services, including local and long-distance voice, high-speed Internet access and data transport, voice and data network integration, software and process integration, Web site and application hosting, e-marketplace development, paging and messaging, as well as cable and satellite television, security services, and directory advertising and publishing. In the United States, the company currently has 61.3 million access lines and is undertaking a national expansion program that will bring SBC service to the nation's top 50 markets. SBC has a 60 percent equity interest in Cingular Wireless, its joint venture with BellSouth, which serves 19 million wireless customers. Internationally, SBC has telecommunications investments in more than 20 countries and has annual revenues that rank it among the largest Fortune 500 companies.*



SBC retreats from Atlanta  
Texas regional telecom fires 40-person staff 15 days after  
announcing campaign to compete with BellSouth.  
Michael E. Kanell - Staff  
Saturday, March 3, 2001

Just 15 days after trumpeting a full-tilt campaign to corral a hefty share of the Atlanta market, SBC Telecom on Friday quietly fired its 40-person staff and gave up the fight.

SBC had just become the first of the remaining regional phone companies to jump into other markets, offering service to both residents and businesses. But now SBC has pulled back --- at least temporarily --- from a much ballyhooed promise to spend upward of \$6 billion building networks to compete in 30 cities outside the Texas-based company's home region.

Spokeswoman Wendy Flanagan confirmed that SBC is "scaling down" efforts in those out-of-region cities, but company officials wouldn't release the number of job cuts nationally. The company won't seek new customers but will service those relatively few it already has, she said. "This is a slowdown, a scaling down in some offices, not a change in strategy," she said.

SBC has service in "eight or nine" of the 30 cities targeted outside its 13-state region, she said.

The company has permission to offer long-distance in just three of its home states. That means it cannot offer long-distance from most of its turf to Atlanta and other new markets, Flanagan said. "We have to revise the business model, not once a quarter, but continually. The rollout was built on some key assumptions that have not turned out."

On Feb. 15, a company executive vowed to fight for every business and residential customer in Atlanta.

Federal regulators had conditioned their approval of SBC buying Chicago-based Ameritech on the company's promise to compete outside its region. SBC said Friday it will still abide by that agreement, but its retreat risks provoking regulators who may feel the deal's spirit has been violated. SBC is already flirting with \$40 million-a-city Federal Communications Commission fines for not complying with deadlines. But should SBC fail to meet all the conditions, it could be whacked up to \$1.2 billion, said Michael Balmoris, spokesman for the FCC.

Earlier in the day, the \$51 billion-a-year company warned analysts that its earnings this year will be shy of expectations. Analyst Patrick Comack of Guzman & Co. said that SBC's competitive phone business in places like Atlanta could not be profitable until 2004.

"I think they are trying to squeeze as much cost out of the operation as they can." Company priorities are delivering high-speed lines and improving customer service in its own region, he said.

Atlanta-based analyst Jeffrey Kagan said the retreat is a response to a telecom downturn. "I don't look at this and say, 'they're trying to get away with something.' I have to believe that if it weren't for the changes in the market, they'd still be here. But this is going to frustrate consumers."

And it will no doubt infuriate advocates who say neither regional Bells nor regulators are serious about giving consumers more choice. "They justified the Ameritech merger as giving them the girth they needed to compete against other telcos," said Gene Kimmelman, co-director of Consumers Union. "But in reality, they were just building bigger monopolies. This demonstrates that the economy of local telephone competition does not exist."

The Atlanta Journal-Constitution.txt  
SBC declined to provide specifics. But employees hired over the last few months were let go in Atlanta during an emotional afternoon session in which the bad news was delivered by Lisa Mosley, company vice president. Employees are apparently going to receive a severance package including eight weeks of pay and benefits. Workers at the meeting were told that Mosley will stay on for 90 days, then lose her own job. Another unnamed employee will stay on to run the office.  
Two weeks ago, BellSouth praised SBC's entry as further proof that its local market was open to rivals as required. On Friday, BellSouth spokesman Jeff Battcher declined to comment on SBC's decision.

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## CERTIFICATE OF SERVICE

I, Stacy Smith, hereby certify that the foregoing "Petition To Investigate The Public Interest Benefits Of The Transfer And To Toll The Expiration Of Certain SBC/Ameritech Merger Conditions Pending Investigation" were filed with the Commission this 3rd day of September, 2002. Copies were sent via First-Class Mail to the following individuals:

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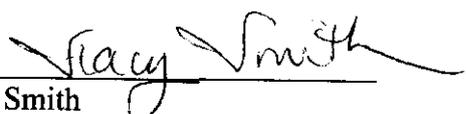
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