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September 9, 2004

VIA ELECTRONIC FILING

William Davenport
Chief, Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Section 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules (CC Docket No. 98-141 – Post-Merger Audit Requirements)

Dear Mr. Davenport:

On August 31, representatives of SBC met with Trent Harkrader and other representatives of the Enforcement Bureau, and William Dever of the Wireline Competition Bureau, to discuss Ernst & Young LLP's 2003 audit reports concerning SBC's compliance with the SBC/Ameritech Merger Conditions and SBC's request for a waiver to discontinue post-merger audits for all periods beginning January 1, 2004. In the course of that meeting, Mr. Harkrader requested that SBC explain its conclusion that Condition 19 (requiring SBC to provide shared transport in the former Ameritech region on terms that are substantially similar to the terms offered in Texas as of August 27, 1999) has sunset.

By its plain terms, that condition sunset on March 24, 2003, the date on which the D.C. Circuit's vacatur of the Commission's unbundling rules adopted in the *UNE Remand Order*, including the obligation to provide shared transport,¹ became final and non-appealable. Specifically, Condition 19 provides that it shall remain in effect only until, *inter alia*, the "date of a final, non-appealable judicial decision providing that shared transport is not required to be provided by SBC/Ameritech in the relevant geographic area."² The D.C. Circuit's decision in *USTA I* did just that—it vacated the Commission's unbundling rules adopted in the *UNE Remand Order*, including, in particular, shared transport.³ In so doing, the D.C. Circuit's decision

¹ *USTA v. FCC*, 290 F.3d 415 (D.C. Cir. 2002), *cert. denied* 123 S.Ct. 1571 (2003) ("*USTA I*").

² *SBC/Ameritech Merger Order* App. C, ¶ 53.

³ *See USTA I* at 420.

provided that shared transport was no longer required to be provided by SBC/Ameritech, or any other ILEC.

In the *Shared Transport Forfeiture Order*,⁴ the Commission acknowledged as much. In particular, the Commission acknowledged that paragraph 56 “expressly provides” that it sunsets once a court “issue[s] a final non-appealable order to [the] effect” that “SBC is not required to provide shared transport.”⁵ The Commission went on to assert, incorrectly, that the D.C. Circuit’s *USTA I* decision had not triggered the sunset provision in paragraph 56 because “[t]he court did not vacate the *UNE Remand Order*.”⁶ In a subsequent order, however, the Commission corrected that statement, and conceded that the D.C. Circuit’s decision in *USTA I* had, in fact, vacated the *UNE Remand Order*. Specifically, it held in the *Triennial Review Order* that *USTA I* had “vacated” the “list of mandatory UNEs” adopted in the *UNE Remand Order*, which included shared transport, and that once the *USTA I* decision became “final and no longer subject to further review . . . the legal obligation [to provide those UNEs] w[ould] no longer exist.”⁷ That determination – which no party challenged in the D.C. Circuit – is binding and, by the Commission’s own logic and the plain terms of Condition 19, confirms that Condition 19 sunset on March 24, 2003, once the D.C. Circuit’s decision in *USTA I* became final and non-appealable.

Please contact the undersigned if you have any further questions concerning the foregoing.

Sincerely,

/s/ Christopher M. Heimann

cc: Trent Harkrader
Hugh Boyle
Diana Lee
Pete Young
Hillary DeNigro

⁴ SBC Communications, Inc. Apparent Liability for Forfeiture, *Forfeiture Order*, FCC 02-282 (Oct. 9, 2002)(“Shared Transport Forfeiture Order”).

⁵ *Id.* at ¶ 19.

⁶ *Id.* ¶ 19 n. 55.

⁷ *Triennial Review Order* at ¶ 31, and ¶705 (emphasis added).