

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Enforcement of Section 275(a)(2) of the	)	CCB Pol. 96-17
Communications Act of 1934, as amended by	)	CCB Pol. 97-7
the Telecommunications Act of 1996,	)	CCB Pol. 97-8
Against Ameritech Corporation	)	CCB Pol. 97-11
	)	

**ORDER**

**Adopted: October 24, 2000**

**Released: October 27, 2000**

By the Commission:

1. In this Order, we adopt a Consent Decree terminating the above-captioned proceedings related to Ameritech Corporation's acquisition of the alarm monitoring services assets of five unaffiliated entities in 1996. With respect to four of the acquisitions, the Commission previously found that Ameritech violated section 275(a)(2) of the Communications Act of 1934, as amended, by obtaining financial control of unaffiliated alarm monitoring service entities prior to February 2001.<sup>1</sup>

2. Pursuant to section 1.1204(b)(10) of the Commission's rules,<sup>2</sup> the Commission and

<sup>1</sup> 47 U.S.C. § 275(a)(2). *Enforcement of Section 275(a)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Against Ameritech Corporation, Motion for Orders to Show Cause and to Cease and Desist*, Memorandum Opinion and Order on Remand and Order to Show Cause, 13 FCC Rcd 19046 (1998) (Ameritech's acquisition of the alarm monitoring services assets of a division of Circuit City Stores, Inc.) (Circuit City Order to Show Cause); *Enforcement of Section 275(a)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Against Ameritech Corporation, Emergency Motions for Orders to Show Cause and to Cease and Desist*, Memorandum Opinion and Order and Order to Show Cause, 13 FCC Rcd 15053 (1998) (Ameritech's acquisition of the alarm monitoring services assets of Central Control Alarm Corp. (CCA), Norman Systems Securities, Inc. (Norman), and Masada Security, Inc. (Masada) (CCA Order to Show Cause). See also Public Notice, Pleading Cycle Established for Comments on Alarm Industry Communications Committee Fourth Emergency Motion for Orders to Show Cause and to Cease and Desist, CCBPol 97-11 DA 97-2176, Rel. Oct. 10, 1997.

<sup>2</sup> 47 C.F.R. § 1.1204(b)(10); see *New York Telephone Co.*, 6 FCC Rcd 3303, 3305 ¶¶ 19-21 (1991), *aff'd sub nom. New York State Department of Law v. FCC*, 984 F.2d 1209 (D.C. Cir. 1993).

SBC Communications, Inc. (SBC)<sup>3</sup> have negotiated the terms of a Consent Decree that would terminate the above-captioned proceedings related to Ameritech's acquisitions. A copy of the Consent Decree is attached hereto and is incorporated by reference.

3. We have reviewed the terms of the Consent Decree and evaluated the facts before us. We believe that the public interest would best be served by approving the Consent Decree and terminating the proceedings related to Ameritech's acquisition of the assets of the five unaffiliated alarm monitoring entities. The Alarm Industry Communications Committee (AICC) filed comments supporting an order requiring divestiture on the grounds that the acquisitions violated section 275(a)(2) of the Act, and Ameritech should not be allowed to retain the unlawfully acquired assets. We believe, however, that divestiture of only the unlawfully acquired alarm monitoring services assets in these circumstances might well create substantial confusion and inconvenience for the customers Ameritech acquired from the five alarm monitoring services entities.<sup>4</sup> The situation is further complicated by the fact that the statutory ban expires in February 2001.<sup>5</sup> Thus, if we required divestiture of the unlawfully acquired customer accounts, SBC likely would be able legally to acquire the companies that purchase the customer accounts, after the section 275 ban expires. In light of the limited duration of the statutory prohibition of section 275(a)(2), the customer confusion and inconvenience that likely would result from divestiture of the unlawfully acquired alarm monitoring assets in this proceeding suggest that such a remedy may not best serve the public interest in these circumstances.<sup>6</sup>

4. Under the Consent Decree, SBC agrees that it shall use its best efforts, prior to February 9, 2001, to divest itself of SecurityLink, which is comprised of the grandfathered alarm monitoring assets that Ameritech lawfully held before February 1996 and the alarm monitoring services assets that Ameritech unlawfully acquired after February 1996. If, despite its best efforts, SBC is unable to enter into a legally enforceable and commercially reasonable contract to divest itself of SecurityLink and does not submit such a contract to the Commission by February 9, 2001, SBC shall make a voluntary contribution to the United States Treasury of One Million Dollars (\$1,000,000) on February 10, 2001. In the event that SBC divests itself of SecurityLink, it would divest both the grandfathered alarm monitoring assets that Ameritech lawfully held before February 1996 and the alarm monitoring services assets that Ameritech unlawfully acquired after February 1996. Such divestiture would not result in the confusion and disruption to customers that would be caused by the partial divestiture of the unlawfully acquired alarm monitoring assets. In the event that SBC enters into and submits to the Commission a legally enforceable and commercially reasonable divestiture contract by February 9, 2001, but fails to

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<sup>3</sup> On October 6, 1999, Ameritech Corp. merged with SBC Communications, Inc. As a result of the merger, Ameritech is a wholly owned subsidiary of SBC Communications, Inc. *In re Applications of Ameritech Corp., Transferor and SBC Communications Inc., Transferee*, Memorandum Opinion and Order, 14 FCC Rcd 14712 (1999).

<sup>4</sup> See SecurityLink from Ameritech, Inc.'s Reply to AICC Letter Urging Divestiture, Nov. 10, 1998.

<sup>5</sup> The prohibition in section 275(a)(2) sunsets five years after the date of enactment of the Telecommunications Act of 1996. 47 U.S.C. § 275(a)(2).

<sup>6</sup> None of the cases cited by AICC necessitates divestiture.

divest itself of SecurityLink by the later of: (a) June 9, 2001; or (b) the ninth (9<sup>th</sup>) business day after the Commission approves any transfer of control applications required under the Communications Act for completion of the divestiture transaction, then SBC shall make a voluntary contribution to the United States Treasury of One Million Dollars (\$1,000,000) on the first business day after such later date.

5. Finally, SBC agrees not to become involved with other alarm monitoring businesses prior to the February 2001 expiration of section 275(a)(2).

6. We conclude that adoption of the Consent Decree serves the public interest. In addition, based on the record before us, and in the absence of material new evidence relating to this matter, we conclude that there are no substantial and material questions of fact as to whether SBC possesses the basic qualifications, including its character qualifications, to hold or obtain any FCC licenses or authorizations.

7. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), 275, and 312 of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 275, and 312, that the Consent Decree, incorporated by reference in and attached to this order, is hereby ADOPTED.

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

9. IT IS FURTHER ORDERED that the above proceedings ARE TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

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**CONSENT DECREE**

**I. Introduction**

1. The Federal Communications Commission ("Commission" or "FCC") and SBC Communications Inc., and its subsidiary, Ameritech Corporation ("Ameritech"), and Ameritech's wholly-owned subsidiary, SecurityLink from Ameritech, Inc. ("SecurityLink") (all of them, collectively "SBC" or "SBC and its affiliates"), hereby enter into this Consent Decree for the purpose of terminating certain enforcement proceedings pending before the Commission concerning compliance, by Ameritech and SecurityLink, with Section 275 of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 275.

**II. Background**

2. On June 28, 1996, SecurityLink acquired the alarm monitoring assets of the Home Security Division of Circuit City Stores, Inc. ("Circuit City"). In April 1997, SecurityLink acquired the alarm monitoring assets of Central Control Alarm Co. ("Central") and Norman Security Systems, Inc. ("Norman"). On June 19, 1997, SecurityLink acquired the alarm monitoring assets of Masada Security, Inc. ("Masada"). On October 3, 1997, SecurityLink acquired the alarm monitoring assets from six subsidiaries of Republic Security Companies Holding Co., II, Inc. ("Republic"). These transactions will be referred to collectively herein as the "Transactions."

3. Section 275(a)(2) of the Act permits Ameritech to provide alarm monitoring services either directly or through an affiliate.<sup>7</sup> However, that provision prohibits Ameritech from obtaining financial control of any unaffiliated alarm monitoring service entity for a period of 5 years from the effective date of the Act, which was February 8, 1996.<sup>8</sup>

4. The Alarm Industry Communications Committee ("AICC") filed motions with the Commission with respect to each of the Transactions, alleging that they violated Section 275(a)(2) and requesting that the Commission issue a cease and desist order, pursuant to Section 312(b)(2) of the Act, directing Ameritech to rescind its purchase of the alarm monitoring assets.

5. AICC filed its first motion, challenging the Circuit City transaction, on August 12, 1996. The Commission initially denied this motion in an order released on March 25, 1997. *See Enforcement of Section 275(a)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Against Ameritech Corporation*, CCBPol 96-17, Memorandum Opinion and Order, 12 FCC Rcd. 3855 (1997) ("*Circuit City*"). The U.S. Court of Appeals for the District of Columbia Circuit vacated and remanded the Commission's *Circuit City* order on December 31, 1997. *See Alarm Industry Communications Committee v. FCC*, 131 F.3d 1066 (1997). On remand, the Commission issued a show cause order, which is presently pending. *Enforcement of Section 275(a)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Against Ameritech Corporation, Motion for Orders to Show Cause and to Cease and Desist*, CCBPol 96-17, Memorandum Opinion and Order on Remand and Order to Show Cause, 13 FCC Rcd. 19046 (1998).

6. AICC filed a motion challenging the Norman and Central acquisitions on May 1, 1997. AICC filed its third motion, challenging the Masada acquisition, on July 2, 1997. On July 8, 1998, the Commission issued a show cause order, which is presently pending, in those proceedings. *Enforcement of Section 275(a)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Against Ameritech Corporation, Emergency Motions for Orders to Show Cause and to Cease and Desist*, CCBPol 97-7, 97-8, Memorandum Opinion and Order and Order to Show Cause, 13 FCC Rcd. 15053 (1998).

7. AICC filed its final motion, challenging the Republic acquisition, on October 8, 1997. *See Public Notice*, CCBPol 97-11, 12 FCC Rcd. 16428 (Com. Car. Bur. 1997) (setting pleading cycle for comments on AICC motion challenging Republic acquisition). The Commission has taken no action with regard to this final motion, which remains pending.

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<sup>7</sup> Section 275(a)(2) permits "the provision, directly or through an affiliate, of alarm monitoring services by a Bell operating company that was engaged in providing alarm monitoring services as of November 30, 1995." 47 U.S.C. § 275(a)(2).

<sup>8</sup> A Bell operating company that was engaged in providing alarm monitoring services as of November 30, 1995 "may not acquire any equity interest in, or obtain financial control of, any unaffiliated alarm monitoring service entity after November 30, 1995, and until 5 years after the date of enactment of the Telecommunications Act of 1996." 47 U.S.C. § 275(a)(2). *See also Alarm Industry Communications Committee v. FCC*, 131 F.3d 1066 (D.C. Cir. 1997).

8. In its two orders to show cause relating to the Circuit City, Central, Norman and Masada acquisitions, the Commission concluded that Ameritech had acquired financial control of the subject alarm monitoring services entities in violation of section 275(a)(2). Consequently, the Commission ordered Ameritech to show cause why it should not be required to divest itself of the subject alarm monitoring services assets. Ameritech responded to the two show cause orders on August 7, 1998, and October 28, 1998. Ameritech also submitted a letter to the staff on October 29, 1999. Ameritech's responses to the show cause orders contended that divestiture was an inappropriately severe remedy on the facts of this case and that it would be difficult to administer given the commingling of assets that had occurred since the various Transactions. AICC filed comments supporting an order requiring divestiture.

### III. Definitions.

9. For the purposes of this Consent Decree, the following definitions shall apply:

- (1) "Commission" means the Federal Communications Commission.
- (2) "Affiliate" shall have the meaning set forth in 47 U.S.C. § 153(1).
- (3) "SBC" means SBC Communications Inc. and all of its subsidiaries and affiliates.
- (4) "Proceedings" means the Commission proceedings identified in paragraphs 4 through 7 above, CCB Pol. 96-17, 97-7, 97-8 and 97-11.
- (5) "Order" means an order of the Commission adopting this Consent Decree.
- (6) "Final Order" means an Order that is no longer subject to administrative or judicial reconsideration, review, appeal, or stay.

### Agreement

10. SBC and the Commission agree that this Consent Decree does not constitute an adjudication of the merits, or any finding on the facts or law regarding any violations committed by SBC arising out of the Transactions. This Consent Decree does, however, constitute a settlement of all issues raised heretofore, or which, in the absence of material new evidence, may be raised by the Commission hereafter, concerning the permissible scope, under section 275(a)(2), of SBC's actions with respect to the Transactions.

11. Pursuant to this Consent Decree, SBC shall use its best efforts, prior to February 9, 2001, to enter into a legally enforceable and commercially reasonable contract with a Buyer to divest itself of SecurityLink such that SBC does not retain *de jure* or *de facto* control of SecurityLink or the Buyer. In the event that SBC enters into such a contract, SBC shall submit such contract to the Commission by February 9, 2001. If, despite its best efforts, SBC is unable to enter into such a contract and does not submit such a contract to the Commission by February 9, 2001, SBC shall make a voluntary contribution to the United States Treasury of one million dollars (\$1,000,000) on February 10, 2001. In the event that SBC enters into and submits to the Commission a legally enforceable and commercially reasonable contract by February 9, 2001, but fails to divest itself of SecurityLink by the later of: (a) June 9, 2001; or (b) the ninth (9<sup>th</sup>) business day after the Commission approves any transfer of control applications required under the Communications Act for completion of the divestiture transaction, then SBC shall make a voluntary contribution to the United States Treasury of one million dollars (\$1,000,000) on the first business day after such later date. SBC agrees that, barring unforeseen circumstances, it will file any necessary transfer of control applications with the Commission no later than thirty (30) days from the date it submits a legally enforceable and commercially reasonable divestiture contract.

12. In addition, SBC agrees that during the time between release of the Order and February 9, 2001 it will not: (1) acquire any of the customer accounts or other assets of any unaffiliated alarm monitoring entity, (2) acquire any options to purchase or otherwise acquire any unaffiliated alarm monitoring entity or the assets, including the customer accounts, of any unaffiliated alarm monitoring entity, (3) have any joint directors, officers or employees with an unaffiliated alarm monitoring entity, or (4) obtain or acquire *de jure* or *de facto* control over an unaffiliated alarm monitoring entity, whether by providing financing or otherwise.

13. Notwithstanding any other provision herein, the restrictions in paragraph 12 shall not apply to SecurityLink or a Buyer as of the date on which SecurityLink ceases to be an Affiliate of SBC.

14. The Commission agrees that, in the absence of material new evidence related to the Proceedings, it will not use the facts developed in its investigations or the existence of this Consent Decree either to initiate on its own motion any new proceeding, formal or informal, or to initiate on its own motion any enforcement action against SBC concerning those Proceedings. The Commission also agrees that, in the absence of material new evidence related to the Proceedings, it will not use the facts developed in its investigations or the existence of this Consent Decree to initiate on its own motion any proceeding, formal or informal, or initiate on its own motion any action against SBC, with respect to its basic qualifications, including its character qualifications, to be a Commission licensee or with respect to compliance with the Commission's rules and policies.

15. The Parties agree that this Consent Decree will terminate if SBC divests itself of SecurityLink or makes a voluntary contribution to the United States Treasury consistent with the terms of this Consent Decree.

16. In express reliance upon the covenants and representations contained herein, the Commission agrees to terminate the Proceedings when the Order adopting this Consent Decree becomes a Final Order.

17. In consideration for the termination of these Proceedings in accordance with the terms of this Consent Decree, SBC agrees to the terms, conditions and procedures contained herein.

18. In the event that SBC, or any of its affiliates or subsidiaries, are found by the Commission or its delegated authority to have engaged in conduct the same or similar to that described in the Proceedings, SBC and the Commission agree that the conduct described in the Proceedings may be used only to fashion an appropriate sanction. The parties further agree that SBC shall not be precluded or estopped from litigating *de novo* any and all of the issues arising from the facts and allegations in the investigation record of any of the Proceedings only as necessary to defend, in any forum, its interest from challenge by any person or entity not a party to this Consent Decree.

19. SBC admits the jurisdiction of the Commission to adopt this Consent Decree.

20. 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.

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

22. SBC and the Commission agree that if SBC, the Commission, 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, and SBC and the Commission shall waive any statutory right to a trial *de novo* with respect to any matter upon which the Order is based, and shall consent to a judgment incorporating the terms of this Consent Decree.

23. SBC agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, Title 5 U.S.C. § 504 and 47 C.F.R. § 1.1501, *et seq.*



24. SBC agrees that any violation of the Consent Decree or the Order adopting this Consent Decree shall 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.

25. This Consent Decree may be signed in counterparts.

FEDERAL COMMUNICATIONS COMMISSION

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Magalie Roman Salas,  
Secretary

SBC COMMUNICATIONS INC.

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Priscilla Hill-Ardoin  
Senior Vice-President - FCC