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

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In re Applications of	)	
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AMERITECH CORP.,	)	
Transferor,	)	
	)	
AND	)	
	)	
SBC COMMUNICATIONS INC.,	)	CC Docket No. 98-141
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	)	

Comments of AT&T Corp. in Response to SBC's Request for Interpretation, Waiver or Modification of the SBC/Ameritech Merger Conditions

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TABLE OF CONTENTS

Page

I. INTRODUCTION AND SUMMARY 3

II. NETWORK ARCHITECTURE ISSUES: SBC'S PETITION DEMONSTRATES THAT ILECS, NOT THEIR DATA AFFILIATES, MUST OWN AND CONTROL ADLU CARDS AND OCDs. 6

III. OPERATIONAL ISSUES: SBC INTENDS TO IMPOSE PATENTLY UNLAWFUL RESTRICTIONS ON THE USE OF ITS NETWORK 9

A. SBC's Proposed Conditions Would Prevent Competitors Using UNE-P or Other UNE Arrangements from Accessing SBC's Network To Provide Combinations of Voice and High-Frequency Services in the Same Manner SBC Provisions Combinations of Voice and High-Frequency Services to its Retail Customers. 11

B. SBC Is Unlawfully Attempting to Dictate the Manner in Which Competitors May Deploy High-Frequency Services Over the SBC ILECs' Network 14

CONCLUSION 18

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Comments of AT&T Corp. in Response to SBC's Request for Interpretation, Waiver or Modification of the SBC/Ameritech Merger Conditions

AT&T Corp. ("AT&T") hereby responds, pursuant to the Common Carrier Bureau's invitation,[1] to the letter request[2] by SBC Communications Inc. ("SBC") for interpretation, waiver or modification of the merger conditions adopted by the Commission in conjunction with its approval of SBC's acquisition of Ameritech Corporation.[3] SBC seeks the Bureau's concurrence that, pursuant to the merger conditions, certain items of network equipment may be owned and

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[1] Common Carrier Bureau Seeks Comment on SBC's Request for Interpretation, Waiver, or Modification of the SBC/Merger Conditions, FCC Public Notice, CC Docket No. 98-141, ASD File No. 99-49 (rel. Feb. 18, 2000).

[2] Letter from Paul K. Mancini, Vice President and Assistant General Counsel, SBC, to Lawrence E. Strickling, Chief, Common Carrier Bureau, FCC (dated Feb. 15, 2000) ("SBC Letter").

[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 No. 98-141, Memorandum and Order, FCC 99-279 at ¶¶ 348-518 and Appendix C (rel. Oct. 8, 1999) ("SBC/Ameritech Merger Order"), app. pend. sub. nom. Telecommunications Resellers Ass'n v. FCC, Case No. 99-1441 (D.C. Cir.).

used by its incumbent local exchange carriers ("ILECs"), such as Southwestern Bell Telephone Company ("SWBT"), rather than SBC's newly formed "separate affiliate," Advanced Solutions, Inc. ("ASI"). AT&T agrees that the equipment at issue should be provided by SBC's ILECs rather than by ASI. This is the treatment that is most consistent with the merger conditions. More importantly, this is the treatment necessitated by the Communications Act and the Commission's rules and policies.

Proper resolution of this issue, however, is but a small step toward implementation of the measures necessary for SBC to meet its legal obligations to support the competitive provision of Digital Subscriber Line ("DSL") services. The two devices at issue definitely provide network functionality that is necessary for SBC's ILECs to meet their legal obligations under Section 251(c). Assigning the equipment to the ILECs rather than to ASI, however, is not sufficient to demonstrate compliance with the Act.

SBC's filing makes clear that its proposed technical arrangement is an efficient and technically feasible means of allowing both voice and data services to be carried over the same loop. But SBC's filing does not explain at all whether and how a carrier that uses unbundled network elements ("UNEs") to provide voice service can use this arrangement to provide DSL service over the same loop. As explained in several other recent filings,[4] AT&T is looking to SBC to establish processes and procedures that enable AT&T to offer DSL services to

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[4] See Application of SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Texas ("SWBT Section 271 Application"), CC Docket No. 00-4, Comments of AT&T in Opposition at 9-27 (filed Jan. 31, 2000); Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket Nos. 98-147, 96-98, Petition of AT&T for Expedited Clarification or, in the Alternative, for Reconsideration of the Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (filed Feb. 9, 2000); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Petition of AT&T for

consumers in conjunction with the traditional voice services it provides via combinations of UNEs known as the "platform" (or "UNE-P"). SBC has admitted that AT&T is entitled to do so,[5] but has recently disavowed that statement.[6] Moreover, it has failed to provide the nondiscriminatory access to UNE-P and to its operations support systems ("OSS") that would make this possible.[7] If SBC unlawfully denies its proposed serving arrangement to carriers that use UNE-P, AT&T will once again be foreclosed from access to the same operational efficiencies that SBC provides to itself and to its affiliate and will be deprived of a meaningful opportunity to compete using bundled voice and data service offers.[8] Thus, unless the Bureau resolves the issues AT&T identifies here in a pro-competitive manner, SBC will be able to frustrate further the broad deployment of advanced services.

I. INTRODUCTION AND SUMMARY

SBC seeks the Bureau's concurrence that, under the merger conditions, it has the "option" of owning two pieces of network equipment, ADSL Distribution Line Units ("ADLU cards") and the Optical Concentration Devices ("OCDs") within its ILECs rather than its advanced services affiliate, ASI. As SBC states, these devices (or devices providing the same

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Reconsideration and Clarification of the Third Report and Order at 1-11 (filed Feb. 17, 2000)("AT&T UNE Remand Petition").

[5] See Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas, CC Docket No. 00-4, Reply Brief in Support of Application by Southwestern Bell for Provision of In-Region, InterLATA Services in Texas -- Corrected Copy at 37 n.19 (Feb. 22, 2000) ("SWBT Reply Brief") ("AT&T is free to offer both voice and data service over the UNE Platform or other UNE arrangements, whether by itself or in conjunction with its xDSL partner, IC Communications").

[6] See infra Note 30 and related text.

[7] This is one of a number of reasons why AT&T believes that SBC's Section 271 Application for authority to provide long distance services in Texas must be denied.

[8] As AT&T's pleadings referenced in footnote 4 explain, among other things, SBC's refusal to support AT&T's and other CLECs' xDSL needs not only impairs competition for advanced services but also jeopardizes competition for voice services and bundled service packages.

functionalities) are needed to implement voice and DSL "line sharing" when DSLAM functionality is housed in upgraded or newly placed remote terminals ("RTs") throughout SBC's territory. Given that these devices are used to provide services that are offered by SBC's ILECs, as well as by ASI, the merger conditions clearly contemplate that this equipment will be deployed by the ILECs, not by ASI.[9]

As this is the first, but probably not the last, request to interpret, modify, or waive the merger conditions, it is important to place such requests in their proper context. In particular, the Commission must maintain the appropriate relationship between the merger conditions and SBC's other responsibilities. The merger conditions were adopted for the *sole* purpose of ameliorating what would otherwise have been the overwhelmingly adverse effects of permitting SBC to acquire Ameritech -- not for any other purpose.

In adopting the merger conditions, the Commission emphasized that its action was not intended to -- and did not -- constitute "an interpretation of [SBC's legal obligations under] the Communications Act, especially Sections 251, 252, 271, and 272, or the Commission's rules . . ."[10] Thus, no interpretation, modification, or waiver of the merger conditions can alter SBC's

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[9] See SBC/Ameritech Merger Order ¶ 365 & n.682, Appendix C at ¶ 3(d) (providing for transfer from SBC ILECs to ASI of equipment used *exclusively* for advanced services, forbidding the transfer of certain mixed-use equipment, and warning that transfer of unbundled network elements will subject ASI to unbundling requirements under Section 251(c)).

[10] SBC/Ameritech Merger Order ¶ 357; see id. ¶¶ 356, 511. The conditions represent "a floor and not a ceiling." Id. ¶ 356. They "address potential public interest harms specific to the merger of the Applicants, not the general obligations of incumbent LECs or the criteria for BOC entry into the interLATA services market." Id. ¶ 357. Moreover, SBC's request here should serve as a reminder that the merger conditions do not provide blanket protection against anti-competitive behavior on a going-forward basis. Indeed, the SBC/Ameritech merger conditions cannot be expected to offer any significant protection against discriminatory ILEC behavior in circumstances where, as here, the Commission did not have the benefit of actual market experience to anticipate future ILEC behavior.

legal obligations under those statutory provisions.[11] Nor should any interpretation, modification, or waiver be considered without evaluating its impact on SBC's ability to meet its statutory duties. If a conflict arises between Section 251 or another statutory provision and the merger conditions, it is the law -- not the merger conditions – that is paramount.

Here, however, the statutory requirements and the merger conditions both dictate the same result. But this does not mean that SBC has fulfilled its statutory obligations simply because it has properly assigned the ownership of its equipment. Thus, in analyzing SBC's request, the Bureau must ensure that the nondiscrimination requirements of the Act are enforced with respect to *both* network architecture issues *and* operational issues that impact all competitive local exchange carriers ("CLECs") who seek to utilize the SBC ILECs' networks. Accordingly, it is essential that SBC immediately establish processes and procedures that will enable AT&T and other CLECs using UNE-P to add DSL capability to the package of services they offer over the UNE Platform, regardless of whether the DSLAM functionality is deployed in a remote terminal or in a central office and regardless of whether SBC, a data CLEC, or AT&T deploys the functionality.

The Commission also should not approve (or give the impression of approving) provisions that are not relevant to the issue being considered, *i.e.,* the ownership of specific network assets. Thus, the Commission must be sure not to give its imprimatur to those elements of SBC's plans that -- as revealed by the documents appended to SBC's request -- reflect an entirely incorrect view of SBC's legal obligations and would, if not corrected, further impede the evolution of a competitive marketplace. For example, the materials SBC filed with the Commission describe how SBC's ILECs intend to provide requesting data CLECs only with

[11] The Commission must be especially careful not to rely on the SBC/Ameritech merger conditions to define SBC's nondiscrimination obligations under Section 251 and Section 271 of

certain xDSL-based technology (ADSL), using specific equipment (Atcatel Litespeed 200 or UMC 100), subject to strict bandwidth speed limitations (1.5 Mbps downstream capacity, 384 Kbps upstream capacity), on loops that carry only SBC's, and not voice-CLECs', basic telephone service.[12] Such constraints on competitors' offerings are as unlawful as they are unnecessary.

Accordingly, AT&T urges the Commission to avoid these traps and instead redouble its efforts to eliminate the remaining impediments to DSL and voice competition, including most particularly SBC's efforts to prohibit CLECs that use UNE-P from adding DSL capabilities to their competitive offerings.

II. NETWORK ARCHITECTURE ISSUES: SBC'S PETITION DEMONSTRATES THAT ILECS, NOT THEIR DATA AFFILIATES, MUST OWN AND CONTROL ADLU CARDS AND OCDs.

SBC's proposal initially raises issues of network architecture. In particular, SBC proposes that its ILECs own and control certain network equipment, *i.e.*, ADLU cards and the OCDs. SBC states that this issue has arisen because of its plans to provide DSLAM capabilities through next generation Digital Loop Carriers ("DLC") deployed in upgraded or newly placed RTs throughout SBC's territory. The ADLU is simply a plug-in card, residing within the DLC, that provides DSLAM functionality. As SBC correctly states, these devices will be used to

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the Act. See id. ¶ 357.

[12] AT&T's comments are responsive to the documents that SBC has placed into the record in this proceeding. As reflected in the attached Declaration of Gary A. Rall ("Rall Declaration"), however, SBC now states that those documents no longer reflect the terms and conditions SBC intends to impose on ASI and other CLECs seeking to provide high-frequency services, either as a "stand-alone" service or on loops that carry SBC's basic telephone service. AT&T has not had a reasonable opportunity to review and respond to SBC's newest document regarding its DSL deployment plans ("Appendix DSL"), which is attached to the Rall Declaration. Nevertheless, Appendix DSL, which is not yet in the record in this proceeding, provides further evidence that SBC intends to: (1) continue its discriminatory practice of denying CLECs that use UNEs to provide voice service an opportunity to provide data services on the same line; and (2) impose unreasonable and unlawful restrictions on the manner in which high-frequency spectrum access may be obtained by CLECs who opt to relinquish their right to the low-frequency spectrum.

permit SBC ILECs and ASI, as well as CLECs (at least those who do not wish to oust SWBT as the customer's voice carrier), to achieve the efficiency of sharing a single loop for both voice and DSL services.[13]

SBC effectively admits that the functionalities at issue here are spectrum splitting, transmission modulation, and delivery of traffic to CLEC networks.[14] All of these are typical ILEC functions. All involve functions that the Commission has previously determined are subject to ILEC unbundling requirements, most particularly as regards the loop and associated electronics.[15] None of these functions *provide* an advanced service but rather, *among other things*, permit the *delivery* of advanced services. As a result, under the merger conditions, this is equipment that *may not* be transferred from SBC's ILECs to ASI.[16] Indeed, it is inconceivable

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[13] See SBC Letter at 4-6.

[14] See id.

[15] See Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404 at ¶ 271 (rel. Dec. 22, 1999) ("Bell Atlantic-NY Section 271 Order") (Bell Atlantic must "provide access to any functionality of the loop requested by a competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested"); see also Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121, Memorandum Opinion and Order, FCC 98-271, 13 FCC Rcd 20599, 20713 (rel. Oct. 13 1998) ("Second BellSouth Louisiana Order") (same quotation as above); Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325, 11 FCC Rcd 15499, 15691 (rel. Aug. 8, 1996) ("Local Competition Order") aff'd in part and vacated in part by Iowa Utils. Bd. v. FCC, 120 F.3d. 753 (8th Cir. 1997), aff'd in part and rev'd in part by AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999) (defining elements of the local loop); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 at ¶ 175 (rel. Nov. 5, 1999) ("UNE Remand Order") ("Because excluding such equipment from the definition of the loop would limit the functionality of the loop, [the Commission] include[s] the attached electronics (with the exception of DSLAMs) within the loop definition.") AT&T has petitioned the Commission for reconsideration of its determination that DSLAMs are not included as part of the attached electronics within the definition of a loop.

[16] See SBC/Ameritech Merger Order ¶ 365 & n.682, Appendix C at ¶ 3(d). The merger conditions contemplate that even mixed-use equipment should stay with the ILEC, and they warn that transfers to ASI of equipment subject to unbundling requirements will subject ASI to those requirements. See id.

that SBC's ILECs could meet their Section 251(c) responsibilities without owning this equipment. Thus, although SBC seeks the Bureau's concurrence that its ILECs have the "option" of owning and controlling this network equipment, AT&T urges the Bureau to advise SBC that ownership of such functionality is *not* "optional" – it must clearly reside with its ILECs in all cases.[17]

Sections 251 and 252 of the Act, the Commission's rules and orders interpreting those statutory provisions and SBC's own acknowledgement of the functionality provided by ADLU cards and OCDs all compel a determination that ownership of such equipment must rest with the ILEC. The Commission's orders make clear that such equipment provides functionalities of the loop that must remain with the ILEC.[18] SBC correctly states that the "primary function of the OCD is to concentrate and route data signals to various CLECs rather than to provide retail Advanced Services".[19] Without this functionality, an ILEC could not carry and deliver to a CLEC the traffic generated by the CLEC's retail customer. Thus, the OCD provides an interconnection, not a packet switching, function, because the OCD does not direct the communication to its end point destination but rather directs it to an interconnecting network that provides such functionality. Moreover, ADLU cards provide voice/data stream separation and transmission modulation functions that are essential functionalities of the loop.[20] The ADLU card is, therefore, as much a part of the local loop as the DLC which houses the card.

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[17] SBC's explanation of the ADLU cards and the OCDs also provides further clarification and support for AT&T's position that loop electronics such as the splitter and the DSLAM must be provisioned to competitors on an unbundled basis, regardless of where they are located. For example, the splitter, a passive device, cannot be construed as providing any advanced service although without it advanced service cannot be provided (just as without a loop the service would not be provided). If the functionality of a line card in a RT -- voice/data stream separation and transmission modulations -- must be unbundled to permit competition, then the same logic should prevail when the functionality is provided within a central office location via a DSLAM.

[18] See supra note 15.

[19] See SBC Letter at 5.

Accordingly, neither SBC nor any other ILEC may transfer ownership of ADLU cards and OCDs (or equipment with similar functionality) to its affiliate.[21]

Allowing ILECs the option to transfer ownership of network devices that provide anything other than pure packet switching functionality would also be contrary to public policy. If ILECs were allowed such unwarranted discretion, an ILEC and its affiliate could discriminate against competitors in *both* the advanced services *and* traditional service marketplace by placing critical functionalities in the unregulated affiliate, where the ILECs are sure to claim, contrary to the Commission's prior rulings, they are beyond the reach of Section 251(c).

III. OPERATIONAL ISSUES: SBC INTENDS TO IMPOSE PATENTLY UNLAWFUL RESTRICTIONS ON THE USE OF ITS NETWORK.

As part of its request, SBC has attached a draft contract which purports to set forth the terms and conditions for providing advanced services ("Appendix DLE-DSL") when DSLAM functionality is resident in DLCs housed in upgraded or newly placed RTs throughout SBC's territory, with the exception of Connecticut.[22] The Bureau should be careful to foreclose any possibility that a ruling on SBC's request could be interpreted as approval for any of the terms and conditions set forth in Appendix DLE-DSL.[23] The issue presented is solely a question of

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[20] See id. at 4.

[21] Alternatively, if the ILEC does transfer ownership, the affiliate must be deemed its successor and subject to the unbundling and nondiscrimination requirements of section 251(c). See SBC/Ameritech Order at ¶ 365 n.682 (if functionality of an unbundled network element is transferred to an affiliate, then affiliate is deemed as successor or assign).

[22] Appendix DLE-DSL explains that terms and conditions of the SBC ILEC's "DLE-DSL" offering in Connecticut are set forth in a state commission ordered Connecticut Access Service Tariff. See Appendix DLE-DSL § 1.6.

[23] AT&T notes that it cannot fully comment on this aspect of SBC's request at the present time because SBC has not yet supplied interested parties with all of the documents referenced in Appendix DLE- DSL. In addition, AT&T did not receive SBC's newest draft contract, "Appendix DSL", until March 1, 2000. See generally Rall Declaration. Accordingly, AT&T reserves the right to supplement its comments upon receipt and review of these additional documents.

asset ownership under the merger conditions. The Bureau should thus reiterate that all rules governing collocation, UNEs, line sharing, and spectrum management apply to, and will be enforced against, SBC and its ILECs independent of anything in the merger conditions.

Nevertheless, there is significant cause for Commission concern. Appendix DLE-DSL demonstrates that SBC intends to impose restrictions on the use of its network elements in violation of sections 251 and 252 of the Act, as interpreted by the Commission's rules and orders. For example, Appendix DLE-DSL addresses only how SBC intends to provide DSL services to customers receiving voice services supplied by the ILEC. The information that SBC has provided completely fails to explain how a CLEC such as AT&T could use SBC's network to provide a combined voice and data offering in the same manner that SBC intends to provision both voice and high-frequency services to its own voice customers. Nor does it explain how a voice CLEC and a data CLEC could collaborate to do so. In addition, the terms and conditions set forth in Appendix DLE-DSL, if implemented according to SBC's plans, would unlawfully dictate the speed, type of service, and manner in which data CLECs offer high-frequency services to their customers. Although SBC has now distributed – but not placed into the record of this proceeding – a new draft contract, "Appendix DSL", which apparently supercedes many of the terms and conditions set forth in the documents SBC submitted to the Commission in this proceeding, SBC's newest documents provide more, not less, evidence that SBC intends to impair competition.

Preexisting impediments to competition must be removed, and new impediments to competition must not be tolerated. The Commission should not countenance any further delays in the establishment of the processes, procedures, and mechanisms that CLECs using UNE-P need to provide both voice and data services over the same loop in a manner that is as efficient

and effective as the ILEC. It is essential that SBC be required to meet the CLECs' need to offer both voice and data services on the same timetable as that being proposed for data-only providers because the systems are being developed now and redesign would be costly and time consuming.

A. SBC's Proposed Conditions Would Prevent Competitors Using UNE-P or Other UNE Arrangements from Accessing SBC's Network To Provide Combinations of Voice and High-Frequency Services in the Same Manner SBC Provisions Combinations of Voice and High-Frequency Services to its Retail Customers.

Appendix DLE-DSL centers on how SBC intends to provide ADSL service over the high-frequency portion of the local loop to an affiliated or unaffiliated carrier, on loops that carry SBC's basic telephone service. The network configuration proposed by SBC appears, on its face, to be an efficient means of allowing either SBC's affiliate or a data CLEC to provide certain ADSL services to customers receiving SBC's voice services. These efficiencies, however, must also be available to CLECs who seek to provide an integrated bundle of services to their voice customers. Appendix DLE-DSL submitted by SBC gives clear indications that it intends to impose restrictions on the use of this network configuration. Such restrictions, if adopted, would discriminate against CLECs seeking to use either UNE-P or other UNE arrangements to provide both voice and high-frequency services (whether by themselves or in conjunction with a cooperating carrier).[24]

This disparity is unlawful. Section 251(c)(3) compels a determination that SBC must enable AT&T (or any other carrier using UNE-P or other UNE arrangements) to provide both voice and high-frequency services as efficiently as SBC is able to provide such services to its

[24] See Appendix DLE-DSL §§ 3.6, 6.3. SBC's new draft contract, Appendix DSL, coupled with recent statement made by SBC's representatives, makes clear that SBC will continue to deny AT&T, and any other CLEC, from accessing SBC's network to provide combinations of voice

own customers. As AT&T has repeatedly explained,[25] SBC's failure to provide and support fully functional and nondiscriminatory operational procedures that enable CLECs such as AT&T to provide bundled voice services and xDSL capabilities, either on their own or with others, constitutes unreasonable discrimination in the provisioning of loops and OSS and violates Section 251(c)(3).[26]

SBC does not – and can not – show any technical or operational reasons why it should be permitted to create an efficient network configuration for itself, while relegating CLECs who seek to provide integrated voice and DSL services over a single loop to some other unspecified arrangement. As proposed, SBC's network arrangement would permit its ILECs to provide xDSL services over a single loop to their voice customers efficiently and without disruption, and without any practical limitation on how far the retail customer's location is from the traditional serving central office. SBC has not, however, made these efficiencies available to AT&T, even though the physical arrangements that SBC's ILECs must establish for a UNE-P CLEC such as AT&T are virtually identical to those that enable SBC's ILECs to line-share with ASI or with a data CLEC.[27]

Moreover, SBC's intent to limit potential competitors' access to the voice service delivered over the proposed network configuration cannot be squared with SBC's statements in

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and high-frequency services in the same manner SBC provisions such combinations to its retail customers. Rall Declaration ¶¶ 7-11.

[25] See supra note 4.

[26] As recently as March 1, 2000, SBC informed an AT&T representative that SBC would "allow" AT&T and other CLECs that use UNEs to provide voice services to obtain a second line for data-only services. Rall Declaration ¶ 9. This "two-loop" alternative, however, is unacceptable because it would force AT&T to incur significantly greater costs to provide both voice and data services to customers. By denying AT&T's customers the same efficiencies as those available to SBC's voice customers who receive the voice and data services over a single loop, SBC is seeking to force AT&T and other integrated carriers into exactly the same position that the data CLECs found themselves prior to the Commission's release of the Line Sharing Order.

support of its pending application for authority to provide long distances services in Texas.[28] In that proceeding, SBC recently acknowledged, as it must, that CLECs who obtain unbundled loops as network elements, either via the UNE Platform or other UNE arrangements, are entitled to access the high-frequency portion of those loops to provide xDSL-based service in conjunction with their own voice offering.[29] However, as referenced in the attached declaration of Gary A. Rall, SBC has completely disavowed the statements it made to the Commission.[30]

The Commission cannot reasonably conclude that SBC is providing nondiscriminatory access to its network until CLECs that use all of the major entry strategies -- including UNE-P and other UNE arrangements -- are able to provide both voice and high-frequency services to consumers in a manner that (1) is practically efficient; (2) is based upon forward-looking technologies; and (3) does not place potential competitors at a cost or operational disadvantage compared to the SBC ILECs and their data affiliate. Although Sections 251 and 271 require SBC to provide of non-discriminatory access to loops, such access for CLECs using UNEs was not addressed in the context of the merger conditions (or in SBC's current proposal). If CLECs using UNE-P and UNE-L – the principal entry strategies for the mass market – cannot provide a full suite of services to customers, the value of the merger conditions is necessarily diminished and the Act's procompetitive goals are frustrated.

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[27] The record-keeping procedures that are required may vary, but the basic operational needs are the same.

[28] See SWBT Reply Brief at 37 n.19.

[29] See id.

[30] See Rall Declaration ¶ 8. Even during the brief interval when SBC was acknowledging that it had an obligation to provide CLECs using UNEs to provide their own (or a cooperating carrier's) xDSL service to customers who already receive competitive voice services in a non-disruptive and efficient manner, SBC refused to identify any arrangements or procedures that would enable CLECs to do so.

B. SBC Is Unlawfully Attempting to Dictate the Manner in Which Competitors May Deploy High-Frequency Services Over the SBC ILECs' Network.

SBC's documents apparently assume that SBC has the sole discretion to dictate the manner in which high-frequency spectrum access may be obtained and that it may limit such access to CLECs that relinquish their right to the "low frequency spectrum." SBC is wrong. Sections 251 and 252 of the Act, as well as the Commission's rules and orders interpreting these statutory provisions, demonstrate that ILECs are prohibited from unilaterally constraining the competitive services that competitors may provide using unbundled network elements.[31]

Nevertheless, Appendix DLE-DSL makes clear that SBC seeks to use its monopoly control over the loop infrastructure at the RT to impair advanced services competition and constrain consumer choice by impermissibly dictating the terms and conditions under which competitors may deploy high-frequency services over the SBC ILECs' networks. In particular, Appendix DLE-DSL demonstrates SBC attempts to:

- control the type of xDSL-based service ("ADSL") that CLECs may provide in both "line-shared" and "non-line-shared" situations (Appendix DLE-DSL §§ 3.3, 3.4);
- dictate the specific make and model of ADLU card that may be placed into RTs (§§ 2.2, 2.4, 2.6) and;
- restrict the maximum downstream (1.544 Mbps) and upstream bandwidth (384 Kbps) speeds that CLECs may offer their customers (§ 8.8); and

[31] See, e.g., Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, Memorandum Opinion and Order, FCC 97-418, 13 FCC Rcd 539, 646-47 (rel. Dec. 24, 1997), app. pend., Case No. 98-1019 (D.C. Cir.) ("South Carolina Order") (noting that new entrants should be able to choose and control their entry strategy); Local Competition Order, 11 FCC Rcd at 15668-69 (recognizing that new entrants must be able to distinguish their service offerings from those offered by incumbents).

- restrict the manner that CLECs may access "DLC subloops" for traditional voice services (§§ 6.1, 7.1).[32]

In each case, federal law compels that SBC provide CLECs with additional flexibility to provide the specific services that they seek to offer over SBC's network.[33]

First, SBC's attempt to preclude competitors from offering xDSL-based services other than ADSL, as reflected in the documents SBC filed with Commission, is contrary to the Advanced Services Order[34] and Line Sharing Order,[35] whether or not the CLEC seeks to provide xDSL-based services in combination with SBC's basic voice service. Where a CLEC seeks to provide xDSL-based services in combination with SBC's basic voice service, SBC must permit that carrier to "deploy any version of xDSL" that does not interfere with the underlying analog

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[32] In SBC's newest document, and in related discussions, SBC has indicated that it might be willing to provide CLECs with some ability: (1) to provide high-frequency services over the SBC ILEC networks at speeds that differ from those initially proposed in the documents originally submitted to the Commission; and (2) to permit CLECs to request compatible ADLU cards. Rall Declaration ¶¶ 18-19. As explained in the Rall Declaration, these recent concessions, however, provide little comfort that SBC intends to reverse its long-standing strategy to constrain competitors' ability to provide the high-frequency services they seek to offer consumers. In any event, these recent concessions are more than offset by other troubling restrictions imposed on CLECs, such as: (1) SBC's refusal to allow CLECs the opportunity to test loops when they intend to provide high-frequency services over SBC's network; and (2) SBC's reluctance to make ILEC-owned splitters available to CLECs on a line-at-a-time basis. Rall Declaration ¶¶ 13-16.

[33] In addition, the Bureau should make clear that it is not sanctioning any of the cost levels set forth in the Appendix. The Bureau should also note that Appendix DLE-DSL sets forth certain charges that appear questionable, at best. For example, Appendix DLE-DSL § 6.2 appears to give SBC the opportunity to impose cross-connect charges associated with the ADLU cards that are not associated with any corresponding physical work. In addition, it is not clear from Appendix DLE-DSL § 6.2 that SBC's proposed feeder charge includes costs associated with OC-3 transport from the RT to the CO.

[34] Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48 at ¶ 63 ("Advanced Services Order") ("incumbent LECs should not unilaterally determine what technologies LECs, both competitive LECs and incumbent LECs, may deploy").

[35] Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Third Report and Order and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket 96-98, Fourth Report and Order, FCC 99-355 at ¶¶ 63, 70, 179 (rel. Dec. 9, 1999) ("Line Sharing Order").

voiceband transmissions.[36] Where a CLEC seeks to provide only xDSL-based services over a loop, SBC may not impair a CLEC's ability to use that loop to provide other forms of xDSL-based services, such as SDSL or HDSL, that may not be compatible with traditional voice services provided over the same line.[37] Thus, in both instances, SBC's attempt to adopt an "ADSL-only" policy for its network is patently unlawful.

Second, SBC may not require that CLECs use a specific line card, nor may it otherwise use and control RT equipment in a manner that unreasonably limits CLECs' flexibility to provide the xDSL-based services they seek to offer consumers. As the Commission has repeatedly recognized, the ability of a CLEC to use unbundled network elements is integral to achieving Congress' objective of promoting competition in the local telecommunications market, because it gives the CLEC the incentive and ability to provide innovative new services to consumers in ways that differ from the incumbent.[38] In essence, by forcing CLECs to offer only the same advanced service that its advanced services affiliate intends to offer, SBC is unlawfully attempting to erase the principal distinction between sections 251(c)(3) and 251(c)(4).

SBC cannot be permitted to stifle innovation in this manner. In the recent Bell Atlantic-NY Section 271 Order, the Commission recognized that ILECs must provide access to *any*

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[36] See Line Sharing Order at ¶¶70-71.

[37] Line Sharing Order ¶ 27 n.51. A "loop technology is presumed acceptable for deployment when the technology meets any one of the following criteria: (1) it complies with existing industry standards; (2) it is approved by an industry standards body, the Commission, or any state commission; or (3) it has been successfully deployed by any carrier without 'significantly degrading' the performance of other services." See also id. at ¶ 34 (noting that the ability to procure unbundled loops prevents impairment).

[38] See South Carolina Order, 13 FCC Rcd at 646-648; see also Local Competition Order, 11 FCC Rcd at 15667-68. The Commission has recognized that ILECs have a significant "incentive to deny special accommodations required by competitive LECs seeking to offer innovative advanced services that the incumbent may not even offer." SBC/Ameritech Merger Order at ¶ 107 & n.224 (noting that a BOC's "purposeful delay in implementing a competitor's request pertaining to an innovative new service would violate section 201(a) and 272(c)(1) of the Communications Act."). Of course, the same is true when the only thing "special" about a competitor's request is a difference in bandwidth speed.

functionality of the loop requested by a competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested. In particular, the Commission stated:

> In order to provide the requested loop functionality, such as the ability to deliver ISDN or xDSL services, the BOC may be required to take affirmative steps to condition existing loop facilities to enable competing carriers to provide services not currently provided over the facilities, with the competing carrier bearing the cost of such conditioning. The BOC must provide competitors with access to unbundled loops regardless of whether the BOC uses integrated digital loop carrier (IDLC) technology or similar remote concentration devices for the particular loop sought by the competitor. (footnotes omitted).[39]

In accordance with the Commission's rules, if SBC is able to use RT equipment that can handle plug-ins that support other services without network harm, SBC may not impair competitive choice by gating a competitor's deployment to that desired by its affiliate.[40]

Third, for the same reasons, SBC may not restrict the downstream and upstream bandwidth speeds of the high-frequency services CLECs seek to provide their customers. Consistent with the Commission's pronouncement that the market for advanced services must be "conducive to investment and innovation and responsive to the needs of consumers,"[41] CLECs should be permitted flexibility, within broad network engineering parameters that SBC has not yet specified, to provide xDSL-based services at bandwidth speeds that differ from those that SBC happens to prefer.[42]

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[39] Bell Atlantic-NY Section 271 Order at ¶ 271.

[40] While SBC has apparently conceded, as of March 1, 2000, that it must allow CLECs to request compatible ADLU cards, it has not indicated precisely what arrangements and procedures it will establish to enable CLECs to do so. Rall Declaration ¶ 19. AT&T would not object to a condition that CLECs may only request the use of plug-in devices that are compatible with the equipment the ILEC has installed, *provided* that the ILEC deploys remote equipment that does not unreasonably limit competitive choices for CLECs and customers.

[41] Line Sharing Order at ¶ 14.

[42] On March 1, SBC representatives indicated that they are now willing to provide CLECs with the ability to provide high-frequency services at maximum bandwidth speeds that are different

Fourth, SBC may not unreasonably restrict a CLEC's ability to access DLC subloops.[43] The Commission has indicated that access to subloops, defined to apply to new as well as current technologies, is necessary to allow requesting carriers maximum flexibility to interconnect their own facilities at remote terminals in the ILEC's outside plant.[44] Appendix DSL-DLE § 7.1, however, permits CLECs to purchase a subloop from the RT to the customer's premise for "dedicated data only" facilities, while making no such provision for CLECs to access the subloop for voice services. The Commission's rules, however, do not permit SBC to preclude CLECs from accessing SBC's subloops to carry traditional voice services.[45]

CONCLUSION

For the forgoing reasons, Sections 251 and 252 of the Act, the Commission's rules and orders interpreting those statutory provisions, and SBC's acknowledgement of the function provided, require a determination that ownership of ADLU cards and OCDs must rest with the ILEC. But this does not mean that SBC, by properly classifying this equipment, is fulfilling its statutory obligations to support competitive provision of DSL services. On the contrary, SBC's request indicates that SBC intends to impose patently unlawful restrictions on the use of its network that will impair the evolution of a competitive marketplace. Accordingly, the Commission should promptly resolve the major outstanding impediments to DSL competition,

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from those it originally proposed in Appendix DLE-DSL. Rall Declaration ¶ 18. Nevertheless, SBC must not be permitted to impose any bandwidth limitations upon data CLECs seeking to provide high-frequency services in a "line sharing" arrangement, except as indicated above.

[43] See UNE Remand Order ¶ 209.

[44] See UNE Remand Order ¶¶ 205-207, 209.

[45] In addition, in light of SBC's claims that it intends to deploy RT cabinets with "little or new excess space," SBC Letter at 2, the Bureau should also review SBC's proposal in order to ensure that SBC's RT cabinet proposal is not designed to evade its federal collocation obligations. Indeed, statements made by SBC representatives make clear that CLECs will have virtually no opportunity to collocate DSLAMs in SBC's RTs. Incredibly, SBC representatives conceded that SBC had neither sought CLEC input, nor included any forecasted CLEC demand for RT space, in to its network architecture plans. Rall Declaration ¶17.

especially SBC's failure to enable CLECs using UNE-P from adding DSL capabilities to their competitive offerings. Further, the Commission should caution SBC that it may not implement any of the operational constraints on competition, including those discussed above. As noted above, the merger conditions represent a floor and not a ceiling. Thus, SBC's compliance with the merger conditions does not provide a basis for granting Section 271 relief, or otherwise indicate that SBC has satisfied its nondiscrimination obligations under the Section 271 of the Act, or the Commission's implementing rules and orders.

Respectfully submitted,

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March 3, 2000
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of	)	
	)	
AMERITECH CORP.,	)	
Transferor,	)	
	)	
AND	)	
	)	
SBC COMMUNICATIONS INC.,	)	CC Docket No. 98-141
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	)	

Declaration of Gary A. Rall in Support of
Comments of AT&T Corp. in Response to SBC's Request for
Interpretation, Waiver or Modification of the
SBC/Ameritech Merger Conditions

1. My name is Gary A. Rall. I am employed by UltraPro International, Incorporated as a consultant for AT&T Corp. ("AT&T"), as a Senior Technical Consultant. My business address is 3715 Edinburgh Drive, Livermore, CA 94550. Among other duties, I provide technical assistance and advice regarding AT&T's implementation of its strategy for DSL-based services.

2. I submit this declaration in support of the Comments of AT&T filed in the above-captioned proceeding. This declaration is based on my own personal knowledge, and upon information available to me in the course of my duties as AT&T's Senior Technical Consultant.

3. On March 1, 2000, I attended two meetings in Dallas, Texas -- a network engineering meeting and a "Project Pronto" meeting -- with representatives of SBC Communications Inc. and Southwestern Bell Telephone Company (collectively "SBC"). The stated purposes of these meetings were to discuss: (1) technical issues related to SBC's deployment of line sharing; (2) SBC's plans to provide DSLAM capabilities through next generation Digital Loop Carriers ("DLC") deployed in upgraded or newly placed Remote Terminals ("RTs") throughout SBC's territory ("Project Pronto architecture"); and (3) SBC's request to the Bureau for interpretation of the merger conditions adopted by the Federal Communications Commission ("Commission") in conjunction with its approval of SBC's acquisition of Ameritech Corp.

4. As a representative of AT&T, I attended these meetings in order to determine how SBC intended to resolve certain DSL-related issues. In particular, I sought to determine from SBC precisely how it intended to enable AT&T to use the high-frequency spectrum of a UNE-loop employed by AT&T in a UNE-P configuration.

5. During the "Project Pronto" meeting, Rod Cruz, on behalf of SBC, informed participants that the materials accompanying its request to the Commission for interpretation of the merger conditions, particularly Appendix DLE-DSL, are now somewhat outdated and that various SBC positions have recently been changed.

6. SBC also distributed a new draft contract, ("Appendix DSL"), to all participants during the Project Pronto meeting. SBC's new Appendix DSL sets forth the terms and conditions that SBC intends to impose upon SBC's data affiliate, Advanced Solutions, Inc. ("ASI"), as well as CLECs (at least those who do not wish to supplant the SBC ILECs as the customer's voice carrier), when these companies seek to provide high-frequency spectrum ("HFS") services over loops using the Project Pronto architecture. A copy of Appendix DSL is attached to this Declaration. In response to a question from a participant, Mr. Cruz stated that SBC did not intend -- at this time -- to supplement the material it had originally submitted to the Commission, but would address any concerns raised in the comments that related to the new Appendix.

7. During the Project Pronto meeting, Allan Samson, another SBC representative, indicated that SBC's current position was that no CLEC would be permitted to use SBC's Project Pronto architecture to access HFS in situations in which a CLEC was providing, or intended to provide, voice service over the UNE-Platform. Mr. Samson reiterated that SBC's plan to house DSLAM functionality in an upgraded or newly placed remote terminal throughout SBC's territories was available only to CLECs who intend to provide HFS services, either as a data-only option or in combination with SBC's basic voice service.

8. I referred SBC representatives to the reply comments that SBC filed at the FCC in connection with its Texas 271 Application and asked how SBC could deny AT&T access to its network when it had just committed to the Commission that "AT&T is free to offer

both voice and data service over the UNE Platform or other UNE arrangement, whether by itself or in conjunction with its xDSL partner", at page 39, footnote 17. SBC representatives reiterated that SBC was not willing to provide AT&T HFS access utilizing a UNE loop or utilizing the Project Pronto architecture in situations in which AT&T was providing service over UNE-P. After fielding several questions from participants representing various CLECs seeking to use the Project Pronto architecture to provide both voice and data services, Mr. Samson stated that the SBC would "review" its current thinking on this issue, but failed to provide the participants with any information regarding the scope, nature, and proposed timetable of this unspecified future review.

9. SBC's intention to deny AT&T, or any other CLEC-voice provider, access to the network it has architected for its own use significantly impairs AT&T's ability to provide an integrated bundle of voice and data services in competition with SBC. At the Project Pronto meeting , SBC informed participants that it would "allow" AT&T and other CLECs that use UNEs to provide voice services to purchase another (*i.e.*, a second) loop for high-speed xDSL "data-only" service. This "two-loop" alternative, however, is unacceptable because it would force AT&T to incur significantly greater costs to provide both voice and high-speed data services to customers, thus denying AT&T's customers the same efficiencies as those available to voice customers of the SBC ILECs receiving the same services over a single loop.

10. SBC also indicated that, as a second alternative, SBC's ILECs would "try," where available, to provision voice and data services to AT&T over copper cables running

between the central office and a customer's premises. This proposal is also unacceptable to AT&T.

11. SBC's Project Pronto architecture provides it with the ability to provide customers with faster bandwidth speeds and, as a result, a better HFS than would be available over copper facilities alone. By utilizing the Project Pronto architecture to deploy xDSL-based services to customers receiving SBC voice-based services, SBC can decrease significantly the length of a copper loop to a subscriber's home. This shorter loop length permits SBC to deliver and offer its voice customers an HFS service at download speeds of up to 6-8 MBs. Competitors relegated to SBC's alternative "copper loop" model, however, would be forced to attempt to provision HFS to customers over copper loops that may be 15,000 feet in length, or more, as measured from the customer's home to the central office. The discrepancy between speeds available to SBC's voice customers on the Project Pronto architecture and those available to a competitor's voice customer served by the "copper loop" alternative, puts competitors at a significant disadvantage. A loop length of 16,000-18,000 feet, for example, limits the data downsteam speed -- to 1.5 to 2 MBs --, as well as the resulting high-speed services, that competitors may provide to customers. Longer loop lengths would, without the deployment of additional technology, eliminate many customers from being able to receive high-speed data service.

12. I have not had a reasonable opportunity to review and analyze in detail the new Appendix DSL that SBC has just distributed. Nevertheless, Appendix DSL, coupled with

statements made by SBC representatives at the March 1 meeting, reveals that SBC intends to constrain significantly the manner in which HFS access may be obtained and that it limits such access to CLECs that relinquish their right to the "low frequency spectrum."

13. First, SBC's documents and statements reflect that SBC is reluctant to make ILEC-owned splitters available to CLECs in an efficient manner. While new Appendix DSL indicates that SBC's ILEC (in this case Pacific Bell) will permit CLECs to lease an ILEC-owned splitter, the document provides no further details. Appendix § 5.1. To date, SBC has refused to commit to make splitters available to CLECs on a line-at-a-time basis. Indeed, SBC representatives have stated a preference for requiring that a CLEC purchase a shelf of splitters in recent technical and engineering line-sharing meetings.

14. Second, SBC refuses to allow CLECs the opportunity to test loops when they intend to provide HFS using SBC-provided splitters. In particular, SBC has informed "line-sharing" CLECs that they will not be permitted manual test access to the inputs and outputs of the line splitter, or the loop. SBC has also stated that their present position is not to allow line sharing CLECs access to SBC's remote test access capabilities using the ILEC's Maintenance Loop Testing system (MLT), even though SBC provides voice CLECs with access to identical capabilities.

15. SBC's newly filed Appendix DSL, at § 5.2, provides that when the SBC ILEC (in this case, Pacific Bell) installs the splitter in its bay, SBC will access the splitter on behalf

of the CLEC for line continuity tests. Under these circumstances, CLECs are not permitted direct physical access to the MDF or the IDF for testing. While the new Appendix DSL provides that "[a]dditional testing capabilities (including remote testing) may be negotiated by the Parties," SBC has indicated that it is not ready to negotiate this capability. Moreover, SBC representatives offered no insight as to whether, and to what extent, SBC might someday grant such remote test access capability to the CLEC data providers.

16. Without "parity" physical access to the IDF and MDF frames (or access to the ILEC's remote test access capabilities), a CLEC cannot determine the status of the physical loop facilities, or even if any cabling problems exist within, or outside, the central office. Instead, CLECs must request that the ILEC check the loop to look for trouble. Also, if the CLEC sends a trouble ticket to the ILEC, SBC to date has only committed to a response time of 24 hours to make the test.

17. Third, statements made by SBC representatives make clear that CLECs will have little opportunity to collocate at SBC's RTs. While SBC representatives present at the March 1 Project Pronto meeting indicated that CLECs would have the option to collocate DSLAMs in RTs, they also stated that few, if any, RTs had any collocation space available for competitors. At the meeting, SBC representatives conceded that SBC had neither sought CLEC input, nor included any forecasted CLEC demand for RT space, into the Project Pronto architecture plans. The SBC representatives stated that they had no obligation to account for the CLECs' needs when building out new RTs.

18. Fourth, in documents provided to the Commission, Appendix DLE-DSL at § 8-8, SBC had originally indicated that it intended to restrict the downstream and upstream bandwidth speeds of the high-frequency services CLECs seek to provide their customers, to 1.5 Mbps and 384 Kbps, respectively. At the March 1 meeting, however, SBC representatives indicated that they are now willing to provide CLECs with the ability to provide HFS at maximum bandwidth speeds that are different from the limitations originally documented in Appendix DLE-DSL.

19. Fifth, SBC had originally indicated to the Commission that it intended to dictate the specific make and model of ADLU card that may be placed into its ILEC's RTs. Appendix DLE-DSL §§ 2.2, 2.4, 2.6. At the March 1 meeting, SBC representatives stated, for the first time, that according to their California filing they will permit CLECs to request compatible ADLU cards. SBC did not, however, indicate precisely what arrangements and procedures it will establish to enable CLECs to do so.

CONCLUSION

20. In my opinion, SBC's latest DSL plans -- as revealed by statements made and materials distributed at the March 1 meetings -- reflect SBC's desire to impair a competitor's ability to provide the high-frequency services its seeks to offer consumers. In particular, SBC's recent statements and documents provide further indication that SBC intends to: (1) continue its discriminatory practice of denying CLECs that use UNEs to provide voice service an opportunity to provide data services on the same line; and (2) impose unreasonable and unlawful restrictions on the manner in which high-frequency

spectrum access may be obtained by CLECs who opt to relinquish their right to the low-frequency spectrum.