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ORIGINAL

May 19, 2000

Via Hand Delivery

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte Presentation in CC Docket No. 98-141, ASD File No. 99-49

Dear Ms. Salas:

Pursuant to Section 1.1206 of the Commission's rules, the Competitive Telecommunications Association ("CompTel") hereby gives notice that on May 18, 2000, its representative and one member company met with Anthony Dale, Mark Stone, Jerome Stanshine, Shanti Gupta, and Johanna Mikes of the Common Carrier Bureau. CompTel discussed request of SBC Communications for an interpretation, modification or waiver of its merger conditions in the above referenced proceeding.¹ CompTel explained that the equipment, for which SBC seeks an interpretation, modification, or waiver of the merger conditions, is "advanced services" equipment which the SBC advanced services affiliate must own. CompTel also reiterated its position that the Commission should deny SBC's request.

CompTel also explained that, if the Commission did grant SBC's request, the Commission should impose the conditions CompTel proposed in its May 18, 2000 ex parte letter to Carol Matthey, Deputy Chief, Common Carrier Bureau. CompTel engaged in a discussion of why its proposed conditions were necessary to preserve the purpose and intended effect of the original merger conditions. CompTel member CapRock Communications explained how a grant of SBC's request for a waiver would affect its business plans, as a facilities-based integrated provider of voice and data services who would have benefited from the original merger conditions.

¹ Letter dated Feb. 15, 2000, from Paul K. Mancini, SBC, to Lawrence E. Strickling, Chief, Common Carrier Bureau ("SBC request"); see In Re Applications of Ameritech Corp. and SBC Communications For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines, *Memorandum Opinion and Order*, CC Docket No. 98-141, (rel. Oct. 8, 1999) Appendix C ("*Merger Conditions*").

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List A B C D E

During CompTel's discussion of its proposed conditions, Commission staff raised a number of questions which were discussed and addressed by CompTel. In order to supplement the record in this proceeding, CompTel will list and answer several of the questions we discussed at yesterday's meeting with Commission staff.

1.) Why Should the Commission Reject SBC's Request?

As MCI WorldCom explained in its Comments in this proceeding, under the appropriate legal standards for modification of a Commission order, "SBC must prove that it would be consistent with the procompetitive purposes of the merger Conditions and the Communications Act . . . [and] [w]hen a modification is opposed by any party to this proceeding, SBC ordinarily has to demonstrate it is necessitated by a change in circumstances that is unforeseen and unforeseeable."² In this proceeding, SBC has not even suggested that it could meet this burden. In fact, evidence in the record would contradict any such suggestion.³ Given that SBC has not demonstrated that a grant of its request is either consistent with the purpose of the original conditions, or necessitated by an unforeseen change in circumstances, the Commission must reject this request.

2.) Why Does Pronto, As Proposed, Violate the Merger Conditions?

As CompTel explained in its April 27th and May 18th *ex parte* presentations, an interpretation of the merger conditions which would allow the SBC ILEC, during the limited-purpose "transition" period, to radically re-design its network and, thereby, deprive the conditions governing the much longer "steady-state" period of any effect consistent with their original purpose, would be inconsistent with established principles of statutory construction.⁴ Such an interpretation would also be inconsistent with the Commission's obligation to engage in reasoned decision making. Therefore, any reasonable interpretation of the merger conditions could not sanction a plan undertaken by the ILEC, without input from unaffiliated competitors, which would eliminate the need for the affiliate to engage in any network planning, collocation, equipment selection,

² MCI WorldCom Comments at 2, filed March 3, 2000 (*citations omitted*).

³ "we had done an evaluation actually during '98 and part of '99 and had made a company decision to deploy Litespan as a DLC product. We knew that they were also looking at expanding that product to a DSL capable Litespan unit, so we just—it just kind of meshed into where we were going with the technology." James Keown, SBC, from Transcript of March 1, 2000 Project Pronto Product Overview, p. 102 (Transcript was submitted in this proceeding as an Attachment to CompTel's March 8, 2000 *ex parte* letter) ("*March 1, Transcript*").

⁴ By analogy, "[c]ourts have stated that each section of a law which deals with the same subject matter must be read in *pari materia* with other sections on the same subject." Sutherland, *Statutory Construction*, (5th edition) § 51.03, p.138.

etc. on the same basis as unaffiliated carriers.⁵ Yet this is precisely what SBC asks the Commission to do by granting its waiver request.

3.) Couldn't SBC's Affiliate Implement Pronto On Its Own?

No, because the merger conditions were designed to ensure that both the SBC affiliate, and all unaffiliated carriers, receive the same non-discriminatory access to basic network services. Discrimination would occur if similarly situated entities were treated differently. Here, the SBC affiliate is, as a matter of Commission mandate, required to be similarly situated with unaffiliated carriers in terms of the way both receive access to essential network services. If the Pronto design is implemented without the waiver, every unaffiliated carrier will have to access essential network elements differently than the SBC affiliate. It would be a syllogism for SBC to assert that it could achieve a discriminatory result without discrimination in fact under the terms of the original conditions. Moreover, because the Pronto design encompasses the entire network (present and future), the SBC affiliate, if it implemented Pronto entirely on its own, would be taking the place of the SBC ILEC.

4.) Wouldn't CompTel's Conditions Result in SBC Being Treated Differently Than Every Other ILEC?

No. The Commission's merger conditions placed disparate regulatory burdens on SBC in order to offset the Commission's concerns over potential public interest harms resulting from SBC's merger with Ameritech. The CompTel proposed conditions only seek to preserve the procompetitive purpose of those original disparate regulatory burdens, should the Commission choose to relieve SBC of a critical obligation imposed under the original merger conditions.

5.) Would the Proposed "New Transition Period" Restrictions Constitute a "Prior Restraint" of Speech?

No. CompTel's proposed "New Transition Period" merely requires SBC to demonstrate that competitors are not disadvantaged by Pronto before marketing to new customers out of certain central offices and associated remote terminals. These restrictions are temporary and designed to ensure compliance with a pre-existing regulatory obligation. The restrictions do not impact SBC's rights of commercial speech at all. Put simply, SBC has no right to advertise what it has no right to sell. Note that this condition would not affect SBC's rights to market to new customers in areas where competitors will not be affected by this waiver.

⁵ MR. KEOWN: Yeah, the question was, do we take input from CLECs in choosing the technology that we're deploying in PROJECT PRONTO. . . (second question omitted)

The answer to the first question is no.

March 1, Transcript at 90-91.

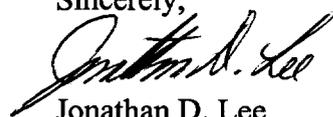
However, assuming these conditions are complied with quickly, neither SBC's ILEC, nor its affiliate, will experience any undue hardship. Moreover, the Commission is not obligated to grant SBC's request. Thus, any conditions which would accompany a waiver grant would be voluntarily undertaken by SBC.

6.) Don't Some of CompTel's Proposed Conditions Simply Re-State Requirements Which Are Already In the Act?

In some cases, yes. However, the reason that CompTel includes within its proposed conditions language which is already in the Act, is because Project Pronto, in the words of an SBC spokesman, "is not \$6 billion that was spent 40 years ago, [I]t's \$6 billion we're spending now to improve our network."⁶ Precisely because so much investment is being placed into a *new* network, the opportunities for many more technically feasible points of interconnection, than exist in the current network will be possible. CompTel asks that these be affirmative conditions to a waiver so that competitors' access to this overlay network will be maximized. For example, it would be unfortunate if, in building so many remote terminals with new potential interconnection points, SBC were to favor a difficult-to-access solution such as "splice points" over the more open "cross-connects". The Commission must be especially vigorous in monitoring this deployment to ensure that this investment is maximized for consumers, who will ultimately benefit from greater investment by all carriers. This investment will not occur if the basic requirements of the Act are overlooked.

During our meeting with Commission staff, CompTel distributed a presentation by CapRock Communications and CompTel's May 18, 2000 *ex parte* letter to Carol Matthey, Deputy Chief, Common Carrier Bureau. Copies of both are attached. Representing CapRock Communications were Lucy Huang and JoAnn Russell. Representing CompTel was the undersigned attorney.

Sincerely,



Jonathan D. Lee
Vice President,
Regulatory Affairs

cc (via electronic mail): Carol Matthey
Anthony Dale
Mark Stone
Jerome Stanshine
Shanti Gupta
Johanna Mikes

⁶ ComTel Asks FCC To Alter Project Pronto, Communications Today, May 19, 2000, p.2. ([http:// www.telecomweb.com/ct](http://www.telecomweb.com/ct)).



SBC's Project Pronto Impacts

CapRock Telecommunications

Lucy Huang - Director of Data Services

JoAnn Russell - Director of LEC Relations

May 17, 2000



CapRock Telecommunications Business Model

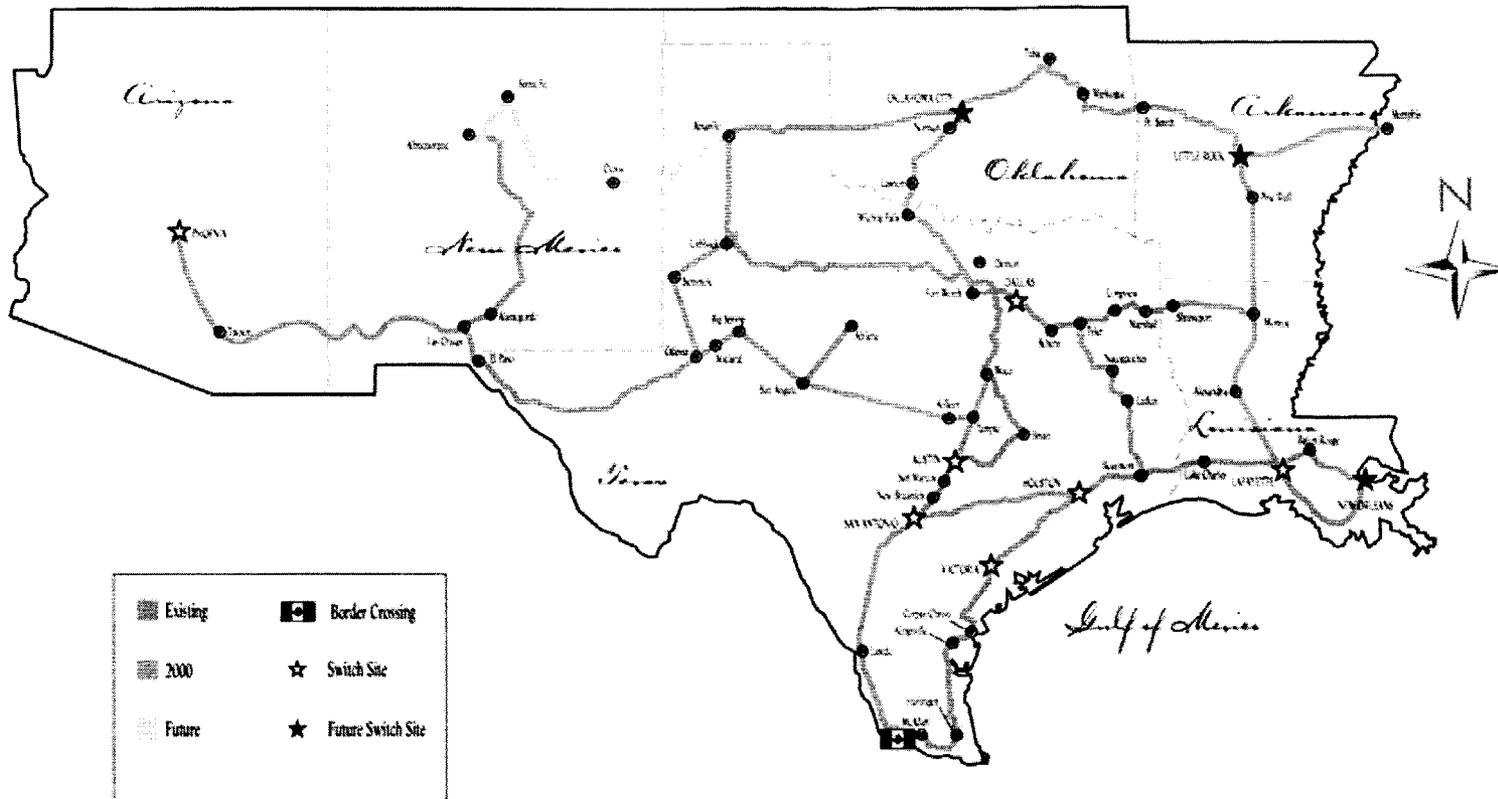
- Facilities-based integrated communications provider (ICP) offering local, long-distance, Internet, data and private line services to business customers in the southwest United States
- 7,500-mile fiber network, as well as voice and data networks, throughout Texas, Louisiana, Arkansas, Oklahoma, New Mexico and Arizona
- 200 voice and data central office collocations planned for 2000
- 48 addressable markets throughout 6 state service region
- Plan to offer facilities based DSL and VoDSL services to both businesses and consumers



CapRock Telecommunications Objectives

- To become the dominant provider of integrated telecommunication services to businesses in the Southwest region of the United States
- To establish itself as the premier wholesale provider of services over the most extensive alternative fiber optic network in the Southwest
- To provide superior customer service to our customers who desire simple bundled plans from a single provider

CapRock Telecommunications Coverage Map





SBC's Project Pronto Impacts to CapRock

1. Project Pronto does not address CapRock's ability to provide voice and data over a single loop
 - Architecture prohibits CapRock from offering both lifeline voice service and DSL service (including derived VoDSL channels)
 - Architecture only allows line sharing of SBC's lifeline voice with the unbundled DSL element
2. Significant reduction of original customer base
 - Pronto will significantly distribute the customer base of each host central office affected to multiple RTs
 - Reduce business potential of CapRock's current and planned capital investments
 - Customer base reduction may be as high as 50%
3. Limited DSL functionality due to selected platform and SBC's limited offerings
 - ADSL only; does not fulfill CapRock's business customer focus
 - Limited configuration options (ATM Quality of Service of Unspecified Bit Rate only and single PVC limitation) prohibit CapRock from offering advanced service features and VoDSL



SBC's Project Pronto Impacts to CapRock

4. SBC's ownership of advanced services equipment will impact CapRock's ability to manage/administer end-users, plan new products, and expand service availability
5. Mixed architecture will present CapRock with significant platform and operational management complexities
 - SBC will only offer unbundled DLEs out of the 13,000 RTs planned under Project Pronto
 - No unbundled options are available at approximately 30,000 existing SBC RTs where conversion to the Pronto architecture may not be planned
 - CapRock will deploy own DSL equipment at planned central office collocations
 - Complex and costly management of different platforms and service delivery models

FCC should reject SBC's request

- Proposed Pronto design is not necessary to accelerate advanced services deployment and discriminates against unaffiliated providers
 - Duplicating existing voice functionality through NGDLCs vs. remote DSLAMs costs more than double.
 - Deployment plan is not economic, but strategic; and inconsistent with separate affiliate obligations.
 - Separate affiliate would receive over 40,000 “collos” in 3 years
 - Impossible for a competitor to receive this level of service

Recommended Conditions

1. *Impact:* Project Pronto does not address CapRock's ability to provide voice and data over a single loop

Proposed Conditions:

- ✓ Access to original loop from host location to customer premise for the remainder of the plant's economic life.
 - ✓ Ability to provide CLECs lifeline voice and DSL services over proposed NGDLC architecture at the same cost as that of the original unbundled loop.
 - ✓ Collocation and implementation procedures/guidelines must be available to CLECs on an equal basis at all RTs (new and existing) for the purpose of CapRock providing both lifeline voice and DSL services over one single unbundled sub-loop. SBC must allow for cage-less collocation inside RT cabinets, CEVs, or huts.
2. *Impact:* Significant reduction of original customer base
 - ✓ If the proposed conditions specified for *Impact (1)* are not imposed on SBC, CapRock's original customer base will be reduced significantly.



Recommended Conditions

3. *Impact:* Limited DSL functionality due to selected platform and SBC's limited offerings

Proposed Conditions:

- ✓ The equipment must be capable of supporting all types of xDSL services including SDSL, ADSL, G.Lite, IDSL, and HDSL2.
- ✓ SBC must offer all equipment configurations (additional ATM QOS, multiple PVCs) to support CapRock's enhanced service features and VoDSL services
- ✓ SBC must establish ongoing and regular technology and platform planning procedures with the CLEC community on a non-discriminatory basis



Recommended Conditions

4. *Impact:* SBC's ownership of advanced services equipment will limit CapRock's ability to manage and administer services and end-user

Proposed Conditions:

- ✓ Appropriate performance standards for provisioning and service. Installation and performance metrics should follow current UNE delivery and performance standards.
- ✓ SBC provides CLECs with access to network management systems for the purpose of viewing real-time service configuration and performance.
- ✓ OSS systems to enable flow-through ordering submission and provisioning.

5. *Impact:* Mixed architecture will present CapRock with significant platform and operational management complexities

Proposed Conditions:

- ✓ SBC to establish procedures and regular interactive planning forums to allow CLECs, on a non-discriminatory basis, to provide service deployment input pertaining to conversion of existing RTs to Pronto configuration.



PLEASE STAMP
AND RETURN

May 18, 2000

Ms. Carol Matthey, Esq.
Deputy Chief, Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RECEIVED
MAY 18 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: CC Docket No. 98-141, ASD File No. 99-49

Dear Ms. Matthey:

In our meeting on April 25, CompTel explained that our position in this proceeding was that the equipment for which SBC was seeking an interpretation, waiver, or modification was advanced services equipment within the meaning of the merger conditions governing SBC's provision of advanced services.¹ CompTel also explained that the integrity of the merger conditions would best be protected if the Commission were to simply deny SBC's request.

The effect of such a denial, along with an explanation that SBC could not execute its advanced services strategy in a manner that discriminates in favor of its affiliate, would be that the SBC affiliate, along with every other unaffiliated carrier, would have to request and procure basic network services from the SBC ILEC on a non-discriminatory basis. Thus, if SBC were forced to rigorously comply with the conditions as written, they would have a powerful incentive to ensure that all providers had access to collocation, or, at a minimum, that the equipment used by the SBC affiliate was compatible with the equipment used by those carriers who might obtain limited collocation space ahead of SBC's affiliate (which one would expect if resources were provisioned on a non-discriminatory basis). Therefore, CompTel continues to believe that rejecting SBC's request is the course of action which best protects the integrity of Commission Orders, the interests of those competitors who may have accelerated their own advanced services

¹ See In Re Applications of Ameritech Corp. and SBC Communications For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines, *Memorandum Opinion and Order*, CC Docket No. 98-141, (rel. Oct. 8, 1999) Appendix C [hereinafter "*Merger Conditions*"].

deployment in SBC's region in reliance on the merger conditions, and consumers who would have ultimately received the benefits of those investments.

However, in our meeting on the 25th, you also asked whether there were any conditions which could accompany a grant of SBC's request, and would still preserve the procompetitive goals which motivated the original conditions. CompTel believes that conditions, which address these concerns, do exist. These conditions are best understood within the context of this proceeding.

As we have explained previously in this proceeding, it is CompTel's belief that SBC's proposed Project Pronto deployment plans plainly violate the terms of the merger conditions. Through a radical redesign of its network during the 180 day "transition" period, SBC egregiously exceeded the scope of this limited exception. Moreover, the scope on which SBC has abused the limited privileges provided by the Commission in order to "permit an orderly transition to the steady-state provisioning of Advanced Services. . ." ² has defeated the procompetitive conditions governing the "steady-state" period. Indeed, if SBC had any intention of scrupulously complying with the Commission's Order, it could have easily requested the same sort of interpretation it requests here, but *before* it had begun deployment of Project Pronto. Perhaps SBC reasoned that it is easier to ask forgiveness than permission.

In recognition of SBC's substantial, though premature, investment in Project Pronto, it is understandable that the Commission would seek to prevent waste of committed resources. However, at the same time, the Commission must also recognize that many CompTel Members, and other competitors, have committed substantial resources of their own to deploy advanced services facilities in SBC's Region. Many of these carriers accelerated deployment plans in reliance on the Commission's assertion that the Affiliate (created through the merger conditions) "will wait in line for collocation, petition to open closed offices, and otherwise deal with the same collocation and OSS implementation problems experienced by CLECs." ³ These carriers' investments also deserve consideration, and any conditions adopted by the Commission in this proceeding must serve to prevent waste of these assets. Indeed, principles of equity demand that the entity best situated to have prevented a loss be required to shoulder losses caused to others through a failure to exercise prudence.

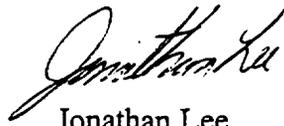
Thus, it is in this context that CompTel proposes the attached conditions, which, while accommodating SBC's basic Pronto design and architecture, are designed to ensure that consumers continue to receive the benefits of the substantial investments in advanced and traditional competitive telecommunications assets already deployed, or committed to deployment, by competitive carriers. Finally, these ancillary conditions are designed to

² *Merger Conditions*, Appendix C, ¶ I.4.n.

³ *Merger Conditions*, ¶ 363, n. 674.

reinstate the procompetitive benefits which the original merger conditions were designed to facilitate in the advanced services market, while minimizing negative collateral effects in other telecommunications markets in the SBC region.

Sincerely,



Jonathan Lee
Vice President
Regulatory Affairs

cc: Ms. Magalie Salas (2 copies)
Mr. Lawrence Strickling
Mr. Anthony Dale
Ms. Dorothy Attwood
Ms. Rebecca Beynon
Mr. Kyle Dixon
Mr. Jordan Goldstein
Ms. Sarah Whitesell
Mr. Paul Mancini

CompTel Proposed Pronto Waiver Conditions

- 1) A new “transition” period should be created for the purpose of “transitioning” competitive carriers onto the Pronto network architecture. During this period, neither SBC’s ILEC nor its Affiliate, will be able to market advanced services to new customers who are served by any central office (or associated remote terminals) in which competitive carriers are currently deployed, or in which competitive carriers have sought collocation until the following:
 - a) SBC installs equipment in the remote terminal that will allow facilities-based providers of both voice and data to provision such service from equipment collocated in the central office over a single sub-loop to the end-user premise;
 - b) Provisioning and ordering procedures are developed which allow competitors to provide integrated voice and data services over a single subloop into the end-user premise;
 - c) Prices, based on forward looking costs, are developed for all new elements associated with the new network architecture;
 - d) SBC must ensure that existing, central office-based OSS interfaces for repair and maintenance will continue to be accessible. For example, competitors must continue to be able to perform remote mechanized line tests on the entire “loop” from the central office to the customer premise;
 - e) SBC must contract with its remote terminal vendor to make the modifications necessary to provide compatibility between the SBC remote terminal equipment and the “cards” of other vendors of advanced services equipment in the SBC region;
 - f) If the obligation imposed by sub-paragraph d is not technically feasible, SBC cannot market to new advanced services customers until SBC’s remote terminal equipment vendor has developed operable “cards” capable of supporting all versions of DSL service, including: HDSL, SDSL, G.Lite splitterless DSL as well as POTS service;
 - g) Once the remote terminals, identified in the body of paragraph 1 above, have been brought into compliance with the requirements of this paragraph, all other remote terminals must comply with the requirements of this paragraph within one year of the effective date of the Commission Order approving these conditions.

- 2) Collocation Requirements. Interconnection must be made available at any technically feasible point in the SBC network, regardless of whether the proposed point of interconnection is owned by the SBC ILEC, or its Affiliate. Additionally, these other conditions apply to all SBC central offices and sub-tending remote terminals:
 - a) Remote terminal collocation, regardless of physical, virtual, cageless, or shelf/rack, will be provided wherever space permits;
 - b) Any equipment used to provide any telecommunications service to customers served through the remote terminal architecture is deemed “necessary” for

purposes of qualifying for central office collocation when remote terminal collocation is infeasible;

- c) ADLU cards used to provide any telecommunications service are necessary for interconnection at the remote terminal, and may be physically or virtually collocated at the remote terminal;
- d) CLEC-to-CLEC interconnection, where efficient, will, if deemed necessary to facilitate interconnection by the Common Carrier Bureau, be allowed and facilitated by SBC.

3) **Unbundled Network Elements.** SBC shall make available the following network elements on either a “leave combined”, or separated, basis as requested by the competitor:

- a) Unbundled network elements necessary to provide a central office-powered 8 db passive signal along a dedicated virtual path from the central office-served fiber through the remote terminal to the end user. This requirement includes all associated elements from the remote terminal through the CO which are necessary for a facilities-based competitor to provide integrated voice and data service;
- b) Line sharing of the subloop between two CLECs, or the CLEC and the ILEC is reasonable, and must be provided;
- c) All features of the SBC remote terminal equipment must be available, if technically feasible, at cost-based prices. This requirement includes permanent virtual circuits of any quality of service of which the equipment is capable of providing;
- d) A virtual dedicated transmission path on the SBC-owned fiber feeder serving the remote terminal must be made available to competitors at cost-based prices;
- e) All elements, previously identified by SBC in this proceeding, necessary to provide a data service.

4) **Preservation of Existing Facilities.** All existing copper feeder plant must be maintained for the remainder of its forecasted economic life. In addition:

- a) Capacity on existing copper feeder plant must be made available on a *preferred* basis to those carriers who are not collocated in the remote terminal;
- b) No customer currently served by any competitive carrier over copper loop technology may be migrated to fiber-based plant without the permission of the competitive service provider.