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March 11, 2005

**VIA ELECTRONIC FILING**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: Access to Confidential Materials in WC Docket No. 04-313 and  
CC Docket No. 01-338**

Dear Ms. Dortch:

On March 9, 2005, Neutral Tandem, Inc. ("Neutral Tandem") filed with the Commission two "Acknowledgement[s] of Confidentiality" on behalf of two of its employees, Jon Clopton and Ronald Gallivet,<sup>1</sup> so that these individuals may review Confidential Information pursuant to the Protective Order adopted in these proceedings.<sup>2</sup> Pursuant to paragraph 8 of the Protective Order, SBC Communications Inc. ("SBC") objects to the disclosure of Confidential Information to one of the two individuals: Jon Clopton.

The Protective Order provides that Confidential Information filed with the Commission in this proceeding may not be provided to persons "involved in competitive decision-making." Protective Order, App. A ¶ 2. Although the acknowledgement provided by Neutral Tandem to SBC does not specifically define Mr. Clopton's role with Neutral Tandem, further correspondence between representatives of SBC and Neutral Tandem suggests that he is involved in competitive decision-making. In particular, although Neutral Tandem has stated that Mr. Clopton does not engage in competitive decision-making, it has also informed SBC that he is

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<sup>1</sup> See Letter from Joshua M. Bobeck, Swidler Berlin, LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-313; CC Docket No. 01-338 (FCC filed Mar. 9, 2005).

<sup>2</sup> Order, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313; CC Docket No. 01-338, DA 04-3152 at Attachment A (FCC rel. Sept. 29, 2004) ("Protective Order").

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responsible for purchasing transport to use in Neutral Tandem's network. In addition, Mr. Clopton's title -- Vice President of Network Optimization -- suggests that he is likely involved in competitive decision-making, *i.e.*, in advising or participating in business decisions made in light of the type of confidential information on file in this proceeding.

Based on this information -- and without anything in the record to contradict it -- Mr. Clopton is not eligible to review Confidential Information pursuant to the Protective Order, and SBC objects to providing him access to Confidential Information submitted in these proceedings without further clarification of his position. In view of SBC's objections, Mr. Clopton may not have access to Confidential Information unless and until SBC's objections are resolved in Neutral Tandem's favor by the Commission and, if appropriate, any court of competent jurisdiction. *See* Protective Order, App. A ¶ 8.

Yours truly,



Colin S. Stretch

cc (via email and overnight delivery):

Joshua M. Bobeck, Swidler Berlin, LLP  
Ronald Gallivet, Neutral Tandem, Inc.