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Federal Communications Commission
Office of Secretary

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

In the Matter of	)	
	)	
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended	)	CC Docket No. 96-149

REPLY COMMENTS

Sprint Corporation hereby respectfully submits its reply to comments filed on April 17, 1997 in the above-captioned proceeding regarding the proper interpretation of section 272(e)(4) of the Telecommunications Act of 1996. Despite overwhelming evidence to the contrary, the BOCs continue to insist that section 272(e)(4) is an independent grant of authority which allows them to provide in-region interLATA services directly, rather than through a separate affiliate, by providing such services on a wholesale basis. As discussed briefly below, this interpretation is without merit and should be rejected.

With the exception of the BOCs, all other commenting parties agree that the Commission was correct in concluding that section 272(e)(4) did not constitute an independent grant of authority for the BOCs to provide in-region interLATA service.[1] Rather than expanding the BOCs' range of permissible activi-

[1] *See, e.g.*, Sprint, p. 3; AT&T, p. 2; Comptel, p. 4; MCI, p. 2; TRA, p. 2; Teleport, p. 2; Worldcom, p. 10; PUC of Ohio, p. 2; Frontier, p. 5.

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ties, section 272(e)(4) imposes a nondiscrimination requirement on a BOC's provision to its affiliate of those interLATA and intraLATA facilities and services which the BOC is otherwise allowed to provide directly under section 272(a). This interpretation is supported by and consistent with the ''language, structure and purpose of the Act'' (AT&T, p. 2).

In contrast, adoption of the BOCs' interpretation of this section conflicts directly with section 272(a), which clearly states that the BOCs may provide in-region interLATA services (except for certain specified services) *only* through a separate affiliate and only after obtaining FCC approval, and would eviscerate the separate affiliate safeguards set forth in the Act. Allowing the BOCs to provide ''wholesale'' in-region interLATA services to their affiliates leaves control of interLATA network design and operation, a combined work force, and key administrative systems, to the BOCs, and renders the affiliate little more than a shell; in other words, it would provide the BOCs with an opportunity to engage in the very types of anti-competitive activities which the separate affiliate requirement was intended to prevent.

Despite the overwhelming evidence in support of the Commission's interpretation of section 272(e)(4), the BOCs continue to insist that this section be read independently of the rest of the Act. They assert that there is no conflict between their view of section 272(e)(4) and section 272(a) because ''[w]hen a BOC provides interLATA services to its affiliate under subsection (e)(4)...it is not 'originating' interLATA

services. Rather, it is the affiliate that 'originates' such services when its retail customers place interLATA calls.''[2] The BOCs' analysis is fatally flawed, and their interpretation of section 272(e)(4) should be rejected.

First, principles of statutory construction require that section 272(e)(4) be read so as to give meaning to all of its different provisions, and must be read in context. Given the Act's emphasis on the need for separate affiliates and other safeguards, and the requirement that the FCC first approve entry by the BOC into the in-region interLATA market, it makes no sense in light of the statutory purpose to read section 272(e)(4) as constituting an independent grant of authority to enter this market. It also makes no sense as a matter of statutory construction. Section 272(e)(4) is the fourth of a series of restrictions on BOC activities. The fact that sections 272(e)(1) through e(3) specify that a BOC and its affiliate ''shall'' or ''shall not'' take specific actions, while e(4) uses the term ''may'' (BOCs, p. 7) is not dispositive that Congress intended e(4) to broaden rather than restrict BOC activities. As noted elsewhere, the BOCs are authorized to provide certain services (*e.g.*, incidental interLATA) directly rather than through a separate affiliate. Use of the term ''may'' reflects this latitude, such that e(4) requires that a BOC

[2]BOCs, p. 5 (all of the RBOCs except US West filed jointly); *see also*, US West, p. 5 (BOCs may provide interLATA services to their affiliates so long as the provided services are not interLATA telecommunications services).

which chooses to offer these authorized services through the affiliate do so in a nondiscriminatory fashion.

Second, the BOCs offer no support whatsoever for their allegation that ''origination'' of interLATA services is only a retail concept (an allegation raised for the first time in Bell Atlantic's and Pacific Telesis' ''Reply in Support of Motion for Summary Reversal and Response to Motion for Remand''). Nothing in the Act or its legislative history supports this interpretation (origination, as used in section 271(b)(1), is used in reference to geography or as opposed to termination; it has no service-specific meaning),[3] nor does the MFJ distinguish between ''wholesale'' and ''retail'' interLATA service. Moreover, as several parties point out, Congress was aware of and elsewhere (*e.g.*, section 251(c)(4)) relied upon the wholesale/retail distinction. Congress could easily have made this same distinction in section 272(e)(4) had it intended to create the major exception to the in-region interLATA rule posited by the BOCs.[4] In short, the ''wholesale/retail'' distinction proposed by the BOCs ''has absolutely no support in the text of the statute, the legislative history, or common industry parlance and practice'' (Worldcom, p. 9).

The BOCs also argue (p. 6) that under canons of statutory interpretation, ''the specific authorization contained in section 272(e)(4) would take precedence over the general language

[3] *See, e.g.*, Sprint, p. 5; AT&T, p. 4; MCI, p. 13; TRA, p. 4; Worldcom, p. 7; PUC of Ohio, p. 4.
[4] *See, e.g.*, Sprint, p. 5; TRA, p. 4; Teleport, p. 3.

of section 272(a)." However, this assumes that the specific provisions have been correctly interpreted. In light of the general statutory purpose and section 272(e)(4)'s position in the statute (the last of a series of provisions which limit the BOCs' allowable activities), it is clear that the BOCs' interpretation of section 272(e)(4) is faulty and thus must be rejected. There is simply nothing in this specific provision which suggests that the "wholesale/retail" distinction sought by the BOCs is legitimate.

Finally, the BOCs argue (p. 10) that allowing them to provide in-region interLATA services directly on a wholesale basis "will greatly enhance long-distance competition" because integrated provision of service will enable the BOCs to take advantage of enormous cost savings. This argument proves too much. The BOCs have offered this argument for years in support of their bid to provide interLATA telecommunications services on a retail basis. However, even the BOCs do not claim that the statute allows them to provide in-region interLATA services directly on a retail basis. The same danger of discrimination and cost misallocations arise in the provision of service on a wholesale basis as on a retail basis. Competition in the long distance market will be impeded, not enhanced, if the BOCs are allowed to discriminate in favor of their long distance affiliate, or if they cross-subsidize their competitive activities with revenues from the monopoly or near-monopoly services (both very real possibilities, since, as discussed above (p. 2), allowing the BOCs to provide wholesale services to their

affiliates will effectively constitute direct provision of in-region interLATA services by the BOCs, leaving the affiliate as little more than a shell). Cost savings stemming from joint use of existing BOC facilities should not be allowed at the expense of other, non-affiliated, competitors which have not and will not have the same opportunity to jointly develop and use the BOCs' interLATA network facilities.

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April 24, 1997

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **REPLY COMMENTS OF SPRINT CORPORATION** was Hand Delivered or sent by United States first-class mail, postage prepaid, on this the 24th day of April, 1997 to the below-listed parties:

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