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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Deployment of Wireline Services Offering) CC Docket No. 98-147
Advanced Telecommunications Capability)

REPLY COMMENTS OF SPRINT CORPORATION

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I. INTRODUCTION AND SUMMARY

The issues raised in the NPRM¹ are numerous and complex, but because of their importance to the competitive offering of advanced services, deserve prompt resolution.

To facilitate a timely decision, the Commission should:

- Dismiss out of hand RBOC requests for relief from §§251(c) and 271 that amount to untimely petitions for reconsideration of the final actions the Commission took in its MO&O herein.²
- Dispense with the proposal – unpopular among CLECs and ILECs alike – to allow ILECs to circumvent their obligations under §251(c) with respect to advanced services if they offer such services through a separate affiliate.
- Address only those collocation and unbundling issues that bear directly on the provision of advanced services, rather than attempting to revisit or amplify on collocation and unbundling issues as they relate to, e.g., analog voice service.

Within this framework, the Commission should promulgate rules giving the parties and the states as specific guidance as the Commission believes is possible to give

¹ FCC 98-188, released August 7, 1998, ¶¶83-196.

² Id., ¶¶32-82.

on the basis of this record, regarding collocation and provision of unbundled elements for advanced services.

In formulating these rules, the Commission should encourage as wide a variety of collocation arrangements and element unbundling options as possible, so as to facilitate creative solutions for using the local wireline infrastructure for competitive provision of advanced services. Not all forms of collocation or approaches to unbundled elements will work in every instance. Nonetheless, since only the ILECs have detailed knowledge of their plant and its capabilities, the Commission should, as a general rule, place the burden on ILECs to show that a particular solution is not technically feasible in a given location.

With relatively few exceptions, the comments of other parties do not warrant any change in or elaboration on, the positions Sprint took in specific collocation and unbundling issues in its initial comments. However, with respect to collocation, Sprint urges the Commission to:

- Make clear that DSLAMs, access servers and ATM multiplexers are eligible for collocation without disabling any functionality.
- Require new forms of collocation to be made available, including nonstandard cage sizes, but decline to set any upward limit on the amount of space that can be requested.
- Leave the carriers the flexibility to negotiate appropriate security measures without limiting the types of security measures that can be required.

As for unbundling issues, the Commission should:

- Set deadlines for development and implementation of spectrum management standards without requiring that “riparian rights” must be reflected in those standards.

- Clarify that an xDSL-equipped loop must be offered as an unbundled element, as well as “shared data transport.”
- Support a wide range of solutions to the problem of delivering advanced services to end users who are served via DLCs or fiber-to-the-curb technology.

Sprint believes its proposals are fair both to competitive and ILEC interests and, if adopted, would facilitate widespread offerings of advanced services to consumers.

II. RBOC REQUESTS FOR §251(C) AND §271 RELIEF SHOULD BE SUMMARILY DISMISSED AS UNTIMELY PETITIONS FOR RECONSIDERATION

In the MO&O, the Commission determined that the provisions of §251(c) of the Act apply fully to telecommunications services, just as they do to traditional ILEC offerings, and reiterated the ILECs’ obligation to make conditioned loops available as an unbundled network element. The Commission further found that it had no power under §706 of the 1996 Act to forbear from enforcing the provisions of §§251(c) and 271, and that RBOCs do not yet qualify for such forbearance under §10 of the Act. The Commission also concluded that RBOCs have not demonstrated that forbearance from the existing dominant carrier regulation was warranted with respect to advanced services, and that large-scale changes in LATA boundaries for advanced services would be an impermissible end run around §271.

Apparently, some of the RBOCs just can’t take no for an answer. They seek to reargue these issues as if the MO&O had never been issued. Ameritech (at 61-70), Bell Atlantic (at 6-18) and U S West (at 51-55) ask for large scale interLATA relief and LATA boundary modifications that go far beyond the limited form of such relief contemplated in ¶¶191-196 of the NPRM and are clearly more in the nature of the

wholesale LATA boundary requests that were denied in the MO&O. Similarly, Bell Atlantic (at 19-22), BellSouth (at 24-26), and U S West (at 4-12) argue extensively for the right to provide advanced services through the ILEC entity without having to comply with the unbundling requirements of §251(c)(3). SBC (at 2-4) seeks non-dominant, detariffed treatment of ILEC-provided advanced services. And Bell Atlantic (at 46-48) argues that it cannot be required to provide conditioned loops.

The Commission should not seriously entertain these arguments. The proper course of action for any party disagreeing with matters that were decided in the MO&O is to seek either reconsideration or judicial review. In fact, two parties – Bell Atlantic and SBC – have sought reconsideration,³ and another RBOC – U S West – has sought judicial review.⁴ In all other respects, the Commission's determinations are final as a matter of law. There is no reason why the Commission should divert its resources to issues that are outside the scope of the NPRM, or encourage the RBOCs' procedural shenanigans. The MO&O issues that have been raised on reconsideration or judicial review should be decided in those contexts and fora, but other determinations in the MO&O are final. The RBOCs cannot be permitted to usurp the Commission's authority to frame the boundaries of a rulemaking proceeding, simply by commenting on whatever issues are of interest to them.

³ Both RBOCs seek reconsideration of the determination that ILECs are required to provide loop conditioning and the determination that §706 is not an independent source of forbearance authority.

⁴ U S West Communications, Inc., v. FCC, CADC No. 98-1410. According to its Statement of Issues filed with the court on October 8, U S West intends to argue that advanced data services are neither telephone exchange services nor exchange access services.

The RBOCs tug at the Commission's heartstrings by claiming that only by giving them everything they want will there be any hope of bringing high speed advanced services to impoverished urban neighborhoods and rural areas. The Commission must remember that it is competition, not sheltered and unfettered monopoly, that has the best prospect of making advanced services available on a widespread and timely basis. It was Sprint's deployment of a nationwide fiber optic network that forced its larger long distance competitors to write off billions of dollars worth of investment in copper, microwave and satellite technologies, and to deploy their own fiber years before they would have, had they not felt the spur of competition. And it is the promotion of competition – not the preservation or extension of monopolies – that is at the heart of the 1996 Act and affords the best prospect for technological progress.

Competition in the local market is not coming quickly or easily, but that should not be surprising. ILECs have lucrative monopolies in the local market, and naturally are unwilling to cede those monopolies any more quickly than they are forced to by regulators or the marketplace. And, despite all the future promise of alternative delivery systems, the wireline networks of the ILECs have to date generated the greatest amount of interest among competitors as a means of delivering advanced services to consumers – particularly in the residential market. Without the threat of widespread here-and-now facilities-based competition to eliminate ILEC market power, it rests with this Commission and the state regulators to see to it that the ILECs live up to both the letter and the spirit of the 1996 Act, and to withstand the considerable rhetoric and lobbying pressures the RBOCs can bring to bear in seeking to short-circuit the process.

This has not been – and will not be – an easy task for the regulators. In the absence of other moderating constraints, the ILECs have a natural incentive to retain as much of their market power as they can, for as long as they can, and to attempt to gain as much business flexibility as possible before competition truly takes hold.⁵ These incentives must be constantly borne in mind as the Commission decides how best to accomplish the goals of the Act. Rather than succumb to the facial attractiveness of wholesale deregulation, the Commission must be prepared to referee the tedious, trench warfare-like process of making advanced service competition a reality through careful implementation of the full panoply of requirements in the 1996 Act.

Only a few additional observations on the RBOCs' MO&O-related arguments are warranted. First, in contending it is unfair to saddle them with the obligations to make unbundled elements available at forward-looking prices or to make retail services available at wholesale discounts, they are quarreling with fundamental provisions of the 1996 Act. As Sprint pointed out in its initial comments (at 8), the TELRIC pricing standards for UNEs and the wholesale discount pricing standards give them a full opportunity to recover their costs, including a risk-adjusted return on investment. In any event, if they are dissatisfied with the pricing standards of the Act, their recourse is to importune Congress, not to ask this Commission to look the other way.

⁵ In Sprint's case, its ILECs are part of a corporate family that includes significant long distance and nascent CLEC interests as well. These often competing interests must be accommodated internally, with the result that Sprint, far more often than not, takes positions that deviate from those of both "pure" ILECs and "pure" IXC or CLECs. Notably unlike the RBOCs, the Sprint ILECs are not here seeking relief from §251(c) for advanced services.

Second, the suggestion that the Commission could construe §251(c)(3) as not applicable to the network elements needed for advanced services,⁶ rests on the contention that §251(d)(2) gives the Commission authority to decline to require access to all technically feasible elements, and thus that such access should not be required for advanced services equipment that is readily available elsewhere. Taken to its logical conclusion, that argument could be used as a basis for wholly absolving the ILECs of their requirements to provide any unbundled network elements, since it is technically possible (although financially impractical) for every CLEC wishing to enter the market to replicate the entire local switched network. Clearly, this is not what Congress had in mind. After holding, in ¶279 of the Local Competition Order, 11 FCC Rcd 15499, 15641 (1996) (subsequent history omitted), that it could refrain from requiring technically feasible elements to be provided, the Commission rejected, in ¶¶286 and 287,⁷ the very argument that BellSouth is making here. The Commission held that such an interpretation “would undermine the procompetitive goals of the 1996 Act” (*id.*, at 15644).

Third, the blanket interLATA relief that some of the RBOCs seek clearly steps beyond the bounds of targeted alteration of LATA boundaries to solve particularized problems. For example, Ameritech, among other things, wants all interLATA restrictions removed within each state, so as to turn each state into a one-LATA state for purposes of “advanced” services. Inasmuch as advanced services also include new ways of

⁶ See, e.g., BellSouth at 24-26.

⁷ 11 FCC Rcd at 15643-44.

delivering conventional voice services, this would clearly eviscerate the requirements of §271, a step the Commission explicitly rejected in the MO&O. In addition, to the extent that the RBOCs seek more particularized relief, they have not made a compelling, fact-supported showing that such relief is necessary in order to ensure adequate access to data services. There are a lot of backbone competitors in the marketplace doing everything they can to expand their reach and customer base, and there is no reason to believe that there is any widespread lack of service today, or that when transitory capacity problems arise, they will last very long. Understandably, the RBOCs want a piece of that action, and they are entitled to compete in that market – but only after they satisfy the tests set forth in §271.

Moreover, Bell Atlantic's argument that §271 does not apply to information services is not only out of place in this proceeding, but is wholly without merit. Nonetheless, out of an abundance of caution, Sprint addresses and refutes that argument in the ensuing section.

III. THE COMMISSION HAS ALREADY CONFIRMED THAT BOCs MAY NOT PROVIDE INTERLATA INFORMATION SERVICES ABSENT § 271 AUTHORIZATION.

- A. The Commission should not, in this proceeding, overturn its decision in the Non-Accounting Safeguards Order⁸ that a BOC may not provide in-region interLATA information services absent §271 authorization.**

Bell Atlantic urges the Commission to confirm that BOCs may provide interLATA information services without first obtaining authority to provide in-region

⁸ Implementation of the Non-Accounting Safeguards of §271 and 272 of the Communications Act of 1934, as amended, 11 FCC Rcd 21905 (1996) (Non-accounting Safeguards Order).

interLATA services under §271 of the Act. According to Bell Atlantic, as long as the BOC provides this service using transmission services obtained from others, it is not providing interLATA services.⁹ Sprint opposes Bell Atlantic request on several grounds. This issue is not at all germane to the instant proceeding. This proceeding addresses ways in which to accelerate the deployment of advanced telecommunications capabilities, such as ADSL. These capabilities are, as Bell Atlantic admits, basic, telecommunications services. In contrast, Bell Atlantic asks the Commission to examine Internet and Internet access services, which the Commission has clearly categorized as information services. Because the Commission's NPRM did not ask for comment on BOC provision of information services, the Commission may not, consistent with the APA's notice and comment requirements, rule on the merits of Bell Atlantic's request.

Bell Atlantic apparently views this proceeding as a means to overturn clear Commission precedent concerning BOC provision of enhanced services. In the Non-accounting Safeguards Order, the Commission held that a BOC may not provide Internet or Internet access services that incorporate a bundled, in-region, interLATA transmission component provided by the BOC over its own facilities or through resale, until it has received in-region interLATA authority under §271. Bell Atlantic would like the Commission to revisit its decision in the Non-accounting Safeguards Order on the grounds that the Commission somehow reversed itself or modified its holding in the Stevens Report,¹⁰ which addressed the Commission's universal service systems. The

⁹ Bell Atlantic comments at 10-18.

¹⁰ Federal-State Joint Board on Universal Service, 13 FCC Rcd 11501 (1998) (Stevens Report).

time for Bell Atlantic to challenge the Non-accounting Safeguards Order is long since passed. The Commission should not allow Bell Atlantic to seek reconsideration of a Commission order in an unrelated proceeding. In addition, because the Stevens Report did not reverse the Commission's Non-accounting Safeguards Order, Bell Atlantic is wrong to assert that it can now provide in-region, interLATA information services either via its own facilities or through resale.

B. The Commission has properly decided that the term “interLATA services” in §271 includes both telecommunications and information services.

1. All Advanced Telecommunications Services are telecommunications services under §706

At the outset of its argument, Bell Atlantic asserts that some “advanced services” are not telecommunications services and therefore not subject to §251’s unbundling and resale obligations or to §271’s restriction on the provision of in-region interLATA services. Bell Atlantic concedes that “some advanced services,” such as ADSL, are telecommunications services. But it then states that there are other “advanced services” that constitute information services.¹¹ Not surprisingly, Bell Atlantic does not attempt to identify any “information services” that would qualify as advanced telecommunications services under §706 of the Act.

Section 706 clearly concerns only basic telecommunications services such as ADSL. That section refers only to “advanced telecommunications capability,” defined as “high-speed, switched broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications

¹¹ Bell Atlantic comments at 10.

using any technology.”¹² Thus, by its terms, §706 contemplates exclusively deployment of advanced telecommunications services.¹³

Bell Atlantic’s argument is not only substantively incorrect, but it is surprising to see it raised at all in this proceeding. Indeed, it is an argument without a destination. Bell Atlantic does not seek any relief based on a claim that §706 includes “information services.” Instead, Bell Atlantic’s sole purpose in raising this issue here is, apparently, to prompt the Commission to overturn its decision in its first Non-Accounting Safeguards Order. Among other things, that order found that the term “interLATA services,” as used in §271 of the Act, to include interLATA information services. It also prohibited BOCs from providing in-region, interLATA information services prior to receiving in-region interLATA service authorization under §271 of the Act. Bell Atlantic now wishes the Commission to “clarify” that it can provide interLATA information services as long as it obtains the underlying interLATA telecommunications transport component from a third party. Unfortunately for Bell Atlantic, the Commission has already ruled that a BOC cannot provide interLATA Internet services through leasing the interstate telecommunications component from a third party until it has received in-region interLATA authority under §271.¹⁴

¹² 47 USC § 706(c)(1).

¹³ Bell Atlantic’s argument is remarkably inconsistent. As explained below, an essential piece of Bell Atlantic’s primary argument here is that telecommunications refers only to basic service and excludes information service. Given this claim, it is hard to understand why Bell Atlantic would insist that the phrase “advanced telecommunications capability” or “advanced telecommunications incentives” includes certain information services.

¹⁴ Non-Accounting Safeguards Order at ¶ 127 (“If a BOC’s provision of an Internet or Internet access service (or for that matter, any information service) incorporates a

2. **The Commission’s determination that the term “interLATA services” in §271(a) includes interLATA information services is consistent with the “plain meaning” of the statute**

As already noted, the Commission should not allow Bell Atlantic to use this proceeding as a vehicle for a collateral attack on the *Non-Accounting Safeguards Order*. Nevertheless, if the Commission should feel compelled to rule on the merits of Bell Atlantic’s request, it should find that the Commission did not err in finding that interLATA services include interLATA information services.

Bell Atlantic asserts that the term “interLATA services,” as defined in §3(21) of the Act,¹⁵ is limited to “telecommunications services,” and that the term “telecommunications services” does not include “information services.”¹⁶ The argument is correct as far as it goes, but it does not go far enough. The problem for Bell Atlantic is that the definition in §3(21) is plainly inconsistent with other sections of the Act, including §271 itself.

For example, under §271, a BOC may not provide “interLATA services” unless the Commission finds, among other things, that authorization to provide interLATA services will be carried out in accordance with the requirements of §272.¹⁷ Section 272 requires a BOC to provide certain interLATA services through a separate affiliate. Specifically, a

bundled, in-region, interLATA transmission component provided by the BOC over its own facilities *or through resale*, that service may only be provided through a §272 affiliate, after the BOC has received in-region interLATA authority under §271.”) (footnotes omitted) (emphasis added).

¹⁵ 47 USC § 3(21).

¹⁶ 47 USC § 3(43).

¹⁷ 47 USC § 271(d)(3)(B).

separate affiliate is required for the origination of interLATA telecommunications services (with some exceptions) and for interLATA information services (again with some exceptions).¹⁸ If interLATA information services were not considered interLATA services, then the Commission would not, under §271 itself, be required to find that a BOC's provision of interLATA information services is carried out through a separate subsidiary. In addition, it would make no sense in §272 to use the term "interLATA telecommunications services" if the term "interLATA services" was limited to "telecommunications services." As the Commission stated in the Non-Accounting Safeguards Order, "if Congress intended the term 'interLATA services' to include only interLATA telecommunications services, its use of the term 'interLATA telecommunications services' in §272(a)(2) would have been unnecessary and redundant."¹⁹

A second example is provided in §271(g) of the Act, which defines those "incidental" interLATA services that BOCs may now provide under the 1996 Act. The services listed in §271(g) as "incidental" interLATA services include not only telecommunications services but, as Bell Atlantic concedes, information services as well. The adjective "incidental" does not add or subtract anything from whether a particular service is an interLATA service.

When, as here, statutory provisions appear to be in conflict, it is not enough to consider only the literal meaning of the terms used in the statute. Rather, the provisions

¹⁸ 47 USC § 272(a).

¹⁹ Non-Accounting Safeguards Order at ¶ 56.

must be considered in the context of the statute. That is, because the statutory provisions are ambiguous, the words in these provisions do not, on their own, provide a “plain meaning” that captures Congress’ intent. Rather than consider these provisions in the context of the 1996 Act, Bell Atlantic has once again confused “‘plain meaning’ with literalism.” Bell Atlantic v. FCC, 131 F3d 1044 (DC Cir., 1997) at 1045. In brief, Bell Atlantic’s statutory interpretation is wholly inconsistent with common sense. If Congress intended to allow BOCs to provide interLATA information services as long as a third party provided the interLATA telecommunications component, Congress would have said so directly. Bell Atlantic simply puts too much stress on the definition of “interLATA service” to withstand a common sense interpretation of that term.

Chevron U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 837 (1984) establishes the standard under which an agency may interpret a statute under its administration. If, as in this instance, “the statute is silent or ambiguous with respect to the specific issue,” then the agency’s interpretation of the statute must be afforded judicial deference.²⁰ Bell Atlantic provides no basis under which the Commission or any court could reverse the Commission’s holding that interLATA services include interLATA information services.

3. The Commission did not modify its prohibition against BOC provision of interLATA information services in the Stevens Report.

Bell Atlantic next argues that the Commission radically altered the conditions under which BOCs may offer interLATA information services in its report to Congress

²⁰ Chevron, 467 U.S. at 843.

regarding the universal service system. According to Bell Atlantic, certain statements in the Stevens Report can be interpreted to establish that a BOC may provide interLATA information service absent §271 authorization, as long as the BOC uses transmission services obtained from third parties. This interpretation flies in the face of the statute, the Commission's explicit holdings in the Non-Accounting Safeguards Order, and precedent under the MFJ.

In considering the issue of BOC provision of interLATA information services, Bell Atlantic rejects common sense in favor of a tortured, literal interpretation of language used in entirely different contexts. More specifically, Bell Atlantic cites language in the Stevens Report to support its view that it may provide interLATA information services as long as a third party provides the interLATA telecommunications component. According to Bell Atlantic, the Commission's statement in the Stevens Report that an ISP does not "provide" telecommunications services but only uses them means that a BOC ISP can provide interLATA information services as long as it does not use its own interstate facilities to do so. This interpretation strains credulity and common sense.

First, the Stevens Report concerned the Commission's universal service systems. It laid out for Congress a description of those firms that are obligated under the 1996 Act to contribute to the Universal Service Fund and those firms that may receive universal service funding. In that context, the Commission stated that when an ISP lease lines in order to provide its information services, it does not contribute to universal service mechanisms.²¹ This is because the ISP does not "provide" telecommunications and only

²¹ Stevens Report at ¶ 67.

telecommunications service providers are required to contribute into the Universal Service Fund. Bell Atlantic then makes an illogical leap to conclude that as long as its ISP does not “provide telecommunications,” *i.e.*, obtains the interstate telecommunications component from a third party, it may provide interLATA information services. But Bell Atlantic fails to view the Commission’s statements in the *Stevens Report* in context. As mentioned above, the Stevens Report concerned only universal service systems. Nowhere in the report did the Commission address BOC provision of interLATA information services. Nor did it modify *sub silentio* its judgment in the Non-Accounting Safeguards Order or overturn long-standing precedent under the MFJ. Bell Atlantic has simply lost touch with common sense when it purports to see in the Stevens Report a radical alteration of the circumstances under which a BOC can provide interLATA information services.

Under the MFJ, the Court held that a BOC may not provide interLATA information services.²² In that decision, the Court rejected the very same argument that Bell Atlantic now makes concerning the permissibility of a BOC providing interLATA information services as long as it obtains the interstate telecommunications component from a third party. The Court ridiculed Bell Atlantic’s reasoning then and stated flatly that it did not matter whether the BOC provided the interstate portion itself or leased it from a third party: “[W]hen information services are, as here, bundled with leased interexchange lines, the activity is covered by the decree. We do not agree with appellants that a

²² U.S. v. Western Electric Co., 907 F.2d 160 (DC Cir. 1990) at 163.

distinction should be drawn between leasing lines, on the one hand, and acquiring or constructing them, on the other.”²³

Nothing in the legislative history of the 1996 Act even hints that Congress intended in §271(a) to allow BOCs to provide interLATA information services as long as they obtained the interstate telecommunications component from a third party. Consistent with precedent under the MFJ and with the language of the Act, the Commission continued the prohibition against BOC provision of interLATA information services, regardless of who provides the interstate telecommunications component, in its *Non-Accounting Safeguards Order*. There, the Commission determined that a BOC provides an interLATA information service when it provides the interLATA telecommunications transport component of the service over its own facilities, or by reselling the interLATA telecommunications service of another interexchange carrier.²⁴ The Commission could not have been more clear in its view that a BOC cannot do what Bell Atlantic now thinks it may do, namely offer an interLATA information service using a third party’s interstate telecommunications transport component. Nowhere has the Commission stated that some interstate information services are not interLATA services. Rather, the Commission explicitly held that all interLATA information services constitute interLATA services and are therefore subject to the restrictions contained in §271 of the Act.²⁵

²³ Id.

²⁴ Non-Accounting Safeguards Order at ¶ 115.

²⁵ Bell Atlantic’s argument that it is entitled to provide interLATA information service where such service is carried entirely over the facilities of an unaffiliated carrier is not only incorrect, but unhelpful to its own position. Bell Atlantic does not in fact provide

C. Bell Atlantic’s argument makes no sense as a matter of policy.

The 1996 Act continued the MFJ’s prohibition against BOC provision of interLATA services, whether on a facilities or resale basis, for two fundamental policy reasons. First, because the BOCs maintained extensive market power in their regions, Congress chose to prohibit BOCs from entering the in-region interLATA market until they opened their local markets. Thus, Congress enacted §271 to serve as an incentive for the BOCs to open their local markets. The second policy goal of the 1996 Act was to ensure that the BOCs would not be able to leverage their bottleneck control of their local markets to discriminate against unaffiliated providers of interLATA services. By prohibiting interLATA entry until the BOC opened its local market, Congress limited the ability of BOCs to engage in anticompetitive discriminatory behavior.

Allowing Bell Atlantic to provide interLATA information services would undermine the policy objectives of the 1996 Act. This is true regardless of whether Bell

information service entirely over the facilities of unaffiliated carriers. If Bell Atlantic leases interoffice transmission facilities to provide in-region interLATA information service, it must nevertheless provide the origination (and in some cases termination) of such service over its own facilities. Since Bell Atlantic is a virtual monopoly in the provision of exchange access, there are ordinarily no alternative facilities providers within its region for origination or termination. As Bell Atlantic itself has emphasized, such origination or termination when provided in connection with an information service is part of a “single inseverable service” (see, Comments of Bell Atlantic, CC Docket No. 98-79, September 14, 1998, p.4). Indeed, Bell Atlantic goes so far as to insist that the service is so integrated that “[t]he Commission should preempt state jurisdiction and exercise authority over the entire [information] service” so as to prevent “. . . potentially conflicting requirements from . . . various state Commissions” (*id.*). Consequently, assuming for the sake of argument, that Bell Atlantic may provide originating or terminating interLATA information service, because such service is permissible exchange access, it is still providing a portion of what it describes as “single inseverable service” over its own facilities. As a result, it will, of necessity provide information service at least partly over its own facilities and fail the very test which it labors so hard to establish.

Atlantic provides the interstate telecommunications component or obtains it from a third party. If the Commission were to allow Bell Atlantic to provide interLATA information services without first obtaining §271 authorization, it would substantially reduce Bell Atlantic's incentives to open up its local markets. In addition, such premature entry into this interLATA market would allow Bell Atlantic to leverage its local bottleneck to discriminate against unaffiliated interLATA providers. Bell Atlantic would be able to engage in such discriminatory conduct even if it relies on a third party for the interLATA telecommunications transport component of its interLATA information service. Under those circumstances, Bell Atlantic could discriminate in favor of the unaffiliated reseller by providing it better rates, terms and conditions for local services than it provides other unaffiliated interLATA carriers. And it could do so for information services in the exact same way as if it were providing telecommunications services. In short, by allowing Bell Atlantic to provide in-region interLATA information services as long as it relies on a third party to provide the interLATA telecommunications component, the Commission would create an enormous loophole in the market-opening provisions of the 1996 Act.

IV. THE COMMISSION SHOULD DROP ITS SEPARATE AFFILIATE PROPOSAL

It is clear from the comments of the parties that the Commission's well-intentioned proposal to allow the ILECs to escape §251(c) obligations for advanced services if they offer such services through an affiliate that is sufficiently separated so as to be "on the same footing as any of their competitors" (§86), is one that ought to be abandoned. To begin with, five of the six largest ILECs – all but Ameritech – are currently offering xDSL services directly. The fact that they are doing so is proof

positive that the Commission need not dangle the carrot of regulatory relief as a necessary condition for inducing ILECs to begin offering such services (although they would welcome such relief). Moreover, as Sprint pointed out in its comments (at 9), three of these carriers either commenced their offerings or significantly expanded their scope after release of the MO&O and NPRM.

The MO&O made clear that ILEC direct offerings of advanced services would be fully subject to §251(c), while the NPRM gave notice of the very real possibility that they could escape conventional regulation by instead offering services through an affiliate, and at the same time put them on notice that they may not be able to transfer any existing services to that affiliate. The fact that these three ILECs nonetheless proceeded to initiate or expand the geographic reach of their services demonstrates that they are willing to offer such services even without the deregulatory relief they seek in this proceeding.

Second, the intended beneficiaries of the proposal – the ILECs – display a notable lack of enthusiasm for the concept of offering advanced services through a separate affiliate.²⁶ On the contrary, the ILECs argue that creation of a separate subsidiary will increase their costs and serve to delay their deployment of advanced services.²⁷ For example, Bell Atlantic states (at 19) that offering service through a separate affiliate “will impose unnecessary costs and inefficiencies that will delay broad scale deployment and increase costs to consumers.” BellSouth similarly contends (at 15): “History has shown

²⁶ Many state commissions also express serious misgivings about the separate affiliate concept. See, Florida PSC at 5-8; Indiana URC and Wisconsin PSC Staff at 6-17; Minnesota DPS at 4-5; and Texas PUC at 2-5.

²⁷ See e.g., Bell Atlantic at 19, 22-26; BellSouth at 14-20; GTE at 9-10; SBC at 2; and U S West at 15-21.

that separate affiliates result in increased costs, lost efficiencies, and less innovation... .”

And U S West puts it in the most stark terms (at 15, emphasis added):

The proposal to grant regulatory relief only to incumbent LECs that create separate data affiliates represents a cure that is worse than the disease. Structural separation would be more destructive than the unbundling and resale rules that mechanism is intended to alleviate.

Third, in order to go forward with this approach, the Commission will have to resolve the very contentious issues raised by other parties as to what degree of separation is necessary. Many CLECs argue that the separation criteria in the NPRM must be significantly strengthened in order to have the desired effect, while many ILECs seek a significant lessening of the degree of separation proposed by the Commission. The time and effort needed to address and resolve these issues can only serve to delay the issuance of a final order on other issues in this rulemaking. And such effort may prove to be wasted in any event if the ILECs choose to continue to offer their advanced services directly rather than through separate affiliates.

Fourth, if the Commission were to succeed in devising separation requirements that would effectively divorce the interests of the ILEC from its advanced services subsidiary, and the ILECs decided to use such subsidiaries after all, the ILECs would have an incentive to optimize their networks for the provision of analog voice service and would be less inclined to take advanced services into account in their planning and engineering decisions. Particularly decisions as to deployment and engineering of loop plant are far different when analog voice service is the primary driver than when the needs of advanced high-speed digital services are also taken into consideration. The use, location and type of digital loop carrier systems, the use of load coils and bridged taps,

the size of remote terminals, all can be substantially affected by the type of services on which the incumbent LEC is focused.

Rather than subjecting all providers of advanced services to the added costs and difficulties of collocating and relying only on the analog voice-engineered loop plant of the ILECs, it is better to have the ILECs offer advanced services directly. By doing so, they will have the incentive to optimize their plant for advanced services, and will avoid the added costs imposed by a separate affiliate structure. ILECs may be able to offer advanced services to their customers more quickly, more economically and on a more widespread basis. CLECs will benefit by being able to use a broader range of UNEs than would be available if ILECs offered advanced services only through affiliates, and would also be able to resell the ILECs' complete service packages.

Finally, the separate subsidiary concept is legally infirm. Sprint and others have argued that even the separated affiliate envisioned by the Commission must be considered a "successor or assign" within the meaning of §251(h)(1)(B)(ii).²⁸ Some of the ILECs go too far in arguing that to be a successor or assign, a corporation must succeed to the entire interest of the former entity.²⁹ None of the cases these parties cite are apposite to the factual circumstances or the statutory framework that are at issue here.

²⁸ See e.g., AT&T at 6-8; MCI WorldCom at 6-11 and CompTel at 9-12. . Sprint fully shares the view of these parties that when the affiliate is designed to avoid the ILEC's §251(c) obligations, by offering services that the ILEC itself chooses not to offer so as to escape those obligations, it clearly is a successor or assign. However, to the extent that these parties argue that any CLEC affiliate of an ILEC must be treated as a successor or assign, Sprint believes they go too far and ignore perfectly benign situations in which an ILEC affiliate may be offering local services in the ILEC's region. See Sprint's May 1, 1998 Comments in CC Docket No. 98-39.

²⁹ See e.g., Bell Atlantic at 27, and GTE, n.63 at 32.

As Justice Marshall observed,³⁰ “There is, and can be, no single definition of ‘successor’ which is applicable in every legal context.” Sprint and other CLECs are not arguing that the advanced services affiliates contemplated by the Commission would be successors or assigns with respect to the entire business interests of the ILECs, and cases involving labor issues, assumption of contractual liability and product liability are simply irrelevant here.

What is involved here is a conscious determination by the ILEC (or its parent, as the case may be) to cede a discrete portion of the ILEC’s future business opportunity to a separate affiliate. With respect to that segment of the business, the affiliate is a successor or assign of the ILEC, notwithstanding that the ILEC continues to operate and offer preexisting services. There is no evidence that Congress intended the successor or assign concept to come into play only if the entire business of an ILEC were transferred. On the contrary, §252(h)(1)(B)(ii) defines incumbent local exchange carrier to include “a person or entity that...became a successor or assign of a member described in clause (i)” (emphasis added). The fact that Congress referred to “a” successor or assign of an ILEC rather than “the” successor or assign, clearly implies that there could be more than one successor or assign of an ILEC. Section 251(c) is at the heart of Congress’ effort to open up local competition by requiring ILECs to make interconnection, UNEs and wholesale discounts available to competing carriers. To allow an ILEC to evade these central responsibilities simply by carving up its business into several different entities, each of

³⁰ Howard Johnson Co. v. Hotel Employees, 417 U.S. 249, 263 n.9 (1974), cited at n.202 of the NPRM.

which would be exempt from these core requirements, would clearly turn the intent of the definition of ILEC in §251(h)(1)(B)(ii) on its head.

All things considered, Sprint believes the best course of action at this time is for the Commission to abandon the separate affiliate alternative. As Bell Atlantic aptly put it (at 26), “[t]he Commission’s separate subsidiary focus, then, is misguided.”

Continuing down that path will invite legal challenges, will unnecessarily enmesh the Commission in complex issues of how separate the affiliate must be and, if employed by any of the ILECs, could (to the extent the ILECs are correct) serve to increase the costs and delay the deployment of advanced services. The regulatory uncertainties created by the separate affiliate concept will hang over the marketplace until they are fully resolved before the Commission and the courts – a process that can consume at a minimum a year or two and perhaps much longer. Given the lack of interest among the vast majority of large ILECs in the separate affiliate concept, the Commission would better serve the public interest by issuing a clear signal to the ILECs that they should get on with the business of offering advanced services, subject to the plain requirements Congress has imposed in §251(c), and instead focus its attention on the collocation and unbundling framework that is most conducive to promoting competitively offered advanced services to the public.

V. THERE IS A CLEAR NEED FOR FURTHER NATIONAL RULES ON COLLOCATION AND UNBUNDLED ELEMENTS RELATING TO ADVANCED SERVICES

A common theme in the comments of GTE and the RBOCs is that there is no need for additional rules. They argue that the standards the Commission promulgated in the Local Competition Order are sufficient to guide the parties with respect to the

collocation and unbundled element issues that arise in the context of advanced services, that the subject matter is too complex or that plant and equipment vary too much from site to site to frame specific rules, that rules based on today's technology will soon be outmoded by changes in technology and, thus, that the process is best left to continued negotiation among the parties and arbitration by the states.

Although Sprint agrees with these parties that the general principles in the Local Competition Order are sound, the Commission should never anticipate that they will be the last word on these issues. As technology and business needs evolve, further direction from the Commission on the overall national approach to the implementation of §251(c) will be needed from time to time. This is not in any way to minimize the role of the states or to denigrate the ways in which they have implemented collocation and unbundling. However, further guidance from the Commission should help, rather than hinder, the states. Sprint also agrees that changes in technology can render specific rules obsolete, but there is no reason why the Commission should not give (a) broad further guidance on interconnection responsibilities for advanced services; (b) do the best job it can to address specific issues that are in need of resolution today; and (c) where possible, frame rules that anticipate changes in technology that are expected to occur in the near future. Sprint also agrees with the ILECs that, ultimately, it is up to the parties and state commissions to implement collocation and unbundling on a case-by-case basis in view of the specific conditions that can arise in a particular locale. That fact, however, does not negate the need for more explicit guidance, in order to reduce the areas of good-faith dispute and thereby expedite and simplify the negotiation and arbitration processes.

Thus, in order to facilitate more rapid implementation of competitively offered advanced services, the Commission should adopt additional national rules. In doing so, the Commission should bear in mind two overarching principles.

The first is quite simple: in order to expedite a final decision in this proceeding, the Commission should confine its focus to rules that relate to collocation and unbundling for advanced services. Although, for the reasons discussed above, it may be appropriate for the Commission to take a fresh look at some of the rules as they relate to analog voice services, the Commission's resources are limited and would be best served by concentrating in this proceeding solely on issues relating to implementation of high-speed digital services. Some issues that need to be addressed, such as those relating to new types of collocation and minimum collocation space requirements, obviously relate to collocation for both traditional and advanced services. Other issues, however, such as whether to require collocation of analog switches in ILEC central offices, need not be addressed in this proceeding.

Second, the Commission must bear in mind the inherent bargaining advantages that ILECs have in the negotiating process. ILECs argue that because equipment, building codes, and conditions can vary so much from one ILEC office to the next, the Commission should not adopt presumptions that if one type of collocation is made available in a particular end office, or one type of loop unbundling is feasible in one area, then it should be presumed to be technically feasible for all LECs in all offices. Sprint does not doubt that there may be considerable merit in their underlying premise, but does quarrel with their conclusion. As discussed above, most ILECs have an inherent incentive to give up as little as possible in the negotiating process. They cannot be

expected willingly to assist competing carriers in breaking their local monopoly. In negotiating with CLECs, the ILECs also hold the best cards. The CLECs need the ILECs far more than the ILECs need the CLECs. Moreover, it is only the ILECs that know the details of their operations – how their central offices are configured, what types of equipment they use, what other facilities or offices are located in the central office, how they engineer loop plant to a specific location, etc. It is natural enough for an ILEC to take as narrow a view as possible in the negotiating process, and when asked for a particular form of interconnection or unbundling, simply to say that that is not technically feasible without explaining why or offering up solutions that differ only in minor details. Because of this imbalance in negotiating power, the Commission should place the burden on ILECs to show that particular arrangements that are used elsewhere are not technically feasible and to explain why. As indicated above, Sprint would expect that in certain instances the ILECs would be able to demonstrate that a particular method of unbundling an xDSL-capable loop or a particular collocation arrangement that is in place at some locations, would be technically infeasible elsewhere. However, creating national standards that draw on the learning of what is possible and on the best practices among the various states will lessen the inherent imbalance in negotiating leverage and move the process forward faster and farther than would otherwise be the case.

In short, in reviewing the record to determine the additional explicit rules that should be adopted with respect to collocation and unbundled network elements, Sprint urges the Commission to: (1) avoid issues that are not directly germane to advanced service offerings; and (2) adopt what amounts to a “best practices” presumption of technical feasibility so that ILECs will have the burden of showing that a particular form

of collocation or network unbundling that they (or other ILECs) offer elsewhere is not technically feasible in a particular context.

On most issues relating to collocation and unbundling, Sprint stands behind the proposals in its initial comments and the reasons given therein. Nothing in the initial comments of other parties warrants any different result from Sprint's recommendations. Only a few collocation and unbundling issues merit additional comment.

A. Collocation Issues

1. Collocation equipment (§§126-135)

The initial comments underscore the need for the Commission to clarify the types of equipment that may be collocated with respect to advanced services. GTE and the most of the RBOCs take the position that under §251(c)(6), the Commission is not empowered to require connection of any equipment that is not necessary for interconnection or access to unbundled network elements but these parties often do not elaborate on the types of equipment (other than switches) that they believe fall outside this definition. Some of these parties go on to indicate the types of equipment they have allowed to be collocated, but it is not always clear whether this constitutes voluntary action on their part or whether they believe that they must allow such equipment.³¹ As discussed above, most ILECs have strong incentives to say "no" to as many issues as possible. Thus, without more explicit guidance as to what types of equipment must be allowed in collocation spaces, competition for advanced services could be significantly impeded by unnecessarily prolonged negotiations and litigation over the outcome of state

³¹ See Ameritech at 39-40; Bell Atlantic at 37-38; GTE at 59-62; SBC at 15-16; and U S West at 36-37.

arbitrations on this issue, and time is money (in different ways) for ILECs and competing carriers alike.

It is settled that ILECs have an obligation to allow collocation of more than just the bare minimum “indispensable” equipment necessary for interconnection or access to unbundled network elements. In ¶579 of the Local Competition Order, 11 FCC Rcd at 15794, the Commission held that “necessary” should not be defined as “indispensable” but rather as “used” or “useful.” Although U S West (at 37) quarrels with this more expansive interpretation of “necessary,” it failed to challenge the Commission’s determination in its appeal of the Local Competition Order, and it should not be necessary for the Commission to revisit every statutory interpretation it made in that order. In ¶¶580-81 of the Local Competition Order,³² the Commission made clear that transmission equipment (including optical terminating equipment) and multiplexers must be allowed, but declined to require ILECs to collocate switching equipment. However, the Commission left the door open to collocation of equipment that performs multiple functions and also stated it might revisit the status of switching equipment “if it appears that such action would further achievement of the 1996 Act’s procompetitive goals.” 11 FCC Rcd at 15795.

For the reasons discussed above, Sprint does not believe the Commission needs to resolve contentions on whether circuit switches or remote switching modules should be mandated, since that equipment relates to traditional analog voice services rather than specifically to advanced services. However, the Commission should make clear that

³² 11 FCC Rcd at 15794-95.

DSLAMs, access servers and ATM multiplexers (or “muxes”) should be allowed.

DSLAMs are simply the type of multiplexers needed for termination of xDSL-capable loops in a central office or remote terminal. Access servers give requesting carriers the capability for in-band management of the circuits passing through the collocation space, including remote dial-in testing and diagnosis and also management (e.g., activating an additional channel for a new customer).

Furthermore, ATM muxes also should be allowed, without revisiting the broader question of whether “switches” are permissible under §251(c)(6). This is because ATM muxes, in the context of collocation for xDSL services, perform what amounts to a traditional multiplexing function rather than a conventional switching function. ATM is a high-speed transmission technology that provides a method to encapsulate data, voice, and video information into a single digital data stream and deliver that information to pre-designated destinations. ATM is a connection-oriented protocol. Newton’s Telecom Dictionary³³ defines connection-oriented operation as “a communications protocol in which a logical connection is established between communicating devices.” This means that a virtual connection is established between designated devices.

ATM technology is important as it pertains to large-scale deployment of DSL-based services. Once a collocating carrier has sufficient traffic coming into a central office, there is no way to efficiently transport that traffic from the collocated DSLAMs to the collocating carrier’s network without using an ATM mux. ATM provides efficient aggregation and transport of DSL communications across a network backbone. Sprint

³³ Newton, Harry, Newton’s Telecom Dictionary. New York: Flatiron Publishing, Inc. (March 1998).

views ATM as a technology to utilize bandwidth efficiently; thus providing the best, lowest cost service possible to our customers.

ATM technology is similar in application to Digital Loop Carrier (DLC) technology currently installed in central and remote offices, but is more efficient. DLCs and their newer, more advanced version, Next Generation Digital Loop Carrier (NGDLCs) communicate by establishing a direct *physical* connection between the origin and destination. In contrast, any number of ATM muxes might be located on an ATM backbone connection, but traffic originating on a certain port of a certain switch is *logically* mapped to a destination switch and port.

Sprint's ability to consolidate and manage DSL bandwidth on the communications backbone would be enhanced with the efficient aggregation capability that ATM provides. An ATM mux placed in a central office would allow the efficient aggregation of a number of circuits such as T-1 or DS-3's originating out of multiple Digital Subscriber Line Access Multiplexors (DSLAMs) onto OC-based carrier. The traffic is aggregated in the ATM mux, packetized, and delivered to a specific destination within the backbone network. This is accomplished by the establishment of a virtual channel between originating and destination switches. In an ATM network, this occurs without "dedicating" bandwidth on the backbone for specific circuits, in contrast to devices like DLCs that use TDM (Time Division Multiplexing).

As there are similarities between DLC technology and ATM, there are significant dissimilarities between a conventional central office analog switch and ATM. An ATM mux in a DSL application is a connection-oriented device that establishes a virtual channel of communication, while a CO switch is essentially a connectionless device that

communicates with another device (CO switch or phone) without an established path. Devices of this type enable any port to have access to any other port or switch within its physical connection on demand. Thus, an analog switch allows the end user to “program” the network dynamically to deliver a call to any destination on the network that is capable of receiving a call. This contrasts with Sprint’s proposed use of ATM technology in which static paths are established for communication between devices. Thus, in this context, the ATM mux does not perform the routing functions normally associated with conventional voice circuit switches, but only establishes an onward virtual circuit for onward transmission.

It may also be noted that ATM muxes do not impose the space burdens on a central offices that conventional circuit switches may impose. Even a “stripped-down” end office switch consumes an area of roughly 20' x 20', while a more fully “loaded” model can consume much more space.³⁴ By contrast, ATM muxes are roughly the size of a personal computer and can easily fit into a 23-inch rack.

Furthermore, in cases where a piece of equipment has multiple functions, Sprint has encountered more than one instance in which an ILEC has argued that some of the functionalities of the equipment should be disabled. ILECs should not be allowed to insist that some of those functions be disabled simply because those functions are not themselves used or useful in interconnection or access to UNEs. This is clearly not a takings issue, since the physical space is the same whether or not particular functions of the equipment are turned on or off. Rather it is simply a blatant attempt by some ILECs

³⁴ See SBC at 17, stating that switches can consume as much as 2400-3000 square feet.

to artificially increase the costs and decrease the efficiency of their competitors. In that regard, even though Sprint supports the Commission's determination to exclude collocation of enhanced services equipment, as long as that is the sole function of the equipment (see Sprint's Comments at 11-12), where equipment is used for basic service but also has the capability of being used to provide both basic and enhanced services on an integrated basis, its enhanced service capability or use should not be grounds for the ILEC to refuse its collocation.

With respect to safety considerations, Sprint and many others argued that compliance with NEBS Level 1 requirements is appropriate, but that NEBS Level 2 and 3 requirements are more relevant to reliability and quality of service than to legitimate safety considerations. Some ILECs³⁵ argue that other carriers' equipment should be held to NEBS Level 1, 2 and 3 standards without really explaining why, or refer simply to NEBS standards without further elaboration. As Sprint pointed out (Comments at 13), Bellcore itself regards the NEBS Level 1 standards as appropriate for collocation with other carriers, and Sprint sees no justification for the more stringent requirements of Levels 2 or 3.

2. Issues relating to collocation space (§§136-149)

NorthPoint (at 9) and Intermedia (at 36) argue that the maximum amount of space that can be used by any one collocating carrier is 100 square feet. Sprint disagrees. Depending upon the demand that a particular requesting carrier has within a area served by an end office, it is easily conceivable that it would legitimately need more than 100

³⁵ GTE at 66, SBC at 18-19, and U S West at 39-40.

square feet of space. Indeed, SBC states (at 22) that it is more common for carriers to request more than 100 square feet of space than to request less than that amount. On the other hand, Sprint agrees with NorthPoint (id.) that it is reasonable for other carriers to request non-standard-sized cages, since non-standard sizes may be able to accommodate much more equipment than a square cage of similar area.³⁶

Sprint agrees with AT&T (at 82) that ILECs should not be allowed to require the use of Point of Termination (“POT”) bays.³⁷ Where POT bays are not employed, however, it should be made clear that only the ILEC can access its main (or intermediate) distribution frame. Second, the requesting carrier must have some collocation presence in the central office (either physical or virtual), so that the carrier’s entrance facilities can terminate at a point other than the MDF/IDF. The ILEC would then run a tie or connecting cable to the requesting carrier’s cage or equipment, and it would be the responsibility of the requesting carrier to terminate this cable on its own equipment.

Nothing in the comments of the RBOCs and GTE dissuades Sprint from its position that alternative forms of collocation, such as cageless collocation using lockable cabinets or shared space in which a requesting carrier can install and maintain its own equipment in the same bays that house ILEC and other CLEC equipment, should be allowed. It may be true, as some of the RBOCs point out,³⁸ that other carriers have shown little concrete interest in such arrangements to date. As physical collocation space

³⁶ NorthPoint asserts that an 11' x 9' cage can accommodate two equipment racks more than a 10' x 10' cage.

³⁷ On course, the collocating carrier could agree to the use of POT bays if it wished.

³⁸ See, e.g., SBC at 21.

becomes more and more scarce, however, interest in cageless collocation is bound to increase. Currently, end offices in SBC's Texas, Missouri, Kansas, Oklahoma, and Arkansas states do not have physical collocation space constraints. Contrast this with many Bell Atlantic end offices, where a proliferation of physical collocation has led or is leading to space exhaustion. As a matter of fact, Bell Atlantic added Secured Collocation Open Physical Environment (SCOPE – or cageless collocation) its federal tariffs and also removed the requirements that collocators enclose their collocation area in a cage.³⁹ Yet another RBOC (Ameritech) refuses to discuss any form of cageless collocation. Thus, in those areas of the country where collocation has proliferated, a clear need exists for cageless collocation options, and elsewhere, there should be as many options open for consideration and use by requesting carriers as is reasonably possible.

At the same time, Sprint recognizes that alternative forms of collocation (as well as traditional caged collocation) impose legitimate security issues, and Sprint has a healthy respect for the legitimate needs of ILECs to ensure that no harm occurs to the ILEC's network and indeed, that other collocating carriers be protected from harm to their facilities as well. Sprint does not agree with the parties who argue that it is always unreasonable for ILECs to require escorts and that other measures, such as controlled-access badges and video surveillance cameras always would suffice.⁴⁰ Thus, Sprint believes that determination of appropriate security measures should be left to case-by-

³⁹ Bell Atlantic Telephone Companies Tr. No. 1085, October 13, 1998, and NYNEX Telephone Companies Tr. No. 523, October 13, 1998.

⁴⁰ See, e.g., AT&T at 87.

case negotiation without predetermined limits on the types of security measures that can be imposed.

In its comments (at 18), Sprint also supported the Commission's tentative conclusion that if an ILEC denies a physical collocation request on a grounds of space limitations, it should submit floor plans to state commissions and also allow the requesting carrier to tour its premises. Some of the RBOCs argue that they would be forced to become "tour guides" if such a rule were imposed. Instead, Ameritech (at 46-47); Bell Atlantic (at 43) and BellSouth (at 47) argue against any central office tours, while GTE (at 71-72) and SBC (at 29) argue that a neutral third party engineering consultant should tour the space and make a determination as to whether additional space is available, with the "losing" party bearing the costs of this third-party inspection. Sprint believes it is not unreasonable to permit the carrier whose request is denied for lack of space to inspect the premises, and that the third-party alternative would only serve to add costs and delay to the process. It is highly speculative to assume that there will be frequent requests for tours of central offices. It may also be difficult to find a qualified neutral consultant in every city where space constraints exist.

B. Loop Issues

1. Loop spectrum management (§§159-162)

In its initial comments (at 22-23), Sprint argued that industry standards are needed both for specifying the spectral mask of equipment (a process which is well underway) and for governing the ILEC management of services that can be placed in binder groups. Sprint's general approach was that once these standards are in place, non-conforming services or equipment should be brought into compliance within a reasonable period of

time, and that the standards should govern all new installations as well (Sprint comments at 22-23). In addition, Sprint (at 23) recommended procedures to govern ILEC management of binder groups in the meantime.⁴¹

In its proposals, Sprint did not explicitly address the “riparian rights” approach mentioned in ¶161, under which new users could not interfere with technology already deployed and would have to work around interference from preexisting users. Sprint wishes to clarify that the Commission should not require the industry, when setting standards for interference and spectrum management, to be bound by a riparian rights approach if there is an industry consensus that it is more efficient to adopt standards that would require changes in existing uses. On the contrary, Sprint believes that spectrum management standards should be receptive, rather than hostile, to new technologies and advanced services. Moreover, there is no reason to grandfather existing uses that may not comply with standards that have already been developed. Thus, the Commission should leave to the standards bodies the issue of the extent to which the riparian rights approach should be employed, and, if anything, should encourage standards that are receptive to advanced services.

In order to give the development of spectrum management standards the necessary priority, Sprint urges the Commission to direct the standards bodies to use their best efforts to formulate standards in the shortest feasible period of time (and not more than one year after the issuance of a final order in this proceeding), and direct the

⁴¹ AT&T (at 61) advances interim proposals for spectrum management similar to Sprint’s.

industry to comply with those standards within the shortest feasible time (again not to exceed one year) after those standards are promulgated.

2. Definitions of loops and other elements (§§164, 180-182)

In its comments (at 35), Sprint listed possible UNEs, including loops, xDSL-capable loops, sub-loop elements, DSLAMS and xDSL line cards used in DLCs or ONUs. Sprint wishes to clarify that the DSLAMs and xDSL line card elements would be relevant in the context of sub-loop unbundling. In addition, Sprint agrees with AT&T (at 44-49) and MCI (at 73-75) that the definition of the loop element should be refined to include xDSL-equipped loops as well as xDSL-capable loops. As AT&T points out (at 46-47), equipment placed on the loop to facilitate transmission is part of the loop and can be obtained by requesting carriers as part of the loop element. In this regard, AT&T correctly observes that DSLAM-type equipment is no different in kind than load coils or DLCs that are part of the loop element for conventional analog service. Thus, xDSL-equipped loops should be available to other carriers at the first feasible point of interconnection. Indeed, where DSLAMs are placed in remote terminals, the xDSL-equipped loop may be the optimum facility for use by other carriers in providing advanced services to their customers.

Sprint also supports the shared data transport element proposed by CompTel (at 46). This element would extend from the back end of a DSLAM to the CLEC's data network, using the same transmission modes as the ILEC's network, and is necessary to enable a carrier to efficiently transport traffic from an ILEC DSLAM or a carrier-collocated DSLAM to the carrier's point of interface to its packet switched network.

**3. Unbundling loops passing through remote terminals
(¶¶165-176)**

As Sprint discussed in its initial comments (pp. 26-35), provisioning xDSL-capable loops (or, for that matter DSL-equipped loops) may pose significant technical and economic challenges when service to the end user is provided via DLCs in remote terminals and fiber-to-the-curb technology. Indeed, two of the ILECs that are now commercially offering DSL service – GTE and U S West – state (at 93 and 48, respectively) that they are not offering such service through DLCs, because there is no way of supporting such a service in a cost-effective fashion. Because of these technical complexities, GTE resists a requirement that ILECs must use any technically feasible manner of unbundling loops at DLCs. While it acknowledges (at 93-94) that third generation DLCs may facilitate integration of both broadband and narrowband services into the same platform,⁴² GTE also argues that the Commission should not adopt rules that anticipate solutions that do not currently exist. Other ILECs also resist any new rules relating to the provision of digital loop capabilities in cases where DLCs are employed. Ameritech (at 14) opposes any requirement on ILECs to show that it is technically infeasible to provide DSL loops via DLCs as long as the ILEC can show that it has a non-discriminatory loop assignment and provisioning process. Bell Atlantic (at 52-53) also resists a sub-loop unbundling mandate, suggesting that the states are better equipped to deal with the problem. BellSouth (at 49-50) takes essentially the same position and

⁴² GTE asserts (n.202 at 94) that such devices are not expected to be commercially available until 1999-2000.

SBC (at 45-46) expresses concern that additional human activity at remote terminals that would occur if sub-loop unbundling is permitted could magnify the chance for harm to the network through inadvertent human error. U S West (at 49) also believes the problems of collocation in remote terminals are “intractable” because of space limitations, and does not believe that DLCs can be unbundled to enable other carriers to offer advanced services until next generation DLCs fed by fiber are purchased and installed in the local networks.

Given the large number of end users served via DLCs,⁴³ what is needed are creative solutions to this problem, not merely a recital of the litany of difficulties that can arise. For this reason, Sprint believes that ILECs should have to explore as many means as are technologically feasible of providing DSL-capable or -equipped loops to customers served via DLCs or fiber-to-the-curb technology. In some cases, economically viable solutions may simply not exist, but that is not an excuse for not trying.

However, some of the solutions proposed by other parties may simply not be technically feasible. For example, Intermedia’s suggestion (at 57) that in the case of integrated DLCs, the ILEC should either demux the traffic coming from the IDLC into discrete loops before entering the switch or allow the CLEC to pick up the loop at the trunk side of the switch appears to relate more to the provisioning of an ordinary analog loop via a DLC, rather than an xDSL loop. Thus, for the reasons discussed above, this is a proposal that (if Sprint understands it correctly) should not be addressed by the Commission in this proceeding since it does not provide a solution for the provision of

⁴³ Estimates in the record range from 20% (NorthPoint at 19) to 30% (Intermedia at 56).

xDSL-capable loops. Covad proposes a solution (at 54) that would obligate the ILEC to install (on request) a suitable digital line card of the CLEC's choosing at the remote terminal and then provide demux capability at the central office. Sprint does not know what types of line cards Covad is referring to, but this solution does not appear to Sprint to be within the capabilities of existing DLC equipment.

Next generation DLCs may well simplify the process of providing xDSL-capable loops via remote terminals, and in that regard, Sprint disagrees with GTE that the Commission should not promote solutions that are technically infeasible today. If such equipment is available in the 1999-2000 timeframe, as GTE projects, that solution may be available or at least imminent when the Commission issues a final decision in this proceeding. Moreover, for the reasons discussed above, the Commission should fashion presumptions of technical feasibility as broadly as possible to place the burden on ILECs to come up with creative solutions to the needs of other carriers. Sprint agrees with the ILECs who discuss the complexity of sub-loop unbundling and collocation at remote terminals. As noted in our initial comments, Sprint believes that roughly 80 percent of its ILECs' remote terminals are full, with no additional space available for collocation. Nonetheless, where space is available and there are no other impediments to collocation at a remote terminal,⁴⁴ requesting carriers should certainly have the right to pursue these alternatives.

⁴⁴ In this regard, whether power and heat dissipation constraints would preclude such collocation, as BellSouth argues, really needs to be addressed on a case-by-case basis.

VI. CONCLUSION

Sprint urges the Commission to simplify its tasks in the proceeding by (1) dismissing extraneous arguments; (2) dispensing with its unpopular and legally suspect proposal for separate advanced services affiliates; and (3) adopting rules, consistent with Sprint's recommendations, that will facilitate collocation and network unbundling for advanced telecommunications services.

Respectfully submitted,

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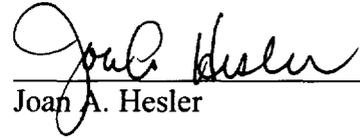
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