

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Application of BellSouth Corporation,) CC Dkt No. 98-121
BellSouth Telecommunications, Inc., and)
BellSouth Long Distance, Inc.)
Pursuant to Section 271 of the)
Communications Act of 1934, as)
amended, to Provide In-Region)
InterLATA Services to Louisiana)

PETITION OF SPRINT COMMUNICATIONS COMPANY L.P.
FOR RECONSIDERATION AND CLARIFICATION

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Sprint Communications Company L.P. ("Sprint"), by its attorneys, petitions the Commission pursuant to Section 405 of the Communications Act, 47 U.S.C. § 405, for reconsideration and clarification of certain issues decided in its October 13, 1998 Order in the above-captioned proceeding.¹

INTRODUCTION AND SUMMARY

The Order appropriately held BellSouth to its legal obligations by denying the premature application for interLATA authority. In its ruling, the Commission found numerous deficiencies, but also sought to give guidance to future applicants and the public on issues not directly raised by the

¹ Memorandum Opinion and Order in CC Dkt. No. 98-121, FCC 98-271 (rel. Oct. 13, 1998) ("Louisiana II Order").

instant application. Sprint seeks clarification and reconsideration on certain of these issues.

First, Sprint seeks clarification and/or reconsideration of the procedures governing future applications filed by BellSouth for Louisiana. Most importantly, the Commission must not unlawfully shift the burden of proof from the applicant, nor foreclose the future exercise of its full jurisdiction once the Supreme Court issues its anticipated decision construing the 1996 Act. Second, Sprint requests the Commission to reconsider, at least procedurally but if necessary substantively as well, its ruling with regard to last-minute disclosures by BellSouth regarding its restrictions on resale of contract service arrangements. Third, Sprint submits evidence apparently not considered by the Commission regarding BellSouth's unreasonable position on jurisdictionally mixed trunking. Fourth and finally, Sprint seeks reconsideration of the Commission's ruling on the adequacy of BellSouth's separated interLATA affiliate under section 272.

I. The Commission Should Clarify and/or Reconsider Its Procedures for "Satisfied" Checklist Items.

In the Order, the Commission found that BellSouth had met its evidentiary burden of demonstrating checklist compliance with respect to certain, specified items. The Commission further set forth a procedure governing future Section 271 applications filed by BellSouth for Louisiana with respect to these items. BellSouth will be allowed to certify "that its actions and

performance at the time are consistent with the showing upon which we base our determination that the statutory requirements for these checklist items have been met." Louisiana II Order at ¶ 58. The Order further states that the Commission would "expect that commenters will direct their arguments to any new information...."Id.

Sprint respectfully requests that the Commission clarify and/or reconsider the Order in this respect. First, Sprint assumes that this language is not intended to shift the burden of proof from the applicant to commenters. While Sprint believes it is reasonable to expect that parties with evidence of non-compliance will come forward, the burden of proof must remain on the applicant. Regardless of the procedural history of the application, the Commission must determine that *the BOC* has affirmatively demonstrated compliance by a preponderance of evidence. See Ameritech Michigan Order, 12 FCC Rcd 20543, ¶¶ 43-46 (1997). Second, and relatedly, any 'certification' offered by BellSouth (and in the future, presumably, other BOCs) must be specific -- any generalized self-assessment of "consistent" behavior could leave substantial room for the BOC to degrade the provisioning of a particular item without having to acknowledge that degradation. The basis for any claim of "consistency" must be submitted for the record, especially new information (which in some cases may be in the BOC's sole possession) since the time of the FCC's Order. For example, where performance measures are kept for a specific item, current measures should be reported directly as part of the application, along with an appropriate

cross-reference to performance measure data previously submitted. Checklist compliance in most instances is not a one-time event; rather, it is ongoing and continuous. The proof must be equally so.²

Third, the Commission should clarify that any relevant changes in law will supersede a previous finding of compliance. In the Order, the Commission noted the importance of UNE pricing, for example, given by the Justice Department in its evaluation of BellSouth's application. The Commission reasoned, however, that it is legally disabled, for the time being, from considering prices in light of the Eighth Circuit's Mandamus Order.³ The Supreme Court's decision in its review of Iowa Utilities Board v. FCC⁴ will inform the remaining viability of the Mandamus Order, directly or indirectly. If the Supreme Court returns to the Commission its rightful authority over UNE pricing, either under Sections 251 through 253 or under Section 271 -- or all of these sections --- the FCC will need to consider these (and other issues similarly implicated) in future 271 applications. Obviously, any finding of BOC compliance to date that was made

² Any concern that such requirements impose a burden on reapplying BOCs would be misplaced. It is the fact that some of the BOCs -- BellSouth most prominently -- continue to knowingly file 271 applications that cannot be granted that creates any burden here.

³ Louisiana II Order at ¶ 60, citing Iowa Utils. Board v. FCC, 135 F.3d 535 (8th Cir. 1998).

⁴ 120 F.3d 753 (8th Cir. 1997), modified on reh'g. No.96-3321 (Oct. 14, 1997), pet. for cert. granted, 66 U.S.L.W. 3490 (Jan. 26, 1998).

with "blindness" to pricing or to most favored nation's obligations, for example, is incomplete if the Supreme Court so acts. Therefore, the Commission can and must require the BOC to come forward to prove compliance with respect to such issues in future 271 applications based upon the changes in law that have occurred.

II. The Commission Should Have Found BellSouth's Restrictions on the Resale of Contract Service Arrangements to Be Unlawful.

In its Order, the Commission found that BellSouth had met its resale obligation, other than OSS related issues, notwithstanding the fact that BellSouth restricts the resale of contract service arrangements (CSAs) to resellers that can demonstrate to BellSouth's satisfaction that their customers are "similarly situated" to the original customer of the underlying CSA. Louisiana Order at ¶¶ 309, 315-17. In its ruling, the Commission rejected arguments made by Sprint and others protesting BellSouth's ambiguous resale restrictions. The history of BellSouth's CSA resale restrictions is helpful to an understanding of both the procedural and substantive problems with the Order's resolution of this issue, and Sprint briefly details that history below.

In its 1997 application under section 271 for interLATA authority in South Carolina, BellSouth maintained that CSAs would not be available at wholesale discounts for resale *at all*. It also precluded resale (at even the contract price) to anyone but the original end user. After submissions by Sprint and others

demonstrating that these constraints violated section 251, the FCC found the failure to offer CSAs at a wholesale discount unlawful. BellSouth South Carolina Order, 13 FCC Rcd 539, ¶ 215-224 (1997). That Order did not address the second resale limitation. Several weeks later in the context of BellSouth's first 271 application for Louisiana, BellSouth tried a "nearly identical" approach⁵: it once again precluded resale of CSAs at a wholesale discount, and again, precluded resale at even the contract price to anyone but the original end user. BellSouth Brief in CC Dkt. No. 97-231 at 67 n.43. Once again, the FCC admonished BellSouth for failing to offer CSAs at a wholesale discount, BellSouth Louisiana I, *supra* at ¶ 69, but again did not reach the second restriction, *i.e.*, the limitation that a reseller could sell only to the original end user of the CSA being resold.

When BellSouth filed its second application for Louisiana, it represented to the Commission that it had corrected its deficiencies and that CSAs were now available for resale. BellSouth Brief at 62. In its petition to deny, Sprint expressed concern that, notwithstanding BellSouth's general representation in its application that CSAs were readily available for resale, some limitations not disclosed to the FCC might remain. Sprint pointed to the fact that BellSouth was contemporaneously taking positions in other forums that suggested that it intended to maintain its earlier restriction that precluded resale to anyone

⁵ BellSouth Louisiana I, 13 FCC Rcd 6245, ¶ 64 (1998).

other than the original end user of the CSA.⁶ In its reply comments, *for the first time in this proceeding*, BellSouth came forward to articulate a new requirement -- absent from its SGAT or any interconnection agreement -- that resellers may not resell to any end user unless these end users are demonstrated to be "similarly situated" to the original end user.⁷ This articulation did not cite to any specific Louisiana Public Service Commission approval for the restriction, nor to any public document (SGAT or interconnection agreement) in which it could be found.

The Commission's Order resolved the issue in BellSouth's favor on the grounds that the reasonableness of the restriction should be left to the Louisiana PSC, and that the restriction appeared "narrowly tailored." Louisiana II Order at ¶ 316. As evidenced by this recitation, there are several procedural, factual and policy errors in this ruling.

⁶ BellSouth had advocated its 'original end user' discriminatory resale restriction in Alabama and North Carolina. Sprint Petition to Deny, CC Dkt. No. 98-121, at p.42 (Aug. 4, 1998).

⁷ "BellSouth allows CLECs to resell CSAs not only to the customer for whom the CSA was originally intended, but also to other end users who are 'similarly situated' to the original end user. If a CLEC's customer has similar usage patterns with respect to quantity, time, type and cost of service to the original end user, BellSouth will permit the CLEC to resell the original end user's CSA to that customer." BellSouth Reply Brief, CC Dkt. No. 98-121, at 82 (Aug. 28, 1998) (citing Varner Reply Aff. At ¶ 44). The Varner affidavit at ¶ 50-51 reiterates that CLECs may not aggregate traffic to meet a volume minimum required under a CSA and that the CLEC's customer must be similarly situated to the original CSA customer.

BellSouth did not come forward with its explanation that only "similarly situated" users could benefit from resold CSAs until BellSouth filed its reply with this Commission. Prior to that filing, Sprint had no notice of this position nor had it been given any rationale for it. Sprint did not therefore analyze the issue of the reasonableness of a 'similarly situated' user restriction, and the record does not show any one else to have discussed the point other than BellSouth itself. Further, contrary to the FCC's apparent impression that the Louisiana PSC had the opportunity to consider and approve this resale restriction, the state commission had not done so.⁸

The Commission has repeatedly rejected this sort of last minute gamesmanship, most especially in the context of the reduced time frames of 271 application proceedings:

Applicants and participants in section 271 proceedings also have an obligation to present their position in a clear and concise manner. . . . It is the petitioner who has the⁹ 'burden of clarifying its position' before the agency.

The Commission ruled in this Order that it would not allow BellSouth to benefit from attempted 'improvements' to its application made subsequent to the application filing. In ruling on AT&T's motion to strike -- *which included references to this*

⁸ The Commission in any event has jurisdiction to resolve these issues. See discussion at pp.9-11, *infra*.

⁹ Revised Procedures for Bell Operating Company Applications Under Section 271 of the Communications Act, Public Notice, 12 FCC Rcd. 18590, 18592 (1997) (quoting WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972)). See Ameritech Michigan Order, at ¶¶ 49-54.

*specific issue*¹⁰ -- the Commission stated that, while it would not strike those portions of BellSouth's submission, it would not rely upon any part of these submissions to find BellSouth in compliance with any checklist item. Louisiana II Order at ¶ 368. But that is exactly what happened here. The Commission must, at a minimum, vacate that portion of the Order addressing the CSA resale restriction.

To the extent the Commission chooses to proceed to the merits of this issue, Sprint respectfully requests that it should find the restriction unlawful. The Commission has stated that the obligation to provide all telecommunications services for resale at a wholesale discount requires that ILECs offer contract arrangements, including volume-based discounts, at wholesale discounts.¹¹ The Commission has also indicated it is unreasonable for ILECs to restrict the resale of volume discount offerings to the customer for whom the ILEC designed the offering.¹² Further, "resale restrictions are presumed to be unreasonable unless the LEC 'proves to the state commission that the restriction is reasonable and non-discriminatory.'" Louisiana II Order at ¶ 307, quoting 47 C.F.R. § 51.613(b). Here, BellSouth has unilaterally imposed an unreasonable, discriminatory constraint on resale by confusing and misapplying

¹⁰ Motion of AT&T Corp. to Strike, Ex.1 (filed Sept. 17, 1998).

¹¹ See Local Competition Order, 11 FCC Rcd. 15499, at ¶¶ 948, 951 (1996).

¹² See id. at ¶¶ 953, 964.

the well-established regulatory concept of similarly situated customers and by relegating to itself, without any regulatory oversight, the power to allow or deny competitive resale offerings based on CSAs.

The error made here was compounded by the Order's treatment of BellSouth's unlawful prohibition on resellers aggregating the traffic of their customers to meet CSA volume minimums. The Order explicitly noted the FCC's earlier rulings that "a CSA resale restriction simply forbidding volume aggregation, without economic justification, is presumptively unreasonable."

Louisiana II Order at ¶ 317. The Order also recited its earlier established rule that "it is presumptively unreasonable for incumbent LECs to require individual customers of a reseller to comply with incumbent LEC high-volume discount minimum usage requirements so long as the reseller, in [the] aggregate, under the relevant tariff, meets the minimal level of demand." Id. The Order speculated, nevertheless, that there could be some aggregation limitations that might be reasonable -- notwithstanding the fact that BellSouth had made no effort to justify its limitations or to even disclose them until the reply round. Indeed, the Order then inappropriately shifted the burden from the applicant to petitioners and stated that absent proof "regarding the specific nature and rationale of any BellSouth volume aggregation prohibitions, we do not conclude at this time that BellSouth imposes unreasonable volume aggregation prohibitions." Louisiana II Order at ¶ 317.

This restatement arbitrarily and without explanation eradicated the presumption of unlawfulness created in earlier FCC rulings and recited in the Order. Moreover, when the limitation is considered and analyzed in the one specific instance given by BellSouth, *i.e.*, that a reseller may aggregate traffic only from its customers that are 'similarly situated' to the original end user of the CSA, the limitation is plainly discriminatory and unlawful.

First, the effect of BellSouth's requirement that CLECs may resell only to similarly situated end users is to make the CSAs practicably unavailable for resale. By definition, a similarly situated end user will by itself likely meet the volume minimum in the CSA, and thus there is no meaningful aggregation opportunity for CLECs. Second, the restriction apparently permits BellSouth to review a reseller's list of customers and their usage profiles and thus unnecessarily gain access to competitively sensitive information. Third, it empowers BellSouth to assess whether its test has been met, thereby allowing the monopolist to deny or delay competitive entry. Fourth, it is simply incorrect as a matter of law. The question of whether a user is 'similarly situated' is relevant only to the party seeking to purchase services from the carrier pursuant to the rates, terms and conditions set forth in the CSA. *That party here is the reseller-CLEC -- not the reseller-CLEC's customers.* If the reseller-CLEC is similarly situated to the original end user of the CSA, then the carrier must make the rates available

to that reseller-CLEC in order to satisfy its non-discrimination obligations.

The Commission's long-standing decisions on the non-discrimination obligation owed to resellers make this clear.¹³ These rules have been in place for more than two decades. Resale and Shared Use, 60 F.C.C.2d 261 (1976), *affd.* AT&T v. FCC, 572 F.2d 17 (2d Cir.) *cert. denied* 439 U.S. 875 (1978). Resale restrictions are unlawful in the specific cases of volume discounts and contract arrangements precisely to ensure against preferential, non-cost based rates to large customers as well as to freely permit arbitrage. The Commission has repeatedly emphasized that volume discount offerings, including specifically individual contract offerings, must be made available to all similarly situated customers - *including resellers*. See, e.g.,

¹³ The obligations created by Section 251 for the interconnection and resale of local services on just, reasonable and non-discriminatory terms and conditions are informed by the Commission's judgments under Title II with respect to interstate services. Of course, the obligations with respect to resale under section 202 for interstate services are not fully congruent with those created under section 252, since the latter imposes a further obligation to offer retail services at a wholesale discount, and further allows cross-class resale restrictions. The cross-class restriction is not implicated here for a number of reasons. First, as a matter of procedure, the FCC Rules (§51.613(a)(1)) require that any restriction justified under this provision be approved by the state PUC -- here only BellSouth's unilateral action is presented. Second, the restriction imposed by BellSouth is not a "cross-class" restriction since it extends overbroadly to users of the same "class" i.e., business users. Third, the purpose of the provision is entirely inapposite to BellSouth's effort to exploit it; section 252 is designed to protect deliberately subsidized services (residential, non-profit, etc.) -- not anticompetitive cross-subsidies favoring large users.

Competition in the Interstate Interexchange Marketplace, 6 FCC Rcd 5880, ¶ 115 (1991) (allowing dominant firm to enter into contract carriage arrangements, subject to the requirement that the terms be "made available to all similarly situated customers, including resellers"). There is no permitted inquiry into whether the customers of the reseller might be "similarly situated." Rather, the only legitimate question is whether the reseller is willing to accept the same material terms as the original offering.

Thus, to the extent the FCC chooses to consider the issue on the merits, it should find the restrictions unlawful and inconsistent with BellSouth's obligations under Section 271 and Section 251.

III. The Commission Should Reconsider its Decision on Jurisdictionally Mixed Trunks Given "Compelling Evidence" that it is Technically Feasible.

In its Order, the Commission accepted BellSouth's refusal to exchange different kinds of traffic, except local and intraLATA toll, over the same interconnection trunks because the RBOC had succeeded in convincing the Louisiana PSC that it would not be technically feasible to do so.¹⁴ The Commission indicated that

¹⁴ See SGAT at I.D., Appendix C-1, Tab 62 to BellSouth Application for Provision of In-Region, InterLATA Services in Louisiana, , CC Dkt. No. 97-231 (filed Nov. 6, 1997) ("Louisiana I App.") ("BellSouth and a CLEC shall establish trunk groups between interconnecting facilities. . . . Local and interLATA traffic only may be routed over the same one-way trunk group. Requests for alternative trunking arrangements may be made through the bona fide request process set out in Attachment B"); Affidavit of W. Keith Milner, at ¶ 15, Appendix A, Tab 14 to BellSouth Application

it would be willing to consider "compelling evidence" to the contrary. Louisiana II Order at ¶ 79.

There is no more compelling evidence of technical feasibility than: 1) an admission by BellSouth that it can be done, and 2) the fact that both BellSouth and other BOCs are willing to do it in other states. These facts are present here. First, BellSouth admitted the technical feasibility of mixed trunking in the Sprint arbitration proceeding in Florida.¹⁵ The Florida PSC relied upon this admission and ordered BellSouth to provide mixed (local, toll and CMRS) traffic trunks for interconnection with Sprint.¹⁶ As the Florida PSC found, there is simply no reason why the "Percent Interstate Usage" ("PIU") factors currently used by carriers to identify interstate and intrastate access minutes cannot be used identify local and wireless traffic as well. Indeed, as it has stated in the past, Sprint is willing to share any reasonably necessary billing records to ensure accuracy of traffic measures.

for Provision of In-Region, InterLATA Services in Louisiana, CC Dkt. No. 98-121 (filed July 9, 1998) ("BellSouth offers routing of local and intraLATA toll traffic over a single trunk group"). The LPSC refused Sprint's request that it be permitted to exchange different traffic types over the same interconnection trunks. See Sprint Arbitration Order at 8-9, Appendix D, Tab 4, Louisiana I App. (concluding that such arrangements are technically infeasible).

¹⁵ See Petition by Sprint Communications Company L.P. for Arbitration, Final Order On Arbitration, Florida PSC Docket No. 961150-TP, 97 FPSC 9 at § VI (Feb. 3, 1997) ("Although BellSouth admits that Sprint's proposal [for exchanging different traffic types over the same trunk] is technically feasible, it opposes Sprint's offer for billing purposes").

¹⁶ See id.

BellSouth in fact is contractually committed to this arrangement with Sprint in Florida, Georgia, North Carolina and Tennessee. In these jurisdictions, the interconnection agreements speak clearly to this issue:

Sprint shall be allowed to mix local, intraLATA and interLATA toll and wireless traffic over the same trunks. Sprint shall report traffic to BellSouth using percentage use factors and shall grant BellSouth reasonable audit rights to ensure the accuracy of the factors. Sprint shall be required to share the necessary call detail records with BellSouth. Sprint and BellSouth shall work together to develop a mutually agreed upon solution for billing mixed traffic.

See, e.g., Georgia PSC Dkt. No. 6958-U, Petition of Sprint Communications Co., L.P. for Arbitration, Arbitrated Interconnection Agreement, Att. 2, 16.6.1.5 (filed June 27, 1997). While the Order unlawfully shifted the burden here by requiring "compelling evidence" of technical feasibility, it is in fact present.

The fact that other ILECs have contractually committed to this type of arrangement also confirms that the exchange of different kinds of traffic over the same interconnection trunks is technically feasible. Bell Atlantic and SBC have both agreed to allow mixed traffic on these trunks. Furthermore, numerous state commissions have required ILECs to allow mixed use trunks, including those within the BellSouth monopoly territory. See Florida PSC Order, *supra*; Georgia PSC Dkt. No. 6958-U, Order Ruling on Arbitration (Jan. 7, 1997) (specifically rejecting BellSouth's claim of infeasibility and ordering interim use of mixed use trunks while directing parties to work out long term

arrangements); AT&T Communications of the Southwest's Petition for Second Compulsory Arbitration, Case No. TO-98-115, 1997 Mo. PSC LEXIS 138 **47-49 (Dec. 23, 1997).

As Sprint noted in its Petition to Deny, BellSouth's quarrel is at best a billing and financial dispute. There is no evidence whatsoever of technical limitations for the arrangements being sought. BellSouth has not claimed that somehow its network within the Louisiana state boundaries varies in any material respect from its network in Florida or Georgia or Tennessee. The only open question is how BellSouth will be able to know which traffic should be charged interstate access charges. Arrangements addressing this issue have been deployed throughout the country to resolve this issue, and the Commission has no evidence before it that would suggest these are somehow inadequate. Indeed, the reasonableness of reporting and estimating minutes of use along with auditing opportunities is recognized within the FCC Order here, albeit in a different context. See Louisiana II Order at ¶ 233 (in the context of unbundled switching, usage factors or other surrogates are reasonable substitutes for actual usage data).

The consequences of tolerating BellSouth's position are severe. Its refusal to enter into auditable arrangements results in disabling CLECs from interconnecting in the most efficient manner possible. The effect is to needlessly raise its rivals' costs, and in some instances, to forestall competitive entry. For these reasons, Sprint requests the Commission reconsider and find technically feasible such arrangements for the exchange of

local, CMRS, intraLATA and interLATA traffic over the same interconnection trunks.

IV. The Commission Should Reconsider the Adequacy and Independence of a Single Director Board.

BellSouth proposed to the Commission that its structurally separate interLATA affiliate pursuant to Section 272 have only one director. The Order rejected Sprint's demonstration that a single director (also serving as an officer) of the section 272 affiliate could not reasonably be found to provide a confident basis for operational independence, as required by the statute. The Order's sole discussion of this issue was a statement that neither the statute nor any FCC rule requires a BOC to "establish a minimum number of Board members." Louisiana II Order at ¶ 330. Because Sprint was not advocating a requirement for a minimum number of directors, we respectfully request the Commission to reconsider the merits of our analysis.

Congress commanded structural separation of a BOC's long distance business from its monopoly operating companies as a key safeguard for ratepayers and competitors. The principal purposes of separating monopoly services from competitive businesses are: 1) to promote efficient allocation of joint and common costs, and 2) to detect and thereby deter discrimination in favor of the affiliated enterprise. See generally Second Computer Inquiry, 77 FCC 2d 384, ¶¶ 204-05 (1980). The specific statutory requirement for separate managers and separate boards of directors can be understood to primarily serve the second objective, since the

cost allocation of common directors' salaries or fees would entail minimal consequences.

It is in this policy context that the FCC should consider the traditional, commercial role of a board of directors. As Sprint demonstrated in its Petition, one principal function of a board of directors is to ensure that the corporation is run lawfully: "The institutional integrity of a corporation depends upon the proper discharge by directors of [their] duties."¹⁷ The obligation to monitor the corporation in order to ensure that it is run according to law is part of the directors' overall fiduciary duties owed to the corporation.¹⁸

The complex legal environment surrounding the activities of BSLD, BellSouth's proposed 272 affiliate, heightens the need for effective operation of the directors' traditional oversight function.¹⁹ In other words, responsibility for enforcement of

17 Francis v. United Jersey Bank, 432 A.2d 814, 824 (N.J. 1981).

18 As the Corporate Director's Guidebook advises, "[t]he corporate director should be concerned that the corporation has programs looking toward compliance with applicable laws and regulations." Corporate Director's Guidebook at p. 1610, (as quoted by the American Law Institute's Principles of Corporate Governance, Tent. Draft No. 4 (1985) Comment c. to § 4:01(a)(1)-(a)(2) in Lewis D. Solomon, et al., Corporations Law and Policy, Ch. 14, § 2A (2nd ed. 1988); see also, Business Roundtable Statement at 101, as cited in Lewis D. Solomon, et al., Corporations Law and Policy, Ch. 14, § 2A (2nd ed. 1988) ("identifying law compliance as a 'core function' of the board").

19 See United States v. Park, 421 U.S. 658, 672 (1975) (noting the "requirements of foresight and vigilance" imposed on responsible corporate agents in seeking out and remedying violations of law and to implement measures to ensure such violations do not occur).

compliance with the Section 272 requirements lies not only with the Commission and the vigilance of competitors, but also with the 272 affiliate's Board of Directors.

Separation, of course, has limits as a safeguard. Because both companies have the same ultimate shareholders, they will generally have the same incentives to maximize overall profits. Given the commonality of owners, separation must make a difference in the differing identities of their managers, that is, in the fact that they have -- indeed are required to have -- different officers and directors. This safeguard is necessarily strengthened if there are more rather than fewer persons (officers and directors) 'separated' between the monopoly and competitive operations.

Similarly, board functions are typically divided among various committees comprised of some of the directors, including such relevant functions as audit committees and compensation committees. How will the BellSouth 272 affiliate "board" of one person fulfill these functions? More specifically, how will it carry out these functions in a manner independent of the monopoly operating companies? Without any explanation from BellSouth, the Commission must infer from the structure that, like the arrangements found deficient in Ameritech Michigan,²⁰ the 272 affiliate will default these functions and responsibilities back to the board of its parent. This is patently inconsistent with the statute's requirement.

²⁰ Ameritech Michigan Order, at ¶¶ 353-62 (1997).

Prior to this Order, the Commission had rejected the argument that minimal compliance with state corporate law would alone be sufficient to meet the standards of Section 272. See Ameritech Michigan Order at ¶¶ 357-60. The Commission found itself obliged to look behind the organizational structure to its operative implications.²¹ The single director board of BSLD represents formalistic adherence to the requirement, but it disserves the underlying concerns and policies. As the Commission noted, "Congress intended its separate director requirement not be easily nullified merely through a legal fiction."²²

Properly structured, Section 272's separate board of directors requirement can aid to promote a long distance affiliate that may operate independently of the BOC, by providing the affiliate with independently informed guidance and monitoring of its compliance with legal requirements. Sprint therefore requests that the Commission reconsider its ruling in this respect and require BellSouth to reconfigure the structure of the BSLD board in a manner that will give greater confidence in its operational independence.

21 See id. at ¶ 361.

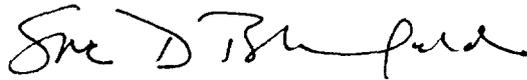
22 Id.

CONCLUSION

For the foregoing reasons, Sprint respectfully requests the Commission to clarify and reconsider its Order as set forth in this Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Catherine M. DeAngelis, do hereby certify that on this 12th day of November, 1998, copies of the foregoing "Petition Of Sprint Communications Company L.P. For Reconsideration And Clarification" were mailed, first class postage prepaid, unless otherwise indicated, to the following parties:

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