Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	**CC Docket No. 96-98**

COMMENTS OF SPRINT CORPORATION

Sprint Corporation hereby comments on the issues raised in the Third Report and Order and Fourth Further Notice of Proposed Rulemaking herein (FCC 99-238, released November 5, 1999) and the November 24, 1999 Supplemental Order (FCC 99-370), regarding the use of unbundled network elements as a substitute for facilities purchased under access tariffs of local exchange carriers. As discussed below, Sprint's view is that there is no sustainable basis for concluding that the Communications Act of 1934, as amended, would permit the ILECs or the Commission to prohibit IXCs from using UNEs in lieu of special access facilities, or for that matter, switched access facilities when it is technically feasible to do so. Thus, UNEs can serve as substitutes for all elements of special access facilities, and for the entrance facility, transport and tandem switching elements of switched access. UNEs cannot substitute for the local switching and common line portions of switched access only because the nature of the local switching UNE is such that it involves the use of the local switch and the loop connected to the local switch for both the customer's long-distance and local traffic.

Nor can §251(g) be construed as permitting restrictions on the uses to which unbundled network elements can be put. Again, the Commission already decided this matter in the First Report and Order, where it held (in ¶362):[3] "The primary purpose of Section 251(g) is to preserve the right of interexchange carriers to order and receive exchange access services if such carriers elect not to obtain exchange access through their own facilities or by means of unbundled elements purchased from an incumbent." In short, §251(g) was intended to protect purchasers of access, not the ILECs, and the quoted language directly implies that IXCs *may* "elect . . . to obtain exchange access . . . by means of unbundled elements . . . ."

Paragraph 496 of the Fourth FNPRM seeks comment on the extent to which the financial impact on ILECs from the substitution of UNEs for special access and switched access transport should be considered in determining whether usage restrictions can be justified. This issue was considered in *Resale and Shared Use*, *supra*, and the Commission held that restrictions on resale are not justified "merely because they protect carrier revenues or rate structures" (60 FCC 2d at 283). There is no justification for the Commission to backtrack on that longstanding, procompetitive policy. The markets here in question – special access and switched access transport – were opened by the Commission to competition in the early 1990s, which perforce means that there is no special public interest in protecting the ILECs' revenue streams from these services.[4]

[3] 11 FCC Rcd at 15682.

[4] The temporary and transitional requirement, imposed in the First Report and Order, that purchasers of the local switching UNE must pay a partial access charge as well, is of no bearing here, for several reasons: (1) the issue here is one of restrictions on the *use* of UNEs; (2) it is nearly four years after the enactment of §251(c)(3) and nearly 3 ½ years after the requirements of §251(c)(3) were spelled out in the First R&O, and thus far too late to impose a new temporary and transitional measure; and, (3) given the fact that the Commission had opened the special access and switched transport markets to competition years ago, the Commission cannot find a compelling public interest need to step in now and protect the ILECs' special access revenue streams.

And in opening these revenue streams to competition, the Commission considered and rejected the other issue raised in ¶496 – whether there are any policy implications of a significant reduction in special access revenues for the Commission's universal service programs. First, in opening special access to competition,[5] the Commission rejected arguments that doing so would threaten universal service. It found (at 7381) no evidence to support the proposition that interstate special access service provides support for residential exchange service in rural areas. It further found (at 7486) that while some costs may be reassigned to the states as an indirect result of special access competition, "any such cost reallocation would not be of sufficient magnitude to undermine universal service . . . ." In a later order in the same case, opening the switched transport market to competition (8 FCC Rcd 7374 (1993)), the Commission found (at 7384) that this action "will not in any way endanger the goal of universal service or harm service in rural areas." And, as the Commission itself noted in the Fourth FNPRM (n.994 at ¶496), in recent actions in the *Universal Service* docket, the Commission did not treat special access services as if they were a source of implicit support for universal service.[6]

The Commission's surprising "freeze" on the use of UNEs as substitutes for special access and switched transport facilities is a backwards step that is clearly irreconcilable both with §251 of the Act and with the Commission's interpretation of that section in its First Report and Order. The Commission should promptly (and in any event, no later than June 30, 2000, as promised in the November 24 Supplemental Order) remove the clouds

[5] *Expanded Interconnection with Local Telephone Company Facilities*, 7 FCC Rcd 7369 (1992) (subsequent history omitted).

[6] Sprint recognizes that UNEs, by definition, are non-jurisdictional, and thus could be used as substitutes for intrastate special access and switched transport services as well. However, to the extent that the rates for such services are intentionally used by the state regulatory authorities to support universal service, this is the very type of implicit subsidy that is impermissible under §254(e). *See Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 425 (5th Cir. 1999).