

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

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

REPLY COMMENTS

Sprint Corporation hereby respectfully submits its reply to comments filed on April 5, 2001 in the above-captioned proceeding. As discussed below, commenting parties raise compelling legal and practical reasons why the impairment analysis can not and should not be applied on a service-by-service basis. Nonetheless, even if the Commission were to insist on adopting this approach, it is clear that the local exchange and special access markets are not distinct markets and that the RBOCs have grossly overstated the extent of CLECs' competitive inroads into the special access market. The comments filed here, consistent with the record in earlier phases of this docket, demonstrate that carriers are impaired by lack of unrestricted access to loops and transport in their provision of any service and that there is no principled basis on which to prohibit carriers from converting special access circuits to UNEs.

I. THERE IS NO LEGAL OR PRACTICAL JUSTIFICATION FOR APPLYING A SERVICE-BY-SERVICE IMPAIRMENT ANALYSIS.

The RBOCs argue that DS1 and above loop and transport network elements used to provide special access services do not meet the unbundling standard set forth in Section 251(d)(2) because carriers seeking to offer special access services are not impaired by lack of access to ILEC UNEs.¹ Significantly, the RBOCs do not attempt to provide legal justification

¹ See, e.g., BellSouth, p. 20; Qwest, p. 11; SBC/Verizon, p. 12.

which might reconcile a service-by-service approach under Section 251(d)(2) with the plain language of Section 251(c)(3). Instead, they attempt to make a showing that the markets for special access and local exchange are separate and that the fact that competitive carriers may be impaired in the provision of one service (local exchange) does not automatically render them impaired in the provision of service in the other market (special access). Even assuming that the local exchange and exchange access markets are not “inextricably interrelated” (an incorrect assumption, as discussed further in Section III below), it is abundantly clear that a service-by-service analysis to determining which network elements must be unbundled is both prohibited for legal reasons and unworkable for practical reasons. Moreover, this service-by-service approach is contrary to the Commission’s approach in the UNE Remand proceeding in which it performed a comprehensive analysis of loop and transport unbundling without respect to individual services provided using these network elements.

As several commenting parties have pointed out,² the Commission has “previously and correctly found [that] any service-specific impairment analysis collides head-on with the plain language of section 251(c)(3), which empowers CLECs to use UNEs to provide any and all telecommunications services” (WorldCom, p. 6). The impairment analysis required under Section 251(d)(2) is for “network elements,” which the Commission found must be defined “by facilities or their functionalities or capabilities, and thus, cannot be defined as specific services.”³ There is no legal justification for the radical switch to a service-by-service analysis, and the Commission should accordingly reject RBOC recommendations to adopt such an approach.

There are also severe practical problems associated with adoption of a service-by-service approach to determining ILEC unbundling requirements. WorldCom, for example, correctly

² See, e.g., WorldCom, pp. 5-12; Comptel, pp. 3-6; AT&T, pp. 6-12; see also, Sprint, p. 2.

states (p. 12) that such an approach would require the Commission “to separately assess impairment for a virtually unlimited number of service/element combinations.” It would also require that this assessment be made for any new service offered by any carrier requesting a particular UNE, thereby slowing and perhaps preventing altogether the offering of innovative or advanced service offerings. A service-by-service impairment analysis would also require the Commission to adopt compliance monitoring rules and enforcement mechanisms to detect “cheating by competitors who might order an element for which impairment was found for one service, and the use that element to provide a different service” (*id.*). Even assuming *arguendo* that the Commission had the resources to perform these tasks, such a highly regulatory approach is entirely inconsistent with the move towards deregulation envisioned in the 1996 Act and espoused by the Commission.

II. **THE RBOCS HAVE GROSSLY OVERSTATED CLECs’ COMPETITIVE INROADS IN THE SPECIAL ACCESS MARKET.**

USTA, on behalf of the RBOCs, attached to its comments a study which purports to demonstrate that the market for special access services is competitive.⁴ The RBOC study concludes (p. 1) that CLECs have a 36% share of the entire special access/private line market, and that CLECs can provide service over their own facilities to customers accounting for 80% of special access revenues in the top 150 MSAs. Citing the study’s compilation of the number of CLECs, fiber route miles, and number of buildings served, the RBOCs assert that competitive carriers “are not impaired in their ability to provide special access services absent use of ILEC

³ *Local Competition Order*, 11 FCC Rcd 15499, 15634 (para. 264) (1996); see also, AT&T, pp. 9-11.

⁴ *Competition for Special Access Service, High-Capacity Loops, and Interoffice Transport* (“RBOC Study”).

loop and transport combinations,” and urge the Commission to impose customer or service-based eligibility requirements on UNEs and UNE combinations.⁵

British politician Benjamin Disraeli stated that there are “lies, damned lies, and statistics.” By this standard, the RBOC study may legitimately be described as a statistical analysis. To cite but a few examples of the flaws in the RBOC study, Sprint would note that:

- In calculating fiber route miles and number of buildings served, the RBOC Study simply adds together the facilities of all of the competitive carriers studied, based largely on press releases issued by various CLECs. Even assuming that all of the CLECs cited actually executed the deployment plans announced in their press releases, the RBOC Study’s approach grossly overestimates actual CLEC coverage, as it double counts the facilities of all of the CLECs who serve the same geographic area. Thus, for example, if 3 CLECs pass by the same building, the RBOC Study erroneously concludes that 3 buildings are served by CLECs.
- The RBOC Study asserts (p. 4, n. 10 and p. 6) that, based on FCC data, CLECs controlled about 33% of special access revenues in 1999. Based on precisely the same data, Sprint estimates that CLEC share of private line and special access revenue was 13.9%.⁶
- While CLECs have built thousands of miles of fiber in certain areas, only a very small percentage -- perhaps as low as 3-5% -- of all commercial high-rise buildings actually have CLEC-provided fiber feeding into them.⁷ A CLEC which passes by a building does not necessarily have last mile access -- permission to install its equipment in the basement of a building, much less have the riser access needed to reach individual tenants.
- The RBOC Study concludes (p. 13) that “the economics of deploying CLEC fiber are continuing to improve in many respects,” and that the marginal cost of adding customers is insignificant. However, one of Sprint’s major vendors has quoted us a cost of \$1

⁵ See, e.g., USTA, p. i; BellSouth, p. 4; Qwest, p. 3; SBC/Verizon, p. 2.

⁶ Private line and special access service revenues, 1999 (mill \$):

	ILEC	CLEC
For resale (Table 5)	\$6698	\$ 658
To end users (Table 6)	<u>\$4343</u>	<u>\$1127</u>
Total	\$11,040	\$1785

CLEC share = $1785 / (11,040 + 1785) = 13.9\%$

Telecommunications Industry Revenues: 1999, Industry Analysis Division, CCB, released Sept. 2000.

⁷ “CityNet Wins \$275 Million in Funding,” Yuki Noguchi, *Washington Post*, April 10, 2001, p. E5. Even this 3-5% estimate may be inflated; in the space of one month, one of Sprint’s vendors revised its estimate of the number of buildings in which it had or was soon expected to have connectivity to the building tenant from 739 to 105.

million per fiber mile to build a fiber loop – hardly an “insignificant” amount. To the extent that the RBOCs’ cost estimates are based on the cost of building links from existing loops to new customers, Sprint would note that many CLECs do not have such “existing loops” and are thus operating from a dramatic financial and network facility disadvantage compared to the ILECs.

Despite the RBOC Study’s rosy depiction of the competitive carrier market, some of the largest and most well known CLECs recently have declared bankruptcy (eSpire, GST, ICG, Jato, NorthPoint, Winstar), announced significant layoffs (Covad, WorldCom, AT&T Broadband), or had their financial viability questioned (Rythms NetConnections, Teligent). Furthermore, most CLECs have experienced a sharp decline in their market capitalization over the past year, which could severely limit their ability to finance future capital investment. In contrast, Tier One ILECs’ special access revenues nearly tripled between 1996-2000; their special access earned rate of return more than tripled, reaching 29.35% in 2000.⁸ Such financial results are hardly typical of a market which is purportedly characterized by cut-throat competition.

The RBOC Study also makes much of the fact that CLECs have invested large amounts of money in deploying their own networks (*see, e.g.*, pp. 9-14). It is true that CLECs have invested hundreds of millions of dollars into their own networks. However, their investment pales in comparison to ILEC network investment. According to ARMIS data, the RBOCs had approximately \$12.5 billion in interoffice facilities investment, and \$157 billion in loop investment (\$33 billion of circuit equipment and \$123 billion of cable and wire facilities, a significant percentage of which is likely associated with high-capacity facilities). Such a disparity hardly supports a conclusion that CLECs have the facilities base (much less the financial wherewithal) to mount an immutable challenge to the RBOCs’ entrenched position.

⁸ See Attachment 1.

III. THERE ARE NO ECONOMIC OR TECHNICAL DISTINCTIONS BETWEEN THE LOCAL EXCHANGE AND EXCHANGE ACCESS MARKETS.

The RBOCs assert that the local exchange and exchange access markets are two distinct markets, serving different customer groups (residential/small business end users vs. IXC) and using different facilities (voice grade vs. DS1 and above).⁹ However, as demonstrated by other parties, such distinctions are absurd: the same facilities -- loop and interoffice transport -- are used to provide both exchange access and local exchange service.¹⁰ While it is true that an IXC may use dedicated, high capacity access facilities to reach large business customers, it is reasonable to assume that these same large business customers at these same locations also obtain high capacity pipes (not large bundles of individual B-1 lines) to meet their local exchange needs. Particularly in this scenario, the technical and economic characteristics of providing local exchange service are indistinguishable from the technical and economic characteristics of providing exchange access service.

The RBOCs also attempt to differentiate the local exchange and exchange access markets on the basis of the Commission's decision to allow pricing flexibility for special access service when certain collocation triggers are met. According to the RBOCs, the Commission's decision to give ILECs special access pricing flexibility proves that "competitors are sufficiently entrenched in the market such that they cannot be driven out," and that competitors therefore must not be impaired by the lack of UNEs for special access.¹¹ Unfortunately for the RBOCs, the Commission explicitly stated that the collocation triggers adopted in the special access pricing flexibility proceeding "do not allow us to evaluate whether the incumbent LEC can withhold access to the inputs that requesting carriers need to provide competitive services in the

⁹ See, e.g., BellSouth, p. 16; Qwest, p. 10; SBC/Verizon, p. 12.

¹⁰ See, e.g., Sprint, p. 3; AT&T, p. 6.

first place,” and that “the use of triggers also does not allow us to evaluate whether the unbundling obligations we adopt are consistent with the goals of the Act...”¹² These collocation triggers simply do not enable the Commission to make a determination of the “practical, economic, and operational viability” of elements provided by CLECs (*id.*).

Finally, the RBOCs assert that allowing carriers to convert from tariffed special access services to the equivalent UNEs will “devalue alternative provider investment in facilities and reduce their incentive to continue to invest.”¹³ However, if UNE rates do in fact represent economically efficient pricing, carriers (both incumbent and competitive) should be encouraged to charge those rates. To encourage above-cost pricing will only encourage uneconomic investment in facilities. Such uneconomic entry is surely contrary to the public interest, and should not be encouraged through artificial, regulation-based price supports. Indeed, AT&T, one of the largest facilities-based providers of special access in the nation, asserts (p. 16) that elimination of use restrictions will not “strand or otherwise negatively impact its investment in such facilities. To the contrary, AT&T (and other competitive LECs) will continue to use those facilities to compete with the incumbents and to build more when the economics warrant it.”

IV. RBOC ASSERTIONS THAT HIGH CAPACITY SPECIAL ACCESS RATES BASED ON TELRIC PRICING ARE NOT JUST AND REASONABLE ARE WITHOUT MERIT.

In its comments, Qwest argues (p. 7) that “TELRIC pricing for high-capacity special access circuits generally results in a significant under-recovery of costs by the incumbent LEC. At current prices, TELRIC rates produce a price approximately one-half of the existing Qwest

¹¹ See, e.g., BellSouth, p. 24, citing the *Pricing Flexibility Order*, 14 FCC Rcd 14221, 14262 para. 77) (1999).

¹² *UNE Remand Order*, 15 FCC Rcd 3696, 3756 (para. 132) (1999).

¹³ BellSouth, p. 29; see also, Qwest, p. 9; SBC/Verizon, p. 8.

special access or private line price” even though these latter rates “are priced competitively in a competitive market.”

As an initial matter, Sprint would note that special access prices are not market-based. At a minimum, special access prices are not fully geographically deaveraged to reflect the cost difference between urban and rural areas. In addition, Qwest’s analysis is based on several highly questionable assumptions, is inadequately documented, and yields results which are counter-intuitive.

Qwest applies what it claims is a LRIC (Long-Run Incremental Cost) methodology to special access, which results in cost estimates which are higher than those generated using the TELRIC (Total Element Long-Run Incremental Cost) methodology. This is counter-intuitive; TELRIC will generally produce higher costs than LRIC. TELRIC is the unit cost of producing the entire volume of demand. Thus, TELRIC includes the cost of land and building, network support, general support, and common costs. In contrast, LRIC is the cost of producing an additional block of units beyond existing demand. Producing an additional block of units does not require a larger building, or additional shared or common costs. Thus, LRIC excludes land and building, network support, general support, and common costs.

The study attached to Qwest’s comments (“Cost Issues Associated with Special Access Conversion to UNEs”) summarizes and compares its special access (LRIC) and UNE (TELRIC) cost studies. The cost studies themselves are not included and therefore cannot be reviewed. However, from what information is provided, it is clear that Qwest has assumed that the network used to provide special access services is smaller, and has a lower utilization rate than is actually the case; in reality, special access services are provided using the same facilities as other

telecommunications services, including UNEs and retail services. Some of the more questionable assumptions made by Qwest include the following:

- For DS1 service, the special access (LRIC) analysis assumes loop copper cable sizes that are only 1/3 those used in the UNE (TELRIC) analysis.
- The special access (LRIC) utilization of copper cables appears to be lower than the UNE (TELRIC) utilization.
- The special access (LRIC) analysis assumes loop fiber-feeder uses only 12-strand fiber cables, while the UNE (TELRIC) analysis uses a variety of larger cable sizes. It is unlikely that Qwest is installing only 12-strand fiber.
- The special access (LRIC) utilization of loop fiber-feeder is only 33%, which is presumably less than the UNE (TELRIC) utilization.
- For all interoffice facilities, the special access (LRIC) analysis assumes smaller terminal sizes than the UNE (TELRIC) analysis.
- For all interoffice facilities, the special access (LRIC) analysis assumes lower OC3 utilization: 50% for special access (LRIC) vs. 70 – 74% for UNEs (TELRIC).

Given these highly questionable assumptions, the Commission should not accept Qwest's assertion that TELRIC pricing results in under-recovery of costs.

V. UNE USE RESTRICTIONS CANNOT BE JUSTIFIED ON UNIVERSAL SERVICE GROUNDS.

At least one RBOC, BellSouth (p. 32), asserts that conversion of special access facilities to UNEs should be prohibited because such conversion jeopardizes universal service funding,¹⁴ and because the resulting "huge wealth transfers [from ILECs to IXC] ... provide no consumer benefits." BellSouth's reasoning is seriously flawed. First, there should no longer be any universal service subsidies in special access rates; indeed, the Commission found almost a decade ago that there was no evidence to indicate that interstate special access service provided support for residential exchange service in rural areas.¹⁵ Implicit subsidies (in both interstate and intrastate access rates) are prohibited by the 1996 Act. The Commission's CALLS plan should

¹⁴ See also, NECA/NRTA/NTCA, OPASTCO/Western Alliance, pp. 4-5; TDS Telecom, pp. 2-3.

¹⁵ See Sprint's comments in CC Docket No. 96-98 filed January 19, 2000, p. 9, citing *Expanded Interconnection with Local Telephone Company Facilities*, 7 FCC Rcd 7369, 7381 (1992). In

have made all interstate implicit USF subsidies explicit, and the states should be in the process of implementing measures to remove implicit USF subsidies from intrastate access charges.

Second, it is simply not the case that a decrease in costs experienced by IXCs will not generate any consumer benefits. As has been made abundantly clear in recent years, the long distance market is fiercely competitive, and any reduction in costs is likely to be reflected almost immediately in the form of lower rates to consumers.

VI. CONCLUSION.

There is no legal, technological, or practical basis for differentiating between the local exchange and exchange markets, and the RBOCs have failed to refute the Commission's previous finding that carriers are not impaired by lack of access to loop and transport network elements in the provision of all services which use these elements. The RBOC Study contains serious flaws which result in a gross overstatement of CLECs' competitive inroads in the special access market. As compelled by the 1996 Act and based upon its previous findings, the Commission should decline to engage in a service-by-service impairment analysis, and allow carriers to convert special access circuits to UNEs.

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addition, it would appear that competition in the provision of special access or local exchange services in rural areas is extremely limited.

**ATTACHMENT 1
SPECIAL ACCESS SUMMARY
TIER 1 COMPANIES ONLY
1996-2000**

	1996	1997	1998	1999	2000
1090 Net Revenues	3,671,443	4,539,136	5,812,189	7,411,612	9,943,706
1910 Avg Net Investment	5,855,630	6,525,518	7,320,649	8,628,195	10,655,079
1915 Net Return	522,450	707,385	1,400,671	2,021,862	3,127,288
1920 Rate of Return	8.92%	10.84%	19.13%	23.43%	29.35%
Revenue Growth %		24%	28%	28%	34%
Investment Growth %		11%	12%	18%	23%

Source: ARMIS Reports

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **REPLY COMMENTS OF SPRINT CORPORATION** was sent by hand or by United States first-class mail, postage prepaid on this the 30th day of April, 2001 to the parties on the attached page.

Christine Jackson

April 30, 2001

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