

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

In the Matter of)
)
2000 Biennial Regulatory Review --) CC Docket No. 00-175
Separate Affiliate Requirements of Section)
64.1903 of the Commission's Rules)

REPLY COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint") submits its Reply Comments to the Comments filed in this docket on November 1, 2001.

I. SUMMARY

In these Reply Comments, Sprint responds to the arguments raised by those in favor of continuing the separate affiliate requirement and observes that no comments support differential treatment among independent incumbent local exchange carriers ("IILECS"). Specifically, the Commission's rulemaking and forbearance authority are not limited by the fact that this is a Biennial Regulatory Review docket. In addition, the continued absence of complaints by IXC's regarding IILEC actions justifies the Commission's skepticism of the continued need for the separate affiliate rules. This is especially true given that other regulatory safeguards can effectively accomplish the goal of deterring anti-competitive behavior. In fact, the separate affiliate rules do not even prevent attempted "price squeezes". Finally, there is no rational basis for dividing the non-BOCs into further categories.

II. DISCUSSION

The opponents of eliminating the separate affiliate rules, ASCENT, AT&T and WorldCom (collectively, the "Opponents"), raise essentially four arguments:

- (i) Since this docket is a Biennial Regulatory Review under Section 11(a) of the Communications Act of 1934, as amended (the "Act"), the Commission may only determine a regulation unnecessary if resulting from meaningful economic competition between providers of a service.¹ The Opponents argue that since there is insufficient meaningful economic competition for local service in IILEC territory, the Commission cannot eliminate the separate affiliate rule in this docket;²
- (ii) The Commission issued orders preserving the separate affiliate rules in both 1997 and 1999. Nothing has changed since 1999 upon which to base a different ruling;³
- (iii) No other safeguards are as effective as the separate affiliate rules;⁴ and
- (iv) The incumbents already misbehave, as both GTE (n/k/a Verizon) in Missouri and SBC in Texas are engaged in price squeezing, and therefore relaxing the separate affiliate rules is inappropriate.⁵

Responses to each of the Opponents arguments are set forth below.

A. The Commission's Authority to Effect a Rulemaking or Forbear From Enforcing Regulations is not Limited by the Docket Title.

The Commission is not limited to Section 11 remedies by the title of the docket. In fact, the Commission's legal basis for taking action pursuant to the *NPRM* includes sections 4, 201-202, 303 and 403 of the Act and Commission Rules 1.1 and 1.411-412.⁶ Rules 1.411 and 1.412 cover rulemaking proceedings. The Commission has given fair notice of the subjects

¹ 47 U.S.C. §161(a).

² See ASCENT Comments at 4; WorldCom Comments at 1.

³ See AT&T Comments at 1, 7; WorldCom Comments at 3.

⁴ See ASCENT Comments at 1-2, WorldCom Comments at 10.

⁵ See AT&T Comments at 5-6.

⁶ The Notice of Proposed Rulemaking ("*NPRM*") in this docket was released on September 14, 2001, in the referenced docket, under FCC 01-261. See paragraph 32 of the *NPRM* for the legal basis of action taken under the *NPRM*.

and issues involved in the rulemaking.⁷ Moreover, under Section 10 of the Act, the Commission is required to forbear from enforcement of regulations where forbearance is consistent with the public interest and the regulations are not necessary to ensure just and reasonable practices or protect consumers.⁸ Although this docket was opened under the Biennial Regulatory Review, the purpose of this rulemaking is clearly covered by the forbearance issues in Section 10, as well as the Commission's general rulemaking authority. Therefore, the Commission is entitled to take action in this rulemaking, including withdrawing the separate affiliate rules, and the Opponents are mistaken in their attempts to restrict the Commission to only consideration of Section 11 factors.

B. Experience Since 1999 Warrants a Decision by the Commission to Withdraw the Separate Affiliate Rules.

In the nearly 2 1/2 years that have elapsed since the Commission's most recent decision on this issue in the *Second Reconsideration Order*,⁹ Sprint is unaware of any substantive complaints regarding the conduct of IILECs toward their IXC competitors. The Commission is therefore justified in questioning the need for the separate affiliate rules, especially in light of the fact that other regulatory tools at the Commission's disposal can effectively discipline the IILECs, including cost allocation rules, equal access rules, and non-discrimination requirements.

⁷ 47 CFR §1.411-413.

⁸ 47 U.S.C. §160.

⁹ *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket Nos. 96-149 and 96-61, Second Order on Reconsideration and Memorandum Opinion and Order, 14 FCC Rcd10771 (1999) ("*Second Reconsideration Order*").

C. Other Regulatory Safeguards are Effective in Preventing Unlawful Behavior by IILECs Serving IXCs.

As stated in Sprint's Comments, other regulatory tools are available and more effective in combating unlawful behavior by IILECs. These include cost allocation rules to prevent misallocation of costs, equal access, and non-discrimination requirements to prohibit non-price discrimination and price squeezes.¹⁰ Violations of these rules can be handled through complaints under Section 208 of the Act, and the Commission has the power to grant damages and injunctive relief, and impose sanctions and forfeitures.¹¹ Thus, there is no need to continue to apply a prophylactic regulation that effectively separates the wholesale and retail market for access service when other regulations effectively cover the issue. This is especially true given the fact that there have been ,to Sprint's knowledge, no complaints about IILEC misbehavior.

ASCENT states that "unfortunately, no alternative safeguards...would be as effective a protection against anticompetitive behavior..."¹² However, throughout the remainder of its Comments, ASCENT offers absolutely no discussion on alternate safeguards or why such safeguards would not be as effective as the separate affiliate requirement. ASCENT provides the Commission no basis upon which to compare alternative regulations. WorldCom asserts that ensuring the proper allocation of costs would be "more difficult" if IILECs were permitted to share facilities with their affiliated long distance provider.¹³ WorldCom fails to address why the cost allocation rules would not adequately cover this issue.

¹⁰ Sprint Comments at 4-5.

¹¹ *Id.*

¹² ASCENT Comments at 1-2.

¹³ WorldCom Comments at 10.

D. The Separate Affiliate Rules Do Not Prevent Attempted “Price Squeezes.”

AT&T alleges that Verizon-Missouri and SBC in Texas are engaged in price squeezing. This allegation proves Sprint's point, because both of these entities offer long distance service through a separate affiliate, as required by the separate affiliate rules (for Verizon as successor to GTE) and Section 272 of the Act (for SBC). If AT&T's allegations are true, then SBC and Verizon are price squeezing *despite* being subject to separate affiliate requirements. Clearly, a Section 208 Complaint avenue is open to AT&T, regardless of the existence of the separate affiliate rules.

AT&T further stated that the Commission has recognized that a LEC could use a price squeeze to "potentially drive competitors from the market..."¹⁴ AT&T cites paragraphs 127-128 of the LEC Classification Order in support of this statement. It should be noted that this section of the LEC Classification Order applies only to BOCs. Paragraph 161 of the LEC Classification Order deals with IILEC price squeezing, but omits any discussion of the ability of IILECs to drive IXCs out of the market. In fact, as stated in Sprint's Comments, the IILECs do not have the scale or scope to drive the large, facility-based IXCs out of their markets.¹⁵

E. There is No Support for Dividing the IILECs into Further Categories.

Only one commenter, ICORE, even mentioned a dividing line of 2% of the nation's access lines, and this mention came only in ICORE's conclusion section.¹⁶ ICORE gives no reason why a line should be drawn at 2% of the nation's access lines. In fact, throughout the body of its Comments, ICORE refers only to "rural ILECs" or "small, rural ILECs" without

¹⁴ AT&T Comments at 2.

¹⁵ Sprint Comments at 3-4.

¹⁶ ICORE Comments at 5.

definition. In the "Conclusion" section, ICORE suddenly states: "Any ILEC serving less than 2% of the nation's total access line(sic), and in particular those serving a minuscule fraction of that 2%, should be exempt from the separate affiliate rule."¹⁷ ICORE provided no support for dividing IILECs on this basis.

To the contrary, Sprint provided extensive reasons why IILECs should not be divided into further classifications in eliminating the separate affiliate rule.¹⁸ One of Sprint's main reasons was that, while the 2% standard in Section 251(f)(2) of the Act may apply for purposes of interconnection obligations, it has no applicability to the context of IILECs' offering long distance service. In a recent order on accounting and ARMIS issues, the Commission specifically refused to give broader application to 251(f)(2), stating:

"We do not agree []that the use of a two percent standard in section 251(f)(2) of the Communications Act "represents Congress's view of a proper differentiation between large ILECs with substantial resources that require heightened Commission regulation and scrutiny, and small and mid-size ILECs," []and therefore the Commission should use the two percent standard in defining Class A and Class B carriers for accounting purposes. Section 251(f)(2) of the Communications Act permits carriers with fewer than two percent of the Nation's subscriber lines installed in the aggregate nationwide to petition a state commission for a suspension or modification of interconnection requirements in section 251(b) or (c). [] This section has no application to the CAM and ARMIS filing threshold. []"¹⁹

Just as the FCC concluded that 251(f)(2) had no applicability to regulatory accounting and reporting rules, it has no applicability to any structural separation requirements either.

¹⁷ *Id.*

¹⁸ Sprint Comments at 6-9.

¹⁹ *In the Matter of 2000 Biennial Regulatory Review --Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2; Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; and Local Competition and Broadband Reporting* CC Docket Nos. 00-199; 97-212; 80-286; and 99-301, Report And Order In CC Docket Nos. 00-199, 97-212, and 80-286, Further Notice Of Proposed Rulemaking In CC Docket Nos. 00-199, 99-301, and 80-286 (rel. November 5, 2001)(citations omitted).

IV. CONCLUSION

In conclusion, a separate affiliate requirement rule is not necessary to prevent potential anticompetitive activity by IILECs. Instead, current Commission rules, including rules regarding cost allocation, equal access and discrimination, are effective deterrents to such activity for non-BOC local exchange carriers. Further, there is no sound basis upon which to further divide IILECs for purposes of eliminating the separate affiliate rules.

Respectfully submitted,

SPRINT CORPORATION

By _____ //s//

Jay C. Keithley
401 9th Street, NW, #400
Washington, DC 20004
(202) 585-1920

Rick Zucker
6360 Sprint Parkway, KSOPHE0302
Overland Park, KS 66251
(913) 762-1920

Brian Staihr, Ph.D.
Senior Regulatory Economist
6360 Sprint Parkway, KSOPHE0302
Overland Park, KS 66251
(913) 762-1916

CERTIFICATE OF SERVICE

I, Joyce Y. Walker, hereby certify that I have on this 20th day of November 2001, served via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing letter," In the Matter of 2000 Biennial Regulatory Review, Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules, CC Docket No. 00-175, filed this date with the Secretary, Federal Communications Commission and to the persons listed below.

//s//

Joyce Y Walker

David C. Bartlett
ALLTEL Communications, Inc.
601 Pennsylvania Ave, NW., Suite 720
Washington, DC 20004

Charles Hunter
Catherine Hannan
Hunter Communications Law Group
1424 Sixteenth Street NW., Suite 105
Washington, DC 20036

Lawrence E. Sarjeant
Linda L. Kent
John W. Hunter
Julie E. Roncs
USTA
1401 H Street NW., Suite 600
Washington, DC 20005

Mark C. Rosenblum
Lawrence J. Lafaro
AT&T Corporation
295 North Maple Avenue, Room 1135L2
Basking Ridge, NJ 07920

David L. Lawson
James P. Young
Sidley Austin Brown & Wood
1501 K Street NW
Washington, DC 20005

Jan F. Reimers
ICORE, Inc.
326 S. 2nd Street
Emmaus, PA 18049

David W. Zesiger
Independent Telephone &
Telecommunications Alliance
1300 Connecticut Avenue, N.W., Suite 600
Washington, DC 20036

Stuart Polikoff
OPASTCO
21 Dupont Circle, NW., Suite 700
Washington, DC 20036

L. Marie Guillory
Daniel Mitchell
NTCA
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203

Henry Rivera
Rodney L. Joyce
Shook, Hardy & Bacon. LLP
600 14th Street NW
Washington, DC 20005

William M. Ojile
Valor Communications Enterprises, L.L.C
201 East John Carpenter Freeway
Las Colinas Tower No. 1, Suite 200
Irving, TX 75062

Alan Buzacott
WorldCom Corporation
1801 Pennsylvania Ave, NW
Washington, DC 20006

Sprint Comments
November 23, 2001

Joel Ader
Telecordia Technologies
710 L'Enfant Plaza S.W.,
Promenade Level, East Building
Washington, D.C. 20024

Qualex International
Federal Communications Commission
445 12th Street SW
Washington, DC 20554