

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Review of the Section 251 Unbundling	)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange	)	
Carriers	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions of the Telecommunications Act	)	
of 1996	)	
	)	
Deployment of Wireline Services Offering	)	CC Docket No. 98-147
Advanced Telecommunications Capability	)	

**REPLY COMMENTS OF SPRINT CORPORATION**

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July 17, 2002

CONTENTS

I. INTRODUCTION AND SUMMARY ..... 1

II. DEVELOPMENTS IN LOCAL COMPETITION ..... 3

III. THE *USTA V. FCC* DECISION ..... 7

IV. FRAMEWORK FOR UNBUNDLING ..... 12

    A. AT A MINIMUM STATUTORY ANALYSIS ..... 12

        1. *Encouraging Facilities-Based Investment* ..... 12

        2. *Encouraging Broadband Deployment* ..... 16

        3. *Intermodal/Intramodal Competition* ..... 18

    B. MORE GRANULAR STATUTORY ANALYSIS ..... 21

V. SPECIFIC NETWORK ELEMENTS ..... 26

    A. LOOP, UNIFIED LOOP, HIGH CAPACITY LOOP ..... 26

    B. ADDED ELECTRONICS/MULTIPLEXING ..... 30

    C. HIGH FREQUENCY PORTION OF THE LOOP ..... 31

    D. SWITCHING AND INTEROFFICE TRANSMISSION FACILITIES ..... 32

        1. *Packet Switching* ..... 32

        2. *Interoffice Transport* ..... 34

        3. *Unbundled Transport for Wireless Carriers* ..... 36

    E. OTHER NETWORK ELEMENTS ..... 39

        1. *Signaling and Call Related Databases* ..... 39

VI. GENERAL UNBUNDLING ISSUES ..... 42

    A. OBLIGATION TO MODIFY OR BUILD UNES ..... 42

    B. COMMINGLING OF UNES AND TARIFFED SERVICE ..... 46

VII. CONCLUSION ..... 48

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**I. INTRODUCTION AND SUMMARY**

The RBOCs ignore the pro-competitive mandate of the Telecommunications Act of 1996, attempt to rewrite its history and intent, and call for the virtual elimination of unbundled network elements ("UNEs"). Manufacturers generally support the positions of the RBOCs, perhaps because they currently account for most of their product purchases. Competitive local exchange carriers ("CLECs"), the major IXCs, and wireless carriers all stress the continued need for access to UNEs and elimination of technology-specific restrictions on unbundling. State commissions argue for continued availability of UNEs, with discretion afforded to state commissions to determine what those elements should be.

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Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

Sprint is one of the largest IXCs in the country. It is also a CLEC, with facilities-based investments and experience with UNEs and pure resale. Sprint is also one of the nation's largest wireless carriers, and an incumbent local exchange carrier with operations in 18 states. Sprint at 1-2. As a consequence of its broad industry coverage — and its role as a purchaser and a provider of UNEs — Sprint's positions reflect an endeavor to develop positions on the issues before the Commission that balance the legitimate needs and concerns of all segments of the industry.

The USTA<sup>1</sup> decision directs the Commission to revisit the UNE Remand Order<sup>2</sup> and the Line Sharing Order.<sup>3</sup> On remand, Sprint believes the record will show that UNEs are essential to ensuring an open and competitive market. It will show that market-specific restrictions are unworkable, and that a national UNE list remains necessary. It will show that Commercial Mobile Radio Service ("CMRS") and fixed wireless carriers qualify for access to UNEs, just as wireline competitors do. With the growth of DSL and packet-based technologies, the record will show that broadband facilities, and any new facilities, cannot be exempted from unbundling. Given the importance of DSL technologies, the record will show that competitive carriers need a DSL-capable loop, access to the High Frequency Portion of the Loop ("HFPL"), and the ability to reach

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<sup>1</sup> United States Telecom Ass'n v. FCC, 290 F.3d 415 (D.C. Cir. 2002) (pets. for reh'g pending) ("USTA"). The Commission and several other parties (including Sprint) filed for rehearing on July 8, 2002.

<sup>2</sup> Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 15 FCC Rcd 3696 (1999).

<sup>3</sup> Deployment of Wireline Services Offering Advanced Telecommunications Capability, et al., 14 FCC Rcd 20912 (1999).

**REDACTED — FOR PUBLIC INSPECTION**

Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

customers behind remote terminals. It will also show that competitive carriers need reasonable flexibility to commingle UNEs and tariffed services.

**II. DEVELOPMENTS IN LOCAL COMPETITION**

Many CLECs noted that the past year has been a grim one for local competition. It was marked by the bankruptcy of many of the CLECs that were in the vanguard of the industry: Adelphia Business Solutions, ART, Convergent, Covad, e.spire, ICG Communications, Metropolitan Fiber Networks, McLeodUSA, Mpower, Net2000, Network Plus, NorthPoint, Rhythms, Teleglobe, Teligent, Viatel, Williams Communications Group, WinStar, and XO Communications, to name a few.<sup>4</sup> WorldCom, which claims to be the largest CLEC in the U.S. in addition to providing long distance services,<sup>5</sup> recently disclosed financial misrepresentations, and last week its new CEO said he believed the company soon will be forced into bankruptcy.<sup>6</sup>

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<sup>4</sup> For a more complete list of CLECs that have filed for bankruptcy, see Comments of Sprint Communications Company L.P., In the Matter of Joint Application by BellSouth Corporation, Inc., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region InterLATA Services in Georgia and Louisiana, CC Docket No. 01-277, filed October 19, 2001, p. 6. Covad emerged from bankruptcy on December 20, 2001. McLeodUSA emerged from bankruptcy under a plan which eliminated approximately \$3 billion in debt and \$325 million in interest. Bankruptcy Court Approves Strategy for Reorganization, The Wall Street Journal, A19 (April 8, 2002).

<sup>5</sup> See Statement of Victoria D. Harker before the Subcommittee on Communications, Committee on Commerce, Science and Transportation, United States Senate, June 19, 2002.

<sup>6</sup> WorldCom CEO Says Firm May Face Bankruptcy, *Washington Post*, E01 (July 10, 2002).

**REDACTED — FOR PUBLIC INSPECTION**

Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

With CLECs facing a very bleak financial situation, investors have shown that they will remain wary of CLEC stocks until it becomes clearer "which CLECs will survive the carnage."<sup>7</sup> Industry experts agree that when the smoke clears from "the steady stream of Chapter 11 filings in the competitive telecom sector," only a few CLEC companies will remain.<sup>8</sup> In the meantime, the depressed state of the industry is making it extremely difficult for the surviving CLECs to obtain capital to expand their facilities. Given the current high risk associated with the CLEC industry, any financing that can be obtained comes at a high price.

In addition to these financial hurdles, CLECs now face regulatory uncertainty concerning the availability of UNEs. This very proceeding is perceived by some industry watchers as posing risks that the Commission may reverse existing policy and restrict the availability of UNEs. In the midst of this proceeding, the D.C. Circuit issued the USTA opinion, suggesting the panel's skepticism about the benefits of UNE-based competition despite the Supreme Court's recognition in Verizon,<sup>9</sup> just a few days earlier, that the Commission could set UNE rates so as to promote local competition broadly. Since a significant portion of the competitive industry relies on UNE components, CLECs likely will scale back any investments until the regulatory environment becomes clearer. In the interim, funding for an industry already under severe financial pressure is extremely

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<sup>7</sup> Telecom Services – Local: Hoexter's Broadband Bits, Merrill Lynch Capital markets, K. Hoexter, at \*1 (June 18, 2001).

<sup>8</sup> Telecom Services – Alternative Carriers: Competition Telecom, Morgan Stanley, Dean Witter, P. Kennedy, at \*1 (June 19, 2001).

<sup>9</sup> Verizon Communications Inc. v. FCC, 122 S. Ct. 1646 (2002).

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Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

scarce, and what is available is high-priced. In all likelihood, given the tumult recounted above, CLEC market share is unlikely to increase at the same pace as it has in recent years, and may decrease as the uncertainty about the availability of UNEs restricts further investments and sends additional competitors into bankruptcy. In this regard, Sprint announced last Friday that it is retrenching its competitive DSL strategy.

The RBOCs grudgingly acknowledge the troubled state of the CLEC industry. BellSouth, remarkably, blames the local industry's current "malaise" and "turmoil" (BellSouth at 3, 113) on the very unbundling requirements mandated by the 1996 amendments to the Communications Act of 1934, as amended ("Act"). BellSouth concludes its comments with a call for elimination of *all* unbundling requirements, citing "Three Lessons Learned." Sprint believes that the Act and recent history compel opposite conclusions from those drawn by BellSouth.

First, BellSouth argues that UNEs really "are not even in the best interests of the CLECs." BellSouth at 113. Ostensibly, according to BellSouth, CLEC dependence on UNEs — instead of facilities investment — has made investors "skeptical" about their business plans, because it necessarily leaves them subject to the whims of regulators. *Id.* No carrier wishes to be dependent on a competitor's facilities if it can reasonably obtain those facilities elsewhere. But Sprint agrees with AT&T that CLECs' problem has been that they invested too much in facilities, not too little. AT&T at 3, 50-51. A key purpose of unbundling is to allow a new entrant to compete and develop a customer base that eventually will sustain investment in stand-alone facilities. *Id.* at 44-45; Sprint at 12. The 1996 amendments to the Act recognized that requesting carriers cannot quickly

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Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

replicate ILEC plant, and that if there is to be broad competition, then requesting carriers will need to rely on at least some ILEC facilities in perpetuity. The experience of the IXC industry shows that such reliance is beneficial. New entrants like MCI and Sprint made their start by reselling facilities secured from then-dominant AT&T in order to achieve the nationwide reach needed to attract customers, while they gradually built their own nationwide networks. See AT&T at 48-49; WorldCom at 3-4; Sprint at 12. In fact, due to the high cost of building fiber, most IXCs continue to enhance their networks by leasing transport from each other. Today, the RBOCs themselves are following a pure resale policy as they expand into interstate long distance. There is no intent by the RBOCs to delay entry into the long distance market until they can provision their own networks themselves.

Second, BellSouth argues that UNEs should be only a "short-term platform ... to facilities-based competition." BellSouth at 114. This position is inconsistent with BellSouth's first lesson, especially given the RBOCs' lack of long distance facilities-based investment. Regardless, the 1996 Act is not time-specific; it does not provide that to have access to UNEs a requesting carrier needed to enter the market in 1996 — or by 2002 or any other date. Nor can any "sunset" provision be read into it. UNEs are to be open to any requesting carrier, at any time, wherever there is impairment without them. 47 U.S.C. Section 251(c)(3). Again, the experience in the long distance industry is instructive. Today — a quarter century after MCI's initial foray into the long distance market — scores of smaller IXCs that could never justify building their own transmission networks continue to spur long distance competition through targeted and innovative

offerings while securing much (and sometimes all) of their network functionality from larger IXCs. In addition, even the large IXCs continue to supplement their networks by leasing transport, rather than building, to some destinations.

Third, BellSouth argues that TELRIC-based UNE pricing "will end up doing the new entrants more harm than good." BellSouth at 115. The issue of UNE pricing, however, is simply outside the scope of this proceeding. But in any event, the Supreme Court in Verizon has rejected the RBOCs' litany of complaints against the TELRIC methodology. BellSouth also claims (at 116) that some states have set artificially low prices for UNEs. Whether particular states have properly applied the Commission's TELRIC principles is a matter to be litigated in the courts, and such bald, unsupported assertions cannot color the Commission's considerations of the issues before it in this proceeding.

### **III. THE *USTA* v. *FCC* DECISION**

The Commission has asked parties to address in their Triennial Review replies the impact of the D.C. Circuit's May 24, 2002 USTA decision. The court remanded the UNE Remand Order and the Line Sharing Order just eleven days after the Supreme Court's related ruling in Verizon. The court found no fault, *per se*, with the Commission's adoption of factors of cost, timeliness, quality, ubiquity, and operational issues as guides to the impairment review (UNE Remand Order at ¶¶ 72-99; NPRM ¶ 19), and virtually all commenters — RBOCs included — agreed with Sprint that all those factors are important in the Commission's review. Sprint at 7-8. Nevertheless, the court found fault with the Commission's UNE Remand and Line Sharing orders in two fundamental

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Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

respects: the Commission's asserted adoption of a uniform national rule and the concomitant failure to consider the state of competitive impairment in particular markets, and the Commission's over-broad reliance on cost-disparities as between using an ILEC's network element and self-provisioning that element.

In reaching these conclusions, the court — despite its recognition of the "extraordinary complexity of the Commission's task" (290 F.3d at 421) and of the fact that Congress "gave no detail as to either the kind or degree of impairment that would qualify" (*id.* at 422) — failed to accord the Commission the Chevron deference it is due under such circumstances.<sup>10</sup> A different panel of the court, dealing with nearly identical issues, more recently applied a "highly deferential standard," noting that "[o]ur deference is particularly great where, as here, the issues involve 'a high level of technical expertise in an area of rapidly changing technological and competitive circumstances.'" Verizon Telephone Cos. v. FCC, \_\_\_ F.3d \_\_\_, 2002 U.S. App. LEXIS 11873, \*14 (D.C. Cir. 2002), quoting from Sprint Comms. Co. v. FCC, 274 F.3d 549, 556 (D.C. Cir. 2001). The USTA panel's analysis of the orders before it reflected a skepticism of the merits of UNE-based competition that is difficult to glean from the structure of the 1996 amendments to the Act and that clearly was not shared by the Supreme Court in Verizon. See 122 S. Ct. at 1654 (elimination of local monopolies was "an end in itself"), 1661 (UNE ratesetting provisions "designed to give aspiring competitors every possible incentive to enter local retail telephone markets, short of confiscating the incumbents'

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<sup>10</sup> Chevron USA, Inc. v. Natural Resources Defense Council, 467 U.S. 837, 843-45 (1984).

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Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

property"). The USTA panel seems clearly to have engaged in "the stuff of debate for economists and regulators" rather than the judicial function of determining "whether the Commission made choices reasonably within the pale of statutory possibility...." Verizon, 122 S. Ct. at 1687.

With all due respect to the panel, Sprint believes that USTA was wrongly decided, and has joined with AT&T in a petition for rehearing or rehearing en banc, and indeed the Commission itself has sought rehearing as well. However, even if the rehearing petitions are denied and USTA is not reviewed by the Supreme Court, the USTA decision does not foreordain a particular result on remand and, as discussed below, does not perforce preclude the Commission from reaffirming the analytical approach adopted in the UNE Remand and Line Sharing orders on the basis of further explication reflecting the record in this proceeding.

First, with respect to the Commission's alleged failure to consider the state of competitive impairment in particular markets, the court's concern with the relationship between UNEs and under- or over-pricing of *retail* local services (290 F.3d at 422-23) can be answered by pointing out the role that competition, particularly UNE-based competition, can play not only in achieving the overall pro-competitive objectives of the Act, but also in wringing out the implicit cross-subsidies that are prohibited by Section 254.<sup>11</sup> The court's other misgivings about the adoption of a national UNE list (290 F.3d

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<sup>11</sup> Sprint fully understands the way ILEC retail rates have often been developed and shares the court's concerns regarding the existence of implicit subsidies. The appropriate response is for states to rebalance ILEC rates, recognizing that this is essential for the development of a competitive market.

**REDACTED — FOR PUBLIC INSPECTION**

Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

at 423-26) do not foreclose, with clear explication and the benefit of a new record and three additional years' experience, the Commission from again concluding (as it did in the UNE Remand Order) that the overall purpose of the statute is best served by a national UNE list with market-specific exceptions where justified. As explained in subsequent sections of this reply, the RBOCs have neither presented record evidence warranting further departures from the existing national list in particular markets nor offered a coherent and workable framework for future case-by-case consideration of market-specific exceptions.

The USTA court's particular application of its analysis to line-sharing faulted the Commission's failure to consider competition from cable and satellite broadband services. 290 F.3d at 428-29. This analysis rests in large part on the perceived disincentives to investment that result from the availability of UNEs, an issue on which seven of the eight Justices in Verizon reached exactly the opposite result. 122 S. Ct. at 1675-76. Even where facilities-based competitive alternatives to ILEC offerings exist in the *retail* market, a cable/ILEC duopoly<sup>12</sup> does not yield the public benefits that additional intramodal competition can spur. But such intramodal competition can only be effective through making the same line-sharing available to competitors that the ILECs themselves employ in their own retail DSL-based services. Again, findings to this effect that can be supported with the current record and three years' additional experience are likely to be sustained on further review despite the misgivings of the USTA panel.

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<sup>12</sup> The court acknowledged the much lesser role of satellite services. USTA, 290 F.3d at 428.

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Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

Second, as to the treatment of costs in the impairment analysis, the court seemed to suggest that reliance on cost differences stemming only from the CLECs' lack of ILEC scale economies, without attempting to ascertain whether there was a link to natural monopoly, was improper. USTA, 290 F.3d at 426-28. The court offered no guidance on how to determine which elements possess natural monopoly characteristics, and in Sprint's view, the jury is still out on that issue. Only time will tell the extent to which it is economical for competitors to self-supply network elements on a widespread basis. But the fact remains that Section 251(c) permits competitors to gain access to UNEs without regard to their "natural monopoly status." In this respect, the USTA panel's interpretation is in tension with, if not foreclosed by, Verizon. See, e.g., 122 S. Ct. at 1661, 1668 n.20, 1672 n.27. Moreover, contrary to the USTA court's impression, economies of scale were not the only cost issue that the Commission found relevant, or relied upon, in its impairment analysis in the UNE Remand Order. Given these other cost factors, together with the Supreme Court's analysis on the intimately related issues in Verizon and the other impairment factors — timeliness, quality, ubiquity, and operational issues — left undisturbed by USTA, the Commission should decide the issues before it as it concludes best comports with the public interest, even if that entails continued recognition of economies of scale in elements that it cannot yet prove are not natural monopolies.

IV. FRAMEWORK FOR UNBUNDLING

A. At a Minimum Statutory Analysis

1. Encouraging Facilities-Based Investment

The RBOCs claim that the goal of Congress was, and that the goal of the Commission should be, to encourage CLECs and requesting carriers to invest in their own facilities, and that access to UNEs is meant only to provide a "temporary" bridge while requesting carriers build their businesses and develop their own facilities. BellSouth at 7. See also Qwest at 2-3; Verizon at 25-27. The RBOCs have repeated this mantra so often that the Commission,<sup>13</sup> some state commissioners,<sup>14</sup> even the USTA court — but not the Supreme Court — may have begun to believe it.

In fact, the Telecommunications Act of 1996 was not focused solely or even principally on a goal of facilities-based competition. As the UNE-P Coalition points out, facilities-based competition was one of several vehicles for competition, including pure resale, UNEs, facilities-based competition, and combinations of these. UNE-P Coalition at 38. See also CompTel at 4-5. The Commission recognized in the First Report and Order<sup>15</sup> that the Act does not require requesting carriers to own any facilities. The Eighth Circuit also recognized this, and the Supreme Court expressly affirmed that

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<sup>13</sup> NPRM at ¶ 23. See also Deployment of Wireline Services Offering Advanced Telecommunications Capability, 16 FCC Rcd 15435 ¶ 4 (2001).

<sup>14</sup> PUC of Ohio at 6.

<sup>15</sup> Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Report and Order*, 11 FCC Rcd 15499 at ¶¶ 328-340 (subsequent history omitted).

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Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

determination. Iowa Utilities Board, 120 F.3d 753, 808-810 (1997), aff'd in part and rev'd in part, 525 U.S. 366, 392-393 (1999). In the UNE Remand Order, the Commission reiterated that the Act does not "express explicitly a preference for one particular competitive arrangement"<sup>16</sup> over the others. In its recent decision upholding TELRIC, the Supreme Court reiterated that "Section 251(c) addresses the practical difficulties of fostering local competition by recognizing three strategies that a potential competitor may pursue," and that no threshold investment in facilities is envisioned or required by the Act. Verizon at 1662, 1664.

Nor is there any basis in the Act for viewing UNEs as temporary — intended only to allow requesting carriers time to grow and deploy their own facilities.<sup>17</sup> By its very terms, the Act is not time-specific. It does not provide that to have access to UNEs, a requesting carrier needed to enter the market in 1996, or by 2002, or by any other date. UNEs are to be available to any requesting carrier, at any time, wherever there is impairment without them. No sunset provision can be read into the Act, and the Commission has no authority to create one. Indeed, the Court also made it clear that the unbundling provisions of the 1996 Act "were intended to eliminate the monopolies enjoyed by the inheritors of AT&T's local franchises; this objective was considered both an end in itself and an important step toward the Act's other goals of boosting

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<sup>16</sup> UNE Remand Order at ¶ 6. See also First Report and Order at ¶ 12.

<sup>17</sup> The Commission has recognized that "there will be a continuing need for all three arrangements Congress set forth in Section 251." UNE Remand Order at ¶ 5. The USTA panel did not disturb that finding.

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Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

competition in broader markets and revising the mandate to provide universal telephone service." Verizon at 1654.<sup>18</sup>

The Supreme Court also expressly dismissed the RBOCs' claim that unbundling requirements discourage investment in facilities. This claim, the Court concluded, "founders on fact," given the extraordinary capital investment undertaken by both new entrants and incumbents. Verizon at 1675. It expressly found that the Commission's unbundling requirements are not an "unreasonable way to promote competitive investment in facilities." Id. at 1676.

AT&T, for example, anticipated the Court's conclusion that the availability of UNEs promotes, rather than discourages, investment in facilities. AT&T at 41-45. AT&T's own entry into local business services markets shows that carriers will invest in their own facilities, rather than rely heavily on UNEs, when those investments are feasible. As AT&T points out, the problem in the CLEC sector has not been reluctance to invest in facilities, but *excessive enthusiasm in doing so*. AT&T at 48-52.

BellSouth asks the Commission to rule that any local loop unbundling obligation imposed or retained after this analysis must be limited in duration until the next biennial review. BellSouth at 71-72. This request is entirely inconsistent with the Act. As explained above, the Act does not envision unbundling as a temporary requirement. In reality, the Act envisions that UNEs will remain an important and valued part of the local telecommunications landscape for the foreseeable future, so long as the impairment

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<sup>18</sup> Nor does the Act provide any basis for imposing a "burden of proof" on requesting carriers to prove impairment. BellSouth at 21.

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Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

standard is met. There is no basis in the Act for setting a "sunset" date for ILEC loop plant, and certainly no basis for suggesting that the Commission can dispense with its statutory impairment analysis and instead shift the burden of proof onto "unbundling proponents," including the Commission.<sup>19</sup> BellSouth at 18.

The FCC should not discourage new entry by existing carriers or new carriers in the future. This is especially important given the shaky start toward local competition and the troubled condition of the CLEC industry today. Even if one accepted the RBOCs' self-serving view, it would not justify freezing the UNE list, restricting states from adding to the UNE list, or imposing a sunset provision that has no basis in the 1996 Act. Moreover, as CompTel explained, even as the RBOCs argue that competitive entry through UNEs or resale should be discouraged, "the ILECs themselves do not embrace such an imprudent business model when they are new entrants" CompTel at 15.<sup>20</sup> After all, "requiring new entrants to build their own facilities as a condition of entry is likely to deter entry altogether." *Id.* at 14. Competitors were allowed to enter certain markets in competition with RBOCs several years before the 1996 Act, but the RBOCs still have an overwhelming market share in most services. Moreover, the Commission must recall that competition in long distance could never have been realized if the Commission had not compelled the dominant incumbent, then AT&T, to make its services and facilities

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<sup>19</sup> As the Supreme Court noted in Verizon, the agency is entitled to substantial deference in implementing the statute, and the petitioner always bears the burden of proving that the agency's interpretation of the statute is unreasonable. 122 S. Ct. at 1675-76.

<sup>20</sup> See also Sprint at 12.

available for resale over the many years that new entrants required to build out their networks and their customer bases. AT&T at 48-49.<sup>21</sup>

The Commission should stay focused on the central goal of the Telecommunications Act of 1996, which is to promote competition. Where requesting carriers are impaired in providing their services without access to particular UNEs, the Commission should ensure that they are available.

## **2. Encouraging Broadband Deployment**

The RBOCs, joined by equipment manufacturers, argue that the Commission must limit access to UNEs in order to speed deployment and availability of broadband services. BellSouth at 30-31; Qwest at 48; SBC at 44; Verizon at 74-75; Telecoms. Indus. Ass'n at 15. This is another case of revisionist statutory history — an attempt to change the subject and shift the focus away from the principal mandate of the 1996 Act: the promotion of competition in monopoly markets.

Yes, Section 706 of the 1996 Act encourages the Commission to promote increased availability of broadband services to all Americans. However, this goal is unquestionably secondary to the advancement of competition in communications services. Section 706, a mere footnote in the codified Act (47 U.S.C. § 157 nt.), does not trump the statutory mandate for UNEs and competition. See also AT&T at 85-87; ALTS at 32-33.

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<sup>21</sup> Resale is still prominent within IXC's architecture; IXCs are some of the largest customers on each others' networks. Competition remains robust while resale has remained in perpetuity.

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Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

Contrary to the RBOC camp's claims, it is abundantly clear that UNEs do not discourage investment in broadband facilities. WorldCom, Sprint, CompTel, and many other commenters showed that in fact the opposite is true. AT&T, in particular, provided a detailed and thoroughly documented economic analysis. AT&T Attachment F (Willing Decl.). AT&T's submission offers a sharp contrast to the conclusory arguments in the RBOCs' so-called "Fact Report." Moreover, the Supreme Court considered and explicitly rejected the RBOCs' contention in Verizon. The Court acknowledged the extensive record evidence establishing the magnitude of investment.<sup>22</sup> "[A] regulatory scheme that can boast such substantial competitive capital spending," the Supreme Court held, "is not easily described as an unreasonable way to promote competitive investment in facilities." 122 S. Ct. at 1675-76.

The growth in DSL subscribership during 2001 also makes this clear. As AT&T summarized (at 70-71), the RBOCs have trumpeted their success. BellSouth reported 188% growth, and expects to nearly double its DSL customer base by the end of this year. Qwest reported a 77% increase in high-speed Internet access customers for 2001. SBC announced a 69% increase and expectations for another 50% increase this year. Verizon reported a 122% increase, with another 50-75% to follow in 2002. See also ALTS at 9-10; WorldCom at 93-94. Meanwhile, the growth of CLEC DSL lines has largely stopped, while the CLEC industry struggles financially. This shows that even

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<sup>22</sup> CLECs invested some \$55 billion through 2000 alone, relying on the Commission's unbundling and line sharing policies. Verizon, 116 S.Ct. at 1675.

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Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

with their statutory unbundling obligations, ILECs are investing heavily in broadband services.

Competition is the reason for all of this investment. Despite these facts, the RBOCs and allied parties attempt to argue that restricting unbundling and raising entry barriers would somehow stimulate investment and facilities-based competition. Sprint agrees with ALTS (joined by 9 CLECs) that "narrowing or eliminating unbundling obligations in the misguided view that this would help achieve broadband goals would be unlawful," because there is no rational basis on which the Commission could reach that conclusion. ALTS at 6; see also AT&T at 65. Restricting UNE-based competition would, if anything, reduce investment, because monopoly providers have little incentive to invest. ALTS at 30; WorldCom at 66. Finally, creating a "broadband exception" would strand the investment of CLECs (see Covad at 9-10) and would likely force others to drastically curtail their competitive DSL offerings. AT&T at 88-96.

Such drastic steps are unjustified and unnecessary. Broadband investment is continuing to grow rapidly. Meanwhile, if the Commission wants to increase the growth rate of broadband subscribership, the best course would be to promote competition and consumer choice not limited to an ILEC/cable duopoly. It can accomplish those goals by clarifying that ILECs must provide line-shared, DSL-capable unbundled loops, and a unified loop when ILECs deploy DSL functionality in remote terminals.

**3. Intermodal/Intramodal Competition**

Sprint agrees with WorldCom that the "path forward is through intramodal competition." WorldCom at 4. The RBOCs and USTA point to cable-based Internet

**REDACTED — FOR PUBLIC INSPECTION**

Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

services and wireless carriers and claim competition is so vibrant that UNEs should not be required at all. But the existence of wireless or cable competition, even if true, is irrelevant to the Commission's impairment analysis. A requesting carrier cannot secure capacity from cable or wireless providers. It can look only to ILECs. As a practical matter, as Sprint explains in Section V(A) below, the other technologies clearly cannot be used by requesting carriers for all the services they seek to offer. The RBOCs' argument that intermodal competition should preclude access to UNEs is directly contrary to the Act's intent, as the Supreme Court's decision in Verizon makes clear. Otherwise, a competitor could enter the market only by acquiring a nationwide cable TV company or wireless carrier.

However, the presence of one cable competitor in a market — itself a monopoly system and closed to competitors — means only that a duopoly exists, not a true competitive marketplace. WCOM at 35-38, 42-47; Sprint at 24-25.<sup>23</sup> There is no basis in the Act for considering the possible existence of closed cable systems in the impairment analysis.<sup>24</sup> Moreover, as ASCENT explained, facilities-based telephony competition over cable is a "promise [that] has never been realized, as less than one percent of access lines are currently provided over coaxial cable." ASCENT at 1-15. This is in part because

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<sup>23</sup> Moreover, as Verizon itself has acknowledged, the two largest cable MSOs control 70% of the nascent cable telephony market. Verizon ex parte 6/21/02 at No. 25.

<sup>24</sup> Cable modem growth appears to be slowing. Multichannel News calculated the number of new cable modem customers for the top six MSOs, and found the rate of growth slowed significantly in the last three quarters of 2001. *Faulkner Telecom Weekly* (July 1, 2002) at 1.

**REDACTED — FOR PUBLIC INSPECTION**

Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

cable generally does not serve business areas (see WorldCom at 42-43, 46-47) where facilities-based new market entrants initially focus their service.

The RBOCs and USTA also claim that wireless and fixed wireless should also be considered "as limiting factors in applying a limiting standard for UNEs." USTA at 2. Contrary to the RBOCs' claims, CMRS service has not yet emerged as a complete substitute for wireline service for the vast majority of consumers. Although wireless substitution is increasing, only a small number of households have cut the cord completely. The Commission's own data reports that only 1.2% of residential households have substituted a CMRS phone for their traditional wireline home phone. Wireline Competition Bureau, Telephone Subscribership in the U.S. (rel. May 21, 2002) at 2 n.2. Moreover, to the extent that mobile wireless services constitute a substitute for wireline services today, they are substitutes for voice services only, as broadband mobile services have not yet been ubiquitously deployed.

Fixed wireless does compete more directly with ILECs. But the RBOCs grossly misrepresent the extent of fixed wireless service. Today, for all practical purposes, there is no significant fixed wireless competitive presence. Major independent fixed wireless ventures, including ART, WinStar, XO, and Teligent went bankrupt. AT&T wrote off over \$1 billion in fixed wireless investment, and in October 2001 Sprint froze in place its fixed wireless business until the technology improves.

Verizon's comments propose that non-high capacity loops should not be subject to unbundling where a digital CMRS carrier or cable-based telephony is present. Verizon at 128. Verizon is attempting to write into the statute a limit that is not there. The

**REDACTED — FOR PUBLIC INSPECTION**

Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

Commission cannot properly adopt such a rule. The 1996 Act does not provide an exemption for ILEC unbundling in situations where CMRS carriers and cable-based telephony are available to consumers, and their presence can have no bearing on whether the requesting carrier is impaired or not. Certainly, in the context of an impairment analysis, CMRS and cable-based telephony are not alternatives for the most common types of high capacity loops, e.g., DS1, DS3 or OCn.

For broadband services in particular, the demise of data LECs reduced competitive pressures on the RBOCs, AT&T notes. "[T]he RBOCs have responded with slower DSL deployment and higher prices." AT&T at 92 & Attachment F (Willig Decl.) at 97-99. There is little or no intermodal competition for small business customers, and for residential customers, "[a]bout 40% of zip codes have only a single high-speed service provider, or no high-speed service provider at all." Id. at 93. As AT&T explained, "[t]here is no reason to assume that there is now effective *intermodal* competition or that such competition will develop soon." Id.

But in any event, the focus of the impairment test is not whether alternatives to ILEC *services* are available to *consumers*, but whether alternatives to ILEC *facilities* are available to would-be *competitors* of the ILECs. Verizon simply fails to explain how a requesting carrier could make use of CMRS or cable facilities short of buying the CMRS provider or cable company.

**B. More Granular Statutory Analysis**

The impossibility of implementing the statutory "impair" analysis on a geographic or market basis is shown by the comments. The RBOCs champion such "disaggregated"

**REDACTED — FOR PUBLIC INSPECTION**

Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

analysis, but they offer no reliable data to demonstrate that impairment no longer exists in certain places today, nor do they propose meaningful, or feasible, tests for determining how to apply the impairment test on a more disaggregated basis in the future.

Qwest argues for using an MSA basis (Qwest at 32), but it does not explain how the Commission could properly or practically conduct such a geographic analysis. Verizon argues that the presence of even one competitor in a wire center should be evidence of competitive transport. Verizon at 42. Verizon's reasoning flies in the face of the Supreme Court's ruling that the goal of the 1996 Act is to promote competition by any of "hundreds of smaller entrants" even if large carriers like AT&T or WorldCom can self-provision. Verizon, 122 S. Ct. at 1672 n.27. SBC calls for geographic review of unbundled transport on a wire center by wire center basis. SBC at 100-01. Such a massive undertaking would be utterly unworkable — and hardly supportive of the Commission's stated goal of administrative practicality.<sup>25</sup> UNE Remand Order at ¶¶ 107-116. BellSouth calls for disaggregation, but its analysis is so general that it offers no basis for that review. BellSouth at 60. For loops, BellSouth simply states that the Commission "should give dispositive weight to evidence of actual CLEC self-provisioning," "third party procurement," and "intramodal competition" within a geographic-specific market. BellSouth at 22. USTA merely calls for a "meaningful limiting standard." USTA at 3.

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<sup>25</sup> See also infra, p. 34, where Sprint points out that the wire center concept makes no sense in the context of transport, since transport by definition involves a circuit between two points rather than a single point.

**REDACTED — FOR PUBLIC INSPECTION**

Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

If the Commission were to undertake a geographic or market review, Sprint contends it must be done city by city, street by street, even building by major building. Sprint at 15; AT&T at 98. It is simply infeasible for the Commission or any state commission to undertake such an inquiry. The RBOCs' inability to offer any way to implement a geographic- or market-specific test shows that it cannot be done as a practical matter.

There should be no reason to consider geographic or market carve-outs, in any event. If a geographic market were competitive, then by definition incumbents would not have the power to raise rates and RBOCs would not be pushing so hard for geographic exemption from the UNE rules. If the market were competitive, UNE requirements would not be a burden, because incumbents would actually want to provide unbundled network elements to secure the incremental revenue on what would otherwise be unused network capacity — just as IXC's today compete for reseller traffic. The fact that RBOCs are so determined to push for geographic analysis indicates that their markets are not competitive.

Recent developments in markets where pricing flexibility has been granted bears this out. As AT&T pointed out, since mid-2000, the Commission granted Verizon, SBC, and BellSouth Phase II price flexibility in selected MSAs ostensibly to allow them the opportunity to respond quickly to a competitive market. Presumably that would mean RBOCs would lower their rates to meet the competition. Instead, they raised rates in those markets. See, e.g., AT&T at 122-23, 139-40. That shows that those 175 MSAs with Phase II price flexibility are in fact not competitive.

**REDACTED — FOR PUBLIC INSPECTION**

Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

Sprint's own experience in price flex markets suggests that RBOCs have, and exploit, market power. In those MSAs where RBOCs received pricing flexibility relief, RBOCs have restructured their rates and fees. Rather than lower rates, the effect has been to increase fees that collocating competitors must pay. Sprint's MAN network is being built in several markets in order to minimize Sprint's transport expense paid to the RBOCs. It includes collocating at key central offices and the self-provisioning of transport between those end offices and Sprint's POP. Sprint then purchases connections from these central offices to the customer premises.<sup>26</sup> Soon after learning of Sprint's competitive strategy for its MAN network, Verizon doubled its administrative fee per DS0 equivalent in *specific locations* where it expected to lose transport revenue to its competitor.<sup>27</sup> The purpose and the effect was to significantly increase — by \$[ ] per year in New York City alone — Sprint's costs even before the first site entered service. The effect of these increases is magnified when other cities are added to the equation, such as Newark and Washington, D.C. If the market were truly

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<sup>26</sup> These loops are clearly UNE-eligible, and, pursuant to explicit Commission orders, the local use restrictions simply do not apply. However, at least one RBOC is refusing to provision them as alternatives to special access channel terminations. Sprint recently filed a letter at the Enforcement Bureau seeking accelerated docket treatment of a complaint against BellSouth, arising from its initial refusal to act on Sprint's request for stand-alone unbundled loops from an end user's premises to Sprint's collocation cage in the same serving wire center where Sprint self-provisions or secures third-party transport. See Letter from Norina Moy to Alexander Starr, Chief, Market Disputes Resolution Division, Enforcement Bureau, Federal Communications Commission (dated May 23, 2002).

<sup>27</sup> Verizon imposes these charges for "network administration performed by the Telephone Company." Verizon Tel. Cos. Tariff FCC No. 11, § 7.2.16(F)(5) (Facilities Management Service). See also Verizon Tel. Cos. Tariff FCC No. 14 (Facilities for Interstate Access), Transmittal No. 209 (June 18, 2002).

**REDACTED — FOR PUBLIC INSPECTION**

Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

competitive, Verizon would not have had the ability to unilaterally increase prices for fear of losing out to the competition. Additionally, Sprint compared the RBOC special access rates before and after price flexibility was granted and determined that DS1 special access rates increased an average of 9.8% and DS3 rates increased an average of 5.6%.<sup>28</sup> Basic economic theory suggests that prices cannot be unilaterally raised in a competitive market. Therefore, the fact that ILECs have the ability to raise rates whenever they qualify for pricing flexibility is a strong indicator that the market is not competitive.

Sprint questions whether the Act can allow any geographic analysis, rather than a case by case review of impairment of requesting carriers. Sprint agrees with ASCENT that, even if the Commission had such authority, the task is unrealistic. A more targeted approach to unbundling, which the NPRM suggested, is neither permissible nor good policy. As ASCENT explained, although a "location-by-location unbundling analysis would be theoretically permissible," the result inevitably would be "arbitrary," because markets vary so widely. ASCENT Comments at 32.

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<sup>28</sup> Sprint compared the DS1 and DS3 special access prices before and after pricing flexibility was granted for Verizon, BellSouth, SBC and Qwest in zone density 2. Zone density 2 was chosen as a representative sample of prices. Zone density 1 rate increases were greater than zone density 2, and zone density 3 rate increases were less than zone density 2.

V. SPECIFIC NETWORK ELEMENTS

A. Loop, Unified Loop, High Capacity Loop

The Supreme Court recognized in Verizon that the 1996 Act was premised on the recognition that "a newcomer could not compete with the incumbent carrier to provide local service without coming close to replicating the incumbent's entire existing network, the most costly and difficult part of which would be laying down the 'last mile' of feeder wire, the local loop, to the thousands (or millions) of terminal points in individual houses and businesses." Verizon, 122 S.Ct. at 1662 (footnote omitted). See also UNE Remand Order ¶¶ 182-83.

Sprint's comments provided actual data establishing that few commercial buildings are served by non-ILEC loops. Sprint at 23-24. Other carriers did the same. See AT&T at 152-53; WorldCom at 16-17. The numbers differ among carriers, because they use different sources and building counts. Nevertheless, they all corroborate Sprint's position that AAVs or CLECs serve only a very small fraction of large buildings nationwide, probably [ ] or less. They do not begin to approach the ubiquity that RBOCs enjoy.

These counts actually *overstate* the availability of non-ILEC loop facilities. Some buildings are served by multiple AAVs, leading to double-counting that suggests broader

**REDACTED — FOR PUBLIC INSPECTION**

Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

availability than actually exists.<sup>29</sup> Sprint has often found, when attempting to order from AAVs, that even when an AAV reports it serves a particular building, the AAV utilizes ILEC facilities, rather than its own, to provide the building access. In addition, the facilities may be of insufficient capacity, or the provider may be technically or financially unreliable. Worse, even when a building may be identified as having non-ILEC loop, typically only selected floors or suites can be reached.

For CLECs, in addition to rights-of-way problems, building access is a very serious obstacle. E.g., CompTel at 48-49; AT&T at 140-46. The RBOCs almost invariably have complete and free access to these buildings. In contrast, building owners routinely impose unreasonably high fees on non-ILECs for building access, for the lease of telco closet space, and for intrabuilding cabling.<sup>30</sup> Owners often take months to address a request for access.<sup>31</sup> For CLECs, unlike ILECs, the costs of building access and intrabuilding cabling pose a serious risk of stranded investment. CLECs also face rights-of-way barriers — including costs, delays, restrictions, and outright bans — that incumbents do not face.

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<sup>29</sup> The RBOCs' so-called UNE Fact Report (at IV-4 n.15) provides an inflated and unreliable count of buildings reached by CLECs and AAVs. It cites the RBOC-sponsored NPRG CLEC Report 2002 (15th ed.), Ch. 4, Table 19. The NPRG report table merely totaled all connections (not buildings) for the relative *handful* of AAVs who publicly disclosed their building counts. Then NPRG added its own unsupported building estimates as well.

<sup>30</sup> WorldCom catalogued the same problems with building access. See WorldCom at 20 & n.34.

<sup>31</sup> In one case, an MTE owner charged Sprint a five-figure fee simply to bore a hole to run a cable between immediately adjacent offices.

**REDACTED — FOR PUBLIC INSPECTION**

Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

The RBOCs claim that wireless or cable TV facilities provide alternatives to unbundled local loops. E.g., Verizon at 50-52; BellSouth at 64. The USTA panel also directed the Commission to consider whether cable and satellite should affect the Commission's impairment analysis. 290 F.3d at 428. Sprint, however, is fully confident the Commission will find on remand that these other technologies are not substitutes for wireline UNE loops. Although the RBOCs argue that the presence of wireless or cable shows that requesting carriers are not impaired, they fail to explain how requesting carriers can get access to use these alternative facilities in any meaningful way to provide their own service. For example, where a requesting carrier is not a wireless carrier itself, it cannot connect a wireless "loop" to its own switch under current rules.<sup>32</sup> Thus, a carrier would be limited just to reselling services that the CMRS carrier itself provides. At present, CMRS networks do not provide ubiquitous DSL capabilities comparable to high-capacity loops, including OCn loops. WorldCom at 42-43. Wireless 3G technology is only now being deployed. Moreover, wireless and cable TV facilities are not open to access from other carriers, and therefore cannot be deemed a substitute for loop elements from wireline carriers. There is no basis in the statute for any exemption from unbundling requirements — or from applying statutory impair analysis — simply because consumers are served by competing technologies. As CompTel explained, the Act requires the Commission to view impairment from the requesting carrier's perspective, not that of incumbents or end-users. CompTel at 60.

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<sup>32</sup> Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, 15 FCC Rcd 13523 (2000).

**REDACTED — FOR PUBLIC INSPECTION**

Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

AT&T's comments call on the Commission to endorse a unified loop. AT&T at 163-203. Sprint has no desire to change the Commission's basic definition of the loop element, other than to clarify that DSL-capable loops must be available to requesting carriers. In that regard, Sprint had opposed the adoption of the NPRM's unified loop concept if it would preclude access to subloop elements. Sprint at 19-20. AT&T interpreted the unified loop concept differently. It understood the term to require end-to-end xDSL functionality for xDSL capable loops traversing remote terminals. AT&T at 164. Sprint agrees with AT&T, and believes the Commission should make clear that ILECs must provide end-to-end xDSL loop functionality, in addition to individual element functionality.

SBC argues that because CLECs are not buying high-capacity loops in quantity, they must not be needed and therefore should be removed from the UNE list. SBC at 100. Sprint does not know why other carriers are not ordering high capacity loops in greater quantities, if in fact that is the case. But for its part, Sprint is currently trying to secure high capacity loops in certain locations from another RBOC, and that RBOC so far has refused to provision them. In any event, the Act sets the criteria for determining when a network element must be unbundled, and it is a question of impairment, not of demand — much less demand at a single point in time. Self-provisioning high capacity loops is costly and impractical. Nor, as discussed above, are there ubiquitous competitive alternatives to RBOC high capacity loops.

The comments also confirm that removing high capacity loops from the UNE list would do immediate and lasting damage both to the CLEC industry and competitive

**REDACTED — FOR PUBLIC INSPECTION**

Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

IXCs. If the Commission denied requesting carriers access to high-capacity loops, they would be unable to provide high-speed services and advanced services. DSL customers would have to be disconnected, collocation cages would have to be dismantled, and an enormous quantity of CLEC investment would be stranded. And interexchange carriers would be impaired in providing their services to enterprise customers, even while the RBOCs begin providing in-region long distance services under Section 271. Of course, killing such competitive threats is exactly what the RBOCs have in mind.

**B. Added Electronics/Multiplexing**

Sprint agrees with AT&T that the loop (and transport, too) includes attached electronics necessary to provide full functionality, including Optical Concentration Devices ("OCDs") and similar equipment. AT&T at 187-189; Sprint at 32-34. For that reason, the Commission should order incumbents to make multiplexing available to requesting carriers wherever they would be impaired without access to unbundled loop or transport.

As WorldCom explained, "a loop is still a loop" even when it incorporates fiber or depends on attached electronics for its full functionality. WorldCom at 113-114. Indeed, the traditional "copper loop" may no longer exist." *Id.* Increasingly, ILECs' networks incorporate Next Generation Digital Loop Carrier ("NGDLC") architecture that requires electronics even for the low frequency portion of the loop. When the ILEC signals are multiplexed (as they increasingly are, even on copper), a requesting carrier cannot retrieve its customers' signals until the ILEC performs a demultiplexing function at the central office end of its local loop. High frequency signals also need demultiplexing by

compatible, attached electronics, usually an OCD. Qwest even offers a UNE loop multiplexing service under tariff, effectively admitting that multiplexing is essential to its unbundled loop element. Additionally, the fact that the Commission requires ILECs to provide EELs (a combination of loop, multiplexing, and transport) and the Supreme Court's determination in Verizon that ILECs must combine UNEs (122 S. Ct. at 1687) show that requiring multiplexing functionality is appropriate. A functionality necessary to combine loop and transport should itself be within the scope of these defined elements.

As Sprint noted in its comments, three state commissions have mandated multiplexing as a UNE. They did so not merely because it is terribly expensive for requesting carriers to deploy their own multiplexing — though it is, as Sprint established plainly in its comments (at 33) — but also because they realized that without UNE multiplexing a requesting carrier is impaired in its ability to provide xDSL and other high capacity services over ILEC facilities that incorporate multiplexing. The Commission should confirm that multiplexing is a feature included within loop and transport elements.<sup>33</sup>

**C. High Frequency Portion of the Loop**

In vacating and remanding the Line Sharing Order, the USTA court directed the Commission to consider cable-based competition and potential disincentives for investment by UNE-based competitors. USTA, 290 F.3d at 428. On remand, the

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<sup>33</sup> Where the requesting carrier is collocated in a central office where the loop terminates, the Commission should allow access to UNE multiplexing even if the requesting carrier utilizes non-ILEC transport. Sprint at 34.

Commission will note that competition in the telecom industry has always relied heavily on the use of other carriers' facilities. The history of the competitive IXC industry is telling. New entrants, including MCI and Sprint, relied on AT&T facilities — made available by Commission order — to establish themselves in the market. Ultimately new entrants constructed their own facilities, and today there is a brisk competition in wholesale services among interexchange carriers. No IXC is asking the Commission to lift resale requirements, and no one can claim that investment in IXC facilities has suffered.

In contrast, cable cannot provide the substantial broadband competition intended by Congress. At best, cable-based competition would create a duopoly of closed networks. Cable systems are largely residential and provide minimal competition in the important business markets. Satellite remains a small niche player. Wireless 3G services are in the earliest stages of deployment. Fixed wireless technology cannot be competitive until new technology overcomes the installation cost and line-of-sight issues that have limited its viability. Without access to line-shared loops, intramodal competitors are at a decisive disadvantage vis-à-vis incumbents, because those new entrants must obtain separate stand-alone loops when ILECs can share DSL and voice facilities.

**D. Switching and Interoffice Transmission Facilities**

**1. Packet Switching**

The RBOCs contend that packet switching should not be required as an unbundled network element. E.g., SBC at 52; Qwest at 41. Sprint does not quarrel with that position, at least in the central office environment. Sprint's comments did not ask the

**REDACTED — FOR PUBLIC INSPECTION**

Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

Commission to add stand-alone packet switching to the list of network elements subject to unbundling. Sprint at 40. However, the Commission's current definition of packet switching artificially includes the DSLAM, while the loop definition artificially excludes DSLAM functionality. RBOCs have used this narrow exemption of stand alone packet switching to deny "the full features, functions, and capabilities of the loops...." AT&T at 180.

Sprint agrees with AT&T that packet switching capability is integral to the "loop functionality," AT&T at 179, and the Commission need only confirm that packet switching capability must be included in the UNE loop element. As AT&T explained, "Next generation remote terminal architectures are simply a more efficient way of implementing the essential functionality of the loop." *Id.* "The equipment associated with a NGDLC loop is part of the unified loop element. All of the impairments relating to copper loops apply to carriers that seek access to unified loops."

Requesting carriers need xDSL-capable loops, capable of reaching a wide base of potential customers. That requires DSLAM functionality in next generation remote terminals and some means of transferring transmissions from the packetized loops to the competitive carrier's network at some reasonable point in the ILEC's network, whether at the ILEC CO or a reasonable aggregation point. Limiting requesting carriers to collocated DSLAMs in an ILEC central office prevents them from reaching potential customers behind any DLCs. That leaves as many as half of all potential customers beyond the reach of competitive carriers. *See* Sprint at 40-42. As state commissions in Illinois, Texas, and Wisconsin have already found, remote terminal collocation is

impractical. Id. at 41. Based on Sprint's actual experience, adjacent collocation is no more viable. Id. at 41-42.

The Commission should recognize that when remote terminals are involved, the DSLAM functionality is an inherent part of the loop plant, and should be treated as such. Sprint believes the most straightforward way to address this problem is to find that the DSLAM and necessary packet switching (e.g., ATM switches located in the central office or elsewhere) are included within the definition of "attached electronics" in the loop element when the DSLAM functionality resides in a remote terminal or NGDLC. Sprint at 42.<sup>34</sup> Several other commenters agree. E.g., AT&T at 179; WorldCom at 114.

## 2. Interoffice Transport

SBC and Verizon argue that CLEC fiber presence in a wire center is itself an indicator that transport need not be unbundled at that facility. SBC at 88; Verizon at 42. Of course, this proposal makes no sense whatever. First, the bare fact that another carrier is present does not mean that it can adequately satisfy the needs of all other requesting carriers. Moreover, competition in transport is utterly meaningless on a wire center by wire center basis. By definition, transport is a circuit between two wire centers, or between a wire center and a requesting carrier office. Thus, it is not whether alternative facilities exist at a wire center, but where those facilities can go to, that is the relevant

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<sup>34</sup> Alternatively, if the Commission views the DSLAM as "packet switching," then it should lift the restrictive conditions imposed by the UNE Remand Order. See 47 C.F.R. Section 51.319(c)(5).

REDACTED — FOR PUBLIC INSPECTION

Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

issue. Only if facilities are ubiquitously available *between* all such points could one argue there is no impairment for a requesting carrier. That is far from the case today.

Sprint's comments showed, from its own experience, that competitive transport is limited even in the highest density centers. Sprint explained how it evaluated non-RBOC transport options in [ ] RBOC central offices in LATAs encompassing [ ] major cities. Sprint at 46. Even in those larger metropolitan areas, only 28% of RBOC central offices have any CLEC-provided transport alternative. To make matters worse, nearly two thirds of those alternatives are bankrupt or in severe financial distress, leaving just 11% that could even be considered as an alternative to the RBOC. *Id.* Even in New York City — which the RBOCs wrongly claim is fully competitive — Sprint targeted [ ] central offices for collocation in connection with its MAN network. Of those central offices, fully [ ], or 60%, have no viable alternative provider.<sup>35</sup> Sprint's other MAN cities had varying but similar shortages of alternative transport. And, of course, Sprint's experience actually *overstates* the availability of non-ILEC transport, since like most competitive carriers Sprint has focused its first efforts on central offices in higher density areas.

The RBOCs cite numbers of fiber miles installed by competing carriers, claiming its growth shows that alternatives to ILEC transport must now be broadly available. RBOC Fact Report at Section III; BellSouth at 90-91; Qwest at 33-35; SBC at 85; Verizon at 105-106. But their data are misleading. They include intercity as well as local

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<sup>35</sup> Sprint considered a provider viable if [ ].

**REDACTED — FOR PUBLIC INSPECTION**

Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

transport, and they double-count shared facilities, which inflates the total. Since 144 fibers fit in one sheath, alternative fiber is overlapping and concentrated in limited areas, unlike the ubiquitous networks of the ILECs. Additionally, short runs of many fibers each are in high-density districts, like Manhattan, which gives a misleading sense of fiber reach and obscures its lack of ubiquity. Route miles are a more honest indicator of competitors' reach. On that basis, despite remarkable investment since 1996, all the combined fiber of the CLEC industry is still tiny compared to the millions of miles of ILEC transport facilities constructed over decades. And although SBC claims the fact that CLECs are successfully utilizing a "patchwork of different networks," in fact those carriers invariably rely on ILEC transport facilities to tie together pieces of that patchwork.

Sprint agrees with the CLEC industry that interoffice transport remains a critical UNE. AT&T at 122-125; ALTS at 60-61; UNE-P Coalition at 53-54; Sprint at 45-46. In the final analysis, as Covad emphasized, ILEC transport between central offices provides the only "ubiquitous alternative." Covad at 67.

**3. Unbundled Transport for Wireless Carriers**

It appears from recent history that the Commission may be determined to impose use restrictions on UNEs — first by hastily creating such restrictions on loop-transport combinations in the Supplemental Order in November 1999 and then by its prolonged inaction and failure to address the merits of those restrictions. Even if the Commission retains or extends use restrictions in this proceeding, the Commission should end the

**REDACTED — FOR PUBLIC INSPECTION**

Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

discrimination against wireless technology and confirm CMRS carriers' access to UNEs.<sup>36</sup>

Even if local use requirements were applied to individual elements, such as standalone loop or standalone transport, CMRS carriers clearly would qualify for UNEs. CMRS service is used extensively, if not principally, for local calling. The Commission appears to view CMRS carriers as facilities-based local competitors to ILECs. Hence, it has imposed on them burdensome local requirements, such as E911 and number portability. Of course, the Commission cannot reasonably treat CMRS carriers as local competitors when applying burdens, while denying them access to UNEs on some unarticulated notion that they are not local carriers. As AT&T Wireless explained, "exclusion of an entire class of competitor because it uses wireless, as opposed to wireline, technology would violate the plain language of the Communications Act as well as undermine the Commission's own efforts to promote intermodal competition." AT&T Wireless at 2.

The Commission should dismiss RBOC claims that CMRS carriers do not need access to UNEs. BellSouth at 46-53; Qwest at 39-40; SBC at 24-25. Essentially, they contend that wireless providers cannot possibly be impaired, because they have succeeded in building broad networks and subscriber bases without the benefit of UNEs. However, the RBOCs ignore the fact that they control the transport without which wireless carriers cannot operate.

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<sup>36</sup> First Report and Order, 11 FCC Rcd 15499 at ¶ 552.

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Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

Such transport is one of the largest single operating costs for wireless carriers. Despite huge investments in wireless infrastructure over the last decade and a half, no one is seriously proposing that wireless carriers can or should build their own transport facilities. The task is simply too large for any wireless carrier, and it would be wasteful since ubiquitous ILEC facilities already exist. Indeed, aspects of wireless networks were designed around existing ILEC architecture. Those transport facilities were built over decades, and paid for by captive customers under a rate of return regime. Now, RBOCs want the ability to control a critical component of their competitors' costs, and to indirectly influence their competitors' prices.

Equally far-fetched is the RBOCs' suggestion that CMRS carriers are "competing successfully" with ILECs, and that the Commission should therefore affirm RBOCs' present refusal to allow them access to UNE transport. SBC at 24-25; BellSouth at 55; Qwest at 39-40. The RBOCs do not explain why, after the better part of two decades and massive ongoing investment in wireless networks, only 1% of households have substituted wireless for wireline service. FCC Subscriber report.<sup>37</sup>

Sprint agrees with Voicestream, for example, that CMRS carriers are "competing with ILECs' own fixed landline services, yet ILECs maintain bottleneck control over essential facilities — the high-capacity trunks CMRS carriers use to connect their cell sites to their mobile switching centers." Voicestream at i. As Voicestream concluded, RBOCs' refusal to provision dedicated transport UNEs to CMRS carriers "distorts

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<sup>37</sup> They also fail to note that all major wireless carriers currently are continuing to experience operating losses that inevitably slow the pace of network buildouts.

competition in the market for local telecommunications services." Likewise, Sprint agrees with Nextel that RBOCs "should not be permitted to hide behind [a] UNE definition of dedicated transmission that aids and abets their ability to collect unnecessarily excessive charges from a competing telecommunications service provider." Nextel at 4.

Indeed, the only argument for excluding CMRS carriers from access to UNE transport is the purely accidental use of wireline-centric language in the current definition of transport. Clearly, CMRS cell sites are functionally analogous to wire centers, and their transport is no different from that of wireline carriers. Sprint at 48. The Commission can easily fix this error by modifying the definition of transport and should confirm that RBOCs are required to offer dedicated UNE transport to both fixed wireless and CMRS carriers. Id. at 47-49.

**E. Other Network Elements**

**1. Signaling and Call Related Databases**

Sprint's comments recommended that signaling and call related databases need no longer be required on a UNE basis, except for signaling and databases necessary to support 911/E911 services. Sprint at 49-51. Many other CLEC commenters nevertheless believe that ILEC signaling should remain on the list of mandatory UNEs. E.g., WorldCom at 120-128; AT&T at 239-240; ALTS at 87-89. The most outspoken of these parties is WorldCom.

WorldCom claims "[n]othing has changed since the Commission issued the UNE Remand Order." WorldCom at 121. That is true, by and large, for other UNEs, but

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Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

Sprint's incumbent LEC experience shows that there is now a competitive market for signaling and call-related database services. Sprint at 49-50. WorldCom contends that these alternative providers' signaling networks are not as ubiquitous as ILECs', that they do not have the redundancy required to protect against outages, and that they have only "geographically dispersed (i.e., not local) STPs [signal transfer points]." WorldCom at 121. In fact, competitive alternatives are available nationwide, with the ubiquity and quality comparable to ILECs.<sup>38</sup> These providers have full-scale redundancy, just as Sprint does. And while alternatives may not have geographically dispersed signal transport points, neither do ILECs. Sprint's signaling network meets or exceeds every industry standard, but, like many carriers, its STPs are regional and not dedicated by LATA. Chapman/Leister Decl. at ¶¶ 6-7. For example, Sprint's incumbent local division has just one STP which sufficiently covers all of Florida.

It should be no surprise that competitive providers rival ILECs in signaling and database capabilities. Specialized providers like Illuminet (recently acquired by VeriSign) and TSI advertise their national coverage. Verizon and SNET also provide signaling and database services to carriers on a competitive basis outside their home territories. ICG offers these services accessible through regional STP nodes in more than 30 cities. Time Warner Telecom and NewSouth have announced they are using their own SS7 networks.

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<sup>38</sup> See Attachment A, Joint Declaration of John D. Chapman and Jeffrey L. Leister on Behalf of Sprint Corporation ("Chapman/Leister Decl.") at ¶¶ 3, 6-7.

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Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

WorldCom also suggests that it would be very expensive "for CLECs to duplicate the ILECs' call-related databases," given the time and money necessary to develop them. WorldCom at 123. Fortunately, there is no need for them to do so. Typically, the requesting carrier's SS7 vendor provides access to any necessary call related databases. Chapman/Leister Decl. at ¶ 8. Illuminet/VeriSign, Targus, Tekelek, and TSI — as well as Verizon and SNET out of territory — offer database services, including toll-free calling numbers, LIDB, AIN, CNAM, and number portability databases. For these reasons, the Commission need not entertain WorldCom's request (at 124-126) that the Commission order that CNAM databases be available for batch download, since requesting carriers are not impaired without "per inquiry" access.<sup>39</sup> Batch downloads would also involve costs, delays, technical problems, and risks of service disruption, and they are not needed even to support custom features. Reilly Decl. at ¶¶ 3-6. And since Section 251(b)(3) of the Act already provides that Directory Assistance Listing information must be available on a nondiscriminatory basis, there are no grounds for WorldCom's request that DAL be unbundled. WorldCom at 127-128.

With competitive options available, Sprint believes requesting carriers will not be impaired by the removal of the signaling and call-related databases (other than for 911/E911) from the mandatory minimum UNE list. Sprint's own experience in its 18-state ILEC service territories shows there is minimal demand for ILEC unbundled signaling and call-related databases. In Sprint's incumbent local territories, [ ]

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<sup>39</sup> See Attachment B, Declaration of William L. Reilly on Behalf of Sprint Corporation ("Reilly Decl.") at ¶¶ 2, 7.

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Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

CLEC and CMRS carriers are providing service. Only [ ] CLECs — or fewer than 6% of these carriers — secure any component of their signaling services from Sprint. Chapman/Leister Decl. at ¶ 10. This experience holds true in cities, small towns, and even rural areas. Sprint at 50-51. Moreover, only [ ] of these CLECs store their customers' information in Sprint's CNAM database, and at least [

] database services from a competitive provider even while utilizing Sprint's unbundled signaling. Chapman/Leister Decl. at ¶ 10.

Several CLECs noted that requesting carriers that rely on UNE switching generally cannot utilize non-ILEC signaling and databases, because those carriers cannot as a practical matter separate those functions from the switching functionality. Sprint acknowledges this may be true in many instances. Nevertheless, for requesting carriers that are not ordering unbundled switching, the Commission can and, Sprint believes, should remove signaling and call-related databases as stand-alone elements from the mandatory list.

**VI. GENERAL UNBUNDLING ISSUES**

**A. Obligation to Modify or Build UNEs**

The RBOCs take the position that incumbents need not take any steps to modify or build facilities for requesting carriers. The RBOCs have refused to make any modifications for competitors, however slight, by deeming it new construction. Even though everyone acknowledges that the requesting carrier must pay cost-based UNE rates for such facilities, some have argued that incumbents are exposed to CLEC bankruptcies that could leave them with stranded investments they would not have made voluntarily.

**REDACTED — FOR PUBLIC INSPECTION**

Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

More fundamentally, of course, the RBOCs object to the concept of providing any assistance to competitors, notwithstanding the stated pro-competitive purpose of the 1996 Act.

As a carrier with ILEC operations in 18 states, Sprint understands the obligations of incumbents are not unlimited. Nevertheless, Sprint recognizes that Section 251(c)(3) requires incumbents to take reasonable steps to modify their networks to support access to unbundled network elements. Sprint at 52-53. Certainly ILECs must be required to modify facilities that are essential to connect the requesting carrier's equipment with the network element. For example, when an ILEC deploys remote DSLAMs connected to central office-based packet switches, the only facility necessary to provide an end-to-end broadband loop to a CLEC is the cross-connect between the packet switch port and the CLEC's equipment. Yet the RBOCs would deny even such minimal requests.

Sprint believes the Commission should clarify that ILECs have a duty to provide provisioning — to make available capacity that already exists or to increase the capacity of existing equipment. But it is also appropriate to require ILECs to undertake new construction for requesting carriers, subject to reasonable guidelines as Sprint outlined in its comments. Sprint at 54-55. Those conditions are consistent with how ILECs currently treat special construction for special access. They balance the needs of requesting carriers for unbundled network elements and the needs of ILECs to avoid undue risk of unrecoverable costs.

Sprint also agrees with ALTS that RBOCs should not necessarily be permitted to deny UNE orders simply by asserting there are no facilities available. ALTS at 107-113.

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Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

Verizon has refused to deploy new multiplexers, or reconfigure existing units, to meet the requests of other carriers, even though undoubtedly it makes such changes routinely for its own customers. Sprint agrees that Verizon has been stretching the 8th Circuit's ruling by refusing even modest changes to its "existing network." Reasonable modifications of provisioning should be required, subject to appropriate conditions, such as "where the incumbent would provision service for its own retail customers." WorldCom at 74-81. Sprint outlined guidelines for ILEC provisioning in its comments. See Sprint at 52-55.

Nor is there any reasonable basis to exclude new construction from unbundling. Sprint Comments at 53-54. The Act does not limit itself to facilities that were in place in 1996, or at any other time, and Section 251 incorporates no distinction "between 'new' and 'old' investments." CompTel at 40. In fact, it would be unreasonable to assume that new facilities — which presumably provide necessary additional capacity, improved services, or increased efficiencies — should be excluded. "[L]egacy networks' and 'broadband' networks," in reality, "are one and the same." CompTel at 41.<sup>40</sup>

Sprint also supports reasonable UNE access to plant upgrades. Networks are not static, and the Act was not limited to facilities solely as they existed in 1996. Although the RBOCs claim xDSL deployment is something revolutionary, as a practical matter such network upgrades are simply the logical extension of network architecture and capability that existed even before the 1996 Act. AT&T at 116-18. Access to these

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<sup>40</sup> As McLeod USA notes, "Perhaps a case could be made for exempting from unbundling obligations a wholly new network which neither touched nor used any piece of the existing network." McLeod at 6. However, no carrier would ever build such a network. "[W]hat is being advocated is that 'newly constructed' pieces of *existing* network be exempted from unbundling." Id. (emphasis in original).

**REDACTED — FOR PUBLIC INSPECTION**

Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

upgrades is essential if requesting carriers are to support provision of advanced services, including packet switching.

ILEC networks are not static, and, contrary to the RBOCs' arguments, no such assumption can or should be read into the Act.<sup>41</sup> Sprint therefore opposes, for example, SBC's call "to take off the table all investment in packet technologies and networks." SBC at 20. Just as there is no basis in the Act for excluding new investment, there is no basis for distinguishing between voice and data traffic.

Excluding access to plant upgrades, whether couched as new construction, upgrades, or new facilities — and SBC, for one, acknowledges the distinctions can be difficult to draw (SBC at 19) — would preclude requesting carriers from access to Sprint's local networks as the circuit to packet conversion is undertaken. The RBOCs presumably also have plans to upgrade their networks to support more advanced services and to seek greater efficiencies. If the Commission excluded upgrades from unbundling, CLECs, and their customers, could be stranded as RBOCs retired copper from service. And although the RBOCs contend that requesting carriers should have incentives to construct new facilities, an upgrade to ILEC plant could provide that same capacity at minimal cost. And when considering constructing new facilities where there is existing ILEC fiber, as AT&T explained, the requesting carrier knows that "the ILEC can almost

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<sup>41</sup> For example, Sprint has announced an ambitious plan to convert its incumbent local operation's entire network — serving more than 8 million access lines in 18 states — from circuit- to packet-switched technology. This ambitious \$4 billion plan is not driven by regulatory considerations, but by Sprint's desire to exploit the advances in technology. It will increase network efficiency, flexibility, and service quality, and support a growing array of DSL and advanced services.

always create the very same capacity by incurring only the *incremental* cost of adding electronics to its existing outside plant." AT&T at 129-130. Realistically, there is no way the Commission can exclude new construction or network upgrades without impairing competition and discouraging investment by new entrants.<sup>42</sup>

**B. Commingling of UNEs and Tariffed Service**

Sprint's comments explained that the ban on commingling UNE and tariffed transport services should be lifted, at least in certain circumstances.<sup>43</sup> Sprint at 55-57. The commingling restriction compels requesting carriers to purchase separate sets of facilities for different types of traffic — for no reason. It prevents requesting carriers from realizing the economies of equipment usage and transport that incumbent ILECs enjoy. It artificially inflates the requesting carrier's costs and impairs competition. Sprint at 56; AT&T at 106-07.

According to Verizon, the Commission cannot require commingling unless it concludes that commingling would promote competition or investment in facilities based competition. Verizon at 141. This is simply a variation on an argument addressed in numerous other contexts elsewhere in this reply, and indeed rejected in a closely related

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<sup>42</sup> Sprint also opposes, for example, SBC's suggestion that the Commission should exclude from unbundling requirements loop facilities to new developments or "greenfield" sites. There is no basis in the Act for excluding facilities simply because they were installed after passage of the Act. Creating such an exemption would simply create islands of monopoly and perversely give investment priority to areas where competition is absent.

<sup>43</sup> Specifically, the Commission should allow commingling of UNE loops and access multiplexing and commingling of access and UNEs on the same high-capacity transport circuits, including entrance facilities. Sprint at 55.

**REDACTED — FOR PUBLIC INSPECTION**

Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

context by the Supreme Court in Verizon. Some commingling restrictions serve no legitimate purpose; they serve only to retard competition. AT&T at 107-108. They force a competing carrier to purchase unnecessary, duplicate facilities and to incur needless higher costs. Sprint at 57. Lifting the ban would be more efficient for the requesting carrier and the ILEC alike.

Verizon claims that allowing commingling such as this would be creating "new" unbundled network elements (something it implies is somehow impermissible), simply because they would utilize ratcheted rates. Verizon at 139. Sprint showed in its comments, applying rates on a ratcheted basis is neither new nor controversial. Sprint at 55-56. The Commission has routinely adopted ratcheting in other proceedings where carriers needed a blended rate, under two pricing structures, for one facility. It does not change the underlying facility, and does not create a "new" network element.

Verizon also claims commingling "would create tremendous implementation difficulties." Verizon at 140. The only difficulties, however, are those that Verizon has knowingly created for itself, by staffing UNE and access service support organizations separately. Ultimately, Verizon fails to catalogue any real difficulties. It simply opines that given its current organizational structure, commingling would be unduly "confusing." Id. How Verizon chooses to organize itself cannot be determinative of the public interest.

Verizon also assumes that a requesting carrier cannot be impaired, "given the competitiveness of the special access market." Id. Aside from the fact that the special access market is not really all that competitive (see supra, pp. 25-27), by definition,

**REDACTED — FOR PUBLIC INSPECTION**

Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

commingling involves more than special access. Denying requesting carriers like Sprint the ability to commingle UNEs and tariffed services in reasonable circumstances impairs them from providing telecommunications services. It artificially inflates their costs, denies them network efficiency, delays their entry to market, and creates operational complexity.

**VII. CONCLUSION**

The comments submitted in this Triennial Review show that the Commission needs to proceed carefully if it is to promote the statute's goals for competition, as recognized by the Supreme Court in Verizon. The D.C. Circuit's joint remand of the UNE Remand Order and Line Sharing Order underscores the importance of providing a thorough — and thoroughly explained — decision-making on remand. Sprint believes Commission review will confirm the following:

- The industry needs regulatory certainty, which should be provided through a national UNE list. The Commission should reject RBOC calls for a market-by-market, service-by-service review as unworkable and contrary to statute.
- Competitive carriers need confirmation that they will have access to UNEs in all circumstances where the "necessary" or "impair" standards are met.
- Competitive carriers need a DSL-capable loop and the ability to reach customers behind remote terminals. The Commission should reject RBOC calls to exclude broadband facilities and new facilities. It should confirm that unbundled loops include attached electronics and that ILECs must support DSL functionality to allow CLECs to reach customers behind a DLC, even when that requires new equipment. The "spare copper" and remote terminal collocation conditions of 47 C.F.R. Section 51.319(c)(5) should be removed.
- Competitive carriers need reasonable flexibility to commingle UNEs and tariffed services, on a ratcheted basis.

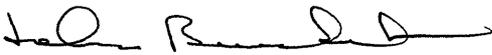
**REDACTED — FOR PUBLIC INSPECTION**

Reply Comments of Sprint Corporation  
CC Dockets Nos. 01-338, 96-98, 98-147  
July 17, 2002

- CMRS and fixed wireless carriers need relief from technology-biased discrimination. The Commission should modify its definition of transport and confirm that wireless carriers can convert transport to UNEs with a simple records conversion.

Respectfully submitted,

SPRINT CORPORATION

By 

John E. Benedict  
H. Richard Juhnke  
Jay C. Keithley  
401 Ninth Street, NW  
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July 17, 2002

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## **ATTACHMENT A**

**Joint Declaration of J. Chapman & J. Leister  
Sprint Corporation  
CC Docket Nos. 01-338, 96-98, 98-147**

**REDACTED – FOR PUBLIC INSPECTION**

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

In the matter of	)	
	)	
Review of the section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147

**JOINT DECLARATION OF JOHN D. CHAPMAN AND JEFFREY L. LEISTER  
ON BEHALF OF SPRINT CORPORATION**

Based on our personal knowledge and on information learned in the course of our duties, we declare as follows:

1. My name is John D. Chapman. I have served as Manager Intelligent Network Operations, Sprint United Management Company (SUMC) since 1997. I have the responsibility of managing the team responsible for input of Sprint ILEC Signaling Transfer Point (STP) translations, the technical review of Database Service Contracts, and serve as the Single Point of Contact (SPOC) for Industry issues regarding Calling Name Delivery (CNAM) and Line Information DataBase (LIDB).

2. My name is Jeffrey L. Leister. In my current position as Senior Member Technical Staff, of Sprint National Engineering, Standards, and Procedures, I have the

**REDACTED – FOR PUBLIC INSPECTION**

Reply Comments of Sprint Corporation  
Declaration of J. Chapman & J. Leister  
CC Docket Nos. 01-338, 96-98, 98-147  
July 17, 2002

responsibility of creating Sprint standards based on the results of laboratory testing and Industry Standards. Also, I have managed Sprint's local SS7 Network in Pennsylvania and New Jersey for the years 1994 to 1997. During this period, I was responsible for operations and survivability of the SS7 Network by insuring link diversification and preparation in the event of catastrophic failure.

3. The purpose of this document is to address claims by WorldCom and others that they are impaired without access to the ILEC SS7 network as an unbundled network element. Specifically WorldCom claims that the alternate vendors' networks are not as ubiquitous and that they do not have the quality of ILEC networks (Bernard Ku Declaration, appended as Exhibit F to WorldCom's April 5, 2002 Comments). These statements, as well as other claims, are not substantiated with quantitative information and therefore do not meet the impairment standards.

4. The only point with respect to unbundling upon which we can agree is that, should the FCC mandate the unbundling of local switching, any carrier purchasing local switching from an ILEC must have access to the associated SS7 signaling.

5. Sprint's SS7 network is interconnected with a variety of providers including: AT&T, WorldCom, Sprint Long Distance, Transaction Network Services, Southern New England Telecom, VeriSign (formerly Illuminet), Qwest (formerly U.S. West), Bell South, Verizon (formerly GTE), Verizon (formerly Bell Atlantic), SBC (formerly Ameritech), SBC (formerly Pacific Bell), SBC (formerly Southwestern Bell), and AT&T Wireless. Two of them, VeriSign and Transaction Network Services, are not carriers.

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Reply Comments of Sprint Corporation  
Declaration of J. Chapman & J. Leister  
CC Docket Nos. 01-338, 96-98, 98-147  
July 17, 2002

6. Mr. Ku (at 5) claims that third-party providers do not have as ubiquitous a network as ILECs, and specifically mentions the placement of STPs. He illustrates this by claiming that they do not have an STP in every LATA, implying that this is essential. This is simply not true. Sprint's incumbent local division operates ten (10) pairs of Regional Signal Transfer Points (STP) and one (1) National STP pair that also serves as a Regional STP for its geographical area. These eleven (11) pairs of STPs serve Sprint customers in eighteen (18) states. Sprint does not operate a STP pair in every LATA or even every state nor do we believe that it is necessary to do so. We have achieved and continue to maintain an enviable level of service with our architecture.

7. Mr. Ku (at 5) also claims that third party signaling networks lack redundancy. This is obviously speaking to the quality of the third party alternatives. He does so without providing any hard evidence whatsoever. Sprint utilizes industry based model standards in the design of its SS7 network, just as other vendors do. Engineering of the Sprint SS7 Network focuses on Network survivability through redundant deployment of SS7 Network elements and diverse routing of links. All of Sprint's STPs and databases are deployed in mated pairs and separated geographically. All of Sprint's Service Switching Points (SSP) are connected to STPs with two or more Associated ('A') links to each STP in the mated pair and Sprint employs diverse routing for each of the 'A' links. With this architecture Sprint supports a goal of [ ] average 'A' and 'D' link in service time. These are the links that Sprint controls and Sprint has exceeded this goal for the previous year-to-date ending April 2002. Sprint does not control 'B' links to the adjacent SS7 Networks mentioned in 5 above but reports statistics that

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Reply Comments of Sprint Corporation  
Declaration of J. Chapman & J. Leister  
CC Docket Nos. 01-338, 96-98, 98-147  
July 17, 2002

indicate all interconnected SS7 service providers combined have also met or exceeded Sprint's goal of [ ] in service time for the previous year-to-date ending May 2002. These statistics attest to the reliability of Sprint ILECs Network and SS7 applications and the stability of other interexchange carrier and third party Networks in relationship to Sprint's Network.

8. Mr. Ku claims that CLECs need access to ILEC call-related databases (at 7). Sprint operates national SCP database platforms that provide services for regions in all eighteen states in which Sprint operates. The databases include Toll Free Service (TFS) (800, 866, 877, and 888), CNAM, LIDB, and Local Number Portability (LNP). Sprint has provided [ ] availability to each of these databases over the 12 months. We maintain many contracts with other companies that provide access to these databases. We agree that CLEC access to ILEC SS7 networks for purposes such as acquiring calling name information is desirable; however, there is no reason why it must be provided as a network element. A CLEC subscribing to an alternate vendor's SS7 database services essentially gets access to Sprint's databases through their vendor's contractual arrangement. Interconnections between SS7 providers such as these were provided before the Telecom Act was passed and can continue without an unbundling obligation.

9. Sprint does not require Local Exchange Carriers (ILEC/CLECs) that directly connect to the Sprint SS7 network to use any of the SUMC database services. These services include LNP, LIDB, CNAM, and TFS. When the LEC owns their own switch, it is the LEC's discretion to use the SUMC database services or to choose a

**REDACTED – FOR PUBLIC INSPECTION**

Reply Comments of Sprint Corporation  
Declaration of J. Chapman & J. Leister  
CC Docket Nos. 01-338, 96-98, 98-147  
July 17, 2002

competitor's services. In either case, Sprint will and does provide routing via the Sprint SS7 network to the interconnection point with the database provider of the LEC's choice.

10. In spite of the enviable quality of Sprint's network, the mandated cost based pricing, and CLEC claims that they are impaired without access to it, Sprint currently has only [ ] CLECs purchasing any component of their SS7 services as a network element. In fact, [ ] of these CLECs store their customers' information in Sprint's CNAM database and at least [ ] using an alternate provider for database services.

11. We believe that these facts clearly describe the industry standard SS7 architecture and prove the quality of Sprint's SS7 network as well as the quality of interconnections with alternate providers. It clearly shows that SS7 signaling transfer points do not have to be deployed in every LATA in order to provide nationwide coverage and that centralized SCP mated pairs can also do the same. This declaration describes how other provides access information in Sprint's databases, which could continue to be provided under contractual arrangement without being unbundled.

12. This concludes our declaration on behalf of Sprint Corporation.

We declare, under penalty of perjury, that the foregoing is true and correct.

Executed on July 17, 2002.

  
Jeffrey L. Leister

  
John D. Chapman

**ATTACHMENT B**

**Declaration of W. Reilly  
Sprint Corporation  
CC Docket Nos. 01-338, 96-98, 98-147**

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

In the matter of	)	
	)	
Review of the section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147

**DECLARATION OF WILLIAM L. REILLY  
ON BEHALF OF SPRINT CORPORATION**

Based upon my personal experience and knowledge I have learned concerning SS7 Administration Systems, I declare the following:

1. My name is William L. Reilly. In my current position as Operations Support Manager for Sprint Intelligent Network Administration Center, I have the responsibilities of planning, installing and maintaining LNP, CNAM, LIDB and Fraud Administration Systems. I have been working in this or a related function for five years.
2. The purpose of my declaration is to refute specific comments made by John Gallant and Michael Lehmkuhl included in Appendix F of WorldCom, Inc.'s April 5, 2002 Comments. Specifically, batch downloads of CNAM databases would

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Reply Comments of Sprint Corporation  
Declaration of W. Reilly  
CC Docket Nos. 01-338, 96-98, 98-147  
July 17, 2002

have significant negative impacts to customer service, add additional costs to ILEC operations, are not necessary to provide new services such as distinctive ring, and are not necessary for CLECs to provide equivalent service.

3. ILECs have refused to provide batch feeds of their CNAM databases for specific customer-affecting issues. When attempting to replicate any database exactly, especially through a batch feed, it is inherently difficult to maintain data integrity. Record updates would be delayed; grouped transactions can be separated causing incorrect data; and customer-affecting issues would not be corrected until the following daily batch load. Manual updates, scheduled and unscheduled outages, bulk loading of customer data, audits and similar activities that are required to maintain a CNAM database complicate matters further.

4. Absent the customer-affecting issues mentioned above and disregarding the cost of doing so, it is possible to export a CNAM database and translate it into a common file format. Performing this task on a database containing tens of millions of records is a process that would require a great deal of time, additional storage, additional processing capability, and increased network bandwidth. Each of these modifications would be costly to Sprint, and the costs would be unavoidable because of the need to protect services and timeframes provided to Sprint's current CNAM database customers.

5. Mr. Gallant and Mr. Lehmkuhl state (at 9) that any delays resulting from batch downloads of the CNAM database would not have significant customer impacts. I disagree. The timeframe to make changes to the CNAM data is visible to the customer, and customers will make future Service Provider selections based upon services they

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Reply Comments of Sprint Corporation  
Declaration of W. Reilly  
CC Docket Nos. 01-338, 96-98, 98-147  
July 17, 2002

receive. An additional twenty-four business hours (which may be 36 actual hours, if provisioning is not done on weekends) is a significant amount of time in the customers' point of view. In the event that Sprint did provide a batch load of Sprint customer data, service parity issues would exist where the CNAM information for WorldCom's customers would be updated faster than the Sprint records stored in WorldCom's database. This is because WorldCom customers would not have the additional batch feed delays. Resolving customer-reported problems would also be delayed because additional research would have to be performed to see whose database was returning incorrect information when queried for the Sprint record. Additional relationships would have to be maintained between competitors for customer problems.

6. WorldCom implies (at 12) that features such as "distinctive ring" could not be offered without a download of the CNAM database. Distinctive ring, as well as other services, can be developed as a switch feature using the query response from any LECs SCP. WorldCom's statement also assumes that a specific feature can only be developed using one method, i.e. CNAM delivery. Distinctive ring need not rely upon a query to a CNAM database since the calling telephone number is presented to the terminating switch for each call. A switch based feature using the calling number as the trigger for "distinctive ring" is much more appropriate for this feature. Utilizing the calling number would eliminate the need to launch a CNAM query and would also be much more successful since CNAM delivery is reliant upon the accuracy of the CNAM database, the reliability of batch downloads, the accuracy of the customer's name entry during Service Order entry, and the stability of the SS7 Network.

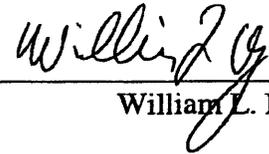
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Reply Comments of Sprint Corporation  
Declaration of W. Reilly  
CC Docket Nos. 01-338, 96-98, 98-147  
July 17, 2002

7. Any carrier, including WorldCom, can provide services equivalent to the ILECs' via the query mechanism. The provision of a batch download would not change the fact that the source of the data is and remains with the ILEC, including any future updates. Requiring batch downloads of the CNAM database would require the establishment of a totally new process with its associated costs and not provide the level of service that can be obtained via the existing query mechanism.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on July 16, 2002.



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William L. Reilly

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of Sprint Corporation in CC Docket Nos. 01-338, 96-98 and 98-147 was sent by United States First-Class Mail, postage prepaid, and/or electronic mail on this the 17th day of July, 2002 to the following parties.

  
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