Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Section 272(f)(1) Sunset of the BOC	)	WC Docket No. 02-112
Separate Affiliate and Related Requirements	)	

COMMENTS OF SPRINT CORPORATION

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Sprint Corporation, on behalf of its incumbent local exchange ("ILEC"), competitive local exchange ("CLEC")/long distance, and wireless divisions, in response to the Notice of Proposed Rulemaking ("NPRM") released May 24, 2002 (FCC 02-148), respectfully submits its comments in the above-captioned proceeding.

As discussed below, Sprint believes that the Commission should retain the separate affiliate and nondiscrimination requirements in section 272 and the implementing regulations (47 CFR Sections 53.203(a) – (e)) until at least the following conditions are met: the Commission has adopted special access and UNE performance measurements and enforcement measures; three years have elapsed from the date on which the RBOC receives Section 271 authorization in the last of its ILEC states; and the Commission has concluded, after review of the results of two biennial audits for each state in which the RBOC has received Section 271 authorization, that the RBOC is in compliance with its Section 272 obligations. Sprint further recommends that the Commission establish a broad framework for determining whether to extend the Section 272 requirements or allow them to sunset, and that that framework be applied to each RBOC as a whole rather than on a state-specific basis. These preconditions for granting relief from the separate affiliate rules are admittedly demanding; however, such measures are entirely warranted by existing market conditions and by the RBOCs' history of disregarding their obligations under the statute, the Commission's local competition orders, and their various merger authorization orders.

I. INTRODUCTION AND SUMMARY

Section 272 of the Act requires that a BOC which is authorized to provide in-region interLATA service do so through a separate corporate affiliate; that it submit to a biennial audit to determine whether it has complied with the Section 272 requirements and implementing regulations; and that it comply with certain safeguards intended to prevent the BOC from discriminating in favor of its affiliate(s) at the expense of unaffiliated entities. Under Section 272(f) of the Act, the separate affiliate and biennial audit requirements "shall cease to apply with respect to the manufacturing activities or the interLATA telecommunications services" three years after date the BOC receives Section 271 authorization, unless the Commission "extends such 3-year period by rule or order." In the instant NPRM, the Commission seeks comment on whether the structural and nondiscrimination safeguards established in section 272 should be extended either generally, or with respect to specific states, and on the process the Commission should follow in making that decision.

Sprint strongly believes that the Section 272 separate affiliate and nondiscrimination requirements must be extended beyond the three-year period. Except for the key fact that the RBOCs have received Section 271 interLATA authority in several states in the past 2+ years, the RBOCs' situation is not materially different than it was when the Commission first adopted rules to implement the statutory requirements of section 272. The RBOCs remain unquestionably dominant in the local exchange and exchange access markets in which they are the incumbent LEC, and thus retain the incentive and the ability to adversely affect long distance competition.[1] And, the potential for discriminatory and anti-competitive behavior will only increase as the RBOCs are granted 271 authority in more and more states and as their stake in the interLATA market becomes ever larger. Significant regulatory oversight, including separate affiliate and nondiscrimination requirements, must be maintained well beyond the initial three-year period in order to curb discriminatory conduct and to identify any abuses which may occur.

Sprint believes that the Section 272 protections should remain in place until at least the following conditions are met:

- the Commission has adopted performance measures and enforcement mechanisms relating to the RBOCs' provision of special access services[2] and UNEs[3];
- three years have elapsed from the date on which an RBOC obtained Section 271 authority in the last of its states in which it is an ILEC;
- after the RBOC has received Section 271 authorization in all of its ILEC states, two biennial audits of its operations have been performed and

[1] However, the same is *not* true of non-BOC ILECs, which because of their much smaller scale and geographically dispersed (and largely rural) local operations are not in the same position as the BOCs to adversely affect interexchange competition. (Indeed, insofar as Sprint is aware, the Commission has never found that a non-BOC ILEC has discriminated in favor of its affiliate at the expense of other unaffiliated carriers.) The fact that Section 272 applies only to the Bell Operating Companies reflects Congress' recognition that the BOCs must be subject to more stringent safeguards than are required for other ILECs.
[2] *In the Matter of Performance Measurements and Standards for Interstate Special Access, Notice of Proposed Rulemaking*, CC Docket No. 01-321, released November 19, 2001. Comments and reply comments have been filed, but to date, no order has been adopted.
[3] *In the Matter of Performance Measurements and Standards for Unbundled Network Elements and Interconnection, Notice of Proposed Rulemaking*, CC Docket No. 01-318, released November 9, 2001. Comments and reply comments have been filed, but to date, no order has been adopted.

demonstrate that the RBOC is in full compliance with the requirements of Section 272.

It is only after all of these conditions have been met, that it would be appropriate for the Commission to consider relieving an individual RBOC of the separate affiliate and nondiscrimination requirements. To eliminate the relevant Section 272 requirements before these conditions are met could well enable the RBOCs to engage in the very type of discriminatory and anti-competitive behavior which Section 272 was intended to prevent.

II. THE COMMISSION SHOULD ADOPT A BROAD PROCEDURAL FRAMEWORK FOR EVALUATING THE SUNSET OF SECTION 272 REQUIREMENTS, RATHER THAN EVALUATING SUNSETS ON AN AD HOC BASIS.

The Commission seeks comment on whether it should approach the question of an extension of the Section 272 requirements as a general rule applicable to all RBOCs and states; or whether, given that Section 271 authorization is considered on a state-by-state basis, the Commission should look at each state and each BOC separately (NPRM, para. 10). Sprint believes that the Commission should adopt a general rule applicable to all RBOCs, for their respective incumbent territories as a whole.

Adopting a more comprehensive approach, rather than considering sunset provisions on a case-by-case basis, makes sense for several reasons. First, by adopting a set of criteria to be used in all cases for determining whether to allow the Section 272 requirements to expire or be extended, the Commission introduces an important element of certainty into the process and into the market. RBOCs and their competitors, state and federal regulatory bodies, and customers all know what showing must be made before the Section 272 requirements can be lifted, and can be assured that all RBOCs will be evaluated on the same basis.

Second, adopting a generally applicable process will offer significant administrative efficiencies. Considering whether to maintain or lift the Section 272 requirements on a BOC-by-BOC, state-by-state basis would severely tax (and could easily overwhelm) the resources of the Commission, state commissions, and interested parties. Furthermore, having a consistent set of nondiscrimination safeguards throughout an RBOC's incumbent operating territory would make it more difficult for the RBOC to engage in anti-competitive activity, and easier to detect abuses which may occur.

Third, the broad approach reflects the regional approach to handling Section 271 applications and to providing in-region interLATA service. Increasingly, the RBOCs operate as regional entities, rather than as separate entities operating on a state-by-state basis, sharing operational support systems, corporate overhead functions, and perhaps marketing and sales functions. This has become increasingly apparent in the Section 271 process as the RBOCs and State Commissions build upon previous efforts within an RBOC's territory. As noted in the *SWBT Missouri/Arkansas Order*: [4]

> Using the model adopted in the *SWBT Kansas/Oklahoma Order*, both states have built upon the successful work of the Texas Public Utilities Commission (Texas Commission), which served as a starting point for the development of their own section 271 reviews. In many ways, Southwestern Bell's process of opening its local market and satisfying the requirements of section 271 in Texas serves as a precursor, and as a model, for the process it has followed in Arkansas and Missouri. **This approach has allowed states within a single Bell Operating Company**

[4] *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance, Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri*, CC Docket No. 01-194, *Memorandum Opinion and Order*, FCC 01-338, released November 16, 2001, at para. 3 (*SWBT Missouri/Arkansas Order),* **emphasis added**.

(BOC) region to conduct section 271 reviews without overwhelming their regulatory resources, primarily by building on the work of other successful states in the region.

The Qwest Section 271 experience also illustrates the benefits (to both Qwest and to the state commissions) of treating an RBOC as one regional entity rather than as separate state-specific operating companies. Thirteen of the fourteen state commissions in Qwest's incumbent local territory have banded together to perform one joint review of Qwest's operational support systems for Section 271 purposes.[5] Qwest in turn has submitted a consolidated Section 271 application to the FCC for several of its states.[6]

III. MARKETPLACE DEVELOPMENTS SUPPORT EXTENSION OF THE SECTION 272 REQUIREMENTS.

The Commission seeks comment on the nature of the marketplace almost three years after the first Section 271 authorization was granted (NPRM, para.12). Sprint agrees that consideration of the state of local competition, of the lack of adequate performance measures and enforcement resources (and the as-yet inconclusive results of the biennial audit proceedings), and of the BOCs' actual behavior, are critical factors to consider in determining whether to extend the Section 272 nondiscrimination safeguards

[5] *See,* Qwest Communications OSS Evaluation, Final Report, Version 2.0, Submitted by KPMG Consulting, May 28, 2002, detailing the agreement of the 13 State Commissions.
[6] On June 13, 2002, Qwest filed a Section 271 application for Colorado, Idaho, Iowa, Nebraska and North Dakota; on July 12, 2002, it filed for Montana, Utah, Washington and Wyoming. BellSouth similarly filed a single Section 271 application for Alabama, Kentucky, Mississippi, North Carolina and South Carolina on June 20, 2002, which received the Justice Department's recommendation for approval on July 30, 2002.

beyond the initial 3-year period. Sprint further believes that these marketplace developments argue in favor of extending the safeguards.

A. The RBOCs Remain Dominant in the Local and Exchange Access Markets, and are Making Significant Competitive Gains in the Interexchange Market

By any reasonable measure, the ILECs -- and in particular the RBOCs -- remain dominant in their traditional local exchange and exchange access markets. According to the Commission's just-released Local Telephone Competition Status Report, CLECs served a mere 6.6% of the total residential and small business switched access lines as of December 31, 2001, representing a very small increase over the 5.5% served six months earlier.[7] When larger business lines are included, the CLECs fare a little better, but still are only serving 10.2 % of the total end-user switched access lines as of December 31, 2001.[8] Six and a half years after passage of the Telecommunications Act of 1996, a 10.2% market share for all competitiors combined is hardly a testament to robust competition or a lack of ILEC dominance.[9] Interestingly, of that 10.2%, less than 1/3 represent lines owned by the CLEC.[10] While some of the non-CLEC-owned lines are

[7] *Local Telephone Competition: Status as of December 31, 2001*, Industry Analysis Division, Common Carrier Bureau, July 2002, Table 2 (CLEC residential and small business switched access lines divided by total ILEC and CLEC residential and small business switched access lines).
[8] *Id.,* Table 1.
[9] By way of comparison, in 1984, AT&T had 90.1% of the toll service revenues market. Six years later, its share had dropped to 65.0%, and by 2000, its share was only 37.9%. *See*, Trends in Telephone Service, Industry Analysis Division, FCC, released May 22, 2002, Table 10.8.
[10] *Id.,* page 3.

undoubtedly obtained from alternative access vendors, it is reasonable to assume that the large majority of such lines are obtained from the ILEC. Thus, even where the CLECs have been successful in obtaining end-user customers, they remain heavily reliant on essential facilities provided by ILECs. And, given the extreme financial melt-down in the CLEC sector over the past three years, it is not at all clear that the competitive gains experienced in the past six and a half years can be duplicated or even sustained.

Even in the relatively rare instances where competitors have made in-roads in the local exchange market, the RBOCs are increasingly successful in winning back many of those customers. As SBC recently told its investor community:[11]

> SBC has enhanced and rescoped its packages to create added value for customers. As a result, in the first quarter, SBC achieved double-digit increases in packages-in-service for both consumer and small-business segments. **Winback percentages also were up substantially compared with the first quarter a year ago -- more than 30 percent in both consumer and business segments. In regions where SBC provided long distance, winback percentages in the first quarter were above 50 percent in both consumer and business segments.**

Competitive gains in the exchange access market have been similarly limited. As Sprint stated in the Special Access Performance Measurement docket, "Sprint Long Distance...continues to rely upon the ILECs for approximately 93% of its total special access needs despite aggressive attempts to self-supply and to switch to CLEC-provided

[11] SBC Investor Briefing, No. 229, April 18, 2002, p. 3, **emphasis added**.

facilities wherever feasible."[12] AT&T, in the ILEC Broadband docket, also emphasized that it still relies heavily on the ILECs for its special access needs, stating that:[13]

> In SBC's territory and throughout the nation, AT&T and other competitors remain heavily dependent upon the ILECs for both interoffice transport facilities and local loops. Today, for the "backbone" portion of AT&T's local network, AT&T almost never self-provides DS1 transport and self-provides DS3 transport only a small minority of the time. Likewise, for the local loops used to provide connectivity between the customer's premise and the local service office, AT&T provides only a tiny fraction of its DS1s entirely on its own network. The remaining service is provided almost exclusively by utilizing the facilities of the ILECs.

Given the lack of robust competition and continued RBOC dominance in the local exchange and exchange access markets, allowing the Section 272 requirements to expire at the end of three years is clearly premature.

The RBOCs' incentive to discriminate in favor of their long distance affiliates will only increase as they receive Section 271 authorization in more and more states, and

[12]Comments of Sprint Corporation filed January 22, 2002 in CC Docket No. 01-321, p. 4.
[13] *See* Comments of AT&T Corp. filed March 1, 2002, 2002 in Review of Regualtory Requirements for Incumbent LEC Broadband Telecommunications Services, CC Docket No. 01-337, p. 28. AT&T's comments also reference the recent ruling of the New York Public Service Commission (NYPSC) in which the NYPSC ruled that Verizon is still the dominant provider of special access services in all of NY - including Manhattan, the area generally regarded as the most competitive in the U.S. (*See Proceeding on Motion of the Commission to Investigate Methods to Improve and Maintain High Quality Special Services Performance by Verizon New York, Inc., Opinion and Order Modifying Special Services Guidelines for Verizon New York Inc., conforming Tariff, and Requiring Additional Performance Reporting*, NY PCS Case 00-C-2051, at 6, released June 15, 2001.)

as their in-region interLATA operations continue to expand.[14] And, there can be no dispute that the RBOCs are making significant gains in the interexchange market. For example, as SBC recently announced:[15]

> SBC delivered solid progress in interLATA long distance in the first quarter [2002]. The company accelerated line growth and made excellent progress in its two newest long-distance states, Missouri and Arkansas, both launched in the fourth quarter of 2001. In the first quarter of 2002, SBC:
>
> - *Added 451,000 long-distance lines, up from 277,000 added last quarter and its best quarterly total in the past year.* SBC now serves more than 5.3 million lines in the six states where it has authority to provide long-distance services, up from 3.6 million a year ago.
> - *Achieved consumer line penetration of more than 30 percent in its five SBC Southwestern Bell states,* even though two of the five SBC states, Missouri and Arkansas, are recent launches and are early in their penetration trajectory.
> - *Won and retained high-usage customers.* Average usage levels for SBC's long-distance customers in its Southwestern Bell states are higher than the industry average in those states. **This reflects effective marketing and SBC's strong emphasis on bundling long distance with local calling services and features. The percentage of SBC long-distance customers in these markets on bundled plans has risen over the past year. In both consumer and business**

[14] The current situation with the RBOCs' 272 requirements is analogous to the Cable Television Consumer Protection and Competition Act of 1992's 10-year statutory prohibition on exclusive contracts for satellite-delivered cable or satellite-delivered broadcast programming between cable operators and their affiliated programmers. That prohibition was set to expire on October 5, 2002. However, on June 28, 2002, the Commission extended the prohibition for another 5 years in part because programmers that are affiliated with cable operators retained the ability and incentive to discriminate in favor of their affiliates over other cable operators and other competitive MVPDS. *See In the Matter of the Cable Television Consumer Protection and Competition Act of 1992,* CS Docket No. 01-290, *Report and Order* released June 28, 2002, paras. 3-4.

[15] SBC Investor Briefing, No. 229, April 18, 2002, p. 7, **emphasis added**.

segments, more than half of the subscribers who selected SBC's long-distance service in the first quarter did so as part of a bundled offering.

The RBOCs continue to dominate their incumbent markets for telephone exchange and exchange access services, and at least one RBOC (SBC) is leveraging that dominance to gain significant interLATA market share once Section 271 authority is obtained. Furthermore, speculation is rampant that the RBOCs may even be allowed to buy a major interexchange carrier.[16] Under these conditions, relieving the RBOCs of their Section 272 obligations could open the floodgates to discriminatory activity on the part of the RBOCs.

The market-opening conditions and requirements in the Act are not specific to any individual segment or business group, but rather apply to the entire local market. Nor can "success" in the development of competition be assumed solely on the basis of results in limited geographical areas (*e.g.,* metropolitan and urban areas) within the RBOC's territory. Until it can be demonstrated that competition exists in all market segments and in all geographic areas that the RBOC serves, removal of the Section 272 safeguards would be contrary to the public interest.

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[16] *See, e.g.,* Yochi Dreazen, "FCC's Powell Says Telecom 'Crisis' May Allow a Bell to Buy WorldCom," *Wall Street Journal,* July 15, 2002, p. A1, quoting Chairman Powell as stating that "the industry's battered, debt-ridden condition now leaves regulators little choice but to consider such options" [a BOC purchase of WorldCom].

B. Lack of Performance Measures and Inadequate Enforcement Resources.

As discussed above, the RBOCs have the incentive and the ability to engage in activities which benefit their affiliates at the expense of their unaffiliated long distance and CLEC competitors. Today, there are no effective performance measures in place which would help to ensure nondiscriminatory provision of special access or UNEs, and what resources are available for enforcing compliance with such safeguards as do exist (and for detecting instances of non-compliance) are extremely limited. If the structural and other nondiscrimination safeguards required under Section 272 are removed, there are few effective alternative mechanisms in place to prevent anti-competitive abuses. As Chairman Powell stated over a year ago, the FCC needs increased enforcement powers to help ensure "vibrant" competition in the local telephone market;[17] "strong and effective enforcement" of Commission regulations is essential to deterring (and correcting) abuses.[18] Until performance measurements and adequate enforcement mechanisms are adopted and in place, it would be entirely inappropriate for the Commission to even consider relieving the RBOCs of their Section 272 obligations.

[17] *See* Letter from Chairman Powell to the Senate and House Commerce and Appropriations Committees (May 4, 2001) requesting an increase in maximum forfeiture levels imposed on common carriers violating local competition provisions of the Telecommunications Act, an increase in the statute of limitations, and grant to the Commission of authority to award punitive damages in formal complaint cases.

[18] *See* Testimony of Chairman Powell before the Subcommittee on Commerce, Justice, State and the Judiciary of the Senate Appropriations Committee (June 28, 2001) (stating that one of the Commission's "directional guideposts" will be "strong and effective enforcement of truly necessary [rules]").

Although the biennial audit requirement is a statutory obligation, [19] the audit process to date has been long drawn out[20] and inconclusive; the FCC has not yet determined whether either of the two BOCs that submitted an audit report (Verizon-NY and Southwestern Bell-Texas) was in compliance with Section 272 or not. Until the Commission rules on the results of the biennial audit, it would be inappropriate to allow the Section 272 requirements to sunset. Indeed, to try to assess the RBOCs' on-going compliance with their statutory obligations, the Commission would be well advised to obtain two biennial reports before it considers allowing the Section 272 requirements to expire.

[19] Section 272(d) requires a biennial audit post-entry to ensure compliance with the structural and transactional requirements of Section 272.

[20] Verizon-NY submitted the first biennial audit report on June 11, 2001 (requesting confidential treatment of some information in the report) and supplemented the report on June 18, 2001. In August 2001, AT&T and Comptel submitted letters requesting access to the unredacted information. On January 10, 2002, the Commission finally released an order denying Verizon's request for confidential treatment. On January 15, 2002, Verizon requested a stay of the Commission's order and filed a petition for reconsideration. On February 6, 2002, the independent auditor submitted an unredacted version of the audit report and supplemental report, and on February 15, 2002, the Commission set April 8, 2002 (some 10 months after the original filing) as the date for comments on the report and supplemental report. On April 11, 2002, the Commission formally denied Verizon's request for a stay and motion for reconsideration. *See In the Matter of Accounting Safeguards Under the Telecommunications Act of 1996,* CC Docket No. 96-150, Reports of Independent Accountants on Applying agreed-Upon Procedures, June 11, 2001; *Memorandum Opinion and Order* released January 10, 2002; *Memorandum Opinion and Order* released January 10, 2002; and *Order on Reconsideration*, released April 11, 2002.

SBC filed a redacted version of its biennial audit for Texas on January 28, 2002, and its filing appears headed down a similar path. See *SBC Communications Inc. Report of Independent Accountants on Applying Agreed-Upon Procedures*, CC Docket No. 96-150, filed January 28, 2002. On February 12, 2002, AT&T requested an unredacted version of the report, and on March 8, 2002, SBC filed comments opposing AT&T's request. This matter currently remains unresolved.

C. Relaxed Regulatory Safeguards Are Unwarranted Given The RBOCs' Recent Behavior.

Over the past year, various RBOCs have been embroiled in numerous controversies relating to compliance with their local competition obligations, conditions included in various merger orders, and Section 271 authorization requests. For example:

1. SBC agreed to make a $3.6 million payment to the US Treasury to resolve two FCC investigations concerning inaccurate information SBC submitted to the FCC in affidavits supporting two separate Section 271 applications to provide long distance service in Missouri, Oklahoma and Kansas. In addition, SBC agreed to implement other specific procedures designed to ensure the accuracy of information contained in future Section 271 affidavits, and to ensure that all of its employees who interact with the FCC are made aware of their obligations to provide truthful, accurate, and complete information to the Commission.[21]

2. SBC was fined $100,000 by the FCC for violating an Enforcement Bureau Order directing the company to provide sworn verification of the truth and accuracy of its answers to a Bureau letter of inquiry relating to SBC's provisioning and maintenance of digital subscriber line service. SBC stated that it had "intentionally refused to provide the sworn statement and that it did not intend to comply with that aspect of the Bureau's Order."[22]

3. SBC was fined $84,000 by the FCC for 24 violations of the Commission's collocation rules.[23]

4. SBC was fined $88,000 by the FCC for violating reporting requirements that the Commission imposed pursuant to its approval of the merger application of SBC and Ameritech Corp.[24]

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[21] *In the Matter of SBC Communications*, File Nos. EB-01-IH-0339 and EB-01-IH-0453, *Order* released May 28, 2002 (FCC 02-153). The Commission was investigating whether SBC had violated Sections 251 and 271 of the Act, and the terms of the June 1999 SBC/SNET Consent Decree, by providing inaccurate information about (1) competing carriers' ability to access loop qualification information from SBC, and (2) a competing carrier's difficulties obtaining electronic access to SBC's LMOS system.

[22] *In the Matter of SBC Communications, Inc.,* EB-01-IH-0642, *Forfeiture Order* released April 15, 2002 (FCC 02-112), para. 3.

[23] *In the Matter of SBC Communications, Inc.,* EB-00-IH-0326a, *Order on Review* released February 25, 2002 (FCC 02-61).

[24] *In the Matter of SBC Communications, Inc.*, EB-00-IH-0432, *Order on Review* released May 29, 2001 (FCC 01-184).

5. The FCC has proposed to fine SBC $6 million (the statutory maximum for the five violations) relating to SBC's apparent failure to comply with its obligation to offer the shared transport UNE in the former Ameritech states on terms at least as favorable as those offered to telecommunications carriers in Texas. This obligation was imposed as a condition in the SBC-Ameritech merger order.[25]

6. Verizon agreed to make a payment of $77,000 to the US Treasury to resolve an FCC investigation into Verizon's compliance with a Commission rule requiring it to promptly notify competitors when a Verizon office has run out of collocation space. Verizon also agreed to take remedial actions regarding its collocation practices.[26]

7. Verizon was found to have violated one of the conditions in the Bell Atlantic-GTE merger order requiring Verizon to permit requesting carriers to adopt in one state an interconnection agreement that was voluntarily negotiated in another state.[27]

8. Qwest has been found by at least one state governmental entity (the Minnesota Dept. of Commerce) to have violated its Section 252(a) obligation to file all voluntarily negotiated interconnection agreements. Qwest is under investigation by several other state PUCs for its failure to file numerous "secret agreements," and comments filed before the FCC overwhelmingly support the view that failure to file any such secret agreements are indeed a violation of Section 252(a).[28]

9. Qwest agreed to make a payment of $96,000 to the US Treasury and to adopt certain new policies to terminate an investigation into possible violations of Section 51.321(h), in connection with Qwest's posting of notice of exhausted collocation space on its website.[29]

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[25] *In the Matter of SBC Communications, Inc.*, EB-01-IH-0030, *Notice of Apparent Liability for Forfeiture* released January 18, 2002 (FCC 02-7).
[26] *In the Matter of Verizon Communications, Inc.*, EB-01-IH-0236, *Order* released September 14, 2001 (FCC 01-2079).
[27] *Global NAPs, Inc. v. Verizon Communications, Verizon New England, Inc., and Verizon Virginia, Inc.,* File No. EB-01-MD-010, *Memorandum Opinion and Order* released February 28, 2002 (FCC 02-59).
[28] *See, e.g., Qwest Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements Under Section 252(a)(1),* WC Docket No. 02-89, Comments and Reply Comments of Sprint filed May 29, 2002 and June 20, 2002.
[29] *In the Matter of Qwest Communications International, Inc.*, EB-01-1H-0393, Order released July 24, 2002 (DA-02-1770).

This list of abuses and violations of their statutory and regulatory obligations -- all of which occurred during a period in which the RBOCs must have been particularly sensitive to the need for compliance – casts considerable doubt over the likelihood of future RBOC compliance under more relaxed regulatory safeguards. Until the Commission has reasonable confidence in future RBOC compliance, based on actual results, it should retain the existing Section 272 nondiscrimination safeguards beyond the initial three-year period.

IV. CONCLUSION.

Because they are still dominant in the telephone exchange and exchange access markets, the RBOCs retain the ability and the incentive to discriminate against non-affiliated long distance and local competitors. Accordingly, the Section 272 requirements cannot be allowed to sunset at the end of the statutory three-year period. Rather, at a minimum, the following conditions must be met before regulators and interested parties alike can determine RBOC compliance with the Act and whether, and when, the requirements can expire:

- Commission adoption of performance measurements and enforcement mechanisms for the RBOC provision of UNEs and special access;
- Passage of three years from the date on which an RBOC obtained Section 271 authority in the last of its states in which it is an ILEC.
- Completion (and acceptance) of two biennial audits for each RBOC, in each state in which it has received Section 271 authority, demonstrating compliance with the Section 272 requirements.

Once these conditions have occurred, the Commission can then review marketplace developments for each RBOC to determine whether it has lost its position of dominance in the provision of telephone exchange and exchange access services, and thus whether the Section 272 requirements may be allowed to expire.

Respectfully submitted,

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