Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Petition for Forbearance From the Prohibition of Sharing Operating, Installation, and Maintenance Functions Under Section 53.203(a) of the Commission's Rules	)	**CC Docket No. 96-149**

SPRINT CORPORATION'S REPLY TO COMMENTS ON PETITION FOR FORBEARANCE

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I. Introduction and Summary

Sprint Corporation, on behalf of its incumbent local exchange ("ILEC"), competitive LEC ("CLEC")/long distance, and wireless divisions, respectfully submits its reply to the comments and oppositions filed in response to Verizon's August 5, 2002 Petition.[1] The Petition asks the Commission to eliminate the consumer and marketplace protections provided by the rule that prevents Bell Operating Companies ("BOCs") from sharing operations, installation, and maintenance services ("OI&M") with their section 272 long distance affiliates. 47 C.F.R. § 53.203(a)(2).

[1] Petition for Forbearance (filed Aug. 5, 2002). In this Reply, references to "Comments" and "Oppositions" are to filings made September 9, 2002, pursuant to Public Notice DA 02-1989.

Sprint explained in its Opposition that Verizon's Petition is premature, that the Act's "operating independently" requirement mandates *at least* this amount of structural separation, and that the OI&M restriction remains vital to prevent BOC misconduct and to protect consumers and the competitive marketplace. Sprint's Opposition also showed that Verizon's "efficiency" and cost claims are unsubstantiated and that the Petition fails to meet section 10's demanding standards for forbearance.

Six parties commented on the Petition. AT&T, WorldCom, and Sprint agree that the Petition must be denied. Their oppositions are entirely consistent with the comments of virtually all non-BOC parties -- including all participating state commissions and state utility consumer advocates -- in the Section 272 Sunset proceeding,[2] which agree that the safeguards incorporated in the Non-Accounting Safeguards Order,[3] including the OI&M restriction, remain essential today.

Only SBC, BellSouth, and USTA (the BOCs' industry association) volunteered any support for Verizon. However, they submitted only cursory statements echoing Verizon's assertions and provided no evidence to support the Petition.

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[2] Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, WC Docket No. 02-112 ("Section 272 Sunset proceeding").

[3] Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, 11 FCC Rcd 21905 (1996) (subsequent history omitted) ("Non-Accounting Safeguards Order" or "Order").

II. The "*Operating Independently*" Requirement Mandates the OI&M Restriction.

The very first mandate among the "structural and transactional requirements" of section 272(b) of the Act is that a BOC's affiliate "*shall operate independently* from the Bell Operating Company." 47 U.S.C. § 272(b)(1) (emphasis added). SBC, BellSouth, and USTA -- like Verizon -- ignore the purpose and meaning of this statutory language. Instead, they focus on the separate, subsequent requirements of section 272(b).[4]

SBC acknowledges the "operate independently" requirement but does not explain how the Commission can disregard it. SBC Comments at 1-2. BellSouth and USTA, however, attempt to offer a rationale. BellSouth argues that "[a]lthough Section 272(b) explicitly requires a BOC and its affiliate to have separate officers, directors, and employees, the Act is silent on the sharing of services." BellSouth claims that, "[t]herefore, the sharing of services or contracting for services is fully permissible ... provided that no employee of one entity is an employee of the other." BellSouth Comments at 2. Similarly, USTA claims that because the Act did not expressly "compel the Commission to develop and impose the OIM rules," the Commission should just ignore section 272(b)(1) altogether. USTA Comments at 2. BellSouth even contends, "[i]n the absence of an express prohibition against the sharing of OI&M services, there is a statutory presumption that such activities are permissible." Id.

Of course, no such "presumption" can be made. A long standing rule of statutory interpretation is that a "statute must be construed so as to give effect to each of its

[4] These particular requirements include keeping separate books (section 272(b)(2)); having separate officers, directors, and employees (section 272(b)(3)); maintaining separate credit (section 272(b)(4)); and conducting transactions at arms' length and through written, publicly available agreements (section 272(b)(5)).

provisions." Order at ¶ 156. Moreover, as WorldCom points out, it is "irrelevant that the OI&M prohibition 'is not [specifically] mentioned anywhere in section 272 of the Act,'" because "[t]he Non-Accounting Safeguards Order makes perfectly clear that the prohibition on the sharing of OI&M functions *is* a requirement of section 272, compelled by a straightforward interpretation of section 272(b)(1)'s 'operate independently' language." WorldCom Opposition at 2-3. As the Commission determined in the Non-Accounting Safeguards Order,[5]

> allowing the same personnel to perform the operation, installation, and maintenance services associated with a BOC's network and the facilities that a section 272 affiliate owns or leases from a provider other than the BOC would create the opportunity for such substantial integration of operating functions as to *preclude independent operation*, in violation of section 272(b)(1).

See AT&T Opposition at 1; Sprint Opposition at 4; WorldCom Opposition at 3.

The Commission found this conclusion inescapable, because "allowing the same individuals to perform *such core functions* on the facilities of" the BOC and its section 272 affiliate would result in a BOC's "integrating its local exchange and exchange access operations with its section 272 affiliate's activities to such an extent that the affiliate *could not reasonably be found to be operating independently*, as required by the statute." Order at ¶ 158 (emphasis added). See AT&T Opposition at 1-2; Sprint Opposition at 3. AT&T explained that "[t]he operation, installation and maintenance of networks and network facilities represents the heart of a telecommunications company -- and for the

[5] Order at ¶ 163 (emphasis added).

BOC, relates directly to the source of the BOCs' bottleneck control over local exchange and exchange access facilities." AT&T Opposition at 11.[6]

After the Non-Accounting Safeguards Order was released, the BOCs sought reconsideration of, among other things, the Commission's interpretation and implementation of section 272(b)(1)'s "operate independently" requirement. The Commission rightly rejected their reconsideration arguments, "recognizing that any other ruling would 'create a loophole around the separate affiliate requirement' and would provide for such 'substantial integration of these essential functions ... that independent operation would be precluded.'" AT&T Opposition at 2, quoting Third Order on Reconsideration at ¶ 20.[7] The BOCs have provided no basis for the Commission to reverse that finding now.

III. The OI&M Restriction Remains Necessary to Protect Consumers and the Competitive Marketplace.

A. The OI&M Restriction Remains Necessary to Prevent Cost Misallocation.

The BOCs also argue that "[t]he OIM rules are not necessary to prevent discrimination or to protect consumers" from misallocation of costs. USTA Comments

[6] WorldCom also notes that the Commission has held that section 10(d), which prohibits forbearing to enforce any requirements of sections 251(c) or 271, when "read in conjunction with Section 271(d)(3), 'precludes forbearance for a designated period from section 272 requirements with regard to any service for which a BOC must obtain prior authorization pursuant to section 271(d)(2).'" WorldCom Opposition at 2, quoting Bell Operating Companies -- Petitions for Forbearance from the Application of Sec. 272 of the Comms. Act of 1934, as Amended, to Certain Activities, *Memorandum Opinion and* Order, 13 FCC Rcd 2627 at ¶ 23 ("E911 Forbearance Order"). That alone is grounds for immediate denial of Verizon's Petition.

[7] Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, *Third Order on Reconsideration*, 14 FCC Rcd 16299 (1999) ("Third Order on Reconsideration").

at 3. Here, too, they are merely repeating arguments made, and rejected, in the reconsideration round before the Third Order on Reconsideration.

SBC contends that the more general affiliate transactions rules "prevent any cost misallocation," and that cost allocation "is no longer an issue" for BOCs because rate caps "deny[] them *any* ability to engage in cross-subsidization." SBC Comments at 5-6 (emphasis added). Even under a price-cap regime, however, a BOC obviously can exploit its dominance in the local exchange and exchange access markets to subsidize entry into the long distance market, consolidate its dominant position, frustrate competition, and ultimately harm consumers. Sprint Opposition at 10. Moreover, "given the significant violations of section 272 that have occurred and that AT&T and other parties have catalogued [in the Section 272 Sunset proceeding], there is no basis to rely on Verizon's [or other BOCs'] claims that the Commission's existing accounting safeguards are sufficient to detect, deter, and remedy cost misallocations." AT&T Opposition at 10. See also Sprint Opposition at 9-11.

BellSouth also repeats the BOC argument that "[t]here is no fundamental difference between the cost allocations necessary to monitor the sharing of OI&M services and the cost allocation requirements applied to administrative and other services for which sharing is permitted." BellSouth Comments at 3. On the contrary, if anything, "the Commission *underestimated* the competitive harm arising from shared BOC/272 affiliate services, and allowed *too much* sharing and too many opportunities for anticompetitive cost misallocations and discrimination" (AT&T Opposition at 3) by allowing sharing of "administrative, marketing, and sales function [that are] inconsistent with section 272(b)(1)." WorldCom Opposition at 4. However, the Commission

permitted sharing of such "ancillary" services only because it judged that they were more limited and could be more easily policed. The sharing of such "core functions" as OI&M, in contrast, "would require 'excessive, costly, and burdensome regulatory involvement in the operations, plans, and day-to-day activities of the carrier [in order] to audit and monitor the accounts and plans necessary for such sharing to take place.'" Order at ¶ 163, quoting BOC Separations Order at ¶ 70.[8] See Sprint Opposition at 10.

Sprint shares other competitive carriers' and state commissions' concerns about cost misallocation even among ancillary or administrative activities. Sprint Opposition at 8-9. Detecting misallocation within OI&M activities, however, is vastly more difficult, and the consequences of abuse far more severe, than for ancillary or more administrative tasks. AT&T Opposition at 11; WorldCom Opposition at 4. AT&T notes, too, that "[t]he sheer difference in magnitude of core OI&M activities relative to corporate overhead service functions such as legal and human resources also must not be overlooked," because "[e]ven a small (percentage) misallocation ... could result in an orders-of-magnitude greater dollar cost shift." AT&T Opposition at 11.

As BOCs like Verizon expand into the in-region interLATA long distance market -- where $100 billion of revenue is at stake -- they have every reason to exploit their dominance in the local exchange and exchange access markets to cross-subsidize their section 272 affiliates' acquisition of long distance market share.

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[8] Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Servs. and Cellular Comms. Servs. By Bell Operating Cos.; North Am. Tel. Ass'n Petition for Declaratory Ruling on the Requirements for Sale of Customer Premises Equipment by the Bell Operating Cos., *Report and* Order, 95 FCC 2d 1117 at ¶ 70 (1983) ("BOC Separations Order").

B. The OI&M Restriction Remains Necessary to Curb Unlawful Discrimination.

BellSouth also contends that ordinary safeguards are sufficient to protect against discrimination. BellSouth Opposition at 3. The Commission has already found otherwise, because "[a]llowing a BOC to contract with the section 272 affiliate for operating, installation, and maintenance services would *inevitably* afford the affiliate access to the BOC's facilities that is superior to that granted to the affiliate's competitors." Order at ¶ 163 (emphasis added). The OI&M restriction therefore is necessary to implement section 272(e)(4)'s requirement that a BOC "may provide any interLATA or intraLATA facilities or services to its interLATA affiliate [only] if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions." Order at ¶ 164.

Sprint's Opposition explained that the BOCs remain overwhelmingly dominant in the local exchange and special access markets. Sprint Opposition at 5-8. Like Verizon, USTA, SBC, and BellSouth ignore the impact of BOCs' obvious ability and clear incentive to exploit that market power as they expand into the in-region interLATA long distance market. Indeed, sections 271 and 272 are both based on that very understanding, and the magnitude of the problem has only grown larger in the six years since the Act was passed. While reviewing BOC mergers, the Commission found that the BOCs "not only will have *more* incentive to discriminate against rivals, but also will have a *heightened* ability to inhibit competitors' provision of services."[9] The OI&M restriction

[9] Applications of Ameritech Corp., Transferor, & SBC Comms. Inc., Transferee, for Consent to Transfer Control of Corporations Holding Comm'n Licenses and Lines, *Memorandum Opinion and Order*, 14 FCC Rcd 14712 at ¶ 206 (1999) ("SBC-Ameritech Merger Order") (emphasis added).

is essential "because BOCs can engage in … myriad subtle forms of discrimination, and it is 'impossible for the Commission to foresee every possible type of discrimination,'" as well as to detect or remedy it. AT&T Opposition at 9, quoting Ameritech Merger Order at ¶ 206. In fact, as Sprint showed in its Opposition (at 11-14), federal and state authorities have found *repeated* instances of BOC abuses of their dominance in the local exchange and exchange access markets, including discrimination against competitors. Together, the BOCs have a sorry record of noncompliance with market-opening and competitive requirements. Since 1996 the BOCs have incurred penalties exceeding $2.1 *billion*, including fines, ordered commitments, and mandatory refunds. Given that history, there is no rational basis for lifting the OI&M restriction or allowing section 272 requirements to sunset until the BOCs no longer have such market power. See id. at 2 n.4.

USTA, SBC, and BellSouth are unable to support the Petition's claim that the OI&M restriction is "superfluous" and "unnecessary" to protect consumers or to avoid cross-subsidization of long distance services. USTA Comments at 2; SBC Comments at 6; BellSouth Comments at 3. As the Commission has already found, without the OI&M safeguard, "consumers would be harmed by [a BOC's] ability to discriminate against its rivals in the long distance market and by higher local and exchange access rates resulting from cost allocations." WorldCom Opposition at 7.

C. The OI&M Restriction is Not Unreasonably Inefficient or Burdensome.

USTA, SBC, and BellSouth echo Verizon's unsupported assertions that the OI&M safeguard is "wasteful" (SBC Comments at 3) and "inefficient" (USTA Comments at 4), and "imposes a tremendous burden on the BOCs." SBC Comments at 2. They provide no evidence to support these claims, and Verizon's declarations "are little more than conclusory statements that opine generally about costs, without any backup material that could be used to verify these claims." AT&T Opposition at 13.

To the extent that the OI&M safeguard imposes limited inefficiencies on the BOCs, those burdens are reasonable when weighed against cost misallocation and discrimination in a marketplace that is a long way from being fully competitive. Sprint Opposition at 15-16. Even if one assumed that Verizon could substantiate its cost allegations, however, the claim is actually irrelevant. The Commission recognized that the Act compels the OI&M restriction by "a straightforward reading of section 272(b)(1)'s 'operate independently' language," rather than any "weighing of costs and benefits by the Commission." WorldCom Opposition at 3. By enacting section 272(b)(1), Congress "has already determined that whatever benefit might result from permitting the BOCs to provide services on an integrated basis is outweighed by the risks that such integration poses to competition in the long distance market. Id. at 8.

Although SBC and BellSouth claim, like Verizon, that "the Commission did not have the benefit of a cost benefit analysis of this restriction" in the Non-Accounting Safeguards proceeding (SBC Comments at 2; see also BellSouth Comments at 3), the Commission actually had a full and extensive record, including comments by every BOC

and more than fifty other parties. The BOCs raised every argument then that they are raising now, and in a less cursory manner.

Seeking to reach an "appropriate balance," the Commission allowed BOCs to retain many of the "efficiencies" associated with their vast scale and captive customer base, but found the OI&M restriction necessary to "protect[] ratepayers against improper cost allocation and competitors against discrimination" that the BOCs otherwise would "inevitably" commit. Order at ¶¶ 163, 167. See Sprint Opposition at 14. Further, although the BOC commenters imply that allowing them to avoid the costs and "inefficiencies" of the OI&M restriction would benefit consumers, neither they nor Verizon show why these savings to a BOC and its long distance affiliate would flow through to consumers in a long distance market that is already competitive, or in a local exchange market that is not. See AT&T Opposition at 16 n.12.

Moreover, AT&T explains (Opposition at 4) that the Commission has repeatedly rejected the BOC argument that other accounting and non-accounting safeguards would be sufficient protection against BOC anticompetitive conduct. It reached this conclusion in the 1999 Third Order on Reconsideration, the 1997 Second Order on Reconsideration, the 1996 Non-Accounting Safeguards Order, and the 1983 BOC Separations Order.[10] Verizon and its allies provide no justification for reopening that issue now.

[10] See Third Order on Reconsideration at ¶ 20; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, *Second Order on Reconsideration*, 12 FCC Rcd 8653 at ¶¶ 11-12 (1997); Non-Accounting Safeguards Order at ¶ 163; BOC Separations Order at ¶ 70.

D. The OI&M Restriction Does Not Place BOCs at a Competitive Disadvantage.

Nor have the BOC parties shown that they are really "hampered" (SBC Comments at 4) in their ability to compete, as they and Verizon claim. Thanks to decades of local monopoly, the BOCs enjoy huge advantages of scale and scope -- and a captive customer base. These extraordinary advantages vastly outweigh the limited impact of the OI&M restriction on the BOCs' costs and operations. As Sprint, WorldCom, and AT&T all note, the Commission has acknowledged in successive section 271 orders that "the structural, transactional, and nondiscrimination safeguards of section 272" are "crucial" to the Act's goal "that BOCs compete on a *level playing field.*"[11]

SBC and BellSouth contend, again like Verizon, that the OI&M restriction makes marketing and provisioning more difficult. They claim that the BOCs "cannot provide seamless end-to-end service" (BellSouth Comments at 4), that coordinating installation and repair between the BOC and the section 272 affiliate is more expensive and awkward (SBC Comments at 3), and that customers hold them "accountable" for the service, repair, and provisioning problems that arise (id. at 4).[12] But SBC and BellSouth are flatly

[11] See, e.g., Application by SBC Comms. Inc., Southwestern Bell Tel. Co., and Southwestern Bell Comms. 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 Tex., 15 FCC Rcd 18354 at ¶ 395 (2000), quoting Application of Ameritech Mich. Pursuant to Section 271 of the Comms. Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Mich., 12 FCC Rcd 20543, 20725 (1997) (emphasis added).

[12] Sprint agrees with SBC and BellSouth that customers hold carriers "accountable" for the quality of their services. SBC Comments at 4. It is for that very reason that the BOCs should follow the same procedures -- and face the same last-mile provisioning difficulties -- as their competitors. Sprint Opposition at 18. SBC cannot blame the OI&M safeguard for any loss of customers who "reluctantly take their business to competitors" when SBC is unresponsive. Id. Even the largest non-BOC competitors face the *very same* provisioning difficulties.

wrong when they suggest that their long distance competitors do not face these same costs and difficulties, and more besides.[13] Rather, they are "describing *precisely* what a competing carrier must do to offer such services." AT&T Opposition at 6 & Selwyn Decl. at ¶ 16.

Contrary to these BOCs' allegations, however, the record shows that their competitors can only *very rarely* use their own fiber-based last mile facilities to serve even their large business customers. Id. at 6; Sprint Opposition at 18; WorldCom Opposition at 8. Therefore, they must "still rely heavily on [the BOCs'] access facilities even when serving large business customers." WorldCom Opposition 8. Accordingly, when the BOCs complain that they cannot respond to customers as a single team, they are simply in the same position as other long distance companies. Sprint Opposition at 18; AT&T Opposition at 6; WorldCom Opposition at 9. If the Commission lifted the OI&M safeguard, the BOCs' section 272 affiliates would enjoy *unfair advantages* over non-BOC long distance competitors, "because competitors would still confront the very same burdensome processes about which Verizon so vociferously complains." AT&T Opposition at 5.

In reality, "the integration that the Commission has allowed provides *significant benefits* to the BOCs' section 272 affiliates." AT&T Opposition at 14 (emphasis added). Those include, among other advantages, the ability to share sales and marketing to more

[13] Contrary to BellSouth's allegations (Opposition at 4), Sprint and other competitive carriers are not able to provide "seamless end-to-end service" and "an integrated service platform of local, long distance, and broadband services," because they must depend on BOC monopoly facilities to serve the vast majority of customers. "Whatever difficulties Verizon's section 272 affiliate may experience in coordinating those activities with the Verizon BOCs are also faced by WorldCom and *every other interLATA carrier*." WorldCom Opposition at 9 (emphasis added). See also Sprint Opposition at 18.

easily exploit a customer base accumulated over decades of local monopoly. Verizon claims this advantage alone gives it customer acquisition costs 20% to 30% lower than its competitors. WorldCom Opposition at 8; Sprint Opposition at 18. The claim that the OI&M safeguard is any meaningful "handicap" in the marketplace (BellSouth Comments at 4) -- or that having some "duplicative" personnel and support systems is an unreasonable burden -- is belied by the BOCs' rapid success in gaining long distance market share.

In Verizon's case alone, "[a]n affiliate with only several hundred employees has quickly gained up to 34.2% market share, more than other facilities-based and better-staffed competitors gained in many years." AT&T Opposition at 4 & Selwyn Decl. at 6. Even with the OI&M safeguard in place, Verizon has become -- overnight -- the fourth largest long distance carrier in the nation, with 9 million customers, thanks to its ability to leverage its overwhelming dominance of the local exchange market for the benefit of its long distance affiliate.[14] Meanwhile, the "duplicative" costs associated with the OI&M restriction have not deterred the BOCs from eagerly filing successive applications to provide long distance services through section 272 affiliates. AT&T explains "[t]hat is because the BOCs know the costs are insignificant compared to the benefits they can obtain by leveraging the power over bottleneck facilities into the long distance market." AT&T Opposition at 14.

[14] Moreover, this growth has not been based on Verizon's construction of facilities, but purely on exploiting its overwhelming dominance in the local exchange market while it resells long distance services acquired from other carriers. See Sprint Opposition at 17.

IV. The Petition Fails to Meet Section 10 Requirements for Forbearance.

In a succession of orders, the Commission has found not only that the OI&M restriction is required by section 272(b)(1), but also that it is essential to promote competition, to advance the public interest, and to protect consumers and competitors from cost misallocation and discrimination by BOCs.[15] Those determinations make it impossible for Verizon or its few supporters to make the difficult showing required by section 10 for forbearance. 47 U.S.C. §§ 160(a), (b).

Little has changed since the Commission made those determinations. The record shows that the BOCs continue to have undisputed market power in the local exchange and special access markets. See Sprint Opposition at 5-8; AT&T Opposition at 2-3. As they eagerly build long distance market share, and as they expand their offerings in other services, the BOCs will have increasing opportunities and incentive to exploit that market power to benefit their own affiliates. If anything, the risks of competitive misconduct, and the need for the OI&M safeguard, are *greater now than ever*.[16] Sprint Opposition at 8.

Sprint, AT&T, and WorldCom each show that Verizon's Petition must be denied. Verizon, USTA, SBC, and BellSouth offer no reasoned basis on which the Commission could reverse its well-established OI&M rule. Instead, they merely "rehash[] the same

[15] See, e.g., Non-Accounting Safeguards Order at ¶¶ 163, 167; Second Order on Reconsideration at ¶¶ 12, 53; Third Order on Reconsideration at ¶¶ 15, 20.

[16] The risks of competitive abuse are particularly acute "with the new services for which, Verizon claims, the OI&M prohibition is 'anachronistic.'" AT&T Opposition at 7.

arguments that the Commission has repeatedly rejected." AT&T Opposition at 2. That falls far short of the stringent standards of section 10. 47 U.S.C. §§ 160(a), (b).

Sprint explained above in Sections III(A) and (B) that Verizon and its supporters are clearly wrong in saying the OI&M restriction is no longer necessary.[17] The OI&M restriction remains necessary to ensure charges and practices are just and reasonable and not discriminatory, and to protect consumers. Lifting the restriction would be contrary to the public interest and the pro-competitive goals of the Act. Without the OI&M safeguard, the BOCs would more easily exploit their local exchange consumers to cross-subsidize their entry into and growth in the long distance and other retail markets, and "consumers would be harmed by [the BOCs'] ability to discriminate against ... rivals in the long distance market and by higher local and exchange access rates resulting from cost misallocations." AT&T Opposition at 7. See also Sprint Opposition at 10.

Likewise, there is no merit to SBC and Verizon's argument that the OI&M restriction "divert[s] capital from productive investments" and discourages development and deployment of new or broadband services. SBC Comments at 7. Without the spur of competition that is enabled by the OI&M restriction, the BOCs will have less incentive to invest in new facilities and services. Sprint Opposition at 21-22. As for broadband, the

[17] SBC quotes Chairman Powell as stating, "I don't think you've got to prove to me that a rule is not necessary. I think I have to prove that it is not necessary." SBC Comments at 8. Yet in the quotation, that sentence is preceded by the recognition that restrictions must remain in place where there is "a clear and demonstrable justification of a rule." Id. Sprint has shown above that the Commission has indeed "proven" that the OI&M restriction is necessary, that it remains necessary, and that it is in fact required by statute. See Sections II and III(A)-(B), supra; 47 U.S.C. § 272(b).

supposed "inefficiencies that raise the costs of introducing broadband service" (SBC Comments at 7) are irrelevant, even if they were true. "Because the risks of discrimination against rivals for such services is much greater, the prohibition on joint OI&M services is all the more important for broadband and other new and advanced services." WorldCom Opposition at 9. The Commission itself has recognized that competitive misconduct is an even greater risk with advanced services. Non-structural safeguards are inadequate to protect against such abuses, because "[p]ast experience with the interconnection of plain vanilla, or POTS services becomes increasingly less useful as a regulatory tool for preventing, detecting, and remedying discrimination."[18]

Nor are the BOCs "being held back from competing effectively ... because of arbitrary demarcations between 'local' and 'long distance.'" SBC Comments at 8. The BOCs' competitors face the very same "artificial demarcation," and indeed it is built into the very foundations of sections 271 and 272. Meanwhile, in the Triennial Review proceeding, the BOCs are seeking to exploit that same "arbitrary" distinction to limit local competitors' access to unbundled network elements mandated by sections 251(c)(3) and 271(c)(2)(B). Sprint Opposition at 16 n.29.

V. Conclusion

The Commission has found that the OI&M restriction is required by the Act, that it is necessary to discourage cost misallocation and discrimination, and that it represents a reasonable trade-off between BOC efficiency and protection of the marketplace.

[18] SBC-Ameritech Merger Order at ¶ 220.

Verizon provides no evidence to justify reversing or ignoring those findings, and SBC, BellSouth, and USTA merely echo its unsubstantiated claims. They ignore both the language and the purpose of the Act. They ignore the BOCs' record of market abuse. They make utterly incredible claims about "competitive disadvantage." And they fail to meet the demanding requirements of section 10.

The Act plainly requires the OI&M restriction to remain in place. Nevertheless, the record before the Commission shows that Verizon and the other BOCs remain dominant in the local exchange and special access markets, that they retain the ability and incentive to unfairly exploit their market dominance, and that they repeatedly violate market protection rules and conditions. Sprint, AT&T, and WorldCom show that the section 272 safeguards remain vital and should be extended until all carriers are on an equal footing. The OI&M restriction is doubtless the most important of these safeguards, and accordingly the Petition must be denied.

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CERTIFICATE OF SERVICE

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