

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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
)	

REPLY COMMENTS OF SPRINT CORPORATION

Sprint Corporation hereby respectfully submits its reply to comments filed on October 16, 2003 regarding a possible re-interpretation of Section 252(i) of the Communications Act of 1934. In the Further Notice of Proposed Rulemaking (FNPRM) in the above-captioned proceedings (FCC 03-36, released August 21, 2003), the Commission asked whether its “pick-and-choose” rule (47 C.F.R. Section 51.809(a) –(c)) implementing section 252(i) should be revised such that once an ILEC obtains state approval of a statement of generally available terms and conditions (SGAT), the ILEC and competitive carriers would be permitted to negotiate agreements that third parties could opt into only in their entirety or not at all. As discussed briefly below, the currently effective pick-and-choose rule should be retained for statutory and policy reasons. The SGAT approach is seriously flawed, and is opposed by both CLECs and ILECs.

1. Changes to the Pick-and-Choose Rule Are Unwarranted.

The majority of commenting parties agreed that the pick-and-choose rule should be retained for statutory and policy reasons. Virtually every commenting party with competitive carrier interests pointed out that the existing rule has been affirmed by the Supreme Court as being the “most readily apparent” reading of the statute,¹ and that the pick-and-choose rule is of critical importance to competitors who lack the resources to negotiate and arbitrate individual interconnection agreements with ILECs.² Furthermore, given the ILECs’ disproportionate bargaining power vis-à-vis the CLECs, and their business interest in hindering rather than facilitating CLECs’ ability to compete in the local marketplace,³ it is simply unrealistic to assume that elimination of the pick-and-choose rule will somehow lead to a flood of innovative agreements or significant new concessions. Indeed, Mpower -- the one CLEC that previously expressed the hope that more innovative and cooperative agreements between ILECs and CLECs were possible -- has now concluded that “given current telecommunications market conditions, adequate market incentives do not exist for its Flex Contract proposal to succeed,”⁴ and has accordingly withdrawn its proposal. Except for the implosion of the CLEC segment of

¹ See, e.g., Sprint, p. 6; ALTS, p. 3; AFB *et al.*, p. 2; California, p. 2; CLEC Coalition, p. 2; Mpower, p. 2; PACE/Comptel, p. 3; RICA, p. 4; WorldCom, p. 2; Z-tel, p. 15. See also, NASUCA, p. 5.

² See, e.g., AFB *et al.*, p. 3; California, p. 3; Cox, p. 2; LECStar, p. 3; Mpower, p. 6; PACE/Comptel, p. 10; RICA, p. 1; US LEC *et al.*, p. 6; Z-tel, p. 11.

³ See, e.g., Sprint, p. 3; ALTS, p. 13; AFB *et al.*, p. 3; CLEC Coalition, p. 2; Cox, p. 4; LECStar, p. 3; Mpower, p. 5; NASUCA, p. 7; PACE/Comptel, p. 5; US LEC *et al.*, p. 3; WorldCom, p. 9.

⁴ Mpower, p. 2. Mpower also states that “[i]f market conditions do not exist for Mpower’s Flex Contract proposal, they most certainly do not exist for an elimination of the pick-and-choose rule” (*id.*).

industry over the past several years, nothing has changed since adoption of the currently effective pick-and-choose rule which would warrant its evisceration.

The RBOCs attribute their reluctance to make any concessions to CLECs to a concern that third parties would pick-and-choose those concessions without making any offsetting concessions of their own.⁵ However, Sprint believes that the lack of innovative concessions on the RBOCs' part is more likely rooted in the fact that such concessions are contrary to the RBOCs' business interests, and that CLECs really have little to offer to the RBOC in return in order to obtain such concessions. Indeed, now that the RBOCs have Section 271 authority in all of their states, they have even less incentive to make concessions to the CLECs than they did prior to grant of such authority. And, actual experience confirms that absence of a pick-and-choose rule does not result in significant concessions by the RBOCs. As *US LEC et al.* pointed out (pp. 4-5), when the 8th Circuit Court stayed and later vacated the pick-and-choose rule (subsequently reinstated by the Supreme Court), "not a single ILEC stated that it would take a more conciliatory approach to negotiations with CLECs as a result of being freed from the restrictions of the rules, nor did they."

In contrast to the CLECs who stated that the pick-and-choose rule is a vital competitive tool for them, Verizon minimizes the importance of this rule to CLECs, noting (p. 3) that only 60 of its interconnection agreements involved pick-and-choose. Sprint disagrees with Verizon on this point; pick-and-choose was presumably of importance in those 60 instances, and CLECs also have used the pick-and-choose rule "informally" in interconnection negotiations to obtain provisions previously arbitrated

⁵ See *BellSouth*, p. 2; *Qwest*, p. 3; *SBC*, p. 2; *Verizon*, p. 2.

and “won” by other CLECs (WorldCom, p. 12). Nonetheless, if Verizon is correct in its belief that pick-and-choose is of little utility to CLECs, it is not clear why the RBOCs consider pick-and-choose to be such a threat and impediment to cooperative negotiations. The RBOCs’ stated concern that the pick-and-choose rule would result in unfettered cherry-picking rings particularly hollow given the limitations on CLECs’ right to pick-and-choose (a pick-and-choose request may be rejected for reasons of cost or technical infeasibility, and an ILEC may require a CLEC to adopt a particular agreement provision if it is “legitimately related” to the purchase of the individual element being sought).⁶

2. Both ILECs and CLECs Oppose Use of SGATs to Replace the Pick-and-Choose Rule.

Although most CLECs and most ILECs take opposing views regarding the merits of the existing pick-and-choose rule, both sides agree that revision of this rule should not be conditioned upon the existence of an SGAT. Commenting parties point out that SGATs are a regulatory construct that apply only to the BOCs; that significant resources are needed to put a SGAT in place (potentially “mega-arbitrations,” involving multiple CLECs); that SGATs can quickly become stale, with no mechanism for updating their terms and conditions, or were put into effect without input from or scrutiny by CLECs.⁷

⁶ See, e.g., Sprint, p. 4 (citing 47 C.F.R. 51.809(b)(1)-(2)); CLEC Coalition, p. 13 (citing *Local Competition First Report and Order*); PACE/Comptel, p. 5.

⁷ See, e.g., Sprint, p. 5; ALTS, p. 10; AFB *et al.*, p. 8; Cox, p. 9; Mpower, p. 8; NASUCA, p. 23; PACE/Comptel, p. 8; SBC, p. 2; US LEC *et al.*, p. 8; Verizon, p. 6; WorldCom, p. 17.

Given all the problems associated with replacing the existing pick-and-choose rule with a SGAT-based alternative, there would seem to be no merit to pursuing this alternative any further.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Reply Comments of Sprint Corporation** was filed by electronic mail or by United States first-class mail, postage prepaid, on this the 10th day of November, 2003 to the parties on the attached list.


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