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**

SPRINT CORPORATION'S
REPLY TO COMMENTS ON PETITIONS FOR
RECONSIDERATION AND CLARIFICATION

Sprint Corporation, on behalf of its incumbent local exchange carrier ("ILEC"), long distance/competitive local exchange carrier ("CLEC"), and wireless divisions, hereby replies to the comments and oppositions filed by other parties regarding the October 2, 2003 petitions for reconsideration or clarification of the Commission's *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, FCC No. 03-36, released August 21, 2003 ("Order").

I. CMRS LOOP/TRANSPORT ISSUES AND QUALIFYING SERVICES

Competitive carriers agreed with Sprint and the CMRS carriers that there is no legal basis for distinguishing between UNE loops and ILECs' connection to CMRS carriers' cell sites or base stations. The BOCs scoff that CMRS carriers previously argued it was "unbundled dedicated transport" but now claim it is "unbundled loop." Qwest at 2. Either label fairly applies, and the Commission should not reward the BOCs' continued "semantic games."

CompTel at 6. As competitive carriers point out, "[t]here is no technical basis to distinguish circuits to cell sites from UNE loops," the facilities fall within the definition of network element, and CMRS carriers are providing qualifying services for access to UNEs. El Paso at 7. See also CompTel at 4-6; Cellular Mobile at 2-3. Indeed, *any* qualifying local services should be entitled to access high capacity EELs, including CMRS and stand-alone local data services.

The BOCs insist that CMRS carriers cannot possibly be impaired. Although Qwest (at 2) asserts that "CMRS providers have done just fine without access to UNEs," the costs of facilities between cell sites and central offices are a major component of wireless costs. CMRS carriers cannot effectively compete with ILECs if they must pay these wireline competitors excessive special access rates.

At the same time, competitive carriers, including other CMRS carriers, notably declined to endorse Nextel's call for "fresh look" to allow immediate conversion of special access term agreements to UNEs. Sprint agrees with Verizon that Nextel has not shown grounds for the Commission to revisit its conclusion that "adopting a fresh look policy" would not "be in the public interest," particularly "with the lack of specific evidence on the record." Verizon at 40, quoting Order at ¶ 698.

II. FIBER TO THE END USER CUSTOMER PREMISES

A. The Commission should reject BellSouth's request to redefine FTTH to include FTTC.

The competitive carriers recognize that BellSouth seeks a "radical expansion" of the Commission's deliberately "narrow FTTH exception." AT&T at 6. Although highly critical of the Order (e.g., Joint CLECs at 3), the competitive carriers acknowledge it is, at least, a "bright-line distinction" (NuVox at 5), limited to the promotion of "nascent" FTTH deployment. In contrast, BellSouth's proposal would also be purely arbitrary, and applicable "to loop

arrangements that are commonplace today." AT&T at 18. FTTC is not functionally "equivalent" to FTTC, and BellSouth conspicuously omits any standards for those loops or what must be transmitted over them. Its definition does not even "require the carrier to provide any broadband or advanced services" at all (NuVox at 9), which "repudiate[s] the purported public interest benefits and next-generation technology incentives that the Commission claimed could be achieved with its FTTH regulatory classification." AT&T at 18. The section 706 rationale cannot be taken to such extremes. PACE at 10.

In fact, the Joint CLECs (at 11-12) share Sprint's suspicion that BellSouth's goal is protection "for its existing network." That may explain why Verizon and SBC – although eager to exempt any "fiber-to-the-curb architectures" from unbundling (Verizon at 16 n.8) – are silent about the details of BellSouth's proposal and, in particular, about its recommendation of 500 feet as the maximum length of a copper drop from "curb" to "premises."[1] It also shows that changing the rules would provide no meaningful incentive to invest. BellSouth was already committed to its hybrid loop overbuilds before the Order's FTTH exemption was ever announced.

B. The Commission should reject BellSouth's request to expand the FTTH exemption to include fiber loops to multi-unit premises.

The competitive carriers also opposed BellSouth and USIIA's attempts to expand FTTH to include fiber to multi-unit premises. Although Verizon claims clarification is necessary to "ensure that mass market customers in multiunit premises are part of the mass market" (Verizon at 21), Catena Networks (at 10) calls on the Commission to "treat[] all FTTP deployments the same, regardless of the identity of the customer."[2]

---

[1] Sprint agrees with the Joint CLECs (at 10-11) that "the 500-foot proposal is unworkable."

[2] The disconnect between Verizon's and Catena Networks's comments shows why the Commission should confirm that FTTH applies only to mass market end-user premises, identified by reference to the same criteria that govern local switching. Sprint at 14-16.

BellSouth's proposed "clarification" would actually treat a fiber loop reaching the exterior of *any* "multi-unit building premises" as FTTH without regard to the type of customers located there, and without regard to ILEC-owned, copper inside wire that renders the loop ordinary hybrid copper/fiber plant. As AT&T points out, "BellSouth's proposed 'clarification' would in fact significantly rewrite the Commission's rules in a manner that would improperly foreclose competition." AT&T at 18. Multiunit premises are within the enterprise market, not the mass market, and the petitions are little more than "backdoor attempts to deregulate enterprise market loop facilities" (Covad at 7) and to overturn the Order's impairment finding. The Commission has no record for reversing that determination, and expanding the FTTH exemption in this way "will not increase incumbent LECs' incentives to deploy fiber." MCI at 9.

C. The Commission should reject SureWest and USIIA's request to define FTTH to include any locations with up to 48 numbers.

SureWest's and USIIA's petitions on a 48-line threshold for mass market won remarkably little BOC support. SBC was silent. Verizon (at 19) endorsed their position, but BellSouth (at 23) vaguely supported them only "to the extent they are consistent with BellSouth's petition." The competitive industry joined Sprint in recognizing the petitions as an improper attempt to expand the FTTH exemption to block competition in the business market.

The petitioners want the Commission to believe that locations served by up to 48 telephone numbers are mass market customers. But Verizon acknowledges openly that this exemption would be targeted "for *businesses* that use 48 or fewer telephone numbers." Verizon at 19 (emphasis added). The petitioners seek to expand FTTH beyond any rationale outlined in the Order or potentially supportable in the record. On the contrary, the Order recognized that DS1 loops are so low in capacity "that there is simply no question that competitors are impaired without access to them." Covad at 10.

III. "NEXT GENERATION" LOOPS AND DARK FIBER ENTERPRISE LOOPS

A. The Commission should reject attempts to block access to the TDM voice channel on hybrid plant and fiber overbuilds

The BOC parties predictably rallied behind BellSouth's, SureWest's, and USIIA's attempts to block competitors' access to the TDM voice channel on hybrid loops. They ask for "clarification" that they need not "design or modify their next generation networks to provide TDM capability." SBC at 9.

The competitive carriers joined Sprint in pointing out that the rules give ILECs no right to wholly exclude competitors from "next generation" network plant.[3] The Commission's exemption was narrowly limited to FTTH in "greenfield" environments for mass market customers.[4] 47 C.F.R. § 319(a)(i). For all other next generation loop plant, including fiber FTTH overbuilds, the rules expressly require ILECs to make available a voice grade loop and full TDM functionality, unless sufficient copper loop has been retained to provide this service. 47 C.F.R. § 319(a)(ii). This requirement is not limited to DS0 loops, either, but also covers DS1 and DS3 loops. NewSouth at 8-11.

Contrary to the BOCs' suggestions, there is little room for ambiguity here. The Order made the ILECs' "obligation to continue to provide unbundled access to the TDM portions of their networks … perfectly clear." Z-Tel at 17. "[I]ncumbent LECs must provide unbundled access to a complete transmission path over their TDM networks to address the impairment that … requesting carriers currently face," which includes both narrow- and broadband services.

---

[3] The BOCs have not defined what exactly they mean by "next generation" networks, but there are no grounds for differentiating between hybrid loops and "next generation" networks anyway. These networks are, after all, one and the same. As Z-Tel explained (at 17), "the mere fact that an ILEC provides packet-based services over a portion of its network does not render those facilities a next generation network immune to unbundling."

[4] Joint CLECs (at 15-16) urge the Commission to again limit FTTH to "residences."

Order at ¶ 289. Moreover, the Order also prohibits ILECs from designing their loop networks to frustrate competitors' access to unbundled network elements. ¶ 294.

The competitive carriers also recognized that the Order requires ILECs to make reasonable network modifications to accommodate competitors' unbundling requests. To ensure competitors can "provide broadband capabilities to end users" over even hybrid loops, "incumbent LECs must provide unbundled access to a *complete transmission path* over their TDM networks to address impairment that ... requesting carriers currently face." ¶ 289 (emphasis added). Sprint agrees with MCI that "[t]he FCC should not permit incumbent LECs to construct networks in ways that make TDM-compatible DS1 and DS3 loops provided over hybrid facilities unavailable to requesting carriers. MCI at 10.

The Order requires ILECs to provide TDM loop capability and to make reasonable network modifications for requesting carriers. Eliminating these obligations would frustrate the Act's goals by giving ILECs permission to design networks to omit TDM capability wherever they wish to block competition.

B. The Commission should reject attempts to limit unbundled enterprise dark fiber loops to those existing at the effective date of the Order.

SBC joins BellSouth in seeking to limit unbundled access to enterprise dark fiber that predated the Order. SBC at 5. Verizon would go farther. It asks the Commission to "eliminate unbundling obligations for fiber deployed to enterprise customers" altogether. Verizon at 27. Their requests should be denied.

The Commission's rules clearly require ILECs to unbundled even *newly installed* enterprise dark fiber, because it found that requesting carriers are impaired without access and that CLECs and ILECs are not similarly positioned in the marketplace or equally able to invest. MCI at 14-15; Joint CLECs at 22-23. The BOC parties offer nothing to rebut these findings,

except their previously-rejected assertions that CLECs can deploy their own fiber. Verizon at 27-28; SBC at 6; Catena Networks at 9-10. The Commission instead recognized that ILECs are already deploying fiber to serve the enterprise market, and, in any event, the Order's discussion of investment incentives for advanced services under section 706 were, appropriately, limited solely to the mass market. Furthermore, the Act is not limited to facilities that already exist, or to facilities that existed in 1996.

IV. SECTION 271 OBLIGATIONS

All competitive carriers opposed BellSouth and USIIA's attempts to ignore section 271 statutory unbundling obligations by selectively excluding broadband services. They agreed with Sprint that the Commission has properly found that section 251 and section 271 obligations are not co-extensive, and that section 271 imposes an independent obligation on BOCs to unbundle narrowband and broadband facilities. See ¶¶ 653-655. They also agree that not only does section 271 require unbundling of loops, but it "makes no distinction between loops used to provide broadband services and those used to provide narrowband services." Z-Tel at 12. The statute includes a provision that expressly prohibits the Commission, "by rule or otherwise," from "limit[ing] or extend[ing] the terms used in the competitive checklist set forth in subsection (c)(2)(B)." 47 U.S.C. § 271(d)(4).

The BOCs ask the Commission to ignore these statutory requirements, by reading section 706 as trumping all other statutory provisions. Section 706 – codified as a footnote in the Act – is irrelevant to section 271 analysis. The Commission found it applicable to its section 251 unbundling review only because the "at a minimum" clause of section 251(d)(2) gave the agency authority "to take Congress's goals into account" in deciding which elements must be unbundled. Order at ¶ 176. Section 271 has no similar "at a minimum" clause, and on the contrary section

271(d) expressly prohibits the Commission from altering, "by rule or otherwise," the list of network elements that BOCs must make available. AT&T at 22-23.

The BOCs' comments also read section 706 too expansively in other ways. It is not a basis for eliminating any unbundling obligation that might pose "regulatory disincentives to the deployment of broadband facilities." Verizon at 5. Instead, it asks the Commission only to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability." 47 U.S.C. section 157 nt. That investment is already progressing, and will continue to progress, "on a reasonable and timely basis" even with section 271 unbundling requirements in place.[5] The BOCs also fail to limit their request to "advanced telecommunications capability," but instead use the more ambiguous term, "broadband." They do not even limit their request to the mass market.

SBC (at 13) claims Congress cannot have intended that BOCs would be subject to unbundling requirements that are broader than "the limits on unbundling in section 251(d)(2)" applicable to all ILECs. SBC's argument rests on the invalid assumption that section 251(d) was intended to somehow override section 271. If that were true, however, Congress could easily have expressly provided so, but that interpretation is not supported by the text of the statute. That makes sense, both because section 271's "competitive checklist" serves a different purpose than section 251(d)(2) and because it applies to a different and narrower group of carriers –

[5] Despite a difficult economy and all the purported regulatory disincentives of unbundling, in 2002 Verizon alone invested $12 billion to upgrade its networks for higher speed capability, adding 400,000 miles of fiber and extending xDSL capability to 60% of its lines. Verizon 2002 Annual Report at 2, 4. Even before the Triennial Review Order was released, Verizon had announced plans to extend broadband capacity to 80% of its lines by the end of 2003, committing to "aggressive network expansion and in new technologies … to compete with cable providers. See, e.g., Verizon Investor Relations, "Verizon Supercharges DSL" (May 13, 2003).

BOCs, distinct from all other ILECs.[6] "Congress designed section 271 to address the BOCs' long-held monopoly and to condition BOC entry into long distance markets on the opening of the local exchange market competition." PACE at 4. The Commission was right to recognize, in the Order as in the UNE Remand Order, that section 271(c)(2)(B) imposes an "independent and ongoing access obligation" on the BOCs. ¶ 654. See also UNE Remand Order at ¶ 468.

Nor can the BOCs find any support in the Act for excluding broadband facilities or services from section 271. SBC weakly suggests that the D.C. Circuit's ruling in USTA[7] requires the Commission to eliminate unbundling of broadband under section 271. This stretches the court's decision beyond recognition. USTA did not even address the unbundling obligations imposed by section 271. The court focused solely on section 251, and in the context of TELRIC pricing which the Commission has (rightly or wrongly) found inapplicable here. Regardless, the U.S. Supreme Court in Verizon found unbundling requirements are not an unreasonable way to promote investment – and that the record showed substantial investment by both competitive carriers and ILECs.[8]

Many competitive carriers joined Sprint in calling for the Commission to prevent BOCs' abuse of their competitors by confirming that BOCs cannot "uncombine" network elements, prohibit combinations or commingling with section 251 UNEs, or impose anticompetitive "gluing" charges for combining UNEs. AT&T at 24-25; ALTS at 25-26; Covad at 20-21; Z-Tel at 15-16. As Covad explains (at 16), BellSouth's petition "pay[s] lip service to section 271, while robbing it of substance." Section 271 mandates non-discriminatory access to checklist

---

[6] The presence of checklist item (ii) – requiring "nondiscriminatory access to network elements in accordance with the requirements of Sections 251(c)(3) and 252(d)(1)" – also underscores that sections 251(d)(2) and 271(c)(2)(B) serve different purposes.

[7] SBC at 12, citing United States Telecom Ass'n v. FCC, 290 F.3d 415 (D.C. Cir. 2002) ("USTA"), cert. denied, 123 S. Ct. 1571 (2003).

[8] Verizon v. FCC, 122 S. Ct. 1646, 1676 (2002).

facilities. "At the very minimum, this must mean that competitors can access checklist items and use them in the same manner as the BOC – including 'commingling' or 'combining' them with the same other facilities and services with which the BOC routinely 'commingles' or 'combines' them." Covad at 16. The Commission should likewise expressly prohibit BOCs from breaking apart UNEs that are currently or traditionally combined. Sprint at 22-25. These practices are inevitably unreasonable practices under section 201; they can serve only anticompetitive purposes.

It may be for that reason that SBC (at 11) and Verizon (at 14), provide no substance to support BellSouth's call for clarification of combination and commingling requirements. The Commission should instead confirm that the September 17, 2003 *errata*'s revision to paragraphs 584 and footnote 1990 do not empower BOCs to refuse access to UNEs where the requesting carrier seeks to combine or commingle them, whether they are secured under section 251 or 271.

Respectfully submitted,
SPRINT CORPORATION

John E. Benedict
H. Richard Juhnke
Suite 400
401 Ninth Street, NW
Washington, DC 20004
202-585-1910

Dated: November 18, 2003

CERTIFICATE OF SERVICE

I Hereby certify that a copy of the foregoing Reply to Comments on Petitions for Reconsideration and Clarification, filed by Sprint Corporation in Docket CC No. 01-338, was sent by First Class Mail, postage prepaid, and/or electronic mail on this the 18th day of November, 2003, as follows:

Sharon Kirby

By ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-B204
Washington DC 20554

By Electronic Mail

Janice Myles
Competition Policy Division
Federal Communications Commission
445 12th St, SW
Room 5-C327
Washington, DC 20554

Qualex International
Portals II
445 12th St, SW
Room CY-B402
Washington, DC 20554

By First Class Mail

David W. Carpenter
Sidley Austin Brown & Wood
Bank One Plaza
10 S. Dearborn Street
Chicago, IL 60603

Leonard J. Cali
Lawrence J. Lafaro
Stephen J. Garavito
AT&T Corp.
One AT&T Way
Bedminster, NJ 07921

David L. Lawson
C. Frederick Beckner
Michael J. Hunseder
Sidley Austin Brown & Wood
1501 K Street NW
Washington, DC 20005

Evan T. Leo
J.C. Rozendaal
Scott H. Angstreich
Kellogg Huber Hansen Todd & Evans
1615 M Street NW
Suite 400
Washington, DC 20036

Jeffrey S. Linder
Nicole A. Rothstein
Wiley Rein & Fielding LLP
1776 K Street, NW
Washington, DC 20006

Susanne A. Guyer
Verizon
1300 I St, NW
Suite 400 West
Washington, DC 20005

Stephen L. Goodman
Wilkinson Barker Knauer
2300 N Street NW
Suite 700
Washington, DC 20037

Paul J. Feldman
Raymond J. Quianzon
Fletcher Heald & Hildreth
1300 N. 17th Street
Arlington, VA 22209

Michael H. Pryor
Angela F. Collins
Susan F. Duarte
Mintz Levin Cohn Ferris Glovsky & Popeo
701 Pennsylvania Ave. NW, Suite 900
Washington, DC 20004

Matthew J. Flanigan
1300 Pennsylvania Ave. NW
Suite 350
Washington, DC 20004

Andrew D. Lipman
Richard M. Rindler
Patrick J. Donovan
Harisha J. Bastiampillai
3000 K Street NW
Washington, DC 20007

Michael E. Glover
Edward Shakin
Verizon
1515 North Courthouse Rd
Suite 500
Arlington, VA 22201-2909

Jim Lamoureux
Christopher M. Heimann
Gary Phillips
Paul K. Mancini
SBC Communications Inc.
1401 I Street NW
Washington, DC 20005

David P. McClure
US Internet Industry Association
815 Connecticut Ave. NW
Suite 620
Washington, DC 20036

Jake E. Jennings
NewSouth Communications Corp.
NewSouth Center
2 North Main Street
Greenville, SC 29601

Rhett Dawson
1250 Eye Street NW
Suite 200
Washington, DC 20005

Kevin Joseph
Megan Delany
Allegiance Telecom, Inc.
1919 M Street NW, Suite 420
Washington, DC 20036

Julia O. Strow
CBeyond Communications
320 Interstate North Pkwy, SE
Suite 300
Atlanta, GA 30339

Robert Holleyman
1150 Eighteenth Street NW
Suite 700
Washington, DC 20036

Gary Shapiro
2500 Wilson Boulevard
Arlington, VA 22201

Carol Ann Bischoff
Jonathan Lee
CompTel/ASCENT Alliance
1900 M Street NW
Suite 800
Washington, DC 20036

Jonathan Askin
Tiki Gaugler
ALTS
888 17th Street NW
Suite 1200
Washington, DC 20006

Robert J. Aamoth
Jennifer M. Kashatus
Kelley Drye & Warren
1200 19th Street NW
Suite 500
Washington, DC 20036

Thomas M. Koutsky
Z-Tel Communications
Suite 500
1200 19th Street NW
Washington, DC 20036

Jason Oxman
Praveen Goyal
Covad Communications
600 14th Street NW
Suite 750
Washington, DC 20005

Jerry Jasinowski
1331 Pennsylvania Ave. NW
Washington, DC 20004

George Scalise
181 Metro Drive
Suite 450
San Jose, VA 95110

Kimberly A. Scardino
Henry G. Hultquist
Dennis W. Guard
Karen M. Johnson
MCI
1133 19th Street NW
Washington, DC 20036

Ruth Milkman
Gil M. Strobel
Richard D. Mallen
Lawler Metzger & Milkman
2001 K Street NW, Suite 802
Washington, DC 20006

Genevieve Morelli
Jennifer M. Kashatus
Kelley Drye & Warren
1200 19th Street NW
Suite 500
Washington, DC 20036

Christopher J. Wright
Timothy J. Simeone
Maureen K. Flood
Harris Wiltshire & Grannis
1200 18th Street, NW
Washington, DC 20036