

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

\_\_\_\_\_ )  
**In the Matter of** )

Section 272(b)(1)'s "Operate )  
Independently" Requirement for )  
Section 272 Affiliates )  
\_\_\_\_\_ )

**WC Docket No. 03-228**

**COMMENTS OF SPRINT CORPORATION**

On behalf of its Incumbent Local Exchange Carrier ("ILEC"), competitive LEC ("CLEC")/long distance, and wireless divisions, Sprint Corporation respectfully submits its comments in response to the Notice of Proposed Rulemaking released November 4, 2003 in the above-captioned proceeding (FCC 03-228.)

In the Non-Accounting Safeguards Order, the Commission held that the prohibition on a BOC and its section 272 Affiliate's sharing of operating, installation, and maintenance ("OI&M") services is compelled by Section 272(b)(1)'s express requirement that the BOC 272 Affiliate "*shall operate independently* from the Bell Operating Company."<sup>1</sup> The Commission also ruled that "operat[ing] independently" prohibits the BOC and its section 272 Affiliate from jointly owning switching and

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<sup>1</sup> Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, 11 FCC Rcd 21905, at ¶ 166 (1996) ("Non-Accounting Safeguards Order") (emphasis added).

transmission facilities, or the land and building on which such facilities are located. In the instant NPRM the Commission seeks comments on whether the OI&M or joint ownership of facilities prohibition are overbroad or otherwise require modification or elimination.

In the NPRM the Commission also asks how a

conclusion by the Commission to eliminate both the joint facilities ownership restriction and the OI&M sharing prohibition would relate to the Commission's conclusion in the *Non-Accounting Safeguards Order* that the "operate independently" language of section 272(b)(1) imposes separate and independent requirements on section 272 separate affiliates beyond those detailed in section 272(b)(2)-(5).<sup>2</sup>

The simple answer is that the Commission would need to conclude that it erred when it determined that section 272(b)(1) imposed distinct requirements from those in section 272(b)(2)-(5), or that facts and circumstances have changed by such a substantial degree that neither prohibition is necessary to ensure that the BOC and its section 272 Affiliate operate independently. There is nothing in the record of any Commission proceeding that would suggest that either conclusion is warranted or indeed supportable.

Rather, the Commission adopted the OI&M prohibition and joint ownership of facilities prohibition because it recognized, among other concerns, the high risk of BOC cost misallocation and inevitable discrimination, as well as the impracticability of monitoring or auditing for such abuses without these safeguards in place.<sup>3</sup> Indeed, many

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<sup>2</sup> *NPRM* at ¶ 10.

<sup>3</sup> See, e.g., *Non-Accounting Safeguards Order* at ¶ 160 ("By prohibiting joint ownership of transmission and switching facilities, we also reduce the potential for a BOC to

parties – Sprint among them – argued that the statutory mandate of independent operation in fact requires more structural separation between BOC and 272 Affiliate than the Commission ultimately imposed. In any event, the record evidence in several recent Commission proceedings conclusively proves that the BOCs remain dominant in the local exchange and exchange access markets and that this dominance has allowed the BOCs to quickly gain sizeable market share in the interstate, interLATA long distance market.<sup>4</sup> The records in these proceedings also show that this dominance provides the BOCs with the incentive, ability, and demonstrated willingness to commit competitive abuses that the OI&M and separate facilities safeguards are needed to constrain.

This record evidence and the many grounds for Sprint's opposition to any modification or elimination of the OI&M and separate facilities ownership safeguards are set forth in detail in Sprint's opposition and reply, filed on November 17 and 26, 2003, respectively, in response to Verizon's new petition for forbearance from section 271

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discriminate in favor of its section 272 affiliate.”); *id.* (“Requiring section 272 affiliates to obtain transmission and switching facilities from a BOC on an arm’s length basis will increase the transparency of such transactions, thereby facilities monitoring and enforcement of the section 272 requirements.”); ¶ 163 (“Allowing 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.”) (emphasis added); *id.* (“[A]llowing the sharing of such services would require ‘excessive costly and burdensome regulatory involvement in the operation, plans and day-to-day activities of the carrier ... to audit and monitor the accounting plans necessary for such sharing to take place.’) (footnote omitted).

<sup>4</sup> If anything, both the BOCs’ entry into the interLATA long distance market and the increased popularity of bundled service offerings and fixed price plans makes the risks of cost misallocation, discrimination, and competitive abuse greater than ever.

unbundling requirements,<sup>5</sup> in Sprint's comments and reply comments, filed June 30, 2003 and July 28, 2003, respectively, in response to the NPRM in the section 272 separate affiliate sunset proceeding,<sup>6</sup> and in Sprint's opposition and reply, filed on September 3 and 18, 2002, respectively, in response to Verizon's petition for forbearance on the OI&M safeguards.<sup>7</sup> Rather than burden the Commission with duplicative comments, Sprint incorporates its prior comments here. Copies are attached for the Commission's convenience.

Accordingly, Sprint opposes any modification or elimination of the OI&M prohibition or the joint ownership of facilities prohibitions, both of which are compelled by Section 272(b)(1) and are necessary in the effort to curb and monitor BOC competitive abuses.

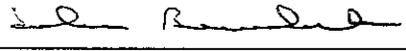
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<sup>5</sup> Verizon's New Petition, as deemed by the Commission in Public Notice FCC 03-263 (released October 27, 2003), includes an *ex parte* letter dated October 24, 2003 and an accompanying memorandum and is being disposed of by the Commission in CC Docket No. 01-338.

<sup>6</sup> Further Notice of Proposed Rulemaking, In the Matter of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules, WC Docket No. 02-112, CC Docket No. 00-175, FCC 03-111 (rel. May 19, 2003). In this proceeding, Sprint argued that the prohibition on Independent ILEC joint ownership of switching and transmission facilities, that is imposed by Commission Rule 64.1903, and not by any statute, should be eliminated because the Independent ILECs due to size and geography factors, have neither the incentive or ability to commit the abuses of the BOCs, nor have the Independent ILECs demonstrated the BOC propensity to commit such abuses.

<sup>7</sup> Petition of Verizon for Forbearance from the Prohibition of Sharing Operating, Installation, and Maintenance Functions under Section 53.203(a)(2) of the Commission's Rules, CC Docket No. 01-338 (filed August 5, 2002).

Respectfully submitted,  
SPRINT CORPORATION

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