ATTACHMENT 3

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements	)	**WC Docket No. 02-112**
2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules	)	**CC Docket No. 00-175**

COMMENTS OF SPRINT CORPORATION

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COMMENTS OF SPRINT CORPORATION

Sprint Corporation, on behalf of its incumbent local exchange ("ILEC"), competitive LEC ("CLEC")/long distance, and wireless divisions, respectfully submits its Comments on the Further Notice of Proposed Rulemaking in the above referenced dockets.[1]

I. INTRODUCTION AND SUMMARY

The Commission seeks comment on the appropriate regulatory classification of BOC provision of in-region interstate and international telecommunications services. Sprint commented previously in this docket that the BOCs retain overwhelming

[1] In the Matter of Section 272(f)(1) sunset of the BOC Separate Affiliate and Related Requirements, WC Docket No. 02-112, 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules, CC Docket No. 00-175, *Further Notice of Proposed Rulemaking*, FCC 03-111, released May 19, 2003 ("FNPRM").

dominance in the telephone exchange and exchange access markets.[2] This dominance gives them the ability to adversely impact long distance competition and, increasingly, competition for bundles of local and long distance services, through discrimination, cost misallocation, and price squeezes. Unfortunately, the BOCs' track record since passage of the Telecommunications Act of 1996 (the "Act") demonstrates that not only do the BOCs have the ability to adversely impact long distance and bundled services, but that the BOCs are willing to use this ability.

Because the BOCs remain dominant in the telephone exchange and exchange access markets and retain the unique ability and the incentive to discriminate against non-affiliated long distance and local competitors, stringent safeguards must be put in place to aid in the detection and deterrence of BOC abuse. As Sprint has previously argued, the Section 272 safeguards, in particular the requirements for a separate affiliate and a biennial audit of Section 272 compliance, cannot be allowed to sunset at the end of the statutory three-year period, but rather should be retained until, at a minimum, the following conditions are met:

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[2] Comments and Reply Comments of Sprint Corporation, In the Matter of Extension of Section 272 Obligations of Southwestern Bell Telephone Co. in the State of Texas, WC Docket No. 02-112, filed, respectively, May 12, 2003 and May 19, 2003 ("*Texas 272 Sunset*"). Comments and Reply Comments of Sprint Corporation, In the Matter of Section 272(f)(1) sunset of the BOC Separate Affiliate and Related Requirements, WC Docket 02-112, filed, respectively, August 5, 2002 and August 26, 2002 ("*BOC Separate Affiliate*"). See also, Sprint Corporation's Opposition to Petition for Forbearance, 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, filed September 9, 2002 and Comments of Sprint Corporation, 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, filed April 5, 2002.

- Commission adoption of performance measurements and enforcement mechanisms for the RBOCs' provision of UNEs and special access; and
- Completion (and acceptance) of two biennial audits for each BOC, in each state in which it has received Section 271 authority, demonstrating compliance with the Section 272 requirements.

If these safeguards are in place, Sprint believes it will be appropriate to classify BOC in-region interstate and international services as non-dominant.

The Commission also seeks comment on the appropriate regulatory classification for independent ILEC provision of in-region interstate and international services. As Sprint has previously commented, the independent ILECs do not present the threat to long distance and local competitors as do the BOCs and therefore a separate affiliate requirement is no longer necessary in order to classify independent ILEC in-region interstate and international services as non-dominant.[3]

II. SPECIFIC GEOGRAPHIC AND SERVICE MARKET CONSIDERATIONS

The Commission proposes that the relevant geographic market for long distance service consist of a single nationwide market.[4] Sprint agrees with the Commission that because of geographic rate averaging, wide-spread competition in interstate long distance throughout the nation, Commission price regulation of the exchange access input to long distance, and the excess capacity in interstate transport all make a single nationwide market reasonable and there is no reason to bifurcate or further divide the geographic market.

Likewise, Sprint agrees with the Commission's proposal to divide the interstate long distance service market into two broad categories – the mass market (including

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[3] See, Comments of Sprint Corporation, In the Matter of 2000 Biennial Regulatory Review – Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules, CC Docket No. 00-175, filed November 1, 2001.

small businesses) and the enterprise market.[5] Sprint does not believe that the existence of comparable services over different platforms from traditional wireline local telephone network necessitate additional service markets. While internet (computer-to-computer and computer-to-phone) and cable long distance calling is growing, it is still too small and too much in its infancy at this point to have an impact on a carrier's dominance or lack thereof.[6] Obviously, as the cable companies expand their as yet nascent provision of local and long distance calling services and as computer calling becomes more prevalent, this issue may need to be revisited.

The same is true of wireless as a platform. Obviously, using wireless for long distance calling is becoming very commonplace. However, Sprint is not arguing in this proceeding that any carrier be treated as dominant in its provision of long distance services. Rather, it is the BOC dominance in local and exchange access, which wireless platforms have not supplanted or impacted appreciably yet, that requires safeguards to be in place in order for the BOC to maintain the non-dominant classification of the long distance service. While the safeguards cannot entirely prevent the BOCs from abusing their local dominance to gain an advantage, or attempt to become dominant, in long distance services, the safeguards provide valuable and necessary tools to detect and deter such abuse.

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[4] FNPRM at para. 18.
[5] *Id.* at para. 10.
[6] As of December 31, 2002 cable-telephony lines constituted only about 1.59% of the total switched access lines in the nation. See, Local Telephone Competition: Status as of December 31, 2002, Industry Analysis and Technology Division, Wireline Competition Bureau, June 2003, at p. 2 and Table 5 (the Table reflects a rounded 2%, but the actual number is 1.59%.)

The Commission also seeks comments on whether bundled packages of local and long distance services should be considered a service market.[7] Certainly the offering of bundled packages of long distance and local services is becoming prevalent both by the BOCs that have 271 authority, and competitive CLEC/IXCs. It is the BOCs' dominance in the local telephone exchange and exchange access market that threatens long distance competition. The threat does not change because the long distance and local service is bundled at a single price. Rather, the threat becomes more significant, for both separate and bundled services, when the BOC can provide both through a single entity which would make it easier for the BOC, undetected, to engage in discrimination, cost-misallocation, and predatory price squeezes. That drives the need, regardless of whether local and long distance are bundled, for the separate affiliate and biennial audit to help detect and deter such behavior. It also drives the need for performance measurements for UNEs and special access, critical inputs for stand-alone local, bundled local-long distance, and stand-alone long distance. Because the threat, and the weapons necessary to help thwart the threat, are the same in each instance, there is no need to create a separate service market.

III. THE BOCS REMAIN DOMINANT IN THE TELEPHONE EXCHANGE AND EXCHANGE ACCESS MARKETS, AND SIGNIFICANT SAFEGUARDS MUST BE IN PLACE TO DETECT AND DETER ABUSE THAT WOULD ADVERSELY AFFECT COMPETITION IN IN-REGION INTERSTATE AND INTERNATIONAL LONG DISTANCE SERVICES.

A. The BOCs remain dominant in the telephone exchange and exchange access markets.

By any reasonable measure, the BOCs remain dominant in their traditional local telephone exchange and exchange access markets. According to the Commission's just-

[7] FNPRM at para. 25.

released Local Telephone Competition Status Report, CLECs served a mere 13.2% of the total switched access lines in the nation as of December 31, 2002, representing a very small increase over the 11.4% served six months earlier.[8] Seven years after passage of the Telecommunications Act of 1996, a 13% market share for all competitors combined is hardly a testament to robust competition or a lack of ILEC dominance.[9] Interestingly, of that 13.2%, only 26%, or less than 1/3, represents facilities owned by CLECs.[10] While some of the non-CLEC-owned lines are 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 thus far can be duplicated or even sustained.

This mediocre state of local competition is further documented by the BOCs' own recent claims of successful winback programs, combined with substantial growth in long distance and bundled long distance/local services. As Verizon recently stated:

- In addition, Verizon Freedom plans continue to retain customers, bolster long-distance and DSL sales, and win back customers from competitors. Verizon Freedom plans introduced last summer offer local services with various combinations of long distance, wireless and Internet access in a discounted bundle available on one bill.[11]

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[8] Id., at p. 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] Local Telephone Competition: Status as of December 31, 2002 at p. 2.
[11] Verizon Investor Quarterly, April 22, 2003, p. 3.

BellSouth tells much the same story:

- The ability to provide long distance service throughout all markets strengthens BellSouth Answers, the company's signature package product launched nine months ago that combines wireline, wireless and Internet services. Nearly 50 percent of the customers who signed up for BellSouth Long Distance are also customers of BellSouth Answers. The package combines the Complete Choice calling plan of local service and unlimited convenience calling features with BellSouth Long Distance, DSL or dial-up internet, and Cingular Wireless services. ....
- BellSouth ended the first quarter with 1.6 million Answers customers, a 35 percent sequential quarter increase. Nearly 60 percent of Answers customers have long distance in their package and more than 45 percent have either DSL or dial-up Internet. The Answers package helps reduce competitive churn for our high-value customers. And the more products an Answers customer buys, the more the churn rate falls.[12]

However, perhaps the most telling evidence of all comes from SBC's report to its investors and potential investors:

- SBC's consumer winback rate improved 500 basis points versus the fourth quarter of 2002 to 40 percent. This marks SBC's third consecutive quarter with a strong sequential improvement in its consumer winback percentage.
- SBC's business winback rate topped 50 percent, consistent with recent quarters.

Competitive gains in the exchange access market have been similarly limited. Sprint continues to rely upon the ILECs for approximately 90.7% of its total special access needs despite aggressive attempts to self-supply and to switch to CLEC-provided facilities wherever feasible. The small percentage of buildings that are in fact served by alternative sources of supply is evidence of the barriers and constraints to loop deployment discussed above. There are 744,000 commercial buildings alone in the

[12] BellSouth Investor News, BellSouth Reports First Quarter Earnings, April 23, 2003, p. 4.

U.S.[13] Except for an insignificant number; all of those are reached by the incumbent LEC. Despite growth in alternative access provider facilities over the last three years, AAVs reach only a tiny fraction of that number. Sprint has developed a comprehensive, nationwide database of buildings served by AAVs, which it originally developed to identify AAV alternatives to ILEC special access channel terminations.[14] The database shows that 32,816 commercial and office buildings, or just 4.4 percent of the nation's total, are reached by an AAV and in less than 3.9 percent of the total can AAVs serve the entire building.

The New York State Department of Public Service recently investigated Verizon's dominance of the special access market in that state, and it concluded that Verizon remains clearly "dominant" in all geographic markets – including New York City, which is widely presumed to be the most competitive in the nation.[15] The Department found, for example, that in New York City, "Verizon has 8,311 miles of fiber compared to a few hundred for most competing carriers," that Verizon has 7,364 buildings on a fiber network compared to less than 1,000 for most competing carriers," and that Verizon's own figures showed "a maximum of 900 buildings served by

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[13] U.S. Dep't of Commerce, Statistical Abstract of the United States (2000), Table 969. This figure understates the number of buildings that house heavy telecommunications end-users. It excludes hospitals, university buildings, hotels, small buildings, many government and military facilities, and other categories of buildings.

[14] Channel terminations are essentially the same as high-capacity loops, and thus the lack of alternatives for special access equates to a lack of alternatives for high capacity loops.

[15] Proceeding on Motion of the Commission to Investigate Methods to Improve and Maintain High Quality Special Services by Verizon New York Inc., Order Denying Petitions for Rehearing and Clarifying Applicability of Special Services Guidelines, NY PSCZ Case 00-C-2051 (Dec. 20, 2001).

individual competitors' fiber facilities."[16] These figures are for a city with "775,000 buildings ... over 200,000 of which are mixed use, commercial, industrial, or public institutions."[17] Consequently, "Verizon represents a bottleneck to the development of a healthy competitive market for Special Services."[18]

B. The BOCs have repeatedly demonstrated their ability to abuse this dominance to the detriment of long distance and local competition.

Since the passage of the Act, several of the BOCs 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.[19]

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. According to the news release issued by the Commission, "SBC said that it had intentionally omitted the sworn statement."[20]

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[16] Id. at 7.
[17] Id.
[18] Id. at 8.
[19] 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.
[20] In the Matter of SBC Communications, Inc., EB-01-IH-0642, *Forfeiture Order* released April 15, 2002 (FCC 02-112).

3. SBC was fined $84,000 by the FCC for 24 violations of the Commission's collocation rules.[21]

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.[22]

5. 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.[23]

6. 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.[24]

7. 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).[25] Qwest is also under investigation by the SEC and US Department of Justice for accounting irregularities.

8. Qwest entered into a Consent Decree in which Qwest admitted that violated the Section 271(a) ban on providing long distance services in its local service region prior to receiving FCC authorization and agreed to make a $6.5 million payment to the United States Treasury.[26]

9. The Commission held that Verizon had not interconnected with Core Communications, Inc. in a reasonable manner and violated the terms of its

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[21] In the Matter of SBC Communications, Inc., EB-00-IH-0326a, *Order on Review* released February 25, 2002 (FCC 02-61).
[22] In the Matter of SBC Communications, Inc., EB-00-IH-0432, *Order on Review* released May 29, 2001 (FCC 01-184).
[23] In the Matter of Verizon Communications, Inc., EB-01-IH-0236, *Order* released September 14, 2001 (FCC 01-2079).
[24] 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).
[25] *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.
[26] News Release, Qwest Admits Violations of Long Distance Ban – Company to Make $6.5 Million Payment to United States Treasury, May 7, 2003.

interconnection agreement and section 251(c)(2) of the Act and allowed Core to file a supplemental complaint against Verizon for damages.[27]

10. Verizon entered into a consent decree admitting that it violated a federal ban on marketing long distance services in its local service region prior to receiving section 271 FCC authorization and agreed to make a $5.7 million payment to the United States Treasury.[28]

11. The Commission imposed a $6 million forfeiture on SBC for violating the *SBC/Ameritech Merger Order* by refusing to allow Core Communications, Inc. and Z-Tel Communications, Inc. to use UNE shared transport to transport intraLATA calls.[29]

While these violations and fines are certainly telling of the BOCs' willingness to abuse their dominance and adversely affect long distance and local competition, perhaps the best evidence comes from the State Commission in Texas. In the *Texas 272 Sunset* docket the Commission stated:

> The Texas PUC's position, set forth in its prior comments to the FCC on the Section 272 NPRFM, is that, given the link between Sections 271 and 272, SBC Texas's treatment of competitors in the local market does not warrant sunset of the Setion 272 requirements at this time. In addition, the Texas PUC provided information on SBDC Texas's continuing performance deficiencies in providing access to competitors. During the Section 27 process SBC Texas and the Commission signed a Memorandum of Understanding on April 29, 1999 stating a goal of 90% of measures met, two out of three consecutive months. From November 1999 to June 2002, SBC Texas's performance was above the 90% goal only 6 out of 31 months. A further review of this data indicates that SBC Texas's performance has generally been in the 86%-89% range with a high of 92.6% in May 2000 and a low of 83.4% in May 20002. From November 1999 to the present, SBC Texas has paid over $25 million in Tier 1 and Tier 2 damages to other carriers and the State of Texas, respectively. This figure would have been higher except that certain

[27] News Release, FCC Finds that Verizon Violated Interconnection Requirements, April , 2003.
[28] News Release, Verizon Admits Violations of Long Distance Marketing Ban – Company to Make $5.7 Million Payment to United States Treasury, March 4, 2003.
[29] News Release, FCC Grants Formal Complaint; Finds SBC in Violation of the SBC/Ameritech Merger Order, April 17, 2003.

penalties are subject to caps. Clearly, substantial progress in SBC Texas's performance remains to be made.[30]

C. Significant safeguards must be in place to detect and deter this abuse.

The BOC dominance and willingness to use it demonstrates the continued need for the Section 272 separate affiliate and biennial audit requirements. These tools provide the critical ability to monitor market behavior and detect misbehavior. Without these monitoring tools, there is no reason to assume that the BOCs will police themselves.

As the Texas Attorney General stated in the *Texas 272 Sunset* proceeding:

> It is therefore plain to see that the local market power dominance which the separate affiliate requirement was designed to mitigate still exists, and therefore the need for a separate affiliate to allow monitoring of market behavior has not disappeared. ...[31]

Likewise, the biennial audit requirement is just as critical to detect and deter abuse by the BOC that can harm long distance competition. As AT&T explained in the *Texas 272 Sunset* proceeding:

> The section 272 structural, accounting and nondiscrimination safeguards are targeted to detect and prevent such market power abuses and thereby to "ensure that competitions of the BOCs' [long distance] affiliate access to essential inputs, namely, the provision of local exchange and exchange access services, on terms that do not discriminate against competitors and in favor of the BOC's affiliate.[32]

To date UNEs have been a critical factor in driving the small amount of BOC

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[30] Letter from Public Utility Commission of Texas to Marilyn H. Dortch, Office of the Secretary, Federal Communications Commission, Texas 272 Sunset Proceeding, May 22, 2003, at p. 2.
[31] Texas AG Comments, *Texas 272 Sunset*, at pp. 3-4.
[32] AT&T's Petition, *Texas 272 Sunset*, at p. 3 citing *Non-Accounting Safeguards Order*, CC Docket No. 96-149, 11 FCC Rcd 21905 (1996) at ¶ 13.

competition that exists today. And while the *UNE Triennial Review* order will undoubtedly drive changes in the availability of UNEs, it is clear that, at least in the mass market segment, UNEs will continue to play a role in driving further competition for the foreseeable future.

Further, as demonstrated by the evidence from the Texas Commission cited above, the existence of a separate affiliate, a biennial audit, and a state UNE Performance Measurement plan has been a critical tool in detecting discrimination in the provision of UNEs. These tools need to be kept in place – but not just in Texas. Rather, a uniform UNE Performance Measurement and enforcement plan is required throughout the nation, combined with the separate affiliate requirement and biennial audits. That is why it is critical that the Commission finish the *UNE Performance Measurements Docket* and adopt the BOC performance measurements and enforcement plan outlined therein by Sprint.[33]

In the enterprise market, special access is a critical component to long distance competition. Given the BOCs' continued dominance in the exchange access market, special access performance measurements and an enforcement plan for the BOC is essential to detect, deter, and punish discrimination. Sprint urges the Commission to complete the Special Access Performance Measurements Docket and adopt the BOC performance measurements and enforcement plan outlined therein by Sprint.[34]

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[33] In the Matter of Performance Measurements and Standards for Unbundled Network Elements and Interconnection, *Notice of Proposed Rulemaking, CC Docket No. 01-318,* 16 FCC Rcd 20641 (2001). Sprint, along with numerous parties, filed comments and reply comments on, respectively, January 22, 2002 and February 12, 2002, but to date no order has been adopted.

[34] In the Matter of Performance Measurements and Standards for Interstate Special Access, *Notice of Proposed Rulemaking,* CC Docket No. 01-321, 16 FCC Rcd 20896

IV. REGULATORY CLASSIFICATION OF INDEPENDENT ILEC IN-REGION INTERSTATE AND INTERNATIONAL SERVICES.

Sprint previously argued that, among other reasons, due to the independent ILECs' limited size and scope of service areas, as well as the dispersion of their service areas, independent ILECs do not have the same ability as a BOC to adversely impact in-region interstate and international services.[35] For example, Sprint's ILEC service territories are widely dispersed and largely rural. In fact, Sprint's ILECs are rural telephone companies, as defined in the Act, in all service territories except Nevada. These factors make it far less likely that an interstate call will originate and terminate within Sprint ILEC territories than within a BOC's territory – especially with the creation of the Mega-BOCs that have resulted from numerous mergers (SWBT-SNET-Pacific-Ameritech and NYNEX-BellAtlantic-GTE.)[36]

Accordingly, Sprint has argued that the requirement for a separate affiliate is no longer necessary in order to classify independent ILECs' in-region interstate and international services non-dominant. Sprint reiterates that argument here, but would

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(2001). Sprint filed comments and reply comments on, respectively, January 22, 2002 and February 12, 2000, but to date no order has been adopted.

[35] Supra, note 4. For example, one of the 4 RBOCs is the dominant ILEC in 97 of the top 100 MSAs in the United States. The remaining three are split, one each, by Sprint (Las Vegas), Cincinnati Bell (Cincinnati), and Rochester Telephone (Rochester.) See, Dun & Bradstreet, 6/2/03.

[36] The probability of this is demonstrated by the fact that the 4 RBOCs control approximately 86% of the nation's ILEC owned switched access lines, while the approximately 1,300 independent ILECs account for only the remaining 14%. See, High Cost Loop Support Projected by State by Study Area, Universal Service Administrative Company, March 31, 2003. Additionally, at the time of the passage of the Act – pre the RBOC mergers – the average number of large businesses served by the RBOCs in the tope 100 MSAs was 2,899; post-merger the average increased to 6,523. See, Dun & Bradstreet, 6/2/03.

point out that in Sprint's experience the separate affiliate requirement has not been nearly so burdensome or astronomically costly as claimed by some of the BOCs.[37]

V. CONCLUSION

Notwithstanding the BOCs' continued dominance in the local telephone exchange and exchange access markets, and the consequent ability and willingness to adversely impact the long distance market, Sprint believes that if stringent safeguards are put in place the BOC provision of in-region interstate and international long distance services should be classified as non-dominant. These safeguards consist of the continuation of the separate affiliate and biennial audit requirements of Section 272. In addition, the Commission must order nation-wide performance measurements and enforcement plans for BOC provisioning of UNEs and special access.

Respectfully submitted,

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[37] Verizon claims that it has spent $314 million solely to meet the Section 272 separation requirements and will spend another $550 million through 2006. See, Verizon's Comments, *BOC Separate Affiliate* proceeding, filed May 12, 2003 at p. 10.

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REPLY COMMENTS OF SPRINT CORPORATION

Sprint Corporation, on behalf of its incumbent local exchange ("ILEC"), competitive LEC ("CLEC")/long distance, and wireless divisions, respectfully submits its reply to comments filed in the above-captioned proceeding on June 30, 2003.

The BOCs devote volumes to baldly asserting that they are not dominant in the provision of in-region interstate and international telecommunications services, that they do not have the ability to become dominant, and that dominant regulation of in-region interstate and international telecommunications services would be highly inappropriate. A representative example is the comments of Qwest.

> Qwest is surprised that the Commission finds it necessary to initiate a new proceeding on the issue of possible BOC dominance when it is crystal clear that the market for interLATA long distance services is highly competitive. **The only parties clamoring for more regulation are competitors** who hope to gain an advantage by subjecting the BOCs to

> additional regulatory obligations. ... The public does not want more regulation – **only the BOCs' competitors do.** ... BOCs cannot possibly raise interLATA long distance prices by restricting their output or by increasing the prices of exchange access and other essential services that they provide to long distance competitors .... As such, the BOCs lack market power and cannot be found to be dominant providers of interLATA long distance under the Commission's existing rules.[1]

Obviously, the BOCs ignore the extensive record of comments by state commissions and consumer advocates, among others. They have recognized that the BOCs' indisputable dominance of the local and exchange access services markets gives them the ability to quickly dominate the in-region and international telecommunications services markets.

Regardless, the question of whether the BOCs' in-region interstate and international telecommunications services should be classified as dominant was not the only question raised in the FNPRM.[2] Rather, the Commission also asked for comment on whether "there are alternative regulatory approaches, in lieu of dominant carrier regulation, that the Commission could adopt to detect or deter any potential anticompetitive behavior."[3] Sprint argued, as it has before,[4] that this question must be

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[1] Qwest Comments at pp. 1-2. [**Emphasis added.**]

[2] In the Matter of Section 272(f)(1) sunset of the BOC Separate Affiliate and Related Requirements, WC Docket No. 02-112, 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules, CC Docket No. 00-175, *Further Notice of Proposed Rulemaking*, FCC 03-111, released May 19, 2003 ("FNPRM").

[3] *Id.*, at para. 3.

[4] Comments and Reply Comments of Sprint Corporation, In the Matter of Extension of Section 272 Obligations of Southwestern Bell Telephone Co. in the State of Texas, WC Docket No. 02-112, filed, respectively, May 12, 2003 and May 19, 2003 ("*Texas 272 Sunset*"). Comments and Reply Comments of Sprint Corporation, In the Matter of Section 272(f)(1) sunset of the BOC Separate Affiliate and Related Requirements, WC Docket 02-112, filed, respectively, August 5, 2002 and August 26, 2002 ("*BOC Separate Affiliate*"). See also, Sprint Corporation's Opposition to Petition for Forbearance, In the

answered yes – there are alternative regulations that must be put in place to help detect and deter anticompetitive behavior.

Sprint argued that the BOCs are still overwhelmingly dominant in the telephone exchange and exchange access markets. This dominance gives them the ability to adversely impact long distance competition and, increasingly, competition for bundles of local and long distance services, through discrimination, cost misallocation, and price squeezes. Additionally, Sprint pointed out that the BOCs' track record since passage of the Telecommunications Act of 1996 (the "Act") demonstrates that not only do the BOCs have the ability to adversely impact long distance and bundled services, but that the BOCs are willing to use this ability. This last point was most recently demonstrated by the July 17, 2003 announcement that the Commission and BellSouth had entered into a $1.4 million consent decree to resolve two investigations concerning long distance and nondiscrimination requirements of Sections 271 and 272.[5]

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, filed September 9, 2002 and Comments of Sprint Corporation, 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, filed April 5, 2002.

[5] FCC NEWS, **FCC AND BELLSOUTH ENTER INTO A $1.4 MILLION CONSENT DEGREE CONCERNING LONG DISTANCE AND NON-DISCRIMINATION REQUIREMENTS,** released July 17, 2003. The investigations involved allegations that BellSouth marketed, or sold long distance service prior to receiving Section 271 approval and that BellSouth had violated sections 271(c) and 272(b), (c), and (e) of the Act with regard to non-discrimination and separate affiliate requirements.

Because the BOCs remain dominant in the telephone exchange and exchange access markets and retain the unique ability and the incentive to discriminate against non-affiliated long distance and local competitors, Sprint argued that the BOCs' in-region interstate and international telecommunications services could be classified as non-dominant provided that the Commission puts stringent safeguards in place to aid in the detection and deterrence of BOC abuse. As Sprint has previously argued, the Section 272 safeguards, in particular the requirements for a separate affiliate and a biennial audit of Section 272 compliance, must be extended beyond the statutory sunset period and the Commission must adopt UNE and special access performance measurements and enforcement mechanisms.

Numerous parties agreed with Sprint that non-dominant classification is appropriate if the Section 272 separate affiliate and biennial audit requirements continue beyond the statutory sunset[6] and if performance measurements are adopted.[7] However, contrary to the claims of Qwest, not all of these commenting parties are competitors of the BOCs that are simply seeking a business advantage. Indeed, two of the more vocal proponents of the continuing need for BOC separate affiliate requirements and biennial audits are state commissions that have no bottom-line interest at stake, but rather are tasked with protecting end-users and ensuring competitive markets within their states.

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[6] *See e.g.*, Comments of Z-Tel Communications, Inc.; MCI Comments; and Comments of Sage Telecom, Inc.

[7] *See e.g.*, Comments of Sage Telecom, Inc.; Comments of AT&T Wireless Services, Inc.; and Comments of AT&T Corp.

The Texas PUC argues persuasively that SBC is still dominant and that separate affiliate requirements are absolutely necessary to detect and deter anticompetitive behavior.

> The Texas PUC believes that, although some progress has been made toward leveling the field, SBC Texas's continued dominance over local exchange and, importantly for this FNPRM, exchange access services still hinders the development of a fully competitive market, especially given the current status of the financial markets, competitive local exchange carriers (CLECs) access to capital, and the bankruptcy of many competitive carriers. ....
> At this point in time SBC Texas retains both the incentive and ability to discriminate against both local and interexchange competitors and to engage in anti-competitive behavior. ... Following the sunset of section 272 requirements, without appropriate regulation, the Texas PUC and the FCC would lose their ability to ensure that SBC Texas complies with its obligation to provide nondiscriminatory access to the local exchange and exchange access markets that it controls.
> Though the safeguards contained in section 272(e)(1) and (3) do offer some assurance that SBC Texas will be required to provide nondiscriminatory access to bottleneck local facilities, those provisions do not offer any means to verify that access is indeed provided on a nondiscriminatory basis.[Citation omitted.] Without requirements in place that require SBC Texas to provide in-0region interexchange services via a separate corporate division or – at a bare minimum – to maintain separate books of account, neither the FCC nor this Commission will have the ability to discern whether SBC Texas is indeed meeting the nondiscrimination requirements.[8]

Likewise, the Missouri PSC noted that it has recently declared SBC to be dominant in the exchange access market and notes that SBC has paid over $2.7 million in penalties to CLECs and $1.4 million to the Missouri Treasury for performance measurement failures under the Missouri 271 Agreement, which expires March 6, 2005. Consequently:

[8] Comments of the Public Utility Commission of Texas, pp. 2-3.

> The MoPSC asserts that without the biennial audit process anticipated in Section 272, there is no way to detect and deter discrimination and anti-competitive behavior. Therefore, the MoPSC suggests the Section 272 separate affiliate safeguards be extended for at least one year beyond the current three-year sunset period, via rule or order as anticipated by Section 272(f).[9]

While both the Missouri and Texas commissions focused on SBC, the ample record evidence in this proceeding demonstrates that the other RBOCs have the same dominant status as SBC, as well as the same ability and incentives to use that dominance for anticompetitive purposes.

The Commission also sought comment on the classification of independent ILEC in-region interstate and interexchange service. Sprint argued that due to the independent ILECs' limited size and scope of service areas, as well as the dispersion of their service areas, independent ILECs do not have the same ability as a BOC to adversely impact in-region interstate and international telecommunication services. Accordingly, Sprint argued that the requirement for a separate affiliate is no longer necessary in order to classify independent ILECs' in-region interstate and international services non-dominant. While Sprint noted that the separate affiliate requirement is not been nearly as burdensome as claimed by some of the BOCs, it is, in the case of the independent ILECs, still an unnecessary regulatory burden.

AT&T, while not agreeing with Sprint as to the need for a separate affiliate for independent ILECs, clearly agrees with Sprint that independent ILECs are substantially different than the BOCs and pose much less of a threat to competition.

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[9] Comments of the Public Service Commission of the State of Missouri at p. 8.

> First, and most importantly, independent LECs are geographically dispersed with relatively small service areas and customer bases. Thus, as the D.C. Circuit explained in rejecting the BOCs' claim that section 271 was an unlawful bill of attainder because Congress subjected the BOCs to stricter regulation than the independent LECs, independent LECs simply do not have the same ability to harm long distance competition as the BOCs. Independent LECs originate relatively few calls and almost all independent LECs' customers' long distance calls will terminate on another carrier's network, which greatly reduces the ability of any independent LEC to cost-price squeeze large regional and national long distance carriers.[10]

The comments filed in this proceeding demonstrate that the BOCs continue to be dominant in the local telephone exchange and exchange access markets, and have the consequent ability and willingness to adversely impact the long distance market. Nevertheless, Sprint believes that if stringent safeguards are put in place, the BOC provision of in-region interstate and international long distance services should be classified as non-dominant. These safeguards consist of the continuation of the separate affiliate and biennial audit requirements of Section 272. In addition, the Commission must order nation-wide performance measurements and enforcement plans for both UNEs and special access.

However, the comments also demonstrate that the independent ILECs pose little, if any, anticompetitive threat. Accordingly, independent ILEC in-region interstate and

[10] Comments of AT&T Corp. at p. 75.

international telecommunication services should be classified as non-dominant without the continuation of the current separate affiliate requirement.

Respectfully submitted,

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