

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

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**In the Matter of**

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

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) **WC Docket No. 03-228**  
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**REPLY COMMENTS OF SPRINT CORPORATION**

On behalf of its Incumbent Local Exchange Carrier ("ILEC"), competitive LEC ("CLEC")/long distance, and wireless divisions, Sprint Corporation respectfully replies to comments filed on December 10, 2003 in response to the Notice of Proposed Rulemaking in the above-captioned proceeding (FCC 03-228.)

The RBOCs' and USTA's comments uniformly claim that the OI&M safeguards and the prohibition of joint ownership of facilities, land, and buildings are not required under Section 272(b)(1) – and indeed that they should never have been adopted in the first place. They assert, without support, that the prohibitions are unnecessary to prevent RBOC discrimination and cost misallocation, and they point to a number of statutory and regulatory provisions -- such as the price cap regime, explicit discrimination prohibitions, and affiliate transaction rules -- that they purport conveniently remove the RBOCs' natural incentive to commit such abuses and/or somehow prevent the RBOC from committing such abuses. None of these RBOC claims are new or novel, and each has been thoroughly refuted in the comments filed in this and numerous prior proceedings,

particularly Sprint's comments and replies in response to Verizon's OI&M petition and in the Section 272 Sunset Proceeding.<sup>1</sup> Sprint need not repeat those arguments here.

However, AT&T presents an additional and compelling argument, which shows that the Commission cannot lawfully modify or eliminate the Section 272(b)(1) OI&M safeguards or the prohibitions of joint ownership of facilities, land, and buildings. AT&T rightly points to the D.C. Circuit's ASCENT decision<sup>2</sup> as showing that "having just concluded that it lacks authority to forbear from the OI&M requirements, it would unlawfully 'circumvent[] the statutory scheme' for the Commission to eliminate those requirements in this rulemaking proceeding."<sup>3</sup>

Indeed, ASCENT presents facts strikingly similar to the instant proceeding. There, the Commission had acknowledged that it could not forbear from Section 251(c) obligations because such obligations had not been fully implemented. 47 U.S.C. § 160(d). Instead, the Commission attempted to relieve SBC's advanced services affiliate from Section 251(c) obligations by ruling that the affiliate was not a "successor or

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<sup>1</sup> See, e.g., Sprint's Comments filed December 10, 2003 in this proceeding and Sprint's comments and reply comments from the following proceedings: 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 Sept. 9 and 24, 2002); 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 (filed June 30 and July 28, 2003); New Verizon Petition Requesting Forbearance from Application of Section 271, CC Docket No. 01-338 (filed Nov. 17 and 26, 2003); and Petition for Forbearance of the Verizon Tel. Cos. Pursuant to 47 U.S.C. Section 160(c), CC Docket No. 01-338 (filed Sept. 3 and 18, 2002).

<sup>2</sup> Association of Communications Enterprises, Inc. v. Federal Communications Commission, 235 F.3d 662 (D.C. Cir. 2001).

<sup>3</sup> AT&T Comments at pp. 29-30.

assign” of the ILEC under Section 251(h). The Court held that this was something the Commission could not lawfully do.

Appellant’s primary argument is that the Commission’s order is simply a device to accomplish indirectly what the statute clearly forbids: the Commission’s exercise of forbearance authority over an ILEC’s provision of advanced services. ...

...

We think appellant’s argument is a powerful one. Although the Commission has not explicitly invoked forbearance authority (in direct violation of § 10), to allow an ILEC to sideslip § 251(c)’s requirements by simply offering telecommunications services through a wholly owned affiliate seems to us a circumvention of the statutory scheme. ...

...

Whether one concludes that the Commission has actually forbore or whether its interpretation of “successor or assign” is unreasonable, the conclusion is the same: The Commission’s interpretation of the Act’s structure is unreasonable.<sup>4</sup>

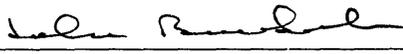
ASCENT makes clear that the Commission, having just determined (and correctly) that it cannot legally forbear from applying the OI&M prohibition<sup>5</sup>, cannot circumvent that legal conclusion through a change to its statutory interpretation of Section 272(b)(1). The same applies to the prohibition of joint ownership of facilities, land, and buildings. The Commission has found that it is also are required by Section 272(b)(1), and, accordingly, they cannot lawfully be subject to forbearance at this time.

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<sup>4</sup> ASCENT at pp. 665-67.

<sup>5</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. 960149, FCC 03-271, Memorandum Opinion and Order (rel. Nov. 4, 2003).

Respectfully submitted,  
SPRINT CORPORATION

By 

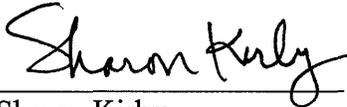
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December 22, 2003

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments, filed by Sprint Corporation in WC Docket No. 03-228, was sent by First Class Mail, postage prepaid, and/or electronic mail on this the 22nd day of December, 2003 as follows:

  
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