ATTACHMENT 2

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Extension of Section 272 Obligations Of Southwestern Bell Telephone Co. In The State of Texas	)	**WC Docket No. 02-112**

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 May 12, 2003.

SBC claims that *AT&T's Petition*[1] wrongly tries to distinguish SBC's situation in Texas from Verizon's situation in New York. For example, SBC claims:

> And as was the case with Verizon, SBC's section 272 biennial audit, conducted by an independent auditor and overseen by federal and state regulators, showed that SBC was in material compliance with section 272 safeguards and had not discriminated or engaged in cross subsidization in any way.[2]

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[1] *Extension of Section 272 Obligations of Southwestern Bell Telephone Co. in the State of Texas*, Petition of AT&T Corp., Docket No. WC 02-112, filed Apr. 10, 2003 ("*AT&T's Petition*").

[2] Comments of SBC Communications Inc., filed May 12, 2003, at p. 2 ("*SBC's Comments*"), citing SBC Reply Comments in CC Docket No. 96-150, at pp. 9-14 (Apr. 15, 2003) (*"Biennial Audit Reply Comments"*).

SBC's reliance on its own self-serving comments in the Biennial Audit Proceeding is disingenuous and lacking any factual foundation.

In fact, the Commission's review of SBC's first Biennial Audit in Texas is not complete. The Commission has not concluded that the audit demonstrates compliance with section 272 or any absence of discrimination and cross subsidization. However, the Texas PUC has completed its review of the audit report and, as Sprint pointed out in its comments in this proceeding,[3] the Texas PUC found so many deficiencies that:

> [a]fter reviewing the final audit report of the first full year's Section 272 activities, the Texas PUC finds itself unable to determine whether SBC has met all the requirements regarding the interactions between itself and its Section 272 affiliates. ...Flaws with the current audit should be rectified before the audit report is considered complete and comprehensive.[4]

In light of the incomplete nature of SWBT's first Biennial Audit Proceeding for Texas and in light of the serious concerns about that audit raised by the Texas PUC, it would be improper to allow the section 272 safeguards to sunset until, at least, the audit process is complete and has been found to demonstrate SWBT's compliance with its section 272 obligations.

SBC also claims that AT&T is wrong in attempting to distinguish Texas from New York on the basis of CLECs being less successful in Texas than in New York in garnering market share. SBC goes so far as to state:

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[3] Comments of Sprint Corporation, filed May 12, 2003, ("*Sprint's Comments*") at pp. 14-18.

[4] Comments of the Public Utility Commission of Texas, CC Docket No. 96-150, at p. 3 (Jan. 30, 2003) ("*Biennial Audit Comments*").

> Indeed, notwithstanding AT&T's claim to the contrary, CLECs in SBC's service area in Texas have won more than twenty percent of the lines in that state, and their market share is *growing*, not shrinking. More to the point, the Commission has never established a market share test for section 272 sunset, ...[5]

Again, SBC is short on facts. As pointed out by Sprint and by the Texas Attorney General in their comments in this proceeding, CLEC market share in Texas is not growing:

> The Texas Public Utility commission's report, *Scope of Competition in Telecommunications Markets of Texas* (January 2003), reflects that facilities-based competition has never really developed in Texas. *Scope of Competition* at 20-22. <u>The report also reflects a recent loss of market share by competitive carriers in Texas</u>. *Scope of Competition* at 20.[6]

SBC is also wrong to claim that AT&T points to the CLECs' flagging market share in Texas because there is a need for a market share test for section 272 sunset. Rather, AT&T's point (as was the point of all of the commenters in this proceeding except for SBC and Verizon) is that SBC's continuing and growing dominant market share in Texas demonstrates the need for continued section 272 safeguards as envisioned by Congress and the Commission. Rather than arguing for some bright line market share test for section 272 sunset, *AT&T's Petition* and the commenters' market share arguments are succinctly stated by the Texas Attorney General as follows:

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[5] *SBC's Comments* at p. 3. *See also,* Comments of Verizon, WC Docket No. 02-112, filed May 12, 2003, at pp. 4-5.

[6] Comments of the Office of the Attorney General of the State of Texas on the Petition of AT&T to Extend the Section 272 Obligations of Southwestern Bell Telephone Co. in the State of Texas, CC Docket No. WC 02-112, filed May 12, 2003 ("*Texas AG Comments*") at p. 6. *See also Sprint's Comments* at p. 7 (emphasis supplied).

> 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....[7]

SBC makes light of the complaints in *AT&T's Petition* of alleged Act violations by SBC and SWBT. While denying any wrong-doing, SBC goes on to argue:

> In order for structural separation to be an appropriate response to allegations of misconduct, it must be shown, at a minimum, that structural separation would be an effective and appropriate check against the conduct claimed. AT&T does not even purport to make that showing, nor could it, frankly, since the violations it alleges ostensibly took place notwithstanding the application of structural separation.[8]

That SBC can so cavalierly dismiss the demonstration of cost misallocation and discrimination by SBC contained in *AT&T's Petition*[9] is, to say the least, disconcerting.

However, what is just as critical is that SBC ignores that the Biennial Audit is a section 272 safeguard, in addition to the structural separation requirement, and that the section 272 safeguards have dual functions. Not only are they to help prevent abuse but, critically, to detect and punish abuse as the federal and state regulators have in the numerous instances cited by *AT&T's Petition* and *Sprint's Comments*. Indeed, as the Texas Attorney General's office explained, it has been this "monitoring of market behavior" made possible by the section 272 safeguards that makes it so critical that they not be allowed to sunset prematurely.[10] The reason is simple, as AT&T explained:

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[7] *Texas AG Comments* at pp. 3-4.
[8] *SBC's Comments* at p. 9.
[9] *AT&T's Petition* at pp. 14-19.
[10] *See* note 7 *supra*.

> The section 272 structural, accounting and nondiscrimination safeguards are targeted to detect and prevent such market power abuses and thereby to "ensure that competitors of the BOCs' [long distance] affiliate have 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."[11]

It is the monitoring of market behavior, and reacting to bad behavior, that ultimately should lead to an end of market abuses and a local market that is fully open to competition. Without the tools to monitor misconduct, particularly the section 272 safeguards, there is no reason to believe that SBC will police itself. The record before the Commission establishes an "institutional" pattern of "anticompetitive conduct" by SWBT and SBC, which "clearly indicates the kind of harm to which the interexchange market ... will be exposed if the Section 272 separate subsidiary requirements are lifted."[12]

Commenting in support of SBC, Verizon claims that the Commission can ignore market power, and argues that lack of it "is not prerequisite to sunset of the section 272 requirements."[13] The Commission has an acknowledged obligation under the statute to open markets and to protect and promote the development of competition through structural and non-structural safeguards, which is precisely why Congress gave it the authority and responsibility to extend section 272 safeguards beyond the three-year

[11] *AT&T's Petition* at p. 3, citing *Non-Accounting Safeguards Order*, CC Docket No. 96-149, 11 FCC Rcd 21905 (1996) at ¶ 13 (emphasis supplied).
[12] *Birch Telecom's Comments* at ii, 3.
[13] *Verizon's Comments* at 5.

minimum. The few remaining requirements of sections 201, 202, and 272(e)(1) and (3) will be too little to protect the public interest, especially given the inability to audit or monitor SWBT's certain noncompliance.

Likewise, Verizon's assertion that there was a "congressional scheme" to limit section 272 requirements to three years because of their "impose[d] inefficiencies" is contrary to the Commission's previous statements and policy.[14] SBC offers no substantiation for its "estimates" of the costs created by these inefficiencies, nor shows that they are unreasonable given its demonstrated abuse of competitors and the conclusion by the Texas PUC and the Texas Attorney General's office that the section 272 safeguards remain necessary in Texas.[15]

In conclusion, SWBT remains overwhelmingly dominant in the local exchange and exchange access markets in Texas, and SBC has the incentive and has demonstrated the ability to commit competitive abuses. The section 272 safeguards therefore are as important today as they were when SWBT first received in-state long distance authority

[14] *Verizon's Comments at 5.*

[15] The BOCs have provided nothing but inflated *estimates* of "savings" they might claim if the Commission were to sunset section 272 requirements, or if it ignored the requirements of section 272(b)(1) and dissolved the restriction on shared operations, installation, and maintenance functions. On May 12, 2003 – nearly a year after the Sunset docket was opened and nine months after petitioning for forbearance of the OI&M safeguard – Verizon submitted information, under protective order, purporting to substantiate its OI&M estimates. Verizon's eleventh-hour submission is not representative of SWBT and cannot be relied upon without independent verification, in light of the BOCs' failure to successfully complete a section 272 audit.

and must not be allowed to sunset at this time. The Commission should act promptly to grant AT&T's Petition.

Respectfully submitted,

SPRINT CORPORATION

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May 19, 2003