

ATTACHMENT 4

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

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

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 BELL SOUTH ENTER INTO A \$1.4 MILLION CONSENT DECREE 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 sunset⁶ 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.

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-region 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.

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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July 28, 2003