Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Section 272(f)(1) Sunset of the BOC	)	WC Docket No. 02-112
Separate Affiliate and Related Requirements	)	

COMMENTS OF SBC COMMUNICATIONS INC.

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SBC Communications Inc., on behalf of itself and its subsidiaries (collectively referred to as "SBC"), hereby submits its Comments in opposition to AT&T's Petition for Extension of SBC's Section 272 Obligations in the States of Kansas and Oklahoma.

I. INTRODUCTION AND SUMMARY

AT&T's petition to extend the section 272 obligations for SBC in Kansas and Oklahoma -- despite clear Congressional intent that those provisions "sunset" three years after entry – should be seen for what it is: a transparent attempt by AT&T to raise the costs of its rivals by shackling them with burdensome, unnecessary regulations to which AT&T itself is not subject. The Commission has already permitted Verizon-New York's and SBC-Texas' section 272 obligations to sunset by operation of law and has deferred all broader policy issues to its *Sunset FNPRM* proceeding. SBC's sunset in Kansas and Oklahoma raises no new issues and should be similarly decided. Indeed, AT&T does not even attempt to distinguish this case from New York and Texas. It simply regurgitates its stock arguments about the BOCs' alleged local market power and their consequent ability and incentive to discriminate. These arguments were rejected for New York and Texas and should be dismissed here. AT&T's petition should be denied and SBC's section 272 obligations should be allowed to sunset by operation of law.

II. THE COMMISSION SHOULD FOLLOW ITS PRECEDENT IN NEW YORK AND TEXAS.

The Commission has already concluded that, by their own terms, the structural separation requirements of section 272 (with limited exceptions) sunset, on a state-by-state basis, three years after the BOC has received section 271 authority in a state unless the Commission sees cause to intervene. Based on that conclusion, the Commission held that Verizon and SBC were no longer subject to section 272 requirements in New York and Texas, respectively. Because Kansas and Oklahoma are in no relevant way distinguishable from New York and Texas, that conclusion applies equally here. As in New York and Texas, SBC was granted section 271 authority in Kansas and Oklahoma three years ago after submitting to rigorous testing and state and federal analysis to prove that the market was "irreversibly open" to competition. Likewise, SBC's compliance with section 271 requirements in Kansas and Oklahoma was subject to a compliance review by the FCC Enforcement Bureau and did not result in any adverse Commission action.[1] And, as was the case with Texas, SBC's section 272 biennial audit, conducted by an independent auditor and overseen by federal and state regulators, showed that SBC was substantially in compliance with the section 272 safeguards in Kansas and Oklahoma and had not discriminated or engaged in cross subsidization in any way.[2] Thus, there is simply no rational basis for treating Kansas or Oklahoma differently from New York and Texas for section 272 sunset purposes. Because the Commission has given effect to the section 272 sunset requirements in New York and Texas, it must do the same here.

III. STRUCTURAL SEPARATION REQUIREMENTS ARE NOT NECESSARY .

As it did in New York and Texas, AT&T trots out its usual flim-flam regarding discrimination and cross-subsidization, but AT&T's petition raises no new issues. AT&T simply recycles its arguments that structural separation remains necessary to prevent discrimination and cross-subsidization. These boilerplate arguments did not persuade the Commission to retain the structural separation requirements in New York or Texas and they should not do so here.

AT&T's primary argument, as in the *Sunset NPRM* and in the *Texas Sunset*, is that the section 272 safeguards should be extended because SBC retains what AT&T characterizes as

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[1] The Commission initiated a one year review to determine the BOC's compliance with section 271 conditions after obtaining in-region entry. The review included all SBC-Southwest states, including Kansas and Oklahoma, and the Commission has taken no action since then indicating non-compliance.

[2] *See,* SBC Reply Comments in CC Docket No. 96-150, at 9-14 (Apr. 15, 2003) (*Biennial Audit Reply Comments*).

"overwhelming market power" in local markets in Kansas and Oklahoma.[3] According to AT&T, structural separation therefore remains necessary to prevent SBC from engaging in anti-competitive discrimination and cross-subsidization.

SBC has previously responded to this argument in the *Sunset NPRM* and *Texas Sunset* proceedings, and, instead of repeating the specifics of those arguments here, refers the Commission thereto.[4] As SBC explained in detail there, AT&T's claim that SBC maintains overwhelming market power in Kansas and Oklahoma can no longer be squared with the facts, and its claim that structural separation is a necessary or cost-effective way to prevent discrimination or cross-subsidization has, in any event, been rejected by the Commission and the courts repeatedly over the course of almost two decades.

First, notwithstanding AT&T's inaccurate portrait of competition in Kansas and Oklahoma, the fact is that significant and growing intramodal and intermodal local competition exists in both states today. SBC estimates that wireline competitors in its service area in Kansas already have achieved over a 28 percent market share, while in Oklahoma they have achieved an 18 percent market share.[5] Moreover, and, again, notwithstanding AT&T's unfortunate tendency to misstate the facts, CLEC market shares have been steadily *increasing* while SBC's access lines and revenues have been decreasing.[6] According to the Commission's most recent

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[3] *See*, AT&T Petition in WC Docket 02-112, at 8 (Dec. 8, 2003) (*AT&T Petition*).

[4] SBC incorporates by reference its comments and reply comments in the *Sunset NPRM* and *Texas Sunset* proceedings. *See* SBC Comments in WC Docket No. 02-112, Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements (Aug. 5, 2002) (*Sunset NPRM Comments*). *See also* SBC Reply Comments in WC Docket No. 02-112, Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements (Aug. 26, 2002) (*Sunset NPRM Reply Comments*). *See also* SBC Comments in WC Docket No. 02-112, Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements (May 12, 2003) (*Texas Sunset Comments*). *See also* SBC Reply Comments in WC Docket No. 02-112, Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements (May 19, 2003) (*Texas Sunset Reply Comments*).

[5] These estimates are based on CLEC numbers that SBC identified from its E911 records; a conservative methodology that the FCC has accepted as reasonable in its section 271 applications. *See*, e.g., Evaluation of the U.S. Department of Justice in CC Docket No. 01-194, p.4, n.8 (Sept. 24, 2001) (*SBC Arkansas-Missouri 271 Application*) ("Estimated market share will vary depending on the methodology used to estimate facilities-based lines. The Department relied on entries in the E-911 database.")

[6] AT&T also argues that the facilities-based competition in Kansas and Oklahoma is low. *See AT&T Petition* at 5-7. This is the same argument that AT&T made in New York and Texas and that was rejected both times. In any event,

competition report – a report that significantly understates competition – CLECs were serving 84,823 local customers in June 2000 and that number increased to 258,312 customers in December 2002.[7] This represents an increase of over 200 percent. Similarly, in Oklahoma, SBC's estimates show that CLEC access lines increased 80 percent over two years. And these numbers do not even account for rapidly accelerating intermodal competition from wireless, cable companies, and other providers of VoIP services. Thus, the local markets in both these states are clearly open; indeed, the Commission's grant of section 271 authority in Kansas and Oklahoma was expressly premised on its finding that those markets are *irreversibly* open to competition.[8]

Because of the significant and growing competition in local services in these states – particularly for those customers within the state whose retail services are not priced below cost – SBC does not have the market power attributed to it by AT&T. But, even if it did, that would in no way demonstrate the need for structural separation requirements. The Commission quite properly rejected the notion that market power requires structural separation shortly after divestiture, when it lifted *Computer II* structural separation requirements for the provision of customer premises equipment and enhanced services by AT&T and the BOCs. Significantly, the Commission found structural separation to be unnecessary notwithstanding that AT&T and the BOCs were dominant in their respective markets; indeed, the BOCs not only were dominant, but retained franchised monopolies for local service. Moreover, the Commission had not yet

even according to Commission estimates, the numbers are not low. In Kansas, about 18 percent of CLECs serve the local market using some combination of their own facilities. And in Oklahoma, more than half the CLECs – 55 percent - use their own facilities. *See Local Telephone Competition: Status as of December 31, 2002*, Industry Analysis and Technology Division, Wireline Competition Bureau, June 2003, at Table 10: CLEC-Reported End-User Switched Access Lines by State (Rel. June 12, 2003).

[7] *See Id.* at Table 8: End-User Switched Access Lines Service by Reporting Competitive Local Exchange Carriers.

[8] Although CLEC market shares in Oklahoma are lower than in New York and Texas, this is irrelevant. Indeed, any comparison of market shares of different states would be nonsensical given, *inter alia,* the unique characteristics of each state, the differing state regulations and pricing structures imposed by the state commissions, and the different business plans of CLECs across the country.

implemented price caps, which it has repeatedly acknowledged significantly removes any ability of a carrier to engage in cross-subsidization.

The Commission's determination that structural separation was "over-kill" – even then – turned out to be correct. The lifting of *Computer II* structural separation requirements did not result in widespread discrimination or cross-subsidization, as had been predicted in self-serving fashion by the competitors of AT&T and the BOCs. To the contrary, competition for CPE and enhanced services flourished.

Since structural separation was not necessary – even for the provision of competitive services by franchised monopolies operating under rate of return regulation it should go without saying that structural separation is not appropriate or necessary today in Kansas or Oklahoma or any other market for that matter. To the contrary, market forces, real world realities, and a host of regulatory reforms and obligations provide ample protection against discrimination and cross-subsidization.

As an initial matter, alleged concerns of discrimination ignore the real world. In an increasingly competitive telecommunications landscape, carriers such as SBC, must build upon customer goodwill, not destroy it. Any attempt by a BOC to provide inferior service to other interexchange carriers – thereby creating inferior service for its local exchange customers – is more likely to alienate local exchange customers than win new interexchange customers. A customer dissatisfied with SBC's local service not only can switch her landline phone to a CLEC, a cable company or, as will be increasingly likely in the near-term, to a provider of low-cost VoIP service, but also abandon her landline connection altogether in favor of wireless service. Moreover, even if that customer maintained her SBC wireline local service, she has multiple choices of long-distance providers. There is thus no basis upon which SBC could assume that discrimination would result in a mass migration of customers to SBC long-distance. Indeed, that notion is nothing but a canard. In order for discrimination to affect customer decisions in the marketplace, that discrimination would have to be evident to customers. It should go without saying that if customers themselves are aware of discrimination, interexchange carriers would also be aware of the discrimination, and they would surely bring it to the attention of appropriate regulatory authorities. It would thus be irrational for any BOC to think that it could derive an advantage in the marketplace through discrimination.[9] The only likely result of discrimination that had the potential to affect customer choices would be fines and forfeitures and perhaps even treble damages.

Further, the Commission itself has recognized the numerous safeguards that will continue to exist even after the structural separation requirements sunset. In the *Non-Accounting Safeguards Order,* for example, it noted that:

> A number of safeguards will be available to prevent discriminatory behavior by BOCs after the separate affiliate requirements of section 272 cease to apply. As we explain in detail above, section 251(c)(5), section 251(g), and the Commission's rules imposing network disclosure and equal access requirements oblige BOCs to provide exchange access on a nondiscriminatory basis. In addition, intraLATA services and facilities must be provided on a nondiscriminatory basis under section 251(c)(3) and the provision of interLATA services and facilities will continue to be governed by the nondiscrimination provisions of sections 201 and 202 of the Act. In addition, as local competition develops, it will provide a check on the BOCs' discriminatory behavior because competitors of the BOC affiliates will be able to turn to other carriers for local exchange service and exchange access. [10]

[9] AT&T argues that SBC's above argument is flawed because it ignores that BOCs can engage in price discrimination without alienating customers and that BOCs can provide superior service to their long distance affiliate while providing minimally acceptable service to all other unaffiliated carriers. This argument completely misses the mark. The point is that because discrimination could only succeed in conferring market power on the BOC long distance affiliate if large numbers of customers adjusted their purchases as a result of it, any attempt at discrimination – price or non-price - is bound to fail. The reason is simple: if large numbers of customers are aware that a carrier's service is deficient in one or more respects, so too will be the carrier. If that deficiency is a result of discrimination, the carrier will promptly bring it to the attention of regulators. Indeed, discrimination would likely be obvious to carriers long before it is obvious to consumers because carriers monitor performance provided to them by the BOCs. Thus, while discrimination may be theoretically possible, in the real world, it is not a significant risk.

[10] *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended,* CC Docket No. 96-149, *First Report and Order and Further Notice of Proposed Rulemaking*, at ¶ 271, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*).

The Commission did not mention section 272(e)(1) and (3), but those requirements, as well, will remain in effect after the sunset.[11]

Nor does sunset raise any risk of cross subsidization. As SBC has explained earlier, BOCs are subject to price cap regulation at both the state and federal level. Price cap regulation severs the link between regulated costs and prices, thereby eliminating any risk of cross subsidization.[12] Any legitimate concerns about cross-subsidization that may have existed years ago have been fully addressed by price caps.

Finally, the Commission has numerous enforcement options after the sunset. It may invoke section 271(d) if it believes the BOC has ceased to meet the conditions of section 271 approval. It can also impose fines and forfeitures under sections 206-209 of the Act. Private parties also may initiate complaint proceedings and seek damages under section 208. Given the extensive protections in the Act, there is absolutely no justification for extension of the structural separation requirements beyond the period contemplated by Congress.

A. Claims of SBC's Non-Compliance Are Baseless, And, In Any Event, Irrelevant.

In an attempt to shore up its claims regarding discrimination and cross-subsidization, AT&T offers its usual litany of unsubstantiated, half-baked allegations that SBC is violating the Act in one fashion or another. SBC has responded to – and the Commission has rightly rejected – all these allegations in the *Texas Sunset* and in numerous related proceedings and SBC will, therefore, keep its comments brief.[13] The important point, however, is that none of these claims – even if true – provides any basis for extending section 272 requirements. In order for structural separation to be an appropriate response to allegations of misconduct, it must be shown, at a

[11] In the *Non-Accounting Safeguards Order*, the Commission determined that §§ 272(e)(2) and (4) will apply only if the BOC retains its separate affiliate after the sunset. If the BOC integrates its operations, however, these requirements will cease to apply.

[12] *See* SBC Comments in WC Docket No. 02-112, at 13 (Aug. 5, 2002) (*Sunset NPRM Comments*).

[13] SBC incorporates by reference its comments and reply comments in the *Sunset NPRM* and *Texas Sunset* proceedings, *see Supra.* at *f.* 4; and its reply comments in the Section 272 Biennial Audit proceeding (SBC Reply Comments in CC Docket No. 96-150, (Apr. 15, 2003)).

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. In any event, as shown below, these allegations are one more instance in which AT&T presents facts in a misleading and inaccurate fashion.

One such claim by AT&T is its charge that its pending price squeeze complaint in Texas is evidence of discriminatory conduct by SBC. This charge is baseless. As an initial matter, this issue is specific to Texas, and is completely irrelevant to the Kansas and Oklahoma sunset, which is the focus of this proceeding. Further, although AT&T has filed a complaint in Texas, there has been no finding in favor of AT&T in that matter. Another claim by AT&T is that by recently settling a Commission investigation on the reporting of its exchange access performance measures, SBC has effectively conceded that it is "discriminating" against competitors. AT&T completely misrepresents the nature of that settlement. The settlement related to data discrepancies – which SBC identified on its own and corrected -- in performance measure data submitted pursuant to the SBC/Ameritech Merger. The settlement had nothing to do with SBC's actual performance, which was exemplary.

AT&T also claims that SBC's Biennial Audit Report evidences SBC's discriminatory behavior. As SBC has explained in its *Biennial Audit Reply Comments*, the report provides overwhelming evidence that SBC was in substantial compliance with section 272 requirements. Although AT&T argues that the audit was not sufficiently thorough,[14] the extensive detail in the reports and the extensive oversight provided by state and federal regulators refute this assertion. Moreover, although AT&T asserts that the few discrepancies noted by the auditors demonstrate noncompliance, the reports show that the auditors found no evidence of either discrimination or cross subsidization.[15] Furthermore, to date, no regulatory commission, state or federal, has taken

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[14] *See AT&T Petition* at 6.

[15] The nature of the audit, which was an "Agreed-Upon Procedures" or (AUP) engagement instead of an "attestation" audit, required the auditors to note every single issue regardless of its materiality. These minor discrepancies would not even have been noted in an attestation audit.

any action with respect to the results of SBC's first biennial audit including simply follow-up inquiries or data requests.

AT&T nonetheless points to certain special access performance measures reported in the Biennial Audit and claims that the data show that SBC discriminates against its competitors in the provision of special access services. At the outset, SBC notes that although these measures have been available to carriers for a number of years, AT&T has never asked for the measures or filed a formal complaint with this Commission about SBC's performance. SBC provides these services to all carriers – affiliated and unaffiliated – under tariff and uses the same processes and procedures for ordering and provisioning of services for all, thereby ensuring parity treatment. Further, as SBC explained in detail in its *Biennial Audit Reply Comments*, AT&T's reliance on the performance data to show discrimination is misplaced. While the performance measures show that for some months and some measures the BOC performed better for its own affiliates, they also show that for other months it provided better service to non-affiliates. These data do not show any pattern of discrimination whatsoever. Moreover, the data do not provide an accurate picture of the BOC's performance. For instance, the measures for "customer desired due date" do not take into account that customers may request due dates that are longer or shorter than the BOC's standard due dates, or may extend originally requested installation dates based on changes in their plans or capabilities. Such differences in behavior can greatly skew the data. Additionally, any comparison between the data for the BOC's affiliates with that for non-affiliates is meaningless because the volume of orders that SBC received from its affiliates was much lower than the volumes from other carriers like AT&T and MCI.[16] Thus, AT&T's arguments are completely off the mark.

Based on these absurd allegations, which are not only misleading, but have no relation to the need for structural separation, AT&T argues that the Commission should extend the section

[16] Where the volumes are comparable, the data shows that SBC provided superior service to non-affiliates than to its affiliates. *See Biennial Audit Reply Comments* at 14.

272 safeguards. The Commission rightly ignored AT&T's rhetoric in the *Texas Sunset* proceeding and it should do so here as well.

IV. AT&T COMPLETELY IGNORES THE SUBSTANTIAL COSTS OF STRUCTURAL SEPARATION.

The Commission has already concluded that the substantial costs of structural separation are unnecessary and that anticompetitive conduct can be deterred through nonstructural mechanisms. For example, in *Computer III*, the Commission determined that structural separation requirements impose substantial costs resulting from the duplication of facilities and personnel, limitations on joint marketing, deprivation of economies of scope, and increased transaction and production costs.[17] Further, the Commission has already declined to extend the Act's default sunset in section 272 for BOC information services.[18] Similarly, in the *Reverse Directory Services* order, the Wireline Competition Bureau waived the CEI requirements for BellSouth's and Verizon's provision of interLATA information services because it found*, inter-alia*, that granting the petitions will be more efficient than requiring the BOCs to use separate personnel, provisioning, and databases, and that the cost of compliance with the CEI requirements would outweigh any potential benefits of compliance.[19] And, as discussed above, just recently the Commission allowed Verizon's and SBC's section 272 obligations for New York and Texas, respectively, to sunset by operation of law.[20]

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[17] *In the Matter of Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements,* CC Docket Nos. 95-20 and 98-10*, Further Notice of Proposed Rulemaking*, at ¶¶ 47 and 56, 13 FCC Rcd 6040 (1998) (*Computer III FNPRM)*.

[18] *Request for Extension of Sunset Date of the Structural, Nondiscrimination and Other Behavioral Safeguards Governing Bell Operating Company Provision of In-Region, InterLATA Information Services,* CC Docket 96-149, Order, ¶¶ 3-4, 15 FCC Rcd 3267, (2000). "…based on the record before us, we find that there are several safeguards that will limit adequately BOCs' ability to discriminate against non-affiliated information service providers even after Section 272(f)(2) takes effect. For example, there are non-structural safeguards that will limit the BOCs ability to discriminate against non-affiliated information service providers."

[19] *BellSouth Petition for Waiver of the Computer III Comparably Efficient Interconnection Requirements and Petition of the Verizon Telephone Companies for Waiver of Comparably Efficient Interconnection Requirements to Provide Reverse Directory Assistance*, CC Dockets 01-288 and 02-17*, Memorandum Opinion and Order*, 17 FCC Rcd 13881 (2002).

[20] *See* FCC Public Notice, "Section 272 Sunsets for Verizon in New York State By Operation of Law on December 23, 2002, Pursuant to Section 272(f)(1)" (Dec. 23. 2002).

AT&T argues that the BOCs have not substantiated their claims that compliance with the section 272 safeguards is particularly costly or that the costs outweigh the benefits.[21] Here again AT&T is grasping at straws. As noted, the Commission itself has long acknowledged that the costs of structural separation requirements exceed the benefits. Moreover, SBC and others have shown that there are virtually no benefits to section 272 structural separation requirements and that these requirements impose significant costs and inefficiencies. SBC estimates that it would save between 20 percent and 75 percent on different functions if it were able to integrate its local and long distance operations.[22] Verizon estimates that it has spent $314 million "solely to meet the Section 272 separation requirements" and will spend another $550 million through 2006.[23] The costs of complying with these separate affiliate rules divert capital from productive investments and development of innovative services and, ultimately, end up harming consumers.

AT&T also argues that because the Commission's orders provide BOCs and their section 272 affiliates with numerous opportunities to share services and to jointly market services, the Commission has already substantially reduced the BOCs' cost of compliance with the section 272 requirements.[24] AT&T's argument is flawed for two reasons. First, it ignores the significant costs that BOCs *continue* to incur as a result of structural separation, despite Commission relief on sharing of administrative and other services. That the Commission has permitted BOCs to share some services with their long distance affiliates does not mean that other structural separation requirements should stay in place despite clear congressional intent to the contrary. For example, as the BOCs have detailed in separate proceedings, BOCs and their customers

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[21] *See AT&T Petition* at 19.

[22] *See* SBC's Sunset NPRM Reply Comments at 16.

[23] *See* Verizon Sunset NPRM Comments at 10 (footnote omitted).

[24] *See* AT&T Petition at 14-15. Of course, AT&T fails to mention that, true to form, it has objected to SBC's sharing of even those permissible services.

suffer tremendous burdens as a result of the OI&M restrictions promulgated under section 272(b)(1), which restrictions SBC hopes the Commission will eliminate shortly.[25]

Second, this argument ignores other inefficiencies and competitive disadvantages that the section 272 requirements impose on the BOCs. Thus, for instance, section 272 requires the BOC to share, on a nondiscriminatory basis, any BOC information that it shares with its section 272 affiliates. This rule imposes enormous inefficiencies on SBC because it has to create artificial walls between its BOC and section 272 employees to avoid any inadvertent sharing of proprietary information. It also hampers SBC's competitive offerings in the market because the information sharing restrictions prevent SBC from taking advantage of the enormous resources within its own company to develop better and more suitable product offerings for its customers. Of course, BOCs' or BOC competitors are not saddled with similar restrictions.

Similarly, because this Commission has – incorrectly – subjected many joint-marketing activities to the nondiscrimination provisions of section 272, BOCs have been severely restricted in their offerings of competitive bundled services. As SBC has briefed in other proceedings, one of the cornerstones of the Communications Act is that consumers can receive bundled local, long distance, broadband, and other services from one source. Although Congress specifically envisioned that BOCs, like their competitors, could jointly market their local and long distance services without any nondiscrimination obligations, this Commission took an overly formalistic and restrictive view of the definition of "joint marketing" and excluded from this definition joint product planning and development or post sales customer care activities. As a result, BOCs today cannot engage in product planning and designing or in providing post sale customer care to their long distance affiliates without a corresponding obligation to provide the same services to their competitors. These restrictions, forcing BOCs to either keep at "arms-length" from their long distance companies or to share sensitive information and services with their competitors, place them at a severe disadvantage in today's competitive market.

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[25] In the Matter of Section 272(b)(1)'s "Operate Independently" Requirement for Section 272 Affiliates, WC Docket No. 03-228, FCC 03-272, *Notice of Proposed Rulemaking*, rel. Nov. 4, 2003 (*OI&M NPRM*).

AT&T is well aware of the costs and inefficiencies imposed by section 272 rules; in fact, that is precisely why it wants these requirements to be extended. Carriers like AT&T that can integrate their local and long distance operations and offer competitive bundled packages have an advantage over the BOCs, most critically in the provision of complex services to large business customers. It is imperative that the Commission allow SBC's section 272 requirements to sunset and force AT&T to compete in a free and open marketplace instead of relying on regulatory constraints for an artificial competitive advantage.

V. CONCLUSION

The Commission has already permitted Verizon-New York's and SBC-Texas' section 272 obligations to sunset by operation of law and has deferred all broader policy issues to its *Sunset NPRM* proceeding. SBC's Kansas and Oklahoma sunset raises no new issues and, in fact, AT&T does not even attempt to argue that it does. Likewise, AT&T's boiler plate arguments on discrimination and cross subsidization provide no basis for a change of course. On the other hand, as the Commission has long recognized, the significant costs of structural separation clearly outweigh its benefits. Therefore, AT&T's petition should be denied and SBC's section 272 obligations should be allowed to sunset by operation of law, as contemplated by Congress.

Respectfully Submitted,

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