

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

In the Matter of)	
)	
Review of Section 251 Unbundling)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange)	
Carriers)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the Telecommunications Act of)	
1996)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	
)	

**SPRINT CORPORATION'S
OPPOSITION TO PETITION FOR WAIVER**

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March 19, 2004

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On behalf of its Incumbent Local Exchange Carrier ("ILEC"), competitive LEC ("CLEC")/long distance, and wireless operating subsidiaries, Sprint Corporation opposes BellSouth Telecommunications, Inc.'s Petition for Waiver, filed February 11, 2004 in these dockets ("Petition").¹

I. INTRODUCTION AND SUMMARY

BellSouth's Petition is overreaching and cannot fairly be granted. BellSouth seeks what it inappropriately calls a "limited and temporary waiver" of the Commission's rules governing commingling and enhanced extended links ("EELs"), adopted in the

¹ See Public Notice DA 04-404 (March 4, 2004). BellSouth's Petition also attached an ex parte communication previously filed in this docket on January 13, 2004.

Triennial Review Order,² because the renegotiation and amendment of some interconnection agreements have proceeded faster than state impairment review proceedings. Petition at 1. BellSouth tries to justify its request by citing “capital costs” that it suggests are necessitated by provisioning unbundled network elements (“UNEs”) in compliance with these rules. *Id.* at 4. BellSouth contends that state impairment reviews will lead to the de-listing of many transport routes and high-capacity loops. *Id.* at 3-4. Therefore, it seeks this delay in complying with these unbundling obligations to avoid incurring supposed “stranded investment” and “inefficient operational processes” that ostensibly would happen if and when these routes or loops are removed from unbundling. *Id.* at 4 & Attach. slide 2.

Sprint believes BellSouth’s petition should be dismissed without prejudice, or deferred, as premature in light of the uncertainty created by the D.C. Circuit panel’s decision in USTA II. If the Commission chooses to address BellSouth’s Petition on the merits, however, it should be denied.

The Petition fails to meet the stringent standard for a waiver of Commission rules. The assumptions underlying BellSouth’s request do not withstand scrutiny; examining them closely shows that it is not in the public interest. BellSouth assumes (at 4) that EELs and special access circuits are configured differently, when they need not be. It

² Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking (rel. Aug. 21, 2003) (“Triennial Review Order”), affirmed in part and vacated and remanded in part by USTA v. FCC, D.C. Cir. No. 00-1012 (Mar. 2, 2004) (“USTA II”). The court ruling is currently stayed.

assumes (id.) that additional equipment is necessary, when it is neither necessary nor even desirable. It assumes that its predictions about de-listing of particular transport routes and high-capacity loops will prove correct (id. at 3-4), when they are unrealistic. It assumes that the Commission intended ILECs to enjoy a "planned nine-month transition period" (id. at 3), when the Triennial Review Order actually directed all parties to negotiate promptly. And it assumes that a lack of Ordering and Billing Forum standards for implementing these UNEs justifies delay (id. at Attach. slide 12), when OBF standards have never been mandatory or a precondition for access to UNEs. Even leaving aside the obvious anticompetitive impacts of such a waiver, these facts show that it is not in the public interest.

Beyond this, however, the Petition is grossly overbroad. Its arguments focus principally on EELs, but its request would also block commingling, including arrangements not subject to state impairment review and unaffected by the USTA II ruling, assuming its stay is not extended.³ The Petition is not limited to those routes and loops for which BellSouth optimistically predicts de-listing. It does not make any provision for retroactive adjustment of pricing to reflect the outcome of proceedings, even though the capital costs claimed by BellSouth would result from its own provisioning choice and would not be the fault of requesting carriers.

³ The USTA II panel did not strike down the Triennial Review Order's lifting of the general prohibition against commingling (§§ 579-84) but did strike down its distinction between qualifying and non-qualifying services (§§ 132-153) and therefore remanded its decision that competing carriers are not entitled to unbundled EELs for the provision of long distance service (§§ 590-611). USTA II, slip op. at 55-59, 62.

II. BELLSOUTH'S PETITION SHOULD BE DENIED, OR DEFERRED, AS PREMATURE.

In light of uncertainty surrounding the recent USTA II decision by a panel of the D.C. Circuit, BellSouth's Petition should be either dismissed without prejudice or held in abeyance. That court ruling poses the prospect of vacatur and remand of unbundled high-capacity transport, which could frustrate access to EELs in the likely event that the Commission does not complete a remand order by the time the court's mandate issues.

The USTA II decision is presently stayed for at least 60 days from its issuance. At this time, it is not clear whether a longer stay may be granted, but a majority of the commissioners have said they vigorously support that move. It is also not clear yet when the Commission may issue a remand order affecting ILEC obligations or what other action the Commission and state commissions may take. It would thus appear inappropriate and premature to act on the Petition at this time, under these circumstances. If the Commission nevertheless determines to address the merits of BellSouth's Petition, it should deny it.

III. ON THE MERITS, BELLSOUTH'S PETITION SHOULD BE DENIED.

A. The Petition fails to meet the standards for waiver.

The standard for grant of a waiver of the Commission's rules is very stringent.⁴ An agency does not have "unbridled discretion" to grant waivers of its rules.⁵ Rather, "a waiver is appropriate only if special circumstances warrant a deviation from the general

⁴ See 47 C.F.R. § 1.3.

⁵ WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

rule and such a deviation will serve the public interest.”⁶ BellSouth's Petition fails this standard.

BellSouth seeks license to “hold” requests for EELs and commingling -- hindering local competition and protecting its special access revenues -- by delaying for months its compliance with the Commission's updated rules governing EELs and commingling. The Petition contends that this delay would offer “substantial public benefits,” principally by allowing BellSouth to avoid costs which might arise from “flipping” circuits between special access and EELs and back to special access, where impairment reviews remove selected transport routes and high-capacity loops from unbundling. Petition at 7.

BellSouth asserts, without any real evidence, that “[i]n certain circumstances,” there could be “significant stranded capital” -- in the form of “capital investment required per circuit [ranging] from \$145 for a DS0 two-wire circuit to \$668 for a DS3 circuit.” Petition at 4. Based on its “preliminary analysis,” BellSouth suggests that these supposed costs could exceed \$15 million -- if every one of its many assumptions proves correct. Petition at Attach. slide 6.

BellSouth's Petition is not in the public interest. It goes virtually without saying that the Petition is anticompetitive. For this reason alone, the Commission should be hesitant to grant a waiver to delay compliance with unbundling requirements. Examining the assumptions contained in the Petition, however, show that BellSouth cannot meet the stringent standards for waiver anyway.

⁶ Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

B. The Petition is based on improper assumptions.

As the nation's largest non-BOC ILEC, Sprint is very familiar with provisioning of special access and unbundled elements, including EELs.⁷ Sprint has assessed the impact of the requirement to commingle on its operations, and it believes BellSouth's Petition is at best based on improper assumptions, or at worst misleads how EELs are, or should be, provisioned.

1. BellSouth's assumption that EELs and special access are necessarily provisioned and configured differently is false.

First, BellSouth's Petition assumes that EELs and special access circuits are provisioned differently in their physical configurations. Sprint believes this is, or certainly should be, a false assumption.

Sprint LTD does not provision EELs and special access circuits differently. Sprint LTD generally uses the same equipment for both UNEs and special access. For example, it typically shares the same DACS⁸ and DSX⁹ panels for both UNEs and special access. In other words, it is not necessary to maintain separate equipment for UNE-supported traffic and special access traffic.¹⁰ There is no need for capital investment to

⁷ Sprint's Local Telecommunications Division companies ("Sprint LTD") have service territories in 18 states and serve nearly 8 million access lines.

⁸ Digital Cross Connect System or Digital Access Cross Connect System.

⁹ Digital Cross Connect.

¹⁰ BellSouth's January 13, 2004 ex parte submission includes circuit diagrams and lists purported equipment involved. Petition at 4 n.9 and Attach. slides 9-11. To this opposition, Sprint attaches its own circuit diagrams. They reflect, in simplified presentation format comparable to BellSouth's, how Sprint and, to the best of its knowledge, many other ILECs fulfill these requirements without deploying separate equipment or isolated "point-to-point" circuits.

“delineate the UNE portion of the circuit from the special access portion.” Petition at Attach. slide 4.

Sprint LTD is a much smaller ILEC than BellSouth, with noncontiguous and principally rural service territories. Although Sprint is investing heavily in upgrading its local network, one would expect BellSouth to have, if anything, more advanced and efficient plant – on average – than Sprint’s current plant. In seeking yet another exemption from its unbundling obligations elsewhere in this docket, BellSouth has highlighted the advanced, fiber-rich character of its network.¹¹ Certainly, it makes little sense to install separate, duplicate facilities or to provide an isolated “point-to-point circuit consisting of multiple same capacity facilities.” Petition at Attach. slide 6. There is no need to do so. The classification of the customer’s use, or how the facility is ordered, does not require separate facilities, and it would be pointlessly inefficient to provision it in that fashion.¹² If BellSouth wants to provision in this way for its own internal management, there is nothing that prohibits it from doing so. But it would be its own business decision to incur those costs. It cannot fairly use its own choice to be needlessly inefficient and expensive in managing its circuits to justify delaying or frustrating competitors’ access to UNEs.

Furthermore, if a circuit is working today and all that a requesting carrier seeks is the conversion of one element (such as a loop) to a UNE, this request should not require

¹¹ See, e.g., BellSouth Petition for Clarification and/or Partial Reconsideration, CC Docket Nos. 01-338, 96-98, 98-147 (filed Oct. 2, 2003); BellSouth Ex Parte Letter, CC Docket No. 01-338 (filed Sept. 30, 2003) (drawing attention to BellSouth’s extensive investment in fiber, even in residential loops).

¹² Use of separate facilities could also lead to discrimination in service quality between special access and UNEs, a practice the Commission would not want to promote.

any physical changes whatsoever. It need involve only a billing change, and that should be no barrier to implementing what the rule allows and a requesting carrier wishes to utilize. Circuits themselves do not need to be "swapped back and forth" (Petition at 4), there need be no capital investment stranded, and there need be no delay in "ordering of new high-capacity EELs" (*id.*) until any impairment proceedings are completed.

2. BellSouth's assumptions about the necessity to add equipment and potential stranded investment are invalid.

Second, BellSouth's claims regarding the necessity to add equipment and the potential for stranded investment are simply not valid. BellSouth asserts that "special access circuits" must be "converted to high-capacity UNE circuits," which might "subsequently have to be taken down or converted to special access circuits." Petition at 4. This, BellSouth asserts, means that "in some cases" there could be "waste [of] resources swapping circuits back and forth between special access services and UNEs."

Id.

In fact, apart from the requirement that an EEL terminate in a collocation arrangement, UNE circuits and special access circuits are, or may reasonably be expected to be, one and the same. Compare Sprint's diagrams 1 and 3, and 2 and 6. Sprint LTD places equipment, typically DSX panels, between each leg of a circuit to facilitate testing and trouble isolation. For example, as shown in Sprint's diagram 1, Sprint usually installs DSX panels between a loop or channel termination and dedicated transport. Thus, the individual components are already physically distinct, without requiring separate or duplicate facilities. Although this need not and should not be a mandatory

requirement for ILECs, as a practical matter it is an efficient and rational configuration – and unbundling policies are premised on efficient and rational provisioning.

Notably, BellSouth does not represent that the “certain circumstances” it describes are typical, and it certainly does not assert that they are necessary. For example, BellSouth says that “where current special access circuits consist of multiple legs at the same capacity level, and a carrier converts fewer than all the legs to UNEs, BellSouth anticipates that it would have to invest in equipment to delineate the UNE portion of the circuit from the special access portion.” Petition at 4. Actually, it is increasingly uncommon that “special access circuits consist of multiple legs at the same capacity level.” Instead, traffic is multiplexed to a higher level for efficiency and lower costs.¹³

3. BellSouth's assumptions about lack of impairment on particular loops and transport routes are grossly exaggerated.

Third, BellSouth's claims about the number of transport routes or high-capacity loops that will be removed from the UNE lists, pursuant to more granular impairment reviews, are plainly exaggerated and self-serving. Sprint is actively involved in Triennial Review Order impairment proceedings in several BellSouth states.¹⁴ Based on its own experience, Sprint believes that the great majority of the routes and loops put forth by BellSouth will not meet the triggers. In particular, Sprint believes BellSouth is grossly

¹³ An exception is in those low density rural areas still served only by twin-lead copper, a circumstance unlikely where high-capacity loop and transport options are found.

¹⁴ Sprint has been particularly active in BellSouth proceedings in Florida, a state in which Sprint has both ILEC and CLEC operations.

overstating the transport routes, and buildings served, by competitive high-capacity service providers.

Surely the Commission cannot simply take BellSouth's word that so many transport routes and high-capacity loops will be soon removed from unbundling. Regardless, as Sprint has already explained, the USTA II decision, though currently stayed, upheld commingling and struck down EELs local service eligibility criteria. Furthermore, Sprint's diagram numbers 4 and 5 – which was not modeled by BellSouth in its attachment – shows a common, viable network arrangement for carriers seeking to compete with ILECs even if transport for a particular circuit (diagram 4) or loop (diagram 5) is removed from the UNE list. BellSouth's Petition would block such arrangements.

4. BellSouth's assumption of a nine-month "transition period" for ILECs is mistaken.

Fourth, BellSouth assumes that by giving states a nine-month deadline to complete impairment reviews, the Commission also intended to entitle ILECs to avoid any costs of provisioning EELs – and presumably the resulting competitive pressures -- during that same supposed "transition period."

The Triennial Review Order does not support BellSouth's claim. The Commission declined the requests of commenters to establish a specific "transition period" for negotiating new or amended interconnection agreements. Triennial Review Order at ¶ 701. The Commission did not "anticipate" (Petition at 7), much less promise, any minimum transition period for ILECs. It noted "that the practical effect of [the] negotiation of new terms *may be* that parties are provided a transition period." Triennial

Review Order at ¶ 701 (emphasis added). Rather, “the nine-month period” is merely the “default timetable for modification of interconnection agreements that are silent concerning change of law and/or transition timing.” *Id.* at ¶ 703. Indeed, the Triennial Review Order made clear the Commission sought to avoid “undue delay in commencing the renegotiation of interconnection provisions” -- by any party. *Id.*

Even assuming that “[l]arge volumes of conversion orders are likely well before that [nine-month] period” is completed (Petition at Attach. slide 2) – and assuming that uncertainty caused by the USTA II decision does not chill competitive requests – the fact that “interconnection agreements are updated faster than anticipated” (*id.*) is good news. It is not something to be lamented or discouraged.

5. BellSouth’s assumption that OBF standards warrant delay is also mistaken.

Fifth, BellSouth assumes that the lack of Ordering and Billing Forum (“OBF”) standards for implementation of the EELs requirements justifies delay. Petition at Attach. slide 12. Sprint supports the Alliance for Telecommunications Industry Solutions and its efforts, but the Commission must remember that OBF standards are not mandatory for carriers. Nor has the Commission ever found them to be a necessary precondition to ILEC implementation of any UNE rules.

ILECs have selectively implemented the eligibility requirements for EELs and commingling, and will continue to do so as such requirements may change in light of USTA II, any continuation of the current stay of that decision, any Commission order on remand, or any potential Supreme Court ruling. Therefore, any reliance on the OBF as a baseline or universal solution is misguided. The lack of OBF standards cannot justify

delaying BellSouth's implementation of, and compliance with, its obligations to provision EELs and commingled facilities. It cannot justify BellSouth's request for waiver.

IV. THE PETITION IS OVERBROAD.

Even apart from its shortcoming on the merits, BellSouth's Petition is grossly overbroad. This should caution the Commission about the risks associated with any such waiver request.

BellSouth appears to focus on EEL scenarios. But it defines the Triennial Review Order's "EEL requirements" as including "commingling and service eligibility requirements," without limiting the scope of its request to EELs. Petition at 1. Commingling, however, can encompass more than just EELs. Commingling refers to any combination of one or more UNEs and a wholesale service, including resold services secured under section 251(c)(4). Triennial Review Order at ¶¶ 579, 584. For example, presume that a requesting carrier seeks to order UNE loops into collocation cages. Even if a given loop is removed from the UNE list pursuant to a non-impairment finding, the requesting carrier nevertheless should ordinarily be able to change to special access using a simple records conversion. BellSouth's claim that the circuits have to be provisioned differently would introduce unnecessary costs and would expose end users to needless risk of a service outage during the conversion. Similarly, where a requesting carrier requests special access transport into an end office and to connect it to a DS1 UNE loop, there can be no justification for BellSouth delaying its processing of that request. To requesting carriers, BellSouth's request hardly seems a "limited waiver." Petition at 1. It

could block commingling arrangements not subject to state impairment review and even those entirely unaffected by the USTA II ruling, assuming its stay is not extended.

The Petition also is not limited to those routes or high-capacity loops for which BellSouth optimistically predicts de-listing. On other routes, BellSouth's competitors would be impaired, but nevertheless forced to wait additional months to secure access to UNEs – a result plainly inconsistent with the Act. The Petition also makes no allowance for retroactive adjustment of pricing to reflect the outcome of impairment reviews in which BellSouth's predictions of de-listing prove mistaken.

Sprint believes BellSouth's Petition cannot properly be granted. At the very least, however, any consideration of it would need to be narrowly limited to EELs, rather than to commingling arrangements generally. It would need to be limited to contested transport routes or high-capacity loops. It would need to be conditioned on adjustment of pricing where impairment is sustained, retroactive to the date of the customer's request. The fact that BellSouth has not sought to limit the scope of its request in these ways simply underscores its overreaching character.

V. CONCLUSION

BellSouth's petition is premature at this time, and it fails to meet the stringent standard for waiver. Its request is certainly not in the public interest. BellSouth's rationale is based entirely on improper assumptions. In particular, the supposed inefficiencies cited by BellSouth would be of its own choice -- not the fault of requesting carriers and not something the Commission should be rewarding. BellSouth's Petition is overbroad and plainly anticompetitive. It should be denied.

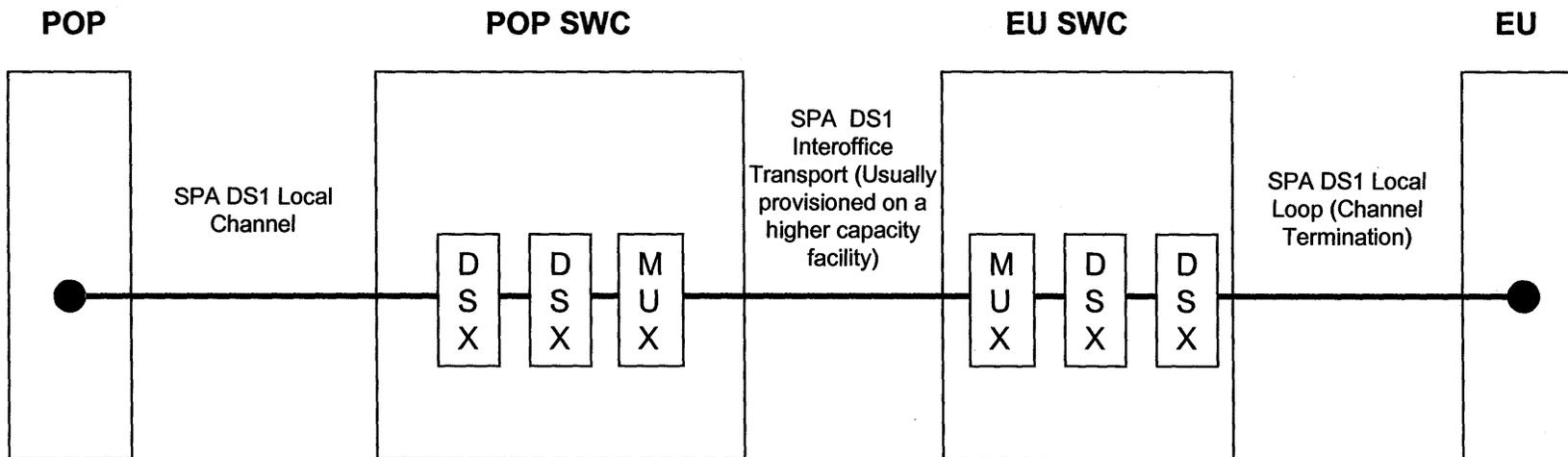
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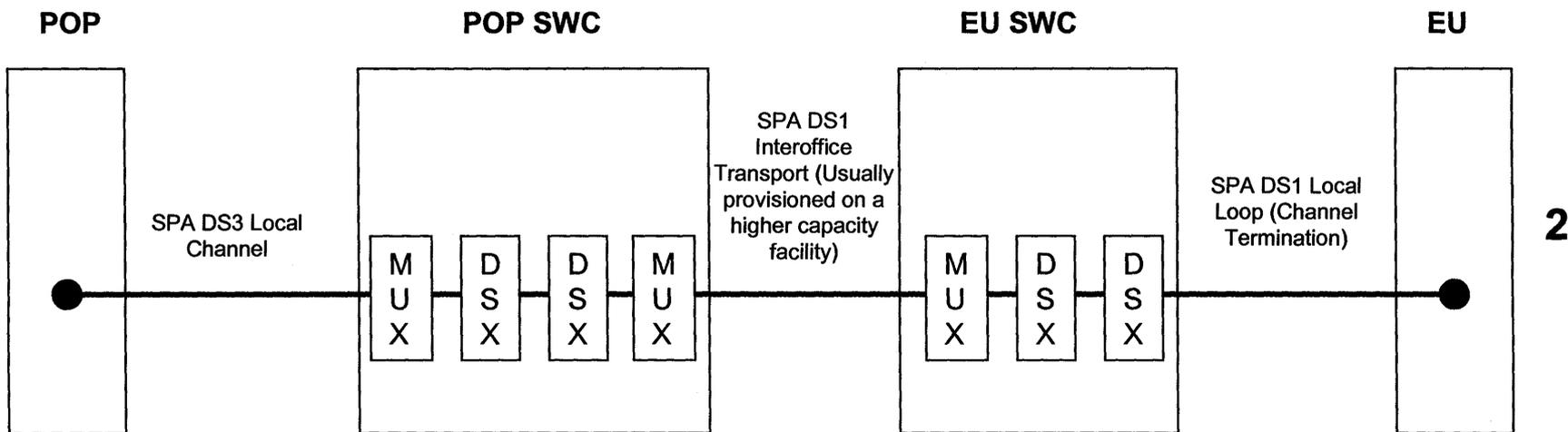
March 19, 2004



Scenario 1 – A special access DS1 circuit from customer premises to POP. While the carrier only purchases a DS1, it will generally be provisioned over a higher capacity interoffice facility. This could also be true of the facility between the POP and POP SWC, which is shown as a DS1.

- POP = Point of Presence
- SWC = Serving Wire Center
- SPA = Special Access
- EU = End User
- DSX = Digital Cross Connect (Jack)
- MUX = Multiplexer (usually deployed with a Fiber Optic Terminal)





Scenario 2 – A special access DS1 circuit from customer premises to POP. Identical to Scenario 1 except that the facility between the POP and POP SWC is a DS3.

POP = Point of Presence

SWC = Serving Wire Center

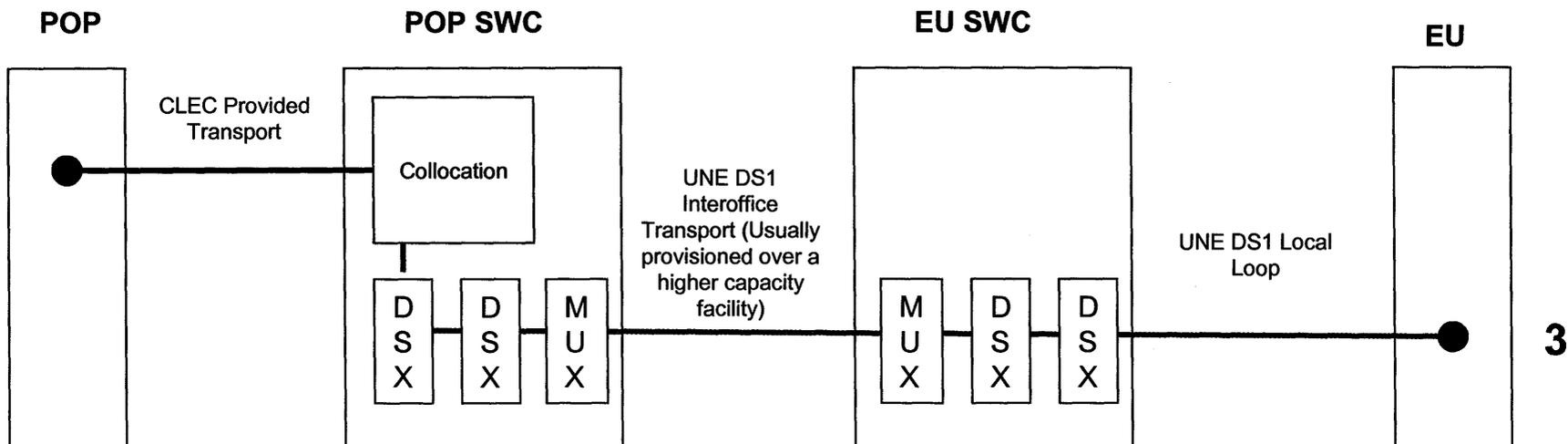
SPA = Special Access

E.U. = End User

DSX = Digital Cross Connect (Jack)

MUX = Multiplexer (usually deployed with a Fiber Optic Terminal)





3

Scenario 3 – A DS1 EEL from the customer premises to the collocation. The CLEC has self-provided transport to its collocation.

POP = Point of Presence

SWC = Serving Wire Center

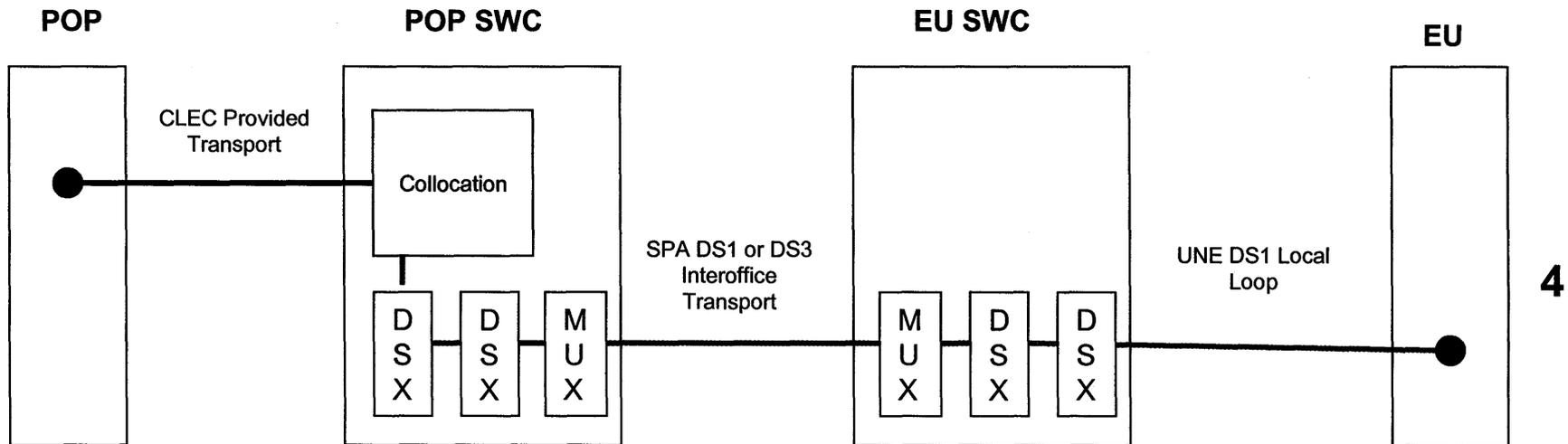
SPA = Special Access

EU = End User

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MUX = Multiplexer (usually deployed with a Fiber Optic Terminal)





Scenario 4 – A DS1 UNE loop commingled with DS1 or DS3 special access transport between the end user SWC and the POP SWC. This “commingled EEL” terminates in the collocation. The CLEC has self-provided transport to its collocation.

POP = Point of Presence

SWC = Serving Wire Center

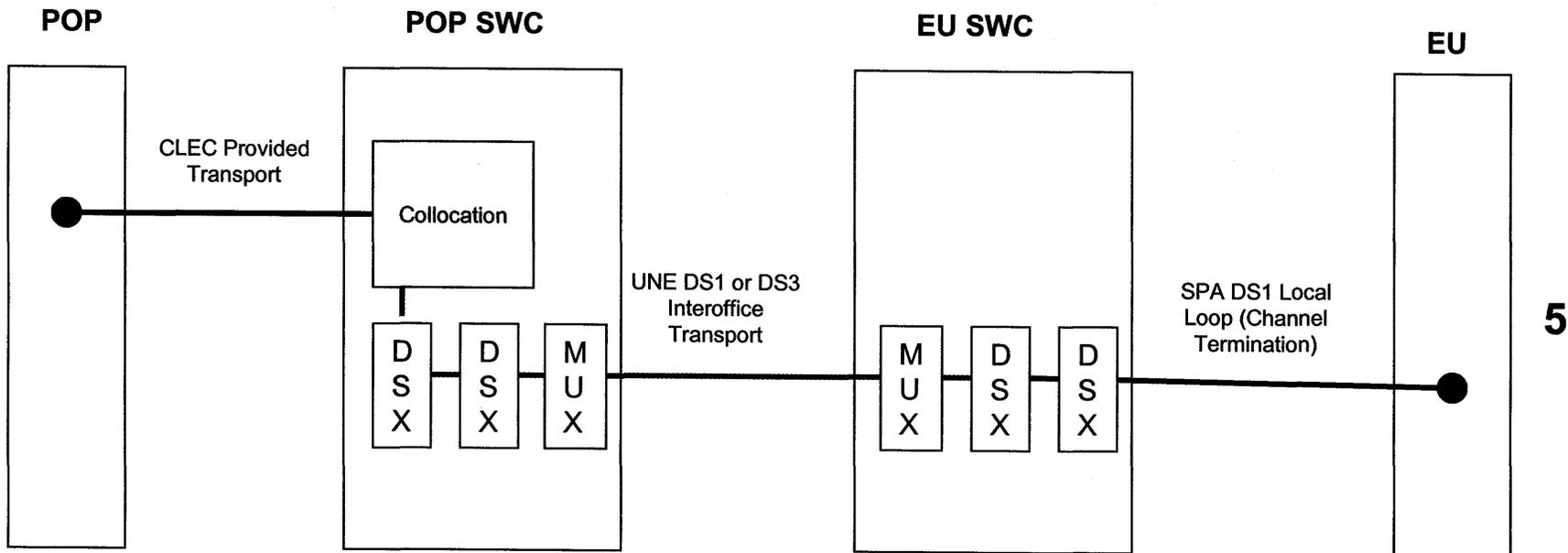
SPA = Special Access

EU = End User

DSX = Digital Cross Connect (Jack)

MUX = Multiplexer (usually deployed with a Fiber Optic Terminal)





Scenario 5 – DS1 special access loop commingled with DS1 or DS3 UNE transport between the end user SWC and the POP SWC. This “commingled EEL” terminates in the collocation. The CLEC has self-provided transport to its collocation.

POP = Point of Presence

SWC = Serving Wire Center

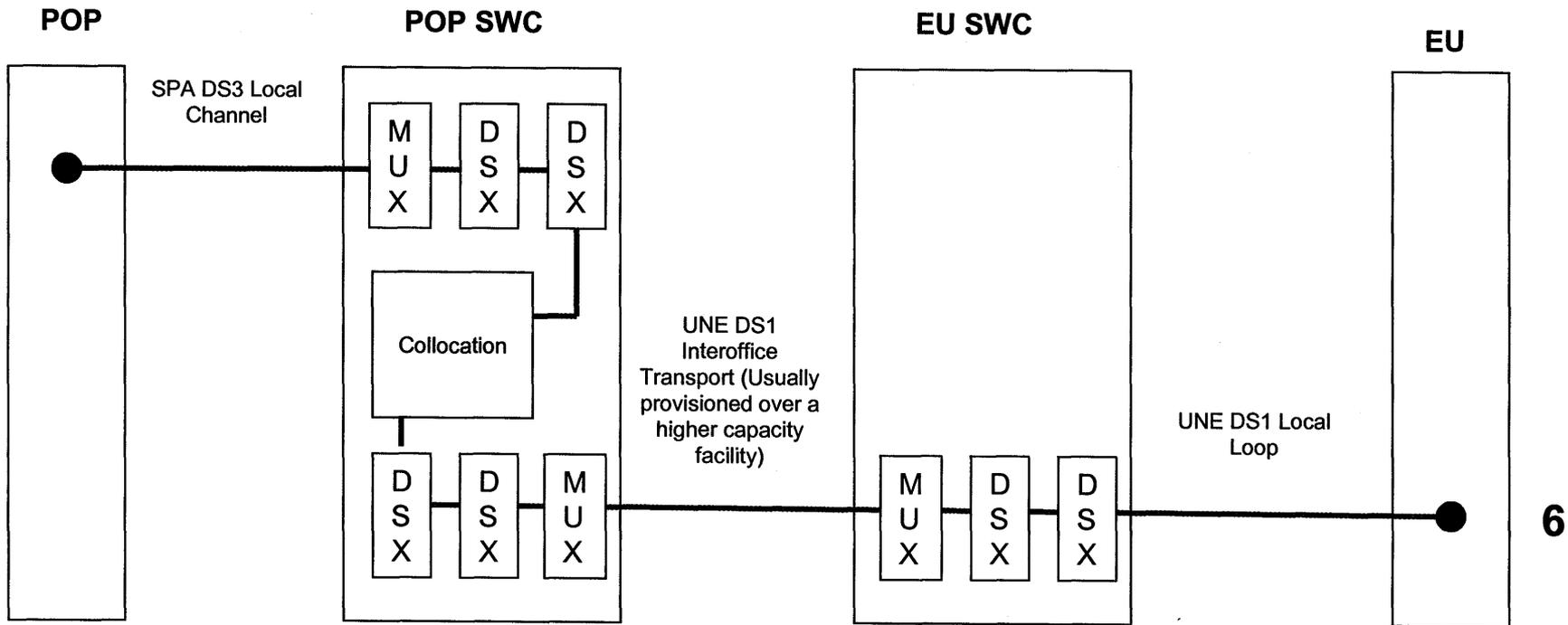
SPA = Special Access

EU = End User

DSX = Digital Cross Connect (Jack)

MUX = Multiplexer (usually deployed with a Fiber Optic Terminal)





6

Scenario 6 – A DS1 EEL from the end user customer premises to the collocation in the POP SWC. The EEL is commingled with special access between the POP and the POP SWC.

POP = Point of Presence

SWC = Serving Wire Center

SPA = Special Access

E.U. = End User

DSX = Digital Cross Connect (Jack)

MUX = Multiplexer (usually deployed with a Fiber Optic Terminal)



CERTIFICATE OF SERVICE

I hereby certify that copies of Sprint Corporation's Opposition to BellSouth's Petition for Waiver in CC Docket Nos. 01-338, 96-98, and 98-147 were sent by electronic mail or first class mail on this 19th day of March, 2004, as noted below.


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