

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

In the Matter of )  
 )  
Extension of Section 272 Obligations Of ) WC Docket No. 02-112  
Southwestern Bell Telephone Co. in the )  
States of Arkansas and Missouri )

**REPLY COMMENTS OF SBC COMMUNICATIONS INC.**

SBC Communications Inc., on behalf of itself and its subsidiaries (collectively referred to as SBC), hereby respectfully submits these reply comments in opposition to AT&T’s petition to extend SBC’s section 272 obligations in Arkansas and Missouri.

Sprint is the only party to file in support of AT&T’s petition, who simply confirms what SBC stated in its comments – AT&T’s petition raises no new issues. The Public Service Commission of Missouri (“MoPSC”) suggests a brief extension of the structural separations requirements based on a Missouri proceeding that examines intrastate pricing flexibility that, while important to SBC, is irrelevant to the instant proceeding. Neither Sprint’s nor the MoPSC’s comments provide any justification that warrants an extension of these requirements.<sup>1</sup> Accordingly, the Commission should follow its precedent and permit the 272 structural separation requirements to sunset by operation of law for Arkansas and Missouri.

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<sup>1</sup> As a threshold matter, Sprint’s comments should be disregarded in this proceeding. Sprint merely incorporated its comments and reply comments that were filed in the Commission’s 272 *Sunset NPRM Proceeding*. Sprint’s arguments are already being considered by the Commission and they should be addressed in that proceeding. Nevertheless, since SBC has previously responded to Sprint’s arguments in that context, SBC incorporates those comments by reference and attaches them for the Commission’s convenience. See SBC Reply Comments in WC Docket No. 02-112, Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements (July 28, 2003), attached hereto as Attachment A.

**I. The MoPSC's Recommendation Is Unwarranted And Contrary To Commission Precedent.**

The MoPSC recommends that the Commission extend the 272 structural separation requirements for Arkansas and Missouri so that the MoPSC can complete its review of competition in the state of Missouri.<sup>2</sup> Although the SBC Missouri Competitive Classification proceeding is extremely important to SBC, it is ultimately irrelevant to the FCC's decision to not extend the 272 requirements beyond the statutorily required period. In the SBC Missouri Competitive Classification proceeding, the MoPSC will examine competition in each telephone exchange where SBC Missouri is the incumbent local exchange carrier and will apply designated statutory criteria to determine whether SBC Missouri is entitled to freedom from price cap regulation and accordingly permitted to price its services using market-based factors. Obviously, the MoPSC's findings in that proceeding are of strategic importance to SBC, however, since there is no link between that proceeding and sunset of the 272 structural separations requirements, it would be inappropriate for the Commission to delay sunset until the MoPSC completes its examination.

As SBC stated in its comments, the Commission has not implemented a local market-share test when deciding not to extend the sunset of the section 272 structural separations requirements.<sup>3</sup> Furthermore, the Commission has not once in any of the past 272 sunset proceedings relied upon a state commission's assessment of effective competition in any market, let alone the entire state. Rather, the Commission through its actions, in the *Sunset Order* and its decisions to allow these requirements to sunset in seven states, has impliedly afforded substantial weight to the clear intent of Congress that sunset should occur by operation of law after three

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<sup>2</sup> Comments of the Public Service Commission of Missouri at p.4 ("MoPSC Comments"), referring to the Matter of the Second Investigation into the State of Competition in the Exchanges of Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, Case No. TO-2005-0035, filed July 30, 2004 ("SBC Missouri Competitive Classification proceeding").

<sup>3</sup> SBC Comments at pp. 3-4.

years.<sup>4</sup> The Commission's precedent in this regard is completely appropriate given the statutory construction of section 272(f)(1) and the applicable legislative history that do not in any way indicate that a finding of "effective competition" is required before the 272 requirements are permitted to sunset. As a result, the Commission should continue its approach and allow the 272 obligations to sunset for Arkansas and Missouri as well.

## **II. The 272 Structural Separation Requirements Are Not Necessary To Prevent Discrimination.**

The MoPSC cites to SBC's performance penalty payments resulting from the Missouri 271 Agreement ("M2A") and states that it "is concerned about potential discrimination beyond the sunset of section 272 and the expiration of the M2A absent a further investigation into the state of competition in Missouri"<sup>5</sup> as if to imply that sunset of the 272 structural separations requirements will impact the MoPSC's ability to monitor SBC's obligation to provide access to its local network. Evidently, the MoPSC misunderstands section 272. Section 272 governs BOC operations in the long distance market, not the local market. After sunset, state regulators retain the same authority over BOC local access as they have today.

The MoPSC is also wrong when it asserts that there will be no means to detect and deter discrimination after the 272 audit requirement sunsets.<sup>6</sup> To the contrary, in a post-sunset era,

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<sup>4</sup> Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, WC Docket No. 02-112, Memorandum Opinion and Order, at ¶12, 17 FCC Rcd 26869 (2002) ("*Sunset Order*"); See FCC Public Notices: "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); "Section 272 Sunsets for SBC in the State of Texas By Operation of Law on June 30, 2003, Pursuant to Section 272(f)(1)" (June 30, 2004); "Section 272 Sunsets for SBC in the States of Kansas and Oklahoma By Operation of Law on January 22, 2004, Pursuant to Section 272(f)(1)" (January 22, 2004); "Section 272 Sunsets for Verizon in the State of Massachusetts By Operation of Law on April 16, 2004, Pursuant to Section 272(f)(1)" (April 16, 2004); "Section 272 Sunsets for Verizon in the State of Connecticut By Operation of Law on July 20, 2004 Pursuant to Section 272(f)(1)" (July 20, 2004); "Section 272 Sunsets for Verizon in the State of Pennsylvania By Operation of Law on September 19, 2004, Pursuant to Section 272(f)(1)" (September 17, 2004).

<sup>5</sup> MoPSC Comments at p. 4.

<sup>6</sup> *Id.*

sufficient non-structural safeguards exist that protect against discrimination. For example, market forces, and a host of regulatory reforms and statutory obligations, including sections 201, 202, 251 and 272(e) of the Act, provide ample protection against discrimination.<sup>7</sup> And the ultimate disincentive is the Commission's authority to suspend or revoke long-distance authorization under section 271(d).

As evidenced by many recent proceedings, the Commission has relied on market forces as well as non-structural safeguards to ensure that the BOCs are not able to discriminate unlawfully against other carriers. For example, the Commission ordered the sunset of the 272 structural separations requirements for information services because it found that "there are several safeguards that will limit adequately BOCs ability to discriminate against non-affiliated information services providers."<sup>8</sup> Also, in the *Reverse Directory Services Order*, the Wireline Competition Bureau waived the comparably efficient interconnection ("CEI") requirements for BellSouth's and Verizon's provision of interLATA information services because it found that the cost of compliance with the CEI requirements would outweigh any potential benefits from compliance.<sup>9</sup> Finally, and of course, the most relevant precedent is the Commission's sunset of the 272 structural separations requirements in seven states, Connecticut, Kansas, Massachusetts, New York, Oklahoma, Pennsylvania, and Texas.<sup>10</sup> These proceedings demonstrate that the non-structural safeguards have proven successful in the past and will continue to be adequate safeguards for Arkansas and Missouri.

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<sup>7</sup> See SBC Comments at p. 7

<sup>8</sup> *Request for Extension of Sunset Date of the Structural, Nondiscrimination and Other Behavioral Safeguards Governing BOC Provision of In-Region, InterLATA Information Services, Order* in CC Docket 96-149, 15 FCC Rcd 3267, ¶ 3 (2000).

<sup>9</sup> See, *BellSouth Petition for Waiver of the Computer III Comparably Efficient Interconnection Requirements; Petition of the Verizon Telephone Companies for Waiver of Comparably Efficient Interconnection Requirements to Provide Reverse Directory Assistance, Memorandum Opinion and Order*, 17 FCC Rcd 13881 (2002).

<sup>10</sup> See *Supra* at f. 4.

### **III. Conclusion**

As demonstrated in SBC's comments, the Commission should deny AT&T's petition, follow its precedent and permit the structural separation requirements to sunset by operation of law for Arkansas and Missouri.

Respectfully Submitted,

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