

VI. QUALITY OF SERVICE

Southern Bell shall continue to monitor and measure service as provided in the Rules and Regulations of the Commission as may be amended from time to time.

VII. COMMISSION AUTHORITY

Nothing in this plan shall abrogate, limit or otherwise diminish the powers and duties of the Georgia Public Service Commission as established by the Constitution and statutes of this State. Under this plan, the Georgia Public Service Commission will continue to monitor Southern Bell's compliance with the terms of the plan, to resolve complaints and petitions by subscribers of Southern Bell's services and to monitor the quality of the basic services provided by Southern Bell.

VIII. EFFECTIVE DATE

This plan shall be effective as of July 1, 1994, or upon approval by the Commission whichever is later.

ATTACHMENT TO APPENDIX A

CATEGORIES OF SERVICES**1. Basic**

Includes those services required to provide flat rate basic local exchange service to residential and single-line business customers. Services in this category are:

- Flat rate residential basic local exchange services
- Flat rate single-line business local exchange service
- Basic service connection charges associated with the above services

2. Interconnection

Includes those services which provide access to Southern Bell's local exchange or toll network for the purpose of enabling another telecommunications provider to originate or terminate telecommunications services. Examples of services in this category are:

- Interconnection for mobile services
- Public telephone access service for CPE
- Sharing and resale of basic local exchange service
- Special access service
- Switched access service

3. Non-Basic

Includes all other services currently offered by Southern Bell which have not been classified as Basic or Interconnection. Examples of services in this category are:

- Custom calling services
- Directory assistance service
- ESSX® service
- Long distance services
- Measured and message local exchange service
- Multi-line business local exchange service
- Operator services
- Private line services
- Public telephone service
- Touchstar® services
- Touchtone service
- White pages directory listings

In the
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)
)
 Plaintiff,)
)
 v.) Civil No. 82-0192 (HHG)
 WESTERN ELECTRIC COMPANY, INC.)
 and AMERICAN TELEPHONE AND)
 TELEGRAPH COMPANY,)
)
 Defendants.)

COMMENTS ON THE MOTION
OF BELL ATLANTIC, BELLSOUTH, NYNEX
AND SOUTHWESTERN BELL TO VACATE THE DECREE

Nextel Communications, Inc. ("Nextel") hereby submits these comments to the Department of Justice in response to the order of the U.S. District Court on August 18, 1994, inviting comment on the Motion to Vacate the Decree submitted by Bell Atlantic Corporation, BellSouth Corporation, NYNEX Corporation, and Southwestern Bell Corporation (hereinafter "the Bell Companies" or "the BOCs").^{1/}

Nextel submits that the BOCs continue to control essential network bottlenecks and use them to forestall the introduction of substantial competition in the local

^{1/} Although Ameritech is not party to the motion, it previously filed its own motion with the Department seeking interexchange relief. Nextel previously filed comments with the FCC on Ameritech's motion. See Reply Comments of Nextel Communications, Inc., filed September 17, 1993 in the Petition for Rulemaking to Determine the Terms and Conditions Under Which Tier 1 LEC's Should be Permitted to Provide InterLATA Telecommunications Services, RM-8303.

telecommunications market despite existing regulations aimed at limiting anti-competitive behavior. Additionally, Nextel's own experience in the wireless market demonstrates that potential competition is not a sufficient predicate for lifting the Decree. Accordingly, vacating the Decree at this time could adversely affect the viability of future local loop competition.

Nextel holds Federal Communications Commission ("FCC" or "Commission") licenses for Specialized Mobile Radio ("SMR") systems in the nation's largest markets. Nextel conceptualized and is implementing Enhanced Specialized Mobile Radio ("ESMR") systems all in advanced digital mobile technology to offer a unique combination of cellular, dispatch, paging and data transmission services using a single handset with a single telephone number over a single integrated network.

Nextel has spent approximately \$1 billion to develop and implement advanced, wide-area ESMR services capable of offering the first real competition to the cellular duopoly. As a new entrant wireless competitor, Nextel advocates competition in lieu of regulation where markets are truly competitive. Unfortunately, this is not yet the case for the local wireline exchange.

Regardless of recent technical advancements by interexchange, wireless and local service providers, the BOCs continue to control access to essential local bottleneck facilities, telephone numbering and code assignments, and network functions and databases. This control permits the BOCs to

inhibit the development of present and future local services competitors -- which they have a powerful incentive to do, particularly when their affiliates provide competitive services such as Commercial Mobile Radio Services ("CMRS").

Despite the initiation of public policy initiatives aimed at reducing the scope of the BOC bottleneck or the degree of anti-competitive behavior, the BOCs' ability and incentive to use their networks to disadvantage new competitors has not been diminished or diluted. Although some competitors exist and compete on the fringes of the local telecommunications market, most are still nascent, operating in either limited, distinct submarkets or not yet operating at all. Without the Decree's continued protection, new potential competitors, including CMRS providers, will have little chance to actually compete with the still-dominant BOCs. This provides no basis for the lifting of any Decree barrier.

A. BOC Control Over Vital Services And Functions Continues to Create Barriers to Competition.

The purpose behind the Decree is the encouragement of competition, not only among AT&T and its former Bell System affiliates, but also among new and yet to be established enterprises. With few exceptions, new telecommunications service providers continue to face substantial barriers to competition with the BOCs. Federal and state structural regulations often do little more than require the BOCs to window dress the services they decide to provide to their affiliates and competitors to

ensure that there is no facial argument of unreasonable discrimination. As the BOC Motion appears to acknowledge, however, the non-discrimination requirements of the MFJ were intended to look beyond existing regulatory failures and create markets where competition could evolve. In this regard, the Decree has not outlived its usefulness.

The BOCs exercise control over numbering code assignments and other essential network bottlenecks. This control historically has been used to put obstacles in the path of existing and would-be competitors. Misuse of the this network control function is particularly acute when the BOC affiliates also provide services in competition with non-BOC affiliates, as in the wireless market. Regulation by the FCC or state regulators has not proved sufficient to prevent recurring and substantial anti-competitive behavior.

1. BOCs Have Failed to Honor Existing Interconnection Obligations.

High quality, broadly available BOC network interconnection that is unbundled and cost-based is critical if competition is to replace monopoly. The frustrating experience of private carriers, interexchange carriers, cellular service providers and other CMRS providers in obtaining fair, cost based interconnection from the BOCs demonstrates the need for continued

vigilance both by federal and state regulators and the MFJ Court.^{2/}

For example, despite the existence of federal policies requiring reciprocal compensation for wireless carriers that originate and terminate local traffic, the BOCs have failed to implement this requirement in their interconnections with wireless service providers.^{3/} Further, the BOCs' ability to set interconnection and compensation rates relative to the actual costs of interconnection allows them to manipulate the costs of their competitors and dictate the terms of competition.

Moreover, granting wireless service providers a right to basic network interconnection does not suffice. BOC network functions, including access to network signalling databases and telephone numbers, must be made available to CMRS providers on an equal basis.

2/ See Declaratory Ruling, The Need to Promote Competition and Efficient Use of the Spectrum, 2 FCC Rcd 2910 (1987) aff'd on recon. Memorandum Opinion and Order on Reconsideration, 4 FCC Rcd 2369 (1989). Under these circumstances, the Department has been understandably cautious in its endorsement of broad based MFJ interexchange relief for wireless services. See e.g., letter from Richard L. Rosen, Chief Communications and Finance Section to Michael K. Kellogg, Esq., BOC counsel, regarding DOJ investigation of BOCs Request for a Generic Wireless Waiver, June 14, 1994.

3/ See Second Report and Order, 9 FCC Rcd 1711, 1797-1501 (1994) and Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 94-54, FCC 94-145 (adopted August 30, 1994, released July 1, 1994) at ¶ 102-120. Similarly the proposed Telecommunications Infrastructure Act of 1993, S. 1822, endorsed the principle of reciprocal compensation and other forms of network coordination between all telecommunications service providers.

Network unbundling requirements are pointless if the BOCs retain complete network control and the ability to strategically price unbundled functions and basic network interconnection. Because the BOCs can use their control over pricing in anti-competitive ways, it is critical to the emergence of alternative, flexible, high capability networks that potential competitors are able to purchase these functions and services at cost-based rates.

2. Recent experience with BOC controlled numbering assignments demonstrate continuing anti-competitive behavior.

Telephone numbers are a scarce resource. Both access to and the assignment of blocks of telephone numbers (central office or NXX codes) is a necessary predicate to local interexchange and wireless competition. Even more important is the development and enforcement of a timetable for implementing full number portability. Despite the scarcity of this essential resource, the BOCs continue to control the assignment of NXX codes through Bellcore, the entity charged at divestiture with the responsibility for numbering administration and BOC centralized organization and network planning. Nextel and other wireless service providers have filed comments before the Commission regarding Bellcore's inherent bias in the discharge of its numbering administration responsibilities and the need to

establish an independent numbering plan administrator with representation from all industry segments.^{4/}

Ameritech's recent numbering proposals in Chicago demonstrate its bias against non-BOC entities and against new market entrants, both wireline and wireless. In light of the apparent imminent exhaust of numbers in the 708 area code, Ameritech initially proposed forcing wireless customers to give back the seven digit telephone numbers previously assigned to their cellular phones and pagers in exchange for 10 digit numbers under an exclusive wireless area code (NXX code). Under Ameritech's original plan, customers would have had to return their units for reprogramming, convert to ten digit dialing and lose the commercially valuable geographic identity of the existing area codes in the Chicago metropolitan area -- while Ameritech's own wireline telephone customers would have been unaffected.

After objections from the wireless industry, Ameritech proposed an all-service overlay NXX code and no reprogramming. Not surprisingly, this plan revision has ameliorated the objections to the renumbering plan of its cellular affiliate, Ameritech Mobile, and the other BOC-affiliated cellular

^{4/} See Comments of Nextel Communications, Inc., Administration of the North American Numbering Plan, CC Docket No. 92-237 Phases One and Two (filed June 7, 1994); Reply Comments of Nextel Communications, Inc., Administration of the North American Numbering Plan, CC Docket No. 92-237 Phases One and Two (filed June 30, 1994). See CTIA Ex Parte Letter to Chairman Hundt, CC Docket 92-237, (October 28, 1994).

duopolist, Southwestern Bell Mobile (d/b/a/ Cellular One). Ameritech's current proposal, however, expressly denies any additional commercially and competitively valuable 708 NXX codes to Nextel -- a potential competitor -- even though approximately half a million 708 NXX numbers remain available for assignment.

In other words, Ameritech, the NXX code administrator in the Chicago area, and the BOC-affiliated cellular incumbents, are attempting to discriminate against the new entrant Nextel to preserve their competitive advantage in access to customer-preferred numbering assignments. This violates Bellcore's "first-come, first-served" numbering assignment policies and the anti-discrimination provisions of Section 201 and 202 of the Communications Act of 1934, as amended.^{5/} That this is happening today sharply illustrates why the BOCs' Motion to Vacate should not be granted so long as they have the ability to engage in discriminatory practices in administering bottleneck local exchange facilities, resources and services.

The local telephone companies in Los Angeles, Houston and Miami are also proposing the assignment of 10 digit numbers to wireless subscribers only. The cost and confusion of these changes will harm wireless providers and their customers, while the BOCs will benefit. Additionally, these number give-backs disproportionately harm the newest service providers, such as

5/ 47 U.S.C. §§ 201, 202.

Nextel, which do not have a ready supply of NXX codes from which to assign numbers to their customers.

The inability or unwillingness of the FCC to formulate uniform rules to deal with these recurring number assignment problems or to regulate the BOCs' administration through Bellcore of numbering resources is demonstrated by another recent incident. In June of 1993, Bellcore informed the FCC by letter of its intention to commence assigning the 500 Service Access Codes ("SACs") to carriers demonstrating a present need for mobile uses.^{6/} This proposed assignment was to take place without any guidelines in place to assess the genuine nature of the purported need, or to assure that later-entering carriers would have a reasonable opportunity to receive a SAC. Only after Nextel and several other carriers protested did the Commission place Bellcore's plan on hold, inviting Bellcore to provide more explicit information regarding the fairness of its process and requesting Bellcore's assessment of a timetable to make the 500

^{6/} SACs are area codes that are assigned for use throughout the North American Numbering Plan area, unlike traditional geographic area codes, which are assigned to specific areas. These codes provide the means for identifying particular calling attributes and telecommunications services, (i.e., the 800 SAC code denotes toll free calls). The 500 SAC has been allocated for personal communications services numbers that identify an individual wherever he or she may be located, rather than a geographic station.

SAC portable (that is, the numbers assigned could move with customers if they chose to change wireless carriers).^{7/}

Rather than responding to the Commission, Bellcore submitted a letter to the Commission announcing on August 16, 1993 its decision to resign the numbering responsibilities assigned to it by the MFJ Court. Since then, Bellcore has provided the Commission with no further information on the fairness of the process or on the feasibility of number portability. Bellcore's actions left the Commission with no method to determine whether all segments of the telecommunications industry had been fairly represented in prior industry numbering discussions and decisionmaking.^{8/}

While the Commission has instituted a rulemaking proceeding to solicit comment on the future administration of numbering, both the BOCs and Bellcore have failed to provide the basic information the FCC must have for informed decisionmaking

7/ See Nextel letter to Kathleen B. Levitz, Acting Chief, Common Carrier Bureau, dated July 28, 1993; see also letter from Time Warner, dated July 29, 1993 at 1-2; letter to Kathleen Levitz, Acting Chief, Common Carrier Bureau, letter from Comcast Corporation, dated July 28, 1993 at 1. Kathleen B. Levitz letter to the Director of NANP Administration, dated August 5, 1993.

8/ Based on representations by the cellular industry that an adequate framework for fair dissemination of 500 SAC numbers was in place, the Commission relented, and permitted Bellcore to begin the number assignment process. Informal reports indicate that these important mobility numbers have been exhausted long before the first auction for Personal Communications Services licenses has even taken place heightening Nextel's concerns about the administration of numbering.

in this area.^{2/} Relying on industry forums dominated by LECs to develop number portability guidelines will derail or delay this necessary process for years. Because control of numbers translates into control of customers, the BOCs cannot be permitted to enter the interexchange market until they have committed to a timetable, enforceable with regulatory or legal sanctions, to implement full number portability. Unless monopoly control of number assignments is ended, all present MFJ restrictions on the BOCs must remain in place.

3. BOCs have discriminated in the provision of ONA services, circumventing regulation.

The BOCs have also discriminated in the provision of open network architecture ("ONA") services and thereby precluded the development of effective competition. ONA provides the BOCs with opportunities to manipulate access to the network to their advantage and their competitors' disadvantage, even though the ONA guidelines were formulated precisely because of the BOCs' monopoly power and unparalleled ability to manipulate the pricing of network functions to disadvantage competitors.^{10/} It is telling that the BOC Motion does not rely on the availability of ONA as an effective regulatory mechanism to achieve even-handed

9/ See Comments of Nextel Communications, Inc., CC Docket No. 92-237, filed June 7, 1994 at 10-12; Reply Comments of Nextel, CC Docket No. 92-237, filed June 30, 1994 at 1-3.

10/ See generally Kelley, Chris L. "The Contestability of the Local Network: The FCC's Open Network Architecture Policy," 45 Fed. Comm. L.J. 89 (1992).

service availability. Recent court decisions confirm that the FCC's ONA policy as implemented is a mere shadow of its original promise, raising significant concerns about its efficacy.^{11/}

Despite its lack of prominence in the BOC Motion, ONA is a major component of the FCC's non-structural safeguards and cost accounting rules. The generally acknowledged failure of ONA and the failure of general non-discrimination requirements in interconnection point to a continuing substantial likelihood that the BOCs will impede competition in the interexchange markets in a manner similar to their current behavior in local markets. In light of this evidence, the time has not come to lift the MFJ Decree prohibitions from the BOCs.

B. Potential Competition Is Not A Sufficient Predicate Upon Which to Vacate the Decree.

In addition to relying on existing regulation to justify vacating the Decree, the BOCs also argue that the potential for competition in the telecommunications marketplace constrains their ability to act anti-competitively.^{12/} This is the same type of analysis the BOC-dominated cellular industry pressed on the FCC in its implementation of the "regulatory

11/ See e.g. California v. FCC, No. 92-70083, No. 92-70186, No. 92-70217, No. 92-70261, 1994 U.S. App. LEXIS 29001, at* 31-34 (9th Cir. October 18, 1994).

12/ See United States v. Western Electric Co., Inc., Motion of Bell Atlantic Corporation, Bellsouth Corporation, NYNEX Corporation, and Southwestern Bell Corporation To Vacate The Decree, Civil Action No. 82-0192 (HHG) at 53-67 (D.C. Cir. filed July 6, 1994).

parity" provisions of the Omnibus Budget Reconciliation Act of 1993.^{13/} In general, the cellular industry argued that the potential competition to be provided by ESMR and Personal Communications Services made existing regulations that singled out cellular services for heightened regulatory scrutiny unnecessary. In addition, they argued that under this analysis the cellular industry did not enjoy market power within the broader commercial mobile services market.

After acknowledging in its expectation that ESMR and other CMRS operators could eventually provide competition to cellular, the FCC concluded that the cellular industry is not currently competitive.^{14/} The FCC stated its intent to conduct additional proceedings to ensure the development of competition in the commercial mobile services market despite the recognized market power of cellular operators. The FCC did not accept potential competition as a basis to deregulate the cellular industry. Similarly, the Department should not accept the argument of potential wireline competition as a basis for vacating the MFJ in this proceeding.

This is not the time for the Department or the MFJ Court to abandon the important pro-competitive safeguards of the MFJ. For robust long-term competition to develop, not only in

^{13/} See Communications Act of 1934 § 332(c), 47 U.S.C. § 332(c) (as amended by the Omnibus Budget Reconciliation Act of 1993); see also Second Report and Order, 9 FCC Rcd 1411 (1994).

^{14/} 9 FCC Rcd at 1472.

the local exchange but in interexchange and wireless services dependent on interconnection with the local exchange, there must be a continuing, enforceable, meaningful obligation on the BOCs to provide reasonable interconnection, and essential network services and functions on an unbundled, nondiscriminatory basis. The BOC Motion has provided no evidence that this factual predicate to consideration of Decree relief exists.

Respectfully submitted,
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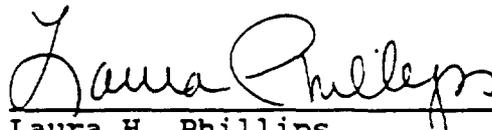
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November 16, 1994

CERTIFICATE OF SERVICE

I, Laura H. Phillips, hereby certify that on this 16th day of November, 1994, true and correct copies of Comments for Nextel Communications, Inc. on the Motion of Bell Atlantic, BellSouth, NYNEX and Southwestern Bell to Vacate the Decree were mailed, first-class-postage paid, to all parties shown on the attached service list.



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