

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of

Petition of BellSouth Corporation for  
Forbearance from the Prohibition of Sharing  
Operating, Installation, and Maintenance  
Functions under Section 53.203 (a)(2)-(3)  
of the Commission's Rules

CC Docket No. 96-149

**REPLY COMMENTS OF VERIZON<sup>1</sup>**

The oppositions to BellSouth's petition for forbearance from the prohibition of sharing operating, installation, and maintenance ("OI&M") services between a BOC and its section 272 affiliates generally repeat the same flawed arguments that these parties raised against the petitions of Verizon and SBC. Verizon has already refuted these arguments in its reply comments and *ex parte* filings and need not repeat them here. The only thing new in these oppositions is Americatel's argument that the Commission should delay action on all of these petitions (or deny them if the statutory deadline is looming) until it has completed the rulemaking proceeding in the *Further Notice*<sup>2</sup> to determine whether the BOCs should continue to be regulated as dominant carriers if they are permitted to provide interLATA services on an integrated basis after sunset of the section 272 separate affiliate requirements. This is completely irrelevant. The petitions for

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<sup>1</sup> The Verizon telephone companies ("Verizon") are the affiliated local telephone companies of Verizon Communications Corp. These companies are listed in Attachment A.

<sup>2</sup> *See Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, Further Notice of Proposed Rulemaking*, 18 FCC Rcd 10914 (2003) ("*Further Notice*").

forbearance all seek relief from the OI&M restriction *before* sunset, while the BOCs are still required to maintain separate affiliates pursuant to section 272. Moreover, the Act does not permit the Commission to deny a section 10 forbearance petition simply because other proceedings are pending – if the Commission does not deny the petition on its merits by the statutory deadline, it is deemed granted. This deadline was enacted by Congress specifically to prevent the type of stalling tactic advocated by AmeriCatel.

The issues in the *Further Notice* have nothing to do with the issues raised in the forbearance petitions. In the *Further Notice*, the Commission noted that it had classified the BOCs' section 272 affiliates as nondominant in the provision of in-region, interstate and international interLATA services based on their compliance with the structural, transactional and nondiscrimination requirements of section 272 and the Commission's implementing rules. *See Further Notice*, ¶ 5. The Commission asked for comments on the continued need for dominant carrier regulation of such services when offered directly by the BOC *after* sunset of the section 272 affiliate requirements in a state. *See id.*, ¶ 2. The Commission asked whether additional regulatory safeguards are needed to address potential problems “*if there are no separate affiliate requirements.*” *Id.*, ¶ 39 (emphasis supplied). The *Further Notice* does not have anything to do with the rules that apply *before* sunset, while the BOCs are still required to provide in-region interLATA services through separate affiliates.

In contrast, the petitions of Verizon, BellSouth and SBC seek forbearance from the OI&M restriction *before* sunset, which is the only time that the OI&M restriction is applicable. They have shown that the OI&M restriction is not necessary to ensure that the BOC and the section 272 affiliate “operate independently” under section 272(b)(1) of the Act, that the OI&M

restriction is not necessary to prevent discrimination or cost misallocation, and that the restriction imposes costs that outweigh any conceivable benefits. Forbearance is irrelevant after sunset, when all of the section 272 separate affiliate requirements expire by their own terms. *See* 47 U.S.C. § 272(f)(1). Because the Commission justified the OI&M restriction as a balancing of interests premised on the section 272(b)(1) “operate independently” requirement, it too would expire.

Americatel argues (at 2) that a grant of the forbearance petitions would prejudice the outcome of the *Further Notice* rulemaking, because the Commission might decide to impose more, rather than less, regulation on the BOCs and their section 272 affiliates in that proceeding. In fact, the Commission did not ask for comments on the level of regulation of the section 272 affiliates. It only asked whether the BOCs should be considered dominant carriers in the provision of interLATA services when they do *not* provide such services through section 272 affiliates. *See Further Notice*, ¶¶ 2, 38-40 (“[c]ommenters should address whether there are specific aspects of dominant carrier regulation that are necessary to constrain BOCs from engaging in certain types of anticompetitive behavior . . . if there are no separate affiliate requirements. . . . interested parties [should] address whether there are adequate safeguards in place, post-sunset”). The Commission did not seek comments on whether the section 272 separate affiliate requirements should be either reduced or increased prior to sunset. Clearly, a decision on the forbearance petitions would not prejudice anything in the *Further Notice*.

Americatel argues (at 5-6) that a favorable decision on the forbearance petitions could be inconsistent with arguments that the parties are making in the rulemaking proceeding, such as their argument that the price cap system does not provide adequate protection against the effects

of cost misallocations. However, this is no excuse for failing to address the forbearance petitions on the merits. The Commission has no obligation to refrain from addressing arguments in one proceeding simply because the parties to another proceeding have made similar arguments. In fact, the forbearance petitions take precedence – there is a statutory deadline on Commission action on forbearance petitions, while there is no time limit on a rulemaking proceeding. Under section 10(c), a forbearance petition is “deemed granted” unless the Commission issues a decision denying the petition for failure to meet the requirements of section 10(a) within 12 months.<sup>3</sup> The Act contemplates that the Commission will take action by that deadline regardless of the status of other pending proceedings. *See AT&T v. FCC*, 236 F.3d 729, 738 (D.C. Cir. 2001) (“The Commission has no authority to sweep [a forbearance petition] away by mere reference to another, very different, regulatory mechanism.”).

In short, section 10 states that the Commission “shall” grant a forbearance petition if it meets the standards for forbearance set out in that section, as does the petition at issue here. A petition that meets these standards cannot be denied simply because the Commission is considering whether to *change* other rules in another proceeding.

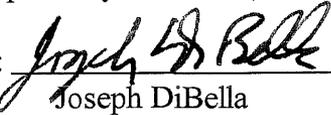
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<sup>3</sup> *See* 47 U.S.C. § 160(c). The 12 month deadline may be extended for an additional 90 days if the Commission finds that it is necessary to do so to meet the requirements of section 10(a).

## Conclusion

For the foregoing reasons, the Commission should reject Americateel's proposal to delay action on, or deny, the forbearance petitions until it completes the proceeding in the *Further Notice*.

Respectfully submitted,

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THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States  
GTE Midwest Incorporated d/b/a Verizon Midwest  
GTE Southwest Incorporated d/b/a Verizon Southwest  
The Micronesian Telecommunications Corporation  
Verizon California Inc.  
Verizon Delaware Inc.  
Verizon Florida Inc.  
Verizon Hawaii Inc.  
Verizon Maryland Inc.  
Verizon New England Inc.  
Verizon New Jersey Inc.  
Verizon New York Inc.  
Verizon North Inc.  
Verizon Northwest Inc.  
Verizon Pennsylvania Inc.  
Verizon South Inc.  
Verizon Virginia Inc.  
Verizon Washington, DC Inc.  
Verizon West Coast Inc.  
Verizon West Virginia Inc.