Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Joint Petition of Qwest, BellSouth, and SBC for Expedited Forbearance From the Commission's Current Pricing Rules for the Unbundled Network Element Platform	)	**WC Docket No. 03-189**

SPRINT CORPORATION'S OPPOSITION TO JOINT PETITION

On July 31, 2003, Qwest Corporation, BellSouth Telecommunications, Inc. and SBC Communications Inc. submitted a joint petition for forbearance, asking the Commission to radically change the regulations governing local competition. Sprint Corporation, on behalf of its incumbent local exchange ("ILEC"), competitive LEC ("CLEC")/long distance, and wireless divisions, opposes the joint petition.[1]

The joint petition is difficult to take seriously. At scarcely more than five pages, it just mimics, very briefly, a petition that Verizon filed a month before.[2] It offers nothing new, but parrots arguments it and other BOCs have raised time and time again in

[1] Joint Petition of Qwest Corporation, BellSouth Telecommunications, Inc. and SBC Communications Inc. for Expedited Forbearance (filed July 31, 2003); Public Notice DA 03-2679 (rel. Aug. 18, 2003).

[2] Petition of the Verizon Telephone Companies for Forbearance From the Current Pricing Rules for the Unbundled Network Element Platform, WC Docket No. 03-157, Petition for Expedited Forbearance of the Verizon Telephone Companies (filed July 1, 2003), modified by Letter from K. Zacharia, Verizon, to M. Dortch, Secretary (July 23, 2003) (together, "Verizon Petition").

courts and before the Commission, including most recently the Triennial Review proceeding.[3] The joint petition was rightly described by commenters in that proceeding as a "me-too" filing that lacks any weight or credibility.[4]

The joint petition acknowledges that it "seek[s] exactly the same relief requested in the Verizon Petition" and that "the grounds for the relief sought by the Joint petitioners are essentially identical too those advanced in the Verizon Petition. Joint Petition at 2, 3. Appropriately, the Commission's public notice asks parties to file in both dockets and invites them to "incorporate by reference" comments filed in response to Verizon's petition. Public Notice at 1-2.

Like Verizon, the joint petitioners claim that the pricing rules for the unbundled network element platform ("UNE-P"), as implemented by all of the state commissions, are allegedly under-compensating ILECs, discouraging "infrastructure investment" and growth of facilities-based competition, and causing "harm … to the telecommunications industry and economy as a whole." Joint Petition at 3. The petitioners therefore join Verizon in asking the Commission to radically change its rules through application of forbearance under section 10 of the Telecommunications Act of 1996.[5]

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[3] Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338 ("Triennial Review").

[4] E.g., NJ Dept. of Ratepayer Advocate Reply at 2 n.1; A+ American, et al. Joint Comments at ii. See also NASUCA Reply at 1 n.3.

[5] 47 U.S.C. § 160.

The petitioners want the Commission to allow them to exclude UNE-P from the "current TELRIC pricing rules"[6] (Joint Petition at 2) or to mandate that states cannot set pricing for UNE-P lower than resale pricing. They also want the Commission to amend its regulations to allow incumbents to demand the exchange access revenues that their UNE-P competitors now properly receive from long distance companies. Joint Petition at 5-6. And they want the Commission to do this without undertaking a rulemaking proceeding.

Consistent with the public notice, Sprint will not repeat in detail the arguments it raised in opposing the Verizon petition.[7] It is sufficient to say that the joint petition must be denied for the same reasons that Sprint set out in that docket.

(1) The joint petition is premature.[8] At the very least, it prejudges the outcome of the newly-released rulemaking on TELRIC issues,[9] yet it is supported by no record evidence and is flatly inconsistent with specific findings in the recent Triennial Review

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[6] Total Element Long-Run Incremental Cost pricing methodology was explained in Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499 at ¶¶ 673-79 (1996) (subsequent history omitted) ("First Report and Order").

[7] Sprint attaches a copy of its comments in that proceeding (herein after "Sprint Opposition"), and incorporates them by reference.

[8] Sprint Opposition at 3-4.

[9] Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Services by Incumbent Local Exchange Carriers, Notice of Proposed Rulemaking, WC Docket No. 03-173 (rel. Sept. 15, 2003).

Order.[10] Indeed, commenters in the Verizon proceeding see both petitions as an attempt to bias the proceedings against competition and to put their competitors – and state commissions -- "into a defensive position."[11] Such posturing is ironic. The Bell Operating Companies ("BOCs") have already waged and lost their battles against UNE-P and TELRIC at the Commission and, in two separate rulings, before the U.S. Supreme Court.[12] This agency should not encourage such abuse of regulatory proceedings, and should deny the petitions promptly. The joint petitioners will have full opportunity to repeat their arguments yet again in the TELRIC rulemaking. The claim that "expedited relief" is necessary is clearly false, as the continued financial health and market dominance of the BOCs amply testify.[13]

(2) The joint petition is legally flawed.[14] It seeks major, substantive changes to the regulations governing local competition and would significantly impact the rights of

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[10] See, e.g., Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (appeals pending) ("Triennial Review Order") at ¶¶ 139-140, 161 (addressing access charges); id. at ¶¶ 178, 448 (confirming UNE-P has not retarded investment); id. at ¶¶ 444, 446 (rejecting BOC claims that "intermodal competition" justifies elimination of UNE-P).

[11] NJ Board of Public Utilities Opposition at 2.

[12] E.g., First Report & Order at ¶¶ 420, 673-79; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 at ¶ 253 (1999) (subsequent history omitted); Triennial Review Order at ¶¶ 459, 484; Iowa Utils. Bd. V. FCC, 525 U.S. 366, 392-93 (1999); Verizon v. FCC, 122 S. Ct. 1646, 1676 (2002).

[13] See Letter from N. Mason, National Alternative Local Exchange Carrier Association, to Marlene Dortch, Secretary, on Qwest, BellSouth and SBC Petition for Forbearance on UNE-P Rates (filed Sept. 11, 2003) at 2.

[14] Sprint Opposition at 5-11.

affected parties. Even assuming the joint petition's claims were credible, the Commission cannot entertain such changes except through a full rulemaking adhering to Administrative Procedure Act ("APA") requirements.[15] Remarkably, the petition does not address how the Commission could have any "authority under section 10" (Joint Petition at 6) to take such action through forbearance. The legal impossibility of granting the petition warrants denial of both petitions without further delay.

(3) The joint petition fails its burden of proving that it meets the standards for forbearance under section 10.[16] In reality, the joint petition makes no effort whatever to meet the demanding showing required by section 10(a) and (b). It hardly even bothers to summarize Verizon's arguments, and its bare assertion that Verizon's petition shows "conditions" for forbearance have been met is plainly inadequate. Additionally, the joint petition – like Verizon's – ignores the section 10(d)'s prohibition against forbearance until the all provisions of section 251 and 271 have been "fully implemented."[17] The recent release of the Triennial Review Order and the commencement of further rulemaking on TELRIC issues merely underscore that these provisions are far from "fully implemented."

It is also worth noting, too, that among the dozens of filings in response to Verizon's petition, every state commission (including the three largest in Verizon's territory), the National Association of Regulatory Utility Commissioners, the National

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[15] 5 U.S.C. § 553.

[16] Sprint Opposition at 11-17.

[17] Id. at 17.

Association of State Utility Consumer Advocates, and dozens of carriers "from the full spectrum of the industry" (AT&T Reply at 1) joined Sprint in calling for immediate denial of the petition.

The only supporters for Verizon were two of the three joint petitioners (Qwest and SBC), the BOCs' association USTA, and the Alaskan ILEC, ACS of Anchorage, Inc. Their comments offered nothing to overcome the petition's fatal procedural and legal deficiencies. Although, like Verizon, Qwest and SBC's comments pointed to selected decreases in TELRIC rates and increases in UNE-P lines, the joint petitioners offer no evidence that state commissions have failed to implement local competition rules properly and fairly – much less that the increase in competition, enabled by UNE-P – is contrary to the public interest. What little "evidence" the joint petition offers is entirely "derivative of arguments" that BOCs submitted, and the Commission rejected, in the Triennial Review. MCI Reply at 5-6. In any event, the joint petitioners, again like Verizon, are fully capable of defending their interests before the state commissions and by appeal to the U.S. District Courts.

Sprint supports competition. It recognizes that the relief sought by the petitions is wholly unwarranted and that forbearance is impermissible. Nevertheless, if the Commission were to conclude otherwise, there can be no rational basis to limit the ruling to just the filing ILECs.

Respectfully submitted,

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September 18, 2003

ATTACHMENT

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Verizon Telephone Companies	)	**WC Docket No. 03-157**
Petition for Forbearance From the Current Pricing Rules for the Unbundled Network Element Platform	)	

SPRINT CORPORATION'S OPPOSITION TO PETITION FOR FORBEARANCE

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August 18, 2003

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Verizon Telephone Companies	)	
Petition for Forbearance From the Current Pricing Rules for the Unbundled Network Element Platform	)	**WC Docket No. 03-157**

SPRINT CORPORATION'S OPPOSITION TO PETITION FOR FORBEARANCE

Sprint Corporation, on behalf of its incumbent local exchange ("ILEC"), competitive LEC ("CLEC")/long distance, and wireless divisions, opposes the Petition for Expedited Forbearance of the Verizon Telephone Companies, filed July 1, 2003 ("Petition").[1]

I. Introduction And Summary

Verizon's petition repeats arguments it and other BOCs have raised time and time again in the local competition dockets, including most recently the Triennial Review proceeding.[2] Verizon asserts that the "pricing rules" for the unbundled network element

[1] See Public Notice DA 03-2189 (rel. July 3, 2003); Order DA 03-2333 (rel. July 15, 2003) (granting requests to extend comment period). On July 31, 2003, Qwest Corporation, BellSouth Telecommunications, Inc. and SBC Communications Inc. filed a very short "joint petition" (not yet placed on public notice), endorsing Verizon's petition without adding any new argument or analysis.

[2] Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338 ("Triennial Review").

platform ("UNE-P"), as implemented by all of the state commissions, are causing "harmful effects" by allegedly under-compensating ILECs, discouraging "investment and the continued growth of facilities-based competition," and hindering "economic growth." Petition at iii. Verizon therefore asks the Commission to utilize forbearance under section 10 of the Telecommunications Act of 1996 to radically amend its rules.

Verizon wants the Commission to allow it to exclude UNE-P from the TELRIC[3] pricing standard, or to mandate that states cannot set pricing for UNE-P that is lower than "resale pricing." Verizon also asks the Commission to amend its rules to allow incumbents to demand the exchange access revenues that their UNE-P competitors now receive from long distance companies. Petition at 1-2.

The petition must be denied, for three reasons. First, it is premature. The Commission has already announced its intention to commence a rulemaking to review TELRIC issues in an upcoming proceeding, and Verizon and all other parties will have an opportunity to comment at that time. Second, the Commission may not act through a petition for forbearance to substantively modify local competition rules and significantly impact the rights of affected parties. In effect, the petition asks the Commission to do summarily, through forbearance, what it could do only through full rulemaking procedures under the Administrative Procedure Act ("APA"). 5 U.S.C. § 553. Third, even apart from its procedural and legal shortcomings, the petition fails its burden of proving that it meets the standards for forbearance under section 10. 47 U.S.C. § 160.

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[3] The Commission explained the Total Element Long-Run Incremental Cost pricing methodology in Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499 at ¶¶ 673-79 (1996) (subsequent history omitted) ("First Report and Order").

II. Verizon's Petition Is Premature And Prejudges The Outcome Of The Anticipated TELRIC Review Proceeding.

The petition is certainly premature. Verizon itself acknowledges that "[t]he Commission has indicated that it intends to initiate a proceeding" to review TELRIC issues, including the BOCs' continuing allegations that the TELRIC pricing regime should be revised. Petition at 1. Commissioner Martin, for example, recently said "[t]he Commission has been talking about and the bureau has been working on potentially initiating a TELRIC proceeding" that would likely commence "soon, sometime in the next few months."[4] Obviously, the outcome of that proceeding will almost certainly affect the issues raised in Verizon's petition. Moreover, the upcoming Triennial Review Order – by addressing the impairment standard under section 251 – may significantly affect assumptions underlying the petition, comments that may be received, and any assessment by the Commission.

Verizon's petition presumes too much about the outcome of any TELRIC review. In any event, whether Commission action on TELRIC is necessary or appropriate is an issue that need not be addressed in response to the present petition. Verizon and all interested parties will have opportunity to comment in that proceeding in due course. Those parties will include the BOC opponents and CLEC supporters of the established TELRIC rules as applied to UNE-P, as well as the state commissions that have been responsible for implementing the unbundling and TELRIC rules. It is worth noting that

[4] "Martin Welcomes Upcoming Review of TELRIC Standard," Telecommunications Reports (July 1, 2003) at 5.

the National Association of Regulatory Utility Commissioners recently adopted a resolution opposing Verizon's petition, finding it "premature."[5]

The issue plainly does not have the "immediacy" that Verizon pretends it does. Indeed, when eight CLECs, a competitive coalition, CompTel, and NARUC requested a three-week extension of the comment period,[6] Verizon was unable to offer any reason for denying their requests. In fact, in arguing that its competitors should be denied additional time to comment, Verizon undercut any urgency by admitting that "the factual and legal arguments in Verizon's petition [and] these issues (or similar issues) have been percolating before the Commission for years."[7] After all that time, and given the importance of TELRIC pricing issues, a few months or more will make little difference. And as for Verizon's claim that state commissions are lowering UNE-P rates by using "extreme assumptions" (Petition at 2), Verizon is more than capable of defending its interests in those forums, or by appeal to U.S. district courts.[8]

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[5] National Association of Regulatory Utility Commissioners, "Resolution on Verizon Forbearance Petition" (July 30, 2003) (sponsored by the Committee on Telecommunications and adopted by the NARUC Board of Directors) at 1.

[6] Request for Extension of Comment Period (filed July 8, 2003) (submitted by AT&T, Birch Telecom, Broadview Networks, Covad, MCI, Sage Telecom, Talk America, Z-Tel, the Competitive Telecommunications Association, and the PACE Coalition); Request for Extension of Comment Period (filed July 11, 2003) (submitted by the National Association of Regulatory Utility Commissioners).

[7] Opposition of Verizon Telephone Companies to Request for Extension of Comment Period (filed July 11, 2003) at 2. Verizon's sole argument against this modest extension was that comment cycles in section 271 proceedings have typically been limited to shorter periods – an argument that left the Commission "unpersuaded." Order, DA 03-2333 (rel. July 15, 2003) at ¶ 4.

[8] In an appendix to its petition, Verizon compares past and present UNE-P prices in various states, but it offers no analysis or evidence that any particular rates are or were not appropriately cost-based.

III. Verizon's Petition Is Legally Improper.

The petition raises nothing new. It repeats arguments Verizon and the other BOCs have made against TELRIC, UNEs in general, and UNE-P in particular, throughout the Commission's proceedings implementing the local competition provisions of the 1996 Act and their associated court appeals.

(A) The Petition Seeks Major, Substantive Changes To Existing Rules And Orders Governing Local Competition.

Because the petition must be denied on legal grounds, Sprint need not address in detail Verizon's assertions about the alleged shortcomings of TELRIC as implemented by the various states. It is sufficient to note that the U.S. Supreme Court, in separate cases, expressly upheld both the legitimacy of UNE-P as a competitive vehicle[9] and the TELRIC pricing methodology,[10] finding them reasonable under the Telecommunications Act of 1996 and within the scope of the Commission's authority.

For purposes of assessing the petition, what matters is the magnitude of the changes to established rules that Verizon is seeking through forbearance. Under the guise of forbearance, Verizon in substance is asking the Commission to engage in a major revision of existing rules. The petition asks the Commission to rewrite the pricing rules governing 10 million UNE-P lines – and to do so without undertaking a rulemaking.[11]

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[9] Iowa Utils. Bd. v. FCC, 525 U.S. 366, 392-93 (1999).

[10] Verizon v. FCC, 122 S. Ct. 1646, 1676 (2002).

[11] Given Verizon's acknowledgement that a TELRIC rulemaking is likely upcoming (Petition at 1), the petition appears designed to discourage the Commission from giving these issues the full public airing and scrutiny that an APA-compliant rulemaking involves.

Verizon asks the Commission to rewrite its TELRIC pricing rules "to hold that, when a CLEC wishes to purchase a platform of all the network elements necessary to provide an existing service, the compensation to the incumbent should be no lower than under the resale pricing standard" – or some other rate negotiated between the carriers. Petition at 14, citing 47 U.S.C. §§ 251(c)(4), 252(d)(3). The Commission cannot simply substitute Verizon's open-ended, "sky's the limit" pricing standard for the current UNE pricing standard. The current rules[12] provide that, where competitors are impaired, incumbents must provide local switching and allow combinations of UNEs, including UNE-P, at rates determined by the TELRIC methodology.[13] Verizon's change in agency "interpretation" would, by design, work a dramatic change in these rules adopted by the Commission, implemented by state commissions, and relied upon by competitive carriers serving millions of customers.

Verizon also asks the Commission "to eliminate the fiction that a UNE-P carrier provides exchange access services to originate and terminate long distance traffic on a UNE-P line, and [to] forbear from its current rule that UNE-P carriers are entitled to

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[12] See 47 C.F.R. §§ 51.315 (requiring combination of UNEs), 51.319(c) (unbundling local switching), 51.503, 51.505, 51.509(b), 51.513(b)(2) (setting pricing rules and applying TELRIC methodology to local switching).

[13] See First Report and Order at ¶ 420; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 at ¶ 253 (1999) (subsequent history omitted) ("UNE Remand Order"). The Commission's February 20, 2003 press release reported that, under the upcoming Triennial Review order, UNE-P would remain available to serve mass market customers where a state commission finds impairment, and be phased out over a three-year period elsewhere. TELRIC methodology would be "clarified" on cost of capital and depreciation, but would remain applicable to all UNEs. "FCC Adopts New Rules for Network Unbundling Obligations of Incumbent Local Phone Carriers" (Feb. 20, 2003), at 2 and Attachment at 4.

collect per-minute access charges from IXCs for the provision of exchange access service." Petition at 14. Here, too, the petition seeks a radical change in the current rules adopted by the Commission.

The Commission addressed the issue of access charges and UNE-P competitors specifically in the First Report and Order. It recognized that "[t]he facilities used to provide exchange access services are the same as those used to provide local exchange services."[14] Since the competitors are paying the full costs of these facilities, allowing the ILECs to charge for access, as Verizon proposes, would result in the ILECs "receiv[ing] compensation in excess of their underlying network costs." Id. Instead, the Commission expressly allowed the CLECs to impose access charges in such circumstances.[15]

> [W]here new entrants purchase access to unbundled network elements to provide exchange access services, whether or not they are also offering toll services through such elements, the new entrants may assess exchange access charges to IXCs originating or terminating toll calls on those elements. In these circumstances, incumbent LECs may not assess exchange access charges to such IXCs because the new entrants, rather than the incumbents, will be providing exchange access services, and *to allow otherwise would permit incumbent LECs to receive compensation in excess of network costs in violation of the pricing standard in section 252(d).*

The Commission determined that "this conclusion is consistent with Congress's overriding goal of promoting efficient competition for local telephony services, because it will allow, in the long term, all new entrants using unbundled elements to compete on the

[14] First Report and Order at ¶ 363.

[15] Id. at ¶ 363 n.772 (emphasis added).

basis of the economic costs underlying the incumbent LECs' networks."[16] All of this shows that Verizon's forbearance request involves major and fundamental changes to rules affecting the entire competitive marketplace, impacting the interests of ILECs, CLECs, consumers, and the states.[17]

(B) The Administrative Procedure Act Precludes Grant Of The Petition.

Whether or not the UNE platform or the TELRIC methodology is "sacrosanct" (Petition at 17), the Commission cannot grant the petition. The changes Verizon seeks – to the extent they may be possible at all – would require a new rulemaking under the APA. Verizon is not seeking forbearance from existing rules; it is seeking a fundamental change in the basic rules governing local competition in the mass market.

Verizon claims the Commission would be "well within its interpretative authority" to rewrite its regulations and orders to require UNE-P pricing to be no lower than resale rates, and order that ILECs – not CLECs – are to receive exchange access revenues where the CLEC provides service via UNE-P. A petition for forbearance is not a proper vehicle for such changes. Section 10 is not an invitation for the Commission to ignore the fundamental baseline rules that govern all agency rulemaking. In the present case, section 10 provides at best a statutory basis for the Commission – in the course of an APA-compliant rulemaking – to determine whether forbearance is warranted, after appropriate notice and review of comments and record.

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[16] Id. at ¶ 363.

[17] See 47 C.F.R. § 51.515 (prohibiting ILECs from imposing inter- or intrastate access charges "on purchasers of elements that offer telephone exchange or exchange access services").

It is well-established that "when an agency ... substantially amends the effect of the previous rule ... the agency must adhere to the notice and comment requirements of section 553 of the APA."[18] This statutory requirement ensures "public participation and fairness to affected parties" and "assures that the agency will have before it the facts and information relevant to a particular problem, as well as suggestions for alternative solutions."[19] The APA's requirements must be followed not merely when new rules are promulgated, but whenever agency action has "significant effects on private interests."[20]

Exceptions to these requirements are rare. They are allowable only "where the need for public participation is overcome by good cause ... or where the need is too small to warrant it." Id. Verizon does not argue that the effects of its requested forbearance would not be significant, far from it. It is clear that the impact on affected competitors would be dramatic. CLECs could face potential open-ended increases in UNE-P pricing, loss of exchange access revenues, or other unspecified changes that, overnight, could undermine business plans.[21] Whether some parties may have opportunity to comment in response to Verizon's petition is irrelevant, because it is not – and does not purport to be – an APA-compliant rulemaking proceeding.

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[18] National Family Planning and Reproductive Health Ass'n v. Sullivan, 979 F.3d 227, 241 (D.C. Cir. 1992).

[19] National Ass'n v. Schweicker, 690 F.2d 932, 949 (D.C. Cir. 1982); see also Batterton v. Marshall, 648 F.2d 694, 703 (D.C. Cir. 1980).

[20] Batterton, 648 F.2d at 701-02; see also Schweicker, 690 F.2d at 949.

[21] Indeed, one may fairly ask whether Verizon's petition is intended primarily to introduce additional regulatory uncertainty to undermine its UNE-P competitors.

The Commission rejected a similar petition by one of Verizon's predecessor companies in 1997.[22] NYNEX had asked the agency to forbear from applying the then-applicable Part 36 jurisdictional separations rules to price cap ILECs, and instead adopt a fixed factor for apportioning joint and common costs between interstate and intrastate operations. The Commission denied the request, explaining:[23]

> NYNEX did not ask us merely to refrain from applying the current separations rules. Instead, it proposed use of the Commission's forbearance authority as a means of *replacing those rules with new ones* without the notice and comment required by the Administrative Procedure Act....

Rather than seeking "mere forbearance," NYNEX's petition sought to "substantially amend" the existing rules, "both structurally and in terms of anticipated results."[24] Whether or not NYNEX's proposal was reasonable, the Commission determined that it could be considered only through a future rulemaking.

Thus, Verizon is wrong to assert that the Commission "has ample authority" to modify "the current pricing rules," outside of the upcoming, "more general" TELRIC rulemaking proceeding. Petition at 12. Nor would it matter if the Commission deemed such action "interim measures," as Verizon proposes. Id. "[T]he label that the agency puts on its given exercise of administrative power is not conclusive; rather it is what the agency does in fact" that matters.[25] A stand-alone proceeding on a forbearance petition

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[22] New England Tel. and Tel. Co. and New York Tel. Co. Petition for Forbearance From Jurisdictional Separations Rules, 12 FCC Rcd 2308 (1997).

[23] Id. at ¶ 13 (emphasis added).

[24] Id. at ¶¶ 12, 13.

[25] Associated Builders & Contractors v. Reich, 922 F. Supp. 676, 680 (D.D.C. 1996).

cannot be a proper vehicle for making such broad, fundamental changes in regulations affecting local telecommunications competition.

IV. The Petition Fails To Meet The Standards For Forbearance.

Even leaving aside the Commission's inability, as a legal matter, to grant the petition, Verizon has failed to meet its burden of proof under the Act's stringent requirements for forbearance.

(A) Verizon Has Not Shown That Enforcement Is Unnecessary To Ensure Regulations Are Just And Reasonable And Not Discriminatory.

Verizon turns section 10(a)(1) analysis on its head. Rather than address the impact on competitors and consumers, Verizon asserts that "the current pricing rules" yield rates that are "unjust and unreasonable" because, in its view, they compensate ILECs inadequately, and thus force them to offer rates that "discriminate" against themselves. Petition at 19, 20. The Act itself "discriminates" – but not unlawfully – against incumbents by imposing obligations that new entrants do not share. BOCs, in particular, are subject to many additional statutory requirements not shared by smaller ILECs, because the latter do not have the market power enjoyed by BOCs. The current rules are not unjust or unreasonable, or discriminatory, simply because they yield a result that Verizon dislikes.

Verizon also argues that TELRIC pricing rules are unreasonable because they allegedly "devalue" and "discourage[] investment by all carriers." Petition at 2. The Supreme Court has already addressed this argument. The Court found that the BOCs' claim that TELRIC-based unbundling rules (including UNE-P at TELRIC rates)

discourage investment in facilities "founders on fact," given the extraordinary capital investment undertaken by both new entrants and incumbents. Verizon, 122 S. Ct. at 1675. It therefore found that the Commission's current unbundling requirements, including TELRIC pricing, are not "an unreasonable way to promote competitive investment in facilities." Id. at 1675-76.

Verizon next argues that TELRIC rules for UNE-P are unnecessary "to ensure just and reasonable rates because there are *better alternatives*," and therefore the Commission "should revise its pricing rules so that UNE rates are set based on the incumbent's actual forward looking costs." Petition at 19 (emphasis added). The availability of better alternatives, if any, and the practicability or impracticability of Verizon's preferred alternatives, are issues for the TELRIC proceeding, and not matters suited for a stand-alone forbearance proceeding. Even assuming that the rules could be changed to provide "better alternatives," Verizon has failed its burden of proving that forbearing to enforce the rules now on the books would not be necessary to guard against unjust and unreasonable rates and practices and against just and unreasonable discrimination against competitors. Indeed, if the petition were granted, it is uncertain what price regime would even apply. Verizon's assumptions or preferences may not hold true, and the supposed benefits of granting the petition as an "interim measure" may become moot.

The merits, if any, of Verizon's assault on TELRIC, as applied to UNE-P, should wait for review in the rulemaking proceeding.

(B) Verizon Has Not Shown That Enforcement Of Such Regulation Is Unnecessary For The Protection of Consumers.

Rehashing its old anti-UNE rhetoric, Verizon argues that "forbearance will affirmatively further consumer interests by encouraging the development of facilities-based competition and by promoting the kind of innovation and meaningful consumer choice that only real, as opposed to merely 'synthetic,' competition can produce." Petition at 20. In fact, the same incremental growth in UNE-P lines that Verizon decries shows that competitors are striving to enter the market and that consumers are embracing the new competitive alternatives that UNE-P makes possible.[26] That is entirely consistent with the goals of the 1996 Act and FCC policy to spur competition.

This is not "synthetic" competition. Indeed, the Commission recognized in the First Report and Order that the Act does not require requesting carriers to own *any* facilities.[27] The Eighth Circuit agreed, and the Supreme Court expressly affirmed that determination.[28] Moreover, the Supreme Court later reiterated that "Section 251(c) addresses the practical difficulties of fostering local competition by recognizing three strategies that a potential competitor may pursue," including UNE-based competition, and that no threshold investment in facilities is envisioned or required by the Act.

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[26] Verizon's call for limiting UNE-P based competition is ironic, given how each of the BOCs has pointed to UNE-P competition to justify granting BOC entry into the interstate long distance market under section 271. 47 U.S.C. § 271.

[27] First Report and Order at ¶¶ 328-340.

[28] Iowa Utils. Bd. v. FCC, 120 F.3d 753, 808-10 (8th Cir. 1997), aff'd in part and rev'd in part, 525 U.S. 366, 392-93 (1999).

Verizon, 122 S. Ct. at 1662, 1664.[29] Verizon's claim that the existing rule has "dampened investment and innovation by incumbents and competitors alike" was likewise rejected by the Court and, judging from the February 20, 2003 press release, by a majority of the Commission.

Thus, Verizon has failed its burden of proof here, too. Ten million consumers currently rely on UNE-P-based services. Granting Verizon's petition would either abruptly deny them choices in local service provider or immediately increase the costs they must pay any provider. The merits, if any, of Verizon's arguments may be addressed in the rulemaking proceeding. Forbearance, however, is not in consumers' best interests.

(C) Verizon Has Not Shown That Forbearance From Applying Such Provision Or Regulation Is Consistent With The Public Interest.

Verizon claims that "the current pricing rules have contributed materially to a massive decline in telecommunications investment," and therefore that the public interest will benefit from substantially modifying UNE-P pricing rules as Verizon proposes. Petition at 23. Verizon attributes the $2 trillion loss of telecom industry market capitalization since 2000 to TELRIC alone.

TELRIC is not to blame for decline in investment or in the value of industry companies. Much of that loss was, frankly, from the bursting of a bubble; the industry had grown to be overvalued. Moreover, cutting capital expenditures in times of

[29] In the UNE Remand Order, the Commission reiterated that the Act does not "explicitly express a preference for one particular competitive arrangement" over another. UNE Remand Order at ¶ 6. See also First Report and Order at ¶ 12.

decreasing growth and economic uncertainty is a fundamental economic principle, especially for new competitive entrants that lack the BOCs' vast, contiguous, and ubiquitous networks and massive customer base. Indeed, much of the CLEC industry's own problems stem from excessive enthusiasm for investing in duplicate facilities, complicated by slowed demand growth, BOC performance issues and resistance to competition, and continued regulatory uncertainty. The burst of the Internet bubble, the general economic slowdown, historic shifts from wireline to wireless networks, growth of electronic mail and broadband services, and loss of faith in corporate governance due to the business scandals are also among the many factors that have contributed to a loss of market capitalization. Moreover, the state reductions in UNE-P rates that Verizon criticizes (Petition at 2-3) can have had no particular impact on investment, because they have been too recent.

Verizon next argues that forbearance will contribute to national security by encouraging carriers to deploy "redundant network facilities." Petition at 23-24. In the Triennial Review proceeding, Verizon similarly sought to exploit national security anxieties to frustrate competition. Yet Verizon and the other BOCs have not embraced this reasoning as they enter the interstate long distance market. After receiving section 271 authority, they have relied almost entirely on resale, without investing in any significant redundant facilities.

(D) Verizon Has Not Shown That Forbearance Will Promote Competitive Market Conditions.

Section 10(b) requires that, "[i]n making the determination under subsection (a)(3) … the Commission *shall* consider whether forbearance from enforcing

the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services." 47 U.S.C. § 160(b) (emphasis added). In this instance, forbearance obviously would significantly reduce competition.

Today, some 10 million customers are served by UNE-P. Many could either lose service from their competitive provider or face immediate price increases to cover the higher UNE rates if the petition were granted. And although Verizon claims UNE-P competitors do not add "anything of unique value" (Petition at 4), UNE-P carriers counter that they can use service levels, brand, advertising, pricing, bundling, and billing as unique value propositions in the marketplace. It is for these reasons too, and not merely economic "arbitrage," that competitors have been able to make limited inroads in the local exchange market.[30]

The stated purpose of Verizon's petition is to increase revenues for itself and costs to its CLEC competitors, by raising UNE-P rates or shifting access charge revenue or both. With such significant and potentially detrimental impact on competition, after weighing "the competitive effect" of the petition, it is clear the Commission cannot grant forbearance. Given the record in this docket, the Commission's prior findings in the UNE Remand Order and, judging from the Triennial Review press release, the upcoming Triennial Review Order, as well as the Supreme Court ruling in Verizon, Verizon's

[30] Congress and the Commission had envisioned that the BOCs would compete against each other. If the economic arbitrage opportunity were as generous as Verizon claims, one may ask why none of the BOCs has entered the others' markets.

assertions that eliminating UNE-P or raising its costs for CLECs would somehow promote competition lacks credibility.

(E) Forbearance Is Premature Because Section 251(c) Of The 1996 Act Has Not Yet Been "Fully Implemented."

Section 10(d) provides that "the Commission may not forbear from applying the requirements of section 251(c) or 271 ... until it determines that those requirements have been fully implemented." 47 U.S.C. § 160(d). This "limitation" on the Commission's authority to forbear is intended to ensure the fulfillment of the Act's purpose – the establishment of a competitive market for local services in place of "the monopolies enjoyed by the inheritors of AT&T's local franchises." Verizon, 122 S. Ct. at 1654.

The Act does not specify what constitutes "full implementation" of the market-opening requirements of section 251(c). Nevertheless, at a time when the impairment standard for access to UNEs has not been established by an order that has been upheld on judicial review, when local competitors hold just 13% of switched access lines, when UNE-P competition accounts for a significant portion of new market entry, and when the state impairment reviews anticipated by the announced, but yet unreleased, Triennial Review Order have not even commenced, it should be clear enough that section 251(c) has not yet been "fully implemented" for the purposes of the present forbearance petition. Verizon's suggestion that the Commission may ignore section 10(d), because "neither TELRIC nor UNE-P is [expressly] required under the Act," is misguided. Petition at 19 n.38.

V. Conclusion

Verizon's petition is premature, is legally improper, and fails to meet the standards of section 10. Its effort to frustrate competition should be denied.

Respectfully submitted,

SPRINT CORPORATION

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August 18, 2003

CERTIFICATE OF SERVICE

I hereby certify that a copy of Sprint Corporation's Opposition to Joint Petition for Forbearance filed in WC Docket No. 03-189 (with a duplicate filed in WC Docket No. 03-157, per Public Notice DA 03-2679), was sent by United States First Class Mail, postage prepaid, and/or electronic mail on this the ~~18th~~ 22nd day of September, 2003 to the following parties.

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