Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
BellSouth Corporation's Petition	)	WC Docket No. 05-277
For Waiver	)	

COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.

Qwest Communications International Inc., on behalf of its affiliates Qwest Communications Corporation ("QCC"), Qwest LD Corporation ("QLDC") and Qwest Corporation ("QC") [hereafter referred to jointly as "Qwest"], hereby files these comments in support of BellSouth Corporation's ("BellSouth") petition for waiver in the above-captioned proceeding.[1]

I. BACKGROUND AND SUMMARY OF ARGUMENT

In its petition, BellSouth requests that the Federal Communications Commission ("Commission") waive its dominant carrier rules in two different situations: (1) when BellSouth's Bell Operating Company ("BOC"), BellSouth Telecommunications, Inc. ("BST"), provides in-region interstate interexchange services on an integrated basis; or (2) when BellSouth Long Distance Services ("BSLDS"), currently BellSouth's Section 272 subsidiary, provides in-region interstate interexchange services in a post-sunset environment where it no longer complies with the Commission's pre-sunset Section 272 rules.[2]

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[1] *See* BellSouth Corporation Petition for Waiver, WC Docket No. 05-277, filed Sept. 19, 2005. *And see*, Public Notice, DA 05-2529, rel. Sept. 27, 2005.

[2] BellSouth seeks waiver of the Commission's tariffing and price cap rules as they apply to the provision of in-region interstate interexchange services by a dominant carrier. In addition, BellSouth seeks waiver of certain accounting rules as they could be applied to such services.

BellSouth's petition addresses the anomalous situation that will arise as the Section 272 rules sunset in all BellSouth states on December 19, 2005. Specifically, under the Commission's interpretation, Section 272's sunset will provide no regulatory relief to BellSouth and its affiliates under the Commission's existing rules unless the Commission takes action.[3] This situation arises for two reasons. First, incumbent local exchange carriers ("ILECs"), including the BOCs, are still classified as dominant carriers in the provision of in-region interstate interexchange service.[4] Thus, if BOCs such as BellSouth or Qwest want to integrate their in-region interexchange operations with their local exchange operations after sunset, they may only do so subject to dominant carrier regulation.

The second reason that Section 272 sunset currently provides no immediate regulatory relief relates to the Commission's previous ruling that BOC Section 272 affiliates were non-dominant providers of in-region interexchange services. Underlying that ruling was the Commission's finding that BOC Section 272 affiliates did not have the ability "to raise and sustain prices of in-region, interstate, domestic, interLATA services significantly above competitive levels by restricting the affiliate's own output."[5] The Commission has made no such finding with regard to BOC affiliates that do not comply with the full array of its Section 272 rules (hereafter "non-272 affiliates"). Under the Commission's rules, non-272 affiliates are

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[3] On its face, Section 272 of the Act appears to imply that BOCs would be subject to less regulation in the provision of in-region interexchange services after sunset. *See* 47 U.S.C. § 272.

[4] *See In the Matter of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, Further Notice of Proposed Rulemaking, 18 FCC Rcd 10914 (2003) ("*Further Notice*") (also referred to herein as the "LEC Non-dominant proceeding").

[5] *See In the Matter of Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, 15802 ¶ 82 ("*LEC Classification Order*"), *on recon.,* 12 FCC Rcd 8730 (1997), *on further recon.,* 14 FCC Rcd 10771 (1999).

deemed to be dominant until such time as the Commission finds them to be non-dominant.[6] Likewise, BOC Section 272 affiliates will apparently be considered to be dominant under the Commission's rules, *after sunset*, if they no longer comply with the whole panoply of the Commission's Section 272 rules. Thus, under the current regulatory regime, if BSLDS or any other BOC Section 272 affiliate wants to continue to provide in-region interstate interexchange service after sunset as a *non-dominant* provider it must continue to comply with all of the Commission's Section 272 rules.

BellSouth correctly describes the situation it faces as a "Hobson's choice" in that BellSouth faces two equally unpalatable options if it wants to take advantage of the reduced regulation that Section 272 sunset purports to offer. Qwest shares this concern. In the near term, it appears that waiver or forbearance from the Commission's dominant carrier rules are the only ways out of the regulatory conundrum facing BOCs after sunset.

In these brief comments, Qwest supports BellSouth's waiver petition and specifically requests that the Commission: 1) complete its pending rulemaking and modify its rules regarding the regulatory classification of LECs providing in-region interstate interexchange service on an integrated basis;[7] and 2) re-evaluate its presumption that non-272 BOC affiliates providing in-region interstate interexchange service are dominant carriers. However, in ruling on these two issues, the Commission must be careful not to rely on or create any findings or

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[6] The Commission bases this position on its findings made during the course of its Competitive Common Carrier proceeding in the early 1980s. In discussing the non-dominant treatment of LEC affiliates in footnote 23 of its Fifth Report and Order in that proceeding, the Commission states "The BOCs currently are barred by the MFJ from providing interLATA services. [Citation to the MFJ omitted.] If this bar is lifted in the future, we would regulate the BOCs' interstate, interLATA services as dominant until we determined what degree of separation, if any, would be necessary for the BOCs or their affiliates to qualify for non-dominant regulation." *See In the Matter of Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor,* Fifth Report and Order, 98 FCC 2d 1191, 1198 n.23 (1984).

[7] *See* note 4 *supra*.

presumptions that BellSouth (or Qwest) are in any way like the post-merger behemoths AT&T/SBC or MCI/Verizon ("MegaBOCs"). While the relief sought by BellSouth is logical and necessary for BellSouth and Qwest, similar relief for the MegaBOCs would require, at the very least, vastly different considerations. Most importantly, while the record in the Commission's current rulemaking proceeding mandates non-dominant treatment of BellSouth, Qwest and the other smaller LECs, there is no record support for non-dominant treatment of post-merger SBC or Verizon.[8]

II. ARGUMENT

A. There is No Basis for Continuing to Subject BellSouth and Qwest to Dominant Carrier Regulation When They Provide In-Region Interexchange Service Either On an Integrated Basis or Through a Non-272 Affiliate

In May 2003, the Commission initiated its rulemaking proceeding to address the regulatory status of ILECs providing in-region interstate interexchange services after Section 272 sunset (the LEC Non-dominant proceeding).[9] Qwest and the other BOCs submitted voluminous comments and massive amounts of market data in this proceeding. Nevertheless, as the proceeding approaches its third anniversary, it appears to be stalled.

Qwest believes that the past data submitted to the Commission in the LEC Non-dominant proceeding justifies a finding of non-dominance for BellSouth, Qwest, and other small LECs when they operate on an integrated basis post-sunset. If anything, the need for regulatory relief

[8] Qwest will soon be filing its own petition to specifically address the status of QC in its region should it choose to provide in-region interstate interexchange services on an integrated basis and the status of QCC and QLDC should they continue to provide in-region interLATA service as non-272 affiliates. Qwest will also address the status of the MegaBOCs in more detail in *ex parte* filings in the pending rulemaking proceeding.

[9] *See* note 4 *supra.* While the primary focus of this proceeding has been on the regulatory classification of BOCs providing in-region interexchange services on an integrated basis after Section 272 sunset, the proceeding was not limited to BOCs but covered all ILECs and, as is discussed more fully in the text below, was broad enough to encompass the issue of the regulatory status of non-272 affiliates post-sunset.

for these LECs is even more compelling in light of the proposed MegaBOC mergers. Accordingly, it is not necessary to delay issuing an order covering these LECs in the LEC Non-dominant proceeding.

The second issue raised by the BellSouth waiver -- that of the Commission's classification of non-272 affiliates as dominant providers -- can also be resolved in the LEC Non-dominant proceeding. While the LEC Non-dominant proceeding has focused almost entirely on whether LECs, including the BOCs, should be classified as non-dominant carriers if they provide in-region interexchange service on an integrated basis, the rulemaking is broader than that. In its *Further Notice* initiating this rulemaking the Commission stated:

> We propose to address the appropriate classification of a BOC's in-region, interstate and international interexchange telecommunications services provided outside of a separate section 272 affiliate. Specifically, we seek comment on the continued need for dominant carrier regulation of BOCs' in-region, interstate and international interexchange telecommunications services after sunset of the Commission's section 272 structural and related requirements in a state." [Footnotes omitted.][10]

The Commission has collected more than enough factual information in the current rulemaking and earlier rulemakings[11] to find non-272 affiliates of BellSouth, Qwest, and smaller LECs to be non-dominant providers of in-region interexchange service.

In light of the above, Qwest believes that there is no basis for continuing to subject BellSouth, Qwest, and smaller LECs to dominant carrier regulation when they provide in-region interLATA service whether on an integrated basis or through a non-Section 272 affiliate.

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[10] *Further Notice*, 18 FCC Rcd at 10914-15 ¶ 2.

[11] *See* note 5 *supra.*

B. The Commission Should Not Harm BellSouth and Qwest By Delaying Regulatory Relief Until it Has Fully Evaluated the Effects and Consequences of the Pending Verizon and SBC Mergers

As discussed above, Qwest believes that the Commission can address all of the issues raised by the BellSouth waiver in its pending rulemaking and that the Commission should resolve these issues now as to BellSouth, Qwest and smaller LECs. Again, the Commission has more than enough information to find that BellSouth, Qwest and other smaller LECs should not be classified as dominant in this market post-sunset. Although the Commission does not have a factual basis for making a similar finding with respect to either integrated MegaBOC entities or non-272 affiliates of the MegaBOCs post-sunset, that fact is not a valid reason for delay. The Commission has a long history of adopting different rules for different classes and sizes of carriers subject to the Commission's rules and it should do so in this case.[12]

[12] *See, e.g.*, 47 C.F.R. §§ 32.11, 32.9000 and Public Notice, Annual Adjustment of Revenue Thresholds, 20 FCC Rcd 8551 (distinguishing Class A carriers from Class B carriers; and Larger Class A carriers from mid-sized carriers); 47 C.F.R. § 64.903 (distinguishing carriers on revenue thresholds). *Also see*, 47 C.F.R. § 61.41 (distinguishing carriers that are regulated under Price Caps or average schedule), 47 C.F.R. § 43.21 (distinguishing carriers on operating revenues), 47 C.F.R. § 43.43 (distinguishing carriers that are subject to depreciation reporting requirements based on operating revenues). *And see generally* 47 C.F.R. § 36.

III. CONCLUSION

For the foregoing reasons, Qwest respectfully requests that the Commission grant BellSouth's waiver petition and take the action described herein.

Respectfully submitted,

QWEST COMMUNICATIONS
INTERNATIONAL, INC.

By: Timothy M. Boucher
Blair A. Rosenthal
Timothy M. Boucher
Suite 950
607 14th Street, N.W.
Washington, DC 20005
(303) 383-6608

Its Attorneys

Of Counsel,
James T. Hannon

October 18, 2005

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be 1) filed with the FCC via its Electronic Comment Filing System, 2) served, via email on Mr. Randy Clarke, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission at Randy.Clarke@fcc.gov and 3) served, via email on the FCC's duplicating contractor Best Copy and Printing, Inc. at FCC@bcpiweb.com.

Richard Grozier
Richard Grozier

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