

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

**BellSouth Corporation's Petition for
Waiver**

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) **WC Docket No. 05-277**
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**SPRINT NEXTEL CORPORATION'S
REPLY COMMENTS IN OPPOSITION
TO PETITION FOR WAIVER**

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I. Introduction and Summary

BellSouth's three Bell Operating Company ("BOC") colleagues¹ formed a chorus supporting its assumption that a wide range of tariffing, price cap, structural separation, and accounting rules applicable to the BOCs should be waived when section 272 requirements sunset.² They assume that simply because their section 272 affiliates have been deemed non-dominant in the long distance market, there is no need for competitive safeguards after section 272 separate affiliate requirements sunset. Like BellSouth, the other BOCs want to integrate their long distance operations into their local operations – something that even independent ILECs cannot do under current Commission rules. Like BellSouth, they are mistaken.

¹ Comments were filed October 18, 2005 by Sprint Nextel Corporation ("Sprint"), Qwest Communications International, Inc. ("Qwest"), SBC Communications, Inc. ("SBC"), and the Verizon Telephone Companies ("Verizon").

² Petition for Waiver (filed Sept. 19, 2005) ("Petition"). See Public Notice DA 05-2529 (rel. Sept. 27, 2005); 47 U.S.C. § 272.

The fact that each of the BOCs apparently wants the same waiver of rules as BellSouth undermines BellSouth's Petition. BellSouth claimed that its waiver was limited – and that it was targeted to its own *unique* circumstances.³ The BOCs' comments thus indirectly confirm that the Petition fails to meet the standards for waiver. None of them provide record evidence sufficient to justify such extraordinary exemptions from rules the Commission has previously found are necessary to protect competition and the public interest. All of the BOCs know that the Commission has a rulemaking already pending,⁴ yet they provide no reason why they cannot wait for the Commission to address BOC long distance issues -- and other related issues even more important to competition - - in appropriate rulemaking orders.⁵

II. The Petition does not meet the standards for waiver.

A. The comments confirm that BellSouth's circumstances are not unique.

Remarkably, none of the three BOCs commenting on BellSouth's Petition bothered to address the standards applicable to waiver applications. That may be because BellSouth's Petition cannot meet those requirements – much less a waiver broadened to include other BOCs, as well. Waivers, by definition, are not to be applied broadly or routinely.⁶ They are not a substitute for proper rulemaking procedures. They are generally meant to apply to a unique applicant and only in unique circumstances.⁷

³ Petition at 6, 24.

⁴ SBC at 1; Qwest at 6; Petition at 2.

⁵ Sprint Comments at 16-18.

⁶ *Id.* at 3-5.

⁷ Northeast Cellular v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

The BOCs' comments effectively confirm that such circumstances do not exist here. In the Petition (at 3), BellSouth tried to claim that it was *different* from the other BOCs (and perhaps even other ILECs), even though it really is not unique. Yet each of the other BOCs contends that it, too, should receive the same waiver.⁸ Their rationales for waiver would apply to any ILEC. If BellSouth's waiver Petition were granted, the Commission could not deny any waiver petition by any of the nation's independent ILECs. They face similar regulations, yet they certainly lack the market power of a BOC.⁹ The BOCs acknowledge that action on BellSouth's Petition would not be an isolated waiver for one unique carrier, but instead a fundamental rewriting of long-standing regulations affecting the entire ILEC industry. The Petition plainly involves circumstances too broad to meet the narrow circumstances for a waiver.

B. The waiver sought is vague.

As Sprint pointed out in its comments (at 5-6), BellSouth's Petition is too vague to entertain. In fact, BellSouth's petition was so vague, it has since found it necessary to go to the Commission to meet with Commission staff to explain itself and then submit not one but two ex parte letters to "supplement" the Petition.¹⁰

⁸ Verizon at 19; Qwest at 1. SBC wants the same "regulatory relief" sought by BellSouth, but would prefer the Commission to provide it by completing the 272 Sunset rulemaking "expeditiously." SBC at 1.

⁹ Qwest actively supports similar waiver for "the other smaller LECs," to allow them to offer long distance and local services on an integrated basis.

¹⁰ Letter to Marlene Dortch, FCC, from Bennett Ross, BellSouth, WC Docket No. 05-277 (dated Oct. 21, 2005) (purporting to "supplement" Petition) ("October 21 letter"); Letter to Marlene Dortch from Bennett Ross (dated Oct. 12, 2005) (same); Notice to Marlene Dortch from Mary Henze, BellSouth (dated Oct. 6, 2005) (disclosing, without detail, ex parte meeting with Commission staff). The two supplemental letters repeat the Petition's generalized objection to "the artificial separation between local and long

The other BOCs' comments prove equally broad and even more vague. Their comments are remarkably short and provide no record evidence sufficient to support the Petition. SBC and Qwest submitted just six and seven pages, respectively. Verizon's submission was longer (at twenty-one pages), but it appears devoted to defending its proposed acquisition of MCI Communications, Inc. Neither SBC, Verizon, nor Qwest actually even cite any of the specific rules that they seek to have waived.

None of the BOCs bothers to explain exactly what would be waived and why. The comments of SBC and Verizon are particularly sweeping. Verizon (at 20) generalizes about how "competition" is the best form of "regulation." When the four BOCs cannot provide clarity about the ostensible "regulatory relief" they seek, it only confirms Sprint's view that the Petition cannot properly be granted.

C. Even with the other BOCs in support, BellSouth has failed to show that the Petition is in the public interest.

1. Regulatory safeguards are necessary and appropriate for BOCs.

In their comments, as in BellSouth's Petition, the BOCs ignore why these regulatory restraints were put in place. Indeed, they ignore the fact that Congress recognized that BOCs require market safeguards. The Act allows for eventual "sunset" of certain section 272 requirements (subject to Commission discretion to extend those requirements),¹¹ but contrary to the BOCs' implication, Congress took no steps

distance operations mandated by Section 272" and repeat the mistaken suggestion that structural and transactional separation rules are requirements "to which no carrier other than the Bell Operating Companies ... must adhere." October 21 letter at 3. BellSouth again fails to recognize that independent LECs are subject to similar rules, despite lacking the market power of a BOC. See Sprint Comments at 4-5.

¹¹ 47 U.S.C. § 272(f)(1).

whatsoever to eliminate altogether the distinction between the BOCs' local exchange services and long distance services that may be offered in-region after receiving authority under section 271, or to suggest (must less dictate) that the dominant carrier status should not be applied to the BOCs in-region even after any sunset of section 272 requirements. Accordingly, if today a BOC wants to integrate its long distance affiliate with its local operations after any sunset of section 271 requirements, it can do so – but it accept its dominant carrier status. As a dominant carrier, it should remain subject to the tariffing, price cap, and accounting rules targeted by the waiver Petition.

SBC highlights that AT&T Corporation and MCI Communications, Inc. have discontinued active marketing of mass market long distance.¹² It fails to acknowledge, however, the principal reason that the nation's first and second largest long distance carriers took this step. Marketing expenses for a mass consumer audience became unjustifiable, given the BOCs' entry into the in-region long distance market. By leveraging their dominance in the local exchange and exchange access services markets within their regions, the BOCs were able to displace AT&T and MCI as the nation's leading long distance carriers for the mass market. SBC and Verizon claim that the long distance market has long been fully competitive, without any dominant carriers. The Commission can only wonder why BellSouth, SBC, and Verizon have entered the in-region long distance market so aggressively, when for years they never made any real effort to enter the long distance market or to compete against one another outside their regions.

¹² SBC at 3.

In truth, the need for these market protections has not gone away with the passage of time, or any changes in technology, or by the changing fortunes of AT&T and MCI. These BOC protections are more important now than ever. They will be even more important still if the largest independent IXCs are in fact bought by the two largest BOCs.¹³ Indeed, Qwest actively opposes any grant of a waiver to what it terms “the megaBOCs.”¹⁴ It rightly points out, “there is no record support for non-dominant treatment of post-merger SBC or Verizon.” Id.

2. The BOCs continue to have market power within their ILEC regions.

SBC, Verizon, and Qwest each claim that they and BellSouth each have no “market power.” The facts show otherwise.

Like BellSouth, all four BOCs remain dominant in the local exchange, exchange access, and special access markets in their respective regions. It is altogether implausible that such dominant market positions do not give the BOCs substantial market power within their regions.

CLECs have only a small portion of the local exchange market.¹⁵ Competitive carriers of all types are overwhelmingly dependent on BOC special access facilities to

¹³ SBC (at 5) makes explicit that it intends to fully “integrate” AT&T’s long distance operations into its BOC operations as soon as possible.

¹⁴ Qwest at 6.

¹⁵ CLECs hold just 17.6% of the residential and small business market, and just 18.5% of total end-user switched access lines. Only a quarter of these CLECs provide service through their own facilities. Local Competition: Status as of Dec. 31, 2004, Industry Analysis Div., Common Carrier Bureau (July 8, 2005) at Tables 1-3. CLECs also are rapidly losing ground in the mass market. BellSouth’s latest quarterly financial report shows its wholesale residential and business access lines, those made available to local competitors, declined 23.8% and 12.5%, respectively. 3Q05 BellSouth Financials (Oct. 25, 2005) at 8 (available at www.bellsouth.com/investor).

provide their services.¹⁶ If SBC's and Verizon's planned acquisitions of AT&T and MCI are approved, not only will they control the industry's two largest IXC's, but the two largest alternative access providers will also become BOC affiliates. BOCs would also for the first time control the large majority of the enterprise market.¹⁷ Qwest (at 6) therefore insists that such market dominance requires excluding SBC and Verizon from any of the "regulatory relief" sought by it and BellSouth.

SBC, Verizon, and Qwest claim that their own markets are now fully competitive. They exaggerate both the health and impact of such competitors. They ignore, for example, the fact that scores of CLECs and IXC's have exited the market (most often after bankruptcy), that capital for competitive carriers is scarce, and that the largest long distance carriers have been compelled to virtually cede the retail mass market to the BOCs within their regions.¹⁸

Certainly, the BOCs remain the country's most formidable carriers. Verizon has a current market capitalization of \$89.6 billion. SBC's market cap is \$79.2 billion. BellSouth's is \$47.9 billion. Even Qwest's is nearly \$8 billion. Together, the four BOCs have a market capitalization of over \$185 billion, dwarfing the rest of the communications industry *combined*.¹⁹ The BOCs already account for 86% of the

¹⁶ See Sprint Comments at 10.

¹⁷ To its shareholders, SBC touted that acquiring AT&T "provides immediate global leadership in the enterprise segment..." Press Release: SBC to Acquire AT&T (Jan. 31, 2005) at 1.

¹⁸ See Sprint Comments at 9-11.

¹⁹ In comparison, the largest pure-wireline independent ILECs at present have market caps of just \$4.5 and \$1 billion (CenturyTel and Cincinnati Bell, respectively). The largest CLEC, leaving aside AT&T and MCI, has a market capitalization of just \$1.7

wireline access lines in America.²⁰ In the long distance market, they and their affiliates already account for half of the nation's long distance customers, less than three years after receiving section 271 throughout their regions.

At the same time, three of the BOCs own the substantial shares of the two largest wireless carriers (themselves major purchasers of wholesale long distance services).²¹ If the Commission allows SBC's and Verizon's proposed acquisitions of AT&T and MCI, BOCs and their affiliates will account for some 85% of the nation's enterprise market, and the two largest long distance carriers will also be affiliates of three of the four BOCs.

Under these circumstances, it is clear that the BOCs do have market power. In light of that power, it is critical to maintain the market protections contained in the rules that BellSouth seeks to have waived.

3. BellSouth and the other BOCs do not need regulatory exemptions to compete.

The BOCs' claim that they will not be "dominant" in long distance in-region is also plainly mistaken.²² Already, all BOCs are effectively dominant in-region in the long distance market.

billion, faces declining revenues, and is losing money (Level 3 Communications, Inc.). It also is not a significant presence in the retail market.

²⁰ Sprint Comments at 4 n.14.

²¹ Cingular, a joint venture of BellSouth and SBC, and Verizon Wireless, a partnership between Verizon and Vodafone PLC, each have approximately 25% of the nation's wireless subscribers. Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, WT Docket No. 05-71, Tenth Report, FCC No. 05-173 (rel. Sept. 30, 2005) at ¶ 5 & Table 4.

²² E.g., SBC at 1; Verizon at 20; Qwest at 3.

Like BellSouth, the other BOCs have won – in less than three years as authorized in-region long distance carriers and without any meaningful investment in facilities – a dominant position in the long distance mass market within their regions. BellSouth has 56% of the mass market in its region.²³ At Verizon, fully 60% of its residential customers are also Verizon long distance customers, up from 49% last year.²⁴ At SBC, 62% of its retail consumer lines and 45 percent of retail business lines included long distance services.²⁵ Even Qwest, which was last to receive section 271 long distance authority, can boast that second quarter “[l]ong-distance penetration of total retail lines increased to 35 percent ... compared to 29 percent a year ago.”²⁶ The BOCs enjoy rising long distance market share, rising long distance revenues, and even rising long distance rates – all at a time when other long distance carriers have seen their business decline.²⁷ The BOCs acquired this market share, and continue to grow rapidly and profitably, even with these supposed “regulatory burdens” already in place.

Apart from any other merger concerns, the Commission certainly should be particularly concerned about the prospect of SBC and Verizon “integrating” AT&T and MCI directly into their ILEC operations. Like all BOCs, they will remain dominant in

²³ BellSouth’s third quarter 2005 long distance revenues were up 30% over last year. BellSouth Mid-Year Report 2005 at 3, 5. In the third quarter, its mass market long distance share rose from 53 to 56%, and its total long distance customer base increased 23.%% from the prior year. Press Release: BellSouth Reports Third Quarter Earnings (Oct. 25, 2005).

²⁴ Press Release: Verizon Communications Reports Second-Quarter Earnings of \$2.1 Billion, With \$18.6 Billion in Revenues (July 26, 2005) at 5.

²⁵ SBC Investor Briefing (Oct. 20, 2005) at 5.

²⁶ Press Release: Qwest Reports Second Quarter Results (Aug. 2, 2005) at 1.

²⁷ Qwest’s “in-region long distance” revenue, for example, grew at twice the rate of its subscriber base, thanks in part to “pricing initiatives.” *Id.* at 4.

local exchange, exchange access, and special access markets. They already have a majority of the in-region mass market long distance market. But SBC and Verizon would also each be acquiring their largest or second largest long distance and enterprise market competitor. Each of the BOCs already has the ability and the incentive to misallocate costs between ILEC and long distance operations, to discriminate against competitors, and to provide subtle advantages to their long distance and wireless affiliates – all to the detriment of the competitive market. The shamefully poor record of each of the BOCs – and especially of SBC and Verizon – in complying with section 251, 271, and 272 requirements, merger conditions, and performance requirements, underscore the need for continued long distance market protections, especially with the growth of bundled service offerings.²⁸

Besides, the Commission has already substantially weakened the rules governing the BOCs' long distance affiliates. In petitions for forbearance filed little over two years ago, the BOCs sought “relief” from the long-standing requirement that they and their affiliates utilize structurally separate operations, installation, and maintenance functions.²⁹ The BOCs claimed they were “hindered” in competing in the long distance

²⁸ See Sprint Comments at 11-12.

²⁹ Petition of Verizon for Forbearance from the Prohibition of Sharing Operating, Installation, and Maintenance Functions Under Section 53.203(a)(2) of the Commission's Rules (filed Aug. 5, 2002); Petition for Forbearance from the Prohibition of Sharing Operating, Installation, and Maintenance Functions Under Section 53.203(a) of the Commission's Rules and Modification of Operation, Installation and Maintenance Conditions Contained in the SBC/Ameritech Merger Order (filed June 5, 2003); 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 (filed July 14, 2003); Petition of Qwest Services Corporation for Forbearance from the Prohibition of Performing Operating, Installation, and Maintenance Functions Under Section 53.203(a)(2)-(3) of the Commission's Rules (filed Oct. 3, 2003). Sprint was among many parties opposing the petitions.

market, and that they would save hundreds of millions annually by the Commission forbearing from enforcing this long-standing requirement.³⁰ Eighteen months ago, the Commission granted those requests,³¹ despite prior findings that such structural separation was required by the Act's mandate that BOCs and their section 272 affiliates "operate independently" and that BOCs would "inevitably" discriminate in favor of their affiliates.³² In the meantime, the BOCs have only solidified their positions as, de facto, the dominant long distance carriers within their regions. Like BellSouth, SBC, Verizon, and Qwest do not mention the OI&M relief they received, much less show why this further regulatory exemption is necessary or comports with the public interest.

Qwest (at 6) insists the Commission should not "harm" it and BellSouth by "delaying" this "regulatory relief." In truth, however, neither they nor the other BOCs need or warrant this "relief." The public interest would be harmed by such a grant.

4. The safeguards the BOCs seek to have waived remain vital to protect the competitive market and the public interest.

The Petition failed to establish that the public interest would be served by waiving these market safeguards for BellSouth. The other BOCs' comments have not made up for the Petition's insufficiency.

³⁰ See 47 C.F.R. § 53.203(a)(2)-(3).

³¹ Section 272(b)(1)'s "Operate Independently" Requirement for Section 272 Affiliates, Report and Order, 19 FCC Rcd 5102 (2004).

³² Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, 11 FCC Rcd. 21905 (1996) ("Non-Accounting Safeguards Order") at ¶¶ 158, 166 (discussing section 272(b)(1)'s requirement that a BOC's section 272 affiliate "shall operate independently from the Bell Operating Company"); id. at ¶ 163.

Verizon contends “the world has changed,” and together with SBC it essentially declares the long distance industry dead.³³ Sprint begs to differ. SBC’s and Verizon’s comments are surely ironic, when the former is seeking to buy AT&T in a transaction worth \$22 billion, and the latter is seeking to buy MCI for \$10.5 billion. The stand-alone long distance market may be declining, but it remains very much alive. It continues in retail and wholesale services, and for mass market and enterprise customers.

SBC and Verizon are mistaken to assume that the world has changed so completely. To begin with, it is not within BellSouth’s or the other BOCs’ authority to eliminate the distinction between local and long distance telecommunications services. It is incorporated into in the Act itself, and not merely in sections 271 and 272. The retail long distance market has been facing changes – changes that have proven difficult for all long distance carriers other than BOCs – but these do not warrant (let alone necessitate) exempting the BOCs from market-protecting rules. Even if independent carriers’ retail market share and revenues are declining, long distance continues to be a multi-billion industry, with hundreds of non-BOC competitors.³⁴ In fact, doubtless the largest single factor in the decline of the competitive long distance carriers has been the in-region retail market entry of the BOCs. That is because of their demonstrated ability to leverage their dominance of their local exchange markets to rapidly win long distance market share in

³³ Verizon at 1; SBC at 1-2.

³⁴ The most recent FCC report indicates that the industry includes than 1,000 toll carriers and \$99 billion in revenue. 90% of that revenue was non-ILEC long distance revenue. Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Statistics of the Long Distance Telecommunications Industry (May 2003) at 3, 5. Although these figures will have declined, the wholesale and retail long distance industry clearly remains a significant portion of the telecommunications services industry.

their regions, even without making any meaningful investment in long distance facilities.³⁵ The BOCs' acquisition of retail market share has had impacts on the wholesale long distance market.

SBC and Verizon point to VoIP and CATV-based technologies as long distance competitors.³⁶ Yes, VoIP has potential to displace some traditional, retail long distance voice traffic. But this technology remains in its early stages, its market share remains very small, and the Commission has found that it is not a substitute for traditional carrier services, either for mass market or enterprise services.³⁷ Yes, cable TV-based telephony has potential. But it, too, remains in its early stages. It also is small and virtually insignificant in the enterprise market.³⁸ Verizon also points to broadband over power line, even though it admits "[t]his service is just beginning to be commercially offered."³⁹ The BOCs repeatedly point to *forecasts*, predictions of what the market will be in the future, rather than to existing competition today. The Commission does not grant waivers based on a petitioner's assumption of what conditions will be in the future.

The BOCs also claim that wireless calling has displaced much wireline long distance demand.⁴⁰ It is true that wireless services have grown dramatically over the last

³⁵ See Sprint Comments at 11, 14.

³⁶ SBC at 2; Verizon at 2.

³⁷ Unbundled Access to Network Elements, Order on Remand, 20 FCC Rcd 2533 (2005) (Triennial Review Remand Order") at ¶ 38 n.114 ("Although we recognize that limited intermodal competition exists due to VoIP offerings, we do not believe that it makes sense at this time to view VoIP as a substitute for wireline telephony.").

³⁸ Together, VoIP and CATV-based services account for less than 4% of the nation's local access lines. Id.

³⁹ Verizon at 16.

⁴⁰ SBC at 2; Verizon at 6.

decade, and that a large percentage of long distance calling is initiated on wireless networks. Pointing to wireless competition to justify relaxing BOC rules is seriously misguided, however, given that the BOCs, including petitioner BellSouth, are affiliated with the two largest wireless providers, accounting for half of the nation's wireless subscribers. Moreover, the vast majority of wireless customers still maintain a wireless phone.⁴¹ The enterprise market has yet to see significant wireless substitution, and data services remain heavily wireline.⁴² Much of wireless calling is not displacing wireline calls. Instead, because of the convenience and popularity of mobile services, consumers make more calls of all types than they did in the past. Total minutes of use industry-wide have actually risen. And even wireless, VoIP and CATV-based calling all still depend on the voice and data networks of other carriers, including the BOCs, AT&T, and MCI, among others. As a general rule, these new entrants have not built their own long-haul facilities. Any displacement by these new technologies is effectively at the retail level only.

Beyond this, SBC, Verizon, and Qwest also join BellSouth in overlooking the fact that all of these ostensible competitors to the BOCs remain very heavily reliant on BOC

⁴¹ Although the percentage is certainly rising, only a relatively few local telecommunications customers have completely substituted wireless for wireline service. See 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, 18 FCC Rcd 16978 (2003) ("Triennial Review Order") at ¶ 53, upheld in part and vacated and remanded in part, United States Telecom Ass'n v. FCC, 359 F.3d 554 (D.C. Cir. 2004) ("USTA II"), cert. denied sub nom. National Ass'n of Reg'y Util. Comm'rs. v. United States Telecom Ass'n, 125 S. Ct. 313 (2004) (noting only three to five percent of wireline customers have gone wholly wireless); USTA II, 359 F.3d at 575.

⁴² Ambitious fixed-wireless networks failed to meet expectations. The largest point to multipoint carriers, such as Teligent and Winstar, were liquidated in bankruptcy. Sprint discontinued marketing its own, limited fixed wireless operations two years ago because of cost and technical issues.

facilities to serve their own customers. Despite efforts to self-supply and to utilize other providers, Sprint still depends on ILECs for more than 90% of its special access needs. The BOCs are in a position to control the costs of network components critical to their competitors' ability to provide service. Unlike independent ILECs, the BOCs have market power and the incentive and the ability to abuse it. They have abused it in the past, and will continue to do so in the future.⁴³ In various ways, the BOCs are sure to find ways to advantage their own affiliates against long distance, wireless, and even CATV-based and VoIP competitors. Without safeguards such as these – dominant status for integrated long distance services, tariffing of rates and terms, price cap application, and separate accounting -- it will be practically impossible for the Commission to detect or deter such abuses in the future.

III. The Commission should address long distance regulatory issues, and not just section 272 sunset issues, in already pending rulemakings.

SBC and Qwest, like BellSouth, acknowledge that a rulemaking is already underway that addresses rules that should apply to BOC long distance operations after sunset of any section 272 requirements.⁴⁴ Qwest (at 6) urges the Commission to “complete its pending rulemaking.” SBC (at 1) even says the Commission should act “expeditiously” to complete the rulemaking, “in lieu of granting BellSouth’s petition.”

⁴³ Like BellSouth, none of the BOCs acknowledge the repeated fines and penalties that have been imposed on the BOCs for violations of performance measures, discrimination, and violations of market protection requirements of the Act and the Commission’s rules. Like BellSouth, they even fail to note that BellSouth’s long distance affiliate continues to operate under a consent decree imposed because of violations of sections 271 and 272 of the Act. See Sprint Comments at 11-13.

⁴⁴ Verizon’s comments do not mention the pending rulemaking.

Sprint agrees the questions in that proceeding are important and deserve to be answered in a full and proper rulemaking order. Sprint draws very different conclusions, however, from the BOCs' assumptions that the rulemaking should or will result in eliminating the rules addressed by BellSouth's Petition. On the contrary, as Sprint and other commenters showed in that rulemaking⁴⁵ – and in related pending rulemaking proceedings – competitive safeguards remain necessary because of the continued market power of the BOCs.

The Commission should not, and properly cannot, prejudice the outcome of that proceeding by entertaining a waiver request from one BOC. That Petition has predictably expanded into a call for waiver by all BOCs. The BOCs do not warrant such exemptions from the Commission's rules, and there is insufficient record evidence to show that the public interest supports a waiver for BellSouth -- much less for all four BOCs. But even assuming for argument's sake that such waiver were justifiable for BellSouth, then the Commission could hardly deny independent ILECs at least the same measure of so-called "regulatory relief." After all, they have long been subject to very similar rules, despite the Commission's recognition that they, unlike BOCs, do not have market power within their ILEC operating territories.⁴⁶

One carrier's waiver petition cannot properly be grounds for rewriting – or actually erasing – regulations that have been in place for all ILECs for years. It certainly cannot properly be grounds for disregarding the Congressional intent that clearly underlie

⁴⁵ See comments and reply comments submitted in Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, WC Docket No. 02-112 (filed June 30 and July 28, 2003, respectively).

⁴⁶ See Sprint Comments at 4-5 & 9 n.24.

sections 271 and 272 of the Act – the intent to protect the public interest and the competitive marketplace from the market power that the BOCs enjoy as “inheritors of AT&T’s [monopoly] local franchises.”⁴⁷

The Commission should deny the Petition and instead address the rulemakings that are already pending. These include not only the 272 Sunset proceeding.⁴⁸ Pending rulemakings on price cap rules⁴⁹ and UNE and special access performance and enforcement measures⁵⁰ are actually more important to the public interest. They are long overdue and, if anything, should be addressed first. Surely, BellSouth and the other BOCs can await the Commission’s action. Even with these rules in place, they have rapidly won the lion’s share of long distance customers in their regions. They have grown revenue sharply at a time when the retail industry has faced revenue declines. And they have accomplished all this without any meaningful investment in long distance facilities.

In the meantime, the BOCs have a choice. It is a clear choice, and a reasonable one. If and when section 272 requirements sunset in all their states, they can operate

⁴⁷ Verizon Comms. Inc. v. FCC, 535 U.S. 467, 476 (2002).

⁴⁸ 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, WC Docket No. 02-112, CC Docket No. 00-175, Further Notice of Proposed Rulemaking, 18 FCC Rcd 10914 (2003).

⁴⁹ Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25, RM-10593, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005).

⁵⁰ Performance Measurements and Standards for Interstate Special Access Services, CC Docket Nos. 01-321, et al., Notice of Proposed Rulemaking, 16 FCC Rcd 20896 (2001); Performance Measurements and Standards for Unbundled Network Elements and Interconnection, CC Docket No. 01-318, Notice of Proposed Rulemaking (16 FCC Rcd 20641 (2001)).

through a separate affiliate and enjoy nondominant long distance status. Or they can integrate facilities and lose nondominant status. They cannot expect, however, to be exempt from tariffing requirements, price cap and accounting rules, and dominant carrier status, when independent ILECs that lack their market power remain subject to essentially the same rules that they seek waived. BellSouth's Petition cannot properly be granted, whether for BellSouth alone or for any of the other BOCs.

IV. Conclusion

BellSouth's Petition fails to meet the standards for waiver, and it fails to show that such extraordinary exemptions from market-protecting regulations are warranted or in the public interest. The comments filed by each of the other BOCs merely confirm that the Petition should be denied. Rather than entertain a waiver request and make policy on a piecemeal basis, the Commission should reject BellSouth's extraordinary waiver request and instead complete the on-point rulemaking proceedings that are already pending.

Respectfully submitted,

SPRINT NEXTEL CORPORATION

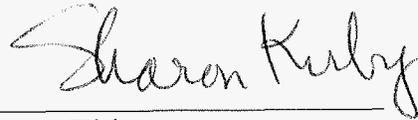
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CERTIFICATE OF SERVICE

I hereby certify that a copy of Sprint Nextel Corporation's Reply Comments in Opposition to Petition for Waiver in WC Docket No. 05-277 was delivered by electronic mail or First Class, postage prepaid, U.S. Mail on this 28th day of October, 2005 to the parties listed below.



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Sprint Reply
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Oct. 28, 2005

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