

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

In the past several months, Qwest has pulled out the stops to try to exploit the regulatory process to gain a competitive edge in the marketplace. First, it sought to obtain advantage by asking the Commission to impose, as conditions for approving the mergers of SBC/AT&T and Verizon/MCI, a host of regulatory obligations that self-evidently were designed to cripple the ability of those companies to compete post-merger in today's robustly competitive, multimodal communications marketplace.¹ Now, Qwest has sought to extend this gambit to this proceeding, urging the Commission to rule that BellSouth, Qwest and other ILECs are non-dominant when they provide in-region interstate interexchange services on an integrated basis following the sunset of section 272 of the Act, but not to extend similar relief to SBC/AT&T or Verizon/MCI.² Qwest asserts that data submitted to the Commission in the LEC Classification Proceeding³

¹ See Ex Parte Letter from Melissa Newman, Qwest Communications International, Inc. To Marlene Dortch, FCC, WC Docket No. 05-65 (October 17, 2005) (October 17 Ex Parte); Ex Parte Letter of Qwest Communications International, Inc., *et al.* to Marlene Dortch, FCC, WC Docket 05-65 (October 21, 2005) (October 21 Ex Parte).

² Comments of Qwest Communications International Inc. at 3-4 (Qwest Comments).

³ *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) (LEC Classification Proceeding).

supports a finding of non-dominance for BellSouth and Qwest post-272, but claims that “there is no record support for non-dominant treatment” of the so-called SBC and Verizon “MegaBOCs” (an appellation that Qwest undoubtedly will repeat *ad nauseum*) post-merger.

But, Qwest’s *ipse dixit* aside (it offers no explanation why SBC’s acquisition of AT&T and Verizon’s acquisition of MCI justifies disparate treatment), there is no basis for differentiating SBC/AT&T and Verizon/MCI from BellSouth and Qwest after the sunset of section 272 requirements. As SBC observed in its comments, the merger of SBC and AT&T will not materially alter the competitive landscape for any telecommunications service because these companies have largely complementary strengths and product sets.⁴ In the enterprise and large business market, AT&T has focused on national and global customers, while SBC has focused on smaller and regional customers whose operations are confined largely to SBC’s thirteen state serving territory. In the mass-market space, SBC has continued to focus on small business and residential customers, while AT&T decided to exit the mass market more than a year ago. The merger of SBC and AT&T thus will not adversely affect competition in any segment of the interstate, interexchange marketplace.

But the Commission need not take SBC’s word for it; just yesterday, the Department of Justice concluded as much. After “thoroughly investigat[ing] all overlaps between the merging parties,” “including residential local and long distance service, Internet backbone services and a variety of telecommunications services provided to business customers,” the Department concluded that “the transactions will not harm competition and will likely benefit consumers, due to existing competition, emerging technologies, the changing regulatory environment, and

⁴ SBC Comments at 2.

exceptionally large merger-specific efficiencies,” except with respect to a small number of wireline connections to particular buildings in a handful of metropolitan areas.⁵

All of the other parties to this proceeding agree, and thus urge the Commission not to afford disparate treatment to BellSouth, Qwest, Verizon and SBC.⁶ Even Sprint Nextel, which opposes BellSouth’s waiver request, recognizes that there is no basis to treat BellSouth and Qwest differently from Verizon and SBC – “the notion that BellSouth is unique, simply because it is smaller than Verizon and SBC (Petition at 6, 24), is wholly mistaken”⁷ – and therefore urges the Commission to address issues pertaining to BOC classification post-272 in the *LEC Classification Proceeding*.⁸

The Commission therefore should reject Qwest latest cynical, and, indeed, hypocritical,⁹ attempt to use the regulatory process to gain competitive advantage by urging the Commission to retain regulatory obligations (dominant carrier treatment) for two of its chief rivals – SBC and Verizon – that it acknowledges are unwarranted and unnecessary in today’s competitive marketplace, but eliminate those obligations for itself. Rather, the Commission should complete

⁵ Department of Justice Press Release, Justice Department Requires Divestitures in Verizon’s Acquisition of MCI and SBC’s Acquisition of AT&T, http://www.usdoj.gov/opa/pr/2005/October/05_at_571.html (rel. Oct.27, 2005).

⁶ Comments of the Verizon Telephone Companies at 1, 20; Sprint Nextel Corporation’s Opposition to Petition for Waiver at 3; SBC Comments at 1.

⁷ Sprint Nextel at 3.

⁸ *Id.* at 18.

⁹ In opposing proposals that the Commission require Qwest to comply with an assortment of conditions to obtain approval of its acquisition of US WEST in 1999, Qwest argued that it would be wholly “inappropriate” to impose onerous regulatory obligations specific to Qwest absent a showing that it was situated differently from other parties: “It is well-established that the Commission may not use its merger review authority as an opportunity to impose obligations on the merger parties that are not related to issues raised by the merger;” “in the absence of any showing that [a] proposed transaction would thwart the public interest, generic rules of conduct . . . should be addressed in generic proceedings.” Ex Parte Letter from Genevieve Morelli, Qwest Communications Inc., and Daniel Poole, US West, to Magalie Roman Salas, FCC, CC Docket No. 99-272 at 6 (filed Nov. 30, 1999).

expeditiously its long-pending *LEC Classification Proceeding*, and rule in that proceeding that BOCs are non-dominant in their provision of interstate, interexchange services.

Respectfully submitted,

/s/ Christopher M. Heimann

Christopher M. Heimann
Gary L. Phillips
Paul K. Mancini

SBC Communications Inc.
1401 I Street, NW
Washington, D.C. 20005
202-326-8909

Its Attorneys

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CERTIFICATE OF SERVICE

I, Shandee R. Parran , do hereby certify that a copy of **Comments of SBC Communications, Inc. to BellSouth Corporation's Petition for Waiver** has been served to the parties below via first class mail – postage prepaid on this 28th day of October 2005.

By: /s/ Shandee R. Parran
Shandee R. Parran

Service List:

Vonya B. Mcann
H. Richard Juhnke
John E. Benedict
Sprint Nextel Corporation
401 Ninth Street, NW
Suite 400
Washington, DC 20004

Timothy M. Boucher
Blair A. Rosenthal
Qwest Communications International, Inc.
607 14th Street, NW
Suite 950
Washington, DC 20005

Leslie V. Owsley
Edward Shakin
Michael E. Glover
Verizon
1515 North Court House Road
Suite 500
Arlington, VA 22201UUPP