Before the
Federal Communications Commission
Washington, D.C. 20554

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

REPLY COMMENTS OF THE VERIZON TELEPHONE COMPANIES[1]

Only Sprint Nextel[2] opposed BellSouth's waiver petition, and Sprint Nextel has not offered any valid reason why the petition should be denied. Qwest[3] supported BellSouth's petition, but argued that the same relief should not be extended to SBC and Verizon. But as Verizon has shown, there is extensive and vigorous competition for both local and long distance services nationwide, including in Verizon's local exchange carrier serving areas. Indeed, for all telecommunications services, Verizon's service areas are among the most competitive in the nation, and it is Qwest's service areas that, on the whole, are comparatively less competitive. And for the long distance services that are the focus of BellSouth's petition, competition is intense nationwide. The Commission should, therefore, grant BellSouth's petition and also should waive the specified rules for all BOCs as their section 272 requirements sunset.

Sprint Nextel argues that the Commission should not waive the particular rules requested by BellSouth because Congress "recognized that regulatory restraints are appropriate . . . when BOCs enter the in-region long distance market." Sprint Nextel Opposition at 6. Sprint Nextel

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[1] The Verizon telephone companies ("Verizon") are the companies affiliated with Verizon Communications Inc. that are listed in Attachment A to these Comments.

[2] Sprint Nextel Corporation's Opposition to Petition for Waiver, WC Docket No. 05-277 (filed Oct. 18, 2005) ("Sprint Nextel Opposition").

[3] Comments of Qwest Communications International, Inc., WC Docket No. 05-277 (filed Oct. 18, 2005) ("Qwest Comments").

points to sections 271 and 272 of the 1996 Telecommunications Act. *Id.* But as Verizon has explained elsewhere, the three-year sunset of the section 272 separate affiliate requirement adopted by Congress, on its face, was intended as a transitional measure that would be of limited duration.[4] It is circular to point to the existence of the section 272 requirements *before* sunset as justification for continued requirements *after* the period Congress found sunset to be appropriate.

Congress' foresight in setting a limited period for the section 272 transitional requirements is confirmed by the explosion in competition in the last decade. As Verizon demonstrated in its Comments in this docket, in the decade since enactment of the 1996 Act, the telecommunications market has undergone a fundamental revolution.[5] Where end users once bought local service from their local phone company and long distance service from one of a number of interexchange carriers, they now can choose among a variety of all distance services offered by a wide range of intermodal providers. Because consumers increasingly view wireless, cable telephony, and VoIP as viable alternatives to wireline service, wireline access lines are now falling at a 5.2 percent annualized run-rate.[6] Average residential wireline toll minutes have also declined for the industry as a whole – from an average of 149 minutes per month in 1997, down to only 90 minutes per month in 2002 (and undoubtedly much less today, given the increase in wireless and decrease in wirelines).[7] In total, consumers reduced the number of long distance minutes of use on landline phones by 40 percent between 1997 and 2002.[8]

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[4] Comments of Verizon, WC Docket No. 02-112, at 6 (filed Aug. 5, 2002).

[5] Comments of the Verizon telephone companies, WC Docket No. 05-277, at 1-16 (filed Oct. 18, 2005) ("Verizon Comments").

[6] *See* Qaisar Hasan and May Tang, Buckingham Research Group, *The Last Mile – Monitoring Quarterly Trends in Telecommunications*, Video and Data at 1 (Aug. 18, 2005).

[7] *See* Indus. Anal. & Tech. Div., WCB, FCC, *Statistics of the Long Distance Telecommunications Industry*, Table 20 (May 2003) *available at* http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/ldrpt103.pdf

As the foregoing makes clear, Sprint Nextel's claim (at 9-11) that the BOCs' "market power" somehow justifies the continued application of outmoded regulations is simply wrong. Sprint Nextel nevertheless argues that BellSouth (and other BOCs) have "abus[ed] [their] market power"[9] and that waiving the regulations BellSouth specified would "undermine deterrence of competitive abuses, because these acts would be rendered virtually undetectable." *Id.* at 13. Sprint Nextel worries that BellSouth might "discriminate in favor of its long distance operations," "cross-subsidize its long distance . . . services," or "create price squeezes." Sprint Nextel Opposition at 12. These allegations ignore the fact that, under the waiver BellSouth seeks, section 272(e) will still require that a BOC provide telephone exchange and exchange access services, information or facilities to competitors and other unaffiliated entities in the same time it provides such services to itself, and will further require that a BOC impute to itself an

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(includes: IntraLATA-Intrastate, InterLATA-Intrastate, IntraLATA-Interstate, InterLATA-Interstate, International, Others (toll-free minutes billed to residential customers, 900 minutes, and minutes for calls that could not be classified)).

[8] *See id.*

[9] Sprint Nextel claims that the BOCs have "shown a pattern of resisting competition," and alleges without citation or explanation that this is proved by the BOCs having been assessed "fines, penalties, and compelled refunds of well over $2.1 billion." Sprint Nextel Opposition at 11 and n.31. At least as far as Verizon is concerned, the Commission has already rejected Sprint Nextel's argument. Verizon has made payments under various performance assurance plans when its reported performance in a particular month did not meet the established standards. But in reviewing Verizon's performance, the Commission has determined time and again that these reported results were not "competitively significant." *See, e.g., Verizon Vermont 271 Order*, 17 FCC Rcd 7625, ¶¶ 41, 42, 54 (2002); *Verizon Maine 271 Order*, 17 FCC Rcd 11659, ¶¶ 39, 47, 49, 50 (2002); *Verizon New Jersey 271 Order*, 17 FCC Rcd 12275, ¶¶ 111, 141 (2002); *Verizon New Hampshire and Delaware 271 Order*, 17 FCC Rcd 18660, ¶¶ 109-111, 115 (2002); *Verizon Virginia 271 Order*, 17 FCC Rcd 21880, ¶¶ 43, 53 (2002); *Verizon Maryland, Washington, D.C., and West Virginia 271 Order*, 18 FCC Rcd 5212, n.6, n.59 (2003). With respect to consent decrees, the Commission has explained that "[t]he act of consenting to [a consent decree] is not a wrongful act and does not necessarily imply wrongful conduct." *Policy Regarding Character Qualifications in Broadcasting*, 102 FCC 2d 1179, at n.64 (1986).

amount "no less than the amount charged to any unaffiliated interexchange carriers" for such services. 47 U.S.C. § 272(e)(1)-(3).

Sprint Nextel also argues that BellSouth is not unique, and that even independent companies are subject to "many of the same requirements." Sprint Nextel Opposition at 4. Sprint Nextel is correct that the waiver should cover the entire industry. The Commission has used industry-wide waivers in other cases where, as here, there are circumstances that support such broad relief.[10] Granting such relief does not limit the Commission's ability to address outmoded regulations that should be eliminated for independent companies as well. Likewise, the fact that such regulations apply to independent companies is no reason not to provide relief here to the Bell Operating Companies, which have been uniquely burdened by section 272's separation requirements.

Qwest supports BellSouth's petition, and argues that it should be entitled to the same relief. It claims, however, that there is no record support for extending a waiver of the specified requirements to other BOCs. Qwest Comments at 4. Qwest's argument makes no sense. Even Sprint Nextel (which opposes the petition) recognizes that BellSouth is not unique. *See* Sprint Nextel Opposition at 3-5. As Verizon demonstrated in its Comments, competition for all kinds

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[10] *See, e.g., National Exchange Carrier Association Petition to Amend Section 69.104 of the Commission's Rules*, 19 FCC Rcd 13591, ¶ 39 and n.99 (2004) (granting, in relevant part, partial interim waiver of Section 69.104 of the Commission's rules to all similarly situated rate-of-return carriers, including those that did not formally request the waiver); *American Family Association*, 19 FCC Rcd 18681 (2004) (granting waiver of Section 1.2105(b)(2) of the Commission's rules for the petitioners and other similarly situated applicants because the circumstances unique to Auction 37 compel grant of the requested waiver as being in the public interest); *Telephone Number Portability; BellSouth Corporation Petition for Declaratory Ruling and/or Waiver,* 19 FCC Rcd 6800, at ¶ 1 (2004) (granting BellSouth's request for a waiver of the five-year local number portability (LNP) cost recovery rule and extending the waiver to all incumbent LECs that had yet to include certain costs in their LNP cost recovery tariffs); *BellSouth Petition for Waiver of Section 32.22 of the Commission's Rules to Permit the Implementation of Flash-Cut Normalization Relating to Tax/Timing Difference Originating in 1988,* 2 FCC Rcd 5146, at ¶ 15 (1987) (extending BellSouth's waiver petition to all carriers).

of telephone services, including long distance services, has increased dramatically over the last decade. All providers of long distance services (whether the services are provided separately, as a bundle of local and long distance, or as "all distance" services) must compete in this changed marketplace, and competition is certainly no less intense in New York or Boston than it is in Denver or Seattle. Indeed, intermodal competitors are national in scope. For example, wireless providers such as Cingular, Sprint Nextel, and T-Mobile compete nationally. Similarly, any customer with a broadband connection – which, as Verizon explained, is now available to more than 90 percent of U.S. households from a provider other than the incumbent LEC – can purchase VoIP services from many different providers including Vonage, Packet8, Lingo, and AT&T.

The Commission has long recognized that competition is the best form of "regulation."[11] Consumers in all parts of the country will benefit from removing outmoded and artificial regulatory handicaps from the BOCs. Conversely, the harm to the public interest that the Commission recognized from imposing tariffing, price cap, and accounting separation regulations on BOCs, but not on other competitors, will result if such regulations are imposed on any of the BOCs, not just BellSouth or Qwest. The pending acquisition of MCI by Verizon does not change these facts. In light of the extremely competitive nature of long distance services today, that acquisition will not reduce competition, and does not suggest that Verizon should be treated differently from BellSouth or Qwest after the sunset of section 272 requirements. It

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[11] *See, e.g., Access Charge Reform*, 12 FCC Rcd 15982, ¶ 263 (1997) ("Competitive markets are superior mechanisms for protecting consumers by ensuring that goods and services are provided to consumers in the most efficient manner possible and at prices that reflect the cost of production. Accordingly, where competition develops, it should be relied upon as much as possible to protect consumers and the public interest. In addition, using a market-based approach should minimize the potential that regulation will create and maintain distortions in the investment decisions of competitors as they enter local telecommunications markets.").

makes no sense, therefore, to subject a few service providers to burdensome regulations designed for a fundamentally different era.

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For the foregoing reasons, the Commission should waive the specified regulations for all BOCs as their 272 requirements sunset.

Respectfully submitted,

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ATTACHMENT A

THE VERIZON TELEPHONE COMPANIES

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

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