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

In the Matter of	)	
	)	
Petition of Qwest Communications International Inc. for Forbearance From Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunset Pursuant To U.S.C. § 160	)	WC Docket No. 05-333

COMMENTS OF BELLSOUTH CORPORATION

BellSouth Corporation ("BellSouth"), on behalf of itself and its wholly owned affiliates, respectfully submits its comments in support of the Petition filed by Qwest Communications International, Inc., Qwest Communications Corporation, Qwest LD Corporation, and Qwest Corporation (collectively "Qwest") seeking forbearance from dominant carrier regulation with respect to Qwest's provision of in-region, interexchange services after the sunset of section 272 of the Telecommunications Act of 1996 ("1996 Act").[1] Specifically, Qwest seeks forbearance from Commission enforcement of Part 61 tariffing and price cap requirements and any other dominant carrier rules that might apply to Qwest's provision of in-region, interexchange services post-sunset. Qwest's Petition more than satisfies the requirements for forbearance under section 10 of the 1996 Act and must be granted.

[1] Section 272 requires that Bell Operating Companies ("BOCs") provide long distance services through a fully separate affiliate for three years, after which the provisions of section 272 expire, except for section 272(e), "unless the Commission extends such 3-year period by rule or order." 47 U.S.C. § 272(f)(1). To date, the Commission has expressly declined to extend this three-year period. *See, e.g., Section 272 Sunsets for BellSouth Communications Inc. in the States of Georgia and Louisiana by Operation of Law on May 15, 2005 Pursuant to Section 272(f)(1)*, WC Docket No. 02-112, *Public Notice*, 20 FCC Rcd 8998 (2005).

First, dominant carrier regulation is not required to ensure that rates and practices are just, reasonable, and not unreasonably discriminatory. The regulatory requirements applicable to dominant carriers were adopted in a different age to govern the conduct of standalone long distance carriers and to address concerns that are no longer valid. For almost a decade, all long distance providers have been classified as nondominant, including the section 272 long distance affiliates through which BOCs offer long distance services.[2] Nondominant carriers are prohibited from filing tariffs except in limited circumstances and are exempt from price cap regulation and detailed accounting requirements. Within this streamlined regime of regulation, long distance competition has continued to increase, and prices have continued to fall. As Qwest convincingly demonstrates in its Petition, there is no basis to conclude that long distance prices would suddenly increase if non-dominant status were accorded to BOCs for the provision of long distance service outside of a section 272 affiliate.

The Commission recognized as much in the *LEC Classification Order,*[3] noting that it would be unlikely

> that a BOC interLATA affiliate, whose customers are likely to be concentrated in the BOC's local service region, could drive one or more of these national companies from the market. Even if it could do so, it is doubtful that the BOC interLATA affiliate would later be able to raise prices in order to recoup lost revenues.[4]

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[2] *See generally Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, Order*, 11 FCC Rcd 3271 (1995); *Motion of AT&T Corp. to be Declared Non-Dominant for International Service, Order*, 11 FCC Rcd 17963 (1996); *see also MCI WorldCom, Inc. v. FCC,* 209 F.3d 760 (D.C. Cir. 2000).

[3] *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area; Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket Nos. 96-149 & 96-61, *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 (1997) ("*LEC Classification Order*").

[4] *Id.* at 15818-19, ¶ 107.

Since the issuance of the *LEC Classification Order* in 1997, the market has become even more competitive, with long distance services being offered by a host of providers other than traditional wireline carriers. For example, wireless service has continued to proliferate, with approximately 195 million wireless subscribers in 2005.[5] By contrast there are approximately 183 million wireline access lines, a number declining each year.[6] In addition, wireless carriers are competing aggressively to displace long distance telephone calls that previously were made on wireline networks, making wireless plans "the method of choice when it comes to long-distance calling from home."[7]

In addition to wireless substitution, there also is increased competition in the long distance market from cable operators and VoIP providers. According to analysts, "Cable telephony, circuit and packet, represent about 3.4 million households today or 3%, but we see this rising steadily to about 17.2 million or 15% by 2010."[8] The number of consumers subscribing to VoIP has been forecast to grow from 1.1 million in 2004 to 28.5 million by 2009.[9] The Commission has acknowledged that consumers of VoIP service expect it to function as a

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[5] *CTIA's Semi-Annual Wireless Industry Survey Results*, *available at* http://files.ctia.org/pdf/CTIAMidYear2005Survey.pdf.

[6] *See, e.g.*, Ind. Anal. & Tech. Div., Wireline Competition Bureau, FCC, *Trends in Telephone Service,* at Table 7.1 (June 2005) (end-user switched access lines have declined steadily since their peak in 2000).

[7] W. Mossberg, *The Mossberg Solution: Turning Your Home Phone into a Cellphone – Call-Forwarding Devices Let You Use Cellular Service on a Traditional Phone*, Wall St. J. at D6 (Dec. 3, 2003).

[8] Banc of America Securities Research Brief, *Setting the Bar: Establishing a Baseline for Bell Consumer Market Share* (June 14, 2005).

[9] Yankee Group, *Consumer Market for US Residential VoIP Services Accelerates* (June 28, 2005).

"regular telephone" service,[10] which means that it increasingly competes with traditional telephone services, including long distance.

Under such circumstances, neither Qwest nor carriers such as BellSouth can reasonably be said to be "dominant" in the long distance market. The continued competitiveness of the long distance market and the resulting low prices that customers currently enjoy have occurred without the hindrance of unnecessary regulation, and dominant carrier regulation is simply unnecessary to ensure that both trends continue.

Second, dominant carrier regulation is not necessary to protect consumers. Given that competition in the long distance market is intense and that no long distance carrier is subject to dominant carrier regulation today, such regulation is clearly unnecessary for consumer protection purposes. In fact, the Commission has recognized as much, noting in the *LEC Classification Order* that "the regulations associated with dominant carrier classification can dampen competition. For example, advance notice periods for tariff filings can stifle price competition and marketing innovation when applied to a competitive industry."[11] As the Commission explained, dominant carrier tariff filing requirements "would reduce incentives for competitive

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[10] *See generally IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers,* WC Docket Nos. 04-36 & 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005).

[11] *LEC Classification Order,* 12 FCC Rcd 15756, 15806, ¶ 88. The Commission previously had eliminated tariffing requirements for nondominant carriers and ordered them to cancel their tariffs for interstate, domestic, interexchange services. *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61, *Second Report and Order*, 11 FCC Rcd 20730 (1996). The Commission did so because it concluded "that a regime without non-dominant interexchange carrier tariffs for interstate, domestic, interexchange services will be the most pro-competitive, deregulatory system." *LEC Classification Order*, 12 FCC Rcd at 15806-07, ¶ 88. The Commission also "found that not permitting nondominant interexchange carriers to file tariffs with respect to interstate, domestic, interexchange services will enhance competition among providers of such services, promote competitive market conditions, and achieve other objectives that are in the public interest." *Id.* at 15807.

price discounting, constrain carriers' ability to make rapid, efficient responses to changes in demand and cost, impose costs on carriers that attempt to make new offerings, and prevent customers from seeking out or obtaining service arrangements specifically tailored to their needs."[12] The Commission also concluded that if it "were to require BOC interLATA affiliates to file tariffs for interstate, domestic, interexchange services, the ready availability of that information might facilitate tacit coordination of prices."[13] In addition, according to the Commission, "[t]he required cost support data also can discourage the introduction of innovative new service offerings, because it requires a carrier to reveal its financial information to its competitors."[14] As the Commission's reasoning makes clear, dominant carrier regulation of long distance services does not protect but instead harms consumers.

Finally, forbearance is consistent with the public interest. The Commission has previously recognized that its dominant carrier rules – in particular, the tariffing requirements applicable to dominant carriers – harm the public interest. Furthermore, other competitors do not labor under the requirement to either separate their local and long distance operations or operate as a dominant long distance carrier. Wireless carriers, cable companies, VoIP providers, and Competing Local Exchange Carriers ("CLECs") are all free to choose the corporate structure that enables them to compete most effectively. Handicapping one set of providers simply reduces effective competition and harms consumers, which is hardly in the public interest.

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[12] *Id.* at 15807, ¶ 88.

[13] *Id.* ¶ 89.

[14] *Id.* at 15808, ¶ 90.

The Commission has long recognized that competition serves the public interest and that excessive regulation can hinder competition. Consistent with this approach, the Commission should allow Qwest (and other carriers such as BellSouth) to offer long distance services without being subject to dominant carrier regulation. Accordingly, the Commission should grant Qwest's Petition for Forbearance.

Respectfully submitted,

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Date: January 23, 2006

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