Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 230554

In the Matter of	)	
	)	
Petitions of the Verizon Local and Long Distance Telephone Companies for Interim Waiver of and Forbearance from Certain Dominant Carrier Regulations for In-Region, Interexchange Services	)	WC Docket No. 06-56

SPRINT NEXTEL CORPORATION'S OPPOSITION TO PETITIONS FOR INTERIM WAIVER AND FORBEARANCE

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I. Introduction and Summary

The Verizon Companies ("Verizon") have asked the Commission to forbear from enforcing or waive a wide range of long-standing regulations applicable to their provision of in-region long distance services.[1] Sprint Nextel Corporation ("Sprint Nextel") opposes the petitions.

Verizon's request is strikingly broad. It wants exemption from section 203 of the Act, removal of dominant carrier tariff requirements and price cap regulation, exemption from all accounting rules -- including the Commission's *Joint Cost Order* and the *Accounting Safeguards Order* -- and from the Commission's *Computer III* requirements, including Comparably Efficient Interconnection and Open Network Architecture

[1] Petition of the Verizon Local and Long Distance Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services; Petition of the Verizon Local and Long Distance Telephone Companies for Interim Waiver with Regard to Certain Dominant Carrier Regulations for In-Region Interexchange Services (both filed Feb. 28, 2006). See Public Notice DA 06-618 (rel. Mar. 31, 2006).

requirements.[2] It also wants exemption from provisions of Part 63 of the Commission's rules concerning acquisition of lines, discontinuance of services, transfers of control, and acquisition of affiliates.[3] And it wants an exemption from rules governing independent LECs' provision of in-region, interstate, interexchange and international services.[4] In addition to seeking forbearance from all these requirements, Verizon separately requests an "interim waiver" of each of these regulations in the former Bell Atlantic region after March 19, 2006, when it expected the Commission would allow section 272 (47 U.S.C. § 272) requirements to sunset.

Verizon's petitions are the latest attempt by a Bell Operating Company ("BOC") to avoid rules that remain critical to wholesale and retail competition in the long distance market.[5] They should be denied. First, forbearance for BOCs is not in the public interest. The Commission has the same issues, and even more important related matters, already pending in rulemaking proceedings that need to be decided -- and should be decided -- on an industry-wide basis, on a complete record, and not on a piece-meal basis. Second, given the BOCs' continued market power, Verizon has not met the requirements for

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2 47 U.S.C. § 203; 47 C.F.R. §§ 61.28, 61.32, 61.33, 61.58, and 61.59; 47 C.F.R. §§ 61-41-61.49; Implementation of the Telecoms. Act of 1996: Accounting Safeguards Under the Telecoms. Act of 1996, 11 FCC Rcd 17539 (1996); Amendment of Sec. 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), 104 FCC 2d 958, ¶¶ 127-131 (1986); Application of ONA and Nondiscrimination Safeguards to GTE Corp., 9 FCC Rcd 4922 (1994).

3 47 C.F.R. §§ 63.12(b), 63.19(b), 63.21(c), 63.71(c).

4 47 C.F.R. §§ 64.1901-1903.

5 BellSouth Corporation's Petition for Waiver, WC Docket No. 05-277 (filed Sept. 19, 2005); Petition of Qwest Comms. Int'l, for Forbearance of the Commmission's Dominant Carrier Rules as They Apply After Sec. 272 Sunset Purs. to 47 U.S.C. § 160, WC Docket No. 05-333 (filed Nov. 22, 2005; "Corrected Version" filed Nov. 30, 2005). Those petitions must be denied for fundamentally the same reasons as Verizon's here. See Sprint Nextel Corporation's Opposition to Petition for Waiver, WC Docket No. 05-277 (filed Oct. 18, 2005).

forbearance under section 10.[6] Verizon's request for interim waiver should also be denied, because it does not meet the standards for waiver of the Commission's rules.

II. Forbearance would be contrary to the public interest.

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

The Commission has a rulemaking already underway addressing rules that should apply to BOC long distance operations after sunset of any section 272 requirements. AT&T has already twice acknowledged that the Commission should not be addressing these issues by forbearance and waiver petitions. Commenting on BellSouth's petition for waiver and on Qwest's petition for forbearance of the same rules, AT&T said the Commission should complete the pending rulemaking, "in lieu of expending energies" on a petition that "is repetitive of issues already before it."[7]

Sprint Nextel agrees the questions in the *BOC Classification Rulemaking* are important and deserve to be answered in a full and proper rulemaking order. Sprint draws very different conclusions, however, from Verizon's and the other BOCs' apparent assumption that the rulemaking should or will result in eliminating the rules addressed by its petition. On the contrary, Sprint Nextel and other commenters showed in that rulemaking[8] – and in other open rulemakings – that competitive safeguards remain necessary because of the continued market power of the BOCs, made possible by their continuing dominance of the local, exchange access, and special access markets. The

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[6] 47 U.S.C. § 160.

[7] Comments of AT&T, Inc., Docket No. 05-333 (filed Jan. 23, 2006) at 1-2. See also Comments of SBC Communications, Docket No. 05-277 (filed Oct. 18, 2005) at 1.

[8] 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).

Commission should not prejudice the outcome of that proceeding by entertaining a waiver or forbearance petitions.

The Commission should instead address the rulemakings that are already pending. These include not only the *BOC Classification Proceeding*. Rulemakings on price cap rules, performance and enforcement measures for unbundled network elements ("UNEs") and special access, and especially access reform are actually more pressing.[9] They are long overdue and, if anything, should be addressed first. In the meantime, granting Verizon's petition is not in the public interest.

B. Congress recognized regulatory restraints on BOCs are appropriate and necessary to protect the public interest.

Verizon ignores why these regulatory restraints were put in place. Congress and the Commission recognized that BOC market power makes safeguards necessary to protect consumers and the competitive market. Each of the BOCs already has the ability and the incentive to misallocate costs between incumbent local exchange carrier ("ILEC") and long distance operations, to discriminate against competitors, and to provide subtle advantages to its long distance and wireless affiliates – all to the detriment of the competitive market. The BOCs have a poor record of complying with section 251, 271, and 272 requirements, merger conditions, and performance requirements, which

[9] 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); 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); Developing a Unified Intercarrier Compensation Regime, Further Notice of Proposed Rulemaking, CC Docket No. 01-92, 20 FCC Rcd 4685 (2005).

underscores the need for continued long distance market protections, especially with the growth of bundled service offerings.[10]

The Act allows for eventual "sunset" of certain section 272 requirements, subject to Commission discretion to extend those requirements.[11] But it did nothing to eliminate altogether the statutory 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 dominant carrier status should not apply in-region even after sunset. Congress also took no steps to lift structural separation requirements applicable to the former GTE companies, from which Verizon also seeks exemption.

Verizon complains that these rules are inefficient, because they prevent the complete integration of its long distance operations after section 272 requirements have sunset. Congress, however, understood these requirements would cause some inefficiencies. It recognized they are nevertheless necessary because of the BOCs' market power in their regions. Accordingly, if Verizon wants nondominant status in former Bell Atlantic and GTE territories, it needs to continue to utilize a separate affiliate. Because of its market dominance, if Verizon wants to integrate its long distance affiliate with its BOC local operations after sunset of section 271 requirements, it needs to comply with the tariffing, price cap, and accounting rules targeted by its petitions.

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[10] Together, the BOCs have been assessed fines, penalties, and compelled refunds of well over $2 billion for market misconduct and violations of statutory obligations, merger conditions, and conditions of section 271 approvals.

[11] 47 U.S.C. § 272(f)(1).

III. Verizon also fails to meet the remaining statutory requirements for forbearance.

Section 10 of the Act requires a petitioner for forbearance to show (1) that enforcement of the regulation is unnecessary to ensure that charges, practices, classifications, or regulations (2) that enforcement is unnecessary to protect consumers, and (3) that forbearance is in the public interest.[12] As explained above, forbearance would not be in the public interest. Verizon has also failed to meet the other requirements for forbearance.

A. Dominant carrier regulations are appropriate and necessary for BOCs to ensure rates and practices are just, reasonable, and not unreasonably discriminatory.

1. The BOCs have only increased their market dominance within their regions.

Verizon claims the competitive environment has changed so dramatically that it no longer has any market power. In reality, the changes taking place in the marketplace have only served to increase, not decrease Verizon's market power.

Verizon contends that long distance is declining as a stand-alone product. Assuming that contention is true, it does not mean that Verizon's dominance is declining. The bundling of local and long distances only increases Verizon's market power, by allowing it to further leverage its local, exchange access, and special access dominance to win an even greater share of the bundled calling market. It makes it easier for Verizon to engage in the type of cost misallocation and discriminatory wholesale pricing that these market safeguards are designed to prevent.

Verizon claims the long distance and enterprise markets are competitive. But it has just acquired one of the two largest enterprise and long distance competitors, and the

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[12] 47 U.S.C. § 160(a).

former SBC has acquired the other. These changes can only make Verizon more dominant, not less. At the same time, its acquisition of MCI takes the second largest long distance and enterprise market competitor out of its market, while simultaneously eliminating one of the few significant alternatives to Verizon special access in its regions.

Verizon argues that wireless services are competitive alternatives to wireline long distance. Today, only relatively few customers have completely substituted wireless for wireline service. In the *Verizon MCI Order*, the Commission concluded that, despite vast investment by wireless carriers, only "approximately 6 percent of households have chosen to rely upon mobile wireless services for all of their communications needs," and found that "the record does not present credible evidence that mobile wireless services have a price constraining effect on all consumers' demand for primary line wireline services."[13] Moreover, three of the four BOCs control wireless carriers accounting for fully half of the wireless marketplace nationwide, giving those BOCs even greater market power within their regions. Verizon itself controls the second largest and, currently, fastest growing wireless carrier. To the extent that Verizon, or AT&T or BellSouth, are losing retail long distance minutes to wireless, they are to a large extent losing those retail revenues to themselves. BOC control over those wireless carriers -- and the wireless minutes they generate -- only increases the incentives and opportunities to misallocate costs and discriminate in favor of their own long distance operations and against their wireline and wireless competitors. The BOCs also control access to many of the cell sites and switching centers of their wireless competitors, giving them additional opportunities to discriminate and to raise costs for these competitors.

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[13] Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control, WC Docket No. 05-75, Memorandum Opinion and Order (rel. Nov. 17, 2005) at ¶ 91 & n.276.

Verizon points to VoIP services, such as Vonage, as ostensible competitors to its long distance services. Yes, VoIP has potential to displace some traditional, retail long distance voice traffic. But this technology remains in its early stages, its market share, while growing, remains small, and the Commission has found that it is not yet a substitute for traditional carrier services, either for mass market or enterprise services.[14] In the meantime, Verizon is relying on market forecasts, rather than competition that exists today, in arguing for exemption from long standing competitive safeguards. Verizon also overlooks the fact that BOCs control the broadband networks over which Vonage and similar VoIP services must ride, giving them the ability to dictate these competitors' costs.

Verizon points to cable telephony as another competitive alternative to its long distance service. Sprint Nextel supports cable market entry as a wholesale carrier in a growing number of markets. But while cable telephony is growing rapidly as an alternative to BOC mass market services, it too remains in its early stages and faces widespread practical and regulatory barriers to entry.[15] It has no significant presence in the enterprise markets, nor can it provide high capacity services. Most important, even where cable telephony has won a foothold in the market, cable telephony providers inevitably are heavily dependent on BOC facilities to provide their services, directly or indirectly – for calls to and from BOC subscribers, to and from subscribers of other

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[14] 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.").

[15] Just some of those barriers are described in petitions filed by Time Warner Cable. See Petition for Preemption, WC Docket No. 06-54 (filed Mar. 1, 2006); Petition for Declaratory Ruling, WC Docket No. 06-55 (filed Mar. 1, 2006).

providers, and even for calls between their own subscribers located on different local cable networks.

All of these competitors to the BOCs have little choice but to rely on BOC facilities to serve their own customers. Alternatives to BOC facilities are confined to a small number of buildings (or portions of buildings) located in concentrated business districts.[16] Sprint Nextel has perhaps the largest nationwide network of any non-BOC, yet it still depends on ILECs for more than 90% of its special access needs for wireless and wireline long distance calling. The BOCs' dominance over special access thus gives them power over a key cost of their competitors.

Verizon's acquisition of MCI compounds its market power. Commenting on BellSouth's request for waiver of essentially the same requirements, Qwest opposed any waiver for "the megaBOCs," explaining "there is no record support for non-dominant treatment of post-merger SBC or Verizon."[17] And in a separate petition for forbearance, Qwest argued that their market power warrants forbearing from enforcing unbundling rules that could otherwise require ILECs such as Qwest to allow the megaBOCs to convert of former AT&T and MCI special access circuits to UNEs.[18]

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[16] Under the Commission's UNE rules, only a small fraction of Verizon wire centers meet nonimpairment standards for dedicated transport and high-capacity loops.

[17] Comments of Qwest Communications International Inc., BellSouth Corporation's Petition for Waiver, WC Docket No. 05-277 (filed Oct. 18, 2005), at 6.

[18] Qwest Communications International Petition for Forbearance from Enforcement of the Commission's Circuit Conversion Rules as They Apply to Post-Merger Verizon/MCI and SBC/AT&T, WC Docket No. 05-294 (filed Oct. 4, 2005). Although Sprint Nextel shares Qwest's concerns about Verizon's and AT&T's market power, the evidence shows BellSouth and Qwest also remain dominant within their territories.

2. BOC long distance safeguards should not be relaxed before completing access reform.

Verizon's focus is on the retail long distance market. However, the Commission cannot address retail market regulations without recalling the reasons that those rules were adopted in the first place. The Commission cannot properly lift long distance safeguards on retail long distance before adopting long-overdue safeguards on the wholesale side of BOC operations.

Exchange access is a vital input for long distance. The BOCs absolutely control the exchange access market in their territories, and there is very little regulation of that market today. Moreover, because the Commission has not yet completed the Special Access Rulemaking, Verizon effectively controls pricing for special access in most Metropolitan Statistical Areas ("MSAs") within its regions and sets charges well above costs. So long as the access regime remains unreformed, Verizon has the incentive and the ability to abuse its dominance of the access market -- to the detriment of all local and long distance competitors.

Without access reform, Verizon enjoys structural advantages compared to any competitor. Verizon companies can claim approximately 25% of the nation's wireline and wireless subscribers as customers. Using customer counts as a guide, and assuming customers send and receive approximately the same amount of traffic, then 25% of traffic on Verizon's network involving Verizon customers both originates and terminates on its network. That traffic is Verizon's own, to bill and keep. It will pay no provider outside its family of affiliated companies for high wholesale intercarrier compensation services for the on-net traffic. In comparison, customer counts suggest 12% of Sprint Nextel's traffic originates and terminates on its network. For all other non-BOC-affiliated carriers, the percentage is doubtless much lower still. Because Verizon does not have to pay an external vendor to exchange its own traffic, it has both a huge structural cost advantage and countless opportunities to discriminate, cross-subsidize, and misallocate costs.

This cost advantage, and resulting the opportunities to discriminate, would be made worse by Verizon's requested forbearance of section 64.1903 of the Commission's rules. Paragraph (3)(c) of that section requires an affiliated long distance carrier to take access service from the affiliated exchange carrier at tariff rates. If this provision were waived, Verizon's long distance affiliate -- alone among all long distance providers -- would not face the tariffed access rates. It would thereby have an unfair advantage over all other long distance carriers, and could discriminate and cross-subsidize with virtually impunity.

To make matters worse, Verizon now claims that Title II regulation and Computer Inquiry rules have been lifted from what it deems its broadband services. These could include the statutory obligation to provide service on a just and reasonable basis and without unreasonably discriminating in favor of its long distance affiliates and against competitors. The industry has no idea whether the Commission can or will resolve the issues created by its failure to act on Verizon's petition for forbearance in WC Docket No. 04-440.[19] Given such uncertainty, forbearance and waiver here is all the more inappropriate.

3. The BOCs do not need regulatory exemptions to compete.

In less than three years as authorized in-region long distance carriers, and without making any meaningful investment in facilities, each of the BOCs has won a dominant

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[19] See Press Release: Verizon Telephone Companies' Petition for Forbearance from Title II and Computer Inquiry Rules with respect to their Broadband Services is Granted by Operation of Law (rel. Mar. 20, 2006). Sprint Nextel is among several parties that have appealed this result.

position in the long distance mass market within its region. They accomplished this by leveraging their dominance of the local exchange, exchange access, and special access markets.

In 2004 and 2005, Verizon added 3.3 million long distance lines (up 22%) and increased long distance revenues 16%. By year-end 2005, 53% of Verizon's local lines included its long distance services, with more than 60% among mass market customers.[20] With the completion of Verizon's acquisition of MCI on January 6, 2006, this market share has increased even further. SBC's last pre-merger investor briefing announced that 62% of retail consumer lines and 45% of retail business lines included long distance services.[21] BellSouth now has 58% of the mass market in its region.[22] Even Qwest, the last to receive section 271 long distance authority, could boast that fourth quarter "[l]ong-distance penetration of total retail lines increased to 37 percent," and that "[a]ggressive marketing efforts" have increased "bundle penetration … to 51 percent in the quarter."[23] Qwest describes in-region long distance as one of its "growth businesses." Id. at 2.

Like all BOCs, Verizon has enjoyed rising long distance market share and rising long distance revenues – all at a time when other long distance carriers have seen their business decline. The BOCs acquired this market share, and continue to grow rapidly and profitably, even with current safeguards in place. Verizon also has had no problem increasing its out-of-territory wireless market share while these safeguards apply to its long distance operations.

[20] Verizon 2005 Annual Report at 20, 21.

[21] SBC Investor Briefing (Oct. 20, 2005) at 5.

[22] BellSouth 2005 Annual Report at 35.

[23] Press Release: Qwest Reports Solid Fourth Quarter Result (Feb. 14, 2006) at 4.

The Commission already substantially weakened the rules governing the BOCs' long distance affiliates little more than a year ago. In individual petitions for forbearance, the BOCs sought "relief" from the long-standing requirement that they and their affiliates utilize structurally separate operations, installation, and maintenance functions.[24] The BOCs claimed they were "hindered" in competing in the long distance market, and that they would save hundreds of millions annually by the Commission forbearing from enforcing this long-standing requirement.[25] The Commission granted those BOC requests,[26] 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.[27] In the meantime, the BOCs have established themselves as the dominant long distance providers and have solidified their dominance of the special access market within their regions.

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[24] 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.

[25] See 47 C.F.R. § 53.203(a)(2)-(3).

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

[27] 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.

B. BOC dominant carrier regulation is necessary to protect consumers.

Dominant carrier regulation has been applied for years, based on the recognition that it is necessary 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."[28]

It is not within Verizon's or the other BOCs' authority to eliminate the distinction between local and long distance telecommunications services. It is incorporated into 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 rules long recognized as needed to protect consumers. Even if independent carriers' retail market share and revenues are declining, long distance continues to be a multi-billion dollar industry, with hundreds of non-BOC competitors.[29] 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 ability to leverage their dominance of their local exchange, exchange access, and special access markets to the long-run detriment of competition and consumers.

Without the safeguards that Verizon wants removed -- dominant carrier 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. Section 201 and 202 can provide no realistic protection

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[28] Verizon Comms. Inc. v. FCC, 535 U.S. 467, 476 (2002).

[29] The industry includes than 1,000 toll carriers and more than $71 billion in 2004 toll revenue. Industry Analysis & Technology Div., Wireline Competition Bureau, Telecommunications Industry Revenues 2004 at Table 2 (rel. Mar. 2006).

against cost misallocation and discrimination. It is one thing to have general rules prohibiting competitive abuses, but quite another to be able to detect and enforce against violations. In the *GTE Consent Decree* proceeding, for example, the court noted how difficult it is to monitor and prevent misconduct, given Verizon's ability to shroud its moves in obscuring accounting.[30] As the court recognized, it is "the more indirect, subtle vehicles for cross-subsidization that are ordinarily the most difficult to detect." 603 F. Supp. at 738.

This is a particular concern given the breadth of the regulatory exemption Verizon is seeking. Granting Verizon's petition would effectively make Verizon -- the nation's second largest carrier -- the least regulated incumbent local exchange and interexchange carrier in the country. The Commission, indeed no one, can anticipate the full impact of the regulatory exemptions Verizon is seeking.

In just one example, Verizon seeks freedom to treat interexchange operations as regulated for accounting purposes if it were to decide to combine its local and long distance affiliates into one entity. That seems at odds with Verizons request that the Commission forbear from regulating it as a dominant carrier. One implication of such treatment would be that investment and associated expenses for Verizon's interexchange operations would be allocated between State and Interstate jurisdictions using the current frozen separations allocation factors. Those factors are based on Verizon's operations in the year 2000, and almost certainly are no longer correct after its acquisition of MCI. This allocation would assign, for example, any fiber plant installed by Verizon and MCI between the State and Interstate jurisdictions, based on those frozen Verizon allocators, even if that plant were installed solely for MCI's long distance network. Any such costs

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[30] United States v. GTE Corp., 603 F. Supp. 730 (D.D.C. 1984) (subsequent history omitted).

assigned to the Interstate jurisdiction would then be assigned to the access categories by Part 69 rules. Although this assignment of costs should not be used directly to set interstate access rates, the costs could entitle Verizon to a claim of confiscation in either the State or Interstate jurisdiction. The Petitions provide no information about the effect of its proposal on cost allocations under Parts 32 and 69, and they ignore their inevitably detrimental impacts on consumers. The Commission cannot find market safeguards unnecessary to protect consumers when impacts such as these are unknown and undisclosed.

Beyond this, the BOCs are sure to advantage their own affiliates, in various subtle ways, against wireline and CATV-based long distance competitors, wireless competitors, and VoIP competitors. Granting the Petition could result only in fewer choices and higher costs for consumers.

IV. **Verizon does not meet the standards for waiver.**

The Commission has authority to waive its rules if there is "good cause" to do so.[31] Its discretion is not unlimited, however. An "agency may not act out of unbridled discretion or whim in granting waivers any more than in any other aspect of its regulatory function."[32] It may waive a rule only where "special circumstances warrant a deviation from the general rule *and* such deviation will serve the public interest."[33] The Commission must be able to "explain why deviation better serves the public interest, and it must articulate the nature of the special circumstances to prevent discriminatory

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[31] 47 C.F.R. § 1.3.

[32] WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

[33] Northeast Cellular v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (emphasis added).

application and to put future parties on notice as to its operation." Verizon's petition does not provide grounds sufficient for the Commission to waive the rules.

Waivers are not to be routine, and they cannot be properly granted where "[t]he record reveals nothing unique about [the applicant's] situation."[34] Verizon is not unique; the other BOCs and independent ILECs are subject to similar rules if they want to be treated as nondominant. The provisions Verizon seeks waived are also part of an industry-wide rulemaking. Waiver is not the appropriate vehicle for such an issue, much less an "interim waiver" that presumes to prejudge the outcome of that important proceeding. Verizon surely can await the Commission's action. Even with these rules in place, Verizon has rapidly won the lion's share of long distance customers in its regions. It has grown revenue sharply at a time when the retail industry has faced revenue declines. And it has accomplished this by leveraging its in-region market power.

V. Conclusion

Verizon's Petitions fail to meet the statutory requirements for forbearance or the Commission's standards for waiver. Rather than entertain such petitions and make policy on a piecemeal basis, the Commission should deny the Petitions and instead complete the rulemaking proceedings that are already pending.

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[34] NE Cellular, 897 F.2d at 1166.

Respectfully submitted,

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April 21, 2006

CERTIFICATE OF SERVICE

I hereby certify that a copy of Sprint Nextel Corporation's Opposition in WC Docket No. 06-56 was delivered by electronic mail or First Class, postage prepaid, U.S. Mail on this 21st day of April, 2006 to the parties listed below.

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