Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 230554

In the Matter of	)	
Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard To Certain Dominant Carrier Regulations for In-Region, Interexchange Services	)	WC Docket No. 06-120

SPRINT NEXTEL CORPORATION'S OPPOSITION TO PETITION FOR FORBEARANCE

Vonya B. McCann
John E. Benedict
401 Ninth Street NW
Suite 400
Washington. DC 20004
202-585-1910

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I. Introduction and Summary

AT&T Inc. ("AT&T") has asked the Commission to forbear from enforcing a broad assortment of long-standing regulations applicable to its provision of in-region long distance services.[1] Sprint Nextel Corporation ("Sprint Nextel") opposes the petition.

AT&T wants exemption from various -- but generally unspecified -- dominant carrier regulations applicable to in-region interstate interexchange or international services, provided by any AT&T affiliate. These include, among other requirements, tariffing, price cap, and entry and exit regulations. AT&T also wants exemption from inbound call "scripting" obligations that require BOCs to inform new customers that they have a choice of long distance providers and to read a list of providers. And it wants exemption from the separate affiliate rules that apply to its non-Bell Operating Company ("BOC") affiliates, including SNET.[2]

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[1] Petition of AT&T Inc. for Forbearance (filed June 2, 2006). See Public Notice DA 06-1302 (rel. June 23, 2006).

[2] See Petition at 1, 4, citing 47 U.S.C. §§ 251(g), 272; 47 C.F.R. §§ 64.1901-64.1903.

AT&T's Petition is simply 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. Each of the other BOCs has already petitioned for similar "relief."[3] Like theirs, AT&T's Petition should be denied. First, in light of their dominance, 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, AT&T has not met the requirements for forbearance under section 10.[4] In fact, these market safeguards remain more important for BOCs today than ever.

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. In fact, AT&T has twice previously advocated that the Commission should not be addressing these issues by forbearance and waiver petitions, but rather as part of pending

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[3] BellSouth Corp.'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); 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 (petitions filed Feb. 28, 2006). Those petitions must be denied for fundamentally the same reasons as AT&T's here. See Sprint Nextel Corporation's Opposition to Petition for Waiver, WC Docket No. 05-277 (filed Oct. 18, 2005); Sprint Nextel Corporation's Opposition to Petitions for Interim Waiver and Forbearance, WC Docket No. 06-56 (filed Apr. 21, 2006).

[4] 47 U.S.C. § 160.

rulemakings. 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."[5] Now, however, AT&T raises the same repetitive issues without even mention of that proceeding.

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 Nextel draws very different conclusions, however, from AT&T'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[6] – and in other open rulemakings – that competitive safeguards remain necessary because of the continued market power of the BOCs, made possible by their continuing[7] dominance of the local, exchange access, and special access markets. The Commission should not prejudice the outcome of that proceeding, much less, rely on the cursory statements and lack of meaningful evidence provided with such petitions. Indeed, in the *SBC AT&T Order*, the Commission declined to address the BOCs' pre-existing ability to raise their competitors' costs and discriminate in special access pricing,

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[5] 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.

[6] 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).

[7] BOC dominance is, in fact, increasing, due to mergers that have eliminated their two largest competitors.

because "those issues [would be] better addressed in pending general rulemaking proceedings."[8]

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 intercarrier compensation are actually far more pressing.[9] They are long overdue and should take priority over carrier-specific forbearance or waiver requests. In the meantime, granting AT&T's petition is not in the public interest.

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

Like the other BOCs, AT&T 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 its 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 (the former SBC especially) have a poor record of complying with section 251, 271, and 272 requirements, merger

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[8] SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control, WC Docket No. 05-65, Memo. Op. and Order (rel. Nov. 17, 2005) at ¶ 35 ("*SBC AT&T Order*").

[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).

conditions, and performance requirements. That 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 former non-BOC ILECs like SNET, from which AT&T also seeks exemption.

AT&T complains that these rules are "costly and inefficient,"[12] because they prevent the complete integration of its long distance operations after section 272 requirements have sunset. Congress, however, always understood these requirements would cause some inefficiencies. It recognized they are nevertheless necessary because of the BOCs' market power in their regions. Accordingly, if AT&T wants nondominant status in former SWBT, PacBell, Ameritech and SNET territories, it needs to continue to utilize a separate affiliate. Because of its market dominance, if AT&T -- or any BOC -- wants to integrate its long distance affiliate with ILEC operations after sunset of section 271 requirements, it needs to comply with the tariffing, price cap, and accounting rules

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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. The former SBC was subject to more than 150 such orders by state or federal regulators.

[11] 47 U.S.C. § 272(f)(1).

[12] Petition at 6.

targeted by its petition. After all, independent ILECs have been living under very similar rules for years, despite their smaller size and noncontiguous service territories.

III. AT&T 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 are just and reasonable and not unjustly or unreasonably discriminatory, (2) that enforcement is unnecessary to protect consumers, and (3) that forbearance is in the public interest.[13] As explained above, forbearance would not be in the public interest. AT&T 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.

AT&T claims that long distance markets are "robustly competitive," such that "no interstate interexchange carrier can exercise market power today."[14] It is true that long distance markets are competitive, but it is not true that AT&T or other BOCs have no market power. In reality, the changes taking place in the marketplace have only served to increase BOC market power.

AT&T contends that long distance is declining as a stand-alone product. Assuming that contention is true, it does not mean that BOC dominance is declining. The bundling of local and long distance services only increases their market power, by

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[13] 47 U.S.C. § 160(a).

[14] Petition at 5.

allowing them to further leverage their local, exchange access, and special access dominance to win an even greater share of the bundled calling market. It makes it easier for AT&T to engage in the type of cost misallocation and discriminatory wholesale pricing that these market safeguards are designed to prevent. And it makes the "scripting requirements" that AT&T derides as "outdated"[15] all the more vital to protect competitors and consumers.

AT&T claims the long distance and enterprise markets are competitive.[16] But it ignores that structural separations are intended to minimize opportunities for anticompetitive behavior precisely to ensure customers have access to alternative providers in a genuinely competitive marketplace. It also glosses over the impact of AT&T's having just acquired the largest enterprise and long distance competitor, and Verizon's having acquired the other. These changes can only make AT&T and Verizon more dominant, not less. At the same time, SBC's acquisition of the former AT&T Corp. takes the largest long distance and enterprise market competitor out of its market, while simultaneously eliminating one of the few significant alternatives to legacy SBC special access in its regions.[17]

AT&T argues that wireless services are competitive alternatives to wireline long distance.[18] Today, only relatively few customers have completely substituted wireless for wireline service. In the *SBC AT&T Order*, the Commission concluded that, despite vast investment by wireless carriers, only "approximately 6 percent of households have

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[15] Id. at 1.

[16] E.g., id. at 18-19.

[17] Underscoring the loss of wholesale and retail competition, the former SBC even adopted the AT&T name.

[18] Petition at 20.

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."[19] Moreover, three of the four BOCs control wireless carriers accounting for more than half of the wireless marketplace nationwide, giving those BOCs even greater market power within their regions. AT&T -- with BellSouth -- is the majority owner of the nation's largest wireless carrier, and Verizon controls the second largest.

To the extent that AT&T, or Verizon 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.

AT&T points to VoIP services as ostensible competitors to its long distance services.[20] Yes, VoIP has potential to displace some traditional, retail long distance voice traffic, though its regulatory price advantage is rapidly eroding due to broadened requirements for access charges, USF contributions, and CALEA compliance. But VoIP 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,

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[19] *SBC AT&T Order* at ¶ 90 & n.277.

[20] Petition at 16-17.

either for mass market or enterprise services.[21] In the meantime, the BOCs continually point to market forecasts, rather than competition that exists today, in arguing for exemption from long standing competitive safeguards. AT&T also overlooks the fact that to a large extent BOCs control the broadband networks over which VoIP services must ride, giving them the ability to dictate these competitors' costs.

AT&T also 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, and holds promise as perhaps the best long-term facilities-based alternative to ILEC mass market services, it too remains in its early stages and faces widespread practical and regulatory barriers to entry.[22] Moreover, contrary to AT&T's suggestion,[23] cable telephony 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 providers, and even for calls between their own subscribers located on different local cable networks.

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[21] 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.").

[22] Just some of those barriers are described in petitions filed by Time Warner Cable, addressing RLEC refusal to interconnect and some state commissions' misapplication of section 251. 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).

[23] Petition at 23-24.

Furthermore, 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. In fact, under the Commission's UNE rules, only a small fraction of BOC wire centers meet nonimpairment standards for dedicated transport and high-capacity loops -- a result that the D.C. Circuit expressly upheld against ILEC challenge.[24] And while AT&T points to the Commission's *Qwest Omaha Forbearance Order* to suggest that "market pressures" are sufficient to protect the competitive market,[25] even there the Commission denied key aspects of Qwest's petition and limited forbearance to a fraction of wire centers.[26]

Sprint Nextel's experience bears out BOC market power. 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 and virtually assures discrimination in favor of their own long distance, advanced services, and wireless affiliates. Moreover, the principal alternatives to BOC special access were AT&T and MCI -- competitive alternatives that appear to have disappeared in-region upon their acquisition by SBC and Verizon.

AT&T's acquisition of the former AT&T Corp. compounds its market power. Commenting on BellSouth's request for waiver of essentially the same requirements,

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[24] Covad v. FCC, slip op. 05-1095 at 33-40 (D.C. Cir. June 16, 2006).

[25] Petition at 34.

[26] Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area, Memo. Op. and Order, FCC 05-170 (rel. Dec. 2, 2005) ("Qwest Omaha Forbearance Order").

Qwest opposed any waiver for "the megaBOCs," explaining "there is no record support for non-dominant treatment of post-merger SBC or Verizon."[27] 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 former AT&T and MCI special access circuits to UNEs.[28] AT&T's proposed acquisition of BellSouth would concentrate its market power even further, by giving it not only unquestionable dominance in long distance, enterprise, local, and exchange access markets, but making a virtually special access monopoly for most of the United States.

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

As with the other BOC petitions, AT&T'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 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*, the BOCs continue to price their special access services in most

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

[28] 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.

Metropolitan Statistical Areas ("MSAs") at levels far above costs. The fact that a very large percentage of all traffic on AT&T's network both originates from and terminates to AT&T affiliates, rather than other carriers, means that it enjoys both an artificial cost advantage and countless opportunities to discriminate, subsidize, and misallocate costs. Given the existing regulatory access charge regime, BOCs have the incentive and the ability to abuse their dominance of the access market -- to the detriment of local, wireless, and long distance competitors and, ultimately, of consumers. Accordingly, AT&T is absolutely wrong in claiming that lifting BOC structural separation safeguards "could not change these competitive realities."[29]

AT&T's abuse of market power would be made worse by its 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 tariffed rates, terms, and conditions. If this provision were waived, AT&T's long distance affiliate -- alone among all long distance providers -- would not face the tariffed access rates, terms, and conditions. AT&T's ILEC affiliates could discriminate and cross-subsidize with virtual impunity, giving AT&T's long distance affiliates an unfair advantage over all other long distance carriers.

If that were not bad enough, AT&T is also seeking to have Title II regulation and Computer Inquiry rules lifted from all non-TDM services, comparable to the ostensible grant-by-default of forbearance to Verizon in WC Docket No. 04-440. On July 13, 2006, prompted by the Commission's failure to deny the Verizon petition, AT&T filed its own demand for exemption from these long-standing competitive safeguards.[30] Because the

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[29] Petition at 25.

[30] See Press Release: Verizon Telephone Companies' Petition for Forbearance from Title II and Computer Inquiry Rules with respect to their Broadband Services is Granted

scope of the Verizon "forbearance" is so vague, it appears Verizon may be interpreting it to extend even to the statutory obligation to provide service on a just and reasonable basis and without unreasonably discriminating in favor of long distance affiliates and against competitors. The potential for such abuse makes forbearance for BOCs here 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 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.

SBC's last pre-merger investor briefing announced that 62% of retail consumer lines and 45% of retail business lines included long distance services.[31] Fourth quarter long distance revenues for the former SBC (pro forma) were up 13.4% from the year before.[32] All BOCs have enjoyed the same dramatic success, even with these competitive safeguards in place. 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.[33] With the completion of Verizon's acquisition of MCI on January 6, 2006, this market share has increased even further. At year end, BellSouth could claim 58% of

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by Operation of Law (rel. Mar. 20, 2006). Sprint Nextel is among several parties that have appealed this result. Sprint Nextel Corp. v. FCC, D.C. Cir No. 06-1111, et al.

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

[32] AT&T Investor Briefing (Jan. 26, 2006) at 4.

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

the mass market in its region.[34] 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."[35] Qwest describes in-region long distance as one of its "growth businesses." Id. at 2.

Like all BOCs, AT&T 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 these supposedly "extensive, burdensome, and expensive"[36] safeguards in place. AT&T's wireless affiliate, Cingular, also has had no problem increasing its in-region or out-of-territory wireless subscriber base (up 10.2% in 2005) or revenues (up 9.4% from 2004),[37] while these safeguards apply to BOC long distance operations.

The Commission already substantially weakened the rules governing the BOCs' long distance affiliates scarcely a year and a half 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.[38] The BOCs claimed they were "hindered" in competing in the long distance

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[34] BellSouth 2005 Annual Report at 35.

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

[36] Petition at 35.

[37] AT&T Investor Briefing (Jan. 26, 2006) at 6.

[38] 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

market, and that they would save hundreds of millions annually by the Commission forbearing from enforcing this long-standing requirement.[39] The Commission granted those BOC requests,[40] 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.[41] 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. Clearly, the BOCs do not need further "relief" to compete. Instead, their competitors and customers need protection from the BOCs' ability to leverage anticompetitively their dominant position.

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

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Functions Under Section 53.203(a)(2)-(3) of the Commission's Rules (filed July 14, 2003); 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 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.

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

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

[41] 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.

market power that the BOCs enjoy as "inheritors of AT&T's [monopoly] local franchises."[42]

It is not within AT&T'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.[43] 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 AT&T and the other BOCs want 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 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

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

[43] 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).

example, the court noted how difficult it is to monitor and prevent misconduct, given Verizon's ability to shroud its moves in obscuring accounting.[44] 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. AT&T's suggestion that "any BOC attempt to obtain market power through discrimination would ... be manifestly obvious"[45] is plainly incorrect. 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.

This is a particular concern given the breadth of the regulatory exemption AT&T and the other BOCs are seeking. Granting AT&T's petition, for instance, would effectively make it -- the nation's 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 AT&T and the BOCs are seeking.

AT&T surely can await the Commission's action. Even with these rules in place, the BOCs 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 as a whole has faced revenue declines. And they have accomplished this by leveraging their in-region market power.

In the meantime, granting the Petition, or others like it already pending, could result only in fewer choices and higher costs for consumers.

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

[45] Petition at 4.

IV. Conclusion

AT&T's Petition fails to meet the statutory requirements for forbearance. Rather than encourage such petitions and make policy on a piecemeal basis, the Commission should deny the Petition and others filed by BellSouth, Verizon, and Qwest. It should instead complete the rulemaking proceedings that are already pending, while maintaining protections for the competitive marketplace.

Respectfully submitted,

SPRINT NEXTEL CORPORATION

By _____

Vonya B. McCann
John E. Benedict
401 Ninth Street, NW, Suite 400
Washington, DC 20004
202-585-1910

July 24, 2006