

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

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

**REPLY COMMENTS OF VERIZON**

There is no question that revolutionary change has swept through communications markets in the years since the BOCs and GTE were originally subject to equal access and scripting obligations, and since the Commission last looked at whether a BOC should be treated as dominant for in-region interexchange services. The distinction between local and long distance services has largely evaporated, and a wide range of competitors – including cable, wireless, and VoIP providers together with traditional wireline carriers – provides all-distance services throughout the country. As companies increasingly move to rely on new broadband technologies, the idea of separating “any distance” services into local and long distance components is a wasteful anachronism.

To the extent BOCs offer any distance services in competition with similar offerings from a variety of providers, there is no legitimate justification for singling these carriers out to *reimpose* the same dominant-carrier regulation that was eliminated for their affiliates. The Commission has already deregulated long distances services as well as bundles of any-distance services. The 272 separation requirements have sunset, consistent with Congress’s expectation that those rules would outlive their usefulness. The only remaining question for the Commission

is whether the Commission should re-regulate long-distance and any-distance services if the BOCs don't "voluntarily" adhere to separate affiliate rules that are no longer mandatory.

The Commission should not take such a backward-looking step. Even on an integrated basis, there is no possibility that the BOCs could harm competition for either local or long distance services. Competition for these services is too far advanced, and only growing more so with intermodal alternatives such as cable, wireless, and VoIP.

Only a small number of parties oppose AT&T's forbearance petition, and they do not come close to demonstrating that equal access and dominant carrier regulations are still necessary to protect consumers. While these commenters claim that there still is not enough competition for local and long distance services to justify the requested relief, they misstate the facts and misapprehend the appropriate legal standards. The commenters resurrect historical arguments that the BOCs will resort to strategies of cross-subsidy and discrimination, but they fail to provide any evidence that supports (much less proves) that this is a realistic possibility in today's intensely competitive marketplace. The commenters also fail to provide any justification for maintaining the scripting obligations. They rely instead on the cynical assertion that, despite the plethora of facts to the contrary, consumers may be unaware that they have competitive alternatives. But they provide no proof this is the case, nor could they.

The Commission should grant AT&T's petition, and provide parallel relief to all BOCs.

#### **I. Vigorous Competition in the Marketplace Prevents Any Risk of Discriminatory Conduct**

As Verizon and other parties demonstrated in the opening comments, over the past decade there has been a dramatic increase in competition for both local and long-distance services. At the time the regulations at issue here were crafted – more than two decades ago – customers were tied to a single local telephone company and one of several interexchange

carriers. Today, by contrast, customers can purchase a wide variety of services (including complete, all-distance packages) from several different types of intermodal competitors, including cable companies, wireless carriers, other VoIP carriers, and traditional wireline companies.<sup>1</sup>

The opponents of AT&T's petition ignore these developments and recycle decades-old arguments about how the BOCs still have "bottleneck" control over the last mile, and how such control enables the BOCs to engage in all sorts of mischief (including predatory pricing, discrimination against interexchange rivals, the "misallocation" of costs and cross-subsidization, and other unspecified forms of anti-competitive conduct). *See, e.g.*, CompTel at 3-4, 6-8; McLeod at 2-5, 8-9; Sprint Nextel at 6-7, 10-12, 16; NASUCA at 6. But given that millions of customers are already using alternatives to traditional wireline local and long-distance services, and that even greater amounts of traffic have migrated to these alternatives, the claim that BOCs still control a "bottleneck" over the provision of local or long distance services, let alone that they have such concentrated market power that they could engage in price discrimination or other anti-competitive conduct, is implausible.

To support their arguments for re-regulation, the opposing commenters attempt to downplay the nature and extent of intermodal competition. Their claims lack merit. Sprint Nextel argues (at 9) that, "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

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<sup>1</sup> *See* Verizon Initial Comments at 2-5; Memorandum of Points and Authorities in Support of Verizon's Petitions for Interim Waiver or Forbearance, WC Docket No. 06-56 at 5-23 (filed Feb. 28, 2006); BellSouth Corporation's Petition for Waiver, WC Docket No. 05-277 at 12-16 (filed Sept. 19, 2005); Petition of Qwest Communications International Inc. for Forbearance, WC Docket No. 05-333 at 7-12 and Declaration of David L. Teitzel (filed Nov. 22, 2005); Petition of AT&T Inc. for Forbearance, WC Docket No. 06-120 at 8-24 (filed June 2, 2006) ("AT&T Petition").

remains in its early stages and faces widespread practical and regulatory barriers to entry.” That is nonsense. Cable companies already offered telephony services (IP-based or circuit switched) to more than half of U.S. households as of year-end 2005, and are expected to offer such services to 95 percent of households by the end of 2007.<sup>2</sup> Cable companies are reporting extraordinary success with these offerings. For example, Comcast added 211,000 new subscribers in the first quarter of 2006 and 306,000 more in the second quarter;<sup>3</sup> Cox already provides telephony to about a quarter of all the homes it passes; Cablevision has more than one million voice customers and is adding new customers at the rate of 10,000 per week;<sup>4</sup> Time Warner added 234,000 subscribers in the second quarter of 2006, its fifth consecutive quarter with more than 200,000 such adds.<sup>5</sup> Collectively, cable companies are expected to serve more than 8.5 million lines by the end of 2006 and more than 13 million lines by year-end 2007.<sup>6</sup>

Sprint Nextel also argues (at 8-9) that competition from VoIP should be given little weight because “VoIP technology remains in its early stages, its market share, while growing, remains small,” and because the BOCs often “control the broadband networks over which VoIP services must ride, giving them the ability to dictate these competitors’ costs.” None of these points withstands scrutiny. VoIP technology, while certainly still evolving, has been deployed commercially on a widespread basis by dozens of carriers. The largest VoIP provider – Vonage

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<sup>2</sup> Jeffrey Halpern, *et al.*, Bernstein Research Call, *Quarterly VoIP Monitor: VoIP Growth Still Accelerating* at Exhibit 12 (Apr. 18, 2006); *see* Verizon Comments at 4.

<sup>3</sup> Comcast, *Comcast Reports Second Quarter 2006 Results*, <http://phx.corporate-ir.net/phoenix.zhtml?c=118591&p=irol-newsArticle&ID=888266&highlight=>.

<sup>4</sup> Cablevision, *Cablevision’s Optimum Voice Surpasses One Million Customers*, [http://www.cablevision.com/index.jhtml?id=2006\\_07\\_18](http://www.cablevision.com/index.jhtml?id=2006_07_18) (July 18, 2006).

<sup>5</sup> Katherine Styponias, Prudential Equity Group, Time Warner, at 5 (Aug. 3, 2006).

<sup>6</sup> Jeffrey Halpern, *et al.*, Bernstein Research Call, *Quarterly VoIP Monitor: Six Million and Counting* at Exhibit 18 (June 12, 2006).

– already has more than 1.8 million VoIP subscribers, and is adding more than 22,000 subscribers each week.<sup>7</sup> The notion that BOCs control the networks over which VoIP is delivered ignores the fact that cable modem service is available to more than 90 percent of U.S. homes – more than the number of homes with access to DSL, as the Commission’s own data show.<sup>8</sup> And the claim that VoIP services still have a small market share misapprehends the competitive analysis the Commission has applied in the forbearance context, as well as other contexts. In particular, the Commission focuses on the availability of competitive alternatives, rather than on the number of customers who have already chosen to switch to such alternatives. See Memorandum Opinion and Order, *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c)*, 20 FCC Rcd 19415 ¶ 62 (2005) (“*Omaha Forbearance Order*”) (the Commission will look at both “actual and potential competition” that “either is present, or readily could be present.”)<sup>9</sup> The Commission has found that market share data “do[] not reflect the rise in data services, cable and VoIP competition, and the dramatic increase in wireless,” nor

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<sup>7</sup> Vonage, Form 10-Q at 14 (SEC filed Aug. 4, 2006). More than 95 percent of Vonage subscribers are in the U.S. See Vonage, Form S-1 at 1 (SEC filed May 23, 2006).

<sup>8</sup> See FCC, *High-Speed Services for Internet Access; Status as of December 21, 2005*, at Tables 1-4, 14 (July 2006).

<sup>9</sup> This also puts the lie to CompTel’s claim (at 8) that AT&T’s market share is rising. CompTel relies on an overly narrow definition of the relevant market – wireline local and long distance – that excludes rapidly growing intermodal competition that the Commission has held must be considered in any relevant analysis. See Memorandum Opinion and Order, *SBC Communications Inc. and AT&T Corp., Applications for Approval of Transfer Control*, 20 FCC Rcd 18290 ¶ 74 (2005) (“*SBC/AT&T Order*”); Memorandum Opinion and Order, *Verizon Communications Inc. and MCI Inc., Applications for Approval of Transfer of Control*, 20 FCC Rcd 18433 ¶ 74 (2005) (“*Verizon/MCI Merger Order*”); see also *USTA v. FCC*, 290 F.3d 415, 428-29 (D.C. Cir. 2002) (vacating the Commission’s decision to provide CLECs with unbundled access to the high frequency portion of copper loops to provide broadband DSL services, primarily because the Commission had failed to consider the relevance of intermodal competition in the broadband market); *USTA v. FCC*, 359 F.3d 554, 584 (D.C. Cir. 2004) (upholding Commission’s decision to eliminate line sharing based largely on presence of intermodal competition).

the fact that “myriad providers are prepared to make competitive offers.” *Verizon/MCI Merger Order* ¶ 74. As a result, “market shares may misstate the competitive significance of existing firms and new entrants.” *Id.*<sup>10</sup>

Several commenters argue that the Commission should ignore competition from wireless services, because the BOCs own two of the largest wireless companies. *See* McLeod at 8-9; CompTel at 9; Sprint Nextel at 7-8. But in any given BOC’s wireline territory, only one wireless company is affiliated with the BOC itself, and there are at least two to four other national wireless companies that provide competitive alternatives.<sup>11</sup> While Sprint claims that “only relatively few customers have completely substituted wireless for wireline service,” this likewise misstates the applicable standard, which is the extent to which wireless is an alternative for wireline, not the whether customers have actually availed themselves of that alternative. *See Omaha Forbearance Order* ¶ 62. Moreover, with respect to long-distance services that are at issue here, the Commission has held that wireless belongs in the same market as wireline based on evidence that “consumers are increasingly using their mobile wireless for long distance calls.”

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<sup>10</sup> CompTel claims (at 7) that the various forms of intermodal competition are not “adequate substitutes for ILEC *wholesale* services.” (Emphasis added.) But whether cable, wireless, or VoIP providers are themselves competing directly in the wholesale market is irrelevant. It is well-settled that, in defining an economic product market, it is necessary to take into consideration *all* existing providers in that market, including vertically integrated firms. *See, e.g.,* U.S. Dep’t of Justice/Federal Trade Comm’n, *Horizontal Merger Guidelines* §§ 1.31.-1.32 (rev. 1997), available at [http://www.usdoj.gov/atr/public/guidelines/horiz\\_book/toc.html](http://www.usdoj.gov/atr/public/guidelines/horiz_book/toc.html); 2A Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law* ¶ 535e, at 225-26 (2d ed. 2002) (“[T]he integrated firm’s . . . output belongs in the market.”); *United States v. Aluminum Co. of Am.*, 148 F.2d 416, 424-25 (2d Cir. 1945); *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 389 (1999) (faulting the Commission for failing to consider carriers that self-provide facilities in evaluating competitive alternatives).

<sup>11</sup> *See FCC Tenth Annual CMRS Competition Report* ¶ 41 (97 percent of the U.S. population live in counties with three or more different wireless providers, and 87 percent live in counties with five or more).

*Verizon/MCI Merger Order* ¶ 94. In point of fact, consumer surveys reveal that wireless service has displaced 64 percent of long distance calling in households with wireless phones.<sup>12</sup>

In any event, wireless also is attracting a large and rapidly increasing percentage of local usage, which proves that customers view it as a viable alternative and that wireless is therefore capable of disciplining wireline prices. Consumer surveys indicate that wireless service has displaced 42 percent of local calling from landlines.<sup>13</sup> The percentage of customers who have given up wireline phones entirely also is growing rapidly, and wireless providers – including Sprint Nextel – have stated that they plan to “increase intermodal competition between wireline and mobile wireless services” and “encourage[e] consumers to ‘cut the cord.’” *SBC/AT&T Order* ¶90.

A few commenters also complain that levels of special access competition are insufficient to prevent the BOCs from engaging in unlawful discrimination. *See* McLeod at 5-6, 8; Sprint Nextel at 9.<sup>14</sup> This claim is misplaced. The BOCs’ separate long-distance affiliates serve mostly mass-market customers – not the enterprise customers or other carriers that purchase special

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<sup>12</sup> Kate Griffin, Yankee Group Report, *Pervasive Substitution Precedes Displacement and Fixed-Mobile Convergence in Latest Wireless Trends* at 5 & Exhibit 3 (Dec. 2005).

<sup>13</sup> *See id.*

<sup>14</sup> McLeod claims (at 5) that in the *Omaha Forbearance Order* “the Commission declined to find Qwest nondominant in provision of high capacity loops and transport even though it also found that Cox was a significant intermodal competitor.” The Commission found, however, that Cox’s cable facilities were “capable of delivering both mass market and enterprise telecommunications services.” *Omaha Forbearance Order* ¶ 66. The Commission also noted that Cox had particularly strong incentives to compete for enterprise customers as compared to the mass-market, because the “revenue potential” is greater. *Id.* The Commission concluded that, in light of these facts, “Cox poses a substantial competitive threat . . . for higher revenue enterprise services.” *Id.* The Commission accordingly granted Qwest forbearance from § 251(c)(3) unbundling obligations in several wire centers, finding that “the facilities-based competition between Qwest and Cox, in addition to the actual and potential competition from established competitors which can rely on the wholesale access rights and other rights they have under sections 251(c) and section 271 from which we do not forbear, minimizes the risk of duopoly and of coordinated behavior or other anticompetitive conduct in this market.” *Id.* ¶ 71.

access. In any event, the Commission has found that there is robust competition for the local and long distance services provided over special access facilities to business customers. *SBC/AT&T Order* ¶¶ 73-76; *Verizon/MCI Merger Order* ¶¶ 74-77.<sup>15</sup> In these circumstances, there is simply no risk that the BOCs can engage in a price squeeze or otherwise discriminate against rival providers of services to business customers. See *SBC/AT&T Order* ¶¶ 80,149 (rejecting similar claims of price-squeeze and discrimination); *Verizon/MCI Order* ¶¶ 81, 148 (same).

## **II. The Commission Should Eliminate Any Requirement That LECs Read Lists of Interexchange Carriers to Their Customers.**

As Verizon and the other BOCs have argued, the Commission should forbear from applying the scripting regulation that continues to apply to the BOCs and GTE, but not to other LECs. The obligations require the BOCs to inform new customers that they have a choice of long distance providers and to read a lengthy list of such providers to customers who are interested in their options. These obligations are a hold-over from the post-divestiture era, in which many or most customers might have been unaware that any competitive long distance companies even existed. In today's marketplace – when competitive long distances companies have been hawking their services for the past twenty years via ubiquitous television commercials, telemarketing calls, ads on the Internet and in print, and elsewhere – it would be

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<sup>15</sup> CompTel claims (at 5) that a recent report by the Buckingham Research Group suggests that the BOCs will engage in a price-squeeze or raise their special access rates. That report in fact states that “smaller carriers expect to gain market share from AT&T. Most carriers we spoke to suggested they were seeing some evidence of modest revenue slippage out of AT&T and Verizon . . . which could translate into fairly meaningful opportunities for the smaller carriers given their size.” Buckingham Research Group, *Telecom Carriers Upbeat on Non-Consumer Trends*, at 2 (July 6, 2006). Moreover, Buckingham published a “correction” to its July 6 report stating that the conclusion cited by CompTel was based on a misinterpretation of the statements of a Verizon executive. See Buckingham Research Group, *Industry Consultants Reinforce Bullish Thesis on Metro, Long Haul* (July 19, 2006) (Verizon’s “intention in seeking the rate relief was to be able to selectively cut prices and select routes and products (as opposed to raising them, which it was unable to do under the previous regulatory regime”).

virtually impossible for a consumer to be unaware of the availability of alternate long distance providers. Indeed, the very fact that the long distance market is so competitive, as the Commission has repeatedly found, proves that customers must not only be aware of, but are actually exercising their option to choose competitive providers.

CompTel nonetheless claims (at 11) that “[i]n today’s market where consumers are inundated with bundled product offerings, it is more likely than ever that someone may not know that he still may choose to have separate carriers for his local and long distance services.” But if customers recognize that they have competition for all-distance bundles – as CompTel appears to concede – it is beside the point whether they also recognize that there is competition for the separate services as well. In any event, it is silly to think that in the wake of bundled offerings consumers have suddenly forgotten about the choices that were previously available, or that they have come to believe that such choices no longer exist. CompTel certainly provides no evidence to support such a cynical view of consumers.<sup>16</sup>

### **III. The Commission Should Eliminate Other “Equal Access” Requirements Preserved By Section 251(g).**

As Verizon pointed out in its opening comments, BOCs have been subject to so-called “equal access” requirements as to interexchange carriers, ever since the Modified Final Judgment in 1984.<sup>17</sup> These requirements were intended to ensure that the Bell companies did not unduly

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<sup>16</sup> The same is true of NASUCA’s claim (at 6) that “although consumers may be generally aware that there are choices available for long distance service, they may not be aware of *which* long distance carriers serve their locality.”

<sup>17</sup> *United States v. American Tel. & Tel. Co.*, 552 F.Supp. 131, 195 (D.D.C. 1982), *aff’d sub nom.*, *Maryland v. United States*, 460 U.S. 1001 (1983). The decree court explained that “[t]he full features of equal access are: (1) dialing parity; (2) rotary dial access; (3) network control signalling; (4) answer supervision; (5) automatic calling number identification; (6) carrier access codes; (7) directory services; (8) testing and maintenance of facilities; (9) provision of information necessary to bill customers; and (10) presubscription.” *United States v. GTE Corp.*, 603 F.Supp. 730, 743 n.55 (D.D.C. 1984).

favor AT&T in those early years of divestiture. These rules make little sense, however, in today's competitive marketplace. Indeed, the 1996 Act indicates that Congress did not expect these consent-decree-based rules to be permanent. For one thing, Section 251(g) expressly notes that the restrictions should continue only until superseded by the Commission. For another thing, Congress referred to "[t]hese interim restrictions and obligations"<sup>18</sup> and took care to point out that "[t]he use of the provisions of the respective consent decrees to provide, on an interim basis, the substance of the new statutory duty in no way revives the consent decrees."<sup>19</sup> In short, these intrusive regulations are no longer necessary in a time when there is no longer any fear that the BOCs will unduly favor a single national long distance monopolist.

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<sup>18</sup> H.R. Rep. No. 104-458, at 123 (1996).

<sup>19</sup> *Id.*

**CONCLUSION**

For the foregoing reasons, the Commission should grant AT&T's petition and provide the same relief to Verizon and other BOCs. The Commission also should eliminate the carry-over in-bound scripting obligations and "equal access" requirements preserved by section 251(g) for all BOCs and the former GTE.

Respectfully submitted,

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