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November 2, 2004

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Unbundled Access to Network Elements, WC Docket No. 04-313; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338; BellSouth's Emergency Petition for Declaratory Ruling (filed May 27, 2004); and BellSouth's Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Section 252 with Respect to Non-251 Agreements (filed May 27, 2004)

Dear Ms. Dortch:

The purpose of this letter is to inform the Commission of a recent decision by the Georgia Public Service Commission pertinent to issues pending in the above-referenced proceedings.

On May 27, 2004, BellSouth filed a Petition for Declaratory Ruling and a Petition for Forbearance challenging attempts by state public service commissions to regulate commercially negotiated agreements for access to network facilities and other services that are not required under section 251 of the Telecommunications Act of 1996 ("1996 Act"). The Commission is considering the issues raised in BellSouth's petitions as part of its broader review of incumbent unbundling obligations under the 1996 Act.

Since the D.C. Circuit vacated the Commission's broad unbundling rules, BellSouth has negotiated commercial agreements with competing local exchange carriers ("CLECs") for the provision of wholesale services -- negotiations that were encouraged by all five members of the Commission. To date, BellSouth has reached commercially negotiated agreements with twenty-two (22) CLECs.

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Such negotiations are threatened, however, by an order of the Georgia Public Service Commission ("GPSC") entered on October 14, 2004, requiring that commercially negotiated agreements be filed with the GPSC for review and approval pursuant to section 252 of the 1996 Act. To the extent the GPSC's order is read to require the filing and approval of any agreement negotiated between a competing local exchange carrier and an incumbent, whether or not the agreement is intended to fulfill the incumbent's section 251 obligations, the order could have a chilling effect on commercial negotiations.

For all of the reasons previously expressed by BellSouth in its petitions, the GPSC's intent to review and approve commercially negotiated agreements is inconsistent with the 1996 Act and violates the exclusive jurisdiction of the Commission. The review of commercially negotiated agreements on a state-by-state basis also increases the likelihood of inconsistent decisions, which jeopardizes the ability of carriers to engage in the give-and-take essential to the successful negotiation of regional agreements. Georgia's recent action underscores the necessity of this Commission ruling quickly and decisively on this issue in order to preserve and promote the ability of carriers to enter into commercially negotiated agreements.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn Reynolds", written in a cursive style.

Glenn Reynolds

GR:kjw

Cc: Jeffrey Carlisle
Michelle Carey
Tom Navin
Christopher Libertelli
Matthew Brill
Jessica Rosenworcel
Daniel Gonzalez
Scott Bergmann