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November 10, 2004

EX PARTE

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

Re: BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to CLEC UNE Voice Customers, WC Docket No. 03-251.

Dear Ms. Dortch:

BellSouth Telecommunications, Inc. (BellSouth) writes to respond to several ex parte presentations submitted in the referenced proceeding by counsel for Time Warner Inc. (Time Warner), in which Time Warner alleges that incumbent LECs have adopted policies of rejecting number-portability requests with respect to telephone lines used to provide voice and DSL service. As BellSouth explains below, Time Warner's arguments are both irrelevant to this proceeding and incorrect with respect to BellSouth.

It must first be noted that Time Warner's ex partes do not identify any specific ILEC, do not provide any specific examples of number portability requests being refused, nor does Time Warner cite any specific number-portability rule that it claims has been violated. In fact, as explained below, it does not appear that Time Warner has ever raised its concerns with the ILECs themselves -- at least not with BellSouth -- before complaining to this Commission. In short, there is no evidence from Time Warner's summary filings that a controversy requiring the Commission's intervention even exists.

Second, Time Warner's allegations are simply irrelevant to the relief BellSouth is requesting in this proceeding. BellSouth's petition simply requests that the Commission re-affirm that it, rather than the state commissions, has regulatory jurisdiction over the provision of DSL service and that it is inconsistent with this Commission's holdings for states to require ILECs to provide broadband services on leased UNE lines. In particular, BellSouth requests the FCC to pre-empt any state commission efforts to require BellSouth to provide broadband service over a CLEC UNE line. As Time Warner concedes in its ex parte filing, its concern about number porting is in no way inconsistent with the Commission granting the relief requested by BellSouth.¹

Third, *at least with respect to BellSouth, Time Warner's allegations are factually incorrect.* BellSouth already has in place appropriate procedures for porting numbers when both voice and DSL services are being provided over the line and does not reject number porting requests simply because the customer is taking DSL from BellSouth. Indeed, these procedures were implemented through BellSouth's Change Control Process (CCP) at the request of CLECs that wanted notification that an end user's account had DSL service.² Consistent with this CLEC change request, BellSouth's ordering system auto-clarifies a Local Service Request (LSR) that is requesting to port a voice line that has DSL. In response to this auto-clarify, the CLEC simply confirms the order -- no additional information is required. All BellSouth services, including any DSL service, on that end user's account are then disconnected when the porting process is complete. Contrary to Time Warner's claims, BellSouth does not require that the end user customer "specifically cancel the ILEC-provided DSL service" before the number is ported.

Finally, but importantly, based upon internal investigation and discussion with Time Warner counsel, it appears that Time Warner has never raised this issue with BellSouth on a business-to-business basis. Instead, Time Warner's ex parte complaints to this Commission were the very first time BellSouth has heard of this issue. As explained above, the processes for handling number-porting requests are developed jointly with the CLEC industry through BellSouth's CCP and BellSouth may not alter those processes unilaterally. If Time Warner has concerns about these processes, it should at least raise them through established channels in the first instance, rather than through general allegations to this Commission.

¹ Indeed, Time Warner's ex parte indicates that it is indifferent to whether the Commission grants BellSouth's requested relief. See TW ex parte ("whichever way the Commission resolves BellSouth's petition...").

² This modification was part of Encore release 11.0 implemented on December 29, 2002.

In sum, Time Warner's number porting issue is simply not ripe for resolution in connection with BellSouth's Petition for Declaratory Ruling. Besides being irrelevant to the legal questions presented in this proceeding, the factual inaccuracies, absence of specifics and Time Warner's failure to raise the issue through established business channels all demonstrate that there is no basis in the record of this proceeding for the Commission -- let alone commenters -- to evaluate whether Commission intervention is appropriate.

Please include this letter in the docket of the proceeding listed above.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn T. Reynolds". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Glenn T. Reynolds

Cc: Christopher Libertelli
Matthew Brill
Daniel Gonzalez
Jessica Rosenworcel
Scott Bergmann
Jeffrey Carlisle
Michelle Carey
Aaron Goldberger
Thomas Navin
Julie Veach
Pamela Arluk
Ian Dillner