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November 29, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: *Ex Parte:*

BellSouth Request for Declaratory Ruling That State Commissions May Not Regulate Broadband Internet Access Service by Requiring BellSouth To Provide Wholesale or Retail Broadband Service, CC Docket No. 03-251.

Dear Ms. Dortch:

On behalf of Time Warner Inc., we write in response to the *ex parte* letter, dated November 10, 2004, of BellSouth Telecommunications, Inc.¹ In that letter, BellSouth expresses disagreement with Time Warner's earlier *ex parte* presentations to Commission staff on the subject of number portability.

In its *ex parte* presentations, Time Warner raised concerns that some ILECs have relied on their "no stand-alone DSL" policy as an excuse for refusing to satisfy

¹ See Letter from Glenn T. Reynolds, Vice President — Federal Regulatory, BellSouth Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-251 (filed Nov. 10, 2004) ("*BellSouth Ex Parte Letter*").

number-portability requests.² Time Warner explained that ILECs have rejected number-portability requests in connection with phone lines also used to provide DSL, and complied with the request only after the subscriber had taken steps to cancel the DSL service. Time Warner argued that such policies violate number-portability rules, which require that LECs comply with number-portability requests without delay.³

BellSouth's November 10 letter responds by saying that "Time Warner's arguments are both irrelevant to this proceeding and incorrect with respect to BellSouth."⁴ In particular, BellSouth makes four points.

First, BellSouth says that "Time Warner's ex partes . . . do not provide any specific examples of number portability requests being refused," and asserts that, accordingly, "there is no evidence from Time Warner's summary filings that a controversy requiring the Commission's intervention even exists."⁵ But, as BellSouth undoubtedly knows, instances of ILECs engaging in the practice have been brought to the attention of this Commission and other regulators numerous times.⁶ Indeed, the issue was previously raised in this very proceeding.⁷ Thus, by denying the existence of

² See, e.g., Letter from Henk Brands, counsel for Time Warner Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-251 (filed Oct. 12, 2004).

³ See 47 C.F.R. § 52.1 *et seq.*

⁴ *BellSouth Ex Parte Letter* at 1.

⁵ *Id.*

⁶ See, e.g. *Application by Verizon Maryland Inc., Verizon Washington, D.C. Inc., Verizon West Virginia Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia*, Memorandum Opinion and Order, 18 FCC Rcd 5212, ¶ 141 (2003) ("Starpower alleges that when porting numbers from customers that have Verizon voice service and are receiving DSL service from either Verizon or another provider, the order is rejected from Verizon's system until the customer cancels the DSL on the line."); Complaint and Request for Declaratory Ruling, *Bright House Networks Information Services, LLC v. Verizon Florida, Inc.*, Docket No. 041170-TP, ¶ 1 (Fla. PSC filed Sept. 30, 2004) ("when a Verizon customer who buys both intrastate telephone exchange service . . . and . . . DSL . . . from Verizon, seeks to switch to BHN for voice services, Verizon refuses to port the customer's POTS number unless the customer first disconnects the DSL service and completely closes out the account").

⁷ See Reply Comments of Comcast Phone, LLC, WC Docket No. 03-251, at 2 (filed Feb. 20, 2004) ("In Verizon territory, Comcast Phone has had telephone number

a “controversy requiring the Commission’s intervention,” BellSouth — ostrich-like — is sticking its head in the sand.

Second, BellSouth asserts that “Time Warner’s allegations are simply irrelevant to the relief BellSouth is requesting.”⁸ BellSouth may be correct in this sense: ILECs’ refusals to comply with number-portability requests perhaps do not by themselves require denial of the preemption relief that BellSouth has requested — whether that relief is proper in the first place is a question that Time Warner to date has not addressed. But BellSouth is wrong in suggesting that the issue is irrelevant to this proceeding. An order granting the requested preemption relief would be the perfect opportunity to caution ILECs that, even if the Commission permits their refusal to provide stand-alone DSL, they may not turn that permission into an excuse for violating number-portability rules.

Third, BellSouth claims that, “at least with respect to BellSouth, Time Warner’s allegations are factually incorrect.”⁹ Whether that is so is unclear: BellSouth’s letter makes mention of an “auto-clarification” procedure that seems to call for subjecting number-portability requests to delayed execution; the letter provides insufficient detail to allow a determination whether the procedure complies with applicable rules. However that may be, if BellSouth complies with applicable rules, BellSouth is to be commended. Time Warner’s prior letters, however, never accused BellSouth of rejecting number-portability requests: Time Warner asserted only that “ILECs” engage in the practice. BellSouth does not deny that other ILECs have engaged in the practice, and it is plainly appropriate to raise concern about it here: the relief that BellSouth requests would likely extend not only to BellSouth but also to other ILECs.

Finally, BellSouth complains that “Time Warner has never raised this issue with BellSouth on a business-to-business basis.”¹⁰ Time Warner’s response should by now be obvious. Our concern is with industry-wide conduct, and this proceeding is the right forum to raise it.

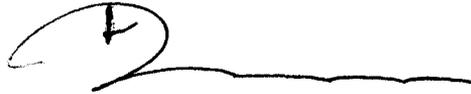
porting requests rejected because the customer has ILEC DSL service. In such cases, the mere presence of ILEC DSL service on the customer’s account results in the rejection by the ILEC of the porting request.”); *accord* Letter from Christopher W. Savage, counsel for Bright House Networks Information Services LLC (Florida), to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-251 (filed Nov. 24, 2004) (“BHN is experiencing difficulties with Verizon in the Florida area, in that Verizon will not promptly port the voice telephone number of a Verizon customer that has . . . DSL . . . service on the voice loop.”).

⁸ *BellSouth Ex Parte Letter* at 2.

⁹ *Id.* (emphasis omitted).

Pursuant to Section 1.1206(b) of the Commission's rules, copies of this notice are being filed electronically in the above-captioned proceeding for inclusion in the public record. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized initial 'H' followed by a long, horizontal, slightly wavy line.

Henk Brands
Counsel for Time Warner Inc.

¹⁰ *Id.*