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June 23, 2005

**EX PARTE**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> St. SW  
Washington, D.C. 20554

**Re: WC Docket 01-338, 04-313, and 04-245**

Dear Ms. Dortch:

Under cover of this letter, BellSouth is submitting for inclusion in the dockets identified above, a recent decision of a United States District Court supporting BellSouth's position on several matters pending before the Commission.

In WC Dockets 01-338 and 04-313, BellSouth has asked the Commission to confirm that commercial agreements for the provision of wholesale services not required to be provided pursuant to section 251 of the Act are not subject to the provisions of section 252 of the Act. Therefore, such commercial agreements need not be submitted to state commissions for approval.

Also, on July 1, 2004, BellSouth filed an Emergency Petition for Declaratory Ruling and Preemption of the actions of the Tennessee Regulatory Commission seeking to regulate BellSouth's rates for switching services offered pursuant to section 271 of the Act. In this Petition, BellSouth asserts that the authority granted to state commissions to arbitrate interconnection agreements by section 252 of the Act is expressly limited to the provision of services required to be offered pursuant to section 251. Therefore, state commissions have no authority to set rates for services offered solely pursuant to section 271.

The attached decision of the federal district court for Montana confirms BellSouth's legal position in these proceedings. In this decision, *Qwest vs. Schneider, et al., CV-04-053-H-CSO (slip op, June 5, 2005)*, the court finds that the Montana Public Service Commission had no authority under section 252 to require Qwest to submit for approval a commercial agreement with Covad for line sharing. The court concludes that "section 252's language limits the requirement that agreements be submitted to state commissions for approval to those agreements that contain section 251 obligations." *slip op. at 14*. The court's analysis emphasizes that the processes set forth in section 252 apply only to agreements for interconnection, services or network elements provided "pursuant to section 251." *citing 47 U.S.C. 252(a)(1)*. The court also notes that its analysis is consistent with the Commission's own interpretation of section 252 in the Qwest Declaratory Ruling Order. *slip op. at 15*.

Please let me know if you have any questions concerning this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn T. Reynolds". The signature is fluid and cursive, with a prominent initial "G" and "R".

Glenn T. Reynolds

*Attachments (2)*

Cc: Michelle Carey  
Thomas Navin  
Russ Hanser  
Jessica Rosenworcel  
Scott Bergmann  
Julie Veach  
Jeremy Miller  
Tamara Preiss  
Sam Feder