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02/15/2007 05:33 PM

To <Peter_McCabe@ao.uscourts.gov>
cc <Rules_Comments@ao.uscourts.gov>
Subject Judicial Conference Advisory Committee on Evidence Rules/
Proposed Rule 502

Dear Mr. McCabe:

Based upon the historical precedents and other reasons articulated last year by the Tenth Circuit in *In re Qwest Communications Int'l Inc.*, 450 F.3d 1179 (10th Cir. (Colo.) 2006), and so eloquently stated by Messrs. Vail, Allman, Hazen, Long and others at the Advisory Committee's January 2007 hearings and in written submissions, it is my firm personal belief the Committee should abstain from recommending adoption by Congress of sub-section (c) of proposed Rule 502 -- and should instead totally defer on the issue to the ultimate will of Congress. (Actually, I would prefer to see the Committee affirmatively recommend to Congress *against* subsection (c), but as a realist, the transcripts of the hearings make that appear highly unlikely, and a plea for abstention seems to be the only hope.)

If a radical and divisive change such as selective waiver is to be enacted at all under the commerce clause, it is essential to first ensure a full and fair public debate in Congress over the slippery slope that selective waiver would entail. The Committee's efforts and its public hearings were a laudable first step, but the implications of this particular issue are so dramatic that it also needs complete airing and reflection of all of its potential ramifications by our elected officials and all constituencies. And only an abstention vote will assure that outcome.

Respectfully submitted,
Ken Mann

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