WOMBLE
CARLYLE
SANDRIDGE
& RICE
A PROFESSIONAL LIMITED
LIABILITY COMPANY

Seventh Floor
1401 Eye Street, N.W.
Washington, DC 20005

Telephone: (202) 467-6900
Fax: (202) 467-6910
Web site: www.wcsr.com

Michael B. Hazzard
Direct Dial: (202) 857-4540
Direct Fax: (202) 261-0035
E-mail: mhazzard@wcsr.com

October 27, 2004

BY ELECTRONIC FILING

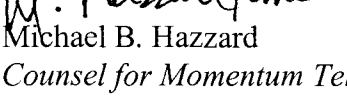
Marlene M. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Notification of Ex Parte*; WC Docket No. 04-313 and CC Docket No. 01-338

Dear Ms. Dortch:

On October 26, 2004, Alan L. Creighton, President and CEO; David Benck, General Counsel, of Momentum Telecom, Inc. ("Momentum"), and I conducted separate ex parte meetings with Christopher Libertelli of Chairman Powell's office and Matthew Brill of Comissioner Abernathy's office. Today I conducted an ex parte meeting with Scott Bergmann of Commissioner Adelstein's office. Alan L. Creighton and David Benck of Momentum participated by teleconference. During the meetings, we discussed the comments Momentum filed in the above-referenced proceedings, and I distributed the attached material, which served as talking points. If you have any questions, please feel free to contact me.

Sincerely,



Michael B. Hazzard
Counsel for Momentum Telecom, Inc.

cc: Christopher Libertelli (electronic mail)
Matthew Brill (electronic mail)
Scott Bergmann (electronic mail)
David Benck (electronic mail)

Momentum Telecom, Inc.

WC Docket No. 04-313

Momentum Telecom

- Founded in 1999
- Based in Birmingham, Alabama
- Over 150,000 customers in the Southeast
- Primarily focused on the residential telecommunications services market ("residential market")
- Serves consumers using UNE-P

Market Definition

- The Commission should conduct an independent impairment analysis for the residential market
- Residential and business markets historically treated as separate
  - Different products
  - Different pricing
  - Different customer expectations
  - Different revenue opportunities
  - Different consumer protection standards

Impairment Most Extreme in the Residential Market

- Economic impairments
  - Enormous sunk cost of substantially duplicating the public switched telephone network
  - Material market share necessary to achieve economies of scale
  - Low incremental revenue opportunity
  - High customer churn

NO CARRIER HAS SUCCESSFULLY OVERCOME THESE ECONOMIC IMPAIRMENTS IN THE RESIDENTIAL MARKET

Impairment Most Extreme in the Residential Market

- Operational impairments
  - ILEC network built for a single provider
  - Extremely difficult and costly to access loops unbundled from switching
  - Fiber deployment exacerbates impairment, as loops cannot be unbundled at all

NO CARRIER HAS SUCCESSFULLY OVERCOME THESE OPERATIONAL IMPAIRMENTS IN THE RESIDENTIAL MARKET

Intermodal Products Are Not Viable Substitutes for POTS

- Intermodal "alternatives" are separate product markets
  - Cable telephony – bundled with cable television
  - VoIP – requires broadband connection
  - Wireless – "not yet suitable" because of quality issues; also often requires long-term contracts

Intermodal Products Are Not Viable Substitutes for POTS

- Intermodal alternatives provide materially less consumer protection
  - State commissions have no jurisdiction over wireless telephony and appear to have no jurisdiction over VoIP or cable telephony
  - No common carrier obligations apply
  - No service quality standards apply
- The BOCs should not be the only residential option that affords consumers traditional protection

At a Minimum, the Commission Should Ensure Compliance with 271

- Section 271 creates an independent obligation to provide UNE-P
- State commissions have jurisdiction over section 271 through section 252 authority over interconnection agreements
- This Commission should support state efforts to set just and reasonable rates under section 271
- Section 201 of the Act applies only to common carriers in their provision of interstate telecommunications services, not intrastate services

"[E]ven most Bells agree that UNE-P should be available for serving residential customers everywhere"

-- Chairman Powell, Letter to Hon. Fred Upton, June 15, 2001

LIMITATIONS ON VOIP AS A REPLACEMENT FROM UNE-P
EXCERPTS FROM KELLOGG HUBER WHITE PAPER
WC DOCKET NO 04-36 (filed May 28, 2004)

- "The main prerequisite for providing VoIP service is a broadband connection…." White Paper at 1.

- "VoIP services are still at an early stage of development…." *Id.* at 2.

- "Vonage … serves at least 155,000 subscribers…." *Id.* at 9.

- "A backup batter is not needed in any household that can rely on a wireless phone during a power outage, but in any event, battery can readily bundled … [at a cost of] $50 per subscriber…." *Id.* at 12.

- "[T]he total one-time equipment-related capital cost for a cable operator to add VoIP service to its existing broadband network is under $200 per customer…. The costs for VoIP-only providers, like Vonage, which use less expensive equipment are below $75 per subscriber." *Id.* at 13.

- In addition, "[s]ubscriber acquisition costs … are currently estimated at an average of about $125." *Id.*

- "A broadband connection equipped with VoIP now sells between $72 and $90." *Id.* 17.

- "Even when voice over broadband is routed over the public Internet … service quality is comparable to, or better, than typical wireless service – fully adequate for price-sensitive customers, or for those who ascribe more value to the superior features that end-to-end digital service can offer." *Id.* at 20.

- "The one primary-line feature that not all VoIP providers have implemented is Enhanced 911 capability." *Id.* at 21.