October 5, 2006

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 – 12th Street, SW
Washington, DC 20554

Re: *Ex Parte Letter,* WC Docket No. 06-74, In the Matter of the Application Pursuant to Section 214 of the Communications Act of 1934 and Section 63.04 of the Commission's Rules for Consent to Transfer Control of BellSouth Corporation to AT&T, Inc.

Dear Ms. Dortch:

Residential competition in the Southeast is collapsing and will accelerate with the instantaneous return of AT&T's residential customers to the incumbent's base. The evidence is overwhelming that competition for plain old telephone service ("POTS") – still the mainstay of the residential market in the Southeast, particularly in the smaller markets served by Momentum Telecom, Inc. – requires access to network elements priced at just and reasonable rates.

If the Commission approves AT&T's acquisition of BellSouth, it should only do so if accompanied by conditions that remove all ambiguity concerning how the requirements of section 271, which can ensure continued access to the network elements required to serve the residential market, will be implemented. The conditions recommended by CompTel would achieve that result. They would define an appropriate state role in the arbitration of just and reasonable rates for section 271 network elements, and ensure that the nondiscrimination requirements of section 271 are satisfied through the opt-in and public disclosure requirements of section 252.[1] Momentum Telecom urges the Commission to condition approval of the AT&T/BellSouth merger application on the adoption of the conditions proposed by CompTel.

The Decline of Residential Competition in the Southeast

The most reliable information concerning residential competition is the Commission's own biannual Local Competition Reports, which were modified starting with reports for June 2005 to better track the number of residential lines served by

1 Letter from Karen Reidy, Vice President, CompTel, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-74, Sept. 22, 2006.

competitors.[2] As shown in the table below, between June 2005 and December 2005, residential competition in the BellSouth region fell by over 275,000 lines, a 24% decline on an annualized basis.

Table 1: Decline in Residential Competition
BellSouth (June 2005 to December 2005)

State	Change in Residential Lines		Annualized Percent	
	ILEC	CLEC	ILEC	CLEC
Alabama	(130)	(31,908)	0%	-34%
Florida	(95,019)	(180,277)	-3%	-56%
Georgia	(6,038)	(85,594)	0%	-39%
Kentucky	(16,357)	22,958	-3%	27%
Louisiana	(139,967)	(48,490)	-20%	-40%
Mississippi	(19,736)	(12,255)	-5%	-24%
North Carolina	(119,951)	90,192	-8%	91%
South Carolina	11,518	789	2%	1%
Tennessee	(7,242)	(31,015)	-1%	-35%
Regionwide	(392,922)	(275,600)	-4%	-24%

There are a number of observations concerning the data summarized above that the Commission should consider.

First, the data demonstrates the impact on the residential market caused by the extraordinary circumstance of hurricane Katrina in New Orleans, which affected both BellSouth and its competitors. After eliminating Louisiana from the analysis, however, the annualized decline in residential competition in the region still exceeded 22% on average, with significant double-digit declines reported for virtually every state. The decline in residential competition is deep and broad.

Second, the *general* decline in residential lines so frequently cited by the incumbent – a decline attributable to the substitution of DSL for dial-up lines, as well as the limited substitution of wireless service (particularly among teenagers and young adults) for wireline service – does not explain the dramatic reduction in CLEC lines shown above. As the dominant provider of residential service in the region,[3] any

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2 *See* Local Telephone Competition: Status as of June 30, 2005, Industry Analysis and Technology Division, Wireline Competition Bureau, FCC (rel. April 2006); Local Telephone Competition: Status as of December 31, 2005, Industry Analysis Division, Wireline Competition Bureau, FCC (rel. June 2006). Starting with the June 2005 report, Form 477 required that CLECs separately report residential lines and the reporting requirements were extended to all CLECs, irrespective of size. As such, the June 2005 and December 2005 reports provide a consistent and comprehensive basis to analyze the level of residential competition in the U.S.

3 In December 2005, the incumbents' residential market share was 90.9%, up from 89.9% six months earlier.

reduction in the total market will be perceptible to BellSouth. Entrants, however, enjoy such a small share that the "effective headroom" for their growth is simply not affected. For instance, in June 2005, the potential market as perceived by an entrant (*i.e.*, the number of incumbent-served lines) in the region was 20.3 million lines; in December, 2005, the potential market had declined somewhat, but it was still 19.9 million lines, a difference that would fall from the analysis through rounding.

Third, the aggregate statistics in Table 1 mask an even more disturbing trend – the elimination of POTS competition. Cable companies are an emerging competitor in some markets, but the emergence of a *single* competitor does not create a competitive market. The vast majority of Momentum Telecom's customers are located in smaller or rural markets, they are working families of modest income, and they remain interested in traditional POTS service. Telling such customers that their competitive option is a triple play of voice, data and video – to the extent that they are even served by a cable system that has been upgraded to offer this alternative – is to tell them that they have no effective choice at all.[4] The aggregate statistics in Table 1 include lines served by cable-based entrants and, therefore, reflect the net reduction in competition. If the analysis focused solely on the traditional POTS market – a market that consists of millions of customers equally deserving of competitive choice – the loss in competition would be even greater.

The market evidence collected by the states in response to the *Triennial Review Order*[5] demonstrates that broad POTS competition – competition for traditional voice service, in rural as well as urban markets – is possible.[6] Given the tools, entrants did expand choice to *every* wire center, protecting not merely the affluent urban subscriber, but the working family as well. Unfortunately, market evidence in the wake of the *Triennial Review Remand Order*[7] demonstrates that such competition is disappearing,[8]

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4 Similarly, it is not sufficient to claim that these POTS customers should simply use their cell phone. Reliable cell phone service is not ubiquitous and therefore is more likely to be used as an additional communications option (sometimes limited to emergencies) than a viable alternative to the traditional phone on the wall.

5 *Review of the Section 251 Unbundling Obligations of Local Exchange Carriers; Implementation of Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 18 FCC Rcd 16978 (2003) ("*Triennial Review Order*" or "*TRO*").

6 *See Unbundled Access to Network Elements,* WC Docket No. 04-313, CC Docket No. 01-338, Comments of the PACE Coalition, et al. (Oct. 4, 2004), at 39-53 (summarizing the record from various state proceedings demonstrating the geographically broad nature of local entry relying on unbundled local switching).

7 *Unbundled Access to Network Elements; Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533 (2005) ("*Triennial Review Remand Order*" or "*TRRO*").

8 The evidence clearly demonstrates that the Commission's hoped-for emergence of UNE-L based entry is simply not occurring. On average, for every 100 lines-with-switching that are being disconnected, only 9 loops-without-switching are being installed (and

and that BellSouth has no intention to willingly offer just and reasonable rates that would erode its market dominance.[9]

Section 271 of the Act was not adopted by Congress as window dressing – it was intended to provide a *meaningful* competitive alternative to bring the benefits of competition broadly to the local market.[10] Section 271 offerings have no practical meaning, however, if BellSouth can impose unreasonable rates, subject solely to the complaint process of the Commission. Momentum Telecom therefore fully supports the merger condition offered by CompTel that would provide for state arbitration of just and reasonable rates for section 271 network elements and urges its adoption.

Sincerely,

Rick Richardson (gm)

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General Counsel
Momentum Telecom, Inc.

cc: Michelle Carey
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nearly all such loops are digital facilities serving a different customer segment). Source: BellSouth Form 477 Reports, Data as of June 2005 and December 2005.

9 A number of states in the BellSouth region have investigated BellSouth's post-*TRRO* rates for local switching and none have found its rates to be just and reasonable. Tennessee and Kentucky have established interim just and reasonable rates for local switching; the Georgia Commission deferred the adoption of a just and reasonable rate while seeking guidance from the FCC concerning its authority to arbitrate rates under section 271. *See* Order, Kentucky Public Service Commission, Case Nos. 2005-00519 and 2005-00533, August 16, 2006; Final Order of Arbitration Award, Tennessee Regulatory Authority Docket No. 03-00119, October 20, 2005; Order Setting Rates Under Section 271, Georgia Public Service Commission Docket 19341-U, March 10, 2006, Order on Reconsideration, March 24, 2006.

10 *See Triennial Review Order,* ¶ 655 ("These additional requirements [the unbundling obligations in the section 271 competitive checklist] reflect Congress' concern, repeatedly recognized by the Commission and courts, with balancing the BOCs' entry into the long distance market with increased presence of competitors in the local market . . .).