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October 27, 2006

VIA ECFS AND ELECTRONIC MAIL

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

**Re: Ex Parte – WC Docket No. 06-74 – In the Matter of AT&T Inc. and BellSouth Corporation Applications for Transfer of Control**

Dear Ms. Dortch:

XO Communications (“XO”), NuVox, Inc. (“NuVox”) and Talk America Inc. (“Talk”), having filed comments and reply comments and having conducted and submitted *ex parte* presentations on their own behalf and in conjunction with COMPTTEL, urge the Commission, if it allows the proposed merger of AT&T and BellSouth to go forward, to adopt, at a minimum, the merger conditions filed by COMPTTEL on October 24, 2006. Only through adoption of a comprehensive and enforceable set of merger conditions, such as those proposed by COMPTTEL, can the Commission even partially ameliorate the harms that would result from approval of the proposed merger. This *ex parte* letter focuses on only one of those conditions – the condition aimed at putting an end to the anti-competitive and anti-consumer practice of retiring copper loops.

There is no sound reason for allowing incumbent LECs such as the Applicants to rip copper loops out of the ground and to dispose of them, so that they may never again be used to provide services to residences and businesses. In its October 24, 2006 comments, COMPTTEL explained that

As Applicants convert their loop plant and install more fiber, this critical copper plant is decommissioned and may even be removed. Putting the brakes on this anti-competitive activity, and preserving the copper last mile access required for intra-modal competitors to

Ms. Marlene H. Dortch, Secretary  
October 27, 2006  
Page Two

reach customers, is critical to ensuring that consumers have more than one or two choices of service providers.<sup>1</sup>

To address this problem, COMPTTEL proposed a simple and relatively costless condition, which would preserve this vital source of competition in the marketplace:

***AT&T/BellSouth shall not decommission copper loops and shall provide unbundled access to such facilities pursuant to section 251(c)(3).***

XO, NuVox and Talk urge the Commission to adopt the proposed copper loop retirement condition. It is essential to the development of facilities-based competition and the deployment of competitive broadband services that existing copper loops remain available as unbundled network elements.

Following the unbundling relief granted by the Commission for newly constructed fiber loops, including fiber-to-the-home (“FTTH”) and fiber-to-the-curb (“FTTC”), incumbent LECs have exploited the Commission’s permissive rules for retirement of copper loops and copper subloops to render unavailable bottleneck copper loop facilities used by competitive LECs to provide bundled voice and broadband services to residential and small to medium-sized business customers. The practice of retiring copper loops in these circumstances does not serve any legitimate purpose under the Act. Instead, it undermines the Act’s goals of fostering intramodal competition and the deployment of advanced services.

Preservation of copper loop facilities, through means such as adoption of the proposed condition, is essential to the continued development of intramodal competition and to the deployment of competitive broadband services. Ethernet over copper technology and ever-improving variants of copper-based DSL enable competitive LECs to bring broadband and voice/broadband bundles to consumers with an ever-increasing demand for such advanced broadband services. Without copper loops, none of this is possible. Thus, the retirement of copper loops literally eliminates one of the most promising and expeditious means of delivering competitive broadband to consumers. Competitive LECs, including XO, NuVox and Talk, are in the process of deploying broadband over copper technologies today.

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<sup>1</sup> COMPTTEL Comments at 24-25 (filed Oct. 24, 2006) (emphasis added).

Ms. Marlene H. Dortch, Secretary  
October 27, 2006  
Page Three

Under Section 51.319(a)(3)(iii)(C) of the Commission's rules, a narrowband transmission path must be provided by incumbent LECs over fiber facilities, if copper loop and copper subloop UNEs are retired.<sup>2</sup> This alternative, however, provides competitors and consumers with no real and sustainable alternative. Availability of only a narrowband channel over fiber precludes competitive LECs from providing customers with the full suite of services, including broadband services, that they currently provide over existing copper loop UNEs. Only the copper loop and copper subloop UNEs currently made available to competitive LECs, under Section 251(c)(3) of the Act, enable competitive LECs to provide a complete array of services to residential and business customers, including bundled voice and broadband products.

The retirement of copper loops and copper subloops in these circumstances also is economically inefficient. Incumbent LECs must incur substantial, non-recoverable costs to dismantle these legacy copper loops, and to reconfigure embedded copper facilities to accommodate specific copper loop and copper subloop retirements. Conversely, preservation of copper loops creates continued revenue opportunities through unbundling at rates that not only cover costs such as maintenance, but that also provide a reasonable profit.<sup>3</sup> Moreover, under the Commission's current rules, no additional financial burdens are imposed where copper loops and copper subloops are retained parallel to overbuild fiber deployments.<sup>4</sup>

The proposed copper loop retirement condition would ensure that the Applicants' transition to next-generation fiber networks and technologies (one of the proposed justifications for the merger) does not result in the elimination of competition, innovation and consumer choice through the destruction of legacy copper loops. Competitive wireline broadband provisioned over legacy copper loops spurs innovation as well as demand for advanced services from all carriers. In turn, it helps deliver more broadband for less money to consumers. For all of the foregoing reasons, XO, NuVox and Talk urge the Commission to adopt as part of any approval of the Applicants' merger a set of robust and enforceable conditions that includes the ban on copper loop retirement proposed by COMPTTEL.

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<sup>2</sup> Where the incumbent LECs choose to overbuild copper facilities with next-generation fiber networks, and subsequently to remove from service existing copper loops and copper subloops, the Commission's rules provide that competitive LECs may obtain unbundled access only to a 64 kilobits per second transmission path over the incumbent LECs' FTTH and FTTC loops, for the sole purpose of providing voice grade service to customers. 47 C.F.R. § 51.319(a)(3)(iii)(C).

<sup>3</sup> 47 U.S.C. § 252(d)(1).

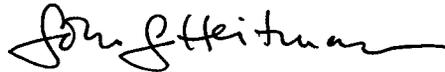
<sup>4</sup> 47 C.F.R. § 15.319(a)(3)(iii)(B).

KELLEY DRYE & WARREN LLP

Ms. Marlene H. Dortch, Secretary  
October 27, 2006  
Page Four

Please do not hesitate to contact the undersigned if there are any questions or if the Commission desires any further information regarding this submission.

Respectfully submitted,



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and Talk America Inc.*

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