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October 27, 2006

VIA ECFS

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:

Competitive Carriers of the South (“CompSouth”) urges 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. While CompSouth supports all of the conditions proposed by COMPTTEL, CompSouth has focused its advocacy on an issue of particular importance to its many members: the elimination of EELs audits. In this regard, through its undersigned counsel, CompSouth herein responds to BellSouth’s October 5, 2006 *ex parte* letter regarding EEL audits.¹ Notably, BellSouth’s *ex parte* pre-dates AT&T’s *ex parte* in which it indicated it would not object to a merger condition that eliminated EEL audits.²

¹ *Ex Parte* Letter from Bennett Ross, Counsel, BellSouth to Marlene H. Dortch, Secretary, FCC (Sept. 20, 2006) (“*BellSouth Ex Parte*”).

² *Ex Parte* Letter from Robert Quinn, Senior Vice President, AT&T to Kevin Martin, Chairman, FCC (Oct. 13, 2006).

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BellSouth's latest attempt to defend its predatory campaign of EEL audit harassment is to characterize its actions as a contractual right.³ The plain fact of the matter is that no ILEC other than BellSouth has used EEL audits as a predation tool designed to mire competitors in regulatory uncertainty and litigation.⁴ Other ILECs have EEL audit rights included in their interconnection agreements, but only BellSouth has pursued a wide-scale campaign that has sought to ensnare every major competitor in its region, save its long-time suitor AT&T.⁵

BellSouth also weakly argues that the elimination of EELs audits would not remedy harms that arise from the proposed merger. *BellSouth Ex Parte* at 2. This argument also cannot succeed, as it fails to recognize that BellSouth has mired in resource-sapping EEL audit activity many of the carriers that will need to develop to fill the void left by the elimination of AT&T as the region's largest CLEC and alternative wholesale service provider. Moreover, BellSouth's contention that the transaction is at the holding company level only – and that nothing will change otherwise – is not even remotely credible. *See id.*

Finally, BellSouth's defense of its practice of keeping CLECs trapped in agreements with the long-ago rejected *Supplemental Order Clarification* use restriction and safe harbors is nonsense – and it appears to be deliberately intended to be such, as the hope of creating confusion evidently is BellSouth's only defense. *BellSouth Ex Parte* at 3. BellSouth points to but two interconnection agreements which contain the newer EEL eligibility criteria and audit requirements – NuVox alone has six others that do not. Moreover, BellSouth fails to mention that it forced CLECs to *arbitrate* in order to get the newer EEL eligibility criteria into its interconnection agreements *because* BellSouth insisted on changing the wording of the Commission's rule and would not merely replicate the actual text. With regard to audits, BellSouth forced CompSouth to arbitrate the issue regionally, as BellSouth refused to accept interconnection agreement language reflecting the FCC's adoption of a "for cause" auditing standard. Of course, BellSouth's recalcitrance on both points was designed to bolster and extend

³ BellSouth points to a single court order involving a single interconnection agreement to support its contention, *BellSouth Ex Parte* at 1, as no other court or state commission has found BellSouth's view of the same contract to be sound. The Georgia Public Service Commission and NuVox have appealed that decision to the 11th Circuit. *BellSouth Telecomms., Inc. v. NuVox Communs., Inc., et al.*, Case No. 06-15443 (11th Cir. docketed Oct. 13, 2006).

⁴ BellSouth's suggestion that is owed millions of dollars in damages bears no relation whatsoever to reality. Its assertion that the North Carolina audit was conducted in accordance with AICPA standards is ridiculous, given the numerous irregularities involved with that audit. BellSouth has yet to prove it is entitled to a penny of damages; yet, the damages BellSouth imposes on competitors in the form of regulatory uncertainty and resource consumption are tremendous and mounting. Such predatory behavior by a dominant provider needs to be abolished promptly.

⁵ BellSouth's claim that it had no cause to audit its long time suitor AT&T rings hollow, as it had no reasonable cause to audit others but attempted to do so anyway. Indeed, in an effort to create cause to justify its audits BellSouth has engaged in conduct that violates the Commission's CPNI rules.

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its predatory campaign of EEL audit harassment. Unfortunately, not all state commissions rejected BellSouth's position – which is all the more reason why BellSouth's predatory EEL audit campaign must be foreclosed at the federal level.

Please include a copy of this letter in the record of the above-referenced proceeding. Thank you for your attention to this matter. Any inquiries as to the content of this letter should be directed to the undersigned counsel.

Respectfully submitted,



Brad E. Mutschelknaus
John J. Heitmann

Counsel for Competitive Carriers of the South

cc: Michele Carey
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