Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Annual Assessment of the Status of	)	MB Docket No. 06-189
Competition in the Market for the Delivery	)	
of Video Programming	)	

COMMENTS OF BELLSOUTH CORPORATION AND BELLSOUTH ENTERTAINMENT, LLC

BellSouth Corporation and its affiliated multichannel video programming distributor ("MVPD"), BellSouth Entertainment, LLC ("BEI") (hereinafter referred to collectively as "BellSouth"), hereby file their comments in response to the Commission's *Notice of Inquiry*.[1]

As the *Notice of Inquiry* correctly observes, the video programming market continues to be dominated by cable operators.[2] As a result, customers of video programming delivered via cable routinely experience significant price increases that outpace the rate of inflation.[3] These market conditions – cable dominance and hefty price increases for video services – are unlikely to change so long as obstacles remain in place that frustrate the ability of new entrants to compete fully and fairly against incumbent cable operators. In BellSouth's experience, the local

[1] *In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming,* MB Docket No. 06-189, Notice of Inquiry (October 20, 2006) (*"Notice of Inquiry"*).

[2] *Id.* ¶ 40 (noting that "cable operators continue to serve almost 70 percent of all MVPD subscribers").

[3] *Id.* ¶ 6 (noting that the average cable programming service tier rate "rose more than 5 percent or almost five times the rate of inflation between 2003 and 2004," while the average monthly cable rate for the combined basic and cable programming service tiers "rose approximately 84 percent between 1995 and 2004").

franchising process is the most serious obstacle to achieving the effective video competition that Congress intended when it enacted the Cable Consumer Protection and Competition Act of 1992 (the "1992 Cable Act").[4]

Because BellSouth has been in the video programming market for years, its efforts to compete against incumbent cable operators are especially instructive. BellSouth currently holds 20 franchises to provide cable "overbuild" service in local markets throughout its telephone service area and offers over 200,000 households a competitive choice of cable service. BellSouth provides cable overbuild service to approximately 35,000 customers in the following 14 markets: City of Vestavia Hills, Alabama; City of Chamblee, Cherokee County, Cobb County, DeKalb County, City of Duluth, Gwinnett County, City of Lawrenceville, City of Roswell, and City of Woodstock, Georgia; and St. Johns County, Miami-Dade County, City of Pembroke Pines and Town of Davie, Florida.

In addition, BellSouth has a strategic marketing alliance with DIRECTV, Inc. to offer DIRECTV digital satellite television service to BellSouth residential customers. As a result of this alliance, as of the end of the third quarter of 2006, approximately 756,000 BellSouth customers have added DIRECTV service to their communication packages.

At the same time, BellSouth is exploring the feasibility of Internet Protocol Video, or IPTV as it is commonly called, which is an exciting new interactive technology used to enhance the delivery of television entertainment. Unlike traditional cable service, IPTV uses advanced Internet technologies to offer consumers a complete suite of interactive entertainment, data and voice services over a next generation broadband network. As part of its ongoing next generation broadband network development, BellSouth is exploring the deployment of IPTV as a

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[4] Pub. L. No. 102-385, 106 Stat. 1460 (1992).

competitive multimedia platform for delivering competitive video services in conjunction with the company's voice and data services.[5]

Upon approval of the merger with AT&T, the combined company would be able to deploy IPTV to customers in BellSouth's region more quickly and at a lower cost and thereby counter the dominance of incumbent cable operators.[6] However, and in response to the Commission's request for comments about "regulatory or statutory impediments to LEC entry into the video service market,"[7] the ability of any wireline provider to offer successfully a competing video service hinges in large measure upon the removal of the most significant impediment facing new entrants – the local franchising process.

That the local franchising process constitutes an impediment to competition is evident from BellSouth's experience with the 20 cable franchises it has negotiated to date. On average, the length of time required to negotiate the cable franchises currently held by BellSouth was approximately 10 months. In other words, it took BellSouth nearly one year, on average, to obtain a local cable franchise, and in some cases, the franchise negotiation process took almost three years to conclude.[8]

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[5] As BellSouth has previously advised the Commission, BellSouth is pursuing video business opportunities in a small number of newly constructed, multi-family communities, which may be provided using IPTV technology. However, BellSouth is unlikely to offer IPTV service in any community before 2007 and has not yet reached a decision on whether to make a generally available commercial offering of IPTV. *See* Supplemental Declaration of William L. Smith, WC Docket No. 06-74 (filed May 31, 2006).

[6] *Notice of Inquiry,* ¶ 41 (noting that the GAO has "found that the existence of a wire-based competitor has a measurable downward impact on the average monthly cable rates …").

[7] *Id.,* ¶ 49.

[8] *See* Declaration of Thompson (Tom) T. Rawls II, ¶¶ 3-4, MB Docket No. 05-255 (hereinafter referred to as "*Rawls Declaration*"); Letter from Bennett L. Ross, General Counsel –

Such delay can be fatal to a new entrant's ability to compete against an entrenched incumbent and could likely doom the success of any video service that BellSouth may choose to offer.[9] In particular, if BellSouth were required to obtain a cable franchise in order to provide competitive video services throughout its region, BellSouth estimates that it would have to negotiate franchise agreements with almost 1,500 local franchising authorities. With each franchise requiring an average of approximately 10 months to conclude, the strain on BellSouth's ability to compete would be significant, to say nothing of the substantial resources it would be required to devote to the negotiation process before BellSouth could even enter the market. To alleviate this problem, the Commission should require that a local franchising authority rule upon any cable franchise application within ninety (90) days, or otherwise the application is deemed granted.[10]

The local cable franchising process also is administratively cumbersome, costly, and fraught with numerous local political perils and litigation risks. This is particularly true for, but certainly not limited to, states that have adopted at the behest of incumbent cable providers so-

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D.C., BellSouth, to Marlene Dortch, Secretary, FCC, MB Docket No. 05-255 (filed April 6, 2006).

[9] IPTV is an interactive service rather than a traditional cable service and is provided over an integrated IP-enabled broadband network platform that is designed to provide a wide array of two-way communications and services, including interactive video programming services, rather than designed primarily to provide the one-way transmission of video programming characteristic of a cable system. Consequently, BellSouth strongly believes that IPTV should not be subject to current Title VI cable laws and regulations. However, because of the regulatory uncertainty around this issue and because the local franchising authorities and the entrenched cable industry take a contrary view, BellSouth supports legislation and Commission action that would provide a more competitive video service environment by establishing regulatory consistency across states and municipalities.

[10] *See* Comments of BellSouth Corporation and BellSouth Entertainment, LLC, at 36-38, MB Docket No. 05-311 (filed Feb. 13, 2006).

called "level playing field" statutes.[11] BellSouth provides traditional local telephone service in two states that have adopted such statutes – Florida and Tennessee.[12] In a nut shell, "level playing field" statutes prohibit local governments from granting a cable franchise to a competitive cable service provider that "is more favorable or less burdensome" than the incumbent's cable franchise. As BellSouth has previously documented, these statutes frequently operate or are used by the incumbent cable operator as intentional barriers to competitive entry, and "level playing field" requirements should be preempted by the Commission.[13]

BellSouth has provided the Commission with numerous examples of the extent to which the local franchising process constitutes an impediment to competitive entry in the video service market.[14] None is more egregious or insidious than mandatory build-out requirements that local franchise authorities seek to impose upon new entrants. In BellSouth's case, BellSouth declined to provide a competing video service in Germantown, Tennessee, when the local franchising authority demanded that BellSouth overbuild all of Germantown and the geographic areas served by the incumbent cable operator in five years.[15] The record in MB Docket 05-311 is replete with other examples of new entrants electing not to offer a competing video service because of the

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[11] *Rawls Declaration* ¶ 5.

[12] Fla. Stat. § 166.046; Tenn. Code Ann. § 7-59-203.

[13] *Rawls Declaration* ¶¶ 4-7; Comments of BellSouth Corporation and BellSouth Entertainment, LLC, at 43-45, MB Docket No. 05-311 (filed Feb. 13, 2006).

[14] *Rawls Declaration* ¶¶ 9-29; Comments of BellSouth Corporation and BellSouth Entertainment, LLC, at 10-20, MB Docket No. 05-311 (filed Feb. 13, 2006).

[15] *Id.* at 17-18.

burdensome build-out requirements the local franchising authorities sought to impose.[16] Consistent with the Commission's finding that build-out requirements are a barrier to entry in the telecommunications market,[17] the Commission should preempt the imposition of build-out requirements on new video entrants.[18]

It is time for the Commission to act. The local franchise process, if left unchanged, will continue to undermine competition for the delivery of video programming. As companies such as BellSouth make plans to offer a wireline video alternative to traditional cable service, the Commission must take action to streamline the local franchise process so that consumers enjoy the benefits of true video competition.

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[16] Qwest Comments at 9; South Slope Comments at 9-10 (noting that customers in Cedar Rapids and Coralville, Iowa franchise areas were denied a competing video service because the expense of building out to serve such areas "presents an unreasonably high barrier to entry"); USTelecom Comments at 22-25 (noting that burdensome and costly build out requirements prevented incumbent telephone companies from providing video service to customers in Ostego, Minnesota, Rockingham County, Virginia, and Roseville, California); FTTH Council Comments, Declaration of Jeff Mnick, ¶¶ 2-5.

[17] *In the Matter of Public Utilities Commission of Texas, et al,* CCB Docket No. 96-13, *et al.*, Memorandum Opinion and Order, 13 FCC Rcd 3460 (1997).

[18] *See* Comments of BellSouth Corporation and BellSouth Entertainment, LLC, at 30-36, MB Docket No. 05-311 (filed Feb. 13, 2006). In addition, the Commission can promote video competition and broadband deployment by adopting rules as proposed by BellSouth and other parties to: (1) prohibit any fees (or in-kind requirements) assessed by the local franchising authorities beyond those expressly authorized by the Cable Act; (2) prohibit a local franchising authority from requiring a broadband video provider to dedicate capacity on any "institutional network" for the benefit of the municipality if an institutional network already exists; (3) limit demands for support of "public, educational and governmental" ("PEG") channels by a new entrant to a reasonable contribution to any capital costs for "adequate" PEG facilities as well as an agreement to carry a reasonable number of PEG channels; (4) define with specificity the revenues that should be included in determining the applicable franchise fee to be paid to a local franchising authority; and (5) clarify that local franchising authorities cannot lawfully require a telecommunications carrier to obtain a cable franchise as a condition to or before the carrier enhances its broadband network in order to provide video service. Adoption of these rules would bring much needed reform to the local franchise process.

Respectfully submitted,

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