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December 29, 2006

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., SW
Washington, D.C. 20554

Re: *AT&T Inc. and BellSouth Corporation Applications for Approval of
Transfer of Control, WC Docket No. 06-74*

Dear Ms. Dortch:

I have been asked by Momentum Telecom, Inc. ("Momentum") to comment on the revised set of "Merger Commitments" filed by AT&T in the above-referenced docket late last evening.¹ As a general matter, Momentum again endorses the full slate of merger commitment modifications filed by COMPTTEL on October 25, 2006.² The record is clear that the proposed merger creates numerous substantial harms to competition, and that much more robust conditions than those proposed by AT&T are required before the merger can be found to be in the public interest.

More specifically, Momentum was extremely disappointed to see that the COMPTTEL Section 271 merger condition was not part of the Revised AT&T Merger Commitments. The COMPTTEL Section 271 merger condition would have the significant benefit of rendering unnecessary the increasing number of costly, resource-intensive lawsuits and proceedings before federal courts and state commissions in the AT&T and BellSouth regions in which the issue of state commission jurisdiction over Section 271 network element pricing and

¹ Letter from Robert Quinn, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Dec. 28, 2006) ("Revised AT&T Merger Commitments").

² Comments of COMPTTEL, WC Docket No. 06-74, at 21-23 (filed Oct. 25, 2006).

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terms is at issue.³ Currently, throughout the country, there are nearly a dozen separate suits pending in the federal courts on the Section 271 jurisdictional issue.⁴ At least three different federal circuit courts of appeals are considering the matter. Unfortunately, all of this expensive, time-consuming litigation is not leading to any clarity on the Section 271 jurisdictional issue, as the commissions and courts are issuing inconsistent rulings.⁵

Further, adoption of the Section 271 merger condition would provide a mechanism for the administration of rates and terms for Section 271 network elements by the entities best suited for the job, *i.e.* the state commissions. Importantly, however, adoption of the proposed condition would not result in an abdication of responsibility or jurisdiction by the Federal Communications Commission (“Commission”). The Commission would remain the final arbiter of compliance with Section 271(c)(2)(B) through the Section 271(d)(6) complaint process.

³ Adoption of the condition would also render moot the separate petitions by the Georgia Public Service Commission and BellSouth Corp. which are pending before the Commission. *In the Matter of BellSouth Emergency Petition for the Declaratory Ruling and Preemption of State Action*, WC Docket No. 04-245 (filed Jun. 24, 2004); *In the Matter of Georgia Public Service Commission Petition for Declaratory Ruling and Confirmation of Just and Reasonableness of Established Rates*, WC Docket No. 06-90 (filed Apr. 18, 2006).

⁴ See Attachment to Letter from Genevieve Morelli, Counsel to Momentum Telecom, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-74 (filed Dec. 13, 2006).

⁵ See *e.g.*, *Verizon-Maine Proposed Schedules, Terms, Conditions and Rates for Unbundled Network Elements and Interconnection (PUC 20) and Resold Services (PUC 21)*, Docket No. 2002-682, Order Part II (Me. P.U.C. Sep. 3, 2004), *aff'd*, *Verizon New England Inc. v. Maine Pub. Utils. Comm'n*, 441 F. Supp. 2d 147 (D. Me. 2006), *appeal pending*, *Verizon New England Inc. v. Maine Pub. Utils. Comm'n*, No. 06-2151, (1st Cir.) (filed Jul. 19, 2006); *Southwestern Bell Telephone L.P. d/b/a SBC Missouri's Petition for Compulsory Arbitration of Unresolved Issues for a Successor Interconnection Agreement to the Missouri 271 Agreement*, Case No. TO-2005-0336, *Arbitration Order*, 2005 Mo. PUC LEXIS 963 (Mo. P.S.C. Jul. 11, 2005), *rev'd in part*, *Southwestern Bell Tel. L.P. d/b/a SBC Missouri v. Missouri Pub. Serv. Comm'n et al.*, 2006 U.S. Dist. LEXIS 65536 (E.D. Mo. 2006), *appeal pending*, *Southwestern Bell Tel. d/b/a SBC Missouri v. Big River Tel. Co., LLC et al.*, Nos. 06-3701 and 06-3726 (consolidated) (8th Cir.) (filed Oct. 26, 2006).

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For all of the foregoing reasons, Momentum urges the Commission to include the COMPTTEL Section 271 merger condition as part of any agreement that would permit the merger of AT&T and BellSouth.

Sincerely,

A handwritten signature in cursive script that reads "Genevieve Morelli / dns".

Genevieve Morelli

Counsel to Momentum Telecom, Inc.

cc: Chairman Kevin J. Martin, FCC (via e-mail)
Commissioner Jonathan S. Adelstein, FCC (via e-mail)
Commissioner Michael J. Copps, FCC (via e-mail)
Commissioner Robert M. McDowell, FCC (via e-mail)
Commissioner Deborah Taylor Tate, FCC (via e-mail)
Scott Bergmann, FCC (via e-mail)
Michelle Carey, FCC (via e-mail)
Scott Deutchman, FCC (via e-mail)
Ian Dillner, FCC (via e-mail)
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