



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

December 1, 2006

The Honorable Ted Stevens  
Chairman  
Committee on Commerce,  
Science and Transportation  
United States Senate  
254 Russell Senate Office Building  
Washington, D.C. 20510

The Honorable Daniel K. Inouye  
Co-Chairman  
Committee on Commerce,  
Science and Transportation  
United States Senate  
510 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Joe Barton  
Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable John D. Dingell  
Ranking Member  
Committee on Energy and Commerce  
U.S. House of Representatives  
2322 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Fred Upton  
Chairman  
Subcommittee on Telecommunications  
and the Internet  
Committee on Energy and Commerce  
U.S. House of Representatives  
2415 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Edward J. Markey  
Ranking Member  
Subcommittee on Telecommunications  
and the Internet  
Committee on Energy and Commerce  
U.S. House of Representatives  
2108 Rayburn House Office Building  
Washington, D.C. 20515

Dear Sirs:

As you know, in March of this year, AT&T and BellSouth filed applications for transfer of control with the Commission pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended, and section 2 of the Cable Landing License Act. Generally, the Commission attempts to rule on mergers within 180 days. This merger filing has now been pending before the Commission for over 8 months. Last year the Commission ruled on two large wireline mergers, the AT&T/SBC and Verizon/MCI transaction, by day 199 of the Commission's calendar. In an attempt to rule on the AT&T/BellSouth transaction in a similar fashion, I circulated a draft order to my colleagues on September 21, 2006 – several weeks in advance of the Commission's 180-day mark.

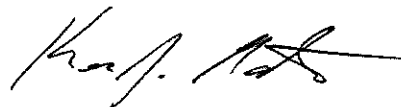
We were originally scheduled to vote on this merger item at the Commission's open agenda meeting scheduled for October 12<sup>th</sup>. We then rescheduled this meeting for the next day, October 13<sup>th</sup> to give my colleagues additional time. On the morning of October 13<sup>th</sup>, Commissioners Copps and Adelstein, in a written letter, requested additional time to consider the

transaction. Specifically, they requested that there be another round of public comment. I agreed to this request and deleted the items from consideration from the October 12<sup>th</sup> meeting and opened up a new comment period. At the conclusion of this comment period, I once again scheduled a vote on the merger order at the Commission's November 3<sup>rd</sup> open agenda meeting. Unfortunately, it became clear on the eve of that meeting that there was still no consensus. I again deleted this item from the Commission's agenda. Since that time, the merger has remained on circulation for consideration by the Commission and I have continued to work with my colleagues in an effort to address the concerns they have expressed about the transaction.

It now appears that, despite working for months to reach consensus with my colleagues, three attempts over the past six weeks to have this item considered at an open meeting, and countless hours of internal deliberations, the Commission has reached an impasse. Although Commissioner McDowell is currently not participating in this proceeding, the FCC's general counsel "may authorize [him] to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The General Counsel has, in the past, used this authority to authorize Commissioners to participate in matters in which they would otherwise be recused. For example, in September 2000, the General Counsel authorized then-Chairman Kennard to break a two-two deadlock in a proceeding addressing the repeal or modification of the personal attack and political editorial rules, despite the fact that Chairman Kennard had previously represented NAB in that proceeding. Given the Commission's inability to reach consensus on this matter, I have asked the General Counsel to consider whether the Government's interest would be served by permitting Commissioner McDowell - who has not participated in this proceeding thus far - to participate.

Please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin J. Martin". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kevin J. Martin  
Chairman