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**December 5, 2006**

**The Honorable Kevin J. Martin  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, D.C. 20554**

**Dear Chairman Martin:**

**Thank you for your December 1 letter regarding the pending merger between AT&T and BellSouth. Regrettably, I write to express my disappointment with your apparent willingness to waive government recusal rules in order to enable Commissioner Robert McDowell's participation in this proceeding. I urge you to reconsider such drastic action and to return to constructive negotiations with your other colleagues.**

**In particular, I am disturbed by your conclusion that negotiations are at an impasse. Indeed, it is only recently that the Commission and the parties to this transaction have been willing to discuss any meaningful conditions that will be necessary to protect consumers and to prevent serious competitive harms. Given that the Commission spent more than 400 days considering issues related to the acquisition of the Adelphia cable systems, it is puzzling that the Commission would conclude so quickly that further negotiations regarding conditions for this merger - which would represent the largest telecommunications merger in our nation's history - are at an impasse.**

**Moreover, I am deeply concerned by your efforts to compare the current situation to the FCC's waiver of the recusal rules in September 2000. In my view, such a comparison is highly suspect. In that case, which involved Commission action in response to a 1980 petition by the Radio-Television News Director's Association to vacate the personal attack and political editorial rules, my understanding is that then-Chairman Kennard's prior involvement in the proceeding had concluded more than 15 years prior to his participation in the proceeding. Perhaps even more importantly, deadlock in that case followed a D.C. Circuit decision in December 1999 where the court had remanded the case to the Commission for justification and explicitly instructed it to act expeditiously on remand. See Radio-Television News Directors Ass'n v. FCC, 229 F3d 269 (D.C. Cir. 2000).**

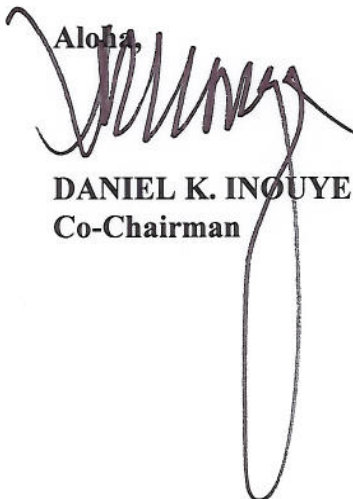
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**When no action occurred at the Commission following this order and in the face of a newly-filed petition for mandamus filed by petitioners in July 2000, only then was Chairman Kennard authorized to participate in the proceeding by the FCC's Designated Agency Ethics Officer.**

**In my view, the present case is nothing like the former case. Here, an effort to waive the recusal rules would transparently be used to short-circuit the negotiation of meaningful conditions that are necessary to preserve competition and to prevent unfair discrimination in the communications marketplace. Given last week's report from the General Accounting Office regarding the lack of competition in special access markets, it is becoming even more important for the Commission to speak with one voice in adopting conditions that will ensure fair competition. While I believe that such a result may still be possible, I fear that your recent decision only moves us further from this goal and would needlessly call into question the fairness of the Commission's action.**

**I hope that you will reconsider your decision to waive the ethical rules presently precluding Commissioner McDowell's participation and return to serious negotiations with your other colleagues on the Commission. These rules and rules of professional responsibility in general exist for a reason and should not be tossed away lightly.**

**I appreciate your attention to this matter and look forward to working closely with you in the 110<sup>th</sup> Congress.**

**Aloha,**  
  
**DANIEL K. INOUE**  
**Co-Chairman**