

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

IN RE:

JOINT FILING OF AT&T, INC.,  
BELLSOUTH CORPORATION, and  
BELLSOUTH'S CERTIFIED TENNESSEE  
SUBSIDIARIES REGARDING CHANGE OF  
CONTROL

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) DOCKET NO. 06-00093  
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RESPONSE OF  
DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY  
TO FIRST INTERROGATORIES AND DOCUMENT REQUEST  
OF JOINT APPLICANTS

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Intervenor, DIECA Communications, Inc. d/b/a Covad Communications Company  
("Covad" or "Respondent"), by counsel, hereby submits its Responses to the Interrogatories and  
Document Request propounded by AT&T, Inc., BellSouth Corporation and BellSouth  
Telecommunications, Inc. (referred to herein collectively as the "Joint Applicants").

A. **General Objections**

1. Covad objects to the First Interrogatories and Document Request to the extent such requests seek information or documents that are privileged under the attorney client privilege, work product, or any other privilege.
2. Covad objects to the First Interrogatories and Document Request insofar as the requests are vague, ambiguous, overly broad, imprecise, or utilize terms that are subject to multiple interpretations but are not properly defined or explained for purposes of these requests. Any answers provided by Covad in response to these data requests will be provided subject to, without waiver of, the foregoing objection.
3. Covad objects to the First Interrogatories and Document Request insofar as such discovery is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this action. Covad will attempt to note in its responses each instance where this objection applies.
4. Covad objects to providing information to the extent that such information is already in the public record before the Tennessee Regulatory Authority ( "Authority" or "TRA")

or has previously been furnished to Joint Applicants or their affiliates in this or any similar proceeding.

5. Covad objects to Joint Applicants' discovery requests, instructions, and definitions insofar as they seek to impose obligations on Covad that exceed the requirements of the Tennessee Rules of Civil Procedure and the TRA's Rules of Practice and Procedure.

6. To the extent that such requests are overly broad and unduly burdensome, Covad objects to any discovery request that seeks to obtain "all" of particular documents, items, or information. Any answers provided by Covad in response to this discovery will be provided subject to, and without waiver of, the foregoing objection.

7. Covad objects to the manner in which certain discovery is requested. Covad may not maintain information in the ordinary course of its business in the particular format requested by Joint Applicants. Covad objects to providing responsive information in the format requested by Joint Applicants on the grounds that doing so would be overly broad, unduly burdensome, and oppressive.

8. Covad objects to any request to the extent that it seeks confidential and proprietary information. No proprietary agreement has been signed, nor has any protective order been issued in this docket.

9. Covad objects to each and every one the First Interrogatories and Document Request to the extent they seek to have Covad create documents or information not in existence at the time of the discovery request.

Any responses provided by Covad to Joint Applicants' requests will be provided subject to, and without waiver of, the foregoing objections. Covad will make partial responses to the extent reasonably consistent with Covad's objections.

B. **Responses**

**INTERROGATORIES**

1. Do you agree that the combined entity will have the financial capability to provide telephone service in Tennessee after the merger?

Response: Respondent's analysis of the potential and/or probable short and long term effects of the Joint Applicants' proposed merger on all aspects of the telecommunications market in Tennessee and in other jurisdictions is on-going. In this regard, Respondent's analysis of the

combined entity's financial capability to provide telephone services after the merger cannot be progressed without the information which has been requested through the Data Requests submitted by other Intervenor to the Joint Applicants in this docket. Thus, Respondent's response to Joint Applicants' Request No. 1 is subject to further evaluation and modification. Subject to the foregoing, and based on Joint Applicants' representations and public statements concerning the merger and other information currently available to Respondent, it is expected that AT&T will have the financial ability to provide reasonable service in Tennessee should the proposed merger between the Joint Applicants be authorized by the Authority and the transaction consummated and implemented as currently proposed.

2. If your response to Request No. 1 is anything other than an unqualified yes, state with specificity each fact that supports your response.

Response: See Respondent's response to Request No. 1 above.

3. Do you agree that the combined entity will have the managerial capability to provide telephone service in Tennessee after the merger?

Response: Respondent's analysis of the potential and/or probable short and long term effects of the Joint Applicants' proposed merger on all aspects of the telecommunications market in Tennessee and in other jurisdictions is on-going. In this regard, Respondent's response cannot be progressed without the information which has been requested through the Data Requests submitted by other Intervenor to the Joint Applicants in this docket. Thus, Respondent's response to Joint Applicants' Request No. 3 is subject to further evaluation and modification. Subject to the foregoing, and based on Joint Applicants' representations and public statements concerning the merger and other information currently available to Respondent, it is expected that AT&T will have the managerial ability to provide reasonable service in Tennessee should the proposed merger between the Joint Applicants be authorized by the Authority and the transaction consummated and implemented as currently proposed.

4. If your response to Request No. 3 is anything other than an unqualified yes, state with specificity each fact that supports your response.

Response: See Respondent's response to Request No. 3 above.

5. Do you agree that the combined entity will have the technical capability to provide telephone service in Tennessee after the merger?

Response: Respondent's analysis of the potential and/or probable short and long term effects of the Joint Applicants' proposed merger on all aspects of the telecommunications market

in Tennessee and in other jurisdictions is on-going. In this regard, Respondent's response cannot be progressed without the information which has been requested through the Data Requests submitted by other Intervenor to the Joint Applicants in this docket. Thus, Respondent's response to Joint Applicants' Request No. 5 is subject to further evaluation and modification. Subject to the foregoing, and based on Joint Applicants' representations and public statements concerning the merger and other information currently available to Respondent, it is expected that AT&T will have the technical ability to provide reasonable service in Tennessee should the proposed merger between the Joint Applicants be authorized by the Authority and the transaction consummated and implemented as currently proposed.

6. If your response to Request No. 5 is anything other than an unqualified yes, state with specificity each fact that supports your response.

Response: See Respondent's response to Request No. 5 above.

7. Do you agree that the proposed merger will not change the TRA's authority to regulate the BellSouth and AT&T operating subsidiaries subject to the Authority's jurisdiction?

Response: The proposed merger does not change the TRA's legal authority.

8. If your response to Request No. 7 is anything other than an unqualified yes, state with specificity each fact that supports your response.

Response: See Respondent's response to Request No. 7 above.

9. Do you agree that the proposed merger will not change BellSouth Telecommunications, Inc.'s obligations under Section 251 of the Telecommunications Act of 1996?

Response: The legal requirements are not changed by the proposed merger. The resources available to BellSouth to frustrate the implementation of those requirements, however, will increase significantly.

10. If your response to Request No. 9 is anything other than an unqualified yes, state with specificity each fact that supports your response.

Response: See Respondent's response to Request No. 9 above.

11. Do you agree that the proposed merger will not change the TRA's authority under Section 252 of the Telecommunications Act of 1996 to arbitrate and enforce interconnection agreements?

Response: The legal requirements are not changed by the proposed merger. The resources available to BellSouth to frustrate the implementation of those requirements, however, will increase significantly.

12. If your response to Request No. 11 is anything other than an unqualified yes, state with specificity each fact that supports your response.

Response: See Respondent's response to Request No. 11 above.

13. Do you agree that the proposed merger will not change the obligations set forth in the section 251 performance plan ordered by the Authority in Docket No. 04-00150?

Response: The proposed merger will not change the obligations. The resources available to BellSouth to frustrate the implementation of these obligations, however, will increase significantly.

14. If your response to Request No. 13 is anything other than an unqualified yes, state with specificity each fact that supports your response.

Response: See Respondent's response to Request No. 12 above.

15. Do you agree that the proposed merger will not change the TRA's jurisdiction over intrastate special access tariffs?

Response: The proposed merger does not change the TRA's jurisdiction.

16. If your response to Request No. 15 is anything other than an unqualified yes, state with specificity each fact that supports your response.

Response: See Respondent's response to Request No. 15 above.

17. Do you currently purchase facilities on a wholesale basis from any AT&T or BellSouth affiliated entity in Tennessee?

Response: Yes.

18. Do you have your own facilities in Tennessee?

Response: Yes.

19. Do you provide local residential wireline voice service in Tennessee today?

Response: No.

20. Do you provide local business wireline voice service in Tennessee today?

Response: Covad offers and provides voice services in Tennessee to business class customers using VOIP.

21. Are you aware of any transport providers in Tennessee other than AT&T or BellSouth affiliates?

Response: Yes.

22. If your answer to Interrogatory No. 21 is anything other than an unqualified no, please identify each such provider.

Response: Time Warner Telecom and XO Communications, Inc.

23. Do you contend that the proposed merger will harm competition in Tennessee?

Response: Yes.

- (a) If so, do you contend that such alleged competitive harm will occur in (1) the residential retail market; (2) the business retail market; or (3) the wholesale market?

Response: Competitive harm will occur in all markets.

- (b) If so, state with specificity each and every way that you contend the proposed merger will harm competition and the factual basis for your contention.

Response: Respondents' analysis of the potential and/or probable short and long term effects of the Joint Applicants' proposed merger on all aspects of the telecommunications market in Tennessee and in other jurisdictions is on-going. In this regard, Respondent's analysis of the

proposed merger not being in the public interest is preliminary. Respondent's positions and supporting facts will be explained more fully in the testimony and analysis submitted in accordance with the procedural schedule and after the information requested through the Data Requests submitted by other Intervenor to the Joint Applicants in this docket has been provided. Thus, Respondent's response to Joint Applicants' Request No. 23(b) is subject to further evaluation and modification.

24. If you contend that the proposed merger is not in the public interest, state any and all factual bases for your contention.

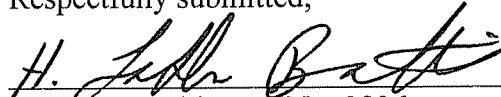
Response: Unless and until BellSouth fully complies with its legal obligations to provide network elements and services to Respondent and/or adequate assurances are provided that these obligations will be met within BellSouth's service areas post merger is not consistent with the public interest. BellSouth currently fails to meet its legal obligations pursuant to Sections 201, 202, 251 and 271 of the Telecommunications Act of 1996 to provide access to network elements and services. Specifically, BellSouth fails to provide line sharing at just and reasonable rates in accordance with its Section 271 obligations; BellSouth fails to commingle Section 251 line splitting with all of its wholesale products; and fails to provide nondiscriminatory ordering, provisioning, maintenance and repair. The broadband and voice products Respondent is inhibited from providing by BellSouth's behavior are critical components of the competitive telecommunications landscape in Tennessee. As such, until it is clear that BellSouth will fulfill its legal obligations, this merger is not in the public interest.

#### **REQUEST FOR PRODUCTION OF DOCUMENTS**

1. Please identify and produce all documents to which you have referred or on which you have relied to answer Interrogatories 2, 4, 6, 8, 10, 12, 14, 16, 22, 23(b) and 24, or which support your answers to such Interrogatories.

Response: No documents were relied upon or referred to by the Respondent.

Respectfully submitted,



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Certificate of Service

The undersigned hereby certifies that on this the 26<sup>th</sup> day of May, 2006, a true and correct copy of the foregoing has been forwarded via electronic transmission to:

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