

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

) Filed Electronically in Docket Office 05/31/06  
)  
)  
) DOCKET NO. 06-00093  
)  
)  
)

---

RESPONSE OF  
XSPEDIUS MANAGEMENT CO. SWITCHED SERVICES, LLC AND  
XSPEDIUS MANAGEMENT CO. OF CHATTANOOGA, LLC  
TO FIRST INTERROGATORIES AND DOCUMENT REQUEST  
OF JOINT APPLICANTS

---

Intervenors, Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Chattanooga, LLC (collectively, "Xspedius" or "Respondents"), by counsel, hereby submit their 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. Respondents object to the First Interrogatories and Discovery 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. Respondents objects to the First Interrogatories and Discovery 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 Respondents in response to these data requests will be provided subject to, without waiver of, the foregoing objection.

3. Respondents object to the First Interrogatories and Discovery 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. Respondents will attempt to note in these responses each instance where this objection applies.

4. Respondents object 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. Respondents object to Joint Applicants' discovery requests, instructions, and definitions insofar as they seek to impose obligations on Respondents 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, Respondents object to any discovery request that seeks to obtain "all" of particular documents, items, or information. Any answers provided by Respondents in response to this discovery will be provided subject to, and without waiver of, the foregoing objection.

7. Respondents object to the manner in which certain discovery is requested. Respondents may not maintain information in the ordinary course of its business in the particular format requested by Joint Applicants. Respondents object 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. Respondents object 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. Respondents object to each and every one the First Interrogatories and Discovery Request to the extent they seek to have Respondents create documents or information not in existence at the time of the discovery request.

Any responses provided by Respondents to Joint Applicants' First Interrogatories and Discovery Request will be provided subject to, and without waiver of, the foregoing objections. Respondents will make partial responses to the extent reasonably consistent with Respondents'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?

Respondents: Respondents' analysis of the potential and/or probable short and long term effects of the Joint Applicants' proposed merger on various aspects of the telecommunications market in Tennessee and in other jurisdictions is on-going. In this regard, Respondents are presently unable to agree or disagree that, post-merger, Joint Applicants will have the financial ability to provide reasonable service in Tennessee. It is possible that Joint Applicants' responses to Respondents' Data Requests or other facts that come to light prior to filing testimony in this proceeding will provide Respondents with a basis to agree or disagree. In any event, Respondents believe that the Staff of the Tennessee Regulatory Authority ("TRA") is likely to focus its analysis in part on the issue of financial ability, whereas Respondents intend to focus their case in Tennessee primarily on the public interest standard and other factors.

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 Respondents' 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: Respondents' analysis of the potential and/or probable short and long term effects of the Joint Applicants' proposed merger on various aspects of the telecommunications market in Tennessee and in other jurisdictions is on-going. In this regard, Respondents are presently unable to agree or disagree that, post-merger, Joint Applicants will have the managerial ability to provide reasonable service in Tennessee. It is possible that Joint Applicants' responses to Respondents' Data Requests or other facts that come to light prior to filing testimony in this proceeding will provide Respondents with a basis to agree or disagree. In any event, Respondents believe that Staff of the TRA is likely to focus its analysis in part on the issue of managerial ability, whereas Respondents intend to focus their case in Tennessee primarily on the public interest and other factors.

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 Respondents' 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: Respondents' analysis of the potential and/or probable short and long term effects of the Joint Applicants' proposed merger on various aspects of the telecommunications

market in Tennessee and in other jurisdictions is on-going. In this regard, Respondents are presently unable to agree or disagree that, post-merger, Joint Applicants will have the technical ability to provide reasonable service in Tennessee. It is possible that Joint Applicants' responses to Respondents' Data Requests or other facts that come to light prior to filing testimony in this proceeding will provide Respondents with a basis to agree or disagree. In any event, Respondents believe that Staff of the TRA is likely to focus its analysis in part on the issue of technical ability, whereas Respondents intend to focus their case in Tennessee primarily on the public interest and other factors.

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 Respondents' 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 Respondents' 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 Respondents' 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 Respondents' 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 Respondents' 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 Respondents' 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: Yes.

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, XO Communications, Inc., MCI, Memphis Networkx, Sprint, and KDL ( Kentucky Data Link).

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, Respondents' analysis of the proposed merger not being in the public interest is preliminary. Respondents' 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 Respondents to the Joint Applicants in this docket has been provided.

Thus, Respondents' 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: 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, Respondents' analysis of the proposed merger not being in the public interest is preliminary. Respondents' 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 Respondents to the Joint Applicants in this docket has been provided. Thus, Respondents' response to Joint Applicants' Request No. 24 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 Respondents, it is Respondents' position that the proposed merger is not in the public interest. The proposed merger between AT&T and BellSouth will further solidify AT&T's dominance as the Nation's largest local exchange carrier and will make it all that more difficult for the TRA to open Tennessee's local markets to competition. There is an unambiguous reduction in competition caused by the continuing concentration of local markets through AT&T's sequential acquisition of the major components of the former Bell System. The TRA must critically review the effect of this concentration on conditions in Tennessee, including in its review the prior characterizations offered by the Joint Applicants. Consider:

- \* "Other voice-over-IP providers, including established companies like AT&T . . . are currently offering voice-over-IP services to even greater numbers."<sup>1</sup>
- \* "Wireless service also now competes directly against traditional wireline service."<sup>2</sup>

---

<sup>1</sup> UNE Fact Report, prepared and filed on behalf of BellSouth and SBC *et. al.*, WCB Docket No. 04-313, at I-1.

<sup>2</sup> UNE Fact Report at I-2.

- \* “[T]he three incumbent interexchange carriers – AT&T, MCI, and Sprint – have traditionally dominated the provision of services to enterprise customers.”<sup>3</sup>
- \* AT&T competes against BellSouth using dark fiber.<sup>4</sup>
- \* AT&T competes against BellSouth using fixed wireless.<sup>5</sup>

The effects of this merger are not limited, however, merely to the harms created by the elimination of AT&T as a competitor to BellSouth. The TRA must also consider the practical effects on its efforts to create an environment in Tennessee that favors the growth of local exchange competition. If allowed to merge, the new post-merger AT&T/BellSouth mega-conglomerate will enjoy an unprecedented geographic footprint that will uniquely position it to offer multi-location customers discounts and other pricing plans that cannot be matched by any competitor in Kentucky. While there may be actions that the TRA can take to mitigate the competitive harms of the merger -- for instance, the more open the local network, the less it can be exploited by the post-merger entity to the competitive disadvantage of CLECs -- keeping the local network open will become even more difficult in the face of the sustained opposition from a post-merger carrier with the vast resources that will be enjoyed by AT&T/BellSouth. In addition, one of the leading CLEC competitors in Tennessee, AT&T, is taking its competitive leadership and expertise out of service and in-house to BellSouth, the dominant incumbent in Tennessee. Like Babe Ruth being traded to the Yankees, this could tip the balance of competition for years to come.

As Respondents indicated at the outset, Respondents' analysis of the merger is underway and ongoing. Respondents intend to fully explain their concerns and potential mitigating actions (if any) that the TRA can adopt once its review is concluded. Even a preliminary analysis demonstrates, however, that this merger will produce less choice, greater concentration and higher prices. It is not in the public interest that it be approved.

---

<sup>3</sup> UNE Fact Report at I-6.

<sup>4</sup> UNE Fact Report at III-18.

<sup>5</sup> UNE Fact Report at III-24.



**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 Respondents.

Respectfully submitted,



H. LaDon Baltimore, No. 3836  
FARRAR & BATES, LLP  
211 Seventh Avenue North, Suite 420  
Nashville, TN 37219  
Phone: (615) 254-3060  
Facsimile: (615) 254-9835  
[don.baltimore@farrar-bates.com](mailto:don.baltimore@farrar-bates.com)

*Counsel for Xspedius Management Co. Switched  
Services, LLC and Xspedius Management Co.  
of Chattanooga, LLC,*

James C. Falvey, Sr. VP - Regulatory Affairs  
Xspedius Communications  
7125 Columbia Gateway Drive, Suite 200  
Columbia, MD 21024  
Phone: (301) 361-4298  
Facsimile: (301) 361-7654  
[jim.falvey@xspedius.com](mailto:jim.falvey@xspedius.com)

**Certificate of Service**

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

Guy Hicks, Esq.  
BellSouth Telecommunications, Inc.  
333 Commerce Street, Suite 2101  
Nashville, TN 37201  
[Guy.Hicks@bellsouth.com](mailto:Guy.Hicks@bellsouth.com) with copy to: [Carolyn.Hanesworth@bellsouth.com](mailto:Carolyn.Hanesworth@bellsouth.com)

Jack W. Robinson, Jr., Esq.  
Gullet Sanford, Robinson & Martin, PLLC  
P.O. Box 198888  
Nashville, TN 37219-8888  
[jrobinsonjr@gsrm.com](mailto:jrobinsonjr@gsrm.com)

and via U. S. Mail, first class postage prepaid, to:

Charles B. Welch, Jr., Esq.  
Farris, Mathews, et al.  
618 Church Street, #300  
Nashville, TN 37219

Timothy Phillips, Esq.  
Office of the Attorney General  
Consumer Advocate & Protective Division  
P.O. Box 20207  
Nashville, TN 37202


Donald Scholes, Esq.  
Branstetter, Stranch & Jennings, PLLC  
227 Second Avenue North, Fourth Floor  
Nashville, TN 37219

Debbie Goldman  
CWA  
501 Third Street, NW  
Washington, DC 20001

Charles E. (Gene) Watkins  
Covad Communications Company  
1230 Peach Tree Street, NE, Suite 1900  
Atlanta, GA 30309

Susan Berlin  
NuVox Communications  
Two North Main Street  
Greenville, SC 29601

D. Anthony Mastando, Esq.  
VP Regulatory/Senior Regulatory Attorney  
ITC^DeltaCom, Inc.  
7037 Old Madison Pike, Suite 400  
Huntsville, AL 35806

  
H. LaDon Baltimore