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June 22, 2006

VIA HAND DELIVERY

Filed Electronically in Docket Office on 06/22/06 @ 1:30pm

Hon. Ron Jones, Chairman
Hon. Richard Collier, Hearing Officer
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

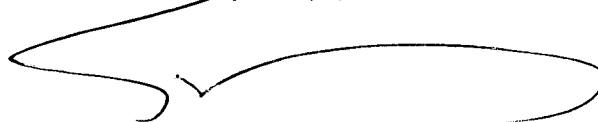
Re: *Joint Filing of AT&T Inc. and BellSouth Corporation together with its
Certificated Tennessee Subsidiaries regarding Change of Control of the
Operating Authority of BellSouth Corporation's Tennessee Subsidiaries*
Docket No. 06-00093

Dear Chairman Jones and Hearing Officer Collier:

Enclosed are the original and four copies of the *Opposition to Motion to
Compel or Motion to Strike of Time Warner Telecom and US LEC* on behalf of
BellSouth and AT&T.

A copy is being provided to counsel of record.

Very truly yours,

A handwritten signature in black ink, appearing to be "Guy M. Hicks", with a large, sweeping loop at the end.

Guy M. Hicks

GMH:ch

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

Joint Filing of)
)
AT&T INC.)
)
and)
)
BELLSOUTH CORPORATION)
TOGETHER)
WITH ITS CERTIFICATED)
TENNESSEE SUBSIDIARIES,)
)
Regarding Change of Control)
of the Operating Authority of)
BellSouth Corporation's Tennessee)
Subsidiaries)
)

Docket No. 06-00093

**OPPOSITION TO MOTION TO COMPEL OR MOTION TO STRIKE
OF TIME WARNER TELECOM AND US LEC**

AT&T Inc. ("AT&T"), BellSouth Corporation, and the BellSouth subsidiaries certificated to provide telecommunications services in Tennessee (collectively, "BellSouth") respectfully oppose the Motion to Compel Responses to Discovery Requests or, in the Alternative, To Strike the Testimony of Debra J. Aron and Other BellSouth Witnesses Regarding Wireless Services as Irrelevant ("Motion") submitted by Time Warner Telecom of the Mid-South, LLC ("TWT") and US LEC of Tennessee, Inc. ("US LEC"). The Motion seeks to compel production of the exact same information sought by the CLEC Coalition in their June 19, 2006 motion¹ – *i.e.*, extensive, detailed, and highly confidential subscribership data of non-party Cingular Wireless, LLC

¹ See NuVox Communications, Inc., Xspedius Management Co. Switched Services, LLC, Xspedius Management Co. of Chattanooga, LLC, and ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom, Motion to Compel Responses to Discovery Requests or, in the Alternative, To Strike the Testimony of Debra J. Aron and Other BellSouth Witnesses Regarding Wireless Services as Irrelevant, Docket No. 06-00093 (TRA filed June 19, 2006).

(“Cingular”). Critically, however, TWT and US LEC never bothered to discuss this matter with AT&T or BellSouth prior to moving to compel production, and in any case they, like the CLEC Coalition, have failed to carry their burden to establish that they are entitled to the data they seek. Their motion should accordingly be denied.

First, as noted immediately above, neither TWT nor US LEC contacted AT&T or BellSouth to meet and confer regarding the data request at issue prior to filing their motion to compel. Established law – as well as common courtesy – dictate that a good faith effort to resolve discovery disputes is a prerequisite to moving to compel production.² AT&T and BellSouth have been extremely forthcoming in discovery, and, as previously explained,³ when pressed on their relatively few objections to data requests, they have attempted to work out a mutually agreeable resolution. Had TWT and US LEC simply called AT&T or BellSouth to discuss this issue, their motion might not have been necessary. Their failure to do so – or even to mention that they would be moving to compel – is particularly egregious in view of the fact that counsel for BellSouth were in repeated contact with counsel for TWT and US LEC to discuss pre-hearing issues on the very day TWT and US LEC filed their motion. TWT and US LEC’s failure to make any effort whatsoever to resolve this issue short of seeking relief from the Authority is reason enough to deny their motion.

² The TRA’s rules plainly (and properly) contemplate that parties will “discuss[] . . . any discovery problems” prior to seeking relief from the Authority. TRA R. 1220-1-2.11(8). Those rules also provide that “discovery shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure.” TRA R. 1220-1-2-.11(1). The Tennessee Rules of Civil Procedure, in turn, contemplate that discovery motions include a statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing counsel. *See* Tenn. R. Civ. Pro. 26.06.

³ *See* AT&T and BellSouth’s Opposition to Motion to Compel or Motion to Strike ¶ 5, Docket No. 06-00093 (TRA filed June 20, 2006) (“June 20 Opposition”).

Second, and in any event, as AT&T and BellSouth have explained,⁴ wireless services are outside the scope of this Authority's jurisdiction. No party disputes this critical fact, and it follows directly that the Cingular subscribership data that TWT and US LEC seek is beyond the scope of this proceeding and therefore irrelevant.⁵

Third, like the CLEC Coalition, TWT and US LEC fail to carry their burden to establish that they are entitled to the information they seek.⁶ TWT and US LEC assert that the information is "essential" for them "to properly file testimony . . . analyzing the merged entity and competitive forces of the marketplace."⁷ If that claim were true, TWT and US LEC presumably would have pressed their claim to the information they now seek upon first receiving AT&T and BellSouth's objection close to a month ago (on May 26, 2006), rather than waiting until *after* the submission of direct and rebuttal testimony (and just four business days before the scheduled hearing). In any case, nothing in the pre-filed direct or rebuttal testimony of TWT or US LEC remotely suggests that lack of access to Cingular subscribership data in any way inhibited their witnesses' ability to analyze the merger or prepare testimony.

TWT and US LEC also suggest that the requested information is necessary to test AT&T and BellSouth's assertions regarding (i) the benefits of the merger to Cingular customers and (ii) the effect of wireless competition.⁸ AT&T and BellSouth addressed these precise claims in their June 20 Opposition, explaining that in both cases precise Cingular subscribership data – whether

⁴ See June 20 Opposition ¶ 9.

⁵ See *id.*

⁶ See *Boyd v. Comdata Network, Inc.*, 88 S.W.3d 203, 220 (Tenn. Ct. App. 2002) ("the party seeking an order compelling discovery under Tenn. R. Civ. P. 37.01, has the burden of establishing that it is entitled to discover the documents or other materials withheld by its adversary").

⁷ Motion at 3.

⁸ See Motion at 2.

in BellSouth's serving area in Tennessee today or elsewhere – will shed no light on those areas.⁹ As to the former, the public interest benefits of the transaction plainly do not turn on the *precise* number of Cingular subscribers in BellSouth's serving area in Tennessee, much less in other States and during prior years. And, as to the latter, Cingular is but one of 13 wireless providers doing business in Tennessee; the number of *Cingular* subscribers standing alone would reveal nothing about the nature or extent of *wireless* competition in the State.¹⁰ Notably, moreover, although AT&T and BellSouth explained these points in their June 20 Opposition, *before* the filing of TWT and US LEC's motion, that motion does not even acknowledge, much less respond to, that explanation.

Fourth, and in all events, as AT&T and BellSouth advised the CLEC Coalition and noted in their June 20 Opposition,¹¹ AT&T and BellSouth may not even be able to obtain the extensive, highly detailed subscribership data that TWT and US LEC seek. For example, the data request is primarily directed at Cingular data that corresponds to particular ILEC serving areas (*i.e.*, BellSouth's serving areas in Tennessee and its nine-state region, and AT&T's footprint in the 13-state legacy SBC region). There is no logical business reason, however, for a wireless carrier such as Cingular to track subscribership data on that basis (rather than, for example, by market and/or by State). For this reason as well, TWT and US LEC's motion should be denied.¹²

⁹ See June 20 Opposition ¶¶ 12, 14-15.

¹⁰ Nor can TWT or US LEC plausibly contend that the data are necessary to gauge whether wireless subscribers will nonetheless be served by an affiliate of the combined company. Even assuming such an inquiry would be relevant (and the information available), TWT and US LEC have *not* requested data on the number of Cingular subscribers that previously subscribed (or, for that matter, currently subscribe) to wireline service from BellSouth or AT&T.

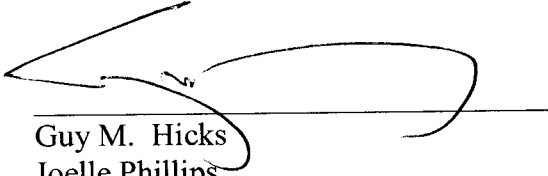
¹¹ See June 20 Opposition ¶ 5 n.5; *see id.*, Exh. 1 at 1.

¹² Like the CLEC Coalition, TWT and US LEC seek in the alternative to strike Dr. Aron's testimony to the extent it relies on wireless service. That extreme request fails for the reasons AT&T and BellSouth have already explained. See June 20 Opposition ¶¶ 14-15.

WHEREFORE, for the foregoing reasons, AT&T and BellSouth respectfully request that the Authority deny TWT and US LEC's Motion to Compel or, In the Alternative, Motion to Strike.

Respectfully submitted,

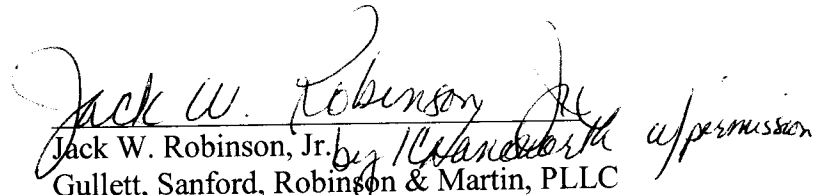
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June 22, 2006

CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2006, a copy of the foregoing document was served on the following, via the method indicated:

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☐ Facsimile
☐ Overnight
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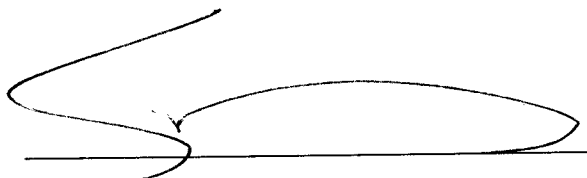
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A handwritten signature in black ink, consisting of a large, stylized 'S' shape followed by a horizontal line.