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June 23, 2006

VIA HAND DELIVERY

Filed Electronically in Docket Office on 06/23/06 @1:02pm

Hon. Ron Jones, Chairman
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:

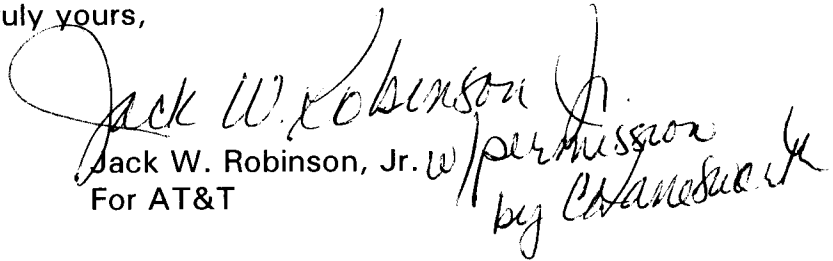
Enclosed are the original and four copies of a *Supplemental Response* on
behalf of BellSouth and AT&T to the Staff's data request dated May 11, 2006.

A copy is being provided to counsel of record.

Very truly yours,



Guy M. Hicks
BellSouth



Jack W. Robinson, Jr. w/permission
For AT&T
by [signature]

Request: Due to the receipt of various Petitions For Leave to Intervene regarding AT&T Inc.'s proposed merger with BellSouth Corporation, provide continued updates of any actions which could affect this petition at the state or federal level.

Response: BellSouth and AT&T provide the following update regarding the merger approval process in BellSouth's region:

Florida: On June 20, 2006, the Florida Public Service Commission ("PSC") voted 5-0 to approve the merger without the imposition of any conditions. In addition, the PSC also voted to submit comments to the FCC regarding the merger. A copy of the PSC's Notice of Proposed Agency Action dated June 23, 2006, reflecting the PSC's June 20, 2006 decision are attached.

North Carolina: On May 18, 2006, the North Carolina Public Utility Commission ("PUC") denied Time Warner's request for an evidentiary hearing and approved the transfer of the BellSouth and BellSouth Long Distance certificates. A copy of the PUC's order of May 18, 2006, is attached. No further merger-related review will be conducted by the PUC.

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Joint application for approval of indirect transfer of control of telecommunications facilities resulting from agreement and plan of merger between AT&T Inc. (parent company of AT&T Communications of the Southern States, LLC, CLEC Cert. No. 4037, IXC Registration No. TJ615, and PATS Cert. No. 8019; TCG South Florida, IXC Registration No. TI327 and CLEC Cert. No. 3519; SBC Long Distance, LLC, CLEC Cert. No. 8452, and IXC Registration No. TI684; and SNET America, Inc., IXC Registration No. TI389) and BellSouth Corporation (parent company of BellSouth Telecommunications, Inc., ILEC Cert. No. 8 and CLEC Cert. No. 4455); and BellSouth Long Distance, Inc. (CLEC Cert. No. 5261 and IXC Registration No. TI554).

DOCKET NO. 060308-TP
ORDER NO. PSC-06-0531-PAA-TP
ISSUED: June 23, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING INDIRECT TRANSFER OF CONTROL

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Case Background

On March 31, 2006, AT&T Inc., BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. (collectively referred to as "Applicants") submitted a joint application for approval of indirect transfer of control of telecommunications facilities from

BellSouth Corporation to AT&T Inc. resulting from an Agreement and Plan of Merger jointly executed by the two companies.

The merger of AT&T Inc. and BellSouth Corporation is a holding company transaction. Upon completion of the merger, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. will become wholly owned subsidiaries of AT&T Inc., and thus, AT&T Inc. will indirectly control BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc.

AT&T Inc. is a Delaware corporation with its headquarters at 175 East Houston Street, San Antonio, Texas. AT&T Inc. is a holding company and does not directly provide any services in Florida. However, AT&T Inc. owns several subsidiaries that are currently providing services in Florida.

AT&T Inc. subsidiaries operating in Florida

AT&T Communications of the Southern States, LLC, holds the following certificates and registration:

- a. Competitive Local Exchange Company (CLEC) Certificate No. 4037, issued May 7, 1996,
- b. Pay Telephone Certificate No. 8019, issued February 1, 2002, and
- c. Interexchange Company (IXC) Registration No. TJ615, issued February 1, 2002.

TCG South Florida holds the following certificate and registration:

- a. Alternative Access Vendor (AAV) Certificate No. 3519, issued through transfer on July 21, 1995 – also authorizes the company to provide CLEC services, and
- b. IXC Registration No. TI327, issued July 27, 1995.

SBC Long Distance, LLC d/b/a AT&T Long Distance holds the following certificate and registration:

- a. CLEC Certificate No. 8452, issued May 4, 2002, and
- b. IXC Registration No. TI684, issued September 3, 1997.

SNET America, Inc. d/b/a SBC Long Distance East holds the following registration:

- a. IXC Registration No. TI389, issued July 27, 1995.

BellSouth Corporation is a Georgia corporation headquartered at 1155 Peachtree Street, N.E., Atlanta, Georgia. Like AT&T Inc., BellSouth Corporation is a holding company that does

not directly provide services in Florida. Through the following subsidiaries, BellSouth Corporation provides services in Florida.

BellSouth Corporation subsidiaries operating in Florida

BellSouth Telecommunications, Inc. holds the following certificates:

- a. Incumbent Local Exchange Company (ILEC) Certificate No. 8, issued January 17, 1955, and
- b. CLEC Certificate No. 4455, issued June 14, 1996.

BellSouth Long Distance, Inc. holds the following certificates and registration:

- a. CLEC Certificate No. 5261, issued November 18, 1997, and
- b. IXC Registration No. TI554, issued October 21, 1997.

According to the Applicants, the merger will have no effect on the rates, terms, and conditions of service that BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. provide to their customers. There will not be a transfer of certificates, customer bases, or assets. Tariffs will not require amendments. Nor will any AT&T Inc. subsidiaries certificated in Florida require any changes.

The Federal Communications Commission (FCC) established a pleading cycle seeking comments or petitions on the joint application for transfer of control filed by AT&T Inc. and BellSouth Corporation (WC Docket No. 06-74). Currently, the FCC is seeking comments on the application and those comments are due by June 5, 2006. Responses to the comments are due on June 20, 2006. The FCC is tentatively scheduled to issue an Order on the AT&T Inc./BellSouth Corporation petition in October 2006. The Order will either grant the applications, grant the applications with conditions, or designate the applications for hearing.

We are vested with jurisdiction over this matter pursuant to sections 364.01, 364.33, and 364.335, Florida Statutes.

I. Jurisdiction

A. Section 364.33, Florida Statutes

We have authority under section 364.33, Florida Statutes, to approve an application for transfer of control. In the past, we have noted that this provision does not provide specific standards which we may follow in making our decision to approve a transfer of control. However, section 364.01, Florida Statutes, implies a public interest standard that we may follow when deciding whether to approve or deny transfers of control, among other transactions.

The broad legislative intent in section 364.01, Florida Statutes, is clear: we are to exercise our jurisdiction in order to protect “the public health, safety, and welfare” as it relates to basic

local telecommunications services. Although there is little guidance on what constitutes the “public interest,” section 364.335, Florida Statutes, provides that “[r]evocation, suspension, transfer, or amendment of a certificate shall be subject to the provisions of this section” We reviewed the management, technical, and financial capability of the companies within the framework of sections 364.33 and 364.335, Florida Statutes.

II. Findings

Historically, a public interest test has been used to determine if a change of control under 364.33, Florida Statutes, should be approved. Our approach in this case is consistent with our past decisions. To determine if the change of control was in the public interest, we reviewed the financial, management, and technical capabilities of the Applicants to determine if these aspects of the operation would impact such items as customer rates, service quality, or the ability to invest in preparing and upgrading infrastructure as a result of the change of control.

A. Management Capability

The Applicants explain in their joint application that BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. will continue to provide service in the same manner as the companies did prior to the transfer of control. The Applicants further state that the merger will not diminish the parties’ commitment to providing the necessary resources to support our regulation of intrastate services and that AT&T Inc. intends to utilize the services of the management and employees of BellSouth Corporation following the closing of the merger.¹ Hence, it appears that the management of BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. will continue unchanged. As an Incumbent Local Exchange Company originally certificated in 1955, BellSouth Telecommunications, Inc. has demonstrated the managerial capability to operate a local exchange company within the framework of the public interest.

B. Technical Capability

The same networks that currently serve Florida customers will continue to serve them after the merger. BellSouth Telecommunications, Inc. will continue to provide service under its Service Guarantee Plan approved by the Commission in Order No. PSC-05-0440-PAA-TL, issued April 25, 2005, in Docket No. 050095-TL. The Applicants claim that the vertical integration of the AT&T Inc. backbone network and the BellSouth Telecommunications, Inc. local network will result in more efficient and reliable services.² Further, the Applicants claim that the merged networks will increase efficiency and reduce costs by avoiding the need for inter-networking traffic between companies, and ultimately, will result in better service and

¹ See Joint Application for Approval of Indirect Transfer of Control of Facilities, filed March 31, 2006, in Docket No. 060308-TI, page 11, ¶ 24.

² See Joint Application, page 18, ¶ 43.

reliability for consumers.³ Thus, the merger should not lessen the Applicants' capability to provide quality service to Florida consumers.

C. Financial Capability

The merger should not affect the Applicants' combined financial capability to continue to provide services in Florida. The Applicants' operations will remain intact while they project expense and capital expenditure synergies of about \$2 billion annually by 2008 as a result of duplicative corporate overhead, network and information technology consolidation and advertising savings.⁴

The merger may affect the combined companies' debt rating and cash flow. Moody's Investors Service placed the debt ratings of both AT&T Inc. and BellSouth Corporation under review for possible downgrade. In its Global Credit Research Rating Action, dated March 6, 2006, Moody's indicated that, while it "believes the acquisition is strategically appropriate, it is nevertheless concerned that cash flow measures of leverage will be higher in 2007 than originally expected by Moody's due to both the large share buyback program⁵ as well as the costs of integrating the two firms." Fitch Ratings also placed AT&T Inc. and BellSouth Corporation on Negative Rating Watch – reflecting Fitch's need to evaluate the financial implications of the merger on the companies' debt ratings.

In summary, the merger may slightly lower the companies' debt ratings, but should not impact BellSouth Telecommunications, Inc.'s financial capability to continue to provide local exchange services to Florida consumers. The combined market capitalization for AT&T Inc. and BellSouth Corporation would be approximately \$165 billion.⁶

III. Conclusion

We find that based upon the Applicants' management, technical, and financial capability, the transfer of control is in the public interest.

³ See Joint Application, page 18, ¶ 44.

⁴ AT&T/BS-FDR-1 000032, Assessing The Rating Implications of the AT&T Inc./BellSouth Corp. Merger, Standard & Poors, Credit FAQ, March 7, 2006.

⁵ AT&T plans to buy back up to \$10 billion of AT&T stock over the next 22 months.

⁶ The Economist, *Big is beautiful*, March 9, 2006.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that AT&T, Inc., BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc.'s Joint Application for Indirect Transfer of Control of BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. from BellSouth Corporation to AT&T Inc. is hereby approved. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 23rd day of June, 2006.

/s/ Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

This is a facsimile copy. Go to the Commission's Web site,
<http://www.floridapsc.com> or fax a request to 1-850-413-
7118, for a copy of the order with signature.

(S E A L)

JKF

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 14, 2006.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. P-55, SUB 1630
DOCKET NO. P-140, SUB 89

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of AT&T, Inc. and BellSouth)
Corporation for Indirect Change of Control)
	ORDER APPROVING TRANSFER OF CONTROL

BY THE COMMISSION: On March 31, 2006, AT&T, Inc. (AT&T) and BellSouth Corporation (BellSouth Corp.; collectively, Petitioners) jointly filed an Application requesting Commission approval pursuant to G.S. 62-111(a)¹ to transfer control of certain competing local providers (CLPs)—namely, BellSouth Long Distance, Inc. (BSLD) and BellSouth Telecommunications, Inc. (BellSouth)—in connection with a planned merger between AT&T, Inc. and BellSouth Corporation. On April 12, 2006, the Commission granted Petitions to Intervene filed by Time Warner Telecom of North Carolina LP and US LEC of North Carolina, Inc. (collectively, Time Warner). On April 21, 2006, the Commission granted intervention to NuVox Communications, Inc.

Time Warner Motion

On May 12, 2006, Time Warner filed a Motion for Procedural Schedule and Hearing. In this consolidated proceeding, Time Warner noted that the Petitioners are requesting approval of the indirect control of CLP certificates held by BellSouth and BSLD in connection with the transfer of control of BellSouth Corp. and its subsidiaries to AT&T, Inc. Time Warner identified several aspects of the proposed combination which it believes deserve regulatory scrutiny through a deliberative process in which the parties can file testimony and cross-examine witnesses.

The first concern had to do with the extent of horizontal concentration. Time Warner stated that the application discloses that six separate entities holding certificates in North Carolina would be combined under common ownership as a result of the merging. They are: (1) SBC Long Distance, LLC, (2) AT&T Communications of the Southern States, LLC, (3) TCG of the Carolinas, Inc., (4) SNET America, Inc., (5) BellSouth and (6) BSLD. Time Warner argued that the application does not disclose the extent of competition among these entities in various markets in North Carolina in

¹ G.S. 62-111(a) reads in relevant part as follows: "No franchise now existing or hereafter issued under the provisions of this Chapter...shall be sold, assigned, pledged, or transferred, nor shall any control thereof be changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination affecting any public utility be made through acquisition or control by stock purchase or otherwise, except after application to and written approval by the Commission, which approval shall be given if justified by the public convenience and necessity...."

any but the most generalized fashion and that allowing such consolidation might lessen competition and create confusion among consumers.

The second concern was the extent to which the merger may impact fair competition, especially as the interconnection arrangements and the procurement of interconnection services and related facilities by Time Warner from the Petitioners. Time Warner noted that in its January 2006 presentation titled "North Carolina Public Utility Infrastructure and Regulatory Climate," the Commission noted certain market failures and instability in the competitive marketplace. Nothing has changed to lessen these concerns.

Lastly, Time Warner argued that the Petitioners would not be prejudiced by a more deliberate approach to review and that the Federal Communications Commission is early in its 180-day merger review.

AT&T and BellSouth Response

On May 15, 2006, the Petitioners filed a Response in Opposition to Time Warner's Motion. The Petitioners noted the comparative lateness of Time Warner's Motion, and argued that Time Warner misunderstood not only the scope of this proceeding but the effects that the proposed merger will have on the relevant CLP subsidiaries. As the Petitioners explained in their Joint Application, this proceeding is concerned only with the transfer of indirect control of BSLD and of BellSouth *in its capacity as a CLP operating outside of its incumbent local service area in North Carolina*. Because BellSouth is subject to price regulation under G.S. 62-133.5 within its incumbent service territory, the merger approval provision of G.S. 62-111(a) does not apply to BellSouth in its capacity as an ILEC.² Thus, Time Warner's purported concerns about fair competition are misdirected because there is no nexus between Time Warner and US LEC on the one hand and the BellSouth CLP subsidiaries on the other. To the extent that Time Warner has concerns about business relationships with BellSouth in its capacity as an ILEC, this is not the proceeding to consider those issues. In addition, Time Warner is wrong to suggest that this merger will have any adverse effect on horizontal concentration. Competition in this state is well-established and will not be affected by this merger. The holding-company merger will not change the direct ownership of the CLP subsidiaries or this Commission's regulatory jurisdiction over them. There is thus no justification to grant Time Warner's request to delay this proceeding by conducting a full evidentiary hearing.

² G.S. 62-133.5(g) reads: "The following sections of Chapter 62 of the General Statutes shall not apply to local exchange companies subject to priced regulation under subsection (a) of this section: G.S. 62-35(c), 62-45, 62-51, 62-81, **62-111**, 62-130, 62-131, 62-132, 62-133, 62-134, 62-135, 62-136, 62-137, 62-139, 62-142, and 62-153." (Emphasis added).

May 15, 2006, Regular Commission Conference

This matter came before Regular Commission Conference on May 15, 2006. Four persons addressed the Commission: Mr. George Sessoms, presenting the item to approve the transfer of control as requested and described in the Application on behalf of the Commission Staff; Mr. Marcus Trathen, representing Time Warner; and Mr. Dwight Allen and Ms. Susan Ockleberry, representing Petitioners.

Commission Staff. Mr. Sessoms explained that AT&T is a Delaware corporation with its principal place of business in San Antonio, Texas. AT&T is a holding company and its subsidiaries provide domestic and international voice and data communications services to residential, business and government customers around the world. AT&T wholly owns four subsidiaries which are authorized to provide local exchange and exchange services as CLPs and/or intrastate interexchange services in North Carolina pursuant to Certificates of Public Convenience and Necessity (Certificates) granted by the Commission. These subsidiaries are AT&T Communications of the Southern States, LLC; TCG of the Carolinas, Inc.; SBC Long Distance, LLC d/b/a AT&T Long Distance; and SNET America d/b/a AT&T Long Distance East. However, according to the Application, these AT&T subsidiaries are not affected by the planned merger and their ownership structure will remain entirely unchanged.

BellSouth Corp. is a Georgia corporation with its headquarters in Atlanta, Georgia. BellSouth Corp. is also a holding company and its subsidiaries provide voice and data communications services to substantial portions of customers in the southeastern United States. Two of BellSouth Corp.'s wholly owned subsidiaries, BSLD and BellSouth, are authorized to provide local exchange and exchange access services as CLPs in North Carolina. BSLD was granted a CLP Certificate by the Commission in Docket No. P-654, Sub 5 on September 24, 2004. (BSLD is also authorized to provide intrastate interexchange services pursuant to a Certificate granted by the Commission in Docket No. P-654, Sub 0 on November 26, 1997, but providers of only interexchange services are exempt from the provisions of G.S. 62-111(a) pursuant to the Commission Order dated January 2, 2004 in Docket No. P-100, Sub 72b.) BellSouth was granted a CLP Certificate by the Commission, to provide such services in all geographic areas outside its incumbent service territory, in Docket No. P-55, Sub 1117 on June 15, 1999. (BellSouth is also an incumbent local exchange carrier which operates under a Commission approved price plan. However, G.S. 62-133.5(g) exempts local exchange companies subject to price regulation from the provisions of G.S. 62-111(a)).

Mr. Sessoms stated that AT&T and BellSouth Corp. entered into an Agreement and Plan of Merger on March 4, 2006. To implement the planned merger, a temporary and special purpose subsidiary of AT&T will merge with and into BellSouth Corp., with BellSouth Corp. being the surviving corporation. At the time of the merger, shareholders of BellSouth Corp. will exchange their shares of stock for shares of AT&T stock.

Following the merger, BellSouth Corp. will become a wholly-owned and direct subsidiary of AT&T. BSLD and BellSouth will continue to be directly owned by BellSouth Corp. However, BSLD and BellSouth will be ultimately owned and indirectly controlled by AT&T because AT&T will own the shares of their corporate parent, BellSouth Corp. Therefore, the Application requests Commission approval pursuant to G.S. 62-111(a) to transfer control of BSLD and BellSouth, in their capacity as CLPs, in connection with the planned merger of AT&T and BellSouth Corp.

According to the Petitioners, the proposed transaction will be transparent to customers in North Carolina. BSLD and BellSouth will continue to exist in their current form after the merger is completed. There will be no transfer of assets or Certificates and the merger will have no effect on the rates, terms, and conditions of service that these entities currently provide.

Mr. Sessoms noted that the Applicants submitted that Commission approval of the proposed transaction is in the public interest for several reasons as set forth in the Application. In the short-run, the merger and transfer of control will be transparent to North Carolina customers since it will have no effect on the rates, terms, and conditions of services currently provided by AT&T and BellSouth Corp. subsidiaries. Ultimately, the proposed transaction should allow the companies to integrate their networks, improving performance and service reliability, and to combine their research and development capabilities, leading to increased innovation and accelerated development of new products and services.

Accordingly, Mr. Sessoms recommended that the Commission issue an order approving the transfer of control as requested and described in the Application.

Time Warner. While alluding to the arguments made in Time Warner's May 12, 2006, Motion concerning horizontal concentration and fair competition, Mr. Trathen instead concentrated on the proposition that the Commission has jurisdiction to significantly broaden the scope of its investigation from the BellSouth CLPs to BellSouth the ILEC. He laid out two main arguments. The first argument sought to bring BellSouth Corp., the holding company, under the Commission's merger jurisdiction and, presumably by that device, to bring in BellSouth the ILEC. This argument hinged upon the phrase in G.S. 62-111(a) to the effect that the Commission has jurisdiction over "any merger or combination affecting any public utility." Mr. Trathen contended that BellSouth Corp. was a "public utility" within the meaning of G.S. 62-3(23)(c).³ The second argument was that BellSouth the ILEC was a fit subject for merger investigation because BellSouth the ILEC was also a CLP. The inference was that this CLP ownership furnished sufficient basis for investigating the ILEC merger, notwithstanding the ILEC exemption under G.S. 62-133.5(g).

³ G.S. 62-3(23)(c) reads in pertinent part as follows: "The term 'public utility' shall include all persons affiliated through stock ownership with a public utility doing business in this State as a parent corporation...to such extent that the Commission shall find that such affiliation has an effect on the rates or service of such public utility."

Petitioners. Mr. Allen rejected Time Warner's arguments both in the May 12, 2005, filing and at Regular Commission Conference. He emphasized the existence of the G.S. 62-133.5(g) exemption for BellSouth the ILEC as being dispositive of the Commission's limited jurisdiction in this matter. He noted that the Commission had noted this limited jurisdiction in other mergers, most explicitly in the Verizon/MCI merger. He also mentioned the extreme smallness of the BellSouth CLPs in terms of customer base and that only two of the CLPs mentioned in the Application were BellSouth CLPs, the others being associated with AT&T and whose status would not change as a result of the merger. He expatiated on the benefits of the merger for the end-user customers of the Petitioners and doubted the sincerity of the concerns expressed by Time Warner for competition, as it belongs to a multi-billion dollar conglomerate.

Others. No other persons spoke at Conference. However, Petitioners stated without demur from the Public Staff, who were present, that the Public Staff supported the recommendation for approval. The Attorney General did not speak on the item after having been given an opportunity to do so.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that good cause exists to deny Time Warner's Motion for Procedural Schedule and Hearing and issue an Order approving the transfer of control as requested by Petitioners for the reasons described in the Commission Staff's recommendation. The Commission does not believe that Time Warner has made convincing arguments that the Commission should expand the scope of an investigation into this merger, especially in light of the exemption for BellSouth the ILEC in G.S. 62-133.5(g).

The first argument of Time Warner, as noted above, relied on the provision in G.S. 62-111(a) that provided that mergers "affecting any public utility" are not to be allowed unless there has been application to, and written approval from, the Commission if such approval is justified by the public convenience and necessity. Clearly, this provision does not affect BellSouth the ILEC as such, because G.S. 62-133.5(g) specifically exempts ILECs subject to price regulation from G.S. 62-111(a). Rather, Time Warner argues that it refers to the holding company, BellSouth Corp., on the basis that BellSouth Corp. is a "public utility" under G.S. 62-3(23)(c). This provision provides that "public utility" includes "all persons affiliated through stock ownership with a public utility doing business in this State as a parent corporation or a subsidiary corporation...to such extent that the Commission shall find such affiliation has an effect on the rates and service of such utility." (emphasis added). Time Warner suggests that BellSouth Corp. is such a parent, and it is not an ILEC subject to price regulation and thus exempt from G.S. 62-111(a).

However, even assuming arguendo that there is an effect on rates and service such as to render BellSouth Corp. a public utility, Time Warner's argument does not lead where it evidently wants to go—that is, to an examination of, and presumably conditions upon, the activities of BellSouth the ILEC. Inconveniently for Time Warner's argument, BellSouth the ILEC falls squarely within the G.S. 62-133.5(g) exemption, so no inquiry on this basis is possible. At most, the argument, if accepted, could lead to the CLPs; but the CLP transfer is already being examined under G.S. 62-111(a).

Time Warner's second argument was related to the fact that BellSouth the ILEC had obtained CLP certification. Time Warner argued that this in effect negated BellSouth the ILEC's exemption under G.S. 62-133.5(g) and rendered BellSouth the ILEC as a whole "fair game" for comprehensive merger inquiry. This is not a convincing argument. BellSouth actually holds two franchises, one as an ILEC and one as a CLP. It is a simple matter analytically and practically to separate consideration of BellSouth the ILEC and BellSouth the CLP. Besides, the logic of Time Warner's argument works both ways. If it can be argued that the existence of BellSouth the CLP makes BellSouth the ILEC fair game, the reverse can be argued as well with perhaps even greater force. Indeed, given their relative sizes and importance, the BellSouth ILEC exemption under G.S. 62-133.5(g) could be argued to apply pari passu to BellSouth the CLP, and thus neither should be subject to G.S. 62-111(a).

Lastly, the Commission notes that the holding of evidentiary hearings regarding mergers and acquisitions under G.S. 62-111(a) is discretionary. The statute simply says that application must be made and written approval be given if justified by the public convenience and necessity. Thus, even were the Commission to accept Time Warner's jurisdictional arguments to widen the scope of this proceeding, this would not necessarily equate to the type of proceeding that Time Warner seeks. Time Warner has raised concerns about horizontal concentration and fair competition, but Time Warner does not lack for options should it believe itself to be harmed and should it wish to pursue them, most notably in complaint actions or arbitrations.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of May, 2006.

NORTH CAROLINA UTILITIES COMMISSION



Patricia Swenson, Deputy Clerk

dl051806.01

Commissioners James Y. Kerr, II and William T. Culpepper, III did not participate.

CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2006, a copy of the foregoing document was served on the following, via the method indicated:

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

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