

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

June 27, 2006

IN RE:

**JOINT FILING OF AT&T INC. AND BELL SOUTH
CORPORATION TOGETHER WITH ITS
CERTIFICATED TENNESSEE SUBSIDIARIES
REGARDING CHANGE OF CONTROL OF THE
OPERATING AUTHORITY OF BELL SOUTH
CORPORATION'S TENNESSEE SUBSIDIARIES**

**DOCKET NO.
06-00093**

RECEIVED
2006 JUN 27 PM 4:22
T.R.A. DOCKET ROOM

PRE-HEARING ORDER

This matter is before the Hearing Officer for the purpose of preparing this docket for hearing before the Tennessee Regulatory Authority (the "Authority" or "TRA"). This matter is scheduled to be heard on June 28 and 29, 2006 by Chairman Ron Jones, Director Pat Miller and Director Sara Kyle, the voting panel assigned to this docket. The Hearing Officer files this Pre-Order reflecting the activity in this docket to date and establishing a procedural schedule for the conduct of the hearing.

Background

On March 31, 2006, the *Joint Filing of AT&T Inc., BellSouth Corporation and BellSouth's Certificated Tennessee Subsidiaries Regarding Change of Control* ("Joint Filing") was submitted to the TRA by the parties, AT&T Inc. ("AT&T") and BellSouth Corporation and its Tennessee certificated subsidiaries (collectively "BellSouth"). According to AT&T and BellSouth, the *Joint Filing* serves as notice to the Authority of the change of control of BellSouth Corporation, the parent of Tennessee certificated subsidiaries, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. The *Joint Filing* states that the change of control of BellSouth Corporation to AT&T is occurring at the holding company level as set forth in the Agreement and Plan of Merger jointly

executed by AT&T and BellSouth Corporation on March 4, 2006. AT&T and BellSouth assert that the Authority lacks jurisdiction over a transaction that occurs at the holding company level. Nevertheless, the *Joint Filing* has been submitted for review and approval and contains information required by Tenn. Code Ann. § 65-4-112 and § 65-4-113, including an extensive statement addressing the public interest component.

At a regularly scheduled Authority Conference held on April 17, 2006, the voting panel appointed General Counsel or his designee to act as Hearing Officer for the purpose of preparing this matter for hearing, including resolving preliminary matters prior to the hearing. The panel also voted to adopt a proposed procedural schedule to completion which encompassed the week of June 26, 2006 for a proposed hearing date. The procedural schedule also provided for the conduct of discovery and the submission of pre-filed testimony.

Petitions to Intervene

Time Warner Telecom of the MidSouth, LLC (“Time Warner”) filed a petition to intervene on April 10, 2006. NuVox Communications, Inc. (NuVox”) made an oral request for intervention during the April 17, 2006 Conference, followed by the filing of a written petition to intervene on April 21, 2006. Those intervention requests were granted by the Authority at the April 17, 2006 Conference. The procedural schedule adopted by the Authority required that petitions to intervene be filed no later than May 10, 2006.

Petitions for intervention were filed by Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Chattanooga, LLC (collectively “Xspedius”) on April 25, 2006, by the Communications Workers of America, AFL-CIO (“CWA”) on May 1, 2006 and by ITC DeltaCom Communications, Inc. d/b/a ITC DeltaCom (“DeltaCom”), Dieca Communications, Inc. d/b/a Covad Communications Company (“Covad”) and US LEC of Tennessee, Inc. (“US LEC”) on May 10, 2006. All requests for intervention were unopposed and met the criteria for granting petitions to intervene set forth in Tenn. Code Ann. § 4-5-310(a), and therefore, have been granted.

All Intervenors have participated fully throughout discovery and in the filing of pre-filed testimony.

A petition to intervene was filed on June 20, 2006 by Momentum Telecom, Inc. ("Momentum"). Though timely filed in advance of the hearing, the petition was filed more than one month past the proposed deadline for petitions to intervene as set forth in the procedural schedule. BellSouth and AT&T filed a response opposing Momentum's request to intervene. On June 26, 2006, the parties and the Hearing Officer were advised by counsel for Momentum that the request for intervention is to be being withdrawn. Subsequently, Momentum filed its notice of withdrawal on June 26, 2006.

Protective Order

On April 13, 2006, AT&T and BellSouth submitted a proposed Protective Order to permit them to respond in a timely manner to data requests issued by TRA Staff. During the week of April 17, 2006, telephone conferences were held between the Hearing Officer and AT&T, BellSouth and the Intervenors to date in the docket. An agreement was reached as to the content of the order and a Protective Order was entered, with slight modification, on April 20, 2006. The Protective Order was relied upon in responding to TRA Staff data requests and discovery between the parties. The Protective Order remains in effect and will be relied upon by the parties in presenting evidence during the hearing in this docket.

Pending Motions

Motions to Compel Discovery or Strike Testimony

After the completion of discovery and the submission of pre-filed testimony two motions were filed seeking to compel discovery or, in the alternative, to strike testimony submitted by AT&T and BellSouth. On June 19, 2006, NuVox, Xspedius and DeltaCom filed a motion to compel discovery responses or to strike the testimony of Debra Aron and other BellSouth witnesses regarding wireless services. On June 20, 2006, AT&T and BellSouth filed a response in opposition to the motion to compel or strike. Thereafter, on June 21, 2006, Time Warner and US LEC filed a

similar motion to compel or strike seeking the production of certain discovery responses from AT&T and BellSouth or the striking of all the references to wireless services in the testimony of Debra Aron. On June 22, 2006, AT&T and BellSouth filed their opposition to the motion to compel or strike filed by Time Warner and US LEC. During a telephonic status conference with all of the parties on June 26, 2006, the Hearing Officer announced his decision to deny both motions to compel or strike filed by the Intervenor. A separate order will issue from the Hearing Officer setting forth the bases for denying those motions.

Applications to Practice Before the TRA Pro Hac Vice

In advance of the Hearing, the following applications of counsel to appear before the Authority pro hac vice have been filed: Susan Berlin and Henry Alford on behalf of NuVox, D. Anthony Mastando on behalf of DeltaCom, David M. Eppsteiner on behalf of AT&T, and James G. Harralson and Lisa S. Foshee on behalf of BellSouth. After reviewing the applications and finding that the filings meet the requirements of the TRA Rule 1220-1-2-.04(7), the Hearing Officer granted, on June 26, 2006, the above referenced applications to appear pro hac vice for the purposes of participating in the Hearing.

Conduct of the Hearing on June 28 and 29, 2006

On June 9, 2006, AT&T and BellSouth filed a letter requesting that the dates of June 28 and 29, 2006 be set aside for the hearing in this docket. These dates fall within the original procedural schedule providing for a hearing during the week of June 26, 2006 and were proposed in part because the hearing in Mississippi on this merger is being held on June 27. According to counsel for AT&T and BellSouth, beginning the hearing on Wednesday, June 28 would almost ascertain completion of the hearing prior to Friday, June 30, 2006.

Following receipt of the request for a hearing date, the Hearing Officer confirmed the availability of the panel for the proposed date for the hearing. The Hearing Officer then contacted all of the parties and confirmed their agreement to the dates for the hearing. On June 16, 2006, the

Hearing Officer issued a Notice of Hearing confirming that the hearing in this docket will commence on Wednesday, June 28, 2006 at 9:00 a.m. and continue to Thursday, June 29, 2006, if necessary.

Parties and Counsel

The parties and their respective counsel participating in the Hearing will be as follows:

BellSouth Corporation and BellSouth Telecommunications, Inc. – **Guy M. Hicks, Esquire** and **Joelle Phillips, Esquire** 333 Commerce Street, Suite 2101, Nashville, TN 37201-3300; **James Harralson, Esquire** and **Lisa Foshee, Esquire**, 675 West Peachtree Street, Suite 4300, Atlanta, GA 30375.

AT&T Inc. – **Jack W. Robinson, Jr., Esquire**, Gullett, Sanford, Robinson & Martin, PLLC, P.O. Box 198888, Nashville, TN 37219-8888; **David Eppsteiner, Esquire**, 175 East Houston, San Antonio, TX 78205-2233.

Time Warner Telecom of the Mid-South, L.P. and US LEC of Tennessee, Inc. – **Charles B. Welch, Jr., Esquire**, Farris, Mathews, Branan, Bobango, Hellen & Dunlap, PLC, 618 Church Street, Suite 300, Nashville, TN 37219;

NuVox Communications, Inc., Xspedius Management Company Switched Services, LLC, Xspedius Management Company of Chattanooga, LLC, and DIECA Communications, Inc. d/b/a Covad Communications Company – **H. LaDon Baltimore, Esquire**, Farrar & Bates, LLP, 211 Seventh Avenue North, Suite 420, Nashville, TN 37219; **Susan Berlin, Esquire**, Two North Main St., Greenville, SC 29601 and **Henry S. Alford, Esquire**, Middleton Reutlinger, 2500 Brown & Williamson Tower, Louisville, KY 40202 for Nuvox Communications; **D. Anthony Mastando**, Vice President, Regulatory / Senior Regulatory Attorney DeltaCom, Inc., 7037 Old Madison Pike, Suite 400, Huntsville, AL 35806.

Communications Workers of America, AFL-CIO – **Donald L. Scholes, Esquire**, Branstetter, Stranch & Jennings, PLLC, 227 Second Avenue North, Fourth Floor, Nashville, TN 37219.

Hearing Procedure

The following addresses the entry of materials into the record, opening and closing arguments of the parties, the order of witnesses, and other procedural matters.

Admission of Testimony and Exhibits into the Record

Testimony and Exhibits – Admission of the testimony and exhibits that were pre-filed in the docket will be moved into the record at the time of live presentation of the witnesses during the hearing. In the event the parties agree to stipulate the testimony of certain witnesses, the sponsoring

party will move admission of the testimony at the close of that party's case. No oral summary will be given by such witness or by counsel on behalf of a witness whose testimony has been admitted by stipulation.

Discovery – The parties are required pursuant to the protective order entered in this case to notify the producing party of the intent to use confidential material prior to referring to it or using it in any manner during the hearing. In addition, most of the parties to this docket are also bound by a supplemental protective agreement regarding highly confidential material. That protective agreement likewise prohibits disclosure or use of such material during the hearing without prior notice to the producing party.

Counsel for NuVox has identified documents with the following Bates Range: NXI-DR38-HC000001 through NXI-DR38-HC000002; NXI-DR73-C000001 through NXIDR73-C000014. Counsel for Time Warner Telecom has provided a much broader notice which is attached as Attachment A. The Joint Applicants will introduce documents with the following Bates Range: TW-DR23-HC000001, TW-DR25-HC000001 and TW-DR26-HC000001. The parties have agreed that no other confidential or highly confidential material will be referenced in any manner during the hearing or placed into the record, unless reference to such becomes necessary for the purpose of impeachment of a witness.

In order to ensure the protection of this material, any exhibit to be introduced or referenced shall be provided by the counsel using it in a sealed envelope to be retained by the TRA in a separate location, and not disclosed, pursuant to the protections of the Protective Order and Protective Agreement in place in this docket. A copy of the exhibit shall also be provided to the court reporter in a sealed envelope to be retained with the transcript. The Hearing Room will be cleared of any party who has not signed the Protective Agreement prior to the use of any highly confidential material.

Because discovery in this case has been voluminous, the parties have agreed that they will not be moving the complete set of discovery responses into the record. In the event a party wishes to introduce discovery responses into the record, counsel will introduce such discovery response as those responses are utilized during the hearing. Counsel referring to or introducing discovery responses must identify the discovery response by describing the date of the request, the party making the request, the date of the response, the party providing the response and the specific item or response number. Counsel will provide an appropriate number of copies for counsel. As set forth above, parties will comply with the Protective Order and Protective Agreement when referencing or otherwise using confidential and highly confidential materials.

Demonstrative Aids – Admission of any demonstrative aid into the record will be moved by the party using such material at the time it is used during the hearing.

Order of Witness Testimony During Hearing

The following witnesses are scheduled to present live testimony during the hearing in the following order:

Marty Dickens (BellSouth/AT&T)
Joseph Gillan* (NuVox)
Debra Aron (BellSouth/AT&T)
James Kahan (BellSouth/AT&T)
Christopher Rice (BellSouth/AT&T)
Lionor Torrez (Time Warner)
Don Wood (Time Warner)

* Mr. Gillan will testify out of order by agreement of the parties due to a scheduling conflict.

The parties have stipulated to the admission of the pre-filed testimony of the following witnesses without live testimony or cross-examination:

Deborah Goldman (CWA)
Charles (Gene) Watkins (Covad)

In the interest of conserving time, the witnesses may provide oral summaries at the beginning of their testimony lasting five to ten minutes in length.

Opening Statements and Closing Arguments

The time permitted for making opening statements and closing arguments has been allotted per side based on the number of parties or counsel representing groups of intervenors. For opening statements BellSouth and AT&T are allotted 10 minutes for their joint presentation. The Intervenors are allotted a total of 15 minutes for opening statements which may be divided between counsel in any manner. For closing arguments, BellSouth/AT&T shall have 20 minutes total. The Intervenors are allotted 30 minutes total, again which may be divided between counsel in any manner.


The parties are aware that notwithstanding any agreement on their parts not to request permission to file post-hearing briefs, the Authority may determine a need for post-hearing briefs at the conclusion of the hearing and may direct the parties to file same within a designated time period.

Jurisdictional Arguments

AT&T and BellSouth have raised arguments regarding whether the Authority has jurisdiction over holding company mergers. AT&T and BellSouth expressly preserve their argument, but will not use hearing time to address that issue in any manner.

IT IS THEREFORE ORDERED THAT:

1. All Intervention requests have been granted and the Intervenors shall participate fully in the Hearing in this docket.
2. All applications of counsel to appear before the TRA pro hac vice are granted.
3. The procedures for the conduct of the Hearing shall be in force during the Hearing unless suspended or modified by the panel hearing this docket.


J. Richard Collier
Hearing Officer