

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 1, 2007

IN RE:)	
)	
JOINT FILING OF AT&T INC. AND BELL SOUTH)	DOCKET NO.
CORPORATION TOGETHER WITH ITS)	06-00093
CERTIFICATED TENNESSEE SUBSIDIARIES)	
REGARDING CHANGE OF CONTROL OF THE)	
OPERATING AUTHORITY OF BELL SOUTH)	
CORPORATION'S TENNESSEE SUBSIDIARIES)	

ORDER

This matter came before Chairman Sara Kyle, Director Pat Miller and Director Ron Jones of the Tennessee Regulatory Authority ("Authority" or "TRA"), the voting panel assigned to this docket, at the regularly scheduled Authority Conference held on July 10, 2006 for consideration of the *Joint Filing of AT&T Inc., BellSouth Corporation, and BellSouth's Certificated Tennessee Subsidiaries Regarding Change of Control* ("Joint Filing").

AT&T, Inc. ("AT&T") is a Delaware corporation with headquarters in San Antonio, Texas. AT&T is a holding company and does not directly provide any services in Tennessee. AT&T is a leader in the provision of global telecommunications services. AT&T's subsidiaries provide domestic and international voice and data communications services to residential, business, and government customers both in the United States and around the world. AT&T's subsidiaries operate sophisticated communications networks that support Internet Protocol ("IP") as well as other data and voice traffic. AT&T holds a sixty percent ownership in Cingular Wireless, LLC ("Cingular"), which serves wireless customers across the United States.

AT&T owns four subsidiaries that are certificated to provide competitive interexchange and local exchange telecommunications services in Tennessee.¹ The merger will not directly or indirectly result in the transfer of control of any of these subsidiaries.

BellSouth Corporation is a Georgia corporation with its headquarters in Atlanta, Georgia. BellSouth Corporation is a holding company and does not directly provide any telecommunications services in Tennessee. Through its two wholly owned subsidiaries,² BellSouth Corporation is a leading communications service provider in Tennessee and elsewhere in the southeastern United States, offering voice and data services to residential, business, and government customers. BellSouth Corporation holds a forty percent ownership in Cingular.

FACTUAL AND PROCEDURAL HISTORY

On March 31, 2006, the *Joint Filing* was submitted to the TRA by AT&T and BellSouth Corporation and its Tennessee certificated subsidiaries (collectively “BellSouth”). According to AT&T and BellSouth (collectively “Applicants”), 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.

¹SBC Long Distance, LLC d/b/a AT&T Long Distance (“AT&T Long Distance”) is authorized to provide facilities-based and resold local exchange and interexchange services pursuant to a certificate of public convenience and necessity granted by the Authority on May 22, 2000, in Docket No. 00-00025. SNET America Inc. d/b/a AT&T Long Distance East (“AT&T Long Distance East”) is authorized to provide resold interexchange services and operator services pursuant to a certificate of public convenience and necessity granted by the Authority on September 17, 1996, in Docket No. 95-02946. AT&T Communications of the South Central States, LLC (“AT&T-South Central”) is authorized to provide intraLATA and interLATA telecommunications services pursuant to certificates of public convenience and necessity granted by the Authority. TCG Midsouth, Inc. (“TCG Midsouth”) is authorized to provide facilities-based and resold local exchange and interexchange telecommunications services pursuant to a certificate of public convenience and necessity issued on July 14, 1997, in Docket No. 97-00949.

²BellSouth Telecommunications, Inc. is authorized to provide local exchange telecommunications services in Tennessee pursuant to Tenn. Code Ann. § 65-4-201(b). BellSouth Long Distance, Inc. is authorized to provide facilities-based and resale intrastate interexchange telecommunications services throughout Tennessee pursuant to certificates of public convenience and necessity granted by the Authority on January 28, 2003, in Docket No. 02-01169, and on August 2, 2005, in Docket No. 05-00137.

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. While AT&T and BellSouth assert that the Authority's approval is not necessary for a transaction that occurs at the holding company level, the Applicants request in the alternative that if the Authority finds that its approval is required, that the Authority grant such approval. To that end, the *Joint Filing* contains information required by Tenn. Code Ann. § 65-4-112 and § 65-4-113. The Applicants further state that they have sought approval for the transaction by filing applications with the Federal Communications Commission ("FCC") for consent to the transfer of control of both domestic and international Section 214 Authority from BellSouth to AT&T.³

Under the parties' merger agreement, a wholly-owned subsidiary of AT&T was created for the purpose of consummating the transaction. The newly formed entity will merge with and into BellSouth, with BellSouth being the surviving entity. Shareholders of BellSouth will receive 1.325 shares of AT&T stock per share of BellSouth stock. Following the merger, BellSouth will become a wholly owned first-tier subsidiary of AT&T.

According to the *Joint Filing*, there will be no change in the ownership structure of any BellSouth-affiliated entity. Likewise, the transaction will result in no change in the ownership of any AT&T subsidiary certificated in Tennessee. The *Joint Filing* states that the proposed transaction will in no way impede the Authority's ability to regulate the intrastate operations of BellSouth Telecommunications, Inc., BellSouth Long Distance, Inc., AT&T Long Distance, AT&T Long Distance East, AT&T-South Central, TCG MidSouth, or any other entities regulated by the Authority that are under the direct or indirect control of BellSouth Corporation or AT&T. The *Joint Filing* states

³Data Response, p. 2 (April 18, 2006). See also *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74.

that all entities will continue to operate and hold the state certificates that they currently hold. Further, the assets of those entities will not be transferred in connection with the transaction nor will the names of the entities be changed.⁴

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 regularly scheduled April 17, 2006 Authority Conference, followed by the filing of a written petition to intervene on April 21, 2006. Those two intervention requests were granted by the Authority at the April 17, 2006 Conference.

Also, at the April 17, 2006 Conference, the panel voted to appoint the 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 hearing. The panel adopted a procedural schedule that required petitions to intervene to be filed no later than May 10, 2006. The procedural schedule set a hearing on the matter for the week of June 26, 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, were granted. All Intervenor participants participated fully throughout discovery and in the filing of pre-filed testimony.

⁴Subsequent to the Authority’s approval of the change of control requested herein, BellSouth filed a petition seeking approval to use an assumed name. The petition was ultimately approved by a majority of the panel in that docket. *In re: Petition of BellSouth for Approval of a D/B/A Name Change and Request for Approval of a Customer Notice*, Docket No. 07-00001, *Order Granting Approval of an Assumed Name* (February 12, 2007).

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 was being withdrawn. Subsequently, Momentum filed its notice of withdrawal on June 26, 2006.

JUNE 28-29, 2006 HEARING

The Hearing notice was issued on June 16, 2006. The Hearing in this matter was held before Chairman Ron Jones, Director Pat Miller, and Director Sara Kyle on June 28-29, 2006. Participating in the Hearing were the following parties and their respective counsel and TRA Staff:

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, LLC and US LEC of Tennessee, Inc. - Charles B. Welch, Jr., Esquire and Kristi Stout, 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, ITC DeltaCom Communications, Inc. d/b/a ITC DeltaCom 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 for ITC DeltaCom Communications d/b/a ITC DeltaCom.

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

Staff of the Tennessee Regulatory Authority - Carsie Mundy, Chief, Competitive Markets and Policy Division; Carlos Black, Utility Rate Specialist, Competitive Markets and Policy Division and Monica Smith-Ashford, Esquire, 460 James Robertson Parkway, Nashville, Tennessee 37243.

At the Hearing, counsel for BellSouth and AT&T called Marty Dickens, State President for Tennessee, BellSouth Telecommunications, Inc.; Dr. Debra Aron, Director of the Evanston Offices of LECG, LLC and Adjunct Associate Professor at Northwestern University; James Kahan, Sr. Executive Vice President for Corporate Development, AT&T; and Christopher Rice, Executive Vice President – Network Planning and Engineering, AT&T. Counsel for Time Warner called Linor Torrez, Senior Manager Access Management, and Don J. Wood, Principal, Wood and Wood Economic and Financial Consulting. Counsel for NuVox called Joseph Gillan, telecommunications and economic consultant. All witnesses were subject to cross examination by the parties and questions from the panel and Advisory Staff. Additionally, the parties stipulated to the admission of the pre-filed testimony of the following witnesses without live testimony or cross-examination: Deborah Goldman, Research Economist for CWA and Charles Watkins, Senior Counsel, Covad.

POSITION OF THE PARTIES

The Applicants

The Applicants maintain that the transaction will serve the public interest, enhance competition in communications services markets, and result in a stronger, more effective, more responsive and more innovative company better able to meet the needs of its customers in Tennessee. The Applicants further maintain that the transaction is a necessary reaction to

competitive forces. The Applicants also state that approval of the transaction will accomplish the above through four benefits of the merger.⁵

First, the merger will create unified ownership and management of AT&T's and BellSouth's wireless operations now jointly owned through Cingular. Replacing the joint venture structure with unified ownership and management will permit the integration of the BellSouth, AT&T and Cingular IP networks, which will enable the development of new IP-based services that will work seamlessly across wireless and wireline platforms. Second, the merger will allow AT&T to bring new services, including IP based video services, to Tennessee faster than would be possible by BellSouth as a stand-alone company by using BellSouth's deployed fiber and taking advantage of AT&T's larger geographic reach. Third, the merger will enable customers in Tennessee to benefit from new and more efficient wireline telecommunications products and services by integrating BellSouth's local IP network with AT&T's IP backbone network. Additionally, BellSouth's operating subsidiaries will benefit from access to the research and development innovations of AT&T Laboratories. Finally, the merger will create a company with enhanced disaster response capabilities because the resulting company will have access to more resources and will encounter fewer logistical and coordination delays when responding to natural disasters and other safety emergencies in Tennessee.⁶

Time Warner

Time Warner argues that the proposed merger will lead to a significant reduction in competitive alternatives, an increase in market concentration and an increase in market power in some business markets for some services including special access services. Time Warner also

⁵*Joint Filing*, pp. 7-8 (March 31, 2006).

⁶*Joint Filing*, pp. 7-9 (March 31, 2006).

maintains that the Department of Justice-Federal Trade Commission Horizontal Merger Guidelines should be used to evaluate how the merger will affect customers in different markets in Tennessee, and the first step is to define the relevant markets. Time Warner states that the merger will harm both customers and competition in Tennessee because the merger will enhance the merged firm's ability to increase prices across entire Metropolitan Statistical Areas ("MSA") without losing market share. Time Warner avers that the merger will reduce the ability of regulators to detect and respond to anticompetitive behavior by the resulting entity because the loss of BellSouth to a merger impairs the ability of regulators to perform benchmarking analysis among the remaining regional Bell operating companies ("RBOCs") resulting in public interest harms. Finally, Time Warner states that the Authority should act to mitigate the impact to the consumer that the increase in market power will produce as a result of the merger by: (1) subjecting the resulting entity to an accelerated dispute resolution process for all intercarrier disputes, including interconnection and peering; and (2) imposing on the surviving entity the obligation to continue to offer access to special access and Ethernet at just and reasonable rates, along with appropriate performance measures with penalties, for at least ten years.⁷ The specific performance measures with penalties that Time Warner recommends the Authority require of AT&T are similar to those contained in the price flex tariff that Time Warner has negotiated with BellSouth but has been unable to negotiate with AT&T.⁸

CLEC Coalition

NuVox, Xspedius, and DeltaCom (collectively "CLEC Coalition") argue that AT&T's merger with BellSouth will bring to Tennessee the cumulative competitive harm of four prior

⁷Don J. Wood, Pre-Filed Direct Testimony, pp. 3-4; 10-14 (June 2, 2006).

⁸Lionor M. Torrez, Pre-Filed Direct Testimony, pp. 3-6 (June 2, 2006).

mergers that resulted in SBC, Pacific Telesis, Southern New England Telephone, Ameritech and AT&T becoming one entity. The CLEC Coalition maintains that the merger will: (1) further entrench AT&T's position in the multi-location business market; (2) result in a critical resource imbalance between competitors and the incumbent effectively blocking any other carrier from achieving similar scale; and (3) make it more difficult for the Authority to ensure Tennessee's local markets are competitive. In order to mitigate the effect of the results of the merger, the CLEC Coalition argues that conditions be imposed upon the merger.⁹

Specifically, the CLEC Coalition proposes a more efficient process than the existing negotiation/arbitration process to establish the terms of wholesale arrangements which would be regulated by an incentive framework such as price caps in much the same way BellSouth's retail and access offerings have been regulated. The CLEC Coalition also maintains: (1) penalty payments associated with the §271 performance plan should be increased in proportion to the increase in Tennessee revenues earned by the AT&T/BellSouth combined entity; (2) the performance plan should be audited by an independent auditor every three years; and (3) the Authority should make clear that the Tennessee performance plan is a stand-alone obligation unrelated to plans in other states.¹⁰

The CLEC Coalition also argues that the pre-*Triennial Review Order* ("TRO") EEL standards should be retired because the safe-harbor EEL requirements have outlived their usefulness and continued audits of those requirements should be eliminated. The CLEC Coalition avers that customers who may have chosen BellSouth or AT&T as a service provider be given the opportunity for a "fresh look" at existing contracts to decide whether to stay with the post-merger provider or to select some other provider without contract termination penalties.

⁹Joseph Gillan, Pre-Filed Direct Testimony, pp. 3-5 (June 5, 2006).

¹⁰Joseph Gillan, Pre-Filed Direct Testimony, pp. 20; 29-30 (June 5, 2006).

Finally, to the extent that the FCC ultimately approves the merger, the CLEC Coalition maintains that the Authority should require the Joint Applicants to agree that the Authority may enforce the conditions adopted by the FCC.¹¹

Covad

Covad maintains that the merger could result in problems with the provisioning of line sharing and line splitting to the CLEC community because of the different way AT&T and BellSouth presently make these services available. AT&T presently provides line sharing in its region via commercial agreements and facilitates line splitting, and BellSouth refuses to do either unless forced. Covad argues that approval of the merger is not in the public interest when a post-merger entity such as BellSouth has demonstrated that it intends to choose an anticompetitive path. As a result, Covad maintains that the Authority should not approve the merger because it is not in the public interest or if approval is granted, impose strong conditions on the merger to guard against anti-competitive behavior by BellSouth.¹²

CWA

The Communications Workers of America argue that the proposed merger could result in the loss of jobs in Tennessee with a negative impact on the quality of service provided by BellSouth to its customers. The CWA avers that the Authority should impose four conditions on the merger in order to protect the public interest. Specifically, the Authority should require the Applicants to commit to: (1) maintain the highest standards of service quality; (2) upgrade every central office in Tennessee to be DSL capable within two years of the merger; (3) maintain

¹¹Joseph Gillan, Pre-Filed Direct Testimony, pp. 33- 34 (June 5, 2006).

¹²Charles E. Watkins, Pre-Filed Direct Testimony, pp. 2- 5 (June 2, 2006).

employment levels in Tennessee for three years after the merger at the same levels that existed prior to the merger; and (4) not close any technical operations, call centers or other facilities for three years after the merger closes.¹³

FINDINGS AND CONCLUSIONS

The transaction for which approval is sought in this docket would result in the transfer of authority of a Tennessee certificated entity to a non-certificated entity. Therefore, Tenn. Code Ann. § 65-4-113 governs.

Tenn. Code Ann. § 65-4-113(a) (2004) provides:

(a) No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) (2004) provides:

(b) Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The authority shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.

After careful consideration of the evidence presented by the parties in this proceeding and contained in the record, a majority of the panel found that this transaction will serve the public interest, will enhance competition in communications service markets, and should result in a stronger, more effective, responsive and innovative company better able to meet the needs of Tennessee consumers. The majority further found from the testimony in this case that these two companies have the managerial, technical, and financial capabilities to provide

¹³Debbie Goldman, Pre-Filed Direct Testimony, pp. 1; 6-7 (June 2, 2006).

telecommunication services at the highest levels in Tennessee. Further, the majority found that placing conditions on the transaction were not warranted as the intervening parties did not provide proof showing a linkage between the proposed conditions and the resulting benefit to consumers or competition. The majority further found that the intervenors failed to provide persuasive evidence that this merger will harm competition. A majority of the panel further found that the likelihood of any job losses directly affecting BellSouth employees in Tennessee is minimal. Persuaded by witnesses for the merger who, while recognizing the risks inherent in today's telecommunications marketplace, articulated a clear vision of a company needing more employees to help forge the way into new fields of video and data, the majority found that the new entity has high expectations for both business growth and employment growth in the future.¹⁴

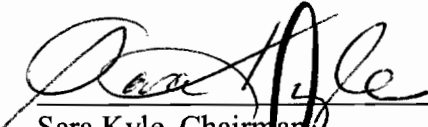
Based on the record and the facts in this docket, a majority of the panel found that the *Joint Filing* is compliant with requirements of Tenn. Code Ann. § 65-4-113 and that the merger/change of control is in the public interest. A majority of the panel voted to approve the merger/change of control contingent upon approval by the FCC and the Department of Justice. A majority further voted to require the Applicants to file with the Authority any documentation from the FCC or the Department of Justice regarding subsequent action on the merger and/or change of control.

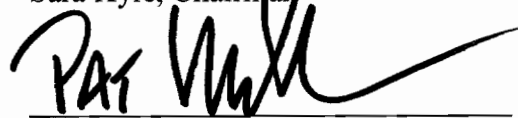
¹⁴Director Miller made the additional finding that based on the testimony in the record that approval of the merger had the potential for improving broadband deployment into rural areas of the state by making available to those consumers new technologies that are not currently available. Director Miller further found that approval of the merger would promote competition in the video market that and would greatly benefit consumers.

IT IS THEREFORE ORDERED THAT:

1. The Authority approves the *Joint Filing of AT&T Inc., BellSouth Corporation, and BellSouth's Certificated Tennessee Subsidiaries Regarding Change of Control* as discussed herein contingent upon approval of the merger and/or change of control by the Federal Communications Commission and the Department of Justice.

2. The parties shall file with the Authority any documentation from the Federal Communications Commission or the Department of Justice regarding subsequent action on the merger and/or change of control.


Sara Kyle, Chairman


Pat Miller, Director

* * *

Ron Jones, Director¹⁵

¹⁵Director Ron Jones dissented. He has filed a separate dissenting opinion outlining his analysis.