

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)

DOCKET NO. 06-00093

RESPONSE OF
ITC^DELTACOM COMMUNICATIONS INC. D/B/A ITC^DELTACOM
TO FIRST INTERROGATORIES AND DOCUMENT REQUEST
OF JOINT APPLICANTS

Intervenor, ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom

("ITC^DeltaCom" or "Respondent"), by counsel, hereby submits its 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. Respondent objects to the First Interrogatories and Document 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. Respondent objects to the First Interrogatories and Document 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 Respondent in response to these data requests will be provided subject to, without waiver of, the foregoing objection.

3. Respondent objects to the First Interrogatories and Document 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. Respondent will attempt to note in these responses each instance where this objection applies.

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

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

Any responses provided by Respondent to Joint Applicants' requests will be provided subject to, and without waiver of, the foregoing objections. Respondent will make partial responses to the extent reasonably consistent with Respondent'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?

Respondent: Respondent's 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, Respondent is 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 Respondent's 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 Respondent intends to focus its 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 Respondent's 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: Respondent's 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, Respondent is 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 Respondent's Data Requests or other facts that come to light prior to filing testimony in this proceeding will provide Respondent with a basis to agree or disagree. In any event, Respondent believes that Staff of the TRA is likely to focus its analysis in part on the issue of managerial ability, whereas Respondent intends to focus its 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 Respondent's 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: Respondent's 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, Respondent is presently unable to agree or disagree that, post-merger, Joint Applicants will have the technical

ability to provide reasonable service in Tennessee. Depending on potential layoffs and buyouts that result after the proposed merger, the technical ability of the combined entity to provide telephone service may actually diminish vis-a-vis each of the applicants taken separately. Moreover, as far as ITC^DeltaCom can determine, the Joint Applicants have not stated whether the combined entity will offer wholesale produce plans for newer, more technically complex services such as SDL, VoIP, and Ethernet. It is possible that Joint Applicants' responses to Respondent's Data Requests or other facts that come to light prior to filing testimony in this proceeding will provide Respondent with a basis to agree or disagree. In any event, Respondent believes that Staff of the TRA is likely to focus its analysis in part on the issue of technical ability, whereas Respondent intends to focus its 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 Respondent's 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. However, the TRA should remain vigilant as the combined entity will have tremendous legal and regulatory skills, and each of the Joint Applicants has been successful in its overall strategy of removing regulatory oversight of its business plan. Each has expended vast resources lobbying state and federal regulatory and legislative bodies. ITC^DeltaCom anticipates that the merged entity will strive to offer products that do not fit in any regulated classification and begin to discontinue regulated products.

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 Respondent's 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. In fact, due to the increased size of the merged incumbent local

exchange carrier and potential to damage its competitors, the combined entity might warrant greater security and additional obligations.

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 Respondent's 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 Respondent's 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 Respondent's 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 directly change the TRA's jurisdiction. Indirectly, however, the combined entity will have even greater power to compel competitive carriers to accept their boilerplate "commercial agreement" and to reduce its tariffed offerings.

In this manner, the merged entity is expected to "manage" and minimize the jurisdiction of the TRA.

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 Respondent's 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: ITC^DeltaCom provided residential services up to the time that BellSouth, and others, were able to convince the FCC to remove the UNE-Platform as a viable way to enter a market to service end-user consumers. Until that time, ITC^DeltaCom was growing its UNE-P customer base, and where the base was sizeable enough, typically 300-400 lines, ITC^DeltaCom invested in collocation equipment to move off UNE-P. By comparison, the commercial agreement gives ITC^DeltaCom virtually no negotiating leverage to obtain a reasonable contract for services. Today, ITC^DeltaCom has services under the highest default rates, even though it has tens of thousands of lines under the commercial agreement and provides BellSouth over \$11,000,000 per month in overall revenues. If, under these conditions, a carrier cannot negotiate reasonable rates with the incumbent, then there is no change for any new or smaller entrants to the marketplace. Indeed, it seems to ITC^DeltaCom that BellSouth seeks to remove all SLAs and SEEM payments for any lack in performance on their part, without any corresponding investment or improvement in back-office systems and automation. Consequently, a smaller carrier such as ITC^DeltaCom does not have the resources to compete in the residential marketplace. BellSouth's ability to provide win-backs, cash incentives, and discount programs cannot be matched due to its economic size.

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: ITC^DeltaCom understands that at least Sprint, American Fiber Systems, Knology, Time Warner Telecom, and XO Communications, Inc. provide transport services in Tennessee. Obviously, there are several transport providers today in Tennessee. But none of them, even combined, provide the reach and coverage that BellSouth/AT&T do. A larger concern to competitive markets than transport is the access to the end-user, local loop, or local access. There are still very few buildings that have access to competitive access providers. For example, ITC^DeltaCom uses BellSouth central offices and facilities to provide approximately 96% of its DSI local loops.

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: Respondent's 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, Respondent's analysis of the proposed merger not being in the public interest is preliminary. Respondent's 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 Respondent to the Joint Applicants in this docket has been provided. Thus, Respondent's 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: Respondent's 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, Respondent's analysis of the proposed merger not being in the public interest is preliminary. Respondent's position 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 Respondent to the Joint Applicants in this docket has been provided. Thus, Respondent's 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 Respondent, it is Respondent's 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."¹
- * "Wireless service also now competes directly against traditional wireline service."²
- * "[T]he three incumbent interexchange carriers – AT&T, MCI, and Sprint – have traditionally dominated the provision of services to enterprise customers."³

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

² UNE Fact Report at I-2.

³ UNE Fact Report at I-6.

- * AT&T competes against BellSouth using dark fiber.⁴
- * AT&T competes against BellSouth using fixed wireless.⁵

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.

As Respondent indicated at the outset, Respondent's analysis of the merger is underway and ongoing. Respondent intends to fully explain its 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.

REQUEST FOR PRODUCTION OF DOCUMENTS

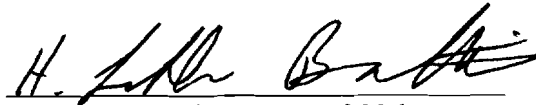
1. Please identify and produce all documents to which you have referred or on which you have relied to answer Interrogatories 2, 4, 6, 8, 10, 12, 14, 16, 22, 23(b) and 24, or which support your answers to such Interrogatories.

⁴ UNE Fact Report at III-18.

⁵ UNE Fact Report at III-24.

Response: No documents were relied upon or referred to by the Respondent.

Respectfully submitted,



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Certificate of Service

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

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