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BEFORE THE TENNESSEE REGULATORY AUTHORITY

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TRANSCRIPT OF EXCERPT OF AUTHORITY CONFERENCE

Monday, July 10, 2006

IN RE: DOCKET NO. 06-00093

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Reported By:

25 Teri A. Campbell, RPR, CCR

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1 (The aforementioned Authority  
2 Conference came on to be heard on Monday, July 10,  
3 2006, beginning at approximately 1:00 p.m., before  
4 Chairman Sara Kyle, Director Eddie Roberson, Director  
5 Pat Miller, and Director Ron Jones. The following is  
6 an excerpt of the proceedings that were had, to-wit:)

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MS. DILLON: Next we have Docket No.  
06-00093, BellSouth Telecommunications, Inc. AT&T  
Inc.'s proposed merger with BellSouth Corporation.  
Consider joint application.

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CHAIRMAN KYLE: This matter came  
before the Tennessee Regulatory Authority upon the  
March 31st, 2006 joint filing of AT&T, Inc., BellSouth  
Corporation, and BellSouth's certified Tennessee  
subsidiaries regarding change of control in this  
docket. In the joint filing, AT&T, Inc., BellSouth  
Corporation, and BellSouth subsidiaries certificated to  
provide telecommunication services in the state of  
Tennessee requests the Authority's approval of the  
change of control of the parent company of the  
Tennessee subsidiaries of BellSouth Corporation to AT&T  
as a result of an agreement and plan of merger executed  
by AT&T and BellSouth Corporation on March 4, 2006.

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Do my fellow directors have comments

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at this time?

CHAIRMAN JONES: Chairman Kyle, if  
you're prepared to make a motion, I do have a motion.

CHAIRMAN KYLE: Fine. I do. I'll  
just go ahead and put mine on the record.

The joint filing and the testimony  
given during the recent hearing on this merger

8 presented many interesting issues to consider. As a  
9 director of the Tennessee Regulatory Authority, I must  
10 weigh the evidence while being mindful of the  
11 Authority's responsibilities to promote the public  
12 interest and facilitate a more competitive environment  
13 by ensuring that Tennesseans have the opportunity to  
14 choose among many telecommunications providers that  
15 will offer consumers and businesses both high quality  
16 service and the latest in technological advancements.

17 After careful consideration of the  
18 evidence presented by the parties in this proceeding  
19 and contained in the record, I believe this transaction  
20 will serve the public interest, will enhance  
21 competition in communications service markets, and  
22 should result in a stronger, more effective responsive  
23 and innovative company better able to meet the needs of  
24 Tennessee consumers.

25 With those thoughts in mind, I have

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1 reviewed the testimony offered in this case and have  
2 come to the conclusion that this change of  
3 control/merger of AT&T and BellSouth will indeed bring  
4 many benefits to the state of Tennessee and its  
5 citizens. Certainly, as evidenced by the witnesses,  
6 these two companies have the managerial, technical, and  
7 financial capabilities to provide telecommunication  
8 services at the highest levels in Tennessee.

9 The intervenors in this docket have  
10 asked the Authority to impose many conditions upon the  
11 merger. After careful review, I do not believe that  
12 any conditions are warranted. I do not see a  
13 connection between the conditions the intervenors seek  
14 to have the Authority impose upon the merger and the  
15 resulting benefit to the consumer or competition. I  
16 did not find any compelling evidence that this merger  
17 will harm competition in any way.

18 I am always deeply concerned when any  
19 proposed merger could potentially result in the loss of  
20 jobs in Tennessee. However, after careful  
21 consideration and review of the record in this docket,  
22 I believe that the likelihood of any job losses  
23 directly affecting BellSouth employees in Tennessee is  
24 minimal. I believe the new entity has high  
25 expectations for both business growth and employment

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1 growth in the future. Witnesses for the merger, while  
2 recognizing the risks inherent in today's  
3 telecommunications marketplace, certainly have clear  
4 visions of a company needing more employees to help  
5 forge the way into new fields of video and data.

6 Based on the record and the facts in  
7 this docket, I find the joint filing is compliant with  
8 requirements of Tennessee Code Annotated Section  
9 65-4-113. I am of the opinion that the approval of  
10 this merger/change of control is in the public interest  
11 and should be approved with no conditions contingent  
12 only upon approval by the FCC and the Department of  
13 Justice. I so move.

14 And I also move that the applicants be  
15 required to file with the Authority any documentation  
16 from the FCC or the Department of Justice regarding  
17 subsequent action on the merger and/or change of  
18 control. So move.

19 CHAIRMAN JONES: I have a different  
20 outcome. But first I'd like to summarize exactly what  
21 it is that I evaluated in this docket.

22 The first point that has to be  
23 recognized is that AT&T's proposed merger with  
24 BellSouth is a very, very big and very complex  
25 transaction worth billions of dollars with many, many

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1 moving parts and considerations. Accordingly, several  
2 federal agencies will commit a depth of resources in  
3 considering this merger request. In Tennessee,  
4 however, notwithstanding the sheer magnitude of the  
5 proposed transaction, my evaluation is necessarily very  
6 Tennessee centric, very Tennessee specific.

7 What that means is an attempt to  
8 answer at a minimum the questions: Is the proposed  
9 merger good for Tennesseans? Will Tennesseans be  
10 better off postmerger, worse off postmerger, or the  
11 same postmerger as they were premerger? Will the level  
12 or balance of technological and competitive affluence  
13 in Tennessee that has been painstakingly developed over  
14 the last ten years or so become jeopardized by the  
15 proposed merger or will they thrive? These are the  
16 questions to be answered.

17 But, first, with respect to the  
18 question of jurisdiction, it is my opinion that the  
19 Authority has jurisdiction over this transaction  
20 pursuant to Tennessee Code Annotated Section 65-4-113.  
21 This section requires approval before a certificated  
22 entity such as BellSouth Telecommunications, Inc. may  
23 transfer all or any part of its authority to provide  
24 service often referred to as a CCN to any corporation.  
25 The BellSouth companies contend that this transaction

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1 does not include a transfer of a regulated utility CCN.  
2 I disagree.

3 In the simplest case, section 65-4-113  
4 requires approval of transactions through which the  
5 certificated entity relinquishes its right to provide  
6 services and hands over its CCN to another entity. In  
7 a complex transfer as we have here, the certificated  
8 entity's ownership changes. In this case, the  
9 certificated entity continues to provide service and  
10 continues to be the named holder of the CCN, but the  
11 transaction requires approval because the change of  
12 ownership of the certificated entity results in a  
13 transfer of the CCN to the new owner.

14 Thus, in the case before us, although  
15 BellSouth Telecommunications, Inc. and BellSouth Long  
16 Distance, Inc. will remain the named certificated  
17 entities and will continue to provide service, control  
18 over the CCNs will be transferred at least to some  
19 degree to AT&T, Inc., the proposed new owner.  
20 Therefore, approval is required.

21 Turning to the analysis of the  
22 transfer under section 65-4-113, I must consider three  
23 factors: First, the suitability, financial  
24 responsibility, and capability of AT&T, Inc. Second,  
25 the benefit to the consuming public. And, third, the

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1 furtherance of the public interest.

2 The record establishes that AT&T, Inc.  
3 is capable of controlling and is suited to control the

4 CCNs of the BellSouth Tennessee certificated entities.  
5 AT&T, Inc. currently controls four other entities  
6 certificated in Tennessee to provide telecommunications  
7 services. Further, AT&T has the financial means to act  
8 as the parent of the BellSouth Tennessee certificated  
9 entities.

10 Consideration of the benefits of the  
11 transaction to the consuming public is next. I view  
12 this consideration very narrowly and without regard to  
13 any potential harm to consumers as I will discuss that  
14 aspect of this case later in my comments. AT&T, Inc.  
15 and the BellSouth companies adamantly maintain that the  
16 benefits to consumers will be great. Accordingly,  
17 through these companies, consumers will receive more  
18 effective disaster recovery efforts and enhanced  
19 wireline, wireless, and video services through the  
20 research efforts of AT&T labs in the integration of the  
21 companies' networks and operations.

22 I must conclude from the evidence that  
23 the proposed merger can likely result in such benefits  
24 to the consuming public. This agency has on numerous  
25 occasions recognized the advantages created through the

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1 combining of companies' resources.

2 The question now becomes whether the  
3 proposed merger is injurious or harmful to the  
4 consumers such that disapproval of the transfer or the  
5 imposition of conditions is justified. The question  
6 leads to the final consideration: Public interest.

7 In 1995, the Tennessee General  
8 Assembly defined the term public interest in my opinion  
9 through the declaration of the telecommunications  
10 services policy in Tennessee Code Annotated Section  
11 65-4-123. In that statute, the General Assembly  
12 instructed this agency, quote, To foster the  
13 development of an efficient, technologically-advanced  
14 statewide system of telecommunications services by  
15 permitting competition in all telecommunications  
16 services markets, end quote.

17 The General Assembly further acclaimed  
18 in this statute that our regulation, quote, Shall  
19 protect the interests of consumers without unreasonable  
20 prejudice or disadvantage to any telecommunications  
21 service provider, end quote.

22 Thus, an action is in the public  
23 interest for the purposes of telecommunications in  
24 Tennessee if the action at a minimum permits  
25 competition, protects consumer interests, and does not

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1 unreasonably disadvantage any telecommunications  
2 service providers. With this standard in mind, I  
3 evaluated the record in this case.

4 CLECs argue that the merger will  
5 adversely affect competition for business customers and  
6 thereby adversely affect the service provided to those  
7 customers. The CLECs contend that the merged entity  
8 will immediately acquire a market share of sufficient  
9 size to allow it to force competitors out of the  
10 business markets in Tennessee.

11 The CWA, AFL-CIO contends that job  
12 loss and technical operation closures could harm  
13 service quality. It is my opinion that while these  
14 arguments raise substantial concerns, they alone do not

15 support denial of approval of the transfer of BellSouth  
16 certificated entity CCNs to AT&T, Inc. The arguments  
17 do, however, cause me to evaluate whether a need exists  
18 to impose conditions on the transfer.

19 BellSouth asserts that conditions  
20 should only be used to address concrete harms that are  
21 a direct result of the merger. It is my opinion that  
22 such a standard is far too rigid and fails to allow the  
23 flexibility necessary for this agency to fulfill its  
24 obligation to promote an environment that fosters and  
25 sustains competition. If BellSouth's standards were

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1 adopted, it is likely, if not certain, that conditions  
2 could never be justified under any circumstances.

3 AT&T, Inc. and the BellSouth companies  
4 rely on studies and statistics used in similar merger  
5 dockets along with the testimony of Dr. Aron to  
6 establish that competition, particularly business  
7 market competition, will not be adversely affected.  
8 This evidence is compelling, but it does not address  
9 the market dominance and resources that the merged  
10 entities will immediately attain as a result of the  
11 transfer.

12 The intervenors were compelling in my  
13 opinion in their testimony that they potentially could  
14 experience disadvantage and that no matter what the  
15 nature of competition in a particular Tennessee market,  
16 the transfer will make it more difficult postmerger for  
17 a competitor to access that market.

18 In my opinion, Tennessee statute, the  
19 declaration of telecommunications policy, imposes an  
20 affirmative obligation to ensure that providers and  
21 consumers alike suffer no direct, indirect, or  
22 collateral disadvantage. Traditionally, competitors in  
23 Tennessee are entitled to the same support as are  
24 providers who are technologically differentiated.

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25 It is only through the imposition of  
1 safeguards on access to the last mile and other  
2 incumbent controlled facilities that the current  
3 environment which I have concluded encourages  
4 competition without regard to technology will flourish.  
5 Moreover, the imposition of conditions to approval will  
6 not hamper the merged entities' freedom to provide  
7 consumers the benefits set forth as a justification for  
8 this agency's approval of the transfer. In fact, past  
9 megamerger conditions involving AT&T have not dampened  
10 the approval process but have sought to strengthen the  
11 competitive environment and consistent with the state  
12 of Tennessee's declaration of telecommunications policy  
13 will in my opinion do so here.

14 As to the arguments of the CWA,  
15 AFL-CIO, I agree with the proposition that lost jobs  
16 and operational closures can degrade the quality of  
17 service received by customers. However, I'm unable to  
18 find based on the record here that such a degradation  
19 will or is likely to happen as a result of the merger.  
20 The record is unclear as to the number of jobs that  
21 will be lost in Tennessee or operations that will be  
22 closed. Until further information which is in the  
23 hands of AT&T, Inc. is received, necessary conditions,  
24 if any, addressing this issue cannot be crafted.

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Further, without this additional

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1 information, it cannot be determined that the  
2 Authority's service quality rules alone afford  
3 consumers sufficient protection. Thus, it is my  
4 opinion that this issue be developed more fully in  
5 future proceedings.

6 Based on the foregoing, it is my  
7 opinion that the transfer should be approved pursuant  
8 to Tennessee Code Annotated Section 65-4-113 contingent  
9 upon approval by the Federal Communications Commission  
10 and completion of the investigative processes of the  
11 Department of Justice and Federal Trade Commission, but  
12 that conditions should be placed on the incumbent to  
13 ensure the continuation of quality service and an  
14 environment that permits the level of competition that  
15 Tennessee has enjoyed over the past ten years. It is  
16 further my opinion that the Authority should defer any  
17 decision establishing conditions until this transaction  
18 is addressed by federal agencies.

19 In a 1930 speech, former President  
20 Herbert Hoover said that, quote, Competition is not  
21 only the basis of protection to the consumer but is the  
22 incentive to progress, end quote. With his statement,  
23 I agree. It is my hope that whatever the decision of  
24 the panel today that the result is a marketplace of  
25 technologically-advanced options for all types of

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1 consumers be they wholesale providers, retail, business  
2 consumers, or residential subscribers. This is a  
3 result mandated by the telecommunications services  
4 policy of our state. I so move.

5 DIRECTOR MILLER: Based on the  
6 representations made by BellSouth and AT&T in this  
7 record, I've concluded that the merger has potential  
8 for improving broadband deployment into rural areas of  
9 our state by bringing to bear new technologies that are  
10 not currently available to those customers. I also  
11 think there's a potential for video services -- the  
12 introduction of video services into this marketplace by  
13 the merged company that offers the potential for  
14 competition in the video market area that doesn't exist  
15 today and would greatly benefit the consumers of the  
16 state of Tennessee.

17 However, I have a hefty skepticism of  
18 that deployment. When I was in third grade -- I think  
19 that's about 1966 -- I went on a tour of a local  
20 Western Electric plant and the centerpiece of that tour  
21 was a preview of new AT&T technology to provide video  
22 services. Well, my son graduated from third grade last  
23 year and that technology hasn't been rolled out yet.

24 But based on the testimony in the  
25 record and the new technology available through AT&T, I

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1 think that it would greatly serve the citizens of  
2 Tennessee to have that technology available and in the  
3 marketplace in Tennessee. I think that is -- will come  
4 in the new future hopefully before my son's son  
5 graduates from third grade.

6 And I think that deployment will  
7 require an increase in the need for employees by  
8 AT&T/BellSouth. I think that very much is in the  
9 public interest especially to the citizens of the state  
10 of Tennessee.

11 Finally -- well, first of all, I want  
12 to address the conditions as set out by the intervening  
13 parties. I find that there are adequate existing  
14 safeguards in place today to protect the interests of  
15 the competitors that are within our jurisdiction.

16 And, finally, the Attorney General's  
17 Consumer Advocate Division's lack of participation in  
18 this docket I think speaks volumes. It demonstrates  
19 that they have little concern for the potential harm of  
20 consumers of the state of Tennessee. And I agree with  
21 that conclusion.

22 Therefore, I second Chairman Kyle's  
23 motion and vote aye because, based on the record, I  
24 believe this merger meets all the statutory  
25 requirements and is in the public interest of all

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1 CHAIRMAN KYLE: Thank you.  
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5 (Conclusion of exerpt.)  
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1 REPORTER'S CERTIFICATE

2 STATE OF TENNESSEE )  
3 COUNTY OF DAVIDSON )

4 I, Teri A. Campbell, Registered  
5 Professional Reporter, Certified Court Reporter, and  
6 Notary Public for the State of Tennessee, hereby  
7 certify that I reported the foregoing proceedings at  
8 the time and place set forth in the caption thereof;  
9 that the proceedings were stenographically reported by  
10 me; and that the foregoing proceedings constitute a  
11 true and correct transcript of said proceedings to the  
12 best of my ability.

13 I FURTHER CERTIFY that I am not related to  
14 any of the parties named herein, nor their counsel, and  
15 have no interest, financial or otherwise, in the  
16 outcome or events of this action.

17 IN WITNESS WHEREOF, I have hereunto  
18 affixed my official signature and seal of office this  
19 11th day of July, 2006.  
20

docket06--00093.txt  
TERI A. CAMPBELL,  
REGISTERED PROFESSIONAL  
REPORTER, CERTIFIED COURT  
REPORTER, AND NOTARY PUBLIC  
FOR THE STATE OF TENNESSEE

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My Commission Expires:  
July 19, 2008