

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION FOR APPROVAL OF	)	
THE INDIRECT TRANSFER OF CONTROL	)	CASE NO.
RELATING TO THE MERGER OF AT&T INC.	)	2006-00136
AND BELLSOUTH CORPORATION	)	

JOINT APPLICANTS' SECOND DATA REQUESTS TO  
NUVOX COMMUNICATIONS, INC.

**DEFINITIONS**

1. "BellSouth Telecommunications, Inc." means BellSouth Telecommunications, Inc., and its subsidiaries, their present and former officers, employees, agents, representatives, directors, and all other persons acting or purporting to act on behalf of BellSouth Telecommunications, Inc.

2. "BellSouth Corp." is a Georgia corporation with its headquarters at 1155 Peachtree Street, N.E., Atlanta, Georgia 30309-3610.

3. "AT&T" means AT&T Inc., a Delaware corporation with its headquarters at 175 East Houston Street, San Antonio, Texas 78205-2233.

4. The terms "you" and "your" refer to NuVox Communications, Inc.

5. "NuVox" means NuVox Communications, Inc. and its subsidiaries, their present and former officers, employees, agents, directors, and all other persons acting or purporting to act on behalf of NuVox.

6. The term "person" means any natural person, corporation, corporate division, partnership, other unincorporated association, trust, government agency, or entity.

7. "And" and "or" as used herein shall be construed both conjunctively and disjunctively and each shall include the other whenever such construction will serve to bring within the scope of these discovery requests any information that would otherwise not be brought within their scope.

8. The singular as used herein shall include the plural, and vice versa, and the masculine gender shall include the feminine and the neuter.

9. "Identify" or "identifying" or "identification" when used in reference to a natural person means to state:

- a) the full legal name of the person;
- b) the name, title and employer of the person at the time in question;
- c) the present or last known employer of such person;
- d) the present or last known home and business addresses of the person; and
- e) the present home address.

10. "Identify" or "identifying" or "identification" when used in reference to a person other than a natural person means to state:

- a) the full name of the person and any names under which it conducts business;
- b) the present or last known address of the person; and
- c) the present or last known telephone number of the person.

11. "Identify" or "identifying" or "identification" when used in reference to a document means to provide with respect to each document requested to be identified by these discovery requests a description of the document that is sufficient for purposes of a request to produce or a subpoena duces tecum, including the following:

- a) the type of document (e.g., letter, memorandum, etc.);
- b) the date of the document;
- c) the title or label of the document;
- d) the Bates number or other identifier used to number the document for use in litigation;
- e) the identity of the originator;
- f) the identity of each person to whom it was sent;
- g) the identity of each person to whom a copy or copies were sent;
- h) a summary of the contents of the document;
- i) the name and last known address of each person who presently has possession, custody or control of the document; and
- j) if any such document was, but is no longer, in your possession, custody or control or is no longer in existence, state whether it: (1) is missing or lost; (2) has been destroyed; or (3) has been transferred voluntarily or involuntarily, and, if so, state the circumstances surrounding the authorization for each such disposition and the date of such disposition.

12. "Identify," "identifying" or "identity" when used in reference to a communication means to state the date of the communication, whether the communication was written or oral, the identity of all parties and witnesses to the communication, the substance of what was said and/or transpired and, if written, the identity of the document(s) containing or referring to the communication.

## **GENERAL INSTRUCTIONS**

1. If you contend that any response to any Data Request may be withheld under the attorney-client privilege, the attorney work product doctrine or any other privilege or basis, please state the following with respect to each such response in order to explain the basis for the claim of privilege and to permit adjudication of the propriety of that claim:

- a) the privilege asserted and its basis;
- b) the nature of the information withheld; and
- c) the subject matter of the document, except to the extent that you claim it is privileged.

2. These discovery requests are to be answered with reference to all information in your possession, custody or control or reasonably available to you. These discovery requests are intended to include requests for information, which is physically within your possession, custody or control as well as in the possession, custody or control of your agents, attorneys, or other third parties from which such documents may be obtained.

3. If any Interrogatory cannot be answered in full, answer to the extent possible and specify the reasons for your inability to answer fully.

4. These Interrogatories are continuing in nature and require supplemental responses should information unknown to you at the time you serve your responses to these interrogatories subsequently become known.

5. For each Interrogatory, provide the name of the company witness(es) or employee(s) responsible for compiling and providing the information contained in each answer.

## **SECOND DATA REQUESTS**

1. Do you dispute the fact that the combined entity, post-merger, will have the financial ability to provide reasonable service in Kentucky pursuant to KRS 278.020(5)? If so, why?
2. Do you dispute the fact that the combined entity, post-merger, will have the technical ability to provide reasonable service in Kentucky pursuant to KRS 278.020(5)? If so, why?
3. Do you dispute the fact that the combined entity, post-merger, will have the managerial ability to provide reasonable service in Kentucky pursuant to KRS 278.020(5)? If so, why?
4. On page 12 of NuVox's Responses to Joint Applicants' Initial Data Requests, NuVox alleges that "[t]he proposed merger between AT&T and BellSouth will . . . make it all that more difficult for the KPSC to open Kentucky's local markets to competition."
  - (a) Is the "local market" to which you referred the mass market (i.e. residential) or the enterprise market (i.e., business)?
  - (b) If the term "local market" refers to the mass market, do you dispute that AT&T stopped marketing to mass market consumers in Kentucky in 2004?
  - (c) If the term "local market" refers to the mass market, state with specificity all facts which support your theory that the merger of BellSouth with an entity that is not competing for mass market customers in Kentucky reduces competition.
  - (d) If the term "local market" refers to the business market, state with specificity all facts that support your theory that BellSouth and AT&T are direct competitors in the business market in Kentucky.
5. On page 14 of NuVox's Responses to Joint Applicants' Initial Data Requests, you state that the combined entity "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."
  - (a) Please confirm that this alleged harm is limited to the business market.
  - (b) Does the allegation that "an unprecedented geographic footprint" will create harm to competitors assume that AT&T owns facilities in Kentucky?
  - (c) If the allegation based on an alleged "unprecedented geographic footprint" does not assume ownership of facilities by ATT in Kentucky, state all facts upon which you claim that "an unprecedented geographical footprint" will cause harm.

6. On page 14 of NuVox's Responses to Joint Applicants' Initial Data Requests, you state that "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."
  - (a) Is it your position that the Commission should deny the merger because the combined entity will have regulatory resources?
  - (b) Do you agree that the combined entity's legal obligations under Sections 251 and 252 of the Telecommunications Act of 1996 will remain unchanged after the merger of the Joint Applicants?
  - (c) If your response to Request 6(b) is anything other than an unqualified yes, state with specificity each and every fact or theory that supports your response.
  - (d) Do you agree that this Commission's authority to act under Section 251 and 252 of the Telecommunications Act of 1996 will remain unchanged after the merger of the Joint Applicants?
  - (e) If your response to Request 6(d) is anything other than an unqualified yes, state with specificity each and every fact or theory that supports your response.
7. On Page 12 of NuVox's Responses to Joint Applicants' Initial Data Requests, you contend that the merger will have a "significant impact" on NuVox who relies "in whole or in part on the network owned and controlled by the Joint Applicants." Identify by location end points each and every facility you currently purchase from AT&T in Kentucky which you believe will be impacted as a result of the merger.
8. On page 16 of NuVox's Responses, you contend that the combined entity "will have nearly unlimited resources to bring to bear to thwart Respondent's efforts to provide competitive telecommunications services in Kentucky." Do you agree that the Commission's authority to resolve complaints against BellSouth, as a wholly-owned subsidiary of AT&T, will remain the same post-merger as it is today?
10. If your response to Request 9 is anything other than an unqualified yes, state each and every fact or theory that supports your response.
11. On page 17 of NuVox's Responses, you contend that "even the performance plan in place since BellSouth received Section 271 authority will be wholly inadequate to deter deliberately poor performance in provisioning UNEs." Do you agree that the Commission's authority over the performance plan will remain the same post-merger as it is today?
12. If your response to Request 11 is anything other than an unqualified yes, state with specificity each and every fact or theory that supports your response.

13. Does NuVox compete in the mass market (i.e., for residential customers)?
14. Does NuVox have any enterprise customers in Kentucky that generate over 1 million per year in revenue for NuVox?
15. In which market do you contend you currently compete with ATT in Kentucky?

Respectfully submitted this the 16th day of May 2006.

FOR BELLSOUTH CORPORATION,  
BELLSOUTH  
TELECOMMUNICATIONS, INC.  
AND BELLSOUTH LONG  
DISTANCE, INC.

FOR AT&T, INC.

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