

**COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION**

IN THE MATTER OF:)
)
JOINT APPLICATION FOR APPROVAL)
OF THE INDIRECT TRANSFER OF) Case No. 2006-00136
CONTROL RELATING TO THE)
MERCER OF AT&T INC. AND)
BELLSOUTH CORPORATION)

**PETITION OF JOINT APPLICANTS FOR CONFIDENTIAL TREATMENT
OF RESPONSES TO SUPPLEMENTAL DATA REQUESTS**

Petitioners AT&T Inc. (“AT&T”), BellSouth Corporation, and BellSouth Telecommunications, Inc. (collectively, “Joint Petitioners”), by and through counsel, pursuant to KRS 61.870, *et seq.*, and 807 KAR 5:001, Section 7, *et seq.*, hereby request confidential treatment of their responses to the specific supplemental data requests filed by the Attorney General of the Commonwealth of Kentucky (“Attorney General”) which reference confidential materials. In support of their Petition, the Joint Petitioners state as follows:

1. On April 21, 2006, the Attorney General, by and through his Office of Rate Intervention, filed his Initial Request for Information from the Joint Petitioners.
2. The Joint Petitioners responded on May 4, 2006. They provided voluminous amounts of non-confidential materials – 14,620 pages of non-confidential documents and non-confidential narrative responses. However, some of the Attorney General’s requests sought highly confidential documents and information. Thus, as explained in the Joint Petitioners’ petition for confidential treatment filed with the Commission on May 5, 2006, some of the Joint Petitioners’ responses qualified for confidential treatment and protection from public disclosure under KRS 61.878.

3. On May 16, 2006, the Attorney General filed supplemental data requests specifically relating to several highly sensitive and confidential documents produced by the Joint Petitioners. Indeed, fourteen of the Attorney General's fifteen supplemental data requests explicitly reference and seek information about the confidential documents.

4. Under Kentucky law, and for essentially the same reasons set forth in Joint Petitioners' earlier petition for confidential treatment, the Joint Petitioners' responses regarding these confidential materials are also entitled to protection from public disclosure under KRS 61.878.

5. **Supplemental Requests Referencing Materials Provided to the United States Department of Justice Under Strict Confidentiality Protections.** Supplemental requests 2 through 14 each explicitly reference (and, in fact, nearly all of the requests directly quote) documents produced in response to the Attorney General's initial Data Request 37, which sought materials that the Joint Petitioners have provided to the United States Department of Justice pursuant to its Request 4(c) under the Hart-Scott-Rodino Antitrust Improvement Act of 1976, 15 U.S.C. § 18a. As explained in detail in the petition for confidential treatment filed on May 5, 2006, these materials are highly confidential. *Indeed, because the documents at issue are extremely sensitive competitive materials, the Department of Justice affords such materials highly confidential treatment, and it is a federal crime for a federal employee to reveal them.* See 15 U.S.C. § 18a(h); 18 U.S.C. § 1905.

6. As demonstrated in the Joint Petitioners' previous petition for confidential treatment, the very fact that the documents at issue were provided in response to Department of Justice Request 4(c) establishes that they are the kinds of high-level business strategy and

planning documents that CLECs and other competitors could exploit to learn of the Joint Petitioners' competitive strategy and thus are shielded from disclosure by KRS 61.878(1)(c).¹

7. Just as with the confidential documents themselves, the quotation, reference, or discussion of these documents, if openly disclosed, would also permit Joint Petitioners' competitors an unfair competitive advantage and thus qualifies for confidential treatment under KRS 61.878(1)(c)(1).

8. Additionally, and independently, these materials qualify for confidential treatment under KRS 61.878(1)(j) because they quote and/or directly refer to materials which are plainly "preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended" and thus protected under KRS 61.878(1)(j). As noted above, the relevant Department of Justice regulation requires submission of materials that are prepared for "*the purpose of evaluating or analyzing the acquisition.*" 16 C.F.R. pt. 803, App. at 4(c) (emphasis added). Documents that "evaluate" or "analyze" an acquisition and advise a corporation's executives and directors as to the best course of action necessarily involve the formulation or recommendation of the policies of the relevant corporation. These documents are thus exempt from public disclosure, and quotations, references, and elaboration of such documents are just as confidential.

¹ In the words of the Department of Justice regulation itself, these documents reveal sensitive evaluations of "competition, competitors, markets, [and] expansion into product or geographic markets." 16 C.F.R. Pt. 803, App. at 4(c). This is precisely the type of information protected by KRS 61.878(1)(c) (affording confidential treatment to documents "generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records."). *See also Southeastern United Medigroup, Inc. v. Hughes*, 952 S.W.2d 195, 198 (Ky. 1997) and *Marina Mgmt. Servs., Inc. v. Commonwealth*, 906 S.W.2d 318, 319 (Ky. 1995) (internal company information withheld from public disclosure pursuant to KRS 61.878(1)(c)(1) because of its competitively sensitive nature).

9. **Other Confidential Materials.** In addition to the above-referenced confidential documents that were produced to the Department of Justice, the Attorney General's first supplemental request also references a confidential portion of analysis provided in response to Data Request 1(a). Joint Petitioners' answer to this supplemental request also relies upon this confidential analysis, which is derived from internal forecasting in which AT&T has made a significant investment and, moreover, would reveal future business plans. Release of these materials would thus again allow competitors to obtain an unfair competitive advantage in the marketplace. Moreover, these estimates are part of the preliminary recommendations that lead to the merger agreement and thus are protected from disclosure for that reason as well. For these reasons, both the Attorney General's first supplemental data request and the Joint Petitioners' response to it merit confidential treatment.

10. WHEREFORE, the Joint Petitioners respectfully request that this honorable Commission issue an order granting confidential treatment to the relevant portions of the Attorney General's Supplemental Data Requests 1-14 and the responses thereto.

Respectfully submitted, this the 24th day of May 2006

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

FOR AT&T INC.

/s/ _____
Creighton E. Mershon, Sr.
Cheryl R. Winn
601 W. Chestnut Street,
Room 407
Louisville, Kentucky 40203
(502) 582-1475 (Telephone)
(502) 582-1573 (Facsimile)
Cheryl.Winn@bellsouth.com

James G. Harralson
Lisa S. Foshee
BellSouth Telecommunications, Inc.
675 West Peachtree
Suite 4300
Atlanta, Georgia 30375
(404) 335-0750 (Telephone)
Lisa.Foshee@bellsouth.com

/s/ _____
Holland N. ("Quint") McTyeire, V
Greenebaum Doll & McDonald PLLC
3500 National City Tower
Louisville, Kentucky 40202
(502) 587-3672 (Telephone)
(502) 540-2223 (Facsimile)
hnm@gdm.com

Wayne Watts
Martin E. Grambow
D. Randall Johnson
David Eppsteiner
AT&T Inc.
175 East Houston
San Antonio, Texas 78205-2233
(214) 464-3620 (Telephone)
eppsteiner@att.com

Sean A. Lev
Kellogg, Huber, Hansen, Todd,
Evans & Figel, PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7975 (Telephone)
(202) 326-7999 (Facsimile)
slev@khhte.com

635105