

**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)
MERGER OF AT&T INC. AND)
BELLSOUTH CORPORATION)

PETITION OF JOINT APPLICANTS FOR CONFIDENTIAL TREATMENT

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.*, request confidential treatment as to documents that are extremely sensitive, generally recognized as confidential or proprietary, and the disclosure of which would permit competitors an unfair competitive advantage. In support of their Petition, the Joint Petitioners state as follows:

1. On May 1, 2006, Intervenors NuVox Communications, Inc. (“NuVox”) and DIECA Communications, Inc. d/b/a Covad Communications Company (“Covad”) filed data requests to the Joint Petitioners. On May 2, 2006, Intervenors Xspedius Management Company Switched Services, LLC and Xspedius Management Company of Louisville, LLC (collectively, “Xspedius”) filed data requests to the Joint Petitioners that were identical to the ones filed by NuVox and Covad.

2. In response to that set of requests, the Joint Petitioners have provided significant amounts of non-confidential materials – 413 pages of non-confidential documents and non-confidential narrative responses to 41 separate Data Requests.

3. Some of the data requests, however, seek documents and information that are highly confidential and qualify for confidential treatment and protection from public disclosure under KRS 61.878.¹ The set of documents and information at issue here is not circulated outside a limited group of personnel at AT&T, BellSouth Corporation, or BellSouth Telecommunications, Inc., nor is it provided to the public. Its internal use is restricted to only those employees who have a legitimate business reason for reviewing such materials, and the Joint Petitioners attempt to control the dissemination of this material through all reasonable means.

4. Under Kentucky law, all of these highly sensitive materials are entitled to protection from public disclosure. Specifically, such sensitive information is a quintessential example of commercial material that would permit competitors of the Joint Petitioners an unfair competitive advantage if openly disclosed. Thus, these documents warrant confidential treatment under KRS 61.878(1)(c)(1). *See Southeastern United Medigroup, Inc. v. Hughes*, 952 S.W.2d 195 (Ky. 1997); *Marina Mgmt. Servs., Inc. v. Commonwealth*, 906 S.W.2d 318 (Ky. 1995) (internal company information withheld from public disclosure pursuant to KRS 61.878(1)(c)(1) because of its competitively sensitive nature). Below, the Joint Petitioners

¹ Because Joint Petitioners consider all of the materials addressed in this motion to be confidential and proprietary, and due to the large amount of material being provided, they are complying with the Commission's rule by copying all of this response on yellow paper. Accordingly, the Joint Petitioners request that the Commission grant a waiver of its rule which generally requires the filing of ten redacted copies of the material in question. The Joint Petitioners note that a similar procedure was requested and approved during the Commission's review of the Bell Atlantic/GTE merger. *See Joint Petition for Confidentiality, Joint Application of Bell Atlantic Corp. and GTE Corp. for Order Authorizing Transfer of Utility Control*, Case No. 99-296, at 1 n.1 (Ky. PSC filed Aug. 9, 1999); Letter Order, Case No. 99-296 (Ky. PSC Aug. 26, 1999) ("August 26, 1999 Letter Order"). *See also* numerous Petitions for Confidential Treatment, *Application for Approval of the Transfer of Control of ALLTEL Kentucky, Inc. and Kentucky ALLTEL, Inc. and for Authorization to Guarantee Indebtedness*, Case No. 2005-00534; Letter Orders, Case No. 2005-00534 (Ky. PSC Mar. 31, 2006) ("March 31, 2006 Letter Order").

establish that the different categories of documents at issue here all amply qualify for confidential treatment under the plain language of the relevant Kentucky statute.

5. ***Current Line Counts, Wholesale Relationships, and Facilities Locations.*** The first set of information for which the Joint Petitioners seek confidential treatment concerns highly sensitive commercial information about many confidential details of the Joint Petitioners' business. Specifically, the information requested consists of the following material:

- The Intervenors make extensive data requests concerning such things as current access lines, customers of the Joint Petitioners, and wholesale and retail services and facilities provided by the Joint Petitioners. *See* NuVox, Covad, and Xspedius Data Request Nos. 11-12, 19, 21-22, 29-35, 37-38.
- The Intervenors make detailed inquiries into the presence and placement of the Joint Petitioners' facilities in Kentucky. *See* NuVox, Covad, and Xspedius Data Request Nos. 2-3, 5-6, 8-10.
- The Intervenors request information that Joint Petitioners "provide a matrix of performance metric payments made by BellSouth to CLECs on a state-by-state basis for the last two (2) years" including in the aggregate and on a carrier-by-carrier basis, including a list of such payments to Kentucky CLECs and the manner in which those payments were made. NuVox, Covad, and Xspedius Data Request No. 40.

6. The information provided in response to these requests shows where, how, and the extent to which the Joint Petitioners compete in Kentucky. This information would thus provide competitors with an unfair competitive advantage. Indeed, information concerning the customers of a company is some of the most highly sensitive commercial data that a company collects. *See* March 31, 2006 Letter Order, *Application for Approval of Transfer of Control of Alltel Kentucky, Inc. and Kentucky Alltel, Inc. and For Authorization to Guarantee Indebtedness*, Case No. 2005-00534 (Ky. PSC Mar. 31, 2006) (granting confidential information to DSL line information by ILEC exchange in review of transfer of control proceeding); June 25, 2001 Letter Order, *Review of BellSouth Telecommunications, Inc.'s Price Regulation Plan*, Case No. 99-434 (Ky. PSC June 25, 2001) (granting confidential treatment to access line information and revenue

data in review of BellSouth Telecommunications, Inc.'s price regulation plan). Moreover, some of this information relates to third parties and those parties have an expectation of privacy that should not be compromised without their individual approval. *See* October 15, 2003 Letter Order, *Investigation Concerning the Propriety of InterLata Services by BellSouth Telecommunications, Inc.*, Case No. 2001-00105 (Ky. PSC Oct. 15, 2003) (granting confidential treatment to the identity of CLECs and specific penalties held in abeyance by BellSouth Telecommunications, Inc. in an investigation concerning the propriety of interLATA services by BellSouth Telecommunications, Inc.). For these reasons, all of this material merits confidential treatment under KRS 61.878(1)(c)(1).

7. ***Internal Memos and Documents Reflecting the Joint Petitioner's Planning and Strategy.*** The second set of information for which the Joint Petitioners seek confidential treatment concerns internal company memoranda and analysis. Specifically, the Intervenor asks the Joint Petitioners to provide "copies of all internal memos and documents produced or amended in the last two (2) years that evaluate the nature and extent of competition in the various product markets in Kentucky." NuVox, Covad, and Xspedius Data Request No. 17. In response, the Intervenor has collected 250 pages of internal documents. If openly disclosed, this internal material would permit CLECs and other competitors an unfair competitive advantage and thus this material qualifies for confidential treatment under KRS 61.878(1)(c)(1).

8. These memos and documents reflect the business judgments and competitive determinations of Joint Petitioners. No company would permit a competitor access to such competitive analysis. Allowing a CLEC or other competitor to obtain such a record of the Joint Petitioners' confidential internal planning would give the competitor an unfair and wholly unwarranted business advantage for purposes of KRS 61.878(1)(c). *See also* August 26, 1999

Letter Order (granting confidential treatment to internal studies and reports made in preparation for the transfer of utility control pursuant to the merger of Bell Atlantic Corporation and GTE Corporation).

9. WHEREFORE, the Joint Petitioners respectfully request that this honorable Commission issue an order granting confidential treatment to the materials discussed in this Petition. Specifically, the Joint Petitioners seek Confidential Treatment for the documents produced in response to the NuVox's, Covad's, and Xspedius's Data Request Nos. 2-3, 5-6, 8-12, 17, 19, 21-22, 29-35, 37-38, and 40. Additionally, the Joint Petitioners respectfully request that the Commission waive its rule and allow the Joint Petitioners to forgo filing any redacted copies of this material for the reasons explained herein.

Respectfully submitted, this the 25th day of May 2006,

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

FOR AT&T INC.

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