

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

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

**JOINT APPLICANTS' PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

On March 31, 2006, AT&T Inc. ("AT&T"), BellSouth Corporation ("BellSouth"), and BellSouth Telecommunications, Inc. ("BST") (collectively, "Joint Applicants") filed a Joint Application for Approval of Indirect Transfer of Control pursuant to KRS § 278.020. The Attorney General of Kentucky, NuVox Communications, Inc. ("NuVox"), Xspedius Management Company Switched Services LLC and Xspedius Management Company of Louisville, LLC (collectively, "Xspedius"), and the Communications Workers of America ("CWA") have intervened in this matter. On April 12, 2006, this Commission established a procedural schedule for disposition of this matter. Pursuant to that procedural schedule, the parties have filed data request responses and pre-filed testimony, presented witnesses at a hearing held before the Commission on June 7, 2006, and provided the Commission with post-hearing briefs. The Joint Applicants and the Attorney General have also entered into a Joint Stipulation of Facts and Evidence as to the nature and effects of this transaction. That document was filed in this record on June 6, 2006.

PROPOSED TRANSACTION

1. This proceeding involves a holding-company transaction. AT&T will purchase all of the issued and outstanding shares of BellSouth, the parent holding company of BST, which is the operating company that acts as an incumbent local exchange carrier (“ILEC”) in parts of Kentucky.

2. As a result of the merger, BellSouth will become a first-tier subsidiary of AT&T. BST, in turn, will remain a subsidiary of BellSouth.

3. The Joint Stipulation of Facts and Evidence entered into between the Joint Applicants and the Attorney General confirms the following facts regarding the proposed Merger:

- a. Because this is a holding-company merger that involves no debt, “Joint Applicants will not (a) engage in any debt financing requiring liens or the pledging of assets by the Joint Applicants’ subsidiaries operating in Kentucky, (b) require any subsidiary or affiliate to guarantee the debt of any other subsidiary, affiliate, or holding company of the Joint Applicants, or to grant liens in favor of any lender providing financing, and as a result, (c) the ratepayers shall not bear, directly or indirectly any debt or transactional costs, liabilities or obligations in order to consummate this merger.” Joint Stip. of Facts and Evidence ¶ 1; *see id.* ¶ 3 (for one year following merger closing, Joint Applicants will notify the Commission and the Attorney General’s Office “in a timely manner” regarding “any downgrading of AT&T Inc.’s debt by Moody’s or Standard & Poor’s”).
- b. The merger will have “no effect on the rates, terms and conditions of the services that the Joint Applicants’ subsidiaries currently provide in Kentucky.” *Id.* ¶ 2.

- c. “Joint Applicants will maintain state headquarters in Kentucky for their Kentucky operating subsidiaries and will continue to work with the Kentucky Public Service Commission and the Attorney General’s Office to assist them in fulfilling their important duties.” *Id.* ¶ 3.
- d. “Joint Applicants’ Kentucky operating subsidiaries will continue to comply with the lawful rules, regulations, and requirements of the Commission.” *Id.* ¶ 5.
- e. “The Joint Applicants’ Kentucky operating subsidiaries will . . . adhere to the Commission’s applicable service quality standards, including the posting of service performance results and filing of corrective action reports.” *Id.*
- f. “The Joint Applicants will continue BellSouth’s historic levels of charitable contributions and community activities Moreover, upon reasonable notice and opportunity to respond, the Joint Applicants will provide to the Kentucky Public Service Commission and the Attorney General’s Office data regarding economic development activities and civic and charitable activities.” *Id.* ¶ 6.
- g. “[T]he Joint Applicants’ Kentucky operating subsidiaries that are parties to collective bargaining agreements will continue to adhere to their collective bargaining agreements.” *Id.* ¶ 7.
- h. “After the merger closes, the existing interconnection agreements between [BST] and the CLECs will remain in effect.” *Id.* ¶ 8.
- i. Because the merger will allow the combined company to “be better able to respond expeditiously and effectively to the evolving needs of government customers,” the Joint Applicants “will contact the Kentucky Department of Homeland Security to

familiarize it with the combined company's enhanced capabilities as a result of this merger." *Id.* ¶ 9.

STATUTORY PROVISIONS

4. KRS § 278.020(5) provides that no person may acquire or transfer control or ownership of a utility under the jurisdiction of the Commission without prior approval by the Commission, which approval shall not be withheld if the Commission determines that the acquirer has the financial, technical, and managerial abilities to provide reasonable service. Under KRS § 278.020(6), the Commission must also determine that the acquisition is made in accordance with the law and for a proper purpose and is consistent with the public interest.

5. The Commission has exempted acquisitions of "[interexchange carriers], long-distance resellers, and operator service providers," as well as "CLECs" and "wireless carriers," from these approval requirements.¹ This exemption does not apply, however, to an ILEC.² Accordingly, this Commission's approval is required only as to the indirect transfer of control of BST, which operates as an ILEC in parts of Kentucky.

DISCUSSION

6. The merger will not affect the financial, technical, and managerial ability of BST to provide reasonable service in Kentucky. Put differently, the record shows that AT&T, as the indirect parent of BST, will meet the statutory requirement of providing reasonable service in Kentucky.

¹ Order at 6-7, *Exemptions for Interexchange Carriers, Long-Distance Resellers, Operator Service Providers and Customer-Owned, Coin-Operated Telephones*, Admin. Case No. 359 (Ky. PSC June 21, 1996) ("First Exemption Order"); Order at 4, *Exemptions for Providers of Local Exchange Service Other Than Incumbent Local Exchange Carriers*, Admin. Case No. 370 (Ky. PSC Jan. 8, 1998).

² See First Exemption Order at 8 (stating that "[t]he Commission does not contemplate extending any of the exemptions provided herein to services provided by incumbent local exchange carriers").

7. The transaction will not affect BST's financial ability to provide service because neither that subsidiary nor any other will be required to guarantee any debt, pledge any assets, or grant any liens as part of the merger. *See* Joint Stip. of Facts and Evidence ¶ 1; Order at 4, *Petition by ALLTEL Corp. To Acquire the Kentucky Assets of Verizon South, Inc.*, Case No. 2001-00399 (Ky. PSC Feb. 13, 2002) ("One of the primary reasons that ALLTEL will have the financial ability to provide reasonable service is that it is acquiring a financially sound ongoing business without issuing debt."). Moreover, both BellSouth and AT&T are financially sound entities, and there is nothing in this record to suggest that they will not remain so.

8. BST will also continue to have the managerial and technical expertise to provide reasonable service to consumers. After the merger, BST will continue to provide service in Kentucky just as it does today. *See* Joint Stip. of Facts and Evidence ¶ 5. The record shows that BST regularly meets the retail service objectives set by this Commission and has consistently satisfied most of those objectives since 1997. No party to this proceeding has produced evidence indicating that BST provides anything other than reasonable service in Kentucky today, and, because this is a holding-company transaction, that level of service should continue after the transaction is completed.

9. The record also shows that the merger will promote the public interest and serve proper purposes. Unification of ownership and managerial control of Cingular Wireless will hasten the availability of new services. The merger will speed deployment of facilities-based competitive video services in Kentucky, which is likely to be a significant benefit given the evidence that cable rates have risen much more quickly than inflation in recent years. The merger will also create a stronger, more efficient U.S.-owned and -controlled supplier of critical communications capabilities to the government and will enhance the ability of the combined

company to respond quickly and effectively to natural disasters. Additionally, the vertical integration of complementary AT&T and BellSouth networks will, as the FCC recognized in approving the analogous SBC/AT&T merger, provide significant public interest benefits to all categories of customers. *See SBC/AT&T Merger Order*³ ¶ 191.

10. Another significant benefit of the merger is the increased research and development that will be made possible by the greater scale of the combined company. Although increased research and development will benefit all classes of consumers, the benefits to rural customers are particularly noteworthy. The merger will allow AT&T and BellSouth to consolidate their efforts to expand BellSouth's already-extensive broadband deployment in Kentucky even further into rural areas, particularly through the use of wireless broadband technology.

11. Although NuVox and Xspedius take issue with a few of these benefits, the Commission does not find that they have demonstrated that the merger will not bring significant public interest benefits to consumers in Kentucky. Indeed, these intervenors do not even contest the existence of some of these benefits in their testimony.

12. The Commission rejects the merger conditions proposed by NuVox/Xspedius and the CWA.

13. The record does not establish any public interest harm that warrants a remedy through conditions. NuVox and Xspedius do not argue in their testimony that the merger will harm mass-market, including residential, consumers. Although they do claim that the merger will increase concentration in the business market, they have conceded that their witness's

³ Memorandum Opinion and Order, *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, FCC 05-183, 20 FCC Rcd 18290 (rel. Nov. 17, 2005) ("*SBC/AT&T Merger Order*").

analysis of that market contains a basic error. Accordingly, the Commission gives that testimony no weight on this issue. The Commission further notes that the FCC has concluded business customers are “sophisticated” consumers of telecommunication services and that they are “aware of the multitude of choices available to them” in finding that the analogous SBC/AT&T merger would not cause any harm to business customers. *SBC/AT&T Merger Order* ¶ 75. Based on the record developed here, that conclusion applies in this case as well.

14. Additionally, to the extent that they are even within this Commission’s jurisdiction, the conditions proposed by NuVox and Xspedius involve issues that are independent of this merger and can and should be addressed, if necessary and appropriate, in other dockets. This Commission, for instance, has considered TELRIC pricing for UNEs, performance measurements, and EELs audits in other dockets. This is not the correct forum for revisiting these issues. In this regard, we agree with the North Carolina Utilities Commission, which, in approving this same transaction without conditions, recently stated that CLECs do “not lack for options” if they are aggrieved by these extraneous issues, but that such issues are not relevant to this merger proceeding.⁴

15. The Commission also does not agree that the conditions recommended by the CWA are necessary or appropriate. Again, the record does not demonstrate that the merger will cause any public interest harm that these conditions would remedy. Thus, although the CWA is understandably concerned about lost jobs, the Joint Applicants have demonstrated that they lose nearly 1,800 employees every month through normal attrition and thus that they reasonably anticipate that any headcount reductions in Kentucky as a result of the merger can be

⁴ Order Approving Transfer of Control at 6, *Application of AT&T, Inc. and BellSouth Corp. for Indirect Change of Control*, Docket Nos. P-55, Sub 1630, P-140, Sub 89 (N.C. Utils. Comm’n May 18, 2006).

accomplished largely through attrition. Moreover, existing protections in collective bargaining agreements will not be affected by the merger.

16. In addition, the CWA's proposed conditions are either irrelevant to the merger or are likely to be counterproductive. The CWA suggests that the Joint Applicants commit to maintain the highest standards of service quality, but it has not demonstrated that this Commission's existing service quality requirements, which will not be affected by the merger, are inadequate. The CWA also asks that the Joint Applicants be required to upgrade every central office in Kentucky to support DSL, but BST has already accomplished this. *See* Joint Stip. of Facts and Evidence ¶ 4.

17. Finally, the CWA suggests that the Joint Applicants retain existing employment levels in Kentucky for three years after the merger's closing and not close any technical operations, call centers, or other facilities in Kentucky for that same three-year period. The Commission concludes that this condition not only is unnecessary for all the reasons discussed above, but also is contrary to the long-term interests of consumers and workers in Kentucky. The best way for the Joint Applicants to provide services that customers want, and thus be able to offer more and better jobs, is to have the flexibility to compete efficiently and on a level playing field with their competitors. We thus reject conditions such as these that would hobble the efficiency of the Joint Applicants and would lead them to lose customers and, ultimately, be forced to reduce jobs.

CONCLUSION

After careful consideration and deliberation, the Commission has determined that this indirect transfer of control meets the standards set forth in KRS § 278.020. The Joint Applicants have provided sufficient evidence to support their assertion that BST, as an indirect subsidiary of AT&T, will have the financial, technical, and managerial ability to provide reasonable service to

Kentucky consumers. The Commission further finds that the proposed transaction will be made in accordance with the law, is for a proper purpose, does not violate any statutory prohibition, and is consistent with the public interest.

IT IS THEREFORE ORDERED that:

1. The Joint Application for Approval of Indirect Transfer of Control is approved.