

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

JOINT APPLICATION FOR APPROVAL )  
OF THE INDIRECT TRANSFER OF )  
CONTROL RELATING TO THE )  
MERGER OF AT&T INC. AND )  
BELLSOUTH CORPORATION )

Case No. 2006-00136

**PROTECTIVE AGREEMENT**

AT&T Inc., BellSouth Corporation, and BellSouth Telecommunications, Inc. and **INSERT NAME**, through their respective attorneys, hereby stipulate and agree to the terms and conditions of this Protective Agreement (“Agreement”) in order to expedite the flow of discovery material, recognize that some discovery material is confidential, ensure that confidential material is protected from disclosure, and facilitate the prompt resolution of disputes over confidentiality in this Proceeding. This Proceeding shall be defined as, and limited to, Kentucky Public Service Commission (“PSC”) Case No. 2006-00136.

1. Designation of Information as “Confidential” and “Highly Confidential.” Any party to this Agreement may designate as “Confidential” or “Highly Confidential” any document, material or other information that is produced or disclosed to the other party in response to discovery in this proceeding. “Confidential” information includes, but is not limited to, any proprietary business document, material or other information that is not made available to the public in the normal course of business. “Highly Confidential” information includes, but is not limited to, competitively sensitive documents, materials or other information disclosing trade secrets, presently unreleased products that have not been publicly disclosed or offered for sale, present and future business plans, present and future financial information or plans, materials that fall within an exemption to disclosure contained in the

Freedom of Information Act (“FOIA”), 5 U.S.C. § 552(b)(1)-(9), materials otherwise entitled to protection from disclosure under State or Federal law, and materials that are otherwise subject to existing non-disclosure obligations. A party shall not designate as “Confidential” or “Highly Confidential” any information that is publicly available at the time of production.

Any party designating any document, material or other information as “Confidential” or “Highly Confidential” shall so indicate by clearly marking each page, or portion thereof, as “CONFIDENTIAL-Subject to a Protective Agreement in Case No. 2006-00136 before the Kentucky Public Service Commission”, “HIGHLY CONFIDENTIAL-Subject to a Protective Agreement in Case No. 2006-00136 Before the Kentucky Public Service Commission” or such other markings that are reasonably calculated to alert custodians of the material to its confidential and proprietary nature and to its designation as “Confidential” or “Highly Confidential” information.

2. Persons Having Access to “Confidential” Information. Unless prior written consent of the producing party is obtained, “Confidential” information made available pursuant to this Agreement shall only be reviewed by the following persons who have executed a Certificate of Authorized Reviewing Representative, and only to the extent necessary to assist in prosecuting this Proceeding:

(a) Outside counsel of record representing **INSERT NAME** in this Proceeding, as well as any legal support personnel (e.g., paralegals and clerical employees) employed by such attorneys.

(b) In-house counsel of record representing **INSERT NAME** in this Proceeding, any legal support personnel (e.g., paralegals and clerical employees) employed by such attorneys.

(c) Other employees, officers, or directors of **INSERT NAME**, or consultants or experts retained by that party, who have not been and who are not currently involved in the marketing of communications services or competitive decision-making regarding such services. Individuals who become reviewing representatives under this paragraph may not engage or consult in any marketing activities proscribed in the previous sentence for three (3) years after reviewing the “Confidential” information under this Agreement.

(d) The PSC or its staff.

(e) Court reporters, stenographers, or persons operating audio or video recording equipment at hearings, provided that any “Confidential” or “Highly Confidential” information shall be so marked and shall be filed under seal.

(f) Any person designated by the PSC in the interest of justice, upon such terms as the PSC may deem proper.

(g) Persons designated as witnesses, to the extent reasonably necessary in preparing to testify or for the purpose of examination in this Proceeding.

3. Persons Having Access to “Highly Confidential” Information.

Unless prior written consent of the producing party is obtained, “Highly Confidential” information made available pursuant to this Agreement shall only be reviewed by the following persons who have executed a Certificate of Authorized Reviewing Representative, and only to the extent necessary to assist in prosecuting this Proceeding:

(a) The PSC or its Staff.

(b) **INSERT NAME**’s outside counsel of record.

(c) Independent third party consultants or experts retained by a party, who have not been and who are not currently involved in the marketing of communications services or

competitive decision-making regarding such services. Individuals who become reviewing representatives under this paragraph may not engage or consult in any marketing activities, or competitive decision-making regarding such services, proscribed in the previous sentence for three (3) years after reviewing the “Confidential” information under this Agreement.

4. Use of “Confidential” and “Highly Confidential” Information Generally.

(a) A copy of materials designated as “Confidential” under this Agreement shall be provided to authorized representatives upon execution of this Agreement and shall be treated by said representatives in accordance with this Agreement.

(b) Materials designated as “Highly Confidential” under this Agreement shall be made available for review only at the office of the producing party’s counsel of record in Frankfort, Kentucky or other location in Kentucky designated by the producing party.

(c) No “Confidential” or “Highly Confidential” information may be disclosed to any person who is not authorized under Paragraphs 2 and 3 above to view such information.

(d) Each individual who is provided access to “Confidential” and/or “Highly Confidential” information pursuant to Paragraphs 2 and 3 above must first be provided with a copy of this Agreement and sign a notarized statement affirmatively acknowledging that the individual has reviewed this Agreement, and understands and agrees to be bound by the limitations it imposes on the signing party. The form of the notarized statement to be used is Attachment A to this Agreement. Copies of these notarized statements shall be provided to counsel of record for the producing party before the individual will be given access to “Confidential” or “Highly Confidential” information.

(e) Before any individual identified in Paragraph 3(c) above will be given access to “Highly Confidential” information, the receiving party shall give notice to counsel of record for the producing party identifying the person(s), his or her address, his or her present employer, and providing a curriculum vitae. Such notice shall be accompanied by a written agreement in the form of Attachment A acknowledging that the individual has reviewed this Agreement and understands and agrees to be bound by the limitations contained herein. The producing party shall have three (3) business days to object in writing to the proposed disclosure to the person in question. If the parties cannot resolve the objection, the producing party must file a motion with the PSC seeking a protective order to prevent disclosure to the person in question.

(f) The number of individuals designated by **INSERT NAME** to review “Confidential” information may not exceed twelve (12) individuals (excluding paralegals and clerical employees) unless the producing party consents to additional reviewing representatives.

(g) No copies may be made of any materials marked as “Highly Confidential,” except that persons designated in Paragraph 3 above may take limited notes. Any note(s) memorializing or recording of “Confidential” and/or “Highly Confidential” information shall, immediately upon creation, become subject to all provisions of this Agreement.

(h) “Confidential” and/or “Highly Confidential” information produced under this Agreement shall only be used for purposes of this Proceeding and any related petitions for review or appeal proceedings, and not for any other purpose whatsoever.

(i) Affidavits, briefs, comments, deposition transcripts and exhibits, interrogatory answers, motions, pleadings, and responses to requests for admission that quote, summarize, or otherwise contain “Confidential” or “Highly Confidential” information entitled to protection under this Agreement shall be prepared in such a manner that the “Confidential” and/or “Highly

Confidential” information is not disclosed and is presented separately from that information not entitled to protection.

(j) Within thirty (30) days of termination of this Proceeding, including all appeals and petitions for review, all “Confidential” information, or any notes or other work product, derived in whole or in part from the “Confidential” and/or “Highly Confidential” information shall be destroyed, and counsel of record for the party who has received access to “Confidential” and/or “Highly Confidential” information under this Agreement shall notify counsel for the producing party, in writing, that this has been completed.

(k) If **INSERT NAME** intends to introduce “Confidential” or “Highly Confidential” materials into evidence on the record as discussed in Paragraph 6 below, that party shall give seven (7) days advance notice in writing to the counsel of record who designated such information as confidential so that such counsel can make the requested “Confidential” or “Highly Confidential” information available for inclusion as evidence on the record under a Protective Order issued by the PSC.

5. Declassification. Nothing in this Agreement shall constitute a waiver by the receiving party of its right to seek a ruling by the PSC that information designated as “Confidential” or “Highly Confidential” is not entitled to such status and protection. However, the producing party shall be given notice of the receiving party’s intent to contest confidential treatment and an opportunity to respond. Should the PSC rule that information designated as “Confidential” or “Highly Confidential” is not entitled to such status and protection, the producing party shall have the opportunity to appeal that ruling to a court of competent jurisdiction. In that event, the information at issue shall remain “Confidential” or “Highly Confidential” and not be disclosed until all appeals are exhausted.

6. Use of Confidential Information and Highly Confidential Information Offered as Evidence in the Proceeding. Subject to the PSC's rules and applicable state statutes, "Confidential" and/or "Highly Confidential" information may be offered into evidence or into the record in this Proceeding, provided that the proponent provides reasonable advance written notice to the producing party. Any party may then file a motion with the PSC if necessary for an order that the "Confidential" and/or "Highly Confidential" information offered into evidence be received in camera or under other conditions to prevent disclosure.

7. Filing of "Confidential" and/or "Highly Confidential" Information. "Confidential" and/or "Highly Confidential" information need not be filed with the PSC, except when required under the PSC's Rules of Practice and Procedure. If filed, such information shall be filed under seal and shall remain sealed while at the PSC, so long as it remains "Confidential" and/or "Highly Confidential."

8. Client Consultation. Nothing in this Agreement shall prevent or otherwise restrict counsel for any party to this Agreement from rendering advice to their clients in this Proceeding or, in the course thereof, from relying generally on such counsel's examination of "Confidential" and/or "Highly Confidential" information. However, in rendering such advice and otherwise communicating with their client, counsel shall not make specific disclosures or references to any "Confidential" and/or "Highly Confidential" information, except as authorized under the procedures set forth in Paragraphs 2 through 4 above.

9. Non-Termination. The provisions of this Agreement shall continue in effect notwithstanding the conclusion of this Proceeding.

10. Objections to Discovery. Nothing in this Agreement prevents any party from objecting to discovery that it believes to be improper or otherwise constitutes a

waiver of any party's right to object to the production of information. Moreover, this Agreement does not in any way obligate a producing party to produce documents, material, and information to any other party to this Proceeding.

11. Enforcement. Any party shall be entitled to seek enforcement or other appropriate relief pertaining to any breach or threatened breach of this Agreement before the PSC or any court of competent jurisdiction.

12. Responsibilities of the Parties. The parties agree and intend that this Agreement shall be broadly and liberally construed so as to protect confidential information from disclosure, while expediting the discovery of relevant information. The parties are responsible for employing reasonable measures, consistent with their intent and the terms of this Agreement, to prevent unauthorized access to, and disclosure or distribution of, "Confidential" or "Highly Confidential" information.

13. Counterparts. This Agreement may be executed by the parties in any number of separate counterparts and all of those counterparts, taken together, shall be deemed to constitute one and the same instrument binding on and inuring to the benefit of each party so executing this Agreement with the same effect as if all such parties had signed the same instrument at the same time and place.

Dated: \_\_\_\_\_, 2006.

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AT&T Inc.



STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

**CERTIFICATE OF AUTHORIZED REVIEWING REPRESENTATIVE**

BEFORE ME , the undersigned authority, duly Commissioned and qualified in and for the State and County aforesaid, personally came and appeared \_\_\_\_\_(insert name), who, being by me first duly sworn, deposed and said as follows:

**I certify my understanding that Confidential Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Agreement in Kentucky Public Service Commission Case No. 2006-00136, that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of “Confidential Information,” and “Highly Confidential Information” and any notes, memoranda, or any other form of information regarding or derived from Confidential Information shall not be disclosed to anyone other than in accordance with the Protective Agreement and shall be used only for the purposes of the proceedings in Case No. 2006-00136.**

Signature:

\_\_\_\_\_

Date of Execution: \_\_\_\_\_

(Type or Print below)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Requesting Party: \_\_\_\_\_

SWORN TO AND SUBSCRIBED BEFORE ME on this \_\_\_\_ day of \_\_\_\_\_,

2006.

\_\_\_\_\_  
(NOTARY PUBLIC)

(SEAL)

My Commission expires: \_\_\_\_\_

