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June 29, 2006

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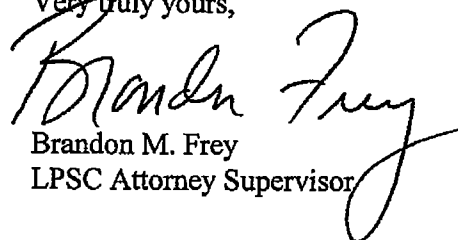
Re: Docket No. U-29427, AT&T, Inc. and BellSouth Corporation, ex parte.

Dear Ms. Lefebvre:

Please find attached hereto an original and two copies of Staff's Position Statement to be filed into the above captioned docket.

Please return me a date stamped copy.

Very truly yours,


Brandon M. Frey
LPSC Attorney Supervisor

cc: Official Service List
Attachments

**BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION**

**AT&T, INC. AND
BELLSOUTH CORPORATION,
EX PARTE**

DOCKET NO. U-29427

In re: Request for approval and/or letter of non-opposition to the indirect change in control of certain certificated entities resulting from the planned merger.

STAFF'S POSITION STATEMENT

MAY IT PLEASE THE COURT:

Now comes Staff, of the Louisiana Public Service Commission ("Commission" "Staff"), who respectfully advances this position statement relative to the proposed merger of AT&T, Inc. ("AT&T") and BellSouth Corporation ("BellSouth Corp") (collectively "Applicants"). For the reasons stated in this position statement, and subject to the additional recommendations discussed herein, Staff is of the opinion that the Commission should, consistent with the requirements of the Commission's General Order dated March 18, 1994 ("General Order"), issue its non-opposition to the transaction as proposed.

BACKGROUND

On March 31, 2006, Applicants filed a joint request seeking the Commission's non-opposition to the proposed merger of AT&T and BellSouth Corp. As further outlined in the request, the merger is being described as a "holding company transaction",

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and thus only affects the corporate parents, i.e. AT&T and BellSouth Corp., of the following companies certificated to provide service in Louisiana:

1. AT&T Communications of the South Central States, LLC, which is authorized to provide local exchange and interexchange services pursuant to certificate number TSP00040-A;
2. TC Systems, Inc., which is authorized to provide local exchange and interexchange services pursuant to certificate number TSP00540;
3. SBC Long Distance, LLC, d/b/a AT&T Long Distance, which is authorized to provide resold interexchange services with operator services and resold and facilities based local exchange services pursuant to certificate numbers TSP00156 and TSP00156-C; and
4. SNET America, d/b/a AT&T Long Distance East, which is authorized to provide resold interexchange services with operator services and resold and facilities based local exchange services pursuant to certificate number TSP00527.

Additionally, BellSouth Corp. is the holding company parent of the following entities:

1. BellSouth Telecommunications, Inc. ("BellSouth"), which provides local exchange and exchange access services as an incumbent local exchange carrier ("ILEC"); and
2. BellSouth Long Distance, Inc. ("BSLD"), which is authorized to provide intrastate interexchange telecommunications services as well as competitive local exchange company services pursuant to certificate number TSP00208-A.

As a result of the merger being proposed at the holding level only, it must be emphasized that none of the above operating entities certificated to provide service in Louisiana will be affected as a result of this merger. Additionally, the certificated entities will continue to operate pursuant to their certificates of authority described above.

The joint request was published in the Commission's Official Bulletin dated April 7, 2006, for a period of 15 days. Timely interventions were received from the Small Company Committee of the Louisiana Telecommunication Association ("SCC"), Cox

Louisiana Telecom (“Cox”), the Louisiana Cable and Telecommunications Association (“LCTA”) on behalf of its member companies, US LEC Communications, Inc. (“US LEC”), the Competitive Carriers of the South, Inc. (“CompSouth”) on behalf of its member companies, NuVox Communications, Inc. (“NuVox”), Xspedius Communications, LLC (“Xspedius”), Image Access, Inc. d/b/a NewPhone (“NewPhone”), and DEICA Communications, Inc. d/b/a Covad Communications Company (“Covad”). In addition to the timely interventions, the Commission received requests to intervene out of time from the Communications Workers of America (“CWA”) and DeltaCom, Inc. (“DeltaCom”). Both motions for leave to intervene out of time were subsequently granted. Covad subsequently has withdrawn its intervention. Prior to filing this position statement, on May 18, 2006, Staff issued a number of data requests to the applicants. In addition to reviewing responses to those requests, Staff has also reviewed the comments filed by the parties and the responsive comments filed by BellSouth, as summarized herein.

SUMMARY OF INTERVENOR COMMENTS

Pursuant to the procedural schedule adopted by the Hearing Examiner, comments were filed on behalf of DeltaCom, NuVox and Xspedius Communications, L.L.C. (collectively “CLEC Coalition”), and NewPhone. Additionally, the direct testimony of Research Economist Debbie Goldman was filed on behalf of the CWA. Staff has reviewed all of the comments and testimony and briefly summarizes them herein.

CLEC Coalition's Comments

The CLEC Coalition opposes the current merger for several reasons. First, it asserts that the merger will extend the harm of the four previous AT&T mergers.¹ The CLEC Coalition argues that the instant application is another attempt by AT&T to become the incumbent rather than a market competitor. Second, it argues that the Joint Applicants have made no suggestion that the merger will improve the typical customer's service or that "Project Lightspeed" will be deployed in Louisiana. Finally, the CLEC Coalition argues that the merger will create a resource imbalance between entrants and incumbents, thereby creating less pressure for reasonable wholesale arrangements, including penalties, establishment and enforcement of access rights, and monitoring of offerings among competitors.

The CLEC Coalition proposes the following conditions should the Commission approve the merger:

1. Implementation of price caps to ensure that UNE rates remain TELRIC-compliant;
2. Stronger § 271 performance plan;
3. Elimination of intrusive audits associated with EEL-availability rules that have long been eliminated;
4. Creation of a "Fresh-Look" Window to Customers of BellSouth and AT&T;
5. Agreement by the Joint Applicants to allow the Commission to enforce the terms of any additional conditions adopted by the FCC because State Commissions are better positioned for dispute resolution; and
6. Creation of a Disaster Recovery Plan which should include a prohibition against preferential service restoration; priority of service restoration over new installations; observance of contractual agreements and regulations to the fullest extent possible during the *force majeure* period; weekly updates to the

¹ SBC acquisitions of Pacific Telesis, Southern New England Telephone, Ameritech and AT&T.

Commission and to CLECs regarding progress; effective means of communication regarding restoration; fresh look to customers that contracted during the *force majeure* period; prohibition of winback activity during the *force majeure* period; and prohibition from signing term agreements with non-customers during the *force majeure* period.

NewPhone's Comments

NewPhone opposes the merger on the grounds that the Regional Bell Operating Companies ("RBOCs") have chosen to merge rather than compete, resulting in loss of potential competition, loss of ability to perform regulatory "benchmarking", and increased opportunity for discrimination against competitors, leading to more discrimination at the expense of competitors and Louisiana consumers.

NewPhone suggests that the Commission must be vigilant in policing BellSouth's unreasonable and discriminatory resale practices should the merger be approved. Accordingly, NewPhone proposes that the Commission prevent resale discrimination by conditioning its approval through a requirement that the Joint Applicants either offer the value of the promotional incentive or apply the wholesale avoided cost service discount to the effective retail rate (tariffed rate minus face value of the promotional incentive.)

In addition, NewPhone proposes a condition whereby the Joint Applicants must make available for resale the telecommunications services contained within the mixed bundle promotions consisting of both telecommunications service and information service, applying the wholesale avoided cost discount to the "effective retail rate" of the telecommunications services contained within the bundle at a prorated value.

CWA's Comments in the Form of the Testimony of Debbie Goldman

On behalf of CWA, Staff accepted the direct testimony of Debbie Goldman. Ms. Goldman, a Research Economist for CWA, testified regarding the potential harm from

the AT&T and BellSouth merger and provided conditions upon which the Commission should rely to prevent and/or mitigate the harm.

Ms. Goldman testified that the merger would result in a loss of jobs in Louisiana and therefore have a resulting negative impact on service quality. In addition to job loss, Ms. Goldman was concerned that work would be moved out of Louisiana as a result of the closing of technical operations, call centers, and other facilities in Louisiana, again resulting in a decline in quality service.

In support of her testimony regarding the job loss and closures of facilities, Ms. Goldman cited the SBC/AT&T merger, which resulted in the announcement of the closure of consumer call centers in Pennsylvania, Arizona, and Massachusetts, and a twenty-five percent reduction in positions at the TRS relay center for the hard of hearing in Pennsylvania. According to Ms. Goldman, an investigation by the Pennsylvania Public Utility Commission resulted in AT&T's decision to forego the reduction in force and call center closing.

Ms. Goldman testified on behalf of CWA that the Commission should place four conditions on the applicants in order to guard against the possibility of job losses, facility closures, and declining service quality. Specifically, the Commission should condition the merger approval on the Joint Applicants' commitment to: maintain the highest standards of service quality; upgrade every central office in the state for DSL capability within two years; maintain current employment levels in the state of Louisiana for at least three years; and maintain technical operations, call centers, and other facilities in the state of Louisiana for three years.

AT&T and BellSouth Corp.'s Reply Comments

In accordance with the procedural schedule, on June 15, 2006, Applicants filed comments in response to the Intervenor comments. As contained therein, Applicants reiterate that the Commission should issue its non-opposition to the transaction as the transaction satisfies each of the "18 factors" as contained in the General Order. Additionally, the Applicants reemphasize that this transaction will occur at the holding level between AT&T and the parent company of the BellSouth operating companies in Louisiana, and thus there will be no transfer of assets or certificates of any of the operating companies. With respect to the Intervenor comments, Applicants remind the Commission that many of its responses to the "18 factors" have remained undisputed. Conversely, it is argued that Intervenors have simply made general statements that the merger will harm service quality and employment in the state.

With respect to the public interest benefits of this merger, Applicants re-assert their original position that this merger will enable the combined company to become an effective competitor in the telecommunications market through the development and deployment of more efficient services, unification of Cingular's ownership and control, increased efficiency in IP networks, more vibrant video competition and enhanced disaster recovery capabilities. Applicants further argue that none of the above public interest benefits have been discredited by the Intervenors, and provide responses to each of the Intervenors concerns with respect to the expected benefits. Additionally, Applicants argue that in addition to providing public interest benefits, this merger will not result in any public interest harms, as it is being consummated solely between holding companies.

Applicants suggest that there is no basis for concluding that this merger will reduce competition in any market segment in Louisiana, as the existing entities in Louisiana provide complementary, rather than competing services. Applicants point out that the merger will not affect competition in Louisiana because AT&T provides little service in the state, and thus the size and competitive advantage of BellSouth will not materially change.

In addressing the comments of the CWA, the Applicants point out that while this merger will likely result in a reduction of 10,000 jobs, that reduction is across all three companies involved in the merger, (AT&T, BellSouth and Cingular), and amounts to approximately 3% of the combined companies' nationwide employee workforce. Additionally, the Applicants point out that through normal attrition, the companies have lost approximately 21,000 employees per year. Thus, the amount of attrition expected to be realized from this merger is actually below the normal annual attrition the companies previously experienced. Further, the Applicants reemphasize AT&T's commitment to maintain a significant local presence in each of BellSouth's ILEC states, including Louisiana.

Turning next to the comments of NewPhone, the Applicants argue that what NewPhone has filed in this docket is in no way different from the comments it has filed with the FCC. Further, the Applicants argue that the comments with respect to BellSouth's resale and marketing policies are not properly before the Commission in this merger proceeding. Finally, the Applicants provide a detailed explanation on why they believe NewPhone's contentions are without merit. Similarly when addressing the comments of Xspedius contained in the CLEC Coalition filing, the Applicants argue that

the concerns are outside the scope of this merger proceeding and thus should be rejected, and further adds that the allegations are without foundation.

Finally, the Applicants dedicate the remainder of their comments to re-urge that this merger be approved without conditions, as no party has specifically identified any harm resulting from this merger necessitating conditions. The Applicants suggest that imposing conditions on the merger would subject the company to regulatory costs and disadvantages to which no other provider is subject.

JURISDICTION AND APPLICABLE LAW

Article IV § 21 of the Louisiana Constitution of 1974, provides the Louisiana Public Service Commission with the authority to regulate,

all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce reasonable rules, regulations, and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties as provided by law.

Pursuant to the above authority, the Commission adopted the General Order dated March 18, 1994, which requires the Commission's non-opposition being issued prior to consummation of any "Sales, Leases, Mergers Consolidations, Stock transfers, and All Other Changes of Ownership or control of Public Utilities Subject to Commission Jurisdiction." Additionally, this Commission has adopted the *Regulations for Competition in the Local Telecommunications Market*, as most recently modified by the General Order dated October 31, 2005, which governs a number of aspects of telecommunications competition, including the relationship between BellSouth and its CLEC customers, Order No. U-24802-A, which established retail service quality objectives that apply to BellSouth, and Order No. U-22252, Subdocket C, which

established service quality measurements that apply to BellSouth's Section § 251² mandated offerings.

STAFF'S POSITION

Staff, by way of the Commission's Minute Entry dated April 25, 1989, is designated the authority to review and process requests for letters of non-opposition for compliance with the March 18, 1994 General Order, provided the requests remain "uncontested."³ Consistent with this delegation of authority, Staff has literally reviewed hundreds of requests for letters of non-opposition, the majority of which involve telecommunications carriers. In many respects, the request filed herein by AT&T and BellSouth, Corp. is no different than those customarily reviewed by Staff. Indeed, a great number of the transactions involve mergers or acquisitions at the holding company level that result in no changes of the certificated entities. However, there is one fundamental difference that cannot be overlooked: BellSouth is the largest ILEC in Louisiana, is a RBOC, and thus is subjected to a number of additional LPSC regulations commensurate with that status. Accordingly, this merger, regardless of the terms in which it is couched, requires close scrutiny from Staff and the Commission.

Application of the March 18, 1994 General Order

As set forth in the General Order, one of the stated policies is that "the Commission must be able to ensure safe, efficient and reliable services at reasonable rates, and that ratepayers will not be harmed as a result of the change in ownership or

² 47 USC § 251

³ While the minute entry was issued prior to the effective date of the 3/18/94 General Order, its application to that Order has been consistently upheld.

control.” The Commission Staff typically performs this review by taking in account the responses by applicants to the “18 Factors” set forth in section 2 of the General Order. Paramount of concern to the Commission and Staff is that proposed transactions are in the “public interest.” In reviewing proposed mergers subjected to the requirements of the General Order, the Commission determines whether a transaction should receive its non-opposition based on an analysis of the transaction, particularly emphasizing if the transaction satisfies each of the “18 Factors” as contained in the General Order.

1. Whether the transfer is in the public interest.

As set forth in the filing, the Applicants have alleged that as a result of this merger, the public will benefit through the provision of more streamlined operations for Cingular, the development and deployment of new technologies, the opportunity for increased video competition, efficiencies of operations that will provide consumer benefits and the existence of a comprehensive national security and disaster recover plan. Further, these positive benefits will flow to consumers, while the merger itself will be essentially seamless to the end user customers of the certificated entities.⁴ The Applicants have also suggested that the Intervenors have failed to show these benefits are not in the public interest, but have simply suggested that they are not sufficient to make a public interest determination, suggesting instead that additional public interest conditions or criteria be added in support of the public interest consideration.

In Staff’s view, there are clear benefits that will be received by end-users of the subsidiary companies in Louisiana as a result of this merger, yet at the same time, the end

⁴ Staff would note that Applicants, in response to Staff’s Data Request #5, have stated they anticipate the “brand name” of the certificated companies may change following consummation of the merger. Applicants have committed to follow Commission procedure prior to implementing any such change.

users and Intervenors will not experience any negative public interest concerns. Thus, Staff is of the position that this transaction is in the public interest.

2. Whether the purchaser is ready, willing and able to continue providing safe, reliable and adequate service to the utility's ratepayers.

There does not appear to be any dispute that AT&T and BellSouth Corp.'s operating companies in Louisiana will continue to provide safe, reliable and adequate service to its ratepayers, as none of these companies' operations will be affected by the holding company transaction. Additionally, due to the nature of this merger, there is no purchaser of the existing certificated companies. Accordingly, Staff believes the Applicants have satisfied this condition.

3. Whether the transfer will maintain or improve the financial condition of the resulting public utility or common carrier ratepayers.

The financial condition of the holding company will be enhanced as a result of this merger, which will in turn strengthen the financial condition of the certificated entities operating in Louisiana. Accordingly, Staff believes the Applicants have satisfied this condition.

4. Whether the proposed transfer will maintain or improve the quality of service to public utility or common carrier ratepayers.

Applicants have argued that customer service will not be affected by this merger, and further allege that the merger will improve the variety and quality of service through increased safety and reliability and research and development. Nevertheless, Staff has closely scrutinized the arguments on this issue as it is of particular concern. Indeed, it is impossible to determine at this time if the merger of these two parent companies will have any negative effect on customer service. Applicants have pointed out that BellSouth

currently operates pursuant to a retail service quality plan adopted in Order No. U-24802-A; thus there is already a disincentive to poor retail service quality. Staff agrees with this argument in principle. Indeed, Order No. U-24802-A was issued to specifically ensure BellSouth's retail service quality would not suffer as a result of the extension of its price cap plan. However, Staff has learned through responses to its data requests that AT&T, operating as an RBOC in 13 states, is subjected to state mandated retail service quality requirements that in many instances are much more thorough and include more measurements than the plan currently in existence in Louisiana. Accordingly, Staff would recommend that the Commission open a docket to modify the existing retail service quality plan adopted by Order No. U-24802-A to the extent necessary to include any additional measures that will help ensure that service quality will be maintained or improved as a result of this merger.

Additionally, as BellSouth is mandated by the Telecommunications Act to provide non-discriminatory access to its network to CLECs, the Commission must also ensure that no negative effects befall those customers. Currently, BellSouth is required to comply with the Wholesale Service Quality Measures ("SQM") adopted by the Commission in Order No. U-22252, Subdocket C. In many respects this SQM plan is one of the most comprehensive of its kind, and will remain in place to govern BellSouth's Section 251 obligations. Nonetheless, Intervenors, and in particular those members of the CLEC coalition, have provided specific examples of how the SQM plan may be improved. Rather than discredit these allegations as Applicants have done in their comments, Staff would recommend the Commission, through its existing SQM review

docket, consider each of the concerns raised by the CLEC Coalition. Subject to the above, Staff believes the Applicants have satisfied this condition.

5. Whether the transfer will provide net benefits to ratepayers in both the short term and the long term and provide a rate making method that will ensure, to the fullest extent possible, that ratepayers will receive the forecasted short and long term benefit.

In its discussion with respect to factor one, dealing with the public interest, the Applicants have set forth the benefits that Louisiana consumers will receive as a result of this merger. Additionally, the Applicants have suggested that substantial long-term benefits will result from this merger, particularly with respect to the creation of new services, etc. Accordingly, Staff believes the Applicants have satisfied this condition.

6. Whether the transfer will adversely affect competition.

Not surprisingly, there is much disagreement between the Applicants and the Intervenor with respect to this factor. Staff, however, must emphasize that the purpose of the Commission's General Order is to address what impact the merger will have on competition in Louisiana. A review of the application, data request responses and comments of Applicant have shown to Staff's satisfaction that, while BellSouth has a major presence in the Louisiana telecommunications market that cannot be understated, AT&T's presence in the state is rather minimal. Currently, the companies provide little overlapping services, thus the specific impact on competitive offerings in Louisiana will likely be minimal.

Intervenor's concerns regarding the effects this merger may have on competition on a national level are not properly before this Commission and are more properly addressed by the FCC and the United States Department of Justice, both of which must

also approve this merger. Indeed, many of the same concerns with respect to competition in filings raised by Intervneors herein are also being considered before the Federal entities reviewing this merger. Nonetheless, as Staff shares some of these same concerns of competition on a national level, Staff would recommend the Commission direct Staff to file comments in the FCC proceeding, urging the FCC to conduct a thorough analysis of all of the stakeholders' concerns prior to its approval of the merger. Along with this recommendation, Staff would request that the FCC put into place all conditions it deems necessary to uphold the rights of stakeholders and consumers of all services of the merged entities, including but not limited to wireline, wireless, Internet, voice-over-Internet protocol (VOIP), long distance, and video, during and subsequent to the merger, if approved. The FCC has imposed conditions on prior mergers of a smaller scale when it approved the transfer of control of AT&T to SBC,⁵ and MCI to Verizon,⁶ in 2005. Staff is of the opinion that more stringent conditions than those previously imposed may be necessary, in light of the larger scale of the present merger.

At the direction of the Commission, Staff would further request that the FCC Order explicitly preserve the jurisdiction of the State authorities, including the Louisiana Public Service Commission, to uphold and enforce those conditions the FCC places on the merger. Subject to the above protection, Staff believes the Applicants have satisfied these conditions.

⁵ *SBC Communications, Inc. and AT&T Corp. Application for Approval of Transfer and Control, WC Docket No. 05-65, Memorandum Opinion and Order, Nov 17, 2005 ("SBC/AT&T Merger Order"*

⁶ *In re: The Applications of MCI, Inc. Transferor, and Verizon Communications, Inc., Transferee: Application for Transfer of Control, WC Docket No. 05-75 ("Verizon/MCI Merger Order")*

7. *Whether the transfer will maintain or improve the quality of management of the resulting public utility or common carrier doing business in the state.*

The Applicants have argued that management will improve as a result of this merger, due to the significant efficiencies that will be created through this merger. Additionally, the merger will result in the combination of the expertise of employees of both parent companies and will improve the quality of Cingular's management. Accordingly, Staff believes the Applicants have satisfied this condition.

8. *Whether the transfer will be fair and reasonable to the affected public utility or common carrier employees.*

The Applicants have gone into great detail to emphasize the manner in which employees of all affected companies will be treated. As has previously stated herein, the Applicants have replied to CWA's concerns by stating the number of positions that may be lost as a result of this merger are less than those that would otherwise be lost through normal attrition. Furthermore, the Applicants have provided a detailed plan outlining the opportunities that will be available to any employee whose position may be affected by the merger. Based on these safeguards in place, and the assurances given by the applicants throughout this filing, Staff believes this transfer will be fair and reasonable to the employees of the affected entities.

9. *Whether the transfer would be fair and reasonable to the majority of all affected public utility or common carrier shareholders.*

As set forth in the application, a majority of the shareholders must vote to approve the merger. Further, if the merger is approved, the stockholders of BellSouth Corp. will simply exchange their shares of stock for shares of AT&T Corp. Thus, Staff believes the transfer will be fair and reasonable to the majority of the affected shareholders.

10. Whether the transfer will be beneficial on an overall basis to State and local economies and to the communities in the area served by the public utility or common carrier.

11. Whether the transfer will preserve the jurisdiction of the Commission and the ability of the Commission to effectively regulate and audit the public utility's or common carrier's operations in the State.

The Applicants have repeated throughout the application, comments, and responses to data requests, that this merger is being consummated at the holding company level, and thus will not affect the operations of any of the certificated entities in Louisiana, thus the Commission's jurisdiction will not be affected. Additionally, the Applicants have emphasized that the merger will in no way affect the Commission's jurisdiction over the certificated entities. Staff agrees with the Applicants that this merger will have no bearing on this Commission's jurisdiction. Not surprisingly if it were determined this merger would in any way affect the Commission's jurisdiction, Staff would stringently oppose it. As this is not the case, and as the Commission has the authority at any time to take any action it needs to ensure the public interest is protected, Staff believes this merger will preserve the jurisdiction of the Commission over the affected companies.

12. Whether conditions are necessary to prevent adverse consequences which may result from the transfer.

18. Whether there are any conditions which should be attached to the proposed acquisitions.

Applicants have stated in their filing, and in the responsive comments filed herein, that no conditions should be placed on this merger, arguing that conditions would subject the company to regulatory costs and disadvantages to which no other provider is subject. Additionally, in the affidavit of Dr. Debra J. Aron filed in support of the Applicants, Dr.

Aron states, "As an initial matter, the predicate for conditions on a merger should be that the merger would create anticompetitive harm."⁷ This statement is misplaced, as no such predicate exists in the March 18, 1994 General Order with respect to factor 18. Simply put, it allows the Commission to determine whether any conditions should be attached to a proposed acquisition. Thus, the Commission has the authority to impose conditions on this merger, regardless of whether it believes the merger would create anticompetitive harm.

As has been summarized herein, Intervenors have suggested the Commission should only issue its non-opposition if it places a number of conditions on the merger. Staff is concerned with a number of the issues that have been raised by the Intervenors, and believe they certainly warrant further investigation. However, Staff does not agree the best course of action to address these concerns is through the imposition of conditions. To expand upon this position, Staff notes that in response to a number of Staff's data requests, particularly those seeking commitments from the Applicants, the Applicants have suggested that, "by law, until the merger closes, AT&T and BellSouth Corp. are required to operate independently at this time, and are subject to significant legal restrictions with regard to making post-merger plans."⁸ Staff has no reason to dispute this assertion, and would further add that individual assurances made prior to the merger would not be as beneficial as requirements ordered by the Commission post-merger. Alternatively, rather than impose a number of conditions on this merger, Staff would recommend the Commission address a number of the concerns voiced herein through dockets currently pending before the Commission and additional dockets that

⁷ See Aron Affidavit at ¶ 36.

⁸ See Applicants' Response to Staff's Data Request No. 5.

will be opened in the future. Specifically, Staff would suggest the Commission open dockets to address the following issues:

1. In the ongoing SQM review pending in Docket No. U-22252, Subdocket C, the Staff should seek comments on the addition of additional wholesale service quality measurements, with particular emphasis on modifying the *force majeure* provisions to ensure that BellSouth continues to provide parity service in such situations.
2. As mentioned previously with respect to factor 4, Staff should seek comments in pending Docket No. U-24802, Subdocket A regarding the imposition of additional service quality measurements.
3. The Commission should open a global rulemaking docket to address a number of concerns raised by the CLEC Intervenors, particularly with respect to the creation of a “fresh-look window”, and other *force majeure* related concerns. Staff anticipates any rules adopted by way of this docket would be contained in the *Local Competition Regulations*.
4. Assuming this merger is approved by all required agencies, both on the federal and state level, the Commission should open post-merger a docket to ensure that Louisiana customers, both retail and wholesale, are protected by receiving the benefit of any conditions or concessions available in other jurisdictions.⁹ By way of this docket, the Commission can ensure that retail and CLEC customers receive the most pro-competitive options, whether they are offered in the former SBC or BellSouth regions.

In addition to the above recommendations, Staff recommends the Commission include in its statement of non-opposition the standard condition it places on all letters of non-opposition: “that this statement of non-opposition of the Commission is done without prejudice to the authority of the Commission to make investigations and require any reasonably necessary change it may legally find to be in the public interest.”

⁹ Applicants have suggested in response to Staff’s Data Request #16 that they, “reserve the right to argue to the Louisiana PSC why the imposition of similar conditions in Louisiana would be inappropriate or anticompetitive.” Staff’s anticipated docket will provide Applicants an opportunity to make their arguments.

While the above recommendations address the majority of Intervenor's conditions, Staff would be remiss if it failed to discuss the remaining conditions proposed by the CLEC Coalition and the CWA, namely the establishment of UNE Price Caps, EEL Audits and requirements to maintain current employment levels and facilities for a three-year period. First, Staff agrees with Applicants that this docket is not the proper venue to address modifications to existing UNE prices. If in fact BellSouth's UNE rates are believed to no longer be TELRIC compliant, Staff would encourage the filing of a request to revisit, and modify if necessary, those rates. Second, with respect to EEL audit condition, Staff is unaware of any ongoing EEL audits in Louisiana, and further adds that the Commission has recently adopted new CLEC supported EEL audit procedures in the "Change of Law Docket"¹⁰. Lastly, with respect to the CWA's conditions, Staff believes that any harm they seek to prevent are more appropriately addressed in Dockets U-24802, Subdocket A, and U-22252, Subdocket C. Subject to the above recommendations, Staff believes the Applicants have satisfied these conditions.

13. The history of compliance or noncompliance of the proposed acquiring entity or principals or affiliates have had with regulatory authorities in this State or other jurisdictions.

As this merger is being consummated at the holding company level, there is no history of compliance or non-compliance at issue, as none of the holding companies provide service in Louisiana. Additionally, Staff would note that the Commission has regulations in place that will ensure the certificated entities continue to comply with all applicable Commission Orders, Rules and Regulations. Accordingly, Staff believes the Applicants have satisfied the requirements of this condition.

¹⁰ LPSC Docket No. U-28131, consolidated with U-28356.

14. Whether the acquiring entity, persons, or corporations have the financial ability to operate the public utility or common carrier system and maintain or upgrade the quality of the physical system.

15. Whether any repairs and/or improvements are required and the ability of acquiring entity to make those repairs and/or improvements.

According to the Applicants, as a result of this merger the combined companies should be in a better position financially and technologically to provide the necessary upgrades to the existing networks in Louisiana. Staff would add that one particular upgrade/improvement has been suggested by the CWA, namely the upgrade of all BellSouth wire centers to DSL capability. This issue has been addressed in Louisiana, as the Commission previously ordered BellSouth to complete the deployment of ADSL to all Louisiana Central Offices by December 31, 2004 in Order U-24802, Subdocket B, an upgrade that was in fact completed in December 2004. Thus, BellSouth has shown an ability to financially operate its system while operating under price caps, an ability that should only be enhanced as a result of this merger. While it is unrelated to the merger, Staff would note that the Commission, at its April 26, 2006 Business and Executive Session, directed BellSouth to report the following information regarding restoration efforts in New Orleans on a weekly basis to both the District III office and to the Commission Staff in Baton Rouge:

1. How many field technicians (booths) are located on the ground.
2. The number of circuits currently out of service.
3. The number of customers that have the ability to receive service.
4. The areas in which repair work is on-going or has not yet been initiated.
5. The areas in which repair work has been completed.

6. Areas in which temporary wireless fixes have been implemented.

The Commission also asked and received assurances from BellSouth that it is committed to restoring service to the New Orleans area and communicating with those residents desiring telephone service. By concluding herein that Applicants, particularly BellSouth, are not required to make any repairs or improvements to the system as a condition of the merger, Staff is in no way absolving BellSouth of the obligations implemented at the April 26, 2006 Commission meeting.

16. The ability of the acquiring entity to obtain all necessary health, safety and other permits.

All of the existing operating AT&T and BellSouth Corp. operating companies in Louisiana have had the ability to obtain all necessary permits as required in the past. As this merger will occur at the holding level, Staff is of the opinion that there is no reason to dispute Applicants' position that the companies will retain this ability.

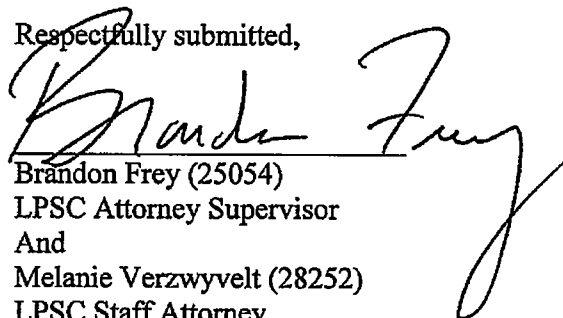
17. The manner of financing the transfer and any impact that may have on encumbering the assets of the entity and the potential impact on rates.

As this merger will occur at the holding level only, it should have no impact on the rates or assets of any certificated entities in Louisiana. Nonetheless, BellSouth's rates it can charge as an ILEC for regulated telecommunications services are subject to the Consumer Price Protection Plan implemented by Order No. U-24802, Subdocket B. Any request by BellSouth to increase its regulated rates must be filed pursuant to the requirements of that order and would be considered by the Commission in that context. Subject to the above, Staff believes the Applicants have satisfied this condition.

CONCLUSION

For the reasons set forth herein, and subject to the additional recommendations contained in response to factors 4, 12, 14, 15 and 18, Staff is of the opinion that the Commission should issue its non-opposition to the transaction as proposed, with the standard condition placed on all letters of non-opposition that this statement of non-opposition of the Commission is done without prejudice to the authority of the Commission to make investigations and require any reasonably necessary change it may legally find to be in the public interest.

Respectfully submitted,



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And

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MOTION: I make a motion to adopt the Staff's Position Statement in this matter, and that this Commission issue a letter of non-opposition to the proposed merger, without prejudice to the authority of this Commission to make investigations and require any reasonably necessary change it may legally find to be in the public interest. I further move that we adopt Staff's recommendations with respect to factors 4, 12, 14, 15 and 18 of this Commission's General Order dated March 18, 1994. Specifically, those recommendations are as follows:

1. In the ongoing SQM review pending in Docket No. U-22252, Subdocket C, Staff is directed to seek comments on the addition of additional wholesale service quality measurements, with particular emphasis on modifying the *force majeure* provisions to ensure that BellSouth continues to provide parity service in such situations.
2. Additionally, Staff shall seek comments in pending docket No. U-24802, Subdocket A regarding the imposition of additional retail service quality measurements.
3. The Commission shall open a global rulemaking docket to address a number of concerns raised by the 3 CLEC interveners, particularly with respect to the creation of a "fresh-look window", and other *force majeure* related concerns. Staff anticipates any rules adopted by way of this docket shall be included in the *Local Competition Regulations*.
4. Assuming this merger is approved by all required agencies, both on the state and federal level, the Commission shall open post-merger a docket to ensure that Louisiana customers, both retail and wholesale, are protected by receiving the benefit of any conditions or concessions available in other jurisdictions. By way of this docket, the Commission can ensure that retail and CLEC customers receive the most pro-competitive options, whether they are offered in the former SBC or BellSouth regions.

Finally, and as part of this motion, this Commission wants to make it clear to the applicants that, in issuing a letter of non-opposition, we are in no way absolving BellSouth of its obligations implemented at the April 26, 2006 Commission meeting to report certain information regarding restoration efforts in New Orleans on a weekly basis. This Commission has asked and received assurances from BellSouth that it is committed to restoring service to the New Orleans area and communicating with those residents desiring telephone service. We expect BellSouth to continue to abide by those assurances and we will continue to monitor the reports and will take whatever action may be necessary to ensure that they do.