

VIA ELECTRONIC FILING

July 18, 2006

Beth O'Donnell
Executive Director
Kentucky Public Service Commission
P.O. Box 615
211 Sower Boulevard
Frankfort, Kentucky 40602-0615

Henry S. Alford
Direct Dial: (502) 625--2776
halford@middreut.com

RE: In the Matter of: Joint Application for Approval of the Indirect Transfer of Control
Relating to the Merger of AT&T, Inc. and BellSouth Corporation, Commonwealth of
Kentucky, Before the Kentucky Public Service Commission,
Case No. 2006-00136

Dear Ms. O'Donnell:

Over the course of the last several days, the Joint Applicants have taken the opportunity to file additional information with the Commission regarding recent developments in other forums examining their proposed merger. Through this letter, NuVox Communications, Inc., Xspedius Management Company Switched Services LLC and Xspedius Management Company of Louisville, LLC (collectively the "Intervenors") now take that same opportunity to inform the Commission of additional recent developments of which the Commission should be aware prior to ruling on the pending merger proposal.

Just last week, in a move that may signal additional federal scrutiny of the AT&T-BellSouth proposed merger, in the pending lawsuit of *United States of America v. SBC Communications, Inc. and AT&T Corp.*, United States District Court for the District of Columbia, Civil Action No. 03-2512 (EGS), U.S. District Judge Emmet G. Sullivan held a hearing pursuant to the federal Tunney Act, 15 U.S.C. § 16, to begin reviewing the former SBC Communications Inc.'s takeover of AT&T Corp.¹ Through this pending lawsuit, Judge Sullivan could decide whether to impose new conditions on the SBC-AT&T merger and, according to Judge Sullivan, on July 25, 2006, he may announce whether he will require additional hearings and call in expert witnesses and government officials who initially scrutinized the deals.

One of the fundamental premises of Judge Sullivan's inquiry is whether the SBC-AT&T and Verizon-MCI mergers are in the public interest. In this regard, through his July 7, 2006 Prehearing

¹ This federal action is consolidated with *United States of America v. Verizon Communications, Inc. and MCI, Inc.*, United States District Court for the District of Columbia, Civil Action No. 03-2513 (EGS).

Beth O'Donnell
Kentucky Public Service Commission
July 18, 2006
Page 2

Order, Judge Sullivan specifically asked the parties to be prepared to address, among other matters, the following issue:

Through the eyes of a layperson, the mergers, in and of themselves, appear to be against public interest given the apparent loss in competition. In layperson's terms, why isn't that the case?

See Judge Sullivan's July 7, 2006 Prehearing Order, p.3, attached hereto as Exhibit "A." See also, articles from the *New York Times* and *Wall Street Journal* describing the proceedings before Judge Sullivan, attached hereto as Exhibits "B" and "C," respectively.²

Judge Sullivan repeatedly stressed during the hearing on July 12, 2006 that he is "not a rubber stamp." Intervenors simply urge this Commission to follow Judge Sullivan's example and not "rubber stamp" the enormous, industry-changing transaction that is the proposed BellSouth-AT&T merger.³

Additionally, in their recent filings, Joint Applicants have informed the Commission, accurately, that recently they have received approvals of the proposed merger from the regulators in Tennessee and Louisiana. With respect to Tennessee, Intervenors would point out that the decision was not unanimous and that Director Jones, one of three Commissioners to hear the matter, made an alternative motion. Though the merger was approved on 2-1 vote, during deliberations, Director Jones stated:

The interveners were compelling in my opinion in their testimony that they potentially could experience disadvantage and that no matter what the nature of competition in a particular Tennessee market, the transfer will make it more difficult postmerger for a competitor to access that market.

. . .

It is only through the imposition of safeguards on access to the last mile and other incumbent controlled facilities that the current environment which I have concluded encourages competition without regard to technology will flourish. Moreover, the

² Judge Sullivan has also requested to examine internal FCC documents regarding the AT&T-SBC and Verizon-MCI mergers. See, *Lexington Herald-Leader* article, attached hereto as Exhibit "D."

³ It should be noted that the importance of the Tunney Act case pending before Judge Sullivan has prompted other interested and authoritative parties to seek intervention into the case. See July 17, 2006 Motion to Intervene and proposed Order of the American Antitrust Institute, Inc., attached hereto as Exhibit "E."

Beth O'Donnell
Kentucky Public Service Commission
July 18, 2006
Page 3

imposition of conditions to approval will not hamper the merged entities' freedom to provide consumers the benefits set forth as a justification for this agency's approval of the transfer. In fact, past megamerger conditions involving AT&T have not dampened the approval process but have sought to strengthen the competitive environment and consistent with the state of Tennessee's declaration of telecommunications policy will in my opinion do so here.

. . .

Based on the foregoing, it is my opinion that the transfer should be approved pursuant to Tennessee Code Annotated Section 65-4-113 contingent upon approval by the Federal Communications Commission and completion of the investigative processes of the Department of Justice and Federal Trade Commission, but that conditions should be placed on the incumbent to ensure the continuation of quality service and an environment that permits the level of competition that Tennessee has enjoyed over the past ten years. It is further my opinion that the Authority should defer any decision establishing conditions until this transaction is addressed by federal agencies.

In the interest of completeness, the full transcript of the Tennessee Regulatory Authority Agenda Conference discussion of the BST-AT&T merger item is attached as Exhibit 'F.'

In Louisiana, though the merger was approved, the Commission voiced its concerns about many of the issues raised before this Commission and in the Louisiana docket by the Intervenor, voting to further investigate many of those matters, including a "fresh look" window for consumers. *See* the Louisiana Public Service Commission Staff recommendation and final motion as adopted by the Louisiana PSC, attached hereto collectively as Exhibit 'G.' Also, Intervenor's concerns regarding the continuation of BellSouth's EELs audits under the pre-TRO antiquated standards were mooted by the Louisiana Commission in that state's TRO/TRRO generic change of law docket, where the Commission adopted the EEL audit standards and procedures established in the FCC's TRO order. Finally, of further interest, the Louisiana vote was 4 to 1, with one Commissioner voting not to approve the transfer at all, calling it "anti-consumer." *See* articles from the *Baton Rouge Advocate* and *New Orleans Times Picayune*, attached hereto as Exhibit 'H' and 'I,' respectively.

Beth O'Donnell
Kentucky Public Service Commission
July 18, 2006
Page 4

Intervenors understand and appreciate that this Commission will do what it believes is the right thing for residential and business consumers and for the state of competition in the Commonwealth rather than rely on decisions made and opinions held by those in other states. Intervenors have provided this information merely as additional background to supplement that provided by Joint Applicants.

One paper copy of this filing is provided for filing in Case No. 2006-00136. The attached certification certifies that the filing was filed electronically today and served by e-mail on parties of record in the docket. Parties of record can access the information at the Commission's Electronic Filing Center located at <http://psc.ky.gov/efs/efsmain.aspx>.

Please contact me if you have any questions regarding this matter.

Very truly yours,

/s/ Henry S. Alford

Henry S. Alford

CERTIFICATION FOR CASE 2006-00136

I hereby certify that the electronic version of this filing made with the Kentucky Public Service Commission this 18th day of July 2006, is a true and correct copy of the documents filed herewith in paper form on July 18, 2006, and the electronic version of the filing has been transmitted to the Commission. An electronic copy of the Read1st document has been served electronically on all parties of record.

/s/ Henry S. Alford

Henry S. Alford

COUNSEL FOR NUVOX
COMMUNICATIONS, INC.;
XSPEDIUS MANAGEMENT
COMPANY SWITCHED
SERVICES, LLC; AND XSPEDIUS
MANAGEMENT COMPANY OF
LOUISVILLE, LLC