

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION FOR APPROVAL OF THE)
INDIRECT TRANSFER OF CONTROL) CASE NO.
RELATING TO THE MERGER OF AT&T INC.) 2006-00136
AND BELL SOUTH CORPORATION)

O R D E R

NuVox Communications, Inc. and Xspedius Management Company Switched Services, LLC and Xspedius Management Company of Louisville, LLC (“Intervenors”) filed a motion for reconsideration of the Commission’s July 25, 2006 Order or, in the alternative, to establish a post-merger docket. AT&T, Inc. and BellSouth Corporation (“Joint Applicants”) have opposed the motion.

The Intervenors assert that the evidence that they presented in this proceeding supports the need for the Commission to protect the competitive viability of Kentucky telecommunications markets. The Intervenors proposed five conditions, none of which were adopted by the Commission. The Intervenors now seek reconsideration of one condition. They ask that the Commission enforce in Kentucky any additional federal conditions adopted by the Federal Communications Commission (“FCC”).

The Intervenors specifically move that the Commission change its decision and add a condition to the merger indicating that the Commission intends to enforce any appropriate federal conditions that are established in conjunction with the merger.¹ The

¹ Intervenors’ Motion for Reconsideration at 4.

Intervenors also ask that the Commission indicate that the July 25, 2006 Order was an interim Order pending the Kentucky Commission's review of the federal Department of Justice's investigations and the determinations of the FCC.² The Intervenors also ask, in the alternative, that the Commission establish a new docket to examine the concerns and the issues raised by the Intervenors.³

The Joint Applicants assert that the Intervenors' motion contains no evidence not previously considered by the Commission. Thus, according to the Joint Applicants, granting of reconsideration or any other relief would fail to meet standards required by KRS 278.400. The Joint Applicants also contend that this Commission lacks jurisdiction to enforce federal conditions in Kentucky and that providing such an avenue to the Intervenors would result in "intolerable forum shopping."⁴

The Commission finds that the Intervenors have raised no evidence or arguments not previously considered by the Commission. Thus, the Commission will not grant rehearing to add a condition to the approval of the merger. The Intervenors' proposal that the July 25, 2006 Order be an interim Order and not a final Order is denied. KRS 278.020(5) and (6) do not permit such a finding. The Commission must issue its decision on a proposed transfer of control within a specified time. The Commission may not leave open the proceeding to await rulings from other agencies.

The Commission previously denied all of the conditions proposed by the Intervenors without prejudice. Nothing prevents the Intervenors or any other person

² Id.

³ Id.

⁴ Joint Applicants' Opposition to Intervenors' Motion for Reconsideration at 2.

from petitioning the Commission to establish a docket to review whether Kentucky customers are receiving adequate protection from this Commission or are receiving benefits from this merger. However, such petition must be based on supported evidence available to the Commission at that time. Accordingly, the alternative relief proposed by the Intervenors is likewise denied.

Having considered the motion for reconsideration and the opposition thereto and having been otherwise sufficiently advised, the Commission HEREBY ORDERS that the motion for reconsideration is denied.

Done at Frankfort, Kentucky, this 21st day of August, 2006.

By the Commission

ATTEST:



Executive Director