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May 22, 2006

Mrs. Blanca S. Bayó
Director, Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 060308-TP - Joint Application for Approval of Indirect Transfer of Control of Facilities Relating to Merger of AT&T, Inc. and BellSouth Corporation

Dear Ms. Bayo:

Enclosed is AT&T, Inc. and AT&T of the Southern States, LLC ("AT&T"), BellSouth Corporation ("BellSouth"), BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. (collectively "Joint Applicants") Joint Response in Opposition to US LEC of Florida's Petition to Intervene, which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

James Meza III (BSS)

James Meza III

cc: All Parties of Record
E. Earl Edenfield, Jr.
Jerry D. Hendrix

CERTIFICATE OF SERVICE
DOCKET NO. 060308-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via First Class U.S. Mail and Electronic Mail this 22nd day of May, 2006 to the following:

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James Meza III (BNS)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Joint Application for Approval of Indirect Transfer of Control of Facilities Relating to Merger of AT&T Inc. and BellSouth Corporation	)	Docket No. 060308-TP
		Filed: May 22, 2006

JOINT RESPONSE IN OPPOSITION TO US LEC OF FLORIDA INC.'S PETITION FOR LEAVE TO INTERVENE

AT&T Inc. and AT&T of the Southern States, LLC ("AT&T"), BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. (collectively, "Joint Applicants") respectfully oppose the petition of US LEC of Florida, Inc. ("US LEC") for leave to intervene in this matter.[1]

US LEC has failed to satisfy the relevant requirements for intervention in this proceeding as set forth in Rule 25-22.039 of the Florida Administrative Code.[2] This is a transfer-of-control

[1] Pursuant to Rule 25-22.039, Florida Administrative Code, any person seeking to intervene in a proceeding must petition the Prehearing Officer for leave to intervene and must include allegations sufficient to prove that the intervenor is entitled to participate in the proceeding. Because US LEC must seek permission to intervene, the request is effectively a motion for leave. *See, e.g.*, Order No. PSC-00-0421-PAA-TP at 6, *In re Joint Application of MCI WorldCom, Inc. and Sprint for Acknowledgement or Approval of Merger Whereby MCI WorldCom Will Acquire and Control Sprint and Its Florida Operating Subsidiaries*, Docket No. 991799-TP (Fla. PSC Mar. 1, 2000) (denying Telecommunications Resellers Association's ("TRA") Motion for Leave To Intervene in MCI and Sprint merger proceeding). As such, US LEC cannot file a reply to this Response in Opposition. *See* Order No. PSC-04-0333-PCO-SU at 2 n.2, *In re Application for Certificate To Provide Wastewater Service*, Docket No. 020745-SU (Fla. PSC Mar. 30, 2004) (refusing to consider a "memorandum in opposition" to a response in opposition to a petition to intervene because the intervenors' filing was an "unauthorized reply to a response").

[2] US LEC has also failed to file its petition pursuant to the appropriate rule of the Florida Administrative Code. US LEC cites Rule 28-106.205, which is the uniform rule of procedure for intervention found in the Florida Administrative Code. But, pursuant to Section 120.54(5)(a), Florida Statutes, the Commission has properly published its own rule, 25-22.039 as an exception to this rule. *See* Rule 25-40.001, Florida Administrative Code (noting exceptions to Uniform Rules of Procedure for Chapter 25 of the Florida Administrative Code). Obviously, the Commission's rule, Rule 25-22.039, governs US LEC's petition.

proceeding – in particular, a proceeding under which the Florida Public Service Commission ("the Commission") is considering the indirect transfer-of-control of the telecommunications facilities of BellSouth Telecommunications, Inc. resulting from the merger of its parent company, BellSouth Corporation, and AT&T pursuant to Section 364.33, Florida Statutes. US LEC has alleged no constitutional or statutory right or Commission rule that entitles it to participate in this proceeding.

Thus, under settled law, US LEC can intervene only if it demonstrates, first, that the transfer-of-control of BellSouth Telecommunications, Inc. facilities in Florida will cause it real and immediate injury. US LEC has made no such showing. Specifically, US LEC has not demonstrated how this indirect transfer-of-control will affect BellSouth Telecommunications, Inc.'s existing obligations to US LEC in *any* way (much less do so *immediately*), nor could it do so. That is because BellSouth Telecommunications, Inc. will remain subject to the same wholesale obligations after the merger, including any obligations in its interconnection agreement with US LEC, that existed prior to the merger.[3] Moreover, the merger will in no way affect this Commission's regulatory authority over BellSouth Telecommunications, Inc., or the Commission's ability to enforce the terms of any agreements between US LEC and BellSouth Telecommunications, Inc. that are subject to the Commission's jurisdiction.[4] Nor has US LEC established any other way that it will be immediately harmed by the granting of the Joint Application. Simply put, the merger will have no impact on US LEC, and US LEC has not established, and cannot establish, otherwise.

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[3] *See* Joint Application at 10 ("Following the merger, the BellSouth operating subsidiaries certificated in Florida will operate just as they do today. . . . The merger will have no effect on the rates, terms, and conditions of service that those entities currently provide.")

[4] *See id.* ("The merger will not impair, compromise, or in any way alter the Commission's Authority to regulate BellSouth Telecommunications, Inc.").

Second, and independently, US LEC's motion should be rejected because US LEC is simply a competitor seeking to inject itself into this transfer-of-control proceeding. It is settled law in Florida, including precedent established and confirmed by this Commission, that a transfer-of-control proceeding under Section 364.33 is not designed to protect competitor interests. For that reason as well, US LEC should not be permitted to intervene.

US LEC HAS NOT MET THE STANDARD FOR INTERVENTION

A. The Commission's Precedent Precludes Intervention

Pursuant to 25-22.039, Florida Administrative Code, a petition for leave to intervene must either demonstrate (1) that the party seeking intervention is "entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule," or (2) that the party's "substantial interests . . . are subject to determination or will be affected through the proceeding." *Id.* US LEC has not alleged a constitutional or statutory right or Commission rule that entitles it to participate in this proceeding. Thus, US LEC's intervention would be proper only if it could demonstrate that its substantial interests are subject to determination or will be affected through the proceeding.

Under a long line of Commission decisions, the proper test to determine "substantial interest" is that announced in *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So. 2d 478 (Fla. Dist. Ct. App. 1981). *See* Order No. PSC-00-0421-PAA-TP at 6[5] ("[W]e agree with MCI WorldCom/Sprint that the two-pronged test set forth in *Agrico* is the appropriate test for determining substantial interest."); *see also* Order No. PSC-06-0033-FOF-TP, *In re Joint*

[5] This order, which also approved the transfer of control in that merger between holding companies, was ultimately vacated because the merger was not consummated, so approval of the transfer of control was no longer necessary. *See* Order No. PSC-00-1667-FOF-TP, *In re Joint Application of MCI WorldCom, Inc. and Sprint Corp. for Acknowledgment or Approval of Merger*, Docket No. 991799-TP (Fla. PSC Sept. 18, 2000). This, of course, has no bearing on the Commission's decision or reasoning in denying intervention.

Application for Approval of Transfer of Control of Sprint-Florida, Docket No. 050551-TP (Fla. PSC Jan. 10, 2006) (applying *Agrico* test in denying CWA's protest of the Commission's approval of a transfer of control of Sprint-Florida from Sprint-Nextel to LTD Holding Company on the grounds that CWA lacked standing); Order No. PSC-98-0702-FOF-TP, *In re Request for Approval of Transfer of Control of MCI Communications Corp.*, Docket No. 971604-TP (Fla. PSC May 20, 1998) (applying *Agrico* test in denying intervention of a competitor/customer (GTE), and a union (CWA) from the Commission's consideration of a transfer of control as part of the MCI-WorldCom merger). US LEC acknowledges that the *Agrico* test applies here. *See* Petition ¶ 9.

Under *Agrico*, a person has a substantial interest in the outcome of an administrative proceeding if: (1) the person will suffer injury in fact that is of sufficient immediacy to entitle the petitioner to a Section 120.57 hearing,[6] *and* (2) the substantial injury is of a type or nature that the proceeding is designed to protect. *See* 406 So. 2d at 482. "The first aspect of this test deals with the degree of injury. The second deals with the nature of the injury." *Id.*; *see also AmeriSteel Corp. v. Clark*, 691 So. 2d 473, 477 (Fla. 1997). US LEC bears the burden of demonstrating that it meets both prongs and therefore has standing to intervene in this proceeding. *See, e.g.*, Order No. PSC-05-0382-FOF-TP at 6, *In re MCG Capital Group*, Docket No. 050111-TP (Apr. 12, 2005); Order No. PSC-00-0421-PAA-TP at 6. If US LEC fails to make *either* showing under the *Agrico* test, its petition must fail. *See* Order No. PSC-00-0421-PAA-TP at 7.

This Commission has consistently applied the *Agrico* test to deny intervention in transfer-of-control proceedings involving telecommunications companies. A decision directly on point

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[6] Section 120.57, Florida Statutes prescribes procedures for the conduct of administrative hearings.

arose from the Commission's 1998 proceeding involving the MCI/WorldCom merger. GTE sought leave to intervene based on alleged injuries it would suffer as a wholesale customer due to the decrease in competition between MCI and WorldCom in the wholesale market. It also argued that its interests as a competitor would be affected by the merger. The Commission found that both bases of GTE's asserted injuries – as a customer and as a competitor – were far too speculative to confer standing under the first prong of *Agrico*. Order No. PSC-98-0702-FOF-TP at 14 ("Speculation as to the effect that the merger . . . will have on the competitive market amounts to conjecture about future economic detriment."). The Commission went on to rule that the asserted injuries also were beyond the scope of a transfer-of-control proceeding because Section 364.33 "does not give us the ability to protect the competitive interests asserted." Order No. PSC-98-0702-FOF-TP at 19.

Two years later, the Commission issued a virtually identical ruling in a proceeding concerning the indirect transfer of control of regulated operating subsidiaries resulting from the proposed merger of MCI WorldCom, Inc. and Sprint Corporation. *See* Order No. PSC-00-0421-PAA-TPP at 5 (citing Order No. PSC-98-0702-FOF-TP). In that proceeding, TRA, a national trade organization representing telecommunications service providers and suppliers (with several members that were authorized to provide local and interexchange service in Florida), sought to intervene on the basis that the proposed merger "will result in the narrowing of competitive network service providers" and therefore "may adversely affect TRA members providing telecommunications services in Florida, who rely on wholesale network services provided by Sprint or MCI." *Id.* at 3. The Commission rejected TRA's petition and found that it failed to satisfy *both* of the *Agrico* prongs. *See id.* at 4. First, the Commission rejected TRA's contention

on the degree-of-injury prong because "the 'loss' of a competitor in the market, in itself," does not demonstrate harm to TRA. *Id.* at 7. Specifically, the Commission held that:

> TRA's speculation as to the effect that the merger of MCI WorldCom and Sprint will have on the competitive market amounts to conjecture about future economic detriment. Such conjecture is too remote to establish standing . . . . We find that this standard is equally applicable whether TRA is arguing its substantial interest as a competitor or as a customer.

Id. at 6-7; *see also* Order No. PSC-06-0033-FOF-TP at 6 (confirming need for immediate harm). Second, the Commission reaffirmed its previous judgment that Section 364.33 "is not a merger review statute" and therefore that TRA's assertion of the competitive interests of its members was insufficient to meet the nature-of-injury prong. Order No. PSC-00-0421-PAA-TP at 8.[7]

[7] More recently, and in an analogous situation, the Commission denied the CWA's attempt to intervene and protest the Commission's approval of the transfer of control of Sprint-Florida and Sprint Payphone from Sprint-Nextel to LTD Holding Company pursuant to Section 364.33. *See* Order No. PSC-06-0033-FOF-TP.

B. Under These Established Commission Precedents, Intervention by a Competitor Should Be Denied Here

This established Commission precedent controls here and requires denial of intervention. ***First***, US LEC cannot satisfy the degree-of-injury prong of the *Agrico* test. As discussed above, US LEC must first demonstrate that it will suffer an injury in fact of sufficient immediacy to entitle it to a Section 120.57 hearing. *See Agrico*, 406 So. 2d at 482. US LEC has not met its burden of demonstrating such a real and immediate injury.

In seeking to satisfy this first aspect of the *Agrico* test, US LEC speculates – without any support or analysis – that the merger "***may . . .*** undermin[e] the legal relationships between ILECs and CLECs created under Chapter 364, F.S" and "allow[] BellSouth to shed itself of the legal obligations imposed on ILECs, under Chapter 364, F.S. and the [Telecommunications] Act." Petition ¶ 7 (emphasis added). US LEC premises this entire claim on the supposition that the transaction will allow BellSouth to provide local service through its CLEC affiliate. *Id.* That allegation is baseless. As a matter of fact, *this merger will not affect BellSouth Telecommunications, Inc.'s legal relationships or obligations with either CLECs or the Commission, under state or federal law*. The merger of AT&T and BellSouth Corporation is solely a parent-level, holding company transaction. Thus, post-merger, BellSouth Telecommunications, Inc. will continue to exist as a separate entity and will carry the same legal obligations with respect to competitors as it had before the merger, including its obligations under its interconnection agreement with CLECs such as US LEC. Likewise, the completion of the transaction will not affect the Commission's regulatory authority over BellSouth Telecommunications, Inc in any way. Similarly, any existing regulatory requirements that apply to BellSouth Telecommunications, Inc. to the benefit of US LEC will likewise be unaffected by

the merger. Accordingly, US LEC's allegation that this transaction "may" undermine BellSouth's legal obligations under federal and state law is factually incorrect and devoid of any merit.

Further, even if there were substance to this allegation (which there is not), US LEC's alleged claim is too remote and speculative to give it standing. Order No. PSC-00-0421-PAA-TPP at 6-7. Indeed, US LEC recognizes this fact by couching its allegations in terms of "may." The Commission should not overlook this fatal admission.

Additionally, and just as incorrectly, US LEC speculates that the merger "***may***" allow ATT and BellSouth Telecommunications, Inc. to engage in anti-competitive practices. Petition ¶¶ 7, 8. The "evidence" US LEC offers of anti-competitive behavior is that shortly after the merger was announced, AT&T Communications of the Southern States, LLC entered into an interconnection agreement with BellSouth Telecommunications, Inc. that contained a transit traffic rate that is less than what BellSouth filed in its transit traffic tariff. *Id.* ¶ 8. This claim is a red herring that has no bearing on this transfer-of-control proceeding. Further, it is nothing more than an attempt by US LEC to collaterally litigate issues pending in another proceeding – a proceeding in which US LEC chose not to participate.

First, US LEC fails to acknowledge that the tariff at issue in Docket Nos. 050119-TP and 050125-TP applies only if there is no agreement between parties addressing transit traffic. US LEC has an interconnection agreement with BellSouth in Florida that addresses transit traffic (and at a rate less than the tariffed rate). Consequently, the tariffed rate being addressed in the subject dockets does not apply to US LEC – a fact US LEC conveniently omits. Second, US LEC misstates the AT&T/BellSouth interconnection agreement because it fails to disclose that the transit traffic rate in the AT&T interconnection agreement increases to $.002 in the second

year of the agreement and then to $.0025 in the third year. Third, and more fundamentally, US LEC ignores the fact that BellSouth is willing to negotiate, and has in fact negotiated, similar rates with other parties. Indeed, other agreements have *lower* rates than that agreed to by AT&T and BellSouth. *See* BellSouth Second Revised Exh. KRM-2, Docket Nos. 050119-TP & 050125-TP (FL. PSC filed March 10, 2006). Fourth, the fact that BellSouth negotiates different terms and conditions with different carriers does not equate to anti-competitive behavior. In fact, if US LEC believes that the transit traffic rate in the AT&T/BellSouth agreement is beneficial, it can adopt that entire interconnection agreement pursuant to 47 U.S.C. § 252(i). Fifth, the agreement to the graduated transit rate that US LEC complains of took place *before* the BellSouth merger was announced; delays in drafting the agreement caused it to be filed after the merger announcement.

Finally, as with its other allegations, this claim of potential anti-competitive behavior is too remote and speculative to give US LEC standing in this proceeding. If US LEC is concerned about transit traffic rates or any alleged anti-competitive behavior, it can raise the issue in the appropriate Commission proceeding.[8]

Indeed, in recently approving a transfer-of-control related to this merger, the North Carolina Utilities Commission noted that a CLEC "does not lack for options should it believe itself to be harmed and should it wish to pursue [its grievances], most notably in complaint actions or arbitrations." Order Approving Transfer of Control at 6, *In re Application of AT&T, Inc. and BellSouth Corporation for Indirect Change of Control*, Docket No. P-55, Sub 1630 (NCUC May 18, 2006), attached hereto as Exhibit A.[9] As in North Carolina, CLECs in Florida

[8] Tellingly, US LEC did not even participate in Docket Nos. 050119-TP and 050125-TP.

[9] In addition to North Carolina, the state commissions of New York and Utah have affirmatively approved transfers-of-control related to this merger. Likewise, the New Hampshire

do not lack for "options" if they believe that specific BellSouth policies or practices are unlawful. And, nothing in this transaction will change this fact.

Nor can US LEC satisfy its burden as to the first prong of the *Agrico* test through any oblique implication that the merger could harm Florida telecommunications customers. *See, e.g.*, Petition ¶¶ 10, 11 (claiming whether the merger is in the public interest as a "disputed issue[] of fact" and an "ultimate fact[]," and whether the merger will "substantially improve the quality and variety of communications services offered to Florida's consumers" as a disputed fact). Even if any basis for US LEC's opaque conjecture existed – and it emphatically does not – US LEC does not represent the interests of consumers in Florida. Any claim of standing by US LEC must be based on its *own* interests, not on its assertions about the interests of Florida consumers. *See Alterra Healthcare Corp. v. Estate of Shelley*, 827 So. 2d 936, 941 (Fla. 2002) ("'In the ordinary course, a litigant must assert his or her own legal rights or interests, and cannot rest a claim to relief on the legal rights or interests . . . of third parties.'") (quoting *Powers v. Ohio*, 499 U.S. 400, 410 (1991)); Order No. PSC-96-0768-PCO-WU, *In re Application for a Limited Proceeding To Include Groundwater Development and Protection Costs in Rates in Martin County by Hobe Sound Water Company*, Docket No. 960192-WU (Fla. PSC June 14, 1996) (denying a town intervention because it had no standing to represent the interests of consumers who are residents and taxpayers).[10]

Second, and independently, US LEC's petition for leave to intervene must be denied because it fails to meet the second prong of the *Agrico* test concerning the type and nature of the

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and Delaware state commissions approved transfers-of-control related to the merger by taking no action in response to the applications. *See* Orders and Correspondence, collectively attached hereto as Exhibit B.

[10] The Commission previously dismissed a similar "service quality" argument in denying the CWA's attempt to intervene in the Sprint/Nextel merger. *See* Order No. PSC-06-0033-FOF-TP.

alleged injury. The only concern possibly asserted by US LEC is that the indirect transfer of control will somehow harm US LEC as a competitor. But, as noted above, the Commission has explained repeatedly and in plain language that a *transfer-of-control* proceeding is not designed to address that type of purported competitive injuries. Rather, in reviewing telecom transactions under Section 364.33, the Commission is to focus on the effect of the transfer of control on service to *consumers* in Florida, and not on the interests of competitors, if any such interests are even implicated (and, in this case, they are not). In the Commission's words, Section 364.33 gives it "jurisdiction to approve the transfer of control of telecommunications facilities for the purpose of providing service to Florida *consumers*," but that provision "does *not* give [the Commission] the ability to protect . . . competitive interests." Order No. PSC-98-0702-FOF-TP at 21 (rejecting attempts of GTE and CWA to intervene to assert alleged injuries to competitors) (emphasis added); *see* Order No. PSC-00-0421-PAA-TP at 8-9 ("We agree with MCI Worldcom/Sprint that this section is *not* a merger review statute. Section 364.33, Florida Statutes, gives us jurisdiction to approve the transfer of control of telecommunications facilities *for the purpose of providing service to Florida consumers*.") (emphasis added).

Just as in those cases, US LEC's petition fails to establish any "substantial interest" of a type or nature which a proceeding under Section 364.33 is designed to protect. *See Agrico*, 406 So. 2d at 482. Indeed, US LEC does not cite, much less address, these Orders, for they are clearly fatal to its attempted intervention. Notably, moreover, the decision on which US LEC does rely, Order No. PSC-98-0562-PCO-TX,[11] did not involve a transfer-of-control proceeding. In that case, the Commission found that MCI had standing to protest a proposed order granting

[11] *In re Application for Certificate To Provide Alternative Local Exchange Telecommunications Service by BellSouth BSE, Inc.*, Docket No. 971056-TX (Fla. PSC Apr. 22, 1998).

BellSouth BSE Inc. an ALEC certificate. It thus has no relevance here and, in fact, the Commission expressly distinguished that decision in the context of the MCI/WorldCom merger as follows:

> Our determination in Order No. PSC-98-0562-PCO-TX . . . is distinguishable from this case for several reasons. First, the entry of BSE, a new competitor, into the local market would directly affect MCI and FCCA's members as competing ALECs. MCI further alleged that under the Telecommunications Act of 1996 (Act) we must review the application to ensure that there is no abuse of market power by the ILEC in its relationship with its subsidiary, BSE. In this case, there is no alleged abuse of monopoly power by an ILEC that would authorize us to take action under the Act. Finally, BellSouth BSE is seeking certification from us. MCI and WorldCom are not.

Order No. PSC-98-0702-FOF at 18.

In sum, this Commission's orders are consistent in holding that competitors' interests are not cognizable in proceedings just like this one. Those decisions compel denial of US LEC's motion.

CONCLUSION

For the foregoing reasons, the Joint Applicants respectfully request that the Commission deny US LEC's petition for leave to intervene.

Respectfully submitted, this 22nd day of May 2006,

FOR BELLSOUTH CORPORATION,
BELLSOUTH TELECOMMUNICATIONS, INC.,
and BELLSOUTH LONG DISTANCE, INC.

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STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-55, SUB 1630
DOCKET NO. P-140, SUB 89

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of AT&T, Inc. and BellSouth	)	ORDER APPROVING
Corporation for Indirect Change of Control	)	TRANSFER OF CONTROL

BY THE COMMISSION: On March 31, 2006, AT&T, Inc. (AT&T) and BellSouth Corporation (BellSouth Corp.; collectively, Petitioners) jointly filed an Application requesting Commission approval pursuant to G.S. 62-111(a)[1] to transfer control of certain competing local providers (CLPs)—namely, BellSouth Long Distance, Inc. (BSLD) and BellSouth Telecommunications, Inc. (BellSouth)—in connection with a planned merger between AT&T, Inc. and BellSouth Corporation. On April 12, 2006, the Commission granted Petitions to Intervene filed by Time Warner Telecom of North Carolina LP and US LEC of North Carolina, Inc. (collectively, Time Warner). On April 21, 2006, the Commission granted intervention to NuVox Communications, Inc.

Time Warner Motion

On May 12, 2006, Time Warner filed a Motion for Procedural Schedule and Hearing. In this consolidated proceeding, Time Warner noted that the Petitioners are requesting approval of the indirect control of CLP certificates held by BellSouth and BSLD in connection with the transfer of control of BellSouth Corp. and its subsidiaries to AT&T, Inc. Time Warner identified several aspects of the proposed combination which it believes deserve regulatory scrutiny through a deliberative process in which the parties can file testimony and cross-examine witnesses.

The first concern had to do with the extent of horizontal concentration. Time Warner stated that the application discloses that six separate entities holding certificates in North Carolina would be combined under common ownership as a result of the merging. They are: (1) SBC Long Distance, LLC, (2) AT&T Communications of the Southern States, LLC, (3) TCG of the Carolinas, Inc., (4) SNET America, Inc., (5) BellSouth and (6) BSLD. Time Warner argued that the application does not disclose the extent of competition among these entities in various markets in North Carolina in

[1] G.S. 62-111(a) reads in relevant part as follows: "No franchise now existing or hereafter issued under the provisions of this Chapter...shall be sold, assigned, pledged, or transferred, nor shall any control thereof be changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination affecting any public utility be made through acquisition or control by stock purchase or otherwise, except after application to and written approval by the Commission, which approval shall be given if justified by the public convenience and necessity...."

any but the most generalized fashion and that allowing such consolidation might lessen competition and create confusion among consumers.

The second concern was the extent to which the merger may impact fair competition, especially as the interconnection arrangements and the procurement of interconnection services and related facilities by Time Warner from the Petitioners. Time Warner noted that in its January 2006 presentation titled "North Carolina Public Utility Infrastructure and Regulatory Climate," the Commission noted certain market failures and instability in the competitive marketplace. Nothing has changed to lessen these concerns.

Lastly, Time Warner argued that the Petitioners would not be prejudiced by a more deliberate approach to review and that the Federal Communications Commission is early in its 180-day merger review.

AT&T and BellSouth Response

On May 15, 2006, the Petitioners filed a Response in Opposition to Time Warner's Motion. The Petitioners noted the comparative lateness of Time Warner's Motion, and argued that Time Warner misunderstood not only the scope of this proceeding but the effects that the proposed merger will have on the relevant CLP subsidiaries. As the Petitioners explained in their Joint Application, this proceeding is concerned only with the transfer of indirect control of BSLD and of BellSouth *in its capacity as a CLP operating outside of its incumbent local service area in North Carolina.* Because BellSouth is subject to price regulation under G.S. 62-133.5 within its incumbent service territory, the merger approval provision of G.S. 62-111(a) does not apply to BellSouth in its capacity as an ILEC.[2] Thus, Time Warner's purported concerns about fair competition are misdirected because there is no nexus between Time Warner and US LEC on the one hand and the BellSouth CLP subsidiaries on the other. To the extent that Time Warner has concerns about business relationships with BellSouth in its capacity as an ILEC, this is not the proceeding to consider those issues. In addition, Time Warner is wrong to suggest that this merger will have any adverse effect on horizontal concentration. Competition in this state is well-established and will not be affected by this merger. The holding-company merger will not change the direct ownership of the CLP subsidiaries or this Commission's regulatory jurisdiction over them. There is thus no justification to grant Time Warner's request to delay this proceeding by conducting a full evidentiary hearing.

[2] G.S. 62-133.5(g) reads: "The following sections of Chapter 62 of the General Statutes shall not apply to local exchange companies subject to priced regulation under subsection (a) of this section: G.S. 62-35(c), 62-45, 62-51, 62-81, **62-111**, 62-130, 62-131, 62-132, 62-133, 62-134, 62-135, 62-136, 62-137, 62-139, 62-142, and 62-153." (Emphasis added).

May 15, 2006, Regular Commission Conference

This matter came before Regular Commission Conference on May 15, 2006. Four persons addressed the Commission: Mr. George Sessoms, presenting the item to approve the transfer of control as requested and described in the Application on behalf of the Commission Staff; Mr. Marcus Trathen, representing Time Warner; and Mr. Dwight Allen and Ms. Susan Ockleberry, representing Petitioners.

Commission Staff. Mr. Sessoms explained that AT&T is a Delaware corporation with its principal place of business in San Antonio, Texas. AT&T is a holding company and its subsidiaries provide domestic and international voice and data communications services to residential, business and government customers around the world. AT&T wholly owns four subsidiaries which are authorized to provide local exchange and exchange services as CLPs and/or intrastate interexchange services in North Carolina pursuant to Certificates of Public Convenience and Necessity (Certificates) granted by the Commission. These subsidiaries are AT&T Communications of the Southern States, LLC; TCG of the Carolinas, Inc.; SBC Long Distance, LLC d/b/a AT&T Long Distance; and SNET America d/b/a AT&T Long Distance East. However, according to the Application, these AT&T subsidiaries are not affected by the planned merger and their ownership structure will remain entirely unchanged.

BellSouth Corp. is a Georgia corporation with its headquarters in Atlanta, Georgia. BellSouth Corp. is also a holding company and its subsidiaries provide voice and data communications services to substantial portions of customers in the southeastern United States. Two of BellSouth Corp.'s wholly owned subsidiaries, BSLD and BellSouth, are authorized to provide local exchange and exchange access services as CLPs in North Carolina. BSLD was granted a CLP Certificate by the Commission in Docket No. P-654, Sub 5 on September 24, 2004. (BSLD is also authorized to provide intrastate interexchange services pursuant to a Certificate granted by the Commission in Docket No. P-654, Sub 0 on November 26, 1997, but providers of only interexchange services are exempt from the provisions of G.S. 62-111(a) pursuant to the Commission Order dated January 2, 2004 in Docket No. P-100, Sub 72b.) BellSouth was granted a CLP Certificate by the Commission, to provide such services in all geographic areas outside its incumbent service territory, in Docket No. P-55, Sub 1117 on June 15, 1999. (BellSouth is also an incumbent local exchange carrier which operates under a Commission approved price plan. However, G.S. 62-133.5(g) exempts local exchange companies subject to price regulation from the provisions of G.S. 62-111(a)).

Mr. Sessoms stated that AT&T and BellSouth Corp. entered into an Agreement and Plan of Merger on March 4, 2006. To implement the planned merger, a temporary and special purpose subsidiary of AT&T will merge with and into BellSouth Corp., with BellSouth Corp. being the surviving corporation. At the time of the merger, shareholders of BellSouth Corp. will exchange their shares of stock for shares of AT&T stock.

Following the merger, BellSouth Corp. will become a wholly-owned and direct subsidiary of AT&T. BSLD and BellSouth will continue to be directly owned by BellSouth Corp. However, BSLD and BellSouth will be ultimately owned and indirectly controlled by AT&T because AT&T will own the shares of their corporate parent, BellSouth Corp. Therefore, the Application requests Commission approval pursuant to G.S. 62-111(a) to transfer control of BSLD and BellSouth, in their capacity as CLPs, in connection with the planned merger of AT&T and BellSouth Corp.

According to the Petitioners, the proposed transaction will be transparent to customers in North Carolina. BSLD and BellSouth will continue to exist in their current form after the merger is completed. There will be no transfer of assets or Certificates and the merger will have no effect on the rates, terms, and conditions of service that these entities currently provide.

Mr. Sessoms noted that the Applicants submitted that Commission approval of the proposed transaction is in the public interest for several reasons as set forth in the Application. In the short-run, the merger and transfer of control will be transparent to North Carolina customers since it will have no effect on the rates, terms, and conditions of services currently provided by AT&T and BellSouth Corp. subsidiaries. Ultimately, the proposed transaction should allow the companies to integrate their networks, improving performance and service reliability, and to combine their research and development capabilities, leading to increased innovation and accelerated development of new products and services.

Accordingly, Mr. Sessoms recommended that the Commission issue an order approving the transfer of control as requested and described in the Application.

Time Warner. While alluding to the arguments made in Time Warner's May 12, 2006, Motion concerning horizontal concentration and fair competition, Mr. Trathen instead concentrated on the proposition that the Commission has jurisdiction to significantly broaden the scope of its investigation from the BellSouth CLPs to BellSouth the ILEC. He laid out two main arguments. The first argument sought to bring BellSouth Corp., the holding company, under the Commission's merger jurisdiction and, presumably by that device, to bring in BellSouth the ILEC. This argument hinged upon the phrase in G.S. 62-111(a) to the effect that the Commission has jurisdiction over "any merger or combination affecting any public utility." Mr. Trathen contended that BellSouth Corp. was a "public utility" within the meaning of G.S. 62-3(23)(c).[3] The second argument was that BellSouth the ILEC was a fit subject for merger investigation because BellSouth the ILEC was also a CLP. The inference was that this CLP ownership furnished sufficient basis for investigating the ILEC merger, notwithstanding the ILEC exemption under G.S. 62-133.5(g).

[3] G.S. 62-3(23)(c) reads in pertinent part as follows: "The term 'public utility' shall include all persons affiliated through stock ownership with a public utility doing business in this State as a parent corporation...to such extent that the Commission shall find that such affiliation has an effect on the rates or service of such public utility."

Petitioners. Mr. Allen rejected Time Warner's arguments both in the May 12, 2005, filing and at Regular Commission Conference. He emphasized the existence of the G.S. 62-133.5(g) exemption for BellSouth the ILEC as being dispositive of the Commission's limited jurisdiction in this matter. He noted that the Commission had noted this limited jurisdiction in other mergers, most explicitly in the Verizon/MCI merger. He also mentioned the extreme smallness of the BellSouth CLPs in terms of customer base and that only two of the CLPs mentioned in the Application were BellSouth CLPs, the others being associated with AT&T and whose status would not change as a result of the merger. He expatiated on the benefits of the merger for the end-user customers of the Petitioners and doubted the sincerity of the concerns expressed by Time Warner for competition, as it belongs to a multi-billion dollar conglomerate.

Others. No other persons spoke at Conference. However, Petitioners stated without demur from the Public Staff, who were present, that the Public Staff supported the recommendation for approval. The Attorney General did not speak on the item after having been given an opportunity to do so.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that good cause exists to deny Time Warner's Motion for Procedural Schedule and Hearing and issue an Order approving the transfer of control as requested by Petitioners for the reasons described in the Commission Staff's recommendation. The Commission does not believe that Time Warner has made convincing arguments that the Commission should expand the scope of an investigation into this merger, especially in light of the exemption for BellSouth the ILEC in G.S. 62-133.5(g).

The first argument of Time Warner, as noted above, relied on the provision in G.S. 62-111(a) that provided that mergers "affecting any public utility" are not to be allowed unless there has been application to, and written approval from, the Commission if such approval is justified by the public convenience and necessity. Clearly, this provision does not affect BellSouth the ILEC as such, because G.S. 62-133.5(g) specifically exempts ILECs subject to price regulation from G.S. 62-111(a). Rather, Time Warner argues that it refers to the holding company, BellSouth Corp., on the basis that BellSouth Corp. is a "public utility" under G.S. 62-3(23)(c). This provision provides that "public utility" includes "all persons affiliated through stock ownership with a public utility doing business in this State as a parent corporation or a subsidiary corporation...*to such extent that the Commission shall find such affiliation has an effect on the rates and service of such utility.*" (emphasis added). Time Warner suggests that BellSouth Corp. is such a parent, and it is not an ILEC subject to price regulation and thus exempt from G.S. 62-111(a).

However, even assuming arguendo that there is an effect on rates and service such as to render BellSouth Corp. a public utility, Time Warner's argument does not lead where it evidently wants to go—that is, to an examination of, and presumably conditions upon, the activities of BellSouth the ILEC. Inconveniently for Time Warner's argument, BellSouth the ILEC falls squarely within the G.S. 62-133.5(g) exemption, so no inquiry on this basis is possible. At most, the argument, if accepted, could lead to the CLPs; but the CLP transfer is already being examined under G.S. 62-111(a).

Time Warner's second argument was related to the fact that BellSouth the ILEC had obtained CLP certification. Time Warner argued that this in effect negated BellSouth the ILEC's exemption under G.S. 62-133.5(g) and rendered BellSouth the ILEC as a whole "fair game" for comprehensive merger inquiry. This is not a convincing argument. BellSouth actually holds two franchises, one as an ILEC and one as a CLP. It is a simple matter analytically and practically to separate consideration of BellSouth the ILEC and BellSouth the CLP. Besides, the logic of Time Warner's argument works both ways. If it can be argued that the existence of BellSouth the CLP makes BellSouth the ILEC fair game, the reverse can be argued as well with perhaps even greater force. Indeed, given their relative sizes and importance, the BellSouth ILEC exemption under G.S. 62-133.5(g) could be argued to apply pari passu to BellSouth the CLP, and thus neither should be subject to G.S. 62-111(a).

Lastly, the Commission notes that the holding of evidentiary hearings regarding mergers and acquisitions under G.S. 62-111(a) is discretionary. The statute simply says that application must be made and written approval be given if justified by the public convenience and necessity. Thus, even were the Commission to accept Time Warner's jurisdictional arguments to widen the scope of this proceeding, this would not necessarily equate to the type of proceeding that Time Warner seeks. Time Warner has raised concerns about horizontal concentration and fair competition, but Time Warner does not lack for options should it believe itself to be harmed and should it wish to pursue them, most notably in complaint actions or arbitrations.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of May, 2006.

NORTH CAROLINA UTILITIES COMMISSION

Patricia Swenson

Patricia Swenson, Deputy Clerk

dl051806.01

Commissioners James Y. Kerr, II and William T. Culpepper, III did not participate.

Filed Session of May 17, 2006
Approved as Recommended
and so Ordered
By the Commission

JACLYN A. BRILLING
Secretary
Issued and Effective May 18, 2006

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

May 2, 2006

TO: THE COMMISSION

FROM: OFFICE OF TELECOMMUNICATIONS

SUBJECT: CASE 06-C-0397 - Joint Petition of AT&T Inc., BellSouth Corporation and BellSouth Long Distance, Inc. for Approval of Merger.

SUMMARY OF RECOMMENDATION: Staff recommends approval be granted pursuant to Sections 99(2) and 100 of the Public Service Law, for AT&T Inc., BellSouth Corporation and BellSouth Long Distance, Inc. for the Merger resulting in BellSouth becoming a wholly-owned subsidiary of AT&T.

SUMMARY

By joint petition dated March 31, 2006, pursuant to Sections 99(2), and 100 of the Public Service Law, AT&T Inc. (AT&T), BellSouth Corporation (BellSouth) and BellSouth Long Distance, Inc. (BSLD) (collectively "Joint Petitioners"), request Commission approval of the merger of AT&T and BellSouth as described in the Agreement and Plan of Merger (Merger Agreement) jointly executed on March 4, 2006. Following the merger, BellSouth will become a wholly-owned, first-tier subsidiary of

AT&T. The only BellSouth subsidiary providing telecommunications services in New York is BSLD. Joint Petitioners have requested expedited treatment and consideration of the transfer request because BellSouth, through this subsidiary, has a very limited presence in New York. Commission approval is recommended.

BACKGROUND

AT&T is a Delaware corporation providing IP-based communications services to businesses worldwide and local and long distance voice and data networking services throughout a thirteen-state region in the United States. AT&T Long Distance, an AT&T subsidiary, was authorized to operate as a facilities-based provider and reseller of telephone service, including local exchange service pursuant to a Certificate of Public Convenience and Necessity granted by the Commission on August 18, 2004 in Case 04-C-0874.[1] AT&T Long Distance includes all of the business assets and operations of SBC Telecom, Inc., an AT&T subsidiary that the Commission authorized as a facilities-based common carrier and reseller of telephone services, including local exchange services, pursuant to a Certificate of Public Convenience and Necessity granted on August 4, 2000 in Case 00-C-0986. Through intermediate

[1] AT&T Long Distance was previously certified to provide resold telephone services in New York in Case 96-C-0944 (December 18, 1996) and to provide resold and facilities-based telephone services in Case 04-C-0157 (April 30, 2004).

subsidiaries, AT&T wholly owns several subsidiaries that are certified to provide competitive interexchange and local exchange telecommunications services in New York. [2]

On September 21, 2005, the Commission approved the merger of AT&T Corp. and SBC Communications Inc. in Case 05-C-0242. Following Commission approval of the merger, AT&T Inc. was formed and AT&T Corp. and SBC Communications Inc. became wholly-owned subsidiaries of AT&T Inc.

BSLD, a wholly-owned subsidiary of BellSouth, is a Delaware corporation authorized to offer resold interexchange service in New York through a Certificate of Public Convenience and Necessity granted by the Commission on April 7, 1997 in Case 96-C-1183 and is also authorized to provide resold local exchange service in New York through a Certificate of Public Convenience and Necessity granted by the Commission on February 25, 1998 in Case 97-C-2161 (and transferred to BSLD on April 22, 2005).

The Merger Agreement provides that BellSouth will become a wholly-owned subsidiary of AT&T. Specifically, AT&T has created a wholly-owned subsidiary called ABC Consolidation Corp. (Merger Sub) for the purpose of the merger. The Merger Sub will merge with, and into, BellSouth with BellSouth continuing as the surviving corporation and as a wholly-owned subsidiary of AT&T. AT&T will issue approximately 2.4 billion new shares of common stock which will represent approximately 38 percent of the outstanding shares of AT&T. Diagrams showing the current and proposed corporate structure of the Joint Petitioners are provided in Exhibit B.

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[2] SBC Long Distance LLC d/b/a AT&T Long Distance, SNET America, Inc. d/b/a SBC Long Distance East, SNET Diversified Group, Inc., AT&T Communications of New York, Inc., Teleport Communications Group, Inc., TC Systems, Inc., Teleport Communications of New York, Inc. and ACC Corp.

Joint Petitioners believe that granting the proposed transaction will have no adverse impact on competition or service in New York since BellSouth has a very limited presence in New York. Specifically, BSLD has no New York State local service revenues, no New York local service customers, no access lines in New York, and only minimal intrastate interexchange service revenues.

Joint Petitioners state that the transactions will further the public interest because even with BSLD's limited role in the state, the merger should ultimately enhance competition by encouraging faster and broader deployment of new and improved services.

DISCUSSION

The merger will not change the ownership of BSLD or the ownership structure of any AT&T-affiliated entity subject to the Commission's regulatory authority. Upon consummation of the merger, these entities will continue to hold all of the state certificates that they currently hold and each will be owned by the same entity that owns them today. There will be no transfer of the assets of those certified entities in connection with this merger.

Supporting documentation in the instant proceeding provided by the Joint Petitioners indicates that the merger will not affect the rates, terms, or conditions of service that those entities currently provide to their customers and that the merger will be transparent to New York customers. Joint Petitioners believe that the merger will create an organization that will enjoy enhanced financial health and vigor, which will affirmatively benefit the public.

COMPLAINTS

Over the past 24 months, no complaints were received by the Department of Public Service Office of Consumer Services (OCS) against BellSouth Corporation or BellSouth Long Distance, Inc.

For the same period, AT&T, Inc. had 7,394 complaints received by OCS. Of those, 36 are currently open. The company has been responsive in resolving consumer complaints. Jason Smitkin (OCS Operations) has reviewed this memo.

ENVIRONMENTAL QUALITY REVIEW

Under the State Environmental Quality Review Act (SEQRA), Article 8 of the Environmental Conservation Law, and its implementing regulations, (6 NYCRR Part 617 and 16 NYCRR Part 7), all State agencies must determine whether the actions they are requested to approve may have a significant impact on the environment. Other than our approval of the action proposed here, no additional State or local permits or approvals are required, and, therefore, coordinated review under SEQRA is not needed. The Public Service Commission will assume Lead Agency Status under SEQRA and conduct an environmental assessment for review of this action.

SEQRA (6 NYCRR § 617.6 (a) (3)) requires applicants to submit a completed environmental assessment form (EAF) describing and disclosing the likely impacts of the proposed actions. Petitioner submitted a short-form Part I EAF.

The proposed action is the approval of the merger of AT&T Inc., BellSouth Corporation and BellSouth Long Distance, Inc. The proposed action does not meet the definition of either Type 1 or Type 2 actions that are contained in 6 NYCRR §'s 617.4, 617.5, and 16 NYCRR § 7.2, so it is classified as an "unlisted "action requiring SEQRA review. After review of the EAF and the petition demonstrates that, based upon the criteria for determining significance listed in 6 NYCRR § 617.7(c), the action proposed in the proceeding, will not have significant adverse environmental impacts. Staff has completed the short-form EAF Part 2.

The EAF demonstrates that the action proposed in the petition will not have a significant impact on the environment. Therefore, a negative declaration pursuant to SEQRA is adopted. Because no adverse environmental impacts were found, no Public Notice Requesting Comments is required or will be issued. A Notice of

Determination of Non-Significance for this unlisted action is attached as Exhibit A. The completed EAF will be retained in our files.

CONCLUSION

Based on the representations in the petition, the Office of Telecommunications agrees that the transactions proposed by the Joint Petitioners, AT&T Inc., BellSouth Corporation and BellSouth Long Distance, Inc. for Approval of Merger, are in the public interest and we have no objections to the companies'

completion of the necessary transactions in connection with the merger. It is recommended that the petition be approved and that this case be closed.

Respectfully submitted,

Jenny Quirk
Utility Analyst

Reviewed by,

Maureen McCauley
Assistant Counsel
Office of General Counsel

APPROVED:

GREGORY C. PATTENAUDE
Chief, Office of Telecommunications

Attachments

EXHIBIT A

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 06-C-0397 - Joint Petition of AT&T Inc., BellSouth Corporation and BellSouth Long Distance, Inc. for Approval of Merger

NOTICE OF DETERMINATION
OF NON-SIGNIFICANCE

NOTICE is hereby given that an Environmental Impact Statement will not be prepared in connection with the approval by the Public Service Commission, of the merger of AT&T Inc., BellSouth Corporation and BellSouth Long Distance, Inc., based upon our determination, in accordance with Article 8 of the Environmental Conservation Law, that such action will not have a significant adverse effect on the environment. The approval of this action is an Unlisted Action as defined under 6 NYCRR Section 617.7(c).

Based upon our review of the record, the action proposed in this proceeding, approval of the transfer of certain communications facilities under section 99(2) and 100 of the Public Service Law will not have a significant adverse environmental impact.

The address of the Public Service Commission, the lead agency for the purposes of the Environmental Quality Review of this project is Three Empire State Plaza, Albany, New York 12223-1350. Questions may be directed to Richard H. Powell at (518) 486-2885 or to the address above.

JACLYN A. BRILLING
Secretary

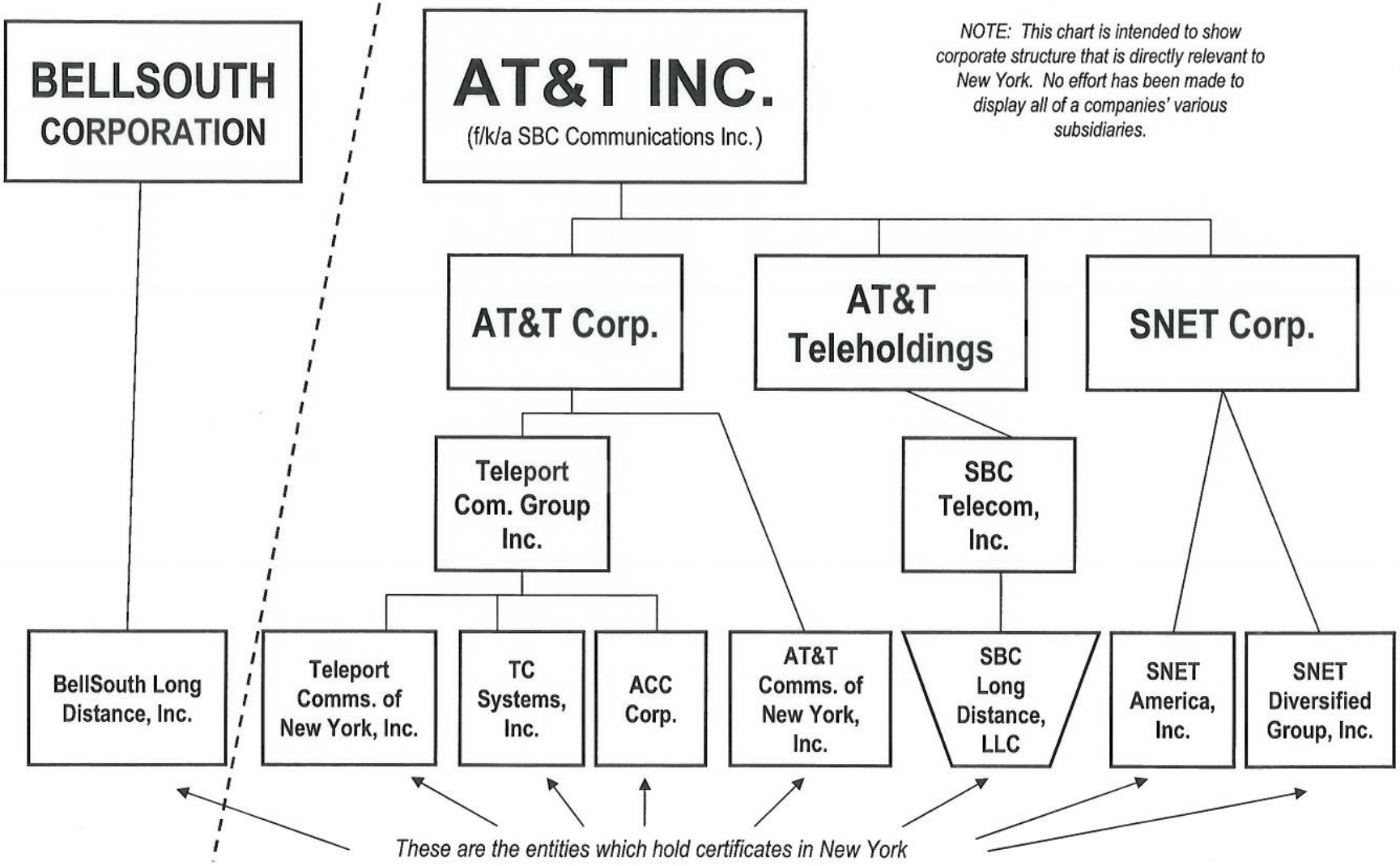
CASE 06-C-0397

EXHIBIT B

Exhibit B

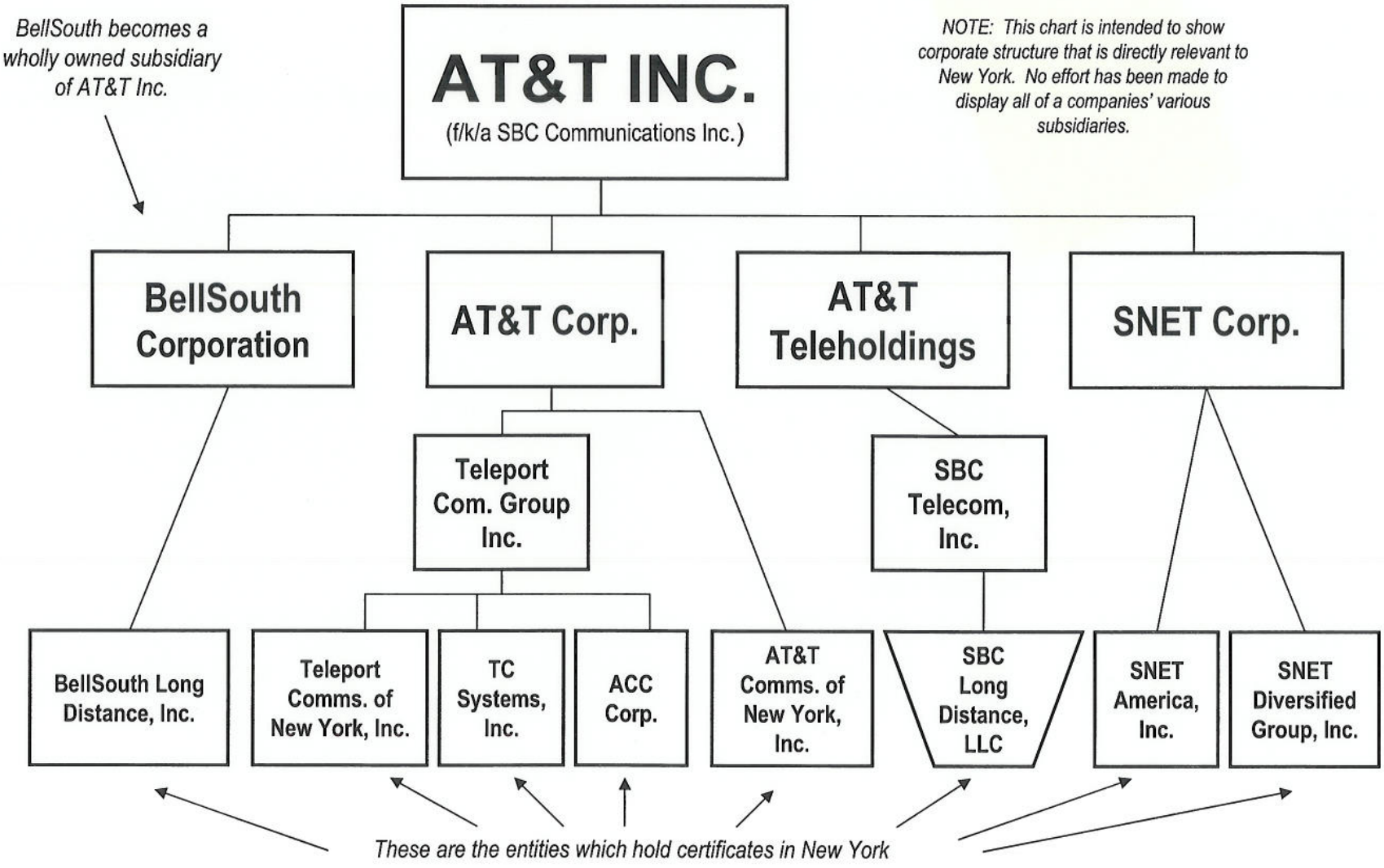
PRE-TRANSACTION CORPORATE STRUCTURE CHART

[NEW YORK SPECIFIC INFORMATION]



POST TRANSACTION CORPORATE STRUCTURE CHART

[NEW YORK SPECIFIC INFORMATION]



- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Joint Application of AT&T Inc. and BellSouth Corporation for Approval of Agreement and Plan of Merger	)	DOCKET NO. 06-087-02 ORDER APPROVING MERGER

SYNOPSIS

The Commission finds the proposed merger of AT&T Inc., and BellSouth Corporation to be in the public interest and approves the same.

ISSUED: May 16, 2006

By The Commission:

PROCEDURAL HISTORY

On March 31, 2006, AT&T, Inc. ("AT&T") and BellSouth Corporation ("BellSouth"),[1] on behalf of BellSouth Long Distance, Inc. ("BSLD"), filed a Joint Application for Approval of Merger Between AT&T, Inc. and BellSouth Corporation ("Application") seeking Commission approval of the merger of AT&T and BellSouth to the extent such approval is necessary under *Utah Code Ann.* §§ 54-4-28, 54-4-29, or 54-4-30. Applicants attached the AT&T Inc./BellSouth Corporation Merger Agreement, dated March 4, 2006, as Exhibit E to the Application.

On May 9, 2006, the Division of Public Utilities ("Division") filed a memorandum of its investigation of the proposed merger recommending approval of the same.

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[1]Hereinafter together referred to as the "Applicants".

DISCUSSION

AT&T is a Delaware Corporation with its principal place of business in San Antonio, Texas. AT&T is the holding company parent, through intermediate subsidiaries, of: (1) SBC Long Distance LLC d/b/a AT&T Long Distance ("AT&T Long Distance"), which is authorized to provide competitive local exchange services (facilities-based and resold) and facilities-based interexchange services within the territory served by Qwest in Utah; (2) AT&T Communications of the Mountain States, Inc. ("AT&T-UT"),[2] which is authorized to provide competitive local exchange service, interexchange service (resale and facilities-based), and private line and access services within the territory served by Qwest in Utah, and statewide interexchange services; and (3) TCG Utah, which is authorized to provide local exchange service and other public telecommunications services (facilities-based or resold) within the territory served by Qwest in Utah. The merger will effect no change in the assets, ownership, or control of AT&T Long Distance, AT&T-UT, or TCG Utah.

BellSouth is a Georgia Corporation with its principal place of business in Atlanta, Georgia. BellSouth is the holding company parent of BSLD, which received a certificate of authority to provide facilities-based competitive local exchange services within the State of Utah, excluding those local exchanges of fewer than 5,000 access lines of incumbent telephone corporations with fewer than 30,000 access lines in the state, on September 7, 2005, in Docket No. 05-2460-01. The merger will effect no change in the assets or ownership of BSLD.

Applicants state the proposed merger will combine two holding companies, effectuating only an indirect change in the control of BSLD as AT&T will become the corporate parent of BellSouth. Applicants note that, although certificated to do so, BSLD does not provide

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[2] In addition to Utah, AT&T-UT also serves Arizona, Colorado, Montana, New Mexico, and Wyoming.

local exchange service to any customers in Utah, and has no assets or employees in Utah. BSLD does provide a small amount of retail resold intrastate interexchange services in Utah, generating less than $12,000 in revenue in 2005. The merger will effect no functional change to BSLD.

Applicants identify a number of benefits they believe will arise from the merger. Applicants state the merger will position the combined companies to deliver better, more innovative products and services to businesses and consumers, and to accelerate the deployment of advanced, next-generation Internet Protocol networks and services to a greater extent than either AT&T or BellSouth could accomplish on a stand-alone basis. The Division concurs.

Utah Administrative Code Rule 746-110-1, authorizes the Commission to adjudicate a matter informally under *Utah Code Ann.* § 63-46b-5 when the Commission "determines that the matter can reasonably be expected to be unopposed and uncontested." We note that, despite the passage of nearly two months since Applicants filed the Application, no party has sought to intervene in this docket. We therefore view this matter as unopposed and uncontested and determine to proceed informally without hearing.

Based upon the evidence submitted by Applicants and the Division's recommendation, we find and conclude that the proposed merger will not harm and can provide benefits to the State of Utah, its citizens, or the Utah customers of AT&T, BellSouth and their subsidiaries, and is in the public interest.

Wherefore, we enter the following:

ORDER

1. Tentatively approving the proposed merger of AT&T, Inc., and BellSouth Corporation.

2. Absent meritorious protest, this Order shall automatically become effective without further action twenty (20) days from the date of this Order.

3. Persons desiring to protest this Order may file said protest prior to the effective date of this Order. If the Commission finds said protest to be meritorious, the effective date shall be suspended pending further proceedings.

Pursuant to Utah Code §§63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the effective date of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code §§63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 16th day of May, 2006.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#48967

STATE OF DELAWARE
PUBLIC SERVICE COMMISSION
861 SILVER LAKE BOULEVARD
CANNON BUILDING, SUITE 100
DOVER, DELAWARE 19904

TELEPHONE: (302) 739 - 4247
FAX: (302) 739 - 4849

April 11, 2006

Ms. Wendie C. Stabler
Saul Ewing LLP
P.O. Box 1266
222 Delaware Avenue
Wilmington, DE 19899

RE: IN THE MATTER OF THE JOINT APPLICATION OF AT&T INC., BELLSOUTH CORPORATION AND BELLSOUTH LONG DISTANCE, INC. FOR APPROVAL OF A MERGER

Dear Ms. Stabler:

After discussion and review of my memorandum dated April 5, 2006, the Commission took no action in PSC Docket No. 06-123. If you would like, I will send you a copy of the minutes of the 4/11/06 Commission Meeting.

Very truly yours,

E. Dennis Maczynski
Public Utilities Analyst

Attachment

STATE OF DELAWARE
PUBLIC SERVICE COMMISSION
861 SILVER LAKE BOULEVARD
CANNON BUILDING, SUITE 100
DOVER, DELAWARE 19904

TELEPHONE: (302) 739 - 4247
FAX: (302) 739 - 4849

April 5, 2006

MEMORANDUM

TO: The Chair and Members of the Commission

FROM: E. Dennis Maczynski, Public Utilities Analyst EDM

SUBJECT: IN THE MATTER OF THE JOINT APPLICATION OF AT&T INC., BELLSOUTH CORPORATION AND BELLSOUTH LONG DISTANCE, INC., FOR APPROVAL OF A MERGER (FILED MARCH 31, 2006) - PSC DOCKET NO. 06-123

Application

AT&T Inc. ("AT&T"), BellSouth Corporation ("BellSouth"), and BellSouth Long Distance, Inc. ("BSLD") (together the "Applicants"), have filed an application for approval of the merger of AT&T and BellSouth.

Parties

AT&T Inc. is a Delaware corporation located in San Antonio, Texas. Through intermediate subsidiaries, AT&T wholly-owns four subsidiaries that are certificated to provide competitive interexchange and local exchange services in the State of Delaware, but are not involved in the proposed merger: 1) SBC Long Distance LLC, d/b/a AT&T Long Distance; 2) SNET America, Inc., d/b/a SBC Long Distance East; 3) AT&T Communications of Delaware, LLC; and 4) TCG Delaware Valley, Inc.

BellSouth is a Georgia corporation located in Atlanta, Georgia. BellSouth is the holding company parent of BSLD, which is a Delaware corporation. BSLD was granted a Certificate of Public Convenience and Necessity to provide competitive local exchange telecommunications services, PSC Docket No. 05-163 on July 5, 2005, and resold interexchange telecommunications services, PSC Docket No. 97-26 on July 23, 1996, in Delaware.

Transaction

On March 4, 2006, AT&T and BellSouth entered into an Agreement and Plan of Merger ("Merger Agreement"). The Merger Agreement provides that BellSouth will become a wholly-owned subsidiary of AT&T. AT&T has created a wholly-owned subsidiary called ABC Consolidation Corp. (the "Merger Sub") for the purpose of the merger. Merger Sub will merge with and into BellSouth, with BellSouth continuing as the surviving corporation, and as a wholly-owned subsidiary of AT&T. At the time of the merger, each share of common stock – par value $1.00 per share – of BellSouth issued and outstanding will become exchangeable for 1.325 common shares – par value $1.00 per share – of AT&T. AT&T will issue approximately 2.4 billion new shares of common stock, which would represent approximately 38% of the outstanding shares of AT&T. The merger will not change the ownership of BSLD or the ownership structure of any AT&T affiliated entity. Exhibit A attached shows the pre-and post-transaction.

Public Interest

The Applicants assert that the public interest will be served. The transaction will allow the Applicants to compete more effectively and to combine their financial, technical, and market resources.

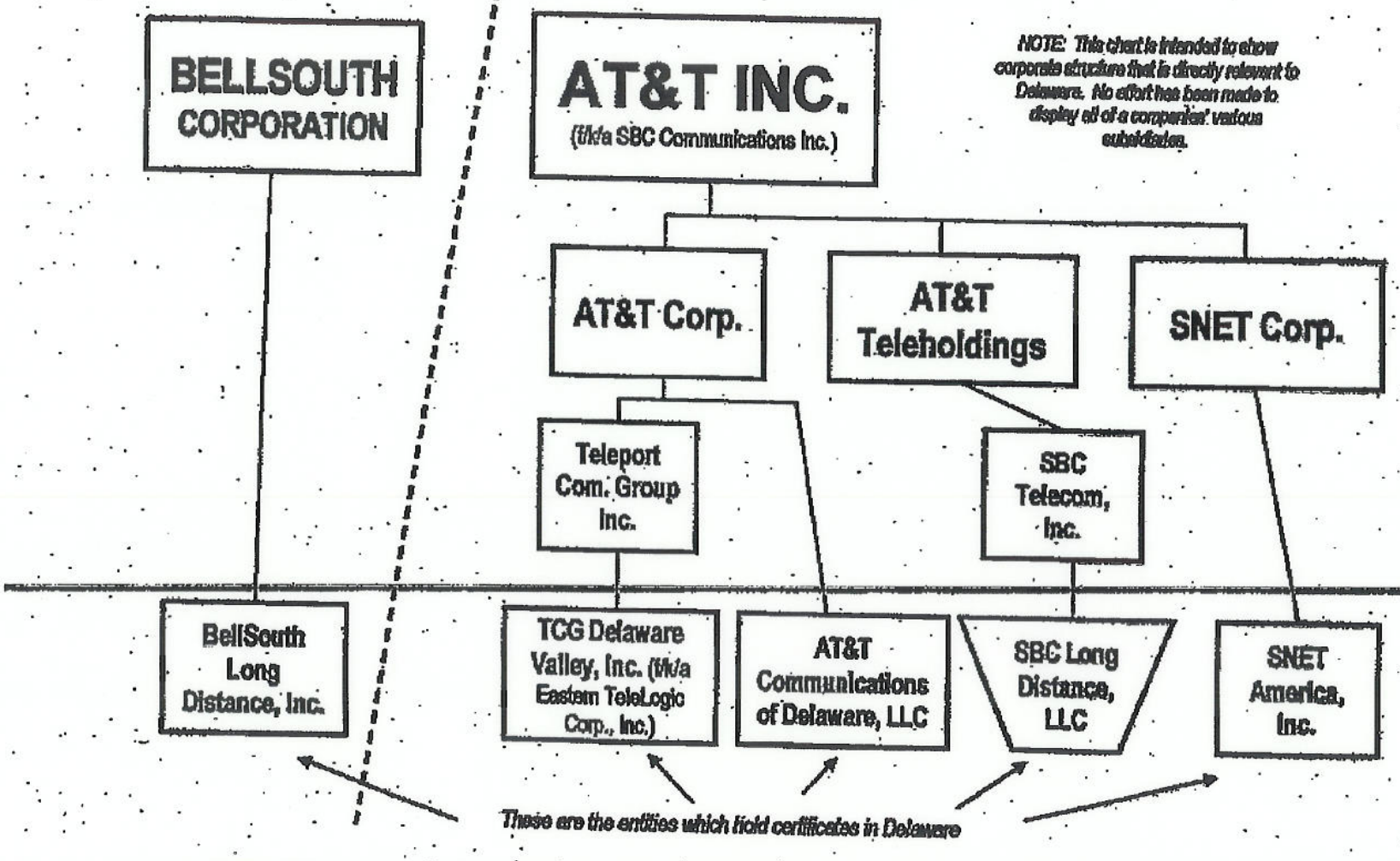
Staff Recommendation

Applications seeking a merger approval by large multi-state resellers of competitive intrastate telecommunications services technically come under the provisions of 26 Del. C. § 215 because the companies are deemed to be public utilities. The applicants have represented that the proposed transaction is in accordance with law, for a proper purpose, and consistent with the public interest. The Commission has previously allowed such applications to become effective by statutory approval without Commission action. The result seems appropriate under the circumstances. Staff, therefore, recommends that the Commission not act on this application. This will have the effect, under 26 Del. C. § 215, of the application being approved. Staff will also acquire verification from the Applicants that the proposed merger has been completed.

Exhibit "A"

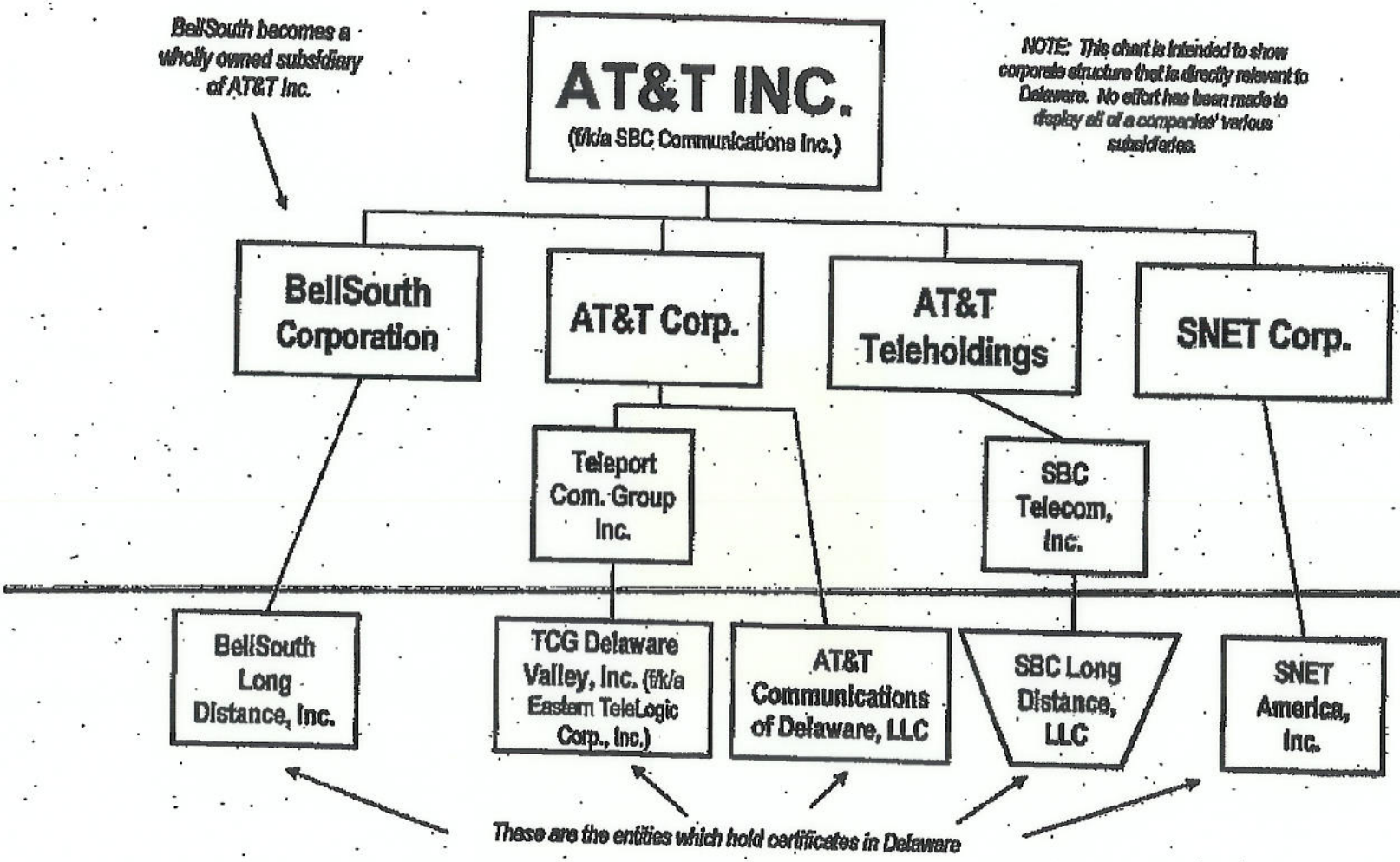
PRE-TRANSACTION CORPORATE STRUCTURE CHART

[DELAWARE SPECIFIC INFORMATION]



POST TRANSACTION CORPORATE STRUCTURE CHART

[DELAWARE SPECIFIC INFORMATION]



April 28, 2006

Douglas L. Patch
Orr & Reno
One Eagle Square
P.O. Box 3550
Concord, New Hampshire 03302-3550

Re: DT 06-051, AT&T, BellSouth Corporation and BellSouth Long Distance, Inc.
Joint Application for Approval of Merger

Dear Mr. Patch:

On March 31, 2006, the Commission received notification that AT&T, Inc. (AT&T) and BellSouth Corporation (BellSouth) had entered into an Agreement and Plan of Merger. In their filing, AT&T and BellSouth, together with BellSouth Long Distance (BSLD), BellSouth's certificated affiliate and operating subsidiary doing business in New Hampshire (collectively, the Companies), requested a determination pursuant to RSA 374:22-o and 369:8 II, that the planned merger is exempt from any requirement to obtain approval from this Commission.

BSLD was certified as a CTP under IXC No. 19997 dated May 1, 1997. AT&T Communications of New England (AT&T-NE) was certified as a CTP under IXC No. 00297 dated January 21, 1991 and as a CLEC in Docket No. DE 97-174 by Order No. 22,725 on September 16, 1997.

Commission Staff has reviewed the filing and determined that BSLD meets the requirements of RSA 374:22-o for exemption from prior Commission approval because it has less than a 10 percent share of the toll revenue in New Hampshire. Staff has also determined, based on the most recent data compiled, that AT&T-NE has more than a 10 percent share of the toll revenue in New Hampshire and, therefore, is not exempt under RSA 374:22-o.

Consistent with RSA 369:8, II, and N.H. Code Admin. Rule Puc 458.02, however, the Companies have represented in their application that the merger involves the acquisition of BellSouth by AT&T at the parent company level and will not adversely affect rates, terms, service or operation of the affected jurisdictional utilities within the state. The application

further represents that the merger will be transparent and seamless for the customers of the operating subsidiaries of BellSouth and AT&T in New Hampshire.

This letter serves as an acknowledgment that the Companies have, as required by statute, represented to the Commission no less than 60 days prior to the anticipated completion of the merger that the planned merger will not adversely affect rates, terms, service or operations in New Hampshire. As such, approval by the Commission, in this case, is not required.

Once the merger transaction is complete, Puc 458.02 requires BSLD to file Form CTP-37 Change of Ownership with the Commission and to provide customer notification of the transaction. BSLD is hereby requested to file within 30 days of the merger closing date Form CTP-37 as well as a copy of its customer notification and the date notification is mailed to customers.

Very truly yours,

ChristiAne G. Mason
Assistant Executive Director and Secretary

cc: Docket file