

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Comments to)	
The Federal Communications)	Case No. TO-2006-0437
Commission on the Merger of)	
AT&T and BellSouth)	

**AT&T MISSOURI’S OPPOSITION TO PUBLIC
COUNSEL’S MOTION TO OPEN CASE**

AT&T Missouri¹ respectfully requests the Missouri Public Service Commission (“Commission”) to deny the Office of the Public Counsel’s (“OPC’s”) Motion to Open Case concerning the impact of the AT&T Inc./BellSouth Corporation merger on Missouri. As it has ruled in numerous prior cases, the Commission has no jurisdiction over this type of transaction and the proposed merger is being sufficiently scrutinized at the federal level both by the Department of Justice and the Federal Communications Commission.

1. In its May 18, 2006, Motion, OPC asks the Commission to open a case “for the purpose of receiving comments from interested parties on the impact of the merger of AT&T Inc. and BellSouth Corporation on Missouri and Missouri telecommunications customers” to assist Commission Staff and the Commission prepare comments to the Federal Communications Commission (“FCC”) on the merger.² OPC suggests that it may be “helpful” to Staff and the Commission for interested parties to submit comments on the “impact, if any, the merger could have on the Missouri telecommunications industry, the customers, and the competitive environment as well as any implications for economic development.”³

¹ Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri will be referred to in this pleading as “AT&T Missouri.” It previously conducted business as “SBC Missouri.”

² OPC Motion, p. 1.

³ Id.

2. The Commission should deny OPC's Motion on the same basis the Commission rejected OPC's request to open a similar proceeding to investigate the merger between SBC Communications Inc. and AT&T Corporation. There, OPC suggested that the Commission could use the results and conclusions of its investigation as the basis for recommendations to the Department of Justice ("DOJ") and the Federal Communications Commission ("FCC") in their review and approval of the proposed merger. In the AT&T merger case, the Commission rejected the notion that it had jurisdiction over the proposed merger and firmly rejected OPC's request for an investigation to assist in the filings of comments with federal regulatory authorities as a redundant, duplicative and fruitless exercise:

The Commission has consistently found that the Commission does not have jurisdiction over transactions at the holding company level, and it will adhere to that position here. Thus, the only question is whether the Commission, despite its lack of direct authority over the transaction, should nonetheless conduct an investigation of its possible effects. Public Counsel has not alleged that those entities that do have jurisdiction over the transaction will be lax in their oversight, and the Commission has no reason to believe they will be. The Commission concludes that the investigation urged by Public Counsel would simply be redundant and duplicative, and given the Commission's lack of jurisdiction, a fruitless exercise. The Commission will not conduct an investigation into the proposed transaction, and will close the case.⁴

3. Like the AT&T Corp./SBC Communications Inc. merger, the proposed merger between BellSouth Corporation and AT&T Inc. does not require the Missouri Commission's approval. As was the case with the AT&T Corp./SBC Communications, Inc. merger, this merger between BellSouth and AT&T Inc. will receive full scrutiny by the Department of Justice and the FCC. There has been no claim that either of these federal agencies will be lax in their oversight.

4. Section 392.300.2 RSMo (2000), the applicable state statutory provision under which Commission approval might be required, is not implicated here because it applies only to

⁴ In the Matter of the Proposed Acquisition of AT&T Corporation by SBC Communications, Inc., Case No. TM-2005-0355, Order Closing Case, issued April 19, 2005, at p. 3.

domestic Missouri telephone companies⁵ and none of the AT&T or BellSouth entities regulated by the Commission is a Missouri corporation. Specifically, AT&T Inc. is a Delaware corporation while BellSouth Corporation is a Georgia corporation. Since none of the companies involved in the transaction are organized or existing under the laws of Missouri, the Commission should deny OPC's Motion to Open Case as the Commission has no jurisdiction over this transaction under Section 392.300.2.

5. Moreover, Section 392.300.2 does not require Commission approval for stock transactions occurring at the holding company level when there is no merger or consolidation of certificated entities:

The Commission has consistently found that the Commission does not have jurisdiction over transactions at the holding company level. For example, in a case involving the merger of SBC Communications and Ameritech Corporation, the Commission found that "there is nothing in the statutes that confers jurisdiction to examine a merger of two non-regulated parent corporations even though they may own Missouri-regulated telecommunications companies." On that basis, the Commission will again find that it has no jurisdiction over the proposed transaction. (Internal citations omitted).⁶

⁵ In the Matter of the Application of SBC Long Distance, Inc., and SBC Telecom, Inc. for Authority to Transfer Stock of SBC Long Distance, Inc. to SBC Telecom, Inc., and Convert SBC Long Distance, Inc. to a Limited Liability Company, Case No. XM-2005-0219, Order Approving the Merger of SBC DataComm into SBC Long Distance, and Finding No Jurisdiction to Review the Transfer of SBC Long Distance Stock, issued March 1, 2005. See also In the Matter of the Application of Global Crossing Ltd. v. GC Acquisition Limited for Approval of the Transfer of Control of Global Crossing Ltd. (Debtor-in-Possession)'s Missouri Operating Subsidiaries to GC Acquisition Limited, Case No. TM-2003-0110, Order Dismissing Application for Lack of Jurisdiction, issued November 14, 2002 (dismissing application for lack of jurisdiction since the applicants were incorporated outside Missouri and Section 392.300 does not require prior approval of a stock transaction if the parties are incorporated outside Missouri); and In the Matter of the Joint Application of Nextlink Missouri, Inc. and Nextlink Long Distance Services, Inc. for Approval of the Pro Forma Transfers of Control of Nextlink Missouri, Inc. and Nextlink Long Distance Services, Inc. from Nextlink Communications, Inc. to NM Acquisition Corp., TM-200-524, Order Granting Staff's Motion to Dismiss for Lack of Jurisdiction, issued March 31, 2000 (dismissing the case for lack of jurisdiction over the parties and over the subject matter, apparently agreeing with Staff that Section 392.300.2 only applies where applicants are incorporated under Missouri law).

⁶ In the Matter of the Application of Advanced TelCom, Inc. and Shared Communications Services, Inc. and Eschelon Telecom, Inc. for Expedited Approval of a Change in Ownership of Authorized Telecommunications Providers, Case No. XM-2005-0111, Order Dismissing Application for Lack of Jurisdiction, issued November 18, 2004 at pp. 2-3. See also In the Matter of the Application of Business Telecom, Inc., d/b/a, BTI for Approval of a Pro Forma Transfer of Control Through a Merger of Its Corporate Parent, Case No. TM-2004-0043, Order Granting Motion to Dismiss, issued September 11, 2003 (no jurisdiction over the merger realigning BTI as a subsidiary of companies and limited partnerships that the Commission does not regulate); and In the Matter of the Notification Regarding the Transfer of Ultimate Control of Comcast Corporation to AT&T Comcast Corporation, Case No. TM-2002-403, Order Closing Case, issued April 1, 2003 (no jurisdiction under Section 392.300 because the transaction was occurring at the non-regulated parent company level and not at the level of any entity regulated by the Missouri regulated utility).

As the Commission explained in a previous case:

After the transaction is complete, the Missouri-regulated utilities will continue to provide service to their respective customers under existing service arrangements and under their respective certificates. All that is really changing is the identity of the indirect owner of these corporations. Under the circumstances of this application, it appears that the Commission does not have jurisdiction over GC Acquisition Limited's purchase of all shares of stock of Global Crossing, Ltd.⁷

6. Here the transaction will similarly occur at the holding company level and there will be no change in ownership of any Missouri Commission-regulated entity. As explained in the March 31, 2006, joint letter from AT&T Missouri and BellSouth Long Distance, Inc.,⁸ the Merger Agreement for the transaction provides that BellSouth Corporation will become a wholly-owned subsidiary of AT&T Inc. AT&T has created a wholly-owned subsidiary called ABC Consolidation Corp. (the "Merger Sub") for the purpose of the merger. The Merger Sub will merge with and into BellSouth Corporation, with BellSouth Corporation continuing as the surviving corporation and as a wholly-owned subsidiary of AT&T. There is no change in the ownership structure of Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri, as a result of the transaction, nor is there a change in the ownership of the other AT&T-affiliated entities subject to the Commission's regulatory authority (SBC Long Distance LLC d/b/a AT&T Long Distance, SBC Advanced Solutions, Inc. d/b/a AT&T Advanced Solutions, Inc., AT&T Communications of the Southwest, Inc., TCG St. Louis, and TCG Kansas City, Inc.). Similarly, the transaction will not result in a change in the ownership of BellSouth Long Distance, Inc. ("BSLD"), the only entity affiliated with BellSouth

⁷ In the Matter of the Application of Global Crossing Ltd. v. GC Acquisition Limited for Approval of the Transfer of Control of Global Crossing Ltd. (Debtor-in-Possession)'s Missouri Operating Subsidiaries to GC Acquisition Limited, Case No. TM-2003-0110, Order Dismissing Application for Lack of Jurisdiction, issued November 14, 2002 at p. 3. See also In the Matter of the Joint Application of Nextlink Missouri, Inc. and Nextlink Long Distance Services, Inc. for Approval of the Pro Forma Transfers of Control of Nextlink Missouri, Inc. and Nextlink Long Distance Services, Inc. from Nextlink Communications, Inc. to NM Acquisition Corp., TM-200-524, Order Granting Staff's Motion to Dismiss, issued March 31, 2000 (nothing in the statutes confers jurisdiction to examine a merger of non-regulated parent corporations, even though they may own Missouri-regulated telecommunications carriers).

⁸ See March 31, 2006 letter from Paul G. Lane of AT&T Missouri and Harris R. Anthony from BellSouth Long Distance, Inc. to the Honorable Colleen M. Dale, Secretary/Chief Regulatory Law Judge of the Commission concerning AT&T Inc.'s acquisition of BellSouth Corporation.

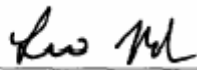
Corporation subject to the Commission's regulatory authority. As there is no merger or consolidation of certificated entities, Section 392.300.2 provides no jurisdiction over the proposed merger.

7. The OPC Motion to Open Case provides no basis for the Commission to take action. The Commission has no jurisdiction over the proposed merger, and the applicable federal regulatory authorities have the necessary expertise to properly perform their oversight function.

WHEREFORE, AT&T Missouri respectfully requests the Commission to deny OPC's Motion to Open Case.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.

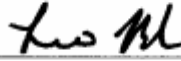
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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail on May 25, 2006.



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