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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer Of Control	)	WC Docket No. 06-74
	)	
Second Protective Order	)	

ORDER

Adopted: July 7, 2006 **Released: July 7, 2006**

By the Chief, Wireline Competition Bureau:

1. On May 12, 2006, the Wireline Competition Bureau (the "Bureau") issued a Protective Order (the "First Protective Order") regarding confidential or proprietary documents that have been or may be submitted by AT&T Inc. ("AT&T") and BellSouth Corporation ("BellSouth") (collectively, "the Applicants") and others that have or may become parties to this proceeding (individually, each is a "Submitting Party," and collectively the "Submitting Parties").[1] For the reasons set forth below, we hereby adopt a further Protective Order (the "Second Protective Order") to ensure that certain highly confidential and competitively sensitive documents and information that may be submitted by the Submitting Parties are afforded adequate protection.

2. On June 23, 2006, the Bureau issued an initial request for information to the Applicants.[2] On July 6, 2006, the Applicants stated that there are certain documents and information responsive to the Bureau's request which constitute some of their most sensitive business data, the release of which would place the Applicants at a significant competitive disadvantage.[3] For this material, the Applicants seek additional protection beyond the First Protective Order.

3. The Commission will grant more limited access to those materials which, if released to competitors, would allow those competitors to gain a significant advantage in the marketplace.[4] For example, a company's list of specific customers or customer data (including revenues associated with the specific customer or group of customers) disaggregated to a relatively detailed level, and competitive analyses including specific future pricing, product or marketing plans could all allow competitors to target

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[1] *AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer Of Control*, WC Docket No. 06-74, Order, DA 06-1032 (rel. May 12, 2006) ("First Protective Order").

[2] Letter from Thomas J. Navin, Chief, Wireline Competition Bureau, to Wayne Watts, Senior Vice President & Associate General Counsel, AT&T, and Mr. James G. Harralson, Vice President & Associate General Counsel, BellSouth, WC Docket 06-74, Attach. at 4 (filed June 23, 2005).

[3] Letter from John B. Gibson, AT&T Inc. and Bennett L. Ross, BellSouth Corporation, to Thomas J. Navin, Chief, Wireline Competition Bureau, WC Docket No. 06-74 (filed July 6, 2006).

[4] *See, e.g., SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Order, DA 05-1322 (rel. May 9, 2005) (adopting a second protective order); *Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Order, DA 05-1538 (rel. May 25, 2005) (adopting a second protective order).

customers and gain an unfair competitive advantage if they were to obtain the information. Accordingly, we will permit persons submitting such documents and information and those of a similarly competitively sensitive nature to designate those materials as Highly Confidential and, as provided below, we will limit access to such materials to outside counsel of record, their employees, and outside consultants and experts whom they retain to assist them in this proceeding. We find that such materials are necessary to develop a more complete record on which to base the Commission's decision in this proceeding and therefore require their production. We are mindful of their highly sensitive nature, but we must also protect the right of the public to participate in this proceeding in a meaningful way. We conclude that the protections adopted in this Second Protective Order will give appropriate access to the public while protecting a Submitting Party's competitively sensitive information, and will thereby serve the public interest. The Second Protective Order covers only those portions of documents or data that fall into one of the categories specified below. Further, it does not cover responses to written interrogatories.

4. Any party seeking access to confidential documents subject to the Second Protective Order shall request access pursuant to the terms of the Second Protective Order and must sign the Acknowledgement of Confidentiality, attached as Appendix A ("Acknowledgement").

5. *Definitions.* As used herein, capitalized terms, not otherwise defined herein, shall have the following meanings:

"Stamped Highly Confidential Document" means any document, or any part thereof, that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 06-74 before the Federal Communications Commission," unless the Commission determines, *sua sponte* or by request pursuant to sections 0.459 or 0.461 of its rules, that any such document is not entitled to such confidential treatment. The term "document" means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person. By designating a document a "Stamped Highly Confidential Document," a Submitting Party signifies that it contains information that the Submitting Party believes should be subject to protection under FOIA, the Commission's implementing rules and this Second Protective Order.

"Highly Confidential Information" means information contained in Stamped Highly Confidential Documents or derived therefrom that is not otherwise available from publicly available sources. Specifically, the responses requested by the Initial Information Request in Docket No. 06-74 covered by the Second Protective Order are those portions of documents or data – or entire documents, if eligible in their entirety – that disclose the following: the identity or characteristics of specific customers or those with whom a company is negotiating (specifications 7, 13(b), 16, 19, 30 and 32); revenues and numbers of customers disaggregated by customer type and a market area smaller than the nation (such as the MSA for in-region areas and franchise area for out-of-state areas) (specifications 5(a), 12(a), 24, 29(b) and (c)); details of the Submitting Party's future plans to compete for a customer or specific groups or types of customers (*e.g.*, business or wholesale customers) specifically including the Submitting Party's future pricing strategies, product strategies, or marketing strategies (specifications 8-10, 20-22, 26, 27 and 33-35); detailed or granular engineering capacity information (specifications 14(a), 14(b)(i)-(ii), 14(c)(i)-(ii) and 17); detailed or disaggregated quantification of merger integration benefits or efficiencies (specifications 53(c) and (f) and 54-56); the underlying carriers the Submitting Party uses when providing U.S.-international resale services and the relative percentage of the Submitting Party's minutes of U.S.-international resale traffic carried by each underlying carrier (specifications 46(3), 47(3) and 48(3)); world-total minutes and revenues for facilities-based U.S.-international traffic and pure resale U.S.-international traffic (combined) (specification 49); revenues and minutes associated with U.S.-

international service provided through prepaid calling cards (specification 50); and those portions of *documents that have some of the characteristics of more than one category of competitive sensitivity* listed above. To the extent that a Submitting Party believes that future submissions fall into one of these categories, the Submitting Party must file a letter explaining which category the information falls within, and the Submitting Party may file under this Second Protective Order only those documents specifically authorized by the Bureau.

"Outside Counsel of Record" or "Outside Counsel" means the firm(s) of attorneys, or sole practitioner(s), as the case may be, representing a party in these proceedings, provided that such persons are not involved in competitive decision-making, *i.e.*, Outside Counsel's activities, association, and relationship with a client do not involve advice about or participation in the business decisions of the client or of any competitor of a Submitting Party nor the analysis underlying the business decisions. Outside Counsel of Record includes any attorney representing a non-commercial party in these proceedings, provided that such a person is not involved in the competitive decision-making activities of any competitor of a Submitting Party.

"Outside Consultants" means consultants or experts retained for the purpose of assisting Counsel or a party in this proceeding, provided that the Outside Consultants are not involved in competitive decision-making, *i.e.*, Outside Consultants' activities, association, and relationship with a client do not involve advice about or participation in the business decisions of the client or any competitor of a Submitting Party nor the analysis underlying the business decisions. Outside Consultants include any expert employed by a non-commercial party in these proceedings, provided that such a person is not involved in the competitive decision-making activities of any competitor of a Submitting Party.

"Reviewing Party" means a person who has obtained access to Highly Confidential Information (including Stamped Highly Confidential Documents) pursuant to paragraphs 8 and 11 of this Second Protective Order.

6. *Use of Highly Confidential Information.* Persons obtaining access to Highly Confidential Information (including Stamped Highly Confidential Documents) under this Second Protective Order shall use the information solely for the preparation and conduct of this license transfer proceeding before the Commission as delimited in this and subsequent paragraphs, and any judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such documents or information for any other purpose, including, without limitation, business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings. Should the Commission rely upon or otherwise make reference to the contents of any of the Stamped Highly Confidential Documents or Highly Confidential Information in its decision in this proceeding, it will do so by redacting any Highly Confidential Information from the public version of the decision and by making the unredacted version of the decision available only to a court and to those persons entitled to access to Highly Confidential Information under this Second Protective Order.

7. *Non-Disclosure of Stamped Highly Confidential Information.* Except with the prior written consent of the Submitting Party, or as hereinafter provided under this Second Protective Order, neither a Stamped Highly Confidential Document nor any Highly Confidential Information may be disclosed by a Reviewing Party to any person other than the Commission and its staff.

8. *Permissible Disclosure.* Subject to the requirements of paragraph 11, Stamped Highly Confidential Documents may be reviewed by Outside Counsel and Outside Consultants. Outside Counsel and Outside Consultants may disclose Stamped Highly Confidential Documents and other Highly Confidential Information to: (1) paralegals or other employees of such Outside Counsel or Outside Consultants not

described in clause 2 of this paragraph assisting Outside Counsel or Outside Consultants in this proceeding; (2) employees of such Outside Counsel or Outside Consultants involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding, or performing other clerical or ministerial functions with regard to documents connected with this proceeding; and (3) employees of third-party contractors performing one or more of the functions set forth in clause 2 of this paragraph. Reviewing Parties may discuss and share the contents of the Stamped Highly Confidential Documents and Highly Confidential Information with any other Reviewing Party and with the Commission and its staff. A Submitting Party's Stamped Highly Confidential Documents and Highly Confidential Information may also be disclosed to employees and Counsel of the Submitting Party.

9. *Protection of Stamped Highly Confidential Documents and Highly Confidential Information.* Persons described in paragraph 8 shall have the obligation to ensure that access to Stamped Highly Confidential Documents and Highly Confidential Information is strictly limited as prescribed in this Second Protective Order. Such persons shall further have the obligation to ensure that: (1) Stamped Highly Confidential Documents and Highly Confidential Information are used only as provided in this Second Protective Order; and (2) Stamped Highly Confidential Documents are not duplicated except as necessary for filing at the Commission under seal as provided in paragraph 15 below.

10. *Prohibited Copying.* If, in the judgment of the Submitting Party, a document contains information so sensitive (even given its Highly Confidential designation) that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited" and no copies of such document, in any form, shall be made. Application for relief from this restriction against copying may be made to the Commission, with notice to Outside Counsel of Record for the Submitting Party.

11. *Procedures for Obtaining Access to Highly Confidential Documents.* In all cases where access to Stamped Highly Confidential Documents and Highly Confidential Information is permitted pursuant to paragraph 8, before reviewing or having access to any Stamped Highly Confidential Documents or Highly Confidential Information, each person seeking such access shall execute the attached Acknowledgment of Confidentiality ("Acknowledgment") and file it with the Bureau, on behalf of the Commission, and serve it upon each Submitting Party through its Outside Counsel of Record so that the Acknowledgment is received by each Submitting Party at least five business days prior to such person's reviewing or having access to such Submitting Party's Stamped Highly Confidential Documents or Highly Confidential Information, except that, where the person seeking access is one described in either clause 2, 3 or 4 of paragraph 8, the Acknowledgment shall be delivered promptly prior to the person obtaining access. Each Submitting Party shall have an opportunity to object to the disclosure of Stamped Highly Confidential Documents to any such persons. Any objection must be filed at the Commission and served on Counsel representing, retaining or employing such person within three business days after receiving a copy of that person's Acknowledgment (or where the person seeking access is one described in either clause 3 or 4 of paragraph 8, such objection shall be filed and served as promptly as practicable after receipt of the relevant Acknowledgment). Until any such objection is resolved by the Commission and, if appropriate, any court of competent jurisdiction prior to any disclosure, and unless such objection is resolved in favor of the person seeking access, persons subject to an objection from a Submitting Party shall not have access to Stamped Highly Confidential Documents or Highly Confidential Information. The Submitting Party shall make available for review the Stamped Highly Confidential Documents of such party at the offices of such party's Outside Counsel of Record or, if the Submitting Party does not have Outside Counsel of Record, at the offices of such party's in-house counsel; *provided, however,* that the Applicants shall make available for review all of their Stamped Highly Confidential Documents at the offices of one Applicant's Outside Counsel of Record (the "Applicants' Custodian Counsel").

12. *Information in Electronic Format.* Upon written request as provided for in paragraph 11, a Reviewing Party may review and analyze Highly Confidential Information that is maintained in an electronic format. The Applicants may require such electronic information be reviewed at the office of Applicants' Custodian Counsel. Any other party submitting Highly Confidential Information in electronic format may require such electronic information be reviewed at the office of their Outside Counsel of Record. The Applicants must provide the Reviewing Party's Outside Counsel of Record and Outside Consultants adequate and secure computer capacity to load and run their software and assist in obtaining any off-site software licenses that may be required. Applicants' Custodian Counsel must afford the Reviewing Party's Outside Counsel and Outside Consultants a private and secure workplace, including private and secure storage and adequate shredding and disposal arrangements, where they may review and analyze the data and prepare their analysis. The Reviewing Party's Outside Counsel and Outside Consultants may use the secure workplace 24 hours a day, seven days a week, until their analysis is complete and ready to be submitted to the Commission, and thereafter on an as needed basis until this proceeding, including any appeal, is final and no longer subject to judicial review.

13. The Applicants must allow the Reviewing Party's Outside Counsel and Outside Consultants to perform an integrated analysis of the Applicants' Highly Confidential Information at a single location in the offices of the Applicants' Custodian Counsel. The Reviewing Party's Outside Counsel and Outside Consultants may print four copies of their analysis, three that are to be submitted to the Commission for purposes of this proceeding in accordance with paragraph 15 and one, identical to the analysis submitted to the Commission, which they may retain and use solely in accordance with the provisions of the First Protective Order and this Second Protective Order. The Reviewing Party's Outside Counsel and Outside Consultants may also print any intermediate steps or work product necessary to perform their analysis, including charts and graphs, etc., and they may keep any printouts of that intermediate work product at the private, secure workplace at the offices of the Applicants' Custodian Counsel until this proceeding, including any appeal, is final and no longer subject to judicial review; however, they are prohibited from removing any intermediate work product from the secure workplace. The Reviewing Party's Outside Counsel and Outside Consultants may take notes necessary to perform their analysis, and they may retain such notes until this proceeding, including any appeal, is final and no longer subject to judicial review. The Reviewing Party's Outside Counsel and Outside Consultants may, at their discretion, retain such notes at the secure workplace or remove them. If the Reviewing Party submits in the record any analysis that uses Highly Confidential Information, it must comply with the terms and conditions set forth in the First Protective Order and this Second Protective Order. After their analysis is completed, the Reviewing Party's Outside Counsel and Outside Consultants may retain the data and analysis at a private, secure location in the offices of Applicants' Custodian Counsel, where they may have access on an as needed basis until this proceeding, including any appeal, is final and no longer subject to judicial review. The Reviewing Party must submit an affidavit in the record of this proceeding, at the time it submits integrated analysis pursuant to paragraph 15, certifying that, as pertains to the review and analysis of Highly Confidential Information that is maintained in an electronic format pursuant to paragraphs 12 and 13, its Outside Counsel and Outside Consultants have removed from the offices of the Applicants' Custodian Counsel only their notes and four copies of the final work product that is being submitted to the Commission, that they have not removed any intermediate work product, and that they have filed everything (other than their notes and one copy of their analysis) that they have removed.

14. *Requests for Additional Disclosure.* If any person requests disclosure of Highly Confidential Information outside the terms of this Second Protective Order, such a request will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.

15. *Filings with the Commission.* Persons described in paragraph 8 may, in any documents that they file in this proceeding, reference Highly Confidential Information, but only if they comply with the following

procedure: Two copies of each filing that contains or references Highly Confidential Information pursuant to this Second Protective Order (the "Confidential Filing") must be delivered in person to Gary Remondino, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The filing should be accompanied by a cover letter stating "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 06-74." Each page of the confidential or proprietary document should be stamped "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 06-74 before the Federal Communications Commission." In addition the submitting party must file with the Secretary's Office one copy of the Confidential Filing and two copies of the Confidential Filing in redacted form (the "Redacted Confidential Filing"). The two copies of the Redacted Confidential Filing and their accompanying cover letters should be stamped "REDACTED – FOR PUBLIC INSPECTION." The cover letter accompanying the Redacted Confidential Filing should state that the Submitting Party is filing a redacted version of the particular Confidential Filing. Parties should not provide courtesy copies of filings containing Highly Confidential Information to Commission Staff unless the Bureau so requests, in which case the Submitting Party may print as many copies as the Bureau requests in addition to the four specified in paragraph 13. Any such courtesy copies shall be submitted under seal.

16. *Client Consultation.* Nothing in this Second Protective Order shall prevent or otherwise restrict Outside Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Stamped Highly Confidential Documents or Highly Confidential Information; *provided, however,* that in rendering such advice and otherwise communicating with such client, outside Counsel shall not disclose Stamped Highly Confidential Documents or Highly Confidential Information.

17. *No Waiver of Confidentiality.* Disclosure of Highly Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Highly Confidential Information. Reviewing parties, by viewing this material agree: (1) not to assert any such waiver; (2) not to use Highly Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Highly Confidential Information by a Submitting Party shall not be deemed a waiver of any privilege or entitlement as long as the Submitting Party takes prompt remedial action.

18. *Subpoena by Courts, Departments or Agencies.* If a court, or a federal or state department or agency issues a subpoena or orders production of Stamped Highly Confidential Documents or Highly Confidential Information that a party has obtained under terms of this Second Protective Order, such party shall promptly notify each Submitting Party of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that the Submitting Party has a full opportunity to oppose such production prior to the production or disclosure of any Stamped Highly Confidential Document or Highly Confidential Information.

19. *Violations of Second Protective Order.* Should a person that has properly obtained access to Highly Confidential Information under this Second Protective Order violate any of its terms, that person shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure of Highly Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Second Protective Order, including but not limited to suspension or disbarment of Counsel from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Highly Confidential Information in this or any other Commission proceeding. Nothing in this Second Protective Order shall limit any other rights and remedies available to

the Submitting Party at law or in equity against any person using Highly Confidential Information in a manner not authorized by this Second Protective Order.

20. *Termination of Proceeding.* The provisions of this Second Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, persons described by paragraph 8 shall destroy or return to the Submitting Party Stamped Highly Confidential Documents and all copies of the same. No material whatsoever derived from Stamped Highly Confidential Documents may be retained by any person having access thereto, except Outside Counsel (as described in paragraph 8) may retain, under the continuing strictures of this Second Protective Order, one copy of the pleading containing Highly Confidential Information prepared on behalf of that party. All Outside Counsel shall make certification of compliance herewith and shall deliver the same to Outside Counsel for the Submitting Party not more than three weeks after conclusion of this proceeding and any administrative or judicial review. The provisions of this paragraph regarding retention of Stamped Highly Confidential Documents and copies of same shall not be construed to apply to the Commission or its staff.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief, Wireline Competition Bureau

APPENDIX A

Acknowledgment of Confidentiality

WC Docket No. 06-74

I hereby acknowledge that I have received and read a copy of the foregoing Second Protective Order in the above-captioned proceeding, and I understand it. I agree that I am bound by the Second Protective Order and that I shall not disclose or use Stamped Highly Confidential Documents or Highly Confidential Information except as allowed by this Second Protective Order. I acknowledge that a violation of the Second Protective Order is a violation of an order of the Federal Communications Commission.

Without limiting the foregoing, to the extent that I have any employment, affiliation or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any information obtained as a result of the Second Protective Order is due solely to my capacity as Outside Counsel of Record or Outside Consultant to a party or other person described in paragraph 8 of the foregoing Second Protective Order and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the Second Protective Order.

I acknowledge that it is my obligation to ensure that: (1) Stamped Highly Confidential Documents and Highly Confidential Information are used only as provided in the Second Protective Order; and (2) Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of paragraphs 9, 12, 13 and 15 of the Second Protective Order, and I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Stamped Highly Confidential Documents or Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Second Protective Order.

Executed at _____ this ___ day of _____, ____.

_____
[Name]
[Position]
[Address]
[Telephone]
[Email]