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**Subject:** E-filing - Docket Nos. 040028-TP and 040527-TP  
**Attachments:** Joint Motion to Dismiss 012407.pdf

ORIGINAL

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Docket No. and title: Complaint and Request for Summary Disposition of BellSouth Telecommunications, Inc. Against NewSouth Communications, Corp. to Enforce Contract Audit Provisions  
 Docket No. 040028-TP

In Re: Enforcement of Interconnection Agreement Between BellSouth Telecommunications, Inc. and NuVox Communications, Inc.  
 Docket No. 040527-TP

Filed on behalf of: BellSouth Telecommunications, Inc. (BellSouth) and NuVox Communications, Inc.  
 Number of pages: 4  
 Document attached: Joint Motion to Dismiss Complaints

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaint and Request for Summary Disposition )	Docket No. 040028-TP
of BellSouth Telecommunications, Inc. Against )	
NewSouth Communications, Corp. to Enforce )	
Contract Audit Provisions )	
)	
In Re: Enforcement of Interconnection Agreement )	Docket No. 040527-TP
Between BellSouth Telecommunications, Inc. and )	
NuVox Communications, Inc. )	Filed: January 24, 2007

**JOINT MOTION TO DISMISS COMPLAINTS**

BellSouth Telecommunications, Inc. ("BellSouth") and NuVox Communications, Inc. ("NuVox"), through counsel, hereby respectfully request that the Florida Public Service Commission (the "Commission") dismiss, with prejudice, the Complaints of BellSouth filed in the above-captioned proceedings, dated January 12, 2004 and June 4, 2004. In support of this Joint Motion, BellSouth and NuVox state as follows:

1. On January 12, 2004, BellSouth filed with the Commission a Complaint to enforce the audit provisions of the interconnection agreement between BellSouth and NewSouth Communications, Corp. ("NewSouth") for the State of Florida (the "NewSouth Agreement"), and to obtain relief for NuVox's alleged breach of the NewSouth Agreement, and alleged violation of the *Supplemental Order Clarification*.<sup>1</sup>

2. On June 4, 2005, BellSouth filed with the Commission a Complaint to enforce the audit provisions of the interconnection agreement between BellSouth and NuVox for the State of Florida (the "NuVox Agreement"), and to obtain relief for NuVox's alleged breach of the NuVox Agreement.

<sup>1</sup> *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order Clarification, 15 FCC Rcd 9587 (2000) ("*Supplemental Order Clarification*").

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3. On March 31, 2006, BellSouth and AT&T Inc. (“AT&T”) filed with the Federal Communications Commission (“FCC”) an Application requesting authority to transfer to AT&T control of certain licenses and authorizations held directly and indirectly by BellSouth.<sup>2</sup>

4. On December 29, 2006, the FCC approved the merger of BellSouth and AT&T, subject to the voluntary commitments of AT&T,<sup>3</sup> and the parties consummated the merger on that date.<sup>4</sup> The final EEL audit merger condition approved by the FCC states:

**AT&T/BellSouth shall cease all ongoing or threatened audits** of compliance with the [FCC]’s EEL eligibility criteria (as set forth in the *Supplemental Order Clarification*’s significant local use requirement and related safe harbors, and the *Triennial Review Order*’s high capacity EEL eligibility criteria), **and shall not initiate new EELs audits.**<sup>5</sup>

Therefore, pursuant to the FCC’s announced adoption of a Memorandum Opinion and Order approving the merger, BellSouth became obligated to cease all “ongoing or threatened” EEL audits, as of December 29, 2006.<sup>6</sup>

5. In consideration of the EEL audit merger condition approved by the FCC, BellSouth and NuVox agree that the disputes before the Commission in the above-captioned proceedings are moot.

6. The Commission has not yet issued its orders in the above-captioned proceedings, resolving the issues presented in BellSouth’s Complaints.

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<sup>2</sup> *In the Matter of BellSouth Corporation and AT&T Inc., Application Pursuant to Section 214 of the Communications Act of 1934 and Section 63.04 of the Commission’s Rules for Consent to Transfer the Control of BellSouth Corporation to AT&T Inc.*, WC Docket No. 06-74 (filed Mar. 31, 2006).

<sup>3</sup> FCC Approves Merger of AT&T Inc. and BellSouth Corporation, Fed. Communications Comm’n News (rel. Dec. 29, 2006) (“News Release”).

<sup>4</sup> Press Release, AT&T and BellSouth Join to Create a Premier Global Communications Company: Deal Consolidates Ownership of Cingular Wireless; BellSouth and Cingular Brand Transition to Begin Soon (Dec. 29, 2006) at [www.att.com/gen/press-room](http://www.att.com/gen/press-room).

<sup>5</sup> News Release, AT&T Merger Commitment Letter, Attachment at 3.

<sup>6</sup> *Id.* at 3 (“Action by the Commission, and effective upon adoption, Friday, December 29, 2006, by Memorandum Opinion and Order.”).

WHEREFORE, for the reasons set forth herein, BellSouth and NuVox respectfully request that the Commission dismiss BellSouth's Complaints in the above-captioned proceedings.

Submitted this 24<sup>th</sup> day of January, 2007.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Joint Motion to Dismiss Complaints was served by electronic mail and U.S. Mail this 24<sup>th</sup> day of January, 2007, 2005 to the following:

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