

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaint and request for summary disposition to enforce contract audit provisions in interconnection agreement with NewSouth Communications Corp., by BellSouth Telecommunications, Inc.

DOCKET NO. 040028-TP

In re: Complaint to enforce interconnection agreement with NuVox Communications, Inc. by BellSouth Telecommunications, Inc.

DOCKET NO. 040527-TP

ORDER NO. PSC-07-0193-FOF-TP

ISSUED: March 2, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. McMURRIAN

ORDER GRANTING JOINT MOTION TO DISMISS COMPLAINTS

BY THE COMMISSION:

I. Case Background

On March 15, 2002 BellSouth Telecommunications, Inc. (BellSouth) transmitted a letter by email and overnight delivery to NuVox Communications, Inc. (NuVox), notifying NuVox of its intent to audit NuVox's Enhanced Extended Links (EELs).¹ On April 26, 2006, BellSouth transmitted a letter to NewSouth Communications, Corp (NewSouth), notifying NewSouth of its intent to audit NewSouth's EELs.² Both NewSouth and NuVox refused to comply with the audit.

BellSouth filed a Complaint and Request for Summary Disposition against NewSouth on January 12, 2004 to enforce an audit provision in their interconnection agreement. On June 4, 2004, BellSouth filed a similar Complaint against NuVox, collectively "Complaints."

¹ An enhanced extended link (EEL) consists of an unbundled network elements (UNEs) combination of loops and transport.

² On April 6, 2005, a memo to CCA was issued in Docket No. 050162-TI acknowledging NewSouth Holdings, Inc. holds the name of NuVox Communications, Inc., as filed with the Florida Department of State, effective March 3, 2005.

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The parties requested that this Commission not take action on the complaint to allow for the differences to be solved through negotiations. The parties reached a resolution and thus filed a Joint Motion to Dismiss Complaints with prejudice on January 24, 2007.

BellSouth and AT&T Inc. (AT&T) filed *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, with the Federal Communications Commission ("FCC") on March 31, 2006. This application requested authority to transfer AT&T control of authorizations and certain licenses held directly and indirectly by BellSouth.

The merger went into effect on December 29, 2006 when the FCC granted approval of the merger of BellSouth and AT&T, subject to the voluntary commitments of AT&T.

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.

Parties further assert that pursuant to the FCC's announced adoption of a Memorandum Opinion and Order approving the merger, on December 29, 2006, BellSouth became obligated to cease all "ongoing or threatened" EEL audits. Parties assert that the disputes before this Commission are moot in consideration of the EEL audit merger condition approved by the FCC and therefore, request that the joint motion to dismiss be granted.

II. Analysis

The law is clear that the plaintiff's right to take a voluntary dismissal is absolute. *Fears v. Lunsford*, 314 So.2d 578, 579 (Fla. 1975). It is also established civil law that once a timely voluntary dismissal is taken, the trial court loses its jurisdiction to act. *Randle-Eastern Ambulance Service, Inc. v. Vasta*, 360 So.2d 68, 69 (Fla. 1978). In their Joint Motion to Dismiss Complaints, the parties advise this Commission that they are in agreement that the disputes in these dockets are rendered moot by the FCC's adoption of a Memorandum Opinion and Order approving the merger and request that BellSouth's Complaints be dismissed with prejudice to the rights of each party to further pursue these issues in any forum.

III. Decision

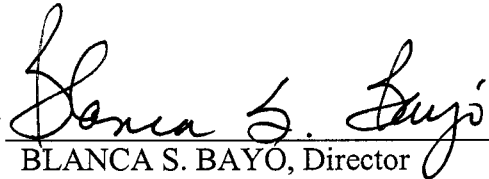
Accordingly, we find it appropriate to grant the parties' Joint Motion to Dismiss Complaints. No other party has filed for intervention in this matter; therefore, acknowledging the voluntary joint motion to dismiss will not be prejudicial to any party. No further action needs to be taken and the dockets shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc. and NuVox Communications, Inc.'s Joint Motion to Dismiss Complaints, be granted. It is further

ORDERED that no further action be taken and these dockets shall be closed.

By ORDER of the Florida Public Service Commission this 2nd day of March, 2007.



BLANCA S. BAYO, Director
Division of the Commission Clerk
and Administrative Services

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.