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March 17, 2008

VIA HAND DELIVERY

Hon. Eddie Roberson, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

filed electronically in docket office on 03/17/08

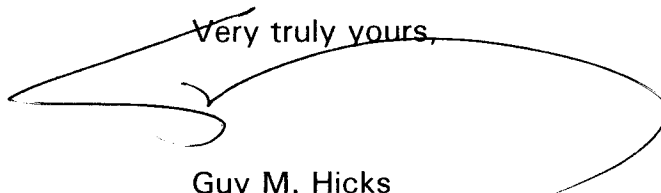
Re: *Joint Petition for Arbitration of NewSouth Communications Corp., et al. of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended*  
Docket No. 04-00046

Dear Chairman Roberson:

Enclosed are the original and four copies of AT&T Tennessee's *Response to NuVox's Reply*.

Copies of the enclosed are being provided to counsel of record.

Very truly yours,



Guy M. Hicks

GMH:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re:        *Joint Petition for Arbitration of NewSouth Communications Corp., et al. of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended*

Docket No. 04-00046

**AT&T TENNESSEE'S RESPONSE TO NUVOX'S REPLY**

BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee ("AT&T Tennessee") respectfully submits this response to the latest pleadings submitted by NuVox Communications, Inc. ("NuVox") in support of its petition for reconsideration and clarification (collectively, "Reply")<sup>1</sup> of the Authority's Final Order of Arbitration Award dated December 5, 2007 ("*Order*").<sup>2</sup> For the reasons set forth herein and in AT&T Tennessee's Response to NuVox's Petition for Reconsideration and Clarification, the Tennessee Regulatory Authority ("Authority") should deny Nuvox's Petition.

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<sup>1</sup> NuVox Communications, Inc.'s motion for leave to file a reply to AT&T Tennessee's response and NuVox's reply to AT&T's response to Nuvox's petition for reconsideration and clarification.

<sup>2</sup> *Order* at 6-7. The Authority's commingling decision in this arbitration is consistent with the Authority's commingling ruling in the Authority's generic change of law docket, Docket No. 04-00381 ("Generic Docket").

***Item 26: Should BellSouth be required to commingle UNEs or Combinations with any service, network element or other offering that it is obligated to make available pursuant to Section 271 of the Act? (Attachment 2, Section 1.7)***

Regarding commingling, NuVox offers no new arguments in its attempt to convince the Authority to reverse course and change its commingling decision.<sup>3</sup> In its *Order*, the Authority correctly concluded that AT&T Tennessee (then known as BellSouth) has no obligation under federal law “to commingle UNEs [unbundled network elements] or UNE combinations with any service, network element or other offering that it is obligated to make available pursuant to Section 271 of the Act.”<sup>4</sup> As previously noted by AT&T Tennessee, the Authority’s commingling ruling is consistent with federal law as pronounced by the Federal Communications Commission (“FCC”) in its *Triennial Review Order (“TRO”)*,<sup>5</sup> wherein the FCC held that carriers like AT&T Tennessee were not required “pursuant to section 271, to combine network elements that no longer are required to be unbundled under section 251.”<sup>6</sup> NuVox’s attempts to limit the aforementioned *TRO* language are unavailing and unpersuasive.<sup>7</sup> Moreover, the Authority’s commingling decision is consistent with the FCC’s elimination of the UNE-P regime in its *Triennial Review*

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<sup>3</sup> See Reply at 2-6.

<sup>4</sup> *Order* at 7.

<sup>5</sup> Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) (“*Triennial Review Order*” or “*TRO*”), *vacated and remanded in part, aff’d in part, United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (“*USTA II*”), *cert. denied, NARUC v. United States Telecom Ass’n*, 125 S. Ct. 313 (2004).

<sup>6</sup> *TRO* at ¶ 655, footnote 1989 (prior to the issuance of the *TRO*’s Errata, footnote 1989 was footnote 1990).

<sup>7</sup> See Reply at 4-5.

*Remand Order ("TRRO")*<sup>8</sup> wherein the FCC ended the UNE-P regime in order to encourage facilities-based competition. As such, the Authority should deny NuVox's Petition for Reconsideration on Item 26.

***Item 36: (A) How should line conditioning be defined in the Agreement? (B) What should BellSouth's obligations be with respect to Line Conditioning? (Attachment 2, Section 2.12.1)***

In its *Order*, the Authority adopted NuVox's position and held that line conditioning should be defined as set forth in the FCC's line conditioning rule.<sup>9</sup> Not satisfied with winning this issue outright, NuVox repeats its request for the Authority to go beyond the language of the FCC's line conditioning rule and include "an express, affirmative ban on AT&T limiting the provisioning of line conditioning to circumstances in which it regularly performs line conditioning for its own customers."<sup>10</sup> As explained below, the Authority should reject NuVox's request.

In its Reply, NuVox offers nothing new in support of its request for clarification. For example, NuVox makes no allegation that during the course of negotiations that AT&T Tennessee has refused to implement the Authority's line conditioning ruling into the parties' new interconnection agreement. As such, NuVox has offered no reason for the Authority to revisit its line conditioning ruling and define line conditioning in a manner that goes beyond the federal definition of line conditioning as set forth in the FCC's rules.

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<sup>8</sup> Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533 (2005) ("*Triennial Review Remand Order*" or "*TRRO*") (subsequent history omitted).

<sup>9</sup> Order at 31.

<sup>10</sup> Reply at 6.

As previously noted by AT&T Tennessee, if the Authority does decide to look beyond the FCC's line conditioning rule in clarifying this issue, then the first place the Authority should look is the FCC's discussion of line conditioning in the *TRO* wherein the FCC stated that "line conditioning should be properly seen as a routine network modification that incumbent LECs regularly perform in order to provide xDSL services to their own customers."<sup>11</sup> Of course, harmonizing the *TRO*'s line conditioning discussion with the text of the FCC's line conditioning rule would require the Authority to adopt AT&T Tennessee's position on this issue. Unless the Authority were to reconsider and adopt AT&T Tennessee's position, the Authority should deny NuVox's Petition with respect to Item 36.

***Item 37: Should the Agreement contain specific provisions limiting the availability of load coil removal to copper loops of 18,000 feet or less? (Attachment 2, Section 2.12.2)***

NuVox has requested for the Authority to delete the following statement, which is contained at the end of the Authority's "Deliberations and Conclusions" portion of section: "The majority of the Panel voted that any provision of service that BellSouth provides for its own customers shall also be made available to CLECs regardless of length."<sup>12</sup> NuVox claims that this straightforward sentence is somehow "ambiguous and confusing."<sup>13</sup> NuVox's claim lacks credibility. The statement appears to be nothing more than a summation AT&T Tennessee's general non-discrimination obligation with respect to the services AT&T Tennessee

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<sup>11</sup> *TRO* at ¶ 643.

<sup>12</sup> *Order* at 33.

<sup>13</sup> *Petition* at 6.

provides to its retail and wholesale customers. What remains ambiguous and confusing is why NuVox wishes to have this non-controversial statement deleted.

As previously noted, it is unclear what NuVox is attempting to accomplish by requesting deletion of the language in question. Far from clarifying its intent, in its Reply, NuVox makes rambling statements such as: *"Nevertheless, if the Authority wants to curb AT&T attempt to limit its line conditioning obligations in a manner directly contrary to federal law in a manner that applies to all CLECs, NuVox would have no objection whatsoever to the Authority doing so upon its own motion in the Generic Docket."*<sup>14</sup> Again, the Authority should not assist NuVox in any attempt to obtain special treatment that goes above and beyond how AT&T Tennessee treats other CLECs operating in Tennessee. As such, the Authority should deny NuVox's Petition for Reconsideration on Item 37.

***Item 51: (B) Should there be a notice requirement for BellSouth to conduct an audit and what should the notice include? (C) Who should conduct the audit and how should the audit be performed?***

The Authority held that "reimbursement of audit costs should conform to the provisions of paragraph 627 of the *Triennial Review Order*."<sup>15</sup> Asserting that reimbursement of audit costs was not an issue in the arbitration, NuVox has requested for the Authority to strike the reimbursement language (quoted above).<sup>16</sup> Again, there is no need for the Authority to strike such language. First, as NuVox acknowledges, the parties have agreed upon audit reimbursement language that

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<sup>14</sup> Reply at 8.

<sup>15</sup> *Order* at 19.

<sup>16</sup> Petition at 7.

comports with the *Triennial Review Order*.<sup>17</sup> As such, there is no need for the Authority to waste time addressing a matter that is not in dispute. Second, NuVox offers absolutely nothing in support of its paranoid fear "that AT&T somehow will seek to modify or alter the language already agreed-upon with NuVox."<sup>18</sup> As previously noted, AT&T Tennessee is concerned that deleting the language in question may create the erroneous impression that the Authority's EEL audit reimbursement position differs from the FCC's position on the issue as set forth in the *Triennial Review Order*. To avoid such confusion, the Authority should deny NuVox's Petition for Reconsideration on Item 51.

#### **CONCLUSION**

For the reasons set forth herein and in AT&T Tennessee's Response to CompSouth's Petition for Reconsideration in the Generic Docket, the Authority should deny NuVox's Petition for Reconsideration and Clarification.

Respectfully submitted,

AT&T TENNESSEE

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<sup>17</sup> *Id.*

<sup>18</sup> Reply at 9.

## CERTIFICATE OF SERVICE

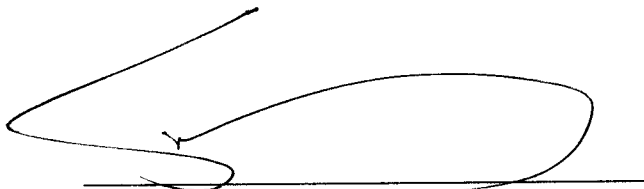
I hereby certify that on March 17, 2008, a copy of the foregoing document was served on the following, via the method indicated:

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A handwritten signature in black ink, appearing to be "J. Heitmann", written over a horizontal line.