

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| COMPLAINT OF BELL SOUTH |) | |
| TELECOMMUNICATIONS, INC. FOR |) | CASE NO. |
| EMERGENCY ENFORCEMENT OF THE |) | 2005-00217 |
| COMMISSION'S APRIL 15, 2005 ORDER IN |) | |
| CASE NO. 2004-00295 REQUIRING NUVOX |) | |
| COMMUNICATIONS, INC. TO SUBMIT TO |) | |
| AUDIT |) | |

O R D E R

On June 6, 2005, BellSouth Telecommunications, Inc. ("BellSouth") filed a complaint against NuVox Communications, Inc. ("NuVox") requesting that the Commission enforce its April 15, 2005 Order.¹ BellSouth asserts that NuVox violated the Commission Order by not submitting within 30 days of April 15, 2005 to an audit of its records and information relating to certain combinations of loop and transport elements. The Commission had resolved the dispute between NuVox and BellSouth by requiring NuVox to permit the Enhanced Extended Links ("EELs") audit requested by BellSouth but had limited the audit to 15 of the 159 circuits which BellSouth desired to audit. BellSouth contends that, as of the filing of its complaint, NuVox had allowed 49 days to elapse since the Commission's Order requiring it to submit to the audit and had taken no steps to cooperate. BellSouth asserts that there is no need to await proof of

¹ In the Matter of BellSouth Telecommunications, Inc. v. NuVox Communications, Inc., Case No. 2004-00295.

further non-compliance by NuVox.² BellSouth requests that the Commission declare NuVox has violated the April 15, 2005 Order and order NuVox to cooperate with the third-party auditor in complying with the Commission's determinations that the audit proceed.

On June 9, 2005, the Commission ordered NuVox to satisfy or answer BellSouth's complaint within 10 days. On June 20, 2005, NuVox answered the complaint, asserting it had complied with the Commission's Order. NuVox contends that it has made itself available to submit to the audit in accordance with the Commission's Order.³ NuVox asserts that there is no basis for the Commission to expand the scope of the audit as requested by BellSouth in its complaint.⁴

On June 23, 2005, NuVox filed a motion to dismiss BellSouth's complaint. NuVox argues it has fully complied with the auditor's requests. BellSouth's complaint asserted that NuVox was obstructing the conduct of the EELs audit. NuVox believes BellSouth's complaint is without merit. NuVox counters that it has supplied the auditor with all information requested.⁵

On February 3, 2006, NuVox submitted a letter indicating that its motion was uncontested. On February 14, 2006, BellSouth moved the Commission to hold this matter in abeyance pending completion of the audit. BellSouth stated it did not respond to NuVox's motion to dismiss because NuVox had filed a complaint in federal court

² BellSouth complaint at 8-9.

³ NuVox Answer at 1.

⁴ NuVox Answer at 13.

⁵ NuVox Motion to Dismiss at 3.

seeking to restrain enforcement of the Commission's Order. On November 1, 2005, the federal court upheld the Commission's Order, and the audit has proceeded, according to BellSouth.⁶

On February 21, 2006, NuVox filed a response to BellSouth's motion and reply in support of its own motion to dismiss. NuVox asserts that there is no need for this matter to remain on the Commission's docket, as even BellSouth agrees that NuVox is cooperating with the audit at this time. NuVox also asserts that BellSouth may seek relief at a later time, should that become necessary.⁷

Having considered all pleadings in this matter, the Commission finds that NuVox's motion to dismiss should be granted and BellSouth's motion to hold in abeyance should be denied. The federal court upheld the Commission's determination that BellSouth had complied with its interconnection agreement regarding EELs audit conditions and that BellSouth had demonstrated its concern by asserting that BellSouth remain the local service provider for 15 of NuVox's EELs and that BellSouth had professed by affidavit the independence of its chosen auditor.⁸ NuVox may object to this EELs audit after it has been performed but may not prevent its initiation once BellSouth asserts it has adequate documentation to support an audit. As the parties appear to be complying with the Commission Order and the Opinion of the federal court,

⁶ BellSouth Motion to Hold in Abeyance at 2.

⁷ NuVox Response at 1-2.

⁸ NuVox Communications, Inc. v. BellSouth Telecommunications, Inc.; Kentucky Public Service Commission; Mark David Goss, in his official capacity as Chairman of the Kentucky Commission; and W. Gregory Coker, in his official capacity as Commissioner of the Kentucky Commission, Civil Action 05-cv-41-JMH, United States District Court, Eastern District of Kentucky.

there is no dispute between the parties at this time. Accordingly, this matter should be dismissed from the Commission's active docket without prejudice to the refiling of a complaint should an actual dispute arise regarding the EELs audit.

IT IS THEREFORE ORDERED that:

1. NuVox's motion to dismiss BellSouth's complaint is granted.
2. BellSouth's motion to hold this matter in abeyance is denied.
3. This case is removed from the Commission's docket.

Done at Frankfort, Kentucky, this 22nd day of March, 2006.

By the Commission

ATTEST:



Executive Director