

**BellSouth Telecommunications, Inc.**  
601 W. Chestnut Street  
Room 407  
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

**Dorothy J. Chambers**  
General Counsel/Kentucky

502 582 8219  
Fax 502 582 1573

June 3, 2005

**RECEIVED**

JUN 0 3 2005

PUBLIC SERVICE  
COMMISSION

Ms. Beth O'Donnell  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, KY 40602

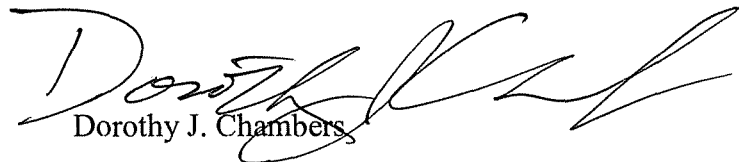
Case 2005-00217

Re: Enforcement of Commission's Order in Case No. 2004-00295, Dated  
April 15, 2005

Dear Ms. O'Donnell:

Enclosed for filing in the above-captioned case is the Complaint of BellSouth Telecommunications, Inc. for Enforcement of the Commission's April 15, 2005, Order Requiring NuVox Communications, Inc. to Submit to Audit.

Sincerely,

  
Dorothy J. Chambers

Enclosure

cc: Parties of Record

588023

COMMONWEALTH OF KENTUCKY

RECEIVED

BEFORE THE PUBLIC SERVICE COMMISSION

JUN 06 2005

PUBLIC SERVICE  
COMMISSION

In the Matter of:

ENFORCEMENT OF COMMISSION'S ORDER IN ) CASE NO. 2005-00217  
CASE NO. 2004-00295, DATED APRIL 15, 2005 )

**COMPLAINT OF BELLSOUTH TELECOMMUNICATIONS, INC. FOR  
EMERGENCY ENFORCEMENT OF THE COMMISSION'S APRIL 15, 2005, ORDER  
REQUIRING NUVOX COMMUNICATIONS, INC. TO SUBMIT TO AUDIT**

BellSouth Telecommunications, Inc. ("BellSouth"), by counsel, respectfully files this Complaint, pursuant to KRS 278.260(1) and 807 KAR 5:001, Section 12, to enforce, on an emergency, expedited basis, an Order of the Kentucky Public Service Commission ("Commission"), dated April 15, 2005. *See In the Matter of BellSouth Telecommunications, Inc. v. NuVox Communications, Inc.*, Case No. 2004-00295, *Order*, April 15, 2005, (the "*April 15, 2005 Order*").

In the *April 15, 2005, Order*, NuVox Communications, Inc. ("NuVox") was required to submit – within 30 days of the Order -- to an audit of its records and information relating to certain combinations of loop and transport elements purchased by NuVox from BellSouth. The audit commenced on May 16, 2005, in compliance with the Commission's order, and on May 18, 2005, the auditor, Grant Thornton LLP, contacted NuVox in an effort to plan the field work for the audit. However, NuVox communicated to the auditor that it did not intend to comply with the Commission's *April 15, 2005, Order*, on the improper basis that on or about May 9, 2005, it had petitioned the Commission for reconsideration of its April 15, 2005, Order.

Although NuVox's petition was never appropriate grounds for NuVox not to cooperate with the audit of the circuits, that petition, as of June 1, 2005, has been denied by operation of

law. KRS 278.400. Despite this Commission's Order of April 15, 2005, NuVox has continued to refuse to cooperate with the audit of its circuits.

NuVox is in contempt of the Commission's *April 15, 2005, Order*. NuVox must be compelled to comply with the *April 15, 2005, Order*, and should be sanctioned for its contempt to date. In this fashion only can the Commission ensure compliance with its lawful orders.

In support of this Complaint, BellSouth alleges and says that:

**PARTIES**

1. BellSouth, a Georgia corporation, is an incumbent local exchange carrier providing telecommunications service in various states, including Kentucky, Alabama, Florida, Georgia, Louisiana, North Carolina, Mississippi, South Carolina and Tennessee.

2. NuVox is a competing local exchange provider (CLEC) that has entered into a nine-state Interconnection Agreement with BellSouth, and that is currently providing service to end users in several states in which BellSouth provides service, including Kentucky.

3. BellSouth's representative for purposes of this proceeding is:

Dorothy J. Chambers  
General Counsel – Kentucky  
BellSouth Telecommunications, Inc.  
601 W. Chestnut Street, Room 407  
P.O. Box 32410  
Louisville, KY 40232  
(502) 582-8219

4. The name and address of the respondent to this Complaint is:

Hamilton E. Russell, III  
NuVox Communications, Inc.  
Senior Vice President – Legal and Regulatory Affairs  
Southeast Region  
Suite 500  
301 North Main Street  
Greenville, South Carolina 29601

## JURISDICTION

5. BellSouth and NuVox entered into an Interconnection Agreement (“Kentucky Agreement” or “Agreement”) pursuant to Sections 251 and 252 of the Federal Telecommunications Act of 1996 (the “Act”) that governs their relationship in each of the nine states in which BellSouth operates, including Georgia, Florida, South Carolina, Tennessee, North Carolina, Kentucky, Alabama, Mississippi and Louisiana. The Interconnection Agreement is presently in force and, although it expired on June 30, 2003, it continues, by agreement of the Parties, to govern the Parties’ relationship until the Parties enter into a new Interconnection Agreement. The Interconnection Agreement was submitted to the individual state public service commissions in each of the aforementioned states and duly approved by those commissions, including this Commission.

6. Section 15 of the General Terms and Conditions – Part A of the Interconnection Agreement provides that “if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, either Party may petition the Commission, the FCC or a court of law for resolution of the dispute.” On July 23, 2004, BellSouth filed a Complaint, docketed as Case No. 2004-00295, in which it alleged that NuVox violated the Kentucky Agreement, *inter alia*, by refusing to permit an audit sought by BellSouth pursuant to the Agreement’s terms.

7. Pursuant to its jurisdiction over Case No. 2004-00295 under the Act, as described, and under KRS 278.260(1) and 807 KAR 5:001, Section 12, the Commission entered an Order in Case No. 2004-00295, which resolved the parties’ dispute by ordering NuVox to permit the audit

sought by BellSouth, but limiting that audit, initially, to 15 of the 159 circuits which BellSouth sought to audit. That Order was duly entered on April 15, 2005, and served upon the parties.

8. The instant Complaint is an action to enforce the terms of the Commission's April 15, 2005 Order, over which the Commission has jurisdiction under the Act's Sections 251 and 252 and the Kentucky Agreement, as well as pursuant to KRS 278.260(1) and 807 KAR 5:001, Section 12.

9. The *April 15, 2005, Order* in Case No. 2004-00295 granted in part, and denied in part, BellSouth's motion for summary disposition in that case.

10. In the *April 15, 2005, Order*, the Commission directed NuVox "to allow BellSouth to [audit the 15 circuits described in the Order] no later than 30 days from the date of [the] Order." *April 15, 2005, Order* at 5.

11. In its *Order*, the Commission determined that it was "not necessary to conduct a hearing at this time," *i.e.*, as to the issues NuVox sought to raise in opposition to BellSouth's Complaint and Motion for Summary Disposition, and in support of NuVox's Motion for a Procedural Order in Case No. 2004-00295.

12. The Commission ruled, in its *Order*, that BellSouth had "complied with Section 10.5.4 in Attachment 2 of [the Kentucky Agreement] and is entitled to audit NuVox's records in order to verify the type of traffic being carried over the combinations of loop and transport network elements." *April 15, 2005, Order* at 4-5.

13. Although the Commission found that BellSouth had complied with all audit prerequisites, it nevertheless limited the initial audit to 15 circuits as to which BellSouth had already developed a concern because of its own records showing BellSouth to be a provider of

local service to those end users, as alleged in its initial Complaint and summary disposition papers. *Id.* at 5.

14. The Commission further ruled that NuVox should only be permitted to “challenge the auditor’s qualifications or bias and the veracity of any conclusions, along with the reasonableness of any remedies sought by BellSouth as a result of the audit, upon the filing of a complaint by BellSouth, pursuant to the process outlined by Section 10.5.4 in Attachment 2 of the interconnection agreement” (*i.e.*, upon filing of a complaint by BellSouth based on the audit’s results). *Id.*

15. The Commission further stated, in the *April 15, 2005*, Order, that the matter would “remain on the Commission’s docket pending the outcome of the audit.” *April 15, 2005 Order* at 5.

16. The Commission did not set any conditions in its *April 15, 2005 Order*, nor did the Commission make any reference whatsoever to, non-disclosure arrangements that would be desired, or might be desired, by NuVox, in respect of the audit. Nor did NuVox raise any questions for the Commission to resolve in Case No. 2004-00295 regarding any such non-disclosure treatment that NuVox might desire.

17. On April 26, 2005, the Commission rescinded a portion of the April 15, 2005 Order by ordering, “on its own motion,” that Case No. 2004-00295 be removed from the Commission’s active docket. *See In the Matter of BellSouth Telecommunications, Inc. v. NuVox Communications, Inc.*, Case No. 2004-00295, *Order*, April 26, 2005, at 1 (the “*April 26, 2005, Order*”). The Commission further ruled that the matter would be “closed without prejudice to the filing of a future complaint, if any, regarding the outcome of the audit.” *April 26, 2005, Order* at 1.

18. On May 9, 2005, NuVox petitioned the Commission for rehearing regarding its April 15, 2005, Order in the matter of Case No. 2004-00295. *See* NuVox's Petition for Rehearing, May 9, 2005. In its Petition, NuVox did not seek reconsideration of the Commission's *April 26, 2005 Order*, nor has NuVox subsequently sought such reconsideration of that latter order.

19. Grant Thornton, LLP ("Grant Thornton"), an international and national audit firm, was engaged by BellSouth to conduct the audit, in accordance with the Commission's *April 15, 2005, Order*.

20. On May 16, 2005, in accordance with the *April 15, 2005, Order*, the audit was commenced, and NuVox was notified of that fact, accordingly, on that date. *See* Letter from J. Hendrix to B. Russell and J. Heitmann, May 16, 2005. Attachment 1.

21. Two days later, on May 18, 2005, Grant Thornton sent a letter to NuVox, indicating that Grant Thornton had been engaged for the audit ordered by the Commission, and requesting that NuVox "provide contact information . . . for the person(s) to whom we should direct our requests and further communications." *See* Letter from G. Tannenbaum, CPA, CIRA to B. Russell, May 18, 2005. Attachment 2.

22. After receiving no response from NuVox to its May 18, 2005, letter, Grant Thornton again contacted NuVox, on May 23, 2005, and reiterated its request for contact information. *See* E-mail from G. Tannenbaum to B. Russell, J. Heitmann, M. Campbell and J. Fury, May 23, 2005. Attachment 3.

23. Later in the evening of May 23, 2005, NuVox finally responded to Grant Thornton's requests, by e-mail from its counsel, John Heitmann, to the auditors. *See* E-mail from J. Heitmann to G. Tannenbaum, May 23, 2005. Attachment 4.

24. In the May 23, 2005, response, NuVox stated that it had “requested that the [Commission] reconsider its decision and the Company intends to reserve all of its rights in that respect and this response to your inquiry should in no way be considered a waiver of any kind.” *Id.*

25. The May 23, 2005, response further states that “it is the Company’s position that it is entitled to dispute the independence of an auditor whenever it is that such a dispute arises.” *Id.*

26. The May 23, 2005, response further states that “[i]t is evident to us that BellSouth has interjected itself in this process far too deeply and has had undue influence on and has placed undue pressure on others that it has engaged for other EEL audits.” *Id.*

27. The May 23, 2005, response further states that “[y]ou [Grant Thornton] should know that the Company is not prepared to have BellSouth involved in the audit process and will seek clarification with respect to BellSouth’s involvement to date.” *Id.*

28. The May 23, 2005, response also states that “NuVox requires appropriate non-disclosure agreements to be in place prior to the exchange of information. Compliance with NDAs will be expected and enforced (there is litigation pending against KPMG related to this issue).” *Id.*

29. The May 23, 2005, response further states that “[w]ith this said, we request that GT *not force any new issues* at this juncture and *that it refrain from making any document requests* until the KPSC has had the opportunity to address in a written order the pending legal issues it has before it.” *Id.* (emphasis added).

30. The May 23, 2005, response further states that, “[u]ntil the KPSC address pending issues, NuVox requests that you and your colleagues adopt a neutral posture. As you can no



doubt appreciate, if an audit is to proceed further, the Company wants very much for there to be no issues regarding the integrity and objectivity of the auditor.” *Id.*

31. On June 1, 2005, by operation of Kentucky law, NuVox’s petition for reconsideration was denied.

32. That day, Grant Thornton again requested NuVox’s cooperation for the initiation of the audit fieldwork, and further requested that NuVox indicate its intent to cooperate by close of business on June 2, 2005. Attachment 5.

33. June 2, 2005, passed without any response from NuVox to the auditor, as requested.

34. It has now been 49 days since the Commission’s April 15, 2005, Order, and 18 days since the audit “commenced,” yet NuVox has not taken a single step to cooperate with that audit. It is apparent that the Commission’s action to enforce its Order is necessary if the Order is to be effectuated.

### **CAUSE OF ACTION**

35. The preceding paragraphs in this Complaint are incorporated by reference as though fully set forth herein.

36. As the foregoing facts demonstrate, NuVox is in violation of the Commission’s *April 15, 2005, Order*, and has been in continuing violation of that Order since May 18, 2005.

37. NuVox’s violation of the April 15, 2005, Order, and the facts and circumstances associated with that continuing violation, underscore and heighten the concern BellSouth already possessed regarding NuVox’s Kentucky EELs. NuVox’s obstruction and contumacy indicate a consciousness of wrongdoing and a desire to prevent the facts of that wrongdoing from coming to light. Under the circumstances, one must have serious doubts as to the legitimacy of NuVox’s compliance *across-the-board*. There is no need, under the circumstances, to await additional

proof of non-compliance (which the audit, if ever permitted, presumably will show) in order for the Commission to expand the audit to the remaining EELs.

38. As the facts show, NuVox has embarked on a campaign to threaten and intimidate the auditor, Grant Thornton, and to erect undue and unfair obstacles to the orderly process of the audit ordered by this Commission. This is pure obstruction.

39. NuVox initially sought to stop the audit by falsely representing the state of the record in Case No. 2004-00295 and the state of the proceedings generally between the parties, and also by making accusatory statements to suggest that the auditor's independence had "already" been compromised and/or is in issue in the matter of the audit of NuVox's circuits ordered by the Commission.

40. NuVox has engaged in this pattern of behavior despite the fact that there is no evidence whatsoever that Grant Thornton has behaved improperly, or that BellSouth has behaved improperly, and despite the fact that, as a procedural and substantive matter, its positions have been facially without support in the record before the Commission.

41. NuVox has no right under the Commission's *April 15, 2005, Order* to "challenge" the auditor's independence at this time, and certainly has no right to challenge it in the fashion that it has on the facts to date. NuVox's intentions are transparent, and smack of bad faith intimidation tactics and obstruction.

42. NuVox further has no right under the *April 15, 2005, Order*, or the *April 26, 2005, Order*, to "require any non-disclosure agreements to be in place prior to the exchange of information." Neither *Order* addresses such agreements, nor has NuVox asked the Commission to address such issues. Thus, NuVox cannot inject such an issue into the proceedings in an effort

to intimidate, confuse or forestall the audit. It is clear, however, that this is precisely NuVox's ambition, as proved by the May 23, 2005, response, and its continuing refusal to cooperate.

43. Further, NuVox well-knew that the matter regarding which it had sought rehearing/reconsideration was no longer on the Commission's active docket; *i.e.*, it was closed by order of the commission on April 26, 2005. NuVox should have known that it had never sought review or reconsideration of the *April 26, 2005, Order*. Under the circumstances, there was no cause for NuVox to raise false issues before the auditor relating to the "merits" of its petition. There was certainly no cause for NuVox to refuse to cooperate with the audit while its petition was pending given the standing order of the Commission.

44. NuVox's conduct is a direct challenge to the Commission and its authority. The Commission's *April 15, 2005, Order* never contemplated or supported actions and inactions by NuVox since the *April 15, 2005, Order* issued, nor does that *Order* countenance NuVox's bad-faith challenges and obstruction regarding the auditor.

45. The *April 15, 2005, Order*, similarly, does not create even the suggestion that NuVox has a unilateral right to refuse to submit to the audit unless the auditor agrees to a "non-disclosure agreement." NuVox's actions and inactions since the *April 15, 2005, Order* demonstrate its apparent belief that NuVox alone holds the power to determine how, and if, it will comply with the *April 15, 2005, Order*.

46. NuVox has attempted to evade the lawful orders of the Commissions on these matters.

47. NuVox has engaged in a pattern of obstruction in Kentucky, as it has in other states. For example, in Georgia, the Georgia Public Service Commission also ruled that BellSouth was entitled to audit NuVox's EELs, in similarly limited fashion as the Kentucky Commission has

ordered. BellSouth, at NuVox's insistence (and the GPSC's urging), selected KPMG to audit 44 EELs circuits in Georgia. The audit commenced and, eventually, a preliminary set of findings was developed by KPMG. The findings were communicated to NuVox for *pro forma* assertions and representations from management. BellSouth has yet to see the findings that were presented to NuVox. However, on the basis of summary, non-detailed information that was provided to BellSouth after NuVox had had ample time but failed to take steps to complete the audit. BellSouth sought relief from the GPSC. On the basis of the findings referred to by BellSouth in its Georgia moving papers, NuVox sued KPMG, alleging that its suit was for breach of a non-disclosure agreement between itself and KPMG. Such non-disclosure agreement had never been made a subject of any GPSC order, nor had NuVox sought any GPSC order on the subject. Moreover, NuVox did not sue the auditor in Georgia; rather, NuVox has brought a "breach of non-disclosure agreement" lawsuit against KPMG in South Carolina state court, and has attempted to secure an injunction against KPMG there to block its ability to make disclosures to third parties, except as permitted by NuVox.

48. NuVox's conduct regarding the Georgia audit is wrongful, and the subsequent lawsuit is patently meritless.

49. BellSouth respectfully requests this Commission to ensure that its *April 15, 2005, Order* is followed both in spirit and in letter. That can begin to be accomplished by an appropriate enforcement order, as is sought by this Complaint.

#### **REQUEST FOR RELIEF**

WHEREFORE, BellSouth requests that the Commission:

1. Enter an order declaring that NuVox has violated, and continues to violate, its *April 15, 2005, Order*.

2. Further order that NuVox cease and desist from any further communications to or with Grant Thornton other than those necessary in relation to providing the information and documents that Grant Thornton may, in its discretion, request.

3. Further order that NuVox immediately make arrangements for Grant Thornton to conduct field work at NuVox's offices.

4. Further order that NuVox observe all provisions of the *April 15, 2005, Order*, including but not limited to those provisions establishing that NuVox may not make challenges to the auditor's independence or any other challenges directed at the auditor until such time as BellSouth brings a complaint on the basis of the audit's findings, if ever.

5. Further order that NuVox may not, without first seeking Commission approval, require, or attempt to require, Grant Thornton to enter any non-disclosure agreement with NuVox or, alternatively, order that NuVox and Grant Thornton may enter a non-disclosure agreement if they so choose, but that: (1) the agreement may not restrict Grant Thornton from disclosing information learned in the audit, in its discretion, to BellSouth and/or to the Commission if it deems such disclosure(s) appropriate in its professional judgment; and (2) the agreement must be presented to and approved by the Commission before NuVox's rights in such agreement come into existence and, until such time as the Commission approves any such agreement, there is no such non-disclosure agreement or rights or duties therein binding upon either NuVox or Grant Thornton.

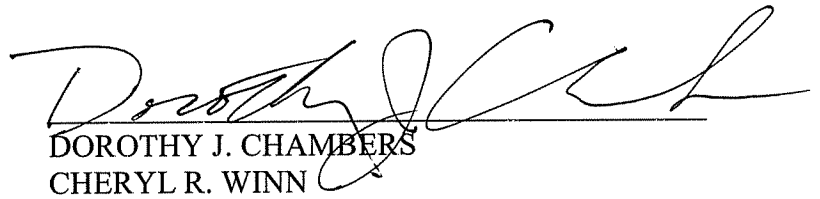
6. Further order that NuVox post an appropriate bond to cover the costs of the audit engagement so as to ensure NuVox's future compliance with the Commission's orders.

7. Further order that NuVox's authority to provide telecommunications in Kentucky will be subject to Commission review upon any further violations by NuVox of the Commission's *April 15, 2005, Order*.

8. Further order that, under the circumstances now shown, NuVox should submit all of its remaining Kentucky EELs circuits to the audit.

9. Grant BellSouth such other and further relief as the Commission deems fair and equitable.

Respectfully submitted,



DOROTHY J. CHAMBERS  
CHERYL R. WINN  
601 W. Chestnut Street, Room 407  
P.O. Box 32410  
Louisville, KY 40232  
(502) 582-8219

R. DOUGLAS LACKEY  
E. EARL EDENFIELD  
THEODORE C. MARCUS  
BellSouth Center – Suite 4300  
675 West Peachtree Street, N.E.  
Atlanta, Georgia 30375  
(404) 335-0743

COUNSEL FOR BELLSOUTH  
TELECOMMUNICATIONS, INC.

586738



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BellSouth Telecommunications  
Interconnection Services  
675 W. Peachtree Street, NE  
Room 34S91  
Atlanta, GA 30375

Interconnection Services Marketing  
Office (404) 927-7503  
Fax (404) 529-7839

May 16, 2005

**VIA ELECTRONIC MAIL**

Mr. Bo Russell  
NuVox Communications, Inc.  
2 N. Main Street  
Greenville, SC 29601  
[brussell@nuvox.com](mailto:brussell@nuvox.com)

Mr. John Heitmann  
1200 19<sup>th</sup> Street, NW, Suite 500  
Washington, DC 20036

Dear Mr. Russell and Mr. Heitmann:

Please be advised that pursuant to the Kentucky Public Service Commission order dated April 15, 2005 in Case No. 2004-00295, the audit of 15 EEL circuits in Kentucky has commenced. As part of the audit, the auditor will contact you shortly.

Sincerely,



Jerry D. Hendrix  
Assistant Vice President  
Interconnection Services Marketing

Enclosure

cc: Mary Campbell, NuVox (via electronic mail)  
John Fury, NuVox (via electronic mail)  
Theodore Marcus, BellSouth (via electronic mail)  
Parkey Jordan, BellSouth (via electronic mail)  
Andrew Caldarello, BellSouth (via electronic mail)



Accountants and Business Advisors

May 18, 2005

Mr. Bo Russell  
NuVox Communications, Inc.  
2 North Main Street  
Greenville, SC 29601

***Re: BellSouth Telecommunications, Inc. v. NuVox Communications, Inc.  
[Case No. 2004-00295 before the Public Service Commission of the Commonwealth of  
Kentucky]***

Dear Mr. Russell:

BellSouth Telecommunications, Inc. has selected Grant Thornton LLP to perform an analysis of 15 Enhanced Extended Links ("EELs") circuits, pursuant to an order of the Public Service Commission of the Commonwealth of Kentucky.

You are listed as a Notices contact for NuVox Communications, Inc. in the February 2005 Amendment to the Agreement between NuVox Communications, Inc. and BellSouth Telecommunications, Inc. dated June 30, 2000. Accordingly, we are addressing this initial communication to you.

We will be preparing a document request list and anticipate being onsite in Greenville, South Carolina, if necessary. Please provide contact information (name, title, mailing address, telephone number and email address) for the person(s) to whom we should direct our requests and further communications.

Thank you.

Very truly yours,

A handwritten signature in cursive script that reads "Gaye Tannenbaum".

Gaye Tannenbaum, CPA, CIRA  
Manager, Economic Advisory Services

cc: Ms. Shelley Padgett, Assistant Director, BellSouth Telecommunications, Inc.

Suite 1000  
1201 Walnut Street  
Kansas City, MO 64106  
T 816 412.2400  
F 816 412.2404  
W [www.grantthornton.com](http://www.grantthornton.com)

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**ATTACHMENT 3**

-----Original Message-----

**From:** Tannenbaum, Gaye [mailto:Gaye.Tannenbaum@GT.com]  
**Sent:** Monday, May 23, 2005 3:21 PM  
**To:** brussell@nuvox.com; jheitmann@KelleyDrye.com; MCampbell@nuvox.com; JFury@NuVox.com  
**Cc:** Padgett, Shelley  
**Subject:** FW: NuVox 15 Kentucky EELs  
**Importance:** High

Mr. Russell, Mr. Heitmann, Ms. Campbell, Mr. Fury:

We have received no response to date from this email, sent last Wednesday.

Please respond with the name and contact information for the person(s) to whom we may direct our Document Requests.

Thank you,

***Gaye Tannenbaum***

Manager, Economic Advisory Services  
Grant Thornton LLP  
Kansas City, MO  
T 816.412.2563  
F 816.412.2404  
E [gaye.tannenbaum@gt.com](mailto:gaye.tannenbaum@gt.com)

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**From:** Tannenbaum, Gaye  
**Sent:** Wednesday, May 18, 2005 2:28 PM  
**To:** 'brussell@nuvox.com'  
**Cc:** Padgett, Shelley  
**Subject:** NuVox 15 Kentucky EELs

<<Bo Russell Nuvox Letter 05 18 2005.pdf>>

*Gaye Tannenbaum*

Manager, Economic Advisory Services

Grant Thornton LLP

Kansas City, MO

T 816.412.2563

F 816.412.2404

E [gaye.tannenbaum@gt.com](mailto:gaye.tannenbaum@gt.com)

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## ATTACHMENT 4

**Heitmann, John**

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**From:** Heitmann, John  
**Sent:** Tuesday, May 24, 2005 7:23 AM  
**To:** 'Tannenbaum, Gaye'  
**Cc:** 'brussell@nuvox.com'; 'MCampbell@nuvox.com'; Kashatus, Jennifer M.; 'Padgett, Shelley'; 'parkey.jordan@bellsouth.com'  
**Subject:** RE: NuVox 15 Kentucky EELs

Ms. Tannenbaum,

A typo has been corrected in the first paragraph of the e-mail sent to you yesterday. The corrected e-mail is included below.

Thanks.

**John J. Heitmann**

Kelley Drye & Warren LLP  
1200 19th Street, N.W., Suite 500  
Washington, D.C. 20036  
Office (202) 955-9888  
Fax (202) 955-9792  
Mobile (703) 887-9920  
jheitmann@kelleydrye.com

-----Original Message-----

**From:** Heitmann, John  
**Sent:** Monday, May 23, 2005 6:39 PM  
**To:** 'Tannenbaum, Gaye'  
**Cc:** brussell@nuvox.com; MCampbell@nuvox.com; Kashatus, Jennifer M.; Padgett, Shelley; parkey.jordan@bellsouth.com  
**Subject:** RE: NuVox 15 Kentucky EELs

Ms. Tannenbaum,

Thank you for your inquiry (both times). As you may know, NuVox has requested that the Kentucky Public Service Commission reconsider its decision and the Company intends to reserve all of its rights in that respect and this response to your inquiry should in no way be considered a waiver of any kind. Until the legal status of all this is resolved and until further notice, you may direct audit related correspondence to those copied above (Mr. Fury, who had been copied on your e-mail, is not currently working on this matter). It is our hope that the Kentucky PSC will rule on our request and resolve open legal issues promptly.

As you may know, the Company does not even know the identity of the circuits for which the KPSC has ordered an audit. Curiously, this is a BellSouth secret. Clarification and reconsideration has been requested. The Company also has asked for reconsideration with respect to the independent auditor issue. In particular, it is the Company's position that it is entitled to dispute the independence of an auditor whenever it is that such a dispute arises. While the Company does not anticipate that disputes would arise with Grant Thorton in this context, the Company has been surprised before. It is evident to us that BellSouth has interjected itself in this process far too deeply and has had undue influence on and has placed undue pressure on others that it has engaged for other EEL audits. You should know that the Company is not prepared to have BellSouth involved in the audit process and will seek clarification with respect to BellSouth's involvement to date. NuVox expects any auditor accepting this type of engagement to do so without compromising its objectivity in any way.

5/24/2005

As information, you should know that NuVox requires appropriate non-disclosure agreements to be in place prior to the exchange of information. Compliance with NDAs will be expected and enforced (there is litigation pending against KPMG related to this issue).

With this said, we request that GT not force any new issues at this juncture and that it refrain from making any document requests until the KPSC has had the opportunity to address in a written order the pending legal issues it has before it. Until the KPSC addresses pending issues, NuVox requests that you and your colleagues adopt a neutral posture. As you can no doubt appreciate, if an audit is to proceed further, the Company wants very much for there to be no issues regarding the integrity and objectivity of the auditor.

Thank you.

Best regards,

**John J. Heitmann**

Kelley Drye & Warren LLP  
1200 19th Street, N.W., Suite 500  
Washington, D.C. 20036  
Office (202) 955-9888  
Fax (202) 955-9792  
Mobile (703) 887-9920  
jheitmann@kelleydrye.com

-----Original Message-----

**From:** Tannenbaum, Gaye [mailto:Gaye.Tannenbaum@GT.com]

**Sent:** Monday, May 23, 2005 3:21 PM

**To:** brussell@nuvox.com; Heitmann, John; MCampbell@nuvox.com; JFury@NuVox.com

**Cc:** Padgett, Shelley

**Subject:** FW: NuVox 15 Kentucky EELs

**Importance:** High

Mr. Russell, Mr. Heitmann, Ms. Campbell, Mr. Fury:

We have received no response to date from this email, sent last Wednesday.

Please respond with the name and contact information for the person(s) to whom we may direct our Document Requests.

Thank you,

***Gaye Tannenbaum***

Manager, Economic Advisory Services  
Grant Thornton LLP  
Kansas City, MO  
T 816.412.2563  
F 816.412.2404  
E gaye.tannenbaum@gt.com

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5/24/2005

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**From:** Tannenbaum, Gaye  
**Sent:** Wednesday, May 18, 2005 2:28 PM  
**To:** 'brussell@nuvox.com'  
**Cc:** Padgett, Shelley  
**Subject:** NuVox 15 Kentucky EELs

<<Bo Russell Nuvox Letter 05 18 2005.pdf>>

***Gaye Tannenbaum***  
Manager, Economic Advisory Services  
Grant Thornton LLP  
Kansas City, MO  
T 816.412.2563  
F 816.412.2404  
E [gaye.tannenbaum@gt.com](mailto:gaye.tannenbaum@gt.com)

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Accountants and Business Advisors

June 1, 2005

Mr. Bo Russell  
NuVox Communications, Inc.  
2 North Main Street  
Greenville, SC 29601

Mr. John Heitmann  
Kelley Drye & Warren LLP  
1200 19th Street, N.W., Suite 500  
Washington, D.C. 20036

*Re: BellSouth Telecommunications, Inc. v. NuVox Communications, Inc.  
[Case No. 2004-00295 before the Public Service Commission of the Commonwealth of  
Kentucky]*

Dear Mr. Russell and Mr. Heitmann:

BellSouth Telecommunications, Inc. has selected Grant Thornton LLP to perform an analysis of 15 Enhanced Extended Links ("EELs") circuits, pursuant to an order of the Public Service Commission of the Commonwealth of Kentucky.

As stated in our letter to Mr. Russell dated May 18, 2005, we are preparing a list of documents required for Grant Thornton to perform the engagement. Please provide contact information (name, title, mailing address, telephone number and email address) for the person(s) to whom we should direct our requests and further communications. We expect that such contact information would be communicated to us by close of business tomorrow June 2, 2005.

Thank you.

Very truly yours,

A handwritten signature in cursive script that reads "Gaye Tannenbaum".

Gaye Tannenbaum, CPA, CIRA  
Manager, Economic Advisory Services

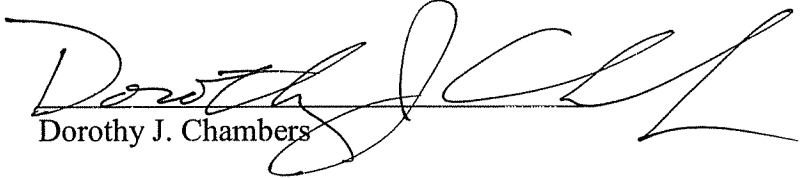
cc: Ms. Shelley Padgett, Assistant Director, BellSouth Telecommunications, Inc.  
Ms. Mary Campbell, NuVox Communications, Inc.

Suite 1000  
1201 Walnut Street  
Kansas City, MO 64106  
T 816.412.2400  
F 816.412.2404  
W [www.grantthornton.com](http://www.grantthornton.com)

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following individual by mailing a copy thereof, this 3rd day of June 2005.

  
Dorothy J. Chambers

Hamilton E. Russell, III  
NuVox Communications, Inc.  
Senior Vice President – Legal and Regulatory Affairs  
Southeast Region  
301 North Main Street, Suite 500  
Greenville, SC 29601