

Dinsmore & Shohl LLP
ATTORNEYS

Holly C. Wallace
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June 20, 2005

via Hand Delivery
Hon. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Blvd.
P. O. Box 615
Frankfort, KY 40601

RECEIVED

JUN 20 2005

PUBLIC SERVICE
COMMISSION

Re: In the Matter of: Enforcement of Commission's Order in Case No. 2004-00295, Dated April 15, 2005; Case No. 2005-00217

Dear Ms. O'Donnell:

Enclosed for filing in the above-styled case is the original and ten copies of NuVox Communications, Inc.'s Answer to BellSouth Telecommunications, Inc.'s Complaint.

Thank you, and if you have any questions, please call me.

Very truly yours,

DINSMORE & SHOHL LLP



Holly C. Wallace

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requested confirmation of contact information and stated that it would be “preparing a document request list...” *See* Letter to Bo Russell, NuVox Communications, Inc., from Gaye Tannenbaum, Grant Thornton (May 18, 2005) (Exhibit A). Despite this notification, to date, the auditor has not yet requested any information or documentation from NuVox, other than the names of contact persons, which NuVox has supplied. Moreover, contrary to BellSouth’s allegation in its complaint, the auditor has *not* contacted NuVox seeking to begin “field work.” *See* BellSouth Complaint at 1. Indeed, NuVox still does not know the identity of the circuits to be audited, despite requesting the Commission’s assistance in that regard on April 26, 2005.

BellSouth’s claims that NuVox has sought to obstruct the audit or somehow intimidate the auditor are baseless and should be denied. In support of its complaint, BellSouth misrepresents statements that NuVox made in an email to BellSouth’s chosen auditor, in which NuVox informed the auditor that it had petitioned for rehearing of the Order. *See* Email to Gaye Tannenbaum, Grant Thornton, from John Heitmann, Kelley, Drye & Warren LLP (May 23, 2005) (Exhibit B). In that email, NuVox advised the auditor that it had sought reconsideration and that its communications with the auditor in furtherance of the audit should not be construed as a waiver of its rights. Indeed, contrary to BellSouth’s mischaracterization of the email, NuVox’s email to the auditor makes clear that NuVox intended to comply with the Order even though it had sought reconsideration. At no time has NuVox ever stated that it would not comply with the audit or taken any actions to obstruct the audit.

NuVox has sought to ensure that the audit will be conducted with the utmost integrity and to prevent any issues that arose in other EEL audits from occurring in the course of the audit of the 15 converted EEL circuits in Kentucky. To this end, NuVox has requested that Grant Thornton provide it with a copy of the audit engagement agreement between Grant

Thornton and BellSouth and a full disclosure of all communications between Grant Thornton and BellSouth. Review of this document and these communications will help NuVox and the Commission ensure that Grant Thornton is operating as an independent auditor.³ If Grant Thornton is operating as an independent auditor, then it should have no difficulty in disclosing this document.

NuVox also has notified Grant Thornton that it likely will be necessary for Grant Thornton and NuVox to enter into a non-disclosure agreement (“NDA”) prior to any review of NuVox’s records. NuVox has not yet proposed an NDA to Grant Thornton because Grant Thornton has not provided NuVox with the types of records that it seeks to review. It is highly likely, however, that Grant Thornton will seek access to customer records that contain customer-specific information such as Customer Network Proprietary Information (“CPNI”) that NuVox is required by law to protect from disclosure. NuVox wants to ensure that this information and any other confidential information that it may be required to disclose during the course of the audit receives appropriate protection. Once NuVox receives a document request from Grant Thornton, then it will evaluate whether it is necessary for NuVox and the auditor to enter into an NDA.

NuVox already has been subjected to an audit of converted EEL circuits in Georgia. During the course of that audit, NuVox learned that BellSouth’s chosen auditor (KPMG) and BellSouth had engaged in an untold number of conversations regarding the audit. Although NuVox was not privy to the details of those conversations, it appears that those conversations helped guide KPMG’s audit of NuVox’s circuits, thus creating reasonable doubt as to whether the audit truly was undertaken in an independent manner. Ultimately, those

³ NuVox is not requesting that Grant Thornton disclose any information regarding the cost of the audit or other information that Grant Thornton might deem to be proprietary between BellSouth and Grant Thornton, and has offered that Grant Thornton may redact this information when providing a copy of the engagement letter to NuVox.

conversations led to and included KPMG's breach of a non-disclosure agreement that it had entered into with NuVox by disclosing preliminary, unverified audit results to BellSouth. NuVox seeks to prevent a repeat of those problems. As such, NuVox requests the Commission's assistance in ensuring that BellSouth does not train, indoctrinate or otherwise taint the auditor. Already, the Kentucky audit is shrouded in too much intrigue and secrecy.⁴

The Commission also must reject BellSouth's extraordinary requests for relief. Specifically, there is no merit to BellSouth's request that the Commission evaluate NuVox's authorization to provide service in Kentucky. NuVox has not taken any action contrary to its certification. To the contrary, NuVox has made itself available to comply with the Order. The Commission also must reject BellSouth's request to expand the scope of the audit. In the Order, the Commission concluded that BellSouth must demonstrate a concern prior to conducting an audit. *See* Order at 5. BellSouth has not demonstrated any concern that would justify an audit of the remaining circuits in Kentucky. NuVox's simple requests that the auditor provide a copy of the engagement letter and enter into an NDA in no way rises to the level of a concern.

NuVox has made itself available to the auditor to begin the audit. As such, there is no merit to BellSouth's claim that NuVox is in contempt of the Order. NuVox has responded to each and every request from the auditor in a timely and professional manner. If anything, it is the auditor that has delayed the audit by refusing to respond to NuVox's questions about the audit. Further, even though NuVox provided contact information in response to the auditor's initial correspondence, the auditor again sought that information, clearly ignoring NuVox's first email. NuVox cannot underscore enough that it has provided the auditor with the name of a

⁴ NuVox does not know the identity of the circuits to be audited or how the audit commenced without its involvement. In addition, NuVox's request for information from Grant Thornton has gone unanswered for nearly a month.

contact person and has made itself available to Grant Thornton to begin an audit. The ball is in Grant Thornton's court now; NuVox has done nothing to obstruct or delay the audit.

RESPONSES TO SPECIFIC COUNTS

1. NuVox submits that no response is required to paragraph 1 of the complaint.

2. NuVox admits the allegations contained in paragraph 2 of the complaint.

3. NuVox submits that no response is required to paragraph 3 of the complaint.

4. NuVox denies the allegations contained in paragraph 4 of the complaint.

By way of further answer, NuVox states that the name and address of the respondent to this Complaint is:

Riley M. Murphy
General Counsel
NuVox Communications, Inc.
2 North Main Street
Greenville, South Carolina 29601

5. NuVox admits the allegations contained in paragraph 5 of the complaint.

6. NuVox states that Section 15 of the General Terms and Conditions of the parties' Agreement speaks for itself. NuVox admits that BellSouth filed a complaint with the Commission on July 23, 2004. NuVox denies that BellSouth sought to conduct an audit in accordance with the terms of the Agreement.

7. NuVox admits that the Commission issued an order on April 15, 2005, and states that the Order speaks for itself. NuVox denies the remainder of the allegations contained in paragraph 7 of the complaint. By way of further answer, in the Order, the Commission explicitly limited the audit of NuVox's converted EEL circuits to the fifteen (15) EEL circuits

for which the Commission found that BellSouth had demonstrated a concern. At no time did the Commission state—or even suggest—that BellSouth would be permitted to conduct a further audit of NuVox’s converted EEL circuits, as BellSouth suggests in paragraph 7 of its complaint.

8. NuVox states that the complaint speaks for itself and that no response is required to the first part of the allegation contained in paragraph 8 of the complaint. NuVox admits that the Commission has jurisdiction over the complaint.

9. NuVox states that the Order speaks for itself and that no response is required to paragraph 9 of the complaint.

10. NuVox states that the Order speaks for itself and that no response is required to paragraph 10 of the complaint.

11. NuVox states that the Order speaks for itself and that no response is required to paragraph 11 of the complaint.

12. NuVox states that the Order speaks for itself and that no response is required to paragraph 12 of the complaint.

13. NuVox admits that the Commission limited the scope of BellSouth’s audit to 15 circuits, and states that the Order speaks for itself. NuVox denies the remaining allegations contained in paragraph 13 of the complaint. By way of further answer, NuVox denies that the Commission in any way permitted BellSouth to conduct any audit beyond the scope of the 15 converted circuits. NuVox also denies that BellSouth had developed a concern through its own records. NuVox has requested that BellSouth provide copies of the records that formed the basis of its alleged concern on numerous occasions, but BellSouth has failed to comply with NuVox’s reasonable request.

14. NuVox states that the Order speaks for itself and that no response is required to paragraph 14 of the complaint.

15. NuVox states that the Order speaks for itself and that no response is required to paragraph 15 of the complaint.

16. NuVox admits the allegations contained in the first sentence of paragraph 16 of the complaint. NuVox denies the allegations contained in the second sentence of the complaint. By way of further answer, NuVox was the defendant, not the complainant, in the underlying proceeding, and the obligation to raise these issues rested with BellSouth. Nonetheless, in its answer to BellSouth's complaint in Case No. 2004-00295, NuVox explained that the Commission should deny BellSouth's request that its auditor be able to use any records that it deemed appropriate. *See Answer at 13-14, ¶ 3.* In its answer, NuVox explained that BellSouth sought to be able to use any and all records in the scope of the audit, including records that contained (or constituted) customer proprietary network information ("CPNI") or customer proprietary information ("CPI"). Under section 222 of the Communications Act of 1934, as amended (the "Act"), carriers only are permitted to use CPNI and CPI for the purpose of provisioning the services requested. NuVox explained that the purpose for which BellSouth sought to use carrier records (from NuVox and potentially other carriers) violated section 222 of the Act.

In addition, under section 222 of the Act, NuVox is required to protect the confidentiality of CPNI and CPNI. NuVox is prohibited from disclosing CPI for any purpose other than to provide service to its customers. NuVox is prohibited from disclosing CPNI for any purpose other than as authorized by its customers or as required by law. Accordingly, NuVox wants to ensure that the auditor accords confidential treatment to any CPNI that NuVox

may be required to disclose during the course of the audit, thus necessitating the need for a nondisclosure agreement. NuVox also has a legitimate interest in protecting the confidential and proprietary nature of its business records from disclosure to competitors, such as BellSouth.

By way of further answer, it was not necessary or appropriate for NuVox to raise the non-disclosure agreement in its defense of BellSouth's complaint. BellSouth set the parameters of the complaint in its pleading. The non-disclosure agreement that BellSouth references in its complaint is a non-disclosure agreement between NuVox and the auditor. The auditor was not a party to the complaint and the Commission would not have had jurisdiction over a non-disclosure agreement between NuVox and the non-carrier auditor. In addition, it is common practice for parties to enter into a non-disclosure agreement before exchanging (or providing) confidential information to the other party. It is not necessary for the Commission to become involved at this time in the mundane task of signing a confidential agreement. It is necessary, however, that NuVox and the auditor have a non-disclosure agreement in place prior to the disclosure of any confidential information.

Finally, BellSouth attached a proposed non-disclosure agreement to its March 15, 2002, audit notice. Thus, even BellSouth has contemplated that a non-disclosure agreement would be necessary. For BellSouth to suggest that NuVox's reasonable insistence on a non-disclosure agreement is in any way obstructive is false, misleading and patently disingenuous.

17. NuVox admits that the Commission issued an order on April 26, 2005, in which it removed Case No. 2004-00295 from the active docket and states that the order speaks for itself. NuVox denies BellSouth's characterization that the order dated April 26, 2005, rescinded a portion of the April 15, 2005, order, and states that the order dated April 26, 2005, speaks for itself.

18. NuVox admits the allegations contained in paragraph 18 of the complaint.

19. NuVox is without information to admit or deny the allegations contained in paragraph 19 of the complaint.

20. NuVox admits that BellSouth sent a letter to NuVox dated May 16, 2005, 31 days after the Order, in which BellSouth states that the audit has commenced, and states that the letter speaks for itself. NuVox is without knowledge or information sufficient to admit or deny whether the audit has commenced. By way of further answer, although the auditor has contacted NuVox to request contact information, to date, the auditor has not requested any documentation from NuVox nor has the auditor identified the circuits that are at issue in the audit. As such, NuVox is unaware but has the right to know how the auditor has commenced the audit.

21. NuVox admits that Grant Thornton emailed a letter to NuVox dated May 18, 2005, and states that the letter speaks for itself.

22. NuVox admits that Grant Thornton contacted NuVox on May 23, 2005, to request contact information.

23. NuVox admits that it sent an email to Grant Thornton on May 23, 2005, and states that the email speaks for itself. NuVox takes exception to BellSouth's pejorative characterization regarding the timeliness of NuVox's response. A three business day response interval is in no way extraordinary.

24. NuVox admits the allegation contained in paragraph 24 of the complaint and states that the email speaks for itself.

25. NuVox admits the allegation contained in paragraph 25 of the complaint and states that the email speaks for itself. By way of further answer, NuVox submits that

BellSouth has taken NuVox's statement out of context. The complete reference is as follows: "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." BellSouth's selective quotation seems designed to mislead the Commission.

26. NuVox admits the allegation contained in paragraph 26 of the complaint and states that the email speaks for itself. By way of further answer, NuVox is attempting to ensure that BellSouth's chosen auditor conducts the audit with the utmost integrity. As stated above, since November 2004, NuVox has been subject to an audit of 44 converted EELs in Georgia by KPMG. During the course of the audit, it became apparent that NuVox and BellSouth had engaged (or were engaging) in conversations regarding the audit. NuVox does not have information about how those conversations might have affected the manner in which the auditor conducted the audit or evaluated the information that it reviewed. To conduct a truly unbiased audit, it is necessary that NuVox be privy to any conversations between BellSouth and the auditor regarding the scope and the conduct of the audit.

27. NuVox admits the allegation contained in paragraph 27 of the complaint and states that the email speaks for itself. By way of further answer, NuVox requests that the Commission act to ensure that BellSouth has not trained or tainted the auditor in any way.

28. NuVox admits the allegation contained in paragraph 28 of the complaint and states that the email speaks for itself. By way of further answer, NuVox states that it is essential that NuVox and the auditor have entered into a non-disclosure agreement prior to the disclosure of any confidential information. By law, NuVox is required to protect the confidentiality of its customers' information, and it is likely that the auditor will request the

precise information that NuVox is obligated to keep confidential. NuVox also has a legitimate interest in protecting the confidential and proprietary nature of its business records from disclosure to competitors such as BellSouth.

NuVox and BellSouth's chosen auditor in Georgia (KPMG) entered into a non-disclosure agreement to govern the audit. KPMG violated the express terms of the non-disclosure agreement by disclosing protected information to BellSouth, and NuVox brought a complaint against it in South Carolina state court . NuVox wants to ensure that Grant Thornton does not repeat the same mistakes that KPMG made, and that the audit can be conducted without incident. Accordingly, NuVox has made Grant Thornton aware that it expects Grant Thornton to comply with any non-disclosure agreement that it enters into with NuVox.

29. NuVox admits the allegations contained in paragraph 29 of the complaint and states that the email speaks for itself. By way of further answer, NuVox states that its request was reasonable especially in light of the fact that NuVox already has filed its request for reconsideration and that Grant Thornton had not made any document requests.

30. NuVox admits the allegations contained in paragraph 30 of the complaint and states that the email speaks for itself. By way of further answer, NuVox submits that neutrality is required in order to establish and maintain independence.

31. NuVox admits the allegations contained in paragraph 31 of the complaint. By way of further answer, under KRS 278.400, a petition for rehearing is deemed denied if the Commission does not act on the petition within twenty days of the date of filing of the petition. On May 9, 2005, NuVox filed a petition for rehearing of the Kentucky Commission's decision. At that time and continuing through the twenty day period, the Kentucky Commission did not have a quorum in place and assigned to the case such that it could have acted on NuVox's

petition. Under KRS 278.400, NuVox's petition was deemed denied through inaction, even though the Kentucky Commission could not have addressed NuVox's petition due to the lack of a quorum.

32. NuVox admits that Grant Thornton sent a letter to NuVox on June 1, 2005, via email, and states that the letter speaks for itself. NuVox denies the remaining allegations of paragraph 32 of the complaint. *See Exhibit C: Letter to Bo Russell, NuVox, and John Heitmann, Kelley Drye & Warren LLP, from Gaye Tannenbaum, Grant Thornton (June 1, 2005).* Specifically, NuVox denies that Grant Thornton ever requested that it begin fieldwork. To date, Grant Thornton has not requested any documentation from NuVox nor has it requested an onsite visit.

33. NuVox denies the allegations contained in paragraph 33 of the complaint. By way of further answer, NuVox states that its counsel of record (John Heitmann) to whom Grant Thornton directed the June 1, 2005, email correspondence was out of the office on business travel when Grant Thornton emailed the letter to Mr. Heitmann. Mr. Heitmann continued to be out of the office on June 2, 2005. Grant Thornton should have received an automated "out of office" response which alerted Grant Thornton to the likelihood that Mr. Heitmann would not be able to respond within the twenty-four hour time frame demanded in the letter. Upon his return to the office, Mr. Heitmann promptly responded to Grant Thornton's email dated June 1, 2005. *See Exhibit D: Email to Gaye Tannenbaum, Grant Thornton, from John Heitmann, Kelley Drye & Warren LLP (June 7, 2005).*

34. NuVox denies the allegations contained in paragraph 34 of the complaint. By way of further answer, as stated above, NuVox has not taken any action whatsoever to frustrate the audit. Grant Thornton has not yet requested any information from NuVox (other

than contact information, which NuVox provided) such that NuVox has failed to cooperate with the audit. In its complaint, BellSouth creates a false emergency based on misrepresentation and false conjecture.

CAUSE OF ACTION

35. NuVox submits that no response to the paragraph 35 of the complaint is required.

36. NuVox denies the allegations contained in paragraph 36 of the complaint. By way of further answer, as stated above, NuVox has not taken any action whatsoever to frustrate the audit. Grant Thornton has not yet requested any information from NuVox (other than contact information, which NuVox provided) such that NuVox is in violation of the Commission's Order.

37. NuVox denies the allegations contained in paragraph 37 of the complaint. By way of further answer, NuVox states that at no time has it refused to comply with the audit or taken any steps to suggest that it would not comply with the audit. NuVox simply has requested that Grant Thornton provide basic information about the scope of its communications and engagement with BellSouth. BellSouth's claim that NuVox somehow has obstructed the audit is disingenuous, misleading and erroneous.

Furthermore, there is no basis for the Commission to expand the scope of the audit. As the Commission already has found, BellSouth must demonstrate a concern prior to auditing any of NuVox's converted EEL circuits. *See Order* at 5. In the *Order*, the Commission limited the scope of the audit to the 15 circuits (to date still unidentified) for which BellSouth claimed a concern. BellSouth has not demonstrated sufficient concern with regard to any other converted EEL circuit in Kentucky nor has NuVox's conduct raised a concern about any other

circuit. As NuVox repeatedly has stated, the auditor has not requested anything other than contact information from NuVox. Accordingly, there is no basis for BellSouth's claim that NuVox has sought to obstruct the audit, or, further, that NuVox is seeking to somehow hide information from coming to light. BellSouth's willingness to engage in wonton misrepresentation and to make baseless accusations of wrongdoing by another raises no concerns about NuVox's certifications or NuVox's conduct.

38. NuVox denies the allegations contained in paragraph 38 of the complaint. By way of further answer, NuVox has made two simply requests of Grant Thornton: (1) that Grant Thornton disclose all communications (and the content thereof) regarding and relating to its engagement with BellSouth; and (2) that Grant Thornton provide a copy of the engagement letter to NuVox. Both of these requests are intended to safeguard the integrity of the audit. Furthermore, both of these requests are reasonable. In addition, NuVox has notified Grant Thornton that it requires appropriate non-disclosure agreements to be in place prior to the exchange of information. As explained above, it is likely that Grant Thornton will seek access to confidential information, some of which NuVox is *required* by law to protect and other information that is competitively sensitive. It is essential *under law* that NuVox ensure that Grant Thornton protects the confidentiality of any CPNI that it may be required to disclose.

39. NuVox denies the allegations contained in paragraph 39 of the complaint. By way of further answer, NuVox was concerned about how the audit already had commenced, given that Grant Thornton had not yet requested any records from NuVox. NuVox simply inquired about the audit to ensure that it was being conducted properly. Under standards of the American Institute of Certified Public Accountants ("AICPA"), an auditor is required to maintain the appearance of propriety. NuVox is entitled to request information from the auditor

(such as the engagement letter) to ensure that the audit is being undertaken in accordance with AICPA standards.

40. NuVox denies the allegations contained in paragraph 40 of the complaint. By way of further answer, NuVox states that, to date, both BellSouth and Grant Thornton have failed to disclose the 15 converted EEL circuits that are to be the subject of the audit. NuVox also states that BellSouth has indicated to NuVox that the audit already has commenced, but BellSouth has failed to explain how that audit has commenced, given that Grant Thornton has not yet requested anything other than contact information from NuVox. In addition, based on the correspondence from Grant Thornton, it is evident that Grant Thornton and BellSouth have had conversations about the plan of the audit. For an audit to be truly independent, NuVox should have the opportunity to be privy to those conversations. NuVox has not “behaved improperly” in any respect.

41. NuVox denies the allegations contained in paragraph 41 of the complaint. As stated above, NuVox wants to ensure—for the benefit of all parties—that the audit is conducted appropriately. NuVox, as the audited entity, also has a right to know the parameters of the audit plan. NuVox simply has taken steps to learn about the conversations that have transpired between BellSouth and Grant Thornton so as to ensure that the auditor truly is independent and does not exceed the scope of the audit allowed by the Commission. NuVox has not challenged Grant Thornton’s independence. BellSouth’s complaint is replete with deception and misrepresentation. The Commission should not countenance or condone such conduct.

42. NuVox denies the allegations contained in paragraph 42 of the complaint. It is standard business practice for parties to enter into a non-disclosure agreement if they are going to exchange confidential information. In addition, as stated above, NuVox is required

under law to protect the confidentiality of certain types of information that the auditor likely will request. Moreover, there is nothing in the Order that prohibits the NuVox and BellSouth or NuVox and Grant Thornton from entering into a non-disclosure agreement. Nor is there anything in the Commission's rules that would have required NuVox to seek approval of a non-disclosure agreement between NuVox and an entity that is not regulated by the Commission prior to requesting such a non-disclosure agreement. NuVox reiterates that it has not refused to comply with the audit; despite Grant Thornton's notification that it intended to request information from NuVox, to date, Grant Thornton has not done so. Accordingly, NuVox is not obstructing an audit or violating the Order. Finally, NuVox notes that BellSouth attached a proposed non-disclosure agreement to its March 15, 2002 audit notice. Thus, even BellSouth has contemplated that a non-disclosure agreement would be necessary. For BellSouth to suggest that NuVox's reasonable insistence on a non-disclosure agreement is in any way obstructive is false, misleading and patently disingenuous.

43. NuVox denies the allegations contained in paragraph 43 of the complaint. The Commission closed the docket on its own motion prior to the expiration of the time period in which NuVox had to file a reconsideration of the Commission's decision. The closure of the docket, however, in no way affected NuVox's statutory right to seek reconsideration of the Order. Furthermore, at no time did NuVox refuse to cooperate with the audit; NuVox simply informed Grant Thornton that it had requested reconsideration of the Commission's April 15, 2005 Order.

44. NuVox denies the allegations contained in paragraph 44 of the complaint.

45. NuVox states that the Order speaks for itself. NuVox denies the remaining allegations contained in paragraph 45 of the complaint.

46. NuVox denies the allegations contained in paragraph 46 of the complaint.

47. NuVox denies the allegations contained in paragraph 47 of the complaint.

By way of further answer, NuVox states that BellSouth engaged KPMG to conduct an audit of the 44 converted EEL circuits at issue in the state of Georgia. During the audit, KPMG requested that NuVox verify KPMG's preliminary audit results. As part of this verification, KPMG specifically requested that NuVox review KPMG's methodology and each preliminary finding that it had made. This was not a *pro forma* exercise and BellSouth's characterization of it as such is a misrepresentation.

NuVox and KPMG entered into a non-disclosure agreement, which KPMG breached. NuVox is based in South Carolina and the audit was in large part conducted in South Carolina. Accordingly, NuVox appropriately brought suit against KPMG in South Carolina. As neither KPMG nor NuVox is located or headquartered in Georgia, there was no basis—and potentially no jurisdiction—for NuVox to bring a claim in a Georgia court. BellSouth's allegation that NuVox somehow committed wrongdoing by bringing a claim against KPMG in South Carolina instead of in Georgia is baseless.

48. NuVox denies the allegations contained in paragraph 48 of the complaint.

49. NuVox submits that no response to paragraph 49 is required by NuVox or the Commission, as BellSouth complaint is frivolous, baseless and replete with misrepresentation of the facts.

REQUEST FOR RELIEF

1. For the reasons stated above, NuVox requests that the Commission deny BellSouth's corresponding request for relief.

2. For the reasons stated above, NuVox requests that the Commission deny BellSouth's corresponding request for relief. BellSouth's request for relief number 2 is inappropriate and suggests that BellSouth is acting improperly. NuVox communicated with Grant Thornton in response to Grant Thornton's request. NuVox should be able to have open dialogue with the entity that it is auditing its records. For BellSouth to attempt to foreclose that dialogue, while having open ended conversations with the auditor, suggests that it is BellSouth, not NuVox, that is acting in an inappropriate manner. As stated above, NuVox should be privy to all conversations about the conduct of the audit between Grant Thornton and BellSouth, and NuVox should be able to speak with Grant Thornton regarding the scope of the audit.

3. For as long as the April 15, 2005 Order remains in force and effect, NuVox will comply and will allow Grant Thornton to commence an audit of NuVox's 15 converted EEL circuits at issue. If Grant Thornton intends to review NuVox's records, however, then it is essential that NuVox and Grant Thornton enter into a non-disclosure agreement to protect the confidentiality of that information. As stated above, Grant Thornton has not contacted NuVox to set up an appointment to conduct field work. As soon as Grant Thornton does so, then NuVox will work with Grant Thornton to set up an appropriate date and time to meet. Since Grant Thornton has not yet contacted NuVox to set up a meeting, there is no basis for grant of the release sought by BellSouth. .

4. NuVox has not violated the Commission's Order, and will abide by that Order as long as it remains in effect. Therefore, BellSouth's request is unnecessary and should be denied.

5. For the reasons stated above, NuVox requests that the Commission deny BellSouth's corresponding prayer for release. As stated above, NuVox is required to protect the

confidentiality of information that it likely will be requested to disclose to Grant Thornton, and NuVox must ensure that Grant Thornton respects the confidentiality of that information.

6. For the reasons stated above, NuVox requests that the Commission deny BellSouth's corresponding request for relief. BellSouth did not raise the issue of the payment of the audit during the proceeding in Case No. 2004-00295 nor is that subject an issue subject to dispute. Under the Agreement, BellSouth is required to pay for the audit, regardless of the outcome of the audit. BellSouth has no basis whatsoever to request that NuVox post a bond to cover the cost of the audit engagement.

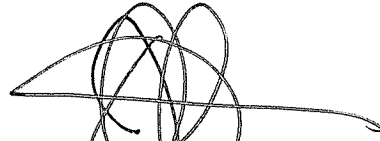
7. For the reasons stated above, NuVox requests that the Commission deny BellSouth's corresponding request for relief. BellSouth has brought this complaint in bad faith. There is no basis for the Commission to inquire into NuVox's authority to provide telecommunications services to consumers in Kentucky.

8. For the reasons stated above, NuVox requests that the Commission deny BellSouth's corresponding request for relief. As stated above, Grant Thornton has not yet requested anything other than contact information from NuVox, and there is no indication that NuVox will not comply with subsequent requests. The Commission already has concluded that BellSouth must demonstrate a concern prior to being able to audit any of NuVox's converted EELs, and BellSouth has not demonstrated a concern such that it could audit all of NuVox's converted EEL circuits in Kentucky.

9. For the foregoing reasons, NuVox requests that the Commission deny BellSouth's corresponding request for relief and NuVox requests that the Commission act to ensure that BellSouth has not trained or tainted the auditor in any way by ordering BellSouth and Grant Thornton to make separate, independent and full disclosure to NuVox and the Commission

of all communications (and the contents thereof) regarding and relating to the engagement for the audit of NuVox's 15 Kentucky circuits, and by ordering that NuVox and the Commission be provided with a copy of the engagement agreement and any other related contract, agreement or understanding between Grant Thornton and BellSouth.

Respectfully submitted,



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Counsel for Plaintiff NuVox Communications, Inc.

June 20, 2005

Certificate of Service

It is hereby certified that the foregoing was served by mailing a copy of the same by First Class United States Mail, postage prepaid to the parties shown on the attached service list this 20th day of June, 2005.

Dorothy J. Chambers
General Counsel/Kentucky
BellSouth Telecommunications, Inc.
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P.O. Box 32410
Louisville, KY 40232
BellSouthKY.CaseFilings@BellSouth.com


Counsel to the NuVox Communications, Inc.

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,



Gaye Tannenbaum, CPA, CIRA
Manager, Economic Advisory Services

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

Heitmann, John

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
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E gaye.tannenbaum@gt.com

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5/24/2005

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
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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,



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
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Grant Thornton LLP
US Member of Grant Thornton International

From: Heitmann, John
Sent: Tuesday, June 07, 2005 6:31 PM
To: 'Tannenbaum, Gaye'
Cc: MCampbell@nuvox.com; brussell@nuvox.com; Kashatus, Jennifer M.; Heitmann, John
Subject: RE: NuVox 15 Kentucky EELs

Ms. Tannenbaum:

I am in receipt of your June 1, 2005 letter in which you request contact information for the persons to whom you should direct your requests and further communications. You further state that "[w]e expect that such contact information would be communicated to us by close of business tomorrow June 2, 2005." On May 23, 2005, I provided you with contact information to be used "until further notice". I will be happy to send you another copy of that communication, if you need it.

I apologize for being unable to meet your expectation of receiving a response within 24 hours of your request. As you were informed by way of automated response, I have been out of the office on business travel. In fact, I have returned a day earlier than planned. Fortunately, you already had received the information you had requested a week earlier. Please know that if you ever have an urgent need for a response, you may contact me on my mobile phone at the number below – that number was included in my past correspondence to you for precisely that purpose (please be advised that the voice-mail offered by my wireless service provider is unreliable and if I should be unable to answer you should try again or leave a message on my voice mail at work – which I check once daily while traveling). With that said, I must ask why you needed a response on such short notice. Can you please explain the reasons? If it is not fair to assume that the request was connected to BellSouth's complaint filed at the KPSC on June 3, 2005, please explain why not. If it was, please explain how so.

NuVox already has been witness to two audits tarnished by BellSouth's unwarranted interjection into and meddling with the audit process (e.g., KPMG's breach of its NDA with NuVox involved the release of protected information to BellSouth (which then -- predictably -- led to its misuse and mischaracterization by BellSouth)). NuVox shares no blame in any of that.

NuVox would prefer to see that history not repeat itself. Accordingly, I request that you make a full disclosure of all communications (and the content thereof) regarding and relating to your engagement with BellSouth and a copy of the engagement agreement itself. If you choose to redact billing rates, please feel free to do so, but provide a statement that Grant Thornton has no financial stake whatsoever in the results of the audit. I trust that, as an independent auditor, you will have no problem complying with these requests. If I am wrong in assuming that Grant Thornton has been engaged to serve as an independent auditor and to perform an attestation audit, all in compliance with AICPA standards, please advise.

Finally, please be advised that NuVox has complied with the KPSC order and will do so unless and until that order no longer is prevailing law. That order contained no May 16, 2005 nor June 2, 2005 deadline (indeed, BellSouth did not notify NuVox of its intent to proceed with an audit until after the 30 day window set forth in the order expired). If you have been advised otherwise, I hope you will provide me with the courtesy of explaining how so. In addition, you should be aware that NuVox reserves all of its legal rights and its responses to your inquiries, whether directly or through counsel, should in no way be considered a waiver of any kind.

Thank you.

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: Wednesday, June 01, 2005 4:28 PM

6/20/2005

Message

To: brussell@nuvox.com; Heitmann, John
Cc: Padgett, Shelley; MCampbell@nuvox.com
Subject: NuVox 15 Kentucky EELs
Importance: High

<<Initial Contact Letter 06 01 2005.pdf>>

Gaye Tannenbaum

Manager, Economic Advisory Services
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6/20/2005