

ORIGINAL

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Cc: BILL HOLLIMON; Jason Rojas; Jennifer Kashatus; Jeremy Susac; John Heitmann; Kip Edenfield; Theodore Marcus; Vicki Gordon Kaufman
Subject: Docket No. 040028-TP
Attachments: Request for OR 07.05.05.pdf

<<Request for OR 07.05.05.pdf>>

Pursuant to the Commission's procedures for e-filing, NewSouth Communications Corp. provides the following information:

A. The attorney responsible for filing is:

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B. The document is to be filed in Docket No. 040028-TP.

C. The document is filed on behalf of NewSouth Communications Corp.

D. The document is 8 pages long.

E. The document is entitled Request for Official Recognition.

CJ Cratty

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ORIGINAL

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

Complaint and Request for Summary Disposition)	Docket No. 040028-TP
BellSouth Telecommunications, Inc. Against)	
NewSouth Communications Corp., To Enforce)	
Contract Audit Provisions)	Filed: July 5, 2005

REQUEST FOR OFFICIAL RECOGNITION

NewSouth Communications Corp. (NewSouth), through its undersigned counsel, pursuant to rule 90.202, Florida Rules of Evidence, and section 120.569(2)(i), Florida Statutes, requests Official Recognition of the attached Temporary Restraining Order granting NuVox's Motion for Temporary Restraining Order against BellSouth Telecommunications, Inc. (BellSouth), the Kentucky Public Service Commission (Kentucky 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, issued by the United States District Court for the Eastern District of Kentucky, in *NuVox Communications, Inc. v. BellSouth Telecommunications, Inc.; Kentucky Public Service Commission, et al.*, Case No.: 05-41-KKC, on July 1, 2005. On June 20, 2005, NuVox filed for injunctive relief from the Kentucky Commission's decision granting, in part, BellSouth's motion for summary disposition and permitting an audit of certain of NuVox's converted enhanced extended link (EEL) circuits in Kentucky. See, *BellSouth Telecommunications, Inc. v. NuVox Communications, Inc., Order*, Case No. 2004-00295 (Apr. 15, 2005). The Court granted NuVox's motion for a temporary restraining order, thereby enjoining BellSouth from engaging in an audit of NuVox's Kentucky circuits.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Request for Official Recognition was served via electronic mail and US mail this 5th day of July, 2005 on the following parties of record:

Jason Rojas
Jeremy Susac
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Kip Edenfield
Theodore Marcus
BellSouth Telecommunications, Inc.
c/o Nancy H. Sims
150 South Monroe Street, Suite 400
Tallahassee, FL 32301-1556

S/ Vicki Gordon Kaufman
Vicki Gordon Kaufman

JUL 1 2005

AT FRANKFORT
LESLIE G WHITMER
CLERK U S DISTRICT COURT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
FRANKFORT

CIVIL ACTION NO. 05-41-KKC

NUVOX COMMUNICATIONS, INC.,

PLAINTIFF

v.

TEMPORARY RESTRAINING ORDER

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*,

DEFENDANTS

* * * * *

This matter is before the Court on Plaintiff NuVox Communication, Inc.'s ("NuVox") Motion for Temporary Restraining Order and Preliminary Injunction [R. 3]. NuVox has moved pursuant to Fed. R. Civ. P. 65 to enjoin Defendant Kentucky Public Service Commission ("PSC") and its Defendant Commissioners, Mark David Goss and W. Gregory Coker, from enforcing the PSC's order granting Defendant BellSouth Telecommunications, Inc.'s ("BellSouth") motion for summary disposition in part in the action entitled *BellSouth Telecommunications, Inc. v. NuVox Communications, Inc.*, Order, Case No. 2004-00295 (Apr. 15, 2005) ("PSC Order") and enjoining Defendant BellSouth from conducting an audit of NuVox's fifteen (15) converted enhanced extended loops ("EELs") or any other NuVox circuit located in Kentucky. NuVox noticed Defendants of its motions at the time of filing. The Court conducted a hearing on the motion for temporary restraining order with counsel representing all parties on June 28, 2005.

Having considered NuVox's Verified Complaint and the attachments thereto [R. 1], NuVox's Memorandum in Support of Plaintiff's Motion and the attachments thereto [R. 3], BellSouth's Memorandum in Opposition and the attachments thereto [R. 7], the Response in Opposition filed by the PSC and its Commissioners [R. 9], and the excellent arguments made by counsel at the hearing, the Court finds that while the parties desire a quick resolution of the issues raised given the nature of the dispute and its potential effect

on the local telephone service industry, those same reasons mandate that the Court take a reasonably cautious approach to the issues raised. However, the Court anticipates taking only a relatively short time to reach its decision and has established a briefing schedule for final resolution of the case in the June 28, 2005, hearing minute order filed at R. 16.

Because the Court believes the issues can be fully and thoroughly resolved in a reasonably quick time, the Court will hereby grant NuVox's request to temporarily restrain and enjoin Defendants PSC and its Commissioners from enforcing the PSC Order, and temporarily restrain and enjoin BellSouth from conducting or causing an independent auditor to audit any of NuVox's EELs located in Kentucky. While the Court cannot determine at this time whether one party has a greater likelihood of success than any other party, the Court finds that NuVox would suffer *substantial* harm without the issuance of a restraining order should NuVox ultimately prevail on the merits of its claims. On the other hand, BellSouth will not be *substantially* harmed by restraining them from conducting the audit for a reasonably short period. Should BellSouth prevail on the merits, it will be able to conduct its audit and seek the same amount of monetary damages should the audit reveal that the EELs in question are not being used for a significant amount of local exchange service. The Court also finds that the PSC and the Commissioners would not be substantially harmed by a temporary restraint on enforcement of the PSC Order. At this time the Court cannot determine whether the public interest weighs in favor of one party over another.

Accordingly, **IT IS HEREBY ORDERED** as follows:

1. As of June 28, 2005, Defendant Kentucky Public Service Commission and its Commissioners and all of their employees, assigns, servants, and representatives, attorneys and agents, as well as any and all persons in the active concert or participation with them, are hereby **TEMPORARILY ENJOINED AND RESTRAINED** from enforcing the order granting Defendant BellSouth Telecommunications, Inc.'s motion for summary disposition in part in the action entitled *BellSouth Telecommunications, Inc. v. NuVox Communications, Inc.*, Order, Case No. 2004-00295 (Apr-15;

2005) ("PSC Order").

2. As of June 28, 2005, Defendant BellSouth Telecommunications, Inc., and all of its employees, assigns, servants, and representatives, attorneys and agents, as well as any and all persons in active concert or participation with it, are hereby **TEMPORARILY ENJOINED AND RESTRAINED** from conducting an audit of any NuVox converted EELs or other NuVox circuit located in Kentucky.
3. This Order shall expire upon the Court's decision on NuVox's motion for preliminary injunction, which the Court will consider according to the schedule set forth in the June 28, 2005, hearing minute order filed at R. 16.
4. As security for the issuance of this Order, Plaintiff NuVox is required to post a bond in the amount of \$250,000 for the payment of such costs and damages as may be incurred or suffered by the Defendant BellSouth if it is found to have been wrongfully restrained.

ENTERED this the 1st day of July, 2005.



Signed By:

Karen K. Caldwell *KKC*

United States District Judge

Other Orders/Judgments

3:05-cv-00041-KKC NuVox Communications Inc. v. BellSouth Telecommunications, Inc. et al

U.S. District Court

Eastern District of Kentucky

Notice of Electronic Filing

The following transaction was received from Dearborn, Christy entered on 7/1/2005 at 3:35 PM EST and filed on 7/1/2005

Case Name: NuVox Communications Inc. v. BellSouth Telecommunications, Inc. et al

Case Number: 3:05-cv-41

Filer:

Document Number: 18

Docket Text:

TEMPORARY RESTRAINING ORDER: 1) As of 6/28/2005, dft KY Public Service Commission and its Commissioners, employees...are TEMPORARILY ENJOINED AND RESTRAINED from enforcing the order entitled "BellSouth Telecommunications, Inc. v. NuVox Communications, Inc.," Case No. 2004-00295 (Apr 15, 2005) ("PSC Order"). 2) As of 6/28/2005 BellSouth and all employees... are TEMPORARILY ENJOINED AND RESTRAINED from conducting an audit of any NuVox converted EELs or other NuVox circuit located in Kentucky 3) This Order shall expire upon Court's decision on NuVox's motion for preliminary Injunction, which the Court will consider according to schedule set forth in the 6/28/2005 hearing minute order filed at R. 16. 4) As security of this Order, Plaintiff NuVox is required to post a bond in the amount of \$250,000.00 for payment of such costs and damages as may be incurred or suffered by dft, BellSouth if it is found to have been wrongfully restrained. Signed by Judge Karen K. Caldwell. (CBD)cc: COR, Finance

The following document(s) are associated with this transaction:

Document description:Main Document

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c4279a9fe7fffb8a4c74552c05b7c109e7f862b8b0036b2a415ba6a0ac8]]

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3:05-cv-41 Notice will be delivered by other means to:

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