

ORIGINAL

**MCWHIRTER REEVES**  
ATTORNEYS AT LAW

TAMPA OFFICE:  
400 NORTH TAMPA STREET, SUITE 2450  
TAMPA, FLORIDA 33602  
P. O. BOX 3350 TAMPA, FL 33601-3350  
(813) 224-0866 (813) 221-1854 FAX

PLEASE REPLY TO:  
  
TALLAHASSEE

TALLAHASSEE OFFICE:  
117 SOUTH GADSDEN  
TALLAHASSEE, FLORIDA 32301  
(850) 222-2525  
(850) 222-5606 FAX

September 7, 2001

**VIA HAND DELIVERY**

Blanca S. Bayo, Director  
Division of Records and Reporting  
Betty Easley Conference Center  
4075 Esplanade Way  
Tallahassee, Florida 32399-0870

RECEIVED - FPSC  
01 SEP - 7 AM 11:47  
COMMISSION  
CLERK

Re: Docket No.: 960786-TL

Dear Ms. Bayo:

On behalf of NuVox Communications, Inc. (NuVox), enclosed for filing and distribution are the original and 15 copies of the following:

- ▶ NuVox Communications, Inc.'s Response to Staff Memorandum Requesting that Testimony be Stricken.

Please acknowledge receipt of the above on the extra copy of each and return the stamped copies to me. Thank you for your assistance.

Sincerely,



Vicki Gordon Kaufman

APP \_\_\_\_\_ VGK/bae  
 CAF \_\_\_\_\_ Enclosure  
 CMP \_\_\_\_\_  
 COM \_\_\_\_\_  
 CTR \_\_\_\_\_  
 ECR \_\_\_\_\_  
 LEG \_\_\_\_\_  
 OPC \_\_\_\_\_  
 PAI \_\_\_\_\_  
 RGO \_\_\_\_\_  
 SEC \_\_\_\_\_  
 SER \_\_\_\_\_  
 OTH \_\_\_\_\_

RECEIVED & FILED  
*RLM*  
FPSC BUREAU OF RECORDS

DOCUMENT NUMBER - DATE  
11153 SEP-7 01  
FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Consideration of BellSouth  
Telecommunications, Inc.'s entry  
Into InterLATA services pursuant  
To Section 271 of the Federal  
Telecommunications Act of 1996.

---

Docket No. 960786-TL

Filed: September 7, 2001

**NuVox Communications, Inc.'s Response to Staff Memorandum  
Requesting that Testimony Be Stricken**

NuVox Communications, Inc. (NuVox) hereby files its response to the Staff's memorandum, dated August 31, 2001, that suggests that certain testimony filed by NuVox witness Willis in this case be stricken. NuVox believes that Mr. Willis' testimony goes directly to matters at issue in this case and should not be stricken. As grounds therefor, NuVox states:

1. This is BellSouth Telecommunications, Inc.'s (BellSouth) second attempt to try to demonstrate to the Commission and the Federal Communications Commission (FCC) that it has complied with all 14 items in the Competitive Checklist of the Federal Telecommunications Act of 1996 (Act).<sup>1</sup> The burden is upon BellSouth to demonstrate that it has fully complied with each Checklist item before it can be granted interLATA authority. BellSouth filed its direct case on May 31<sup>st</sup>.
2. On July 20<sup>th</sup>, Intervenors filed their testimony in which they provided the Commission with information, which, in their view, demonstrates that BellSouth has failed to comply with one or more Checklist items.
3. Subsequent to Intervenors' filings, BellSouth filed a motion to strike certain testimony alleging that it fell within the purview of the third party test, which the Commission had

---

<sup>1</sup> Section 271(c)(2)(B).

previously determined would be dealt with in a workshop/comment process rather than in an evidentiary hearing process. Intervenors disagreed with BellSouth's allegations and filed a response to BellSouth's motion that remains pending at this time.

4. Subsequent to the filing of BellSouth's motion to strike, Commission Staff instituted a conference call among the parties to discuss various matters pending in the docket. Staff informed the parties on that call of its view that there was certain testimony (of BellSouth and Intervenors) that should be stricken.<sup>2</sup> Thereafter, Staff provided parties with a memorandum to Commissioner Deason detailing the testimony it recommended should be stricken.
5. In its memorandum, Staff states that the testimony of NuVox witness Willis should be stricken<sup>3</sup> because it pertains to "company-specific complaints that the Commission specifically stated in its Final Order on the prior hearing in this Docket was [sic] not appropriate for consideration and resolution in this proceeding."<sup>4</sup> That is the sum total of Staff's rationale in attempting to strike all the testimony of a competitive ALEC that has marketplace information which the Commission should consider in this case.
6. Staff's recommendation that Mr. Willis' testimony be stricken is in error and should be disregarded for several reasons. First, Mr. Willis' testimony relates directly to Checklist Item No. 1 (the provision of interconnection) and Checklist Item No. 2

---

<sup>2</sup>The testimony identified in Staff's memorandum apparently is in addition to that in BellSouth's motion to strike, which Staff indicated it thought should be granted.

<sup>3</sup> Staff says that Mr. Willis' testimony at page 3, line 1 through page 4, line 17 should be stricken. This is all Mr. Willis' substantive testimony.

<sup>4</sup> Staff memo at 3.

7. (nondiscriminatory access to network elements at TELRIC-based prices). Mr. Willis demonstrates that while NuVox has an interconnection agreement with BellSouth, BellSouth refuses to charge the rates in that agreement, instead charging higher rates for interconnection trunks and facilities. Clearly, this puts NuVox at a competitive disadvantage and is in direct contravention of the Act.
8. Second, Staff misconstrues the language from the prior 271 Order<sup>5</sup> on which it seeks to rely and misunderstands the purpose of Mr. Willis' testimony. In the prior 271 Order, the Commission said, "We caution the parties, however, that a Section 271 proceeding is not the appropriate forum to *resolve* disputes or complaints."<sup>6</sup> NuVox, through Mr. Willis, does not seek a *resolution* from this Commission in this proceeding of BellSouth's failure to charge the appropriate rates as they appear in the parties' interconnection agreement.<sup>7</sup> Rather, NuVox offers Mr. Willis' testimony as evidence of BellSouth's behavior in the marketplace and as proof of BellSouth's failure to comply with various Checklist items; that is, of its failure to appropriately provide interconnection and its failure to charge TELRIC-based rates.
9. Third, Staff objects to "company-specific" information being offered in this case. However, "company-specific" information is critical to this Commission's consideration of how BellSouth interacts with its wholesale customers and what it does, in NuVox's view, to impede competition. NuVox (and other individual carriers) can only provide this Commission with information as to their own experience with BellSouth; they have no

---

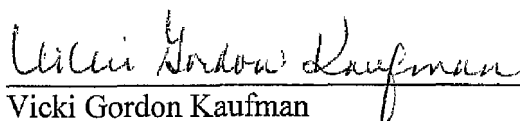
<sup>5</sup> Order No. PSC-97-1459-FOF-TL.

<sup>6</sup> *Id.* at 12, emphasis added.

<sup>7</sup> NuVox understands that any complaint about an interconnection agreement must be brought before the Commission separately.

way to offer testimony as to what other competitors experience nor would it be appropriate for them to offer such information, even if even had access to it. To prohibit ALECs from providing this information to the Commission would hamstring ALECs in their effort to participate in this case and would be patently unfair.

**WHEREFORE**, NuVox requests that the testimony of Mr. Willis remain in the record of this case.



---

Vicki Gordon Kaufman  
McWhirter, Reeves, McGlothlin, Davidson,  
Decker, Kaufman, Arnold & Steen, P.A.  
117 South Gadsden Street  
Tallahassee, Florida 32301  
(850) 222-2525 (telephone)  
(850) 222-5606 (fax)  
vkaufman@mac-law.com

Henry C. Campen, Jr.  
Parker, Poe, Adams & Bernstein  
First Union Capital Center  
150 Fayetteville Street Mall, S-1400  
Post Office Box 389  
Raleigh, NC 27602  
(919) 890-4145 (telephone)  
(919) 834-4564 (fax)  
henry campen@parkerpoe.com

Attorneys for NuVox Communications, Inc.

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing NuVox Communications, Inc.'s Response to Staff Memorandum Requesting that Testimony be Stricken has been furnished by (\*) hand delivery or by U. S. Mail on this 7th day of September, 2001, to the following:

(\*)Beth Keating  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399

Jeremy Marcus  
Blumenfeld & Cohen  
1625 Massachusetts Avenue, NW  
Suite 300  
Washington DC 20036

Nancy B. White  
c/o Nancy Sims  
BellSouth Telecommunications, inc.  
150 South Monroe Street  
Suite 400  
Miami Florida 32301

James Falvey  
e.spire Communications  
131 National Business Parkway  
Suite 100  
Annapolis Junction, MD 20701

Michael Gross  
Florida Cable Telecommunications  
Association  
246 E. 6th Avenue  
Tallahassee, Florida 32303

Kim Caswell  
GTE  
Post Office Box 110  
FLTC0007  
Tampa, Florida 33601

Richard Melson  
Post Office Box 6526  
Tallahassee, Florida 32314

Scott Sapperstein  
Intermedia  
One Intermedia Way  
MC FLT-HQ3  
Tampa, Florida 33619-1309

Donna McNulty  
325 John Knox Road  
Suite 105  
Tallahassee, Florida 32303

Floyd Self/Norman Horton  
Messer Law Firm  
Post Office Box 1876  
Tallahassee, Florida 32302

Pete Dunbar/Karen Camechis  
Pennington Law Firm  
Post Office Box 10095  
Tallahassee, Florida 32301

Susan S. Masterton  
Sprint  
Post Office Box 2214  
MC: FLTLH00107  
Tallahassee, Florida 32316-2214

Ken Hoffman  
Rutledge Law Firm  
Post Office Box 551  
Tallahassee, Florida 32302-0551

Andrew Isar  
Ascent  
3220 Uddenberg Lane, Suite 4  
Gig Harbor, WA 98335

Matthew Feil  
Florida Digital Network, Inc.  
390 North Orange Avenue  
Suite 2000  
Orlando, Florida 32801

Angela Green, General Counsel  
Florida Public Telecommunications Assoc  
125 S. Gadsden Street  
Suite 200  
Tallahassee, Florida 32301-1525

Patrick Wiggins  
Katz, Kutter Law Firm  
12th Floor  
106 East College Avenue  
Tallahassee, Florida 32301

Scheffel Wright  
Landers Law Firm  
Post Office Box 271  
Tallahassee, Florida 32302

Office of Public Counsel  
c/o The Florida Legislature  
111 W. Madison Street  
Suite 812  
Tallahassee, Florida 32399-1400

Rodney L. Joyce  
600 14th Street, N.W.  
Suite 800  
Washington DC 20005-2004

John Kerkorian  
MPower  
5607 Glenridge Drive, Suite 300  
Atlanta, GA 30342

CWA (Orl)  
Kenneth Ruth  
2180 West State Road 434  
Longwood, FL 32779

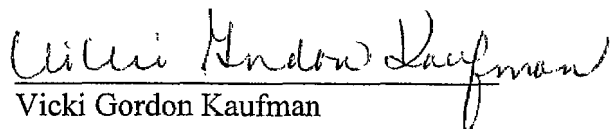
ITC^ DeltaCom  
Nanette S. Edwards  
4092 South Memorial Parkway  
Huntsville, AL 35802-4343

Network Access Solutions Corporation  
100 Carpenter Drive, Suite 206  
Sterling, VA 20164

Swidler & Berlin  
Richard Rindler/Michael Sloan  
3000 K. St. NW #300  
Washington, DC 20007-5116

Suzanne F. Summerlin  
IDS Telcom L.L.C.  
1311-B Paul Russell Road, Suite 201  
Tallahassee, Florida 32301

Jim Lamoureux  
AT&T Communications, Inc.  
1200 Peachtree Street, NE  
Room 8068  
Atlanta, GA 30309

  
Vicki Gordon Kaufman