

ORIGINAL

Matilda Sanders

From: Barclay, Lynn [Lynn.Barclay@BellSouth.com]
Sent: Tuesday, April 12, 2005 1:36 PM
To: Filings@psc.state.fl.us
Cc: Fatool, Vicki; Linda Hobbs; Nancy Sims; Holland, Robyn P; Bixler, Micheale; Slaughter, Brenda ; Marcus, Theodore
Subject: Dkt. 040527-TP BellSouth's Supplemental Affidavit of Jerry Hendrix
Attachments: 040527-TP Sup Affidavit.pdf

- A. Lynn Barclay
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 BellSouth Telecommunications, Inc.
 150 South Monroe Street
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 Tallahassee, Florida 32301
 (404) 335-0788
lynn.barclay@bellsouth.com
- B. Docket No. 040527-TP: In re: Enforcement of Interconnection Agreement between BellSouth Telecommunications, Inc. and NuVox Communications, Inc.
- C. BellSouth Telecommunications, Inc.
 on behalf of Nancy B. White
- D. 5 pages total
- E. Supplemental Affidavit of Jerry Hendrix on Behalf of BellSouth Telecommunications, Inc.

<<040527-TP Sup Affidavit.pdf>>

Lynn Barclay

Legal Department
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Legal Department

NANCY B. WHITE
General Counsel - FL

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(305) 347-5558

April 12, 2005

Mrs. Blanca S. Bayó
Director, Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 040527-TP
BellSouth v. NuVox

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Supplemental Affidavit of Jerry Hendrix, which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Nancy White (NB)

Nancy B. White

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey

DOCUMENT NUMBER-DAT

03551 APR 12 05

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CERTIFICATE OF SERVICE
Docket No. 040527-TP

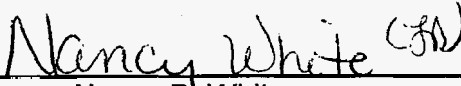
I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and FedEx this 12th day of April, 2005 to the following:

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Jeremy Susac
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Nancy B. White

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In Re:)
)
Enforcement of Interconnection Agreement) Docket No. 040527-TP
between BellSouth Telecommunications, Inc.)
and NuVox Communications, Inc.)

**SUPPLEMENTAL AFFIDAVIT OF JERRY HENDRIX
ON BEHALF OF BELL SOUTH TELECOMMUNICATIONS, INC.**

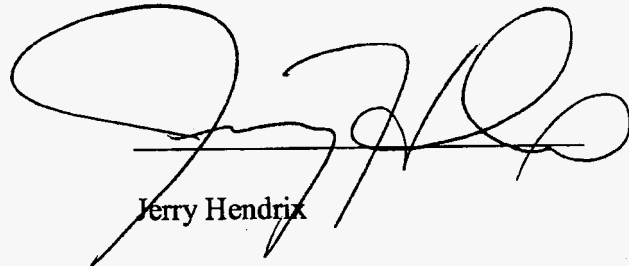
Comes the affiant, Jerry Hendrix, and being duly sworn, deposes and says:

1. My name is Jerry Hendrix. I previously filed an affidavit in this matter on September 10, 2004. The numbered paragraphs of that affidavit are incorporated herein by reference.
2. An audit of 44 of NuVox's Georgia EELs ("Georgia Audit") was performed recently, pursuant to a Georgia Public Service Commission Order Adopting in Part and Modifying in Part the Hearing Officer's Recommended Order on July 6, 2004. BellSouth employed the independent audit firm, KPMG, LLP to undertake the Georgia Audit. I understand that KPMG concluded its collection of information and documentation for this audit three weeks ago, and is waiting for NuVox to provide a management performance report, which I understand to be an affirmation by NuVox that it provided KPMG with all relevant materials in NuVox's possession. I further understand that, to date, despite repeated requests from KPMG, NuVox has refused to provide KPMG with the requested information.
3. While KPMG's report, thus, has not been finalized for release, "high-level" results of the audit were provided to BellSouth in a readout session with KPMG. Based on those high-level discussions, BellSouth anticipates that the Georgia Audit will confirm substantial non-compliance (and possible outright misrepresentation) regarding the circuits

inspected, as well as an inadequate control and recordkeeping structure established and/or maintained by NuVox in support of the certifications that were made to justify the circuit conversions.

4. I further understand from KPMG that NuVox's control and recordkeeping structure is centralized; that is, the structure is not unique from state-to-state.
5. Based on the high-level audit results from Georgia, it appears that NuVox has a poor compliance record relating to converted circuits. Under the circumstances, BellSouth is now faced with substantial and growing losses from the continued delay in its ability to audit NuVox's Florida converted circuits. For example, if NuVox's converted Florida EELs were audited and all were found non-compliant, the difference between the special access (SPA) rates that should have been paid, in that event, and the lower EEL rates that have been paid, would be approximately \$6.7 million (as of year-end 2004). Even if only half of NuVox's EELs in Florida were found to be non-compliant, NuVox would owe BellSouth more than \$3.35 million.
6. NuVox is a privately held company. Thus, BellSouth has no access to NuVox's financial records. However, according to available NuVox website information, NuVox's annualized EBITDA (earnings before interest, taxes, depreciation, and amortization) on revenues of approximately \$300 million is stated as "more than" \$10 million, while it has approximately \$80 million in debt. Based on this information, BellSouth has no confidence that NuVox could satisfy any future refund entered against NuVox in these amounts (*i.e.*, regionally, over \$29 million, potentially, or the potential \$6.7 million for Florida only), thereby permanently depriving BellSouth of its just compensation.

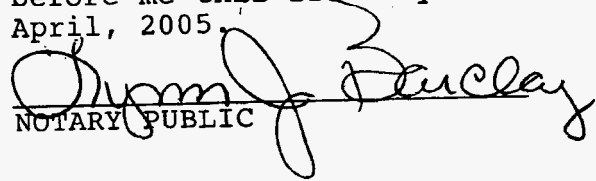
7. Additionally, there is a strong indication that NuVox's current records are incomplete and insufficient to establish compliance for converted circuits on a going forward basis. BellSouth, thus, stands to lose additional money and customers for as long as NuVox continues to improperly purchase new and existing EELs.
8. BellSouth has made the decision to hire KPMG, LLP to conduct the audit of NuVox's EELs in Florida.
9. This concludes my statement.



Jerry Hendrix

580836

Subscribed and Sworn to
before me this ~~12th~~ day of
April, 2005.



NOTARY PUBLIC

Lynn J. Barclay
Notary Public, DeKalb County, Georgia
My Commission Expires August 13, 2006.