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OCT 18 2002

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Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WC Docket No. 02-150 - *Ex Parte Notification*

Dear Ms. Dortch:

Copies of this *ex parte* notification and the letter attached were submitted today, October 18, 2002, viaelectronic mail, to William Maher, Tamara Preiss, Charles Kelley, Christopher Libertelli, Matthew Brill, Daniel Gonzalez, Jordan Goldstein, Scott Bergmann, Aaron Goldberger, Maureen Del Duca and Joshua Swift.

In accordance with Section 1.1206^{of} the Commission's rules, an original and one copy of this letter is being filed with your office. If you have any questions concerning this filing, please do not hesitate to contact me.

Respectfully submitted,



John J. Heitmann

Attachment

cc: William Maher, Tamara Preiss, Charles Kelley, Christopher Libertelli, Matthew Brill, Daniel Gonzalez, Jordan Goldstein, Scott Bergmann, Aaron Goldberger, Maureen Del Duca, Joshua Swift

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Via E-Mail and US Mail

Jonathan Banks, Esquire
General Attorney
BellSouth Corporation
Legal Department
1133 21st Street, N.W., Suite 900
Washington, D.C. 20036-3351

Re: WC Docket No. 02-150

Dear Jon:

This letter is in response to your September 24, 2002 letter to me and associated filing in the above-referenced docket. In your letter, you express BellSouth's displeasure with an August 29, 2002 *ex parte* filed in the above-referenced docket and indicate that the purpose of your letter is to give me an "opportunity to reconsider [my] refusal to meet this issue head on." Along with this opportunity, you also render your opinion that the August 29, 2002 *ex parte* somehow went "well beyond the bounds of acceptable advocacy" and imply that censure, suspension or disbarment proceedings may be appropriate.

Thank you for so graciously providing me with the "opportunity" to state that, contrary to your view, I believe that the August 29 *ex parte* crossed no line of acceptable advocacy of which I am aware. Moreover, I am well aware of the requirements of FCC Rule 1.52. I read (and wrote) the August 29 *ex parte* and I believe that there is good ground to support it.

Now, I will take this opportunity *first* to refresh your memory. In this regard, I will repeat what I told you on our initial September 6, 2002 call during which we discussed at length BellSouth's displeasure with the August 29 *ex parte* and the settlement BellSouth subsequently signed addressing certain issues raised in that letter: my client stands by the *en parte* and the statements contained therein. During that call, I also explained that the basis for the allegations to which you protest are also set forth in the letter,

Jonathan Banks, Esquire
October 18, 2002
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As you will recall, our September 6 call was an unscheduled call from BellSouth to me and my client was not present. On a scheduled call on September 10, I conveyed my client's desire (as did my client) to focus on the settlement discussions ongoing between NuVox and BellSouth at the time and not to devote resources to rehashing allegations made in the August 29 *ex parte* with you. You and your colleagues were again informed that NuVox stood by the allegations to which you protest and that the reasons for them were set forth in the letter. BellSouth also was invited to come back to us with any information that would prove the allegations false. Since more than a month has passed and BellSouth has presented no such information, I presume that BellSouth does not have any.

Having said that, I would prefer to conclude our discourse on these matters promptly, and, to the extent possible, not through a series of missives that I believe would unnecessarily divert scarce resources from important work here in Washington and in South Carolina. Thus, I am willing to engage in additional discussions with you. Because my own resources are not unlimited, and because I can do so without compromising any of my client's interests, I will promptly take three of the four statements identified by you in your letter off the table. In a separate *ex parte* letter to the Commission, I will formally retract statements (1), (3) and (4) and will replace them with language that does not reference or assert an attempt of deliberate deception by BellSouth's affiants.

With respect to statement (2), I will take the second option you have provided me, as opposed to the first (which I have taken with respect to statements (1), (3) and (4)). (Thanks for the options, which you have so graciously provided along with this opportunity to respond publicly to your letter.) I am willing to discuss the basis for statement (2) with you at our earliest mutual convenience. Before our next call, however, I request that you re-read statement (2) in context. *You* will find that the basis for that statement (and the others) is set forth in the letter. Nevertheless, I expect that I will enjoy discussing this one with you in more detail.

Now that it is clear that our next discussion will focus on a statement made in the letter – rather than the mistaken representations of it and others made by BellSouth on our September 6 call, I look forward to our next conversation.

Best regards,


John J. Heitmann

JJH/cpa