

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

NuVox Communications of Missouri, Inc.,)	
)	
Complainant,)	
)	
vs.)	Case No. CC-2009-0435
)	
Southwestern Bell Telephone)	
Company d/b/a AT&T Missouri,)	
)	
Respondent.)	

**AT&T MISSOURI'S RESPONSE TO NUVOX'S RENEWED MOTION
FOR MORE DEFINITE STATEMENT**

COMES NOW Southwestern Bell Telephone Company d/b/a AT&T Missouri ("AT&T Missouri") and submits its response to NuVox Communications of Missouri, Inc.'s ("NuVox's") September 8, 2009, renewed motion for more definite statement of AT&T Missouri's affirmative defenses.

Settled law states that a defendant must responsively plead all available affirmative defenses, or else risk waiving them. Rodgers v. Czamanske, 862 S.W. 2d 453, 459 (Mo. App. W.D. 1993). Given this -- and the glaring absence of any discussion in the complaint about the dates on which the overcharges alleged by NuVox occurred -- AT&T Missouri pleaded four affirmative defenses to NuVox's complaint. The first is directed to the substance of the claims asserted in the complaint, as measured against the terms of the parties' interconnection agreement. The remaining three are directed to the timeliness of NuVox's claims, as likewise measured against the terms of that agreement.

AT&T Missouri intends to develop each of these affirmative defenses during the course of this proceeding. For example, it has already generated data requests asking NuVox to, among other things, identify each discrete charge (and the associated bill date) which comprises the

“approximately \$430,000” allegedly overcharged, see Complaint, para. 14, and to identify when NuVox discovered these overcharges.


In any case, NuVox’s original and renewed motions for more definite statement are not meaningfully responsive to the Commission’s August 6 Order, which was clear in directing that NuVox “shall” respond to AT&T Missouri’s affirmative defenses by August 20. Moreover, though not directed to do so, on August 28 AT&T Missouri specifically identified pertinent provisions of the interconnection agreement related to its affirmative defenses, even though NuVox is no doubt already keenly aware of these provisions. NuVox’s latest suggestion -- that by doing so AT&T Missouri thus sought to place on NuVox the burden of proof regarding these defenses -- fails to meet the Order’s direction to NuVox.

For present purposes, however, NuVox’s “renewed” motion to dismiss should be denied. It is without merit and, in addition, was quite untimely filed. NuVox’s original motion was filed on August 20 (the same day as its response to the Order was due), well over one month after AT&T Missouri filed its July 9 answer and affirmative defenses to the complaint.

WHEREFORE, AT&T Missouri respectfully requests that the Commission deny NuVox’s original and renewed motions for more definite statement.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY,
D/B/A AT&T MISSOURI

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by e-mail on September 18, 2009.


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