

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

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

**COMPLAINT**

COMES NOW NuVox Communications of Missouri, Inc. (NuVox), pursuant to Sections 386.040, 386.230, 386.250, 386.320.1, 386.330, 386.390, 386.400, 392.200.1, and 392.240 RSMo., and 4 CSR 240-2.070 and 2.080, 47 USC 251 and 252, 47 CFR 51.307 et seq, and the provisions of the interconnection agreement (ICA) in effect between NuVox and Southwestern Bell Communications Company d/b/a AT&T Missouri (“AT&T Missouri”), and other applicable authority, and for its Complaint against AT&T Missouri regarding unauthorized charges for cross-connects purportedly provided with Enhanced Extended Links (EELs), states as follows to the Commission:

1. NuVox is a competitive telecommunications company authorized to provide local exchange and interexchange telecommunications services in Missouri. It is also authorized by the FCC to provide interstate and international telecommunications services. NuVox is in good standing with the Missouri Secretary of State, as shown by the certificate of good standing attached hereto. Its principal Missouri offices are currently located at 12400 Olive Blvd, Suite 430, St. Louis, MO 63141 (Contact Ed Cadieux: tel 636-537-5743, fax 636-733-5743, email [ecadieux@nuvox.com](mailto:ecadieux@nuvox.com)).

2. AT&T Missouri is a Missouri corporation in good standing. It provides local exchange telecommunications services to the public. It also provides telecommunications wholesale products and services to other local exchange telecommunications services providers, such as NuVox, in connection with their own offerings and sale of local exchange telecommunications services to the public. It has offices located at One AT&T Center, Suite 3520, St. Louis, Missouri 63101.

3. All inquiries, correspondence, communications, pleadings, notices, orders and decisions to be sent to NuVox relating to this matter should be directed to:

Carl J. Lumley, #32869  
Curtis, Heinz, Garrett & O'Keefe, PC  
130 S. Bemiston, Suite 200  
St. Louis, Missouri 63105  
Telephone: (314) 725-8788  
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4. The Commission has general jurisdiction over both NuVox and AT&T Missouri as telecommunications companies and their telecommunications facilities, including pursuant to Section 386.250 RSMo., and including all powers necessary or proper to enable it to carry out fully and effectually all its regulatory purposes as provided in Section 386.040. The Commission has jurisdiction to supervise AT&T Missouri and its facilities pursuant to Section 386.320 RSMo. The Commission has jurisdiction to pursue complaints regarding unlawful conduct by telecommunications companies, such as this one against AT&T Missouri, pursuant to Sections 386.230, 386.330, 386.390, 386.400, 392.200, and 392.240 R.S.Mo. and Sections 251 and 252 of the Telecommunications Act of 1996, and related regulations concerning unbundled network elements at 47 CFR 51.307 et seq. The Commission has jurisdiction over this controversy pursuant to its grant of authority under § 252(e)(1) of the Act to approve negotiated or arbitrated

interconnection agreements. This grant of authority to the Commission necessarily includes the power to interpret and enforce approved interconnection agreements. *See Southwestern Bell Telephone Co. v. Connect Communications Corp.*, 225 F.3d 942, 946-47 (8th Cir. 2000). The Commission also has jurisdiction under the federal Telecommunications Act of 1996, 47 U.S.C. § 251(d) (3) (conferring authority to State commissions to enforce any regulation, order or policy that is consistent with the requirements of Section 251), with respect to the matters raised in this Complaint.

5. NuVox is entitled to seek relief on its Complaint before the Commission under Section 13 of the General Terms and Conditions of the ICA between NuVox and AT&T Missouri, which governs dispute resolution, as well as under Appendix 6 and Appendix Pricing UNE, which set forth the rates, terms and conditions regarding AT&T Missouri's provision of unbundled network elements to NuVox including the combination of elements known as EELs.

6. NuVox and AT&T Missouri are competitors and operate under an ICA that was arbitrated and approved by the Commission and became effective in 2005 in Case No. TK-2006-0072, as subsequently amended and extended including in VT-2008-0029. The Commission should take notice of the ICA as amended and its related orders and proceedings which are contained in its files and incorporated herein by this reference.

7. NuVox obtains DS1 EELs from AT&T Missouri pursuant to Appendix 6 and Appendix Pricing UNE of the ICA. As stated in section 2.20.1.1 of Appendix 6 of the ICA, "Enhanced Extended Link" or "EEL" is "a UNE combination consisting of UNE loop(s) and UNE Dedicated Transport, together with any facilities, equipment or functions necessary to combine those UNEs." It is described as a complete "circuit" in various subsections of section 2.20 of Appendix 6 of the ICA. DS1 refers to Digital Signal Level 1, which is the 1.544 mbps

first-level signal in the time-division multiplex hierarchy (also known as T-1), as stated in Appendix Definitions of the ICA. NuVox uses EELs to connect its network to customers that subtend an AT&T end office in which NuVox does not have a collocation. The EEL provides a circuit that extends to a neighboring AT&T central office where it connects to the NuVox network (at a collocation or multiplexer) and at that point is aggregated with other circuits serving other NuVox customers.

8. Cross-connects are the media that connect AT&T Missouri's distribution frame to a point designated by NuVox as stated in section 15.1 of Appendix 6 of the ICA. Regarding the combination of loop and transport known as an EEL, section 15.2 of Appendix 6 of the ICA provides that cross-connects are provided at either or both ends of an EEL circuit, at the discretion of NuVox.

9. When NuVox obtains DS1 EELs from AT&T Missouri, it only orders a cross-connect at the end of the EEL circuit that connects to the applicable NuVox collocated equipment or multiplexer at the AT&T Missouri central office at the distant end of the circuit relative to the customer being served. NuVox's EEL orders do not request any other cross-connects for EEL circuits.

10. Appendix Pricing UNE expressly states that it "contains a complete list of rate elements and charges associated with UNEs and other items, if any, offered by SBC MISSOURI [now AT&T Missouri] pursuant to" the ICA.

11. Appendix Pricing UNE does not establish a rate for a cross-connect purportedly provided between the loop and transport portions of an EEL combination – there simply is no billable loop cross connect in the Pricing Schedule that corresponds to any type of intra-office link that might be used with a DS1 EEL. The connection between these elements at the

customer-serving end office (if such a connection is, in fact employed) is not an item for which AT&T Missouri is authorized to impose an additional charge. Rather, AT&T Missouri is only authorized to charge the established rates for the involved loop and transport elements, plus the single cross-connect provided at the end of the circuit proximate to the NuVox collocation or multiplexer as described above.

12. Despite the foregoing facts, in addition to charging for the cross-connect provided between the end of an EEL circuit and the applicable NuVox collocation or multiplexer, AT&T Missouri has also been charging NuVox for a purported cross-connect between the loop and transport elements of each EEL circuit. Even though NuVox only orders a single cross-connect per EEL, AT&T Missouri unilaterally bills a monthly charge of fourteen dollars and fifty-one cents (\$14.51) each, for two cross-connects per EEL – i.e., a total of twenty-nine dollars and two cents (\$29.02) per month for cross connect charges on each EEL.

13. AT&T Missouri's aforesaid actions violate 392.200.1, and 392.240 RSMo., 47 USC 251 and 252, 47 CFR 51.307 et seq, and Section 13 of the General Terms and Conditions and Appendix 6 and Appendix UNE Pricing of the ICA, and other applicable authority.

14. To date, AT&T Missouri has overcharged NuVox by approximately \$430,000 regarding EELs obtained pursuant to the ICA, by means of the unauthorized charges described above, and continues to bill such improper charges to NuVox regarding such EELs in amounts of about \$20,000 per month.

15. When it discovered that AT&T Missouri was imposing these unauthorized charges on it, NuVox disputed AT&T Missouri's billings in accordance with the terms and conditions of the ICA. NuVox has been in direct contact with AT&T Missouri regarding this

matter, but has not been able to resolve the foregoing issues. Efforts at dispute resolution between NuVox and AT&T Missouri pursuant to the ICA have failed.

WHEREFORE, NuVox requests that the Commission

1. Serve this Complaint and its notice upon AT&T Missouri, directing it to answer this Complaint;
2. Promptly set a prehearing conference and a deadline to file a procedural schedule;
3. Proceed to hearing on the matters described in this Complaint;
4. Determine that AT&T Missouri's charges for a purported cross-connect between the loop and transport elements of EELs it provides to NuVox are unauthorized and need not be paid by NuVox under the terms and conditions of the ICA;
5. Grant such other and further relief to NuVox as the Commission deems just and proper.

CURTIS, HEINZ,  
GARRETT & O'KEEFE, P.C.

/s/ Carl J. Lumley

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Attorneys for NuVox Communications  
of Missouri, Inc.

## **CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing document was either mailed, faxed, or emailed this 5th of June, 2009, to the persons listed on the attached service list.

/s/ Carl J. Lumley

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