

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
TRANSCRIPT OF PROCEEDINGS
PREHEARING CONFERENCE

AUGUST 6, 2009

JEFFERSON CITY, MISSOURI
VOLUME 1

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

Harold Stearley, Presiding
Senior Regulatory Law Judge

Reported By: Nancy L. Silva
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1 (The proceedings commenced at 10:00 a.m.)

2 JUDGE STEARLEY: Morning. Today's
3 Thursday, August 6, 2009, and we are here for a
4 prehearing conference in NuVox Communications of
5 Missouri, Incorporated, versus Southwestern Bell
6 Communications Company doing business as AT&T
7 Missouri; File No. CC-2009-0435.

8 My name's Harold Stearley and I'm the
9 presiding officer over this matter. Our court
10 reporter this morning is Nancy Silva, and we'll
11 begin by taking entries of appearance beginning
12 with NuVox.

13 MR. LUMLEY: Thank you, Your Honor.
14 Carl Lumley of the Curtis, Heinz, Garrett
15 and O'Keefe Law Firm representing NuVox
16 Communications of Missouri, 130 South Bemiston,
17 Suite 200, Clayton, Missouri 63105.

18 JUDGE STEARLEY: Thank you, Mr. Lumley.
19 And for AT&T Missouri?

20 MR. GRYZMALA: Good morning as well,
21 Your Honor. This is Bob Gryzmala for Southwestern
22 Bell Telephone Company d/b/a AT&T Missouri. We're
23 located at 909 Chestnut Street, and I'm in
24 Room 3516, St. Louis, Missouri 63101. And Your
25 Honor -- okay. That's fine. Thanks.

1 JUDGE STEARLEY: Thank you,
2 Mr. Gryzmala.

3 MR. GRYZMALA: Uh-huh.

4 JUDGE STEARLEY: For the staff of the
5 Missouri Public Service Commission?

6 MS. DALE: This is Colleen M. Dale
7 appearing for Jennifer Hernandez, who represents
8 the staff of Missouri Public Service Commission,
9 Post Office Box 360, Jefferson City, Missouri
10 65102.

11 JUDGE STEARLEY: All right. Did someone
12 else join us on the phone bridge?

13 MR. JUDGE: I just did. My name is Tim
14 Judge, and I'm from AT&T Missouri.

15 JUDGE STEARLEY: All right. Thank you,
16 Mr. Judge.

17 We have no one present for the Office of
18 Public Counsel, so I'll just let the record
19 reflect that they have made no entry of
20 appearance.

21 As an initial matter this morning I'd
22 like to clarify staff's party status. Ms. Dale
23 had filed a pleading introducing a novel approach
24 to this case, which the Commission actually does
25 appreciate being able to proceed in this case as

1 sort of -- in a -- kind of a hybrid context.

2 It's being handled as a complaint but
3 it's falling similar matters as we would in
4 arbitrations on interconnection agreements, but
5 being that it is in a complaint procedure process,
6 I'm not a hundred percent sure that Ms. Dale's
7 suggestion is workable in this case so I wanted to
8 allow her first opportunity to say if that's the
9 way she wishes to proceed and then ask if the
10 parties would consent to having staff serving as
11 an advisory capacity versus as an active party in
12 the case.

13 I can tell you my preference but --

14 MS. DALE: I have to say that my motion
15 in this matter was mistakenly premised on the
16 assumption that staff was not going to take a
17 position, and that was my misunderstanding, so
18 that I'm afraid this whole mix-up is completely my
19 fault, but let's hear your preference.

20 JUDGE STEARLEY: Okay.

21 I don't think it's completely your fault
22 because I was ready to adopt the advisory staff
23 position, and I sent staff an e-mail indicating
24 that, and I didn't mean to create any additional
25 confusion.

1 But an additional thought on this: My
2 concern in a complaint action is that NuVox and
3 AT&T would have the opportunity to cross-examine
4 any staff witnesses and there would be no
5 appearance of the Commission having secret
6 meetings with individuals outside of the
7 cross-examination process.

8 So it would be my preference that we
9 proceed in a normal complaint fashion, and if
10 staff is going to offer testimony, that they --
11 cross-examination be allowed.

12 Any position from NuVox or AT&T regarding
13 this?

14 MR. GRYZMALA: Judge, this is
15 Bob Gryzmala. I tend to agree. I think
16 fundamental is that because the -- Your Honor's
17 adjudicating rights and responsibilities under the
18 Interconnection Agreement, you know, staff's
19 opinions and input would certainly be worthwhile
20 and -- but on the other hand, I -- you know, we
21 share your points, too, so an opportunity to have
22 access to the communications that are being made
23 to the finder of fact in making the determinations
24 on the record and an opportunity to comment or
25 cross-examine on that input, it sort of drives you

1 to party status.

2 JUDGE STEARLEY: Right. Okay. I think
3 that is --

4 MR. GRYZMALA: I mean, that's just my --
5 sort of my feel there.

6 JUDGE STEARLEY: Right. I don't want any
7 type of due process issues to materialize in this
8 matter, so I believe that's the way we will
9 proceed.

10 And when you guys have an opportunity to
11 work out procedural schedule, that will allow for
12 figuring out the time lines for where we're going
13 to go.

14 MS. DALE: If I may, let me add that in
15 light of the fact that the staff's status was
16 uncertain, the staff has not engaged in the
17 discovery it normally would engage in during this
18 time period and would like to note that the staff
19 will need discovery time.

20 JUDGE STEARLEY: And I don't think that
21 should be a problem. It can certainly be built
22 into the procedural schedule so that there's
23 adequate discovery for this.

24 MR. GRYZMALA: Judge, one other
25 comment -- this is Bob Gryzmala -- if I may.

1 JUDGE STEARLEY: Yes.

2 MR. GRYZMALA: Having said what we --
3 with proceeding, I just do want to point out that
4 with respect to the arbitration and process that
5 has to do with that sort of, you know,
6 procedural -- the process in conjunction with
7 staff has worked very well.

8 I do think that what -- the
9 considerations here, though, are more important
10 having to do because they're a complaint. It's a
11 complaint case, but I do want to say in those
12 other forums things have worked out very -- you
13 know, pretty smoothly.

14 JUDGE STEARLEY: Okay. Thank you,
15 Mr. Gryzmala, and there may be an opportunity for
16 adapting that type of process in another case
17 but --

18 MR. GRYZMALA: I have one other just very
19 minor procedural matter, Your Honor, if I may.

20 JUDGE STEARLEY: Certainly.

21 MR. GRYZMALA: We are listed as a party,
22 Southwestern Bell Communications Company, and I
23 think we all would agree that if we could kindly
24 henceforth refer in the caption to Southwestern
25 Bell Telephone Company. Just a minor item.

1 JUDGE STEARLEY: Certainly.

2 MR. GRYZMALA: Carl, is that okay with
3 you?

4 MR. LUMLEY: Yeah.

5 MR. GRYZMALA: Okay.

6 JUDGE STEARLEY: All right. Having
7 worked through that issue, let me just briefly
8 summarize a few elements about the complaint just
9 to make sure I'm on the same page with the
10 parties.

11 It appears NuVox is alleging possible
12 violations of Section 392.200, 392.240; 47 United
13 States Code, Sections 251 and 252; 47 Code of
14 Federal Regulations, Section 51.307.

15 Is that a fair summary, Mr. Lumley?

16 MR. LUMLEY: Well, those are the
17 underlying statutes but, I mean, it really comes
18 down to the billing of charges that we don't
19 believe are allowed under the agreement.

20 JUDGE STEARLEY: Under the agreement.

21 In your pleadings you've indicated
22 pertinent sections --

23 MR. LUMLEY: Right.

24 JUDGE STEARLEY: -- being Section 13,
25 General Terms and Conditions; Appendix 6, which

1 for my clarification, I believe, is actually
2 Attachment 6, Considering Munis -- is that correct
3 -- and then the appendix Pricing of Munis?

4 MR. LUMLEY: Right.

5 JUDGE STEARLEY: The parties have kindly
6 filed a copy of the Interconnection Agreement in
7 the matter, and as I grouped this, I think I have
8 a couple of missing pages.

9 I just wanted to call the parties'
10 attention to that to make sure I'm not missing
11 something that's pertinent, but I appear not to
12 have copies of pages 157, 158, and pages 177
13 through 191.

14 MR. GRYZMALA: Run that by us again, Your
15 Honor.

16 JUDGE STEARLEY: 157 and 158 --

17 MR. GRYZMALA: Okay.

18 JUDGE STEARLEY: -- and pages 177 through
19 191.

20 I know it was a voluminous filing, and
21 it's possible when I printed this out that I might
22 have just missed a section, because it came in in
23 multiple sections and due to efuses on additions,
24 but if the parties wouldn't mind checking just to
25 make sure I'm not missing something.

1 And those pages may not be pertinent to
2 the issues in the case as well, but I did want to
3 call the parties' attention to that.

4 Now, being this involves the
5 interpretation and application of the
6 Interconnection Agreement, the Commission would
7 like to further narrow this to be sure we don't
8 have just issues of law requiring decision or if
9 there are factual issues in dispute, so I'm going
10 to ask the parties to file a joint stipulation as
11 to the facts that are undisputed, to identify for
12 the Commissions facts that remain in dispute, if
13 there are any, because if there are no material
14 facts in dispute, the Commission may take this up
15 as a matter of law and take it on submission of
16 briefs as opposed to having a hearing and/or oral
17 argument.

18 If there are factual issues, the
19 Commission needs to decide if the Commission is
20 clearly going to proceed with a full hearing.

21 Additionally, AT&T has raised some
22 affirmative defenses. And Mr. Lumley, I'm gonna
23 direct NuVox to respond to those affirmative
24 defenses.

25 So in terms of filings, I would like the

1 stipulations, the responses to the affirmative
2 defenses and a proposed procedural schedule to be
3 filed, and I don't -- would expect that these
4 items could be filed within a two- to four-week
5 time period.

6 So before I set a firm date, I wanted to
7 ask the parties how much time you would like to
8 have to respond to those directives.

9 MR. LUMLEY: Well, Judge, I think the
10 proposed schedule and the response to the
11 affirmative defenses, you know, certainly two
12 weeks would probably be sufficient, but developing
13 the stipulation of facts between the parties,
14 probably more along the month time frame --

15 JUDGE STEARLEY: All right.

16 MR. LUMLEY: -- in my reaction.

17 JUDGE STEARLEY: The other parties agree
18 with that?

19 MR. GRYZMALA: I would tend to agree with
20 Mr. Lumley, Judge. This is Bob Gryzmala.

21 JUDGE STEARLEY: Okay.

22 MS. DALE: Staff agrees.

23 JUDGE STEARLEY: Why don't we set August
24 20 for the filing of the procedural schedule and
25 for NuVox to respond to AT&T's affirmative

1 defenses --

2 MR. LUMLEY: Okay. August 20 on the
3 procedural and the NuVox response.

4 JUDGE STEARLEY: -- and Monday, September
5 7 for the stipulations.

6 MR. GRYZMALA: Why does that sound like
7 Labor Day to me, Your Honor?

8 MS. DALE: Is that the Monday after Labor
9 Day?

10 MR. GRYZMALA: Let me make sure of that.

11 JUDGE STEARLEY: It might be Labor Day.
12 I don't pay much attention to holidays or days
13 off.

14 MR. GRYZMALA: Yeah, it just struck my --
15 yeah, it is.

16 JUDGE STEARLEY: Okay.

17 MS. DALE: Can we move it back a week?

18 JUDGE STEARLEY: Why don't we say
19 September 8.

20 MS. DALE: If I may request --

21 JUDGE STEARLEY: You may.

22 MS. DALE: -- we go to the next Monday --

23 JUDGE STEARLEY: The next Monday.

24 MS. DALE: -- so that we're not all
25 working over Labor Day weekend.

1 JUDGE STEARLEY: Okay. How about
2 September 15? Is that acceptable?

3 MR. LUMLEY: Sure.

4 MR. GRYZMALA: That sounds good. Thank
5 you. And that is for the stipulation?

6 JUDGE STEARLEY: Right. And I would
7 expect the parties to identify nondisputed facts
8 as well as disputed facts.

9 If there's disagreement among the parties
10 as to what facts are disputed, they can file
11 separate pleadings, but the Commission would like
12 to narrow this down. Obviously we've got a
13 voluminous ICA, and we want to pinpoint the issues
14 in the matter.

15 MR. GRYZMALA: Okay.

16 THE COURT REPORTER: Could I have just
17 one second?

18 JUDGE STEARLEY: Certainly.

19 Have to give our court reporter a second
20 here before we continue.

21 (A discussion was held off the record.)

22 JUDGE STEARLEY: Okay. Well, those are
23 the major things I wanted to lay out today.

24 Are there any other matters that we need
25 to take up this morning?

1 MS. DALE: Staff has none.

2 JUDGE STEARLEY: Well, we will conclude
3 the record portion of the prehearing conference,
4 and I will leave you-all to your discussions.

5 If you need to contact me today for any
6 reason, I should be in my office except for a
7 short time period this afternoon where I will be
8 presumably touring a water plant, water treatment
9 plant, but I will be around if you-all need to
10 contact me for any reason.

11 MR. LUMLEY: Okay. Good.

12 JUDGE STEARLEY: All right. Thank you
13 all very much, and we are off the record.

14 (A discussion was held off the record.)

15 (The proceedings concluded at 10:25 a.m.)

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1 CERTIFICATE OF REPORTER

2 STATE OF MISSOURI) ss:
)
3 COUNTY OF CALLAWAY)

4 I, Nancy L. Silva, Certified Court
5 Reporter, the officer before whom the foregoing
6 proceedings were taken, do hereby certify that the
7 witness whose testimony appears in the foregoing
8 proceedings was duly sworn by me; that the
9 testimony of said witness was taken by me to the
10 best of my ability and thereafter reduced to
11 typewriting under my direction; that I am neither
12 counsel for, related to, nor employed by any of
13 the parties to the action in which these
14 proceedings were taken, and further that I am not
15 a relative or employee of any attorney or counsel
16 employed by the parties thereto, nor financially
17 or otherwise interested in the outcome of the
18 action.

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22 Notary Public in and for
23 the State of Missouri

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25 My Commission expires 4/20/10.