

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

JACOR Contracting, Inc.,)	
)	
Complainant,)	Case No. CC-2009-0128
)	
vs.)	
)	
NuVox Communications of Missouri, Inc.)	
and Southwestern Bell Communications)	
Company d/b/a AT&T Missouri,)	
)	
Respondents.)	

NUVOX CROSS-COMPLAINT AGAINST AT&T

COMES NOW NuVox Communications of Missouri, Inc. (NuVox), pursuant to Sections 386.040, 386.230, 386.250, 386.310.1, 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 Sections 7, 13 and 52 of the General Terms and Conditions and Attachments 8 and 17 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 Cross-Complaint against AT&T Missouri regarding service interruptions resulting from its failure to repair and maintain unbundled network elements purchased by NuVox from AT&T Missouri in compliance with applicable statutes and rules and the ICA, 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. 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).

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.

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

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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, 386.310, 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 Cross-Complaint.

5. NuVox is entitled to seek relief on its Cross-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 Sections 7 and 52 of the General Terms and Conditions, which sets forth AT&T Missouri's obligations to indemnify and extend credits for service interruptions, Attachment 8, which sets forth AT&T Missouri's maintenance obligations regarding unbundled network elements purchased by NuVox from AT&T Missouri, and Attachment 17 and related Performance Remedy Plan, which set forth AT&T Missouri's performance obligations.

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. JACOR Contracting, Inc., a Missouri corporation ("JACOR"), is a customer of NuVox pursuant to applicable contract and tariffs.

8. JACOR has filed a Complaint with the Commission against NuVox and AT&T Missouri, alleging various problems with the unbundled network elements that NuVox has purchased from AT&T Missouri pursuant to the ICA so that NuVox can provide service to JACOR.

9. For several years, NuVox sought necessary repair and maintenance from AT&T Missouri regarding repeated problems with the unbundled network elements that NuVox has purchased from AT&T Missouri pursuant to the ICA so that NuVox can provide uninterrupted service to JACOR.

10. AT&T Missouri breached the ICA and applicable law by failing to promptly repair and maintain the unbundled network elements that NuVox has purchased from AT&T Missouri pursuant to the ICA so that NuVox can provide uninterrupted service to JACOR.

11. AT&T Missouri's failure to promptly provide the necessary repairs and maintenance constitutes gross negligence, intentional and willful misconduct, and/or breach of applicable law.

12. NuVox has been in direct contact with AT&T Missouri regarding this matter, but has not been able to resolve the foregoing issues.

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 Sections 7, 13 and 52 of the General Terms and Conditions and Attachments 8 and 17 (including the Performance Remedy Plan) of the ICA, and other applicable authority.

14. AT&T should be required to indemnify NuVox against all claims of JACOR under the circumstances and should provide service outage credits and Performance Remedy Plan payments to NuVox due to the experienced interruptions in service.

WHEREFORE, NuVox prays the Commission to:

1. Serve this Cross-Complaint and its notice upon AT&T Missouri, directing it to answer this Cross-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 Cross-Complaint;
4. Direct AT&T Missouri to immediately provide any necessary repairs and maintenance to the unbundled network elements that NuVox has purchased to provide services to JACOR, as required by the ICA and applicable law.
5. Direct AT&T Missouri to comply with its indemnification, credit and Performance Remedy Plan obligations under the ICA.
6. 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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of Missouri, Inc.

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was either mailed, faxed, or emailed this 13th of February, 2009, to the persons listed on the attached service list.

/s/ Carl J. Lumley

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