

**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 REPLY TO NUVOX’S RESPONSE TO THE  
COMMISSION’S AUGUST 6 ORDER DIRECTING FILING**

COMES NOW Southwestern Bell Telephone Company d/b/a AT&T Missouri (“AT&T Missouri”) and submits its reply to NuVox Communications of Missouri, Inc.’s (“NuVox’s”) response to the Commission’s August 6 Order Directing Filing (“Order”).

NuVox’s June 5 Complaint challenges AT&T Missouri’s charges to NuVox for the “cross-connect” which AT&T Missouri provisions “between the loop and transport elements of each EEL circuit” ordered by NuVox. Complaint, para. 12.<sup>1</sup> EELs provided by incumbent local exchange carriers like AT&T Missouri allow carriers like NuVox to reduce their collocation costs by aggregating loops at fewer collocation locations and then transporting the customer’s traffic to their own switches. *Triennial Review Order*, 18 FCC Rcd.16978 (2003), ¶ 576.<sup>2</sup>

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<sup>1</sup> An “Enhanced Extended Link” (or “EEL”) is an “[Unbundled Network Element] combination consisting of UNE loop(s) and UNE Dedicated Transport, together with any facilities, equipment or functions necessary to combine those UNEs.” AT&T Missouri/NuVox Interconnection Agreement, Attachment 6: Unbundled Network Elements, at § 2.20.1.1 (Serial page no. 106). A cross-connect is defined as “the media between the [AT&T] Missouri distribution frame and a CLEC designated collocated space, UNE Access Method, Subloop Access Method, or other SBC Missouri Unbundled Network Elements purchased by CLEC.” *Id.*, at § 15.1 (Serial page no. 154).

<sup>2</sup> As NuVox has stated, “NuVox uses EELs to connect its network to customers that subtend an AT&T end office in which NuVox does not have a collocation.” Complaint, para. 7.

NuVox's Complaint alleged that "AT&T Missouri has overcharged NuVox by approximately \$430,000" but did not identify, among other things, the period over which the alleged overcharging began or when NuVox learned of the alleged overcharge.

The interconnection agreement ("ICA") entered into between the parties encourages early resolution of differences of opinion that may arise between the parties regarding matters encompassed by the ICA. Given NuVox's generalized allegations, in addition to answering NuVox's Complaint, AT&T Missouri submitted four affirmative defenses to the Complaint. It is these affirmative defenses to which the Commission's Order directed NuVox to respond. While NuVox failed to do so under the guise of needing a "more definite statement of" these defenses, each of them is clear and well-understood by NuVox. In any case, this Reply provides the greater detail that surely will enable NuVox to respond, as the Commission's August 6 Order directed.

AT&T Missouri's first affirmative defense is that NuVox's Complaint fails to state a claim on which relief may be granted. Either now (in response to the Order), or later (following discovery, in its pre-filed Direct Testimony), NuVox should explain why AT&T Missouri should not be permitted to charge for work it performs to combine the loop and transport UNEs -- including providing the cross-connect between the two UNEs -- especially since this work helps NuVox reduce its collocation costs.<sup>3</sup> Indeed, without this cross-connect the EEL can't even work.

Three additional affirmative defenses followed, all based on "timeliness." These defenses, detailed below, would be best for NuVox to address sooner than later (as AT&T Missouri understood the Order contemplated) to spare the Commission's and the parties' finite resources. Each is based upon ICA provisions meant to bring disputes to the other party's

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<sup>3</sup> See, note 2, *supra*.

attention in a timely manner, and to bring claims for the Commission's resolution in a timely manner.

The first of these three defenses is that “[t]he Complaint is barred and/or relief thereunder limited by the applicable statutory and/or parties’ contractually agreed-upon period of limitations stated in their ICA which governs the time within which to bring a claim for a dispute arising under the ICA.” This language is drawn from Section 13.1.1 of the General Terms and Conditions of the parties’ Commission-approved ICA, which states in pertinent part:

13.1.1 Except as otherwise specifically provided in this Agreement, no claims will be brought for disputes arising from this Agreement more than 24 months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention.

NuVox brought its claim to the Commission on June 5, 2009, but did not identify when NuVox first discovered or reasonably should have discovered the overcharges of which it now complains.

AT&T Missouri’s second timing defense is that “[t]he Complaint is barred and/or relief thereunder limited by the parties’ contractually agreed-upon period stated in their ICA which governs the time within which to claim a credit for charges allegedly over-billed.” Its third is that “[t]he Complaint is barred and/or relief thereunder limited by the parties’ contractually agreed-upon period stated in their ICA which governs the time within which to dispute charges appearing on a bill.”

Similar to the above time-bar provision related to filing claims with this Commission, these particular defenses prescribe time frames within which to claim a bill credit or lodge a dispute with respect to a billing matter (before a claim is brought to the Commission for

resolution), as in the case of the cross-connect billing challenged by NuVox. Both are set forth in the General Terms and Conditions of the parties' Commission-approved ICA:

10.4 Notwithstanding anything to the contrary in this Agreement, a Party shall be entitled to . . . claim credit for any charges for services provided pursuant to this Agreement that are found to be . . . over-billed, but only when such charges appeared . . . on a bill dated within the twelve (12) months immediately preceding the date on which the . . . Billed Party provided written notice to the Billing Party of the claimed credit amount. . . .

13.4.3 Notwithstanding anything contained in this Agreement to the contrary, a Party shall be entitled to dispute only those charges which appeared on a bill dated within the twelve (12) months immediately preceding the date on which the Billing Party receives notice of such dispute.

NuVox's Complaint does not identify the pertinent dates that would indicate whether NuVox timely requested a bill credit or timely submitted a notice of dispute regarding the cross-connect charges billed to NuVox.<sup>4</sup>

In sum, AT&T Missouri understood the Commission's August 6 Order to require that NuVox respond affirmatively to each of AT&T Missouri's affirmative defenses, by detailing whether its claim has been timely brought to this Commission (in accordance with Section 13.1.1), and whether each of the charges which are the subject of its claim brought to the Commission were made the subject of a timely request for bill credits and notice of dispute (in accordance with Sections 10.4 and 13.4.3). NuVox's response does not do so.

WHEREFORE, AT&T Missouri respectfully requests that the Commission direct NuVox to affirmatively respond, as indicated above, to AT&T Missouri's affirmative defenses. NuVox's Motion for More Definite Statement should be dismissed as non-responsive to the

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<sup>4</sup> In this connection, AT&T's files contain an October 27, 2008, overnight letter from NuVox entitled "Notice of Dispute Under NuVox/AT&T Interconnection Agreement for the States of Arkansas, Illinois, Indiana, Kansas, Missouri, Ohio and Oklahoma," referencing a "Notice of Dispute Under Interconnection Agreements Regarding Charges Assessed for Cross-Connects on Enhanced Extended Links ("EELs")."

Commission's August 6 Order or, alternatively, should be dismissed as moot in light of this Reply.

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 August 28, 2009.

  
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