

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

JACOR CONTRACTING, INC.,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
NUVOX COMMUNICATIONS OF	)	
MISSOURI, INC.,	)	<b><u>Case No. CC-2009-0128</u></b>
	)	
and,	)	
	)	
SOUTHWESTERN BELL COMMUNICATIONS	)	
COMPANY D/B/A AT&T MISSOURI	)	
	)	
Respondents.	)	

**NOTICE OF COMPLAINT AND ORDER DIRECTING STAFF  
INVESTIGATION AND RESPONSES**

Issue Date: October 9, 2008

Effective Date: October 9, 2008

Legal Department  
NuVox Communications of Missouri, Inc.  
Two North Main Street  
Greenville, South Carolina 29601

AT&T Missouri Legal Department  
One AT&T Center, Suite 3520  
St. Louis, Missouri 63101

**CERTIFIED MAIL**

On October 9, 2008,<sup>1</sup> JACOR Contracting, Inc., (“JACOR”), filed a complaint with the Commission against NuVox Communications of Missouri, Inc. (“NuVox”) and Southwestern Bell Communications Company d/b/a AT&T Missouri (“AT&T Missouri”). A copy of the

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<sup>1</sup> All dates throughout this order refer to the year 2008 unless otherwise noted.

complaint is enclosed. Under Commission Rule 4 CSR 240-2.070, NuVox and AT&T Missouri have 30 days from the date of this notice to file an answer or to file notification that the complaint has been satisfied. Since this notice is being issued on October 9, NuVox's and AT&T Missouri's responses are due by November 10.<sup>2</sup>

In the alternative, the Respondents may file a written request that the complaint be referred to a neutral third-party mediator for voluntary mediation of the complaint. Upon receipt of a request for mediation, the 30-day time period shall be tolled while the Commission ascertains whether the Complainant is also willing to submit to voluntary mediation. If the Complainant agrees to mediation, the time period within which an answer is due shall be suspended pending the resolution of the mediation process. Additional information regarding the mediation process is enclosed.

If the Complainant declines the opportunity to seek mediation, the Respondent will be notified in writing that the tolling has ceased and will also be notified of the date by which an answer or notice of satisfaction must be filed. That period will usually be the remainder of the original 30-day period.

All pleadings (the answer, the notice of satisfaction of complaint or request for mediation) shall be mailed to:

Secretary of the Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102-0360

A copy shall be served upon the Complainant at the Complainant's address as listed within the enclosed complaint. A copy of this notice shall be mailed to the Complainant.

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<sup>2</sup> The thirty-day response date falls on Saturday, November 8, 2008; however, the Commission's computation of time rule, 4 CSR 240-2.050(1) extends the deadline until Monday, November 10, 2008.

Pursuant to Commission Rule 4 CSR 240-2.070(10), the Commission will direct its Staff, an unbiased third party in this complaint case, to investigate the facts in this case and the contested issues set out in the pleadings. Staff also has the discretion to report findings as to any other contested issues in this case that may appear during its investigation. The Staff must then file its findings with the Commission and serve copies on the other parties. The Commission will also allow the parties to file responsive pleadings to that report.

**IT IS ORDERED THAT:**

1. The Commission's Data Center shall mail a copy of this Notice and Order to the Complainant, JACOR Contracting, Inc.
2. NuVox Communications of Missouri, Inc. shall, no later than November 10, 2008, file a response to this complaint.
3. Southwestern Bell Communications Company d/b/a AT&T Missouri shall, no later than November 10, 2008, file a response to this complaint.
4. The Staff of the Commission shall file, no later than November 24, 2008, a report of its investigation in this matter.
5. Any party may file a response to Staff's report no later than December 1, 2008.

6. This order shall become effective immediately upon issuance.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written in a cursive style.

Colleen M. Dale  
Secretary

( S E A L )

Harold Stearley, Senior Regulatory Law Judge  
by delegation of authority pursuant to  
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 9th day of October, 2008.

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

JACOR, CONTRACTING, INC.,	)	
	)	
	)	
Complainant,	)	
	)	Case No. _____
v.	)	
	)	
NUVOX, COMMUNICATIONS OF	)	
MISSOURI, INC.,	)	
	)	
and	)	
	)	
SOUTHWESTERN BELL	)	
COMMUNICATIONS COMPANY d/b/a	)	
AT&T MISSOURI,	)	
	)	
Respondents.	)	

**COMPLAINT**

JACOR, Contracting, Inc., (“Complainant”), pursuant to §§ 386.040, 386.250, 386.320, 386.330, 386.390, 386.400 and 392.200 RSMo., and Missouri Public Service Commission (“Commission”) Rule 4 CSR 240-2.070, hereby initiates its complaint against NuVox Communications of Missouri, Inc., and Southwestern Bell Communications Company d/b/a AT&T Missouri (“AT&T Missouri) (collectively “Respondents”) as follows:

1. Complainant JACOR Contracting, Inc., is a Missouri corporation with its principal place of business in Kansas City, Missouri. JACOR’s address is 1114 N. Walrond, Kansas City, Missouri 64120. Complainant JACOR is a telecommunications service customer of Respondent NuVox and those services are a subject of this Complaint.
  
2. All communications regarding this proceeding directed to Complainant JACOR should be sent to:

David M. Skeens  
Walters Bender Strohhahn & Vaughan, P.C.

Street/overnight delivery address:  
Suite 2500, City Center Square  
1100 Main Street  
Kansas City, MO 64105  
Telephone: (314) 259-2543  
Facsimile: (314) 259-2020  
Email: [dskeens@wbsvlaw.com](mailto:dskeens@wbsvlaw.com)

Mail Address:  
Suite 2500, City Center Square  
P.O. Box 26188  
Kansas City, MO 64196

3. Complainant properly brings this action before the Commission pursuant to § 386.390.1 RSMo which provides that a corporation may file complaints against a public utility setting forth any act or thing to be done or omitted to be done by the public utility in violation of any law, rule, order or decision of the Commission, and pursuant to Commission Rule 4 240-2.070(1) which provides that any person aggrieved by any statute, rule, order or decision of the Commission regarding any public utility within the Commission's jurisdiction may file a complaint.

4. Respondent NuVox Communications of Missouri, Inc., ("NuVox") is a Delaware corporation registered to do business in Missouri. NuVox is a "competitive telecommunications company" and a "public utility" that is authorized to provide "telecommunications service" within the State of Missouri as provided in § 386.020 RSMo. In the course of providing telecommunications services to JACOR, NuVox utilizes the telecommunications facilities of AT&T Missouri which are made available to NuVox pursuant to the Telecommunications Act of 1996, 47 U.S.C. § 251 *et seq.*

5. The contact information and registered agent information concerning Respondent NuVox is as follows:

NuVox Communications of Missouri, Inc.  
Two North Main Street  
Greenville, South Carolina 29601

Registered Agent:

BCRA Co.  
221 Bolivar Street, Suite 101  
Jefferson City, Missouri 65101

6. Respondent Southwestern Bell Telephone Company is a Missouri corporation that does business as AT&T Missouri, a Missouri registered fictitious business name. AT&T Missouri is a “competitive telecommunications company” and a “public utility” that is authorized to provide “telecommunications service” within the State of Missouri as provided in § 386.020 RSMo.

7. The contact information and registered agent information concerning Respondent AT&T is as follows:

AT&T Missouri Legal Department  
One AT&T Center, Suite 3520  
St. Louis, Missouri 63101

AT&T Missouri  
208 S. Akard St.  
Dallas, TX 75202

Registered Agent:

CT Corporation System  
120 South Central Avenue  
Clayton, MO 63105

8. Respondents NuVox and AT&T Missouri are subject to the Commission’s jurisdiction pursuant to § 386.250 RSMo. Each Respondent provides telecommunications service in Missouri pursuant to a certificate of public convenience and necessity and tariffs approved by the Commission.

9. Missouri law requires that “[e]very telecommunications company shall furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate and in all respects just and reasonable”. § 392.200.1 RSMo.

10. Missouri law also prohibits telecommunications companies from discriminating against any particular customer or locality. § 392.200.3 RSMo. Therefore, all customers must be provided adequate and updated telecommunications facilities.

11. For multiple years Respondents, and each of them, have violated § 392.200 by failing to provide Complainant adequate, just and reasonable service and/or by failing to install updated and adequate telecommunications facilities in and around JACOR’s headquarters while other customers do receive such updated and adequate telecommunications facilities.

12. Documentation of Respondent NuVox’s failure to provide adequate, just and reasonable service to Complainant JACOR is set forth the affidavit of JACOR’s President, Ted Jacques, attached as **Exhibits 1**. Mr. Jacques’ affidavit and the exhibits thereto detail only a partial listing of all instances of Respondent NuVox’s failure to provide adequate service. The service interruptions that are detailed are more than sufficient, however, to demonstrate to the Commission the nature, severity and duration of service violations. Indeed, because of these constant service interruptions, NuVox has referred JACOR to its Chronic Interruptions Department.

13. Prior to the initiation of this formal complaint, JACOR had repeated communications with NuVox to inform them of the service interruptions and to request that NuVox properly remedy the service failures. To date, no proper remedy has been achieved as the chronic interruptions continue. JACOR has no indication or belief that these service problems, which are in violation of Missouri law, will cease.

14. Service personnel responding to JACOR's service interruptions have stated that the service problems could only be remedied by the installation of new lines and/or other telecommunications facilities but that AT&T does not want to spend the money to install such new facilities.

15. As a customer of Respondent NuVox, Complainant JACOR has an interest in receiving adequate, just and reasonable telecommunications service, facilities and instrumentalities from Respondent NuVox. The chronic and often prolonged service interruptions have caused a severe disruption of Complainant JACOR's business and have resulted in undue and burdensome costs and other substantial damages to Complainant JACOR.

16. Because Respondent AT&T Missouri will necessarily be part of any remedy or solution to the service problems JACOR continues to experience, AT&T Missouri is properly a party to this Complaint. *See Commission's March 11, 2008 Order Granting Staff's Motion to Join AT&T Missouri as a Party, Duke Manufacturing, Inc., v. McLeodUSA and AT&T, case no. TC-2008-0191.*

WHEREFORE Complainant JACOR Contracting, Inc., respectfully requests the following:

- a. That the Commission open a complaint case pursuant to § 386.390 RSMo investigate the complaints made herein;
- b. That a hearing be held and thereafter that the Commission find Respondents, and each of them, in violation of § 392.200 RSMo;
- c. That the Commission order and direct Respondents to take all actions necessary to furnish Complainant with adequate, just and reasonable telecommunications

service, including instrumentalities and facilities as shall be adequate, just and reasonable, and all other relief that the Commission deems appropriate; and

- d. That the Commission grant this relief on an expedited basis to prevent further disruption to Complainants' respective businesses and additional costs to Complainant.

Dated: October 9th, 2008

WALTERS BENDER STROHBEHN  
& VAUGHAN, P.C.

By /s/ David M. Skeens

David M. Skeens -Mo. Bar 35728  
2500 City Center Square  
1100 Main Street  
P.O. Box 26188  
Kansas City, MO 64196  
(816) 421-6620  
(816) 421-4747 (Facsimile)

ATTORNEY FOR COMPLAINANT  
JACOR, CONTRACTING, INC.,

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing has been sent by U.S. Mail or electronic mail this 9<sup>th</sup> day of October 2008 to:

General Counsel's Office  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102

Office of Public Counsel  
P. O. Box 7800  
Jefferson City, Missouri, 65102

NuVox Communications of Missouri, Inc.  
Two North Main Street  
Greenville, South Carolina 29601

BCRA Co.  
Registered Agent for NuVox Communications  
of Missouri  
221 Bolivar Street, Suite 101  
Jefferson City, Missouri 65101

AT&T Missouri Legal Department  
One AT&T Center, Suite 3520  
St. Louis, Missouri 63101

AT&T Missouri  
208 S. Akard St.  
Dallas, TX 75202

CT Corporation System  
Registered Agent for AT&T Missouri  
120 South Central Avenue  
Clayton, MO 63105

*/s/ David M. Skeens*



**AFFIDAVIT OF TED A. JACQUES**

Ted A. Jacques, having first been duly sworn, states as follows:

1. I am the President of JACOR, Contracting, Inc. Our company's headquarters are located at 1114 Walrond, Kansas City, Missouri 64120, which is in an area commonly known as the Northeast Bottoms.

2. JACOR is a construction company, specializing in masonry and concrete repair and maintenance. Like many businesses, we are dependent on telecommunications service to conduct our daily business. The aspects of such necessary telecommunications service include telephone, facsimile and internet; all are vital to our ability to communicate with our client and employees, including our ability to bid on jobs. These telecommunications services are also vital to the operation of JACOR's alarm system.

3. On or about September of 2003, JACOR entered into a contract with NuVox Communications of Missouri, Inc., under which NuVox was to supply all our telecommunications needs. It is my understanding that such service is delivered over facilities (lines and switching) owned and maintained by AT&T.

4. Unfortunately, for several years now, JACOR has suffered chronic service interruptions that often last hours or even days. Attached as exhibit A to this Affidavit is a spreadsheet of NuVox service calls to JACOR's headquarters, which information was supplied to me by NuVox. Attached as exhibit B to this Affidavit is a spreadsheet compiled under my direction by JACOR employees that also reflects our listing of telecommunications service interruptions. I note that neither of these are complete – there have been and continue to be more service interruptions than are depicted on these two spreadsheets. In fact, the service went out

**EXHIBIT 1**

this past Friday, October 3, 2008 and was not back up until Saturday and it was down again yesterday, October 6 and today, October 7.

5. JACOR has, on many, many occasions, brought the service interruptions to the attention of NuVox. Indeed, JACOR has now been referred by NuVox to their Chronic Interruption Department. To date, neither NuVox nor AT&T has satisfactorily resolved the service interruption problems.

6. Service personnel from NuVox have told me that the problem with our chronic service interruptions rests with the cabling and switching equipment of AT&T, that an installation of new facilities is needed to correct, for good, the service interruption problems but that AT&T does not want to spend the money to make such needed installations.

7. Much of JACOR's business depends on good telecommunications services, including the ability to communicate with customers and potential customers, our employees and our ability to access information from the internet such as blue prints and job specifications needed to bid on potential work. Accordingly, when JACOR suffers these telecommunications service outages, it greatly affects our ability to perform and complete the business we have as well as our ability to obtain new business. Additionally, these service outages affect the perception of our company. When your customers and potential customers cannot communicate you because your phones, fax and internet are constantly down, those persons begin to wonder what is wrong with your company and your reputation suffers.

8. The lack of telecommunications services also effects the workings of JACOR's burglary and fire alarms, putting JACOR at greater risk during the many times the alarms have been and apparently will continue to be compromised by the lack of telecommunications services.

FURTHER AFFIANT SAYETH NOT

*Ted A. Jacques*

Ted A. Jacques

STATE OF MISSOURI )

)

COUNTY OF JACKSON )

Subscribed and sworn before me, a Notary Public, this 7<sup>th</sup> day of October 2008.

*Joanne M Haake*

Notary Public

My Commission Expires:

4/29/2012



Jacor Contracting-TROUBLE TICKET SUMMARY

CUSTOMER NAME	Nuvox Trouble Ticket	Date Ticket Closed	Open Type	Close Type	Challenge Owner	Trouble Area	Correction Performed
Jacor Contracting:Jacor	011005-00251	1/11/2005	Service	Voice	LEC	Repair	F! cable repair
Jacor Contracting:Jacor	011305-00284	1/15/2005	Service	Facility	NuVox	Found okay	Testing
Jacor Contracting:Jacor	050106-00060	5/2/2006	Service	Facility	LEC	Repair	Cable
Jacor Contracting:Jacor	100107-00662	10/4/2007	Service	Facility	LEC	Repair	Cable
Jacor Contracting:Jacor	121107-00383	12/13/2007	Service	Facility	LEC	Repair	Cable
Jacor Contracting:Jacor	020508-00216	2/8/2008	Service	Facility	LEC	Repair	Cable
Jacor Contracting:Jacor	030708-00272	3/7/2008	Service	Facility	LEC	Repair	Cable
Jacor Contracting:Jacor	031708-00291	3/19/2008	Service	VoxIP	IXC-AT&T	Repair	Wiring
Jacor Contracting:Jacor	031908-00975	3/21/2008	Proactive	VoxIP	LEC	Repair	Wiring
Jacor Contracting:Jacor	032008-00176	6/30/2008	Proactive	Facility	LEC	Repair	ILEC tech found loop on the ckt. He removed this & the ckt restored & ran clean
Jacor Contracting:Jacor	060908-01210	6/10/2008	Service	Data	NuVox	Equipment	Frame Agg.
Jacor Contracting:Jacor	072408-02322	7/28/2008	Service	Data	LEC	Repair	LEC moved cust to spare & removed patch in COLO
Jacor Contracting:Jacor	090508-00792	9/6/2008	Service	Data	Customer	LAN Issue	None
Jacor Contracting:Jacor	091808-01100	9/22/2008	Service	Facility	LEC	Repair	Cable

Nuvox Trouble Ticket	Date	Date Ticket Closed	Called in By:	Problem/Issue	NOTES
011005-00251	1/10/2005	1/11/2005			See Attached Nuvox Log
011305-00284	1/13/2005	1/15/2005			See Attached Nuvox Log
050106-00060	5/1/2006	5/2/2006			See Attached Nuvox Log
100107-00662	10/1/2007	10/4/2007			See Attached Nuvox Log
121107-00383	12/11/2007	12/13/2007			See Attached Nuvox Log
020508-00216	2/5/2008	2/8/2008			See Attached Nuvox Log
030708-00272	3/7/2008	3/7/2008			See Attached Nuvox Log
031708-00291	3/17/2008	3/19/2008			See Attached Nuvox Log
031908-00975	3/19/2008	3/21/2008			See Attached Nuvox Log
032008-00176	3/20/2008	6/30/2008			See Attached Nuvox Log
	4/4/2008		Ted	Line 2 Down	
	4/7/2008		Ted	Phones Out	
	4/29/2008		Kim	Intermittant Outages	Needed to Fax Bids & Payroll (Direct deposits)
060908-01210	6/9/2008	6/10/2008	Kim	Internet Down	See Attached Nuvox Log
072408-02322	7/24/2008	7/28/2008	Katie	Phones Out	See Attached Nuvox Log - Needed to Fax Bids
072508-00405	7/25/2008		Ted	Phones Out	
090508-00792	9/5/2008				
091808-01100	9/18/2008		Kim	Phones Out	

**Exhibit B**

092408-990	9/24/2008		Kim	Phones Out	Had to re-activate a cell phone so that calls could be forwarded
	9/25/2008		Ted	Phones Out	Dropped call @ 11:50 am and phones down for approx. 10 min.
	9/29/2008		TR	Phones Out	Dropped call-TR @4:25 pm
092908-01391	9/29/2008		Ted	All Services Down	4:35 PM
	9/29/2008		Ted		NuVox called at 5:15 pm asking me to return to reset equipment
	9/29/2008		Ted		9:10 pm returned back to office to meet Joe w/AT&T. He tested lines and said the trouble was in the man-hole by the lake
					Rcv'd call from Joe w/AT&T at 12:15 am asking me to return back to office to put the card back in the T-1 and check service. Said they found a bad doubler
	9/30/2008		Ted		Joe's cell #(816) 804-1664
	9/30/2008		Ted		NuVox called at 12:42 am to check service and said they would return our account back to their chronic people



**Commissioners**

**JEFF DAVIS**  
Chairman

**CONNIE MURRAY**

**ROBERT M. CLAYTON III**

**TERRY JARRETT**

**KEVIN GUNN**

***Missouri Public Service Commission***

POST OFFICE BOX 360  
JEFFERSON CITY, MISSOURI 65102  
573-751-3234  
573-751-1847 (Fax Number)  
<http://www.psc.mo.gov>

**WESS A. HENDERSON**  
Executive Director

**DANA K. JOYCE**  
Director, Administration and  
Regulatory Policy

**ROBERT SCHALLENBERG**  
Director, Utility Services

**NATELLE DIETRICH**  
Director, Utility Operations

**COLLEEN M. DALE**  
Secretary/Chief Regulatory Law Judge

**KEVIN A. THOMPSON**  
General Counsel

**Information Sheet Regarding Mediation of Commission Formal Complaint Cases**

Mediation is a process whereby the parties themselves work to resolve their dispute with the aid of a neutral third-party mediator. This process is sometimes referred to as "facilitated negotiation." The mediator's role is advisory and although the mediator may offer suggestions, the mediator has no authority to impose a solution nor will the mediator determine who "wins." Instead, the mediator simply works with both parties to facilitate communications and to attempt to enable the parties to reach an agreement which is mutually agreeable to both the complainant and the respondent.

The mediation process is explicitly a problem-solving one in which neither the parties nor the mediator are bound by the usual constraints such as the rules of evidence or the other formal procedures required in hearings before the Missouri Public Service Commission. The Regulatory Law Judges at the Public Service Commission are trained mediators and this service is offered to parties who have formal complaints pending before the Public Service Commission at no charge. In addition, the assistance of an attorney is not necessary for mediation. In fact, the parties are encouraged not to bring an attorney to the mediation meeting.

The formal complaint process before the Commission invariably results in a determination by which there is a "winner" and a "loser" although the value of winning may well be offset by the cost of attorneys fees and the delays of protracted litigation. Mediation is not only a much quicker process but it also offers the unique opportunity for informal, direct communication between the two parties to the complaint and mediation is far more likely to result in a settlement which, because it was mutually agreed to, pleases both parties. This is traditionally referred to as "win-win" agreement.

The traditional mediator's role is to (1) help the participants understand the mediation process, (2) facilitate their ability to speak directly to each other, (3) maintain order, (4) clarify misunderstandings, (5) assist in identifying issues, (6) diffuse unrealistic expectations, (7) assist in translating one participant's perspective or proposal into a form that is more understandable and acceptable to the other participant, (8) assist the

participants with the actual negotiation process, (9) occasionally a mediator may propose a possible solution, and (10) on rare occasions a mediator may encourage a participant to accept a particular solution. The Judge assigned to be the mediator will not be the the same Judge assigned to the contested complaint.

In order for the Commission to refer a complaint case to mediation, the parties must both agree to mediate their conflict in good faith. The party filing the complaint must agree to appear and to make a good faith effort to mediate and the utility company against which the complaint has been filed must send a representative who has full authority to settle the complaint case. The essence of mediation stems from the fact that the participants are both genuinely interested in resolving the complaint.

Because mediation thrives in an atmosphere of free and open discussion, all settlement offers and other information which is revealed during mediation is shielded against subsequent disclosure in front of the Missouri Public Service Commission and is considered to be privileged information. The only information which must be disclosed to the Public Service Commission is (a) whether the case has been settled and (b) whether, irrespective of the outcome, the mediation effort was considered to be a worthwhile endeavor. The Commission will not ask what took place during the mediation.

If the dispute is settled at the mediation, the Commission will require a signed release from the complainant in order for the Commission to dismiss the formal complaint case. If the dispute is not resolved through the mediation process, neither party will be prejudiced for having taken part in the mediation and, at that point, the formal complaint case will simply resume its normal course.



Colleen M. Dale  
Secretary