

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

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

AT&T MISSOURI’S ANSWER AND CROSSCLAIM

COMES NOW Respondent, Southwestern Bell Telephone Company d/b/a AT&T Missouri (“AT&T Missouri”), and pursuant to the Commission’s January 21, 2009, Order Directing Filing of Status Report and Re-Setting Procedural Schedule (“Order”) and Commission Rule 2.070(8) (4 CSR 270-2.070(8)), respectfully files herewith its Answer to the Complaint of JACOR Contracting, Inc. (“JACOR”) and its Crossclaim directed to NuVox Communications of Missouri, Inc. (“NuVox”).

As explained in AT&T Missouri’s Motion to Dismiss filed contemporaneously herewith, JACOR’s Complaint fails to state a claim on which relief may be granted against AT&T Missouri, and it seeks relief which is beyond the jurisdiction of the Commission to grant. JACOR, as a customer of NuVox -- and not a customer of AT&T Missouri -- may proceed against NuVox pursuant to Section 392.200, RSMo, but JACOR may not proceed against AT&T Missouri. JACOR does not allege that it receives any telecommunications services from AT&T

Missouri, nor does it allege that it has any contract or other legal relationship with AT&T Missouri.

Consequently, while this Answer and Crossclaim are filed in compliance with the above referenced Order and rule, its filing is without prejudice to AT&T Missouri's Motion to Dismiss, which should be granted, and without waiving AT&T Missouri's objection to the Commission's jurisdiction in this case.

As and for its further Answer to the Complaint, AT&T Missouri states as follows:

ANSWER

1. AT&T Missouri is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 of the Complaint, and therefore, denies same.

2. Paragraph 2 of the Complaint sets forth no allegations. AT&T Missouri states that it has directed and will continue to direct its communications regarding this case to JACOR's counsel of record as shown in the Complaint.

3. AT&T Missouri denies the allegations set forth in paragraph 3 of the Complaint.

4. AT&T Missouri admits that it provides NuVox certain telecommunications facilities, and that, if and to the extent NuVox may utilize such facilities to provide service to its end-user customer, JACOR, those facilities are provided by AT&T Missouri directly to NuVox pursuant to the terms of an interconnection agreement entered into by AT&T Missouri and NuVox, and approved by the Commission, pursuant to Section 252 of the Telecommunications Act of 1996 (47 U.S.C. § 252). AT&T Missouri is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in paragraph 4 of the Complaint, and therefore, denies same.

5. AT&T Missouri is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 of the Complaint, and therefore, denies same.

6. AT&T Missouri admits that Southwestern Bell Telephone Company is a Missouri corporation which does business under the registered name of "AT&T Missouri," and that it is a public utility and a competitive telecommunications company which provides telecommunications services to customers not including JACOR. Except as otherwise admitted herein, AT&T Missouri denies the remainder of the allegations set forth in paragraph 6 of the Complaint.

7. AT&T Missouri admits the allegations set forth in paragraph 7 of the Complaint insofar as same are directed to it. AT&T Missouri is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 of the Complaint insofar as same are directed to the undefined entity "AT&T," and therefore, denies same.

8. AT&T Missouri admits that it provides telecommunications services to customers, not including JACOR, pursuant to Section 392.410, RSMo and tariffs approved by the Commission, and that these tariffs state the rates, terms and conditions under which such services are provided. AT&T Missouri denies that its provision of facilities to NuVox pursuant to the terms of an interconnection agreement entered into between them, and approved by the Commission, pursuant to Section 252 of the Telecommunications Act of 1996 (47 U.S.C. § 252), is subject to the Commission's jurisdiction pursuant to Section 386.250, RSMo. AT&T Missouri is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in paragraph 8 of the Complaint, and therefore, denies same.

9. AT&T Missouri admits that the provisions of Section 392.200.1, RSMo, speak for themselves. Except as otherwise admitted herein, AT&T Missouri denies the remainder of the allegations set forth in paragraph 9 of the Complaint.

10. AT&T Missouri admits that the provisions of Section 392.200.3, RSMo, speak for themselves. Except as otherwise admitted herein, AT&T Missouri denies the remainder of the allegations set forth in paragraph 10 of the Complaint.

11. AT&T Missouri denies the allegations set forth in paragraph 11 of the Complaint insofar as same are directed to it. AT&T Missouri is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in paragraph 11 of the Complaint insofar as same are directed to NuVox.

12. Paragraph 12 of the Complaint sets forth no allegations against AT&T Missouri. AT&T Missouri is without knowledge or information sufficient to form a belief as to the truth of the allegations directed against NuVox which are set forth in paragraph 12 of the Complaint.

13. Paragraph 13 of the Complaint sets forth no allegations against AT&T Missouri. AT&T Missouri is without knowledge or information sufficient to form a belief as to the truth of the allegations directed against NuVox which are set forth in paragraph 13 of the Complaint.

14. AT&T Missouri is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 14 of the Complaint, and therefore, denies same.

15. AT&T Missouri is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 15 of the Complaint, and therefore, denies same.

16. AT&T Missouri denies the allegations set forth in paragraph 16 of the Complaint.

AFFIRMATIVE DEFENSES

As and for its Affirmative Defenses to the Complaint, and without prejudice to its Motion to Dismiss filed contemporaneously herewith, AT&T Missouri states as follows:

1. The Complaint fails to state any claim on which relief may be granted against AT&T Missouri.

2. The Complaint is barred as to AT&T Missouri inasmuch as the Complaint does not allege that AT&T Missouri has contracted with JACOR to provide any service, that JACOR is in privity of contract with AT&T Missouri, or that AT&T Missouri owes any duty to JACOR cognizable under law.

3. The Complaint is barred as to AT&T Missouri inasmuch as AT&T Missouri was not provided fair notice of the existence or nature of JACOR's alleged several service complaints made to NuVox and/or Commission Staff prior to the filing of JACOR's Complaint, and was, therefore, denied any potential opportunity to investigate them prior to the filing of the Complaint.

4. The Complaint is moot as to AT&T Missouri since, as noted in the parties' Joint Status Report (filed January 26, 2009), certain post-Complaint work undertaken "has resulted in providing JACOR uninterrupted service to date."

5. The Commission is without authority to award monetary damages against AT&T Missouri (including, but not limited to, compensatory damages and attorneys' fees) or to order that AT&T Missouri undertake specific tasks relative to its telecommunications-related instrumentalities and facilities which JACOR alleges are utilized by NuVox.

6. To the extent that any portion of the Complaint directed to AT&T Missouri is justiciable by the Commission under state law (which AT&T Missouri denies), AT&T

Missouri's liability is specifically limited by its Commission-approved tariffs and/or its Commission-approved interconnection agreement with NuVox. To the extent that any portion of the Complaint directed to AT&T Missouri is justiciable by the Commission under federal law (which AT&T Missouri denies), AT&T Missouri's liability is specifically limited by its Commission-approved interconnection agreement with NuVox.

WHEREFORE, AT&T Missouri respectfully requests that the Commission dismiss the Complaint in its entirety, and that it grant AT&T Missouri such further and other relief as may be just and appropriate under the circumstances.

CROSSCLAIM

As and for its Cross-Claim directed to NuVox, and without prejudice to its Motion to Dismiss filed contemporaneously herewith, AT&T Missouri states as follows:

1. At all times relevant hereto, an interconnection agreement between NuVox and AT&T Missouri was in force, which agreement was approved by the Commission on August 12, 2005, pursuant to Section 252 of the federal Telecommunications Act of 1996 (47 U.S.C. § 252).

2. As JACOR alleges in its Complaint (¶ 4), and based upon current information and belief, the telecommunications facilities of AT&T Missouri which are referred to in JACOR's Complaint, to the extent owned by AT&T Missouri, are those facilities of AT&T Missouri that are utilized by NuVox pursuant to the above-referenced Commission-approved interconnection agreement. NuVox is bound by that agreement, including but not limited to its General Terms and Conditions.

3. Section 7.3.3.1 of the General Terms and Conditions of the interconnection agreement between NuVox and AT&T Missouri provides as follows:

In the case of any loss alleged or made by an end user of either Party, the Party whose end user alleged or made such loss (Indemnifying Party) shall defend and

indemnify the other Party (Indemnified Party) against any and all such claims or loss by its end users regardless of whether the underlying service was provided or unbundled element was provisioned by the Indemnified Party, unless the loss was caused by the gross negligence or intentional willful misconduct or breach of applicable law of the other (Indemnified) Party.

4. AT&T Missouri has provided NuVox notice of NuVox's obligation to indemnify AT&T Missouri with respect to JACOR's claim directed to AT&T Missouri, as well as AT&T Missouri's request that NuVox defend such claim on AT&T Missouri's behalf.

5. To date, NuVox has failed to confirm that it will defend and indemnify AT&T Missouri, as required by the interconnection agreement.

6. Consequently, while AT&T Missouri denies the allegations of JACOR's Complaint, to the extent that AT&T Missouri may be held liable under the Complaint in any manner whatsoever, NuVox is liable to AT&T Missouri for those claims asserted by the Complaint as are directed to AT&T Missouri, in accordance with Section 7.3.3.1 of the General Terms and Conditions of the parties' interconnection agreement.

WHEREFORE, AT&T Missouri respectfully requests that the Commission hold and determine that, to the extent that AT&T Missouri may be held liable to JACOR in any manner whatsoever, NuVox is liable to and must indemnify AT&T Missouri for all of such claims asserted by the Complaint as are directed to AT&T Missouri, including but not limited to AT&T Missouri's reasonable attorneys' fees expended herein, and that the Commission grant AT&T

Missouri such further and other relief pursuant to its Crossclaim as may be just and appropriate under the circumstances.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY,
D/B/A AT&T MISSOURI

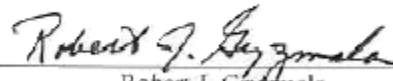
BY 

Timothy P. Leahy #36197
Leo J. Bub #34326
Robert J. Gryzmala #32454
One AT&T Center, Room 3516
St. Louis, Missouri 63101
(314) 235-6060
(314) 247-0014 (Fax)
Email: robert.gryzmala@att.com

Attorneys for Southwestern Bell Telephone Company,
d/b/a AT&T Missouri

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by e-mail on February 12, 2009.


Robert J. Gryzmala

General Counsel
Missouri Public Service Commission
PO Box 360
Jefferson City, Mo 65102
GenCounsel@psc.mo.gov

Carl J. Lumley
Curtis, Heinz, Garrett & O'Keefe, P.C.
130 S. Bemiston, Suite 200
St. Louis, MO 63105
clumley@lawfirmemail.com

Lewis Mills
Public Counsel
Office of the Public Counsel
PO Box 7800
Jefferson City, MO 65102
opcservice@ded.mo.gov

David M. Skeens
JACOR Contracting, Inc.
1100 Main Street, Suite 2500
City Center Square
Kansas City, MO 64105
dskeens@wbsvlaw.com