STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

JACOR CONTRACTING, INC.
VS.
NUVOX COMMUNICATIONS OF MISSOURI, INC.
AND
SOUTHWESTERN BELL COMMUNICATIONS COMPANY
d/b/a AT&T MISSOURI

Case No. CC-2009-0128

TRANSCRIPT OF PROCEEDINGS

PREHEARING CONFERENCE

VOLUME 1

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Harold Stearley, Presiding,
SENIOR REGULATORY LAW JUDGE

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P R O C E E D I N G S

JUDGE STEARLEY: Good morning. Today is Monday, March 9th, 2009, and we're here for a prehearing conference in the case captioned Jacor Contracting, Incorporated, Complainant, versus Nuvox Communications of Missouri, Incorporated and Southwestern Bell Company, doing business as AT&T, are the Respondents, and this is File No. CC-2009-0238 (sic).

My name is Harold Stearley and I'm the presiding officer over this matter, and our court reporter this morning is Pat Stewart.

We shall begin by taking entries of appearance, beginning with Jacor Contracting.

MR. SKEENS: This is David Skeens of Walters, Bender, Strohbehn & Vaughan on behalf of Jacor Contracting.

JUDGE STEARLEY: Thank you, Mr. Skeens.

Nuvox Communications.

MR. LUMLEY: Good morning. Let the record reflect the appearance of Carl Lumley on behalf of Nuvox Communications of Missouri, Inc.

And, Judge, I think you may have misspoke about the case number.

JUDGE STEARLEY: Oh. Did I read that off wrong?

MR. LUMLEY: Unless it's changed.

JUDGE STEARLEY: Pardon me. I certainly did. 0128.

Thank you for calling my attention to that. I tend to recycle our documents, and that will happen occasionally.

AT&T Missouri.

MR. GRYZMALA: Good morning, Your Honor. Bob Gryzmala on behalf of Southwestern Bell Telephone Company d/b/a AT&T Missouri.

Thank you.

JUDGE STEARLEY: Thank you, Mr. Gryzmala.

Staff of the Missouri Public Service Commission.

MS. HERNANDEZ: Jennifer Hernandez on behalf of the Staff of the Missouri Public Service Commission.

Thank you.

JUDGE STEARLEY: Thank you, Ms. Hernandez.

And let the record reflect that no one is present for the Office of Public Counsel.

Briefly let me kind of run through the status of the case as it stands now.

From my understanding Jacor has had an issue with service disruptions, which has now been corrected, but Nuvox -- or Nuvox in addressing their complaint has

asked that we dismiss their complaint and has filed a cross-complaint against AT&T. AT&T has asked us to dismiss Jacor's complaint and has filed a cross-claim against Nuvox. And Staff has not really expressed a position on Jacor's complaint but has spoken of possibly a separate complaint of its own regarding potential violations of Section 392.200.

Is that a pretty fair summary of where we're at right now?

MS. HERNANDEZ: I believe that's correct, Your Honor.

JUDGE STEARLEY: Okay. I guess at this point the Commission, in wanting to figure out how it's going to go with this, wants to kind of focus back on Jacor's original complaint to begin with.

And, Mr. Skeens, I guess I'm going to direct some homework to the parties here so we can figure out where we're going.

MR. SKEENS: Okay.

JUDGE STEARLEY: You all will have an opportunity once I leave the room, of course, to discuss this fully, and you may reach some other decisions on how you may wish to proceed.

But if you decide to proceed with your individual complaint, what I'd like you to do is file a

status report with the Commission by next Monday, the 16th, and I'd like you to state in that status report with particularity the grounds of your continued complaint and what you're requesting for relief.

MR. SKEENS: Okay.

JUDGE STEARLEY: And as you probably know, the other parties may contest what relief is available to you through this Commission.

If you're going to proceed, then I'm going to ask Staff to file this, but all of the parties will file with the Commission a joint stipulation of all noncontested material facts regarding your complaint no later than March 30th.

And if you believe there are disputed issues or factual issues of material fact for us, I want you to individually file a list of what you believe is disputed with the Commission by April the 6th.

That way the Commission can decide if we're looking at issues of fact which require a hearing or if we're just looking at legal issues which can be decided without a hearing.

Now, with regard to Nuvox and AT&T in your cross-complaints, by Monday, March 16th I will direct you to show cause why your cross-complaints shouldn't be handled in a separate case as opposed to continuing

forward with Jacor's case.

Obviously, you're asking for this case to be dismissed, their complaint to be dismissed, and it seems that your complaints could be handled in a separate matter.

And I give the same assignment to Staff. If you're wanting to file a separate complaint for alleged statutory violations, it may involve Jacor for issues of fact, perhaps for witnesses for your case, that the Commission is not sure that that needs to continue under this case file.

So I'll ask that you file a pleading stating if you intend to seek your complaint in a separate action or if you want it to go forward under this case as captioned and, if so, why.

So, once again, we have parties asking that this case be dismissed.

MS. HERNANDEZ: What date was that again?

JUDGE STEARLEY: March 16th, next Monday.

MS. HERNANDEZ: Thank you.

All right. Do any of you have questions for me regarding those instructions?

MR. GRYZMALA: Just a recap for AT&T, Your Honor, just to make sure.

On behalf of AT&T and, presumably, Nuvox,

our operating deadline is March 16 --

JUDGE STEARLEY: Right.

MR. GRYZMALA: -- to show cause why our particular matters of dispute can't be handled separately rather than in this particular file number?

JUDGE STEARLEY: Correct.

MR. GRYZMALA: Thank you.

JUDGE STEARLEY: And it could be -- I mean, in terms of you showing cause, if you decide that you will go forward in a separate matter, you can simply dismiss your complaints under this case caption and go ahead and proceed to file something. Whatever is more expedient for you in addressing that. I don't want to make you all repeat your work.

Any other clarifications?

MR. LUMLEY: Judge, just kind of thinking hypothetically. If we end up with some filings on April 6th of remaining disputed facts, do you also want us to work at that time on some kind of schedule, or are we going to save that for later?

JUDGE STEARLEY: I'd save that for later, because the Commission may decide based on your filings that it may not have a hearing. So at that point we'll go from there and see what your filings reflect.

If it appears the Commission wants to have a

hearing, we'll set another prehearing conference. And, actually, at this point we'll just probably go ahead and ask for a procedural schedule since we've already had the opportunity to meet in this conference.

Mr. Skeens, are you clear with those instructions?

MR. SKEENS: I believe I am, Your Honor.

JUDGE STEARLEY: Okay. Are there any matters that the Commission needs to address from you-all at this time that we haven't discussed?

MR. GRYZMALA: Your Honor, if I might add: I noticed, if I wrote correctly, you had asked Jacor to state with particularity the grounds of their complaint and the relief that they're requesting by March 16th.

I wonder if the court -- if Your Honor means also to encompass in that discussion why Jacor might believe that its claim would survive AT&T's motion --

JUDGE STEARLEY: Exactly. And that's what I was getting at by stating with particularity, because we do already have two motions to dismiss their complaint before us.

So, Mr. Skeens, like I noted, if you plan to continue -- if Jacor plans to continue with its complaint, the Commission wants to know specifically on what grounds you believe your complaint survives the motions to

dismiss --

MR. SKEENS: Okay.

JUDGE STEARLEY: -- and specifically what relief, then, you're requesting the Commission to provide.

MR. SKEENS: As I've confessed to anybody in this case before, at least the opposing parties and Ms. Hernandez as well, that for 20 years I've been a commercial litigator, but I haven't really practiced much before this Commission. This is the first time.

And so, you know, I have read the rules and looked at some of the cases to determine what relief I believe that you-all can give and things like that.

And what I do -- and I'll just ask -- I understand that I'm not entitled to any monetary relief from the Public Service Commission, at least that's what I believe to be indicated from the things I looked at.

Secondly, what I would be interested in continuing on is to have a finding of a violation of 392 by the Commission. And if you're telling me that that's a finding that -- you know, I'm welcome to anybody to tell me, no, that's not anything you can still go forward with now.

But if it is something that I can ask that Commission to make a finding of, that would be the basis on which I would continue this matter, realizing that

should I want to seek monetary damages, that I'm going to have to go to one of the circuit courts here in the State of Missouri to do that.

JUDGE STEARLEY: Okay.

MR. SKEENS: That's my understanding of the lay of the land right now, but I would welcome anybody to tell me I'm wrong.

JUDGE STEARLEY: Okay. And when I leave here, Mr. Skeens, you can continue that discussion with the parties and perhaps Ms. Hernandez, because that, I believe, is the basis of what they're considering a separate complaint for, and it may be that the two of you can work together with that regard.

MR. SKEENS: Okay. And just to be clear, because I had -- you know, it's my -- I chose not to come down there, so it's my issue that I didn't hear real well.

What I think -- I'm not even sure if it was Bob or Carl who was saying this, but the clarification they wanted with respect to what we were to do, but that is, by this filing a week from today we are to not only state what relief we continue to be seeking but also set forth whatever opposition we believe exists as to the motions to dismiss. Is that correct?

JUDGE STEARLEY: That's correct.

MR. SKEENS: Okay. Thank you.

JUDGE STEARLEY: All right. Are there any other matters we need to take up at this time?

Go ahead, Mr. Gryzmala.

MR. GRYZMALA: Your Honor, I would just entertain a discussion on a procedural matter.

Mr. Lumley and I are to submit a statement as to why these can't be handled separately. I noticed that that's due on the same day as Jacor's pleading is due. I wonder -- and I don't know what Mr. Lumley's feeling might be on that, if maybe filing --

JUDGE STEARLEY: We can give you a couple other days.

MR. GRYZMALA: -- that it might be deferred until the uncontested issues of fact on March 30th.

I'm just throwing this out, because I'm thinking, I'm sitting at my desk on March 16th with a filing due the same day on which I'm going to hear from Jacor. I'm just wondering if maybe we got a week or two. I don't know. It's just a thought.

JUDGE STEARLEY: Okay.

MR. GRYZMALA: I'm not saying --

JUDGE STEARLEY: Is it your preference of one or two weeks? I can make it March 23rd or we can make it March 30th.

MR. LUMLEY: I think it might be helpful for

us to have the March 23rd deadline because it would affect what kind of facts we might have to stipulate to by the 30th.

JUDGE STEARLEY: Okay. Why don't we go with that.

MR. GRYZMALA: Thank you, Your Honor.

MS. HERNANDEZ: And would you be changing our date as well, Staff's date, to the 23rd?

JUDGE STEARLEY: What date would you be seeking, Ms. Hernandez? What would give you adequate time?

MS. HERNANDEZ: Well, I'm agreeable with March 23rd. That's fine. If there is going to be filings on the 16th by Jacor, I would appreciate the time for Staff to review those and then respond on March 23rd.

JUDGE STEARLEY: Okay. We'll make your deadline March 23rd then as well.

All right. Anything else we need to take up at this time?

All right. Well, hearing none, we will conclude the on-the-record portion of the prehearing conference, and I'll leave you-all to your discussions. We thank you very much.

MR. SKEENS: Thank you, Your Honor.

MS. HERNANDEZ: Thank you.

WHEREUPON, the on-the-record portion of the prehearing conference was concluded.)

CERTIFICATE OF REPORTER

I, Patricia A. Stewart, RMR, RPR, CCR, a Certified Court Reporter in the State of Missouri, do hereby certify that the testimony that appears in the foregoing transcript was taken by me to the best of my ability and thereafter reduced to typewriting by me; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

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Patricia A. Stewart

CCR No. 401