

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

AT&T Corp.
v. Broadvox-CLEC, LLC
Complaint

Case No. PU-14-117

AFFIDAVIT OF SERVICE CERTIFIED MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Cara DeSaye deposes and says that:

she is over the age of 18 years and not a party to this action and, on the 28th day of **March, 2014**, she deposited in the United States Mail, at Bismarck, North Dakota, **two** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and containing photocopy of:

**Formal Complaint of AT&T Corp.
Motion Dated March 26, 2014**

The envelopes were addressed as follows:

INCORP Services, Inc., Registered Agent
For Broadvox-CLEC, LLC
919 S 7th St. STE 503
Bismarck ND 58504

Cert. No. 7013 2630 0001 2317 0774

Nadine Ezzie
Deputy General Counsel
Broadvox-CLEC, LLC
1950 N. Stemmons Frwy Suite 3031
Dallas TX 75207

Cert. No. 7013 2630 0001 2317 0750

The addresses shown are the respective addressee's last reasonably ascertainable mailing address.

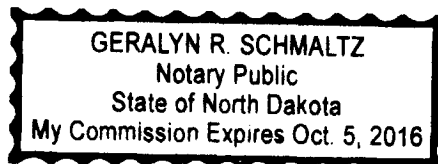


Subscribed and sworn to before me
this 28th day of **March, 2014**.



Notary Public

SEAL





Public Service Commission

State of North Dakota

COMMISSIONERS

Brian P. Kalk
Randy Christmann
Julie Fedorchak

Executive Secretary
Darrell Nitschke

Nadine Ezzie
Deputy General Counsel
Broadvox – CLEC, LLC
1950 N. Stemmons Frwy
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Dallas, TX 75207

26 March 2014

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

RE: Case No. PU-14-117

Ms. Ezzie,

On March, 12, 2014 the Public Service Commission received a complaint from AT&T Corporation against Broadvox –CLEC, LLC. A copy of the complaint is attached to this letter.

On March 26, 2014, the Commission determined that the Complaint stated a prima facie case and conforms to N.D. Admin. Code § 69-02-02-02. A copy of the Commission motion is attached to this letter as well.

Upon service of the attached Complaint and Motion, you have twenty (20) days to file an answer to the complaint, pursuant to N.D. Admin. Code § 69-02-02-03. If no answer is received within twenty days of service of this complaint, the Commission may enter a default order on this matter. N. D. Century Code § 28-32-21(e). A hearing before the Commission on this matter may be held no earlier than 45 days from service of the complaint.

If you have any questions, feel free to call me at 701-328-4077 or email at pfahn@nd.gov.

Best regards,

Patrick Fahn
Director, Compliance and Competitive Markets Division

APPROVED

DATE: 3-26-14
\$

MOTION

March 26, 2014

AT&T Corp.
v. Broadvox-CLEC, LLC
Complaint

Case No. PU-14-117

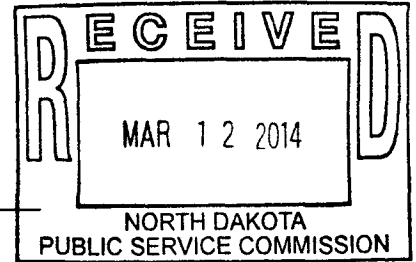
I move the Commission find the March 12, 2014 Complaint filed by AT&T Corp. states a *prima facie* case and serve the complaint on the Respondent, Broadvox-CLEC, LLC, Case No. PU-14-117.

PJF

**BEFORE
THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA**

AT&T Corp.,)
)
 Complainant,)
)
vs.)
)
Broadvox - CLEC, LLC,)
 Respondent.)

Case No. _____
COMPLAINT



Complainant AT&T Corp. ("AT&T"), by its attorney, and pursuant to Section 69-02-02 of the Commission's rules, alleges as follows:

1. AT&T is a foreign corporation and a registered Competitive Local Exchange Carrier ("CLEC") and a registered Interexchange Carrier ("IXC") authorized to do business in the State of North Dakota.
2. Respondent, Broadvox – CLEC, LLC ("Broadvox"), filed amendments to North Dakota Tariff No. 1 (Access Service) with the North Dakota Public Service Commission on February 25, 2014, which are before the Commission in Case No. PU-14-102.
3. AT&T files this Complaint regarding the tariff amendments and requests that the Commission order its Staff to further investigate the amendments, and to schedule a hearing on their appropriateness. In addition, the automatic approval of the tariff amendments should be suspended.
4. The tariff amendments contain objectionable provisions affecting the ability of Broadvox's access customers, such as AT&T, to dispute charges on their bills and prescribing a mechanism by which such disputes may be resolved.
5. In particular, Section 2.5.5, on 1st Revised Page No. 14, is a new provision that purports to bind carriers to a dispute resolution process on a unilateral basis. Section 2.5.5 appears to establish a three-stage process governing situations where the parties have a dispute "regarding this tariff and performance hereunder." Section 2.5.5 (first sentence). In the first stage of the process, the parties "agree" that they will have a "Dispute Meeting" upon 10 days' written notice, at which they will engage in

negotiations to attempt to resolve the dispute, either face-to-face in Cleveland, Ohio, or by teleconference. *Id.* If the Dispute Meeting does not result in a final resolution of the dispute, the parties may, under the second stage, agree to participate in non-binding mediation in Cleveland, Ohio. In the third stage, if the parties have been unable to resolve their dispute “in good faith by the conclusion of the mediation,” the dispute “shall be finally determined by a court of law.” Section 2.5.5 (last sentence).

6. Section 2.5.5 is objectionable for at least two reasons.

- a. First, Broadvox’s tariff provisions – requiring a Dispute Meeting and ultimately litigation in court – cannot be characterized as something to which other carriers can “agree”; the tariff is essentially a take-it-or-leave-it proposition. Broadvox is simply attempting to preclude other carriers from pursuing dispute resolution in their desired forum.
- b. Second, Broadvox’s tariff language, and especially the provision compelling litigation, effectively usurps this Commission’s authority to entertain and adjudicate complaints involving the application of Broadvox’s tariff provisions – a process that is well-established under state law and this Commission’s rules.

NOW WHEREFORE, AT&T prays for the following relief:

1. That the Broadvox tariff filed February 25, 2014, be suspended.
2. That the Broadvox tariff be determined not to comply with North Dakota law.

Dated this 12th day of March, 2014.

VOGEL LAW FIRM

Seth Thompson

BY: Amanda E. Peterson(#06943)

Seth A. Thompson(#07662)

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ATTORNEYS FOR COMPLAINANT AT&T
CORP.

1870373.1