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May 1, 2014

Darrell Nitschke
ND Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480



Re: AT&T v. Broadvox-CLEC, LLC
Case No. PU-14-117

Dear Mr. Nitschke:

Enclosed for filing is an original and seven copies of the Answer of Broadvox-CLEC, LLC in the above matter.

Sincerely,

Brenda Vitek Secretary to
Paul R. Sanderson
Certified Civil Trial Specialist
National Board of Trial Advocacy

Enclosures

cc: Seth Thompson

13 **PU-14-117** Filed: 5/1/2014 Pages: 7
Answer of Broadvox-CLEC, LLC

Broadvox-CLEC, LLC

Paul Sanderson, Evenson Sanderson, PC

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

AT&T Corp.,)	
)	
Complainant,)	ANSWER OF BROADVOX-CLEC,
)	LLC
vs.)	
)	
Broadvox-CLEC, LLC,)	
)	Case No. PU – 14 - 117
Respondent.)	

Respondent Broadvox-CLEC, LLC (“Broadvox”) answers AT&T Corp.’s (“AT&T”) Complaint in Case No. PU-14-117 (the “Complaint”) as follows:

I.

Except as otherwise admitted, qualified, or explained, Broadvox denies each and every allegation of the Complaint.

II.

Broadvox admits upon knowledge and belief that AT&T is a foreign corporation and a registered CLEC and IXC, authorized to do business in the State of North Dakota.

III.

Broadvox admits the allegations contained in paragraph 2 of the Complaint.

IV.

With respect to the allegations contained in paragraph 3 of the Complaint, Broadvox admits that AT&T filed a Complaint against Broadvox’s tariff amendments, but denies every other allegation in paragraph 3.

V.

Broadvox denies the allegations contained in paragraph 4 of the Complaint.

VI.

Broadvox denies the allegations contained in paragraph 5 of the Complaint. First, Section 2.5.5 is not a new provision. This Commission has already approved this Section in an earlier tariff filing, filed June 6, 2013 (Case No. PU-13-281). Second, AT&T mischaracterizes the term “agree” contained within the tariff. Under the “filed rate doctrine,” recognized under federal and North Dakota law, the terms of a tariff are controlling. Once a tariff is approved, no “agreement” between the parties is necessary. See generally E.W. Wylie Corp. v. Menard, Inc., 523 N.W.2d 395 (N.D. 1994).

VII.

Broadvox denies the allegations contained in paragraph 6 of the Complaint.

- a. This Commission should uphold Broadvox’s tariff language because the concept of “agreement” is irrelevant in tariff law. Under federal law, a tariff functions as an offer to sell service on the terms specified in the tariff. See Iowa Network Servs. v. Qwest Corp., 385 F. Supp. 2d 850, 910 (S.D. Iowa 2005). See also Metro E. Ctr. for Conditioning & Health v. Qwest Communications Int’l. Inc., 294 F.3d 924, 926 (7th Cir. 2000). A party accepts the terms of the tariff by using the products or services. Id. Tariffs benefit the marketplace by establishing specific rates and conditions for the sale of products and services. This allows carriers to quickly and easily purchase services from other carriers. To allow carriers to choose whether or not to “agree” to any specific clause within a tariff would cause serious harm to the free market. This Commission should approve Broadvox’s tariff as written.
- b. This Commission should uphold Broadvox’s tariff language because it does not usurp Commission authority and advances the public policy of this state. The Commission

obviously has authority to approve or disapprove all tariffs in North Dakota. The Commission also has authority to regulate CLEC's and IXC's, including the parties to this dispute, and to adjudicate tariff interventions, such as the matter at hand. The language at issue simply provides a well-established and accepted avenue for alternative dispute resolution that benefits the ND PSC, the courts that receive appeals from its decisions, and the public that has to pay for all of the foregoing. That process is to be encouraged: it requires the parties to engage in negotiations—face-to-face or via teleconference; followed by mediation, followed by litigation if none of the foregoing resolve the dispute.

VIII.

Broadvox affirmatively asserts that the Complaint fails to state a claim against it upon which relief can be granted.

WHEREFORE, Broadvox respectfully requests that the Complaint be dismissed, at AT&T's costs, and for reimbursement of its attorneys' fees and expenses associated with the defense of this Action.

Dated this 1st day of May, 2014.

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By: 

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Pro Hac Vice Motion Pending

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

AT&T Corp.,)	Case No. PU-14-117
)	
Complainant,)	
)	
vs.)	AFFIDAVIT OF MAILING
)	AND FACSIMILE
Broadvox – CLEC, LCC,)	
)	
Respondent,)	

STATE OF NORTH DAKOTA)
) ss.
 COUNTY OF BURLEIGH)

The undersigned, being duly sworn, deposes and says that: I am a United States citizen, over 18 years of age, and on May 1, 2014, I served a copy of the attached:

Answer of Broadvox-CLEC, LLC

by placing a true copy in a postage paid envelope or envelopes addressed to each person named below, at the address stated below, which is the last known address of the addressee, and by depositing said envelope in the United States mail at Bismarck, North Dakota and by facsimile.

Darrell Nitschke
 ND Public Service Commission
 600 E. Boulevard, Dept. 408
 Bismarck, ND 58505-0480
 Facsimile: 701-328-2410

Seth Thompson
 Vogel Law Firm
 P.O. Box 2097
 Bismarck, ND 58502-2097
 Facsimile: 701-258-9705

Brenda Vitek

Brenda Vitek

Subscribed and sworn to before me, today, May 1, 2014.

Barbara S. Evenson

Notary Public

