

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

**In the Matter of the Filing by Broadvox-CLEC, LLC
For Approval of Revisions to Tariff No. 1**

TC13-137

**PETITION OF AT&T CORP. TO INTERVENE AND REQUEST
TO SUSPEND TARIFF AND INVESTIGATE**

Pursuant to SDCL Sections 49-31-12.4(1) and 49-31-12.4(2), and ARSD Section 20:10:01:15:02, AT&T Corp. (“AT&T”) petitions for leave to intervene in the above-captioned proceeding concerning the tariff amendments filed by Broadvox-CLEC, LLC (“Broadvox”) on December 3, 2013. AT&T also petitions for suspension of the tariff pending investigation. As grounds for the intervention, AT&T states as follows:

1. Broadvox is a competitive local exchange carrier (“CLEC”) and a provider of Voice over Internet Protocol (“VoIP”) services. On December 3, 2013, Broadvox filed with the Commission several amendments to its access tariff, with a proposed effective date of January 4, 2014.
2. AT&T is an interexchange carrier authorized to provide long distance service in South Dakota. As a long distance or toll provider, AT&T must pay certain carriers’ intrastate access rates, including those rates charged by CLECs and VoIP providers that interconnect with the public switched telephone network (“PSTN”). As a result, AT&T has a direct interest in the rates, terms, and conditions of the access tariff revisions recently filed by Broadvox. Pursuant to ARSD Section 20:10:01:15:02, AT&T qualifies for intervention here as its interest is distinguishable from an interest common to the public or taxpayers in general.
3. The Broadvox tariff amendments contain several objectionable provisions affecting the ability of Broadvox’s access customers, such as AT&T, to dispute charges on their bills and the mechanism by which such disputes may be resolved.
4. First, 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 within six months, the dispute "shall be finally determined by the arbitration procedures set forth below." Section 2.5.5 (last sentence).

5. Section 2.5.5 is objectionable for several reasons. First, Broadvox's tariff provisions – requiring a Dispute Meeting and ultimately arbitration – 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. Second, Broadvox's tariff language, and especially the provision compelling arbitration after six months, 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. Finally, the reference to "arbitration procedures set forth below" is confusing and potentially deceptive, since the rest of the Broadvox tariff contains no mention of arbitration or arbitration procedures.¹ Section 2.5.5 thus should be stricken from the Tariff in its entirety.
6. Second, in Section 2.5.3, on 1st Revised Page No. 14, Broadvox attempts to bind carriers to pay its attorneys' fees in the event it prevails in a dispute to enforce the terms of the tariff or to collect money due under the tariff. This section would replace a provision under which the prevailing party in a dispute – and not just Broadvox – is allowed to recover its legal fees and court costs from the non-prevailing party. *See* Section 2.5.3, Original Page No. 14 (effective Feb. 26, 2013). The award of attorneys' fees should not be a one-way street, but should be determined on a case-by-case basis. Broadvox's attempt to obtain attorneys' fees through a tariffed provision is not appropriate, and Section 2.5.3 should be stricken.
7. Finally, the tariff also contains objectionable payment terms, because the time allowed for the resolution of billing disputes is unreasonably short. Specifically, Section 2.10.4(A), on 1st Revised Page No. 25, requires that claims arising from a billing dispute be submitted within 60 days of the invoice date. Requiring a dispute notification to be made within 60 days of the bill is not consistent with industry practice, which usually affords parties 90 days from receipt of the bill to submit a billing dispute. Indeed, the

¹ It may be that the reference to "arbitration procedures" is a Trojan Horse by which Broadvox intends to establish mandatory and one-sided arbitration requirements in a subsequent tariff filing.

version of Section 2.10.4 in Broadvox's current tariff allows 90 days for submission of billing disputes. *See* Section 2.10.4(A), Original Page No. 25 (effective Feb. 26, 2013).²

WHEREFORE, AT&T requests that it be granted permission to intervene in this proceeding and that the Commission suspend the Broadvox tariff amendments pending investigation.

Respectfully submitted this 20th day of December, 2013.

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/s/ filed electronically

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² *See also* Qwest Corporation South Dakota Access Service Tariff, Section 2.4.1.B.2.c, page 38 (effective Sept. 15, 2000) (providing 90 days for claim to be submitted in billing dispute). In addition, Section 2.10.4(A) provides that a dispute is waived if not submitted within 60 days. The express preclusion, by tariff, of a carrier's ability to contest a bill after 60 days short-circuits the statute of limitations for a claim that could be brought before the Commission or a state court. *See* SDCL §§ 49-13-1-1, 15-2-13(1).