

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Strip,	)	
Hoppers, Leithart, McGrath & Terlecky	)	
Co., LPA,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 12-3291-TP-CSS
	)	
Windstream Ohio, Inc., Windstream	)	
NuVox Ohio, Inc. and The Ohio Bell	)	
Telephone Company dba AT&T Ohio,	)	
	)	
Respondents.	)	

ENTRY

The attorney examiner finds:

- (1) On December 24, 2012, Strip, Hoppers, Leithart, McGrath & Terlecky Co., LPA, (SHLM&T or complainant) filed a complaint against Windstream Ohio, Inc. (Windstream Ohio), Windstream NuVox Ohio, Inc. (NuVox), and The Ohio Bell Telephone Company dba AT&T Ohio (AT&T). In the complaint, SHLM&T states that it is an Ohio law firm and that it entered into a customer service agreement with Windstream Ohio and/or NuVox on February 8, 2011. The customer service agreement was for the provision of telephone service to SHLM&T.
- (2) SHLM&T alleges that when it switched telephone service to Windstream Ohio or NuVox it experienced intermittent problems with its telephone and fax lines, including outages and dropped calls for approximately one week. SHLM&T alleges that Windstream Ohio or NuVox breached the service agreement by failing to provide service and by failing to take necessary steps to remedy the problems. SHLM&T further alleges that AT&T's equipment may have contributed to the service problems. As a result, SHLM&T claims that it suffered from lost productivity and a likely loss of clients.

SHLM&T seeks a finding from the Commission that the respondents are liable and have provided inadequate service. For a remedy, SHLM&T seeks a detailed response report that explains the cause, nature, and remedies for the telephone service problems. Ultimately, SHLM&T requests an order directing the respondents to make necessary repairs and improvements to their equipment.

- (3) On January 16, 2013, AT&T filed an answer to the complaint. AT&T denies the material allegations of the complaint and avers that it has breached no duty owing to the complainant. Claiming that SHLM&T has failed to state reasonable grounds against AT&T, AT&T urges the Commission to dismiss the complaint.
- (4) Windstream Ohio and NuVox jointly filed an answer to the complaint on January 16, 2013. Concurrently, Windstream Ohio and NuVox filed a joint motion to dismiss. Windstream and NuVox deny the material allegations in the complaint.
- (5) In the motion to dismiss, Windstream Ohio seeks to be dismissed as a party. Windstream Ohio explains that it is not a party to the customer service agreement. Windstream Ohio highlights that the agreement is between SHLM&T and NuVox. Moreover, Windstream Ohio points out that its defined service area does not include Columbus, Ohio or the SHLM&T location. Because Windstream Ohio's affiliate NuVox is the service provider, Windstream Ohio seeks to be dismissed from this proceeding.
- (6) At this time, the attorney examiner finds that this matter should be scheduled for a settlement conference. The purpose of the settlement conference will be to explore the parties' willingness to negotiate a resolution of this complaint in lieu of an evidentiary hearing. In accordance with Rule 4901-1-26, Ohio Administrative Code (O.A.C.), any statement made in an attempt to settle this matter without the need for an evidentiary hearing will not generally be admissible to prove liability or invalidity of a claim. An attorney examiner from the Commission's legal department will facilitate the settlement process. However, nothing prohibits either party from initiating settlement negotiations prior to the scheduled settlement conference.

- (7) Accordingly, a settlement conference shall be scheduled for February 12, 2013, at 1:30 p.m. in Room 1246 in the offices of the Commission, 12<sup>th</sup> Floor, 180 East Broad Street, Columbus, Ohio 43215. If a settlement is not reached at the conference, the attorney examiner will conduct a discussion of procedural issues. Procedural issues for discussion may include discovery dates, possible stipulations of facts, and potential hearing dates.
- (8) Pursuant to Rule 4901-1-26(F), O.A.C., the representatives of the public utility shall investigate the issues raised in the complaint prior to the settlement conference, and all parties attending the conference shall be prepared to discuss settlement of the issues raised and shall have the requisite authority to settle those issues. In addition, parties attending the settlement conference should bring with them all documents relevant to this matter.
- (9) As is the case in all Commission complaint proceedings, the complainant has the burden of proving the allegations of the complaint. *Grossman v. Public Util. Comm.*, 5 Ohio St. 2d 189, 214 N.E. 2d 666 (1966).

It is, therefore,

ORDERED, That a settlement conference be held on February 12, 2013 at 1:30 p.m. in Room 1246 in the offices of the Commission, 12<sup>th</sup> Floor, 180 East Broad Street, Columbus, Ohio 43215. It is, further,

ORDERED, That a copy of this entry be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/ L. Douglas Jennings

By: L. Douglas Jennings  
Attorney Examiner

jrj/vrm

**This foregoing document was electronically filed with the Public Utilities**

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**Case No(s). 12-3291-TP-CSS**

Summary: Attorney Examiner Entry scheduling a settlement conference on February 12, 2013, at 1:30 p.m. electronically filed by Vesta R Miller on behalf of L. Douglas Jennings, Attorney Examiner, Public Utilities Commission of Ohio