

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

BIRCH TELECOM OF MISSOURI, INC.	)	
ET AL	)	
	)	
V.	)	Case No. TC-2003-0547
	)	
SOUTHWESTERN BELL	)	
TELEPHONE, LP	)	
	)	
XO MISSOURI, INC.	)	
	)	
V.	)	Case No. LC-2003-0570
	)	
SOUTHWESTERN BELL	)	
TELEPHONE, LP	)	
	)	
	)	
NUVOX COMMUNICATIONS	)	
OF MISSOURI, INC.	)	
	)	
V.	)	Case No. XC-2003-0421
	)	
SOUTHWESTERN BELL	)	
TELEPHONE, L.P. D/B/A	)	
SBC MISSOURI.	)	

**MOTION TO CANCEL PROCEDURAL SCHEDULE AND SET A NEW  
PREHEARING CONFERENCE**

COME NOW NuVox Communications of Missouri, Inc. ("NuVox") and XO Missouri, Inc., pursuant to 4 CSR 240-2.090(4) and for their Motion to Cancel Procedural Schedule and Set a New Prehearing Conference, with consent of all parties<sup>1</sup>, state to the Commission as follows:

1. NuVox has herein filed a complaint against Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC"). On September 9, 2003 the Commission consolidated NuVox's complaint proceeding with cases involving similar complaints filed by XO

Missouri, Inc., Birch Telecom of Missouri, Inc., AT&T Communications of the Southwest, Inc., TCG Kansas City, Inc., and TCG St. Louis, Inc.

2. Since the Commission issued its order consolidating these matters, NuVox and SBC have been able to negotiate a settlement of the NuVox complaint. Upon approval of the interconnection agreement amendment filed to implement that settlement, now pending before the Commission under Case No. XK-2004-0221, NuVox will dismiss its complaint. However, the Commission has until February 10, 2004 under 47 USC 252(e) to resolve that interconnection amendment proceeding.

3. Under the procedural schedule now in effect in this consolidated matter, NuVox and SBC would have to continue to devote substantial resources regarding the NuVox complaint notwithstanding their settlement agreement. Neither party should have to waste its resources in this manner.

4. Furthermore, the parties notified the Commission on or about November 21, 2003 that they had released the hearing dates set in this proceeding to facilitate the proceedings in Case No. TO-2004-0207. All the parties are currently devoting substantial resources to that proceeding.

5. With consent of all parties, NuVox and XO Missouri move the Commission to cancel the procedural schedule in this consolidated case and set a new prehearing conference. Such action will allow NuVox to conclude its settlement with SBC and allow XO and the other parties an opportunity to develop and propose a new hearing date and a new schedule coordinated with that hearing date.

---

<sup>1</sup> Counsel for Public Counsel could not be reached, but has previously indicated that he will not be an active participant in this case.

WHEREFORE, with consent of the parties, NuVox and XO Missouri respectfully request the Commission to cancel the procedural schedule in this matter and set a new prehearing conference.

CURTIS, OETTING, HEINZ,  
GARRETT & O'KEEFE, P.C.

/s/ Carl J. Lumley

---

Carl J. Lumley, #32869  
Leland B. Curtis, #20550  
130 S. Bemiston, Suite 200  
Clayton, Missouri 63105  
(314) 725-8788  
(314) 725-8789 (FAX)  
[clumley@cohgs.com](mailto:clumley@cohgs.com)  
[lcurtis@cohgs.com](mailto:lcurtis@cohgs.com)

Attorneys for NuVox Communications of Missouri,  
Inc. and XO Missouri, Inc.

/s/ Carl Keith (By Carl J. Lumley)

---

Carol Keith, #45065  
NuVox Communications  
16090 Swingley Ridge Road, Suite 500  
Chesterfield, Missouri 63017  
(636) 537-7337  
(636) 728-7337 (FAX)  
[ckeith@nuvox.com](mailto:ckeith@nuvox.com)

Attorneys for NuVox Communications of Missouri,  
Inc.

**Certificate of Service**

A true and correct copy of the foregoing was served upon the parties identified on the attached service list on this 2d day of January, 2004, by placing same in the U.S. Mail, postage paid, by email and/or by fax transmission.

/s/ Carl J. Lumley

---

Office of Public Counsel  
P.O. Box 2230  
Jefferson City, Missouri 65102  
Fax 573-751-5562

Office of General Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102  
Fax 573-751-9285

Legal Department  
Southwestern Bell Telephone Company  
One Bell Center, Room 3520  
St. Louis, Missouri 63101-1976  
314-247-0014

Mark W. Comley  
601 Monroe Street, Suite 301  
Jefferson City, Missouri 65102

Katherine Mudge  
816 Congress Ave Suite 1270  
Austin, Texas 78701

Rose Mulvany Henry  
Birch Telecom  
2020 Baltimore Ave  
Kansas City, MO 64108

Rebecca DeCook  
ATT  
1875 Lawrence St, Suite 1575  
Denver CO 80202