

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of )  
NuVox Communications of Missouri, Inc. for )  
an Investigation into the Wire Centers that ) Case No. TO-2006-0360  
AT&T Missouri Asserts are Non-Impaired )  
Under the TRRO. )

**CLEC COALITION RESPONSE TO  
AUGUST 31, 2007 ORDER DIRECTING FILING**

**COME NOW** NuVox Communications of Missouri, Inc. (“NuVox”), XO Communications Services, Inc. (“XO”), and McLeodUSA Telecommunications Services, Inc. (“McLeodUSA”) (collectively, “Coalition”) and file their response to the Order Directing Filing dated August 31, 2007.

1. In the Order Directing Filing, the Commission stated:

Although the parties have submitted a number of issues for the Commission to resolve, it appears as though the only disputes involve a determination of whether two wire centers are impaired. The Commission realizes that there are other disputes between the parties but that a resolution of these disputes will not affect any factual determinations, e.g., how a wire center is classified.

Order Directing Filing, at 1 (emphasis supplied). The CLEC Coalition respectfully disagrees with this statement for two reasons.

First, the “factual determinations” at issue in this case extend beyond decisions about two wire centers. Disputed Issue C involves the question of whether AT&T correctly identified 14 wire centers as non-impaired in March 2005. As the CLEC Coalition demonstrated in its Post-Hearing brief, there is no evidence (aside from AT&T’s unreliable hearsay testimony) supporting AT&T’s assertion that the following wire centers should be classified as Tier 1 non-impaired: Bridgeton, Kirkwood, Parkview, Prospect, and Springfield Tuxedo (Tuxedo is the disputed SPFDMOTU wire center). *See* Coalition Initial Post-Hearing Brief at 15-18. If AT&T’s position on Issue C prevails,

the Springfield Tuxedo (SPFDMOTU) wire center would thus vault up to Tier 1 status. The CLEC Coalition believes the Order Directing Filing correctly identifies the relevant dispute over SPFDMOTU as related to its status as Tier 2 versus Tier 3. AT&T's position on Issue C, however, would have the Commission rule that SPFDMOTU is a Tier 1 wire center.

In addition, Disputed Issue F involves the question of whether the Commission should approve multiple wire center designations (some applying today and others applying for periods in prior years). The resolution of the disputes regarding the two wire centers identified in the Order Directing Filing will not resolve the practical, factual question of whether AT&T can treat certain wire centers as non-impaired for a limited period back in 2005 (and backbill CLECs higher rates for UNEs used during that period). The wire centers for which AT&T seeks this extraordinary treatment include all five of the wire centers in dispute under Issue C discussed above (Bridgeton, Kirkwood, Parkview, Prospect, and Springfield Tuxedo).

Second, the Commission's resolution of the disputed issues presented by the parties will affect not only the wire center designations already made by AT&T Missouri, but the standards to be applied to future wire center designations. Under the FCC's *Triennial Review Remand Order* ("TRRO"), AT&T Missouri can seek to de-list wire centers at any time based on the criteria set forth by the FCC. The Commission's interpretation of those criteria will have an impact on how AT&T goes about identifying wire centers for de-listing as long as the Rules promulgated in the *TRRO* remain in effect. If the Commission does not address the disputes identified in this case, those disputes likely will arise again next time AT&T Missouri designates additional wire centers as non-impaired. In the meantime, and unlike the situation in most neighboring states, the "rules of the game" for classifying wire centers in Missouri will remain unresolved, which will cause unnecessary regulatory uncertainty for telecommunications companies in the State.

2. The Order Directing Filing states that the “legal conclusions” that require resolution in this proceeding are:

(1) Should the business line count include all UNE-L lines or only UNE-L lines used to provide switched services to business end users? (2) Does the definition of fiber-based collocator include collo-to-collo arrangements in which the connecting carrier establishes service without providing optronics for fiber that leaves the wire center?

The resolution of the two issues identified in the Order Directing Filing will not resolve the disputes related to the Springfield Tuxedo (SPFDMOTU) and St. Louis Ladue (STLSMO21) wire centers. This is the case for two reasons.

First, in determining the Business Line count, AT&T Missouri and the CLEC Coalition used different data sets. The CLEC Coalition recommendation detailed in Mr. Gillan’s Exhibit JPG-9 uses 2004 ARMIS data to calculate Business Lines; AT&T uses 2003 ARMIS data, but inflates that data by applying its misguided interpretation of the Business Line definition. If the Commission accepts either the CLEC Coalition or the AT&T Missouri recommendation, the Commission will be required to take a position on the issue posed as disputed Issue A(3): “On what vintage of data should the Business Line counts supporting the wire center designations rely?”

Second, the testimony and briefs documented that the Business Line dispute that makes the most difference to the bottom line wire center classifications is Issue A(2): “Should the Business Line count for digital UNE-L be based on the loop’s capacity or the loop’s usage?” *See* Coalition Initial Post-Hearing Brief at 1-8. This issue is not captured in the issue posed in the Order Directing Filing (quoted above), which captures only Issue A(1) rather than both A(1) and (2). For the reasons detailed in the Coalition’s Post-Hearing Brief, the accuracy of Business Line counts in any wire center depends more than anything else on the answer to the question posed in Issue A(2).

3. The Coalition concurs with the Commission that the critical issue with regard to the “Fiber-Based Collocator” disputes is the one identified in the Order Directing Filing. If the

Commission rejects AT&T Missouri's "collo-to-collo" theory, it is not necessary for the Commission to make a separate legal determination of what constitutes a "comparable transmission facility." *See* Issue B(2). In addition, the "collo-to-collo" dispute is at the heart of the dispute in Issue B(3) over whether NuVox qualifies as a Fiber-Based Collocator. Put simply, if carriers with "collo-to-collo" arrangements do not count as Fiber-Based Collocators, then NuVox is not a Fiber-Based Collocator. (The evidence supporting the Coalition's position on the NuVox issue is discussed in detail in the Coalition's Pre-Hearing Brief at 44-46.)

The Coalition appreciates the opportunity to address these issues and is prepared to provide additional information the Commission finds necessary to the completion of this proceeding.

Respectfully submitted,

/s/ Carl J. Lumley

Carl J. Lumley, #32869

Leland B. Curtis, #20550

Curtis, Heinz, Garrett & O'Keefe, PC

130 S. Bemiston, Suite 200

Clayton, Missouri 63105

Telephone: (314) 725-8788

Facsimile: (314) 725-8789

Email: [clumley@lawfirmemail.com](mailto:clumley@lawfirmemail.com)

[lcurtis@lawfirmemail.com](mailto:lcurtis@lawfirmemail.com)

ATTORNEYS FOR

NUVOX COMMUNICATIONS OF MISSOURI, INC.,

AND

XO COMMUNICATIONS SERVICES, INC.

Mary Ann (Garr) Young, #27951  
WILLIAM D. STEINMEIER, PC  
2031 Tower Drive  
PO Box 104595  
Jefferson City MO 65110-4595  
Telephone: (573) 634-8109  
Facsimile: (573) 634-8224  
Email: [myoung0654@aol.com](mailto:myoung0654@aol.com)

ATTORNEYS FOR MCLEODUSA  
TELECOMMUNICATIONS SERVICES, INC,

Bill Magness  
Texas State Bar No. 12824020  
Casey, Gentz & Magness, L.L.P.  
98 San Jacinto Blvd., Suite 1400  
Austin, Texas 78701  
Telephone: 512-480-9900  
Facsimile: 512-480-9200  
Email: [bmagness@phonelaw.com](mailto:bmagness@phonelaw.com)

ATTORNEYS FOR MCLEODUSA  
TELECOMMUNICATIONS SERVICES, INC,  
NUVOX COMMUNICATIONS OF MISSOURI, INC.,  
AND  
XO COMMUNICATIONS SERVICES, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was served upon the attorneys for all parties on the following list by either U.S. Mail, fax, or email on this 12th day of September, 2007.

/s/ Carl J. Lumley

Carl J. Lumley

Office of the Public Counsel  
PO Box 2230  
Jefferson City, Missouri 65102  
opcservice@ded.mo.gov

William K. Haas  
Deputy General Counsel  
Missouri Public Service Commission  
PO Box 360  
Jefferson City, Missouri 65102  
gencounsel@psc.mo.gov

Robert J. Gryzmala  
AT&T Missouri  
One SBC Center, Room 3520  
St. Louis, Missouri 63101  
rg1572@att.com