

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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

**AT&T MISSOURI'S RESPONSE TO THE
COMMISSION'S ORDER DIRECTING FILING**

COMES NOW AT&T Missouri¹ and files this response to the Commission's August 31, 2007, Order Directing Filing ("Order"). The Order requires the parties to identify whether their factual disputes are limited to two wire centers -- the Springfield Tuxedo wire center (SPFDMOTU) and the St. Louis Ladue wire center (STLSMO21) -- and whether a legal conclusion reached on the two questions noted in the Order will resolve the factual disputes concerning these wire centers.

SUMMARY

In response to the Order, AT&T Missouri confirms that each of these two wire centers present factual disputes. More specifically, these two wire centers are the only wire centers among those listed on AT&T Missouri's three wire center lists dated March 11, 2005, December 16, 2005, and December 29, 2006 that would be affected by a Commission decision on the Business Line Count Issues presented by the parties (as Issues, A., 1 through 3, and Issue E) and the Fiber-Based Collocator ("FBC") Issues presented by the parties (as Issues B. 1 through 3). With regard to the Springfield Tuxedo wire center, should the Commission find that there were a sufficient number of FBCs, it need not proceed to decide any business line issues. Stated another

¹ Southwestern Bell Telephone Company d/b/a AT&T Missouri ("AT&T Missouri").

way, business line issues would be presented only if the Commission should find that there were not a sufficient number of FBCs. In both this instance, and in the instance of the St. Louis Ladue wire center, a legal conclusion that the business line count should include all UNE-L lines would resolve the dispute as to whether these wire centers had a sufficient number of business lines to be classified as Tier 1 wire centers.

At the outset, however, it should be noted that a Commission decision on these factual disputes associated with the Springfield and St. Louis Ladue wire centers would not resolve all of the issues that have been presented by the parties. That is because the parties also have disputes regarding whether multiple wire center lists should be approved, whether a “collo-to-collo” cross connect arrangement should be counted as an FBC, and how the term “comparable transmission facility” should be defined. These are discussed immediately below, followed by discussion specific to the Springfield Tuxedo and St. Louis Ladue wire centers.

DISCUSSION

AT&T Missouri’s Three Wire Center Lists

As the Commission is aware, AT&T Missouri has asked that the Commission approve each of its three wire center lists dated March 11, 2005, December 16, 2005, and December 29, 2006. The difference between the designations for the wire centers shown in the March, 2005 list and the designations for the wire centers shown in the two later lists lies exclusively in the fact that effective with the December 16, 2005 list, AT&T Missouri updated its wire center designations to no longer count “pre-merger AT&T” FBCs, in accordance with its commitment made to the FCC in connection with the SBC/AT&T merger. The update caused 5 wire centers to move from Tier 1 status to Tier 2 status. Whether the update should be applied only prospectively, as AT&T Missouri contends, is disputed between AT&T Missouri and the

CLECs.² Importantly, its resolution is integral to the parties' Issues C, D and F (i.e., whether the March, 2005, list correctly identified 14 wire centers as Tier 1 wire centers; whether the December, 2005, list correctly identified the 5 wire centers affected by the pre-merger AT&T re-classification as Tier 2 wire centers; and whether the Commission should approve a separate wire center list applicable to the period between March, 2005, and December, 2005).

At a minimum, the Commission should resolve Issue C by deciding that the March, 2005, list correctly identified each of the 14 wire centers as Tier 1 wire centers. The Commission could then determine that Issues D and F are matters that the CLECs should take up with the FCC, since both involve whether the SBC/AT&T merger commitments made to that agency were met. That way, the Commission would have determined that AT&T Missouri's March, 2005 list was *TRRO* compliant, while deferring issues related to merger-related commitments to the federal agency entrusted with the responsibility for administering and enforcing those commitments.

The “Collo-to-collo” and “Comparable Transmission Facility” Disputes

The parties' Issues B. 1 and 2 relate to whether a collo-to-collo arrangement qualifies as an FBC, and how the term “comparable transmission facility” should be defined, respectively. These issues represent disputes for which AT&T Missouri seeks resolution. While it is true that neither issue impacts any of AT&T Missouri's wire center lists, a decision on each may help to altogether avoid future disputes, or may help to resolve them more quickly and without the need for Commission action.

The Springfield Tuxedo Wire Center (SPFDMOTU) Dispute

As noted above, AT&T Missouri has asked that the Commission approve each of its three wire center lists dated March 11, 2005; December 16, 2005; and December 29, 2006.

² AT&T Missouri's Brief, pp. 23-25; AT&T Missouri's Reply Brief, pp. 13-15.

SPFDMOTU appears on each list. SPFDMOTU was classified as a Tier 1 wire center on the March, 2005, list. It was later re-classified as a Tier 2 wire center and appears as such on each of the December, 2005, and December, 2006, lists.

The Order correctly notes that the issue of how many FBCs were located in this wire center is a dispute between AT&T Missouri and the CLECs. AT&T Missouri agrees that if the Commission finds that there were a sufficient number of FBCs in this wire center, it need not proceed to decide any business line issues. Otherwise, business line issues would be presented regarding this wire center. However, a legal conclusion as to whether a “collo-to-collo” arrangement is an FBC would not answer nor even be relevant to deciding the FBC dispute, for the reasons explained below.

With respect to the March, 2005, wire center list, SPFDMOTU satisfies the disjunctive “either/or” Tier 1 test only if it had at least 4 FBCs because its business line count of **_____** is short of the 38,000 business line threshold. Consequently, the Commission needs to determine whether AT&T Missouri correctly identified 4 FBCs in this wire center. Whether the FBC count (and thus the Tier classification) were correct has nothing to do with the “collo-to-collo” cross connect issue, since none of AT&T Missouri wire center classifications rested on an FBC count which included a collo-to-collo arrangement.³ Since the identification of 2 among the 4 FBCs identified has been challenged (one of the two being the pre-merger AT&T CLEC, the other being a CLEC unaffiliated with either pre-merger AT&T or AT&T Missouri), the Commission needs to decide whether these two identifications were appropriate. AT&T Missouri has briefed the matter of its having properly identified the pre-merger AT&T FBCs.⁴ It has also briefed the matter of its having properly identified the unaffiliated CLEC’s FBC, arguing (1) that its

³ AT&T’s Missouri’s Brief, pp. 22, 23.

⁴ AT&T’s Missouri’s Reply Brief, pp. 13-15.

identification of the unaffiliated CLEC as an FBC stands unrebutted; (2) that the unaffiliated CLEC's arrangement falls within the CLECs' own definition of an FBC; and that (3) even if this unaffiliated CLEC is not an FBC, the other carrier named by it is an FBC.⁵

With respect to the December, 2005, wire center list, the number of FBCs in SPFDMOTU was reduced from 4 to 3 and the wire center was re-classified to Tier 2, due to the removal of pre-merger AT&T as an FBC. SPFDMOTU satisfies the disjunctive "either/or" Tier 2 test if it had at least 3 FBCs or at least 24,000 business lines. If the Commission decides that SPFDMOTU had at least 3 FBCs, it need not decide whether there were at least 24,000 business lines.

As with the March, 2005, list, whether the FBC count, and thus the Tier 2 classification effective December 16, 2005, were correct has nothing to do with the "collo-to-collo" cross connect issue, since no AT&T Missouri wire center classifications rested on an FBC count which included a collo-to-collo arrangement.⁶ However, since the identification of 1 among the 3 FBCs identified has been challenged (the CLEC unaffiliated with either pre-merger AT&T or AT&T Missouri), the Commission needs to decide whether this single identification was appropriate. AT&T Missouri, the CLECs and Staff have all briefed the matter, as noted above in connection with the March, 2005, list.

Only if the Commission decides there were an insufficient number of FBCs to support AT&T Missouri's December, 2005, Tier 2 designation would it then have to decide whether there were a sufficient number of business lines. Moreover, if the Commission rules that there were not enough FBCs in SPFDMOTU to support AT&T Missouri's proposed designations, but determines that the business line count should include all UNE-L lines, then AT&T Missouri's

⁵ AT&T Missouri's Brief, pp. 20-21.

⁶ AT&T's Missouri's Brief, pp. 22, 23.

business line count would be sufficient to entirely resolve the factual dispute involving this wire center, and this is so regardless of whether the Commission were to use December 31, 2003 data or December 31, 2004 data. Should the Commission rule in AT&T Missouri's favor solely on the basis of 4 FBCs effective in March, 2005, it does not need to examine any business line issues. If, however, the Commission does not find 4 FBCs in this wire center effective in March, 2005, then the Commission needs to determine whether this wire center should be classified as a Tier 2 wire center effective March, 2005, based on the number of business lines.

AT&T Missouri's business line count yielded **_____** (based on line counts as of December 31, 2003, and accounting for "digital equivalence" by counting a DS1 loop as 24 lines). The December 31, 2004, line count remained above 24,000, at **_____**. ⁷ CLECs advance a business line count of **_____** (based on line counts as of December 31, 2003, not accounting for "digital equivalence" in any respect) or, alternatively, a business line count of **_____** (based on line counts as of the following year, i.e., December 31, 2004, and counting a DS1 loop as 11 lines). ⁸ Thus, the SPFDMOTU line count meets 24,000 if the Commission counts all UNE-L lines, i.e., **_____** ⁹ but does not meet 24,000 if the Commission either (a) decides to not count all of the UNE-L lines by treating all UNE-L lines as a single voice grade line regardless of the line's capacity, which yields **_____** or (b) adopts the alternative 11:1 proxy methodology advanced by CLECs, and further, decides that data generated on December

⁷ Exh. 2 (Gillan Rebuttal Testimony), at Exh. JPG-9 (HC).

⁸ Compare, Exh. 16 (Chapman Direct Testimony), at Schedules CAC-1 (HC), CAC-2 (HC) and CAC-3 (HC), with Exh. 2 (Gillan Rebuttal Testimony), at Exhs. JPG-8 (HC) and JPG-9 (HC).

⁹ Even if the Commission were to decide the data "vintage" issue in favor of the CLECs, a decision that the business line count should include all UNE-L lines would still yield a sufficient line count to allow AT&T Missouri to prevail because, as noted, the December 31, 2004, line count remains above 24,000, at **_____**. Exh. 2 (Gillan Rebuttal Testimony), at Exh. JPG-9 (HC).

31, 2003 should be disregarded in favor of data generated on December 31, 2004, which yields **_____**. AT&T Missouri briefed each of these business line issues.¹⁰

The St. Louis Ladue Wire center (STLSMO21) Dispute

STLSMO21 was designated as non-impaired for purposes of DS3 loops under the conjunctive test, which requires at least 38,000 business lines and at least 4 FBCs. There is no dispute that STLSMO21 had at least 4 FBCs when the wire center was designated as non-impaired. Therefore, the only issue is whether at least 38,000 business lines were then present in the wire center.¹¹ A legal conclusion that the business line count should include all UNE-L lines would entirely resolve the factual dispute involving this wire center, and this is so regardless of whether the Commission were to use December 31, 2003 data or December 31, 2004 data.

AT&T Missouri's business line count for STLSMO21 yielded **_____** (based on line counts as of December 31, 2003, and accounting for "digital equivalence" by counting a DS1 loop as 24 lines). The December 31, 2004, line count remained above 38,000, at **_____**. ¹² CLECs advance a business line count of **_____** (based on line counts as of December 31, 2003, not accounting for "digital equivalence" in any respect) or, alternatively, a business line count of **_____** (based on line counts as of the following year, i.e., December 31, 2004, and counting a DS1 loop as 11 lines).¹³ Thus, the STLSMO21 line count meets 38,000 if the Commission counts all UNE-L lines, i.e., **_____**¹⁴ but does not meet 38,000 if the

¹⁰ AT&T Missouri's Brief, pp. 7-15; AT&T Missouri's Reply Brief, pp. 2-7.

¹¹ STLSMO21 also was classified as a Tier 1 wire center and appears as such on each of the March, 2005, December, 2005; and December, 2006, lists. There is no dispute that it qualifies as a Tier 1 wire center under the "either/or" Tier 1 test because all parties agree it had at least 4 FBCs.

¹² Exh. 2 (Gillan Rebuttal Testimony), at Exh. JPG-9 (HC).

¹³ Compare, Exh. 16 (Chapman Direct Testimony), at Schedules CAC-1 (HC), CAC-2 (HC) and CAC-3 (HC), with Exh. 2 (Gillan Rebuttal Testimony), at Exhs. JPG-8 (HC) and JPG-9 (HC).

¹⁴ Even if the Commission were to decide the data "vintage" issue in favor of the CLECs, a decision that the business line count should include all UNE-L lines would still yield a sufficient line count to allow AT&T Missouri to prevail because, as noted, the December 31, 2004, line count remains above 38,000, at **_____**. Exh. 2 (Gillan Rebuttal Testimony), at Exh. JPG-9 (HC).

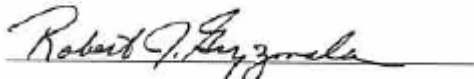
Commission either (a) decides to not count all of the UNE-L lines by treating all UNE-L lines as a single voice grade line regardless of the line's capacity, which yields **_____** or (b) adopts the alternative 11:1 proxy methodology advanced by CLECs, and further, decides that data generated on December 31, 2003 should be disregarded in favor of data generated on December 31, 2004, which yields **_____**. AT&T Missouri briefed each of these business line issues.¹⁵

CONCLUSION

AT&T Missouri respectfully submits that the factual disputes and issues presented for Commission decision are the disputes and issues described above.

Respectfully submitted,

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¹⁵ AT&T Missouri's Brief, pp. 7-15; AT&T Missouri's Reply Brief, pp. 2-7.

CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail on September 12, 2007.


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