

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 AT&T MISSOURI’S REPLY TO
RESPONSES TO COMMISSION’S ORDER DIRECTING FILING**

COME NOW NuVox Communications of Missouri, Inc. (“NuVox”), XO Communications Services, Inc. (“XO”), and McLeodUSA Telecommunications Services, Inc. (“McLeodUSA”) (collectively, “CLEC Coalition”) and file their response to “AT&T Missouri’s Reply To Staff’s and the CLECs’ Responses To The Commission’s Order Directing Filing” (“AT&T Reply”).

The CLEC Coalition files this response to correct two assertions in AT&T Missouri’s Reply.

1. AT&T Missouri asks the Commission to count as “Fiber-Based Collocators” (“FBC”) collocation arrangements that belonged to pre-merger AT&T (which now belong to AT&T Missouri). AT&T Missouri urges that if the Commission approves its initial wire center designations (Issue C), it must also approve the post-merger revisions (Issues D and F) – thus approving more than one set of wire center designations for Missouri. In its Reply, AT&T Missouri reiterated its position that the Commission should “determine that Issues D and F are matters that the CLECs should take up with the FCC, since both issues involve whether the SBC/AT&T merger commitments to that agency were met.” AT&T Reply at 5.

The CLEC Coalition notes that the Commission will take a position on the merger conditions whether it rules in favor of AT&T Missouri or in favor of the CLEC Coalition on Issues D and F. If the Commission rules in favor of AT&T, it will permit AT&T to count as FBCs collocation arrangements owned by pre-merger AT&T. This is contrary to the merger conditions approved by

the FCC in the SBC-AT&T merger, for the reasons detailed in the CLEC Coalition's post-hearing brief (pages 50-55). By issuing such a ruling, this Commission will be interpreting the meaning of the merger conditions no less than if it rules with the CLEC Coalition on Issues D and F. Allowing AT&T Missouri to count FBCs in a manner contrary to its commitments involves the question of whether the merger commitments are met no less than requiring AT&T Missouri to exclude pre-merger AT&T collocations in compliance with the merger commitments.

In spite of the fact that AT&T Missouri seeks relief that implicates the merger conditions, AT&T attempts to persuade the Commission that only the FCC can address the question at hand. Recently, another state commission addressing the same question, in a case involving another AT&T ILEC, ruled contrary to AT&T Missouri's position here. In an Order issued September 18, 2007, the Kentucky Public Service Commission denied AT&T's motion to dismiss a petition by Sprint requesting the state commission resolve a dispute involving interpretation of the AT&T-BellSouth merger conditions approved by the FCC. As it does here, AT&T argued that the state commission had no authority to resolve the issue. The Kentucky PSC disagreed:

Simply because the [State] Commission has to refer to a federal agency's Order to resolve a dispute does not mean that the Commission is completely preempted from using its statutorily bestowed power of arbitration. The FCC may have created and issued its merger Order, but it did not restrict the rights of state commissions to review, interpret, and apply the meaning of that document. The Commission believes it maintains concurrent jurisdiction with the FCC to resolve such post-merger or merger-related disputes, unless clearly and unequivocally told otherwise pursuant to an FCC Order or regulation.¹

As in this case, AT&T asserted that a state commission could not resolve a matter pending before it that was clearly within its jurisdiction to decide. The CLEC Coalition urges the Commission to take

¹ Kentucky Public Service Commission, Case No. 2007-00180, *Petition of Sprint Communications Company, L.P. and Sprint Spectrum L.P. d/b/a Sprint PCS For Arbitration of Rates, Terms, and Conditions of Interconnection With BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky d/b/a AT&T Southeast*, Order, at 8-9 (September 18, 2007). A copy of the Kentucky Public Service Commission's Order is attached to this Response as Exhibit 1.

a similar approach here. The Commission has ample authority to resolve the issues in this case in a manner that is consistent with both the FCC's rulings in the *TRRO* and its orders in the SBC-AT&T merger. The proper outcome under both FCC orders would exclude pre-merger AT&T collocations from the FBC count in Missouri.

2. AT&T Missouri has repeatedly asserted that the question of whether NuVox is a FBC can be resolved without the Commission ruling on the "collo-to-collo" FBC dispute. The CLEC Coalition must again refute this misstatement of the facts. AT&T contends that, even if the Commission does not rule on the "collo-to-collo" dispute (Issue B(1)), NuVox should be designated as a FBC because of the "undisputed results of AT&T Missouri's 2005 physical inspection; NuVox's own description of its arrangement as of October, 2006; and NuVox's identification of a third party." AT&T Reply at 3. The CLEC Coalition detailed the record evidence refuting these points in its pre-hearing brief (at pages 44-46) and post-hearing reply brief (at pages 11-12). In response to AT&T Missouri's repetition of these arguments, the CLEC Coalition again notes:

- AT&T's "physical inspections" of wire centers identified collocation arrangements as FBCs if they included the disputed "collo-to-collo" arrangements. The CLEC Coalition does not dispute that AT&T conducted the physical inspections, but strongly disputes the methodology used to identify FBC during such inspections. Simply put, AT&T sent its inspectors out looking for the wrong thing, *i.e.*, collo-to-collo arrangements rather than legitimate FBC.
- NuVox's description of its collocation arrangement describes a collo-to-collo arrangement. Nothing in Mr. Cadieux's affidavit for NuVox (submitted in response to Staff's discovery request) nor in any testimony suggests that NuVox itself has any arrangement that might qualify as a FBC.
- NuVox's identification of a third party carrier as a potential FBC does not qualify NuVox as a FBC. There is nothing in the *TRRO* that would permit the Commission to count NuVox as a FBC because it has an arrangement with another carrier that might qualify as a FBC.

As the CLEC Coalition stated in its Order Directing Filing, the resolution of the "collo-to-collo" dispute (Issue B(3)) is necessary to the complete resolution of the issues in this proceeding.

The Coalition again urges this Commission to join the numerous other state commissions that have rejected the “collo-to-collo” theory advanced by AT&T Missouri.

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

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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 9th day of October, 2007.

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