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July 2, 2002

Secretary of the Commission  
Missouri Public Service Commission  
200 Madison Street, Suite 100  
P.O. Box 360  
Jefferson City, Missouri 65102-0360

Re: Case Nos.: TT-2002-227, et al.

Dear Secretary of the Commission:

Enclosed please find for filing with your office an original and nine (9) copies of the Application for Rehearing of NuVox Communications of Missouri, Inc., MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., MCImetro Access Transmission Services, LLC, TCG St. Louis and TCG Kansas City. Upon your receipt, please file stamp the extra copy received and return to the undersigned. If you have any questions, please contact me.

Very truly yours,



Carl J. Lumley

CJL:dn  
Enclosures  
cc. Parties of Record (W/Enclosure)

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of Southwestern Bell Telephone )  
Company's Proposed Revisions to PSC Mo. ) Case No. TT-2002-227  
No. 26, Long Distance Message ) Tariff No. 200200300  
Telecommunications Service Tariff. )

In the Matter of MCI metro Access )  
Transmission Services, LLC's Local ) Case No. TT-2002-235  
NationwideOne Promotion. ) Tariff No. 200200338

In the Matter of NuVox Communications )  
of Missouri, Inc.'s "Free Month" Promotion ) Case No. TT-2002-274  
for New Customers. ) Tariff No. 200200364

In the Matter of American Communication )  
Services of Kansas City, Inc.'s Tariff Filing ) Case No. TT-2002-294  
to Introduce New Product Packages for Basic ) Tariff No. 200200364  
Local Service Business Customers. )

In the Matter of MCI metro Access )  
Transmission Services, LLC's Proposed ) Case No. TT-2002-304  
Revisions to its Local Exchange Service ) Tariff No. 200200395  
Tariff, MO P.S.C. Tariff No. 1. )

In the Matter of MCI WorldCom )  
Communications, Inc.'s Proposed Revisions ) Case No. TT-2002-305  
to its MO P.S.C. Tariff No. 4. ) Tariff No. 200200394

In the Matter of Brooks Fiber Communications )  
of Missouri, Inc.'s Proposed Revision to its ) Case No. TT-2002-306  
P.S.C. Tariff No. 2, General Exchange ) Tariff No. 200200396  
Services. )

In the Matter of TCG St. Louis' Proposed )  
Revisions to its P.S.C. Tariff No. 2, ) Case No. TT-2002-308  
Local Exchange Services. ) Tariff No. 200200515

In the Matter of TCG Kansas City's Proposed )  
Revisions to its P.S.C. Tariff No. 1 Local ) Case No. TT-2002-309  
Exchange Services. ) Tariff No. 200200516

**APPLICATION FOR REHEARING OF  
NUVOX COMMUNICATIONS OF MISSOURI, INC., MCI WORLD COM  
COMMUNICATIONS, INC., BROOKS FIBER COMMUNICATIONS OF MISSOURI,  
INC., MCI metro ACCESS TRANSMISSION SERVICES, LLC, TCG ST. LOUIS AND  
TCG KANSAS CITY**

COME NOW Applicants NuVox Communications of Missouri, Inc. ("NuVox"), MCI WorldCom Communications, Inc. ("MCI WorldCom"), Brooks Fiber Communications, Inc. ("Brooks"), MCI metro Access Transmission Services, LLC ("MCI metro" and, with MCI WorldCom and Brooks, collectively "WorldCom"), TCG St. Louis and TCG Kansas City (collectively "TCG") and for their Application for Rehearing pursuant to Sections 386.500 and 4 CSR 240-2.160 state to the Commission:

1. On June 27, 2002 the Commission issued its Report and Order in this case, wherein *inter alia* it rejected tariffs filed by Applicants and e.spire. The Report and Order bears an effective date of July 3, 2002.

2. Applicants seek rehearing of the Commission's Report and Order regarding the rejection of the tariffs filed by Applicants and e.spire. On rehearing, the Commission should reverse those portions of its decision and conclude instead that there is no factual or legal basis for a rejection of those tariffs. Accordingly, the Commission should reverse its rejection of the tariffs filed by Applicants and e.spire.

3. In its Report and Order, the Commission correctly concluded that it should reject tariffs proposed by SWBT that contain term discounts with term commitments greater than one year, for the same reasons that it rejected such proposed SWBT tariffs in Case No. TT-2002-108/TT-2002-130. (Report and Order, p. 11). The Commission correctly concluded that SWBT "continues to dominate the local exchange market in its exchanges." (Id). The Commission

correctly concluded, "the state of competition in the local exchange market is currently in a critical position." (Id p 12).

4. The Commission also correctly determined that CLECs such as Applicants and e.spire "are not in a position to dominate the marketplace for local exchange telecommunications services." (Id).

5. The Commission indicated in its Report and Order that it was rejecting CLEC term discount tariffs to protect the competitive process. It stated that the market "will operate most efficiently if potential customers are not locked into contracts extending for more than one year." (Id p 13). The Commission erroneously stated "this finding applies equally to long-term contracts created by the tariffs offered by the CLECs as it does to the long-term contracts created by SWBT's tariff." (Id). There was no evidence in the record that would support a finding or conclusion that CLECs' use of long-term arrangements have impaired (or will impair) the efficiency of the market.

6. The Commission's Report and Order would do more harm to the competitive process than would have resulted from approval of SWBT's tariffs. As Commissioner Forbis observed in his dissent, "this decision would deprive the CLECs of the best tool they have to try to establish their position in the competitive marketplace. The CLECs need long-term agreements to ensure that they retain their new customers long enough to justify the cost of establishing the necessary network connections to serve those customers. In addition, term agreements facilitate their efforts to access critical capital markets. Rather than preserving competition, therefore, this decision may instead make it harder for CLECs to compete." (Forbis Dissent).

7. The Commission's rejection of the CLEC tariffs is unlawful, unjust, unreasonable, arbitrary, capricious, and contrary to the public interest. No party presented evidence that use of long-term arrangements by CLECs poses any problem. Indeed, SWBT was the only party that advocated restriction of CLEC tariffs, and it did so only on a contingent basis and solely by means of an erroneous legal argument for equal treatment of unequal incumbents versus CLECs. Even SWBT conceded there was no issue regarding the merits of the CLECs' tariffs. Further, Staff and OPC supported the CLECs' tariffs. As Commissioner Forbis stated: "No evidence was presented to show that term agreement tariffs offered by CLECs could adversely affect the local exchange market." (Forbis Dissent).

8. The Commission ignored the fundamental nature of the local exchange market - SWBT as the incumbent has its ubiquitous network, paid for primarily as a result of its regulated monopoly operations, and started with all of the customers. CLECs remain new market entrants that must invest in new facilities and persuade customers to leave SWBT. This is the critical area of competition, which the Commission appropriately sought to protect by precluding SWBT from locking up customers. But the Commission then contradicted itself and acted contrary to the public interest by obstructing CLECs from making long-term arrangements that are indisputably essential to their entry, investments and marketing efforts. There was no evidence that subsequent competition between CLECs over customers that have chosen to switch from SWBT to a specific CLEC would proximately occur to any appreciable extent, whether or not CLECs could use long term arrangements. Nor was there any evidence to suggest that such competition among CLECs over their own customers would play a significant role in the competitive process in the foreseeable future. To the contrary, the Commission expressly found that CLECs still have relatively small market shares. On the other hand, all the evidence

indicated that CLECs could not succeed in persuading customers to leave SWBT without the ability to use long-term arrangements and the price concessions that accompany them. Further, the record unequivocally demonstrated that use of long term discounts by CLECs is essential and promotes the competitive process. The Commission expressly concluded "nearly all of the local exchange customers of the CLECs whose tariffs have been suspended are locked in to those CLECs by term agreements." (Report and Order p 12). Yet the Commission ignored the uncontroverted evidence that use of term agreements is a core component of the limited success CLECs have had to date in the local market.

9. The Report and Order reflects an overly simplistic, one-size-fits-all approach, that ignored a record that conclusively demonstrated that two different standards are necessary and proper, one for incumbents and one for new entrants (just like a variety of other regulations). The Commission must reconsider its decision and allow CLECs to use long-term discounts. Otherwise, instead of protecting the competitive process, it will substantially impair it, if not bring it to a grinding halt.

10. The Report and Order suffers from the same flaw as the Commission observed in SWBT's arguments about growth of CLEC market share. (Report and Order p. 12). Just as SWBT's witnesses could not determine whether CLECs would have done better had SWBT not been using long-term discounts, the Commission has no basis to assume that CLECs would not have done worse had they not been using long-term discounts. Likewise, just as the Commission concluded that the dire straits of the CLECs require a restriction against SWBT obstructing competition through long term arrangements, those same dire straits require the Commission to refrain from obstructing CLECs from competing by means of long term arrangements.

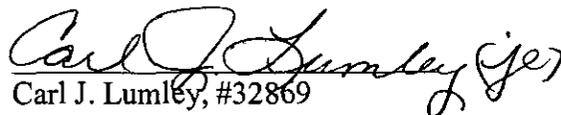
11. On rehearing, the Commission should reverse its decision rejecting the CLECs' tariffs. Such rejection was not supported by competent and substantial evidence as required by law. See, e.g. State ex rel Rice v. PSC, 220 SW2d 61, 64 (Mo. 1949). Further, there are not adequate or sufficient findings of fact and conclusions of law regarding the rejection of the CLECs' tariffs, contrary to the requirements of Chapter 386 and Section 536.090. The rejection of the CLECs' tariffs was unreasonable, unjust, unwarranted, arbitrary, capricious, unlawful, contrary to the public interest, and should be changed.

12. In further support hereof, Applicants incorporate by reference their Initial and Reply Briefs previously filed in this case.

WHEREFORE, Applicants apply for rehearing and further relief as requested herein.

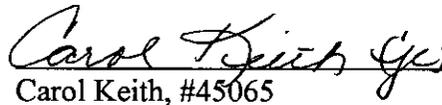
Respectfully submitted,

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



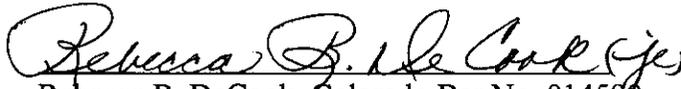
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**Certificate of Service**

A true and correct copy of the foregoing was served upon the parties identified on the attached service list on this 2nd day of July, 2002, by e-mail and by placing same in the U.S. Mail, postage paid.

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