

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 7th day of
May, 2008.

In the Matter of the Application of NuVox)
Communications of Missouri, Inc. for an)
Investigation into the Wire Centers that AT&T)
Missouri Asserts are Non-Impaired Under the)
TRRO.)

Case No. TO-2006-0360

**ORDER REGARDING APPLICATION FOR REHEARING
AND/OR RECONSIDERATION**

Issue Date: May 7, 2008

Effective Date: May 17, 2008

Syllabus: This order denies AT&T Missouri's request to the Missouri Public Service Commission to rehear its conclusion regarding the inclusion of collo-to-collo arrangements in the definition of fiber-based collocator. However, this order grants AT&T's request to the Commission to rehear its finding that AT&T's March 2005 wire center list was incorrect.

Background

On March 31, 2008 the Missouri Public Service Commission issued its Report and Order in this matter. In that order, the Commission concluded that a collocation-to-collocation arrangement does not satisfy the definition of a fiber-based collocator. The Commission's conclusion was based on its interpretation of the Federal Communications Commission's definition of a fiber-based collocator¹ and the arguments presented by the parties.

¹ 47 C.F.R. §51.5.

Consistent with this conclusion, the Commission determined that in March of 2005, AT&T did not correctly identify 14 wire centers as non-impaired.² The Commission's determination was based on its finding that NuVox Communications of Missouri, Inc. should not be counted as a fiber-based collocator in a particular wire center.³ Because NuVox was not counted as a fiber-based collocator, that particular wire center was not counted as a Tier 1 wire center. Under the definition of a Tier 1 wire center, the center must have at least four fiber-based collocators to meet the "non-impairment standard."⁴ NuVox's exclusion resulted in the wire center having only 3 fiber-based collocators.⁵ Hence, the Commission found that the March 2005 list was incorrect.

AT&T's Application

On April 9, 2008, AT&T Missouri filed its application for rehearing. In its application, AT&T requests that the Commission conclude that a collo-to-collo arrangement should be included in the definition of a fiber-based collocator. AT&T also asserts that even if the Commission does not accept the argument that a collo-to-collo arrangement should be included in the definition of a fiber-based collocator, the wire center in question should nonetheless be included as a Tier 1 wire center.

AT&T's assertion is best explained as follows: NuVox's arrangement with another carrier⁶ in the wire center necessitates that one of them be counted as a fiber-based collocator. Because the Commission has excluded NuVox, the second carrier must

² See Case No. TO-2006-0360, Report and Order, page 15.

³ The identity of the wire center is highly confidential information.

⁴ 47 C.F.R. §51.319(e)(3)(i).

⁵ See Exhibit 16, Direct Testimony of AT&T witness Carol Chapman, Attachment CAC-1 HC.

⁶ The identity of this carrier is highly confidential.

therefore be included. Including the second carrier would set the number of fiber-based collocators at four. This being so, the wire center should be a Tier 1 wire center having at least four fiber-based collocators.

Order Directing Filing

To better understand and examine AT&T's request with regard to the March 2005 wire center, the Commission issued an order directing NuVox and the Staff of the Commission to file pleadings informing the Commission of whether "the exclusion of NuVox inappropriately excluded the collocator with which NuVox has an arrangement."

Staff's Response

In its response to the Commission order directing filing, Staff points out the following from the record:

- NuVox, through a verified response to Staff, explains why it believes it should not be counted as a fiber-based collocator.⁷
- In the same response, NuVox states that it is likely that another carrier does qualify as a fiber-based collocator.
- AT&T's witness explains that the arrangement between NuVox and the other carrier is indicative of a fiber-based collocation arrangement.⁸
- CLEC witness Gillan admitted that if either NuVox or the other carrier is counted, then the criterion for the presence of a fiber-based collocator is met.⁹

Staff then goes on to recommend that the other carrier be counted as a fiber-based collocator.

⁷ Exhibit 22, Staff witness Scheperle Direct, HC Schedule 2C-28-29.

⁸ Exhibit 18, Carol Chapman Rebuttal.

⁹ Transcript, pages 222-23.

NuVox's Response

NuVox attacks the sufficiency of the evidence reflected in the verified response of its own witness, Mr. Cadieux, stating that he has no personal knowledge of the ownership, operation or network facilities of any carrier other NuVox. NuVox discusses the best evidence rule under Missouri law and concludes that “Mr. Cadieux’ affidavit is not direct record evidence that the carrier satisfies the FCC’s definition.”

NuVox further argues that although Joseph Gillan, a CLEC coalition witness, testified that [if either NuVox or the other carrier is counted in the wire center in question, then the presence of fiber-based collocators is met], this is not evidence that the other carrier is a “fiber-based” collocator. NuVox suggests that the Commission direct the carrier who would be counted to file a statement as to whether it is a fiber-based collocator.

Discussion

The only evidence on this issue indicates that the carrier *is* a fiber-based collocator. There is no evidence to the contrary. In addition to the points made by Staff, AT&T’s witness Mr. Nevels testified that there is fiber representing a fiber-based collocator in the wire center.¹⁰ Although NuVox argues that it is cross-connected to another carrier and is therefore not a fiber-based collocator, Mr. Nevels concludes that if NuVox is not counted as a fiber-based collocator then some other carrier must be counted. It is unnecessary, as NuVox has suggested, to require the other carrier verify its status because there is sufficient evidence in the record to support AT&T’s assertion.

In light of the above, the Commission has revisited and will change its finding with regard to the wire center in question. Consequently, the Commission must change its finding on the issue of whether the March 2005 wire center list is correct, but need not

¹⁰ Tr. page 175, lines 1-5, 9-17.

address the conclusion that collo-to-collo arrangements are not included in the definition of a fiber-based collocator because AT&T has presented nothing new for the Commission to consider.

IT IS ORDERED THAT:

1. AT&T Missouri's application for rehearing is denied on the issue of whether collo-to-collo arrangement should be included in the definition of a fiber-based collocator.

2. AT&T Missouri's application for rehearing is granted on the issue on whether AT&T correctly identified, in March of 2005, 14 wire centers as non-impaired under the Tier 1 wire center criteria for dedicated interoffice transport facilities.

3. The Commission finds that AT&T correctly identified 14 wire centers as non-impaired under the Tier 1 wire center criteria for dedicated interoffice transport facilities.

4. This order shall become effective on May 17, 2008.

5. This case may be closed on May 18, 2008.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Clayton,
Jarrett, and Gunn, CC., concur.

Jones, Senior Regulatory Law Judge