

# 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 )  
Missouri Asserts are Non-Impaired Under )  
the TRRO. )

**Case No. TO-2006-0360**

### **ORDER REGARDING PROCEDURAL PROCESS**

Issue Date: August 29, 2006

Effective Date: August 29, 2006

During a prehearing conference, the parties raised the issue of whether this matter should be procedurally bifurcated. The first phase would be for the purpose of interpreting the relevant portions of federal law and the Federal Communications Commission's Triennial Review Remand Order.<sup>1</sup> The second phase would be to determine, based on the Commission's interpretation of the law in the first phase, the wire centers in Missouri that AT&T is no longer required to provide access to unbundled high-capacity loops or dedicated transport. Thereafter, the Staff of the Commission and AT&T each filed a pleading briefing this issue. Likewise, NuVox Communications of Missouri, Inc. and McLeodUSA Telecommunications Services, Inc.<sup>2</sup> filed a joint pleading.

AT&T argues that the proceeding should be bifurcated because bifurcation would be more efficient in that resolution of legal issues in the first phase would eliminate the need for resolution of issues in second phase. Also, AT&T contends that bifurcation would

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<sup>1</sup> *In the Matter of Unbundled Access to Network Elements*, WC Docket 04-313 and *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, 20 FCC Rcd 2533 (2005).

<sup>2</sup> CLEC Coalition.

facilitate proper management of discovery because parties would only seek information relevant to each phase. AT&T reasons that information relevant only to the second phase may not be needed after issues from the first phase have been resolved. Finally, AT&T expressed concern about highly confidential information being unnecessarily sought after.

The Staff of the Commission is concerned that it is unable to obtain discovery of information that AT&T asserts is only relevant to the second phase.

The CLEC Coalition points out that the bifurcated process, implemented in other states, has not resulted in a more expeditious resolution. Further, the bifurcated process adds unnecessary layers of complication and impedes discovery of relevant facts. Additionally, the bifurcated process results in discovery disputes concerning what information should be included in each phase.

## **Discussion**

The Commission is not convinced that a bifurcated process would be more efficient. As evidenced by Staff's pleading, discovery disputes have already hindered progress in this matter. Further, this matter is no different than any other case in that there are legal and factual issues. The Commission is further persuaded by the CLEC Coalition's assertion that the bifurcated process, as implemented in other states, has not proven to be more efficient. Furthermore, a single-phase process will allow those parties, other than AT&T, to gather information and apply their perspective interpretations of law just as is in any case before the Commission.

For that matter, the parties may agree with AT&T's conclusions regarding wire centers, obviating the need for this docket. This is an investigation. No party has asserted that AT&T's conclusions are flawed. Lastly, AT&T has expressed concern over the highly

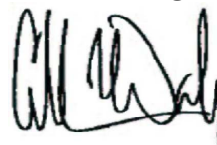
confidential nature of its information. The Commission points out that a protective order has been issued.

To further this matter, the Commission will require that Staff file a status report. Staff has noted that it has had difficulty getting information from AT&T. This hinders the investigation. As pointed out by Staff, AT&T's resistance to discovery was premised on this matter proceeding in two phases. Because the Commission will require that this matter proceed in one phase, AT&T has no apparent reason for resisting discovery. Staff's report shall therefore center on AT&T's cooperation with discovery requests.

**IT IS ORDERED THAT:**

1. This matter shall not be bifurcated, but shall proceed in one phase with fact and law being considered together.
2. The Staff of the Commission shall file no later than September 12, 2006, a status report as described in the body of this order.
3. This order shall become effective on August 29, 2006.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale  
Secretary

( S E A L )

Kennard L. Jones, Senior Regulatory  
Law Judge, by delegation of authority  
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 29th day of August, 2006.