

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

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| NUVOX COMMUNICATIONS |) | |
| OF MISSOURI, INC., et al., |) | |
| |) | |
| V. |) | Case No. TC-2004-0600 |
| |) | |
| SOUTHWESTERN BELL |) | |
| TELEPHONE, L.P. D/B/A |) | |
| SBC MISSOURI. |) | |

WITHDRAWAL OF MOTION FOR EXPEDITED TREATMENT

COME NOW NuVox Communications of Missouri, Inc. ("NuVox"), Victory Communications, Inc. ("Victory"), Socket Telecom, LLC, ("Socket"), MCImetro Access Transmission Services, LLC ("MCImetro"), The Pager Company d/b/a The Pager & Phone Company ("PagerCo"), Birch Telecom of Missouri, Inc. ("Birch"), Xspedius Communications, LLC ("Xspedius"), AT&T Communications of the Southwest, Inc. ("AT&T"), TCG St. Louis, Inc. and TCG Kansas City, Inc. ("TCG")(collectively herein "Joint CLECs"), pursuant to 4 CSR 240-2.080(20) and withdraw their Motion for Expedited Treatment. In connection therewith Joint CLECs state to the Commission as follows:

1. On June 8, 2004 Joint CLECs filed their complaint herein. Similar pleadings were filed with utility commissions in other states across the country - and in particular in other states in which SBC operates - both before and after that date by complainants herein and/or other CLECs.
2. At least partly as a result of the pressures created by the filing of such pleadings with state commissions, SBC issued a letter to the FCC and an accessible letter to CLECs setting forth certain commitments that SBC purports to extend to CLECs and regulators. In its June 9, 2004 letter to the FCC, SBC states that "SBC will continue providing to our wholesale customers the mass market UNE-P, loops and high-capacity transport between SBC's offices and will not unilaterally

increase the applicable state-approved prices for these facilities at least through the end of this year." SBC also states in the letter to the FCC that its intent is to provide assurance "that there will be no marketplace disruption." A copy of SBC's letter is filed herewith.

3. In its June 10, 2004 accessible letter (CLECALL04-095), SBC states that its "commitment means that SBC will continue providing to our wholesale customers mass-market UNE-P, DS1 and DS3 loops, and DS1 and DS3 dedicated transport between SBC central offices, and will not unilaterally increase the applicable state-approved prices for these facilities through December 31, 2004." A copy of the accessible letter is filed herewith.

4. These commitments still leave unanswered certain key questions, for which CLECs are seeking answers by various means, including in connection with formal regulatory proceedings such as in Texas. As an example, a copy of a letter seeking clarification in Texas is filed herewith. These questions concern matters that SBC does not specifically address in its new commitments as well as various qualifications that SBC places upon its commitments. For example, SBC qualifies its commitments in several ways in its accessible letter (that it did not state in its letter to the FCC), by stating that "of course, those TELRIC rates are otherwise subject to change in accordance with the provisions of each CLEC's interconnection agreement" and "of course SBC reserves any and all rights to challenge the lawfulness of any requirement to provide those facilities, along with their associated rates."

5. Obviously, SBC's most recent communications came after the filing of the Complaint and, therefore, were not available to Joint CLECs as they made their decision that it was necessary to seek immediate orders of protection from this Commission. In reliance upon SBC's latest commitments to prevent marketplace disruption, and notwithstanding the remaining questions that surround SBC's commitments, Joint CLECs have now concluded that they are able to withdraw their

Motion for Expedited Relief. It appears from SBC's representations that the Commission will not need to issue any expedited orders to preserve the status quo prior to June 15, 2004 or immediately thereafter.

6. However, significant disputes remain to be resolved in this proceeding on a more normal case schedule. Specifically, as demonstrated in the Complaint SBC has no right to make any unilateral changes in the unbundled elements that it provides under the M2A or the rates for such elements. SBC's latest commitments only run through the end of the year, whereas its M2A commitments to CLECs and this Commission run at least through March 6, 2005 (and beyond if the agreement is extended or negotiations to replace it are underway). While it remains unclear what SBC intends to do at the beginning of 2005, its threats to take unilateral action in violation of the M2A continue to cast doubt and uncertainty upon its dealings with Joint CLECs. Additionally, SBC has left itself room to take adverse unilateral action prior to the end of the year, including with regard to non-mass market UNE-P (however SBC defines that). And SBC has gone so far as to suggest that its commitment against price increases does not foreclose it from attempting to impose retroactive trueups. As a way to provide certainty, the Commission should join other state commissions in making certain that SBC does not violate its commitments under its interconnection agreements.

7. The Commission has already served the complaint and notice upon SBC and directed it to respond. While it appears that expedited action is not currently required, the Joint CLECs request that the Commission remain ready to issue orders to preserve the status quo as the facts continue to unfold, and in particular as the year draws to an end. In the meantime, the Joint CLECs also request that the Commission:

(1) promptly set a prehearing conference and a deadline to file a procedural schedule, so that this case may proceed to hearing;

(2) after further proceedings herein, determine that SBC must continue to full its obligations under the M2A to provide UNEs at TELRIC prices;

(3) direct SBC not to take any steps to alter or terminate the provision of any unbundled network element services to Joint CLECs (including a directive to continue processing of any new or change orders in due course), or to change the prices for such elements, until such time as the FCC or this Commission affirmatively determines that a UNE need no longer be provided or successor interconnection agreements are filed with and approved by the Commission, whichever occurs first; and

(4) grant such other and further relief to Joint CLECs as the Commission deems just and proper in the premise.

WHEREFORE, in reliance upon SBC's most recent commitments not to take action to disrupt services and prices under its interconnection agreements, Joint CLECs respectfully withdraw their Motion for Expedited Treatment and request that the Commission proceed with its handling of the Complaint in this case.

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

/s/ Carl J. Lumley

Carl J. Lumley, #32869
Leland B. Curtis, #20550
130 S. Bemiston, Suite 200
St. Louis, Missouri 63105
(314) 725-8788
(314) 725-8789 (FAX)
clumley@lawfirmemail.com
lcurtis@lawfirmemail.com

Attorney for NuVox Communications
of Missouri, Inc., Socket Telecom, LLC, Victory
Communications, Inc., MCImetro Access Transmission
Services, LLC, , AT&T Communications of the Southwest,
Inc., TCG St. Louis, Inc. and TCG Kansas City, Inc.

CASEY & GENTZ, L.L.P.

/s/ Bill Magness (By Carl J. Lumley)

Bill Magness, #12824020
Susan C. Gentz, #07803500
Valerie P. Kirk, #11516900
919 Congress Avenue, Suite 1060
Austin, Texas 78701
512-480-9900
512-480-9200 (FAX)
bmagness@phonelaw.com

Attorneys for Birch Telecom of Missouri, Inc.,
Xspedius Communications, LLC, NuVox Communications
Of Missouri, Inc.

WILLIAM D. STEINMEIER, P.C.

/s/ William D. Steinmeier (By Carl J. Lumley)

William D. Steinmeier, #25689
Mary Ann (Garr) Young, #27951
2031 Tower Drive
P.O. Box 104595
Jefferson City, Missouri 65110-4595
573-659-8672
572-636-2305 (FAX)
wds@wdspc.com
myoung0654@aol.com

Attorneys for PagerCo and Xspedius Communications, LLC

NEWMAN, COMLEY & RUTH

/s/ Mark W. Comley (By Carl J. Lumley)

Mark W. Comley, #28847
601 Monroe Street, Suite 301
P.O. Box 537
Jefferson City, Missouri 65102-0537
(573) 634-2266
(573) 636-3306 (FAX)
comleym@ncrpc.com

ATTORNEYS FOR BIRCH TELECOM OF MISSOURI,
INC.

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was e-mailed this 14th day of June, 2004,
to:

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102
gencounsel@psc.state.mo.us

Office of Public Counsel
P.O. Box 2230
Jefferson City, Missouri 65102
opcservice@ded.state.mo.us

Legal Department
Southwestern Bell Telephone Co., L.P.
d/b/a SBC Missouri
One Bell Center, Room 3520
St. Louis, Missouri 63101
paul.lane@sbc.com

/s/ Carl J. Lumley
