

**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)	Case No. TO-2006-0360
Missouri Asserts are Non-Impaired Under the)	
TRRO)	

STAFF’S PREHEARING BRIEF

COMES NOW the Staff of the Missouri Public Service Commission for its prehearing brief states:

Introduction

NuVox Communications of Missouri, Inc., filed an application for an investigation into the wire centers that AT&T Missouri asserts are non-impaired under the Federal Communications Commission’s Triennial Review Remand Order (TRRO).

Federal statute 47 U.S.C 251(d) directs the FCC to establish regulations that determine what network elements an incumbent local exchange carrier has the duty to provide access to on an unbundled basis. The statute directs the FCC to consider whether the failure to provide access to such network facilities would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.

The TRRO, which was the FCC’s fourth attempt to establish such regulations, was affirmed on appeal. In the TRRO, the FCC established non-impairment triggers which count the number of fiber-based collocators and/or the number of business access lines present in a specific wire center. If the non-impairment trigger is met, then the incumbent local exchange carrier, here AT&T Missouri, is no longer required to provide nondiscriminatory access to certain high capacity loops and/or dedicated interoffice transport facilities on an unbundled basis.

The Commission joined AT&T Missouri as a party and granted intervention to XO Communications, Inc., and McLeodUSA Telecommunications Services, Inc. AT&T Missouri, the CLEC Coalition, and the Staff filed direct testimony. AT&T Missouri and the CLEC Coalition filed rebuttal testimony. This brief will address the issues as set forth in the jointly proposed list of issues.

Argument

Issue A. Business Line Count Issues:

(1) Should the Business Line count include all UNE-L lines or only

UNE-L lines used to provide switched service to business end users?

The Business Line count should include all UNE-L lines. FCC Rule 47 CFR 51.5 defines the number of business lines in a wire center as “the sum of all incumbent LEC business switched access lines, plus the sum of all UNE loops connected to that wire center.” The rule does not use the word business to modify UNE loops. Additionally, Paragraph 105 of the TRRO states, “The BOC wire center data that we analyze in this order is based on ARMIS 43-08 business lines, plus business UNE-P, plus UNE loops.” The order does not use the word business to modify UNE loops. (Scheperle Direct, p. 12).

(2) Should the Business Line Count for digital UNE-L be based on the

loop's capacity or on the loop's usage?

The Business Line Count for digital UNE-L should be based on the loop's capacity. FCC Rule 47 CFR 51.5 states that “business line tallies shall account for ISDN and other digital access lines by counting each 64 kbs-equivalent as one line. For example, a DS1 line corresponds to 24 64 kbs-equivalents, and therefore to 24 business lines.” (Scheperle Direct, p. 10).

(3) On what vintage of data should the Business Line counts supporting the wire center designations rely?

The Staff agrees with the rebuttal testimony of AT&T Missouri witness Chapman (pp. 32-33) that the Business Line counts should be from December 2003, which were the latest data available when the wire center designations went into effect in March 2005. (Also, Scheperle Direct, Schedule 4 and Schedule 7)

Issue B. Fiber-Based Collocator Issues:

(1) Does the definition of Fiber-based Collocator include collo-to-collo arrangements in which the connecting carrier establishes service without providing optronics for fiber that leaves the wire center?

Yes. A collocation-to-collocation, or “collo-to-collo,” arrangement is where a carrier collocated at an ILEC’s wire center does not own the transport facility it uses to send traffic out of the wire center, but rather, leases capacity on another collocated carrier’s facilities. (Nevels Direct, p.10). A carrier need not own optronics in order to “operate” a transmission facility. Instead, the carrier has multiplexing equipment that aggregates traffic and transmits it over a coaxial cable at a DS-3 level of transmission. The carrier makes engineering and market entry decisions. (Nevels Rebuttal, p. 7) The Staff agrees with AT&T Missouri that the cross-connected carrier “maintains a collocation arrangement” and “operates a fiber-optic cable or comparable transmission facility” within the meaning of FCC Rule 47 CFR 51.5 even if that carrier does not provide the optronics for that fiber. However, in connection with the AT&T/Bell South merger, AT&T committed that for 42 months it would not count both carriers in the above scenario as fiber-based collocators. (Nevels Direct, pp. 10-11).

(2) How should the term "comparable transmission facility" be defined?

The Commission need not define “comparable transmission facility.” FCC Rule 47 CFR 51.5 defines, in relevant part, a fiber-based collocator as any carrier, unaffiliated with the incumbent LEC, that operates a fiber-optic cable or “comparable transmission facility.” Whether a carrier operates a comparable transmission facility is a factual determination that should be undertaken on a case-by-case basis. Such a determination is the focus of the following issue.

(3) Should NuVox be counted as a Fiber-based Collocator in the locations specified by AT&T Missouri?

Yes. NuVox should be counted as a fiber-based collocator in the **HC _____ HC** In its verified response to the Staff, NuVox explains why it believes it should not be counted as fiber-based collocator. (See Scheperle Direct, HC Schedule 2C-28 and 29) While NuVox may not be a fiber-based collocator in and of itself, the highly confidential arrangement described in its verified response to the Staff is indicative of a fiber-based collocation arrangement as explained in the rebuttal testimony of AT&T Missouri witness Chapman (pp. 69-71) The Staff concurs with AT&T Missouri witness Chapman that the NuVox collocation arrangement meets the definition of a fiber-based collocator.

Issue C. In March 2005, AT&T Missouri identified fourteen wire centers (Hiland, Westport, McGee, Springfield McDaniel, Springfield Temple, Chestnut, Jefferson, Ladue, Creve Coeur, Springfield Tuxedo, Parkview, Prospect, Kirkwood, and Bridgeton) as Tier 1 wire centers. The non-impairment criteria for dedicated interoffice transport facilities for a Tier 1 wire center is that the wire center has at least four fiber-based collocators or at least 38,000 business access lines, or is a tandem switching location with no line-side switching facilities but serving as a point of traffic aggregation accessible by CLECS. Did AT&T Missouri correctly identify these fourteen wire centers as non-impaired under the Tier 1 wire center criteria for dedicated interoffice transport facilities?

Yes. The Staff mailed letters requesting affidavit verification from all CLECs identified by AT&T as fiber-based collocators. The CLEC was asked to confirm or deny that it is a fiber-based collocator in the specified wire center and was also asked to provide its business line count in the specified wire center. Prior to application of the SBC/AT&T merger commitments, thirteen of the fourteen wire centers were correctly identified as non-impaired because they have four or more fiber-based collocators. The fourteenth wire center, Springfield Temple, meets the definition for a tandem switching center location; thus it was also correctly identified as non-impaired. (Scheperle Direct, pp. 6-8, Schedule 2A, 2B-HC, 2C-HC). In accordance with the SBC/AT&T merger commitments made to the FCC, AT&T Missouri revised its list of wire centers to exclude the fiber-based collocations of the pre-merger AT&T (or its affiliates) from the fiber-based collocator counts. As a result, AT&T Missouri properly re-classified five of these wire centers (Springfield Tuxedo, Parkview, Prospect, Kirkwood and Bridgeton) as Tier 2 wire centers. (Chapman Direct, pp. 14-18). Such reclassification is the focus of Issue D.

Issue D. As a result of a merger commitment associated with the SBC/AT&T merger, in December 2005, AT&T Missouri re-classified five of these wire centers (Springfield Tuxedo, Parkview, Prospect, Kirkwood and Bridgeton) as Tier 2 wire centers. The non-impairment criteria for dedicated interoffice transport facilities for a Tier 2 wire center is that the wire center has at least three fiber-based collocators or at least 24,000 access lines. Has AT&T Missouri correctly identified these five wire centers as non-impaired under the Tier 2 wire center criteria for dedicated interoffice transport facilities?

Yes. The Staff mailed letters requesting affidavit verification from all CLECs identified by AT&T as fiber-based collocators. The CLEC was asked to confirm or deny that it is a fiber-based collocator in the specified wire center and was also asked to provide its business line count in the specified wire center. The Parkview, Prospect, Kirkwood, and Bridgeton wire centers

each have at least three fiber-based collocators. The presence of three-fiber based collocators in the Springfield Tuxedo wire center may be disputed by the CLECs, but this wire center meets the definition of a Tier 2 wire center because it has at least 24,000 business lines. (Scheperle Direct, pp. 9-10, Schedule 2, 3, 4HC)

Issue E. In March 2005, AT&T Missouri identified three wire centers (McGee, Chestnut and Ladue) as non-impaired for DS3 capacity loops. The non-impairment criteria for DS3 capacity loops is that the wire center has at least four collocators and at least 38,000 business lines. Did AT&T correctly identify these three wire centers as non-impaired under the criteria for DS3 capacity loops?

Yes. The Staff mailed letters requesting affidavit verification from all CLECs identified by AT&T as fiber-based collocators. The CLEC was asked to confirm or deny that it is a fiber-based collocator in the specified wire center and was also asked to provide its business line count in the specified wire center. Each of these three wire centers has four or more fiber-based collocators and at least 38,000 business lines. (Scheperle Direct, pp. 14-15, HC Schedules 6A, 6B, 7).

Issue F. Should the Commission approve a separate wire center list applicable to the period between March 2005 and December 2005?

Yes. On March 11, 2005 (the effective date of the TRRO), AT&T Missouri identified fourteen wire centers (Hiland, Westport, McGee, Springfield McDaniel, Springfield Temple, Chestnut, Jefferson, Ladue, Creve Coeur, Springfield Tuxedo, Parkview, Prospect, Kirkwood, and Bridgeton) as Tier 1 wire centers. In accordance with the SBC/AT&T merger commitments made to the FCC, AT&T Missouri revised its list of wire centers to exclude the fiber-based collocations of the pre-merger AT&T (or its affiliates) from the fiber-based collocator counts. As a result, AT&T Missouri re-classified five of these wire centers (Springfield Tuxedo,

Parkview, Prospect, Kirkwood and Bridgeton) as Tier 2 wire centers. (Chapman Direct, pp. 14-18).

Conclusion

WHEREFORE, the Staff requests the Commission to affirm AT&T Missouri's lists of non-impaired wire centers.

Respectfully submitted,

/s/ William K. Haas
William K. Haas
Deputy General Counsel
Missouri Bar No. 28701

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-7510 (Telephone)
(573) 751-9285 (Fax)
william.haas@psc.mo.gov

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 7th day of May 2007.

/s/ William K. Haas
William K. Haas