

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**

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

**NOTICE OF VOLUNTARY DISMISSAL OF COMPLAINT**

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 240-2.116(1) and provide their Notice of Voluntary Dismissal of Complaint. 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. Joint CLECs were compelled to file such complaints by SBC's threats to unilaterally and abruptly change the manner in which it provided UNEs to Joint CLECs, without regard to contractual commitments, upon the issuance of the mandate of the D.C. Circuit Court of Appeals regarding the FCC's TRO.

2. At least partly as a result of the pressures created by the filing of such complaints

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 has been previously filed herein.

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 has been previously filed herein.

4. Subsequently, SBC has "clarified" these communications on these subjects, generally with the effect of diluting them and creating more uncertainty. Moreover, SBC remains unwilling to accept responsibility for creating significant uncertainty and concerns among Joint CLECs by means of its threats and incomplete and ambiguous retractions. Nonetheless, it now appears that as a result of the complaints filed against it and other pressures, SBC has backed off from its threats to unilaterally and abruptly walk away from its contractual commitments. In particular, SBC has committed to this Commission that it will "take no precipitous action now that the D.C. Circuit's mandate has issued." (Response of SBC Missouri to Complaint and Request for Immediate Orders, pages 2 and 5).

5. In point of fact, 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 M2A commitments to

Joint 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). Accordingly, Joint CLECs will file a new Complaint with the Commission in the event SBC resurrects its threats to violate these commitments and disrupt Missouri telecommunications. But for now, it appears that the Complaint may be dismissed.

WHEREFORE, Joint CLECs respectfully provide their Notice of Voluntary Dismissal.

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@wdspe.com  
myoung0654@aol.com

Attorneys for PagerCo and Xspedius Communications, LLC

NEWMAN, COMLEY & RUTH

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](mailto: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 19th day of July, 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

---