

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of)	
NuVox Communications of Missouri, Inc. for)	
an Investigation into the Wire Centers that)	Case No. TO-2006-0360
AT&T Missouri Asserts are Non-Impaired)	
Under the TRRO.)	

**CLEC COALITION RESPONSE TO ORDER
DIRECTING FILING OF STATUS REPORT**

COME NOW NuVox Communications of Missouri, Inc. (“NuVox”), XO Communications Services, Inc. (“XO”), and McLeodUSA Telecommunications Services, Inc. (“McLeodUSA”) (collectively, “CLEC Coalition”) and file the status report “advising the Commission of any timelines, goals, contemplated hearings, etc., in this matter” required by the Order Directing Filing issued on January 4, 2007.¹

Counsel for the CLEC Coalition consulted with counsel for AT&T Missouri and Commission Staff prior to preparing this status report. The consensus among the active parties is that a procedural schedule leading to a hearing and Commission decision should be established for this proceeding. The CLEC Coalition requests that the Commission convene a telephonic prehearing conference in the near future to discuss a procedural schedule for subsequent submittal and approval.

The inactivity in this case in recent months has primarily resulted from the Federal Communications Commission’s (“FCC”) consideration of the merger of AT&T and BellSouth. In

¹ The Commission’s January 4, 2007 Order contemplated a response from NuVox because NuVox originally initiated the docket. Since the case began, CLECs similarly situated to NuVox have joined together in the “CLEC Coalition” group for purposes of this docket. This filing serves as a status report from NuVox and the other members of the CLEC Coalition.

the FCC's merger proceeding, AT&T proposed (and the FCC adopted)² a set of "merger commitments" that affect the issues in this case.³ In particular, AT&T committed to:

[R]ecalculate its wire center calculations for the number of business lines and fiber-based collocations and, for those that no longer meet the non-impairment thresholds established in 47 CFR § 51.319(a) and (e), provide appropriate loop and transport access. In identifying wire centers in which there is no impairment pursuant to 47 CFR § 51.319(a) and (e), the merged entity shall exclude the following ... entities that do not operate (*i.e.*, own or manage the optronics on the fiber) their own fiber into and out of their own collocation arrangement but merely cross-connect to fiber-based collocation arrangements⁴

AT&T's merger commitments apply "for a period of forty-two months from the Merger Closing Date and would automatically sunset thereafter."⁵

One of the disputed issues in this case is whether under the FCC's regulations at 47 CFR § 51.319(a) and (e) "entities that do not operate (*i.e.*, own or manage the optronics on the fiber) their own fiber into and out of their own collocation arrangement but merely cross-connect to fiber-based collocation arrangements" should ever count as meeting the definition of "fiber-based collocators" ("FBC"). The CLEC Coalition believes, and all but one state commission addressing the matter in the AT&T region have ruled, that CLECs that are merely cross-connected to fiber-based collocation arrangements cannot themselves be counted as FBCs under the FCC's rules. AT&T Missouri takes the contrary position that the FCC's rules permit such carriers to be counted as FBCs.

Given the clarity of AT&T's merger commitment, , the CLEC Coalition believed that the adoption by the FCC of the merger commitment on the FBC issue would obviate the need for the

² The FCC issued a News Release on December 29, 2006 announcing its approval of the merger, but as yet has not issued the formal order. The News Release can be viewed at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-269275A1.pdf

³ The merger commitments adopted by the FCC are detailed in an ex parte filing by AT&T dated December 28, 2006. See Letter from Mr. Robert W. Quinn, Jr., AT&T Senior Vice-President – Federal Regulatory, *In the Matter of Review of AT&T Inc. and BellSouth Corp. Application For Consent to Transfer of Control*, WC Docket No. 06-74 (December 28, 2006).

⁴ *Id.* at 3.

⁵ *Id.* at 1.

parties to seek a ruling from the Commission on their disagreement about the proper interpretation of the FCC's rules. Since the AT&T/BellSouth merger closed, it has become clear that this is not the case. AT&T takes the position that its recent merger commitment does not reflect a change in its legal position on the inclusion in its wire center calculations of carriers merely cross-connected to fiber-based collocation arrangements. Therefore, without a ruling from the Commission, AT&T Missouri would not remove from its counts the cross-connected carriers it has counted to date. In addition, in wire center calculations conducted after the expiration of the merger commitment, AT&T Missouri currently intends to revert to use of a methodology that includes cross-connected carriers to reduce the availability of unbundled network elements.

Companies represented in the CLEC Coalition are disputing AT&T's interpretations of the merger commitments in other proceedings. For purpose of this proceeding, however, the salient fact is that the question of whether merely cross-connected carriers constitute "fiber-based collocators" under the FCC's rules is a live issue in need of Commission resolution. The parties also have not resolved disputes regarding AT&T Missouri's methodology for applying the "Business Line" definition in the FCC's rules. The Commission's resolution of that issue could shift the number of wire centers that AT&T claims are "de-listed" for provision of high-capacity transport or loops.

The efforts to confirm AT&T Missouri's counts of Business Lines and FBC undertaken by Commission Staff have provided valuable data that will serve to narrow the factual disputes about the accuracy of AT&T's count of de-listed wire centers in Missouri. Examination of responses to Staff's request for affidavits from companies identified by AT&T as FBC will permit the parties to identify in their testimony which wire centers will be affected by the Commission's determination of the proper interpretation of the FCC's rules. Moreover, AT&T's responses to discovery requests

from the CLEC Coalition will provide useful information that should narrow the factual disputes presented to the Commission.

The CLEC Coalition appreciates the Commission's attention to this matter, and respectfully requests that the Commission convene a telephonic prehearing conference for purposes of developing a procedural schedule for completion of this case in a timely manner.

Respectfully submitted,

/s/ Carl J. Lumley

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was served upon the attorneys for all parties on the following list by either U.S. Mail, fax, or email on this 1st day of February, 2007.

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