

**BEFORE MISSOURI THE PUBLIC SERVICE COMMISSION**

In the Matter of a Commission Inquiry into     §  
the Possibility of Impairment without         §  
Unbundled Local Circuit Switching When     §  
Serving the Mass Market                     §

Case No. TO-2004-0207

**NUVOX COMMUNICATIONS OF MISSOURI INC.'S RESPONSE TO SBC'S  
RESPONSE TO ORDER DIRECTING FILING**

Comes Now NuVox Communications of Missouri, Inc. ("NuVox") pursuant to Commission order herein and 4 CSR 240-2.080(15) and for its Response to SBC Missouri's ("SBC's") Response<sup>1</sup> to Order Directing Filing respectfully states to the Commission as follows.

NuVox is a switch and collocation-based local telecommunications and data provider with operations in thirteen states. NuVox serves business customers in the Saint Louis, Springfield, and Kansas City metropolitan areas of Missouri using its own switches and unbundled loops from the ILEC plus unbundled dedicated transport from the ILEC and other carriers. As such, NuVox's main areas of concern in the Triennial Review proceedings are SBC's assertions regarding non-impairment for unbundled loops and transport.

**I. Response to Impairment Issues**

NuVox respectfully offers the following responses to the impairment issues that the Commission identified in Paragraph 8 of its Order Creating Case and Establishing Initial Filing Deadlines:

- a. The incumbent local exchange carrier's ("ILEC's") proposal for geographically defining the market;

NuVox does not intend to take an active role in arguing this issue before the Commission.

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<sup>1</sup> To the extent CenturyTel's Response overlaps SBC's Response, NuVox's position is the same.

- b. The ILEC's proposal for defining the appropriate DS0/DS1 cross-over between the mass market and the enterprise market;

NuVox does not intend to take an active role in arguing this issue before the Commission.

- c. The geographic areas where the ILEC will be challenging impairment based on its response to Nos. 1 and 2;

NuVox does not intend to take an active role in arguing this issue before the Commission.

- d. The competitor(s) that the ILEC asserts satisfies the impairment triggers for mass market switching in each geographic market;

NuVox does not intend to take an active role in arguing this issue before the Commission.

However, NuVox does not believe that it would be appropriate to include it on such a list of competitors.

- e. The specific routes where the ILEC will be challenging the finding of impairment for dedicated transport;

SBC has failed to meet its burden for challenging the FCC's national impairment finding for dedicated transport for the routes that SBC identified in its November 12<sup>th</sup> filing.

Specifically, SBC alleges without proper evidentiary support or explanation that the FCC's triggers have been met in the specified routes. SBC's pleading is ambiguous as to the specific relief that it seeks (i.e. SBC has improperly lumped together different types of transport that are subject to different standards under the FCC's order). Therefore, NuVox respectfully urges the Commission to affirm the FCC's finding that CLECs are impaired without access to dedicated transport in Missouri.

SBC has also attempted to reserve its right to supplement its list of specific dedicated transport routes based upon information obtained in discovery or as a result of further analysis. NuVox objects to this request. If SBC is permitted to add additional dedicated transport routes to its non-impairment list throughout the entirety of this case, due process dictates that the other

parties be provided additional time to evaluate and prepare a response to SBC's revised list. It would be impossible for the Commission to set forth and control a procedural schedule in the nine month time frame required by this case if such schedule had to be constantly modified to accommodate the parties' due process rights to challenge additional routes identified by SBC.

- f. The identity of the competitor(s) that the ILEC asserts satisfies the impairment triggers for dedicated transport; and

SBC fails to provide proper evidentiary support to establish that competitors satisfy the FCC's impairment triggers in the specified routes. For example, SBC fails to identify carriers for the specified routes. (A general list of carriers that allegedly provide transport in Missouri is insufficient.) Therefore, the FCC's national impairment finding for dedicated transport applies in Missouri.

- g. The specific customer locations where the ILEC will be challenging the finding of impairment for enterprise loops.

SBC has failed to meet its burden for challenging the FCC's national impairment finding for enterprise loops for the customer locations that SBC identified in its November 12<sup>th</sup> filing. Specifically, SBC alleges without proper evidentiary support that the FCC's triggers have been met in the specified customer locations. SBC's pleading is ambiguous as to the specific relief that it seeks (i.e. SBC has improperly lumped together different types of loops that are subject to different standards under the FCC's order). Additionally, SBC fails to identify carriers for the specified locations. Therefore, NuVox respectfully urges the Commission to affirm the FCC's finding that CLECs are impaired without access to enterprise loops in Missouri.

As was the case with dedicated transport noted above, SBC has also attempted to reserve its right to supplement its list of customer locations based upon information obtained in discovery or as a result of further analysis. NuVox objects to this request. If SBC is permitted to add additional customer locations to its non-impairment list throughout the entirety of this case,

due process dictates that the other parties be provided additional time to evaluate and prepare a response to SBC's revised list. It would be impossible for the Commission to set forth and control a procedural schedule in the nine month time frame required by this case if such schedule had to be constantly modified to accommodate the parties' due process rights to challenge additional customer locations identified by SBC.

NuVox reserves the right to respond to any change in position presented by SBC under the various reservation of rights found throughout SBC's Response. Further, given the high-level perspective offered by the legal conclusions in SBC's Response, NuVox reserves the right to respond to any more specific arguments that may be presented.

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

/s/ Carl J. Lumley

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Carl J. Lumley, #32869  
Leland B. Curtis, #20550  
130 S. Bemiston, Suite 200  
Clayton, Missouri 63105  
(314) 725-8788  
(314) 725-8789 (FAX)  
[clumley@cohgs.com](mailto:clumley@cohgs.com)  
[lcurtis@cohgs.com](mailto:lcurtis@cohgs.com)

Carol Keith  
Director- Regulatory and Public Affairs  
NuVox Communications of Missouri, Inc.  
16090 Swingley Ridge Rd., Suite 500  
Chesterfield, MO 63017  
636-537-7337  
636-728-7337 (Facsimile)  
[ckeith@NuVox.com](mailto:ckeith@NuVox.com)

Attorneys for NuVox Communications of Missouri, Inc.

**Certificate of Service**

A true and correct copy of the foregoing was served upon the parties identified on the attached service list on this 17th day of November, 2003, by placing same in the U.S. Mail, postage paid.

/s/ Carl J. Lumley

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Dana K. Joyce  
P.O. Box 360  
200 Madison St., Suite 800  
Jefferson City, MO 65102

John B. Coffman  
P.O. Box 7800  
200 Madison St., Suite 640  
Jefferson City, MO 65102

Paul G. Lane  
SBC Missouri  
One SBC Center, Room 3520  
St. Louis, MO 63101

Lisa C. Hendricks  
Sprint Missouri, Inc.  
d/b/a Sprint  
6450 Sprint Parkway  
Overland Park, KS 66251

Larry W. Dority  
Spectra Communications  
Group, LLC  
d/b/a CenturyTel  
101 Madison, Suite 400  
Jefferson City, MO 65101

Legal Department  
877-Ring Again  
P.O. Box 720429  
Dallas, TX 75372

Legal Department  
Accutel of Texas, Inc.  
7900 W. John Carpenter  
Freeway  
Dallas, TX 75237

Legal Department  
ACN Communications  
Services  
32991 Hamilton Court  
Farmington Hills, MI 48333

Legal Department  
Advanced Integrated Tech  
9855 W. 78th Street,  
Suite 300  
Eden Prairie, MN 55344

Legal Department  
Affordable Phone Company  
808 S. Baker Street  
Mountain Home, AR 72653

Legal Department  
Affordaphone, Inc.  
1703 16th Street  
P.O. Box 1220  
Bridgeport, Texas 76426

Legal Department  
Allegiance Telecom of  
Missouri  
9201 N. Central Expressway  
Dallas, TX 75231

Legal Department  
Ameritel, Your Phone  
Company  
1307 Central Ave.  
Hot Springs, AR 71902

Legal Department  
Atlas Communications, Ltd.  
900 Comerica Bldg.  
Kalamazoo, Michigan 49007

Legal Department  
BarTel Communications  
333 Leffingwell, Suite 101  
St. Louis, MO 63122

Legal Department  
Basicphone, Inc.  
P.O. Box 220  
Orange, TX 77631

Legal Department  
BBC Telephone, Inc.  
154 N. Emporia  
Wichita, KS 67202  
Legal Department

Legal Department  
Birch Telecom of Missouri  
2020 Baltimore Ave.  
Kansas City, MO 64108

Legal Department  
BTI  
4300 Six Forcks Rd.,  
Suite 400  
Raleigh, NC 27609

Legal Department  
Budget Phone, Inc.  
6901 W. 70th Street  
P.O. Box 19360  
Shreveport, LA 71129

Legal Department  
BullsEye Telecom, Inc.  
25900 Greensfield Road  
Oak Park, MI 48237

Legal Department  
Buy-Tele Communications,  
Inc.  
6409 Colleyville Blvd.  
P.O. Box 1170  
Colleyville, TX 76034

Legal Department  
Camarato Distributing, Inc.  
900 Camarato Dr.  
P.O. Box 638  
Herrin, IL 62948

Legal Department  
Cbeyond Communications  
320 Interstate N. Pkwy,  
Suite 300  
Atlanta, Georgia 30339

Legal Department  
CD Telecommunications  
608 St. Hwy, 165, Suite #5  
Branson, MO 65616

Legal Department  
Chariton Valley Telecom  
Corporation  
109 Butler  
Macon, MO 63552

Legal Department  
C12, Inc.  
200 Galleria Pkwy.,  
Suite 1200  
Atlanta, GA 30339

Legal Department  
Cinergy Communications  
1419 West Lloyd  
Expressway  
Evansville, IN 47710

Legal Department  
Concert Communications  
Sales  
2355 Dulles Corner Blvd.,  
#LBBY  
Herndon, VA 20171

Legal Department  
Connect!  
P.O. Box 619  
Bryant, AR 72089

Legal Department  
Convergent Communications  
P.O. Box 746237  
Arvada, CO 80006

Legal Department  
Cox Missouri Telecom  
5428 Florida Blvd.  
Baton Rouge, LA 70806

Legal Department  
Davidson Telecom, LLC  
19003 Hodestone Mews Crt.  
Davidson, NC 28036

Legal Department  
Delta Phones, Inc.  
245 Illinois Street  
Delhi, LA 71232

Legal Department  
DMJ Communications, Inc.  
P.O. Box 12690  
Odessa, TX 79768

Legal Department  
dPi-Tele.-Connect, LLC  
1720 Windward Concourse,  
#250  
Alpharetta, GA 3000

Legal Department  
DSLnet Communications,  
LLC  
545 Long Wharf Dr., 5th  
Floor  
New Haven, CN 06511

Legal Department  
e.sprrie Communications  
22685 Holiday Park Dr.,  
Suite 80  
Sterling, VA 20166

Legal Department  
Ernest Communications  
5275 Triangle Parkway, Suite  
150  
Norcross, GA 30092

Legal Department  
Everest Midwest Licensee  
LLC  
9647 Lackman Road  
Lenexa, KS 66219

Legal Department  
Excel Telecommunications  
1600 Viceroy Dr.  
Dallas, TX 75235

Legal Department  
EZ Talk Communications,  
LLC  
4727 S. Main  
Stafford, Texas 77477

Legal Department  
FamilyTel of Missouri, LLC  
2900 Louisville Ave.  
Monroe, LA 71201

Legal Department  
Fast Connections, Inc.  
P.O. Box 40  
Hubbard, OR 97032

Legal Department  
Global Crossing  
Local Services, Inc.  
1080 Pittsford Victor Rd.  
Pittsford, NY 14534

Legal Department  
Global Crossing  
Telemanagement  
1080 Pittsford Victor Rd.  
Pittsford, NY 14534

Legal Department  
GlobalCom, Inc.  
2100 Sanders Rd., Suite 150  
Northbrook, IL 60062

Legal Department  
GoBeam Services, Inc.  
5050 Hopyard Rd., Suite 350  
Pleasanton, CA 94588

Legal Department  
Green Hills  
Telecommunications  
7926 NE State Route M  
P.O. Box 227  
Breckenridge, MO 64625

Legal Department  
Group Long Distance, Inc.  
1 Cavalier Court  
P.O. Box 534  
Ringoos, NJ 08551

Legal Department  
ICG Telecom Group, Inc  
161 Inverness Drive West  
Englewood, CO 80202

Legal Department  
Integrated  
Telecommunications  
Services, LLC  
1500 E. Washington Ave.  
P.O. Box 892  
Jonesboro, AR 72403

Legal Department  
Ionex Communications, Inc.  
2020 Baltimore  
Kansas City, MO 64108

Legal Department  
IPvoice Communications,  
Inc.  
14860 Montfort Dr., Suite  
210  
Dallas, TX 75254

Legal Department  
KMC Data, LLC  
1545 Route 206  
Bedminster, NJ 07921

Legal Department  
KMC Telecom III  
1545 Route 206  
Bedminster, NJ 07921

Legal Department  
Level 3 Communications, I  
1025 Eldorado Blvd.  
Broomfield, CO 80021

Legal Department  
Local Line America, Inc.  
P.O. Box 4551  
Akron, OH 44310

Legal Department  
Magnus Communications,  
Inc.  
340 S. Broadview

Cape Girardeau, MO 63703  
Legal Department  
Mark Twain  
Communications  
P.O. Box 128  
Hurdland, MO 63547

Legal Department  
Maxcess, Inc.  
P.O. Box 951419  
Lake Mary, FL 32795

Legal Department  
Maxcom, Inc.  
1250 Wood Branch Dr.,  
Suite 600  
Houston, TX 77079

Legal Department  
Max-Tel Communications  
1720 Windward Concourse  
Alpharetta, GA 30005

Legal Department  
McLeodUSA  
Telecommunications  
Services, Inc.  
6400 C Street, SW  
P.O. Box 3177  
Cedar Rapids, IA 52406

Legal Department  
Metro Communications Co.  
P.O. Box 555  
Sullivan, IL 61951

Legal Department  
Metro Teleconnect Company  
2150 Herr Street  
Harrisburg, PA 17103

Legal Department  
Midwestern Tel  
2751 N. Ashland Ave.  
Chicago, IL 60614

Legal Department  
Missouri Comm South, Inc.  
2909 N. Buckner Blvd.,  
Suite 800  
Dallas, TX 75228

Legal Department  
Missouri State Discount  
804 Elkins Lake  
Huntsville, TX 77340

Legal Department  
Missouri Telecom, Inc.  
515 Cleveland, Suite C  
Monett, MO 64708

Legal Department  
Navigator  
Telecommunications  
8525 Riverwood Park Dr.  
P.O. Box 13860  
North Little Rock, AR 72113

Legal Department  
North County  
Communications  
3802 Rosecrans Street  
San Diego, CA 92110

Legal Department  
Now Acquisition Corporation  
180 N. Wacker Dr., Suite 3  
Chicago, IL 60606  
Carol Keith  
NuVox Communications  
16090 Swingley Ridge Rd.,  
Suite 500  
Chesterfield, MO 63017

Legal Department  
Omniplex  
1250 Wood Branch Park Dr.,  
Suite 600  
Houston, TX 77079

Legal Department  
Phone-Link, Inc.  
1700 Eastpoint Parkway,  
#270  
Louisville, KY 40223

Legal Department  
PNG Telecommunications  
100 Commercial Dr.  
Fairfield, OH 45014

Legal Department  
Popp Telecom Inc.  
620 Mendelssohn Ave.,  
North  
Golden Valley, MN 55427

Legal Department  
Premiere Paging & Cellular  
1114 Blue Bird Lane  
Liberty, MO 64068

Legal Department  
QCC, Inc.  
8829 Bond Street  
Overland Park, KS 66214

Legal Department  
QuantumShift  
Communications  
88 Rowland Way  
Novato, CA 94945

Legal Department  
Quick-Tel, Inc.  
P.O. Box 1220  
Bridgeport, TX 76426

Legal Department  
Qwest Communications  
Corp.  
1801 California St.,  
47th Floor  
Denver, CO 80202

Legal Department  
Reliant Communications  
801 International Parkway  
Lake Mary, FL 32746

Legal Department  
Ren-Tel Communications  
33 Black Forest Run  
Douglasville, GA 30134

Legal Department  
Rocky Mountain Broadband.  
999 18th St., Suite 1835  
Denver, CO 80202

Legal Department  
SBA Broadband Services,  
Inc.  
5900 Broken Sound Pkwy,  
NW  
Boca Raton, FL 33487

Legal Department  
ServiSense,com, Inc.  
115 Shawnmut Road  
Canton, MA 02021

Legal Department  
Simply Local Services, Inc.  
2225 Apollo Dr.  
Fenton, MO 63026



Legal Department  
Smoke Signal  
Communications  
8700 S. Gessner  
Houston, TX 77074

Legal Department  
Snappy Phone  
6901 W. 70th Street  
Shreveport, LA 71129

Legal Department  
Socket Telecom, LLC  
811 Cherry St., Suite 210  
Columbia, MO 65201

Legal Department  
Southern Telecom Network  
P.O. Box 1161  
Mountain Home, AR 72653

Legal Department  
Supra Telecommunications  
and  
Information Systems, Inc.  
2620 S.W. 27th Ave.  
Miami, FL 33133

Legal Department  
Suretel, Inc.  
5 N. McCormick  
Oklahoma City, OK 73127

Legal Department  
Talk America, Inc.  
6805 Route 202  
New Hope, PA 18938

Legal Department  
Tel Com Plus  
2277 19th Ave., SW  
Largo, FL 33774

Legal Department  
TelCove  
712 N. Main Street  
Coudersport, PN 16915

Legal Department  
Telefonos Para Todos  
14681 Midway Road  
Addison, TX 75001

Legal Department  
Telepacific Communications  
515 S. Flower St., 47th Floor  
Los Angeles, CA 90071

Legal Department  
Telera Communications  
910 E. Hamilton Ave.,  
Suite 200  
Campbell, CA 95008

Legal Department  
Tele-Reconnect, Inc.  
16925 Manchester Rd.  
Wildwood, MO 63040

Legal Department  
Teligent Services, Inc.  
460 Herndon Pkwy, Suite  
100  
Herndon, VA 20170

Legal Department  
The Cube  
7941 Katy Freeway,  
Suite 304  
Houston, TX 77024

Legal Department  
Transamerican Telephone  
209 E. University  
Danton, TX 76201

Legal Department  
TruComm Corporation  
1608 Barclay Blvd.  
Buffalo Grove, IL 60089

Legal Department  
Unite  
303 N. Jefferson  
P.O. Box 891  
Kearney, MO 64060

Legal Department  
Valor Communications  
CLEC of Missouri  
201 E. John Carpenter  
Freeway, #200  
Irving, TX 75062

Legal Department  
VarTec Telecom, Inc.  
1600 Viceroy Dr.  
Dallas, TX 75235

Legal Department  
Verizon Select Services, Inc.  
6665 N. MacArthur Blvd.  
Irving, TX 75039

William D. Steinmeier  
Xspedius Communications  
2031 Tower Drive  
P.O. Box 104595  
Jefferson City, MO 65110

Legal Department  
Z-Tel Communications  
601 S. Harbour Island Blvd.,  
Suite 220  
Tampa, FL 33602

Mary Ann Young  
Ameritel Missouri, Inc.  
2031 Tower Drive  
P.O. Box 104595  
Jefferson City, MO 65110

Legal Department  
American Fiber Network,  
Inc.  
9401 Indian Creek Pkwy,  
Suite 140  
Overland Park, KS 66210

Legal Department  
Atlas Mobilfone, Inc.  
1903 S. Glenstone  
Springfield, MO 65804

Legal Department  
Bellsouth BSE, Inc.  
400 Perimeter Center  
Terrace, Suite 400  
Atlanta, Georgia 30346

Legal Department  
Big River Telephone  
Company, LLC  
240 Souht Minnesota  
P.O. Box 1608  
Cape Girardeau, MO 63072

Legal Department  
Logix Communications Co.  
2950 N. Loop W., Suite 1200  
Houstin, TX 77092

Legal Department  
O1 Communications of  
Missouri, LLC  
2000 E. Lamar Blvd.,  
Suite 730  
Arlington, TX 76006

Legal Department  
WTX Communications  
11001 Wilcrest Dr., Suite 100  
Houston, TX 77099

Legal Department  
XO Missouri, Inc.  
2700 Summit Ave.  
Plano, TX 75074

Legal Department  
1-800-Reconex, Inc.  
2500 Industrial Avenue  
Hubbard, OR 97032

David Woodsmall  
Corporate Counsel  
Xspedious Communications  
5555 Winghaven Blvd.,  
Suite 300  
O'Fallon, MO 63366

Charles Brent Stewart  
Stewart & Keevil, LLC  
4603 John Garry Drive,  
Suite 11  
Columbia, MO 65203

Sheldon K. Stock  
Jason L. Ross  
10 South Broadway, Suite  
2000  
St. Louis, MO 63102-1774

Stephen F. Morris  
MCI WorldCom  
701 Brazos, Suite 600  
Austin, TX, Suite 600 78701

William J. Cobb, III  
COVAD Communications  
100 Congress Ave., Suite  
2000  
Austin, TX 78701

Legal Department  
1-800-REconex, Inc.  
2500 Industrial Avenue  
Hubbard, OR 97032

Legal Department  
CAN Communications  
Services  
32991 Hamilton Court  
Farmington Hills, MI 48333

Katherine J. Mudge  
Smith Majcher & Mudge,  
LLP  
816 Congress, Suite 1270  
Austin, TX 78701

Legal Department  
Buy-Tel Communications  
6409 Colleyville Boulevard  
P.O. Box 1170  
Colleyville, TX 76034

Legal Department  
ExOp of Missouri  
303 N. Jefferson  
P.O. Box 891  
Kearney, MO 64060

Rebecca B. DeCook  
AT&T  
1875 Lawrence Street, Suite  
1575  
Denver, CO 80202

J. Steve Weber  
AT&T  
101 W. McCarty, Suite 216  
Jefferson City, MO 65101



