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January 8, 2002

Secretary of the Public Service Commission
Missouri Public Service Commission
200 Madison Street, Suite 100
P.O. Box 360
Jefferson City, Missouri 65102

Re: Case No. TO-2001-467

Dear Secretary of the Commission:

Enclosed please find for filing with the Commission an original and nine (9) copies of NuVox Communications of Missouri, Inc.'s, MCImetro Access Transmission Services, LLC's, Brooks Fiber Communications of Missouri, Inc.'s and MCI WorldCom Communications, Inc.'s Response to SWBT's Application for Rehearing. Upon your receipt, please file stamp the extra copy received and return to the undersigned in the enclosed, self-addressed, stamped envelope. If you have any questions, please do not hesitate to contact us.

Very truly yours,

Carl J. Lumley

CJL:dn
Enclosures
cc. Parties of Record (W/Enclosures)

FILED²
JAN 08 2002
Missouri Public
Service Commission

FILED²
JAN 09 2002
Missouri Public
Service Commission

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Investigation of the)
State of Competition in the Exchanges of)
Southwestern Bell Telephone Company.)

Case No. TO-2001-467

FILED²
JAN 09 2002
Missouri Public
Service Commission

NUVOX COMMUNICATIONS OF MISSOURI, INC.'S
MCImetro ACCESS TRANSMISSION SERVICES, LLC.'S
BROOKS FIBER COMMUNICATIONS OF MISSOURI, INC.'S

AND
MCI WORLDCOM COMMUNICATIONS, INC.'S
RESPONSE TO SWBT'S
APPLICATION FOR REHEARING

COME NOW NuVox Communications of Missouri, Inc. (NuVox), MCImetro Access Transmission Services, LLC (MCImetro), Brooks Fiber Communications of Missouri, Inc. (Brooks), and MCI WorldCom Communications, Inc. (MCI WorldCom) and for their Response to SWBT's Application for Rehearing state to the Commission:

1. NuVox, MCImetro, Brooks, MCI WorldCom have filed an Application for Rehearing, requesting that the Commission reverse part of the decision set forth in its December 27, 2001 Report and Order in this case and determine that SWBT's core business switched services and related services are not subject to effective competition in the St. Louis and Kansas City exchanges and should not be classified as competitive pursuant to Section 392.245 in those two exchanges. In its Application for Rehearing, SWBT seeks just the opposite relief, requesting that the Commission find that such services are subject to effective competition and should be classified as competitive in other exchanges besides St. Louis and Kansas City.

2. Notwithstanding its request for relief, SWBT's own arguments confirm that the Commission should grant the request of NuVox, MCImetro, Brooks and MCI WorldCom for rehearing of the Report and Order regarding the decisions on core business switched services and related services. On rehearing the Commission should reverse its decision and find and conclude

that there is insufficient evidence that those services are subject to effective competition. Accordingly, the Commission should reverse its classification of those services as competitive pursuant to Section 392.245.

3. In its Report and Order, the Commission agreed with NuVox, MCImetro, Brooks and MCI WorldCom and others that "effective competition is competition that exerts sustainable discipline on prices and moves them to the competitive level of true economic cost." Report and Order at p. 11. Further, the Commission agreed that SWBT had the burden of proof in this case. Id. p. 9. The Commission agreed that "even in the exchanges where market share [of alternative providers] is substantial, without further substantial evidence of the effect of competition, market share alone is not sufficient for the Commission to find that effective competition exists." Id. p. 13 (emphasis added). The Commission found that alternative providers face significant barriers to continuing to provide service and to expanding operations. Id. p. 17. Finally, the Commission expressly found that "there was no testimony that any specific changes were made [in SWBT's prices] as a result of competition or explaining the specific analysis that resulted in" the limited price changes that SWBT has made since 1984. Id. p. 17-18.

4. Notwithstanding these findings and conclusions, and in direct contradiction thereto, the Commission relied solely upon what it described as SWBT's "substantial market share loss" resulting from a number of alternative carriers and their facilities in reaching its conclusion that SWBT's core business switched services, and the related services, are subject to effective competition in the St. Louis and Kansas City exchanges. In short, the Commission erroneously relied upon the mere existence of competition in determining that such competition was "effective" under Section 392.245. This decision was unlawful, unjust, and unreasonable under both Section 392.245 and the Commission's interpretation thereof as set forth in paragraph

3 above, because there was no competent and substantial evidence that competition has had any effect whatsoever on SWBT's pricing practices.

5. In its Application for Rehearing, SWBT again confirms that it did not offer any evidence regarding the effect of competition or the effectiveness of competition on its pricing practices. SWBT continues to point solely to evidence that competition exists, in the form of market share data, as it did throughout the hearing and in post-hearing briefs. SWBT sums up its Application by stating that it "presented substantial evidence establishing that...there are competitors..." (Application, p. 15). Further, SWBT concedes that evidence that is subsumed by market share data, such as the extent of fiber facilities owned by competitors, is not evidence of the effectiveness of competition. As SWBT states at page 6-7 of its Application, "there was no evidence to support the proposition that the mere placement of fiber facilities by a telecommunications carrier leads to any more 'effective competition'" than other forms of CLEC market share. In fact, SWBT goes even further, stating "nor was there any evidence of whether business switched services were even provided over those facilities, or the market share obtained by use of those facilities." (Application, p. 7).

6. Further, SWBT does not specifically challenge the findings and conclusions of the Commission that are summarized in paragraph 3 above. Rather, SWBT characterizes the Commission's interpretation of the statute as "an important first step... in implementing the regulatory structure envisioned by the legislature." (SWBT Application, page 2). As the Commission recognized in its Report and Order, "effective competition" is different from "competition", and in the context of deciding whether to lift price cap regulation the pertinent "effect" of competition is effect on pricing. As the Commission also recognized, there was no

evidence that competition had any effect on SWBT's pricing. SWBT does not directly address either of these conclusions in its Application, because they are unassailable conclusions.

7. The crux of SWBT's argument is that there is generally the same amount of competition (i.e. CLEC market share) in the exchanges immediately adjacent to the St. Louis and Kansas City exchanges as there is in those two exchanges (and that Springfield is also similar) and therefore the Commission's decision is inconsistent. As SWBT puts it at page 6 of its Application, "there has been no evidence presented to or any finding by the Commission that the 53 CLECs competing for business customers in the St. Louis exchange are any more effective competitors – either as a group or individually – than the 27 CLECs serving business customers in the adjoining Fenton exchange." However, as demonstrated in the Application for Rehearing filed by NuVox and the WorldCom companies, it is the Commission's ruling regarding St. Louis and Kansas City that is inconsistent with its analysis of the statute (which SWBT does not directly challenge) and evaluation of the evidence, not the ruling regarding business and related services in other exchanges. There is no evidence that competition is effective anywhere in Missouri as to these services. Hence, the Commission should reverse the classification of business services in St. Louis and Kansas City.

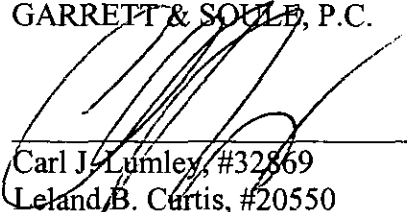
8. The Commission should deny SWBT's Application and grant the Application filed by NuVox and the WorldCom companies. On rehearing, consistent with the requirements of Section 392.245 and its findings described in paragraph 3 above, the Commission should reverse its decision in its Report and Order and find and conclude that SWBT must first provide competent and substantial evidence that competition is actually exerting sustainable discipline on its prices and moving them to the competitive level of true economic cost, before its core business switched services, and related services, can be held to be subject to effective

competition in St. Louis and Kansas City and accordingly classified as competitive in these two exchanges under Section 392.245. The Commission can only make a determination that effective competition exists for a particular service in a particular exchange based on competent and substantial evidence. See, e.g., State ex rel. Rice v. PSC, 220 SW2d 61, 64 (Mo. 1949).

9. In further support hereof, NuVox, MCImetro, Brooks and MCI WorldCom incorporate by reference their Initial and Reply Briefs previously filed in this case.

WHEREFORE, NuVox Communications of Missouri, Inc., MCImetro Access Transmission Services, LLC, Brooks Fiber Communications of Missouri, Inc. and MCI WorldCom Communications, Inc., request the Commission to grant the relief sought in their Application for Rehearing and deny SWBT's Application for Rehearing.

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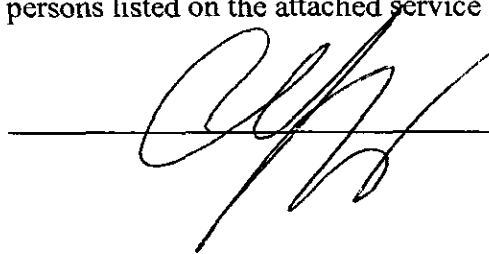
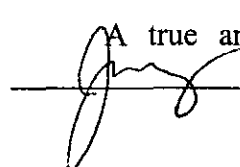


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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing was mailed this 8 day of July, 2002, to the persons listed on the attached service list.



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