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January 4, 2002

FILED<sup>3</sup>

JAN 04 2002

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

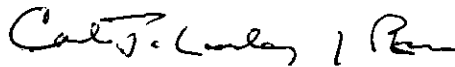
Missouri Public  
Service Commission

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 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)

## BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

**FILED<sup>3</sup>**

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

Case No. TO-2001-467

JAN 04 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 WORLD COM COMMUNICATIONS, INC.'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 Application for Rehearing pursuant to Sections 386.500 and 392.245 RSMo. and 4 CSR 240-2.160 state to the Commission:

1. On December 27, 2001 the Commission issued its Report and Order in this case, wherein *inter alia* it determined that Southwestern Bell Telephone Company's (SWBT's) core business switched services were subject to effective competition in the St. Louis and Kansas City exchanges and classified those services as competitive pursuant to Section 392.245 in those two exchanges. Finding that business line-related services, business directory assistance and business busy line verification/busy line verification interrupt services were inseparable from the underlying core business switched services, and that high capacity exchange access line services were subject to similar competition, the Commission also classified them as competitive under Section 392.245. The Report and Order bears an effective date of January 6, 2002.

2. NuVox, MCImetro, Brooks and MCI WorldCom seek rehearing of the Commission's Report and Order regarding the decisions on core business switched services and

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the related services identified in paragraph 1 above. 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 on SWBT's pricing practices.

5. 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).

6. 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., apply for rehearing and further relief as requested herein.

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**CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing was mailed this 4<sup>th</sup> day of JANUARY, 2002, to the persons listed on the attached service list.

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