

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

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

**STAFF’S POSTHEARING BRIEF**

COMES NOW the Staff of the Missouri Public Service Commission and for its posthearing brief states:

**Introduction**

NuVox Communications of Missouri, Inc., filed an application for an investigation into the wire centers that AT&T Missouri asserts are non-impaired under the Federal Communications Commission’s Triennial Review Remand Order (TRRO).

In the TRRO, the FCC established non-impairment triggers which count the number of fiber-based collocators and/or the number of business access lines present in a specific wire center. If the non-impairment trigger is met, then the incumbent local exchange carrier is no longer required to provide nondiscriminatory access to certain high capacity loops and/or dedicated interoffice transport facilities on an unbundled basis. Appendix B of the TRRO, which sets forth new definitions and the new specific unbundling requirements, is attached to this brief.

SBC Communications Inc. (now AT&T Inc.), in connection with its mergers with AT&T Corp. and with BellSouth Corporation, made certain commitments that impact its implementation of the TRRO.

In WC Docket No. 05-65,<sup>1</sup> the Federal Communications Commission approved the merger of SBC Communications Inc. and AT&T Corp. Appendix F of the SBC/AT&T Merger Order is titled Conditions. Appendix F begins, “The Applicants have offered certain voluntary commitments, enumerated below. Because we find these commitments will serve the public interest, we accept them and adopt them as Conditions of our approval of the merger.” (p. 122) Paragraph 2 under the heading Unbundled Networks Elements provides:

Within thirty days after the Merger Closing Date, SBC/AT&T shall exclude fiber-based collocation arrangements established by AT&T or its affiliates in identifying wire centers in which SBC claims there is no impairment pursuant to section 51.319(a) and (e) of the Commission’s rules. SBC/AT&T shall file with the Commission, within thirty days of the Merger Closing Date, revised data or lists that reflect the exclusion of AT&T collocation arrangements, as required by this condition. (p. 122)

Paragraph 1 under the heading Sunset provides:

For avoidance of doubt, unless otherwise expressly stated to the contrary above, all conditions and commitments contained in this letter shall end on the second anniversary of the Merger Closing Date. (p. 125)

In WC Docket No. 06-74,<sup>2</sup> the FCC approved the merger of AT&T Inc. and BellSouth Corporation. Appendix F of the AT&T/BellSouth Merger Order was titled Conditions. Appendix F begins, “The Applicants have offered certain voluntary commitments, enumerated below. Because we find these commitments will service the public interest, we accept them.” (p. 147). The Merger Commitments provide:

For avoidance of doubt, unless otherwise expressly stated to the contrary above, all conditions and commitments proposed in this letter are enforceable by the FCC and would apply in the AT&T/BellSouth in-region territory, as defined herein, for a period of forty-two months from the Merger Closing Date and would automatically sunset thereafter. (p. 147)

Paragraph 2 under the heading UNEs provides:

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<sup>1</sup> *In the Matter of SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, rel. Nov. 17, 2005, (SBC/AT&T Merger Order).

<sup>2</sup> *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, rel. March 26, 2007 (AT&T/BellSouth Merger Order).

AT&T/BellSouth shall recalculate 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: (i) fiber-based collocation arrangements established by AT&T or its affiliates; (ii) 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; and (iii) special access lines obtained by AT&T from BellSouth as of the day before the Merger Closing Date. (p. 149)

### **Argument**

#### **Issue A. Business Line Count Issues:**

##### **(1) Should the Business Line count include all UNE-L lines or only**

##### **UNE-L lines used to provide switched service to business end users?**

The Business Line count should include all UNE-L lines. FCC Rule 47 CFR 51.5 defines the number of business lines in a wire center as “the sum of all incumbent LEC business switched access lines, plus the sum of all UNE loops connected to that wire center.” The rule does not use the word business to modify UNE loops. Additionally, Paragraph 105 of the TRRO states, “The BOC wire center data that we analyze in this order is based on ARMIS 43-08 business lines, plus business UNE-P, plus UNE loops.” The order does not use the word business to modify UNE loops. (Scheperle Direct, Ex. 21, p. 12).

In the TRRO, the FCC noted the criteria that it chose for the impairment tests are objective (Paras. 108, 161), rely on data possessed by and readily available to ILECs (Para. 108), and are simple to apply (Paras. 93, 105). AT&T Missouri, an ILEC, does not know if a CLEC uses a UNE loop to serve a business customer or a residential customer. (Chapman Direct, Ex. 16, p. 26; Chapman, Tr. 202).

##### **(2) Should the Business Line Count for digital UNE-L be based on the loop's capacity or on the loop's usage?**

The Business Line Count for digital UNE-L should be based on the loop's capacity. FCC Rule 47 CFR 51.5 states that "business line tallies shall account for ISDN and other digital access lines by counting each 64 kbs-equivalent as one line. For example, a DS1 line corresponds to 24 64 kbs-equivalents, and therefore to 24 business lines." (Scheperle Direct, Ex. 21, p. 10).

As noted above, the impairment tests rely on data possessed by and readily available to the ILEC. AT&T Missouri's records indicate only the bandwidth of the digital loops that it provides; AT&T Missouri does not know whether a CLEC is using the full bandwidth. (Chapman Direct, Ex. 16, p.27).

**(3) On what vintage of data should the Business Line counts supporting the wire center designations rely?**

The Staff agrees with the rebuttal testimony of AT&T Missouri witness Chapman (Ex. 18, pp. 32-33) that the Business Line counts should be from December 2003, which were the latest data available when the wire center designations went into effect in March 2005. (*See also*, Scheperle Direct, Ex. 21, Schedule 4 and Schedule 7)

**Issue B. Fiber-Based Collocator Issues:**

**(1) Does the definition of Fiber-based Collocator include collo-to-collo arrangements in which the connecting carrier establishes service without providing optronics for fiber that leaves the wire center?**

Yes. A collocation-to-collocation, or "collo-to-collo," arrangement is where a carrier collocated at an ILEC's wire center does not own the transport facility it uses to send traffic out of the wire center, but rather, leases capacity on another collocated carrier's facilities. (Nevels Direct, Ex. 12, p.10). A carrier need not own optronics in order to "operate" a transmission facility. Instead, the carrier has multiplexing equipment that aggregates traffic and transmits it

over a coaxial cable at a DS-3 level of transmission. The carrier makes engineering and market entry decisions. (Nevels Rebuttal, Ex. 14, p. 7) The Staff agrees with AT&T Missouri that the cross-connected carrier “maintains a collocation arrangement” and “operates a fiber-optic cable or comparable transmission facility” within the meaning of FCC Rule 47 CFR 51.5 even if that carrier does not provide the optronics for that fiber.

As noted above, AT&T had committed, in connection with the AT&T/Bell South merger, that for 42 months it would exclude “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.” (*See also*, Nevels Direct, Ex. 12, pp. 10-11). If an entity that is cross-connected were not to be counted as a fiber-based collocator under 47 CFR 51.5, then the FCC would have said so, instead of approving this particular merger condition.

**(2) How should the term "comparable transmission facility" be defined?**

The Commission need not define “comparable transmission facility.” FCC Rule 47 CFR 51.5 defines, in relevant part, a fiber-based collocator as any carrier, unaffiliated with the incumbent LEC, that operates a fiber-optic cable or “comparable transmission facility.” Whether a carrier operates a comparable transmission facility is a factual determination that should be undertaken on a case-by-case basis. Such a determination is the focus of the following issue.

**(3) Should NuVox be counted as a Fiber-based Collocator in the locations specified by AT&T Missouri?**

Yes. NuVox should be counted as a fiber-based collocator in the \*\*HC \_\_\_\_\_  
\_\_\_\_\_ HC\*\* In its verified response to the Staff, NuVox explains why it believes it should not be counted as fiber-based collocator. (See Scheperle Direct, Ex. 22,

HC Schedule 2C-28 and 29) While NuVox may not be a fiber-based collocator in and of itself, the highly confidential arrangement described in its verified response to the Staff is indicative of a fiber-based collocation arrangement as explained in the rebuttal testimony of AT&T Missouri witness Chapman (Ex. 18, pp. 69-71) The Staff concurs with AT&T Missouri witness Chapman that the NuVox collocation arrangement meets the definition of a fiber-based collocator.

NuVox, after explaining in its response, why it believes it should not be counted as a fiber-based collocator, states that it is likely that another carrier does qualify as a fiber-based collocator. AT&T Missouri counted NuVox but did not count the other carrier. CLEC witness Gillan admitted that if either NuVox or the other carrier is counted, then the criterion for the presence of a fiber-based collocator is met. (Gillan, Tr. 222-23).

**Issue C. In March 2005, AT&T Missouri identified fourteen wire centers (Hiland, Westport, McGee, Springfield McDaniel, Springfield Temple, Chestnut, Jefferson, Ladue, Creve Coeur, Springfield Tuxedo, Parkview, Prospect, Kirkwood, and Bridgeton) as Tier 1 wire centers. The non-impairment criteria for dedicated interoffice transport facilities for a Tier 1 wire center is that the wire center has at least four fiber-based collocators or at least 38,000 business access lines, or is a tandem switching location with no line-side switching facilities but serving as a point of traffic aggregation accessible by CLECS. Did AT&T Missouri correctly identify these fourteen wire centers as non-impaired under the Tier 1 wire center criteria for dedicated interoffice transport facilities?**

Yes. The Staff mailed letters requesting affidavit verification from all CLECs identified by AT&T as fiber-based collocators. The CLEC was asked to confirm or deny that it is a fiber-based collocator in the specified wire center and was also asked to provide its business line count in the specified wire center. Prior to application of the SBC/AT&T merger commitments, thirteen of the fourteen wire centers were correctly identified as non-impaired because they have

four or more fiber-based collocators. The fourteenth wire center, Springfield Temple, meets the definition for a tandem switching center location; thus it was also correctly identified as non-impaired. (Scheperle Direct, Ex. 21, pp. 6-8, Schedule 2A, 2B-HC, 2C-HC). In accordance with the SBC/AT&T merger commitments made to the FCC, AT&T Missouri revised its list of wire centers to exclude the fiber-based collocations of the pre-merger AT&T (or its affiliates) from the fiber-based collocator counts. As a result, AT&T Missouri properly re-classified five of these wire centers (Springfield Tuxedo, Parkview, Prospect, Kirkwood and Bridgeton) as Tier 2 wire centers. (Chapman Direct, Ex. 16, pp. 14-18). Such reclassification is the focus of Issue D.

**Issue D. As a result of a merger commitment associated with the SBC/AT&T merger, in December 2005, AT&T Missouri re-classified five of these wire centers (Springfield Tuxedo, Parkview, Prospect, Kirkwood and Bridgeton) as Tier 2 wire centers. The non-impairment criteria for dedicated interoffice transport facilities for a Tier 2 wire center is that the wire center has at least three fiber-based collocators or at least 24,000 access lines. Has AT&T Missouri correctly identified these five wire centers as non-impaired under the Tier 2 wire center criteria for dedicated interoffice transport facilities?**

Yes. The Staff mailed letters requesting affidavit verification from all CLECs identified by AT&T as fiber-based collocators. The CLEC was asked to confirm or deny that it is a fiber-based collocator in the specified wire center and was also asked to provide its business line count in the specified wire center. The Parkview, Prospect, Kirkwood, and Bridgeton wire centers each have at least three fiber-based collocators. The presence of three-fiber based collocators in the Springfield Tuxedo wire center may be disputed by the CLECs, but this wire center meets the definition of a Tier 2 wire center because it has at least 24,000 business lines. (Scheperle Direct, Ex. 21, pp. 9-10, Schedule 2, 3, 4HC)

**Issue E. In March 2005, AT&T Missouri identified three wire centers (McGee, Chestnut and Ladue) as non-impaired for DS3 capacity loops. The non-impairment criteria for DS3 capacity loops is that the wire center has at least four collocators and at least 38,000 business lines. Did AT&T correctly identify these three wire centers as non-impaired under the criteria for DS3 capacity loops?**

Yes. The Staff mailed letters requesting affidavit verification from all CLECs identified by AT&T as fiber-based collocators. The CLEC was asked to confirm or deny that it is a fiber-based collocator in the specified wire center and was also asked to provide its business line count in the specified wire center. Each of these three wire centers has four or more fiber-based collocators and at least 38,000 business lines. (Scheperle Direct, Ex. 21, pp. 14-15, HC Schedules 6A, 6B, 7).

**Issue F. Should the Commission approve a separate wire center list applicable to the period between March 2005 and December 2005?**

Yes. On March 11, 2005 (the effective date of the TRRO), AT&T Missouri identified fourteen wire centers (Hiland, Westport, McGee, Springfield McDaniel, Springfield Temple, Chestnut, Jefferson, Ladue, Creve Coeur, Springfield Tuxedo, Parkview, Prospect, Kirkwood, and Bridgeton) as Tier 1 wire centers. In accordance with the SBC/AT&T merger commitments made to the FCC, AT&T Missouri revised its list of wire centers to exclude the fiber-based collocations of the pre-merger AT&T (or its affiliates) from the fiber-based collocator counts. As a result, AT&T Missouri re-classified five of these wire centers (Springfield Tuxedo, Parkview, Prospect, Kirkwood and Bridgeton) as Tier 2 wire centers. (Chapman Direct, Ex. 16, pp. 14-18).



### **Conclusion**

WHEREFORE, the Staff requests the Commission to affirm AT&T Missouri's lists of non-impaired wire centers.

Respectfully submitted,

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 23<sup>rd</sup> day of July 2007.

/s/ William K. Haas  
William K. Haas