

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

_____)	
In the Matter of)	
)	
Review of the Section 251 Unbundling)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange)	
Carriers)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the Telecommunications Act of 1996)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	
_____)	

**EMERGENCY PETITION FOR STAY
OF NUVOX, INC.**

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SUMMARY

NuVox, Inc. ("NuVox"), and likely other competitive local exchange carriers ("CLECs"), will be irreparably harmed unless the Federal Communications Commission ("FCC") immediately stays its decision in the *Triennial Review Order* to redefine the "dedicated transport" unbundled network element ("UNE") to include only those "transmission facilities *within* an incumbent LEC's transport network, that is, the transmission facilities between incumbent LEC switches." *Triennial Review Order* ¶ 366 (emphasis in original). By de-listing "internetwork transmission facilities" the FCC essentially eliminated entrance facilities as a UNE. Accordingly, as of the effective date of the *Triennial Review Order*, ILECs no longer are required to make entrance facilities available to requesting carriers at cost-based rates under section 251. Instead, CLECs will be forced to purchase those entrance facilities at the ILECs' substantially higher tariffed Special Access rates, or, in those locations where adequate substitute facilities are available at competitive rates from third parties, to incur the significant costs of migrating their traffic to new entrance facilities.

The FCC's decision is erroneous and will be reversed on appeal. The FCC lacks the authority to exclude entrance facilities from the UNE regime through redefining the "dedicated transport" UNE. Congress specifically defined the term "network element" in the Act to include any "facility or equipment" used to provide a telecommunications service, and there is no dispute that entrance facilities qualify as a network element. The FCC did not attempt to remove entrance facilities from the UNE regime by conducting an impairment analysis or through a section 10 forbearance proceeding; there is no other lawful basis pursuant to which the FCC may redefine the dedicated transport UNE.

NuVox will suffer irreparable harm if the FCC does not stay this aspect of the *Triennial Review Order*. The entrance facility is a critical bottleneck that connects NuVox's network with the ILEC's network. NuVox does not have viable alternatives for obtaining entrance facilities except to procure them from the ILECs as UNEs pursuant to section 251. Purchasing the functional equivalent to the entrance facility UNE through the ILECs' tariffed Special Access services would increase NuVox's costs approximately 400%, and NuVox would not be able to recoup these costs. Moreover, competitive alternatives are not ubiquitously available, and it would take significant time and expense even to identify whether and where possible options exist. Given the time delay and prohibitive expense associated with self-provisioning entrance facilities, self-provisioning entrance facilities also is not a viable option.

NuVox will be forced to incur significant additional expenses due to the FCC's decision to remove entrance facilities from the definition of the dedicated transport UNE. Even if NuVox's appeal ultimately is successful on the merits, NuVox never will receive compensation from any party for these higher costs. NuVox also will be harmed because these cost increases will force it to consider modifying its business plan by contracting the potential customer base to which it markets and the geographic markets in which it offers service. Accordingly, the FCC should immediately stay those portions of the *Triennial Review Order*, which modify the definition of the dedicated transport UNE.

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NuVox, Inc. ("NuVox" or "Petitioner"), through its attorneys and pursuant to sections 1.41 and 1.43 of the rules of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. §§ 1.41, 1.43, hereby petitions the Commission to stay certain portions of the *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking* in the above-captioned proceeding.¹

The *Triennial Review Order* significantly modified the regime first established by the FCC in 1996 to implement the requirement in sections 251 and 252 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. §§ 151, *et seq.*, that incumbent local exchange carriers ("ILECs") must provide network elements to any requesting carrier on an unbundled basis at rates conforming to the FCC's Total Element Long Run

¹ *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, FCC 03-36 (rel. Aug. 21, 2003) ("*Triennial Review Order*" or "*TRO*").

Incremental Cost (“TELRIC”) methodology.² In this petition, NuVox asks the FCC to stay its decision to unilaterally redefine the “dedicated transport” unbundled network element (“UNE”) to include only those “transmission facilities *within* an incumbent LEC’s transport network, that is, the transmission facilities between incumbent LEC switches.” *Triennial Review Order* ¶ 366 (emphasis in original). By de-listing “internetwork transmission facilities,” the FCC recognized that it was “effectively eliminat[ing] ‘entrance facilities’ as a UNE.” *Id.* ¶ 366 n.1116. As of the effective date of the *Triennial Review Order*, ILECs no longer are required to make entrance facilities available to requesting carriers at cost-based rates, and CLECs will be forced to purchase these entrance facilities at the ILECs’ substantially higher tariffed Special Access rates or, in those locations where adequate substitute facilities are available at competitive rates from third parties, to incur the significant costs of migrating their traffic to new entrance facilities.³

The FCC’s decision is erroneous, and will be reversed on appeal, because the FCC lacks the authority to unilaterally exclude entrance facilities from the UNE regime through an expedient redefinition of the “dedicated transport” UNE. Congress itself defined the term “network element” in section 153(29) to include any “facility or equipment” used to provide a telecommunications service, and there is no dispute on the record, or in the *Triennial Review Order*, that entrance facilities qualify as a “network element.” There are only two lawful mechanisms for removing entrance facilities from the UNE regime, and the FCC has not employed either one. One would be for the FCC to determine pursuant to section 251(d)(2) that

² Telecommunications Act of 1996, Pub.L.No. 104-104, 110 Stat. 56. In this petition, NuVox will refer to these acts collectively as the “Act.”

³ The FCC clarified that requesting carriers still may obtain interconnection trunks from ILECs at TELRIC rates, and that certain dedicated transport connecting reverse collocations with the ILECs’ wire centers may continue to be obtained as dedicated transport at TELRIC rates. *Triennial Review Order*, ¶¶ 365-66, 369 n.1126. In this petition, NuVox does not in any way challenge either of those rulings, nor does NuVox express any opinion on their scope or applicability to NuVox’s or any other party’s network arrangements.

requesting carriers are not impaired from providing the services they seek to offer without access to entrance facilities, and the other is the FCC's section 10 forbearance authority. The FCC expressly disclaimed applying the impairment standard in section 251(d)(2), *Triennial Review Order* ¶ 367 n.1119, and even if the FCC had sought to utilize its forbearance authority (which it did not purport to do), the FCC is precluded by statute from using such authority here because the requirements of section 251(c) have not been "fully implemented." 47 U.S.C. §160(d). The FCC's authority in section 201(b) to implement the Act also does not give it the authority to rewrite Congress's definition of "network element" or to change the UNE regime that Congress established in sections 251(c)(3) and 251(d)(2).

NuVox and other competitive carriers will suffer severe irreparable harm if this aspect of the *Triennial Review Order* is not stayed. NuVox is a small, facilities-based competitive local exchange carrier ("CLEC") that has deployed its own switching facilities and has constructed almost 200 collocation arrangements. NuVox has deployed specialized customer premises equipment at most of the locations of its nearly 18,000 customers. NuVox provides a full suite of local and long distance telephone services, as well as Internet access and other data services, to primarily small and medium-sized business customers in 30 city markets in thirteen states.⁴

For a CLEC like NuVox, the entrance facility is a critical bottleneck that interconnects NuVox's network with the ILEC's network. Today NuVox obtains almost 100 high-capacity DS3 entrance facilities from the ILECs as UNEs pursuant to section 251. A substantial portion of NuVox's customer traffic traverses these entrance facilities at some point

⁴ Declaration of Keith Coker ¶ 3 (provided as Attachment A).

in its routing.⁵ Further, entrance facilities serve a critical call aggregation function as they permit numerous separate traffic streams to be aggregated onto a single high-capacity facility (often a DS1 or DS3 facility),⁶ thereby permitting NuVox to benefit from economies of scope and scale.⁷ Therefore, the question is not whether NuVox will need entrance facilities, but from whom NuVox will obtain these facilities and at what price.

NuVox does not have viable alternatives for obtaining entrance facilities except to procure them from the ILECs as UNEs pursuant to section 251. Although the ILECs offer functionally equivalent Special Access services, NuVox has attached the Declaration of Keith Coker, its Vice President-Engineering and Planning, showing that **comparable Special Access rates are more than 400% higher than current UNE rates.**⁸ It would increase NuVox's facilities costs by \$2 million per year, **representing a system-wide increase of approximately 5%**, to obtain entrance facilities from the ILEC through comparable Special Access services.⁹ Moreover, even if NuVox were to eliminate its business and operational flexibility by locking itself in to Special Access term and volume plans, it would have to pay a significant increase over current UNE rates.¹⁰ Third-party alternatives to ILEC facilities are not available in all locations where NuVox obtains entrance facilities as UNEs today, and in those locations where such options are available it would take NuVox many months and require a major expenditure of resources to identify available facilities with adequate capacity, negotiate an acceptable

⁵ *Id.* ¶ 4.

⁶ The "DS" designation identifies the amount of capacity that is available over a particular transmission facility. A DS1 facility can carry 24 voice-grade, 64 KBPS circuits, while a DS3 facility can carry 28 DS1s (or 672 voice-grade 64 KBPS circuits).

⁷ Declaration of Keith Coker ¶ 4.

⁸ *Id.* ¶ 7.

⁹ *Id.*

¹⁰ *Id.* ¶ 8.

arrangement, and migrate large amounts of traffic to alternative facilities.¹¹ Self-provisioning entrance facilities would be prohibitively expensive and time-consuming for NuVox, and therefore is not a feasible option.¹²

The only effective remedy is a stay of the *TRO*. NuVox, and likely other carriers, will suffer irreparable harm if this aspect of the *TRO* goes into effect as scheduled. NuVox does not yet generate a positive cash flow, and it cannot increase subscriber rates to absorb these major cost increases in today's marketplace.¹³ The FCC did not establish any mandatory transition period for removing entrance facilities from the UNE regime, and hence NuVox must migrate its traffic as soon as it has completed the necessary revisions to its interconnection agreements with the ILECs. *Triennial Review Order* ¶ 700. As Mr. Coker notes, the result will be that NuVox is forced to consider modifying its business plan to contract the customer base to whom it markets service and the geographic areas it seeks to serve.¹⁴ Moreover, as regards the cost increases that NuVox would incur, it does not stand to be compensated by any other party at a later date regardless the ultimate outcome of the consolidated appeals of the *Triennial Review Order*.

NuVox seeks this stay on an emergency basis pending appeal of the *TRO*. NuVox will not seek a judicial stay of the *Triennial Review Order* until five business days after filing this petition with the Commission so as to provide the Commission sufficient time to consider and act on this petition. If the FCC denies or does not act on NuVox's petition, then the FCC reserves the right to seek appropriate relief in Court.

¹¹ *Id.* ¶ 9.

¹² *Id.* ¶ 11.

¹³ *Id.* ¶¶ 7, 11.

¹⁴ *Id.* ¶ 7.

I. BACKGROUND

A. The Unbundled Network Element Regime under the Act

Pursuant to the Act, ILECs are required to make available certain components and functionalities of their monopoly local telephone networks to competing telecommunications carriers. In particular, section 251(c)(3) of the Act requires ILECs to provide nondiscriminatory access to “network elements” on an unbundled basis at rates, terms, and conditions that are just and reasonable in accordance with the FCC’s TELRIC pricing standards.¹⁵ Congress required ILECs to make UNEs available to new entrants because it was unrealistic to expect new entrants to build-out a ubiquitous local exchange network from scratch as a condition precedent to entering the local telephone market to compete against an ILEC.

In the Act, Congress directed the Commission to identify a minimum list of “network elements” that ILECs must make available to requesting carriers on an unbundled basis. Congress did not leave it to the FCC to define the term “network element.” Rather, Congress defined that term specifically and broadly to include any “facility or equipment used in the provision of a telecommunications service,” and the term includes all “features, functions, and capabilities that are provided by means of such facility or equipment.” 47 U.S.C. § 153(29). In other words, a network element includes all of the ILEC’s physical and network facilities, as well as all of the associated features, functions, and capabilities.¹⁶ The FCC’s task in the

¹⁵ 47 U.S.C. § 251(c)(3) (stating that ILECs have a "duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the ... the requirements of this section and section 252.")

¹⁶ *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection Between Local Exchange Carriers and*

statutory network element regime is not to define (or redefine) the term “network element,” but to “determine[e] what network elements should be made available.” 47 U.S.C. § 251(d)(2). In performing this task, the FCC is required to consider “at a minimum, whether . . . the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.” 47 U.S.C. § 251(d)(2)(B). This statutory criterion often is referred to as the impairment standard.

In accordance with this Congressional mandate, the FCC has issued several orders beginning in 1996 that have applied the statutory impairment standard and identified various network elements that ILECs must make available to requesting carriers, including dedicated transport. Dedicated transport is a transmission facility (which normally is either copper or fiber) between two points where the capacity is dedicated to the use of a single requesting carrier.¹⁷ Beginning with its initial order in 1996, and consistently until the *Triennial Review Order*, the FCC has defined “dedicated transport” as:

Incumbent LEC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers.¹⁸

Under this definition, the dedicated transport UNE consists of various components, including transport between two separate nodes in the ILEC’s local telephone

Commercial Mobile Radio Service Providers, CC Docket No. 95-185, First Report and Order, 11 FCC Rcd 15499, 15631, ¶ 258 (1996) (“*Local Competition Order*”).

¹⁷ See, e.g., *Petition of WorldCom, Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc, and for Expedited Arbitration, Memorandum Opinion and Order*, DA 03-2738, ¶ 494 (rel. Aug. 28, 2003).

¹⁸ *Local Competition Order*, 11 FCC Rcd at 15718, ¶ 440; see also *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 3696, 3842, ¶¶ 322-23 (1999) (“*UNE Remand Order*”); 47 C.F.R. § 51.319(d)(1)(i).

network and the entrance facilities, which function as the transport link between one of the ILEC's network nodes and the network interface point of the interconnecting carrier (sometimes called a point of presence, or POP). In other words, under the FCC's original definition of dedicated transport, ILECs were required to offer as a UNE the entrance facilities connecting the ILEC's network with the requesting carrier's network. There was no doubt then, as there is none now, that entrance facilities qualify as a "network element" under the statutory definition in 47 U.S.C. § 153(29).

Entrance facilities are a critical link in the transmission network of any facilities-based CLEC. The entrance facility is a dedicated transmission link that interconnects the ILEC's local network with the transmission network of the CLEC. A substantial portion of the subscriber traffic carried by NuVox traverses an ILEC-supplied entrance facility at some point during its routing by NuVox. As the term "entrance facility" implies, this dedicated transmission link serves as an on-ramp and off-ramp between the respective telephone networks of the ILEC and the interconnecting CLEC.

In addition to providing an essential link between the ILEC and CLEC networks, entrance facilities serve an important traffic aggregation function. In order to limit the number of links between an ILEC's network and a CLEC's network, it is typical for several discrete traffic streams to be aggregated at a single point so they can be transmitted between the two networks over a single high-capacity transmission link, which is the entrance facility. By serving this aggregation function, the entrance facility permits the CLEC to benefit from significant economies of scope and scale in the design of its network and the routing of traffic.

B. The Triennial Review Order

In the *Triennial Review Order*, the FCC cast aside over seven years of consistent practice by unilaterally redefining the "dedicated transport" UNE to exclude entrance facilities.

As a result, as of the effective date of the FCC's *Triennial Review Order*, ILECs will not be required by the FCC's rules to provide entrance facilities to CLECs on an unbundled basis pursuant to section 251. Specifically, the FCC limited the dedicated transport UNE to those transmission facilities that connect separate nodes within the ILEC's local telephone network. *Triennial Review Order* ¶ 365. The FCC stated that it was "tailor[ing]" the definition of the dedicated transport UNE to include "only those transmission facilities *within* an incumbent LEC's transport network, that is, the transmission facilities between incumbent LEC switches." *Id.* (emphasis in original). Because the entrance facility is, by definition, a transmission link between the ILEC's network and the CLEC's network, it does not meet this new, narrower definition, and hence is excluded from the redefined dedicated transport UNE. Entrance facilities will remain "dedicated" to a single CLEC, and they will continue to represent a type of "transport" provided by the ILEC, but they will no longer qualify as "dedicated transport" under the FCC's new rules.¹⁹ The FCC adopted this new definition for the sole purpose of excluding entrance facilities from this UNE; the FCC admitted that "[o]ur determination here effectively eliminates 'entrance facilities' as UNEs." *Id.* ¶ 366 n.1116.

The FCC faced an immediate problem from its decision to remove so-called "internetwork transmission facilities" (*TRO* ¶ 368) from the mandatory UNE regime. Section 251(c)(2) of the Act expressly requires the ILECs to provide certain "internetwork transmission facilities" at TELRIC-based rates. This section states that ILECs must interconnect with "the facilities and equipment of any requesting telecommunications carrier" for the "transmission and routing" of local and long distance telephone calls. 47 U.S.C. § 251(c)(2). This section, by its

¹⁹ *But see supra* note 3 (noting that the FCC clarified that certain dedicated transport connecting reverse collocations with the ILECs' wire centers may continue to be obtained as dedicated transport at TELRIC rates).

terms, requires the ILEC to provide transport facilities that are not located entirely within the ILEC's own network. The FCC resolved this dilemma through the expedient of holding that ILECs must provide "internetwork transmission facilities" when used for interconnection pursuant to section 251(c)(2), but not when used for "backhauling" traffic.

The FCC did not offer any rationale for adopting a system whereby entrance facilities must be offered by the ILEC at TELRIC-based rates when used for one purpose, but not when used for another purpose. Nor did the FCC explain the ostensible differences between using entrance facilities for "interconnection" versus using such facilities for "backhauling."

The FCC also did not address its failure to subject entrance facilities to the same impairment scheme that it adopted for dedicated transport in general. In the *TRO*, the FCC made a national finding that CLECs are impaired without access to ILEC-supplied dedicated transport and, therefore, that CLECs are entitled to obtain dedicated transport as a UNE at TELRIC-based rates. *Triennial Review Order* ¶ 359. The FCC then subjected dedicated transport to a more "granular" route-by-route review by state public utility commissions. *Id.* ¶ 360. The FCC also adopted bright-line thresholds (known as triggers) for states to use in determining when CLECs cease to be impaired without unbundled transport pursuant to section 251. The triggers are (1) where three non-ILEC carriers have self-provisioned transport along the requested route, and (2) where two non-ILEC wholesale providers sell transport along that route. *Id.* Under the procedures adopted in the *Order*, states have nine months to make route-by-route impairment determinations. *Id.* Although this regime would seem to be just as appropriate for entrance facilities as for other types of dedicated transport, the FCC offered no reason for excluding entrance facilities from the UNE regime on a categorical basis.

II. STANDARD OF REVIEW

Although the FCC has declined to embrace a single standard for evaluating requests for injunctive relief, it generally considers the following four criteria: (1) the likelihood of success on the merits, (2) the threat of irreparable harm absent grant of preliminary relief, (3) the degree of injury to the other parties if relief is granted, and (4) whether a stay will be in the public interest.²⁰ The FCC has stated that these factors are balanced on a case-by-case basis, and that a stay may be warranted if there is a "particularly strong showing as to at least one of the factors, even if there is no showing regarding another."²¹ In the present case, the Petitioner satisfies all four criteria.

III. ARGUMENT

A. There is a Strong Likelihood of Success of the Merits

The FCC's decision to redefine the "dedicated transport" UNE to exclude entrance facilities is unlawful because it is contrary to the statutory language and scheme. There are, at most, two ways for the FCC lawfully to exclude entrance facilities from the dedicated transport UNE. One way is for the FCC to exercise its forbearance authority under Section 10 of the Act. *See* 47 U.S.C. § 160. Another possible way is for the FCC to limit the availability of a UNE by applying the statutory impairment standard in section 251(d)(2). *See* 47 U.S.C. § 251(d)(2). However, the FCC did not exercise – indeed, it did not even purport to exercise –

²⁰ *See, e.g., Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services*, 15 FCC Rcd 7051, 7054, ¶ 7 (1999); *see also Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Order on Reconsideration, FCC 03-208, ¶ 7 (rel. Aug. 18, 2003) (citing *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F.2d 921 (D.C. Cir. 1958)).

²¹ *See, e.g., Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services*, 15 FCC Rcd 7051, 7054, ¶ 7 (1999).

either source of authority here. In effect, the FCC acted to rewrite the statutory definition of the term “network element,” and this aspect of the *TRO* is unlawful and will be reversed on appeal. Because the FCC’s action is contrary to the plain statutory language and scheme, the FCC’s decision is not entitled to deference under the doctrine of *Chevron U.S.A. Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 842-43 (1984).

The FCC does not discuss its putative authority to redefine the “dedicated transport” UNE to exclude entrance facilities, except to assert (*TRO* ¶ 366) that “the Act does not provide guidance” on this issue and, therefore, the agency has discretion to modify the definition as it sees fit. However, the FCC’s assertion that the Act fails to address this issue is wrong. Section 153(29) expressly defines the operative term “network element” as a “facility or equipment used in the provision of a telecommunications service,” and it makes clear that the term includes all “features, functions and capabilities that are provided by means of such facility or equipment.” 47 U.S.C. § 153(29). As the FCC has consistently stated, “network elements are defined by facilities or their functionalities or capabilities.” *See Local Competition Order*, 11 FCC Rcd at 15634, ¶ 264. The FCC adopted a definition of the term “network element” in Rule 51.5 that virtually mirrors the statutory definition. 47 C.F.R. § 51.5.

There is no dispute on the record that entrance facilities qualify as a “network element” under the definition in section 153(29). The entrance facility is a transmission link provided by the ILEC that interconnects its network with the network of the requesting carrier, and hence qualifies as a “facility . . . used in the provision of a telecommunications service” pursuant to section 153(29). The FCC recognized that entrance facilities qualify as a “network element” by including entrance facilities in the “dedicated transport” UNE in its original decision

and rules implementing the Telecommunications Act of 1996. *Local Competition Order*, 11 FCC Rcd at 15718-19, ¶¶ 440-43.

In other contexts, the FCC has made clear that entrance facilities are considered to be one of the ILECs' dedicated transport services. In its Part 69 rules governing the provision of Special Access services by ILECs to requesting carriers, the FCC has defined the term "dedicated transport" to include "entrance facilities." 47 C.F.R. § 69.709(a)(1); *see also* 47 C.F.R. §69.2(qq) (defining the term "entrance facilities"). The FCC has affirmed that entrance facilities are one of three critical links making up the ILECs' Special Access services, which provide a dedicated transmission service between a customer's premises and the network interface point of the customer's chosen carrier. *See, e.g., Application by SBC Communications, Inc. Pursuant to Section 271 to Provide In-Region, InterLATA Services in Texas*, 15 FCC Rcd 18354, ¶ 225 n.618 (2000). When the FCC permits the ILECs to exercise pricing flexibility for Special Access services, the FCC has made clear on many occasions that the term "dedicated transport services" refers to "services associated with entrance facilities, direct-trunked transport, and the dedicated component of tandem-switched transport." *E.g., Verizon Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, 18 FCC Rcd 11356, ¶ 4 n.12 (2003). Entrance facilities are included within the FCC's system of price cap regulation for the major ILECs,²² and the FCC has underscored that "local transport" includes "entrance facilities." 47 C.F.R. § 69.301(a). Even in the *Notice of Proposed Rulemaking* in the FCC's proceeding below, it acknowledged that entrance facilities are "a form of transport." *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Notice of Proposed*

²² *See, e.g., Access Charge Reform, CC Docket No. 96-262, Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, Fifth Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 14221, 14273, ¶ 93 (1999).

Rulemaking, 16 FCC Rcd 22781, 22787, ¶ 12 (2001). Hence, there can be no doubt – and the FCC in the *TRO* did not dispute – that entrance facilities qualify as a “network element” under the statutory definition.

When it adopted the Telecommunications Act of 1996, Congress did not give the FCC authority to define or modify the term “network element.” Congress itself defined the term in section 153(29); the task it gave to the FCC was to “determine[e] what network elements should be made available for purposes of [section 251(c)(3)].” 47 U.S.C. § 251(d)(2). In other words, the FCC’s task is to examine the universe of network elements (as Congress defined that term) and then to decide which network elements should, and which should not, be made available by ILECs to requesting carriers at TELRIC-based rates. In performing this task for non-proprietary network elements such as entrance facilities, the FCC is instructed to apply the so-called impairment standard, namely, to determine whether a requesting carrier would be impaired in providing the services it desires to offer were it denied access to a particular network element. 47 U.S.C. § 251(d)(2)(B).

Under the statute, the FCC lacks authority to remove a network element from the list of UNEs that ILECs must make available to requesting carriers unless it (1) determines that the network element does not satisfy the impairment standard; or (2) exercises its section 10 forbearance authority. As for the former, the FCC expressly disclaimed reliance upon the impairment standard when excluding entrance facilities from the “dedicated transport” UNE. The FCC stated “we are not . . . conducting an impairment analysis.” *Triennial Review Order* ¶ 367 n.1119. Hence, the FCC cannot, and does not, justify excluding entrance facilities from this UNE based on an application of the impairment standard.

As for the latter, the FCC has authority under section 10 to “forbear from applying any regulation or any provision of this Act” when certain criteria are satisfied. 47 U.S.C. § 160(a). However, section 10(d) prohibits the FCC from exercising this forbearance authority to “the requirements of section 251(c)” until such requirements have been “fully implemented.” *Id.* § 160(d). In this case, the FCC did not purport to exercise its forbearance authority as regards entrance facilities, nor did it address whether the specified forbearance criteria were met. Further, the FCC’s determination as to which network elements should be subject to mandatory unbundling by the ILECs directly involves the UNE provisions in section 251(c)(3), and hence forbearance is prohibited because such provisions have not yet been “fully implemented.”

There is no other lawful basis – nor did the FCC identify any – to support its putative authority to redefine the “dedicated transport” UNE to exclude entrance facilities. While it is clear that section 201(b) gives the FCC authority to implement the Act, it is hornbook law that an agency’s authority to implement a statute does not give it *carte blanche* to rewrite the statute. *E.g., Indiana Michigan Power Company v. Department of Energy*, 88 F.3d 1272, 1276 (D.C. Cir. 1996) (rejecting agency ruling as a “rewrite” rather than an “interpretation”); *Railway Labor Executives’ Association v. National Mediation Board*, 29 F.3d 655, 670-71 (D.C. Cir. 1994) (agency does not have plenary authority to act in an area just because it has some authority to act in the area).

The only putative policy rationale offered by the FCC is its assertion that entrance facilities are somehow not “within” the ILEC’s transport network because they connect directly to a requesting carrier’s network. *Triennial Review Order* ¶ 366. This rationale is irrelevant and wrong. It is irrelevant because nothing in the Communications Act of 1934, including the

definition of “network element” in section 153(29), limits an ILEC’s unbundling obligation to facilities that are “within” a self-contained ILEC network. (For example, ILECs must provide loops and subloops as UNEs even though loops and subloops connect subscribers with the ILECs’ local telephone networks.) As defined by Congress, the term “network element” encompasses *any* facility or equipment provided by an ILEC for the provision of a telecommunications service, and it includes all features, functions and capabilities of those facilities and equipment.

In any event, the FCC’s new-found approach to entrance facilities is inconsistent with its pre-existing practice regarding the ILECs’ dedicated transport services. Up until the *TRO*, the FCC had always regarded entrance facilities to be an integral part of the ILECs’ transport networks and Special Access services. *See supra* at 6-8. Indeed, the FCC continues to treat entrance facilities as an integral part of the ILECs’ transport networks for the provision of interstate access services. Nothing in the *TRO* modified the ILECs’ continuing obligation to provide entrance facilities as part of dedicated transport services offered under their Federal Special Access tariffs pursuant to the FCC’s Part 69 rules.

Further, the FCC’s tortured attempt to square its ruling with the interconnection language in section 251(c)(2) serves only to repudiate its de-listing of entrance facilities. The *TRO* recognizes that ILECs provide the functional equivalent of an entrance facility when they interconnect with requesting carriers. *Triennial Review Order* ¶ 365. The *TRO* further recognizes that ILECs must provide this entrance facility pursuant to section 251(c)(2), which requires ILECs to furnish the facilities necessary to interconnect with a requesting carrier’s “facilities and equipment” for the routing of local or long distance telephone calls. *Id.* In recognition of this statutory requirement, the *TRO* holds that ILECs must provide entrance

facilities when necessary for interconnection at TELRIC-based rates as specified in the statute. *Id.* ¶¶ 365-66. It is only when a requesting carrier desires to obtain an entrance facility UNE for “backhauling” traffic that the FCC’s newly-minted exclusion takes effect.²³ The FCC’s obvious contortions to reconcile its de-listing of entrance facilities with other statutory requirements painfully underscore the absence of any basis in law or policy for a rule that removes entrance facilities from the statutory UNE regime.

Finally, it should be noted that the FCC found (correctly, in NuVox’s view) that dedicated transport in general satisfies the impairment standard, and the FCC established various impairment triggers and authorized nine-month state commission proceedings to facilitate a more granular application of the statutory criteria on a state-by-state basis. The FCC offers no reason why this framework does not work just as well for entrance facilities as for other types of dedicated transport. The key issue should be whether requesting carriers are impaired in the provision of telecommunications services without access to ILEC-supplied entrance facilities. If the answer is yes, then these facilities should be made available as part of the “dedicated transport” UNE. If the answer is no, then these facilities may be excluded from the mandatory unbundling list under section 251. That is the scheme established by Congress, and it leaves no room for the FCC to narrow the scope of UNEs by the simple expedient of modifying their definitions.

²³ The FCC offers no guidance to help the industry distinguish between the use of an entrance facility for interconnection, which is permitted, and the use of an entrance facility for backhauling, which is not subject to the UNE regime. Unfortunately, it is likely that the FCC’s arbitrary distinction between interconnection and backhauling will result in further disputes, arbitrations, and litigation between ILECs and requesting carriers.

B. Petitioner Will Suffer Irreparable Harm if the FCC Denies the Stay

NuVox, as well as other CLECs, will suffer severe irreparable harm unless this portion of the *TRO* is stayed immediately. As stated above, entrance facilities are an essential component of a facilities-based CLEC's network configuration. There is no technical alternative to an entrance facility for a facilities-based CLEC such as NuVox. Instead, the issue is from whom the CLEC will obtain entrance facilities and at what price.

NuVox has no viable alternative to purchasing entrance facilities from the ILEC as UNEs pursuant to section 251. In theory, NuVox has three potential options for obtaining entrance facilities outside the UNE regime, but none is a realistic alternative today: (1) purchase the same entrance facilities from the ILECs as tariffed Special Access services at much higher prices; (2) obtain entrance facilities along the same routes from an alternative provider, or (3) self-provision entrance facilities. In the attached Declaration of Keith Coker, Vice President – Engineer and Planning, NuVox demonstrates that none of these options is a viable substitute for ILEC-supplied entrance facility UNEs pursuant to section 251.

1. *It Is Not An Adequate Substitute to Purchase Entrance Facilities at ILEC Special Access Rates*

Although the ILECs offer the functional equivalent of an entrance facility UNE through their tariffed Special Access services, they do so at rates far above the TELRIC-based rates mandated by the Act for UNEs. For example, NuVox currently pays the ILECs between \$500-\$600 per DS3 entrance facility per month on a month-to-month basis under the UNE regime.²⁴ Under the ILECs' Special Access tariffs, it would cost NuVox between \$2,000 to \$2,750 per month to purchase the *identical* DS3 entrance facility from the ILEC at the ILEC's

²⁴ Declaration of Keith Coker ¶ 7.

tariffed special access rates, **an increase of approximately 400 percent.**²⁵ NuVox has calculated that these cost increases would total approximately \$2 million per year, representing a **system-wide cost increase of approximately 5%.** In an industry characterized by high capital costs, slow demand growth, intense competition, and narrow margins, a one-time across-the-board cost increase of 5% is a significant additional burden to a CLEC such as NuVox that has not yet begun to generate positive cash flow.

Purchasing entrance facilities as a tariffed Special Access service at lower rates is possible, but only if NuVox agrees to sacrifice its business and operational flexibility by locking itself in to a long-term contract with stiff penalties for early termination. Once a carrier subscribes to this service, it is effectively precluded by those penalties from migrating its traffic to any alternative facilities that may later become available on the market.²⁶ Further, even these discounted Special Access rates are still much higher than the TELRIC-based rates the ILECs charge for entrance facilities as UNEs under section 251.²⁷ Hence, the ILEC's tariffed Special Access offerings do not mitigate the harm that NuVox will suffer from excluding entrance facilities from the "dedicated transport" UNE.

2. *Competitive Alternatives Are Not Available*

Competitive alternatives also are not a viable option. As an initial matter, alternative sources of entrance facilities are not ubiquitously available on all routes; indeed, there are numerous locations where the ILEC is the only option.²⁸ Even in those locations where alternative providers exist, they may not have sufficient capacity to accommodate all CLECs

²⁵ *See id.*

²⁶ *Id.* ¶ 8.

²⁷ *Id.*

²⁸ *Id.* ¶ 9.

who currently obtain entrance facilities from the ILECs pursuant to section 251, nor do they always offer the same quality and reliability of service as the ILECs. Equally significant, it is extremely burdensome for a small, facilities-based carrier such as NuVox to migrate its traffic to an alternative network facility. It will take time and a significant commitment of resources to identify available facilities, determine whether such facilities are suitable, negotiate a satisfactory arrangement, and then migrate large traffic volumes to those facilities.²⁹ As Mr. Coker states in his declaration, this entire process could take up to six months while imposing significant costs on NuVox.

3. *Self-Provisioning Entrance Facilities Is Not an Alternative*

Self-provisioning entrance facilities also is not a realistic alternative for NuVox. In order to do so, NuVox would need to construct fiber between its switching hubs and the ILEC's serving wire center in each affected market, which would be an extremely costly and time sensitive endeavor. NuVox estimates that it would cost between \$15 to \$30 million to complete the necessary construction to be able to self-provision entrance facilities. NuVox does not have these funds on hand, nor can it readily obtain them in today's capital markets. Even if it were economically feasible for NuVox to undertake this project, it would take many months if not longer to complete the new facilities and migrate their subscribers' traffic. In the meantime, of course, NuVox would be forced to pay the exorbitant month-to-month Special Access rates charged by the ILECs.

4. *NuVox Will Suffer Irreparable Harm Absent a Stay.*

The ultimate impact of removing entrance facilities from the UNE regime would be to force NuVox to incur significant additional expenses. Even if NuVox's appeal ultimately

²⁹ *Id.*

is successful on the merits, NuVox will never receive compensation from any party for these higher costs. Moreover, the FCC failed to establish any mandatory transition plan for migrating CLECs away from entrance facilities as UNEs. In cases where the CLEC has an interconnection agreement with a change-of-law provision, the FCC required the parties to immediately begin negotiating in good faith to revise the agreement to remove entrance facilities as UNEs.

Triennial Review Order ¶ 703. The FCC warned that it would monitor these negotiations to ensure that there are no “undue delay” in revising the applicable agreements. *Id.* In this environment, the FCC must assume, as does NuVox, that CLECs will be required to migrate traffic and customers away from their current entrance facility arrangements before the consolidated *TRO* appeals have been finally resolved by a Court. Hence, an immediate stay is necessary to prevent NuVox from suffering severe irreparable harm.

The harm to NuVox is not only measured in economic terms. NuVox will be harmed because these costs increases will force it to consider modifying its business plan by contracting the potential customer base to which it markets and the geographic markets in which it offers service.³⁰ Entrance facilities in outlying areas, where longer transmission distances are more common, would become particularly problematic if CLECs are forced to pay exorbitant Special Access rates or seek third-party alternatives. Hence, fewer customers in smaller areas will have access to the full range of competitive offerings if entrance facilities are excluded from the UNE regime.

C. No Other Party Would Be Harmed if the FCC Granted the Stay

No other party would be harmed by staying the redefinition of dedicated transport. Granting the stay will affect two groups of parties: (1) competitive carriers, such as

³⁰ *Id.*

NuVox, that purchase entrance facilities from ILECs as a UNE; and (2) ILECs, which previously have been required to make entrance facilities available as a UNE.

Other competitive carriers that purchase entrance facilities from the ILECs as UNEs would not be harmed by granting the stay. To the contrary, since CLECs require entrance facilities as part of their interconnection with the ILEC, CLECs, some of which likely are in the same predicament as NuVox, would benefit from the granting a stay.

The ILECs also would not be harmed by a stay of the portion of the *TRO* redefining dedicated transport. Prior to the effective date of the *TRO*, the ILECs made entrance facilities available to requesting carriers at UNE rates, and if the FCC grants the requested stay, the *status quo* would be preserved. The ILECs would continue to receive TELRIC-based rates for entrance facilities, which the FCC has determined are sufficient to enable the ILECs to recover their costs. Accordingly, the ILECs would not be harmed if the FCC were to grant this petition.

D. The Public Interest Would Be Served by Granting the Stay

The public interest dictates that the *TRO* be stayed while the appeals are pending. As noted above, NuVox faces substantial immediate and unrecoverable losses absent a stay of the portion of the *TRO* redefining the dedicated transport UNE to eliminate entrance facilities. NuVox may be forced to consider modifying its business plan by serving fewer customers, different types of customers, or customers in different markets. As a result, the customers that currently have chosen NuVox, or other similarly situated competitive carriers, will be harmed, either because their current provider no longer can realistically afford to provision service or because they have fewer number of competitive alternatives from which to choose. By contrast, no parties will be harmed if the FCC grants the stay. Accordingly, it is in the public interest for the FCC to grant the requested stay of the *Triennial Review Order*.

IV. CONCLUSION

For the foregoing reasons, Petitioner requests that the Commission stay the revised definition of the dedicated transport UNE of the *Triennial Review Order* pending judicial review.

Respectfully submitted,


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September 25, 2003

ATTACHMENT A

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers)	CC Docket No. 01-338
)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996)	CC Docket No. 96-98
)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability)	CC Docket No. 98-147

DECLARATION OF KEITH COKER

Keith Coker states that the following is true and correct to the best of his knowledge and belief:

1. My name is Keith Coker, Vice President -Engineering and Planning for NuVox. I am responsible for managing the network architecture of NuVox's voice and data networks. This includes the evaluation of the effects of new products, new technologies, regulatory changes, capital investment and cost of sales for both short and long-term financial projections of the company. Additionally, I am responsible for managing NuVox's network installation and inventory control activity.
2. I have eleven years' experience in network planning, engineering and operations in various areas of the telecommunications, including fiber-based, wireless and cable firms. Before accepting my current position, I joined one of NuVox's

predecessor companies, TriVergent Communications, in 1999, and was responsible for the overall design of TriVergent's voice and data networks. I hold a B.S. in electrical engineering from Auburn University and an M.S. in electrical and optical engineering from the University of Arizona.

3. NuVox is a facilities-based competitive local exchange carrier ("CLEC") and integrated communications provider. NuVox has deployed its own switching centers (digital voice and ATM data), has constructed and equipped almost 200 collocations in incumbent local exchange carrier ("ILEC") central offices, and has deployed specialized customer premises equipment at most of the locations of its nearly 18,000 customers. NuVox leases unbundled network elements ("UNEs") from the ILECs, including UNE loops (for which the serving ILEC is the exclusive supplier) and UNE dedicated transport. NuVox utilizes this mix of leased and owned equipment to provide voice (local and long-distance) and data (including broadband internet access) services to small and medium-sized business customers in 30 city markets across 13 Southeast and Midwest states. NuVox continues to grow and progress towards profitability, but has not achieved a position of generating positive cash flow due to the high up-front costs associated with the network deployment of a facilities-based new entrant into the local exchange and broadband internet access markets, and due to downturn in growth in demand for telecommunications services that began in 2001.
4. In order to provide telecommunications and broadband internet access services to its customers, NuVox obtains DS3 dedicated transport entrance facilities that connect between the ILEC's serving wire center and NuVox's hub facility in a

particular market. A significant portion of NuVox's subscriber traffic traverses an ILEC-supplied entrance facility at some point in its routing. Along with UNE loops and dedicated interoffice transport facilities, these entrance facilities constitute a critical link in the transmission path that connects customers' premises to NuVox's switching platform. In addition, these entrance facilities serve an important call and traffic aggregation function which permits NuVox to realize substantial economies of scale and scope.

5. NuVox obtains a substantial number of these entrance facilities from the serving ILEC as UNEs, with nearly 100 ILEC-provided DS3 UNE entrance facilities in place across the network. As with other UNEs, these ILEC DS3 UNE entrance facilities are provided by the serving ILEC on a month-to-month term. In most instances these DS3 UNE entrance facilities are individual circuits within the same fiber optic facilities that contain DS3 interconnection circuits connecting between the NuVox and ILEC networks.
6. The serving ILECs also offer entrance facility links under their respective special access tariffs. These special access service entrance facilities are functionally identical to DS3 UNE entrance facilities. They differ from DS3 UNE entrance facilities only in terms of the rates charged and the ordering system used to process requests for the circuits.
7. The monthly recurring rate that NuVox currently pays the ILECs for DS3 UNE entrance facilities is in the range of approximately \$500 to \$600 per month. The rates for equivalent, ILEC DS3 special access entrance facilities are substantially higher – they average from approximately \$2,000 to \$2,750 per month. Thus, if

NuVox were to convert its embedded base of DS3 UNE entrance facilities to comparable DS3 special access service entrance facilities, the estimated annual increase in NuVox's facilities costs would be on the order of \$2,000,000. That would amount to approximately a 5% increase in the system-wide costs NuVox currently pays the ILECs for leased facilities that NuVox uses to connect to our customers. Under current market conditions for a CLEC, it is extremely unlikely that NuVox could raise rates to cover that type of unbudgeted increase in facilities costs. Because NuVox has not yet reached a position of generating positive cash flow, and in light of the continued relatively slow growth in demand for telecommunications services and other factors, a cost increase of that magnitude would have a significant negative effect on NuVox's progress towards profitability, and would force NuVox to consider changing its business plan. For example, NuVox might restrict its marketing only to medium and large business customers, and move away from serving the smaller business customer segment that it has traditionally served. As another example, NuVox might restrict the geographic scope of its service area in order to better control underlying facilities costs.

8. The ILECs also provide DS3 special access entrance facilities under long-term contracts (up to terms of 8 years or more) at discounts compared to short-term (month-to-month or 1 year) special access prices. However, long-term special access arrangements are not a comparable substitute for DS3 UNE entrance facilities, which are provided on a month-to-month term basis. Entering into long-term special access arrangements would lock NuVox into exclusive, long-

term arrangements with the serving ILEC for these facilities, because early cancellation of those arrangements typically result in very substantial termination penalties. Thus, if NuVox were to enter into long-term special access contracts for these facilities it would effectively be deprived of the opportunity to avail itself of any competitive transport alternatives to the extent they may exist or may become available during the term of a multi-year special access arrangement. Moreover, in most cases the long-term special access arrangements that are available from the ILECs and useable by NuVox are still priced significantly higher than UNE entrance facilities, and so would result in significant price increases to NuVox.

9. It is possible that NuVox could obtain alternate DS3 entrance facilities from third-party transport providers on some of the routes where it currently utilizes ILEC-provided DS3 UNE entrance facilities. However, there are numerous tasks associated with investigating the availability of the necessary quantity of facilities from those third-party providers that operate on particular routes, and to coordinate the installation of those new circuits (and decommissioning the ILEC-provided DS3 UNE entrance facilities) once an alternative source has been identified. As an initial matter it may well be necessary to engage in multiple bilateral negotiations to establish new or supplemental contracts with the third-party transport providers across all of the routes that are affected. Once the required contract negotiations are successfully concluded, great care and a substantial amount of time and effort by NuVox personnel will be required to interface with the ILECs to decommission the DS3 UNE entrance facility circuits,

to work with the third-party transport providers to schedule installation of the substitute entrance facility circuits that they would provide, and to coordinate both of those efforts to ensure “seamless” circuit conversions that avoid service outages . If the Commission’s elimination of UNE entrance facilities is not stayed, NuVox personnel will need to begin that process immediately upon the Order’s effective date. However, I would estimate that it would take anywhere from three to six months to complete all of the tasks required to move the affected DS3 entrance facilities off of the ILEC network and onto third-party transport providers in areas where such providers have sufficient available capacity and offer suitable service at competitive rates, and there is no way to determine at this point whether NuVox will be able to find third-party transport providers with available capacity to handle all of the DS3 UNE entrance facility circuits that it would need to transfer.

10. In any event, the Commission’s elimination of UNE entrance facilities does not make any provision for a mandatory transition period to accommodate the time and effort required to move entrance facilities off of the ILEC networks and onto the networks of third-party transport providers. As a result, the alternative of moving these circuits to a third-party transport provider may be nothing more than a mirage – i.e., because of the time and effort required to physically move the circuits off of ILECs’ networks and onto third-party providers’ networks, NuVox would be under substantial pressure to keep the circuits with the ILEC via special access and to mitigate rate shock by entering into multi-year term arrangements,

notwithstanding the undesirable “lock-up” of facilities with the ILEC that would result.

11. Self-provisioning of substitute entrance facilities is not a feasible alternative under the circumstances. Constructing fiber runs between NuVox’s switching hubs and the ILEC serving wire centers in each of the affected markets would be an expensive and time consuming proposition. While the amount will vary from market-to-market, I would estimate the capital cost to deploy and activate the necessary fiber links in all of the 20 NuVox markets that would be affected by the elimination of ILEC-provided UNE entrance facilities to be somewhere in the neighborhood of \$15 to 30 million. Under the current economic and capital market conditions facing facilities-based CLECs, funds for capital deployment are extremely tight, and NuVox has no funds budgeted for this type of entrance facility replacement. Moreover, even if the necessary funds were immediately available, self-provisioning these facilities would require NuVox to obtain the necessary permits and rights-of-way from municipal authorities, to purchase the needed fiber optic cable and associated electronics, trenching, the running of conduit, and other related activities. In light of what is required to self-provision, I would estimate that it would take NuVox as much as 12 to 18 months to construct and activate all of the new self-provisioned entrance facility fiber routes that would be required to replace the ILEC-provided DS3 UNE entrance facilities. However, as noted above the Commission’s Triennial Review Order does not establish a mandatory transition period regarding the elimination of entrance facilities as UNEs. Given the very substantial lead time required and the realities

of the prevailing constraints on facilities-based CLEC capital budgets, self-provisioning of entrance facilities is, likewise, a fictitious alternative under the circumstances.

12. For all of these reasons, NuVox will be irreparably harmed if the Commission's elimination of entrance facilities as a UNE is not stayed.



J. Keith Coker

Date: September 25, 2003

CERTIFICATE OF SERVICE

I, Alice R. Burruss, a legal secretary at Kelley Drye & Warren LLP, do hereby certify that on this 25th day of September, 2003, the foregoing Emergency Petition for Stay of NuVox, Inc. was sent by the means indicated to each of the following:

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554
(via electronic delivery)

John A. Rogovin
Daniel M. Armstrong
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Alice R. Burruss