

Docket 04-00381, Order of November 28, 2007 and Order on Reconsideration, June 10, 2008), the agency's decisions preceded the Nuvox case and were based on arguments which the Eleventh Circuit has now rejected. As the Court explained, the meaning of the FCC's commingling rule is a question of law and can best be resolved by examining the words of the rule itself. Those words, according to the Court, are clear.

Because the agency has considered these issues twice before, CompSouth respectfully suggests that it is unnecessary for the parties to submit, yet again, full briefs on the meaning of the commingling rule. Instead, the TRA should ask the parties to address the question of how the rule should be interpreted in light of the Nuvox opinion and any other relevant decisions which have been, or may be, released following the TRA's last order.¹

Finally, it should be noted that although the TRA has addressed this issue twice in Docket 04-00381, the matter was decided each time by a divided vote. Moreover, two of the Directors assigned to this docket (Director Freeman and Chairman Hargett) have never had the opportunity to interpret the commingling rule. They should have the opportunity to make their own decision -- especially in view of the Nuvox ruling -- before this matter is put before a court.

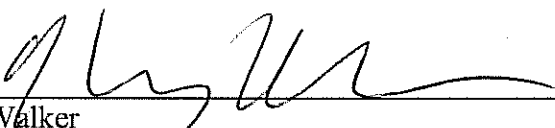
¹ As explained in the Petition, there are no other court decisions directly addressing the FCC's commingling rule (as opposed to the separate "combination" rule) and only one court where the commingling issue is still pending. See, BellSouth v. Kentucky Public Service Commissions, Docket 08-cv-7-DCR, United States District Court for the Western District of Kentucky. The Kentucky appeal has been briefed and argued; a decision should be issued soon.

For these reasons, CompSouth urges the TRA to open a contested case proceeding to consider the proper interpretation of the commingling rule in light of recent legal developments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded electronically and via U.S. Mail, first class, postage prepaid, to:

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on this the 24th day of October, 2008.



Henry Walker