Robert J. Gryzmala
Senior Counsel

AT&T Missouri
One AT&T Center
Room 3516
St. Louis, Missouri 63101

T: 314.235.6060
F: 314.247.0014
robert.gryzmala@att.com

July 23, 2007

Honorable Kennard Jones
Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street
Jefferson City, MO 65101

Re: TO-2006-0360 (In the Matter of the Application of NuVox Communications of Missouri, Inc. for an Investigation into the Wire Centers that AT&T Missouri Asserts are Non-Impaired Under the *TRRO*

Dear Judge Jones:

In accordance with your instructions at the May 16, 2007 hearing of the above-referenced matter,[1] jointly submitted herewith on behalf of the CLEC parties and AT&T Missouri is Judge's Exhibit A, consisting of two matrices (Other State Decisions -- Business Line Definition; Other State Decisions -- Fiber Based Collocator Definition). Should Your Honor like a complete copy of any of the decisions referenced in these matrices, please do not hesitate to contact Mr. Magness or myself.

Sincerely

Robert J. Gryzmala

Attachment

cc: Mr. William L. Magness
Mr. William K. Haas
Mr. Michael F. Dandino
Mr. Carl J. Lumley
Mr. William D. Steinmeier
Ms. Mary Ann Young
EFIS

[1] Tr. 243.

OTHER STATE DECISIONS
BUSINESS LINE DEFINITION

ISSUE	STATE	RESULT		CASE CITATION	QUOTE
		AT&T	CLEC		
Business Line Definition	Alabama	X		In re: Petition Regarding the Establishment of a Generic Proceeding on Change-of-Law and Non-Discriminatory Pricing for UNEs, Docket No. 295423, Final Order Resolving Disputed Issues (Alabama P.S.C. April 20, 2006).	BellSouth asserts that it is proper to include all UNE loops in the number of business lines calculated in affected wire centers, including UNE loops used to service residential customers. With respect to ISDN and other digital access lines within its wire centers, BellSouth represents that it is appropriate to account for such facilities at their full system capacity; that is, each 64 kbps-equivalent of those facilities is to be counted as one line. . . CompSouth asserts that BellSouth's aforementioned treatment of residential UNE loops and ISDN and other digital access facilities is inconsistent with the rules of the FCC and improperly inflates the number of business lines in BellSouth's wire centers. Unfortunately, the wording of the FCC rule in question does not provide clarity with regard to the correct interpretation between the parties. It does appear, however, that the FCC, in the TRO and TRRO, made references that tend to support the more generous business line count methodology that BellSouth seeks to apply in this proceeding. Additionally, there is no evidence of record that would adequately support a different determination of the applicable business line counts. We accordingly conclude that the nonimpaired wire center determination submitted by BellSouth . . . is hereby adopted as the current nonimpairment determination of the Commission. Order at pp. 25-26.
	California	X		Application of Pacific Bell Telephone Company, d/b/a SBC California for Generic Proceeding to Implement Changes in Federal Unbundling	The CLECs would have us believe that the term UNE loops should be considered those "used to serve a business customer." However, the FCC's rule Section **51.5** mirrors the language in P 105 which states in part: "The BOC wire center data that we analyze in this Order is based on ARMIS 43-08 business lines,

				Rules Under Sections 251 and 252 of the Telecommunications Act of 1996, Decision 06-01-043, 2006 Cal. PUC LEXIS 33, January 26, 2006	plus business UNE-P, plus UNE-loops." Since the FCC uses the phrase "UNE loops" in both the discussion and in its rule, we must assume that that is exactly what the FCC meant. SBC points out that paragraph 114, footnote 322 explains how the FCC compiled the data it used regarding the relationship between business access line counts and fiber-based collocations in the Bell Operating Companies' (BOCs) wire centers for purposes of establishing the tiers. Because the initial record evidence on this point varied from one BOC to another and did not show evidence of wire centers below 5,000 business lines, the BOCs each filed revised data sets, all based on the same definition of business line, and including all wire centers. SBC states that the FCC stressed that it wanted a rule that would be easy to administer, using data readily available to ILECs. According to SBC, they do not have the information necessary to determine how a CLEC is using its UNE loops. When SBC provides a UNE loop to a CLEC, the loop is terminated at a collocation arrangement. SBC does not know the service that the CLEC actually provides to the end user over the loop. Similarly, SBC does not possess the information necessary to distinguish between the UNE loops the CLECs are using to provide business service and the UNE loops the CLECs are using to provide residential service to an end user. We agree with SBC that they do not have the information necessary to distinguish UNE loops used by CLECs to serve residential customers versus business customers. Also, the FCC's language is clear that all UNE loops are to be included in the count. Order at pp. *12-14.
	District of Columbia	X		Petition of Verizon Washington, D.C. for Arbitration Pursuant to Section 252(B) of the Telecommunications Act of	While the first sentence of this definition appears to limit the lines to business lines, the second sentence of this definition includes all UNE loops in the wire center, without restricting the loops to business loops.

				1996, TAC 19; Order No. 13836, 2005 D.C. PUC LEXIS 257, December 15, 2005.	Because the definition of business line includes all UNE loops attached to a wire center, it appears that residential lines would be included in the definition of "business line." Verizon DC is correct that the acceptance of the full definition of "business line" resolves Issue 5(c). Order at pp. *87-88.
	Florida	X		In re: BellSouth Telecommunications, Inc., Docket No. 041269-TP, Order on Generic Proceeding, 2006 WL 656737 (Fla. P.S.C. March 2, 2006).	***26** We note that the CFR specifies that 'the number of business lines in a wire center shall equal the sum of all incumbent LEC business switched access lines, plus the sum of all UNE loops connected to the wire center, including UNE loops provisioned in combination with other unbundled elements.' (47 CFR 51.5) We note that the rule refers to ILEC 'business' switched access lines, but does not specify any particular UNE loops; rather, it says 'all' UNE loops connected to the wire center, including UNE loops provisioned in combination with other unbundled elements. This is consistent with the language from the text of the TRRO, cited above. We find that this distinction is significant and indicates that ILEC switched business access lines and UNE loops should be treated differently. Accordingly, we disagree with CompSouth witness Gillan's adjustment to UNE-L, which is based upon his assumption that UNE-L should include only those lines used to provision business service, rather than being counted at full capacity as done by BellSouth. We also agree with BellSouth that unused capacity on channelized high capacity loops should be counted in the business lines. As noted by BellSouth witness Tipton, the FCC rules specifically state that 'the business line tallies ... shall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line.' (47 CFR 51.5) The FCC rule further explains by way of example that a DS1 line should be counted as 24 business lines because it corresponds to 24 64 kbps-equivalents. The rule does not specifically use the term 'UNE-P.' We find it

					is encompassed in ILEC business switched access lines. BellSouth has taken a conservative approach in counting only business UNE-P, excluding residential, which appears to be in accord with the FCC's intent. Accordingly, we find this approach should be accepted.
	Georgia	X		In re: Generic Proceeding to Examine Issues Related to BellSouth Telecommunications, Inc.'s Obligations to Provide Unbundled Network Elements, Docket 19341-U, Order on Remaining Issues, 2006 WL 758303 (GA P.S.C. February 7, 2006).	For the counting of business lines, the FCC rule appears to contemplate the inclusion of all UNE loops, and not just those that are business UNE loops. It is not necessary to read the first sentence out of the definition in order to reach this conclusion. The first sentence includes in the definition of "business line" that it serve a "business customer." However, the next sentence of the line instructs on the manner in which such lines shall be calculated. In setting forth what shall be included in the calculation, the rule modifies the sum of all incumbent LEC switched access lines with the word "business." There is no confusion that this part of the addition is limited to business lines. Yet, in the same sentence, when discussing the sum of all UNE loops connected to that wire center, the rule does not similarly use the modifier "business." If, because of the prior sentence, it would have been duplicative to state that these were business UNE loops, as CompSouth suggests, then the switched access lines need not have been identified as business in the first part of the sentence. That the switched access lines were expressly limited to business lines, and the UNE loops were not so limited, indicates that the limitation does not apply to the UNE loops. In the discussion of business line counts in the *TRRO*, the FCC again refers to "business UNE-P, plus UNE-loops." (¶ 105). This conclusion is consistent with the policy goals expressed by the FCC. That the FCC states it intended to measure business "opportunities" in a wire center provides support for why its method to calculate business lines would potentially include non-business lines. *Id*. The Commission also concludes that it is appropriate to count DS1 lines as 24 business lines, provided that those DS1 lines in which all 24 channels are empty shall not be counted at all

					towards the business line count. It is consistent with Commission practice to consider a DS1 line to be an access line. If a DS1 line includes channels that are not empty, then it is an access line that connects end-user customers with incumbent LEC end-offices for switched services. Consistent with 47 C.F.R. § 51.5, such a DS1 line must count as 24 lines. However, if a DS1 line does not connect end-users for switched services, then it does not meet the first requirement set forth in the federal rule, and therefore must be excluded from the tally of business lines. Order at p.15.
	Illinois	X		Investigation into Illinois Bell Telephone Company's Designation of Certain of its Wire Centers as Non-Impaired, Case No. 06-0029, Order, issued December 6, 2006.	IBT's original December 2004 business line count submission to the FCC predated the definition of business lines in §51.5, which mandates the inclusion of digital equivalency. IBT subsequently submitted a business line count to the FCC based upon the business line definition in §51.5 that requires inclusion of digital equivalency. Accounting for digital equivalency increased the total number of business lines significantly and results in the reclassification of various wire centers. Any ambiguity contained within the TRRO as to whether digital equivalency is proper, is resolved by the FCC's enactment of §51.5. Section 51.5 changed the methodology of how business lines were to be computed by including digital equivalency. Accordingly, IBT's initial and future wire center designations should be calculated consistent with § 51.5. Order, Business Line Count Issue 3, Section 3(d), p. 9. The Commission agrees with IBT and Staff that this issue was disposed of in Docket 05-0442, and should not again be decided here. In Docket 05-0442, we concluded that business lines that provision non-switched access should be included in business line counts. CLECs' position is based on the premise that we cannot include non-switched access lines in business line counts *if* we depart from our conclusion in Docket 05-0442

					that “business lines must be counted in the same manner as they were in the data IBT submitted to the FCC in December 2004.” We do not depart from that conclusion. In Docket 05-0442, we held that IBT correctly included non-switched access lines in business line counts. Order, Business Line Count Issue 4, Section 4(d), p. 10.
	Indiana	X		In the Matter of the Indiana Utility Regulatory Commission’s Investigation of Issues Related to the Implementation of the Federal Communications Commission’s Triennial Review Remand Order and the Remaining Portions of the Triennial Review Order, Cause No. 42857, Order, Approved January 11, 2006.	Part of the FCC's test for when DSl and DS3 facilities must be unbundled depends on how many business lines are served in a given wire center. The two disputes here concern the definition of "business lines." Specifically, should the definition include all UNE loops, or should it exclude (i) UNE loops used to serve residential customers, and/or (ii) UNE loops used to provide non-switched services? SBC Indiana says that the answer is a decisive yes in the case of both disputed definitions, because the FCC expressly directed that for this purpose "business lines" includes *all* UNE loops. We agree, and so find. Plainly, the real-world tests should remain consistent with the approach the FCC used to set the thresholds for non-impairment. Had the FCC applied the different formula that the CLECs propose, it would undoubtedly have chosen a lower number of business lines for its thresholds. The FCC's rule, 47 C.F.R. *5* 51.5, defines "business lines" to include all UNE loops connected to a wire center at issue, regardless of the type of customer served. Moreover, when the FCC conducted a sample run of how to compute "business lines" in a wire center in paragraph 105 of the TRRO, it used all UNE loops in the wire center, with no exclusions. One reason for this was that the FCC wanted to establish a simple, objective test that relied on data the ILECs already have and which could be easily verified. SBC Indiana's proposal for computing "business lines" uses the exact same data and categories that the FCC relied on in the TRRO. We will not ignore the FCC's use of all UNE loops in its dry run nor will we redefine "business lines" in a manner that conflicts with the FCC's approach. Finally, we agree with SBC Indiana that the CLECs' proposal to exclude certain UNE loops is inconsistent with the FCC's impairment

					analysis, which used the same type of data that SBC Indiana proposes to continue to use here. We also note that the Illinois and Ohio commissions both held for SBC on this issue in their *TRO/TRO Remand Order* implementation dockets. Order, pp. 15 – 16.
	Kansas	X		In the Matter of the Complaint of Post-Interconnection Dispute Resolution of Southwestern Bell Telephone, L.P. Against NuVox Communications of Kansas, Inc. Regarding Wire Center UNE Declassifications, Docket No. 06-SWBT-743-COM, Order Determining Proper Method for Fiber-based Collocator and Business Line Counts, 2006 Kan. PUC LEXIS 644 (June 2, 2006), Reconsideration Denied at 2006 Kan. PUC LEXIS 861 (July 20, 2006).	Thus the Commission concludes that NuVox's attempt to link the phrase "among these requirements" to the first sentence of the rule is wrong. NuVox's interpretation would limit the business line count to only SWBT-owned switched access lines used to serve business customers, whether by SWBT itself or by a CLEC that leases lines from SWBT. This limitation is clearly not the intention of the FCC because an inquiry would be required as to which CLEC-leased lines were used for business customers and which lines were leased for switched access or data purposes. This information is held only by the CLECs in Kansas n86 and clearly is not the "objective set of data that incumbent LECs already have created for other regulatory purposes" envisioned by the FCC. Order at *47. NuVox further claimed that the "single largest business line issue in this proceeding is whether UNE loops should be converted to their maximum potential capacity" when SWBT counts only capacity used for ARMIS 43-08 purposes. NuVox suggested that a "good faith" estimate be made to remove residential lines, empty capacity and data-providing lines from the maximum potential capacity loops. SWBT, on the other hand, asserted that, when it provides a full DS1 to a retail end user or to a CLEC, ARMIS 43-08 requires counting the DS1 as 24 equivalent lines. The Commission concludes that this sort of dispute is precisely what the FCC intended to avoid. The FCC purposely chose "objective criteria to which the incumbent LECs have full access, [that] is readily confirmable by competitors, and [that] makes appropriate inferences regarding potential deployment" to "avoid complex and lengthy proceedings that are administratively wasteful but add only marginal value to our unbundling analysis." The FCC's

					requirement of counting all UNE loops in a wire center is unqualified. The Commission, therefore, concludes that NuVox's "good faith" proposal is not in compliance with the rule or the FCC's intent expressed in that rule and in the *TRRO*. Order at *51.
	Louisiana	X		In re: Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Change-of-Law, Order No. U-28356 (consolidated with Order No. U-28131) (Louisiana P.S.C. July 25, 2006) .	The ALJ's Recommendation, as contained herein, is adopted, with the following modifications: With respect to Issues 4 and 5, the FCC's definition of business lines should be interpreted to include all UNE-L lines and digital access lines at full capacity. Order, p. 22, ordering para. 3.
	Michigan	X		Michigan Bell Telephone Company, Incorporated, d/b/a AT&T Michigan v. J. Peter Lark, Laura Chappelle, and Monica Martinez, in their Official Capacities as Commissioners of the Michigan Public Service Commission and not as Individuals, Case No 06-12374 (E.D. Mich. May 8, 2007).	In counting the business lines, the MPSC determined that only loops, whether UNE-P, UNE-L, or leased lines, that serve a business customer will be counted, whereas AT&T asserts that all lines should be counted. The Court finds the MPSC's interpretation violates the regulation. The MPSC's position confuses the definition of a business line with the procedure used for counting a business line as specified in the governing regulation. "A business line is an incumbent LEC-owned switched access line used to serve a business customer." See 47 C.F.R. 51.5. Based upon this definition, the MPSC concluded that the phrase "all UNE loops connected to that wire center" included only those UNE loops that can be shown to serve business clients." See Pl.'s Ex. A Sept. 20, 2005 Order at p. 4. This interpretation ignores the plain language of the regulation. If the FCC wanted to include only business switched-access lines, it would have said so. The Court declines to transform the unambiguous phrase "all UNE loops" to mean only some UNE loops. Further support for the reading of the regulation advanced by AT&T can be gleaned from the FCC's rejection of an approach requiring "detailed and potentially subjective building-by-building and loop-by-loop evaluations" as impractical. TRRO at ¶ 159. The FCC instead

					based its business line count on data established by objective ILEC filings, concluding that "by basing our definition [of business line counts] on an ARMIS[2] filing required of incumbent LECs and adding UNE figures, which must also be reported, we can be confident in the accuracy of the thresholds, and a simplified ability to obtain the necessary information. Id. at ¶ 105. Opinion and Order at p. 5.
	Mississippi	X		In re: Order Establishing Generic Docket to Consider Change-of-Law to Existing Interconnection Agreements, Docket No. 2005-AD-139, Final Order (Miss. P.S.C. October 20, 2006).	. . . the text of the FCC's definition of "business line" calls for inclusion of "***all*** UNE loops," and BellSouth included all UNE loops in its count (i.e., those loops offered as stand alone loops or in combination with dedicated transport). The CLECs apparently take issue with this, arguing that in doing so, BellSouth has wrongly included some UNE loops that serve residential customers in its count of business loops. The Commission finds that BellSouth's count is appropriate . . . The CLECs also suggest that the Commission should undertake some calculation or estimate to capture "switched" UNE loops. CLEC witness Gillan, however concedes there is no source that would provide data concerning which UNE loops are switched as compared to looped that are not switched. Moreover, the FCC clearly intended to capture, with its business line test, an accurate measurement of the revenue opportunity in a wire center. This intent is consistent with the revised impairment standard the FCC adopted in the TRRO, which considers, in part, whether requesting carriers can compete without access to particular network elements and requires consideration of all the revenue opportunity that a competitor can reasonably expect to gain over facilities it uses, from all possible sources. Finally, the FCC was very clear that it wished to avoid a "complex" test, or a test that would be subject to "significant latitude." The Commission, therefore, declines to undertake the calculation or estimate suggested by the CLECs. This is consistent with decisions reached by the Illinois and Michigan Commissions. Order, pp. 42-43.

	North Carolina		X	In re: BellSouth Telecommunications, Inc., Docket No. P-55, Sub 1549, Order Concerning Changes-of-Law, 2006 WL 995866 (North Carolina Util. Comm. March 1, 2006).	The Commission believes after reading and analyzing the FCC's directives in both the TRRO and Rule 51.5 that the FCC did not intend for the ILECs' ARMIS business line count to be altered in any way. Therefore, the Commission agrees with CompSouth and the Public Staff that BellSouth has inappropriately adjusted the high capacity business lines represented in the ARMIS report to reflect the maximum potential use. The Commission is further convinced by the first sentence of the business line rule, Rule 51.5, which specifically states that a business line is an incumbent LEC-owned switched access line used to serve a business customer. The Commission agrees with CompSouth witness Gillan that this first sentence is the core of the FCC's definition of business line. Therefore, the Commission concludes that it is inappropriate for BellSouth to expand its count of its switched access business lines to count full system capacity. The second issue in contention concerns whether it is appropriate for BellSouth to include all UNE-L lines, including residential lines, in the count of business lines. BellSouth argued that the definition in Rule 51.5 states that the sum of all UNE loops connected to that wire center, including UNE loops provisioned in combination with other unbundled elements, should be included in the business line count. CompSouth argued that the first sentence of Rule 51.5 is the core of the definition and states that a business line is an ILEC-owned switched access line used to serve a business customer. The Commission does acknowledge that the FCC stated in its Rule that business lines should include all UNE loops. However, the Commission finds it troublesome that a business line count would include residential lines. In addition, the Commission agrees that the first sentence in Rule 51.5 is a core requirement for a line to be counted and that sentence says that it must be a switched access line used to serve business customers in order to be counted. \ Therefore, the Commission concludes that it is inappropriate for BellSouth to include residential UNE-L lines in the count of business lines. The third area of disagreement concerns

					whether it is appropriate for BellSouth to expand its count of high-capacity UNE-L to count full system capacity. The Commission agrees with CompSouth and the Public Staff that UNE-L lines added should only reflect the actual used capacity to serve a business customer as specified in the first sentence of Rule 51.5 (i.e., only lines used to serve business customers should be counted). The Commission agrees with the Public Staff that the business opportunities in a wire center represent the actual use of the lines, not necessarily the maximum potential use of the lines. Stated another way, the actual use of lines by actual customers is the business opportunity available in a wire center, not simply the maximum capacity available to serve additional customers if additional customers are not seeking to be served. The Commission acknowledges that BellSouth cannot determine the actual used capacity of the CLPs' UNE-L lines. The Commission believes that the proposal by CompSouth, supported by the Public Staff, to assume that CLP end users would have the same utilization factor as BellSouth's end users is appropriate. As explained by the Public Staff, if BellSouth's high capacity line customers use 75% of the maximum capacity of their lines, it is reasonable to believe that CLP customers would use 75% of the maximum capacity of their lines. Therefore, the Commission concludes that it is inappropriate for BellSouth to expand its count of high capacity UNE-L to count full system capacity. Instead, BellSouth should use the same utilization factor for CLP high-capacity UNE-L as exists for BellSouth's high-capacity lines. Order, at pp. 67-69
	Ohio	X		In the Matter of the Petition of XO Communications, Inc. Requesting a Commission Investigation of those Wire Centers that AT&T Ohio Assert are Non-Impaired, Case No. 05-	The Commission rejects the CLEC Coalition's proposal to exclude unused capacity and capacity used for residential services on high capacity UNE-L lines. As this Commission concluded in its 05-887 Order, "the FCC has clearly stated that all UNE loops connected to the wire center should be counted as part of the business line density in determining wire center

				1393-TP-UNC, Finding and Order, 2006 Ohio PUC LEXIS 347, June 6, 2006.	nonimpairment for high capacity loops and transport" (05-887 Order at 16). Further, the Commission is not convinced that CLECs would have the same capacity utilization rates as the ILEC, which is the carrier of last resort, simply because they compete for some of the same customers. The FCC stated, in PP105 and 108 of the TRRO, that its approach relies on objective criteria to which the ILECs have full access and which have already been created for other regulatory purposes. As AT&T Ohio does not have full access to the data necessary to determine how CLECs are using high capacity UNE loops the Commission does not believe it was the FCC's intention to have the ILECs remove an estimated amount of unused capacity. To the contrary, the FCC has explicitly stated that ILECs shall account for high capacity digital access lines by counting each 64 kbps-equivalent as one line. For example, a DS1 line corresponds to 24, 64 kbps-equivalents and, therefore, to 24 business lines (See *47 C.F.R. § 51.5*). Therefore, the Commission finds that AT&T Ohio's method of converting high capacity UNE-L to business lines is appropriate and consistent with FCC rules. . . . As AT&T Ohio does not have full access to the data necessary to determine how CLECs are using high capacity UNE loops, the Commission does not believe it was the FCC's intention to have the ILECs remove an estimate of high capacity loops providing nonswitched service. Therefore, the Commission finds that AT&T Ohio's method of converting high capacity UNE loops to business lines is appropriate and consistent with FCC rules. This is further consistent with our decision in the 05-887 Order where we concluded that all UNE loops be counted as a business line for the purpose of determining wire center nonimpairment determinations for high capacity loops and transport (05-887 Order at 16). Order at *43 - *47.

	Oregon		X	Oregon Public Utility Commission, Docket UM 1251, In the Matter of Covad Communications Company; Eschelon Telecom of Oregon, Inc.; McLeodUSA Telecommunications Services, Inc.; and XO Communications Services, Inc. Request for Commission Approval of Non-Impairment Wire Center List , Order (March 20, 2007)	With respect to whether lines "used to serve" should include spare capacity, including DS1 equivalents for the purpose of calculating line counts and consequent wire center eligibility, the Commission is again asked to divine the FCC's intentions. The relevant language could reasonably be interpreted as either Qwest or the Joint CLECs propose. Although there is a lack of general consensus among the various state commissions, we agree with the comments of the North Carolina commission that a simple reading of the phrase "used to serve" precludes counting spare—i.e., unused—capacity either in individual lines or equivalents. This interpretation is not only reasonable; it most closely reflects current, real world circumstances and is most consistent with our policy of promoting robust competition in the offering of telecommunications services to the public. Joint CLECs also have asked that, if Qwest is authorized to modify its ARMIS 43-08 line counts (i.e., include unused capacity as described by Qwest above), the Commission make certain additional adjustments, including using the most contemporaneous data for UNE-P and UNE-loops.33 In light of our findings above, Joint CLECs' request is moot. We direct the parties to jointly submit new business line data for the Bend and Portland Alpine wire centers. The submission shall utilize business line counts, as defined in paragraph 105 of the TRRO, taken from the 2004 ARMIS 43-08 report. The line counts for each wire center shall include only lines actually used to serve customers and shall exclude spare capacity, as measured in voice grade equivalents.
	South Carolina	X		In re: BellSouth Telecommunications, Inc., Docket No. 2004-316-C, Order Addressing Changes of Law, 2006 WL 2388163 (S.C. P.S.C. March 10, 2006	The dispute between BellSouth and the CLECs over these wire centers concerns the application of the FCC's rule defining business lines. [FN126] There are two aspects to this dispute. The first is BellSouth's inclusion of certain UNE loops, and the second is BellSouth's treatment of high capacity loops. The Commission finds that BellSouth properly implemented the applicable federal law with regard to both of these aspects of the dispute. With respect to the inclusion of certain UNE loops, the TRRO

					clearly requires BellSouth to include business UNE-P. [FN127] BellSouth did so, [FN128] it did not include residential UNE-P, [FN129] and the CLECs have not suggested that BellSouth should have included residential UNE-P. Moreover, the text of the FCC's definition of 'business line' calls for the inclusion of 'all UNE loops,' [FN130] and BellSouth included all UNE loops in its count (i.e. those loops offered as stand-alone loops or in combination with dedicated interoffice transport). The CLECs apparently take issue with this, arguing that in doing so, BellSouth has wrongly included some UNE loops that serve residential customers in its count of business loops. The Commission finds that BellSouth's count is appropriate. The federal rule requires the number of business lines in a wire center [t]o equal the sum of all incumbent LEC business switched access lines, plus the sum of all UNE loops connected to that wire center, including UNE loops provisioned in combination with other unbundled elements. [FN131] The FCC intentionally required all UNE loops (excepting residential UNE-P) to be included, because doing so gauges 'the business opportunities in a wire center, including business opportunities already being captured by competing carriers through the use of UNEs.' The CLECs also suggest that the Commission should undertake some calculation or estimate to capture 'switched' UNE loops. CLEC witness Mr. Gillan, however, concedes there is no source that would provide data concerning which UNE loops are switched as compared to loops that are not switched. [FN135] Moreover, the FCC clearly intended to capture, with its business line test, an accurate measurement of the revenue opportunity in a wire center. [FN136] This intent is consistent with the revised impairment standard the FCC adopted in the TRRO, which considers, in part, whether requesting carriers can compete without access to particular network elements [FN137] and requires consideration of all the revenue

					opportunity that a competitor can reasonably expect to gain over facilities it uses, from all possible sources. [FN138] Finally, the FCC was very clear that it wished to avoid a 'complex' test, or a test that would be subject to 'significant latitude.' [FN139] The Commission, therefore, declines to undertake the calculation or estimate suggested by the CLECs. This is consistent with decisions reached by the Illinois and Michigan Commissions. [FN140] Additionally, the federal rule requires ISDN and other digital access lines, whether BellSouth's lines or CLEC UNE lines, to be counted at their full system capacity; that is, each 64 kbps-equivalent is to be counted as one line. [FN141] The FCC's rule plainly states that 'a DS1 line corresponds to 24 64 kbps-equivalents, and therefore to 24 'business lines." [FN142] The FCC has made clear its 'test requires ILECs to count business lines on a voice grade equivalent basis. In other words, a DS1 loop counts as 24 business lines, not one.' [FN143] Order at *17-*18.
	Texas	X		Post –Interconnection Dispute Resolution Proceeding Regarding Wire Center UNE Declassification, PUC Docket No. 31303, Order Approving Methodology to Determine AT&T Texas Wire Centers Which Are Non-Impaired, issued April 6, 2006.	Further, the Commission is not persuaded by the Joint CLEC's assertion that a further examination regarding the type of customer being served by UNE loops is required, since that requirement would go beyond the FCC's directive in ¶105 of the *TRRO*. The Commission notes that the FCC indicated that when counting business lines the ILEC should include ARMIS 43-08 business lines (i.e. business line service for ILEC customers), plus UNE-P business lines (i.e. business lines service by CLEC customers using UNE-P), plus UNE loops. The Commission is persuaded that if the FCC intended that only UNE loops serving business customers should be counted, it would have stated this in ¶105 of the *TRRO*. Order at p. 30. The Commission finds that AT&T Texas's counting and reporting of UNE-L capacity complies with the FCC's

					definition of a business line in 47 C.F.R §51.5 as well as the FCC's specific instruction on reporting such lines found in ¶105 of the *TRRO*, described in Issue 1A, *supra*. The Commission notes that two-wire switched digital access lines have a capacity of two 64 kbps circuits, therefore, each switched two-wire switched digital line used to provide business service should be counted as two business lines as directed in 47 C.F.R. §51.5(3). Order at p. 33.
				Affirmed by a federal district court in: Logix Communications L.P. v. Public Utility Commission of Texas, Case No. A-06-CA-548-SS, Order (W.D. Tx., November 6, 2006)	The FCC, by the plain language of this rule, has determined that "[t]he number of business lines in a wire center shall equal the sum of all incumbent LEC business switched access lines, plus the sum of all UNE loops connected to that wire center." 47 C.F.R § 51.5. Logix contends this language is qualified by the phrase that precedes it: "A business line is an incumbent LEC-owned switched access line used to serve a business customer." *Id* Therefore, Logix argues, the phrase "all UNE loops connected to that wire center" must be read to include only the UNE Loops that can be shown to serve business clients. This argument fails to consider the simple fact that the rule identifies 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." This grammatical structure indicates the FCC wished to include only business switched-access lines, but wished to count all UNE loops. This interpretation is further supported by the next clause in the sentence: "the sum of all incumbent LEC *business switched access lines*, plus the sum of *all UNE loops* connected to that wire center, *including UNE loops provisioned in combination with other unbundled elements.*" The FCC explicitly intended to count all UNE loops, not just those "provisioned in combination with" business lines. The approach advocated by Logix would require the exact loop-by-loop analysis rejected in the FCC's Order. Logix

					argues only UNE loops serving business customers should be counted in the business line tally, but this information is not readily available to or verifiable by the FCC. ILECs do not generally report or even have information on how CLECs use their UNE loops. Thus, this is exactly the type of information the FCC found impractical: it is "not easily verifiable, and is often exclusively within the possession of competitive LECs, many of which have little incentive to provide that information to regulators evaluating impairment." *Id.* at ¶ 158. Logix points to this Court's decision in *Cbeyond Communications L.P. v. Pub. Util. Comm'n.*, arguing that notwithstanding the analysis explained in the FCC's Order, the intent expressed in the order must yield to the unambiguous language to the final regulation. No. A-05-CA-862-SS (W.D. Tex., Jan. 24, 2006). *Cbeyond* concerned an FCC regulation that was "facially irreconcilable" with the text of the *Triennial Review Remand Order*. *Id.* In that situation, this court held that "when the FCC makes inconsistent statements in an order and a regulation, it is the language in the regulation -- not the order -- that is controlling." *Id.* The regulation and order at issue today are not irreconcilable; the order explains and supports the plain meaning of the regulation. Therefore, the PUCT's decision that all UNE loops in a wire center should be counted to establish the number of business lines in that wire center is correct. Logix raises essentially the same textual argument in asserting that the rule's requirement that business line tallies "(3) [s]hall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line" is properly limited to 64 kbps-equivalents actually used by business customers. This argument is without merit. The sentence itself is unqualified and suggests no exceptions or limitations. Moreover, as explained above, data on actual end use is not readily verifiable by the FCC, nor is it objective. The FCC has rejected such a detailed approach, recognizing that "although it

					may provide a more complete picture," the evaluation of such data would be unworkable. *Triennial Review Remand Order* at ¶ 105. The PUCT's holding that each 64 kbps-equivalent shall be counted as one business line is supported by both the text of the regulation and the intent expressed in the *Triennial Review Remand Order*. Order at pp. 4-7.
	Utah	X		In the Matter of the Investigation into Qwest Wire Center Data, Docket No. 06-049-40, 2006 Utah PUC LEXIS 239, September 11, 2006.	Having considered the parties' arguments, we conclude it is appropriate for Qwest to have used the December 2003 data contained in its 2004 ARMIS 43-08 report to compile its initial wire center non-impairment list. The Wireline Competition Bureau requested this list in early February 2005 and Qwest provided the list to the FCC in March 2005. Qwest's 2005 ARMIS 43-08 report was not filed with the FCC until April 2005. We note the FCC decided to require ILECs to base their business line counts on ARMIS information because that information has "already [been] created for other regulatory purposes" n20 and is "readily confirmable by competitors." n21 Based on this guidance, it is reasonable that Qwest used its 2004 ARMIS 43-08 data to create its initial non-impairment list, and we see no reason to require Qwest to change that list simply because newer data has become available over the past eighteen months. We therefore deny the Joint CLECs' request that we require Qwest to use data from its 2005 ARMIS 43-08 report as the basis for its initial wire center non-impairment list. Order at pp. *23-24. In addition, all UNE loops, whether residential or business, switched or non-switched, should be added to the ARMIS business line data. Order at p. *31. In deciding this matter, we look first to the *TRRO* and then attempt to read the FCC's rules consistently with the FCC's guidance in the *TRRO*. All parties agree the basic intent of paragraph 105 of the *TRRO* is to provide

					an easily understood process for calculating business lines based on readily available information. We concur and conclude the Division's proposed method of determining the number of business lines at a given wire center best satisfies the FCC's intent by providing an easily calculated, reasonable representation of competition within that wire center. Using ARMIS 43-08 data, including Qwest's known retail DS1 and DS3 line counts, as a starting point for business line calculations provides "an objective set of data that incumbent LECs already have created." Likewise, adjusting wholesale DS1 and DS3 numbers to account for their total VGE capacity and counting all UNE loops accords with the FCC's view that the number of business lines fairly represents the business opportunities available in a given wire center. Order at p. * 33.

OTHER STATE DECISIONS
FIBER BASED COLLOCATOR DEFINITION

ISSUE	STATE	RESULT		CASE CITATION	QUOTE
		AT&T	CLEC		
Fiber Based Collocator Definition	Illinois		X	Investigation into Illinois Bell Telephone Company's Designation of Certain of its Wire Centers as Non-Impaired, Case No. 06-0029, Order, issued December 6, 2006.	The presence of several carriers with fiber facilities in a single wire center indicates that the market condition of the wire center is one that can economically support the deployment of CLEC fiber facilities. The FCC looked at the high costs involved with fiber deployment when defining impairment. TRRO, ¶ 98. Counting one FBC's investment in fiber facilities more than once, as proposed by IBT, does not show that the wire center can economically support the deployment of multiple CLEC fiber facilities. Accordingly, in the situation specifically discussed by the parties, i.e. a fiber-based collocator is cross-connected with another collocator, we find that the second cross-connected collocator should not be counted as a fiber-based collocator for purposes of determining wire center designations. This decision does not preclude the counting of other arrangements that may meet the definition of FBC, we merely do not find the cross-connect situation described herein to meet the definition of FBC. Order, FBC Issue 1, Section 1(d), p. 17.
	Kansas		X	In the Matter of the Complaint of Post-Interconnection Dispute Resolution of Southwestern Bell Telephone, L.P. Against NuVox Communications of Kansas, Inc. Regarding Wire Center	Even if SWBT could convince the Commission that DS3s constitute "comparable transmission facilities", the Commission would conclude SWBT's fiber-based collocators count was fatally flawed because SWBT considered the cross-connecting collocators as "operating" the fiber-based collocator's fiber-optic cable in some fashion. It is the Commission's experience that an operator of a fiber-optic cable provides surveillance of the integrity

				UNE Declassifications, Docket No. 06-SWBT-743-COM, Order Determining Proper Method for Fiber-based Collocator and Business Line Counts, 2006 Kan. PUC LEXIS 644 (June 2, 2006), Reconsideration Denied at 2006 Kan. PUC LEXIS 861 (July 20, 2006).	of the system, responds to trouble reports and undertakes routine maintenance. Cross-connecting collocators do not perform any of these functions and, thereby, do not qualify as "operators" of a fiber-optic cable . . . Furthermore, the Commission concludes that the FCC intended the term "operator" to be at a higher operative level than that proposed by SWBT. The FCC defined fiber-based collocation, for its impairment analysis, as a "competitive collocation arrangement, with active power supply, that *has* a non-incumbent LEC fiber-optic cable that both terminates at the collocation facility and leaves the wire center." Reading the text of the order with the rule, it is clear that the FCC intended that, to be counted as a fiber-based collocator, the CLEC must have some ownership of the cable, such as an IRU. Order at *30 - *31.
	Michigan		X	In the Matter, on the Commission's Own Motion, to Commence a Collaborative Proceeding to Monitor and Facilitate Implementation of Accessible Letters Issued by SBC Michigan and Verizon, Michigan Public Service Commission Docket U-14447 (September 20, 2005) The Michigan PSC's decision on this issue was affirmed by a federal district court in: Michigan Bell Telephone Company, Incorporated,	Commission Decision: The arrangement in which one CLEC cross connects to the facilities of another CLEC that is a fiber-based collocator does not increase the number of fiber-based collocators for purposes of this analysis. See 47 C.F.R. 51.5. Contrary to SBC's arguments, the issue is not ownership, but rather control and operation of fiber facilities. There is no support for finding that this arrangement includes fiber to the collocation cage of the CLEC that cross-connects to the CLEC that does control and operate fiber facilities. The arrangement in which one CLEC cross connects to the facilities of another CLEC that is a fiber-based collocator does not increase the number of fiber-based collocators for purposes of this analysis. See 47 C.F.R. 51.5. Contrary to SBC's arguments, the issue is not ownership, but rather control and operation of fiber facilities. There is no support for finding that this arrangement includes fiber to the collocation cage of the CLEC that cross-connects to

				d/b/a AT&T Michigan v. J. Peter Lark, Laura Chappelle, and Monica Martinez, in their Official Capacities as Commissioners of the Michigan Public Service Commission and not as Individuals, Case No 06-12374 (E.D. Mich. May 8, 2007).	the CLEC that does control and operate fiber facilities. Order, p. 11. Court Decision: The Court agrees with Defendants that when a fiber-based collocator is cross-connected with another collocator, the second cross-connected collocator should not be counted as a fiber-based collocator for purposes of determining wire center designations. Order at p. 13.
	New Hampshire		X	Verizon New Hampshire Wire Center Investigation and DT 06-012, Verizon New Hampshire Revisions to Tariff 84, Order Classifying Wire Centers and Addressing Related Matters, Order No. 24,598 (March 10, 2006).	To operate a [fiber] cable, a CLEC must be able to control not only the lighting of the fiber within it, but a broader range of functions, such as the placement, capacity and configuration of the cable itself. Order at p. 37.
	Ohio	X		In the Matter of the Petition of XO Communications, Inc. Requesting a Commission Investigation of those Wire Centers that AT&T Ohio Assert are Non-Impaired, Case No. 05-1393-TP-UNC, Finding and Order, 2006 Ohio PUC LEXIS 347, June 6, 2006. Rehearing denied, 2006 Ohio PUC LEXIS 426, July 26, 2006.	The Commission recognizes that the scenario in dispute is when a "collocator A," collocating in AT&T Ohio's wire center, does not own the fiber it uses to leave the wire center, and obtains that transmission capability of DS-3 or above from another carrier "collocator B," collocating in that wire center via a cross-connect using coaxial cable. The Commission concludes that the FCC was clear in its TRRO at P102 that collocators utilizing nontraditional collocation arrangements that meet the criteria outlined in the FBC definition are considered FBCs. Pursuant to the definition of FBC in *47 C.F.R. § 51.5*, we find no requirement that the collocator must obtain the fiber, or comparable facilities it does not own, as a dark fiber on an IRU basis from a third party facility provider.

					In other words, we find that, under the FCC's FBC definition, the collocator can lease lit fiber from a party other than the ILEC. Therefore, no requirement exists that the collocator has to own the optronics used to light the fiber transmission facility. Order, at *23 - *25.
	Oregon		X	Oregon Public Utility Commission, Docket UM 1251, In the Matter of Covad Communications Company; Eschelon Telecom of Oregon, Inc.; McLeodUSA Telecommunications Services, Inc.; and XO Communications Services, Inc. Request for Commission Approval of Non-Impairment Wire Center List , Order (March 20, 2007)	Joint CLECs contend that Qwest incorrectly counted one company (Company A) despite having been informed that Company A did not own or operate fiber in the Medford wire center. Joint CLECs assert Qwest misinterprets the TRRO by relying on the fact that Company A obtains transport from both Qwest and non-Qwest affiliated carriers. Joint CLECs assert that merely obtaining transport does not mean that a company operates or has the right to use the fiber itself and does not meet the "indefeasible right of use" standard for the purpose of the TRRO analysis. … Here again we find it to be in the public interest to use data that most closely reflects current, real world circumstances. Wire center non-impaired status classification is a permanent, i.e., irreversible, act and should therefore be firmly based in fact. Company A was not shown to have either ownership or an indefeasible right of use of facilities from another carrier, the standard enunciated in paragraph 102, Note 292, of the TRRO. Thus, Company A's leasing of fiber circuits without any ownership or operation of a fiber optic network does not fulfill the language of the TRRO for "fiber-based collocators." Order, pp.10-11.
	Texas		X	Post –Interconnection Dispute Resolution Proceeding Regarding Wire Center UNE Declassification, PUC Docket No. 31303, Order	The Commission finds that in order for a collocated carrier's equipment to operate a fiber-optic cable or comparable transmission facility that leaves the wire center, the collocator's fiber-transmission equipment must be directly connected to that transmission facility and cannot be routed through (e.g. cross-connected to) an

				Approving Methodology to Determine AT&T Texas Wire Centers Which Are Non-Impaired, issued April 6, 2006.	unaffiliated carrier's collocated equipment located in the same central office. Order at p. 13.