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August 17, 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:

The CLEC parties and AT&T Missouri respectfully present this joint submission in the above-referenced case.

On July 23, 2007, the CLEC parties and AT&T Missouri jointly submitted Judge's Exhibit A, consisting of two matrices (Other State Decisions -- Business Line Definition; Other State Decisions -- Fiber Based Collocator Definition). This is to advise that, on August 15, 2007, the Indiana Utility Regulatory Commission issued the attached Final Order in which the Commission ruled in favor of AT&T Indiana with respect to the business line issues (*see* pp. 16-18) and in favor of CLECs with respect to the fiber-based collocator issues (*see*, pp. 31-32) which are likewise presented in this case.

Mr. Magness and I will update Judge's Exhibit A as and when decisions such as this are issued prior to the issuance of the Commission's own decision, absent different instructions.

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
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STATE OF INDIANA

AUG 16 2007 INDIANA UTILITY REGULATORY COMMISSION

INDIANA UTILITY REGULATORY COMMISSION
TELECOMMUNICATIONS DIVISION

PETITION OF INDIANA BELL TELEPHONE COMPANY, INCORPORATED FOR EXPEDITED RESOLUTION OF DISPUTE WITH NUVOX COMMUNICATIONS INC. REGARDING NON-IMPAIRED WIRE CENTERS	)	CAUSE NO. 42986
	)	FINAL ORDER
	)	APPROVED: AUG 15 2007

BY THE COMMISSION:
Larry S. Landis, Commissioner
Lorraine Hitz-Bradley, Administrative Law Judge

1. **Procedural History.** On February 17, 2006, Indiana Bell Telephone Company, Incorporated ("AT&T" or "Petitioner") filed its Petition, as titled above, along with the Direct Testimony of its witnesses, Carol A. Chapman and Wesley Pool and a *Motion for Protection of Confidential Information* with the Indiana Utility Regulatory Commission ("Commission"). The Petition requests resolution of a dispute between AT&T and NuVox Communications, Inc. ("NuVox") regarding wire center unbundled network element ("UNE") declassifications.

The Commission granted Petitioner's *Motion for Confidentiality* on March 1, 2006. NuVox filed its *Response to AT&T's Petition* on March 9, and Covad Communications Company ("Covad") filed a *Petition for Leave to Intervene* on March 15, 2006, which was granted by the Commission.

Pursuant to notice, and as provided in 170 I.A.C. 1-1.1-15, a Prehearing Conference was held in this Cause on March 22, 2006 at 2:30 p.m., EST, in Room E306 of the Indiana Government Center South, Indianapolis, Indiana. Proof of publication of the notice of the Prehearing Conference has been incorporated into the record and placed in the official files of the Commission. At that conference a procedural schedule was agreed upon and ordered by the Commission in its Prehearing Conference Order issued on April 6, 2006.

On March 24, 2006, NuVox and Covad (hereinafter, collectively, the "CLECs") filed an *Application for Issuance of Subpoenas*, requesting that the Commission issue subpoenas to a number of non-party telecommunications companies operating in the State of Indiana, asking for information NuVox deemed critical to its case. Because much of this information was alleged to be confidential in nature, a Confidentiality Agreement was included in the subpoena request. A March 30, 2006 Docket Entry granted the issuance of the subpoenas and allowed for limited confidential treatment to the information being requested. An additional request for a subpoena to be issued to a carrier omitted from the original request was filed by the CLECs on April 21, 2006 and approved by the Commission on April 24, 2006.

NuVox and Covad filed the pre-filed testimony of their witness Joe Gillan on May 5, 2006, along with a *Motion for Protection of Confidential and Proprietary Information* for the protection of confidential information contained therein. That Motion was granted by a docket entry issued by

the Presiding Officers on May 11, 2006. The Indiana Office of the Utility Consumer Counselor ("OUCC") issued its *Notice of Intent Not to File Testimony* on May 15, 2006.

On May 17, 2006, NuVox filed a *Motion to Compel Discovery* requesting that the Commission order AT&T to respond to a discovery request that AT&T objected to as irrelevant. NuVox also asked the Commission to impose additional sanctions on AT&T for its failure to respond, including the award of attorney fees. AT&T filed a *Reply* to the Motion on May 24, 2006 and NuVox filed a *Reply in Support of Its Motion to Compel Discovery* on May 31, 2006. In a Docket Entry issued on June 2, 2006, the Presiding Officers ordered AT&T to respond to NuVox's request for information, but denied the additional request for sanctions.

AT&T filed the Rebuttal Testimony of its witnesses Chapman and Pool on May 26, 2006. On May 30, 2006 NuVox filed *NuVox Communications of Indiana, Inc.'s Objection to the Admission of and Motion to Strike Portions of the Prefiled Direct and Rebuttal Testimony of AT&T Indiana Witness Chapman*, requesting the Commission strike the portions of Ms. Chapman's testimony that dealt with her knowledge of the calculation and number of fiber-based collocators in each wire center for which AT&T claimed non-impairment. NuVox contemporaneously filed a *Motion for Confidential Treatment of Information*, as the Motion to Strike referred to information in witness Chapman's testimony that was deemed confidential by AT&T. In their June 2, 2006 Docket Entry, the Presiding Officers determined that if AT&T felt the information identified was confidential it should file for protection of said information, as NuVox was not in a position to satisfy substantive requirements of 170 I.A.C. 1-1.1-4. AT&T filed such a *Motion* on June 5, 2006, which was granted by the Presiding Officers later that day. AT&T also filed its *Response to NuVox Communications of Indiana, Inc.'s Objection to the Admission of and Motion to Strike Portions of the Prefiled Direct and Rebuttal Testimony of AT&T Indiana Witness Chapman* on June 6th. Additional argument and testimony regarding this Motion was held prior to the start of the Evidentiary Hearing on June 7, 2006. The Motion was denied by the Presiding Officers at that time.

Pursuant to notice published as required by law, the evidentiary hearing was held on June 7, 2006 in Conference Center Room #32 of the Indiana Government Center South, Indianapolis, Indiana, at 9:30 a.m. The proofs of publication of the notice of such hearing were incorporated into the record of this proceeding by reference and placed in the official files of the Commission. The evidence of both parties was offered and admitted into the record in accordance with the rulings of the Presiding Officer and witnesses were made available for cross-examination.

The Commission, based upon the applicable law and the evidence herein, and being duly advised in the premises, now finds as follows:

2. **Jurisdiction.** This matter invokes the Commission's jurisdiction authorized by 47 U.S.C. §§ 251 and 252. Section 251(b) of the 1996 Act imposes certain duties on all local exchange carriers ("LECs"). Sections 251(d)(3) and 261 of the federal Communications Act of 1934, as amended by the Telecommunications Act of 1996 (47 U.S.C. § 151 *et seq.*) ("Act"), operate to provide oversight of this Commission-initiated investigation by federal courts. Since our rulings and Commission orders will be informed by, and will inevitably contain, interpretations of federal law, such oversight ensures consistency of Commission procedures, actions, and orders with regard to interconnection and unbundling requirements found in federal law.

AT&T and the CLECs are public utilities and telephone companies within the meaning of the Indiana Public Service Commission Act, as amended. Accordingly, the Commission has jurisdiction over AT&T and the CLECs, as well as the subject matter of this Cause, in the manner and to the extent provided by the laws of the State of Indiana and by the Act.

3. **Statutory Standards.** On February 4, 2005, the Federal Communications Commission ("FCC") issued its *Triennial Review Remand Order* (the "TRRO").[1] In the *TRRO*, the FCC conditioned certain unbundling obligations relating to high capacity loops and dedicated transport on the specific characteristics of ILEC wire centers associated with those UNEs. In evaluating whether CLECs are impaired with respect to dedicated interoffice transport and high-capacity loops, the FCC established certain impairment triggers in the TRRO.[2] Those impairment triggers focus on the number of fiber-based collocators and the number of business access lines present in a specific wire center. The FCC's impairment/non-impairment determination and its wire center-based triggers, and the necessary application of those triggers to wire centers in Indiana to determine the scope of AT&T's unbundling obligations, give rise to the current matter. The goal of this proceeding is to resolve the dispute of the parties regarding implementation of the *TRRO* as to these triggers and the non-impairment determinations made by AT&T under Section 252 of the Act. Under Section 252, a state Commission "shall resolve each issue set forth in the petition and response, if any, by imposing appropriate conditions as required to implement subsection (c) [§ 252(c)] upon the parties to the agreement . . . ." 47 U.S.C. §252(b)(4)(C).

In resolving any open issues and imposing conditions upon the parties to the agreement, Section 252(c) provides:

> a State Commission shall –
>
> (1) ensure that such resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the [FCC] pursuant to Section 251;
>
> (2) establish any rates for interconnection, services, or network elements according to subsection (d); and
>
> (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

In light of the above standards, we summarize the parties' positions on the open issues and we resolve those issues as set forth below.

4. **Background.**

AT&T's Data and Methodology. AT&T has designated wire centers as non-impaired for DS1 and DS3 loops and wire centers as being Tier 1 or Tier 2 and therefore non-impaired for dedicated transport. *See* Chapman Direct, Schedules CAC-5 and CAC-6. In order to establish a

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[1] Order on Remand, *In the Matter of Unbundled Access to Network Elements*, WC Docket No. 04-313 and *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, rel. February 4, 2005.

[2] See, e.g., *TRRO* at ¶ 5 (Executive Summary).

foundation for the discussion and resolution of issues, the following sets forth how AT&T made these determinations.

A. Business Line Counts. The FCC's rules for non-impairment for DS1 and DS3 loops and dedicated transport are based in part on the number of "business lines" served in a given wire center. The FCC provided specific definitions and guidance regarding the methodology to be used to count business lines.[3] The FCC stated that business line counts were to be based on objective data that LECs "already have to create for other regulatory purposes." *TRRO,* ¶ 105. Specifically, the FCC relied on wire center data based on "ARMIS 43-08 business lines, plus UNE-P, plus UNE-loops." *Id.* Similarly, AT&T's method bases business line counts upon ARMIS 43-08 business line data, UNE-P business line counts, and UNE loop counts. *Chapman Direct* at 20. AT&T first calculated the switched access business lines using the data underlying its December 2003 ARMIS 43-08 report, which was the most recent report on file with the FCC as of the date of the non-impairment declaration and the effective date of the *TRRO. Id.* at 20. Second, AT&T calculated the total number of UNE loops and the total number of business UNE-P switched access lines leased by CLECs from AT&T as of December 2003 (December 2003 data was used to be consistent with the data in the most recent ARMIS report). *Id.*

B. Fiber-Based Collocator Count. The second input for determining impairment for DS1 and DS3 loops and dedicated transport is the number of fiber-based collocators ("FBCs").[4] The

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[3] The FCC defines "business line" as follows:

> Business line. A business line is an incumbent LEC-owned switched access line used to serve a business customer, whether by the incumbent LEC itself or by a competitive LEC that leases the line from the incumbent LEC. 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 that wire center, including UNE loops provisioned in combination with other unbundled elements. Among these requirements, business line tallies (1) shall include only those access lines connecting end-user customers with incumbent LEC end-offices for switched services, (2) shall not include non-switched special access lines, (3) shall account for ISDN and other 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.'

47 C.F.R. § 51.5.

[4] The FCC defines "fiber-based collocator" as follows:

> Fiber-based collocator. A fiber-based collocator is any carrier, unaffiliated with the incumbent LEC, that maintains a collocation arrangement in an incumbent LEC wire center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that (1) terminates at a collocation arrangement within the wire center; (2) leaves the incumbent LEC wire center premises; and (3) is owned by a party other than the incumbent LEC or any affiliate of the incumbent LEC, except as set forth in this paragraph. Dark fiber obtained from an incumbent LEC on an indefeasible right of use basis shall be treated as non-incumbent LEC fiber-optic cable. Two or more affiliated fiber-based collocators in a single wire center shall collectively be counted as a single fiber-based collocator. For purposes of this paragraph, the term affiliate is defined by 47 U.S.C. § 153(1) and any relevant interpretation in this Title.

FCC stated that "[i]nformation regarding fiber-based collocation is readily identifiable by incumbent LECs, via review of billing records or physical inspection of central office premises." *TRRO,* ¶ 100. AT&T reviewed its billing records and performed a physical inspection of its central office premises in order to determine the number of FBCs. *Chapman Direct* at 13. The AT&T Industry Markets organization identified wire centers that potentially would meet the FCC's non-impairment criteria. *Pool Direct* at 4-5. This identification was based upon data such as business line counts, UNE-L counts, and collocation records. *Id.* AT&T personnel familiar with collocation arrangements and fiber facilities then completed physical site inspections at each of the identified wire centers in Indiana. *Id.* at 5. Through this process, AT&T determined the identity of each collocator, whether the collocator had fiber-optic cable (or a comparable transmission facility) that terminated at its collocation arrangement, whether electricity was being supplied to the collocator,[5] whether the collocator was connected to fiber facilities (or their equivalent) that leave the wire center, whether AT&T provided the fiber facility in question, and whether the collocator was affiliated with other collocators. *Chapman Direct* at 27; *Pool Direct* at 5-7.

AT&T did not count a collocator unless it: (1) was unaffiliated with AT&T,[6] (2) maintained collocation with an active electrical power supply in an AT&T wire center, and (3) was connected to a fiber-optic cable or comparable transmission facility. *Chapman Direct* at 25. AT&T also did not count the fiber-optic cable or comparable transmission facility operated by the carrier unless it: (1) terminated at a collocation arrangement in the wire center, (2) left the wire center, and (3) was not owned by AT&T, except if dark fiber was provided under an indefeasible right of use ("IRU"). *Id.* at 25-26. Where two or more carriers that were affiliated with each other met these requirements in a given wire center, only one of the affiliated carriers would be counted. *Id.* If a FBC was connected to an unaffiliated CLEC's collocation arrangement, such that the second CLEC was capable of utilizing the first CLEC's fiber-based entrance facility in its own collocation arrangement, both CLECs would be identified as collocators meeting the FCC's criteria, subject to confirmation of an active power supply. *Pool Direct* at 9.

i. Data

The data supporting AT&T's wire center designations is in Confidential Chapman Exhibits CAC-1 and CAC-2, admitted with Ms. Chapman's Direct Testimony and in Petitioner's Confidential Exhibit 5 admitted at the hearing in this proceeding (*see* Transcript p. A-37). The following table summarizes the wire centers in Indiana that meet the criteria for DS1 and DS3 loop non-impairment and that meet the non-impairment thresholds for Tier 1 and Tier 2 wire centers:[7]

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47 C.F.R. § 51.5.

[5] AT&T determined whether there was an active power supply by visually inspecting the equipment in the collocation arrangement. *Pool Direct* at 6-7.

[6] No review was undertaken where the collocation arrangements were those of AT&T-affiliated CLECs and no AT&T-affiliated CLECs were taken into account in AT&T's non-impairment analysis. *Pool Direct* at 5. No pre-merger AT&T arrangements were counted once AT&T's designations were adjusted on December 16, 2005. *Chapman Direct* at 9-10, 13.

[7] AT&T initially designated wire centers as non-impaired as of March 11, 2005. Although those designations were correct under the FCC's rules, in accordance with the SBC/AT&T merger conditions established by the FCC, they were revised on December 16, 2005 to exclude any pre-merger AT&T fiber-based collocation arrangements from the fiber-based collocator count. The designations listed in the table are those from December 16, 2005. *Chapman Direct* at 14-17.

	DS1 Loops	DS3 Loops	Tier 1 Transport	Tier 2 Transport
ARSNIN01				X
BLTNIN01		X	X	
CRMLIN01			X	
EVVLIN03			X	
FSHRIN01			X	
IPLSIN01	X	X	X	
IPLSIN04				X
IPLSIN06				X
IPLSIN07			X	
IPLSIN08			X	
KOKMIN01				X
MARNIN03			X	
MUNCIN01			X	
SBNDIN01			X	

Chapman Direct at 14-17.

5. Positions of the Parties.

A. Business Line Counts.

(1). AT&T's Position. At issue is whether AT&T's 2005 non-impairment designations were properly calculated as required by the FCC's definition of business line, using the most recent data available as of the effective date of the *TRRO* (the position of AT&T), or whether the designations should have used the business line counts provided to the FCC by AT&T in December 2004 (the position of the CLECs).

This issue relates to whether the *TRRO*'s digital equivalency requirements for UNE loops should be applied. AT&T asserts that it correctly used 2003 data, and made the calculations as required by the *TRRO* in making business line counts. *Chapman Direct* at 12, 20. The CLECs aver that the business line count filed by AT&T with the FCC, which the FCC relied upon to establish the thresholds, must also be used to determine whether the thresholds were met in March, 2005. AT&T argues that its application of the "Business Line" definition is correct and that the CLECs' suggestions to use the business line count filed with the FCC in December 2004 should be rejected.

The CLECs assert that there is a potential that AT&T may attempt to "reclassify the special access lines leased by the (pre-merger AT&T) as (post-merger) business lines,"[8] but do not point to any specific instance where special access lines have been "reclassified." AT&T states that it is unable to see how to "reclassify" a former non-switched special access line so that it would be counted under the business line definition. AT&T asserts that the only non-switched lines that may be counted under the business line definition are UNE-L lines; non-switched special access lines may not be counted. *Chapman Rebuttal* at p. 33. AT&T notes that the AT&T/SBC merger has not changed any of these requirements. *Id.* AT&T suggests that in the absence of a true controversy and a context for rendering a decision, nothing more can be decided.

AT&T argues that it must use data from the ARMIS 43-08 report actually filed with the FCC. *TRRO* at ¶ 105. AT&T asserts that business line counts are therefore specifically based on "an ARMIS filing required of incumbent LECs," and that this is completely consistent with the FCC's finding that non-impairment determinations be made from readily available data and be simple to apply. *TRRO* at ¶¶ 105, 108. AT&T asserts that the February 2005 non-impairment designations it made were properly based on the only available ARMIS 43-08 report -- 2004 ARMIS 43-08 Report, containing 2003 data, and concurrent UNE data. For any future wire center designation, AT&T states it will use the most up-to-date ARMIS 43-08 report available (and concurrent UNE data). *Chapman Rebuttal* at 32.

AT&T states that it has not altered the counting method of business lines from the way it counted UNE lines in its filings with the FCC in the *TRRO* proceeding, and that AT&T's position is not inconsistent with its prior positions regarding the importance of the business line information that it had provided to the FCC. *Chapman Rebuttal* at 24-27. AT&T believes that the CLECs' proposal to use the business line counts that AT&T filed with the FCC in December 2004 violates the FCC's rule. *Id.* at 20, 27. While AT&T agrees that the business line count it filed with the FCC in December 2004 is generally consistent with the methodology that it proposes here, the December 2004 business line count did not take into consideration the FCC's digital equivalency requirements for UNE loops. Therefore, AT&T asserts that the December 2004 business line count does not comply with the FCC's rule and cannot be used. *Id.* at 4, 20, 27.

AT&T further notes that the parties have already negotiated and agreed to digital equivalency language in Section 0.1.12 of the TRO/TRRO Amendment approved by this Commission in Cause 42587, which provides that "business line tallies ... shall account for ISDN and other 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.'" *Chapman Rebuttal* at 12. AT&T states that the CLECs did not contest the inclusion of the digital equivalence language in their TRO/TRRO Amendment. AT&T further states that the CLECs have provided no basis for revising their agreements, and that there is no dispute about what the words in the amendment mean; they must be interpreted and enforced according to their plain meaning. AT&T believes that the dispute the CLECs raise now is not for resolution of matters not otherwise addressed in the Amendment, but is an attempt to vitiate the contract terms and insert new provisions in their place. AT&T objects and asserts that the Commission must enforce the plain meaning of that language and to enforce the counting of UNE loops on a digital equivalent basis.

[8] *Gillan* at pp. 14-15.

AT&T states that there is a good reason why the December 2004 submission did not contain a digitally equivalent count for UNE-L lines. When AT&T filed its business line counts with the FCC in December 2004, AT&T did not have the benefit of the text of the *TRRO* and the implementing rules. As a result, AT&T did not understand that a calculation for digital equivalency was required for UNE-L lines, and therefore did not make that calculation. *Id.* at 18. The FCC's definition of Business Lines requires AT&T to count "all" UNE loops and, with respect to high-capacity UNE loops ("digital access lines") to "count[] each 64-kbps equivalent as one line. For example, a DS1 line corresponds to 24 64-kbps equivalents, *and therefore to 24 'business lines.'*" 47 C.F.R. § 51.5 (emphasis added). After the *TRRO* was issued, AT&T did, in fact, make that calculation and resubmitted its business line count to the FCC. *Id.* at 21. Thus, the FCC is well aware of the difference between the business line counts AT&T relied upon for wire center designations and the counts contained in AT&T's December 2004 FCC filing, yet has not expressed any concern over AT&T's post-*TRRO* recalculation. [9]

AT&T states that the CLECs have recognized that the FCC's rules require UNE loops to be counted as business lines at their full digital equivalency. In the *CLEC Petition for Reconsideration of the TRRO* ("PFR"), NuVox and other CLECs complained about the FCC's definition of a "Business Line."[10] In that filing, they acknowledged that the FCC's "64 kbps-equivalents rule counts every *DS1 provided by CLECs as 24 business lines." Id.* at 5. Thus, when the PFR was filed in March of 2005, the CLECs conceded that the business line definition in §51.5 counted each UNE loop on a digital equivalent basis (i.e., a DS1 counts as 24 lines; a DS3 counts as 672 lines).

AT&T points out that in Cause No. 42857, the parties had a dispute concerning whether the business line count should rely on all UNE-L lines or only those UNE-L lines used to provide switched service to business customers. *Chapman Rebuttal* at 24. AT&T's position was that the data used for the business line count must include all UNE-L lines as required by the rule, the text of the *TRRO* and as noted in AT&T's December 2004 filing. *Id.* The parties did not have a dispute as to the calculation of digital equivalency. *Id.* As noted above, the CLECs agreed to digital equivalency language in the TRO/TRRO Amendment approved by this Commission in Cause 42587 at Section 0.1.12. AT&T notes that in other jurisdictions, the CLECs have interpreted this language, taken directly from the FCC's rule, to require that UNE loops are counted on a digital equivalent basis. *Chapman Rebuttal* at pp. 3, 17. According to AT&T, the CLECs now argue just the opposite, i.e., that each UNE loop can only be counted as one line. On the other hand, AT&T is using the same data to support the current business line calculations as it used to support the business line calculations that AT&T filed with the FCC in December of 2004. *Id.* at 25. The difference in the end result is not in the data that was used (which is identical), but in the additional calculation required to account for the digital equivalency for digital UNE-L lines as required by the parties' interconnection agreements and the FCC's business line rule. *Id.*

AT&T asserts that it is clear that the December 2004 business line count cannot be used to make determinations as to impairment of wire centers. AT&T claims that the CLECs nevertheless try to convince the Commission to ignore the FCC's rule, arguing that AT&T has supported the use of the December 2004 counts in full. AT&T avers that this is wrong. *Id.* at 24. Once the FCC issued its rule and required that high-capacity UNE loops be counted at their full digital

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[9] *See Chapman Rebuttal* Exhibit CAC – 3, *Ex Parte* Letter dated February 18, 2005, to Mr. Jeffrey J. Carlisle, Chief, FCC Wireline Competition Bureau from Mr. James C. Smith of AT&T at 1, n.2.

[10] *See Chapman Rebuttal* Exhibit CAC – 1.

equivalency, AT&T complied, and represents that the company must comply in the future. *Id.* at 20.

AT&T asserts that the FCC did not make specific route declarations, but established thresholds that would be used to determine the impairment status of specific wire centers and routes. *Id.* at 22. The FCC based the transport impairment thresholds on "indicia of the potential revenues and suitability for competitive transport deployment." *TRRO* at ¶ 111. The FCC did not create impairment determinations that were designed to establish non-impairment at particular, pre-determined locations. In light of this, AT&T argues that it is critical to use the methodology the FCC intended when establishing the thresholds. *Id.*

With respect to the CLEC suggestion that the business line count must exclude empty circuits or data circuits, AT&T avers that the *TRRO* and Commission's Order in Cause No. 42857 have already resolved this issue otherwise. 47 C.F.R. § 51.5 clearly requires that the business line count include "the sum of all UNE loops connected to that wire center, including UNE loops provisioned in combination with other unbundled elements." If the FCC had intended there to be exclusions based on how a UNE loop is used or on how much of the loop's capacity is being used, AT&T believes that it would not have used the word "all." AT&T is required to comply with the *TRRO*, and the Commission has agreed with AT&T's position in Cause No. 42587.[11] AT&T argues that this is not inconsistent with the calculation of digital equivalency, which is also compelled by the clear language of the *TRRO*. AT&T notes decisions by the utility commissions of Texas, Kansas, Ohio, Florida, and California that have sided with AT&T and against the CLECs in similar cases.[12]

AT&T further contends that the CLECs' proposal to use business line counts that existed at the end of the most recent quarter for future wire center determinations is also contrary to the *TRRO*. AT&T argues that FCC rules require that ARMIS 43-08 data be used for the purposes of counting business lines, and that data has very specific reporting requirements. *Id.* at 32-33. AT&T notes that it does not use the ARMIS 43-08 reporting guidelines when pulling data for its quarterly investor briefing and therefore that data cannot be used to calculate business lines consistent with the *TRRO*. *Id.* According to AT&T, the data that complies with the ARMIS 43-08 reporting guidelines is only available on an annual basis. *Id.*

AT&T supports this as a common sense outcome because it creates a uniform, national rule, so that all ILECs will count business lines the same way. AT&T argues that the CLECs' proposal

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[11] Order at 16.

[12] *Order Approving Methodology to Determine AT&T Texas Wire Centers Which Are Non-Impaired, Post-Interconnection Dispute Resolution Proceeding Regarding Wire Center UNE Declassification,* PUC Docket No. 31303, Public Utility Commission of Texas, dated April 7, 2005 at 30-331. (*"TPUC Order"*); *In the Matter of the Complaint of Post Interconnection Dispute Resolution of Southwestern Bell Telephone LP Against NuVox Communications of Kansas Inc. Regarding Wire Center UNE Declassification,* Docket No. 06-SWBT-743-Com, State Corporation Commission of Kansas, dated June 2, 2006 at 29-29; *In the Matter of the Petition of XO Communications, Inc. Requesting a Commission Investigation of Those Wire Centers That AT&T Ohio Asserts are Non-impaired,* Case No. 05-1393-TP-UNC, Finding and Order issued June 6, 2006 ("Ohio Order") at 24 (¶ 28); *Bell South Telecommunications, Inc.,* Docket No. 041269-TP, Order dated March 2, 2006 at 29 (Florida Public Utility Comm.); Decision Adopting Amendment to Existing Interconnection Agreements, *Application of Pacific Bell Telephone Company b/d/a SBC California for Generic Proceeding to Implement Changes in Federal Unbundling Rules Under Sections 251 and 252 of the Telecommunications Act of 1996,* Application 05-07-024 at 10-11 (Pub. Utils. Comm'n of Calif., Jan. 26, 2006).

to use quarterly business line calculations reported in investor relations filings would create a patchwork of counting methodologies and is likely to result in unnecessary disputes. Using the annual ARMIS 43-08 Report is also a more reliable, proven methodology because it is an established report that ILECs have been filing for years, updated every twelve (12) months, so that the business line data remains current. AT&T also believes that this is consistent with 47 C.F.R. §§51.319(a)(4), 51.319(a)(5), in which the FCC found that any difference between the line count at the time of the designation and the count at a later time is irrelevant. AT&T argues that the FCC has concluded that not only are CLECs not impaired in locations where the thresholds have been met, but once the thresholds are met, the non-impairment status will remain even if the wire center drops below the threshold in the future.

AT&T disagrees that there is a mismatch between the use of annual ARMIS 43-08 data for business line counts and the use of current data for determining FBCs. AT&T argues that these are two separate things being counted, and the methodology for counting them is different under the FCC's rules. In counting the business lines and FBCs, AT&T will use the most recent data available at the time. AT&T notes that it did not decide that ARMIS 43-08 Reports are filed only on an annual basis, nor did AT&T manipulate the timing of its designations. Rather, it made them precisely when the FCC told it to do so, in February, 2005 (effective March 11, 2005). Moreover, requiring business line data and FBC data to be from the exact same time period would create an artificial limitation on the frequency of wire center updates because AT&T could only update once a year.

AT&T asserts that for all of these reasons, the Commission should reject the CLECs' position and should rule that: 1) AT&T properly used the 2004 ARMIS 43-08 Report (containing 2003 data) and concurrent UNE data, properly included all UNE-L lines, and properly calculated digital equivalency as required by the *TRRO* in making its February, 2005 wire center designations; 2) for future designations, AT&T should use the previous year's ARMIS 43-08 data for any wire center designations made on May 1st or later, through the following May 1st[13]; and 3) for future designations, should continue to calculate the count of business lines by applying digital equivalency, without excluding empty circuits or data circuits.

As to the CLECs' argument that AT&T cannot count business lines provided to CLECs under private wholesale contracts, No such lines were counted for the wire centers at issue here because such contracts were not in place as of the date of the business line data (December 2003). Since that time, such agreements have been made and this may become an issue in the future. *Chapman Rebuttal* at 30. AT&T requests that the Commission find that these lines do count as business lines.

AT&T's commercial UNE-P replacement offerings are ILEC-owned switched access lines. *Id.* at 30-31. Although the business line definition does not specifically mention these arrangements by name, AT&T notes that the business line definition clearly requires that *all* ILEC business switched access lines be included in the business line tallies. *Id.* at 30. AT&T's commercial UNE-P replacement offerings, which are access lines with AT&T-provided switching, must be counted under the FCC's rule according to AT&T. *Id.* Furthermore, AT&T argues it is completely illogical to suggest that the FCC intended for a UNE-P or resale lines to be counted, but intended to exclude

[13] May 1 is the date the ARMIS 43-8 Reports are filed with the FCC.

a physically identical configuration used to provide the same type of service simply because it is sold under different rates, terms, and conditions. *Id.*

(2). The CLECs' Position. The CLECs' principal recommendation with respect to business line counts is that AT&T should be required to count business lines in the same manner that the business line counts were calculated in the data AT&T submitted to the FCC in December 2004 during the *TRRO* proceeding, which the FCC used to establish the non-impairment thresholds contained in the FCC's rules. [14] This would be the business line data provided by SBC in its December 7, 2004 *ex parte* letter (cited by the FCC in the *TRRO*, paragraph 105, n. 322).[15] This recommendation is consistent with AT&T's position in Cause No. 42857, where AT&T argued that the FCC's rule and non-impairment thresholds were crafted to match the data provided by AT&T and other ILECs in that December 7, 2004 *ex parte* letter. According to the CLECs, if this business line count was acceptable by the FCC to establish the thresholds, it must also be used to apply those thresholds.

The CLECs believe that because the December 2004 data would provide a lower number of business lines, AT&T is attempting to recalculate the number of UNE-L lines by applying a "digital equivalency test" in this case. Under this test, instead of a UNE-L being counted as single loop (or "1 line"), AT&T proposes to count each DS1 and DS3 loop (which have a capacity to carry more than "1" line) at their digital equivalency. Under AT&T's "digital equivalency" approach, each DS1 lines would be counted as "24" lines, and each DS3 would be counted as "672" lines.[16]

In its reply brief in Cause No. 42857, AT&T asserted that the FCC expected the states to use the same calculation as the FCC used in the *TRRO*.[17] The CLECs assert that the Commission adopted AT&T's argument, and concluded that it was essential to use the same methodology to calculate business lines "in practice" as the FCC used in determining non-impairment.[18] The CLECs therefore argue that the Commission must compel AT&T to be consistent in how it relies upon the December 7, 2004 data. In the data that AT&T provided the FCC in the *TRRO* proceeding, AT&T applied the conventional counting method for UNE-Loops (as used by the FCC in its *Local Competition Report*), counting each loop once, irrespective of the maximum potential capacity of the loop. The CLECs note how AT&T pointed to this December 7, 2004, *ex parte* filing when claiming in Cause No. 42857 that the FCC intended for it to count residential lines and non-switched capacity, because that is how such loops were treated in the data the FCC relied upon to establish the impairment thresholds (from the December 2004 *ex parte* submission.) The CLECs argue that AT&T cannot have it both ways; either this Commission should adhere to the methodology used by AT&T in the data that it filed at the FCC, or the Commission should reject

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[14] In a similar case in Illinois, AT&T's own witness Carol Chapman explained that the FCC adopted its business line definition and the non-impairment thresholds to *match* the way the data was provided to it in the December 2004 filings:

> This language describes the fact that the FCC's business line definition is the same as the definition used for the data the FCC analyzed to develop the threshold limits (i.e., 24,000; 38,000, 60,000) in the first place. (ICC Docket 06-0029, AT&T Illinois Ex. 1)

[15] CLECs Ex. 1 at 4.

[16] Tr. at 92.

[17] CLECs Ex. 1 at 7-8, citing Reply Brief of SBC Indiana, Cause No. 42857 (filed October 28, 2005) at 9, 10 (emphasis added).

[18] Order, Indiana Utility Regulatory Commission, Cause No. 42857, at 16.

AT&T's argument (adopted by the Commission in Cause No. 42857 before AT&T's inconsistency became apparent) that the FCC's business line definition should be interpreted so as to match how that data was then calculated.

As to how business lines are to be counted, the CLECs maintain that the FCC has adopted specific criteria for counting business lines. A UNE loop must be (1) used to serve a business customer; (2) used to provide switched services; and, to the extent consistent with these requirements, (3) each 64 kbps voice-grade channel should be evaluated as one line. Under AT&T's approach, a CLEC serving a customer a single business line via a DS1 or DS3 would be counted as 64 lines for a DS1 loop, and 674 lines for a DS3 loop. AT&T does not take into account that the FCC's definition of a business line includes "an incumbent LEC-owned switched access line used to serve a business customer, whether by the incumbent LEC itself or by a competitive LEC that leases the line from the incumbent LEC."[19]

The CLECs note that a UNE-loop arrangement used by a CLEC should not be counted as a business line unless the same arrangement connected to an AT&T switch would be counted by AT&T as a business line in ARMIS 43-08.[20] The basic model for the business line count is the ARMIS 43-08 Report. The term "business switched access lines" is a defined term in ARMIS 43-08. The ARMIS reporting instructions (referenced and included in CLEC witness Gillan's pre-filed testimony as Exhibit JPG-3) require that AT&T report its own lines in voice-equivalents,[21] but does not permit AT&T to count empty circuits, empty capacity or data circuits.[22] The FCC's business line definition applies in the same manner whether or not the line is served by the ILEC or the CLEC.[23] Thus, the fact that ARMIS 43-08 prohibits AT&T from counting its digital lines at their maximum potential capacity would mean that CLEC lines should not be counted in that manner either.

AT&T witness Ms. Chapman acknowledges that AT&T does not report the digital equivalency on DS1 and DS3 loops for its business customers when it reports its own retail lines on the ARMIS 43-08 reports.[24] According to Ms. Chapman, if AT&T was serving a business customer with a single fax line via a DS1 loop (where the remaining capacity of the line would be used for data), AT&T would be required by ARMIS reporting requirements to report that DS1 loop as "1" line.[25] However, if that same customer migrated its service to a CLEC such as NuVox, AT&T

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[19] 47 C.F.R. §51.5.

[20] ARMIS 43-08 is the source for the AT&T retail line count. To ensure consistent treatment, UNE-loop arrangements should be counted applying the same requirements as apply to AT&T's retail configurations. CLECs Ex. JPG-1.0 at fn. 34.

[21] *See* http://www.fcc.gov/wcb/armis/documents/2004PDFs/4308c04.pdf (page 21) defining ARMIS 43-08 Business Switched Access Lines as "total voice-grade equivalent analog or digital switched access lines to business customers." (emphasis added).

[22] As page 20 of the ARMIS 43-08 instructions (Exhibit JPG-3) make clear, AT&T Illinois may count "only those lines connecting end-user customers with their end offices for switched services", which is effectively the same as the FCC's business line definition used for this proceeding.

[23] Specifically, the very first sentence of the FCC's business line definition (47 C.F.R. § 51.5) is as follows:

> Business line. A business line is an incumbent LEC-owned switched access line used to serve a business customer, whether by the incumbent LEC itself or by a competitive LEC that leases the line from the incumbent LEC.

[24] Tr. at 86.

[25] Tr. at 93.

recommends that the Commission permit AT&T to count that DS1 loop as "24" lines for purposes of determining whether the FCC's impairment thresholds have been met.[26] Contrary to what AT&T is proposing in this proceeding, for its own DS1 and DS3 loops, AT&T reports the number of UNE loops directly (*i.e.*, without conversion).[27]

The CLECs assert that AT&T's recommended approach ignores the first sentence of the definition of business line in Section 51.5 as well as the fact that the FCC relied on business lines for determining impairment. The FCC found that "business lines are a more accurate predictor [of revenue opportunities for CLECs] than total lines because [competitive] transport deployment largely has been driven by the high bandwidth and service demands of businesses, particularly in areas where business locations are highly concentrated."[28] Because the FCC chose to rely on "business lines" in its impairment test (not business equivalents), it makes no sense to include the digital equivalent of a loop facility when determining whether there are sufficient revenue opportunities for CLECs within the wire center as an indicator of non-impairment.

The CLECs argue that for AT&T's initial list of wire center designations, the Commission must evaluate the designations using the same business line counts for those wire centers that AT&T submitted to the FCC on December 7, 2004 in the *TRRO* proceeding.[29] The evaluation of AT&T's initial list of wire center designations should be based on December 2003 ARMIS 43-08 business line data and contemporaneous UNE-P and UNE-L counts, with each UNE-L loop counted as one business line regardless of loop type. See, CLEC Ex. JPG-2.

In the data AT&T submitted to the FCC in December 2004 during the *TRRO* proceeding, it counted all UNE-L loops as one business line regardless of loop type, consistent with the ARMIS 43-08 requirements.[30] In this proceeding, however, AT&T now seeks to count each digital UNE loop by its maximum potential capacity – that is, to convert each UNE loop to the maximum number of voice grade paths that could theoretically be provided by the loop, whether the loop is being used in that manner or not. By altering the method used to calculate business lines (as compared to the data AT&T provided the FCC in December 2004 that the FCC used to establish the impairment thresholds), AT&T increased its business line count at the seven wire centers on its initial list of designations by over 25,000 business lines. While this did not change the impairment status of the twelve wire centers, it is significant to note, given that future designations could apply the same flawed reasoning where it would have an impact on whether a wire center is deemed impaired or not. AT&T is taking this position even though the business line count threshold established by the FCC was based on data in which each UNE loop was counted as one business line, rather than its digital equivalency.

The CLECs Exhibit JPG-2 compared the numbers of business lines that AT&T provided to the FCC in December 2004 – the data the FCC used to adopt its non-impairment criteria – to the number of business lines that AT&T now claims at the wire centers it designated as non-impaired.

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[26] *Id.* at 93-94.

[27] *See, e.g.*, instructions for Form 477 (FCC Local Competition Report), Part C-II, where ILECs report the number of UNE loop arrangements (attached as Exhibit JPG-4) at 7.

[28] *TRRO* ¶ 103.

[29] *See* CLECs Ex. JPG-2.

[30] The business line counts that AT&T submitted to the FCC in December 2004 during the *TRRO* proceeding consisted of ARMIS 43-08 data as of December 2003 plus contemporaneous UNE-P and UNE-L counts.

Although AT&T witness Chapman averred in this case that AT&T was applying the "same definition"[31] to data at the same point in time,[32] CLEC Exhibit JPG-2 shows that the number of business lines that AT&T now claims existed at its Indiana wire centers as of December 2003 systematically exceeds the count for each wire center that it had provided the FCC. Thus, the CLECs argue that by applying a different methodology than AT&T used when it provided its data to the FCC, AT&T increased the count of business lines in the seven wire centers at issue by over 25,000 lines.

With respect to future wire center designations, the CLECs believe that AT&T should be required to count UNE-L loops as one business line regardless of loop type. The CLECs underscore that the issue here is more than simply asking AT&T to be consistent. The FCC used the data presented by AT&T and other ILECs to determine and set what the business line thresholds would be for non-impairment status. In that data, digital UNE loops were counted as single business lines; the thresholds likewise reflect a single business line for each digital UNE loop. It would be comparing apples to oranges if one were to base future non-impairment decisions on a business line counting methodology different from the one used to compile the business line data the FCC used to establish the threshold. If the Commission decides to revisit the methodology to be used in determining business line counts, then it should do so in a manner that is consistent with the entire FCC definition.

The CLECs also take issue with the vintage of data in respect to business line counts. AT&T proposes to use business line counts as of December of a year until May 1 of the second following calendar year. The CLECs aver that this would mean that AT&T could base wire center non-impairment designations on business line counts that are as much as 16 months old; this creates a serious risk that AT&T could designate a wire center to be non-impaired for high capacity UNE loops at a time when the wire center does not meet *both* the applicable business line threshold *and* the applicable FBC threshold required by the FCC's regulations.[33] Instead, the CLECs contend that AT&T should be required to base business line counts on data as of the end of the most recent calendar quarter prior to the designation of an additional wire center as non-impaired (based on data that AT&T's parent regularly compiles and releases to the financial community in connection with quarterly earnings statements).[34]

The FCC's ARMIS instructions provide that the ARMIS 43-08 definition be used to count business line data, but does not require that AT&T wait until it has actually filed its annual ARMIS 43-08 report.[35] Moreover, AT&T routinely reports access lines each quarter to its investors

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[31]"AT&T's business line counts are based upon ARMIS 43-08 business line data, UNE-P business lines counts, and UNE loop counts *using the same definition that was used when AT&T provided the data that the FCC relied upon for its analysis*." AT&T In. Ex. 3 at 19-20 (emphasis added).

[32]The data reviewed by the FCC counted AT&T's business lines as of December 2003. This is the same vintage of data that AT&T contends should be used in this docket to evaluate its initial set of wire center designations. In addition to the dispute concerning AT&T's effort to change the *definition* (i.e., methodology) used to count its business lines (in comparison to the approach used in the data filed with the FCC), there is a separate question as to whether it would be more appropriate to apply an identical methodology to data that better reflects actual conditions at the time of a designation (*i.e.*, with respect to the initial designations made by AT&T in late February 2005, data as of December 2004).

[33]CLECs Ex. 1 at 18.

[34] CLECs Ex. 1 at 17 -18.

[35] *Id.*

(including UNE-L and UNE-P line counts), and its CLEC customers and this Commission deserve no less current information when AT&T is making additional wire center designations. AT&T should provide the CLECs with a complete breakdown of any business line information being used to support a claimed designation, including a breakdown of the data into its constituent components (retail lines, UNE-P, and UNE-L). Any adjustments to its data - to either its ARMIS 43-08 (retail line) information or UNE-L data - should be fully disclosed.

The CLECs also point to other state Commissions decisions regarding the vintage of the data issue. The Michigan Public Service Commission ruled in a contested proceeding between AT&T's sister company Michigan Bell Telephone Company and CLECs that in determining whether the initial wire center designations made by Michigan Bell as of March 11, 2005 are appropriate under the FCC's criteria, the ARMIS 43-08 business line data as of December 2004 must be considered.[36] Additionally, as reported in a recent Order of the North Carolina Utilities Commission, BellSouth has voluntarily used December 2004 ARMIS data and December 2004 UNE-L and UNE-P data to justify its wire center designations.[37]

If the Commission does not adopt the CLECs' primary recommendation that the correctness of AT&T's initial set of wire center designations (made as of February 22, 2005) should be evaluated based on the business line counts that AT&T filed with the FCC in December 2004 (which were based on December 2003 ARMIS 43-08 data with UNE loops counted as one business line, then the correctness of the initial set of wire center designations should be judged based on AT&T's December 31, 2004 annual reported ARMIS 43-08 business line data (and contemporaneous UNE line counts). The CLECs also request the Commission to require AT&T to base future wire center designations on business line counts computed in accordance with ARMIS 43-08, and contemporaneous UNE line counts, as of the end of the most recently-completed calendar quarter.

The CLECs also request that the Commission reject AT&T's position to include lines provided to CLECs under AT&T's post-*TRRO* "commercial offerings" in its business line counts.[38] The CLECs argue that there is no basis in the *TRRO* or in the FCC regulations for including commercial arrangement lines in business line counts, which are expressly limited to ARMIS 43-08 lines plus UNE-P plus UNE-L. The CLECs argue that non-UNE lines provided to CLECs under commercial arrangements are none of the above. The CLECs point to Ms. Chapman's testimony that "the business line definition does not *specifically* mention these arrangements."[39]

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[36]Michigan Public Service Commission, *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*, Case No. U-14447, Order, Sept. 20, 2005, at 5 (emphasis added).

[37]North Carolina Utilities Commission, *In the Matter of Proceeding to Consider Amendments to Interconnection Agreements Between BellSouth Telecommunications, Inc. and Competing Local Providers Due to Changes of Law*, Docket No. P-55, SUB 1549, Order, March 1, 2006, at 38.

[38]This issue affects only business line counts for future wire center designations, not the initial list of wire center designations, because there were no "commercial arrangements" in place in either December 2003 or December 2004 to be included in the business line counts as of that date.

[39]AT&T In. Ex. 4 at 31 (emphasis in original).

AT&T witness Chapman argued that lines provided to CLECs under commercial agreements must be included in business line counts because they "are switched access lines" and "are access lines with AT&T-provided switching", but the CLECs aver that she did not deal with the FCC's "business line" definition in 47 C.F.R. § 51.5.[40] The FCC regulation dictates 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, including UNE loops provisioned in combination with other unbundled elements."[41] The CLECs argue that AT&T's "commercial agreement" lines are not "incumbent LEC business switched access lines," are not "UNE loops connected to that wire center" and are not "UNE loops provisioned in combination with other unbundled elements", and Ms. Chapman did not claim that the "commercial agreement" lines are any of these things.[42] Therefore, the "commercial agreement" lines cannot be counted as "business lines" for wire center non-impairment purposes.

AT&T witness Ms. Chapman also argued that "it is completely illogical to suggest that the FCC intended for a UNE-P and resale lines to be counted, but intended to exclude a physically identical configuration."[43] However, the FCC's "business line" definition is structured "to exclude a physically identical configuration simply because it is sold under different rates, terms and conditions." The "business line" definition permits AT&T to count UNE loops as business lines, but prohibits it from counting special access lines that share an identical configuration to UNE loops. Thus, the FCC already determined that whether a line should be counted as a "business line" under 47 C.F.R. § 51.5 does not depend on whether it has a common architecture to another line that can be counted. The CLECs therefore request that the Commission reject AT&T's position.

(3). Commission Findings and Discussion. We must decide whether AT&T properly calculated business line counts for non-impairment designations made in February, 2005, or whether the designations should have based on the line counts provided to the FCC by in December 2004.

We find that AT&T's position is consistent with the FCC's determinations, and that for the initial list of wire centers it is appropriate to apply the digital equivalency calculations as provided in the *TRRO,* using the most recent ARMIS data and concurrent UNE data that was available at the time of designation. We reject the CLECs' position that AT&T should be using the line counts filed with the FCC in December 2004 for the initial wire center impairment determinations, or that AT&T should exclude empty circuits or data circuits.

AT&T's current designations reflect recognition of digital equivalency. This does not mean, however, that AT&T has used different baseline data for its designations or that such a result is 'inconsistent.' AT&T has used the same 2003 ARMIS data that it supplied to the FCC. In its original submission to the FCC (submitted in 2004), AT&T did not convert certain of its digital lines to their analog equivalents; in the wire center designations relied upon by AT&T in this case, it has included a digital equivalency conversion. When AT&T submitted data to the FCC in

[40] *Id.* at 31.

[41] 47 C.F.R. § 51.5.

[42] The CLECs presume that AT&T is well aware of the difference between a UNE loop and a loop provided under a commercial agreement.

[43] AT&T In. Ex. 4 at 31.

December 2004, the text of the *TRRO* and the implementing rules were not available, and AT&T did not anticipate or make a calculation for digital equivalency for UNE-L lines. In the *TRRO* rules subsequently announced, the FCC's definition of business lines requires an ILEC to count "all" UNE loops and, with respect to high-capacity UNE loops ("digital access lines") to "count[] each 64-kbps equivalent as one line. For example, a DS1 line corresponds to 24 64-kbps equivalents, *and therefore to 24 'business lines'*." 47 C.F.R. § 51.5 (emphasis added). After the *TRRO* was issued, AT&T made the calculation called for in this rule and resubmitted its line count to the FCC.[44] The record does not indicate that the FCC has ever registered any concern over the varying filings, and the FCC can reasonably be expected to be aware of the difference.

The CLECs have recognized that the FCC's rules require UNE loops to be counted as business lines at their full digital equivalency. The CLECs could have contested the inclusion of the digital equivalence language in their TRO/TRRO Amendment, but did not. The CLECs have already agreed to these terms, and as we find that they have provided no basis for revising their agreements containing these already agreed-upon provisions, we will not now annul those terms in this matter. This is consistent with our decision in Cause No. 42857. The CLECs accepted the use of a digital equivalency calculation in that cause, and have not provided a reasonable explanation for their change in position. Given that AT&T is appropriately using the same data to support its current business line calculations and is simply applying the additional digital equivalency calculation required by the *TRRO,* we find no inconsistency. Once the FCC issued its rule requiring that high-capacity UNE loops be counted at their full digital equivalency, AT&T was and is required to comply. It has done so in the designations used in this case, and must do so in any future designations.

We also reject the CLECs' proposal to exclude empty circuits and data circuits from the business line count, a conclusion in line with our decision in Cause No. 42587, in which we noted that the FCC expressly included in its definition "*all* UNE loops."[45] This is not inconsistent with the calculation of digital equivalency. The difference in the end result is not caused by the data, which is identical, but is because of the calculation required by the rule to account for the digital equivalency for digital UNE-L lines. This does not change the requirement that all UNE-L lines must be included. ILECs do not have full access to the data necessary to determine how CLECs are using high-capacity UNE loops. The FCC decision relies on objective criteria, freely accessible and already created for other regulatory purposes. The Commission finds that AT&T's method of including all UNE loops as business lines for the purpose of determining wire center non-impairment determinations is correct. As with our decision regarding digital equivalency, this applies to future determinations as well.

We also reject the CLECs' proposal that for future wire center designations, AT&T should use the business line counts that exist at the end of the most recent quarter available at the time of the designation. The FCC has required ILECs to use ARMIS data for wire center designations, and the ARMIS reporting system is subject to specific reporting requirements, only available on an annual basis. Quarterly data used for AT&T investor briefings cannot be used to calculate business lines and remain consistent with the *TRRO* requirement that such line counts be based on ARMIS reporting. The use of the ARMIS 43-08 reporting guidelines creates a uniform, national rule, so

[44] *See Chapman Rebuttal* Exhibit CAC – 3, *Ex Parte* Letter dated February 18, 2005, to Mr. Jeffrey J. Carlisle, Chief, FCC Wireline Competition Bureau from Mr. James C. Smith of AT&T at 1, n.2.
[45] Order at 16.

that all ILECs will count business lines the same way. The annual ARMIS 43-08 Report is a proven methodology that ILECs have been filing for years; because is updated every twelve (12) months, the business line data remains current.

We therefore find that AT&T properly used the 2004 ARMIS 43-08 Report, containing 2003 data, and concurrent UNE data in its February, 2005 (effective March 2005) wire center designations and properly calculated the business line count, including as to the application of digital equivalency for UNE loops; 2) for future designations, AT&T should use the previous year's ARMIS 43-08 data for any wire center designations made on May 1st or later, through the following May 1st; and 3) for future designations, should continue to calculate the count of business lines by applying digital equivalency for UNE loops, and without excluding empty circuits or data circuits.

We also find that AT&T should count as business lines those lines provided to CLECs under private wholesale contracts. The FCC's definition for business lines clearly requires that *all* ILEC business switched access lines be included in the business line tallies. The lines AT&T provides to CLECs under commercial contracts are within this definition. This decision comports with our overall decision to strictly enforce the FCC's rule that all of an ILEC's UNE loops be counted as business lines. As the FCC intended UNE-P and resale lines to be counted, a physically identical configuration used to provide the same type of service should not be excluded simply because it is sold under different rates, terms, and conditions. In future proceedings, AT&T should count as business lines those lines provided to CLECs under private wholesale contracts.

The Commission finds that there is no basis upon which to revisit the determination in Cause No. 42857. A party may seek rehearing and take a direct appeal of a Commission order (I.C. 8-1-3) or seek to reopen the record (170 I.A.C. 1-1.1-22), but otherwise there is no subsequent right to attack a Commission decision, particularly in another proceeding. The CLECs were parties to Cause No. 42857, had the opportunity to litigate the issues they now urge be reversed here, the Commission decided these issues in a judicial manner, and the CLECs have no pending appeal. We therefore reject the request to reopen Cause No. 42857.

B. Fiber-Based Collocators.

(1). AT&T's Position. AT&T asserts that a collocator in AT&T's wire center that does not own the fiber it uses to leave the wire center but, instead obtains that transmission capability from another non-affiliated carrier collocating in that wire center: a) still has an independent fully-functioning network, b) maintains a collocation arrangement, and c) operates a fiber-optic cable or comparable transmission facility under 47 C.F.R. § 51.5. AT&T's states that such collocators should be counted as FBCs, while the CLECs' position is that they should not be counted, except in the rare situation where the cross-connected carrier obtains dark fiber on an IRU basis and lights the fiber with its own electronics.

As to what qualifies as "comparable transmission facilities" for the purpose of identifying a FBC, AT&T asserts that a typical fiber-based collocation arrangement is an arrangement where a single fiber cable, not owned by AT&T, comes from outside the wire center and terminates at the collocation arrangement of a single carrier that is not affiliated with AT&T. *Chapman Direct* at 28. If it is not affiliated with any other FBC and the collocation arrangement has active power, it is

considered a FBC. *Id.* AT&T asserts that the FCC's definition of FBC is not limited to fiber connections, but also includes comparable transmission facilities. In support of its position, AT&T cites footnote 102 of the *TRRO*, in which the FCC explains that its fiber-based collocation test is actually "agnostic as to the medium used to deploy an alternative transmission facility, because we find that a technologically neutral test better helps us to capture the actual and potential deployment in the marketplace than would a wireline-specific test." Thus, the FCC designed its rule to include any carrier that "operates a fiber-optic cable *or comparable transmission facility*." 47 C.F.R. § 51.5 (emphasis added). AT&T believes that under the FCC rules, the test is not whether the collocation arrangement is literally fiber-based but, rather, whether it provides the carrier with a network configuration that provides a "comparable transmission facility" to fiber. AT&T contends that the test requires the Commission to consider the transport capabilities, and not the physical attributes, of the transport network. *Id.* at 29.

AT&T therefore states that in addition to counting collocators using fiber facilities, collocators using two other types of facilities should be included within the group of the wire center designations at issue here, inasmuch as they constitute "comparable transmission facilities." AT&T believes that these collocators should include (i) those using fixed-wireless facilities, and (ii) those using a transmission facility consisting of fiber or coaxial cable (with a capacity of DS-3 or above) intra-office cabling (within the wire center) in conjunction with fiber facilities that leave the wire center. *Pool Direct* at 9; *Chapman Rebuttal* at 48-51.

In support of its inclusion of fixed-wireless collocators, AT&T cites the FCC's determination in paragraph 102 of the *TRRO* that "because fixed-wireless carriers' collocation arrangements may not literally be fiber-based, but nevertheless signal the ability to deploy transport facilities, we include fixed-wireless collocation arrangements at a wire center if the carrier's alternative transmission facilities both terminate in and leave the wire center." AT&T asserts that the fixed-wireless arrangement would typically provide a carrier with a minimum of DS-3 level transport. *Id.*

As to including collocators using fiber or coaxial cable interoffice connections in conjunction with non-AT&T fiber facilities that leave the wire center to create an end-to-end transmission facility with a capacity of DS-3 or above, AT&T asserts that the FCC recognizes that, although a collocation arrangement may not literally be fiber-based, the arrangement may nevertheless signal the ability to deploy transport facilities. *TRRO,* ¶102. AT&T notes the FCC's reliance on the "ability to deploy" for the purpose of demonstrating non-impairment and the consideration of a "reasonable proxy for where significant revenue opportunities exist for competitive LECs." *Id.* at ¶101. This is why AT&T believes the FCC's test is "agnostic as to the medium used to deploy an alternative transmission facility." *Id.*, n.295. Although it could be argued that smaller transmission capabilities also are comparable to fiber-optic cables, AT&T maintains that a facility capable of DS3 or higher capacity plainly meets the "comparable transmission facility" standard when the facility includes non-AT&T interoffice fiber (fiber that leaves the wire center). *Pool Direct* at 8-9; *Chapman Rebuttal* at 48-51. Accordingly, AT&T contends that the deployment of a facility with such a large capacity (i.e., transmission facilities consisting of interoffice fiber connected to either intra-office fiber or intra-office coaxial cable facilities with a capacity of DS-3 or above) should be considered a comparable transmission facility. *Id.* AT&T further argues that, although the company would not use coaxial cable solely for interoffice transmission, the CLECs ignore the fact that coaxial cable can be used in conjunction with fiber facilities that leave the wire center. *Chapman Rebuttal* at 50.

AT&T further states that its position also is consistent with the FCC's statements in the *TRRO* regarding fixed-wireless facilities. AT&T asserts that it would not make sense to count some arrangements that provide DS3 level transmission (*i.e.,* fixed wireless arrangements) and exclude other arrangements that provide at least DS3-level transmission (*e.g.* a DS3 or higher facility with fiber interoffice and coaxial cable intra-office components). AT&T states that an example of comparable transmission facilities that terminate in and leave the wire center – similar to the fixed wireless arrangement - is this situation in which one carrier has a DS-3 or higher link to another carrier's collocation arrangement and creates a DS-3 or higher transport facility leaving the wire center through its connection to the other carrier that meets the criteria for a facilities-based collocator, as discussed above. *Id.*

A coaxial cross-connect arrangement (or a fiber cross connect arrangement) is connected to fiber optic cable that leaves the central office and handles the "long-haul" transport between central offices; the capacity of the end-to-end transport facility, when evaluated as a whole, is comparable to fiber optic cable. *Pool Rebuttal* at 6. In instances where coaxial cable is used for the intra-office cabling, the coaxial cable portion that is located within the central office can support nearly 2,700 lines, or four times the number of telephone lines that are associated with the DS3 capacity level, through the use of common multiplexing equipment. *Pool Direct* at 10; *Pool Rebuttal* at 8-9.

As to the argument that in order for a facility to be comparable to a fiber facility, it must at least be capable of carrying 3 DS-3s (i.e., one OC-3) of capacity that leaves the wire center (*Gillan*, p. 35), AT&T argues that this is an effort to redefine "comparable to fiber" to mean "fiber." AT&T points out that if it were to adopt the CLECs' criterion (a minimum of 3 DS-3 capacity), the "comparable transmission facility" would exclude fixed-wireless facilities with a single DS-3 capacity, contrary to the FCC's statement that fixed-wireless arrangements, including fixed-wireless arrangements with a single DS-3 level capability, must be considered as comparable to a fiber facility. *Chapman Rebuttal* at 49.

AT&T asserts that a collocator in AT&T's wire center that does not own the fiber it uses to leave the wire center but, instead, obtains that transmission capability from another non-affiliated carrier collocating in that wire center: a) still has an independent fully-functioning network, b) maintains a collocation arrangement, and c) operates a fiber-optic cable or comparable transmission facility under 47 C.F.R. § 51.5. AT&T's position is that such collocators should be counted as FBCs, while the CLECs counter that they should not be counted except in the rare situation where the cross-connected carrier obtains dark fiber on an IRU basis and lights the fiber with its own electronics.

AT&T argues that a plain reading of 47 C.F.R. § 51.5 reveals no prohibition on CLECs sharing facilities or exclusion of such CLECs from the count of FBCs. AT&T asserts that multiple carriers can share a fiber-optic cable and still maintain distinct networks. *Pool Rebuttal* at 7. AT&T states that the FCC has explicitly and consistently encouraged collocated CLECs to share the expenses of providing facilities-based competition with other CLECs so as to decrease reliance on ILECs and to increase the development of competition. In support of its position, AT&T states that ILECs are required to make available to CLECs a "shared collocation" arrangement.[46] The FCC

[46] First Report and Order and Further Notice of Proposed Rulemaking, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd. 4761 (1999), ¶41. See also 47 C.F.R. 51.323(k)(1).

requires ILECs to permit CLECs to cross-connect with one another for the purpose of obtaining competitively-provided entrance facilities because "cross-connects between collocators within incumbent LEC premises are critical to the development of facilities-based competition."[47] Since the FCC recognizes that cross-connected collocators are critical to the development of competition, AT&T asserts that it is logical that they are not excluded from the definition of an FBC in Rule 51.5. AT&T argues that this is because such arrangements are what the FCC has encouraged - collocated CLECs sharing the expenses of providing facilities-based competition with other CLECs.

AT&T further cites to ¶102 of the *TRRO*, where the FCC states that the ILECs' wire center computations for determining FBCs can "includ[e] less traditional collocation arrangements." In making this statement, the FCC cited to paragraph 406, footnote 1257 of the *TRO*, which states: "Collocation may be in a more traditional collocation space or fiber can be terminated on a fiber distribution frame, or the like, to which any other competing carrier collocated in that central office can obtain a *cross-connect* under nondiscriminatory terms." (Emphasis added). The FCC identified Verizon's CATT fiber termination arrangements as one such "less traditional" collocation arrangement.[48] AT&T avers that Verizon's CATT arrangement allows third-party competitive fiber providers ("CFPs") access to a shared alternate splice point in a wire center for the purpose of terminating fiber facilities of the CFPs for distribution to collocation arrangements within a central office. *Pool Direct* at 3; *Pool Rebuttal* at 11. The CATT is located in or near a Verizon cable vault in a wire center for the purpose of terminating fiber facilities of competitive fiber providers for distribution to collocation arrangements within a central office. *Id.* Thus, AT&T believes that the service that Verizon provides allows a carrier - that is not itself a collocating carrier, but is a wholesale transport facilities provider - to terminate fiber cables in a Verizon wire center, and then offer these transport facilities to collocated carriers at that location, including all CLECs. AT&T argues that these arrangements could not count as qualifying collocation arrangements under 47 C.F.R. § 51.5 if a collocating CLEC's use of another CLEC's transmission facility was a disqualifying factor.

AT&T states that it does not matter that AT&T does not offer a service identical to Verizon's CATT, because AT&T offers a service in which a collocator can create a connection between it and another collocator. *Pool Direct* at 8. The point AT&T makes is that the FCC recognized that a CLEC can qualify as a FBC by cross-connecting to the fiber facilities of another carrier. AT&T allows carriers to terminate their fiber cables at cross-connect facilities in their collocation arrangement and then make spare capacity available to third-party carriers collocated within the wire center. *Id.* If the CLECs were correct that such collocation-to-collocation arrangements cannot count as qualifying collocation arrangements under 47 C.F.R. § 51.5, AT&T points out, the FCC would not have counted Verizon's CATT fiber termination arrangements. AT&T argues that there is no reason why the similar cross-connect arrangements permitted by AT&T should not be counted too.

AT&T contends that the collocator can "operate" a transmission facility by combining network components of its own with transmission capacity leased from another carrier in a collocator-to-collocator arrangement. Specifically, the connecting carrier must 1) design the comparable transmission facility; 2) decide upon the type and quantity of its own facilities to place

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[47] *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No 98-147, Fourth Report and Order (rel. Aug. 8, 2001) at para. 67.
[48] *TRRO* at ¶ 102.

in its collocation arrangement and deploy accordingly; 3) engage in any negotiations required to obtain rates, terms and provisions for leased components that are suitable for the carrier's desired network design; 4) decide what traffic it will route on the comparable transmission facility; 5) control the equipment that enables the traffic to be aggregated and transmitted over the comparable transmission facility; 6) place desired traffic onto the transmission facility; 7) ensure that the transmission quality of the end-to-end transmission facility meets (and continues to meet) its desired standards; 8) make engineering and market entry determinations in deciding the transmission capacity required to meet, and continue to meet, the demands of its network; and 9) monitor the use of the comparable transmission facility to determine if and when network modifications and augments are needed. These are some of the activities that a connecting carrier performs while operating the comparable transmission facility that it has created.

AT&T asserts that these functions are activities that are key to the operation of the comparable transmission facility and that must be performed by the connecting carrier – not the carrier from whom the connecting carrier has chosen to lease transmission capacity. *Chapman Rebuttal*, pp 38-39. Accordingly, AT&T posits the control that such a collocator exercises means it is operating a comparable transmission facility. *Chapman Rebuttal* at 39. AT&T notes that it would not count a collocation-to-collocation connection unless each arrangement provides DS-3 or above transmission capability out of the wire center.[49] *Chapman Rebuttal* at 36, 39. AT&T contends that nothing in the FCC's rules or the *TRRO* requires a carrier to own optronics in order to "operate" the relevant transmission facility. AT&T also contends that the CLECs' argument that a fiber interoffice facility can terminate only once, i.e., at another carrier's space, is erroneous in that it depends on the now-vacated *TRO* rules. *Chapman Rebuttal* at 47.

AT&T asserts that the CLECs focus on the cabling between collocation-to-collocation arrangements and see it as a discrete transmission route that begins and ends at those two locations. *Pool Rebuttal* at 6. AT&T asserts that this fails to acknowledge that the cross-connection is a just a small segment of an uninterrupted transmission route consisting of the cross-connection and the fiber facility leaving the wire center. AT&T avers that all of the cabling and equipment, from points A through J on Rebuttal Exhibit WP 2, make up the facility that "terminates" (i.e., ends) at the cross-connected carrier's collocation.

This concept of a transmission facility that consists of more than one type of transmission media and internal electronics and/or optronics apart from the transmission equipment at the facility's termination point is consistent with the FCC's use of the term "transmission facility" in its unbundling rules. *Chapman Rebuttal* at 50. The FCC's unbundling rules describe the Hybrid Loop as "a local loop composed of both fiber optic cable, usually in the feeder plant, and copper wire or cable, usually in the distribution plant."[50] The FCC described a Local Loop as "a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premises."[51] The Local Loop definition goes on to note that the local loop transmission facility includes various electronics and equipment "used to establish the transmission path to the end-user customer premises." Therefore, a "transmission

[49] If in a given collocation-to-collocation arrangement, one of the collocators has a fiber transmission facility capable of providing both carriers a DS-3 level of transmission out of the wire center, but the connection between the two collocators is not capable of supporting a DS-3-level transmission, AT&T would only count the collocator with the fiber transmission facility capable of providing both carriers DS-3 transmission capability out of the wire center.

[50] 47 C.F.R. § 51.319(a)(2).

[51] 47 C.F.R. § 51.319(a).

facility" may be made up of a combination of many things including, but not limited to, fiber optic cable, copper wire, cable, electronic equipment, and optronics.

AT&T states its reading of 47 C.F.R. § 51.5 dovetails with the FCC's insistence that non-impairment thresholds rely on readily available data that ILECs already possess. When AT&T conducts a physical inspection of a central office for FBCs, it cannot determine what occurs inside the carrier's collocation arrangement. *Chapman Rebuttal* at 42. All its technicians can see is the facility connecting the cages, which they can determine to be coaxial cable capable of supporting DS3 level transmission or fiber. AT&T asserts that it cannot rely on information that it does not have. *Id.* at 42-43. Accordingly, AT&T argues that the CLECs' position regarding collocator-to-collocator arrangements is contrary to the FCC's intent to rely on readily identifiable information.

Finally, AT&T disagrees that cross connection can be only counted when the carrier obtains the cross-connect through an IRU. This position is arguably supported by Footnote 292 of the *TRRO* which requires that when a company has collocation facilities connected to fiber transmission facilities obtained on an IRU basis from another carrier, these facilities shall be counted for purposes of the *TRRO* analysis. The footnote in question cites to provisions in the *TRO* in which the FCC discussed the concept of IRU as it applied to the competitive transport triggers. AT&T notes that the CLECs' interpretation must again refer to the now-vacated rule that the FCC established for the competitive transport triggers in the *TRO,* which required that in order to be counted, the competing provider had to have "deployed its own transport facilities" and those facilities "may use dark fiber facilities that the competing provider has obtained on a long-term, indefeasible-right of use basis and that it has deployed by attaching its own optronics to activate the fiber."[52] In contrast, the new rule under the *TRRO* merely states that a fiber-based collocator must "*operate*[] a fiber-optic cable or comparable transmission facility," and counts instances where the interoffice facilities are owned by another party (as in Verizon's CATT arrangement) or where facilities are obtained from the ILEC under an IRU. *TRRO*, ¶ 102; 47 C.F.R. § 51.5. While the treatment of IRUs within the *TRO* rules and the *TRRO* rules is the same (i.e., fiber leased by a CLEC on an IRU basis is treated as if it were owned by that CLEC), AT&T argues that the ownership requirements in those rules are very different; the now-vacated *TRO* required that the competing carrier had deployed *its own* transport facilities, whereas the *TRRO* counts instances so long as the fiber (or comparable facility) is not owned by the incumbent LEC.[53] To adopt the CLEC position would reinstate the vacated *TRO* rules which required a CLEC-by-CLEC determination of fiber ownership, and ignore the meaning of the *TRRO.*

AT&T points out that the process the parties will follow in the event AT&T identifies additional wire centers that meet one or more of the non-impairment thresholds established by the FCC is set forth in the amendment that was arbitrated in Cause No. 42857.[54] *Chapman Rebuttal* at 52. The CLECs are proposing to modify an already litigated, signed and approved amendment. The dispute the CLECs raise is not over the interpretation of the terms of the Amendment or resolution of matters not otherwise addressed in the Amendment, but is a proposal to invalidate existing contract terms and insert new provisions in their place.

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[52] Vacated TRO 47 C.F.R. 51.319(e)(2)(i)(A)(1). *See also* vacated TRO 47 C.F.R. § 51.319(e)(1)(ii)(A); § 51.319(e)(2)(i)(B)(1).

[53] 47 CFR § 51.315.

[54] See Section 4.0 of the *TRO/TRRO* Amendment reflecting the Commission's rulings on disputed issues 3, 4, 13, 14, 15, 16, 17, and 18.

AT&T argues that the CLECs' approach is exactly the kind of approach the FCC rejected in the *TRRO*. The FCC stated that "unlike information regarding fiber-based collocation, the information necessary to implement the previous [*TRO*] self-deployment triggers was possessed entirely by a span of competitive LECs and was not easily verifiable." *TRRO* ¶ 99. In contrast, under the *TRRO* approach, "[i]nformation regarding fiber-based collocation is readily identifiable by incumbent LECs, via review of billing records or physical inspections of central office premises." *Id.* ¶ 100. The CLECs' proposal, however, would require AT&T to conduct some unofficial form of discovery on the CLECs, outside the context of an actual proceeding, where CLECs have no incentive to respond, AT&T would have no leverage to make them respond, and the answers may prove unreliable. Further, the CLEC proposal is dependent upon CLEC verification of the data and means a CLEC's failure to respond forecloses AT&T from making a designation of non-impairment, a result that is clearly contrary to the *TRRO*.

AT&T argues that recent history has shown carriers are not responsive even to Commission directives, pointing to apparently incomplete responses from the CLECs who received Commission-issued subpoenas in this proceeding (*Gillan* at p. 38; Hearing Transcript, p. A13, line 10-20), as well as the process of obtaining a signed amendment reflecting the implementation of the Commission's order in Cause No. 42857. *Chapman Rebuttal* at 53. Numerous CLECs ignored AT&T's request for a signed amendment and AT&T was required to file a motion to move the matter forward after the Commission's order was issued. See, *AT&T Motion to Approve Amendment to Interconnection Agreements Pursuant To January 11, 2006 Order* filed May 11, 2006 in Cause No. 42857. *Chapman Rebuttal* at 53. Similarly, when AT&T ILECs were attempting to determine the locations where the now-vacated non-impairment triggers established in the *TRO* had been met, the AT&T ILECs issued numerous discovery requests to CLECs in an attempt to obtain precisely the type of confirmation that Mr. Gillan proposes that AT&T be required to obtain here. In spite of the fact that many of the discovery requests were issued in the course of state Commission monitored proceedings, many CLECs provided no response, and many others provided responses that did not provide the information needed. *Chapman Rebuttal* at 52-53.

AT&T remarks that the CLECs point to Bell South's agreement to serve requests for admission on all relied upon FBCs, but notes that the circumstances are very different in Indiana. There, according to the CLEC testimony, Bell South had a 50% error rate in some cases and the issues involved over 100 wire centers. Hearing Transcript, A-48 line 21 through A-49 line 2. In addition, AT&T asserts that a process dependent upon CLEC verification of the data would will be overly burdensome and add cost and delay. *Chapman Direct* at 52. In order for such a process to work, every potential FBC would first have to provide a meaningful response in a timely manner. AT&T also opines that such a requirement would have little value since each responding CLEC would have its own interpretation regarding what constitutes a fiber-based collocator for the purpose of the *TRRO*. AT&T also disagrees with the CLECs' proposal that the requisite information necessary to determine a FBC could be included on the collocation application. *Chapman Rebuttal* at 57-58. AT&T's collocation application does not provide the level of detail necessary to obtain the relevant information from CLECs. *Id.* Even if it did, that would not help AT&T obtain information from any of the existing collocators, nor would it change the fact that the responses are unlikely to resolve the issues. *Id.*

With respect to the issues concerning filing the data with the Commission and giving CLECs access, AT&T notes that the CLECs' testimony speaks to this point only in passing. AT&T

first notes that the parties already negotiated and agreed to the process to be followed when future wire center designations are made. *Chapman Rebuttal* at 53; TRRO Amendment Section 4.1.1. Under that process, the parties agreed that absent a CLEC self-certification, AT&T's wire center designations would be treated as controlling; however, if a CLEC does self-certify, AT&T must either file a dispute regarding that self-certification with the Commission and provide the data upon which AT&T intends to rely; or waive its right to claim that the wire center currently meets the FCC's non-impairment thresholds. Further, Section 4.1.4 of the TRO/TRRO Amendment negotiated and agreed to by the parties and approved by the Commission provides that:

> In the event of a dispute following CLEC's Self-Certification, upon request by the Commission or CLEC, AT&T will make available, subject to the appropriate state or federal protective order, and other reasonable safeguards, all documentation and all data upon which AT&T intends to rely, which will include the detailed business line information for the AT&T wire center or centers that are the subject of the dispute.

AT&T submits that the company makes data available in a variety of ways and additional filings are not necessary. The company represents that CLECs may review this data subject to a protective order entered by the FCC. *Chapman Direct* at 9. AT&T informed CLECs of the availability of this data via accessible letter. *Id.* Further, the CLECs can make a good-faith self-certification without full access to this data. AT&T asserts that the FCC contemplated that CLECs would *not* have access to all of the relevant data prior to a self certification: "the requesting carrier seeking access to the UNE certifies only *to the best of its knowledge,* and is unlikely to have in its possession all information necessary to evaluate whether the network element meets the factual impairment criteria in our rules." *TRRO* n. 659 (emphasis added). In sum, the CLECs already have reasonable access to the data that AT&T relies upon to make wire center non-impairment determinations, and the Commission should reject any specific proposals to deviate that the CLECs may make. Requiring AT&T to provide this data prior to self-certification would be contrary to the FCC's intent, and would place an undue burden on AT&T to turn over data without confidentiality protection or a pending proceeding.

(2). <u>The CLECs' Position</u>. The primary purpose of the FCC's *TRRO* was to "impose unbundling obligations in a more targeted manner where requesting carriers have undertaken their own facilities-based investments and will be using UNEs in conjunction with self-provisioned facilities."[55] The FCC recognized that the deployment of fiber transport facilities involves substantial fixed and sunk costs that must be recovered from "numerous customers' traffic."[56] The FCC thus reaffirmed its holding that CLECs are impaired "when lack of access to an incumbent LEC network element poses a barrier or barriers to entry . . . that are likely to make entry into a market uneconomic."[57] The FCC found that the "best and most readily administrated indicator of the potential for competitive deployment is the presence of fiber-based collocators in a wire center."[58]

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[55] *Id* at ¶ 3.

[56] *Id* at ¶ 72.

[57] *Id.* at ¶ 21, quoting *TRO*, ¶ 84.

[58] *Id.* at ¶ 93.

The FCC determined that by looking at the number of carriers that deployed fiber-based facilities in a wire center and the number of business lines served by a wire center, it was possible to conclude whether the CLECs had facilities-based alternatives to the ILECs' facilities, or that the revenue opportunities available with high volumes of business customers provided adequate incentive for CLECs to invest in their own facilities. With multiple independent FBCs at a wire center, the FCC surmised that CLECs would have revenue opportunities sufficient to justify building out loop plant to the buildings served by that wire center. The number of FBCs in a wire center is intended to serve as an indicator not only of the presence of competitive fiber deployment in that one wire center, but also of the existence of fiber rings connecting multiple wire centers. These fiber rings serve as the transport facilities among central offices as an alternative to the ILECs' facilities, and also provide opportunities for the construction of short fiber runs (laterals) to particular buildings to serve end users.[59]

The FCC recognized that the presence of one carrier's fiber-based collocation at one ILEC wire center alone does not prove that the same carrier could offer a competitive interoffice transport route to another wire center across town.[60] The FCC found, however, that "those competing carriers that deploy fiber and collocate, do so in multiple incumbent LEC wire centers within core business areas, thus increasing the chances that competitive transport facilities exist connecting many incumbent LEC wire centers."[61] The FCC relied upon the presence of FBCs as an indicator that CLECs would not be impaired without access to high-capacity loop facilities as well as transport. Such loop facilities would exist or be deployed through the construction of fiber rings and laterals there from to individual buildings. In discussing its decision to use the presence of carriers with fiber-based collocations as an indicator that CLECs need not rely upon ILEC-provided high-capacity loops, the FCC stated "that the presence of fiber-based collocations in a wire center service area is a good indicator of the potential for competitive deployment of fiber rings. Thus, high business line counts and the presence of fiber-based collocators...are likely to correspond with actual self-deployment of competitive LEC loops or to indicate where deployment would be economic and potential deployment likely."[62]

AT&T's proposed interpretations and applications of the FCC's fiber-based collocator definition will identify carriers as FBCs that do not meet the FCC's criteria. As the FBC definition indicates, to be counted as a fiber-based collocator the CLEC must operate an inter-office fiber network that leaves the wire center in question. AT&T proposes that the Commission permit it to count as a FBC CLECs that do not physically operate a fiber network, but which only buy access to the high-capacity fiber facilities of the CLEC that actually operates the fiber facilities. This would allow AT&T to classify not only the CLEC that truly operates a fiber network as a FBC, but would also permit AT&T to count wholesale customers of that CLEC as FBCs. The CLECs maintain that this is prohibited by the FCC's rules.

Carriers that do not have fiber-optic cable facilities leaving a wire center often lease capacity on the fiber facilities of carriers that operate their own fiber rings. When a carrier purchases

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[59] *TRRO*, ¶ 161.

[60] *See id.* ¶ 96 (Presence of fiber-based collocator "signals that significant revenues are available ... sufficient to justify the deployment of transport facilities.").

[61] *Id.* at ¶ 97 (footnotes omitted).

[62] *Id.* at ¶ 167 (footnotes omitted) (emphasis supplied).

services from an alternative transport provider and cross-connects to the provider's collocation arrangement, it does not "operate" the fiber facility that leaves the wire center any more than it would "operate" interoffice transport services obtained from AT&T (whether special access or UNE dedicated transport). AT&T would count these CLECS as "fiber-based collocators" for purposes of applying the FCC's rules.

The FCC's definition of a FBC contemplates a one-on-one relationship between the number of such collocators and distinct transport facilities that exit the wire center.[63] The FBC definition requires that a FBC actually operate a fiber-optic cable (or comparable transmission facility) that both terminates at a collocation arrangement within the wire center and leaves the wire center.[64] The CLECs argue that a collocator that does not have its own fiber and which is just buying a fiber-based service from a carrier to whom it cross-connects at a collocation site, is not a "fiber-based collocator." AT&T's position applies an overly broad definition of fiber-based collocator, one which would literally include almost every collocated CLEC, simply because the CLECs purchase services from carriers that actually operate fiber networks. AT&T asserts that a CLEC that cross-connects to another carrier to establish a "transmission path" or transmission signal that leaves the wire center over a fiber facility would qualify a carrier as a FBC.[65]

This would make the term "facility" in the FCC's rule synonymous with "transmission path." However, every CLEC that leaves the wire center establishes a transmission path. The *TRRO*'s FBC definition requires that the purported FBC operate and terminate fiber-optic cable or comparable transmission facilities that leave the ILEC wire center. The collocator who is cross-connected to a legitimate fiber-based collocator does not, merely because of the cross-connection, qualify as a FBC. A carrier purchasing services from a legitimate FBC can complete a "transmission path" from its equipment to its customer, but this indicates nothing about whether the carrier is "operating" the network that actually leaves the wire center.

The CLECs further argue that fiber cable, by definition, terminates in one place and is terminated by one carrier. It is the FBC that is responsible for the fiber-optic cable coming into and leaving the central office (CLEC B in CLECs' Exhibit JPG-5) that is terminating the fiber-optic cable and is counted as the FBC. When the FCC determined that before a collocator in a wire center can be counted as a FBC, it must operate and terminate fiber-optic cable, the FCC was identifying a particular sort of carrier, namely a carrier that has control of its own network transmission facilities that run through a particular wire center. The carrier that operates the fiber-optic cable is the carrier that decides the type of optronics equipment to which the cable will terminate, and the capacity of the fiber facility itself. The cross-connected CLEC has no right to modify or change out the optronics equipment, and would not generally be responsible for repairing or maintaining the fiber optic equipment.

Carriers sometimes lease dark fiber from another carrier and activate it by adding their own electronics. By definition, any facility that connects a collocated CLEC to another carrier does not

[63] CLECs Ex. 1 at 20.

[64] *Id.* at 20.

[65] Tr. at 62.

leave the wire center – it terminates at the collocation with the other CLEC.[66] There is a fundamental difference between a CLEC that has leased dark fiber under an IRU and then "lights" that fiber with its own optronics, and a CLEC that is obtaining service from another. AT&T's proposed effort to count "cross connected" CLECs ignores this difference. In the lease of dark fiber, the carrier installing the optronics can be said to "operate" the network because it is the optronics that determines the system capacity. A CLEC that is obtaining service from another carrier is merely obtaining a service and has no control over the system's operation or speed. The FCC's definition of FBCs makes clear that only carriers operating fiber networks should be counted, not carriers obtaining services.[67]

AT&T does not rely on the *TRRO* to support its position that a cross-connected CLEC can be counted as a fiber-based collocator. Rather, AT&T's position is derived from a footnote in the *TRO,* linked to the *TRRO* through a separate footnote, that references a Verizon "CATT" offering that AT&T does not offer. From this tangential use of the term "cross-connect" in a footnote of the *TRO*, AT&T makes its claim that any carrier that is cross-connected so that it may purchase service from a legitimate fiber-based collocator – *i.e.,* the carrier that actually operates a fiber network that terminates within the wire center and leaves that wire center – should also be counted as a fiber-based collocator. The CLECs point to the initial sentence in *TRRO* ¶ 102 from which AT&T Indiana attempts to build its cross-connect theory:

> We find that the collocation arrangement may be obtained by the competing carrier either pursuant to contract, tariff or, where appropriate, section 251(c)(6) of the Act, including less traditional collocation arrangements such as Verizon's CATT fiber termination arrangements.[68]

The FCC indicates that it could be appropriate to count a CATT arrangement as a fiber-based collocation, but the FCC never goes on to say that the CATT arrangement and every carrier that is cross-connected to a CATT arrangement should be counted, which is what AT&T asserts. Moreover, the CATT arrangement referenced by the FCC is limited to instances where individual fiber strands are spliced for distribution to different collocation arrangements.[69] Such an arrangement would typically be used under the circumstance where a second carrier has obtained dark fiber and has "lit" that fiber using its own electronics. Therefore, the type of shared arrangement addressed by the CATT offering is the only type of shared arrangement that would

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[66] The FCC understood that when a carrier leases dark fiber, typically under an IRU arrangement, and then activates that fiber through its own optronics investment, the carrier effectively operates a fiber facility and may be counted. The FCC explained the role of dark-fiber IRUs in the *TRRO*:

> We find that when a company has collocation facilities connected to fiber transmission facilities obtained on an indefeasible right of use (IRU) basis from another carrier, including the incumbent LEC, these facilities shall be counted for purposes of this analysis and shall be treated as non-incumbent LEC fiber facilities. *Triennial Review Order*, 18 FCC Rcd at 17231-32, para. 408 & nn.1263, 1265.

[67] When a carrier obtains a service, its capacity is multiplexed with the capacity of other carriers into the overall system capacity of the network. In contrast, when a carrier leases dark fiber and lights it with its own optronics, that carrier is defining the system capacity by the type of optronics being installed.

[68] *TRRO* ¶ 102.

[69] CLECs Ex. 1 at 27.

result in multiple FBCs, but it is not a general direction that other arrangements that do not involve spliced dark fiber arrangements should be counted.[70]

In further support of its position, the CLECs emphasize that other state commissions have rejected AT&T's arguments to count cross-connected CLECs as FBCs.[71] The CLECs urge this Commission to similarly reject AT&T's argument, and reject the notion that cross-connected carriers are facilities-based providers. The FCC's designation of carriers as FBCs is intended to count the number of carriers that operate fiber-optic cables that terminate in a particular wire center. Fiber-optics are currently the preeminent transport technology, and the one most commonly deployed by competitors and incumbents. The FCC recognized, however, that there may be other technologies deployed that are comparable to fiber and, therefore, did not limit its test to fiber-optic cable only. As such, the *TRRO* defined FBCs as follows:

> A fiber-based collocator is any carrier [that] ... operates a fiber-optic cable or comparable transmission facility that (1) terminates at a collocation arrangement within the wire center; (2) leaves the incumbent LEC wire center premises; and (3) is owned by a party other than the incumbent LEC or any affiliate of the incumbent LEC.[72]

The FCC's analysis in the *TRRO* and its definition of a FBC support counting transmission media that are comparable to fiber-optic cable that leaves the wire center and provides a potential alternative source of transport outside the wire center. That is why paragraph 102 of the *TRRO* references fixed-wireless networks as an example of a non-fiber-based transmission medium that would qualify as comparable: its comparability is based on the fact that fixed-wireless networks leaving a wire center "signal the ability to deploy transport facilities."[73] Thus, to be "comparable" to fiber, the facility must be comparable as an inter-office transmission facility. The capacity of the comparable facility is critical to the proper application of the FCC's rule. The capacity of the "comparable" facility should be, at a minimum, equal to three DS3s.[74]

As noted above, the purpose behind the FCC's impairment criteria was to determine those wire centers where CLECs would have the financial incentives and ability to deploy networks alternative to the ILECs' network. The FCC has specifically concluded that it would not be

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[70] As explained earlier, the FCC was explicit that the *only* type of shared network arrangements that may result in multiple fiber-based collocators is the circumstance where dark fiber is leased (under an IRU) to a carrier that lights that fiber with its own optronics.

[71] *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 Declassification*, Docket No. 06-SWBT-743-COM, Order Determining Proper Method for Fiber-Based Collocator and Business Line Counts, ¶ 24 (June 2, 2006); *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, Order at 11 (September 20, 2005); DT 05-083 *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), at 37; *Post Interconnection Dispute Resolution Proceeding Regarding Wire Center UNE Declassification*, Docket No. 31303, Order Approving Methodology to Determine AT&T Texas Wire Centers Which are Non-Impaired (April 7, 2006) ("*Texas Wire Center Order*") at 13-14.

[72] 47 C.F.R. § 51.5 (emphasis added).

[73] *TRRO* ¶ 102.

[74] CLEC Ex. 1 at 30 (emphasis in original).

economically practical for a CLEC to attempt to recover the costs of installing a single DS3 for transport.[75] The FCC even tied its impairment findings to the deployment of a large capacity of DS3 facilities. The FCC determined that a carrier would have sufficient revenue opportunity to deploy its own transport facility when it reached 12 DS3s of capacity from a wire center; once it concluded that CLECs could cost-effectively deploy their own facilities at 12 DS3s worth of capacity, the FCC precluded CLECs from purchasing more than 12 DS3s for transport purposes.[76] The FCC did not conclude that a single DS3 worth of capacity is comparable to fiber in light of "significant revenue opportunities" that exist with a single DS3 capacity of traffic.

Moreover, AT&T's argument that a single DS3 worth of capacity is comparable to fiber completely ignores the fact that a single DS3 facility has nowhere near the capacity of fiber. To be "comparable" to fiber, the facility must be comparable as an inter-office transmission facility. Three DS3s are comparable to fiber because no known CLEC interoffice fiber facility operates at less than OC-3 (3 DS3) speeds, with OC-12 capacity being far more common.[77] Consequently, at a minimum, in order for a transmission facility to be considered comparable to fiber-optic cable, it must at least be capable of carrying 3 DS3s of capacity, across typical interoffice distances (*i.e.*, several miles).[78]

In the *TRO*, the FCC indicated that the lower boundary for when a competitive transport facility would be deployed would be 3 DS3s.[79] As the FCC's analysis indicates, the lowest plausible capacity would be three DS3s, with 12 DS3s (or greater) far more common. While twelve DS3s worth of capacity is the likely breakpoint for a "comparable transmission facility", CLECs concede that as low as 3 DS3s' worth of capacity may satisfy the test in light of the fact that BellSouth occasionally relies on 3 DS3s' worth of capacity for transport in some of its offices. However, there is simply no basis to conclude that a fiber optic transport facility would operate at a single DS3.

AT&T also asserts that coaxial cable is comparable to fiber. While the FCC recognized that there may be technologies deployed that are comparable to fiber for purposes of determining whether the owner of the facility may be counted as a FBC, coaxial cable would not quality. These facilities do not have sufficient capacity to match the capacity of fiber facilities.

The FCC's definition of FBCs is intended to identify facilities and networks that leave the wire center and provide a source of transport that is an alternative to the ILEC, not connections that remain within the wire center. Fiber networks operate at multi-DS3 speeds and must be viable over reasonable distances. AT&T is the "single DS-3 test" so that it can argue that coaxial cable is "comparable" to fiber optic cable, even though it is not. The CLECs argue against defining a transmission facility as 'comparable' to fiber-based on the minimum capacity that could be supported by a fiber network, and even then only for a minimal distance. Comparability must be based on what level of capacity is *typically* associated with fiber capacity. Given the physical capacity limitations of coaxial cable, coaxial cross-connects are not "a comparable transmission facility" to fiber optic cable.

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[75] *TRO* ¶ fn. 1195.
[76] *TRRO* ¶ 131.
[77] CLEC Ex. JPG-1.0 at 20.
[78] *Id.*
[79] *TRO* ¶ 388 footnotes omitted [emphasis added.]

To be comparable to fiber, an alternative facility must be an inter-office transmission facility -- or, at a minimum, equal to three DS3s. Even assuming coaxial and a single DS1 facility are "comparable facilities," these facilities are only used by CLECs to cross connect to another facility; these facilities do not actually exit the wire center, as required by the FCC's rules. AT&T only argues that these facilities are comparable because they are used to cross connect to other carriers. However, these facilities are not comparable to fiber, and even if they were, they would not qualify a CLEC as an FBC, because these facilities do not leave the wire center, a requirement of the FCC's rules.

(3). Commission Discussion and Findings. As with defining "business line", the Commission must evaluate what constitutes a fiber-based collocator so that its criteria are properly applied in the instant case and for any future wire center designations. If the criteria are not properly applied, FBCs could be wrongfully identified as meeting the non-impairment standard.

First, to be counted as a fiber-based collocator, the CLEC must operate an inter-office fiber network that leaves the wire center in question. AT&T proposes that the Commission permit it to count as a FBC CLECs that do not physically operate a fiber network, but which only buy access to the high-capacity fiber facilities of the CLEC that actually operates the fiber facilities. We reject this argument, since it would classify not only the CLEC that truly operates a fiber network as a FBC, but would also permit AT&T to count customers of that CLEC as FBCs. We agree with the CLECs that this was never the intention of the FCC, and is prohibited by the FCC's rules.

The FCC's definition of a FBC contemplates a one-on-one relationship between the number of such collocators and distinct transport facilities. Again, according to ¶ 102 of the *TRRO,* the FBC definition requires that a FBC actually operate a fiber-optic cable (or comparable transmission facility) that both terminates at a collocation arrangement within the wire center and leaves the wire center. A collocator that does not have its own fiber and is just buying a fiber-based service from a carrier to whom it cross-connects at a collocation site is not a "fiber-based collocator." We reject AT&T's contention to count these "cross-connected" carriers as FBCs. If AT&T's approach were applied, any carrier or series of carriers that are "daisy-chained" to a fiber-based collocator could qualify as a FBC, and every carrier unaffiliated with the ILEC with a collocation arrangement in a wire center would be counted as a FBC.

This finding is further supported by the agreement by AT&T, as part of its merger with BellSouth, to recalculate impairment triggers. Specifically, AT&T agreed to the following:

> In identifying wire centers in which there is no impairment pursuant to 47 CFR §§ 51.319(a) and (e), the merged entity shall exclude the following: (i) fiber-based collocation arrangements established by AT&T or its affiliates; (ii) entities that do not operate (i.e., own or manage the optronics on the fiber) their own fiber into and out of their own collocation arrangement but merely cross-connect to fiber-based collocation...

In the Matter of AT&T and BellSouth Corporation, Application for Transfer of Control, 22 F.C.C.R. 5662, App. F (Merger Conditions) (adopted Dec. 29, 2006, rel. Mar. 26, 2007).

This agreement would tend to underscore our interpretation of the FCC's intent regarding the definition of a FBC, specifically concerning cross-connected entities. We therefore concur with the CLECs that such entities do not constitute FBCs under the relevant rules.

As to what constitutes a "comparable transmission facility," the FCC's analysis in the *TRRO* and its definition of an FBC count transmission media that are comparable to fiber-optic cable that (1) leaves the wire center, and (2) provides a potential alternative source of transport outside the wire center. AT&T asserts that coaxial cable and a single DS3 facility is comparable to fiber, and that CLECs that operate coaxial cable or a single DS3 worth of capacity would qualify as a FBC because they operate a "comparable transmission facility." We disagree.

While the FCC recognized that there may be technologies deployed that are comparable to fiber for purposes of determining whether the owner of the facility may be counted as an FBC, coaxial cable and a single DS3 facility do not qualify, since these facilities do not have sufficient capacity to match the capacity of fiber facilities. To be comparable to fiber, an alternative facility must be an inter-office transmission facility or at least have capacity equal to three DS3s. In addition, these facilities do not actually exit the wire center, as required by the FCC's rules.

In regard to the CLECs' request that AT&T be required to obtain confirmation from each carrier that AT&T has counted as a fiber-based collocator, the Commission finds that such request should be denied. First, the CLECs have already agreed to the terms which govern the process that will be followed when future wire center designations are made, and have provided no basis for revising their provisions contained in these already agreed-upon terms. Words in an agreement must be interpreted and enforced according to their plain meaning. The CLECs could have raised the issue of obtaining confirmations in the proceeding to establish the TRO/TRRO Amendment, but did not. Accordingly, the Commission is obligated to enforce the plain meaning of that language and not impose additional obligations on AT&T.

Further, even had the terms not already been negotiated and agreed upon, this approach would require AT&T to seek additional information from CLECs, which is contrary to the FCC's goal of relying solely on data that ILECs already possess. The Commission expects that any CLEC that is collocating in that wire center will likely participate in the relevant proceeding and will have an opportunity to comment on AT&T's identification of it as a fiber-based collocator. As to the CLECs' request that the data underlying AT&T's wire center designations be filed with the Commission and copies be made available to CLECs, this request is denied. Upon an AT&T challenge of a CLEC self-certification, the burden of proof will be with AT&T to support the non-impaired wire center designation. It serves no purpose to file information with the Commission in advance of the unfolding of the process contemplated in the *TRRO*.

We also dismiss the CLECs' proposal that the requisite information necessary to determine fiber-based collocation be included on the collocation application. Such information will likely not reduce the level of disputes regarding the issue of non-impairment, due to the fact that collocation arrangements can be augmented and modified subsequent to the original collocation application.

As a result of our findings in this section, as well as any determinations made in the remainder of our Order, we again direct AT&T to refile its wire center designations consistent with the above determinations.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The disputed issues between the parties are resolved in accordance with the findings and conclusions set forth herein.

2. This Order shall be effective on and after the date of its approval.

HARDY, GOLC AND ZIEGNER CONCUR; LANDIS AND SERVER ABSENT:
APPROVED: AUG 15 2007

I hereby certify that the above is a true and correct copy of the Order as approved.

Brenda A. Howe

Brenda A. Howe
Secretary to the Commission