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SOUTHWESTERN BELL TELEPHONE, L.P. d/b/a
AT&T MISSOURI

CASE NO. TO-2006-0360

REBUTTAL TESTIMONY

OF

CAROL CHAPMAN

Public Version

Dallas, Texas

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

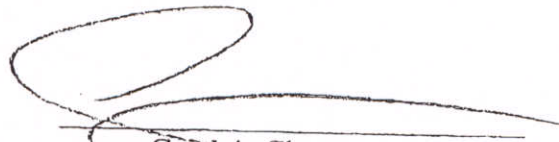
In the Matter of the Application of NuVox
Communications of Missouri, Inc., for an Investigation
into the Wire Centers that AT&T Missouri Asserts are
Non-Impaired Under the TRRO.)
Case No. TO-2006-0360.)
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AFFIDAVIT OF CAROL A. CHAPMAN

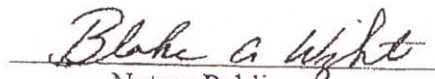
STATE OF TEXAS)
COUNTY OF DALLAS) SS
)

I, Carol A. Chapman, of lawful age, being duly sworn, depose and state:

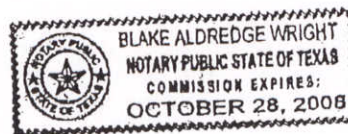
1. My name is Carol A. Chapman. I am presently an Associate Director – Wholesale Customer Care for Southwestern Bell Telephone, L.P.
2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.


Carol A. Chapman

Subscribed and sworn to before this 25 day of April, 2007.


Notary Public

My Commission Expires: Oct 28, 2008



REBUTTAL TESTIMONY OF CAROL CHAPMAN

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REBUTTAL TESTIMONY OF MARVIN NEVELS

ON BEHALF OF AT&T MISSOURI

I. INTRODUCTION

Q: PLEASE STATE YOUR NAME?

A: My name is Carol A. Chapman.

Q: ARE YOU THE SAME CAROL A. CHAPMAN WHO FILED DIRECT TESTIMONY IN THIS PROCEEDING?

A: Yes.

II. PURPOSE OF TESTIMONY

Q: WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A: The purpose of my Rebuttal Testimony is to respond to the Direct Testimony of CLEC witness, Joseph Gillan¹ and the Direct Testimony of Missouri Public Service Commission Staff witness, Michael S. Scheperle.² I have no general disputes with Mr. Scheperle's testimony. Mr. Scheperle supported AT&T Missouri's methodology for the Business Line count and recommended that the Commission adopt AT&T Missouri's currently effective wire center designations. The only flaw in Mr. Scheperle's testimony is not an error, but an oversight. As explained below, Mr. Scheperle's testimony did not address the wire center designations that were applicable prior to the application of pertinent merger commitments made in connection with the SBC/AT&T merger.

¹ Direct Testimony of Joseph Gillan on Behalf of the CLEC Coalition, TO-2006-0360 ("Gillan Direct").

² Missouri Public Service Commission utility Operations Division, Direct Testimony of Michael S. Scheperle, NuVox Communications of Missouri, Inc. Case No. TO-2006-0360 ("Scheperle Direct").

1 The majority of my Rebuttal Testimony is focused on my response to Mr. Gillan's Direct
2 Testimony. As I explain below, Mr. Gillan's proposals on Business Line counts are
3 directly contrary to the clear direction provided by the FCC in the *TRRO*. I also address
4 the parties' factual disputes and methodological disputes on Fiber-based Collocators. My
5 testimony will demonstrate that AT&T Missouri has applied the FCC's rules correctly
6 and that the Commission should adopt AT&T Missouri's wire center designations
7 without modification.

8 **Q: HOW IS YOUR TESTIMONY ORGANIZED?**

9 A: I have organized my testimony to first address general issues applicable to the wire center
10 designations. The first of these general issues is covered in my response to Mr.
11 Scheperle's Direct Testimony. While I do not disagree with any of Mr. Scheperle's
12 conclusions, I do point out an area he did not address in his testimony, relating to the
13 timing of the application of the wire center merger commitment associated with the
14 SBC/AT&T merger. The second general issue I address concerns the CLECs' support of
15 subjective, outcome-based methods for determining the appropriate wire center
16 designations. The FCC was crystal clear on this point. The non-impairment thresholds
17 the FCC established rely on objective, readily obtainable data that is already in the
18 possession of the ILECs. The CLECs' proposals stray from this clear directive.

19 My discussion of the general issues is followed by my testimony on specific Business
20 Line disputes. In this portion of my testimony, I identify each area of dispute related to
21 the Business Line count and then provide testimony addressing each area of dispute.

1 After my testimony on the Business Line count disputes, I address the disputes
2 concerning the Fiber-based Collocator counts. Again, I identify each area of dispute and
3 then address each dispute separately.

4 **III. GENERAL RESPONSE TO MR. SCHEPERLE'S DIRECT TESTIMONY**

5 **Q: DO YOU HAVE ANY GENERAL COMMENTS REGARDING MR.**
6 **SCHEPERLE'S DIRECT TESTIMONY?**

7 A: Yes. I generally support and agree with Mr. Scheperle's Direct Testimony. Mr.
8 Scheperle correctly supported AT&T Missouri's methodology for the Business Line
9 count and recommended that the Commission adopt AT&T Missouri's currently effective
10 wire center designations.³ I agree with his conclusions.

11 **Q: DO YOU HAVE ANY CONCERNS REGARDING MR. SCHEPERLE'S DIRECT**
12 **TESTIMONY?**

13 A: Only one. Mr. Scheperle's Direct Testimony addresses the wire center designations as
14 they stand today after the application of AT&T Missouri's commitments to the FCC in
15 connection with the SBC/AT&T merger and the AT&T/BellSouth merger. Mr.
16 Scheperle's Direct Testimony does not address the designations that were applicable
17 prior to the SBC/AT&T merger. Prior to that merger, AT&T Missouri's wire center
18 designations simply reflected the requirements established by the FCC in the *TRRO*.
19 These are the designations that applied (and were used by AT&T Missouri in its business
20 relationships with wholesale customers) before the merger commitments took effect. In
21 order to ensure that these wire centers are handled correctly, the Commission must assess

³ See Scheperle Direct generally and at p. 15.

1 the wire center designations as of the effective date of the *TRRO* (March 11, 2005) *prior*
2 to the application of the SBC/AT&T merger commitment (effective on December 16,
3 2005) which resulted in the exclusion of Fiber-based Collocation arrangements affiliated
4 with the pre-merger AT&T.

5 **Q: CAN YOU EXPLAIN FURTHER?**

6 A: Yes. On the effective date of the *TRRO*, March 11 2005, SBC and AT&T were not
7 affiliated companies. As a result, pre-merger AT&T Fiber-based Collocation
8 arrangements were properly counted as Fiber-based Collocators. However, effective
9 December 16, 2005, in compliance with an SBC/AT&T merger commitment, AT&T
10 Missouri modified the wire center list. This modification was done on a prospective
11 basis, because the merger commitment was only prospective (not retroactive), and
12 therefore had no bearing on any transition-related activity (including the billing of
13 transitional rates) that occurred prior to the modification. It is important for the
14 Commission to recognize the prospective nature of AT&T Missouri's merger
15 commitment in order to preclude unnecessary disputes concerning billing and transition-
16 related activity for the period between March 11, 2006 and December 16, 2006. This
17 merger commitment reads as follows:

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

1 As the language above clearly indicates, this merger commitment was not effective until
2 *after* the SBC/AT&T merger was complete.

3 **Q: ARE THERE ANY ADDITIONAL METHODOLOGICAL QUESTIONS THAT**
4 **THE COMMISSION NEEDS TO CONSIDER IN ORDER TO MAKE THIS**
5 **DETERMINATION?**

6 A: No. The only difference between the updated December 16, 2005 wire center
7 designations and the original March 11, 2005 designations is that the March 11, 2005
8 designations include the Fiber-based Collocation arrangements belonging to pre-merger
9 AT&T. As explained in my Direct Testimony, there are five instances in which the
10 exclusion of the pre-merger AT&T's Fiber-based Collocation arrangements resulted in a
11 re-designation of a wire center from Tier 1 to Tier 2. In addition to adopting the currently
12 effective wire center designations (as updated for the merger commitments), the
13 Commission should also rule that those five wire centers were properly designated as
14 Tier 1 wire centers between March 11, 2005 and December 16, 2005.

15 **IV. THE FCC PRECLUDES SUBJECTIVE INTERPRETATIONS OF THE**
16 **BUSINESS LINE AND FIBER-BASED COLLOCATOR DEFINITIONS IN**
17 **THE TRRO**

18 **Q: IS THE CLECS' OVERALL APPROACH TO APPLYING THE FCC'S**
19 **BUSINESS LINE AND FIBER-BASED COLLOCATOR DEFINITIONS**
20 **CONSISTENT WITH THE FCC'S DISCUSSION OF THESE DEFINITIONS?**

21 A: No. Throughout his testimony, Mr. Gillan advances a subjective analysis meant to
22 convince the Commission to adopt recommendations that suit the CLECs' desired
23 outcome on the issues, instead of employing the straightforward implementation

1 requirements of the *TRRO* and the FCC's implementing rules.⁴ The FCC emphasized
2 throughout its discussion of the Fiber-based Collocator and Business Line definitions in
3 the *TRRO* that it was creating a set of objective criteria that would be easy to implement
4 because they rested on readily available, verifiable data.⁵ The CLECs' subjective
5 approach, by contrast, is reminiscent of the approach taken in the unbundling rules in the
6 *TRO*, which generally required state commissions to make subjective judgments
7 regarding impairment and to rely on CLEC data that was difficult to obtain and verify.
8 After the D.C. Circuit vacated those rules, the FCC designed its new rules in the *TRRO* to
9 avoid those sorts of problems and eliminate any reliance on CLEC-provided or subjective
10 data.⁶ The FCC noted that it was "acutely aware of the need to base any test we adopt
11 here on the most objective criteria possible in order to avoid complex and lengthy
12 proceedings that are administratively wasteful but add only marginal value to our
13 unbundling analysis."⁷ Thus, Mr. Gillan's proposal that the Commission base its wire
14 center determinations on a subjective analysis -- instead of the objective criteria stated in
15 the FCC's rules -- is directly contrary to the unbundling framework established by the
16 FCC in the *TRRO* and approved by the United States Court of Appeals for the D.C.
17 Circuit when it upheld the *TRRO* rules on appeal.

⁴ See, for example, Gillan Direct at pp. 4-9, 18-22.

⁵ See, for example, *TRRO* at ¶¶ 99, 105, 108.

⁶ *TRRO* at ¶¶ 99, 108, 157-58, 169.

⁷ *TRRO* at ¶ 99 (emphasis added).

1 **Q: HOW DID THE FCC DESCRIBE THE OBJECTIVE CRITERIA IT**
2 **ESTABLISHED FOR DETERMINING IMPAIRMENT FOR HIGH-CAPACITY**
3 **LOOPS AND DEDICATED TRANSPORT?**

4 A: The FCC repeatedly emphasized its intent to create objective standards that would be
5 easy for state commissions to implement. Specifically, the FCC adopted “a proxy
6 approach that, unlike the *Triennial Review Order* triggers, relies on objective criteria to
7 which the incumbent LECs have full access, is readily confirmable by competitors, and
8 makes appropriate inferences regarding potential deployment.”⁸ The FCC further stated
9 that “the tests we adopt rely on data regarding the number of business lines and fiber-
10 based collocators in a wire center, which are objective and readily available.”⁹ The FCC
11 found that “as we define them, business line counts are an objective set of data that
12 incumbent LECs already have created for other regulatory purposes”¹⁰ and that “[f]iber-
13 based collocation also stands out as one of the most objective indicia of competitive
14 deployment available to us.”¹¹

15 **Q: WHY ARE THESE FCC FINDINGS PARTICULARLY IMPORTANT IN THIS**
16 **CASE?**

17 A: It is crystal clear that the FCC’s definitions of Business Line and Fiber-based Collocator
18 are based on purely objective criteria. The FCC has already performed the subjective,
19 policy analysis to determine the instances in which carriers are impaired without access
20 to high-capacity loops and dedicated transport and then established tests that would use

⁸ *TRRO* at ¶ 108.

⁹ *TRRO* at ¶ 161.

¹⁰ *TRRO* at ¶ 105.

¹¹ *TRRO* at ¶ 99.

1 objective criteria to implement its policy determinations. State commissions have been
2 given the authority to implement those *objective* standards, not, as the CLECs propose,¹²
3 to adopt different standards that would require subjective analysis or reliance on CLEC-
4 provided data. The Commission should simply apply the criteria as set forth by the FCC
5 in its rules and in the discussion of those rules in the text of the *TRRO*. The remainder of
6 my Rebuttal Testimony will focus on the specific requirements of the FCC's rules.

7 **V. BUSINESS LINE COUNT DISPUTES**

8 **a. Identification of Issues**

9 **Q: HAVE YOU IDENTIFIED THE BUSINESS LINE ISSUES IN DISPUTE BASED**
10 **ON YOUR READING OF MR. GILLAN'S DIRECT TESTIMONY?**

11 **A:** Yes. I have identified the Business Line count disputes and have provided a brief
12 summary of each dispute below.

13 1. The first area of dispute, and probably the most critical, concerns the manner in
14 which UNE-L lines are counted.¹³ AT&T Missouri's position is that both the
15 definition of Business Line in the FCC's rule and the text of the *TRRO*
16 unequivocally require that *all* UNE-L lines be included in the Business Line count
17 regardless of how the CLEC chooses to use the loop.¹⁴ The CLECs' position is
18 that only UNE-L lines that are used to provide switched service to business end
19 users may be included in the business line count. As I explain in more detail in
20 my rebuttal of the CLECs' position below, the CLECs' position is directly

¹² See, e.g., Gillan Direct, at pp. 8, 20.

¹³ For purposes of this testimony, the term UNE-L includes both stand-alone UNE loops and UNE loops that are part of an EEL or commingled arrangement. The term UNE-L does not include UNE loops provided in conjunction with AT&T Missouri switching (UNE-P).

¹⁴ See 47 C.F.R. § 51.5 (definition of "Business Line"); *TRRO* at ¶ 105.

1 contrary to the FCC's rule and the text of the *TRRO*. Furthermore the CLECs
2 interpret the definition of Business Line in a manner that would require the use of
3 subjective, CLEC-provided data that AT&T Missouri does not possess and cannot
4 verify – precisely what the FCC rejected.

5 2. The second business line dispute is closely tied to the first. AT&T Missouri's
6 position is that the FCC requires that all UNE-L lines be included in the business
7 line count, regardless of use, and that the same treatment applies to digital UNE-L
8 lines. In other words, the FCC's Business Line rule requires that digital
9 equivalency for UNE-L lines should be calculated based on the loop's digital
10 capacity and not on the individual CLEC's use of the loop. The CLECs, however,
11 contend that only UNE-L loops used to provide switched-based service to
12 business end users should be included in the business line count and, therefore,
13 only digital capacity used by the CLEC to provide switched service to a business
14 customer should be counted. As with the first dispute discussed above, the
15 CLECs' interpretation is contrary to the plain language of the FCC's rule and
16 relies on data that is not available to AT&T Missouri and that is not readily
17 verifiable.

18 3. The third business line dispute concerns the "vintage" of data that should be used
19 to support the wire center designations made by AT&T Missouri as of the
20 effective date of the *TRRO*. AT&T Missouri's position is that the business line
21 counts must be based on the most current business line data available to AT&T
22 Missouri at the time the *TRRO* went into effect (March 11, 2005). The most

1 current data available to AT&T Missouri at any given time is determined by the
2 most recent ARMIS 43-08 filing. At the time of designation, the most current
3 ARMIS 43-08 filing was the April 2004 filing, which reflects December 2003
4 billing data. The CLECs' position on this issue is not clear. The CLECs claim
5 that more recent business line data should be used but do not propose the use of
6 any particular vintage of data. I believe that, based on their outcome-based
7 approach, the CLECs do not want to finalize their position until they determine
8 which data would provide the most favorable result.

- 9 4. The fourth business line dispute concerns the CLECs' proposal suggesting that
10 the Commission ignore the requirements of the FCC's rule defining Business
11 Lines¹⁵ by using the line count that was filed with the FCC in December of 2004
12 (prior to the issuance of the *TRRO*). Mr. Gillan dubs this proposal a "simple
13 solution." But it is no solution at all, because it does not comply with the FCC's
14 rule. As I will explain below, after the December 2004 submission, the FCC's
15 *TRRO* rules specifically directed that business line counts account for digital
16 equivalency. The line counts that AT&T (then SBC) provided to the FCC in
17 December 2004 (before the issuance of the *TRRO*) did not apply digital
18 equivalency calculations to UNE lines. Although AT&T Missouri and the CLECs
19 do not agree on how the FCC's Business Line definition should be interpreted,
20 both parties do agree that the rule requires the calculation of digital equivalency

¹⁵ See 47 C.F.R. § 51.5 (definition of "Business Line").

1 for UNE lines. The Commission cannot adopt a Business Line count that does
2 not comply with the FCC's rule.

3 **b. Business Line Count Dispute 1 – Should the Business Line**
4 **count include all UNE-L lines or be limited to UNE-L lines**
5 **used to provide switched service to business end users?**

6 **Q: WHAT IS THE BASIS OF THIS DISPUTE?**

7 A: As I explained in my Direct Testimony, the FCC's Business Line rule and the *TRRO*
8 clearly require that all UNE-L lines be included in the Business Line count. AT&T
9 Missouri is not permitted to exclude UNE-L lines from the Business Line count based on
10 the type of service provided or the type of customer served. Despite the FCC's clear
11 instructions on this issue, however, the CLECs claim that UNE-L lines may be included
12 in the Business Line count *only if* the UNE-L is used to provide a switched service for a
13 business customer. This is directly contrary to the FCC's rule on counting Business
14 Lines in 47 C.F.R. § 51.5 (which states that "all UNE loops" are to be counted as
15 business lines), as well as paragraph 105 of the *TRRO*, which explains that all "UNE-
16 loops" count as business lines, not just "business" UNE loops.

17 **Q: HAS THE COMMISSION'S STAFF INDICATED ITS POSITION ON THIS**
18 **ISSUE?**

19 A: Yes. Mr. Scheperle correctly recognized that both the FCC's rule and the text of the
20 *TRRO* require that *all* UNE-L lines be included in the business line count.¹⁶ Mr.
21 Scheperle's Direct Testimony on this point supports AT&T Missouri's interpretation of
22 the Business Line rule.

¹⁶ Scheperle Direct at p. 12.

1 **Q: IS AT&T MISSOURI'S INTERPRETATION OF THE FCC'S DEFINITION OF**
2 **"BUSINESS LINE" BASED ON A READING OF THE ENTIRE DEFINITION?**

3 A: Yes. Mr. Gillan claims that AT&T Missouri's "application of the FCC definition is
4 based on reading isolated components of the definition, while ignoring other
5 requirements."¹⁷ This is not the case. AT&T Missouri (unlike Mr. Gillan) has considered
6 the FCC's definition of Business Line¹⁸ in its entirety, as well as the FCC's discussion of
7 the definition in the *TRRO*.

8 **Q: CAN YOU EXPLAIN WHAT THE FCC'S DEFINITION OF BUSINESS LINE**
9 **REQUIRES?**

10 A: Yes. The FCC's definition is:

11 *Business line.* A business line is an incumbent LEC-owned switched access line
12 used to serve a business customer, whether by the incumbent LEC itself or by a
13 competitive LEC that leases the line from the incumbent LEC. The number of
14 business lines in a wire center shall equal the sum of all incumbent LEC business
15 switched access lines, plus the sum of all UNE loops connected to that wire
16 center, including UNE loops provisioned in combination with other unbundled
17 elements. Among these requirements, business line tallies:

18 (1) shall include only those access lines connecting end-user customers
19 with incumbent LEC end-offices for switched services,

20 (2) shall not include non-switched special access lines,

21 (3) shall account for ISDN and other digital access lines by counting each
22 64 kbps-equivalent as one line. For example, a DS1 line corresponds to 24 64
23 kbps-equivalents, and therefore to 24 "business lines."¹⁹

¹⁷ Gillan Direct at p. 14.

¹⁸ 47 C.F.R. § 51.5 (definition of "Business Line").

¹⁹ 47 C.F.R. § 51.5 (definition of "Business Line").

1 In the first sentence of the definition, the FCC explains what a business line is. A
2 business line is “an incumbent LEC-owned switched access line used to serve a business
3 customer, whether by the incumbent LEC itself or by a competitive LEC that leases the
4 line from the incumbent LEC.”

5 As explained in the first phrase of the second sentence (“The number of business lines in
6 a wire center shall equal . . .”), the rest of the definition explains the calculations that
7 must be performed to determine the number of business lines in a wire center. It requires
8 that the business line count be calculated to include:

- 9 • “the sum of all incumbent LEC business switched access lines”
- 10 • “plus the sum of all UNE loops connected to that wire center, including
11 UNE loops provisioned in combination with other unbundled elements”

12 As noted above, the first group of lines that must be counted are “incumbent LEC
13 business switched access lines.” An “incumbent LEC business switched access line” is
14 simply a line utilizing AT&T Missouri-owned switching that is used to provide service to
15 a business customer. ILEC-owned business switched access lines include retail business
16 lines, resale business lines, UNE-P business lines and (to the extent such lines exist)
17 UNE-P replacement business lines. As I show below, this interpretation is supported by
18 paragraph 105 of the *TRRO*.

1 After the ILEC-owned business switched access lines are counted, the second group of
2 lines that must be counted are “UNE loops connected to that wire center.”²⁰ The rule
3 expressly requires that “all” such UNE loops be included in the business line count.²¹

4 At first glance when looking at the two bullets above, it may appear that UNE-P lines
5 could potentially be counted in either category. UNE-P lines qualify for the first category
6 because they are ILEC-owned switched access lines. If UNE-P lines are counted under
7 this category, only business UNE-P lines would be counted. On the other hand, a UNE-P
8 line could theoretically be considered “UNE loops connected to that wire center,
9 including UNE loops provisioned in combination with other unbundled elements.” If
10 UNE-P lines were included in this second category, *all* UNE-P lines would be counted.

11 For two reasons, it is clear that only business UNE-P lines—and not all UNE-P—should
12 be counted. First, the FCC’s rule instructs the parties to count ILEC *business* switched
13 access lines. And second, the FCC’s explanation of this definition in paragraph 105 of
14 the *TRRO* clarifies that only business UNE-P lines should be counted (“The BOC wire
15 center data that we analyze in this Order is based on ARMIS 43-08 business lines, plus
16 *business* UNE-P, plus UNE-loops”) (emphasis added). Therefore, the only interpretation
17 that does not double count UNE-P lines and that remains consistent with the text of the
18 *TRRO* is that UNE-P lines must be counted in the same manner as all other ILEC-owned

²⁰ Per the requirements of the rule, the Business Line count must include both stand-alone UNE-L lines and UNE-L lines that are part of an EEL combination.

²¹ 47 C.F.R. § 51.5 (definition of “Business Line”).

1 switched access lines, that is, only business UNE-P lines should be included in the
2 business line count.

3 Looking at the second bullet, the rule’s language clearly answers the question of which
4 UNE loops should be counted. Simply put, the rule requires ILECs to count “*the sum of*
5 *all UNE loops* connected to that wire center, including UNE loops provisioned in
6 combination with other unbundled elements.” (Emphasis added.) The rule could not be
7 more clear in requiring the inclusion of all stand-alone UNE-L lines. Moreover, based on
8 the rule’s mandate to count loops provisioned in combination with other unbundled
9 elements, the rule also requires the inclusion of all UNE-L lines that are part of an EEL
10 arrangement. Once again, this interpretation of the rule is supported by the FCC’s
11 discussion in paragraph 105 of the *TRRO*.

12 The next section of the rule (“Among these requirements, business line tallies
13 . . .”) goes on to provide additional detail on how to count the business lines. The rule
14 provides instruction that business lines:

- 15 • “shall include only those access lines connecting end-user customers with
16 incumbent LEC end-offices for switched services”
- 17 • “shall not include non-switched special access lines”
- 18 • “shall account for ISDN and other digital access lines by counting each 64
19 kbps-equivalent as one line. For example, a DS1 line corresponds to 24
20 64 kbps-equivalents, and therefore to 24 ‘business lines.’”

1 The first requirement modifies that part of the instructions relating to AT&T
2 Missouri's switched access lines (requiring "the sum of all incumbent LEC business
3 switched access lines"). It clarifies that the count should be limited to only include lines
4 "connecting *end-user customers* with *incumbent LEC end-offices* for switched services."
5 (Emphasis added.) This precludes the inclusion of lines providing premise-to-premise
6 services and AT&T Missouri company lines in the business line count. AT&T Missouri
7 complied with this requirement.

8 The second requirement makes it clear that non-switched *special access* lines should *not*
9 be included in the business line count. AT&T Missouri complied with this requirement.

10 The final instruction requires that digital access lines be converted to their voice grade
11 equivalents and provides the specific mathematical calculation for doing so. AT&T
12 Missouri complied with this requirement.

13 **Q: CAN THE FIRST SENTENCE OF THE BUSINESS LINE DEFINITION BE**
14 **READ TO APPLY TO THE COUNTING METHODOLOGY FOR UNE-L LINES,**
15 **AS MR. GILLAN SUGGESTS?²²**

16 **A:** No. Mr. Gillan claims that the first sentence of the Business Line definition establishes
17 conditions for calculating the number of Business Lines in a wire center.²³ Such an
18 interpretation creates internal conflict within the definition. The first sentence of the
19 definition of "Business Line" reads as follows: "A business line is an incumbent LEC-
20 owned switched access line used to serve a business customer, whether by the incumbent

²² Gillan Direct at pp. 11-14.

²³ Gillan Direct at p. 11.

1 LEC itself or by a competitive LEC that leases the line from the incumbent LEC.”²⁴ If,
2 as Mr. Gillan suggests, this sentence creates conditions that all lines must meet to be
3 counted as Business Lines, then *only* ILEC-owned switched access lines may be included
4 in the Business Line count. By definition, a switched access line includes loop facilities
5 and switching. An ILEC-owned switched access line includes an ILEC-owned loop and
6 *ILEC-owned switching*. No UNE-L line qualifies as an “incumbent LEC-owned switched
7 access line” because the incumbent does not own the switch used on a UNE-L line. If the
8 first sentence of the business line definition is read as a qualifier for the rest of the
9 definition, as Mr. Gillan proposes, the rule falls apart. Under his qualifier approach, the
10 definition would *prohibit the inclusion* of all UNE-L lines in the first sentence but then
11 *require the inclusion* of all UNE-L lines in the second sentence.

12 **Q: EVEN ASIDE FROM THESE DEFICIENCIES IN THE CLECS’ PROPOSED**
13 **INTERPRETATION, AS A PRACTICAL MATTER, COULD AT&T MISSOURI**
14 **DETERMINE THE CORRECT BUSINESS LINE COUNT USING THE CLECS’**
15 **PROPOSED INTERPRETATION?**

16 **A:** No. AT&T Missouri does not know if a CLEC is using a particular UNE loop to serve a
17 business end user or a residential end user. Furthermore, AT&T Missouri does not know
18 if a CLEC is using a particular UNE loop to provide a switched service or a non-switched
19 service (or, for that matter, any service at all). AT&T Missouri does not have the data
20 that would be necessary to implement the CLECs’ proposed interpretation.

²⁴ 47 C.F.R. § 51.5 (definition of “Business Line”).

Q: DOES MR. GILLAN PROVIDE ANY SUGGESTION AS TO HOW AT&T MISSOURI WOULD DETERMINE BUSINESS LINE COUNTS IF THE CLECS' PROPOSAL WERE ADOPTED?

A: No. Although Mr. Gillan proposes that the Commission interpret the FCC's Business Line rule to require AT&T Missouri to exclude UNE-L lines that are used to provide either residential service or non-switched service from the business line count, he fails to provide any suggestion as to how such an interpretation would be implemented. Mr. Gillan also fails to explain how his proposal can be reconciled with the FCC's clear statements indicating that AT&T Missouri already possesses all of the data needed to determine Business Line counts.²⁵

Q: DESPITE THEIR INTERPRETATION ARGUMENTS ADVANCED HERE, HAVE XO AND NUVOX (TWO OF THE THREE CLECS MR. GILLAN REPRESENTS) PREVIOUSLY ACKNOWLEDGED THAT AT&T MISSOURI'S INTERPRETATION OF THE FCC'S BUSINESS LINE RULE IS CORRECT?

A: Yes. XO and NuVox previously interpreted the FCC's business line rule to require that *all* UNE-L lines be included in the business line count and that digital UNE-L lines be counted based on the full capacity of the loop. XO and NuVox, along with several other carriers, filed this interpretation in a Petition for Reconsideration with the FCC asking that the FCC change, among other things, its rule on business lines.²⁶ In that filing XO and NuVox unequivocally stated that the FCC "counts *all UNE-L lines provided to CLECs*. This would include UNE loops used for non-switched access purposes, such as

²⁵ *TRRO* at ¶¶ 105, 108.

²⁶ See In the Matter of Unbundled Access to Network Elements Review of Section 251 Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313, CC Docket No. 01-338, Petition for reconsideration (March 28, 2005) ("XO/NuVox Petition for Reconsideration") attached as Rebuttal Exhibit CAC-1. XO and NuVox are two of the CLECs that sponsored this petition.

1 Internet access or local private lines.”²⁷ XO and NuVox went on to state that the FCC
2 “separately counts business access lines and residential lines in the ARMIS data. All
3 UNE-L lines are included, however, *regardless of whether they are used to serve*
4 *business or residential customers.*”²⁸ In short, XO and NuVox agreed that the FCC’s
5 rule, as written, requires that all UNE-L loops be counted as business lines. XO and
6 NuVox asked the FCC to change those plain requirements, but the FCC has not granted
7 their Petition and has not changed a word of its rules or the *TRRO*. Thus, the rule stands
8 as written – and as these CLECs correctly construed it.

9 **Q: HAVE OTHER STATE COMMISSIONS REJECTED THIS INTERPRETATION**
10 **OF THE FCC’S BUSINESS LINE RULE?**

11 A: Yes. Numerous state commissions have interpreted the FCC’s rule in the same way as
12 has AT&T Missouri: I quote from a few leading examples below.

13 **California:** “Since the FCC uses the phrase ‘UNE loops’ in both the discussion
14 and in its rule,” rather than adding “business” as a qualifier, “we must assume that
15 that is exactly what the FCC meant. . . . [T]he FCC’s language is clear that all
16 UNE loops are to be included in the count.” *California TRO/TRRO Order* at 10-
17 11, 2006 WL 238404, at *5.

18
19 **Illinois:** “The phrase ‘all UNE loops’ encompasses residential customers and
20 non-switched services.” *Illinois TRO/TRRO Order* at 30, 2005 WL 3359097, at
21 *26.

22
23 **Indiana:** “The FCC’s rule, 47 C.F.R. § 51.5, defines ‘business lines’ to include
24 all UNE loops connected to a wire center at issue, regardless of the type of
25 customer served.” *Indiana TRO/TRRO Order* at 16, 2006 WL 618004, at *12.

26
27 **Kansas:** “The FCC’s requirement of counting all UNE loops in a wire center is
28 unqualified.” *Kansas Wire Center Order* at ¶ 56, 2006 WL 2360900, at *11.

²⁷ XO/NuVox Petition for Reconsideration at 15. (Emphasis added.)

²⁸ XO/NuVox Petition for Reconsideration at 15. (Emphasis added. Footnotes omitted.)

“The second sentence of the [FCC’s business-line] rule is eminently easy to understand – follow the instructions and compliance with the rule will be assured.” *Kansas Wire Center Reconsideration Order* at ¶ 24, 2006 WL 2794797, at *24.

Ohio: “The FCC has clearly stated that all UNE loops connected to the wire center should be counted as part of the business line density in determining wire center non-impairment for high capacity loops and transport.” *Ohio TRO/TRRO Order* at 16, 2005 WL 3018712; *Ohio Wire Center Order* at ¶ 28, 2006 WL 1540270, at *13.

Washington, D.C.: “Because the definition of business line includes all UNE loops attached to a wire center, [it] appears that residential lines would be included in the definition of ‘business line.’” *Washington, D.C. TRO/TRRO Order*, 2005 WL 3541003, at *15.

Q: HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A: The Commission should rule that AT&T Missouri must continue to include all UNE-L lines in its business line count as required by the *TRRO* and implementing rules.

c. Business Line Count Dispute 2 – Should the digital equivalency for digital UNE-L lines be calculated based on the loop’s capacity or on the loop’s usage?

Q: WHAT IS THE BASIS OF THIS DISPUTE?

A: This dispute is essentially the same as Business Line Count Dispute 1 (which UNE-L lines should be included in the business line count). The only difference between the two issues is that Dispute 1 concerns which UNE-L lines should be counted and Dispute 2 concerns what *portion* of digital UNE-L lines should be counted. The parties’ positions on the issue are essentially the same as well. As noted above, the FCC’s definition of Business Line requires that the Business Line count “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.’”²⁹ Both parties agree that the rule requires that digital UNE-L lines be calculated based on 64 kbps-equivalency. However, while AT&T Missouri believes that the rule requires that all digital UNE-L lines be counted as Business Lines, the CLECs propose that only digital UNE-L lines used to provide switched access service to a business customer be counted as Business Lines.³⁰

Q: HAS THE COMMISSION STAFF INDICATED ITS POSITION ON THIS ISSUE?

A: Mr. Scheperle’s Direct Testimony supports AT&T Missouri’s position in that Mr. Scheperle indicates his belief that AT&T Missouri counted business lines correctly.³¹ In addition, as noted above, Mr. Scheperle clearly indicates that the Business Line definition requires that *all* UNE-L lines be included in the business line count, regardless of use. As noted above, the CLECs’ position on digital equivalency is simply an extension of their position that certain UNE-L lines should be excluded from the business line count.

Q: WHAT IS THE GIST OF THE CLECS’ PROPOSAL?

A: Essentially, the CLECs propose that digital equivalent lines for UNE-L should not be included in the business line count unless the specific digital equivalent line is used to provide switched service to a business customer. The CLECs claim that their goal is to exclude the portion of any digital UNE-L line that was used to provide residential service

²⁹ 47 C.F.R. § 51.5 (definition of “Business Line”).

³⁰ Gillan Direct at pp. 11, 14-15.

³¹ Scheperle Direct at p. 12

1 or non-switched service or that is not in active use. To implement this proposal, the
2 CLECs recommend that the Commission apply a utilization factor to all UNE-L lines.³²

3 **Q: HAS MR. GILLAN DESCRIBED AT&T MISSOURI'S POSITION ON THIS**
4 **ISSUE ACCURATELY?**

5 A: No. Mr. Gillan claims that AT&T Missouri seeks to count each digital UNE-L at its
6 "maximum potential capacity."³³ This is not the case. AT&T Missouri does not count
7 digital UNE-L lines based on "potential capacity," maximum or otherwise. Consistent
8 with the FCC's directive, AT&T Missouri calculates digital equivalency for UNE-L lines
9 based on the *actual loop capacity* requested by the CLEC and provided by AT&T
10 Missouri. A given loop facility may have the potential to support additional capacity.
11 AT&T Missouri does not count based on that potential. AT&T Missouri only counts
12 based on the actual loop capacity provided to the CLEC. Thus, for example, if a CLEC
13 leases a DS1 loop, which has the capacity for 24 64-kbps equivalents, AT&T Missouri
14 counts it as 24 business lines, precisely as the FCC's rule requires.

15 **Q: IS MR. GILLAN'S POSITION ON THIS ISSUE CONSISTENT WITH THE**
16 **PLAIN LANGUAGE OF THE FCC'S BUSINESS LINE RULE?**

17 A: No. Mr. Gillan claims that the FCC's business line rule does not direct AT&T Missouri
18 to count each channel in a high capacity circuit as a business line.³⁴ Although he admits
19 that the rule requires AT&T Missouri to "account for ISDN and other digital access lines

³² Gillan Direct at pp. 20-21.

³³ For example, *see* Gillan Direct at p. 14.

³⁴ Gillan Direct at p. 15.

1 by counting each 64 kbps-equivalent as one line,”³⁵ he then claims that this portion of the
2 rule only requires that the 64 kbps equivalent be treated as “one line” but *does not* require
3 that the 64 kbps equivalent be counted as a “business line.”³⁶ Mr. Gillan’s interpretation
4 ignores the next sentence of the rule. The relevant portion of the rule, when read as a
5 whole, requires that the business line tallies “shall account for ISDN and other digital
6 access lines by counting each 64 kbps-equivalent as one line. For example, a DS1 line
7 corresponds to 24 64 kbps-equivalents, and therefore to 24 ‘business lines.’”³⁷ The rule
8 does not merely state that a DS1 line equates to 24 “lines” that must then be evaluated on
9 a line-by-line basis to decide which of the 24 lines to include in the business line count,
10 as Mr. Gillan claims. Instead, the rule specifically states that a DS1 line equates to 24
11 *business lines*.

12 **Q: WHAT THEORY DOES MR. GILLAN USE FOR AVOIDING THE EXPRESS**
13 **LANGUAGE OF THE FCC’S RULE?**

14 A: Mr. Gillan suggests that UNE-L lines must be counted in the same manner as AT&T
15 Missouri retail lines.³⁸ This concept is contrary to the FCC’s rule and the *TRRO*. It also
16 demonstrates how unsupportable the CLECs’ position is on this issue. The only way that
17 AT&T Missouri could make the type of determination necessary to treat these two
18 offerings (AT&T Missouri retail lines and UNE-L lines) identically would be if each and
19 every facility-based CLEC provided AT&T Missouri with the equivalent of ARMIS 43-
20 08 data broken down by wire center for all of their UNE-L customers. This interpretation

³⁵ Gillan Direct at p. 12.

³⁶ Gillan Direct at pp. 13-14.

³⁷ 47 C.F.R. § 51.5 (definition of “Business Line”) (emphasis added).

³⁸ Gillan Direct at pp. 13, 15-16.

1 is about as far from being easily administrable as can be and directly conflicts with the
2 FCC's decision not to have its rule depend on any CLEC-provided data or line-by-line
3 analysis.³⁹ Mr. Gillan's contention that the FCC intended the criteria for AT&T
4 Missouri's retail lines to be identical to the criteria for counting UNE-L lines is
5 unfounded and directly contrary to the FCC's discussion of the matter.

6 **Q: IS MR. GILLAN'S COMPARISON OF AT&T MISSOURI'S COUNTING**
7 **METHODOLOGY FOR AT&T MISSOURI RETAIL LINES AND CLEC LINES**
8 **ACCURATE?**

9 A: No. Mr. Gillan states that the ARMIS 43-08 reporting requirements do "not permit
10 AT&T Missouri to count empty circuits or data circuits."⁴⁰ He also states that the same
11 treatment applies whether the end user is served by an ILEC or a CLEC.⁴¹ Mr. Gillan
12 implies that AT&T Missouri treats lines provided to CLECs differently than AT&T
13 Missouri retail lines. This is not the case. The identity of the end user's provider does
14 not have *any* bearing on the manner in which the line is counted. The *only* factor that is
15 relevant to the business line count is the actual *offerings* that AT&T Missouri is selling in
16 a given wire center.

17 For example, AT&T Missouri's retail services and CLEC resale services are counted
18 pursuant to the ARMIS 43-08 reporting guidelines. Resold CLEC lines are counted using
19 the same methodology as AT&T Missouri retail lines. For each of these services, AT&T
20 Missouri counts each line based on the service that AT&T Missouri has provisioned to

³⁹ *TRRO* at ¶¶ 105, 108, 158-59.

⁴⁰ Gillan Direct at p. 16 (emphasis omitted).

⁴¹ Gillan Direct at pp. 13, 16.

1 the requesting customer (the end user or the reselling CLEC). The same is true for UNE-
2 P. AT&T Missouri counts UNE-P based on the business UNE-P lines that it actually
3 provides to requesting CLECs. The same approach applies for UNE-L: AT&T Missouri
4 counts the offering (and associated bandwidth) that has been provided to its customer, the
5 CLEC.

6 **Q: HOW DOES THIS WORK IN PRACTICE?**

7 A: AT&T Missouri simply considers the offering that it has provided to its customer,
8 whether that customer is a retail end user or a CLEC. For example, in the ARMIS 43-08
9 counts, if AT&T Missouri has provided a retail or resale customer with a full DS1 line,
10 AT&T Missouri will count the DS1 as 24 equivalent lines as required by the ARMIS 43-
11 08 reporting rules. If AT&T Missouri has provided a retail or resale customer with a
12 single voice-grade line that simply happens to be provisioned over a larger DS1 facility,
13 AT&T Missouri will only count the single line. The same is true for UNE Loops. If
14 AT&T Missouri has provided a full DS1 loop to a requesting CLEC, AT&T Missouri
15 will count that loop as 24 equivalent lines. If AT&T Missouri has provided a single
16 voice-grade loop to a CLEC, but has provisioned that loop over a DS1 facility, AT&T
17 Missouri will only count the voice-grade loop it has provided.

18 **Q: DOES AT&T MISSOURI HAVE ACCESS TO THE DATA NECESSARY TO**
19 **DETERMINE THE PORTION OF A UNE-L DIGITAL ACCESS LINE THAT A**
20 **CLEC IS CURRENTLY USING?**

21 A: No. AT&T Missouri leases UNE loops -- not portions of UNE loops. AT&T Missouri
22 therefore does not know, and could not know without extensive discovery and reliance on

1 unverifiable, CLEC-provided data, what portion of a digital UNE-L line is used to
2 provide switched service to business customers.

3 **Q: IS IT LOGICAL FOR THE FCC TO INCLUDE ALL UNE-L LINES (AND**
4 **ASSOCIATED CAPACITY) IN ITS BUSINESS LINE COUNTS?**

5 A: Yes. To the extent business lines are being used as an indicator of the revenue
6 opportunities available to facility-based CLECs,⁴² it makes sense to count all of the
7 existing facility-based competition in the wire center and to consider the total revenue
8 potential for the entire loop. Obviously, a facility-based carrier is receiving revenue for
9 all services provided over a UNE-L line, whether those services are switched or non-
10 switched. Furthermore, the FCC has indicated its desire to base impairment
11 determinations on easily verifiable information that is readily available to the ILEC. In
12 regard to UNE-L lines, the only way to accomplish this would be to either include all
13 UNE-L lines or to exclude all UNE-L lines. The FCC chose to count all UNE-L lines. In
14 this respect, the Business Line rule and the text of the *TRRO* are clear: all UNE-L lines
15 must be included in the Business Line count.

16 **Q: HOW DID XO AND NUVOX INTERPRET THE DIGITAL EQUIVALENCY**
17 **PORTION OF THE FCC'S BUSINESS LINE RULE IN ITS FILING WITH THE**
18 **FCC?**

19 A: Both XO and NuVox (two of the three CLECs represented by Mr. Gillan) recognized that
20 under the Business Line definition, the FCC "count[s] DS1s and other digital lines on a
21 per 64 kbps-equivalent basis."⁴³ XO and NuVox further noted that the "64 kbps-

⁴² See *TRRO* at ¶¶ 43, 94-95, 103.

⁴³ XO/NuVox Petition for Reconsideration at p. 11.

1 equivalents rules counts every *DSI provided by CLECs as 24 business lines.*”⁴⁴ The
2 interpretation of the rule that XO and NuVox filed with the FCC is consistent with the
3 methodology applied by AT&T Missouri, but is inconsistent with its own position here as
4 set forth in Mr. Gillan’s Direct Testimony.

5 **Q: MR. GILLAN PROPOSES THAT DIGITAL EQUIVALENCY FOR UNE-L**
6 **LINES BE DETERMINED THROUGH THE APPLICATION OF A**
7 **UTILIZATION FACTOR. IS THE CLECS’ PROPOSAL ON THIS ISSUE**
8 **CLEAR?**

9 **A:** No. To begin with, the proposal is contrary to the plain language of the FCC’s rule,
10 which requires “each” 64 kbps-equivalent to be counted as a business line, not just some
11 percentage.

12 Second, the proposal is contrary to the FCC’s determination that its Business Line rule is
13 to rely on objective, readily verifiable data that ILECs already report for other regulatory
14 purposes. A utilization factor would not meet any of these requirements. To the
15 contrary, it would require extensive, expensive state-by-state litigation over the proper
16 factors for each digital loop type, precisely what the FCC wanted to avoid. As explained
17 in more detail in my Direct Testimony, the FCC stated that its unbundling framework
18 was “based upon objective and readily obtainable facts, such as the number of business
19 lines or the number of facilities-based competitors in a particular market.”⁴⁵ The FCC
20 described the wire center thresholds as objective,⁴⁶ simple to apply,⁴⁷ and noted that the

⁴⁴ XO/NuVox Petition for Reconsideration at p. 13. (Emphasis added.)

⁴⁵ *TRRO* at ¶ 234 (emphasis added).

⁴⁶ *TRRO* at ¶¶ 108, 161.

1 thresholds relied on data possessed by and readily available to ILECs.⁴⁸ The FCC
2 explained that the approach it chose would “significantly reduce the burdens of
3 implementing the standard in comparison with the extensive and litigious proceedings
4 that followed the issuance of the *Triennial Review Order*.”⁴⁹ The establishment of a
5 subjective utilization factor would have the opposite effect.

6 In its discussion of business line counts, the FCC provided crucial guidance that should
7 put to rest any dispute over the meaning of the definition. In paragraph 105 of the *TRRO*,
8 the FCC explained that its business line definition was based on objective criteria and
9 depended upon data already submitted by the ILECs -- ARMIS 43-08 business line data,
10 UNE-P business lines counts, and UNE loop counts. The FCC noted that it chose not to
11 use evidence that might have provided a more complete picture but would have been
12 difficult to obtain and verify. In short, the FCC’s own description of the business line
13 definition clearly does not contemplate the type of subjective approach proposed by Mr.
14 Gillan.

15 Third, and further proof of why a utilization factor is subjective and improper, the CLECs
16 cannot even articulate a clear proposal. In one place, Mr. Gillan appears to propose the
17 use of an 11:1 DS1 utilization rate be applied for DS1 UNE-L lines; however, he also

⁴⁷ *TRRO* at ¶¶ 93, 105.

⁴⁸ *TRRO* at ¶ 108

⁴⁹ *TRRO* at ¶ 108.

1 discusses a 50% utilization rate, but does not explain how the 50% DS1 utilization rate
2 correlates to the 11:1 DS1 utilization rate.⁵⁰

3 Fourth, Mr. Gillan's proposal is incomplete. He does not provide any support (or
4 apparently any proposal) for the utilization rate that would apply for other digital UNE-L
5 lines (such as 2-wire digital loops and DS3 loops).

6 **Q: ARE MR. GILLAN'S REFERENCES TO THE COMMISSION'S ECONOMIC**
7 **CROSS-OVER DETERMINATIONS FROM THE TRO PROCEEDINGS**
8 **RELEVANT HERE?**⁵¹

9 A: No. To begin with, the FCC's unbundling rules do not allow for any type of "utilization
10 factor." However, even if the FCC had permitted the use of a utilization factor, which it
11 did not, the economic cross-over point for DS1 loops is not interchangeable with the
12 actual average utilization for DS1 loops. The purpose of the economic cross-over
13 determination was to decide the point at which it would be more economical to provision
14 voice lines over a DS1 loop instead of individual voice-grade loops. In other words, the
15 Commission previously determined that if a carrier was providing 11 voice grade lines *or*
16 *more*, it would be more economical to provision those voice grade lines over a DS1 loop
17 than to provision each line individually. If anything, this determination establishes the
18 *minimum* number of lines that would typically be provisioned over a DS1 loop. It does
19 not establish an average as Mr. Gillan's testimony implies. In fact, one would expect the
20 average to be higher.

21 **Q: DO YOU HAVE ANY ADDITIONAL COMMENTS REGARDING THE**
22 **UTILIZATION OPTION MR. GILLAN DESCRIBES?**

⁵⁰ Gillan Direct at p. 20.

⁵¹ Gillan Direct at pp. 19-20.

1 A: Yes. To begin with, had the FCC intended to require that a utilization factor be applied
2 to the UNE-L lines in the business line count, one would expect the FCC would have
3 made some mention of a utilization factor (and explained how the utilization factor would
4 be calculated) in the *TRRO*. It did not. This is a critical flaw in Mr. Gillan's argument.
5 Had the FCC intended that a utilization factor be applied, then the only way to avoid the
6 type of "extensive and litigious proceedings that followed the issuance of the *Triennial*
7 *Review Order*"⁵² would be to provide clear instructions regarding the application of the
8 utilization factor. ILECs do not know how a CLEC is utilizing the high-capacity UNE-L
9 lines provided. As a result, the establishment of any utilization factor would require
10 either an extensive discovery process or the establishment of some sort of proxy. The
11 establishment of a proxy factor is also bound to lead to disputes regarding the appropriate
12 number. The FCC's silence on this topic, coupled with the FCC's express
13 pronouncement that its methodology be based upon objective and readily obtainable
14 facts, can only reasonably mean that the FCC did not contemplate the use of a utilization
15 factor.

16 **Q: HAVE OTHER STATE COMMISSIONS SUPPORTED THE APPLICATION OF**
17 **DIGITAL EQUIVALENCY USED BY AT&T MISSOURI?**

18 A: Yes. I have represented the AT&T ILEC position on this issue in all of the wire-center
19 related proceedings in AT&T's pre-BellSouth merger thirteen states. To date, every one
20 of the state commissions that has ruled on this issue in those proceedings has ruled in

52*TRRO* at ¶ 108.

1 favor of the digital equivalency approach supported by AT&T Missouri in this
2 proceeding. For example:

3 **Texas:** The Commission finds that AT&T Texas's counting and reporting of
4 UNE-L capacity complies with the FCC's definition of a business line in 47
5 C.F.R §51.5 as well as the FCC's specific instruction on reporting such lines
6 found in ¶105 of the *TRRO*, described in Issue 1A, *supra*. The Commission notes
7 that two-wire switched digital access lines have a capacity of two 64 kb circuits,
8 therefore, each switched two-wire switched digital line used to provide business
9 service should be counted as two business lines as directed in 47 C.F.R.
10 §51.5(3).⁵³

11
12 **Kansas:** "NuVox also claimed that the rule does not direct an incumbent LEC to
13 count each channel in a high capacity facility as a 'business line.' The
14 Commission finds this claim to be without any merit whatsoever. . . . If the FCC
15 had intended to limit each 64 kbps-equivalent as NuVox suggested, it would not
16 have stated that a DS1 line corresponds to 24 'business' lines. The Commission
17 concludes that the FCC plainly and unambiguously stated its intentions: each 64
18 kbps-equivalent shall be counted as a LEC-served business line for purposes of its
19 impairment analysis." *Kansas Wire Center Order* at ¶ 58, 2006 WL 2360900, at
20 *10.

21
22 **Ohio:** "The Commission rejects the CLEC Coalition's proposal to exclude
23 unused capacity and capacity used for residential services on high capacity UNE-
24 L lines. . . . To the contrary, the FCC has explicitly stated that ILECs shall
25 account for high capacity digital access lines by counting each 64 kbps-equivalent
26 as one line." *Ohio Wire Center Order*, ¶ 28, 2006 WL 1540270, at *13.

27
28 **Illinois:** "IBT's original December 2004 business line count submission to the
29 FCC predated the definition of business lines in §51.5, which mandates the
30 inclusion of digital equivalency. IBT subsequently submitted a business line
31 count to the FCC based upon the business line definition in §51.5 that requires
32 inclusion of digital equivalency. Accounting for digital equivalency increased the
33 total number of business lines significantly and results in the reclassification of
34 various wire centers. Any ambiguity contained within the *TRRO* as to whether
35 digital equivalency is proper, is resolved by the FCC's enactment of §51.5.
36 Section 51.5 changed the methodology of how business lines were to be
37 computed by including digital equivalency.

⁵³ Texas Wire Center Order at 33. AT&T Texas' proposal for the "counting and reporting of UNE-L capacity" was the same as AT&T Missouri's proposal in this proceeding.

"Accordingly, IBT's initial and future wire center designations should be calculated consistent with § 51.5."⁵⁴

Q: HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?

A: The appropriate determination on this issue is clear. The FCC clearly requires that all UNE-L lines be included in the Business Line count (regardless of use) and that the Business Line count "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.'*"⁵⁵

d. Business Line Count Dispute 3 – Should the Business Line counts supporting the wire center designations rely on the most recent data available to AT&T Missouri at the time of designation or more recent data?

Q: WHAT IS THE NATURE OF THE DISPUTE ON THE "VINTAGE" OF DATA THAT SHOULD BE USED FOR THE BUSINESS LINE COUNTS?

A: The dispute concerns whether the data that is used for the business line count should be the data that was available at the time the wire center designations in question went into effect (March 11, 2005), or data that did not become available until later. AT&T Missouri's position on this issue is clear, logical, and easy to apply. The data that should be used is the most recent data available at the time the designations were made. The CLECs' proposal, on the other hand, is not clear. Mr. Gillan has indicated that he believes that more recent data should be used; however, he appears to be waiting to see which year's data produces a more favorable result before making a concrete

⁵⁴ Illinois Wire Center Order (ICC docket 06-0029) at p. 9.
⁵⁵ 47 C.F.R. § 51.5 (definition of "Business Line") (emphasis added).

1 recommendation.⁵⁶ Any such results-based approach is contrary to the FCC's directive
2 to use *objective* data.

3 **Q: WHAT VINTAGE OF DATA SHOULD BE USED FOR THE BUSINESS LINE**
4 **COUNTS?**

5 A: The only workable approach is to use the most recent data available at the time the wire
6 center designations were made, that is, on the effective date of the *TRRO* (March 11,
7 2005). This is precisely what AT&T Missouri has done and what AT&T Missouri has
8 proposed should be done for any future designations. As I explained in my Direct
9 Testimony, the most recent ARMIS 43-08 data available on the effective date of the
10 *TRRO* was the December 2003 data originally filed with the FCC on or about April 1,
11 2004.

12 **Q: COULD AT&T MISSOURI HAVE USED MORE RECENT BUSINESS LINE**
13 **DATA AT THE TIME THE ORIGINAL WIRE CENTER DESIGNATIONS**
14 **WERE MADE?**

15 A: No. AT&T Missouri does not track ARMIS 43-08 data throughout the year. Rather,
16 AT&T Missouri only compiles ARMIS 43-08 data as necessary to comply with AT&T
17 Missouri's annual filing obligations. Although AT&T Missouri does use other types of
18 line count data throughout the year, other types of line count data (for example, the data
19 used in quarterly earning statements) is *not* ARMIS 43-08 data and is not consistent with
20 the methodology required under the FCC's definition Business Line and therefore cannot
21 be used for the purpose of determining impairment. The wire-center specific ARMIS 43-
22 08 business line data that complies with the FCC's definition is only available on an

⁵⁶

Gillan Direct at p. 17.

1 annual basis at some time after April 1 of each year. That is the data AT&T Missouri
2 used and the data on which the Commission should rely.

3 **Q: WOULD THE USE OF DATA THAT DOES NOT COMPLY WITH THE ARMIS**
4 **43-08 REQUIREMENTS CREATE ADDITIONAL CONCERNS?**

5 A: Yes. The ARMIS 43-08 report is an established report with publicly available reporting
6 guidelines. The use of data taken directly from the ARMIS 43-08 report minimizes the
7 potential for dispute. On the other hand, if AT&T Missouri were to compile business line
8 data using a different process than the standard process for the ARMIS 43-08 reports,
9 disputes concerning AT&T Missouri's reporting methodology are almost guaranteed,
10 leading to the kind of extensive state-by-state litigation the FCC wanted to avoid.

11 **Q: WHY HAS AT&T MISSOURI TAKEN THE POSITION THAT THE MOST**
12 **RECENT DATA AVAILABLE AT THE TIME OF DESIGNATION MUST BE**
13 **UTILIZED?**

14 A: This approach is required by the FCC's unbundling rules for high-capacity loops and
15 dedicated transport. The FCC determined that once a wire center meets the thresholds for
16 non-impairment, the non-impairment status cannot be reversed. The FCC reiterated this
17 principle four times in its rules:

18 As to DS1 loops:

19 Subject to the cap described in paragraph (a)(4)(ii), an incumbent
20 LEC shall provide a requesting telecommunications carrier with
21 nondiscriminatory access to a DS1 loop on an unbundled basis to
22 any building not served by a wire center with at least 60,000
23 business lines and at least four fiber-based collocators. *Once a wire*
24 *center exceeds both of these thresholds, no future DS1 loop*
25 *unbundling will be required in that wire center.*⁵⁷
26

⁵⁷ 47 C.F.R. § 51.319(a)(4)(i) (emphasis added).

1 As to DS3 loops:

2
3 Subject to the cap described in paragraph (a)(5)(ii), an incumbent
4 LEC shall provide a requesting telecommunications carrier with
5 nondiscriminatory access to a DS3 loop on an unbundled basis to
6 any building not served by a wire center with at least 38,000
7 business lines and at least four fiber-based collocators. *Once a wire*
8 *center exceeds both of these thresholds, no future DS3 loop*
9 *unbundling will be required in that wire center.*⁵⁸

10
11 As to dedicated interoffice transport:

12
13 Tier 1 wire centers are those incumbent LEC wire centers that
14 contain at least four fiber-based collocators, at least 38,000 business
15 lines, or both. Tier 1 wire centers also are those incumbent LEC
16 tandem switching locations that have no line-side switching
17 facilities, but nevertheless serve as a point of traffic aggregation
18 accessible by competitive LECs. *Once a wire center is determined*
19 *to be a Tier 1 wire center, that wire center is not subject to later*
20 *reclassification as a Tier 2 or Tier 3 wire center.*⁵⁹

21
22 And

23
24 Tier 2 wire centers are those incumbent LEC wire centers that are
25 not Tier 1 wire centers, but contain at least 3 fiber-based collocators,
26 at least 24,000 business lines, or both. *Once a wire center is*
27 *determined to be a Tier 2 wire center, that wire center is not subject*
28 *to later reclassification as a Tier 3 wire center.*⁶⁰

29
30 Based on the FCC's rules, the question is whether the thresholds were met as of the
31 effective date of the *TRRO* or whenever a designation is made—not whether the
32 thresholds continue to be met on an ongoing basis.

⁵⁸ 47 C.F.R. § 51.319(a)(5)(i) (emphasis added).

⁵⁹ 47 C.F.R. § 51.319 (e)(3)(i) (emphasis added).

⁶⁰ 47 C.F.R. § 51.319 (e)(3)(ii) (emphasis added).

1 **Q: WHAT ARGUMENTS HAS MR. GILLAN MADE TO SUPPORT THE USE OF A**
2 **LATER VINTAGE OF BUSINESS LINE DATA?**

3 A: Mr. Gillan suggests that wire center designations should rely on line count data and
4 collocater data from the same time period.⁶¹ In other words, Mr. Gillan appears to
5 propose that if the business line count relies upon December 2003 data, the fiber-based
6 collocater count must also rely upon December 2003 inspections. This proposal is
7 unworkable.

8 **Q: WHAT IS ONE OF THE PRACTICAL CONCERNS ASSOCIATED WITH THIS**
9 **CONCEPT?**

10 A: Because the business line data is only available annually, the CLECs' proposal would
11 create an artificial limitation on the frequency of AT&T Missouri's wire center updates.
12 An artificial limitation serves no valid purpose and is contrary to the FCC's rules. In
13 Case No. TO-2005-0336, the M2A successor arbitration proceeding, the Commission
14 adopted language that permits AT&T Missouri to make updates to its wire center
15 designation without limitation.⁶² In light of the fact that ARMIS 43-08 data is only
16 available annually, the CLECs' proposal would prevent AT&T Missouri from making
17 updates more often than once a year. While business line data is only available annually,
18 fiber-based collocation arrangements can be added at any time. AT&T Missouri must

⁶¹ Gillan Direct at pp. 17-18.

⁶² See, Southwestern Bell Telephone, L.P., d/b/a SBC Missouri's Petition for Compulsory Arbitration of Unresolved Issues for a Successor Interconnection Agreement to the Missouri 271 Agreement ("M2A"), Final Arbitrator's Report, June 21, 2005, Section III, pp. 17-18. Specifically, the Commission observed that then SBC Missouri's non-impaired wire center language was attached as Exhibit 1 to its post-hearing brief filed on June 7, 2005, and ruled that "[t]he language submitted by SBC Missouri as Exhibit 1 to its brief shall be included in the agreement." The operative language in Exhibit 1 states that "[t]he parties recognize that wire centers that are not currently designated as meeting the FCC's non-impairment thresholds referenced above, may meet those thresholds in the future. In the event that a wire center that is not currently designated as meeting one or more of the FCC's non-impairment thresholds, meets one or more of these thresholds at a later date, SBC MISSOURI may add the wire center to the list of designated wire centers."

1 have the ability to make new designations when a wire center meets the non-impairment
2 thresholds, as required in the Commission-approved language.

3 **Q: ASIDE FROM THE DESIGNATION FREQUENCY ISSUE DISCUSSED ABOVE,**
4 **ARE THERE OTHER TIMING CONCERNS WITH MR. GILLAN'S**
5 **PROPOSAL?**

6 A: Yes. Mr. Gillan's proposal (that the Fiber-based Collocator count used for the updates be
7 based on data pulled from the same time period as the business line data) is not
8 reasonable from a logistical perspective. As explained in my Direct Testimony and the
9 Direct Testimony of Mr. Nevels, AT&T Missouri's Fiber-based Collocator counts are
10 based on physical inspections. One of the key factors that AT&T Missouri uses to
11 determine which wire centers will be physically inspected is the business line count data.
12 The ARMIS 43-08 reports rely on December line count information. The wire-center
13 level business line count data that will be used for any updates is not available until after
14 the federal filing around April 1 of each year. (The aggregate state-wide data is filed
15 with the FCC in April. Additional work must be performed to disaggregate the business
16 lines at a wire center level.) Because of the additional work that must be performed to
17 disaggregate the data at a wire center level, AT&T Missouri will typically not have all of
18 the information necessary to determine likely wire centers until after May of each year.
19 If AT&T Missouri identifies a wire center that may meet the non-impairment thresholds
20 based on the business line counts that become available in May, it is not logical to require
21 AT&T Missouri to in effect go back in time to December of the previous year to perform
22 physical inspections of wire centers that are concurrent with the business line data. Mr.

1 Gillan's proposal would hinder AT&T Missouri's ability to effectively identify wire
2 centers that meet the FCC's Fiber-based Collocator thresholds.

3 **Q: IS THE BUSINESS LINE COUNT TREND DESCRIBED BY MR. GILLAN**
4 **RELEVANT TO THE ISSUE AT HAND?**⁶³

5 A: No. Business line count trends are not relevant to the issue of how business lines should
6 be counted. In light of this fact, I did not perform a detailed review of the accuracy of the
7 numbers provided by Mr. Gillan; however, I will note that access line loss is often an
8 indicator of increases in intermodal competition. Indeed, one of the reasons the FCC
9 chose to establish threshold criteria that, once met, could not be reversed is that more and
10 more customers are being served by services that do not rely on AT&T Missouri's local
11 network. If the initial wire center determinations were made using more recent data than
12 the data upon which the FCC relied, then such determinations would also need to
13 consider any increase in intermodal competition beyond the levels that the FCC reviewed
14 when making its impairment determinations.

15 In addition, Mr. Gillan's theory is illogical on its face. His view is that the decrease in
16 AT&T Missouri business lines should lead to *more* unbundling. Obviously, though,
17 AT&T Missouri's losses are a sign of *more* competition from outside AT&T Missouri's
18 network, which shows even more that CLECs do not need unbundled access.

⁶³

Gillan Direct at pp. 18-19.

1 **Q: HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?**

2 A: The Commission should rule that AT&T Missouri must use the most recent data
3 available at the time a wire center designation is made. In this case, that would be the
4 most recent data available as of March 11, 2005, the effective date of the *TRRO*.

5 **e. Business Line Count Dispute 4 – Is the Commission required**
6 **to follow the requirements established in the FCC’s Business**
7 **Line definition, or may the Commission opt to adopt the**
8 **CLECs’ proposed “simple solution”?**

9 **Q: WHAT IS AT&T MISSOURI’S POSITION ON MR. GILLAN’S PROPOSED**
10 **“SIMPLE SOLUTION”?**

11 A: AT&T Missouri’s position is already “simple”: the Business Line count must follow the
12 requirements established by the FCC in its definition of Business Line.⁶⁴ Mr. Gillan, by
13 contrast, suggests that the Commission can choose to use the Missouri line counts that
14 AT&T (then SBC) provided to the FCC *prior* to the issuance of the *TRRO* instead of
15 determining the appropriate Business Line counts required under the FCC’s final rule.
16 The line counts that Mr. Gillan proposes be used do not comply with the requirements of
17 the FCC’s rule – which was issued after the line counts were provided. Put simply, these
18 line counts are do not comply with the FCC’s rules and may not be used to determine the
19 wire center designations.

20 **Q: DOES MR. GILLAN ATTEMPT TO GLOSS OVER THIS FUNDAMENTAL**
21 **FLAW IN HIS PROPOSAL?**

22 A: Yes. On page 8 of his Direct Testimony, Mr. Gillan appears to be trying to side-step this
23 issue. Mr. Gillan claims that he is not recommending that the Commission use a different
24 definition of Business Line than the one adopted by the FCC; however, Mr. Gillan

⁶⁴ 47 C.F.R. § 51.5 (definition of “Business Line”).

1 immediately proceeds to suggest that the Commission do just that. In fact, Mr. Gillan
2 devotes a significant portion of his testimony on this issue to providing arguments as to
3 why he believes the Commission should not apply the FCC's Business Line definition.

4 **Q: YOU STATED THAT THE LINE COUNTS THAT AT&T (THEN SBC)**
5 **PROVIDED TO THE FCC IN DECEMBER OF 2004) DO NOT COMPLY WITH**
6 **EITHER PARTY'S INTERPRETATION OF THE BUSINESS LINE DEFINITION**
7 **ESTABLISHED BY THE FCC IN THE TRRO. PLEASE EXPLAIN FURTHER.**

8 A. The Missouri line counts that AT&T (then SBC) provided the FCC in December of 2004
9 reflected ARMIS 43-08 business lines from December 2003 (as reported on or around
10 April 1 of 2004), plus UNE-P business lines from December 2003, plus all UNE-L lines
11 from December 2003. The data that supports the line counts provided to the FCC is
12 identical to the data that supports AT&T Missouri's current Business Line count.
13 However, although the data itself is the same and appropriate for use in determining the
14 Business Line count, the FCC's subsequently-issued definition of "Business Line"
15 requires a modification to the *calculations applied* to this data.

16 In December of 2004, AT&T (then SBC) understood the categories of data that should be
17 provided, but did not understand that the FCC expected AT&T to perform a calculation
18 for digital equivalency for UNE lines.⁶⁵ As a result, while AT&T's December 2004
19 filing utilized the *data* that would later be required under the FCC's Business Line
20 definition, it did not reflect the correct Business Line count because it did not properly
21 account for digital equivalency on UNE lines. From AT&T Missouri's perspective, the
22 only change that should apply to the December 2004 line counts is the calculation of

⁶⁵ Digital equivalency was provided for the ARMIS 43-08 business lines (retail and resale lines) because the ARMIS 43-08 rules contain provisions for calculating digital equivalency.

digital equivalency required by the FCC's rule. The tables below summarize the differences between the line count provided to the FCC prior to the issuance of the *TRRO* in December of 2004 and each parties' interpretations of the requirements of the Business Line rule:

COMPARISON TO CLEC INTERPRETATION OF BUSINESS LINE RULE		
AT&T's December 2004 line count filing	The CLEC Coalition's interpretation of the requirements of the FCC's Business Line rule in this proceeding ⁶⁶	Is the methodology consistent?
ARMIS 43-08 business lines, UNE-P business lines and all UNE-L lines were counted.	Only lines used to provide service to business customers should be counted. ⁶⁷	No. The December 2004 filing counted all UNE-L lines (including UNE-L lines, if any, that were used by CLECs to provide to residential customers).
ARMIS 43-08 business lines, UNE-P business lines and all UNE-L lines were counted.	Only lines used to provide switched services should be counted. ⁶⁸	No. The December 2004 filing counted all UNE-L lines (including UNE-L lines, if any, that were not used to provide a switched service).
All UNE-L lines were counted.	There is no requirement that all UNE loops be counted. ⁶⁹	No. All UNE-L lines were counted in the December 2004 filing.

⁶⁶ As noted elsewhere, XO and NuVox's interpretation of the requirements of the FCC's Business Line rule in the XO/NuVox Petition for Reconsideration differs significantly from the position they are taking here. XO and NuVox's prior interpretation is more consistent with AT&T Missouri's interpretation and also precludes the use of the line counts proposed in Mr. Gillan's "simple solution."

⁶⁷ Gillan Direct at p. 12.

⁶⁸ Gillan Direct at p. 12.

⁶⁹ Gillan Direct at p. 15.

COMPARISON TO CLEC INTERPRETATION OF BUSINESS LINE RULE		
AT&T's December 2004 line count filing	The CLEC Coalition's interpretation of the requirements of the FCC's Business Line rule in this proceeding ⁶⁶	Is the methodology consistent?
December 2003 data was used.	December 2003 data should not be used. ⁷⁰	No. The December 2004 filing was based on 2003 data, which was the most current business line data available at the time of filing.
No digital equivalency was calculated for UNE-L lines.	Digital equivalency for digital UNE-L lines should be calculated based on the capacity actually used to provide switched access service to business customers (not the capacity provisioned by AT&T Missouri). ⁷¹	No. The business line counts filed by AT&T in December 2004 did not include any digital equivalency calculation for UNE-L lines.

1
2 A comparison of the methodology used for AT&T's December 2004 filing with
3 the FCC and the methodology proposed by AT&T Missouri in this proceeding is
4 provided in the table below:

⁷⁰ Gillan Direct at pp. 17-18.

⁷¹ Gillan Direct at p. 13.

COMPARISON TO AT&T MISSOURI'S INTERPRETATION OF BUSINESS LINE RULE		
AT&T's December 2004 business line filing	AT&T Missouri's interpretation of the requirements of the FCC's Business Line rule	Is methodology consistent?
ARMIS 43-08 business lines, UNE-P business lines and all UNE-L lines were counted.	ARMIS 43-08 business lines, UNE-P business lines and all UNE-L lines were counted	Yes. The methodology is identical.
ARMIS 43-08 business lines, UNE-P business lines and all UNE-L lines were counted.	ARMIS 43-08 business lines, UNE-P business lines and all UNE-L lines were counted.	Yes. The methodology is identical.
All UNE-L lines were counted.	All UNE-L lines were counted.	Yes. The methodology is identical.
December 2003 data was used.	December 2003 data was used.	Yes. Both instances used December 2003 data, which was the most current business line data available at the time of filing.
No digital equivalency was calculated for UNE-L lines.	Digital equivalency for digital UNE-L lines were calculated by counting each 64 kbps-equivalent as one line as required in the FCC's business line definition. ⁷²	No. The business line counts filed by AT&T in December 2004 did not include any digital equivalency calculation for UNE-L lines.

1
2 **Q: DO YOU HAVE AN OPINION AS TO WHY MR. GILLAN HAS SUGGESTED**
3 **THAT THE COMMISSION ADOPT BUSINESS LINE DATA THAT CLEARLY**
4 **DOES NOT COMPLY WITH HIS OWN UNDERSTANDING OF THE FCC'S**
5 **RULE?**

6 A: Yes. It appears that Mr. Gillan's primary objective is *not* to comply with the FCC's rule
7 but to persuade the Commission to approve a methodology that provides the *lowest*

⁷²

47 C.F.R. § 51.5 (Definition of "Business Line").

1 *business line count possible* by recommending a methodology that does not include
2 digital equivalency calculations for UNE lines.

3 **Q: DOES AT&T MISSOURI (OR THE COMMISSION) HAVE THE OPTION OF**
4 **SIMPLY USING THE MISSOURI LINE COUNTS THAT AT&T (THEN SBC)**
5 **FILED WITH THE FCC IN DECEMBER 2004, AS PROPOSED BY MR.**
6 **GILLAN?**

7 A: No. AT&T Missouri and the Commission must comply with the rules established by the
8 FCC. The FCC's business line rule clearly requires that AT&T Missouri account for
9 digital lines (including UNE-L lines) by counting each 64 kbps-equivalent as one line.

10 **Q: IS THE FCC AWARE OF THE DIFFERENCE BETWEEN THE BUSINESS LINE**
11 **COUNTS AT&T MISSOURI RELIED UPON FOR THE WIRE CENTER**
12 **DESIGNATIONS AND THE MISSOURI LINE COUNTS CONTAINED IN**
13 **AT&T'S DECEMBER 2004 FCC FILING?**

14 A: Yes. AT&T (then SBC) notified the FCC of this fact shortly after the issuance of the
15 *TRRO* and before the order became effective.⁷³ AT&T also filed updated business line
16 count information with the FCC that reflected the required digital equivalency
17 calculations. The FCC has known for more than two years that the data that AT&T
18 provided in December 2004 did not account for voice grade equivalents for the UNE
19 lines and that AT&T's business line counts have since been adjusted to do so. Although
20 the FCC is aware of the differences between the December 2004 business line counts and
21 the business line counts upon which the current wire center designations are based, the
22 FCC has not changed its business line thresholds, nor has it required AT&T to adjust its
23 data to change the digital equivalency factor.

⁷³ See 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, fn. 2. The letter, without attachments, is Attachment CAC-2 hereto.

1 **Q: HAVE CLECS REQUESTED THAT THE FCC MODIFY THE BUSINESS LINE**
2 **REQUIREMENTS IN ITS RULES?**

3 A: Yes. As explained above, on March 28, 2005, XO and NuVox, along with other CLECs,
4 petitioned the FCC to reconsider its digital equivalency rule. In its petition, XO and
5 NuVox noted that the FCC's business line definition required that the entire digital UNE-
6 L line be counted based on digital equivalency, regardless of whether the entire loop was
7 used to provide switched access service to business customers. XO and NuVox argued
8 that the FCC should modify the business line definition, in part, because of concerns
9 regarding the manner in which the rule requires UNE-L lines to be counted. XO and
10 NuVox suggested that the business line definition either be modified to rely solely on
11 ARMIS 43-08 data or, alternatively, to count UNE-L lines based on how the CLEC
12 actually used the loop.⁷⁴ Although the XO/NuVox Petition for Reconsideration was filed
13 over two years ago, the FCC has not modified its rules. At the time XO and NuVox filed
14 their Petition for Reconsideration with the FCC, XO and NuVox recognized that unless
15 the FCC's rule was changed, business lines would need to be calculated in the manner
16 proposed in this docket by AT&T Missouri. The Commission should reject XO's and
17 NuVox's proposal now to impose requirements that are contrary to what they themselves
18 recognized the FCC requires.

19 **Q: HAS THE FCC PROVIDED ANY INDICATION THAT IT DID NOT KNOW**
20 **WHICH WIRE CENTERS WOULD ACTUALLY MEET ITS NON-**
21 **IMPAIRMENT CRITERIA AT THE TIME IT RELEASED THE *TRRO*?**

22 A: Yes. On the day the FCC issued the *TRRO* (February 4, 2005), the FCC's Wireline
23 Competition Bureau issued a letter to AT&T (then SBC) requesting that AT&T provide

⁷⁴ XO/NuVox Petition for Reconsideration at 16-17.

1 the FCC with a list of the wire centers that met the impairment criteria established in the
2 *TRRO*. Specifically, the FCC asked that AT&T “provide the Bureau a list identifying by
3 Common Language Location Identifier (CLLI) code which wire centers in your
4 company’s operating areas satisfy the Tier 1, Tier 2, and Tier 3 criteria for dedicated
5 transport, and identifying by CLLI code the wire centers that satisfy the nonimpairment
6 thresholds for DS1 and DS3 loops.”⁷⁵ I do not believe that the FCC would have
7 requested such a list unless it anticipated that AT&T might need to make adjustments to
8 the business line count and/or fiber-based collocater counts previously provided to the
9 FCC in order to ensure that these counts complied with the requirements of the FCC’s
10 new rules.

11 **Q: DOES MR. GILLAN’S TESTIMONY ACCURATELY REPESENT AT&T**
12 **ARKANSAS AND AT&T INDIANA’S PREVIOUS POSITIONS?**⁷⁶

13 A: No. Mr. Gillan’s testimony grossly misrepresents the AT&T ILECs’ prior positions on
14 this issue. All of the AT&T ILECs in the pre-merger SBC territory have taken the exact
15 same position on the business line issues in each state. In each of the instances
16 referenced by Mr. Gillan, the discussion had to do with what types of lines should be
17 included in the Business Line count.

18 **Q: WAS THE LANGUAGE CITED BY MR. GILLAN FROM OTHER AT&T ILEC**
19 **PROCEEDINGS RELATED TO THE ISSUE OF DIGITAL EQUIVALENCY?**⁷⁷

20 A: No. In each of the cites referenced by Mr. Gillan, the issue at hand was whether the
21 business line count should rely on *all* UNE-L lines or *only* those UNE-L lines used to

⁷⁵ See February 4, 2005 letter from Jeffrey J. Carlisle, Chief, Wireline Competition Bureau which is provided as Rebuttal Exhibit CAC-3 (footnotes omitted).

⁷⁶ Gillan Direct at pp. 5-7.

⁷⁷ Gillan Direct at pp. 5-7.

1 provide switched service to business customers. In each case, the AT&T ILEC's position
2 was that the data used for the business line count must include all UNE-L lines as
3 required by the rule, the text of the *TRRO* and as noted in AT&T's December 2004 filing.
4 In short, Mr. Gillan's references to previous filings made in Indiana and Arkansas are
5 taken completely out of context. The testimony and associated briefing in each instance
6 related to whether or not business lines should be counted based on ARMIS 43-08
7 business lines, plus business UNE-P lines, plus UNE-L lines as they were in December
8 2004 and as described in the *TRRO*.

9 **Q: HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?**

10 A: The Commission should reject the CLECs' proposal to use line counts that are not
11 compliant with the requirements contained in the FCC's Business Line rule.

12 **VI. FIBER-BASED COLLOCATOR DISPUTES**

13 **f. Identification of Issues**

14 **Q: HAVE YOU IDENTIFIED THE FIBER-BASED COLLOCATOR ISSUES IN**
15 **DISPUTE BASED ON YOUR READING OF MR. GILLAN'S TESTIMONY?**

16 A: Yes. I have identified the Fiber-based Collocator count disputes and have provided a
17 brief summary of each dispute below:

- 18 1. The first Fiber-based Collocator dispute concerns the instances in which a connecting
19 carrier in a collo-to-collo arrangement should be counted as a Fiber-based Collocator.
20 AT&T Missouri's position is simple: the connecting carrier should be counted if the
21 resulting arrangement provides the connecting carrier with non-AT&T Missouri

1 provided interoffice transport out of the wire center using fiber facilities or a
2 transmission facility that is comparable to fiber. AT&T Missouri's position is
3 consistent with the FCC's determination in the *TRRO* that the definition of Fiber-
4 based Collocator is technologically neutral. The CLECs' position, on the other hand,
5 essentially limits the definition of Fiber-based Collocator to instances in which the
6 CLEC has provisioned its own fiber (or fiber obtained on an IRU basis). The CLECs'
7 position is not supported by the *TRRO*.

- 8 2. The second Fiber-based Collocator dispute is closely related to the first. This dispute
9 concerns the type of arrangements that qualify as "comparable" to fiber under the
10 definition of Fiber-based Collocator.⁷⁸ AT&T Missouri bases its position on the
11 FCC's discussion of comparable transmission facilities in paragraph 102 of the
12 *TRRO* (including footnote 295). The FCC specifically found that fixed-wireless
13 arrangements are comparable to fiber for purposes of the definition and that the test
14 should be technologically agnostic. Based on the FCC's analysis, AT&T Missouri
15 has taken the position that any arrangement that provides transmission capabilities
16 similar to a fixed-wireless arrangement, that is, at least DS3 transmission capabilities,
17 must be considered a comparable transmission facility. The CLECs' suggest that the
18 minimum transmission capability that can be considered as "comparable" to fiber is
19 OC-3 level transmission. The CLECs' position cannot be reconciled with the FCC's
20 discussion of comparable transmission facilities.

⁷⁸

47 C.F.R. § 51.5 (definition of Fiber-based Collocator).

3. Mr. Nevels addresses the above two issues from a network perspective. The third issue, which I alone will address, is whether NuVox should be counted as a Fiber-based Collocator in the wire centers identified by AT&T Missouri. AT&T Missouri's designations are based on physical inspections. The CLECs have not provided any evidence suggesting that NuVox was not a Fiber-based Collocator in the specified locations as of March 11, 2005. Furthermore, NuVox's response to Staff's query on this issue provides further support for AT&T Missouri's position.

Q: HOW DO THE FIBER-BASED COLLOCATOR DISPUTES IMPACT THE CURRENT WIRE CENTER DESIGNATIONS?

A: It does not appear that any of the methodological disputes impact any of the wire center designations. The Commission's determinations on the methodological issues will only impact future wire center determinations. The factual dispute regarding NuVox would affect, at most, only one of the wire center designations.

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

Q: WHAT IS THE NATURE OF FIBER-BASED COLLOCATOR DISPUTE 1?

A: This dispute, which Mr. Nevels addresses from a network perspective, concerns whether a connecting carrier in a collo-to-collo arrangement may be counted as a Fiber-based Collocator (if the carrier also meets all of the rest of the requirements of the FCC's definition). The CLECs' position is that the connecting carrier in a collo-to-collo arrangement may only be counted if the carrier is connecting to fiber that leaves the wire

1 center and the carrier lights the fiber with its own optronics. AT&T Missouri's position
2 is that a connecting carrier counts as a Fiber-based Collocator if the transmission path the
3 carrier establishes out of the wire center is comparable to fiber (see FBC Dispute 2) and
4 the carrier also meets the other requirements of the FCC's rule.⁷⁹

5 **Q: DO YOU HAVE ANY GENERAL COMMENTS REGARDING MR. GILLAN'S**
6 **TESTIMONY ON THE DEFINITION OF "FIBER-BASED COLLOCATOR"?**⁸⁰

7 A: Yes. Mr. Gillan's testimony on this issue appears to be based on the false premise that
8 the FCC's instructions require each Fiber-based Collocator to possess a distinct and
9 separate transport network that does not share any physical components with another
10 carrier.⁸¹ The FCC's definition describes Fiber-based Collocation not in terms of a
11 "distinct" facility but simply as a "fiber-optic cable or comparable transmission facility"
12 that terminates at a collocation arrangement in a wire center, leaves the wire center and is
13 owned by a party other than AT&T Missouri (or an AT&T Missouri affiliate). Contrary
14 to this clear definition, Mr. Gillan attempts to impose additional qualifications.

⁷⁹ I should note that because of AT&T's merger commitment on this issue associated with the AT&T/BellSouth merger, effective December 29, 2006, AT&T Missouri will not count this type of collo-to-collo arrangement, even if the Commission adopts AT&T Missouri's position on this issue, until the expiration of the merger commitment.

⁸⁰ Gillan Direct at pp. 22-27.

⁸¹ Gillan Direct at p. 23.

1 **Q: DO THE *TRRO* AND IMPLEMENTING RULES SUPPORT MR. GILLAN'S**
2 **CLAIM THAT EACH FIBER-BASED COLLOCATOR MUST USE A DISTINCT**
3 **TRANSPORT FACILITY?⁸²**

4 A: No. The *TRRO* contains no such directive. Moreover, while some Fiber-based
5 Collocators may build their network using components provided by other carriers, each
6 carrier that AT&T Missouri counted has its own network.

7 **Q: WHAT TYPES OF ARRANGEMENTS SHOULD BE COUNTED AS FIBER-**
8 **BASED COLLOCATORS?**

9 A: The FCC's definition of Fiber-based Collocator is clear that any unaffiliated carrier that
10 has a collocation arrangement with active power in a given wire center must be counted if
11 it operates a fiber-optic cable or comparable facility that does the following:

- 12 • Terminates at a collocation arrangement in the wire center;
- 13 • Leaves the wire center premises; and
- 14 • Is not owned by the ILEC (unless dark fiber is provided by the ILEC on an
15 IRU basis).

16 This is the standard that determines whether a carrier is a Fiber-based Collocator. All
17 carriers meeting the standard are Fiber-based Collocators and must be counted.⁸³ I

⁸² Gillan Direct at p. 23.

⁸³ If two or more carriers that are affiliated with each other both qualify as Fiber-based Collocators in a single wire center, only one of the affiliated carriers may be counted for that wire center.

1 explain how the disputed types of collo-to-collo arrangements meet these requirements
2 below.

3 **Q: WHAT TYPES OF COLLO-TO-COLLO ARRANGEMENTS WOULD BE**
4 **COUNTED UNDER THIS DEFINITION?**

5 A: As explained in my Direct Testimony and in the Direct Testimony of Mr. Nevels, in
6 order for a collocation arrangement to be counted as a Fiber-based Collocation by AT&T
7 Missouri, a fiber-optic cable or a comparable transmission facility must be terminated at
8 the collocation arrangement of the collocator in question. Thus, in a collo-to-collo
9 situation, AT&T Missouri only considers the connected CLEC if the connection, and the
10 resulting end-to-end comparable transmission facility, is at least at the DS3 level. In
11 addition, AT&T Missouri does not consider arrangements that rely upon fiber facilities
12 provided by AT&T Missouri or carriers that are affiliated with AT&T Missouri or
13 another Fiber-based Collocator in the wire center. Collocation arrangements that do not
14 meet these standards are not counted as Fiber-based Collocators.

15 **Q: DOES THE CONNECTING CARRIER IN A COLLO-TO-COLLO**
16 **ARRANGEMENT OPERATE A FIBER-OPTIC CABLE?**

17 A: Although there are instances where a connecting carrier would operate the fiber-optic
18 cable, the connecting carrier in the collo-to-collo arrangements identified as Fiber-based
19 Collocators operates *either* a fiber-optic cable *or* a comparable transmission facility as
20 required by the FCC's definition of Fiber-based Collocator.⁸⁴

⁸⁴ 47 C.F.R. §51.5 (definition of "Fiber-based Collocator).

1 **Q: WHAT DOES A FIBER-BASED COLLOCATOR OPERATE IN INSTANCES**
2 **WHERE THERE IS A DS3 OR HIGHER LEVEL COLLO-TO-COLLO**
3 **CONNECTION TO A FIBER-BASED COLLOCATOR?**

4 A: From a high level, there are two ways a collo-to-collo arrangement can meet the
5 “operate” criteria. In instances where the connection between the two collocation
6 arrangements is fiber that connects to a dark fiber entrance facility, the CLEC with the
7 collo-to-collo connection would operate a fiber facility that terminates in its collocation
8 arrangement and leaves the wire center. Mr. Gillan agrees that this type of arrangement
9 does qualify as a Fiber-based Collocator.⁸⁵ In instances where the collo-to-collo
10 connection is coaxial cable or fiber that does not connect to dark fiber, the CLEC with the
11 collo-to-collo connection would be operating the comparable transmission facility that it
12 created using the collo-to-collo connection and transport capabilities obtained from the
13 other carrier.

14 **Q: PLEASE EXPLAIN IN MORE DETAIL HOW THE CONNECTING CLEC IN A**
15 **COLLO-TO-COLLO ARRANGEMENT OPERATES THE COMPARABLE**
16 **TRANSMISSION FACILITY IT HAS CREATED.**

17 A: A generally accepted dictionary meaning for the word “operate” is “[t]o control the
18 functioning of; [to] run.” *The American Heritage Dictionary of the English Language*, p.
19 1268 (3d ed. 1992). A connecting carrier in a collo-to-collo arrangement runs the
20 comparable transmission facility it has created and controls its functionality when it
21 creates a comparable transmission facility by combining network components of its own
22 with transmission capacity leased from another carrier in a collo-to-collo arrangement.
23 Specifically, the connecting carrier must 1) design the comparable transmission facility;

⁸⁵

Gillan Direct at p. 25.

1 2) decide upon the type and quantity of its own facilities to place in its collocation
2 arrangement and deploy accordingly; 3) engage in any negotiations required to obtain
3 rates, terms and provisions for leased components that are suitable for the carrier's
4 desired network design; 4) decide what traffic it will route on the comparable
5 transmission facility; 5) control the equipment that enables the traffic to be aggregated
6 and transmitted over the comparable transmission facility; 6) place desired traffic onto
7 the transmission facility; 7) ensure that the transmission quality of the end-to-end
8 transmission facility meets (and continues to meet) its desired standards; 8) make
9 engineering and market entry determinations in deciding the transmission capacity
10 required to meet, and continue to meet, the demands of its network; and 9) monitor the
11 use of the comparable transmission facility to determine if and when network
12 modifications and augments are needed. These are just some of the activities that a
13 connecting carrier performs while operating the comparable transmission facility that it
14 has created. These activities are key to the operation of the comparable transmission
15 facility and must be performed by the *connecting* carrier -- not the carrier from whom the
16 connecting carrier has chosen to lease transmission capacity.

17 **Q: COULD BOTH CARRIERS IN A COLLO-TO-COLLO ARRANGEMENT ACT**
18 **AS ALTERNATIVE TRANSPORT PROVIDERS?**

19 A: Yes. AT&T Missouri only considered configurations capable of supporting transmission
20 out of the wire center at a minimum of DS3 level. If a carrier has deployed the network
21 capabilities necessary to support DS3 level transport out of the wire center, it could

1 choose to provide DS1 transport to other carriers. A carrier with higher capacity
2 capabilities could provide additional offerings.

3 **Q: DO THE COLLO-TO-COLLO ARRANGEMENTS COUNTED BY AT&T**
4 **MISSOURI INVOLVE COMPARABLE TRANSMISSION FACILITIES THAT**
5 **LEAVE THE WIRE CENTER?**

6 A: Yes. In order to be considered a Fiber-based Collocator, a carrier must have access to a
7 transmission facility that *leaves* the wire center and that is *fiber* or *comparable to fiber*.
8 As such, a carrier with a collo-to-collo connection to another carrier will *not* be
9 considered to be a Fiber-based Collocator *unless* that collo-to-collo connection provides
10 the carrier with the ability to either directly access a fiber entrance facility that leaves the
11 wire center or create a network that is comparable to fiber that leaves the wire center.
12 The facility that terminates at the carrier's collocation arrangement is a comparable
13 transmission facility that leaves the wire center.

14 **Q: WHAT IS YOUR CONCERN REGARDING MR. GILLAN'S TESTIMONY ON**
15 **THE SUBJECT OF IRUs AND FIBER OWNERSHIP?**

16 A: In one part of his Direct Testimony, Mr. Gillan appears to claim that the FCC requires
17 AT&T Missouri to determine the actual ownership of fiber that it considers; however, on
18 an earlier page of his testimony, Mr. Gillan admits that this is not the case.⁸⁶ To the
19 extent Mr. Gillan is suggesting that AT&T Missouri must determine the ownership of
20 non-AT&T Missouri fiber, that is directly contrary to the FCC's Fiber-based Collocator
21 definition and the text of the *TRRO*. The FCC's Fiber-based Collocator definition only

⁸⁶

Gillan Direct at p. 25.

1 requires that AT&T Missouri ensure that it does not consider fiber that is owned by
2 AT&T Missouri or an AT&T Missouri affiliate unless that fiber was offered to a non-
3 affiliated carrier on an IRU basis.⁸⁷ As the FCC noted, “unlike information regarding
4 Fiber-based Collocation, the information necessary to implement the previous self-
5 deployment triggers was possessed entirely by a span of competitive LECs and was not
6 easily verifiable.”⁸⁸

7 **Q: MR. GILLAN SUGGESTS THAT THIS POSITION IS SUPPORTED BY THE**
8 ***TRRO*.⁸⁹ IS THIS TRUE?**

9 A: No. In paragraph 102 of the *TRRO*, the FCC states that for “purposes of our analysis, we
10 define fiber-based collocation as a competitive carrier collocation arrangement, with
11 active power supply, that has a non-incumbent LEC fiber-optic cable that both terminates
12 at the collocation facility and leaves the wire center.”⁹⁰ Obviously, any fiber that is not
13 owned by AT&T Missouri is “non-incumbent LEC fiber-optic cable.” However, in spite
14 of the clear language in the FCC’s definition and in the text of the *TRRO*, Mr. Gillan
15 appears to suggest that a footnote that describes an exception to the FCC’s prohibition
16 against counting ILEC-owned fiber actually creates an obligation to determine the
17 ownership of non-ILEC fiber-optic cable.

18 **Q: WHAT DOES THE FOOTNOTE SAY?**

⁸⁷ 47 C.F.R. § 51.5; *TRRO* at ¶ 102.

⁸⁸ *TRRO* at ¶ 99.

⁸⁹ Gillan Direct at pp. 24-26.

⁹⁰ *TRRO* at ¶ 102 (footnotes omitted).

1 A: Footnote 292 of the *TRRO* simply states the following:

2 We find that when a company has collocation facilities connected to fiber
3 transmission facilities obtained on an indefeasible right of use (IRU) basis
4 from another carrier, including the incumbent LEC, these facilities shall be
5 counted for purposes of this analysis and shall be treated as non-
6 incumbent LEC fiber facilities. *Triennial Review Order*, 18 FCC Rcd at
7 17231-32, para. 408 & nn. 1263, 1265.

8 **Q: DOES THIS FOOTNOTE HAVE ANY BEARING ON THE APPLICATION OF**
9 **THE FIBER-BASED COLLOCATOR COUNT FOR FIBER THAT IS OWNED**
10 **BY A NON-INCUMBENT CARRIER?**

11 A: No. The Fiber-based Collocator definition simply requires that any ILEC-owned (or
12 ILEC affiliate-owned) fiber be excluded unless that fiber has been provided on an IRU
13 basis. Any fiber that is not owned by the ILEC (or an affiliate) is always considered --
14 regardless of how the fiber had been provided. Put simply, non-ILEC-owned fiber is
15 counted whether the carrier using the fiber owns the fiber, leases the fiber, or has
16 obtained the fiber on an IRU basis. On the other hand, ILEC-owned (or ILEC-affiliate
17 owned) fiber does not count unless that fiber has been provided on an IRU basis.
18 Nothing in the footnote referenced by Mr. Gillan suggests otherwise. The footnote
19 simply requires that fiber-facilities provided on an IRU basis (whether by AT&T
20 Missouri or another carrier) be counted for the analysis. The footnote does not create a
21 new ownership requirement.

22 **Q: WHAT ABOUT THE CITES TO THE *TRO* REFERENCED IN THE**
23 **FOOTNOTE?**

24 A: The footnote in question cites to provisions in the *TRO* in which the FCC discussed the
25 concept of IRU as it applied to the competitive transport triggers. The concept of how

1 the IRU test would apply is the same in the *TRRO* and the *TRO*. In both situations, if a
2 carrier obtains the facility on an IRU basis, it is treated as if that carrier actually owned
3 the facility. However, what Mr. Gillan fails to explain in his testimony is that the
4 applicability of the IRU test is different in the *TRRO* than in the *TRO*. The ownership
5 requirements from the *TRO* to which Mr. Gillan refers have been vacated. The Fiber-
6 based Collocator rule established subsequently in the *TRRO* only requires that the fiber-
7 optic cable or comparable facility be “owned by a party other than the incumbent LEC or
8 any affiliate of the incumbent LEC, except as set forth in this paragraph.”⁹¹ Mr. Gillan
9 refers to the now-vacated rule that the FCC established for the competitive transport
10 triggers in the *TRO*, which required that in order to be counted, the competing provider
11 had to have “deployed its own transport facilities” and those facilities “may use dark fiber
12 facilities that the competing provider has obtained on a long-term, indefeasible-right of
13 use basis and that it has deployed by attaching its own optronics to activate the fiber.”⁹²
14 While the treatment of IRUs within the *TRO* rules and the *TRRO* rules is the same (i.e.,
15 fiber leased by a CLEC on an IRU basis is treated as if it were owned by that CLEC), the
16 ownership requirements in those rules are very different; the *TRO* only counted instances
17 where the competing carrier had deployed *its own* transport facilities, whereas the *TRRO*
18 counts all instances where the fiber (or comparable facility) is *not owned by the*
19 *incumbent LEC*. The *TRO* rules which required a CLEC-by-CLEC determination of fiber
20 ownership were vacated and replaced by the *TRRO* rules.

⁹¹ 47 C.F.R. § 51.5. Note that the rule goes on to provide the exception that “Dark fiber obtained from an incumbent LEC on an indefeasible right of use basis shall be treated as non-incumbent LEC fiber-optic cable.”

⁹² 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).

1 **Q: DOES THE PORTION OF THE FCC'S DEFINITION OF FIBER-BASED**
2 **COLLOCATOR DEALING WITH FIBER PROVIDED ON AN IRU BASIS**
3 **PROVIDE FURTHER SUPPORT FOR AT&T MISSOURI'S POSITION ON**
4 **COLLO-TO-COLLO ARRANGEMENTS?**

5 A: Yes. The FCC's definition of Fiber-based Collocator requires that the fiber or
6 comparable transmission facility in a Fiber-based Collocation must be "owned by a party
7 other than the incumbent LEC or any affiliate of the incumbent LEC, except as set forth
8 in this paragraph." The rule then goes on to state that "Dark fiber obtained from an
9 incumbent LEC on an indefeasible right of use basis shall be treated as non-incumbent
10 LEC fiber-optic cable." There are two key points here. First, the only *lit* fiber the FCC
11 excludes is lit fiber provided by the ILEC. Second, the only time the FCC required an
12 IRU was in instances where the ILEC provided the fiber. If the FCC intended to exclude
13 all fiber provided as lit fiber (as is the case in a collo-to-collo arrangement in which the
14 CLEC does not light the fiber that leaves the wire center), and only allow dark fiber
15 provided on an IRU basis, it could have easily done so. As it is, the rule clearly reflects
16 the FCC's awareness that fiber may be provided as dark fiber or lit fiber. In spite of this
17 awareness, the rule only requires the use of dark fiber in instances where the fiber has
18 been provided by the ILEC.

19 **Q: HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?**

20 A: The Commission should rule that AT&T Missouri may count collo-to-collo
21 arrangements, subject to its merger commitments, as long as those arrangements meet the
22 requirements of the FCC's definition of Fiber-based Collocator, including the

1 requirement that the carrier operate a fiber-optic cable, or comparable transmission
2 facility, that leaves the wire center.

3 **ii. Fiber-based Collocator Dispute 2 – How should the**
4 **term “comparable transmission facility” be defined?**

5 **Q: MR. GILLAN CLAIMS THAT DS3 TRANSMISSION CAPABILITY IS NOT**
6 **COMPARABLE TO FIBER.⁹³ IS HIS POSITION CONSISTENT WITH THE**
7 **FCC’S DETERMINATIONS IN THE *TRRO*?**

8 A: No. Mr. Gillan does not dispute the fact that fixed-wireless arrangements may support
9 only a single DS3 or the fact that the FCC specifically stated that fixed-wireless
10 collocation arrangements are considered to be comparable to fiber.⁹⁴ The FCC has
11 already determined that fixed-wireless arrangements do count as comparable
12 transmission facilities. AT&T Missouri’s position is simply that any other transmission
13 facility with similar transmission capabilities must count as well.

14 **Q: DOES THE FCC DESCRIBE COMPARABLE TRANSMISSION FACILITIES IN**
15 **TERMS OF THE POTENTIAL CAPACITY?**

16 A: No. The FCC declared that fixed wireless arrangements should be counted simply
17 because these arrangements “signal the ability to deploy transport facilities.”⁹⁵ The FCC
18 established a *functional* requirement, not a *capacity* requirement. Nevertheless, AT&T
19 Missouri conservatively adopted a DS3 minimum standard to be consistent with the one
20 comparable arrangement described by the FCC.

⁹³ Gillan Direct at p. 27.

⁹⁴ *TRRO* at ¶ 102.

⁹⁵ *TRRO* at ¶ 102.

1 **Q: HAS THE FCC PREVIOUSLY RECOGNIZED TRANSMISSION FACILITIES**
2 **THAT CONSIST OF MORE THAN ONE TYPE OF TRANSMISSION MEDIA**
3 **AND INCLUDE TRANSMISSION EQUIPMENT?**

4 A: Yes. AT&T Missouri looked at the capacity of a particular facility when determining
5 whether the facility in question is comparable to fiber. AT&T Missouri considers an end-
6 to-end transmission path to be a facility. The FCC rules support this approach. The
7 FCC's rules currently use the term "transmission facility" to describe facilities that
8 consist of more than one transmission media and that include transmission equipment
9 apart from the transmission equipment at the facility's termination point. For example,
10 the FCC's unbundling rules describe the Hybrid Loop as "a local loop composed of both
11 fiber optic cable, usually in the feeder plant, and copper wire or cable, usually in the
12 distribution plant."⁹⁶ Therefore, a local loop may consist of more than one transmission
13 media. The FCC described a Local Loop as "a transmission facility between a
14 distribution frame (or its equivalent) in an incumbent LEC central office and the loop
15 demarcation point at an end-user customer premises."⁹⁷ The Local Loop definition goes
16 on to note that the local loop transmission facility includes various electronics and
17 equipment "used to establish the transmission path to the end-user customer premises."
18 As the FCC's definitions in the Local Loop and Hybrid Loop rules demonstrate, a
19 "transmission facility" may be made up of a combination of many things including, but
20 not limited to, fiber optic cable, copper wire, cable, electronic equipment, and optronics
21 that are required to provide a transmission path. It is common knowledge that multiple
22 hybrid loops may be provisioned, in part, over a single fiber strand. Although multiple

⁹⁶ 47 C.F.R. § 51.319(a)(2).

⁹⁷ 47 C.F.R. § 51.319(a).

1 hybrid loops may share a single fiber strand, the FCC recognized that each hybrid loop is
2 a separate transmission facility.

3 **Q: IS COAXIAL CABLE, IN AND OF ITSELF, COMPARABLE TO FIBER?**

4 A: No. AT&T Missouri has not identified any circumstances in which a coaxial cable, in
5 and of itself, would be considered comparable to fiber-optic cable. However, a
6 transmission facility that is comparable to fiber *may* include an intraoffice coaxial cable
7 connection. In order to be considered a “comparable transmission facility,” the facility in
8 question must be capable of supporting at least DS3 level transmission out of the wire
9 center. This means that the facilities inside the wire center *and* the facilities leaving the
10 wire center must be capable of supporting DS3 or greater transmission. For example, a
11 coaxial cable would *not* be considered a comparable transmission facility if the coaxial
12 cable were the facility leaving the wire center. However, a network consisting of a short
13 coaxial cable connection within the wire center and fiber facilities exiting the wire center
14 would be capable of supporting DS3 level transmission out of the wire center and would
15 be considered.

16 **Q: HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?**

17 A: The Commission should follow the FCC’s directive that establishes that the Fiber-based
18 Collocator definition is technologically agnostic. The Commission should rule that any
19 arrangement that provides transmission capabilities similar to those of a fixed-wireless
20 arrangement (*i.e.*, an arrangement that supports DS3 or greater transmission out of the
21 wire center) must be considered a comparable transmission facility.

iii. Fiber-based Collocator Dispute 3 – Should NuVox be counted as a Fiber-based Collocator in the locations specified by AT&T Missouri?

Q: MR. GILLAN STATES THAT NUVOX HAS DENIED THAT IT IS A FIBER-BASED COLLOCATOR IN ANY WIRE CENTER IN MISSOURI.⁹⁸ DO YOU HAVE ANY COMMENTS REGARDING THIS STATEMENT?

A: Yes. Although it would be informative to know whether NuVox *is currently* a fiber-based collocator at any wire center in Missouri, the relevant question is whether NuVox *was* a fiber-based collocator in the wire centers identified by AT&T Missouri as of March 11, 2005.

Q: DID MR. GILLAN DISPUTE THAT NUVOX WAS A FIBER-BASED COLLOCATOR IN THE WIRE CENTERS IDENTIFIED BY AT&T MISSOURI AS OF MARCH 11, 2005?

A: No. Mr. Gillan does not provide any evidence suggesting that NuVox was not, in fact, a fiber-based collocator in the wire centers identified by AT&T Missouri on March 11, 2005.

Q: WHY IS THIS A RELEVANT CONSIDERATION?

A: As I noted earlier in my Rebuttal Testimony, the FCC’s non-impairment thresholds for high-capacity loops and interoffice dedicated transport emphasize that once the non-impairment thresholds have been met, the finding is permanent. For example, the FCC’s DS3 loop rule states that once a wire center exceeds both of the pertinent thresholds, “*no future DS3 loop unbundling will be required in that wire center.*”⁹⁹ The FCC has thus

⁹⁸ Gillan Direct at p. 28.

⁹⁹ 47 C.F.R. § 51.319(a)(5) (emphasis added). *See* similar language in 47 C.F.R. § 51.319(a)(4) (DS1 Loops) and 47 C.F.R. § 51.319(e)(3)(i-ii) (Tier 1 and Tier 2 designations).

1 made abundantly clear that the relevant question is not whether NuVox *is* a fiber-based
2 collocator in the locations identified by AT&T Missouri, but whether NuVox *was* a fiber-
3 based collocator in those locations as of the effective date of the *TRRO*.

4 **Q: MR. GILLAN STATES THAT NUVOX HAS DENIED THAT IT IS A FIBER-**
5 **BASED COLLOCATOR IN MISSOURI. IS HIS ANALYSIS OF THE IMPACT**
6 **OF THIS DENIAL ACCURATE?**¹⁰⁰

7 A: No. Mr. Gillan claims that excluding NuVox (and Birch) from the Fiber-based
8 Collocator counts “does not change the wire [center] classifications in Missouri.”¹⁰¹ This
9 is not true. As I explained above and in my Direct Testimony, the wire center
10 designations were modified based on commitments made in conjunction with the
11 SBC/AT&T merger; however, those modifications did not go into effect until December
12 16, 2005. Between March 11, 2005 and December 16, 2005, the wire center designations
13 must be based solely on the requirements established by the FCC in the *TRRO*. It is
14 important for the Commission to rule on the March 11, 2005 designations in addition to
15 the currently effective designations. Assuming that the Commission upholds AT&T
16 Missouri’s Business Line counts, excluding NuVox from the Fiber-based Collocator
17 counts will not impact any of the post SBC/AT&T merger designations. Excluding
18 NuVox from the Fiber-based Collocator counts does, however, impact one of wire center
19 designations applicable between March 11, 2005 and December 16, 2005.

¹⁰⁰ Gillan Direct at p. 28.

¹⁰¹ Gillan Direct at p. 28.

1 **Q: ARE THERE OTHER SIGNIFICANT OMISSIONS IN MR. GILLAN'S**
2 **TESTIMONY?**

3 A: Yes. Although Mr. Gillan represents NuVox, Mr. Gillan provided absolutely no
4 explanation as to why NuVox believes that it should not be counted as a fiber-based
5 collocator in the wire centers identified by AT&T Missouri. In my experience, disputes
6 concerning the identification of a particular carrier have typically been based on one of
7 two issues: the proper counting methodology or the vintage of data that should be
8 considered. To the extent the dispute concerns methodology, the Commission's
9 determinations in this proceeding should resolve any dispute. Since Mr. Gillan did not
10 explain why NuVox has claimed that it is not a fiber-based collocator in the locations
11 designated by AT&T Missouri, I will briefly address common areas of dispute.

12 **Q: DOES THIS OMISSION CREATE A PROBLEM?**

13 A: Yes. AT&T Missouri provided a detailed description of its process for identifying each
14 Fiber-based Collocator. Mr. Gillan, on the other hand, disputes AT&T Missouri's
15 identification of one of the CLECs he represents (NuVox), but fails to indicate the reason
16 for the dispute.

17 **Q: ARE YOU CONFIDENT THAT NUVOX WAS A FIBER-BASED COLLOCATOR**
18 **IN THE LOCATIONS IDENTIFIED BY AT&T MISSOURI AS OF MARCH 11,**
19 **2005?**

20 A: Yes. As explained in the testimony of Mr. Nevels, AT&T Missouri performed physical
21 inspections of each of the wire centers identified as meeting one or more of the FCC's
22 non-impairment thresholds. NuVox was only identified as a fiber-based collocator in
23 instances where AT&T Missouri's physical, on-site inspection showed that NuVox had a

1 collocation arrangement in place that met the physical requirements necessary to be
2 classified as a fiber-based collocator.

3 **Q: IS IT POSSIBLE THAT NUVOX WAS A FIBER-BASED COLLOCATOR ON**
4 **MARCH 11, 2005 BUT IS NO LONGER A FIBER-BASED COLLOCATOR**
5 **TODAY?**

6 A: Yes. In my experience in wire center proceedings like this one in other states, I am aware
7 of a number of instances in which carriers that were fiber-based collocators in a particular
8 wire center in March of 2005 are no longer fiber-based collocators in those wire centers
9 today.

10 **Q: PLEASE EXPLAIN FURTHER.**

11 A: There are a number of reasons why a carrier that initially qualified as a fiber-based
12 collocator in a particular wire center might not still be considered a fiber-based collocator
13 in that wire center today. Two of the most common reasons I have seen are changes to
14 affiliate relationships and transfers of assets between carriers (e.g., sales).

15 **Q: PROVIDE AN EXAMPLE OF HOW THE TIME OF WIRE CENTER**
16 **DESIGNATION RELATES TO AFFILIATE RELATIONSHIPS.**

17 A: Affiliate relationships between carriers change over time. The affiliate relationship that
18 must be considered for wire center designations is the affiliate relationship that was in
19 place at the time of wire center designation. For example, in March of 2005 MCI and
20 Verizon were not affiliate carriers. As such, those two carriers could have both been
21 counted as fiber-based collocators in a single wire center for a March 11, 2005 wire
22 center designation. Today, however, MCI and Verizon *are* affiliated carriers. If new

1 wire center designations were made today, MCI and Verizon could not both be counted
2 as Fiber-based Collocators in the same wire center. The affiliate status that matters is the
3 affiliate status at the time the non-impairment thresholds are met.

4 **Q: PROVIDE AN EXAMPLE OF HOW THE TRANSFER OR SALE OF ASSETS**
5 **MAY IMPACT THE FIBER-BASED COLLOCATOR COUNTS.**

6 A: Carriers may choose to transfer or sell some of their assets to another carrier. Some asset
7 transfers will impact whether a particular carrier that qualified as a Fiber-based
8 Collocator as of March 11, 2005 continues to do so today. For example, in order to
9 qualify as a Fiber-based Collocator in a particular wire center, the carrier must have a
10 collocation arrangement with active power and operate a fiber-optic cable or comparable
11 transmission facility. If a carrier transferred some of its collocated equipment to another
12 carrier, it might no longer meet this standard. In some cases, such a transfer results in a
13 new carrier qualifying as a Fiber-based Collocator. In others, the transfer results in a
14 reduction in the number of Fiber-based Collocators in the wire center. In either case,
15 such a transfer of assets will not impact whether or not the original carrier should have
16 been counted as a Fiber-based Collocator for the original wire center designation. The
17 transfer of assets will only impact whether or not that carrier may qualify as a Fiber-
18 based Collocator for future designations.

19 **Q: ARE THERE OTHER CHANGES THAT MAY IMPACT A CARRIER'S**
20 **ONGOING QUALIFICATION AS A FIBER-BASED COLLOCATOR?**

21 A: Yes. I have not attempted to provide a comprehensive list of changes that could impact a
22 carrier's qualification for inclusion as a Fiber-based Collocator for future designations.

1 Some of these changes could include a redesign of the carrier's network or
2 decommissioning of a collocation arrangement. Any such changes will be relevant for
3 future wire center designations, but do not impact the accuracy of AT&T Missouri's
4 current wire center designations.

5 **Q: ASIDE FROM THESE TIME CONSIDERATIONS, ARE THERE OTHER FACTS**
6 **THAT SUPPORT AT&T MISSOURI'S IDENTIFICATION OF NUVOX AS A**
7 **FIBER-BASED COLLOCATOR?**

8 A: Yes. For purposes of this part of my testimony, I will focus only on the wire center
9 where NuVox's inclusion or exclusion as a Fiber-based Collocator has an impact on the
10 wire center designations. The only wire center where NuVox's classification impacts the
11 designations is ** ** Although NuVox has not provided any evidence
12 whatsoever regarding its status as a Fiber-based Collocator on of March 11, 2005 (the
13 effective date of the *TRRO*), NuVox's response to Staff's query on this point provides
14 strong support to AT&T Missouri's Fiber-based Collocator count.

15 **Q: WHAT RESPONSE DID NUVOX PROVIDE TO STAFF ON THIS ISSUE?**

16 A: In regard to the wire center noted above, NuVox responded, as Mr. Gillan claims, that it
17 is not a Fiber-based Collocator.¹⁰² However, a review of NuVox's reasoning on this
18 point shows that the arrangement in question is a Fiber-based Collocation arrangement
19 and should be counted.

¹⁰² Gillan Direct at p. 28.

Q: WHY DOES NUVOX CLAIM IT IS NOT A FIBER-BASED COLLOCATOR IN THE REFERENCED WIRE CENTER?

A: In its response to Staff's query, NuVox admits that it **

Q: WHAT IS YOUR CONCLUSION AFTER READING NUVOX'S RESPONSE?

A: Based on NuVox's response, it is clear that NuVox is currently a Fiber-based Collocator in the wire center referenced above. NuVox meets each of the following requirements of the Fiber-based Collocator rule¹⁰³

- NuVox is not affiliated with AT&T Missouri or any of the other Fiber-based Collocators in the wire center;

¹⁰³ 47 C.F.R. § 51.5 (definition of "Fiber-based Collocator").

- NuVox maintains a collocation arrangement with active electrical power;
- NuVox operates a fiber-optic cable that terminates at the collocation arrangement within the wire center and leaves the wire center; and
- NuVox's transmission facility is not owned by AT&T Missouri or an affiliate of AT&T Missouri.

Q: DOES NUVOX DISPUTE THAT IT MEETS THE FOUR REQUIREMENTS LISTED ABOVE?

A: NuVox does not dispute that its collocation arrangement meets each of these four requirements; however, in spite of this, NuVox claims that it is not the party that met the requirements. In other words, NuVox does not dispute that the collocation arrangement in question is a Fiber-based Collocation arrangement. NuVox merely claims that it is not the carrier that should be identified as the Fiber-based Collocator associated with that arrangement

**

**

Based on these facts, willingly acknowledged by NuVox, the arrangement in question is undoubtedly a Fiber-based Collocation arrangement.

HC

1 **Q: IF THIS IS TRUE, WHY DOES NUVOX STILL CLAIM IT SHOULD NOT BE**
2 **CONSIDERED A FIBER-BASED COLLOCATOR IN THIS WIRE CENTER?**

3 A:**

4 _____
5 _____
6 _____** As I explained above, the FCC does not require that a carrier
7 own their own fiber or obtain dark fiber on an IRU basis in order to be considered a
8 Fiber-based Collocator. The *only* requirement in that regard is that the fiber in question
9 *not* belong to AT&T Missouri *unless* it is dark fiber provided on an IRU basis. As long
10 as the fiber does not belong to AT&T Missouri, ownership is irrelevant.

11 **

12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____**

1 **VII. CONCLUSION**

2

3 **Q: WHAT IS THE BOTTOM LINE ON THIS ISSUE?**

4 A: NuVox provides no evidence that undermines AT&T Missouri's determination that it
5 was, in fact, a Fiber-based Collocator as of March 11, 2005. Indeed, NuVox presents no
6 evidence on the matter whatsoever. Whether NuVox is *currently* a Fiber-based
7 Collocator is of no consequence. Moreover, based on NuVox's *own affidavit*, the
8 physical arrangement in question *is* a Fiber-based Collocation arrangement under either
9 party's interpretation of the Fiber-based Collocator rule.¹⁰⁴ Finally, if NuVox is not
10 counted as a Fiber-based Collocator in this wire center today for the reasons cited by
11 NuVox in its affidavit, the carrier identified by NuVox in that affidavit would be counted
12 as a Fiber-based Collocator in NuVox's stead. Thus, the Fiber-based Collocator count
13 remains the same, and the associated wire center designations remain the same.

14 **Q: HOW SHOULD THE COMMISSION RULE ON THIS FACTUAL DISPUTE?**

15 A: The Commission should rule that NuVox was a Fiber-based Collocator on March 11,
16 2005 in each wire center where AT&T Missouri has identified it as such. Furthermore,
17 the Commission should rule that NuVox's Fiber-based Collocation arrangements should
18 be included in the Fiber-based Collocator counts for the wire center designations as issue
19 in this proceeding. If, however, the Commission agrees with NuVox's position that it
20 should not be counted as a Fiber-based Collocator, the Commission should nevertheless
21 approve AT&T Missouri's Fiber-based Collocator count for the **_____** wire

¹⁰⁴

47 C.F.R. § 51.5 (definition of Fiber-based Collocator).

1 center based on NuVox's admission that another carrier, which is not included in AT&T
2 Missouri's Fiber-based Collocator count for this wire center, does qualify as a Fiber-
3 based Collocator.

4 **Q: DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

5 **A: Yes.**