

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of)	
NuVox Communications of Missouri, Inc. for)	Case No. TO-2006-0360
an Investigation into the Wire Centers that)	
AT&T Missouri Asserts are Non-Impaired)	
Under the <i>TRRO</i> .)	

**AT&T MISSOURI'S RESPONSE TO NUVOX/XO'S
MOTION TO COMPEL RESPONSES TO DISCOVERY REQUESTS**

AT&T Missouri,¹ in accordance with Commission Rules 2.080(15) (4 CSR 240-2.080(15)) and 2.090 (4 CSR 240-2.090), respectfully submits this response to the March 20, 2007 Motion to Compel Responses to Discovery Requests filed by NuVox/XO.² For the reasons stated herein, NuVox/XO's Motion should be denied.

I. BACKGROUND OF DISCOVERY DISPUTE AND SUMMARY OF RESPONSE

The purpose of this proceeding is to implement the FCC's 2005 *Triennial Review Remand Order* ("*TRRO*") and associated rules for certain high-capacity loops and transport facilities. NuVox/XO's Motion is not only thoroughly untimely at this testimony-filing stage of the proceedings, it is completely inconsistent with the FCC's intention, as expressed in its *TRRO*, to curb the intensive litigation (and attendant discovery) that plagued the FCC's 2003 *TRO*. AT&T Missouri would be prejudiced were the Commission to grant NuVox/XO's Motion and the motion is otherwise without merit. NuVox/XO's Motion should be denied.³

¹ Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri.

² NuVox Communications of Missouri, Inc.'s and XO Communications Services, Inc.'s Motion to Compel Responses to Discovery Requests Propounded to Southwestern Bell telephone, L.P. ("NuVox/XO's Motion").

³ In its 2005 *TRRO*, the FCC decided to institute "easily implemented and reasonable bright-line rule[s] to guide the industry." *TRRO* ¶ 169. These rules prescribe the criteria, or "methodology," by which wire centers may be regarded as "non-impaired" for purposes of the FCC's loop and transport unbundling requirements. Simply put, once certain straightforward criteria are met in any given wire center, no further unbundling of that network element "will be required in that wire center." 47 C.F.R. 51.319(a)(4)(i) (DS1 loops); 47 C.F.R. 51.319(a)(5)(i) (DS3 loops); see also, 47 C.F.R. 51.319(e)(2)(ii)(A) (dedicated DS1 transport unbundling required except where both wire centers defining the route are so-called "Tier 1 wire centers" according to the FCC's criteria); 51.319(e)(2)(iii)(A) (dedicated DS3 transport unbundling required except where both wire centers defining the route are "either Tier 1 or Tier 2 wire centers" according to the FCC's criteria). The criteria focus on the number of fiber-based collocators and business lines in a wire center. Based upon these criteria, AT&T Missouri developed a list of non-impaired wire centers.

While AT&T Missouri has maintained from the beginning that it “welcomes the Commission’s oversight in a proceeding to validate the accuracy of AT&T Missouri’s list of non-impaired wire centers,”⁴ discovery should be subject to reasonable limits. AT&T Missouri has responded to many data requests (“DRs”) generated in this proceeding both by Staff as well as NuVox/XO, and it has done so promptly and meaningfully. Any issues NuVox/XO had with respect to AT&T Missouri’s objections or its responses should have been raised many months ago.

Six months ago and after the Commission ruled that this case should proceed in one phase rather than two, AT&T Missouri withdrew its discovery objection based on this point and promptly supplemented its discovery responses. For its part, Staff confirmed that AT&T Missouri “delet[ed] the general objection that the requests were served on AT&T Missouri without the Commission’s first having determined whether the case should be adjudicated in two phases.”⁵ Staff also confirmed that AT&T Missouri both “has accordingly supplemented its responses to Staff’s data requests” and “has provided responses to all of Staff’s data requests issued to date.”⁶

Not until now, when AT&T Missouri and the other parties are busy working on the Direct Testimony due the same day as this pleading is due, has NuVox/XO challenged AT&T Missouri’s objections and responses.⁷ Each of the 3 (among 15) DRs which are now the subject of NuVox/XO’s Motion⁸ was generated over seven months ago. Were the Commission to grant the motion in any respect, the only testimony in which such discovery responses could now be included is Rebuttal Testimony, which is due on April 27, 2007. There is no provision in the procedural schedule for any further testimony. As a result, were the Commission to grant any part of NuVox/XO’s Motion, to any extent, AT&T Missouri would not have an opportunity to respond to any claims the CLEC may make

⁴ AT&T Missouri’s Response to Order making AT&T Missouri a Party and Directing Filing, April 20, 2006, at p. 2.

⁵ Staff’s Status report, September 12, 2006, p. 1.

⁶ Staff’s Status report, September 12, 2006, p. 1 [emphasis added].

⁷ NuVox’s and XO’s post-M2A interconnection agreements are but two of over 62 post-M2A agreements now in place.

⁸ On March 27, 2007, Ms. Susan Gentz, one of NuVox/XO’s counsel, confirmed to the undersigned its withdrawal of that portion of the NuVox/XO’s Motion directed to DR 15. Thus, there is no need for any Commission ruling with respect to that DR.

regarding the additional information produced. Evidence as to which there is no opportunity afforded to respond is not admissible; to hold otherwise would be inconsistent with (if not directly violative) of due process. That being the case, none of the three DRs is reasonably calculated to lead to the discovery of admissible evidence and NuVox/XO's Motion must be denied for this reason alone.

In addition, the arguments NuVox/XO advance in support of their motion regarding these DRs should be rejected. The purpose of this case, as the Commission long ago observed, is two-fold: first, to “interpret[] the relevant portions of federal law and the FCC’s Triennial Review Remand Order” [*TRRO*], and second, to “determine, based on the Commission’s interpretation of the law in the first phase, the wire centers in Missouri that AT&T is no longer required to provide access to unbundled high-capacity loops or dedicated transport.”⁹

None of NuVox/XO’s 3 DRs has to do with whether AT&T Missouri properly interpreted the *TRRO* and none has to do with whether AT&T Missouri properly applied the criteria this Commission ultimately concludes that the FCC prescribed. Instead, each request strays far beyond these objectives, presumably to challenge the integrity of the data AT&T Missouri compiled in developing its list of non-impaired wire centers via a comparison to a variety of publicity published data or data in NuVox/XO’s own records. This far-removed, tertiary-at-best, fishing expedition has nothing to do with the Commission’s stated investigative goals. Even worse, the DRs do not even meet their presumed objective. Two examples illustrate.

First, all of the 3 DRs press for information on a state-wide basis. That is, they request detailed “wire-center-specific” data regarding all of AT&T Missouri’s 211 wire centers, even though AT&T Missouri designated just 14 of them as non-impaired. NuVox/XO’s attempted inquiry regarding the remaining 197 (or over 93% of all) AT&T Missouri wire centers -- as to which AT&T Missouri does not claim that the FCC’s non-impairment rules have been satisfied -- has nothing to do with “the wire centers in Missouri that AT&T is no longer required to provide access to unbundled high-capacity

⁹ Order Regarding Procedural Process, August 29, 2006, p. 1.

loops or dedicated transport.”¹⁰ Such inquiry has nothing to do with interpreting the *TRRO* or applying that interpretation in the “counting” of fiber-based collocators or business lines. The requests are irrelevant, unreasonable and overbroad, and NuVox/XO’s Motion does not demonstrate otherwise.

Moreover, such wire-center-specific information cannot be meaningfully compared to information that, according to NuVox/XO, AT&T Missouri and its parent file “with the SEC, the FCC and state commissions that are a matter of public record.”¹¹ First, such public records do not include wire-center-specific data. Second, NuVox/XO does not need wire-center-specific data to compare to the aggregate data that are presented in such public filings; rather, aggregate data should suffice. But neither CLEC has asked for such data (even at this late stage). Finally, information presented in public filings such as quarterly earning statements is not prepared pursuant to the methodology employed in compiling ARMIS 43-08 data and is not consistent with the methodology required under the FCC’s definition of business lines. Therefore, such information cannot be meaningfully compared to the data on which AT&T Missouri determined non-impaired wire centers. AT&T Missouri should not be required to provide these two CLECs highly proprietary confidential information unless it is directly relevant to the issues at hand. It is not.

As a second example, one DR (DR 14) asks for business line information specific to NuVox/XO that was contained in 2003 billing records (once again, for all wire centers, not just those designated as “non-impaired”). However, none of the data on which AT&T Missouri based the business lines counts underlying its designations of non-impaired wire centers is CLEC-specific. Indeed, the FCC expressly rejected a line-by-line, CLEC-by-CLEC test (which would have spawned endless litigation) in favor of using aggregate data reported by incumbents for other regulatory purposes.¹² Thus, the business line counts compiled by AT&T Missouri were drawn from AT&T

¹⁰ Order Regarding Procedural Process, August 29, 2006, p. 1.

¹¹ NuVox/XO’s Motion, p. 5.

¹² *TRRO* ¶ 105 (“Moreover, as we define them, business line counts are an objective set of data that incumbent LECs have already created for other regulatory purposes. The BOC wire center data that we analyze in this Order is based on ARMIS 43-08 business lines, plus business UNE-P, plus UNE-loops.”).

Missouri's billing systems and collected the total of all CLECs' business lines in a wire center. In other words, the business line count for each non-impaired wire center is a "CLEC-aggregate" count, not a "CLEC-specific" count.

In any case, both CLECs were billed for these loops, and they can review their own bills from 2003 to determine how many and what type of loops AT&T Missouri billed to them. Furthermore, if NuVox/XO had reason to believe that AT&T Missouri's loop billing data was inaccurate, it is reasonable to assume that they would have disputed their respective bills at the time. The CLEC-specific information NuVox/XO request is no longer available in AT&T Missouri's billing systems due to the passage of time.

Finally, NuVox/XO discuss and provide three citations to the *TRRO* for the proposition that their broad-based inquiries have somehow been sanctioned by the FCC as legitimate "verification" activities. None of the three citations supports NuVox/XO's positions.

NuVox/XO first observe that the FCC indicated that ILECs' "counts of fiber-based collocation can be verified by [CLECs], which will also be able to challenge the incumbent's estimates."¹³ This passage is irrelevant to this discovery dispute. None of the DRs which are at issue here has anything to do with AT&T Missouri's fiber-based collocators counts. Instead all three are directed exclusively to the matter of counting business lines. In addition, the FCC's statement regarding fiber-based collocators makes sense only when applied to its proper context -- identifying fiber-based collocators is a CLEC-specific activity (and AT&T Missouri has identified each such CLEC, by name). This consideration is reflected in the FCC's statement immediately preceding (but omitted from) the quotation relied on by NuVox/XO: "Information regarding fiber-based collocation is readily identifiable by incumbent LECs."¹⁴ By contrast, the business line counts which are the subject of all

¹³ NuVox/XO Motion, p. 3, citing *TRRO*, ¶ 100.

¹⁴ *TRRO*, ¶ 100.

three DRs at issue here are CLEC-aggregate, i.e., the count for a given wire center reflects the total wire center-wide line count without regard to who or how many CLECs contributed to the total.

NuVox/XO's second *TRRO* citation actually supports AT&T Missouri. NuVox/XO emphasize the FCC's statement that "by basing our definition in an ARMIS filing required of incumbent LECs, and adding UNE figures, which also must be reported, *we can be confident in the accuracy of the thresholds*, and a simplified ability to obtain the necessary information." (emphasis added by NuVox/XO).¹⁵ The passage does no more than confirm that the FCC determined to place its confidence in data reported to the FCC for other regulatory purposes.

NuVox/XO's third *TRRO* "self-certification" citation¹⁶ likewise offers no support for the broad-based "verification" to which they claim they are entitled. On the contrary, the FCC made it clear that "a requesting carrier must undertake a reasonably diligent inquiry and, based on that, inquiry, self-certify."¹⁷ (emphasis added). Nowhere in the passage cited by NuVox/XO did the FCC state (much less dictate) that the CLECs' own inquiry might require ILECs to do the CLECs' self-certification work for them (as opposed to, for example, a CLEC's checking its own records or inquiring among other CLECs). Indeed, the very term "self-certification" undercuts any contrary thought.¹⁸

Contrary to NuVox/XO's view, the FCC explained that the basis for its business line counting methodology rested on several considerations. More specifically, the FCC explained that it:

- based its business line definition on objective criteria;

¹⁵ NuVox/XO Motion, p. 3, citing *TRRO*, ¶ 105.

¹⁶ NuVox/XO's Motion, p. 3.

¹⁷ *TRRO* ¶ 234.

¹⁸ By way of example, telecommunications companies are expressly permitted to "rely upon" the "self-certification" process by which low-income and disabled customers may qualify for Missouri Universal Service Fund Support. This ensures that those applying for discounts are not vulnerable to any companies' request that the applicant actually verify his or her eligibility. More to the point for purposes of this response is that it also relieves companies from any obligation to verify whether applicants actually qualify for discounted essential local telecommunications service. 4 CSR 240-31.050(3)(D).

- based its definition upon data already created by the ILECs -- ARMIS 43-08 business line data, UNE-P business line counts and UNE loop counts;
- created thresholds based on data that could be easily and simply obtained; and
- was confident in the accuracy of the thresholds.¹⁹

Granting NuVox/XO' Motion would be completely inconsistent with these objectives.

II. RESPONSE TO MOTION TO COMPEL (DATA REQUESTS 6, 7 and 14)

Data Request 6: Provide, in electronic spreadsheet form (EXCEL), separately for each AT&T Missouri wire center, the following information as of the date AT&T Missouri contends the business line calculation required by the FCC in the *TRRO* should be conducted for determining non-impairment for loops and transport: (a) The number of retail switched business lines; (b) The number of UNE Loops (*note*--do not convert to VGEs; do include EELs and standalone loops, but do not include UNE-P). Please identify the date (month and year) for which the data are being provided.

AT&T Missouri's Objection: AT&T Missouri objected to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence, and that it is overly broad and unduly burdensome. Nevertheless, AT&T Missouri provided NuVox/XO the same business line data that AT&T Missouri had provided to the FCC in 2005.²⁰ NuVox/XO concede that AT&T Missouri "provided data for the individual wire centers it contends are non-impaired"²¹ but claim they are entitled to data for "each AT&T Missouri wire center" -- that is, even for the nearly 200 wire centers where no party claims that the FCC's non-impairment criteria have been satisfied. For the reasons indicated in the above Introduction and Summary, NuVox/XO are not entitled to such data.

In addition, the motion should be denied for other reasons. Wire center-specific information is not necessary to make the types of comparisons to public data "reported to stockholders" that

¹⁹ *TRRO* ¶¶ 93, 105, 108, 161.

²⁰ This data was comprised of ARMIS 43-08 data as of December 31, 2003, the most current ARMIS data available as of the March 11, 2005, effective date of the *TRRO*, and December, 2003, UNE/UNE-P line counts, for purposes of maximizing consistency with the ARMIS December 31, 2003, data. The data reflected the specific line counts, broken out into separate categories, for each Missouri non-impaired wire center whose business line count met the FCC's business line count thresholds (a copy of which is attached hereto as Exhibit A).

²¹ NuVox/XO's Motion, p. 5.

NuVox/XO reference in their motion.²² In fact, they admit that the data to which they wish to compare the requested data is only available on a state-wide basis.²³ As such, there is no justification for suggesting that AT&T Missouri should be required to provide highly proprietary, competitively sensitive wire center level detail for each of the approximately 197 wire centers that are not at issue in this proceeding. This level of detail is completely unnecessary for NuVox/XO to perform the analysis they claim they wish to perform.

Also, NuVox/XO have requested information in a format that is not readily available to AT&T Missouri. AT&T Missouri did not pull data for “retail switched business lines” (see, DR 6(a)) when conducting its wire center analysis. Further, business line counts reported to stockholders do not follow the ARMIS 43-08 reporting guidelines or the FCC’s business line definition, and are irrelevant to this proceeding.

NuVox/XO also suggest that if AT&T Missouri had not calculated the number of business lines for all Missouri wire centers, it could not have identified those wire centers whose business line counts met the FCC’s requisite thresholds. But that is beside the point. The only legitimate question is whether the wire center business line counts for each of the 14 wire centers identified as non-impaired meet (or do not meet) the FCC’s threshold. It matters not whether the business line counts among any of AT&T Missouri’s remaining 197 wire centers likewise meet (or do not meet) those thresholds because no party has placed any one of those 197 wire centers at issue. Indeed, as to those remaining wire centers, none are problematic insofar as CLECs’ potential UNE transport/loop requests are concerned, as none have been identified as non-impaired.

Nowhere does NuVox/XO expressly state exactly how data regarding 197 “impaired” wire centers is calculated to lead to relevant information regarding 14 “non-impaired” wire centers.” And, given the overbreadth and lack of relevance of the request, providing information on these remaining 93+% of AT&T Missouri’s wire centers would be overly burdensome.

²² NuVox/XO’s Motion, p. 6.

Finally, it should be noted that NuVox/XO's Motion does not move to compel a response to the DR as it is written. Rather, NuVox/XO merely move to compel AT&T Missouri to produce the same information for the "impaired" wire centers as AT&T Missouri produced for the "non-impaired" wire centers.²⁴ The information AT&T Missouri provided did not track the specific subparts of this DR. Thus, with specific reference to DR 6, subpart (a), AT&T Missouri had not provided to either the FCC (and hence, to NuVox/XO) the number of "retail switched business lines" (which, together with the number of "resold" lines comprise the total switched access lines reported in the column "ARMIS 43-08 Business Lines"²⁵ in Attachment A hereto. Because the FCC did not require that the data be "broken out" separately for retail and resale, the data available to and relied on by AT&T Missouri to make its non-impairment determinations did not contain any such breakdown (rather, only "ARMIS 43-08 Business Lines" as a total). NuVox/XO's Motion does not insist on such a "break-out" so there is no basis to consider requiring AT&T Missouri to provide one. Similarly, with specific reference to subpart (b), there is no claim that the data provided by AT&T Missouri did not contain the requested detail and, in any case, the documents do provide such detail.

In sum, NuVox/XO's Motion to compel AT&T Missouri to provide NuVox/XO the same information for the wire centers it does not contend are non-impaired as the wire centers it does contend are non-impaired should be denied in its entirety. The request has no support in the *TRRO*, is irrelevant, and is overly broad and burdensome. Wire center-specific detail is completely unnecessary to enable NuVox/XO to perform the analysis they advance (even if that purpose was consistent with the FCC's *TRRO*, which it is not). Rather, aggregate, state-wide data would suffice.

²³ NuVox/XO's Motion, p. 6

²⁴ See, NuVox/XO's Motion, at p. 5 ("Instead of providing for all of its wire centers the number of its own retail switched business lines and the number of UNE loops provided to CLECs, AT&T Missouri provided information *solely* for the wire centers it asserts are non-impaired.") (emphasis original); see also, NuVox/XO's Motion, at p. 6 ("AT&T Missouri has only provided data for the individual wire centers it contends are non-impaired; it has provided no other data for any other wire centers.").

²⁵ The FCC based its business line definition on "ARMIS 43-08 business lines, plus business UNE-P, plus UNE-loops." *TRRO*, ¶ 105. The ARMIS 43-08 business line count is based on both total switched access lines, i.e., retail and resale lines. *TRRO*, ¶ 105, and n. 303, citing, <http://www.fcc.gov/wcb/armis/documents/2004PDFs/4308c04.pdf>. At this link may be found the FCC Report 43-08 Report Definitions and Instructions Applicable to Switched Access Lines in Service,

Data Request 7: Please provide, in un-redacted form and disclosing the actual CLLI codes, the number of business lines at each AT&T Missouri wire center that was provided by SBC to the FCC in SBC's December 7, 2004 ex parte letter (cited by the FCC in *TRRO*, paragraph 105, n. 322).

AT&T Missouri's Objection: AT&T Missouri objected to this request on the ground that it is not reasonably calculated to lead to the discovery of admissible evidence. NuVox/XO argue that "the FCC set its non-impairment thresholds after reviewing data it asked the RBOCs to submit on their business line counts in their wire centers," emphasizing that the data they request here is data "on which the FCC relied in setting the [business line] thresholds" and that NuVox/XO need the data to identify whether "any discrepancies exist" between it and the business line data on which AT&T Missouri later based its non-impairment determinations.²⁶ None of these points is a sufficient basis on which to grant their motion to compel. The motion should be denied for the reasons stated in the above Introduction and Summary, and for the following additional reasons.

While it is true that the FCC used the data submitted by the ILECs to set the business line thresholds, NuVox/XO know full well that there is one important difference in the counting methodology between the December 7, 2004, submission to the FCC (which preceded the FCC's order) and AT&T Missouri's 2005 wire center designations (which followed and implemented the FCC's order). The data that AT&T (then SBC) provided the FCC on December 7, 2004, contained business line data (specifically, UNE-P and UNE-L data) in which each loop was counted as a single business line regardless of loop type {or capacity}. However, two months later, the FCC released its *TRRO*, in which it decided that "digital equivalency" of loops should be accounted for. Specifically, the FCC ruled that business line counts "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.'"²⁷

which, at pages 17-18, indicate that the ARMIS 43-08 count of Total Switched Access Lines in Service includes retail and resold telephone exchange service lines.

²⁶ NuVox/XO's Motion, p. 7.

²⁷ *TRRO*, Appendix B, Final Rules - 47 C.F.R. 51.5 (Business Line Definition).

After the FCC issued its *TRRO* in February 2005, stating that UNE-Ps and UNE-Ls should be counted based on their digital equivalency, AT&T revised its business line calculations to reflect the FCC's order. AT&T informed the FCC of this revision, and the reasons for it, in a February 18, 2005 *Ex Parte* letter to the Chief of the FCC's Wireline Competition Bureau. The FCC did not change its business line thresholds. It did not change its requirement that loops "shall" be counted based on digital equivalency; and it did not require any of the AT&T ILECs (or any other party) to adjust their counts or their digital equivalency calculations.

Perhaps NuVox/XO do not like the FCC's "digital equivalency" order, but that is a matter that must be addressed to the FCC. Indeed, both CLECs two years ago filed with the FCC a Petition for Reconsideration on this precise point.²⁸ The FCC, however, has not granted that petition, and the FCC's rules remain the law.²⁹ To the extent discovery is sought here regarding the December, 2004, filing on the basis that the FCC "relied" on that data, that basis is insufficient and inappropriate.

For the same reason, the "cross-check" which NuVox desires to perform -- without explaining precisely how or why -- is irrelevant inasmuch as there is no dispute that the "before" (pre-*TRRO*) and "after" (post-*TRRO*) data are different because of the FCC's dictates in the *TRRO*. As noted, the pre-*TRRO* data did not reflect digital equivalence; the post-*TRRO* data does. A cross-check would serve no worthwhile purpose.

Finally, whether the same information NuVox/XO request here was produced in two states out of the many states served by the AT&T ILECs is of no consequence. No reference is made by NuVox/XO as to the reasons for or circumstances under which that production was made. The request is nonetheless objectionable for the reasons stated above.

²⁸ 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) at 11 (wherein CLECs claim: "The most egregious over counting of business lines results from the [Federal Communications] Commission's treatment of digital access lines. Rule 51.5 states that business line tallies 'shall account for ISDN and other digital lines by counting each 64 KBPS-equivalent as one line.' Thus, a DS1 is counted as 24 'lines;' a DS3 is counted as 672 'lines,' etc.").

²⁹ 47 C.F.R. §1.429(k).

In sum, the request is overly broad in that it requests information regarding wire centers not designated as non-impaired, and for other reasons. The only distinction between the business line counts that were provided to the FCC on December 7, 2004, and the business line counts that AT&T Missouri relies on here is the application of the digital equivalency calculation required by the FCC's business line rule. If NuVox/XO wish to determine the magnitude of the difference between the two business line counts for non-impaired wire centers, the detailed business line count information AT&T Missouri has already provided enables them to perform that analysis, without the need for additional information from AT&T Missouri. Thus, if they wish to determine the business line counts that were provided to the FCC on December 7, 2004, they can simply add the ARMIS 43-08 numbers to the raw UNE-P and UNE-L numbers (instead of applying the digital equivalency calculations to these raw numbers). NuVox/XO are fully aware of the difference between the two data submissions, as demonstrated in their Petition for Reconsideration filed (along with others) with the FCC in March of 2005. NuVox/XO's Motion should be denied with respect to DR 7.

Data Request 14: Provide separately for XO and NuVox the total number of UNE loops (for the types of loops identified below) that were provided by AT&T Missouri to each of these carriers in Missouri as of the date AT&T Missouri contends should be used for the business line calculation: (a) The number of analog UNE loops; (b) The number of DS1 UNE loops (include EELs); and (c) The number of DS3 UNE loops (include EELs).

As part of your answer, please state the date (month and year) for which the response is being provided. *Note:* In preparing and providing your response to this Data Request, do not convert (b) and (c) to VGEs.

AT&T Missouri's Objection: AT&T Missouri objected to this request on the ground that it is not reasonably calculated to lead to the discovery of admissible evidence and is overly broad and unduly burdensome.

As noted in the Introduction and Summary, DR 14 ignores that the business line data on which AT&T Missouri identified non-impaired wire centers was not broken out, or "disaggregated," on a CLEC-by-CLEC basis. In other words, the "CLEC-aggregate" data was compiled on the basis of

product (e.g., loop) types without regard to any individual CLEC or CLECs whose UNE loop and UNE-P counts may have contributed to the total. Nothing in the *TRRO* required that specific CLECs' business line counts be captured when determining whether the FCC's business line thresholds were met in individual wire centers, so such data was not generated. For this reason alone, NuVox/XO's motion should be denied. AT&T Missouri does not know the number of loops "separately for XO and NuVox," if any, that were included in the business line counts.

In addition, the Commission should not be misled by NuVox/XO's assertion that the December, 2003, records they seek are those AT&T Missouri "necessarily maintains in order to provide and bill [NuVox/XO]." ³⁰ While AT&T Missouri's billing systems do maintain billing data in order to bill its customers and AT&T Missouri drew upon these systems to compile CLEC-aggregate business line counts, AT&T Missouri does not have a need to maintain billing data in its billing systems indefinitely. In fact, the CLEC-specific information NuVox/XO request is no longer available in AT&T Missouri's billing systems due to the passage of time (and may no longer exist in any database in any usable format).

Furthermore, NuVox and XO were billed for the loops in question several years ago. Indeed, NuVox/XO squarely admit that AT&T Missouri "bill[ed] NuVox and XO for the UNEs and the EELS it provides." ³¹ That being the case, NuVox/XO have already been provided the billing statements indicating the items for which AT&T Missouri billed them. For these separate and independent reasons, NuVox/XO's Motion directed to DR14 should be rejected.

III. CONCLUSION

AT&T Missouri respectfully submits that NuVox/XO's Motion should be denied in its entirety.

³⁰ NuVox/XO's Motion, p. 10.

³¹ NuVox/XO's Motion, p. 11.

Respectfully submitted,

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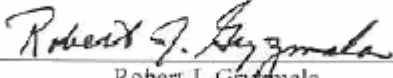
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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail on March 30, 2007.


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