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TRANSCRIPT OF PROCEEDINGS

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Scheduling Conference

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June 14, 2006

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Jefferson City, Missouri

Volume 1

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

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KENNARD L. JONES, Presiding,  
REGULATORY LAW JUDGE

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24 REPORTED BY:

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1 P R O C E E D I N G S

2 JUDGE JONES: We're in the Matter of the  
3 Application of NuVox Communications of Missouri,  
4 Incorporated, for an investigation into the wire  
5 centers that AT&T Missouri asserts are nonimpaired  
6 under the TRRO. This is Case No. TO-2006-0360.

7 My name is Kennard Jones. I'm the  
8 Administrative Law Judge over this matter, and good  
9 morning. At this time we will take entries of  
10 appearance, beginning with NuVox. I think I said  
11 NuVo earlier.

12 MR. LUMLEY: That's all right. Good  
13 morning, Judge. Carl Lumley of the Curtis Heinz law  
14 firm, 130 South Bemiston, Suite 200, Clayton,  
15 Missouri 63105, appearing on behalf of NuVox  
16 Communications of Missouri and Excel Communications  
17 Services.

18 On the phone we also have co-counsel,  
19 Bill Magness, and I'll let him go through his address  
20 in a moment. And also our clients are represented by  
21 their employees, Edward Cadieux and Chris Schulman  
22 from Excel. Mr. Cadieux's from NuVox, and they're  
23 both on the telephone as well.

24 JUDGE JONES: Okay. Those of you on the  
25 telephone, are you able to hear okay?

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1 MR. MAGNESS: Yes, sir, so far.

2 MR. DANDINO: Yes. Yes.

3 JUDGE JONES: Great.

4 MR. MAGNESS: And, your Honor, for the  
5 record, this is Bill Magness, and my address is --  
6 I'm with Casey, Gentz & Magness law firm. The  
7 address is 98 San Jacinto Boulevard, Suite 1400,  
8 Austin, Texas 78701.

9 JUDGE JONES: Thank you, Mr. Magness.  
10 Now we'll hear from AT&T.

11 MR. GRYZMALA: Yes. Good morning,  
12 everyone. This is Bob Gryzmala for Southwestern Bell  
13 Telephone, L.P., d/b/a AT&T Missouri at One AT&T  
14 Center, Room 4516, St. Louis, Missouri 63101. And I  
15 have with us on the phone Carol Chapman, an employee,  
16 your Honor.

17 JUDGE JONES: Thank you. And from the  
18 Staff of the Commission?

19 MR. WILLIAMS: Nathan Williams, Senior  
20 Counsel, Public Service Commission, P.O. Box 360,  
21 Jefferson City, Missouri 65102.

22 JUDGE JONES: For the Office of Public  
23 Counsel?

24 MR. DANDINO: Michael Dandino, Office of  
25 the Public Counsel, Post Office Box 2230, Jefferson

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1 City, Missouri 65102, representing the Office of  
2 Public Counsel and the public.

3 JUDGE JONES: Thank you, Mr. Dandino.  
4 And for McLeod U.S.A.?

5 MS. YOUNG: Thank you, Judge. Mary Ann  
6 Young with the law firm of William D. Steinmeier,  
7 P.C., P.O. Box 104595, Jefferson City, Missouri, on  
8 behalf of McLeod U.S.A. Telecommunications Services,  
9 Inc.

10 JUDGE JONES: And that sounds like  
11 everyone. Well, my -- the first thing I want to talk  
12 about before we get into the case is McLeod and Excel  
13 both filed applications to intervene without being  
14 given notice from the Commission. There hasn't been  
15 any notice offered to the whole telco community. And  
16 I'm wondering first -- well, it's obvious how Excel  
17 was made aware, because they're affiliated with  
18 NuVox. What about McLeod, how were you-all made  
19 aware of this filing? What brought you to seek  
20 intervention?

21 MS. YOUNG: We were made aware of it  
22 through contacts within the CLEC community.

23 JUDGE JONES: So it's just talk going  
24 around. Does everyone in the CLEC community know  
25 about this?

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1                   MR. LUMLEY: I wouldn't be comfortable  
2 saying that, no.

3                   MR. GRYZMALA: I'm sorry, your Honor. I  
4 could not hear the lady speaking. This is Bob  
5 Gryzmala.

6                   JUDGE JONES: Mr. Gryzmala, that was  
7 Mary Ann Young.

8                   MR. GRYZMALA: Oh, yes. Okay.

9                   JUDGE JONES: I asked her how she became  
10 aware of this proceeding, and she said just through  
11 talking in the telco community.

12                  MR. GRYZMALA: Okay. Great. Thank you.

13                  JUDGE JONES: And then I asked if  
14 every -- if everyone is talking about it in the telco  
15 community, and Mr. Lumley stated that he would not  
16 feel comfortable making that conclusion. Is that  
17 everyone else's sentiment?

18                  MS. YOUNG: I would agree, Judge.

19                  JUDGE JONES: Ms. Young is shaking her  
20 head yes and saying she agrees. Does everyone on the  
21 phone agree with that also?

22                  MR. DANDINO: That would be fine.

23                  JUDGE JONES: Okay. What I'll do after  
24 this prehearing conference, then, is issue a notice,  
25 and we may have to have a second prehearing

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1 conference just so you know. I'll issue a notice  
2 today giving any interested telco carriers 15 days to  
3 seek intervention.

4 MR. MAGNESS: And, your Honor, this is  
5 Bill Magness. Did you say 15 days?

6 JUDGE JONES: Yes, rather than 20 just  
7 so we can move it along.

8 MR. MAGNESS: Yes, sir. I -- Judge, I  
9 just didn't hear it.

10 JUDGE JONES: Okay. Now, I don't think  
11 it's necessary for us to go into any substance. Do  
12 you-all want to just talk to each other and figure  
13 out what you want to do, how this is to proceed, what  
14 needs to be taken care of on the record?

15 MR. LUMLEY: Well, your Honor, this is  
16 Carl Lumley. The parties have had some  
17 off-the-record discussions already about a potential  
18 schedule, and I think, unless there's been a change  
19 overnight at least, that we're at somewhat of an  
20 impasse in terms of the structure of the proceedings.

21 I would think that, as in most cases, we  
22 could ultimately come to an agreement on dates --  
23 it's not that kind of a dispute -- but, rather, how  
24 the proceedings should be structured.

25 And the CLECs are proposing that the



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1 Commission hear the case in a single phase as it's  
2 been done successfully in a number of states recently  
3 where the parties would provide all of the  
4 information at one time, you know, how we think the  
5 FCC rule should be interpreted, you know, who should  
6 be counted and who should not be counted and that  
7 sort of thing as well as the underlying data so the  
8 Commission can see how those differing  
9 interpretations actually play out and what the  
10 impacts of the decision would be.

11 I'll let Mr. Gryzmala speak to his  
12 views. But, in essence, AT&T wants to do it in two  
13 steps, and so I think we're at loggerheads at that  
14 point. And I'm not exactly sure how to proceed,  
15 other than perhaps we file competing schedules and  
16 you can make a choice.

17 JUDGE JONES: Okay. Mr. Gryzmala?

18 MR. GRYZMALA: Yes. Good morning.

19 Thank you. Your Honor, given the fact that you will  
20 be sending out a notice to folks to intervene, this  
21 may or may not be right or subject to change later by  
22 others' input. But our basic view is that, you know,  
23 as you heard from Mr. Lumley, there was a statement  
24 made that the entirety of the case has been tried in  
25 a single phase in other -- a number of cases, and we

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1 advance a two-phase process.

2 Just by way of snapshot, your Honor, the  
3 case is largely, if not -- largely about the  
4 methodology by which AT&T determined that certain  
5 wire centers were not impaired under the TRRO issue  
6 by the FCC.

7 And our principal point, your Honor, is  
8 that to my understanding, in each of the other  
9 states -- and I have the scheduling order for each of  
10 the other southwest states in my possession,  
11 excluding Texas here -- the parties agreed, that is,  
12 AT&T and NuVox agreed in each and every one of these  
13 states, being Arkansas, Kansas and Oklahoma, that we  
14 could proceed on a bifurcated basis.

15 There really being no reason to go into  
16 a recount or a bash of the data, if you will, until  
17 one figures out the rules of engagement; in other  
18 words, what the methodology is and whether what we  
19 employed was valid or was not.

20 So subject to that, I mean, we could  
21 take this to some, you know, length, but again, I'm  
22 not sure that this is a matter that's presently ripe.

23 JUDGE JONES: Okay. First, Mr. Lumley,  
24 are you aware of the proceedings in the other states?

25 MR. LUMLEY: Yes, and I'm not gonna

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1    verify the exact list.  I think Mr. Magness actually  
2    could do that.  But in essence, there are states that  
3    have done it in two phases.  But more recently there  
4    are states, such as Indiana and I think Ohio, where  
5    the companies have done it in a single phase, and  
6    we've found that to be more efficient and productive  
7    for the state commissions and the parties.

8                   MR. MAGNESS:  Your Honor, this is Bill  
9    Magness.  If I could speak to it just briefly.  
10   Mr. Gryzmala's correct.  In Kansas, Oklahoma and  
11   Arkansas there was agreement to do this two-phase  
12   approach, and that was following a case in -- the  
13   case on this in Texas where the Commission decided it  
14   wanted to look at the, call it methodology questions.  
15   That is, when AT&T produced its list of wire centers  
16   it said should be delisted, were they -- were they  
17   basically interpreting the FCC rule correctly.

18                   That was taken up in a -- in a first  
19   phase, and then the second phase was devoted to if  
20   the answer is no, that AT&T did not do it completely  
21   correctly, how do we go back and correct their  
22   assertions about what should be delisted.

23                   In -- the cases Mr. Lumley is referring  
24   to are in the old Ameritec regions or more the upper  
25   Midwest states where there have been -- he said these

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1 have been done in various ways, but there have been  
2 single-phase proceedings where the parties not only  
3 talked about the methodology but what the outcome of  
4 the methodology would be.

5 And it's our experience that these cases  
6 are certainly not getting done any faster in the  
7 two-phase approach, and, in fact, Texas -- the Texas  
8 case was filed June 30th of last year and is just now  
9 completing.

10 We don't have any decisions on the two  
11 phases from the other BOCA states, from Oklahoma,  
12 Kansas or Arkansas, and we're finding that the  
13 process generally, at least in our view, works more  
14 efficiently if we try to do it all at once. And we  
15 have learned quite a bit in doing these cases several  
16 times and I think can expedite a lot of things,  
17 particularly around testimony concerning those  
18 issues.

19 I also want to mention that this is an  
20 issue, your Honor, that -- that arose because of the  
21 Triennial Review Remand Order. So this has been  
22 addressed in -- in outside AT&T's territory as well.

23 And we were involved in the Bell South  
24 states. In those states these issues were taken up  
25 certainly in a single phase and were dealt with in an

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1 efficient way that got the issues done and resolved.  
2 I think they're probably more final -- there are more  
3 final resolutions of this issue in the Bell South  
4 states where they took it up that way than there are  
5 in the AT&T states at this point. So -- at least in  
6 the midwest and the southwest regions.

7 MR. GRYZMALA: May I be heard, your  
8 Honor?

9 JUDGE JONES: Mr. Magness, were you  
10 finished?

11 MR. MAGNESS: Yes, your Honor. The only  
12 thing I'd add is that the -- the outcomes of these  
13 cases have been different in a lot of places. And,  
14 you know, I don't want to go into the substance, but  
15 the basic issues are about fiber-based colocaters and  
16 about business line accounts. And how you do this on  
17 a phase basis does not have any particular impact on  
18 the substantive outcome of the methodology.

19 So it's not that we're looking for one  
20 or the other because we got a better outcome on one  
21 or the other. It just seems like given what we know  
22 now and given the experience in these cases, that  
23 it's gonna be more efficient just to do it in one  
24 case that puts it all in front of the Commission at  
25 one time.

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1 JUDGE JONES: Okay. Mr. Gryzmala?

2 MR. GRYZMALA: Just a couple of quick  
3 points, your Honor. Number one, I don't think  
4 there's gonna be any unnecessary delay here. CLECs  
5 filed in this state when they decided they wanted to  
6 do that. Kansas, Oklahoma, Arkansas, correct, no  
7 decision. In Oklahoma nor Arkansas, but it should be  
8 any day in Arkansas. And my understanding is, your  
9 Honor, Kansas, in fact, has a decision. The --

10 MR. MAGNESS: On phase one, Bob, but not  
11 on phase two. I'm sorry to interrupt, but there's a  
12 phase one division, but the case isn't complete.

13 MR. GRYZMALA: I agree. I quite agree.

14 MR. MAGNESS: Okay.

15 MR. GRYZMALA: We misunderstood each  
16 other. The process has been agreed to in four other  
17 states, your Honor, bifurcated. If the parties here  
18 or CLECs here wanted to move this quicker, more  
19 quickly than they have proceeded in the southwest  
20 states, otherwise they could have filed a motion to  
21 expedite. They did not.

22 I cannot speak to Bell South because I  
23 don't have that in front of me and I can't verify it,  
24 your Honor, but I will say this, I think, as a final  
25 point: I think the discovery process is going to be

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1 significantly smoother if we bifurcate.

2 I will -- I will inform you, and Bill,  
3 you correct me if I'm wrong, that in the four other  
4 states in which we litigated on a bifurcated basis,  
5 all three of Arkansas, Kansas and Oklahoma CLECs  
6 waived discovery and determined that because we use  
7 the same methodology here, your Honor, as we did in  
8 Texas, we would rely -- the parties would rely on  
9 Texas data.

10 I'm not suggesting that Staff might not  
11 want to do something. That's an open issue as far as  
12 discovery there. But the fact of the matter is,  
13 discovery disputes are going to be largely, if not  
14 entirely, eliminated if we just do a bifurcated  
15 approach. That's all I would have, your Honor, but  
16 thank you.

17 JUDGE JONES: Okay. Staff?  
18 Mr. Williams, do you have any opinion on this?

19 MR. WILLIAMS: Not as to whether a  
20 single-phase or two-phase would be the better  
21 approach.

22 JUDGE JONES: Okay. Well, it's my  
23 understanding then that if it were bifurcated, the  
24 first phase would be a Conclusion of Law basically  
25 interpreting the TRRO.

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1                   MR. GRYZMALA: That's essentially right.

2   I would agree, your Honor.

3                   JUDGE JONES: And the second phase would  
4   be a factual determination of whether AT&T's  
5   methodology -- methodology is consistent with this  
6   Commission's interpretation of the TRRO; is that  
7   correct?

8                   MR. MAGNESS: Your Honor, I think that  
9   it catches a lot of it, but one of the other issues  
10  that has arisen in some of these states is that there  
11  are questions of whether wire centers are identified  
12  accurately that don't have to do with methodology.

13                   For example, there have been situations  
14  where AT&T, in good faith, believed that a particular  
15  CLEC was a fiber-based colocater under any standard,  
16  let's say, to get the legal disagreement out of the  
17  way, and the particular wire center. And that CLEC  
18  has -- has looked at it and said, wait a minute, you  
19  know, I may be one over here but I'm not one in that  
20  wire center. And that -- that deletion of that  
21  particular CLEC, because of the error, may have an  
22  impact on whether that wire center is eligible for  
23  UNEs or not, is illicit or not.

24                   So there is -- there are factual issues  
25  that can be cleared up relatively easily and quickly



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1 if folks have the information from AT&T that are kind  
2 of outside the methodology questions.

3 MR. GRYZMALA: Your Honor, this is for  
4 AT&T and maybe Carol can talk to a second of my two  
5 pieces. I want to clarify. I think you're thinking  
6 on maybe the bifurcation phase one would consist of  
7 in -- not maybe the best words here, the Commission's  
8 determinations, Conclusions of Law as to how the  
9 methodology laid down by the FCC should be  
10 implemented. In other words, what the FCC meant when  
11 they said X or they said Y. And we have our view and  
12 the CLECs have their views. So that would be kind of  
13 the phase one.

14 The phase two would be what others have  
15 come to call in our southwest states, the recount, if  
16 needed. That is, if our methodology is upheld in all  
17 respects, no recount would be necessary. Contrary,  
18 if the methodology is in any respect found deficient,  
19 and then there would be a recount.

20 I would like Ms. Chapman basically to  
21 speak to the other point. I mean, you know, your  
22 Honor, it's unusual in the industry that there are --  
23 there is data from time to time that's erroneous and  
24 the parties are well aware of doing data scrubs and,  
25 you know, corroborating on these things.

1                   My experience is that that has not  
2   occurred in our southwest territory, but -- maybe an  
3   instance or two in Ameritec, but Carol knows more  
4   about that than do I, your Honor.

5                   JUDGE JONES:  Ms. Chapman, are you an  
6   attorney?

7                   MR. CHAPMAN:  No, I'm not.

8                   JUDGE JONES:  Well, I don't want to hear  
9   from you.

10                  MR. GRYZMALA:  I'm sorry.  I didn't mean  
11   to get -- I got out of step.  But the point is that I  
12   do not think that would be an issue whatsoever.

13                  JUDGE JONES:  Well, do you all agree  
14   that a single-phase proceeding would -- would be  
15   quicker?  Does everyone agree with that?

16                  MR. MAGNESS:  Your Honor, we do because  
17   of our experience with it.  I think at this point if  
18   we get the list of fiber-based colocaters by wire  
19   center which is one of the essential data pieces,  
20   which is something already in AT&T's possession, then  
21   we can move right into testimony that says -- as  
22   Mr. Gryzmala said, you know, here's our legal  
23   position, here's what we think the outcome ought to  
24   be.  And if you believe our legal position, here's  
25   what the -- here's what the data shows, here's what

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1 the numbers are and how -- how AT&T's list should be  
2 corrected.

3 AT&T on the other hand, defends the list  
4 it has created and the methodology it used. I'll  
5 tell you, of the orders that have been issued in  
6 Texas and Kansas that is in the phase one of those  
7 cases, and the arbitrator's report which is still  
8 pending in Oklahoma, there hasn't been a single state  
9 in the southwest region that has affirmed AT&T's  
10 methodology in total.

11 So in every instance there's been a need  
12 to go back and do the second phase. So given that we  
13 have been doing this several times and you know, are  
14 aware of what the data needs are, it just seems like  
15 let's just do it in one -- one round.

16 JUDGE JONES: Mr. Gryzmala?

17 MR. GRYZMALA: Your Honor, I would not  
18 agree that it would necessarily lead to a quicker  
19 outcome and to the point that, you know, if we're  
20 wrong in any respect, however minute, we may have to  
21 come back and revisit the recount.

22 But I, you know, remind Mr. Magness of  
23 my understanding, AT&T enjoyed a win on all counts in  
24 Ohio. So I mean, you know, we don't want to prejudge  
25 the outcome by saying, well, gee, this is what it

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1 would look like if the CLECs were to prevail on these  
2 specific issues.

3 I think what's most important here is  
4 that we establish what the methodology is: Is it an  
5 appropriate methodology, is it our view of the world,  
6 your Honor, or is it the CLECs's view of the world,  
7 and then we go from there.

8 Again, I'd emphasize if there was some  
9 reason to expedite this matter, we would have seen a  
10 motion to expedite. And I don't know that this is  
11 going to change anything at all.

12 MR. CADIEUX: Your Honor, may I be  
13 heard?

14 JUDGE JONES: Is that Mr. Magness?

15 MR. CADIEUX: No, this is Mr. Cadieux  
16 and I am an attorney licensed in Missouri.

17 JUDGE JONES: And you're representing,  
18 I'm sorry, who?

19 MR. CADIEUX: With NuVox.

20 JUDGE JONES: Okay.

21 MR. GRYZMALA: Your Honor, I don't know  
22 that Mr. Cadieux has entered an appearance. My  
23 understanding was he was simply a witness/employee if  
24 you will.

25 JUDGE JONES: Mr. Cadieux, what -- what

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1     hat are you wearing?

2                   MR. CADIEUX:  I have not entered an  
3     appearance at this point, your Honor.

4                   JUDGE JONES:  Well, is that what you  
5     want to do or not?

6                   MR. CADIEUX:  Well, if it will -- if it  
7     will --

8                   JUDGE JONES:  If it will allow you to  
9     say what you want to say, then I'd rather you not.  
10    If you want to enter an appearance to play the game,  
11    then enter an appearance.

12                  MR. CADIEUX:  Well, if it will bar  
13    me from -- my value probably would be better  
14    providing information to the Commission at a hearing  
15    rather than doing it now --

16                  JUDGE JONES:  Okay.

17                  MR. CADIEUX:  -- if that's the choice.

18                  JUDGE JONES:  Okay.  That will be fine  
19    then.  Mr. -- Mr. Gryzmala?

20                  MR. GRYZMALA:  Yes, sir.

21                  JUDGE JONES:  Every -- every case has  
22    law and facts.  Why won't we just bifurcate every  
23    case to first determine what the law is and then  
24    investigate the facts?

25                  MR. GRYZMALA:  Because I think

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1 principally in this case, your Honor, and I  
2 understand intuitively it would be correct, but I  
3 don't have the history that maybe Mr. Magness has.  
4 But I know what I know, and that is, in four states  
5 that came before us in southwest, our company, my  
6 company and the CLECs who otherwise were as adverse  
7 as one could expect, agreed on a process. It worked  
8 and there's been no demonstration that it has not.  
9 That we know.

10                   Secondarily, discovery will be largely  
11 eliminated if not altogether eliminated, certainly  
12 from a CLEC community, if there is no phase -- no  
13 single phase. In every state in the southwest  
14 following Texas, the CLECs -- the CLECs waived  
15 discovery.

16                   Now, that's a very attractive  
17 proposition when you're arguing what is key here and  
18 that is what the FCC meant when they did X. And  
19 that's what makes an efficient resolution here and  
20 that's why we continue to embrace it.

21                   MR. LUMLEY: Your Honor, the perspective  
22 we're trying to bring is, you know, that we've  
23 learned from prior experience and things have been  
24 done different ways.

25                   And ultimately, the Commissioners, you

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1 know, the choice I think that's presented is, you  
2 know, do you decide an abstract question of law  
3 without any idea of what the impacts are, or do you  
4 get all the information so you have a sense of, you  
5 know, the sensitivity of the data. If I make this  
6 decision, what kind of an impact is it going to have?  
7 You know, are these points of just hypothetical  
8 concern or are these issues that actually have a  
9 bearing on the outcome?

10 MR. WILLIAMS: Judge, if I might for  
11 Staff?

12 JUDGE JONES: Yes, Mr. Williams.

13 MR. WILLIAMS: From what I'm hearing,  
14 not only are we going to be looking at what  
15 methodology to use, we're going to be, sounds like,  
16 verifying the underlying data. And it seems to me  
17 like that's going to have to occur regardless of the  
18 methodology. So perhaps the two-phase approach is  
19 not a better approach.

20 JUDGE JONES: Well, Mr. Gryzmala,  
21 I'll -- I'll be fair with you, and quite honestly,  
22 Mr. Williams' comments do help, but I don't -- I  
23 still, even before he made those statements, don't  
24 see how this is different from any other case that  
25 has matters of law and fact involved.

1                   It's obvious to me that one phase or the  
2 other is to the benefit of either AT&T or the CLECs,  
3 the phasing -- the process that each of you propose.  
4 I don't -- it would take me a few days to even figure  
5 out how it benefits one party or the other.

6                   But at this point I don't see the point  
7 for a -- for a two-phase process. If you-all want to  
8 file something in that regard, I don't know, that  
9 sets out something convincing, maybe that will change  
10 my mind. Of course, the CLECs would be able to file  
11 something in response --

12                   MR. GRYZMALA: I understand, your Honor.

13                   JUDGE JONES: -- the same thing you  
14 file, but I don't...

15                   MR. GRYZMALA: Would you envision that  
16 only after the time for others to intervene should  
17 they care to? I'm not sure how that would work.

18                   JUDGE JONES: Yes, I would.

19                   MR. GRYZMALA: Okay.

20                   JUDGE JONES: Then the other intervenors  
21 would have an opportunity to respond to whatever it  
22 is you might file. What I'll do is issue something  
23 that prompts a filing by you if you'd like to file  
24 something, giving you a date which would be after the  
25 date for intervention.



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1 MR. GRYZMALA: Okay.

2 MR. MAGNESS: And, your Honor, from  
3 NuVox's perspective, would you expect us to file at  
4 the same time advocating what we want to do, or would  
5 you prefer a response to --

6 JUDGE JONES: No. You'd just respond --

7 MR. MAGNESS: Okay.

8 JUDGE JONES: -- with any other  
9 intervenors that -- with any intervenors that  
10 would -- would want to respond.

11 MR. GRYZMALA: Okay. So intervention  
12 date may be X date and then a filing by us would  
13 follow that, X plus, and then filing by CLECs after  
14 that?

15 JUDGE JONES: Correct.

16 MR. GRYZMALA: Okay. All righty.

17 JUDGE JONES: Do the CLECs have a time  
18 frame you want to get this done? Anybody care or can  
19 I just drag my heels on it or what?

20 MR. LUMLEY: Your Honor, we had come --

21 MR. MAGNESS: I think we -- we initiated  
22 the case and there is not a particular date we're  
23 striving for. We want to be sure there's time to  
24 look at the data and, you know, get in the testimony  
25 and make for an effective hearing, but, you know,

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1 obviously whether we think the process we're  
2 suggesting is more efficient to getting there, but I  
3 don't think there's any sort of jurisdictional  
4 deadline or, you know, something like that involved.

5 MR. LUMLEY: And your Honor, we had come  
6 prepared to propose a schedule that would have called  
7 for hearings in September just so you get a sense of  
8 the time frame you were looking at.

9 MR. MAGNESS: Yeah, yeah.

10 MR. LUMLEY: This process that we're  
11 talking about will extend that out a little bit but  
12 that will give you a sense of our perspective on the  
13 time line.

14 JUDGE JONES: Okay. You know what? I  
15 take this back, because I see now you-all probably  
16 have proposed -- well, let me ask you, Mr. Gryzmala.

17 MR. GRYZMALA: Yes, sir.

18 JUDGE JONES: Do you have a proposed  
19 procedural schedule that you're -- that you could  
20 file any day now?

21 MR. GRYZMALA: It would not be very  
22 long. I actually floated one, your Honor, to all the  
23 parties a few days ago, yes.

24 JUDGE JONES: And was yours based on the  
25 bifurcated process?

1                   MR. GRYZMALA: Yes, and of course the  
2   procedural schedule that I distributed, your Honor,  
3   did not key up a phase two, if you will, because it's  
4   tied, of course, to phase one. And let me just get a  
5   second here.

6                   I'll have to reformat it but it was at  
7   the time formatted as a joint motion to bifurcate and  
8   waive discovery wherein simultaneous direct would  
9   have been filed in early July, simultaneous rebuttal  
10   end of July time frame, jointly-agreed issues,  
11   et cetera, beginning of August. And then after that  
12   we were just looking for hearing dates at the  
13   Commission's convenience.

14                  JUDGE JONES: Okay.

15                  MR. GRYZMALA: With post-hearing briefs  
16   30 days after transcript filed. So in sum, it would  
17   be, you know, give or take maybe a month earlier than  
18   Mr. Lumley, you know, mentioned to you a little bit  
19   ago.

20                  JUDGE JONES: Okay. Thanks.

21                  MR. GRYZMALA: Because phase -- you  
22   know, putting everything together in two phases, you  
23   know, at least does kind of bump things out a month,  
24   if you will, if that's rough -- you know, give or  
25   take pretty rough -- rough cut.

1 JUDGE JONES: Okay. Also, have you-all  
2 had any discovery process?

3 MR. GRYZMALA: No discovery has been  
4 generated at all in the case to my knowledge, your  
5 Honor. We certainly have not generated any nor have  
6 we fielded any.

7 JUDGE JONES: Okay.

8 MR. LUMLEY: And, your Honor, what we're  
9 hoping is that AT&T will voluntarily provide, subject  
10 to the protective order that's already been issued,  
11 the data on which it's relied in creating the list of  
12 what it's claiming are nonimpaired wire centers, and  
13 specifically, the identity of the fiber-based  
14 collocating CLECs and the number of business lines.  
15 And what we would expect to do is then try to verify  
16 with those CLECs that they agree that they are,  
17 indeed, properly counted. And if we can do that on a  
18 voluntary basis somewhere along the lines of a  
19 federal court proceeding where the parties exchange  
20 some of this basic information up front, you know,  
21 then the case can move along pretty expeditiously.

22 JUDGE JONES: Mr. Gryzmala, I assume you  
23 agree with that?

24 MR. GRYZMALA: I don't believe so, your  
25 Honor, for the reasons I mentioned before. And, you

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1 know, I would just make one other point, and I don't  
2 want to open up a whole can of worms, but you know,  
3 last year this Commission entered an order regarding  
4 the process by which a CLEC is to self-certify its  
5 right to UNEs. And it's up to the CLEC -- the  
6 Commission ordered it in 2005-0294. You know, it's  
7 up to the CLEC to describe its own diligent inquiry  
8 and explain how that inquiry leads it to believe that  
9 it's entitled to unbundled access to a particular  
10 network element.

11 And, you know, since that time, your  
12 Honor, unless I'm wrong in my facts, that order was  
13 entered back in March of 2005. NuVox was front and  
14 center in the case with Big River and several others,  
15 and NuVox has never sought to self-certify with us.  
16 And I think that the reason why that's pertinent is  
17 that because this is sort of just another way to go  
18 about the same point.

19 MR. MAGNESS: Mr. Gryzmala, you're wrong  
20 on your facts.

21 MR. GRYZMALA: Okay.

22 MR. MAGNESS: NuVox has provided  
23 self-certification a long time ago.

24 MR. GRYZMALA: AT&T --

25 MR. MAGNESS: Yeah, after the order,

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1 after the order provided for the self-certification  
2 process. AT&T has filed cases against NuVox saying  
3 its self-certification was insufficient in the states  
4 where apparently you were in some hurry, which is  
5 Arkansas --

6 MR. GRYZMALA: I'm just talking about  
7 the Missouri order, Mr. Magness. That's all.

8 MR. MAGNESS: Okay. Well, and then in  
9 Missouri we filed to try to get an answer on this  
10 thing because it's being answered and dealt with in  
11 several states and so --

12 MR. GRYZMALA: Did you file a  
13 self-certification in Missouri after the March 2005  
14 Commission Order? That's the question. That is my  
15 question.

16 MR. MAGNESS: NuVox has self-certified  
17 to AT&T for -- I mean, I'd have to ask Mr. Cadieux  
18 the exact number of states.

19 MR. DANDINO: In Missouri.

20 JUDGE JONES: I knew I could get a fight  
21 started here.

22 MR. MAGNESS: I mean, I could ask -- I  
23 could ask Mr. Cadieux, just as a factual matter, is  
24 there one filed.

25 JUDGE JONES: Well, you-all deal with



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1 early on is, if you can get the identity of those  
2 colocaters, you can go through a process by which you  
3 can verify them, both -- well, I say both, I mean  
4 factually verify to be sure there aren't any errors,  
5 for one thing, and then, you know, flesh out if there  
6 are any -- any disputed wire centers on a factual  
7 basis.

8                   And that's what -- when I was describing  
9 Bell South, what -- the process that went to -- what  
10 happened in all nine states in that region was, the  
11 list was produced something in the nature of a  
12 request for admission. It could be a subpoena, it  
13 could be, you know, anything listed -- given to all  
14 of the CLECs who had been identified. And they  
15 answered the question basically, you know, do you  
16 agree you qualify as a fiber-based colocater. And  
17 most of the time there wasn't any big problem with  
18 it.

19                   And in some instances, companies would  
20 say, you know, hold on a minute, I don't think I do.  
21 And often, you know, Bell South would either say we  
22 agree with you, we made a mistake here, or no, we  
23 disagree with you, and that's an issue we're gonna  
24 have to litigate. But you identified it up front so  
25 you knew what all the disputes were.



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1 JUDGE JONES: Okay. Well, that aside,  
2 you-all are saying that the Commission is gonna have  
3 to interpret this 185 documents with regard to your  
4 specific issue. Can you-all agree where those --  
5 what paragraphs need to be interpreted?

6 MR. GRYZMALA: Your Honor, if I may  
7 speak to that, I think that the paragraphs that the  
8 parties have cited in their briefs, as they've walked  
9 through the southwest states, are pretty much known.

10 JUDGE JONES: Well, I don't know what  
11 they are.

12 MR. GRYZMALA: No, no. I mean, I  
13 thought you were directing that to us.

14 JUDGE JONES: Oh, yeah. But you-all do  
15 agree on what they are?

16 MR. GRYZMALA: Bill, is that fair?

17 MR. MAGNESS: No, I think we've got a  
18 pretty good sense of where the -- where the legal  
19 disputes are, yeah, your Honor. But there's a  
20 paragraph in the TRRO and portions of the FCC's rules  
21 that are the key text.

22 MR. GRYZMALA: Right.

23 JUDGE JONES: And what portions of the  
24 TRRO are you in dispute about? I'm getting a head  
25 start on it.

1                   MR. MAGNESS: I would say just picking  
2 it up in front of me, probably the paragraphs we tend  
3 to cite back and forth to one another start somewhere  
4 around paragraph 90 where the FCC is describing why  
5 it chose the criteria it chose. I'd say probably  
6 paragraph 87, something in that neighborhood, where  
7 they describe their -- their approach to determining  
8 impairment. And so, oh, you know, somewhere in the  
9 neighborhood of 78 and then into --

10                  JUDGE JONES: Now, Mr. Magness?

11                  MR. MAGNESS: Yes, sir.

12                  JUDGE JONES: That's you talking, right?

13                  MR. MAGNESS: Yes, sir.

14                  JUDGE JONES: So I wrote down 90 and  
15 then I wrote down 87 and then now should I write 78?

16                  MR. MAGNESS: I'm sorry. I just -- I  
17 just opened up the order and I -- as I was looking at  
18 it, I know that I'm very familiar with citing things  
19 from like paragraph 90 or 93, but as I opened up the  
20 order, I realized I'm gonna give you a complete  
21 answer. It probably goes back to probably around  
22 paragraph 78 where the FCC starts describing its  
23 approach to impairment and then --

24                  MR. GRYZMALA: May I interrupt, Bill,  
25 briefly?

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1 MR. MAGNESS: Sure.

2 MR. GRYZMALA: Would you agree  
3 through -- through 105? I mean, if I didn't read  
4 through 105 --

5 MR. MAGNESS: Sure.

6 MR. GRYZMALA: 78 to 105, your Honor.

7 JUDGE JONES: Okay.

8 MR. MAGNESS: Yeah. And there -- there  
9 may be some paragraphs in the discussion of high-  
10 capacity loops impairment that -- that we may  
11 reference you to as well, but I think certainly  
12 through paragraph 105. But then you find, for  
13 example, that it then hops around a bit, and I think  
14 the self-certification process that Mr. Gryzmala was  
15 describing is further on --

16 MR. GRYZMALA: Right.

17 MR. MAGNESS: -- into the Order. And  
18 then as far as the rule goes, the primary language  
19 that's in dispute, from our view anyway, is the  
20 definitions of business line and of fiber-based  
21 colocation.

22 MR. GRYZMALA: If you look at the back  
23 of the FCC order, your Honor, if you happen to have  
24 it or can come up with it, it's 51.319 (A) (4),  
25 (A) (5), (E) (2). Those are the -- (E) (3) as well.

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1 Those would be the principal FCC rules that your  
2 Honor --

3 JUDGE JONES: And those are definitions?

4 MR. GRYZMALA: Under the tests. Under  
5 the tests.

6 MR. MAGNESS: Yeah. I think we may -- I  
7 would point you more to 51.5 which is the  
8 definitions.

9 MR. GRYZMALA: Right, agreed.

10 MR. MAGNESS: Of business line and of  
11 fiber-based colocater. I don't think we have a  
12 dispute about the number of fiber-based colocaters  
13 that constitute nonimpairment, for example. The  
14 number of business lines, those are simple  
15 quantitative things. It's really how you -- how you  
16 count business lines to get up to that number, how  
17 you count fiber-based colocaters to get up to that  
18 number. So I think we're fencing with each other  
19 mainly about the definitions of those two terms.

20 And, I mean, Mr. Gryzmala is right. I  
21 mean, there were discussions of impairment for  
22 transport and loops that, you know, we may reference  
23 those rules. But I think the primary focus is on  
24 those two definitions.

25 JUDGE JONES: Okay. I just need to get

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1 a head start so I'll know what the heck you-all are  
2 talking about.

3 MR. GRYZMALA: Did you say 51.5, Bill?

4 MR. MAGNESS: Yeah, that's right.

5 MR. GRYZMALA: Okay. I wrote 51.3, but  
6 it's 51.5.

7 MR. MAGNESS: Yeah.

8 MR. GRYZMALA: Okay. Good.

9 MR. MAGNESS: Yeah. In the appendix B  
10 in the TRRO of those -- those rules.

11 MR. GRYZMALA: Right.

12 MR. LUMLEY: Your Honor, if it would be  
13 helpful, perhaps when we make our filing about phases  
14 and proposed schedules, we could confirm those  
15 section references for you.

16 JUDGE JONES: That would be good. Did  
17 you-all hear what Mr. Lumley suggested?

18 MR. GRYZMALA: Uh-huh.

19 JUDGE JONES: Do you-all agree with  
20 that?

21 MR. MAGNESS: Certainly from NuVox's  
22 perspective we're happy to do that. I may have cast  
23 the net too wide, but give me a few minutes to look  
24 at it. We could probably give you a fairly  
25 straightforward answer.

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1 JUDGE JONES: And Mr. Gryzmala, do you  
2 agree with that?

3 MR. GRYZMALA: I think it's fair. If it  
4 replicates what we talked about this morning, I mean,  
5 Bill, I mean, on paragraphs 78 to 105, FCC rule 51.5  
6 and 51.319.

7 MR. MAGNESS: Uh-huh, pretty much it.

8 MR. GRYZMALA: Yeah.

9 MR. MAGNESS: That's pretty much it.

10 JUDGE JONES: Is there anything else we  
11 need to discuss on the record?

12 MR. GRYZMALA: Not for AT&T, your Honor,  
13 I don't believe, AT&T, Missouri.

14 MR. MAGNESS: I don't think anything for  
15 NuVox, your Honor. We'll just await the Orders you  
16 were -- you were contemplating.

17 JUDGE JONES: Okay.

18 MR. WILLIAMS: Note for Staff, I think  
19 I'll just point out, unlike the other parties in this  
20 case, the Commission Staff hasn't been involved in  
21 these issues in other states, so we're kind of behind  
22 the curve with regard to the other parties.

23 JUDGE JONES: Would either process  
24 benefit Staff, bifurcated -- single-phase or  
25 bifurcated process?

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1                   MR. WILLIAMS: We're gonna want to look  
2 at kind of like what Carl Lumley was saying, look at  
3 the data and get verification from CLECs about it.  
4 So I think the earlier we're engaged in doing that,  
5 the better.

6                   JUDGE JONES: And Mr. Dandino?

7                   MR. DANDINO: Yes, sir.

8                   JUDGE JONES: Do you have anything you'd  
9 like to add?

10                  MR. DANDINO: No, I have nothing to add  
11 to the proceeding right now.

12                  JUDGE JONES: Okay. Well, with that,  
13 then, we will go off the record.

14                  (WHEREUPON, the recorded portion of the  
15 scheduling conference was concluded.)

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