Exhibit No.:
Issue:
Witness: Joseph Gillan
Sponsoring Party: CLEC Coalition
Type of Exhibit: Rebuttal Testimony
Case No.: TO-2006-0360

REBUTTAL TESTIMONY OF

JOSEPH GILLAN

ON BEHALF OF THE CLEC COALITION

TO-2006-0360

April 27, 2007

Case No. T0-2006-0360
Rebuttal Testimony: Joseph Gillan
On Behalf of CLEC Coalition
April 27, 2007

STATE OF Montana)
) SS.
COUNTY OF Missoula)

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

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

AFFIDAVIT OF JOSEPH GILLAN

COMES NOW Joseph Gillan, of lawful age, sound of mind and being first duly sworn, deposes and states:

1. My name is Joseph Gillan. I am the consultant for CLEC Coalition.

2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony in the above-referenced case.

3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

Joseph Gillan

SUBSCRIBED AND SWORN to before me, a Notary Public, this 27th day of April, 2007.

Notary Public

My Commission Expires: 6-27-2009
(SEAL)

JAMES P. DENTON
NOTARY PUBLIC-MONTANA
Residing at Missoula, Montana
My Comm. Expires June 27, 2009

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**

REBUTTAL TESTIMONY OF JOSEPH GILLAN
ON BEHALF OF THE CLEC COALITION[1]

April 27, 2007

I. INTRODUCTION

Q. Please state your name and the party sponsoring your rebuttal testimony.

A. My name is Joseph Gillan. I am testifying on behalf of McLeodUSA Telecommunications Service, Inc. ("McLeodUSA"), NuVox Communications of Missouri, Inc. ("NuVox"), and XO Communications Services, Inc. ("XO")

[1] Members of the CLEC Coalition are McLeodUSA Telecommunications Services, Inc., NuVox Communications of Missouri, Inc., and XO Communications Services, Inc.

(collectively, the "CLEC Coalition"). I previously filed direct testimony in this proceeding.

Q. What is the purpose of your rebuttal testimony?

A. The purpose of my rebuttal testimony is to address AT&T Missouri's claim that the methodology it used to count business lines and fiber-based collocators complies with the *Triennial Review Remand Order* ("*TRRO*").[2] As I explain below, AT&T Missouri has not correctly applied the FCC's definition of "Business Line" or "Fiber-Based Collocator," and has instead adopted interpretations that were consistently designed to inflate the count of each.[3]

AT&T Missouri attempts to portray my testimony (or, rather, what they claimed *would be* my testimony) as recommending interpretations of the FCC's *TRRO* that would impose administratively costly steps.[4] As I explain below, none of my recommendations are administratively complex – indeed, for business lines, my primary recommendation is to simply use the exact same business line count as

---

[2] In the Matter of Unbundled Access to Network Elements, WC Docket No. 04-313, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 1-338 (rel. Feb. 4, 2005) ("*TRRO*").

[3] I focus my testimony on the testimony filed by AT&T Missouri. To the extent that Mr. Scheperle adopts AT&T Missouri's positions, however, the rebuttal points apply equally to staff.

[4] *See*, for instance, Direct Testimony of Carol Chapman (Chapman Direct) at 7:

> AT&T Missouri expects that the NuVox will propose an interpretation of the Business Line and/or Fiber Based Collocator Definition that relies upon data that are not objective, readily available to AT&T Missouri or simple to apply.

AT&T provided the FCC during its deliberations underlying the *TRRO*, while my recommendation for counting fiber-based collocators would eliminate a step grafted onto the process (and definition) by AT&T Missouri (*i.e.*, the counting of cross-connected carriers that are not themselves legitimate fiber-based carriers).

II. CALCULATING BUSINESS LINES

A. AT&T's Implicit Endorsement of the Simple Option

Q. What is the "simple option" that you recommended in your direct testimony?

A. The simple option described in my direct testimony is that the Commission use the 2003 business line count that AT&T Missouri provided to the FCC, and upon which the FCC relied in establishing its non-impairment thresholds. This would be the business line data provided by AT&T (then known as SBC) in its December 7, 2004 ex parte letter (cited by the FCC in the *TRRO* at ¶ 105, n. 322).

Q. Does AT&T recommend that the Commission rely on 2003 data?

A. Yes. Although AT&T is committed to 2003-vintage data *generally*,[5] AT&T

[5] Inexplicably, AT&T is also asking the Commission to use this same 2003 data in support of wire center designations effective December 16, 2005 and December 29, 2006. *See* Chapman Direct at 10. I address this aspect of AT&T's testimony – i.e., that the Commission should adopt

opposes using the *specific* 2003 data that AT&T provided to the FCC, even though this was the business line count that the FCC explicitly relied upon. Consequently, AT&T takes the odd position that 2003 is the right year, so long as the data differs from the data provided the FCC.

Q. Does AT&T Missouri agree that the data it provided the FCC (and which the FCC relied upon) was based on the same business line definition that the FCC adopted?

A. Yes. AT&T Missouri's own testimony is that the FCC's business line definition conforms to the data that it analyzed:

> In this way, Paragraph 105 of the *TRRO* makes clear that FCC's business line definition is the same as the definition used for the data the FCC analyzed.[6]

If the FCC's adopted business line definition is the same as the definition used for the data that AT&T provided the FCC, then the Commission cannot run afoul of the FCC's definition by using the very data analyzed by the FCC in the *TRRO*.

Q. Does AT&T Missouri's testimony show that it agrees that the 2003 data it filed in December 2004 is the data that the FCC relied upon?

---

three separate wire center lists, all relying on the same old data – in Section II(C) of my rebuttal testimony.

[6] Chapman Direct at 20 (emphasis added).

A. Yes. Ms. Chapman cites the specific paragraph in the *TRRO* in which the FCC indicated it was relying on AT&T Missouri's data (alongside similar data provided by the other RBOCs) and even italicized the relevant clause:

> Accordingly, *we* [the FCC] *base our analysis in this Order on the BOC data received in December*.[7]

Moreover, as I explained in my direct testimony, AT&T has taken the position that the FCC expected the states to use the exact same calculation as the FCC used in the *TRRO*:

> To make the matter even more clear, the FCC performed a "dry run" of the rule in the proceedings that led to the TRO Remand Order. It directed the incumbents to provide business line counts … [t]he incumbents complied, the FCC deemed the data sufficient to assess non-impairment, and it told the world that it expected the same calculations in practice.[8]

Using the same exact data as was used at the FCC would simplify the Commission's analysis and achieve the "apples-to-apples" consistency that AT&T has (otherwise) been so concerned with.[9] AT&T's own testimony is that the FCC's business line definition is the same as the definition used for the data

---

[7] *Ibid* at 21. Emphasis added by AT&T Missouri.

[8] Reply Brief of SBC Illinois, *Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 with Illinois Bell Telephone Company d/b/a SBC Illinois to Amend Existing Interconnection Agreements to Incorporate the Triennial Review Order and Triennial Review Remand Order*, Illinois Commerce Commission Docket No. 05-0442 (filed September 2, 2005) at 16-17 (emphasis added).

[9] As I explained in my direct testimony (Gillan Direct at 19), the data suggests that "business lines" are in decline. Consequently, future line counts are likely to be lower than those used here and it is unlikely that wire centers that have not already achieved the necessary thresholds will do so in the future. By using the same data as the FCC, the Commission may find that it need not return to these issues again.

the FCC analyzed. Indeed, AT&T claims that it is continuing to rely upon the same data that it provided to the FCC:

> Moreover, it [AT&T's position] relies upon the same data as that provided the FCC (upon which the FCC relied when making its impairment determinations).[10]

There is no more simple and direct path to establishing the initial wire center list – and no *other* way for the Commission's impairment determinations to match those of the FCC – than to rely on the same data that the FCC reviewed.[11]

B. The Administrative Convenience Defense

Q. If the Commission does not use the same data that the FCC relied upon, then what is the principal methodological issue it must resolve?

A. The principal methodological dispute between AT&T and the CLECs concerns whether each line must satisfy *every* sentence of the FCC's Business Line Rule, or instead can a line be counted (particularly a line that is part of a high capacity UNE loop) if it satisfies only *one* of the requirements in the rule. It is the CLEC view that the full definition must be complied with (specifically, that each line that is counted must provide switched service to a business customer), while

[10] Chapman Direct at 24.

[11] AT&T Missouri goes on to claim that the FCC adopted a business line definition "that is consistent with the data that it analyzed (the data provided by the ILECs)" (Chapman Direct at 22). It is impossible to reconcile these statements with a position that the Missouri Commission should not use the exact same data that the FCC used.

AT&T Missouri argues that a line may be counted merely because the capacity exists (even if it is not used to provide any service at all).

Q. What is AT&T Missouri's principal defense against fully complying with the FCC's business line definition by making sure that it only counts lines that provide switched service to business customers?[12]

A. AT&T Missouri's principal defense against applying the full business line definition is its claim that the FCC's overarching criterion was that its rules would rely on data that was readily available and simple to apply:

> … the FCC intended that its rules … be administratively simple by requiring evaluations of impairment to be based on "objective and readily identifiable facts" which the FCC identified.[13]
>
> ***
>
> Specifically, the FCC noted that the criteria it chose for the impairment tests:
>
> - are objective;
> - rely on data possessed by and readily available to the ILECs, and
> - are simple to apply.[14]

Q. Do you disagree that the FCC favored the use of data that was simple to develop?

---

[12] I fully explained how each sentence of the FCC's Business Line definition must be honored in my direct testimony and will not repeat that discussion here.

[13] Chapman Direct at 3. Footnotes omitted.

[14] *Ibid* at 6. Footnotes omitted.

A. No. My disagreement with AT&T Missouri is not that the FCC favored administrative convenience, but rather AT&T Missouri's claim that the only administratively convenient way to interpret and apply the FCC's definition of a business line is to ignore the full requirements of the FCC rule.

AT&T's position is demonstrably wrong. My direct testimony recommended an administratively simple method that respects the full requirements of the FCC rule – including the requirement that only lines used to provide switched services to business customers are to be counted – and I applied that methodology to the 2003 data provided by AT&T to propose a FCC-compliant list (Confidential Exhibit JPG-4).[15]

It is not "administrative convenience" that drives AT&T's position, it is merely the desire to inflate the business line count in hope of superseding thresholds established after the FCC reviewed a far lower business line count.[16]

Q. Has AT&T been candid with the Commission concerning the effort required to compile the business line count that it is sponsoring?

---

[15] The wire center list provided in Confidential Exhibit JPG-4 was marked as preliminary because it is based on 2003 data. At the time that my direct testimony was filed, AT&T was refusing to provide data for 2004. AT&T has since provided this information in response to an Order Granting CLECs' Motion to Compel and I have prepared an analysis of the updated data. *See* Section IV below.

[16] As I explain in Section IV below, AT&T's post-*TRRO* methodology increases its 2003 business line count by 23% compared to the data that it provided the FCC. *See* Confidential Exhibit JPG-7.

A. No. As I discussed above, AT&T places great emphasis on its claim that the FCC expected that the data needed to develop business line counts would be readily available. AT&T never explains, however, whether the data that its methodology uses meets this expectation.

For instance, AT&T points out in its testimony that the FCC expected the ILECs to rely on data that is already reported, specifically citing ¶ 105 of the *TRRO* and adding emphasis to the FCC's words as shown in the quote below:

> [A]s we define them, business line counts are an objective set of data *that incumbent LECs already have created* for other regulatory purposes.[17]

Later, in that same paragraph, the FCC specifically indicated its business line definition relied on UNE figures that were already being reported:

> [B]y basing our definition in an ARMIS filing required of incumbent LECs, and <u>adding UNE figures, which must also be reported</u>, we can be confident in the accuracy of the thresholds, and a simplified ability to obtain the necessary information.[18]

AT&T summarized the simplicity of the FCC's basic approach, noting:

> [The FCC] created a business line definition that depended upon <u>data already created by the ILECs</u> – ARMIS 43-08 business line data, UNE-P business line counts, and UNE Loop counts.[19]

---

[17] Chapman Direct at 20, citing *TRRO* ¶ 105 (emphasis added by AT&T).

[18] *TRRO* ¶ 105 (emphasis added).

[1919] Chapman Direct at 22. Emphasis added.

Q. Does AT&T's methodology count UNE loops in the same manner as the UNE Loop figures that it already reports?

A. No. Despite its constant references to the fact that the FCC expected the ILECs to use data that they already report, nowhere does AT&T explain that it does not report UNE Loop figures in the way that it is proposing to count such capacity here (where all high capacity UNE loops are converted to their maximum potential voice grade capacity).[20] Rather, AT&T Missouri reports the number of UNE loops directly (*i.e.*, without conversion).[21] Consequently, if the most important standard in judging whether a proposed methodology conforms to the FCC's definition is whether the data is *already* reported in the form being used, then the methodology of AT&T Missouri fails that test.

Q. If the Commission seeks to use data that is already reported -- and which produces the same impairment determinations as those of the FCC -- then what data must it use?

---

[20] Moreover, NuVox/XO requested the same data used to compile AT&T's claimed business line count (vintage 2003), for the years 2004 and 2005. Among other objections, AT&T argued that:

> The information, even if it could be assembled in the format in which the information responsive to DR 3 was formatted, would not be available for approximately ten to fourteen days.

See AT&T Missouri's Response to NuVox/XO's Supplemental Motion to Compel Responses to Discovery Requests, April 16, 2007 at 2. Obviously, if AT&T's methodology relied upon data that was already reported, there should be no delay in providing that data for 2004 and 2005.

[21] *See, e.g.*, instructions for Form 477 (FCC Local Competition Report), Part C-II, where ILECs report the number of UNE loop arrangements. Attached as Exhibit JPG-5.

A. There is only one set of data that satisfies these requirements, and that is the data AT&T *already reported* to the FCC in the *TRRO* proceeding on December 7, 2004. This is the only data that is readily available and can be expected to produce the same impairment determinations that the FCC reached. At the very least, the Commission should compare the results from alternative interpretations of the FCC's rules to this data, to determine which interpretation produces results that best approximates the business line data reviewed by the FCC. [I provide this comparison in Section IV of my rebuttal testimony, which analyzes data provided by AT&T in response to the Order Granting Motion to Compel Discovery Requests.[22]]

Q. AT&T's testimony indicates that it informed the FCC that it substantially changed its business line count (from that which the FCC relied upon) and the FCC has taken no action.[23] Should the Commission interpret FCC inaction as a "silent endorsement" of AT&T's position in this case?

A. No. It is not unusual for the FCC to be silent on controversial aspects of its Orders, particularly where a state process is available for parties to resolve differences of interpretation. The FCC specifically indicated that it expected

[22] *See* Order Granting Motion to Compel Discovery Requests, April 18, 2007 ("Order Granting Motion to Compel"). In accordance with the process adopted in that Order , I have isolated any testimony produced as a result of that Order to Section IV below.

[23] Chapman Direct at 21.

issues involving the implementation of the *TRRO* would be resolved before State Commissions, either in accordance with Section 252 or dispute resolution procedures:

> We expect that incumbent LECs and competing carriers will implement the Commission's findings as directed by section 252 of the Act. Thus, carriers must implement changes to their interconnection agreements consistent with our conclusions in this Order.[24]
>
> ***
>
> To the extent that an incumbent LEC seeks to challenge any such UNEs, it subsequently can raise that issue through the dispute resolution procedures provided for in its interconnection agreements. In other words, the incumbent LEC must provision the UNE and subsequently bring any dispute regarding access to that UNE before a state commission or other appropriate authority.[25]

C. Other Issues

Q. What vintage data should be used in establishing the number of business lines at a wire center?

A. If the Commission adopts my primary recommendation – *i.e.*, that it use the same data that the FCC relied upon in the *TRRO* – then the data would be from 2003.

[24] *TRRO* ¶ 233 (footnotes omitted).

[25] *TRRO* ¶ 234 (footnotes omitted).

This is the vintage data that AT&T Missouri recommends,[26] although it claims that a different count should be used than the count that the FCC reviewed.

If the Commission decides to recalculate the number of business lines (as AT&T Missouri is proposing), however, then there is no reason to use old data. Indeed, the *TRRO* indicates that the FCC expected that 2004 data would be used in those instances where new data was reviewed.

Q. Why do you state that the FCC expected that 2004 data would be used to establish wire center lists?

A. In ¶ 105 of the TRRO (which indicates that ARMIS 43-08 data should be used to determine the ILECs retail business lines), the FCC specifically referenced the 2004 ARMIS instructions, not the 2003 reports.[27] Had the FCC intended that 2003 data should be used, it could have easily cited the existing 2003 ARMIS files. The fact that the FCC pointed to the 2004 ARMIS instructions indicates that it expected the impairment findings to reflect the more current data that was due to be filed within three weeks of the *TRRO*.[28]

---

[26] Chapman Direct at 15.

[27] *See TRRO* fn. 303, ¶105.

[28] Indeed, all of BellSouth's proposed wire center lists were prepared based on 2004 ARMIS data.

In addition, the non-impairment criteria for loop unbundling require application of a two-pronged test that considers both the number of fiber-based collocators and the number of business lines. Obviously, both standards must be measured at the same point-in-time for the conjunctive tests for DS1 and DS3 UNE loops (*i.e.*, the wire center must exceed the requisite number of business lines and the required number of fiber-based collocators) to be satisfied. AT&T Missouri seeks to use business line counts as of December 2003, but then analyzes fiber-based collocator data from 2005.[29] It is inappropriate to reach impairment findings by combining data from two totally different time periods. Relying on December 2004 business line data reduces this discrepancy (although it does not correct it completely).

Q. AT&T Missouri has now eliminated UNE-P, which is one of the components of its business line count. Should AT&T be permitted to include lines served under its so-called commercial agreements (if any) in the business line count?

A. No. There is nothing in the FCC rule that references, much less permits, AT&T Missouri to count lines leased to CLECs under its so-called commercial agreements. Although AT&T asserts (in a footnote) that the FCC's rules permit it to count its so-called commercial UNE-P replacement offer, it cites no provision

[29] AT&T Missouri indicated that its collocation data was developed from inspections that continued throughout 2005, with some inspections occurring in December 2005 (two years after the business line data that it is proposing to use). See Nevels Direct at 6. AT&T does not indicate, however, which inspections were conducted in early 2005 compared to December of that year.

of the rule that does so.[30] Indeed, the basic structure of the rule suggests that such lines should not be counted. The typical "replacement offer" for a DS1 UNE where non-impairment takes effect is a DS1 special access line. While the DS1 UNE loop may be counted as a business line (and, indeed, AT&T would always count such loop at its maximum potential capacity), the FCC's rules make clear that after its conversion to special access it would no longer be counted at all.[31] The comparable treatment of UNE-P replacement lines would be that they too should not be counted. If AT&T Missouri wants to include commercial replacement lines in the business line count, then AT&T should petition the FCC to modify its rule to permit this treatment.

Q. AT&T has asked this Commission to approve three separate wire center lists, all relying on the same data (2003), but with differing effective dates (March 11, 2005, December 16, 2005 and December 29, 2006).[32] Do you agree?

A. No. This docket should adopt a single wire center list that is effective as of March 11, 2005. The fact that AT&T agreed to conditions that prohibited it from counting itself as a competitor should apply to this initial wire center list. There is nothing in the FCC Merger Order that implies that the SBC's agreement to exclude AT&T from its list of claimed fiber-based collocators did not apply to

[30] Chapman Direct at 12 (footnote 25).

[31] Rule § 51.5 (the definition of a "business line") prohibits an ILEC from counting any special access lines in its business line count.

[32] Chapman Direct at 10.

these initial wire center lists. Nor has AT&T undertaken *any* effort to update its information for any time period other than the period for which the initial list will be set. The Commission should hold AT&T to its commitment to exclude itself as a fiber-based collocator, establish this initial list, and move on.

III. COUNTING THE NUMBER OF FIBER-BASED COLLOCATORS

A. Cross-Connected Carriers Cannot Be Counted

Q. What is the principal issue in dispute with respect to how Fiber-Based Collocators should be counted?

A. The principal issue is that AT&T Missouri claims that it may count any carrier that is cross-connected to a legitimate fiber-based collocator, merely because the second (cross-connected) carrier is obtaining a service from the first (the carrier that actually operates the fiber network).[33] The FCC's definition of fiber-based collocator (and relevant text) makes clear, however, that only carriers operating networks should be counted, not carriers obtaining services.[34]

[33] Nevels Direct at 10.

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

Q. AT&T implies that the source of the dispute over the treatment of a cross-connected carrier is a disagreement about whether "ownership" is a requirement for a Fiber Based Collocator.[35] Is that a valid characterization of the CLEC position?

A. No, not at all. Indeed, the basis for Mr. Nevels' characterization of the issue in this manner is a mystery. The dispute has *nothing* to do with ownership; rather, the issue involves counting as fiber-based collocators only those carriers that operate a fiber-optic cable (or comparable facility) that leaves the wire center. AT&T claims that it may count carriers that are cross-connected to another carrier's network, even though the "cross-connected CLEC" does not operate any fiber cable that leaves the wire center, while the CLECs believe this approach violates the FCC rule.

Q. Do you have a schematic that helps illustrate this issue?

A. Yes. Exhibit JPG-6 illustrates the various ways in which CLECs may collocate in a wire center and interconnect. In Exhibit JPG-6, CLEC A is leasing dark fiber (from CLEC B) and lighting it with its own optronics. As I explained in my direct testimony,[36] in the unique event that a CLEC leases dark fiber under an

[35] Nevels Direct at 12.

[36] Gillan Direct at 24.

IRU and then lights that fiber with its own optronics, it may be considered a fiber-based collocator.

In comparison, CLEC C is obtaining a service from CLEC B, with its capacity multiplexed onto the network alongside capacity used by CLEC B. As the schematic clearly shows, CLEC C only has a service-level cross-connect to CLEC B. When a carrier obtains a service – irrespective of the capacity of that service or the technology used to connect to it[37] – it cannot be said to "operate" the fiber that leaves the wire center (which terminates at CLEC B's collocation cage).

The status of CLEC C represents the core of the dispute with AT&T – AT&T claims that it may count CLEC C even though the CLEC does not operate any fiber network that leaves the wire center.

Q. What is AT&T Missouri's explanation for its claim that it may count any carrier that is <u>cross-connected</u> to a fiber-based collocator as another fiber-based collocator?

[37] Typically, cross-connect arrangements use coaxial cable because of the short distances involved. In some situations, the cross-connect is a fiber cable, but that the cross-connect cable does not "leave the wire center" as required by federal rules Whether the cross-connect transmission medium is fiber or coax, however, makes no difference because in neither event does the configuration involve the termination of a fiber network (or comparable transmission medium) that leaves the wire center.

A. AT&T Missouri argues that a reference in the *TRRO* (¶ 102) -- addressing a collocation product that AT&T Missouri does not even offer – provides the justification for its position:

> We find that the collocation arrangement may be obtained by the competing carrier either pursuant to contract, tariff or, where appropriate, section 251(c)(6) of the Act, including less traditional collocation arrangements such as Verizon's CATT fiber termination arrangements.[38]

First, as the full citation makes clear, the FCC was not addressing the type of carrier that could be considered a fiber-based collocator (as the term is used in the *TRRO*), it was only addressing the different types of collocations that might qualify. More importantly, the citation never suggests that it would be appropriate to count both the CATT arrangement and every carrier that is cross-connected to each other, which is effectively what AT&T Missouri asserts.[39]

Second, and more importantly, the CATT arrangement discussed by the FCC is limited to instances where individual dark fiber strands are being spliced for distribution to different collocation arrangements. The arrangement is only applicable for the unique circumstance where a second carrier has obtained dark fiber and has "lit" that fiber using its own optronics. Therefore, the specific type of shared arrangement addressed by the CATT offering is the type of shared arrangement that I acknowledge *might* be counted – i.e., a carrier leasing dark

[38] *TRRO* ¶ 102.

[39] Indeed, the citation does not even say that the CATT arrangement *necessarily* satisfies the requirements of FBC rule, only that it *may*.

fiber under an IRU. AT&T Missouri's position that this unique circumstance supports a general conclusion that *any* cross-connected carrier should be counted is a complete fabrication and violates the FCC's rules.

Q. How does AT&T Missouri's approach violate the federal definition?

A. AT&T Missouri's approach violates the federal definition because it attempts to count the *same* fiber network multiple times. This interpretation is implausible, for it would mean that multiple carriers were each operating the same network and terminating the same network multiple times. Even had the FCC not made clear that a dark fiber IRU was the *only* way that a second carrier could be counted using the same fiber cable (but different strands), the FCC's requirement that the fiber-based carrier *operate* the network, and terminate a fiber that is *leaving* the wire center means that only *one* Fiber-Based Carrier per network may be counted.[40]

[40] AT&T Missouri may argue (on rebuttal) that it is difficult to confirm that a second carrier has a dark fiber IRU. There is nothing in the *TRRO* that requires AT&T Missouri to conduct more of a review that it wants to; it can, after all, choose to not explore these relationships and not attempt to count multiple carriers using the same fiber cable. AT&T can visually observe a single fiber-optic cable entering its wire center (which means that the fiber leaves it) and can trace it to a collocation, permitting it count one fiber based collocator. AT&T Missouri can gather additional facts from any future collocation through the collocation-application process if it believes that additional collocations are supporting fiber-based collocators and it could easily have verified the facts for this wire center list (as Staff did).

B. Comparable Transmission Facility

Q. Is AT&T Missouri's interpretation of "comparable transmission facility" reasonable?

A. No. The sole criteria that AT&T Missouri uses to judge whether a transmission facility is comparable to fiber is whether it can support a single DS-3.[41] This criterion is deficient in two material respects: (1) the required *level* of capacity is inadequate; and (2) there is no reference to a transmission facility's ability to support the level of capacity at any reasonable *distance*. AT&T Missouri claims that coaxial cable can be "comparable" to a fiber-optic transmission line,[42] even though AT&T Missouri itself acknowledges that it would not use this type of facility for interoffice transmission. As AT&T (in the form of SBC-Texas) explained:

> SBC Texas would use coax cross-connections for DS-3 inter/intra-equipment, intra-building connections. For speed requirements higher than DS-3, multiple DS-3 requirements, or connections longer than 900 feet, SBC Texas would typically place optical equipment and a fiber cross-connection.[43]

[41] Nevels Direct at 9.

[42] In the two instances where AT&T Missouri counted cross-connected carriers, the observed connection was coaxial cable. Nevels Direct at 15.

[43] See AT&T Missouri Response to NUVOX-XO Communications Request No. 1, RFI No. 1-1 (asking that AT&T Missouri indicate whether it concurred in full with the cited response by SBC Texas).

AT&T Missouri confirmed that this statement was true for it as well. Any "theory" that counts a facility as "comparable" to a fiber-based interoffice network when that type of facility is not even used for inter-office applications, is clearly flawed.

Q. Is it reasonable to define a transmission facility as being comparable to fiber, even though it is capable of carrying only a fraction of a fiber network's capacity and, even then, only for short distances?

A. No. It is absurd to define a transmission facility as "comparable" to fiber based on the facility being able to carry the *minimum* capacity that could be supported by a fiber network, and even then only for a minimal distance. Comparability must be based on what level of capacity is *typically* associated with fiber capacity.

Q. Is AT&T's "single DS3 standard" consistent with its own description of the typical fiber-optic cable?

A. No. AT&T Missouri itself describes the typical fiber optic network leaving an AT&T wire center as follows:

> A single fiber optic cable leaving an AT&T Missouri wire center will contain several hundred fiber strands which can easily support up to 20 carriers. These 20 carriers can all have four fiber stands dedicated to their use. The four strands could support an OC-192 system which could in turn support multiple collocated carriers.[44]

[44] Nevels Direct at 14.

Thus, while AT&T Missouri's witness Mr. Nevels claims that any transmission medium capable of supporting a single DS-3 should be considered "comparable" to a fiber-optic cable, he later -- in the very same testimony -- describes a fiber-optic cable leaving its wire center as having the capability to supply 3,840 DS-3s of capacity (*i.e.*, 20 carriers, each with 192 DS-3s of capacity). Obviously, against this description, even the standard that I recommend – that is, that the transmission medium be capable of at least three DS-3s – is exceedingly conservative, while AT&T Missouri's "single DS-3" standard is plainly absurd.

Q. Has the FCC provided guidance as to the levels of capacity that should be expected from a fiber optic transport facility?

A. Yes. The FCC determined that a carrier should be able to deploy its own transport facility when its transport needs reached 12 DS3s of capacity from a wire center and, therefore, placed a cap on the number of DS3 transport UNEs a carrier could lease on any route:

> On those routes for which we find impairment for DS3s, we limit the availability of DS3 transport. Although we find that sufficient revenue opportunities generally are not available to justify the deployment of competitive transport facilities on these routes, we nevertheless establish a safeguard to limit access to a carrier that has attained a significant scale on such a route indicating that more than sufficient potential revenues exist to justify deployment, we find no impairment. We give effect to this distinction, as we did in

> the *Triennial Review Order*, by establishing a limitation of 12 DS3s per carrier for any route on which carriers are not impaired.[45]

The corollary to the FCC's finding that a carrier would no longer be impaired once it reached the 12 DS3 (OC-12) level is that the Commission should not expect fiber optic transport facilities to be deployed below the OC-12 levels of capacity. This is certainly the case in my experience – carriers simply do not deploy single DS-3 transport networks.

Q. Has the FCC already <u>rejected</u> the claim that transport facilities can be deployed at the level of a single DS3?

A. Yes. In the *TRO*, the FCC specifically rejected the argument that a carrier could reasonably deploy a transport facility operating at the level of a single DS3:

> The potential revenue stream associated with a single DS3 is far less than the revenue stream associated with aggregating traffic that requires an OCn circuit, yet the cost to deploy the facilities can be practically the same. *See* AT&T Oct. 4, 2002 *Ex Parte* Letter, Attach. at 12 (stating that transmission electronics generally do not scale with demand). Accordingly, it takes a longer period of time for a competitive LEC to recover its costs of deploying a single DS3 transmission facility.[46]

[45] *TRRO* ¶ 131.

[46] *TRO* fn. 1195.

Q. You have recommended that a transport facility be capable of at least 3 DS3s of capacity before it is considered "comparable" to a fiber optic cable.[47] Is this a *conservative* recommendation?

A. Yes. In the *TRO*, the FCC indicated that the *lower* boundary for when a competitive transport facility would be deployed would be 3 DS3s:

> Consistent with our analysis of dark fiber transport, we find that as a carrier develops traffic along a route consisting of multiple DS3s worth of capacity, it can overcome barriers to entry including sunk costs and economies of scale such that it can prepare to self-deploy transmission facilities or optronic equipment to activate dark fiber…. Based on the predominance of record evidence, we establish a maximum number of twelve unbundled DS3 transport circuits that a competing carrier or its affiliates may obtain along a single route. *In making this decision, we considered a wide range of evidence in the record. For instance, BellSouth states that one-third of its end offices require only three DS3 transport circuits or less. Meanwhile, competitive LECs assert that it is not economic for them to deploy transport facilities with less than ten to eighteen DS3 circuits on a route.* Moreover, the record shows that carriers have deployed transmission facilities at the twelve DS3 level and above to serve enterprise customers, in areas across the country, and to provide wholesale transmission services and facilities to carriers. In limiting the unbundling obligation on a route to twelve DS3 circuits per carrier, we recognize that we are engaging in an act of line-drawing.[48]

There is simply no basis to conclude that a fiber optic transport facility would operate at the exceedingly low levels of capacity (a single DS3) asserted by AT&T Missouri. As the FCC's analysis indicates, the *lowest* plausible capacity would be three DS3s, with 12 DS3s (or greater) far more common.

---

[47] Gillan Direct at 27.

[48] *TRO* ¶ 388 (footnotes omitted)(emphasis added).

IV. ANALYSIS OF AT&T DATA RESPONSE

Q. What is the purpose of this section of your testimony?

A. The purpose of this section of my testimony is to quantify the recommendations in my direct testimony that could not (at the time my direct testimony was filed) be analyzed because AT&T had refused to provide answers to relevant discovery questions. Since that direct testimony was filed, AT&T has been ordered to respond and I now have the data needed to quantify the recommendations in my direct testimony.[49] Specifically, I provide analysis quantifying the recommendations in my direct testimony addressing (a) the importance of the 2003 business line count data that AT&T provided the FCC during its deliberations in the *TRRO* proceeding[50] and, to the extent that the Commission does not rely on the same data the FCC reviewed, (b) the need to develop a rule-compliant business line count for 2004.[51]

Q. How did you recommend that the Commission use the 2003 business line data that AT&T provided the FCC?

---

[49] Order Granting Motion to Compel Discovery Requests, April 18, 2007 ("Order to Compel").

[50] Gillan Direct at 8.

[51] Gillan Direct at 17.

A. As I explained in my direct testimony, the Commission could use this data in two ways:

> First, the business line count data that AT&T-Missouri provided the FCC could be used directly to reach impairment/non-impairment findings for this, the initial wire center list.
>
> ***
>
> Alternatively, the business line data provided to the FCC can be used indirectly to judge the reasonableness of alternative interpretations of the business line definition…. The closer the result is to the calculation relied upon by the FCC, the more closely the Commission's impairment findings will track those of the FCC.[52]

Confidential Exhibit JPG-7 provides the wire center list based on the 2003 data provided by AT&T to the FCC.[53] Confidential Exhibit JPG-8 compares the 2003 data provided by AT&T to the FCC to (a) the 2003 business line count calculated using the methodology AT&T Missouri is recommending here and (b) to the 2003 business line count calculated using the methodology recommended by the CLECs and described in my direct testimony. Confidential Exhibit JPG-8 demonstrates that the CLEC methodology produces results significantly closer to the data reviewed by the FCC (and which the FCC relied upon to establish its non-impairment thresholds) than the methodology AT&T Missouri recommends.

[52] Gillan Direct at 8 -9.

[53] Using the business line count provided by AT&T to the FCC changes two wire center designations (compared to AT&T Missouri's claims here). SPFDMOTU becomes a Tier 3 wire center (transport) and DS3 UNE Loops would remain available at STLSMO21.

Q. What other analysis have you performed using the data provided by AT&T in response to the Order to Compel?

A. My direct testimony also explained that, should the Commission decide not to use the same 2003 data that the FCC relied upon, the Commission should use 2004 data which is the year the FCC's language in the *TRRO* specifically references.[54] Confidential Exhibit JPG-9 provides the non-impaired wire center list that results when business lines are calculated based on 2004 data.[55] This data is for the year referenced by FCC in the *TRRO* and is for a point-in-time much closer to the dates in which AT&T collected information on Fiber-Based Collocators (February 2005 to December 2005).[56]

V. RECOMMENDATION

Q. What is your recommendation?

A. My primary recommendation is that the Commission adopt the wire center list in Confidential Exhibit JPG-7 (which is based on the same wire center data as the

[54] Gillan Direct at 18, noting the *TRRO*'s reference directed parties to the 2004 ARMIS instructions, not the 2003 data.

[55] Wire center designations using the 2004 data and the CLEC methodology are the same as the wire center designations based on the business line count provided by AT&T to the FCC. These designations (compared to the wire center designations claimed by AT&T Missouri) differ for two wire centers: SPFDMOTU becomes a Tier 3 wire center (transport) and DS3 UNE Loops would remain available at STLSMO21.

[56] Nevels Direct at 6.

FCC relied upon). Alternatively, the Commission should adopt the CLEC methodology and the wire center list in Confidential Exhibit JPG-9 (2004). Although the methodologies and time period differ, adopting either recommendation produces the same initial wire center list.[57]

Q. Does this conclude your rebuttal testimony?

A. Yes.

[57] As I explained earlier, the fact that the CLEC methodology produces results that are consistent with the data reviewed by the FCC – and, therefore, produces impairment determinations consistent with those adopted by the FCC – demonstrates that the CLEC methodology is a better interpretation of FCC rules than the methodology proposed by AT&T Missouri.