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

<u>CLEC COALITION'S POST-HEARING REPLY BRIEF</u>

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COME NOW McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"), NuVox Communications of Missouri, Inc. ("NuVox") and XO Communications Services, Inc. ("XO") (collectively referred to as the "CLEC Coalition") and file their Post-Hearing Reply Brief in accordance with the procedural order entered in this case.

I. SUMMARY OF ARGUMENT

The issues in this case have been litigated before many state commissions and two federal courts. If the Commission chooses to rely on guidance from other states' decisions, there is a clear pattern to those decisions.[1] Most state commissions and federal courts that have heard the issues in this case: (a) endorsed the CLEC Coalition's views on the disputes related to the FCC's "Fiber-Based Collocator" definition, and (b) accepted AT&T's views on the "Business Line" definition. All state commissions have approved a single state-specific wire center classification list for their states, rather than different classification lists for different points in time.[2]

The rulings recommended by AT&T and Commission Staff would have the Commission part company with other state commissions and federal courts, and chart a course that would make Missouri an outlier among the states implementing the FCC's *Triennial Review Remand Order* ("*TRRO*"). If the Commission approves the legal theories advanced by AT&T (and accepted by Staff, apparently without question or substantive analysis), Missouri will drift far from the mainstream on these sensitive competitive issues. Specifically, the AT&T/Staff view regarding the FCC's "Fiber-Based Collocator" rule is shared by only one of the numerous state

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[1] The prior state commission and court decisions are listed in Judge's Exhibit A submitted jointly by the CLEC Coalition and AT&T Missouri on July 23, 2007.

[2] CLEC witness Mr. Gillan's summary at hearing is consistent with the decisions listed on Judge's Exhibit A: "[T]ypically AT&T loses on its fiber-based collocator interpretation. Typically CLECs … lose on the business line interpretation. There have been some states where the CLECs have won both. I think there's been one state or one or two states that [AT&T] won both. That's basically how it has generally shaken out … ." Tr. at 241.

commissions that have heard AT&T's arguments on the issue. (*See* Issue B.) It has been explicitly rejected by the only federal court to have ruled on the issue. Moreover, before BellSouth was part of AT&T, BellSouth did not even advocate AT&T's strained and illogical reading of the FCC's Rule, even though it would have been just as self-serving for BellSouth to advocate it as it is for AT&T Missouri to do so here. There is good reason for the widespread rejection of AT&T's position: AT&T's "collo-to-collo cross-connect" and "comparable transmission facility" theories comply with neither the text nor the underlying purpose of the FCC's *TRRO*. Staff's endorsement of AT&T's position on this issue parrots the AT&T rationale, but provides no explanation for why Missouri should accept it when so many other states and a federal court have flatly rejected it.

In addition, AT&T Missouri's desire for approval of several wire center classification lists is unprecedented in any state proceeding, and is not supported by the evidence in this case. (*See* Issue F.) AT&T asks the Commission to give it what no other state has: multiple wire center classification lists that permit AT&T to shirk commitments it made as a condition of FCC approval of the SBC/AT&T merger to remove "old AT&T" collocations from its wire center classification lists. Under the FCC's "Fiber-Based Collocator" Rule, AT&T cannot count as Fiber-Based Collocators any carrier that is affiliated with AT&T. Once the AT&T/SBC merger closed, therefore, the collocations that formerly belonged to pre-merger AT&T could not, according to the FCC's Rule, be counted when determining "non-impairment" of a wire center. Before the merger closed, however, AT&T/SBC committed to the FCC that it would not count pre-merger AT&T collocations as "Fiber-Based Collocators" in its wire center classifications.

AT&T/SBC issued a revised wire center classification list almost immediately after the merger closed that conformed its non-impairment designations to its merger commitment. It is that post-merger wire center classification list that has been subject to review and approval by state commissions in every state in which members of the CLEC Coalition have participated in proceedings similar to this one. In this case, however, AT&T Missouri asks the Commission to not only approve the list actually in effect today, but also approve a different list that reflects the world before AT&T and SBC merged. In essence, AT&T is seeking an opportunity to backbill CLECs based on wire center classifications that pretend AT&T is still a separate company from – and a company competing with – present day AT&T.

II. WIRE CENTER CLASSIFICATIONS RECOMMENDATION

As discussed in testimony and prior briefs, the CLEC Coalition proposes that the Commission adopt a single wire center classification list that provides certainty to the parties and reflects marketplace reality. The Coalition's proposal relies on the factual information provided by Missouri CLECs in response to discovery, on discovery responses from AT&T, and on an interpretation of the FCC's *TRRO* and accompanying federal Rules that is consistent with the text and spirit of the FCC's decisions. The CLEC Coalition's recommendation is similar to AT&T's in many respects; the Coalition agrees with AT&T's statement in its post-hearing brief that the "bottom-line classification" recommended by the parties is the same for numerous Missouri wire centers.[3] The CLEC Coalition recommendation will result in a significant reduction in the availability of unbundled high-capacity loops and transport in Missouri. The differences arise from removal of the overreaching aspects of AT&T's proposal, including AT&T's desire to adopt multiple lists that pretend "old AT&T" is still in existence and competing with "new AT&T."

[3] Post-Hearing Brief of AT&T Missouri at 6.

The *TRRO* classifies wire centers based on the number of "Business Lines" served from that wire center and "Fiber-Based Collocators" present in the wire center. A DS-1 or DS-3 dedicated transport route is "non-impaired" if one or both of the two end points on that route meet the criteria for a "Tier 1" or a "Tier 2" wire center. Missouri wire centers that are not identified as either a Tier 1 or a Tier 2 wire center fall into the remaining "Tier 3" category. Dedicated transport UNEs remain available in all Tier 3 wire centers. The impairment status of DS-1 and DS-3 high capacity loops is also based on combinations of Business Line and Fiber-Based Collocator threshold numbers spelled out in the FCC's Rule**.**

Where the "Loop Unbundling" column in the table below is left blank, the wire center does not qualify as "non-impaired" for any type of UNE loop. Notably, the evidence did not support "non-impairment" findings affecting DS-1 loops in any wire center, only DS-3 loops in certain wire centers. The CLEC Coalition recommends that the Commission approve the following wire center classifications for the wire centers at issue in this proceeding:[4]

CLEC Coalition Recommended Wire Center Classifications

Wire Center Name	Transport Tier	Loop Unbundling
Hiland	1	
Westport	1	
McGee	1	No DS3 Loops
Springfield McDaniel	1	
Springfield Temple	1	
Springfield Tuxedo	3	
Chestnut	1	No DS3 Loops
Jefferson	1	
Parkview	2	
Prospect	2	
Ladue	1	
Creve Couer	1	
Kirkwood	2	
Bridgeton	2	

[4] This recommendation is included in CLEC Exhibit 1 (Exhibit JPG-9 to the Direct Testimony of Joseph Gillan). The detailed HC information in Mr. Gillan's exhibit is removed here for purposes of presenting a public version of the Coalition's recommendation.

In the remainder of this Reply Brief, the CLEC Coalition responds to other parties' post-hearing briefs regarding each of the questions on the list of disputed issues.

III. <u>ISSUES ON DISPUTED ISSUES LIST</u>

Issue A(1): Should the Business Line count include all UNE-L lines or only UNE-L lines used to provide switched service to business end users?

The Business Line count should include only those switched access lines used to serve business customers. To interpret the FCC's Rule otherwise would be inconsistent with its terms. The first sentence of the FCC's Business Line definition states:

> A business line is an incumbent LEC-owned switched access line used to serve a business customer, whether by the incumbent LEC itself or by a competitive LEC that leases the line from the incumbent LEC.[5]

This sentence establishes two basic conditions for finding that a line qualifies as a "Business Line": (1) only *business* lines (as opposed to residential) are to be counted; and (2) whether the line should be counted is not affected by whether it is served by AT&T or by a CLEC leasing the line from AT&T.

AT&T/Staff focus on another sentence in the Business Line definition that says that "all UNE loops" should be included in counting Business Lines, and on the sentence in *TRRO* ¶ 105 that refers to UNE loops without specifying "business UNE loops."[6] The core problem with the AT&T/Staff approach is that it concludes that because the FCC's language does not specify "business UNE loops," it means that residential lines can be counted as "Business Lines." If this was the FCC's intent, however, the FCC would not have written the first sentence in the Business Line definition to restrict Business Lines to "lines used to serve a business customer"

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[5] 47 C.F.R. 51.5.

[6] *See, e.g.*, Staff's Posthearing Brief at 3.

(quoted above). Staff's initial brief makes no effort to reconcile this inconsistency, but rather simply relies on AT&T's view of the Rule (which, not surprisingly, results in a higher Business Line count more favorable to AT&T's interests). The Coalition recommends that the entire Rule be interpreted in a manner that renders it internally consistent.

Issue A(2): Should the Business Line count for digital UNE-L be based on the loop's capacity or on the loop's usage?

The FCC's Business Line definition requires that the line "be used to serve a business customer."[7] The FCC further limits the Business Line category by explicitly stating that the only lines to be counted are those "access lines connecting end-user customers with incumbent LEC end-offices for switched services."[8] Therefore, according to the Rule, an access line "used to serve a business customer" cannot be counted unless that access line is also providing "switched services." That means that of the 24 potential lines on a DS-1, the "Business Lines" cannot include those that are providing non-switched services or those sitting unused as spare capacity.

Staff and AT&T urge the Commission to focus not on the substantive limits the FCC placed on what constitutes a Business Line, but to focus exclusively on the last sentence of the definition. The last sentence, however, provides only an example of how a DS-1 should be counted. A DS-1 could be counted as a single line (the way it is provisioned), or it could be counted as up to 24 lines (because it has the capacity to provide 24 lines of switched services). The FCC's ARMIS reporting system, for example, instructs ILECs to count only lines "connecting end-user customers with their end offices for switched services."[9] In the ARMIS system, a DS-1 is counted as a single line, not as 24 lines. In the Business Line definition, on the other hand, the FCC made clear that a DS-1 should be counted on a per-channel basis, *i.e.*,

[7] 47 C.F.R. 51.5.

[8] *Id.*

[9] Exhibit 1 (Gillan Direct, Exhibit JPG-2, FCC ARMIS Report 43-08 Instructions, p. 20).

recognizing that a DS-1 could potentially provide 24 lines of switched services. That counting instruction does not, however, say that the portion of the Rule limiting Business Lines to lines used to provide switched services no longer applies. The FCC still requires that of the 24 lines of DS-1 capacity, the "Business Lines" to be counted are only those that meet the other requirements of the FCC's definition.

Staff and AT&T explain their willingness to ignore the "switched services" limitation by claiming that AT&T's methodology is the only "administrable" way to count DS-1 lines. Their arguments disregard the fact that the CLEC Coalition presented an administratively simple method for establishing the proportion of CLEC DS-1 capacity used for switched services. The CLEC Coalition's recommendation relies on a previous decision of this Commission as well as testimony from AT&T's own witnesses in previous proceedings. The Coalition's recommendation is not complex, and it honors the entirety of the FCC's Business Line definition – rather than just the last sentence.

Issue A(3): On what vintage of data should the Business Line counts supporting the wire center designations rely?

In Missouri, the evidence shows that use of 2003 or 2004 data does not affect the outcome. The initial wire center list will not change depending on the vintage of the data used. The CLEC Coalition recommendation presented in Section II above is based on calculations using the 2004 ARMIS data, but the wire center tiers and non-impairment results would be the same using 2003 ARMIS data.

The CLEC Coalition recommends that the Commission base its Business Line counts on the actual 2003 ARMIS business line data that the FCC used to formulate its impairment criteria. AT&T Missouri's wire center list uses 2003 data, but inflates it by applying its incorrect interpretations of the FCC's Business Line definition to the data. If 2003 data is used, it should be the actual data relied on by the FCC, not AT&T's re-shaping of that data. Alternatively, the CLEC Coalition recommends the Commission order the wire center classifications be re-calculated based on more recent 2004 ARMIS data. In the *TRRO*, the FCC referred to 2004 ARMIS instructions when explaining how ILECs should prepare wire center classification lists. The FCC certainly did not preclude use of more updated data for state-specific wire center determinations.

Issue B(1): Does the definition of Fiber-based Collocator include collo-to-collo arrangements in which the connecting carrier establishes service without providing optronics for fiber that leaves the wire center?

No. The "collo-to-collo" arrangement articulated by AT&T/Staff does not meet the FCC's standard in the *TRRO* for identifying "Fiber-Based Collocators" ("FBC"). The post-hearing briefs added no new arguments that were not already addressed in prior CLEC Coalition briefs. In sum, AT&T's and Staff's position would turn every collocated carrier that leases transmission capacity from any provider other than AT&T into an FBC, which is directly contrary to the text and intent of the FCC's Rule. In essence, it permits AT&T to count an FBC twice: once itself, and again by counting any other carrier that leases capacity from the FBC. This approach serves AT&T's objective of increasing the number of FBCs in a wire center, but fails to tie non-impairment to the criteria the FCC identified as indicative of its rationale for eliminating unbundling—namely, the demonstrable presence of multiple alternative providers of high-capacity dedicated transport or loops in a particular wire center.

The "collo-to-collo" argument advanced by AT&T has been rejected by every state that has heard it save one. The only federal court to have interpreted the FCC's FBC definition flatly rejected the legal argument AT&T advances here, holding in May 2007 that "when a fiber-based collocator is cross-connected with another collocator, the second cross-connected collocator should not be counted as a fiber-based collocator for purposes of determining wire center designations."[10] The federal court decision is consistent with numerous state commission decisions rejecting AT&T's self-serving "collo-to-collo" theory. For example:[11]

Illinois: The presence of several carriers with fiber facilities in a single wire center indicates that the market condition of the wire center is one that can economically support the deployment of CLEC fiber facilities. The FCC looked at the high costs involved with fiber deployment when defining impairment. *TRRO*, ¶ 98. Counting one FBC's investment in fiber facilities more than once, as proposed by [AT&T], does not show that the wire center can economically support the deployment of multiple CLEC fiber facilities.

Texas: [I]n order for a collocated carrier's equipment to operate a fiber-optic cable or comparable transmission facility that leaves the wire center, the collocator's fiber-transmission equipment must be directly connected to that transmission facility and cannot be routed through (e.g. cross-connected to) an unaffiliated carrier's collocated equipment located in the same central office.

Kansas: Even if SWBT could convince the Commission that DS3s constitute "comparable transmission facilities", the Commission would conclude SWBT's fiber-based collocators count was fatally flawed because SWBT considered the cross-connecting collocators as "operating" the fiber-based collocator's fiber-optic cable in some fashion. It is the Commission's experience that an operator of a fiber-optic cable provides surveillance of the integrity of the system, responds to trouble reports and undertakes routine maintenance. Cross-connecting collocators do not perform any of these functions and, thereby, do not qualify as "operators" of a fiber-optic cable.

Oregon: Wire center non-impaired status classification is a permanent, i.e., irreversible, act and should therefore be firmly based in fact. Company A was not shown to have either ownership or an indefeasible right of use of facilities from another carrier, the standard enunciated in paragraph 102, Note 292, of the *TRRO*. Thus, Company A's leasing of fiber circuits without any ownership or operation of a fiber optic network does not fulfill the language of the *TRRO* for "fiber-based collocators."

AT&T's continued advocacy of its widely discredited position is understandable: if AT&T is successful AT&T will eliminate additional unbundling alternatives for competitors. It is more puzzling that Staff would take up this outlier position since: (a) the overwhelming weight of authority is contrary to AT&T's position; and (b) Staff advances no support for its position

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10 *Michigan Bell Tel. Co. d/b/a AT&T Michigan v. Lark*, 2007 WL 1343691, at *7 (E.D. Mich. May 8, 2007).

11 Full citations to each of these decisions are included in Judge's Exhibit A, filed jointly by AT&T Missouri and the CLEC Coalition on July 23, 2007.

other than citations to AT&T's testimony. The Commission's adoption of Staff's position would put Missouri in the company of only one other state in adopting a legal position that has already been rejected by a reviewing federal court.

Issue B(2): How should the term "comparable transmission facility" be defined?

The CLEC Coalition agrees with Staff's conclusion (although not its reasoning) that the Commission need not define "comparable transmission facility,"[12] but only if the Commission rejects the "collo-to-collo" arrangement as an FBC. A carrier is correctly counted as an FBC if it owns (or has an indefeasible right to use) fiber that terminates in a wire center and leaves the wire center, or if it operates a network (such as fixed wireless) that provides alternative high capacity dedicated transport alternatives to other collocated carriers. The CLEC Coalition has seen no evidence that – for the legitimate FBCs identified by AT&T in Missouri – any FBC is relying on "comparable transmission facilities" to qualify.

Rather, the "comparable transmission facilities" portion of the FBC definition becomes controversial only if the Commission adopts AT&T/Staff's "collo-to-collo" theory. This is because the CLEC that is merely cross-connected to a legitimate FBC on a "collo-to-collo" basis has no fiber of its own terminating in its collocation or leaving the wire center. To try to force this non-FBC into the FCC's definition, AT&T has to claim that the jumper cable (typically a co-axial cable) that connects the FBC to the cross-connected carrier is a "comparable transmission facility." This strained application of the term, however, flies in the face of how the FCC used the term in the *TRRO*.

For example, the FCC found that fixed wireless systems could qualify as "comparable transmission facilities" because while "fixed-wireless carriers' collocation arrangements may not

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[12] *See* Staff's Posthearing Brief at 5.

literally be fiber-based, [they] nevertheless signal the ability to deploy alternative transport facilities." *TRRO* ¶ 102 (emphasis supplied). A coaxial cable connecting one carrier to another within a wire center does nothing to "signal the ability to deploy alternative transport facilities." The coaxial cable (with only DS-3 capacity) does not leave the wire center for use in the interoffice transport network. It makes no engineering or business sense to equate a piece of coaxial cable with interoffice fiber or interoffice fixed wireless networks, and the FCC did not contemplate such jumper cables being "comparable" to a fiber cable that actually leaves the wire center.

The AT&T/Staff position requires a finding that the coaxial jumper cable is indeed a "comparable transmission facility," because the "collo-to-collo" theory falls completely apart without that finding. Similarly, any finding that a particular CLEC is an FBC based on the "collo-to-collo" theory also relies on the qualification of the jumper cable as being comparable to fiber deployed in the network between wire centers. If the Commission prudently rejects the "collo-to-collo" theory, it is not necessary to define "comparable transmission facility" any further than it is already defined in the *TRRO* and the FCC's FBC definition – both of which make clear that the coaxial DS-3 jumper cable does not meet the definition.

Issue B(3): Should NuVox be counted as a Fiber-based Collocator in the locations specified by AT&T Missouri?

No. NuVox's sworn affidavit provides the only evidence regarding NuVox's status as an FBC.[13] NuVox's affidavit makes plain that NuVox has a "collo-to-collo" cross-connect to another carrier in the wire center in question. NuVox could only be an FBC if AT&T's generally discredited "collo-to-collo" theory is adopted by the Commission (*see supra*, Issue B(1) above).

[13] The affidavit is in evidence in Exhibit 22, Scheperle Direct Testimony, HC Schedule 2C, at 28-29.

If the Commission rejects the "collo-to-collo" theory, there is no evidence supporting NuVox being identified as an FBC in the relevant wire centers.

In its post-hearing brief, Staff argues that NuVox should be considered an FBC. Why? Because "AT&T witness Chapman [testified] that the NuVox collocation arrangement meets the definition of a fiber-based collocator."[14] With all due respect, the fact that AT&T says it is so cannot be sufficient evidence when the witness' testimony is based on a misinterpretation and misapplication of the FCC's Rule. As discussed in the CLEC Coalition's pre-hearing brief, Ms. Chapman's testimony is based entirely on her "collo-to-collo" theory, and is supported not by actual knowledge of the NuVox collocation, but on her unsubstantiated speculation.

As Staff argues in its post-hearing brief, there may be another carrier that qualifies as an FBC in the wire center in dispute. CLEC witness Mr. Gillan did not dispute this, although there is no record evidence verifying the other carrier's status. That does not, contrary to Staff's contention, make NuVox an FBC. The answer to the question posed in Issue B(3) is therefore clearly a "No."

Issue C: In March 2005, AT&T Missouri identified fourteen wire centers (Hiland, Westport, McGee, Springfield McDaniel, Springfield Temple, Chestnut, Jefferson, Ladue, Creve Coeur, Springfield Tuxedo, Parkview, Prospect, Kirkwood, and Bridgeton) as Tier 1 wire centers. The non-impairment criteria for dedicated interoffice transport facilities for a Tier 1 wire center is that the wire center has at least four fiber-based collocators or at least 38,000 business access lines, or is a tandem switching location with no line-side switching facilities but serving as a point of traffic aggregation accessible by CLECs. Did AT&T Missouri correctly identify these fourteen wire centers as non-impaired under the Tier 1 wire center criteria for dedicated interoffice transport facilities? Lou Ann this needs to be justified.

No. AT&T over-counted the number of wire centers qualifying as Tier 1. As discussed in detail above, AT&T Missouri's proposed methodology for implementing the FCC's Business Line and Fiber-Based Collocator criteria incorrectly inflates the counts for both criteria. Staff

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14 Staff Posthearing Brief at 6.

witness Mr. Scheperle's concurrence in AT&T's flawed methods led him to affirm every designation made by AT&T. Moreover, for the reasons discussed in the CLEC Coalition's initial post-hearing brief, there is no factual evidence (aside from AT&T's unreliable hearsay testimony) supporting AT&T's assertion that the following wire centers should be classified as Tier 1 non-impaired: Bridgeton, Kirkwood, Parkview, Prospect, and Tuxedo.

Issue D: As a result of a merger commitment associated with the SBC/AT&T merger, in December 2005, AT&T Missouri re-classified five of these wire centers (Springfield Tuxedo, Parkview, Prospect, Kirkwood and Bridgeton) as Tier 2 wire centers. The non-impairment criteria for dedicated interoffice transport facilities for a Tier 2 wire center is that the wire center has at least three fiber-based collocators or at least 24,000 access lines. Has AT&T Missouri correctly identified these five wire centers as non-impaired under the Tier 2 wire center criteria for dedicated interoffice transport facilities?

Four of the five wire centers are identified correctly as Tier 2 in AT&T Missouri's designation: Parkview, Prospect, Kirkwood, and Bridgeton. The Springfield Tuxedo wire center should be classified as a Tier 3 wire center. Springfield Tuxedo has two (2) verified Fiber-Based Collocators, rather than the four (4) identified by AT&T.[15]

Issue E: In March 2005, AT&T Missouri identified three wire Centers (McGee, Chestnut and Ladue) as non-impaired for DS3 capacity loops. The non-impairment criteria for DS3 capacity loops is that the wire center has at least four collocators and at least 38,000 business lines. Did AT&T correctly identify these three wire centers as non-impaired under the criteria for DS3 criteria loops?

No. AT&T incorrectly identified one of these wire centers as meeting the non-impairment criteria for DS3 loops. The Ladue wire center does not have over 38,000 Business Lines. Only AT&T's over-count of Business Lines in the Ladue wire center results in its inclusion on the list of wire centers in which AT&T Missouri is no longer required to provide DS3 UNE loops. AT&T Missouri correctly identified the McGee and Chestnut wire centers as unimpaired for DS3 UNE loops.

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[15] *See* Exhibit 3, Gillan Rebuttal Testimony, HC Exhibit JPG-9 (summarized in the table in Section II of this brief).

Issue F: Should the Commission approve a separate wire center list applicable to the period between March 2005 and December 2005?

No. The Staff's post-hearing brief identifies portions of the SBC/AT&T merger conditions that are relevant to AT&T's commitment to remove pre-merger AT&T collocations from lists of FBC.[16] One of those commitments was that AT&T "shall exclude fiber-based collocation arrangements established by AT&T or its affiliates in identifying wire centers in which SBC claims there is no impairment." SBC and AT&T voluntarily agreed not to identify AT&T as an FBC, and to file revised data reflecting the "recount" of FBCs within thirty days of the completion of the merger. The FCC's Order approving the merger described the merger condition this way: SBC and AT&T "commit to exclude fiber-based collocation arrangements established by AT&T or its affiliates in identifying wire centers in which SBC claims there is no impairment pursuant to section 51.319(a) and (e) of the Commission's rules."[17] The FCC adopted the commitments by SBC and AT&T as formal conditions to merger approval.[18] In its Order approving the merger, the FCC stated that it took "comfort" that the merger would not have anti-competitive effects based in part on the "voluntary commitments which the Applicants [SBC and AT&T] have made" removing AT&T FBC from wire center lists.

While Staff's brief correctly quotes the merger conditions, it fails to take them into account. As detailed in the CLEC Coalition's pre-hearing brief, the merger conditions remove pre-merger AT&T collocations from post-merger AT&T's wire center classification lists. Yet AT&T asks this Commission to approve a wire center list that adds those AT&T collocations

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16 Staff Posthearing Brief at 1-2.

17 FCC WC Docket No. 05-65, In the Matter of SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control, Memorandum Opinion and Order, FCC Rcd 18290, 18317, ¶ 51 (rel. Nov. 17, 2005).

18 *Id.* at 18291, ¶ 2 ("[W]e note that the Applicants [SBC and AT&T] have offered certain voluntary commitments. Because we find these commitments will serve the public interest, we accept them and adopt them as conditions of our approval of the merger.")

back in, solely for purposes of backbilling CLECs for UNEs. AT&T asks the Commission to permit it, in 2007, to charge CLECs higher rates for a period in 2005 based on the existence of old AT&T collocations that now belong to new AT&T.

Staff endorses AT&T's request without question or explanation.[19] Staff's recommendation drains the meaning from a voluntary commitment that the FCC found important to preventing the SBC/AT&T merger from having anti-competitive effects. In addition, it would result in Missouri being the first state in the nation to approve multiple wire center classification lists that give AT&T the ability to limit unbundling as if the SBC/AT&T merger had never happened.

IV. CONCLUSION

For all the reasons stated, the CLEC Coalition respectfully requests that the Commission rule consistently with the recommendations presented by the CLEC Coalition on the issues on the Issues List filed in this proceeding.

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19 Staff Posthearing Brief at 8.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was served upon the attorneys for all parties on the following list by U.S. Mail, fax, or email on this 13th day of August, 2007.

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