

DIRECT TESTIMONY
OF
JAMES ZOLNIEREK

POLICY DEPARTMENT
TELECOMMUNICATIONS DIVISION
ILLINOIS COMMERCE COMMISSION

ILLINOIS COMMERCE COMMISSION ON ITS OWN MOTION
IN THE MATTER OF IMPLEMENTATION OF THE FEDERAL
COMMUNICATIONS COMMISSION'S TRIENNIAL REVIEW ORDER WITH
RESPECT TO POTENTIAL NON-IMPAIRMENT DETERMINATIONS
REGARDING UNBUNDLED LOCAL SWITCHING FOR MASS MARKET
CUSTOMERS IN SPECIFIC MARKETS

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1 **Q. Please state your name and business address.**

2 A. My name is James Zolnierrek and my business address is 527 East Capitol
3 Avenue, Springfield, Illinois 62701.

4

5 **Q. By whom are you employed and in what capacity?**

6 A. I am employed by the Illinois Commerce Commission (“Commission” or
7 “ICC”) as the Manager of Policy Department within the Public Utility
8 Bureau’s Telecommunications Division.

9

10 **Q. Please state your education background and previous job**
11 **responsibilities.**

12 A. I earned my Bachelors of Science degree in mathematics from Michigan
13 State University in 1990, my Master of Arts degree in economics from
14 Michigan State University in 1993, and my Doctor of Philosophy degree in
15 economics from Michigan State University in 1996.

16

17 I have been a Visiting Professor of Economics in the Department of
18 Economics at both the University of Nebraska and Arizona State
19 University. Prior to joining the Illinois Commerce Commission I was
20 employed by the Federal Communications Commission (“FCC”) in the
21 Common Carrier Bureau, Industry Analysis Division.

22

23 **Overview**

24

25 **Q. What is the purpose of your testimony?**

26 A. I will present my analysis, assessment, and findings regarding potential
27 non-impairment determinations for unbundled local switching for mass
28 market customers located in markets that are within the portion of SBC
29 Illinois' ("SBC's") service territory that is included in the Chicago-
30 Naperville-Joliet, IL-IN-WI Metropolitan Statistical Area ("Chicago MSA").

31

32 In addition, I address the analysis and recommendations of witnesses for
33 both SBC and intervenors, including those of SBC Witnesses William C.
34 Deere¹, William E. Taylor², and W. Karl Wardin³, those of Allegiance
35 Telecom of Illinois, Inc. ("Allegiance") Witness Lawrence E. Strickling⁴,
36 those of MCIMetro Access Transmission Services LLC and WorldCom,
37 Inc. d/b/a MCI ("MCI") Witness Terry L. Murray⁵, those of AT&T
38 Communications of Illinois, Inc., TCG Chicago, TCG Illinois, Access One,
39 Inc., Bullseye Telecom, Inc., CIMCO Communications, Inc., Forte
40 Communications, Inc., and Globalcom, Inc. ("The CLEC Coalition")

¹ ICC Docket No. 03-0595, Direct Testimony of William C. Deere on Behalf of SBC Illinois, SBC Illinois Ex. 1.0 ("Deere Direct").

² ICC Docket No. 03-0595, Direct Testimony of William E. Taylor on Behalf of SBC Illinois, SBC Illinois Ex. 2.0 ("Taylor Direct").

³ ICC Docket No. 03-0595, Direct Testimony of W. Karl Wardin on Behalf of SBC Illinois, SBC Illinois Ex. 4.0 ("Wardin Direct").

⁴ ICC Docket No. 03-0595, Direct Testimony of Lawrence E. Strickling on Behalf of Allegiance Telecom of Illinois, Inc., Allegiance Exhibit 1.0 ("Strickling Direct").

⁵ ICC Docket No. 03-0595, Testimony of Terry L. Murray on Behalf of MCIMetro Access Transmission Services LLC and WorldCom, Inc. d/b/a MCI ("MCI") ("Murray Direct").

41 Witness Joseph Gillan⁶, those of AT&T Communications of Illinois, Inc.
42 (“AT&T”) Witness Scott L. Finney⁷, those of Access One, Inc., Bullseye
43 Telecom, Inc., CIMCO Communications, Inc., and Forte Communications,
44 Inc. (“Access One/Bullseye/CIMCO/Forte”) Witness William A. Capraro
45 Jr.⁸, those of Z-TEL Communications, Inc. (“Z-TEL”) Witness George
46 Ford⁹, those of Talk America, Inc. and Sage Telecom, Inc. (“Sage/Talk
47 America”) Witness Dr. A. Daniel Kelley¹⁰, those of Talk America, Inc.
48 Witness Gabriel Battista¹¹, and those of Sprint Communications Company,
49 L.P. (“Sprint”) Witnesses Daniel R. Gordon¹² and James R. Burt.¹³

50

51 **Impairment Evaluation Process – TRO Guidelines**

52

53 **Q. Has the FCC provided guidelines for this Commission to follow when**
54 **making findings regarding potential non-impairment determinations**
55 **for unbundled local switching for mass market customers?**

⁶ ICC Docket No. 03-0595, Direct Testimony and Exhibits of Joseph Gillan on Behalf of AT&T Communications of Illinois, Inc., TCG Chicago, TCG Illinois, Access One, Inc., Bullseye Telecom, Inc., CIMCO Communications, Inc., Forte Communications, Inc., and Globalcom, Inc. (“The CLEC Coalition”), CLEC Coalition Ex. JPG 1.0 (“Gillan Direct”).

⁷ ICC Docket No. 03-0595, Direct Testimony of Scott L. Finney on Behalf of AT&T Communications of Illinois, Inc., AT&T Ex. 1.0P (“Finney Direct”).

⁸ ICC Docket No. 03-0595, Direct Testimony of William A. Capraro Jr. on Behalf of Access One, Inc., Bullseye Telecom, Inc., CIMCO Communications, Inc., Forte Communications, Inc. (“Capraro Direct”).

⁹ ICC Docket No. 03-0595, Direct Testimony of George Ford on Behalf of Z-Tel Communications, Inc. (“Ford Direct”).

¹⁰ ICC Docket No. 03-0595, Direct Testimony of Dr. A. Daniel Kelley on Behalf of Talk America Inc. and Sage Telecom, Inc. (“Kelley Direct”).

¹¹ ICC Docket No. 03-0595, Direct Testimony of Gabriel Battista on Behalf of Talk America, Inc. (“Battista Direct”).

¹² ICC Docket No. 03-0595, Direct Testimony of James R. Burt on Behalf of Sprint Communications Company, L.P., Regarding Unbundled Local Switching for Mass Market Customers, Sprint Ex. 2.0 (“Burt Direct”).

56 A. Yes. The FCC prescribed a well-defined process that the Commission is
57 to use in making findings regarding potential non-impairment
58 determinations for unbundled local switching for mass market customers?
59 As an initial matter the Commission is to assess actual deployment as
60 measured by two local switching triggers; a self-provisioning trigger and a
61 wholesale facilities trigger.¹⁴ The FCC prescribes further action
62 dependent on the results of this “trigger analysis.”

63
64 If either trigger is met then the FCC rules require, with a limited exception,
65 that the Commission find “that a requesting carrier is not impaired without
66 access to local circuit switching on an unbundled basis in a particular
67 market.”¹⁵ The exception in the FCC’s guidelines occurs if the
68 Commission determines that the self-provisioning trigger and the self-
69 provisioning trigger alone is met and that “some significant barrier to entry
70 exists such that service to mass market customers is foreclosed even to
71 CLECs that self-provision switches.”¹⁶ In such circumstances, based on
72 an “exceptional sources of impairment analysis”, the Commission may
73 petition the FCC for “a waiver of the application of the trigger, to last until
74 the impairment to deployment identified by the state no longer exists.”¹⁷

75

¹³ ICC Docket No. 03-0595, Direct Testimony of Daniel R. Gordon on Behalf of Sprint Communications Company, L.P., Regarding Unbundled Local Switching for Mass Market Customers, Sprint Ex. 1.0 (“Gordon Direct”).

¹⁴ 47 C .F.R. § 51.319(d)(2)(iii)(A).

¹⁵ 47 C .F.R. § 51.319(d)(2)(iii)(A).

¹⁶ TRO at ¶ 503.

¹⁷ TRO at ¶ 503.

76 If neither trigger is met then, with a limited exception, the FCC has
77 determined that a requesting CLEC is impaired without access to
78 unbundled local mass market switching.¹⁸ The exception occurs if the
79 Commission determines in a “potential deployment analysis”, based on
80 FCC defined criteria, that self-provisioning of local switching is
81 economic.¹⁹ If the Commission determines that self-deployment is
82 economic then the Commission “shall find that requesting carriers are not
83 impaired without access to unbundled local switching in a particular
84 market.”²⁰

85

86 **Q. Do the guidelines in the TRO afford this Commission any discretion**
87 **in making non-impairment determinations for unbundled local**
88 **switching for mass market customers?**

89 A. Yes. However, it is my understanding that the Commission is to exercise
90 discretion within the parameters defined in the FCC’s rules.²¹ In particular,
91 the FCC specified that it directed the use of the triggers in order to “avoid
92 the delays caused by a protracted proceeding” and in order to “minimize
93 administrative burdens.”²² The FCC has, as it states, strived to provide

¹⁸ 47 C.F.R. § 51.319(d)(2)(iii)(A).

¹⁹ 47 C.F.R. § 51.319(d)(2)(iii)(B).

²⁰ 47 C.F.R. § 51.319(d)(2)(iii)(B).

²¹ In its Triennial Review Order the FCC declared its intent to establish “...objective, carefully defined criteria for determining where unbundling is (and is not) appropriate” in order “...to ensure that states undertake the tasks we give them consistently with the statute’s substantive standards and stay within the parameters of federally established guidelines.” TRO at ¶ 428.

²² TRO at ¶ 498.

94 bright-line rules to guide the Commission.²³ The recommendations I make
95 here are therefore constrained by and in some instances defined by the
96 FCC's TRO rules.

97

98 **Trigger Analysis**

99

100 ***Staff Data and Maps***

101

102 **Q. Have you compiled competitive information for this proceeding?**

103 A. Yes. I have compiled two sets of data and created numerous maps
104 depicting this data that I rely on to make my recommendations below. I
105 obtained this information from the responses of CLECs and SBC to
106 requests for information issued by both Staff and SBC, from SBC's direct
107 testimony in this proceeding, and from various government publications.
108 A data set containing competitive information is attached as Schedule JZ
109 1.01 to my testimony. A data set containing county area, housing and
110 population statistics is attached as Schedule JZ 1.02.

111

112 **Q. Please summarize the data that you have included in Schedule JZ**

113 **1.01.**

114 A. Schedule JZ 1.01 contains 153 records one for each SBC wire center in
115 the Chicago MSA. For each wire center I provide the following
116 information:

²³ TRO at ¶ 498.

- 117 ▪ The SBC wire center name
- 118 ▪ The 8-Digit SBC CLLI code for the wire center
- 119 ▪ The access area (A, B, or C) where the wire center is located
- 120 ▪ The county where the wire center is located
- 121 ▪ The number of SBC retail lines in the wire center
- 122 ▪ An indicator variable indicating whether *****BEGIN CONF XXXXXXXX**
123 **END CONF ***** self provides local mass market switching in the wire
124 center (1 if yes, 0 if no)
- 125 ▪ An indicator variable indicating whether *****BEGIN CONF XXX END**
126 **CONF***** self provides local mass market switching in the wire center
127 (1 if yes, 0 if no)
- 128 ▪ An indicator variable indicating whether *****BEGIN CONF XXX END**
129 **CONF***** self provides local mass market switching in the wire center
130 (1 if yes, 0 if no)
- 131 ▪ An indicator variable indicating whether *****BEGIN CONF XXXX END**
132 **CONF***** self provides local mass market switching in the wire center
133 (1 if yes, 0 if no)
- 134 ▪ An indicator variable indicating whether *****BEGIN CONF XXXXX END**
135 **CONF***** self provides local mass market switching in the wire center
136 (1 if yes, 0 if no)
- 137 ▪ An indicator variable indicating whether *****BEGIN CONF XXX END**
138 **CONF***** self provides local mass market switching in the wire center
139 (1 if yes, 0 if no)

- 140 ▪ An indicator variable indicating whether *****BEGIN CONF XXX END**
141 **CONF***** self provides local mass market switching in the wire center
142 (1 if yes, 0 if no)
- 143 ▪ An indicator variable indicating whether *****BEGIN CONF XXX END**
144 **CONF***** self provides local mass market switching in the wire center
145 (1 if yes, 0 if no)
- 146 ▪ An indicator variable indicating whether *****BEGIN CONF XXX END**
147 **CONF***** self provides local mass market switching in the wire center
148 (1 if yes, 0 if no)
- 149 ▪ An indicator variable indicating whether *****BEGIN CONF XXXXXX**
150 **END CONF***** self provides local mass market switching in the wire
151 center (1 if yes, 0 if no)
- 152 ▪ The total number of mass market local switching self providers in the
153 wire center (excludes *****BEGIN CONF XXXXXX END CONF*****)
- 154 ▪ The total number of CLECs with collocation arrangements in the wire
155 center
- 156 ▪ An indicator variable indicating whether the wire center contains at
157 least one mass market local switching self provider (excludes
158 *****BEGIN CONF XXXXX END CONF*****)
- 159 ▪ An indicator variable indicating whether the wire center contains three
160 or more CLECs with collocation arrangements

- 161 ▪ An indicator variable indicating whether the wire center contains three
162 or more mass market local switching self providers (excludes
163 ***BEGIN CONF XXXX END CONF***)
- 164 ▪ The name of the market that I recommend the Commission include the
165 wire center in for purposes of the local switching self provisioning
166 trigger analysis
- 167 ▪ An indicator variable indicating whether the wire center is included in a
168 market that satisfies the FCC's local switching self provisioning trigger.

169

170 **Q. Do the number of wire centers included in Schedule JZ 1.01 equal**
171 **the number of wire centers reflected in the information of SBC's**
172 **Witnesses in this proceeding?**

173 A. No. SBC witness Deere indicates that there are 152 wire centers in the
174 Chicago MSA.²⁴ Schedule JZ 1.01 contains 155 wire centers that are
175 contained within the Chicago MSA. Presumably, the figure cited by Mr.
176 Deere is in reference to the wire centers listed in SBC Illinois Ex. 1.0,
177 Proprietary Attachment WCD-2, which contains a list of 153 wire centers.
178 While this list contains 153 wire centers, it includes one unnamed wire
179 center. This wire center is identified in Mr. Deere's schedule by the 8-digit
180 CLLI code ORPKILOW. I have identified this wire center by the name
181 Orland Park West in Schedule JZ 1.01. I presume that Mr. Deere simply
182 failed to count this unnamed wire center. Including this wire center would
183 raise Mr. Deere's total count to 153 wire centers.

184

185 In addition, SBC Illinois Ex. 1.0, Proprietary Attachment WCD-2 also omits
186 two wire centers that are included in both SBC Illinois Ex. 1.0, Proprietary
187 Attachment WCD-6 and SBC Illinois Ex. 4.0, Proprietary Attachment
188 WKW-1. These wire centers are identified by the 8-digit CLLI codes
189 LNSRILAB and VNHLILAF and I have identified them in Schedule JZ 1.01
190 respectively as Lincolnshire and Vernon Hills. Including these two wire
191 centers would raise Mr. Deere's total count to 155 wire centers.

192

193 Finally, I note that SBC Illinois Ex. 4.0, Proprietary Attachment WKW-1
194 includes a reference to the wire center with the 8-digit CLLI code
195 NPVLILSW. This wire center does not appear in Mr. Deere's attachments
196 and I have not included it in Schedule JZ 1.01.

197

198 **Q. Does the CLEC information that you have compiled from CLEC**
199 **responses to Staff and SBC information requests match the data that**
200 **SBC Witness Wardin compiled from these same sources and**
201 **presented in Proprietary Attachment WKW-1?**

202 A. No. There are a few differences between the provisioning information I
203 have compiled and included Schedule JZ 1.01 for *****BEGIN CONF XX**
204 **END CONF***** and *****BEGIN CONF XX END CONF***** and that reported
205 in Proprietary Attachment WKW-1. Specifically, I have indicated that
206 *****BEGIN CONF XXX END CONF***** self-provides mass market service in

²⁴ Deere Direct at 18.

207 the Northbrook (NBRKILNBP) wire center, while SBC has not.²⁵ I have not
208 indicated that *****BEGIN CONF XX END CONF***** self-provides mass
209 market service in the Highland Park (HGPKILHP) wire center, while SBC
210 has.²⁶ I have indicated that *****BEGIN CONF XX END CONF***** self-
211 provides mass market service in the Northbrook (NBRKILNB) wire center,
212 while SBC has not.²⁷

213
214 In addition, Attachment WKW-1 includes provisioning information for
215 *****BEGIN CONF XXXX END CONF***** which I have not included in
216 Schedule JZ 1.01. In addition, while I have included *****BEGIN CONF**
217 **XXX END CONF***** information, I have not included this information in
218 tabulations or totals, nor do I base my recommendations on this
219 information. There is no information in the record that indicates that these
220 CLECs are currently providing mass market switching over their own
221 switches.

222
223 Finally, I include provisioning information for *****BEGIN CONF XXXXXX**
224 **END CONF***** in Schedule JZ 1.01 that is not included in Attachment
225 WKW-1. *****BEGIN CONF XXXXX END CONF***** information is

25 ***** BEGIN CONF XX**
XX
XX
XX
XX
XX
XXXXX END CONF***

26 *****BEGIN CONF XXXXXXXXXXXXX END CONF*****

27 *****BEGIN CONF XXXXXXXXXXXXX END CONF*****

226 presumably not included in Attachment WKW-1 because of the fact that
227 *****BEGIN CONF XXXX END CONF***** did not provide this information to
228 either Staff or SBC until after SBC’s direct testimony was filed.²⁸

229
230 The provisioning information I have independently compiled and included
231 for *****BEGIN CONF XX END**
232 **CONF***** matches that included in WKW-1.

233
234 **Q. Is there any CLEC information contained in Schedule JZ 1.01 that**
235 **you have taken from SBC’s filing, but have not independently**
236 **confirmed?**

237 A. Yes. *****BEGIN CONF XXXX END CONF***** reported to Staff that it self-
238 provides mass market switching in two Aurora and five Chicago wire
239 centers, but did not identify those wire centers with specificity.²⁹ I have
240 relied on SBC information that identifies the seven specific wire centers
241 that *****BEGIN CONF XXXX END CONF***** did not include in its
242 response to Staff.³⁰ All other information that I compiled for *****BEGIN**
243 **CONF XXXXXX END CONF***** matches that reported by SBC in
244 Attachment WKW-1.

245

²⁸ *****BEGIN CONF XX END**
CONF***

²⁹ *****BEGIN CONF XX END**
CONF***

³⁰ SBC Illinois Ex. 4.0, Proprietary Attachment WKW-1.

246 In addition, the information which I have included for *****BEGIN CONF**
247 **XXXXXXXX END CONF***** is that reported by SBC in Attachment WKW-1.
248 As indicated above, I have included this information, but my
249 recommendations and the trigger analysis do not, at this time, rely on the
250 *****BEGIN CONF XXXX END CONF***** information.

251

252 **Q. Please summarize the data in Schedule JZ 1.02.**

253 A. Schedule JZ 1.02 contains data for eight of the nine Illinois counties in the
254 Chicago MSA. According to the Office of Management and Budget, the
255 Chicago MSA includes Cook County, DeKalb County, DuPage County,
256 Grundy County, Kane County, Kendall County, McHenry County, Will
257 County and Lake County.³¹ The Chicago MSA also includes counties in
258 Indiana and Wisconsin that are outside the scope of this analysis. For
259 each county in Schedule JZ 1.02 I provide the following information:

- 260 ▪ The county name
- 261 ▪ The population
- 262 ▪ The number of housing units
- 263 ▪ The area (in square miles)
- 264 ▪ The water area (in square miles)
- 265 ▪ The land area (in square miles)
- 266 ▪ The population per square land mile
- 267 ▪ The number of housing units per square land mile

268

269 I also include one record in this table that contains the eight-county total
270 for each of the reported pieces of information.

271

272 **Q. Have you provided maps that depict the Staff competitive**
273 **information?**

274 A. Yes. I have included a number of maps that depict the information
275 contained in Schedule JZ 1.01. These maps contain information variously
276 by MSA (which, for the Chicago MSA, is a collection of counties), county,
277 wire center, and access area (which is a collection of SBC wire centers).
278 The MSA, county, and state boundary information and mapping software
279 (ArcView 8) I used in my analysis were produced by ESRI, 280 New York
280 Street, Redlands, CA 92373-8100. The wire center boundaries used in
281 my analysis are taken from Wire Center Premium, which is produced by
282 Geographic Data Technology, Inc. (GDT), Lebanon, NH 03766-1445.

283

284 There are four wire centers included in Schedule JZ 1.01 that are not
285 included in Wire Center Premium. These wire centers are the Lincolnshire
286 (LNSRILAB), Schaumburg North (SCBGILRS), Vernon Hills (VNHLILAF),
287 and Aurora West (AURRILAW) wire centers.

288

289 I have attached four schedules with maps to my testimony: Schedule JZ
290 1.03 contains maps that present an overview of relevant information for
291 the entire Chicago MSA; Schedule JZ 1.04 contains maps that present an

³¹ Office of Management and Budget Bulletin No. 03-04, June 6, 2003, Attachment at 27.

292 overview of relevant information for the three Illinois access areas (Access
293 Areas A, B, and C); Schedule JZ 1.05 contains maps that present county
294 level detail for Lake and Kane Counties; and Schedule JZ 1.06 contains
295 maps depicting local self-provisioning mass market switch provider
296 footprints in the Chicago MSA.

297

298 **Q. Please summarize the maps that you have included in Schedule JZ**
299 **1.03.**

300 A. Schedule JZ 1.03, which contains maps that present an overview of
301 relevant information for the entire Chicago MSA, includes the following
302 maps:

- 303 ▪ Map 1 - A MSA map depicting county and SBC wire center borders
- 304 ▪ Map 2 – A MSA map overlaying wire centers with three or more self-
305 provisioning mass market switch providers on county and SBC wire
306 center borders
- 307 ▪ Map 3 – A MSA map overlaying wire centers with one or more self-
308 provisioning mass market switch providers on county and SBC wire
309 center borders
- 310 ▪ Map 4 – A MSA map overlaying wire centers with three or more
311 collocated CLECs on county and SBC wire center borders
- 312 ▪ Map 5 – A MSA map overlaying wire centers with 20,000 or more SBC
313 retail lines on county and SBC wire center borders

- 314 ▪ Map 6 – A MSA map overlaying wire centers with one or more self-
315 provisioning mass market switch providers, three or more collocated
316 CLECS, and 20,000 or more SBC retail lines on county and SBC wire
317 center borders
- 318 ▪ Map 7 – A MSA map overlaying wire centers that I recommend the
319 Commission conclude are in markets where triggers are met on county
320 and SBC wire center borders

321

322 **Q. Please summarize the maps that you have included in Schedule JZ**
323 **1.04.**

324 A. Schedule JZ 1.04, which contains maps that present an overview of
325 relevant information for the three Illinois access areas (Access Areas A, B,
326 and C), includes the following maps:

- 327 ▪ Map 1 – A MSA map overlaying the three Illinois access areas on SBC
328 wire center borders
- 329 ▪ Map 2 – A MSA map overlaying wire centers with three or more self-
330 provisioning mass market switch providers on access area borders
- 331 ▪ Map 3 – A MSA Map overlaying access areas on county borders

332

333 **Q. Please summarize the maps that you have included in Schedule JZ**
334 **1.05.**

335 A. Schedule JZ 1.05, which contains maps that present county level detail for
336 Lake and Kane Counties, includes the following maps:

- 337 ▪ Map 1 – A map of the SBC wire centers in Kane County
- 338 ▪ Map 2 – A map overlaying wire centers with three or more self
- 339 provisioning local switch providers on Kane County wire center borders
- 340 ▪ Map 3 – A map overlaying wire centers with one or more self-
- 341 provisioning mass market switch providers, three or more collocated
- 342 CLECS, and 20,000 or more SBC retail lines on Kane County wire
- 343 center borders
- 344 ▪ Map 4 – A map depicting the wire centers assigned to the two Kane
- 345 County markets (West Kane County and East Kane County) that I
- 346 recommend the Commission adopt
- 347 ▪ Map 5 – A map of the SBC wire centers in Lake County
- 348 ▪ Map 6 – A map overlaying wire centers with three or more self
- 349 provisioning local switch providers on Lake County wire center borders
- 350 ▪ Map 7 – A map overlaying wire centers with one or more self-
- 351 provisioning mass market switch providers, three or more collocated
- 352 CLECS, and 20,000 or more SBC retail lines on Lake County wire
- 353 center borders
- 354 ▪ Map 8 – A map depicting the wire centers assigned to the two Lake
- 355 County markets (Northwest Lake County and Southeast Lake County)
- 356 that I recommend the Commission adopt

357

358 **Q. Please summarize the maps that you have included in Schedule JZ**

359 **1.06.**

360 A. Schedule JZ 1.06, which contains maps depicting local self-provisioning
361 mass market switch provider footprints in the Chicago MSA, includes the
362 following maps:

- 363 ▪ Map 1 – A MSA map depicting wire centers where *****BEGIN CONF**
364 **XXXXX END CONF***** self-supplies local mass market switching
- 365 ▪ Map 2 – A MSA map depicting wire centers where *****BEGIN CONF**
366 **XXXX END CONF***** self-supplies local mass market switching
- 367 ▪ Map 3 – A MSA map depicting wire centers where *****BEGIN CONF**
368 **XXXX END CONF***** self-supplies local mass market switching
- 369 ▪ Map 4 – A MSA map depicting wire centers where *****BEGIN CONF**
370 **XXXX END CONF***** self-supplies local mass market switching
- 371 ▪ Map 5 – A MSA map depicting wire centers where *****BEGIN CONF**
372 **XXXX END CONF***** self-supplies local mass market switching
- 373 ▪ Map 6 – A MSA map depicting wire centers where *****BEGIN CONF**
374 **XXXX END CONF***** self-supplies local mass market switching
- 375 ▪ Map 7 – A MSA map depicting wire centers where *****BEGIN CONF**
376 **XXXXX END CONF***** self-supplies local mass market switching
- 377 ▪ Map 8 – A MSA map depicting wire centers where *****BEGIN CONF**
378 **XXXXX END CONF***** self-supplies local mass market switching
- 379 ▪ Map 9 – A MSA map depicting wire centers where *****BEGIN CONF**
380 **XXXX END CONF***** self-supplies local mass market switching
- 381 ▪ Map 10 – A MSA map depicting wire centers where *****BEGIN CONF**
382 **XXXX END CONF***** self-supplies local mass market switching

383

384 **Q. A number of your schedules associate wire centers and counties.**

385 **Are wire center and county boundaries consistent?**

386 A. No. Numerous SBC wire centers in the Chicago MSA are contained in
387 part within multiple counties. However, I assigned each SBC wire center
388 in the Chicago MSA to a unique county based upon the location of the
389 geographic center of the wire center area. Where the Commission's
390 mapping software was unable to make such an assignment I assigned
391 wire centers based upon the size of the portion of the wire center
392 contained in each county. For those wire centers not included in the Wire
393 Center Premium product I assigned wire centers to counties by mapping
394 the wire center CLLI codes to rate exchange areas contained in LERG 6
395 and then identifying the county where the rate center (the center of the
396 rate exchange area) lies.³² Schedule JZ 1.01 includes a list of each wire
397 center in the Illinois portion of the Chicago MSA and the wire centers
398 assigned to these counties.

399

400 ***Trigger Evaluation Process – TRO Guidelines***

401

402 **Q. Has the FCC provided guidelines that this Commission should follow**
403 **when conducting its trigger analysis for unbundled local switching**
404 **for mass market customers?**

³² Local Exchange Routing Guide ("LERG") Table 6 contains routing and rating information published by Telcordia Technologies, Inc., One Telcordia Drive, Piscataway, NJ 08854.

405 A. Yes. The FCC guidelines require the Commission to make three basic
406 decisions when conducting its trigger analysis:

- 407 ▪ the FCC guidelines require the Commission to define, based on FCC
408 prescribed criteria, mass market customers
- 409 ▪ the FCC guidelines require the Commission to determine, based on
410 FCC defined criteria, which providers are self-provisioning mass
411 market providers and which of these self-provisioning mass market
412 providers should be included in the trigger analysis, and
- 413 ▪ the FCC guidelines require the Commission to define, based on FCC
414 prescribed criteria, relevant geographic areas to include in each
415 market.

416

417 The Commission's decisions in these three areas will determine whether
418 local mass-market switching triggers are satisfied.

419

420 ***Mass Market Customer Definition***

421

422 *TRO Guidelines*

423

424 **Q. Does the TRO include a general definition of mass market**
425 **customers?**

426 A. Yes. The TRO defines mass market customers as residential customers
427 and small business customers that take the same kinds of services as

428 residential customers.³³ Alternatively, the FCC defines enterprise
429 customers as those that are, or potentially could be, served by DS1 or
430 above capacity loops.³⁴

431

432 **Q. Did the TRO identify the cross over point (measured in DS0**
433 **equivalent lines) between mass market and enterprise customers?**

434 A. No. The FCC did, however, establish a default value for the densest
435 areas of the country. The FCC stated its expectation that for the densest
436 areas in the top 50 MSAs the cutoff would be four lines.³⁵ That is, absent
437 new or additional evidence to the contrary, customers with three or fewer
438 voice grade local telephone lines at a single location would be considered
439 mass market customers and customers with four or more voice grade
440 local telephone lines would be considered enterprise customers.

441

442 **Q. Does the FCC authorize the Commission to determine a different**
443 **cross over point?**

444 A. Yes. The TRO authorizes the Commission to determine a different cross
445 over (or alternatively “cut over” or “cutoff”) point if it is presented with

³³ The FCC states that mass market customers are “residential customers and very small business customers.” TRO at ¶¶ 127 and 459, n. 1402. The FCC further notes that “[v]ery small businesses typically purchase the same kinds of services as do residential customers, and are marketed to, and provided service and customer care, in a similar manner.” TRO at ¶ 127, n. 432.

³⁴ The FCC states that enterprise customers are “those customers for whom it would be economically feasible to serve using a DS1 or above loop.” TRO at ¶ 455, n. 1376.

The FCC further notes that this includes “all customers that are served by the competing carrier using a DS1 or above loop” and “customers who could be served by the competing carrier using a DS1 or above loop.” TRO at ¶ 421, n. 1296.

446 significant evidence that indicates that the cross over point should not be
447 four lines.³⁶

448

449 The TRO establishes that, for customers served via DS0 loops, the
450 potential for a competing CLEC to serve a customer using a DS1 or above
451 loop should be defined in terms of the number of DS0 loops provided to
452 the customer.³⁷ The FCC specified that the cross over point between
453 mass market and enterprise customers "...may be the point where it
454 makes economic sense for multi-line customers to be served via a DS1
455 loop."³⁸ More specifically, the FCC stated:

456 ...the state Commission shall take into account the point at
457 which the increased revenue opportunity at a single location
458 is sufficient to overcome impairment and the point at which
459 multiline end users could be served in an economic fashion
460 by higher capacity loops and a carrier's own switching and
461 thus be considered part of the DS1 enterprise market.³⁹
462

463 *Review of SBC Position*

464

465 **Q. How do SBC's Witnesses recommend the Commission define mass**
466 **market customers?**

³⁵ "We expect that in those areas where the switching carve-out was applicable (i.e., density zone 1 of the top 50 MSAs), the appropriate cutoff will be four lines absent significant evidence to the contrary." TRO at ¶ 497

³⁶ "Accordingly, we authorize the states, within nine months of the effective date of this Order, to determine the appropriate cross over point. * * * We expect that in those areas where the switching carveout was applicable (i.e., density zone 1 of the top 50 MSAs), the appropriate cutoff will be four lines absent significant evidence to the contrary." TRO at ¶ 497.

³⁷ "At some point, customers taking a sufficient number of multiple DS0 loops could be served in a manner similar to that described above for enterprise customers..." TRO at ¶ 497.

³⁸ TRO at ¶ 497.

³⁹ See 47 C .F.R. § 51.319(d)(2)(iii)(B)(4).

467 A. SBC Witness Deere recommends that the Commission define customers
468 that purchase three or fewer DS0 lines as mass market customers and
469 customers that purchase four or more DS0 lines as enterprise
470 customers.⁴⁰

471

472 **Q. What support does Mr. Deere provide for his position?**

473 A. Mr. Deere states that:

474 ...for purposes of the switching trigger analysis, SBC Illinois
475 has defined the cut-off for the entire mass market as three
476 DS0 lines, the default established by the FCC.⁴¹
477

478 Thus, Mr. Deere's support is, in part, based upon the fact that the FCC
479 established a default mass market customer definition of customers with
480 three or fewer lines for the densest area of the Chicago MSA.

481

482 Mr. Deere provides further evidence (e.g., descriptions of enterprise
483 customer purchasing patterns) that is presumably intended to go beyond
484 mere acceptance of the FCC defaults and prove that the increased
485 revenue opportunities from serving customers with four or more voice
486 lines at a single location, in combination with cost considerations, are
487 sufficient to permit CLECs to serve customers with four or more voice

⁴⁰ Deere Direct at 28.

⁴¹ Deere Direct at 26. Mr. Deere's reference to a three line cross over is only different from my own reference to a four line cross over as a semantic matter. Both Mr. Deere and I reference the FCC's cross over which includes customers with three or fewer lines in the mass market and customers with four or more lines in the enterprise market. Because the FCC elected to refer to its default as a four line cutoff in the TRO, I elected to reference a four line cutoff as opposed to a three line cutoff as used by Mr. Deere. See TRO at ¶ 497

488 lines at a single locations, in an economic fashion, with higher capacity
489 loops and their own switching.⁴²

490

491 **Q. Is the information provided by SBC sufficient for the Commission to**
492 **make a determination that the four line cross over point is the point**
493 **at which it becomes economic for CLECs to serve customers with**
494 **higher capacity loops and their own switching?**

495 A. No. As an initial matter Mr. Deere does not include information that would
496 permit the Commission to sufficiently address provisioning cost and
497 revenue differences in the DS0 and DS1 markets. In fact, Mr. Deere
498 includes no specific information at all regarding the differences in revenue
499 opportunities between customers taking various numbers of lines. He
500 indicates that many small enterprise customers that have only four voice
501 lines often need data services for their businesses and asserts that this
502 may produce economic efficiencies that support provisioning over DS1
503 loops rather than DS0 loops.⁴³ However, he provides no specific
504 estimates of the fraction of customers with four voice lines that are
505 provisioned over DS1s, no estimates of the fraction of customers with four
506 voice lines that subscribe to data services provided over separate
507 facilities, and no revenue or cost estimates to support his argument that
508 combining voice and data over DS1 makes it more economic to serve four
509 line voice customers over a DS1 rather than over multiple DS0 loops. Nor

⁴² Deere Direct at 27.

⁴³ Deere Direct at 27.

510 does Mr. Deere provide any evidence regarding how the “economic
511 efficiencies” relevant to four line voice customers compare to “economic
512 efficiencies” that may be achieved by serving three, five, six or other
513 multiline customers via DS1 loops rather than DS0 loops.

514

515 While Mr. Deere does provide some data regarding the SBC recurring
516 monthly tariffed UNE rates for DS0 and DS1 loops, these rates are
517 insufficient to prove that the FCC’s four line cross over represents the
518 point where it becomes economic to serve customers via DS1 or higher
519 loops rather than via DS0 loops.⁴⁴ For example, if the Commission were
520 to rely solely on the tariffed UNE DS0 and DS1 loop rates he provides in
521 support of his position, the cross over point suggested by the figures
522 provided by Mr. Deere for access areas A, B, and C would be 28, 9, and 5
523 lines, respectively --- results that are insufficient to prove that a four line
524 cross over point is appropriate.⁴⁵

525

526 **Q. Do you recommend the Commission adopt Mr. Deere’s**
527 **recommendation to establish a four line cross over point to**
528 **distinguish mass market and enterprise customers in the Chicago**
529 **MSA?**

530 A. Yes. Mr. Deere fails to provide the information that is necessary to
531 establish for any particular access area the point at which the increased

⁴⁴ Deere Direct at 26.

532 revenue opportunities from serving customers with four or more voice
533 lines at a single location, in combination with cost considerations, are
534 sufficient to permit CLECs to serve customers in an economic fashion,
535 with higher capacity loops and their own switching. However, it is my
536 recommendation that, in the absence of such information, the Commission
537 should adopt, as directed by the FCC, a four line cross over point.

538

539 *Review of MCI Position*

540

541 **Q. How does MCI's witness recommend the Commission define mass**
542 **market customers?**

543 A. MCI Witness Murray makes a recommendation regarding the appropriate
544 cross over point between mass market and enterprise customers. Mr.
545 Murray recommends that the Commission should not determine a cross
546 over point, but instead determine that CLECs are able to obtain local
547 switching for an unlimited number of DS0 level loops wherever they are
548 still able to obtain mass market switching.⁴⁶

549

550 **Q. What support does Mr. Murray provide for his recommendation that**
551 **the mass market should include all customers served by DS0 loops**
552 **without regard to the number of DS0 loops provided to the**
553 **customer?**

⁴⁵ The recurring costs Mr. Deere reports for DS1 loops are approximately 28, 9, and 5 times the recurring costs Mr. Deere reports for DS0 loops in Access Areas A, B, and C, respectively.

554 A. Mr. Murray does not actually provide affirmative support for his
555 recommendation. Instead, Mr. Murray argues that the evidence for any
556 particular cross over point is inconclusive and that SBC has failed to
557 support it's proposed cross over point.⁴⁷ Because of this, he argues, the
558 Commission should simply elect not to establish a cross over point.⁴⁸

559

560 **Q. Do you recommend the Commission adopt Mr. Murray's proposal to**
561 **define a mass market customer as any customer served by DS0**
562 **loops without regard to the number of DS0 loops provided to the**
563 **customer?**

564 A. No. The FCC determined that, for the purposes of evaluating local
565 switching impairment, customers should be divided into two separate
566 classes: mass market customers and enterprise customers.⁴⁹ Mr. Murray
567 acknowledges that under his proposed recommendation SBC would need
568 to provide local switching to enterprise customers.⁵⁰ Therefore, under Mr.
569 Murray's proposal enterprise customers would be included within his
570 proposed definition of the mass market.

571

⁴⁶ Murray Direct at 10 and 105.

⁴⁷ Murray Direct at 102.

⁴⁸ Murray Direct at 103.

⁴⁹ In fact, the FCC established separate rules that establish separate processes and guidelines for making impairment determinations in the two separate markets. 47 C.F.R. § 51.319(d)(2) provides guidelines regarding mass market impairment determinations while 47 C.F.R. § 51.319(d)(3) provides guidelines regarding enterprise market impairment determinations.

⁵⁰ "For example, it is my understanding that MCI sometimes provides UNE-L service using analog voice-grade loops to customers that are basically enterprise customers." Murray Direct at 99.

572 As Mr. Murray acknowledges the rules and regulations that apply to SBC's
573 provision of mass market and enterprise switching differ.⁵¹ Therefore, it is
574 necessary to establish a cross over point between mass market and
575 enterprise customers, not only because the FCC guidelines require it, but
576 also because the federal rules applicable to each market differ. Mr.
577 Murray's recommendation to define any customers served by DS0 loops
578 without regard to the number of DS0 loops provided to the customer as a
579 mass market customer both fails to establish a cross over point as
580 required under FCC guidelines and, by his own admission, results in a
581 mass market definition inclusive of enterprise customers.

582

583 Furthermore, the FCC indicated that for the densest zones in the top 50
584 MSAs, in the absence of significant evidence to the contrary, the
585 appropriate cross over point would be four lines.⁵² Mr. Murray's proposal
586 to reject a four line cross over point in this part of the Chicago MSA, based
587 on the absence of significant evidence to support any particular cross over
588 point, is directly at odds with the FCC direction.

589

590 For these reasons, the Commission should reject Mr. Murray's
591 recommendation to define any customers served by DS0 loops without

⁵¹ "It is my understanding that CLECs will not be able to obtain TELRIC-priced unbundled switching to serve enterprise-level customers in Illinois because [sic] the Commission has stated that it will not undertake an inquiry regarding the FCC's national finding of "no impairment" for enterprise-level switching. It is also clear that TELRIC-priced unbundled local switching will continue to be available to mass market customers in at least some parts of the SBC service territory in Illinois because SBC did not choose to challenge the national finding of impairment in every location." Murray Direct at 104.

592 regard to the number of DS0 loops provided to the customer as a mass
593 market customer.

594

595 *Review of the CLEC Coalition Position*

596

597 **Q. How do the CLEC Coalition's witnesses recommend the Commission**
598 **define mass market customers?**

599 A. CLEC Coalition Witness Gillan proposes to establish a cross over point
600 based on a calculation that determines when the cost of a UNE DS1
601 (including non-recurring activities and the installation of customer
602 premises equipment necessary to utilize DS1 level service) is less than
603 the continued cost of use of multiple UNE analog loops.⁵³

604

605 **Q. Do you recommend that the Commission adopt Mr. Gillan's proposal**
606 **to determine a cross over point based on UNE loop rates?**

607 A. No. Mr. Gillan refers to his belief that enterprise customers are
608 distinguished from mass market customers by their intense, often data
609 centric, demand for telecommunications services sufficient to justify
610 service via high-capacity loops at the DS1 capacity and above.⁵⁴
611 However, his proposal completely ignores these revenue related
612 considerations and focuses solely on the costs of providing non-data,
613 voice only facilities.

⁵² TRO at ¶ 497

⁵³ Gillan Direct at 28.

614

615 In addition, Mr. Gillan acknowledges that his approach fails even to
616 include all costs relevant to determining an appropriate cross over.⁵⁵ He
617 implies that such error is acceptable because a cross over calculated
618 based on his simple formula would be lower than a cross over calculated
619 based on all relevant costs, but fails to explain why the Commission
620 should accept error in the direction he presumably favors.⁵⁶

621

622 Finally, Mr. Gillan has, to date, been unable to apply his theoretical
623 proposal. Mr. Gillan indicates that he does not have the information
624 necessary to apply his proposed calculation.⁵⁷

625

626 For all of the these reasons the Commission should reject Mr. Gillan's
627 proposal to determine the mass market – enterprise customer cross over
628 point based on a calculation that determines when the cost of a UNE DS1
629 (including non-recurring activities and the installation of customer
630 premises equipment necessary to utilize DS1 level service) is less than
631 continued use of multiple UNE analog loops.

632

⁵⁴ Gillan Direct at 27.

⁵⁵ Gillan Direct at 29.

⁵⁶ Gillan Direct at 29.

⁵⁷ Gillan at 24-25.

633 **Q. Mr. Gillan also argues that the FCC has not established a default**
634 **cross over point.⁵⁸ Do you agree that the FCC has not established a**
635 **default cross over point?**

636 A. No. Mr. Gillan's statement is directly at odds with the FCC direction. The
637 FCC explicitly stated:

638 We expect that in those areas where the switching carve-out
639 was applicable (i.e., density zone 1 of the top 50 MSAs), the
640 appropriate cutoff will be four lines absent significant
641 evidence to the contrary.⁵⁹
642

643 Although the FCC declined to establish a mandatory national cross over
644 point, the FCC clearly indicated that the cross over point between mass
645 market customers and enterprise customers should be four lines absent
646 significant evidence to the contrary. Thus, the FCC states explicitly what
647 Mr. Gillan claims they did not.

648
649 Mr. Gillan then presents numerous arguments for why the FCC's four line
650 cross over is inappropriate, none of which provide the Commission
651 significant evidence indicating that the four line cross over is incorrect.

652
653 First Mr. Gillan argues that the FCC did not mandate a four line cross
654 over.⁶⁰ This is irrelevant. To my knowledge no party disputes that the
655 FCC directed the Commission to determine an appropriate cross over if

⁵⁸ Gillan Direct at 29.

⁵⁹ TRO at ¶ 497; see also TRO at ¶ 525, note 1609.

⁶⁰ TRO at ¶ 30.

656 provided sufficient evidence.⁶¹ This does not, however, render the FCC’s
657 pronouncement on what it expects in the absence of such evidence
658 meaningless.

659

660 Mr. Gillan also argues that the areas where the FCC’s previous four line
661 cross over was applicable do not include areas where the ILECs did not
662 “implement” the FCC’s previous rules related to the four line cross over.⁶²

663 Mr. Gillan’s argument implies that, when the FCC refers to “those areas
664 where the switching carve-out was applicable” they do not refer to area
665 where the ILEC continued to offer unbundled local switching to CLECs
666 serving customers with four or more lines at a particular location.
667 However, the FCC states in the TRO that it “allowed state commissions to
668 require switching to be unbundled even in areas where the carve-out test
669 was met.”⁶³ As this statement indicates, the fact that SBC continued to
670 provide unbundled local switching in the densest part of Chicago does not
671 mean that the carve-out test was not applicable there.

672

673 Mr. Gillan then refers to the fact that “the four-line carve-out was never
674 justified by record evidence...”⁶⁴ This indicates that Mr. Gillan does not
675 agree with the guidance provided by the FCC, but that does not alter the
676 fact that the FCC provided guidance.

⁶¹ 47 C .F.R. § 51.319(d)(2)(iii)(B)(4).

⁶² Gillan Direct at 30.

⁶³ TRO at 497, n. 1545.

⁶⁴ Gillan Direct at 31.

677

678 Finally, Mr. Gillan states that "...it is mathematically impossible to cost-
679 justify a DS-1 to serve a customer that only needs 3 lines."⁶⁵ This is the
680 most pointed example of why Mr. Gillan's arguments and proposal should
681 be rejected. The FCC rules specifically and explicitly direct the
682 Commission to "consider the point at which the increased revenue
683 opportunity at a single location is sufficient to overcome impairment."⁶⁶
684 Mr. Gillan's arguments and proposal completely ignore the revenue
685 opportunities associated with providing service. He then asserts that it is
686 impossible to justify the FCC's four line cross over based purely on cost.
687 Perhaps so, but the FCC directed the Commission to also consider
688 revenue opportunities, and there is no evidence in this proceeding to
689 suggest that the four line cross over cannot be justified based upon a
690 combination of cost and revenue considerations. Mr. Gillan's inability to
691 economically justify a four line cross over based on cost differences alone
692 is simply irrelevant given that he did not perform the analysis the FCC
693 directed this Commission to consider.

694

695 *Review of Access One/Bullseye/ CIMCO/Forte Position*

696

697 **Q. How does the Access One/Bullseye/CIMCO/Forte Witness**
698 **recommend the Commission define mass market customers?**

⁶⁵ Gillan Direct at 32.

⁶⁶ 47 C .F.R. § 51.319(d)(2)(iii)(B)(4).

699 A. Access One/Bullseye/CIMCO/Forte Witness Capraro, like MCI Witness
700 Murray, recommends that the Commission should not determine a cross
701 over point, but instead determine that CLECs are able to obtain local
702 switching for an unlimited number of DS0 level loops wherever they are
703 still able to obtain mass market switching.⁶⁷ In the alternative, Mr. Capraro
704 recommends that the Commission adopt the formula driven cross over
705 point proposed by CLEC Coalition Witness Gillan.⁶⁸

706

707 **Q. Do you recommend that the Commission accept Mr. Capraro's**
708 **recommendation?**

709 A. No. Mr. Capraro reiterates the proposals of Mr. Murray and Mr. Gillan,
710 which I have addressed and recommended the Commission reject above.

711

712 In addition, Mr. Capraro states:

713 Of note, different customers face varying considerations.
714 Among these are the customer's voice vs. data needs, both
715 immediate and expected over the short-, medium- and long
716 term; existing contracts with various voice (local as well as
717 long distance), data, and/or Internet providers...⁶⁹
718

719 Thus, Mr. Capraro testifies that revenue related demand considerations
720 are an important consideration for CLECs deciding whether to serve
721 customers over DS1 loops or whether to service customers over multiple
722 DS0 loops. Mr. Capraro, however, advocates Mr. Gillan's proposal to

⁶⁷ Capraro Direct at 11.

⁶⁸ Capraro Direct at 11.

⁶⁹ Capraro Direct at 5.

723 delineate mass market customers from enterprise customers, which fails
724 to account for such revenue considerations.

725

726 *Review of Sprint Position*

727

728 **Q. How do Sprint's witnesses recommend the Commission define mass**
729 **market customers?**

730 A. Sprint witnesses Gordon and Burt both recommend that the Commission
731 define mass market customers as those taking fourteen (14) or fewer DS0
732 lines.⁷⁰

733

734 **Q. How did Sprint's Witnesses derive the 14 line cross over point**
735 **between mass market and enterprise customers?**

736 A. Mr. Gordon developed this figure by comparing the sum of recurring and
737 non-recurring UNE rates for DS-1 loop facilities (including a channel bank
738 at the customer premises) with the sum of recurring and non-recurring
739 UNE costs for multiple DS0 loop facilities.⁷¹

740

741 **Q. Do you recommend the Commission define mass market customers**
742 **as those taking fourteen (14) or fewer DS0 lines as the Sprint**
743 **Witnesses recommend?**

⁷⁰ Gordon Direct at 2 and Burt at 30.

⁷¹ Gordon Direct at 2-3.

744 A. No. Mr. Gordon presents the most complete and transparent comparison
745 between the provisioning costs for a DS1 loop and the provisioning costs
746 for multiple DS0 loops. However, Mr. Gordon fails, as did Mr. Gillan, to
747 compare differences in revenue opportunities created by differences in
748 customer demand for the respective product offerings.

749

750 Sprint witness Burt explicitly references that customers are separated by
751 the “complexity and the volume” of the services they demand and that
752 “[t]he service needs of business customers at a specific physical location
753 determine the minimum facility capacity required to provide those
754 services.”⁷² Thus, Mr. Burt confirms that mass market and enterprise
755 customers are separated by more than differences in demand for voice
756 line volumes --- they are also separated by differences in the complexity of
757 each customer’s needs and the differences in revenues opportunities that
758 these differing needs represent. Mr. Gordon’s calculations, however,
759 determine mass market versus enterprise customer separation solely on
760 differences in costs of provisioning voice lines. For this reason, I
761 recommend that the Commission reject Sprint’s proposed fourteen (14)
762 line cross over point.

763

764 *Review of Sage/Talk America Position*

765

⁷² Burt Direct at 29.

766 **Q. How does Sage/Talk America's witness recommend the Commission**
767 **define mass market customers?**

768 A. Sage/Talk America witness Kelley recommends that the Commission
769 determine that all customers served with DS0 lines, regardless of the
770 number of DS0 lines provided to the customer, are mass market
771 customers.⁷³

772

773 **Q. Do you recommend the Commission adopt Dr. Kelley's**
774 **recommendation?**

775 A. No. Dr. Kelley's proposal mirrors that of Mr. Murray, which I have
776 addressed and recommended the Commission reject above.

777

778 In addition, I note that Dr. Kelley's recommendations are inconsistent. Dr.
779 Kelley recommends that the Commission find that all customers served
780 with DS0 loops are mass market customers. However, he also
781 recommends that the Commission exclude CLECs that serve customers
782 with DS0 loops from its trigger analysis because these CLECs serve
783 enterprise rather than mass market customers.⁷⁴

784

785 *Recommendations*

786

⁷³ Gordon Direct at 2 and Burt at 30.

⁷⁴ Kelley Direct at 30.

787 **Q. In your opinion, has any party to this proceeding provided the**
788 **Commission with sufficient evidence to overturn the FCC’s**
789 **presumption that the cut-off for multiline DS0 customers in the**
790 **highest density zones in the top 50 MSAs should be four lines?**

791 A. No. No party has provided evidence sufficient for this Commission to alter
792 the FCC’s finding that a four line cross over point is appropriate. While
793 some of the parties have provided estimates of provisioning cost
794 differences, no party provided any quantifiable estimates of differences in
795 revenue opportunities between customers served by various numbers of
796 lines. This is a critical omission. The FCC rules specifically and explicitly
797 direct the Commission to “consider the point at which the increased
798 revenue opportunity at a single location is sufficient to overcome
799 impairment [if serving those customers over DS1 or above loops].⁷⁵ The
800 importance of revenue opportunities in determining the cross over point is
801 reinforced by the witnesses repeated references to the fact that
802 provisioning is substantially determined by revenue opportunities
803 presented by customer demand for voice and/or data service (despite
804 those witnesses’ failure to provide any related revenue estimates
805 accounting for such revenue opportunities).

806

807 **Q. What is your recommendation regarding the appropriate cross over**
808 **point, defined in terms of DS0 lines, between mass market and**
809 **enterprise customers?**

810 A. Because no party has provided evidence sufficient for this Commission to
811 alter the FCC's finding that a four line cross over point is appropriate I
812 recommend that the Commission adopt a four line crossover. That is, I
813 recommend that the Commission find that customers with three or fewer
814 voice grade local telephone lines are mass market customers and
815 customers with four or more voice grade local telephone lines are
816 enterprise customers.

817

818 The FCC determined that the separation between the mass market and
819 the enterprise market should be determined by identifying customers (in
820 terms of the number of DS0 lines they take) that, because of revenue
821 opportunities the customers represent and the costs of serving them with
822 varying configurations, can be served in an economic fashion over higher
823 capacity loops.⁷⁶ The FCC then stated its expectation that the appropriate
824 cutoff will be four lines absent significant evidence to the contrary.⁷⁷ The
825 inherent reasoning of the FCC in establishing its four line cutoff, is that
826 customers that take four or more DS0 lines can be served, as a result of
827 both the costs of provisioning and the revenue opportunities they
828 represent, by CLECs with DS1 or greater capacity loops. There is
829 insufficient evidence in this proceeding that would prove otherwise,
830 therefore, I recommend that Commission adopt a four line cross over
831 point.

⁷⁵ 47 C .F.R. § 51.319(d)(2)(iii)(B)(4).

⁷⁶ See 47 C .F.R. § 51.319(d)(2)(iii)(B)(4).

832

833 I also recommend that the Commission apply this cross over point
834 throughout the Chicago MSA. There is simply insufficient evidence in this
835 proceeding to prove that, when considering revenue and cost factors, the
836 appropriate cross over point differs in different parts of the Chicago MSA.

837

838 ***Self Provisioning Mass Market Switch Provider Definition***

839

840 *TRO Guidelines*

841

842 **Q. Does the FCC specify what criteria a CLEC must meet to be counted**
843 **for purposes of the local switching self-provisioning trigger test?**

844 A. The FCC rules specify that the CLEC must be able to currently offer and
845 be able to provide mass market service (and be likely to continue to do so)
846 with the use of its own switch.⁷⁸ The FCC also notes that the CLEC must
847 be unaffiliated with the ILEC, must use its own separate switch, and must
848 be actively providing voice service to mass market customers.⁷⁹

849

850 *Review of SBC Position*

851

852 **Q. What recommendation do SBC Witnesses make regarding the self-**
853 **provisioning mass market switch provider definition?**

⁷⁷ TRO at ¶ 497.

⁷⁸ 47 C.F.R. § 51.319(d)(2)(iii)(A)(1).

854 A. SBC witnesses do not clearly articulate a position. SBC witnesses provide
855 a variety of data sets that variously include and exclude different types of
856 CLECs. For example, Mr. Wardin presents a table that summarizes
857 service providers in each of SBC's Chicago MSA wire centers.⁸⁰ This
858 table includes deployment information for *****BEGIN CONF XXXXX END**
859 **CONF***** in the column entitled "# of CLECs to Meet Trigger of 3."
860 However, the color coded information in the table (green, yellow, and red,
861 respectively, are represented as "Met trigger", "2 CLECs", "1 CLEC") does
862 not include the *****BEGIN CONF XXXXXXXX END CONF***** information.
863 Similarly, Mr. Deere includes a table in his testimony that contains a
864 column entitled "Count of CLECs in Wire Center" that contains information
865 that often differs from the information provided by Mr. Wardin in his "# of
866 CLECs to Meet Trigger of 3" column.⁸¹

867

868 **Q. Do you recommend that the Commission adopt SBC's approach to**
869 **identifying self-provisioning mass market switch providers?**

870 A. No. The Commission certainly benefits from receiving as much
871 information regarding CLEC activity as possible. However, SBC has
872 presented the Commission with a number of different data sources
873 describing CLEC deployment, which variously do and do not include
874 various providers. As a result of this approach the Commission cannot
875 identify precisely what information SBC relies on when performing its

⁷⁹ TRO at ¶ 499.

⁸⁰ Wardin Direct, Attachment WKW-1.

876 trigger analysis. For this reason, I recommend the Commission reject
877 SBC's approach to identifying self-provisioning mass market switch
878 providers.

879

880 *Review of MCI Position*

881

882 **Q. What recommendation do MCI Witnesses make regarding the self-**
883 **provisioning mass market switch provider definition?**

884 A. Mr. Murray recommends that the Commission, for the purposes of its
885 trigger analysis, count only self-provisioning switch providers that pass a
886 number of "screens".⁸²

887

888 **Q. Do you recommend the Commission adopt Mr. Murray's proposed**
889 **screening process?**

890 A. No. Not all of the screens Mr. Murray proposes are consistent with FCC
891 guidelines. Furthermore, in some instances where a particular screen
892 might be consistent with FCC guidelines in concept, Mr. Murray's
893 recommendation regarding implementation fails to follow FCC guidelines.

894

895 **Q. Are there any particular screens proposed by Mr. Murray that you**
896 **recommend the Commission reject?**

⁸¹ See Deere Direct, Proprietary Attachment WCD-6.

⁸² Murray Direct at 110 and Murray Direct Attachment TLM-2.

897 A. Yes. Several of his screens should be rejected. Mr. Murray proposes to
898 exclude all CLECs that do provide small-business mass market service
899 but that do not provide residential mass market service and all CLECs that
900 do provide residential mass market service but that do not provide small-
901 business mass market service.⁸³ Mr. Murray proposes to exclude, for
902 purposes of the trigger test, all intermodal providers from markets where
903 they provide services using their own loops.⁸⁴ Mr. Murray proposes a
904 market share threshold to “ensure that it is at least plausible that the
905 trigger companies have overcome the economic and operational barriers
906 to entry.”⁸⁵ Each of these screens should be rejected.

907

908 **Q. Why do you recommend that the Commission reject Mr. Murray’s**
909 **proposal to exclude, for purposes of the trigger test, a CLEC that**
910 **serves residential mass market customers with its own switch or**
911 **small business mass market customers with its own switch, but**
912 **does not serve both?**

913 A. Mass market customers are defined by the FCC rules as including both
914 residential and small business customers.⁸⁶ The FCC stated that its
915 trigger test is designed to identify CLECs using their own switches to
916 provide service to mass market customers.⁸⁷ A CLEC that provides voice
917 lines to residential customers with its own switch serves mass market

⁸³ Murray Direct at 125 and Murray Direct, Attachment TLM-3 at 14.

⁸⁴ Murray Direct at 120 and Murray Direct, Attachment TLM-3 at 14.

⁸⁵ Murray Direct at 131-132.

⁸⁶ TRO at ¶ 459, n. 1402.

918 customers as defined by the FCC. Therefore, such a CLEC should be
919 identified as using its own switch to provide mass market service. A
920 CLEC that provides voice lines to small business customers with its own
921 switch serves mass market customers as defined by the FCC. Therefore,
922 such a CLEC should be identified as using its own switch to provide mass
923 market service for purposes of the trigger test.

924

925 The primary argument Mr. Murray makes for excluding a CLEC that
926 serves residential mass market customers with its own switch or small
927 business mass market customers with its own switch, but does not serve
928 both is that providing service to one does not prove that the CLEC can
929 serve the other.⁸⁸ However, Mr. Murray's application of his screen
930 demonstrates that his argument is internally inconsistent. For example,
931 Mr. Murray excludes ***BEGIN CONF XXX END CONF*** from his
932 analysis (in areas where ***BEGIN CONF XXXX END CONF*** provides
933 service using its own switch and SBC lines) because it only provides
934 residential service and excludes ***BEGIN CONF XXX END CONF***
935 from his trigger analysis because it only self providers local switching for
936 its business customers.⁸⁹ Accepting Mr. Murray's reasoning, one would
937 need to conclude that, while ***BEGIN CONF XXX END CONF***, has
938 overcome economic and operation barriers associated with serving
939 residential customers, higher economic and operation barriers associated

⁸⁷ TRO at ¶ 498.

⁸⁸ Murray Direct at 126.

940 with serving small business customers prevent its entry into that market.
941 Similarly, one would need to conclude that, while *****BEGIN CONF XXX**
942 **END CONF*****, has overcome economic and operation barriers associated
943 with serving small business customers, higher economic and operation
944 barriers associated with serving residential customers prevent its entry
945 into that market. These conclusions are inconsistent and reveal the
946 internal inconsistency in Mr. Murray's proposal.

947

948 The FCC has determined that

949 ... the existence of three self-provisioners of switching
950 demonstrates adequately the technical and economic
951 feasibility of an entrant serving the mass market with its own
952 switch, and indicates that barriers to entry are not
953 insurmountable.⁹⁰
954

955 In order to conclude that serving one group of mass market customers
956 (e.g., small business customers) does not adequately demonstrate the
957 technical and economic feasibility of an entrant serving the another group
958 of mass market customers (e.g. residential customers) the Commission
959 would need to conclude that the customers in these markets are
960 appreciably different with respect to a CLEC's ability to technically and
961 economically serve them. The FCC, however, has explicitly determined
962 they are not by placing them within the same customer market.⁹¹

⁸⁹ Murray Direct, Attachment TLM-3 at 14 and 3.

⁹⁰ TRO at ¶ 501.

⁹¹ The FCC has specified the procedure the Commission is to follow if it identifies an exceptional source of impairment that prevents further entry by self-provisioning local switch providers in a

963

964 The Commission should reject Mr. Murray's proposal and should instead
965 count for the purpose of the trigger test a CLEC that serves residential
966 mass market customers with its own switch or small business mass
967 market customers with its own switch, but does not serve both.

968

969 **Q. Why do you recommend that the Commission reject Mr. Murray's**
970 **proposal to exclude, for purposes of the trigger test, a CLEC that**
971 **provides service over its own loops?**

972 A. The TRO guidelines require the Commission to consider CLECs that
973 provide intermodal voice service using their own switch facilities in its
974 trigger analysis, but requires the Commission to determine whether such
975 providers should be included based upon the extent the services provided
976 over these intermodal alternatives are comparable in cost, quality, and
977 maturity to incumbent LEC services.⁹² Therefore, in concept, Mr. Murray's
978 proposal is consistent with FCC guidelines.

979

980 Mr. Murray, however, proposes to implement this screen by excluding all
981 intermodal providers from markets where they provide services using their
982 own loops.⁹³ He argues that only by using SBC loops can a CLEC prove
983 that it has overcome relevant operational and economic barriers to entry

particular part of the market. This procedure is, however, separate and apart from the procedure to determine trigger satisfaction. TRO at ¶ 503.

⁹² TRO at ¶ 499, footnote 1549.

⁹³ Murray Direct at 120.

984 without access to UNE switching. The exclusion Mr. Murray recommends
985 as a result of his imposed screen demonstrates the error in his logic.

986

987 For example, Mr. Murray proposes to exclude “the portion of *****BEGIN**
988 **CONF XXXXXX END CONF***** operation that relies on non-SBC loops.”⁹⁴

989 Mr. Murray recommends this exclusion because, in his opinion, *****BEGIN**
990 **CONF XXX END CONF***** has not demonstrated that it has overcome

991 relevant operational and economic barriers to entry in areas where it
992 provides its own loops.⁹⁵ Mr. Murray indicates, however, that his fifth

993 screen would not exclude *****BEGIN CONF XXXX END CONF***** in areas
994 where *****BEGIN CONF XXX END CONF***** uses SBC loops.⁹⁶ I disagree

995 with Mr. Murray’s analysis. The fact that *****BEGIN CONF XXXX END**
996 **CONF***** provides mass market service using its own switch and SBC’s

997 loops provides significant evidence to support the conclusion that
998 *****BEGIN CONF XXXX END CONF***** has been able to overcome

999 operational and economic barriers associated with using its own switch
1000 and SBC loops in areas where it does not have its own loop facilities.

1001 That is, this is significant evidence to support the conclusion that a CLEC
1002 that is demonstrably able to use SBC loops may elect to use its own loops

1003 instead.

1004

⁹⁴ Murray Direct, Attachment TLM-3 at 13.

⁹⁵ Murray Direct, Attachment TLM-3 at 14.

⁹⁶ Murray Direct, Attachment TLM-3 at 14.

1005 The fact that *****BEGIN CONF XXX END CONF***** has chosen to use its
1006 own loops in areas where it has such facilities does not negate the fact
1007 that *****BEGIN CONF XXX END CONF***** has demonstrated that it is able
1008 to overcome operational and economic barriers associated with using
1009 SBC loops. The far more reasonable conclusion is that where *****BEGIN**
1010 **CONF XXXX END CONF***** has its own loops it has simply elected based
1011 on sound business analysis to use its existing loops rather than lease
1012 alternative facilities from SBC.

1013

1014 Furthermore, the FCC has explicitly addressed this very issue. The FCC
1015 stated:

1016 We recognize that when one or more of the three
1017 competitive providers is also self-deploying its own local
1018 loops, this evidence may bear less heavily on the ability to
1019 use a self-deployed switch as a means of accessing the
1020 incumbent's loop. Nevertheless, the presence of three
1021 competitors in a market using self-provisioned switching and
1022 loops, shows the feasibility of an entrant serving the mass
1023 market with its own facilities.⁹⁷
1024

1025 Thus, the FCC has specifically directed that CLECs be counted in the
1026 trigger analysis even if they provide their own loops. Therefore, Mr.
1027 Murray's recommendation is directly inconsistent with the FCC's TRO
1028 rules.

1029

⁹⁷ TRO at ¶ 501 footnote 1560.

1030 For these reasons I recommend the Commission reject Mr. Murray's
1031 proposal to exclude, for purposes of the trigger test, a CLEC that provides
1032 service over its own loops.

1033

1034 **Q. Why do you recommend that the Commission reject Mr. Murray's**
1035 **proposal to impose a "plausibility" screen; that is a market share**
1036 **threshold?**

1037 A. The FCC determined that the self-provisioning trigger is met when three or
1038 more CLECs each is serving the mass market, in a particular market, with
1039 the use of their own switches. The FCC chose three providers as the
1040 threshold in order to be "assured that the market can support 'multiple
1041 competitive' local exchange service providers using their own switches",
1042 and because of its stated belief that "the existence of three self-
1043 provisioners of switching demonstrates adequately the technical and
1044 economic feasibility of an entrant serving the mass market with its own
1045 switch, and indicates that barriers to entry are not insurmountable."⁹⁸
1046 Thus, the trigger test is itself, according to the FCC, a plausibility test. Mr.
1047 Murray, however, prescribes an additional plausibility test that would,
1048 when CLEC market shares are below Mr. Murray's proposed thresholds,
1049 reject the FCC's plausibility test (the self-provisioning trigger test). In
1050 particular, Mr. Murray recommends excluding CLECs that have not
1051 achieved at least a 1% market share.⁹⁹ Mr. Murray's proposal would, in

⁹⁸ TRO at ¶ 501.

⁹⁹ Murray Direct at 132.

1052 effect, require the Commission to find that triggers are not met in
1053 instances where they, in fact, are. The Commission should reject Mr.
1054 Murray's proposal.

1055

1056 In addition, Mr. Murray argues that excluding CLECs with less than 1%
1057 market share from the trigger analysis (in the relevant market) is
1058 necessary because such levels of activity do not ensure that SBC will be
1059 able to employ its hot cut process in a manner that is adequate to handle
1060 higher volumes that might occur if UNE-P were no longer available.¹⁰⁰

1061 The FCC, however, prescribed how this specific issue was to be
1062 addressed and the Commission is addressing it directly in Docket No. 03-
1063 0593.¹⁰¹ Therefore, the Commission should reject Mr. Murray's attempt to
1064 resolve this issue through modification to the trigger analysis rather than
1065 through the method prescribed by the FCC.

1066

1067 The FCC has provided explicit direction regarding the procedure the
1068 Commission must use in the event that the trigger analysis fails to identify
1069 sources of impairment. In such circumstances, based on an "exceptional
1070 sources of impairment analysis", the Commission may petition the FCC for
1071 "a waiver of the application of the trigger, to last until the impairment to
1072 deployment identified by the state no longer exists."¹⁰² Mr. Murray's
1073 proposal to address such concerns through modification of the trigger

¹⁰⁰ Murray Direct at 132.

¹⁰¹ TRO at 487-492 and Initiating Order in Docket No. 03-0593 at 11.

1074 analysis itself (i.e., adding a plausibility screen to the trigger analysis) is
1075 inconsistent with the FCC direction and the Commission should reject it.

1076

1077 **Q. Do you recommend that the Commission adopt Mr. Murray's self-**
1078 **provisioning mass market switch provider definition?**

1079 A. No. For the reasons I describe above, the screening process that
1080 implicitly yields Mr. Murray's self-provisioning mass market switch provider
1081 definition does not comport with the FCC's guidelines for implementing the
1082 local switching self-provisioning trigger and improperly excludes CLECs
1083 that are properly included within the trigger analysis as mass market local
1084 switch self-providers.

1085

1086 *Review of CLEC Coalition Position*

1087

1088 **Q. What recommendation do CLEC Coalition Witnesses make regarding**
1089 **the self-provisioning mass market switch provider definition?**

1090 A. Mr. Gillan, like Mr. Murray, recommends that the Commission effect a
1091 series of screens to determine whether CLECs should be counted for
1092 purposes of the trigger analysis."¹⁰³ Many of Mr. Gillan's proposed
1093 screens are effectively the same as certain screens proposed by Mr.
1094 Murray. To avoid unnecessary duplication of my analysis of these

¹⁰² TRO at ¶ 503.

¹⁰³ Gillan Direct at 49-50.

1095 proposals, I simply refer the Commission to my analysis of Mr. Murray's
1096 comparable screens above.

1097

1098 **Q. Are there any particular screens proposed by Mr. Gillan that you**
1099 **recommend the Commission reject?**

1100 A. Yes. Mr. Gillan proposes to exclude CLECs from the trigger test that
1101 provide mass market service using their enterprise switches. Mr. Gillan
1102 proposes to exclude CLECs from the trigger test if the CLECs do not
1103 provide service using their own switches that compares in geographic
1104 reach to the service they provide using UNE-P. The Commission should
1105 reject each of these screens.

1106

1107 **Q. Why do you recommend the Commission reject Mr. Gillan's proposal**
1108 **to exclude from the trigger test providers that provide mass market**
1109 **service using their enterprise switches?**

1110 A. Mr. Gillan states:

1111 "[S]witches serving the enterprise market," the FCC held, "do
1112 not qualify for the triggers" applicable to mass market
1113 switching. Thus, the TRO directs the Commission to
1114 consider only the mass market switches in the mass market
1115 switching trigger analysis.¹⁰⁴
1116

1117 When taken in context, however, the FCC's statements do not imply that
1118 switches used to serve enterprise customers should be excluded from
1119 mass market trigger analyses when such switches are also used to

¹⁰⁴ Gillan Direct at 51.

1120 provide mass market service. The full FCC's statement, that Mr. Gillan
1121 partially quotes, is:

1122 Although switches serving the enterprise market do not
1123 qualify for the triggers described above, we believe that,
1124 after implementation of a batch cut process, switches being
1125 used to serve the enterprise market are likely to be
1126 employed to serve the mass market as well, and that the
1127 state commission should investigate the feasibility of this.¹⁰⁵
1128

1129 As this passage indicates the FCC was specifically referring to switches
1130 that do serve enterprise markets but do not serve the mass market when it
1131 stated that enterprise switches serving the enterprise market do not qualify
1132 for the triggers. In no way does this imply, as Mr. Gillan indicates, that
1133 switches used to serve mass market customers should be excluded from
1134 the trigger analysis when they also happen to be used to serve enterprise
1135 customers.

1136

1137 The FCC indicated that the presence of self-provisioning enterprise switch
1138 providers should be given substantial weight (in potential deployment
1139 analyses) finding:

1140 ...the existence of switching serving customers in the
1141 enterprise market to be a significant indicator of the
1142 possibility of serving mass market because of the
1143 demonstrated scale and scope economies of serving
1144 numerous customers in a wire center using a single
1145 switch.¹⁰⁶
1146

¹⁰⁵ TRO at ¶ 508.

¹⁰⁶ TRO at ¶ 508.

1147 Therefore, the FCC specifically recognized that mass market service
1148 might be provided over a switch also used to provide enterprise service.
1149 In fact the FCC directed this Commission to substantially weigh the
1150 potential for CLECs to use their enterprise switches to service mass
1151 market customers when evaluating whether the mass market could be
1152 economically served by CLECs with their own switches. It is clear from
1153 these statements that the FCC intended this Commission to count, for
1154 purposes of trigger assessment, CLECs that provide mass market service
1155 using their own switches to provide mass market service when that same
1156 switch is also used to provide enterprise service.

1157

1158 Mr. Gillan's identification of CLECs providing both enterprise service and
1159 mass market service with their switches provides the Commission with
1160 significant evidence regarding the feasibility of potential deployment of
1161 mass market switching in the Chicago MSA. Thus, although no party at
1162 this time recommends that the Commission perform a potential
1163 deployment analysis, the evidence Mr. Gillan presents would, based on
1164 the FCC's rules, weigh in favor of a finding of no impairment if the
1165 Commission were to perform such an analysis.

1166

1167 For the reasons above, the Commission should reject Mr. Gillan's
1168 recommendation to exclude CLECs that provide mass market services

1169 with switches that they also use to provide enterprise service from the
1170 local switching self-provisioning trigger test.

1171

1172 **Q. Why do you recommend the Commission reject Mr. Gillan’s proposal**
1173 **to exclude CLECs from the trigger test if the CLECs do not provide**
1174 **mass market service using their own switches that compares in**
1175 **geographic reach to the service they provide using UNE-P?**

1176 A. Mr. Gillan asserts that “ubiquity is clearly a critical dimension in the mass
1177 market” and that “a state clearly would be incorrect to count as a mass
1178 market trigger any provider with a ubiquity materially less than UNE-P.”¹⁰⁷

1179 It is not clear that it would be incorrect to count in assessing a mass
1180 market trigger any provider with a ubiquity materially less than UNE-P and
1181 Mr. Gillan has not explained what he, apparently, believes to be self-
1182 evident.

1183

1184 There is no apparent justification for the Commission to exclude from its
1185 trigger analysis in a particular market a self provisioning local switch
1186 provider that is actively providing mass market service simply because
1187 that provider also provides service (perhaps to a different degree) via
1188 UNE-P. The FCC has already accommodated Mr. Gillan’s apparent
1189 concern by directing the Commission to consider deployment patterns of
1190 self-provisioning switch providers when defining geographic markets.¹⁰⁸

¹⁰⁷ Gillan Direct at 61.

¹⁰⁸ TRO at ¶ 495, n. 1537.

1191 Mr. Gillan has simply added an irrelevant screen that requires the
1192 Commission to ignore evidence of the presence of self-provisioning mass
1193 market providers.

1194

1195 The Commission should reject Mr. Gillan's recommendation to exclude
1196 CLECs that do not exhibit geographic reach comparable to UNE-P from
1197 the trigger analysis.

1198

1199 **Q. Do you recommend that the Commission adopt Mr. Gillan's self-**
1200 **provisioning mass market switch provider definition?**

1201 A. No. For the reasons I describe above, the screening process that
1202 implicitly yields Mr. Gillan's self-provisioning mass market switch provider
1203 definition does not comport with the FCC's guidelines for implementing the
1204 local switching self-provisioning trigger and improperly excludes CLECs
1205 that are properly included within the trigger analysis as mass market local
1206 switch self-providers.

1207

1208 *Review of AT&T Position*

1209

1210 **Q. What recommendation does AT&T's witness make regarding the self-**
1211 **provisioning mass market switch provider definition?**

1212 A. Mr. Finney recommends that the Commission not count AT&T when
1213 computing the trigger test.¹⁰⁹

1214

1215 **Q. Do you recommend the Commission accept Mr. Finney's proposal to**
1216 **exclude AT&T when computing the trigger test?**

1217 A. No. Mr. Finney indicates that AT&T is self-provisioning local switching to
1218 small business customers¹¹⁰, but argues that AT&T should be excluded
1219 because AT&T does not pass Mr. Gillan's proposed screens.¹¹¹ As I
1220 explained above, the Commission should reject Mr. Gillan's proposed
1221 screens and, therefore, Mr. Finney's analysis implementing Mr. Gillan's
1222 screens.

1223

1224

1225 *Review of Sprint Position*

1226

1227 **Q. What recommendation do Sprint Witnesses make regarding the self-**
1228 **provisioning mass market switch provider definition?**

1229 A. Mr. Burt recommends that the Commission effect screens that are for the
1230 most part the same as various screens proposed by witnesses Gillan and
1231 Murray. To avoid unnecessary duplication of my analysis of these
1232 proposals, I simply refer the Commission to my analysis above.

1233

¹⁰⁹ Finney Direct at 2.

¹¹⁰ Finney Direct at 7.

1234 *Review of Sage/Talk America Position*
1235

1236 **Q. What recommendation does Sage/Talk America's witness Dr. Kelley**
1237 **make regarding the self-provisioning mass market switch provider**
1238 **definition?**

1239 A. Dr. Kelley recommends that the Commission effect screens that are for
1240 the most part the same as various screens proposed by witnesses Gillan
1241 and Murray. To avoid unnecessary duplication of my analyses of these
1242 proposals, I simply refer the Commission to my analyses above. Dr.
1243 Kelley does, however, propose two screens that differ from those offered
1244 by Mr. Gillan and Mr. Murray. Dr. Kelley proposes to exclude CLECs from
1245 the trigger analysis that have significant traffic flow imbalances with SBC,
1246 and he proposes to exclude CLECs from the trigger analysis that do not
1247 provide DSL services using their switches.¹¹²

1248
1249 **Q. What support does Dr. Kelley provide for his proposal to exclude**
1250 **from the trigger analysis CLECs that have significant traffic flow**
1251 **imbalances with SBC?**

1252 A. Dr. Kelley argues that traffic imbalances signify that a CLEC is providing
1253 data traffic to enterprise customers and thus should not be considered a
1254 mass market local switch provider.

1255

¹¹¹ Finney Direct at 4.

¹¹² Kelley Direct at 54.

1256 **Q. Do you recommend the Commission adopt Dr. Kelley's proposal to**
1257 **exclude CLECs from the trigger analysis that have significant traffic**
1258 **flow imbalances with SBC?**

1259 A. No. Dr. Kelley's recommendation would require the Commission to
1260 exclude switches that presumably provide enterprise service. However, if
1261 these switches are also used to provide mass market service, they should
1262 not, as I explain above (in response to Mr. Gillan's proposal to exclude all
1263 CLECs using switches to serve enterprise customers), be excluded.

1264

1265 **Q. What support does Dr. Kelley provide for his proposal to exclude**
1266 **from the trigger analysis CLECs that don't provide DSL service using**
1267 **their switches?**

1268 A. To my knowledge, Dr. Kelley provides no support for this proposal.

1269

1270 **Q. Do you recommend that the Commission adopt Dr. Kelley's proposal**
1271 **to exclude from the trigger analysis CLECs that don't provide DSL**
1272 **service using their switches?**

1273 A. No. First, Dr. Kelley's proposal is unsupported. Second, to my knowledge
1274 even SBC does not provide DSL service from all of its Illinois switches.
1275 Therefore, under Dr. Kelley's proposal even SBC would not be considered
1276 a mass market local switching provider in many of its local service areas --
1277 - a conclusion that is clearly unsound and demonstrates the
1278 inappropriateness of Dr. Kelley's proposal.

1279

1280 In addition, Dr. Kelley offers inconsistent recommendations. He requests
1281 the Commission exclude a CLEC from its trigger analysis when there is
1282 evidence that the CLEC is providing data service. However, he
1283 recommends that the Commission exclude mass market switch providers
1284 simply because the provider is not providing DSL (a data service).

1285

1286 For these reasons, I recommend that the Commission reject Dr. Kelley's
1287 proposal to exclude from the trigger analysis CLECs that don't provide
1288 DSL service using their switches.

1289

1290 *Recommendation*

1291

1292 **Q. Do you recommend that the Commission develop a comprehensive**
1293 **set of criteria in order to determine which CLECs should be counted**
1294 **for purposes of the local switching self-provisioning trigger test and**
1295 **which should not?**

1296 A. No. The FCC provided direction to the Commission establishing many of
1297 the criteria necessary to make such determinations. Furthermore, as a
1298 pragmatic matter, the Commission's decision is made somewhat easier by
1299 the fact that it is presented with a discreet number of CLECs for which it
1300 must make a determination. That is, the Commission is not required to
1301 make general determinations regarding hypothetical providers, but must

1324 those markets where each self supplies local mass market switching when
1325 it conducts its trigger analysis. My recommendation is based on my
1326 understanding that each of these CLECs currently provides local voice
1327 lines to mass market customers. Notably, no party has proposed a mass
1328 market to enterprise customer cross over point of fewer than four lines and
1329 each of these CLECs has indicated that it currently provides voice lines to
1330 customers with fewer than four lines (mass market customers by all
1331 proposed definitions).

1332

1333 In addition, excluding factors related to the “financial stability and well-
1334 being” of the CLECs, there is no evidence that any of these CLECs will not
1335 be able to continue to provide mass market service over their own
1336 switches in the future.¹¹⁵ To my knowledge all of the CLECs listed are and
1337 continue to provide such service to actual Illinois customers.

1338

1339 None of the CLECs listed above are affiliated with SBC or with one
1340 another according to the FCC’s definition of affiliate.¹¹⁶ Therefore, there is
1341 no risk of double counting affiliated entities or counting SBC affiliates.

1342

¹¹⁴ Mr. Murray does make reference to potential exclusions on this basis, but does not in fact recommend that any particular CLEC be excluded. Murray Direct at 112.

¹¹⁵ “For purposes of these triggers, we find the states shall not evaluate any other factors, such as the financial stability or well-being of the competitive switching providers.” TRO at ¶ 500. (Footnote omitted.)

¹¹⁶ TRO at ¶ 499, footnote 1550.

1343 With the exception of *****BEGIN CONF XXXXXX END CONF***** each of
1344 these CLECs provides service using SBC loops and its own switch and
1345 therefore is not subject to the excess scrutiny the FCC has indicated may
1346 be necessary when considering “intermodal alternatives.”¹¹⁷ I have no
1347 evidence to suggest that *****BEGIN CONF XXXXXX END CONF*****
1348 service is not comparable in cost, quality, or maturity to that of SBC and
1349 the fact that *****BEGIN CONF XXXX END CONF***** is actively providing
1350 service in numerous wire centers in the Chicago MSA is evidence
1351 (although very limited evidence) that it does provide a comparable
1352 product. No party has provided evidence to the contrary.¹¹⁸ Therefore, I
1353 have included them in the list of CLECs to be counted for the trigger
1354 analysis.¹¹⁹

1355
1356 There are two CLECs that, at this time, I recommend the Commission not
1357 count when performing the trigger test. It is my understanding that neither
1358 *****BEGIN CONF XXXXXX END CONF***** nor *****BEGIN CONF XXXXX**
1359 **END CONF***** provide service using their own switch. Therefore, they
1360 should be excluded from the trigger test on that basis.

1361

¹¹⁷ TRO at ¶ 499, footnote 1549.

¹¹⁸ Notably, *****BEGIN CONF XXXXX END CONF***** filed its information over one month before the CLECs filed their testimony in this proceeding. Despite the availability of this information, no CLEC addressed whether *****BEGIN CONF XXXXXX END CONF***** is or is not appropriately included in the trigger analysis.

¹¹⁹ My recommendation to include *****BEGIN CONF XXXX END CONF***** is tentative. As a practical matter, however, the inclusion of *****BEGIN CONF XXXXX END CONF***** has no bearing on my trigger recommendations. Were *****BEGIN CONF XXX END CONF***** to be excluded my trigger recommendations would remain the same.

1362 ***Geographic Market Boundaries***

1363

1364 *TRO Guidelines*

1365

1366 **Q. Does the TRO provide guidelines for the state to follow in defining**
1367 **geographic markets?**

1368 A. Yes. The TRO specifies that the primary consideration when defining
1369 geographic markets should be whether or not alternative facilities have
1370 been deployed by competing CLECs.¹²⁰ Specifically, the FCC directed:

1371 ...if competitors with their own switches are only serving
1372 certain geographic areas, the state commission should
1373 consider establishing those areas to constitute separate
1374 markets.¹²¹
1375

1376 The TRO also directs the Commission to consider “the variation in factors
1377 affecting competitor’s ability to serve each group of customers, and
1378 competitors ability to target and serve specified markets economically and
1379 efficiently using currently available technologies.”¹²² For example, the
1380 FCC suggests states may consider “how UNE loop rates vary across the
1381 state, how retail rates vary geographically, how the cost of serving
1382 customers varies according to the size of the wire center and the location
1383 of the wire center, and variations in the capabilities of wire centers to

¹²⁰ “It is fundamental to our general impairment analysis to consider whether alternative facilities deployment shows a lack of impairment in serving a particular market.” TRO at ¶ 495, n. 1536.

¹²¹ TRO at ¶ 495, n. 1537.

¹²² TRO at ¶ 495.

1384 provide adequate collocation space and handle large numbers of hot
1385 cuts.”¹²³

1386

1387 *Review of SBC Position*

1388

1389 **Q. How do SBC witnesses propose to define geographic markets?**

1390 A. SBC witnesses Deere and Taylor both recommend that the Commission
1391 should use Metropolitan Statistical Area (“MSA”) boundaries to define
1392 markets in Illinois.¹²⁴

1393

1394 **Q. What support does Mr. Deere provide for SBC’s position that**
1395 **markets should be defined as MSAs?**

1396 A. Mr. Deere argues that the best evidence in support of using MSAs to
1397 define markets comes from actual CLEC deployment.¹²⁵ Mr. Deere then
1398 summarizes deployment information gathered by SBC from various
1399 sources.¹²⁶

1400

1401 **Q. Do you agree with Mr. Deere’s assessment that the best evidence in**
1402 **support of a particular market definition comes from actual CLEC**
1403 **deployment?**

¹²³ TRO at ¶ 496. (Footnotes omitted.)

¹²⁴ Deere Direct at 7 and Taylor Direct at 12 and 13.

¹²⁵ Deere Direct at 10.

¹²⁶ Deere Direct at 11-19.

1404 A. Yes. As indicated above, I believe the FCC guidelines require the primary
1405 consideration to be actual CLEC deployment.

1406

1407 **Q. Do you agree that actual CLEC deployment supports the MSA as the**
1408 **appropriate market definition?**

1409 A. No. I do not agree with Mr. Deere that the evidence of deployment
1410 presented by Mr. Deere supports using MSAs to define markets.
1411 Attachment WCD-4 to Mr. Deere's direct testimony reveals that there are
1412 large contiguous areas within the Chicago MSA where there is no
1413 evidence that a self provisioning mass market switch provider is present.

1414 As Dr. Taylor states:

1415 As the FCC put it in paragraph 495 of the TRO, the
1416 Commission should, when it determines geographic market
1417 definitions, "attempt to distinguish among markets where
1418 different findings of impairment are likely."¹²⁷
1419

1420 According to the data presented by SBC there are large generally less
1421 dense contiguous areas of the Chicago MSA, that if evaluated
1422 independently from other generally higher density contiguous areas would
1423 likely produce different findings of impairment. While this fact is not
1424 dispositive, it is certainly suggestive that the MSA is not the market
1425 definition most appropriate given actual deployment information.

1426

1427 **Q. Does Mr. Deere provide any other support for an MSA market**
1428 **definition?**

1429 A. Yes. Mr. Deere also argues that “in the Chicago MSA there are few, if
1430 any, variations in the factors that affect a CLEC’s ability to serve mass
1431 market customers.”¹²⁸

1432

1433 **Q. Do you agree with Mr. Deere’s assessment that there are few, if any,**
1434 **variations in the factors that affect a CLEC’s ability to serve mass**
1435 **market customers in the Chicago MSA.**

1436 A. No. I do not believe the evidence provided by Mr. Deere supports his
1437 conclusion. Mr. Deere relies on the following five factors to support his
1438 conclusion: (1) that variations in UNE loop rates and retail rates across
1439 SBC’s three retail and UNE rate zones are insufficient to affect a
1440 competitor’s ability to serve mass market customers in the Chicago
1441 MSA,¹²⁹ (2) that variations in wire center densities throughout the Chicago
1442 MSA are insufficient to affect competitor’s ability to serve mass market
1443 customers in the Chicago MSA,¹³⁰ (3) that collocation space limitations do
1444 not affect competitors ability to serve mass market customers in the
1445 Chicago MSA,¹³¹ (4) that any hot cut concerns will be addressed by the
1446 Commission in Docket 03-0593,¹³² and (5) that CLEC cost variations are
1447 insufficient to affect competitor’s ability to serve mass market customers in

¹²⁷ Taylor Direct at 19.

¹²⁸ Deere Direct at 23.

¹²⁹ Deere Direct at 20.

¹³⁰ Deere Direct at 21.

¹³¹ Deere Direct at 21.

¹³² Deere Direct at 21.

1448 the Chicago MSA.¹³³ I do not believe the evidence provided by Mr. Deere
1449 supports his conclusion.

1450

1451 **Q. Do you agree with Mr. Deere that variations in UNE loop rates and**
1452 **retail rates across SBC's three retail and UNE rate zones are**
1453 **insufficient to affect competitor's ability to serve mass market**
1454 **customers in the Chicago MSA?**

1455 A. No. Mr. Deere relies on data provided in the testimony of Mr. Wardin to
1456 make this assertion.¹³⁴ This evidence is insufficient to support Mr. Deere's
1457 conclusion for several reasons. First, the evidence on retail and UNE rate
1458 variation presented by Mr. Wardin is incomplete, excluding for example,
1459 differences that CLECs face in switching costs in different areas of the
1460 Chicago MSA. These costs vary as a result of differences in customer
1461 density and consequently cost determinates, such as switch fill factors,
1462 are likely not only to vary across access areas, but also within access
1463 areas. Thus, because a self provisioning CLEC mass market switch
1464 provider faces costs that are not averaged across access areas, as SBC's
1465 loop rates are, these CLECs will likely face much more variation in cost
1466 than is represented by differences in SBC's UNE average access area
1467 loop rates. As Mr. Deere admits, SBC has not submitted a cost study for

¹³³ Deere Direct at 21.

¹³⁴ Deere Direct at 20.

1468 this proceeding.¹³⁵ Therefore, there is no specific evidence that would
1469 indicate a lack of variation in cost across wire centers in the Chicago MSA.

1470

1471 Furthermore, the evidence presented by Mr. Wardin suggests that there
1472 are variations between UNE loop rates and Access + EUCL rates in the
1473 different access areas. In fact, the margin between retail and UNE loop
1474 rates (assuming for the sake of argument that the information correctly
1475 reflects such rates) is twice as high (\$4.46 vs. \$2.10) for residential
1476 customers in Access Area A as it is for residential customers in Access
1477 Area C. This difference appears all the more significant given that loop
1478 costs (based upon SBC's UNE loop rate) are lowest in Access Area A, the
1479 area with the highest margin according to SBC's figures. That is, the
1480 numbers suggest but do not prove that a CLECs return on investment in
1481 Access Area A is greater than in the other access areas in the Chicago
1482 MSA.

1483

1484 Overall, the evidence provided by Mr. Wardin and relied on by Mr. Deere
1485 does not support Mr. Deere's conclusion that variations in UNE loop rates
1486 and retail rates across SBC's three retail and UNE rate zones are
1487 insufficient to affect a competitor's ability to serve mass market customers.
1488 In fact, the evidence supports precisely the opposite conclusion. That is,
1489 evidence on SBC's UNE and retail line charges suggests, but does not
1490 prove, that CLECs ability to serve mass market customers is greater in

¹³⁵ Deere Direct at 21.

1491 Access Area A than in Access Area B, and is greater in Access Area B
1492 than in Access Area C.

1493

1494 **Q. Do you agree with Mr. Deere that variations in wire center densities**
1495 **throughout the Chicago MSA are insufficient to affect competitors'**
1496 **ability to serve mass market customers in the Chicago MSA?**

1497 A. No. Mr. Deere has not provided evidence that differences in wire center
1498 sizes are not material. He has simply observed that there are many large
1499 wire centers and very small wire centers in the Chicago MSA.¹³⁶ He has
1500 not presented any evidence regarding whether the differences in density
1501 are material. Actual deployment evidence certainly does not support his
1502 hypothesis that differences are not meaningful. For example, the
1503 correlation coefficient between the number of competitors and SBC retail
1504 customer counts in SBC wire centers is .78 --- suggesting that the number
1505 of providers is highly correlated and varies with wire center size.¹³⁷ While
1506 correlation does not necessarily imply causation, the evidence available
1507 certainly does not support Mr. Deere's unsupported proposition that
1508 variations in wire center size are immaterial.

1509

¹³⁶ Deere Direct at 21.

¹³⁷ This figure represents the correlation coefficient between the number of providers I have identified and the number of SBC reported retail lines in those wire centers for which SBC reported retail line counts. SBC failed to provide SBC retail line counts for the Gurnee, Lincolnshire, Orland Park West, Vernon Hills, Aurora East or Aurora West wire centers.

1510 **Q. Do you agree with Mr. Deere that collocation space limitations do not**
1511 **affect competitors' ability to serve mass market customers in the**
1512 **Chicago MSA?**

1513 A. I have no evidence to suggest that Mr. Deere is incorrect with respect to
1514 this point.

1515

1516 **Q. Do you agree with Mr. Deere that hot cut issues need not be**
1517 **considered in any geographic market analysis because those**
1518 **concerns will be addressed by the Commission in Docket No. 03-**
1519 **0593?**

1520 A. No. While hot cut issues are being considered in Docket No. 03-0593,
1521 differences in the hot cut process, caused for example by network
1522 equipment differences, might result in differences in CLECs ability to
1523 serve. However, there is no specific evidence in this proceeding that
1524 specifically identifies such differences in areas within the Chicago MSA.

1525

1526 **Q. Do you agree with Mr. Deere that CLEC cost variations are**
1527 **insufficient to affect competitors' ability to serve mass market**
1528 **customers in the Chicago MSA?**

1529 A. No. First and foremost Mr. Deere has specifically indicated that he has
1530 not relied on cost studies to draw his conclusion.¹³⁸ Mr. Deere instead
1531 relies on an examination of SBC's UNE rates to assess variations in

¹³⁸ Deere Direct at 21.

1532 CLECs self provisioning costs, in this case examining rates for UNEs that
1533 Mr. Wardin did not include in his analysis of UNE loop rates.

1534

1535 First, Mr. Deere indicates that collocation costs are the same across
1536 SBC's service territory.¹³⁹ Collocation rates schedules may not vary
1537 across wire centers, however, this does not imply that per line collocation
1538 costs faced by CLECs do not vary across wire centers. For example, a
1539 CLEC may be able to obtain collocation space in an urban office that costs
1540 the same price as collocation space in a rural office. However, in urban
1541 areas CLECs may be able to place equipment in a collocation space to
1542 serve numerous customers while the same equipment and space may be
1543 necessary to serve fewer customers in more rural areas. That is, CLECs
1544 may be able to take advantage of economies of scale in larger offices to
1545 reduce per line collocation costs. Thus, in order to find that CLECs' ability
1546 to serve customers, as measured by per line collocation costs, remains
1547 invariant across SBC's service area, there would need to be evidence (i)
1548 that SBC's collocation cost schedules do not vary across SBC's service
1549 area and (ii) that there are no economies of scale for collocation in larger
1550 wire centers. Mr. Deere has supplied no evidence regarding the later
1551 requirement and, therefore, his assessment is unsupported and, in my
1552 opinion, incorrect.

1553

¹³⁹ Deere Direct at 21 and 22.

1554 Second, Mr. Deere acknowledges that transport costs do vary, but that the
1555 Chicago MSA is such that those differences should not affect a CLECs'
1556 ability to provide mass market services.¹⁴⁰ Mr. Deere supports this
1557 conclusion by stating that CLECs can reduce transport costs by increasing
1558 switching costs in less dense areas and that SBC provides transport at
1559 reasonable rates. This support is deficient. First, CLECs might eliminate
1560 variation in transport costs between less dense and more dense areas by
1561 investing in relatively more switching, but to do so they create variation in
1562 switching costs and, therefore, differences in competitors' ability to provide
1563 mass market service. Second, presumably CLECs can obtain transport at
1564 reasonable rates throughout SBC's service territory. This does not,
1565 however, imply that there are no differences in CLEC's ability to provide
1566 mass market service in different parts of SBC's territory. Mr. Deere's
1567 conclusion, in effect, reflects a position that CLECs should be able to
1568 provide mass market service anywhere in the country where UNE
1569 transport is offered (presuming, for the sake of argument, both that CLECs
1570 could always substitute switching for transport and that all UNE rates are
1571 reasonable). This opinion, regardless of the merit, sheds no light on
1572 differences in ability to serve that would distinguish market boundaries. If
1573 anything, Mr. Deere's observation would imply that the state is a single
1574 market, a conclusion that, as noted in Mr. Deere's testimony, the FCC has
1575 specifically rejected.¹⁴¹

¹⁴⁰ Deere Direct at 23.

¹⁴¹ Deere Direct at 6.

1576

1577 **Q. In summary, do you agree with Mr. Deere's conclusion that "there**
1578 **are few, if any, variations in the factors that affect a CLEC's ability to**
1579 **serve mass market customers?"**

1580 A. No. Mr. Deere's confuses two different questions: (1) whether CLECs can
1581 potentially serve mass market customers throughout the Chicago MSA
1582 and (2) whether CLECs experience differences in their ability to serve
1583 customers in different areas of the MSA. An affirmative answer to the
1584 first, which is the question that Mr. Deere's analysis is largely focused on,
1585 does not imply a negative answer to the second, which is the question that
1586 goes to appropriate market definitions under the FCC guidelines. That is,
1587 CLECs might be able to serve the entire MSA profitably (a finding that
1588 SBC is not attempting to prove or asking the Commission to make in this
1589 proceeding¹⁴²) yet face different profit opportunities (and different markets)
1590 in different portions of the Chicago MSA. As explained above, even in
1591 those instances, where Mr. Deere addresses differences in the ability of
1592 CLECs to serve different portions of the Chicago MSA, I believe Mr.
1593 Deere's analysis falls short of supporting his position. Thus, I do not
1594 believe that Mr. Deere has shown that there are few, if any, variations in
1595 the factors that affect a CLEC's ability to serve mass market customers
1596 nor do I believe this to be the case.

1597

¹⁴² Rebuttal Notice at ¶ 8.

1598 **Q. What support does Dr. Taylor provide to support the MSA as a**
1599 **market definition?**

1600 A. Dr. Taylor's support primarily rests on arguments related to advertising.
1601 Dr. Taylor argues that media advertising is aimed at a geographic area at
1602 least as large as the MSA and that because of this CLECs should be
1603 expected to serve the MSA.¹⁴³

1604
1605 **Q. Do you agree with Dr. Taylor's conclusion that CLECs serve areas**
1606 **defined exclusively by contours of media markets?**

1607 A. No. I do not agree that Dr. Taylor's arguments support this conclusion.
1608 Certainly, advertising costs and exposure are factors that determine a
1609 CLEC's ability to serve customers. This, however, does not imply that the
1610 economies of scale that a CLEC might obtain from advertising in an MSA
1611 dictate the conclusion that the carrier will serve the entire MSA. Nor, does
1612 the fact that consumers from one area of an MSA might be exposed to
1613 advertising directed to consumers in another part of the MSA (e.g., for
1614 example suburban commuters driving by a bill board directed at urban
1615 consumers) logically require that CLECs will serve the entire MSA. It is
1616 unlikely that CLECs would in every instance, as Dr. Taylor's analysis
1617 suggests,¹⁴⁴ accept large losses resulting from a combination of low
1618 demand and high facilities costs in a particular area, merely in order to
1619 obtain lower advertising costs in a wider "media market". It is also unlikely

¹⁴³ Taylor Direct at 12 and 13.

¹⁴⁴ Taylor Direct at 13.

1620 that CLECs would in every instance, as Dr. Taylor's analysis suggests,¹⁴⁵
1621 absorb large losses in a particular area simply to preserve good will
1622 amongst those customers which happen to be part of a larger "media
1623 market".

1624

1625 **Q. Does Dr. Taylor address non-advertising factors that determine a**
1626 **CLEC's ability to serve customers.**

1627 A. Yes. Dr. Taylor argues that CLECs will also consider the "reach of a
1628 switch", but only as a secondary matter.¹⁴⁶ Dr. Taylor argues that "...when
1629 a CLEC enters using mass-market advertising, it has implicitly chosen to
1630 reach all potential customers in the geographic area served by the
1631 media."¹⁴⁷ Thus, Dr. Taylor implies that CLECs face a discreet decision;
1632 whether or not to serve customers in a media market taking the contours
1633 of that market as fixed. I do not agree with Dr. Taylor that the choices
1634 faced by CLECs are necessarily discreet. CLECs' entry decisions are
1635 based, at least in part, on service costs and for this reason CLECs might
1636 elect to serve only portions of media markets using self provisioned
1637 switching.

1638

1639 Mr. Taylor's position is, in fact, inconsistent with SBC's own deployment
1640 policies. For example, SBC offers its SBC Yahoo! DSL product in the

¹⁴⁵ Taylor Direct at 13.

¹⁴⁶ Taylor Direct at 10.

¹⁴⁷ Taylor Direct at 10.

1641 Chicago media market. However, SBC has adopted the following policy
1642 with respect to availability within the MSA:

1643 In order to qualify for SBC Yahoo! DSL, your location must
1644 meet certain conditions. In addition to having SBC Yahoo!
1645 DSL available in your central office, you must be within
1646 approximately three miles from your central office, or live in a
1647 neighborhood where a DSL Gateway has been installed.
1648 Please note that the measurement from the central office or
1649 gateway to your location is the length of the telephone line
1650 facility, not street miles or air miles. You must also have a
1651 telephone line qualified to carry the DSL signal.

1652
1653 Not all customers who meet these criteria will qualify for SBC
1654 Yahoo! DSL, due to existing conditions of the telephone line.
1655 For example, some telephone equipment, which are used as
1656 part of the telephone company infrastructure to provide
1657 better voice service, can interfere with the DSL signal. If your
1658 line has these conditions, it is not qualified to carry the DSL
1659 signal. Historically, approximately 60% - 65% of customers
1660 out of each central office will qualify for the service.¹⁴⁸
1661

1662 Thus, SBC has presumably determined (based on financial or other
1663 considerations apart from advertising costs) not to supply certain
1664 customers in the Chicago media market despite its decision to enter that
1665 market.

1666

1667 **Q. Does Dr. Taylor take into account actual market activity when**
1668 **defining markets?**

1669 A. Yes. However, Dr. Taylor again relates actual market activity to a
1670 secondary consideration stating:

1671 Economic analysis, of course, also takes into account actual
1672 market activity to date, because that indicates how

¹⁴⁸ Downloaded from SBC's public website
(http://www05.sbc.com/DSL_new/content/1,,46,00.html) 1/23/04.

1673 competitors themselves have balanced the various
1674 considerations that go into entering a market.¹⁴⁹
1675

1676 There are large portions of the Chicago MSA that are not, according to the
1677 evidence in this proceeding, served by self-provisioning mass market
1678 switch providers. Dr. Taylor seemingly acknowledges this fact when he
1679 expresses his expectation that "...CLECs can be expected to continue
1680 expanding the scope and extent of their facilities-based services
1681 throughout the MSA."¹⁵⁰ The evidence of actual market activity in the
1682 record in this proceeding does not support Dr. Taylor's position that the
1683 market for mass market customers in the Chicago area should be defined
1684 as the Chicago MSA.

1685
1686 Dr. Taylor further states that a finding of non-impairment is less likely
1687 "where the level of CLEC entry is limited to date"¹⁵¹ and that "important for
1688 determining the contours of the relevant market is where the CLECs have
1689 not chosen to serve."¹⁵² However, he ignores, seemingly against his own
1690 recommendation, those areas within the Chicago MSA where the level of
1691 entry by self-provisioning mass market switch providers is limited or non-
1692 existent to date.

1693

¹⁴⁹ Taylor Direct at 10.

¹⁵⁰ Taylor Direct at 11.

¹⁵¹ Taylor Direct at 19.

¹⁵² Taylor Direct at 18.

1694 **Q. Dr. Taylor argues that because of the manner in which OMB defines**
1695 **MSAs that he would expect CLECs to try to serve entire MSAs.¹⁵³ Do**
1696 **you agree with this assessment?**

1697 **A.** No. In fact, such a conclusion goes against the advice of OMB itself.
1698 OMB states that:

1699 The purpose of the Standards for Defining Metropolitan and
1700 Micropolitan Statistical Areas is to provide nationally
1701 consistent definitions for collecting, tabulating, and
1702 publishing Federal statistics for a set of geographic areas¹⁵⁴
1703

1704 and cautions that:

1705 Metropolitan Statistical Area and Micropolitan Statistical
1706 Area definitions should not be used to develop and
1707 implement Federal, state, and local nonstatistical programs
1708 and policies without full consideration of the effects of using
1709 these definitions for such purposes.¹⁵⁵
1710

1711 Therefore, the manner in which OMB has defined MSAs does not, in and
1712 of itself, dictate that MSAs be established as the basis for defining mass
1713 market boundaries in this proceeding. I agree with OMB that whether or
1714 not the MSA is the appropriate mass market definition to use for this
1715 proceeding must be determined based on the FCC's guidelines for
1716 determining mass market boundaries and the evidence available in this
1717 case. FCC guidelines and the evidence in this proceeding indicate that
1718 the MSA is an inappropriate geographic area to use to define mass market
1719 boundaries in this proceeding.

¹⁵³ Taylor Direct at 12.

¹⁵⁴ Federal Register, Vol. 65, No. 249, Wednesday, December 27, 2000, Notices, at 82228.

¹⁵⁵ Federal Register, Vol. 65, No. 249, Wednesday, December 27, 2000, Notices, at 82228.

1720

1721 **Q. Dr. Taylor indicates that the FCC has elected to rely on MSAs to**
1722 **define markets in other proceedings. Do you believe this supports**
1723 **using MSAs to define mass market boundaries in this proceeding?**

1724 A. No. Whether or not the MSA is the appropriate mass market definition to
1725 use for this proceeding must be determined based on the FCC's
1726 guidelines for determining mass market boundaries and the evidence
1727 available in this case. Dr. Taylor's reference to past FCC orders in
1728 support of the MSA as a market definition is consistent with his conclusion
1729 that "the MSA is the best generic answer to the question: in what
1730 geographic areas are CLEC and ILEC services likely to compete."¹⁵⁶
1731 However, this question is not relevant to this proceeding. The FCC
1732 directed the states to address the question of market boundaries precisely
1733 because it did not want a generic answer, but rather wanted geographic
1734 areas defined by various and varied circumstances in different areas of
1735 the country based on current, actual data.

1736

1737 In fact, I believe Dr. Taylor's references to past FCC decisions to use
1738 MSAs contradicts rather than supports his position. The fact that the FCC
1739 chose to rely on MSAs in the past but did not elect to do so here strongly
1740 suggests that the FCC did not believe a generic answer was an
1741 appropriate response to the question: In what geographic areas are CLEC
1742 and ILEC services likely to compete?

1743

1744 **Q. In summary, do you agree with Dr. Taylor's assessment that the MSA**
1745 **best approximates how mass-market services are provided?**

1746 A. No. I do not believe the definition advocated by Dr. Taylor is the best
1747 definition given the FCC's guidelines and the evidence in this proceeding.

1748

1749 *Review of Allegiance Position*

1750

1751 **Q. How does Allegiance's Witness propose to define geographic**
1752 **markets?**

1753 A. Allegiance Witness Strickling proposes that the Commission define
1754 markets according to access areas.¹⁵⁷

1755

1756 **Q. What support does Mr. Strickling provide for his recommendation to**
1757 **define geographic markets according to access areas?**

1758 A. Mr. Strickling argues that the density of lines in wire centers is a good
1759 surrogate for determining where competitors can profitably serve
1760 customers using their own switches.¹⁵⁸ He then notes that the existing
1761 access areas vary in density and that, in general, wire centers in Access
1762 Area A have a higher density than wire centers in Access Area B and wire

¹⁵⁶ Taylor Direct at 11.

¹⁵⁷ Strickling Direct at 9.

¹⁵⁸ Strickling Direct at 9.

1763 centers in Access Area B have a higher density than wire centers in
1764 Access Area C.¹⁵⁹

1765

1766 Mr. Strickling argues that actual deployment evidence (as measured by
1767 wire center collocation data) support his recommendation. Examining
1768 entry patterns (as measured by collocation patterns) Mr. Strickling notes
1769 that three or more CLECs have collocated in every wire center in Access
1770 Area A, in approximately 70% of wire centers in Access Area B, and in 39
1771 of 111 (or 35%) of wire centers in Access Area C.

1772

1773 **Q. Do you recommend that the Commission accept Mr. Strickling's**
1774 **proposal to define geographic markets according to access area**
1775 **boundaries?**

1776 A. No. Mr. Strickling has presented evidence that demonstrates a strong
1777 correlation between CLEC entry (as approximated by CLEC collocation
1778 arrangements) and density (as approximated by access areas). However,
1779 I recommend against Mr. Strickling's proposal for two reasons. First, as I
1780 explain below, there is a set of geographic market boundaries that better
1781 correlate with both density and entry. Second, Mr. Strickling's proposed
1782 Access Area C market is overly broad. As the data I present below
1783 shows, there are a number of relatively large wire centers (as measured
1784 by SBC retail lines) in Access Area C and a number of groups of
1785 contiguous wire centers with three or more mass market competitors in

¹⁵⁹ Strickling Direct at 9.

1786 Access Area C. Therefore, deployment data (as well as density and
1787 collocation data) indicate that Access Area C should be divided into more
1788 granular markets.

1789

1790 *Review of MCI Position*

1791

1792 **Q. How do MCI witnesses propose to define geographic markets?**

1793 A. MCI witness Murray proposes that the Commission define each wire
1794 center as a separate market.¹⁶⁰

1795

1796 **Q. What support does Mr. Murray provide for his recommendation to**
1797 **define each wire center as a separate market?**

1798 A. Mr. Murray provides little affirmative support for his recommendation. Mr.
1799 Murray states that, while it may be appropriate to group certain wire
1800 centers into the same geographic market, such groupings can only be
1801 determined by “demonstrating near-uniformity of the economic and
1802 operational conditions in those wire centers.”¹⁶¹ He then argues that
1803 because no such detailed review has been done the Commission cannot
1804 determine appropriate wire center groupings.¹⁶²

1805

¹⁶⁰ Murray Direct at 9 and 90.

¹⁶¹ Murray Direct at 90.

¹⁶² Murray Direct at 90.

1806 **Q. Do you recommend that the Commission adopt Mr. Murray's**
1807 **recommendation to define each wire center as a separate geographic**
1808 **market?**

1809 A. No. Mr. Murray's assertion that wire center groupings can only be
1810 determined by demonstrating near-uniformity of the economic and
1811 operational conditions in those wire centers is reasonably consistent with
1812 the FCC's direction to the Commission to consider "how UNE loop rates
1813 vary across the state, how retail rates vary geographically, how the cost of
1814 serving customers varies according to the size of the wire center and the
1815 location of the wire center, and variations in the capabilities of wire centers
1816 to provide adequate collocation space and handle large numbers of hot
1817 cuts."¹⁶³ However, I do not agree with Mr. Murray that the Commission
1818 does not have the ability to determine wire center groupings in this
1819 proceeding. While Mr. Murray has not elected to perform such an
1820 analysis, this does not indicate that one cannot be done.¹⁶⁴ As I indicate
1821 below, I believe the Commission has evidence in this proceeding sufficient
1822 for it to determine wire center groupings.

1823

1824 *Review of the CLEC Coalition Position*

1825

¹⁶³ TRO at ¶ 496. (Footnotes omitted.)

¹⁶⁴ Mr. Murray mentions factors that might affect a CLECs ability to serve customers and notes that these factors can and do vary across wire centers. See, for example, Murray Direct at 87 and 90. Mr. Murray does not, however, provide specific evidence to the Commission that would permit the Commission to identify appropriate wire center groupings.

1826 **Q. How do the CLEC Coalition’s witnesses recommend the Commission**
1827 **define geographic markets?**

1828 A. CLEC Coalition witness Gillan proposes to define each Local Transport
1829 and Access Area (“LATA”) in Illinois as a single market.¹⁶⁵

1830

1831 **Q. What support does Mr. Gillan provide for his recommendation to**
1832 **define each LATA in Illinois as a single market?**

1833 A. If I am understanding Mr. Gillan’s arguments correctly, Mr. Gillan is
1834 arguing that the “mass” in mass market refers to the fact that lots of
1835 customers buy a particular type of product or service and that all
1836 customers that purchase these products are part of the same market.¹⁶⁶

1837 More pointedly Mr. Gillan argues that individual customers in mass
1838 markets are not profitable and entrants can only profit from serving lots of
1839 them.¹⁶⁷

1840

1841 For these reasons, it is my understanding that Mr. Gillan advocates large
1842 geographic markets. For example, he suggests that providers of mass
1843 market services serve one market, which includes all of SBC’s service
1844 area in Illinois.¹⁶⁸ However, noting that the FCC rules prohibit the

¹⁶⁵ Gillan Direct at 38.

¹⁶⁶ Gillan Direct at 37.

¹⁶⁷ Gillan Direct at 37.

¹⁶⁸ Gillan Direct at 38.

1845 Commission from defining the state as a single market,¹⁶⁹ Mr. Gillan has
1846 proposed the LATA as the appropriate geographic boundary.

1847

1848 **Q. Do you recommend that the Commission accept Mr. Gillan's**
1849 **recommendation?**

1850 A. No. Mr. Gillan bases his recommendation, in part, on the fact that
1851 competitors serving customers over their own switches will provide service
1852 throughout the state. However, Mr. Gillan acknowledges that this is
1853 speculation on his part and that he does not have information to confirm
1854 this speculation.¹⁷⁰

1855

1856 In addition, Mr. Gillan's argument presumes that self-provisioning switch
1857 providers are not able to profitably serve markets smaller than the LATA.
1858 Mr. Gillan offers no factual support for this assumption and the
1859 deployment patterns of self-provisioning mass market switch providers in
1860 this proceeding simply does not support Mr. Gillan's assumption. None of
1861 the self-provisioning mass market switch providers in this proceeding
1862 currently provides service to all areas of the Chicago LATA.

1863

1864 Finally, Mr. Gillan's analysis ignores FCC direction. Mr. Gillan indicates
1865 that he has not considered specific data on the locations of customers

¹⁶⁹ Gillan Direct at 35.

¹⁷⁰ Gillan Direct at 38.

1866 actually being served by competitors.¹⁷¹ As Mr. Gillan recognizes, the
1867 FCC has directed the Commission to consider this data.¹⁷² Mr. Gillan also
1868 recognizes that the FCC has directed the Commission to consider
1869 variations in factors affecting competitors' ability to serve groups of
1870 customers.¹⁷³ However, the only evidence Mr. Gillan provides regarding
1871 such variation suggests that variation occurs between wire centers,
1872 evidence that supports rejection of the LATA as a market boundary.¹⁷⁴

1873

1874 On the whole Mr. Gillan provides no factual information regarding any of
1875 the factors that he indicates the FCC directed the Commission to consider
1876 when defining markets. Therefore, the Commission should reject Mr.
1877 Gillan's proposal to define mass market boundaries based on LATA
1878 boundaries.

1879

1880 *Review of Z-TEL Position*

1881

1882 **Q. How does Z-TEL's witness recommend the Commission define**
1883 **geographic markets?**

¹⁷¹ Gillan Direct at 35-36.

¹⁷² Gillan Direct at 35.

¹⁷³ Gillan Direct at 35.

¹⁷⁴ Gillan Direct at 44.

1884 A. Z-TEL Witness Ford does not offer a “geographic market” definition.¹⁷⁵ Dr.
1885 Ford does, however, recommend the Commission, if it is considering a
1886 finding that the triggers are met in a geographic area:

1887 ...consider the impact on competition and service in Illinois
1888 both “inside” that geographic area and “outside” that area if
1889 UNE-P access were denied “inside” that “geographic
1890 market.”¹⁷⁶
1891

1892 **Q. Should the Commission accept Dr. Ford’s recommendation?**

1893 A. No. Although Dr. Ford has provided no specific recommendation, he
1894 notes that Z-Tel might not be able to profitably provide UNE-P based
1895 service at all in Illinois if the Commission finds no impairment in certain
1896 areas of Illinois.¹⁷⁷ Thus, his general recommendation would seem to
1897 foreclose the selection of any geographic market definition that would lead
1898 to a finding that triggers are satisfied anywhere in Illinois. A
1899 recommendation that does not under any circumstances permit the
1900 Commission to conclude that triggers are satisfied anywhere in Illinois
1901 nullifies the trigger analysis included in the FCC rules. That is, Dr. Ford’s
1902 proposal reads the trigger analysis out of the FCC rules. Therefore, I
1903 recommend that the Commission reject Dr. Ford’s recommendation to the
1904 extent it forecloses the selection of any geographic market definition that
1905 would lead to a finding that triggers are satisfied anywhere in Illinois.
1906

¹⁷⁵ Ford Direct at 17.

¹⁷⁶ Ford Direct at 20.

¹⁷⁷ Ford Direct at 21.

1925 **Q. Do you recommend that the Commission accept Mr. Burt's proposal**
1926 **to define each MSA as a geographic market for purposes of its**
1927 **trigger analysis?**

1928 A. No. As I discussed above, in response to SBC's proposal to define each
1929 MSA as a geographic market for purposes of its trigger analysis, the
1930 Commission should reject this proposal.

1931

1932 **Q. Mr. Burt argues that the concept of where customers are "actually**
1933 **being served" is problematic for defining a market because there are**
1934 **numerous and increasing granular ways to parse the MSA (e.g.,**
1935 **single wire center, single census block, etc.) and that all of these**
1936 **areas "represent where customers are actually being served".¹⁸¹ Do**
1937 **you agree with Mr. Burt's statement?**

1938 A. No. Mr. Burt argues that CLECs that are self-provisioning mass market
1939 switching in a particular area serve common areas included within
1940 numerous different geographic boundaries. For example, if a CLEC
1941 serves a wire center, it also serves the MSA, state, and country containing
1942 this wire center. This does not, however, imply that the concept of where
1943 customers are actually being served is itself problematic for defining a
1944 market. Instead it implies that the Commission should both pay particular
1945 attention to ensure that geographic areas are defined in a granular enough
1946 manner such that CLECs are actually serving the area and that there are
1947 not large portions of the area that the CLECs do not serve and that the

1948 areas are not so small that “a competitor serving that market would not be
1949 able to take advantage of available scale and scope economies from
1950 serving a wider market.”¹⁸² This does not suggest, as Mr. Burt implies,
1951 that the Commission should not look to deployment data as the primary
1952 factor in determining geographic market boundaries.

1953

1954 *Review of Sage/Talk America Position*

1955

1956 **Q. How does Sage/Talk America’s witness recommend the Commission**
1957 **define geographic markets?**

1958 A. Dr. Kelley recommends that the Commission define each wire center as a
1959 separate geographic market for purposes of its trigger analysis.¹⁸³

1960

1961 **Q. Do you recommend that the Commission accept Dr. Kelley’s**
1962 **proposal to define each wire center as a geographic market for**
1963 **purposes of its trigger analysis?**

1964 A. No. Dr. Kelley notes that the FCC has directed that the Commission
1965 should not define markets so narrowly that CLECs serving that market
1966 alone are not able to take advantage of scale and scope economies from
1967 serving a wider market.¹⁸⁴ He then states:

¹⁸¹ Burt Direct at 9-10.

¹⁸² TRO at ¶ 495.

¹⁸³ Kelly Direct at 35.

¹⁸⁴ Kelley Direct at 33.

1968 A switch in one location may have competitive significance in
1969 adjacent wire centers due to the presence of scale and/or
1970 scope economies in switching.¹⁸⁵
1971

1972 Thus, Dr. Kelley's statements indicate that the wire center might not be the
1973 appropriate area to define as a geographic market.

1974

1975 Dr. Kelley, however, goes on to point out numerous factors that may or
1976 may not prevent a CLEC from taking advantage of switching economies of
1977 scale and/or scope by serving adjacent wire centers.¹⁸⁶ Dr. Kelley then
1978 concludes that, as a result of such potential barriers, the Commission
1979 should determine that each wire center is itself a market.

1980

1981 Dr. Kelley has listed potential factors that prevent a CLEC from taking
1982 advantage of switching economies of scale and/or scope by serving
1983 adjacent wire centers. He has not, however, presented any evidence that
1984 these potential factors do in fact prevent CLECs from taking advantage of
1985 switching economies of scale and/or scope in any particular adjacent wire
1986 centers. For this reason, I recommend the Commission reject Dr. Kelley's
1987 recommendation to define each wire center as a geographic market for
1988 purposes of its trigger analysis.

1989 *Recommendations*
1990

¹⁸⁵ Kelley Direct at 33.

¹⁸⁶ See, for example, Kelley Direct at 33, and 36-37.

1991 **Q. How do you recommend that the Commission define markets in this**
1992 **proceeding?**

1993 A. I recommend that, in accordance with the direction of the FCC, the
1994 Commission determine market boundaries primarily based on the
1995 evidence that exists regarding actual provision of service by CLECs using
1996 their own switches to provide mass market service to customers in the
1997 Chicago MSA. In addition, where evidence exists, the Commission should
1998 supplement the actual provisioning information with information regarding
1999 the variation in factors affecting a competitor's ability to target and serve
2000 specified markets economically and efficiently using currently available
2001 technologies.

2002

2003 Specifically, based on the actual evidence available in this proceeding, I
2004 recommend an approach that groups wire centers together to form
2005 markets based on:

- 2006
- 2007 ▪ the number of providers serving mass market customers with their own
2008 switches in the wire centers
 - 2009 ▪ the number of CLECs with collocation arrangements in the wire
2010 centers
 - 2011 ▪ the size of the wire center (defined by the number of SBC retail lines in
2012 the wire centers), and
 - 2013 ▪ the proximity of wire centers to one another

2014 **Q. How are the markets that you recommend that the Commission**
2015 **adopt for the purposes of this proceeding related to your**
2016 **recommendations regarding the appropriate definition of mass**
2017 **market customers and mass market providers?**

2018 A. Because the FCC prescribed that geographic markets be developed
2019 primarily based on deployment information, measurement of deployment
2020 will be critical to any determination. My analysis assumes that mass
2021 market customers are those customers served by three or fewer DS0 lines
2022 and that mass market providers include those nine providers included in
2023 Schedule JZ 1.01 (excluding *****BEGIN CONF XXXX END CONF*****).
2024 These assumptions define the set of deployment information I include in
2025 my analysis. For example, if the Commission determines that *****BEGIN**
2026 **CONF XXXXXXXX END CONF***** should be considered a mass market
2027 provider then the number of CLECs that I include in counting self-
2028 provisioning local switch providers will, in certain wire centers, increase.
2029 Similarly, if the Commission determines that CLECs serving more than
2030 four lines are to be considered mass market providers then the number of
2031 CLECs that I include in counting self-provisioning local switch providers
2032 will, in certain wire centers, increase. Therefore, the three critical
2033 decisions the Commission must make in conducting the trigger analysis
2034 (which customers are mass market customers, which of the possible self-
2035 provisioning mass market providers should be included in the trigger

2036 analysis, and what geographic areas to include in each market) are
2037 necessarily interdependent.

2038

2039 **Q. How did you develop the geographic markets that you recommend**
2040 **the Commission adopt in this proceeding?**

2041 A. As an initial matter, based on my review of deployment, collocation, and
2042 wire center size information, I elected to examine each county within the
2043 Chicago MSA separately. Map 1 in Schedule JZ 1.03 depicts the 9
2044 counties in the Chicago MSA and overlays SBC's Chicago MSA wire
2045 centers.

2046

2047 **Q. Above you indicated, and as Map 1 of Schedule JZ 1.03 depicts,**
2048 **county and wire center boundaries do not match up precisely. Do**
2049 **you believe this is a significant factor in your analysis?**

2050 A. No. The wire centers that I joined together to form each "county"
2051 collectively fall for the most part within the actual county borders. I believe
2052 the information I present in this proceeding will demonstrate these
2053 groupings are appropriate.

2054

2055 **Q. Why did you begin your analysis by looking at counties?**

2056 A. Based on this information, Cook County, DuPage County, Kane County,
2057 and Lake County each contain at least one wire center served by three or
2058 more self provisioning mass market switch providers, while Kendall

2059 County, McHenry County, Will County, DeKalb County, and Grundy
2060 County do not contain at least one wire center served by three or more
2061 self provisioning mass market switch providers. Thus, there is a clear
2062 delineation between these areas in terms of actual deployment by mass
2063 market local switch self-providers. Map 2 in Schedule JZ 1.03 depicts the
2064 wire centers in each county where three or more self provisioning mass
2065 market switch providers provide service.

2066

2067 **Q. Apart from the number of self provisioning mass market switch**
2068 **providers, what other factors differentiate Cook, DuPage, Kane, and**
2069 **Lake Counties from the other five counties in the Illinois portion of**
2070 **the Chicago MSA?**

2071 A. As Schedule JZ 1.02 indicates, Cook, DuPage, Kane and Lake Counties
2072 are the densest counties in terms of both population per square mile and
2073 housing units per square mile. These four counties also contain the most
2074 SBC retail lines and the largest wire centers (measured by average wire
2075 center line sizes per county), and the most wire centers with three or more
2076 collocated CLECs. Schedule JZ 1.03, Maps 3, 4, and 5, depict wire
2077 centers within each county that are, respectively, served by one or more
2078 mass market local switch self-providers, contain three or more collocated
2079 CLECs, and contain 20,000 or more SBC retail lines. Schedule JZ 1.03
2080 Map 6 depicts wire centers within each county that meet all three criteria
2081 (are served by one or more mass market local switch self-providers,

2082 contain three or more collocated CLECs, and contain 20,000 or more SBC
2083 retail lines).

2084

2085 **Q. Did you reach any conclusions from examining county level**
2086 **information?**

2087 A. Yes. Based on this examination I reached two conclusions. First, I
2088 determined that Kendall, McHenry, Will, DeKalb, and Grundy Counties
2089 should be separated for the purposes of defining geographical markets
2090 from Cook, DuPage, Kane and Lake Counties. The division captures not
2091 only differences in deployment by self provisioning mass market switch
2092 providers, but differences in recognized cost factors such as wire center
2093 size.

2094

2095 **Q. Are you recommending that the Commission affirmatively find that**
2096 **Kendall, McHenry, Will, DeKalb, and Grundy Counties are each**
2097 **separate markets?**

2098 A. No. I do not believe the Commission needs to define market boundaries
2099 in these areas, nor should it. Not one of these counties has wire center
2100 with three or more mass market providers. Therefore, the Commission
2101 should conclude that deployment in these areas is not, at this time,
2102 sufficient to satisfy the FCC triggers. In fact, deployment is so limited that

2103 the Commission simply doesn't have the deployment information
2104 necessary to identify any separate geographic markets in these areas.¹⁸⁷

2105

2106 **Q. Isn't it conceivable that if enough wire centers were consolidated in**
2107 **these areas, that there might be three providers in the consolidated**
2108 **area?**

2109 A. Yes. However, it is my recommendation that the Commission should not
2110 define geographic boundaries in such a way that triggers are met when no
2111 two providers serve the same wire center.¹⁸⁸ That is, while I recommend
2112 the Commission initially approach the defining of markets from a top down
2113 perspective, the Commission should also work from the bottom up. That
2114 is, I recommend that the core of any group of wire centers the
2115 Commission determines to be a market include at a minimum one wire
2116 center with three or more providers. As I explain below, this does not
2117 imply that every wire center must have three or more local switching self
2118 providers. This also does not imply that I recommend that the
2119 Commission define each wire center as a market. I simply recommend
2120 that markets drawn based on actual provision must be drawn such that at
2121 least some wire center in the market contains three actual providers.

2122

¹⁸⁷ The Commission might, as an alternative turn to potential deployment information, when defining markets in these areas. However, no party has submitted a potential deployment analysis in this proceeding. Therefore, the Commission has insufficient information in this respect to define markets in these areas at this time.

¹⁸⁸ My recommendation assumes that the Commission does not have, as is the case in this proceeding, potential deployment related information that would allow the Commission to define markets absent significant actual deployment information.

2123 The wire center is a logical building block because the CLECs included in
2124 this switching analysis predominately use ILEC loops to provide mass
2125 market service. CLECs that have configured their networks to use ILEC
2126 loops in a wire center (e.g., collocated in that wire center) are, in general,
2127 more easily able to add customers in that wire center than they are able to
2128 add customers in wire centers where they have not configured their
2129 networks to use ILEC loops in the wire center. Therefore, when three
2130 CLECs self-provision service in a particular wire center, it is likely that
2131 these CLECs are, in fact, able to compete for the same mass market
2132 customers. For this reason, I recommend the Commission use wire
2133 centers as the building blocks for geographic market determinations and
2134 require that any geographic market defined contain at least one wire
2135 center with three or more self-provisioning local switch providers.

2136

2137 **Q. What other conclusions did you reach from examining the county**
2138 **level information?**

2139 A. I concluded, based on my examination of the evidence in this proceeding,
2140 that the Commission should identify Cook and DuPage counties each as a
2141 single market that meets the triggers. These recommendations result
2142 directly from the deployment patterns in Cook and DuPage counties. As
2143 Schedule 1.03 Map 2 depicts, in both Cook and DuPage counties three or
2144 more local mass market switch providers are present in individual wire
2145 centers throughout the county. However, even more telling is that, as

2146 depicted in Schedule 1.03 Map 3, all but one wire center in Cook County
2147 and all but one wire center in DuPage County contain a local mass market
2148 switch provider.

2149
2150 I recognize that there is voluminous testimony in this proceeding regarding
2151 potential differences in operational, revenue, and cost considerations
2152 between wire centers. Therefore, I have considered other information
2153 when making my recommendations. In particular, I have looked at wire
2154 center size and the number of collocated CLECs when aggregating wire
2155 centers to form markets for purposes of the trigger analysis.

2156
2157 Deployment information suggests there is an important delineation in entry
2158 between wire centers with around 20,000 SBC retail lines or less and wire
2159 centers with 20,000 SBC retail lines or more. For example, no wire center
2160 in the Chicago MSA with less than 19,500 SBC retail lines (52 wire
2161 centers) currently contains three or more mass market local switch self
2162 providers. However, 70 of the 79 wire centers in the Chicago MSA with
2163 more than 19,500 SBC retail lines contain three or more mass market
2164 local switch self providers.¹⁸⁹

2165
2166 In addition, the presence of three or more collocated CLECs provides
2167 evidence that these CLECs have been able to overcome at least one of

¹⁸⁹ SBC has not provided retail line information for the remaining six wire centers in the Chicago MSA.

2168 the possible barriers to entry in a wire center --- the establishment of
2169 facilities often necessary to allow the CLEC to access SBC UNE loops.

2170

2171 I note that 57 of the 70 wire centers in Cook County contain at least one
2172 mass market provider, three collocated CLECs, and over 20,000 SBC
2173 retail lines. Further I note that the 13 wire centers that do not meet these
2174 conditions (all but one of which contains at least one mass market local
2175 switching self provider) are isolated wire centers that are adjacent (and for
2176 the most part surrounded by) wire centers that do meet these conditions.

2177 Therefore, there are no groupings of more than two contiguous wire
2178 centers in Cook County each of which fails to contain at least one mass
2179 market provider, three collocated CLECs, and over 20,000 SBC retail
2180 lines. As a result, of these considerations I recommend the Commission
2181 include all wire centers in Cook County into a market for purposes of the
2182 trigger analysis.

2183

2184 Similarly I note that 13 of the 16 wire centers in DuPage County contain at
2185 least one mass market provider, three collocated CLECs, and over 20,000
2186 SBC retail lines. Only 2 wire centers do not meet these conditions (one of
2187 which contains at least one mass market local switching self provider).¹⁹⁰

2188 These two wire centers are adjacent (and for the most part surrounded by)
2189 wire centers that do meet these conditions. Therefore, there are no

¹⁹⁰ One wire center for which SBC did not supply retail line counts does contain both one mass market local switching self-provider and three or more collocated CLECs.

2190 groupings of more than two contiguous wire centers in DuPage County
2191 each of which fails to contain at least one mass market provider, three
2192 collocated CLECs, and over 20,000 SBC retail lines. As a result of these
2193 considerations I recommend the Commission include all wire centers in
2194 DuPage County into a market for purposes of the trigger analysis.

2195

2196

2197 **Q. Does this imply that there are no actual markets smaller than the**
2198 **county?**

2199 A. No. It is conceivable that there may be separate markets within these
2200 counties consistent with the FCC criteria. However, based on the
2201 information available in this proceeding, there is no reasonable way for the
2202 Commission to parse this market that does not result in the triggers being
2203 met in each portion. If the FCC analysis had been required in 1996, the
2204 deployment data at that time might have supported the identification of
2205 separate markets that would have had a practical impact on the outcome
2206 of the trigger analysis for the Chicago MSA. That is simply not the case at
2207 this time based on the record evidence discussed above. Therefore, the
2208 Commission need not undertake such an activity.

2209

2210 **Q. Should the Commission define individual wire centers as markets**
2211 **and then determine that triggers are not met in certain wire centers**
2212 **in Cook and DuPage Counties?**

2213 A. No. The individual deployment patterns of each of the self-provisioning
2214 local switch providers in this proceeding, depicted in Schedule JZ 1.06
2215 Maps 1-10, illustrate that these providers often serve multiple and
2216 contiguous wire center groups. This strongly suggests that relative wire
2217 center locations are important considerations in deployment. Therefore,
2218 the fact that there are a few lower density wire centers surrounded by
2219 larger wire centers in Cook and DuPage counties makes it likely that these
2220 wire centers will be served by providers serving adjacent areas (i.e., that
2221 they will fall into the same markets as measured by deployment patterns).
2222 The provisioning information (which shows that all but one wire center
2223 each in all of Cook and DuPage Counties is served by at least one
2224 provider) supports this conclusion.

2225

2226 I note that my recommendation is made based on the best information
2227 available. Should any party present information identifying specific
2228 differences between particular wire centers or groups of wire centers in
2229 any of the markets I propose, I will reconsider my recommendation based
2230 on such new information.

2231

2232 **Q. There are two counties that you have not addressed, Lake and Kane**
2233 **Counties. What is your recommendation with respect to these two**
2234 **counties?**

2235

2236 I recommend that the Commission determine Lake and Kane counties to
2237 each contain two separate markets. Specifically, Lake county should be
2238 divided into a market containing the Antioch, Zion, Fox Lake, Lake Villa,
2239 Gurnee, Round Lake, and Wauconda wire centers and another separate
2240 market containing the Waukegon, North Chicago, Grayslake, Libertyville,
2241 Lincolnshire, Vernon Hills, Lake Forest, Barrington, Lake Zurich,
2242 Wheeling, Deerfield, and Highland Park wire centers. Similarly Kane
2243 county should be divided into a market containing the Hampshire, Plato
2244 Center, Elburn, Kaneville, Big Rock, and Sugar Grove wire centers and a
2245 separate market containing Dundee, Elgin, Geneva, Aurora Main, and
2246 Aurora West wire centers.

2247

2248 **Q. Please explain how you identified the separate markets in Lake**
2249 **County.**

2250 A. I first identified the Waukegon, Libertyville, Lake Forest, Wheeling,
2251 Deerfield, and Highland Park wire centers as wire centers with three or
2252 more self provisioning mass market switch providers. These wire centers
2253 comprise a single contiguous area.¹⁹¹ To form a market I added to these
2254 wire centers those within Lake County that contained 20,000 or more SBC
2255 retail customers, at least one self provisioning mass market switch
2256 provider, and three or more collocated CLECs. This approach generated
2257 a market including the Waukegon, North Chicago, Grayslake, Libertyville,

¹⁹¹ While these wire centers form a single contiguous area they do, however, isolate the North Chicago wire center. This is addressed below.

2258 Lake Forest, Barrington, Lake Zurich, Wheeling, Deerfield, Highland Park,
2259 Lincolnshire, and Vernon Hills wire centers.¹⁹² I then formed a separate
2260 market comprised of all other wire centers located in Lake County.

2261

2262 The two markets produced by this approach can be described, according
2263 to their geographic locations, as Northwest Lake County and Southeast
2264 Lake County. Apart from their geographic separation the two markets are
2265 separated by density, with the Northwest Lake County market containing
2266 lower density wire centers than does the Southeast Lake County market.
2267 Another notable feature of the Southeast Lake County market is that the
2268 wire centers contained therein are those generally in closest proximity to
2269 the downtown Chicago area.

2270

2271 Consistent with my recommendation above, I do not recommend that the
2272 Commission determine whether the Northwest Lake County market should
2273 be further subdivided. Absent a single wire center with three or more
2274 CLEC self-provisioning switch providers, the Commission should
2275 determine that the triggers are not met in this area and leave further

¹⁹² SBC did not provide SBC retail line counts for the Lincolnshire, Vernon Hills, or Gurnee wire centers. Nor are these wire centers included in the Wire Center Premium Software I have used for my analysis. However, based on LERG information, it is my understanding that the Lincolnshire and Vernon Hills wire centers are contained within the area defined on the map as the Libertyville wire center. Because this area contains in excess of 20,000 SBC lines and because Lincolnshire and Vernon Hills both contain at least one self provisioning mass market switch provider I have included them in the market that contains those wire centers with three or more self provisioning mass market switch providers. Absent SBC retail line information on the Gurnee exchange, I have excluded Gurnee from the market that contains those wire centers with three or more self provisioning mass market switch providers.

2276 determinations open until deployment information becomes available that
2277 would necessitate a decision.

2278

2279 I do recommend, however, that the Commission define the Southeast
2280 Lake County area as a market for purposes of the trigger analysis and
2281 determine that the local self-provisioning trigger test is met in the
2282 Southeast Lake County market.

2283

2284 **Q. Please explain how you identified the separate markets in Kane**
2285 **County.**

2286 A. I used the same basic approach to define Kane County markets as I did to
2287 define Lake county markets. I first identified the Geneva and Aurora Main
2288 wire centers as wire centers with three or more self provisioning mass
2289 market switch providers. Again, these wire centers comprise a single
2290 contiguous area. To form a market I added to these wire centers those
2291 within Kane County that contained 20,000 or more SBC retail customers,
2292 at least one self provisioning mass market switch provider, and three or
2293 more collocated CLECs. This approach generated a market including the
2294 Dundee, Elgin, Geneva, Aurora Main and Aurora West wire centers.¹⁹³ I

¹⁹³ SBC did not provide SBC retail line counts for the Aurora West wire center. Nor is this wire centers included in the Wire Center Premium Software I have used for my analysis. However, it is my understanding that the Aurora West wire center is contained within the area defined on the map as the Aurora West wire center. Because this area contains in excess of 20,000 SBC lines and because Aurora West contains at least one self provisioning mass market switch provider I have included it in the market that contains those wire centers with three or more self provisioning mass market switch providers.

2295 then formed a separate market comprised of all other wire centers located
2296 in Lake County.

2297

2298 The two markets produced by this approach can, again, be described,
2299 according to their geographic locations. The division here, however, is
2300 between East and West rather than between Northwest and Southeast.
2301 Again, apart from their geographic separation the two markets are
2302 separated by density with the Eastern Kane County market generally
2303 containing lower density wire centers than does the Western Kane County
2304 market. Again, as is the case for Lake County, a notable feature of the
2305 Eastern Kane County market is that the wire centers contained therein are
2306 those generally in closest proximity to the downtown Chicago area.

2307

2308 Also, consistent with my recommendation above, I do not recommend that
2309 the Commission determine whether the West Kane County market should
2310 be further subdivided. Absent a single wire center with three or more
2311 CLEC self-provisioning switch providers, the Commission should
2312 determine that the triggers are not met in West Kane County and leave
2313 further determinations open until deployment information becomes
2314 available that would necessitate a decision.

2315

2316 I do recommend, however, that the Commission define the East Kane
2317 County area as a market for purposes of the trigger analysis and

2318 determine that the local self-provisioning trigger test is met in the East
2319 Kane County market.

2320

2321 **Q. Please summarize your recommendation regarding geographic**
2322 **market definitions in this proceeding?**

2323 A. I recommend that the Commission define four markets for purposes of its
2324 trigger analysis: one market which includes all wire centers in Cook
2325 County, one market with includes all wire centers in DuPage County, one
2326 market that contains all wire centers in Southeast Lake County, and one
2327 market that contains all wire centers in East Kane County. Furthermore,
2328 the Commission should declare that it does not have sufficient information
2329 to draw market boundaries outside these four markets and that no such
2330 exercise is necessary at this time.

2331

2332 **Q. Please compare how your assessment compares to that of**
2333 **Allegiance Witness Strickling.**

2334 A. Schedule JZ 1.04 Map 1 depicts the SBC wire centers in the various
2335 access areas within the Chicago MSA. As I indicated above, Mr. Strickling
2336 has identified a high level of correlation between deployment and access
2337 areas. As Schedule JZ 1.04, Map 3 depicts, Access Areas A and B are
2338 included entirely within Cook and DuPage Counties. Because of this, if
2339 the Commission finds the triggers satisfied in Cook and DuPage Counties,
2340 it will in effect be finding that the triggers are satisfied in Access Area A

2341 and Access Area B. In this respect my recommendation is similar to that
2342 of Mr. Strickling. However, my proposal differs from that of Mr. Strickling
2343 because I parse Access Area C into separate markets, divisions that are
2344 dictated by deployment and wire center size differences within Access
2345 Area C. As Schedule 1.04 Map 2 depicts, the borders of Access Area C
2346 do not match well with the areas in which CLECs provide mass market
2347 switching in Access Area C. The recommendation I make corrects for
2348 this mismatch in Access Area C.

2349

2350 **Q. If your recommendation is accepted, how much of the Chicago MSA**
2351 **is included in areas where triggers are satisfied?**

2352 A. If my recommendation is accepted, the triggers will be satisfied in 103 of
2353 the 155 (66% of) Chicago MSA wire centers. However, a disproportionate
2354 share of SBC retail customers are located in these wire centers.

2355 *****BEGIN CONF XX**

2356 **XXXXX END CONF***** SBC retail customers in the Chicago MSA are
2357 located in wire centers where the triggers are satisfied.

2358

2359 ***Staff Trigger Assessment***

2360

2361 *Recommendation*

2362

2363 Q. What do you recommend that the Commission conclude regarding
2364 satisfaction of the local provisioning triggers in markets in the
2365 Chicago MSA?

2366 A. I recommend that the Commission determine the following:

2367

2368 ▪ Customers with three or fewer voice grade local telephone lines are
2369 mass market customers and customers with four or more voice grade
2370 local telephone lines are enterprise customers for purposes of
2371 evaluating satisfaction of the local switching self-provisioning triggers.

2372

2373 ▪ *****BEGIN CONF XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX**
2374 **XXXXXXXXXXXXXXXXXX END CONF***** are mass market local switching
2375 self providers with service areas defined by the information for each
2376 respective CLEC included in Schedule JZ 1.01 for purposes of
2377 evaluating satisfaction of the local switching self-provisioning trigger.

2378

2379 ▪ For purposes of evaluating satisfaction of the local switching self-
2380 provisioning trigger, there are four markets in the Chicago MSA: one
2381 market which includes all wire centers in Cook County, one market
2382 which includes all wire centers in DuPage County, one market that
2383 contains all wire centers in Southeast Lake County, and one market
2384 that contains all wire centers in East Kane County. Wire center
2385 assignments are as reflected in JZ Schedule 1.01.

2386

2387 ▪ Market boundaries outside the Cook County, DuPage County,
2388 Southeast Lake County, and East Kane County markets are
2389 indeterminate at this time and the Commission should make such
2390 determinations if and when such determinations are necessary (e.g., if
2391 the Commission is presented with evidence that three or more mass
2392 market local switching self providers provide service in any wire center
2393 within these areas).

2394

2395 ▪ The local switching self-provisioning trigger is satisfied in the Cook
2396 County, DuPage County, Southeast Lake County, and East Kane
2397 County markets.

2398

2399 The wire centers included in markets in which I recommend that the
2400 Commission find that the local switching self-provisioning trigger is
2401 satisfied are depicted in Schedule JZ 1.03 Map 7.

2402

2403

2404 **Non-Trigger Related Issues**
2405

2406

2407 ***Additional Impairment Considerations***

2408 *Recommendation*

2409

2410 **Q. Does your mass market switching impairment analysis above**
2411 **determine whether SBC must or must not unbundle local mass**
2412 **market switching in Illinois?**

2413 A. No. I have made a recommendation regarding mass market local
2414 switching self-provisioning triggers as specified in the TRO. Following the
2415 guidelines in the TRO, and based on the information available in this
2416 proceeding I have recommended that the Commission determine that
2417 mass market local switching self-provisioning triggers are met in certain
2418 markets within SBC's service territory. This determination only addresses
2419 the issue of whether ILECs are required to provide, and CLECs are
2420 entitled to obtain, unbundled local mass market switching as an unbundled
2421 network element under Sections 251 and 252 of the 1996
2422 Telecommunications Act. This is not a determination of whether SBC
2423 must or must not unbundle local mass market switching in Illinois based
2424 on other unbundling requirements, such as Section 271 of the 1996
2425 Telecommunications Act of 1996 ("1996 Act") or the unbundling
2426 requirements under PUA Section 13-801.

2427

2428 **Q. Are you recommending that the Commission determine that that a**
2429 **requesting carrier is not impaired without access to local circuit**
2430 **switching on an unbundled basis in those markets where you have**
2431 **indicated that the local switching self-provisioning triggers are met?**

2432 A. Yes. As I explained above, if the triggers are met, the FCC rules require
2433 that the Commission find that a requesting carrier is not impaired without
2434 access to local circuit switching on an unbundled basis in a particular
2435 market. If, however, the Commission identifies an exceptional source (or
2436 sources) of impairment, the Commission may petition the FCC for a
2437 waiver of the application of the trigger, to last until the impairment to
2438 deployment identified by the Commission no longer exists.

2439

2440 In its initiating order the Commission ordered:

2441 ...any CLEC or other party seeking to have the Commission
2442 petition the FCC to waive application of the self-provisioning
2443 trigger in a specific market, in the event and notwithstanding
2444 a finding that such trigger has been satisfied, shall have the
2445 burden of submitting prima facie evidence in the form of
2446 testimony supporting its assertion that the Commission
2447 should petition the FCC to waive application of the self-
2448 provisioning trigger because of the existence of an
2449 exceptional barrier to entry that prevents further entry in a
2450 specific market.¹⁹⁴
2451

2452 The Commission further ordered:

2453 ...if no CLEC or other party submits such evidence in its
2454 initial testimony filing then this Commission will not
2455 undertake an inquiry at this time and in this proceeding into
2456 whether it should petition the FCC to waive the self-
2457 provisioning trigger because of the existence of an

¹⁹⁴ Initiating Order at 12-13.

2458 exceptional barrier to entry that prevents further entry in a
2459 specific market.¹⁹⁵
2460

2461 No party asserted in its initial testimony that the Commission should
2462 petition the FCC to waive application of the self-provisioning trigger.
2463 Therefore, it is my understanding, based on the Commission's initiating
2464 order, that the Commission will not undertake an inquiry at this time and in
2465 this proceeding into whether it should petition the FCC to waive the self-
2466 provisioning trigger because of the existence of an exceptional barrier to
2467 entry that prevents further entry in a specific market.

2468

2469 For these reasons, I recommend that the Commission conclude in this
2470 proceeding that, because the local switching self-provisioning trigger is
2471 satisfied in the Cook County, DuPage County, Southeast Lake County,
2472 and East Kane County markets, a requesting carrier is not impaired
2473 without access to local circuit switching on an unbundled basis in these
2474 markets. I also recommend that, per its initiating order, the Commission
2475 determine that it will not, based on the fact that no carrier requested that
2476 the Commission to petition the FCC to waive application of the self-
2477 provisioning trigger in this proceeding, seek a waiver of the self-
2478 provisioning trigger because of the existence of an exceptional barrier to
2479 entry that prevents further entry in a specific market.

2480

¹⁹⁵ Initiating Order at 13.

2481 **Q. Do you recommend that the Commission never seek a waiver of the**
2482 **self-provisioning trigger because of the existence of an exceptional**
2483 **barrier to entry that prevents further entry in a specific market?**

2484 A. No. I am simply recommending, because no party has indicated in its
2485 initial testimony that the Commission should seek a waiver, that the
2486 Commission not seek a waiver based on the evidence in this proceeding.
2487 Presumably this would not preclude a party from petitioning the
2488 Commission to open such an inquiry outside this investigation.

2489

2490 ***State Section 13-801 Considerations***

2491

2492 *Review of Talk America Position*

2493

2494 **Q. What do Talk America's witnesses recommend the Commission**
2495 **conclude with respect to state unbundling rules in this proceeding?**

2496 A. Mr. Battista states that Talk America's position is that unbundling of the
2497 loop port and switch port combination is required by state law, apart from
2498 whatever unbundling obligations are directed by the FCC.¹⁹⁶

2499

2500 **Q. Do you recommend that the Commission determine in this**
2501 **proceeding, as Mr. Battista proposes, that unbundling of mass**
2502 **market local switching is required by state law apart from whatever**
2503 **unbundling obligations are directed by the FCC?**

2504 A. No. The Commission initiated this docket to:

2505 ...address any assertion that carriers are not impaired
2506 without access to local switching for mass market customers
2507 in specific markets, including consideration of an appropriate
2508 DS0 crossover point, to be completed within nine months of
2509 the effective date of the Triennial Review Order.¹⁹⁷
2510

2511 Mr. Batista's proposal does not assess whether carriers are impaired
2512 without access to local switching for mass market customers in specific
2513 markets, but instead assesses whether SBC has a requirement to provide
2514 UNEs (independent of any impairment findings) under PUA Section 13-
2515 801. This proposal is outside the scope of the investigation ordered by the
2516 Commission and I do not recommend the Commission adopt Mr. Batista's
2517 recommendation.

2518

2519 ***Federal Section 271 Related Considerations***

2520

2521 *Review of Talk America Position*

2522

2523 **Q. Do Talk America's witnesses make any recommendations regarding**
2524 **SBC's 271 obligations?**

2525 A. Yes. Mr. Battista recommends that the Commission determine that SBC
2526 must, if it is not required to offer unbundled local switching under its
2527 Section 251 and 252 federal obligations, offer unbundled local switching

¹⁹⁶ Battista at Page 6.

¹⁹⁷ Initiating Order at 11.

2528 under its Section 271 federal obligations and at rates established by the
2529 FCC for “ISP-bound traffic”¹⁹⁸

2530

2531 **Q. Do you recommend that the Commission determine in this**
2532 **proceeding, as Mr. Battista proposes, that unbundling of mass**
2533 **market local switching is required by Section 271 of the 1996 Act**
2534 **apart from whatever unbundling obligations are required under**
2535 **Sections 251 and 252 of the 1996 Act?**

2536 A. No. As I explained above, the Commission initiated this docket to
2537 determine whether carriers are impaired without access to local switching
2538 for mass market customers in specific markets. Mr. Batista’s proposal
2539 does not assess whether carriers are impaired without access to local
2540 switching for mass market customers in specific markets, but instead
2541 assesses whether SBC has a requirement to provide UNEs (independent
2542 of any impairment findings) under Section 271 of the Telecommunications
2543 Act. This proposal is outside the scope of the investigation ordered by the
2544 Commission and I do not recommend the Commission adopt Mr. Batista’s
2545 recommendation.

2546

2547 **Q. Does this conclude your testimony?**

2548 A. Yes.

¹⁹⁸ Battista at Page 31.