

DIRECT TESTIMONY
OF
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TELECOMMUNICATIONS DIVISION
ILLINOIS COMMERCE COMMISSION

DOCKET NO. 06-0029

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Background 33

Recommendation 34

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

2 A. My name is James Zolnierek 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 as Interim Manager of the
7 Policy Department of the Telecommunications Division.

8

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

10 A. I earned my Doctor of Philosophy degree in economics from Michigan State
11 University in 1996. Prior to joining the Illinois Commerce Commission I was
12 employed by the Federal Communications Commission ("FCC") in the Common
13 Carrier Bureau, Industry Analysis Division.

14

15 **Q. What is the purpose of your testimony in this proceeding?**

16 A. The instant investigation was opened for the purpose of determining whether
17 AT&T Illinois' current designations, for impairment determination purposes, of
18 wire centers are appropriate and in accordance with the Triennial Review
19 Remand Order¹ and the applicable FCC's rules, and to consider and resolve any
20 methodological issues concerning the interpretation and application of wire center
21 designation provisions of the TRRO and the FCC's rules that the parties may

¹ Federal Communications Commission, Order on Remand, In the Matter of Unbundled Access to Network Elements/Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket Nos. 04-313 and 01-338, FCC 04-290 (Rel. February 4, 2005) (hereafter "TRRO")

22 may identify.² To that end, AT&T Illinois and certain participating competitive
23 local exchange carrier's ("CLECs") developed an issues list, which AT&T Illinois
24 included as an attachment, entitled "05-0717 CLEC Issue List Dec 1 2005.doc," to
25 its supplemental response to McLeodUSA/NuVox Data Request 1.9. This issue
26 list contains 14 issues. I will address these 14 issues here.

27

28 **Business Line Counts**

29

30 ***Issue 1: What year's ARMIS 43-08 data did/should AT&T Illinois use in making***
31 ***its business line counts – 2003 or 2004?***

32

33 **Background**

34

35 **Q. Has AT&T Illinois provided CLECs with lists of wire centers that it asserts**
36 **satisfy or satisfied non-impairment thresholds for DS1 loops, DS3 loops,**
37 **DS1 transport circuits, DS3 transport circuits, and dark fiber transport?**

38 A. Yes. On February 22, 2005, AT&T Illinois issued a series of accessible letters
39 notifying CLECs in Illinois that it had added lists of wire centers that it asserted
40 satisfied non-impairment thresholds for DS1 loops, DS3 loops, DS1 transport
41 circuits, DS3 transport circuits, and dark fiber transport to the AT&T Illinois CLEC
42 Online website.³

² Order, Illinois Commerce Commission On Its Own Motion vs. Illinois Bell Telephone Company; Investigation into Illinois Bell Telephone Company's designation of certain of its wire centers as non-impaired, Docket No. 06-0029 (January 11, 2006) (hereafter "Initiating Order") at 2.

³ Direct Testimony of Carol A. Chapman On Behalf of AT&T Illinois, AT&T Illinois Ex. 1.0 ("Chapman Direct"), Schedule CAC-3.

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Q. Has AT&T Illinois revised the list of wire centers that it asserts satisfy or satisfied non-impairment thresholds for DS1 loops, DS3 loops, DS1 transport circuits, DS3 transport circuits, and dark fiber transport since February 22, 2005.

A. Yes. In granting the merger of SBC Communications, Inc. and AT&T Corp., the Federal Communications Commission accepted, and adopted as express conditions of its merger approval, certain voluntary commitments made by the merging parties. One such condition states:

Within thirty days after the Merger Closing Date, SBC/AT&T shall exclude fiber-based collocation arrangements established by AT&T or its affiliates in identifying wire centers in which SBC claims there is no impairment pursuant to section 51.319(a) and (e) of the Commission's rules. SBC/AT&T shall file with the Commission, within thirty days of the Merger Closing Date, revised data or lists that reflect the exclusion of AT&T collocation arrangements, as required by this condition.⁴

AT&T Illinois witness Carol A. Chapman provides revised lists of wire centers that contain the wire center lists referenced in AT&T Illinois' February 22, 2005 accessible letters revised to reflect the exclusion of AT&T collocation arrangements.⁵

⁴ Federal Communications Commission, Memorandum Opinion and Order, In the Matter of SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control, WC Docket No. 05-65, FCC 05-183 (Rel. November 17, 2005) (hereafter "Merger Order"), Appendix F, at 4.

⁵ Chapman Direct at 15-22.

66 **Q. What, in your opinion, is the appropriate date that would apply for**
67 **challenges to designations of the post merger adjusted wire centers**
68 **referenced in Ms. Chapman's testimony?**

69 A. AT&T Illinois' notified CLECs of these designations on February 22, 2005. It is
70 my understanding that the only adjustment to AT&T Illinois' February 22, 2005
71 designations is that AT&T Illinois updated its lists as a result of its merger
72 condition by removing wire centers where AT&T fiber-based collocations were a
73 determining factor in meeting non-impairment thresholds.⁶ In the TRRO
74 Arbitration Order, the Commission determined that the self-certifications
75 submitted for wire centers are to be based on the date that AT&T Illinois' listed
76 the wire center.⁷ Thus, the appropriate date that would apply for challenges to
77 designations of the post merger adjusted wire centers referenced in Ms.
78 Chapman's testimony is February 22, 2005, the date AT&T Illinois listed the wire
79 centers.

80
81 **Q. What year's ARMIS 43-08 data did AT&T Illinois use in developing its wire**
82 **center lists?**

83 A. According to Ms. Chapman, AT&T Illinois used ARMIS information reflecting
84 business line counts for 2003.⁸

85

⁶ Chapman Direct at 13.

⁷ Arbitration Decision, Access One, Inc. et. al., Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 with Illinois Bell Telephone Company to Amend Existing Interconnection Agreements to Incorporate the Triennial Review Order and Triennial Review Remand Order, Docket No. 05-0442 (November 2, 2005) (hereafter "TRRO Arbitration Order") at 106.

⁸ Chapman Direct at 11.

86 **Q. When does AT&T Illinois file its yearly ARMIS information with the FCC?**

87 A. AT&T Illinois is required to file ARMIS data for December 31 of a given year on or
88 before April 1 of the following year.⁹

89

90 **Q. What year's ARMIS 43-08 data does AT&T Illinois intend to use for purposes**
91 **of making wire center based impairment determinations?**

92 A. AT&T Illinois states: "AT&T Illinois would use the previous year's ARMIS 43-08
93 data for any wire center designations made on May 1 or later."¹⁰ The date AT&T
94 Illinois proposes to use as the basis of wire center determinations is a date that is
95 one month later than the date when AT&T Illinois must file its ARMIS 43-08 data
96 with the FCC. With respect to this additional month, AT&T Illinois states "AT&T
97 Illinois estimates that the disaggregation process can be completed within
98 approximately 30 days."¹¹

99

100 **Q. Under AT&T Illinois' proposal, what would be the appropriate data to use**
101 **for assessing the appropriateness of AT&T Illinois' February 22, 2005 wire**
102 **center determinations?**

103 A. Because February 22, 2005 is before May 1, 2005, the appropriate information to
104 use in evaluating wire center designations is, according to AT&T Illinois' proposal,
105 the 2003 ARMIS information.

⁹ Chapman Direct at 10, footnote 13 and AT&T Illinois response to McLeodUSA/NuVox Data Request 1.3. The FCC's ARMIS website (<http://www.fcc.gov/wcb/armis/filereqt.html>) states "Currently, all of the reports are filed annually, and reports are due on April 1 of a given year, for prior year data. Subsequent submissions correcting previously filed data should be filed as soon as the correction is identified."

¹⁰ AT&T Illinois response to McLeodUSA/NuVox Data Request 1.3.

¹¹ AT&T Illinois response to McLeodUSA/NuVox Data Request 1.3.

106

107 Recommendation

108

109 **Q. Do you recommend that the Commission accept AT&T Illinois' proposal to**
110 **use the previous year's ARMIS 43-08 data for any wire center designations**
111 **made on May 1 or later?**

112 A. Yes. In my opinion the Commission should make determinations regarding the
113 appropriateness of wire center classifications based on the ARMIS business line
114 counts AT&T Illinois *actually* files with the FCC. AT&T Illinois is already required
115 to produce and report ARMIS information to the FCC. Therefore, relying on this
116 information that AT&T Illinois already files with the FCC obviates the need to
117 develop business line definitions and for AT&T Illinois to produce new
118 information.¹² This is, in my opinion, consistent with the FCC's stated intention
119 that:

120 [B]y basing our definition in an ARMIS filing required of incumbent
121 LECs, and adding UNE figures, *which must also be reported*, we
122 can be confident in the accuracy of the thresholds, and a simplified
123 ability to obtain the necessary information.¹³
124

125

126 With respect to the primary issue here of timing, there are several reasons to
127 adopt a bright line rule, such as that proposed by AT&T Illinois. First, the FCC
128 provides AT&T Illinois three months to collect, process, and report its state level
129 ARMIS information. While AT&T Illinois might be able to make preliminary

¹² AT&T Illinois will, however, need to disaggregate to the wire center level the state level ARMIS information it reports to the FCC.

130 projections of information prior to April 1 of each year, projections would not
131 necessarily match the actual data filed with the FCC on or before April 1.
132 Severing the connection between what is actually filed with the FCC and what is
133 used to make impairment determinations would eliminate the confidence the FCC
134 expressed in the accuracy of information that must be reported according to
135 ARMIS reporting requirements. In addition, such an approach would greatly add
136 to the complexity of the impairment determination process as the Commission
137 would be required to grapple with issues, for example, of whether and/or how to
138 reconcile projections with actual filed reports.

139

140 Second, data availability will be increasingly problematic as designation dates
141 approach the beginning of the calendar year. For example, when looking ahead
142 to future designations, the Commission could be called upon to appraise a
143 designation made on January 1, 2007. It would be difficult to imagine that AT&T
144 Illinois could make such a designation or the Commission could (without
145 significant delay) determine the appropriateness of such a designation based on
146 2006 ARMIS information that would not be reasonably available on January 1,
147 2007 as it would not, in fact, exist prior to December 31, 2006. In such
148 circumstances the Commission should allow AT&T Illinois a reasonable chance to
149 measure and compile its ARMIS information before it requires it to base a wire
150 center determination on such data. The three month reporting timeframe afforded
151 AT&T Illinois by the FCC is a reasonable time frame to allot for such a purpose.

¹³ TRRO at ¶ 105 (emphasis added).

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Third, by adopting AT&T Illinois' approach the Commission will also avoid tying its evaluations to the timing of challenges, which would have the effect of complicating and randomizing determinations. Again, consider the example of a designation made on January 1, 2007. Suppose this designation was challenged on January 1, 2007. As indicated above, it is unlikely that the Commission could feasibly use 2006 ARMIS data to assess such a determination. Thus, the Commission would almost certainly be constrained to making a determination based on 2005 ARMIS data. However, suppose a competitor waited several months into 2007 – until 2006 ARMIS data became available, to challenge AT&T Illinois' designation. If the Commission waited to assess AT&T Illinois' designation and relied on 2006 ARMIS information, then its determinations could very well differ from those that it might make if it evaluated AT&T Illinois designation immediately based on 2005 ARMIS data. Under such a scenario the timing of the challenge to AT&T Illinois' designation would be a determining factor in the Commission's assessment. This not only increases the complexity of the Commission's assessment, but also introduces the possibility that the Commission could reach two different conclusions for the same designation depending on when the Commission conducted its review. Conversely, it could also mean that initial determinations made by the Commission might not be binding or that the Commission could not assess determinations in a timely manner.

176 If the Commission elects a path that will allow it to find a designation inappropriate
177 based on data unavailable at the time of the determination, then the
178 appropriateness of designations will remain uncertain until some unspecified time
179 after they are made. If the parties begin transitioning UNEs at the time of the
180 designation, then such an approach will reduce the parties ability to ensure that
181 no resources are wasted in transitions that need not occur. Alternatively, if the
182 parties delay transitions while waiting for future data, they will have shorter
183 transition periods when such data does become available. Neither outcome is
184 desirable and I recommend the Commission avoid them by selecting a bright line
185 rule such as that proposed by AT&T Illinois.

186
187 For the above reasons, I recommend the Commission, at a minimum, use the
188 previous year's ARMIS 43-08 data only for any wire center designations made on
189 April 1 or later. The remaining issue is whether or not the Commission should
190 extend the April 1 date to May 1 in order to give AT&T Illinois time to produce
191 dissagregated data consistent with its state level ARMIS filings. With respect to
192 this issue, I have no reason to dispute AT&T Illinois' estimate that 30 days is an
193 appropriate period of time for such an exercise. Therefore, I recommend the
194 Commission accept AT&T Illinois' proposal and use the previous year's ARMIS
195 43-08 data only for any wire center designations made on May 1 or later.

196

197 **Issue 2: What adjustments, if any, has AT&T Illinois made/should AT&T**
198 **Illinois make to ARMIS 43-08 data for purposes of its business line**
199 **counts?**

200

201 Background

202

203 **Q. Has AT&T Illinois made any adjustments to the ARMIS 43-08 data for**
204 **purposes of its business line counts?**

205 A. In response to McLeodUSA/NuVox data request 1.36, AT&T Illinois states:

206 (i) The wire center counts of business switched access lines
207 under the ARMIS 43-08 definitions were obtained from the
208 same data used for the state level ARMIS 43-08. To support
209 wire center reporting, the data was retrieved by the
210 established process for ARMIS 43-08 reporting of business
211 switched access lines with an additional breakdown by CLLI
212 code.

213 (ii) No allocations, estimations, manipulations or calculations
214 were performed. The ARMIS 43-08 business switched
215 access line data were retrieved at the wire center level
216 directly.
217

218 Thus, apart from disaggregating the information by wire center, it is my
219 understanding that AT&T Illinois did not make any adjustments to the ARMIS 43-
220 08 data for purposes of its business line counts.

221

222 **Q. Did the Commission make any determinations in its TRRO Arbitration Order**
223 **that are relevant to this issue?**

224 A. Yes. In its TRRO Arbitration Order the Commission stated:

225 The point made by both SBC and Staff is that the FCC relied upon
226 certain business counts in SBC's wire centers to establish
227 thresholds to determine whether CLECs were competitively
228 impaired. The data the FCC relied upon is based on ARMIS 43-08

229 business lines, business UNE-P, and UNE-P loops. Altering those
230 business counts after the thresholds have been established renders
231 the impairment determinations inconsistent with the FCC's
232 findings.¹⁴
233

234 Thus, the Commission has determined that AT&T Illinois should use unaltered
235 ARMIS 43-08 information when making its wire center determinations.

236 Recommendation

237

238 **Q. What adjustments, if any, has AT&T Illinois made to ARMIS 43-08 data for**
239 **purposes of its business line counts and what, if any, adjustments should**
240 **AT&T Illinois make to ARMIS 43-08 data for purposes of its business line**
241 **counts?**

242 A. Apart from disaggregating information to the wire center, AT&T Illinois has made
243 no adjustments to the ARMIS 43-08 information it filed with the FCC, and,
244 according to the Commission's direction in its TRRO Arbitration Order, apart from
245 disaggregating information to the wire center, AT&T Illinois should not make any
246 adjustments to the ARMIS 43-08 information it files with the FCC when making
247 wire center impairment designations. I recommend the Commission find this
248 issue to be resolved by its prior determinations in its TRRO Arbitration Order.
249

¹⁴ TRRO Arbitration Order at 30.

250 **Issue 3: Did/should AT&T Illinois exclude unused capacity on high capacity**
251 **UNE-L lines (including those used in combination with UNE**
252 **transport) for purposes of its business line counts?**

253

254 Background

255

256 **Q. Did AT&T Illinois exclude unused capacity on high capacity UNE-L lines**
257 **(including those used in combination with UNE transport) for purposes of**
258 **its business line counts?**

259 A. No. According to Ms. Chapman:

260 Each 2-wire digital line UNE-L was counted as 2 business lines, and
261 each DS1 UNE-L Loop was counted as 24 business lines, and each
262 DS3 UNE-L Loop was counted as 672 business lines.¹⁵
263

264 **Q. Does AT&T Illinois report UNE lines to the FCC?**

265 A. Yes. As noted by the FCC, its business line definition is based on "...an ARMIS
266 filing required of incumbent LECs, and *adding UNE figures, which must also be*
267 *reported...[.]*"¹⁶ In particular, AT&T Illinois is required to file UNE line data in
268 response to the FCC's semi-annual "FCC Form 477 – Local Telephone
269 Competition and Broadband Reporting" data request.

270

271 **Q. How does the FCC specify that UNE lines be counted for purposes of its**
272 **semi-annual "FCC Form 477 – Local Telephone Competition and Broadband**
273 **Reporting" data request?**

274 A. The FCC directions for reporting UNE loop information state:

¹⁵ Chapman Direct at 37.

275 Report the number of circuits you provided to unaffiliated
276 telecommunications carriers under an unbundled network element
277 (UNE) loop arrangement, where you do not provide switching for
278 that circuit. Do not convert any high capacity circuits provided under
279 such UNE arrangements into voice-grade equivalent measures.¹⁷

281

282 Thus, the FCC directions specify that AT&T Illinois should not, for purposes of
283 completing the FCC Form 477 – Local Telephone Competition and Broadband
284 Reporting data request, convert circuits into voice-grade equivalents as it has
285 done for purposes of its wire center determinations.

286

287 **Q. Did the Commission make any determinations in its TRRO Arbitration Order**
288 **that are relevant to this issue?**

289 A. Yes. In its TRRO Arbitration Order the Commission stated:

290 The point made by both SBC and Staff is that the FCC relied upon
291 certain business counts in SBC's wire centers to establish
292 thresholds to determine whether CLECs were competitively
293 impaired. The data the FCC relied upon is based on ARMIS 43-08
294 business lines, business UNE-P, and UNE-P loops. Altering those
295 business counts after the thresholds have been established renders
296 the impairment determinations inconsistent with the FCC's findings.¹⁸

297

298 **Q. Were the UNE-L loops that were included in the information the FCC relied**
299 **upon to set its thresholds measured consistent with the manner in which**
300 **AT&T Illinois has counted them here for purposes of wire center**
301 **determinations?**

¹⁶ TRRO at ¶ 105 (emphasis added).

¹⁷ FCC Form 477, Instructions for March 1, 2006 Filing (of data as of 12/31/05) at 8.

¹⁸ TRRO Arbitration Order at 30.

302 A. No. The information the FCC relied upon to set its thresholds was based upon
303 reports counting UNE-L lines as single business lines regardless of loop type.¹⁹
304

305 Recommendation
306

307 **Q. Did AT&T Illinois exclude unused capacity on high capacity UNE-L lines**
308 **(including those used in combination with UNE transport) for purposes of**
309 **its business line counts and should AT&T Illinois exclude unused capacity**
310 **on high capacity UNE-L lines (including those used in combination with**
311 **UNE transport) for purposes of its business line counts?**

312 A. AT&T Illinois did not exclude unused capacity on high capacity UNE-L lines
313 (including those used in combination with UNE transport) for purposes of its
314 business line counts. Had AT&T Illinois reported UNE-L lines in a manner
315 consistent with the manner in which it reported UNE-L lines in response to the
316 FCC Form 477 – Local Telephone Competition and Broadband Reporting data
317 request and the manner in which it reported line counts used by the FCC to
318 establish its wire center impairment thresholds then such capacity would have
319 been, for the most part, excluded.²⁰ I recommend that AT&T Illinois count UNE-L
320 lines, for purposes of making wire center impairment determinations, as single
321 business lines regardless of loop type. I further recommend that AT&T Illinois
322 revise its February 22, 2005 lists to reflect the exclusion of any wire centers that

¹⁹ AT&T Illinois response to Staff Data Request JZ 2.01.

²⁰ I note that unused capacity would not be excluded when CLECs don't use the high-capacity line at all. However, AT&T Illinois states in response to McLeodUSA/NuVox Data Request 1.32 "AT&T Illinois does not know (and cannot know) the service(s) that the CLEC actually provides to the end user over a

323 were included in these lists, but that would not have been included had AT&T
324 Illinois counted UNE-L lines as single business lines.

325

326 **Issue 4: Did/should AT&T Illinois exclude non-switched UNE-L capacity on**
327 **high capacity UNE-L lines (including those used in combination with**
328 **UNE transport)?**

329

330 Background

331

332 **Q. Did AT&T Illinois exclude non-switched UNE-L capacity on high capacity**
333 **UNE-L lines (including those used in combination with UNE transport)?**

334 A. No. According to AT&T Illinois' response to McLeodUSA/NuVox Data Request
335 1.32 AT&T Illinois took no steps to exclude non-switched UNE-L capacity from its
336 UNE-L line counts.

337

338 **Q. Did the Commission make any determinations in its TRRO Arbitration Order**
339 **that are relevant to this issue?**

340 A. Yes. In its TRRO Arbitration Order the Commission stated:

341 The FCC's definition of business lines specifically includes "...the
342 sum of all incumbent LEC business switched lines, plus *the sum of*
343 *all UNE loops* connected to that wire center, including UNE loops
344 provisioned in combination with other unbundled elements." (47
345 C.F.R. §51.5) (emphasis added). The phrase "all UNE loops"
346 encompasses residential customers and non-switched services.²¹
347

over a stand-alone UNE loop."

²¹ TRRO Arbitration Order at 30.

348 Thus, the Commission has determined that AT&T Illinois need not exclude non-
349 switched UNE-L lines from its business line counts.

350

351 Recommendation

352

353 **Q. Did AT&T Illinois exclude non-switched capacity on high capacity UNE-L**
354 **lines (including those used in combination with UNE transport) and should**
355 **AT&T Illinois exclude non-switched capacity on high capacity UNE-L lines**
356 **(including those used in combination with UNE transport)?**

357 A. AT&T Illinois did not exclude non-switched capacity on high capacity UNE-L lines
358 when calculating business line counts, and, according to the Commission's
359 direction in its TRRO Arbitration Order, AT&T Illinois need not exclude non-
360 switched capacity on high capacity UNE-L lines when calculating business line
361 counts. I recommend the Commission find this issue to be resolved by its prior
362 determinations in its TRRO Arbitration Order.

363

364 ***Issue 5: Has AT&T Illinois included lines that are served by VoIP in its***
365 ***business line counts?***

366

367 Background

368

369 **Q. Has AT&T Illinois included lines that are served by VoIP in its business line**
370 **counts?**

371 A. That is not clear. Ms. Chapman states: “I note that there are no VoIP UNE-P
372 lines at the current time.”²² However, as noted by AT&T Illinois in response to
373 McLeodUSA/NuVox Data Request 1.32 “AT&T Illinois does not know (and cannot
374 know) the service(s) that the CLEC actually provides to the end user over a
375 stand-alone UNE loop.” Therefore, it is possible that VoIP services are being
376 provided over stand-alone UNE loops that AT&T Illinois has included in its
377 business line counts.

378

379 **Q. Did the Commission make any determinations in its TRRO Arbitration Order**
380 **that are relevant to this issue?**

381 A. Yes. As explained above, the Commission has determined that AT&T Illinois can
382 include all UNE-L lines in its business line counts. Thus, AT&T Illinois need not
383 exclude UNE-L lines used to provide VoIP.

384

385 Furthermore, as explained above, the Commission has determined that, apart
386 from disaggregation, AT&T Illinois should compute business line counts based on
387 unaltered ARMIS 43-08 information. Thus, on a going forward basis, AT&T Illinois
388 need not exclude business retail lines used to provide VoIP that it reports to the
389 FCC pursuant ARMIS 43-08 reporting requirements.

390

391 Recommendation

392

²² Chapman Direct at 35.

393 **Q. Has AT&T Illinois included lines that are served by VoIP in its business line**
394 **counts?**

395 A. As explained above, AT&T Illinois did not knowingly include VoIP lines in its
396 business line counts, but might have unknowingly included VoIP services
397 provided over stand-alone UNE loops.

398

399 **Q. Should AT&T Illinois include lines that are served by VoIP in its business**
400 **line counts?**

401 A. With respect to UNE-L counts, the Commission has determined that AT&T Illinois
402 can include all UNE-L lines in its business line counts. Thus, with respect to
403 these lines, I recommend the Commission find this issue to be resolved by its
404 prior determinations in its TRRO Arbitration Order.

405

406 Similarly, with respect to AT&T Illinois retail business line counts, the Commission
407 has determined that AT&T Illinois should compute business line counts based on
408 unaltered ARMIS 43-08 information. Thus, with respect to these lines, I again
409 recommend the Commission find this issue to be resolved by its prior
410 determinations in its TRRO Arbitration Order.

411

412 With respect to UNE-P counts, as Ms. Chapman notes, there are no VoIP UNE-P
413 lines at the current time. Nor is it clear that there will ever be a VoIP UNE-P
414 offering. The question of whether a VoIP UNE-P offering will be offered in Illinois
415 at some future date is uncertain – as are the consequent ramifications that such

416 an offering would have on the impairment questions at issue in this proceeding.
417 In fact, these issues are sufficiently speculative in nature that I recommend the
418 Commission decline to make a determination on them at this time.

419
420 I note that the Commission has determined that “if an issue can be raised in this
421 investigation, parties are precluded from raising it in a subsequent proceeding.”²³
422 While this statement may imply that the Commission must determine the
423 appropriate methodology for counting UNE-P VoIP lines, I recommend that the
424 Commission explicitly find that it does not. Rather, I recommend the Commission
425 determine that the question of how to count UNE-P VoIP lines is sufficiently
426 speculative in nature (given that it is not clear that there will ever be a UNE-P
427 VoIP product) that it cannot reasonably be raised at this time, and, therefore, that
428 the Commission need not resolve it at this time.

429
430 **Fiber-Based Collocators (FBCs)**

431
432 **Issue 1: *Must a carrier counted as a FBC have fiber facilities that enter and***
433 ***exit its collocations? Should carriers cross-connected with another***
434 ***carrier (that is already counted as a FBC) be counted? Has AT&T***
435 ***Illinois counted such cross-connected carriers in its FBC counts?***

436
437 **Background**

438

²³ Initiating Order at 3.

439 **Q. Has AT&T Illinois counted as an FBC a carrier that is cross-connected with**
440 **another carrier (that is already counted as a FBC)?**

441 A. Yes. AT&T Illinois included one such carrier in its FBC count for one wire
442 center.²⁴

443

444 **Q. Was the fact that AT&T Illinois' counted as an FBC a carrier that is cross-**
445 **connected with another carrier (that is already counted as a FBC) a**
446 **determining factor in the designation of the one effected wire center?**

447 A. No. The inclusion or exclusion of this carrier was not a determining factor in the
448 impairment designation of the wire center.²⁵

449

450 **Q. Did the FCC define fiber-based collocation?**

451 A. Yes. The FCC stated

452 [W]e define fiber-based collocation as a competitive carrier
453 collocation arrangement, with active power supply, that has a non-
454 incumbent LEC fiber-optic cable that both terminates at the
455 collocation facility and leaves the wire center.²⁶

456

457 Similarly, within its rules the FCC stated the FBC's fiber-optic cable must be
458 "owned by a party other than the incumbent LEC or any affiliate of the incumbent
459 LEC."²⁷ Thus, the FCC defined a competitive carrier as a FBC provided it uses a
460 non-incumbent LEC fiber-optic cable rather than restricting FBCs to those carriers
461 using their own fiber-optic cable.

²⁴ AT&T Illinois response to Staff Data Request JZ 1.03.

²⁵ Chapman Direct, Schedule CAC-6.

²⁶ TRRO at ¶ 102 (footnotes omitted).

²⁷ 47 C.F.R. §51.5.

462

463 More pointedly, as Ms. Nevels notes, the FCC specifically referenced
464 arrangements, that it includes for purposes of counting FBCs, under which
465 carriers rely on non-incumbent, third-party fiber optic cable.²⁸

466

467 Recommendation

468

469 **Q. Has AT&T Illinois counted as FBCs carriers cross-connected with another**
470 **carrier (that is already counted as a FBC), and should AT&T Illinois count**
471 **such carriers as FBCs?**

472 A. While AT&T Illinois has counted as an FBC a carrier cross-connected with
473 another carrier (that is already counted as a FBC), the inclusion or exclusion of
474 this carrier was not a determining factor in the impairment designation of the wire
475 center. Thus, the Commission need not make a determination regarding this
476 issue with respect to AT&T Illinois' prior wire center impairment designations. As
477 it concerns future designations, however, counting as FBCs carriers cross-
478 connected with another carrier (that is already counted as a FBC) is, in my
479 opinion, reasonable and consistent with the direction in the TRRO.

480

481 With respect to the question of “[m]ust a carrier counted as a FBC have fiber
482 facilities that enter and exit its collocations”, it is not clear to me, prior to some
483 explanation from the party or parties that raised the issue, what specifically this

²⁸ Direct Testimony of Marvin Nevels On Behalf of AT&T Illinois, AT&T Illinois Ex 2.0 (“Nevels Direct”) at 7-8 and TRRO at ¶ 102.

484 question is designated to address. To the best of my knowledge, AT&T Illinois
485 does not dispute that carriers can be counted as FBCs only if there is a fiber-optic
486 cable or comparable transmission facility that terminates at the carrier's
487 collocation arrangement within the wire center and leaves the incumbent LEC
488 wire center premises. That is, to my knowledge, there is no dispute that the fiber
489 facilities must enter and exit the collocation arrangement.

490

491 **Issue 2: How should the phrase "terminates at a collocation arrangement**
492 **within a wire center" (47 CFR 51.5) be construed and implemented?**

493

494 **Q. What is the nature of the dispute surrounding this issue?**

495 A. I do not know. Ms. Chapman seems to indicate that this issue might properly be
496 considered the same as Issue 3.²⁹ However, prior to some explanation from the
497 party or parties that raised the issue regarding what specifically this question is
498 designated to address (in particular, whether it differs from Issue 3), I offer no
499 recommendation.

500

501 **Issue 3: What non-fiber-optic cable facilities qualify as "comparable**
502 **transmission facilities" under the definition of "FBC" in 47 CFR**
503 **§51.5?**

504

505 Background

506

²⁹ Chapman Direct at 40.

507 **Q. How has AT&T Illinois defined comparable fiber facility for purposes of**
508 **counting FBCs?**

509 A. Ms. Chapman states:

510 ...AT&T Illinois only included collocation arrangements where,
511 based on the network configuration identified, it appeared that the
512 collocator had the ability to provide at least DS3 level transport out
513 of the wire center.³⁰
514

515 **Q. Has AT&T Illinois counted any carriers as FBCs that use comparable**
516 **transmission facilities other than a fiber-optic cable?**

517 A. According to AT&T Illinois, ***Begin Confidential
518 XXX
519 XXX
520 XXX
521 XXX
522 XXXXXXXXXXXXXXXXXXXXXXX. End Confidential***³¹ As noted above, the
523 inclusion or exclusion of this carrier was not a determining factor in the
524 impairment designation of the wire center.
525

526 **Q. Did the FCC define comparable transmission facilities?**

527 A. No. However, the FCC did state:

528 Because fixed-wireless carriers' collocation arrangements may not
529 literally be fiber-based, but nevertheless signal the ability to deploy
530 transport facilities, we include fixed-wireless collocation
531 arrangements at a wire center if the carrier's alternative
532 transmission facilities both terminate in and leave the wire center.

³⁰ Chapman Direct at 42.

³¹ AT&T Illinois responses to Staff Data Request JZ 1.03 and McLeodUSA/NuVox Data Request 1.16.

533 [n. 295: For this reason, although we refer to our indicia as “fiber-
534 based collocation,” our test is actually agnostic as to the medium
535 used to deploy an alternative transmission facility, because we find
536 that a technologically neutral test better helps us to capture the
537 actual and potential deployment in the marketplace than would a
538 wireline- specific test.]³²
539

540 Thus, the TRRO does provide that a carrier counted as a FBC might use non-
541 fiber optic cable.

542

543 **Q. How do DS3 speeds compare with fiber-optic cable speeds?**

544 A. While I am not an engineer, it is my understanding that a DS3 transmission path
545 provides transmissions speeds that are equivalent to an Optical Carrier Level 1
546 (“OC-1”) transmission path – or transmission speeds of approximately 51.84
547 Mbps. Thus, a DS3 transmission path would, at least in this respect, be
548 comparable to a basic fiber-optic transmission path.

549

550 Recommendation

551

552 **Q. What non-fiber-optic cable facilities qualify as “comparable transmission
553 facilities” under the definition of “FBC” in 47 CFR §51.5?**

554 A. In counting FBCs, AT&T Illinois has included collocation arrangements where,
555 based on the network configuration identified, it appeared that the collocater had
556 the ability to provide at least DS3 level transport out of the wire center. While
557 AT&T Illinois has included one such carrier in one wire center in its FBC counts,

³² TRRO at ¶ 102.

558 the inclusion or exclusion of this carrier had no determining influence on any wire
559 center impairment designation. Thus, the Commission need not make a
560 determination regarding this issue with respect to AT&T Illinois prior wire center
561 impairment designations. As it concerns future designations, however, including
562 collocation arrangements where, based on the network configuration identified,
563 collocators have the ability to provide at least DS3 level transport out of the wire
564 center is, based on signal levels and the FCC's statements in the TRRO,
565 reasonable.

566

567 **Issue 4:** *In determining whether dark fiber obtained from an ILEC qualifies as*
568 *CLEC fiber for purposes of applying the FBC criterion, what*
569 *constitutes an "indefeasible right of use" under 47 CFR § 51.5 and*
570 *what evidence should be used to identify an IRU? What criteria has*
571 *AT&T Illinois applied in identifying IRUs?*

572

573 Background

574

575 **Q.** Has AT&T Illinois counted as an FBC any carrier that is relying on fiber
576 provided by AT&T Illinois based upon the premise that the fiber was
577 provided pursuant to IRU?

578 A. No.³³

579

³³ AT&T Illinois response to McLeodUSA/NuVox Data Request 1.18.

580 **Q. Has AT&T Illinois proposed a definition that would define when fiber**
581 **provided by AT&T Illinois should be, for purposes of identifying FBCs, fiber**
582 **provided pursuant to an IRU?**

583 A. No.³⁴ Ms. Chapman does, however, offer some suggestions for how such a
584 relationship might be identified. She suggests that an IRU arrangement could be
585 identified in circumstances where the arrangement is not affected by a change in
586 AT&T Illinois' unbundling obligations.³⁵ However, this proposal is neither
587 objective nor complete. She also suggests that an IRU arrangement can be
588 identified by its designation within a contract as an IRU arrangement. However,
589 labeling an arrangement an IRU independent of its underlying characteristics
590 does not mean that it contains characteristics that would properly be met for
591 purposes of identifying FBCs.

592
593 **Q. Have the parties that raised this issue offered a definition that would define**
594 **when fiber provided by AT&T Illinois should be, for purposes of identifying**
595 **FBCs, fiber provided pursuant to an IRU?**

596 A. No. Testimony has not yet been offered by the party or parties that raised this
597 issue that would explain what specifically this question is designated to address.

598

599 Recommendation

600

601 **Q. What is the appropriate definition of an IRU?**

³⁴ AT&T Illinois response to McLeodUSA/NuVox Data Request 1.18.

602 A. It appears that this issue is not applicable with respect to AT&T Illinois' prior wire
603 center determinations, as AT&T Illinois did not count any carriers as FBC's that
604 relied on AT&T Illinois fiber. With respect to future determinations, prior to some
605 explanation from the party or parties that raised the issue and IBT regarding what
606 specific problem this issue is designated to address it is unclear what dispute the
607 parties might have, if any, regarding what relationships to define as IRUs for
608 purposes of counting FBCs. For these reasons, I offer no recommendation with
609 respect to this issue at this time.

610

611 **Issue 5: When will AT&T Illinois post a revised list of WC designations based**
612 **on implementation of its merger commitment to the FCC to treat**
613 **AT&T as an "affiliate"?**

614

615 Background

616

617 **Q. Has AT&T Illinois revised its list of wire center designations, based on**
618 **implementation of its merger commitment to the FCC, to treat AT&T as an**
619 **"affiliate"?**

620 A. Yes. Ms. Chapman provided the revised lists in her direct testimony in this
621 proceeding.³⁶

622

623 Recommendation

624

³⁵ Chapman Direct at 44.

625 **Q. Do you have any recommendation with respect to the issue of when AT&T**
626 **Illinois will revise its list of wire center designations, based on**
627 **implementation of its merger commitment to the FCC, to treat AT&T as an**
628 **“affiliate”?**

629 A. No. The issue, as stated, has been resolved. As noted above, Ms. Chapman
630 provided the revised lists of wire center designations, based on implementation of
631 its merger commitment to the FCC, in her direct testimony in this proceeding.

632

633 **Data Access**

634

635 **Issue 1: *The ICC should establish rules and procedures whereby CLECs can***
636 ***obtain meaningful access to data AT&T Illinois relies on to make its***
637 ***WC designations, so that the CLEC can review this data (subject to***
638 ***confidentiality restrictions) before deciding to make a self-***
639 ***certification?***

640

641 **Background**

642

643 **Q. Does the TRRO provide any guidance on this issue?**

644 A. No. The TRRO states:

645 We therefore hold that to submit an order to obtain a high-capacity
646 loop or transport UNE, a requesting carrier must undertake a
647 reasonably diligent inquiry and, based on that inquiry, self-certify
648 that, to the best of its knowledge, its request is consistent with the
649 requirements discussed in parts IV, V, and VI above that it is
650 therefore entitled to unbundled access to the particular network
651 elements sought pursuant to Section 251(c)(3). [n. 658: ...Although
652 we decline to adopt specific record-keeping requirements, we

³⁶ Chapman Direct at 15-22.

653 expect that requesting carriers will maintain appropriate records that
654 they can rely upon to support their local usage certification. ...]³⁷

656

657 Thus, the TRRO placed the burden for making impairment determinations, at
658 least initially, on requesting carriers and not on AT&T Illinois. The TRRO
659 provided no guidance on whether AT&T Illinois must provide requesting carriers
660 wire center impairment related information prior to their self-certification.

661

662 **Q. Did the parties to the Commission's TRRO Arbitration Proceeding³⁸**
663 **negotiate any provisions that are relevant to this issue?**

664 A. Yes. The parties to the TRRO Arbitration Proceeding, as noted by Ms.
665 Chapman,³⁹ agreed to the following language:

666 In the event of a dispute following CLEC's self-certification, upon
667 request by the Commission or CLEC, SBC will make available,
668 subject to the appropriate state or federal protective order, and
669 other reasonable safeguards, all documentation and all data upon
670 which SBC intends to rely.⁴⁰

671

672 Thus, the parties to that proceeding agreed to information sharing provisions,
673 including provisions related to the timing of information exchanges.

674

³⁷ TRRO at ¶234.

³⁸ Proceeding in Docket No. 05-0442 (hereafter "TRRO Arbitration Proceeding").

³⁹ Chapman Direct at 48.

⁴⁰ Petition for Arbitration, Access One, Inc. et. al., Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 with Illinois Bell Telephone Company to Amend Existing Interconnection Agreements to Incorporate the Triennial Review Order and Triennial Review Remand Order, Docket No. 05-0442 (July 14, 2005) (hereafter "TRRO Arbitration Petition"), Attachment A to Arbitration Petition at 17.

675 Recommendation
676

677 **Q. Should the ICC establish rules and procedures whereby CLECs can obtain**
678 **meaningful access to data AT&T Illinois relies on to make its WC**
679 **designations, so that the CLEC can review this data (subject to**
680 **confidentiality restrictions) before deciding to make a self-certification?**

681 A. No. The TRRO amendment resulting from the TRRO Arbitration proceedings
682 resulted in processes and procedures for wire center impairment designations
683 that resolved issues related to the timing of information exchanges. I recommend
684 the Commission find this issue to be resolved by the TRRO amendment produced
685 through negotiation and arbitration in the TRRO Arbitration Proceeding.

687

688 **Issue 2: Should the data underlying AT&T Illinois' WC determinations be filed**
689 **with the ICC and/or provided to Staff?**

690

691 **Q. Is the outcome of this issue contingent on the Commission's decision with**
692 **respect to Data Access Issue 1?**

693 A. Yes. This issue concerns what rules and procedures would apply if the
694 Commission were to establish rules and procedures whereby CLECs can obtain
695 meaningful access to data SBC relies on to make its WC designations, so that the
696 CLEC can review this data (subject to confidentiality restrictions) before deciding
697 to make a self-certification. However, since I recommend the Commission find
698 that it need not establish such rules, it necessarily follows that I recommend that

699 recommend that the Commission find that it need not determine whether AT&T
700 Illinois' WC determinations should be filed with the ICC and/or provided to Staff.

701

702 **Issue 3: Should the data made available to CLECs per Ill.1 include the**
703 **identities of the carriers in the WC that AT&T Illinois has counted as**
704 **FBCs?**

705

706 **Q. Is the outcome of this issue contingent on the Commission's decision with**
707 **respect to Data Access Issue 1?**

708 A. Yes. This issue concerns what rules and procedures would apply if the
709 Commission were to establish rules and procedures whereby CLECs can obtain
710 meaningful access to data AT&T Illinois relies on to make its WC designations, so
711 that the CLEC can review this data (subject to confidentiality restrictions) before
712 deciding to make a self-certification. However, since I recommend the
713 Commission find that it need not establish such rules, it necessarily follows that I
714 recommend that the Commission find that it need not determine whether AT&T
715 Illinois should make available to CLECs prior to self-certification disputes the
716 identities of the carriers in the WC that AT&T Illinois has counted as FBCs.

717

718 **Issue 4: Should AT&T Illinois be required to notify and obtain confirmation**
719 **from each carrier that AT&T Illinois has counted as a FBC in a WC?**

720

721 Background

722

723 **Q. Did the parties to the Commission's TRRO Arbitration Proceeding negotiate**
724 **any provisions that are relevant to this issue?**

725 A. No.

726

727 Recommendation

728

729 **Q. Should AT&T Illinois be required to notify and obtain confirmation from**
730 **each carrier that AT&T Illinois has counted as a FBC in a wire center?**

731 A. No. I concur with Ms. Chapman's assessment that, it is not only conceivable, but
732 in fact likely, that the responses AT&T Illinois would receive, if any, would fail to
733 resolve any issues regarding the number of FBCs in a wire center.⁴¹

734

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

736 A. Yes.

⁴¹ Chapman Direct at 52.