STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	**)**	
On Its Own Motion	**)**	
-vs-	**)**	
Illinois Bell Telephone Company	**)**	
	)	**Docket No. 06-0029**
Investigation into Illinois Bell	**)**	
Telephone Company's Designation of	**)**	
Certain of its Wire Centers as Non-Impaired	**)**	

REPLY BRIEF OF AT&T ILLINOIS

PUBLIC VERSION

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Illinois Bell Telephone Company ("AT&T Illinois") submits its Reply Brief in the Commission's investigation into the designation of AT&T Illinois wire centers as non-impaired under the Rules established in the Federal Communication Commission's ("FCC") *TRO Remand Order*[1].

I. INTRODUCTION AND SUMMARY

The *TRO Remand Order* provides AT&T Illinois very limited relief from its obligation to unbundle High-Capacity Loops and High-Capacity Dedicated Transport. Rather than grant the broad unbundling relief AT&T Illinois requested, the FCC ruled that the unbundling obligation only goes away where the facts established that there are a very high number of Business Lines (not total lines - just Business Lines) and/or several Fiber-Based Collocators in a wire center. For example, there is no relief from the unbundling obligation for DS1 loops unless there are at least 60,000 Business Lines *and* at least 4 Fiber-Based Collocators at a wire center. Because of

[1] Order on Remand, *In re Unbundled Access to Network Elements*, 20 FCC Rcd. 2533 (2005) ("*TRO Remand Order*" or "*TRRO*"). The D.C. Circuit has now affirmed the FCC's decision. *Covad Communications Co. v. FCC*, Nos. 05-1095 *et al.* (consol.) (D.C. Cir. June 16, 2006). ("*Covad*").

these high thresholds, AT&T Illinois was only able to meet the criteria for DS1 loop non-impairment in four of its roughly 277 wire centers. Not surprisingly, these four wire centers - Franklin, Dearborn, Superior and Wabash - are all located in the center of a major metropolitan area. Thus, only the wire centers in the most dense, highly concentrated business areas qualify for this unbundling relief.

Not content with their victory at the FCC, CLECs go to extraordinary lengths to minimize AT&T Illinois' unbundling relief even further by urging this Commission to adopt very restrictive readings of the FCC's non-impairment criteria. In particular, CLECs urge the Commission to interpret the "Business Line" and "Fiber-Based Collocator" definitions in a manner that will further reduce the already-modest unbundling relief AT&T Illinois achieved under the *TRRO*. The point here is not that the Commission should go out of its way to construe the FCC's rules in AT&T Illinois' favor. It should not. This is not a result-oriented process. Rather, it is a process to apply the FCC's Rules in a forthright way in order to implement the FCC's uniform, nationwide unbundling rules for high-capacity loops and dedicated transport.

The FCC took great pains to adopt a "self-effectuating" mechanism that uses an objective set of data that ILECs already create for other regulatory purposes. *TRRO* at ¶¶ 3, 105. To this end, the FCC adopted an uncharacteristically detailed definition of "Business Line" and "Fiber-Based Collocator". It also provided a detailed description of the way in which those rules should be interpreted and how the non-impairment determinations should be made. *See*, e.g., *TRRO* at ¶¶ 96-106. Thus, implementation of the non-impairment criteria should be a relatively straightforward and simple matter.

The opposite has been true in Illinois. AT&T Illinois devoted substantial effort to the negotiation of contract terms to implement these provisions. This industry-wide collaborative process lasted approximately ten weeks and culminated in an arbitration proceeding (Docket 05-

0442) to resolve remaining disputes. This docket resolved thirty-four (34) contested issues between the parties - many of them relating to high-capacity loops and dedicated transport.

One would have thought that all of the CLEC objections to AT&T Illinois' application of the non-impairment criteria would have been addressed and resolved in that proceeding. Most were, but the ever-inventive CLECs were able to come up with new issues and filed a petition in Docket 05-0717 to open a new proceeding to re-visit this topic. That, of course, led to this investigation proceeding (Docket 06-0029) which, pursuant to the terms of the *Initiating Order*, should be the Commission's last foray into the question of how to apply the FCC's non-impairment criteria for high-capacity loops and dedicated transport.

The point of this background is to illustrate that what should have been a relatively straightforward and prompt implementation of the FCC's non-impairment criteria has, through the CLECs' unremitting opposition, become an elaborate, complicated and drawn-out affair. The CLECs continue that opposition in this proceeding. They ignore the simple answers provided in the FCC's Rules; they turn a blind eye to prior rulings by this Commission and they invent new procedural hurdles that would further delay the limited relief AT&T Illinois is entitled to.

The three most significant issues in this proceeding typify the CLEC approach. Business Line Issue 3 asks whether each unbundled loop should be counted as a single Business Line (as CLECs contend) or whether it should be counted on a "digital equivalent" basis, i.e., so that a DS1 that delivers 24 separate voice-grade channels is counted as 24 Business Lines (as AT&T Illinois contends). The FCC's Rule on this is clear: it instructs the parties to count UNE loops on a digital equivalent basis. The CLEC approach to the issue is to ignore the FCC Rule where they can, and (where they cannot), to explain it away through a convoluted interpretation of the Rule. An even greater challenge for the CLECs on this issue is to get around the concession they

made in Docket 05-0442 and in a Petition for Reconsideration filed with the FCC that UNE loops are counted on a digital equivalent basis. CLECs offer no persuasive reason why these legal admissions should not be binding in this proceeding.

Another major issue is Fiber-Based Collocator Issue 1, where CLECs take the position that a carrier with a *bona fide* collocation arrangement cannot qualify as a "Fiber-Based Collocator" if it accesses its fiber transport through a collocation-to-collocation cross-connection with another CLEC. Despite the FCC's clear pronouncement that a carrier does not have to "own" its own fiber transport facility to qualify as a Fiber-Based Collocator, CLECs ask this the Commission to graft this made-up requirement to the FCC's Rule. Staff recognizes that CLECs are over-reaching on this issue and recommends adoption of the AT&T Illinois' position.

The third major issue is Data Access Issue 4, where CLECs request the Commission to establish a requirement found nowhere in the *TRRO,* i.e., that AT&T Illinois obtain a "verification" from every carrier that it intends to identify as a "Fiber-Based Collocator". As the FCC recognized in the *TRRO,* it is completely impractical to condition unbundling relief on the consent of the CLEC. The CLEC would be unlikely to grant its consent, either because it did not care (and did not want to be bothered with providing verifications) or because its own business interests would be harmed by a non-impairment designation. The FCC got it right. There is no room in the FCC's "self-effectuating" process for the procedural hurdles the CLECs wish to construct.

For all of these reasons, and for the reasons set out below, AT&T Illinois respectfully requests that the Commission adopt the straightforward application of the FCC's Rules explained below. In addition, AT&T Illinois requests that the Commission issue an order specifically approving the high-capacity loop and dedicated transport non-impairment designations made by AT&T Illinois in Schedule CAC-7.

II. METHODOLOGICAL ISSUES SHOULD BE RESOLVED IN FAVOR OF AT&T ILLINOIS

A. AT&T ILLINOIS CORRECTLY COUNTED BUSINESS LINES CONSISTENT WITH THE FCC'S RULES IN THE *TRRO*

This section of the Reply Brief addresses the six (6) issues related to the proper counting of Business Lines under the FCC's Rule.

1. What Year's ARMIS 43-08 Data Did/Should AT&T Illinois Use In Making Its Business Line Counts - 2003 Or 2004?

a. Staff Supports AT&T Illinois' Position

Staff's recommendation on this issue mirrors the recommendation of AT&T Illinois. Staff believes that the Commission should make non-impairment determinations based on the "ARMIS Business Line Counts AT&T Illinois *actually* files with the FCC." Staff Br. at 8. Staff recognizes the FCC's stated intention that the ARMIS portion of the Business Line calculation be based on "reported" results. Staff goes on to say that it is reasonable to provide AT&T Illinois thirty (30) additional days beyond the April 1st filing date of the ARMIS Report (to May 1st) to disaggregate ARMIS data on a wire center-by wire center basis. *Id*. at 9. The Commission should adopt Staff's recommendation in its entirety.

b. The Commission Rejected The CLEC Coalition Position In 05-0442.

The issue of whether to base the Business Line count on the actual ARMIS 43-08 Report data or on other data is beyond the scope of this proceeding because the Commission has already resolved it in AT&T Illinois' favor. AT&T Ill. Br. at 16-18. CLECs argue that this issue was not "arbitrated and resolved" in Docket 05-0442 because the question of whether the 2004 ARMIS 43-08 Report should have been used was not listed as a specific issue in Docket 05-

0442. CLEC Br at n. 105. The question of whether an issue has been "arbitrated and resolved" is not answered by rotely looking at the arbitration issues list developed by the parties. Rather, it is answered by reviewing the Commission's order to determine whether or not the issue was addressed. It is the *order* that contains the Commission's ruling and it is the *order* that establishes legal obligations with which parties must comply – not the issues list.

The Order in 05-0442 instructs the parties to use the ARMIS 43-08 Report (at 30). It also establishes that non-impairment determinations must be evaluated as of "the moment in time" when they are made (at 106). This later determination was made in response to the specific disputes that were raised about the timing of CLEC self-certifications (Issues 17A and 20) and was made to eliminate the "absurd results" that would occur if a dispute had to be resolved on a different set of data than was used by the ILEC to make the non-impairment designation. The mechanism for enforcing this result in 05-0442 is that the ILEC uses the most current ARMIS 43-08 Report available at the "moment in time" that it makes its designation. That determination remains binding on the parties and precludes CLEC from arguing that anything other than the ARMIS 43-08 Report can be used in the Business Line calculation.

CLECs also argue that their proposal to use something other than the ARMIS 43-08 Report is *consistent* with the *TRO/TRRO Arbitration Order* because quarterly reports prepared on an *ad hoc* basis would comply with the "moment in time" requirement found on page 106. The problem with this argument is that it ignores the Commission determination on page 30 of the *TRO/TRRO Arbitration Order* that the appropriate data source for counting Business Lines is the ARMIS 43-08 Report provided by ILECs to the FCC. There, the Commission found that the Business Line calculation counts "ARMIS 43-08 Business Lines, Business UNE-P, plus UNE-P

Loops". The only place that "ARMIS 43-08 Business Lines" can be found is in the ARMIS Report filed by AT&T Illinois with the FCC.[2]

c. CLECs' Position On The Merits Conflicts With The *TRRO* And Is Internally Inconsistent.

CLECs' position is somewhat schizophrenic because they agree that it is appropriate to use the filed ARMIS 43-08 Report to obtain Business Line counts for AT&T Illinois' *initial designation*. CLEC Br. at 35. When it comes to *future designations*, however, they assert that using the ARMIS 43-08 Report is completely inappropriate. *Id*. at 36-40. This position is irreconcilably inconsistent.

CLECs also complain that using ARMIS 43-08 Reports could result in using Business Line data as old as 16 months. CLEC Br. at 36. The more likely result, however, is the use of Business Line data that is just 4 months old, because once a new ARMIS 43-08 Report becomes available and shows that a new wire center meets the non-impairment threshold, AT&T Illinois has every incentive to immediately designate that wire center as "non-impaired". But the Commission need not rely on AT&T Illinois' motivations alone to be confident that current data is used for non-impairment designations because the ARMIS 43-08 Report is constantly refreshed every 12 months. There is nothing unreasonable about using data that is updated annually. Indeed, pursuant to statutory directive in Section 13-407 of the PUA, the Commission itself updates its competitive business line data once a year.[3]

CLECs propose two alternatives to the ARMIS 43-08 Report: 1) that AT&T Illinois compute a Business Line count at the end of each quarter: and 2) that AT&T Illinois compute a

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[2] In Docket 05-0442 CLECs argued that ARMIS data should not be used. ("In response to SBC and Staff's contention that ARMIS data be used, the CLECs highlight that the FCC rules, specifically Section 51.5, say nothing regarding the use of ARMIS data.") *TRO/TRRO Arbitration Order* at 29. The Commission rejected that argument.

[3] *See*, e.g., Annual Report on Telecommunications Market in Illinois, released by the Illinois Commerce Commission, May 24, 2005.

Business Line count on December 31st of each year. CLEC Br. at 38-39. These proposals should be rejected for three reasons. *First*, they are contrary to the FCC's mandate to use the as-filed ARMIS 43-08 Report. Paragraph 105 of the *TRRO* says that Business Line counts are "an objective set of data that incumbent LECs already have to create for other regulatory purposes". It also says that by using "an ARMIS filing required of incumbent LECs" the Commission "can be confident in the accuracy of the thresholds" and that the parties can have "simplified ability to obtain the necessary information." CLECs never explain how their proposals are consistent with these requirements.

Second, the CLEC proposals are highly impractical. They would require ILECs to prepare *ad hoc* business line reports (on a quarterly or annual basis) that will inevitably differ from the ARMIS 43-08 Report. This will create inconsistent application of the FCC's rule from state-to-state. But more important, it will give rise to endless disputes. The Commission can well imagine that if AT&T Illinois prepares an *ad hoc* Business Line report that lacks the imprimatur of a filed ARMIS 43-08 Report, CLECs will conduct endless discovery to ascertain how the *ad hoc* report was prepared, what data was used to prepare it and what methodological assumptions were made. They will also raise endless disputes if the Business Line count is not to their liking – disputes that will have to be resolved by the Commission. This is just the sort of thing the FCC wanted to avoid when it instructed the parties to use reports that ILECs "already have to create for other regulatory purposes". The CLEC proposals are an invitation to conflict and controversy that the Commission should not accept.

Third, CLECs assert that their alternative proposals would not be administratively burdensome for AT&T Illinois. CLEC Br. at 45-46. CLECs are wrong. There are no processes or procedures in place to create the reports CLECs envision, nor are their available personnel to do the work. Tellingly, CLECs do not offer to reimburse AT&T Illinois for any of the extensive

work that would be needed to produce these reports. They would, however, undoubtedly hold AT&T Illinois to a very strict standard of precision for the Business Line information reported in this fashion. Overall, the drawbacks to the CLEC proposals are significant and the alleged benefits are slight. They should be rejected.

CLECs next challenge Staff's analysis on Business Line Issue 1 by saying that it is shortsighted. CLEC Br. at 49-50. Their main point is that updating the ARMIS 43-08 Business Line count once a year will advantage AT&T Illinois because, as business lines are held steady through the year, any new Fiber-Based Collocators can put AT&T Illinois over the non-impairment threshold for DS1 or DS3 loops.[4] The CLEC argument should be rejected for at least two reasons. *First*, there is nothing in the *TRRO* that requires the Business Line data to be of the exact same vintage as the Fiber-Based Collocator data. To the contrary, these are two separate things that are being counted and the methodology for counting them is different. What is important is that, in separately counting Business Lines and Fiber-Based Collocators, AT&T Illinois uses the most recent data available at the time. AT&T Illinois cannot be faulted for using the ARMIS 43-08 Reports - as specified by the FCC - that are filed only on an annual basis. AT&T Ill. Br. at 20.

Second, CLECs' concern is entirely speculative because it is based on the assumption that the number of Fiber-Based Collocators is increasing (and is increasing in locations where Business Line counts are decreasing). There is no data on this in the record and therefore the Commission has no basis to conclude that this is so. Industry trends indicate that the opposite is true. Consolidation has been the major trend in the last several years in the telecommunications

[4] CLECs concede that this is not an issue for transport because non-impairment criteria for transport can be met *just* with the Business Line count. CLECs therefore concede (as we point out above) that after the new ARMIS 43-08 information is prepared on May 1st of each year, AT&T Illinois will promptly designate any new wire centers that meet the applicable thresholds. CLEC Br. at 49.

industry, and when two companies with collocation arrangements in the same central office merge, they can obviously eliminate duplicative collocation facilities. The speculative nature of the CLEC concern on this point does not justify any departure from the FCC's established method of using filed ARMIS 43-08 Business Line reports.

Finally, CLECs argue that the Michigan Public Service Commission has resolved this question in their favor. CLEC Br. at 50-51. The Michigan case is wrongly decided and is on appeal but, more to the point, it is inconsistent with Illinois law. This Commission has already established in Docket 05-0442 that it is data in the ARMIS Report that is to be used in non-impairment designations and that any review of such a designation must focus on "the moment in time" when the wire center is added to the list. *TRO/TRRO Arbitration Order* at 30, 106. The methodological approach in Illinois is simply different than the Michigan approach.

CLECs also argue that Bell South has voluntarily used the December 2004 ARMIS Business Line count (CLEC Br. at 51), but AT&T Illinois cannot be bound by whatever agreement BellSouth has made. Any reliance on BellSouth's action is particularly inappropriate because we do not know what concessions it may have received in exchange for revising its designations using ARMIS reports that did not exist at the time it made its designations.

For all of these reasons, the Commission should reject CLECs' position on Business Line Issue 1 and should adopt the recommendations of AT&T Illinois and Staff.

2. What Adjustments, If Any, Has AT&T Illinois Made (Or Should It Make) To ARMIS 43-08 Data For Purposes Of Its Business Line Counts?

Staff agrees with AT&T Illinois that: 1) the Commission has already resolved this issue in the *TRO/TRRO Arbitration Order*; and 2) no adjustments to ARMIS 43-08 line counts should be made. Staff Br. at 10. CLECs agree that "ARMIS 43-08 data should be used without

adjustment". AT&T Ill. Br. at 22. Accordingly, the Commission should find that, apart from disaggregating information on a wire center basis, no adjustments should be made to the ARMIS 43-08 line counts that AT&T Illinois files with the FCC.

3. Did/Should AT&T Illinois Exclude Unused Capacity On High Capacity UNE-L Lines (Including Those Used In Combination With UNE Transport) For Purposes Of Its Business Line Counts?

a. Summary Of AT&T Illinois' Position

The issue statement asks whether AT&T Illinois should exclude unused capacity on UNE-L lines for purposes of its Business Line count. The issue has developed quite differently. In reality, the issue is whether each digital UNE loop counts as just one (1) Business Line (as CLECs and Staff contend) or whether it must be counted as more than one (1) Business Line on a "digital equivalent" basis (as AT&T Illinois contends). AT&T Illinois' argument in support of its position consists of six (6) principle points:

1. The FCC's Business Line Rule requires counting UNE loops on a digital equivalent basis. The Rule says that Business Line tallies "shall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one (1) line. For example, a DS1 line corresponds to 24 64 kbps-equivalents, and therefore to 24 'business lines'". 47 C.F.R. § 51.5.

2. The vast majority of state commissions that have addressed this issue require UNE loops to be counted on a digital equivalent basis, including the commissions in Texas,[5] Ohio,[6] Kansas[7] and Florida.[8]

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[5] *Order Approving Methodology to Determine AT&T Texas Wire Centers Which Are Non-Impaired, Post-Interconnection Dispute Resolution Proceeding Regarding Wire Center UNE Declassification,* PUC Docket No. 31303, Public Utility Commission of Texas, dated April 7, 2005 at 33. (*"Texas Order"*).

[6] *In the Matter of the Petition of XO Communications, Inc. Requesting a Commission Investigation of Those Wire Centers That AT&T Ohio Asserts are Nonimpaired,* Case No. 05-1393-TP-UNC, Finding and Order issued June 6, 2006 at 24. ("Ohio Order"). ("the FCC has explicitly stated that ILECs shall account for high-capacity digital access lines by counting each 64 kbps-equivalent as 1 line.").

3. Consistent with these state commissions, this Commission has already ruled that "all UNE loops" must be counted. *TRO/TRRO Arbitration Order* at 30.

4. The CLECs already agreed to count digital UNE loops on a digital equivalent basis in Section 0.1.11 of their TRO/TRRO Amendment. This language tracks the FCC's Business Line definition – the same language that at least four state commissions have ruled plainly requires UNE loops to be counted on a digital equivalent basis. Words in an agreement must be interpreted and enforced according to their plain meaning.

5. The CLECs have conceded this point. In Docket 05-0442, they argued that "the total number of Business Lines in a particular wire center is equal to the number of simultaneous connections between end users, business customers and the PSTN that can be established at the wire center." *TRO/TRRO Arbitration Order* at 28. They did not argue that each UNE loop should count as only one (1) Business Line (as they do now). Rather, they conceded that the Business Line count includes all "simultaneous connections" that "can be established." *Id.* This is precisely the interpretation that AT&T Illinois urges the Commission to adopt in this proceeding.

6. Two (2) of the eight (8) members of the CLEC Coalition (NuVox and XO) made a legally-binding admission in a pleading filed with the Federal Communications Commission

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[7] *In the Matter of the Complaint of Post-Interconnection Dispute Resolution of Southwestern Bell Telephone, L.P. Against NuVox Communications of Kansas, Inc. Regarding Wire Center UNE Declassifications,* Docket No. 06-SWBT-743-COM, Order Determining Proper Method for Fiber-Based Collocator and Business Line Counts, June 2, 2006 at 28-29 ("*Kansas Order*"). ("the Commission concludes that the FCC plainly and unambiguously stated its intentions: each 64 kbps-equivalent shall be counted as a CLEC-served Business Line for purposes of this impairment analysis.").

[8] *Bell South Telecommunications, Inc.,* Docket No. 041269-TP, Order dated March 2, 2006 at 29 ("the FCC Rules specifically state that "the Business Line tallies…shall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as 1 line.").

that the Business Line Rule requires each UNE loop to be counted on a digital equivalent basis.[9] AT&T Ill. Br. at 26-27.

In sum, AT&T Illinois' position is that a straight-forward application of the Business Line Rule requires UNE loops to be counted on a digital equivalent basis.

b. Staff's Position Is Inconsistent With The FCC's Business Line Rule.

Staff recommends that each UNE loop count as one (1) Business Line, regardless of how many separate loops are provided on a digital equivalent basis. Staff Br. at 11-13. Staff is wrong for several reasons.

First, Staff ignores the primary source for resolving this issue -- the FCC's Business Line Rule itself. That rule plainly instructs that "business line tallies…shall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one (1) line. For example, a DS1 line corresponds to 24 64 kbps-equivalents, and therefore to 24 'business lines.'" At least four state Commissions have held that this rule unambiguously requires UNE loops to be counted on a digital equivalent basis. Staff overlooked this rule altogether.

Second, Staff overlooks the fact that each CLEC already agreed to count UNE loops on a digital equivalent basis by adopting the FCC's definition of "Business Line" in section 0.1.11 of its TRO/TRRO Amendment.

Third, Staff relies on a phrase from Paragraph 105 of the *TRRO* that says "by basing our definition in an ARMIS filing required of incumbent LECs, and adding *UNE figures, which must also be reported*, we can be confident in the accuracy of the thresholds, and a simplified ability

[9] *See In the Matter of Unbundled Access to Network Elements, Review of Section 251 Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Petition for Reconsideration (filed March 28, 2005 at 11) ("CLEC Petition for Reconsideration") XO and NuVox are two of the CLECs that sponsored this petition. The *CLEC Petition for Reconsideration* is attached to AT&T Illinois Ex. 1.1 as Sch. CAC-10.

to obtain the necessary information". (Emphasis added by Staff). Staff Br. at 11. Staff asserts that the italicized language refers to the FCC's Semi-Annual Form 477 Report, which requires AT&T Illinois to report UNE loop information without digital equivalence. Staff draws the wrong conclusion from the italicized language. Assuming that the language refers to Form 477 (which is not clear), Form 477 only establishes the universe of loops that must be counted (i.e., the number of two-wire loops, the number of DS1 loops, the number of DS3 loops, etc.). The italicized language says nothing about whether those loops should be counted on a digital equivalent basis or not. To answer that question, one only need look at the Business Line definition, which can only be read to say that the universe of UNE loops identified (whether in Form 477 or by other means) must be converted to Business Lines on a digital equivalent basis. Had Staff continued its analysis and asked how loops identified in Form 477 should be actually counted, it would have discovered that the answer is clearly provided in the Business Line definition -- "business line tallies shall account for digital access lines by counting each 64 kbps equivalent as one line". Staff's reliance on Form 477 to the complete exclusion of the Business Line rule itself is misplaced and cannot be followed.

Fourth, Staff argues that the *TRO/TRRO Arbitration Order* found that converting circuits into voice-grade equivalents would be inconsistent with the FCC's findings. Staff Br. at 12. This is an incorrect interpretation of the Commission's Order. There is no language in the *TRO/TRRO Arbitration Order* on digital equivalence because that issue was not before the Commission in that docket. In the TRO/TRRO Arbitration the CLECs chose to pursue different theories on how to interpret the Business Line Rule - theories that were fundamentally inconsistent with its current position that the digital equivalence requirement can be ignored. (See Section II.A.3.c, below). AT&T Illinois, for its part, had no incentive to raise the digital equivalence issue in the TRO/TRRO Arbitration proceeding because CLECs agreed to the full

text of the Business Line definition from Rule 51.5 which plainly requires that UNE loops be counted on a digital equivalent basis.

Given that the parties agreed to language requiring the application of digital equivalence in the TRO/TRRO Amendment, this issue was simply not before the Commission and Staff cannot conclude that the language on Page 30 of the *TRO/TRRO Arbitration Order* is a ruling that UNE loops cannot be counted on a digital equivalent basis. The Commission has not yet had an opportunity to directly address this aspect of the Business Line Rule and Staff should not read Page 30 to take that opportunity away from the Commission.

c. CLECs Evade The Plain Digital Equivalence Requirement In The Business Line Definition

i. The CLECs "Direct Approach" Violates The FCC's Rule.

Like Staff, CLEC Coalition does not come to grips with the clear language in the Business Line definition in the FCC's rule and in the TRO/TRRO Amendment which requires UNE loops to be counted on a digital equivalent basis.[10] Instead, they argue that the Business Line count cannot vary from the Business Line counts submitted by AT&T Illinois to the FCC on December 7, 2004. This approach is wrong for several reasons.

First, it ignores the Business Line definition in Rule 51.5 -- a definition that was not even in existence at the time AT&T Illinois submitted its business line count to the FCC on December 7, 2004. AT&T Ill. Cross-Ex. 4.0. The Business Line Rule was not promulgated until the *TRRO* was released on February 4, 2005. No one disputes that the December 7, 2004 loop count submitted by AT&T Illinois does not count UNE loops on a digital equivalent basis. Thus, if the Commission believes that the Business Line rule adopted in the *TRRO* requires UNE loops to be

[10] In their alternative analysis, CLECs offer a convoluted explanation of why the digital equivalence language in the Business Line Rule should be applied partially – but not entirely. AT&T Illinois explains why that reading of the Business Line Rule is wrong in Section II.A.3.c.ii, below.

counted on a digital equivalent basis (as nearly every other Commission addressing this question believes), it would be indefensible to require AT&T Illinois to use the line counts in its December 7, 2004 submission.

Second, adhering blindly to the December 7, 2004 submission - as CLEC Coalition proposes - would require the Commission to ignore all the events after December 7, 2004. Once the FCC issued its Business Line Rule on February 4, 2005 (with the accompanying explanatory text in the *TRRO*) AT&T Illinois promptly recalculated its Business Line counts to conform to the new Rule. AT&T Ill. Ex. 1.1 at 855-867; AT&T Br. at 28-29. This information, which counted UNE loops on a digital equivalent basis as required by the Rule, was transmitted to the FCC on February 18, 2005.[11] The FCC was therefore well aware – early on - of the difference between AT&T Illinois' December 7, 2004 submission and its February 18, 2005 submission and was free to instruct AT&T Illinois (either formally or informally) to revise its Business Line counts if they were incorrect. The FCC has not done so. AT&T Br. at 29. Nor has the FCC responded to the invitation made by CLECs to re-visit this issue in the *CLEC Petition for Reconsideration* requesting the FCC to revise its definition of Business Line, further indicating that the FCC has no problem with the revised Business Line counts submitted by AT&T Illinois on February 18, 2005.

Third, each CLEC in this proceeding agreed with AT&T Illinois in an approved TRO/TRRO Amendment that business lines "shall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line. For example, a DS1 line corresponds to 24 64 kbps-equivalents, and therefore to 24 'Business Lines.'" AT&T Ill. Ex. 1.0, Sch. CAC-2;

[11] *See* Schedule CAC-11 to AT&T Ill. Ex. 1.1.

TRO/TRRO Amendment at §0.1.11.[12] These amendments require that UNE loops be counted on a digital equivalent basis. CLECs cannot dispute this interpretation of the language, because: 1) the CLECs conceded in Docket 05-0442 that the Business Line count includes all "simultaneous connections" that "can be established" (*TRO/TRRO Arbitration Order* at 29); and 2) the CLECs in their "alternative" proposal concede that UNE loops are counted on a digital equivalent basis (even though they go on to say that UNE loops used for residential and non-switched services should then be subtracted). This is the correct interpretation of the contract language, as the state commissions in Ohio, Kansas, Texas and Florida have all held.

CLECs acknowledge that they agreed to incorporate those words into the TRO/TRRO Amendment, but dispute that this constitutes an agreement that UNE loops be counted on a digital equivalent basis. CLEC Br. at 25-26. CLECs say they were simply avoiding the need to resolve any "interpretive differences" concerning the definition at that time. *Id.* This explanation does not hold together. CLECs pursued far less significance issues in Docket 05-0442. For example, Issue 6 (which was ultimately settled, but which CLECs nonetheless included in their Arbitration Petition) involved the question of whether certain sections of the Agreement that already described AT&T Illinois' obligation under Section 251 should "include additional references to Section 251". AT&T Ill. Ex. 1.0 at Sch. CAC-1. CLECs have never shown reluctance to raise additional arbitration issues – no matter how small - so it strains credibility to believe that they were simply avoiding the need to resolve that interpretive dispute in Docket 05-0442.

[12] Attachment 2 to AT&T Illinois' Initial Brief is a table that shows the docket in which the TRO/TRRO Amendment with this language for each member of the CLEC Coalition was approved. XO is the only member of the CLEC Coalition that did not participate in Docket 05-0442, but XO later signed a TRRO Amendment that includes the language referenced above. See Docket 06-0344, approving the XO/AT&T Illinois TRRO Amendment, Section 0.1.11.

The real answer is that CLECs did not dispute the language because they actually agreed that UNE loops *should* be counted on a digital equivalent basis. Indeed, that is the only way to explain the position the CLECs took in Docket 05-0442, where they argued that residential and non-switched lines should be subtracted from the total UNE loop count. In order to argue that residential lines and non-switched lines should be *excluded* from the UNE loop count, CLECs have to concede that UNE loops are counted as more than one Business Line in the first place. If they did not, there would be no need for CLEC to argue that residential lines and non-switched lines should be excluded. It is also the only way to explain the CLEC statement in their briefs that the Business Line count should include all "simultaneous connections" that "can be established" between end user business customers and the PSTN. AT&T Ill. Br. at 27.

Of course, words in an agreement must be interpreted and enforced according to their plain meaning. The CLECs could have contested the inclusion of the digital equivalence language in their TRO/TRRO Amendment - but did not. Accordingly, the Commission has no choice but to enforce the plain meaning of that language and to allow AT&T Illinois to count UNE loops on a digital equivalent basis.

The CLECs' main argument is that the December, 2004 loop count is required by the *TRO/TRRO Arbitration Order*. CLEC Br. at 20-21. As we just explained, however, no party raised the digital equivalence issue in Docket 05-0442 and the Commission never had the occasion or the opportunity to directly address that issue. See Section II.A.3.b, above.

CLECs also argue that the December 7, 2004 line count should be adopted because AT&T Illinois argued in Docket 05-0442 that the FCC used that count to establish the non-impairment thresholds. CLEC Br. at 21-22. This argument should also be rejected. It is true that AT&T Illinois argued in Docket 05-0442 that the FCC developed the thresholds using "the data that the incumbents provided, which was calculated using the *same definitions* and sources

that SBC Illinois proposes here". CLEC Br. at 21 (emphasis added). But the "definitions" at issue in Docket 05-0442 were the three Business Line disputes that CLECs raised in Docket 05-0442 -- none of which included the digital equivalence issue. These disputed issues were: 1) whether UNE loops used by CLECs to serve residential should be excluded from the UNE loop count; 2) whether UNE loops used by CLECs to provide non-switched services should be excluded from the UNE loop count; and 3) whether every nine (9) Centrex lines should count as a single business line. *TRO/TRRO Arbitration Order* at 30. AT&T Illinois' advocacy to the Commission in Docket 05-0442 must be viewed in the context of the issues presented there -- which undisputedly did not include the digital equivalence issue which is the center piece of this proceeding.

It is also somewhat hypocritical of CLECs to criticize AT&T Illinois for the arguments it made in Docket 05-0442 because the situation is largely of their own making. In Docket 05-0442, CLECs raised three issues to interpret the Business Line Rule, but conceded the digital equivalence issue by asserting that the Business Line count should include all "simultaneous connections" that "can be established" between end user business customers and the PSTN. AT&T Ill. Br. at 27. Moreover, two of the three Business Line interpretation issues the CLEC raised in Docket 05-0442 (exclusion of residential and non-switch UNE loops) are premised on the idea that UNE loops are counted on a digital equivalent basis, so the CLEC position here (in 06-0029) is diametrically opposed to their position in Docket 05-0442. CLECs recognized in Docket 05-0442 that UNE loops are counted on a digital equivalent basis, but attempted to whittle that number down by excluding UNE loops used for residential and non-switched services. Having lost that argument, CLECs now take the exact opposite position in this proceeding, where they argue that UNE loops are not subject to counting on a digital equivalent

basis at all. In this environment of shifting CLEC positions, they are hardly in a position to criticize AT&T Illinois for any apparent inconsistencies in its position.

Finally, CLECs attempt to explain away the *CLEC Petition for Reconsideration* filed by XO and NuVox by asserting that the "fact that the FCC has not acted one way or another on the Petition for Reconsideration leaves all parties to the proceeding unaware of the FCC's view" of the digital equivalence issue. CLEC Br. at 27. This misses the point altogether. AT&T Illinois' argument is not that the FCC's view of the digital equivalence issue is somehow up in the air. To the contrary, we believe that it has plainly and unambiguously imposed a digital equivalence requirement in its Business Line definition. The point of citing the *CLEC Petition for Reconsideration* is to demonstrate that several CLECs have made a legal admission in a pleading before the FCC that is diametrically opposed to the view they assert in this proceeding. In that pleading, NuVox and XO plainly state that the Business Line Rule requires UNE loops to be counted on a digitally equivalent basis. ("The most egregious over counting of business lines results from the Commission's treatment of digital access lines. Rule 51.5 states that business line tallies 'shall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line.' Thus, a DS1 is counted as 24 'lines;' a DS3 is counted as 672 'lines,' etc.") *CLEC Petition for Reconsideration* at 11. Given that admission, it is difficult to see how this Commission could arrive at a different conclusion in this proceeding.

ii. The CLECs' "Alternative" Solution Should Also Be Rejected.

a. A Utilization Factor Is Inappropriate

AT&T Illinois fully anticipated and addressed the CLEC argument regarding the use of a so-called "utilization factor" to calculate the Business Line count for UNE loops. AT&T Ill. Br at 30-36. CLECs' Brief raises no new argument. CLEC Br. at 29-30. It merely says that AT&T

Illinois should not use an *actual* utilization factor for every CLEC, but rather should use its own utilization factor as a proxy for the utilization of other carriers. As AT&T Illinois stated in its Initial Brief, the use of any utilization factor is inappropriate because it violates the FCC's requirement that Business Lines be counted using an objective set of data that the ILEC already creates for "other regulatory purposes". *TRRO* at ¶105. If the FCC envisioned the use of a utilization factor for UNE loop counts, it would have said so (but it did not). Even if a utilization factor were appropriate (and it is not) carriers use different strategies, target different niches and specialize in different types of services, so they would have different utilization rates on their high capacity lines. Finally, the idea of a utilization factor is completely contrary to the FCC's express direction to count UNE loops on a digital equivalent basis. The FCC specifically said that UNE loops are calculated "by counting each 64 kbps-equivalent as one line". 47 C.F.R. § 51.5. The "utilization factor" approach violates this rule by *excluding* lines. This proposal must be rejected.

b. The Commission Should Not Reconsider Its Holdings From The *TRO/TRRO Arbitration Order*

Finally, CLECs assert that if the Commission does not adopt its "direct" approach (by limiting Business Line counts to those tallied in the December 7, 2004 submission), then it should reconsider all of its Business Line determinations in the *TRO/TRRO Arbitration Order*. CLEC Br. at 30-35. This is improper. As an initial matter, CLECs do not explain why a rejection of their "direct" approach requires reconsideration of other Business Line determinations. In fact, no such reconsideration is required. The Commission can reject the CLEC's "direct" approach simply on the grounds that the FCC's Business Line definition requires that UNE loops be counted on a digital equivalent basis. Such a finding would do nothing to undermine the Commission's determinations in the *TRO/TRRO Arbitration Order*,

especially because the digital equivalence issue was never directly raised or addressed in that proceeding. Moreover, the primary argument advanced by AT&T Illinois in the TRO/TRRO proceeding was that the FCC's Rule, on its face, required rejection of the CLEC claims regarding the exclusion of UNE-L residential and non-switched lines, as well as the counting of every nine (9) Centrex Lines as one (1) Business Line. See, e.g., *TRO/TRRO Arbitration Order* at 24-26. Thus, the outcome in the *TRO/TRRO Arbitration Order* is fully supported by the FCC's Rules and by the record and argument in that proceeding and there is no need to reconsider any of its Business Line determinations.

CLECs also make a convoluted statutory construction argument to justify the exclusion of UNE loops used to provide residential and non-switched services. As we explained in our Initial Brief at 34-35, if the meaning of an administrative rule is clearly expressed in the language, the court or administrative agency should not resort to contorted construction of the rule that would render terms meaningless, nor should it permit a general provision to override a more specific provision with which it conflicts. AT&T Illinois Br. at 34-35. These principles of construction are violated by the CLEC interpretation, which we discuss immediately below. It is important to keep in mind that this CLEC interpretation has been specifically considered and rejected by state commissions in Ohio,[13] Kansas [14]and Texas.[15]

CLECs' statutory construction argument relies on the first sentence of the Business Line definition for the proposition that only those UNE loops used to provide business service may properly be included in the Business Line counts. CLEC Br. at 30-35. In addition, it relies on the third sentence of the definition for the proposition that only UNE loops used to provision switched services may properly be counted. *Id.*

[13] *Ohio Order* at 24 (¶28).
[14] *Kansas Order* at 25-30.
[15] *Texas Order* at 30.

Contrary to these assertions, there is no inconsistency between the FCC's use of the phrase "all UNE loops" in the second sentence of the definition and the asserted limitations that CLECs glean from the first and third sentences of the definition. The first sentence does not apply to UNE loops at all – it defines a Business Line "as an incumbent LEC-owned *switched* access line used to serve a business customer." 47 C.F.R. § 51.5. (Emphasis added). A switched access line includes loop facilities and switching. A UNE loop is not "an incumbent LEC-owned switched access line" because the ILEC does not own the switch used with a UNE loop. If the first sentence of the Business Line definition is read as a qualifier for the rest of the definition, as CLECs suggest, the rule falls apart. Under this approach, the definition would create an internal inconsistency between the first sentence (which would *exclude* all UNE loops) and the second sentence of the definition (which would *include* all UNE loops).

The second sentence of the definition explains the calculations that must be performed to determine the number of Business Lines in a wire center. It requires that the Business Line count be calculated to include: 1) the sum of all ILEC business switched access lines; and 2) the sum of all UNE loops connected to a given wire center, including UNE loops provisioned in combination with other unbundled elements. Looking at the first provision, the question is what comprises an "incumbent LEC business switched access line"? While the rule clearly requires counting all business retail lines and business resale lines, a threshold question is whether to include all UNE-P arrangements or only *business* UNE-P arrangements. For three reasons, AT&T Illinois concluded that only business UNE-P lines – and not all UNE-P – should be included under the first provision. *First,* the FCC's rule instructs the parties to count ILEC business switched access lines, thus excluding non-business UNE-P arrangements. *Second,* the FCC's explanation of this definition in paragraph 105 of the *TRRO* clarifies that only business UNE-P lines should be counted. *Third,* AT&T Illinois' application of the second sentence best

effectuates the FCC's rationale for adopting its business line definition, which is to fairly represents the business opportunities in a wire center, including business opportunities already being captured by competing carriers through the use of UNEs. *TRRO* at ¶ 87, 105. Therefore, "incumbent LEC business switched access lines" must refer to business retail lines, business resale lines and business UNE-P lines.

Looking at the second provision of the second sentence of the Rule, the question arises as to what UNE loops should be counted. Simply put, the Rule requires ILECs to count "*the sum of all UNE loops* connected to that wire center, including UNE loops provisioned in combination with other unbundled elements." All stand-alone UNE loops are counted; all UNE loops that are part of an EEL arrangement are counted.

The third sentence of the Business Line definition provides additional detail on *how* to count the Business Lines. There are three instructions:

> 1. the count includes only those access lines connecting end-user customers with ILEC end-offices for switched services;
>
> 2. the count does not include non-switched special access lines; and
>
> 3. for ISDN and other digital access lines, each 64 kbps-equivalent is counted as one line; for example, a DS1 line corresponds to 24 64 kbps-equivalents and therefore to 24 "business lines."

The first requirement (subparagraph (1)) modifies that part of the definition relating to AT&T Illinois' switched access lines, for instance, the second sentence's directive to include the "sum of all incumbent LEC business switched access lines" in its business line tallies. The first requirement clarifies that the business line count should include only lines which "connect [ ] end-user customers with incumbent LEC end-offices for switched services." This precludes the inclusion of premise-to-premise services and ILEC company lines.

The second requirement (subparagraph (2)) stands on its own. According to this requirement, non-switched special access lines (which are not incumbent LEC switched access lines or UNE loops) should not be included in the business line count.

Finally, the third requirement (subparagraph (3)) requires that digital access lines be converted to their voice grade equivalents. Under the FCC's application of digital equivalency, a DS1 line should be counted as 24 business lines.

AT&T Illinois' interpretation of the Business Line definition provides the Commission with a reasonable and logical interpretation and counting methodology that upholds the FCC's stated policy objectives. Unlike the CLEC interpretation, AT&T Illinois' interpretation avoids any internal inconsistency between the meaning and application of the first and third sentences of the FCC's business line definition, and the clear directive in the second sentence to count "all UNE loops." AT&T Illinois' analysis of Rule 51.5 also avoids the need to totally disregard the clear meaning of Paragraph 105 of the *TRRO*, or to rewrite its provisions to require the counting of less than all UNE loops connected to a given wire center.

For all of these reasons, the Commission should reject the CLEC request to reconsider the Business Line determinations in the *TRO/TRRO Arbitration Order* and – if it for some reason does reconsider its determinations - should reject the CLEC contorted interpretation of the Business Line Rule.

4. Did/Should AT&T Illinois Exclude Non-Switched UNE-L Capacity On High Capacity UNE-L Lines (Including Those Used In Combination With UNE Transport) For Purposes Of Its Business Line Counts?

CLECs address this issue in their discussion of the "alternative" proposal which AT&T Illinois addresses in Business Line Issue 3, above. For all of the reasons set forth therein, the

Commission should not reconsider its decision to count "all UNE loops" and should reject the CLEC proposal to exclude non-switched UNE loop capacity on high capacity UNE loops.

Staff agrees with AT&T Illinois on this point. Staff Br. at 13-14. According to Staff, "the Commission has determined that AT&T Illinois need not exclude non-switched UNE-L lines from its Business Line counts. Staff, accordingly, recommends that the Commission find this issue to be resolved by its prior determinations in its *TRO Arbitration Order*." *Id.* For these reasons, the Commission should confirm that non-switched UNE loop capacity should not be excluded from the overall UNE loop count for purposes of its Business Line count.

5. Has AT&T Illinois Included (Or Should It Include) Lines That Are Served By VoIP In Its Business Line Counts?

There no longer appears to be a dispute on this issue. AT&T Illinois' position is that there should be no special rule that excludes business lines provided over VoIP. As long as a VoIP service would be included in the ARMIS 43-08 Business Line count or is provisioned on a UNE loop, it qualifies as a "Business Line". AT&T Br. at 37-38.

Staff concurs. Staff says that the Commission has already determined that AT&T Illinois should compute Business Line counts based on unaltered ARMIS 43-08 information. Thus, Staff argues, if a line used to provide VoIP service would otherwise be reported in the ARMIS 43-08 Report, it qualifies as a Business Line. According to Staff, the Commission should find this issue to be resolved by its prior determinations in the *TRO/TRRO Arbitration Order*. Staff Br. at 15. Staff reaches the same conclusion for any VoIP services provided over UNE loops.

Stripped of its rhetoric, CLECs agree with this when they say that "Nor do the CLECs have any disputes with the general proposition that a line can be included in the Business Line counts if the FCC's 'Business Lines' definition permits it to be counted". CLEC Br. at 55. CLECs go on to argue that the Commission should refrain from addressing the VoIP issue, but

that recommendation should be rejected. There is consensus that VoIP lines count like any other Business Line under § 51.5 and the Commission's order should make that clear.

6. Should AT&T Illinois Include Lines That Are Served By Its Wholesale Commercial Offering In Its Business Line Counts?

CLECs argue that Business Lines provided to carriers under commercial agreements (such AT&T Illinois' "Local Wholesale Complete" offering) do not fall within the actual language of the FCC's Business Line definition in 47 C.F.R. §51.5. CLEC Br. at 52-54. The following demonstrates that the Business Lines provided under commercial agreements fully satisfy the FCC's definition.

The FCC's definition states that: "*the number of Business Lines in a wire center shall equal the sum of all incumbent LEC business switched access lines plus the sum of all UNE loops connected to that wire center, including UNE loops provisioned in combination with other unbundled elements.*" Lines provided to business end users under a commercial agreement fall under the first of these categories, i.e., "all incumbent LEC business switched access lines". The lines provided under a commercial agreement are owned by AT&T Illinois and are connected to AT&T Illinois' switch and therefore meet the definition of an "incumbent-LEC switched access line". AT&T Illinois only counts such lines "used to serve a business customer" (as with retail, resale and UNE-P, lines serving residential customers will be excluded).

The last portion of the FCC's definition states that: "*Among these requirements, business line tallies (1) shall include only those access lines connecting end-user customers with incumbent LEC end-offices for switched services, (2) shall not include non-switched special access lines, (3) shall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line. For example, a DS1 line corresponds to 24 64 kbps-equivalents, and*

therefore to 24 'business lines.'" AT&T Illinois' counting methodology for lines provided pursuant to commercial agreements will comply with each of these three requirements.

Thus, just like any of AT&T Illinois' retail, resale or UNE-P switched access lines provided to business customers, a business line provisioned under a commercial agreement is an "*incumbent LEC business switched access line"* and therefore must be included in the Business Line count.

B. AT&T ILLINOIS CORRECTLY COUNTED FIBER-BASED COLLOCATORS CONSISTENT WITH THE FCC'S RULES IN THE TRRO

This section of the Reply Brief addresses the four (4) issues related to the proper counting of Fiber-Based Collocators ("FBCs") under the FCC's Rule.

1. Must A Carrier Counted As An FBC Have Fiber Facilities That Enter And Exit Its Collocations? Should Carriers Cross-Connected With Another Carrier (That Is Already Counted As An FCB) Be Counted?

The issue here is whether CLECs that connect their collocation arrangements to the outside world using a collocation-to-collocation cross-connection to the fiber transport of another CLEC count as a Fiber-Based Collocator (as AT&T Illinois and Staff contend) or whether they are disqualified from counting (as CLECs contend).

Staff addresses this issue concisely and recommends that "counting as FBCs carriers cross-connected with another carrier (that is already counted as an FBC) is, in Staff's opinion, reasonable and consistent with the direction in the TRRO." Staff Br. at 17-18. While Staff believes that the Commission need not make a determination as it concerns the single location where AT&T Illinois identified a cross-connected Fiber-Based Collocator (Wabash) because there are enough other Fiber-Based Collocators there already, that does not detract in the least

from Staff's belief that cross-connected carriers can fully satisfy the FCC's definition of a Fiber-Based Collocator. The Commission should follow this aspect of Staff's recommendation.

Opposing Staff and AT&T Illinois, CLECs argue that a cross-connecting carrier cannot qualify as a Fiber-Based Carrier because it cannot satisfy the requirement that it "operate" a fiber-optic cable or comparable transmission facility and that such a facility "terminate" at its collocation arrangement. CLEC Br. at 65-69. CLECs also assert that counting a cross-connected carrier would be inconsistent with the intent of the FCC's rule. CLEC Br. at 58-61. AT&T Illinois anticipated and rebutted each of these arguments in its Initial Brief. Nothing in the CLEC Initial Brief changes the conclusion that its overly-restrictive reading of the Fiber-Based Collocator definition should be rejected.

a. The FCC's "Analytical Construct"

The CLECs say that the "analytical construct" underlying the FCC's Fiber-Based Collocation rule supports their position, but they mis-read the *TRRO*.

First, CLECs claim that the foundation of the FCC's determinations is the presence of multiple carriers that "have actually deployed their own fiber facilities" and that carriers can only qualify as a Fiber-Based Collocator if they "actually own" their own fiber facilities. CLEC Br. at 59 (emphasis added). This is not what the *TRRO* says. The non-impairment test does not count CLECs that have actually deployed their own facilities (that was the old approach under the *TRO*).[16] Instead, it uses the presence of Fiber-Based Collocators as a "reasonable proxy for where significant revenue opportunity exists for competitive CLECs". *TRRO* at ¶ 101. The FCC's proxy analysis looks to arrangements that "signal the ability to deploy transport

[16] In fact, the *TRRO* rejected CLEC proposals that would have "focused too closely on actual deployment and actual wholesale availability, rather than on the ability to self-deploy and the likelihood of wholesale alternatives". *TRRO* at ¶ 122.

facilities." TRRO at ¶ 102. It does not, as CLECs wrongly assert, require that all qualifying collocation arrangements reflect the end-stage of fully-developed competition. Under the CLECs' interpretation, unbundling relief would only be available for high-capacity loops in locations where there is proven actual deployment. This is contrary to the requirement that non-impairment determinations have to consider the potential for deployment as well as actual deployment. *United States Telecom Ass'n v. FCC,* 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*"), at 575. As the D.C. Circuit Court of Appeals just held in reviewing the *TRRO,* "the Commission repeatedly justifies its unbundling determinations on the basis of both actual and potential competition." *Covad* at 20.

Second, CLECs claim that the *TRRO* requires a "one-on-one relationship between the number of fiber-based collocators and distinct transport facilities." CLEC Br. at 61. This methodology would count only one collocator per competitive transport facility in a wire center – in other words, it would count *transport facilities* instead of *fiber-based collocators*. This is the discredited approach that the FCC tried to follow in the *TRO* (it was vacated in *USTA II*), not the new rule established in the *TRRO*. The *TRO* required ILECs to count only instances where the competing carrier had deployed its own transport facilities. *TRRO*, ¶ 400.[17] In contrast, the *TRRO* merely states that a Fiber-Based Collocator must "operate[] a fiber-optic cable or comparable transmission facility," and counts instances where the interoffice facilities are owned by another party - as in Verizon's CATT arrangement and where facilities are obtained from the ILEC under an IRU. *TRRO,* ¶ 102; 47 C.F.R. 51.5. The *TRRO* does not state that ILECs are

[17] "The first trigger is designed to identify routes along which the ability to self-provide transport facilities is evident based on the existence of several competitive transport facilities." *TRO,* ¶ 400.

permitted to count only the CLEC that "deployed" or "owns" the transport facility.[18] In fact, the only time the *TRRO* mentions ownership of transmission facilities in its discussion of Fiber-Based Collocators is to state that the facility cannot be owned by the ILEC or an affiliate. *TRRO*, ¶ 102; 47 C.F.R. 51.5. Other than that, the facility can be owned by anyone.

The *TRRO* rejected CLEC proposals to re-adopt the vacated TRO triggers, which were based on existing deployment of competitive transport facilities, because the D.C. Circuit had squarely rejected that approach in *USTA II*. *TRRO*, ¶ 108. It would make no sense to interpret the FCC's rule in a way that effectively reinstates the vacated TRO triggers. Yet that is precisely what the CLECs would have the Commission do.

Third, CLECs mis-state the significance of fiber rings in the high capacity loop analysis. They claim that the Commission must examine whether a collocating carrier "has, or would, deploy 'fiber rings'". CLEC Br. at 64. There is no such requirement under the Rule. Nowhere in Rule 51.5 does it require a CLEC to have deployed a fiber ring in order to be counted as a Fiber-Based Collocator. Nor does it make sense that any such requirement would be imposed. Granted, the FCC understood that high capacity loops are most easily deployed as "laterals" that extend from fiber rings. *TRRO* at ¶ 154. But that did not cause the FCC to say that only those carriers with fiber rings can qualify as Fiber-Based Collocators. Rather, the FCC found that two factors - the number of Business Lines and the number of Fiber-Based Collocators - are indicators of the presence of fiber rings and required that both thresholds be met for a finding on non-impairment. ("Thus, high business line counts and the presence of fiber-based collocators, when evaluated in conjunction with one another, are likely to correspond with actual self-

[18] Indeed, the only provision in the Fiber-Based Collocator definition that requires two separate collocations arrangement to be counted as one is that "two or more affiliated fiber-based collocators shall be counted as a single fiber-based collocator." 47 C.F.R. § 51.5. The FCC could have written a similar requirement into the definition had it intended for cross-connect arrangements to be counted as one, but it did not do so.

deployment of competitive LEC loops or to indicate where deployment would be economic and potential deployment likely.") *TRRO* at ¶ 168. Thus, the *TRRO* looks only at indicators for potential deployment and not – as CLECs suggest – at actual deployment of fiber rings. Despite CLEC best efforts, none of this can be bootstrapped into a requirement that a carrier must have actually deployed a fiber ring in order to count as a Fiber-Based Collocator.

b. Meaning Of "Operates"

The CLECs contend that collocated carriers that are cross-connected to an unaffiliated carrier and use that carrier's facilities to exit the wire center should not count as Fiber-Based Collocators because they do not "operate" a fiber-optic cable or comparable transmission facility within the meaning of Rule 51.5. CLEC Br. at 65-69. This is overly-restrictive and mis-guided.

Carriers commonly "operate" networks comprised of both their own facilities and facilities that they obtain from third parties. AT&T Ill. Ex 1.1 at 1028-1035. For example, CLECs construct networks that use their own facilities together with ILEC UNEs (e.g., local loops and dedicated transport) or components obtained from other wholesale providers. This does not prevent these CLECs from being facilities-based carriers in their own right. The *TRRO* itself acknowledges this dynamic when it states that it "imposes unbundling obligations in a more targeted manner where requesting carriers have undertaken their own facilities-based investments and will be using UNEs in conjunction with self-provisioned facilities." *TRRO* at ¶ 3. The *TRRO* expressly acknowledges that some Fiber-Based Collocators will use inputs from other competing carriers. See *TRRO* at ¶ 28 ("our inferences regarding the potential for deployment are based on the characteristics of markets where actual deployment has occurred, which presumes that competitive LECs will use reasonably efficient technologies and take advantage of existing alternative facilities deployment where possible"). The fact that CLECs

use inputs from other carriers does not mean they are not "operating" a comparable transmission facility.

The CLEC argument that a carrier can only "operate" a network if it installs the optronics and owns the fiber facility is merely an attempt to create new requirements that do not exist in the Rule. CLEC Br. at 62. The standard dictionary definition for "operate" is not to own, but rather "to work or use a machine, apparatus, or the like" or "to act effectively; produce an effect; exert force or influence,"[19] which is precisely what can occur when a CLEC uses facilities that it leases or purchases from another CLEC in conjunction with its own facilities.

To return to the diagram attached to the AT&T Illinois Initial Brief as Attachment A, a CLEC (Collocator 2) can have a DS3 coaxial cable or fiber cross-connection to another CLEC (Collocator 1) that owns a fiber interoffice transmission facility. Collocator 2 "operates" its own comparable transmission facility that it has established using its own facilities located in its collocation arrangement, the fiber capacity that it leases or contracts from Collocator 1, and the DS3 coaxial cable or fiber cross-connect that connects it to Collocator 1's multiplexing equipment. AT&T Ill. Br at 44-46. Specifically, Collocator 2 must 1) design the comparable transmission facility; 2) decide upon the type and quantity of its own facilities to place in its collocation arrangement and deploy accordingly; 3) engage in any negotiations required to obtain rates, terms and provisions for leased components that are suitable for the carrier's desired network design; 4) decide what traffic it will route on the comparable transmission facility; 5) control the equipment that enables the traffic to be aggregated and transmitted over the comparable transmission facility; 6) place desired traffic onto the transmission facility; 7) ensure that the transmission quality of the end-to-end transmission facility meets (and continues to meet) its desired standards; 8) make engineering and market entry determinations in deciding the

[19] WEBSTER'S UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE at 1357 (2001).

transmission capacity required to meet, and continue to meet, the demands of its network; 9) monitor the use of the comparable transmission facility to determine if and when network modifications and augments are needed. These functions are activities that are key to the operation of the comparable transmission facility and that must be performed by the connecting carrier – not the carrier from whom the connecting carrier has chosen to lease transmission capacity. AT&T Ill. Ex. 2.0 at 11-13; AT&T Ill. Ex 2.1 at 9-14; Tr. at 176-178.

In short, Collocator 2 is obtaining transmission capacity from Collocator 1, but it has dedicated use of that capacity and controls everything else on its own. The control that Collocator 2 exercises meets any reasonable definition of "operate." Indeed, Mr. Gillan himself states in his Direct Testimony (at 749-751) that a carrier "operates" a transmission facility when it "determines the capacity of the system and its operating characteristics," which is exactly what Collocator 2 does in a collocation-to-collocation arrangement.

Nothing in the FCC's rule says that the Collocator must own the fiber, control the speed of the fiber, or run optronics equipment to be counted as a Fiber-Based Collocator. Moreover, the CLECs' optronics-based test is impractical. For example, Mr. Gillan's Exhibit JPG 1.6 depicts two different collocation-to-collocation arrangements, between carriers A and B and B and C. According to Mr. Gillan, both A and B could be counted as Fiber-Based Collocators because both have their own optronics (with A's optronics used on fiber coming out of B's collocation cage), but C could not be counted because it does not have its own optronics. Mr. Gillan thus concludes that C could not be counted even if it connected to B via fiber. CLEC Ex. 1.0 at 846-854. The problem with this approach is that, standing outside the collocation cages, AT&T Illinois would have no way of knowing whether C had its own optronics and thus no way to distinguish A from C, when both are connected to B via fiber. AT&T Ill. Ex. 1.1 at 1151-1159; AT&T Ill. Ex. 2.1 at 241-252. Thus, Mr. Gillan's optronics-based approach would

require AT&T Illinois to seek additional information from CLECs, which is contrary to the FCC's goal of relying only on data that ILECs already possess.

Finally, the CLECs claim that "a dark fiber IRU [is] the only way that a second carrier could be counted using the same fiber cable (but with different strands)." CLEC Br. at 77. That is one way to count a second Fiber-Based Collocator, but not the only way. Any arrangement that meets the definition of Fiber-Based Collocation, as the collocation-to-collocation arrangement discussed above does, must be counted.

CLECs also claim that the TRRO's discussion of dark fiber IRUs at ¶135 supports their claim that a carrier must install the optronics in order to "operate" a fiber facility. CLEC Br. at 68. This is demonstrably false. First, ¶135 deals only with a non-impairment analysis for dark fiber and has nothing to do with the use of the term "operates" or the definition of Fiber-Based Collocator. Second, if one attempts to draw any conclusion from ¶135 about the meaning of the term "operates", the more reasonable conclusion is that the term "operates" does not require ownership of the optronics. The language cited by CLECs says that "The record also indicates that competing carriers using unbundled dark fiber transport can operate more efficiently than when using lit transport…" This says that the carrier using unbundled dark fiber can operate more efficiently, but it acknowledges that both the dark fiber carrier and the carrier using lit transport "operate" their networks – it's just that one can do so more efficiently than the other. To support CLEC's position, this language would have to say that a carrier that uses lit fiber does not operate its network at all – something it clearly does not say.

Lastly, if the example of dark fiber IRUs means anything at all, it means that a carrier does not have to install the optronics in order to count as a Fiber-Based Collocator. Remember, the only time a carrier getting fiber transport from an ILEC can "count" is when the carrier combines it own optronics with the ILEC's dark fiber. There is no similar requirement when the

carrier gets fiber from another CLEC. Thus, the inescapable conclusion is that a carrier can obtain lit fiber from another CLEC and still count as a Fiber-Based Collocator under Rule 51.5.

c. Meaning Of "Terminates" And "Leaves"

The CLECs argue that a cross-connected collocator cannot be counted as a Fiber-Based Collocator because it does not operate a transmission facility that "terminates" in the central office and because the facility that connects it to the other collocator (i.e., the coaxial cable) does not "leave" the wire center. CLEC Br. at 66. The CLECs' analysis is flawed because it singles out the link between the two arrangements instead of looking at the transmission facility as a whole. As explained in Part II.B.3 below, the "comparable transmission facility" is not the coaxial cable standing alone - it is the facility established using Collocator 2's collocation-to-collocation connection and the transport capabilities it obtains from Collocator 1. Consistent with this, AT&T Illinois *only* counts a coaxial cable cross-connection arrangement when it is used as part of network facilities that are capable of supporting a DS3 or greater capacity leaving the central office. AT&T Illinois does not consider coaxial cable to be a comparable transmission facility if the coaxial cable is the facility leaving the wire center. AT&T Ill. Ex. 1.1 at 1338-1339. Thus, as shown in Attachment 1 to the Initial Brief (AT&T Ill. Ex 2.1, Sch. MN-2), the "comparable transmission facility" extends from point A through point J, and Collocator 2 operates a comparable transmission facility that "terminates" within its arrangement at point A and "leaves" the wire center at point J.

CLECs dismissively say that a cross-connected carrier "does nothing more than purchase services" from another carrier. CLEC Br. at 65. This is nonsense. The cross-connected carrier purchases fiber transport capacity as one of many inputs into its network. It has its own operating collocation arrangement, its own telecommunications equipment (see Attachment 1)

and provides its own services to its end users. CLECs would have this Commission believe that a cross-connected carrier is merely a reseller that "does nothing more" than purchase services for resale. The Commission should reject that assertion.

d. The Collocation-To-Collocation Arrangements Counted By AT&T Illinois Are Similar To Verizon's CATT Arrangements And Should Count As Fiber-Based Collocations

The FCC states that Fiber-Based Collocator counts can "includ[e] less traditional collocation arrangements," like Verizon's CATT fiber termination arrangements. *TRRO*, ¶ 102. Inexplicably, the CLECs fail to address the CATT arrangement at all. From this the Commission can only conclude that there is no reasonable distinction between the Verizon CATT arrangement and the collocation-to-collocation arrangement counted by AT&T Illinois as a Fiber-Based Collocator.

This conclusion is borne out by the facts. The service Verizon provides allows a carrier that is not itself a collocating carrier, but is a wholesale transport facilities provider, to terminate fiber cables in a Verizon wire center, and then offer these transport facilities to other collocated carriers at that location, including all CLECs. AT&T Ill. Ex 2.0 at 185-204. In a similar fashion, AT&T allows carriers to terminate their fiber cable at cross-connect facilities in their collocation arrangements and then make spare capacity available to third-party carriers collocated within the wire center. *Id.* In this manner, AT&T Illinois allows collocated carriers to cross-connect their arrangements together and, as with Verizon's CATT service, allows one collocated carrier to use the fiber transmission facilities of another collocated carrier, rather than deploying its own fiber or having to rely on AT&T Illinois. If the FCC did not intend for such fiber-sharing arrangements to count, it would not have counted Verizon's CATT fiber termination arrangements.

e. The Commission Should Follow The Lead Of The Ohio Commission On This Issue

CLECs place great weight on decisions from Kansas, Michigan, Texas and New Hampshire. However, those decisions suffer from the same flaws as the CLECs' arguments here. The better authority is the more recent decision from the Public Utilities Commission of Ohio discussed at page 48 of AT&T Illinois' Initial Brief. That decision properly finds that a cross-connected carrier can and should count as a Fiber-Based Collocator because it fully satisfies the requirement that the carrier "operate" a fiber-optic cable (or comparable transmission facility) that "terminates" in its collocation arrangement.[20]

* * *

If AT&T Illinois is not permitted to count cross-connected collocators, the end result is foreseeable and predictable. In structuring future collocation arrangements in wire centers that have not yet been identified as non-impaired, CLECs would have strong incentive to use cross-connects, rather than to deploy fiber. By collocating in this manner, CLECs would minimize the Fiber-Based Collocator count in a particular wire center and thereby perpetuate AT&T Illinois's unbundling obligations at that location. This, of course, is the opposite of what the FCC intended. Instead of spurring the deployment of competitive transmission facilities, it would reduce the incentive to invest in facilities, even in areas where competition is robust. The Commission should reject this outcome.

2. How Should The Phrase "Terminates At A Collocation Arrangement Within The Wire Center" (47 C.F.R. § 51.5) Be Construed And Implemented?

AT&T Illinois agrees with Staff that this issue statement does not raise any items that are not already addressed in FBC Issue 1. CLECs do not follow the issues statement format that

[20] Ohio Order at 13-14.

they themselves created, so they do not offer any comments on this issue at all. Accordingly, the Commission's Order should state that there is no contested issue on FBC Issue 2 that is not already addressed by FBC Issue 1.

3. What Facilities Qualify As "Comparable Transmission Facilities" Under The Definition Of "FBC" In 47 C.F.R. § 51.5?

The FCC's definition of "Fiber-Based Collocator" includes a carrier that "operates a fiber-optic cable or *comparable* transmission facility." 47 C.F.R. § 51.5 (emphasis added). AT&T Illinois has conservatively defined "comparable transmission facilities" to include fixed-wireless arrangements and other non-fiber facilities that have a capacity of DS3 or greater.

Staff supports AT&T Illinois' position. Staff says that it is reasonable to count "collocation arrangements where, based on the network configuration identified, collocators have the ability to provide at least DS3 level transport out of the wire center". Staff Br. at 19. Although Staff believes that there is no need to address this issue as it applies to the initial list of wire centers designated as non-impaired by AT&T Illinois, that does not detract from Staff's belief that a transport facility made up of an intraoffice DS3 coaxial cross-connection and a fiber facility that leaves the wire center fully qualifies as a "comparable transmission facility" under Rule 51.5.

The CLECs argue that to be considered "comparable" to fiber-optic cable, a facility must at least be capable of carrying 3 DS3s of capacity, outside, at typical interoffice distances (which the CLECs define as several miles). CLEC Br. at 71-74. Based on these CLEC-created criteria, the CLECs conclude that any transmission facility made in part of coaxial cable is not a "comparable transmission facility." The CLECs are wrong.

a. Capacity

A DS3 facility composed of a fiber transport facility and a coaxial cross-connect qualifies as "comparable" to fiber because it has the same capacity as the starting capacity of a fixed-wireless system that the FCC already held to be comparable to fiber. AT&T Ill. Ex. 2.0 at 158-162; *TRRO* at ¶ 102 ("Because fixed-wireless carriers' collocation arrangements may not literally be fiber-based, but nevertheless signal the ability to deploy transport facilities, we include fixed-wireless collocation arrangements at a wire center if the carrier's alternative transmission facilities both terminate in and leave the wire center.")

The CLECs respond by arguing that while a fixed-wireless transmission facility can be as small as a DS3, it also can be much larger. CLEC Ex. 1.0 at 996-999. That is irrelevant, for no one disputes that fixed-wireless facilities can be sized at the DS3 level and that fixed-wireless facilities *do* count as "comparable" to fiber – regardless of how they are sized. Moreover, the CLECs' complaint that DS3 is a "minimum" capacity for fixed-wireless transmission (CLEC Ex. 1.0 at 996-997) is irrelevant, for all the non-impairment thresholds are based on meeting a "minimum" requirement of some kind. The FCC obviously knew that fixed-wireless facilities could have DS3 capacity, and if it thought the level of transport needed to be higher than a DS3 it would not have found that fixed-wireless arrangements "signal the ability to deploy transport facilities" and thus are "comparable transmission facilities" to fiber. *TRRO* at ¶ 102. The CLECs fail to articulate any legitimate reason for their argument that – all else being equal – some arrangements providing DS3 level transmission are "comparable transmission facilities," while other facilities that provide DS3-level transmission (*e.g.*, a DS3 coaxial cross-connect combined with interoffice fiber) are not.

The CLECs next claim that a combination of a DS3 coaxial cable and fiber cannot be "comparable" to fiber because a facility can only be comparable to fiber if it is able to carry 3 DS3's worth of capacity. CLEC Br. at 72. This position makes a mockery of the FCC's rule.

First, the smallest facility with 3 DS3's of capacity is an OC3, and an OC3 is *always* made of fiber. AT&T Ill. Ex. 2.1 at 127-131. Thus, under the CLECs' definition, the only facility that is "comparable" to fiber (other than fixed wireless) is another fiber facility. That would render the "comparable" concept meaningless.

Second, fiber transmission facilities do not start at the OC3 level (3 DS3s) as Mr. Gillan contends. Rather, they begin at the OC1 level,[21] and a DS3 is for practical purposes indistinguishable from an OC1 in terms of speed and capacity: Just like a DS3, an OC1 "supports 672 voice-grade digital channels of 64 Kbps"; a DS3 offers speed of 44.736 Mbps, while an OC1 offers very similar speed of 51.840 Mbps, with the slight difference due to "optical processing overhead";[22] and "[a]n OC-1 is capable of carrying one DS-3 within its payload."[23] These close similarities to an OC1 fiber facility confirm that a DS3 coaxial cable is "comparable" to fiber.

Third, the CLECs' 3 DS3 threshold would completely exclude transmission facilities containing coaxial cable from ever being counted as a comparable transmission facility. If that is what the FCC intended, it would have (and easily could have) said so. Instead, the FCC's definition of Fiber-Based Collocator is "agnostic as to the medium used to deploy an alternative transmission facility, because we find that a technologically neutral test better helps us to capture

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[21] MCGRAW-HILL ILLUSTRATED TELECOM DICTIONARY at 279 (1998) (defining "OC-1" as "The beginning of SONET-level transmission speeds.").

[22] NEWTON'S TELECOM DICTIONARY at 527 (18th ed. 2002) (definition of "OC-1"); *see* AT&T Ill. Ex. 2.1 (Nevels Rebuttal) at 113-125 (discussing capacity of a DS3). Indeed, Mr. Nevels also explains that a DS3 can be modified by common digital loop carrier ("DLC") equipment to carry 2,688 voice-grade 64-kbps equivalents. *Id.*

[23] MCGRAW-HILL ILLUSTRATED TELECOM DICTIONARY at 279 (1998) (definition of "OC-1").

the actual and potential deployment in the marketplace than would a wireline-specific test." *TRRO*, ¶ 102 n.295. The FCC also made clear that fixed-wireless facilities are just an example of "comparable transmission facilities," meaning that there could be others. *TRRO* at ¶ 102 & n.295.

b. Outside At Typical Interoffice Distances

The CLECs next argue that DS3 coaxial cable facilities cannot count as "comparable transmission facilities" because they are subject to distance limitations that prevent them from being used for interoffice connections. CLEC Br. at 73. The CLECs misunderstand the issue. AT&T Illinois does not suggest that coaxial cable is "comparable" to fiber when used for interoffice connections. To the contrary, we say that it is "comparable" only when it is part of an end-to-end DS3 level or greater transmission facility provisioned over fiber facilities that leaves the wire center. The DS3 coaxial cross-connect *standing alone* does not have to qualify as "comparable" to fiber, because it is merely one component of an end-to-end transmission facility that includes transmission capacity provisioned over another collocator's *inter*-office fiber-optic cable.

c. The Commission Should Follow The Lead Of The Ohio Commission On This Issue, Too

Finally, the CLECs argue that the Texas Commission adopted the CLEC position (CLEC Br. at 74) , but that decision suffers from the same flaws as the CLECs' arguments here. The better authority is the more recent decision from the Public Utilities Commission of Ohio discussed at page 51 of AT&T Illinois' Initial Brief. That decision properly finds that a

"comparable transmission facility" can consist of a coaxial cross-connect to a fiber facility that leaves the wire center.[24] This Commission should rule likewise.

4. In Determining Whether Dark Fiber Obtained From An ILEC Qualifies As CLEC Fiber For Purposes Of Applying The FBC Criterion, What Constitutes An "Indefeasible Right Of Use" Under 47 C.F.R. § 51.5 And What Information Should Be Used To Identify An IRU? What Criteria Has AT&T Illinois Applied In Identifying IRUs?

AT&T Illinois demonstrated in its Initial Brief that there is no need to establish a specific definition of a "indefeasible right to use" ("IRU") at this time. AT&T Ill. Br. at 52. AT&T Illinois went on to explain, however, that at the very least the Commission should find that if a carrier offers Dark Fiber to another carrier pursuant to a contract which the parties themselves have mutually agreed is offered on an IRU basis, that should qualify as an IRU without additional inquiry. *Id*. at 52.

CLECs make two responses, both of which should be rejected. First, they argue that a facility does not qualify as an IRU because a contract designates it as an IRU. CLEC Br. at 80. According to CLECs, this would permit AT&T Illinois to insert self serving declarations into the contract, but CLECs overlook the fact that AT&T Illinois alone cannot determine whether to call something an IRU. Both parties to the arm's-length agreement must agree that the IRU label appropriately describes the subject manner of the transaction. Since AT&T Illinois is not contracting with unsophisticated parties - but with business-savvy CLECs that take great care when they enter into written agreements with AT&T Illinois – it is reasonable to permit an agreed-upon designation of an IRU control.

Second, CLECs offer a brand new proposal and say that if the Commission desires to identify the characteristics of an IRU, it should establish minimum criteria to ensure that a cross-

[24] *Ohio Order* at 8.

connected CLEC that is purchasing services from a Fiber-Based Collocator does not qualify as a Fiber-Based Collocator. CLEC Br. at 80. This proposal is entirely inappropriate. If CLECs desired to make such a proposal in this proceeding, they should have offered that proposal in their direct testimony filed on March 21, 2006. Instead, AT&T Illinois and Staff are seeing this proposal for the first time in the post-hearing brief filed on June 8, 2006. This deprives AT&T Illinois of any opportunity to submit evidence or to develop a position on this issue. For this reason alone, the CLEC proposal should be rejected.

The proposal is also wrong because under the Business Line Rule, the IRU issue only applies where the CLEC is obtaining dark fiber from the ILEC (i.e., where dark fiber is "obtained from an incumbent LEC on a indefeasible right of use basis") – not where a carrier obtains dark fiber from a non-ILEC. Accordingly, CLECs stated purpose to define IRUs so that a cross-connected CLEC that is purchasing services from a Fiber-Based Collocator does not qualify as a Fiber-Based Collocator is completely off-base.

The proposed standard should also be rejected on the merits because it would establish an unrealistically restrictive definition of IRU by requiring a "perpetual" leasehold. The term "perpetual" is defined in Blacks Law Dictionary as "never ceasing", "continuous", and "unlimited in respect of time".[25] Under the CLEC approach, therefore, the only arrangements that would qualify as IRUs are those which have absolutely no time limitation at all. This cannot be correct because CLECs use the term "IRU" to define arrangements of much shorter duration. The Level 3 CEO, James Crowe, publicly explained his understanding that an IRU can last as little as 5 years. AT&T Ill. Ex. 1.0, Sch. CAC-8 at 1. According to Level 3, "an indefeasible right of use ("IRU"), as the term is used in our industry, means the right to use a fixed amount of communications capacity, or a certain communications facility, for a defined period of time. For

[25] Blacks Law Dictionary, Revised Fourth Edition (1968) at 1298.

example, the company might purchase an IRU giving it the right to use an OC-48 wavelength (the equivalent of about 32,000 simultaneous telephone calls) for five years." CLEC Coalition cannot square its "perpetual" proposal with this description.

For these reasons, AT&T Illinois respectfully requests that the Commission refrain from defining the specific characteristics of an IRU, but that it adopt AT&T Illinois' proposal that if two parties to an arms-length transaction designate a facility as an IRU, it be recognized as such by the Commission.

III. ALL OF AT&T ILLINOIS' IMPAIRMENT DESIGNATIONS SHOULD BE APPROVED BY THE COMMISSION

A. THE CLECS' LIST OF IMPAIRED WIRE CENTERS IS NOT ACCURATE

The CLECs submit their own list of non-impaired wire centers based on their interpretation of the Business Line and Fiber-Based Collocator counting methodologies. CLEC Br. at 84-88; 104-111. As we explain in Section II, above, their methodology is unduly restrictive and, accordingly, their list of non-impaired wire centers fails to count all of the qualifying wire centers in Illinois.

CLECs ask the Commission to keep in mind that, once a wire center is found to be non-impaired, it remains non-impaired. CLEC Br. at 83-84. While this is true, it is not a reason to resolve methodological issues in favor of CLECs. This is not a result-oriented exercise. To the contrary, this is a proceeding to implement the FCC's uniform, national unbundling policy. Nor is it correct to argue that AT&T Illinois would be unaffected by an adverse decision because it can "try again later". CLEC Br. at 84. This proceeding will establish counting methodologies that will apply in the future, and if those methodologies are applied to benefit CLECs, AT&T Illinois cannot simply change them at a later date. Accordingly, this Commission should apply

the FCC's Rule in a straight-forward, forthright manner and should reject any suggestion to skew the results to benefit one party or the other.

B. AT&T ILLINOIS HAS PROVEN THAT THE DESIGNATED FIBER-BASED COLLOCATORS SATISFY THE FCC'S DEFINITION

CLECs assert that AT&T Illinois has "failed to prove by competent evidence" that *any* of the identified Fiber-Based Collocators satisfied the FCC's definition. CLEC Br. at 88-96. According to CLECs, every wire center designated by AT&T Illinois as non-impaired for High-Capacity Loops should be removed from the list. The CLECs' argument does not hold water.

First, CLECs complain that neither Ms. Chapman nor Mr. Nevels performed the inspections themselves and that their testimony is "hearsay". Mr. Marvin Nevels, a Manager in AT&T's network organization, described in detail the inspections conducted by his network organization to verify the attributes of the Fiber-Based Collocators in AT&T Illinois' wire centers. Mr. Nevels testified that in February 2005, AT&T Illinois personnel intimately familiar with the collocation arrangements conducted physical site inspections at each of the identified wire centers. At these inspections, the AT&T Illinois personnel visually determined whether the CLEC collocation arrangement: 1) had a fiber-based entrance facility leaving the wire center that terminates to the CLEC collocation arrangements; and 2) had an active power supply. AT&T Ill. Ex. 2.0 at 15-16. Ms. Carol Chapman's Testimony: 1) explains AT&T Illinois' methodology for calculating impaired wire centers on the FCC's rules; and 2) tabulates the results of the physical inspections described by Mr. Nevels to identify the wire centers that satisfy the FCC's criteria. Thus, AT&T Illinois' testimony goes straight to the heart of the FCC Rule and the purpose of this docket. Indeed, Ms. Chapman and Mr. Nevels (or his counterpart) have provided testimony just like the testimony at issue here in several proceedings, without objection, including proceedings before the Ohio and Michigan state commissions.

CLECs say that AT&T Illinois' evidence is not "competent", but CLECs did not object to the testimony when it was offered into the record at the hearing, so they must have believed that it was competent at the time. More important, because it was admitted into the record it is competent, by definition. Competent evidence is that which is not barred by some rule of evidence. *See* Trial Handbook for Illinois Lawyers -Civil, Section 21.3 ("the evidence sought to be elicited on direct examination must be competent; that is, it must not be barred by some rule of evidence that excludes such evidence.") It is too late for CLECs to assert that the AT&T Illinois evidence identifying Fiber-Based Collocators is not competent.

CLECs next argue that AT&T Illinois did not have written procedures to govern the collocation inspections and did not keep detailed records. CLEC Br. at 91-92. The answer to the first criticism is provided by CLECs themselves at page 45 of their Initial Brief where they correctly point out that the inspections were performed in the two week period between the release of the *TRRO* on February 4, 2005 and AT&T's submission of revised counts to the FCC on February 18, 2005. AT&T Illinois was working quickly and did not have the time to develop written procedures. In any event, CLECs were not harmed by the lack of written procedures. The only alleged harm CLECs can point to is the claim that "AT&T had a obligation to prove to this Commission how it made its determinations". CLEC Br. at 92. But Mr. Nevels did exactly that. There is no question that AT&T Illinois physically inspected each of the designated collocation arrangements; that AT&T Illinois counted an arrangement as a Fiber-Based Collocator pursuant to the criteria described by Mr. Nevels, and that AT&T Illinois fully disclosed the list of all qualifying Fiber-Based Collocators to CLECs and the Commission. Thus, AT&T Illinois fully discharged its obligation to explain to the Commission how it made its determinations.

CLECs' complaint about the lack of a document trail is a side-show that should not divert the Commission. CLEC Br. at 92-93. AT&T Illinois provided a detailed 4 ½ page summary document listing all of the designated wire centers and identifying each CLEC counted as a Fiber-Based Collocator at that wire center. McLeodUSA/NuVox Cross Ex. 2. This summary document aggregates all of the combined feedback of the AT&T Illinois personnel who conducted the physical inspections. For each CLEC, the summary document identifies whether that CLEC has a fiber-based entrance facility terminating in the collocation arrangement, whether the CLEC had an active power source, whether the CLEC had a collocation-to-collocation cross connection, and whether the CLEC had a transport facility leaving the wire center.[26] In this document, AT&T Illinois fully responded to the CLEC Coalition Data Request and provided all of the relevant detail to CLECs.

CLECs never explain why additional data concerning the inspections would be helpful or desirable. As AT&T Illinois explained, the visual inspection was done to confirm the absence or presence of the facilities required under the FCC's definition of Fiber-Based Collocator. This is essentially a "yes/no" data collection, which is precisely what CLECs were provided in response to McLeodUSA/NuVox Cross Ex. 2.

CLECs further argue that AT&T Illinois did not submit the "supporting data" required by the *Initiating Order*, CLEC Br. at 89, 94-96, but AT&T Illinois fully complied with this requirement. The collocation-by-collocation inspection results reported in McLeodUSA/NuVox Cross Ex. 2 appear in Schedule CAC-7 to AT&T Ill. Ex. 1.0. There, each non-impaired wire center is listed together with all qualifying Fiber-Based Collocators in that wire center. Thus, for Fiber-Based Collocators, AT&T Illinois' submission described *what* we saw (active power, fiber

[26] As Mr. Nevels explained at the hearing, additional verifications were performed to ensure that each Fiber-Based Collocator listed on McLeodUSA/NuVox Cross Ex. 2 was connected to fiber-based facilities that left the wire center. Tr. at 180-181.

transport, etc.) *where* we saw it (by specific wire center) and *whose* collocation arrangement we saw it in (each qualifying CLEC was separately identified). AT&T Ill. Ex. 2.0 at 15-16; AT&T Ill. Ex. 1.0, Sch. CAC-7. With respect to the Business Line count, detailed data was provided for each wire center showing the total Business Line count. Disaggregated Business Line counts were provided in ten separate categories. AT&T Ill. Ex. 1.0 at Sch. CAC-7.

Two additional reasons demonstrate that AT&T Illinois' supporting data was sufficient. First, AT&T Illinois' data permitted CLECs to undertake investigations of their own collocation arrangements to verify AT&T Illinois' designation. It is evident that CLECs conducted these investigations because McLeodUSA took specific issue with the AT&T Illinois designations for the ***** BEGIN CONFIDENTIAL************************ ***END CONFIDENTIAL***** CLEC Br. at 97-99. From this it is logical to assume that CLECs undertook the same review at *all* of their affected wire centers to search for any non-qualifying collocations.

Second, AT&T Illinois' submission was sufficiently detailed to allow CLECs to seek subpoenas of numerous third party CLECs. CLEC Br. at 96-104. Thus, it appears that the contested case process worked exactly as it was designed to, i.e., 1) AT&T Illinois identified the non-impaired wire centers and submitted evidence supporting its designations; and 2) CLECs had the opportunity to investigate and dispute those designations. As a result of this process, the Commission has the relevant facts before it and is able to make a fully-informed determination.

C. THE SUBPEONA RESPONSES VERIFY THE OVERALL ACCURACY OF AT&T ILLINOIS' METHODOLOGY

CLECs argue that the third-party subpoena responses call into question the overall accuracy of AT&T Illinois' Fiber-Based Collocator count. CLEC Br. at 96-104. In fact, just the opposite is true. The CLEC subpoena responses show that approximately 97% of the Fiber-

Based Collocator designations made by AT&T Illinois have been verified by the CLECs themselves. The 97% figure is calculated by counting all of the Fiber-Based Collocators listed in Schedule CAC-7 (there are 93 of them) and subtracting those for which the CLECs were able to raise a plausible factual dispute (i.e., the two McLeodUSA locations).[27]

In a classroom, 97% earns an "A". Here, it is strong proof that AT&T Illinois' process is accurately identifying Fiber-Based Collocators. While AT&T Illinois would prefer a system that was 100% accurate, it is not realistic to expect any system to achieve absolute perfection. That is why AT&T Illinois' non-impairment designations are subject to the CLECs' right to self-certify and to an expedited dispute resolution process before the Commission. *See* TRO/TRRO Amendment, § 4.1.3. The contested case process is well-suited to making the type of fact-based determinations at issue here, and AT&T Illinois respectfully submits that the process has worked well in this proceeding.

As for the specific CLEC challenges to the Fiber-Based Collocator classifications made by AT&T Illinois, they are discussed below:

1. <u>Global Crossing</u> - Global Crossing is identified as a Fiber-Based Collocator at two wire centers *****BEGIN CONFIDENTIAL***** *************************************
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[27] Even if the two Global Crossing locations and the Qwest location are added to this list (and they should not be), AT&T Illinois' accuracy rate would still be 95% (88/93).

********** *****END CONFIDENTIAL***** It is significant to note that Counsel for CLECs was provided with this subpoena response before noon on Friday, May 12th. (*See* the time stamp on Joint CLEC Ex. 8 of Friday, May 12 at 11:32 A.M.) CLECs should have provided that response to AT&T Illinois earlier.

2. McLeodUSA - McLeodUSA disputed its identification as a Fiber-Based Collocator at the *****BEGIN CONFIDENTIAL***** **********

**********[28]**********

********** *****END CONFIDENTIAL*****

3. Adams Telesystems Inc. - Adams is identified by AT&T Illinois as a Fiber-Based Collocator at the *****BEGIN CONFIDENTIAL***** **********

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4. US Xchange - US Xchange is identified by AT&T Illinois as a Fiber-Based Collocator at the *****BEGIN CONFIDENTIAL***** **********

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5. Looking Glass Networks - Looking Glass is identified by AT&T Illinois as a Fiber-Based Collocator at the ***BEGIN CONFIDENTIAL*** *********************
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*************************************** ***END CONFIDENTIAL***

6. Qwest - Qwest is identified by AT&T Illinois as a Fiber-Based Collocator at the ***BEGIN CONFIDENTIAL*** ***
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Second, the CLEC subpoena does not ask for information as it existed in February 2005 - the time that AT&T Illinois made its wire center designations. It is undisputed that this Commission requires non-impairment designations to be judged by the data as it existed at the

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“moment in time” that the designation was made. *TRO/TRRO Arbitration Order* at 106. Accordingly, CLECs should have asked Qwest whether it “operated” a fiber-based or comparable transmission facility as of February, 2005. It did not do so, and therefore the Qwest subpoena response only applies to April, 2006 (the date it was received by CLECs) and presents mismatched data.

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CLECs fail to mention the other subpoena responses, i.e., those from ***BEGIN CONFIDENTIAL*** ***
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****************** ***END CONFIDENTIAL*** When viewed on an aggregate basis, (i.e., all of the subpoena responses offered into evidence by CLECs and AT&T Illinois and all of the information related to CLECs that are parties to this proceeding), AT&T Illinois’ Fiber-Based Collocator designations are accurate 97% of the time.

Based on the entire record, the Commission should find that the AT&T Illinois Fiber-Based Collocator designations are accurate and should approve the non-impairment designations offered by AT&T Illinois in Schedule CAC-7.

IV. AT&T ILLINOIS GIVES CLEC ACCESS TO DATA CONSISTENT WITH INDUSTRY AGREEMENTS, THE FCC'S RULES AND THE TRRO

1. Should The ICC Establish Rules And Procedures Whereby CLECs Can Obtain Access To The Data AT&T Illinois Relies Upon On To Make Its Wire Center Designations, So That The CLEC Can Review This Data (Subject To Reasonable Confidentiality Restrictions) Before Deciding To Make A Self-Certification?

AT&T Illinois demonstrated that the parties have already negotiated and agreed to rules and procedures regarding CLEC access to data, so this issue has already been resolved and is outside the scope of this proceeding. AT&T Ill. Br. at 53-55.

The Ohio Commission addressed each of these four data access issues and resolved each one in favor of AT&T.[30]

Staff agrees with AT&T Illinois that the TRO/TRRO Amendment agreed to by the parties "resulted in processes and procedures for wire center impairment designations that resolved issues relating to the timing of information exchanges. Staff recommends that the Commission find this issue to be resolved by the TRRO Amendment produced through negotiation in arbitration in the TRRO Arbitration Proceeding". Staff Br. at 22-23.

CLECs make no mention of this issue whatsoever. Instead, they confine their data access comments to a single issue which we address below in Data Access Issue 4. Accordingly, the Commission should find that there is no need to establish rules and procedures whereby CLECs can obtain early access to the data AT&T Illinois relies upon to make its wire center designations and should deny any relief under Data Access Issue 1.

[30] *Ohio Order* at 31-32 (¶ 37).

2. Should The Data Underlying AT&T Illinois' Wire Center Determinations Be Filed With The ICC And/Or Provided To Staff?

Here too, AT&T Illinois demonstrated that the parties agreed to a process in the TRO/TRRO Amendment whereby AT&T Illinois will provide the data underlying its wire center determinations to the Commission and Staff in the context of a self-certification dispute resolution proceeding. AT&T Ill. Br. at 55-56. The Ohio Commission also resolved this issue in favor of AT&T.[31]

Staff again agrees with AT&T Illinois that the Commission need not establish any such rules: "Staff recommends that the Commission find that it need not determine whether AT&T Illinois' WC determinations should be filed with the ICC and/or provided to Staff". Staff Br. at 23.

As is the case with Data Access Issue 1, CLECs make no argument or recommendation in support of Data Access Issue 2 and have abandoned this issue. Accordingly, the Commission should find that there is no requirement that AT&T Illinois provide the data underlying its wire center determinations to the Commission or Staff prior to the initiation of any dispute resolution process and should deny any relief under Data Access Issue 2.

3. Should The Data Made Available To CLECs Per Issue 1, Above Include The Identities Of The Carriers In The Wire Center That AT&T Illinois Has Counted As FBCs?

AT&T Illinois also demonstrated that the parties have agreed that the names and locations of the Fiber-Based Collocators will be provided in a context of a self-certification dispute resolution proceeding, and need not be decided before then. AT&T Ill. Br. at 56-57. The Ohio Commission also resolved this issue in favor of AT&T.[32]

[31] Ohio Order at 31-23 (¶ 37).
[32] Ohio Order at 31-23 (¶ 37).

Again, Staff agrees with AT&T Illinois and "recommends the Commission find that it need not determine whether AT&T Illinois should make available to CLECs prior to self-certification disputes the identity of the carriers in the WC that AT&T Illinois has counted as FBCs. Staff Br. at 24.

As is the case with Data Access Issues 1 and 2, CLECs make no claim or argument in support of this issue and have abandoned any claim for relief under this issue. Accordingly, the Commission should rule that AT&T Illinois need not disclose the identities of the carriers in the wire center that AT&T Illinois has counted as Fiber-Based Collocators prior to any self-certification dispute resolution process, and should otherwise deny all relief under Data Access Issue 3.

4. Should AT&T Illinois Be Required To Notify And Obtain Confirmation From Each Carrier That AT&T Illinois Has Counted As An FBC In A Wire Center?

AT&T Illinois demonstrated that it should *not* be required to obtain verification from CLECs prior to making a non-impairment designation because: 1) the parties have already agreed upon a data-disclosure methodology in the TRO/TRRO Amendment; 2) the CLEC proposal would violate the requirement in the *TRRO* that the information necessary to make a non-impairment designation be "readily identifiable" by incumbent LECs; and 3) it is not realistic to expect that CLECs would respond accurately and promptly to such requests. AT&T Ill. Br. at 57-59.

Staff continues to take a dim view of the CLEC proposal. Staff Br. at 24. Staff believes that it is not only conceivable, but likely, that any responses that AT&T Illinois would receive from CLECs "would fail to resolve any issue regarding the number of FBCs in a wire center", and therefore would build-in unnecessary delay and impediments to the process.

The CLECs' arguments in favor of its proposal do not withstand close scrutiny. They argue that the information obtained from their subpoenas shows that AT&T Illinois needs to engage in verification activities prior to a wire center designation. CLEC Br. at 113. The responses to AT&T Illinois designations show that just the opposite is true, i.e. that AT&T Illinois accurately identifies Fiber-Based Collocators 97% of the time.

While 97% accuracy is not perfection, any inaccuracies can be detected through the contested case process. That is precisely what has happened in this proceeding – and what will happen in any future self-certification dispute proceeding. AT&T Illinois disclosed all of its Business Line data and identified all Fiber-Based Collocators in this proceeding, and it would do the same in a future self-certification dispute as required by Section 4.1.3 of the TRO/TRRO Amendment. And just as CLECs used that information to conduct their own investigation into AT&T Illinois' determinations in this proceeding (*See,* e.g. CLEC Br. at 96-104), CLECs will do the same in any future self-certification dispute. In short, Docket 06-0029 has been a successful test bed for the process agreed upon by the parties, and no changes to that process can or should be made.

CLECs argue that the experience with two (2) of the McLeodUSA wire centers underscores a need to change the process. CLEC Br. at 113. This argument makes no sense. CLECs concede - as they must - that they achieved the outcome they sought, i.e., they successfully challenged one of the two offices and prompted AT&T Illinois to withdraw McLeodUSA as a Fiber-Based Collocator at the other office (without conceding the issue one way or the other). The complaint that it took "several iterations of information exchanged" to accomplish this is completely misplaced. Any contested case proceeding (whether a Commission investigation like this or a self-certification dispute in the future) will have testimony and discovery. That is the meat and potatoes of a contested case proceeding and it is

through that process that the Commission is able to ascertain the facts necessary for its ultimate determination. CLECs cannot seriously contend that AT&T Illinois' data must be unassailably accurate before the dispute proceeding even begins. If it were, there would be no need for a dispute resolution proceeding in the first place.

In any event, there is nothing about the CLEC proposal that would abbreviate the contested case process or that would otherwise make it more efficient. In fact, the opposite is true. Under the CLEC view, AT&T Illinois could not even designate a wire center as impaired without the verification/permission of a CLEC. It is difficult to imagine how AT&T Illinois could attain that verification without the discovery process or a subpoena, neither of which will be available without a contested case proceeding. Therefore, the CLEC construct creates a catch-22 situation where AT&T Illinois cannot file a proceeding until it obtains the required information, but cannot obtain the required information until it files a proceeding.

Of course, this entire debate is beside the point because the FCC recognized in the *TRRO* that it makes no sense to require verification from CLECs. In footnote 442, the *TRRO* acknowledges that third party CLECs have little incentive to provide relevant information and often have "explicit incentive to avoid cooperating." The *TRRO* puts it this way:

> We decline to impose the burdens of creating and updating a building-by-building facilities catalog on these third-party carriers. Moreover, we recognize that these third-party competitive LECs may (1) have no interest in the outcome of the analysis, and thus little incentive to provide the relevant information, or (2) desire to retain unbundling within the building (perhaps to serve customers on floors other than the floors currently served over their own facilities), and thus would have an explicit incentive to avoid cooperating.[33]

[33] *TRRO* at ¶ 158, n. 442.

Thus, the FCC recognized that any requirement to obtain data from CLECs would actually slow down the non-impairment/self-certification process and would give CLECs *de facto* veto power over an ILEC's ability to make non-impairment designations.[34]

Finally, CLECs say that AT&T Illinois should be required to establish written procedures and instructions for its personnel to follow in inspecting wire centers for purposes of identifying Fiber-Base Collocators and that there should be a requirement to create "contemporaneous documentation recording to results of any wire center inspection". CLEC Br. at 114-115. These proposals should be rejected. AT&T Illinois understands its obligation to accurately assess the facts and the evidence demonstrates that it has done just that in this proceeding. The Commission should not impose unnecessary requirements concerning "written procedures" and "contemporaneous documentation" because there is no demonstrated need to do so. The process has worked as it is intended to. AT&T Illinois identified the specific Fiber-Based Collocators in each wire center and described the methodology it used to ascertain that information. CLECs investigated and disputed the designations. The additional documentation CLECs seeks would not add to AT&T Illinois' showing. To the contrary, it would create another "checklist" requirement (i.e., the documentation itself) which would presumably disqualify non-impaired locations if AT&T Illinois was unable to produce the documentation. There is no requirement like this in the *TRRO* and this Commission should not create such a requirement in Illinois.

[34] Moreover, the subpoena language proposed by CLECs is inaccurate and should not be used in any event. For example, its proposed request 1.01 asks whether the carrier "owns and operates" a fiber optic cable or comparable transmission facility. The Rule contains absolutely no requirement that a carrier "own" the transmission facility in question. Also, the proposed subpoena has no definition of the term "comparable transmission facility" and uses the confusing term "activated capacity" without definition. These are only some of the problems with the subpoena requests, as drafted.

V. CONCLUSION

For all the reasons set forth herein the Commission should make the following findings in this proceeding:

1. With respect to Business Line Issues 1 through 5, the Commission should rule that it has already resolved these issues in favor of AT&T Illinois in its *TRO/TRRO Arbitration Order*. If the Commission does not believe that it has already addressed and resolved Business Line Issue 3 in AT&T Illinois' favor, then it should find that the FCC's Business Line Rule requires UNE loops to be counted on a digital equivalent basis.

2. With respect to Business Line Issue 6, the Commission should find that business lines provisioned by AT&T Illinois pursuant to a commercial agreement are "incumbent LEC business-switched access lines" that must be included in the Business Line count.

3. With respect to Fiber-Based Collocator Issues 1 and 2, the Commission should find that the term "Fiber-Based Collocator" includes a carrier that cross-connects to another carrier with coaxial cable at a DS3 level and leaves the wire center using a fiber transport facility.

4. With respect to Fiber-Based Collocator Issue 3, the Commission should find that a "comparable transmission facility" is a facility that is capable of operating at a DS3 level, such that it can include a DS3 coaxial cable cross-connected inside a wire center to a fiber transport facility that exits the wire center.

5. With respect to Fiber-Based Collocator Issue 4, the Commission should refrain from defining the specific characteristics of an IRU, but should adopt AT&T Illinois' proposal that, when two parties to an arms-length transaction designate a facility as an IRU, the facility should be treated as an IRU.

6. With respect to Data Access Issue 1 through 4, the Commission should find that they are all beyond the scope of this proceeding because they are addressed by the TRO/TRRO Amendment entered into between AT&T Illinois and each member of the CLEC Coalition. Moreover, the Commission should reject the CLEC proposal that AT&T Illinois be required to obtain CLEC verification before making a non-impairment determination; that AT&T Illinois be required to develop written procedures to govern its inspection of Fiber-Based collocation facilities; and that AT&T Illinois be required to create documentation while conducting inspections of Fiber-Based collocation arrangements.

Respectfully submitted,

ILLINOIS BELL TELEPHONE COMPANY

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One of Its Attorneys

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CERTIFICATE OF SERVICE

I, Mark R. Ortlieb, an attorney, certify that a copy of the foregoing **REPLY BRIEF OF AT&T ILLINOIS** was served on the parties on the attached service list by U.S. Mail and/or electronic transmission on June 29, 2006.

_____

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