

**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

In the Matter of a Commission Inquiry into the)	
Possibility of Impairment without Unbundled Local)	Case No. TO-2004-0207
Circuit Switching When Serving the Mass Market.)	Filed: January 16, 2004
_____)	

**REBUTTAL TESTIMONY AND EXHIBITS OF
JOSEPH GILLAN
ON BEHALF OF
THE CLEC COALITION**

Introduction

Q. Please state your name.

A. My name is Joseph Gillan. I previously filed direct testimony on behalf of the CLEC coalition in this proceeding.

Q. What is the purpose of your rebuttal testimony?

A. The purpose of my rebuttal testimony is to respond to the recommendations by Staff and SBC concerning the relevant “market area” that should be used in the next phase of this proceeding to evaluate whether CLECs should retain access to unbundled local switching to serve mass market customers,¹ as well as the

¹ Although I do not intend to belabor this point here, as an affiliate of a Regional Bell Operating Company, SBC Missouri is obligated to provide unbundled local switching to CLECs

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1 DS0/DS1 cut-off that establishes a regulatory upper-limit to the mass market
2 based on the number of analog lines a customer purchases.

3
4 **Q. What is the central conclusion of your rebuttal testimony?**

5
6 A. As the Commission reviews the direct testimony concerning the appropriate
7 geographic market in this phase of the proceeding, one conclusion should stand
8 out above all others: Any decision it reaches now should be tentative only,
9 because it will not be until the proceeding concludes that the Commission will be
10 able to fully understand the interplay between its selection of the geographic
11 market and the consequences of that decision on consumers in the state.

12
13 For instance, SBC testimony makes clear that it intends to argue that, because of
14 levels of UNE-L competition that its own analysis shows rounds to a 0% market
15 share, UNE-P should be eliminated in more than 80% of the State. For its part,
16 Staff (in an effort intended to *protect* consumer choice) has suggested a market
17 definition that (if combined with SBC's arguments as to how mass market UNE-L
18 should be measured) would translate this same UNE-L market share of 0% into a
19 reason to eliminate UNE-P in more than 65% of the State. Either consequence is
20 absurd – how could an entry strategy that has achieved a 0% market share after
21 nearly eight years conceivably demonstrate that UNE-P is not needed for mass

at rates that are “just and reasonable and nondiscriminatory” and which provide entrants
“meaningful access.” (TRO ¶ 603).

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1 market competition, particularly as UNE-P demonstrates itself as a viable mass
2 market strategy, bringing competitive choice to *every* corner of the state?

3
4 **Q. What geographic area do you recommend the Commission (tentatively)**
5 **adopt?**

6
7 A. I continue to recommend the LATA as the unit of geographic analysis because
8 LATAs are generally sufficiently large to reflect the same conditions within the
9 LATA that exist statewide. The analysis in my rebuttal testimony demonstrates
10 that, with the exception of the Westphalia LATA (which may be too small to
11 stand on its own as a single market),² the LATA is the only boundary that divides
12 the state into markets of reasonable size and consistent competitive
13 characteristics. Missouri is seeing local competition develop on a statewide basis
14 by entrants that use unbundled local switching. Both SBC's MSA approach and
15 the Staff's "exchange area" proposal seriously jeopardize local competition by
16 essentially splitting the state between "primary markets" and "residual areas" that
17 are unlikely to attract and sustain mass market competition.³ Only the LATA-

² There are only 6 wire centers in the Westphalia LATA.

³ Subdividing the state further into individual wire centers fundamentally camouflages the defining characteristic of the mass market – its broad geographic nature. The only justification for using wire centers as impairment evaluation areas would be if the Commission were to mistakenly reject the parallel finding (that will be a topic of debate in the next phase) that alternatives to UNE-P must actually be serving the geographically dispersed mass market to be considered evidence of non-impairment. I will explain in detail in the next phase of this proceeding why the Commission should *not* redline areas of the state and thus wall them off from mass market competition. Not only would such an action harm those customers directly affected, but the Commission could eliminate mass market competition throughout the state if the redlined area was sufficiently large to render Missouri unattractive. These complex interrelationships are

1 approach considers the interdependency of competitive conditions across *all* the
2 exchanges by defining the market comprehensively.

3
4 **Q. What does your rebuttal testimony recommend regarding the DS0/DS1**
5 **cutoff?**

6
7 A. With respect to the DS0/DS1 cutoff, I concur with Staff that the methodology
8 applied by AT&T witness Finnegan best estimates the *actual* point at which it
9 could make economic sense to serve an analog customer using a DS-1 loop. As
10 Staff points out, Sprint's testimony also satisfies the approach described by my
11 direct testimony, but that approach provides a more conservative (i.e., an estimate
12 that would be too low) estimate, albeit one that is simpler to develop. In contrast,
13 the SBC recommendation should be rejected because it does not comply with the
14 requirements identified by the Triennial Review Order (TRO).

15
16 **The Appropriate Geographic Market**

17
18 **Q. Please summarize your direct testimony concerning the appropriate**
19 **geographic area that should be used to evaluate impairment.**

20

yet another reason why the Commission should defer making any final decision until all of the
issues are fully discussed.

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1 A. My direct testimony contained two critical points.⁴ The first point may be
2 obvious: mass market customers reside in *every* exchange in Missouri. The mass
3 market is a geographically broad market, as geographically dispersed as the
4 state's population. The second point may have been more surprising: local
5 competition is emerging throughout the *entire* mass market, with customers
6 choosing alternatives in virtually every exchange.

7
8 The conclusions that I drew from these facts were twofold. First, I strongly
9 encouraged the Commission to make its decision in this phase of the case
10 tentative; in part so that the Commission could consider additional evidence from
11 the next phase, and in part to make sure that it fully understood the consequences
12 of any decision on the choices available to Missouri consumers. Indeed, to my
13 knowledge, Missouri is the *only* state that is attempting to make a binding
14 determination of the geographic market in a proceeding that is divorced from the
15 other interrelated issues that are the subject of the switching impairment inquiry.
16 Second, I suggested that relatively large areas (in particular, LATAs) may be the
17 most appropriate geographic areas to consider, because the larger the area, the
18 more likely it becomes that it will be representative of competitive conditions in
19 the state overall.

20
21 **Q. What geographic area has the staff recommended?**
22

⁴ Gillan Direct Testimony, page 18.

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1 A. Staff recommends the use of the “exchange areas” as the geographic area for
2 analysis. It appears that Staff has offered this suggestion as a compromise,
3 intended to “...reduce the number of consumers left without competitive
4 alternatives.”⁵

5
6 **Q. Do you agree with Staff that the appropriate area should be the**
7 **exchange?**

8
9 A. No. As I indicated earlier, it is important that as the Commission crafts its
10 “impairment evaluation areas” (the areas the FCC calls “markets,” but *without* the
11 pretense of using the term as an economic term of art), it is important that it do so
12 in a manner that recognizes that mass market competition requires mass to
13 succeed. The nature of the mass market is that it is comprised (colloquially) of a
14 whole lot of smaller users. As the FCC explained (more elegantly):

15
16 Mass market customers are residential and very small business
17 customers – customers that do not, unlike larger businesses,
18 require high-bandwidth connectivity at DS1 capacity and above.
19 Mass market customers’ accounts tend to be smaller, lower
20 revenue accounts and are often serviced on a month-to-month basis
21 and not pursuant to annual contracts.⁶
22

23 An important consideration in dividing the state into areas for the evaluation of
24 impairment is that the Commission must consider not only the areas where SBC

⁵ Thomas, page 9.

⁶ TRO, footnote 1402 (citation omitted).

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1 intends to challenge impairment,⁷ the Commission must also consider the residual
2 market of those areas in Missouri that SBC ignores.⁸ Importantly, mass market
3 competition is *interdependent* – that is, it is not possible to eliminate switching in
4 one part of a market without the consequences of that decision being felt
5 throughout the entire area, including those “residual areas” that are not initially
6 included in the analysis. Even if SBC does not challenge switching impairment in
7 a particular area, that area’s competitive choices could be affected by a finding of
8 “no impairment,” and a reduction in competitive choices, in the areas identified
9 by SBC. If UNE-P is not available in a smaller, denser area, the company
10 offering service there may withdraw its offerings not only there but in the residual
11 areas that cannot be served economically without the opportunity to serve the
12 smaller, denser area. These residual areas must also satisfy the FCC requirement
13 that the area is not so small that “...a competitor serving that market alone would
14 not be able to take advantage of available scale and scope economies from serving
15 a wider market.”⁹

16
17 **Q. Have you conducted an analysis as to the suitability of using LATAs as the**
18 **geographic area for impairment analysis?**
19

⁷ By acknowledging that there are areas where SBC will claim that impairment no longer exists, I do not mean to suggest that their claims are in any way valid.

⁸ SBC testimony makes clear that it does not address the effect of its proposals on mass market competition in those areas of the state that it is not challenging impairment. *See* Fleming Direct, page 9.

⁹ TRO ¶ 495.

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1 A. Yes. Unlike the “exchange” and “MSA” proposals of Staff and SBC, Missouri’s
2 LATAs are generally sufficiently large that each is representative of the mass
3 market and competitive conditions in the state overall. That is, each of Missouri’s
4 LATAs (with the exception of Westphalia, which I address below) generally have
5 comparable levels of competitive activity, both in terms of the absolute level of
6 competitive activity (i.e., market share), as well as the geographic dispersion of
7 that activity.

8

9 **Q. Have you estimated competitive market share in each of the LATAs?**

10

11 A. Yes. Table 1 shows that each of the principal LATAs in Missouri – Kansas City,
12 St. Louis and Springfield – is roughly comparable in terms of competitive share
13 gain. In contrast, the Westphalia LATA is dramatically smaller and should be
14 consolidated with another LATA for subsequent analysis. (The remainder of my
15 testimony will deal exclusively with the three principal LATAs).

16

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1

Table 1: Comparing the LATA Markets

LATA	Total Lines ¹⁰	Lines Per Wire Center	Competitive Share	
			UNE-P	UNE-L ¹¹
Kansas City	966,842	19,731	6%	0%
St. Louis	1,896,785	14,591	6%	0%
Springfield	324,696	12,988	4%	1%
Westphalia	5,040	840	3%	0%
		15,206	6%	0%

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Table 1 also illustrates the dramatically different levels of competitive activity made possible by access to unbundled local switching. After more than eight years, the level of mass market competition that had developed without using unbundled local switching (i.e., UNE-L) still rounds to a 0% market share. In contrast, the mass market competition made possible by access to unbundled local switching has grown to more than 6%, even though it only become commercially active in late 1999.¹²

Q. Did you also evaluate each of the LATAs to judge the geographic dispersion of mass market competition?

¹⁰ Source: FCC Hybrid Cost Proxy Model (used to estimate High Cost Support). The line count overstates the relevant number of switched access lines in each LATA because it includes special access lines. However, the measure remains useful to determine relative scale and competitive share.

¹¹ UNE-L volumes are “mass market UNE-L” as estimated by SBC (i.e., locations with less than 4 lines). If calculated using an economically justified cutoff (in the range of 10 to 13 lines), the relative penetration of UNE-L would increase, but the substantive conclusions in the testimony would not change.

¹² Source: SBC Form 477 (Local Competition Reports) to the FCC).

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1 A. Yes. Exhibit JPG-3 to my direct testimony illustrated the competitive profile of
2 UNE-P and UNE-L for Missouri overall. (For convenience, I have attached JPG-
3 3 to this testimony as well.) As Exhibit JPG-3 demonstrated, UNE-P is used to
4 serve the entire mass market throughout the state (while UNE-L entry is virtually
5 non-existent).

6
7 Exhibits JPG-4 (Kansas City LATA), JPG-5 (St. Louis LATA) and JPG-6
8 (Springfield LATA) provide the relevant competitive profile in each individual
9 LATA. As these exhibits demonstrate, the competitive profile of UNE-P and
10 UNE-L in each LATA generally mirrors that of the state overall. Thus, by
11 adopting the LATA as the geographic area to guide the Commission's review in
12 the next phase of the proceeding, the Commission can best assure that it has
13 adopted "markets" that are representative of conditions in the mass market
14 throughout the State.

15
16 **Q. Would Staff's proposal (i.e., retail exchange boundaries) enable a similarly**
17 **representative analysis?**

18
19 A. No. As a threshold matter, I note that Staff apparently did not consider the
20 LATA-option in preparing its recommendations.¹³ Moreover, Staff itself
21 acknowledges that its "exchange area" approach cannot be implemented

¹³ Rebuttal Testimony of Walter Cecil (page 2) indicates that the only alternatives considered were wire centers and MSAs.

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1 consistently because the “exchanges” that is has focused on (Kansas City, St.
2 Louis and Springfield) are atypical of exchange boundaries generally:

3
4 It is Staff’s understanding that the majority of the exchanges
5 throughout the state are comprised of a single wire center. In the
6 metropolitan areas of St. Louis, Kansas City, and Springfield, SBC
7 has defined the exchanges to encompass multiple wire centers.¹⁴
8

9 Staff’s approach contains, for most of the state, an internal contradiction: Staff
10 correctly identifies the flaws in the wire center-based approach, but then
11 recommends an exchange-based approach that is exactly the same as the wire
12 center approach for the bulk of Missouri. Even using Staff’s own rationale,
13 Staff’s recommendation could be applied only in those areas SBC has identified
14 for impairment analysis, where exchanges contain more than one wire center.
15 The most important problem with Staff’s analysis, however, is that Staff appears
16 to have based its recommendation on a fundamental misconception as to the
17 *potential* consequences for competitive choice if the exchange boundary is used in
18 place of a larger, more representative, area. Although the question of *how* the
19 geographic areas will be used is the subject of the next phase of the proceeding, it
20 is important to partially address the issue here because of the rationale underlying
21 staff’s proposal.¹⁵
22

¹⁴ Thomas Rebuttal, page 10.

¹⁵ This influence of the potential consequences of “market definition” on Staff’s recommendation underscores my continuing recommendation that the Commission not make a final determination in this phase of the proceeding, but that it protect for itself the flexibility to consider *all* of the evidence before making any final decision.

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1 **Q. What appears to be the underlying rationale for the Staff's proposal?**

2
3 A. Staff's testimony reveals its concern that competitive choice would be adversely
4 impacted by a finding of non-impairment and has, as a result, proposed to more
5 narrowly define the area in which that adverse impact might apply:

6
7 Staff suggests that defining markets on an exchange basis could
8 reduce the number of consumers left without competitive
9 alternatives while recognizing that CLECs market their services to
10 consumers in areas wider than a wire center.¹⁶
11

12 ***

13 An analysis of Mr. Fleming's Schedule GAF 2 HC with wire
14 centers grouped by exchange for the three major MSAs within the
15 state, as found in Schedule 3HC, indicates competition exists, at
16 least by the methods Mr. Fleming uses to determine the existence
17 of competition, mainly within the metropolitan exchanges of
18 Kansas City, Springfield, and St. Louis. Furthermore, a review of
19 this schedule makes it obvious that competition is less widespread
20 outside the metropolitan exchanges. By determining impairment
21 on an MSA basis, customers in the outer areas of the three largest
22 MSAs could be left without competitive alternatives.¹⁷
23

24 Staff's concern for mass market competition is well placed. However, its attempt
25 to address its concern by *isolating* the harmful effect of an adverse (to consumers)
26 finding to a relatively smaller (compared to SBC's MSA) area does not protect
27 consumers in the way that it hopes.

28

¹⁶ Thomas Rebuttal, page 9.

¹⁷ Thomas Rebuttal, page 14.

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The fact is that mass market competition depends upon an ability to market and provision service across a broad market of relatively small users. Defining a “regulatory market” that is smaller than the mass market reached by UNE-P will not preserve choice in the residual areas, because “preserving” UNE-P in those areas is meaningless if they are not sufficiently large to support competition.

Q. Have you estimated the “residual market” that would result if either the Staff (exchange) or SBC (MSA) proposal is adopted?

A. Yes. Table 2 (below) estimates the relative size of the residual market (i.e., the rest of the exchanges in the LATA that are not in the “market” as proposed by Staff or SBC). These “residual markets” are the direct consequence of adopting “partial market” definitions that do not address the mass market in its entirety.

Table 2: Size of Residual Market Under Varying Geographic Proposals

Geographic Proposal	Wire Centers in Residual Market	Percent of Total Lines in Residual	Lines per Wire Center
Kansas City LATA			
LATA	No Residual Market		19,731
MSA	27	17.5%	6,277
Exchange	33	23.0%	6,730
St. Louis LATA			
LATA	No Residual Market		14,591
MSA	79	16.2%	3,892
Exchange	107	37.2%	6,587
Springfield LATA			
LATA	No Residual Market		12,988
MSA	12	37.6%	10,176
Exchange	21	44.9%	6,936

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Table 2 illustrates why Staff's proposal, while well intentioned, will not protect customer choice. Staff mistakenly assumes that if UNE-P is no longer available in its smaller (compared to SBC) market areas, that competitive choice in the residual market will not be affected. However, even under Staff's proposal, the addressable market in each LATA could potentially be reduced by more than half, with a statewide reduction in addressable market by 66%. (SBC's MSA proposal would be even more harmful, eliminating areas that today represent 85% of the mass market competition).

Table 3: Reduction in Relevant Market Under Staff Proposal

Market Measure	LATA			State
	Kansas City	St. Louis	Springfield	
Reduction in Addressable Market	77%	63%	55%	66%
Reduction in Lines Served by UNE-P	82%	59%	47%	66%

Table 4: Reduction in Relevant Market Under SBC Proposal

Market Measure	LATA			State
	Kansas City	St. Louis	Springfield	
Reduction in Addressable Market	82%	84%	62%	81%
Reduction in Lines Served by UNE-P	91%	85%	64%	85%

Tables 3 and 4 vividly demonstrate the serious consequences that could come from the dual errors of defining the relevant market too narrowly and/or erroneously concluding that some small and geographically limited entry is sufficient to prove that carriers are not impaired without access to UNE-P to serve the much broader mass market.

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Staff's testimony appears founded upon the mistaken belief that competition in residual areas would be unaffected by eliminating access to UNE-P in only certain exchanges. The massive reduction in the addressable mass market that could occur if the Commission were to incorrectly find "no impairment" by focusing its analysis on these few atypical exchanges, however, would collaterally harm competition across the entire state.¹⁸ This is because the mass market is broader than those limited exchanges, and the only way to correctly evaluate impairment is to define the mass market as it really exists – as a broad market, spread over a wide area – and then *only* consider as alternatives (i.e., as triggers) those entry strategies that actually serve that market.

Q. What do you recommend?

A. As discussed above, the LATA is the area that is most representative of the mass market and, as a result, is the best available tool to evaluate the relative ability of UNE-P and UNE-L to serve that market. Other advantages are that LATA boundaries conform to wire center boundaries (which are the fundamental building block of any analysis), the boundaries are well understood (at least within the industry), and the boundaries were once drawn to approximate the "local market" (albeit 20 years ago). To the extent that the Commission chooses to adopt any area in this phase of the proceeding – and the Commission should

¹⁸ In Phase II of this proceeding, I will explain that the geographically limited UNE-L competition that SBC claims exists does not satisfy the requirements needed to satisfy the preconditions to withdrawing access to unbundled local switching.

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1 consider deferring the entire question until it has a complete record – it should
2 adopt LATAs as the *tentative* geographic area it will use to conduct the trigger
3 analysis in the next phase.
4

The DS0/DS1 Cutoff

5
6
7 **Q. Please summarize the role of the DS0/DS1 cutoff.**

8
9 A. The cutoff is a regulatory limit on the upper boundary of the mass market.
10 Customers above the cutoff are *deemed* “enterprise customers” by the number of
11 voice lines, even if the customer’s choice is to remain a purchaser of analog voice
12 services. Thus, once a customer has more voice lines than the cutoff number, a
13 CLEC would no longer be able to serve that customer using UNE-P.
14

15 **Q. Do you agree with the Staff’s recommendation that AT&T has presented the**
16 **most comprehensive analysis of the point at which “which it is economically**
17 **feasible for a competing carrier to provide voice service with its own switch**
18 **using a DS1 or above loop”?¹⁹**

19
20 A. Yes. As Staff explained:
21

22 Ideally, Staff supports the type of analysis performed by Mr.
23 Finnegan, as it appears to be the most comprehensive study of the

¹⁹ TRO, footnote 1296.

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1 cost differential between providing service using DS0 and DS1
2 loops on an unbundled basis, including additional costs that a firm
3 incurs when using UNE-Loop (UNE-L) over UNE-Platform
4 (UNE-P).²⁰
5

6 I understand that Staff requested that AT&T provide additional justification for
7 some of the inputs in its calculation, but that does not diminish the importance of
8 its conclusion that the methodology itself is the most comprehensive approach to
9 the DS0/DS1 cutoff issue.
10

11 **Q. Does the Sprint methodology also satisfy the approach described in your**
12 **direct testimony?**
13

14 A. Yes. The difference between the approaches (as noted by Staff) goes to the *detail*
15 in the analysis, more than its basic structure. While the more simplified
16 calculation supported by Sprint produces a cutoff of 10 lines, AT&T's more
17 comprehensive analysis results in a cutoff of 13 lines. This is consistent with my
18 direct testimony that explained that a calculation based on the simplified formula I
19 suggested (which is essentially the Sprint calculation) would "represent the *lowest*
20 reasonable crossover."²¹
21

22 **Q. Do you also support Staff's recommendation to reject the SBC proposal?**
23

²⁰ Thomas, page 6.

²¹ Gillan Direct Testimony, page 13.

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1 A. Yes. SBC (as well as Century Telephone) recommend that the Commission adopt
2 what they claim is a “default cutoff” adopted by the FCC.²² In addition, SBC
3 claims to “justify” such a low cutover with the claim that additional capacity in
4 the DS-1 could be used by a CLEC to provide data services.²³ Although Staff
5 offered its own reason to reject these recommendations, let me make add that (a)
6 the ILECs are wrong to imply there is a “default” 4 line cutoff, and (b) SBC’s
7 post-hoc justification relying on data services is inconsistent with the TRO’s
8 direction that the cutoff should be based on the number of analog voice lines used
9 by a customer.

10
11 **Q. Why do you say that there is no “default” 4 line cutoff?**

12
13 A. The FCC was clear that the cutoff is to be numerically justified by evidence at the
14 point where “it is economically feasible for a competitive carrier to provide voice
15 service with its own switch using a DS1 or above loop.”²⁴ The FCC explicitly *did*
16 *not* (except for an interim period during which State Commissions are to conduct
17 their analysis) preserve the “four line” rule, a conclusion in the TRO made clear
18 in a discussion regarding Commissioner Abernathy’s dissent:

19
20 Commissioner Abernathy claims that our decision not to preserve
21 the previous Commission’s four-line carve-out represents a

²² See Fleming, page 26.

²³ Fleming Direct, page 27,

²⁴ TRO ¶421, n.1296.

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1 “potentially massive expansion” of unbundled switching.
2 *Commissioner Abernathy Statement* at 8 n.27. This claim makes
3 no sense. If a state finds that the appropriate cut-off for
4 distinguishing enterprise from mass market customers in density
5 zone 1 of the top 50 MSAs is four lines, there will be no more
6 unbundled switching available than there was under the previous
7 carve-out.²⁵
8

9 In addition, the prior “4-line” limitation applied only in *selected* end-
10 offices (i.e., those Zone 1 end offices in the top 50 MSAs),²⁶ with *no limit*
11 in any other area. Such a structure is incompatible with a crossover point
12 developed based on the evidence related to the relative costs of serving
13 customers using analog loops versus DS-1 loops.²⁷
14

15 **Q. Is it appropriate to include data services in the calculation of the cutoff?**
16

17 A. No. It is important to remember that, but for the application of the cutoff, the
18 customer would otherwise be considered a mass market customer (which is to

²⁵ TRO ¶ 497, n. 1546, emphasis added.

²⁶ It should be noted that the “Zone 1” offices are those used by the FCC for special access pricing flexibility, and are not the same as the “Zone 1” used for deaveraged UNE rates.

²⁷ It is also useful to note that the FCC never claimed that its (now abandoned) 4-line rule was ever a useful demarcation between the mass and enterprise markets (UNE Remand Order ¶ 291, emphasis added);

We conclude that without access to unbundled local circuit switching, requesting carriers are impaired in their ability to serve the mass market.... *No party in this proceeding, however, identifies the characteristics that distinguish medium and large business customers from the mass market.*

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1 say, a typical voice customer.)²⁸ In discussing the role of the cutoff, the FCC was
2 clear that it was to represent the point at which a customer could be served using a
3 DS-1 for voice service:
4

5 We define “DS1 enterprise customers” for our impairment analysis
6 as customers for which it is economically feasible for a competing
7 carrier to provide voice service with its own switch using a DS1 or
8 above loop. We find that this includes all customers that are
9 served by the competing carrier using a DS1 or above loop. After
10 the state commission conducts a “multiline DS0 cut-off” inquiry, it
11 includes customers who could be served by the competing carrier
12 using a DS1 or above loop.²⁹
13

14 ***

15 At some point, customers taking a sufficient number of multiple
16 DS0 loops could be served in a manner similar to that described
17 above for enterprise customers – that is, voice services provided
18 over one or several DS1s...³⁰
19

20 It is simply not appropriate to attempt to artificially lower the cutoff by including
21 data services as SBC has attempted to do here.³¹ To the extent that a customer
22 desires a DS1 voice/data service, the customer becomes part of the enterprise
23 market when it purchases such an arrangement. The TRO does not contemplate
24 state commissions attempting to determine which customers *should* want that type

²⁸ As the FCC explained (TRO ¶ 459): “The mass market for local services consists primarily of consumers of analog “plain old telephone service” or “POTS” that purchase only a limited number of POTS lines and can only economically be served via analog DS0 loops.”

²⁹ TRO, footnote 1296, emphasis added

³⁰ TRO, ¶ 497, emphasis added.

³¹ I would note that a customer that *really* was interested in a DS-1 based voice/data service will become part of the enterprise market when it decides to *actually* purchase such a service.

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1 of service, with the state commission *curtailing* their competitive voice options
2 until they buy one. Moreover, using SBC's logic, a DS1 loop that is used
3 exclusively for data could be rationalized into the mass market by hypothesizing
4 that the customer could *possibly* use a single channel of the DS1 for voice service
5 at some point in time. SBC's logic could reduce the cutoff to one line (or even
6 zero voice lines), but that "logic" is neither reasonable nor supported by any of
7 the guidance provided by the FCC regarding the proper method of determining
8 the DS0/DS1 cutover.

9
10 **Q. Does this conclude your rebuttal testimony?**

11
12 **A. Yes.**