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BEFORE THE WASHINGTON UTILITIES AND

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TRANSPORTATION COMMISSION

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4 In the Matter of the Petition) Docket No. UT-990390
for Arbitration of an)
5 Interconnection Agreement) Volume 2
Between) Pages 1-147
6)
AMERICAN TELEPHONE TECHNOLOGY,)
7 INC., and GTE NORTHWEST,)
INCORPORATED.)
8)
Pursuant to 47 U.S.C. Section)
9 252.)

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A hearing in the above matter was

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held on November 2, 1999, at 3:15 p.m., at 1300

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Evergreen Park Drive Southwest, Olympia, Washington,

14

before Administrative Law Judge LAWRENCE BERG.

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The parties were present as

17

follows:

18

AT&T, by Lawrence R. Freedman,
Attorney at Law, Arter & Hadden, 1801 K. Street,
19 N.W., Suite 400 K, Washington, D.C., 20006-1301.

20

GTE NORTHWEST, INCORPORATED, by
Judith A. Endejan, Attorney at Law, Williams, Kastner
21 & Gibbs, P.L.L.C., Two Union Square, 601 Union
Street, Suite 4100, Seattle, Washington 98101.

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1 JUDGE BERG: We'll be back on the record.
2 This is a continuation of proceedings in Washington
3 Utilities and Transportation Commission Docket Number
4 UT-990390, arbitration hearing between American
5 Telephone Technology, Inc., also referred to as ATTI,
6 and GTE Northwest, Incorporated, also referred to as
7 GTE.

8 Pending before the bench are two separate
9 exhibits, both relating to testimony relating to
10 Issue Number Three, as identified in the unresolved
11 issues matrix, revised October 22, 1999.

12 Ms. Endejan, I'm going to refer to what has
13 previously been identified as Exhibit 103 to include
14 two pages of textual information, ATTI's response to
15 GTE's second data request, including six pages of
16 attached materials. My understanding is that you've
17 had an opportunity to review these materials; is that
18 correct?

19 MS. ENDEJAN: I have, Your Honor.

20 JUDGE BERG: And regarding all of these
21 materials as comprising Exhibit 103, do you have any
22 objections to its admission into the record?

23 MS. ENDEJAN: As previously stated, I would
24 continue to object to the response to Data Request
25 Number Four, which is, I believe, non-responsive and

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1 self-serving additional testimony of ATTI. I do not
2 object to the remainder of this document.

3 JUDGE BERG: Mr. Freedman, would you like
4 to respond?

5 MR. FREEDMAN: Your Honor, Ms. Endejan is
6 characterizing the document, but I would submit to
7 you that the bottom line is she doesn't like the
8 response to Issue Number Four, but that's different
9 than having a valid objection to its admissibility.

10 The response to Issue Number Four was, in
11 fact, ATTI's response to the question GTE posed
12 identifying, as ATTI identified them, substantial
13 human resources that it has, in fact, indicated would
14 be implicated by the imposition of this background
15 investigation form.

16 It could be characterized as self-serving
17 or it could be characterized as ATTI's truthful and
18 sincere testimony in response to the question posed.
19 We characterize it as the latter, and we offer Mr.
20 Oxley to submit himself to cross-examination on any
21 of the points raised in the answer to the second Data
22 Request Number Four.

23 So for those reasons, we think there is no
24 legal basis for sustaining the objection, and
25 therefore would request that the objection be

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1 overruled.

2 JUDGE BERG: I am somewhat concerned that
3 the responses to data requests take on the appearance
4 of testimony, but insofar as Mr. Oxley is present and
5 available for questioning by GTE, I am going to admit
6 Exhibit 103 into the record.

7 My understanding, Mr. Freedman, is, on that
8 basis, you have no objections to the admission of
9 Exhibit 203; is that correct?

10 MR. FREEDMAN: Yes, Your Honor, that's
11 correct.

12 JUDGE BERG: All right.

13 MR. FREEDMAN: Just so I'm clear, that's
14 the supplemental response?

15 JUDGE BERG: Correct.

16 MR. FREEDMAN: Yes, that's correct, Your
17 Honor. No objection to the admission of that
18 exhibit.

19 JUDGE BERG: Exhibit 203 will also be
20 admitted into the record. Ms. Endejan, I presume
21 that you have a full set of what would otherwise --
22 what is now known as Exhibit 103 in your possession?

23 MS. ENDEJAN: I do.

24 JUDGE BERG: All right. Mr. Freedman, I
25 know you presented the bench with this copy and

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1 indicated that additional copies would have to be
2 made. Do you presently have a full set to refer to
3 at your table?

4 MR. FREEDMAN: No. I'm sorry, Your Honor,
5 I don't.

6 JUDGE BERG: All right. Let me return this
7 to you, and what we'll do is, before the conclusion
8 of the proceeding, I'll want to get a full set of
9 that document from you.

10 And Ms. Endejan, before we turn to Mr. Lee,
11 I'm going to provide you with an opportunity to ask
12 Mr. Oxley any questions that you may have in regards
13 to Exhibit 103 at this time.

14 MS. ENDEJAN: Thank you. Was Mr. Oxley
15 placed under oath?

16 MR. OXLEY: Yes, I was.

17 MS. ENDEJAN: Okay, thank you.

18 JUDGE BERG: Thank you. I appreciate your
19 thinking of that, as well.

20 MR. FREEDMAN: Pardon us for one minute.
21 We should configure so that Mr. Oxley is in front of
22 the --

23 JUDGE BERG: That's all right. With the
24 reporter present -- the microphone does help the
25 reporter, even in these circumstances, but it won't

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1 be quite the critical factor it was when we were
2 taping.

3 MR. FREEDMAN: Very well.

4 C R O S S - E X A M I N A T I O N

5 BY MS. ENDEJAN:

6 Q. Good afternoon, Mr. Oxley. Mr. Oxley, your
7 title is Director of Regulatory Affairs for ATI;
8 correct?

9 A. Yes, that's correct.

10 Q. Does the human resources function report up
11 to you in any way?

12 A. No, it does not report to me.

13 Q. Okay. Your area of expertise is not in
14 human resources; correct?

15 A. My area of expertise is in legal issues,
16 and I'm referred to from all areas of the company
17 with respect to legal issues.

18 Q. I don't believe that necessarily -- are you
19 an attorney, Mr. Oxley?

20 A. Yes, I am an attorney.

21 Q. Okay. Do you provide legal advice to the
22 human resources function of ATI?

23 A. On occasion, I do. On occasion, I refer
24 their questions to outside counsel.

25 Q. Are you the only attorney for ATI?

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1 A. Yes, I am.

2 Q. Okay. Mr. Oxley, as the Director of
3 Regulatory Affairs, I take it you have read the FCC's
4 order released March 31st, 1999. I'm not certain if
5 -- could we come up with a shorthand name for this
6 beast? I mean, do you call it the advanced services
7 order?

8 A. That's how I refer to it.

9 Q. Okay. So would it be okay for all parties
10 to refer to it as the advanced services order and
11 we'll know what we're talking about?

12 JUDGE BERG: That makes sense to me. I've
13 started to adopt that, because it seems to be the
14 most prevalent phraseology that I hear among other
15 parties.

16 MR. FREEDMAN: Just so we're clear, then, I
17 think it's Order Number 99-48, issued March 31st,
18 1999, and we're defining that to be the, quote,
19 advanced services order, close quote; is that
20 correct?

21 MS. ENDEJAN: Right, it's issued in CC
22 Docket Number 98-147.

23 JUDGE BERG: Correct.

24 MR. FREEDMAN: Thank you.

25 Q. All right. You have read the advanced

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1 services order?

2 A. Yes, I've read it.

3 Q. Okay. I'd like to hand you a copy or a
4 page --

5 MR. FREEDMAN: We have a copy.

6 Q. Okay. Could you turn to paragraph 47 of
7 that order? And could you read the first sentence,
8 Mr. Oxley?

9 A. We conclude, based on the record, that
10 incumbent LECs may impose security arrangements that
11 are as stringent as the security arrangements that
12 incumbent LECs maintain at their own premises, either
13 for their own employees or for authorized
14 contractors.

15 Q. Thank you. It's not ATTI's position that
16 GTE's attempting to impose a more stringent security
17 arrangement on ATTI than it imposes on itself, is it?

18 A. It is our position that, relative to ATTI,
19 GTE's security measures impose a larger burden on
20 ATTI than they do on GTE.

21 Q. Are you saying that the sentence you've
22 just read does not allow GTE to impose the
23 requirements at issue here with respect to background
24 investigation checks? Is that your position?

25 A. With respect to ATTI and other companies of

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1 a similar ilk, yes, that is our position.

2 Q. To your knowledge, did the FCC carve out or
3 create any exception for companies such as ATTI or,
4 to use your term, their ilk?

5 A. Yes, I refer you to the last sentence in
6 that paragraph. May I read that? It says, Stated
7 differently, the incumbent LEC may not impose
8 discriminatory security requirements that result in
9 increased collocation costs without the concomitant
10 benefit of providing necessary protection of the
11 incumbent LEC's equipment.

12 Q. Okay. GTE does not impose a different
13 security requirement on ATTI employees than it does
14 on its own, does it?

15 A. Well, the security requirement --

16 Q. Can you answer the question yes or no, Mr.
17 Oxley?

18 A. I'm trying to answer the question.

19 JUDGE BERG: Mr. Oxley, I think -- I will
20 provide you some opportunity to explain your
21 response, but it does sound like a question that
22 calls for a yes or no, based upon your understanding
23 of GTE's security practices.

24 MR. OXLEY: The words are the same. Yes.

25 Q. Wait a minute. Okay. So in other words,

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1 and I want to get this clear, you understand that GTE
2 imposes the same security requirements on its
3 employees as it seeks to impose on ATTI and other
4 collocators?

5 MR. FREEDMAN: Objection, Your Honor, on
6 the basis -- if you could let me state my objection
7 -- on the basis that it calls for this witness's
8 personal knowledge of what GTE, in its practice,
9 imposes on all of its employees worldwide, and
10 therefore, I believe that the witness should be
11 instructed to testify to the extent he knows what GTE
12 does to its employees.

13 JUDGE BERG: I am looking for the
14 understanding of this witness. However, I think we
15 all know what -- you know, where the lines are drawn
16 here. I think what Counsel for GTE is trying to
17 ascertain is whether ATTI contends that GTE is
18 seeking to impose a more stringent requirement on
19 ATTI than it imposes on itself, not whether or not
20 that requirement may or may not constitute a
21 discriminatory practice or have a discriminatory
22 impact on ATTI.

23 I think it's a fair question to pose, and I
24 think it's an answer -- a question that hasn't been
25 answered up until this point, so I'm going to allow

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1 the witness to answer if he can.

2 MR. OXLEY: Yes.

3 MS. ENDEJAN: Okay. I think we're clear on
4 that.

5 JUDGE BERG: And I'll also indicate, Ms.
6 Endejan, I get this issue and I think I see where
7 both parties's positions are, or at least where -- I
8 know we still need to spend some time with Mr. Lee,
9 but I certainly understand where both -- where ATTI's
10 position is and what GTE's concerns are with that
11 position.

12 Q. Just a few follow-up questions. Mr.
13 Oxley, you prepared the answer to question number
14 four, which is on Exhibit 103; correct?

15 A. Yes, I did.

16 Q. Did you do anything to quantify or in any
17 way determine the costs that ATTI would have to incur
18 to comply with this GTE requirement?

19 A. Yes, I did.

20 Q. Did you come up with any number?

21 A. Yes, I came up with some different numbers.

22 Q. Now, in terms of, I guess, the grand scheme
23 of things, would it be fair to say that ATTI, as a
24 cost of doing business, has to absorb certain costs
25 to deal with collocation requests? I mean, its

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1 request to collocate, excuse me.

2 MR. FREEDMAN: Objection, Your Honor, and a
3 request for clarification of what in the question is
4 meant by certain costs.

5 Q. Okay. Let me rephrase the question.

6 Actually, let me ask you a question that I'm curious
7 about. Mr. Oxley, when I received this data request
8 response -- or wait, let me rephrase that.

9 Do you see Data Request Number One on the
10 top of Exhibit 103?

11 A. Yes.

12 Q. And that data request asked you to produce
13 a sample ATT employment application, did it not?

14 A. Yes, it did.

15 Q. And you responded by saying, Attached are
16 the relevant documents. Now, if we turn to the
17 relevant documents, there is a reference on -- it
18 would appear to be page two of three that states that
19 the company utilizes a standard application for
20 employment form. Do you see that?

21 A. Yes, I do.

22 Q. I do not see a standard employment
23 application form in the remainder of the materials
24 which you produced. Can you tell me why it was not
25 included?

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1 A. I went with this data request to our vice
2 president of human resources and asked her for
3 documents relevant to the request, and these are the
4 documents that I received from the vice president of
5 human resources and they're the ones that I submitted
6 to Mr. Freedman for submittal to you.

7 Q. Were you subsequently contacted after I
8 contacted Mr. Freedman's office to point out that the
9 application form didn't appear to be in the packet?
10 Did you do any further checking about why an
11 employment application wasn't included?

12 A. I was contacted on --
13 MR. FREEDMAN: Let me just caution the
14 witness not to discuss or reveal -- and to the extent
15 that the question would cause you to respond with
16 privileged communications, I would instruct you not
17 to answer the question.

18 Q. Well, I'm not trying to get into privileged
19 communications; I just want to find out if there is
20 an application form. Let me just cut to the chase.
21 Can we get a copy of it?

22 A. Yes, I will inquire again as to whether
23 there is an application form. I wasn't aware that
24 one existed, because I'm a relatively recent employee
25 and I didn't fill one out. It didn't seem to me

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1 that, since I was hired in September, that I would
2 not have filled one out if one existed. So it didn't
3 seem to me to be odd that there wasn't one in the
4 materials that we gave you, but I will make inquiry
5 again as to the existence of an application form. It
6 wasn't an effort to misguide.

7 Q. No, I'm not suggesting it is. It's just
8 something that I would like to have perhaps reserved.

9 I don't know if there's a possibility of a
10 late-marked exhibit or not. I don't know how you
11 would handle that, Judge Berg, but I do think it's,
12 you know, relevant and responsive, and if we can get
13 it in the next day or two, I might seek permission to
14 -- or I might not, depending on what it says -- to
15 attach it to the brief.

16 JUDGE BERG: We'll cross that bridge when
17 we get to it. I hear Mr. Oxley saying that there was
18 no purposeful intent not to provide it, that he will
19 follow through, and I'll leave it to counsel to work
20 with each other to -- if there's an issue regarding
21 the relevancy of the form to the arguments to be
22 made.

23 MR. FREEDMAN: We would stipulate, Your
24 Honor, that the form does not require a mandatory
25 drug screening, if that would assist Ms. Endejan.

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1 MS. ENDEJAN: I'd like to see it.

2 MR. FREEDMAN: Very well.

3 JUDGE BERG: I think that that -- call it
4 an offer of proof or statement or admission -- is
5 accepted. and Ms. Endejan, my understanding is
6 that's being offered in addition to ATTI's commitment
7 to present you with a copy of that document to be
8 reviewed.

9 MS. ENDEJAN: Okay. Thank you.

10 Q. Mr. Oxley, did you read over the materials
11 that you provided in response to this before you sent
12 it on to be given to GTE?

13 A. Before I sent them, I read them very
14 cursorily.

15 Q. Were you aware of the paragraph that
16 appears in the -- I'm not certain -- last page, which
17 deals with alcohol and drugs? Did you read that
18 before you turned it over?

19 A. Yes, I did.

20 Q. Okay. How does ATTI monitor to protect
21 against the use, possession, sale, transfer, purchase
22 or being under the influence of intoxicating liquor,
23 illegal drugs, or other intoxicants by employees at
24 any time on company premises or while on company
25 business?

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1 A. In the first week of an employee's tenure
2 at ATTI, the employee meets with the human resources
3 person and is given a copy of the employee handbook.
4 In the course of the meeting, the company's chief
5 policies are outlined by the human resources person,
6 including the company's policies on alcohol and
7 drugs, and the employee is requested to review the
8 entirety of the employee handbook and then to sign a
9 signature page indicating that the employee has read
10 the book and intends to comply with its terms. And
11 that's a dated form that's then sent back to the
12 human resources person.

13 Following that, we look towards the
14 performance of the employee, his or her ability to
15 carry out the normal course of events, and if anybody
16 appears to be under the influence of drugs or
17 alcohol, that information would come to the attention
18 of his or her supervisor, and that would be a cause
19 for discipline, perhaps termination.

20 Q. This portion of document that says alcohol
21 and drugs, this isn't the employee handbook, is it?

22 A. I believe it's from the human resources
23 section that is included in the employee handbook.

24 Q. Does the company reserve the right to
25 conduct drug testing, if necessary, and advise

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1 employees of that?

2 A. I don't believe the company has reserved
3 that right in any of its materials to require drug
4 testing.

5 Q. Did you check all the materials to see if
6 that, in fact, is true, or is this just basically
7 your belief since you joined the company?

8 MR. FREEDMAN: Your Honor, Ms. Endejan had
9 objected to any time limits on the issues, and we are
10 less than halfway through the first of our issues,
11 and we're getting into a level of detail that I would
12 submit to the arbitrator is starting to get far
13 afield from the issues, so I'm just hoping that maybe
14 we -- if we're not getting to closure, maybe we ought
15 to agree to some time limits to better keep us on
16 track to getting to some of the other issues in the
17 case.

18 JUDGE BERG: I appreciate that, counsel. I
19 had just gone through a similar review myself. I
20 will be imposing a time restriction on the next
21 issues discussion. My feeling at this point is that
22 when we get to a point here where I'm not hearing any
23 additional information to assist me, then I am going
24 to ask you to close your cross-examination, Ms.
25 Endejan, but we're not quite there yet. You know,

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1 I'll let the witness answer that question.

2 And I've come to the conclusion that it's
3 just not fair to expect counsel to plan their own
4 time and to manage their own time in a hearing like
5 this, because all counsel have their clients' best
6 interest at heart and probably have the ability to
7 review and discuss any issue indefinitely. There's
8 never enough time to do the job that any attorney, I
9 think, is comfortable with, so we'll go forward.

10 And Ms. Endejan, understand that I do
11 understand where -- at this point, pretty much where
12 the parties are coming from, and we still have Mr.
13 Lee to work with.

14 MS. ENDEJAN: Okay. I would like an answer
15 to the question, and then I think I have one final
16 question, and then I'm through.

17 JUDGE BERG: All right. Can you pop the
18 question again?

19 Q. What was the question?

20 A. Is the question what is my basis for my
21 statement that I do not believe the company has
22 reserved the right to require drug testing or --

23 Q. I believe my question to you was did you do
24 anything to review the company materials to verify
25 your belief that the company would never require drug

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1 testing?

2 A. I interviewed the human resources vice
3 president and asked her that question, as to what the
4 company policy was, and I went through the employee
5 handbook. And that's the basis for my statement.

6 Q. Okay. And you joined the company when, in
7 September?

8 A. September 20th.

9 MS. ENDEJAN: Okay. I have nothing
10 further.

11 JUDGE BERG: All right. Ms. Endejan, do
12 you have any objections to the admission of Exhibit
13 T-101, direct testimony of Mr. Kunde?

14 MS. ENDEJAN: No.

15 JUDGE BERG: All right. T-101 is admitted
16 into the record. T-102 had previously been admitted
17 into the record. Mr. Freedman, just to be sure I've
18 covered it, does US West -- excuse me, that's a
19 really bad faux pas. Does ATTI have any objections
20 to the admission of Exhibit 205, the GTE
21 certification of background investigation form?

22 MR. FREEDMAN: No, Your Honor.

23 JUDGE BERG: All right. Exhibit 205 is
24 admitted into the record. Ms. Endejan, if you would
25 spend a minute qualifying Mr. Lee as a witness. And

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1 at that point in time I'll also want to inquire of
2 counsel whether counsel will have any objections to
3 the admissions of Exhibits T-201 and T-202 after Mr.
4 Lee is qualified.

5 MR. FREEDMAN: Excuse me, Judge Berg. Were
6 you contemplating an opportunity for redirect on any
7 of the issues raised on cross?

8 JUDGE BERG: Yes. Brief redirect, yes.

9 MR. FREEDMAN: Would that be now or after
10 Mr. Lee?

11 JUDGE BERG: After Mr. Lee.

12 MR. FREEDMAN: Thank you.

13 MS. ENDEJAN: Your Honor, I take it you
14 have your copy of the testimony, direct and rebuttal
15 testimony of Mr. Lee?

16 JUDGE BERG: I do.

17 D I R E C T E X A M I N A T I O N

18 BY MS. ENDEJAN:

19 Q. Mr. Lee, do you have in front of you what
20 has been marked as Exhibits T-201 and T-202?

21 A. Yes, I do.

22 Q. Okay. Well, first of all, Mr. Lee, could
23 you state your full name and business address for the
24 record?

25 A. My name is R. Kirk Lee. My business

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1 address is 600 Hidden Ridge Drive, Irving, Texas,
2 75038.

3 Q. Was Exhibit T-201, which is your direct
4 testimony filed October 15th, 1991 (sic), prepared
5 under your direction and control?

6 A. Yes, it was.

7 Q. Do you have any additions or corrections
8 you'd like to make to it?

9 A. No, I don't.

10 Q. Let me ask you the same questions with
11 respect to T-202. Were these prepared under your
12 direction and control?

13 A. Yes, they were.

14 Q. And any additions or corrections?

15 A. No.

16 Q. To the best of your knowledge and belief,
17 are your statements in Exhibits T-201 and T-202 true
18 and correct?

19 A. Yes, they are.

20 MS. ENDEJAN: Your Honor, the witness is
21 available for cross-examination, at the conclusion of
22 which I would move for the admission of Exhibits
23 T-201 and T-202.

24 JUDGE BERG: All right. Let me just check
25 with opposing counsel. Mr. Freedman, at this time,

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1 do you have any objections to the admission of 201
2 and 202?

3 MR. FREEDMAN: No, Your Honor.

4 JUDGE BERG: All right.

5 MS. ENDEJAN: Your Honor, I misspoke. He's
6 available for cross-examination after he's through
7 with his summary.

8 JUDGE BERG: Thank you. Exhibit T-201 and
9 T-202 are admitted into the record. Mr. Lee, please
10 proceed to provide a brief summary of your testimony
11 on the issue presently being discussed, after which
12 Mr. Freedman will conduct cross-examination.

13 MR. LEE: Thank you, Your Honor. ATTI
14 objects to GTE's requirement that collocators and
15 their contractors have a certification of background
16 investigation form completed. In this form, the CLEC
17 certifies to GTE that drug screening has occurred,
18 there have been no felony convictions, and the person
19 requiring access to GTE's central office has not been
20 dismissed from GTE for cause.

21 The basis for GTE's requirement with this
22 certification is found in paragraph 47 of the FCC's
23 advanced services order, where it says that ILECs may
24 impose security requirements that are as stringent as
25 those the ILEC maintains for either their own

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1 employees or for authorized contractors. It goes on
2 to say the incumbent may apply the more stringent of
3 the two.

4 GTE's proposal complies with the order
5 because it matches the standards that we apply to our
6 own employees using our own employment practices.
7 ATTI would have GTE modify those standards for their
8 own employees, which could ultimately compromise the
9 safe and secure environment in the central offices
10 that GTE seeks to maintain.

11 It is reasonable for GTE to apply its own
12 standards to ATTI, because GTE cannot control ATTI's
13 access to our central office facilities. We are, in
14 fact, required by the FCC's order to provide them
15 direct access, unescorted access into our central
16 office.

17 Ultimately, what other companies, such as
18 US West, require is irrelevant to this proceeding.
19 The FCC order in paragraph 47 specifically allows GTE
20 to impose these requirements on ATTI and other CLECs
21 seeking collocation. GTE applies these standards
22 uniformly for itself, all CLECs and their contractors
23 today. ATTI is not being treated any differently.
24 We're not requesting that.

25 All GTE is asking for is parity in this

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1 case. It is a nondiscriminatory requirement and
2 would not competitively harm ATTI relative to other
3 CLECs seeking collocation with GTE, nor relative to
4 GTE itself.

5 Irregardless of whether ATTI likes GTE's
6 policy, it is expressly allowed by the FCC. Thank
7 you.

8 JUDGE BERG: Mr. Freedman.

9 C R O S S - E X A M I N A T I O N

10 BY MR. FREEDMAN:

11 Q. Good afternoon, Mr. Lee. My name is Larry
12 Freedman, representing ATTI in this case, as you
13 know. Has GTE always required mandatory drug
14 screening?

15 A. It's my understanding that practice has
16 been in effect since March of 1990.

17 Q. So isn't it true that employees that were
18 hired at GTE before 1990 are exempt from the policy?

19 A. Yes, that is my understanding.

20 Q. Thank you. And so this is probably obvious
21 to say that there came a time in 1990 prior to which
22 GTE did not have mandatory drug screening and after
23 which it did; isn't that correct?

24 A. I presume that's the case, yes.

25 Q. And wouldn't it be reasonable to believe

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1 that GTE's implementation of such a program would
2 involve employee education programs?

3 A. That would be a reasonable step, yes.

4 Q. And wouldn't it also be reasonable to conclude
5 that GTE's implementation of that program involved
6 changes to any applicable employment handbooks?

7 A. Yes, that would be reasonable to assume.

8 Q. And wouldn't it also be reasonable to
9 assume that GTE's implementation of that program was
10 reviewed by its labor counsel, its labor lawyers;
11 isn't that true?

12 A. I don't have firsthand knowledge of that,
13 but it would be reasonable that they would want to
14 review that procedure, yes.

15 Q. And wouldn't the imposition of such a
16 procedure have required negotiations and possibly
17 consent of GTE's labor unions?

18 A. That's possible.

19 Q. And wouldn't you agree that all of those
20 things could have caused GTE significant expense?

21 A. I can't testify to any level of expense
22 that might have occurred.

23 Q. But it's true that all of those things
24 could cause significant expense; isn't that true?

25 MS. ENDEJAN: Repetitive.

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1 JUDGE BERG: I think the issue here is what
2 constitutes significant, and what I think I
3 understand the witness' answer is that he doesn't
4 have the ability to testify as to what constitutes
5 significant. If I'm reading something into his
6 response -- if you think I'm reading something into
7 his response that you didn't hear, please feel free
8 to approach it from another angle.

9 MR. FREEDMAN: I can move on to my next
10 question, Your Honor.

11 Q. Obviously, you would agree that all those
12 things -- employee education, programs, employment
13 handbooks, review by labor counsel and negotiations
14 with labor unions, among other things -- are
15 substantial issues, are they not, Mr. Lee?

16 A. I would not characterize them that way at
17 all, no. I think that's an ongoing part of doing
18 business, is that GTE frequently negotiates with its
19 unions, frequently modifies and updates its
20 procedures and practices as a cost of doing business.

21 Q. Are those substantial issues?

22 MS. ENDEJAN: Well, objection to the term
23 substantial. I think that's a fairly broad and
24 undefined term.

25 Q. Do you understand what that term means, Mr.

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1 Lee?

2 A. Not in this context, no, I don't understand
3 that.

4 Q. Do you believe that GTE's imposition of
5 mandatory drug testing in 1990 was considered at GTE
6 to implicate substantial human resources issues?

7 MS. ENDEJAN: Same objection.

8 JUDGE BERG: If the witness has personal
9 knowledge, he can respond.

10 MR. LEE: I don't have personal knowledge
11 of that, no.

12 Q. How is it that GTE proposes that this
13 pre-1990 exclusion worked for the CLECs? Do pre-1990
14 employees of the CLEC get a free pass like they do at
15 GTE? Have you figured that out yet?

16 A. I don't have exact knowledge of how that
17 would apply.

18 Q. So you don't know yet?

19 A. No.

20 Q. So ATTI could not know whether its
21 employees that were hired prior to 1990, if there are
22 any, would or would not qualify for this program; is
23 that correct?

24 A. I would think ATTI would know, have
25 knowledge of what their employees have been screened

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1 for or not.

2 Q. But we don't know how the application of
3 this grandfathering provision, as it's applied to
4 GTE's employees, would apply to ATTI's employees;
5 isn't that true?

6 A. That's correct.

7 Q. Thank you. And you said it was important
8 to impose these security requirements on ATTI
9 because, quote, GTE strives to provide a safe and
10 drug-free workplace for its employees and other
11 collocators, close quote, referencing your direct
12 testimony at page 11, line 21. I assume you stand by
13 that statement; is that correct?

14 A. Yes, I do.

15 Q. Now, is this a goal that GTE came up with
16 in 1990?

17 A. I think it's always been GTE's goal to have
18 that kind of a work environment. The additional
19 steps of requiring a drug screening serve to enhance
20 and improve the ability to do that.

21 Q. Well, when did GTE first start doing
22 business in the telecommunications area?

23 A. I do not have knowledge of that date, but
24 it's been decades.

25 Q. So for decades, at least prior to 1990, GTE

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1 strived to provide a safe and drug-free workplace for
2 its employees and other collocators without mandatory
3 drug screening; isn't that true?

4 A. Prior to 1990, I would imagine that that is
5 the case, but that is not the case --

6 Q. Thank you.

7 A. -- after that.

8 Q. Wouldn't you agree that a safe and
9 drug-free workplace can be achieved through a careful
10 employment program without necessarily using drug
11 screens?

12 A. No, I do not.

13 Q. So that, for all those years prior to 1990,
14 GTE was not achieving a safe and drug-free workplace?
15 That, then, is your testimony; is that correct?

16 MS. ENDEJAN: Objection. I think that
17 completely mischaracterizes his testimony.

18 JUDGE BERG: Sustained. Mr. Freedman, you
19 know, you have a hurdle that you have to get over,
20 and that is the FCC's order that, to the extent
21 existing security arrangements, existing security
22 arrangements are more stringent for one group than
23 for the other, the incumbent may impose the more
24 stringent requirements.

25 And I understand the issues that your

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1 client is raising, but if what you're seeking to do
2 is to impeach the reasonableness of GTE's current
3 security, existing security arrangements, I'm really
4 at somewhat of a loss how to fit that in when I have
5 some very clear language and direction from the FCC
6 on the issue.

7 I understand, from the testimony of ATTI's
8 witnesses, that they believe the follow-up sentence
9 in the paragraph, whereby the FCC states the issue
10 differently and refers to the imposition of
11 discriminatory security requirements, but I don't see
12 anything here that allows the CLEC to come in and
13 essentially impeach the reasonableness of the
14 existing security arrangements of the incumbent, and
15 it's not going to be productive to continue going
16 down that path.

17 MR. FREEDMAN: Thank you, Your Honor. I
18 would just submit to you that, in fact, we read the
19 last sentence of paragraph 47 to establish a standard
20 that the reasonable benefit asserted by GTE has to be
21 established and balanced by the cost imposed on the
22 incumbent, and Mr. Lee has very clearly stated in his
23 testimony what he thinks that benefit is, and I've
24 inquired of him about that very benefit, to which his
25 response was that they were, in fact, obtaining that

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1 very same benefit for years prior to 1990 without
2 requiring mandatory drug screens. And we have
3 submitted that this will impose a substantial cost on
4 ATTI.

5 So I will move on to my next line of
6 questioning on this, but I just submit to you, Your
7 Honor, that we do believe that is a very important
8 counter-balance to the first sentence of paragraph
9 47.

10 JUDGE BERG: Except that the last sentence
11 refers -- limits an incumbent from imposing
12 discriminatory security requirements that have a
13 certain result. So the first hurdle is whether or
14 not the security requirement is discriminatory. And
15 if it's not discriminatory, then you don't even get
16 to the second standard that you're focusing on.

17 MR. FREEDMAN: Your Honor, without agreeing
18 or disagreeing, I would just submit to you that, in
19 briefing, we will urge you to consider that the
20 impact of a program on a multi-billion dollar company
21 like GTE, with sophisticated in-house lawyers and
22 human resource experts in place, is significantly
23 different than the impact on a startup CLEC, like
24 ATTI, and that there is discrimination when you take
25 a controversial, unorthodox, not universally-accepted

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1 policy and require every CLEC to comply with it when,
2 in fact, all those CLECs have the same millions of
3 dollars of equipment at stake and the same threat to
4 their connectivity to their network that could be
5 jeopardized by an environment that is not safe and
6 drug-free and have decided, in their own judgment,
7 that they wish to protect that without the burden of
8 going through this program.

9 JUDGE BERG: It's not my intent to be
10 argumentative, because the standard is only going to
11 be imposed on those employees that the CLEC wants to
12 have access to the incumbent's property. But a much
13 more valuable argument would be to try and
14 demonstrate some rationale for an administrative law
15 judge to make a decision contrary to an order of the
16 FCC.

17 MR. FREEDMAN: Well, I'm prepared to
18 continue on with the cross, Your Honor.

19 JUDGE BERG: Yes, sir.

20 Q. Mr. Lee, GTE has thousands and, perhaps,
21 presumably, millions of dollars of equipment in its
22 wire centers in Washington and beyond; isn't that
23 true?

24 A. I don't know the exact figure, but I am
25 sure it is in the millions of dollars.

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1 Q. And it has numerous customers for its
2 telecommunications services connected through that
3 equipment; isn't that true?

4 A. Yes, it does.

5 Q. And I assume you'd agree with me that,
6 obviously, GTE would be self-motivated to ensure
7 those concerns are protected, that the investment is
8 protected, the connectivity of the customers is
9 protected, and that employees are appropriately
10 screened and trained, wouldn't you agree?

11 MS. ENDEJAN: Wait a minute. Objection.
12 That question had so much in it --

13 MR. FREEDMAN: I'll break it down.

14 MS. ENDEJAN: -- no human being could
15 answer it.

16 MR. FREEDMAN: Thank you for that.

17 JUDGE BERG: And counsel, we're going to be
18 here for a while, so I think we really need to take
19 all the hyperbole and all the rhetoric out of our
20 dealings with each other this evening. I understand
21 that, on an impulse, you might feel that way, but,
22 counsel, Mr. Freedman had already agreed to split the
23 question.

24 MS. ENDEJAN: I meant no disrespect, Your
25 Honor.

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1 JUDGE BERG: All right. Thank you.

2 Q. Wouldn't you agree that GTE would be
3 self-motivated to protect the substantial financial
4 investment in its wire centers?

5 A. Yes, I agree that any company would be
6 interested in protecting its assets. It's not unique
7 to GTE.

8 Q. And ATTI will similarly have substantial
9 equipment, expensive equipment, and customers
10 connected through that equipment in your wire
11 centers; isn't that true?

12 A. I would presume that they would have some
13 expensive equipment there, yes.

14 Q. And you would agree with me that ATTI would
15 have the same obvious self-motivation to protect that
16 investment, wouldn't you?

17 A. Yes, I would. However, ATTI would have
18 none of the similar motivation to protect GTE's
19 equipment in that office.

20 Q. What kind of access does ATTI have to GTE's
21 equipment in an office?

22 A. Under the now collocation requirements in
23 the advanced services order, they're basically
24 allowed 24-hour-a-day, seven days a week, unlimited
25 access to a central office on a caged or cageless

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1 basis.

2 Q. Isn't it true that GTE's collocation
3 contract and policy expressly prohibits ATTI from
4 coming anywhere close to GTE's facilities in that
5 wire center, in any wire center?

6 A. That is the stated policy, yes.

7 Q. Isn't it true --

8 A. Whether that can be enforced is a different
9 matter.

10 Q. Isn't it true that GTE won't even let ATTI
11 close enough to, for example, the MDF to even review
12 or inspect its connections to that MDF; isn't that
13 true?

14 MS. ENDEJAN: Objection, Your Honor. I
15 think that we are dealing with an issue here that has
16 been resolved between the parties, and it is not
17 relevant to this outstanding issue. That issue has
18 been resolved, Mr. Freedman, and you know that.

19 MR. FREEDMAN: Yeah, I do. But Mr. Lee
20 testified that here was all kinds of concern that
21 ATTI's employees could jeopardize GTE's equipment,
22 and the point I was making is that there's absolutely
23 no way, under GTE's restrictions on access in the
24 proposal, that that, in fact, could ever happen. And
25 therefore, that is not a justifiable basis for

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1 imposing this particular background policy on ATTI's
2 employees.

3 JUDGE BERG: Mr. Freedman, my
4 understanding, from the FCC's order, is that
5 incumbents are prohibited from imposing
6 discriminatory security requirements, and that to the
7 extent existing security arrangements are no more
8 stringent than they require from themselves, that it
9 may just be the CLECs' cross to bear. It may be that
10 the CLECs only choose to designate one person to go
11 into that incumbent's premises.

12 But regardless of how imaginary or
13 realistic the threat is, it doesn't go to the real
14 heart of the issue here. And the heart of the issue
15 is, as I see it, unless ATTI can provide me some
16 basis for which to ignore the FCC's provisions in
17 that paragraph 47, there is no allowance for the
18 additional cost to be incurred by a CLEC.

19 And I don't think this is a matter of
20 whether or not the CLEC does or doesn't trust ATTI's
21 policies. They don't have to trust ATTI's policies,
22 because their only requirement is that they not
23 impose any discriminatory security requirement that
24 results in increased collocation costs without the
25 benefit of providing necessary protection for the

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1 incumbent's equipment.

2 You know, taken that way, it actually
3 states that an incumbent may impose additional
4 requirements if the incumbent can demonstrate that
5 there's a concomitant benefit of providing a
6 necessary protection. That's a burden for the
7 incumbent that they're not seeking to establish here.

8 All the incumbent's looking to do is to
9 impose existing security arrangements that are
10 consistent with the security arrangements that it
11 imposes on itself. So you can understand that all
12 these other issues of whether it's reasonable or not
13 are somewhat lost on me at this point.

14 MR. FREEDMAN: Very well. Thank you, Judge
15 Berg. I just have a few more questions.

16 JUDGE BERG: All right.

17 Q. Do you recall, Mr. Lee, citing a federal
18 law in your testimony? Not the Telecommunications
19 Act; 47 USC Section 701.

20 MS. ENDEJAN: Do you have a cite?

21 MR. LEE: Can you cite the --

22 Q. Surely. Page 12, line one through three of
23 the direct.

24 A. I'm there.

25 Q. Okay. Is it your contention that the cited

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1 law provides federal drug workplace requirements?

2 A. I was provided the cite by legal counsel,
3 and I'm not directly familiar with the exact
4 requirements of that section of the U.S. law.

5 Q. Okay. Are you aware that, in fact, the
6 cited testimony relates to something having to do
7 with satellite provisions, that, in fact, there's a
8 drug-free workplace law at 41 USC Section 701?

9 A. No, I was not aware of that.

10 Q. Are you aware that 41 USC Section 701,
11 which is the drug-free workplace act, establishes no
12 requirement for drug testing?

13 A. No, I'm not aware of that. I'm aware of
14 the, you know, general provisions of the act or that
15 law seeking to establish a drug-free workplace,
16 though. And drug screening would not be prohibited
17 by that proceeding -- by that piece of law.

18 Q. Are you aware that that law provides seven
19 methods by which a drug-free workplace be
20 established, none of which include the imposition of
21 mandatory drug screening on employees?

22 A. No, I'm not aware of that, but, again, it
23 does not exclude the possibility that that can be a
24 legitimate requirement, as well.

25 Q. Are you aware that the courts have, in

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1 fact, found that that statute does not provide a
2 basis for mandatory drug testing?

3 MS. ENDEJAN: Your Honor, I think I'd
4 object at this point. He's calling for a legal
5 conclusion and going far beyond the limited reference
6 made in the testimony to that act.

7 JUDGE BERG: Mr. Freedman, I agree. This
8 seems to be a legal issue and I think it would be a
9 good issue to raise in arguments, but I don't think
10 it will further your arguments at all, whether this
11 witness has any knowledge about it one way or the
12 other.

13 MR. FREEDMAN: Very well, Your Honor. I
14 think, if the court would -- I'm sorry, if the
15 Arbitrator would indulge me for about 60 seconds, I'm
16 about to conclude my questions on this subject.

17 JUDGE BERG: Thank you.

18 MR. FREEDMAN: Other than the limited
19 opportunity for redirect, Your Honor, I have no
20 further cross-examination questions for this witness.

21 JUDGE BERG: All right. I don't have any
22 questions. Mr. Griffith, do you have a question?

23 E X A M I N A T I O N

24 BY MR. GRIFFITH:

25 Q. As long as we're on the subject of drug

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1 testing, I'm going to have to ask a couple questions.
2 I have a couple questions for Mr. Lee. Does GTE
3 conduct drug screening on existing employees, that
4 is, employees who've already been hired, including
5 those before March 1990?

6 A. I believe there are some work groups that
7 have some random drug testing requirements, but I'm
8 not certain as to what those are.

9 Q. Would you happen to know under what
10 conditions they might be tested?

11 A. No, I do not.

12 Q. Okay. And if one of them happened to fail
13 a test, do you know what kind of disciplinary action
14 would be required?

15 A. No, I'm not familiar with the disciplinary
16 procedure.

17 E X A M I N A T I O N

18 BY MR. GRIFFITH:

19 Q. Okay. And for Mr. Kunde, I have a
20 question. When you were testifying earlier, you
21 mentioned the area of false positives occurring
22 during drug tests. That is, a person will take a
23 drug test that really wasn't on drugs, but they would
24 -- it would show up as if they had been taking drugs.
25 Do you recall that?

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1 A. No, I don't, actually.

2 Q. Oh. I thought you said something about the
3 tests not always being conclusive?

4 A. I think I referenced the tests may come
5 back and we did not have a conclusion and, at that
6 point, as to what to do with the result of the test.

7 Q. Okay. I guess that's what I'm referring
8 to. Do you have an idea of how often that might
9 happen, that someone might be screened out when they
10 haven't actually been taking drugs?

11 A. I don't, because we don't do the drug
12 testing at this point.

13 MR. GRIFFITH: Okay. That's all I have,
14 Your Honor.

15 JUDGE BERG: Thank you, Mr. Griffith. Mr.
16 Freedman, do you have an estimate of how long it
17 would take to conduct redirect?

18 MR. FREEDMAN: Five minutes, Your Honor.

19 JUDGE BERG: All right. Go ahead, take
20 five minutes. And we'll allow, likewise, five
21 minutes for re-cross and then five minutes redirect,
22 if any, of Mr. Lee, and no more than five minutes of
23 re-cross. I would hope that we wouldn't have to take
24 all that time, because it doesn't sound like a lot in
25 pieces, but another 20 minutes on this -- this

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1 subject doesn't deserve another 20 minutes. Please
2 proceed, Mr. Freedman.

3 R E D I R E C T E X A M I N A T I O N

4 BY MR. FREEDMAN:

5 Q. Mr. Kunde, you were asked questions on
6 cross-examination about Nortel and their policy on
7 drug testing. Do you recall some of these questions?

8 A. Yes, I do.

9 Q. Do you have an understanding as to why
10 Nortel has a policy on mandatory drug screening?

11 A. I can't give you all the significant
12 background of what Nortel's motivation might be, but
13 I do know that GTE was, at least a couple of years
14 ago, Nortel's largest account, and I would assume
15 that GTE would apply those same requirements upon any
16 vendor, like their policy calls, so Nortel would
17 certainly have to undertake drug screening and drug
18 testing in order to be doing work for their largest
19 account.

20 So I think, certainly, if I was in charge
21 of Nortel, I would want to undertake that same
22 mandatory drug screening, because I was providing
23 service to and GTE was a very large customer.

24 Q. Mr. Kunde, you were asked questions as to
25 whether you were aware whether GTE imposes this

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1 mandatory drug screening program on all of its
2 employees, and I think you said yes; is that correct?
3 Do you recall that testimony?

4 A. Yes.

5 Q. Do you have personal knowledge, in fact, of
6 what or how GTE imposes or implements any kind of
7 background checks in actual practice in GTE's
8 operations?

9 A. No, I would not. I would assume that
10 basically from the requirement that GTE had put forth
11 in their testimony.

12 Q. And are you aware that GTE states that this
13 program is only applicable to employees hired after
14 1990?

15 A. I was not aware of that issue, no.

16 Q. Do you know how, anyway, that particular
17 requirement is implemented in GTE?

18 A. No, I do not.

19 Q. And are you aware that GTE, as part of its
20 form, also screens out anybody who is, quote, not
21 dismissed by GTE for cause, unquote? Were you aware
22 of that?

23 A. Yes, I had seen that on the form.

24 Q. I want to turn your attention to what has
25 been marked as Exhibit T-103, and ask you to turn to

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1 the last page of that exhibit, which has, in the
2 lower right-hand corner, the number 20. Do you have
3 that sheet in front of you?

4 A. Yes, I do.

5 Q. Okay. Now, you testified earlier that you
6 did not believe that ATTI had a policy for alcohol
7 and drugs. Do you recall that testimony?

8 A. Yes, I do.

9 Q. Let me direct your attention to the middle
10 of that sheet I just referred you to, with the
11 subheading Alcohol and Drugs, and ask you if you
12 could read the two paragraphs under the heading
13 alcohol and drugs?

14 A. The company recognizes that alcohol and
15 drug abuse in the workplace has become a major
16 concern. We believe that by reducing drug and
17 alcohol use we will improve the safety, health and
18 productivity of employees. The object of the
19 company's alcohol and drug policy is to provide a
20 safe and healthy workplace for all employees, to
21 comply with federal and state health and safety
22 regulations, and to prevent accidents.

23 The use, possession, sale, transfer,
24 purchase, or being under the influence of
25 intoxicating liquor, illegal drugs, or other

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1 intoxicants by employees at any time on company
2 premises or while on company business is prohibited.
3 The illegal use of drug, narcotic, or any other
4 controlled substance is prohibited. Employees must
5 not report for duty or be on company property while
6 under the influence of or have in possession while on
7 company property any intoxicating liquor, marijuana,
8 or illegally-obtained drug, narcotic, or other
9 illegal substance.

10 Q. And do you have any reason to doubt that
11 what you just read, in fact, accurately reflects
12 ATTI's policy today with respect to alcohol and
13 drugs?

14 A. Given that Mr. Oxley did research it and I
15 certainly didn't, then I would certainly believe that
16 this would be a more accurate statement.

17 MR. FREEDMAN: Okay. Last line of
18 questions, Judge Berg.

19 Q. Ms. Endejan asked you questions about the
20 burden on ATTI for compliance with this policy. Do
21 you recall those questions?

22 A. Yes, I do.

23 Q. Do you recall cross-examination regarding
24 the number of employees that ATTI had in Washington
25 and the number that would be entering the wire

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1 center?

2 A. Yes.

3 Q. What, in fact, would be the burden to ATTI
4 if even a small number of employees could not be
5 employed to do their jobs in a wire center as a
6 result of the imposition of this mandatory drug
7 screening policy?

8 A. The burden would be on ATTI to be able to
9 dispatch or a requirement to enter a particular wire
10 center to do work is to find and sort through all of
11 the employees and find the ones that are able to be
12 dispatched to the GTE central offices, and this would
13 be particularly burdensome on a call-out basis or
14 when you have an after-hours type of dispatch
15 requiring significant network outages to be
16 controlled or maintained.

17 MR. FREEDMAN: No further redirect, Your
18 Honor.

19 JUDGE BERG: Ms. Endejan, re-cross?

20 MS. ENDEJAN: Just a few.

21 R E C R O S S - E X A M I N A T I O N

22 BY MS. ENDEJAN:

23 Q. Mr. Kunde, your testimony regarding the
24 Nortel policy on drug testing, now, your response to
25 your counsel's question, was that based upon any

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1 information you gained from Nortel or is it just your
2 supposition that the Nortel policy is implemented
3 because GTE happened to be Nortel's largest account?

4 A. As I indicated in my testimony, I indicated
5 that if I were Nortel, so therefore, it would be my
6 supposition.

7 Q. Okay.

8 A. This would be my response.

9 Q. Okay. Well, when was ATTI founded?

10 A. ATTI was founded in 1996. I'm sorry, ATI
11 was founded in 1996. I don't know when ATTI was
12 founded. I don't have an answer to that question.

13 Q. Would it be safe to say, therefore, that
14 ATTI would not have had any employees prior to 1990?

15 A. No, I would assume that ATTI actually has
16 employees who were employed by ATTI prior to 1990.

17 Q. I'm confused here. I asked you when was
18 ATTI founded as a company.

19 MR. FREEDMAN: He answered the question,
20 Ms. Endejan.

21 Q. No, you said 1996; correct?

22 A. I said ATI, which is the parent
23 corporation, was founded in 1996. ATTI, which is the
24 local subsidiary of ATI, was founded much earlier. I
25 don't know the exact date.

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1 Q. Okay. ATTI, the CLEC that has obtained
2 registration as a CLEC here in Washington State, when
3 was that company formed?

4 A. I don't know the answer to the question.

5 Q. Okay. Were there any employees of ATTI
6 prior to 1990, who would have -- who are currently
7 involved in the ATI CLEC business?

8 A. There may very well be. Since we don't
9 have that business operational, we would certainly
10 expect to draw on those existing employees from ATTI
11 to provide service to our network.

12 Q. What sort of --

13 JUDGE BERG: Ms. Endejan, how many hairs
14 are we going to split here?

15 MS. ENDEJAN: Okay, you're right.

16 Q. Let me just ask you, the alcohol and drug
17 policy that you quoted, was that a policy of ATTI or
18 is it the policy of ATI?

19 A. It's a policy of ATI that extends to all of
20 the subsidiary organizations, it's my understanding.

21 Q. Okay. The burden that you described in
22 response to a question from Mr. Freedman, wouldn't
23 other CLECs be in the same situation, in terms of
24 having to deal with employees that might not qualify
25 because they didn't pass a drug test? I mean, is

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1 there something special about ATTI that we should
2 know about here?

3 A. The burden that I was asked about was not
4 having to do with employees that didn't pass a drug
5 test; it was having to sort through and only apply a
6 drug test to a certain number of employees out of an
7 entire group, and then having to dispatch and sort
8 through the employees that had been appropriately
9 tested and, therefore, have access to GTE offices
10 versus the entire employee base.

11 Q. Wouldn't that be a burden that would apply
12 to other CLECs, in addition to ATTI?

13 A. I would suppose it may be, but I can't tell
14 you or testify to the operations of other CLECs.

15 Q. And the burden that you alluded to,
16 basically, you don't know if that, in fact, would be
17 the case. You're just speculating that it might be a
18 burden; isn't that true? You don't know in fact?

19 A. It would be a burden if we chose not to
20 test all employees.

21 MS. ENDEJAN: Nothing further.

22 JUDGE BERG: All right. Any redirect of
23 Mr. Lee?

24 MS. ENDEJAN: No.

25 JUDGE BERG: All right. Off the record.

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1 (Discussion off the record.)

2 JUDGE BERG: We'll be back on the record.

3 Having concluded all testimony relating to Issue
4 Number Three, as identified in the unresolved issues
5 matrix, we'll now proceed to Issue Number Four. Each
6 party will have eight minutes within which to
7 cumulatively present a summary of its direct
8 testimony or company's stated position, as identified
9 in the issues matrix, to conduct cross-examination,
10 redirect and re-cross, if necessary, and we'll begin
11 with ATTI's witness, Mr. Kunde.

12 MR. KUNDE: As we indicated in the
13 unresolved issues matrix, basically we believe that
14 the interval should be ten days. The reason that
15 we're taking that position is that, just as GTE
16 indicates its wish is to have system-wide
17 consistency, ATTI also wishes the same thing.

18 ATTI works with ten-day intervals with
19 other ILEC business partners and in other states.
20 GTE has required detailed and meticulous records and
21 equipment listings and specifications in order to
22 keep its records meticulous and up-to-date in those
23 offices.

24 Given GTE's accurate and up-to-date
25 records, we believe that it certainly would be

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1 practical for GTE to be able to respond to any
2 request within a ten-day interval and -- similar to
3 that of other large companies.

4 I look at it as it really shouldn't be a
5 big deal. I've operated as an ILEC, or an incumbent
6 LEC operation before and responded to these types of
7 requests. As long as your records are accurate and
8 equipment listings are well-maintained, you know
9 exactly how much space and how much power is driven
10 off your power plant. It should be just a check of
11 the records and, at most, a phone call to what is
12 almost always a manned office, where there are
13 personnel already available who can visually observe,
14 physically verify the availability of both space and
15 power. So that's all we have to say on the issue.

16 JUDGE BERG: All right. Cross-examination
17 by GTE, Ms. Endejan.

18 C R O S S - E X A M I N A T I O N

19 BY MS. ENDEJAN:

20 Q. Mr. Kunde, you referred to the ATTI
21 position on the unresolved issues matrix, did you
22 not?

23 A. Yes, I did.

24 Q. And that position states that the FCC's
25 collocation order plainly states that this interval

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1 should be ten days. Did you review the FCC's
2 collocation order to see where that is stated?

3 A. Yes, we did look at that.

4 Q. And counsel, I believe you have a copy of
5 the advanced services order. If you could turn to
6 paragraph 55 and show Mr. Kunde the language that's
7 in that paragraph, I would appreciate it. Could you
8 take a minute and read paragraph 55?

9 A. Okay.

10 Q. The second sentence states that the FCC
11 views ten days as a reasonable time period; correct?

12 A. Yes.

13 Q. Now, the FCC order does not state whether
14 those ten days should be measured as calendar days or
15 as business days, does it not?

16 A. Not in this particular section, no.

17 Q. Are you aware of any other section of this
18 order which specifies that the ten days is to be
19 measured in business days?

20 A. I can't state that off the top of my head,
21 no, but I have heard that there are other proceedings
22 where that has been detailed.

23 Q. Are you aware of other proceedings in other
24 states where a larger time period has been found to
25 be reasonable? Specifically, are you familiar with

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1 the California Public Utility Commission decision?

2 A. No, I am not.

3 Q. Okay. But you personally, just to close
4 this out, you can't cite to me any other language of
5 an FCC order which clarifies that the ten days means
6 calendar or business days, can you?

7 A. Not based on the language in paragraph 55,
8 no.

9 Q. Okay. Now, you stated that this should not
10 be burdensome, really, to an ILEC, so long as the
11 records are updated and all these other -- I guess
12 ducks are in a row. Would that be a correct
13 characterization of your testimony?

14 A. I said as long as the records are kept
15 up-to-date, similar to what GTE requires of ATTI.

16 Q. Would your testimony depend upon the number
17 of collocation requests that GTE would have to
18 process at any given time? In other words, wouldn't
19 it be fair to say that if GTE has to deal with a
20 number of collocation requests at the same time, it
21 may not be able to deal with it in the perfect
22 scenario that you have envisioned?

23 A. I don't know that I'm indicating a perfect
24 scenario. I don't know that ten days or fifteen days
25 is a perfect scenario. I do believe that certainly

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1 ten days is sufficient to deal with the request and
2 that, typically, usually most companies will have a
3 single individual or two dealing with a particular
4 office. The number of requests that GTE may have
5 outstanding in other offices become irrelevant at
6 that point.

7 Q. Do you have any personal knowledge with
8 respect to GTE's recordkeeping systems?

9 A. I have some limited knowledge to GTE's
10 recordkeeping system.

11 Q. Similarly, do you have any personal
12 knowledge as to how GTE staffs the person -- you
13 know, its personnel that are involved in processing a
14 request from a CLEC?

15 MR. FREEDMAN: Objection. Clarification of
16 the question?

17 Q. Well, let me rephrase it. Are you familiar
18 with GTE's staffing levels at the central offices
19 where ATTI might require collocation?

20 A. I would say that I'm not familiar
21 specifically with the staffing levels of any offices
22 where we may request collocation, but I would say
23 that it's generally understood that most offices that
24 are large enough to have a collocation request are
25 typically manned offices.

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1 Q. Do you know if they're staffed 24 hours a
2 day?

3 A. No, I don't.

4 Q. And are you aware of any limitations that
5 might be imposed by staff illnesses or vacation
6 schedules or holiday schedules, which would mean the
7 normal staffing level might not be the same or steady
8 at any given time?

9 MR. FREEDMAN: Could the reporter read back
10 that question, please?

11 Q. Let me rephrase it, because it's probably
12 confusing. I'm confusing myself. When you staff a
13 central office, you also have to take into account
14 sicknesses, vacations, holidays, do you not, from an
15 operational standpoint?

16 A. Yes, you would.

17 Q. And those three factors can impact the
18 level of staffing available to you at any given time
19 during the year; isn't that correct?

20 A. Yes.

21 MS. ENDEJAN: Thank you. Nothing further.

22 JUDGE BERG: All right. Mr. Lee, you have
23 three minutes within which to state GTE's position.

24 MR. LEE: Okay, all right. This is, again,
25 in regards to responding to space availability

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1 request for collocation. In paragraph 55 of the
2 FCC's advanced services docket again, they viewed ten
3 days as a reasonable period for responding to space
4 availability requests. And the FCC, in the same
5 paragraph, attributed this to a GTE and Ameritech
6 position.

7 However, the FCC order did not designate
8 these as business or calendar days. In fact, the ten
9 days noted by the FCC refers to ten business days,
10 not calendar days, from GTE's view and what their
11 current policy is.

12 This requirement for ten business days, not
13 calendar days, has also been validated by other state
14 commissions who recognize that to require ten
15 calendar days was unreasonable. Again, the
16 California State Public Utility Commission set
17 fifteen calendar days as the guideline, which is the
18 equivalent of ten business days.

19 So this is a reasonable period for GTE to
20 schedule, coordinate a visit to these offices,
21 complete their evaluation and paperwork and get it
22 back to the CLEC. As much as I'd like the situation
23 to be as Mr. Kunde describes it, GTE's records in
24 this area are not up-to-date, in part because of the
25 sometimes dozens of simultaneous collocation requests

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1 we get from a single CLEC for multiple offices.

2 There's so much activity going on right now
3 that it does indeed require site visits to evaluate
4 the availability of space depending on the type of
5 collocation, as well, because there may be cageless
6 or adjacent space available, but not caged space.

7 Basically, Mr. Kunde depicted us as having
8 on-site people in these offices 24 hours a day, and
9 that's just not the case. The majority of central
10 offices are unmanned. And when they are manned,
11 they're manned by CO technicians, people that are
12 capable of performing routine central office work.
13 It's not the same employee base that would be
14 qualified to evaluate the space requirements for
15 different types of collocation.

16 GTE has to schedule the time for those
17 people to be out there and needs ten business days to
18 do that. These people have regular jobs they have to
19 perform, as well. When we get dozens of collocation
20 requests, it really throws a wrench into the works.

21 So ATT's requirement would leave GTE with
22 as little as six business days to evaluate these
23 requirements and even fewer days over holiday
24 periods. Thank you.

25 JUDGE BERG: Mr. Freedman, you have six

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1 minutes to conduct cross-examination.

2 C R O S S - E X A M I N A T I O N

3 BY MR. FREEDMAN:

4 Q. Mr. Lee, in normal commercial practice,
5 isn't it true that when people mean business days,
6 they say business days; isn't that correct?

7 A. No, I can't characterize that as being a
8 normal practice at all.

9 Q. So when GTE then writes a contract like its
10 contract with ATTI, everywhere that it says days, it
11 could mean business days; is that your testimony?

12 A. That would be, in general, GTE's practice.

13 Q. So where you're promising to complete your
14 collocation intervals in 90 days, it's your testimony
15 that GTE is interpreting that to mean 90 business
16 days; is that correct?

17 A. I think GTE's practice is to state whether
18 it's calendar or business days, and you'd have to
19 provide me with a specific example of where you're
20 quoting because the requirement for building out a
21 collocation site is 90 calendar days. That's
22 different. Once the deposits for the appropriate
23 nonrecurring charges are received, the clock starts
24 ticking.

25 Q. Your direct testimony, Mr. Lee, states that

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1 you've been in marketing and various accounting
2 functions and presumably dealing with various
3 commercial transactions in GTE for a number of years;
4 isn't that correct?

5 A. I have been in accounting and product
6 management functions, as well as regulatory, yet I
7 don't know what you mean by dealing with commercial
8 transactions.

9 Q. I guess my question is, based on your
10 experience, as stated in your direct testimony, isn't
11 it true that when people say ten days, they mean ten
12 days, and if they meant ten business days, they would
13 say business days; is that true?

14 A. I can't speak to that. That's a -- to me,
15 that's a matter of opinion, not a business practice.

16 Q. Okay. So in other words, it's your
17 testimony that when somebody in a commercial
18 transaction with GTE says ten days or when GTE says
19 ten days, it may mean ten calendar days or it may
20 mean ten business days, you just don't know; is that
21 your testimony?

22 A. I think the business practice is to seek
23 clarity with the party to whom you're agreeing to a
24 period of days.

25 Q. If somebody says ten days, without saying

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1 they're calendar or business, how would you interpret
2 that statement, calendar days or business days, Mr.
3 Lee?

4 A. I would interpret it as business days
5 absent any clarifying discussions with the other
6 party.

7 Q. And that's GTE's official policy, that
8 whenever a number of days is stated, without stating
9 business or calendar, you interpret those as business
10 days; is that correct?

11 MS. ENDEJAN: Objection. I think that
12 mischaracterizes his testimony.

13 MR. FREEDMAN: I'll withdraw the question
14 and move on. Does paragraph 55 expressly condition
15 the FCC's statement of ten days on agreement with
16 GTE's filing?

17 A. Could you ask the question again? I guess
18 I don't understand what --

19 Q. Yeah, I'll restate it.

20 A. -- what you're asking.

21 Q. Read the third sentence of paragraph 55,
22 please, that you've referred to in your testimony.
23 I'm sorry, could you read it aloud, please?

24 A. Oh, okay. We view ten days as a reasonable
25 time period within which to inform a new entrant,

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1 whether its collocation application is accepted or
2 denied.

3 Q. Now, it's your testimony that the FCC
4 clearly meant ten business days; is that correct?

5 A. No, it's my testimony that the FCC
6 attributed this ten-day policy to the position of GTE
7 and Ameritech.

8 Q. That's not my question. My question is, is
9 it your testimony that the FCC clearly meant ten
10 business days in the sentence you just read for Judge
11 Berg, yes or no?

12 MS. ENDEJAN: The letter speaks for itself.

13 MR. LEE: Yeah, the language does not
14 specify either one.

15 MR. FREEDMAN: Could the court reporter
16 restate my question, please?

17 (Record read back.)

18 MR. LEE: And my response to that is no,
19 the FCC was not clear --

20 Q. Thank you.

21 A. -- in that sentence.

22 JUDGE BERG: Mr. Freedman, please let the
23 witness finish his response --

24 MR. FREEDMAN: I apologize.

25 JUDGE BERG: -- before asking the second

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1 question. Last question, Mr. Freedman.

2 Q. How much actual time, in terms of minutes
3 or hours, is required of GTE to perform the functions
4 necessary to verify space availability and issue the
5 report that we're talking about here?

6 A. I don't have exact knowledge of that, but I
7 know that there's a lot of variables involved. The
8 availability of people to meet the travel time
9 necessary to get to the specific central office, time
10 to fill out the paperwork, route it back through the
11 account representatives for the CLEC and get it to
12 them by the required date.

13 JUDGE BERG: Thank you, counsel. We're
14 going to take a 15-minute break, till ten minutes
15 after 5:00, at which point we'll discuss time
16 limitations with regards to Issue Number One. Be off
17 the record.

18 (Recess taken.)

19 JUDGE BERG: We'll be back on the record.
20 In the interests of developing an efficient and
21 orderly record, I've requested, and the parties have
22 agreed, that with regards to Issue Number One, there
23 will be no summary of testimony by the witnesses, and
24 we'll just proceed to cross-examination by counsel.

25 There will be a time limitation on each

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1 counsel of 40 minutes to conduct cross-examination.
2 At the conclusion of all cross-examination, we'll
3 have a brief discussion as to whether or not any
4 redirect is necessary.

5 So with that, Ms. Endejan, are you prepared
6 to begin cross-examination of Mr. Kunde on the issue
7 of sharing of collocation costs associated with space
8 conditioning or do the parties feel that this is an
9 issue that's more appropriate for Mr. Lee to go
10 first?

11 MS. ENDEJAN: I'm prepared to start with
12 Mr. Kunde.

13 MR. FREEDMAN: That's fine with us.

14 JUDGE BERG: All right. Forty minutes,
15 counsel.

16 MS. ENDEJAN: Thank you.

17 C R O S S - E X A M I N A T I O N

18 BY MS. ENDEJAN:

19 Q. First of all, Mr. Kunde, let me just ask
20 you a couple of background questions, please. When
21 did you join ATTI?

22 A. In May of this year.

23 Q. All right. For the sake of time efficiency
24 here, I'm going to try to cut to the chase and tie
25 directly to questions I have about your direct and

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1 rebuttal testimony, okay.

2 I want to see if you -- if we both agree to
3 the same definition of upgrade expense. Would you
4 agree that major environmental conditioning
5 constitutes or could constitute a major upgrade
6 expense?

7 A. Yes.

8 Q. And major power plant upgrades?

9 A. Yes.

10 Q. Equipment rearrangements?

11 A. Yes.

12 Q. Major conduit and cable vault additions?

13 A. Yes.

14 Q. Okay. Now, are these the sort of upgrade
15 expenses that we are talking about for purposes of, I
16 guess, GTE's method -- let me strike that.

17 When a CLEC seeks collocation in a central
18 office, it submits an application to the ILEC;
19 correct?

20 A. That's correct.

21 Q. And in some circumstances, no upgrade
22 expense will need to be incurred, whereas in other
23 circumstances or other CO's, upgrade expenses will
24 have to be incurred; correct?

25 A. That's true.

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1 Q. Okay. Now, you testified on page one,
2 lines 25 and 26, that your current responsibilities
3 include day-to-day operations of the ATI network and
4 planning technical employment. And that's your
5 direct testimony, Exhibit T-101. You also state that
6 you're responsible for the costs incurred by ATI for
7 collocation and interconnection. Does that mean that
8 you are responsible for determining the costs that
9 would be incurred by ATI for collocation and
10 interconnection?

11 A. No, that means that I'm responsible for
12 managing those costs and making decisions based upon
13 those costs.

14 Q. Who determines the level of costs that you
15 have to manage in connection with collocation and
16 interconnection? Is that someone in your
17 organization?

18 A. No. Typically, it's the interconnection
19 agreement with GTE. So GTE would determine what
20 those cost factors and levels are based upon what our
21 volume quantity component requirements would be.

22 Q. Okay. So would it be fair to say that the
23 level of costs are driven by the number of central
24 offices where ATTI would seek collocation in
25 Washington, if you were going to try to determine the

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1 level of collocation costs for ATI for Washington?

2 A. Not necessarily. The issue, as we look at
3 things on an office-by-office basis, and we choose to
4 go into some offices and not into others based upon
5 cost factors and the costs and the quotes that we
6 would get back, based upon our collocation request.

7 Q. You have not submitted a collocation
8 request to GTE for any central office in Washington,
9 have you?

10 A. That's true.

11 Q. As you sit here today, do you know how many
12 central offices you will seek collocation in in GTE's
13 central offices in Washington State?

14 MR. FREEDMAN: Your Honor, I just have to
15 object. This is the very question you ruled on at
16 the beginning of the hearing.

17 JUDGE BERG: I think that's correct,
18 counsel.

19 MS. ENDEJAN: It is, but, Your Honor, if I
20 might -- it's a foundational question, because what
21 we're talking about here is the determination of a
22 methodology for the sharing of collocation costs.
23 The level of costs is relevant, and the level of cost
24 that they suggest they would incur is substantial.
25 That level is driven by the number of central offices

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1 where they want to collocate.

2 We have no idea what the level of ATTI's
3 collocation costs are estimated to be, because we
4 don't know how many central offices they're going to
5 be in.

6 JUDGE BERG: It doesn't matter, counsel.
7 Your methodology, whatever the approach is, is going
8 to have to work on whether it's one or a hundred. If
9 Mr. Kunde were to sit here today and tell you, We
10 only plan to collocate in one, and they turned around
11 and then requested to collocate in a hundred, they're
12 going to have the same right to do that. This isn't
13 some kind of a fact upon which to base any type of
14 methodology for the allocation of cost.

15 Allocation of cost is going to have to
16 stand or fall on some other basis, other than how
17 many offices does a party intend to collocate in. If
18 what you're looking to do is to refute the contention
19 that there's going to be substantial costs incurred,
20 then I would just say that it's one of those issues
21 where you just have to trust that I'm not going to be
22 swayed by sweeping statements of generally speaking
23 about this is going to be burdensome and oppressive.

24 If ATTI can't produce a methodology that
25 makes sense, then it's going to stand or fall on its

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1 own merits, and the same thing for GTE. And I see it
2 as just absolutely no relevancy as to how many
3 offices they want to collocate in.

4 MS. ENDEJAN: Okay.

5 JUDGE BERG: I mean, I agree that, overall,
6 it's going to -- if you make a mistake in that
7 methodology in determining how to collocate --
8 allocate costs for collocation, that the more offices
9 in which collocation is requested, you know, the
10 mistake is going to be amplified, but, you know, what
11 we're looking to do here is come up with a good
12 methodology, and it's a methodology that GTE is
13 looking to apply to a whole lot of other CLECs, other
14 than just ATTI.

15 Q. Well, perhaps, then, let me ask you
16 generally, Mr. Kunde, if -- does ATTI know -- or
17 strike that.

18 Has ATTI quantified any anticipated upgrade
19 expense in Washington that it views it would have to
20 bear for collocating in a GTE central office?

21 A. No, we haven't quantified that, because we
22 don't know what the factor is going to be,
23 specifically because of this issue. It's not
24 resolved. Our understanding is that we would have to
25 bear significant portions of upgrade costs, as

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1 testified by Mr. Lee, that could be millions of
2 dollars, and we would have a 20 or a 25 percent share
3 of that for which we may not cause any or very
4 minimal expenditures.

5 Q. Okay. You would agree that you would only
6 have to incur these upgrade expenses in certain
7 central offices, but not every central office;
8 correct? I mean, some central offices are already
9 conditioned, so you would not have to do -- GTE would
10 not have to do anything else to condition it for your
11 presence?

12 A. We don't know that for a fact.

13 Q. Have you done any investigation to
14 determine if any of the central offices you're
15 interested in are those that are already conditioned
16 or might require significant upgrades?

17 A. The conditioning is more than just whether
18 it has space available for cages. The conditioning
19 could include power plant. And until we determine
20 the exact amount of power we would require and submit
21 to a request, GTE can't determine whether or not they
22 need to upgrade a power plant in a particular office,
23 and especially when they add together all of the
24 large number of collocators that are all
25 simultaneously requesting the same thing, as we heard

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1 about before.

2 Q. So then, would it be fair to say that GTE
3 won't know what additional expense would have to be
4 incurred until it knows the requirements of the
5 collocators?

6 A. Exactly. Taken in their totality for all
7 collocators, not just ATTI.

8 Q. Okay. Now, is it your testimony that GTE
9 would delay upgrades to its plant, which may be
10 necessary for its continuing operations, and which
11 might be service-affecting?

12 A. Yes, that would be my testimony.

13 Q. Do you have any evidence to support that
14 testimony?

15 A. Yes, I do. I have personal knowledge of
16 that.

17 Q. In Washington State?

18 A. In the GTE system.

19 Q. Can you describe what you're talking about,
20 in terms of the example that you're alluding to?

21 A. Prior to joining ATTI, I was the vice
22 president of engineering for another company called
23 Citizens Communications. Citizens purchased half a
24 million access lines from GTE, so therefore, in that
25 process, I was directly responsible for all the

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1 central office upgrades and activities, power plant
2 equipment, generators of all of those half-million
3 access lines, which were well over 300 exchanges.

4 In those exchanges, I did note, because I
5 commissioned a study on those exchanges, that there
6 were significant delays, specifically in power plant
7 generators and batteries, and that the average
8 change-out rate on those was typically 30 to 40 plant
9 units per year. In the two or three years prior to
10 sale of those properties to my previous company,
11 those averaged three to five per year. So I do know
12 that GTE did, in fact, delay upgrades for power plant
13 and equipment to certain offices prior to their sale.
14 So I would have no reason to believe that GTE
15 wouldn't do the same thing in order to share the
16 costs of collocation with collocating parties.

17 Q. Was this plant that you're referring to,
18 were those located in rural exchanges?

19 A. Those were located in rural and suburban
20 exchanges.

21 Q. Are you aware of any of those -- any of
22 those exchanges in Washington State?

23 A. No, none of those exchanges were in
24 Washington State.

25 Q. Do you have any evidence that the reason

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1 GTE delayed upgrading its power plant was due to a
2 desire to make collocators absorb costs of such
3 upgrades or could it have been for other reasons why
4 GTE might not have made those upgrades?

5 A. I can't tell you why GTE didn't. I would
6 assume it's for what I'll call rational economic
7 analysis. GTE looked at those properties and knew
8 that those properties were going to be sold and
9 decided not to make capital investment in that, and
10 that's certainly a rational economic decision. Just
11 like delaying equipment or power plant or generator
12 upgrades in collocating properties or collocating
13 types of offices, those certainly can be delayed for
14 a year or two.

15 If I were a central office supervisor at
16 GTE and knew my battery plant needed to be replaced
17 in the next three or four years, I may wait until
18 collocators came along, such that I could share that
19 cost with them.

20 Q. In your experience with Citizens, isn't it
21 true that plant upgrades are basically determined
22 according to normal, say, capital budgeting
23 requirements? You sit down on an annual basis and
24 you figure out what plant you have budget for to
25 upgrade, and you then upgrade according to that

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1 budgeted plan. Would that be a fair characterization
2 of what an ILEC would do, based upon your experience
3 with Citizens?

4 A. That would be a partial characterization.
5 Additionally, service requirements and age of plant
6 and depreciation level would also go into that
7 decision.

8 Q. Okay. But at some point in the course of a
9 year, there would be an established budget, a capital
10 budget, for making plant improvements or upgrades;
11 correct?

12 A. Yes.

13 Q. And the organization that would determine
14 that plant budget or that plant upgrade budget would
15 be -- I don't know what it would be in Citizens, but
16 probably a discrete unit in the operations network
17 engineering side business?

18 A. It's typically your central office
19 engineering associated with the maintenance forces
20 that operate those central offices.

21 Q. And in Citizens' case, was this capital
22 budgeting done at a centralized level?

23 A. It was done on a bottom-up basis from the
24 field and a top-down basis on a centralized basis.

25 Q. Are you familiar with GTE's capital

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1 budgeting process?

2 A. Yes. Once again, as we acquired those half
3 a million access line from GTE, additionally we
4 acquired on the order of 1,500 to 2,000 employees who
5 had been part of the GTE system.

6 Q. In your experience in dealing with -- or
7 strike that.

8 When you worked for Citizens, did you have
9 to deal with requests for collocation from CLECs?

10 A. Yes, we did.

11 Q. Okay. Was a different part of the Citizens
12 organization devoted to processing or dealing with
13 those CLEC applications, other than the central
14 office network engineering folks?

15 A. They typically were our central office
16 engineering trained people who were put into another
17 organization who handled those requests.

18 Q. Was there any sort of process whereby the
19 Citizens engineers or capital operations folks talked
20 to the collocation folks to determine when or if a
21 collocation request would be coming along?

22 A. Yes.

23 Q. And that was for Citizens?

24 A. Yes, that was for Citizens.

25 Q. Do you know if any such process exists for

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1 GTE?

2 A. No, because at the point in time that
3 Citizens acquired those properties, it was 1993 and
4 1994. Collocation was, at that point, not a
5 prevalent activity.

6 Q. And in your experience, is it possible for
7 an ILEC like GTE to accurately forecast where and
8 when a request for collocation would come in for a
9 particular central office? Is there some way you can
10 look into a crystal ball and figure out how many
11 collocation requests are going to come in at a time?

12 A. I would say that, typically, past history,
13 or if I were speaking on behalf of GTE, would
14 certainly be able to look at what offices tend to get
15 collocation requests and assume that you would
16 continue to get more in those offices. They tend to
17 be more popular. GTE's central office collocation
18 requests do not tend to be spread evenly across all
19 of their offices. Like, they're not spread across
20 most local exchange carriers. They tend to be
21 concentrated in certain numbers of offices. And
22 therefore, past interest in collocation and past
23 numbers of request will tend to be a reasonable
24 indicator of additional collocation requests.

25 Q. Does ATTI provide forecasts of where it's

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1 going to seek collocation to ILECs?

2 A. No. However, on the collocation form, we
3 do provide all of the information that's required to
4 predict usage levels. Everything from power to HVAC
5 to space, all of the different conditioning
6 requirements are on that collocation form. And given
7 the interval required, you know, the 170 to 180 days,
8 GTE has plenty of time to react to that.

9 Q. Okay. But you don't tell GTE on, say, an
10 annual basis, that we're going to submit, you know, a
11 request to collocate at X, Y and Z central office in
12 the next 24 months, do you? You don't tell them that
13 sort of information; you just tell when you want to
14 collocate?

15 A. That's correct.

16 Q. Okay. Do you know if any other CLECs
17 provide forecasts to ILECs when they want to
18 collocate in an office?

19 A. They are our forecasts that are provided
20 once collocation is established for the additional --
21 addition of additional power or additional cabling or
22 DS1, DS3, voice frequency cable requirements. Those
23 are typically provided once collocation is initially
24 established.

25 Q. Okay. Now, when a collator (sic) comes

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1 along -- collocator, excuse me, comes along and
2 submits a request for collocation and it's determined
3 that an upgrade is required and the collocator wants
4 to be in that central office, GTE has no choice but
5 to make the upgrade; isn't that true?

6 A. Yes, that would be true.

7 Q. Now, are you an engineer by background, Mr.
8 Kunde?

9 A. I do not hold an engineering degree, but I
10 have spent 15 years working in various engineering
11 roles and as an engineer at various companies. I
12 hold a United States patent for work at a previous
13 company.

14 Q. Okay. Given that background and
15 experience, would you say that you are familiar with
16 sound engineering practices in connection with
17 planning facilities for the provision of
18 telecommunications services?

19 A. Yes.

20 Q. Okay. Now, with that background and your
21 experience, would you agree with me that it's not a
22 sound engineering practice to upgrade, for example,
23 your power requirements to deal only with the
24 incremental demand of one party requested
25 collocation. Would you agree with that statement?

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1 A. It depends on the circumstance, but
2 generally, yes, I would agree with that statement.

3 Q. So sound engineering practice would really
4 require sizing an upgrade to accommodate anticipated
5 future demands from other collocators or even the
6 same collocator; wouldn't you agree with that?

7 A. Yes.

8 Q. And such a practice really proves to be
9 more economical for all parties, doesn't it, because
10 it's cheaper to put in a bigger system once than to
11 make additional incremental changes; would you agree
12 with that?

13 A. Once again, without a specific
14 circumstance, I would say it would be dependent upon
15 the situation, but generally, that's a
16 well-established rule.

17 Q. Okay. Now, you are familiar with GTE's
18 proposed cost allocation formula?

19 A. Yes, I am.

20 Q. That formula recognizes that GTE will pay
21 some of the expense of performing the upgrade,
22 doesn't it? It bears a share?

23 A. It bears a relatively small share, yes.

24 Q. And that relatively small share is your
25 opinion; correct?

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1 A. Certainly, yes.

2 Q. Now, under ATTI's approach, you would only
3 pay for those upgrade expenses based upon the space
4 you occupy in the central office; is that your
5 approach?

6 A. For space preparation expenses, yes, but
7 for other types of measurable expenses, such as can
8 be measured with power, can be measured with heating,
9 ventilating and air conditioning, where you can
10 measure BTU and wattage dissipation factors and so
11 forth, those are all specifications that are made
12 right on the collocation application form. Those are
13 certainly very measurable, and you can also measure
14 the total capacity of either a power plant or an HVAC
15 plant, that we would have a pro-rated share of
16 percentage utilization of that particular plant and
17 not on a space allocation basis.

18 Q. Now, Mr. Kunde, under the GTE approach, the
19 amount that GTE would pay would be equal to what ATTI
20 would pay; isn't that true?

21 A. That's very true.

22 Q. Now, does ATTI have a preference in terms
23 of an approach for allocating cost? Does it prefer
24 based upon space occupied or energy units measured or
25 whatever?

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1 A. I think I just answered that question. For
2 space preparation charges, which has to do with
3 rearranging things having to do with the space, we
4 would prefer by the amount of space that we utilize.
5 But for other types of very large ICB types of costs
6 having to do with power plant, such as a generator or
7 battery plant, we would recommend that we utilize a
8 percentage of what we're asking for.

9 If we're asking for 20 amps and it's a
10 100-amp power supply, then yes, we would pay 20
11 percent of it. But if we're asking for 40 amps and
12 it's a 50,000 kilowatt generator being put in, we
13 certainly wouldn't be expecting to pay 20 to 25
14 percent of a half-million dollar generator when all
15 we want is 40 amps.

16 Q. Well, on the example which, I think,
17 appears on page three of your testimony, the 20-amp
18 example, let's focus on that example, okay. Now, in
19 that example, you're not testifying that before ATTI
20 made its request that GTE's generator was
21 insufficient to meet GTE's needs, are you?

22 A. No.

23 Q. Okay. So then ATTI comes along and
24 requests 20 amps. Now, if GTE's current generator
25 was sufficient and could provide that, GTE wouldn't

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1 need to replace it to deal with your demand; correct?

2 A. They wouldn't need to replace it now, but
3 they would need to replace it at some point in time.
4 Every generator has a finite life. It's typically in
5 the ten-year range, just like battery plant and HVAC
6 does.

7 Q. Okay. But leaving aside the question of
8 not life span, but just sheer capacity, it could
9 handle your request if it was -- you know, if its
10 current generator was sufficient at the time of the
11 collocation request, is it your testimony that GTE
12 would still replace the generator and try to ask ATTI
13 to absorb some of those costs, or would GTE try to
14 accommodate the ATTI request out of current or
15 existing generator?

16 A. I don't know what GTE would actually do,
17 because we don't have the opportunity to review any
18 of the GTE records or the GTE decisions that would be
19 made.

20 Q. You are given an opportunity to review the
21 costs before you sign any ICB to make the upgrade,
22 are you not?

23 A. That's true.

24 Q. And in the interconnection agreement, there
25 is a dispute resolution procedure, is there not, for

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1 challenging what you might perceive to be incorrect
2 or erroneous costs?

3 A. My understanding is that there is, yes.

4 Q. Okay. Now, let's assume that ATTI comes
5 along and requests 20 amps and it pushes the limit of
6 GTE's current generator's capacity. Would you agree,
7 then, that GTE would have to make an upgrade?

8 A. Yes.

9 Q. And as you sit here, you don't know when or
10 if GTE would replace that generator but for the ATTI
11 request, do you?

12 MR. FREEDMAN: Could I ask for that
13 question to be clarified, please?

14 JUDGE BERG: Counsel, it seems like you're
15 setting up a hypothetical.

16 MS. ENDEJAN: Well, I'm asking him
17 questions, Your Honor, about his hypothetical, which
18 is in his testimony. I'm trying to explore his
19 20-amp example.

20 JUDGE BERG: Okay.

21 MR. FREEDMAN: I was just requesting that
22 the question be clarified.

23 MS. ENDEJAN: Okay.

24 Q. Well, let me see if I can re-ask it, okay.
25 Bottom line is we have ATTI coming along asking for

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1 another -- asking for 20 amps. GTE says, Can't do
2 it, maxed out, have to replace the generator. Now,
3 you don't know when or if GTE would have replaced
4 that generator if it wouldn't have been for ATTI's
5 request, do you?

6 A. Exactly. That's precisely the point.

7 Q. All right. So would you agree with me that
8 ATTI's request triggered the need to replace the
9 generator to satisfy both GTE's ongoing needs and
10 your needs that are new in the CO?

11 A. Yes, it was the trigger point, but it
12 wasn't necessarily -- when it's all said and done,
13 GTE will still continue to use 80 to 90 percent of
14 the capacity of that generator.

15 Q. Well, according to your assumption, if GTE
16 occupies say, as you say, 70 percent of the floor
17 space, therefore, GTE would have to pay 70 percent of
18 the cost; is that your testimony?

19 A. No. My testimony would be that, in the
20 case of power, that GTE would pay their pro rata
21 portion of the power consumption of the generator.

22 Q. Okay. Now, but this is a cost that GTE
23 would not have had to incur but for the ATTI request;
24 isn't that true?

25 A. GTE would eventually incur that cost. It

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1 may be next year, it may be six months from now, it
2 may be five years from now.

3 Q. But it's --

4 A. The point that I'm making is that we don't
5 know when, and it very well could be in the very near
6 future and it's something that could have been
7 delayed by GTE to coincide with a collocator coming
8 into a particular office.

9 Q. Now, that last statement is your surmial,
10 is it not, Mr. Kunde? Do you have any evidence to
11 support that, in Washington State, that GTE would
12 have delayed an upgrade so that a CLEC would have to
13 bear a disproportionate share of costs?

14 A. I would not.

15 MR. FREEDMAN: Before you answer, I'm just
16 -- with all due respect, I'm just confused, because
17 your question was -- he was testifying to a
18 hypothetical. I don't understand where the question
19 is going in terms of the hypothetical. Judge Berg,
20 if you understand it, then --

21 JUDGE BERG: Well, I didn't understand it
22 to relate to a hypothetical. It was just seeking
23 whether or not this witness had any Washington-based
24 data that was relevant to the issue.

25 MS. ENDEJAN: That's correct, Your Honor.

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1 He made a surmial that GTE would -- and I don't mean
2 to mischaracterize your testimony -- that GTE would
3 delay a necessary upgrade so that it could wait until
4 a collocator was present to absorb the costs.

5 Q. And my question to you, Mr. Kunde, is
6 besides your surmial, do you have any knowledge or
7 evidence that GTE, in Washington State, has ever
8 delayed such an upgrade for the purpose of having a
9 collocator bear more of the costs?

10 A. I don't have direct evidence in Washington
11 State. I can only speak to the fact that GTE has
12 centralized engineering services in Irving, Texas,
13 that provide central office engineering services
14 throughout the country, and I can also testify to
15 what I observed with delayed central office power and
16 generator projects for other purposes in reason. So
17 I put two and two together and I come up with a
18 surmial that I don't think is grasping at straws.

19 Q. I mean, you're making a connection that
20 there is some relationship between delayed
21 investments and exchanges that GTE intended to sell,
22 and investment required to comply with environmental
23 conditioning demands in central offices, aren't you?
24 You're equating those two?

25 A. In that they're both economic analysis that

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1 GTE's central office engineering forces would
2 perform, yes, I am equating them.

3 Q. Okay. Now, would it be fair to say that in
4 most central offices where there will be the most
5 collocation requests, that will probably be in a more
6 populated, densely-populated area?

7 A. Very true, yes.

8 Q. Okay. And wouldn't those central offices
9 be subject to a lot of competitive pressures from all
10 parties utilizing the central office, ILECs, CLECs,
11 everybody?

12 MR. FREEDMAN: Can I just ask you what you
13 mean by competitive pressures in your question?

14 Q. Okay. Would you agree with me that GTE is
15 in a competitive environment at the current time,
16 particularly in connection with densely-populated
17 areas where there are other CLECs competing with them
18 for customers?

19 A. Yes.

20 Q. Okay. Now, in such a -- would you agree,
21 then, that GTE and the CLECs are in a competitive
22 environment today?

23 A. Yes.

24 Q. All right. Now, in a competitive
25 environment, would you agree with me that factors

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1 such as, you know, quality of service, ability to
2 meet customer demands, et cetera, are important
3 factors that will allow a company to attract
4 customers? Service quality is an issue?

5 A. Certainly all those things, as well as
6 cost.

7 Q. And wouldn't you agree that GTE would have
8 an incentive in its central offices to make sure that
9 its equipment could meet those customer demands,
10 particularly in competitive areas?

11 A. Yes.

12 JUDGE BERG: Ms. Endejan, you have about --

13 MS. ENDEJAN: Five minutes.

14 JUDGE BERG: Actually, seven.

15 Q. Okay. Let me ask you -- now, you
16 acknowledge that ATTI, as a CLEC, will benefit from
17 the upgrade that it asks GTE or another ILEC to
18 perform in a central office where it's collocating;
19 correct?

20 A. We would utilize the power or the HVAC that
21 we had requested.

22 Q. Okay. In fact, if ATTI did not have to
23 construct its own central office, that amounts to a
24 pretty big savings, does it not, to ATTI?

25 A. Yes, it would.

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1 Q. Now, you've talked about the financial
2 impact of the charges which GTE is trying to assess
3 for sharing of collocation -- for collocation costs.
4 Now -- and again, I don't want to beat a dead horse,
5 but I just want to clarify. You don't know if ATTI
6 will be asked to absorb staggering costs in
7 Washington from GTE, as you sit here today, do you?
8 You just don't know what that level of cost is going
9 to be?

10 A. You're right. I don't know for sure, but
11 I'm concerned about the probability that we may,
12 especially given Mr. Lee's testimony.

13 Q. Okay. In your rebuttal testimony, you say
14 that GTE is a price cap regulated company, so that
15 GTE has an incentive to avoid or postpone network
16 upgrade projects that do not directly result in
17 additional revenue or major cost savings. That's on
18 the top of page two of your rebuttal. Do you see
19 that?

20 A. Yes, I do.

21 Q. Are you aware that GTE is not price cap
22 regulated in Washington State?

23 A. My understanding is that GTE is federally
24 price cap regulated, but not on a local basis with
25 the local PSC.

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1 Q. You understand that this commission does
2 not price cap regulate GTE?

3 A. I understand that, but on a federal basis,
4 you are.

5 Q. Okay. You also have some testimony in your
6 rebuttal that deals with the issue of whether GTE
7 should absorb the costs as compliance costs under the
8 1996 act. Have you read the 1996 Telecommunications
9 Act?

10 A. As I testified earlier, no, I haven't read
11 the entire thing.

12 Q. Okay. Now, are you aware of any section in
13 the act that says that CLECs may enter a market and
14 have ILECs absorb the costs of that market entry?
15 Are you aware of any provision that allows for that
16 in the act?

17 A. No, I can't say that I could specify any
18 provision that says that specifically.

19 Q. Okay. Are you aware that -- are you aware
20 of any commission orders from the FCC that deal with
21 the issue of whether an ILEC is entitled to recover
22 the implementation costs of compliance with the
23 Federal Telecommunications Act?

24 A. I understand that the ILEC is able to
25 recover that, but not certainly over-recover those

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1 costs.

2 Q. And in your scenario, if there's only GTE
3 and ATTI in the central office that has required a
4 substantial upgrade, in fact, wouldn't GTE be bearing
5 and absorbing the majority of the costs under that
6 scenario?

7 A. GTE would be absorbing its pro-rated share
8 of what it utilizes of the particular item that was
9 installed in the office.

10 Q. But assuming a fill factor of four, the
11 most that ATTI would have to pay would be its 25
12 percent under GTE's theory; correct?

13 A. Yes.

14 Q. And GTE would pay 25 percent, correct?

15 A. Yes.

16 Q. And if there were no other collocators, GTE
17 would have to absorb effectively the remaining 50
18 percent of those costs; isn't that true?

19 A. Yes, but if there were ten other
20 collocators, GTE would over-recover to the tune of
21 two to three times the cost of the upgrade.

22 Q. Are you familiar with the economic concept
23 of a fill factor?

24 A. Yes, I am.

25 Q. Are you familiar with the fact that the

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1 Federal Communications Commission has used fill
2 factors in numerous instances for purposes of
3 determining a rate or a charge?

4 A. That's typically for things that aren't
5 measurable, unlike power and HVAC.

6 JUDGE BERG: Two minutes.

7 MS. ENDEJAN: That's it. Okay. Thank you,
8 Mr. Kunde. Perhaps maybe I may have two minutes at
9 the end, if I think of anything?

10 JUDGE BERG: I think both counsel may want
11 that opportunity. Mr. Freedman, would you like to
12 proceed?

13 C R O S S - E X A M I N A T I O N

14 BY MR. FREEDMAN:

15 Q. Mr. Lee, for all of my questions, if you
16 could have GTE's proposed language in front of you,
17 many, if not all, of my questions will relate to your
18 proposed fill factor formula. I would suggest the
19 language that was submitted to the Arbitrator would
20 be one appropriate document, if your counsel has that
21 handy.

22 If you could just give me a signal when you
23 have that language available, I would appreciate it.

24 A. I have it here.

25 Q. Great. Mr. Lee, even for GTE's existing

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1 use, its own use of wire centers, I assume it's
2 correct that regular maintenance and equipment
3 upgrades would be required in the ordinary course of
4 business; isn't that true?

5 A. Yes, I presume that to be the case.

6 Q. And as I understand it, you said in your
7 testimony that GTE's engineers -- well, let me
8 actually quote you. Quote, GTE's engineers developed
9 GTE-driven schedules for plant upgrades, close quote.
10 Isn't that true?

11 A. Yes, that's correct. They do have input
12 into that.

13 Q. Of course, it's prudent to undergo
14 regulatory maintenance; isn't that true? I'm sorry,
15 I said regulatory. Let me repeat that. It's prudent
16 to undergo regular maintenance; isn't that true?

17 A. Yes, GTE has an obligation, being a
18 regulated company, to maintain the quality of service
19 to its end user customers.

20 Q. Equipment breaks down; isn't that correct?

21 A. Yes.

22 Q. Equipment wears out; isn't that correct?

23 A. Yes.

24 Q. GTE's own changes in the wire center
25 demands and technology may impose new and additional

00095

1 requirements on that equipment; isn't that correct?

2 A. That's possible, yes.

3 Q. In short, GTE has some kind of plan for
4 scheduled maintenance on its wire centers; isn't that
5 true?

6 A. I would presume there is such a plan. I'm
7 not intimately familiar with it.

8 Q. And wouldn't GTE's records reflect the
9 actual maintenance and upgrades historically done on
10 its wire centers, to keep track of that stuff?

11 A. I cannot testify to the level of detail in
12 the records on the maintenance or when and how plant
13 has been changed out. I'm not an engineer.

14 Q. I understand. But is it your belief, in
15 fact, that you think your company does keep track of
16 the number and extent of expenditures for maintenance
17 and upgrades on its wire center facilities?

18 A. It's my belief that there would be some
19 sort of tracking. Reasonable assumption.

20 Q. Okay. Looking now at GTE's proposed
21 algorithm or formula to be submitted to the
22 Arbitrator in front of you, how does GTE's proposed
23 formula take into account upgrades that would
24 otherwise be required, in any event, to support GTE's
25 own current needs?

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1 A. I guess I'm confused. The formula itself
2 is not intended to determine what GTE's needs are for
3 upgrades, you know. That is based on engineering and
4 network planning review of, again, what's out there
5 in the office and anticipated growth and other
6 knowledge of the equipment and when it needs to be
7 changed out.

8 Q. Well, the answer is the formula doesn't
9 make any provision, does it, for example, as to
10 whether a GTE planned upgrade would have been
11 necessary anyway at the same time that GTE asserts a
12 collocator's request necessitates an upgrade, does
13 it?

14 MS. ENDEJAN: Wait a minute. I didn't
15 follow that question. I'm sorry. Could you rephrase
16 it?

17 MR. FREEDMAN: Yes.

18 Q. What would happen if a collocation request
19 purportedly necessitated an upgrade of the same
20 nature and at the same time that GTE otherwise would
21 have been required to make anyway, okay? How does
22 your formula take that into account in assessing that
23 cost on CLECs versus GTE?

24 MS. ENDEJAN: Can I ask a point of
25 clarification, because I'm confused. You used the

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1 term upgrade versus maintenance. I'm not certain you
2 have established that they're the same thing.

3 JUDGE BERG: Objection overruled. The
4 witness can answer it, if he can. If the witness is
5 confused, then I'll let Mr. Freedman take another
6 stab at it, but I think I understand the question.

7 MR. LEE: I think, again, the formula has
8 nothing to do with the timing of the upgrade, but if
9 GTE had planned an upgrade at the same time it
10 received this collocation request, it would go ahead
11 with the upgrade and the collocator would not be
12 charged.

13 Q. How does your formula provide that
14 guarantee? Show me in your proposed contract
15 language where I can be assured that that will be the
16 result, and please feel free to direct the Arbitrator
17 and me to any language in your formula that shows
18 that.

19 A. I haven't reviewed the contract language in
20 that area.

21 Q. I'm talking about the formula that's right
22 before you. Show me where that formula provides that
23 level of protection.

24 A. The intent of the formula is to provide a
25 methodology to share costs once an upgrade

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1 determination has been made. It's not the purpose of
2 the formula to determine that, in fact, an upgrade is
3 necessary.

4 Q. So your formula doesn't really address that
5 issue or provide any protection along those lines at
6 all, does it?

7 A. I don't know how a formula could ever
8 determine what essentially takes human input to
9 evaluate a central office in terms of upgrade
10 requirements.

11 Q. All right. And you say -- thank you. Now,
12 you say that some of these upgrades could be millions
13 of dollars; isn't that correct?

14 A. Yes, that's correct.

15 Q. And let's just use a simple example. Let's
16 take a one million dollar upgrade, assume with me
17 that the upgrade costs one million bucks, okay, and
18 assume that there are four collocators. Do you
19 understand my example so far?

20 A. Okay.

21 Q. Now, also assume that that upgrade would
22 have been required under GTE's normal schedule for
23 upgrading, okay?

24 A. Okay.

25 Q. Now, under the application under the

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1 formula that is before you, that you're looking at,
2 your proposed language, wouldn't 80 percent of that
3 cost, or \$800,000, be borne by CLECs? Just under the
4 formula you've submitted to the Arbitrator?

5 A. No, the -- that assumes a fill factor of
6 five, is that what you're --

7 Q. Yes.

8 A. Okay. Again, that's not the
9 Washington-specific fill factor we're talking about
10 here. Also, collocators that were already in the
11 office and already had existing collocation
12 arrangements do not bear any of the cost of upgrade
13 costs by an incremental collocator coming into the
14 office.

15 So if you have in your example four
16 collocators, but three of them have had existing
17 arrangements in the office already, we're not going
18 to retroactively charge them for conditioning
19 requirements that they didn't have when they first
20 collocated in the office. So in that example, if the
21 upgrade was triggered by the fourth CLEC coming in,
22 essentially GTE would only recover 20 percent of the
23 cost of that upgrade.

24 Q. And how does your formula provide for that
25 result, the formula you've submitted before the

00100

1 Arbitrator today? Show me where in that formula it
2 would provide for that result?

3 A. Again, the formula is just a simple
4 formula. That's what you're talking about, is how
5 GTE would apply the formula. That should be in the
6 contract language. I don't know that it is in this
7 example here.

8 Q. I would submit to you that it's not, but
9 rather than do an exhaustive search of the contract,
10 even in the example you just gave, the way you are
11 saying you would assume it would be applied, that
12 collocater -- you're saying that it would be charged
13 \$200,000. Based on GTE's interpretation of the
14 formula, it would be \$200,000 that the CLEC would be
15 paying for an upgrade, by definition, that would
16 otherwise have been required by GTE anyway for its
17 own purposes?

18 A. Oh, no, you did not say this was for GTE's
19 own purposes. That was not assuming that.

20 Q. Okay. But the upgrade occurs at the same
21 time that GTE needs it anyway, for its own use. Are
22 you telling me your formula provides any protection
23 that the cost of those upgrades otherwise retired by
24 GTE anyway could not be imposed on CLECs? Where in
25 your formula does it provide for that?

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1 A. Again, the specific formula does not
2 provide for that. That's the policy and how GTE
3 would apply the formula.

4 Q. Thank you. Now, doesn't GTE seek to
5 reserve space in wire centers for its own future use?

6 A. Yes, GTE, as a matter of course, does
7 reserve space and has the right to reserve space for
8 its own use.

9 Q. You have various provisions in your
10 collocation contract which seek that; isn't that
11 true?

12 A. Again, I'm not intimately familiar with the
13 collocation contract, but I assume there are
14 provisions in there for that.

15 Q. And that reservation of space for future
16 use presumably takes into account GTE's anticipated
17 future needs in a wire center; correct?

18 A. That's correct.

19 Q. Now, how does GTE's proposed formula take
20 into account upgrades that would be required in any
21 event, even if there were no collocators to support
22 GTE's own future expansion needs?

23 A. The question is irrelevant. That's not the
24 intent of the formula, is to determine upgrade needs.
25 It's the intent of the formula to allocate the costs

00102

1 in a fair and equitable manner once you determine
2 there is an upgrade requirement that's induced by a
3 CLEC collocation request.

4 Q. Well, if you are reserving the right, based
5 on your forecasted future growth for additional space
6 in that wire center, and if there was an upgrade that
7 you would have had to do anyway for that future
8 expansion, how do I know, as a CLEC, whether you're
9 saying my request triggers that requirement for an
10 upgrade would not have been required by you anyway,
11 for your own future expansion in that wire center?
12 How does your formula address that situation?

13 A. Again, the formula is a formula. It can't
14 address situations. You know, language in the
15 contract has to address those additional situations.
16 I guess I don't understand your point in continuing
17 to insist that a formula would ever require
18 provisions that are contract language.

19 Q. That is precisely my point, Mr. Lee. There
20 is no language, and I will state that very
21 emphatically, zero language anywhere in that contract
22 and nowhere in your proposed formula that protects
23 CLECs in either of these circumstances; isn't that
24 true?

25 A. Again, subject to check, I'll agree with

00103

1 you, but I'm not aware of that.

2 Q. Thank you. You talk about the fill
3 factoring concept as an accepted regulatory tool;
4 isn't that correct?

5 A. Yes.

6 Q. And you define it on page four, line three
7 of your direct testimony as, quote, average usage
8 level over the life of the investment, close quote;
9 isn't that true?

10 A. Yes.

11 Q. And then you say the quote, usage factor,
12 close quote is used to calculate a price that will
13 recover the total cost of an investment; is that
14 correct? Referring you to direct, page four, line
15 four.

16 A. Yes.

17 Q. Well, what does the term usage mean?

18 A. The usage we're referring to in the context
19 of collocation would be the number of collocators
20 occupying space in GTE's central offices on average.

21 Q. Well, why couldn't usage mean the actual
22 usage of the upgrades, which you're saying are
23 necessitated by the collocators?

24 A. Well, it doesn't mean that in this context.
25 The average usage here has to be the number of

00104

1 parties by which the costs should be shared to make
2 it fair and equitable. Because, again, the relative
3 usage level for things like power or whatever in Mr.
4 Kunde's examples have very little to do with the
5 actual level of expenditures required for these types
6 of projects.

7 Q. I assume it's fair to say that, as a large
8 telecommunications carrier, GTE keeps, in the
9 ordinary course of its business, records of its wire
10 center expenditures; is that correct?

11 A. Yes, I think you asked that earlier.

12 Q. And someone could presumably review those
13 records and determine what has been required to be
14 spent historically on upgrades; isn't that true?

15 A. I would presume that is the case.

16 Q. And you said in your direct testimony that
17 GTE has, quote, actual experience with collocation
18 from completed, pending, and forecasted applications,
19 close quote; isn't that correct?

20 A. Yes, that's correct.

21 Q. Well, wouldn't that experience provide a
22 good gauge for a more precise measurement formula for
23 usage?

24 A. Actually, that information provides the
25 exact gauge for usage that we use.

00105

1 Q. Well, gosh, if you have all this experience
2 with completed, pending, and forecasted applications,
3 don't you have a good sense of exactly how much of
4 those central office upgrades and requirements the
5 collocators are actually using, or certainly that
6 GTE, in its lengthy historical experience, has
7 required?

8 A. Again, the level of usage of those upgrades
9 has little to do with, you know, the amount of cost
10 that GTE is required to incur to build those
11 upgrades, and it's all the parties that are
12 collocating or pending collocating or, in the short
13 term, forecast to be collocating who will benefit
14 equally from having that upgrade done to the central
15 office.

16 Q. Well, gosh, why couldn't -- even if we
17 liked your fill factor idea, why couldn't you make
18 that kind of fill factor approach based on usage, the
19 actual usage of the equipment based on historical
20 experience, rather than based on the absolute number
21 of collocators, as GTE has advocated in its proposal?

22 A. Well, let's cite your example in Mr.
23 Kunde's testimony with the power. Under your
24 proposed application of usage, based on the usage of
25 power, GTE would be required to pay the majority of

00106

1 that power upgrade, which is inequitable and
2 basically is requiring GTE to finance ATTI's entry
3 into the competitive market.

4 Q. So I take it that you would object to the
5 application of the fill factor based on usage because
6 you just don't think it's fair; is that a fair
7 statement of your testimony?

8 A. As you defined usage, that's correct. As
9 we define usage, usage is the number of competitors,
10 including GTE, who benefit overall from the cost of
11 the upgrade.

12 Q. You said in your testimony that it was not
13 practical to accurately predict the number of
14 collocators that will occupy a particular central
15 office. Do you recall saying that?

16 A. Yes.

17 Q. And therefore, you say you need to use a
18 statewide average; is that correct?

19 A. Yes.

20 Q. Well, why isn't it practical to predict the
21 number of collocators that will occupy a particular
22 central office?

23 A. A perfect example was raised earlier when
24 the question was raised, does ATTI provide forecasts
25 of where and when it plans to collocate to ILECs, and

00107

1 ATTI doesn't. That's very typical in the CLEC
2 industry.

3 GTE continually has requested forecasting
4 information from CLECs to try to make plans for its
5 central offices, but voluntarily getting that
6 information from CLECs has become problematic. They
7 aren't willing to provide it in most cases.

8 Q. Couldn't GTE, for example, forecast that
9 offices in densely-populated urban areas would
10 receive more demand for collocation than offices in
11 less densely-populated rural areas?

12 A. Well, it's fair to make that assumption,
13 but the level and amount of collocation is a shot in
14 the dark. We would have to know the business plans
15 of all the CLECs operating in the state in order to
16 determine that.

17 Q. Well, I assume it's fair to say that not
18 all offices will, in fact, be equal in terms of the
19 actual demand for collocation; isn't that true?

20 A. Yes, that's fair to assume that.

21 Q. So if a CLEC like ATTI -- actually, let me
22 restate that. What would happen in a particular
23 office if the actual number of collocators exceeds
24 the number generated by the fill factor, your
25 statewide average?

00108

1 A. Again, the statewide -- in those cases, if
2 those were all incremental collocators and not
3 existing collocators -- again, because existing
4 collocators would not be retroactively charged for
5 upgrade requirements based on a requirement that was
6 triggered by a new collocator, so it would only be
7 those going forward from the time of the request. So
8 I guess you'd have to clarify your example a little
9 bit to allow me to tell you how it would be applied.

10 Q. All right. Suppose, for purposes of this
11 example, that the fill factor estimate was four,
12 okay, four collocators. Suppose you actually have
13 ten collocators in the office, all right?

14 A. Existing or --

15 Q. Well, let me go to this existing versus new
16 concept, and again, referring you to the document in
17 front of you, GTE's proposed language, show me where
18 that language differentiates existing versus new or
19 incremental collocators?

20 A. Well, I don't think it's there, or you
21 wouldn't ask me that question.

22 Q. Well --

23 JUDGE BERG: I'll just say again, for
24 parties' benefits, it is important that we make good
25 use of our time to ascertain what the positions of

00109

1 the parties are. I've stated that I will be looking
2 to the proposed language of the parties for, you
3 know, for some guidance, but I'm not going to be
4 actually choosing between proposed language.

5 And as I think is apparent from Mr. Lee's
6 testimony on this point, the proposed language on
7 this issue doesn't seem to address all of the aspects
8 of GTE's position, so it's important to, I think,
9 bring out those areas of weaknesses in the proposed
10 language, and, as I did in the US West case, I will
11 allow parties to revise their proposed language along
12 with their opening post-hearing briefs to, again,
13 give me some further guidance, but I understand that
14 the positions of the parties may be broader than the
15 language proposed.

16 MR. FREEDMAN: I'm ready to move on to a
17 different set of questions, Judge Berg.

18 JUDGE BERG: Okay, good.

19 Q. I want to now talk about the initial
20 determination of when an upgrade is necessary as a
21 result, as you said, triggered by a CLEC. Under the
22 GTE proposal, is there any opportunity for input in
23 that determination, that initial determination, of
24 whether or not an upgrade is required by the CLEC?

25 A. No, there's not. Other than the CLEC's

00110

1 input as to the form and type of collocation that
2 they're requesting and the type of equipment that
3 they're putting in there, that would assist GTE in
4 determining whether an upgrade was necessary.

5 Q. But ultimately, it's GTE's call; isn't that
6 true?

7 A. Yes.

8 Q. And there's no opportunity for input from
9 the state commission; isn't that true?

10 A. I would presume that, through some sort of
11 dispute resolution process, if there was a
12 disagreement, that the state commission could be
13 involved.

14 Q. Well, is there any requirement in the
15 proposal GTE is advocating for the provision of
16 information to the CLEC, information upon which the
17 determination of the nature and extent of the upgrade
18 is based?

19 A. I'm not aware of the level of detail that
20 would be provided to the CLEC.

21 Q. Well, does your proposal, as it's stated
22 for contract purposes, have any mechanism for the
23 provision of information to the CLEC about how and
24 why a particular upgrade was selected?

25 A. Generally, it's the what and how much

00111

1 that's provided to the CLEC, and then the -- again,
2 the CLEC has the right to approve or disapprove those
3 charges prior to the beginning of any work being
4 done.

5 Q. And if they disapprove, presumably the
6 result to the CLEC is can't collocate; right?

7 A. Yes, it would be infeasible to collocate.

8 Q. Thank you. How can a CLEC reasonably
9 forecast its anticipated collocation costs under
10 GTE's proposal?

11 A. GTE provides a price list with various
12 charges for collocation. It's the extraordinary
13 costs that we're talking about in this case that
14 can't be forecasted, because that is all dependent on
15 when and where a CLEC is going to collocate.

16 Q. And it's true there's no way a CLEC can
17 have any idea of what its costs are going to be for
18 collocation under GTE's proposal for imposing these
19 extraordinary costs; isn't that true?

20 A. That's correct.

21 Q. Thank you.

22 A. GTE has no way of knowing what those costs
23 are, either, until it receives the request from the
24 CLEC.

25 Q. And I think you said in your testimony, did

00112

1 you not, that extraordinary costs are not included in
2 any of the standard rate elements for collocation and
3 therefore must be charged as an ICB; isn't that
4 correct?

5 A. That's correct.

6 MR. FREEDMAN: Bear with me for one moment,
7 Judge Berg.

8 JUDGE BERG: I had started the ATTI clock
9 ticking at six o'clock.

10 Q. Okay. Mr. Lee, I want to go back to this
11 concept of existing collocators versus new
12 collocators under the GTE formula.

13 A. Yes.

14 Q. And maybe I should go to my example. Let
15 me use a hypothetical with the following factors:
16 Fill factor of four, okay?

17 A. Okay.

18 Q. Or assuming four collocators, plus GTE, it
19 would be a total of five. And assume a one million
20 dollar upgrade. There are nine collocators -- I'm
21 sorry, eight collocators already in the office, all
22 right. They're merrily collocating away. And we now
23 have a ninth collocator that comes in and, on their
24 application, makes a request which GTE determines
25 triggers a one million dollar upgrade for that

00113

1 office. Follow me so far?
2 A. I think so.
3 Q. Okay. Under the GTE formula, what's the
4 result? Who pays what?
5 A. Again, a fill factor of five, you said;
6 right?
7 Q. Correct.
8 A. And a one million expenditure?
9 Q. Correct.
10 A. The CLEC that triggered the request would
11 pay their fair share based on the fill factor or 20
12 percent or 200,000, in this case, right.
13 Q. Okay.
14 A. Okay. GTE would not be able to charge any
15 of the remaining expenditure to any of the existing
16 collocators and would have to absorb the remaining
17 cost itself if no additional collocators came into
18 that office.
19 Q. So the net result is CLEC Nine pays
20 \$200,000, CLECs One through Eight pay zero, and GTE
21 would pay \$800,000; is that correct?
22 A. Yes, that's correct.
23 Q. All right. Now, Collocator Number Ten
24 wanders along and comes into the office. And let me
25 assume, firstly, that they, by themselves, require

00114

1 nothing that in and of itself would trigger an
2 upgrade. Do they pay any part of this million bucks?
3 Do they get hit with it?

4 A. Yes, they would pay 200,000 because, as a
5 collocator coming in after the fact, they would have
6 benefited from the fact that GTE did an upgrade
7 necessary to provide them capacity and conditioned
8 space, for instance.

9 Q. So if ATTI has the misfortune in that
10 example of being Collocator Number Ten, they're
11 walking into a \$200,000 liability for something that
12 they didn't cause, based on your testimony; isn't
13 that correct? You can let the witness answer.

14 A. Could you repeat the question?

15 Q. Actually, I'll withdraw the question. I
16 think your prior testimony spoke for itself. Let me
17 restate a different question. Let's suppose this
18 happens to be a very popular central office, and time
19 marches on and now Collocator Number Twenty wanders
20 along, okay.

21 Question: Same example, million dollar
22 upgrade, there were eight collocators in the office
23 at the time that the upgrade was done and you hit
24 Collocator Number Nine with the \$200,000 bill and
25 presumably Collocator Number Ten with a \$200,000

00115

1 bill. Is Collocator Number Twenty going to receive a
2 \$200,000 bill for coming into that office?

3 A. If no -- if GTE had planned for that many
4 additional collocators in putting in their upgrade in
5 the first place, in other words, that was part of the
6 capacity of the upgrade, and no additional upgrades
7 had been triggered between Ten and Twenty, yes, they
8 would pay 200,000 based on the formula.

9 And in contrast, you know, you have some
10 offices that are under-located where GTE would not
11 recover all of its costs in that case. The purpose
12 of the formula is to average out cost recovery across
13 all offices where collocation opportunities are
14 happening so that eventually you achieve full cost
15 recovery in total.

16 Q. I want to address a last question or two
17 regarding testimony on evidence of delays of
18 upgrades. There was a question earlier relating to
19 any Washington-specific evidence on delays of
20 upgrades. Do you recall that discussion?

21 A. Yes, I remember the questions.

22 Q. Are GTE's capital expenditure policies and
23 decisions made independently in each state?

24 A. They're made on a centralized basis through
25 headquarters personnel. The amount of capital

00116

1 dollars allocated to each state certainly varies
2 state-by-state. So we work with a limited capital
3 budget, you know, and that's allocated down to a
4 state level and funding for specific projects is
5 determined by need and priority.

6 Q. And of course, as I understand it, your
7 office is in Texas; is that correct?

8 A. Yes.

9 Q. But you're representing GTE's policies in
10 Washington; is that correct?

11 A. Yes.

12 MR. FREEDMAN: No further questions, Judge
13 Berg.

14 E X A M I N A T I O N

15 BY JUDGE BERG:

16 Q. Mr. Lee, coming back to this most recent
17 hypothetical with the fill factor of five and, again,
18 I understand that a one million upgrade is kind of
19 high end, but let's stick with that just for the sake
20 of discussion.

21 My concern at this point is I don't see a
22 rational relationship between the fill factor and the
23 cost of the upgrade or at least the ability of the
24 upgrade to service any particular number of CLECs.
25 Let's say that, again, throwing in another factor.

00117

1 And I say that so you kind of know where I'm going.

2 Let's say that prudent engineering
3 practices is that an incumbent have a ten percent
4 reserve on the energy side, whether it be generation
5 or battery, I'll just generically call it energy. So
6 that ten percent, as a result of those -- but GTE has
7 been willing to dip into that reserve to fill the
8 demands of collocating parties up to the point of
9 exhaust. So we've had maybe eight collocators come
10 to GTE, space existed, there was an allocation of
11 space with other costs imposed, necessary costs
12 imposed for conditioning space to meet those needs,
13 and GTE's been standing back watching its reserve
14 dwindle to the point that now a subsequent request
15 pushes GTE over the edge, and maybe it's not
16 necessarily exhaust to the point where this would be
17 a necessary upgrade, but it's an exhaust to the point
18 that in order to maintain that buffer, that reserve,
19 GTE's got to make an upgrade.

20 GTE makes that one mill upgrade to preserve
21 its reserve, but at the same time, if that one
22 million dollar upgrade is sufficient to meet the
23 average demands, the average energy demands of ten
24 collocating parties, then it seems that after that
25 fill factor of five, every potential collocator

00118

1 represents a profit center for GTE, that a collocator
2 -- and we'll just -- you know, ignoring the initial
3 collocating parties, post-upgrade, Collocators One
4 through Four, at \$200,000 apiece, basically makes up
5 the outside contribution. There may be a \$200,000
6 contribution for GTE to maintain its reserve for its
7 own specific needs, but as soon as number five comes
8 along and that one million dollar upgrade has the
9 capacity to service more than the fill factor, that
10 Number Five collocator represents a profit center of
11 \$200,000?

12 A. Yes. I guess, first of all, I don't know,
13 based on engineering practices and the most efficient
14 outlay, whether that outlay of a million would be
15 sufficient to serve the fifth subsequent collocator
16 or not, but the concept of the fill factor is not to
17 accurately recover to the penny every dollar expended
18 on every project.

19 The concept of the fill factor and how it's
20 used in regulatory rates is that it's averaged across
21 all rates, all customers, you know, all projects, so
22 that, in total, it would allow us to recover the
23 costs that we should, because there's going to be a
24 fair share of projects where we don't get enough
25 collocators to allow us to recover all of our cost.

00119

1 And by use of looking at our existing collocation
2 arrangements, both completed and impending, in
3 offices where we have collocation, it gives us an
4 idea of, I guess, what to expect on average, you
5 know, going forward, you know, what we're going to
6 experience in collocation. And applying that average
7 to the incremental cost allows us to recover it on
8 average, again.

9 If you looked at each individual project,
10 there's going to be over and under-recovery, but
11 that's attendant with the use of an average fill
12 factor.

13 JUDGE BERG: I understand.

14 MR. LEE: Yeah.

15 JUDGE BERG: I know that Ms. Roth has some
16 questions and I would anticipate Mr. Griffith has
17 questions, as well. I'll let Mr. Griffith proceed,
18 and then I think we'll have some opportunity for
19 brief follow-up by the parties.

20 E X A M I N A T I O N

21 BY MR. GRIFFITH:

22 Q. Mr. Lee.

23 A. Yes.

24 Q. As long as we're on the subject of fill
25 factors, and this may be a question of semantics, but

00120

1 it's just the way that it's written here in this
2 Issue Number One, description of the formula. And it
3 says, State ICB fill factor, and it's my
4 understanding that this is a single factor spread
5 across the entire state, even though ICB stands for
6 individual case basis, which would imply that it
7 might be different for each office. So I want to
8 make sure that there's only one fill factor; is that
9 correct?

10 A. There is one fill factor per state. The
11 words ICB refer to the cost, the total cost of the
12 project.

13 Q. Okay.

14 A. The fill factor is standard and it would
15 stay fixed per state average.

16 Q. Then my other question regarding the fill
17 factor is is that fill factor developed from all of
18 the GTE offices in the state?

19 A. Yes.

20 Q. Does that include the offices that have no
21 CLECs in them?

22 A. We developed the average based on the
23 offices that had collocation or pending collocation
24 in them.

25 Q. Okay. And another question kind of has to

00121

1 do with wording. And I see the term collocation
2 space preparation charges, and I see another term
3 that says ICB charge. Are those two terms different,
4 and if they are, what is your understanding of the
5 difference between them?

6 A. I think we're talking generally the same
7 thing. When we talk about space preparation, though,
8 there are some costs that there are existing monthly
9 recurring and nonrecurring charges for already. The
10 ICB case refers to space preparation costs that are
11 extraordinary, that are out of the ordinary realm of
12 the services, the collocation services that would be
13 provided. So these are unusual and extraordinary
14 expenditures.

15 Q. So the extraordinary expenditures are the
16 ones that the state ICB fill factor is applied to?

17 A. Yes, only those.

18 Q. And the ones that are just normal are
19 recovered through another mechanism?

20 A. Yes, although some of those rate levels may
21 have been determined using those fill factors, as
22 well.

23 MR. GRIFFITH: Go ahead, Jing.

24 MS. ROTH: Okay. I'll give you a break. I
25 will have a couple questions for you.

00122

1 MR. LEE: Thank you.

2 MS. ROTH: Then I'll come back to you.

3 Take a deep breath. Strike that, by the way.

4 E X A M I N A T I O N

5 BY MS. ROTH:

6 Q. Mr. Kunde?

7 A. Kunde.

8 Q. Yeah, Kunde. Does ATTI currently collocate
9 in any of GTE's central offices in the country?

10 A. No, not at this point in time.

11 Q. Not a single one in the country?

12 A. (Nodding head.)

13 Q. Are you familiar with this Commission's
14 generic cost and pricing docket, usually referred to
15 as UT-960369?

16 A. No, I'm not.

17 Q. Then I can't really ask you some questions.

18 But I would advise that your counsel go ahead and
19 read the 17th Supplemental Order, refer to paragraph
20 284, and also paragraph 302. The Commission has set
21 some interim prices for GTE for collocation. And the
22 Commission intends to, in Phase III of that docket,
23 to address the new, revised, updated GTE collocation
24 cost study that is coming up before the Commission.
25 So I'd advise you to read the entire -- not the two

00123

1 paragraphs, but the entire section of how the
2 Commission ruled on GTE collocation prices on the
3 interim basis. That's all for you.

4 A. Can I ask a question?

5 Q. Sure.

6 A. Does it specifically address the ICB
7 factors?

8 Q. That's the question I'm going to ask Mr.
9 Lee. I don't think so, but it does specifically
10 address the HA --

11 A. HVAC?

12 Q. HVAC.

13 A. Typically, HVAC and power, all those things
14 are normal costing elements in any collocation cost
15 docket.

16 MS. ROTH: So I suggest you go read that
17 and you see what the Commission has ruled out on some
18 of the factors before you prepare your final brief.

19 E X A M I N A T I O N

20 BY MS. ROTH:

21 Q. Mr. Lee?

22 A. Yes.

23 Q. You're familiar with 960369, aren't you?

24 A. Yes, I am.

25 Q. Is it GTE's intention that this particular

00124

1 fill factor we're talking about here is what GTE's
2 going to file with the Commission in Phase III of
3 that docket?

4 A. I am not the witness in that proceeding,
5 but I would gather that we would include that in
6 testimony and the backup exhibits as the policy of
7 how we would seek to recover, you know, ICB or
8 extraordinary costs.

9 Q. So I am correct, am I, that the Commission
10 has never considered this particular factor you're
11 proposing here today?

12 A. Yes, that's correct.

13 Q. Now, go back to the formula you have. I
14 have this letter dated to Judge Berg October 22nd,
15 1999, the one that Dave Griffith was referring to.
16 Everyone in the room seems to understand how you
17 developed the state ICB fill factor, but I'm lost. I
18 go through your testimony, I went through the entire
19 record, and I am asking you for some backup
20 information on how exactly that fill factor was
21 developed?

22 A. Okay.

23 MS. ROTH: So do you want me, specific to
24 -- Judge Berg, can we ask for that as a bench
25 request?

00125

1 JUDGE BERG: Counsel, would this be the
2 type of inquiry that could be better satisfied
3 through a bench request than the testimony of the
4 witness?

5 MR. LEE: Let me respond to that.

6 JUDGE BERG: All right, good. And then
7 I'll consult with you, Ms. Roth, about whether a
8 further bench request is necessary.

9 MR. LEE: Okay. The way it was developed
10 is we looked at existing number of collocators as
11 well as the pending number of collocators, okay, to
12 get a total experience in collocation in the state,
13 okay. And then we looked at the number of offices
14 that were being collocated in, okay, for all of those
15 collocators I just mentioned.

16 And it's simple division. You divide the
17 number of offices into the total number of
18 collocators, come up with an average, which is
19 rounded to the nearest whole number. We then added
20 an additional collocator to represent GTE to increase
21 the fill factor by one.

22 Now, if you need an additional level of
23 detail, like, well, which offices exactly are you
24 talking about, which collocators in which offices,
25 that would better be handled by a request, and we

00126

1 could provide that level of detail. If you just want
2 the number, I'll tell you the number of collocators
3 and the number of offices and how that --

4 Q. Are those numbers, those numbers you just
5 described, the existing collocators, the pending
6 collocators, the number of offices, is that
7 Washington-specific --

8 A. Yes, it is.

9 Q. -- information?

10 A. Yes.

11 Q. Then, on the pending collocators, I do want
12 a level of detail, because you have to do some
13 forecasting -- forecast out how many collocators are
14 pending or how many collocators are coming in the
15 door, you know, making a request, in what -- in next
16 year or, you know.

17 A. We can't forecast that information. So
18 when I say pending, that means they've submitted
19 their application already, but the project is in
20 process. In other words, the collocation cage hasn't
21 been completed yet and turned over to the CLEC. So
22 when I say pending, it's not a forecast of what we
23 think's going to come in, because we have no way to
24 know that. The CLECs don't provide us that
25 information.

00127

1 Q. So ATTI, in your calculation, is a pending
2 collocator?

3 A. No, they have not even submitted one
4 request to us for collocation yet.

5 JUDGE BERG: Let me just jump in. Mr. Lee,
6 that population of existing and pending collocators,
7 does that include requests for caged, cageless, and
8 virtual collocation?

9 MR. LEE: I believe it's all forms of
10 collocation, yes.

11 JUDGE BERG: All right.

12 Q. A follow-up on that that Dave just pointed
13 out to me. I know I got that forecasting from
14 something. On the bottom page of that formula we're
15 reading, the letter dated October 22nd, 1999, the
16 state ICB fill factor, it states, from GTE, will
17 equal the average number of collocators based on
18 completed, pending, and forecasted applications plus
19 GTE's share. Did you see that?

20 A. Yes.

21 Q. So is their forecast in the formula or --

22 A. There is no forecast in the formula.

23 Again, in this case, forecast is included in this
24 wording. We have forecasts available because there
25 are some CLECs who will provide forecasted

00128

1 information, okay. Generally, they don't, but in
2 this particular calculation, there is no forecast for
3 Washington-specific.

4 Q. So what is the fill factor for Washington?

5 A. It's four. Three on average collocators
6 per collocated office, plus one for GTE.

7 Q. Could you -- I still want some detailed
8 information to see how you come out with that three
9 and four.

10 JUDGE BERG: All right. We'll make a bench
11 request, it will be Bench Request Number One, and it
12 will be for just the raw statistical information of
13 how many different offices constitute the population.
14 And for each office, how many collocators are
15 associated on a per-office basis.

16 I don't believe it's necessary for GTE to
17 actually identify the location of the office itself,
18 but we would be looking to see what the sampling
19 range is. Is that adequate, Ms. Roth?

20 MS. ROTH: That's better than I stated.

21 JUDGE BERG: All right.

22 MS. ENDEJAN: Judge Berg, would we also be
23 able to just indicate a number of collocators, but
24 not necessarily identify them?

25 JUDGE BERG: Yes, I'm not looking --

00129

1 MR. LEE: It would be proprietary if we --

2 MS. ENDEJAN: They would be upset.

3 JUDGE BERG: I'm looking to sort of strip
4 out the proprietary information of the identity of
5 the collocating parties or the pending collocators,
6 but if you can break it down between existing and
7 pending on a, you know, per site, per office basis.
8 And I'm not asking that GTE specifically identify the
9 code for the office either. You can just put them
10 down, you know, Offices One through Twenty, and then,
11 for Offices One through Twenty, the number of
12 existing collocators and pending collocators.

13 Those are the basic numbers that would all
14 add up to do the calculation that would lead to the
15 three plus one.

16 MS. ROTH: I'm not done yet.

17 JUDGE BERG: All right. I'm just looking
18 again just to confirm that that meets your analytical
19 needs?

20 MS. ROTH: Yeah.

21 JUDGE BERG: All right. Mr. Lee, when
22 would be a sufficient time for GTE to respond?

23 MR. LEE: Is the end of the week okay?

24 JUDGE BERG: The end of the week would be
25 fine. We'll look for a response by the conclusion of

00130

1 Friday --

2 MR. ROTH: The 5th.

3 JUDGE BERG: I'm looking at the wrong year.
4 November the 5th. Ms. Roth is not only right, but
5 faster than me, as usual. If, for some reason, you
6 need additional time, I'll allow you to request
7 additional time.

8 MR. LEE: Okay.

9 MS. ENDEJAN: Judge Berg, just a question
10 of clarification. Would this bench request then be
11 made an exhibit? How do you typically treat bench
12 requests?

13 JUDGE BERG: What I will -- in this
14 instance, I'm just going to reserve that decision.
15 If I feel that it produces a document that's going to
16 be referred to or used in the Arbitrator's report and
17 decision, it will be assigned an exhibit number and
18 admitted as a late-filed exhibit.

19 MS. ENDEJAN: Thank you.

20 JUDGE BERG: But, again, at this point, I'm
21 relating to it more as an illustrative exhibit.

22 MR. FREEDMAN: Would that be something that
23 would be provided to ATTI at the same time that it's
24 provided to you?

25 JUDGE BERG: Yes, I'm expecting that any

00131

1 bench request that's issued --

2 MS. ENDEJAN: No, you don't get it, Larry.

3 JUDGE BERG: -- will be served on the
4 opposing party, as well.

5 MR. FREEDMAN: Thank you.

6 JUDGE BERG: Thank you, as well. I should
7 have made that clear from the outset. You shouldn't
8 have had to ask. Ms. Roth.

9 Q. Now, when did GTE start this practice to
10 charge this type of fee, just the one that we're --
11 Issue Number One. When did you start this?

12 A. Well, GTE has developed this in response to
13 the FCC's order in its advanced services docket.
14 Because they came out in the order and said that our
15 prior practice of charging a hundred percent of the
16 ICB up front to the collocator and then rebating as
17 additional collocators came in was not allowed, so
18 this is in response to the order and the requirement
19 that those costs be pro-rated on an equitable,
20 systematic basis to all collocators.

21 Q. So is there any CLEC in the state of
22 Washington today that's paying you for a fee that
23 we're talking about here?

24 A. I don't know the answer to that question.
25 I have not -- I will answer I have not seen any

00132

1 extraordinarily large ICBs in the state of
2 Washington, so probably none.

3 Q. So you're familiar with the Commission's
4 17th Supplemental Order on the GTE collocation
5 prices?

6 A. I looked at it when it first came out. I
7 don't remember exactly what it said.

8 Q. So could you look at the paragraph 284?
9 So is that the FCC Order Number 99-048 that's the
10 advanced services order --

11 A. Yes, it is.

12 Q. -- you're referring to?

13 A. Yes.

14 Q. So would you agree with me, after reading
15 that paragraph, you would say that the Commission has
16 made a tentative ruling that you may not recover the
17 entire startup cost for collocation from the first
18 entrant requesting collocation? Then the Commission
19 said we'll look at this issue in Phase III of this
20 proceeding?

21 A. Yes, that's what it says.

22 Q. Then go back to paragraph 304. Would you
23 agree with me that the Commission has considered
24 GTE's proposal on building modification and HVAC
25 charges in Phase II of that proceeding, and the

00133

1 Commission has decided that, other than those rates
2 -- other than those interim rates for collocation
3 determined by the Commission in Phase II, the rest of
4 those charges are not to be considered by the
5 Commission, but they'll further look at those charges
6 in Phase III of that proceeding if GTE filed a new
7 cost study?

8 A. I think that's what this is saying. The
9 FCC order said that we could not require separate
10 entrances for CLECs and have them pay for those
11 costs, so GTE's proposal will not have rate elements
12 for those types of costs unless CLECs want to pay for
13 them. But we will not require that.

14 Q. Right. Help me understand here, when the
15 Commission mentioned HVAC, does the Commission mean
16 heating and air conditioning or the Commission means
17 it's separate entrances?

18 A. The HVAC, I presume to be the --

19 Q. The heating?

20 A. -- heating, ventilation, air conditioning
21 systems.

22 Q. Isn't that what we're talking about here?

23 A. Those types of costs would be extraordinary
24 costs that we would seek to recover through this ICB
25 and average fill factor procedure, yes. There's

00134

1 never been rate elements to recover HVAC charges,
2 other than normal HVAC charges.

3 To give you an example, say some duct work
4 needs to be extended over to an area where a CLEC's
5 collocation cage is, but it's not of the
6 extraordinary variety. The way I read this is the
7 extraordinary HVAC charges that the Commission is
8 concerned with.

9 Q. So did the Commission set interim rates for
10 regular HVAC charges in the generic case on the
11 interim basis for a rate that you can charge for
12 power supply and air conditioning?

13 A. Actually, I can't remember if there were
14 specific rates in there for that.

15 MS. ROTH: Okay. Well, Judge Berg, this is
16 my last request. I'm going to be done. I'm done.

17 JUDGE BERG: All right.

18 Q. Is the formula that we referred in that
19 letter to total ICB collocation space preparation
20 cost, you see that entire formula and divide it by
21 state ICB fill factor.

22 Earlier we have a bench request asking you
23 to provide some detailed information on the ICB fill
24 factor. Can I modify my request or, as a separate
25 request, ask a line item by line item what's in those

00135

1 costs you're referring to? For instance, if you use
2 HVAC, you would say those are extraordinary, those
3 are not regular, or is there any other, like the
4 conduits -- I want to have a list of those central
5 office items that you consider extraordinary for
6 collocation for ATTI.

7 A. Okay. Let me make sure I understand this,
8 because that list is going to vary on an
9 office-to-office basis, because it depends on the
10 evaluation of that office.

11 Q. Okay. So --

12 A. There may be HVAC in one case, but not in
13 another.

14 Q. Right, right.

15 A. But there could be other types of costs in
16 a request.

17 Q. I understand that, but you go through a
18 checklist, right? When you go to a central office,
19 you would say ATTI asked for collocation for this
20 central office, you have a checklist, you know,
21 what's extraordinary cost for us. Is there a
22 checklist that you go by?

23 A. I don't know that it's a checklist of
24 you're looking for ICB costs, like you're searching
25 for ICB costs, but the list would be a result of the

00136

1 evaluation of, you know, specific office. It doesn't
2 need power upgrades that are -- and it may need some
3 minor power changes, okay, but that would be covered
4 through existing rates. But if it needs major power
5 changes, it would have to be recovered through an
6 ICB.

7 So the list is not a function of these are
8 the items; the list is a function of the level of
9 costs or size of the project required to enable the
10 collocation request.

11 E X A M I N A T I O N

12 BY JUDGE BERG:

13 Q. Let me ask, Mr. Lee, understanding that ICB
14 means individual case basis and that this total ICB
15 collocation space preparation cost may vary from
16 office-to-office, where a collocater's share would
17 need to be calculated, and knowing that GTE would
18 certainly want to reserve the right to include any
19 reasonable cost that might be incurred, is there any
20 sort of a list that you know of or that exists that
21 would list what is either routinely looked at or
22 might otherwise normally be a consideration that
23 could be produced without great difficulty?

24 A. Again, I'm not aware of that, but I'm
25 willing to check into it and find out for you, and

00137

1 we'll respond to that. I do, in my testimony, on
2 page eight, provide a list of other types of major
3 upgrades that could occur here, the answer beginning
4 on line six.

5 Q. In your direct testimony?

6 A. Yes.

7 MR. FREEDMAN: What page reference was
8 that?

9 MR. LEE: Page eight, line six.

10 JUDGE BERG: Well, let me just propose a
11 Bench Request Number Two, which would consist of an
12 inventory of line item costs that GTE presently is
13 familiar with that could possibly be incurred as the
14 result of a collocation request triggering an ICB
15 review.

16 And if it turns out, from GTE's
17 perspective, that to produce such a line item request
18 is unduly burdensome, I would allow GTE to come back
19 and explain why it would be burdensome and to make
20 whatever offer or submission that was not burdensome,
21 and then we'd proceed to make some determination if
22 any further response was necessary. But I appreciate
23 sort of a good faith, you know, look at it, and it's
24 not my intent to initiate a major project, but it
25 might be information that would be helpful to an

00138

1 economist like Ms. Roth to understand sort of the
2 universe in which we're operating.

3 A. I don't think it will be burdensome at all.
4 It just might take a couple days longer, because
5 we'll have to consult some other people that are more
6 familiar with those types of costs that would occur.

7 MS. ROTH: Judge Berg, could I just ask one
8 clarification before Mr. Lee goes to Texas and I have
9 to call him and he's not under oath?

10 JUDGE BERG: You can, but let me just nail
11 this down. Say November 10th.

12 E X A M I N A T I O N

13 BY MS. ROTH:

14 Q. Okay. Go back to the formula, the
15 collocater's share. So let me understand this. The
16 total ICB collocation space preparation cost is based
17 on each central office. What GTE needs to do is
18 extraordinary that prepared that office; am I
19 correct?

20 A. Yes, that's what that's referring to, is
21 the extraordinary costs that we would incur to
22 provide --

23 Q. For that particular specific office,
24 because you just told me that --

25 A. Yes.

00139

1 Q. -- there may be different things you need
2 for different offices?

3 A. Right. So each office and each collocation
4 request is looked at individually.

5 Q. And then, for the state ICB fill factor, I
6 have heard -- earlier you were telling me that's on
7 an average number of existing, pending, and may or
8 may not be forecasted applications. So that's a
9 state average denominator?

10 A. Yes, yes.

11 Q. That's not central office-by-central office
12 based?

13 A. No, it is a state average, again, designed
14 like a typical fill factor, to recover costs on
15 average across all offices.

16 MS. ROTH: Thanks.

17 MR. LEE: Yes.

18 MS. ROTH: That's all.

19 JUDGE BERG: Let's be off the record for a
20 moment.

21 (Discussion off the record.)

22 JUDGE BERG: We'll be back on the record.

23 Ms. Endejan, we went off the record. There was
24 discussion regarding what has been marked as Exhibit
25 204. My understanding is that you wish to offer

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1 Exhibit 204 into the record at this time?

2 MS. ENDEJAN: Yes, Your Honor, I would like
3 to offer it into the record. My purpose in doing so
4 is, in briefing the Commission and the Arbitrator, I
5 would like to have some reference available to
6 describe what type of CLEC Advanced
7 Telecommunications, Inc. is. We know very little
8 about what kind of company it is, based upon the
9 testimony of Mr. Kunde. I think that it provides
10 useful and relevant information for the Commission to
11 know that they intend to to be a facilities-based
12 telecommunications provider to small business
13 customers in selected geographical markets, including
14 Washington, or they wouldn't be here.

15 I can't make that sort of characterization
16 or describe ATI based upon the testimony in the
17 record from Mr. Kunde to date. I don't find it -- I
18 mean, it's out there on the web, it is a
19 publicly-available document put forth by ATI, and I
20 would almost argue that, you know, anything that's in
21 there is an admission of them, against them, for them
22 that describes what kind of a company they are.

23 I think it educates the Commission to know
24 as much as they can about what the CLEC is and what
25 they're all about in terms of deciding issues that

00141

1 relate to their business activities in the state.

2 JUDGE BERG: Do you intend to make
3 reference to this document as a statement of the only
4 business activities that ATTI intends to undertake?

5 MS. ENDEJAN: Well, my intention would be,
6 and I would be happy to even just quote verbatim from
7 this document, that this is GTE, this is who we are,
8 this is ATTI, this is who they are, this is what they
9 say they are and what they intend to do, and then
10 move on to the discussion of, you know, the other
11 issues that are on the matrix.

12 It's simply more for background and
13 narrative than anything else, because a lot of
14 people, you know, don't know what ATI is. I didn't
15 know until I looked it up in the website.

16 JUDGE BERG: Mr. Freedman, accepting,
17 subject to check, that in fact this Exhibit 204 is a
18 screen shot or a verbatim copy of information
19 available on the ATTI or ATI website, is there
20 anything about this exhibit that you would object to?

21 MR. FREEDMAN: No.

22 JUDGE BERG: All right. In which case
23 Exhibit 204 shall be admitted into the record. I'll
24 state for the parties I do not have a copy of this
25 exhibit at this time.

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1 All right, then. At this point, Mr.
2 Freedman, you have four minutes to present follow-up
3 questions to Mr. Lee.

4 MR. FREEDMAN: Thank you.

5 R E C R O S S - E X A M I N A T I O N

6 BY MR. FREEDMAN:

7 Q. Mr. Lee, as I understood your testimony,
8 you've calculated a fill factor for Washington; is
9 that correct?

10 A. Yes.

11 Q. Is there any provision or plan for whether
12 that calculation would be changed or updated?

13 A. I'm not aware of any provision for that.

14 Q. So the same fill factor would be used
15 today, tomorrow and for the next number of years; is
16 that correct?

17 A. At least for a reasonable period. I
18 imagine it would be checked periodically, but I know
19 of no specific plans to do so.

20 Q. And as I understood your testimony in
21 response to Ms. Roth's questions, and I'm referring
22 now to your proposal on the letter dated October 22nd
23 at the bottom of the first page, although it states
24 there, and this is the very last line on that page,
25 it's based on completed, pending and forecasted

00143

1 applications. If I understood your testimony
2 correctly, forecasted was not, in fact, included. It
3 was just completed and pending applications; is that
4 correct?

5 A. Yes, this is more of a general statement on
6 the methodology, in that we would use forecasted
7 information if we had it.

8 Q. So if a hundred new CLECs come on and
9 collocate in GTE wire centers in the next two years,
10 would an application of this fill factor, the way you
11 calculate it, result in a gross over-recovery for GTE
12 of its costs?

13 A. Well, it depends on where they collocate.
14 We have 70 central offices here. Only 13 of them
15 have existing collocation or pending collocation in
16 them. So no, it could under-recover costs depending
17 on how they're spread and the level of ICBs in each
18 office. If the large ICBs are in the offices where
19 you have actual collocation experience less than the
20 fill factor, GTE is in trouble, from a cost recovery
21 standpoint.

22 Q. If you calculated your fill factor based on
23 certain offices for which you had actual experience,
24 and to the extent that those offices received a great
25 number of additional actual collocation requests in

00144

1 the future that were not, quote, completed, or,
2 quote, pending at the time the fill factor was
3 calculated, then, in fact, there would be an
4 over-recovery, wouldn't there?

5 A. No, because at a certain level, additional
6 collocation requests are going to trigger additional
7 upgrades, and then those new ones will be -- those
8 new collocators will be paying for the next upgrade.
9 They'll be recovering the costs -- helping GTE
10 recover the costs of the next incremental upgrade
11 required.

12 MR. FREEDMAN: Would there come a time when
13 GTE might recalculate the fill factor if additional
14 -- strike that. I have no further questions, Your
15 Honor.

16 JUDGE BERG: Thank you, Mr. Freedman. Ms.
17 Endejan?

18 MS. ENDEJAN: I just have one question for
19 you, Mr. Kunde.

20 R E C R O S S - E X A M I N A T I O N

21 BY MS. ENDEJAN:

22 Q. Isn't it true that -- strike that.

23 Mr. Kunde, do you know if ATTI currently
24 resells GTE's service in the state of Washington?

25 A. Actually, I don't know the answer to that

00145

1 question, no.

2 MS. ENDEJAN: Thank you. That's all.

3 JUDGE BERG: All right. We'll be off the
4 record.

5 (Discussion off the record.)

6 JUDGE BERG: We'll be back on the record.

7 There's no further testimony or arguments to be
8 presented by the parties at this point in time. Just
9 as a follow-up, Mr. Freedman, when can you provide me
10 with a copy of the complete Exhibit 103?

11 MR. FREEDMAN: Tomorrow.

12 JUDGE BERG: All right. That would be
13 fine. I'd like to get a nice, clean copy, and not a
14 faxed copy, so let's just say by Friday, the 5th.

15 MR. FREEDMAN: Very well.

16 JUDGE BERG: Just to give you a little
17 slack. If you need more time, let me know. Are
18 there any other matters that the parties wish to
19 raise before we adjourn, Mr. Freedman?

20 MR. FREEDMAN: No, Judge Berg.

21 JUDGE BERG: Ms. Endejan?

22 MS. ENDEJAN: No, Judge Berg.

23 JUDGE BERG: All right. I'd just ask that,
24 when the parties do prepare their briefs, that they
25 follow the sequence of at least the numerical

00146

1 identification of issues as presented. It's possible
2 that one party may actually phrase the issue
3 differently than the other party.

4 Please don't waste any unnecessary energy
5 trying to address whether the other party has or has
6 not factually identified the issue, but in your reply
7 brief try to respond to the issue as framed by
8 opposing counsel, and that should be a sufficient
9 check and balance that, at all times, we're sort of
10 comparing apples to apples and oranges to oranges.

11 And if there's any further issue that the
12 parties think of as an afterthought, please contact
13 me and let me know.

14 We will actually be producing two
15 transcripts to cover the hearing, one by the reporter
16 and another by the Commission, to cover the taped
17 version. Have the parties made arrangements with the
18 reporter for a copy yet?

19 MR. FREEDMAN: No.

20 MS. ENDEJAN: I've just begun inquiries.

21 JUDGE BERG: All right. As soon as we go
22 off the record, I'll let the parties complete those
23 arrangements with the reporter. I'll represent to
24 the parties that the Commission will prepare a typed
25 transcript of the taped portion and have it available

00147

1 to transmit to the parties on Friday. We'll fax
2 transmit that to the parties and follow up with a
3 hard copy.

4 And I'll leave it up to the parties to make
5 whatever arrangements are necessary and appropriate
6 with the court reporter for her portion of the
7 record.

8 MR. FREEDMAN: Judge Berg.

9 JUDGE BERG: Yes, sir.

10 MR. FREEDMAN: Would the Commission's
11 iteration of the transcript be available
12 electronically? And if so, we would request it.

13 JUDGE BERG: I think most certainly it
14 would. I believe it will be created as most likely a
15 WordPerfect document, but I'll nail that down and
16 communicate with the parties about that, but I think
17 it would be remiss of the Commission to not prepare
18 an electronic version.

19 MR. FREEDMAN: Thank you.

20 JUDGE BERG: You're welcome. All right.
21 We're adjourned.

22 MS. ENDEJAN: Thank you.

23 (Proceedings adjourned at 7:31 p.m.)

24

25