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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-990385
for Arbitration of an)
5 Interconnection Agreement) Volume I
Between) Pages 1 - 187
6)
AMERICAN TELEPHONE TECHNOLOGY,)
7 INC., and US WEST)
COMMUNICATIONS, INC.)
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 October 28, 1999, at 1:15 p.m., at 1300

13

Evergreen Park Drive Southwest, Olympia, Washington,

14

before Administrative Law Judge LAWRENCE BERG.

15

16

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

US WEST COMMUNICATIONS, INC., by
John M. Devaney, Attorney at Law, Perkins Coie, 607
21 14th Street, N.W., Washington, D.C., 20005.

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1 JUDGE BERG: This is a proceeding before
2 the Washington Utilities and Transportation
3 Commission in Docket Number UT-990385. This matter
4 has been captioned In the matter of the petition for
5 arbitration of an interconnection agreement between
6 American Telephone Technology, Inc. and US West
7 Communications, Inc. pursuant to 47 USC Section 252,
8 also along with several other sections known as the
9 Telecom Act of 1996.

10 During the course of this proceeding, any
11 references to the Commission will mean the Washington
12 Utilities and Transportation Commission; any
13 references to the Federal Communications Commission
14 shall be the FCC; American Telephone and Technology,
15 Inc. may also be referred to as ATTI; US West
16 Communications, Inc. may also be referred to as US
17 West.

18 This arbitration proceeding is being
19 conducted on Thursday, March (sic) 28th, 1999, in the
20 Commission's offices in Olympia, Washington, pursuant
21 to notice properly served on all parties on October
22 21st, 1999. That was a notice of revised hearings
23 schedule.

24 This proceeding is also being conducted
25 pursuant to Commission Docket Number UT-960269, in

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1 which the Commission issued an interpretive and
2 policy statement regarding arbitration and approval
3 of agreements under the Telecom Act.

4 Arbitrations conducted under the Telecom
5 Act are not deemed adjudicative proceedings pursuant
6 to the Washington Administrative Procedures Act, but
7 are guided by its principles.

8 At this point in the proceeding, I would
9 like to take appearances of counsel. Please announce
10 your name, party representation, and other business
11 affiliation. We'll start with ATTI.

12 MR. FREEDMAN: Good afternoon, Your Honor.
13 My name is Lawrence Freedman, on behalf of ATTI.
14 Sitting with me at counsel table is Mr. David Kunde,
15 our witness, and Mr. Jeffery Oxley, who is Director
16 of Regulatory Affairs for ATTI.

17 JUDGE BERG: All right. Thank you.

18 MR. DEVANEY: Good afternoon. John
19 Devaney, for US West, and also with me is Lisa Anderl
20 with US West, and Mark Reynolds, US West
21 representative and witness in this case.

22 JUDGE BERG: Ms. Anderl, I don't believe
23 you've previously entered an appearance in this
24 proceeding. Will you be playing any active role as
25 counsel for US West?

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1 MS. ANDERL: No, I'll be observing today,
2 Your Honor. Thank you.

3 JUDGE BERG: All right. Thank you very
4 much.

5 JUDGE BERG: Joining me in the extended
6 bench are Ms. Jing Roth, Commission Staff economist
7 and adviser; Mr. David Griffith, Commission Staff
8 telecommunications engineer and adviser, and Mr. Tre
9 Hendricks, administrative law judges clerk. Ms. Roth
10 and Mr. Griffith and Mr. Hendricks will be advising
11 me throughout the course of this proceeding.

12 It may be that, at various times during the
13 course of the proceeding, any of those advisers may
14 wish to have questions presented to the parties. I'm
15 going to allow those advisers to present their
16 questions directly, and if there was any problem with
17 that or with the question at the time, we'll just
18 deal with it, but I think that's probably a more
19 direct process than just having them pass a question
20 to me for answering. I'm sure that any question they
21 ask is a question that the parties should just
22 presume I would have in my own mind, as well.

23 At this point, I'm just going to briefly
24 outline the format that we're going to follow here
25 today. At the outset of the hearing, we will swear

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1 both witnesses to present testimony here today.
2 We'll swear in both witnesses. And thereafter, the
3 way we'll proceed is that the ATTI witness will make
4 some summary in the form of his direct testimony, to
5 be followed by cross-examination of US West counsel,
6 to be followed by a summary of the direct testimony
7 of the US West witness, to be followed by
8 cross-examination by ATTI's counsel.

9 At that point, if the advisers or the bench
10 have any questions, they will raise those questions,
11 and subsequent to that, parties will have a chance to
12 conduct brief redirect and then re-cross of each
13 other's witnesses. This format is designed so that
14 we can proceed on an issue-by-issue basis as
15 presented in the issues list and the issues matrix
16 prepared by counsel.

17 I'll let counsel know that I think they've
18 done an excellent job in narrowing the issues down,
19 resolving many issues, and providing the positions of
20 the parties in a way that is most helpful for myself,
21 and I appreciate that very much. I'm sure it
22 reflects a great deal of hard work on the part of
23 both parties.

24 As we move from issue to issue, there may
25 be other issues that should be grouped together and

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1 discussed at the same time. I'll let each counsel
2 express or state their position with regards to
3 multiple issues being discussed simultaneously.
4 Likewise, I or other staff members may have some
5 clarification questions, and if so, I will try and
6 present that at the outset before any testimony
7 begins. Are there any questions from counsel?

8 MR. FREEDMAN: No, Your Honor.

9 MR. DEVANEY: No, Your Honor.

10 JUDGE BERG: All right, thanks. There is
11 one other preliminary matter that I would like to
12 raise before swearing in the parties, and this has to
13 do with the legal issues that have been identified by
14 the parties.

15 And I'm concerned to the extent that if I
16 had anticipated seeing factual issues that supported
17 the statement of at least one of the legal issues,
18 and in particular, with regards to legal issue number
19 one, the issue is whether or not ATTI is entitled to
20 receive a reciprocal compensation arrangement from an
21 interconnection agreement previously approved by the
22 Commission between US West and MFS.

23 My concern is that here we are at an
24 arbitration, and the purpose of the arbitration is to
25 resolve all disputed issues between the parties, and

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1 the question comes to my mind is, in this instance,
2 if US West were to prevail on the issue of whether or
3 not ATTI is entitled to receive the reciprocal
4 compensation arrangement from the MFS agreement, then
5 what? Does that mean that there is a hole in the
6 agreement where there is no provision for a
7 reciprocal compensation arrangement?

8 And I bring this up because, in other
9 proceedings, this Commission has stated a fairly
10 clear position that it believes reciprocal -- or
11 considers that reciprocal compensation is due for
12 ISP-bound traffic that is transported and terminated.
13 And the real dispute has not been over whether or not
14 that traffic -- at this point in time, the dispute
15 should not be over whether or not that traffic, in
16 fact, is entitled to reciprocal compensation, but
17 what mechanism should apply.

18 In prior proceedings with US West, US West,
19 to the best of my knowledge, has uniformly advocated
20 that bill and keep was the proper mechanism to apply,
21 certainly with regards to ISP-bound traffic, and
22 often that another mechanism should apply to other
23 traffic, other local traffic.

24 I say that with the understanding that
25 there is a lot of debate over the use of the word

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1 local traffic to refer to ISP-bound traffic, so I
2 want to avoid getting into that debate at this time,
3 as well. But in other instances it's been fairly
4 consistent that CLECs are -- competing local exchange
5 carriers, such as ATTI, are seeking an MFS-type
6 reciprocal compensation arrangement because of the
7 provision of minute-of-use compensation for ISP-bound
8 traffic.

9 Now, I haven't seen any real segregation of
10 ISP-bound traffic from other local traffic in the
11 context of this case, but I'm presuming that that's
12 what's driving ATTI's request for the MFS
13 arrangement.

14 So let me turn it over to the parties now
15 to respond to my observations, correct me if I'm
16 wrong, or challenge me if I'm out of line, but also
17 assist me in understanding what we do in this
18 agreement if, in fact, US West prevails with regards
19 to ATTI's statutory right.

20 MR. FREEDMAN: Your Honor, I think the
21 contract that US West has submitted and advocated is
22 the same as the US West/AT&T agreement in Washington.
23 So at least in terms of the relief they've requested,
24 if they prevail, then the reciprocal compensation
25 provisions of the AT&T contract would form part of

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1 our contract. There would not be a hole.

2 JUDGE BERG: So you're presenting that as
3 what US West has proposed?

4 MR. FREEDMAN: Correct.

5 JUDGE BERG: All right.

6 MR. DEVANEY: And Judge Berg, Mr. Freedman,
7 I think, articulated correctly our position, and that
8 would be, as he stated it, that if there were a
9 ruling that ATTI could not opt into the MFS recip.
10 comp. arrangement, then the AT&T contract would fill
11 in that gap, and that contains a bill and keep
12 arrangement.

13 MR. FREEDMAN: Your Honor.

14 JUDGE BERG: Mr. Freedman.

15 MR. FREEDMAN: I'm not sure that my
16 response was, from the comments, was necessarily
17 responsive to your question.

18 JUDGE BERG: Well, in part.

19 MR. FREEDMAN: If there's something else I
20 can say to be more responsive, I'd be happy to, upon
21 further questions from the bench.

22 JUDGE BERG: Well, in the course of an
23 arbitration -- well, let me just use the Nextlink/US
24 West case that was recently handled here at the
25 Commission. In that case, Nextlink had previously

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1 adopted an agreement in its entirety that had been
2 approved by the Commission between US West and TCG
3 that provided a contractual right to propose an
4 alternate compensation mechanism to bill and keep
5 when traffic reached a certain threshold.

6 Nextlink presented two alternative requests
7 for remedies, one based upon its statutory right to
8 receive the reciprocal compensation arrangement in
9 the MFS agreement, but they also presented a request
10 for contractual remedy based upon the contract, in
11 which case at issue was more what is an appropriate
12 reciprocal compensation mechanism once the Commission
13 determines that ISP-bound traffic should be subject
14 to reciprocal compensation.

15 And in this instance, where here's an
16 arbitration where normally the parties bring
17 contrasting positions to the table and present their
18 positions -- and I understand that this is an
19 instance where the Commission rolled ATTI's 252(I)
20 request into this proceeding as the most expedited
21 way to proceed. However, I'm just somewhat concerned
22 that, after the fact, that if there is a decision in
23 favor of US West, that ATTI would feel it was
24 entitled to some other consideration from an
25 appropriate compensation mechanism, independent from

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1 its statutory rights.

2 When I initially reviewed the filings by
3 the parties, at all times, in my mind, I was thinking
4 that what I was going to be presented with is -- the
5 question is what is an appropriate reciprocal
6 compensation arrangement. And to the extent that the
7 parties are now presenting the issue in such a way
8 that it looks as if the issue to be resolved is going
9 to be driven by whether or not ATTI is entitled to
10 exercise statutory rights over the MFS reciprocal
11 compensation arrangement. And if not, then there's a
12 default to the underlying AT&T agreement with US
13 West.

14 It may be that -- I mean, I'm not
15 necessarily saying we need to add a new issue to the
16 list, but I'm sharing with parties my concerns, when
17 I see this, that it wasn't clear to me what the
18 consequences would be if the legal issue was resolved
19 in favor of US West. And I wanted to see if the
20 parties had any other intent or understanding in what
21 that consequence would be.

22 MR. FREEDMAN: Not at the moment, Your
23 Honor. What I'd request is maybe if we can consider
24 your comments and, at the first break in the hearing,
25 we can confer a little bit, and after that break,

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1 give you any other thoughts that we might have.

2 JUDGE BERG: All right. And again, it
3 comes up because certainly these proceedings are
4 restricted to issues that are raised by the parties,
5 but when I see the request for the MFS reciprocal
6 compensation arrangement, I read into that what I
7 know about the MFS reciprocal compensation
8 arrangement. And that means that what I understood
9 ATTI to be seeking was a minute-of-use compensation
10 mechanism for the termination of ISP-bound traffic.

11 If I'm incorrect about that, if that's
12 something that is presumptive on my part and which
13 otherwise misinterprets the issues that are
14 unresolved between the parties, then I certainly
15 invite counsel to correct me.

16 MR. FREEDMAN: Your Honor, I can confirm
17 that what you just stated in your comments
18 immediately preceding my comment now was, in fact,
19 our intention and our interpretation, meaning, number
20 one, we did feel we had a statutory right, and number
21 two -- to adopt that provision of the MFS contract,
22 and number two, that yes, we did have the belief
23 that, upon exercising that right, we would obtain
24 minute-of-use reciprocal compensation for the
25 termination of ISP-bound traffic.

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1 JUDGE BERG: All right. Counsel should
2 consult with their clients and experts during the
3 course of the proceeding to determine whether or not
4 there's any other response that should be made to my
5 comments before we conclude. At the very least,
6 we'll revisit the issue when we get around to the
7 presentation of arguments on legal issues. Is that
8 satisfactory?

9 MR. DEVANEY: We'll do that. Thank you.

10 JUDGE BERG: All right. And then, at this
11 point in time, I'm going to swear the witnesses in.
12 If both you, Mr. Kunde, and Mr. Reynolds will stand,
13 raise your right hand.
14 Whereupon,

15 DAVID KUNDE and MARK REYNOLDS,
16 having been first duly sworn, were called as
17 witnesses herein and were examined and testified as
18 follows:

19 JUDGE BERG: Thank you very much. Please
20 be seated. Any statements or testimony that is
21 presented here from this point forward until you're
22 excused will be subject to the affirmation that you
23 just presented.

24 Let's very quickly number exhibits for Mr.
25 Kunde. Starting with Exhibit 101, it will be the

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1 direct testimony, it will be T-101, direct testimony
2 of Mr. Kunde. Mr. Kunde, am I pronouncing your name
3 properly?

4 MR. KUNDE: Yes, you are.

5 JUDGE BERG: All right. And I do not see
6 any exhibits attached to Mr. Kunde's direct
7 testimony. Exhibit T-102 is the rebuttal testimony
8 of Mr. Kunde. Attached to Exhibit T-102, there is a
9 diagram that will be separately marked as an exhibit.
10 Exhibit 103 is the US West collocation, cross-connect
11 and transport diagram prepared by ATTI. And Mr.
12 Freedman, if you would just not necessarily
13 distribute, but identify for me other exhibits to be
14 used by Mr. Kunde during the proceeding?

15 MR. FREEDMAN: Actually, I have to give you
16 an apology, Your Honor, because I was slightly
17 distracted for a moment when you were going through
18 those exhibit numbers.

19 JUDGE BERG: Sure.

20 MR. FREEDMAN: And in fact, I think, quite
21 candidly, you numbered them differently than I had.
22 So could you quickly tick through your numbers and
23 exhibit description again?

24 JUDGE BERG: Sure. T-101 is direct
25 testimony.

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1 MR. FREEDMAN: I see what you're doing.

2 JUDGE BERG: T-102 is rebuttal, and Exhibit
3 103 is the diagram attached to 102.

4 MR. FREEDMAN: Thank you, Your Honor. Your
5 question is what else besides that?

6 JUDGE BERG: Yes.

7 MR. FREEDMAN: The answer is three
8 photographs for which -- they just came in today, and
9 so we apologize. They're really only being used as
10 demonstrative evidence and not for substantive
11 evidence. Mr. Kunde will, from time to time, be, in
12 explaining the concepts in his testimony, referring
13 to those photographs, and we propose that those be
14 marked as T-104, 5, and 6, respectively.

15 JUDGE BERG: All right. And is there any
16 way to distinguish the three so that, on the written
17 record, on a going forward basis, we would be able to
18 distinguish between them?

19 MR. FREEDMAN: Yes, Your Honor. In the
20 lower left-hand corner of each, there is a computer
21 file code, and the last three letters on each are
22 JPG, and then, before that, there's a dot, and before
23 that are three numbers, three numerals and a letter.

24 JUDGE BERG: All right. Why don't you just
25 go through what you want to assign to 104 and what

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1 you want to assign to 105 and what you want to assign
2 to 106.

3 MR. FREEDMAN: 104 will be the one that has
4 the three numerals O13F.JPG at the end.

5 JUDGE BERG: All right.

6 MR. FREEDMAN: 105 will be O12F.JPG.

7 JUDGE BERG: Okay.

8 MR. FREEDMAN: And 106 will be O19F.JPG.

9 JUDGE BERG: All right. Are there any
10 other exhibits, whether they be illustrative or
11 substantive, that you will refer to?

12 MR. FREEDMAN: Not at this time, Your
13 Honor.

14 JUDGE BERG: All right. Mr. Devaney, have
15 you had an opportunity to review all of the exhibits
16 that have been referred to by Mr. Freedman?

17 MR. DEVANEY: Yes, we have.

18 JUDGE BERG: Do you have any objections to
19 the admission of any of those exhibits?

20 MR. DEVANEY: We have no objections.

21 JUDGE BERG: All right. At this point in
22 time, Exhibits T-101 through Exhibit 106 shall be
23 admitted into the record.

24 I do not recall having any confidential
25 information presented to myself during the course of

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1 this proceeding, there was a confidential protective
2 order entered, and I would just request that if the
3 parties at any time make reference to any
4 confidential information that has been exchanged
5 between themselves or otherwise confidential
6 information that they've learned as a result of
7 materials received in this proceeding, that they take
8 all necessary steps to preserve the confidential
9 nature of that information.

10 And then I think we're actually ready to
11 get under way. Anything else from counsel before we
12 do?

13 MR. FREEDMAN: No, Your Honor.

14 JUDGE BERG: All right. Mr. Kunde, we're
15 going to start with Issue Number One. Let me ask
16 each counsel respectively whether they think there
17 are other issues that should be addressed at the same
18 time with Issue Number One?

19 MR. FREEDMAN: Yes, Your Honor. Issues
20 One, Two, and 22 all are related and essentially
21 relate to two core concepts which are the fundamental
22 concepts of this proceeding, and indeed would flow
23 from the same schematic diagram by way of
24 illustration that Mr. Kunde has submitted with his
25 testimony, as prepared to be used as demonstrative

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1 evidence to the Court. So he has planned his summary
2 to address those three issues together at the outset.

3 JUDGE BERG: Mr. Devaney.

4 MR. DEVANEY: Judge Berg, we do differ in
5 one slight respect. And that is we agree that Issues
6 One and Two ought to be discussed together. We would
7 ask, however, that Issue 22 be segregated and dealt
8 with separately.

9 As we look closer at Issue 22, it involves
10 issues that really don't relate, in some respects, to
11 Issues One and Two. For example, quote preparation
12 fees and issues that would require a fair amount of
13 attention related to costs associated with the
14 activity discussed in Issue 22. And we just think it
15 would be cleaner if we dealt with One and Two
16 separately, and then 22 when its time arises in the
17 course of the proceeding.

18 JUDGE BERG: Any objection to taking --
19 maybe a possible compromise to take Issue 22
20 immediately after Issues One and Two?

21 MR. FREEDMAN: That would be fine, Your
22 Honor.

23 JUDGE BERG: Mr. Devaney.

24 MR. DEVANEY: That's fine. Thanks.

25 JUDGE BERG: All right. That's what we'll

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1 do. We'll deal with Issues One and Two at the same
2 time and then we'll proceed to Issue 22. Just a few
3 clarifications I have before we start the summary and
4 cross-examination. Is it clear to the parties that
5 the use of wire center by ATTI and the use of central
6 office by US West, as terms of art, represent the
7 same thing?

8 MR. FREEDMAN: Yes, Your Honor.

9 MR. DEVANEY: Yes, it is.

10 JUDGE BERG: All right. And I also noticed
11 a difference in some of the proposed language
12 regarding caged physical collocation. Is there an
13 issue as to whether ATTI is required to lease space
14 in 100-square-foot increments?

15 MR. FREEDMAN: No, Your Honor.

16 JUDGE BERG: All right. Anything further?
17 Mr. Freedman.

18 MR. FREEDMAN: I want to keep that fine
19 line between what's going on in negotiations versus
20 what the Tribunal has before it, but the bottom line
21 is the answer to your question remains no, there is
22 no issue on that point.

23 MR. DEVANEY: Judge Berg, I think that's
24 correct, but I'd like to confer with Mr. Freedman
25 during a break and maybe talk to our negotiator just

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1 to confirm that's the case. I have no reason to
2 believe that's not correct, but I would just like to
3 remove that shred of doubt if I could.

4 JUDGE BERG: All right. That's certainly
5 an issue that wouldn't require any development of the
6 record, as far as I'm concerned. But if parties felt
7 that that was a disputed issue and that they wanted
8 to make some statement of position, I'd try and
9 accommodate them.

10 We may have other points like this that the
11 parties wish to present to me for resolution as an
12 issue in my arbitration report and order which are
13 not otherwise discussed or cross-examined here today.
14 And likewise, if counsel decide that they wish to
15 waive a direct statement on any issue or waive
16 cross-examination and rely upon the prefiled
17 testimony and their written briefs, that will also be
18 acceptable. I will not interpret that to mean that
19 one party or the other is conceding the issue to the
20 other side.

21 MR. DEVANEY: Judge Berg, may I confer with
22 my client for just one moment on the order of issues?
23 There's one thing I'd like to discuss if I could.

24 JUDGE BERG: Yes, sir.

25 MR. DEVANEY: Thank you. I have no change

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1 in the agreement on Issues One and Two, followed by
2 22. I just wanted to confirm that.

3 JUDGE BERG: All right. Mr. Kunde, thanks
4 for your patience. Go ahead and summarize your
5 testimony with regards to Issues One and Two.

6 MR. KUNDE: Issues One and Two, Your Honor,
7 are both related to what I'll call ICDF connection
8 issues, and ICDF is an interconnection distribution
9 frame.

10 Basically, to give you a general
11 understanding of why that's important to us,
12 connection to US West and other parties for both
13 access to unbundled elements, which are the copper
14 wires and copper loops that go out to customers, as
15 well as to US West and/or other parties for
16 transport, which is the high-capacity transport from
17 the equipment that we place in a collocation cage
18 back to our central or host office that we would have
19 that wouldn't be in a US West location, are the key
20 things that we need to have in order to make that
21 network functional and make that collocation cage and
22 the equipment contained within it a functional
23 operating telephone telecommunications network.

24 ATTI feels that the use of the ICDF or SPOT
25 frame should be an option that we can and may and, in

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1 many cases, will use, but we don't feel it should be
2 a mandatory issue. And there are some reasons for
3 that. One of them has to do with the idea of choice.
4 If we were to utilize the ICDF only, our ability to
5 have direct connections to other transport providers
6 who may be collocated in that same office could
7 potentially be minimized.

8 Additionally, ATTI wishes to have what I'll
9 call simple direct connections. Using an ICDF, in
10 many cases, will actually introduce an additional set
11 of wiring and connection points into any telephone
12 circuit. It's common knowledge in repairing and
13 looking at causes for trouble in any
14 telecommunications system that the majority of the
15 trouble will occur in the places where you have
16 connection points, not necessarily in the physical
17 cable itself. So we're seeking to minimize the
18 number of connection points.

19 The other thing that we believe is an issue
20 here is the broad scope of needing to use an ICDF.
21 We believe that there may be some circumstances that
22 we will and most likely will utilize that form of
23 connection, but we also believe that there are other
24 circumstances, for example, connection to other
25 collocated parties, where going through an ICDF is

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1 not necessary and causes additional time and money to
2 be expended on the part of a company.

3 So I think that really summarizes that
4 issue. What I would like to introduce is refer to
5 this chart, which I believe we've labeled as Exhibit
6 103.

7 JUDGE BERG: Yes, sir.

8 MR. KUNDE: If you would wish, I do have a
9 color copy of that. I'm sure that didn't come
10 through. If I could present that?

11 JUDGE BERG: How many copies of that do you
12 have?

13 MR. KUNDE: I have two color copies of
14 that.

15 JUDGE BERG: That's all right. I'll make
16 reference to the black and white.

17 MR. KUNDE: This is intended to be a
18 demonstrative diagram that kind of shows how things
19 lay out in a typical central office. In this
20 diagram, you'll see the ILEC or US West switch is the
21 large circle, and it is typically connected to --
22 those switching ports or switching elements are
23 typically connected to the MDF, or main distribution
24 frame.

25 Across that MDF there is an arrow with an

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1 arrow indicator on it, and that's that MDF to the
2 outside plant cabling, which is the copper wires that
3 go out to the customer's premise, which is depicted
4 here with the telephone poles and the telephone
5 instrument itself.

6 Typically, that is how US West or any other
7 ILEC will provision their network. And in this case,
8 ATTI has a cage represented by the box, and from that
9 cage, we have basically connection wires that go out
10 to the device known as the VF and DS0 ICDF, and at
11 that point, we have terminations. And then, as we
12 order services, we will need to have a cross-connect
13 go across that ICDF to connect to the cables that
14 connect the ICDF to the MDF. And then there is
15 another jumper that gets run at the MDF to connect
16 that appearance on the MDF to the outside plant
17 cable.

18 JUDGE BERG: Which jumper is that?

19 MR. KUNDE: That would be the jumper that
20 is represented by the left-hand-most portion of what
21 I would refer to as the red arrow, but in yours it's
22 not.

23 JUDGE BERG: That's all right.

24 MR. KUNDE: It's the longer arrow.

25 JUDGE BERG: Yes, okay.

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1 MR. KUNDE: That longer arrow actually
2 represents two jumpers and what I'll call tie cabling
3 that goes between the ICDF and the MDF. The point
4 that we're making here is that there are actually,
5 within the ICDF, two separate sets of connections,
6 one to the ATTI tie cabling that goes back to our
7 cage, and another connection that goes from the ICDF
8 to the MDF. And then, on the MDF, there are another
9 set of two connections, which gives us a total of
10 four sets of connections that are made in getting our
11 line and circuit equipment connected to the telephone
12 wires and the outside plant.

13 That is one method through which we may use
14 the ICDF, but you'd notice that it has an additional
15 set of connections over what US West might normally
16 use.

17 Additionally, there are some connections
18 that go from ATTI to CLEC Number Two, and that's
19 represented with a CLEC-to-CLEC and connection on the
20 top of the page, and that is what we're proposing
21 that we would have the opportunity to do, without
22 going through an ICDF. And down below to the right,
23 you'll see an ICDF DS1 or DS3 cross-connect panel,
24 and there is another wire that goes from ATTI down
25 through that cross-connect panel jumper across that

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1 cross-connect panel and to CLEC Number Three. And
2 that demonstrates the alternative method.

3 Our belief is that, in some cases, we may
4 choose to utilize that methodology, because of
5 distances in the office from various collocators, our
6 ability to potentially choose other connectors, but
7 in some cases, literally CLEC Number Two, who would
8 be providing our transport, is as little as ten feet
9 away from where our cage would be located. And to go
10 out to a 50-foot or a 100-foot connection point, run
11 jumpers across there and then go back to another CLEC
12 for another, you know, 50, 100, 200 feet would be an
13 inefficient connection.

14 It also requires us to place orders on US
15 West for each one of those connections that we wish
16 to make.

17 So therefore, it's our request that, in
18 some cases, we may be able to go directly to another
19 CLEC, and in other cases, we may utilize the SPOT
20 frame or the ICDF equipment to go from ATTI to a
21 different CLEC.

22 Basically, to summarize this, we're really
23 looking for minimizing the number of connection
24 points at our option and our ability to engineer that
25 network, minimizing the time delay in connecting to

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1 other carriers, and minimizing the cost that we would
2 have to pay to US West or any other carrier, for that
3 matter, to make those connections, and having those
4 options available to us allows us to achieve that.

5 JUDGE BERG: All right, thank you. Mr.
6 Devaney, please conduct your cross-examination.

7 MR. DEVANEY: Thank you, Judge Berg.

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

9 BY MR. DEVANEY:

10 Q. Good afternoon, Mr. Kunde. Let me just
11 begin by asking you to clarify a couple of things
12 that you said during your summary. You said that the
13 ICDF is, I think, equivalent to the SPOT. You said
14 the ICDF or the SPOT. What I wanted to clarify is is
15 it your understanding that the so-called ICDF is the
16 same thing as the SPOT frame?

17 A. Yes, it is.

18 Q. And what's your understanding based upon?

19 A. The understanding is based upon
20 conversations with US West employees in those
21 offices, based upon exhibits -- I guess it would be
22 four, five, and six -- that demonstrate that that is
23 actually the ICDF when we went on the tour of the US
24 West office, but it is obviously labeled as a SPOT
25 frame, additionally; that there is essentially no

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1 difference between a SPOT frame or an ICDF.

2 Q. So is it your understanding, then, that
3 when US West uses the term ICDF in its proposed
4 contract language, that it's really referring to
5 nothing different than the SPOT frame?

6 A. It's my understanding that US West has
7 attempted to broaden that terminology to include many
8 types of frames, but that, in practice, the actual
9 connection is to the device known as the SPOT frame.

10 Q. But with respect to the contract language
11 that's before the Commission, do you agree that when
12 US West uses the term ICDF, that the term, for
13 purposes of the contract, encompasses more than just
14 the SPOT frame?

15 A. In certain circumstances.

16 Q. Which circumstances, do you know?

17 A. It would be circumstances relating to
18 connection to certain US West elements.

19 Q. Anything else?

20 A. Unbundled network elements.

21 Q. Okay. Any other circumstances that you're
22 aware of?

23 A. Circumstances related to a connection to
24 other CLECs in the office.

25 Q. Okay. Mr. Kunde, do you have any knowledge

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1 of whether US West uses an ICDF for its own purposes,
2 unrelated to CLEC purposes?

3 A. Yes.

4 Q. What is your understanding?

5 A. US West will use ICDF under the broader
6 definition of an ICDF that US West has proposed,
7 because that definition includes an MDF. That MDF is
8 certainly provided by every telephone company in
9 every central office.

10 Q. Is ATTI comfortable with the position of US
11 West offering or providing use of the ICDF only in
12 situations where US West uses it for itself?

13 A. No.

14 Q. Okay. Mr. Kunde, in your testimony, in
15 your direct testimony, in particular, as you begin
16 your discussion of collocation, you talk about a few
17 general concerns you have with US West's collocation
18 proposals, and I realize this might not fit neatly
19 into Issue One, but this is kind of an over-arching
20 concern that ATTI expressed, and I thought it best,
21 if it's okay, to just address the over-arching
22 concerns they have right up front as we discuss
23 Issues One and Two. Is that okay, Judge Berg?

24 JUDGE BERG: That makes sense to me. And
25 if you need to make reference to them with regards to

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1 other issues later in the testimony, as well, that
2 would be acceptable. I'm going to be very flexible
3 with the parties, both from a cross-examination and
4 from a testimony standpoint as to going forward, get
5 all the information and all relevant information into
6 the record.

7 And I understand that format is one that
8 was just agreed upon this morning and the parties
9 have not designed their presentations for this
10 format. I appreciate their flexibility.

11 I'd also indicate to the parties that if
12 anybody feels more comfortable in working without a
13 jacket on, they should feel free to take your jacket
14 off. And likewise, if the temperature seems to be
15 too cold, we can make a request that temperature be
16 turned up, as well. Okay. Thank you.

17 MR. DEVANEY: Thank you.

18 Q. Mr. Kunde, at page one of your direct
19 testimony, which is T-101, you raise, as I said
20 before, some general concerns about US West's
21 collocation proposals, and one of the concerns you
22 express is US West's lack of cooperation with
23 interconnection. Do you recall saying that?

24 A. Yes.

25 Q. And what I'd like to know is have you

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1 evaluated US West's collocation practices in its
2 relationships with CLECs in a collocation context
3 here in Washington?

4 A. The answer is yes, to some extent, in that
5 we have submitted orders in Washington for
6 collocation. Those orders are not very far down the
7 process, but we've had some experience thus far.

8 Q. Well, for example, have you looked beyond
9 that, beyond the orders you've submitted, to what US
10 West's practices with respect to collocation have
11 been toward other CLECs and whether other CLECs have
12 had issues with US West?

13 A. Yes, I have.

14 Q. Okay. Well, for example, have you looked
15 into whether US West offered cageless collocation
16 before it was required by law to do so? Is that
17 something you've analyzed?

18 A. No, I have not.

19 Q. Have you inquired at all into the
20 collocation relationship between US West and Covad
21 and how the parties addressed collocation issues
22 between them?

23 MR. FREEDMAN: Your Honor.

24 JUDGE BERG: Mr. Freedman.

25 MR. FREEDMAN: I would object to the

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1 question. I think it exceeds the scope of the direct
2 testimony and it would take us down a path of asking
3 US West, as a multi-billion dollar company operating
4 in 14 states, so we could sit here listening to US
5 West's relationships with a million different
6 companies, but he hasn't testified to any of those
7 individual companies. So it might be more germane to
8 ask him what he did base his statement on, rather
9 than a hundred different things that he might have.

10 JUDGE BERG: Mr. Devaney, I'm certainly
11 sensitive to your client's position that there may be
12 testimony in the record that may not reflect US
13 West's actual performance in the field.

14 MR. DEVANEY: Yes.

15 JUDGE BERG: But if there is some way to
16 get to that in a more direct fashion, I'd certainly
17 appreciate it.

18 MR. DEVANEY: Okay, that's fine. I was
19 just about done anyway, and I wanted to find -- never
20 mind. I'll move on from that issue.

21 JUDGE BERG: All right. And both counsel
22 should understand that, you know, I've been around
23 this block more than once. I know that, as far as
24 things go, in my eyes, I know that good lawyers know
25 how to use rhetoric in support of their arguments and

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1 that it may be necessary for both sides to protect
2 their clients and their clients' reputation in the
3 course of this proceeding for the general public that
4 may be reviewing the record at some later date, but
5 certainly, for my benefit, I certainly understood the
6 point right off the bat.

7 MR. DEVANEY: Thank you.

8 Q. Another concern you raise is the concern
9 about rates that US West charges. Do you recall
10 that, Mr. Kunde?

11 A. Yes, I do.

12 Q. And you raise that in a broad context,
13 about generally rates that US West charges. And what
14 I want to ask you is, first of all, what rates is
15 ATTI advocating in this case for collocation, do you
16 know?

17 A. I can't speak to the specifics of the rates
18 that are being advocated in this case, no.

19 Q. Can you speak to whether there's a body of
20 rates out there that ATTI is assuming would apply to
21 a collocation relationship between the parties,
22 without getting to the specific rates?

23 A. There are rates that we have experienced
24 thus far in collocation applications and subsequent
25 quotes for those collocation applications in the

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1 state of Minnesota, which are not too dissimilar from
2 what we expect to see in the state of Washington.

3 Q. Okay. But with respect to, for example,
4 whether ATTI wants the rates that were ordered in the
5 generic cost docket here in Washington, do you know
6 if that's what ATTI is advocating?

7 MR. FREEDMAN: Your Honor, objection. This
8 is a backhand way to raise an issue that's not an
9 issue in the testimony, has nothing to do with ICDF
10 versus MDF, it has nothing to do with cross-connects,
11 and I object to the question.

12 JUDGE BERG: Mr. Devaney.

13 MR. DEVANEY: Well, the question is a
14 foundational question, because I'd like to know --
15 he's complained about our rates. And I'm going to do
16 this very quickly, because I'm very cognizant of the
17 statement you made a few minutes ago. But he's
18 complained about our rates, and I'd like to know what
19 rates he thinks applies. Once he identifies the
20 rates he thinks applies, I'd like to ask him what
21 complaints he has about them. I think it's relevant
22 and responsive to his testimony that US West
23 overcharges and has rates that are too high.

24 MR. FREEDMAN: Your Honor, rates are not at
25 issue here. In fact, Mr. Devaney earlier tried to

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1 make them an issue, and it was specifically clear
2 that that issue is a settled issue in the case. With
3 all due respect, I think this is a backhand way to
4 reraise an issue that was not raised fairly before
5 the parties and was not part of his testimony. I
6 think it's an inappropriate question.

7 MR. DEVANEY: I'd be happy to withdraw the
8 questions if ATTI withdraws its testimony that our
9 rates are too high. It's really that simple. I
10 agree that it's a settled issue and not one that's
11 before the Commission, but his testimony says our
12 rates are too high. If they want to withdraw their
13 testimony on that, then we'll accept that.

14 JUDGE BERG: One moment, please. I think
15 the way I'd like to approach this is when the parties
16 filed their petition and prefiled testimony, I think
17 it was all in the context of my observation at the
18 outset that the parties have not made very good
19 progress in their negotiations.

20 And I'm more impressed by the way the
21 parties have worked together to resolve issues and to
22 narrow issues in this case than I'm, again, overly
23 concerned about any aspersions that may be left on
24 the table as a result of statements in the petition
25 or prefiled testimony that are not relevant at this

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1 time.

2 While I understand, Mr. Devaney, that it
3 may be an unfair statement to make in a general
4 context, the way it was made, and that your client
5 has an interest in making sure that whatever specific
6 problems other parties have with their operations or
7 their rates are specifically identified and
8 addressed, I don't think that's going to happen in
9 this proceeding.

10 And rather than looking for some kind of
11 broad statement that would -- in the form of an
12 apology, that there is no problem or challenge to any
13 rates that US West has, I would certainly accept it
14 if ATTI were to just represent that any prior
15 statements that were made about rates in this
16 proceeding are no longer relevant, based upon the
17 progress that the parties have made in negotiating
18 the issues that have been set out.

19 MR. FREEDMAN: May I have one moment, Your
20 Honor?

21 JUDGE BERG: Yes, sir.

22 MR. FREEDMAN: Your Honor, consistent with
23 the spirit of what you just said, I think we can say
24 that we are not relying on the statement about rates,
25 and I assume Mr. Devaney is referring to lines 13 and

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1 14 of page two of his direct for the positions that
2 we are advocating in the arbitration, but the rate
3 issue between these parties is a settled issue.

4 MR. DEVANEY: If that --

5 JUDGE BERG: Mr. Devaney.

6 MR. DEVANEY: I guess if that means that
7 there's no allegation that we're charging excessive
8 rates, then I accept the representation and we'll
9 move on.

10 JUDGE BERG: Is that the representation
11 being made, or is this a matter where we should just
12 strike the testimony from the record? Mr. Freedman.

13 MR. FREEDMAN: I think, Your Honor,
14 predicated on sort of the comment I have made that we
15 don't believe lines 13 and 14 are necessary for you
16 to rely on to make a decision on the disputed issues
17 that are before you, we would agree to strike lines
18 13 and 14.

19 JUDGE BERG: Mr. Devaney, is that
20 acceptable?

21 MR. DEVANEY: That would be acceptable, but
22 I would also ask that line 43 on page one, beginning
23 with the word "second" and carrying over to line two
24 on page two be struck.

25 MR. FREEDMAN: My page numbering may be

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1 different than yours, but you're talking about the
2 statement, Second, we are concerned that US West may
3 attempt --

4 MR. DEVANEY: Yes.

5 MR. FREEDMAN: Your Honor, because those
6 lines are different than the lines that we've
7 previously stricken, we would decline to take Mr.
8 Devaney's invitation.

9 JUDGE BERG: Mr. Devaney, I'm not really
10 interested in trying to sanitize the record to
11 address all aspersions that may be cast on US West.
12 I mean, we all know that, you know, US West takes a
13 lot of criticism from outside parties that very often
14 are not necessarily backed up by hard evidence. But
15 if we are going to do that in this proceeding and
16 open this up beyond the issues that the parties have
17 worked so hard to narrow down and develop their
18 positions on, I'm concerned that -- not only that
19 we'll spend a lot of time doing that, but that US
20 West still won't have any kind of a meaningful
21 outcome.

22 You know, it may be in this situation that
23 if it's not an issue and it's not going to be argued
24 in briefs by the parties, and if it's not going to be
25 swung around or shouted about as some kind of

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1 intangible that ought to sway the way that decisions
2 on other more substantive issues should be resolved
3 or on the tougher issues, then I think that we should
4 just -- that US West will be better served by just
5 letting these sorts of rhetorical complaints wash off
6 its back if, in fact, there's no substantive support
7 for the allegations in the record itself.

8 MR. DEVANEY: Understood, Judge Berg. I
9 will move on. And I hope you appreciate that we felt
10 it necessary to respond to those broad allegations.
11 I know this is not a running start to the case, but
12 we felt like we just had to deal with that right up
13 front, and we've done that, and I will move on and
14 jump into the issues now.

15 JUDGE BERG: I appreciate it. We will
16 strike lines -- please help me with the page
17 reference. It looks like page two, line --

18 MR. FREEDMAN: I have it as lines 13 and
19 14, which starts, In addition, US West has attempted,
20 and ends with the words incremental cost.

21 JUDGE BERG: So it looks like -- I'm
22 looking for a punctuation mark. So it looks like
23 line 12 and 13.

24 MR. FREEDMAN: I apologize. It must have
25 been a function, perhaps, of the e-mail as to why the

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1 line numbering is off. But it says, In addition, US
2 West has attempted to impose higher rates for
3 interconnection based upon the cost study
4 methodologies that would recover far more than
5 long-run incremental costs.

6 JUDGE BERG: All right, thank you. That
7 testimony will be stricken from the record. And I'll
8 just, as just a final note, I'll let both parties
9 know that just impressed me so little that it just
10 didn't even come up on my list to be addressed, but
11 Ms. Roth, being an economist, did take note and had
12 some questions that she would have presented to Mr.
13 Kunde on the same point of what the basis for those
14 statements were.

15 I would like to just try and stay focused
16 on the positions of the parties with regards to the
17 factual issues and the specific contract language to
18 fulfill their positions, as proposed in the matrix,
19 going forward on an issue-by-issue basis, if we can.

20 MR. DEVANEY: Judge Berg, I can assure you
21 that, from this point, it will be more focused on the
22 issues. As I say, we did feel it necessary to probe
23 into those allegations.

24 JUDGE BERG: All right. Thanks, everybody.
25 Q. Mr. Kunde, turning to the meat of the

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1 matter, if you will, I want to focus on the situation
2 where a US West cross-connect facility, and it's one
3 that's specifically controlled by US West, is being
4 used by ATTI for access to UNEs or to access another
5 party's collocated equipment. Are you with me in
6 that scenario?

7 A. Yes, I am.

8 Q. Will you agree with me, as an engineer,
9 that US West has a legitimate need to maintain
10 control over its own cross-connect facilities?

11 A. Yes, I would agree with that.

12 Q. And why is that?

13 A. I'm going to hesitate to make surmises
14 about US West's reasons for that.

15 Q. I ask you as an engineer. As an engineer,
16 why would a telephone company need to retain control
17 over its own cross-connect facilities?

18 A. So that the cross-connects are run in a
19 proper manner.

20 Q. Would you agree, as Mr. Reynolds has
21 testified, that as a practical matter, only US West
22 is able to identify the appropriate points on a US
23 West cross-connect device for interconnection?

24 A. If you're referring to accessing unbundled
25 network elements in the term interconnection, the

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1 answer would be yes.

2 Q. And only US West has knowledge of the
3 appropriate cross-connect port or circuit, is that
4 correct, for its own cross-connect facilities?

5 A. Yes.

6 Q. With that said, and as I read your rebuttal
7 testimony in the case, am I correct that you really
8 don't object to US West selecting the appropriate
9 point for interconnection on a US West cross-connect
10 device?

11 A. Yes, but I would qualify that with as long
12 as ATTI has facilities at that particular
13 cross-connection point. If US West had selected a
14 point on a separate ICDF or frame that ATTI did not
15 have facilities present at, then obviously the
16 circuit doesn't work.

17 Q. Okay, thank you. And also, as an engineer,
18 would you agree that, within its central office or
19 wire center, that US West has an interest in
20 controlling cable routing and controlling where
21 terminations occur on its frames?

22 A. Yes.

23 Q. And again, could you just briefly elaborate
24 on why you think that's an appropriate concern of US
25 West's?

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1 A. US West being the owner of that leased
2 facility, what we might call it, would certainly be
3 interested in the total capacities of its cable
4 racking and total output of power or heat or whatever
5 the case may be. So US West is certainly interested
6 in everything that goes on within a particular
7 facility, including the routing of cabling.

8 Q. Mr. Kunde, do you know, are there
9 circumstances where using an ICDF arrangement would
10 be more economical? That is, less expensive than
11 direct cabling to an MDF?

12 A. I have to admit, I have not run all of the
13 final cost studies and all of the potential
14 arrangements that may exist out there, so I can't
15 give you an example where it may be either more or
16 less cost-effective. That would have to be done on a
17 case-by-case basis, dependent upon the length of the
18 runs in a particular office.

19 MR. DEVANEY: Okay. Judge Berg, could I
20 have one moment, please?

21 JUDGE BERG: Yes, sir.

22 MR. DEVANEY: Thank you, Mr. Kunde. No
23 further questions on Issues One and Two.

24 JUDGE BERG: Mr. Griffith, any questions
25 you'd like to pose?

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1 MR. GRIFFITH: Yes.

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

3 BY MR. GRIFFITH:

4 Q. Good afternoon. I'm Dave Griffith, with
5 Commission Staff. I just have a couple of questions
6 on your diagram. Am I correct in assuming that what
7 you're proposing here is that ATTI be able to just
8 cable directly from the ATTI collocation area to
9 either another CLEC's collocation area?

10 JUDGE BERG: Excuse me, Mr. Griffith. I
11 did commit a small faux pas here, and that was I was
12 going to hold questions from the bench until we
13 finished with the direct and cross of the witness. I
14 apologize. That's my mistake.

15 MR. GRIFFITH: I can ask this later.

16 JUDGE BERG: All right. I appreciate that.
17 I don't want to deviate from the schedule I'd set
18 out, and I'm surprised that such competent counsel
19 didn't take me to the task right away.

20 MR. DEVANEY: I was too thirsty.

21 JUDGE BERG: All right. Mr. Reynolds, if
22 you would present direct testimony with regards to
23 Issues Numbers One and Two.

24 MR. FREEDMAN: Your Honor, would there be
25 an opportunity for redirect of Mr. Kunde at this

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1 time?

2 JUDGE BERG: You know, I was hoping that if
3 you did redirect now, you might also have other
4 redirect to do after you hear questions from advisers
5 on the bench. I was hoping to get it all done in one
6 round, but I think -- I'm willing to go with whatever
7 makes sense for both counsel, if that seems like it's
8 going to be too remote to make sense.

9 MR. DEVANEY: I guess my view, Mr.
10 Freedman, would be that it would move things along if
11 we both keep our redirects till the end and do it all
12 at once. I just think it would be faster.

13 MR. FREEDMAN: I guess, Your Honor, while
14 the issues are kind of fresh, I'm just -- I guess I
15 would defer to the bench, but I'd be prepared to ask
16 him a few simple questions now.

17 JUDGE BERG: Let's stick to the schedule --
18 the format that we had originally looked at, and you
19 know, on a going forward basis, if it seems like it's
20 not working, then I'll be willing to go off the
21 record and talk about it with the parties, but hold
22 those questions and let's take care of Mr. Reynolds'
23 summary and his cross-examination first, and then
24 we'll try and do redirect and re-cross at the same
25 time.

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1 MR. FREEDMAN: Your Honor, before Mr.
2 Reynolds starts, may I make an inquiry as to whether
3 he's being offered as an expert in this case? And if
4 so, on what subject?

5 MR. DEVANEY: Yes, he's being offered as an
6 expert in US West policies on collocation and with
7 respect to specific engineering collocation issues
8 that US West deals with on a routine basis.

9 MR. FREEDMAN: Your Honor, before he
10 starts, may I inquire of the witness?

11 JUDGE BERG: Sure, go ahead.

12 MR. FREEDMAN: Thank you.

13 V O I R D I R E E X A M I N A T I O N
14 BY MR. FREEDMAN:

15 Q. Mr. Reynolds, I'd like to direct your
16 attention to your direct testimony filed in this
17 case. Is it correct that you have a bachelor's
18 degree in English and an MBA?

19 A. That's correct.

20 Q. And you joined the phone company now known
21 as US West as a business sales manager?

22 A. Pacific Northwest Bell, yes.

23 Q. And then you moved to product management;
24 is that correct?

25 A. There's actually a lot more to it, but on a

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1 really abbreviated basis, I would accept that.

2 Q. And is it correct that you've held various
3 director positions in cost economic analyses, pricing
4 planning, and interconnection in the marketing and
5 regulatory areas?

6 A. I wouldn't say that my interconnection
7 experience was necessarily in the marketing area.

8 Q. Let me direct your attention to your direct
9 testimony. Do you have a copy of that in front of
10 you?

11 A. I sure do.

12 Q. Okay. Page one, line 16, could you read
13 what is stated there between lines 16 and 18?

14 A. I have held various director positions in
15 cost, economic analysis, pricing, planning and
16 interconnection for US West Communications in the
17 marketing and regulatory areas.

18 Q. All right. And is that a true statement?

19 A. Yes.

20 Q. Thank you. Is it true that you also are a
21 professional pricing policy witness?

22 A. I have been. I have been in the past, yes.

23 Q. And is it correct that you manage a staff
24 of over 100 employees responsible for economic
25 analyses and cost studies?

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1 A. I have in the past. I don't currently. My
2 current bio is at the end of it.

3 Q. Thank you. And is it correct that in the
4 recent past you've managed US West interconnection
5 product pricing and product strategy? Is that true?

6 A. Yes.

7 Q. And you've managed US West cost advocacy
8 and witness group, which was responsible for
9 providing economic cost representation and
10 telecommunications forums, workshops, and regulatory
11 proceedings; is that correct?

12 A. That is correct.

13 Q. How many central office switches have you
14 installed in your career?

15 A. I have not installed any central office
16 switches.

17 Q. How many collocations have you overseen in
18 your career?

19 A. I guess I would need a clarification of
20 what you mean by overseen.

21 Q. How many collocations have you directed as
22 a network operations person, the actual installation
23 of collocated facilities?

24 A. None.

25 Q. How many times have you actually completed

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1 a cross-connection, as you use that term in your
2 testimony?

3 A. I have never completed a cross-connection,
4 as I use it in my testimony.

5 Q. How many times have you completed a
6 connection to an MDF or an ICDF?

7 A. I have never.

8 Q. How many times have you undertaken any
9 maintenance of jumper cables on an ICDF?

10 A. I have never done that.

11 Q. Have you ever been in a US West central
12 office before?

13 A. Yes, I have.

14 Q. Have you ever seen any of the ATTI
15 facilities anywhere?

16 A. To the extent that ATTI has any facilities
17 in Washington, I may have seen them and not known it.

18 Q. Okay. Where was that when you may have
19 seen them?

20 A. If they have facilities in virtually any of
21 the central offices in the Seattle area, if they have
22 any collocations in Puyallup, Tacoma, Olympia,
23 Silverdale, virtually most of the central offices in
24 western Washington, I may have seen it. I wasn't
25 specifically looking for it, though.

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1 Q. Do you have any certifications or
2 professional credentials to undertake activities in
3 the area of cross-connections in a central office or
4 wire center?

5 A. No, I do not.

6 MR. FREEDMAN: Your Honor, I'd challenge
7 the admission of Mr. Reynolds as an expert on the
8 issues to which he's being called to testify. He's,
9 in short, a professional regulatory witness, but has
10 no knowledge of the areas that are the subject of his
11 testimony.

12 MR. DEVANEY: May I ask Mr. Reynolds a
13 question or two, Judge Berg?

14 JUDGE BERG: Yes, sir, Mr. Devaney.

15 MR. DEVANEY: Thank you.

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

17 BY MR. DEVANEY:

18 Q. Mr. Reynolds, I see that you are the
19 regulatory affairs director responsible for managing
20 all wholesale-oriented regulatory matters in the
21 state of Washington is that correct?

22 A. Yes, that is.

23 Q. Would you generally describe what those
24 responsibilities include, and in your description
25 would you address whether those responsibilities

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1 include anything related to US West's collocation
2 policies and practices?

3 A. Yes, it's generally my responsibility to
4 serve as the main interface with the Utilities and
5 Transportation Commission on wholesale issues, and
6 many of those issues involve collocation, many of
7 them involve out of space notifications, many of them
8 involve collocation tours, and actually, informally
9 negotiating disputes between parties on collocation
10 issues.

11 And I have, in the course of my business,
12 conducted many central office tours for CLECs to
13 evaluate space, to evaluate the type of collocation
14 they would like to do in central offices, the types
15 of interconnection that they would like to make. And
16 so that's my familiarity with interconnection, or at
17 least collocation in the context of this job. I do
18 have experience in my other positions, as well.

19 MR. DEVANEY: Judge Berg, we think that
20 that clearly establishes a foundation. Mr. Reynolds
21 is very familiar, probably more familiar than anyone
22 in Washington with US West collocation policies in
23 this state. And included in the collocation policies
24 is the working knowledge of what it takes to
25 collocate and to make space fit for collocation, so I

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1 think the foundation is well-established, and
2 obviously oppose the motion by ATTI.

3 MR. FREEDMAN: Your Honor, I respectfully
4 disagree. I think that the way that Mr. Devaney
5 phrased his comment was very careful, because he said
6 he was familiar with US West policies. And it's
7 certainly one thing to be able to go to the
8 Commission, as he obviously regularly does, and
9 represent a position, but it's another thing to be an
10 engineer, to get into a central office, and to
11 undertake the kinds of activities that Mr. Kunde is
12 charged with undertaking on a regular basis.

13 And being a professional policy witness
14 does not qualify you as an expert on how
15 cross-connects in the central office ought to be
16 done. So we do respectfully disagree with Mr.
17 Devaney's statement.

18 JUDGE BERG: I've heard what I need to
19 hear. Mr. Reynolds is here to sponsor the testimony
20 that was prefiled on his behalf. However Mr.
21 Reynolds' expert status is characterized, I find that
22 his experience qualifies him to testify consistent
23 with his prefiled testimony. To the extent, Mr.
24 Freedman, that on any of these issues that you want
25 to, you know, argue that the testimony of, for

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1 example, a person with more engineering experience
2 and expertise, Mr. Kunde, should be given greater
3 weight than the testimony of Mr. Reynolds, I'll
4 certainly consider that on a going forward basis.

5 But I will accept Mr. Reynolds as being
6 qualified to sponsor the testimony that has been
7 prefiled in this case.

8 MR. FREEDMAN: Thank you, Your Honor.

9 MR. DEVANEY: Thank you, Judge Berg.

10 JUDGE BERG: One thing I'd like to do here
11 is go ahead and number exhibits relating to Mr.
12 Reynolds, ask US West whether it intends to offer all
13 of those exhibits for admission, and to get ATTI's
14 response, and then we're going to take a five-minute
15 break, but no longer.

16 The direct testimony of Mr. Reynolds shall
17 be identified as T-201. The exhibit marked as MSR-1
18 shall be Exhibit 202. The document identified as MSR
19 -- excuse me if I misstated that prior exhibit.
20 MSR-1 is 202. MSR-2 is 203. I lost track of my own
21 rat. And the rebuttal testimony of Mr. Reynolds
22 shall be marked as Exhibit T-204.

23 Mr. Devaney, are there other exhibits that
24 need to be marked?

25 MR. DEVANEY: Those are the only exhibits

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1 that need to be marked. We do have a corrected
2 version of MSR-2, which is T-203. The version that
3 we submitted had a few sort of comments in the body
4 of the text that we should have deleted and did not.
5 And so we're submitting a version that gets rid of
6 those comments.

7 JUDGE BERG: All right. So that would be a
8 revised MSR-2?

9 MR. DEVANEY: Yes, that's correct.

10 JUDGE BERG: All right. A revised MSR-2
11 shall be marked as Exhibit 205.

12 MR. DEVANEY: I guess what I was wondering
13 is if we just do a replacement, would that be
14 possible, so that we would have just a new version of
15 MSR-2 that would be T-203, it would replace what
16 we've prefiled as MSR-2?

17 MR. FREEDMAN: Your Honor, can I understand
18 what the basis of the revisions are?

19 MR. DEVANEY: Sure.

20 MR. FREEDMAN: What we're getting here?

21 MR. DEVANEY: Could I approach Mr.

22 Freedman? Would that be okay?

23 JUDGE BERG: Yes, sir. We'll be off the
24 record.

25 (Recess taken.)

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1 JUDGE BERG: Back on the record. With
2 regards to Exhibit MSR-2, we will strike the
3 designation of revised MSR-2 as Exhibit 205. And the
4 revised MSR-2 will be substituted for the originally
5 filed MSR-2 as Exhibit 203. Are there any other
6 exhibits that I need to take note of, Mr. Devaney?

7 MR. DEVANEY: No, there are not, Judge
8 Berg.

9 JUDGE BERG: All right. Does US West
10 intend to offer Exhibits 201 through 204 into the
11 record?

12 MR. DEVANEY: Yes, we do. Thank you.

13 JUDGE BERG: Mr. Freedman, do you have any
14 objections?

15 MR. FREEDMAN: I guess no objection to the
16 substitution of the exhibit, but I guess I don't want
17 to walk away from here with the idea that the
18 original MSR-2 didn't exist. I just assume we're
19 doing a substitution; correct?

20 JUDGE BERG: The original MSR-2 will remain
21 in the Commission records as having been attached to
22 Mr. Reynolds' testimony, but in terms of the
23 designation of exhibits for the record, the original
24 MSR-2 will not be either identified as an exhibit or
25 otherwise ruled on.

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1 MR. FREEDMAN: Understood. Thank you, Your
2 Honor.

3 JUDGE BERG: All right. With that
4 understanding, are there any objections?

5 MR. FREEDMAN: No.

6 JUDGE BERG: All right. Exhibits T-201
7 through T-204 shall be admitted into the record.

8 MR. DEVANEY: Judge Berg, I'm sorry. I
9 forgot Mr. Reynolds had a couple of corrections to
10 his testimony. I should have done that before
11 admitting the testimony, but if we could do that?

12 JUDGE BERG: Sure. Let's do that. That's
13 probably also my responsibility to have counsel
14 qualify and offer their witness.

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

16 BY MR. DEVANEY:

17 Q. Mr. Reynolds, you've filed both direct and
18 rebuttal testimony. Do you have any corrections to
19 either piece of testimony?

20 A. Yes, I do. I have two in my direct and one
21 in my rebuttal. The first correction in my direct
22 testimony is on page 19, line two. In the tail end
23 of that question, the number that's in parentheses
24 that says 14.1 -- or 14.2 should actually read 14.1.

25 MR. FREEDMAN: I apologize. My, again,

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1 page numbering is different for some reason. So
2 you're saying it's page 19, line two of the direct?

3 MR. REYNOLDS: Yes, it's the question for
4 Issue Number 18.

5 MR. FREEDMAN: Question for Issue 18.

6 MR. DEVANEY: The question reads, Should US
7 West be required to identify. That's how it begins.

8 MR. FREEDMAN: Gosh, for some reason it's
9 on my page 21. So it should be 14.1 instead of 14.2?

10 MR. REYNOLDS: Yes. And on page 20, but
11 it's question of Issue Number 20.

12 JUDGE BERG: What page number, for my
13 reference?

14 MR. REYNOLDS: It's page 20, and it's Issue
15 Number 20. The second paragraph of the answer
16 contains an acronym IDCF. It should read ICDF. And
17 finally, in my rebuttal testimony there's a sentence,
18 it's on my page three, line 12, the paragraph that
19 starts, "Ultimately." It currently reads, Ultimately
20 US West's position on this issue is consistent with
21 both of the FCC collocation order and results in
22 ATTI. Obviously not a complete thought. I would
23 strike "and results in ATTI," so that the sentence
24 ends after collocation orders.

25 JUDGE BERG: And I'll just state that that

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1 sentence, the word ultimately starts on my line 11.

2 MR. REYNOLDS: That's correct.

3 JUDGE BERG: All right. That starts on
4 your line 11, as well, Mr. Reynolds?

5 MR. REYNOLDS: Yes, it does.

6 JUDGE BERG: All right. Mr. Freedman, but
7 you do see where those changes --

8 MR. FREEDMAN: Yes, I'm fine with the
9 changes.

10 JUDGE BERG: It will be very important, on
11 the backside, that all counsel be working from the
12 same paginated documents. To the extent that I have
13 the same pagination as you do, Mr. Reynolds, I would
14 like US West to provide ATTI with additional copies
15 of Mr. Reynolds' direct and rebuttal testimony so
16 that ATTI will actually have the same paginated
17 document that US West will be referring to
18 post-hearing.

19 MR. DEVANEY: We'll do that, Judge Berg.
20 And as I know you're aware, and just to make Mr.
21 Freedman sure that we're not trying to trick him,
22 this is a result of e-mailing, and that when you
23 e-mail, you end up with different page --

24 MR. FREEDMAN: No, Mr. Devaney has been
25 extremely courteous about faxing, e-mailing, and

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1 sending me documents every way other than carrier
2 pigeon, so I don't have any suspicion whatsoever, and
3 I appreciate the courtesy.

4 JUDGE BERG: And I understand that, again,
5 we're on a really fast track here, so the fact this
6 doesn't come up until now isn't a surprise. I just
7 want to make sure everybody understands what they're
8 required to do to clean up whatever discrepancies
9 there are.

10 So are there any other matters before Mr.
11 Reynolds presents a summary of his direct testimony
12 -- or summary of his testimony on Issues One and Two?
13 All right. Mr. Reynolds, please proceed.

14 MR. REYNOLDS: Us West's position on Issues
15 One and Two is that US West should be the party that
16 specifies both the cross-connect devices and the
17 circuit location for all ATTI to US West UNE
18 connections and on all ATTI to other CLEC collocation
19 cross-connections that are made through a US West
20 ICDF frame.

21 And technically, what happens there is that
22 US West would inform ATTI where to terminate their
23 particular circuit on our cross-connect frame in
24 order that a connection can be made to the requested
25 UNE. The rationale for that position is that it is

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1 US West's network, and that US West understands the
2 routing of its cables, it understands which
3 cross-connects access which UNEs, and thus it really
4 has to be US West that specifies the cross-connect
5 and the points on the cross-connect frame.

6 We believe that our right to manage those
7 facilities stems from the FCC's first interconnection
8 order, specifically Rule 51.323(H)(2), which speaks
9 to the rights of incumbent LECs to manage the
10 facility outside a competitive LEC's collocation
11 installations.

12 We do acknowledge that the newly-ordered
13 rights in the FCC's new collocation order do allow
14 for competitive LECs to construct their own
15 cross-connect facilities between collocation
16 installations, and that issue is currently being
17 debated in this proceeding as Issue Number 22.

18 To allay ATTI's concerns regarding use of
19 ICDF and their allegation that it is tantamount to a
20 SPOT frame, US West is willing to assure ATTI that
21 its access to UNEs via our ICDF frames would
22 essentially be the same as US West access to that
23 same type of functionality for its retail services.

24 US West maintains, in fact, that an ICDF is
25 not the same thing as a SPOT frame. A SPOT frame, by

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1 its underlying meaning, single point of termination,
2 means just that. US West's prior proposed SPOT
3 concept had to do with using a single point of
4 termination for access to all UNEs, and our current
5 philosophy utilizes virtually any frames in our
6 office as interconnection distribution frames as
7 really efficiency dictates.

8 And that concludes my summary remarks on
9 our position.

10 JUDGE BERG: All right. Mr. Freedman.

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

12 BY MR. FREEDMAN:

13 Q. Mr. Reynolds, if I understood your
14 testimony correctly, you're saying that US West
15 should be the party that specifies cross-connect
16 devices where the CLEC is going through US West's
17 network; is that correct?

18 A. I would say, to respond to that, yes, that
19 is correct, and to clarify that, I would say that,
20 for all competitive LEC interconnections to UNEs,
21 that they essentially would utilize an ICDF frame of
22 one form or another, because that's a competitive
23 LEC-to-US West network interconnection.

24 For competitive LEC-to-competitive LEC
25 collocation cross-connection, there are two options.

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1 One option is to utilize US West facilities and
2 utilize an ICDF, and the other option would be for
3 the competitive LEC to either itself, as an approved
4 vendor, or to use an approved vendor to construct its
5 own interconnection between collocation
6 installations.

7 Q. So I understand your testimony, then, US
8 West does recognize the right of a CLEC to construct
9 its own cross-connect between its collocated facility
10 and the collocated facility of another CLEC in that
11 wire center; is that correct?

12 A. Yes, I believe that's required.

13 Q. And the CLEC would not have to do that by
14 using US West's ICDF if it does not so choose; is
15 that correct? It can do it any way it wants to,
16 subject only to safety concerns; is that correct?

17 A. No, I would not agree with that.

18 Q. What, other than safety, would restrict the
19 CLEC's rights to construct its own cross-connect to
20 another collocated CLEC?

21 A. US West believes that it would need to
22 engineer the job given the cable racking facilities
23 that would be available, the routes that would be
24 necessary in order to bring the two collocation
25 installations together, that it really needs to be

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1 engineered by US West, given all of the other US West
2 and other competitive LEC facilities that are also at
3 issue. It does not mean, however, that you would
4 need to use a US West ICDF frame to do so.

5 Q. So clearly, then, the choice of whether to
6 use the ICDF frame for a cross-connect to another
7 collocated CLEC would be the CLEC's choice; is that
8 correct?

9 A. That is correct.

10 Q. And to the extent the CLEC chooses to use
11 the ICDF for that cross-connect, then it would be US
12 West's view that it, US West, gets to specify the
13 appropriate point on the ICDF by which that
14 cross-connect would be accomplished?

15 A. That's correct.

16 Q. In your testimony, you said that US West
17 reads 51.323 of the FCC's order as the authority to
18 determine network routing for facilities beyond CLEC
19 collocation installations. Do you recall that
20 testimony?

21 A. Yes, I do.

22 Q. But that clearly does not include what you
23 just testified to, which is a CLEC's right to
24 cross-connect to another CLEC and to choose not to
25 use the ICDF; is that correct?

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1 A. Yes, I believe that the provision that I
2 quoted is superseded by the FCC's new collocation
3 order, sometimes referred to as the 706 or advanced
4 services order, where it does require incumbent LECs
5 to allow competitive LECs to construct their own
6 cross-connect between collocation installations.

7 Q. Now, you testified that to -- pardon me for
8 one moment -- allay ATTI's concerns about the ICDF,
9 US West would be willing to assure ATTI access to
10 UNEs via the ICDF where US West is using that same
11 means of access; is that correct?

12 A. That is correct.

13 Q. And that's your sort of proposed contract
14 language, the compromise, if you will, that's in your
15 testimony?

16 A. That is correct.

17 Q. And would that be the language that's found
18 on page eight -- my page eight of your direct
19 testimony, which is lines nine through 13, which is
20 the language that is just before the start of
21 question three? I'll just read it. It says, quote,
22 ATTI may order access to UNEs which ATTI may connect
23 to other network elements or combine for the purpose
24 of offering finished retail services. ATTI will
25 utilize the ICDF for access in US West's UNEs in US

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1 West wire center only to the same extent, on the same
2 terms and conditions as US West utilizes the ICDF for
3 provision of its retail services.

4 A. That is correct.

5 Q. Do you believe -- and let me call out for a
6 defined term of the US West proposal. So if I talk
7 for the next few minutes in my cross-examination
8 about the US West proposal, I'll be referring to that
9 proposal, that language that I just read.

10 JUDGE BERG: Mr. Freedman, I apologize for
11 interrupting your flow, but is that language also
12 stated in the matrix, or is this language to be
13 considered in addition to the matrix?

14 MR. DEVANEY: It's in addition to the
15 matrix, Judge Berg.

16 JUDGE BERG: Okay. That's all I needed to
17 know. Thank you, Mr. Freedman.

18 Q. So it would be your view that if US West
19 claims that it utilizes the ICDF for access to UNEs,
20 then, under this proposal, it could require the CLEC
21 to utilize the ICDF for access to UNEs; is that
22 correct?

23 A. I don't think that that's the only point on
24 that issue.

25 Q. Would that be one conclusion if this

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1 language were adopted as part of ATTI's collocation
2 contract with US West?

3 A. I see this as more of a guarantee that US
4 West is using the frame.

5 Q. Right, but with all due respect, this is
6 one of those yes or no questions.

7 A. Could you please repeat it?

8 MR. FREEDMAN: May the court reporter
9 repeat it, please?

10 (Record read back.)

11 Q. I guess I'll restate the question, because
12 the substantive question was the one just preceding
13 that. The substantive question is if this language
14 were adopted, would a CLEC be required to utilize the
15 ICDF as a connection to the network or for access to
16 unbundled network elements if US West states that it
17 is using the ICDF for those purposes within the
18 meaning of your proposal?

19 A. No, not only for that reason.

20 Q. Okay. Let me try it one more time, and
21 I'll try and simplify the question.

22 JUDGE BERG: And Mr. Freedman, possibly if
23 you could actually refer to the operative language
24 that you think may otherwise bind ATTI, that might be
25 of some benefit.

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1 Q. Looking at your language, if US West were
2 to assert that it, quote, utilizes the ICDF for
3 provision of its retail services, unquote, in a
4 particular wire center, would it then be your view
5 that US West could compel ATTTI -- too many Ts --
6 ATTI to also utilize the ICDF for access to the
7 network or access to UNEs, yes or no?

8 A. No, not only for those reasons.

9 JUDGE BERG: Well, I'm confused by the
10 response, Mr. Reynolds.

11 MR. REYNOLDS: He's asking a conditional
12 question suggesting that --

13 JUDGE BERG: Because it seems to me that --

14 MR. REYNOLDS: The only driving reason
15 behind US West indicating that ATTI needs to use a
16 specific frame is contingent upon US West using it
17 for retail purposes. My point would be no, that's
18 not -- that's not the primary reason. I've already
19 testified that US West believes that it alone should
20 specify the cross-connect device and the point, but
21 as an assurance, we're willing to also offer up that
22 US West uses these same frames. This is not a single
23 point of termination frame.

24 JUDGE BERG: I understand.

25 MR. REYNOLDS: So that's the point.

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1 JUDGE BERG: I really do understand. It
2 seems to me the response is yes, but not just for
3 those reasons. It seems to me that what you're
4 stating is that US West can compel ATTI to utilize
5 the ICDF to access US West UNEs in US West wire
6 centers for reasons other than or in addition to the
7 fact that US West also utilizes the ICDF for
8 provision of its retail services?

9 MR. REYNOLDS: I would accept that, as
10 well. That's fine.

11 Q. What are those other reasons?

12 A. As I stated in our position that US West
13 believes that it is its network and that it is
14 responsible for managing the facilities outside the
15 collocation installation. And when a competing LEC
16 orders access to UNEs, US West will facilitate that
17 in the most efficient way possible, and it will
18 designate the cross-connect device.

19 Q. Are there any other reasons?

20 A. No.

21 Q. Okay. So let me summarize your testimony.
22 You believe that US West can compel ATTI to utilize
23 the ICDF for access to the network or access to UNEs,
24 and the reasons you've stated are, one, this
25 compromise proposal that you've offered, and number

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1 two, your statement that US West believes that it's
2 its network, is that correct, and there are no other
3 reasons; is that correct?

4 A. Well, I believe that the reasons that it's
5 its network stems from the two FCC orders and the
6 rules that govern US West's rights as far as managing
7 its network in conjunction with collocation. I think
8 I've already addressed both of those in how they sync
9 up with our position.

10 Q. I'm going to get to those rules in a
11 minute, but I assume you would have the same position
12 even if it were, in fact, technically feasible --
13 well, even if, number one, the ICDF were, in fact,
14 not at the MDF, because now the ICDF could be any
15 place; right?

16 A. Well, the ICDF indeed could be the MDF.

17 Q. But it may not?

18 A. It may be additional cross-connect system,
19 it may be -- it is where US West also accesses that
20 functionality. It is using US West's existing
21 interconnection frames to allow competitive LECs to
22 interconnect to UNEs using the same frames that US
23 West uses to access that functionality.

24 Q. So at a place where US West has designated
25 something that used to be called the SPOT frame as

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1 the ICDF, and not the MDF, and where it would be
2 technically feasible for the CLEC, nevertheless, to
3 interconnect with the network at the MDF; it is your
4 view, nevertheless, that US West could compel the
5 CLEC to access UNEs or access the network through the
6 ICDF even if that ICDF were located at what you used
7 to call the SPOT frame, but I know you don't use that
8 term anymore, and where it would be technically
9 feasible to interconnect at the MDF; is that correct?

10 A. That was an awfully long question. I don't
11 --

12 Q. Did you understand the question?

13 A. No, I did not.

14 Q. Okay. Are there circumstances where US
15 West -- the ICDF is now this sort of amorphous,
16 floating term; correct?

17 A. Well --

18 MR. DEVANEY: Object to the
19 characterization.

20 Q. It could be different things in different
21 wire centers; isn't that correct?

22 A. ICDF stands for interconnection --

23 Q. That could just be a yes or no question.

24 Could the ICDF be different things in different wire
25 centers, yes or no? Could it be different physical

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1 locations?

2 A. Yes.

3 Q. Sometimes it could be the MDF; isn't that
4 correct?

5 A. Yes.

6 Q. And sometimes it could be what used to be
7 called the SPOT frame; isn't that correct?

8 A. Yes.

9 Q. Could it be anything other than those two
10 places?

11 A. Yeah, it could be a digital cross-connect
12 to access DS1 and DS3.

13 Q. Okay.

14 A. In fact, ICDF doesn't look any different
15 than the points of interconnection that Mr. Kunde
16 lays out in his proposed interconnection
17 cross-connect.

18 Q. There's no question pending for that
19 answer.

20 MR. DEVANEY: Well, he's permitted to
21 explain his answer.

22 JUDGE BERG: I think it was a legitimate
23 response.

24 MR. FREEDMAN: I apologize, Your Honor.

25 Q. So the ICDF could be the MDF, could be what

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1 used to be called the SPOT frame, could be -- or
2 could be one of these digital cross-connect
3 locations; is that correct?

4 A. Yes.

5 Q. And US West is the one who determines which
6 of those possibilities will be the ICDF in any
7 particular wire center; correct?

8 A. Yes, depending on the UNE that's being
9 requested.

10 Q. So it is true, is it not, that there could
11 be a wire center where, in fact, US West has
12 designated the SPOT frame as the ICDF; isn't that
13 correct?

14 A. US West may well use a SPOT frame for
15 ICDF-type interconnection only because many SPOT
16 frames were placed on existing main distribution
17 frames and they essentially give the same access and
18 interconnection to UNEs.

19 Q. So the answer to my question is yes; isn't
20 that correct?

21 A. That is correct.

22 Q. Thank you. And one of those wire centers
23 where the ICDF is at the SPOT frame, assume for
24 purposes of my question that it is technically
25 feasible for ATTI to interconnect with the network at

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1 the MDF. Do you understand me so far?

2 A. I guess I would need to understand your
3 understanding of what the MDF is.

4 Q. The main distributing frame. Does that
5 term have a meaning to you?

6 A. Yes, it does.

7 Q. Thank you.

8 A. But it may be one and the same as the SPOT,
9 and many times is.

10 Q. Okay. Assume that the SPOT frame is a
11 single point of termination.

12 Do you have the picture, David?

13 JUDGE BERG: Mr. Reynolds, I understand
14 that there may be any number of any reasons for
15 feeling frustrated, but I'm going to just request
16 that you be patient, listen to the hypothetical,
17 accept it as a hypothetical, and respond to it to the
18 best of your ability, accepting the premises that
19 counsel lays out for you.

20 Q. Okay. Assume for the moment that we're in
21 a wire center where, in fact, the ICDF is not the
22 MDF, all right. And assume that it is technically
23 feasible, in fact, to interconnect directly to the
24 MDF, through the MDF, for purposes of access to UNEs
25 or access to the network. In that example, would it

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1 still be US West's position that it could compel ATTI
2 to interconnect at the ICDF, yes or no?

3 A. Yes.

4 Q. Thank you. Can you look -- do you have
5 before you -- and I think your counsel mentioned it
6 -- a copy of the FCC's collocation order in the
7 advanced services docket?

8 A. Yes, I do.

9 Q. Do you believe that that view is supported
10 by that order?

11 A. Yes, I do.

12 Q. If you turn to page -- well, paragraph 42.

13 JUDGE BERG: Mr. Freedman, I'm going to
14 stop here. You know, I'd hate to actually project
15 where we're going to wind up in this hearing if we
16 continue progressing the way we are.

17 I may have done the parties a real
18 disservice in suggesting that we go on an
19 issue-by-issue basis, because prior time estimates
20 were that, in fact, parties would testify for about
21 15 minutes, or summarize all of their testimony in
22 about 15 minutes, and each counsel was going to
23 conduct about a hour's worth of cross-examination on
24 all issues, and then there might be a couple hours
25 left over, or at least an hour left over for counsel

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1 to do legal arguments.

2 And this only falls on your shoulders
3 because you're the person who's sort of at the plate
4 at the point in time when my alarms go off. And to
5 the extent that you wish to take exception with Mr.
6 Reynolds' interpretation of that order, it might be
7 much more productive to argue that on the backside.

8 MR. FREEDMAN: I accept that suggestion. I
9 withdraw the prior question.

10 JUDGE BERG: All right. And then, once
11 we're through discussing Issues One and Two, I'm
12 going to want to go off the record and chat with
13 counsel about whether we need to fall back on the old
14 schedule. But, you know, I understand that this may
15 be the product of my suggestion that we go on an
16 issue-by-issue basis. Please proceed, Mr. Freedman.

17 Q. Mr. Reynolds, going back to what we call
18 the US West proposal, the proposed language, what
19 does it mean when it says, at the end, as US West
20 utilizes the ICDF for provision of its retail
21 services?

22 In other words, the language says, as I
23 read it, ATTI will utilize the ICDF to access US West
24 UNEs in the wire center only to the same extent and
25 on the same terms and conditions as US West utilizes

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1 the ICDF for provision of its retail services.

2 And my question to you is what is the
3 meaning of the phrase at the end of that, "as US West
4 utilizes the ICDF for provision of its retail
5 services?"

6 A. Maybe I could give an example. On our
7 COSMIC frame, we have appearances of our outside
8 plant loops that interconnect with our switch ports,
9 and as we -- as customers move around and there is a
10 requirement to interconnect different loops with
11 different switch ports, over time, you can't extend
12 wire all the way up and down along the COSMIC frame.
13 And so we tend to utilize interconnection frames,
14 sometimes called tie pair frames, to accomplish that.
15 It's how we access the loop and how we access the
16 switch port.

17 And we do that in the provision of our
18 retail services, our basic exchange services. To the
19 extent that we are accessing that unbundled loop
20 through a tie pair frame, that tie pair frame is a
21 very efficient way to also allow competitive LECs to
22 access the UNEs, because direct access on the COSMIC
23 would force competitive LECs to interconnect with
24 every module on the COSMICs to access the same loops
25 that are accessible from the tie pair frame.

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1 Q. How will US West measure the, quote, the
2 extent it utilizes the ICDF for provision of its
3 retail services within the meaning of the US West
4 proposal? What will the measurement criteria be?

5 A. I think just a determination that it indeed
6 accesses an unbundled loop. And my example of the
7 tie pair frame, to the extent it accesses unbundled
8 loops or it accesses loops in the provision of its
9 retail services, then that's the same -- if a
10 competitive LEC were wanting to access the same
11 functionality, the same UNE, if you will, unbundled
12 loop, then that's what's meant.

13 Q. So if US West accesses any UNEs on its
14 designated ICDF, then the competitive LEC would have
15 to access all UNEs on the ICDF; is that correct?

16 A. No.

17 Q. Why not?

18 A. I guess I'm taking issue with your use of
19 the term all UNEs. Possibly all like UNEs, because
20 to the extent that a competitive LEC wanted to access
21 a different type of UNE that wasn't served by that
22 particular frame, for example, something that was on
23 the digital cross-connect frame, rather than a main
24 distribution frame, then that would be the more
25 appropriate place to interconnect the competitive

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1 LEC. And US West would use that same digital
2 cross-connect frame to provision its DS1 and DS3
3 services.

4 Q. So the meaning of extent here, as I
5 understand your testimony, is the type of UNEs, and I
6 take it that if US West, for a particular type of
7 UNE, can show that it's using an ICDF, or at least
8 one loop, for example, of that UNE, then it would
9 take the position that it could compel a CLEC to
10 utilize that ICDF for any time it wanted to
11 interconnect that same type of loop; is that correct?

12 A. Yes, for that and the other reasons that I
13 stated earlier.

14 Q. Can you quantify for Judge Berg in how many
15 offices is the ICDF that US West uses within the
16 meaning of this phrase at a location other than at
17 the MDF?

18 A. My understanding -- my current
19 understanding of ICDF, for example, for high-capacity
20 services, DS1 and DS3, is that, at least currently,
21 it would always be at a digital cross-connect frame
22 that may be different than the MDF. It may not. We
23 have some digital cross-connect frames that are
24 attached to MDF. There is no hard and fast rule for
25 frames and, depending on the vintage of the central

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1 office, an MDF may well be a protective frame, as
2 well as an MDF, as well as a SPOT frame.

3 Q. Can you quantify, with respect to basic
4 unbundled loops, two-wire loops, how many offices
5 does US West utilize what it used to call the SPOT
6 frame or any location other than the main
7 distributing frame for the provision of its retail
8 services within the meaning of the US West proposal?
9 Are there any offices to do that you can point to
10 where that occurs?

11 A. I'm sorry, I missed the beginning part of
12 your question.

13 Q. Are there any offices today that you can
14 point to where US West, for basic unbundled two-wire
15 loops, utilizes a SPOT frame, as that term used to be
16 known, an intermediate frame, a frame different than
17 the MDF, for the provision of its retail services
18 within the meaning of the US West proposal?

19 A. I don't know the answer to that one way or
20 the other.

21 Q. Can you name any such offices for Judge
22 Berg right now?

23 A. I can't.

24 Q. Thank you.

25 A. I don't know.

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1 Q. You say in your testimony that the ICDF
2 reduces cost. Do you recall that testimony?

3 A. Yes.

4 Q. What is the basis for that statement?

5 A. The example I gave a few minutes ago about
6 a tie pair frame that allows US West to access a
7 number of modules on a COSMIC frame, rather than
8 provisioning up and down a COSMIC frame with many
9 feet of wire, is a good example of where a connecting
10 frame is more efficient than running multiple --
11 multiple cable routes to every module on a COSMIC
12 frame.

13 There are literally, in a large office,
14 there are many modules on a COSMIC frame, and if a
15 competitive provider wanted to access unbundled
16 loops, it could be required to run cable to each and
17 every module on the COSMIC, whereas an intermediate
18 frame can access those a lot more efficiently, and
19 that is a cost savings that US West employs for its
20 own retail services and would extend that to
21 competitive LECs.

22 Q. But I take it you haven't submitted any
23 data or information with your testimony that is a
24 study or any kind of a basis to support your
25 statement that the ICDF reduces cost; isn't that

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1 true?

2 A. I did not submit any studies. No, I did
3 not.

4 Q. And hasn't the FCC and other state
5 commissions rejected what used to be called the SPOT
6 frame because, among other things, they said it
7 increases cost?

8 A. I have read orders -- the order that you
9 referred to earlier, the FCC order, I've read it and
10 I don't think it refers to a SPOT frame. It refers
11 to intermediate connecting arrangements that could
12 potentially increase cost. The example I gave you,
13 if a SPOT frame were used, or any frame were used, to
14 achieve the efficiencies that I just testified to,
15 then I would disagree with that. I think that a
16 single frame that allows competitors access to
17 multiple modules on a COSMIC frame truly is a
18 cost-saving device.

19 Now, I think I would agree that if a single
20 point of termination frame required cable routing
21 from other frames unnecessarily, that then would have
22 been inefficient. And if certain state commissions
23 found that that was inefficient, I would agree with
24 them. However, that's not what we're talking about
25 with ICDF.

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1 Q. So then, the ICDF that you're talking about
2 will never be what the state commissions previously
3 referred to as the SPOT frame, or single point of
4 termination; is that correct? Because you said
5 that's not what we're talking about.

6 A. It will never be the same concept.

7 Q. Will it ever be the same physical device?

8 A. Yes.

9 Q. It will be?

10 A. Yes.

11 Q. Okay.

12 A. We constructed SPOT frames during that
13 period of time. And as I explained earlier, many
14 times that SPOT frame was merely a part of the main
15 distribution frame. We utilized existing frames that
16 we had available to us to do that. And so to the
17 extent that competitive LECs believe that somehow the
18 main distribution frame is where they want to go and
19 we have built the capability for UNE access through a
20 pre-existing SPOT on the MDF, there's actually no
21 difference than if we were to build a new point of
22 termination on the MDF. That's exactly what the
23 prior SPOT frame was.

24 What is different is US West will no longer
25 cable in high-capacity circuits so that -- and

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1 require that CLECs interface with every type of UNE
2 at a single frame. What we've said is we will now
3 use all the existing frames in the central office.
4 To the extent that we constructed what were called
5 SPOT frames in the past, those are very utilizable.
6 I mean, there's no reason not to utilize those
7 frames. They're in good shape, so --

8 MR. FREEDMAN: I have no further questions
9 at this time, Your Honor.

10 JUDGE BERG: Mr. Griffith.

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

12 BY MR. GRIFFITH:

13 Q. Okay. I'll get back to my question for Mr.
14 Kunde. Referring to your diagram, Mr. Kunde, am I
15 right in describing your proposal that you would like
16 to run a single cable from the ATTI collocation area
17 over to another CLEC's collocation area? Is that --
18 that would be part of your proposal, rather than
19 going to a different location?

20 A. Effectively correct. It may not be a
21 single cable. It may be two or three cables in the
22 case of a DS3 connection that requires two separate
23 coaxial cables to be run.

24 Q. Okay. And extending that same question
25 over to the MDF, that might be a single cable or

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1 several cables?

2 A. It would typically be in the form of cables
3 that had 100 pairs in them, 100-pair cables. So if
4 we were wanting to have a thousand pairs of access to
5 the MDF, that would be ten of those.

6 Q. In reference to the previous discussion
7 that was being had with Mr. Reynolds, would that be a
8 single cable for each module, in the case of a COSMIC
9 frame, or would it be fewer cables than that?

10 A. It would generally be a single cable for
11 each module in the COSMIC frame.

12 MR. GRIFFITH: Okay, thank you. I do have
13 a question for Mr. Reynolds.

14 JUDGE BERG: Sure, go ahead.

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

16 BY MR. GRIFFITH:

17 Q. Continuing with the questioning on -- I
18 guess I want to step back a little bit and just try
19 to understand some of the terminology that's been
20 going on here. Am I correct in assuming now that
21 there's no longer such a thing as a SPOT frame? Are
22 they all gone, or is there still something with that
23 name?

24 A. I think US West is trying to shed the SPOT
25 concept. And there's a lot of parties that want to

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1 keep reminding us that we had proposed it at one
2 time. So no, we no longer propose SPOT. We propose
3 this ICDF philosophy that we'll utilize all frames in
4 the office, pretty much, and share them amongst, you
5 know, retail and wholesale needs.

6 Q. Okay. And an office could have an ICDF, as
7 well as an MDF; would that be correct?

8 A. Yes.

9 Q. Okay. And then I want to ask a couple of
10 hypotheticals. If a UNE is currently terminated on
11 the MDF, would ATTI be able to get access to that UNE
12 at the MDF?

13 A. If that were the most efficient place and
14 was currently terminated there, yes. I mean, that's
15 probably where US West would designate cross-connect.
16 But the point I was bringing up earlier is that US
17 West would designate that cross-connect.

18 Q. And then there may be another case where
19 UNEs actually terminated to the ICDF, and then the
20 ICDF would be a more appropriate place for the
21 interconnection?

22 A. Yes.

23 MR. GRIFFITH: Okay, thank you.

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

25 BY JUDGE BERG:

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1 Q. Mr. Reynolds, will there ever be a place
2 where US West utilized both the ICDF and the MDF for
3 the provision of the same UNE?

4 A. That might be possible. And the example I
5 would go back to, once again, is there may be a tie
6 pair frame. And I apologize, I don't know if this is
7 the case or not, but there technically could be a tie
8 pair frame that is utilized for a certain number of
9 modules on a COSMIC that might be an intelligent
10 location to access UNEs for competitive LECs to
11 access unbundled loops.

12 Likewise, there may be a separate frame
13 that was maybe constructed as part of a SPOT concept
14 at one point in time, and if you wanted to -- if that
15 were the more efficient place to interconnect with
16 other of the same type of UNEs, that might be the
17 case. I suppose it could happen, hypothetically.

18 Q. So in looking at the US West guarantee, at
19 page seven, lines six through ten, and I understand
20 your essential position that US West should retain
21 absolute authority to make certain determinations
22 regarding the utilization of its network, but with
23 this guarantee, to put the minds of interconnecting
24 CLECs at rest, if, in fact, US West had a choice in a
25 particular wire center in a sense that it provided

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1 retail services through more than one path, then, in
2 that instance, would the CLEC also be entitled to
3 make that same discretionary decision, or is it still
4 an efficiency determination?

5 A. I think it would still be an efficiency
6 determination, and it would be essentially based on
7 US West's engineering of that office. And I can
8 probably give you an example of the COSMIC frame.
9 The COSMIC frame truly is a point of interconnection
10 that US West interconnects its loop plant with its
11 switch ports. And it is very inefficient to try to
12 access unbundled network elements on every module of
13 the COSMIC frame. Nonetheless, the COSMIC frame is a
14 connecting frame, and so, potentially, competitive
15 LECs, if it were up to their discretion, could
16 request interconnection on the COSMIC frame.

17 It would be very inefficient, it would be
18 very costly, and so we would engineer away from that.
19 And so that's an example of where we would use our
20 discretion and favor efficiency and, you know, solid
21 network engineering over the discretion of the
22 competitive LEC.

23 Q. In US West's proposed language in its
24 matrix, its proposed language for 3.21, the first
25 sentence makes reference to a direct connection,

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1 where technically feasible, and in the very next
2 sentence, it makes reference to direct cabling to US
3 West's network via ICDF.

4 In this instance, are there actually -- are
5 we talking about two different things? Is there a
6 technical difference between direct connection in the
7 first sentence and direct cabling to US West's
8 network via ICDF in the second?

9 A. No.

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

11 BY JUDGE BERG:

12 Q. Okay. And Mr. Kunde, in looking at ATTI's
13 proposed language for Factual Issue Number One, under
14 virtual collocation, proposed 2.1.1, the second
15 sentence refers to access to the appropriate point on
16 the cross-connect device, but down in 2.1.3, under
17 cageless physical collocation, in the italicized
18 type, it states that cageless physical collocation
19 will also include access to the cross-connect device.

20 Is there a technical reason why, for
21 virtual collocation, ATTI is seeking access to the
22 appropriate point, but in cageless, it's seeking
23 access to the cross-connect device, to the device?

24 A. Generally, it boils down to the difference
25 between virtual and cageless. In the cageless

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1 scenario, we actually control our equipment and
2 operate it and maintain it. In the virtual scenario,
3 US West does that on our behalf.

4 JUDGE BERG: All right, thanks. I thought
5 it might be that simple. I have no other questions.
6 At this point in time, Mr. Freedman, would you like
7 to conduct redirect of Mr. Kunde?

8 MR. FREEDMAN: I'll try to be brief, Your
9 Honor.

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

11 BY MR. FREEDMAN:

12 Q. In cross-examination, Mr. Kunde, you were
13 asked whether the ICDF was the same as the SPOT frame
14 or whether it included more than the SPOT frame or
15 something different than the SPOT frame, and I
16 believe your testimony was that your current
17 understanding was that the ICDF concept included
18 something more than the SPOT frame, or now included
19 that.

20 My question to you is has that always been
21 your understanding, that the ICDF -- that there was
22 some other concept beyond the SPOT frame as some
23 point of interconnection for the US West network?
24 Let me rephrase that. How long has the ICDF concept
25 been familiar to you or have you understood it or

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1 known about it?

2 A. It's been a relatively short period of
3 time, and it's based upon kind of divining what US
4 West's interpretation of or definition of the ICDF
5 has been.

6 Q. Now, before the ICDF, there was the SPOT
7 frame; is that correct?

8 A. Yes.

9 Q. And what is the SPOT frame?

10 A. The SPOT frame, for all practical purposes,
11 is a point, or a distributing frame --

12 JUDGE BERG: Counsel, if you want to close
13 curtains at any time, feel free to modify the
14 environment, okay.

15 THE WITNESS: -- that sits generally, and I
16 will say, I'll reference our experience in Minnesota,
17 across 15 central offices that we've observed there,
18 no reason to believe it's much different in Seattle
19 or any other location that US West operates, but
20 generally, the SPOT frame is truly a separate
21 intermediate frame that sits generally right outside
22 the cages of interconnecting companies and is not the
23 MDF.

24 Q. You said it's an intermediate frame. Is
25 that an intermediate point of interconnection?

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1 A. Yes, it is.

2 Q. And it's your understanding that the ICDF
3 could be the SPOT frame or could be something else
4 besides the SPOT frame under the current US West
5 approach; is that correct?

6 A. That's correct.

7 Q. And you were asked whether you had an
8 understanding as to whether US West uses the ICDF for
9 its own purposes, and I believe your answer was yes,
10 that it would use it under the broader definition,
11 including where that definition includes the MDF. Is
12 that your testimony?

13 A. That's true.

14 Q. Have you ever observed US West using the
15 SPOT frame as the ICDF, as it's main point of
16 interconnection to the network in the 15 offices
17 you've observed?

18 A. Thus far, the particular device -- once
19 again, there are a lot of different frames in a
20 particular office, but the device that, in the cases
21 that we have been directed to utilize the ICDF
22 device, I have never seen US West provisioning their
23 own retail services off of that frame. As a matter
24 of fact, it's my understanding, as US West talked
25 about earlier, that generally the line cards in a

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1 particular switch in an office are wired directly to
2 one side of the MDF to connect to the outside plant
3 cables, which are on the other side of a particular
4 MDF. And the majority -- and I would venture a guess
5 that it's probably 90-plus percent, 95-plus percent
6 of all of their retail services are a more direct
7 connection like that.

8 Q. Now, is it possible that, just speaking
9 colloquially for the moment, and please translate
10 this back into technical terms, that US West could
11 essentially use the SPOT frame for just a little bit
12 of its retail services, while keeping the majority of
13 its services on something like the MDF?

14 MR. DEVANEY: Judge Berg, I guess I'm going
15 to object to the leading nature of the redirect, and
16 would ask that perhaps counsel try to be a little
17 less leading in the redirect.

18 JUDGE BERG: And counsel, if you could --
19 is there a way for you to rephrase the question?

20 MR. FREEDMAN: Yes.

21 Q. If US West were to utilize the SPOT frame,
22 as you have observed it, for the provision of its own
23 retail services, would it have to provision all of
24 its retail services or could it provision just some
25 of its services utilizing that frame?

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1 A. It could provision some of its services
2 utilizing that frame. I think the definition and the
3 differentiation comes in the fact that the higher
4 capacity high cap services, like DS1s and DS3s,
5 probably tend to go through some common ICDF, like a
6 DACS. However, the DS0 or voice frequency types of
7 services generally are not provisioned through a SPOT
8 frame or an intermediate device. Those usually go
9 directly to an MDF.

10 Q. Now, I believe Mr. Devaney asked you
11 whether US West has a legitimate need to maintain
12 control over its own cross-connections. Does US West
13 have a need to maintain control over the
14 cross-connections of other parties?

15 A. They shouldn't.

16 Q. And why not?

17 A. The issue of, I guess, specifying a
18 particular point on an MDF, and I'll reference my
19 diagram again, US West had indicated that they needed
20 to control and only knew which points things needed
21 to be connected to. In certain circumstances, such
22 as which line card within our particular cage or
23 piece of equipment is provisioned to provide a
24 service to a customer, US West wouldn't know that
25 particular piece of information, so it wouldn't

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1 particularly know which point on the tie cables from
2 the cage out to the SPOT frame would be the ones to
3 be connected to. We would have to be able to be
4 involved in specifying that.

5 Q. And I take it there's a difference -- well,
6 let me rephrase it. Is there any difference between
7 specifying the point on the cross-connect device
8 versus specifying the cross-connect device?

9 A. Yes, there is.

10 Q. What's that difference?

11 A. The difference is, in specifying the
12 cross-connect device, you're actually talking about
13 an entire frame to which tie cabling gets run to,
14 whether it's an ICDF or an MDF. So large amounts of
15 tie cables, typically in 100-pair complements or
16 increments, are typically run and pre-wired out to
17 that point.

18 Once that is done and those are in place,
19 that's all typically done in advance, done through
20 the collocation application process. The actual
21 connection on a customer-by-customer basis of tie
22 cabling to MDF to its particular outside plant cable
23 is done on a point-by-point basis, and there are
24 particular tie down points then within a frame that
25 are used to specification of the point.

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1 Q. Does ATTI need to control its cross-connect
2 devices?

3 A. We certainly need to control and administer
4 and keep records on those for trouble-shooting and
5 installation purposes so that the right customers are
6 connected to the right pairs and connected to the
7 right line cards within the central office so that
8 the proper services and telephone numbers and so
9 forth are provisioned to that customer.

10 Q. Does ATTI --

11 JUDGE BERG: Mr. Freedman, let me stop you
12 right here. How much longer is your redirect going
13 to go on?

14 MR. FREEDMAN: Five minutes.

15 JUDGE BERG: Let's go off the record.

16 (Discussion off the record.)

17 JUDGE BERG: Back on the record.

18 Q. Mr. Kunde, based on the US West proposal
19 referenced in Mr. Reynolds' direct testimony on my
20 page eight, starting at line nine, are you
21 comfortable with accepting that proposal, to use the
22 ICDF where US West utilizes it?

23 A. It does provide me with a certain level of
24 discomfort.

25 Q. Why are you not comfortable with that

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1 proposal?

2 A. Because essentially it makes it necessary
3 for us to utilize the ICDF as US West specifies for
4 all of our services, all of our access to UNEs of a
5 particular type, where, for the most part, US West
6 may use that only for a very limited number of
7 services. And the majority of those services will
8 actually traverse a separate, potentially more
9 efficient route.

10 MR. FREEDMAN: I have no other questions on
11 redirect, Your Honor.

12 JUDGE BERG: Mr. Devaney, re-cross?

13 MR. DEVANEY: None, thank you.

14 JUDGE BERG: All right. Redirect for Mr.
15 Reynolds?

16 MR. DEVANEY: None, thank you.

17 JUDGE BERG: Mr. Freedman, would you like
18 to pose some questions on re-cross for Mr. Reynolds?

19 MR. FREEDMAN: Just one.

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

21 BY MR. FREEDMAN:

22 Q. Mr. Griffith and Judge Berg posed questions
23 to you regarding a choice and whether the CLEC would
24 be entitled to choose. How would a CLEC know -- I
25 guess I have two questions. First of all, how would

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1 a CLEC know where the ICDF is in any central office
2 or wire center, as you use the term? You would tell
3 them? You, US West, would tell them; is that
4 correct?

5 A. Yeah, it would have to be a part of the
6 initial quote preparation. We would have to know
7 where to extend their cables to. So depending on the
8 mix of UNEs that they requested on the initial
9 request form, we would essentially have to plan that
10 build to build their UNEs out to the required
11 interconnection distribution frame.

12 Q. So they would know because US West would
13 tell them; is that correct?

14 A. Yes.

15 Q. And you said that that would be a choice
16 based on efficiency in response to Judge Berg, is
17 that correct, based on reduction of cost?

18 A. Among other things, yes.

19 Q. Whose costs would be reduced?

20 A. In an example that I gave, a CLEC's costs
21 could be reduced. It is also a cost savings to US
22 West. US West has to expend the initial dollars,
23 initial investment to build out, and it's a use of
24 money during a specified period of time, so it could
25 save both parties money.

00102

1 Q. Would you be willing -- would US West be
2 willing to modify its compromised proposal to
3 condition the designation of a CLEC -- of the ICDF as
4 being the least-costly interconnection alternative
5 for the CLEC?

6 A. I can't do that here today. I'd be willing
7 to consider it.

8 JUDGE BERG: I'll just state that the
9 parties have made great progress, and I would urge
10 them to continue to try and take advantage of what
11 they've learned about each other's positions here
12 today to continue trying to work out some
13 mutually-agreeable resolution of these issues. It
14 still may be overall preferable to a decision that
15 you'll get from the Commission.

16 MR. FREEDMAN: I have no further questions
17 on re-cross, Your Honor.

18 JUDGE BERG: All right. Thank you. Mr.
19 Griffith, any other questions?

20 MR. GRIFFITH: I have no further questions.

21 JUDGE BERG: All right. Let's resume at --
22 well, let me just state, before we go off the record,
23 on the way that Issue Number Two is to be referred to
24 in arguments in post-hearing briefs would be to
25 insert the word "or" between the two perspectives, so

00103

1 that the issue to be briefed by the parties is will
2 US West be allowed to direct the routing of cables to
3 access UNEs in its network or can ATTI choose to use
4 ICDF or direct connection to US West's network based
5 only on technical feasibility, and then that should
6 provide sufficient latitude for the parties to go
7 wherever they want in their arguments.

8 All right. And then, when we come back,
9 we'll talk about a time within which to cover Issue
10 22. At this point, it's almost five minutes after.
11 Let's take a break till 4:15. After we come back,
12 we're going to try and hit this hard and long to take
13 up a major portion of the remaining presentation of
14 issues.

15 (Recess taken.)

16 JUDGE BERG: Back on the record. At this
17 point in time, we're going to allow the parties to
18 address Factual Issue Number 22. Factual Issue
19 Number 22 has been stated as, What are the
20 appropriate terms and conditions under which ATTI
21 should be permitted to complete cross-connects to
22 other collocated parties. And I do not have any
23 requests for clarification. Mr. Kunde. Excuse me,
24 Mr. Freedman.

25 MR. FREEDMAN: Pardon me, Your Honor.

00104

1 Thank you. Your Honor, we don't really have anything
2 from US West on this. The matrix just says, Do we
3 have counter language and what is our position. So I
4 think it might help us maybe, for just this issue, to
5 reverse the order and let Mr. Reynolds start, so that
6 we can get a feel for what we're going to hear.

7 JUDGE BERG: Mr. Devaney, that does make
8 some sense to me. Is that all right?

9 MR. DEVANEY: Yeah, we're fine with that.
10 Judge Berg, if I could just add, this Issue 22 came
11 up sort of late in the program, after the parties had
12 filed testimony. And I will say that our new matrix
13 doesn't say what is our position anymore.

14 MR. FREEDMAN: I'm sorry. I apologize. It
15 says, To be presented at the hearing.

16 MR. DEVANEY: We've had a chance to review
17 the issue in the last couple of days, and I would ask
18 for leave, if I could, that -- I guess after the
19 hearing, because there's no choice now, that we would
20 submit a proposed paragraph on this, assuming the
21 parties can't, you know, get together on the issue,
22 that would be consistent with what Mr. Reynolds is
23 about to testify to.

24 JUDGE BERG: All right. I think that's
25 fair. Mr. Freedman, if whatever was proposed by US

00105

1 West, in ATTI's opinion, was not consistent with the
2 evidence that was presented here today, I would give
3 ATTI an opportunity to state any objections, and if
4 the parties are unable to resolve that between
5 themselves.

6 MR. FREEDMAN: Thank you, Your Honor.

7 JUDGE BERG: All right. I appreciate that.
8 That will help me as I write my report, as well. And
9 Mr. Devaney, how long would it take for US West to
10 present its written position and proposed language
11 to --

12 MR. DEVANEY: If we could present that on
13 Tuesday of next week, would that be acceptable?
14 Tomorrow being a travel day, just --

15 JUDGE BERG: Mr. Freedman.

16 MR. FREEDMAN: Yes, that's fine. Just as a
17 side question that relates to that, is the briefing
18 schedule in this case -- was this one that you had
19 extended, or is it due November the 10th, as the
20 initial brief, or is it still November the 8th?

21 JUDGE BERG: I went ahead and exercised
22 some judicial license and extended the briefing
23 schedule in this proceeding, as well as in the GTE
24 proceeding.

25 MR. FREEDMAN: Both to November 10th?

00106

1 JUDGE BERG: Correct, November 10th and
2 November 17th.

3 MR. FREEDMAN: So we would get it on
4 Tuesday, which I think is November the 2nd. Okay.
5 Thank you, Your Honor. That would be fine.

6 JUDGE BERG: All right. And then, what I
7 would be looking for is, if ATTI has objections, that
8 it present its objections to US West on 11/4, at
9 which point in time the parties will make some
10 attempt to resolve whatever differences they have.
11 If they are unable to resolve their differences, then
12 I'd like to -- I want the parties to be available for
13 a telephone conference on Friday, 11/5.

14 And Mr. Devaney, I know that Mr. Freedman
15 will be in Olympia, Washington, on the afternoon of
16 Tuesday, November the 2nd, for the ATTI/GTE
17 arbitration, and if you can coordinate with him and
18 make sure that service is made on ATTI to Mr.
19 Freedman here in Washington, I would appreciate it.

20 MR. FREEDMAN: Actually, I think it's Mr.
21 Davis, who we've talked about today. The same,
22 Davis, Oxley, Freedman, would be acceptable.

23 MR. DEVANEY: Okay.

24 JUDGE BERG: Okay, great. Please excuse me
25 while I walk to the water cooler. Mr. Kunde, are you

00107

1 all set?

2 MR. KUNDE: I'm all set with water.

3 MR. FREEDMAN: We're going to start with

4 Mr. --

5 JUDGE BERG: Thank you. Mr. Reynolds,

6 you're all set to go?

7 MR. REYNOLDS: Yes, I am.

8 JUDGE BERG: All right. So please forgive

9 me for being on my feet, but go ahead and start your
10 summary.

11 MR. REYNOLDS: Us West actually doesn't
12 have a proposal at this point in time, as is
13 evidenced by the issues matrix, and so my comments
14 will come in review of the ATTI proposed language.
15 And US West does not dispute, as I testified earlier,
16 ATTI's right to engage in cross-connection between
17 its collocation, its collocation installation, and
18 another competitive LEC's collocation installation.
19 And so that is not the issue.

20 The issue is really the terms and
21 conditions of how that cross-connection will take
22 place. Speaking to ATTI wishing to manage the
23 construction of the cross-connect facility between
24 the two collocation installations, and referencing
25 everyone to ATTI's proposed language in 17.2, I would

00108

1 like to make the following observations.

2 We believe that US West would require 10
3 days, rather than seven days, to verify a route and
4 engineer the route. We would also move -- and this
5 will be in our proposed language. We will also move
6 to ensure that the collocation installations are in
7 place before we do that engineering. That is a
8 prerequisite to us to be able to do that. If they
9 aren't in place, we can't do the verification, the
10 engineering.

11 We also believe that US West is entitled to
12 recovery of its costs in association of the
13 activities that it needs to engage in to allow this
14 to happen, and that would be the receipt of a quote
15 preparation fee. It will be a modified quote
16 preparation fee from the one that we charge for
17 standard collocation. It has not been developed yet,
18 but we intend to develop one.

19 Other chargeable rates by US West will
20 include cable racking, it will include engineering
21 time, and if US West provides the cable, then US West
22 will also charge for cable.

23 We believe that if ATTI wishes to engage in
24 actually doing the construction themselves, then they
25 need to submit and be approved as an approved vendor,

00109

1 and that's specific criteria that US West requires of
2 all vendors that work in its central offices, and the
3 types of criteria that are under our approved vendor
4 requirements are that they be bonded, that they have
5 insurance, that they fill out a questionnaire as to
6 their experience and their capabilities in routing
7 cables around central offices and other attendant
8 questions.

9 Also, ATTI can select from an approved
10 vendors list. If they don't choose to engage in that
11 construction themselves, they can select an approved
12 vendor.

13 Those are the additional provisions that US
14 West would add to the proposed language of ATTI, and
15 I think, as my counsel represented, we will have that
16 language available in the near future.

17 MR. DEVANEY: Judge Berg, could I ask one
18 clarifying question of Mr. Reynolds?

19 JUDGE BERG: Yes, sir, Mr. Devaney.

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

21 BY MR. DEVANEY:

22 Q. Mr. Reynolds, when you said US West must
23 recover its costs to make this happen, what did you
24 mean as to make this happen? What activities were
25 you referring to?

00110

1 A. Well, for example, it's US West's overhead
2 cable routing and racking that will be utilized to
3 accomplish this interconnection, and it's US West
4 engineers that have to engineer this job. And
5 although other contractors can engage in the actual
6 construction of the facilities, US West needs to
7 engineer it just for its office integrity.

8 MR. DEVANEY: Thank you.

9 JUDGE BERG: All right. Mr. Freedman,
10 cross-examination.

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

12 BY MR. FREEDMAN:

13 Q. What is actually involved in -- what
14 physical activities does US West have to do on its
15 part where ATTI constructs its own cross-connect to
16 another CLEC?

17 A. US West needs to evaluate the cable route
18 and the overhead racking between the two collocation
19 installations and insure that adequate racking is in
20 place and also design the route and engineer the
21 route that AT&T -- ATTI would follow.

22 Q. That's pretty much it; isn't that correct?

23 A. To the extent that that's all that US West
24 was doing, to the extent that either ATTI, as an
25 approved vendor, that it was approaching a

00111

1 contractor, yes.

2 Q. And when you talk about -- a quote
3 preparation fee, I take it, is a fee for the recovery
4 of your costs just to generate a quote; right? A QPF
5 doesn't actually pay for the work you just described;
6 that's just a fee to develop a quote; correct?

7 A. Yes.

8 Q. When you say a -- what is the normal quote
9 preparation fee in Washington now? If I submitted to
10 you that I believe it's around \$2,500, does that --
11 can you say whether that's correct or not?

12 A. That sounds in the ballpark.

13 Q. So the fee we're going to hear from you is
14 not going to be \$2,500. Do you have any estimate as
15 to what a modified quote preparation would be?

16 A. I do not, but to the extent that the
17 activities would be significantly reduced from a
18 standard collocation installation and build-out, I
19 would think that it would be smaller than the 2,500,
20 certainly.

21 Q. Doesn't US West already do this activity
22 that you described that would be required with the VF
23 tie cables?

24 A. I'm sorry?

25 Q. Does US West not already do the activities

00112

1 that you've talked about, checking the cable rack and
2 engineering the route with the VF tie cables?

3 A. Not to my knowledge. Not between two
4 newly-specified locations.

5 Q. Is there any difference between -- is there
6 any additional work that US West would have to do for
7 a CLEC-to-CLEC cross-connect that wouldn't already be
8 included as part of the original collocation package
9 or request?

10 A. Yes, as I related earlier, they would need
11 to design a cable route and ensure adequate cable
12 racking between the two collocation installations.

13 Q. And I think you testified earlier that it
14 would be ATTI's choice, on a CLEC-to-CLEC
15 cross-connect, as to whether or not it would use the
16 ICDF or not; correct?

17 A. That is correct.

18 Q. I think you mentioned in your comments that
19 you would want to insure that the other collocation
20 installation was complete before fulfilling the
21 request. And my question is why would you need to do
22 that?

23 A. In order to adequately engineer the job.
24 If it's not complete and we don't know what the
25 existing cabling that is currently existent between

00113

1 those offices -- and it may involve more parties than
2 just, for example, ATTI and the party they want to
3 interconnect with. It may involve other parties that
4 have built cabling in the meantime, and so that's why
5 we need two complete collocation installations in
6 order to do an accurate estimate of the amount of
7 work that needs to be done.

8 Q. And these costs that you would impose, the
9 cable racking and the engineering time, would those
10 be determined on an ICB basis?

11 A. Yes, they would.

12 Q. If the CLEC to which ATTI wishes to
13 cross-connect has already -- you've already developed
14 the engineering for them, and you've started the
15 construction, but simply haven't completed that,
16 wouldn't you already have all the information in
17 place that would enable you to also contemporaneously
18 process this CLEC-to-CLEC cross-connect?

19 A. I'm afraid I can't answer that. It depends
20 on when the request for construction is actually
21 made. And the point I was trying to make earlier is
22 that, unless both installations are in place and
23 ready to go and it looks like construction is
24 imminent, that's what we need in order to do an
25 accurate estimate of cable racking and cable routing.

00114

1 And so if that answers your question -- if it
2 doesn't, please ask it again, because I do want to be
3 responsive.

4 Q. No, I think it does. I take it that there
5 are some circumstances, such as, for example, the one
6 you just described, where the cross-connect could be
7 accomplished, even though, for example, the other
8 CLEC's cage wasn't totally complete?

9 A. I would imagine that that possibly could
10 happen, yes, and I think the company would probably
11 be willing to work with situations.

12 Q. Would you be willing to offer contract
13 language that would reflect that possibility?

14 A. I can't offer that here today, but I will
15 certainly take it back and, to the extent we can
16 reflect that in our proposal, we will.

17 Q. Mr. Reynolds, am I correct in understanding
18 that there would be existing cables that, in fact,
19 would already be run, even without those cages being
20 completed? Isn't that correct?

21 A. It really depends on what facilities are in
22 place currently. To the extent -- and it really
23 depends on what option ATTI chooses. If ATTI wishes
24 to utilize US West to run the cabling, then it would
25 be dependent on whether the cabling were there or we

00115

1 needed to put new cabling in. If they choose to run
2 it and purchase cabling from a third party vendor or
3 purchase it themselves, if they're going to act as
4 their own contractor, then really all we're dealing
5 with is cable racking and insuring that there's
6 adequate cable racking in place and adequate routing
7 on the designed route.

8 So that's US West's involvement both -- if
9 we're providing the cable, as opposed to ATTI or an
10 approved vendor.

11 Q. And might there be situations where, in
12 fact, a determination of records that you maintain in
13 the ordinary course of business could be consulted to
14 determine whether there's adequate cable racking?

15 A. Once again, I think it depends on timing.
16 I can't answer yes or no. If the timing were
17 established -- unfortunately, timing is critical,
18 because there are cables being laid at all times in
19 central offices, and even records aren't updated
20 probably that often, and that's why it's critical to
21 go out and engineer the job. That's why we need to
22 send an individual out, especially in the areas where
23 collocations are, because there are literally
24 hundreds of cable, overhead cables that are being
25 placed at any given point in time, and we don't know

00116

1 what the layout looks like until the exact time that
2 construction will begin.

3 JUDGE BERG: You're at eight minutes, Mr.
4 Freedman.

5 MR. FREEDMAN: No further questions.

6 JUDGE BERG: All right. Mr. Devaney. And
7 I failed to make provisions for witnesses to kick
8 counsel under the table. Mr. Devaney, you have --
9 excuse me. Then we switch to you, Mr. Kunde. You
10 have two minutes to summarize the ATTI position. And
11 Mr. Devaney, you have six minutes to conduct
12 cross-examination.

13 MR. DEVANEY: Thank you.

14 MR. KUNDE: ATTI's position, basically,
15 with regard to terms and conditions, is that we
16 should be able to specify up front, in the original
17 collocation application, the other CLEC party that
18 we'd like to connect to. That should not be any more
19 difficult than the 12 to 40 cables that are already
20 part of that collocation application, which require
21 cable racking into our same collocation.

22 US West maintains that the collocation cage
23 must be completed before they can determine that
24 route while they had already determined other routes
25 to that cage for all of the DS1, DS3, voice

00117

1 frequency, MDF or ICDF connections. So all of that
2 cable racking -- and most of the time, it's the same
3 cable racking that's being utilized.

4 So we see no reason why that all can't be
5 done simultaneously. US West engineers go out to
6 engineer the collocation cage and look at the racking
7 for all of that other cabling. Once again, there's
8 up to 12 to 40 of those other types of cables. We're
9 asking for an additional two to five cables to be
10 run. And that can all be done at exactly the same
11 time.

12 Additionally, US West is asking for us to
13 pay an additional QPF fee, or quote preparation fee,
14 of \$2,500, times the number of collocations that
15 we're requesting in Seattle, which is 13, an
16 additional \$32,500 that we're being asked to pay that
17 we're already paying as part of the original
18 application.

19 US West's application form does include a
20 place on the form to check off and select
21 CLEC-to-CLEC connection. We believe that as long as
22 we know who the other party is in advance and their
23 cage is complete and they're operational, that we
24 should be able to select that and put that in as part
25 of the original application, and the additional work

00118

1 content is negligible.

2 JUDGE BERG: Thank you. Mr. Devaney, six
3 minutes for cross.

4 MR. DEVANEY: If I may use 30 seconds of my
5 time to confer with Mr. Reynolds?

6 JUDGE BERG: Yes, sir.

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

8 BY MR. DEVANEY:

9 Q. Mr. Kunde, you testified, I think, and I
10 may have -- well, I hope I heard correctly, but that
11 in the original collocation request that ATTI would
12 make, that much, if not all of this work, would be
13 already performed by US West, much of the routing
14 that would have to be done for a CLEC collo
15 connection to another CLEC collo space. Is that what
16 you testified to?

17 A. The work that I was referring to is the
18 verification of cable racking emanating from the
19 collocation cage. It is that same cable racking that
20 the CLEC-to-CLEC connection would ride on or be
21 placed on.

22 Q. Now, Mr. Reynolds was testifying, I want to
23 make sure you understand, to terms and conditions
24 having to do with ATTI constructing its own
25 facilities in its CLEC-to-CLEC connection. Did you

00119

1 understand him to be testifying to that?

2 A. Most certainly.

3 Q. And the collocation situation that you're
4 talking about is where US West is doing constructing;
5 correct?

6 A. Absolutely not.

7 Q. Okay. Well, then, I misunderstand you.
8 The tasks that Mr. Reynolds defined during his
9 summary that US West would have to perform to
10 engineer the job, if you will, even when ATTI is
11 doing the work, do you agree that some of those tasks
12 do have to be performed by US West?

13 A. Yes, some of those tasks do have to be
14 performed.

15 Q. Which tasks must US West perform?

16 A. The visual verification of cable racking
17 and a route to get to the other cage.

18 Q. And when you say a route to get to the
19 other cage, are you saying design a route or just see
20 if one's in place?

21 A. Whichever the case may be. In some cases,
22 it may be design; in other cases, and many cases, the
23 route is obviously visually there and can be verified
24 in a matter of two minutes.

25 Q. Now, if US West has to design a route, for

00120

1 example, do you agree that US West would incur cost
2 to design the route?

3 A. Yes, it would be the same cost that would
4 be incurred to design the other 40 cables that only
5 require a single quote preparation fee.

6 Q. And you would agree that US West would have
7 to put together a quote to provide to ATTI with
8 respect to the costs that were incurred to design
9 that route; is that right?

10 A. Yes.

11 Q. And I take it, just so that we're clear,
12 ATTI does not dispute that it will pay some amount of
13 money, whatever that amount is, to have US West
14 prepare the quote, is that agreed? Putting the
15 amount of money aside. Just the concept?

16 A. That would be the original quote
17 preparation fee.

18 Q. So your position is that there should not
19 be any separate payment by ATTI to US West for this
20 design of the route from one CLEC collo cage to
21 another; is that correct?

22 A. That's correct, because we design up to
23 anywhere from 12 to 30 separate individual cables, US
24 West does, under one single collocation application
25 fee -- or quote preparation fee, excuse me.

00121

1 Q. The initial collocation quote preparation
2 fee is for build-out from ATTI's collocated space to
3 an ICDF, isn't it?

4 A. If ATTI chooses to utilize the ICDF.

5 Q. Okay.

6 A. Once again, referring to our previous
7 conversation.

8 Q. If that were the situation, then it
9 wouldn't include a build-out or routing from ATTI's
10 collocated space over to another CLEC's collocated
11 space, would it?

12 A. But it could in many cases.

13 Q. But in cases where it wouldn't, you would
14 agree that the initial quote preparation fee would
15 not cover the costs US West would incur to develop a
16 quote for that CLEC-to-CLEC routing; correct?

17 A. I can't comment on US West's cost recovery
18 in the initial quote preparation fee, because I could
19 order anywhere from 20 to 3,000 amps of power, which
20 will come in significant increments in multiples of
21 20 or 40 amps, and still pay the same quote
22 preparation fee.

23 Q. Okay. A simple question for you. If the
24 initial quote preparation fee did not anticipate
25 these activities that we're talking about for

00122

1 CLEC-to-CLEC collocation connection, would you agree
2 that US West ought to be able to recover additional
3 costs beyond the initial quote preparation fee?

4 A. Once again, I don't know what the original
5 quote preparation fee is based upon, because --

6 Q. If you accept my hypothetical.

7 A. Okay. If US West did not originally have a
8 connection like that, yes, there may be additional
9 cost.

10 Q. Okay.

11 A. As there are with the significant variables
12 associated with ordering a collocation cage.

13 Q. Okay. And would you agree that those costs
14 should be recovered on an ICB basis?

15 A. Not necessarily, no.

16 Q. How should they be recovered?

17 JUDGE BERG: Last question.

18 THE WITNESS: Through the original quote
19 preparation fee.

20 MR. DEVANEY: Okay. Thank you.

21 JUDGE BERG: I understand the positions of
22 the parties, as developed in that exchange. I
23 appreciate the parties making good use of time.

24 MR. GRIFFITH: I don't have anything.

25 JUDGE BERG: No questions from myself. Ms.

00123

1 Roth? All right. Is there a combination of issues
2 that we could take next and that would be of a higher
3 priority, rather than a lesser priority, so we could
4 slay several dragons at the same time?

5 MR. FREEDMAN: I would suggest that Issues
6 Four and 21 could be taken together.

7 MR. DEVANEY: That's what we just said.

8 JUDGE BERG: All right.

9 MR. FREEDMAN: Well, then, I have to
10 reconsider my position, Your Honor.

11 JUDGE BERG: And how much time do you think
12 we would need to cover that?

13 MR. FREEDMAN: Can we do it in the same 20
14 minutes?

15 MR. DEVANEY: I would think so.

16 MR. REYNOLDS: I would think ten.

17 MR. DEVANEY: Five a side.

18 MR. FREEDMAN: We think it will take around
19 the same amount of time, Your Honor, as the issue we
20 just dealt with.

21 JUDGE BERG: Let's set out the same amount
22 of time for Issues Four and 21, and I need to take a
23 rest room break, so everybody else gets to take one
24 with me, but that's -- if they so choose, but that's
25 all we're going to do, and then be back in here. No

00124

1 telephone calls, please, and no leaving the immediate
2 area of the hearing room except to use the rest room.

3 (Recess taken.)

4 JUDGE BERG: Please begin.

5 MR. KUNDE: With regard to Issue Number
6 Four, I don't intend to debate the issue of whether
7 or not we're allowed to combine UNEs here in this
8 forum. That's for others. But it's more that ATTI
9 feels that it's not technically necessary to
10 collocate in any form in order to do combinations if
11 we are allowed to do so.

12 And US West has suggested that, once again,
13 we go back to our old friend, the ICDF, or the SPOT
14 frame, or whatever it is they want to call it, and US
15 West's suggestion is, in order to combine things, you
16 would have to do that at the SPOT frame.

17 It's our contention that combinations can
18 certainly be done much more efficiently at a device
19 other than the SPOT frame -- for example, the MDF --
20 and not bringing all that wiring and cabling back out
21 to some intermediate device.

22 Along those same lines, we can go to Issue
23 21, with block and jumper maintenance on an ICDF
24 collocation. The whole premise here is that ATTI has
25 no equipment in the office, but it just use the ICDF

00125

1 for connecting elements together.

2 Once again, we don't necessarily agree that
3 that's the case, but, actually, we've become quite
4 confused, to some extent. In some of these ICDFs, we
5 can do maintenance; i.e., the ICDF related to ICDF
6 collocation, but in other cases, where we're
7 physically located, we're not allowed to do block and
8 jumper maintenance. US West has said that they only
9 have access to those ICDFs. So there's a bit of
10 confusion there.

11 Mr. Reynolds also has stated the ICDF may
12 or may not encompass the MDF or any other frame in a
13 particular office. On many occasions, US West has
14 said to me that they would not allow ATTI to perform
15 block and jumper maintenance on the MDF.

16 Mr. Reynolds states that the ICDF may or
17 may not encompass the MDF or other frame devices. I
18 don't see that US West is going to allow ATTI to
19 perform block and jumper maintenance on the MDF, as
20 they've stated so very vehemently on a number of
21 particular occasions.

22 So there's some confusing inconsistencies
23 that we find with having to use an ICDF to combine
24 elements. Who's responsible for block and jumper
25 maintenance. It's different than the other types of

00126

1 collocation, being caged and cageless physical
2 collocation, where we're not allowed to do block and
3 jumper maintenance.

4 We'd just like to see this done on a
5 consistent basis and the ability for us to make
6 choices as to what is the most cost-effective way to
7 get the connections made. It's really very similar
8 to the issues that we raised in some of the other
9 direct connection versus ICDF connections, so you are
10 right in linking those together.

11 JUDGE BERG: All right. Mr. Devaney.

12 MR. DEVANEY: Thank you.

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

14 BY MR. DEVANEY:

15 Q. Mr. Kunde, as background for Issues Four
16 and, to some extent, 21, let me ask you, what network
17 elements does ATTI intend to use for its UNE
18 combinations, do you know?

19 A. I can't give you the exhaustive list,
20 because I don't know the exhaustive list from off the
21 top of my head, but certainly switch ports and
22 unbundled loops, the ability to cross-connect those
23 would be some of those elements. There are certainly
24 others that would be out there.

25 Q. You're not sure what they are today?

00127

1 A. I can't tell you right off the top of my
2 head. There is a relatively sizable list of them.

3 Q. Do you know whether ATTI intends to use all
4 unbundled network elements or a combination of
5 unbundled network elements, plus network elements
6 that aren't unbundled?

7 A. Both. There will be some scenarios where
8 we'll have some subset of the total unbundled network
9 elements where we are physically located, and there
10 will be other locations where we've chosen not to
11 locate, that we would want to use the entire set of
12 unbundled elements and have them connected together.

13 Q. Is it ATTI's position US West is obligated
14 to sell elements that aren't unbundled?

15 MR. FREEDMAN: Your Honor, I guess, in the
16 form of an objection, I guess I would object that
17 he's going beyond the scope of Mr. Kunde's direct
18 testimony.

19 JUDGE BERG: Mr. Devaney.

20 MR. DEVANEY: Well, I'm trying to
21 understand exactly what elements go into the UNE
22 combinations, and that's the area of probing that I'm
23 getting into, because I think it relates to a number
24 of the UNE issues, including potentially the
25 collocation issue.

00128

1 JUDGE BERG: This seems to be an important
2 distinction to flesh out, whether or not there are
3 elements other than UNEs, unbundled network elements,
4 that should be combined. I'm going to allow the
5 question to be asked.

6 Q. And the question was is it ATTI's position
7 that US West is obligated to sell to ATTI network
8 elements that aren't unbundled?

9 MR. FREEDMAN: Your Honor, again, I just
10 want to be clear that we didn't offer him as a
11 witness on those issues. And so for him to state a
12 legal position is not at all what he said in any of
13 his direct or rebuttal testimony.

14 MR. DEVANEY: I can rephrase it to get
15 around that.

16 JUDGE BERG: All right. Maybe, you know,
17 if it's necessary to understand what ATTI's -- is the
18 witness qualified to state ATTI's definition of an
19 unbundled network element?

20 MR. FREEDMAN: I don't want to diminish the
21 witness's abilities or qualifications. All I'm
22 saying is that we looked at Issue Four and we never
23 cast it as a UNE issue. All we said was a
24 collocation issue, and we just said we wanted an
25 explicit -- we wanted it clear that, by signing this

00129

1 contract, we weren't conceding that we had to
2 collocate to get combined UNEs, period, not at all
3 expanding or defining, in any way, shape, or form,
4 what those rights may be. Whatever those rights are,
5 we didn't think it was appropriate to have that
6 limitation.

7 With respect to Issue 21.4, it's a
8 provision of the contract that says maintenance and
9 repair, and it has ICDF collocation on there. His
10 testimony went to issues relating to that. He wasn't
11 going down the path of trying to articulate our
12 strategy on combined UNEs.

13 And with all due respect, I just think
14 these questions are way afield from what we intended
15 or what we offered his testimony for.

16 JUDGE BERG: Mr. Devaney, there is a lot of
17 debate over what should be in that class of unbundled
18 network elements. It may not even be resolved when
19 the FCC continues its review. There are also
20 jurisdictional issues. And it seems to me that if,
21 in fact, there was a request for an element that US
22 West felt it was not obligated to provide as a UNE,
23 that the contract would also provide for ADR.

24 But if not -- if it's something that's
25 important to be resolved, you know, with regard to

00130

1 these issues, go ahead and try asking the question in
2 a different way.

3 MR. DEVANEY: I'll ask probably just one
4 final question on this.

5 Q. Is it ATTI's expectation that US West will
6 sell ATTI elements, network elements, that are not
7 unbundled?

8 A. Yes.

9 Q. Including elements that are not currently
10 classified as unbundled by the FCC?

11 A. My yes was predicated on, for example, the
12 resale of services. There are certain resale
13 services that aren't considered unbundled. They are
14 certainly all bundled together in a package.

15 Q. And is it ATTI's expectation that it can
16 obtain from US West that bundle of resale that --
17 that bundled resale package at a UNE rate?

18 MR. FREEDMAN: Your Honor, again, I just
19 can't see how something could go more to a completely
20 different issue than what you have before you now.
21 With all due respect, we're taking testimony on an
22 issue that hasn't been teed up as a factual issue.

23 JUDGE BERG: You know, Mr. Oxley is in the
24 room. I understand he's not a witness, but it seems
25 that, you know, that concept of what a UNE is, US

00131

1 West is concerned that it may, through the contract
2 language being proposed, be obligated to provide
3 something as part of a combination that it would not
4 otherwise agree to in writing. And I think they're
5 legitimately trying to tie it down.

6 If Mr. Oxley doesn't want to assist Mr.
7 Kunde, then Mr. Kunde should just answer to the best
8 of his ability. If it's outside his knowledge of
9 ATTI's interpretation of what constitutes an element
10 eligible for combination, then I'll let him say so.

11 MR. FREEDMAN: Your Honor, I know -- I'm
12 going to say what you're thinking, which is I'm
13 treading on thin ice, so I will not beat this dead
14 horse, but I just have to repeat that I do think it's
15 interesting information, but it's not what Issues
16 Four and 21 are all about.

17 JUDGE BERG: I understand, I understand.
18 And I told the parties when we started talking about
19 -- when we started converting over to an
20 issue-by-issue basis that I was going to allow some
21 flexibility, and this is one of those instances where
22 I'm going to allow it.

23 And it will cut both ways, if there's
24 something that comes up that's not quite within the
25 four corners of the issue, but otherwise seems

00132

1 relevant to a party's understanding of what they will
2 be obligated to do as part of a contractual
3 agreement. And if you want to make any other
4 statement for the record, I'll allow you to do so.

5 But my decision is that if Mr. Kunde has
6 knowledge and can answer the question, then I'd like
7 him to do so.

8 MR. FREEDMAN: Very well, Your Honor.
9 Thank you. You might want to repeat the question.

10 MR. KUNDE: Could you restate the question?

11 MR. DEVANEY: I was hoping you'd remember
12 it. Let's see. I think the question was --

13 MR. FREEDMAN: I think the word expectation
14 was in there.

15 Q. Is it ATTI's expectation that US West will
16 sell to ATTI an entire resale package that's bundled
17 together, but at UNE rates?

18 A. I think it would be fair to characterize it
19 that way, yes.

20 MR. DEVANEY: Thank you. That's all I
21 have.

22 JUDGE BERG: All right. There was some
23 back and forth there, so it's hard to estimate and
24 allocate time fairly. Mr. Reynolds, I'll give you
25 two minutes to state US West's position.

00133

1 MR. REYNOLDS: I'm not sure I'll take that
2 long, Your Honor.

3 JUDGE BERG: All right.

4 MR. REYNOLDS: I essentially punted this
5 issue as being a legal issue. I did address,
6 however, the fact that US West is required, or at
7 least we believe that we're required, to provide a
8 platform to allow competitive LECs the ability to
9 combine UNEs if they so choose without bringing any
10 of their own equipment in. We referred to that as
11 ICDF collocation, and we will provide them with the
12 required elements to do that.

13 And I understand that that's a different
14 proposition than what's being proposed by ATTI. And
15 the other part of that proposition, which is
16 essentially collocationless UNE combos, I did not
17 address in my testimony. I left that as a legal
18 issue.

19 JUDGE BERG: All right. Mr. Freedman, you
20 have at least six minutes to conduct
21 cross-examination.

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

23 BY MR. FREEDMAN:

24 Q. Does US West take the position that a CLEC
25 must be collocated to obtain combined UNEs?

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1 A. I didn't testify to that.

2 Q. I'm asking you whether US West takes that
3 position?

4 A. I didn't testify to that.

5 Q. Well, US West objects to our language,
6 which expressly says that we don't have to be
7 collocated, so I guess my question is does US West
8 take the position that a CLEC must be collocated to
9 obtain combined UNES?

10 A. I didn't testify to that.

11 JUDGE BERG: Mr. Reynolds, I'm going to
12 take that as an objection from your counsel that I'm
13 going to overrule, and ask that you answer the
14 question.

15 MR. REYNOLDS: Go ahead. Restate it,
16 please.

17 Q. Does US West take the position that a CLEC
18 must be collocated to obtain combined UNES?

19 A. US West maintains that a CLEC must be
20 collocated, or at least engage in what we call ICDF
21 collocation, to combine UNES.

22 Q. And what is the basis for that position?

23 A. The basis for that position is, I believe,
24 the fact that an Eighth Circuit Court ruling that was
25 left in effect by the FCC that incumbent LECs were

00135

1 not required to recombine unbundled network elements,
2 and yet we're still required to provide the ability
3 for competitive LECs to combine, is the basis for our
4 belief that we need to provide a platform, and that
5 platform is ICDF collocation. And in prior
6 proceedings, we've referred to it as SPOT
7 collocation.

8 JUDGE BERG: Mr. Freedman, I'm very
9 familiar with this 251(c)(3), 51.319 dilemma. I
10 don't think that's something I would want to go much
11 further in this proceeding. It wouldn't be helpful.
12 But it was helpful for that clarification.

13 Q. If ATTI were to sign the contract with US
14 West's proposed language on Issues Four and 21, would
15 US West then take the position that that contract
16 would obligate ATTI to collocate in order to obtain
17 combined UNES?

18 A. I don't believe that that specific language
19 speaks to the issue of already-combined UNES. The
20 language that I'm reading here, our marked up
21 version, which speaks to ICDF collocation, speaks
22 only to unbundled network elements and the ability
23 for competitive LECs to combine on that platform.

24 Q. Gosh. I would confess I didn't understand
25 your answer.

00136

1 JUDGE BERG: And let me just interject. I
2 understand that part of this may be stemming from --
3 and I didn't notice this beforehand, that in fact the
4 parties have some disagreement over what the issue
5 should be here. And that's another good reason for
6 me to provide the parties with as much flexibility as
7 possible. It may be that there is more than one
8 issue. Mr. Reynolds -- Mr. Freedman, do you want to
9 break the question down?

10 MR. FREEDMAN: Yes.

11 JUDGE BERG: All right.

12 Q. Are there any provisions in US West's
13 proposed contract before this tribunal that you would
14 point to as obligating ATTI to be collocated in order
15 to obtain combined UNEs?

16 A. I don't believe that the issue of combined
17 -- already previously-combined UNEs is in the
18 collocation section of our proposed agreement.

19 Q. So therefore, the answer is no, there is no
20 provision in this contract that US West would point
21 to as a basis to say that ATTI would have to be
22 collocated to obtain combined UNEs; correct?

23 A. There's nothing in the language that's
24 proposed currently. My understanding is is that that
25 issue came from a separate part of the

00137

1 interconnection agreement that ATTI proposed, and
2 it's in a separate portion, also, of US West's
3 proposal that ATTI be allowed to opt into the AT&T
4 agreement in its entirety.

5 Q. Now I'm more confused. What provisions are
6 you referring to in your prior answer?

7 A. My understanding of ATTI's proposal here,
8 it was three-fold. They decided to opt in to the
9 AT&T agreement, they decided to pick and choose the
10 portion of the MFS agreement for reciprocal comp, and
11 then they declined to pick and choose, but modify
12 other portions of the agreement, including
13 collocation and UNE combinations.

14 The UNE combination issue, it seems to me,
15 is a separate issue that I don't address -- and I
16 didn't mean to be difficult earlier. I don't address
17 that in my testimony. The mechanics of how that
18 happens, if you maintain that that's not a
19 collocation issue, I don't address it here.

20 Q. I'm still confused.

21 JUDGE BERG: Mr. Devaney, is this what US
22 West considers a legal issue?

23 MR. DEVANEY: Yes, it is, Judge Berg. It's
24 something we can address on brief.

25 JUDGE BERG: And can you, just for Mr.

00138

1 Freedman's benefit here and now, can you state what
2 the legal nature of the issue is?

3 MR. DEVANEY: Well, I think, fundamentally,
4 the law on ILECs' obligation to provide unbundled
5 elements in an already-combined form is still
6 evolving. We're still awaiting the FCC order. And
7 in our view, the determination of that issue and how
8 this is ultimately resolved potentially could affect
9 the question of whether collocation is required.

10 And so, given the uncertain nature of the
11 law right now, frankly, we're hoping to get guidance
12 from the FCC soon, and we think that that will shed
13 light on the collocation issue, in addition to the
14 other issues that flow from the UNE combination
15 question.

16 JUDGE BERG: Mr. Freedman, does that give
17 you enough clay to work with?

18 MR. FREEDMAN: No. I don't want to belabor
19 this. I'm giving you an honest answer, but I think
20 -- let me just step back to how we got here.

21 JUDGE BERG: Okay.

22 MR. FREEDMAN: And I think Mr. Kunde
23 testified to this, that there was a concern, when we
24 saw this contract, that somehow it was going to be
25 used to somebody to point to a provision that says

00139

1 you've got to collocate to get combinations, that's
2 why ATTI proposed and US West has opposed language
3 that specifically said, without trying to establish
4 or determine whatever those combined UNE rights may
5 be, whatever they are, they're not contingent on
6 collocation. And it's that language that's at issue.

7 And all I'm trying to find out is are they
8 going to point to this collocation contract -- and
9 that's the only issue before us right now, not
10 combined UNE language -- and say that provision of
11 this contract obligates you to collocate to get
12 combined UNES. That's the question I'm trying to get
13 an answer to.

14 JUDGE BERG: I understand, but let's just
15 say, for instance, that when you look at the plain
16 language of the contract, that there's no strict,
17 express -- there's no express provision that
18 collocation is a prerequisite, and ATTI seeks to
19 obtain a combination of elements without collocating
20 and US West were then to step forward and say, well,
21 we won't provide this to you unless you're
22 collocated, and you would say -- ATTI would say to US
23 West, Well, where are we obligated to do that in our
24 agreement, and US West would either point you to
25 where the agreement requires collocation or they

00140

1 would provide you with their interpretation.

2 And if the parties disagreed, then they
3 have some alternative dispute resolution procedures,
4 or they would come to this Commission and, under
5 480-09-540, seek some expedited relief.

6 Now, to the extent that ATTI is providing
7 or proposing language, and to be honest with you, I'm
8 not certain whether ATTI does, but ATTI is proposing
9 language that expressly states that they are entitled
10 to combinations without collocating, then that's
11 something that the parties will argue in their briefs
12 and I'll decide as part of this arbitration. But if
13 what you're looking to do is to head off a problem
14 before it exists, I think that the time may not be
15 right.

16 If you look at the agreement and you say,
17 Well, you know, we don't see anything here that
18 requires us to do so, but yet we have this indication
19 from US West that they do require this, well, you
20 know, when push comes to shove, whoever's resolving
21 any disputes between the parties, the first thing
22 they're going to look to is the express agreement.

23 So I'm not sure what more you're going to
24 -- I'm not sure what you're trying to accomplish
25 beyond that, giving some kind of an early warning

00141

1 signal of what to expect down the road.

2 MR. FREEDMAN: I think we were trying to
3 accomplish whether the provisions of this contract,
4 and particularly the provisions of the ICDF
5 collocation, a concept which by, I think, US West's
6 concession has been a new, evolving concept, we're
7 not even sure what physically it means in any central
8 office, would be construed, under the meaning of this
9 contract, to say you've got to be collocated.

10 JUDGE BERG: I can't interpret the contract
11 before it's --

12 MR. FREEDMAN: I haven't asked you to.

13 JUDGE BERG: -- before it's approved. But
14 that's where you're headed, because what you're
15 looking for is an interpretation that the contract
16 provision, as proposed, does not require collocation.
17 And if you want to propose -- if ATTI -- when I say
18 you, I certainly mean ATTI. If ATTI is putting
19 language on the table that it wants to be considered
20 in support of its position, and this is an issue that
21 has been raised and addressed by the parties, then I
22 can deal with it, you know, as a black and white, is
23 this or is this not required. If I'm just
24 interpreting whether their proposal -- I'm not going
25 to interpret what their proposal does or doesn't

00142

1 provide other than, you know, what it says.

2 MR. FREEDMAN: I think, if you would
3 permit, I could very much narrow and restate my
4 question to Mr. Reynolds.

5 JUDGE BERG: Okay, I'd appreciate that.
6 And I may be off the mark, as well, but let's see how
7 that works.

8 Q. Mr. Reynolds, look at Sections 2.1.5 and
9 21.4 of the US West proposed contract, and tell me if
10 you believe that either of those sections would be
11 pointed to as requiring ATTI to be collocated in
12 order to obtain combined UNES?

13 A. I can't tell you -- I can't answer that.
14 What I can tell you is that both those sections are
15 intended to provide a means and platform for
16 competitive LECs to recombine already-unbundled
17 network elements. That is the intent of ICDF
18 collocation.

19 Q. Thank you. Is it the exclusive means?

20 A. I can't answer that at this point.

21 Q. Why not?

22 A. Because I don't know the answer. Or maybe
23 I need to understand what you mean by exclusive
24 means.

25 Q. Is ICDF collocation the exclusive means by

00143

1 which a competitive LEC can obtain, as I think you
2 said, recombination of elements that are already
3 unbundled?

4 A. I believe that the company also offers a
5 specific type of ICDF -- well, no. Strike that.

6 Yes, it is. For rebundling US West
7 unbundled network elements, without any physical
8 presence in a cageless, virtual, or physical
9 collocation, that is the exclusive means to recombine
10 already-unbundled network elements that US West
11 offered.

12 MR. FREEDMAN: No further questions, Your
13 Honor.

14 JUDGE BERG: All right. Thank you, Mr.
15 Freedman. Any questions, Mr. Griffith?

16 MR. GRIFFITH: I'm going to try to come out
17 --

18 JUDGE BERG: Excuse me. I need to just
19 take a quick look at my score card here. I believe
20 we did start out with Mr. Kunde, concluded with Mr.
21 Reynolds, we heard from both parties. All right.
22 Thank you.

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

24 BY MR. GRIFFITH:

25 Q. Mr. Kunde, I understand you're -- do I

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1 understand correctly that your objection to having
2 connected at the ICDF is more or less an efficiency
3 type of issue? Would it be okay if you could enter
4 -- or have the elements combined at an MDF or
5 wherever you specified in the office?

6 A. Are you relating to Issue Four or Issue 21?

7 Q. Issue Four?

8 A. Yes. Certainly the most efficient method of
9 combining them, which typically is the MDF, is what
10 we would like to see happen.

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

12 BY MR. GRIFFITH:

13 Q. Okay. And a question for Mr. Reynolds.
14 And I thought of asking this before, maybe I'll ask
15 it now. Referring to the ICDF, who was responsible
16 for making connections at the ICDF, or who would be
17 the one that would combine the elements?

18 A. The competitive LEC.

19 Q. Okay. They actually would run the
20 cross-connects at the ICDF?

21 A. Yes.

22 MR. GRIFFITH: Okay.

23 JUDGE BERG: Ms. Roth.

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

25 BY MS. ROTH:

00145

1 Q. The question is for Mr. Reynolds. On the
2 direct testimony, on page eight, you answer to the
3 Issue Number Four. The second paragraph, the last
4 sentence, it said, Under ICDF collocation, a
5 competitive LEC need not collocate equipment in the
6 US West wire center to gain access to the facilities
7 in the wire center in order to combine UNEs and
8 ancillary services. Did you see that?

9 A. Yes, I do.

10 Q. Okay. So is my understanding correct that
11 you offer that platform on ICDF, ATTI can come in,
12 cross-connect itself, then combine the UNEs itself?
13 US West is not doing the combination, it's not doing
14 the cross-connect?

15 A. That is correct.

16 Q. Is that correct?

17 A. Yes, it is.

18 Q. But if you already have combined UNEs
19 available in your office, in whatever office that is,
20 ATTI can purchase that already-combined UNEs without
21 going through the ICDF collocation, through resale
22 and so forth, existing combined UNEs?

23 A. And I believe that that is probably the
24 issue that is --

25 Q. Confusing here?

00146

1 A. That is confusing and that is subject to
2 sort of a legal debate at this time, is exactly what
3 constitutes the combined UNE, you know, or what
4 unbundled network elements comprise that combined
5 UNE, and what sort of platform does it need to be
6 offered on, and my testimony doesn't speak to that.
7 But that is -- I think that is a legal issue that the
8 parties will take on brief or in legal arguments.

9 MS. ROTH: Thank you.

10 JUDGE BERG: One moment, please. In the
11 post-hearing briefs of the parties, the US West
12 presentation of the issue will be marked as 21-A and
13 the ATTI description of the issue will be addressed
14 as 21-B. It sufficiently looks like two separate
15 issues. I'll want some additional argument or some
16 other restatement of the parties' positions with
17 regard to both's spin on the issue.

18 Does that -- with that coming at the end
19 rather than the beginning of the discussion of
20 issues, does that cause any difficulty for either
21 party?

22 MR. DEVANEY: No, it doesn't.

23 MR. FREEDMAN: No.

24 JUDGE BERG: All right, thank you. All
25 right. Let's take a five-minute break and at -- what

00147

1 issue shall we take up, what combination issue shall
2 we take up next?

3 MR. FREEDMAN: We propose Issue Five, Your
4 Honor.

5 MR. DEVANEY: That's fine.

6 JUDGE BERG: All right. And how much time
7 do you think you would need to conduct the cross,
8 present your position and conduct cross-examination,
9 Mr. Freedman?

10 MR. FREEDMAN: We would propose 20 minutes
11 total.

12 MR. DEVANEY: For both sides or --

13 MR. FREEDMAN: Yes, for both. And just so
14 it's in context, we would probably propose short
15 periods of time for the remaining issues.

16 MR. DEVANEY: Well, I guess we'd be willing
17 to give 15 minutes a shot total on this one.

18 JUDGE BERG: I think ten minutes apiece is
19 excessive, based upon my reading of the issue. To
20 me, what we're looking at here is whether, in fact,
21 the statute says adjacent, and when does nearby
22 become nonadjacent, and who's going to pick up the
23 cost. So I'll give each side eight minutes. We'll
24 start -- let's start no longer than five minutes.

25 (Recess taken.)

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1 MR. KUNDE: ATTI used adjacent collocation
2 as a very real issue, not a possibility, because we
3 know that in certain locations in this area of the
4 country that there will be some offices that are
5 truly out of capacity and out of space.

6 As a network engineer, what I would state
7 is that adjacent collocation is both practical and
8 feasible, and it's really merely -- what we're
9 suggesting is merely an extension of tie cable. And
10 I'll reference back to my diagrams, these connections
11 between collocation and the ICDF.

12 What we're proposing is that the cage won't
13 be in the US West central office, but it will be at
14 some external point. And what we're proposing is
15 essentially extending that tie cable, and it's going
16 to be longer, to some off-premise nearby location.
17 The provisioning of that cabling is something that US
18 West does every day with its thousands of outside
19 plant engineers. If a retail telemarketer were to
20 have moved in across the street or down the block and
21 ordered retail service from US West, they would
22 provision hundreds of pairs of cable to that
23 particular customer. This would work exactly the
24 same way.

25 ATTI understands that it would bear the

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1 cost of the construction of that tie cable, just like
2 we bear the cost of the construction of the tie cable
3 within the office, and that we would not require, in
4 those particular circumstances, the extension of
5 power or HVAC or those other types of in-building
6 central office kinds of services.

7 If we don't have the opportunity to move
8 forward with adjacent collocation, we end up with an
9 anti-competitive situation, in that when offices are
10 exhausted from space, there is no more competition
11 that can effectively go into that office and offer
12 services with its own equipment or its own switch
13 without some sort of ability to get into the office
14 through an adjacent collocation perspective. And
15 that's all I have.

16 JUDGE BERG: Thank you. Cross-examination,
17 Mr. Devaney, and I'll again let the parties know
18 that, to the extent that we stay focused on the
19 positions and proposed language, that would be most
20 helpful to my determination of issues.

21 MR. DEVANEY: Okay.

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

23 BY MR. DEVANEY:

24 Q. Mr. Kunde, I take it you have reviewed the
25 706 advanced services order in preparation of your

00150

1 testimony? Have you?

2 A. Yes, to some extent. I won't say that I'm
3 an expert at it.

4 Q. And we agree that the FCC speaks of
5 adjacent collocation, not nearby collocation?

6 A. Yes, I would.

7 Q. You'll also agree, I take it, that your
8 definition of adjacent -- or nearby collocation will
9 result in greater costs if you're collocating on
10 property other than US West property; is that
11 correct?

12 A. Not necessarily in its entirety. I would
13 not pay for the collocation cage or the power or the
14 build-out US West would normally charge me for when I
15 collocated in that office.

16 Q. But if you're collocating down the street,
17 for example, on property not owned by US West,
18 there'd be costs associated with trenching, placing
19 conduit, placing power cable and the like; is that
20 correct?

21 A. No. Well, yes and no. There would be no
22 power cabling to be provided.

23 Q. By US West?

24 A. By US West.

25 Q. Okay. Who would pay those trenching costs

00151

1 that would have to be incurred, for example, under
2 your proposal, do you know?

3 A. We would propose that we would pay for the
4 cost to provide an outside plant cable to the
5 particular location that we want to access.

6 Q. Do you have your contract language in front
7 of you, Section 2.1.7?

8 A. Okay.

9 Q. As I read that, I don't see anything in
10 there that says ATTI would pay those additional costs
11 that would be incurred for this type of nearby
12 collocation that you're advocating. Can you point to
13 anything in there that says you'll pay those costs?

14 A. It talks about adjacent physical location
15 may be ordered using the collocation order form
16 through the BFR process. And our understanding of
17 the BFR process is it's very inclusive of the ICB
18 process, where US West would provide a quote to us
19 and an ICB type of quote to be able to provide that
20 for us.

21 Q. If this Commission were to allow nearby
22 collocation, which, of course, we don't think is
23 appropriate, but if it were to be allowed, would you
24 agree that it would be clearer if this contract
25 language expressly said that ATTI would bear the

00152

1 costs, the additional costs resulting from this
2 nearby collocation?

3 A. I think if we were to bear the cost, I'm
4 not sure that it would truly be additional or not.
5 It depends on the situation and how far it is and
6 what the costs of trenching, if US West has a conduit
7 in place. There may not actually be any trenching.

8 Q. But if there are any additional costs, do
9 you agree the contract language that you're proposing
10 would be clearer if it made it express?

11 A. Yes, that's correct.

12 Q. And my final question for you on this point
13 is I think you point to -- in your testimony, you
14 point to the FCC's discussion of adjacent
15 collocation, and you say that they may or probably
16 were anticipating nearby collocation off the ILEC's
17 property, because they speak of zoning issues. Do
18 you recall that?

19 A. Yes, I do.

20 Q. And isn't it a fact that zoning issues
21 arise even when an ILEC is fitting its own property
22 for collocation?

23 A. Certainly.

24 MR. DEVANEY: Thank you. That's all I
25 have.

00153

1 JUDGE BERG: Mr. Reynolds, you have four
2 minutes to state US West's position.

3 MR. REYNOLDS: US West's position is that
4 adjacent collocation is a concept whereby additional
5 collocation space may be made available in adjacent
6 controlled environmental vaults or similar
7 structures. That's very consistent with the FCC's
8 collocation order.

9 US West believes that the requirement for
10 adjacent collocation, as envisioned by the FCC, is
11 limited because the premises of the LEC. And the
12 rationale we use for that observation is that nearby
13 locations are not addressed anywhere in the FCC's
14 collocation order. Adjacent collocation is only
15 addressed from an on-premises perspective.

16 For example, they order US West -- or they
17 order incumbent LECs to provision power to adjacent
18 collocation sites in the traditional manner that it
19 is required to do so for physical collocation within
20 the walls of the wire center. And so that leads us
21 to believe that certainly the FCC did not anticipate
22 that this adjacent collocation extends to nearby
23 locations.

24 And just based on the exchange between
25 counsel and Mr. Kunde, we disagree with Mr. Kunde's

00154

1 statement that the FCC's reference to zoning
2 requirements relates to nearby locations, for the
3 reasons that Mr. Kunde just testified to, that
4 certainly the FCC could be referring to the zoning
5 requirements placed on incumbent LECs as they build
6 new structures on their own premises.

7 And finally, I think just the observation
8 that interconnection at locations that are nearby is
9 clearly not collocation. It's something else and,
10 you know, it's not required. That summarized my
11 statement.

12 JUDGE BERG: All right. Mr. Freedman, six
13 minutes for cross-examination.

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

15 BY MR. FREEDMAN:

16 Q. Mr. Reynolds, isn't it technically feasible
17 to have collocation at a premises other than right on
18 US West's property?

19 A. That's not collocation.

20 Q. Isn't it technically feasible to have
21 collocation in a manner in which Mr. Kunde described
22 in his testimony at a premises not right on US West
23 premises?

24 A. It certainly is technically feasible,
25 because a number of other competitive LECs

00155

1 interconnect with the company using other types of
2 facilities to do so, but, once again, that's not
3 called collocation.

4 Q. Thank you. And doesn't the -- looking at
5 ATTI's proposed language, for which your counsel
6 directed Mr. Kunde to a moment ago, it contemplates a
7 BFR process; isn't that correct? And isn't the BFR
8 process a way for US West to provide ATTI with a
9 quote for the costs incurred for any particular item
10 ordered through that BFR process? Isn't that true?

11 A. I think the BFR process is subject to the
12 current state of the law and also the technical
13 feasibility.

14 Q. Isn't the BFR process a way for US West to
15 determine the cost of a particular request and
16 provide a quote back to ATTI for provisioning that
17 request? Isn't that true?

18 A. Yes, it is, subject --

19 Q. Thank you.

20 A. Subject to technical feasibility and the
21 law.

22 Q. Thank you. And if US West did, in fact,
23 get reimbursed for all of its costs for permitting
24 adjacent collocation and if it were technically
25 feasible and safe, why would US West oppose allowing

00156

1 off-premises adjacent collocation?

2 A. I'm not sure I can answer that, but if that
3 proposition had been initially proposed to us, we may
4 have evaluated and responded accordingly.

5 Q. If, in fact, I say to you right now that
6 this contract would be interpreted that ATTI would
7 pick up the costs of connectivity power through the
8 BFR process, is there any reason why US West would
9 oppose off-premises adjacent collocation?

10 A. I don't know the answer to that. I can't
11 do the feasibility study on the site right here,
12 right now, all the factors that I would have to
13 consider to give you an answer.

14 Q. I'm not talking about a feasibility study
15 for a specific request. I'm talking about whether
16 the language in 2.1.7 that is on the matrix before
17 you, if that BFR were interpreted to permit US West
18 to impose the costs on ATTI for the trenching,
19 conduit, power, HVAC, all the things you talked about
20 in your testimony as being the big problems US West
21 had with this proposal, then shouldn't there be no
22 reason at all why US West would have to oppose this
23 proposal?

24 A. I think yes, there should. Yes, there
25 should be. And it's -- my initial point that I made

00157

1 that it's not required by law. The FCC just issued a
2 ruling and they defined adjacent collocation, and
3 this is not adjacent collocation, and I'm suggesting
4 it's not even collocation.

5 Now, if you wanted to submit a request on
6 how you would access US West UNEs from a distant
7 location, then -- and work through the BFR process,
8 possibly US West will work through that with you and
9 you might come to some sort of resolution. I'm not
10 so sure we would call it anything close to
11 collocation, though.

12 JUDGE BERG: Mr. Freedman, you don't need
13 to go down this path any further, down that line of
14 questioning.

15 MR. FREEDMAN: Thank you, Your Honor. No
16 further questions.

17 JUDGE BERG: All right. Mr. Griffith, any
18 questions?

19 MR. GRIFFITH: Just a question for Mr.
20 Reynolds.

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

22 BY MR. GRIFFITH:

23 Q. And just getting away from terminology, if
24 ATTI requested that a cable be run from a US West
25 office to another building that they could use for

00158

1 connecting some UNEs together, but not calling it
2 collocation; is that feasible?

3 A. Yes, it is. Not only is it feasible, but I
4 think it's been done before and it utilizes existing
5 UNEs in conjunction -- I might add, in conjunction
6 with ICDF collocation.

7 MR. GRIFFITH: Okay, thank you.

8 JUDGE BERG: I have a couple questions.

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

10 BY JUDGE BERG:

11 Q. Mr. Kunde, in looking at ATTI's proposed
12 language, it looks like there's this proposed
13 200-foot limitation on what otherwise would be
14 treated as adjacent under the FCC's order, whereby US
15 West may be obligated to pick up certain costs; is
16 that correct? Is that the purpose of that 200-foot
17 reference?

18 A. The 200-foot reference was actually an
19 attempt on both parties' part to come to some
20 resolution. It was originally proposed by US West in
21 their language, and you'll notice it also exists
22 there. So we agreed with that 200-foot reference.
23 And I believe that the reference was generally for
24 those situations where we may also want to locate on
25 premises, and there would be some of those

00159

1 situations, also.

2 JUDGE BERG: So your understanding is from
3 -- well, let me then shift to Mr. Reynolds.

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

5 BY JUDGE BERG:

6 Q. Mr. Reynolds, does US West use this sort of
7 yardstick to determine what is or isn't adjacent
8 being 200 feet?

9 A. I think -- if I could reference the FCC's
10 order, I think -- does it address the 200 feet in the
11 order? It may be a requirement in the order that
12 we're required to provide power within 200 feet in
13 the traditional -- as I explained earlier, in the
14 manner that we provided to traditional collocation,
15 but it limits it at 200 feet for probably property
16 where we have extensive property. So US West is not
17 held liable for long distance power hauls.

18 Q. So even if you had an adjacent property,
19 contiguous property, where, in order to complete the
20 installation, required an extension of power to 200
21 feet, US West's obligation, even within its own
22 premises, would only be 200?

23 A. That's my recollection. I can check on
24 that, though.

25 Q. All right. Mr. Reynolds, we all know that

00160

1 we've got some problems down the road with space
2 exhaustion. I'm sure you're also aware that
3 Congress, under 261(c), allows states to impose
4 requirements that are not inconsistent with the act
5 or with the FCC's implementation of the act, and
6 without engaging you in any sort of a jurisdictional
7 debate as to whether or not a Commission-ordered
8 requirement that US West provide the necessary
9 facilities at the cost of ATTI or a requesting CLEC
10 at something other than an adjacent location, is
11 there some fundamental unfairness or prejudice to US
12 West in doing so? And it's meant to be a legitimate
13 question.

14 A. I would say no to that, and in fact, I
15 might reference the answer that I made to Mr.
16 Griffith, that the company has found ways to provide
17 connectivity to competitive LECs at distant
18 locations. We don't call it collocation, but it is
19 utilizing unbundled interoffice dedicated transport
20 and it is allowing them to access our office using
21 ICDF collocation. So they would come in via a leased
22 facility, and they could accomplish, I think, all the
23 things that ATTI wants to accomplish here.

24 But, once again, you know, my point was
25 that was not collocation. But to the extent that

00161

1 they submitted that request through a BFR process --
2 and I wasn't trying to be rhetorical in my answer to
3 Mr. Freedman a minute ago. Truly, I think the
4 company might be able to work out a solution with
5 ATTI in those instances where it does want to access
6 UNEs from a distant location.

7 I think that goes to your point that it
8 kind of serves as beneficial to the space issue.
9 Space is a scarce commodity, and we have to find ways
10 to allow companies connectivity into offices where
11 all the wires meet.

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

13 BY JUDGE BERG:

14 Q. Mr. Kunde, is this notion of a leased
15 facility the stumbling block, or is that just what
16 you would expect to be paying for in order to acquire
17 access at a nearby location, regardless of what kind
18 of a label we stick on it?

19 A. The leased facility that's typically used
20 in most of the other arrangements that Mr. Reynolds
21 references are typically higher-capacity fiber, DS1
22 and DS3 types of facilities. What we're really
23 getting at here is probably something a little
24 different. We're looking for copper cable. So
25 that's a little different than the leased facilities

00162

1 that have typically have been utilized by other
2 CLECs.

3 So because of the types of services we're
4 looking to provide, they rely on full copper
5 complement cable directly out to the end user
6 customer.

7 JUDGE BERG: Why don't you go ahead and
8 follow-up with that. I think, otherwise, I've made
9 my point.

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

11 BY MR. GRIFFITH:

12 Q. I would just like to reask my question to
13 Mr. Reynolds. I think I phrased it as cable. Would
14 your answer be the same if I had asked for copper
15 cable?

16 A. It's my understanding that we have also
17 worked out arrangements with competitive LECs in
18 reference to copper, as well as high-cap services,
19 where they bring their facility in to an
20 environmental vault and the actual collocation exists
21 there.

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

23 BY JUDGE BERG:

24 Q. Mr. Reynolds, you just used the collocation
25 word. Was that inadvertent?

00163

1 A. The C word. No, because it is different.

2 Q. Okay.

3 A. It's environmental vault collocation in
4 that situation, and it is on premises.

5 JUDGE BERG: All right. I'd like the
6 parties to explore this issue further and see if this
7 is a matter of semantics. It seems to me if this is
8 something ATTI wants to receive and is willing to pay
9 for, it shouldn't matter what it's called.

10 And likewise, if this is something that US
11 West is willing to provide and does provide, it just
12 doesn't want to call it collocation, I'd hate to
13 think that the stumbling block was whether it's
14 referenced as collocation. And is there some other
15 dimension to this issue that I'm missing here? Mr.
16 Kunde, you first, and then you, Mr. Reynolds.

17 MR. KUNDE: I don't believe that there's
18 anything that you're missing there. And whether it's
19 called collocation or something else, the reason
20 we've termed it that is because it runs under the
21 same terms and conditions to access and ICDF to be
22 able to access the copper loops or the DS1
23 connections.

24 JUDGE BERG: Mr. Reynolds.

25 MR. REYNOLDS: I think it is an issue that

00164

1 the parties can work out and, you know, our initial
2 reaction, just so we didn't look difficult here, it
3 wasn't at all clear, by their initial proposal and
4 nearby locations, whether we would have to provide
5 power to the nearby location and how much trenching
6 we'd have to do.

7 It wasn't until Mr. Kunde's rebuttal
8 testimony that some of that got clarified. And the
9 more it started to look like these other
10 alternatives, the more I thought that there might be
11 a match with some of these other means of accessing
12 our office.

13 JUDGE BERG: I understand. And there may
14 be some further discussion between the parties
15 regarding allocation of costs, and I'd like the
16 parties to kind of flesh that out. If that's what
17 this comes down to, you know, if it is going to be a
18 BFR ICB basis upon which a quote is generated and
19 parties dispute the numbers, I'd like to work out the
20 allocation part on the front end and then the parties
21 can go wherever they're legally entitled to go to
22 settle any disputes they have regarding what numbers
23 get plugged in.

24 Where should we go next? Do you want to
25 take the issues in a sequential order at this point?

00165

1 My preference -- I'm trying to look at these to see
2 whether there are collocation questions. Mr.
3 Griffith, for example, is here specifically to work
4 on collocation issues, and if, in fact, there -- that
5 may be optimistic to think there's anything but
6 collocation issues, but I'd certainly like to put
7 anything that is not collocation related to the end.

8 Do the parties want to suggest an
9 out-of-sequence issue to be addressed, or should we
10 just go right down the line?

11 MR. FREEDMAN: I think, at this point, Your
12 Honor, we would probably be comfortable with going
13 right down the line.

14 JUDGE BERG: Mr. Devaney.

15 MR. DEVANEY: I think that's right. I
16 think, as I look through the issues, we probably
17 ought to just proceed by number.

18 JUDGE BERG: All right. With regards to
19 Issue Number Six, before we talk about time
20 allocation, there's an initial issue stated under the
21 numeral six, the parties have resolved A and B, and
22 there's a sub-part C. So is there still those two
23 separate points to address?

24 MR. FREEDMAN: Under sub-part C?

25 JUDGE BERG: Is there a distinct question

00166

1 under six and under -- and sub-part C?

2 MR. DEVANEY: I think that six and C are
3 linked, that they're the two related questions, and
4 they essentially go to the scope of US West's ability
5 to obtain information about the use of ATTI's
6 equipment.

7 JUDGE BERG: Okay. So if we were to -- can
8 we restate the issue, then, as what scope of
9 information should ATTI be required to provide
10 regarding intended use or use of its equipment?

11 MR. DEVANEY: I think that captures it.

12 JUDGE BERG: Address all aspects that are
13 still left to be resolved.

14 MR. FREEDMAN: Right, with the
15 understanding that the two separate sub-parts are, as
16 I understand it, one, audit, and two, written notice;
17 correct?

18 MR. DEVANEY: I think that captures it.

19 MR. FREEDMAN: Actually, Your Honor. I
20 think I misspoke. May I confer with Mr. Devaney for
21 a moment, please?

22 JUDGE BERG: Sure. Off the record.

23 (Discussion off the record.)

24 JUDGE BERG: Back on the record. With
25 regard to my restatement of the issue under Number

00167

1 Six, how much time would the parties like to present
2 their positions and conduct cross-examination?

3 MR. FREEDMAN: We think seven minutes a
4 side would probably be enough.

5 MR. DEVANEY: Well, not to negotiate, but I
6 was going to say five a side.

7 MR. FREEDMAN: Fine.

8 JUDGE BERG: All right. Let's shoot for
9 five. I think if we get to the end and there's
10 something left to be said, I'll let the parties
11 request additional time. And is there any
12 disagreement, Mr. Freedman, with Mr. Kunde going
13 first?

14 MR. FREEDMAN: No, Your Honor.

15 JUDGE BERG: All right. Mr. Kunde.

16 MR. KUNDE: With regard to written notice
17 for the intended use of the equipment, it's AT&T's --
18 or, sorry, ATTI's belief that we've already provided
19 all the pertinent information in our collocation
20 application. ATTI believes that we've already
21 provided all the pertinent information in the
22 collocation application form. That form includes in
23 it equipment specifications, sizes, types, heat
24 discharge rates, power consumption, on and on and on.
25 Also, the quantity and types of connections to the

00168

1 ICDF for access to unbundled network elements, how
2 many circuits and how many VF loops and how many DS1
3 and DS3 and DSO loops.

4 We believe that this additional
5 notification is an unnecessary administrative hassle.
6 Basically, it makes me nervous as to why US West
7 would need additional affirmative representation as
8 to what we're doing beyond what's requested in the
9 original application in the first place, and kind of
10 also nervous that it was raised to the level of this
11 arbitration, and I really haven't heard a good reason
12 why that additional affirmation might be required.

13 JUDGE BERG: Okay. Mr. Devaney.

14 MR. DEVANEY: Thank you.

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

16 BY MR. DEVANEY:

17 Q. Mr. Kunde, I think the basis for this
18 dispute arises from the 706 order in paragraph 28,
19 which says that an ILEC is required to allow
20 collocation of equipment only if the equipment is
21 being used or is useful for interconnection or access
22 to unbundled network elements. Are you familiar with
23 that statement by the FCC?

24 A. Yes, I am.

25 Q. Do you agree that's how this dispute

00169

1 arises, from that statement?

2 A. Yes.

3 Q. In your collocation order form, where you
4 provide specs and the like that you've just
5 described, that obviously doesn't give any
6 information on how ATTI's actually using the
7 equipment at any particular time, does it?

8 A. I would beg to differ. I would think that
9 US West has a whole cadre of engineers that certainly
10 know, when I give equipment model numbers and so
11 forth, exactly what that equipment is used for.

12 Q. Yes, but unless US West has information
13 about how you are actually using the equipment after
14 you collocate, then they're not able to determine
15 whether you're using it at that time for the purposes
16 for which you're allowed; is that correct?

17 A. Once again, I would disagree. The nature
18 of most central office equipment and digital loop
19 carrier equipment and DSLAM equipment is real
20 obvious, when you look at the model numbers and the
21 manufacturer and so forth.

22 Q. So it's your view that, as long as before
23 you collocate, you just describe the equipment, that
24 that's enough for US West to determine how, at a
25 later time, you're actually using the equipment?

00170

1 A. A description of the equipment and the
2 number and the types and quantities of connections to
3 the ICDF for unbundled network element connections,
4 since that's what the ICDF is for.

5 JUDGE BERG: I understand the point that's
6 being made here, Mr. Devaney.

7 MR. DEVANEY: Thank you, Judge Berg.

8 Q. Now, my last question for you on this
9 subject, if you look at your language 3.2, it says US
10 West may request from ATTI reasonable information to
11 allow US West to confirm that such telecommunications
12 equipment is being utilized for interconnection or
13 access to unbundled elements. Do you see that?

14 A. Yes, I do.

15 Q. Would you agree that -- or would ATTI agree
16 to turn that into an affirmative obligation, where
17 ATTI would agree to provide information as to how its
18 equipment was being utilized, as opposed to saying US
19 West may request that information?

20 A. Once again, maybe I'm confused here, but I
21 would go back to the issue that US West -- my
22 understanding, how many cross-connects have been
23 ordered and how many UNE loops have been ordered to
24 connect to the equipment, and US West specifies those
25 connection points, and knowing what the equipment was

00171

1 would come to that same conclusion without additional
2 requirements for statements or information.

3 Q. Is the answer to my question no?

4 A. Yes, the answer would be no.

5 MR. DEVANEY: Thank you. No further
6 questions.

7 JUDGE BERG: All right. Mr. Reynolds, why
8 don't you take one to two minutes, just to state your
9 position.

10 MR. REYNOLDS: Well, US West's position is
11 that it believes that, in order to efficiently manage
12 scarce resources space in its office, that it's
13 entitled to perform audits to determine if the
14 equipment being placed by collocators is legitimately
15 used for interconnection or access to UNEs. And our
16 rationale for our position is that the FCC's
17 collocation order infers that incumbent LECs have an
18 opportunity to prove that a collocator's equipment
19 will be used for interconnection or access to UNEs.
20 And an audit is really the only means where US West
21 can determine, with absolute certainty, how the
22 equipment is being used.

23 JUDGE BERG: Mr. Freedman, why don't you
24 take four minutes for cross-examination.

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

00172

1 BY MR. FREEDMAN:

2 Q. Would US West propose to actually conduct
3 tests on ATTI's equipment during those audits?

4 A. No, I believe US West would be willing to
5 work cooperatively with ATTI to satisfy its interests
6 that the equipment is actually being used to access
7 UNEs or for interconnection.

8 Q. So would US West agree to some limitation
9 on its audit rights, such that if ATTI were concerned
10 about US West's technicians touching or testing
11 ATTI's equipment, that it would conduct that audit in
12 such a way as not to have that happen?

13 A. I believe that would be reasonable, yes.

14 Q. How often are these audits going to be
15 required?

16 A. I don't know that.

17 Q. What would be the criteria by which US West
18 would decide how often or not it would occur?

19 A. I don't know that.

20 Q. Could US West just go in whenever it --
21 strike the question.

22 Why would you need an audit unless there
23 was either new or -- new equipment or a modification
24 to existing equipment?

25 A. I wouldn't believe that you would.

00173

1 Q. So wouldn't US West then be agreeable to a
2 limitation on its audit rights that it would only be
3 necessary only when there's new equipment or
4 modifications to existing equipment?

5 A. Well, it would depend. You know, maybe I
6 need to reconsider my last answer. You know,
7 periodic audits would ensure that the equipment, even
8 after it's being installed, is continuing to be used
9 for specific use of accessing units or accessing UNES
10 or for interconnection, and so there would probably
11 be an ongoing need, a periodic need for them.

12 Q. Who judges if ATTI passes this audit?

13 A. I believe that the spec engineer in the
14 central office is responsible for managing that.

15 Q. So US West makes the decision?

16 A. Well, I think US West would make the
17 decision that it believes that it's found some
18 equipment that is questionable. And to the extent
19 that the parties wanted to dispute that, they could
20 take it to dispute resolution. To the extent that
21 the party -- that the competitive LEC chose not to
22 alter the way that it was using that equipment, US
23 West would probably file a complaint for
24 interconnection agreement enforcement with the
25 Commission.

00174

1 MR. FREEDMAN: No further questions.

2 JUDGE BERG: I just have a couple
3 questions.

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

5 BY JUDGE BERG:

6 Q. Mr. Kunde, with the understanding that not
7 every CLEC may be as honorable and trustworthy as
8 ATTI, and that there may be some companies out there
9 that, in fact, may be tempted to use equipment that
10 has been collocated for a limited purpose, but has
11 greater capabilities to take advantage of those other
12 capabilities beyond what they would otherwise be
13 legally entitled to do, is there some way for an
14 incumbent carrier to check on compliance, other than
15 an audit?

16 A. The issue of how a particular device is
17 being utilized, typically -- even an audit in some
18 cases, unless the audit were to be what I would call
19 intrusive audit, where someone would actually go in
20 and inspect the software or the coding or setup of
21 the equipment, which, once again, ATTI would be
22 pretty concerned about, if US West were to actually
23 access the software stored program controls of the
24 equipment we would place.

25 Q. Is it like an audit that gets done on my

00175

1 computer here at the Commission, where Microsoft or
2 maybe Corel comes by to see whether or not the
3 Commission is running more programs on computers than
4 it has a license to do, that sort of software audit?
5 Is that what we're talking about, or is there
6 something a little bit different happening here?

7 A. It would be similar to that in some cases,
8 except the device that controls the equipment in a
9 collocation cage actually is not located in the cage.
10 In many cases, it's back at our host office. And
11 it's the host office that, once again, is not in any
12 of US West's buildings or premises that has the
13 stored programming control that gives the directions
14 to remote modules placed in the collocation cages.

15 ATTI would be concerned about opening up
16 our entire host central office, then, to inspection
17 to determine the detailed utilization of equipment
18 that would sit in a collocation cage.

19 Q. Well, assuming that this is not a situation
20 where an incumbent is trying to gain some competitive
21 advantage over a CLEC, such as ATTI, is this one of
22 those issues where you're telling me that if a
23 company wants to -- if a CLEC wants to beat the
24 system, so to speak, that it's going to be able to do
25 it; that there is no effective way to confirm that

00176

1 equipment with greater capabilities is not being used
2 beyond its authorized purpose?

3 Let me go one step further. I hear
4 statements that, well, for example, that certain
5 forms of data protection is meaningless because
6 there's always a way to beat it or get around it, so
7 why should we be worried about how long an encryption
8 key is or something to that extent. Is it --

9 A. I think, effectively, that's what I'm
10 saying. To some extent, an audit of the nature
11 that's being proposed here will not necessarily gain
12 the type of information that US West may be looking
13 for in this particular case. And I'm looking forward
14 a little bit here into the future of technological
15 change that will continue to occur where devices and
16 boxes and pieces of equipment will continue to gain
17 multiple functionality into the future. And the -- I
18 guess the rate of technological change may quickly
19 outstrip the nuances of a particular collocation
20 contract.

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

22 BY JUDGE BERG:

23 Q. And Mr. Reynolds, understanding that US
24 West is being compelled to allow equipment to be
25 interconnected that can include or integrate

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1 capabilities that go beyond those that are necessary
2 in order to achieve its legal purposes,
3 realistically, is the audit concept capable of
4 achieving any real security for US West?

5 A. Realistically, I think it serves as maybe a
6 point of tension, that it creates the idea that US
7 West does have a right and opportunity to examine the
8 equipment. I don't think we intended to be invasive.
9 I think we intend to work with the competitive LEC
10 that we are auditing. And if somehow they can pull
11 one over on us and they do, then that's going to
12 happen. But I think by having that requirement in
13 the contract, it makes the companies think twice
14 about the requirements that they concentrate on
15 ensuring that their equipment is used and useful for
16 interconnection or access to UNEs.

17 And if that provision serves nothing more
18 than to give them a second thought, then, yeah, I
19 think it's worth having in there.

20 JUDGE BERG: That's all the questions I
21 have. Thank you, everybody.

22 MR. FREEDMAN: Your Honor.

23 JUDGE BERG: Yes, sir.

24 MR. FREEDMAN: Can I ask one question of
25 Mr. Reynolds on this issue based on some of the

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1 things you just said?

2 JUDGE BERG: Sure. Let's do it and, if
3 necessary, Mr. Devaney, I'll provide some opportunity
4 for follow-up.

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. If ATTI were to incur costs or suffer --
8 let's just say basic costs, like technician time or
9 physical costs as a result of an audit, or if ATTI
10 were to incur a network outage or something like
11 that, let's just say a bigger cost, would US West be
12 willing to obligate itself to cover those costs for
13 AT&T where US West conducts these audits?

14 A. No, I don't believe so.

15 Q. So if, as a result of one of the audits,
16 ATTI's connection goes down, it's ATTI's tough luck?

17 A. I believe ATTI, if it felt strongly enough
18 that US West had abused their equipment, that we'd
19 probably go into dispute resolution, if US West was
20 not willing to make ATTI whole just in negotiations
21 between the parties. If there was a dispute as to
22 whose fault it was, then we'd probably go to
23 arbitration.

24 MR. FREEDMAN: Thank you. No other
25 questions.

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1 JUDGE BERG: Any follow-up, Mr. Devaney?

2 MR. DEVANEY: No, thank you.

3 JUDGE BERG: All right. Just a short break
4 before we take up Issue Nine, less than five minutes.
5 Everybody please -- so everybody except Mr. Freedman
6 jump up and down and get some oxygen recirculating,
7 and maybe we can finish up Nine, 11, 13, and 17 in
8 the next half hour.

9 MR. FREEDMAN: Just as a point, we would
10 suggest Nine and 11, when we come back, might be
11 amenable to be taken together.

12 JUDGE BERG: All right. Mr. Devaney, why
13 don't you consider that and we'll talk about that.

14 (Recess taken.)

15 JUDGE BERG: Back on the record. There are
16 approximately four factual issues that have not been
17 addressed during the hearing, that being Issues Nine,
18 including the sub-parts A through F, 11, 13, and 17.

19 Likewise, there were two issues of law that
20 the parties had identified that -- and I had reserved
21 some final decision as to whether or not arguments
22 would be permitted during the course of the hearing.

23 At the conclusion of the break, the parties
24 indicated to me that they are willing to rest upon
25 the record with regards to all the remaining factual

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1 issues, and that they will present legal issues in
2 briefs. Is that correct, Mr. Devaney?

3 MR. DEVANEY: That is correct, Judge Berg.

4 JUDGE BERG: And Mr. Freedman?

5 MR. FREEDMAN: Yes.

6 JUDGE BERG: All right. I have several
7 questions that might be of a clarification nature,
8 and even if not, they might provide some guidance for
9 the parties on discussing and -- framing the issue
10 and discussing the issue in their briefs.

11 With regard to Issue Nine, when I look at
12 the three pages of parties' position and proposed
13 language with regards to the initial contract
14 provisions, I was concerned that there might be an
15 issue of apples and oranges here, where it looked
16 like ATTI was talking NEBS, N-E-B-S, safety
17 standards. It looked like US West was talking space
18 availability. And it isn't clear to me, in fact,
19 that the parties were thinking about the issue in the
20 same way.

21 So I think, from US West's perspective, it
22 may want to incorporate some of the NEBS safety
23 standard language into its arguments, and from the
24 ATTI perspective, it may want to take a closer look
25 at the way US West is talking about space

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1 availability. And I'm really thinking of -- having
2 gone through this before, I know the devil's always
3 in the details, and I'm looking for proposed contract
4 language that will help simplify my job.

5 I've informed the parties that this is not
6 baseball-style arbitration and I will not necessarily
7 be adopting any parties' proposed contract language
8 on a wholesale basis, but I think it's been very
9 useful up to this point.

10 Likewise, if parties intend to propose any
11 alternate language on any of these issues, I require
12 that it must be stated in its opening brief, so that
13 opposing counsel would have an opportunity to respond
14 or react in the reply brief.

15 I would hope that any changes in the
16 proposed language would occur as part of an effort to
17 establish a compromise position that would be more
18 acceptable to the opposing party than it would be to
19 distance the parties from each other.

20 With regards to ATTI's proposed language,
21 under 6.2, I had several questions that I just wrote
22 out to myself, and I'll share those with both
23 parties.

24 First of all, the question, Must US West
25 perform while a dollar dispute is pending, and is

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1 this just an argument over who holds the money in
2 trust while the dispute resolution proceeding is
3 under way. Also, in looking at 6.2, it looked like
4 there were two separate issues there, one may be the
5 process and the other was actually more of a
6 substantive nature.

7 I, quite honestly, just in reading 6.3, I
8 didn't understand what 6.3 meant. And to both
9 parties, there seems to be some wavering or
10 inconsistency in trying to find that language that
11 would otherwise bind or obligate a party to perform,
12 and my own disbelief that the parties couldn't quote
13 language to me that would make sense and be
14 acceptable to both parties is only exceeded by my own
15 disbelief that I can't suggest language to them,
16 other than to say that it seems that this has been --
17 this has come up before and I've seen language in
18 agreements that seems to give parties a mutual
19 comfort zone upon which time to either compel
20 performance or the idea of what constitutes a final
21 decision seems to have been addressed in other
22 agreements, and I would be looking for the parties to
23 try and work together to come up with some precise
24 language that satisfies their mutual needs.

25 Keep in mind that parties that wish to

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1 engage in any kind of an appeal process always have
2 the opportunity to apply for a stay, a stay order, if
3 that's what's necessary for their protection. And I
4 wouldn't want the parties to try and be resolving
5 whether or not a stay should be granted pending
6 appeal on a preemptive basis.

7 If, for some reason, a stay on appeal, as
8 provided for by Commission regulations, doesn't
9 provide the parties adequate protection, please state
10 so in your briefs.

11 Mr. Devaney, would US West -- in looking at
12 Factual Issue 11, Mr. Devaney, under US West's
13 proposed language, there is no proposed language. I
14 had a note to myself of whether there was overlap
15 between ATTI's alternative dispute resolution
16 language and the ATTI proposal, based upon US West's
17 position.

18 MR. DEVANEY: Yeah, our view on this is
19 that the AT&T contract already contains language that
20 addresses this issue, and therefore we're not
21 proposing any additional language. Does that respond
22 to your question?

23 JUDGE BERG: I think so. It sounds like
24 this is one of those issues where US West doesn't
25 want to consider any modifications to the AT&T

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1 agreement language in order not to compromise itself
2 in other respects.

3 MR. DEVANEY: That's also an issue, so it's
4 twofold, really. It's that principle, but in
5 addition, we think there is language in the AT&T
6 contract that's already sufficient.

7 JUDGE BERG: All right. And then, to ATTI,
8 I'd just suggest that they compare their proposed
9 language with the provisions under 480-09-530, the
10 Commission's enforcement of interconnection
11 agreements rule.

12 At first, when I was looking at this issue,
13 the way I was reading it was that, well -- and this
14 goes with regards to Issue Number 13, as well.

15 I was somewhat concerned that, with the
16 ATTI proposed language, that it was thinking only in
17 the context of its right to seek recourse before the
18 Commission, and possibly was not considering non-WUTC
19 alternative dispute resolution, such as the American
20 Arbitration Association. I know, without knowing
21 what language -- without being sure what language was
22 contained in the AT&T agreement, this Commission has
23 exercised jurisdiction under 480-09-530, in spite of
24 the presence of alternative dispute resolution
25 language providing for binding arbitration before the

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1 AAA, and it just seemed to me that ATTI needed to
2 take a real good second look at its proposed language
3 and make sure that it wasn't foreclosing any non-WUTC
4 venues that it may have for relief.

5 You may not always have Judge Berg to rely
6 upon. There may actually be somebody out there in
7 the private sector who's qualified to consider these
8 issues.

9 And with regards to Factual Issue Number
10 17, I had a note to myself, isn't this the same basic
11 issue as Number 13. Who holds the dinero while
12 dispute resolution is pending.

13 So if there's something more than that
14 between 13 and 17, you'll certainly want to underline
15 it or emphasize it to the extent that, in fact,
16 that's what we're really talking about here is, you
17 know, who acts as trustee of the charges that US West
18 seeks to impose, then let's talk about -- try and
19 address that with me in terms of the issues of
20 fairness, you know, if there is any reason why that
21 use of capital, you know, whether the use of capital
22 is at issue or whether or not there's any kind of a
23 risk to either party for paying funds that are under
24 dispute or not being paid funds that are under
25 dispute. Any questions or comments from counsel?

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1 MR. DEVANEY: No, thank you.

2 JUDGE BERG: Mr. Freedman.

3 MR. FREEDMAN: No, Your Honor.

4 JUDGE BERG: All right. As previously
5 discussed, opening briefs from the parties are due on
6 November 10, 1999, and reply briefs are due on
7 November 17th, 1999. Are there any other matters --
8 oh, excuse me. There is one other issue.

9 With regards to Exhibits T-104, 105, and
10 106, would you be sure that sets of those exhibits
11 are distributed to opposing counsel and to the bench.
12 I know there's no specific reference to those
13 exhibits in the hearing record here today. Will ATTI
14 want to make some reference to those exhibits in its
15 briefs?

16 MR. FREEDMAN: Possibly.

17 JUDGE BERG: All right. Would ATTI be able
18 to nail that down and so inform US West on 11/4?

19 MR. FREEDMAN: Yes, we could, Your Honor.

20 JUDGE BERG: All right. And Mr. Devaney, I
21 know it may be short time, and if there's some good
22 reason to request an extension, I'll consider it at
23 the time, but if you have any objections to the
24 references that ATTI intends to use, make use of
25 those exhibits in arguments, I'd like you to raise

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1 them on 11/5.

2 MR. DEVANEY: That's fine, Your Honor.

3 JUDGE BERG: I understand this is a little
4 irregular, but this is not your normal proceeding,
5 either. So I just want to make sure that no party is
6 treated unfairly, and everybody understands or knows
7 what's going to happen. Very often, disputes are as
8 much a matter of surprise as anything else. Anything
9 else from the parties?

10 MR. DEVANEY: No, thank you.

11 JUDGE BERG: Okay. Thanks, everybody.
12 We'll be adjourned. The witnesses are excused and
13 the hearing will be adjourned.

14 (Proceedings adjourned at 7:07 p.m.)

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