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**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

**In the Matter of the Petition for Arbitration
of an Interconnection Agreement Between
AMERICAN TELEPHONE TECHNOLOGY,
INC. and GTE NORTHWEST
INCORPORATED Pursuant to 47 U.S.C.
Section 252**

DOCKET NO. UT-990390

**OPENING BRIEF OF
GTE NORTHWEST**

1 GTE Northwest Incorporated (“GTE”) submits its opening brief
2 addressing, in order, the following unresolved issues relating to an
3 interconnection agreement between the parties:

4 1. Issue No. 1: Sharing of collocation costs associated with space
5 conditioning. In the Advanced Services Order¹, Paragraph 51, the FCC stated:

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7 “We conclude, based on the record, that incumbent LECs must allocate space
8 preparation, security measures, and other collocation charges on a pro-rated basis so the
9 first collocator in a particular incumbent premises will not be responsible for the entire
10 cost of site preparation.”

11 The FCC deferred to State Commissions the determination of the proper pricing
12 methodology to ensure that incumbent LECs properly allocate site preparation costs
13 among new entrants.

14 In this arbitration, GTE presented its proposed pricing methodology for the
15 allocation of extraordinary costs triggered by a collocation request. GTE’s methodology
16 would divide such extraordinary costs according to a “state specific fill factor” which
17 spreads the costs evenly by dividing them by the expected number of collocators in the
18 impacted central office. GTE includes itself as one of the collocators in its methodology.

19 GTE’s method complies with the FCC’s mandate because it does not recover
20 100% of the extraordinary cost from the collocator which caused GTE to incur those
21 costs. Rather, GTE’s approach fairly assigns a portion of the extraordinary costs to each
22 collocator benefiting from the project, including GTE itself.

¹ In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications
Capability, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No.
98-147 (Released March 31, 1999) (hereinafter “Advanced Services Order”).

1 ATTI has proposed contract language which would allocate costs “based on the
2 percentage of the total space utilized by ATTI to the percentage of the total space utilized
3 by All Users” or based on “the percentage of utilization of the total calculable amount of
4 such HVAC and power” [sic]. If the Commission were to adopt ATTI’s approach, this
5 would mean that GTE and its customers would be forced to bear the vast majority of
6 costs necessitated by a collocation request, not by GTE’s service requirements. Mr.
7 Kunde, testifying for ATTI, admitted that the collocation request triggers GTE’s need to
8 incur these significant costs (Tr. 85). GTE’s customers should not have to absorb these
9 new additional expenses.

10 The costs GTE must incur to provide an upgrade are not costs which GTE could
11 avoid because the Telecommunications Act of 1996 (“ACT”), 47 U.S.C. § 251(b)(6)
12 obligates GTE to provide collocation upon demand. GTE is required to do the work,
13 replace the equipment and otherwise satisfy the collocator’s demands in the central office.
14

15 However, under federal and state law GTE is entitled to a full cost recovery for
16 interconnection costs. See i.e. 47 U.S.C. § 252(d)(1). In the 17th Supplemental Order in
17 Docket Nos. UT-960369, UT-960370 and UT-960371 the Commission acknowledged
18 that the Act intends that ILECs be compensated for costs they incur due to market entry
19 by CLECs and that the Act does not require an ILEC to subsidize a CLEC. It said:
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21 It is this Commission’s opinion that the Act is designed to facilitate efficient entry into
22 the local market. The Act does not state that an ILEC or its retail customers should
subsidize the price of UNEs. Rather, the Act provides that when a CLEC orders a UNE,
it must pay a fair and just price, which will compensate the ILEC for its reasonable costs.

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2 Id., Paragraph 100.

3 Mr. Kunde, for ATTI, has also acknowledged that GTE, as an ILEC, is entitled to
4 recover the implementation costs of compliance with the Act (Tr. 91). Therefore Mr.
5 Kunde erroneously claims (Ex. T-102, p. 4) that the Act requires GTE to absorb these
6 costs as “compliance costs.” This position demonstrates that ATTI’s approach would not
7 allow GTE to recover the costs associated with implementing a collocation request and
8 that GTE’s retail customer will be subsidizing ATTI’s market entry. This Commission
9 must decide either as a result of this arbitration, or in the next phase of its costing and
10 pricing docket in Docket Nos. UT-960369, UT-960370, UT-96-0371, how to allow GTE
11 to obtain full cost recovery for collocation costs.²

12 ATTI tries to justify its noncompensatory approach by claiming that GTE is
13 incited to delay upgrades which GTE itself would otherwise need to make. That way,
14 according to Mr. Kunde, GTE is allowed to “foist” GTE costs on collocators (Ex. T-102,
15 p. 4). There is no evidence to support this irrational, illogical and unsubstantiated claim.
16 GTE has an obligation to serve in its current local exchanges. GTE cannot avoid its
17 service responsibilities by delaying necessary upgrades on the speculation that a
18 collocator may “come along” to
19 help pay for them. Mr. Lee, testifying for GTE, said that collocators are not charged
20 when upgrades are required by GTE’s own needs (Tr. 97). He explained that GTE does
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² In the 17th Supplemental Order, Paragraph 302 the Commission stated “The permanent resolution of collocation pricing issues is deferred to Phase III.”

1 not receive forecasts from collocators (Tr. 107). Therefore GTE cannot reasonably know
2 when and where collocation requests will come in. Furthermore, ATTI's claim assumes
3 that GTE would somehow build into its normal capital budgeting cycle anticipated
4 collocation requests rather than base its budget requirements upon GTE's actual service
5 requirements. Mr. Kunde said that he did not know if GTE had a process in place to
6 substantiate this assumption. (Tr. 77).

7
8 Mr. Kunde stated that he had no evidence that in Washington State GTE has
9 delayed any upgrade so that a CLEC would have to pay a disproportionate share of cost
10 (Tr. 86). At best, Mr. Kunde's supposition that GTE would delay needed upgrades to
11 have collocators pay for them is based upon an experience which is not relevant to the
12 issue of collocation cost allocation. Mr. Kunde speculated that GTE would not make
13 necessary plant upgrades because GTE allegedly did not make upgrades to plant it sold to
14 Citizens Communications six or seven years ago (Tr. 73). GTE does not agree with this
15 speculation. Even if it did, for the sake of argument, the situation of plant sale described
16 by Mr. Kunde is not analogous to plant impacted by collocation requests. The plant at
17 issue in a collocation situation is not in the process of being sold and is used to meet
18 ongoing services requirements. It would make no economic sense for GTE to delay
19 service affecting upgrades in plant which it has no intention of selling. In today's
20 competitive environment service quality will be an increasingly important issue and
21 incents GTE to make sure its equipment meets customer demand, as acknowledged by
22 Mr. Kunde (Tr. 89).

1 Therefore, there is no basis to speculate about GTE's purported "incentive" to not
2 make investments that would be necessary to meet customer demands so as to dump an
3 unfair share of costs on collocators.

4 In sum, GTE's proposal spreads costs triggered by collocators' requests on a more
5 predictable, fair basis. In contrast, ATTI's proposal forces GTE's customers to absorb
6 costs the Company would not have incurred but for the collocators' request. Allocating
7 cost on the method proposed by ATTI would force GTE and its customers to subsidize
8 ATTI's entry into the competitive marketplace (Tr. 105-106). Such a result is contrary to
9 the approach taken by this Commission in the 17th Supplemental Order, supra, Paragraph
10 100._

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12 2. Issue No. 2: GTE's obligation to provide unbundled network elements
13 (UNE) in requested combinations._

14 On November 5, 1999 the FCC issued its Third Report and Order and Fourth
15 Further Notice of Proposed Rulemaking in In the Matter of Implementation of the Local
16 Competition Provisions of the Telecommunications Act of 1999. FCC No. 99-238, cc
17 Docket No. 96-98 (hereinafter "UNE Order"). The UNE Order will effectively establish
18 GTE's obligations to provide unbundled network elements.

19 Without waiving any rights to appeal the UNE Order, GTE will abide by all legal
20 requirements to provide UNEs, including combinations, once the UNE order is effective.
21 In the event that the UNE Order is modified or stayed on appeal, GTE reserves the right
22 to provide only those UNEs which it is legally required to provide.

1 With the foregoing in mind, it is premature for the Commission to consider any
2 proposed language on UNE combinations, including ATTI's proposed language, until the
3 parties have had sufficient time to digest the UNE Order and try to implement it after it
4 takes effect. The UNE arrangement contained in the GTE/AT&T agreement that ATTI
5 plans to adopt has specific provisions dealing with changes in law that would apply to the
6 implementation of the UNE Order. Therefore, GTE urges the Commission to deny
7 ATTI's proposed language on combinations, and in the process, to permit the parties an
8 adequate opportunity to implement the UNE Order.

9 3. Issue No. 3: Requirement of background information for ATTI's
10 employees.

11
12 GTE requires that all collocators, including ATTI, fill out a Certification of
13 Background Investigation form ("CBI") in order to obtain a keycard and access to GTE
14 facilities (Ex. 205). This CBI requires that a drug screen be conducted on those
15 employees certified by the collocator for access.

16 ATTI protests GTE's CBI form, focussing on the reasonableness of a drug
17 screening requirement.

18 As the arbitrator pointed out several times during the arbitration (Tr. 31-32, 38-
19 39), the clear language of Paragraph 47 of the FCC's Advanced Services Order clearly
20 allows GTE to require that ATTI provide the certification called for by the CBI.

21 Paragraph 47 provides:
22

 We conclude, based on the record, that incumbent LECs may impose security

1 arrangements that are as stringent as the security arrangements that incumbent LECs
2 maintain at their own premises either for their own employees or for authorized
3 contractors. To the extent existing security arrangements are more stringent for one
4 group than the other, the incumbent may impose the more stringent requirements. Except
5 as provided below, we conclude that incumbent LECs may not impose more stringent
6 security requirements than this. As stated differently, the incumbent LEC may not
7 impose discriminatory security requirements that result in increased collocation costs
8 without the concomitant benefit of providing necessary protection of the incumbent
9 LEC's equipment.

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ATTI has failed to prove that GTE's security requirements are not allowed by
Paragraph 47. The first sentence of Paragraph 47 allows GTE to impose a security
arrangement that is as stringent as GTE imposes for its own employees. ATTI has
admitted through the testimony of Mr. Kunde (Tr. 1.26) and Mr. Oxley (Tr. 11-13) that
GTE's security requirements for ATTI are no more stringent than those GTE imposes
upon itself, for its employees. Because of this fact, GTE complies with Paragraph 47.
No further analysis of the remainder of Paragraph 47 is necessary. Even if it were, GTE
continues to act well within the parameters of Paragraph 47 because it could impose
more stringent requirements on collocators than on itself if it chose to. GTE does not do
so. Finally, even if GTE were to impose discriminatory security requirements it could
still do so if there was a benefit to provide the necessary protection for GTE's equipment.

ATT's argument that GTE's requirement is *per se* discriminatory because it
imposes increased collocation costs is irrelevant because there is no evidence in the
record whatsoever of any discriminatory treatment which GTE would have to justify
according to the last sentence of Paragraph 47.

1 Furthermore, there is no persuasive evidence of any heightened collocation costs
2 or expanded burdens that would single out ATTI, as opposed to other collocators, for
3 discriminatory treatment. Mr. Kunde admitted (TR. 1.29, 1.33) that ATTI's primary
4 subcontractor, Nortel, would not be impacted by GTE's security requirement because
5 Nortel has its own mandatory drug screening program. (Ex. 103, ATTI Supp. Response.)

6 Further, the burden of drug screening would not apply to all ATTI
7 employees—but only to those seeking access to GTE's facilities. At this point in time,
8 this would involve between two or three employees out of an employee population of
9 thirty (Tr. 1.31).

10 The record shows why GTE is justified in imposing the security requirement
11 reflected in the CBI. Mr. Lee explained that GTE holds collocators to the same standards
12 as GTE employees. The requirement does not impact ATTI's entire employee population
13 but is limited to only those collocator employees seeking access to the central office on a
14 24-hour day 7-day a week basis (Tr. 36). Collocator employees have no incentive to
15 protect GTE's equipment (Tr. 36) and GTE acts well within its legal boundaries in
16 requiring a security check that involves mandatory drug testing.

17 ATTI challenged the practice of mandatory drug screening in Mr. Kunde's
18 testimony and at the arbitration. The wisdom or reasonableness of mandatory drug
19 screening is not at issue, however. The determinative issue is whether it is allowed by the
20 FCC's Advanced Services Order. The very clear language and direction of that Order
21 allows GTE to insist upon mandatory drug screening—even if ATTI does not like it, and
22

1 even if it may impose hypothetical increased collocation cost.³

2 4. Issue No. 4: 10-day interval to notify ATTI of space availability and
3 feasibility of collocation requests.

4 The resolution of this issue turns on an interpretation of Paragraph 55 of the
5 Advanced Services Order, and common sense. In that paragraph the FCC stated: “We
6 view ten days as a reasonable time period within which to inform a new entrant whether
7 its collocation application is accepted or denied.”
8

9 The “10 days” referred to in this passage should mean ten (10) business days or
10 approximately fifteen (15) calendar days. However, ATTI claims that the “10 days” in
11 the passage means 10 calendar days. Yet the FCC in Paragraph 55 did not specify
12 whether the 10 day timeline was to be measured in “calendar days” or “business days.”
13 GTE’s interpretation of business days is more reasonable and has been accepted by at
14 least one other regulatory commission, the California Public Utilities Commission.⁴

15 ATTI’s only justification for a 10 calendar day interval is “to have system-wide
16 consistency,” according to Mr. Kunde (Tr. 52). GTE also would like such “system-wide
17 consistency”, which would mean 15 days. ATTI presented no evidence that it would be
18 harmed by accepting GTE’s “business day” interpretation.
19

20 GTE, in contrast, presented evidence based on GTE’s operational experience to

21 ³ ATTI argues for a subjective impact test. However, as the arbitrator correctly noted (Tr. 38),
22 Paragraph 47 makes no allowance for additional cost impact where, as here, there is no evidence
of different security requirements for GTE as opposed to ATTI.

⁴ See D. 98-12-068, issued by the California Public Utilities Commission in R. 95-104-043, I. 95-04-044.

1 show that meeting a 10 calendar day interval would be burdensome to GTE (Ex. 201,
2 pp. 12-13). In real life, GTE has to contend with multiple requests from multiple
3 collocating parties, not just ATTI. Site visits are necessary to evaluate collocation
4 requests, which requires GTE to schedule appropriate personnel who are capable of
5 evaluating the space requirements for different types of collocation. These individuals
6 perform this task in addition to their regular jobs. Consequently, GTE can have a serious
7 staffing problem which would make a 10 calendar day requirement difficult to meet,
8 particularly during times of holidays and heavy vacation schedules (see Tr. 58-59).

9
10 Accordingly, given GTE’s demonstration of the burdensomeness of a 10 calendar
11 day requirement, and ATTI’s lack of evidence of any detrimental impact, it is reasonable
12 to allow GTE to interpret the 10 days referenced in Paragraph 55 as “business days”—not
13 “calendar days.”

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21 CONCLUSION

22 GTE requests the Arbitrator to rule in GTE’s favor on each of the

1 unresolved issues.

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3 RESPECTFULLY SUBMITTED this _____ day of November, 1999.

4 WILLIAMS, KASTNER & GIBBS PLLC

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