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BEFORE THE WASHINGTON UTILITIES AND

2

TRANSPORTATION COMMISSION

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4 In the Matter of the Petition) Docket No. UT-990390
for Arbitration of an)
5 Interconnection Agreement) Volume II
Between) Pages 148 - 174
6)
AMERICAN TELEPHONE TECHNOLOGY,)
7 INC., and GTE NORTHWEST,)
INCORPORATED.)
8)
Pursuant to 47 U.S.C. Section)
9 252.)

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A hearing in the above matter was

12

held on February 17, 2000, at 12:37 p.m., at 1300

13

Evergreen Park Drive Southwest, Olympia, Washington,

14

before CHAIRWOMAN MARILYN SHOWALTER, COMMISSIONER

15

RICHARD HEMSTAD, and COMMISSIONER WILLIAM R. GILLIS.

16

The parties were present as

17

follows:

18

19 ATTI, by J. Jeffery Oxley,
Director of Regulatory Affairs, 730 Second Avenue
South, Suite 1200, Minneapolis, Minnesota, 55402.

20

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

23

24 COMMISSION STAFF, by Shannon
Smith, Assistant Attorney General, 1400 S. Evergreen
Park Drive, S.W., P.O. Box 40128, Olympia, Washington
98504-0128.

25

BARBARA L. SPURBECK, CSR

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1 CHAIRWOMAN SHOWALTER: We're here on oral
2 argument in Cause Number UT-990390. I think the
3 format will be if we could hear from GTE first and
4 each side take up to 20 minutes, though if you take
5 less than that, we'll have more time for questions
6 afterwards. And I'd say, with respect to the issue
7 affected by the Ninth Circuit decision, focus your
8 remarks on that if you're going to discuss that
9 issue. Go ahead.

10 MS. ENDEJAN: Thank you. Good afternoon,
11 Chairwoman Showalter and Commissioners Gillis and
12 Hemstad. I'm --

13 CHAIRWOMAN SHOWALTER: I forgot to take
14 appearances. I guess go ahead. Is that what you're
15 going to do?

16 MS. ENDEJAN: I was just going to identify
17 myself. My name is Judy Endejan, and I'm here today
18 appearing on behalf of GTE Northwest, Incorporated.

19 MR. OXLEY: I'm Jeff Oxley. I'm here on
20 behalf of American Telephone Technology,
21 Incorporated.

22 MS. SMITH: Shannon Smith, Assistant
23 Attorney General, on behalf of Commission Staff.

24 MS. ENDEJAN: Commissioners, we're here
25 today really about two contested issues associated

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1 with the arbitration that GTE had with ATTI,
2 represented by Mr. Oxley. We had four arbitrated
3 issues. Of those four, we are only really dealing
4 with two here today, because the parties reached
5 agreement with respect to the space conditioning cost
6 on an interim basis, and both parties are not
7 contesting the arbitrator's decision with respect to
8 time intervals.

9 I'd like to focus on the first issue, which
10 deals with the unbundled network, or UNE combination
11 issue. And one of the things I want to emphasize at
12 the outset is that it has never been GTE's position
13 that it is trying to avoid implementing UNE
14 combinations. That has not been its position from
15 day one. Its position has been we've been waiting to
16 see what happens at the federal level in order to
17 find out what the FCC will be saying in terms of
18 implementing the new FCC rules on unbundled network
19 elements.

20 Now this is sort of a procedural morass,
21 the whole area of what's known as Rule 319, which
22 deals with the issue of unbundled network elements
23 and unbundled network combinations. And before I
24 address the issues associated with both the Eighth
25 Circuit and Ninth Circuit decisions, I wanted to talk

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1 about the language that we're proposing and contrast
2 it with the language that ATTI is proposing on this,
3 because I think that will be most helpful to the
4 Commission, because what we're really here for is we
5 need to have some language in this agreement on this
6 issue.

7 And I want to tell you why the language
8 we've suggested, which appears in Attachment Four to
9 the letter which accompanied the filing of the
10 interconnection brief on February 9th, is appropriate
11 and why we think it best comports with the FCC's
12 order.

13 The language we're proposing basically
14 states, in a nutshell, we will abide by the FCC's
15 recent Rule 319 order, which is called the UNE remand
16 order, as well as we will comply, when it takes
17 effect, the December 9th, 1999 FCC line sharing
18 order, but that doesn't go into effect until, I
19 think, May 17th or June 17th of this year.

20 So with that in mind, GTE's proposed
21 language states that we will negotiate with ATTI
22 consistent with the language of the AT&T agreement,
23 which is being adopted, which has a, quote,
24 regulatory changes provision, which says that when
25 there's a change in the law, in the regulation which

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1 governs interconnection, the parties agree to
2 negotiate language that will implement that order --
3 or implement the change in the law, excuse me.

4 So the first paragraph of our proposed
5 language simply reiterates that fact, that we'll
6 agree to negotiate a supplemental term dealing with
7 51.319. The remaining language in Attachment Four
8 tracks very carefully with the FCC's UNE order.

9 And part of the problem with this whole
10 area is that we were trying to arbitrate this and
11 negotiate this when there was legal uncertainty in
12 the sense that the U.S. Supreme Court, in AT&T v.
13 Iowa Utilities Board, remanded back to the FCC the
14 task of determining what would be the unbundled
15 network elements that would have to be offered under
16 Rule 319.

17 The U.S. Supreme Court, in Iowa Utilities
18 Board, had before it just one subset of that Rule
19 319, which was 319(b). 319(b) is what controls the
20 identification of unbundled network elements. The
21 other components of Rule 319, which dealt with
22 combinations -- I think it's 319(c) through (g), or
23 (c) through (d), excuse me -- was not at issue in the
24 AT&T/Iowa Utilities Board case, because the FCC did
25 not appeal the Eighth Circuit's setting aside of

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1 those particular portions of the rule.

2 So as the record currently stands, the
3 Eighth Circuit has jurisdiction over ruling on the
4 validity of Rules 319(c) through I believe (d), which
5 deals with UNE combinations. Where it gets a little
6 complicated, and the reason the Eighth Circuit has
7 jurisdiction over the issue of ruling on the validity
8 of that rule, is because of the Hobbs act. The Hobbs
9 act states that -- or basically allows for the
10 consolidation of all agency appeals relating to a
11 particular agency order in one circuit court of
12 appeals, and that's controlled by 28 USC Section
13 2112.

14 The Eighth Circuit has jurisdiction over
15 the rules adopted by the FCC in the first report and
16 order, which is known as the interconnection order.
17 So the issue of whether this rule is good, bad,
18 indifferent, et cetera, is before the Eighth Circuit.

19 The Supreme Court, in the Iowa Utilities
20 Board, and even the Ninth Circuit, in the MFS
21 IntelNet case, acknowledged that the Eighth Circuit
22 has jurisdiction over the validity of these rules.
23 So what that means, for all practical purposes, is
24 that the issue of UNE combinations is not finally
25 resolved by the court that is charged with the task

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1 of resolving it.

2 And where -- and I'm not quite certain what
3 the issue was with US West, et cetera, on their
4 combination issue, but GTE's legal obligation is to
5 provide to CLECs, such as ATTI, access to combine
6 network elements that already exist in its network.
7 We don't contest that obligation.

8 Where we do have a problem is where the
9 language, as proposed by ATTI, suggests that GTE
10 assume additional responsibilities to combine network
11 elements that have not been combined previously by
12 GTE or which would require GTE to bear the
13 responsibility for combining its UNEs with ATTI UNEs.
14 It is that distinction, that's why we're here,
15 because we're saying we don't have to do that yet.

16 COMMISSIONER HEMSTAD: Because of the
17 pending issue in front of the Eighth Circuit?

18 MS. ENDEJAN: Because of the pending Eighth
19 Circuit case.

20 COMMISSIONER HEMSTAD: But in the meantime,
21 don't we have in place a Ninth Circuit affirmation of
22 a decision made here on the pick and choose issue
23 with respect to that question, and therefore there is
24 that section in an outstanding contract or
25 interconnection agreement in place that ATTI can pick

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1 and choose?

2 I mean, you're saying that the pendency,
3 the open pendency of that issue in front of the
4 Eighth Circuit trumps the opportunity for a new
5 entrant to pick and choose an existing contract term
6 that's been upheld by the Ninth Circuit.

7 MS. ENDEJAN: Well, first of all, let me
8 address that specifically, and then get a little
9 broader. The specific term you're talking about is
10 not in the contract that AT&T is adopting. That was
11 the -- that was a specific agreement between US West
12 and MFS. ATTI is not adopting the contract term from
13 that agreement here in this arbitration with us,
14 okay.

15 COMMISSIONER HEMSTAD: Okay.

16 MS. ENDEJAN: And the Ninth Circuit had
17 jurisdiction to review that specific agreement under
18 Section 252(e)(6). What I'm saying is the Ninth
19 Circuit did not have jurisdiction to declare what the
20 law is on the combination rule. That broader, bigger
21 picture issue is before the Eighth Circuit. And on
22 that, the Eighth Circuit trumps.

23 So they're not adopting the same term that
24 was at issue in the Ninth Circuit. It's a different
25 term, it's a different agreement. So I would argue

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1 that the MFS decision is not applicable here to this
2 agreement, okay.

3 So that -- and I do say that, and let me
4 point out to you, because I think it's relevant, I
5 noticed, in reading the Staff's report yesterday,
6 that they advised the Commission that, to the extent
7 possible, parties should be required to file contract
8 language similar to, if not the same, as the language
9 used in other contracts between ATTI and another
10 incumbent local exchange carrier.

11 I bring that up because I want to advise
12 you about what is pending in Oregon and what the
13 Oregon arbitrator recommended, because this issue was
14 before that arbitrator and all the issues associated
15 with, well, what controls, Ninth Circuit, Eighth
16 Circuit, et cetera, was before the arbitrator.

17 And in Oregon, what the arbitrator
18 recommended was that the contract be revised so that
19 the duty to provide existing combinations is clear,
20 which we don't contest, but he did not go further,
21 and said we're going to leave that issue open, we're
22 not going to force the parties to adopt contract
23 language which goes beyond that obligation. And he
24 said, That being the case, I find that GTE should not
25 be required to comply with rules -- it's 315(c)

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1 through (f), excuse me, until the scope of the ILEC's
2 duty to combine has been resolved by a court of final
3 jurisdiction.

4 The arbitrator said, There is no question
5 that requiring ILECs to combine network elements not
6 ordinarily combined has major implications for the
7 operations of those telecommunications providers.
8 The prudent approach, therefore, is to postpone
9 implementation of that requirement until such time as
10 litigation surrounding the issue is concluded.

11 The arbitrator noted that ATTI would not be
12 prejudiced by this result and, by taking that
13 approach, the arbitrator basically said we have two
14 parties here, one of whom could be significantly
15 impacted by having to absorb new responsibilities
16 that aren't at all clear under the law, and we have
17 one who's not going to be prejudiced. So the
18 language -- meaning ATTI, by not forcing GTE to have
19 to combine elements that aren't already combined in
20 their network.

21 CHAIRWOMAN SHOWALTER: They're affected,
22 though. In other words, what decision we come down
23 with, positively or negatively, affects one side or
24 the other. There's no possibility, in a relative
25 sense, that someone is unaffected by the decision.

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1 MS. ENDEJAN: Agreed. But I think that
2 what the arbitrator was saying here is, and what we
3 would urge is, for the sake of consistency between
4 and contractual obligations between jurisdictions,
5 we'd advocate -- I mean, the Oregon approach is a
6 prudent approach, because it recognizes the
7 uncertainty in this discrete area.

8 Again, I can't reiterate again why we're
9 not here saying we want to shirk our legal
10 responsibilities. We're just saying that we want the
11 Eighth Circuit, which we believe is the appropriate
12 circuit, to tell us what those are before we go
13 forward in this area.

14 COMMISSIONER HEMSTAD: When do you expect
15 that to be decided?

16 MS. ENDEJAN: Well, it was argued last, I
17 believe, November, Commissioner Hemstad. So it's
18 February now. I don't know how quickly the Eighth
19 Circuit works.

20 COMMISSIONER HEMSTAD: Has the Oregon
21 Commission affirmed the arbitrator's report?

22 MS. ENDEJAN: That's pending.

23 COMMISSIONER HEMSTAD: Okay.

24 MS. ENDEJAN: So that's all I know
25 procedurally about how things stand. I wanted to

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1 point out to you, and again, because I know time is
2 short, that the language that ATTI proposes was the
3 language kind of what we started out with months ago,
4 before the FCC UNE remand order, et cetera. The
5 language they're proposing does not currently reflect
6 that UNE order that is now in place as of --
7 actually, it's kind of ironic we're here today.
8 Today, February 17th, is the day that the new rules
9 take effect.

10 This is outdated language, if you match it
11 against the FCC's order. And in order to approve an
12 interconnection agreement, the obligation of state
13 commissions, as you well know, is to make sure that
14 it is consistent with state or federal law.

15 CHAIRWOMAN SHOWALTER: Can I ask you a
16 question right there, then?

17 MS. ENDEJAN: Sure.

18 CHAIRWOMAN SHOWALTER: If we approve the
19 arbitrator -- our arbitrator's decision, is the ATTI
20 language consistent with the arbitrator's decision?
21 Is there a problem --

22 MS. ENDEJAN: There is a problem.

23 CHAIRWOMAN SHOWALTER: What is it?

24 MS. ENDEJAN: We don't know what the
25 arbitrator necessarily was particularly saying about

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1 the obligations that we're asked to assume, because
2 you can interpret it. It is capable of more than one
3 construction. And I think that ATTI's language
4 parallels and reflects and perpetuates, I think, that
5 problem.

6 For instance, it says -- the ATTI language
7 says, ATTI may purchase unbundled network elements
8 individually or in combinations without restrictions
9 as to how those elements may be rebundled. We don't
10 know what that means. We really -- you know, we're
11 looking at it, trying to figure out what does that
12 mean we have to do.

13 Then it says, When ordering a combination,
14 ATTI shall have the option of ordering and GTE shall
15 provide, when requested, all features, functions and
16 capabilities of each network element. Well --

17 CHAIRWOMAN SHOWALTER: I'm sorry, are you
18 reading from the --

19 MS. ENDEJAN: I'm reading from the ATTI's
20 proposed language, which, according to the Staff's
21 recommendation, more closely parallels the
22 arbitrator's recommendation. And I'm telling you
23 that we do not understand this language and we don't
24 believe that it accurately reflects the FCC's UNE
25 remand order. And what we're saying is our language

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1 is about as -- we tried to be about as precise and
2 tailored as we could be to say, Here's the rule, it
3 takes place today, this is what we're obligated to
4 do, we will do it, this is what you get. When and if
5 the rule is changed on combinations, we do the
6 regulatory changes procedure, we implement that.

7 So you know, we just have a problem with
8 having language that goes -- that could be construed
9 as going beyond the scope of the FCC's order. And we
10 don't want to be back here in front of you being the
11 subject of a complaint with ATTI saying we didn't
12 comply with this or that.

13 The way we read the U.S. Supreme Court's
14 decision reinstating the combination order, it
15 basically says your network, as it is currently
16 combined, you have an obligation to make available to
17 your competitors. Fine. You can't read the U.S.
18 Supreme Court decision as saying you have to combine
19 things you wouldn't do, add things on that you
20 wouldn't have to, and do this for the sake of your
21 competitors. You cannot construe either the language
22 of the act or AT&T versus Iowa Utilities Board in
23 that manner.

24 So what we are submitting is an approach,
25 an approach that we tried to work throughout the

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1 entire negotiation process, that we have no idea why
2 ATTI is insistent upon -- it seems to me they've got
3 a lot with the combination language that they have.
4 I don't have any idea why they want to have a
5 broader, more open-ended obligation on GTE's part
6 that doesn't have any source back to the FCC UNE
7 order. So that's why we're very troubled by this,
8 and I'm running out of time.

9 CHAIRWOMAN SHOWALTER: Yes.

10 MS. ENDEJAN: And I need to address drug
11 screening, and I can say that quite quickly. The
12 FCC's advanced services order, to summarize,
13 basically said you can impose upon collocators
14 equally as stringent requirement on their employees
15 as on your employees. And what we have in this
16 situation is ATTI admitted at the arbitration that we
17 weren't asking their employees to do something we
18 weren't asking our own employees to do. They agreed
19 that we impose the same drug screening requirement on
20 GTE's employees as on CLEC employees.

21 ATTI did not protest this in Oregon. It
22 wasn't an issue. They're apparently fine with drug
23 screening in Oregon, but in Washington, I guess they
24 don't want it. We have never had this issue raised
25 by other collocators. It's not been a problem. I

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1 frankly sort of feel odd having to spend time on this
2 issue, which is really not a major, substantive
3 issue.

4 What the arbitrator seemed to find is that,
5 you know, drug screening is not a particularly useful
6 thing. Well, I'm not here to debate the merits of
7 drug screening or not. I'm just here to state that,
8 as a security policy, the reason that GTE -- it drew
9 a line in the sand in 1990, as many corporations did,
10 in terms of implementing a stricter drug and alcohol
11 policy in the workplace. And like many employers
12 back in 1990, GTE insisted that its employees who
13 wanted to come work there take a drug test. The
14 purpose behind that would be screening out candidates
15 before you hire them. And once they're hired,
16 they're subject to the drug and alcohol policy, plus
17 observation on the job, et cetera, so you can monitor
18 the employees' conduct in the work force. Drug
19 screening is just not an arbitrary employment
20 requirement.

21 I think where the arbitrator had a problem
22 was the 1990 time frame. Just because we had
23 employees before 1990 and ATTI didn't have employees
24 before 1990, that doesn't mean that we're
25 discriminating against ATTI's employees. We're

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1 treating all post-1990 employees with access to
2 central office equipment in the same manner. There
3 is no basis for discrimination there. Our employees
4 get a drug screen. We want our collocators to have
5 had their employees to have had a drug screen,
6 because what goes with that, then, is the belief that
7 they will monitor their employees, they have a drug
8 and alcohol policy, and there is a legitimate safety
9 concern.

10 We believe that the FCC's clear language
11 expressly allowed for GTE to impose this security
12 requirement, and that there is no evidence of
13 discrimination in this case. With that, I'll
14 conclude my remarks.

15 CHAIRWOMAN SHOWALTER: Thank you. Let's
16 hear from ATTI.

17 MR. OXLEY: Thank you. My name is Jeff
18 Oxley. I'm the Director of Regulatory Affairs for
19 ATTI. I'm embarrassed to say I didn't know there was
20 a staff briefing paper for this, so I didn't read it,
21 and I might be stepping over myself or saying things
22 that aren't very helpful as a consequence. I think I
23 should probably just go ahead and say what I'm going
24 to say and hope that you'll take into account the
25 fact that if I'm repeating myself or repeating the

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1 recommendation, it's not intended, if that's all
2 right?

3 CHAIRWOMAN SHOWALTER: No, go ahead.

4 You're forgiven in the sense that we have had
5 discussions about what is the role of Staff in a
6 proceeding like this, and you know, without wasting a
7 lot of time, they're really advisers to us, and
8 whether there should or shouldn't be Staff briefing
9 papers that you've got to respond to is really an
10 open question, so don't feel bad that it came at you
11 by surprise. If you can incorporate it into your
12 remarks, fine; if not, don't worry about it.

13 MR. OXLEY: Okay. Well, I think, just in
14 the interest of time, I'll just respond to GTE's
15 Counsel's arguments and start on the UNE combination
16 issue. GTE is saying that it's not trying to avoid
17 implementing UNE combinations, it's just waiting for
18 the FCC and the Eighth Circuit and everybody to
19 settle things out.

20 It's hard for ATI to wonder, well, how do
21 you draw the line between somebody not implementing
22 something and somebody waiting for something else to
23 happen before they do implement it. To us,
24 practically, it's the same thing. It's not getting
25 implemented.

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1 GTE is saying they will comply with
2 whatever's done, and that's good, but I can't imagine
3 you ever had anybody come before you in this room and
4 say, you know, when the FCC rules, we're going to
5 ignore them. Of course they're going to comply. And
6 the issue is not that. The issue is what will
7 compliance mean, how will they interpret whatever is
8 said. And at ATTI, we think that GTE will interpret
9 things in a way which, you know, is pretty logical.
10 They'll interpret them in a way which makes their
11 obligations under that language as limited and as
12 narrow as possible. ATTI will interpret whatever
13 does happen in a way that would make ATTI's rights as
14 broad as possible.

15 So I don't think we'll ever come to a point
16 where an authoritative tribunal says something and
17 ATTI and GTE meet and say, Yep, we know exactly what
18 that means, and the dispute is over. I don't think
19 we're on that kind of track. We're not waiting for
20 that kind of event to happen.

21 What ATTI is here doing is asking you for
22 some help in moving down that road. And here's where
23 we're coming from. GTE looked at ATTI's language
24 that we proposed and said there's a lot of things
25 that we don't understand there. The language that

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1 we've proposed is pretty darn clear, and we think
2 that ATTI should agree with it.

3 Well, I don't find it clear. If you look
4 at their Attachment Four and you look under 3(A), it
5 says, GTE will offer combinations of UNEs where the
6 elements are already combined in GTE's network. Now,
7 does that mean as they are currently combined for a
8 specific customer, does that mean as they are
9 generally combined for all the customers served by
10 GTE's network? There's ambiguity there.

11 And this paragraph goes on to say that GTE
12 will no longer provide OS, operator services, and
13 directory assistance when it provides customized
14 routing. Accordingly, ATTI cannot order a UNE
15 combination that replicates a retail service where
16 such service includes OS and DA.

17 Now, does that mean that we don't get to
18 order that combination because the existing
19 combinations include OS and DA, or does it mean OS
20 and DA will be taken off those combinations and then
21 we can order them? We're not sure what that means.

22 B, 3(B), GTE will not construct new
23 facilities to offer any UNE or combination of UNEs.
24 Well, what does that mean? If we're serving a
25 customer on a UNE basis and that customer has used up

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1 all the pairs in the drop that comes to the
2 customer's house and wants to add a line, adding
3 lines is part of a normal network operation. It's
4 not adding a sort of new facility in the sense of
5 something that doesn't exist anyplace else in the
6 network to accommodate a peculiar need of ATTI's, but
7 it is adding a new facility in the sense of something
8 new that exists in the space where it wasn't before.

9 So we read that and say, Well, it could
10 mean that GTE is saying that it's not going to offer
11 anybody any more lines than they already have, and if
12 they're served by a competitor, their service is
13 frozen right where it is if they can't be served with
14 more lines on a UNE basis.

15 Paragraph six, then, has a B in it, that
16 says, basically, that GTE is reserving its rights to
17 discontinue the combination of UNEs not already
18 combined in GTE's network. And I don't know how that
19 relates to 3(A), where it says that they're only
20 going to provide what's already combined, and 3(B),
21 they're going to discontinue the combination of UNEs
22 not already provided. So we found this attachment
23 not very clear.

24 Now, it is true that the AT&T agreement
25 says, Well, when you have regulatory changes, the

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1 parties get together and they negotiate how those
2 regulatory changes will be enacted, and then, if they
3 can't agree, there's a dispute mechanism.

4 What we thought of in going into this was,
5 Well, we wanted to start out from a place with the
6 agreement that was where contemporary state law and
7 federal law was. We didn't want to start with an
8 agreement that was already behind the status of those
9 things. It seemed to us to make sense to go in and
10 try and get the rights that presently existed for us.
11 So that's why we tried to draft up language that we
12 thought more currently reflected the state of things.

13 GTE says, Well, the state of things really
14 depends on what the Eighth Circuit does. I mean,
15 that is the big determinant. And as long as they're
16 still out, none of us can really meaningfully move
17 forward. The Ninth Circuit has rejected that
18 argument, and I think this Commission is obligated to
19 follow the Ninth Circuit as the law of the land.

20 GTE mentions Oregon, the Oregon decision
21 deciding to wait, and that's what the arbitrator did
22 there. I think the Ninth Circuit is the law of the
23 land in Oregon just as much as it is in Washington,
24 so we don't agree with that part of the arbitrator's
25 decision.

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1 We also don't agree with the part of it
2 that says there's no prejudice to any party. When
3 you've got money sitting in facilities, based on a
4 technology that involves serving customers through
5 UNE loops and through combinations built on UNE
6 loops, it certainly is difficult to get into business
7 until those issues are clarified. So while there
8 wasn't any prejudice in a legal sense, I guess, to
9 us, there certainly was a real practical consequence
10 of the arbitrator's decision in Oregon.

11 Now, I know that Ms. Endejan pointed out
12 where she thought language was vague in this
13 agreement, and I'll just point your attention to, in
14 our proposed language, about two-thirds of the way
15 down, in paragraph 32.5, we say, GTE is not required
16 to combine unbundled network elements in any manner
17 requested if not technically feasible. So if they're
18 being asked to do something that they can't do, they
19 don't have to do it.

20 CHAIRWOMAN SHOWALTER: Since I asked Ms.
21 Endejan the question, do you think your language
22 comports with the arbitrator's decision? And she
23 said she wasn't sure, I think --

24 MR. OXLEY: Well, we think it does comport
25 with the arbitrator's decision. And we think it also

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1 tracks the language that we proposed on this same
2 issue in the US West contract that you were here with
3 last week.

4 CHAIRWOMAN SHOWALTER: Go ahead on that.

5 MR. OXLEY: I had actually finished what I
6 was going to say on the UNE combinations, so if it
7 would be appropriate now, I'd be happy to address any
8 questions on that.

9 CHAIRWOMAN SHOWALTER: Let's get one
10 comment from Ms. Roth.

11 MS. ROTH: I actually have one question to
12 follow up the comments you just made. The language
13 in US West/ATTI contract in Attachment Three I have
14 in front of me, and I compared the language in the
15 ATTI proposal in this case, 32.5. What I find is
16 there's a couple extra sentences at the beginning of
17 32.5 and the last sentence in 32.5 that are not in
18 the ATTI/US West contract. And I want to know why,
19 in this case, you propose additional language?

20 MR. OXLEY: May I ask, are those sentences
21 the ones that start with GTE shall offer each network
22 element individually?

23 MS. ROTH: Uh-huh.

24 MR. OXLEY: I believe that language comes
25 from the GTE/AT&T contract that we're adopting.

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1 MS. ROTH: Okay.

2 MR. OXLEY: Can you tell me what --

3 MS. ROTH: And then, the last sentence,
4 When ordering a combination, ATTI should have the
5 option of ordering and GTE should provide, when
6 requested, all features, functions and capabilities
7 of each network elements. ICB pricing willing be
8 used where prices are otherwise not available. I
9 don't see those sentences in the US West/ATTI
10 agreement.

11 MR. OXLEY: Are those -- I mean, my answer
12 would be the same. I thought those came out of the
13 AT&T/GTE agreement.

14 MS. ROTH: Oh, those would? Because
15 they're in bolded letters, so I thought that's your
16 proposed language.

17 MR. OXLEY: Yes, that was a mistake to put
18 them in bolded language. I'm saying that without the
19 AT&T contract in front of me, but generally we
20 wouldn't be touting ICB pricing if we were just -- so
21 that's why I think we took that from the AT&T.

22 MS. ROTH: AT&T and GTE contract?

23 MR. OXLEY: Yes.

24 MS. ROTH: Okay.

25 CHAIRWOMAN SHOWALTER: Any questions? Do

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1 you want to make any comments about the drug testing
2 provisions or any other --

3 MR. OXLEY: I guess on the drug testing, I
4 would just say that we agreed with the arbitrator's
5 decision. And I would take -- respond to any
6 questions you have, but I have nothing to add.

7 CHAIRWOMAN SHOWALTER: Anything further?

8 COMMISSIONER HEMSTAD: No.

9 CHAIRWOMAN SHOWALTER: Anything further?
10 Any final comment?

11 MS. ENDEJAN: Well, I guess I would urge
12 the Commission to go back, in deciding which language
13 is appropriate, to look at the FCC UNE remand order.
14 And that should control both parties' obligations
15 here. And I think that Mr. Oxley stated that he
16 wanted to start from a more contemporary platform. I
17 agree with him. His language does not accurately
18 reflect the state of the law right now, as the FCC
19 order has been issued.

20 I think that GTE -- where things get fuzzy
21 again is not GTE's willingness to combine or to offer
22 combinations --

23 CHAIRWOMAN SHOWALTER: I think we're
24 starting to retread here.

25 MS. ENDEJAN: Okay, I'm retreading. Then I

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1 won't -- the other thing is I'm not quite certain I
2 would agree that this language proposed by Mr. Oxley
3 and ATTI does not track in all respects with what the
4 arbitrator was ordering. And we would urge that
5 whatever language the Commission approves, that it be
6 limited, at this point in time, to currently combined
7 network elements in the network. Thank you.

8 CHAIRWOMAN SHOWALTER: Thank you, all
9 parties. Any comment?

10 MS. ROTH: I have no additional comments.

11 MS. SMITH: Nothing.

12 CHAIRWOMAN SHOWALTER: Thank you very much.

13 MS. ENDEJAN: Thank you, Commissioners.

14 (Proceedings adjourned at 1:16 p.m.)

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