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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of : DOCKET NO. 960847-TP  
Petitions by AT&T Communicatiосn of: DOCKET NO. 960980-TP  
the Southern States, Inc., MCI :  
Telecommunications Corporation, MCI:  
Metro Access Transmission Services, :  
Inc., for arbitration of certain :  
terms and conditions of a proposed :  
agreement with GTE Florida :  
Incorporated, concerning :  
interconnection and resale under :  
the Telecommunications Act of 1996. :  
:

SECOND DAY - AFTERNOON SESSION

VOLUME 9

PAGE 1013 through 1100

PROCEEDINGS: HEARING  
BEFORE: CHAIRMAN SUSAN F. CLARK  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER JULIA L. JOHNSON  
COMMISSIONER DIANE K. KIESLING  
COMMISSIONER JOE GARCIA  
DATE: Tuesday, October 15, 1996  
PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida  
REPORTED BY: NANCY S. METZKE, RPR, CCR  
APPEARANCES:

(As heretofore noted.)

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1  
2  
3 MR. TYE: Chairman Clark, while the next witness  
4 is taking the stand, can I make an offer in the spirit of  
5 not keeping us here all night the next two nights? I've  
6 spoken with MCI, and there is an additional six GTE  
7 witnesses that AT&T and MCI would be willing to stipulate  
8 into the record. Those witnesses are Mr. Morris,  
9 Mr. Peters, Ms. Menard, Mr. Hartshorn, Mr. Jernigan and  
10 Mr. Cantrell. What we would propose, if it's agreeable  
11 with GTE and with the staff, is to stipulate the testimony  
12 of those witnesses into the record just as we did with the  
13 economics witnesses and also stipulate whatever exhibits  
14 staff has already identified. And if we do that, then the  
15 witness doesn't need to take the stand and we don't need to  
16 cross them.

17 COMMISSIONER KIESLING: Could you repeat those  
18 names?

19 MR. TYE: Yes, Commissioner Kiesling. It would  
20 be Mr. Morris, Mr. Peters, Ms. Menard, Mr. Hartshorn,  
21 Mr. Jernigan and Mr. Cantrell.

22 COMMISSIONER KIESLING: Thank you.

23 CHAIRMAN CLARK: Why don't we go ahead with  
24 Mr. deCamp, and after we take a half hour lunch break,  
25 we'll go through the motions of stipulating them in the

1 record, okay?

2 MR. TYE: Thank you, Madam Chairman.

3 MS. CANZANO: Plus staff needs time to consider  
4 it too.

5 CHAIRMAN CLARK: Oh, excuse me, Donna, I  
6 didn't -- I guess I was just so anxious that --

7 MS. CANZANO: Okay. And we'll do our best.

8 CHAIRMAN CLARK: Yes, but remember, if you need  
9 to ask some questions, that's fine, okay?

10 MS. CANZANO: Thank you.

11 CHAIRMAN CLARK: Go ahead, Ms. McMillin.

12

13 Whereupon,

14 TIMOTHY L. DECAMP

15 was called as a witness on behalf of MCI and, after being  
16 first duly sworn, was examined and testified as follows:

17

18 DIRECT EXAMINATION

19 BY MS. McMILLIN:

20 Q Please state your name and business address.

21 A My name is Timothy deCamp. My business address  
22 is 8521 Leesburg Pike, Vienna, Virginia.

23 Q By whom are you employed and in what capacity?

24 A I'm employed by MCI Communications, and I'm a  
25 senior staff member in the local markets organization.

1 Q Have you prefiled direct testimony in this docket  
2 dated August 26, 1996 and consisting of 17 pages?

3 A Yes, I have.

4 Q Do you have any changes or corrections to that  
5 testimony?

6 A No, I do not.

7 Q Have you prefiled rebuttal testimony in this  
8 docket dated September 30th, 1996 and consisting of nine  
9 pages?

10 A Yes, I have.

11 Q Do you have any changes or corrections to that  
12 testimony?

13 A Yes, I do. I have three. The first one on page  
14 7 of my rebuttal testimony is a clarification on line 1.  
15 Please insert the word "billing data" after the word ILEC.  
16 The next one is a typographical change on page 8, line 13,  
17 the first two words "with access," need a space between  
18 those two words. At the end of line 13 is the third  
19 change, and that is, to place the word "monitor" in front  
20 of "status" where right now it is after the word "status."  
21 Those are all my changes.

22 Q With those corrections, if I were to ask you the  
23 same questions today, would your answers be the same?

24 A Yes, they would.

25 MS. McMILLIN: Madam Chairman, at this time we

1 would ask that Mr. DeCamp's direct and rebuttal testimony  
2 be inserted in the record as though read.

3 CHAIRMAN CLARK: It will be inserted in the  
4 record as though read.

5 BY MS. McMILLIN:

6 Q You had no exhibits attached to your direct or  
7 rebuttal testimony; is that correct?

8 A That is correct.

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DIRECT TESTIMONY OF TIMOTHY L. DECAMP  
ON BEHALF OF MCI  
(MCI/GTEFL ARBITRATION)

August 26, 1996

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Timothy L. deCamp and my business address is 8521 Leesburg Pike, Vienna, Virginia.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by MCI Telecommunications Corporation as a Senior Staff Member in MCI's Local Markets Group. In that position, I have responsibility for the development of strategic requirements for local market competition, including defining the requirements for incumbent LECs in order to provide a fair and non-discriminatory local market competitive environment and developing interconnection contracts for MCImetro's facilities based plans. I have also been involved in MCI's ongoing interconnection negotiations, with lead responsibility for interconnection, right-of-way, and collocation issues.

Q. PLEASE GIVE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A. I have been employed by MCI since 1989 in a variety of capacities. Prior to my current position, I was the Manager of Transmission Engineering and also led a special task force program managing the installation of a local phone service capable of carrying video to residential customers in a rural setting.

1 Other positions with MCI have included management of Network Planning and  
2 Network Provisioning organizations implementing new products and services  
3 for long distance consumers market, and service as an international traffic  
4 engineer.

5 I have a degree in Electrical Engineering from George Mason  
6 University and am currently pursuing my Masters of Business Administration  
7 at the George Washington University.

8

9 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

10 A. The purpose of my testimony is to identify the operations support systems that  
11 MCI and other new entrants will require be implemented to eliminate, to the  
12 greatest extent possible, barriers to competition. As explained further herein,  
13 access to key databases and operations support systems is essential for MCI to  
14 be able to offer local exchange telecommunications and exchange access  
15 service competitively. Nondiscriminatory access to ILEC databases and  
16 systems is necessary to ensure that the ILECs do not gain an unfair market  
17 advantage through their control of their networks and these essential databases  
18 and systems. In this testimony, I will explain the systems, databases, and  
19 processes to which MCI requires access to provide services equal in quality to  
20 the ILECs.

21

22 Q. PLEASE EXPLAIN THE IMPLICATIONS OF THE RECENT FCC ORDER  
23 AND RULES ON THIS ISSUE.

24 A. The FCC has come to the same conclusion as MCI. In its discussion of  
25 Operations Support Systems in the August 8, 1996 Order implementing the



1 local competition provisions of the Telecommunications Act of 1996, the FCC  
2 found:

3 that it is absolutely necessary for competitive carriers to  
4 have access to operations support systems functions in  
5 order to successfully enter the local service market.

6 (Paragraph 521)

7 Moreover, the FCC concluded that:

8 operations support systems and the information they  
9 contain fall squarely within the definition of "network  
10 element" and must be unbundled upon request under  
11 section 252(c)(3). (Paragraph 516)

12

13 Q. WHY IS NONDISCRIMINATORY ACCESS TO THE ILEC'S  
14 UNBUNDLED OPERATIONS SUPPORT SYSTEMS NECESSARY?

15 A. In competitive markets, providers compete on such factors as customer service  
16 and quality of service in addition to service features and price. Customer  
17 service and quality of service include such factors as the time to install  
18 service, the time to repair service when trouble is reported, and the accuracy  
19 of the bill rendered, in addition to overall responsiveness to customer  
20 inquiries. To the extent that ILEC competitors such as MCI must rely on the  
21 underlying network of the ILEC to provide local and exchange access service -  
22 - either through resale of services (including ancillary services) or through  
23 leasing of unbundled network elements (including those needed to provide  
24 ancillary services) -- competitors' ability to control customer service or quality  
25 of service they offer is limited. To that same extent, an ILEC has incentives

1 to provide a lower quality of service to competitors because consumers will  
2 blame the CLEC, rather than the ILEC for any problems. Consequently,  
3 access to the ILEC's operations support systems is critical to competitors'  
4 ability to provide quality service and meet customers' service delivery  
5 expectations.

6

7 Q. HOW IS THIS ISSUE ADDRESSED BY THE FCC IN ITS RECENT  
8 ORDER?

9 A. The FCC explicitly recognized this at paragraph 525 in its Order:  
10 in order to comply fully with section 251(c)(3), an  
11 incumbent LEC must provide, upon request,  
12 nondiscriminatory access to operations supports systems  
13 functions for pre-ordering, ordering, provisioning,  
14 maintenance and repair, and billing of unbundled  
15 network elements under section 251(c)(3) and resold  
16 services under section 251(c)(4). Incumbent LECs that  
17 currently do not comply with this requirement of section  
18 251(c)(3) must do so as expeditiously as possible, but in  
19 any event no later than January 1, 1997.

20 The FCC Order also identifies, at paragraph 518, the sort of operations  
21 support systems databases to which access is necessary:

22 Without access to review, *inter alia*, available telephone  
23 numbers, service interval information, and maintenance  
24 histories, competing carriers would operate at a  
25 significant disadvantage with respect to the incumbent.

1 Other information, such as the facilities and services  
2 assigned to a particular customer, is necessary to a  
3 competing carrier's ability to provision and offer  
4 competing services to incumbent LEC customers.  
5 Finally, ... access to the information such [operations  
6 support] systems contain, is vital to creating  
7 opportunities for meaningful competition.

8

9 Q. WHAT SHOULD BE THE COMMISSION'S MAIN CONSIDERATION IN  
10 RESOLVING OPERATIONS SUPPORT SYSTEM FUNCTION AND  
11 DATABASE ISSUES?

12 A. In considering the appropriate nature and extent of access to these systems and  
13 databases, the overarching principle that the Commission or any inter-carrier  
14 contract should strive to achieve is "service parity." In several places in its  
15 Order, the FCC explicitly recognized the need for parity. For example, in its  
16 discussion of resale services, at paragraph 970, the Commission stated:

17 We conclude that service made available for resale be at  
18 least equal in quality to that provided by the incumbent  
19 LEC to itself or to any subsidiary, affiliate, or any other  
20 party to which the carrier directly provides the service,  
21 such as end users. Practices to the contrary violate the  
22 1996 Act's prohibition of discriminatory restrictions,  
23 limitations or prohibitions on resale. This requirement  
24 includes differences imperceptible to end users because  
25 such differences may still provide incumbent LECs with

1 advantages in the marketplace. Additionally, we  
2 conclude that the incumbent LEC services are to be  
3 provisioned for resale with the same timeliness as they  
4 are provisioned to the ILEC's subsidiaries, affiliates, or  
5 any other party to which the carrier directly provides the  
6 service, such as end users.

7 Similar language appears in other sections of the Order -- based on language in  
8 the Act. For example, in the discussion of interconnection at paragraph 224,  
9 the Commission stated:

10 We conclude that the equal in quality standard of section  
11 251(c)(2)(C) requires an incumbent LEC to provide  
12 interconnection between its network and that of a  
13 requesting carrier at a level of quality that is at least  
14 indistinguishable from that which the incumbent provides  
15 itself, a subsidiary, an affiliate, or any other party. We  
16 agree with MFS that this duty requires incumbent LECs  
17 to design interconnection facilities to meet the same  
18 technical criteria and service standards, such as  
19 probability of blocking in peak hours and transmission  
20 standards, that are used within their own  
21 networks...[W]e further conclude that the equal in quality  
22 obligation imposed by section 251(c)(2) is not limited to  
23 the quality perceived by end users. The statutory  
24 language contains no such limitation, and creating such a  
25 limitation may allow incumbent LECs to discriminate

1                   against competitors in a manner imperceptible to end  
2                   users, but which still provides incumbent LECs with  
3                   advantages in the marketplace...

4

5       Q.     WHAT SHOULD THE COMMISSION DO TO FOSTER SERVICE  
6             PARITY?

7       A.     Toward this goal, the Commission must specifically reject any ILEC assertions  
8             that the only standards of quality to which they should be held are those  
9             standards currently in place via Commission quality rules or state statutes. It  
10            must be understood that those standards, some of which may be outdated,  
11            were developed to enforce minimum requirements for retail services. The  
12            services in question here are either network elements or services provided on a  
13            wholesale basis to competitors for their provision of competing retail services.  
14            It is for this purpose that the FCC's standard of "parity" is critical. Allowing  
15            an ILEC to provide to MCI services at lower levels of quality than the levels it  
16            provides to itself (including operational coordination), even if meeting current  
17            Commission standards for retail services, will either reduce the quality of  
18            MCI's service or force MCI to incur unnecessary costs in order to provide a  
19            competitive product, thus hindering competition.

20            Parity -- in the FCC context of being at least of equal quality -- can  
21            only be measured in terms of detailed technical standards, interfaces, and  
22            performance measures (such as installation intervals and maintenance and  
23            repair times) that are better addressed in mediated negotiations or industry fora  
24            than in contested hearings. At the same time, full implementation of these  
25            standards, interfaces, and measures must be achieved in order to ensure that

1 the ILEC has met its unbundling and resale requirements under Section  
2 251(c)(3) and 251(c)(4) of the Act. This need not create a problem of timing,  
3 however, since as the FCC concluded in its Order, access to ILEC operations  
4 support systems and databases is technically feasible today (Paragraph 520),  
5 and in fact the FCC has ordered the ILECs to comply with its access  
6 requirements by January 1, 1997. While issues involving these detailed  
7 standards, interfaces, and measures were asked by MCI to be addressed in a  
8 process that runs concurrent with, but separate from, a contested arbitration  
9 hearing, these, standards, interfaces, and measures, to the extent they are  
10 unresolved, must be resolved as a part of this arbitration process.

11

12 Q. SHOULD THE COMMISSION ENCOURAGE STANDARDIZED  
13 INTERFACES TO ILEC DATABASES AND SUPPORT SYSTEMS?

14 A. ILECs that provide unique interfaces to their databases and operations support  
15 systems do not meet the requirement to provide access of equal quality to  
16 operations support systems. If each ILEC is allowed to develop its own  
17 unique gateway to these systems, as NYNEX is attempting to do today, the  
18 burden for new entrants like MCI will be unnecessarily increased by the  
19 requirement to develop separate interfaces and systems for each ILEC. The  
20 FCC stated, at paragraph 527:

21 Ideally, each incumbent LEC would provide access to  
22 support systems through a nationally standardized  
23 gateway. Such national standards would eliminate the  
24 need for new entrants to develop multiple interface  
25 systems, one for each incumbent.

1           The FCC is confident that this will happen, citing (at paragraph 514) an *ex*  
2           *parte* letter filed in the proceeding in which Bell Atlantic and AT&T state that  
3           they expect that, given appropriate guidance from the Commission, the  
4           industry can achieve consensus on sufficient data elements and formatting  
5           conventions to facilitate that 95% of all inter-telecommunications company  
6           transactions may be processed via electronic gateways within twelve months.  
7           We are less confident that this will happen unless the states and the FCC  
8           implement rules that require the industry to do so rather than allowing  
9           individual ILECs to develop their own proprietary gateways.

10

11       Q.    DESCRIBE THE VARIOUS FUNCTIONS FOR WHICH ACCESS TO  
12           OPERATIONS SYSTEMS ARE NECESSARY.

13       A.    The FCC Order identified a number of functions that are performed by ILEC  
14           operations support systems. These include: 1) pre-ordering and ordering  
15           processes, 2) provisioning and installation, 3) maintenance and trouble  
16           resolution, and 4) billing. Competitors must have access to ILEC systems that  
17           provide these functions on an equal basis. I discuss what that means below.

18

19       Q.    PLEASE DESCRIBE THE PRE-ORDERING AND ORDERING  
20           PROCESSES.

21       A.    Pre-ordering and ordering processes involve the exchange of information  
22           between LECs about current or proposed customer products and services, or  
23           unbundled network elements, or some combination. Intercompany procedures  
24           must be developed to support the ordering of unbundled network elements  
25           (such as loops and subloop elements, transport, and switching), interconnection

1 facilities (trunks, etc.), resold wholesale services, and ancillary services such  
2 as interim number portability mechanisms (e.g., remote call forwarding and  
3 direct inward dialing) and customer listing databases that support the white  
4 pages directory and directory assistance databases. For example, when MCI  
5 uses resale or unbundled elements to provide service to our end users, it is  
6 necessary for us to submit orders for such services to the ILEC. If MCI is  
7 forced to utilize ordering procedures and interfaces that are inferior to that  
8 which the ILEC provides to itself, then we will not be able to provide to our  
9 customers an offering equivalent to that provided by the ILEC.

10 The ordering interface used by the ILEC is direct electronic access to  
11 systems that permit the simultaneous establishment of the customer account  
12 and of the service installation. For example, when a customer calls an ILEC  
13 customer representative, that customer's account can be established  
14 immediately, a telephone number given, and an installation date determined.  
15 If the ILEC does not provide direct electronic access to such systems, MCI  
16 will not be able to provide potential customers with their new telephone  
17 numbers (in the case of resale) in "real time" (during the phone call) the way  
18 the ILEC can, or to inform customers of the service installation date (in the  
19 case of either resale or unbundled elements) in real time fashion, the way the  
20 ILEC can.

21 The importance of access to ILEC operations support systems using  
22 electronic interfaces is demonstrated by the case of Rochester Telephone, in  
23 which AT&T was not given electronic interfaces with Rochester's ordering  
24 systems. Rather, AT&T had to rely on paper faxes to submit orders. Not  
25 only did this paper process result in the types of delays and lack of service



1 parity noted above, it was also enormously inefficient and could not handle  
2 orders in any significant quantity. In the absence of electronic interfaces for  
3 order processing, the ILEC will not be providing "service parity" to MCI.

4 Thus, the directive to provide equal quality service requires that ILEC  
5 provide to MCI electronic, real-time interfaces with the ILEC ordering systems  
6 for the ordering of trunks, unbundled elements, resale and other ILEC services  
7 to ensure MCI's orders are processed with the same efficiency that the ILEC  
8 provides to itself or its affiliates. These electronic interfaces should conform,  
9 to the extent practical, to current or expected industry standards. To the  
10 extent the ILEC develops a proprietary and different electronic interface  
11 system, MCI will be forced to expend additional resources to use the  
12 interfaces.

13 In addition, a mechanism is needed to enable MCI to transfer customers  
14 from ILECs quickly and easily. This "transfer-as-is" mechanism would allow  
15 MCI to present a wholesale order form to an ILEC instructing the ILEC to  
16 transfer a customer to MCI and include all existing services and functionalities  
17 to which the customer subscribes. Without a mechanism that allows for quick  
18 and accurate transfers for existing customers, efficient shifting between local  
19 carriers will be deterred. The FCC recognized the need for such transfers in  
20 paragraph 421:

21 We agree with CompTel and LDDS that new entrants  
22 will be disadvantaged if customer switchover is not rapid  
23 and transparent. We also note that the Michigan  
24 Commission has recognized the significance of customer  
25 switchover intervals and has directed Ameritech and GTE

1 to file proposals on how they will "ensure the equal  
2 availability of expeditious processing of local,  
3 interLATA, and intraLATA carrier changes." [footnote  
4 omitted] Therefore, we require incumbent LECs to  
5 switch over customers for local service in the same  
6 interval as LECs currently switch end users between  
7 interexchange carriers

8  
9 Q. PLEASE DESCRIBE THE PROVISIONING AND INSTALLATION  
10 FUNCTIONS.

11 A. Provisioning involves the exchange of information between LECs in which one  
12 executes a request for a set of products and services or unbundled network  
13 elements (or a combination) from another with attendant acknowledgements  
14 and status reports. Service parity requires that when MCI initiates an order  
15 for an unbundled network element, interconnection trunk, resold wholesale  
16 service, or other ILEC equipment, facility, or service, our order is processed  
17 through the same provisioning and installation systems as orders initiated by  
18 the ILEC. Just as ILEC service representatives have real time access to the  
19 ILEC provisioning system to track the status of installation, an important  
20 customer service, MCI requires real time access to those provisioning systems  
21 in order to track installation status.

22 The ILECs have (or should have) target installation intervals for most,  
23 if not all, services. To ensure these same intervals are available to all  
24 providers of local service, the Commission should require the ILEC to report  
25 regularly the installation intervals for CLECs and itself on each type of

1 installation. Absent such monitoring and reporting, the ILEC could take  
2 advantage of the opportunity to provide shorter service installation intervals for  
3 its own customers than for CLECs or their customers. Such potential  
4 discriminatory treatment can be minimized, if not prevented, by establishing  
5 monitoring and reporting requirements.

6

7 Q. PLEASE DISCUSS THE MAINTENANCE AND TROUBLE RESOLUTION  
8 FUNCTIONS.

9 A. Maintenance and repair involves the exchange of information between LECs in  
10 which one initiates a request for repair of existing products and services or  
11 unbundled network elements (or combination) from the other with attendant  
12 acknowledgements and status reports. As with ordering and provisioning,  
13 customers will judge the quality of MCI's service by its response time when  
14 trouble is reported. Because many of these troubles will not be problems  
15 within MCI's control, but rather within the control of the ILEC, it is critical  
16 that MCI have access to the ILEC's trouble reporting, tracking and resolution  
17 systems and that the ILEC meets the same standards for MCI as for its  
18 customers.

19 MCI is requesting a single point of contact with the ILEC with 24 hour  
20 a day, 7 day a week (7/24) coverage. In addition, MCI requires a trouble  
21 management and escalation process with repair intervals equivalent to that  
22 which the ILEC provides for itself. Failure to have these procedures will  
23 inhibit MCI's ability to resolve trouble reports, restore service in a timely  
24 manner and maintain the image of a quality provider in customers' eyes. As  
25 with other operations support systems functions, MCI requires real time access

1 to the ILEC's Trouble Reporting system so that MCI's customer service  
2 personnel can provide real time trouble tracking for our customers. In  
3 addition, the Commission should establish a reporting requirement to ensure  
4 that the ILEC is resolving MCI's and other competitors' maintenance and  
5 repair problems within the same time intervals as it resolves its own trouble  
6 reports. Failure to have such a reporting requirement provides the opportunity  
7 for unequal and discriminatory treatment.

8

9 Q. PLEASE DESCRIBE THE ISSUES REGARDING THE BILLING  
10 FUNCTIONS.

11 A. Billing issues can be divided into two categories: billing between ILECs and  
12 CLECs, and billing of end user customers. For ILEC/CLEC billing, a CABS  
13 or CABS-like billing system should be used for charges related to  
14 interconnection, unbundled elements, and resale. While CABS may require  
15 modifications to be able to bill these elements, it is a system that is familiar to  
16 both ILECs and CLECs and has been the foundation for intercompany billing  
17 since access charges began. A CABS-like system would be cost effective  
18 because a standardized format would be used for all carriers, rather than a  
19 format unique to each LEC. It is important that any system used provide  
20 timely and accurate billing detail and be subject to audit reviews.

21 Timely and accurate billing detail is also needed for billing of end user  
22 customers. Customers expect to receive accurate bills on a timely basis  
23 reflecting their actual level of service with appropriate rates and charges. For  
24 this to happen, it is necessary that the ILECs and CLECs exchange billing  
25 information in an efficient, timely manner.

1           The quality of items purchased from the ILEC, including  
2           interconnection trunks, unbundled elements, resold wholesale services, and  
3           other ILEC items, should be of the same quality as the ILEC provides to  
4           itself, not merely the standards in the Commission's rules or state statutes, as  
5           discussed above. Anything less would constitute discriminatory treatment and  
6           would be a violation of the Act. To assure this quality standard, we propose  
7           that state commissions require the ILEC to report regularly on quality  
8           standards such as average outage durations and the percent of call blocking for  
9           new entrants and itself.

10  
11       Q.    IDENTIFY THE VARIOUS DATABASES TO WHICH MCI AND OTHER  
12           CLECS SHOULD HAVE NONDISCRIMINATORY ACCESS.

- 13       A.    In order to be able to access and commercially use the ILECs' unbundled  
14           elements and resold services, CLECs need access to ILEC operations support  
15           systems and databases that house the following kinds of information:
- 16       o    Centrex Business Group Information, which contains the centrex dialing plan  
17           and a feature information database. With access to this information, MCI could  
18           migrate a centrex application from the ILEC to itself without disrupting the  
19           customer's service.
  - 20       o    Intercept Information, which contains records relevant to customer disconnect  
21           referrals. Access to this information would allow MCI to monitor the accuracy  
22           of ILEC disconnect referrals.
  - 23       o    Operator Reference Information, which contains general information regarding  
24           valid area codes, exchanges, and dialing instructions. Access to this  
25           information is critical if MCI is to provide a full range of operator services.

- 1     o     Customer Record Information System (CRIS), which contains the ILEC's  
2           database of customer orders. Access to this database is required for MCI to  
3           monitor the status and verify service installations and disconnects, and is  
4           particularly important for service parity when MCI resells the incumbent's  
5           local services.
- 6     o     Emergency Services Information, which associates customer name and address  
7           to 911 routing plans.
- 8     o     Repair/Dispatch Information, which would allow MCI to monitor the status of  
9           repairs and dispatches of repair personnel related to use of MCI-purchased  
10          unbundled ILEC network functions or resold ILEC services.
- 11    o     Installation/Order Processing data, which allows MCI to monitor the status of  
12          service activation related to our use of unbundled ILEC network functions or  
13          resold ILEC services.
- 14    o     Switch Network ID data, which describes each ILEC switch, including services  
15          supported through each switch, NPA-NXXs served, business and residential line  
16          counts, and rate centers served, *etc.* Access to this database is critical to  
17          planning efficient local interconnection.
- 18    o     Local Calling Area data, which describes local calling areas and extended area  
19          service calling areas. MCI needs access to this database to construct accurate  
20          switch routing tables for our networks when mirroring existing ILEC local  
21          calling areas.
- 22    o     CMDS contains the industry standard mechanism for the exchange of billed  
23          messages such as third-party billed, collect, and calling card messages. Access  
24          to this database is necessary for MCI participation in the intercompany  
25          arrangements for the clearing of these calls.

- 1 o Plant inventory data, containing information on conduit, fiber, switch port, loop  
2 feeder, and loop distribution. Access to this database is necessary to reduce the  
3 likelihood that MCI will request infeasible points of interconnection or  
4 unbundled network functions. Additionally, access will allow MCI and  
5 regulators to ensure that ILEC facilities are made available on a non-  
6 discriminatory basis.
- 7 o Number Assignment data, access to which would allow MCI, using resold  
8 ILEC service or unbundled local switching, to assign numbers to our customers  
9 directly, rather than rely on the ILEC to assign phone numbers to MCI  
10 customers. As a result, MCI would avoid discriminatory delays to fulfillment  
11 of the service order.

12

13 Q. DO YOU HAVE ANY FINAL REMARKS?

14 A. The FCC has concluded that it is imperative for competitive carriers to have  
15 access to operations support systems functions to allow them to offer local  
16 exchange telecommunications and exchange access services on a competitive  
17 basis. Consistent with the FCC's conclusion, this Commission should require  
18 nondiscriminatory access to ILEC databases and systems to ensure that ILECs  
19 do not gain an unfair market advantage and thwart competitive entry into the  
20 local exchange market.

21

22 Q. DOES THIS COMPLETE YOUR TESTIMONY?

23 A. Yes.

24

25

## 1 REBUTTAL TESTIMONY OF TIMOTHY L. DECAMP

2 ON BEHALF OF MCI

3 DOCKET NO. 960980-TP

4 September 30, 1996

5

6 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

7 A. My name is Timothy L. deCamp and my business address is 8521 Leesburg  
8 Pike, Vienna Virginia.

9

10 Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

11 A. Yes, I filed direct testimony in this docket on August 26, 1996.

12

13 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

14 A. The purpose of my rebuttal testimony is to respond to the testimony of Mr.  
15 Langley. In particular, I will show that the type of access to operations support  
16 systems proposed by GTE will prevent MCI from achieving parity with GTE in  
17 service to its customers.

18

19 Q. AT PAGES 6-7 OF HIS TESTIMONY, MR. LANGLEY SEEMS TO STATE  
20 THAT ALECs WILL HAVE PARITY WITH GTE BECAUSE GTE'S  
21 OPERATIONS SUPPORT SYSTEM FUNCTIONS WILL BE USED IN THE  
22 SAME WAY FOR ALECs AS FOR GTE. IS THIS PARITY?23 A. No. Throughout his testimony, Mr. Langley refers to operations support system  
24 FUNCTIONS and appears to argue that parity is achieved so long as the same  
25 systems are used to process orders, repair requests, etc., for the ALECs as GTE



1 uses itself. This is a truly remarkable statement. A GTE service representative  
2 sits at his or her workstation and places an order which flows through  
3 automatically to install service for a residential customer. If the service  
4 representative needs to verify address, or service feature and function  
5 availability, that information is at their fingertips on-line. Now consider what  
6 happens when MCI wants to place an order. MCI must call GTE to reserve a  
7 number and get a due date which creates a place holder for service. MCI must  
8 then transmit to GTE a Local Service Request (LSR), which, if not received by  
9 noon on the date the order is made (no explanation as to what is to occur with  
10 orders placed after noon) the place holder will be lost and a new due date  
11 assigned. For some undetermined period of time, MCI will be required to  
12 submit these LSRs through E-mail, fax or internet. No date for electronic  
13 interfaces, let alone real-time interactive interfaces, is provided. MCI may be  
14 lucky enough to get certain data base information provided on paper or on tape,  
15 but will have no electronic or real-time access as the MCI customer service  
16 representative talks with its customer. But, says GTE, there is parity because  
17 once the MCI order is received at GTE it will be processed by the same systems  
18 as GTE uses itself. In fact Mr. Langley goes on at great length describing these  
19 systems. This obfuscates the real issue -- there will not be parity until MCI has  
20 real-time interactive interfaces.

21

22 Q. AT PAGE 7 OF HIS TESTIMONY, MR. LANGLEY STATES THAT GTE  
23 WILL MAKE AVAILABLE TO MCI THE ABILITY TO ORDER TRUNK-  
24 SIDE INTERCONNECTION SERVICES FROM GTE THROUGH DIRECT  
25 ELECTRONIC INTERFACES TO THE SAME SYSTEMS THAT GTE USES

1           TODAY TO PROCESS IXC ORDERS FOR ACCESS PURCHASES. AT  
2           PAGE 10, MR. LANGLEY STATES THAT LINE SIDE SERVICE WILL  
3           ALSO BE AVAILABLE FOR ORDERING AT SOME POINT THROUGH  
4           ELECTRONIC INTERFACES. ARE ELECTRONIC INTERFACES  
5           ADEQUATE FOR EFFECTIVE COMPETITION TO DEVELOP?

6           A.    No they are not. Until such time as ALECs have real-time interactive interfaces  
7           to the GTE operations support systems there will be no parity of service to end  
8           users between GTE and the ALECs. GTE suggests that what MCI is seeking is  
9           more than parity. To GTE parity means only that MCI gets the same system  
10          functionality as GTE. As I attempted to show with the previous example, this  
11          contention is absurd. There is no way that MCI will be able to serve customers  
12          as efficiently or effectively as GTE, let alone have an opportunity to become a  
13          provider of better quality service, if it is discriminated against in terms of how  
14          it obtains access to these system functions.

15  
16          Q.    AT PAGE 29 OF HIS TESTIMONY, MR. LANGLEY CONTENDS THAT  
17          DIRECT ACCESS TO GTE'S OPERATIONS SUPPORT SYSTEMS HAS  
18          DRAWBACKS, ONE OF THE MOST CRITICAL BEING THE INABILITY  
19          TO PROTECT CUSTOMER PROPRIETARY NETWORK INFORMATION  
20          (CPNI). WHAT IS MCI'S POSITION ON ACCESS TO CPNI?

21          A.    MCI is not seeking blanket access to CPNI. MCI seeks access to CPNI only  
22          when it has customer permission. MCI has offered to provide to GTE a blanket  
23          letter of authorization ("LOA") which will represent that MCI has customer's  
24          authorization whenever its accesses information or takes action on behalf of a  
25          customer.

1 Q. WHY IS ACCESS TO CPNI, WITH THE CUSTOMER'S PERMISSION,  
2 IMPORTANT TO MCI?

3 A. It is important for several reasons. First, residential and small business  
4 customers are often not aware of all the services to which they subscribe. It  
5 will thus be virtually impossible for MCI to establish a complete and correct  
6 customer record for purposes of ordering service without access to CPNI. In  
7 addition, unless MCI fully understands a customer's service information during  
8 sales calls, it cannot make apples-to-apples price quotations to prospective  
9 customers. If MCI quotes a price based on the recollection of the customer as  
10 to its existing services, and after the sale MCI discovers the customer has  
11 different services than discussed, MCI will be in the very awkward position of  
12 having to go back to the customer with new pricing or absorbing any pricing  
13 differences. For the small business customer, an error in establishing service  
14 could cost the business its livelihood.

15  
16 For medium and large business customers there are even more issues. With  
17 more services and locations, combined with changing personnel, business  
18 customers are not going to want to spend time providing new entrants details  
19 about their services for new entrants to make price quotes. Time is money to  
20 these business customers. Unless new entrants can offer proposals without  
21 requiring work effort on the part of the business customers, competition will be  
22 stifled.

23  
24 Additionally, in the case of business customers with complex services, the  
25 likelihood of orders being rejected will be substantially increased if MCI does

1 not have complete and fully updated customer information at the time of  
2 ordering. With more services it is likely that the customer will not get it right  
3 from his or her recollection. Not having it right means a rejected order,  
4 delayed service installation, and customer dissatisfaction for a new MCI  
5 customer.

6  
7 And I am not speculating here about problems. Southern New England  
8 Telephone (SNET) recently rejected an MCI order to convert service of a  
9 business customer. The customer advised MCI that six lines were to be  
10 converted so this is what MCI requested on the order. SNET records reflected  
11 that the customer had 7 lines and the order was rejected for this reason, as well  
12 as for the additional reason that SNET questioned the hunting sequence.

13

14 Q. AT PAGES 34-35 OF HIS TESTIMONY, MR. LANGLEY ARGUES THAT  
15 IT DOES NOT MAKE SENSE FOR GTE TO SET AN IMPLEMENTATION  
16 SCHEDULE FOR REAL-TIME INTERACTIVE INTERFACES UNTIL IT  
17 HAS ASSESSED WHAT IS REQUIRED TO COMPLETE SUCH ACTIVITY.  
18 IS THIS REASONABLE?

19 A. MCI does not expect that real-time interactive interfaces will be in place January  
20 1, 1997. What MCI does expect is that GTE should be in the process now of  
21 assessing what is needed to make these interfaces a reality, and that GTE  
22 establish a time-table for development and implementation to which it can be  
23 held accountable.

24

25 The issue of ordering and provisioning for local service is now before the

1 industry Ordering and Billing Forum ("OBF"). That group has published the  
2 initial draft of the Local Service Ordering Guideline and the Local Service  
3 Request Industry Support Interface. While many issues remain, GTE should be  
4 now actively assessing what it will take to achieve the requested interfaces.  
5

6 There is a very unique situation which exists with GTE. GTE is already in the  
7 long distance business here in Florida. Electronic bonding - a real-time,  
8 electronic interface - is already in place for access repair and maintenance. A  
9 real-time interactive interface for provisioning access is scheduled to be  
10 deployed by the industry in the first half of 1997. Similarly, after years of  
11 development, real-time interactive interfaces for PIC processing are close to  
12 becoming a reality. Here sits GTE in MCI's business with all sorts of advanced  
13 technology to facilitate its service to its customers, while MCI is expected to  
14 accept electronic interfaces to be available at some unknown date in the future,  
15 without even a plan by GTE to move to real-time interactive interfaces. GTE,  
16 the local monopolist, appears to have all the advantages in this scenario with  
17 parity not even a glimmer in anyone's eye.  
18

19 Q. AT PAGE 15 OF HIS TESTIMONY, MR. LANGLEY EXPLAINS HOW  
20 CBSS IS DIFFERENT FROM CABS. HE ASSERTS THAT ALECs SHOULD  
21 GET BILLING FROM CBSS AS THAT IS HOW GTE BILLS END USERS.  
22 WHY IS CBSS BILLING NOT ADEQUATE FOR MCI?

23 A. MCI is not attempting to tell GTE what system to use to produce bills to MCI  
24 for resold services and unbundled elements. MCI is requesting that GTE  
25 produce a bill in CABS billing data format. This is an industry standard format

1042  
billing data

1 that will enable MCI to build one system to receive and audit ILEC rather than  
2 having to build multiple interfaces and audit systems. In addition the CABS  
3 format has a number of features such as tracking of claims and adjustments that  
4 are much better suited to the volume purchases that MCI will be making.

5  
6 At OBF 55 held in August, 1996, final closure was reached on the specifications  
7 for CABS formatted billing data for resold local service. NYNEX and Pacific  
8 Bell are already moving towards implementation of billing for resold services in  
9 the CABS billing data format. They began work before there was even final  
10 closure of the issue.

11  
12 It will create a significant barrier to entry if MCI is required to accommodate  
13 multiple bill formats for receipt and auditing of bills. Billing is just as critical  
14 to market entry as the ability to order and provision service.

15  
16 Q. AT PAGES 16-19 OF HIS TESTIMONY, MR. LANGLEY TALKS ABOUT  
17 HOW GTE INTENDS TO HANDLE REPAIR. IS HE CORRECT IN HIS  
18 ASSESSMENT OF ON-LINE ACCESS TO GTE'S TROUBLE  
19 MAINTENANCE SUPPORT SYSTEMS TO OBTAIN STATUS  
20 INFORMATION AND CLOSE TROUBLE TICKETS?

21 A. No. Today GTE provides an on-line interactive repair interface for access  
22 services. Trouble information is entered, status is monitored, and tickets are  
23 closed on-line. While it does take time to build such an interface, GTE is  
24 already enjoying the benefits of such technology as a competitor to MCI in the  
25 long distance industry. Just as with ordering and provisioning, industry forums

1 are addressing this issue for local service. GTE should be required to establish  
 2 a schedule for development and implementation consistent with the development  
 3 of standards and schedules in the industry forums.

4  
 5 Q. AT PAGE 19 OF HIS TESTIMONY, MR. LANGLEY STATES THERE  
 6 WILL BE NO HARM TO THE ALECs IF THEY DO NOT HAVE REAL-  
 7 TIME INTERACTIVE INTERFACES FOR REPAIR. WHY ARE SUCH  
 8 INTERFACES IMPORTANT?

9 A. GTE proposes that MCI place phone calls to GTE to relay customer trouble.  
 10 This ineffective means to process customer troubles will put MCI at a significant  
 11 competitive disadvantage. The availability of real-time interactive interfaces is a  
 12 key driver of the timeliness of repair. This is reflected in MCI's experience  
 13 with <sup>Space</sup>access trouble reports, where electronic bonding is used to report, <sup>monitor</sup>status  
 14 <sup>status</sup>monitor, and close trouble tickets.

15  
 16 Q. AT PAGES 38-40 OF HIS TESTIMONY, MR. LANGLEY DISCUSSES  
 17 SERVICES STANDARDS. WHAT IS WRONG WITH THE GTE POSITION?

18 A. If the GTE position were to be adopted a new entrant who utilizes any ILEC  
 19 service, whether resold or an unbundled element, would be in effect precluded  
 20 from ever offering service of a quality better than the ILEC. MCI wants to  
 21 compete based on price, product innovation and service quality. If GTE is  
 22 allowed to maintain its position, the ability for MCI to win and retain customers  
 23 based on service quality will never be allowed to develop. GTE also states that  
 24 it does not believe it should be held accountable for meeting service level  
 25 standards. This monopolist view of the world does not have place in a

1 competitive environment. If MCI cannot hold GTE accountable for meeting  
2 service levels it will never be able to make commitments to its customers,  
3 further stifling the growth of competition.

4

5 Mr. Inkellis will be providing more information on what liability and indemnity  
6 provisions are appropriate to be included in the arbitrated agreement between  
7 MCI and GTEFL.

8

9 Q. DOES THAT CONCLUDE YOUR REBUTTAL TESTIMONY?

10 A. Yes.

11

12

13

14

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25



1 Q Will you summarize your direct and rebuttal  
2 testimony?

3 A Thank you.

4 Good afternoon, Chairman Clark and Members of the  
5 Commission, my name is Timothy deCamp. Of all the areas of  
6 testimony you've heard, my area of testimony most addresses  
7 the immediate impression that customers and consumers will  
8 realize regarding whether or not they do in fact receive  
9 the benefits of competition. My testimony covers  
10 requirements for operation support systems. I believe the  
11 purpose of this hearing is to bring the advantage of  
12 competition to consumers.

13 It is at that consumer interface that parity must  
14 be measured and safeguarded. For that reason we should  
15 have industry standard interfaces with nondiscriminatory  
16 access to GTE's OSS systems. The alternative is the  
17 imposition of a proprietary interface by the dominant party  
18 or a delay inducing manual process. These are the systems  
19 that each consumer will be dependent upon in their quest to  
20 receive competitive local phone service.

21 The areas I cover are preordering, ordering and,  
22 provisioning, maintenance and trouble handling and  
23 billing. Preordering consists of the requirements which  
24 will provide consumers with the information necessary to  
25 make a choice between providers.

1           Next, to the ordering and provisioning  
2 requirements, and that will assure quality of service is  
3 delivered to the consumer.

4           Following is trouble handling and maintenance,  
5 these systems cover whether consumers will continue to  
6 receive the quality of service and prompt response for  
7 service issues.

8           Lastly, we have the billing system requirements,  
9 and they're necessary to both correctly bill the consumers  
10 and to provide resolution for billing issues.

11           Each of these four areas are critical to  
12 providing the appropriate level of service that will  
13 effectively establish true competition. The major areas of  
14 disagreement between MCI and GTE in this OSS area concern  
15 the extent of system access, and that is really whether it  
16 is real-time or simply reentered into GTE's systems.

17           The adoption of industry standard interfaces and  
18 the instituting of performance measures and comparative  
19 reports, the extent of system access is critical to  
20 providing service to consumers that is equal in quality to  
21 what GTE provides for itself today. This is why MCI  
22 requires electronic access to GTE's existing systems. To  
23 the extent we don't get this access, there will be  
24 additional time required for MCI to provide the same  
25 service.

1           One of the results of competition is improved  
2 service. Any improvement that MCI brings in service,  
3 quality and delivery will only serve to overcome the time  
4 delay that GTE's manual process introduces and will not be  
5 realized by the consumer. And clearly, without electronic  
6 access MCI cannot expect to compete. As an example, when a  
7 consumer calls to determine when service can be installed  
8 for them, whether they get the time or the date, they won't  
9 be satisfied with MCI's response under GTE's proposal. MCI  
10 will only be able to say, We can't tell you exactly, but  
11 don't worry, it won't take any longer than GTE already  
12 provides.

13           With regard to adopting industry standard  
14 interfaces, this is critical in order to minimize the  
15 impact to new entrants, both for developing system  
16 interfaces for all of the existing proprietary systems and  
17 across all the different incumbent carriers. In addition,  
18 each member of the industry will share the benefits of  
19 improved data communications and reduce manual  
20 intervention.

21           Concerning performance measures and comparative  
22 reporting, this is necessary for MCI to assure accurate  
23 services and billing from GTE. This will also minimize the  
24 extent to which MCI will have to appeal each and every  
25 issue to this Commission simply to obtain the comparative

1 information and subsequently then to address any issues  
2 between MCI and GTE.

3 In summary, what MCI requests is for the  
4 Commission to support that electronic interfaces at parity  
5 should be set up on 1/1/97 as indicated by the FCC and that  
6 industry standard interfaces be adopted as soon as  
7 practical and that performance measurements and comparative  
8 reports on the quality of service that GTE gives itself are  
9 necessary and should be made available on an ongoing  
10 basis. Thank you.

11 Q Thank you, Mr. deCamp.

12 MS. McMILLIN: Mr. deCamp is available for cross.

13 CHAIRMAN CLARK: Mr. Tye.

14 MR. TYE: No questions.

15 CHAIRMAN CLARK: Ms. Caswell.

16 MS. CASWELL: Yes.

17 CROSS EXAMINATION

18 BY MS. CASWELL:

19 Q Good morning, Mr. deCamp. My name is Kim  
20 Caswell.

21 A Good afternoon.

22 Q Judging from your testimony and summary you have  
23 just given, I believe that GTE has already agreed to some  
24 of the things that you want and maybe we could go over  
25 those first to establish them so we don't have to argue

1 about them anymore.

2 A If you like.

3 Q At page 8 of your direct testimony and in your  
4 summary, you indicated that ILECs should use industry  
5 standards in developing electronic interfaces to their  
6 support systems, and I was wondering if you knew that GTE  
7 agrees with your position on that?

8 A Yes, I have read that GTE agrees -- I'm sorry,  
9 they do not oppose going to industry standards, but we  
10 haven't really gotten into the detail with GTE to  
11 understand to what extent they agree with us.

12 Q Okay. Is it your understanding that complete  
13 industry standards have been determined at this point to  
14 develop the kind of access you want?

15 A No, the complete industry standards across all  
16 the different OSS systems have not been established yet.

17 Q Okay. And I think you also said something about  
18 a disagreement on the extent of system access that GTE is  
19 willing to give you, and I want to make sure we are talking  
20 about the same sort of procedures or the process that is  
21 going to take place. Do you understand that there will be  
22 interim procedures before the long-term measures can be put  
23 in place for access?

24 A Yes, I do.

25 Q Okay. And hasn't GTE agreed to provide you the

1 sort of real-time interactive access you want as a  
2 long-term solution?

3 A No, I don't know that for sure.

4 Q Okay. I think also you said in your summary of  
5 testimony you were dissatisfied with the manual processes  
6 that still existed. In other words, there is a human  
7 between -- GTE has to manually input some data in the  
8 interim processes, do you understand that?

9 A Right.

10 Q And do you also understand that GTE is working to  
11 remove that human intervention even on an interim basis?

12 A Yes.

13 Q Okay. I think you also stated that, and correct  
14 me if I'm wrong, it is your belief that when MCI is  
15 establishing service for a customer, MCI would not be able  
16 to give that customer his phone number and the installation  
17 date on the call?

18 A That's correct.

19 Q Would you be surprised to learn that GTE has  
20 agreed to do that?

21 A To provide --

22 Q Yeah, time and date on the call for establishing  
23 service.

24 A What I understand from GTE's proposal is that we  
25 will make a call to GTE to get that information. They will

1 provide that information while on the call to the MCI  
2 service representative. What MCI is looking for is to be  
3 able to, when a consumer calls in and says, I would like to  
4 shop around, that MCI be able to give them the information  
5 that is necessary, and that would include being able to  
6 tell them a date that they would be able to get in service  
7 and a phone number, so they would have to have the  
8 capability to have the direct access into GTE's system;  
9 otherwise, the alternative is to put them on hold, call  
10 GTE, and that is the service difference that we are talking  
11 about.

12 Q Okay. If a customer wants to shop around, why  
13 would you need to give him a phone number and an  
14 installation date on that call?

15 A Only to the extent that they would then choose  
16 MCI as their carrier. The schedule date, the delivery time  
17 frame would be important to the customer.

18 Q Okay. And when your representative is on the  
19 call with the GTE person and you've got your customer on  
20 the other line and you get the due date and the phone  
21 number from the GTE rep, wouldn't you then return to your  
22 customer and give him that information?

23 A Yes, we would.

24 Q Okay. On page 2 of your rebuttal testimony,  
25 you've noted that GTE will require MCI to submit service

1 orders by mail, FAX or Internet. Are you aware that this  
2 is not in fact GTE's proposal?

3 A No, I'm not aware that that is not GTE's  
4 proposal. I believe that is the existing practice for  
5 areas we are currently serving today.

6 Q Okay. Were you here this morning for Mr. Price's  
7 testimony?

8 A Yes, I was.

9 Q Did you hear him say that MCI would be providing  
10 electronically to GTE all the information it needs to set  
11 up an account?

12 A MCI would be providing to GTE?

13 Q Electronically to GTE all the information it  
14 needs to set up an account.

15 A Yes, we are in the position to do that. I don't  
16 believe that GTE is in the position to electronically  
17 receive that in the areas where we have existing service.

18 Q Okay. Are you familiar with the concept of GTE's  
19 national data mover, I think that is what the acronym  
20 stands for?

21 A Yes.

22 Q NDM. And that would be a way to electronically  
23 transmit information from MCI to GTE, would it not?

24 A Yes, it would, but I would like to make the  
25 clarification that what you're talking about exists right



1 now is in the access arena, not in the local arena, so to  
2 the extent that we are sending over orders in the local  
3 arena, the proposal for GTE does not include an interface.

4 Q Have you read Mike Drew's testimony in this  
5 proceeding? I think it was Rodney Langley adopted by Mike  
6 Drew.

7 A Yes, I have.

8 Q And doesn't he talk about extending that  
9 capability, that electronic transmission capability from  
10 the access arena to the local service sector?

11 A Yes, he does.

12 Q Okay. At pages 6 and 7 of your rebuttal  
13 testimony, you've stated that MCI wants billing in a CABS  
14 format for ILEC, CLEC billing. Are you aware that GTE has  
15 agreed to provide that?

16 A Yes, with the clarification that GTE has accepted  
17 to do that on the trunk side.

18 Q Right, and that would be the ILEC, CLEC  
19 qualification, correct?

20 A Not completely, no. That would, the line side  
21 would also be some information for the customer information  
22 that we would expect that would also come through CABS, and  
23 in Mr. Drew's rebuttal testimony he says that he will  
24 provide that for trunk side but not for line side as we  
25 request.

1 Q Okay. And are you aware that GTE is working  
2 toward modifying its CABS system so it can accommodate the  
3 line side end-user billing as well?

4 A No, I'm not.

5 Q Okay. At page 13 of your direct testimony, you  
6 state that the ILEC should meet the same maintenance and  
7 trouble resolution standards for MCI as for its own  
8 customers. GTE has agreed to do that, hasn't it?

9 A I'm sorry, could you go back to that reference?

10 Q Okay. It's page 13 of your direct testimony.

11 A Yes.

12 Q And you've indicated there that --

13 MS. McMILLIN: Excuse me, what line number are  
14 you referencing?

15 Q I believe we are talking about lines 1 through 5.  
16 And I believe it's your view that the ILEC should meet the  
17 same maintenance trouble resolution standards for MCI as  
18 for its own customers, right?

19 A Right, that's correct.

20 Q And are you aware that GTE has agreed to do that?

21 A No, I'm not aware of that.

22 Q Okay.

23 A I would say that to the extent that we have  
24 included a variety of performance measures we do not have  
25 the extent to which GTE has said that they would meet all

1 of those performance measures.

2 Q Okay. I believe you have asked the Commission to  
3 order GTE to compile several types of reports, and these  
4 would include reports on installation intervals for both  
5 GTE and ALECs, reports on resolution times for ALECs'  
6 maintenance and repair problems and reports on service  
7 quality standards for ALECs. Are you aware that complying  
8 with this request would require GTE to create new systems?

9 A I don't know that, but I would expect that that  
10 might be the case.

11 Q And if that is the case, is MCI willing to pay  
12 for development of these systems?

13 A I believe Mr. Price already covered some of the  
14 issues associated with the, how the cost would be recovered  
15 and really that was done across the broad spectrum of all  
16 the different system interfaces.

17 Q So is your answer that MCI would pay for  
18 development?

19 A Yes. I think it's important to indicate that to  
20 some extent that there is a shared benefit from developing  
21 some of these systems, that MCI believes that be would then  
22 share the cost for those types of upgrades. And clearly,  
23 an example of that would be in the trouble and handling  
24 scenario where manual intervention could be eliminated, as  
25 is the case and has been the experience with the IXC to

1 ILEC arena, that that is going to benefit both parties.  
2 And to the extent that it benefits both parties, that would  
3 be considered a shared benefit and that the parties would  
4 then share the cost.

5 Q Okay. At page 7 of your rebuttal testimony, I  
6 think you've stated that --

7 MS. McMILLIN: I'm sorry, what line was this?

8 Q At line 21 and 22. You state that GTE enters  
9 trouble information into its system and status is  
10 monitored. That is on line 22. Do you know that GTE does  
11 not in fact routinely enter any data that would allow it to  
12 monitor trouble status?

13 A No, I don't.

14 Q Okay. If MCI wanted system modifications that  
15 would allow such a capability, would it pay for them?

16 A To the extent that that is not a shared benefit,  
17 then yes.

18 Q I think that is all I've got.

19 MS. CASWELL: Thank you, Mr. deCamp.

20 CHAIRMAN CLARK: Staff.

21 CROSS EXAMINATION

22 BY MR. PELLEGRINI:

23 Q Mr. deCamp, I'm Charlie Pellegrini representing  
24 the staff. Just one question concerning customer  
25 authorization. What type of customer authorization do you

1 believe should be required to access customer account  
2 information and transfer existing services?

3           A     If the Commission allows me to elaborate a little  
4 bit, I was here yesterday and so I understand some of the  
5 confusion. And I would like to first start off by saying  
6 that AT&T and MCI are in a pretty similar position, and  
7 since yesterday's testimony I've tried to find the  
8 information in Florida statutes and the Telecom Act and in  
9 the FCC order.

10                   MCI's position is essentially that we believe  
11 there should be a blanket authorization, and clearly in the  
12 Telecom Act it requires the approval of the customer, but  
13 it did not necessarily say that there has to be a written  
14 approval. MCI's position is that we would have the  
15 customer approve that -- in the example that a customer  
16 calls up and says, I would like to shop around, MCI would  
17 then be able to say, if we have your authorization, that  
18 would be sufficient to get the information from GTE. Does  
19 that answer your question?

20           Q     And you believe that to be in compliance with the  
21 Act?

22           A     Yes, I do.

23                   MR. PELLEGRINI: That's all, Mr. deCamp. Thank  
24 you.

25                   WITNESS deCAMP: Thank you.

1 CHAIRMAN CLARK: Redirect.

2 MS. McMILLIN: Just a few on redirect.

3 REDIRECT EXAMINATION

4 BY MS. McMILLIN:

5 Q Mr. deCamp, you were asked some questions on  
6 cross about whether GTE had offered electronic receipt of  
7 ordering data for CABS for line side billing. Are you  
8 aware of whether GTE has set forth any time table for  
9 providing that?

10 A No, I have not.

11 Q You were also asked about a number of items of  
12 whether GTE had agreed to provide them, and I guess this is  
13 just a blanket question, are you aware of whether GTE has  
14 offered any time tables or any specificity as to when the  
15 different proposed items would be provided?

16 A No, I'm not aware of it.

17 Q In general, where GTE has agreed in principle to  
18 different items, has it committed to a firm time frame?

19 A No, they haven't.

20 MS. McMILLIN: No further questions.

21 CHAIRMAN CLARK: Thank you very much,  
22 Mr. deCamp.

23 We'll take a break until one o'clock, and at that  
24 time we will take up the witnesses that we can stipulate --  
25 their testimony can be stipulated into the record, and then

1 we would begin with Mr. Wood. Would that be correct?

2 MR. MELSON: No, Mr. Wood is not here until  
3 tomorrow. We take Mr. Inkellis.

4 CHAIRMAN CLARK: Okay. We will take  
5 Mr. Inkellis.

6 MR. MELSON: Thank you.

7 CHAIRMAN CLARK: Thank you, and I will see you at  
8 one o'clock.

9 (WHEREUPON, THERE WAS A LUNCH RECESS TAKEN AT  
10 12:20 P.M.)

11 CHAIRMAN CLARK: Let's reconvene the hearing.  
12 The first thing -- I would have waited. Mr. Fuhr had just  
13 taken a bite of whatever he was eating when I looked at  
14 him. I have, and all the Commissioners have been given  
15 copies of GTE objections to Guedel testimony in response to  
16 my request that he enumerate specifically those parts of  
17 the testimony and exhibits that he objected to. I would  
18 propose to simply mark this as exhibit 26 so it is clear  
19 what is being objected to.

20 Is that okay with you, Mr. Hatch?

21 (MR. HATCH NODDED HEAD AFFIRMATIVELY)

22 CHAIRMAN CLARK: Okay. The document entitled GTE  
23 Objections to Guedel Testimony will be marked as exhibit  
24 26, and it will be admitted in the record without  
25 objection.

1 (SO MARKED EXHIBIT 26)

2 MR. GILLMAN: Thank you.

3 CHAIRMAN CLARK: I'm sorry, Donna.

4 MS. CANZANO: I'm sorry, too.

5 CHAIRMAN CLARK: We were just -- All we did was  
6 mark as exhibit 26 the document entitled GTE Objections to  
7 Guedel Testimony so the record would be clear as to what  
8 testimony and parts of the exhibits that the objection was  
9 relevant to.

10 Now Mr. Tye had indicated that there was some  
11 testimony that could possibly be stipulated into the  
12 record. Ms. Canzano, have you had time and staff had time  
13 to look at that and reach a resolution as to whether or not  
14 you can agree to stipulating it into the record?

15 MS. CANZANO: We agree to everything except that  
16 we have questions for Ms. Menard.

17 CHAIRMAN CLARK: Okay. All right. With that,  
18 let's -- Mr. Gillman, I guess if I could ask you to  
19 identify the testimony that we need to get into the record.

20 MR. GILLMAN: You want to do that now. Could I  
21 ask that we -- It might be better and more -- It would  
22 be better prepared if we go through this witness and at  
23 that time we'll have people getting it altogether so that  
24 it will go very smoothly.

25 CHAIRMAN CLARK: Okay. That sounds good. As I



1 understand it, it would be Mr. Hartshorn, Mr. Morris,  
2 Mr. Peters, Mr. Jernigan and Mr. Cantrell.

3 MR. GILLMAN: Yes.

4 CHAIRMAN CLARK: Okay. All right. So then we  
5 are ready to begin with Mr. Inkellis.

6

7 Whereupon,

8

STEVE INKELLIS

9 was called as a witness on behalf of MCI and, after being  
10 duly sworn, was examined and testified as follows:

11

12

DIRECT EXAMINATION

13

BY MR. MELSON:

14

Q Would you please state your name and address for  
15 the record?

16

A My name is Steven Inkellis. My business address  
17 is 1801 Pennsylvania Avenue, Northwest, Washington, D.C.,  
18 20006.

19

Q By whom are you employed and in what capacity?

20

A I'm employed by MCI Communications Corporation as  
21 a vice president, law and public policy.

22

Q You need to pull that microphone just a little  
23 closer.

24

A Sure.

25

Q Have you prefiled rebuttal testimony in this

1 docket dated September 30th, 1996 and consisting of 14  
2 pages?

3 A Yes, I have.

4 Q Do you have any changes or corrections to that  
5 testimony?

6 A No, I don't.

7 Q And if I were to ask you the same questions today  
8 that are in that testimony, would your answers be the same?

9 A Yes, they would.

10 MR. MELSON: Madam chairman, I would ask that  
11 Mr. Inkellis's rebuttal testimony be inserted into the  
12 record as though read.

13 CHAIRMAN CLARK: It will be inserted in the  
14 record as though read. I'm still looking for my copy, I'm  
15 sorry.

16 (DOCUMENT TENDERED TO CHAIRMAN CLARK)

17 CHAIRMAN CLARK: I'm sure it's in there, I'm just  
18 having difficulty locating it.

19 Go ahead.

20 MR. MELSON: I'm sorry, was the testimony  
21 inserted?

22 CHAIRMAN CLARK: The rebuttal testimony will be  
23 inserted in the record as though read.

24

25

## 1 REBUTTAL TESTIMONY OF STEVEN A. INKELLIS

2 ON BEHALF OF MCI

3 DOCKET NO. 960980-TP

4 September 30, 1996

5

6 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

7 A. My name is Steven A. Inkellis. My business address is MCI Communications  
8 Corporation, 1801 Pennsylvania Avenue, NW, Washington, DC 20006.

9

10 Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

11 A. I am employed by MCI Communications Corporation as Vice President, Law and  
12 Public Policy. In that position, I am responsible for commercial affairs relating  
13 to MCI Telecommunications Corporation sales and marketing of  
14 telecommunications and related goods and services. In connection with MCI's  
15 entry into local telecommunications services, I have been asked to assist MCI  
16 Telecommunications Corporation and its affiliated local services company, MCI  
17 Metro Access Transmission Services, Inc., in their interconnection negotiations  
18 with incumbent local exchange telephone companies ("ILECs"). In particular,  
19 I have been acting as commercial counsel, together with other attorneys in MCI's  
20 Law and Public Policy group, in support of MCI's negotiations with various GTE  
21 telephone operating companies for interim and long term agreements for local  
22 exchange interconnection, resale and unbundled network elements. I have been  
23 responsible for preparing drafts of agreements, reviewing drafts under  
24 negotiation, supporting MCI's business negotiators responsible for the

1 interconnection arrangements MCI seeks, and from time to time personally  
2 engaging in the direct negotiations process.

3

4 Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

5 A. I have been employed in various commercial legal positions of increasing  
6 responsibility with MCI since May 1985, providing support for nearly every  
7 major business unit at MCI. For the last several years, I have been responsible  
8 for general legal support for MCI's major commercial operating units, MCI Mass  
9 Markets and MCI Business Markets. I supervise a staff of approximately 45  
10 attorneys plus support staff, who are responsible for negotiating commercial  
11 arrangements with MCI's customers and vendors and for supporting MCI's  
12 marketing organizations in product development and promotion. In that capacity,  
13 I have been involved in development of MCI's local product initiatives, which has  
14 required me to become familiar with the provisions of the Telecommunications  
15 Act of 1996 promoting competition in the local exchange market and to become  
16 engaged in MCI's substantial efforts to integrate local exchange service into its  
17 existing product portfolio. Prior to that, I was an associate attorney with the law  
18 firm of Squire, Sanders & Dempsey from 1979-1985 with a varied commercial  
19 and public policy practice. I received a J.D. from George Washington  
20 University's National Law Center in 1979 and a B.A. from the University of  
21 Massachusetts at Amherst.

22

23 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

24 A. The purpose of my testimony is to explain why sound commercial practice and

1 public policy demonstrate that MCI's proposed provisions governing liability  
2 limits and indemnity should be adopted over GTE's proposed provisions in the  
3 arbitrated interconnection agreement between GTE and MCI. I am advised that  
4 this issue was identified in its current form after the deadline for filing direct  
5 testimony in this docket. My testimony generally responds to the portion of Mr.  
6 Langley's direct testimony filed in the AT&T arbitration proceeding (and  
7 incorporated by reference in this docket) in which he states that an ALEC should  
8 not be permitted to penalize GTE for not maintaining ALEC-imposed standards,  
9 and that liquidated damages should not be used as a penalty in an arbitrated  
10 agreement. (Langley Direct in Docket 960847-TP at pages 39-40)

11

12 Q. WHAT CONTRACTUAL PROVISIONS FOR LIABILITY AND INDEMNITY  
13 DOES MCI PROPOSE FOR INCLUSION IN THE ARBITRATED  
14 AGREEMENT BETWEEN MCI AND GTEFL?

15 A. The liability and indemnity provisions that MCI believes should be included in the  
16 arbitrated agreement are set forth below. These provisions have been the subject  
17 of negotiations between MCI and GTE. MCI also sought the assistance of the  
18 Commission staff to mediate this issue. Even with mediation, the parties have  
19 been unable to reach agreement. The highlighted portions show the language that  
20 GTE has been unwilling to agree to.

21 LIMITATION OF LIABILITY

22 Neither Party shall be liable to the other for any lost  
23 profits, or revenues or for any indirect, incidental, special  
24 or consequential damages arising out of or related to this

1 Agreement or the provision of service hereunder.  
2 Notwithstanding the foregoing, a Party's liability shall not  
3 be limited in the event of its willful or intentional  
4 misconduct, including gross negligence, *its repeated breach*  
5 *of any one or more of its material obligations under this*  
6 *Agreement*, or its acts or omissions causing bodily injury,  
7 death or damage to tangible property, *or with respect to*  
8 *the Indemnifying Party's indemnification obligations*  
9 *under this Agreement.*

10

11 INDEMNITY

12 Each Party (the "Indemnifying Party") will indemnify and  
13 hold harmless the other Party ("Indemnified Party") from  
14 and against any loss, cost, claim, liability, damage,  
15 expense (including reasonable attorney's fees) to third  
16 parties, relating to or arising out of negligence or willful  
17 misconduct by the Indemnifying Party, its employees,  
18 agents, or contractors in the performance of this  
19 Agreement, *or the failure of the Indemnifying Party to*  
20 *perform its obligations under this Agreement.* In addition,  
21 the Indemnifying Party will, to the extent of its obligations  
22 to indemnify hereunder, defend any action or suit brought  
23 by a Third Party against the Indemnified Party.

1 It should be noted that this language is reciprocal, and each party has the same  
2 liability for its own intentional misconduct, gross negligence, or repeated breach  
3 of contract.

4

5 Q. WHAT IS THE MAIN AREA OF DISAGREEMENT BETWEEN MCI AND  
6 GTE?

7 A. The principal difference between the parties, in my opinion, is that GTE is  
8 unwilling to take responsibility for the natural consequences that would flow from  
9 its failure to provide interconnection services to MCI in accordance with the  
10 terms it will be required to provide in the arbitrated agreement. GTE attorneys,  
11 anticipating that GTE will fail to perform as required, are anxious to ensure that  
12 GTE will not suffer significant financial risk arising out of such failures. MCI  
13 is rightly concerned that substantial incentives exist for GTE employees to be  
14 negligent in providing effective interconnection services to MCI. MCI wishes to  
15 ensure that reasonable and appropriate incentives exist to cause GTE employees  
16 to effectively provide the services MCI requires. The difficulty for GTE  
17 employees is that the better they perform under the interconnection agreement,  
18 the better able MCI will be to compete with GTE in its monopoly local exchange  
19 market, GTE's crown jewel marketplace. To counter that, MCI needs to ensure  
20 that GTE employees will understand that failure to perform will cause GTE to  
21 incur the risk of substantial financial obligations. If MCI is successful in this  
22 arbitration, GTE attorneys will instruct their clients that there can be significant  
23 costs to GTE associated with repeated breaches of material interconnection  
24 obligations. I believe, based on my years of practice as commercial legal

1           counsel, that corporate employees faced with such choices will choose to perform  
2           their company's contractual obligations. If the goals of the Telecommunications  
3           Act of 1996 are to be achieved for the benefit of consumers, then there must be  
4           strong incentives for the ILECs to perform under the arbitrated agreements in  
5           accordance with their terms.

6  
7           The principal natural consequence of GTE's failure to perform will be lost  
8           revenues and profits for MCI--that is, to the extent that MCI is unable to connect  
9           its network with GTE's, MCI will be unable to obtain and/or retain local services  
10          customers in GTE's former monopoly market. Thus, GTE will retain the  
11          customers, revenues and profits, and MCI will be left with no remedy other than  
12          to seek orders from this Commission enforcing the contract terms. The parties  
13          understand that it would be difficult for MCI to prove that GTE intentionally  
14          breached its agreement. Thus, MCI has asked that it have recourse to a lost  
15          revenues and profits damages claim in the event the GTE repeatedly breaches  
16          material provisions of the agreement. MCI believes that repeated breaches of  
17          material terms is tantamount to intentional or grossly negligent breach (which  
18          GTE accepts should cause it to lose any liability limitation protection).  
19          Moreover, GTE well understands that there is no other effective contractual  
20          remedy for MCI. The normal contract remedy for breach, cover damages, is  
21          simply unavailable where, as here, the only source of supply for interconnection  
22          to GTE's customers, network elements and resold ILEC service is GTE alone.  
23          MCI cannot cover. Thus, its only remedy is to seek its lost business revenues  
24          and profits, the clear and natural consequence of repeated breaches by GTE of its



1 material obligations. With respect to the indemnity provision, the parties disagree  
2 on whether GTE should be responsible to protect MCI against claims by its  
3 customers that result from GTE breach of the agreement. In the newly  
4 competitive and emerging market for local exchange services, customers will  
5 demand and get from their telecommunications suppliers the right to seek  
6 damages for failure to perform as promised. MCI will for some time to come be  
7 substantially reliant on GTE in order to provide local exchange service to its  
8 customers. If GTE is able to evade its responsibility to indemnify MCI against  
9 customer claims arising out of GTE's repeated failure to perform its material  
10 obligations, then MCI will be left with a significant coverage gap in a newly  
11 competitive marketplace. Overall, the effect of GTEFL's position is that it could  
12 repeatedly breach the agreement with impunity, unless the breaches resulted from  
13 GTE's intentional misconduct or gross negligence.

14

15 Q. HOW COULD MCI BE DAMAGED BY GTE'S BREACH OF ITS  
16 AGREEMENT?

17 A. If GTE does not perform its interconnection obligations, three things will happen,  
18 all of them bad for MCI but good for GTE. First, MCI will be unable to permit  
19 any of its local service customers to call or receive calls from GTE customers.  
20 Of course, as GTE currently has all or nearly all the local customers on its  
21 network, no rational consumer would sign up for MCI's service knowing that he  
22 or she could not call or receive calls from nearly anyone else in the local calling  
23 area. Second, MCI will be unable to effectively resell GTE's local service.  
24 Thus, the principal product MCI will require initially to enter the local consumer

1 services market will be unavailable. Third, MCI will be unable effectively to  
2 obtain and use unbundled network elements to combine to provide  
3 telecommunications services. The effect of any of those three will be that GTE  
4 will retain its existing customers and revenue and MCI will be unable to mount  
5 effective competition for GTE's monopoly customer base. In the meantime, GTE  
6 will continue to work to erode MCI's base of long distance customers by offering  
7 to them integrated local and long distance calling, service integration that  
8 customers have clearly indicated they desire. Without any of these three services  
9 provided in an effective manner, MCI will be unable to develop the critical mass  
10 of local services customers required to finance its own facilities build out. The  
11 natural result will be that GTE will remain the entrenched monopoly supplier.

12

13 For example, if GTE repeatedly fails to install interconnection circuits within  
14 contractually agreed time frames, or if the interconnection repeatedly fails to meet  
15 contractually agreed performance standards, the quality of service to MCI's  
16 customers will suffer. MCI may fail to meet scheduled due dates to transfer  
17 customers from GTE to MCI. Or if interconnection does not meet agreed quality  
18 standards, MCI's customers could experience an unsatisfactory level of call  
19 blocking. Either of these situations affect the public perception of MCI's service  
20 quality, even though the problems were caused by GTE's breach of its agreement.  
21 Moreover, GTE marketers can be expected to exploit these service deficiencies  
22 by advertising GTE reliability and quality attributes versus those of their new  
23 competitors. Of course, during any delay in transferring service from GTE to  
24 MCI, MCI will lose revenues and GTE will be unjustly enriched. And if MCI

1 develops a reputation for poor or spotty service quality, customers will elect to  
2 remain with GTE, or reconvert to GTE, again translating to lost profits for MCI  
3 and unjustified profits for GTE.

4

5 Q. WHAT IS THE EFFECT OF GTE'S POSITION?

6 A. The effect of GTE's proposed language would be to insulate GTE from financial  
7 responsibility for the consequences of breaching its agreement. GTE's attempt  
8 to limit liability in this way is totally unreasonable when you consider the nature  
9 of the relationship between GTE and MCI:

- 10 ● MCI must interconnect with GTE in order for customers of the two  
11 companies to complete calls to each other. MCI has no alternative  
12 supplier for the needed interconnections and therefore no way to mitigate  
13 any damage caused by GTE's breaches.
- 14 ● MCI for the first time will be competing in GTE's core business.  
15 Contrary to a typical commercial transaction in which a supplier (GTE)  
16 has an incentive to keep a large customer (MCI) happy, GTE has the  
17 incentive to see MCI fail, since every customer MCI captures represents  
18 a loss of market share to GTE. If GTE is not responsible for damages  
19 caused by a breach of its agreement, it is unlikely that GTE employees  
20 will be rewarded for making MCI's entry into the market run smoothly,  
21 or disciplined if that entry is delayed or frustrated. Put another way, no  
22 GTE employee is likely to receive a promotion for making MCI a stronger  
23 competitor in GTE's richest and best market.
- 24 ● Because of the nature of interconnection, any problems will typically

1                   degrade the quality of service to MCI's entire customer base.

2

3     Q.     IF THE AGREEMENT WAS TOTALLY SILENT ON THE ISSUE OF  
4            LIABILITY, WOULD GTE BE RESPONSIBLE FOR LOST PROFITS AND  
5            OTHER CONSEQUENTIAL DAMAGES CAUSED BY A BREACH OF THE  
6            AGREEMENT?

7     A.     Yes it would.  Although I am not admitted to practice in Florida, I understand  
8            that the common law in Florida is consistent with that in most states, and that  
9            GTE would be responsible for any reasonably foreseeable consequential damages  
10           that result from a breach of contract.  Given the nature of the agreement between  
11           MCI and GTE, lost profits are clearly a reasonably foreseeable result of a breach.  
12           MCI's proposed language affords protection to GTE that is above what it would  
13           have under general contract law, since there is no liability for consequential  
14           damages from a single breach, or from breach of minor contract provisions -- but  
15           only for damages from *repeated breaches* of its *material obligations*.

16

17     Q.     DON'T UTILITY TARIFFS TYPICALLY EXCLUDE LIABILITY FOR  
18            CONSEQUENTIAL DAMAGES?

19     A.     Yes, they do, but for sound public policy reasons that do not apply here.  Rate  
20            of return regulated monopolies have traditionally been permitted to limit their  
21            liability for their customers' consequential damages.  First, it's often difficult for  
22            the utility to know what those damages might be and the damages may be  
23            substantially unrelated to the cost of the service.  Thus, if a telephone company's  
24            banking customer is unable to place a trade, the customer might incur substantial

1 damages while the cost of the failed call might be pennies. Second, if the utility  
2 were held responsible for such damages, it would pass those costs on to its  
3 general body of ratepayers. In a regulated rate of return monopoly environment,  
4 the regulator would have been forced to permit this and there would be no  
5 competition to force the inefficient provider to limit its failures. Third, the tariff  
6 provisions are not designed to encourage new entrants to offer services that will  
7 unseat the incumbent from its monopoly supplier status. Instead, those tariffs  
8 apply to typical supplier-customer relationships, not to the particular type of  
9 supplier-competitor relationship that will exist under the MCI/GTE agreement.  
10 As I stated before, the incentives for GTE to fail to fully perform its obligations  
11 are much different here than in the usual case. Most importantly, if GTE fails  
12 to deliver as promised, MCI simply has no other supplier to turn to.

13

14 Q. IF MCI LIMITS LIABILITY TO ITS CUSTOMERS BY TARIFF, COULD GTE  
15 BE HELD RESPONSIBLE FOR AN MCI CUSTOMER'S LOST PROFITS IF  
16 IT BREACHED THE INTERCONNECTION AGREEMENT?

17 A. No. Let me start by noting that it is my understanding from local regulatory  
18 counsel that MCI will be required to file a price list for local service in Florida  
19 but will not be required to file a tariff. It is unclear to me exactly how  
20 limitations of liability will be established in this regulatory environment. I am  
21 hopeful, however, that GTE will not be in a better position to limit liability to its  
22 customers via tariffs than MCI will be able to as an ALEC operating without  
23 tariffs. In any event, under the proposed indemnity provision, GTE's  
24 responsibility for an MCI's customer's lost profits resulting from a GTE breach

1 would never exceed MCI's liability to that customer. And, of course, MCI will  
2 endeavor to limit its exposure for such losses to its customers in accordance with  
3 good telecommunications industry practice. However, if MCI sustained lost  
4 profits as a result of GTE's repeated breaches, GTE would be liable to MCI for  
5 those damages.

6

7 Q. HAS ANY OTHER LOCAL COMPANY AGREED TO MCI'S LANGUAGE  
8 ON LIABILITY AND INDEMNIFICATION?

9 A. Yes. Here in Florida, BellSouth has agreed to MCI's proposed provisions. In  
10 California, GTE itself has accepted this language first with MCI and with at least  
11 one other ALEC in agreements we've seen on file. Pacific Bell, too, has  
12 accepted this language. In each of these three cases where I have been personally  
13 involved in the negotiations the ILEC has accepted our rationale. I am at a loss  
14 to understand why GTE continues to oppose language that it accepted in  
15 California and that is clearly becoming industry standard for interconnection  
16 agreements.

17

18 Q. YOU STATED EARLIER THAT UNLESS GTE TAKES FINANCIAL  
19 RESPONSIBILITY FOR THE NATURAL CONSEQUENCES OF ITS  
20 ACTIONS, IT WILL NOT HAVE AN INCENTIVE TO FULLY PERFORM ITS  
21 OBLIGATIONS UNDER THE AGREEMENT. ISN'T THIS MORE OF A  
22 THEORETICAL CONCERN THAN A PRACTICAL ONE?

23 A. Absolutely not. In the early days of long distance competition, when the Bell  
24 System was both the supplier of access and the long distance competitor, the Bell

1 System used its monopoly power in a variety of ways to impede entry by MCI  
2 and other competitive carriers. See, United States v. AT&T, 524 F. Supp. 1336,  
3 1352-1357 (D.D.C. 1981) and United States v. AT&T, 552 F. Supp. 131, 160-  
4 163 (D.D.C. 1982). In those early days of competition, AT&T disconnected  
5 MCI interconnections causing MCI grave harm in the marketplace. Similar  
6 problems existed in the GTE system as a result of its partnership with AT&T.  
7 See, United States v. GTE Corporation, 603 F. Supp. 730, 735 n. 23 (D.D.C.  
8 1984). The same incentives exist in the local market today, as MCI and others  
9 begin to enter and compete with GTE in its core business.

10

11 Further, in the long distance access arena, I am advised that GTE has a poor  
12 track record of meeting service due dates. This could be an even greater problem  
13 in the local service arena unless GTE has the proper contractual incentives to  
14 perform up to its agreed standards.

15

16 Q. ARE YOU SUGGESTING THAT MCI'S PROPOSED CONTRACT  
17 LANGUAGE WOULD ELIMINATE THESE INCENTIVES.

18 A. Not entirely. But MCI's proposed contractual provisions -- which do nothing  
19 more than place financial responsibility on GTE for the consequences of actions  
20 that would at once harm MCI and benefit GTE -- can at least create a positive  
21 incentive for GTE to avoid repeated breaches of its contract.

22

23 Q. HOW SHOULD PUBLIC POLICY CONSIDERATIONS INFLUENCE THE  
24 COMMISSION'S DECISION ON THIS ISSUE?

1 A. Actions by the Florida Legislature and the U.S. Congress have established a  
2 public policy in favor of local competition. MCI's proposal advances competition  
3 by requiring GTE to take responsibility if it repeatedly breaches its contract to  
4 provide essential services to a new competitor. GTE's proposal, on the other  
5 hand, does nothing to promote competition. Instead it says that "so long as you  
6 can avoid being charged with intentional misconduct or gross negligence, you  
7 don't have to be very careful about how you meet your contractual obligations to  
8 your competitors." Adoption of GTE's proposal would affirmatively subvert the  
9 strong public policies favoring creation of competition in the local exchange  
10 marketplace.

11

12 Q. DOES THAT CONCLUDE YOUR TESTIMONY?

13 A. Yes.

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1 BY MR. MELSON:

2 Q All right. Would you please summarize your  
3 testimony?

4 A Thank you.

5 Chairman Clark and Members of the Commission, the  
6 other witnesses this morning have been talking about what  
7 promises GTE should make in connection with interconnection  
8 services. I want to talk here about what happens if those  
9 promises are not kept. This will hark back for all of  
10 those who have been through the first year of law school to  
11 the famous case of Hadley versus Baxendale (phonetics)  
12 which many people would like to forget, but the issue there  
13 is the issue here, and that is, what happens when promises  
14 are broken? Does the person who is harmed get to recover  
15 the natural consequences of that breach, or are they  
16 somehow limited from their recovery? MCI here has asked  
17 that in the event of the breach of a contract in a material  
18 fashion, MCI recover whatever direct damages it can prove;  
19 and as well, in the event the contract is breached  
20 intentionally or willfully or grossly negligently or if  
21 there are repeated breaches of material provisions, that  
22 MCI can recover as well its lost revenues and profits.

23 GTE for its part has said, well, that is not a  
24 normal recovery permitted in commercial transactions. And  
25 while we agree, we think the circumstances here are so very

1 different that MCI should be permitted to recover those  
2 damages in the event there are repeated breaches of  
3 material provisions of the agreement. What are those  
4 material provisions?

5           There are really three things we are here to get,  
6 interconnection so we can reach GTE's customers and they  
7 can reach ours, resale of services so it can provide  
8 services on a ubiquitous basis initially, and network  
9 elements so that we could create our own services. If GTE  
10 fails to provide any of those three elements, we will be  
11 unable to provide service to customers, and GTE will be  
12 able to retain those customers during that period and  
13 perhaps longer because the benefits of competition will not  
14 appear very effective to potential customers.

15           While GTE retains those customers, it retains the  
16 revenues and profits from those customers; we don't get  
17 those. And what is worse, in an ordinary contract damages  
18 situation, a party who is unable to get performance from  
19 its vendor can go out in the open market and procure  
20 covered services and cover itself in the market. MCI can't  
21 do that here. There are no covered damages available to  
22 MCI because there is no one else MCI can turn to in GTE  
23 territory for interconnection to reach its customers, for  
24 resale, or for network elements. GTE is the sole supplier  
25 of the essential services, and we would be left effectively

1 without any remedy at all if the only remedy the contract  
2 permits us is the normal covered damages remedy. That is  
3 why we asked to push that normal limitation aside here and  
4 be able to prove up our consequential damages in the event  
5 there are repeated breaches of any of the material  
6 provisions of the agreement.

7           Also here, unlike the normal circumstance, GTE  
8 knows what our damages would be in the event of a breach.  
9 They know what the revenues are going to be from the  
10 customers that we will not be able to take. So to us,  
11 public policy, the public policy here behind the  
12 procompetitive -- the procompetitive policy of the act here  
13 and the actions of the Florida Public Service Commission, I  
14 think -- we think require that we be allowed to seek our  
15 consequential damages. That ends my summary.

16           MR. MELSON: The witness is available for cross.

17           CHAIRMAN CLARK: Mr. Hatch.

18           MR. HATCH: No questions.

19           CHAIRMAN CLARK: Mr. Gillman.

20           MR. GILLMAN: Thank you, Chairman Clark.

21                           CROSS EXAMINATION

22 BY MR. GILLMAN:

23           Q     Good afternoon, Mr. Inkellis. In your summary  
24 you stated that it was -- limitation liability provisions  
25 were normal in other commercial transactions. Isn't it

1 also fair to say that those sort of limitations are normal  
2 in the regulated environment as well for telephone  
3 companies?

4 A Yes.

5 Q And it's not unusual for such limitations of  
6 liability provisions to appear in company tariffs?

7 A No, it is not.

8 Q And in fact, MCI has a similar limitation of  
9 liability in their tariffs?

10 A Yes, it does.

11 Q Okay. Now when -- I think in your testimony, and  
12 I don't know if I have the exact cite, but I think you'll  
13 agree with me that -- I mean do you consider a failure to  
14 perform or a breach to occur when the company fails to meet  
15 a standard set forth in the agreement?

16 A That would be a breach, yes.

17 Q Are you familiar with any of the sort of  
18 standards that are being proposed for interconnection?

19 A Yes, I am.

20 Q Do you know what the standard is, say, for  
21 blocking calls?

22 A No, I'm not familiar at that level of detail, no.

23 Q Subject to check, I'd just ask you to assume that  
24 the -- Let me back up. There are also -- It is not  
25 uncommon, is it, for public service commissions in this

1 state as well as throughout the country to establish  
2 service standards?

3 A I can't testify to my own knowledge about that,  
4 but if you ask me to assume that, I will.

5 Q Okay. Assuming that such service standards  
6 exist, would it be MCI's position that it would not  
7 negotiate any service level that would be lower than that  
8 service standard?

9 A You mean would MCI be -- If the question is  
10 would MCI be willing to accept an inferior service standard  
11 to one mandated by a state commission, no, MCI would not be  
12 willing to do so.

13 Q And those service standards of course were  
14 developed under rate of return sort of regulation, were  
15 they not?

16 A I don't know.

17 Q I'm going to ask you to assume and subject to  
18 check that, just for the purpose of the questions, that the  
19 blocking standard in Florida as I believe is .005, such  
20 that in order to maintain adequate service there couldn't  
21 be blocking situations for 99.5% of the calls. Do you  
22 understand what I'm talking about?

23 A Well, I do know -- I understand blocking  
24 standards. A blocking standard to me of .005 is not the  
25 same as how you just described it.

1 Q Well, isn't .005 I guess the same as .5%?

2 A As I understand blocking standards, a blocking  
3 standard of .005 would mean no greater than half a percent  
4 of calls are blocked during the busy hour.

5 Q Okay. Now if GTE, you know, just misses that  
6 standard for one hour and one day over one year due to its  
7 inadvertence, would you consider that a failure to perform  
8 under the contract?

9 A Yes.

10 Q And would you consider that a material failure to  
11 perform?

12 A A single failure during the year, no, I don't  
13 think so.

14 Q What about two failures?

15 A Probably not.

16 Q Would you not consider that a repeated breach?

17 A I would consider that a repeated breach, yes.

18 Q And, but it would not be a repeated breach of a  
19 material obligation?

20 A Probably not under those circumstances you  
21 describe.

22 Q And aren't what you're really trying to get at is  
23 the standpoint that GTE would miss those standards not by a  
24 little bit and not one or two times a year but on a  
25 consistent basis for an extended period of time?

1           A     I'm not certain that's exactly how I would phrase  
2 it, no.

3           Q     In your opinion, does it matter whether the  
4 failure to meet the standard is caused by inadvertence of  
5 the company or by its intentional acts?

6           A     Well, here is the problem, if I may answer that,  
7 the problem is it will be virtually impossible for us to  
8 prove willful breaches of contracts, I think everybody  
9 knows that. It's very hard to prove even reckless breaches  
10 of contracts. But a pattern of negligent failures in a  
11 situation like we have here, where new entrants trying to  
12 enter a monopolous market begins to look like it's  
13 intentional after a while, and what we are trying to  
14 establish here is a standard that will permit the trier of  
15 fact and adjudicator to allow us to recover reasonable  
16 damages when we might not be able to prove intentional or  
17 reckless breach but it sure looks like that.

18          Q     What you're trying to protect yourself against  
19 though, aren't you, is not GTE's inadvertence but a course  
20 of action that shows GTE's intent to do harm to MCI?

21          A     No, we are trying to do more than that. That is  
22 a minimal standard. GTE has already agreed that we can  
23 recover consequential damages where we can show intent, and of  
24 course it would be against public policy, I believe, for  
25 GTE to try to have denied us that and so GTE did not.

1           Q     So back to my example of where there were two  
2 failures to meet the standards, completely, unintentional  
3 and inadvertent, and it had no harm to any, to MCI or to  
4 MCI's customers. In that situation, you would not consider  
5 that to be a breach of a material obligation?

6           A     Well, let's back up for a second. There wouldn't  
7 be any -- under the circumstances you describe it, MCI  
8 wouldn't have any damages, would it? So there would be no  
9 reason for the liability limitation to kick in. But let's  
10 suppose there were to completely answer your question, I  
11 think it would be for the trier of fact, if we were to make  
12 such a claim, to determine whether the blocking standard in  
13 that case and a failure to meet it constituted a material  
14 breach of a material provision of the agreement.

15                     The problem here is definitional. We can't  
16 precisely define every single point that would give us  
17 cause to seek consequential damages. And in fact, it would  
18 be affirmatively bad if we did. If we were to do that, GTE  
19 employees would know exactly how far they could go in  
20 degrading service before we could take action.

21           Q     Except, Mr. Inkellis, under my scenario, if we  
22 failed to meet the standards on two occasions and it  
23 doesn't cause any damages, and then on the third occasion  
24 three years later and it causes damage of significant  
25 magnitude to MCI, then wouldn't you be entitled to recover



1 under the language as you've proposed it?

2           A     We could make a claim I suppose, and we would  
3 then go through a dispute resolution process where  
4 eventually we would get to a neutral party, an arbitrator,  
5 this Commission or a judge who would make a determination  
6 as to whether that was a reasonable claim under those  
7 provisions.

8           Q     And you wouldn't be taking the position then  
9 before that judge or arbitrator that GTE had in fact  
10 breached the agreement on three different occasions?

11          A     Perhaps we would. I'm just not certain we would  
12 make that claim that you've raised.

13          Q     I'm going to read you a definition from the  
14 Black's Law Dictionary. "The distinction between ordinary  
15 negligence and gross negligence is that the former lies in  
16 the field of inadvertence and the latter in the field of  
17 actual or constructive intent to harm or to injure." And  
18 it's your testimony here that GTE should be held liable for  
19 consequential damages under both of those, negligence as  
20 well as gross negligence?

21          A     It seems to me it is irrelevant whether GTE has  
22 broken its promises here because it intended to do so or  
23 because it just made a mistake. We are paying for the  
24 services that are supposed to allow us to interconnect;  
25 and if GTE negligently fails to you allow us to, we are

1 damaged just the same as if GTE intentionally did so.

2 Q Except that in many of what you are calling  
3 breaches in the agreement there may not be any harm  
4 whatsoever because of the -- even though the blocking  
5 standard may not be met, MCI may not incur any damages?

6 A In which case we might not have a damages claim  
7 under these provisions.

8 Q Except for the third breach where you do have a  
9 damage claim; is that correct?

10 A Is that a question?

11 Q Yes.

12 A I'm sorry.

13 Q Except for the third breach where you would have  
14 a damage claim under this provision?

15 A I'm sorry, I didn't follow the question.

16 Q Drawing your attention to -- we may get back to  
17 that point -- to page 6 of your testimony, specifically  
18 line 16 to 18, MCI believes that repeated breaches of  
19 material terms is tantamount to intentional or grossly  
20 negligent breach, and is that what MCI is trying to get at,  
21 grossly negligent breach or actions that are tantamount to  
22 intentional or grossly negligent breach, or are they trying  
23 to impose liability for consequential damages on, for  
24 purely inadvertent acts?

25 A What we are trying to do is ensure that in the

1 event we cannot interconnect with customers, get resold  
2 service or network elements in compliance with the terms of  
3 the agreements, we are trying to ensure that there are  
4 reasonable and adequate incentives for GTE to perform, one  
5 of which would be a risk on the part of GTE that it might  
6 have to pay us our consequential damages as a result of the  
7 breach. Absent those kinds of incentives, there are no  
8 incentives here for GTE to perform adequately. In fact,  
9 every incentive here is just the opposite. GTE is not like  
10 another vendor in the market place voluntarily selling  
11 these services. It's only selling them to us because it is  
12 required to.

13 Q Any incentives would not apply to inadvertent  
14 failures in the network, would it?

15 A An inadvertent failure? Such as what?

16 Q Well, where for whatever reason maybe GTE would  
17 not meet the blocking standards that are set forth in the  
18 agreement on one day for one hour that just so happens to  
19 cause damage to MCI or to one of their customers?

20 A I'm still not certain I'm following the  
21 question. If you are asking me should MCI be able to seek  
22 consequential damages for an inadvertent single failure of  
23 the network, probably not, but I think that issue goes to  
24 materiality of the breach.

25 Q But aren't you saying that the materiality

1 doesn't depend on the breach but on the consequences that  
2 it causes?

3 A No.

4 Q So with respect to the blocking standards, what  
5 would you consider a material breach?

6 A Well, this is your opinion here, but I would  
7 think that if we saw a regular pattern of failure to meet  
8 blocking standards or if the standard was missed by a  
9 substantial amount on several occasions and we felt that we  
10 were being damaged in the market place, losing the ability  
11 to get and keep customers, then we might seek to make -- we  
12 might make a claim under this provision. The concern we  
13 have is that we will end up with degraded quality standards  
14 that will enable GTE to advertise in a market place that  
15 has superior quality to new market entrants, and we need to  
16 ensure that that can't happen.

17 Q So then would you agree to revise the language  
18 such that the limitation of liability would go away upon a  
19 showing of a regular pattern of failures to --

20 A Well, I don't know that it's appropriate to  
21 negotiate the provision here from the stand, but we would  
22 be willing to consider alternative formulations that get us  
23 to the same place, yes, we would.

24 Q And the same place, is it not, is to try to get  
25 at those acts that are taken by GTE to intentionally harm

1 MCI?

2 A No, it has to be more than that I think because  
3 intent is just so hard to prove. Look, the problem is  
4 going to be that GTE engineers aren't going to get promoted  
5 for helping us become a better competitor, and they will  
6 have motivation to do their jobs maybe a little more  
7 sloppily than they should. It will be impossible, not  
8 impossible, but very difficult to prove that up in a case.  
9 We need to go beyond that I believe.

10 Q Are you familiar with 2-way trunks?

11 A I'm familiar with the concept, yes.

12 Q So traffic is going back both and forth by GTE?

13 A Yes.

14 Q When a blockage that effects both companies,  
15 doesn't it?

16 A I don't -- That I'm not -- I wouldn't know  
17 that.

18 Q Okay. Well, assuming that's true, then wouldn't  
19 GTE have an equal incentive to keep its network up to  
20 satisfy its own customers?

21 A Probably in that case.

22 Q And that would be true with any sort of  
23 interconnection arrangement, wouldn't it? I mean it works  
24 both ways, that's the standard for interconnection?

25 A No, actually I don't think so on reflection. For

1 the new entrant who has no market share, GTE doesn't really  
2 care much if its customers can't interconnect with those  
3 customers, so two-way blockage wouldn't be all that  
4 important to GTE, but it could be very important to the new  
5 entrant. That could change over time, but certainly early  
6 on I don't see that the incentives are equalized there.

7 Q If GTE accepts this expanded liability, and I  
8 mean expanded, expanded from what's presently in its  
9 tariff, shouldn't GTE be able to take all precautions  
10 necessary to protect its network?

11 A I'm not sure what you mean.

12 Q If GTE takes on this expanded liability,  
13 shouldn't GTE be able to take all precautions necessary to  
14 preclude network outages that would subject itself to a  
15 suit by MCI?

16 A I think that GTE should take reasonable  
17 precautions to ensure that it has network reliability, yes.

18 Q And would those reasonable precautions include  
19 requiring national standards to be implemented before GTE  
20 allows interconnection to, say, its AIN data base?

21 A I don't think so.

22 Q You don't think so?

23 A No.

24 Q And why is that?

25 A Because I think the two parties can work out

1 reasonable standards and reasonable precautions so that  
2 there is network reliability. We don't have to wait years  
3 for network standards to be developed before we can  
4 interconnect.

5 Q Well, I mean nobody said it would be years, but  
6 is it not reasonable for GTE to ensure through network  
7 standards that its network doesn't go down?

8 A Well, yeah. Yes, it is reasonable for GTE to  
9 take reasonable precautions to assure that its network  
10 doesn't go down.

11 Q To the extent that GTE is accepting additional  
12 risk than that which is set forth in its tariff, and when  
13 I'm talking about additional risk, I'm talking about the  
14 risk of consequential damage liability for its inadvertent  
15 acts, shouldn't GTE be entitled to include the cost of that  
16 increased risk within its rates?

17 A Absolutely not in this case, sir, and the reason  
18 why is because to the extent that GTE fails to perform  
19 under this agreement, it will retain the revenues from the  
20 customers who don't switch over to competitive local  
21 exchange carriers. It will be more than adequately  
22 compensated for the risk.

23 Q Not on all inadvertent breaches that result in  
24 some sort of network glitch?

25 A I don't think those are the kinds of concerns we

1 have in general though.

2 Q I understand that. We may be saying the same  
3 thing, but what you've said is that these inadvertent  
4 breaches can result in liability to the company?

5 A What I've said is a pattern of inadvertent  
6 breaches that cause us harm could give rise to a claim by  
7 us, yes.

8 Q Except the language that you're proposing, and I  
9 agree I don't want to negotiate it here, only refers to  
10 repeated breaches; it doesn't refer to any sort of pattern  
11 or course of conduct designed to injure MCI, does it?

12 A Well, I think the intention of the language about  
13 intent in that provision does go to pattern of conduct  
14 designed to harm MCI, but as I have indicated in my  
15 testimony and here today and in my rebuttal testimony, we  
16 need to go beyond that, I believe, to adequately protect  
17 new entrants.

18 Q You're going beyond that to get at the  
19 unintentional network glitches that may occur and do occur  
20 on a routine basis?

21 A We are going beyond that to get to things that we  
22 might not be able to prove were intentional but might sure  
23 look like it.

24 Q So then you're not trying to get at those acts  
25 which do not at least appear to be intentional?



1           A     Well, I think that if there are unintentional  
2 repeated breaches of material provisions of the  
3 interconnection agreement, we ought to be able to recover  
4 our consequential damages, the natural consequence of those  
5 breaches. GTE ought to ensure that it does not allow that  
6 to happen.

7           Q     Do you have a definition of repeated?

8           A     Well, certainly it means more than once.

9           Q     Is that your definition?

10          A     Well, as I said earlier, if we try to define it  
11 in terms of numbers, 3, 4, 5, 6, 10, 15, 20, we would be  
12 telling GTE employees exactly how many times they could  
13 breach it before consequences would result; that is not an  
14 appropriate.

15          Q     Okay. So your answer then, it could be just more  
16 than one?

17          A     Yes, my answer then is it could be more than one.

18               MR. GILLMAN: No further questions.

19                               CROSS EXAMINATION

20 BY MS. CANZANO:

21          Q     Good afternoon, Mr. Inkellis. I'm Donna Conzano  
22 appearing on behalf of the Commission staff, and  
23 Mr. Gillman asked some questions I was interested in, and  
24 I'm going to follow up on some of those. On page 4 of your  
25 testimony, lines 7 through 9 you highlighted a phrase of

1 your proposed contractual language contested by GTE. Could  
2 you read that out loud, please?

3 A 7 through 9. "Death or damage to tangible  
4 property or with respect to the indemnifying party's  
5 indemnification obligations under this agreement."

6 Q And that language is similar to the proposed  
7 language on lines 19 through 20 on that same page; is that  
8 correct?

9 A Yes, it is.

10 Q In your opinion does this language protect MCI  
11 against consequential damages from a single breach of minor  
12 contract provisions?

13 A No. May I explain that provision?

14 Q Yes.

15 A The lines 7 through 9, the "or with respect to  
16 the indemnifying party's indemnification obligations under  
17 this agreement," is to ensure that we don't face a defense  
18 in a claim where we are claiming under the indemnification  
19 provision that GTE should not be responsible for a third  
20 party's consequential damages. Let me give an example. If  
21 we have a customer who is harmed by GTE's action and their  
22 harm is consequential damages, MCI is sued by the customer  
23 and we face a consequential damages claim, we would seek  
24 indemnification from GTE. We don't want GTE to say, sorry,  
25 we are not liable here for those consequential damages,

1 tough luck MCI. And so we propose to insert that  
2 language. It might not even be necessary to have that  
3 language there, but we wanted to surface the issue, and it  
4 certainly did.

5 Q Does GTE contest that language?

6 A They have so far.

7 Q Why do you think they contest that language?

8 A I'm not certain why. I think -- except to the  
9 extent that I think they want to limit their liability to  
10 the maximum extent that they can.

11 Q Would MCI be willing to withdraw that language  
12 from its proposal?

13 A If I thought that we were otherwise protected  
14 under the provisions of the agreement so that that language  
15 was not necessary, yes, we would be willing to withdraw  
16 that.

17 Q What does MCI mean by "minor contract  
18 provisions?" Specifically, in your testimony on page 10,  
19 line 14, if you read the sentence starting on line 12.

20 A Yeah, "MCI's proposed language affords protection  
21 to GTE that is above what it would have under general  
22 contract law since there is no liability for consequential  
23 damages from a single breach or from breach of minor  
24 contract provisions but only for damages from repeated  
25 breaches of its material obligations."

1           Well, I hate to waffle here, I'm going to say it  
2 is very difficult to define minor under the circumstances,  
3 versus material. It's almost -- it depends on the facts  
4 and circumstances, but certainly any provisions of the  
5 agreement that might have a significant effect on our  
6 ability to provide service to customers or service of a  
7 quality standard that is industry standard would seem to me  
8 to be the material provisions of the agreement. Some other  
9 provision that might not have anything to do with customer  
10 facing activity or have a direct effect on our ability to  
11 serve customers, you know, something in a billing  
12 provision, back-office billing provision or something that  
13 didn't seem to have an impact on our service ability would,  
14 I would think, not be a material provision but be some kind  
15 of a minor provision.

16           Q     And what is MCI's position regarding minor  
17 contract provisions?

18           A     Our position is that if GTE intentionally  
19 breaches the contract or can be shown to have breached it  
20 through its gross negligence, then GTE's liability for our  
21 damages should not be limited; but if we can't show either  
22 intent or gross negligence with respect to minor contract  
23 breaches, then GTE's liability should be limited.

24           Q     Aren't there instances where GTE should not be  
25 held liable for breaches of certain contract provisions,

1 for example, if it's beyond its control?

2 A Well, there are force majeure provisions that  
3 cover issues beyond its control. And again, of course, we  
4 can't recover anything if we can't get an adjudicator to  
5 agree that it's an appropriate case for us to recover. But  
6 we can't get to first base if we don't have provisions that  
7 allow us to seek the damages.

8 Q You've mentioned Florida common law in your  
9 testimony; is that correct?

10 A I mentioned?

11 Q You just mentioned Florida common law.

12 A Yes, I did.

13 Q Why do you think that this Commission rather than  
14 the court is responsible for arbitrating this breach of  
15 contract issue?

16 A Well, I'm not certain that this Commission would  
17 be. I don't know what the dispute resolution provisions  
18 will be that we have in the agreement. I believe our  
19 proposed agreement suggests that disputes that can't be  
20 agreed between the parties be brought before the Commission  
21 for resolution.

22 Q Why do you think it's necessary that this  
23 Commission be responsible for the exact language in your  
24 contract?

25 A Well, here is the problem. We can't -- because

1 GTE is not a willing participant in this negotiation, they  
2 don't want to do this, we can propose good contract  
3 language all day, but unless they are told what their  
4 responsibility is with respect to agreement to the  
5 language, they won't agree to anything that they are not  
6 required to agree to; that is just the facts of this  
7 negotiation. So we need this Commission's help in  
8 negotiating language that will give us appropriate  
9 protections; otherwise, we will be left with a -- a  
10 so-called voluntary agreement that does not have reasonable  
11 protections for us under the circumstances, and that is why  
12 we seek the Commission's help in this.

13 Q And if the Commission decides not to even address  
14 the issue of breach of contract, does MCI have remedies if  
15 there is a breach of contract?

16 A Well, no, we wouldn't, because if GTE won't agree  
17 to a contract that does not limit their consequential  
18 damages, we can't get them to sign one and we can't get the  
19 services. If there were an -- if we had an agreement that  
20 had no consequential damages limitation. We would be  
21 satisfied, and we would be willing to live with Florida  
22 common law. What we have proposed is something that is  
23 actually better from GTE's perspective, we have proposed  
24 that there should be limits on consequential damage in  
25 spite of Florida's common law but that those limits should

1 be gotten through under certain circumstances, and we have  
2 tried to define the circumstances.

3           So we have tried to steer a course that is  
4 between the common law rule that would allow us full  
5 recovery of consequential damages for any breach and a  
6 commercial standard that would normally exclude  
7 consequential damages, and we recognize this is a different  
8 kind of arrangement, and we've tried to steer a course in  
9 between that would allow us to get consequential damages  
10 under some circumstances but not all.

11           MS. CANZANO: Staff has no further questions.

12           CHAIRMAN CLARK: Redirect.

13           MR. MELSON: Just a couple.

14                           REDIRECT EXAMINATION

15 BY MR. MELSON:

16           Q     Mr. Inkellis, you were asked by Mr. Gillman  
17 whether MCI would be willing to consider alternative  
18 formulations that addressed its concern about repeated  
19 breaches. To date has GTE proposed any alternative  
20 formulations to MCI?

21           A     Not to my knowledge.

22           Q     Mr. Gillman used examples of breach of a blocking  
23 standard to try to illustrate how this provision would  
24 work, let me use a different example. Let me use a due  
25 date for installation of interconnection circuits. Without

1 the language that you advocate, what would be GTE's  
2 responsibility if it repeatedly failed to meet installation  
3 dates for interconnection circuits?

4 A I don't think we would have any remedy under the  
5 contract. The normal cover damages remedy to seek that  
6 interconnection from a third party would be unavailable to  
7 us. We would not be able to do anything other than seek a  
8 Commission order enforcing the terms of the contract. In  
9 the meantime, we would have dissatisfied our customers and  
10 probably lost them.

11 Q And is that the type of situation that MCI is  
12 hoping to protect against with its proposed language?

13 A It is exactly.

14 Q And finally, is the liability provision that you  
15 have proposed reciprocal? And by that I mean does it  
16 impose the same -- does it impose liability on MCI for  
17 breaches to the same extent that it imposes liability on  
18 GTE for breaches?

19 A Yes, it does.

20 MR. MELSON: That's all I had.

21 CHAIRMAN CLARK: Thank you, Mr. Inkellis.

22 MR. MELSON: May Mr. Inkellis be excused?

23 CHAIRMAN CLARK: He may?

24 WITNESS INKELLIS: Thank you.

25 (Transcript follows in sequence in Volume 10)