

Exhibit D

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

)

In re:)

)

ALLEGIANCE TELECOM, INC., et al.,)

)

Debtors.)

)

Chapter 11 Case No. 03-13057 (RDD))

)

Deposition of JOHN NISHIMOTO held at the offices of Sidley Austin Brown & Wood LLP, 787 Seventh Avenue, New York, New York, on Tuesday, May 18, 2004, commencing at 12:56 p.m., before James W. Johnson, Registered Professional Reporter and a Notary Public of the State of New York.

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3 APPEARANCES:
4
5 AKIN GUMP STRAUSS HAUER & FELD LLP
6 Attorneys for the Official Committee
7 of Unsecured Creditors
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9 New York, New York 10022-2524
10 BY: COLIN M. ADAMS, ESQ.
11 BLOSSOM KAN, ESQ.
12 CHRISTOPHER T. SCHULTEN, ESQ.
13
14 SIDLEY AUSTIN BROWN & WOOD LLP
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16 787 Seventh Avenue
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18 BY: KIMBERLY A. JOHNS, ESQ.
19
20 TOGUT SEGAL & SEGAL LLP
21 Attorneys for the Debtor
22 One Penn Plaza
23 New York, New York 10119
24 BY: GERARD DI CONZA, ESQ.
25 JONATHAN HOOK, ESQ.

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1 Nishimoto
2 JOHN NISHIMOTO, called as a
3 witness, having been first duly sworn by a
4 Notary Public, was examined and testified
5 under oath as follows:
6 EXAMINATION BY MS. JOHNS:
7 Q. Mr. Nishimoto, did you do anything to
8 prepare for today's deposition?
9 A. No.
10 Q. Did you meet with your attorneys?
11 A. Yes.
12 Q. Did you review any documents?
13 A. No. Oh, by myself? Or with --
14 Q. By yourself.
15 A. Yes.
16 Q. What documents did you review?
17 A. Just some old e-mails.
18 Q. Did any of those e-mails refresh your
19 memory?
20 A. No, not really.
21 Q. What were those old e-mails with regard
22 to?
23 A. The contracts, the PRI and the
24 collocation contract with KMC.
25 Q. Did you review any deposition

Page 3

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2
3 IT IS HEREBY STIPULATED AND AGREED by
4 and between the attorneys for the respective
5 parties herein, that the filing and sealing of
6 the within deposition be waived.
7 IT IS FURTHER STIPULATED AND AGREED that
8 all objections, except as to the form of the
9 question, shall be reserved to the time of the
10 trial.
11 IT IS FURTHER STIPULATED AND AGREED that
12 the within deposition may be sworn to and
13 signed before any officer authorized to
14 administer an oath with the same force and
15 effect as if signed and sworn to before the
16 Court.
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23 - oOo -
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25

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1 Nishimoto
2 transcripts?
3 A. No.
4 Q. Would you please describe your education
5 starting after high school.
6 A. BSEE, electric science engineering. The
7 school too?
8 Q. Yes.
9 A. University of Virginia, and MBA from
10 Georgetown.
11 Q. And what year did you receive your MBA
12 from Georgetown?
13 A. '99.
14 Q. And your BSEE?
15 A. '85.
16 Q. When did you begin working at
17 Allegiance?
18 A. November 1999.
19 Q. What was your position?
20 A. In the carrier, in the wholesale group,
21 sales manager.
22 Q. What were your responsibilities as
23 wholesale sales manager?
24 A. To lead the regional sales team for
25 sales for carriers.

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1 Nishimoto
2 **Q. What types of products were involved?**
3 A. Primarily -- let's see, manage modem
4 dial Internet services, PRI, collocation. It's
5 primarily the major ones that --
6 **Q. Did your position at Allegiance change?**
7 A. Yes.
8 **Q. When did it change?**
9 A. In -- let's see, it probably changed
10 from regional sales manager to director -- this is
11 a guess -- in fall of 2000, and then in, at the end
12 of last year, 2003, to senior director.
13 **Q. What were your responsibilities as**
14 **director?**
15 A. Very similar to regional sales director,
16 it was leading the sales teams.
17 **Q. During the period of 2001 to 2002 who**
18 **did you report to?**
19 A. John Dumbleton.
20 **Q. Anyone else?**
21 A. I directly reported to John Dumbleton.
22 I worked with other folks, other people, but he was
23 my direct supervisor.
24 **Q. In the same timeframe, 2001 to 2002, who**
25 **directly reported to you?**

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1 Nishimoto
2 A. CLIC, global exchange carrier.
3 **Q. And what does that mean?**
4 A. Local services, local dial services.
5 **Q. Are you familiar with KMC?**
6 A. Yes.
7 **Q. When did you first become familiar with**
8 **them?**
9 A. Probably August 2001.
10 **Q. And how did you become familiar with**
11 **them?**
12 A. I don't remember how I was introduced to
13 them, but it was within the context of being a
14 supplier for the Genuity opportunity.
15 **Q. What was the Genuity opportunity?**
16 A. To provide managed modem support
17 services.
18 **Q. In 2001 did KMC and Allegiance begin**
19 **discussions regarding a potential business**
20 **relationship?**
21 A. Yes.
22 **Q. And what was the subject of those**
23 **discussions? What was the nature of the business**
24 **relationship?**
25 A. Oh. As a supplier. KMC would be a

Page 7

1 Nishimoto
2 A. Let's see. William Henderson, sales
3 engineer; Rick Williams, sales account manager;
4 Paul Connolly, account manager; Michelle Mason,
5 sales account manager; and Frank Caligiuri and
6 Cheryl Jones. Cheryl Jones is a program manager.
7 **Q. During this 2001/2002 time period did**
8 **Peter Swenson report to you?**
9 A. He, he didn't report under me, but I
10 directed his activities.
11 **Q. Did Jeff Feinberg report to you at the**
12 **time?**
13 A. No.
14 **Q. Did you report to him at all?**
15 A. I, it's kind of like my relationship
16 with Peter. He helped, he directed a lot of my
17 daily activities, but I did, I still was under John
18 Dumbleton's group.
19 **Q. What daily activities did Jeff Feinberg**
20 **direct?**
21 A. During that time period it was mainly
22 the installation activities. We managed the
23 Genuity/KMC installations.
24 **Q. In 2001 to 2002 what was the business of**
25 **Allegiance?**

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1 Nishimoto
2 supplier to Allegiance.
3 **Q. A supplier of what?**
4 A. Primarily PRI services.
5 **Q. When did those discussions begin?**
6 A. Either in September or October of 2001,
7 I think.
8 **Q. Who initiated the discussions?**
9 A. Who specifically at KMC? Or who --
10 **Q. Yes, who specifically initiated?**
11 A. Chris Menier. I believe he contacted
12 Allegiance on a sales call.
13 **Q. Who at Allegiance did Chris Menier**
14 **contact?**
15 A. I believe initially it was John
16 Dumbleton.
17 **Q. What was your involvement in the**
18 **discussions with KMC?**
19 A. I was primarily, I was involved in the
20 negotiating team primarily from a technical and
21 operational viewpoint.
22 **Q. Who else from Allegiance was involved in**
23 **the negotiations?**
24 A. John. Jeff Feinberg. Those are the
25 primary ones.

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1 Nishimoto
2 MR. DI CONZA: I'm going to ask the
3 witness not to speculate. If you don't
4 recall --
5 A. That's the three that I can recall, John
6 myself and Jeff.
7 Q. Who from KMC was involved in
8 negotiations?
9 A. Kevin Bittner, Chris Menier, Constance
10 Loosemore, Ken Jones, and their outside counsel.
11 Q. Why was Allegiance in discussions with
12 KMC for a potential business relationship?
13 A. To provide services --
14 MR. DI CONZA: Objection to the form.
15 You can answer.
16 THE WITNESS: I'm sorry?
17 MR. DI CONZA: You can answer that if
18 you know.
19 A. To provide services where we didn't.
20 Q. I'm sorry, can you read that one again.
21 A. To provide services where we don't
22 cover.
23 Q. Were the discussions with KMC a direct
24 result of Allegiance's business relationship with
25 Genuity?

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1 Nishimoto
2 determining what initial pricing to request?
3 A. It was more reactive.
4 Q. Could you describe for me how the price
5 term under the PRI agreement changed during the
6 negotiations with KMC.
7 A. I really wasn't involved too much in the
8 price negotiations.
9 Q. Who handles the price negotiations?
10 A. Jeff Feinberg.
11 Q. Were you aware of a price per port
12 threshold that Allegiance needed to meet?
13 When was the subject of collocation
14 first discussed between Allegiance and KMC?
15 A. I can't recall exactly when it was -- it
16 became part of the negotiations and I can't
17 remember exactly.
18 Q. At what price did Allegiance initially
19 propose providing collocation space to KMC?
20 A. I don't remember what the pricing
21 proposal was for collocation.
22 Q. Does Allegiance have standard
23 collocation pricing?
24 A. Yes.
25 Q. What is that standard pricing?

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1 Nishimoto
2 A. Yes.
3 Q. Who was in charge of the Allegiance
4 relationship with Genuity?
5 A. I don't think it would be one person.
6 MR. DI CONZA: To the extent you don't
7 know --
8 Q. What was your involvement in the
9 Allegiance relationship with Genuity?
10 A. Coordinating the technical and
11 operational aspects of network buildout.
12 Q. What were the initial terms of the PRI
13 services that were discussed between Allegiance and
14 KMC?
15 A. What do you mean by "initial terms?"
16 Q. At the onset of discussions regarding
17 PRI services, did Allegiance request certain
18 pricing from KMC?
19 A. Yes.
20 Q. And what was that initial pricing?
21 A. I don't remember.
22 Q. Who was responsible for determining that
23 initial pricing?
24 A. KMC.
25 Q. Who was responsible at Allegiance for

Page 13

1 Nishimoto
2 A. I don't -- actually, I don't know what
3 the rate is.
4 Q. During the 2001/2002 time period did
5 Peter Swenson have authority to offer collocation
6 prices?
7 A. I don't know.
8 Q. During this time period did you need to
9 approve collocation pricing?
10 A. No.
11 MS. KAN: Can the witness just speak up
12 a little bit.
13 THE WITNESS: Sure.
14 Q. During that time period did anyone need
15 to approve collocation pricing?
16 A. I don't know what that process was.
17 Q. Were you involved in the negotiation of
18 collocation pricing with KMC?
19 A. I was in attendance. I wouldn't say I
20 was involved.
21 Q. What do you mean you were in attendance?
22 A. I didn't drive the pricing part; I drove
23 more the technical, operational pieces.
24 Q. Who drove the pricing part?
25 A. That would have been Jeff.

1 Nishimoto
 2 **Q. Were you a part of in-person meetings**
 3 **where collocation pricing was negotiated?**
 4 A. Yes.
 5 **Q. What was the substance of those**
 6 **discussions relating to collocation pricing?**
 7 A. What the ultimate price would be for the
 8 services.
 9 **Q. And what was the ultimate price?**
 10 A. It was, ended up being split for
 11 Genuity-related services and non-Genuity-related
 12 services.
 13 **Q. What was it for non-Genuity?**
 14 A. I don't remember the exact dollar
 15 figure.
 16 **Q. How did the non-Genuity prices relate to**
 17 **Allegiance's standard co-lo prices?**
 18 A. I believe it was kind of based on the
 19 five-year term.
 20 **Q. So you think it was the same as**
 21 **Allegiance's standard pricing for five-year?**
 22 A. That would be a guess. I don't know.
 23 It would be a guess. I couldn't say definitely.
 24 It would be equal to five-year pricing.
 25 **Q. And what was the pricing for Genuity-**

1 Nishimoto
 2 **Q. What was the substance of that**
 3 **discussion?**
 4 A. What was, you know, what was the actual
 5 price to KMC for the services. He said it would be
 6 zero.
 7 **Q. Did you ask him why?**
 8 A. Yes.
 9 **Q. And what did he say?**
 10 A. I don't remember.
 11 MR. DI CONZA: To the extent you don't
 12 recall, if you don't recall you don't have to
 13 answer.
 14 A. Yeah, I don't remember exactly what he
 15 said.
 16 **Q. What did he say in substance?**
 17 A. I'd be guessing. I think -- I really
 18 don't remember.
 19 **Q. Did he tell you it related to pricing on**
 20 **the PRI agreement?**
 21 A. I'm sorry?
 22 **Q. Did he tell you that it related to**
 23 **pricing under the PRI agreement?**
 24 A. Not that I recall. I don't remember a
 25 direct --

1 Nishimoto
 2 **related services?**
 3 A. For the cabinets they were zero dollars.
 4 **Q. Were these prices the collocation prices**
 5 **that were initially discussed between the parties?**
 6 A. No.
 7 **Q. How did they compare to the prices that**
 8 **were initially discussed?**
 9 A. I don't remember the, the dollar figure,
 10 but there was a charge for Genuity-related
 11 collocation services.
 12 **Q. When did the price for Genuity-related**
 13 **services change?**
 14 A. I don't remember exactly. I couldn't
 15 tell you.
 16 **Q. Do you remember Generally when they**
 17 **were?**
 18 A. Towards the end of the negotiations.
 19 **Q. Why did it change to nothing for the**
 20 **Genuity-related services?**
 21 A. I don't know.
 22 **Q. Did you ever discuss with anyone from**
 23 **Allegiance why KMC was to be charged nothing for**
 24 **space related to Genuity services?**
 25 A. Yes, with Jeff Feinberg.

1 Nishimoto
 2 **Q. Was there anyone else present when you**
 3 **had this conversation with Jeff Feinberg?**
 4 A. No.
 5 **Q. Where did this discussion take place?**
 6 A. I don't remember where we were at the
 7 time.
 8 **Q. Was it in person?**
 9 A. Yes.
 10 (Telephone interruption.)
 11 (Mr. Schulten entered the room.)
 12 (Record read.)
 13 **Q. Approximately when did this discussion**
 14 **take place?**
 15 MR. DI CONZA: I believe that was asked
 16 and answered.
 17 A. It's toward the end of the negotiations.
 18 **Q. Did you have any discussions with anyone**
 19 **else at Allegiance about the fact that KMC was to**
 20 **be provided collocation space for free with respect**
 21 **to Genuity-related services?**
 22 A. Probably not. I was really
 23 concentrating more on the technical aspects, less
 24 so the business aspects.
 25 **Q. Did Allegiance ask for a new design with**

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1 Nishimoto
 2 respect to PRI services in February of 2002?
 3 A. A new design?
 4 Q. Was there anything about the PRI
 5 services that Allegiance required from KMC that
 6 changed in February of 2002?
 7 A. Nothing about the design itself of
 8 services. Schedule of implementation was
 9 discussed.
 10 Q. What changed with respect to the
 11 schedule of implementation?
 12 MR. DI CONZA: Objection to form. I
 13 don't believe he testified that there was a
 14 change in the schedule.
 15 THE WITNESS: No.
 16 Q. What about the schedule of
 17 implementation did you discuss?
 18 A. When to deliver certain markets.
 19 Q. Would this schedule of implementation
 20 increase costs to KMC?
 21 A. Only for their network expense that
 22 would be used earlier than later.
 23 Q. Did you have any discussions with KMC in
 24 February 2002 relating to increased capital
 25 expenses?

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1 Nishimoto
 2 the terms of the document?
 3 A. Yes.
 4 Q. What was your involvement?
 5 A. Concentrating on the technical and
 6 operational aspects.
 7 Q. Were you involved in the revisions of
 8 this document?
 9 A. Yes.
 10 Q. What revisions were you involved in?
 11 A. All of them.
 12 Q. Are there – let me start over.
 13 Did you provide comments on any
 14 provision of this document?
 15 A. Yes.
 16 Q. What provisions did you provide comments
 17 on?
 18 A. Typically it would be the, anything to
 19 do with a technical aspect or an operational aspect
 20 of service.
 21 Q. Who drafted the PRI agreement?
 22 A. A committee.
 23 MR. DI CONZA: To the extent you recall.
 24 A. I'm trying to remember where initially
 25 it came from. I know that Allegiance and our team

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1 Nishimoto
 2 A. No, not that I can remember.
 3 Q. Did you have any conversations with KMC
 4 in February 2002 regarding extra cross-connects
 5 that would be required under the PRI?
 6 A. Yes.
 7 Q. What did you discuss?
 8 A. Their requirements for cross-connects
 9 and estimated quantity.
 10 Q. And was the number of cross-connects
 11 increased?
 12 A. No, it correlates to the services they
 13 provide.
 14 Q. I'm going to show you what's been marked
 15 KMC 1. You can take a look at that document and
 16 tell me what it is.
 17 A. The PRI interface services agreement.
 18 Q. Are you familiar with the terms of that
 19 agreement?
 20 A. Yes.
 21 Q. Have you read that agreement before?
 22 A. Yes.
 23 Q. When did you read it?
 24 A. During the negotiations.
 25 Q. Were you involved in the negotiation of

Page 21

1 Nishimoto
 2 had, I believe, created the framework for us.
 3 Q. Do you recall anyone in particular?
 4 A. It would be myself, Randall Hand, Jeff
 5 Feinberg, John Dumbleton, our outside counsel and
 6 Mark Trebnowski.
 7 Q. What was the purpose of the PRI
 8 agreement?
 9 A. To provide PRI services for KMC to
 10 provide PRI services.
 11 Q. I'm going to hand you what's been marked
 12 KMC Exhibit 3.
 13 A. Okay.
 14 Q. If you can, take a look at that and tell
 15 me what that is.
 16 A. The collocation agreement.
 17 Q. Are you familiar with the terms of this
 18 agreement?
 19 A. Yes.
 20 Q. Have you read this agreement before?
 21 A. Yes.
 22 Q. When have you read it?
 23 A. Definitely during the negotiations.
 24 Q. Were you involved in the negotiation of
 25 the terms of the document?

1 Nishimoto
 2 A. Yes.
 3 Q. What was your involvement?
 4 A. Primarily the technical and operational
 5 aspects of the service.
 6 Q. Were you involved in the revision of the
 7 document?
 8 A. Yes.
 9 Q. What, what provisions of the document
 10 did you provide comments to, if any?
 11 A. Anything to do with operational part of
 12 the agreement.
 13 Q. Who drafted the co-lo agreement?
 14 A. This is based on a standard Allegiance
 15 agreement, so I don't know who drafted it.
 16 Q. Did Allegiance have more than one type
 17 of standard collocation agreement?
 18 A. Not that I'm aware of.
 19 (KMC Exhibit 5, E-Mail dated January 22,
 20 2002 from John Nishimoto to Christopher
 21 Menier, with Attachments, Bates Stamped KMC
 22 000768-771, marked for identification.)
 23 Q. Do you recognize KMC Exhibit 5?
 24 A. Yes.
 25 Q. And is this an e-mail that you sent to

1 Nishimoto
 2 A. She would have. I think this is this
 3 one.
 4 (KMC Exhibit 6, E-Mail dated January 22,
 5 2002 from John Nishimoto to Kate Demro and
 6 Randall Hand, with Attachments, marked for
 7 identification.)
 8 Q. If you can, tell me if you recognize KMC
 9 Exhibit 6.
 10 A. Yes, I do.
 11 Q. And what is that?
 12 A. It's an e-mail, e-mail correspondence.
 13 Q. And by the top e-mail you request Kaete
 14 to send you a copy of the standard co-lo agreement
 15 because KMC is a vendor?
 16 A. I'm sorry?
 17 MS. JOHNS: Could you read the question.
 18 (Record read.)
 19 MR. DI CONZA: Objection as to the form
 20 of that question.
 21 Q. Do you understand the question?
 22 MR. DI CONZA: Do you understand the
 23 question?
 24 THE WITNESS: No.
 25 A. Can you rephrase it.

1 Nishimoto
 2 Chris Menier of KMC?
 3 A. Yes. Yes.
 4 Q. And the attachment to the e-mail?
 5 A. Mm hmm.
 6 Q. Was this the first draft of the
 7 collocation agreement that was sent to KMC?
 8 A. I'm trying to remember if, if we had a
 9 different agreement or not before this, because it
 10 says, "We've really simplified this agreement."
 11 MR. DI CONZA: To the extent you recall.
 12 I don't want the witness to be speculating.
 13 THE WITNESS: Okay.
 14 A. I don't know if this was the first
 15 draft.
 16 Q. The attachment to the e-mail is based on
 17 a standard agreement of Allegiance's?
 18 A. Yes.
 19 Q. I'm probably going to pronounce this
 20 name incorrectly, so I apologize now. Kaete Demro?
 21 A. Kaete Demro, yes.
 22 Q. Who is Kaete Demro?
 23 A. She works in our legal department.
 24 Q. Did she provide you with a standard
 25 collocation agreement to be provided to KMC?

1 Nishimoto
 2 Q. In the second e-mail Kaete asks you if
 3 the co-lo arrangement is being done because KMC is
 4 a vendor?
 5 A. Yes.
 6 Q. And "It will be easier for us to order
 7 services for them if they're collocated with us,"
 8 correct?
 9 A. Yes.
 10 Q. And in your response you say yes,
 11 correct?
 12 A. Yes. That's correct.
 13 Q. And you also ask her to forward to you
 14 the alternate agreement, correct?
 15 A. Yes.
 16 Q. That alternate agreement being the
 17 Allegiance standard co-lo agreement, correct?
 18 A. Yes.
 19 Q. Going back to KMC Exhibit 3, the co-lo
 20 agreement.
 21 A. Mm hmm?
 22 Q. What was the purpose of this agreement?
 23 A. Allegiance would be providing
 24 collocation space to KMC.
 25 Q. Why was Allegiance going to provide

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1 Nishimoto
 2 collocation space to KMC?
 3 A. So that KMC could locate their
 4 equipment, collocate their equipment in our
 5 facilities.
 6 Q. Why was it necessary for KMC to
 7 collocate in Allegiance's facilities?
 8 A. Initially to provide services to
 9 Genuity, for us to provide services to Genuity.
 10 Q. Were you aware that KMC would not
 11 execute the PRI agreement without a collocation
 12 agreement?
 13 A. I don't remember that specifically.
 14 Q. Did anyone from KMC ever tell you that
 15 KMC would only execute both documents at the same
 16 time?
 17 MR. DI CONZA: Counsel, that's been
 18 asked and answered. He doesn't remember.
 19 A. I don't remember specifically, no.
 20 Q. What do you remember generally?
 21 A. I don't remember those conversations.
 22 (Recess taken.)
 23 (KMC Exhibit 7, E-Mail dated May 28,
 24 2003 from John Nishimoto to Kaete Demro and
 25 Randall Hand, with Attachments, marked for

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1 Nishimoto
 2 identification.)
 3 Q. If you can, take a look at that document
 4 and tell me if you recognize it.
 5 A. Yes.
 6 Q. And what is it?
 7 A. It looks like an e-mail distributing the
 8 final, final copies of the collocation agreement.
 9 Q. And you received this e-mail?
 10 A. Apparently so, yes.
 11 Q. If you'll read the last sentence of the
 12 e-mail from Mikhael Vitenson.
 13 A. Okay.
 14 Q. Does reading this e-mail refresh your
 15 recollection that KMC told you that they would not
 16 execute the PRI agreement without the co-lo
 17 agreement?
 18 A. No, not really. I mean, I see what it
 19 says, but at the time I don't recall it being an
 20 issue.
 21 (KMC Exhibit 8, E-Mail dated February 7,
 22 2002 from Mikhael Vitenson, with Attachments,
 23 Bates Stamped KMC 000339-340, marked for
 24 identification.)
 25 Q. After you've had a chance to look at KMC

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1 Nishimoto
 2 Exhibit 8, if you will, tell me what that is.
 3 A. This is an e-mail correspondence from
 4 KMC, Allegiance and Piper Rudnick.
 5 Q. And did you receive this e-mail?
 6 A. I'm on here, so yes.
 7 Q. If you'll read the last sentence of the
 8 e-mail from Mikhael Vitenson.
 9 A. "We should be ready to execute both the
 10 service agreement and the collocation agreement at
 11 the same time."
 12 Q. Does this e-mail refresh your
 13 recollection that KMC told you that it would not
 14 execute the PRI agreement without the collocation
 15 agreement?
 16 MR. DI CONZA: Objection to form.
 17 A. Yeah, just like the other one, I, I
 18 don't remember it being an issue.
 19 Q. Would Allegiance have entered into the
 20 collocation agreement with KMC without the PRI
 21 agreement?
 22 MR. DI CONZA: Objection. It calls for
 23 speculation.
 24 Q. You can answer the question.
 25 MR. DI CONZA: To the best of your

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1 Nishimoto
 2 knowledge.
 3 A. Would we have entered into, would we
 4 have entered into a collocation agreement with them
 5 without the PRI? Yes, that's -- it would be
 6 basically hypothetical, depending on what else they
 7 would want to do.
 8 Q. Would Allegiance have entered into the
 9 collocation agreement with KMC without any other
 10 business with KMC?
 11 MR. DI CONZA: Objection. Again calls
 12 for speculation.
 13 A. Typically we don't enter into
 14 collocation agreements without other telecom
 15 services.
 16 Q. Would the collocation agreement without
 17 the PRI agreement have been profitable for
 18 Allegiance?
 19 A. Yes.
 20 Q. How?
 21 A. If they had purchased other services
 22 from us in addition to the collocation they would
 23 be paying for.
 24 Q. Would the collocation agreement without
 25 the PRI agreement have been profitable for

1 Nishimoto
 2 Allegiance if KMC had not purchased other services?
 3 A. If they would pay for the collocation
 4 services, then yes.
 5 Q. Under the collocation agreement
 6 Allegiance was to provide collocation space to KMC
 7 at no cost, correct?
 8 A. For Genuity-related services only, but
 9 for all others they were paid.
 10 Q. Was KMC required to use Allegiance
 11 collocation space to service third parties?
 12 A. Required? No.
 13 Q. If you'll turn to Exhibit A to the
 14 collocation agreement.
 15 A. Mm hmm?
 16 Q. Are you familiar with this exhibit?
 17 A. Yes.
 18 Q. Earlier we talked about pricing under
 19 the collocation agreement for services to not -
 20 non-Genuity services.
 21 A. Mm hmm.
 22 Q. Are those prices reflected in the chart
 23 underneath paragraph two?
 24 A. Yes.
 25 Q. How did these prices compare to

1 Nishimoto
 2 let me read through it. Okay.
 3 Q. Is this an e-mail that you sent to Chris
 4 Menier?
 5 A. Apparently so, yes.
 6 Q. And the pricing that you refer to in
 7 that e-mail, is that the pricing in Exhibit C to
 8 the collocation agreement?
 9 A. Yes, for the racks, yes.
 10 Q. And you refer to that pricing in your
 11 e-mail is better than 50%?
 12 A. If so, the pricing in the addendum is
 13 better than 50%, yes.
 14 Q. Has Allegiance ever sent an invoice to
 15 KMC under the collocation agreement with respect to
 16 third parties?
 17 A. I don't know.
 18 Q. Are you aware if KMC provides service to
 19 third parties from equipment in Allegiance
 20 collocation space?
 21 A. I could only assume so. I don't know.
 22 Q. Have you had any discussions with anyone
 23 at Allegiance regarding whether or not KMC uses
 24 Allegiance collocation space to service third
 25 parties?

1 Nishimoto
 2 Allegiance's standard co-lo pricing?
 3 A. I believe the power and the cross-
 4 connects are standard, are the standard pricing.
 5 Q. How about the monthly recurring charges?
 6 A. That depends on the deal, and, and
 7 there's a pretty wide range of what the monthly
 8 recurring costs, charges for collocation would be
 9 for any particular customer.
 10 (Record read.)
 11 Q. Are these monthly recurring charges 50%
 12 of Allegiance's standard collocation pricing?
 13 A. I don't know what the standard is. It
 14 would be a guess.
 15 Q. Have you ever told anyone that the
 16 prices reflected in the chart on Exhibit C was 50%?
 17 A. Possibly. I don't, I don't remember.
 18 (KMC Exhibit 9, E-Mail dated January 30,
 19 2002 from John Nishimoto to Christopher
 20 Menier, with Attachments, Bates Stamped KMC
 21 006128-131, marked for identification.)
 22 A. Okay.
 23 Q. If you'll look at KMC Exhibit 9, tell me
 24 if you recognize this document.
 25 A. I don't remember it specifically, but

1 Nishimoto
 2 A. Yes.
 3 Q. Who have you had conversations with?
 4 A. John Dumbleton, Mark Trebnowski. John
 5 Lafleur, operations.
 6 Q. Anyone else?
 7 A. Not that I can recall.
 8 Q. What did you discuss with Mr. Dumbleton?
 9 A. Wondering if they did in fact, were in
 10 fact using the space for other non-Genuity
 11 business.
 12 Q. When did you have that conversation?
 13 A. Fall of last year, summer of last year,
 14 fall of last year.
 15 Q. What prompted that conversation?
 16 A. John asked me if I knew.
 17 Q. Who is John Lafleur?
 18 A. He's in operations. Director of
 19 operations quality, I think, is his title.
 20 Q. What conversations did you have with
 21 him?
 22 A. Asked him if he knew if they were using
 23 the space for other non-Genuity services.
 24 Q. What did he say?
 25 A. We don't have any visibility into their

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1 Nishimoto
 2 network, so we can't, we can't tell.
 3 **Q. When did you have this conversation with**
 4 **him?**
 5 A. It was the same time period John asked
 6 me, so then I asked -- John Dumbleton asked me, so
 7 then I asked John Lafleur, and then I'm sure I
 8 replied back to Dumbleton with what Lafleur had
 9 said.
 10 **Q. Did you have any conversations with**
 11 **anyone outside of Allegiance?**
 12 A. Yeah, I've asked folks at KMC, and they
 13 basically said they'll get back to me.
 14 **Q. Has Allegiance ever entered into a**
 15 **collocation agreement where it agreed to provide**
 16 **collocation space at no cost?**
 17 A. I don't know.
 18 **Q. Have you ever referred to the**
 19 **collocation contract as part of the overall network**
 20 **services contract with KMC?**
 21 A. I don't -- no, I don't think so. I
 22 don't know.
 23 (KMC Exhibit 10, E-Mails, marked for
 24 identification.)
 25 **Q. At the beginning of the deposition you**

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1 Nishimoto
 2 A. Mm hmm. Mm hmm.
 3 **Q. Is that an e-mail you wrote?**
 4 A. Apparently so, yes. It's contradicted
 5 here or else, let's see, "If you recall, the KMC
 6 collocation contract is separate from the Services
 7 Contract," so -- the one to the operations guys is
 8 really from an operational point of view.
 9 **Q. Are you familiar with KMC's motion for**
 10 **an order determining that the infrastructure**
 11 **interconnection agreement is integrated with the**
 12 **primary rate interface services agreement?**
 13 A. I'm not familiar with it, but I've heard
 14 it exists.
 15 **Q. Have you read it?**
 16 A. No.
 17 **Q. Have you read the affidavit of Constance**
 18 **Loosemore submitted in connection with that motion?**
 19 A. No.
 20 **Q. Have you read the objection of**
 21 **Allegiance and the creditors' committee in**
 22 **opposition to that motion?**
 23 A. No.
 24 (Discussion off the record.)
 25 MS. JOHNS: I have no further questions.

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1 Nishimoto
 2 mentioned that you reviewed some old e-mails that
 3 you forwarded?
 4 A. Yes.
 5 **Q. Are these those e-mails?**
 6 A. Not all of these, no.
 7 **Q. These are some of the e-mails you**
 8 **forwarded?**
 9 A. I don't think so, actually. I don't
 10 think I had these still saved. I think these must
 11 have come from somebody else. I recognize this, I
 12 think, on the -- gosh, I don't know what page it
 13 is. It's, the e-mail is between Robert Williams, a
 14 copy to Gary Kemp and Andy Blusiewicz. These are
 15 all the operations guys. I do recognize this one.
 16 **Q. If you'd go to what is the 13th page in**
 17 **from the front.**
 18 A. Yes. Okay.
 19 **Q. Near the, just below halfway down the**
 20 **page, an e-mail from you to Peter Swenson and**
 21 **Andrew Blusiewicz.**
 22 A. Okay.
 23 **Q. Where you wrote, "We have a collocation**
 24 **contract as part of the overall network services**
 25 **contract," do you see that?**

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1 Nishimoto
 2 MR. DI CONZA: Great.
 3 (Time noted: 3:17 p.m.)
 4
 5
 6
 7
 8 Sworn and subscribed to
 9 before me this ____ day
 10 of _____ 2004.
 11
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 13 _____
 14 NOTARY PUBLIC
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CERTIFICATE

STATE OF NEW YORK)
ss
COUNTY OF NEW YORK)

I, JAMES W. JOHNSON, a Registered Professional Reporter and Notary Public within and for the State of New York, do hereby certify:

That JOHN NISHIMOTO, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF I have hereunto set my hand this 18th day of May 2004.

JAMES W. JOHNSON
Registration #01J05000925
Commission Expires 9/4/2006

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