

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3	WASHINGTON UTILITIES AND)	
	TRANSPORTATION COMMISSION,)	
4)	
	Complainant,)	Hearing No. UT-911488
5)	
	vs.)	UT-911490
6)	
	US WEST COMMUNICATIONS,)	UT-920252
7)	VOLUME XII
	Respondent.)	PAGES 1132 - 1171
8	-----)	

9 A hearing in the above matter was held on
10 February 10, 1993 at 2:20 p.m., at 1300 South
11 Evergreen Park Drive Southwest, Olympia, Washington,
12 before Chairman SHARON L. NELSON, Commissioners
13 RICHARD D. CASAD and A.J. "Bud" PARDINI and
14 Administrative Law Judge HEATHER BALLASH.

15 The parties were present as follows:

16 WASHINGTON UTILITIES AND TRANSPORTATION
17 COMMISSION, SALLY G. BROWN, Assistant Attorney
18 General, 1400 South Evergreen Park Drive Southwest,
Olympia, Washington 98504.

19 US WEST COMMUNICATIONS by EDWARD T. SHAW,
20 Attorney at Law, 1600 Bell Plaza, Room 3206,
Seattle, Washington 98191.

21 METRONET SERVICES CORPORATION
22 by BROOKS E. HARLOW, Attorney at Law, 4400 Two Union
Square, Seattle, Washington 98101.

23 TRACER AND TCA, STEPHEN J. KENNEDY, Attorney
24 at Law, 1201 Third Avenue, Suite 2850, Seattle,
Washington 98101.

25 Cheryl Macdonald, RPR, CSR

1 FOR THE PUBLIC, CHARLES F. ADAMS, Assistant
Attorney General, 900 Fourth Avenue, Suite 2000,
2 Seattle, Washington

3 DEPARTMENT OF INFORMATION SERVICES, by
GEOFFREY G. JONES, Assistant Attorney General, 7th
4 Floor Highways-Licenses Building, Box 40100, Olympia,
Washington 98504.

5 ENHANCED TELEMAGEMENT INC., by GREGORY A.
6 LUDVIGSEN, Attorney at Law, 706 Second Avenue South,
Suite 500, Minneapolis, Minnesota 55402.

7 DIGITAL DIRECT, by GREGORY J. KOPTA,
8 Attorney at Law, 2600 Century Square, 1501 Fourth
Avenue, Seattle, Washington 98101.

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1134

	I N D E X					
	WITNESS	D	C	RD	RC	EX
2	GENE BIER	1137	1142	1168		1162
			1152			
3	EXHIBITS	MARKED	ADMITTED			
	T-104	1137	1142			
4	105	1137	1142			
	106	1137	1142			
5	107	1137	1142			
	108	1137	1142			

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P R O C E E D I N G S

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JUDGE BALLASH: Let's be on the record.

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The hearing will please come to order. This is a

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continuation in Commission Docket No. UT-9211488, et

6

al. Today's date is February 10, 1993. As we are

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short a few counsel from yesterday, I would like each

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counsel to state their name and who they are

9

representing for the record so we know who is here

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today beginning with Mr. Shaw.

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MR. SHAW: Edward Shaw representing US West

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Communications.

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JUDGE BALLASH: Commission staff.

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MS. BROWN: Sally Brown, assistant attorney

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general.

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JUDGE BALLASH: Public counsel.

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MR. GARLING: William Garling of Public

18

Counsel.

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MR. HARLOW: Brooks Harlow representing

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MetroNet Services Corporation and also representing

21

MCI Telecommunications Company.

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JUDGE BALLASH: Mr. Ludvigsen.

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MR. LUDVIGSEN: Gregory Ludvigsen

24 representing Enhanced TeleManagement Incorporated.

25 JUDGE BALLASH: Before we went on the

1136

1 record, Counsel had advised the Commission that there
2 will be some deletions from Mr. Bier's testimony, is
3 that correct and also Mr. Patterson will not be
4 appearing.

5 MR. LUDVIGSEN: Yes. As we told the
6 Commission on Monday, we have reached an agreement on
7 the ACT issue. As a result, Mr. Mason, a portion of
8 his testimony which was struck will remain struck.
9 Mr. Patterson will not be appearing and his testimony
10 will not be introduced and we will be striking the
11 reference in Mr. Bier's testimony to the ACT issue.

12 JUDGE BALLASH: On that basis Mr.
13 Patterson's prefiled testimony is withdrawn?

14 MR. LUDVIGSEN: Yes.

15 JUDGE BALLASH: I will note for the record
16 that at the last set of hearings we did admit
17 Mr. Bier's initial testimony and exhibit as Exhibits
18 T-58 and 59 for the record. Your witness,
19 Mr. Ludvigsen.

20 MR. LUDVIGSEN: At this time, I will call
21 Mr. Gene Bier to the witness stand.

22 Whereupon,

23 GENE BIER,

24 having been first duly sworn, was called as a
25 witness herein and was examined and testified as follows:

1137

1 MR. LUDVIGSEN: Take a few moments at this
2 time to describe his testimony. Do you want
3 additional copies of the old?

4 JUDGE BALLASH: No.

5 MR. LUDVIGSEN: Commission has theirs?

6 CHAIRMAN NELSON: Yes.

7 MR. LUDVIGSEN: There are some minor
8 corrections that Mr. Bier will be making. For the
9 convenience of the Commission and the staff I would
10 hand out the pages which are a little harder to follow
11 and he will read off some additional ones.

12 JUDGE BALLASH: The rebuttal testimony of
13 Gene A. Bier will be marked as Exhibit T-104 for
14 identification. Mr. Bier's GAB-4 will be marked as
15 Exhibit 105 for identification. GAB-5 will be marked
16 as Exhibit No. 106 for identification. GAB-6 will be
17 marked as Exhibit 107 for identification. GAB-7 will
18 be marked as Exhibit No. 108 for identification.

19 (Marked Exhibit Nos. T-104, 105 through
20 108.)

21

22 DIRECT EXAMINATION

23 BY MR. LUDVIGSEN:

24 Q. Would you please state your name for the
25 record?

(BIER - DIRECT BY LUDVIGSEN)

1138

1 A. Gene A. Bier.

2 Q. What is your address?

3 A. 2820 Holly Lane, Plymouth, Minnesota.

4 Q. Did you cause to be prepared direct
5 testimony which is before you and identified as
6 Exhibit T-58 and Exhibit 59 and then T-104 and
7 Exhibits 105 through 108?

8 A. I did.

9 Q. Do you have any corrections or changes you
10 wish to make to that prefiled testimony?

11 A. I do.

12 Q. What are those corrections and changes?

13 A. Page 6, line 7, there's a parentheses that
14 says 1FB or 1FH, cross out "or 1FH."

15 JUDGE BALLASH: Are we on the direct or the
16 rebuttal?

17 MR. LUDVIGSEN: Sorry, we're on the direct.
18 This is T-58. That was the piece of paper that I
19 handed out.

20 A. On line 11 of that same page, says Exhibit
21 44. It should be Exhibit 30.

22 On line 13 of that same page, once again
23 crossing out "and 1FH." At the end of line 14 crossing

24 out "and 1FH." And the same correction in line 16
25 after 1FB crossing out "and 1FH."

(BIER - DIRECT BY LUDVIGSEN)

1139

1 On page 16 of the same testimony, on line 7
2 it says Exhibit 44, that should be Exhibit 30. At the
3 end of line 11, once again crossing out "or 1FH." And
4 on page 18 which was not handed out to you of that
5 same testimony, line 6, it refers to a nine people
6 employed in Washington. That should now be 12.
7 That's it.

8 Q. In addition to those corrections and
9 changes as a result of the agreement between ETI and
10 US West regarding the ACT question, would you agree
11 that we could strike No. 1 on page 19, lines 11 and
12 12?

13 MR. GARLING: Is this rebuttal?

14 MR. LUDVIGSEN: No, this is the same
15 testimony. I will go through this testimony first.

16 Q. Page 19, lines 11 and 12.

17 A. Are you asking would I do that?

18 Q. Yeah.

19 A. Yes.

20 Q. On No. 1?

21 A. Yes.

22 Q. Furthermore, on page 19 -- starting on page
23 19, line 18 through page 21, line 10, would you agree

24 that should be struck as a result of the ACT
25 settlement?

(BIER - DIRECT BY LUDVIGSEN)

1140

1 A. Yes.

2 MR. HARLOW: Line 10 or line 11?

3 MR. LUDVIGSEN: Line 10. Page 19, line 18.

4 Q. Continuing to page 21, line 10, and finally
5 page 26, lines 16 through 18?

6 A. Yes.

7 Q. Now referring to Exhibit T-104, which is
8 your rebuttal testimony, do you have any corrections
9 or changes on that? Just the date in front?

10 A. Yes, sir. The date should be 1993 instead
11 of 1992.

12 Q. And in addition as a result of the
13 settlement with US West of the ACT issue, should we be
14 striking the reference on page 10, lines 3 and 4?

15 JUDGE BALLASH: Again, is that item No. 1,
16 Counsel?

17 MR. LUDVIGSEN: This is item T-104 and item
18 No. 1, yes.

19 A. Item No. 1 on lines 3 and 4, yes.

20 Q. With those corrections and changes to your
21 testimony, if I were to ask you the same questions
22 contained -- that are contained in your testimony
23 today, would you give the same answers?

24 A. I would.

25 MR. LUDVIGSEN: I hereby offer Exhibits

(BIER - DIRECT BY LUDVIGSEN) 1141

1 T-58, Exhibit 59, Exhibit T-104 and Exhibits 105
2 through 108.

3 JUDGE BALLASH: I will note for the record
4 that Exhibits T-58 and 59 have previously been
5 admitted into the record. The changes stated by
6 counsel and the witness will be so noted for the
7 record.

8 MR. LUDVIGSEN: Thank you.

9 JUDGE BALLASH: Any objection to the
10 admission of Exhibits T-104 and 105 through 108?

11 MR. SHAW: One observation, not so much an
12 objection. Leave it up to the bench. I believe that
13 Exhibit T-105 has already been admitted in the context
14 of the MetroNet cross-examination of the company's
15 witnesses so we have two identical exhibits.

16 MR. LUDVIGSEN: I don't believe that these
17 are identical, your Honor. The earlier one referred
18 to MetroNet. This particular exhibit is addressed
19 directly to Enhanced TeleManagement Incorporated.

20 MR. SHAW: On that basis there is no issue,
21 then.

22 JUDGE BALLASH: Any other comments or
23 objections?

24 Exhibits T-104 and 105 through 108 will be
25 admitted into the record.

(BIER - DIRECT BY LUDVIGSEN) 1142

1 MR. LUDVIGSEN: Mr. Bier is available for
2 cross-examination.

3 JUDGE BALLASH: I don't believe you've
4 asked the witness his name and his business address
5 for the record.

6 MR. LUDVIGSEN: Yes, I did, at the
7 beginning.

8 JUDGE BALLASH: Mr. Shaw.

9 (Admitted Exhibits T-104 and 105 through
10 108.)

11

12 CROSS-EXAMINATION

13 BY MR. SHAW:

14 Q. Mr. Bier, as I understand it, you're not an
15 employee of ETI currently; is that correct?

16 A. I am currently a vice chairman of board. I
17 act in a consulting role with him, although I am paid
18 from the payroll currently.

19 Q. You receive a paycheck from ETI?

20 A. I do.

21 Q. As vice chairman?

22 A. Yes, as vice chairman and for consulting
23 work.

24 Q. Directing your attention to T-58, your
25 direct testimony, page 4, line 14, you refer to the

(BIER - CROSS BY SHAW)

1143

1 state of Minnesota, and I presume you mean you refer
2 to the state of Washington?

3 A. Yes.

4 Q. On page 5, line 23 you make the statement
5 that the average ETI customer has approximately six
6 telephone lines. Do you see that?

7 A. Yes, I do.

8 Q. In your rebuttal testimony you have a
9 statement to the effect that you believe that through
10 stimulation your customers take more lines than they
11 would if they bought directly from US West on page 8
12 of your rebuttal testimony, page 106; is that correct?

13 A. If I can look it up here. Yes.

14 Q. Do you have any data on how many telephone
15 lines your average customer had from US West before
16 you displaced US West service and converted the
17 customers to your service?

18 A. I do not have any data, no, I do not.

19 Q. Is it your belief that the customers of US
20 West take more telephone lines than -- from you, ETI,
21 than they would have from US West?

22 A. According to Dr. Zepp that is the case, and
23 I have no reason to disbelieve that.

24 Q. So, then, the average size of ETI customer
25 in Washington would be something less than six lines

(BIER - CROSS BY SHAW)

1144

1 if served by US West?

2 A. I don't know. I would have to make that
3 calculation. I think you could generally say that.

4 Q. When an ETI customer signs up with ETI, do
5 they look to ETI for their local telephone service?

6 A. They look for ETI to be their provider.

7 Q. You also resell long distance telephone
8 service in the state of Washington, do you not?

9 A. Yes, we do.

10 Q. Do you resell US West intraLATA toll?

11 A. I really don't know.

12 Q. Do you know what company's intraLATA you
13 sell?

14 A. I'm assuming it's US West but I really
15 don't know.

16 Q. How about interLATA toll, what company do
17 you resell?

18 A. Sprint.

19 Q. Exclusively?

20 A. I think so.

21 Q. You don't do any least cost routing to a
22 variety of long distance carrier, then I take it?

23 A. What we sell is Sprint. Whatever is

24 provided through features we provide would be the
25 customer's selection.

(BIER - CROSS BY SHAW)

1145

1 Q. Page 6 of your direct testimony at line 4
2 and 5 you talk about Centrex being a service that
3 switches long distance telecommunications. By that I
4 don't take it you mean that Centrex provides any long
5 distance service in any way, do you?

6 A. No. I mean it provides access.

7 Q. A customer of US West for Centrex if it
8 wished to make a long distance call would simply dial
9 a long distance number or a carrier code of their
10 selected carrier, would they not, and it would switch
11 through the network just like any other customer's
12 long distance call?

13 A. As far as I know.

14 Q. But when ETI provides long distance service
15 for its customers that customer will always get
16 SPRINT? If it signs up for your service?

17 A. I don't know that they would always get
18 SPRINT. If they had a feature that routed it
19 elsewhere, like least cost or whatever.

20 Q. Line 9 of your testimony you talk about
21 intercom calling and I take it by that reference you
22 mean that Centrex provides intercom calling between
23 the stations that the customer has from you?

24 A. It means, yes, that the service can be used
25 as a local intercom, yes.

(BIER - CROSS BY SHAW)

1146

1 Q. Service can be used as a local intercom
2 between --

3 A. Station users.

4 Q. Between all of your customers on the same
5 Centrex common block?

6 A. I don't know about the common block. I
7 think of it in terms of a customer.

8 Q. Just internal to one customer?

9 A. Yes.

10 Q. Not all customers of ETI are on the same
11 common block?

12 A. That is correct.

13 Q. I would like to refer you to page 19 of
14 your direct testimony, T-58, where I believe you state
15 for the first time what you wish the Commission to do
16 in this case, is that correct, at lines 13 through 17?

17 A. That is correct.

18 Q. What is the difference between what's now
19 your second recommendation, requirement, that each new
20 location start pricing at the 120 line and the fourth
21 recommendation that be allowed to aggregate lines from
22 different locations?

23 A. There isn't a significant difference. In

24 fact, we considered at the time and in retrospect
25 could have at the time combined four and two, but I

(BIER - CROSS BY SHAW)

1147

1 will go ahead and tell you that number two in our view
2 relates pretty much directly to us as a provider and
3 number four relates to a potential Centrex customer
4 who orders their own service or gets it through
5 someone else.

6 Q. I'm not sure I understand that answer. Two
7 is simply you're complaining about the company's
8 proposal that if a Centrex customer of the company US
9 West has 20 lines at one location and 50 lines at
10 another location that they can't aggregate those two
11 locations to get a 70-line price. Isn't that the
12 issue on there, too?

13 A. That could be an issue under two; more so
14 we're thinking of the resale at that point that if
15 within a central office or common block, if you will,
16 that if we provide service for 20 stations then our
17 price from that point on, each additional location
18 would go down. In four, there's a requirement that
19 businesses who are separated, I think, by the term
20 public right-of-way -- whatever it means, it's across
21 a street or across an alley -- cannot aggregate those
22 stations to get the blind discounts in pricing and
23 there are a number of businesses to include government

24 and university that currently enjoyed an opportunity
25 today that ought to be able to continue to enjoy it

(BIER - CROSS BY SHAW)

1148

1 whether we provide the service or not.

2 Q. What's the difference between your use of
3 the word "new location" at lines 12 and 13 and the use
4 of the word "different locations" at line 16 and 17?

5 A. Well, I think each new location, the word
6 new was designed to suggest that these new locations
7 were in fact new customers and different locations
8 were within the same customer.

9 Q. Location is used the same way, a physical
10 building or premises; is that correct?

11 A. Yes.

12 Q. Turning to your rebuttal testimony, page
13 10, you have a different set of what I take to be
14 recommendations for the Commission which you state the
15 number four at line 8 as setting the discount level at
16 an unreasonably high level. Do you see that?

17 A. I do.

18 Q. What do you mean by that statement?

19 A. I think that would relate back to number
20 three on the direct. It would relate back to number
21 three on the direct. The significant discount level
22 starting at 50 as opposed to 21 -- 21 as opposed to
23 51.

24 Q. You want the significant discounts to start
25 at 20 lines and not at 50 lines?

(BIER - CROSS BY SHAW)

1149

1 A. Yes.

2 Q. And do you want them to be flat between
3 20 and 50?

4 A. Well, I think we could negotiate any number
5 of things on that.

6 Q. Well, the issue is what you're asking this
7 Commission to do. I take it you're not asking this
8 Commission along with the staff to reclassify this
9 service as a monopoly service; is that correct?

10 A. No, I don't believe I made that contention.

11 Q. And I take it that you're not recommending
12 that this Commission accept the staff's position that
13 there be no discounts except those that are cost-
14 justified?

15 A. All I am recommending here is what we
16 believe is best for ETI and our customers and we
17 believe that the discount levels ought to be at 21 as
18 opposed to 51, the significant discount levels.

19 Q. And you want the same discount levels that
20 US West is proposing at 20 lines?

21 A. Excuse me?

22 Q. Let me rephrase that. That wasn't a very
23 good question. You want the same discount levels that

24 US West is proposing at 50 lines to be available at 20
25 lines?

(BIER - CROSS BY SHAW)

1150

1 A. That would be ideal.

2 Q. And the reason that you want this is to
3 make your services more attractive to your customers,
4 correct?

5 A. Well, I think it makes Centrex overly or
6 whatever term you want to use -- if it's all right I
7 will use just use Centrex as the term for central
8 office-based services. I think it makes central
9 office-based services more attractive. I think it
10 could be cost-justified whether it's provided by us,
11 someone else or the customers themselves order it.

12 Q. Your testimony is that the discounts US
13 West is proposing and even further discounts are
14 cost-justified?

15 A. My testimony here is suggesting that, and
16 we're talking about my rebuttal testimony, page 10, is
17 suggesting that the impetus for changing the discount
18 levels is to accomplish the stated objective of US
19 West to eliminate resale and this is a step towards
20 that.

21 Q. Is it your testimony that if this
22 Commission accepts the Centrex Plus proposal in this
23 docket that ETI is going to go out of business?

24 A. It is not my testimony.

25 Q. Resell will exist and indeed thrive under
(BIER - CROSS BY SHAW)

1151

1 Centrex Plus, correct?

2 A. I cannot say that resell will thrive under
3 Centrex Plus. I don't think it will. My testimony
4 simply is, here in this case, to suggest that these
5 changes in my opinion are artificial and they're
6 designed to move towards the US West stated objective
7 of eliminating resellers.

8 Q. Is a customer with less than six lines
9 a candidate for PBX service?

10 A. They could be a candidate for PBX service.
11 Generally I wouldn't think that is a prime target
12 market. Certainly they could be.

13 Q. But it's not reasonable, is it, Mr. Bier,
14 to expect a firm that's so small that it only has less
15 than six lines to go out and buy a PBX?

16 A. Well, buying a PBX is one thing. Sharing a
17 PBX is another. A firm with less than six lines might
18 be an excellent candidate for shared tenant service.
19 A firm with less than six lines might be an excellent
20 candidate to associate with a parent company, and it
21 happens all the time, and more and more a firm with
22 six or less lines if in fact they anticipate growth or
23 have peculiar needs that are only satisfied by a PBX

24 can now buy some very reasonably refurbished PBXs at
25 10 to 20 cents on the dollar. So, I think it's not

(BIER - CROSS BY SHAW)

1152

1 unreasonable to say that that's an alternative for
2 some.

3 Q. So a small firm with less than six lines
4 could move into a shared tenant service provider
5 building, correct, and get telephone service from his
6 landlord?

7 A. Could either move into a building or it
8 could be that a provider would come to that building
9 and offer that service.

10 MR. SHAW: I have nothing further. Thank
11 you.

12 JUDGE BALLASH: Questions from Commission
13 staff.

14 MS. BROWN: We have no questions.

15 JUDGE BALLASH: Mr. Garling?

16 MR. GARLING: None.

17 JUDGE BALLASH: Mr. Harlow?

18 MR. HARLOW: Thank you.

19

20 CROSS-EXAMINATION

21 BY MR. HARLOW:

22 Q. Good afternoon, Mr. Bier. Like you to
23 first refer to your direct testimony T-58, I believe

24 it is. Pages 8 to 9 where you're talking about the
25 function of what ETI provides so on and so forth. Do

(BIER - CROSS BY HARLOW)

1153

1 you believe ETI provides value to its customers other
2 than the lower rates that they make available to
3 customers?

4 A. Yes, I do. I enumerate in the testimony
5 some of those. The consultation, the one stop
6 shopping, et cetera. If you go beyond that ETI
7 provides a service to its small customers in that it
8 represents -- through representing itself it
9 represents them in proceedings such as this. ETI also
10 provides almost 100 percent access for any calls
11 for any service needs, both of which I think are
12 significant values for the small customer.

13 Q. Mr. Bier, did you have an opportunity with
14 your counsel last night to look at the letters and
15 brochures MetroNet introduced as exhibits while Mr.
16 Mason was on the stand and those were -- I don't know
17 if you know them by number but for the record they
18 were Exhibits 80 through 83.

19 A. I do not know them by number. I remember
20 looking briefly at I think a letter from Mr. Schenk,
21 yes, and brochures.

22 Q. The thrust of those brochures was
23 consistent with what US West was doing in Minnesota

24 when you were with Northwestern Bell as reflected in
25 your testimony regarding promoting Centrex-type

(BIER - CROSS BY HARLOW)

1154

1 services?

2 A. Promoting Centrex-type services, yes, and
3 the distribution thereof, yes.

4 Q. Were the policies that you discuss in your
5 testimony, in your understanding, policies that
6 applied with regard to all three of the Bell operating
7 companies, in other words, Mountain Bell, Northwestern
8 Bell and Pacific Northwest Bell?

9 A. I cannot state that there was a written
10 policy that applied to all three companies. I can
11 tell you this, and that is that immediately after the
12 modified final judgment was issued the three -- there
13 was a chairman appointed for the three companies and
14 and immediately an organization called Trico was
15 established which was established under the leadership
16 of Andy Smith who was president of Pacific Northwest
17 Bell at the time. His objective was to bring the
18 three companies together, where can we have
19 efficiency, where can we share the staffs, and how is
20 it we develop uniform policies. So virtually
21 everything that happened beyond divestiture that was
22 significant, and the change in distribution would be
23 significant, was run through that kind of an

24 organization.

25 Q. Mr. Mason in his rebuttal testimony on

(BIER - CROSS BY HARLOW)

1155

1 behalf of US West addressed the supposed autonomy of
2 Pacific Northwest Bell. Do you know what level
3 Mr. Mason would have been with -- would have been at
4 with the companies at that time in 1984-'86?

5 A. To answer you directly, no, I do not know
6 what level he would have been. Reading the
7 description of his job as he described his duties from
8 1984 to 1986 I would assume that it would have been
9 a second or third level position, but I cannot --

10 Q. What was your level at that time, that same
11 time frame as the CEO of Northwestern Bell?

12 MR. SHAW: Objection. That misstates the
13 witness' testimony. He did not testify he was the CEO
14 of Northwestern Bell.

15 MR. HARLOW: I may have misstated.

16 Q. What were the CEO of?

17 A. Thank you, Mr. Shaw. I was not the CEO of
18 Northwestern Bell. I was the vice-president and CEO
19 for the state of Minnesota for Northwestern Bell.

20 Q. And what was your level at that time?

21 A. In numerical terms it would have been six.

22 Q. What's the highest level or what was the
23 highest level number with the company at that time?

24 A. Well, let's see. The president of
25 Northwestern Bell would have been a seven and when

(BIER - CROSS BY HARLOW)

1156

1 the US West was formed that would have made the
2 chairman of US West an eight in numerical terms.

3 Q. In this time period, 1984 to 1986, were
4 you involved in policy making for the three Bell
5 operating companies of US West?

6 A. In that time period I was involved in a
7 number of meetings where I had input into policies,
8 yes.

9 Q. And some of these policies were the ones
10 that are addressed in your direct testimony and your
11 rebuttal testimony?

12 A. I don't know in that particular time frame
13 if there are any policies stated in here. I would
14 have to review the testimony again.

15 Q. Are the policies discussed in the testimony
16 perhaps a little bit prior to that time frame, is that
17 what you're saying?

18 A. Actually, in talking about the
19 encouragement of resale and that sort of thing, even
20 though the formal entry of ETI, for example, into the
21 resale market was in April of 1984 the policies were
22 really established beginning in 1982 and through 1983.

23 Q. At page 5 of your testimony, you indicated

24 that you had -- ETI had 977 customers. Mr. Mason on
25 Monday testified that US West, US West customer

(BIER - CROSS BY HARLOW)

1157

1 service representatives at their BSC or business
2 services center, each had approximately 1250 customers
3 assigned to them. For comparison purposes, could you
4 please tell me how many customer service
5 representatives ETI has in Washington to serve its 977
6 customers?

7 A. Yes. Three in Seattle and one in Spokane,
8 Seattle serving Tacoma and Bellevue as well.

9 Q. Does ETI have a policy regarding premises
10 visits by its customer service representatives to its
11 customers?

12 A. The answer is, yes, it does, and that
13 policy depends on the size of the customer. For our
14 larger customers it's twice a year at least, every
15 customer at least once. Some of our customer service
16 representatives contact their customers virtually
17 monthly but there are minimums, as I stated.

18 Q. Do you know how this compares to US West's
19 customer services representatives premises visits?

20 A. I read something about it in Mr. Mason's
21 testimony. I did not compare it, however, to us.

22 Q. At page 15 of your testimony --

23 JUDGE BALLASH: State which testimony.

24 MR. HARLOW: Your T-58.

25 Q. Your T-58 lines 15 to 16 you talk about

(BIER - CROSS BY HARLOW)

1158

1 helping US West by reducing the number of repair
2 calls. Do you believe this has any effect on US West
3 costs compared to as if those customers were direct
4 customers ordering 1FB's from US West?

5 A. Yes. I believe that every call we field be
6 it a billing matter, a repair call, especially a
7 repair call, absolutely is one that US West doesn't
8 have to handle. Now, if in fact we need to call US
9 West as a result of a customer's call, then that
10 doesn't save US West the call. What it does, however,
11 is our people really know what they're talking about
12 and they can talk the lingo and the whole works. It's
13 a much quicker, more efficient report.

14 Q. Thank you. At page 22 of your testimony,
15 you recommend that the repricing starting from zero
16 when there's another location be eliminated and you
17 also recommend, as was reflected earlier on cross by
18 Mr. Shaw, that the greater discount be made available
19 of the 21-50 line level. Do you believe that US West
20 can implement these recommendations while still
21 maintaining the pricing alignment that US West says it
22 needs to be in compliance with the MFJ?

23 A. I don't think that compliance with the

24 MFJ is an issue at all. We had reason to go back and
25 visit with the Justice Department, myself and another

(BIER - CROSS BY HARLOW)

1159

1 attorney, in regard to another matter where US West
2 had claimed that they had written -- well, had claimed
3 and in fact they had written the Justice Department
4 asking if resale as it was constituted was something
5 that they approved of and the answer was yes. As far
6 as they were concerned if they were doing any
7 restrictions it was a state matter. This isn't merely
8 reading a letter. This is going back and spending two
9 hours in the Justice Department, so I think any
10 reference to the MFJ here is, in my experience,
11 designed for a purpose other than what it's stated to
12 be.

13 Q. Well, assume just for the sake of argument
14 that there is an MFJ concern. Could your
15 recommendation be implemented and US West's MFJ
16 concerns, could they still be addressed in the tariff?
17 Could US West still achieve this supposed pricing
18 alignment that they need?

19 A. Based on the information that I have I
20 absolutely -- there's just no question about it.

21 Q. Thank you. Now that apparently you've
22 resolved your differences between ETI and US West with
23 regard to automatic call transfer, does that in any

24 way significantly lessen the experience you've
25 expressed in your testimony about the effects of

(BIER - CROSS BY HARLOW)

1160

1 Centrex Plus on resellers and joint users?

2 A. If in fact that agreement is upheld and not
3 reneged upon by US West then it would remove a partial
4 concern. But until I see it actually consummated --

5 Q. Would it eliminate any concerns you have
6 about the pricing structure and the effect of that on
7 resellers and joint users?

8 A. Concerns two, three and four would remain.

9 Q. Thank you. Mr. Mason testified both in his
10 prefiled and in response to cross-examination
11 questions -- actually in redirect by Mr. Shaw that he
12 didn't feel that MetroNet and ETI were offering
13 advanced features to their customers. Do you agree
14 with that testimony?

15 A. Well, I think we offer features other than
16 are available on the 1FB. In our case an important
17 one is call accounting and that's one in which we have
18 found US West offering CDAR to not really meet our
19 customers' needs nor ours. So we offer it at
20 additional cost to ourselves really through our
21 carrier. So, yes.

22 Q. Your testimony indicates that ETI was
23 encouraged into the business of reselling of

24 Centrex-type services. Do you have any knowledge as
25 to why US West might have thought that to be

(BIER - CROSS BY HARLOW)

1161

1 beneficial overall to the company other than what's
2 indicated in your testimony?

3 MR. SHAW: Your Honor, I think I'm going to
4 object at this point. A little friendly cross is
5 always permissible but the way he's phrased the
6 question, anything that's in addition to your direct
7 testimony, so this is not cross-examination of his
8 direct.

9 JUDGE BALLASH: Mr. Harlow.

10 MR. HARLOW: Well, I am not aware of any
11 evidence rule against friendly cross. The test for
12 relevant evidence or, excuse me, permissible cross is
13 does it relate to the direct testimony and is it
14 designed to either elicit support for or to contradict
15 that testimony. Clearly this is. I've asked
16 specifically does he have any other examples to
17 bolster his testimony.

18 JUDGE BALLASH: I think in all fairness I
19 have to sustain the objection.

20 MR. HARLOW: You've kind of cut me off,
21 Judge. I won't compound the record. I think we have
22 a pretty good record here from Mr. Bier so I have no
23 further questions.

24 JUDGE BALLASH: Any questions from the
25 Commission?

(BIER - CROSS BY HARLOW)

1162

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2

E X A M I N A T I O N

3

BY COMMISSIONER CASAD:

4

Q. Afternoon, Mr. Bier.

5

A. Afternoon.

6

7

Q. I notice reading your testimony that you
were a long time employee of the Bell system and you
indicated you took early retirement in 1987 from
Northwestern Bell; is that correct?

10

A. Yes, sir.

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Q. I have been aware through other testimony
and through your testimony and through questioning of
you that US West encouraged the resale of its services
and I want to ask you, sir: You indicated that resale
policies were really shaped in 1982 and 1983 or
beginning to be shaped in 1982 and 1983. Did you
leave US West with the specific agreement or
understanding that you would enter the resale business
with ETI and resell US West services?

20

21

22

23

A. The question, Commissioner, is did I leave
with the understanding that US West, Northwestern
Bell as a part of US West specifically --

Q. Right. Did you leave US West with an

24 understanding with US West that you would begin the
25 resale of its services?

(BIER - EXAMINATION BY COMMISSIONER CASAD) 1163

1 A. Commissioner, if I understand your question
2 are you thinking that I left US West and went directly
3 to ETI?

4 Q. I'm not thinking at all. I'm trying to ask
5 a question to determine your situation. Did you have
6 an agreement with US West prior to leaving their
7 employment where you would, after you left their
8 employment, that you would resell their services?

9 A. I understand. Let me give a long answer,
10 fairly long answer to that question. The
11 encouragement of ETI to include Northwestern Bell
12 personnel appearing at potential investor meetings for
13 ETI, encouraging investors saying that in fact
14 Northwestern Bell, US West supported this, took place
15 really in 1983, some in 1982. I was still employed,
16 and I was in the marketing organization at the time.
17 It was people that worked for me at the time that
18 developed the guidelines for resell and that sort of
19 thing and began to enter into this ETI agreement. I
20 left that job in June of 1983. ETI actually started
21 the business in 1984. So resell had already been
22 taking place, customers were already in place when I
23 left in January of 1987. I never had any specific

24 dealings with ETI until late 1989 when the chairman of
25 the board asked me if I could help ETI improve their

(BIER - EXAMINATION BY COMMISSIONER CASAD) 1164

1 relationships with US West. I thought I could and I
2 was wrong. So --

3 Q. What did you do when you left US West in
4 January of 1987?

5 A. Commissioner, two other people and myself
6 formed a company in which we were going to put
7 together five companies that were related. We bought
8 one of them which was a small telemarketing company
9 and the linch pin of what we wanted to do was a
10 vending machine company. We bought the telemarketing
11 company and had verbal agreement to buy the vending
12 machine company. Well, we had two or three of those
13 verbal agreements. The long and the short of it is
14 that fell through and we subsequently sold the
15 telemarketing company. So then in late 1987 a company
16 called ELTRAX asked if I would run that company.

17 JUDGE BALLASH: Spell that for the record.

18 THE WITNESS: E L T R A X?

19 A. They market hospital admission systems and
20 digital imaging of x-rays. So I ran that company and
21 founded a new president.

22 Q. Are you aware of, during the time that
23 policies were being developed for the marketing of US

24 West services by resellers and others, were you aware
25 of any overt support from US West for the formation

(BIER - EXAMINATION BY COMMISSIONER CASAD) 1165

1 and/or establishment of those companies that were
2 going to resell?

3 A. Commissioner, yes. There are a number of
4 letters that were written that I was copied on which
5 talked about the overall benefits to US West of this
6 kind of activity and the need to expedite this and the
7 need to treat companies such as ETI as customers and
8 work closely with them and provide them assistance to
9 include writing letters to customers, introducing ETI
10 and saying this is a good deal. So, yes.

11 Q. Of which Mr. Schenk's letter would have
12 been an example?

13 A. Yes, sir. That would have been one
14 example.

15 Q. You indicate in your testimony that for
16 whatever reason US West had a change of heart and
17 rescinded its decision to market their services
18 through resellers. Were you involved in that decision
19 or did you have any knowledge of how that decision was
20 developed?

21 A. Commissioner, I have no direct knowledge.
22 I did not know at the time I left that anyone had
23 changed their mind on the overall benefit of

24 resellers. I had no direct knowledge of it. I have
25 subsequently thought about it, but I cannot speak from

(BIER - EXAMINATION BY COMMISSIONER CASAD) 1166

1 direct knowledge.

2 Q. What is your view as a pilot of your
3 thoughts of why it occurred?

4 A. Commissioner, having been at ETI and
5 reviewing ETI's history, I would say that I think ETI
6 had a part in this. I think that ETI thought that
7 they were a very significant customer of US West and
8 paid them millions of dollars each year and thought
9 that they ought to be treated perhaps better than they
10 actually deserved, and when that didn't happen I think
11 a lot of acrimony started. I also think in the case
12 of US West, I think a couple of things.

13 One, in the initial application by ETI it
14 was pointed out that the installation and maintenance
15 of ETI sales would be done by a subsidiary of US West
16 called Interline. So that was an unregulated
17 subsidiary that stood to benefit, get revenues, by the
18 activities of an ETI. Somewhere in the '86-'87 time
19 frame, as I recall, Interline kind of went under. So
20 that benefit, if it ever existed, and I don't know,
21 but it was an anticipated benefit as I viewed it, was
22 not going to be realized.

23 And the other reason is so simple it almost

24 sounds foolish, but US West is run by internal
25 measurements. And for someone to have small business

(BIER - EXAMINATION BY COMMISSIONER CASAD) 1167

1 responsibility they would be measured on the revenue
2 from 1FB's. It's quite likely someone else would
3 have revenue responsibility for Centrex. So the
4 person that had 1FB's would not want to see ETI
5 succeed in moving revenue from one category to
6 another. In fact, the primary architect as I would
7 determine of let's give it resell, in fact, was the
8 vice-president in charge of small business.

9 Q. Thank you.

10 COMMISSIONER PARDINI: I have none.

11 JUDGE BALLASH: Mr. Bier, you had indicated
12 in your last answer that employees' performance was
13 measured by revenues. Was it also measured by cost?

14 THE WITNESS: Your Honor, there were quite
15 a number of internal measurements and, yes, there were
16 measurements that did relate to cost, annual budgets
17 being one and productivity indexes being another. I
18 think, and in terms of assigning values to them, I
19 guess I can't right now. I am not there. I would
20 guess that revenue would be more important.

21 JUDGE BALLASH: Thank you. Redirect for
22 this witness?

23 MR. LUDVIGSEN: Could I have just a moment

24 with him?

25

(BIER - REDIRECT BY LUDVIGSEN)

1168

1 REDIRECT-EXAMINATION

2 BY MR. LUDVIGSEN:

3 Q. Commissioner Casad had asked you earlier
4 about whether or not how did US West or Northwestern
5 Bell show support for local resale. Was one of the
6 other ways that they showed support for local resale
7 was by sending personnel to ETI meetings where they're
8 attempting to have people invest in their companies?

9 MR. SHAW: I will object. This is grossly
10 leading him.

11 JUDGE BALLASH: If you can rephrase it.

12 MR. LUDVIGSEN: Okay.

13 Q. Were there any other ways that you were
14 aware of that US West encouraged resellers to go into
15 business?

16 A. I think I mentioned letters. I think I
17 mentioned letters to potential customers, I think I
18 mentioned potential investor meetings and those were
19 ones I think I mentioned.

20 Q. Are ETI's customers forced to buy long
21 distance from ETI?

22 A. No, they are not.

23 Q. Can they choose to have another long

24 distance provider?

25 A. Absolutely, yes, they do.

(BIER - REDIRECT BY LUDVIGSEN)

1169

1 Q. Will ETI sell a customer just long distance
2 service without selling them local service?

3 A. I don't know if they are currently or not.
4 I don't think so.

5 MR. LUDVIGSEN: No further questions.

6 JUDGE BALLASH: Any other questions for
7 this witness?

8 Thank you for your testimony, you may step
9 down. I have one housekeeping item before we go off
10 the record. I do not believe the company has
11 responded to bench request No. 5. I have spoken to
12 Mr. Shaw about that.

13 MS. BROWN: I wasn't able to locate it in
14 my file.

15 JUDGE BALLASH: What I would like to do is
16 ask Mr. Shaw to check his records. I will check the
17 Commission file again to make sure and if that exhibit
18 has not been submitted, please do so by the end of
19 next week and I will give the companies an opportunity
20 to object to its admission. Is that acceptable, Mr.
21 Shaw?

22 MR. SHAW: Yes. And I apologize if it
23 didn't somehow get sent in. My file indicates that it

24 did. I will resend it immediately.

25 JUDGE BALLASH: Anything further before we

(BIER - REDIRECT BY LUDVIGSEN)

1170

1 stand adjourned?

2 Remind the parties that briefs are due

3 March 8.

4 MR. HARLOW: I perhaps should mention as

5 one follow-up that Mr. Shaw and I conversed about data

6 request No. 31 and it's my understanding that US West

7 will respond to that as not calling for a legal

8 conclusion, and I would request, if it should be

9 material, request the opportunity to perhaps file that

10 as a late exhibit when that response is received.

11 JUDGE BALLASH: How soon do you anticipate

12 a response? If it's going to be part of the record it

13 should be part of the record before briefs are due,

14 say by the end of February.

15 MR. SHAW: Certainly.

16 MS. BROWN: One other thing I wanted to

17 point out for the record that as directed staff did

18 submit the bench request No. 4 to US West for its

19 review on January 5 so US West did have an opportunity

20 to review and submit a response to Chairman Nelson's

21 bench request.

22 JUDGE BALLASH: That is so noted for the

23 record. Anything further?

24 MR.LUDVIGSEN: I will just note that I have
25 received bench request No. 5.

(BIER - REDIRECT BY LUDVIGSEN)

1171

1 MR. SHAW: There may have been some
2 confusion, your Honor, in terms of calling it a record
3 requisition versus a bench request but I will check my
4 file and send it again.

5 JUDGE BALLASH: Let's be off the record.

6 (Hearing adjourned at 3:20 p.m.)

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