

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
2 COMMISSION

3	NORTHWEST PAYPHONE ASSOCIATION,)	)	
	a Washington nonprofit	)	
4	corporation, DIGITAL ACCESS	)	
	COMMUNICATIONS CORP., NCS	)	
5	TELEWORK COMMUNICATIONS CO.,	)	
	PAYTEL NORTHWEST, INC., and	)	
6	PUBLIC COMMUNICATIONS OF	)	
	AMERICA,	)	
7	Complainants,	)	HEARING NO. UT-920174
	vs.	)	VOLUME 13
8	U S WEST COMMUNICATIONS, INC.,	)	PAGES 896 - 973
	Respondent.	)	
9	-----	)	

10 A hearing in the above matter was held on  
11 October 15, 1993, at 9:05 a.m. at 1300 South Evergreen  
12 Drive Southwest, Olympia, Washington, before  
13 Comissioners RICHARD HEMSTED, RICHARD CASAD, and  
14 Administrative Law Judge ALICE HAENLE.

15 The parties were present as follows:

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

20 U S WEST COMMUNICATIONS, by EDWARD T. SHAW,  
21 and MOLLY HASTINGS, Attorneys at Law, 1600 - 7th  
22 Avenue, Suite 3206, Seattle, Washington 98191.

23 NORTHWEST PAYPHONE ASSOCIATION, INC., by  
24 BROOKS E. HARLOW, Attorney at Law, 4400 Two Union  
25 Square, 601 Union Street, Seattle, Washington  
98101-2352.

Cheryl Macdonald, CSR, RPR  
Court Reporter

	I N D E X					
	WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS	EXAM
1						
2						
3	TOM WILSON		900			
4	WAYNE BORKOWSKI	941	950			
5	EXHIBITS:		MARKED		ADMITTED	
6	T-67		941		950	
7	C-68		941		950	
8	C-69		941		950	
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						
23						
24						

## 1 P R O C E E D I N G S

2 JUDGE HAENLE: The hearing will come to  
3 order. This is a 13th day of hearing in docket No.  
4 UT-920174. The hearing is taking place on October 15,  
5 1993 at Olympia. Today we are continuing with the  
6 direct and cross-examination of witnesses for the  
7 Commission staff and respondent U S WEST. Appearances  
8 are the same today as they were yesterday. Before we  
9 continue with Mr. Wilson's examination, it's my  
10 understanding that you have found some corrections that  
11 need to be made on the revised page of C-27. Is that  
12 correct, Mr. Shaw?

13 MR. SHAW: Yes, your Honor.

14 JUDGE HAENLE: Would you indicate what those  
15 are?

16 MR. SHAW: Yes, your Honor. On revised C-27  
17 there is a typographical error, and I would direct your  
18 attention to five lines up from the bottom which is end  
19 user access charge new rate 7-1-93. The \$4.09  
20 indicated is, I think, correct. That's the old rate.  
21 It should be \$5.39, the second from the bottom line  
22 above the first solid line. And by correcting that  
23 typographical error it causes some light mathematical  
24 changes in the following numbers: The weighted cost

25 number of \$24.04 changes to 27 -- \$22.74.

(COLLOQUY)

899

1 COMMISSIONER HEMSTAD: What was that?

2 MR. SHAW: Commissioner Hemstad, in the  
3 semipublic column the \$24.04 weighted cost changes to  
4 \$22.74. And then the \$92.46 on that same line changes  
5 to \$92.31.

6 The very bottom figure in the semipublic  
7 column which currently reads .188 changes to .178.  
8 And then the number after the aggregate equal of .246  
9 changes to .245.

10 JUDGE HAENLE: And you have indicated that  
11 you will provide a revised -- a corrected revised page?

12 MR. SHAW: Yes. As soon as we get back to  
13 our office we will rerun it to change that typo and  
14 send that to everybody.

15 JUDGE HAENLE: Do those changes require any  
16 additional questions by you, Mr. Harlow?

17 MR. HARLOW: No.

18 MS. BROWN: No questions.

19 JUDGE HAENLE: So it's all right by you if  
20 those changes are submitted late, Mr. Harlow?

21 MR. HARLOW: Yes.

22 MS. BROWN: Yes.

23 JUDGE HAENLE: Anything else of a  
24 preliminary nature?

25                   Go ahead, then, Mr. Shaw. I believe you

(COLLOQUY)

900

1   were cross-examining Mr. Wilson.

2

3

CROSS-EXAMINATION (Cont.)

4   BY MR. SHAW:

5           Q.   Mr. Wilson, is the import of your testimony  
6   that the Commission should not consider changing either  
7   the PAL rate or the coin box rate in this proceeding a  
8   recommendation that an imputation cost/revenue test  
9   should not be applied by this Commission to deciding  
10  where these rates should be set for U S WEST or other  
11  local exchange companies doing business in the state of  
12  Washington?

13          A.   No. I think my recommendation really  
14  focuses on the issue that staff believes that the price  
15  of a quarter is what's in the public interest.

16          Q.   And the current PAL line rates are also in  
17  the public interest?

18          A.   Yes.

19          Q.   You're familiar with imputation principles  
20  generally, I take it, as a staff economist?

21          A.   Yes.

22          Q.   And are you familiar with the history of  
23  this methodology in this jurisdiction?

24          A.   My familiarity with that would begin with

25 what I know generally about the prime saver case.

(WILSON - CROSS BY SHAW)

901

1 Q. And it's true, isn't it, that first and  
2 indeed only use of an imputation methodology by this  
3 Commission has been in the context of toll rates,  
4 intraLATA toll rates, services provided by the local  
5 exchange companies?

6 A. That's certainly been one of the areas. I  
7 think the Commission has also at least tangentially  
8 considered imputation issues in Centrex cases also.

9 Q. Let's focus on toll for a minute. It's been  
10 a principle established by this Commission that  
11 intraLATA toll rates provided -- charged by local  
12 exchange companies should include as a price floor the  
13 cost of switched access.

14 MR. HARLOW: I would object to the extent  
15 this calls for a legal conclusion.

16 JUDGE HAENLE: Mr. Shaw?

17 MR. SHAW: Well, I don't think it calls for  
18 a legal conclusion. I presume as a staff economist  
19 that he is familiar with the Commission's orders in the  
20 area of imputation, and that's all I am trying to get  
21 to.

22 JUDGE HAENLE: Ms. Brown, you had a comment,  
23 too.

24 MS. BROWN: Well, the basis for my objection

25 is it's beyond the scope of Mr. Wilson's testimony.

(WILSON - CROSS BY SHAW)

902

1 He doesn't testify about imputation.

2 JUDGE HAENLE: Mr. Shaw.

3 MR. SHAW: Well, Your Honor, he does testify  
4 that notwithstanding the evidence in this case that in  
5 his opinion the rates shouldn't be changed and the  
6 necessary implication of that testimony to me is that  
7 he is recommending that no imputation test be done, and  
8 I think that it would be helpful to this record and to  
9 the Commission to have some examination of imputation  
10 in the context of regulatory rate making where the  
11 Commission has used that and what decision the  
12 Commission has to make in order to decide whether it's  
13 going to be used as to payphone service.

14 JUDGE HAENLE: I am going to sustain  
15 Ms. Brown's objection. I believe it does go far beyond  
16 the scope.

17 Q. By recommending no changes in US West's  
18 rates, are you recommending that the Commission ignore  
19 any imputed cost/revenue analysis introduced as  
20 evidence in this case?

21 A. Well, I don't know that I recommend that  
22 they ignore it. It's interesting information.

23 Q. Well, you have in your Exhibit C-66 provided  
24 yourself a Washington cost revenue summary that

25 includes imputed PAL rates, have you not?

(WILSON - CROSS BY SHAW)

903

1 A. Yes.

2 Q. And that document was not prepared by you  
3 but was a document supplied to you by U S WEST; is that  
4 correct?

5 A. Yes.

6 Q. When was that document supplied to you?

7 A. To the best of my knowledge sometime during  
8 the fall of 1992.

9 Q. What was the occasion for that document to  
10 be supplied to you?

11 A. As I recall, it was one of the documents  
12 that was copied to staff when U S WEST responded to a  
13 Northwest Payphone data request last fall.

14 Q. Are you sure about that or was it possible  
15 that Mr. Lanksbury gave this to you in a meeting in  
16 regard to discussing U S WEST payphone service outside  
17 the context of this case?

18 A. That's possible.

19 Q. So I take it you don't know whether this  
20 document was supplied in discovery in this case or was  
21 supplied to you outside this case?

22 A. That's right. I have had several versions  
23 of this same cost study come across my desk just like  
24 have come into the record here, and I apologize. When



25 I pulled this sheet out to use in my testimony I pulled

(WILSON - CROSS BY SHAW)

904

1 it out of a study that I thought was the one that we  
2 had been using in the discovery process, but I didn't  
3 remember to label it for which response it may have  
4 come from, so it could have come from an informal  
5 working session with U S WEST earlier, which we did  
6 have  
7 several of those in the summer of 1992.

8 Q. And what was the reason for those informal  
9 working sessions with you and U S WEST personnel?

10 MR. HARLOW: Excuse me. I would like to  
11 clarify. Is it Mr. Shaw's position that that is the  
12 source of this document, an informal working session  
13 rather than discovery in this case?

14 JUDGE HAENLE: I don't know that Mr. Shaw  
15 needs to take a position. I think the question was  
16 whether the witness knows where it came from. He said  
17 there could be several sources.

18 MR. HARLOW: I think it is important, Your  
19 Honor, because if it was not provided in this case then  
20 it's a public record and it's not subject to the  
21 protective order and it should not be a confidential  
22 exhibit in this case.

23 JUDGE HAENLE: Mr. Shaw.

24 MR. SHAW: Well, that's a large jump in

25 assumption. Counsel doesn't know whether it was

(WILSON - CROSS BY SHAW)

905

1 provided to staff under claim of confidentiality so it  
2 may not be a public record.

3 JUDGE HAENLE: Since it's your document and  
4 it's your confidentiality that would be bridge what do  
5 you suggest, Mr. Shaw?

6 MR. SHAW: Well, we would not waive any  
7 claim of confidentiality to this document assuming that  
8 we have not already waived it. I simply do not know  
9 that as I sit here.

10 JUDGE HAENLE: I think what Mr. Harlow was  
11 indicating was you would not have a claim of  
12 confidentiality if it were not supplied in discovery to  
13 waive or not waive.

14 MR. SHAW: That's certainly not the case at  
15 all. We've supplied paper to this Commission staff by  
16 the ton constantly outside of dockets and we've claimed  
17 confidentiality on those documents. The document  
18 itself is stamped confidential and has proprietary and  
19 confidential at the bottom of it.

20 JUDGE HAENLE: We'll, treat it, Mr. Harlow,  
21 as if it were part of this discovery and confidential.  
22 In any case now it's part of this record and it is  
23 confidential so treat it confidentially. Let's go on.

24 Q. Mr. Wilson, I take it you're not sponsoring

25 the truth or accuracy of this exhibit?

(WILSON - CROSS BY SHAW)

906

1 A. That is correct.

2 Q. You are offering it simply as illustrative  
3 of a study that could be done and that was in fact done  
4 by U S WEST sometime in the past?

5 A. Yes.

6 Q. By offering this exhibit into the record,  
7 are you recommending that this Commission adopt an  
8 imputation methodology for determining the rates of U S  
9 WEST for payphone service?

10 A. Could you repeat the question, please.

11 Q. Yes.

12 MS. BROWN: I am going to interpose the same  
13 objection I made earlier. Mr. Shaw is just going back  
14 to imputation from another angle.

15 JUDGE HAENLE: If the question is, is this  
16 part of his recommendation or not, I think that's an  
17 appropriate question. If it is not part of his  
18 recommendation he can so indicate. If he's not taking  
19 a position on imputation, he can so indicate, but I  
20 think the question is proper. Repeat, Mr. Shaw.

21 Q. By offering this Exhibit C-66, are you  
22 recommending to the Commission that it adopt some form  
23 of imputation cost methodology in evaluating the rates  
24 of U S WEST for payphone service?

25           A.     I think that the Commission does need to

(WILSON - CROSS BY SHAW)

907

1     look at imputation when they consider the price of a  
2     local call, and I think that it's good to know that  
3     when that is taken into account it appears as if the  
4     estimates show that the price of a local call at a U S  
5     WEST payphone may not be recovering its cost for U S  
6     WEST on an imputation basis. I think that if you look  
7     at the figures that you have there you will see that  
8     another test that I talked about before, which is that  
9     a price should also recover a certain degree of  
10    contribution to common overheads, further raises the  
11    question of whether a quarter covers its cost.

12                 Staff's position, though, is that with  
13    regard to the quarter it's in the public interest to  
14    keep that price at a quarter and not to raise it.  
15    Staff believes that raising it would only cause  
16    consumers to pay more for an essential service and it  
17    would result in, among other things, the price going up  
18    at nonLEC payphones as well, staff believes, and that  
19    would only benefit nonLEC providers.

20           Q.     And I take it the same rationale applies to  
21    lowering the PAL tariff rates and that reduction in  
22    revenue would have to be picked up by other ratepayers,  
23    correct?

24           A.     It's entirely possible. We looked at the

25 long run incremental cost estimate for PAL service

(WILSON - CROSS BY SHAW)

908

1 yesterday in Exhibit C-42, if I recall correctly, and  
2 you can see there that if a contribution to common  
3 overhead were included in that cost estimate, it's  
4 possible that there isn't much room to reduce that  
5 rate, based on that study.

6 Furthermore, reducing that rate staff fears  
7 would not result in the flow of any savings to end use  
8 customers of PAL service customers of U S WEST.  
9 Rather,  
10 it would result in simply more profit to nonLEC  
11 providers. We don't think they pass it through.

12 Q. You can appreciate, I'm sure, that the  
13 regulated local exchange companies need to know whether  
14 it's a requirement for their pricing of payphone  
15 services whether they need to use a cost methodology  
16 including imputation of essential services. Would you  
17 agree with that?

18 A. I am certain that in a rate making process  
19 that would be something that would be discussed in  
20 depth.

21 Q. In the past in the context of toll where the  
22 Commission has required an imputation process, they've  
23 waived that process for services that they feel are  
24 uniquely in the public interest, specifically toll

25 pack?

(WILSON - CROSS BY SHAW)

909

1 MR. HARLOW: I am going to object to the  
2 extent that this calls for a legal conclusion, I  
3 believe. To the extent that Mr. Wilson is being asked  
4 to interpret Commission orders, I think that's strictly  
5 up to the Commission and is a legal conclusion. I  
6 certainly would not have any objection to Mr. Wilson  
7 responding to this question as an economist, but when  
8 it gets to interpretation of Commission orders, I think  
9 that's beyond Mr. Wilson's stated expertise.

10 JUDGE HAENLE: Well, the Commission will  
11 keep in mind that Mr. Wilson is an economist and ask  
12 him to reply as an economist.

13 A. I haven't looked at cost studies for toll  
14 pack. I don't know if there's an imputation test  
15 involved with toll pack or not. It's my understanding  
16 that overall U S WEST toll rates would pass an  
17 imputation test.

18 Q. Let me direct your attention to page 11 in  
19 your prefiled testimony and your statement Mr. Harlow  
20 asked you some questions about yesterday, specifically  
21 lines 11 through 13. The statement is, "I do not  
22 dispute that certain inequities due to U S WEST  
23 behavior  
24 exist operating to the detriment of nonLEC public

25 payphone providers."

(WILSON - CROSS BY SHAW)

910

1           From your testimony yesterday is all you  
2 mean by that statement is that you neither support or  
3 oppose -- in other words take no position on -- all the  
4 other allegations by the complainants in this case  
5 other than those related to rate changes?

6           A.     Well, I am testifying on behalf of  
7 Commission staff, and this is the official position of  
8 the staff as I stated in my testimony, and we've chosen  
9 to take no position on the other issues.

10          Q.     Yes, I appreciate that, but my question is,  
11 what do you mean by this language? Are you asserting  
12 that inequities exist due to U S WEST behavior or are  
13 you saying that you're simply not supporting or  
14 disputing the evidence of the complainants in this  
15 case?

16          A.     I think that's been asked and answered  
17 yesterday afternoon. I hesitate to repeat my answer  
18 yesterday. I think that there obviously are some  
19 inequities that exist. We looked at the payment of U S  
20 WEST Direct to U S WEST C for placing Yellow Pages in U  
21 S WEST payphone booths. As I understand it, U S WEST  
22 Direct does not make those payments to nonLEC  
23 providers. That's a business decision of  
24 the firm, as I understand it, that's getting into that

25 imputation area. Those are inequities that exist, but

(WILSON - CROSS BY SHAW)

911

1 staff is not taking a position on them.

2 Q. Is U S WEST Direct a separate subsidiary of  
3 U S WEST Inc.?

4 A. I don't know.

5 Q. If U S WEST Communications maintains the  
6 hanging equipment and the books themselves that U S  
7 WEST Direct places in U S WEST C's phone booths, is it  
8 appropriate that U S WEST Direct pay U S WEST C a fee  
9 for that service?

10 A. If it is it should be appropriate that U S  
11 WEST Direct make that payment to nonLEC providers too,  
12 it seems to me, particularly if in fact U S WEST  
13 Direct is a separate subsidiary.

14 Q. Are you suggesting by that testimony that U  
15 S WEST Direct has some sort of obligation to place  
16 Yellow Page directories in nonLEC payphones?

17 A. It's my understanding that the payphone  
18 owner has the obligation to make sure that there's a  
19 directory in the phone booth per the Commission rules.

20 Q. Do the rules require that that directory be  
21 a U S WEST Direct directory?

22 A. No.

23 Q. Are in fact there other Yellow Page  
24 telephone directories published by competitors of U S



25 WEST Direct in the state of Washington?

(WILSON - CROSS BY SHAW)

912

1 A. Yes.

2 Q. Your previous couple of answers indicated  
3 that you do think that inequities exist and you cited  
4 the one we just discussed. Specifically what other  
5 inequities exist as inferred by this testimony on page  
6 11?

7 A. Another one that came to my attention during  
8 cross-examination of Mr. Lanksbury was that U S WEST  
9 includes the walk-away toll fraud as a toll expense  
10 although it seems to be attributable only to U S WEST  
11 payphone service, and I don't see walk-away toll fraud  
12 in any of the cost studies for payphone service.

13 Q. When you wrote this testimony earlier this  
14 year and prefiled it, did you have the walk-away toll  
15 fraud issue in mind?

16 A. No.

17 Q. What other specific inequities do you mean  
18 to infer by this statement on page 11?

19 A. None other than I've already testified to.

20 Q. Could you state those for me, please.

21 A. Go through an asked and answered process  
22 again. As I recall what I really had in in mind when I  
23 wrote the testimony was that I have visited nonLEC  
24 provider places of business. I've observed their

25 operations and I have seen the problems that are

(WILSON - CROSS BY SHAW)

913

1 occurring in their marketplace with high prices to  
2 consumers. I've seen that the nonLEC providers appear  
3 to have quite efficient operations with regard to their  
4 daily work in providing their payphone services, and I  
5 have tried to separate that efficiency in daily  
6 operation from what I perceive to be inefficiencies  
7 with regard to their financial operations.

8           Nevertheless, it appears to me as if there  
9 are characteristics of U S WEST's production of the  
10 service that result in inequities vis-a-vis the nonLEC  
11 providers.

12           Q.     That's what I want to get at so this record  
13 is clear exactly what those are. When you visited  
14 these nonLEC payphone providers, what was apparent  
15 to you specifically as a condition of their operation  
16 that was due to inequities stemming from U S WEST's  
17 behavior?

18           A.     Well, for example, when I visited Paytel  
19 Northwest up near Tukwila I was given a tour of their  
20 office and their warehouse which sits directly -- it's  
21 part of their office in the back of the building. And  
22 I saw there payphone booths that they had bought from  
23 another Bell operating company in southeast of the  
24 country. I believe it was Southwestern Bell or perhaps

25 Bell South, and they were used payphone booths. They

(WILSON - CROSS BY SHAW)

914

1 had bought those -- I'm not going to be able to  
2 remember the numbers exactly but it was somewhere  
3 around the price of about in between \$50 and \$150  
4 apiece.

5           They were retrofitting them to use them  
6 themselves at another additional expense of about \$50  
7 per booth leaving them with an investment of around  
8 \$200 to \$250 per booth. They told me that they were  
9 able to do that and place payphone booths where it was  
10 their understanding that U S WEST expends about \$1,000  
11 to \$1500 on new booths. That appeared to me to be an  
12 efficiency, and they commented to me that they are not  
13 able to purchase used phone booths from U S WEST, and  
14 they told me that U S WEST sends those booths to  
15 recycling. That seemed to me to be an inequity. Now,  
16 if that's anti-competitive or not, I don't know, but U  
17 S WEST simply, I was told, was refusing to sell used  
18 booths to the nonLEC providers.

19           Another example of the inequity that I had  
20 observed was that when I visit with Mr. Lanksbury in  
21 Bell Tower, I am in a building that's 30 stories tall.  
22 When I visit them at Paytel I am in a very small  
23 office. To me in my mind that is big versus small.  
24 That's the kind of thing that I had in mind when I said

25 inequity. U S WEST has many different products they

(WILSON - CROSS BY SHAW)

915

1 sell including many inputs that are monopoly inputs  
2 where companies such as Paytel and Digital Access have  
3 nowhere else to go to buy those services. Take billing  
4 and collection for example. That finishes my answer.

5 Q. Let's take those one by one. Do you have  
6 any evidence that U S WEST scraps usable phone booths  
7 in the state of Washington?

8 A. No. Mr. Lanksbury claims that only unusable  
9 phone booths are scrapped. I don't know what they do  
10 with the usable ones when they finish with them. I am  
11 told they do not sell them to nonLEC providers.

12 Q. Do you have any knowledge whether U S WEST  
13 used usable phone booths in providing its own service?

14 A. No, I don't. I certainly hope they do,  
15 though.

16 Q. So I take it you have no evidence other than  
17 the lobbying statements to you by Paytel personnel that  
18 U S WEST's behavior has caused any inequities to the  
19 nonLEC payphone providers --

20 MR. HARLOW: Object, the question is  
21 argumentative.

22 MR. SHAW: I haven't finished the question.

23 JUDGE HAENLE: Restate the question.

24 MR. SHAW: Lost my train of thought.

25 JUDGE HAENLE: Why don't you begin again.

(WILSON - CROSS BY SHAW)

916

1 Q. I take it, then, Mr. Wilson that you have no  
2 evidence of inequities due to U S WEST behavior  
3 related to phone booths other than the statements to  
4 you by payphone personnel?

5 A. I saw that it had a different Bell operating  
6 company name on the used phone booths at Paytel, and I  
7 didn't see any that said U S WEST or Pacific Northwest  
8 Bell or Mountain Bell or Northwestern Bell on them. I  
9 can't figure out how it is that those companies have  
10 phone booths that they evidently didn't reuse that  
11 they were willing to resell for, as I recall, \$50 to  
12 \$150 apiece and U S WEST didn't.

13 Q. Do you have any knowledge of whether any  
14 other RBOC surplused a large number of telephone booths  
15 and put them on the market?

16 A. No.

17 Q. Did you investigate that possibility before  
18 you made the statement that U S WEST behavior has  
19 caused inequities relative to phone booths?

20 A. No.

21 Q. Is the fact that U S WEST is a large local  
22 exchange company providing many local exchange and  
23 intraLATA toll services and nonLEC payphone providers  
24 are small relatively, is that a U S WEST behavior that

25 has caused inequities?

(WILSON - CROSS BY SHAW)

917

1 A. I suspect it may be.

2 Q. It's your testimony, then, that big versus  
3 little is a behavioral issue that causes an inequity  
4 flowing from the big to the little?

5 A. It's certainly an issue.

6 Q. What is it about U S WEST's behavior in  
7 being big that causes inequities?

8 A. There I am referring to the fact that U S  
9 WEST has lots of different groups of people who do a  
10 lot of different things that include provision of  
11 monopoly services which do not equate in the nonLEC  
12 provider situation.

13 Q. Do you have any evidence that U S WEST  
14 through its behavior has caused inequities to nonLEC  
15 payphone providers related to provision of essential  
16 network elements to those providers?

17 A. Other than the disparate rate comparisons  
18 that a person can make based on the tariffs here, no.

19 Q. Talking about the fact that nonLEC payphone  
20 providers charge much more for operator-assisted  
21 traffic typically than U S WEST does?

22 A. Yes, that's a good example.

23 Q. Have you made any study of the profitability  
24 or market share growth of nonLEC payphone providers?

25 A. Yes.

(WILSON - CROSS BY SHAW)

918

1 Q. In what context?

2 A. Competitive classification petitions listed  
3 in my testimony and rate cases. Furthermore, I've also  
4 reviewed annual reports submitted by several of the  
5 complainants pursuant to the Commission's requirements.

6 Q. Did any of those studies disclose to you  
7 that nonLEC payphone providers are profitable?

8 MR. HARLOW: Your Honor, I am going to  
9 object to this line of questioning. I think Mr. Shaw  
10 is getting into the same line of questioning that I  
11 tried to get in, Ms. Brown objected that it was beyond  
12 the scope of direct. I think in fairness Mr. Shaw  
13 should not be allowed to go into the same area that I  
14 was excluded from.

15 JUDGE HAENLE: Mr. Shaw?

16 MR. SHAW: Your Honor, Mr. Wilson's  
17 testimony would be unremarkable as far as U S WEST is  
18 concerned except for this one provocative sentence that  
19 we're talking about, and he seems to say without  
20 identifying that U S WEST behavior causes inequities,  
21 and I think that we are fully entitled to examine that  
22 on cross-examination and challenge that statement, and  
23 the witness has been very elusive on what he means by  
24 that statement, and I think that I am entitled to

25 pursue it, and the witness is now saying that he has

(WILSON - CROSS BY SHAW)

919

1 done profitability studies with the inference that  
2 somehow those studies indicate inequities due to U S  
3 WEST behavior, and I think the record demands an  
4 explanation for this statement.

5 JUDGE HAENLE: I am going to overrule your  
6 objection, Mr. Harlow. At the time you were asking the  
7 question I considered the witness' testimony to be  
8 substantially narrower than it has evolved on  
9 cross-examination by Mr. Shaw. The descriptions and  
10 examples that Mr. Wilson is giving as he explains his  
11 testimony are matters that I think Mr. Shaw is entitled  
12 to cross-examine about. We were not in that situation  
13 at the time that you may have asked questions that went  
14 beyond what the witness had originally indicated he was  
15 going to testify about. I don't know if this will lead  
16 to another round of cross or not, but while indicating  
17 that the staff is taking no position, Mr. Wilson has  
18 also testified about things which I think Mr. Shaw is  
19 entitled to cross-examine about.

20 So I am going to overrule your objection and  
21 allow the question to be asked, and it occurs to me if  
22 this is going to be -- I don't think anybody  
23 anticipated we were going to take quite this long. We  
24 might need to take your witness -- break this witness'



25 testimony, take your witness, Mr. Shaw, and make sure

(WILSON - CROSS BY SHAW)

920

1 he gets off the stand and then come back to Mr. Wilson.

2 How much more do you have?

3 MR. SHAW: Very little.

4 JUDGE HAENLE: Do you expect to have  
5 additional cross?

6 MR. HARLOW: I would like to revisit the  
7 area that I was precluded from yesterday but I don't  
8 think it's going to take a substantial amount of time.  
9 I only have a few questions in that area.

10 JUDGE HAENLE: I guess we can continue.

11 Remember that the commissioners will only be here until  
12 noon and then we run out of time.

13 MR. SHAW: I understand.

14 Q. I will ask another question. I am not sure  
15 it will be the same one.

16 Is it your testimony here today, then, Mr.  
17 Wilson, that your studies of nonLEC payphone financial  
18 data has disclosed inequities due to U S WEST behavior?

19 A. You asked me if I had done any studies.  
20 You're the one making the inferences about that.

21 Q. And you had testified you had done studies  
22 in the context of your work on the AOS classification  
23 in rate cases --

24 A. Right.

25 Q. -- mentioned in your testimony?

(WILSON - CROSS BY SHAW)

921

1 A. Yes.

2 Q. Do those studies that you have reference to  
3 support your assertion that inequities are present due  
4 to U S WEST behavior?

5 A. They may. A great deal of the evidence that  
6 I've seen suggested that a lot of the problem in the  
7 market that we see evidenced by higher rates by nonLEC  
8 providers seems to be due to their payment of  
9 commission fees to site owners which are, in staff's  
10 opinion, not in the public interest and appear to be  
11 very high. And to the degree that their costs of doing  
12 business are higher due to U S WEST, I have my  
13 suspicions but I have not done any conclusive analysis.  
14 I think I've listed for you the areas where I can be  
15 more specific already.

16 Q. Is it your testimony that U S WEST behavior  
17 causes nonLEC payphone providers to pay higher  
18 commissions to site providers than U S WEST pays to its  
19 site providers?

20 A. There's nothing in the official staff  
21 position to that effect.

22 Q. Is it true to say, Mr. Wilson, that you have  
23 no evidence of any inequities due to U S WEST  
24 behavior?

25           A.     Beyond those that I've cited, I have not

(WILSON - CROSS BY SHAW)

922

1     been able to do any studies to find that evidence. I  
2     only have suspicions. Official staff position is  
3     stated in my testimony.

4           Q.     When you visited these site providers --  
5     strike that. When you visited these nonLEC payphone  
6     providers, did you advise them that they needed to  
7     register as telecommunications company with this  
8     Commission?

9           A.     I visited two at their sites. One was  
10    Paytel, they're registered. The other one was a man  
11    named Tony Vendetoulli who had 13 payphones. We  
12    discussed his operations in an economic impact  
13    statement staff provided during the rulemaking process  
14    on the AOS rules and I did not advise him that he  
15    needed to register.

16           JUDGE HAENLE:   Would you spell the name,  
17    please.

18           THE WITNESS:   V E N D E T O U L L I.

19           A.     He was operating, I believe, 13 dumb sets.

20           Q.     And these two visits, then, formed the whole  
21    basis for your conclusions that nonLEC payphone  
22    providers are suffering from inequities due to U S WEST  
23    behavior from your observation of their operations?

24           A.     I've already listed for you several specific

25 examples that also relate to that opinion.

(WILSON - CROSS BY SHAW)

923

1 Q. The last one that you mentioned we haven't  
2 discussed is billing and collection. Is it your  
3 testimony here that U S WEST billing and collection  
4 services to other carriers should be reclassified from  
5 effectively competitive to noncompetitive?

6 A. Obviously not. That's not in my prefiled  
7 testimony. However, I have testified on that issue  
8 several times and my opinion has not changed that that  
9 is not an effectively competitive service of U S WEST.

10 Q. So the basis for your conclusion that  
11 inequities due to U S WEST behavior exist in regard to  
12 billing and collection is that U S WEST charges  
13 pursuant to a price list pursuant to its effectively  
14 competitive classification for billing and collection?

15 A. Could you rephrase that -- restate the  
16 question.

17 Q. Certainly. Is the basis for your opinion  
18 that inequities due to U S WEST behavior relative to  
19 billing and collection exist due to the fact that U S  
20 WEST charges on a usage-sensitive basis pursuant to  
21 price lists rather than tariffs for billing and  
22 collection to AOSs and other telecommunications  
23 companies?

24 A. Well, certainly the charges that U S WEST

25 levies in its individually -- individual case-based

(WILSON - CROSS BY SHAW)

924

1 contracts for billing and collection services could be  
2 an explanation for inequities. I haven't seen cost  
3 studies that would in my opinion provide staff or  
4 myself with a basis for alleging price discrimination  
5 in billing and collection services. As I explained to  
6 you on deposition, alleging price discrimination is  
7 serious business, and it takes having your ducks in  
8 order. I haven't had the opportunity to do that. But  
9 I will say unequivocally that I am unaware of any other  
10 provider than U S WEST for billing and collection  
11 services.

12 Q. AOS companies can do their own billing and  
13 collection, correct?

14 A. Not without help from the monopoly.

15 Q. Are you saying that there is discrimination  
16 in the provision of billing information to AOS's?

17 A. I already told you that alleging  
18 discrimination is serious business and you have to have  
19 your ducks in order to do that, and I don't have that  
20 evidence. I haven't done the study. I can't make that  
21 conclusion, but I can point to the fact that there do  
22 not exist other alternatives. There do exist also  
23 price differentials. To the degree that that is due to  
24 economies of scale, I don't know.

25 Q. I am having trouble following your

(WILSON - CROSS BY SHAW)

925

1 testimony. Are you saying that U S WEST behavior  
2 results in AOS's not being able to get the billing  
3 information they need to do their own billing and  
4 collection?

5 A. They have to pay U S WEST for it and I don't  
6 know -- I suspect that the higher rate they pay U S  
7 WEST for it compared to AT&T, for example, I don't know  
8 if that is due to differences in cost or not.

9 Q. You have not, I take it, from that statement  
10 made any study of the U S WEST billing and collection  
11 rates to carriers generally?

12 A. Not since I testified in the U-88-97 -- or  
13 whatever it was, the billing and collection competitive  
14 petition by U S WEST.

15 Q. And the fact is you have no evidence of  
16 either discrimination by U S WEST or anti-competitive  
17 behavior by U S WEST towards nonLEC payphone  
18 providers, do you?

19 A. Are we still on billing and collection?

20 Q. No. We're on the whole issue.

21 A. Other than the areas I've already  
22 specifically identified, no.

23 Q. And your testimony here today constitutes  
24 the entirety of the evidence that you're relying on to

25 make the statement at lines 11 through 14 of page 11?

(WILSON - CROSS BY SHAW)

926

1 A. I believe so. I've been deposed for about  
2 six or eight hours in this case, once in June and again  
3 in September, I think, or maybe it was October. I  
4 think that that's all that we've talked about.

5 MR. SHAW: Thank you.

6 JUDGE HAENLE: Take commissioners questions  
7 next except if Mr. Harlow has additional areas he  
8 wanted to go into before we take commissioners  
9 questions and before we take your redirect, I suppose  
10 we could cover those so that you can ask redirect over  
11 all of it. Mr. Harlow, I trust this will be brief.

12 MS. HASTINGS: I don't think I have any  
13 recross at all after Mr. Shaw has clarified things.

14 JUDGE HAENLE: Commissioners, do you have  
15 questions?

16 COMMISSIONER CASAD: Just a couple.

17

18 E X A M I N T I O N

19 BY COMMISSIONER CASAD:

20 Q. Mr. Wilson, in response to questions it's my  
21 understanding that it is your belief that U S WEST  
22 contracts with U S WEST Direct for the provision of  
23 directories at pay telephone sites; is that correct?

24 A. Yes.

25 Q. To your knowledge, was there a competitive  
(WILSON - EXAM BY COMMISSIONER CASAD) 927

1 bidding process between the provider U.S. Direct and U  
2 S WEST for the provision of those directories including  
3 other providers or was there not?

4 A. I don't know.

5 COMMISSIONER CASAD: Thank you. I will  
6 defer on the other question.

7 JUDGE HAENLE: Commissioner Hemstad.

8

9 E X A M I N A T I O N

10 BY COMMISSIONER HEMSTAD:

11 Q. Just a couple of more narrow questions. Mr.  
12 Wilson, is it still your testimony after the  
13 questions you were asked by Mr. Harlow that the gross  
14 profit for payphone services apparently of the  
15 independent operators is 316 percent?

16 A. My testimony on that was dealing with the  
17 tariffed rate, which is 6 cents per message after the  
18 first 300 free messages. So after 300 calls  
19 have gone through the PAL line, the 301st and on are  
20 charged 6 cents apiece per the tariff. The question  
21 was, is that a fair rate? Should it be changed?  
22 Should it be reduced is what I was trying to address,  
23 and I know that the vast majority of the nonLEC  
24 providers like U S WEST charge a quarter for that call,



25 so I was simply addressing that rate. I am not saying

(WILSON - EXAM BY COMMISSIONER HEMSTAD)

928

1 that I know that Northwest Payphone Association members  
2 are all earning 316 percent profit overall. I don't  
3 know what many of them are earning.

4 Q. Because they can have other kinds of costs?

5 A. Absolutely, yes. It would take a lot of  
6 costs to add up to a quarter, I think.

7 Q. When was the price for payphones raised to  
8 25 cents?

9 A. I'm sorry, I don't know. It's been that  
10 level since I've been in Washington for eight years, I  
11 think.

12 Q. So some time?

13 A. Yes.

14 Q. Do you have any opinion as to whether at  
15 some point the price will have to be raised or, let me  
16 add to that, or is this a declining cost environment  
17 where it will never have to be raised?

18 A. The U S WEST cost studies that we've looked  
19 at all offer varying estimates of the cost, and staff  
20 hasn't investigated those to try to say, well, this is  
21 what we think it should be. We're just looking at the  
22 evidence that we've been provided and that indicates  
23 that the cost is somewhere around a quarter, maybe a  
24 little bit more than a quarter.

25                   The question will it ever have to be raised,

(WILSON - EXAM BY COMMISSIONER HEMSTAD)

929

1   that's entirely possible. I think that people want to  
2   be able to know how much it's going to cost when they  
3   happen to need a payphone, and it seems in  
4   the public interest to keep that as low as possible for  
5   universal service concerns.

6           Q.    Well, do you think it is of any importance  
7   to this case and the complaint that has been brought  
8   here whether U S WEST's costs are above or below 25  
9   cents?

10          A.    I think it's good information to have so  
11   that you can make a good decision. Dr. Cornell  
12   testifying on behalf of the association agreed that one  
13   way of alleviating the association's concerns about  
14   making money would be to allow the rate to go up. That  
15   would also address the apparent imputation problem  
16   evidenced in the cost studies, but again, I think that  
17   when there are people who don't have phones and rely on  
18   a payphone to communicate it's important to keep that  
19   rate as low as possible for them.

20          Q.    Well, let's take a more extreme  
21   hypothetical. Let's assume that the long run  
22   incremental cost for providing payphone services for U  
23   S WEST is 30 cents. Would that be a determining factor  
24   as to what this Commission should do with regard to

25 this complaint?

(WILSON - EXAM BY COMMISSIONER HEMSTAD)

930

1 A. I believe it's staff's position that for  
2 universal service concerns, despite the fact that it's  
3 30 cents, it ought to remain at a quarter.

4 Q. So in that sense U S WEST's costs are not  
5 the driving force behind the staff's position in  
6 effect?

7 A. It's the public interest.

8 Q. Well, in translation, what recommendation is  
9 the staff making to this Commission as to what it  
10 should do with this complaint?

11 A. You mean with all of the other issues that I  
12 haven't presented testimony on?

13 Q. You testified you have no opinion or no  
14 position with regard to those issues?

15 A. Not on behalf of the staff.

16 Q. So apparently the staff is saying to the  
17 Commission, do the best you can, that we have no  
18 recommendations to make to you as to how you should  
19 deal with these matters?

20 A. Well, I have testified over a dozen times  
21 for the Commission now, and every time when I prefile  
22 written direct testimony I draft up my analysis, I  
23 present it as a proposal to present on behalf of staff,  
24 and then it goes up the chain of command and gets

25 approved or adjusted. We discuss it and come up with

(WILSON - EXAM BY COMMISSIONER HEMSTAD)

931

1 our best recommendations. In this case I did that and  
2 my senior management decided that we would limit the  
3 scope of our presentation to these two issues. I  
4 believe that there was some consideration given to the  
5 fact that the association had a witness who in fact  
6 the Commission staff has employed before as a  
7 consultant and the two parties ought to be able to  
8 defend their own interests seemed to me to be the  
9 senior level view on the case. I felt that it was very  
10 important to present to you information drawing your  
11 attention to the fact that we don't think that raising  
12 the price of a local call or dropping PAL rates is  
13 going to be a solution that benefits the public.

14 Q. So it's the staff position that the public  
15 interest doesn't require that payphone rates be priced  
16 competitively?

17 A. Seems that the public interest requires that  
18 price of a local call be kept low for universal service  
19 concerns.

20 Q. You heard the testimony that three other  
21 states in the U S WEST territory now have a 35 cent  
22 rate. I assume -- I don't know that there may be other  
23 states in the country outside of the U S WEST territory  
24 that perhaps have a higher than 25 cent rate. Do you

25 have any opinion as to why those other states would

(WILSON - EXAM BY COMMISSIONER HEMSTAD)

932

1 have a higher rate with respect to their conclusion  
2 about the public interest?

3 A. I don't know much about what they've  
4 considered in determining to raise the price.

5 COMMISSIONER HEMSTAD: That's all the  
6 questions I have.

7 JUDGE HAENLE: Well, I don't have any  
8 questions, but Chairman Nelson did leave two questions  
9 for me to read to you. She wrote them out, I will read  
10 them just as she wrote them.

11

12 E X A M I N A T I O N

13 BY JUDGE HAENLE:

14 Q. How does your narrow nonresponsive testimony  
15 square with the statutory goal -- that is, of the  
16 regulatory flexibility act -- encouraging diversity  
17 in telecommunications supply?

18 A. I don't know that the staff's testimony that  
19 I am presenting on their behalf addresses that issue  
20 very well. I think that there are additional statutory  
21 goals such as promoting efficiency and affordability as  
22 well and I think that those were the areas that we were  
23 more interested in, particularly affordability.

24 Q. Your opinion about contribution to low local

25 rates is derived from -- well, would be C-4 and C-66;

(WILSON - EXAM BY JUDGE HAENLE)

933

1 is that correct?

2 A. I'm sorry. Could you restate that, please.

3 Q. Your opinion about contribution to low local  
4 rates is derived from the two exhibits you originally  
5 sponsored, the one is C-4, the other is C-66; is that  
6 correct?

7 A. Those are the only cost studies for the  
8 local call that I would be referring to, yes.

9 Q. Why do you believe the exhibits are correct  
10 or perhaps have you independently verified them in any  
11 way?

12 A. I haven't independently verified them.

13 Q. Do you have any other independent evidence?

14 A. On the cost?

15 Q. I assume so.

16 A. No. I would draw the chairman's attention,  
17 though, to the walk-away toll fraud issue, which isn't  
18 included in this study.

19 COMMISSIONER CASAD: I need to ask another  
20 question.

21

22 E X A M I N A T I O N

23 BY COMMISSIONER CASAD:

24 Q. In order to clarify your response to

25 Commissioner Hemstad, you indicated that -- in response

(WILSON - EXAM BY COMMISSIONER CASAD)

934

1 to the question whether payphone services should be  
2 competitively priced, if I understood your answer  
3 correctly, you indicated that the public interest is  
4 served by it being priced at 25 cents even though that  
5 might not be a competitive price for those services; is  
6 that correct?

7 A. I don't know if it's a competitive rate or  
8 not, frankly. Looking at Mr. Lanksbury's cost study  
9 and looking at the cost study he provided me which I  
10 have sponsored, it's the same study, different numbers  
11 but you get generally the same result, that's what U S  
12 WEST's costs are maybe, but we don't know what the  
13 costs are for the nonLEC providers besides the tariff  
14 rate they pay. And I think he had a good point that  
15 the nonLEC providers do have sources of other  
16 revenue streams and other expenses that we haven't  
17 really looked at here.

18 For example, they sell interLATA services  
19 with their AOS's and so on and so forth. I still  
20 think that when you look at the fact that the  
21 association members pay 6 cents for a call  
22 they sell for a quarter that there's plenty of leeway  
23 there for us to feel fairly confident on the  
24 competitive price issue with their regard.

25 Q. If U S WEST's costs exceeded 25 cents, would

(WILSON - EXAM BY COMMISSIONER CASAD)

935

1 you consider it in the public interest to maintain the  
2 rate at 25 cents, therefore, creating a cross-subsidy  
3 for pay telephone operations?

4 A. Yes. I think that it's real important that  
5 people be able to afford those calls. They're often  
6 very highly valued calls that are made, and I think  
7 that even if it was costing nonLEC providers more than  
8 a quarter, I think that we still need to try our best  
9 to keep those rates at a quarter because of that  
10 universal service concern. I think it's part of the  
11 cost of doing business in that market of providing a  
12 public service. And I think that all of the providers  
13 have other sources of revenue where they can still  
14 remain profitable overall.

15 Q. So you encourage a situation for payphone  
16 telephone operations, and perhaps other operations that  
17 were deemed to be in the public interest, where they  
18 would be cross-subsidized by other services offered by  
19 U S WEST, and I guess using as a final measurement the  
20 overall rate of return authorized for the company.  
21 Would that be correct?

22 A. Essentially, yes.

23 JUDGE HAENLE: Anything else, Commissioners?

24 You said you had something else, Mr. Harlow.



25 Just briefly.

(WILSON - EXAM BY COMMISSIONER CASAD)

936

1 MR. HARLOW: Very brief. Just a quick  
2 follow-up to the question that Commissioner Casad just  
3 asked.

4

5 CROSS-EXAMINATION

6 BY MR. HARLOW:

7 Q. And that was when you responded that you  
8 thought it was important for people to be able to  
9 afford the local call rate -- do you recall that?

10 A. Yes.

11 Q. In preparing your testimony did you do any  
12 kind of a survey of the public to determine the  
13 differing rates in affordability between a 25 cent and  
14 a 35 cent rate?

15 A. No.

16 Q. So you have no idea what portion of the  
17 public could not afford 35 cents if the Commission were  
18 to decide to follow that option?

19 A. Other than common experience, no.

20 Q. Earlier Commissioner Hemstad asked you what  
21 recommendation is the staff making to the Commission  
22 with regard to what to do with this complaint and you  
23 responded in part that you had no opinion on behalf of  
24 staff. Do you recall that response?

25           A.     Yes.

(WILSON - CROSS BY HARLOW)

937

1           Q.     Do you have any kind of a personal opinion  
2 as to what this Commission should do with this  
3 complaint?

4           MS. BROWN: I will object.

5           MR. SHAW: I will object.

6           JUDGE HAENLE: One at a time, please. Ms.  
7 Brown.

8           MS. BROWN: As I stated earlier, Mr.  
9 Wilson's personal opinions are not at issue here.  
10 Staff has decided to remain neutral on several of the  
11 issues raised in the Northwest Payphone Association  
12 complaint. This is not a new issue, at least the one  
13 raised by Mr. Harlow, because I encountered it  
14 throughout both the depositions of this particular  
15 witness. As I said then, I will say I too have  
16 personal opinions but I do not expect to be deposed.  
17 Mr. Wilson's personal opinions are irrelevant.

18           JUDGE HAENLE: Mr. Shaw.

19           MR. SHAW: I concur in those remarks. It's  
20 not fair to the parties and my client in particular to  
21 be faced with two differing and potentially conflicting  
22 staff testimonies out of the same person.

23           JUDGE HAENLE: Mr. Harlow.

24           MR. HARLOW: Well, we're a little bit

25 premature yet since we don't know yet whether he even

(WILSON - CROSS BY HARLOW)

938

1 has an opinion but let's go ahead and take on the  
2 issue. Mr. Wilson is testifying here as an expert.  
3 He's testified, true, what the staff position is, but  
4 an expert witness must necessarily testify as to what  
5 their opinion is. That is the very nature of an expert  
6 opinion. It is their personal opinion. If they have  
7 -- if their personal opinion based on their review of  
8 the evidence somehow differs from what somebody else  
9 has told them they ought to testify to, then that goes  
10 to the credibility and the strength of their direct  
11 testimony.

12 Now, I don't know if that's going to be the  
13 case or not because we don't know whether Mr. Wilson  
14 even has his own opinion, but I think that to say that  
15 an expert's opinion is not relevant really undermines  
16 the entire nature of expert testimony. I think it's  
17 clear from Commissioner Hemstad's questions as well as  
18 from the written questions from Chairman Nelson that  
19 the Commission is very interested in what the staff  
20 feels should be done with this complaint. We now know  
21 from Mr. Wilson's testimony that the staff as a whole  
22 is taking no position on those other issues, but we do  
23 have a member of the staff here who may or may not have  
24 a personal opinion and that opinion, depending on what

25 it is, may bear on the credibility and the weight to be

(WILSON - CROSS BY HARLOW) 939

1 given to Mr. Wilson's testimony that he did file in  
2 this case, and I think we ought to find out what it is  
3 and what it's worth and then the Commission can decide  
4 what weight to give it.

5 JUDGE HAENLE: Sustain the objection.  
6 You're perfectly welcome to ask him for the reasons  
7 he has given behind the testimony he has given but I  
8 don't think his opinions are relevant.

9 MR. HARLOW: Nothing further.

10 MS. BROWN: Nothing further.

11 MR. SHAW: I had one recross suggested by a  
12 question by Commissioner Casad if I may.

13

14 CROSS-EXAMINATION

15 BY MR. SHAW:

16 Q. In an answer to Commissioner Casad -- excuse  
17 me, it was in answer to Chairman Nelson's written  
18 questions -- you pointed out for the benefit of  
19 Chairman Nelson that walk-away toll fraud is a cost of  
20 payphone. It's true, isn't it, Mr. Wilson, that  
21 walk-away toll fraud is a foregone toll revenue. It is  
22 not a cost of providing payphone service?

23 A. Seems to be directly attributable to  
24 payphone service.

25 Q. Notwithstanding that, it is a foregone

(WILSON - CROSS BY SHAW)

940

1 revenue, not a cost, correct?

2 A. The company incurred expense in providing  
3 that service.

4 Q. But the fact of nonpay by the subscriber is  
5 a foregone revenue, correct?

6 A. If that's what you want to call it, sure. I  
7 call it a cost.

8 JUDGE HAENLE: Anything more of the witness?

9 MR. HARLOW: No, Your Honor.

10 JUDGE HAENLE: Thank you, sir. You may step  
11 down.

12 (Recess.)

13 JUDGE HAENLE: Let's be back on the record  
14 after our morning recess. The next U S WEST witness  
15 has assumed the stand so would you raise your  
16 right hand sir.

17 Whereupon,

18 WAYNE A. BORKOWSKI,

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

21 JUDGE HAENLE: I will mark for  
22 identification three documents which were prefiled as  
23 follows: Marked as Exhibit T-67 for identification is  
24 a nine-page document. The caption at the top is WRB-1.

25 It's entitled Testimony of Wayne R. Borkowski.

(WILSON - CROSS BY SHAW)

941

1 Marked as C-68 is a confidential exhibit in  
2 two pages. In the upper right-hand corner it has  
3 C-WRB-2. The first two words in the front page are  
4 category 1. I assume that's not protective, Ms.  
5 Hastings. And C-WRB-3, which is in four pages, will be  
6 marked as Exhibit C-69 for identification. May I give  
7 the first word on that page, also Ms. Hastings?

8 MS. HASTINGS: Yes.

9 JUDGE HAENLE: Intellicom I N T E L L I C O  
10 M.

11 COMMISSIONER HEMSTAD: I don't seem to have  
12 those exhibits.

13 (Discussion off the record.)

14 JUDGE HAENLE: Let's be back on the record.  
15 During the time we were off the record a full set of  
16 copies was provided.

17 (Marked Exhibits T-67, C-68 and C-69.)

18

19 DIRECT EXAMINATION

20 BY MS. HASTINGS:

21 Q. Mr. Borkowski, would you please state your  
22 name and your address and occupation for the record.

23 A. It's Wayne Robert Borkowski. My address is  
24 7548 Fair Oaks Road in Olympia, Washington, and I am a

25 college professor currently employed by Pacific

(BORKOWSKI - DIRECT BY MS. HASTINGS)

942

1 Lutheran University.

2 Q. I would like to direct your attention to  
3 three exhibits that have been marked Exhibit T-67,  
4 Exhibit C-68 and Exhibit C-69. Were these exhibits  
5 prepared by you or under your direction?

6 A. Yes, they were.

7 Q. Do you have any changes or corrections that  
8 you need to make to these exhibits at this time?

9 A. Just one little typographical error. In  
10 Exhibit C-69 on the second page on the fourth line from  
11 the bottom that dollar amount you should add a zero at  
12 the end. That's Exhibit C-69, second page, fourth line  
13 from the bottom. That's it.

14 Q. With that change, then, are these exhibits  
15 true and correct to the best of your knowledge?

16 A. Yes, they are.

17 MS. HASTINGS: Your Honor, I would like to  
18 move for the admission of these exhibits.

19 JUDGE HAENLE: Any objection, Mr. Harlow?

20 MR. HARLOW: Your Honor, I would like to  
21 briefly voir dire before I state my objection.

22 JUDGE HAENLE: Go ahead.

23

24 VOIR DIRE EXAMINATION

25 BY MR. HARLOW:

(BORKOWSKI - VOIR DIRE BY HARLOW)

943

1 Q. Mr. Borkowski, as I understand it, based on  
2 the documents that you reviewed as provided by the  
3 complainants in this proceeding you would not be able  
4 to give an opinion today as to whether or not U S WEST  
5 is hindering competition in any way in the payphone  
6 marketplace?

7 A. I can give an opinion on the documents  
8 that I was available to review that were provided to  
9 me, as far their level of profitability.

10 Q. But once again, let me repeat the question  
11 and listen carefully, please. Based on the documents  
12 you have reviewed, I understand you would not be able  
13 to give an opinion one way or another on whether or not  
14 U S WEST is hindering competition in the payphone  
15 marketplace; is that correct?

16 A. Because of the significant deficiency in the  
17 data that were provided, it would be difficult to make  
18 a definitive statement one way or the other.

19 Q. So the answer to that question would be yes?

20 A. Yes.

21 Q. Mr. Borkowski, it's my understanding that  
22 your review for this case did not examine whether or  
23 not a competitive payphone industry as a whole is  
24 profitable; is that correct?





25 was granted and it's my understanding that Your Honor

(BORKOWSKI - VOIR DIRE BY HARLOW)

945

1 wanted U S WEST to have the opportunity to see that  
2 data and then see what if anything they could make of  
3 it, and if there was some way they could tie it into  
4 this case and make it relevant, it's abundantly clear  
5 from Mr. Borkowski's limited answer on voir dire that U  
6 S WEST has been able to make no connection whatsoever  
7 between the profit levels of those selected companies  
8 and the issues in this case. The level of profit of  
9 one or two or even all the companies is simply not an  
10 issue in this case.

11 The issue as Mr. Borkowski identifies in his  
12 prefiled testimony is whether or not U S WEST is  
13 through its actions somehow hindering competition, and  
14 Mr. Borkowski's testimony today clearly reflects that  
15 he cannot draw that conclusion one way or the other.  
16 Therefore, this anecdotal testimony, particularly the  
17 confidential exhibits, about who is making what kind of  
18 money, simply is prejudicial and has no impact  
19 whatsoever on the issues in this case. We would  
20 strenuously object to admission of Mr. Borkowski's  
21 testimony as well as his confidential exhibits.

22 JUDGE HAENLE: Ms. Hastings, do you have a  
23 reply?

24 MS. HASTINGS: Yes, Your Honor.

25 Profitability is an issue in this case and it was first

(BORKOWSKI - VOIR DIRE BY HARLOW)

946

1 raised by the complainants. Referring the Commission  
2 to Exhibit T-15 which Mr. David Colson filed and  
3 entered on the record, at line 16 of page 13 of his  
4 testimony, which is on the record in this proceeding,  
5 he says, and I quote, "I cannot stress enough that  
6 profitability is not the issue in this case. Some  
7 competitive payphones providers are very profitable.  
8 Others have gone out of business.

9 JUDGE HAENLE: You are going to need to  
10 speak much more slowly or it will not be recorded.

11 MS. HASTINGS: Thank you. So Mr. Colson  
12 first raised the issue of profitability with his  
13 testimony. The profitability of the complainants is  
14 also an important issue for this Commission to  
15 consider. This is a regulated company that the  
16 complainants are filing their complaint against and  
17 their profitability is regulated by this Commission.  
18 Even as early as this morning Commissioner Hemstad  
19 expressed an interest in the profitability issue as it  
20 was discussed at length yesterday in Mr. Wilson's  
21 cross-examination. I think that it's clear  
22 profitability of the unregulated payphone providers in  
23 this complaint against a regulated company is a very  
24 important issue for the Commission who has had some

25 concern about the amount of information that's

(BORKOWSKI - VOIR DIRE BY HARLOW)

947

1 available to them.

2 JUDGE HAENLE: Any brief response before we  
3 take -- ask Ms. Brown if she has an objection.

4 MS. BROWN: I have no objection.

5 MR. HARLOW: Very briefly. It's interesting  
6 that U S WEST continues to rely on Mr. Colson's  
7 testimony that states "I cannot stress enough that  
8 profitability is not an issue in this case" as  
9 supporting the conclusion that profitability is an  
10 issue. Even assuming for the sake of argument that  
11 profitability of the competitive payphone industry is  
12 an issue, if you will recall my voir dire, Mr.  
13 Borkowski has testified that he hasn't got data to  
14 conclude whether the industry is profitable or not.  
15 His data is purely anecdotal and doesn't go to even the  
16 issue that U S WEST claims is an issue. So you've got  
17 two problems here. Number one, profitability is not an  
18 issue and number two, Mr. Borkowski's testimony is  
19 insufficient to even address that issue if it were an  
20 issue.

21 JUDGE HAENLE: Was the required information  
22 provided by all of your clients, Mr. Harlow?

23 MR. HARLOW: It was not and we explained the  
24 reasons that it could not be compiled when we addressed

25 the motion to compel. U S WEST did not file any

(BORKOWSKI - VOIR DIRE BY HARLOW)

948

1 further motion to compel after the responses were  
2 concluded so we presumed they accept the responses as  
3 sufficient by their inaction.

4 JUDGE HAENLE: Commissioner Hemstad.

5 COMMISSIONER HEMSTAD: May I ask what were  
6 the reasons why the other companies didn't respond?

7 MR. HARLOW: We do not represent individual  
8 members of the Northwest Payphone Association,  
9 Commissioner. We represent the association as a whole,  
10 which is a voluntary association and we represent the  
11 three named complainants -- actually there are four but  
12 two of them have merged so there are now three. Those  
13 three complainants did supply the information that was  
14 requested. The payphone association, we got a list of  
15 the members, we wrote letters to all of them. We  
16 encouraged them strongly to supply this information. A  
17 number of them did, a number of them did not. We have  
18 no mechanism and the association has no mechanism to  
19 force members to divulge their confidential financial  
20 information so we made the best effort we could but we  
21 simply have no way to compel that.

22 COMMISSIONER HEMSTAD: But isn't the  
23 anecdotal nature of the testimony then directly related  
24 to the degree of response to the request for

25 information?

(BORKOWSKI - VOIR DIRE BY HARLOW)

949

1 MR. HARLOW: I would concede that that in  
2 part would be the case. However, U S WEST did have  
3 other avenues such as the tool of subpoena or something  
4 like that. Apparently they didn't consider this issue  
5 to be important enough to go to that expense. Like I  
6 say, we made a good faith effort as we committed to  
7 the administrative law judge we would do when she  
8 ordered us to attempt to obtain that data. We simply  
9 couldn't get it.

10 JUDGE HAENLE: Anything else on this issue?

11 MS. HASTINGS: Well, Your Honor, it seems a  
12 little bit of a miscarriage of justice for us to ask  
13 for the data, for them not to provide the data, and in  
14 fact with respect to the named complainants the data is  
15 -- there's such a dearth of data that it's almost  
16 incredible that they would not have this kind of  
17 information for general financial reporting information  
18 and then to turn around and say that because they  
19 didn't give us the data we asked for, we now can't put  
20 evidence in on it.

21 JUDGE HAENLE: Anything else?

22 I am going to overrule the objection.  
23 Although you have indicated that it is your position,  
24 Mr. Harlow, that the level of profitability of

25 complainants is not an issue, we recognize from the

(BORKOWSKI - VOIR DIRE BY HARLOW)

950

1 prefiled testimony and the testimony that's already in  
2 that one of U S WEST's defenses that all elements of  
3 the level playing field, quote-unquote, must be taken  
4 into account. One of those is regulated versus  
5 nonregulated. I feel that this is an appropriate  
6 method of following up on that position. Whether the  
7 Commission will accept that position or not certainly  
8 remains to be seen. I note that your client did not  
9 provide all the data that were required by the  
10 Commission and take that into account in determining  
11 whether the information will be characterized as  
12 anecdotal or not. I do feel it is relevant and it will  
13 be entered into the record. I believe Ms. Brown  
14 already indicated she had no objection.

15 Anything else of the witness before we go to  
16 cross?

17 MS HASTINGS: No, Your Honor. He's ready  
18 for cross.

19 (Admitted Exhibits T-67, C-68 and C-69.)

20

21 CROSS-EXAMINATION

22 BY MR. HARLOW:

23 Q. Mr. Borkowski, you're not an economist by  
24 education or experience; is that correct?

25 A. That is correct.

(BORKOWSKI - CROSS BY HARLOW)

951

1 Q. You have no undergraduate or graduate degree  
2 in economics?

3 A. I had significant course work in economics  
4 at the undergraduate level but no degree.

5 Q. And you have no experience in working in the  
6 regulated industry; is that correct?

7 A. That is correct.

8 Q. I understand you're simply testifying as a  
9 certified public accountant this morning?

10 A. I am testifying on the quality of the  
11 financial statements that were presented to me.

12 JUDGE HAENLE: You're going to need to speak  
13 much more slowly to be sure that the court reporter can  
14 get down everything that's said. She's going to miss  
15 some of it and it won't exist unless she gets it down.

16 Q. As I understand your work experience since  
17 concluding your formal education, you started with  
18 Ernst & Ernst, an accounting firm; is that correct?

19 A. Yes.

20 Q. And that was a big A or big 10 or whatever?

21 A. Yes, big CPA firm.

22 Q. And that firm primarily dealt with publicly  
23 traded companies?

24 A. Yes, it did.



25 Q. And then you went into the Army?

(BORKOWSKI - CROSS BY HARLOW)

952

1 A. Yes.

2 Q. Then you went to work for IBM?

3 A. That is correct, a subsidiary of IBM,  
4 Science Research Associates.

5 Q. And then you went to work for St. Martin's  
6 College; is that correct?

7 A. That is correct.

8 Q. And that's where you were until you filed  
9 your prefiled testimony in this case?

10 A. That is correct.

11 Q. And since then you've been freelancing I  
12 guess?

13 A. I don't know what you mean by freelancing.

14 Q. Been a consultant?

15 A. I do a lot of presentations to CPA's and  
16 businesses on a variety of accounting and finance  
17 issues.

18 Q. But you've been self-employed?

19 A. Yes.

20 Q. In your deposition you indicated that the  
21 company that you worked with was a division of IBM  
22 rather than a subsidiary?

23 A. It's a subsidiary.

24 Q. It is a subsidiary. Its financial

25 statements were reported on a consolidated basis with

(BORKOWSKI - CROSS BY HARLOW)

953

1 IBM; is that correct?

2 A. We created a set of financial statements  
3 that was subject to audit. They were then rolled into  
4 IBM's consolidated financial statements.

5 Q. And those financial statements that the  
6 subsidiary prepared were required by the Securities and  
7 Exchange Commission to be prepared consistent with  
8 generally accepted accounting principles; is that  
9 correct?

10 A. The parent company, IBM, required that we do  
11 that because they were going to be included in their  
12 consolidated financial statements.

13 Q. So that indirectly was a requirement of the  
14 Securities and Exchange Commission?

15 A. Yes.

16 Q. Companies that are not publicly traded are  
17 not under any requirement to follow generally accepted  
18 accounting principles; is that correct?

19 A. Generally accepted accounting principles is  
20 a standard by which companies do create consistent  
21 financial information.

22 Q. My question was whether or not they were  
23 required by any governmental entity to use generally  
24 accepted accounting principles unless they're publicly

25 traded?

(BORKOWSKI - CROSS BY HARLOW)

954

1 A. Not by a governmental entity.

2 Q. As I understand, the subsidiary of IBM you  
3 worked for had about seven or 800 employees at the  
4 time?

5 A. That is correct.

6 Q. And that was apparently the smallest company  
7 that you've ever worked for?

8 A. Well, I mentioned to you during the  
9 deposition my involvement with a start-up company in  
10 the last year, the espresso company.

11 Q. You're not an employee of that company, are  
12 you?

13 A. No.

14 Q. Are you preparing its financial statements?

15 A. I review them on a regular basis.

16 Q. But you're not preparing them?

17 A. No.

18 Q. On pages 7 and 8 of your testimony you  
19 addressed the issue of whether or not U S WEST is  
20 hindering competition in the payphone market. Do you  
21 recall that testimony?

22 A. I am not sure what question you're referring  
23 to. Is this in Exhibit T-67?

24 Q. Yes. At pages 7 and 8.

25           A.     What I have on page 7 is information about

(BORKOWSKI - CROSS BY HARLOW)

955

1     the data requests, the response.

2                   JUDGE HAENLE:   Look at line 26 on page 7?

3                   THE WITNESS:   I see.

4           A.     Any correlation and conclusions between lack  
5     of marketing and complainant's contention that they  
6     hinder competition, since --

7           Q.     I am simply trying to find out whether you  
8     recall that question.

9           A.     Yes, I do.

10          Q.     If you were to be asked to analyze whether  
11     or not U S WEST were hindering competition in the  
12     payphone market through its actions or inactions, what  
13     do you think you would need to look at to determine  
14     that that were true, that competition were being  
15     hindered?

16          A.     I would need to look at exactly what I  
17     thought I was going to receive and what was requested  
18     by U S WEST.  A set of financial statements which  
19     detail the revenues and expenses and the resources of  
20     the business.  Those statements prepared consistently  
21     over a number of years.  I would need to look at the  
22     business plans because that would give me an indication  
23     of the companies and what they believe the  
24     opportunities are in that industry and what the threats

25 are give me some insight into the types of things that

(BORKOWSKI - CROSS BY HARLOW)

956

1 they believe are really issues they have to address in  
2 the future.

3 Q. Anything else?

4 A. No.

5 Q. If you had a set of financial statements  
6 that showed historically over time -- assume  
7 hypothetically that a competitive payphone provider's  
8 profits are declining say over a three-year period.  
9 Could you conclude from that one way or another as to  
10 whether or not U S WEST were hindering competition and  
11 that was the cause of those declining profits?

12 A. What I could do is take a look at the reason  
13 for the decline in profits. If I had expenses  
14 identified to try to isolate what area that was.  
15 Was it salaries, was it travel, the types of expenses.  
16 And if I observed significant changes in those expenses  
17 that would be a matter of trying to identify what that  
18 cause was by speaking to management about those issues.

19 Q. So in other words, there would be another  
20 element here. You would have to talk to management  
21 about those changes in the financial statements  
22 over time; isn't that correct?

23 A. That is correct.

24 Q. And you didn't have an opportunity in this

25 case to talk to any of the management of any of the

(BORKOWSKI - CROSS BY HARLOW)

957

1 companies whose financial statements you reviewed in  
2 this case; isn't that correct?

3 A. I wasn't provided the opportunity to do that  
4 and there wasn't enough information really to glean  
5 from the financial statements as to what was the reason  
6 for the changes.

7 Q. Please assume hypothetically that all of the  
8 companies whose financial statements you reviewed  
9 provided you with three or four years of financial data  
10 prepared consistent with generally accepted accounting  
11 principles. Do you have that hypothetical in mind?

12 A. Yes.

13 Q. I take it even -- I take it that was the  
14 data you understood had been requested by U S WEST of  
15 the complainants?

16 A. That and the business plans, yes.

17 Q. You don't understand that U S WEST requested  
18 that you have an opportunity to interview management,  
19 do you?

20 A. No, I didn't.

21 Q. So assuming that hypothetical that you have  
22 these generally accepted accounting principle  
23 statements in front of you, I take it without the  
24 opportunity to interview management you still would not

25 have been able to determine with those financial

(BORKOWSKI - CROSS BY HARLOW)

958

1 statements that U S WEST were or were not hindering  
2 competition; is that correct?

3 A. That's incorrect. I could have. For  
4 example, if I observed the profitability declining  
5 over a period of time, it could be that certain  
6 expenses as a percentage of sales would maintain at the  
7 same level and other percentages -- other expenses,  
8 percentage of sales could have been increasing.

9 Q. How would that lead you to conclude that  
10 those changes were as a result of actions or inactions  
11 by U S WEST?

12 A. Well, U S WEST -- some of these financial  
13 statements did detail what their cost of sales were and  
14 what their line charges were, and I observed companies  
15 where their cost of sales were actually declining as a  
16 percentage of sales --

17 JUDGE HAENLE: You're going to need to talk  
18 more slowly. As a result of the witness going more  
19 quickly you are going more quickly. I am missing -- I  
20 don't know if the court reporter is. The answer to  
21 that is to be concise, not to talk more quickly.

22 A. So what I could do then is observe that  
23 certain expenses could have been maintained at the  
24 same level of sales over time while other expenses were

25 increasing as a percentage of sales. I would assume if

(BORKOWSKI - CROSS BY HARLOW)

959

1 the profit was declining it would be not caused by the  
2 expenses that were maintaining at the same level but by  
3 those that were increasing over time and those are the  
4 ones that I would try to address to find out what the  
5 cost was, but I could identify what the expenses were.  
6 For example, to respond to your question --

7 Q. Let's just stop it there to try to be  
8 concise as the judge has requested.

9 A. Let me do that.

10 Q. No, I think you've answered the question is  
11 what I'm getting at.

12 A. I would like to finish it. There were  
13 certain statements where I identified cost of sales,  
14 which a lot of the input from U S WEST were actually  
15 declining as a percentage of sales; but other expenses,  
16 consulting fees, salaries, legal fees, were increasing  
17 dramatically as a percentage of expenses. I can  
18 conclude that that is nothing that would necessarily be  
19 caused by U S WEST but by other types of expenditures  
20 and then I would request management, what's causing  
21 these expenditures.

22 Q. Mr. Borkowski, in looking at the level of  
23 profitability, I assume you looked at that to try to  
24 determine whether or not U S WEST were hindering



25 competition?

(BORKOWSKI - CROSS BY HARLOW)

960

1 A. I was trying to see if the firms were in  
2 fact --

3 JUDGE HAENLE: Could you begin with a yes or  
4 no and then explain your answer, please, sir?

5 A. Would you repeat the question.

6 Q. In looking at the levels of profitability of  
7 the company you looked at, were you trying to determine  
8 whether or not U S WEST was hindering competition?

9 A. Yes.

10 JUDGE HAENLE: He can explain the answer  
11 as I indicated. But I would like you to be concise.  
12 You can explain your answer but don't go into great  
13 detail.

14 THE WITNESS: Sorry. That's a fault of  
15 being a college professor.

16 A. I could because what I attempted to do was  
17 look at the profitability of the enterprises, see if  
18 there were changes in the profitability and try to  
19 identify what caused that to occur. There were  
20 significant data deficiencies. Many companies didn't  
21 provide data beyond 1991. Many provided only one year  
22 worth of data, so I had to do that with a very limited  
23 amount of information that was presented to me.

24 Q. Mr. Borkowski, even if you had all the data

25 you requested, would you have sufficient information to

(BORKOWSKI - CROSS BY HARLOW)

961

1 know what the profits would have been but for the

2 alleged anti-competitive conduct of U S WEST?

3 A. Could you repeat that question again.

4 Q. Even if you had all the data you requested,  
5 would you have been able to determine what the level of  
6 profitability of the complainants would have been but  
7 for the alleged anti-competitive conduct of U S WEST?

8 A. I am not sure how to respond to that as  
9 far as alleged anti-competitive behavior. What I  
10 could have looked at once again is if there was a  
11 profitability problem what expenses were causing that,  
12 and if those were in fact charges coming from U S WEST  
13 and that was the reason for the decline in  
14 profitability, we might then say that this could have  
15 been the cause of the lack of profitability. That's  
16 not what I found.

17 Q. Does a higher charge from U S WEST  
18 necessarily mean that it's an anti-competitive act?

19 A. Not necessarily if it's increasing in  
20 proportion to the increase in sales.

21 Q. Isn't it true, Mr. Borkowski, that you would  
22 have to have a lot more information available to you  
23 including interviewing management and perhaps looking  
24 at the actions of U S WEST itself to determine whether

25 or not the trends in profitability that you looked for

(BORKOWSKI - CROSS BY HARLOW)

962

1 were caused in fact by anti-competitive conduct of U S  
2 WEST?

3 A. What I would really need to talk to  
4 management about is where I saw significant shifts in  
5 expenses, what was causing that to occur. And many  
6 times those expenses are beyond those caused by U S  
7 WEST.

8 Q. So isn't it true that really when you get  
9 right down to it you can't tell what the causes of the  
10 changes in the financial conditions of the company is  
11 without interviewing management?

12 A. I can look at the types of expenses that are  
13 causing the change in profitability. Now, why those  
14 expenses changed would require me to talk to  
15 management.

16 Q. So, again, that was -- with that explanation  
17 the answer to that question was yes? Remember the  
18 administrative law judge asked you to give your answer  
19 yes and then explain it. Do you recall the question?

20 A. Would you repeat it, please.

21 Q. The question was when you get right down to  
22 it, Mr. Borkowski, even if you have all the financial  
23 data showing the profitable trends, in order to  
24 determine the real causes of those profitability trends

25 you need to interview the management; isn't that

(BORKOWSKI - CROSS BY HARLOW)

963

1 correct?

2 A. Yes.

3 Q. In preparing your testimony for this case, I  
4 understand you did not read the testimony that  
5 previously had been filed by the complainants in this  
6 case?

7 A. I had reviewed the original complaint, the  
8 response to the complaint, the data requests and the  
9 response to the data requests, and I had just kind of  
10 skimmed through some other files, testimony that was  
11 provided just to see if it would help me do a financial  
12 analysis.

13 Q. Then I understand from your deposition you  
14 really didn't read that testimony?

15 A. No.

16 Q. And you didn't review the document produced  
17 by U S WEST in this case to the complainants; is that  
18 correct?

19 A. That is correct, I didn't.

20 Q. So you wouldn't have seen any of the  
21 exhibits that the complainants have filed in this case  
22 which they believe show anti-competitive conduct by U S  
23 WEST?

24 A. Yes. I didn't.

25 Q. And I understand you didn't review any

(BORKOWSKI - CROSS BY HARLOW)

964

1 market share data in preparing your testimony in this  
2 case?

3 A. That is correct, I didn't.

4 Q. And I think we've already ascertained you  
5 didn't talk to any of the company management?

6 A. That's correct.

7 Q. You testified or at least was mentioned in  
8 your confidential exhibits about officer salaries for  
9 officers of the complainants in this case?

10 A. Yes.

11 Q. What if anything did you use as a benchmark  
12 in your review of those financial statements as the  
13 appropriate level of officer salaries?

14 A. What I was attempting to do is look at the  
15 change in officer salaries over time, and unfortunately  
16 in most cases I wasn't provided historical information  
17 to see if the change in salaries was greater than the  
18 change in the revenues of the  
19 company.

20 Q. What about nonofficer salaries? Did you use  
21 any kind of a benchmark for the level of those as well?

22 A. Without knowing the number of employees who  
23 were in that base it would be difficult to do that.

24 Q. Same question with regard to consulting

25 fees.

(BORKOWSKI - CROSS BY HARLOW)

965

1 A. All I can observe with consulting fees is a  
2 company whose profitability declined when consulting  
3 fees went from zero or a minimal amount in one year to  
4 over \$400,000 in another year, I can make that  
5 observation and say this was the cause of the  
6 profitability decrease when all other expenses remained  
7 the same.

8 Q. But I take it you have no way of knowing  
9 whether or not those increased consulting fees were  
10 reasonable and necessary business expenses?

11 A. I have no way of knowing that.

12 Q. And so in your testimony you're not in any  
13 way suggesting that the salaries, officer salaries, or  
14 consulting fees are abnormal or inappropriate for this  
15 industry?

16 A. Not at all.

17 Q. Would you agree, Mr. Borkowski, that small  
18 companies could have unwritten business plans?

19 A. They could have, yes.

20 Q. And certainly even though management of  
21 a small company or of a competitive payphone company  
22 didn't have a written business plan that alleged or  
23 mentioned anti-competitive conduct of U S WEST that  
24 doesn't necessarily mean management doesn't feel that

25 that conduct has been occurring; isn't that correct?

(BORKOWSKI - CROSS BY HARLOW)

966

1 A. That is correct.

2 Q. I understood at the time we took your  
3 deposition that you were not employed by Pacific  
4 Lutheran University?

5 A. We took the deposition -- yes, I was at that  
6 time.

7 Q. Oh, you were?

8 A. The question never came up.

9 Q. I believe there was a period of time between  
10 St. Martin's College and Pacific Lutheran University  
11 where you were not employed other than self-employment?

12 A. Just a summer. That's between the school  
13 year. My contract with St. Martin was over and the  
14 next contract I signed was with Pacific Lutheran  
15 University.

16 Q. During that time as I understood it, you had  
17 a small business of consulting. Maybe you're still  
18 doing that on a part-time basis.

19 A. It's not a small business. Over the last  
20 several years I make presentations to business  
21 professionals and CPA's about accounting and finance  
22 matters. It's just something I do in the summers and  
23 other times when class is not in session.

24 Q. Do you have a business plan for your

25 consulting business?

(BORKOWSKI - CROSS BY HARLOW)

967

1 A. Not a written business plan.

2 Q. Do you have any kind of a benchmark for the  
3 appropriate level of profit that is necessary to  
4 attract investors to the competitive payphone business  
5 in this state?

6 A. Well, in general investors would like to be  
7 compensated for their risk. So, if the risk-free rate  
8 of interest would be 7 percent or 6 percent, an  
9 investor would then have to look at the level of risk  
10 that is being asked of them and would like to generate  
11 a higher rate of return for that risk.

12 Q. But you can't say how much higher than 7  
13 percent?

14 A. Different individuals have different  
15 propensities to risk. Risk takers would be willing to  
16 take risk for a lot lower level of profitability.  
17 Those that are risk averse would be willing to take on  
18 a lot of risk for a lot higher levels of profitability.  
19 That really depends upon the individual.

20 Q. Doesn't the marketplace typically establish  
21 a range of necessary profitability in a given industry  
22 as being necessary to attract sufficient capital  
23 investment?

24 A. Firms in an industry tend to aggregate



25 around a certain level of profitability, but many of

(BORKOWSKI - CROSS BY HARLOW)

968

1 them can succeed and be extremely profitable if they're  
2 run well and many can go bankrupt within the first five  
3 years of their existence because they're not being  
4 managed appropriately.

5 Q. So is the answer a qualified yes?

6 A. Yes.

7 Q. And I take it you don't have any opinion on  
8 what that level of profitability is for this particular  
9 industry; is that correct?

10 A. Yes.

11 Q. And I take it you didn't do any review of  
12 the overall profitability of this industry; is that  
13 correct?

14 A. Didn't have the data to do that in this  
15 state.

16 Q. And I take it based on the work that you've  
17 done in this state, you would not be able to generalize  
18 and state that the entire competitive payphone industry  
19 is sufficiently profitable to attract capital; is that  
20 correct?

21 A. That's correct, although I have observed in  
22 the statements that were provided many companies moving  
23 into this industry and many companies who are  
24 significantly increasing their investment in their

25 business work cash flow statements where they are

(BORKOWSKI - CROSS BY HARLOW)

969

1 provided to me which indicates that capital is being  
2 attracted into the industry at the current time.

3 Q. I assume that's based on the current level  
4 of profitability?

5 A. That is based on current -- and I assume the  
6 anticipated level of profitability for these entities.

7 Q. Are you aware that the Washington Utilities  
8 and Transportation Commission has cases pending that  
9 are attempting to review what we commonly call  
10 alternative operator surcharges?

11 A. No, I am not.

12 JUDGE HAENLE: Services.

13 MR. HARLOW: Operator surcharges service?

14 A. No, I am not.

15 Q. So you do not know what would happen to the  
16 the profitability of the companies whose financial  
17 statements you reviewed if the WUTC staff position in  
18 those cases prevails and those surcharges are  
19 reduced; is that correct?

20 A. That is correct.

21 Q. Are you aware of any trend by U S WEST to  
22 pay higher commissions to site owners for placement of  
23 payphones in competition with my client?

24 A. I am not.

25 Q. So you would have no way of knowing what the  
(BORKOWSKI - CROSS BY HARLOW) 970

1 effect of, say, a U S WEST 5 percent increase in site  
2 commissions would be on this particular marketplace?

3 A. Would the commissions be charged to your  
4 client or to other customers?

5 Q. Commissions would be paid to the space  
6 providers for the placement of payphones.

7 A. I would not.

8 Q. Did you undertake any comparison of U S  
9 WEST's rate structure -- that would be the rates  
10 charged to payphone end users -- did you undertake any  
11 effort to compare that rate structure to what the  
12 competitive payphone providers charge to end users?

13 A. I did not.

14 Q. So you would have no way of knowing the  
15 effect on the competitiveness of the companies based on  
16 variations between the rates?

17 A. That is correct.

18 Q. Did you do any analysis of the market share  
19 data between complainants in this case and U S WEST?

20 A. I did not.

21 Q. Did you study competitiveness of payphone  
22 companies in Oregon?

23 A. I did not.

24 Q. Did you look at the competitiveness of

25 payphone companies in GTE territory?

(BORKOWSKI - CROSS BY HARLOW)

971

1 A. I did not.

2 Q. Do you recall that financial statements --  
3 some of the financial statements that you reviewed  
4 contained financial data for both Oregon and Washington  
5 operations?

6 A. Yes. Some of those statements had  
7 information about various charges, but unfortunately in  
8 some cases expenses were broken down by state but not  
9 revenues so it was difficult to draw any correlation or  
10 conclusion about the different states and whether  
11 they were appropriate or not. It just was insufficient  
12 data.

13 Q. So in other words you couldn't sort out  
14 between Oregon and Washington operations?

15 A. It was difficult to sort very much out with  
16 the data that was provided. That was not available to  
17 me.

18 Q. And likewise, you couldn't sort out between  
19 operations in U S WEST territory compared to operations  
20 in GTE territory?

21 A. That data was not provided to me, that's  
22 correct.

23 MR. HARLOW: That's all the questions I  
24 have.

25 JUDGE HAENLE: Did you have questions, Ms.

(BORKOWSKI - CROSS BY HARLOW)

972

1 Brown?

2 MS. BROWN: No, Your Honor.

3 JUDGE HAENLE: Commissioners, questions?

4 COMMISSIONER CASAD: No questions.

5 COMMISSIONER HEMSTAD: No questions.

6 MS. HASTINGS: No, Your Honor.

7 JUDGE HAENLE: Anything more of the witness?

8 Thank you, sir, you may step down. Let's go  
9 of record to discuss whether there's anything further  
10 to discuss.

11 (Discussion off the record.)

12 JUDGE HAENLE: Let's be back on the record.

13 During the time we were off the record we discussed a  
14 couple of items. Do you want to do your item first,  
15 Mr. Harlow?

16 MR. HARLOW: Certainly. It's my  
17 understanding that NCS Telework Communications Co. and  
18 Paytel Northwest, Inc., who are two of the complainants  
19 in this proceeding, have, since the complaint was  
20 filed, concluded a merger. They are now one entity  
21 under the name of Paytel Northwest Inc. and so NCS  
22 Telework Communications Co. no longer exists as a  
23 separate legal  
24 entity.

25  
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

JUDGE HAENLE: You suggested that you might  
(BORKOWSKI - CROSS BY HARLOW) 973

need to file an amended complaint and that I think U S  
WEST has indicated that that would not be required as  
long as they knew of the merger. Is that correct, Ms.  
Hastings?

MS. HASTINGS: That's correct, Your Honor.

JUDGE HAENLE: Do you have any problem with  
that, Ms. Brown?

MS. BROWN: No.

JUDGE HAENLE: Let's do it on that basis. I  
appreciate your flexibility. We have two record  
requisitions that were made yesterday. We have the  
corrected version coming in on C-27 from U S WEST.  
Cross of rebuttal is set for the 13th through the 16th  
of December. Rebuttal is to be prefiled by  
November 19. Anything else we need to discuss?

We'll be in recess until 9:30 on December  
13th. Thank you.

(Hearing adjourned at 11:15 a.m.)

