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INDEX

WITNESSES:

DIRECT

MR. LOVELESS

39

EXHIBIT INDEX

EXHIBIT NO. DESCRIPTION

PAGE NO.

(No exhibits were marked for identification.)

1 BE IT REMEMBERED that on Tuesday,
2 the 25th day of March, 1997, at 4:20 p.m., at 1300
3 Evergreen Park Drive Southeast, Olympia, Washington,
4 before LISA K. QUINN, CCR, Notary Public in and for
5 the State of Washington, a hearing in the above matter
6 was held;

7 WHEREUPON, the following
8 proceedings were had, to wit:

9
10 <<<<<>>>>

11
12 JUDGE SCHAER: The hearing will
13 come to order. This is the hearing in Docket
14 No. 960659, which is a complaint by United & Informed
15 Citizen Advocates Network against U S WEST, alleging
16 an improper disconnection of service.

17 This is a hearing for consideration of
18 dispositive motions that was set in a pre-hearing
19 conference order and continued from 1:30 p.m. to
20 3:30 p.m. today at the request of U S WEST. It's
21 taking place on March 25th, 1997, at Olympia,
22 Washington, and we are beginning at about 4:30 in the
23 afternoon.

24 The hearing is being held before Administrative
25 Law Judge Marjorie R. Schaer. With me on the bench is

1 Wally Budsberg who is acting as advisory staff to me
2 in this proceeding.

3 I would like to begin taking appearances,
4 starting with the appearance of the complainants,
5 please.

6 MR. HOLCOMB: Pardon me?

7 JUDGE SCHAER: I would like to
8 start taking appearances, starting with the
9 complainants, please, Mr. Holcomb.

10 MR. HOLCOMB: I'm Byron Holcomb,
11 and I'm the attorney for the complainant U & I CAN.

12 JUDGE SCHAER: Would you please
13 give us your address also.

14 MR. HOLCOMB: Post Office Box
15 10069, Bainbridge Island, Washington 98110.

16 JUDGE SCHAER: Thank you. And
17 for U S WEST, please?

18 MS. ANDERL: Lisa Anderl
19 representing U S WEST Communications. My address is
20 1600 Seventh Avenue, Room 3206, Seattle, Washington
21 98191.

22 JUDGE SCHAER: And for the
23 commission staff, please?

24 MS. SMITH: Shannon Smith,
25 Assistant Attorney General, representing commission

1 staff. My address is 1400 South Evergreen Park Drive
2 Southwest, P.O. Box 40128, Olympia, Washington
3 98504-0128.

4 JUDGE SCHAER: Our job this
5 afternoon is to hear oral argument on two dispositive
6 motions. Following the motions, as I told you in my
7 letter faxed to you on March 24th, I would like to
8 very briefly go over the remaining motions pending in
9 this case and discuss how we should proceed with
10 them.

11 Are there any preliminary matters before we begin
12 the arguments? This is where you tell me about the
13 deposition.

14 MR. HOLCOMB: For the record, we
15 have stipulated that the deposition of Joseph Thayer
16 taken on March 12th, 1997, may be admitted in this
17 proceeding and a copy may be used in lieu of the
18 original. And a copy has been provided to the
19 administrative judge.

20 MS. ANDERL: Yes. I provided
21 Judge Schaer with my copy of that, which includes the
22 deposition exhibits attached to it. And if at some
23 point, I could get that copy back.

24 JUDGE SCHAER: I will have it
25 copied, Ms. Anderl. At some point, I believe you

1 indicated that your client is reviewing that
2 deposition, and that if he has any corrections, they,
3 along with the original of the deposition, will be
4 filed with the commission; is that correct?

5 MS. ANDERL: I will-- we will
6 make the necessary corrections, if there are any. And
7 then since Mr. Holcomb took the deposition and is
8 going to be the one in charge of the original, I have
9 no problem with it being filed. I will let him do
10 that.

11 JUDGE SCHAER: All right.

12 MR. HOLCOMB: By "him," do you
13 mean me?

14 MS. ANDERL: Yes.

15 JUDGE SCHAER: So you will return
16 the original to Mr. Holcomb for him to file with the
17 commission?

18 MR. HOLCOMB: I will be
19 responsible for that.

20 JUDGE SCHAER: Then let's start
21 with the U & I CAN motion, please. Mr. Holcomb, would
22 you like to begin?

23 MR. HOLCOMB: Thank you.

24 Judge Schaer, Ms. Anderl, Ms. Smith, two
25 observations I would like to make at the outset. One,

1 we are trying to-- when we were here in the pretrial
2 hearing, that was kind of a confused proceeding as to
3 the positions of everybody and what was going to
4 occur, and we have tried to simplify that in our
5 motion, to state exactly what has occurred and
6 precisely what has occurred. In companion with that,
7 I would like to make a brief argument about what
8 should have been done.

9 In our motion for summary disposition, we
10 combined a number of factors, which we have
11 collectively called CCMS, and that is a package that
12 is provided by U S WEST Communications and which was
13 purchased by U & I CAN. You will note in the exhibits
14 attached to our motion, CWL 2 and 3, that it provides
15 what's called customized call services packages.

16 And what we want to focus on as part of that
17 package is the call transfer capability of that
18 package. No dispute that we were-- we purchased that,
19 agreed to the terms of U S WEST as to that package.
20 We were up-to-date in our payments for that package,
21 and that was in effect through and including December
22 of 1995.

23 Now we move to January of '96. Now, U S WEST,
24 for its own reasons, was unhappy about the use of this
25 call transfer capability. Now, what should have been

1 done at that point, to do what U S WEST wants to do in
2 this proceeding, is that the tariff should have been
3 addressed on or about that date, to include the
4 objections to any use or the limitations on the use or
5 the clarifications on the use of this call transfer
6 capability. That was never done. I regard that as
7 being the front-door approach to this proceeding and
8 what should have been done. Unfortunately, it was
9 not.

10 Instead, on or about January of 1996, the first
11 of what U S WEST chooses to call disablement
12 occurred. By that, that's an in-house term that they
13 use to describe the termination of the call transfer
14 capability feature of the CCMS package.

15 A review of the tariffs in the Washington
16 Administrative Code and the statutes does not disclose
17 any definition of what constitutes, quote,
18 disablement, unquote. As I say, that is an admitted
19 locally generated term -- "locally" meaning U S WEST
20 Communications generated term -- for cessation of this
21 call transfer capability.

22 Not only is there no definition of disablement,
23 there is companion with that no reference whatsoever
24 in the tariffs or the WAC's or the statutes about the
25 call capability transfer feature itself.

1 In determining why U S WEST Communications,
2 quote, disabled, unquote, it has been a very difficult
3 time arriving to what's a very simple answer to this
4 thing. It is that there is no definition of
5 disablement. There was no unlawful use of this CCMS
6 package, call transfer capability feature, by U & I
7 CAN. Nothing has been shown that we are doing
8 anything illegal. This was a strictly arbitrary,
9 strictly unilateral decision on the part of U S WEST
10 to terminate this feature.

11 Now, we get into extended slippery slopes on this
12 case, as I say, as to what the position is. Is U S
13 WEST stipulating that this is disconnecting a service
14 or is it not? We don't know. We invite them to
15 clarify that before a judge at this point.

16 If it is disconnecting the service, there are
17 certain acts and certain procedures that must be
18 followed by U S WEST by way of notice, and that's
19 written notice, and that's never been done.

20 There have been at times allegations of fraud.
21 There's no showing of any fraud in this proceeding.
22 U & I CAN used the call transfer capability exactly as
23 purchased from U S WEST Communications.

24 There have been suggestions of other unlawful
25 features, and I have addressed that at this time. We

1 have not been cited to any specific unlawful use of
2 this CCMS package and specifically the call transfer
3 capability feature of this CCMS package.

4 What we are left with, and I'm going to reserve
5 argument on this because I don't want to make their
6 argument for them, is whether U & I CAN should be
7 registered as a telecommunications company or whether
8 it should be considered a private telecommunications
9 system.

10 That only has relevance in terms of the tariff
11 use, but even that has to be taken in consideration of
12 the actual use of the CCMS package by U & I CAN. We
13 used it lawfully; we used it as purchased.

14 I don't care whether we are Boeing, John L. Scott
15 or various Realtors all around the Puget Sound area,
16 J. Byron Holcomb private attorney, any other group of
17 business, nonprofit, whatever, we have collectively,
18 meaning those that have the CCMS package, have a right
19 to use this package as offered and as purchased from
20 U S WEST, and we have a right to use every feature of
21 that as offered and as purchased from U S WEST.

22 In this specific case, U & I CAN has, and I
23 repeat again, has used it lawfully, as ordered and as
24 provided by U S WEST.

25 Our complaint is well-founded in this case. This

1 was wrongful on the part of U S WEST to terminate--
2 disable. Excuse me. We don't want to get our terms
3 mixed up. This was wrongful, the disablement of this
4 package. There has been no showing of any conduct on
5 the part of U & I CAN that is wrongful in this case,
6 unlawful, fraudulent, contrary to any tariff, contrary
7 to any statute.

8 And we are entitled to-- and this is-- what
9 I'm saying here is not disputed by U S WEST
10 Communications. It's just not disputed. It's
11 important to focus on specifically what it's doing.

12 And I'm going to assume this Court knows probably
13 much more than I do about how telephone systems
14 operate, but I'm going to explain it this way: If A
15 wants to reach C, B is the vehicle by and through
16 which A and C can communicate. This can be within an
17 area, most likely in the overwhelming number of cases
18 is -- although there are no statistics, but no
19 statistics are necessary -- but it could also go from
20 one exchange area to another. Again, this is offered
21 by U S WEST as a part of the CCMS package. It is not
22 unlawful to do that.

23 Now, EAS, as a definition in WAC 48-124-05 says,
24 as used in this chapter, quote, extended area of
25 service, unquote, means mandatory two-way, seven-digit

1 local calling service between exchanges that provides
2 the ability to call from one exchange to another
3 exchange without incurring a toll charge. That's one
4 of the features that CCMS does.

5 Now, there is no definition of EAS bridging in
6 this WAC or in the tariff or any other place. That's
7 something that's been grafted on in discussion by
8 U S WEST.

9 We are entitled, we are entitled as a minimum, to
10 specific notice as to what the reason for the action
11 taken by U S WEST is, what provision of the tariff,
12 what provision of the WAC, what provision of the
13 statute we have violated, if any. We have never been
14 provided that.

15 There is a lot of throwing things out on the wall
16 and hoping something sticks here. But when you look
17 at the actual specifics of what is done here, all that
18 has been done is to cease, and they use the term
19 disable, the call transfer capability of the CCMS
20 package. And the use of that by U & I CAN was
21 entirely lawful and proper.

22 Thank you for your attention. Do you want me
23 available for questions?

24 JUDGE SCHAER: Would you like to
25 have questions now? I was planning to do that.

1 MR. HOLCOMB: It's up to you.

2 JUDGE SCHAER: If that's

3 everyone's preference.

4 You provided me this afternoon with a copy of the
5 deposition of Mr. Thayer.

6 MR. HOLCOMB: That's correct.

7 JUDGE SCHAER: And I'm looking at
8 Page 22 of that deposition in the middle. There's a
9 reference there to a March 21st memorandum and a
10 March 11th line in that memorandum.

11 Do you see that reference, sir?

12 MR. HOLCOMB: I am reading-- are
13 you referring to Line 7 through 15?

14 JUDGE SCHAER: Yes.

15 MR. HOLCOMB: Yes, I have that
16 before me.

17 JUDGE SCHAER: Does Mr. Loveless
18 agree that he was provided this information on
19 March 11th?

20 MR. HOLCOMB: I don't think any
21 information was provided except a courtesy call that
22 the line was disabled.

23 JUDGE SCHAER: Well, if you would
24 look at the memorandum, which is attached to the
25 deposition you have provided from which this quote is

1 taken, it appears to me that Mr. Thayer is indicating
2 that he communicated this information to Mr. Loveless
3 in the courtesy telephone call.

4 Is that how you would read that also? Let me
5 give you a minute to find that.

6 MR. HOLCOMB: I'm looking at the
7 affidavit of Thayer, which is--

8 JUDGE SCHAER: If you look at
9 JT-2.

10 MR. HOLCOMB: JT-1. I'm looking
11 at Paragraph 13.

12 JUDGE SCHAER: I'm looking at
13 JT-2, the bottom paragraph.

14 MR. HOLCOMB: It's actually on
15 JT-1, Page 4, Lines 1 through 8, is the same
16 discussion.

17 JUDGE SCHAER: And it appears
18 to me, both from the deposition and from JT-2, the
19 notation at the bottom under March 11th, that
20 Mr. Thayer is indicating that he gave this information
21 to Mr. Loveless.

22 MR. HOLCOMB: Well, what is he
23 referring to there? What tariff provision?

24 JUDGE SCHAER: As I see it, it's
25 referring to the access tariff, which I believe is

1 U S WEST Tariff WNU-36, but--

2 MR. HOLCOMB: That wasn't in
3 effect. That came into effect I think in June of '96,
4 36 did. I think so.

5 MS. ANDERL: I'm not sure, Your
6 Honor -- if I may interrupt -- when WNU-36 was
7 effective. But in any event, if that particular
8 access tariff was not effective until June of 1996,
9 something very similar to it was in effect up until
10 that time.

11 JUDGE SCHAEER: What I'm trying to
12 find out is, it appears from this that Mr. Thayer is
13 saying that he told Mr. Loveless that he had no
14 objection to providing the service, but that
15 Mr. Loveless must subscribe to the appropriate
16 underlying services from the access tariff. And I'm
17 just trying to see if that's one of the facts that
18 everyone agrees upon.

19 MR. HOLCOMB: Well, as stated in
20 the memorandum and his affidavit, I don't challenge
21 it, but what does it mean in effect in terms of any
22 kind of conclusion? It's vague; it's ill-defined.
23 He's not referring to any specific provision. He's
24 not providing it to us, and never did in his
25 deposition, as to the exact tariff that was at issue

1 that he claims is being-- that he has to subscribe to
2 here.

3 If there is-- if the judge is referring to the
4 general toll tariff, even that does not apply to the
5 CCMS package, the way I read it.

6 JUDGE SCHAER: All I'm trying to
7 determine right now is if you agree with Mr. Thayer
8 that that information in this form was provided.

9 MR. HOLCOMB: May I ask my
10 client?

11 JUDGE SCHAER: Yes, you may.

12 (Discussion off the record.)

13 MR. HOLCOMB: In response to Your
14 Honor's question, I would say that even Mr. Thayer
15 does not know particularly what access tariff
16 Mr. Loveless has to apply to, because he said he would
17 offer to have an IXE marketing person meet with him.

18 So in terms of stipulating, I don't know what you
19 want to stipulate to.

20 JUDGE SCHAER: I just want to
21 know whether Mr. Loveless agrees that he was told that
22 he needed to use-- that there was no objection to the
23 service, but that he had to subscribe to the
24 appropriate underlying services from the access
25 tariff.

1 MR. HOLCOMB: So far as that
2 general phrase, without specificity, yes.

3 JUDGE SCHAER: Thank you.

4 MR. HOLCOMB: This is now March.
5 Of course, it was turned off in January.

6 JUDGE SCHAER: Certainly. I have
7 seen the time line.

8 MR. HOLCOMB: I just don't know
9 what you can conclude from that. I don't know why you
10 are making that specific reference, because it doesn't
11 mean anything.

12 JUDGE SCHAER: Going forward,
13 what kind of-- what type of customer premise equipment
14 does U & I CAN have on Centrex lines?

15 MR. HOLCOMB: In specific terms
16 or general terms?

17 JUDGE SCHAER: As specific as
18 possible.

19 MR. HOLCOMB: I would have to--

20 MR. LOVELESS: We have a
21 standard--

22 MR. HOLCOMB: Can he answer this
23 question? I don't know, is my answer. I don't know
24 how to answer that. I can tell you in general terms
25 the way it operates, but I can't answer it

1 specifically.

2 MS. SMITH: Perhaps we can have
3 him sworn in to answer those questions that Counsel
4 isn't able to answer.

5 JUDGE SCHAER: Would you have any
6 objection to proceeding in that manner?

7 MR. HOLCOMB: Well, I would have
8 an objection on materiality and relevance, for one
9 thing. I don't know that's that important. Whatever
10 was purchased from U S WEST was purchased by way of a
11 package. And that's the important question.

12 And I hesitate having things come piecemeal.
13 There has been opportunity for discovery here, and
14 nobody-- U S WEST nor the State have availed
15 themselves of an opportunity to depose anybody. And I
16 would prefer to reserve that testimony to a hearing,
17 if it's going to be that. I don't think that's
18 necessary, and it's immaterial and irrelevant.

19 JUDGE SCHAER: Well, I am looking
20 at your motion, what your motion seeks, and I'm trying
21 to really-- what I'm trying to do, Mr. Holcomb, is
22 figure out what U & I CAN is, how it operates, what
23 equipment it owns, what equipment it gets from U S
24 WEST, and--

25 MR. HOLCOMB: It gets no

1 equipment--

2 JUDGE SCHAER: These are my
3 questions, rather than questions of any of the
4 parties. I'm trying to wrap my mind around what kind
5 of animal this is that I'm dealing with.

6 And my understanding, from some of what I have
7 read in the materials provided to me, is that there
8 are computers, there are some other equipment that are
9 owned by U & I CAN provided to persons whose phone
10 numbers are used for this purpose, in addition to
11 what's purchased from U S WEST, and I would like to be
12 able to clarify that.

13 MR. HOLCOMB: Let me take a
14 second here, if I may.

15 (Discussion off the record.)

16 MR. HOLCOMB: We can have
17 Mr. Loveless sworn to answer the judge's questions. I
18 don't want cross-examination, to turn this into a
19 deposition kind of format. That's the only thing.

20 MS. SMITH: For the record, I had
21 no intention of seeking cross-examination at this
22 proceeding. I simply thought that if he could answer
23 questions that the judge needs to help understand
24 this, that would be one way to do it.

25 MS. ANDERL: That's fine with me.

1 I would view this as something akin to having
2 submitted an affidavit with the pleadings. Simply let
3 this witness answer your questions under oath. That's
4 fine with me.

5 MR. HOLCOMB: Again, you are
6 viewing this, I take it, as not our burden. You are
7 viewing this as just a generalized question?

8 JUDGE SCHAER: As I say, I am
9 trying to understand U & I CAN as well as I can, to
10 help me make the decisions I need to make in this
11 proceeding.

12 And one of the arguments I have seen is that
13 U & I CAN is a private telecommunications system.
14 There has been other discussions about what it does
15 and does not do.

16 And I would like to find out enough details that
17 I feel comfortable that I know what I'm dealing with,
18 because they may be pertinent to some of the decisions
19 that I need to make.

20 MR. HOLCOMB: Just by way of
21 preface, I don't think we need to get into the issue
22 of what the status of U & I CAN is for this
23 proceeding. I don't think it makes any difference
24 whether we're Boeing, John L. Scott, or me or John Q.
25 Public. If we purchase a CCMS package from U S WEST,

1 we should be able to use it as U S WEST intends that
2 it be used, and that's what we did.

3 JUDGE SCHAER: And I understand
4 that that's your position.

5 MR. HOLCOMB: Do you want
6 Mr. Loveless to be sworn?

7 JUDGE SCHAER: Yes. Would you
8 please stand and raise your right hand, sir?

9 (Witness sworn.)

10

11 EXAMINATION

12 BY JUDGE SCHAER:

13 Q Would you please state your full name and spell your
14 last name for the record.

15 A It's Bill Loveless, L-o-v-e-l-e-s-s.

16 Q Will you please pull that microphone closer to you
17 because--

18 A People usually ask me to pull it away, Your Honor.

19 Q What is your position with U & I CAN, sir?

20 A I'm the general manager.

21 Q The question I had just asked your counsel is, what
22 type of customer premise equipment do you, U & I CAN,
23 have on the Centrex lines?

24 A We have a PC, a computer that has a voice mail card in
25 it. The voice mail card can hook flash and redial,

1 and that's what it does. If somebody calls, the
2 software answers and says "Who are you?" They say,
3 "I'm member so-and-so." It says, "Who do you want to
4 call?"

5 And at that time, they can put in codes that
6 either come to the central office or go to a voice
7 mail, go to the fax line, or will transfer a call to
8 the number that they dial.

9 Q Do you know the brand name of the machine that does
10 it, or the model number?

11 A They are just standard PC's. They are generic. I
12 mean, it's not a piece of equipment that's been bought
13 anyplace. It's just a computer. Specifically, it's a
14 386 SC-- I can get very technical on what's inside the
15 computer, but it's just a standard little desktop
16 computer, a mini-tower computer.

17 The voice mail card is-- the company that makes
18 that is Big Mouth by Talking Technologies, an outfit
19 in California. I can get the address, if it's
20 important.

21 Q Thank you. Do you or your customer premise equipment
22 transmit information over the telephone lines?

23 A I'm not technical enough on that part to know whether
24 we transmit or not. What we do is make a hook flash
25 and we make-- it makes dial tones, the voice mail card

1 does that. Now, I don't know what that's called.

2 Your engineer probably can tell us.

3 Q Do you provide any data processing services?

4 A Data processing services? You need to define that for
5 me, Your Honor.

6 Q Do you keep track of who makes what calls?

7 A Excuse me?

8 Q Do you keep track of who makes what calls?

9 A By number, we know if a call is completed. By their
10 membership number, we know if a call is completed.

11 Q Do you keep some kind of billing record of those
12 calls?

13 A Not a billing record, no, ma'am.

14 Q I read in your materials that people who make more
15 than 25 calls, I believe --

16 A 30.

17 Q -- it was then, and I believe it's 30 calls now a
18 month are assumed to have a second user at their
19 number. So are you keeping some kind of count of how
20 many calls by number?

21 A We keep count. We have since changed that. This has
22 been changing because as we talk to different people,
23 they tell us to do different things, in the WUTC and
24 also at U S WEST.

25 Right now, what we do is have a limit. Each

1 member is limited to only 30 completed accesses a
2 month, whether it be to the-- to anything. It's not--
3 they get a record of the numbers they called, but it's
4 not for billing purposes. The bill is eight dollars a
5 month, which is dues and nothing else.

6 Q Do all of your members live in a single high-rise
7 building?

8 A Oh, no.

9 Q Do all of your members work in the same business
10 complex?

11 A No.

12 Q As I understand your service, you have to join an
13 association, and the only way to join is to be
14 sponsored; is that correct?

15 A Yes, that is correct.

16 Q Do the parties who sponsor other parties know each
17 other?

18 A They are supposed to. We understand there is some
19 subterfuge used to sponsor a member who didn't really
20 become a member, but claims they did. But they are
21 absolutely supposed to know each other and they are
22 supposed to be able to recommend that they have a like
23 mind and that they will be active in our advocations.

24 Q You offer inducements to present members to sponsor
25 others; isn't that correct?

1 A That is not correct any longer, Your Honor, since
2 last-- the start of last year.

3 Q Is there any requirement that the sponsor has to know
4 the sponsored party?

5 A Yes, they are supposed to know the sponsored party.
6 What we do now to make sure of that, since our
7 system's weakness was found by a U S WEST employee, is
8 to have the sponsor call us and tell us who they are
9 sponsoring, how they knew them, and then have the
10 person sponsored also call.

11 Q Have you ever refused membership to any party except
12 when they did not pay the initiation fee?

13 A Would you repeat that for me, please?

14 Q Certainly. Have you ever refused membership to any
15 party except when they did not pay the initiation fee?

16 A Many times. Many times. We have had people call up
17 and say, "I want to join your telephone service." We
18 say, "We are sorry. It's not a telephone service."
19 "Well, whatever it is, we want to join." We don't let
20 them join.

21 We have people call up and say, "I heard about
22 this here phone service you got." We say, "We are
23 sorry. You have to have a sponsor." We have had
24 people get violently angry with us because we don't
25 take them.

1 My next question is, I'm interested in your
2 theory that U & I CAN operates a private
3 telecommunications system, and my first question is,
4 does U & I CAN own and operate facilities to provide
5 telecommunications?

6 MR. HOLCOMB: I would say the
7 answer to that is no.

8 MR. LOVELESS: The answer to that
9 is no.

10 JUDGE SCHAER: And "facilities,"
11 for your information, is defined in RCW 80.04.010, if
12 you would like to refer to that.

13 MR. HOLCOMB: I have 80.04.010
14 before me.

15 JUDGE SCHAER: For some reason,
16 they didn't put these in alphabetical order.

17 MR. HOLCOMB: Gas company,
18 electric plant, electric company--

19 JUDGE SCHAER: If you look at the
20 bottom of the next page, I believe --

21 MR. HOLCOMB: "Facilities." Here
22 we go.

23 JUDGE SCHAER: -- you will find
24 "facilities" defined there, sir.

25 MR. HOLCOMB: I would like the

1 record to show that I'm going to show that definition
2 to Mr. Loveless.

3 JUDGE SCHAER: Certainly.

4 MR. LOVELESS: Good heavens. By
5 that definition, we can't not provide facilities, I
6 would think. It includes everything that I can think
7 of.

8 MR. HOLCOMB: I guess we need
9 further definition of what constitutes instruments and
10 instrumentality. I suppose if you say a computer is
11 an instrument, that would be the one thing that could
12 conceivably be defined as a facility. But there's no
13 real estate, no easements, no apparatus.

14 MR. LOVELESS: We rent spaces.
15 We rent spaces. So I guess there could be real estate
16 involved.

17 JUDGE SCHAER: The definition in
18 the top right, the next column, "Telecommunications,"
19 may be helpful to you too, since facilities talk about
20 things used to facilitate the provisions of
21 telecommunications service.

22 MR. LOVELESS: I don't think we
23 do. We might. The card will hook flash. That's
24 electromagnetic. Again, we would have to ask the
25 engineer, because I don't know. It says hook flash.

1 Q (By Judge Schaer) Are the phone numbers that are the
2 subject of your complaint in the name of U & I CAN?

3 A They have been-- some of them are still in the name of
4 ACAPS (phonetic), which was way, way back. It's just
5 never been changed. Some are in my name, some-- you
6 have donated numbers. (Indicating.) Other people
7 have donated numbers.

8 I don't know whether we have any in U & I CAN or
9 not, Your Honor. I know that sounds silly, but I just
10 don't know. It's not been a-- usually there has been
11 a line and then we have asked for the package to be
12 put on the line.

13 JUDGE SCHAER: Mr. Holcomb, this
14 is probably more addressed to you: Why do you believe
15 that U & I CAN has standing to complain about how U S
16 WEST treats their customers who subscribe to those
17 numbers?

18 MR. HOLCOMB: The whole thrust of
19 U S WEST is directed to U & I CAN, and there's no
20 question but whether they are in the name of ACAPS,
21 U & I CAN, or by members of U & I CAN, these numbers
22 are utilized for U & I CAN's purpose.

23 Q (By Judge Schaer) We are here in this whole
24 proceeding because U & I CAN, an organization, filed a
25 complaint against U S WEST; is that correct?

1 A We are the real party in interest as to all these
2 numbers.

3 MR. HOLCOMB: I have listed them
4 in my motion for summary determination at Lines 12 and
5 13.

6 Q (By Judge Schaer) So your theory is that even though
7 these numbers stand in the names of these individuals
8 or past organization names, they are really all
9 numbers that are held by U & I CAN; is that correct?

10 A That's correct.

11 Q But U & I CAN is a Washington nonprofit corporation?

12 MR. HOLCOMB: That is correct.

13 A U & I CAN is the real party in interest.

14 Q (By Judge Schaer) You have just made reference to
15 donations of lines by members, I believe. In what
16 legal forum is the donation of a local access number
17 to U & I CAN made?

18 A Just a person saying, "You can use my line. I will
19 get a line. You can use that."

20 Q Are these donations reported to the Secretary of State
21 under RCW Chapter 19.09, which is the chapter
22 regarding tariffs, solicitations, and donations?

23 A No. It's for donation to the use of their fellow
24 members in the group, Your Honor. It's not a donation
25 like to a charity or something.

1 MR. HOLCOMB: From my
2 investigation and to my knowledge, that would be true.

3 JUDGE SCHAER: How does the
4 corporation secure that asset?

5 MR. HOLCOMB: "Secure" meaning
6 obtain? "Secure" meaning used for security? What
7 does it mean?

8 JUDGE SCHAER: Well, this is
9 something that, apparently under your theory, the
10 property of an individual has been donated to the
11 corporation. How does the corporation take title of
12 that asset?

13 MR. HOLCOMB: By possession.

14 Q (By Judge Schaer) What value does it place on the
15 asset?

16 A It's the use that's donated to their fellow members.
17 There's no value to an asset or anything that I can--

18 MR. HOLCOMB: I have just not
19 inquired in that depth as to the-- on your books, the
20 books and records and accounts that are kept for U & I
21 CAN, do you ascribe any value to the numbers that are
22 utilized here?

23 MR. LOVELESS: No.

24 Q (By Judge Schaer) How does the corporation inform
25 U S WEST of the donation?

1 A Well, we never have. We have never been asked, Your
2 Honor. I don't know-- I don't know why we would even
3 think of informing them. They haven't even asked.

4 Q Is the corporation registered as a charitable trust
5 under Chapter 11.110 RCW?

6 A I'm sorry. Would you ask that again?

7 Q Is U & I CAN, Incorporated, registered as a charitable
8 trust under Chapter 11.110 RCW?

9 A A charitable trust?

10 MR. HOLCOMB: From my
11 information, no, we would not be--

12 MR. LOVELESS: Our papers are in
13 there someplace.

14 MR. HOLCOMB: CWL-1 is the
15 Articles of Incorporation. Beyond that, I don't know
16 any registration that U & I CAN has done with any
17 instrumentality of the State.

18 JUDGE SCHAER: All right.

19 MR. HOLCOMB: I could be shown
20 wrong, but I don't--

21 MR. LOVELESS: I will look and
22 see if there's any wording such as that. I don't
23 think there is.

24 JUDGE SCHAER: Let the record
25 reflect that another gentleman has approached--

1 MR. HOLCOMB: It's Mr. Al Hooper.
2 He's one of the officers of U & I CAN.

3 MR. LOVELESS: It's registered,
4 according to the state form, under RCW 24.03.

5 MR. HOLCOMB: I think that's the
6 nonprofit corporation statutes, if I recall correctly.

7 MR. LOVELESS: That's what they
8 call it, yes.

9 JUDGE SCHAER: Getting back kind
10 of to your picture of A, B, and C, is the
11 telecommunication service provided by U & I CAN an
12 inter-exchange service?

13 MR. HOLCOMB: Do you recall where
14 that's defined in the WAC?

15 JUDGE SCHAER: Well, "exchange"
16 is defined in the WAC at 480-120-021.

17 MR. HOLCOMB: 021?

18 JUDGE SCHAER: And "exchange
19 area" is defined immediately following.

20 MR. HOLCOMB: I have WAC
21 480-120-021 before me, and your question is again?

22 JUDGE SCHAER: My question is, is
23 the telecommunication service provided by U & I CAN an
24 inter-exchange service?

25 MR. HOLCOMB: An inter-exchange

1 service? I see an inter-exchange telecommunications
2 company defined.

3 JUDGE SCHAER: And I had referred
4 you to the definition of "exchange" or "exchange
5 area."

6 MR. HOLCOMB: The definition of
7 "exchange" or "exchange area"?

8 JUDGE SCHAER: Is it a service
9 that goes between exchange areas or inter-exchange?

10 MR. HOLCOMB: This is the way I
11 understand it: Call transfer capability, this can
12 either be within an exchange or it can be exchange to
13 exchange. It can work both ways, is the way I
14 understand it.

15 JUDGE SCHAER: So it can be an
16 inter-exchange service?

17 MR. HOLCOMB: Well, I don't know
18 how that "inter-exchange service" is defined. But
19 there is an exchange-- the terms I see are exchange,
20 exchange area, inter-exchange telecommunications
21 company.

22 I don't know what "inter-exchange service" is.
23 But in the sense-- if "service" means that we're a
24 telecommunications system, we have described that to
25 the court.

1 JUDGE SCHAER: I believe that you
2 already made reference to the definition of extended
3 area of service in RCW 80.36.850; is that correct?

4 MR. HOLCOMB: That's correct.

5 JUDGE SCHAER: And "extended area
6 of service" in that definition means the ability to
7 call from exchange to another exchange without
8 incurring a toll charge; is that correct?

9 MR. HOLCOMB: Well, you are
10 talking about EAS as a definition?

11 JUDGE SCHAER: Yes.

12 MR. HOLCOMB: EAS means without
13 toll, the way I-- according to the WAC.

14 JUDGE SCHAER: I was referring
15 you to RCW 80.36.850, which also defines extended area
16 of service.

17 MR. HOLCOMB: RCW 80.36...?

18 JUDGE SCHAER: .850.

19 MR. HOLCOMB: Thank you. This
20 says, as used in RCW 80.36.855, quote, extended area
21 of service, quote, means the ability to call from one
22 exchange to another exchange without incurring a toll
23 charge.

24 JUDGE SCHAER: Okay.

25 MR. HOLCOMB: That's what the

1 call transfer capability does, can be either the
2 exchange, or exchange to exchange. It doesn't
3 necessarily mean from one inter-exchange to another
4 one, there would ordinarily be a toll charge
5 incurred. It doesn't mean that, per se.

6 JUDGE SCHAER: Does U & I CAN pay
7 access charges for the inter-exchange service it
8 purchases from U S WEST?

9 MR. HOLCOMB: CWL 2 and 3 would
10 indicate what is paid for the call transfer capability
11 CCMS service. It's attached. It's a flat fee per
12 month. It varies from line to line. It looks like
13 it's five dollars a line.

14 JUDGE SCHAER: Are you aware if
15 they pay access charges under U S WEST's access tariff
16 WNU-36?

17 MR. HOLCOMB: They would not,
18 because U-36 went into effect in June of 1996, is the
19 way I understand it.

20 JUDGE SCHAER: Does U & I CAN
21 have any operations that are active at this time?

22 MR. HOLCOMB: Yes.

23 JUDGE SCHAER: Are they paying
24 any access charges for the inter-exchange service they
25 are purchasing from U S WEST?

1 MR. HOLCOMB: A flat fee is paid
2 to the present company as was paid to U S WEST, same
3 arrangement.

4 JUDGE SCHAER: So payments are
5 made for--

6 MR. HOLCOMB: A flat fee is paid
7 per month.

8 JUDGE SCHAER: But no access
9 charges under Tariff WNU-36, is that correct, or do
10 you know?

11 MR. HOLCOMB: Not to my
12 knowledge.

13 MR. LOVELESS: No.

14 JUDGE SCHAER: It's gotten
15 confused enough, Mr. Loveless, I'm going to have to
16 ask you what "no" means. Are you saying you do not
17 pay access charges?

18 MR. LOVELESS: We do not pay
19 access charges. We have never been told what access
20 charges we should pay. Each time we have asked what
21 we should do, we have been sent something that does
22 not apply to us, Your Honor. It's either something
23 for hire or something that some other company did
24 years ago that they have sent to us. We do not know
25 what they mean.

1 We went down and we got tariffs, and they
2 couldn't tell us what it should be. We have asked
3 Ms. Anderl to send us-- she hasn't sent us "Pay this."
4 We don't know.

5 JUDGE SCHAER: So right now, you
6 are not paying any inter-exchange service-- any access
7 line charges?

8 MR. LOVELESS: No.

9 MR. HOLCOMB: Nor is none being
10 asked.

11 JUDGE SCHAER: Do the members of
12 U & I CAN who have donated their local access numbers
13 pay access charges for the inter-exchange services
14 they purchase from U S WEST?

15 MR. LOVELESS: They pay exactly
16 what U S WEST asks them to pay for the service they
17 ask for, nothing more, nothing less.

18 JUDGE SCHAER: Those are my
19 questions for you at this time, Mr. Holcomb. I think
20 we will next hear from you, Ms. Anderl.

21 MR. HOLCOMB: I think I have used
22 up my 15 minutes.

23 JUDGE SCHAER: I thought you had
24 concluded your argument before I started my questions,
25 sir, but you will have an opportunity for a response.

1 MS. ANDERL: Good afternoon, Your
2 Honor. I'm going to attempt to limit my response to
3 the issues raised in U & I CAN's complaint, but by
4 necessity, that response laps over somewhat into the
5 allegations made in our own motion and in our
6 cross-complaint. I will try to keep things
7 constrained to what Mr. Holcomb addressed during this
8 round.

9 In order to prevail on a formal complaint such as
10 that filed by U & I CAN, U & I CAN must allege that
11 U S WEST has done something contrary to the law,
12 either in violation of its own filed tariff, in
13 violation of a commission rule, a commission statute,
14 or a commission order.

15 U S WEST submits that no such allegation has been
16 made or established in this case. The closest that
17 U & I CAN comes to making such an allegation is to
18 suggest that U S WEST's disablement of the call
19 transfer feature is somehow an improper disconnection
20 of service under the applicable rules and tariffs.
21 U S WEST disputes that it is an improper disconnection
22 of service.

23 I do believe we have an interesting legal issue
24 if we ever do get to a factual issue, and I'm not
25 really even sure, but if we get to that point, in

1 determining whether simply removing the customized
2 call management feature, which is the CCMS, counts as
3 a discontinuance or disconnection of service under the
4 applicable WAC's and tariffs.

5 We have not disabled dial tone. The access lines
6 that are at issue in the complaint have continued to
7 have dial tone. The only thing that U S WEST has
8 attempted to do is to remove from those lines the call
9 transfer features.

10 And if that does constitute a discontinuance of
11 service under WAC 480-120-081, U S WEST would submit
12 that it is a situation where discontinuance was
13 effected due to a use of the service in violation of
14 the applicable law. Under those circumstances, no
15 notice is required. And we believe that that's
16 exactly what happened.

17 Of course, that's at the crux of what Mr. Holcomb
18 was saying earlier. Mr. Holcomb suggests that U S
19 WEST doesn't dispute that U & I CAN used these
20 services as they were intended to be used and in a
21 lawful manner. That's false. We do dispute that.

22 We allow these customers to subscribe to a
23 customized call management feature which enables call
24 transfer. U S WEST does not consent to the use of
25 that feature to enable EAS bridging as we have talked

1 about it in this case.

2 That call transfer feature and function should
3 allow parties within the same exchange area to
4 transfer calls to one another. Its purpose and intent
5 is not to enable a transfer to a computer, which in
6 turn performs a function as a telecommunications
7 facility, to transfer that call to another line
8 outside or in an overlapping EAS area, thereby
9 circumventing the access charge system and the payment
10 of access charges and toll.

11 U S WEST submits that the use of the call
12 transfer feature is unlawful because it is being used
13 as a telecommunications facility, to provide
14 telecommunications services, that those services are
15 being provided by U & I CAN, which is not a registered
16 telecommunications company, although it is required by
17 law to register, and that under those circumstances,
18 it's appropriate for U S WEST to disable that service,
19 to the extent that it's able to identify the lines
20 upon which that service is being used for that
21 unlawful purpose of avoiding access charges.

22 With regard to the other issue raised by
23 Mr. Holcomb in his motion for summary determination,
24 as to whether or not money damages and attorney's fees
25 are appropriate, he didn't really bring it up during

1 oral argument.

2 I will just address it briefly to say that I
3 believe in our written submissions, we have
4 established as a matter of law that money damages and
5 attorney's fees cannot be awarded in this type of
6 proceeding. And even in the event that they could be,
7 he would have to prevail on the merits to be entitled
8 to those. And we don't think that he can prevail on
9 the merits, based on the discussion we have just had.

10 I'm available for questions.

11 JUDGE SCHAER: Is it the opinion
12 of U S WEST that the telecommunication service
13 provided by U & I CAN is an inter-exchange service?

14 MS. ANDERL: Yes, we believe that
15 it is. Based on the affidavit of Joe Thayer and the
16 facts set forth therein, I believe that establishes
17 beyond any doubt that the functionality provided by
18 U & I CAN enabled a call, which otherwise would have
19 required the dialing of 1, plus 206, and the payment
20 of toll charges.

21 JUDGE SCHAER: Looking at your
22 tariff, did you have a prior access tariff that was in
23 effect in January of 1996?

24 MS. ANDERL: Yes, Your Honor, we
25 did. I confess that I do not know the number. I

1 don't have the number off the top of my head. But we
2 have had an access charge in effect ever since the
3 commission, through its order in U-80-523, established
4 the access charge system.

5 JUDGE SCHAER: I note that WNU-36
6 contains a definition of exchange. Do you know if
7 that definition also existed in the prior tariff?

8 MS. ANDERL: There would be a
9 symbol in the right-hand margin of the current tariff
10 if the language is changed or moved from the previous
11 tariff in any way. That would be the only way that I
12 could tell, other than checking the previous tariff.

13 I believe that it would have-- I believe that it
14 would have been, and I'm sure that our definitions of
15 "exchange" mirror the statutory and rule definitions.

16 JUDGE SCHAER: I'm going to ask
17 you to approach the bench and get a copy of your
18 tariff.

19 (Discussion off the record.)

20 JUDGE SCHAER: While we were off
21 the record, I had a brief discussion with Mr. Budsberg
22 regarding U S WEST's Tariff WNU-36 and the current
23 version. And we examined that version to see if we
24 could see the symbols that would designate what
25 portions were changed from the prior version.

1 And it appears that this tariff does not include
2 those symbols, so we would have to do further research
3 into the older tariffs to find out what was available
4 in January of '96. So we will move on to another
5 question at this point.

6 MS. ANDERL: Your Honor, if I
7 might just add, as I said, to the extent that there
8 are definitions in the WAC's, I doubt that the tariff
9 could prevail, even if it were in conflict with the
10 WAC's. So in any event, we would have the definition
11 that was present in the WAC in 1996, which I believe
12 probably comes out of what was ever contained in the
13 tariff, in any event.

14 JUDGE SCHAER: Ms. Anderl, is it
15 your understanding that the exchange tariff and the
16 access service tariff that was in effect in January of
17 1996 provided that any customer, including but not
18 limited to telecommunication companies and/or
19 inter-exchange carriers, could purchase services from
20 the access tariff?

21 MS. ANDERL: That sounds right.

22 JUDGE SCHAER: Do you know or do
23 you not know?

24 MS. ANDERL: I don't know. And
25 actually, maybe that's limited to carriers who could

1 have purchased from that tariff. But I guess that
2 just shows that I really don't know.

3 JUDGE SCHAER: Okay. As you
4 describe your theory of the case, it appears that it's
5 your theory that U & I CAN is a telecommunications
6 company which should be registered with the
7 commission.

8 If the commission were to determine that this
9 company did not need to be registered, would its
10 activities in providing inter-exchange service still,
11 in your opinion, require it to purchase through the
12 access tariff?

13 MS. ANDERL: I would have to read
14 the access tariff to see what it says. But my belief
15 is that what they are doing constitutes a
16 telecommunications service, and that as such, they are
17 required to register pursuant to 80.36.350, and that
18 nothing they have said here or in any of their
19 pleadings would exempt them from that registration
20 under 80.36.370.

21 JUDGE SCHAER: So that is an
22 essential brick in your argument?

23 MS. ANDERL: That what they are
24 doing is telecommunications?

25 JUDGE SCHAER: What I am trying

1 to explore is, the commission regulates
2 telecommunication companies that offer services for
3 hire to the public. Perhaps out there in the world
4 somewhere -- and perhaps this is one, perhaps it is
5 not -- there is a nonprofit corporation that is not
6 providing services for hire to the public, but is
7 still providing telecommunication services that are
8 inter-exchange.

9 My question is, if there were such an entity that
10 perhaps then was not required to be registered because
11 it was not providing service for hire to the general
12 public, would the fact that it was providing
13 inter-exchange service, telecommunication services,
14 still under your tariff mean that it was the kind of
15 entity that needed to purchase access-- pay access
16 fees? That's a hypothetical I would like you to
17 consider.

18 MS. ANDERL: Assuming your
19 hypothetical, and further assuming that our tariff
20 would permit purchase of the services by a noncarrier,
21 then yes, I believe they would have to.

22 JUDGE SCHAER: Your current
23 tariff, as of June 18th, 1996, provides in Section I,
24 Original Sheet 1, Item B-2, that any customer,
25 including but not limited to telecommunications

1 companies and/or inter-exchange carriers, may purchase
2 certain services from this tariff for their own or
3 administrative use, as specified in other sections of
4 this tariff.

5 And I'm just wondering if that doesn't indicate
6 that any customer of U S WEST who is providing an
7 exchange service, at least as of June of 1996, would
8 have to pay access fees, no matter whether they were a
9 telecommunications company or an inter-exchange
10 carrier or not?

11 MS. ANDERL: And that statement
12 in the tariff is very circumscribed. It says in
13 certain services under certain circumstances. And I'm
14 not sure, if we flow that through into the tariff,
15 whether a noncarrier could purchase the services that
16 we are talking about here. But assuming that they
17 could, then yeah.

18 One of the big problems we have with U & I CAN is
19 that they are providing inter-exchange services
20 without paying access charges. Now, if you can do
21 that without being a telecommunications carrier, you
22 at least have to pay access charges.

23 JUDGE SCHAER: So if they were
24 some kind of a-- to use an analogy of transportation,
25 some kind of a private carrier rather than a public

1 carrier that wasn't required to have operating
2 authority, it still would be required to purchase
3 access under the access tariff in order to provide
4 inter-exchange services? Is that your understanding
5 or is it not?

6 MS. ANDERL: Assuming your
7 hypothetical, yes. Like I said, I'm not very
8 comfortable with it, but-- because we don't believe --
9 and I was going to save this until my direct statement
10 on my motion -- but we don't believe that they-- that
11 U & I CAN does exempt itself from registration by
12 saying that it doesn't offer service to the public for
13 hire.

14 We believe that that is a subterfuge, that by
15 saying it, doesn't make it true. You have to look at
16 what the company does. And we believe that they do in
17 fact offer their services for hire to the general
18 public, with some very minor procedural perhaps
19 safeguards or hurdles that they put in place so that
20 they can appear not to be.

21 JUDGE SCHAER: Does U S WEST
22 think that U & I CAN has standing to bring a formal
23 complaint before the commission about limitation of
24 service to the phone numbers that are the subject of
25 its formal complaint?

1 MS. ANDERL: I wondered if the
2 subscribers shouldn't actually be the ones who were
3 doing that. I suppose one might argue that the
4 subscribers have assigned their claims in interest to
5 U & I CAN. And in that instance, I probably wouldn't
6 spend a lot of time debating whether U & I CAN is the
7 right party or the subscriber was the right party.
8 But I do think it's a good question.

9 JUDGE SCHAER: Have you seen in
10 your discovery or your research in this case evidence
11 of such an assignment?

12 MS. ANDERL: Only U & I CAN's
13 claim that the lines are donated to U & I CAN by the
14 individual members who are the subscribers. But I
15 have not seen anything beyond that bare claim that
16 that is so.

17 MR. HOLCOMB: I didn't hear the
18 last part of the judge's question. Evidence of what?

19 JUDGE SCHAER: I would have to
20 ask the reporter to read it.

21 (The question on Page 67,
22 Line 11, read by
23 reporter.)

24 MR. HOLCOMB: Was there a
25 question?

1 JUDGE SCHAER: Not pending, no.
2 I'm just trying to think if there was anything else
3 that I have for you at this time. I don't believe
4 there is. Thank you.

5 Ms. Smith?

6 MS. SMITH: Thank you. I will be
7 very brief. It's the commission staff's position that
8 U & I CAN is a telecommunications company and should
9 be required to register as a telecommunications
10 company. That's not to suggest that staff wouldn't
11 consider or agree with a relaxed form of regulation
12 for this company so it is not unduly burdened by the
13 regulations that the commission places on larger
14 telecommunications companies. However, commission
15 staff believes that this company should register as a
16 telecommunications company.

17 Staff bases this position on its understanding of
18 the services that U & I CAN offers, which is
19 inter-exchange services. U & I CAN operates-- owns
20 and operates facilities that enable it to interconnect
21 with other local exchange companies, and with U S WEST
22 in particular, to terminate traffic from one exchange
23 to another.

24 The fact that U & I CAN does this in a manner
25 that enables its members to bypass toll charges and

1 U & I CAN does not pay access charges is very
2 troublesome to commission staff.

3 Commission staff believes that the operations of
4 U & I CAN are substantially similar to the operations
5 of Metrolink, where the commission ordered that
6 Metrolink had to register as a telecommunications
7 company and therefore pay access charges to the local
8 exchange companies.

9 I would like to point out on Page 6 of staff's
10 response to U & I CAN's motion, at the very end in the
11 heading, or Subsection B, it says, "U & I CAN is
12 entitled to an award of damages or attorney's fees."
13 And it should read, "U & I CAN is not entitled to
14 those damages or attorney's fees." There is
15 absolutely no statutory provision that would allow
16 payment of damages or attorney's fees as a result of
17 this complaint.

18 Essentially, staff concurs in the comments and
19 briefing by U S WEST in this matter. Would you have
20 any questions?

21 JUDGE SCHAER: What do you think
22 about the standing issue?

23 MS. SMITH: I think that's an
24 interesting issue. I have to admit, that's one I
25 didn't think about until you asked the question

1 earlier.

2 To me, it raises two issues. One, I don't think
3 that if U & I CAN simply has members, as it claims
4 that it has, then U & I CAN, I don't believe, has any
5 standing to complain on behalf of those telephone
6 subscribers whose custom call management service or
7 call transfer was discontinued by U S WEST.

8 However, counsel for U & I CAN indicated that
9 U & I CAN itself is the real party in interest to
10 these lines. And if that's the case, I think that
11 lends to an even stronger argument that U & I CAN is a
12 telecommunications company, in that its operations--
13 in its membership system of having members only and
14 sponsoring that person and their statement that they
15 don't offer telecommunication services to the public,
16 I think that lends more toward Ms. Anderl's comment,
17 that it's a system of subterfuge to avoid the
18 technical requirements of the law.

19 If U & I CAN is the real party in interest in
20 these lines, then that's just a stronger statement
21 that U & I CAN is engaging in unlawful conduct by EAS
22 bridging.

23 JUDGE SCHAER: Thank you. That
24 brings back to mind, if you would indulge me, the
25 other question that I had for Ms. Anderl that flew out

1 of my mind when we went back in the record.

2 Ms. Anderl, in U S WEST's opinion, who owns the
3 lines?

4 MS. ANDERL: Between...?

5 JUDGE SCHAER: Between U S WEST
6 and its customers.

7 MS. ANDERL: U S WEST owns the
8 lines.

9 JUDGE SCHAER: So do customers
10 have something they own there, in your opinion, that
11 they could donate?

12 MS. ANDERL: It's my
13 understanding, when U & I CAN talks about donation of
14 the lines, it's basically donations of the
15 subscriber's status to the line.

16 JUDGE SCHAER: Do you have any
17 kind of provisions that you use to ask customers to
18 let you know who the real subscriber is or not?

19 MS. ANDERL: We establish an
20 account in the customer's or subscriber's name,
21 whoever requests service. We bill that person.
22 Typically, if they wish to disconnect and no longer be
23 responsible for that line, then they have to advise us
24 of that.

25 We don't, I don't think, have particular rules or

1 regulations or provisions covering what U & I CAN does
2 because it's so out of the ordinary course of things.

3 JUDGE SCHAER: Do you undertake
4 to be responsible for the needs of some organization
5 to whom your subscribers might donate their lines?

6 MS. ANDERL: If I understand the
7 question correctly, I believe the answer is no.

8 JUDGE SCHAER: Thank you.

9 Mr. Holcomb?

10 MR. HOLCOMB: May I respond just
11 very briefly?

12 JUDGE SCHAER: Certainly. This
13 is your time to respond, sir.

14 MR. HOLCOMB: If I may refer to
15 my motion for summary disposition, Line 13, the 926
16 numbers that appear, the two numbers are in the name
17 of Mr. Hooper, who is here today. And I think he
18 would indicate to you, if asked, that the real party
19 in interest or the user of this line, subscriber of
20 the line, may be in his name, is in fact U & I CAN.

21 The 804 numbers that appear on that line, both of
22 those are the subscriber's, Bill Loveless, and he
23 would, I think, indicate to you, if asked, that they
24 are the subscribers in form only, that U & I CAN is in
25 fact the party that uses the line.

1 I find it interesting here, all this discussion
2 about, you know, we should be a-- "we" meaning U & I
3 CAN should be a telecommunications company. I think
4 this-- as I mention on Page 5 of my response in the
5 summary determination, the WUTC staff has answered our
6 discovery by saying they have never had occasion to
7 review the status of U & I CAN to determine whether it
8 should be registered with the WUTC, and I think this
9 judge should accept that conclusion as being final on
10 this issue, that U & I CAN should not be registered
11 with the commission as a telecommunications company.

12 If it should be, it should only be done after
13 investigation and in accordance with the statutes then
14 in effect, which I have cited hereto in my brief. And
15 I think this is again the slippery slope we're on all
16 the time, that while we get discovery that says yes,
17 you-- no, you don't need to be registered; here we get
18 argument, yes, you should be registered now. This is
19 the kind of the thing we've had to deal with
20 throughout this proceeding.

21 And on that slippery slope issue, that in the
22 deposition of Mr. Thayer I want to cite Page 25,
23 Lines 24 and 25, and following on to Lines 1 through
24 6, I asked Ms. Anderl-- we are trying to determine the
25 appropriateness of my questions.

1 She responded-- I asked her, I said, "Did we ask
2 for and did we get a copy of the tariff dealing with
3 removal of a feature or a function?"

4 Ms. Anderl: "I don't know if you asked for one.
5 I don't know if you would have gotten anything, had
6 you asked for it, because I don't believe there's a
7 specific tariff provision applicable, although I would
8 have to research that."

9 Well, again, my major point, coming back, we have
10 violated no tariff, we have violated no WAC, we have
11 violated no statute, none has been cited to us.
12 That's the basis of our complaint. It is legitimate.
13 The burden, we have met before this commission, to
14 show that we have violated nothing. They agree that
15 we have violated nothing. They are throwing a lot of
16 things on the wall, hoping something sticks here, but
17 nothing sticks.

18 And the point is that we are acting lawfully,
19 subscribing to a service offered by U S WEST
20 Communications, Incorporated. We met their terms and
21 conditions for that service, and there is nothing that
22 anybody has shown that's a violation of law, rule,
23 regulation, tariff, statute, or anything else.

24 And it's kind of a crazy situation here to say,
25 oh, yeah, but they shouldn't have done it. Well, what

1 shouldn't we have done? The proper procedure would
2 have been back in January of 1996, if U S WEST has
3 some beef about how U & I CAN operates, is to amend
4 the tariff to cover this specifically, so that all
5 parties dealing with U S WEST, Incorporated, know what
6 they can and cannot do in relation to the call
7 transfer features of this service offered by U S
8 WEST.

9 Remember, that's where the focus should be. U S
10 WEST does it. They offer it as a part of a package.
11 We don't implement it. They do. We don't manufacture
12 it. They provide it. We have done nothing illegal,
13 unlawful, contrary to rules and regulations of U S
14 WEST, and that should be the finding.

15 Now, Metrolink has been mentioned here. All
16 right. Let's look at Metrolink. The commission came
17 down with a totality of circumstances in that case,
18 totality of circumstances.

19 Metrolink designed, manufactured, sold, and
20 distributed, so let's look at customers, and did every
21 act conceivable to try to set itself up as a
22 telecommunications company, and yet tried to avoid
23 that. Totality of circumstances. What can anybody
24 point to, totality of circumstances, which even
25 remotely suggest that U & I CAN is a

1 telecommunications company required to be registered.
2 Commission staff doesn't agree. They say no. We
3 accept that, and so should this judge. Thank you.

4 JUDGE SCHAER: Could you tell me
5 where that reference was to the commission staff? I
6 looked at Page 5 of your answer, and I didn't find it
7 there.

8 MR. HOLCOMB: Question 2 of the
9 answers to discovery provided by the staff, we asked--
10 do you want me to state it for the record?

11 JUDGE SCHAER: I would like to
12 know what document you are looking at. You said
13 something about this being in your answer, so I assume
14 it was your answer to U S WEST's motion; is that
15 correct?

16 MR. HOLCOMB: Well, I addressed
17 my argument to my answer by complainant of U S WEST
18 Communications' motion for summary determination.

19 JUDGE SCHAER: And I have got
20 that answer in front of me.

21 MR. HOLCOMB: I cited that
22 Page 3, Lines 6 through 9.

23 JUDGE SCHAER: Okay.

24 MR. HOLCOMB: The question-- our
25 data request to WUTC was as follows: "State whether

1 WUTC has ever had occasions to determine whether the
2 Complainant herein has:

3 (a) ever been the subject of an
4 investigation to determine whether the complainant is
5 a private or a public telecommunications service in
6 accordance with the provisions of RCW 80.36 and,
7 specifically, RCW 80.36.270(2), or any codes or
8 regulations of the State of Washington, and

9 (b) whether any formal determination has
10 ever been made based on that investigation."

11 The response was, "No."

12 JUDGE SCHAER: Is that document
13 that you are referring to now included in what's been
14 provided to me by one of the parties?

15 MR. HOLCOMB: It is a data
16 request answered by the WUTC. I think that was
17 provided by letter to the commission, the response.

18 JUDGE SCHAER: Is that attached
19 to your materials, Ms. Smith?

20 MS. SMITH: No, it is not.
21 Although I can make a copy. But if I might add that
22 if Counsel wants to bring that information into this
23 proceeding that was not submitted in his materials, I
24 would like an opportunity to argue that Counsel
25 grossly mischaracterizes staff's answer to that data

1 request, and in fact is not in support of his motion.

2 JUDGE SCHAER: I don't think that
3 what you have just read to me is in any of the
4 materials that you have provided to me or in any of
5 the materials that any of the others have provided to
6 me.

7 MR. HOLCOMB: Aren't the
8 responses to data requests filed with the commission?

9 JUDGE SCHAER: No, they are not.

10 MR. HOLCOMB: Then I plead error
11 on that. I was under the impression that they were
12 and became part of the record in this proceeding. I
13 would like to make this part of the record, and I will
14 move for making it a part of the record.

15 JUDGE SCHAER: I think I will let
16 you get copies made and distribute it after the
17 hearing today, and then we will include that in
18 addition to his materials, and let the documents speak
19 for themselves, unless you would like to briefly
20 address what was just said about the document.

21 MS. SMITH: I would like to
22 briefly address what the question is in the document.
23 As staff understood the question, staff did not
24 interpret that question as a question of, does staff
25 think that U & I CAN is-- needs to be registered as a

1 telecommunications company. Staff never investigated
2 it. Staff never determined whether or not it should
3 be until this proceeding.

4 MR. HOLCOMB: See, this is the
5 slippery slope we're on all the time. Now, what does
6 that mean?

7 JUDGE SCHAER: Well, Mr. Holcomb,
8 I allowed her to make a brief response because you
9 brought up in your reply time a new document that was
10 not in the record before me.

11 I would like to ask you also about, you said that
12 some of the lines that are discussed here are in the
13 name of Mr. Hooper, who is in the hearing room today.
14 And I had asked Ms. Anderl if, in U S WEST's opinion,
15 these lines were owned by U S WEST or owned by the
16 subscriber. And it was her opinion that they're owned
17 by U S WEST.

18 Do you agree or disagree with that?

19 MR. HOLCOMB: I think the lines
20 are owned by U S WEST. They are placed by U S WEST in
21 the name of a subscriber. What that status is, I have
22 never had occasion to research it. But I'm sure U S
23 WEST can manage, control, and direct those lines with
24 authorized tariffs, rules, and regulations anytime
25 they want to.

1 JUDGE SCHAER: And in the same
2 case, the lines of Mr. Loveless. I'm interested,
3 again, trying to figure out what we are dealing with
4 here in terms of assets or property that's been
5 donated.

6 What is it that you believe these gentlemen have
7 donated to the corporation?

8 MR. HOLCOMB: The right to use
9 the line.

10 JUDGE SCHAER: And have they ever
11 provided notice that the line was going from them to
12 U & I CAN, to U S WEST?

13 MR. HOLCOMB: I don't know.

14 MR. LOVELESS: It would be like
15 if I have a guest in the house, and he says, "Bill,
16 could I use your phone?" I say, "Sure." I don't
17 notify U S WEST that they're going to use it. I don't
18 understand.

19 JUDGE SCHAER: Mr. Loveless, have
20 you donated this line to U & I CAN --

21 MR. LOVELESS: I have said that
22 the members --

23 JUDGE SCHAER: -- a Washington
24 corporation?

25 MR. LOVELESS: -- of U & I CAN

1 may use-- may have the use of this line, yes.

2 JUDGE SCHAER: You testified
3 earlier, I believe, that you have donated-- these
4 lines had been donated to the corporation; is that
5 correct?

6 MR. LOVELESS: The use, Your
7 Honor, the use of the lines. We don't own the lines.
8 We can't donate the lines. But the use, whoever makes
9 a call on the lines.

10 An example I can give you is, if you come visit
11 my house and want to make a phone call, and I say,
12 "Sure. Go ahead." I have donated you the use of my
13 phone for you to make that call.

14 JUDGE SCHAER: And then you think
15 that if you had problems with U S WEST, I would have
16 standing to bring a complaint before the commission on
17 the basis that you had donated your line to me; is
18 that correct?

19 MR. HOLCOMB: May I just step
20 in? The word "donated" almost sounds like a gift of
21 some kind. I think I would use the word dedicated.

22 JUDGE SCHAER: If you want to
23 change the word that your client has used in his
24 materials and in his testimony, you may do that. But
25 I still don't-- I'm still-- the question I have just

1 asked you then, still answer, with the word dedicated.

2 MR. LOVELESS: I don't know how
3 to answer it, other than, to the best of my knowledge,
4 I have said the members may make a call over this line
5 or through this service, any member that wants to that
6 is a member -- no member can't because they don't have
7 an ID -- they may use my phone line, as I have-- it's
8 not really the use of the line. It's the use of the
9 ability to make the call.

10 I don't really use a line when I make a phone
11 call, so I'm puzzled by the terminology. But
12 members-- one member will get a phone and say, "Fellow
13 members, you may make calls through this phone."

14 JUDGE SCHAER: And you believe
15 that that generous offer results in a situation where
16 U & I CAN, as a Washington nonprofit corporation, has
17 standing to bring a formal complaint before the
18 Washington Utilities and Transportation Commission if
19 U S WEST disconnects a portion of the service provided
20 to that individual; is that correct?

21 MR. LOVELESS: I wouldn't put it
22 in those words because I'm not sure I understand those
23 words. But what I would say is that U & I CAN, as the
24 entity of the membership, has the standing because it
25 is the membership's use. We can't-- I don't know how

1 to divide that out.

2 It's not-- if I have a swimming pool and I invite
3 a party to come over to my house, of members, and I
4 say, "Okay. Any of you members can go swimming. If
5 you are not members, you can't," I would think it
6 would be somewhat the same thing. I don't-- I don't
7 know how to answer your question because I guess I'm
8 not smart enough to understand it.

9 JUDGE SCHAER: If someone comes
10 and cleans your swimming pool and they do a poor job,
11 and there's leaves and gunk still in there, do you
12 think that one of the members who came over and went
13 swimming in your pool can take them to small claim's
14 court and say, "U & I CAN should get damages because
15 we had a party in a pool that this member let us use"?

16 MR. LOVELESS: No. But I'm
17 sure--

18 JUDGE SCHAER: That's what I'm
19 trying to find out. You seem to be here and here, and
20 I don't see how the theories fit together. So I'm
21 trying to ask you and give you every opportunity to
22 say.

23 MR. LOVELESS: I would say that,
24 going along with your scenario, that if I were having
25 a function of U & I CAN and they were all U & I CAN

1 members that came, and they said, "Bill, we went
2 swimming in your pool and it's horrible and you gave
3 this pool for us to use and we can't use it, do
4 something about it in our name," I would do something
5 about it. And I would say, "I'm really sorry,
6 members. Come back and use it now. It's cleaned up."
7 That's how I think I would respond to that.

8 JUDGE SCHAER: Thank you. That's
9 all I have.

10 MR. HOLCOMB: I'm looking at
11 Rule 17 for a minute, civil rules of the superior
12 court. It's been a long time since I have looked at
13 that. Yes. Rule 17(n), "Real party in interest.
14 Every action shall be prosecuted in the name of the
15 real party in interest, executor, administrator,
16 guardian, bailee, trustee of an express trust, party
17 with whom or in whose name a contract is made to
18 benefit of another, or a party authorized by statute."

19 It's quite an all-inclusive thing. I'm sure that
20 if asked today, that they would say that they have,
21 for all intents and purposes, assigned whatever rights
22 they have in the line usage to U & I CAN. I don't
23 think there's any question about that.

24 JUDGE SCHAER: How, sir, does U S
25 WEST have notice of that, so that they know that they

1 are answerable to U & I CAN, if you don't tell them?

2 MR. HOLCOMB: They treated it as
3 in the name of U & I CAN in the responses of Thayer
4 and Wiggins and others with whom U & I CAN dealt. The
5 memorandum of Thayer of March of 1996 clearly shows
6 they're dealing with U & I CAN, not with individual
7 subscriber's names.

8 And I don't think anybody is being mislead or
9 trying to take advantage of anybody by that fact or
10 act. Everybody is dealing with U & I CAN as the real
11 party in interest in this proceeding, and this judge
12 should also. The commission should deal with them.

13 JUDGE SCHAER: If the commission
14 were to decide tomorrow that U & I CAN should cease
15 providing telecommunications service and
16 inter-exchange use until such time as it began paying
17 access charges under Tariff WNU-36, how would it find
18 the phones that have been donated or dedicated to
19 U & I CAN? How would U S WEST find those people?

20 MR. HOLCOMB: U & I CAN is going
21 to be registered now as a telecommunications company?

22 JUDGE SCHAER: Well, I'm not to
23 that point. I'm just saying, if there was a
24 determination that U & I CAN was providing an
25 inter-exchange service and it had to pay access

1 charges for that service, how would the commission or
2 U S WEST find them?

3 MR. HOLCOMB: Ask us which lines
4 apply. We will tell you.

5 MR. LOVELESS: If the commission
6 decided that, we would have no choice but to say,
7 these are the phones. They already know the phones
8 we're using, Your Honor. We haven't hidden anything.
9 They have our newsletters. They have every
10 newsletter, to my knowledge, for the last two years.

11 We have never said that we-- our members do not
12 make inter-exchange calls. They do. They also make a
13 lot of calls within the exchange for many and various
14 reasons.

15 We have never hidden anything. When we have been
16 asked or talked-- the first one that talked to us
17 said, "I knew you guys weren't like these other
18 fly-by-night people after I talked to you for five
19 minutes." He told us that, "We will have no further
20 interest if you don't charge by the call." And at
21 that time we were charging by the call because we
22 didn't know any reason that we shouldn't.

23 And then we went ahead and shut down two lines
24 after he said it was okay. And we thought, well,
25 maybe that's just the gorilla trying to whack us over

1 the head, because they knew everything about us. He
2 said he had done a full investigation, and nothing
3 else was touched.

4 So we started up the lines in the same names,
5 except that time, Mr. Hooper put one in his name.
6 Mine was in the same name. And we went 20 months.
7 And after he said it was okay and we thought, boy,
8 this is wonderful, we are going along, we are a big
9 threat. We've got 700 members.

10 They want us to be a phone company. We don't
11 want to be a phone company. We want to do our
12 advocating, and somehow that's a horrible thing to
13 do.

14 We want our members to be able to talk to each
15 other at length about issues. We want our members to
16 be able to call people and find out what charity needs
17 a computer that's been put together for them or what--
18 I really don't understand this whole proceeding and I
19 don't understand why they say, well, it's okay, and
20 then it's not. Then the commission says, no, we have
21 never investigated you, and then we find out that we
22 have had two informal hearings, one of which we asked
23 for, and we said it was a moot point, so there's no
24 need to have-- it goes on and on. I'm talking too
25 much, but I'm frustrated.

1 We asked, "What are we doing wrong? Show us
2 something. Tell us what we have to do." I asked
3 Mr. Thayer when he gave me that courtesy call three
4 months after they first shut us off with no warning of
5 any kind, "What is it you want us to pay?" He said,
6 "Well, I really don't know. It's too complicated.
7 But I will have a TXL or some kind of expert talk to
8 you." And I said, "If it's too complicated for you to
9 tell me, and you are a U S WEST employee, I probably
10 won't understand it. I'll have my attorney call."
11 Our attorney. I'm saying "mine" as general manager
12 now. "I'm going to have our attorney call."

13 When he called, Mr. Thayer didn't want to talk to
14 him. He said, "You have to talk to our attorney."
15 Boom. Just like that.

16 I don't know what's going on. We say, "Show us
17 what we are supposed to do. Give us a paper. Where
18 have we broken the law?" They send us a huge thing
19 about Metrolink. We're not Metrolink. We're not even
20 close to what they were doing. We don't want to do
21 what they were doing. I don't understand it. We say,
22 "Send us a tariff." And they send us something that
23 says, "If you do it for hire." We're not hiring it.
24 We are not selling it. We are charging dues, eight
25 dollars a month. We have to limit the--

1 JUDGE SCHAER: Mr. Loveless, I
2 think we need to move on now.

3 MR. LOVELESS: I'm sorry.

4 JUDGE SCHAER: I don't want to
5 cut you off, sir, but we still have argument on the
6 other motion, and we have a son with a basketball
7 banquet and some other very important values that we
8 need to keep in mind.

9 MR. LOVELESS: I'm sorry.

10 (Discussion off the record.)

11 MR. HOLCOMB: I just want to
12 conclude that I share Mr. Loveless's frustration in
13 trying to prepare a response to all of this because it
14 changes and slippery and all of this. Thank you.

15 JUDGE SCHAER: Let's go ahead,
16 Ms. Anderl, with your motion.

17 MS. ANDERL: Thank you, Your
18 Honor. I don't want to belabor this point, as much of
19 this has already been covered.

20 We are here to determine whether some or all of
21 this complaint and cross-complaint can be decided on
22 motions for summary determination. U S WEST believes
23 that they can, as there are no material issues of fact
24 in dispute, and that all of the questions can be
25 decided as a matter of law.

1 We think that we have set forth our argument in
2 our motion. I will just summarize for you that our
3 motion covers four main issues. The first of which is
4 whether or not the complainant has properly stated a
5 claim for damages and/or attorney's fees. We believe
6 that they haven't.

7 While they have gotten very excited about how
8 wrong it was for U S WEST to disable the call transfer
9 service, which they claim to have been using lawfully,
10 which of course we disagree with, but in any event,
11 they have not even cited any statutory provision or
12 any rule which would prohibit U S WEST from removing
13 that service and removing the accompanying charges on
14 their bill.

15 They simply failed to even allege any sort of a
16 rule violation, statutory violation, or violation of a
17 commission order, which would even get us in the front
18 door of a complaint.

19 As I have said in our written motion, we are
20 willing to assume, giving them the benefit of every
21 doubt for purposes of argument on these motions for
22 summary determination, that the removal of the call
23 transfer feature could be considered a discontinuance
24 of service such that WAC 480-120-081 would apply. And
25 then we go into the questions of whether there was

1 notice required.

2 And in order to determine that, we have to look
3 at, did the discontinuance of service come under a
4 provision wherein notice isn't required. And U S WEST
5 contends that clearly that is the case. These
6 services were being used unlawfully.

7 I'm really struggling here with U & I CAN because
8 Counsel and Mr. Loveless and Mr. Hooper seem very
9 sincere. They have been very forthcoming with the
10 type of services they provide, freely admitting on the
11 record that they enable their customers to make
12 inter-exchange services. It doesn't seem like they
13 are trying to hide anything.

14 On the other hand, what's not to understand?
15 They continue to say they don't understand what they
16 are doing wrong, that U S WEST never told them what
17 they needed to do. We beg to differ with that. We
18 have told them dozens of times, they need to pay
19 access charges. They are using the service in
20 circumvention of the access charges.

21 And we offered to have IXC, or inter-exchange
22 carrier, marketing representative contact them to get
23 them set up under I think it's feature group D, but
24 I'm not sure, feature group A, one of the two. I
25 don't even understand it.

1 The point is, there are experts in the
2 telecommunications industry and in the company who can
3 explain it. And they simply, because it is
4 complicated, want to say, well, they don't have to
5 understand. They are doing this little service for
6 their members.

7 Their membership is simply a guise for saying
8 that they are not holding themselves out to the
9 public. That's simply not true. All you have to do
10 is call them up and say the magic words, say, "I want
11 to be involved in your advocacy organization." If you
12 make a mistake and say, "I want to take advantage of
13 your telephone system," they will turn you down,
14 likely because they have learned the lesson of
15 Metrolink. If you say that's what you are doing, it
16 would be abundantly clear that you are circumventing
17 the access charges system, that you are for hire to
18 the public, and you need to be either shut down or
19 registered as a telecommunications company
20 immediately.

21 They put a couple of procedural roadblocks in the
22 way. The point of fact is, you can only make 30 calls
23 per month for their eight dollar dues. They are
24 charging 25 cents a call for unlimited time toll
25 calling over EAS areas.

1 I think that the affidavits on file and the
2 admission of U & I CAN establish beyond any question
3 that they are providing a service which Metrolink
4 provided, and which this commission has held under the
5 totality of the circumstances and in analyzing what
6 the company did, regardless of what the company tries
7 to call it or tries to say it is or isn't, U & I CAN
8 is doing the same thing as Metrolink, and the result
9 in this case should be the same.

10 I don't think we need to do any fact-finding on
11 it. I think it's already abundantly clear on the
12 record that that is what they are doing.

13 I really think that I have covered everything
14 else in my previous remarks here, and I won't
15 reiterate that or belabor the point. If you have any
16 other questions, I'm available.

17 JUDGE SCHAEER: I think I have
18 pretty much covered my questions in your presentation
19 as well as on your response, in my earlier questions
20 to you also.

21 Which of you would like to go next?

22 MR. HOLCOMB: I don't-- I think
23 what Ms. Anderl has addressed has been adequately
24 responded to by way of argument by myself today, as
25 well as is covered in our brief. I don't see any

1 reason to add anything else.

2 The only thing about the issue of damages, that's
3 an issue that follows a determination that we should
4 be awarded relief on our complaint. At that time, we
5 should argue whether the provisional statute apply.

6 I would say for now there's no definition of what
7 constitutes a quote, court, unquote. This is a 1961
8 statute. I don't know what the legislature had in
9 mind, but I would say a duly plenary convened
10 commission of the state of Washington is coexistent
11 and coequal with a superior court of the state of
12 Washington, if that's what they mean by a court, or a
13 district court of the state of Washington, if that's
14 what they mean by court, or appellate court of the
15 state of Washington, if that's what they mean by
16 court, to make a finding that we are entitled to
17 damages and attorney's fees, and that follows in the
18 subsequent proceeding. And that's all I would say for
19 that.

20 We have five copies here of U & I CAN's request
21 that I would like to make part of the record.

22 JUDGE SCHAER: Thank you. Go
23 ahead and distribute those.

24 MS. ANDERL: I have a copy.

25 MS. SMITH: I have a copy at the

1 office. I don't need one.

2 MR. HOLCOMB: That concludes my
3 presentation.

4 JUDGE SCHAER: Thank you. I'm
5 going to take what you have just provided, it just
6 says "Request U & I Can - 2," and I'm going to make
7 this an additional attachment to your motion by
8 complainant for summary determination, since we have
9 already agreed that we will not be making any exhibits
10 in this phase of this proceeding.

11 Ms. Smith, did you have anything that you wished
12 to say at this time?

13 MS. SMITH: No, I had nothing to
14 add, other than commission staff concurs in the motion
15 for summary judgment made by U S WEST, and we would
16 argue to the ALJ that U S WEST's motion should be
17 granted.

18 JUDGE SCHAER: Any brief reply?

19 MS. ANDERL: No. Thank you.

20 JUDGE SCHAER: Thank you. As I
21 indicated at the beginning of our session today, that
22 will conclude argument on the two summary motions.
23 There are some other motions pending in this
24 proceeding, and I need to click through those fairly
25 quickly, I hope, just to see that we are all on the

1 same page about what should be done with those.

2 Referring first to your February 21st, '97,
3 objection to the pre-hearing order, Mr. Holcomb, you
4 had-- do you have a copy of that with you, sir?

5 MR. HOLCOMB: I think I made two
6 objections, didn't I? One as to the January 28th data
7 request?

8 JUDGE SCHAER: Yes. And another
9 was to the grounds for my decision that discovery
10 would be allowed in this proceeding. I just was
11 wondering if you had transcript references for the two
12 items that you challenged?

13 MR. HOLCOMB: I have not taken
14 out a transcript. They were from my notes.

15 JUDGE SCHAER: I did not find
16 those when I checked.

17 MR. HOLCOMB: I had a specific
18 note on January 28th. I think they are moot anyway.

19 JUDGE SCHAER: That's what I
20 wondered, if--

21 MR. HOLCOMB: I think they are
22 moot.

23 JUDGE SCHAER: I think we're
24 beyond those, although if we do get back into an
25 evidentiary stage in this proceeding, we will have to

1 reopen the whole discovery issue, I think, for all
2 three parties.

3 Also, on February 21st, U & I CAN objected to
4 U S WEST's motion to amend its counterclaim. And in
5 that motion, you sought-- U S WEST sought to argue
6 that it should be paid access fees; is that correct,
7 Ms. Anderl?

8 MS. ANDERL: I'm sorry, Your
9 Honor. I was reading something else. I didn't
10 realize you were going to address the question to me.

11 JUDGE SCHAER: You have to pay
12 attention now.

13 MS. ANDERL: I understand that.

14 JUDGE SCHAER: We are almost
15 done.

16 You made a motion to amend the counterclaim, in
17 which you sought to recover access fees from U & I
18 CAN.

19 MS. ANDERL: Yes.

20 JUDGE SCHAER: And Mr. Holcomb
21 objected to allowing you to amend your counterclaim.

22 If I were to rule -- this is a hypothetical -- if
23 I were to rule in favor of U S WEST on the dispositive
24 motions, will you want to continue with this matter to
25 pursue that counterclaim?

1 MS. ANDERL: I would have to
2 check with my client on that.

3 JUDGE SCHAER: If you did, would
4 I need to reopen discovery so that Mr. Holcomb could
5 find from you what access charges you thought had gone
6 unpaid and the detail of how those were calculated?

7 MS. ANDERL: We might have to
8 request some additional discovery if he wanted to
9 pursue that, in order to try to determine minutes of
10 use, although I believe there are tariff provisions
11 which allow us to estimate minutes.

12 So it might be that we could simply state what we
13 believe the access charges should be, without any
14 additional discovery.

15 JUDGE SCHAER: Well, I'm not
16 certain though that that would satisfy Mr. Holcomb's
17 needs. He had indicated in his objection to your
18 motion to amend, that your motion came after his
19 discovery opportunities had ended, and that he would
20 want to do discovery in that area.

21 So from what you have said, would you like to
22 check with your client and then let everyone here know
23 what your intention would be on that, or would you
24 like to wait until such time as I rule on the
25 dispositive motions, and then have a deadline of a

1 certain amount of time, if you should win, to let us
2 know, or how would you like to proceed with that?

3 MS. ANDERL: It would be my
4 preference to have you rule on the motions, and then
5 give me a week or two after the ruling to determine
6 whether we wish to call it quits or to proceed on the
7 unresolved issues.

8 JUDGE SCHAER: I would like to
9 indicate now on the record that if I should grant U S
10 WEST's motion, I would like you within one week of the
11 service date of that order to let all parties and me
12 know what your intentions are in that area. Because
13 if we are going to continue into that phase of the
14 proceeding -- again, this is all very hypothetical --
15 then I think we would need to have another pre-hearing
16 conference by phone or here to talk about discovery
17 and how we were going to go forward.

18 On March 7th, U S WEST sought a protective
19 order. Can we put that in the same status, that if
20 you were to win your motion, would you only need a
21 protective order if we were going to go forward, or
22 would you need one at all?

23 MS. ANDERL: We still need a
24 protective order, Your Honor, because it's tied into
25 the motion to compel discovery and confidential

1 information claimed by U & I CAN to be confidential.
2 We would still like that discovery to be complied
3 with. We would like that confidential data be
4 produced, and we feel that it's appropriate if U & I
5 CAN claims it to be confidential, that it be produced
6 under the terms of a protective order.

7 JUDGE SCHAER: Now, are you
8 saying that no matter what the disposition is, if I
9 were to grant U & I CAN's motion for summary
10 disposition as a result of this hearing, would you
11 still want that order issued and still want those
12 responses?

13 MS. ANDERL: Yes.

14 JUDGE SCHAER: Also, if I were to
15 grant your motion and you decided not to pursue access
16 charges, you would still want that?

17 MS. ANDERL: Yes.

18 MR. HOLCOMB: If I may inquire
19 here, this is a bizarre procedure. She's asking for a
20 protective order of my client to produce documents?

21 JUDGE SCHAER: We have discussed
22 protective orders at the pre-hearing conference, and
23 to go into that briefly again, the commission does
24 have a procedure whereby we will enter a protective
25 order, and then matters that are designated as

1 confidential by any parties to a proceeding are
2 required under our discovery rules to be provided, but
3 they can be provided within a designation that they
4 are confidential and they are protected as described
5 in that rule.

6 So it's my understanding that you have objected
7 to some discovery requests on the basis that the
8 information sought is confidential. And I believe
9 what U S WEST has asked is that there be a protective
10 order put in place because they would like to obtain
11 that information from you, and they would like us to
12 have a protective order in place so that you have the
13 protection it provides and so that you have no reason
14 under our discovery rules not to give them the
15 information.

16 MR. HOLCOMB: I would want a
17 ruling, first of all, that they would be entitled to
18 that information. I would like to see why they want
19 it. They have not provided any reason why. And at
20 that point then, if the commission decided that they
21 are entitled to it, then I would like to discuss the
22 terms of that protective order, because I-- I would
23 have to review that term.

24 We have-- we have a lot of wives that are trying
25 to avoid husbands that are out to physically assault

1 them, as part of the membership of U & I CAN. We have
2 various and sundry special interest groups that have
3 interests to protect. I will be very vague and very
4 broad about that, when I say that, that their names
5 should not be made part of any disclosure to anybody,
6 much less U S WEST Communications, for any purpose.

7 And I would like to know-- see a good and solid
8 substantial reason why they need the membership list
9 of U & I CAN. I have not seen any yet.

10 JUDGE SCHAER: I'm not ruling yet
11 or even talking at the moment too much about the
12 motion to compel, but rather about whether we should
13 have a protective order in place, so that if I do rule
14 on the motion to compel, that information should be
15 provided, that protection is in place and we are able
16 to move forward.

17 MR. HOLCOMB: May I respectfully
18 request we have a special hearing on that issue?

19 JUDGE SCHAER: On the issue of
20 whether a protective order is needed, or on the
21 motion to compel?

22 MR. HOLCOMB: On both, combined
23 in one hearing.

24 MS. ANDERL: I object to that,
25 Your Honor. We were instructed specifically in your

1 letter to be ready to argue these motions today. I
2 don't think there should be a special hearing.

3 MR. HOLCOMB: That's what I'm
4 arguing today, is for a special hearing, because this
5 is not a matter that can be treated in the way that
6 it's being treated here today.

7 This is-- you need to be well-advised and
8 well-versed before you order any disclosure for any
9 purpose to any group about the membership of U & I
10 CAN. Most people, we have no problem, but there are
11 problems with some of them.

12 JUDGE SCHAER: What I am going to
13 do is, I'm going to rule today that there should be a
14 protective order put in place, and that order will be
15 processed and issued. It needs to go through the
16 commissioners. And that will give you an opportunity
17 to become familiar with it.

18 And then I will not rule on the motion to compel
19 today, but rather will wait to see-- to give you that
20 time to review that before we go forward with that.

21 MR. HOLCOMB: Your Honor, do we
22 have an opportunity to object at any stage here to the
23 protective order, the contours of it, who sees it, the
24 provisions of it and so on?

25 JUDGE SCHAER: Yes. When I issue

1 the order, you will have the opportunities that you
2 have with any commission order, to appeal any portion
3 of it.

4 MR. HOLCOMB: Thank you.

5 JUDGE SCHAER: And again, as I
6 say, the order itself does not-- is not a ruling on
7 the motion to compel. There are instances, for
8 example, in the Merger Case that's just concluded,
9 there was certain information that, if it had been
10 revealed, the FCC would have been required to be
11 published, and so we went beyond the confidential
12 designation and designated certain documents as top
13 secret documents, and strictly limited access to
14 those, and did not allow several parties to the case
15 who had signed confidentiality agreements to view
16 those documents.

17 And I am going to need from you, Ms. Anderl, as
18 we go forward with your motion to compel, depending on
19 what rules come out of today, some justification of
20 why perhaps information is still needed, if either of
21 your motions is granted.

22 Because right at this moment, and it's late and I
23 may not be thinking with all cylinders, I'm not really
24 sure why there would be a continuing need for that
25 information, if your motion were granted, unless we

1 went into the extended phase of the proceeding.

2 MS. ANDERL: And if I could just
3 very briefly reply to that. For example, one of the
4 things that we requested in discovery was a list of
5 all the seven-digit numbers that have been dedicated
6 or donated to U & I CAN by its members.

7 U & I CAN refused to disclose that information to
8 us, claiming that U S WEST has that information.
9 That's simply false. As we have heard today, very
10 clearly, U & I CAN members make no effort to advise
11 U S WEST when they have dedicated their line to U & I
12 CAN.

13 And in fact, if-- I will be very up-front with
14 you, if we prevail on this motion, we want those
15 numbers, because it's going to be beyond any doubt
16 that what they are doing is illegal, and we're going
17 to want to continue to disable the call transfer
18 features. And I think we would have every legal right
19 to do so and have every legal right to have them tell
20 us what numbers are being used for that access charge
21 circumvention.

22 That's just one very specific instance, where
23 even if you were to grant a summary determination in
24 our favor, where we would continue to want to seek
25 discovery responses to some of the questions. It may

1 be that we would withdraw our motion to compel as to
2 some others.

3 JUDGE SCHAER: Mr. Holcomb, I
4 thought I heard Mr. Loveless say today that he was
5 willing to provide that information to U S WEST. Did
6 I mishear him or--

7 MR. HOLCOMB: If it gets to a
8 point you find that they are a public
9 telecommunications company and required to be
10 registered, at that point, I think it's inherent
11 within the power of the commission to require us to
12 disclose all the lines that are being used for that
13 fashion.

14 JUDGE SCHAER: That's not
15 something that you are willing to do absent a
16 commission order; is that correct?

17 MR. HOLCOMB: That's correct.

18 JUDGE SCHAER: And final
19 question, does anyone here wish to do any additional
20 briefing regarding the motions that were argued
21 today?

22 MS. ANDERL: No, Your Honor.

23 MS. SMITH: No.

24 MR. HOLCOMB: No.

25 JUDGE SCHAER: All right. Is

1 there anything more to come before us this afternoon?

2 MR. HOLCOMB: Complainant has
3 nothing.

4 MS. ANDERL: U.S. WEST has
5 nothing.

6 JUDGE SCHAER: Thank you all for
7 your patience. I apologize again for the late start
8 and the late finish, but we had some worthwhile work
9 accomplished here today. We are off the record.

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(Hearing concluded at

13

6:30 p.m.)

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C E R T I F I C A T E

As Court Reporter, I hereby certify
that the foregoing transcript is true and accurate and
contains all the facts, matters, and proceedings of
the hearing held on March 25, 1997.

Lisa K. Quinn
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