

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
2 COMMISSION

3	GTE NORTHWEST INCORPORATED,	)	
4		)	
	Complainant,	)	DOCKET NO. UT-951240
5		)	
	vs.	)	VOLUME 3
6		)	
	PAUL C. and BARBARA STEPHANUS,	)	PAGES 57 - 205
7	and the marital community	)	
	composed thereof, d/b/a PAUL C.)	)	
8	STEPHANUS INVESTMENTS and U.S.	)	
	TELCO, INC., a Washington	)	
9	corporation,	)	
	Respondents.	)	
10	-----	)	

11 A hearing in the above matter was held on  
12 May 22, 1996, at 9:30 a.m., at 1300 South Evergreen  
13 Park Drive Southwest, Olympia, Washington before  
14 Administrative Law Judge SIMON FFITCH.

15

16 The parties were present as follows:

17 GTE NORTHWEST, INC., by TIMOTHY J.  
18 O'CONNELL, Attorney at Law, 1800 41st Street (5LE),  
19 Everett, Washington 98201.

19 WASHINGTON UTILITIES AND TRANSPORTATION  
20 COMMISSION STAFF, by SHANNON SMITH, Assistant  
21 Attorney General, 1400 South Evergreen Park Drive  
22 Southwest, Olympia, Washington 98504.

21 U S WEST COMMUNICATIONS, by LISA A. ANDERL,  
22 Attorney at Law, 1601 7th Avenue, Room 3206, Seattle,  
23 Washington 98191.

24 Cheryl Macdonald, CSR  
25 Court Reporter

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A P P E A R A N C E S (Cont.)

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3 PAUL and BARBARA STEPHANUS, d/b/a STEPHANUS  
4 INVESTMENTS and U.S. TELCO, INC., by SCOTT A. SMITH,  
Attorney at Law, 3000 First Interstate Center, 999  
5 Third Avenue, Seattle, Washington 98104.

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WITNESSES: D C RD RC VD

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NILSON 69 76 84

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ROSE 97 99

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TURGEON 101 102

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GANSON 107 108 114

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(by phone)

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STEPHANUS 116 119

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WILSON 174 175 199 200

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

2 JUDGE FFITCH: Good morning, everyone.

3 This is the time and place scheduled for the hearing  
4 in the matter of GTE Northwest, Incorporated, versus  
5 Paul and Barbara Stephanus. And the UTC docket is  
6 UT-951240. Appearing today on behalf of the various  
7 parties are Tim O'Connell, attorney for GTE; Scott  
8 Smith, attorney for the respondents, Paul and Barbara  
9 Stephanus; Shannon Smith, assistant attorney general  
10 on behalf of the Commission staff; and Lisa Anderl,  
11 attorney for U S WEST Communications. We have had a  
12 brief discussion off the record about witness  
13 scheduling and it's my understanding that the parties  
14 have agreed to take a witness by telephone for GTE at  
15 11 a.m. That witness is Ms. Ganson, Peggy Ganson, and  
16 if when 11 a.m. comes she's out of order and we're in  
17 the middle of someone else's case it's my  
18 understanding that counsel have no objection to  
19 stopping and taking her testimony at that time. Any  
20 objection to that?

21 MR. O'CONNELL: No objection.

22 MR. SMITH: No.

23 JUDGE FFITCH: Hearing none we will proceed  
24 in that fashion. As I said off the record also, we're  
25 going to try to conclude the hearing today and I

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1 appreciate counsel's cooperation on that, and we'll  
2 talk about scheduling as we go along to try to be  
3 efficient, and I think that brings us to opening  
4 statements, and at this time I will offer counsel the  
5 opportunity to make a brief opening statement. It's  
6 not necessary for you to give an extended overview of  
7 your case, but brief opening statement will be  
8 acceptable at this time, and I will just go through  
9 people in the order that I listed appearances, GTE,  
10 respondents, staff and U S WEST. So, Mr. O'Connell.

11 MR. O'CONNELL: Thank you, Your Honor. I  
12 will be brief. GTE believes that the issues that are  
13 presented in this case are adequately presented in the  
14 issues list which was adopted in this matter in the  
15 eighth supplemental order. That issues list was  
16 unopposed and does set out the issues to be resolved  
17 by the Commission very directly. I won't spend,  
18 therefore, a great deal of time on them because I  
19 believe that those will be encompassed within the  
20 testimony and certainly the briefing that the party  
21 will put in after the fact.

22 I do want to emphasize one issue. This  
23 case is, in the context of the evolving  
24 telecommunications field, is an important issue.  
25 Shared tenant services, private shared

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1 telecommunications services in the language of the  
2 Washington statute are an important player in how  
3 telephone service is provided to the citizens of the  
4 state of Washington, and the issues that this case  
5 presents will be important issues in how SDSs, shared  
6 tenant services, shared telecommunications services,  
7 are to be permitted to operate in the future. We  
8 thank you for your time and attention and look forward  
9 to --

10 JUDGE FFITCH: Thank you. For the court  
11 reporter's benefits, the term STS, the acronym will be  
12 used a lot in this hearing and it stands for shared  
13 tenant services.

14 MR. O'CONNELL: Shared tenant services or  
15 shared telecommunications services. The terms are  
16 sometimes used interchangeably. Typically STS no  
17 periods run together.

18 JUDGE FFITCH: Once we're on the point of  
19 acronyms there may be other acronyms that come up in  
20 the course of the hearing today. I would ask  
21 witnesses and counsel to explain them when they are  
22 used initially both for the benefit of the record, for  
23 my benefit and also so the court reporter gets a good  
24 transcript.

25 Mr. Smith.

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1                   MR. SMITH: Let's see if I can match Mr.  
2 O'Connell's brevity and keep the whole hearing moving  
3 at a good pace. There is one issue and that's whether  
4 or not the GTE has the right to use Mr. Stephanus's  
5 private property without paying any compensation when  
6 they're doing so without his permission. When  
7 you start looking at U.S. Constitution, state  
8 constitution on taking private property without  
9 compensation you realize that GTE obviously is not  
10 going to have rights that the state does not have or  
11 that the federal government does not have.

12                   Much of the issues that led to the filing  
13 of this case have been resolved. Mr. Stephanus has  
14 agreed that GTE can remain on his property. In  
15 frustration he threatened to bar them from access  
16 because they would not even communicate with him in  
17 response to his request. Make some reasonable request  
18 to buy the cable or at least talk with him about their  
19 request to use his property for free and his cabling  
20 for free. So on the access issue, yes, they can  
21 have access. The remaining issue is whether they  
22 should have to make some reasonable payment.

23                   Our position mirrors that of the Commission  
24 staff in the prefiled testimony which says, yes, they  
25 concede that GTE should have to make some kind of a

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1 payment. There is alternative access given Mr.  
2 Stephanus's agreement that GTE can remain in the  
3 building. There is also U.S. Telco. I believe if you  
4 look at the relevant statutes cited by all parties the  
5 Commission doesn't have authority to regulate U.S.  
6 Telco with respect to its rates nor do I see why the  
7 Commission has any authority truly to get into the  
8 other issues here. There's a lot of miscellaneous  
9 information in the prefiled testimony, and if you  
10 reflect on that and bounce it off of the issues as we  
11 frame them or as GTE has framed them, it is completely  
12 irrelevant. It really is -- this is why we initially  
13 didn't file any prefiled testimony. We have a legal  
14 issue: Does GTE have the right to use the private  
15 property owner's property without making just  
16 compensation? So that's the issue I would ask you to  
17 keep in mind as we proceed through the testimony.

18 JUDGE FFITCH: Very well. Thank you. Ms.  
19 Smith.

20 MS. SMITH: Thank you. I will be very  
21 brief. The issues list that was filed by GTE that  
22 staff had no objection to frames some fairly broad  
23 policy issues that the Commission is interested in as  
24 policy and in the public interest. The staff's  
25 position in this case is set forth in Tom Wilson's



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1 testimony and I won't repeat it here. And staff is  
2 here to address those broad policy concerns that are  
3 set out in this case.

4 JUDGE FFITCH: Okay. Ms. Anderl.

5 MS. ANDERL: We'll waive an opening  
6 statement.

7 JUDGE FFITCH: Before we get into the  
8 testimony, it does seem that some of the factual  
9 issues perhaps have narrowed here. Although everyone  
10 is in agreement that the issues list is an accurate  
11 one at this point, I'm wondering if there's anything  
12 to be gained by perhaps an an off-the-record  
13 discussion about stipulating any issues about access,  
14 for example. That may delay us rather than just going  
15 ahead with testimony; I don't know. I'm just raising  
16 the question for brief preliminary discussion. If  
17 some of these questions on here are really not in  
18 dispute at this time, maybe 15 minutes of discussion  
19 and stipulation by counsel might expedite the hearing  
20 rather than having the witnesses talk about disputed  
21 access or things of that nature, and I just raise that  
22 question right now to see if people think we can maybe  
23 narrow the focus further. I think the issues list is  
24 a pretty good start narrowing it but --

25 MR. SMITH: I wanted to make one comment if

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1 I might. There's been a statement by a couple of  
2 people, I think yourself even, that everybody agrees  
3 with GTE's issues list. We do not agree with that as  
4 setting forth all the issues or even setting forth  
5 issues that need to be resolved of any relevance to  
6 the heart of this case. We had at the prior hearing  
7 accepted your invitation to simply stand on the motion  
8 we previously filed which set forth a list of issues.  
9 I did not file an additional issues list in response  
10 to that earlier issues list in which we presented our  
11 motion to clarify or limit the issues.

12           From the beginning we've tried to focus  
13 this proceeding on the crux of the issues which, as we  
14 framed it, is taking private property without making  
15 any payment. And I just didn't want the Commission to  
16 think that we agreed 100 percent with the issues list  
17 raised by GTE; and, as I said before, in another  
18 context we would just as soon, as you see the bumper  
19 sticker, rather be sailing, rather be doing something  
20 else. We were dragged into this proceeding and would  
21 like to get out of it as soon as possible. We've  
22 given GTE more than I think they're legally entitled  
23 to, and the question is now since they have the access  
24 do they have to pay for it, and on that I don't know  
25 that frankly a whole lot of the testimony has any

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1 relevance. Talk about, oh, common practice in a  
2 rapidly evolving era of telecommunications law seems a  
3 little antiquated and, frankly, doesn't address the  
4 issues as to the underlying legal authority for GTE to  
5 take private property.

6           So in terms of trying to stipulate to some  
7 things to move this along there's a stipulation GTE  
8 may continue to have access to the property, or at  
9 least we would so stipulate if the parties would.  
10 That removes a critical issue. Mr. Stephanus does not  
11 own U.S. Telco. Has no financial interest in it. I  
12 believe that that's an uncontested fact. Beyond that,  
13 I guess I look to the other parties to see what other  
14 facts there might be that we could stipulate to.

15           The obstruction issue is kind of a minor  
16 issue, the conduit issue. On that one I don't see any  
17 parties having any evidence they know why GTE is  
18 unable to feed an extra 200 pair of cable into a 100  
19 pair of cable conduit currently, but they're unable to  
20 do so. And again, that seems to present a legal issue  
21 as to when they're able to add more wire to an  
22 existing conduit, and there's no evidence for who is  
23 at fault for that fact, whether the owner has to  
24 pay, whether the customer has to pay or whether GTE  
25 has to pay.

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1 JUDGE FFITCH: Okay. Mr. O'Connell.

2 MR. O'CONNELL: Thank you, Your Honor.

3 First off, I would object to any suggestion that the  
4 issues list issued by Your Honor on May 16 is anything  
5 other than the established issues list decided in this  
6 hearing. The sixth supplemental order that was issued  
7 on March 20, 1996 called for the parties to develop an  
8 issues list. It called for responses to that issues  
9 list to be filed by April 12, 1996. No responses were  
10 filed, including by Mr. Stephanus and U.S. Telco, and  
11 Your Honor issued the eighth supplemental order  
12 adopting the issues list as the issues list to be  
13 decided in this case. I think, frankly, given the  
14 proceeding which has occurred in this case to which  
15 Mr. Smith was -- my recollection is that was done by  
16 telephone but Mr. Smith was a participant, full  
17 participant, in the pre-hearing conference that  
18 resulted in the sixth supplemental order. The  
19 respondents have not made any response or objections  
20 to the issues list, and I think at this point they  
21 have waived any opportunity to do so, and I think at  
22 this point that issues list should be determined as  
23 dispositive and the issues to be resolved here. Quite  
24 frankly, in light of Mr. Smith's response, I don't  
25 think there is much usefulness to spent a lot of time

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1 to work out a stipulation to the issues. I think it  
2 would be -- more straightforward manner would be just  
3 to proceed with testimony.

4 JUDGE FFITCH: In view of the discussion I  
5 think that I agree that it appears we should just go  
6 ahead at this time with the testimony. So, Mr.  
7 O'Connell, you may call your first witness.

8 Whereupon,

9 MICHAEL NILSON,  
10 having been first duly sworn, was called as a witness  
11 herein and was examined and testified as follows:

12 JUDGE FFITCH: Would you state your full  
13 name for the record.

14 THE WITNESS: My name is Michael P. Nilson,  
15 N I L S O N.

16 JUDGE FFITCH: Mr. O'Connell, you may  
17 inquire.

18

19 DIRECT EXAMINATION

20 BY MR. O'CONNELL:

21 Q. Mr. Nilson, you have prepared prefilled  
22 testimony in this case?

23 A. Yes.

24 Q. And if I were to ask you those questions  
25 today I would get the same answers?

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1 A. Yes.

2 Q. There are some amendments to that  
3 testimony?

4 A. That's correct.

5 Q. Going to hand you a packet of exhibits  
6 which, for the record, I have previously provided the  
7 administrative law judge and all of the parties an  
8 identical packet.

9 Mr. Nilson, can I ask you to turn your  
10 attention, please, in your initial testimony to page  
11 5, line 7.

12 A. I see it.

13 Q. The question was how many held orders do we  
14 have now, and again, just to put it in context, I  
15 think that's referring specifically to the Casablanca,  
16 one of the four apartment complexes at issue here.

17 A. That's correct.

18 Q. And your answer was at that time none?

19 A. That's correct.

20 Q. Do you need to amend that answer, sir?

21 A. Yes. We currently have five held orders at  
22 the Casablanca complex.

23 Q. So it is clear, was your testimony accurate  
24 when you prepared it?

25 A. Yes, it was.

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1 Q. Do you know when the first of those held  
2 orders were received after you prepared your  
3 prefiled testimony?

4 A. Yes, I do. It was the day that my  
5 testimony was served on the respondent.

6 Q. Thank you. Can I ask you to turn your  
7 attention to page 3 of your opening testimony. At  
8 line 9 and 10 and then at line 19 and 20, do you need  
9 to amend your testimony on those locations, sir?

10 A. Yes, I do. In the interim since my  
11 testimony was prepared we merged two of our Washington  
12 tariffs and included in the package of exhibits that  
13 you provided to everyone present our updated exhibits  
14 from tariff U 17 which is now the appropriate tariff  
15 covering those specific items.

16 Q. So that's -- both exhibits in the package  
17 there so that you can refer to it so that we're all  
18 clear, that's both Exhibit 2 and 3?

19 A. That is correct.

20 Q. Why don't you explain for the parties what  
21 we have in the two exhibits that are referenced in the  
22 packet there, Exhibits 2 and 3?

23 A. Exhibit 2 is the -- Exhibit 2 shows my  
24 original exhibit page which was Washington U 10, sheet  
25 -- Washington U 10, sheet 210, and the corresponding

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1 pages from U 17, section 2, original sheet 30, and  
2 original sheet 31, and that's associated with customer  
3 premise inside wire.

4 Q. Let's just be very clear. Mr. Nilson, to  
5 what degree, if at all, did the tariff provision that  
6 you are citing to in your testimony change in the  
7 transition from the prior tariff U 10 to the current  
8 tariff U 17?

9 A. There was no change.

10 Q. Then what's Exhibit 3, please?

11 A. Exhibit 3 is my original exhibit page from  
12 U 10, sheet 360, and the corresponding pages from --  
13 I'm sorry, 360 and 361, and then the corresponding  
14 pages from U 17, section 2, original sheets 43, 44 and  
15 45.

16 Q. Again, substantively, to what degree, if at  
17 all, did the language to which you are referring in  
18 your testimony at page 3 change in the transition from  
19 U 10 to U 17?

20 A. There's no change in language.

21 Q. Can I ask you to turn your attention to  
22 your rebuttal testimony lines 18 through 22.

23 A. I have it.

24 Q. Do you have prepared there an Exhibit 5?

25 A. I have.



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1 Q. In the packet which was handed to all of  
2 the parties and the judge?

3 A. That's correct.

4 Q. Can you explain what Exhibit 5 is?

5 A. Exhibit 5 is the appropriate tariff sheets  
6 for our service charges and what we call Smart Call  
7 feature rates from U 10, which was the tariff in place  
8 at the time my testimony was prepared, and then the  
9 corresponding sheets from U 17, the combined tariff.

10 Q. So those are the tariffs that you refer to  
11 as the approved tariffs which are on file with the  
12 Commission on lines 20 and 21 of your rebuttal  
13 testimony?

14 A. Yes, correct.

15 Q. Are there any further amendments or  
16 corrections to your testimony, Mr. Nilson?

17 A. No.

18 MR. O'CONNELL: I would offer the testimony  
19 of Mr. Nilson and all the exhibits that he has  
20 attached to it.

21 JUDGE FFITCH: Very well. Are there any  
22 objections to the exhibits that have been offered  
23 through Mr. Nilson?

24 MR. SMITH: I object to what I think was  
25 referred to as Exhibit 5 -- it was the rate sheet just

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1 referred to a minute ago -- as not having any  
2 relevance to this proceeding. I don't have an  
3 objection to some of the substantive testimony but  
4 just in terms of the exhibits themselves I would  
5 object to that tariff, and the U.S. Telco looks like  
6 some kind of a marketing flyer which is part of the  
7 materials provided to us this morning.

8 JUDGE FFITCH: First of all, on MPN 5 which  
9 is the rate groups exhibit, your objection is as to  
10 relevance?

11 MR. SMITH: Yes. I don't know what GTE's  
12 rates have to do with their right to use Mr.  
13 Stephanus's property.

14 JUDGE FFITCH: Mr. O'Connell, response to  
15 that.

16 MR. O'CONNELL: Thank you. Mr. Smith needs  
17 to remember that it's a proceeding against both Mr.  
18 Stephanus and U.S. Telco. The rate sheet was provided  
19 to us as a "marketing document" that is distributed to  
20 tenants at the apartments. It is offered for the  
21 purposes of showing the manner in which Mr. Stephanus  
22 and U.S. Telco interact in marketing their services to  
23 residences of those apartments.

24 JUDGE FFITCH: You're referring to MPN 4?

25 MR. O'CONNELL: Yes, correct.

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1                   JUDGE FFITCH: I'm not sure which exhibit  
2 we're talking about right at this point. You have  
3 objected to both MPN 4 and 5, is that correct, Mr.  
4 Smith, as to relevance on both of those?

5                   MR. SMITH: All right.

6                   JUDGE FFITCH: And your response goes to  
7 both of those exhibits?

8                   MR. O'CONNELL: Yes.

9                   JUDGE FFITCH: The objection is overruled  
10 and the exhibits will be received. No objections to  
11 the other exhibits that have been offered?

12                   MR. SMITH: Not the exhibits but some  
13 objection to the testimony as being based on hearsay.

14                   JUDGE FFITCH: Well, we may need to get  
15 more specific with that objection. Before we do that,  
16 let me make sure that I have these exhibits logged in  
17 properly. Are you offering the direct and rebuttal  
18 testimony as well as the exhibits at this time?

19                   MR. O'CONNELL: Yes, please.

20                   JUDGE FFITCH: I think rather than to take  
21 up the parties' time with an extended marking process  
22 now -- I think we're going to be able to -- on my part  
23 I think we're going to be able to keep track of the  
24 exhibits with the identification that you've used, Mr.  
25 O'Connell, and I am assuming the other parties will be

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1 able to do that, too. We don't have a huge number of  
2 exhibits here so I'm going to mark these formally  
3 after the hearing. They are identified. Exhibits are  
4 properly identified and we can refer to the prefiled  
5 testimony as either the direct or the rebuttal written  
6 testimony for purposes of identification. So at this  
7 time I'm going to admit MPN 1 through 5 into the  
8 record.

9 (Admitted Exhibits MPN 1 - 5.)

10 JUDGE FFITCH: Now, I understand that you  
11 have objections to --

12 MR. SMITH: What I might do is just go  
13 through cross-examination, and it will be clear from  
14 some of that which testimony is provided on hearsay  
15 and not his personal knowledge. Then we can move to  
16 strike as appropriate.

17 MR. O'CONNELL: No objection to proceeding  
18 that way.

19 JUDGE FFITCH: Very well. Do you have any  
20 further examination of the witness Mr. O'Connell?

21 MR. O'CONNELL: No, Your Honor.

22 JUDGE FFITCH: Mr. Smith, you may  
23 cross-examine.

24

25 CROSS-EXAMINATION

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1 BY MR. SMITH:

2 Q. I wanted to ask you about your use of the  
3 term "customer" which appears throughout some of your  
4 prefiled testimony. The customer is the person to  
5 whom you provide the telephone service and they pay a  
6 monthly bill; is that correct?

7 A. Correct.

8 Q. And when you talk about customers getting  
9 choice you're talking about that customer, the  
10 customer who is getting the dial tone, receiving a  
11 phone service from GTE?

12 A. That's correct.

13 Q. And the wiring, the inside premises wiring  
14 is called officially the customer inside premises  
15 wiring?

16 A. Yes, correct.

17 Q. And it's your understanding of the tariffs,  
18 it is the customer's responsibility to provide that  
19 wiring and keep it functioning and in good repair?

20 A. Yes.

21 Q. And using the customer the same way, the  
22 person gets dial tone?

23 A. Yes.

24 Q. And if that customer who gets the dial tone  
25 from you isn't willing to spend the money, they don't

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1 want to do it, or for whatever reason decide they  
2 don't want to repair their inside wiring, they simply  
3 don't get the phone service from GTE?

4 A. That's correct.

5 Q. They get that choice as well as to decide  
6 given the cost of fixing the inside wiring, I don't  
7 frankly want to pay for that and get the inside wiring  
8 fixed to get the dial tone. That would be their  
9 choice?

10 A. That's true. That's their choice.

11 Q. And regardless of the reason why that  
12 wiring may not work -- for example, if at my house I  
13 cut the wiring by doing some remodeling I got to fix  
14 it unless I get that linebaker service but either I  
15 fix it or lose my dial tone?

16 A. That's true, although you do have the  
17 option of fixing it yourself.

18 Q. Either if I'm smart enough I might be able  
19 to but if I'm not I will hire somebody else or hire  
20 your people to do it for me?

21 A. That's correct.

22 Q. And that's no different in an apartment  
23 building?

24 A. That's right.

25 Q. Similar concept. If a customer decides

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1 they would rather just use cellular phones rather than  
2 hard wire phones they've certainly got that option?

3 A. That's correct.

4 Q. Mr. Stephanus is not a customer of yours,  
5 is he, in the way you've used that term?

6 A. In that context I would say no.

7 Q. He simply owns the apartment buildings  
8 where your customers reside?

9 A. That's true.

10 Q. Is it your position in this case that Mr.  
11 Stephanus not being a customer does not get to  
12 exercise any choice as to whether or not the tenants  
13 in his building do or do not have phone service?

14 A. Would you repeat that.

15 Q. Is it your position in this case that Mr.  
16 Stephanus, who is not your customer, is not a party  
17 that has any choice in whether or not the tenants who  
18 are your customers have access to GTE's phone service?

19 MR. O'CONNELL: I'm going to object. I  
20 think that calls for a legal opinion.

21 Q. Just asking about your understanding.

22 MS. ANDERL: Well, Your Honor, I have to  
23 object and I would ask counsel to rephrase the  
24 question. It was not clear to me what he was asking.

25 JUDGE FFITCH: Could you rephrase the

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1 question, Mr. Smith, and as long as you're not asking  
2 the witness for a legal conclusion I will allow you to  
3 ask him for his understanding.

4 Q. When we talk about a customer having the  
5 choice of whether or not to repair the inside wiring  
6 when it's broken or whether or not to get GTE's phone  
7 service or use cellular service, that customer does  
8 not include Mr. Stephanus as the owner of the  
9 building. Isn't that correct?

10 A. I'm still confused. Say it again, would  
11 you, please.

12 Q. He's the owner of the building. He's the  
13 landlord, he's not the tenant. The tenants are your  
14 customers; isn't that correct?

15 A. That's correct.

16 Q. The tenants make the choice about repairing  
17 inside wiring or going with cellular service if they  
18 want to have GTE's phone service, correct?

19 A. All right, I agree with you. Correct.

20 Q. Is your understanding any different with  
21 respect to repairing a conduit, that the customer --  
22 if a customer wants to have the additional phone lines  
23 and the conduit doesn't accommodate the additional  
24 cables that it's the customer that needs to pay the  
25 cost of repairing that conduit or improving it or



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1 upgrading it?

2 A. Well, in the case of the conduit our tariff  
3 is pretty explicit, in my opinion, that it clearly  
4 says the conduit belongs to the property owner but he  
5 has the responsibility to maintain it in proper  
6 working condition.

7 Q. Can you show me in the tariff where it  
8 refers to owner and not customer?

9 A. Just a second.

10 JUDGE FFITCH: If you could give us the  
11 exhibit number, too, that would help.

12 Q. We're looking, I believe, at Exhibit 3.

13 JUDGE FFITCH: MPN 3?

14 A. We're looking at MPN 3.

15 Q. What sheet?

16 A. Section 2, original sheet 45, and it's  
17 paragraph 3, private property normal construction.

18 Q. When I asked you that question a minute ago  
19 you referred to the owner as having responsibility.  
20 You agree with me, don't you, that the owner is not  
21 identified here as having any responsibility for  
22 repairing or upgrading the buried wire or cable?

23 A. The tariff uses the word "customer," that  
24 is correct.

25 Q. Is it your position or belief that the

00082

1 customer of GTE can impose upon the owner of the  
2 property that he's using the cost of repairing a  
3 conduit or upgrading a conduit if additional phone  
4 service is needed by your customer?

5 MR. O'CONNELL: Objection. Calls for a  
6 legal opinion.

7 JUDGE FFITCH: You want to rephrase that,  
8 Mr. Smith? Does sound like you're starting to ask for  
9 a legal opinion here.

10 Q. The introductory words were "is it your  
11 understanding." I just want to know your  
12 understanding.

13 JUDGE FFITCH: Very well. You may answer.

14 A. As you posed the question, I don't think I  
15 have been involved in a situation in that manner.

16 Q. Let me ask you to look at your prefiled  
17 testimony on the top of page 4.

18 JUDGE FFITCH: Are you referring to the  
19 direct or the rebuttal?

20 MR. SMITH: The direct.

21 A. I have it.

22 Q. You state, "The owner of an apartment  
23 complex such as Mr. Stephanus in this case gained  
24 substantial economic advantage by having as many  
25 tenants as possible participate in his private shared

00083

1 telecommunications service. By aggregating the  
2 established service the owner can reap for himself the  
3 discounts available to large volume users of  
4 telecommunications services."

5           This statement by you assumes that Mr.  
6 Stephanus owns U.S. Telco, doesn't it?

7           A.     Yes, it does.

8           Q.     Do you know -- have personal knowledge as  
9 to whether that's the case?

10          A.     No, I don't.

11          MR. SMITH: We move to strike any statement  
12 by this witness in his direct testimony about Mr.  
13 Stephanus's ownership of U.S. Telco or whether or not  
14 he has any --

15          Q.     Do you know if he has any economic -- what  
16 the terms of his contractual or other relationship is  
17 with U.S. Telco?

18          A.     I know from his testimony that he indicated  
19 there was a contract. My understanding is that we  
20 asked for a copy of it and it was not provided.

21          Q.     So you don't have any knowledge as to the  
22 terms of that relationship?

23          A.     No, I do not.

24          MR. SMITH: Move to strike that testimony,  
25 then, as not being based on personal knowledge and

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1 being incorrect.

2 JUDGE FFITCH: Mr. O'Connell, response?

3 MR. O'CONNELL: Thank you, Your Honor.

4 Perhaps voir dire for one moment.

5 JUDGE FFITCH: All right.

6

7 VOIR DIRE EXAMINATION

8 BY MR. O'CONNELL:

9 Q. Mr. Nilson, have you had the opportunity to  
10 review Mr. Stephanus's prefiled testimony?

11 A. Yes, I have.

12 Q. Do you have any testimony by Mr. Stephanus  
13 as to whether he receives an access fee from U.S.  
14 Telco?

15 A. Yes. His testimony states that he does.

16 Q. Thank you.

17 MR. O'CONNELL: Your Honor, I would submit  
18 that in fact, given respondent's own testimony, the  
19 testimony is correct. I would object to the motion to  
20 strike.

21 MR. SMITH: I would be comfortable with GTE  
22 stipulating to the accuracy of Mr. Stephanus's  
23 testimony in this point, which is what I believe Mr.  
24 O'Connell is doing, and that Mr. Nilson's gratuitous  
25 comments about substantial economic advantage based on

00085

1 the supposition that Mr. Stephanus owns U.S. Telco is  
2 simply wrong. It is not something this witness has  
3 any knowledge of. This witness himself in that voir  
4 dire refers not to something he has any knowledge of  
5 but to that evidence presented by a different party.  
6 So this witness is not competent or knowledgeable to  
7 provide testimony in this particular issue.

8 JUDGE FFITCH: I'm going to overrule the  
9 objection and accept your cross-examination and the  
10 testimony that's been given in response as going to  
11 the weight of this testimony.

12

13 CROSS-EXAMINATION

14 BY MR. SMITH:

15 Q. Let me ask about a couple of other things  
16 in your statement that I'm not sure that you have  
17 background for testifying to. Do you have any  
18 personal knowledge that Mr. Stephanus is requiring his  
19 tenants to obtain phone service only through U.S.  
20 Telco?

21 A. The knowledge I have is from calls from  
22 tenants asking if that was in fact their only option  
23 and what in fact the telecommunications rules were.

24 Q. The only thing you have some information  
25 about is what some third parties who are not here at

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1 this hearing made in a phone call?

2 A. That's correct.

3 MR. SMITH: Move to strike that testimony  
4 as based on hearsay.

5 MR. O'CONNELL: Can you be more specific?

6 JUDGE FFITCH: Mr. Smith, could you  
7 identify a specific language that you're referring to?

8 MR. O'CONNELL: Page 5, 8 through 10.

9 MR. SMITH: You may have found it before I  
10 have there. Page 5, lines 8 through 12. Certainly  
11 those witnesses, Your Honor, could have come here if  
12 that was a true statement. Mr. Stephanus has  
13 explained in his prefiled testimony that that's not  
14 accurate. Through this witness GTE is attempting to  
15 offer third party hearsay based upon some rumor that  
16 is not in evidence before the hearing.

17 JUDGE FFITCH: Any response, Mr. O'Connell?

18 MR. O'CONNELL: Your Honor, I will concede  
19 that it is hearsay, I think it may be admissible, and  
20 perhaps I may be able to establish it through voir  
21 dire?

22 JUDGE FFITCH: Very well.

23

24 VOIR DIRE EXAMINATION

25 BY MR. O'CONNELL:

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1 Q. Mr. Nilson, how many people did you talk to  
2 to base your testimony in your direct on lines 8  
3 through 12?

4 A. Five.

5 Q. And were those persons tenants in any one  
6 of the four apartment complexes in particular?

7 MR. SMITH: Objection, that calls for  
8 hearsay. Any testimony about his statement with a  
9 nonparty witness is hearsay. If GTE believed that  
10 there is any truth to this statement, which has no  
11 relevance to the factual issues and is designed to  
12 divert this Commission, it could have had those  
13 witnesses come forth.

14 MR. O'CONNELL: Your Honor, this is voir  
15 dire. I'm trying to lay the foundation for that.

16 MR. SMITH: He's laying voir dire with  
17 hearsay.

18 MS. ANDERL: Well, Your Honor, I might just  
19 point out that a hearsay objection alone is not  
20 sufficient to make testimony or evidence inadmissible  
21 in an administrative proceeding.

22 JUDGE FFITCH: I was about to make that  
23 observation myself, Mr. Smith, that in our proceedings  
24 some hearsay is admissible.

25 MR. SMITH: I appreciate that if there's

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1 some circumstantial guarantees of trustworthiness if  
2 it is simply quibbling, but here GTE is trying to  
3 provide testimony that has nothing to do with the  
4 issues in an effort to discredit Mr. Stephanus, and  
5 they could very easily have added one more witness to  
6 their lengthy witness list if there was any truth to  
7 this, and for those reasons I'm objecting.

8           There is a lot of other hearsay throughout  
9 this entire record which I am not going to quibble  
10 with because it's not important or because the parties  
11 truly could prove that is true, and for me to object  
12 it's hearsay, I know what the rules of hearsay are.  
13 That's not my intent. My intent is to focus on those  
14 areas that I believe it is proper for the Commission  
15 to accept those testimony. This is one of those  
16 few areas.

17           JUDGE FFITCH: I believe you're also  
18 raising now a relevance objection and perhaps it will  
19 be helpful to turn that -- first of all, Mr.  
20 O'Connell, Mr. Smith has suggested that this testimony  
21 is not relevant, so can you show me on the issues list  
22 whether we need to get into the matters that you're  
23 examining on here?

24           MR. O'CONNELL: Yes, I can, Your Honor,  
25 thank you. I think if you focus on question 1, do



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1 tenants in the apartments have alternative access to  
2 local exchange telecommunications companies, the  
3 testimony will establish -- and Mr. Smith must  
4 remember that he is representing in this proceeding  
5 not just Mr. Stephanus but also U.S. Telco, who is a  
6 defendant in this case, and they're the ones who chose  
7 to proceed jointly. If the parties, the defendants,  
8 the respondents, have combined to make statements to  
9 the tenants with the intent of suggesting or  
10 dissuading them from obtaining service from the  
11 telephone industry -- from the telephone company,  
12 excuse me -- through suggestions that, A, are not true  
13 or, B, are taking advantage of the position as the  
14 landlord and the rental management company, I think  
15 that's showing that they are in fact throwing up  
16 barriers to access to the local telephone company. I  
17 think that's something that this Commission should  
18 consider in ruling on issue one.

19           And again -- so I think it's highly  
20 relevant and I really didn't finish the voir dire on  
21 the relevance objection -- excuse me -- on the hearsay  
22 objection. Just kind of as a manner of offer of proof  
23 what Mr. Nilson testified to is we asked these persons  
24 to come and testify and they were all afraid of  
25 retaliation from their landlord for going to do so.

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1 This is not something where -- as I indicated to you  
2 at the beginning, Your Honor, we concede that this is  
3 hearsay. We think it should be admitted, though, for  
4 the limited purposes that it's offered.

5 MS. SMITH: If I might make one observation  
6 following the observation made by Lisa Anderl that I  
7 think Mr. Smith's objection really goes to the weight  
8 of this evidence and not to its admissibility.  
9 Hearsay evidence is admissible in administrative  
10 hearings, and his comments may go on to the weight  
11 that you will place on these, but I don't think it  
12 goes to its admissibility.

13 JUDGE FFITCH: Well, that's my inclination.  
14 I'm going to rule that the evidence, the line of  
15 questioning, is relevant to the first issue on the  
16 issues list, and I'm going to allow you, Mr.  
17 O'Connell, to finish your voir dire on the way in  
18 which this information was obtained in order to help  
19 me conclude whether it's reliable hearsay or not.

20 MR. O'CONNELL: Thank you, Your Honor.

21 JUDGE FFITCH: So if you would like to  
22 expeditiously finish that voir dire, you may.

23 MR. O'CONNELL: As quickly as I can, Your  
24 Honor.

25 Q. Mr. Nilson, I frankly forgot my last

00091

1 question to you, sir. Were all of those tenants who  
2 -- I think you said you had five different contacts?

3 A. Yes, I spoke to five different people.

4 Q. Were all of those tenants from any one  
5 apartment complex?

6 A. They were all from Campo Basso.

7 Q. That's one of the four apartment complexes  
8 at issue?

9 A. Yes. That's the complex where the damaged  
10 conduit is located.

11 Q. Was there any variation in what these five  
12 individuals told you on that issue?

13 A. No. I felt that they were all very  
14 consistent, that they had been told they had no option  
15 for service other than through U.S. Telco, and that  
16 was why they called my office to find out if that  
17 really was true. They weren't familiar with current  
18 competitive telecommunications environments. There's  
19 a lot of people aren't until you get exposed to it and  
20 so I basically answered their questions.

21 Q. Those five tenants who contacted you, did  
22 they identify to you who had made those statements to  
23 to them?

24 A. They identified to me that it was the  
25 leasing office at the complex.

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1 Q. Did they mention at what time in the  
2 process that they became a tenant there that those  
3 statements were made to them?

4 A. Well, in terms of timing it was at the time  
5 they were signing the lease and reviewing other  
6 documents associated with being a tenant.

7 Q. Did you ask any of these five individuals  
8 to testify in this proceeding?

9 A. I asked every one of them.

10 Q. And were any of them willing to do so?

11 A. No, they weren't.

12 Q. Did they give you a rationale for why they  
13 were not willing to do so?

14 A. They had all just signed leases to become  
15 tenants at the complex and were concerned that there  
16 could be some retaliation if they testified against  
17 their landlord.

18 Q. Thank you, Mr. Nilson.

19

20 CROSS-EXAMINATION

21 BY MR. SMITH:

22 Q. Mr. Nilson, did you have the tenant names  
23 when they called you?

24 A. I did.

25 Q. So you could have subpoenaed them if you

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1 believed they could provide such testimony?

2 A. I guess we could have.

3 Q. You didn't provide any of that detail in  
4 your prefiled testimony, did you?

5 A. No.

6 Q. In your rebuttal testimony --

7 JUDGE FFITCH: Before you go on, Mr. Smith,  
8 I believe your objection is still outstanding as to  
9 the hearsay, your request to strike lines 8 through  
10 12.

11 MR. SMITH: Yes. I thought you --

12 JUDGE FFITCH: Well, and I'm going to  
13 overrule the objection as to hearsay and allow your  
14 examination to go to the weight of the testimony  
15 that's been offered.

16 Q. Let me ask you to consider your rebuttal  
17 testimony where you state on lines 10 through 13 that  
18 GTE was, in your words, forced to file two motions to  
19 compel to obtain Mr. Stephanus's response to GTE's  
20 data request. Did you verify that statement before  
21 putting in your rebuttal testimony?

22 A. I guess I'm not quite sure how to answer  
23 that.

24 Q. I'm asking if you put testimony in your  
25 rebuttal testimony that you did not know whether or

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1 not it was accurate by having checked it yourself.

2 It's a pretty strong statement. I want to know why

3 you put that in your testimony.

4 A. Okay. I put it into my testimony because  
5 we had to file two motions to obtain the information.

6 Q. Is that your understanding or did somebody  
7 tell you that?

8 A. It's my understanding.

9 Q. And so this was not something you checked  
10 to see whether in fact Mr. Stephanus had filed his  
11 testimony -- excuse me -- his data request responses  
12 after the first motion and before the second motion?  
13 You don't know one way or the other?

14 MR. O'CONNELL: I object. I don't  
15 understand.

16 Q. You don't know one way or another whether  
17 or not GTE had to file two motions to get Mr.  
18 Stephanus to respond to the data requests?

19 A. I believe I do. We filed two motions.

20 Q. Did you verify that? Did you look at the  
21 timing? I'm asking because this is not a correct  
22 statement, and I'm wondering whether you simply agreed  
23 to file testimony based on something other people are  
24 telling you to put in your statement or whether you  
25 have personal knowledge of and know about those facts

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1 that you present to the Commission.

2 MR. O'CONNELL: Objection. The question is  
3 argumentative. It assumes facts not in evidence and  
4 if Mr. Smith is going to testify perhaps he should be  
5 sworn.

6 JUDGE FFITCH: Mr. Smith, I will tell you  
7 my reaction here is that we're essentially -- we're on  
8 the verge of getting into a discovery dispute. We  
9 don't really have a discovery dispute before us in  
10 this hearing and I really hate to go down this road.

11 MR. SMITH: I apologize. I thought it was  
12 a gratuitous cheap shot. It's not true as well as  
13 being a gratuitous cheap shot. Mr. Nilson clearly has  
14 filed something in this hearing that he did not verify  
15 because it's not accurate and I am concerned about  
16 that being offered to cast a poor light on Mr.  
17 Stephanus. I don't want to get into the substance of  
18 it.

19 JUDGE FFITCH: Well, perhaps what you can  
20 do is at a break confer with Mr. Nilson and then if  
21 you want just to clarify the procedural posture on the  
22 record you can do that. I don't think this is --

23 MR. SMITH: I will avoid that and that's  
24 all the questions I have on cross.

25 MR. O'CONNELL: For the record, Your Honor,

00096

1 I can't let that -- I disagree with Mr. Smith's  
2 characterization. You're right, we do have a  
3 discovery dispute here and the attorneys cannot agree  
4 on this. I disagree with Mr. Smith's assertion on the  
5 record that Mr. Nilson's testimony is wrong. In fact  
6 I believe it to be correct. Mr. Nilson, as he has  
7 testified, believes it to be correct and he is the  
8 only one of us who is under oath at this time.

9 JUDGE FFITCH: All right. Any  
10 cross-examination from staff?

11 MS. SMITH: If I can have one moment I  
12 might have.

13 (Discussion off the record.)

14 MS. SMITH: No questions.

15 JUDGE FFITCH: Ms. Anderl.

16 MS. ANDERL: Also no questions.

17 JUDGE FFITCH: Any redirect?

18 MR. O'CONNELL: No, Your Honor.

19 JUDGE FFITCH: You may step down. Thank  
20 you for your testimony. Off the record just briefly.

21 (Discussion off the record.)

22 Whereupon,

23 TOMMY ROSE,

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



00097

1 JUDGE FFITCH: Before we begin with your  
2 examination, Mr. Rose, we moved on from the last  
3 witness without a formal offer of the -- or at least a  
4 resolution of your offer of the direct and rebuttal  
5 testimony.

6 MR. O'CONNELL: I would offer that  
7 testimony.

8 JUDGE FFITCH: And I believe we resolved  
9 the objections that you had raised, Mr. Smith, in that  
10 connection, and I will receive the direct and rebuttal  
11 of Mr. Nilson at this time.

12 (Admitted Exhibits Nilson Direct and  
13 Rebuttal.)

14 JUDGE FFITCH: Very well. Mr. Rose, would  
15 you state your full name for the record, please.

16 THE WITNESS: Tommy C. Rose. Last name  
17 spelled R O S E.

18 JUDGE FFITCH: Thank you. You may inquire,  
19 Mr. O'Connell.

20

21 DIRECT EXAMINATION

22 BY MR. O'CONNELL:

23 Q. Mr. Rose, you have a copy of your direct  
24 testimony with you?

25 A. Correct.

00098

1 Q. You prepared this testimony?

2 A. Yes, sir.

3 Q. And if I were to ask you these questions  
4 today I would get the same responses --

5 A. Yes, sir.

6 Q. -- listed here?

7 A. Yes, sir.

8 Q. Do you have any amendments or corrections  
9 to your testimony?

10 A. No, sir.

11 Q. Your testimony includes one illustrative --  
12 excuse me -- two illustrative exhibits A and B?

13 A. Correct.

14 Q. You prepared those?

15 A. Yes, sir.

16 MR. O'CONNELL: I would offer the direct  
17 testimony of Mr. Rose and the illustrative exhibits  
18 which accompany them.

19 JUDGE FFITCH: Any objection to Mr. Rose's  
20 testimony?

21 MR. SMITH: Not by respondent. We'll have  
22 brief cross-examination but no objection to the  
23 admission of the direct and the exhibits.

24 JUDGE FFITCH: Very well. Any other  
25 objections?

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1 MS. SMITH: No objection.

2 MS. ANDERL: None.

3 JUDGE FFITCH: No objections being received  
4 the direct testimony and Exhibits A and B are received  
5 for the record.

6 (Admitted Exhibits Rose Direct and A and  
7 B).

8 JUDGE FFITCH: Any further direct?

9 MR. O'CONNELL: No.

10 JUDGE FFITCH: You may cross-examine, Mr.  
11 Smith.

12

13 CROSS-EXAMINATION

14 BY MR. SMITH:

15 Q. I'm curious. Have you ever heard of  
16 another situation where an apartment owner said to  
17 GTE, I don't want you to use my inside wiring to  
18 provide phone service to my tenants?

19 A. No. I have not personally heard that, no.

20 Q. Have you ever heard of a situation where  
21 the apartment owner said, you can use it but I want  
22 you to pay for it, other than the current situation  
23 with Mr. Stephanus?

24 A. No, sir.

25 Q. And how many years have you been working

00100

1 for GTE?

2 A. In total 17 years.

3 MR. SMITH: That's all I have.

4 JUDGE FFITCH: Very well. Ms. Smith, any  
5 examination for the witness?

6 MS. SMITH: No.

7 JUDGE FFITCH: Ms. Anderl?

8 MS. ANDERL: No.

9 JUDGE FFITCH: Thank you, Mr. Rose. No  
10 redirect?

11 MR. O'CONNELL: No.

12 JUDGE FFITCH: Thank you, Mr. Rose. You  
13 may step down. Counsel, is your cross-examination of  
14 Mr. Turgeon very brief?

15 MR. SMITH: May be even briefer. No, I've  
16 got a few more questions for him but it will be much  
17 briefer than the first witness.

18 MS. SMITH: To aid in deciding I have no  
19 cross questions.

20 MS. ANDERL: I also don't think I have any.

21 MR. O'CONNELL: Perhaps we can get Mr.  
22 Turgeon on, too, before we break.

23 JUDGE FFITCH: Mr. O'Connell.

24

25 Whereupon,

00101

1                                   EDWARD TURGEON,  
2   having been first duly sworn, was called as a witness  
3   herein and was examined and testified as follows:

4                    JUDGE FFITCH:  Would you state your full  
5   named for the record.

6                    THE WITNESS:  My name is Edward E. Turgeon,  
7   T U R G E O N.

8

9                                   DIRECT EXAMINATION

10  BY MR. O'CONNELL:

11         Q.     Mr. Turgeon, you have your direct testimony  
12  with you?

13         A.     Yes, sir, I do.

14         Q.     You prepared this testimony?

15         A.     Yes.

16         Q.     And if I were to ask you these questions  
17  today I would get the same answers as you have  
18  indicated there?

19         A.     Yes.

20         Q.     And are there any amendments or corrections  
21  to your testimony?

22         A.     No.

23                   MR. O'CONNELL:  Thank you.  I would offer  
24  the testimony of Mr. Turgeon.

25                   JUDGE FFITCH:  Any objection to Mr.

00102

1 Turgeon's testimony?

2 MR. SMITH: No objections.

3 MS. ANDERL: No.

4 MS. SMITH: No.

5 JUDGE FFITCH: The direct testimony will be  
6 received. Are there exhibits attached to that?

7 MR. O'CONNELL: There are not.

8 JUDGE FFITCH: Direct testimony of Mr.  
9 Turgeon is received for the record.

10 (Admitted Exhibit Turgeon Direct.)

11 JUDGE FFITCH: Do you have  
12 cross-examination, Mr. Smith?

13 MR. SMITH: Yes.

14

15 CROSS-EXAMINATION

16 BY MR. SMITH:

17 Q. The conduit we're talking about in this  
18 particular situation is a four-inch wide plastic pipe?

19 A. That's correct.

20 Q. And it currently has 100 pair of 24 gauge  
21 cable running through it?

22 A. Correct.

23 Q. And the cable all together is about an inch  
24 thick?

25 A. Roughly I guess the issue arose or problem

00103

1 arose when an effort was made to add another 200 pair  
2 of cable through this conduit?

3 A. That's correct.

4 Q. And I need to understand a little better,  
5 someone at GTE is trying to feed this through the  
6 existing conduit and unable to push more of it  
7 through?

8 A. Well, what we did is we contracted to have  
9 someone what they call blow in the ducts or proofing  
10 the duct, and that involves a process of blowing a jet  
11 line with a compressor from point A to point B. If  
12 that doesn't work then there's -- what do they call  
13 it -- metal router that's on a reel we push through.  
14 What they found was that we wanted to get these ducts  
15 proofed before we could pull our cable in, and found  
16 there was an obstruction. That was documented on the  
17 work reports of the contractor.

18 Q. What's the nature of the obstruction? Do  
19 you know?

20 A. Without actually digging up what the  
21 obstruction is we don't know what it is.

22 Q. Help me out by listing some of the possible  
23 ways the conduit might have become obstructed.

24 A. From experience with these types of  
25 installations when an apartment house is built or a

00104

1 commercial complex is built the -- one of the first  
2 things that happens is the conduit is set in place to  
3 provide a service so the telephone company can provide  
4 service to the complex for security reasons, fire and  
5 what have you. Normally that ditch is opened and  
6 backfilled before any of the amenities are put in,  
7 i.e., posts or directional lights, whatever, that's on  
8 a complex. So what I did, I personally walked the  
9 route of that conduit on to the Casablanca complex.

10 Q. This is 775 feet long?

11 A. Right. From the right-of-way.

12 Q. Yes.

13 A. And I found that in a three-foot wide swath  
14 of where the conduit is foot and a half on each side,  
15 I think I counted 13 possibilities of where objects or  
16 installations were put in the ground after the conduit  
17 was pulled in.

18 Q. So it can be any variety of contractors?

19 A. Any one.

20 Q. And as far as actually knowing whether it  
21 was a -- for example, heavy vehicle might have run  
22 across the ditch after it was filled in and kinked the  
23 conduit?

24 A. Well the conduit is normally buried 18 to  
25 24 inches and if it's installed properly heavy



00105

1 vehicles should not damage that duct.

2 Q. You mentioned some of the various possible  
3 ways that this particular conduit may have become  
4 obstructed. Is it correct that you don't actually  
5 know who or why this conduit -- who is responsible and  
6 why the conduit is obstructed here?

7 A. I don't know who is responsible.

8 MS. SMITH: That's all I have. Thank you.

9 JUDGE FFITCH: Ms. Smith, any  
10 cross-examination?

11 MR. SMITH: No.

12 JUDGE FFITCH: Ms. Anderl.

13

14 CROSS-EXAMINATION

15 BY MS. ANDERL:

16 Q. Can you, Mr. Turgeon, give an example of  
17 one or more of the things that you saw that might have  
18 been responsible?

19 A. Right. I saw cyclone fence around a tennis  
20 court that was piped for the cyclone fence were  
21 directly in line with the route of the conduit. In  
22 addition, even the posts for the net were in direct  
23 line with it. There were posts designating parking  
24 for handicapped that were in line again with the  
25 route. Light posts, couple, two or three light posts.

00106

1 20-foot highlight posts would be to go into the ground  
2 at least four feet that were in direct line with us.  
3 All these things were done after the original  
4 installation in 1989 would have had a bearing on --  
5 could have, could have been damage or caused the  
6 damage.

7 MS. ANDERL: Thank you.

8 JUDGE FFITCH: Anything further?

9 MS. ANDERL: No, that's it.

10 JUDGE FFITCH: Any redirect?

11 MR. O'CONNELL: No, Your Honor.

12 JUDGE FFITCH: Thank you, Mr. Turgeon, for  
13 your testimony. You may step down. It's my  
14 understanding that GTE has one further witness, Ms.  
15 Ganson, who will be available at 11 a.m. by telephone.

16 MR. O'CONNELL: That's correct, Your Honor.

17 JUDGE FFITCH: That's probably 15 minutes  
18 from now. We could take a break until that time,  
19 unless there's any other suggestions from counsel.

20 MR. O'CONNELL: That seems ideal, Your  
21 Honor.

22 JUDGE FFITCH: Why don't we recess at this  
23 time and reconvene at 11 a.m.

24 (Recess.)

25 JUDGE FFITCH: We're back on the record

00107

1 returning from a morning recess, and I will just state  
2 for the record that we have the next witness for GTE,  
3 who is Peggy Ganson on the speaker phone from out of  
4 state, and the parties have indicated they have no  
5 objection to her appearing by phone. At this time I  
6 will swear you in, Ms. Ganson. If you would raise  
7 your reason.

8 Whereupon,

9 PEGGY GANSON,

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

12 JUDGE FFITCH: Would you please state your  
13 full name for the record.

14 THE WITNESS: Peggy Ann Ganson, G A N S O  
15 N.

16 JUDGE FFITCH: I think we're going to try  
17 to adjust the speaker a little bit here.

18 MR. O'CONNELL: Ms. Ganson, will you just  
19 say a couple of words?

20 THE WITNESS: Pardon?

21 MR. O'CONNELL: That's better.

22 JUDGE FFITCH: You may inquire.

23

24 DIRECT EXAMINATION

25 BY MR. O'CONNELL:

00108

1 Q. Ms. Ganson, just so that we're clear, you  
2 need to be certain that we're finished because you do  
3 not have the video cues that you normally use in  
4 conversation, so if at any time I cut you off or if  
5 anyone else cuts you off just say so, okay?

6 A. Okay.

7 Q. Ms. Ganson, do you have the testimony you  
8 prepared for this case with you?

9 A. Yes, I do.

10 Q. Ms. Ganson, if I was to ask you the  
11 questions that are in that testimony today I would get  
12 the same answers as are set out there?

13 A. Well, I certainly hope so.

14 Q. Well, ma'am, is that a yes or a no?

15 A. Yes.

16 MR. O'CONNELL: I have nothing further. I  
17 would offer the testimony of Ms. Ganson.

18 JUDGE FFITCH: All right.

19 Cross-examination, Mr. Smith.

20

21 CROSS-EXAMINATION

22 BY MR. SMITH:

23 Q. Can you hear me? I think I've got a  
24 microphone by me.

25 A. Yes.

00109

1 Q. Is this going to work for you?

2 A. Yes.

3 Q. I'm Mr. Stephanus's lawyer. I've got a  
4 couple of questions for you. You've talked about your  
5 observations of what you see out there in the world of  
6 apartments. I'm asking, are you aware of any legal  
7 prohibition that would restrict a property owner, an  
8 apartment owner, from asking local phone company from  
9 paying for the use of property owner's inside wiring?

10 MR. O'CONNELL: Objection. Asks the  
11 witness for a legal opinion.

12 JUDGE FFITCH: Pretty clearly a request for  
13 a legal opinion.

14 Q. I'm asking if she's aware of any or has any  
15 understanding there would be any legal restrictions  
16 that would prohibit an apartment owner from asking the  
17 local phone company to pay for use of the inside wire.

18 MR. O'CONNELL: Same objection.

19 A. I am not --

20 MR. O'CONNELL: Ms. Ganson, hang on a  
21 second. Same objection.

22 JUDGE FFITCH: Perhaps if you could take  
23 the word "legal" out of your question. Ask her if  
24 she's aware of any restrictions. Understanding, Ms.  
25 Ganson, that you're not an attorney I will let you go

00110

1 ahead and answer the question.

2 A. All right. With all the conversation would  
3 you restate the question, please.

4 Q. Are you aware of any prohibitions that  
5 would restrict a property owner from asking the local  
6 phone company to pay for use of the inside wires?

7 A. I've never heard of it before.

8 Q. I know that and that's the subject of your  
9 testimony. I'm wondering if you've ever heard of any  
10 such restrictions.

11 A. No. I am not aware of it.

12 Q. You're probably not even aware of any  
13 situation where a property owner has made that  
14 request?

15 A. No, I'm not.

16 Q. Considering, if you would, a boarding  
17 house. I assume you're familiar with some of your  
18 fellow realtors, property owners that own boarding  
19 houses.

20 A. I have never sold any boarding houses and I  
21 am not familiar with the laws on operating them.  
22 They're quite different on boarding houses than they  
23 are the regular apartment houses.

24 Q. You're aware that there are residential  
25 units that have a common phone in the lobby but no

00111

1 phone in the individual rooms?

2 A. I have never dealt with one like that.

3 Q. You've never heard of that kind of a living  
4 situation?

5 A. I presume there would be but I have not  
6 dealt with it.

7 Q. Do you know whether a tenant in a boarding  
8 house, say, on the third floor, could impose upon the  
9 owner of the boarding house the cost of putting wiring  
10 from that room to the main phone lines if the tenant  
11 said, I'm a boarding house tenant but I want a phone  
12 in my room, I'm expecting the owner to pay for that?

13 A. Well, this would be outside my expertise  
14 because I have never dealt in that field of real  
15 estate.

16 Q. Let me ask you about your understanding of  
17 easement situations. If GTE, for example, wanted an  
18 easement across a piece of property that you owned to  
19 enable them to provide phone service to tenants in a  
20 neighboring apartment building, is it your  
21 understanding that GTE would have to get your  
22 permission to do that?

23 A. Well, my understanding, it is a public  
24 utility and it has to furnish because if you have to  
25 call 911 it has to be -- it's not a luxury, it's a

00112

1 necessity.

2 MR. SMITH: I move to strike as  
3 nonresponsive.

4 JUDGE FFITCH: I'm not going to strike the  
5 testimony. You can just proceed with your  
6 questioning.

7 Q. Is it your understanding that GTE can have  
8 free access across any property they want in order to  
9 provide phone service around its territory?

10 A. That would be my understanding because it  
11 is a public utility and it's a necessity.

12 MR. SMITH: That's all I have. Thank you.

13 JUDGE FFITCH: Ms. Smith, any questions for  
14 the witness?

15 MS. SMITH: None.

16 JUDGE FFITCH: Ms. Anderl.

17

18 CROSS-EXAMINATION

19 BY MS. ANDERL:

20 Q. Ms. Ganson, my name is Lisa Anderl and I'm  
21 an attorney representing U S WEST in this matter. Can  
22 you tell me anything else about your background? You  
23 say you've testified before the Washington  
24 legislature. Have you provided testimony on the  
25 subject matter of either telecommunications or rental



00113

1 issues before any courts or any other -- any state  
2 agencies?

3 A. If you're talking about like a housing  
4 agency, yes, I have. Within the state legislature I  
5 have there. Is that what you're referring to?

6 Q. Well, I was just asking for whatever other  
7 experience you had as a witness or an expert witness.

8 A. Oh, I have testified for an attorney in  
9 town two or three times as an expert witness for him.

10 Q. Regarding the subject matter of what?

11 A. Basically property management.

12 Q. And Ms. Ganson, other than your experience  
13 gained from owning, operating or representing the  
14 owners of apartment buildings for more than 30 years,  
15 do you have any formal educational background which  
16 would qualify you, prepare you to testify in this  
17 matter?

18 A. Yes. I have my degree from the University  
19 of Washington, and I took a minor in real estate that  
20 they offered at the time that I was there and then you  
21 have to take continuing education courses. You have  
22 to have 30 hours every two years to maintain your real  
23 estate brokerage license, which I have done and  
24 currently am a licensed real estate broker.

25 MS. ANDERL: That's all I have. Thank you.

00114

1 JUDGE FFITCH: Any redirect?

2 MR. O'CONNELL: Just one.

3

4 REDIRECT EXAMINATION

5 BY MR. O'CONNELL:

6 Q. Ms. Ganson, you testified you testified as  
7 an expert witness two or three times, I think you  
8 said, for an attorney in town. That wasn't me, was  
9 it?

10 A. No.

11 MR. O'CONNELL: Nothing further.

12 JUDGE FFITCH: Any objection to the receipt  
13 of Ms. Ganson's direct testimony in evidence?

14 MR. SMITH: Yes. I don't believe it has  
15 anything to do with the issues in this case. It's all  
16 very interesting to hear what her understanding is of  
17 normal practice. That doesn't help this Commission in  
18 deciding what the legal rights are of the parties  
19 here. She may be an expert on those issues that she  
20 has some knowledge of but as far as being able to  
21 help the Commission on the legal issues as to whether  
22 GTE can use private property without paying for it,  
23 she has no knowledge of it, and her comments about or  
24 understanding of the way it's normally done doesn't  
25 bear at all on whether there are legal restrictions on

00115

1 the request by a property owner to receive some  
2 compensation from the local phone company to use  
3 private property.

4 JUDGE FFITCH: So essentially it's a  
5 relevance objection. You may respond.

6 MR. O'CONNELL: Your Honor, I think Mr.  
7 Smith continues to decline to adhere to the issues  
8 list as was developed by the parties and approved by  
9 this Commission in your eighth supplemental order. I  
10 think Ms. Ganson's testimony is directly relevant --  
11 perhaps indirectly relevant to issue number one. It  
12 is directly relevant to issue No. 2A, No. 2B, No.  
13 2C and No. 2D. And respectfully urge that the  
14 objection be overruled.

15 JUDGE FFITCH: Well, I'm going to allow the  
16 testimony and overrule the objection, Mr. Smith. And  
17 Ms. Ganson's testimony will be received. Your  
18 objection will go to the weight of her testimony.

19 Do you have any further witnesses or  
20 evidence for GTE Mr. O'Connell?

21 (Admitted Ganson Direct.)

22 MR. O'CONNELL: We do not, Your Honor. May  
23 we disconnect from Ms. Ganson?

24 JUDGE FFITCH: You may. Thank you for your  
25 testimony, Ms. Ganson. Any objection to releasing Ms.

00116

1 Ganson at this time? Hearing none you can disconnect  
2 the call.

3 MR. O'CONNELL: Thank you, Ms. Ganson.

4 THE WITNESS: You're certainly welcome.

5 MR. O'CONNELL: At this point we have no  
6 further witnesses. GTE rests.

7 JUDGE FFITCH: Our next witness on the  
8 schedule is Mr. Stephanus. And I'm prepared to  
9 proceed at this time unless you would like a short  
10 break.

11 MR. SMITH: We're ready to proceed.

12 Whereupon,

13 PAUL STEPHANUS,  
14 having been first duly sworn, was called as a witness  
15 herein and was examined and testified as follows:

16

17 DIRECT EXAMINATION

18 BY MR. SMITH:

19 Q. Mr. Stephanus, you've had a chance to  
20 reread your direct testimony earlier today?

21 A. Yes.

22 Q. And does it set forth the answers to the  
23 questions that you would give today if I were to ask  
24 those of you under oath?

25 A. Yes.

00117

1           MR. SMITH: We offer the direct testimony  
2 of Mr. Stephanus.

3           THE WITNESS: I beg your pardon?

4           JUDGE FFITCH: Your counsel has just  
5 offered your written testimony.

6           Any objection to Mr. Stephanus's testimony  
7 being received in evidence?

8           MR. O'CONNELL: Your Honor, I do.  
9 Specifically to lines -- page 2, lines 25 through page  
10 3, line 16. I believe the testimony is an attempt to  
11 enter before the Commission settlement discussions  
12 which have been had between the parties, and I would  
13 object under rule 408. To the degree that Mr.  
14 Stephanus attempts to characterize GTE's position in  
15 this matter and, quote, unreasonable and intransigent,  
16 we're going to have to get into any settlement  
17 discussions between the parties and I think that's  
18 inappropriate I would move to strike those lines.

19           JUDGE FFITCH: Page 2, line 25 through page  
20 3, line 16; is that correct?

21           MR. O'CONNELL: Yes, Your Honor.

22           JUDGE FFITCH: You're referring to  
23 480-09-408?

24           MR. O'CONNELL: I'm sorry, no. I was  
25 referring specifically to evidence rule 408, Your

00118

1 Honor.

2 JUDGE FFITCH: I don't have those here.

3 MR. O'CONNELL: I understand that the  
4 evidence rules are -- of course, are not strictly  
5 speaking binding but I believe the Commission's rules  
6 are specific that they are used as guidance, and  
7 evidence rule 408, which is in Washington the  
8 statement, as the federal evidence rule, prohibits  
9 evidence of furnishing or offering or promising to  
10 furnish or accepting or offering or promising to  
11 accept the valuable consideration and compromising or  
12 attempting to compromise a claim which is disputed as  
13 to either validity or amount.

14 JUDGE FFITCH: Mr. Smith, response to the  
15 objection?

16 MR. SMITH: Yes. It is very similar to a  
17 series of questions asked of Mr. Nilson: What's the  
18 purpose of your testimony? What gave rise to the  
19 complaint? I certainly thought it appropriate for Mr.  
20 Stephanus to provide some background and explain to  
21 the Commission what his goal and purpose was at this  
22 hearing and what his position is on the various  
23 issues, and that's the purpose of it.

24 JUDGE FFITCH: I'm going to overrule the  
25 objection and allow the testimony to stand. Any

00119

1 further objections to the testimony, Mr. O'Connell?

2 MR. O'CONNELL: No, thank you, Your Honor.

3 JUDGE FFITCH: Mr. Stephanus's direct  
4 testimony will be received.

5 (Admitted Exhibit Stephanus Direct.)

6 JUDGE FFITCH: You may cross-examine.

7 MR. O'CONNELL: Thank you, Your Honor.

8

9 CROSS-EXAMINATION

10 BY MR. O'CONNELL:

11 Q. Mr. Stephanus, I don't think you have a  
12 copy of your direct testimony with you.

13 A. No, I do not.

14 Q. Did your counsel provide you with one?

15 MR. SMITH: I didn't prepare an extra one.

16 Do you have --

17 MR. O'CONNELL: Anybody prepare an extra  
18 one?

19 MS. SMITH: I will be happy to provide him  
20 mine.

21 Q. I'm going to ask you some questions about  
22 that at the same time I'm also going to ask you some  
23 questions about the data responses which you filed in  
24 this matter, Mr. Stephanus.

25 A. The what?

00120

1 Q. The data responses, the responses to data  
2 requests.

3 MR. O'CONNELL: Your Honor, what exhibit  
4 number are we up to?

5 JUDGE FFITCH: Well, we have been working  
6 with witness-specific exhibit numbers, but for GTE we  
7 have at this time 12 exhibits so this would be GTE 13.

8 (Marked Exhibit GTE 13.)

9 Q. Mr. Stephanus, do you have GTE 13, which  
10 it's entitled on the top --

11 A. Which one is that?

12 Q. -- GTE Data Request, do you recognize that?

13 A. No.

14 Q. Mr. Stephanus, I will represent to you that  
15 it's the responses that your counsel prepared to data  
16 requests that GTE had propounded.

17 A. Well, I haven't had a chance to read it  
18 through. You just handed it to me.

19 Q. I asked you if you recognized it.

20 A. I recognize what I read through.

21 Q. Take a moment and read through it until  
22 you're comfortable answering my question one way or  
23 the other.

24 A. Fine.

25 Q. These appear to be signed by Scott A.



00121

1 Smith. He's your attorney in this matter?

2 A. Yes.

3 Q. And did you work with Mr. Smith to prepare  
4 the answers to these data responses?

5 A. Yes.

6 Q. And you believe these to be true and  
7 correct and accurate?

8 A. Yes.

9 MR. O'CONNELL: Your Honor, at this point I  
10 would offer GTE 13. Ordinarily I understand that we  
11 would do it on a data request by data request basis  
12 but respondents sent these all one together and so I  
13 would just offer them at this time.

14 JUDGE FFITCH: Any objection, Mr. Smith?

15 MR. SMITH: No objection.

16 JUDGE FFITCH: Objection from other  
17 counsel? Hearing none GTE 13 will be received.

18 (Admitted Exhibit GTE 13.)

19 Q. Mr. Stephanus, I would like to ask you  
20 first off about your response to request No. 1. It's  
21 on the very first page. Your response is on lines 20  
22 and 21 there.

23 A. I see the response.

24 Q. "Inside wiring and cables are owned by Mr.  
25 Stephanus. The switching equipment is owned by U.S.

00122

1 Telco." We're in agreement, then, are we not, you own  
2 the wiring in the apartment buildings between each  
3 individual tenant's apartment and wherever the U.S.  
4 Telco switch is located for each complex?

5 A. Yes.

6 Q. So you're providing that last extension, if  
7 you will, of the telephone service, then, for those  
8 tenants who are in your apartment complex?

9 A. Yes.

10 Q. Do you know who owns the wire from the U.S.  
11 Telco switch in each apartment complex to the point  
12 where it connects with the public telephone network?

13 A. Yes.

14 Q. Who owns that wire?

15 A. I do.

16 Q. Do you know, Mr. Stephanus, what type of  
17 service that is? We could take it apartment complex  
18 by apartment complex if we need to, but do you know in  
19 a general sense what type of service it is that  
20 connects the U.S. Telco switch to the public telephone  
21 network?

22 A. You mean what type of switch it is in the  
23 building there? What they call a switching room?

24 Q. In the switching room -- no. I was trying  
25 to focus, if you will, sir, between the switching room

00123

1 and wherever it joins up with the public telephone  
2 network.

3 A. Yes. What is the question?

4 Q. Do you know what type of service that is?

5 A. I'm not too sure I understand how you're  
6 identifying service. Are you identifying the cable?

7 Q. Sometimes it's referred to, Mr. Stephanus,  
8 as a T1 or some type of digital service. Are you  
9 familiar with any of those specifics?

10 A. No, I am not. I am not an engineer.

11 Q. You do own that wire between the switch  
12 and where it connects with the public network?

13 A. Yes.

14 Q. Now, Mr. Stephanus, what is your  
15 relationship to U.S. Telco, Inc.?

16 A. They provide telephone service to some of  
17 the tenants.

18 Q. Fair enough. I understand that the  
19 president of U.S. Telco Inc. is a person by the name  
20 of John Stephanus?

21 A. That's right.

22 Q. And John Stephanus is your son?

23 A. Yes.

24 Q. How old is your son John Stephanus?

25 A. He's 40.

00124

1 Q. How long has John Stephanus owned U.S.  
2 Telco?

3 A. I don't know just exactly when they  
4 incorporated it, but I think it's been since the date  
5 of incorporation there.

6 Q. Was there a predecessor company there? Did  
7 they do some type of business before incorporation?

8 A. Well, there was a predecessor company, yes.

9 Q. What was the name of that predecessor  
10 company?

11 A. ATM.

12 Q. You said he's owned it since the date of  
13 incorporation. Do you know when that date was?

14 A. No, I indicated I did not.

15 Q. I did not understand that. Thank you.  
16 Do you recall even what year it was?

17 A. I would imagine it would have been within  
18 three years.

19 Q. Three years from now?

20 A. Yes.

21 Q. So certainly during the '90s?

22 A. Yes.

23 Q. Do you know where your son John Stephanus  
24 obtained the funds to start U.S. Telco?

25 A. Where he obtained what?

00125

1 Q. Where he obtained the funds to start U.S.  
2 Telco.

3 A. I don't.

4 Q. You did not have any involvement in his  
5 organizing U.S. Telco?

6 A. No.

7 Q. Did you make any loans or other financial  
8 arrangements with U.S. Telco?

9 A. No.

10 Q. Do you have any ownership interest in U.S.  
11 Telco?

12 A. No.

13 Q. Do you have any financial stakes whatsoever  
14 in U.S. Telco, Inc.?

15 A. No.

16 Q. Now, you indicated, I think, that they  
17 provide you -- that they provide telephone service to  
18 some of the tenants in some of your apartments?

19 A. Yes.

20 Q. And in fact they pay you for that  
21 privilege?

22 A. Yes.

23 Q. Do you still have your testimony, sir, in  
24 front of you?

25 A. Yes.

00126

1 Q. Can you turn to page 3 of your testimony,  
2 Mr. Stephanus. Can you turn your attention to page  
3 line 24 and continuing on to line 25, "Access fee paid  
4 by U.S. Telco is nominal and helps offset the original  
5 cost," et cetera. Do you see that?

6 A. Yes.

7 Q. What is that access fee, sir? What is that  
8 access fee for, sir?

9 A. It's a payment to us for the right to use  
10 the wiring in the building.

11 Q. And how much is it, sir?

12 A. I would have to go back and look and see.  
13 I don't recall.

14 Q. You don't know at all?

15 A. Well, I would have to go back and look it  
16 up.

17 Q. Can you even give me an approximate amount  
18 of the -- I mean the order of magnitude?

19 A. Well, I don't remember and I don't think it  
20 would be a good idea to just guess at things.

21 Q. Not asking you to guess. I'm asking do you  
22 even recall the order of magnitude?

23 A. No.

24 Q. So you don't recall if it's \$10 or a  
25 thousand dollars?

00127

1 A. Well, I know it's not a thousand dollars.

2 Q. You say you know it's not a thousand  
3 dollars. Are you saying on a weekly, per month, per  
4 use? What basis are you saying that you know it's not  
5 a thousand dollars?

6 A. I would have to go back and look up the  
7 contract or the agreement.

8 Q. And where would you go to look up that  
9 contract or agreement, Mr. Stephanus?

10 A. Either at U.S. Telco or my office.

11 Q. How long have you had that contract where  
12 you would go to look up the amount you're being paid,  
13 sir?

14 A. How long have I had it?

15 Q. Yeah. How long have you had that contract  
16 where you would have to go to look up how much you're  
17 being paid?

18 A. I would say ever since they took over.

19 Q. So again that's sometime in the '90s?

20 A. Yes.

21 Q. Mr. Stephanus, can you turn your attention  
22 to GTE 13, specifically to page 2, request No. 3.  
23 That request asks you to provide copies of any  
24 contracts or agreement between respondents, correct?

25 A. Yes.

00128

1 Q. Your response was "there are no such  
2 written agreements between the respondents," correct?

3 A. Yes.

4 Q. That wasn't true then, was it?

5 A. Yes, it was.

6 Q. Well, Mr. Stephanus, you just testified you  
7 would have to go look at the contract to find the  
8 amount you're being paid?

9 A. I would have to go back and look at the  
10 records. I am not -- we don't have a formal contract.

11 Q. We'll leave that for the court. So you're  
12 saying there is no formal contract now?

13 A. That's right.

14 Q. A handshake between you and your son?

15 A. After all, he is my son. I can deal with  
16 him on that basis.

17 Q. Do you know the basis on which you're  
18 receiving payments from U.S. Telco?

19 A. I really don't recall just all the  
20 conditions that are involved in that.

21 Q. Do they pay you a flat fee per month or do  
22 they pay you a fee that depends on the number of  
23 customers they have?

24 A. There again I would have to look that up  
25 for you.



00129

1 Q. What would you have to look it up in, sir?

2 A. The records.

3 Q. Where are those records maintained?

4 A. The records would be in either one of the  
5 two offices.

6 Q. Let's focus on yourself.

7 A. All right.

8 Q. When you say an office, where would that  
9 be?

10 A. Office would be at my home.

11 Q. And that's your home in Broadmoor?

12 A. Yes.

13 Q. What would you anticipate that those  
14 records would show to provide the details of the  
15 relationship between your company -- excuse me --  
16 between yourself and U.S. Telco?

17 A. Well, it would show what agreement we had  
18 and when it was to be paid and how much.

19 Q. But again, in response to request No. 4,  
20 you told us that there are no such agreements.

21 A. Well, we don't have a written agreement in  
22 that sense but there are records. When we're  
23 referring to a written agreement I presume you're  
24 talking about a written contract.

25 Q. Thank you, sir. So that I'm clear you're

00130

1 saying you don't have any written agreements?

2 A. Yeah.

3 Q. Can you turn your attention back to your  
4 testimony, not the data response, the testimony. Let  
5 me ask you to turn your attention to a couple of lines  
6 ahead of where we just were, specifically line 20?

7 A. On what page?

8 Q. Same place, page 3, line 20. Do you see  
9 the second sentence that begins, "he has not"?

10 A. Yes. I see that.

11 Q. "He has not seen my contract." Are you  
12 telling us now that wasn't true?

13 A. No.

14 Q. So there was a contract to be seen?

15 A. Well, we had a contract where U.S. Telco  
16 purchased this equipment, see. Originally I owned it  
17 all and they purchased it and this is what I was  
18 referring to in that instance.

19 Q. And they purchased it when, sir?

20 A. What?

21 Q. When did they purchase it, sir?

22 A. It was about a year ago, approximately,  
23 maybe year to two years ago, something. I would have  
24 to go back and look.

25 Q. Your earlier testimony was that U.S. Telco

00131

1 was incorporated about three years ago?

2 A. Well, it possibly was. I don't know.

3 Q. I'm just trying to make sure we understand  
4 each other, Mr. Stephanus. I'm not trying to trip you  
5 up here, sir. Are you telling us now that there was  
6 some period of time that U.S. Telco was in operation  
7 but you owned the switching equipment?

8 A. Well, I don't know just when, as I  
9 indicated, when they incorporated, but I'm trying to  
10 give you the time without the advantage of any records  
11 with me to give you that exact dates.

12 Q. When you sold them the switching equipment,  
13 there was a contract for that?

14 A. There was a written agreement there on how  
15 we would consummate the sale.

16 Q. Did that written agreement obtain any  
17 ongoing obligations for either party?

18 A. I don't think that did.

19 Q. Now --

20 A. Could I amend my last statement?

21 Q. If it's not accurate, please do.

22 A. Well, it was insufficient in that, thinking  
23 back, there was no obligations on my part, but on the  
24 part of U.S. Telco they took over certain bank  
25 obligations.

00132

1 Q. Can you turn your attention, please, to the  
2 next page in the data request, GTE 13. Like to direct  
3 your attention to request No. 6. It's at the very top  
4 of the page. Do you see that?

5 A. Yes.

6 Q. "Please state the amount of revenue  
7 received by respondent Stephanus." Do you see that?  
8 You can take a moment and read it. I don't need you  
9 to read the whole thing.

10 Do you see that?

11 A. Yes.

12 Q. And your response to that question was  
13 "none," right?

14 A. Yes, I see that.

15 Q. Now, can you please set side by side your  
16 testimony in this matter, sir, the same line as we  
17 discussed a few moment ago, line 24, the access fee  
18 paid by U.S. Telco is nominal?

19 A. Yes.

20 Q. Mr. Stephanus, which is true? Your  
21 testimony or your response to request No. 6?

22 A. Well, I think that my statement here that I  
23 made in this complaint here is true. I don't know how  
24 in the world we answered that in this way but it was  
25 apparently an error.

00133

1 Q. Mr. Stephanus, why don't you take a moment  
2 and go through your data requests and see if there's  
3 any other errors, please.

4 The rest of them are accurate?

5 A. As well as I can tell without checking  
6 from other records.

7 Q. Now, Mr. Stephanus, there were some  
8 documents submitted to us in addition to your data  
9 requests there.

10 MR. O'CONNELL: That would be GTE 14.

11 JUDGE FFITCH: This document headed Compu-  
12 share Utility Metering Addendum will be marked as GTE  
13 14 for identification.

14 (Marked Exhibit GTE 14.)

15 Q. Mr. Stephanus, so you can put this in  
16 context, I will represent to you that in response to  
17 the data requests your counsel furnished us with  
18 various form leases that you use at the apartments  
19 that are at issue and that all of those leases refer  
20 to a utility addendum, but that was the only utility  
21 addendum that was furnished to us, so I would like to,  
22 having made that representation, just ask if you  
23 recognize this document?

24 A. No, I don't.

25 Q. Do you recognize a document of which this

00134

1 is a form?

2 A. What?

3 Q. Do you recognize this as being some type of  
4 form document regardless of the handwriting that's on  
5 it?

6 A. Well, I recognize the stationary.

7 Q. Are you familiar with attaching utility  
8 addendums to the leases that you enter into with the  
9 tenants at your apartment?

10 A. I understand that the management company  
11 does do that.

12 Q. Do you have any reason to doubt that this  
13 is a standard utility addendum that is furnished to  
14 the tenants at your apartment?

15 A. No, I don't question it at all.

16 MR. O'CONNELL: I would offer GTE 14.

17 JUDGE FFITCH: Any objection to GTE 14?

18 MR. SMITH: No objection.

19 JUDGE FFITCH: It will be received.

20 (Admitted Exhibit GTE 14.)

21 Q. Do you still have GTE 14?

22 A. Yes.

23 Q. Mr. Stephanus, I take it, then, it is the  
24 standard practice at your apartments that the utility  
25 charges your tenants pay are based on month to month

00135

1 usage of those utilities?

2 A. Yes. You're talking about water, sewer and  
3 garbage, yes.

4 Q. Well, the ones that are set out in GTE 14,  
5 sir?

6 A. Yes. You didn't say that, though.

7 Q. That's fine. Mr. Stephanus, this one I  
8 think we do have to take an apartment complex by  
9 apartment complex basis. How many units total at  
10 Casablanca?

11 A. Currently or at the time that the telephone  
12 cable was installed?

13 Q. No. Let's say certainly since this dispute  
14 arose in October, November 1995.

15 A. Let's see, 387.

16 Q. And then one of the other is Campo Basso?

17 A. Yeah.

18 Q. How many units there?

19 A. Let's see, that one is about 320.

20 Q. And then the other one is Park 212 it's  
21 referred to as?

22 A. Yes.

23 Q. And how many units is Park 212?

24 A. I think that is 273.

25 Q. And then the last of the four that are at

00136

1 issue here today is Park Edmonds. How many unit  
2 there?

3 A. 100.

4 Q. I think this is clear, but let's make sure  
5 we understand it since you talked about a property  
6 management company. You own all four of these  
7 apartments personally?

8 A. Yes. I have until just recently with the  
9 Casablanca.

10 Q. What happened just recently to Casablanca?

11 A. We did a refinancing and we had to put  
12 it on a Fannie Mae loan so the lender required that  
13 we put it into a -- trying to think of the proper  
14 name. It's a special type of partnership.

15 Q. You do not own any of these four apartments  
16 through a corporate entity?

17 A. No.

18 Q. Your answer for the court reporter was?

19 A. Pardon?

20 Q. I couldn't hear your answer. Your answer  
21 for the court reporter was?

22 A. No.

23 Q. If I didn't say this before, I have a  
24 little bit of a hearing problem so if I drop my voice  
25 just tell me. I don't mean to try and trick you, sir.



00137

1 A. So do I.

2 Q. That's why I'm trying to speak up, so if  
3 you can't hear me please just say so.

4 A. Fine.

5 Q. Now, Mr. Stephanus, it is my understanding  
6 that in addition to the four apartment complexes that  
7 are at issue here today, you own a fair number of  
8 other apartment complexes in the greater Seattle area?

9 A. Yes.

10 MR. SMITH: Objection as to relevance.

11 JUDGE FFITCH: What's the relevance of  
12 that?

13 MR. O'CONNELL: Your Honor, I'm getting to  
14 in Mr. Stephanus's direct testimony, pages 2 and 3,  
15 lines 25 through 16, specifically Mr. Stephanus's  
16 statements on page 3 at lines 4 through 7. Mr.  
17 Stephanus is going to contend that he does not have  
18 the resources to fully defend this matter. I believe  
19 I am entitled to inquire into the resources available  
20 to him to litigate this business issue. If counsel  
21 would care to stipulate that Mr. Stephanus has gone  
22 through his strategy here as a matter of choice, that  
23 he's chosen not to spend the resources on this, I  
24 would withdraw the question.

25 JUDGE FFITCH: Do you have a response,



00139

1 statements, Your Honor, I'm satisfied.

2 JUDGE FFITCH: Let's move on.

3 Q. Still have, I think, Mr. Stephanus, your  
4 direct testimony. Could you turn your attention,  
5 please, to page 2 of that. I would like to ask you  
6 specifically concerning your testimony on lines 4  
7 through 6. You did not oppose entry of the  
8 preliminary injunction of the Snohomish County  
9 Superior Court. Mr. Stephanus, it's true, is it not,  
10 that the preliminary injunction in that matter was  
11 entered only after a temporary restraining order had  
12 been entered?

13 A. I don't know.

14 Q. You don't know?

15 A. I'm not an attorney.

16 Q. Do you remember being served with papers to  
17 commence this action and also initiate a temporary  
18 restraining order proceeding?

19 A. Mr. O'Connell, you have just had a  
20 snowstorm of papers you've inquired that be sent on  
21 to me.

22 Q. My question to you, sir --

23 A. -- so I don't recall each and every one  
24 individually.

25 Q. Do you recall the very first appearance in

00140

1 this matter in Snohomish County Superior Court?

2 A. No.

3 Q. Do you recall sending your attorney to this  
4 matter instructed to oppose the entry of the temporary  
5 restraining order?

6 A. I know that the attorney did handle it,  
7 yes.

8 Q. And in fact you did oppose the entry of the  
9 temporary restraining order before the preliminary  
10 injunction was entered?

11 A. I presume he has.

12 Q. I'm sorry?

13 A. I presume he has, Mr. O'Connell.

14 Q. Thank you, Mr. Stephanus.

15 MR. O'CONNELL: I have nothing further at  
16 this time. Thank you, sir.

17 JUDGE FFITCH: Any cross-examination, Ms.  
18 Smith?

19 MS. SMITH: I do have a few questions.

20 Thank you.

21

22 CROSS-EXAMINATION

23 BY MS. SMITH:

24 Q. Getting back to the questions that Mr.

25 O'Connell asked you about the nominal access fee that

00141

1 U.S. Telco pays you for access to the apartment unit,  
2 and you indicated in your testimony, if I recall  
3 correctly, that you don't know without referring to  
4 your records what that amount is.

5 A. That's right.

6 Q. Do you recall the last time you received a  
7 payment from U.S. Telco for access fees?

8 A. Do I recall what?

9 Q. The last time you received a payment of the  
10 access charges?

11 A. I would have to look that up.

12 Q. Does U.S. Telco typically pay you with a  
13 check for the access charges?

14 A. No.

15 Q. Does U.S. Telco give you cash?

16 A. No.

17 Q. Does U.S. Telco make a direct deposit into  
18 a bank account that you might have?

19 A. Probably made a deposit in the management  
20 account.

21 Q. Does U.S. Telco have access to that  
22 management account?

23 A. Oh, yes.

24 Q. And what exactly does that access charge  
25 represent?

00142

1 A. Is that your question?

2 Q. Yes.

3 A. Well, access charge represents their  
4 payment for the privilege of operating in buildings  
5 and using the equipment that we have there, which is  
6 wiring.

7 Q. I think Mr. O'Connell may have asked you  
8 this question and if this is the second time this  
9 question has been asked, I apologize. Does U.S. Telco  
10 pay you every month?

11 A. He already asked that.

12 Q. And I don't recall your answer. Do you  
13 recall? Can you answer that question?

14 A. I don't recall what the answer was. What  
15 was the answer?

16 Q. Well, I will skip it.

17 JUDGE FFITCH: Well, it's a fairly  
18 straightforward question, Mr. Stephanus, and it has  
19 been asked before, but I don't believe it's  
20 particularly burdensome for you to repeat your answer.

21 A. I think I answered that I didn't recall and  
22 I would have to go back to my records and see.

23 Q. Do you know how many of your tenants  
24 currently take their phone service from U.S. Telco?

25 A. No.

00143

1 Q. Would you have any idea if it's half of  
2 your tenant or a quarter of your tenants? Would you  
3 have any idea?

4 A. No.

5 Q. Do you know how many of your tenants  
6 currently take their phone service from GTE?

7 A. No.

8 Q. Would you know if most of your tenants take  
9 service from U.S. Telco or if most of them take  
10 service from GTE?

11 A. No.

12 Q. Have you ever asked any of your tenants to  
13 pay for access to GTE services?

14 A. I don't quite understand what that question  
15 is. What services?

16 Q. Telephone service.

17 A. Well, are you asking me whether I asked the  
18 apartment tenants whether they should pay for GTE  
19 services?

20 Q. Let me rephrase the question. If you have  
21 a tenant who requests telephone services from GTE --

22 A. Yes.

23 Q. -- and they would, I assume, request these  
24 services directly from GTE, not from you, would you  
25 charge that tenant --

00144

1 A. They don't provide -- I don't provide.

2 JUDGE FFITCH: Mr. Stephanus, would you  
3 allow counsel to finish.

4 Q. I understand that you don't provide the  
5 telephone service.

6 THE WITNESS: But she said not from me, you  
7 see. I was only correcting.

8 Q. No. That was my point. You don't provide  
9 the telephone service. GTE provides the telephone  
10 service or U.S. Telco provides the telephone service?

11 A. Yes, thank you.

12 Q. When a tenant requests telephone service  
13 from GTE, do you charge that tenant a fee to have  
14 service from GTE?

15 A. No, not to my knowledge.

16 Q. Do you encourage your tenants to obtain  
17 telephone service from U.S. Telco as opposed to GTE?

18 A. I don't.

19 Q. Do any of the managers at your apartment  
20 complexes encourage your tenants to accept service  
21 from U.S. Telco as opposed to GTE?

22 A. I would rather imagine they do.

23 Q. Can you speculate as to why they would do  
24 that?

25 A. Well, because the fact that John Stephanus



00145

1 has ownership of the U.S. Telco it would only be  
2 reasonable that we would ask them to sign up with U.S.  
3 Telco.

4 Q. Does John Stephanus have any ownership  
5 interest in any of the four apartment complexes we're  
6 discussing today?

7 A. Yes.

8 Q. And which might those be?

9 A. All four of them.

10 Q. What is his percent ownership?

11 A. It's very nominal. It's probably five  
12 percent or less.

13 Q. Do you charge access fees for other  
14 services besides telephone service in your buildings?

15 A. We charge for water, sewer, garbage.

16 Q. I guess I don't mean what you charge your  
17 tenants. Do you charge any other service providers an  
18 access fee to provide services to the tenant in your  
19 buildings?

20 A. Oh, yes.

21 Q. And what services do you charge an access  
22 fee and how much are those access fees?

23 A. Well, I can't tell you all of that, but I  
24 can give you some examples in that area. We have  
25 Viacom, which provides cable, and they paid for

00146

1 access. The Blackburn Laundry Equipment Company  
2 provides laundry service in the building laundries and  
3 they pay.

4 Q. On Viacom, for example, when that company  
5 pays for access do they pay per unit?

6 A. They paid, if I remember correctly, about  
7 30, \$40,000 for the privilege of going into the  
8 Casablanca apartments.

9 Q. What's the basis for that, that amount  
10 that's paid, that Viacom pays to you?

11 A. Right of entry fee.

12 Q. Asking you to refer to the data requests, I  
13 don't know if you still have a copy of that before  
14 you. Yeah, you do. Your answer to request 1C on  
15 page 1 you've indicated that neither you nor U.S.  
16 Telco has a mapped diagram or other graphic depiction  
17 of the equipment wiring, et cetera, on the properties.  
18 How do you and U.S. Telco manage the telephone service  
19 facilities in these buildings?

20 A. I don't.

21 Q. You don't?

22 A. I don't manage the telephone service.

23 Q. U.S. Telco does?

24 A. Yes.

25 Q. And do you know how U.S. Telco manages

00147

1 those facilities?

2 A. No.

3 Q. Does any other property management or  
4 ownership affiliate receive any money from U.S. Telco?

5 A. I don't know that. I don't have the  
6 privilege of that information.

7 Q. What is the original cost of the wiring,  
8 switching and installation and space that's referred  
9 to at page 3, line 25 of your direct testimony?

10 A. I don't understand your question.

11 Q. What's the original cost of the wiring,  
12 switching and installation that's referred to at lines  
13 24 and 25 of page 3? You've indicated in your  
14 testimony that access fee paid by U.S. Telco is  
15 nominal and helps offset the original cost of  
16 installing wiring, switching equipment and using space  
17 in the building. What is the original cost that  
18 is being offset by that access fee?

19 JUDGE FFITCH: If I could just interject.  
20 I think to assist the witness I believe counsel is  
21 referring back to your direct testimony.

22 MS. SMITH: I'm sorry, did I indicate it  
23 was the data request?

24 JUDGE FFITCH: I think you indicated  
25 correctly but the witness had not found it during the

00148

1 questioning.

2 A. You're talking about this one? I thought  
3 you said this one (indicating).

4 Q. I'm sorry, perhaps I did.

5 A. Again you're on page 3?

6 Q. On page 3 beginning at line 24. You've  
7 testified about the access fee paid by U.S. Telco.

8 A. Yes, I see that.

9 Q. And it references an original cost of  
10 installing the wiring, switching equipment and using  
11 space in the building.

12 A. Yes.

13 Q. What is that original cost?

14 A. Original cost of the switching equipment?

15 Q. Of that and the other equipment.

16 A. Which building are you talking about?

17 Q. Well, let's start with Casablanca.

18 A. It's \$110,000.

19 Q. And that's for all of it or just the  
20 switching equipment?

21 A. Well, that was for setting it up,  
22 installing the wiring and the switching equipment.

23 Q. And what about Campo Basso?

24 A. I don't recall the other buildings. I  
25 would have to go back and refresh my memory from

00149

1 records.

2 Q. And you do have those records somewhere?

3 A. Today? No.

4 Q. Would you be able to get those records?

5 A. Actually the records were the ATM company  
6 that were doing the service for us, both the  
7 installation and the management of the telephone  
8 service prior to U.S. Telco. They had gone out of  
9 business and I can't readily say that all their  
10 records would be available.

11 Q. Did you have any ownership interest in the  
12 ATM company?

13 A. No.

14 Q. Did your son John Stephanus, the current  
15 owner of U.S. Telco, have any ownership interest in  
16 the ATM company?

17 A. I don't believe so.

18 Q. Do you know who had ownership interest in  
19 that company?

20 A. Well, there were a number of people but I  
21 don't know all the people that had ownership in it.

22 Q. As to the Casablanca apartments where  
23 you've indicated that the original cost was about  
24 100,000 --

25 A. 110,000.

00150

1 Q. 110, excuse me.

2 -- do you know what the current value is of  
3 that equipment?

4 A. No, I'm not in the business of appraising  
5 or selling telephone equipment so I couldn't answer  
6 that right off.

7 Q. And once again on page 3 of your testimony  
8 at line 12 you've testified that GTE forced you to pay  
9 \$28,921 for cabling in the Campo Basso apartments?

10 A. It was actually more than that.

11 Q. Do you recall how many cable-pairs that  
12 was?

13 A. No, I don't know.

14 Q. Could you describe any of the cable that  
15 was installed?

16 A. No, I don't know enough about the  
17 engineering to describe that.

18 Q. Have you reviewed any of the testimony that  
19 was submitted by any of the witness for GTE?

20 A. Who are here today?

21 Q. Yes.

22 A. Well, I listened.

23 Q. Did you review any of their written  
24 testimony?

25 A. I think that some of it was sent to me. I

00151

1 mean I think it was probably all sent to me by my  
2 attorney, and I probably read some of it through.

3 Q. I do have a question here. Just trying to  
4 find the right document. I'm handing you what's  
5 already been marked as Exhibit MPN 4 which are  
6 exhibits to Mr. Nilson's testimony, and I believe  
7 this was information that you originally provided in  
8 your data requests.

9 A. I didn't provide this.

10 Q. You didn't provide that?

11 A. No.

12 Q. Do you know who prepared that?

13 A. No.

14 Q. You don't have any knowledge of what that  
15 is?

16 A. No, I can just read. Gives certain names  
17 of companies in there.

18 Q. I recall that you testified earlier that  
19 U.S. Telco purchased the switching equipment?

20 A. Yes.

21 Q. And U.S. Telco purchased that switching  
22 equipment from you?

23 A. Yes.

24 Q. What was the purchase price of that?

25 A. I really don't remember exactly what the

00152

1 total amount was. They took over some bank  
2 obligations there.

3 Q. Did U.S. Telco provide you with any lump  
4 sum payment in that arrangement?

5 A. No.

6 Q. So all they did was take over a bank  
7 obligation?

8 A. Yes.

9 Q. Would you allow any of the tenants in your  
10 buildings to remove any of the telephone wires in the  
11 units?

12 A. Are you asking me whether I allow tenants  
13 to remove the wiring?

14 Q. Yes, I am. Would you allow any tenant to  
15 remove any of the wiring in any of the units?

16 A. No, absolutely not.

17 Q. Who owns that wiring?

18 A. I do.

19 MS. SMITH: I don't have any more  
20 questions.

21 JUDGE FFITCH: Ms. Anderl.

22

23 CROSS-EXAMINATION

24 BY MS. ANDERL:

25 Q. Mr. Stephanus, following up on that



00153

1 question, would you allow any tenants in any of the  
2 four buildings we've talked about today to add  
3 additional telephone wire out of their unit to connect  
4 with GTE on your premises?

5 A. I wouldn't object if they needed additional  
6 service and their unit they were in did not have  
7 sufficient wiring to provide the service for them.  
8 Providing it was done in a very workmanlike manner and  
9 didn't destroy or damage any other part of the  
10 premises.

11 Q. Would you allow the tenant to do that if  
12 those conditions were met?

13 A. If it was done by a proper installer.

14 Q. Would you pay for that?

15 A. I don't think I would. I would have to  
16 think about that whether I felt kindly enough or --  
17 about that particular tenant.

18 Q. Does U.S. Telco provide telephone service  
19 for any other apartment buildings that you own other  
20 than the four that we've talked about today?

21 A. Does U.S. Telco own telephone service?

22 Q. Provide telephone service for any buildings  
23 that you own other than the four that we've talked  
24 about today.

25 A. No, I don't think so.

00154

1 Q. Who other than John Stephanus has an  
2 ownership interest in U.S. Telco?

3 A. I don't know.

4 Q. Do you know if anyone else does?

5 A. No.

6 Q. Which of the owners of ATM do you recall?  
7 You state that there were a lot of owners and you  
8 didn't know all of their names. Which ones do you  
9 know?

10 A. Well, frankly, I'm not very good about  
11 remembering names. I was trying to remember some of  
12 them earlier this morning, and I couldn't seem to  
13 recall the names. It's been a little while since we  
14 dealt with them.

15 Q. You state that they did the installation  
16 and management of telephone equipment for your  
17 buildings; is that correct?

18 A. Yes.

19 Q. What did they install?

20 A. They installed wiring, cable to the  
21 Casablanca. They installed the switching and they  
22 took care of all of the necessary connections to make  
23 it operative.

24 Q. And with regard to the wiring that they  
25 installed, who owned that?

00155

1 A. I owned it.

2 Q. So you purchased the wire and paid them to  
3 install it?

4 A. No. I think that's kind of ridiculous,  
5 isn't it?

6 Q. Well, I don't know. How did it work?

7 A. I'm a businessman. I'm not an engineer. I  
8 think you're being facetious, aren't you?

9 Q. No, I'm not, Mr. Stephanus.

10 A. I think you are. I think you're being very  
11 ridiculous, in fact.

12 MS. ANDERL: Your Honor, I move to strike  
13 that remark as nonresponsive and argumentative. Could  
14 you please direct the witness to answer my questions?  
15 I am clearly not being facetious.

16 JUDGE FFITCH: Mr. Stephanus, if you would  
17 please just answer the attorney's questions and not  
18 engage in an argument are with we will be able to  
19 proceed.

20 THE WITNESS: She's asking me whether I go  
21 out and buy the wire and hire somebody to install it.

22 JUDGE FFITCH: If you would simply answer  
23 the question we can move on rather than argue with the  
24 lawyers.

25 A. No.

00156

1                   JUDGE FFITCH: Regardless of your opinion  
2 of the question just answer it truthfully and then we  
3 will be able to get through the questions. Thank you.

4           Q.       With regard to the switching equipment that  
5 they installed, did they own that or did you own that?

6           A.       Well, they purchased it for me.

7           Q.       So they acted on your behalf in making the  
8 arrangements to purchase all the materials necessary  
9 to do the job?

10          A.       Yes.

11          Q.       And they, I assume, billed you for that?

12          A.       Yes.

13          Q.       And that's how you came to own the switch  
14 and the wire?

15          A.       Yes.

16          Q.       Mr. Stephanus, with regard to the  
17 electrical service provided at your apartment  
18 buildings, do you know who provides the electrical  
19 service? You can just pick --

20          A.       I guess that's Puget Sound Power and Light.

21          Q.       And it's correct, is it not, Mr. Stephanus,  
22 that you own the copper wire that is inside the  
23 building through which that electricity is transmitted  
24 to each unit?

25          A.       Yes.

00157

1 Q. Do you charge Puget Sound Power and Light  
2 an access fee for right of entry to your buildings?

3 A. I haven't yet.

4 Q. Could you explain why not?

5 A. Well, I just hadn't gotten to that.

6 Q. And if they were not willing to pay that do  
7 you have an alternative method for providing power?

8 A. No.

9 Q. Would I be correct, then, if they were to  
10 refuse to pay an access or entry fee if you were to  
11 ask then you would simply have to accept their  
12 refusal?

13 A. Or provide my own power.

14 Q. And then how would you do that?

15 A. Install generators, I presume.

16 Q. Do you have any plans along those lines?

17 A. No, not yet.

18 Q. Mr. Stephanus, you state that your son John  
19 has a nominal ownership in all four of the buildings.  
20 Is that correct?

21 A. Yes.

22 Q. And you identified that ownership interest  
23 as approximately five percent or less?

24 A. That's what it was listed as.

25 Q. Listed where?

00158

1 A. In that refinancing that we went through.

2 Q. Is that kind of a limited partnership then?

3 A. It's a limited partnership.

4 Q. Are all four buildings held by the limited  
5 partnership?

6 A. No.

7 Q. The limited partnership holds which  
8 building?

9 A. Casablanca.

10 Q. And how is it, then, that John Stephanus  
11 comes to have an ownership interest in the other three  
12 buildings?

13 A. It's part of my estate planning.

14 Q. So you've actually conveyed an interest in  
15 those buildings to him?

16 A. Yes.

17 Q. And what's --

18 A. I wouldn't say that I actually conveyed it.  
19 It was true that in the sense that he has been  
20 instrumental in my acquiring the buildings and  
21 developing these properties.

22 Q. So what's the nature of his interest in the  
23 buildings other than Casablanca? Is he on the title?

24 A. Yes. He has an ownership in the title to  
25 the property, yes.

00159

1 Q. Is that as a joint tenant with you or tenant  
2 in common or --

3 MR. SMITH: I'm going to object to the  
4 relevance. I think we're going far afield or we're  
5 getting into questions that have nothing to do with  
6 the case.

7 MS. ANDERL: I'm going to tie it together  
8 if I can get an answer.

9 THE WITNESS: What is your question?

10 JUDGE FFITCH: We have an objection if  
11 you could wait. Could you enlighten me about  
12 relevance? I guess you're going to tie it up.

13 MS. ANDERL: I guess what I can do is  
14 accept Mr. Stephanus's testimony that his son in fact  
15 does have a nominal ownership interest in all four  
16 buildings and that interest amounts to a less than  
17 five percent value, and I can just -- if counsel  
18 stipulates that those were the witness's answers rather  
19 than exploring the nature of the interest I could just  
20 go on to my next question.

21 JUDGE FFITCH: Are you willing to so  
22 stipulate counsel? It's my recollection of the  
23 earlier testimony.

24 MR. SMITH: I think the record speaks for  
25 itself as to what his testimony is. I don't know

00160

1 whether Mr. Stephanus knows very clearly the nature of  
2 the ownership interest, whether it's from a  
3 partnership and estate planning and LLC's. The bottom  
4 line, I think you're interested in, is does John  
5 Stephanus have a nominal ownership interest. I  
6 believe the record reflects his answer was yes, he  
7 does.

8 MS. ANDERL: Fine.

9 Q. What is a fair market value of those four  
10 buildings?

11 MR. SMITH: Object as to relevance.

12 MS. ANDERL: I will tie it together if I  
13 may just continue this line of questioning.

14 JUDGE FFITCH: Overruled. You may  
15 continue.

16 A. Well, I'm not an appraiser so I would have  
17 to just make an estimate based on original cost if  
18 that's what you would accept.

19 Q. And taking into account a recent refinance  
20 which I assume might have included an appraisal, yes?

21 A. Yes.

22 A. Well, I would say the Casablanca is 13 and  
23 a half million. Probably Campo Basso would be about  
24 \$11 million. The Park 212 would be about eight and a  
25 half million and the Park Edmonds would be about three



00161

1 and a half million.

2 Q. Now, Mr. John Stephanus's nominal ownership  
3 interest by my calculation would come up to about 1.8  
4 million on a five percent basis, if I did my math  
5 right, and you characterized that as nominal, and I  
6 wanted to go back to your testimony and ask how that  
7 amount would compare to the access fee paid by U.S.  
8 Telco which you've also used the word nominal to  
9 describe, and that's on page 3, line 24 of your  
10 testimony.

11 A. Yes, sir. What is your question?

12 Q. When you use the word nominal to describe  
13 Mr. John Stephanus's ownership interest in these  
14 buildings, are you using that word in the same way as  
15 you used the word nominal on line 24 of page 3 of your  
16 testimony?

17 A. I think nominal is nominal all the way  
18 through.

19 Q. How exactly would you define that word?

20 A. Less than a majority interest.

21 Q. And in describing the access fee that U.S.  
22 Telco pays, how are you using the word nominal?

23 A. I think the same way.

24 Q. Well, I don't understand. Can you explain  
25 what you mean by that?

00162

1 A. What don't you understand?

2 Q. Well, Mr. Stephanus, you say that nominal  
3 means less than a majority interest and I'm not  
4 understanding how an access fee can be described as  
5 less than a majority interest so maybe you could  
6 explain that to me.?

7 A. Well, you asked me to describe to my  
8 knowledge what the word nominal means.

9 Q. In the context of the access fee paid by  
10 U.S. Telco.

11 A. Well, that would be not a large sum, let us  
12 say.

13 Q. And how do you know that, that it's not a  
14 large sum?

15 A. Because I'm the ultimate recipient.

16 Q. Mr. Stephanus, who controls the day-to-day  
17 operations of Paul C. Stephanus Investments?

18 A. I do more or less. It's always -- I always  
19 discuss these things with my wife.

20 Q. Do you have an accountant who does your  
21 accounting or keeps your books?

22 A. I have an accountant that does my income  
23 tax return.

24 Q. What about who keeps track of the receipts,  
25 say, the receipt from U.S. Telco when and if you were

00163

1 to receive an access fee? Who keeps track of that?

2 A. U.S. Telco.

3 Q. Well, U.S. Telco keeps track of, as I  
4 understand it, when they pay but who keeps track of  
5 when you receive it?

6 A. Oh, I see. That would be probably the  
7 management company there, real estate management  
8 company.

9 Q. Is that ARMCO?

10 A. Yes.

11 Q. Do you have any ownership interest in  
12 ARMCO?

13 A. No.

14 Q. Does your son, John?

15 A. Yes.

16 Q. What's his ownership interest in ARMCO?

17 A. I believe he has 100 percent. I don't know  
18 whether he has anyone else that has ownership in it or  
19 not.

20 Q. And he's also then as the owner of the  
21 management company the person who is responsible for  
22 signing up new tenants and signing the leases; is that  
23 right?

24 A. Well, he doesn't handle it all directly.

25 Q. One of his employees would do that then?

00164

1 A. Yes.

2 Q. And is that why you said that you would  
3 imagine that they would try to sign tenants up for  
4 U.S. Telco service then because the management company  
5 and U.S. Telco are owned by the same person?

6 A. Yes.

7 Q. And you're not involved with the day-to-day  
8 management of ARMCO, are you?

9 A. Only to the extent that they send me  
10 statements every month.

11 Q. What's on those statements?

12 A. What is on the statements? Incoming  
13 expenses.

14 Q. And is one of the items on the income side  
15 any access fee that U.S. Telco would pay?

16 A. Well, it might be involved in the income  
17 there. I would have to -- I don't think it's set out  
18 specifically.

19 Q. Now, you stated that the access fee from  
20 U.S. Telco is direct deposited into one of your  
21 accounts; is that right?

22 A. No. They send us a check. Are you talking  
23 about U.S. Telco or ARMCO?

24 Q. I just said U.S. Telco.

25 A. Oh, I'm sorry. Now, what is your question?

00165

1 Q. The access fee that U.S. Telco pays you for  
2 right of entry into your buildings, how do you receive  
3 that money?

4 A. I think that's put into the management  
5 account. I think I answered that earlier.

6 Q. Well, I didn't understand what management  
7 account.

8 A. The ARMCO management account.

9 Q. Well, when do you actually get it?

10 A. Well, we would get a portion of it after  
11 all bills are paid and all mortgage payments are made  
12 and all taxes are paid. We will get a portion of it  
13 after that at the end of the following month.

14 Q. Let me see if I understand this right, Mr.  
15 Stephanus. You charge U.S. Telco an access fee for  
16 right of entry into your buildings; is that correct?

17 A. They pay us a payment there for the  
18 privilege of being in the buildings there.

19 Q. And they owe that money to Paul C.  
20 Stephanus Investments; is that right?

21 A. Right.

22 Q. When and how does Paul C. Stephanus  
23 Investments receive that money?

24 A. Well, when I received the management  
25 account.

00166

1 Q. So you don't receive it ever as a separate  
2 line item?

3 A. No.

4 Q. And you just basically ask U.S. Telco owned  
5 by John Stephanus to pay ARMCO owned by John  
6 Stephanus?

7 A. Right.

8 Q. And then ARMCO pays you a net amount every  
9 month?

10 A. They pay -- not that particular amount  
11 every month. They pay an amount based upon the income  
12 and expenses of all the buildings.

13 Q. And you talked about not -- strike that.  
14 Is it correct that you testified that you don't know  
15 what the amount of that access fee is sitting here  
16 today?

17 A. Well, I think that I said that I didn't  
18 know enough to be able to give you a statement on it.

19 Q. And is it also correct that there's no  
20 formal written agreement identifying what that amount  
21 should be?

22 A. No. I didn't say that there was any formal  
23 written agreement. I said exactly the opposite.

24 Q. I said is it correct that there is no  
25 formal written agreement?

00167

1 A. That's right.

2 Q. You have stated several times in response  
3 to questions as to whether it was a monthly rate or on  
4 what basis you were receiving these payments that you  
5 would have to go look it up in your records.

6 MR. SMITH: Object. The questions have  
7 been gone over several times. The preamble is --

8 MS. ANDERL: Just trying to --

9 MR. SMITH: Excuse me. The preamble  
10 has already been asked and answered before and  
11 she's just asking the witness to repeat the same  
12 answer.

13 MS. ANDERL: Just verifying it so I don't  
14 mischaracterize the testimony.

15 MR. SMITH: I would like to move forward on  
16 to some new areas of testimony.

17 MS. ANDERL: I would like to get an answer.

18 JUDGE FFITCH: Well, Ms. Anderl, I don't  
19 want you to repeat questions that were asked already.  
20 If you're going to come at it a different way or ask a  
21 different question, that's fine, and I'm not going to  
22 preclude you from recapping prior testimony in doing  
23 that but please don't repeat questions that were  
24 previously asked.

25 Q. Mr. Stephanus, you have stated that in

00168

1 order to get any details about the access fee you  
2 would have to go look it up in your records?

3 A. Yes.

4 Q. What records would you consult?

5 A. I would have to look at the records in my  
6 office and the records in --

7 If you're talking about the U.S. Telco  
8 payment?

9 Q. Yes.

10 A. -- U.S. Telco's office.

11 Q. And in your office what piece of paper  
12 would you look at?

13 A. What piece of paper?

14 Q. Yes. What records would you consult?

15 A. I don't know that it's -- what piece of  
16 paper would be there?

17 Q. Or would it be a piece of paper? All I'm  
18 asking, Mr. Stephanus, is what records in your office  
19 would you consult?

20 A. Well, I would have to go back and look and  
21 see what the various statements and information that  
22 he sent me.

23 Q. And what type of statement and information?  
24 You mean the monthly accounting?

25 MR. SMITH: I'm going to object that this



00169

1 is not relevant. It's tantamount to badgering the  
2 witness. He testified he doesn't have a recollection  
3 of these figures and would need to look. Why we  
4 need to badger the witness and get him to talk about  
5 what scrap of paper he would look at that might have  
6 the information is beyond me.

7 MS. ANDERL: Well, I think the access issue  
8 fee is enormously relevant and I just find it  
9 incredible that this witness can't recall anything  
10 about it after testifying that it was both nominal and  
11 not anybody's business.

12 JUDGE FFITCH: Well, let me say this, Mr.  
13 Stephanus. You're under oath here today.

14 THE WITNESS: I understand.

15 JUDGE FFITCH: And any -- withholding of  
16 information or failure to answer candidly or  
17 completely to these questions is not only a violation  
18 of that oath but in the end is undoubtedly detrimental  
19 to your position in this case. I'm sympathetic to  
20 counsel's comment that given the significance of this  
21 issue it's at a minimum troubling that Stephanus or  
22 U.S. Telco are apparently unable to provide any  
23 information whatever to the Commission today to help  
24 make a decision here.

25 MR. SMITH: Your Honor, let me interject.

00170

1                   JUDGE FFITCH: I'm not interested in having  
2 the lawyers badger you, but if you can just answer the  
3 questions clearly and directly so that the lingering  
4 doubts that have been created by your testimony could  
5 be clarified, that would be very helpful. If we're  
6 getting into badgering I'm not going to permit that to  
7 happen.

8                   MR. SMITH: Your Honor, let me interject.  
9 We were not asked prior to this hearing to provide  
10 that information. If we'd been asked that it would  
11 have been provided as to what that actual payment is.  
12 Mr. Stephanus is over 70 years old. He owns numerous  
13 apartment buildings and doesn't remember the specific  
14 financial details of the operation of every one of  
15 them. I think the implication generated by counsel in  
16 questioning is inappropriate and casts a false light  
17 of this witness's effort to try to assist the  
18 Commission to provide them information. Unlike a  
19 normal trial we didn't have a deposition discovery  
20 that took place that was extensive to ask, let's get a  
21 payment history on the U.S. Telco/Stephanus  
22 arrangement.

23                   MS. ANDERL: Well, Your Honor -- were you  
24 done, Mr. Smith?

25                   MR. SMITH: Yes, thank you.

00171

1                   MS. ANDERL: I just have to absolutely  
2 object to Mr. Smith's characterization of what they  
3 were or were not asked or what they did or did not  
4 know coming into this hearing. Clearly data request  
5 No. 3 and data request No. 6 put them on notice that  
6 this was going to be an issue and that this was  
7 information that GTE had requested. I'm very  
8 disturbed by the response to request No. 6 and  
9 testimony that we've had in this hearing today, and I  
10 think that at the very least that inconsistency  
11 warrants further exploration. That's all I was trying  
12 to do. I do not intend to badger the witness. I'm  
13 sorry it appeared to anyone that I did. I really was  
14 just trying to get some more information on the  
15 record.

16                   JUDGE FFITCH: Well, let's proceed with the  
17 questioning and I'm going to be trying to be -- I have  
18 a concern about badgering, and I am not characterizing  
19 what's already occurred today as badgering, just to  
20 make the record clear, but, as I said before, I don't  
21 want counsel just repeating questions that have been  
22 asked, so why don't we proceed.

23                   MS. ANDERL: Thank you, Your Honor.

24                   Q.     Just one or two more follow-up questions on  
25 that. Mr. Stephanus, with regard to the records that

00172

1 the management company would have, would you expect  
2 that they would have broken out in their records the  
3 amount of the access fee that U.S. Telco had been  
4 required to pay and had in fact paid?

5 A. I want to be accurate in these things, but  
6 I really can't give you an answer on that because I  
7 don't know.

8 MS. ANDERL: I believe that is all the  
9 questions that I have then.

10 JUDGE FFITCH: Do you have any redirect,  
11 Mr. Smith?

12 MR. SMITH: No, Your Honor.

13 JUDGE FFITCH: Thank you, Mr. Stephanus.  
14 You may step down.

15 It's quarter to one. It's my understanding  
16 we have one more witness, Mr. Wilson, for staff.  
17 Rather than take an extended lunch break my suggestion  
18 would be that we would take perhaps a 10-minute recess  
19 at this time, come back, and I believe we would then  
20 be able to conclude the hearing with Mr. Wilson's  
21 testimony. Any other comment from counsel?

22 MS. SMITH: Can we have maybe an idea as to  
23 how long folks think the cross-examination of Mr.  
24 Wilson might take?

25 MR. O'CONNELL: I have a few questions but

00173

1 I would think if it's ten minutes that's excessive.

2 MS. SMITH: Mr. Smith, do you have any idea  
3 how long your cross of Tom Wilson might take?

4 MR. SMITH: It would be shorter than Mr.  
5 Nilson's. Probably about half that length so I think  
6 it's about five minutes at the most.

7 JUDGE FFITCH: On that basis, then, any  
8 objection to a short recess at this time?

9 MR. O'CONNELL: Make it perhaps 15 minutes,  
10 Your Honor.

11 JUDGE FFITCH: We've had a request for 15  
12 minutes. We're in recess until 1 p.m.

13 (Recess.)

14 JUDGE FFITCH: Let's go back on the record.  
15 We're returning from a brief midday recess, and it's  
16 my understanding that Stephanus has presented its  
17 witness and evidence and you've completed your case at  
18 this time.

19 MR. SMITH: Yes.

20 JUDGE FFITCH: Very well. It's now time  
21 for staff's case. Ms. Smith, you may call your  
22 witness.

23 MS. SMITH: Staff calls Tom Wilson.

24 Whereupon,

25 TOM WILSON,

00174

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

3 JUDGE FFITCH: Will you state your full  
4 name for the record?

5 THE WITNESS: Thomas L. Wilson, Jr.

6 JUDGE FFITCH: Ms. Smith.

7

8 DIRECT EXAMINATION

9 BY MS. SMITH:

10 Q. Mr. Wilson, did you prepare prefilled  
11 testimony in this case?

12 A. Yes, I have.

13 Q. Do you have that testimony in front of you?

14 A. Yes, I do.

15 Q. And after review of that testimony, if I  
16 were to ask you those questions today, would they be  
17 -- would you have the same answers that are in your  
18 prefilled testimony?

19 A. Yes, they would, although I would like to  
20 offer one minor correction to my prefilled written  
21 testimony, which actually occurred to me this morning  
22 when Mr. Nilson noted by changing some of his exhibits  
23 that since I filed my testimony GTE's tariff numbering  
24 scheme changed slightly, and therefore on page 9 of my  
25 prefilled written testimony the two footnotes which

00175

1 appear at the bottom of the page bear incorrect tariff  
2 citations, and I would like to correct those now if I  
3 may. Specifically footnote there references GTE's  
4 tariff WNU 10, sheet 210. That should be WNU 17,  
5 sheet 31. And also then footnote 4 references the GTE  
6 tariff. I would like to correct that so that it now  
7 would read GTE tariff WNU 17 section 2, sheet 45.  
8 With that I don't think there's any other major  
9 corrections that need to occur in my testimony.

10 MS. SMITH: I offer the testimony of Tom  
11 Wilson as an exhibit in this matter and make him  
12 available for cross-examination.

13 JUDGE FFITCH: Any objection to the direct  
14 testimony of Tom Wilson being admitted?

15 MR. O'CONNELL: No.

16 MR. SMITH: No objection.

17 MS. ANDERL: No.

18 JUDGE FFITCH: Testimony is received for  
19 the record.

20 (Admitted Exhibit Wilson Direct.)

21 JUDGE FFITCH: Mr. Smith, you may  
22 cross-examine.

23

24 CROSS-EXAMINATION

25 BY MR. SMITH:

00176

1 Q. When, Mr. Wilson, you comment in your  
2 testimony that something might or might not be in the  
3 public interest, that's not a comment about whether  
4 something is or is not allowed by law, is it?

5 A. No.

6 Q. For example, on I think it's page 3 where  
7 you said it would be in the best public interest if  
8 the apartment owner did not charge the phone company a  
9 charge to have the phone company use the owner's  
10 inside wiring to provide phone service to the tenant,  
11 that's really no different, is it, from a statement  
12 that if the owner had a right to charge for it and  
13 agreed not to that that would benefit the tenant by  
14 making their phone service less expensive or GTE's  
15 rates perhaps less expensive?

16 A. I'm sorry, I don't understand your  
17 question, sir. Could you rephrase that, please.

18 Q. Sure, I'm sorry. Let me try again. If the  
19 owner had a right to charge -- let me give you a  
20 specific example, cable TV. I don't think there's any  
21 question here but that cable TV companies do pay right  
22 of access fees to apartment owners to get in the  
23 apartments. Are you aware of that?

24 A. I am not aware of that. That was not part  
25 of my testimony.



00177

1 Q. Why don't you just assume that with me  
2 because that is the case here. Wouldn't it be your  
3 testimony as well that it would be in the public  
4 interest if in fact the apartment owner waived any  
5 such charges to the cable company and allowed the  
6 cable companies free access in the building?

7 A. I have not conducted any analysis at all  
8 about what the public interest may be in light of --  
9 in terms of provision of cable TV service.

10 Q. But I'm trying to understand better what  
11 you mean by public interest. Are you talking about  
12 the tenant, the largest group of people here that have  
13 some financial stake in who pays what for use of  
14 inside wiring?

15 A. Maybe this would help, sir, if I mentioned  
16 that as I was thinking about the public interest I was  
17 thinking about it specifically in terms of the state's  
18 policy goals for telecommunications.

19 Q. And what are they?

20 A. They're enumerated at RCW 80.36.300; for  
21 example, promoting diversity in supply of  
22 telecommunications services is one of those. I could  
23 discuss others with a little prompting. I don't  
24 remember all of them right now.

25 Q. I had to ask the realtor about a phone

00178

1 company's right to obtain easements across private  
2 property without payment. Are you aware if they have  
3 to make such payment if they don't have permission  
4 from the owner?

5 A. I don't know.

6 Q. Are you aware of any authority or policy  
7 that would state that a phone company can take private  
8 property without making compensation to that private  
9 property owner?

10 A. Am I aware of any authority?

11 Q. Or policy that says a phone company can  
12 take private property without paying for it.

13 A. I have no idea about that at all.

14 Q. What, then, was the basis of your statement  
15 on page 7, line 7, "The staff does not dispute that  
16 Mr. Stephanus owns the inside wire and deserves to be  
17 compensated for its use." I agree with that position.  
18 I'm just wondering what you looked at in how you came  
19 to that conclusion.

20 A. Well, what I had in mind there was actually  
21 that the issue here is whether Mr. Stephanus should be  
22 allowed to charge to either the tenant or to GTE --  
23 really I guess it's to GTE -- some charge for renting  
24 the inside wire. Actually, staff's position is that  
25 we think that it would be best if that rent was

00179

1 collected or factored into the apartment rental rate  
2 and collected from the tenant.

3 Q. So if you were the lawmaker and you could  
4 draft a law to dictate who has to pay for the use of  
5 the inside wiring your public policy preference would  
6 be to shift that cost to the tenant as opposed to the  
7 phone company?

8 A. Yes. It would based upon my ten years  
9 experience with the Commission working on  
10 telecommunications industry matters.

11 Q. But that's not based in any particular  
12 lawsuit or statute or regulation currently existing  
13 indicating how that decision would get made?

14 A. I am not an attorney.

15 Q. But you've looked at the regs; you've  
16 looked at the policies. I'm asking you from your  
17 experience having done the work you do for so many  
18 years whether it's correct that there's simply no  
19 statute, law, regulation you're aware of that would  
20 answer the question raised as to who would have to pay  
21 the cost of using the inside wiring.

22 MR. O'CONNELL: Objection, calls for a  
23 legal opinion.

24 JUDGE FFITCH: It sure sounds like you're  
25 getting close to asking him for his legal opinion

00180

1 about what the statutes and regulations provide.

2 MR. SMITH: Well, he's here as an expert to  
3 talk about the regulatory scheme of public policies  
4 reflected in the statutes, and what I guess I want to  
5 make real clear in these questions to the Commission  
6 is that he's not aware as anybody else in this room is  
7 of any law, statute, regulation that would dictate  
8 that a property owner is not allowed to charge a  
9 reasonable fee to a phone company if the phone company  
10 want to use that property owner's property.

11 JUDGE FFITCH: Well, with the understanding  
12 that his answer is not being given in any legal  
13 capacity and you're asking for his own personal  
14 awareness of statutes and regulations, I will allow  
15 the witness to answer that.

16 A. If I understand this correctly, indeed  
17 there is a gray area.

18 Q. Thank you. You're aware that Mr. Stephanus  
19 in this case has taken the position that GTE can  
20 remain in his buildings and can provide access to his  
21 tenants?

22 A. Yes.

23 Q. And that he's not going to bar GTE from  
24 having such access?

25 A. Yes.

00181

1 Q. And the only issue then is who should --  
2 whether GTE should have to pay for the privilege of  
3 using Mr. Stephanus's property and equipment?

4 A. I think the issue is also who, if anyone,  
5 should.

6 Q. Okay. Whether or not they should or  
7 whether some other party or tenant should have to do  
8 that. As far as you know, then, the tenants in these  
9 buildings do have alternative access?

10 A. As far as I know with the caveat that I  
11 heard Mr. Nilson testify this morning that GTE does  
12 have five held orders at one of the complexes which I  
13 am assuming means that they can't get in there and  
14 those tenants are not getting alternative access.

15 Q. Is the conduit obstructed or somehow it's  
16 not large enough to accommodate the additional wiring?

17 A. I don't know why there are five held  
18 orders.

19 Q. Let me ask you about the conduit issue and  
20 its inability to accommodate another 200 pair of  
21 cable. If that conduit was originally constructed so  
22 that it wasn't large enough to accommodate future  
23 growth in the apartment building, do you know whose  
24 responsibility it would be to upgrade that?

25 A. It's my understanding that it's the

00182

1 apartment owner's responsibility.

2 Q. I had some questions earlier of Mr. Nilson  
3 about that particular tariff that didn't refer to the  
4 apartment owner but referred to the customer. Do you  
5 use "customer" differently in that context than the  
6 actual customer and the phone company?

7 A. Yes.

8 Q. Do you have any reference or authority to  
9 that or is it just how you interpret customer in that  
10 tariff and you interpret customer different in other  
11 tariffs and regulations?

12 A. I wasn't interpreting the tariff; rather --  
13 I guess I am. I think that to say that the tenant is  
14 responsible to maintain that equipment is not in the  
15 public interest. I think that the apartment owner is  
16 responsible for that.

17 Q. Let me ask you about that boarding house  
18 example where a tenant on the third floor in a  
19 boarding house that has one common pay phone on the  
20 first floor asks for a phone to be installed in the  
21 tenant's unit. Is it your understanding that the  
22 apartment or boarding house owner has an obligation to  
23 install the inside wiring to obtain one tenant's  
24 request?

25 A. My understanding would be simply as a

00183

1 layperson, kind of a man on the street opinion,  
2 actually. If I were renting an apartment or a room in  
3 the boarding house and I knew there was no phone in  
4 there I think that's part of the deal. But when I  
5 rent an apartment and I understand that it will have  
6 telephone service in it then that's a different deal,  
7 isn't it.

8 Q. How would it be a different deal if the  
9 tenant was told we have phone service from a company  
10 called U.S. Telco but not GTE? How would that be  
11 different if that was the deal?

12 A. Because of RCW 80.36.370, I think.

13 Q. Which has to do with alternative access?

14 A. Right.

15 Q. And given Mr. Stephanus's position that GTE  
16 can remain in the building, is it your understanding  
17 that the Commission has any authority to regulate the  
18 conduct of Mr. Stephanus or U.S. Telco in this  
19 situation?

20 A. It's my understanding that's the issue at  
21 hand and that's a legal matter.

22 MR. SMITH: That's all I have. Thank you.

23 JUDGE FFITCH: Any questions for the  
24 witness, Mr. O'Connell?

25 MR. O'CONNELL: Thank you, Your Honor, I

00184

1 do.

2

3

CROSS-EXAMINATION

4 BY MR. O'CONNELL:

5 Q. Mr. Wilson, let's make sure, be clear, the  
6 correction that you made at the very beginning of your  
7 testimony. Is it your understanding that the specific  
8 language in the tariffs did not change anything that  
9 is at issue in footnote I think it's 3 and 4 of your  
10 testimony?

11 A. Yes.

12 Q. So the text of the tariff, if you will, is  
13 the same in each instance?

14 A. Yes. I found the language that I was  
15 referencing earlier still there.

16 Q. Do you have those tariffs in front of you?

17 A. No, I don't.

18 Now I do.

19 Q. Let's start with the conduit issue. The  
20 specific provision regarding the conduit that Mr.  
21 Smith asked you about is original sheet 45 in U 17 and  
22 the original sheet 361 in WN 10, right?

23 A. That's the reference I had given.

24 Q. Which one are you looking at? The current  
25 one? Original sheet 45?



00185

1 A. Yes.

2 Q. And the sentence in particular is --  
3 particular portion of it is the third line on the last  
4 paragraph there, "The applicant/customer will provide  
5 the conduit, will own and maintain at  
6 applicant/customer's expense the conduit and  
7 underground supporting structure." That is the  
8 sentence to which you're referring?

9 A. Yes.

10 Q. And in your experience, Mr. Wilson, when  
11 telephone service is installed in a large residential  
12 apartment complex such as we have at issue here today,  
13 who typically is the applicant for service?

14 A. The owner of the complex or sometimes their  
15 agent.

16 Q. Fair enough. But it's not the tenant.  
17 So it is on that basis on which you  
18 conclude that the owner or their agent is responsible  
19 to own and maintain the conduit and underground  
20 supporting structure?

21 MR. SMITH: Objection, leading question.  
22 It's putting words in the witness's mouth.

23 MR. O'CONNELL: After all, I thought this  
24 was cross-examination.

25 MR. SMITH: I don't believe this is a

00186

1 hostile witness.

2 JUDGE FFITCH: Can you rephrase the  
3 question.

4 Q. On what basis did you then make the  
5 statement, Mr. Wilson, that the apartment owner was  
6 responsible to maintain the conduit?

7 A. On the basis of this language that we were  
8 just referencing.

9 Q. Mr. Wilson, I understand from the testimony  
10 you have a master's in economics?

11 A. Yes, I do.

12 Q. You prepared your testimony before you had  
13 a chance to review the testimony of Peggy Ganson,  
14 would that be correct?

15 A. Yes.

16 Q. Have you had a chance to review Ms.  
17 Ganson's testimony, her written testimony?

18 A. Yes.

19 Q. What opinion do you have as to Ms. Ganson's  
20 analysis that the cost of providing the telephone  
21 infrastructure is inherently included in the rent paid  
22 by a tenant?

23 A. I agree with her.

24 Q. Is that part of the basis on which staff  
25 has made its recommendations in this case?

00187

1 A. Yes.

2 Q. So that we kind of make it clear, that  
3 recommendation in a nutshell is contained on page 3 of  
4 your testimony?

5 A. Yes, that's the summary of staff's  
6 recommendation.

7 Q. Lines 11 through 13.

8 A. Correct.

9 Q. So it's staff's recommendation -- can you  
10 summarize what that recommendation is on the issue as  
11 to who if anyone should pay the access fee Mr.  
12 Stephanus seeks?

13 A. Staff's recommendation is that it should be  
14 factored into the rent or that that should be the  
15 outcome. We do not recommend proceeding in the  
16 fashion Stephanus requests.

17 Q. Turning your attention to page 7 of your  
18 testimony, the statement that is contained on lines 7  
19 through 9 of your testimony. Do you have any  
20 understanding of whether, as we sit here today, Mr.  
21 Stephanus is being compensated for the use of his  
22 inside wire?

23 MR. SMITH: Objection, lack of foundation.

24 JUDGE FFITCH: What's the foundation of the  
25 question?

00188

1                   MR. O'CONNELL:  It's Mr. Wilson's testimony  
2  -- may I rephrase the question?

3                   JUDGE FFITCH:  All right.

4           Q.       Mr. Wilson, do you have an opinion one way  
5  or the other whether Mr. Stephanus is being inherently  
6  compensated for the use of his inside wire?

7           A.       I assume that he is.

8           Q.       And what mechanism -- how would he be  
9  compensated for the use of his inside wire?

10                  MR. SMITH:  Objection, lack of foundation.  
11  He's asking him to speculate on something about which  
12  he has no personal knowledge.

13                  JUDGE FFITCH:  Response?

14                  MR. O'CONNELL:  Your Honor, the witness is  
15  testifying as a policy analyst on behalf of the  
16  Commission.  Moreover, he is by training a qualified  
17  economist and I think he's entitled to express an  
18  opinion as to the manner in which the economic  
19  relationship between Mr. Stephanus and his tenant is  
20  structured so that he is compensated for the use of  
21  his inside wire.

22                  JUDGE FFITCH:  Very well.  The objection is  
23  overruled.

24           A.       Well, my understanding would be that  
25  currently as a rational businessman Mr. Stephanus is

00189

1 conducting his business such that he collects  
2 sufficient revenue to cover his marginal costs of  
3 producing apartments and his common costs as well, and  
4 in my view the inside wire is a common cost, and so  
5 assuming he's rational I think he's probably  
6 recovering that. If he's not then I don't know how we  
7 can show that at this time.

8 Q. Thank you. Page 4, your diagram between  
9 lines 12 and 13, are we agreed that everything that is  
10 within the circle that you've produced there would be  
11 owned by someone other than the telephone company?

12 A. Yes.

13 Q. Based on your review of the telephone  
14 company's tariffs, specifically the inside wire  
15 tariff, what difference is it to the telephone company  
16 who owns that wire?

17 A. I'm sorry, I don't understand.

18 Q. Sure. The inside wire between the  
19 demarcation point to the PBX to two apartment  
20 buildings there?

21 A. Right.

22 Q. On the other side of the demarcation -- by  
23 "other" I mean on the other side from GTE's side of  
24 the demarcation point -- who is using that wire?

25 A. GTE probably doesn't know.

00190

1 Q. It's GTE's customers?

2 A. Well, the tenants in this example in  
3 apartment building A and apartment building B are  
4 receiving service over that inside wire and the PBX.

5 Q. Thank you.

6 MR. O'CONNELL: I have nothing further.

7 JUDGE FFITCH: Ms. Anderl, any questions  
8 for the witness?

9 MS. ANDERL: Just a few clarifying  
10 questions.

11

12 CROSS-EXAMINATION

13 BY MS. ANDERL:

14 Q. Does the PBX there indicate that there is a  
15 shared tenant provider serving those buildings or is  
16 that not necessarily the case?

17 A. In this example I'm intending it indicate  
18 that there's a shared tenant service provider.  
19 Whether that's not the apartment property owner I  
20 didn't make a distinction.

21 MS. ANDERL: Thanks.

22 MR. SMITH: I had some recross.

23

24 CROSS-EXAMINATION

25 BY MR. SMITH:

00191

1 Q. By saying that the cost of the inside  
2 wiring is inherent in the cost of the building or is  
3 passed on to the tenant in rent, to illustrate that,  
4 if an apartment's rent is \$300 a month the landlord  
5 might spell it out and say actually the rent for the  
6 apartment is \$295 a month and the rent for the inside  
7 telephone wiring is \$5 a month?

8 A. That's right.

9 Q. May be silly to do that but that's what  
10 you're --

11 A. I wasn't finished.

12 Q. I'm sorry.

13 A. I wanted to add that, quite frankly, sir, I  
14 think that any person looking at this case would  
15 reflect on common experience as well, and I have.  
16 When I rent my house, which I do now, it was  
17 understood that there was telephone jacks in the house  
18 and that use of that facility was part of what I was  
19 paying rent for, and I think that any rational tenant  
20 is going to assume the same thing.

21 Q. Do you think any rational tenant would  
22 assume that they can choose of any of the many phone  
23 carriers in the state of Washington which ones will  
24 provide them phone service? For example, apartment  
25 No. 3 says, "I want U.S. Telco," and No. 4 says, "I

00192

1 want Electric Lightwave," and No. 5 says, "I want the  
2 MCA company," and No. 6 says, "I want GTE," and by  
3 doing that they impose upon the owner the obligation  
4 to allow all those different companies to put their  
5 wiring inside the building?

6 A. I think that if the owner is operating a  
7 private shared telecommunications service as defined  
8 by the statute then, yes, indeed.

9 Q. Regardless of the cost to the owner a  
10 tenant can impose that on the owner. That's your  
11 belief?

12 A. I would expect a reasonable response to  
13 that would be no, not regardless of the cost.

14 Q. Mr. Stephanus testified that it cost about  
15 \$110,000 in one of his buildings to put all the inside  
16 wiring and equipment. Although it may sound silly to  
17 have done it this way, going back to my hypothetical,  
18 you could have said your rent for this unit is \$300  
19 but actually \$5 of that is to pay for the  
20 infrastructure of the phone system. You get to the  
21 same result, don't you, if the tenant is paying \$300  
22 per month for the apartment unit which includes the  
23 inside telephone wiring?

24 A. I'm not sure what you said, "the same  
25 result."



00193

1 Q. If you're paying \$300 for an apartment that  
2 comes with phone service -- not the actual phone  
3 service but the inside wiring?

4 A. Oh, I agree.

5 Q. If the apartment owner said, in fact, I am  
6 recovering -- it's built in the rent typically, the  
7 cost of the inside wiring and, frankly, the sheetrock  
8 and the ceiling and the common areas and all of that  
9 stuff, that's how I calculate the rent and get a fair  
10 return, but I've got a deal for some of you tenants.  
11 U.S. Telco is a company that's willing to pay me that  
12 \$5 a month, which is kind of my overhead cost in  
13 providing the inside wiring, so if you want U.S. Telco  
14 your rent is \$295 a month because I'm getting \$5 from  
15 U.S. Telco. If you want GTE, that's fine, that's \$300  
16 a month, because they're not going to pay for the  
17 inside wiring. Do you see any problem with that  
18 scenario?

19 A. Yes.

20 Q. What problem do you see with that?

21 A. As I state in my testimony on behalf of the  
22 staff, the staff has in a previous informal event  
23 adopted a staff policy that the private shared  
24 telecommunications service provider should not be  
25 allowed to charge tenants a monthly recurring charge

00194

1 to rent inside wire.

2 Q. Well, here the private shared company isn't  
3 but the landlord is. The landlord is reflecting on  
4 the fact that because I'm getting an access fee from  
5 the private shared telecommunications company,  
6 separate company, I don't need to charge you that  
7 extra \$5 a month if you used their phone service.  
8 That's the situation I'm talking about, not where the  
9 owner of the apartment also owns and operates a  
10 telecommunications system, private shared STS. Do you  
11 see any problem with that scenario? In the public  
12 interest the tenant actually might get that \$5 break.  
13 Wouldn't that be in the public interest?

14 A. I think that it is more in the public  
15 interest that the private shared telecommunications  
16 service provider experience the effects of market  
17 discipline on their pricing behavior, and I am  
18 concerned that the outcome you outlined -- and this  
19 is the basis for staff's earlier settlement in the  
20 other matter -- is that we think that there's this  
21 rationale for why private shared telecommunications  
22 services are not regulated. It's because as long as  
23 tenants have access to an alternative then the pricing  
24 behavior of the private shared telecommunications  
25 service provider is disciplined by the market.

00195

1 Q. Sure.

2 A. And if the private shared  
3 telecommunications service provider -- in this  
4 scenario I think we're really beginning to look at the  
5 property owner and the private shared  
6 telecommunications service provider as virtually one  
7 and the same because they have similar interests.  
8 They need to experience that market discipline, and if  
9 they are seeking indemnification from that by asking  
10 either the tenant or the alternative local exchange  
11 company to pay for that then they are trying to avoid  
12 that market discipline.

13 Q. I'm not sure I agree because in that  
14 scenario the tenant, rational tenant, wouldn't sign up  
15 with the STS if the STS were more than that \$5 break  
16 higher. Isn't the market going to dictate that the  
17 private shared telecommunications company has to keep  
18 their rates even reflecting the \$5 discount passed on  
19 to the landlord competitive with the local exchange  
20 company?

21 A. Yes.

22 Q. Let me ask you to look into the future a  
23 couple of years. Fax machines and Internet access is  
24 becoming more and more common. More and more people  
25 are getting two phone lines in their house; isn't that

00196

1 correct?

2 A. I believe so.

3 Q. And isn't it fair to look down the crystal  
4 ball into the future and assume that that percentage  
5 will increase into the future?

6 A. It's entirely possible.

7 Q. If it were true that a sizable number of  
8 the tenants in an apartment unit wanted an extra phone  
9 line to accommodate either a fax or an Internet access  
10 and that required additional inside wiring or larger  
11 conduit, do you believe that that cost can be imposed  
12 upon the owner of the apartment building simply  
13 because that's what the tenant has requested?

14 A. I think that that would be in the public  
15 interest.

16 Q. And that the landlord might have to spend  
17 that money even if it were additional \$110,000 for a  
18 particular unit simply because their tenant are now  
19 asking for that?

20 A. Yes. I think that's a matter for a market  
21 for apartments to resolve, not regulators of  
22 telecommunications facilities.

23 Q. Good. So the tenant would say, I want a  
24 second phone line and the apartment owner makes a  
25 decision based on what are the costs compared to the

00197

1 risk of losing that tenant, wouldn't the market take  
2 care of that? Isn't that what you were just saying?

3 A. As long as we are not talking about the  
4 market for telecommunications service, yes. I'm  
5 talking about the market for apartments.

6 Q. Yeah. Just as some people don't want to  
7 live in a boarding house without a telephone some  
8 people may not want to live in an apartment that  
9 doesn't have built-in cable TV and two phone lines?

10 A. Exactly. I would like to see that market  
11 incentive be squarely placed on the property owner and  
12 the STS.

13 Q. And so if you have an apartment owner who  
14 says, I frankly don't want to spend the cost to tear  
15 up my building to put in second phone lines to all  
16 these units for cable TV or whatever, isn't it correct  
17 that the tenant cannot impose that cost upon the  
18 owner?

19 A. I would greatly prefer it if we could stick  
20 to telecommunications.

21 Q. Let's leave out the cable TV then. Talking  
22 about a second phone line.

23 A. It seems to me that you're talking about  
24 something that needs to be resolved between the  
25 property owner and the tenant.

00198

1 Q. I agree with you completely. Would it also  
2 need to be resolved between the tenant and the  
3 property owner if the need to add another 200 pair of  
4 cable to a conduit that's about six years old is due  
5 to an increased demand on phone lines within the  
6 building?

7 A. It's my understanding that the increased  
8 demand is based upon the private shared  
9 telecommunications service provider's failure to meet  
10 the market demand in those apartment complexes.

11 Q. I'm asking you about a situation where  
12 there's an additional demand put on an existing  
13 conduit because of a request for additional phone  
14 lines in the building. Is that also something that  
15 ought to be worked out between the apartment owner and  
16 the tenant?

17 MR. O'CONNELL: Objection, irrelevant.

18 JUDGE FFITCH: How is that relevant, Mr.  
19 Smith?

20 MR. SMITH: We're talking about the  
21 ultimate obligation to pay if the cost of upgrading  
22 conduit that apparently won't accommodate twice as  
23 many pair of cable as it currently has.

24 JUDGE FFITCH: Well, I will overrule the  
25 objection and allow the question.

00199

1 A. Could you please restate.

2 MR. SMITH: Ask the court reporter to read  
3 it back.

4 (Record read as requested.)

5 A. Yes.

6 MR. SMITH: All I have. Thank you.

7 JUDGE FFITCH: Do you have any redirect?  
8

9 REDIRECT EXAMINATION

10 BY MS. SMITH:

11 Q. Mr. Wilson, does the Utilities and  
12 Transportation Commission regulate cable TV providers?

13 A. No, it doesn't. That's specifically not  
14 regulated under I believe the same statute that  
15 exempts private shared telecommunications services  
16 from regulation.

17 Q. And does your testimony, your direct  
18 testimony, relate to situations where the inside wire  
19 is already physically located in the apartment  
20 complex?

21 A. Yes.

22 Q. And access to -- and isn't the ultimate  
23 question here whether the tenants are allowed access  
24 to the local exchange company through that  
25 landlord-owned inside wire?

00200

1 A. Yes.

2 MS. SMITH: I don't have anything further.

3 JUDGE FFITCH: Very well. Any other  
4 questions for the witness?

5 MR. O'CONNELL: Your Honor, I do just very  
6 briefly.

7

8 RE-CROSS-EXAMINATION

9 BY MR. O'CONNELL:

10 Q. Mr. Wilson, different topic. Can you turn  
11 your attention, please, to page 8, paragraph that  
12 begins, 17, specifically the sentence that begins on  
13 line 21 and goes over to the next page.

14 A. What was your question, sir?

15 Q. I was just directing you to the right  
16 section.

17 A. Yes.

18 Q. We're together?

19 A. Yes.

20 Q. You're familiar with the amount of  
21 pre-hearing discovery that was undertaken in this  
22 case?

23 A. Yes, I believe so.

24 Q. Can you contrast for us, please, the amount  
25 of discovery undertaken in this case as opposed to a



00201

1 typical proceeding to set the fair, just and  
2 reasonable charges and rates that are referred to  
3 in your testimony there?

4 MR. SMITH: Object to the relevance as to  
5 the -- of this hearing compares with other hearings.  
6 It also exceeds the scope of direct and prior cross.

7 MR. O'CONNELL: I concede that it does  
8 exceed the scope of the prior cross and I would  
9 request leave to do so.

10 JUDGE FFITCH: Well, I think I am going to  
11 sustain the objection. I'm not sure that it's a  
12 profitable line of examination in terms of useful  
13 testimony. Objection is sustained.

14 MR. O'CONNELL: I have nothing further.

15 JUDGE FFITCH: Anything further for the  
16 witness?

17 Thank you. You may step down.

18 Any further witnesses or evidence for  
19 staff, Ms. Smith?

20 MS. SMITH: None.

21 JUDGE FFITCH: I believe that concludes the  
22 taking of testimony and presentation of evidence for  
23 all parties. Am I correct? Is there any further  
24 presentation of testimony or of evidence?.

25 MR. O'CONNELL: No, Your Honor.

00202

1           JUDGE FFITCH: Does any party wish to make  
2 a closing statement? I will allow brief closing  
3 statements if parties wish.

4           MR. O'CONNELL: Your Honor, in light of the  
5 fact that I think all parties concede this case raises  
6 some substantial legal issues we would request leave  
7 to conduct some post hearing briefing.

8           JUDGE FFITCH: All right. Any comment on  
9 that request from other parties?

10          MS. ANDERL: I concur.

11          MR. SMITH: Our inclination, Your Honor,  
12 would be to rest on our motion to clarify and limit  
13 issues which in that document filed in late January we  
14 indicated that this would be our brief in this case as  
15 well, and I wrote it with that in mind. My suggestion  
16 is that we would be given an opportunity to follow up  
17 by reply brief. Frankly, we may not even bother to  
18 do so.

19          JUDGE FFITCH: Do you have a schedule in  
20 mind?

21                   (Recess.)

22          JUDGE FFITCH: I will just state for the  
23 record that we've adopted a briefing schedule. The  
24 parties other than Mr. Stephanus will file briefs on  
25 July 8. Respondent will file a brief on July 29th

00203

1 unless it decides to rely on its existing briefing in  
2 which case on or before that date will notify the ALJ  
3 and the other parties in writing that they will not  
4 be filing a brief, by letter would be satisfactory,  
5 and the reply or rebuttal brief of GTE would be due  
6 on August 12, and then, Ms. Anderl, you had a point.

7 MS. ANDERL: I was just going to ask if  
8 when you sent out the memorandum order confirming this  
9 if you could attach a copy of the exhibit list.

10 JUDGE FFITCH: I will do that.

11 MS. ANDERL: Thank you.

12 MR. SMITH: Your briefing schedule made  
13 reference to respondent. Mr. Stephanus actually had  
14 another client so I am assuming you really meant the  
15 two respondents.

16 JUDGE FFITCH: Yes, I did. I was using a  
17 shorthand. That's correct. Mr. Stephanus and U.S.  
18 Telco.

19 Anything further today?

20 MR. O'CONNELL: Your Honor, I would. I  
21 would ask at this time that you issue an order  
22 directing respondents to prepare and serve a  
23 supplemental response to request No. 6. The testimony  
24 before you today was that the response is not  
25 accurate. And I would ask that you order the

00204

1 respondents to serve a supplemental response to  
2 request No. 6 no later than ten days from today so  
3 that it can be received in time to -- contemporaneous  
4 with the transcript.

5           MR. SMITH: We have no objection to doing  
6 that. There was some embarrassment. Mr. Stephanus  
7 pointed out that that answer was in error. I would  
8 request that two weeks in that it will take two weeks  
9 to get a transcript anyway, but I think it is a fair  
10 request to ask us to supplement something we  
11 inadvertently didn't answer previously.

12           JUDGE FFITCH: So you're requesting two  
13 weeks from today's date to provide that supplemental  
14 answer to request No. 6?

15           MR. SMITH: I believe it's No. 6, yes.

16           MR. O'CONNELL: I would request that be  
17 received subject to the right of the parties to object  
18 to it if they feel it should not be admitted as an  
19 exhibit.

20           JUDGE FFITCH: Well, as I understood your  
21 request you're asking the supplemental -- maybe I  
22 should clarify. Supplemental response could be  
23 provided to you as simply a response to a data request  
24 and then GTE could determine whether to offer it --

25           MR. O'CONNELL: That would be good.

00205

1                   JUDGE FFITCH:  -- at that time.  That means  
2 the other parties don't see it immediately so we could  
3 approach it differently, but that would be just sort  
4 of a simple discovery approach to it.

5                   MR. SMITH:  I don't have a problem  
6 providing all parties.  There's no reason to go  
7 through letting Mr. O'Connell screen whether he shares  
8 with the other parties.  We'll give it to everybody.

9                   JUDGE FFITCH:  Let's do it that way then.  
10 Mr. Smith, if you could provide that to Mr. O'Connell  
11 within two weeks and serve the other parties.  As far  
12 as whether it comes into the record, I suppose, let's  
13 reserve that.  You don't need to file that.  Just  
14 serve it on the other parties and I will allow the  
15 parties to determine whether they want to submit that  
16 for the record.  You should do so promptly with  
17 briefing coming up.

18                   Anything else today?  Thank you for your  
19 attendance and we're adjourned.

20                   (Hearing adjourned at 1:50 p.m.)

21

22

23

24

25