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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
2 COMMISSION

3 In the Matter of: )  
4 )  
5 CAMELOT SQUARE MOBILE HOME ) DOCKET NOS. UT-960832  
6 PARK, SKYLARK VILLAGE MOBILE ) UT-961341  
7 HOME PARK, BELMOR MOBILE ) UT-961342  
8 HOME PARK, )  
9 Petitioners, )  
10 vs. )  
11 ) VOLUME 4  
12 ) PAGES 73 - 257  
13 U S WEST COMMUNICATIONS, INC., )  
14 Respondent. )  
15 ----- )

16 A hearing in the above matter was held  
17 on June 10, 1997 at 9:35 a.m. at 1300 South Evergreen  
18 Park Drive Southwest, Olympia, Washington, before  
19 Administrative Law Judge MARJORIE SCHAER.

20 The parties were present as follows:

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

25 U S WEST COMMUNICATIONS, INC., by KIRSTIN  
DODGE, Attorney at Law, 411 - 108th Avenue NE,  
Bellevue, Suite 1800, Bellevue, Washington 98004.

CAMELOT SQUARE MOBILE HOME PARK, SKYLARK  
VILLAGE MOBILE HOME PARK, BELMOR MOBILE HOME PARK, by  
WALTER H. OLSEN, JR., Attorney at Law, 999 Third  
Avenue, Suite 3000, Seattle, Washington 98104.

Cheryl Macdonald, CSR

Court Reporter

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1

I N D E X

2	WITNESSES:	D	VD	C	RD	RC
	EVANS	78	90	94	100	
3						
	SMALLEY	102	107	125	138	
4						
	FRICKS	142	148	159	165	166
5						
	JENSEN	168	186	210		

6

7	EXHIBITS:	MARKED	ADMITTED
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8	T-1 - 24	86	96
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9	T-25 - 31	104	125
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10	C-33	129	
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11	T-34 - T-42	145	159
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12	T-43 - 66	172	209
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1                                    P R O C E E D I N G S

2                    JUDGE SCHAER:  The hearing will come to  
3 order.  This is a hearing in docket No. UT-960832,  
4 Camelot Square Mobile Home Park; docket No.  
5 UT-961341, Skylark Village Mobile Home Park; and  
6 docket No. UT-961342, Belmor Mobile Home Park.  This  
7 is a hearing that was set by a notice of hearing dated  
8 May 16, 1997.  It's taking place on June 10, 1997 in  
9 Olympia, Washington.  The hearing is being held before  
10 Administrative Law Judge Marjorie R. Schaer.

11                    We had some brief discussion of preliminary  
12 matters when we were off the record, and have  
13 determined as follows:  In the pre-hearing conference  
14 in this matter certain prefiled testimony of the  
15 complainant was marked for identification.  Following  
16 that hearing amended testimony for each of those  
17 witnesses was filed, and the materials that were  
18 marked for identification at the pre-hearing  
19 conference will not be further included in this  
20 matter, will not be admitted and we will begin marking  
21 exhibits today with the witnesses that take the stand.

22                    There is confidential material included in  
23 some of the exhibits.  Confidential material does not  
24 appear to be appropriately stamped as it does not  
25 designate the protective order in this matter, and I

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1 have asked the parties to review anything that's  
2 marked confidential to segregate and correctly mark  
3 anything that should be protected, and to perhaps take  
4 a look at what is marked confidential, and if there  
5 are things that are marked confidential that really  
6 don't need to be so marked to let me know that instead  
7 and we will eliminate the confidential markings on  
8 those documents.

9                   Counsel, Ms. Dodge for U S WEST, and Mr.  
10 Olsen, have agreed to work together on reviewing those  
11 materials. Our witness order will be to take the  
12 witnesses of the complainant first, then the witness  
13 of U S WEST, then the witnesses for the Commission  
14 staff. We've agreed that we will take both the direct  
15 and the rebuttal testimony of those witnesses at the  
16 time each witness is on the stand.

17                   And finally, there's a motion pending  
18 of complainants to strike portions of the prefiled  
19 testimony of U S WEST witness Ms. Jensen, and a  
20 response to that motion was filed this morning. We've  
21 agreed that argument on that motion will take place at  
22 the time that Ms. Jensen is called to the stand so  
23 that all the parties may have a little bit more time  
24 to prepare and absorb the materials that have been  
25 filed yesterday and this morning.

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1           Is there any other preliminary matter that  
2 we discussed or that we need to discuss at this time?  
3 Then let's start out by taking appearances starting  
4 with petitioner.

5           MR. OLSEN: For the petitioners, Walter H.  
6 Olsen, Jr., and I represent Camelot Mobile Home Park,  
7 Belmor Mobile Home Park and Skylark Village Mobile  
8 Home Park.

9           JUDGE SCHAER: For the respondent.

10          MS. DODGE: Kirstin S. Dodge for respondent  
11 U S WEST Communications, Inc.

12          JUDGE SCHAER: And for the Commission  
13 staff.

14          MS. SMITH: Shannon Smith, assistant  
15 attorney general for Commission staff.

16          JUDGE SCHAER: All right, Mr. Olsen, would  
17 you like to call your first witness.

18          MR. OLSEN: Please.

19          JUDGE SCHAER: We usually use this seat  
20 closest to the bench as the witness's seat and your  
21 witnesses may feel free to bring any materials with  
22 them that they like.

23          MS. SMITH: Petitioners call Nancy Evans  
24 from Belmor Park.

25 Whereupon,

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

4

5 DIRECT EXAMINATION

6 BY MR. OLSEN:

7 Q. Ms. Evans, would you state and spell your  
8 full name for the record?

9 A. My name is Nancy, N A N C Y, L. Evans, E V  
10 A N S.

11 Q. And what is your business address?

12 A. 2101 South 324th Street, Federal Way,  
13 Washington.

14 Q. What is your occupation and by whom are you  
15 employed?

16 A. I'm a resident manager for Belmor Mobile  
17 Home Park which is owned by Belmor Holdings, a joint  
18 venture.

19 Q. In preparation for your testimony today,  
20 did you prefile testimony and exhibits?

21 A. Yes.

22 Q. And was that testimony prepared by you?

23 A. Yes.

24 Q. Do you have your testimony before you?

25 A. Yes, I do.

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1 Q. And if I were to ask you the same questions  
2 in your prefiled testimony, would your answers be the  
3 same today as they were then?

4 A. Yes.

5 Q. I believe the amended prefiled testimony  
6 references certain exhibits and exhibit numbers; is  
7 that correct?

8 A. Yes, that's right, and some of those do  
9 need to be changed.

10 Q. Some of the exhibit references do need to  
11 be changed, okay.

12 MR. OLSEN: At this point I understand that  
13 we'll start off with Exhibit No. 1.

14 JUDGE SCHAEER: Well, why don't I go ahead  
15 and mark for identification what you've prefiled for  
16 this witness. I'm going to mark for identification as  
17 Exhibit T-1, because it's your testimony, document  
18 that states on the cover First Amended Testimony of  
19 Nancy L. Evans and it has a date of March 4, 1997.

20 I'm going to mark for identification as  
21 Exhibit T-2 document entitled Rebuttal Testimony of  
22 Nancy L. Evans.

23 Marked for identification as Exhibit 3  
24 two-page document which the heading Northwest  
25 Utilities, Inc. at the top and identified on the cover

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1 is NLE-1.

2 MR. OLSEN: Your Honor, if I might  
3 interrupt there were also exhibits to the direct  
4 testimony of Nancy Evans.

5 JUDGE SCHAER: Let's go off the record for  
6 a moment.

7 (Discussion off the record.)

8 JUDGE SCHAER: Let's be back on the record.  
9 While we were off the record certain other exhibits  
10 were located. I will mark for identification as  
11 Exhibit 4 a document which has a date on it April 1994  
12 and appears to be a map of the Belmor Mobile Home  
13 Park.

14 MS. SMITH: Your Honor, if I may interrupt.

15 JUDGE SCHAER: Yes.

16 MS. SMITH: I didn't get exhibits that you  
17 had marked 2 and 3 when you were marking those. I was  
18 looking at the exhibits attached to the direct and  
19 lost track of what you had marked as 2 and 3.

20 JUDGE SCHAER: Okay. What I marked as T-2  
21 was the rebuttal testimony of Ms. Evans and what I had  
22 marked as 3 was Exhibit NLE-1 which was attached to  
23 her rebuttal testimony.

24 MS. SMITH: Thank you for clarifying.

25 JUDGE SCHAER: You're welcome. Now, marked



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1 as Exhibit 4 is a document I've identified and I  
2 should note that it says in the corner Exhibit T-16.

3           Marked for identification as Exhibit 4  
4 three pages of photocopies of photographs. Did you  
5 bring the originals, Mr. Olsen?

6           MR. OLSEN: Yes, I did.

7           JUDGE SCHAER: And I will include the  
8 originals in the original file if you wish to offer  
9 them.

10           MS. DODGE: Sorry, Your Honor. Was that  
11 Exhibit 5?

12           JUDGE SCHAER: Yes, thank you. So Exhibit  
13 5 is three pages of photographs designation T-17 on  
14 the bottom right-hand corner.

15           Marked for identification as Exhibit 6, a  
16 June 1, 1993 letter with U S WEST letterhead to BOMA  
17 members.

18           Marked for identification as Exhibit 7 a  
19 June 15, 1993 letter U S WEST letterhead from U S WEST  
20 to business customer. Are those all of the exhibits  
21 that were attached to her direct testimony?

22           MR. OLSEN: Yes.

23           JUDGE SCHAER: Then we'll continue with the  
24 exhibits that were attached to Ms. Evans's rebuttal  
25 testimony.

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1                   Marked for identification as Exhibit 8  
2 document with a cover exhibit NLE-2, which is five  
3 page document appears to be regarding the repair work.  
4 First page has a date at the upper right-hand corner  
5 of 8-25. Is that 84 or '94, Mr. Olsen, do you know?

6                   MR. OLSEN: I believe '94.

7                   JUDGE SCHAER: Marked as Exhibit 9, NLE-3  
8 single page document, and this is one of the items  
9 that is marked confidential. If this becomes a  
10 confidential exhibit then we would make it Exhibit  
11 C-9. Can you tell me now whether that's going to be  
12 its designation?

13                   MS. DODGE: I believe it should be  
14 confidential. It has customer name and address on it,  
15 a third party in this matter.

16                   JUDGE SCHAER: Any problem with --

17                   MR. OLSEN: I have no objection.

18                   JUDGE SCHAER: We'll make that Exhibit C-9  
19 then. Exhibit 10.

20                   MS. DODGE: I'm sorry, Your Honor. If it  
21 would be convenient to do that now, Exhibit 8, NLE-2,  
22 should also be designated confidential. Would you  
23 still prefer that we wait and do this?

24                   JUDGE SCHAER: I don't have any  
25 confidentiality designations on any of this, so I

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1 think that perhaps it will be better for you to -- the  
2 ones that aren't identified at all to deal with --

3 MS. DODGE: At a later point.

4 JUDGE SCHAER: As Exhibit 10 then will be  
5 NLE-4 which is a two page document. First page has  
6 Northwest Utilities, Inc., letterhead dated April 19,  
7 1995.

8 As Exhibit 11, NLE-5, single page document  
9 with the name Lois Lake in the upper left-hand corner.

10 MS. DODGE: Your Honor, that one is stamped  
11 confidential.

12 JUDGE SCHAER: Would you like that  
13 designated now as a confidential exhibit?

14 MS. DODGE: Please.

15 JUDGE SCHAER: Well, I will make that  
16 Exhibit C-11.

17 Exhibit 12, NLE-6, two-page document with  
18 Northwest Utilities, Inc., letterhead on the first  
19 page dated October 28, 1995.

20 Exhibit 13 -- appears it should be Exhibit  
21 C-13 -- NLE-7, single page document. Numbers in the  
22 upper left-hand corner 2539393804.

23 Exhibit 14, NLE-8, three-page document  
24 heading at the top of Belmor Mobile Home Park Repair  
25 Data 1996.

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1                   Exhibit 15, NLE-9, six-page document,  
2 heading at the top Camelot Square Mobile Home Park  
3 Repair Data 1996.

4                   Exhibit 16, NLE-10, two-page document first  
5 page letterhead at the top says Northwest Utilities,  
6 Inc. dated February 9, 1996.

7                   Exhibit 17 would be NLE-11, another two-  
8 page document with Northwest Utilities, Inc.,  
9 letterhead dated February 29, 1996.

10                   Exhibit 18, NLE-12, two-page document with  
11 Northwest Utilities, Inc. letterhead dated April 29,  
12 1996.

13                   As Exhibit 19, NLE-13, two-page document  
14 with Northwest Utilities, Inc. letterhead dated  
15 September 13, 1996.

16                   As Exhibit 20, NLE-14, a multi-page  
17 document with a Declaration of Records Custodian on  
18 the first page from Steve Ogden.

19                   As Exhibit 21 NLE-15, multi-page document  
20 with a declaration of records custodian on the first  
21 page and the name of Ivar Petersen.

22                   Exhibit 22, Exhibit NLE-16, appears that it  
23 should be Exhibit C-22. Is that correct, Ms. Dodge?

24                   MS. DODGE: Yes, it is correct.

25                   JUDGE SCHAER: A two-page document on

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1 Camelot Square repair data from January and February  
2 of '97. Exhibit 23, NLE-17.

3 MS. DODGE: Your Honor, I would note that  
4 most of those documents have been stamped confidential  
5 after the first cover page.

6 JUDGE SCHAER: Appears again that some have  
7 and some haven't. This is the one where I wondered  
8 why some of them were. I will let you sort through  
9 that one again. This cover page calls it documents  
10 faxed on a certain date. Is this a response to a  
11 particular request or is that sufficient designation?

12 MR. OLSEN: This is one letter of multiple  
13 pages that are in Exhibit T-23, so it's only a cover  
14 letter for the first five or six pages following.

15 JUDGE SCHAER: Another cover letter. Are  
16 these responses to data requests?

17 MR. OLSEN: Yes.

18 JUDGE SCHAER: I'm going to designate this  
19 as responses to data requests. Let you describe more  
20 particularly if you wish to with your witness.

21 Finally as Exhibit 24 we have NLE-18, and I  
22 believe that this is an easement.

23 MR. OLSEN: Yes.

24 JUDGE SCHAER: For Belmont.

25 MR. OLSEN: Yes.

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1           JUDGE SCHAER: Belmor, excuse me. Are  
2 those all of the exhibits for this witness, Mr. Olsen?

3           MR. OLSEN: Yes.

4           (Marked Exhibits T-1, T-2, 3 - 7, C-8, C-9,  
5 10, C-11, 12, C-13 - C-15, 16 - 21, C-22, C-23 and  
6 24.)

7           JUDGE SCHAER: Go ahead.

8           Q.    Ms. Evans, are there any changes that you  
9 would like to make to your testimony before it's  
10 offered into evidence?

11          A.    Do we need to change these exhibits that we  
12 had in the original?

13          Q.    I think --

14          A.    They've been renumbered now.

15          MR. OLSEN: I think the record reflects the  
16 renumbering of the exhibits. There are references in  
17 your testimony that reference the old exhibit, and I  
18 would ask the record reflect that the exhibit numbers  
19 have been changed and the new exhibit numbers should  
20 be referenced in the direct testimony.

21          JUDGE SCHAER: Is anyone going to have  
22 trouble finding those?

23          MS. DODGE: I don't believe so, Your Honor.

24          MS. SMITH: No.

25          JUDGE SCHAER: Let's go ahead, then, with

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1 that clarification, statement on the record.

2 Q. Ms. Evans, I'm handing you a series of  
3 photographs. Do you recognize these pictures?

4 A. Yes, I do.

5 Q. What do you recognize them to be?

6 A. The temporary service that was placed for  
7 space 159 in Belmor Park when he put a modem on his  
8 computer. The first one is the pedestal in the  
9 backyard of space 158, and the wires are wrapped  
10 around that pedestal. Then the second one shows how  
11 they were carried up into a tree. The third photo is  
12 how the wires were then draped over the shed in space  
13 158 across their driveway and over a long side of 159  
14 house. The next photo is of the wires at the skirting  
15 of 159. The next photo is of the cutting of sod that  
16 was done by someone U S WEST sent out near the  
17 pedestal in space 58 -- 158, excuse me.

18 The continuation of that cutting is the  
19 next. Behind the shed of 158 is the continuation of  
20 the trenching. Alongside the fence on the 159 side is  
21 the continuation of that trenching.

22 Q. Did you take these pictures?

23 A. I did.

24 Q. And are these the original pictures that  
25 were identified, has just been identified as T-5 in

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1 your direct testimony?

2 A. Yes, they are.

3 MR. OLSEN: With that, then, I would offer  
4 the pictures into evidence as well as the direct  
5 testimony and its attached exhibits as well as the  
6 rebuttal testimony and the attached exhibits.

7 JUDGE SCHAER: Are you wanting to replace  
8 what is in the record right now for identification as  
9 Exhibit 5 with these?

10 MR. OLSEN: The original pictures.

11 JUDGE SCHAER: I'm going to take what I had  
12 marked for identification as Exhibit 5. We only use  
13 the T designation for testimony just so you know what  
14 we're doing, and then we use -- I'm going to take what  
15 had been marked for identification as Exhibit 5 and  
16 replace it with the color copies and with the original  
17 in the original file.

18 MR. OLSEN: Thank you.

19 JUDGE SCHAER: And you've offered, then,  
20 Exhibits T-1, 2 and Exhibits 3 through 24; is that  
21 correct?

22 MR. OLSEN: Yes.

23 JUDGE SCHAER: Is there any objection to  
24 any of those documents?

25 MS. DODGE: Your Honor, we object to



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1 portions of Ms. Evans's direct and rebuttal testimony.  
2 If you like I can go through those now or move to  
3 strike once it's admitted.

4 JUDGE SCHAER: Well, I think it would  
5 probably be better for you to go ahead and identify  
6 which portions you find objectionable at this point.

7 MS. DODGE: At page 2 of Ms. Evans's direct  
8 testimony, lines 17 through 20, she's testifying as to  
9 events in 1966. At line 5 of the same page she  
10 testifies that she's been at Belmor Mobile Home Park  
11 since May 1, 1993, so testimony as to events in 1966  
12 at Belmor have no foundation and are outside this  
13 witness's knowledge.

14 Similarly, page 5, lines 8 through 15, Ms.  
15 Evans is testifying as to events that occurred at  
16 Belmor Mobile Home Park, and, again, there's no  
17 foundation prior to May 1, 1993 for such testimony.

18 Finally, in her rebuttal testimony, page 6,  
19 lines 18 through 20 --

20 JUDGE SCHAER: Hold on just a moment,  
21 please. Go ahead.

22 MS. DODGE: -- Ms. Evans again is  
23 testifying as to events that may or may not have  
24 occurred in 1966. There's no foundation for such  
25 testimony. It's outside of this witness's knowledge.

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1 MS. SMITH: Could I ask you to repeat that  
2 page and line, please.

3 MS. DODGE: Page 2, lines 17 through 20.  
4 Do you need the others?

5 MS. SMITH: No, I have the others. It was  
6 just that last one.

7 MS. DODGE: I'm sorry, the rebuttal was  
8 page 6, lines 18 through 20. I think it laps into 21  
9 -- well, 20.

10 MS. SMITH: Thank you.

11 JUDGE SCHAER: Any response, Mr. Olsen?

12 MR. OLSEN: Yes, Your Honor. May I voir  
13 dire the witness for her foundation?

14 JUDGE SCHAER: Certainly.

15

16 VOIR DIRE EXAMINATION

17 BY MR. OLSEN:

18 Q. Ms. Evans, are you the record custodian for  
19 Belmor Park?

20 A. Yes, I am.

21 Q. And is it true that you began working at  
22 Belmor Park in 1993?

23 A. That's correct.

24 Q. And on page 2, lines 17 through 20 of your  
25 testimony, your direct testimony, you reference events

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1 that occurred in 1966; is that correct?

2 A. That's right.

3 Q. What is the basis for your representations  
4 on page 2, lines 17 through 20?

5 A. I have checked the records of Belmor Mobile  
6 Home Park and talked with the owners and they have  
7 verified that this was the case.

8 MR. OLSEN: Your Honor, with regard to page  
9 2, lines 17 through 20 and with regard to other  
10 references with regard to events that occurred before  
11 she accepted her position at the mobile home park, I  
12 would argue that Ms. Evans is the record custodian of  
13 the park. She's made an investigation of the park's  
14 records. She's interviewed the owners of  
15 the park and based on that information she has  
16 concluded that there's no evidence in the park's  
17 records that the park has or installed service lines  
18 in the park in 1966. With that conclusion that was  
19 the result of her investigation she's made the  
20 representations on page 2, lines 17 through 20 and  
21 would offer it into evidence.

22 JUDGE SCHAEER: Ms. Evans, what records did  
23 you look at for this time period?

24 THE WITNESS: I looked at the maps of the  
25 park and documents that were filed for permits, and I

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1 believe the park would have had to get permits to do  
2 this work, and we did not do that.

3 MR. OLSEN: May I ask a few more follow-up  
4 questions?

5 JUDGE SCHAEER: I would like -- yeah, I  
6 would like to explore what evidence there is and what  
7 was looked at if we could. This foundation is for  
8 this and for the other two references.

9 Q. Ms. Evans, do you keep the accounting  
10 records for the park?

11 A. Yes, I do.

12 Q. And are you familiar with the depreciation  
13 practices for the park?

14 A. Oh, excuse me. I should back up here. I  
15 send in the documentation to our main office. They  
16 keep the actual accounting records.

17 Q. The main office keeps the actual --

18 A. The main office does, yes.

19 Q. -- accounting records?

20 A. That's right.

21 Q. Do you have accounting reports from the  
22 main office?

23 A. I did at the time we were looking at this  
24 project, yes.

25 Q. And so you reviewed accounting reports --

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1 A. That's correct.

2 Q. -- for the park in preparation of your  
3 direct and rebuttal testimony; is that correct?

4 A. Yes.

5 Q. Do the accounting records include  
6 depreciation schedules?

7 A. Yes, they did.

8 Q. And on the depreciation schedules did you  
9 observe any depreciation for the installation of  
10 telephone service lines?

11 A. No, none at all.

12 Q. Are you familiar with the depreciation life  
13 for capital improvements such as telephone service  
14 installation at the park?

15 A. Oh, yes.

16 Q. And what is your understanding that the  
17 depreciation life is for Belmor for capital  
18 improvements such as installation of telephone service  
19 lines?

20 A. Well, we did not have it for the telephone  
21 lines but for the TV system that we put in it's 30  
22 years.

23 Q. And in your review of the accounting  
24 records, did you observe a depreciation schedule for  
25 the initial installation of telephone service lines

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1 that took place in 1966 at Belmor?

2 A. No.

3 Q. Are there any other accounting records or  
4 business records that you reviewed in preparation of  
5 your rebuttal testimony?

6 A. Just what I've said. That's all.

7 Q. That includes the accounting records?

8 A. Yes.

9 Q. Maps?

10 A. Maps and other documents in the office,  
11 yes.

12 MS. DODGE: Your Honor, may I cross?

13 JUDGE SCHAER: Yes.

14

15 CROSS-EXAMINATION

16 BY MS. DODGE:

17 Q. Ms. Evans, is it fair to say that Belmor  
18 Mobile Home Park owns its cable TV system?

19 A. Yes, we do.

20 Q. You own the physical cable that's lining  
21 the ground?

22 A. Well, I would say yes, that's right. We do  
23 our own repair on that.

24 Q. And therefore, you're depreciating that  
25 investment over time?

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1 A. Yes.

2 Q. Do you have any understanding whether  
3 Belmor owns the telephone wire that are lying in the  
4 ground on Belmor Mobile Home Park?

5 A. I do not believe we do.

6 Q. So therefore it would make sense that there  
7 would be no depreciation schedule in Belmor's records  
8 for a telephone cable lying in the ground?

9 A. That's correct.

10 Q. And is it your understanding that expenses  
11 such as labor costs are found anywhere on depreciation  
12 schedules in businesses?

13 A. I don't remember anything addressed to  
14 labor, no.

15 MS. DODGE: Your Honor, I still have  
16 concern that those records wouldn't have contained any  
17 information regarding the trenching that's at issue.

18 JUDGE SCHAER: Well, I'm going to allow the  
19 testimony to go into the record and I am going to  
20 allow you to do further cross if you would wish to  
21 develop just what the foundation for this testimony  
22 was. I believe that insofar as the date, that that  
23 date is the same date that Ms. Jensen gives in her  
24 testimony, so I believe the issue is just about who  
25 put in the lines, who paid for it, and to the extent

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1 that this witness has any knowledge through  
2 conversation with principals or search of records, I  
3 will allow you to explore that, but I'm going to let  
4 the testimony stand.

5 Is there any objection to any of the other  
6 offered exhibits?

7 MS. DODGE: I think the rest goes to cross,  
8 Your Honor.

9 JUDGE SCHAER: Okay. Then I'm going to  
10 admit Exhibit T-1, Exhibit T-2 and Exhibits 3 through  
11 24 into the record.

12 (Admitted Exhibits T-1, T-2, 3 - 7, C-8,  
13 C-9, 10, C-11, 12, C-13 - C-15, 16 - 21, C-22, C-23  
14 and 24.)

15 JUDGE SCHAER: And you may proceed, Mr.  
16 Evans.

17 MR. OLSEN: No further questions.

18 JUDGE SCHAER: Then Ms. Evans is available  
19 for cross.

20 Q. Ms. Evans, when you explored the question  
21 of the installation of the park -- phone service into  
22 the park in 1966, what did you ask your principals in  
23 order to get information from them on this subject?

24 A. I asked them, first of all, who did the  
25 installation and their immediate answer was that



00097

1 Pacific Northwest Bell did the installation just as  
2 they would in any of the new entities that would be  
3 put into service.

4 Q. And were you satisfied with that answer or  
5 did you ask any follow-up questions?

6 A. Well, I looked on the maps and they do not  
7 show anything about -- all of our maps -- show  
8 anything that we had anything to do with putting into  
9 the park. We do not have a telephone map.

10 Q. Is it fair to say, then, that you didn't  
11 explore the issue of who paid for the trenching to  
12 install those telephone service --

13 A. I asked for the information about  
14 depreciation, and they do not have it because they did  
15 not install it. It is not our wire.

16 Q. Are you aware whether any of the telephone  
17 lines that run under the private roadways in Belmor  
18 are lying in conduit or directly in the ground?

19 A. I believe everything is directly in the  
20 ground.

21 Q. Do you have your testimony in front of you,  
22 your direct testimony?

23 A. Yes.

24 Q. Could you turn to page --

25 A. Of the amended?

00098

1 Q. Of the amended. Could you turn to page 3,  
2 please.

3 A. Okay, I have it here.

4 Q. Looking at lines 18 through 21, you've  
5 testified that U S WEST provided its own trenching  
6 during the summer of 1995?

7 A. Yes.

8 Q. What is the basis for your testimony?

9 A. When I saw the men working in that area I  
10 went out and asked the workmen what they were doing  
11 because it took them for such a long time and their  
12 answer was that they were working on the lines. I  
13 felt that they were adding a line, but they did not  
14 indicate that they were. They dug up old lines and  
15 replaced some of them. I know that for a fact because  
16 they tore out plants that were supposed to be replaced  
17 that never did get replaced.

18 Q. And where were these workers located?

19 A. They were working behind the homes along  
20 the spaces 150 through 165 first and then they moved  
21 from 183 to 254 after that project was done.

22 Q. How long did it take them?

23 A. Most of the summer. Almost -- I would say  
24 it started in June or July and lasted probably through  
25 September.

00099

1 Q. Turning to Exhibit 24 --

2 A. I did have a pen up here.

3 Q. -- which is premarked as NLE-18.

4 A. Yes.

5 Q. What is your understanding of the  
6 significance of this document? First, what is it?

7 A. It is an easement so that the telephone  
8 company can come in and work on their lines without  
9 getting my permission, without getting the owner's  
10 permission, I should say.

11 Q. Are you aware of whether there's any path  
12 or road on Belmor's property through which the phone  
13 company has to go to get to a piece of property, we  
14 can call it, trapped behind Belmor? Is there public  
15 access to all of the properties that surround Belmor?

16 A. I would not have any idea where their  
17 terminals would be. They do come into our park a lot  
18 of times, but I assume that they are working on our  
19 own property. I have no idea.

20 Q. Have you ever had occasion to have a  
21 property owner complain to you that they needed to get  
22 through Belmor, that some service utility needed to  
23 come through Belmor's property to get to their  
24 property or they wouldn't be able to have service?

25 A. I am not aware of such as that, no.

00100

1 MS. DODGE: Those are all the questions for  
2 this witness.

3 JUDGE SCHAER: Commission staff have  
4 questions for this witness?

5 MS. SMITH: I have one question to clarify.

6 Ms. Evans, when you testified about the  
7 trenching that was done at spaces 150 through 165 and  
8 spaces 183 to 254, do you know whether that work was  
9 done in response to a customer complaint about  
10 telephone service?

11 THE WITNESS: Not any of my residents ever  
12 told me that there was anything. The only thing I  
13 thought when they were behind 183 to 254 was that they  
14 were trying to install additional lines for new  
15 tenants that were moving in because we did have a wait  
16 for tenants to get their phone service at that time.

17 MS. SMITH: I don't have any more  
18 questions.

19 JUDGE SCHAER: Is there any redirect for  
20 this witness?

21 MR. OLSEN: Briefly.

22

23 REDIRECT EXAMINATION

24 BY MR. OLSEN:

25 Q. With regard to that same testimony

00101

1 referenced by staff at page 3 on lines 18 through 21,  
2 did you actually observe this trenching going on?

3 A. Yes, I did.

4 Q. And did the trenching involve more or less  
5 than 300 feet?

6 A. Oh, yes. It's --

7 Q. Was it more than 300 feet?

8 A. Much more than 300 feet, yes.

9 Q. Can you estimate how long the trenching  
10 was?

11 A. Each lot is 40 feet wide and that's a lot  
12 of lots. Let's see 83 from 54, that's 70-some lots  
13 times 40, so that's a lot.

14 Q. So approximately 3,000 feet of trenching?

15 A. Close, yes. Very close.

16 MR. OLSEN: No further questions.

17 JUDGE SCHAEER: Thank you for your  
18 testimony.

19 Who will your next witness be, Mr. Olsen?

20 MR. OLSEN: Petitioners call Russ Smalley  
21 from Skylark Village Mobile Home Park.

22 Whereupon,

23 RUSSELL SMALLEY,

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

00102

1                   JUDGE SCHAER: Mr. Olsen, I'm going to  
2 suggest that we get your witness's preliminary  
3 questions asked and that we take our morning recess so  
4 that you have some time to get through these exhibits  
5 and sort out what we don't need to have admitted and  
6 then we can go ahead and mark his exhibits after the  
7 recess.

8                   MR. OLSEN: Okay.

9

10                                   DIRECT EXAMINATION

11 BY MR. OLSEN:

12           Q.     Mr. Smalley, would you state and spell your  
13 full name for the record?

14           A.     Russell, R U S S E L L, J. Smalley, S M A L  
15 L E Y.

16           Q.     What is your business address?

17           A.     900 29th Street Southeast The Office at  
18 Auburn, Washington 98002.

19           Q.     What's your occupation and by whom are you  
20 employed?

21           A.     I'm manager of Skylark Village employed by  
22 Skylark Village.

23           Q.     In preparation for your testimony today,  
24 did you prefile direct and rebuttal testimony and  
25 exhibits?

00103

1 A. Yes.

2 Q. And was that testimony prepared by you?

3 A. Yes.

4 Q. Do you have that testimony before you now?

5 A. Yes, I do.

6 Q. And if I were to ask you the same questions  
7 that are asked in your prefiled direct and rebuttal  
8 testimony, would your answers be the same today as  
9 they were then?

10 A. Yes.

11 MR. OLSEN: That's all the questions I have  
12 at this time.

13 JUDGE SCHAEER: Let's take our morning  
14 recess at this time. Please be back and ready to go  
15 at 20 'til. Thank you.

16 (Recess.)

17 JUDGE SCHAEER: Let's be back on the record  
18 after our morning recess. At this point I'm going to  
19 mark for identification certain documents. Marked for  
20 identification as Exhibit T-25 is a seven-page  
21 document entitled First Amended Testimony of Russ  
22 Smalley, and it's dated March 4, 1997 on the cover.

23 Marked for identification as Exhibit 26 is  
24 a map of Skylark Village.

25 Marked for identification as Exhibit 27 is

00104

1 a photocopy of a U S WEST Communications note to  
2 customer dated 2-13-97.

3                   Marked for identification as Exhibit 28 is  
4 a U S WEST Communications Note to Customer on door  
5 dated 2-17-97.

6                   Marked for identification as Exhibit T-29  
7 is the rebuttal testimony of Mr. Smalley.

8                   Marked for identification as Exhibit 30 is  
9 a single page document. Cover sheet that says RS-18  
10 and the document includes a business card from the  
11 Shriner Corporation.

12                   Marked for identification as Exhibit 31 is  
13 a document, cover sheet RS-19, two-page document  
14 appears to be an easement for underground  
15 communication lines.

16                   Are those all of the materials for your  
17 witness, Mr. Olsen?

18                   MR. OLSEN: Yes, Your Honor.

19                   JUDGE SCHAER: Go ahead, please.

20                   (Marked Exhibits T-25, 26 - 28, T-29, 30  
21 and 31.)

22                   MR. OLSEN: I have no further questions.

23                   JUDGE SCHAER: Did you wish to offer the  
24 exhibits?

25                   MR. OLSEN: I do wish to offer the exhibits



00105

1 into evidence.

2 JUDGE SCHAER: Is there any objection to  
3 the exhibits?

4 MS. DODGE: Yes, Your Honor. We have  
5 objections to portions of the direct and rebuttal  
6 testimony.

7 JUDGE SCHAER: All right. Would you tell  
8 us, please.

9 MS. DODGE: On page 2 of the direct  
10 testimony Mr. Smalley testifies that he's been at  
11 Skylark Village Mobile Home Park since March 20, 1991.

12 Page 2 of his direct testimony, lines 22  
13 through 25, he testifies as to matters that occurred  
14 in the early 1960s. These are beyond the witness's  
15 knowledge and have no foundation.

16 Similarly, direct testimony, page 3, lines  
17 6 through 13 concern testimony regarding matters that  
18 occurred since 1967, in 1978 and in 1987, all prior to  
19 his time at Skylark.

20 There are additional -- there's an  
21 additional reference to events since 1967 at page --  
22 lines 17 through 19 of page 3, and actually line 17  
23 through 25 on page 3 are again prior to his time at  
24 Skylark. Page 4 of the direct testimony, lines 14 --

25 JUDGE SCHAER: Just a moment. On page 3,

00106

1 lines -- you've already objected to 16 to 19. 20  
2 through 24. You're saying that these events in  
3 February of '91 and spring of '94 were before his  
4 time?

5 MS. DODGE: Well, only because line 24  
6 laps over to 25, but I'm not objecting to events in  
7 1994.

8 JUDGE SCHAER: And you believe that this  
9 1991 was before his time?

10 MS. DODGE: It was before his time as  
11 manager. It's possible that the lines 22 through 24  
12 should be a subject of cross rather than -- there is  
13 some indication that he may have observed this, so I  
14 will withdraw the objection and handle that on cross  
15 as to those three lines.

16 JUDGE SCHAER: All right. And then you're  
17 on page 4?

18 MS. DODGE: Yes. Page 4, lines 14 and half  
19 and 15. He's making a statement as to events from  
20 1967 through '95. I would object to the portion up  
21 until time within his personal knowledge, 1991. Pages  
22 -- page 6 at lines 8 through 16 there's testimony  
23 about original installation which occurred before his  
24 time at the park.

25 In his rebuttal testimony, page 4, lines 4

00107

1 through 6 date back to events in 1959. Lines 10  
2 through 13 concern events prior to 1991 and page 7,  
3 lines 10 and 11 again date back prior to 1991.

4 MR. OLSEN: What was that last reference?  
5 I'm sorry.

6 MS. DODGE: Page 7, lines 10 and 11.

7 JUDGE SCHAER: Any response, Mr. Olsen?

8 MR. OLSEN: Yes, Your Honor, may I voir  
9 dire Mr. Smalley?

10 JUDGE SCHAER: Yes, you may.

11

12 VOIR DIRE EXAMINATION

13 BY MR. OLSEN:

14 Q. Mr. Smalley, how long have you worked at  
15 Skylark Village?

16 A. Since March of 1991.

17 Q. And in preparation of your direct and  
18 rebuttal testimony, what investigation did you  
19 conduct?

20 A. A record search of our office files as well  
21 as the files calling our corporate office in Canada  
22 and asking them for any references made to telephone  
23 buried trenching, things of that matter.

24 Q. What records do you maintain at Skylark  
25 Village? Are you the records custodian at Skylark

00108

1 Village; is that correct?

2 A. Yes.

3 Q. And you keep the books and records for  
4 Skylark Village?

5 A. Yes.

6 Q. And what books and records do you maintain?

7 A. We maintain files on maintenance of park  
8 owned utilities, any bills that may come into the  
9 office for work done in the park.

10 Q. What is maintained in the maintenance  
11 files?

12 A. Any work done by Skylark Village or someone  
13 Skylark Village has hired, you know.

14 Q. Are there invoices?

15 A. Yes.

16 Q. Are there records of maintenance?

17 A. Yes.

18 Q. And what type of records of maintenance  
19 would be included in the maintenance files?

20 A. What are included in those are cable  
21 system, our water system within the park.

22 Q. So the park has its own privately owned  
23 cable system?

24 A. Yes.

25 Q. And those records are in your maintenance

00109

1 files?

2 A. Yes.

3 Q. Park has its own privately owned water  
4 system?

5 A. Yes.

6 Q. And those records are in your maintenance  
7 files?

8 A. Yes.

9 Q. What about landscaping records or records  
10 of other maintenance that goes on at the park?

11 A. Yes. There is records of landscaping.

12 Q. And are they in your maintenance files?

13 A. Yes.

14 Q. Would you expect that if Skylark Village  
15 had provided trenching anywhere in the park with  
16 regard to telecommunication or communication lines or  
17 for any other purpose, would records appear in your  
18 maintenance files?

19 A. Yes, there should be.

20 Q. And did you see any records in your  
21 maintenance files with regard to trenching for  
22 communication lines?

23 A. No. And also our corporate office had no  
24 record.

25 Q. Did you call your corporate office?

00110

1 A. Yes.

2 Q. And who did you speak with?

3 A. Ann Gilbert.

4 Q. Who is she?

5 A. She's the head secretary of the office.

6 Q. What is her job responsibilities, do you  
7 know?

8 A. She works directly with Mr. Steven Heinz,  
9 the owner.

10 Q. Does she keep other records in Canada  
11 separate from what you keep in --

12 A. Yes, she keeps records of all the parks.

13 Q. And do you know whether she conducted a  
14 records search?

15 A. Yes. She called me back and said that she  
16 couldn't find a thing.

17 Q. She couldn't find a thing with regard to --

18 A. With regard to trenching or any telephone  
19 service repairs.

20 Q. Is that with regard to the initial  
21 installation of the telephone lines?

22 A. She said she couldn't find anything at all  
23 so --

24 Q. And I would assume that also regards any  
25 maintenance and repair to telecommunications?

00111

1 A. Correct, yes.

2 Q. Do you keep accounting records also at  
3 Skylark Village?

4 A. As far as sending in all the bills we keep  
5 a photostatic copy of everything that comes through  
6 our office.

7 Q. I see. Do you maintain accounting records  
8 with regard to just the general business options for  
9 Skylark or is that done in Canada?

10 A. That's done in Canada, the main  
11 bookkeeping. We just keep the invoices that come  
12 through our office that are paid through the corporate  
13 office.

14 Q. Have you ever received an invoice from  
15 U S WEST with regard to the providing of  
16 telecommunication lines at Skylark Village?

17 A. No.

18 MR. OLSEN: No further questions.

19 JUDGE SCHAEER: Go ahead, Ms. Dodge.

20

21 VOIR DIRE EXAMINATION

22 BY MS. DODGE:

23 Q. Mr. Smalley, how far back do your records  
24 go that you keep in your office?

25 A. In my office they go back early 1987.

00112

1 Q. Do you have records in your office of the  
2 cable TV system installed in 1987 by Skylark?

3 A. Yes.

4 Q. Did you ask the records custodian in Canada  
5 how far back those records go?

6 A. No, I didn't.

7 MS. DODGE: Your Honor, there may be some  
8 foundation here for the 1987 and on records, but I  
9 still see no foundation for pre-1987 records.

10 JUDGE SCHAER: Let's look at your  
11 objections again. Looking at page 2 at the bottom, I  
12 believe it's your witness's testimony that these lines  
13 were installed in 1959. Seem to me that we don't have  
14 a dispute about the time period.

15 MS. DODGE: I don't believe there's a  
16 dispute about the time when the initial service lines  
17 were installed which I believe is 1959.

18 JUDGE SCHAER: Is there any dispute about  
19 whether or not the lines have conduit?

20 MS. DODGE: I believe there is potentially.  
21 It's not something that is conceded.

22 JUDGE SCHAER: So you don't know whether  
23 they have conduit or not. It appeared to me that  
24 perhaps the concern was about who had installed them  
25 and rather than -- I mean, I'm trying to sort out



00113

1 what's a concern to you and what isn't.

2 MS. DODGE: It's not sufficient to say that  
3 the lines were installed because the question here is  
4 not that the phone company installed lines, but who  
5 provided or paid for the trenching or conduit in which  
6 lines were placed.

7 JUDGE SCHAER: And I don't see anything  
8 here that states who did that. Do you?

9 MS. DODGE: Well, it doesn't state  
10 specifically, but in subsequent testimony this section  
11 is referred to as support for the claim that U S WEST  
12 provided trenching without complaint and comments of  
13 that sort.

14 JUDGE SCHAER: Well, I'm going to leave  
15 this in, but let's go on and look at some of these  
16 other statements.

17 Looking at page 3, I don't find the  
18 question at line 6 to 7 objectionable, because I  
19 believe that there is evidence by this witness of work  
20 since 1967; even if it's work since last week, it's  
21 1967.

22 Looking at lines 8 through 15, I'm going to  
23 not admit the sentence that begins in 1978 and ends  
24 with Washington Natural Gas because I don't see any  
25 foundation for that in anything your witness has

00114

1 described, Mr. Olsen, unless you have something  
2 further you would like to say about that.

3 MR. OLSEN: Yes, I would. Like to ask a  
4 couple of more questions of Mr. Smalley, if I can.

5 JUDGE SCHAEER: Okay.

6

7 VOIR DIRE EXAMINATION

8 BY MR. OLSEN:

9 Q. Mr. Smalley, on page 3, lines 9 through 10  
10 of your testimony you state in 1978 a new addition was  
11 added to Skylark Village 1 and new underground  
12 utilities were installed by Pacific Northwest Bell  
13 Puget Power and Washington Natural Gas. What is the  
14 basis for that statement?

15 A. I called our corporate office, talked to  
16 Mr. Steven Heinz and asked if we had done any  
17 trenching, doing any type of work other than putting  
18 in our water system and cable system in that new  
19 section, and he said no. And I talked to a few  
20 residents around and asked them who installed the  
21 telephone lines and they responded telephone company  
22 did.

23 Q. And you're an employee of Mr. Heinz; is  
24 that correct?

25 A. Yes.

00115

1 Q. And can you enter into agreements on behalf  
2 of Mr. Heinz?

3 A. Yes.

4 Q. For instance, if you need a new utility  
5 service provided for a new mobile home, can you on  
6 behalf of Mr. Heinz contact the utility provider and  
7 request that it be supplied?

8 A. Yes.

9 MR. OLSEN: Your Honor, Mr. Smalley is an  
10 agent for Mr. Heinz and can speak on behalf of the  
11 owner, is authorized to speak on behalf of the owner,  
12 and it's their collective knowledge that in 1978 a new  
13 addition was added to Skylark Village 1, and it's  
14 their collective knowledge that in 1978 new  
15 underground utilities were installed by Pacific  
16 Northwest Bell, Puget Power and Washington Natural  
17 Gas, and so I would ask that be allowed.

18 JUDGE SCHAER: Ms. Dodge.

19

20 VOIR DIRE EXAMINATION

21 BY MS. DODGE:

22 Q. Mr. Smalley, how long has Mr. Heinz been  
23 with the company?

24 A. Mr. Heinz is the company. He owns the  
25 mobile home parks and with investors.

00116

1 Q. Do you know when they purchased the mobile  
2 home parks?

3 A. Skylark Village I believe it was in 1975,  
4 purchased the property.

5 Q. Has Mr. Heinz ever worked at Belmor Mobile  
6 Home Park or been located there -- I'm sorry, it's  
7 Skylark Mobile Home Park?

8 A. Has he ever worked?

9 Q. Well, I understand he's the owner but has  
10 he ever been located at Skylark Mobile Home Park or  
11 overseen the day-to-day operations there?

12 A. He has come down, yes, and overseen some  
13 projects, yes.

14 Q. Certain projects?

15 A. Yes, from time to time.

16 Q. Are you aware of which projects he's  
17 overseen?

18 A. Some remodeling jobs. He relies on the  
19 manager on site to do most of that, though. He may  
20 come down and look and see exactly what's going on,  
21 and if there's something that he thinks needs to be  
22 changed he will tell me.

23 MS. DODGE: Your Honor, I still have a  
24 problem with this testimony because there's not  
25 sufficient foundation that Mr. Heinz would have

00117

1 followed this kind of incident, that he was there. If  
2 their records only go back to about 1987 it's not  
3 something he could have checked, and because this is  
4 such a specific issue, again, not just purely asking  
5 somebody did the phone company install lines but going  
6 to whether a bill was generated, whether people were  
7 hired or not, this kind of thing. It's quite specific  
8 and I don't think there's a foundation here for this  
9 testimony.

10 JUDGE SCHAER: Mr. Smalley, do you know  
11 whether Mr. Heinz was actively involved in supervising  
12 the new addition to Skylark Village in 1978?

13 THE WITNESS: Yes. He had to approve all  
14 the plans. It was an undeveloped piece of property.

15 JUDGE SCHAER: And so he was the person  
16 that was supervising that addition; is that correct?

17 THE WITNESS: Yes.

18 JUDGE SCHAER: And tell me again what you  
19 asked him about these underground utilities and what  
20 he told you.

21 THE WITNESS: I asked him what utilities  
22 the park had put in, and as far as the water, we put  
23 the water and the cable system in and he said we had  
24 not put any telephone lines, done any trenching or  
25 line laying for the utility of telephone.

00118

1                   JUDGE SCHAER: I'm going to allow this  
2 entire section on from page 3, line 6 to 15 to go in  
3 and allow you to cross-examine, Ms. Dodge, but I  
4 believe that we've elicited sufficient foundation to  
5 allow that statement to stay in.

6                   Looking at lines 16 through 19 on that  
7 page, I believe that that can remain in. If you look  
8 at the following answer there is testimony about  
9 things since 1967 that this witness has personal  
10 knowledge of, and the question could just as easily be  
11 asked since 1991, it appears, because he doesn't  
12 testify to anything before that so I don't think that  
13 harms your position in that time period.

14                   Looking now at page 4, lines 12 through --  
15 question at line 12 and the answer, I believe your  
16 concern about that is at line 14 through the end of  
17 the sentence on line 15; is that correct?

18                   MS. DODGE: That's correct.

19                   JUDGE SCHAER: Mr. Olsen, what is your  
20 response on that objection?

21                   MR. OLSEN: Our response would be the same  
22 response and we would offer the same voir dire that we  
23 offered earlier with regard to lines 14 and 15 on page  
24 4 of his direct testimony. Mr. Smalley has testified  
25 that he's inspected the books, that he's talked to the

00119

1 principals, that he's interviewed residents of the  
2 park and based on that information has concluded that  
3 Skylark Village or that U S WEST has never required  
4 Skylark Village to provide access to a trench or  
5 conduit for that period of time.

6           He's the records custodian at Skylark  
7 Village. He's the person who would know if anyone  
8 would know about what has taken place at the park  
9 because he has the records that demonstrate what has  
10 taken place at the park. He has testified that his  
11 books go back to 1987, but I haven't asked him whether  
12 that would include the maintenance files.

13           I understand that some of the books do go  
14 back to 1987, but I don't know that the testimony is  
15 clear with regard to the maintenance file and whether  
16 things like trenching for communications lines would  
17 be in the maintenance file before 1987.

18           JUDGE SCHAER: Okay. I am concerned about  
19 this statement regarding the period between 1967 and  
20 1987 both because looking at his testimony and the  
21 specific incidents that he refers to they appear to be  
22 from about 1991 on, and we have -- I have allowed the  
23 specific testimony about the addition so that's  
24 already covered. I don't think that this kind of a  
25 general statement has foundation for the period from

00120

1 1967 to 1987. If you want to say from 1987 to 1995, I  
2 would be inclined to allow that and allow you to  
3 cross-examine on it because you can inquire into what  
4 records were looked at and what he has knowledge of.

5 MR. OLSEN: I have no objection to that.

6 JUDGE SCHAEER: I'm going to then change  
7 line 15 where it states 1967 to state 1987.

8 Moving on to page 6 lines 8 through 16,  
9 what is your response there, Mr. Olsen?

10 MR. OLSEN: May I ask the witness a couple  
11 of more questions?

12 JUDGE SCHAEER: Certainly.

13 MR. OLSEN: Thank you.

14

15 VOIR DIRE EXAMINATION

16 BY MR. OLSEN:

17 Q. Mr. Smalley, with regard to the maintenance  
18 file, at what point do records in the maintenance file  
19 start? Is it true that your maintenance records begin  
20 as of 1987?

21 A. Well, as of when Mr. Heinz bought the park  
22 in 1975, actually.

23 Q. So the maintenance records that you  
24 reviewed as part of your investigation actually go  
25 back to 1975 as opposed to --



00121

1 A. Yes.

2 Q. -- 1987? What records were you referring  
3 to then with regards to the records that started in  
4 1987? Is that your accounting records or what exactly  
5 were you thinking about there?

6 A. Did I say 1987?

7 Q. I believe that you did. Is it your  
8 testimony that that should be corrected to 1975?

9 A. It should be, yes. I don't know why I said  
10 '87.

11 MR. OLSEN: Then I would ask that the last  
12 reference to 1987 be corrected to 1975 and ask that  
13 the testimony on page 6, lines 8 through 16, be  
14 qualified as to the period of time between 1975 and  
15 present day.

16 JUDGE SCHAER: Ms. Dodge.

17 MS. DODGE: With regard to page 6, lines 8  
18 through 9, that question concerns original  
19 installation which everybody seems to believe was  
20 about 1959, so certainly those lines ought to come  
21 out.

22

23 VOIR DIRE EXAMINATION

24 BY MS. DODGE:

25 Q. Mr. Smalley, could you tell me again,

00122

1 please, which records you reviewed in order to provide  
2 your testimony?

3 A. Yeah. Our maintenance records in our file.

4 Q. And how far back do those go?

5 A. They should go back to 1975.

6 Q. Where do you keep those records?

7 A. In our office.

8 Q. Where is your office located?

9 A. 900 29th Street Southeast The Office.

10 Q. Do you keep your records in file drawers or  
11 in boxes?

12 A. Both.

13 Q. What would you say your volume of records  
14 is? How many boxes or file drawers?

15 A. I've got four large boxes and two file  
16 cabinets of files. That's tenant files, maintenance  
17 files, permits. Just numerous other files just on a  
18 day-to-day basis we use.

19 Q. How far back do the records in Canada go,  
20 do you know?

21 A. They should go back to 1975 also.

22 Q. But you don't know?

23 A. If I have a copy of it in my file it should  
24 be in their file because we keep invoices for work  
25 done.

00123

1 MS. DODGE: Your Honor, I'm just concerned  
2 that the reference now has changed mid testimony along  
3 with some leading questions and maybe that's a  
4 credibility issue and not an issue of admission. I  
5 will leave it to your discretion.

6 JUDGE SCHAEER: Well, I am going to with  
7 this information go back to page 4 and change this  
8 reference at line 15 to 1975. On page 6, I'm going to  
9 strike the question and answer at lines 8 and 9. I  
10 believe Ms. Dodge is correct that we have no  
11 information about what happened in 1959 to 1960 time  
12 period regarding that, and we do already have specific  
13 information about additions in 1978 which can stand  
14 alone without any of this testimony.

15 As far as lines 10 through 16 I am going to  
16 leave them in with the understanding that they are  
17 qualified by with what we have heard from this witness  
18 that this is based on the best of his knowledge based  
19 on records that date back to 1975.

20 Looking at the rebuttal testimony, page 4,  
21 lines 4 through 6, again I'm concerned about the date,  
22 and Mr. Olsen, can we agree that that should be  
23 modified in some way to reflect this witness's  
24 knowledge since 1975?

25 MR. OLSEN: Yes. I would ask that the date

00124

1 1959 be changed to 1975.

2 MS. DODGE: And the reference to original  
3 installation then should be struck also, since --

4 JUDGE SCHAER: I think we should cross out  
5 "it was originally installed in 1959," leave "since"  
6 and include 1975. Does everyone agree that that would  
7 make this more accurate?

8 MR. OLSEN: No objection.

9 JUDGE SCHAER: Then looking at the  
10 objection to lines 10 through 13, I believe we've had  
11 testimony about new additions sufficient to leave this  
12 in the chart, Ms. Dodge.

13 Looking now at page 7 of your rebuttal  
14 testimony, lines 10 and 11, again, this is within the  
15 time period for which this witnesses has reviewed  
16 records, so I will overrule that objection.

17 Were there any other objections to the  
18 testimony?

19 With the changes, then, that have been  
20 described on the record testimony in Exhibit T-25 and  
21 Exhibit T-29 will be admitted. Was there any  
22 objection to any of the exhibits?

23 MS. DODGE: No, Your Honor.

24 JUDGE SCHAER: So Exhibits 26 through 28  
25 and 30 through 31 are also admitted.

00125

1 (Admitted Exhibits T-25, 26 - 28, T-29, 30  
2 and 31.)

3 JUDGE SCHAER: And I believe you indicated  
4 the witness is available for cross. Is that correct?

5 MR. OLSEN: Yes, Your Honor.

6 JUDGE SCHAER: Ms. Dodge.

7 MS. DODGE: Thank you, Your Honor.

8

9 CROSS-EXAMINATION

10 BY MS. DODGE:

11 Q. Mr. Smalley, you've testified that Skylark  
12 installed cable TV system in 1987; is that correct?

13 A. Yes.

14 Q. Are you aware whether that cable runs in a  
15 conduit or is direct buried in the ground?

16 A. It's direct buried.

17 Q. How do you know that?

18 A. I made repairs to it.

19 Q. How do you repair a cable TV wire?

20 A. By splicing it together.

21 Q. How do you reach it? How do you reach the  
22 cable?

23 A. You have to dig a trench around the break  
24 and repair it.

25 Q. When you splice something, how big a hole

00126

1 do you have to dig?

2 A. Depends on how big of a problem you have.  
3 If you have someone running a rototiller over a line  
4 for 50 feet you have to dig 50 feet.

5 Q. And if it cuts straight across the line  
6 like that you just repair that little section?

7 A. Yes.

8 Q. And then you just dig out, what, a foot or  
9 something?

10 A. Couple of feet, enough to get down to it  
11 and work on it.

12 Q. How do you determine where your cable TV  
13 line is broken or needs repair?

14 A. By the point of which service ends.

15 Q. So depending on which mobile homes still  
16 have cable and which don't you can pretty much  
17 accurately pinpoint?

18 A. Correct.

19 Q. Are you aware whether when the cable TV  
20 system was installed in 1987 -- first of all, is it  
21 correct that Skylark provided the trenching for that  
22 cable?

23 A. Yes.

24 Q. Are you aware whether anyone at Skylark  
25 checked with U S WEST or any other utility regarding

00127

1 their service lines in the area before you dug into  
2 the ground?

3 A. You have to call local utilities before you  
4 dig over 12 inches, so my answer would be yes.

5 Q. If you dig over 12 inches deep?

6 A. Yes.

7 Q. Are you aware whether any phone cable was  
8 laid at the time that the cable TV -- that the cable  
9 for the cable TV was laid?

10 A. I'm not aware of that.

11 Q. But there was trench around at the time  
12 you've testified?

13 A. Yes.

14 Q. If your cable TV system isn't working for  
15 several mobile homes, how do you know exactly or do  
16 you ever have a situation where the problem isn't  
17 exactly obvious?

18 A. Yes.

19 Q. And what do you do in that kind of a  
20 situation?

21 A. I call out our service technician.

22 Q. And they have a way of pinpointing the  
23 location?

24 A. Yes.

25 Q. Are you aware of what tools or process they

00128

1 use to pinpoint a cable problem?

2 A. Our service technician has a device that  
3 can detect leaks in line, in a service line of a cable  
4 TV pedestal, just from the street.

5 Q. So they're able to then dig pretty nearly  
6 exactly where the problem is?

7 A. Yes.

8 Q. Have you ever had a situation where you had  
9 to lay open huge stretches of cable to fix a pin-  
10 pointed problem?

11 A. No.

12 MS. DODGE: Your Honor, I have an exhibit  
13 for this witness that was produced in data requests  
14 but is not yet premarked.

15 JUDGE SCHAER: Why don't you go ahead and  
16 distribute it at this point. Let me remind everyone  
17 at this point also that we should strive to have  
18 everything that you hand in three-hole punched if you  
19 can.

20 MS. DODGE: Sorry, Your Honor.

21 JUDGE SCHAER: You've handed me four page  
22 document. States at the upper left-hand corner Joseph  
23 Dairy May 29, 1997 and we can mark that for  
24 identification as Exhibit 33.

25 MS. DODGE: Your Honor, I'm sorry, this



00129

1 should be marked confidential, and I apologize that  
2 it's not. It is a confidential document.

3 MR. OLSEN: It was marked confidential when  
4 it was provided to us.

5 MS. DODGE: That was on oversight in the  
6 last minute, I'm sorry.

7 JUDGE SCHAEER: Then I will mark this for  
8 identification as Exhibit C-33. I'm going to ask you  
9 to collect copies that you just distributed after this  
10 witness's testimony and get them properly identified  
11 as confidential per the protective order and placed in  
12 envelopes so that we can put them in notebooks that  
13 way.

14 (Marked Exhibit C-33.)

15 Q. Mr. Smalley, I've handed you what's been  
16 marked as Exhibit C-33. Do you have any understanding  
17 of why this document was not attached as an exhibit to  
18 your testimony?

19 A. No.

20 Q. Do you recognize any of the streets on this  
21 map?

22 A. 29th Street and M Street, yes.

23 Q. Does that appear to be the general location  
24 of Skylark Mobile Home Park?

25 A. On the opposite side of the 29th Street

00130

1 noted on the map, yes.

2 Q. I'm sorry, which page are you looking at?

3 A. Just the front.

4 Q. In the lower right-hand corner there are  
5 numbers that begin with F, F12?

6 A. 12D.

7 Q. So this is F12B?

8 A. D.

9 Q. And you note on the lower left-hand corner  
10 there is a handwriting that says Skylark Village and  
11 then there's a line looks like hand drawn across the  
12 map?

13 A. On the lower left?

14 Q. On the lower left.

15 A. Yes, I see Skylark Village, yes.

16 Q. And it is the case, is it not, that Skylark  
17 Village is located on 29th Street Southeast?

18 A. Yes, at 900.

19 Q. Like to turn your attention to the page  
20 that's marked F13 is in the lower right-hand corner.

21 A. Okay.

22 Q. And if you look at the circled area, the  
23 hand circled area, there's some handwriting that says  
24 Skylark Village 2?

25 A. Yes.

00131

1 Q. And you will note that the right-hand of  
2 that hand drawing appears to be on M Street Southeast  
3 near 32nd Street Southeast and 33rd Street Southeast?

4 A. Yes.

5 Q. Is that the location of Skylark Village 2?

6 A. Yes.

7 JUDGE SCHAER: I'm sorry, Counsel, I'm not  
8 seeing any of those street designations.

9 MS. DODGE: This is map F13.

10 JUDGE SCHAER: F13A?

11 MS. DODGE: Just F13.

12 JUDGE SCHAER: I'm sorry, thank you. That  
13 clarifies that. Now, where are the street  
14 designations?

15 MS. DODGE: In the upper right-hand corner  
16 there is a hand drawing that is circling an area. It  
17 is marked Skylark Village 2 and the right-hand tip of  
18 that oval that's drawn sits nearly on top of the  
19 designation M street southeast.

20 JUDGE SCHAER: Okay.

21 MS. DODGE: And there's also a notation of  
22 32nd Street Southeast and 33rd Street Southeast.

23 JUDGE SCHAER: Okay, thank you.

24 Q. Now, you've testified that in 1987 new  
25 phone lines were installed at Skylark Village 2; is

00132

1 that correct?

2 A. Yes.

3 Q. And that you don't recall whether -- you  
4 don't have any knowledge whether those were conduit or  
5 direct buried or anything else regarding the specifics  
6 of that installation?

7 A. No.

8 Q. If you note on this map inside the oblong  
9 circle on F13 there are some drawings that have lines  
10 going to them and the designation is OWN's two-inch  
11 PVC?

12 A. Yes.

13 Q. And you will note that -- do you have any  
14 understanding what that designation is?

15 A. It's two-inch PVC pipe.

16 Q. Do you have any knowledge whether "OWN's"  
17 refers to owner's two-inch PVC?

18 A. I have no knowledge of that, no.

19 Q. Then you will note there are also lines  
20 going to those, the same drawings, that say 5C and  
21 they have a series of numbers on the next line that  
22 ends 87A. Does that mean anything to you?

23 A. Where is that located?

24 Q. This would be inside the oblong hand  
25 drawn circle. There is what we'll call the PVC

00133

1 schematic, and the bottom leg of that schematic has  
2 some lines coming off of it that say 5C and the next  
3 line has a series of numbers and letters and the last  
4 number on that second line says 87A?

5 A. Okay, I see that.

6 Q. Does that mean anything to you?

7 A. No.

8 Q. But that would be consistent with 1987  
9 installation if that's what that represents?

10 A. I would assume so, yes.

11 Q. Then turning to map No. F13A.

12 JUDGE SCHAER: Counsel, I'm a little bit  
13 concerned about the detail we're going into without  
14 having this offered.

15 MS. DODGE: I'm sorry, Your Honor.

16 JUDGE SCHAER: Should we take care of that  
17 detail?

18 MS. DODGE: I would like to offer these  
19 into the record.

20 JUDGE SCHAER: Is there any objection?

21 MR. OLSEN: Yes. This is not a document  
22 created by Mr. Smalley. In fact, I think if I asked  
23 Mr. Smalley a few minutes ago it's the first time he's  
24 ever seen this document. He can't testify as to what  
25 "OWN's" means or what PVC means as it relates to this

00134

1 document. He's not the author of the document. Has  
2 no capacity to testify as to the document.

3 I have no objection to Ms. Dodge asking him  
4 questions about what he understands the document to  
5 be, but I object to its admission because he had  
6 nothing to do with the creation of the document. We  
7 don't even know if the document has to do with phone  
8 lines, I don't think, so I would object based on  
9 testimonial capacity, personal knowledge and  
10 authentication.

11 JUDGE SCHAER: Ms. Dodge.

12 MS. DODGE: Your Honor, this was a document  
13 produced in response to the complainant's data request  
14 that asked for information about the 1987  
15 installations of phone line at Skylark Village 2. It  
16 was produced to the complainants by U S WEST from  
17 their official records, and the witness has been able  
18 to testify as to street location, the address of  
19 Skylark Village.

20 He has testified he certainly has enough  
21 general knowledge to have recognized the designation  
22 for two-inch PVC pipe, and I think this is essentially  
23 an official document that should be able to come in.  
24 He can testify as to whatever he knows about it or  
25 within his understanding, what any of this means.

00135

1 JUDGE SCHAER: So this is a U S WEST  
2 document?

3 MS. DODGE: Yes.

4 JUDGE SCHAER: So why wasn't this included  
5 within your rebuttal testimony?

6 MS. DODGE: This was found after the  
7 rebuttal testimony was filed in response to very  
8 specific lists and inquiries by complainants which  
9 allowed U S WEST to find a number of additional  
10 documents specific to their inquiries which had not  
11 been located before. That process has been fully  
12 explained in the declaration of Jane Nishita, and most  
13 of those documents have been produced by complainants  
14 as part of their rebuttal testimony. This one was  
15 not.

16 JUDGE SCHAER: Well, I am not going to  
17 allow you to offer this through this witness. I can  
18 recognize when you read it to me that that said PVC,  
19 and that's probably plastic PVC pipe, and I cannot  
20 tell you what this is, so I don't think that's a fair  
21 standard to determine that he has sufficient knowledge  
22 to testify about this document.

23 We can all read the street names if you  
24 point them out to us closely enough. Some of us need  
25 more help than others, as I've evidenced, but I

00136

1 believe if the company has documents which are  
2 U S WEST records that it wants to include in this  
3 proceeding that it should offer them through U S WEST  
4 witnesses.

5           If you want to ask this witness questions  
6 that would find out whether he has enough familiarity  
7 to give you any useful information, you may do so, but  
8 I'm not going to let you put in an engineering drawing  
9 of U S WEST through a lay witness of another party,  
10 and if you have other U S WEST documents that you're  
11 planning to enter, you should include your witness's  
12 documents with your witness's testimony or even as a  
13 late-filed exhibit.

14           One of the reasons that we have prefilings  
15 in our proceedings is so that people are not taken by  
16 surprise by this kind of technical information where  
17 they may need someone like an engineer to tell them  
18 what it means. So if there's more of this I would  
19 suggest that you get it distributed so that people  
20 have a chance to look at it before you offer it  
21 through your own witness, and I will not admit the  
22 document at this time.

23           Q.     Mr. Smalley, turn your attention to Exhibit  
24 31, which I believe in your documents would be RS-19.  
25 Have you found that document?



00137

1 A. Yes.

2 Q. What is your understanding of what this  
3 document is?

4 A. Looks like an easement for, it says,  
5 underground communication lines.

6 Q. Do you have an understanding of what it  
7 permits with regard to the property?

8 A. Basically that the telephone company has  
9 the right to go through and make repairs to their  
10 existing services.

11 Q. That are located on Skylark's property?

12 A. Yes.

13 Q. Have you ever had any requests from a  
14 property owner that is a neighbor of Skylark to allow  
15 U S WEST or another service company to travel through  
16 Skylark's property to provide service to the neighbor  
17 or else they won't be able to get service?

18 A. No.

19 Q. Are you aware whether there are any  
20 neighboring properties that have no public access and  
21 would have to come through Skylark's property in order  
22 to reach them?

23 A. No, I don't believe so.

24 MS. DODGE: That's all I have for this  
25 witness, Your Honor.

00138

1 JUDGE SCHAER: Thank you. Questions from  
2 staff?

3 MS. SMITH: No questions from staff.

4 JUDGE SCHAER: Any redirect?

5 MR. OLSEN: Please, Your Honor.

6

7 REDIRECT EXAMINATION

8 BY MR. OLSEN:

9 Q. Mr. Smalley, you've testified about a cable  
10 system installed at the park. Does the park own that  
11 cable system?

12 A. Yes.

13 Q. What does that mean? How is it that the  
14 cable system is operated?

15 A. We operate it just like TCI would operate  
16 their cable service.

17 Q. So do you bill residents for the cable  
18 service?

19 A. Part of their service is included with  
20 their rent. There is -- we have some premium channels  
21 that we do offer that we have to go out and put traps  
22 or filters on the lines.

23 Q. And who maintains the cable system? Is it  
24 the park?

25 A. The park does, yes.

00139

1 Q. Whose decision was it to put in the cable  
2 system?

3 A. Mr. Heinz.

4 Q. Why was that decision made, do you know?

5 A. He just liked the idea of having our own  
6 cable service that we could provide tenants with a  
7 variety of different programming.

8 Q. Does the park have other services that it  
9 provides similar to cable systems?

10 A. Just our -- we have our own water system.

11 Q. What about a garbage system?

12 A. Yes. We collect our own garbage also.

13 Q. Do you own the phone system?

14 A. No.

15 Q. Do you maintain the phone system?

16 A. No.

17 Q. Do you know who maintains the phone system?

18 A. I assume U S WEST does.

19 Q. Have you ever been billed by U S WEST for  
20 maintenance of the phone system at Skylark Village  
21 Mobile Home Park?

22 A. No.

23 Q. Do you know whether any resident of the  
24 park has ever been billed by U S WEST for maintenance  
25 of the phone system at Skylark Village Mobile Home

00140

1 Park?

2 A. That I would not know.

3 Q. Has a resident ever contacted you and  
4 stated that they were being billed for repair services  
5 performed by U S WEST as Skylark Village Mobile Home  
6 Park?

7 A. In their homes, yes.

8 Q. What do you mean by "in their homes"?

9 A. Most residences have their own lines in the  
10 house.

11 Q. What about the phone service outside of  
12 their home? Have you been contacted by resident in  
13 Skylark Village regarding repair/maintenance of the  
14 phone service lines outside the home?

15 A. Yes.

16 Q. And have you been contacted by a resident  
17 regarding the outside phone service lines and U S WEST  
18 charging the resident for repair and maintenance of  
19 the outside phone service lines?

20 MS. DODGE: Your Honor, I would like to  
21 object to this line of questioning as being beyond the  
22 scope of cross.

23 JUDGE SCHAER: Mr. Olsen.

24 MR. OLSEN: I will withdraw the question,  
25 and no further questions.

00141

1 JUDGE SCHAER: All right. Is there  
2 anything further for this witness?

3 MS. DODGE: If I may have a moment, Your  
4 Honor.

5 JUDGE SCHAER: Certainly.

6 MS. DODGE: No further questions, Your  
7 Honor.

8 JUDGE SCHAER: Thank you for your  
9 testimony, Mr. Smalley.

10 Mr. Olsen, are you going to have some  
11 sorting to do through your next witness as well?

12 MR. OLSEN: No, Your Honor. We did that at  
13 the last break so we're prepared to examine Mr.  
14 Fricks.

15 JUDGE SCHAER: Why don't we get Mr.  
16 Fricks on the stand and then take our lunch break, or  
17 do we need to take our lunch break now?

18 MR. OLSEN: I would not object to taking  
19 our lunch break.

20 MS. SMITH: As a suggestion, we could get  
21 the documents marked and then once we're ready to go  
22 on that we can go on the lunch break and then  
23 after lunch start off with the examination.

24 JUDGE SCHAER: Okay.

25 MS. DODGE: Like to move forward, Your

00142

1 Honor, on whatever we can take care of.

2 JUDGE SCHAEER: Well, then, let's go ahead  
3 and move forward and take your next witness.

4 MR. OLSEN: Petitioners call Robert Fricks.  
5 Whereupon,

6 ROBERT FRICKS,  
7 having been first duly sworn, was called as a witness  
8 herein and was examined and testified as follows:

9

10 DIRECT EXAMINATION

11 BY MR. OLSEN:

12 Q. Would you state and spell your full name  
13 for the record?

14 A. My name is Robert Fricks, R O B E R T  
15 F R I C K S.

16 Q. What is your business address?

17 A. 3001 South 288th Street in Federal Way,  
18 Washington.

19 Q. What is your occupation and by whom are you  
20 employed?

21 A. General manager for Camelot Square Mobile  
22 Home Park employed by Camelot Square Mobile Home Park.

23 Q. In preparation for your testimony today,  
24 did you prefile testimony and exhibits?

25 A. Yes, I did.

00143

1 Q. Did that include both direct testimony and  
2 rebuttal testimony?

3 A. Yes, it did.

4 Q. Was that testimony, both direct and  
5 rebuttal, prepared by you?

6 A. Yes, it was.

7 Q. And do you have your testimony before you  
8 today?

9 A. Yes, I do.

10 Q. If I were to ask you the same questions  
11 that are asked in your prefiled direct and rebuttal  
12 testimony, would your answers be the same today as  
13 they were when your testimony was prepared?

14 A. Yes, they would.

15 MR. OLSEN: Then I would ask that Mr.  
16 Fricks's direct testimony with attached exhibits be  
17 marked for identification as well as his rebuttal  
18 testimony.

19 JUDGE SCHAER: Okay. I'm looking at  
20 -- refers to amended testimony of Robert Fricks dated  
21 March 4, 1997. And I will mark that for  
22 identification as Exhibit T-34.

23 The next document is titled at the top  
24 Washington Guidelines for Regulated Provisioning and  
25 designation at the bottom right-hand corner T-2. Mark

00144

1 that for identification as Exhibit 35.

2 Next document is two-page map Camelot  
3 Square Mobile Home Park, designation lower right-hand  
4 corner as T-3, and I will mark that for identification  
5 as Exhibit 36.

6 The next document is a letter to Mr. Fricks  
7 from Dewey Johnson, U S WEST letterhead, dated October  
8 26, 1995. And I will mark that for identification as  
9 Exhibit 37.

10 The next document is a letter, no  
11 letterhead, dated December 19, 1995 to property owner  
12 manager at Camelot Square from Mae Tse at U S WEST  
13 Communications. Mark that for identification as  
14 Exhibit 38.

15 Next document is handwritten letter to Bob  
16 Fricks from person with a first initial L. and appears  
17 a last name of Romonoff dated March 10, '96. And I  
18 will mark that as Exhibit 39 for identification.

19 Next there's a group of documents, three  
20 pages, estimates, Evergreen Utility Contractors,  
21 National Electrical Services and Glenco, Inc.,  
22 designation in the lower right-hand corner of T-7. I  
23 will mark that as Exhibit 40 for identification.

24 The next item is a letter on Short Cressman  
25 Burgess letterhead dated February 24, 1996 to Mae Tse



00145

1 at U S WEST from Walter Olsen. I will mark that as  
2 Exhibit 41 for identification. It looks to me like  
3 the next two letters should be together; is that  
4 correct?

5 MR. OLSEN: Yes, Your Honor.

6 JUDGE SCHAEER: Next document is the  
7 rebuttal testimony of Robert Fricks dated June 4,  
8 1997, mark that as Exhibit T-42 for identification.  
9 Then what of these remaining documents needs to be  
10 marked?

11 MR. OLSEN: None of the remaining documents  
12 attached as to Mr. Fricks's rebuttal testimony needs  
13 to be marked because they've been marked in prior  
14 testimony.

15 JUDGE SCHAEER: So those are identified  
16 documents. Let's take our lunch recess at this time.  
17 And when we return we'll take up the admissibility of  
18 these documents. It's 10 to 12 now. Let's be back at  
19 1:15 and we're off the record.

20 (Marked Exhibits T-34, 35, C-36, 37 - 41  
21 and T-42.)

22 (Lunch recess taken at 11:50 a.m.)

23

24

25

00146

1

AFTERNOON SESSION

2

1:20 p.m.

3

JUDGE SCHAER: Let's go back on the record  
4 after our lunch recess, and I believe that, Counsel,  
5 you indicated that over the lunch recess you were able  
6 to review exhibits and determine which should be  
7 marked as confidential exhibits; is that correct?

8

MS. DODGE: Yes, Your Honor. Exhibit 8.

9

JUDGE SCHAER: Exhibit 8 will be designated  
10 as Exhibit C-8.

11

MS. DODGE: Exhibit 14.

12

JUDGE SCHAER: Exhibit 14 will be  
13 designated Exhibit C-14.

14

MS. DODGE: Exhibit 15.

15

JUDGE SCHAER: Exhibit 15 will be  
16 designated Exhibit C-15.

17

MS. DODGE: Exhibit 23.

18

JUDGE SCHAER: Exhibit 23 will be  
19 designated C-23.

20

MS. DODGE: And Exhibit 36.

21

JUDGE SCHAER: And Exhibit 36 will be  
22 designated Exhibit C-36.

23

MS. DODGE: That's all, Your Honor.

24

JUDGE SCHAER: Thank you, Counsel. I've  
25 asked counsel at the next break to get a stamp that

00147

1 has the proper designation of "confidential per  
2 protective order" in this matter, which I believe Ms.  
3 Smith can make available, and to properly segregate  
4 these exhibits and envelopes with the stamp on them so  
5 that we can be certain that that confidentiality is  
6 respected.

7 I believe we're at the point that Mr.  
8 Fricks has been sworn in and identified and his  
9 exhibits have been marked for identification. Have  
10 they been offered, Mr. Olsen?

11 MR. OLSEN: No, they have not. I would  
12 offer them into evidence.

13 JUDGE SCHAEER: Is there any objections to  
14 materials sponsored by Mr. Fricks?

15 MS. DODGE: Yes, Your Honor. We object to  
16 certain portions of Mr. Fricks's testimony. Mr.  
17 Fricks testifies that he's been manager of Camelot  
18 Square Mobile Home Park since June 1, 1993. Over at  
19 page 2 of his direct testimony, lines 20 through 23 he  
20 testifies as to matters occurring in 1967. These are  
21 beyond the witness's knowledge and have no foundation.

22 Page 3, lines 6 through 8, concern matters  
23 in 1974. Lines 12 through 21 concern testimony  
24 regarding a time period since 1967.

25 Page 4, lines 1 and 2, concern testimony

00148

1 from the time period between 1967 to 1995, and in the  
2 portions where a range is given anything past -- I'm  
3 sorry -- prior to June 1, 1993 is the portion that we  
4 object to.

5 Page 5, lines 3 through 9, there's  
6 testimony concerning original installation which is a  
7 time period prior to the witness's knowledge or  
8 experience at the park.

9 And page 6, lines 1 and 2, there's  
10 testimony as to what was -- whatever happened at the  
11 park, again, prior to June 1, 1993 has no foundation.

12 In his rebuttal testimony at page 6, lines  
13 6 and 7, there is testimony again regarding 1967 and  
14 1974. These are beyond the witness's knowledge.

15 JUDGE SCHAER: Mr. Olsen.

16 MR. OLSEN: May I voir dire Mr. Fricks?

17 JUDGE SCHAER: Yes, you may.

18

19 VOIR DIRE EXAMINATION

20 BY MR. OLSEN:

21 Q. Mr. Fricks, who are the owners of Camelot  
22 Mobile Home Park?

23 A. It's a partnership. The owners are T. R.  
24 Gillespie and Stan DeLong.

25 Q. Are you authorized to speak on their

00149

1 behalf?

2 A. Yes, I am.

3 Q. Are you authorized to enter into agreements  
4 or contract on their behalf?

5 A. Yes, I am.

6 Q. How long has Camelot Square Mobile Home  
7 Park been owned by the present owners?

8 A. Since its inception. The property was  
9 owned by the present owners prior to becoming a mobile  
10 home park in 1967. They designed, developed and built  
11 the park themselves.

12 Q. And what did you review in preparation of  
13 your testimony?

14 A. Actually I reviewed basically four  
15 different areas. I pulled out and reviewed the  
16 original blueprints for the construction of the park  
17 and particularly composite plans, which the composite  
18 plans show the facilities for the mechanical plant  
19 that the owners installed at their own expense. That  
20 would be water, sewer, the original cable TV system,  
21 sprinkler system, landscaping and so forth, and again,  
22 all the areas that the owners are responsible for  
23 included in this composite plan is that is what was  
24 turned into the county for permits and approval. That  
25 is what the contractor used when the park was built.

00150

1 Telephone --

2 Q. This is at the time of the initial  
3 installation?

4 A. Yes, exactly.

5 Q. What services did you find in the composite  
6 blueprints?

7 A. I found the water, sewer, original cable TV  
8 system, sprinkler, storm drain. It also had a  
9 landscape plan and showed street contours.

10 Q. Why were these services included on the  
11 composite blueprints, do you know?

12 A. Yes. These are the areas that the owners  
13 of the property are responsible for installing or  
14 causing to be installed as part of the original  
15 development. So they were in their blueprints that  
16 were drawn up by their engineers and architects to  
17 give to their contractor to do.

18 Q. Did you find communication lines on the  
19 composite blueprint?

20 A. No.

21 Q. With regard to repair or maintenance or any  
22 service to these services after its initial  
23 installation, would they also be included in the  
24 composite blueprint?

25 A. Would you ask me that again, please.

00151

1 Q. If after the initial construction of the  
2 park the park undertook some maintenance of the  
3 services that you've identified, would they show up on  
4 the composite blueprint?

5 A. Yes, they would. We have the as-built  
6 which would be the original, and then any time any  
7 additions or changes are made there are supplemental  
8 blueprints filed with that for future reference.

9 Q. Did you review the supplemental blueprints  
10 as part of your investigation?

11 A. Yes.

12 Q. And what did you find there?

13 A. Again, that there were no upgrades or  
14 changes to the communications systems done for or done  
15 by the park owners.

16 Q. In preparation of your testimony, did you  
17 speak with anyone regarding the park?

18 A. I had spoken with both the owners.

19 Q. And what exactly did you speak with them  
20 about?

21 A. In regards to the original installation of  
22 the telephone lines as pertains to how they were  
23 installed, who installed them and who paid for them.

24 Q. What did they say?

25 A. And their response was that they did not

00152

1 pay or provide any trenching. They did not pay to  
2 have trenching done, and in fact one in particular was  
3 quite adamant about it, and as we were just talking  
4 about a mutual acquaintance who is doing some  
5 development work and got hit with a real hefty bill  
6 for that.

7 MS. DODGE: Your Honor, I believe this is  
8 going beyond the scope of the specific question.

9 A. Well, the answer to the question --

10 JUDGE SCHAEER: I'm going to overrule the  
11 objection and let the witness continue his answer .

12 A. What I was saying there is that the answer  
13 on the part of this particular owner, Stan DeLong, was  
14 so adamant that they didn't pay for it, what he was  
15 saying at this point in time, if they had to pay like  
16 that they never would have built it. So it was very  
17 clear in his mind and the answer was very clear to me  
18 that, no, they did not pay for that or provide it.

19 Q. Was that in regards to the original  
20 installation?

21 A. Yes.

22 Q. Was that also in regards to subsequent  
23 repairs and maintenance?

24 A. Yes.

25 Q. Was there anything else that you reviewed



00153

1 in preparation of your testimony today?

2 A. Two other areas. One is I did take a look  
3 at the financial reports and read over the list of  
4 depreciable assets and there is no entry there for  
5 trenching expenses, cabling expenses, anything of that  
6 nature. Also, in taking a look at the actual physical  
7 plant in the park and the drawings I found that the  
8 items that the owners either installed or paid to have  
9 installed are in a common trench, which of course  
10 would make sense. You're only going to dig one trench  
11 if you can. I have found subsequently in any  
12 excavating or repair work we've done or when we've had  
13 underground systems located as a precaution prior to  
14 digging the telephone cables are not in that common  
15 trench.

16 Q. Did you have reason to review the  
17 depreciation schedules for the park?

18 A. Yes, I did.

19 Q. What did you find?

20 A. I found that there was no category or entry  
21 on there for installation, trenching or cabling  
22 expenses for a telephone system.

23 Q. Did you find an entry for conduit?

24 A. No.

25 Q. In reviewing the accounting records, did

00154

1 you have reason to review the accounts payable files  
2 for the park?

3 A. Yes, I did.

4 Q. And what is in the accounts payable files?

5 A. The files that I have, the files that are  
6 still existent do not go back to 1967. There is  
7 nothing in the files that indicate or show any  
8 expenditures for anything of this nature. The files  
9 do not go back that far.

10 Q. How far do the files go back?

11 A. The oldest I could find was 1987.

12 Q. And in the accounts payable files, did you  
13 find an invoice or any invoice from U S WEST for the  
14 repair, maintenance or provision of trenching for the  
15 repair, maintenance of communication lines?

16 A. No.

17 MR. OLSEN: Your Honor, I have no further  
18 questions, but would argue that Mr. Fricks for the  
19 same reasons that Ms. Evans and Mr. Smalley are agents  
20 of the owners, can speak on behalf of the owners.  
21 This case is somewhat unique insofar as or Camelot  
22 Square is somewhat unique as compared to the other two  
23 because the owners who presently own Camelot Square  
24 have owned Camelot Square since its original  
25 development, and so Mr. Fricks is in a unique position

00155

1 to review the files of the owners from the inception  
2 of the mobile home and base his conclusions on the  
3 investigation that he made, and so I would offer his  
4 testimony and exhibits into evidence without  
5 exception.

6 JUDGE SCHAER: Ms. Dodge, did you have any  
7 questions on voir dire for this witness?

8 MS. DODGE: Yes.

9

10 VOIR DIRE EXAMINATION

11 BY MS. DODGE:

12 Q. Mr. Fricks, you mentioned certain  
13 blueprints for services that are owned by the park  
14 that therefore the installation was planned by the  
15 park; is that correct?

16 A. That's correct.

17 Q. Is it your understanding -- do you have an  
18 understanding of whether any private owner ever plans  
19 the layout for telecommunications lines that are  
20 installed by a phone company?

21 A. Based on my experiences at Camelot Square  
22 Mobile Home Park I would say no, that doesn't happen,  
23 but that's really outside the sphere of my knowledge  
24 or my training. It's the only project I've been  
25 involved in.

00156

1           Q.     Based on your experience, would you expect  
2 if the phone company had lines that they wanted to  
3 place they would plan those by their own engineering  
4 people and come in and either install them or instruct  
5 someone where to dig a trench if that's what they  
6 wanted?

7           A.     I think that would be reasonable, yes.

8           Q.     So we can't necessarily expect there to be  
9 a blueprint of telecommunications line layouts within  
10 your park records?

11          A.     Well, the only reason I wouldn't expect  
12 necessarily to find it would be if the owners had in  
13 fact planned it as part of their original thing, yes.

14          Q.     And did I understand you to say that all of  
15 the services that the park owns exist in a common  
16 trench?

17          A.     Yes.

18          Q.     So that you've got water lines and cable  
19 lines, electrical cable lines running in the same  
20 trench?

21          A.     The park doesn't own the electrical lines.

22          Q.     Well, for example, the cable TV line that  
23 would work through electrical impulses, as best I  
24 understand it?

25          A.     Correct.

00157

1 Q. Have you ever experienced any problem with  
2 water seepage into your electrical cables?

3 A. No.

4 Q. Do you have an understanding, Mr. Fricks,  
5 of what the purpose of depreciation accounts is?

6 A. A general understanding, a layman's  
7 understanding.

8 Q. Would it be your understanding that a  
9 business owner has a depreciation account for every  
10 cost or expense or item that they own?

11 A. No, some things you can write off 100  
12 percent.

13 Q. Do you have an understanding whether  
14 conduit would be the kind of thing that would fall  
15 under an item that's normally depreciated or whether  
16 it would fall outside of what is normally considered  
17 to be a depreciable expense?

18 A. I've been told by our CPA that that would  
19 be depreciable over a substantial period of time.

20 Q. Would that depend on the amount of conduit  
21 involved, the initial investment, for example?

22 A. That I don't know.

23 Q. When you reviewed your accounts payable  
24 back to 1987, did you find any record regarding  
25 installation of a cable television system at Camelot?

00158

1           A.     Yeah.  In fact, I caused to be installed  
2 all the -- or rebuild a cable TV system in 1994.

3           Q.     Did you have a single contractor do all of  
4 that work?

5           A.     Yes, I did.

6           Q.     So there was one bill that came to you for  
7 that entire system?

8           A.     Well, actually it was billed over a period  
9 of time but from one contractor.

10          Q.     Did you find any accounts payable that  
11 showed labor expenses in and of themselves of any  
12 kind?

13          A.     Yes, I did.  Painting, plumbing repairs,  
14 labor costs, plumbing repairs.  Some labor bills for  
15 street repair.

16                   MS. DODGE:  Those are all the questions  
17 that I have.

18                   JUDGE SCHAEER:  Well, I'm going to overrule  
19 your objection to this witness's testimony.  I believe  
20 that voir dire has elicited that he did have direct  
21 information from the owners who have owned this  
22 property from the time it was built on the specifics  
23 of who paid for the installation of the system at the  
24 time it was put into the ground, so all of this  
25 testimony will be admitted.

00159

1 (Admitted Exhibits T-34 and T-42.)

2 JUDGE SCHAER: Had you also offered his  
3 exhibits?

4 Is there any objection to any of the  
5 exhibits?

6 MS. DODGE: No objection, Your Honor.

7 JUDGE SCHAER: Those will be admitted as  
8 well.

9 (Admitted Exhibits 35, C-36, 37 - 41.)

10 JUDGE SCHAER: Is this witness available  
11 for cross or did you have further questions for him?

12 MR. OLSEN: No further questions.

13 JUDGE SCHAER: Ms. Dodge.

14 MS. DODGE: Thank you, Your Honor.

15

16 CROSS-EXAMINATION

17 BY MS. DODGE:

18 Q. Mr. Fricks, I believe you testified that  
19 you caused to be installed a television cable system?

20 A. That's correct.

21 Q. Was that in 1994?

22 A. Yes.

23 Q. I also understand from your testimony that  
24 you had numerous repair calls regarding  
25 telecommunications problems beginning in 1995/1996?

00160

1           A.     Actually, that information was relayed to  
2 me from a U S WEST employee.

3           Q.     But it's your understanding that?

4           A.     Yes.

5           Q.     That comports with your understanding?

6           A.     That is my understanding.

7           Q.     And it's correct that that TV cable was not  
8 laid in conduit?

9           A.     No, it wasn't.

10          Q.     Did you call U S WEST before you began  
11 digging for the television system or any other  
12 utilities?

13          A.     We called Underground Locators.

14          Q.     And what are those?

15          A.     That is -- call it a clearing house, if you  
16 will. It's just one number that you call before you  
17 do any digging. It is their responsibility to locate  
18 -- or not locate but to contact any utility providers  
19 or any agency that might have something underground at  
20 that location. They contract and do the locating, is  
21 my understanding, for most of them. Some cable  
22 companies and stuff do their own, but again, it's a  
23 clearing house. You call the one number and then they  
24 take care of contacting anyone that needs to come to  
25 the property to do the locating, the marking.



00161

1 Q. And did anyone come to the Camelot property  
2 and mark cables and lines?

3 A. Yes, they did.

4 Q. Do you have an understanding of whether  
5 U S WEST provided such marking?

6 A. Actually, it's my recollection it was done  
7 by Underground Locators.

8 Q. So they sent someone to try to locate and  
9 mark various cable?

10 A. That's correct.

11 Q. Do you know whether in the process of  
12 digging that cable TV trench whether any cables were  
13 hit?

14 A. Before I answer that question, I would like  
15 to say one thing. Actually we didn't dig a trench.  
16 We plowed in the cable, and there is a difference.  
17 But to answer your question, yes, we did cut a couple  
18 of drop lines.

19 Q. Would those be telecommunications drop  
20 lines?

21 A. Yes.

22 Q. And you said that you cut a couple. Do you  
23 have an understanding of whether any other cables were  
24 nicked during that process, maybe not severed but  
25 possibly nicked?

00162

1           A.     That would be very unlikely in that our  
2 cable, main cable lines, only went down nine inches.

3           Q.     What is your understanding with regard to  
4 the depth at which telecommunications lines are buried  
5 on Camelot's property?

6           A.     My understanding is that they would be  
7 nothing less than twelve inches deep.

8           Q.     So we're talking about three-inch clearance  
9 in ground?

10          A.     Uh-huh.

11          Q.     So it's possible that some error in digging  
12 could cause some nicking to occur?

13          A.     It's possible that the telephone cable may  
14 not be as deep as it should have been, but as far as  
15 the cable going deeper I don't think that is possible  
16 because it is set. There's an attachment, a plow  
17 attachment, on a tractor that's set specifically with  
18 hydraulics to only go into the ground so far, so that  
19 wouldn't vary.

20          Q.     Did anyone ever express to you the opinion  
21 that there were numerous nicks and damage to the  
22 cable, the telecommunications cable and service lines,  
23 on Camelot's property that were causing some  
24 deterioration in the lines?

25          A.     What I was told by Mr. Dewey Johnson was

00163

1 that there was moisture in the lines which can be  
2 caused by nicks. It can be caused by just a little  
3 bit of ground movement, settling rocks rubbing against  
4 the cable. If it's put in conduit, and it's quite  
5 common over time, the way the sheathing is on the  
6 cable laying on the cable deteriorates over time and  
7 does allow moisture to infiltrate into the cable.

8 Q. So that kind of deterioration has been a  
9 problem at Camelot over the last several years?

10 A. That's what I'm being told by the phone  
11 company engineers.

12 Q. And do you have any understanding of  
13 whether it's possible for the earth to wash away or  
14 settle over time in a way that might affect the depth  
15 at which a cable is buried over time?

16 A. You know, I wouldn't rule that out, but I  
17 couldn't give you an intelligent answer to that.

18 Q. You mentioned that trenching and plowing  
19 are two separate things. Why don't you explain to me  
20 your understanding of the difference between trenching  
21 and plowing.

22 A. My understanding is that trenching is  
23 actually digging, displacing earth, either by hand,  
24 backhoe or whatever it might be, but the end result is  
25 you have an open hole in the ground. Plowing is done

00164

1 mechanically. It doesn't involve opening up the earth  
2 with the exception of where the plow goes in there's a  
3 split maybe one to two inches wide. It forces the  
4 cable in and the ground closes back behind it so there  
5 is no open trenches.

6 Q. And there's a machine that will feed that  
7 cable and lay it at the same time?

8 A. Yes.

9 Q. Is that how the cable television system was  
10 installed?

11 A. Yes.

12 MS. DODGE: That's all I have for this  
13 witness, Your Honor.

14 JUDGE SCHAEER: Commission staff have any  
15 questions?

16 MS. SMITH: Couple of questions.

17

18 CROSS-EXAMINATION

19 BY MS. SMITH:

20 Q. Are you an accountant?

21 A. No, I'm not.

22 Q. Are you a telecommunications engineer?

23 A. No, I'm not.

24 MS. SMITH: No more questions.

25 JUDGE SCHAEER: Any redirect, Mr. Wilson?

00165

1 MR. OLSEN: Briefly, Your Honor.

2

3 REDIRECT EXAMINATION

4 BY MR. OLSEN:

5 Q. Mr. Fricks, you testified about cutting  
6 some drop wires. What do you mean by drop wires?

7 A. Drop wire would be -- what I'm calling a  
8 drop wire, may not be using the term correctly --  
9 would be the wire going between the pedestal and the  
10 tenants or in this case the phone company's customer's  
11 home.

12 Q. Is that buried wire?

13 A. Yes. Typically real close to the surface,  
14 but buried, yes.

15 Q. And how is it that you actually cut the  
16 drop wires?

17 A. Well, I wasn't there to see it happen, but  
18 I would expect that probably the man running the  
19 tractor got a little closer to the marked areas than  
20 he should have.

21 Q. How was it learned that the drop wires had  
22 been cut?

23 A. I got a call from a couple of tenants that  
24 the phones didn't work.

25 Q. Then what happened?

00166

1           A.     We called the phone company and they were  
2 repaired.

3           Q.     Did you receive a bill for that?

4           A.     No, I didn't.

5           Q.     Do you know whether the tenants received a  
6 bill for that?

7           A.     I was never told that they did, which I  
8 would expect to have happened.

9           Q.     Did you ever learn of actual buried service  
10 wire being cut? What I mean by buried service wire is  
11 everything but drop wire in the park.

12          A.     No.

13                   MR. OLSEN: No further questions.

14                   JUDGE SCHAEER: Anything further for this  
15 witness?

16                   MS. DODGE: Just one question on recross,  
17 Your Honor.

18

19                                   REXCROSS-EXAMINATION

20 BY MS. DODGE:

21           Q.     When you learned that certain  
22 telecommunications cables had been cut, did you ask or  
23 clarify at that time specifically whether service  
24 lines or drops were involved?

25           A.     I saw the lines myself, and what they were

00167

1 was a small twisted pair, actually had four wires in  
2 it, which to me, my definition, that's a drop line.

3 Q. You're not sure in terms of what a  
4 telecommunications engineer might describe as a  
5 service line or drop, what that might be called?

6 A. Well, I don't know what an engineer would  
7 call it, but again, to clarify, if it's got two  
8 twisted pair, four wires, between a pedestal and a  
9 house, that's my definition of a drop line. Obviously  
10 I'm not a telecommunication engineer. I'm not sure if  
11 they would agree with that.

12 MS. DODGE: That's all.

13 MR. OLSEN: Nothing further.

14 JUDGE SCHAER: So I understand, you're  
15 saying that you saw the places where these wires were  
16 cut were between the pedestal at the street and the  
17 home?

18 THE WITNESS: Actually it's not at the  
19 street. The pedestal is in a greenbelt but between  
20 the pedestal and the home, yes.

21 JUDGE SCHAER: Anything further for this  
22 witness? Thank you for your testimony, Mr. Fricks.

23 Anything further to present?

24 MR. OLSEN: No further witnesses.

25 MS. DODGE: We call Theresa Jensen.

00168

1 Whereupon,

2 THERESA JENSEN,

3 having been first duly sworn, was called as a witness

4 herein and was examined and testified as follows:

5

6 DIRECT EXAMINATION

7 BY MS. DODGE:

8 Q. Ms. Jensen, would you state your name and  
9 business address for the record?

10 A. Theresa A. Jensen, J E N S E N, 1600  
11 Seventh Avenue, Room 3011.

12 Q. Ms. Jensen, did you cause testimony to be  
13 prefiled in this docket?

14 A. Yes, I did.

15 MS. DODGE: Shall we mark the testimony and  
16 exhibits now?

17 JUDGE SCHAER: We can do that if you would  
18 like, certainly. Marked for identification is Exhibit  
19 T-43, the direct testimony of Theresa A. Jensen dated  
20 April 7, 1997.

21 MS. SMITH: Excuse me, may I please get  
22 that exhibit reference again?

23 JUDGE SCHAER: T-43. While we're talking  
24 about exhibit numbers let me state on the record that  
25 there is no Exhibit 32. You just have a judge who has



00169

1 new bifocals. Not used to them.

2                   Marked for identification as Exhibit 44 is  
3 four pages from U S WEST tariff WN U-31. Marked for  
4 identification as Exhibit 45 is sixth page from tariff  
5 WN U-31.

6                   MS. DODGE: Your Honor, is that the old  
7 TAJ-2 you're referring to?

8                   JUDGE SCHAEER: Yes, looking at TAJ-2.  
9 Marked for identification as Exhibit 46 is Exhibit  
10 TAJ-3. States A Tariff History 4.6.A.2.f. It's a  
11 number of pages.

12                   Marked for identification as Exhibit 47 is  
13 Exhibit TAJ-4 which has a heading at the top Policies  
14 of Other Utilities Regarding Trenching with multiple  
15 pages.

16                   Marked for identification as Exhibit 48 is  
17 TAJ-5 which is testimony of Thomas L. Wilson, Jr., and  
18 the transcript page from docket No. UT-951240.

19                   Marked for identification as Exhibit 49 is  
20 TAJ-6 which is a number of definitions, and then  
21 number of all cancelled tariff pages or are there some  
22 current tariff pages in this?

23                   Marked for identification as Exhibit 50 is  
24 it TAJ-7, just a copy of an E-mail message to Mary at  
25 WUTC POUTIL dated first date August 8, '94. And then

00170

1 a second E-mail message in this exhibit as well.

2                   Marked for identification as Exhibit 51 is  
3 a U S WEST internal memoranda and a marked up  
4 memorandum or letter, and copy of something entitled  
5 A Message to Trailer Park Residents.

6                   Marked for identification as Exhibit T-52  
7 is the rebuttal testimony of Theresa A. Jensen.

8                   Marked for identification as Exhibit 53 is  
9 TAJ-9 which was an advice letter followed by some  
10 tariff pages.

11                   Marked for identification as Exhibit 54 is  
12 TAJ-10 which, again, which is a letter to Paul  
13 Curl, Secretary of the Washington Utilities and  
14 Transportation Commission, with an attachment and a  
15 number of tariff pages.

16                   Marked for identification as Exhibit 55  
17 appears to be two pages of prefiled testimony by  
18 Thomas L. Spinks in a docket which is not identified  
19 in the exhibit.

20                   Marked for identification as Exhibit 56 is  
21 Exhibit TAJ-12 consists of a letter from assistant  
22 attorney general Sally Brown to Administrative Law  
23 Judge Christine Clishe.

24                   Marked for identification as Exhibit 57 is  
25 TAJ-13, second supplemental order in docket No.

00171

1 UT-920474, and that's it for that one.

2                   Marked for identification as Exhibit 58 is  
3 TAJ-14, designated Appendix A Stipulated Settlement in  
4 docket No. UT-920474. Is there a TAJ-15?

5                   MS. DODGE: Yes, there is, Your Honor.

6                   JUDGE SCHAEER: Is that a confidential  
7 exhibit?

8                   MS. DODGE: It is not. I will show you.

9                   JUDGE SCHAEER: Let's go off the record for  
10 a moment.

11                   (Discussion off the record.)

12                   JUDGE SCHAEER: Back on the record. When we  
13 were off the record I located my copy of Exhibit  
14 TAJ-15. Marked as Exhibit 59 for identification, it's  
15 a multi-page document. First page indicates it's a  
16 draft -- actually all the pages look like they're  
17 draft tariff pages.

18                   Marked for identification as Exhibit 60 is  
19 TAJ-16. Single page document indicates it was faxed  
20 from Theresa Jensen to Sally Brown.

21                   Marked for identification as Exhibit 61 is  
22 TAJ-17. Appears to be cross-examination testimony of  
23 someone named Williams being cross-examined by someone  
24 named Brown with no number indicator;  
25 cross-examination of someone named Williams by someone

00172

1 named Koontz, K O O N T Z.

2                   Marked for identification as Exhibit 62 is  
3 TAJ-18. It's a cover note. This one named Theresa  
4 Jensen to Mr. Spinks and followed by a number of  
5 tariff pages.

6                   Marked for identification as Exhibit 63 is  
7 TAJ-19, a letter to Paul Curl, acting secretary of the  
8 Commission, from G.A. Walker, U S WEST -- at that time  
9 actually Pacific Northwest Bell -- and followed by a  
10 tariff sheet.

11                   TAJ-20 marked for identification as Exhibit  
12 64. Appears to be a draft tariff sheet, advice letter  
13 followed by some more tariff pages.

14                   TAJ-21 marked for identification as Exhibit  
15 65 is another advice letter to Mr. Curl from an  
16 unknown person and behind it is a summary of activity.

17                   Marked for identification as Exhibit 66 is  
18 TAJ-22 and this is a document from Skylark Village  
19 Mobile Home Park directed to U S WEST signed by Cindy  
20 Smalley.

21                   (Marked Exhibits T-43, 44 - 51, T-52, 53 -  
22 66.)

23           Q.     Ms. Jensen, your prefiled direct and  
24 rebuttal testimony and exhibits in this docket now  
25 referred to as T-43 through Exhibit 66 --

00173

1 A. Yes.

2 Q. -- was that testimony prepared by you or  
3 under your direction and control?

4 A. Yes, it was.

5 Q. Is it true and correct to the best of your  
6 knowledge?

7 A. Yes, it is.

8 Q. Do you have any additions or corrections to  
9 that testimony?

10 A. Not at this time. There may be a statement  
11 in my testimony concerning no information available on  
12 a particular incident sited where the complainant has  
13 actually provided some information.

14 Q. And if I were to ask you these questions  
15 contained therein today, would your answers be  
16 substantially the same?

17 A. Yes, they would.

18 MS. DODGE: Like to offer these exhibits  
19 for admission.

20 JUDGE SCHAEER: At this point, Mr. Olsen, do  
21 you want to take up your motion to strike?

22 MR. OLSEN: Yes. Your Honor, in January of  
23 1997 the petitioners served their first data requests,  
24 and in those data requests there were specific  
25 questions. Question No. 37 asked U S WEST if it ever

00174

1 provided trenching at Camelot Square, Skylark Village  
2 or Belmor Park. Question No. 38 asked for the  
3 documents which provided the basis for U S WEST's  
4 answer to No. 37, and since January 1997 petitioners  
5 have been attempting to get this repair information  
6 and these trenching records.

7           We renewed our request with a second series  
8 of data requests, and at that point a record from a  
9 Mike Spivey at U S WEST was produced. Initially in  
10 response to the first data request U S WEST response  
11 was that our records do not provide enough detail to  
12 give you this information. Our second request was  
13 responded with Mr. Spivey's records.

14           Our third request was an informal request  
15 shortly before later motion to compel, and we did not  
16 receive any records in response to our formal request.  
17 We brought a motion to compel that was heard via  
18 conference call between the parties of record, and the  
19 result of that motion to compel was to provide certain  
20 information to the petitioners. Information was  
21 provided. As I understand it, it was obtained but the  
22 pattern of disclosure here has been one replete with  
23 petitioners ask a question, we don't have enough  
24 detail. Petitioners ask again. Well, maybe we can  
25 give you a little more. Petitioners bring a motion to

00175

1 compel. Well, maybe there is a little more.

2           And so I at this point have no credibility  
3 -- I have no comfort level with the fact that we've  
4 been provided full and complete information, and I say  
5 that because one of the products of our motion to  
6 compel was a list of third party contractors that  
7 U S WEST hires to perform repairs and trenching at  
8 each of the mobile home parks. Upon receipt of that  
9 list I issued subpoenas to everyone looking for repair  
10 records. There were about 15 contractors who were  
11 involved, and two of the contractors, WACO and  
12 Northwest, actually had records, records with U S  
13 WEST's letterhead on them, records on U S WEST's  
14 preprinted forms, records -- a specific record that we  
15 were especially interested, titled Buried Service Wire  
16 Sketch/Forms, which included drawings of trenching  
17 that had been performed at each of the parks  
18 collectively between WACO and Northwest.

19           Upon receipt I mailed them to U S WEST and  
20 a few days later I get them mailed back to me in  
21 response to our earlier data requests. I'm not sure  
22 why these records were not produced in January when we  
23 first asked for them, but I think they should have  
24 been produced then.

25           Although the hearing was scheduled for June

00176

1 10, I can't help but think that if we had continued  
2 this process additional records would have been  
3 produced because that's just the pattern that has  
4 taken place over the last six months now, five months.  
5 We ask for records, a little bit comes in, we ask for  
6 some more records, more comes in.

7           The purpose of these records are  
8 threefold, and I have listed them in my moving papers.  
9 Initially, I believe that this case is one largely of  
10 tariff interpretation, and one of the burdens that  
11 I've accepted on behalf of the petitioners is to  
12 demonstrate that the tariff has been interpreted to  
13 not require the petitioners to provide trenching and  
14 repairs and maintenance of service cable until just  
15 recently in 1995 or 1996, so I really see these  
16 records as part of petitioner's case in chief with  
17 regard to what they need to prove.

18           It's also very important with regard to  
19 rebutting certain statements made by Ms. Jensen in her  
20 direct testimony. In her direct testimony, Ms. Jensen  
21 makes statements such as "our records do not contain  
22 sufficient detail. Our records do not reflect that  
23 repair and maintenance or trenching was provided," and  
24 with these records, which we've received some by WACO  
25 and the Northwest, we are able to rebut that



00177

1 testimony.

2                   And finally, the third basis or the third  
3 purpose for these records is that Ms. Jensen has  
4 offered testimony regarding an unwritten what sounds  
5 like informal policy that distinguishes between  
6 trenching provided when it involves more than 300 foot  
7 of trenching or less than 300 foot of trenching. We  
8 asked for specific regards with regard to the summer  
9 of 1995 at Belmor Park which Ms. Evans in her direct  
10 testimony testified was well over 300 feet. If  
11 sufficient records had been provided in response to  
12 that repair we would be able to rebut the fact that  
13 there is this informal unwritten 300 foot policy,  
14 which, I might point out, is coincidentally the same  
15 length of the trench provided at Belmor, which are  
16 demonstrated by the Mike Spivey records. Mike Spivey  
17 records have notations on them that 300 feet four-inch  
18 PVC.

19                   And so ultimately we ask that Ms. Jensen's  
20 testimony as it relates to U S WEST's trenching  
21 practice be stricken insofar as U S WEST has not  
22 provided sufficient responses to our data requests and  
23 has not allowed us to both present our case regarding  
24 their past practice in trenching and also rebut Ms.  
25 Jensen's testimony with regard to U S WEST's past

00178

1 practices in trenching. There is a series of case  
2 law regarding spoliation and the negative inference  
3 that can arise when a party fails to produce  
4 responsive records to data requests.

5           And I've cited the most recent Supreme  
6 Court case in our moving papers, and I would just  
7 suggest that to the extent that U S WEST has failed to  
8 produce the records that they rely on for the  
9 proposition that they have not provided this trenching  
10 at their own expense that a negative inference be  
11 created; that such evidence if it was produced would  
12 be unfavorable to U S WEST much like the repair  
13 records that have been produced seem to indicate, as I  
14 interpret them, are unfavorable to U S WEST. So I  
15 would ask that Ms. Jensen's testimony be stricken, and  
16 that a negative inference be entered with regard to  
17 the documents that were not produced.

18           JUDGE SCHAER: I believe that you list all  
19 of the portions that you seek to have stricken on page  
20 9 of your motion; is that correct?

21           MR. OLSEN: Yes.

22           JUDGE SCHAER: And all of these appear to  
23 be on her direct testimony and none on her rebuttal.  
24 Is that also correct?

25           MR. OLSEN: Yes.

00179

1                   JUDGE SCHAER: Let's go through those one  
2 at a time if we could. First portion that you seek to  
3 have stricken is page 3, lines 12 through 16. And are  
4 you contesting whether this language appeared in the  
5 tariff during that time?

6                   MR. OLSEN: No.

7                   JUDGE SCHAER: So should we -- I would do  
8 this as saying this language has been in the tariff  
9 since that time and also is given Ms. Jensen's  
10 interpretation of what that tariff language means, and  
11 I really don't see any purpose in terms of your  
12 argument to striking this.

13                   MR. OLSEN: Yes. I withdraw that  
14 reference.

15                   JUDGE SCHAER: This will remain in her  
16 testimony.

17                   MR. OLSEN: I guess the objection that I  
18 had to that language, the specific language in her  
19 answer which appears to be a legal conclusion that  
20 requires the property owner/customer to provide the  
21 supporting structure. To the extent that that's her  
22 interpretation then I would have no objection, but to  
23 the extent that it is a legal conclusion which is  
24 unsupported by U S WEST documents that they failed to  
25 produce us, that's why it was included in the initial

00180

1 list.

2 JUDGE SCHAER: Okay. Well, I am not going  
3 to allow Ms. Jensen to provide testimony on legal  
4 conclusions. I will allow all parties to provide  
5 briefing in that area, but I would interpret any  
6 testimony that she offers as being her interpretation  
7 of what the tariff language means. Is that how it was  
8 offered, Ms. Dodge?

9 MS. DODGE: Your Honor, it is offered as to  
10 her opinion. She also has particular expertise  
11 regarding the content of tariffs because of her  
12 position within the company, but we will be happy to  
13 brief the legal tariff issues.

14 JUDGE SCHAER: You're not asking me to  
15 accept this as a legal conclusion because she's  
16 testified to it; is that correct?

17 MS. DODGE: I believe Ms. Jensen is  
18 qualified to give an opinion about what the tariffs  
19 provide. I suppose it does come down to her opinion  
20 and to the extent it's legal interpretation the  
21 attorneys can find out.

22 JUDGE SCHAER: That's kind of how I view  
23 it, too. I would not read any witness's testimony in  
24 this proceeding as providing legal conclusions that  
25 are binding on the bench no matter whether that

00181

1 testimony is admitted or excluded. So I am going to  
2 leave in the testimony on page 3, lines 12 through 16.  
3 And let's look at page 4, lines 5 through 7.

4 MR. OLSEN: Your Honor, the question asks,  
5 "Does U S WEST require property owners to provide  
6 support or structures for its facilities in all of its  
7 states?" We would argue that, no, it doesn't as  
8 evidenced by U S WEST's past practices which we  
9 haven't received complete responsive documents for,  
10 and so to the extent that she is saying, yes, U S WEST  
11 requires property owners to provide support structures  
12 for its facilities in all of its states, I don't  
13 believe that's true in the first place. And I believe  
14 that I could have rebutted this affirmative answer to  
15 that question with full and complete responses to our  
16 discovery requests.

17 MS. DODGE: Your Honor, I don't recall any  
18 data request that asked U S WEST provide documents as  
19 to support structures in all of its 14 states where it  
20 provides service.

21 MR. OLSEN: I believe there was a data  
22 request that asked for that information.

23 JUDGE SCHAEER: Well, regardless of whether  
24 there was or wasn't, I know that this is a contested  
25 issue. It's contested by if it's offered and admitted

00182

1 what has been prefiled in testimony by Commission  
2 staff both in terms of what this means and also  
3 whether this is for new construction work, repair, so  
4 I'm going to let this answer again stay in and let you  
5 cross-examine on this and let this represent the  
6 position of this party and we'll hear the positions of  
7 all parties and then have to make some decisions.

8           The next is at page 8, lines 4 through 19.

9           MR. OLSEN: This passage deals with the  
10 so-called 300 foot rule, which, as I mentioned in my  
11 earlier argument, we were especially interested in  
12 because it was something we couldn't find in the  
13 tariff, something that we were somewhat surprised by  
14 and something that we purposefully explored in our  
15 data requests. We specifically asked for a repair at  
16 Belmor in 1995 that Ms. Evans has testified was well  
17 over 300 feet. In fact it was closer to two or 3,000  
18 feet, and this is information that we asked for but  
19 did not receive, and I would ask that everything after  
20 the second sentence in line 6 through 14 be stricken.

21           JUDGE SCHAER: Everything after the second  
22 sentence, so everything from line 10 through 14?

23           MR. OLSEN: I'm counting the word "no" as a  
24 sentence. So everything from line 7 that starts with  
25 "currently" through the remainder of the answer, line

00183

1 14.

2 MS. DODGE: Your Honor, Mr. Olsen's  
3 objection is based on the claim that complainants  
4 asked for this information and didn't receive it, and  
5 as the declaration of Jane Nishita demonstrates,  
6 although there was some difficulty locating some of  
7 these documents, ultimately documents were located  
8 that were responsive. The sources of documents, the  
9 sources of the particular document he's particularly  
10 interested in was located and searched extensively and  
11 double-checked to make sure that they had checked  
12 everywhere and that nothing fell through the cracks,  
13 and also it was confirmed that that document if it  
14 exists would exist in those records and would have  
15 been turned up and produced with that search, and so I  
16 believe there's just no support. He had the sense  
17 that something may not have been produced, but I  
18 believe that that's now been conclusively put to rest  
19 that we have indeed completed the searching. That  
20 record had it existed would have been found and  
21 produced.

22 JUDGE SCHAER: Was any record found that  
23 supports the testimony given in this answer of this  
24 policy of the 300 feet?

25 MS. DODGE: I believe that there are a

00184

1 number of -- that is an issue that is strongly  
2 contested in terms of the whole issue of when  
3 trenching has been provided and when it hasn't. I  
4 would say that complainants have tried to demonstrate  
5 through a number of their exhibits whether that policy  
6 existed or didn't exist and what exactly the content  
7 of it is. I believe that that is properly subject for  
8 cross-examination and exploration on all the evidence  
9 that's there so that we can have a complete picture of  
10 what's really at issue in this case.

11           To the degree there's a specific document  
12 on a specific incident that they believe should have  
13 been produced or that did exist that wasn't found for  
14 some reason, at most that would just pertain to one  
15 particular incident, and we have disputes over a  
16 number of different incidents in this case over time.

17           JUDGE SCHAEER: Well, the question that I've  
18 asked you is are there any documents that support the  
19 statement in the testimony that there is this 300 foot  
20 policy.

21           MS. DODGE: As an initial matter, I don't  
22 believe that there is anything that supports the fact  
23 that there is a 300 foot policy. I believe the  
24 testimony reflects that a practice was discovered in  
25 the course of investigating this complaint which shows



00185

1 that there are technicians who are opening trenches  
2 where the lengths are under 300 foot that they're  
3 dealing with.

4 JUDGE SCHAER: And so this is oral comments  
5 of technicians to Ms. Jensen that this is based upon.

6 MS. DODGE: That and also in certain -- for  
7 example, the contractor records that were turned over  
8 could be -- in a sense you're asking me to make the  
9 complainant's argument.

10 JUDGE SCHAER: No. I'm asking you to tell  
11 me what supports this statement. There's been a lot  
12 of testimony that there are no records kept about  
13 trenching, that there is nothing that can be found  
14 about who has paid for trenching or who has paid for  
15 conduit. I want to know what the support for this  
16 statement is, whether or not there's some basis for  
17 having the statement in the record.

18 MS. DODGE: Your Honor, I'm not trying to  
19 be evasive. I have some difficulty because there is  
20 some evidence that trenching has occurred by U S WEST  
21 that does not comport with the tariff and policy that  
22 says that that trenching should not be happening.

23 JUDGE SCHAER: And is there evidence that  
24 that's limited to incidents to length of trenching 300  
25 feet or less?

00186

1 MS. DODGE: There is evidence that it is  
2 limited to lengths of 300 foot or less.

3 JUDGE SCHAER: Is that evidence in this  
4 record now?

5 MS. DODGE: Yes, it is.

6 JUDGE SCHAER: Can you give me a reference  
7 to that?

8 MS. DODGE: Yes. May I voir dire the  
9 witness on this?

10 JUDGE SCHAER: Yes.

11

12 VOIR DIRE EXAMINATION

13 BY MS. DODGE:

14 Q. Ms. Jensen, could you point the court to  
15 exhibits that demonstrate the practice that might be  
16 occurring at 300 feet or less that U S WEST has been  
17 providing some trenching?

18 A. Yes. If you would turn to Exhibit 8.

19 MS. SMITH: I think for the record maybe we  
20 could clarify that this is Exhibit 51, is it not?

21 JUDGE SCHAER: I thought we were talking  
22 about Exhibit 8. Exhibit C-8 NLE-2?

23 THE WITNESS: Yes.

24 A. There's a few exhibits I could use, but I'm  
25 picking this one. If you look at Exhibit 8, and I

00187

1 think it's three pages into the actual documentation,  
2 picture that looks like this (indicating).

3 JUDGE SCHAER: Found a picture that looks  
4 like an arrow pointing to the left?

5 THE WITNESS: Yes.

6 A. If you look at about the point of the arrow  
7 to the right there is several entries there but  
8 there's a line that says PL 300 feet four-inch PVC,  
9 and beneath it it says 5C. The 5C is the code used  
10 for financial accounting purposes by U S WEST, and  
11 that code is for underground cable. It indicates that  
12 there was -- excuse me, let me correct that for a  
13 minute. That 5C designates copper underground cable  
14 was placed. It appears, though, we cannot tell from  
15 this actual record that the conduit was placed at the  
16 same time the underground copper cable was placed.

17 Subsequently, if U S WEST were to place the  
18 conduit you would also see an account code of 4C.

19 JUDGE SCHAER: Is that the one that appears  
20 right after 5C?

21 THE WITNESS: I don't have a 4C -- oh, if  
22 you look at page 2, you're correct.

23 JUDGE SCHAER: Looking right at where you  
24 found 5C I see 4C.

25 THE WITNESS: I have actually two arrowed

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1 diagrams in this exhibit, and one has just 5C on it,  
2 and you're correct. The second one has 5C and 4C, and  
3 that would indicate for this particular situation that  
4 U S WEST in fact placed that particular piece of  
5 conduit.

6           There are other examples provided in the  
7 exhibits for this document that are less than 300 feet  
8 primarily made up of bills from outside contractors  
9 for so many feet of trenching. An example would be  
10 Exhibit 3.

11           JUDGE SCHAER: I've got that.

12           THE WITNESS: If you look at the first page  
13 that has Northwest Utilities, Inc., on top of it,  
14 there's a line item that says, "hand dig twelve inches  
15 deep, 50 TR feet." That's 50 trench feet that were  
16 hand dug by this contractor 12 inches deep.

17           If you look at Exhibit -- I will just give  
18 one more example if that would be sufficient. Exhibit  
19 10 is another bill from Northwest Utilities. That on  
20 the first page shows again that there was a hand  
21 dug trench 12 inches deep for 136 feet. If you look  
22 at Exhibit 12 as a contrast, the first page that shows  
23 Northwest Utilities, Inc., there is no trenching  
24 involved in this contractor job.

25           So there are incidents where you will see

00189

1 billing from a contractor and it will specifically  
2 state on it that they did trenching and how many feet  
3 of trenching they did, and there are contractor  
4 receipts in this case as exhibits that do not deal  
5 with trenching at all but may deal with the repair  
6 of buried service wire, and you would be able to tell  
7 the difference by whether the contractor actually  
8 billed trench feet or not or billed for conduit or  
9 not.

10                   JUDGE SCHAER: So to be certain that I  
11 understand you, is there anything on Exhibit 12 that  
12 would indicate there was trenching of more than 300  
13 feet so that someone else paid for it or is this just  
14 a repair where no trenching at all was involved?

15                   THE WITNESS: This is just a repair where  
16 no trenching at all is involved. In fact, if you look  
17 at the second sheet where they have a diagram and it  
18 says "repair BSW," right below it there's a little  
19 circle, and then I think -- I'm not sure what it says.  
20 It looks like it might say repair. There's something  
21 written below that. What that designates is that  
22 little circle is a spot where they repaired buried  
23 service wire by just digging down to that section of  
24 the wire, which was a very small section, and repaired  
25 just that piece.

00190

1                   So, for instance, there might be a buried  
2 service wire that has been nicked. They would dig  
3 potentially a foot of ground out to get down to that  
4 spot, which they isolate and would splice the wire in  
5 that spot only, and that would not be considered  
6 trenching.

7                   I will confirm -- I'm not sure how clear it  
8 was, but my testimony at page 8 of my direct testimony  
9 does state in footnote 2 that there is no written  
10 policy around the 300 foot issue, and the 300 foot  
11 discussion was based on conversations only. What I  
12 have subsequently found through additional research is  
13 that the 300 feet really has nothing to do with  
14 trenching at all. That this was a misinterpretation  
15 by our employees. The 300 feet has to do with how we  
16 account for material expenses not whether we trench or  
17 not.

18                   JUDGE SCHAER: So is there any exhibit or  
19 anything that shows a trench of more than 300 feet and  
20 that you didn't pay for it or is the support that  
21 you've discussed in the exhibits simply that there are  
22 bills for trenching for 300 feet or less that you can  
23 show were paid by the company?

24                   THE WITNESS: I have not found any document  
25 that suggests the company has done trenching for over

00191

1 300 feet. To the best of my knowledge the company has  
2 not based on the research that has been done. There  
3 are documents that we have found through this case  
4 that indicate trenching has occurred under 300 feet  
5 either directly by U S WEST or by an outside contract.

6 JUDGE SCHAER: Well, with that explanation  
7 I'm going to allow this testimony to remain in the  
8 record. I think we know enough about the basis for  
9 this based on conversations with technicians. I think  
10 there's sufficient foundation for this to remain in at  
11 this point.

12 Looking next at page 10, lines 13 through  
13 20, again, Mr. Olsen, I don't see anything here that  
14 would -- this again appears to me to be an argument  
15 based on tariff interpretation which I am certain will  
16 be briefed and argued, but I don't see any new facts  
17 here that indicate anything other than I don't know  
18 who put this in or who paid for it.

19 MR. OLSEN: Your Honor, are we talking  
20 about foundation objections, too, at this point? I  
21 was under the impression that we were just talking  
22 about striking testimony for reasons of nonproduction  
23 or nonresponses to data requests. And so the basis  
24 for my objection to each of these citations is the  
25 fact that we were unable to obtain adequate responses

00192

1 to our data requests, and so to the extent that Ms.  
2 Jensen is asserting that Camelot Square was involved  
3 with the original installation of the service line and  
4 that Camelot Square has been involved with subsequent  
5 repairs or maintenance of service line at Camelot  
6 Square or any of the parks, I'm asking that that  
7 testimony be stricken because we have not had  
8 sufficient responses to our data requests to rebut her  
9 testimony.

10 JUDGE SCHAER: Well, let me just say that I  
11 don't see anything here that alleges affirmatively  
12 that Camelot Square was involved, and quite frankly, I  
13 don't see how it harms you to have testimony in that  
14 they say that they don't know.

15 MR. OLSEN: I'm objecting on page 10 to the  
16 second sentence, "However, it is a common business  
17 practice to involve the property owners when  
18 installing service lines." We take exception to that  
19 because given the limited records that we have been  
20 able to obtain that's just not the case, and to the  
21 extent that we would have been provided with other  
22 information it's our position that we would have been  
23 better able to rebut that assertion.

24 JUDGE SCHAER: Ms. Dodge.

25 MS. DODGE: My understanding is that Mr.



00193

1 Olsen is concerned about what he believes is lack of  
2 production of buried service wire repair records.  
3 Those have nothing to do with installation of service  
4 lines. This question goes to original installation of  
5 service lines, which is talking about a different  
6 subject than repair records. I don't see where the  
7 information that he believes should exist goes to  
8 this; and furthermore, the Camelot Square was  
9 installed in 1967 and early on in discovery it was my  
10 understanding that all parties understood that when  
11 you're going back to 1959, 1967, that no one expects  
12 those documents to still exist.

13 MR. OLSEN: And so for the same reasons  
14 that portions of our testimony was stricken because of  
15 lack of foundation to go back to 1959, and it's an  
16 alternative reason for Ms. Jensen's testimony to be  
17 stricken to the extent that it also goes back to, in  
18 this case, 1961.

19 MS. DODGE: To the extent that Mr. Olsen  
20 would want to cross-examine on foundation for a  
21 particular statement, that seems appropriate, but he's  
22 asking that it be stricken altogether.

23 JUDGE SCHAEER: Again, my only concern would  
24 be this middle line about common practice, and I will  
25 let you cross-examine on that for foundation if we get

00194

1 to objections on foundation, but as far as your motion  
2 to strike for nonproduction, I don't see anything here  
3 that makes an affirmative assertion that any fact  
4 exists other than the tariff existed, and I believe  
5 that is something that can be historically verified.  
6 So let's go on to the next.

7 Page 12, lines 12 through 19.

8 MR. OLSEN: This language is the equivalent  
9 language for Belmor Mobile Home Park that we just  
10 discussed for Camelot Square Mobile Home Park.

11 JUDGE SCHAER: So we'll have the same  
12 ruling. Page 13.

13 MR. OLSEN: This question deals with the  
14 repair that was performed in 1995 which would have  
15 been longer than or which would have required  
16 trenching longer than 300 feet, and so this more than  
17 any of the other passages should be stricken to the  
18 extent that U S WEST has not produced responsive  
19 documents to confirm or deny trenching that took place  
20 at Belmor in 1995.

21 JUDGE SCHAER: Well, again, Mr. Olsen, I  
22 don't see how the state of the record harms your  
23 client. We have affirmative factual evidence  
24 testimony that this trenching was done, that it was  
25 approximately 2800 feet long, that the park did not

00195

1 pay for it. This testimony indicates to me that they  
2 have nothing to rebut your testimony, and I don't see  
3 how that would hurt you. I will not strike it.

4 Looking at page 15, lines 8 through 13.

5 MR. OLSEN: This is the equivalent language  
6 of the language we allowed for Belmor and Camelot  
7 Square.

8 JUDGE SCHAER: So that would be the same  
9 ruling. That will remain in. Page 16, lines 6  
10 through 19.

11 MR. OLSEN: Based on the court's ruling,  
12 prior rulings, I will withdraw that citation.

13 JUDGE SCHAER: So that appears to deal with  
14 all of the specifics of your motion, and what we have  
15 remaining is your request that the Commission draw a  
16 negative inference from the nonproduction of records.

17 MR. OLSEN: Yes.

18 JUDGE SCHAER: Ms. Dodge, I am a little bit  
19 puzzled or concerned about the appearance of the  
20 complainant's subpoenaing certain records from  
21 contractors and obtaining evidence of trenching of  
22 your company, then finding evidence of the same  
23 trenching but no more and no less through its own  
24 searching. Is there anything you would like to say to  
25 make me more comfortable about that?

00196

1 MS. DODGE: Yes, Your Honor. The timing  
2 could give rise to the types of argument that Mr.  
3 Olsen has made. However, the timing is also  
4 understandable, I believe, given the fact that the  
5 time period that we're talking about is between May 15  
6 and the first couple of days of June in terms of when  
7 very specific records were provided to U S WEST in  
8 terms of specific incidents that they believed they  
9 had testimony on that there ought to be records about.

10 It went from a situation where U S WEST was  
11 looking for a needle in a haystack to having very  
12 directed questions where they were able to go very  
13 specifically to people in different departments and  
14 say, you say generally these records are in here, what  
15 about this, what about this, anything you can find on  
16 this, so that it enabled U S WEST to then locate some  
17 of these additional records.

18 At the same time the contractors list  
19 was turned over, Mr. Olsen issued his subpoena, the  
20 contractors did the same searching in their records,  
21 came up with the document they came up with and  
22 everybody came up with these documents at essentially  
23 the same time. And then in a sense I think that it  
24 ought to be comforting that what the contractors came  
25 up with and what U S WEST came up with is essentially

00197

1 the same thing because then that shows that of the 15  
2 contractors, first of all, only two had any records at  
3 all, and that those records comport with what U S WEST  
4 has in its files.

5 I would think that given the evidence that  
6 we have from these two contractors in terms of even  
7 minimal, small repairs being farmed out to contractors  
8 that if there was an incident in 1995 where they were  
9 opening up acres of trenching a contractor ought to  
10 have that record if it exists because it ought to have  
11 been farmed out. I think that's just a fair inference  
12 is that how a document exists that wasn't produced.

13 THE WITNESS: Your Honor, if I might add a  
14 comment.

15 JUDGE SCHAEER: No, you may not at this  
16 point, Ms. Jensen.

17 MR. OLSEN: Your Honor, the system was  
18 flawed to a certain extent. The list of contractors  
19 that we were provided I assumed is a list of current  
20 contractors. Contractors come and go. I got varying  
21 degrees of cooperation from the contractors. I know,  
22 although, if there was additional time I may have  
23 pressed them. I may have brought motions to compel to  
24 test the waters a little bit. That wasn't able to  
25 take place.

00198

1                   The one question I have is it looks like  
2 U S WEST does keep buried service wire work orders,  
3 and it appears that way because Ms. Dodge is correct  
4 in that I received forms from the contractors without  
5 notations and forms from U S WEST with U S WEST  
6 notations which tells me that U S WEST is in their  
7 ordinary course processing these buried service wires  
8 and not throwing them away, as I originally  
9 understood. Just is awfully coincidental that these  
10 buried service wire forms surface after we already  
11 only find them through our independent chance, and I  
12 can't help but think that there are other buried  
13 service wires for the repairs that we know about  
14 anyway at our parks, but also probably with regard to  
15 repairs that we don't know about because our managers  
16 aren't there each and every day to see when U S WEST  
17 comes into their park.

18 And so I would ask that the park -- or the court in  
19 reviewing the records understand the difficulties that  
20 we've had with regard to obtaining this information.

21                   MS. SMITH: Your Honor, although this isn't  
22 staff's motion, would it be appropriate for staff to  
23 make a brief comment?

24                   JUDGE SCHAEER: I believe it would, yes.

25                   MS. SMITH: It's troublesome for staff that

00199

1 the response to this motion to strike is that, well,  
2 the fact that the contractors were able to find the  
3 same documents that U S WEST was able to find that  
4 should ease some concerns that Your Honor might have  
5 about the discovery, and what's troublesome for staff  
6 is that the complainants had to go to the contractors  
7 to get documents that U S WEST is required to keep in  
8 the first place and that only after the contractors  
9 were able to get those documents that U S WEST was  
10 able to find them. These are documents that U S WEST  
11 is required to keep, and it's very unfortunate that  
12 the complainants' information is limited to what the  
13 contractors were able to keep, and I don't see how  
14 that could make Your Honor feel any more comfortable  
15 about this discovery situation.

16           And also we're really not talking about a  
17 tight time line from May 15 until the first week of  
18 June. This information was requested months ago and  
19 the response to the data requests was we've given you  
20 everything we have, we simply don't have anything  
21 else, and U S WEST was pushed a little harder, okay,  
22 we have some more, and then U S WEST is shown  
23 documents kept by contractors that it contracts with.  
24 Oh, I guess we have a little more. And it just is  
25 very troublesome for staff that this discovery has

00200

1 gone along this course. And I think a negative  
2 inference as to this lack of production would be  
3 appropriate in this case.

4 JUDGE SCHAER: Thank you. Is there  
5 anything further?

6 MS. DODGE: Your Honor, the negative  
7 inference at issue, first of all, the testimony of Ms.  
8 Jensen reflects that U S WEST has not denied that the  
9 trenching alleged occurred. We're saying that our  
10 records do not reflect whether it did or didn't occur  
11 or who provided it or who paid for the trenching, and  
12 the records at issue are quite difficult in the sense  
13 that, again, it's splitting the difference between  
14 service installation versus who actually digs or pays.  
15 It's looking for information that is not kept in the  
16 normal course in the way that they're looking for it.  
17 So I think that that was quite understandable that it  
18 took some digging and follow-up to try to find very  
19 specific types of information that just aren't  
20 normally kept the way that they're looking for it, and  
21 to the degree the court is inclined to have any  
22 negative inference I think it would be appropriate to  
23 limit it to this particular buried wire form.

24 JUDGE SCHAER: My ruling right now is that  
25 I'm not going to make an inference either way, not a



00201

1 negative inference that documents that are missing  
2 would provide some other information nor a positive  
3 inference that finding the same information that  
4 complainants had already found means that you had  
5 found everything that exists. I am going to tell the  
6 parties again that looking at it from this point what  
7 I'm hearing from the complainants is factual testimony  
8 about trenching, about who paid for it, about how long  
9 it was, about what was done, and what I'm hearing from  
10 U S WEST is that there is no information that rebuts  
11 any of that testimony. So I'm not certain that you  
12 need a negative inference at this stage of the  
13 evidence.

14               So I'm going to suggest that we take our  
15 afternoon recess now and then come back after the  
16 break and take the cross-examination of Ms. Jensen.  
17 Let's be back at 10 minutes after 3 and we'll be off  
18 the record.

19               (Recess.)

20               JUDGE SCHAER: Let's be back on the record  
21 after our afternoon recess. We're at the point where  
22 Ms. Jensen's testimony and exhibits have been offered  
23 and we have dealt with the written motion to strike  
24 filed by the complainants.

25               Are there any other objections to her

00202

1 testimony or exhibits?

2 MS. SMITH: Commission staff has an  
3 objection to page 15 of the rebuttal testimony at line  
4 18 beginning with the word "it is important" and  
5 ending with that sentence that ends on line 20.  
6 That's a legal conclusion and there's no basis for  
7 that in the testimony.

8 JUDGE SCHAER: What page are you on,  
9 please?

10 MS. SMITH: Page 15 of the rebuttal  
11 testimony which is Exhibit T-52.

12 JUDGE SCHAER: I have it now. I didn't  
13 when you first started.

14 MS. SMITH: Page 15, line 18 at the  
15 beginning of the sentence it says, "It is important to  
16 note that this case is not about a complaint against  
17 the tariff. Rather, it is a complaint against an  
18 interpretation of the tariff. Therefore, the tariff  
19 cannot be changed in this proceeding." That's a  
20 legal conclusion and staff objects to that and moves  
21 to strike it.

22 JUDGE SCHAER: Ms. Dodge?

23 MS. DODGE: I think the record probably  
24 speaks for itself on that. To the degree this is Ms.  
25 Jensen's opinion I believe it's appropriate.

00203

1 Obviously to the degree that it ultimately is a legal  
2 conclusion that can be dealt with on brief.

3 MS. SMITH: May I voir dire the witness?

4 JUDGE SCHAER: Yes.

5

6 VOIR DIRE EXAMINATION

7 BY MS. SMITH:

8 Q. What is the basis for your opinion in that  
9 sentence?

10 A. That opinion is based on discussions with  
11 my counsel.

12 Q. Your legal counsel?

13 A. Yes, it is.

14 MS. SMITH: I would think, then, that's a  
15 legal conclusion. It's not appropriate for this  
16 testimony.

17 JUDGE SCHAER: Do you have some need for  
18 this statement being in the testimony?

19 MS. DODGE: It doesn't need to be in the  
20 testimony, Your Honor. We'll withdraw that statement.

21 JUDGE SCHAER: I think you can argue this  
22 in your brief without this being in the testimony, so  
23 let's just do that. I'm not going to admit page 15 of  
24 T-52 sentence beginning in the middle of line 18 and a  
25 half and continuing to line 20.

00204

1                   Any other objections to testimony or  
2 exhibits?

3                   MR. OLSEN: Yes, I have one objection. On  
4 page 4 of Ms. Jensen's direct testimony, lines 9  
5 through 11.

6                   MS. SMITH: I beg your pardon. Hear the  
7 page cite again?

8                   JUDGE SCHAEER: Page 4.

9                   MR. OLSEN: Page 4 of her direct testimony,  
10 Ms. Jensen's direct testimony and that's line 9  
11 through 11. Lines 9 through 11 refer to other  
12 utilities and their practice with regard to requiring  
13 property owners to provide support structures. Line  
14 11 references what was identified as TAJ-4.

15                   JUDGE SCHAEER: Been marked for  
16 identification as Exhibit 47.

17                   MR. OLSEN: Right, which is now identified  
18 as Exhibit 47. And in Exhibit 47 is a description of  
19 what appears to be four different utility providers,  
20 and selected provisions of what I think is the tariff  
21 for each of these utility providers.

22                   First of all, I would question the  
23 relevance with regard to other utility providers'  
24 tariffs when what is at issue in this case is U S  
25 WEST's tariff. I would also object to the information

00205

1 in Exhibit 47 as based on hearsay and outside the  
2 testimonial capacity of Ms. Jensen who works at  
3 U S WEST and not GTE, Puget Power, City of Seattle,  
4 the City Light or Seattle Water Department. And would  
5 ask that lines 9 through 11 on page 4 be stricken as  
6 well as Exhibit 47.

7 JUDGE SCHAER: Ms. Dodge.

8 MS. DODGE: Your Honor, Exhibit 47 contains  
9 publicly filed documents that are portions of tariffs.  
10 These are official records that are merely included as  
11 an exhibit here. To the degree that Mr. Olsen doesn't  
12 agree with the argument concerning the interpretation  
13 of those he can certainly provide other excerpts of  
14 those tariffs or argue the tariffs, but they speak for  
15 themselves and are public documents.

16 The first page of Exhibit 47 merely points  
17 to the portions of those tariffs to which Ms. Jensen  
18 refers and do not purport to be any kind of official  
19 -- they're an assistance. If there's some objection  
20 to that type of assistance being provided as an  
21 exhibit perhaps that document is unnecessary, but the  
22 remainder are publicly filed documents.

23 JUDGE SCHAER: I believe the other  
24 objection was relevance.

25 MR. OLSEN: Yes.

00206

1 MS. DODGE: The complainants themselves  
2 have testified that these other utilities have  
3 provided trenching without cost on their property so  
4 they have raised the issue of other utilities'  
5 practices.

6 JUDGE SCHAER: And I believe the other  
7 utilities were Puget Power and Washington Natural Gas  
8 that the complainant referred to.

9 MR. OLSEN: Yes. That would be it, Puget  
10 Power, Washington Natural Gas and Pacific Northwest  
11 Bell.

12 JUDGE SCHAER: I note that you have Puget  
13 Power here. You do not have Washington Natural Gas  
14 and then -- is it U S WEST's contention that any of  
15 these projects are served by GTE or the City of  
16 Seattle.

17 MS. DODGE: May I voir dire the witness?

18 JUDGE SCHAER: Yes, you may.

19

20 VOIR DIRE EXAMINATION

21 BY MS. DODGE:

22 Q. Ms. Jensen, what is the basis of your  
23 testimony at page 4, lines 9 through 11 and the  
24 Exhibit 47 that is attached and why is that included  
25 in this -- in your testimony?

00207

1           A.     Well, the conclusion was to present to this  
2 Commission that this is not a new issue, that the  
3 Commission has in fact approved tariffs of other  
4 utilities, both U S WEST and GTE as well as those  
5 companies they regulate -- of course they don't  
6 regulate the city of Seattle -- with tariff language  
7 that is similar if not the same as that that U S WEST  
8 has in their tariff, and so the purpose really was to  
9 deal with the issue of why U S WEST would be singled  
10 out recognizing, of course, that this is a complaint  
11 filed against U S WEST but that the practice is fairly  
12 common in the industry. To the best of my knowledge  
13 GTE does not serve any of these parks at this time but  
14 they're certainly not precluded from serving them in  
15 the future.

16                 JUDGE SCHAEER: Well, I can see some  
17 arguable relevance to the GTE and Puget Power tariffs.  
18 I can't see any relevance to what's going on with  
19 Seattle City Light or Seattle Water. They've got  
20 their own statutes that are different from ours.  
21 They've got their own rules that are different from  
22 ours. They've got their own overall structures that  
23 are very different from investor-owned utilities.

24                 So what I am going to do is I'm going to  
25 allow the question and answer on page 4 to remain, but

00208

1 I am going to have you -- I am going to edit Exhibit  
2 47 to allow the Puget tariffs and the GTE tariffs to  
3 remain but I'm going to remove the Seattle City Light  
4 and the Seattle Water portions of this and the  
5 references to them on the cover sheet as being  
6 irrelevant to this proceeding. I'm certain that  
7 U S WEST would love to have a statute like the  
8 municipal code in Seattle.

9 MS. SMITH: Your Honor, I had, I guess, one  
10 other question with respect to Exhibit 47, and it's a  
11 question for Ms. Jensen with respect to the language  
12 regarding GTE Northwest, Inc., and there is an  
13 asterisk underneath that and it says, "Interpretation  
14 that U S WEST C and GTE policies are the same  
15 confirmed via telephone conversation with GTE's Joan  
16 Gage." I'm wondering if you could tell me who made  
17 that telephone conversation. Was it you or another  
18 U S WEST employee?

19 THE WITNESS: It was Jane Nishita and it  
20 was under my direction.

21 MS. SMITH: And would those be her initials  
22 at the bottom of the document?

23 THE WITNESS: That's correct.

24 MS. SMITH: Thank you.

25 JUDGE SCHAEER: You are looking at?



00209

1 MS. SMITH: Exhibit 47. It was the first  
2 page and there was an asterisk following the  
3 information regarding GTE.

4 JUDGE SCHAER: I see on the cover sheet  
5 there. And you just wanted to know who had had that  
6 conversation. You weren't objecting to that notation?

7 MS. SMITH: I'm not objecting to that, no.

8 MR. OLSEN: No further objections.

9 JUDGE SCHAER: No further objections?

10 MS. DODGE: Your Honor, this witness is  
11 available for cross-examination.

12 JUDGE SCHAER: First I have to admit things  
13 and then we'll move on. So Exhibit T-43, T-52 are  
14 admitted. And Exhibit 44, 45 and 46 are admitted.  
15 Exhibit 47 is admitted in part and refused in part.  
16 Exhibits 49 -- 48, 49, 50 and 51 are admitted.  
17 Exhibits 53 through 66 are admitted. And I believe  
18 you indicated the witness is now available for  
19 cross-examination.

20 (Admitted Exhibits T-43, 44 - 51, T-52, 53 -  
21 66.)

22 MS. DODGE: There also is Exhibit T-52.

23 JUDGE SCHAER: I had admitted T-52 at the  
24 same time as T-43, Counsel.

25 MS. DODGE: I'm sorry, I didn't hear that.

00210

1 And also are we clear on 56 through 66 have been  
2 admitted?

3 JUDGE SCHAER: I just admitted 53 through  
4 66, yes.

5 MS. DODGE: I'm sorry. This witness is  
6 available for cross-examination.

7 JUDGE SCHAER: Okay. Did you have  
8 questions for this witness?

9 MR. OLSEN: Yes.

10 JUDGE SCHAER: Go ahead, please, Mr. Olsen.

11

12 CROSS-EXAMINATION

13 BY MR. OLSEN:

14 Q. Ms. Jensen, do you have your direct  
15 testimony before you?

16 A. Yes, I do.

17 Q. Can you refer to page 5 of your direct  
18 testimony, please. And specifically lines 4 through  
19 10 on page 5.

20 A. Yes.

21 Q. In lines 4 through 10 it appears that you  
22 define a term customer premises; is that correct?

23 A. Yes.

24 Q. And are you defining that term as you  
25 believe it is used in the tariff?

00211

1           A.     I am referring to the definition in the  
2 tariff at line 5 and then I am elaborating on it in  
3 lines 5 through 10.

4           Q.     But the term, the actual term "customer  
5 premises," that does not appear anywhere in the  
6 tariff, correct?

7           A.     I believe premises does appear in the  
8 tariff.

9           Q.     But not customer premises; is that correct?

10          A.     Customer may. Customer is certainly  
11 defined in the tariff either under customer or  
12 subscriber.

13          Q.     How about customer premises together?

14          A.     I would have to look at the tariff to see  
15 if it's customer premises or premises. Could be one  
16 or the other.

17          Q.     I'm handing you a copy of section 2.1, the  
18 definitions section of the tariff, and on the page  
19 that I've handed you does the definition of premises  
20 appear?

21          A.     Yes, it does.

22          Q.     Is that the definition that you use to base  
23 your direct testimony on page 4 or 5?

24          A.     Yes, it is.

25          Q.     Does that refresh your memory with regard

00212

1 to whether there's a definition for customer premises?

2 A. Well, this tells me what's defined under  
3 premises. I would have to see the total definition  
4 section.

5 Q. Here's the total definition section. Is  
6 the term customer premises defined anywhere in the  
7 definition section, section 2.1?

8 A. Based on the document you've handed me, no.

9 Q. So the definition of customer premises  
10 that's in your direct testimony on page 5 that's your  
11 personal definition; is that correct?

12 A. No, it is not. It is premises as defined  
13 in WN U-31 as I state on line 5.

14 Q. Right, but you're defining customer  
15 premises; isn't that correct?

16 A. I consider them to be the same thing for  
17 application of this tariff.

18 Q. What is the basis of that consideration?

19 A. Because the focus of this tariff, which is  
20 general regulations, conditions of offering, deals  
21 with definitions of terms used in tariffs written by  
22 U S WEST, and what we are defining is the meaning of  
23 the term as it's used in U S WEST's tariffs.

24 Q. So you make no distinction then between  
25 premises and customer premises?

00213

1           A.     Well, when I look at this definition of  
2 premise it starts with "the space occupied by a  
3 customer." Customer meaning a U S WEST customer.

4           Q.     Right. And it goes on to say the space  
5 occupied by a customer in a single building or in  
6 connecting buildings on continuous property. Is it  
7 your contention that that definition applies to either  
8 of the three petitioners?

9           A.     I believe the definition in total, which  
10 includes, a space may be a dwelling unit, other  
11 building or a legal unit of real property such as a  
12 lot on which the dwelling unit is located, applies to  
13 the mobile home parks, yes.

14          Q.     A legal unit of real property, that is also  
15 in the definition of premises, isn't it?

16          A.     Yes, it is.

17          Q.     In fact, it's in the second sentence which  
18 reads, "This space may be a dwelling unit, other  
19 building or a legal unit of real property such as a  
20 lot on which a dwelling unit is located subject to the  
21 local telephone company's reasonable and  
22 nondiscriminatory standard operating practices."

23                   Is it your contention that either of the  
24 three petitioners are on a lot on which a dwelling  
25 unit is located subject to the local telephone

00214

1 company's reasonable and nondiscriminatory standard  
2 operating practices?

3 A. I need some clarification on your question.

4 Q. Well, the definition --

5 A. The park itself from a U S WEST tariff  
6 perspective contains several customers of U S WEST in  
7 individual lots on which a dwelling unit is located.  
8 Those customers, as I understand it, don't own the  
9 property. The park owns the property. The park  
10 managers, I understand, I believe, if my memory is  
11 correct, are located on the park property and are also  
12 subscribers of service from U S WEST.

13 Q. Right. They're subscribers for specific  
14 phone numbers; isn't that correct?

15 A. That's correct. And this definition is  
16 only applied to customers of U S WEST services and the  
17 space occupied by those customers.

18 Q. For specific phone numbers, right?

19 A. Generally, it's a phone number, but there  
20 are customers that may buy service from U S WEST and  
21 not buy services associated with a telephone number.

22 Q. Please refer to page 3 in your direct  
23 testimony. On lines 18 through actually continues on  
24 to page 4, line 4, you refer to public and private  
25 right-of-ways. And in fact in your answer you

00215

1 indicate that U S WEST does provide supporting  
2 structures on public and private right-of-way  
3 property; isn't that correct?

4 A. Yes, I do.

5 Q. So this is a U S WEST policy then?

6 A. This is what the U S WEST tariff states and  
7 it is also our policy, yes.

8 Q. Where is it in the tariff that this is  
9 stated?

10 A. I believe I state that in my testimony.  
11 There are several places in the tariff. If you look  
12 at page 2, line 22, beginning at that line through  
13 page 3, through line 7 it discusses where the tariff  
14 requires the property owner to provide the structure.  
15 The inference is that U S WEST provides it in all  
16 other circumstances. It doesn't -- U S WEST doesn't  
17 have a tariff that specifically it places it on public  
18 and private right-of-way.

19 Q. The terms private and public right-of-way  
20 do not appear in section 4.6.A.2 section 2.5.C; isn't  
21 that correct?

22 A. I believe so.

23 Q. And the term public right-of-way, is that a  
24 definition provided in the tariff?

25 A. I would have to look at the definition

00216

1 section.

2 JUDGE SCHAER: Let the record show that  
3 that section is being provided to the witness.

4 Q. I'm handing you section 2.1 of WN U-31. Is  
5 this the definition section you referred to for a  
6 definition of public or private right-of-way?

7 A. If there were use of a term in the tariff  
8 that needed to be defined, yes. In section 2 sheet 15  
9 there is a definition of public roadway.

10 Q. Would that definition apply to your answer  
11 on page 3?

12 A. Yes, it would.

13 Q. What is the basis for that opinion?

14 A. Well, my responsibility in my current  
15 position is to file tariffs before this Commission,  
16 and a part of that is to determine the use of terms  
17 that may not be clear when someone is reading the  
18 tariff, and so this particular term public roadway --  
19 in fact there may be in the tariff, but I can't tell  
20 you specifically what section, some discussions around  
21 public roadway or public and private right-of-way, but  
22 this definition talks about any roadway owned and  
23 controlled by governmental agency. When I referred in  
24 my testimony to public right-of-way what I'm talking  
25 about are streets that are owned and controlled by



00217

1 governmental agency, not by a private citizen.

2 Q. How about the term private right-of-way?

3 Is that defined in the definition section?

4 A. No, it is not.

5 Q. So the definition of private right-of-way  
6 in your answer on page 3 is your own definition then?

7 A. Yes, it is, based on the application of  
8 U S WEST policies.

9 Q. And what policies would that be?

10 A. In essence where U S WEST is many times  
11 required to cross the property of other individuals to  
12 reach a given customer we have labeled that private  
13 right-of-way where we are crossing the personal  
14 property of an individual to reach a customer to  
15 provide service such as like at perhaps a farm area  
16 where we're literally going through one farm to get to  
17 another farm. In that situation we would consider  
18 that private right-of-way where we need the property  
19 owner's permission to place our facilities on their  
20 property for purposes of reaching another customer.

21 Q. Are you aware that there are easements at  
22 Belmor Park and Skylark Village?

23 A. Yes, I am.

24 Q. Were you aware that there were easements at  
25 Belmor and Skylark when you prepared your answers to

00218

1 your direct testimony?

2 A. I was aware that U S WEST requires  
3 easements to place facilities on private property of  
4 all our customers.

5 Q. And the easements that Belmor and Skylark  
6 have, are they the same private right-of-ways that  
7 you're referring to in your answer there?

8 A. No, they're not.

9 Q. How is that different?

10 A. The difference is that U S WEST requires an  
11 easement to place its facilities on a private party's  
12 property to simply place the facility. An easement is  
13 where U S WEST is placing a facility that does not  
14 belong to that property owner. It's used to serve a  
15 customer other than the property owner but we must  
16 cross that property to reach the customer we are  
17 attempting to serve. In that situation we ask the  
18 property owner to -- for an easement as well, in  
19 essence, to construct private right-of-way being that  
20 it's still the property owner's property but we are  
21 crossing their property to serve a customer located on  
22 different property.

23 In the easement in the situation of the  
24 parks we also require an easement to place our  
25 facilities within private property so that those

00219

1 facilities are protected from future damage is the  
2 goal.

3 Q. And is this documented anywhere or is this  
4 just your understanding of U S WEST's practice?

5 A. I believe I have seen a document discussing  
6 the need for attainment of an easement to place  
7 facilities on property.

8 Q. Can you really tell the difference between  
9 -- if you were to look at an easement to try to  
10 determine whether it's a private right-of-way, as you  
11 call it, or a normal easement, is there a difference?

12 A. Yes. Because on our records what you would  
13 see is the beginning and the end of the facility which  
14 would cover more than a single unit of property.

15 Q. But you're not aware of any provision in  
16 the tariff that specifies how to handle private  
17 right-of-ways or easements?

18 A. No, because this Commission does not  
19 regulate private property.

20 Q. What's the basis for that distinction?  
21 Aren't the parks private property?

22 A. I believe the -- well, I think parks are  
23 both public and private. I'm sorry. I was thinking  
24 of a general definition of parks. The mobile home  
25 parks are private property, but they're clearly not

00220

1 regulated by the Commission, if I understood your  
2 question correctly.

3 Q. Please refer to page 8 of your direct  
4 testimony. I know that we've talked about this  
5 before, but on lines 4 through 14 you appear to  
6 distinguish between trenching more than 300 feet and  
7 trenching of less than 300 feet for purposes of  
8 whether U S WEST provides the trenching or conduit; is  
9 that correct?

10 A. Yes.

11 Q. And again this is a U S WEST policy,  
12 correct?

13 A. This is not a written U S WEST policy.  
14 What I have discovered through conversations with  
15 employees is that a general practice employed in  
16 Washington is when repair activity requires trenching  
17 for less than 300 feet that the work associated with  
18 that is expensed, not capitalized. It doesn't require  
19 an engineering job in the sense of an engineer to plan  
20 the work through a formal job process and therefore  
21 it's left to the judgment of the employee that's on  
22 the location, and that their practice has been when a  
23 situation requires the employee's judgment as to what  
24 needs to occur if trenching is included in the sense  
25 of repair work -- and I am referring to line 10 which

00221

1 specifically addresses repair activity -- that in many  
2 cases they have in fact either issued a dig slip, as  
3 we've seen through the exhibits produced, to have a  
4 contractor come out and provide a trench and actually  
5 place cable less than 300 feet, or the individual may  
6 dig a hole, in essence, isolate where the trouble is  
7 in the buried service wire, which goes from the  
8 pedestal to the point of demarcation or the SNI,  
9 isolate where that trouble is to, say, within a foot.  
10 Generally it's one spot in a cable. And would  
11 actually dig down to the cable, which would not be  
12 considered trenching, and would repair the cable.

13                 So this unwritten guideline that the  
14 employees have been following was really one specific  
15 to the accounting of any material costs or labor costs  
16 that might be associated with repair activity as well  
17 as when it required involving other U S WEST  
18 departments, and as a general practice they have been  
19 verbally advised that under 300 feet there's a  
20 judgment call to be made, and they have attempted to  
21 do what in their view would be the most efficient  
22 practice to repair service. It depends on the type of  
23 repair activity and each situation needs to be  
24 evaluated.

25                 Q.     So some repairs of less than 300 feet

00222

1 U S WEST contends is billed to individual customers;  
2 is that correct?

3 A. Well, U S WEST never bills for repair  
4 activity. There's really two issues here. There's an  
5 issue of U S WEST facilities that need to be repaired  
6 and U S WEST would never charge for repair of  
7 facilities on its side of the demarcation point. That  
8 is part of the service that we provide.

9 The question is if U S WEST cannot reach  
10 that facility or if that facility needs to be fully  
11 replaced -- in other words, if the cable from the  
12 pedestal or from the street to a home is totally  
13 dysfunctional and cannot be repaired in a given  
14 section -- then U S WEST would ask a customer to  
15 provide a trench or conduit or we would string aerial,  
16 assuming the city permitted such, and place a new  
17 cable in.

18 When the repair activity simply involves  
19 repairing a section of the facility, which can vary in  
20 length -- if there's a cable cut it depends on what  
21 cut it; it could be five feet -- it can be cut in  
22 several areas. It could -- we have trouble with  
23 ground hogs chewing through cable in several sections.  
24 So it really depends on each situation as to what's  
25 involved, and the employees if it's less than 300 feet

00223

1 usually can accommodate that on a repair visit,  
2 depending on how much is involved, and would do so  
3 where they could simply on that same visit, but if  
4 it's very expensive then you would tend to see the dig  
5 slip activity where if it was going to take them four  
6 or five hours and that meant that the rest of their  
7 job load for that day wasn't going to be met, then  
8 they wouldn't do it. They would issue a work order  
9 and ask someone else to do it. So it's really an  
10 individual judgment call depending on the scope of the  
11 repair activity and what's required, but in no case  
12 would we ever charge for repair of the facility.

13 Q. But you may charge for providing of the  
14 structure; is that correct?

15 A. If a customer -- if the situation required  
16 that the customer provide trenching or conduit or  
17 support structure and the customer asked U S WEST to  
18 do that, we would advise them that they can go to  
19 others to do it as well, but in some cases the  
20 customer may request that we do it. There is a charge  
21 in the tariff to residential customers of \$70 and for  
22 other customers it would be a quote on the spot.

23 Q. The customers that you're referring to are  
24 customers with specific phone numbers; isn't that  
25 correct?

00224

1           A.     Well, it gets real tricky when the customer  
2 doesn't own the property.

3           Q.     What about the customer that you're  
4 charging \$70 for? Is that a customer with a specific  
5 phone number?

6           A.     Yes, it is.

7           Q.     And so in a mobile home park if you were  
8 charging a mobile home resident \$70 it would be a  
9 person in the mobile home park in a mobile home with a  
10 specific phone number; isn't that correct?

11          A.     Yes, or they might ask us to talk to the  
12 owner of the property. I mean, some customers would  
13 simply choose to pay it as opposed to bringing the  
14 owner into the situation.

15          Q.     About this 300 foot rule, is there a 300  
16 foot rule then or not? I guess I'm confused. It  
17 sounds like sometimes the repair person makes the  
18 repair and other times they don't.

19          A.     There is not a --

20          Q.     Is there a 300 foot rule?

21          A.     No, there is not. There is an accounting  
22 practice.

23          Q.     And just to clarify your testimony, it's  
24 not your testimony that Camelot Square, Skylark or  
25 Belmor has provided trenching of more than 300 feet;



00225

1 is that correct?

2 A. I do not have any documents that suggest  
3 that trenching has been provided over 300 feet. I  
4 have reviewed the maps of each park and the Skylark  
5 map indicates that there was conduit placed that I  
6 believe was over 300 feet, not placed by U S WEST, but  
7 I cannot tell you who placed it.

8 Q. And it's not your testimony that Camelot  
9 Square, Skylark or Belmor has actually paid U S WEST  
10 to provide trenching of more than 300 feet; is that  
11 correct?

12 A. I am not aware whether they have paid or  
13 not paid U S WEST to provide trenching. The records  
14 don't exist any longer.

15 Q. Earlier in your testimony you're referring  
16 to damage to service line, nicks in the service line  
17 and how a repair person may come in and dig down in a  
18 foot area to access telephone service lines. Is that  
19 repair -- subsequently speaking, if a customer nicks a  
20 cable is it the customer's responsibility or does  
21 U S WEST come out and repair it themselves and not  
22 charge the customer for it?

23 A. Well, again, U S WEST never charges a  
24 customer for repair of its facilities. When a  
25 contractor cuts a cable or nicks a cable, I believe

00226

1 there are instances where a contractor is charged for  
2 damaging U S WEST cable. I'm familiar with an outage,  
3 for instance, we had in Bellevue where 4,000 customers  
4 were put out of service by a cable cut, and where it's  
5 clear who was responsible for the cable cut U S WEST  
6 does attempt to recover its costs associated with the  
7 repair, not of the facility itself but of the labor  
8 and expense associated with that repair due to the  
9 negligence of another party.

10 But in the case of private property where  
11 there may occur a nick on the cable, unless U S WEST  
12 knows, for instance, that the property owner actually  
13 was responsible for the damage to the cable, there  
14 wouldn't be any effort to try to recover the cost.

15 Again, that does not deal with the issue of  
16 trench or conduit. That's simply dealing with the  
17 issue of the facility and the replacement of that  
18 facility. And by that I mean the material itself.

19 Q. Sounds like you would, though, charge for  
20 the labor necessary to provide the trenching if a  
21 customer was to damage the service line; is that  
22 correct?

23 A. If the customer damaged the line and  
24 notified us that they were -- they had cut the cable  
25 through negligence on their part, maybe they didn't

00227

1 bother to locate our facilities and so forth,  
2 generally we would attempt to recover the expense  
3 associated with the work that's performed but not for  
4 the material itself. For instance, if we placed 100  
5 feet of copper cable we would not charge -- I don't  
6 believe we would charge for the cable itself. What we  
7 would charge would be the cost associated with  
8 repairing the cable.

9 Q. I see. That's based in the tariff, isn't  
10 it?

11 A. I believe that that's more an issue of  
12 negligence by contractors. I mean, again, it's not a  
13 customer issue. Customers generally don't  
14 intentionally damage their telephone cable. So in  
15 cases that I'm talking about it's generally a builder  
16 who has plowed through the street or the ground and  
17 taken our cable and who knows what else with it.

18 Q. I'm actually talking about a customer and  
19 damage that a customer might cause to U S WEST service  
20 line. For instance, maybe one of the parks in  
21 installing their own utility service ended up digging  
22 up part of U S WEST's service line. Isn't there a  
23 specific tariff provision that would be applied in  
24 that type of a situation where the customer is  
25 responsible for loss of damage or damage to any

00228

1 facilities?

2 A. I would have to look through the tariffs,  
3 and I haven't specifically searched them for that. I  
4 know there is tariff language in a number of our  
5 services that talk about negligence on the part of the  
6 customer and the fact that there can be action taken  
7 by the company when that would occur. But generally  
8 -- for instance, I understand that there were a number  
9 of nicks that occurred on one of the mobile home parks  
10 when the cable TV system was put in, and that there  
11 were some cable cuts, and I do not believe that we  
12 asked the park to pay for those repairs.

13 Q. I'm going to hand you a copy of 2.4.2.C of  
14 WN U-31 section 2 original sheet 53. Do you recognize  
15 section C?

16 A. Yes, I do.

17 Q. What is that section?

18 A. General -- well, this is in the general  
19 regulations conditions of offering. It deals with a  
20 liability of the company and 2.4.2 deals with  
21 maintenance and repair.

22 Q. How about specifically section C?

23 A. Section C deals with use of facilities, and  
24 it states that "the customer is responsible for loss  
25 of or damage to any facilities furnished by the

00229

1 company unless the customer proves that such loss or  
2 damage was caused by negligence or intentional  
3 misconduct of others or was otherwise due to causes  
4 beyond the customer's control. If it becomes  
5 necessary to bill for recovery of damages the  
6 estimated cost for replacing such facilities will  
7 apply."

8 Q. Is that the tariff provision that you were  
9 referring to when you were describing how a customer  
10 may get charged for repairs due to the customer's  
11 negligence?

12 A. I wasn't referring to any specific tariff  
13 language. I am familiar with a variety of sections  
14 within the tariff that deals with the liability on  
15 this issue. And this is not the only place in the  
16 tariff where this would be addressed.

17 Q. Is that a section that would apply, though?

18 A. This would certainly apply from a general  
19 regulations perspective, yes.

20 Q. And just so I understand your testimony,  
21 it's not your testimony that Skylark Village is in any  
22 way negligent with regard to the current condition of  
23 the telephone service line that's at Skylark Village,  
24 is it?

25 A. It's my understanding in discussions with

00230

1 our employees that when the cable TV systems were  
2 placed that there was damage, I believe, at least at  
3 one of the parks, to our facility, but the company has  
4 taken no actions against the park with respect to that  
5 issue. But we are aware, in fact, and I believe one  
6 of the witnesses testified that there was damage to  
7 our facilities that occurred.

8           When a cable is nicked it generally will  
9 not show that there's been any damage unless there's  
10 rain or some incident that would cause a malfunction  
11 on that line, on that facility. So the fact that  
12 something is nicked doesn't necessarily mean that  
13 there's going to be immediate trouble on it.  
14 Obviously if it's cut there's no dial tone.

15       Q.     What about Skylark Village? Do you know  
16 whether Skylark Village has damaged their own service  
17 line?

18       A.     I don't believe so. Skylark Village was  
19 one of the parks from which I understood that there  
20 had been some significant problems caused.

21       Q.     What about Belmor Park? Is Belmor Park a  
22 park where problems have been encountered due to some  
23 act by Belmor Park?

24       A.     Belmor may have run into this situation but  
25 I would have to go back and look at my notes.

00231

1 Q. Now, earlier in your testimony you  
2 mentioned the word trenching and how isolated  
3 additions would not constitute trenching. Do you  
4 remember that?

5 A. Yes.

6 Q. And what is the basis for that distinction?

7 A. Well, a trench if you think about the  
8 context of it is, you know, I tend to think of like a  
9 ditch where U S WEST is asking to bury facilities  
10 underground and in the case of a specific trench is  
11 asking for an opening in the ground to place its  
12 facilities, and generally that would be from point A  
13 to point B. What I was trying to help you understand  
14 is that a section is basically just a hole to get to  
15 that piece of cable. You couldn't splice a cable by  
16 digging what would normally be a trench to just place  
17 new cable. I mean, you're talking about a significant  
18 difference in terms of your ability to get your hands  
19 in and fix cable versus to just lay a cable in a hole  
20 to string from A to B.

21 Q. Now, that definition of trenching is your  
22 definition; isn't that correct?

23 A. Yes, it is.

24 Q. The word trenching isn't defined in the  
25 tariff, is it? I've taken this away.

00232

1           A.     Subject to check I will certainly agree  
2 with you.

3           Q.     I'm handing you a copy of the definitions  
4 section again.  Is the word trenching defined in the  
5 tariff?

6           A.     Not in this section.

7           Q.     Would there be other definitions sections  
8 that we would refer to to find the word trenching?

9           A.     Well, I think that some of the tariff  
10 language that we talked about, I don't think it  
11 defines trenching.  I think it assumes that trenching  
12 is fairly obvious.

13                   I think the dig slips or the slips from the  
14 outside contractors that we hire also clearly  
15 designate when trenching is done versus when buried  
16 service wire repair is done that didn't involve  
17 trenching because there's no charge for trenching.  
18 Our own records would indicate if buried service wire  
19 was repaired.  If trenching was required you would  
20 generally see a notation of that.  If there's no  
21 notation it means they've just gone in and fixed the  
22 section.

23           Q.     If they've just gone in and fixed the  
24 section, wouldn't they charge for their time to just  
25 go down in and fix the section?



00233

1 A. No, they would not.

2 Q. How is it that would be charged then?

3 A. Well, it isn't charged. It's basically a  
4 service that's included in whatever rate is charged to  
5 the customer for their service.

6 Q. Is it your understanding that all of the  
7 wire located at the petitioners' parks, Belmor,  
8 Skylark and Camelot, is buried service wire; isn't  
9 that correct? There is no aerial service wire at  
10 these parks?

11 A. There is no aerial service wire.

12 Q. And so is it fair to assume that all the  
13 wire at each of the parks is buried service wire?

14 A. Well, there is conduit on a couple of the  
15 properties and there is buried service wire outside of  
16 conduit on each of the properties. There is both on  
17 some.

18 Q. Well, then, I guess, just to keep it more  
19 general it's safe to say that all of the service line  
20 at each of the parks is underground?

21 A. Yes.

22 Q. And you cannot access service wire that's  
23 under the ground without digging to it; isn't that  
24 correct?

25 A. No. If service wire -- first of all, let

00234

1 me explain that if there's a trouble condition in a  
2 facility -- and by that I mean the actual physical  
3 wire that goes from a terminal box to a customer's  
4 home to try to keep this simple -- there is a way to  
5 test that facility from the central office and to  
6 isolate trouble and to correct trouble depending on  
7 what the trouble condition is.

8           When the actual facility needs to be --  
9 when there's a portion of it that needs to be  
10 replaced, which we call splicing where we would  
11 actually take the damaged section, be it one inch or  
12 five inches or three feet or 50 feet and replace that,  
13 generally there's a tool where the maintenance  
14 employee would go out and isolate where the trouble  
15 condition is, much like the process that one of the  
16 earlier witnesses described where they can, prior to  
17 going into the ground, isolate where the circuit is  
18 broken, so to speak, or where the tone changes in  
19 testing that facility, and they can determine based on  
20 that how long or how far the damage is on that  
21 particular cable.

22           In that instance, depending on what the  
23 diagnosis is, if it is in fact in the cable and that  
24 the cable is defective then you're correct, they would  
25 have to go into the ground. They would have to either

00235

1 dig in the case of buried wire or in conduit wire they  
2 have a couple of options.

3           If it's in conduit there may be an  
4 opportunity to use what we call a vacant cable. So  
5 there may be additional cables and they can simply  
6 take one end and what we would call is cut or  
7 basically untie it from the defective pair to a new  
8 pair in the conduit, and it doesn't require any work  
9 in the conduit or any digging per se in the ground if  
10 the conduit is accessible.

11       Q.     You've reviewed the exhibits that have been  
12 admitted as part of the petitioner's direct testimony?

13       A.     Yes.

14       Q.     And in the exhibits are various what you  
15 call dig slips?

16       A.     Yes.

17       Q.     And is a dig slip the same as a buried  
18 service wire form sketch?

19       A.     In many instances, yes.

20       Q.     And in your review of the exhibits, do any  
21 of the repairs represented by the exhibits involve  
22 conduit?

23       A.     If memory serves me right of the dig slips  
24 I think that they were all trenching, but there was  
25 one that was clearly on public right-of-way and that

00236

1 may have involved conduit. It wouldn't show on the  
2 dig slip because it's very probable the conduit was  
3 already there, so it's difficult to draw that  
4 conclusion. There was one slip where the wire was  
5 placed, I believe it was 36 inches, below ground  
6 level, and that would indicate that it was on public  
7 right-of-way because there are standards on public  
8 right-of-way established by the county or the city or  
9 the government entity that would require it be 36  
10 inches deep. And there was at least one if not more  
11 incidents that included that.

12 MR. OLSEN: I have no further questions.

13 JUDGE SCHAER: Commission staff have  
14 questions for Ms. Jensen?

15 MS. SMITH: Yes, Commission staff has  
16 several questions, and it might be a good idea to  
17 inquire how late Your Honor wants to go tonight. I  
18 don't think I could finish within an hour. We could  
19 get started and stop for tomorrow or we could --

20 JUDGE SCHAER: I think it would be a good  
21 idea to go until about 5 and then take up again  
22 tomorrow morning.

23

24 CROSS-EXAMINATION

25 BY MS. SMITH:

00237

1           Q.     If I could direct your attention again to  
2 page 8 of your direct testimony and the part of your  
3 testimony where you have stated that if trenching  
4 activity would require trenching of more than 300  
5 feet the property owner provides the support  
6 structure, and when the repair activity requires less  
7 than 300 feet the company generally opens a trench,  
8 repairs the cable problem and closes the trench. Is  
9 that the practice of U S WEST in mobile home parks  
10 exclusively or is that a practice of U S WEST in  
11 neighborhoods where you would have single family  
12 dwellings that are not part of a mobile home park?

13           A.     Actually, upon research, what I found is  
14 this tends to be the case in all circumstances, so if  
15 there was an individual residential home that required  
16 repair activity that, again, depending upon the given  
17 circumstance, if it's fairly simple repair that the  
18 maintenance person can do without affecting their  
19 schedule for the day they will do it.

20           Q.     You've indicated that in the portion of the  
21 testimony relating to repairs or repair activity  
22 requiring trenching of less than 300 feet the company  
23 generally will open the trench and effectuate the  
24 repair. Doesn't that term generally indicate that it  
25 may happen in some circumstances and while it may not

00238

1 happen in others?

2           A.     Yes.  And I would like to explain if you  
3 don't mind.  We have had really two challenges face us  
4 in recent years.  We have restructured our business,  
5 and we used to have local engineering operations  
6 located in each state and they're no longer located in  
7 each state.  They're located in a centralized area in  
8 Denver.  And so in earlier days the team that would  
9 design major jobs that would tend to be more than just  
10 a single residential property unit would require an  
11 extensive planning process permit.  They would need to  
12 get permits.  They would need to check if they were  
13 going to dig or place conduit with other facilities in  
14 terms of where they were located and so forth when we  
15 dealt with underground cable.  What has happened is  
16 that we have found that that process has caused delays  
17 at times that were not acceptable from a service  
18 perspective, and this Commission has paid a lot of  
19 attention to service issues as it relates to U S WEST.

20                 So we made a decision about a year ago that  
21 we needed to bring some local engineers back to the  
22 state operations to deal with these types of issues so  
23 that we didn't go through a planning process which  
24 usually takes about three months.  So with respect to  
25 this function, we've struggled in the sense of strict

00239

1 interpretation of the tariff in a balance with  
2 customer service issues and an objective of the  
3 company to reduce complaints directed to the  
4 Commission.

5           And we have some employees who are  
6 overzealous in their efforts to get service to a  
7 customer to avoid complaints, and perhaps their  
8 judgment is questionable such as the photos that we  
9 saw this morning. I would share with you that that's  
10 not a safe practice in the sense of how that cable was  
11 strung. That's not a company standard in the sense of  
12 how it should have been placed, and should harm come  
13 to maybe children on the property the company was in  
14 in a very difficult situation.

15           So that's not the kind of behavior that we  
16 would endorse in the sense of a company practice. But  
17 there are maintenance men and installers out there  
18 that are working with customers. You know, if they've  
19 got a hot customer who is very irate they may not use  
20 good judgment. And I would have to share with you  
21 that I don't believe those photos were good judgment  
22 open of how that cable was laid.

23           What the installer or the maintenance  
24 person is juggling with is a judgment that if that  
25 customer doesn't have dial tone, you know, what are

00240

1 they going to do about it. It's very hard to walk  
2 away from a customer and tell them you're not going to  
3 provide them service or they're going to have to wait  
4 and provide trenching. It's a difficult situation and  
5 not all of our employees handle that properly. I will  
6 tell you that I believe 99.9 percent of the time that  
7 our employees would not do what in fact they did in  
8 that instance. They would not dig a trench because it  
9 would delay their load and they would be in trouble in  
10 essence if they weren't able to complete the jobs  
11 assigned to them for a given day.

12           So if there's repair activity that requires  
13 extensive work that's going to keep an installer for  
14 more than one to two hours at a property it's unlikely  
15 that they would do the job. If it's something that's  
16 fairly minimal, and I would say 300 feet isn't  
17 minimal, but if it were something that were, say, 50  
18 feet or within that range depending on what tools they  
19 have with them in their truck and so forth, they're  
20 going to do the best job they can for the customer on  
21 a judgment call.

22           Q.     So whether or not a customer is going to be  
23 charged by the company for a repair activity could  
24 depend on the judgment of the technician who answers  
25 the service call?



00241

1           A.     What I would say is that, again, 99 percent  
2 of the time the employee will not do the trenching  
3 because they understand, and we've spent a lot of  
4 effort over the last few years advising them, that the  
5 tariff requires the property owner to do the trenching  
6 for installation as well as for maintenance, and so  
7 most employees will not do it. It would be the  
8 rare exception where an employee will violate what I  
9 would call clear tariff language and do something  
10 different, and in some instances it's because they  
11 don't know better. In other instances, it's because  
12 they're trying to help a customer who is generally  
13 very upset with the company.

14                 And they should not be doing it in those  
15 instances but occasionally we will find one that does.  
16 A good example in this case is the Mike Spivey  
17 document which was 300 feet where he was an employee  
18 that was not aware of the company policy and in fact  
19 did a job providing trenching but if you were to ask  
20 him today he would tell you that he would not do that  
21 trenching.

22           Q.     So it's your testimony, then, that it is  
23 possible if you have two residences that are next door  
24 to one another with a drop wire of the same length and  
25 in this neighborhood there's a ground hog that causes

00242

1 problems for the company's facilities that one  
2 neighbor, one resident, may call the company and the  
3 wire would be repaired at no charge to that customer  
4 while right next door the same problem that the same  
5 repair activity would be charged to that customer. It  
6 is a possibility, is it not?

7 A. Repair is never charged.

8 Q. The trenching?

9 A. U S WEST does not charge for trenching  
10 unless a customer requests that U S WEST do the  
11 trenching. Most customers do the trenching  
12 themselves.

13 Q. Then wouldn't it be possible in that  
14 situation that one customer would be asked to provide  
15 the trench and another customer would not be asked to  
16 provide the trench and that the company would provide  
17 that?

18 A. I'm going to add some additional facts.

19 Q. I guess I'm just asking for a yes or no  
20 answer. It's possible, isn't it?

21 A. It depends on the length --

22 Q. It's possible, isn't it? It's the same  
23 length, same situation, one customer who calls the  
24 phone company on Tuesday, the phone company comes in,  
25 opens a trench, effectuates the repair. The neighbor

00243

1 right next door calls the phone company on Wednesday  
2 same situation, the company comes out and requests  
3 that the customer open the trench?

4 A. I would say it's highly impossible.

5 Q. But it's possible, isn't it?

6 A. It's possible because there's human  
7 judgment but if it were the same technician I do not  
8 believe it's possible.

9 Q. No, it wouldn't be the same technician, but  
10 with respect to your testimony on page 8, with respect  
11 to the property owner providing the support structure  
12 if it's more than 300 feet and generally the company  
13 will open the trench if it's less than 300 feet, is  
14 that something that the company has tariffed?

15 A. No, it is not. And, as I mentioned  
16 earlier, through additional research this is not a  
17 policy at all. It is not a guideline at all. What I  
18 found in pursuing this and attempting to understand it  
19 after my direct testimony was filed is that it's an  
20 accounting practice.

21 Q. Is this an accounting practice that could  
22 result in one customer being asked to provide a trench  
23 to effectuate a repair when another customer would not  
24 be asked to provide a trench to effectuate a repair?

25 A. No.

00244

1 Q. Throughout your testimony you have used the  
2 term service wire. How do you define service wire?

3 A. As the facility that extends from U S  
4 WEST's central office all the way to the customer's  
5 SNI or point of demarcation.

6 Q. Is that term defined in the tariff?

7 A. I don't believe it is.

8 Q. What's a distribution facility?

9 A. Distribution facility is generally the  
10 portion of what I would call service wire that runs  
11 from the central office through -- to a given serving  
12 area such as a neighborhood and down a street. That  
13 generally would be what we would classify as  
14 distribution cable or facilities.

15 Q. Wouldn't you consider these mobile home  
16 parks to be a neighborhood?

17 A. As it applies to how we provision service  
18 to this given area, depends on the size of the mobile  
19 home park. These tend to be fairly large. They do  
20 have private roads, and so there would probably be  
21 some distribution facilities located within those  
22 private roads. But it depends on the layout of the  
23 park itself and how the spaces are set up.

24 Q. What's a drop wire?

25 A. Generally a drop wire goes from a pole to a

00245

1 home. That would be considered a drop. It could go  
2 from a point where there are several cables, like a  
3 25-pair cable and individual pairs are spliced off to  
4 go to individual residents.

5 Q. And that term is defined in the tariff,  
6 isn't it?

7 A. Drop wire I would --

8 Q. Would you accept subject to check that it's  
9 --

10 A. Yes. I would gladly accept subject to  
11 check.

12 Q. In your testimony you state that customers  
13 are required to provide support structure pursuant to  
14 U S WEST tariff WN U-31- section 2.5.2C under the  
15 heading building and electrical power supply and  
16 section 4.6.A 2.f under the heading new construction.  
17 Is that a fair characterization of your testimony?

18 A. Could you tell me what page you're looking  
19 at?

20 Q. Yes. You just have to give me a second  
21 here. Pages 2 and 3, beginning at line 22 of page 2  
22 and continuing through line 7 of page 3.

23 A. And I'm sorry, your question is?

24 Q. I guess my question is would you consider  
25 that a fair characterization of your testimony?

00246

1           A.     That the property owner is required to  
2 provide the supporting structure?

3           Q.     Yes, pursuant to those two tariff sections.

4           JUDGE SCHAER:  What was your question,  
5 property owner or a customer?

6           MS. SMITH:  Customer.

7           A.     Well, my testimony is that the property  
8 owner is responsible and in some cases that may be the  
9 customer.

10          Q.     That's correct.  My question said customer,  
11 but I realize that your testimony said property owner.  
12 So with that clarification, is that a correct  
13 characterization of your testimony?

14          A.     I believe these are the two primary tariff  
15 references that deal with this issue.  I've gone  
16 through quite a bit of testimony, both my direct and  
17 rebuttal, on this subject.

18          Q.     Now, isn't it correct that section 2.5.2  
19 refers to a customer and section 4.6.A.2.f refers to a  
20 property owner or customer?

21          A.     I believe that the best way of looking at  
22 this would be to look at the tariff itself which has  
23 been provided, and there are several discussions  
24 within the tariff language.  Perhaps I can find it for  
25 you and point you to it.  In my rebuttal testimony

00247

1 there's a thorough discussion on both of these tariff  
2 sections and the history associated with them. If you  
3 look at page --

4 Q. Let me withdraw that question and perhaps  
5 ask a different question. Is it your testimony that  
6 the current language in the tariff section 2.5.2C was  
7 not intended to limit customer responsibility for  
8 conduit and/or poles within buildings?

9 A. Yes, it is.

10 Q. Now, you stated, if I could direct you to  
11 page 7 of your rebuttal testimony, at line 21, the end  
12 of the line beginning with "for example." You state  
13 that there would not be an occasion -- there would  
14 never be an occasion where trenching or pole  
15 replacement would be required within a building.  
16 Is that what your testimony says?

17 A. Yes, it is.

18 Q. Now, on page 9 of your rebuttal testimony  
19 at lines 19 through 22 you state that if the language  
20 were intended to apply just within buildings that you  
21 believe staff would have questioned the inclusion of  
22 poles and trenching in that tariff if U S WEST had  
23 represented to staff that the additional language only  
24 applied to support structure within buildings. Is  
25 that a correct characterization of your testimony?

00248

1 A. Yes, it is.

2 Q. I noticed you don't have your definitions  
3 section in front of you any longer. I'm just going to  
4 provide you with a copy of U S WEST's tariff. I would  
5 like to direct your attention to the definition of the  
6 word building.

7 A. Okay.

8 Q. Doesn't the tariff define a building as a  
9 structure that houses the customer, separate buildings  
10 are treated as one building if the customer furnishes  
11 and maintains adjoining passageway which is suitable  
12 to the company for the placing of wire facilities.  
13 Pipes and conduit are considered enclosed  
14 passageways."

15 A. Yes.

16 Q. So is it your testimony that it is  
17 impossible that when providing service through  
18 adjoining passageway the customer or applicant would  
19 never place support structures such as poles or  
20 trench?

21 A. Yes, it is.

22 Q. How would the company propose to provide  
23 the enclosed passageway described in that definition  
24 without poles or trenches?

25 A. The company doesn't provide the enclosed



00249

1 passageway. The enclosed passageway is generally on  
2 the property. For instance, at the University of  
3 Washington there is an underground passageway from one  
4 building to another building. That is what is  
5 referred to as an enclosed passageway.

6 Q. How could the company provide that service  
7 without the poles or conduit?

8 A. It would be the same as a company would  
9 provide facilities in a high rise building. The  
10 facilities are generally taken through a conduit from  
11 floor to floor, and in the case of an enclosed  
12 passageway the facilities would be protected since  
13 that passageway is used for something other than  
14 telephone facilities, and there may be a number of  
15 people or cars or whatever going through that  
16 passageway so the facilities would be enclosed in  
17 conduit, or the building itself through some type of  
18 arrangement built around it but generally a conduit of  
19 some form to get from one building to another  
20 building. They would never be exposed so that anyone  
21 could come up and cut those wires.

22 Q. Is it possible that the conduit would be  
23 buried?

24 A. Not in a passageway of that nature. It  
25 would need to be accessible.

00250

1           Q.     Turning back to page 7 of your rebuttal  
2 testimony at line 18. You state that the tariff  
3 language in 2.5.2C clearly demonstrates that the  
4 application of the language is not limited to  
5 situations within buildings and then you go on to say  
6 that you agree that placement of the tariff language  
7 under building space and electrical power supply was  
8 perhaps not the best location for that section and  
9 that the language speaks for itself and is being taken  
10 out of context by Mary Taylor in her testimony. Is  
11 that a fair summary of your testimony?

12           A.     Well, what I've stated there is that the  
13 language should not be taken out of context. I  
14 understand what Ms. Taylor states is her  
15 interpretation, but the heading was actually placed,  
16 as my exhibit demonstrates, when the tariff was  
17 converted from one format to a new format, and there  
18 was an effort for consistency across our 14 states to  
19 standardize our tariff format, so existing language  
20 was placed under the heading building space and  
21 electric power supply as a part of that filing, under  
22 a section with that title, but it was existing tariff  
23 language that previously was not under a title of that  
24 nature, and I agree with Ms. Taylor that it doesn't  
25 make sense under the context of that title.

00251

1 Q. Wasn't the reformatted tariff approved  
2 prior to this particular filing?

3 A. Could you clarify what particular filing  
4 you're referencing?

5 Q. Would you agree -- I'm going to withdraw  
6 that question for now and come back to that question  
7 later. Would you agree that if tariff headings --  
8 strike that. Do the tariff headings in U S WEST's  
9 tariff limit the application of the tariff to the  
10 subject matter of the heading?

11 A. I believe they do not.

12 Q. Well, if that's the case, wouldn't you  
13 agree that it would be difficult for members of the  
14 UTC staff and members of the public to determine the  
15 subject matter to which that tariff language applies  
16 if it is not limited to the heading?

17 A. What I would share with you is that through  
18 my experience in working on tariff issues since 1991  
19 that tariffs are frequently interpreted to meet a  
20 given situation, and it depends on the interpreter as  
21 to how they are interpreted. My experience with this  
22 Commission staff is that they are very thorough in  
23 their analysis of tariff language filed with this  
24 Commission, and there have been many instances where  
25 they have made suggestions or recommendations to

00252

1 clarify tariff language that the company and the staff  
2 feel could be improved, and I've personally had a  
3 number of incidents with Mr. Spinks and with Ms.  
4 Taylor where we have together worked on tariff  
5 language to make it clearer with respect to the intent  
6 of the company.

7           This particular filing, as you have pointed  
8 out, dealt with this whole tariff (indicating). And  
9 we replaced every page in this tariff with a new page.  
10 Prior to that there was no tariff heading for this  
11 same language that required the support structural  
12 work to be done at the expense of the customer. There  
13 was also language in '93 that talked about the  
14 property owner's responsibility for installation,  
15 maintenance and repair.

16           The title of buildings space and electric  
17 power supply was added in June of '94 when this entire  
18 tariff was replaced with a new tariff that reformatted  
19 language, reformatted sections, moved language from  
20 one location in a tariff to another location in a  
21 tariff to try to attempt to have a document that was  
22 consistent to the greatest extent possible across our  
23 14 states. The fact that this language slipped under  
24 a tariff heading that I believe does not at all  
25 describe what this language addresses was something

00253

1 that occurred in that process and was improper, and I  
2 believe had staff literally had the time to look at  
3 every change to the extent that those changes were  
4 made would have questioned it as the company should  
5 have questioned it in this same filing process.

6 MS. DODGE: Your Honor, could the record  
7 reflect that the witness has picked up a binder that  
8 is approximately four inches thick that apparently  
9 contains the tariff at issue?

10 JUDGE SCHAER: Yes. The record will  
11 reflect that.

12 MS. SMITH: Maybe I should clarify another  
13 point. There are a lot of tariff sections that are  
14 being referred to, definition and whatnot in this  
15 proceeding, and I would like some clarification as to  
16 whether or not we need to enter into the record all of  
17 those sections that are not included in the testimony  
18 and the exhibits or if we could just refer to the  
19 company's tariff without having to offer the tariff as  
20 an exhibit.

21 JUDGE SCHAER: I don't want you to offer  
22 the entire tariff as an exhibit.

23 MS. SMITH: Okay. Would you like us to  
24 provide copies of those tariff sections that are being  
25 referenced in the proceeding or can we just refer to

00254

1 the tariff and the tariff sections without putting  
2 those individual sections on the record?

3 JUDGE SCHAEER: I would find it helpful if  
4 you would either include in the hearing or as an  
5 attachment to your brief the sections that you refer  
6 to in your brief. I believe that Ms. Jensen with her  
7 testimony has supplied several of the sections that  
8 she's referred to.

9 I've had some problem working with her  
10 exhibits, though I appreciate you not copying the  
11 entire tariff, in that I often am coming into the  
12 middle of a section to look at specific language and I  
13 don't know what has preceded that. So I would ask you  
14 when you're putting together the tariff sections that  
15 you're going to include to put in enough of the  
16 section that I can tell what language precedes the  
17 subsection that you're dealing with to know what the  
18 general topic area is and what specific part of that  
19 we are in, because I have been trying to track through  
20 some of this and having problems determining exactly  
21 where we are and with what has been provided to me  
22 thus far.

23 (Recess.)

24 JUDGE SCHAEER: Let's be back on the record.  
25 While we were off the record the reporter changed

00255

1 paper in her machine. Ms. Smith, about how much do  
2 you have left?

3 MS. SMITH: Oh, an hour.

4 JUDGE SCHAER: Would it be useful to have  
5 some time to organize or are you --

6 MS. SMITH: It would be useful to have  
7 some time to organize.

8 JUDGE SCHAER: I think what I would suggest  
9 at this point is that we break with the  
10 cross-examination for this afternoon. I would like to  
11 spend a few minutes with counsel figuring out how to  
12 treat the confidential exhibits, how to get my copies  
13 of exhibits to you to be processed and how to get them  
14 back. And we can discuss whether there's any other  
15 matters that we need to take up tomorrow.

16 Also like to discuss starting time for  
17 tomorrow. I would suggest that we start at 9:00  
18 instead of 9:30, but I don't have to drive here from  
19 Seattle so how does that sound to others?

20 MR. OLSEN: I have no objection to that.

21 MS. DODGE: No objection. I have a number  
22 of exhibits that have now been designated confidential  
23 and I don't know whether they're Mr. Olsen's exhibits,  
24 but they're things that weren't properly designated by  
25 U S WEST in the first place so I don't know which one

00256

1 wants to take them back and put together in the  
2 morning.

3 MR. OLSEN: I can.

4 JUDGE SCHAER: Okay. Is there anything  
5 else that we need to talk about in preparation for  
6 tomorrow's hearing? Do people have estimates of how  
7 much time we're going to take tomorrow?

8 Commission has a pre-hearing conference  
9 scheduled at 1:30. We are hopeful that we'll be done  
10 by then or should we have another court reporter come  
11 down or should we evaluate that tomorrow morning?

12 MS. SMITH: Staff is anticipating maybe  
13 about another hour with Ms. Jensen, but I've been  
14 wrong so many times trying to estimate the length of  
15 testimony.

16 JUDGE SCHAER: I do have some questions for  
17 Ms. Jensen if they aren't asked by staff. Some of my  
18 questions have already been asked by the parties. Do  
19 you have an estimate for how much questioning you're  
20 going to have for Commission staff witnesses, Ms.  
21 Dodge?

22 MS. DODGE: I don't believe it will take  
23 much time. I would say less than hour.

24 JUDGE SCHAER: Less than an hour for both  
25 or for each?



00257

1 MS. DODGE: Probably for both.

2 JUDGE SCHAER: How about you, Mr. Olsen?

3 MR. OLSEN: I do not expect to ask the  
4 Commission questions so I would maybe reserve 10  
5 minutes, 15 minutes just in case, but odds are no  
6 time.

7 JUDGE SCHAER: Sounds fairly hopeful, then,  
8 that we can get done tomorrow morning. Let's be off  
9 the record until 9:00 tomorrow morning.

10 (Hearing adjourned at 4:50 p.m.)

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