

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
HOME PARK, BELMOR MOBILE) UT-961342
HOME PARK,)
7)
Petitioners,)
8)
vs.) VOLUME 5
9) PAGES 258 -465
U S WEST COMMUNICATIONS, INC.,)
Respondent.)
-----)

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11 A hearing in the above matter was held
12 on June 11, 1997 at 9:00 a.m. at 1300 South Evergreen
13 Park Drive Southwest, Olympia, Washington, before
14 Administrative Law Judge MARJORIE SCHAER.

15

16 The parties were present as follows:

17 THE WASHINGTON UTILITIES AND TRANSPORTATION
18 COMMISSION STAFF, by SHANNON E. SMITH, Assistant
19 Attorney General, 1400 South Evergreen Park Drive
Southwest, Olympia, Washington 98504.

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

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

24 Cheryl Macdonald, CSR

25 Court Reporter

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

2 JUDGE SCHAEER: Let's be back on the record.

3 It's Wednesday, June 11, 1997 and we are at the
4 Commission's hearing room in Olympia, Washington
5 in the matter of Camelot Square Mobile Home Park,
6 docket No. UT-960832, in the matter of Skylark Village
7 Mobile Home Park, docket No. UT-961341, and in the
8 matter of Belmor Mobile Home Park, docket No.
9 UT-961342, which is a consolidated complaint case by
10 these three complainants against U S WEST, and at this
11 point we were in the middle of staff's
12 cross-examination of Theresa Jensen for U S WEST. I
13 will note that the appearances today are the same as
14 they were yesterday.

15 Are there any preliminary matters before we
16 proceed with questioning? Hearing nothing we'll go
17 ahead. Ms. Smith.

18

19 CROSS-EXAMINATION

20 BY MS. SMITH:

21 Q. Good morning, Ms. Jensen.

22 A. Good morning.

23 Q. If I can direct your attention to U S WEST
24 WN U-31 section 4.6D which is Exhibit 44, I believe,
25 in the testimony. It might be easier to find that

00261

1 way. Assume that a customer of a company who resides
2 in a trailer in a mobile home park needs to move that
3 trailer 500 feet. By the terms of section D in the
4 tariff would the trenching for that job -- would the
5 charge for the trenching of that job be limited to
6 \$70?

7 A. If the customer requested that U S WEST
8 provide the trench and the service is single family
9 residential service wires on private property, if the
10 tenant owned the property in the mobile park and they
11 asked U S WEST to do the work and they were a
12 residential customer then this charge would apply. If
13 the customer did not own the property then the
14 responsibility for the trench would go to the property
15 owner which, in this case, is a business, not a
16 residence, and then the charge would be quoted to the
17 business owner based on the cost of performing the
18 work. What we find in most residential applications
19 is that the customer prefers to do the trench work
20 themselves.

21 Q. Where would a business find the charge for
22 -- if in that scenario the resident of the trailer did
23 not own the property and the property was owned by a
24 business, where would the business find the applicable
25 charge in the tariff for the trenching if the business

00262

1 asked the company to do it?

2 A. There is no tariffed rate, because the
3 company does not want to be in the trenching business.
4 We agreed to provide this rate for residential
5 customers, but from a business perspective and even on
6 a residence perspective our preference is not to do
7 trenching work or conduit work. That's not a
8 telecommunications service, and so the work that we
9 would tend to do in that area when we do it is, as
10 I've mentioned before, for public right-of-way and
11 private right-of-way, is part of the cost of
12 installing the cable that the company incurs, but when
13 it's on private property that's not a business we
14 prefer to be in.

15 If a customer asks us to do the work we're
16 going to try to urge the customer to do it themselves
17 or to find a contractor, and we give them a list, as
18 we did for the complainants, of contractors that do
19 this type of work because we really don't have the
20 resources to do this type of work on private property,
21 and we're not staffed to do it. So in that case if
22 they continued to push us to do it we would give them
23 a quote but we would continue to urge them to go to a
24 contractor that's in this business.

25 Q. If I can direct your attention to Exhibit

00263

1 45, tariff section 2.5.2. Yesterday, I believe you
2 testified that the language in 2.5.2C was put under
3 the building space and electrical power supply in
4 error and the cause of that error was the fact that
5 the language was introduced at the time the company
6 refiled its entire tariff cancelling WN U-24 and
7 introducing WN U-31. Is that what your testimony was
8 yesterday?

9 A. Yes, it is. That's when the title went on.
10 I'm not sure I heard your question clearly.

11 Q. And is that when that language was placed
12 under that title?

13 A. If you look at an exhibit in my rebuttal
14 testimony, the history of the title and the languages
15 documented --

16 Q. I guess my question, Ms. Jensen, is when
17 was the language in 2.5.2C placed under the heading
18 building space and electrical power supply? It's my
19 recollection yesterday that your testimony was that
20 that language was put under that heading at the time
21 the company refiled its entire tariff cancelling
22 WN U-24 and introducing WN U-31; is that correct?

23 A. Just to be clear on the record, the title
24 was added in June of '94. The existing language
25 existed -- not the language that we're looking at on

00264

1 this exhibit, but a portion of that language was in
2 existence at the time that WN U-31 was filed to
3 replace WN U-24.

4 This first sentence, I believe it is, I
5 would have to look at the specific details which is in
6 my testimony, but the language and the intent of the
7 language was already in the tariff. The title was
8 added in June of '94 and Exhibit 64 gives the
9 documentation that defines specifically what occurred
10 when that title was placed, what language was in the
11 tariff, where it was in WN U-24 and what occurred when
12 it was placed in WN U-31. That's Exhibit 64.

13 Q. Would you agree that the total tariff
14 refiling was made under advice No. 2546T, which was
15 filed on June 29, 1994 and approved by the Commission
16 on August 11, 1994? Would you agree to that or accept
17 that subject to check?

18 A. Actually, I would disagree. If you look at
19 Exhibit 64 on the first page it was advice 2546T. It
20 was received by the Commission on June 29. It was
21 approved on August 10 with an effective date of August
22 11.

23 Q. So the effective date of that would be
24 August 11?

25 A. Yes.

00265

1 Q. Now, wasn't there a filing that modified
2 the language under section 2.5.2C that was filed under
3 advise No. 2555T filed on July 22, 1994 and approved
4 or made effective on August 24, 1994? Would you
5 accept that or agree subject to check?

6 A. Well, if you look at Exhibit 53 that is
7 advice 2555T, and I think you have to look at the
8 context of Exhibit 53 and Exhibit 64 to understand
9 what was in the tariff at the time 2555T was filed.
10 255 T --

11 Q. Ms. Jensen, my question is, would you agree
12 that that tariff was effective on August 24, 1994?

13 A. Subject to check.

14 Q. Now, if the language in 2.5.2C were not
15 intended to apply exclusively to buildings and
16 electrical power supply, which is the heading under
17 which it was filed, doesn't it seem reasonable to
18 assume that Commission staff interprets that tariff to
19 apply to buildings and electrical power supply? It
20 was filed specifically under that section heading.

21 A. No, I don't believe so, because of the
22 context of the filing that was made in June of '94.
23 The language that was in the tariff at the time that
24 filing was made was very clear that it was the
25 customer's responsibility to provide the premises

00266

1 space satisfactory to the company for placement of all
2 equipment and facilities necessary for furnishing
3 service.

4 There was also language in the tariff under
5 new construction, under that section, 46.A.2.f, that
6 the property owner is responsible for the
7 installation, maintenance and repair of the trench or
8 conduit utilized for company facilities to provide
9 service within the owner's private property.

10 That language was in the tariff in two
11 separate sections. This has been the position of the
12 company as far back as I was able to trace since 1961,
13 and so I don't believe the fact that a title was added
14 to a page changes the intent of the language, and I do
15 not believe that the language makes sense if it's
16 narrowed to the title.

17 Q. I'm going to direct your attention to
18 section 4.6.A.2.f, which I believe is Exhibit 44.
19 What's the heading for that section?

20 A. Construction or conditions.

21 Q. And what's the subheading under section A?

22 A. New construction.

23 Q. Ms. Jensen, I would now like you to refer
24 to section 4.1 of the tariff, and I actually have a
25 copy of it.

00267

1 A. Actually I can look it up here, if you
2 would like.

3 JUDGE SCHAER: Did you want this marked as
4 an exhibit or did you just want us to look at it?

5 MS. SMITH: I'm handing this out so we can
6 look at it. I may attach it to my brief but I don't
7 think we need to make it an exhibit.

8 JUDGE SCHAER: Okay.

9 Q. Now, with respect to section to 4.1.3,
10 which addresses extension of facilities both aerial
11 and buried to a prospective customer's premises.
12 Wouldn't you agree that extension means the first time
13 service is installed?

14 A. You're looking at 4.1.3? Your question
15 specific to that?

16 MS. SMITH: If I might have just a moment
17 to get my papers in order.

18 Q. Would you agree that the general terms in
19 section 4.1 apply to all of the provisions in section
20 4?

21 A. Yes.

22 Q. With respect to section 4.1.3, wouldn't you
23 agree where the language says the company will extend
24 buried facilities within the BRA to a
25 company-designated point on the prospective customer

00268

1 property line, do you agree that extension means the
2 first time service is installed?

3 A. No, I don't. The discussion of this tariff
4 applies to construction of facilities. It could be
5 for initial service. It could be for additional
6 lines. It could be for line extensions. It's for any
7 time that U S WEST is applying or requires
8 construction of facilities. If U S WEST has to
9 replace a defective facility, and by that I mean the
10 complete facility, it would also apply.

11 Q. Doesn't the language "prospective customer
12 property line" imply new service as opposed to an
13 existing customer with existing service?

14 A. It is not written to deal with service.
15 It's written to deal -- if you're looking at
16 prospective customer premises, what it's talking about
17 is a piece of property to which the customer has
18 requested service and the company must provide
19 facilities. That could be a vacant lot. It could be
20 a portion of an existing lot. There's all types of
21 definitions that this could apply to. We have
22 customers that take property and subdivide the
23 property.

24 Q. So it's your position, then, that the word
25 prospective modifies property and not customer?

00269

1 A. Well, no. I see your point there. I mean,
2 what we're saying is this is a customer that doesn't
3 have this particular service that will be furnished
4 over this facility. Doesn't mean the customer doesn't
5 have service with the company, but this language
6 applies to the need to build a facility to reach a
7 customer and until the customer is paying for that
8 service they're not a customer. They're a prospective
9 customer.

10 Q. Well, what if a customer has service, has a
11 phone and loses dial tone and that service needs to be
12 repaired? That service -- that customer isn't a
13 prospective customer. The customer is an existing
14 customer. The customer doesn't want anything
15 extended. The customer wants service repaired. How
16 would this section be applicable to that customer?

17 A. Because in most instances of repair
18 U S WEST doesn't have to go out and replace the
19 facility end to end. There are very few instances
20 when a customer's drop, if you want to limit it to the
21 piece that's generally found on their private
22 property, needs to be fully replaced. Generally,
23 repair doesn't involve buried service wire at all, or
24 the aerial wire at all. And in conditions where it
25 does it's a portion or segment of the cable. It's not

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1 the full cable.

2 If it's aerial construction the customer
3 already has, if it's existing service they already
4 have, a point of termination for that service or
5 support structure that the company can utilize, so it
6 wouldn't make sense to talk about aerial construction
7 requiring a new support structure for maintenance. We
8 would have an existing structure that we could use.

9 For buried construction, the company if
10 it's going to place new facilities may ask the
11 customer to provide a trench that's not the existing
12 trench, depending on the state of their current
13 service, but this is a situation where the customer
14 has ordered service and the company needs to place
15 facilities to provide it for this particular
16 discussion.

17 Q. So, is it correct, then, that it's the
18 company's position that when a customer, an existing
19 customer, loses service and the service needs to be
20 repaired that customer is now a prospective customer
21 because the company has to go out and repair a line
22 that might require some trenching or might require
23 some conduit?

24 A. I don't believe that's what I said.

25 Q. Direct your attention to page 14 of your

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1 rebuttal testimony. In your testimony at line 7, you
2 say U S WEST does not prescribe the support structure
3 required to support our facilities. It is the
4 property owner's choice. Do you see that testimony?

5 A. Yes, I do.

6 Q. And directing your attention back to the
7 general section in section 4, 4.1.4. Doesn't that say
8 that it's the company's prerogative to designate the
9 type of supporting structure that's required for the
10 placement of the company's facilities?

11 A. Yes, it does.

12 Q. So when would the property owner choose if
13 it's the company's prerogative?

14 A. The company will request of the customer a
15 specific type of support structure and the customer
16 being the property owner is the final decision maker.
17 If the customer requests the company -- I'm trying to
18 think of an application why there would be a conflict,
19 quite honestly. If the customer, for instance, said
20 they didn't want to provide a conduit and they wanted
21 to provide a trench, then the company, I believe,
22 would place the facilities in a trench, but the
23 company may advise the customer and would probably
24 advise the customer why conduit would be a more
25 appropriate vehicle, but we do try to work with the

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1 property owner.

2 And so while I would agree with you that
3 the company could designate a certain type of support
4 structure, if a customer refused to provide that type
5 of support structure and another structure was usable
6 and reasonable but perhaps not as efficient, the
7 company would try to work it out with the property
8 owner.

9 Q. Then what's the purpose of section 4.1.4?

10 A. To protect the company.

11 Q. So it really isn't the company's
12 prerogative to designate the type of supporting
13 structure, is it? It's the customer's prerogative
14 with the advice and counsel of the company? Is that
15 what your testimony is?

16 A. No. What my testimony is is actually
17 wrong, as you have pointed out. It is the company's
18 prerogative to designate the type of supporting
19 structure. What I have just testified to is that the
20 company works with the property owner in doing so, and
21 to the best of my knowledge there has never been a
22 dispute.

23 JUDGE SCHAER: So let me inquire. If you
24 say your testimony is wrong, should we cross out the
25 word "not" in that sentence or how should we make it

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1 more correct?

2 THE WITNESS: I think to make it more
3 accurate, Your Honor, it should say that U S WEST does
4 have the prerogative to designate the type of
5 supporting structure required to support our
6 facilities and will work with the property owner.

7 JUDGE SCHAER: Thank you.

8 Q. To direct your attention to 4.1.6 of the
9 company's tariff. Doesn't this section say that the
10 charge described in section 4 in this section will
11 apply inside the BRA in connection with the placement
12 of new service wires from a point on the customer's
13 property line to the premises to be served and that
14 construction charges outside the BRA are addressed in
15 section 4.2.1?

16 A. If you're asking me if that's what the
17 tariff language says, yes, it does.

18 Q. Would you agree that based on the language
19 of that tariff section specifically the reference to
20 new service wires and premises to be served that the
21 subsection applies to initial construction of service?

22 A. I guess I'm having trouble with your
23 definition of initial construction of service, if
24 those were your terms. New service wires mean that
25 the wires do not exist, period.

00274

1 Q. So what's your testimony, then, that this
2 section would also apply to the repair and maintenance
3 of existing service?

4 A. If new wires or facilities need to be
5 placed, yes. If an existing facility cannot be
6 repaired and it requires the placement of a new
7 service wire, as this section addresses, then, yes, it
8 would apply. It is not applied on a product basis.
9 What we're talking about is the company's need to
10 place facilities that do not exist on that premise
11 today, be it for repair or for installation.
12 Actually, if I might clarify that, there's a lot of
13 confusion on this issue.

14 Q. There's no question right now. Like to
15 direct your attention to section 4.2.1A.

16 JUDGE SCHAER: 4.2.1?

17 MS. SMITH: Yes.

18 JUDGE SCHAER: Do we have that available to
19 us, Counsel?

20 MS. SMITH: I believe that's in the
21 testimony. I left my list where things were located
22 in the testimony downstairs.

23 JUDGE SCHAER: Ms. Jensen, do you know
24 where that would be found in your exhibits?

25 THE WITNESS: I believe it's Exhibit 46.

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1 JUDGE SCHAER: Thank you.

2 THE WITNESS: Maybe not.

3 MS. SMITH: It is in the testimony. It has
4 not yet been marked. It's Exhibit 7 to the direct
5 testimony of Mary Taylor.

6 JUDGE SCHAER: Okay.

7 THE WITNESS: I believe it's also in my
8 testimony, though, which is marked.

9 JUDGE SCHAER: Exhibit 46 does not appear
10 to be the right reference.

11 Q. Did you find it in Exhibit 7 of Mary Taylor
12 as testimony?

13 JUDGE SCHAER: Do you have Ms. Taylor's
14 exhibits and testimony available to you, Ms. Jensen?

15 THE WITNESS: Yes, I do.

16 Q. I would like to direct your attention to
17 4.2.1A with deals with extension of company plant
18 facilities. Wouldn't you agree that service is
19 extended only once so that this section deals with
20 initial installation of service not repair of existing
21 service?

22 A. I think you've asked me two questions
23 there. There are instances where service is extended
24 more than once and that may be due to maintenance
25 reasons. This particular section of the tariff that

00276

1 talks about the application of line extension charges
2 would be on a per service basis. So, for instance, if
3 they ordered basic service, a single line, then the
4 charge would apply for that line.

5 Q. And so if one line is installed and then
6 that line needs to be repaired would the repair of
7 that line necessarily be an extension of that service
8 or would it be repair and maintenance of that service?

9 THE WITNESS: Your Honor, I'm concerned
10 about the semantics here.

11 A. What I will say, which I think answers your
12 question, is that repair of an existing service -- and
13 to correct my earlier testimony -- the customer would
14 not be charged for the facility itself. If the
15 company is required to replace a facility, be it
16 requiring new construction because the original
17 facility is not usable, and if that facility happens
18 to be one that incurred a line extension charge at
19 some point in time, and required replacement because
20 the original facility was not functional, the company
21 does not charge repair charges for the facility
22 itself. There is no instance where a customer is
23 charged for the cable unless they intentionally damage
24 the property.

25 JUDGE SCHAER: Let me ask you a

00277

1 hypothetical to see if I understand this. Say that
2 U S WEST does a line extension to Ms. Dodge's new
3 mansion on top of Cougar Mountain, and there's conduit
4 and trenching and wire goes in up to her place, and
5 then let's say that where Cougar Mountain mice get
6 inside the conduit and eat the cable all the way down
7 to the hill and you have to entirely replace the
8 cable, would there be a new line extension charge
9 because you have to go in and replace the entire line?

10 THE WITNESS: Not for the existing service,
11 no.

12 JUDGE SCHAER: So looking at 4.2.1A, if
13 there's been a line extension charge paid and then
14 there is replacement rather than new additional
15 service going in, the replacement would not be
16 charged; is that correct?

17 THE WITNESS: That's correct. For the
18 facility itself.

19 JUDGE SCHAER: For the facility.

20 Q. What's the definition of facility in U S
21 WEST's tariff?

22 A. The material, generally copper cable, that
23 furnishes service from U S WEST central office to the
24 customer's premise. What I'm referring to as the
25 facility is the wire that literally goes from the

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1 office that provides them dial tone to the customer's
2 point of demarcation.

3 Q. So in Judge Schaer's scenario what would
4 the customer have to pay to have that service replaced
5 after the initial installation?

6 A. Your assumption is that we need to replace
7 the facility?

8 Q. My assumption is that the customer no
9 longer has dial tone. What charges would the customer
10 incur to have that service replaced if replacement was
11 necessary?

12 A. A customer is not charged for repair. The
13 customer may be asked to furnish a support structure
14 if a new facility needs to be placed, but the customer
15 is not charged for the repair function.

16 Q. But the customer would have paid for the
17 facility at the time of the initial installation,
18 would it not?

19 A. No, they don't. Our charges do not cover
20 the cost of placing an initial facility through the
21 installation charge that the customer pays.

22 JUDGE SCHAEER: That's true for your
23 line extension charges, which I believe is what we're
24 talking about still?

25 THE WITNESS: For line extension charges I

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1 would have to spend some time looking at this tariff.
2 If we're charging -- I don't believe we're charging
3 the customer for the asset, i.e. the copper wire,
4 specifically. I think we're charging them -- if you
5 give me a moment I can tell you what they're paying
6 for.

7 You would have to look at the tariff in
8 total context. Line extension charges typically deal
9 with customers that are located outside of the
10 company's current serving area, as I understand it, or
11 the base rate area. And so if there is, for instance,
12 a group of customers that maybe traditionally have not
13 cared if they had phone service or not, maybe they
14 were vacation homes or something of that nature, and
15 now they would like service and no company typically
16 has facilities to that location, then there may be
17 several applicants that desire service. And so in the
18 line extension tariff on sheet 3 an applicant can do a
19 survey along with the company to find who else might
20 be interested in service, and in that scenario they
21 would not pay the full cost of extending the facility.

22 What I'm not clear on that I would need to
23 relook at is if they're actually -- let's say they're
24 the only customer and there's a charge. What I would
25 want to look at this closer is do they pay the full

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1 cost of that facility in one lump sum or not and how
2 that charge is actually determined. In other words,
3 if it cost us \$10,000 of cable, is that what the
4 customer pays. It's my understanding, but I would
5 like to check this, that the customer pays for the
6 cost of construction and not the cost of the cable
7 that is placed, but I would like to look into that, if
8 I may.

9 JUDGE SCHAEER: Well, let's assume that
10 that's true and the customer pays the cost of
11 construction and then the line breaks down and there
12 has to be a replacement/repair of not anything new
13 added, but you've got your Microsoft executive on the
14 top of Cougar Mountain with their T-1 line and they
15 want it replaced. It's not working. Who pays for it?

16 THE WITNESS: It's my understanding that if
17 the line needs to be fully replaced for the existing
18 service the company does it at no charge to the
19 customer. For repair.

20 Q. So it's your testimony in that situation
21 the customer is not charged for the replacement of the
22 facility; is that correct?

23 A. When a facility needs to be placed due to
24 repair no customer is charged, to my knowledge, for a
25 facility.

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1 Q. And what is a facility, specifically?

2 A. It's generally the copper cable that serves
3 that customer.

4 Q. Would you agree, or would you agree subject
5 to check, that the definition of facility in U S WEST
6 tariff is supplemental equipment apparatus, wiring,
7 cables and other materials and mechanisms necessary to
8 or furnished in connection with telephone service?

9 A. Yes, I would.

10 Q. In that situation that we're addressing
11 when the customer needs to have its service repaired
12 or replaced when it's not functioning, what are the
13 obligations of the customer with respect to having
14 that service restored?

15 A. Each situation is specific. What the
16 tariff obligates the customer to do is to install,
17 maintain and repair trench or conduit utilized for
18 company facilities. If the customer is not the
19 property owner then it is the property owner's
20 responsibility to provide the support structure
21 necessary for company facilities to provide service.

22 Q. With respect to section 4.2.1.B.2 under
23 line extension charges, that section states that the
24 applicant may elect to furnish and set the required
25 poles or provide a trench on their own property.

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1 Wouldn't you agree that the term applicant means that
2 the person is someone who is requesting new service
3 not an existing customer?

4 A. The applicant is whoever is requesting the
5 service that requires the line extension and the
6 construction. It could be a first line. It could be
7 additional line. I don't tend to refer to additional
8 lines as new service.

9 Q. That wouldn't be an existing line, though,
10 would it?

11 A. This is a line that requires construction.
12 Therefore, not existing.

13 Q. If you have an existing line that requires
14 trenching or conduit in order to repair that existing
15 line, then the customer wouldn't be an applicant in
16 that situation?

17 A. I can't think of an existing line that
18 would require a trench or conduit. An existing line
19 would already be in a trench or conduit or aerial.
20 The only time that support structure issue arises is
21 when the company requires the construction of a new
22 facility on that property, which is very rare. I
23 mean, what you're talking about is the wiring on the
24 customer's property -- trying to be careful with terms
25 and definitions here -- that the wire that is on the

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1 private property is defective and needs to be fully
2 replaced, and customer could have some service. They
3 may not be totally without dial tone but they could
4 have very poor service because of interruptions in
5 static and so forth on the line.

6 The company may have attempted to repair
7 that facility and the customer is still dissatisfied.
8 In that case the company may decide that maybe this
9 customer is using the line for data transmission, that
10 the best way to enable the customer to use the line as
11 they desire is to replace the total cable that's on
12 their private property and possibly beyond on the
13 public right-of-way, and in that instance the company
14 would ask the customer to provide a support structure,
15 if it's underground, a trench or conduit. That is a
16 very rare occasion.

17 Q. What if the customer just wants phone
18 service, no data transmission, just wants service and
19 the service has deteriorated? There's no dial tone.
20 Or the service is so poor that it needs to be
21 replaced. Customer has been living there for 10 or 15
22 years and all of a sudden the phone doesn't work.
23 What is the customer's obligation to get that phone to
24 work again?

25 A. It depends on why the phone isn't working.

00284

1 If there is no dial tone it is rare that that's caused
2 by a buried service wire problem. You know, U S WEST
3 does not go out and replace facilities on a frequent
4 basis. That doesn't occur very often. If it did
5 something would be wrong.

6 The customer's responsibility only is a
7 factor as it relates to our equipment on our side of
8 the point of demarcation. The customer, as it relates
9 to repair responsibility, is only when the company
10 deems it's appropriate that for whatever reason that
11 entire facility must be replaced on the customer's
12 private property. In that instance and that instance
13 alone, which is rare, then U S WEST will ask the
14 customer to provide a trench or conduit for
15 underground cable.

16 We have over 300,000 repair tickets a year,
17 and the majority of them do not involve replacement of
18 facilities. In fact, I think if you look at the
19 evidence in this case the majority of it does doesn't
20 involve replacement of facilities.

21 Q. The majority of it involves repair of
22 existing facilities, correct?

23 A. That's correct, but most of it is that
24 application I described where they dug a hole, got
25 their hands on there, spliced a section of cable and

00285

1 buried it up again and went away. They did not
2 replace the entire facility and didn't require the
3 replacement of the entire facility.

4 Q. If the situation does not involve replacing
5 the facility, the situation involves repair of the
6 facility, what is the customer's obligation with
7 respect to the repair of an existing facility that
8 does not need to be replaced?

9 A. Without understanding every item in the
10 tariff, I don't believe the customer has any
11 responsibility in that scenario as long as they did
12 not intentionally damage the facility. In its typical
13 repair the company will come out and repair the
14 facility on its side of the demarcation point and the
15 customer has no obligation. Now, that's assuming we
16 can access it without the customer's involvement.

17 Q. What do you mean by the typical repair?

18 A. Typical repair -- I will narrow this to
19 buried service wire. If the problem is with buried
20 service wire generally it's with a piece of the wire.
21 The total wire isn't bad. You know, there are very
22 few scenarios where someone can come along and damage
23 several feet of a cable on a customer's property. If
24 you think of the average property in the city, the
25 distance is very short of the facility from the street

00286

1 to the customer's home.

2 So in most instances -- and in fact if you
3 look at the repair records in this case, a large
4 portion of them didn't even deal with buried service
5 wire issues. Those that did deal with the buried
6 service wire some were fixed at the terminal where we
7 had an option to cut over to a vacant cable that was
8 available to us. There are others where we literally
9 had to go in and fix a small section of it. If it's a
10 cable cut, we don't replace the whole facility. We
11 just resplice the area that was cut.

12 So generally the company is just fixing the
13 problem. I'm trying to think of a good analogy. It's
14 like when something breaks on your car, you don't fix
15 the whole car. You fix the problem with the car.

16 Q. Earlier you answered that on the company's
17 side of the demarcation point if the wire needs only
18 to be repaired then there is no obligation to the
19 customer assuming that the company can access the
20 buried wire?

21 A. That's correct.

22 Q. At what point is the customer required to
23 provide access to the company's facilities, the
24 company's wire on the company's side of the
25 demarcation point, so that the company's wire can be

00287

1 repaired?

2 A. There are instances where a customer's wire
3 or point of demarcation may be in a garage, so it may
4 be underground to the garage, and then there may be a
5 few feet in the garage where the point of demarcation,
6 which is a physical box, is located, and if the point
7 of demarcation happens to be that box there are
8 instances where we need access to that box and the
9 customer has to be home to let us in.

10 Q. So the customer's responsibility in that
11 scenario is to be home?

12 A. To allow us access to our equipment, yes.
13 I think the term what's the customer responsible for
14 is very broad, and I am trying to be responsive to
15 your questions.

16 Q. Is the customer responsible for the
17 trenching to access that wire on the company's side of
18 the demarcation?

19 A. If the company is digging to get to the
20 portion of the cable that is bad on that customer's
21 private property for that section of cable the company
22 will hand dig the hole to get to the cable and repair
23 it. We do not ask the customer to do that.

24 Q. Does the company charge the customer for
25 that hand digging?

00288

1 A. No, they do not. No, they do not.

2 Q. How much hand digging will the company do
3 to repair a buried wire?

4 A. Now we're kind of back into the judgment
5 issue. Generally, the technician will do the hand
6 digging if he can complete that job within the hour or
7 two that he's allocated for the work. When he leaves
8 in the morning he's got several jobs that he needs to
9 get to. The most frequent incidence is that there's a
10 small section of cable that he can hand dig to if it's
11 underground cable and access the cable, splice it and
12 repair it. And in that instance he will probably do
13 that on that visit because it's cheaper for him to do
14 it while he's out there than to come back and do it
15 another time.

16 If you're talking about 50 feet or 100
17 feet, generally they're not going to hand dig 100 feet
18 because they don't have time. You know, if it were
19 their last appointment and they were authorized for
20 overtime they might, but generally, no.

21 Q. If it's in excess of about 50 feet or in
22 your technician's judgment can't be done at that time,
23 how is that repair effectuated by the company?

24 A. Can you elaborate on your question a bit,
25 please?

00289

1 Q. This is a situation where your technician
2 cannot go in and hand dig to make the repair. It's in
3 excess of -- I don't know, you used 50 feet. Let's
4 just assume that the repair would involve accessing
5 more than 50 feet of the buried wire. How is that
6 repair effectuated by the company?

7 A. My understanding, if I understand your
8 question correctly, is that if the repair didn't
9 require the total replacement of the facility but
10 required work on a good number of feet, which is not
11 real usual over 50 feet, but let's assume that it was
12 100 feet, that they would submit a request for a
13 technician to go out and do that work, so it would be
14 an especially assigned job with time allocated based
15 on the number of feet that they felt needed to be
16 repaired, and they would repair it.

17 Q. What is the customer's obligation,
18 financial obligation, with respect to that repair?

19 A. Again, the customer's responsibility is to
20 provide the support structure for placement of new
21 facilities. If we're not placing a new facility
22 that's of a distance like that, the company would do
23 it.

24 Q. Who would open the trench?

25 A. In a case where we're not replacing the

00290

1 entire facility and it was, as I understand it, less
2 than 300 feet, the company would do it.

3 Q. So there is a policy within the company
4 that if repair involves trenching of less than 300
5 feet the company provides that trenching at no cost to
6 the customer?

7 A. There is a current practice in the company
8 that if repair work includes trenching and does not
9 include replacement of the entire facility that the
10 job can be done without processing it through an
11 engineer for a plan, and therefore on a local basis,
12 we generally do that work. That it doesn't require an
13 engineering job in design to do, so generally the
14 local person will do it.

15 Q. And that's at no cost to the customer?

16 A. That's correct.

17 Q. What if the repair requires trenching in
18 excess of 300 feet? Who is responsible for opening
19 the trench or paying for the trench to be opened?

20 A. In that case the job would be sent to
21 engineering. It would require design work. In most
22 instances it would require a total placement of
23 facility. You're talking about -- 300 feet is
24 significant in terms of lot size, and the customer
25 would be asked by our business practice to open a

00291

1 trench or provide a trench or conduit.

2 Q. Is this current company practice tariffed?

3 A. No, it is not.

4 Q. Like to direct your attention to Exhibit
5 44, please. Section 4.6.A.1 that addresses aerial
6 construction. That section addresses applicants,
7 doesn't it?

8 A. I believe it addresses applicants and
9 property owner.

10 Q. What's an applicant?

11 A. An applicant is someone that places an
12 order for service. I think it's defined in the
13 tariff. It's section 2. sheet 1, an individual or
14 legal entity making application to the company for
15 service except as defined in 4.2.1.B.1.

16 Q. How does an applicant differ from a
17 customer?

18 A. Well, I would understand an applicant to be
19 a future customer who does not yet have service from
20 the company for this particular service they're
21 ordering. They could have service elsewhere.

22 Q. So a current customer currently has
23 telephone service from the customer when asking for a
24 second line is an applicant with respect to that
25 second line?

00292

1 A. That's correct.

2 Q. Directing your attention to subsection A
3 under section 2 buried construction. This section
4 applies to premises to be served, does it not?

5 A. I think the tariff language speaks for
6 itself. A portion of this does address --

7 Q. So you agree that it applies to premises to
8 be served?

9 A. Well, there's several items addressed in
10 this section. A portion of it does talk about
11 termination of the facilities at the premises to be
12 served.

13 Q. Doesn't that indicate that those premises
14 currently are not served by the company and the
15 customer is requesting new service?

16 A. A customer could have service from the
17 company and could be ordering an additional line, and
18 in that scenario this language would apply if those
19 facilities were not available. If the company has to
20 place new facilities regardless of whether it's a
21 first line or second line or fifth line, if the
22 company requires the customer to provide access to a
23 trench or conduit, this language is applicable.

24 Q. I want to address your attention to section
25 2.4.2C. What is the heading for section 2.4.2?

00293

1 A. Maintenance and repair.

2 Q. Would you agree that section 2.4.2C states
3 that the customer is liable only for losses that are
4 caused by the customer's negligence or the intentional
5 misconduct of others?

6 A. I'm not sure I heard you correctly. Again,
7 I think the tariff language is fairly clear.

8 Q. Do you agree that that section of the
9 tariff says that the customer is liable only for
10 losses that are caused by the customer's negligence or
11 the intentional misconduct of others?

12 A. I don't think it says that. I think it
13 says that the customer's responsible for loss of or
14 damage to any facilities unless the customer proves
15 that the loss or damage was caused by negligence or
16 intentional misconduct of others or was otherwise was
17 due to causes beyond the customer's control.

18 Q. In situations where the customer is not
19 responsible for the loss or damage, isn't U S WEST
20 responsible for the replacement cost of those
21 facilities?

22 A. U S WEST, as I've stated previously, does
23 not charge the customer for replacement of facilities.
24 U S WEST simply asks the customer to provide the
25 support structure. It is only when a customer

00294

1 willfully damages our facilities that they are asked
2 to place, as this tariff section states, the cost for
3 replacing those facilities.

4 Q. Is there anything in section 2.4.2C that
5 says that a customer is responsible for providing
6 access by trenching and/or conduit when existing
7 facilities require maintenance or repair?

8 A. There is language in section 2 general
9 regulations, conditions of offering, which this is a
10 part of, that says that. In this specific section
11 2.4.2C, no, it does not, but the other language does
12 state that the customer is responsible for support
13 structures required to support telephone services
14 in this same tariff section.

15 Q. What is the tariff site?

16 A. 2.5.2C states that any existing or new
17 structures or work required to support telephone
18 services on the customer's premises will be provided
19 at the expense of the customer. Goes on to state that
20 that may include the use -- placement of or use of
21 trenching, conduit or poles.

22 Q. And that's under -- what's the heading of
23 2.5?

24 A. Responsibilities of the customer.

25 Q. What's the heading of the specific

00295

1 subsection 2.5.2C?

2 A. The heading we discussed, building space
3 and electric power supply.

4 Q. Can you point me to any place in the tariff
5 that says that the replacement of deteriorated cable
6 constitutes new construction rather than a repair?

7 A. If you're looking for the specific language
8 that you've addressed, I don't believe that specific
9 language exists in the tariff. But I have not looked
10 for it.

11 JUDGE SCHAER: Ms. Smith, about how much
12 more do you have?

13 MS. SMITH: At this point I have about a
14 half an hour, 45 minutes, although if we took a break
15 I could probably scale it down a bit.

16 JUDGE SCHAER: I usually accept offers of
17 that nature. Why don't we take our morning recess at
18 this time. Be back at 25 'til.

19 (Recess.)

20 JUDGE SCHAER: Let's be back on the record
21 after our morning recess.

22 Q. Ms. Jensen, directing your attention to
23 page 6 of your rebuttal testimony. At lines 13
24 through 16 you state that the additional tariff
25 language, which I believe is cited in your testimony

00296

1 above that sentence, was addressed in a memorandum to
2 Ms. Taylor that clarified that this language was not a
3 new policy but rather was intended to clarify existing
4 tariff language. What existing tariff language was
5 that additional tariff language intended to clarify?

6 A. The language that was in -- let me look at
7 this if I might have a moment. If you would look at
8 Exhibit 53, the last page of that exhibit. On that
9 page at the top it should say section 2 original sheet
10 56 and then handwritten next to it, it says first and
11 cancels. What that sheet shows is it's a marked up
12 page that we file with the actual tariff advice that
13 shows specifically what the old language was, which is
14 C, which is crossed out there, and then the language
15 that we've inserted to replace it, which is denoted
16 below with an arrow pointing to C.

17 Q. In your testimony at page 6 you say that
18 this additional tariff language was addressed in a
19 memorandum to Ms. Taylor, "see Exhibit TAJ-7." Could
20 you turn to that exhibit?

21 A. Yes.

22 Q. And that's a, what, looks like a three-page
23 exhibit. At the bottom of the page, of the first page
24 of the exhibit, could you read the last paragraph of
25 the page that carries over to the next page.

00297

1 A. The second modification simply reiterates
2 that property owners are responsible for expenses and
3 work associated with supporting structures such as
4 conduit, poles, et cetera, and that such expenses
5 associated with such work cannot be billed to
6 U S WEST. This is not a new policy. It simply
7 clarifies existing language, and then I point her to
8 4.6 A.1.a.

9 Q. And that existing language, then, is
10 language found at 4.6.A.1.a?

11 A. My reference at that memo was July of 1994,
12 and we would have to look at the July '94 tariff. I
13 believe I probably was trying to point her to A.2.f,
14 but let's see what tariff pages is in 4.6.A.1.a.
15 There has been a tariff change. The current tariff
16 was effective August of '94, so that reference is to
17 whatever tariff was effective July of '94 which would
18 have been prior to 2546T.

19 Q. If you can give me a moment I need to find
20 that tariff section that was effective in July of
21 '94.

22 JUDGE SCHAER: Is that included in one of
23 your exhibits, Ms. Jensen?

24 THE WITNESS: I believe it is, and that's
25 what I was searching for.

00298

1 A. I do have a sheet of paper that might be
2 helpful. Difficulty that we've run into is the tariff
3 language has moved over the years, and so what I have
4 done is I have a single sheet of paper that I would be
5 glad to produce that shows the language during
6 different intervals and what section of the tariff it
7 was in at that point in time. And it may be easier to
8 follow that than to follow all these tariff filings,
9 so I would offer that up.

10 Q. What I will do is I will just move on.

11 JUDGE SCHAER: Okay. So we don't have in
12 the hearing room what was the 4.6.A.1.a in July of
13 '94? Is that where we are? Go ahead, Ms. Smith.

14 Q. On page 1 of your direct testimony you
15 state at line 14 that RCW 80.36.090 also supports the
16 requirement that the property owner provide support
17 structures such as trench, conduit or poles for the
18 placement of U S WEST facility. Do you see that
19 testimony?

20 A. Yes, I do.

21 Q. Do you have a copy of 80.36.090 in front of
22 you?

23 A. No, I don't.

24 Q. Where in 80.36.090 is the language that
25 states that the customer must provide those support

00299

1 structures?

2 MS. DODGE: Your Honor, to the degree this
3 is calling for a legal conclusion I would suggest it's
4 more appropriate on briefing than posed to this
5 witness.

6 MS. SMITH: This isn't a legal conclusion.
7 I'm just asking her to point to a portion in the
8 statute that she cited in her testimony as supporting
9 the position that the property owner is to provide
10 support structure such as trench, conduit or poles for
11 placement of U S WEST's facilities on private property
12 whether it be for new construction or maintenance
13 reasons.

14 THE WITNESS: Your Honor, I believe there's
15 a typing error here because Ms. Smith is correct that
16 this isn't the proper citation. The RCW I was
17 attempting to cite to is the RCW that requires
18 customers to provide access to the company in order
19 for the company to place its facilities, and so I have
20 an improper citation here that I think must have
21 gotten changed in the typing process.

22 JUDGE SCHAEER: Do you have a correct
23 citation, Ms. Jensen?

24 THE WITNESS: Well, I was looking for it.
25 If you will give me a moment.

00300

1 JUDGE SCHAER: You can do that or if
2 counsel believes that this is a legal conclusion that
3 doesn't properly belong in testimony, we can strike
4 the sentence. Which would you prefer, Ms. Dodge?

5 MS. DODGE: At this point I think to speed
6 things along it would just make sense for us to
7 address the statutes in the briefing and we can go
8 ahead and strike this sentence.

9 JUDGE SCHAER: Let's do that.

10 Q. Turning again to your rebuttal testimony.
11 On page 12, lines 9 through 15, you say that under the
12 LDA tariff U S WEST is responsible for maintenance and
13 repair of common facilities but only on public
14 right-of-way. Can you direct me to the tariff section
15 that specifies this?

16 A. I believe what I state is that the tariff
17 does not commit the company's responsible -- or the
18 tariff does commit that the company is responsible for
19 the maintenance and repair of facilities, but it does
20 not state that the company is responsible for support
21 structures, and I go on to state that the LDA tariff
22 deals with common facilities installed on the public
23 right-of-way, not facilities on each parcel of private
24 property within the development.

25 JUDGE SCHAER: Where is that in the tariff,

00301

1 please?

2 THE WITNESS: If you turn, I believe,
3 Exhibit 21 I believe is the LDA -- that's the summary,
4 I'm sorry.

5 JUDGE SCHAER: 21 in this case or to your
6 testimony?

7 THE WITNESS: I'm sorry, it wasn't a
8 correct reference. If you would turn to Exhibit 49.
9 16 pages in.

10 JUDGE SCHAER: 16 --

11 THE WITNESS: -- pages into that exhibit.
12 These sheets are cancelled, but I think what I can do
13 is check them against the current language because
14 they're very similar. If you are looking at sheet
15 9-1, construction of outside plant facilities, this
16 was actually the original filing, there is a section
17 called residential developers. It's under one
18 description A2, and that is where the language starts
19 for LDA, in the current tariff at section 4 sheet 7.

20 JUDGE SCHAER: Now, what is the section 4
21 sheet 7, the same thing that's on this page or the
22 reference in the testimony?

23 THE WITNESS: Unfortunately, I think it's
24 changed quite a bit so we probably ought to go with
25 the current tariff. I was hoping I could use some of

00302

1 this language. Actually if you go back to -- stay in
2 that same place but go back to sheet 9-6. This
3 appears to be very similar to the current language.
4 LDA applies to extensions into residential
5 developments, as you can see on 9-6 at E that meets
6 certain criteria?

7 A. And I'm sorry, Ms. Smith, I don't remember
8 your question, if you could repeat it.

9 Q. My question is you had stated in your
10 testimony that the LDA tariff deals with common
11 facilities installed on public right-of-way not the
12 facilities on each parcel of private property --

13 A. That's correct.

14 Q. -- within development. And the question
15 was, where in the tariff does it state that U S WEST
16 is responsible for maintenance and repair of common
17 facilities but only on public right-of-way?

18 A. What the tariff -- the tariff, I believe,
19 is silent on that issue in total, and by that I mean
20 WN U-31. What the tariff defines is what the property
21 owner is responsible for. It is silent with respect
22 to support structures that the company deals with
23 because that is a given.

24 Q. We're discussing common facilities.

25 A. Would you define common facilities, please.

00303

1 Q. In the current WN U-31, section
2 4.4.1.A.7.a, "a legally sufficient easement to
3 accommodate the placing and maintaining of the common
4 communications serving facilities, e.g., feeder and
5 distribution cables plus terminal pedestals or like
6 devices and access points, point cabinets."

7 A. Yes.

8 Q. That's what I am meaning by common
9 facilities.

10 A. And your question is?

11 Q. Where does the tariff say that U S WEST is
12 responsible for maintenance and repair of common
13 facilities but only on the public right-of-way?

14 A. As I've mentioned before, because U S WEST
15 is responsible for the repair of the facilities and
16 all facilities there is no need to address it in the
17 tariff. The only thing that the tariff states along
18 the lines of your question is when private property is
19 involved, an underground cable or aerial cable is
20 involved, that the customer must provide the support
21 structure. The company never charges for repair
22 unless the customer intentionally damages our
23 facilities.

24 MS. SMITH: I do have an exhibit that I
25 would like to have marked.

00304

1 JUDGE SCHAER: Go ahead and distribute it.
2 You've handed me a single page document. States on
3 the left "U S WEST announces changes for telephone,
4 cable and wiring for residential customers in
5 Washington." Mark this for identification as Exhibit
6 67.

7 (Marked Exhibit 67.)

8 Q. Ms. Jensen, can you identify this document?

9 A. Yes, I can.

10 Q. What is it?

11 A. This was one of several notices sent as
12 part of a stipulated agreement that dealt with the
13 deregulation of inside wire.

14 Q. Would you agree that this notice was a
15 result of the MPOP case and not the deregulation case?

16 A. Well, they're one and the same. There were
17 two cases. The deregulation case -- the MPOP case
18 further deregulated portions of inside wire, so it was
19 a second phase of the deregulation case.

20 Q. Is this the notice that the residents
21 within the parks would have received?

22 A. If the customer subscribed to residential
23 service they would have received this notice, yes.

24 Q. Doesn't this notice specifically state in
25 the first paragraph that the changes will not affect

00305

1 customers in single family residences and that those
2 customers will continue to be responsible for repair
3 and maintenance within their residences?

4 A. Yes.

5 Q. Doesn't this notice to customers imply that
6 the company will repair up to the customer's premises?

7 A. This notice was very specific to a specific
8 change that was occurring. And what it talked about
9 is the building owner's options for location of the
10 point of demarcation for multi-tenant buildings. The
11 notice also informed customers that there were two
12 phases. There were single tenant buildings and
13 multi-tenant buildings, and the notice itself states
14 your choices for repair and maintenance are the same
15 as those listed below for multi-tenant buildings.

16 Q. But wouldn't you agree that these residents
17 in the trailer parks are not multi-tenant buildings?

18 A. This notice went to residential customers.
19 It wasn't specifically directed to mobile parks. It
20 went to all residence class of customers, and those
21 customers could be in apartments. They could be in
22 trailer parks. They could be in single family
23 dwellings. It applies to all residential customers.

24 Q. Wouldn't you agree that the customers
25 residing in the individual manufactured homes in the

00306

1 complainants' mobile home parks are single family
2 residences?

3 A. For the parks -- I'm having trouble with
4 your question.

5 Q. In the parks assume that each individual
6 trailer has U S WEST telephone service and that the
7 demarcation point is at each trailer, is on each
8 trailer or within inches of the trailer. Wouldn't you
9 agree that those trailers are single family residences
10 as opposed to multi-tenant buildings?

11 A. In the application that you described we
12 would treat each trailer, if the demarcation point
13 were at each trailer, as a single family residence,
14 yes.

15 Q. Do you recall the testimony yesterday that
16 in some circumstances at these parks the company has
17 been repairing service to include the trenching at no
18 cost to the customer?

19 A. I believe my testimony was to provide --
20 they have trenched to repair sections of cable.

21 Q. And that the company provided that
22 trenching or contracted for the provision of that
23 trenching at no cost to the customer?

24 A. For sections of cable, yes, not for
25 complete cables.

00307

1 Q. Wouldn't the fact that the company has
2 repaired sections of cable to include the provisioning
3 of trenching and the fact that this notice states to
4 customers that nothing has changed for single family
5 residences indicate to those customers that U S WEST
6 will repair up to the customer's premise at no charge
7 to the customer?

8 A. There's a lot of confusion around this
9 issue, and I think it's very important that it's
10 clear. For regulated telephone facilities, which
11 would not include inside wire or wire on the customer
12 premises or wire on the customer's side of the point
13 of demarcation, but for everything on the company's
14 side of the point of demarcation U S WEST does not
15 charge for repair. The fact that a trench or conduit
16 or a terminal has to be accessed or ground has to be
17 dug to reach a facility to repair it, not replace it,
18 but to reach a wire to fix it, the company does not
19 charge any customer for that as long as the damage
20 wasn't done intentionally by the customer.

21 The company -- this case is about the
22 company suggesting to these property owners that all
23 of the facilities located on their property need to be
24 replaced. We are not asking this property owner to
25 pay for those facilities. We are asking the property

00308

1 owner to provide a trench and conduit in certain
2 sections for our ability to place new facilities,
3 which is one option at improving the quality of
4 service on this property. There are other options
5 which we're currently exercising.

6 Q. I guess I want to clarify this a little
7 further so you understand exactly the question I'm
8 asking. Recall the testimony that in the parks
9 service was repaired. The repair was done by the
10 company. In the process of the repair the company did
11 the trenching or contracted for that trenching at no
12 cost to the customer, and further, there was no
13 obligation for the customer to provide the trenching.
14 Given the company's conduct at those parks with
15 respect to that repair, wouldn't you agree that the
16 fact of that repair and the notice that states that
17 nothing has changed for single family residence
18 indicates to the customers that U S WEST repairs up to
19 the customer's premises?

20 MS. DODGE: Your Honor, I'm going to object
21 to that question because it inserted in addition to
22 some factual assumptions a conclusion, a legal
23 conclusion, about the obligation under the tariff, so
24 maybe we should have it read back if that's not clear.

25 MS. SMITH: The question did not include

00309

1 any obligation to the tariff. Those customers in
2 those specific factual situations were not charged and
3 were not asked to pay.

4 JUDGE SCHAER: I'm going to overrule the
5 objection, and I am going to ask Ms. Jensen to respond
6 directly to that question. I heard it asked once
7 before, and I heard an answer that wasn't responsive,
8 and I'm concerned that having it restated and -- I
9 think that the hypothetical that's given is a clear
10 one, and I would like to know what her response
11 specifically to that question is.

12 A. I would like to make sure I have all the
13 facts. The assumption is that the company has
14 repaired a section of cable; is that correct? That's
15 what I testified to yesterday?

16 Q. Some other wire that provides the telephone
17 service.

18 A. But the cable has not been replaced.

19 Q. The cable has not been replaced.

20 A. Under the scenario, if I understand your
21 question correctly, where the company has repaired a
22 section of cable that included the company doing
23 trench work and the customer has received this notice,
24 in that scenario the customer would not have been
25 charged for the repair before this notice and the

00310

1 customer would not be charged for the repair
2 subsequent to this notice. And so as this notice
3 states, nothing has changed about that situation.
4 This notice is specific to inside wire and the point
5 of demarcation.

6 Q. Doesn't this notice say in paragraph 1, "If
7 you reside in a typical single family residence, i.e.,
8 a house, these changes will not affect you. However,
9 you will continue to be responsible for repair and
10 maintenance within your residence"?

11 A. That's correct.

12 Q. Now, given the fact that these customers
13 have received this notice, they live in a single
14 family residence and it's their experience that when
15 U S WEST has repaired their service on the company's
16 side of the demarcation and that repair was
17 effectuated through trenching done either by the
18 company or by a contractor and those customers were
19 not charged for that repair in any respect, the
20 trenching or the repair work, the fact that the
21 customer received this notice, wouldn't that indicate
22 to the customer that the company will repair on the
23 company's side of the demarcation point without any
24 responsibility to the customer?

25 A. This notice does not address charges to the

00311

1 customer, but what I am answering you is for like
2 circumstances what this notice would say to the
3 customer is nothing has changed. If the customer
4 wasn't charged before they won't be charged subsequent
5 to this notice. I'm struggling with your question.

6 THE WITNESS: And I am not trying to be
7 difficult, Your Honor, in that I think the question is
8 too general.

9 A. If the customer wasn't charged and
10 shouldn't be charged then nothing would change as a
11 result of this notice. If the customer was charged
12 prior to this notice, dependent on the circumstance,
13 they would be charged here. And so I think that the
14 statement is too general and that's why I'm
15 struggling with answering it, but for like
16 circumstances the customer would understand that this
17 notice isn't changing anything about the current
18 tariff.

19 Q. When an item of property must be replaced
20 in the course of providing service, the company can
21 reflect that expenditure as either an expense or
22 capital expense; is that correct?

23 A. Well, there's a specific practice that
24 defines whether it's expensed or capitalized.

25 JUDGE SCHAEER: Excuse me, Counsel. Did you

00312

1 intend to offer Exhibit 67.

2 MS. SMITH: Yes, I'm sorry. Thank you. I
3 would offer Exhibit 67.

4 JUDGE SCHAER: Any objection?

5 MS. DODGE: No objection.

6 JUDGE SCHAER: Admitted.

7 (Admitted Exhibit 67.)

8 JUDGE SCHAER: Please proceed.

9 Q. Is that correct, the company can reflect
10 that expenditure as either an expense or capital
11 expense?

12 A. There's been very specific guidelines and
13 practices as to which it is, an expense or capitalized
14 item.

15 Q. But it would be one or the other, wouldn't
16 it?

17 A. Yes.

18 Q. Is it correct, or would you accept subject
19 to check, that the uniform system of accounts prior to
20 1985 required separate accounting for drop wires in
21 plant account 231?

22 A. Well, subject to check I would be glad to
23 agree to that.

24 Q. Is it correct, or would you accept subject
25 to check, that the USOA plant account 231 required the

00313

1 cost of trenching in buried drops to be capitalized
2 into plant account 231?

3 A. I believe that whatever account it was
4 would require trenching done by the company. If your
5 suggestion is it requires it to be treated in a
6 certain way, it would be applicable to trenching that
7 the company performed under its regulatory
8 obligations.

9 JUDGE SCHAER: Was that a yes or subject to
10 check?

11 THE WITNESS: Subject to check.

12 JUDGE SCHAER: Yes, subject to check, okay.
13 If you could try to answer yes or no subject to check
14 and then give your explanation, I will allow the
15 explanation but we will have a clearer record.

16 THE WITNESS: Thank you.

17 JUDGE SCHAER: Thank you.

18 Q. Would you agree or accept subject to check
19 that the costs of trenching would also include those
20 costs associated with the company contracting out for
21 trenching?

22 A. In the same account or -- I don't
23 understand your question.

24 Q. Well, the account that the question is
25 addressed to is costs the company incurs for

00314

1 trenching. Would trenching performed by the company
2 and the costs associated with that be treated
3 differently than the costs incurred by the company
4 when the company contracts for and pays for trenching
5 provided by a contractor?

6 A. Would the costs be different or the cost
7 accounting be different?

8 JUDGE SCHAEER: I think the question is
9 would the costs be accounted for differently.

10 A. I don't believe they would be accounted for
11 differently. I believe that whatever the company is
12 obligated to do for trenching would be treated the
13 same regardless of who did the work on behalf of the
14 company.

15 Q. So could we agree that the embedded base of
16 buried drops includes the trenching costs with the
17 possible exception of minor occurrences of special
18 drop work?

19 A. No. I don't believe it does because
20 trenching is an expense, and I understand that the
21 buried drop and aerial drop accounts today -- again,
22 it depends on the number of feet involved in the
23 trenching, but there is some trench costs that may be
24 included and others that would not be included. They
25 would be expensed, and therefore not part of, for

00315

1 instance, the buried account 35C.

2 MS. SMITH: No more questions.

3 MR. OLSEN: Your Honor, would it be
4 appropriate for the petitioners to have minimal
5 recross? I have like seven questions that at some
6 point I would like to ask if we could.

7 JUDGE SCHAER: What we would usually do is
8 at this point I would ask any questions that I have,
9 and I do have some questions for the witness, then we
10 would allow Ms. Dodge to redirect and then if there's
11 any recross it would follow the redirect, and it could
12 then be based on everything including those two
13 sessions as well.

14 MR. OLSEN: Thank you.

15

16 EXAMINATION

17 BY JUDGE SCHAER:

18 Q. Ms. Jensen, a lot of the questions that I
19 had as we've gone through this have been answered, but
20 some of them I still would like to get some
21 clarification from you on to be certain that I
22 understand company's position in this matter. Looking
23 first at your direct testimony and looking at page 3,
24 line 4. Does the tariff define customer?

25 A. I believe it does in the definitions

00316

1 section of the tariff.

2 Q. Would you just give me a reference to that,
3 please.

4 A. Yes. It would be at section 2 sheet 4,
5 customer is defined.

6 Q. Thank you. Then looking at the bottom of
7 that same page 3 you state that U S WEST provides
8 supporting structures on public and private
9 right-of-way property; is that correct?

10 A. Yes.

11 Q. And that a private right-of-way would
12 include an easement over private property. Is that
13 also correct?

14 A. Yes.

15 Q. And you give an example of an easement
16 to serve a few homes at the end of a driveway. What
17 would distinguish the easements in the example that
18 you give in your testimony from the easements that are
19 exhibits in this case?

20 A. The easements that I address over private
21 property are easements where a portion of our cable is
22 on an individual's private property to serve customers
23 that are not located on that property. In the
24 easement addressed in this case on the park's property
25 our facilities are placed on the park's property to

00317

1 serve the tenants of that property.

2 Q. And is this distinction spelled out
3 somewhere in your tariff?

4 A. I think the closest that I saw we addressed
5 was a reference to the easement discussion. If you
6 will give me a moment.

7 Q. Certainly.

8 A. I'm going to refer you, if I may, to my
9 exhibit because I'm having trouble finding it in the
10 current tariff, but Exhibit 62, I believe nine sheets
11 back or ten sheets back, at the top of the page it
12 would say sheet 9-10. Under E7A a legally sufficient
13 easement to accommodate the placing and maintaining of
14 structures.

15 Q. Yes.

16 A. This is the obligation that all customers
17 must meet in the sense of accommodating facilities to
18 serve their property. In this case we're specifically
19 talking about a development, so some of these
20 facilities in the easement would apply to public
21 right-of-way as well, or private right-of-way in some
22 instances.

23 Q. What I'm looking for is something that
24 shows the distinction that you're making in your
25 testimony between what you will do on a public road,

00318

1 what you will do on a private right-of-way and what
2 you will do on an easement such as the one that -- the
3 ones that are exhibits in this case.

4 A. I'm not sure that that is defined in the
5 tariff specifically other than within individual
6 sections. I don't believe it is.

7 Q. So what is the basis for you making the
8 distinction that you make between the work that would
9 be done on a public road, work that would be done on a
10 private right-of-way, the work that would be done on
11 kind of easement that you have in the exhibit in this
12 case for mobile home parks? And I am going to ask you
13 in a moment about the work that would be done on
14 privately owned streets.

15 A. The distinction in the tariff that the
16 company relies upon is in two sections. The first
17 being under general regulations, conditions of
18 service, 2.5.2C at section 2, sheet 56.

19 Q. Is that in your exhibits?

20 A. Yes.

21 Q. Would that be Exhibit 45?

22 A. It's actually in Exhibit 53 six pages back.

23 Q. 2.?

24 A. 5.2 C.

25 Q. Section 2?

00319

1 A. Yes, section 2, sheet 56.

2 Q. And this talks about customer and customer
3 premises, correct?

4 A. Yes.

5 Q. Where is something that talks about
6 property owner?

7 A. That would be Exhibit 54, 11 sheets back.
8 The top of the page should say sheet 9-5.

9 Q. Is this a cancelled sheet?

10 A. Yes, it is.

11 MS. DODGE: I think it's Exhibit 44.

12 JUDGE SCHAER: I believe she said Exhibit
13 54. Is it 44?

14 MS. DODGE: You asked whether it was
15 cancelled. I believe it may be the cancelled version,
16 but I think that the current is found at 44, if that's
17 correct?

18 THE WITNESS: Yes, it is. Thank you. And
19 it would be on the second page of Exhibit 44. The
20 title of the tariff sheet is section 4, sheet 14. It
21 would be 46.A.2.f.

22 Q. And I don't see anything in this section
23 about the distinction between public right-of-way,
24 private right-of-way, easements, private roads as to
25 which ones the company is going to serve.

00320

1 A. That's correct. These sections only
2 address the private property of the owner of the
3 property itself.

4 Q. So under new construction property owner is
5 responsible for this. Is that what this section
6 states?

7 A. Yes. The intent is, Your Honor, if I may,
8 that at the time a new facility is constructed that
9 the property owner understands that they are
10 responsible for the installation, maintenance and
11 repair of the support structure.

12 Q. I'm still troubled, and I am not certain
13 I'm understanding the basis for your distinctions with
14 what's going on at the bottom of page 3.

15 A. In my testimony?

16 Q. Yes, in your direct testimony.

17 A. What --

18 Q. U S WEST provides supporting structures on
19 public and private right-of-way property. Is private
20 right-of-way property defined somewhere in the tariff?

21 A. I don't believe it is.

22 Q. Private right-of-way includes an easement
23 over private property to serve homes. You said the
24 distinction that you're making is whether the homes
25 are on land that's owned by the same person as owns

00321

1 private driveways to get there.

2 A. That's correct.

3 Q. So if I were a home builder, and I had a
4 private road that serves six homes that I had built
5 and I lived in one of them and I had sold the others,
6 U S WEST would consider that a private right-of-way
7 for the other five homes but not for my own. Is that
8 a correct understanding?

9 A. That would be correct, yes.

10 Q. And then you say that this would also
11 include privately owned streets if that service was to
12 individual pieces of property; is that correct?

13 A. That's correct.

14 Q. What is your understanding of the legal
15 structure of the complainant insofar as the property
16 that is concerned in each of the mobile home parks?
17 What assumptions is U S WEST making and asking?

18 A. That there is one owner of the entire park,
19 that it is a single piece of property.

20 Q. And do you understand that -- in your
21 understanding are the lots in the park separately
22 platted or are they not?

23 A. If I understand your question correctly,
24 it's my understanding that the park does not have
25 individual pieces of property. That there is a single

00322

1 owner for all of the property. I don't know if
2 they're subplotted or not. I know the park owns them
3 all.

4 Q. Well, when you say that the park owns them,
5 what are you assuming is the status of the people that
6 live in the home?

7 A. That they are leasing the property from the
8 owner, and I believe that the legal description -- we
9 did look at the legal description of the property and
10 it is a single property.

11 Q. But these are leases?

12 A. These are leases of the property.

13 Q. And it's been a lot of years since I was in
14 law school, but seems to me that a lease was
15 considered in some forms as an ownership of property.
16 How do you distinguish which leases are or which
17 leases are not considered to be a form of ownership of
18 property?

19 A. I would personally go to my attorney for
20 that distinction. I can give it to you from a
21 practice perspective. It would deal with the issue of
22 whether the tenant was authorized to make decisions
23 that altered the property. It's my understanding that
24 the application of our tariff that we are dealing with
25 the owner of the property as opposed to a lessee of

00323

1 the property.

2 Q. And what investigation did U S WEST staff
3 make into this issue in this proceeding involving
4 these three parks?

5 A. We looked at the parks to determine if the
6 individual tenants owned the individual piece of
7 property by record or not. We do have mobile home
8 parks where the tenant actually owns the property on
9 which the trailer resides. In these parks it's my
10 understanding they do not own it.

11 Q. So let's take that as an example. If you
12 had one of the mobile home parks where instead of
13 leasing parcels of property individuals owned parcels
14 of property and had private roads in there that were
15 owned by the park and you needed to replace facilities
16 in those roads, would U S WEST then pay for the
17 trenching and conduit?

18 A. I believe in that scenario we would ask the
19 park owner for the easement and we would categorize
20 that as the private right-of-way, and under those
21 circumstances we would provide the trench.

22 Q. So you are deciding -- let me back up a
23 step just to try to understand this. The customers of
24 U S WEST that are involved that the Commission needs
25 to be concerned about are the residents of the

00324

1 individual mobile homes. Is that -- I'm not saying
2 exclusive concern but they are certainly players that
3 need to be kept in mind in this proceeding; is that
4 correct?

5 A. Yes, it is correct.

6 Q. And if you have a resident of a mobile home
7 in this park that is having poor service right now
8 because the cable in the easement that serves her home
9 is in poor shape and needs to be replaced, that
10 tenant cannot or that customer cannot call on U S WEST
11 for the same kind of repair that a customer in the
12 park that owned her own lot could; is that correct?
13 You provide a different level of service to that
14 customer or --

15 A. I believe the customers would be treated
16 the same from the standpoint of our need to have a
17 trench or conduit furnished the difference being that
18 in the one case the private road most likely has an
19 easement in place that enables the company to get to
20 that private property where in the other scenario it
21 is not individual units of property. So the
22 distinction does affect the trench work on the private
23 road because the property definitions differ.

24 Q. Is there some problems with the easements
25 that have been given to U S WEST by the parks in this

00325

1 proceeding that would cause problems for U S WEST in
2 providing service?

3 A. The easement isn't the issue. It's the
4 management of the -- and the commitments associated
5 with the public right-of-way or private right-of-way
6 versus private property. On public right-of-way or in
7 a situation where there's an easement that what I'm
8 calling private right-of-way generally there's a very
9 strict code with respect to how deep the facilities
10 are placed. There may be a permit process associated
11 with it. There may be a specification for conduit.

12 So the likelihood of our cable being
13 damaged in a scenario where we are actually doing the
14 trenching or conduit work on a private road is
15 different than where a private property owner owns the
16 complete piece of property. And so we have found that
17 it's more probable for trouble to occur in this
18 scenario where it's a single unit of property than the
19 scenario where there are individual units of property
20 because of the code and enforcement of how that
21 original cable is placed and protected.

22 Q. You go on to state at page 4 of your
23 testimony, line 16 and 17, that if the owners of these
24 three mobile home parks were to sell or deed their
25 streets to the local municipality, U S WEST would then

00326

1 put in the replacement facilities and would provide
2 the conduit and the trench itself. Is that a correct
3 reading of your testimony?

4 A. On the streets, yes.

5 Q. And is there somewhere in the tariff that
6 describes this distinction between public and private
7 streets?

8 A. Well, there is a definition in the tariff,
9 as was pointed out to me, of public roadway, but I
10 think to be more pointed to your question, I don't
11 believe that the tariff, you know, differentiates.
12 The tariff generally doesn't define everything the
13 company does. It tries to be specific to the
14 obligations of the customer, or the obligations of the
15 service as opposed to the provisioning and maintenance
16 process of that service, so that's why we're not
17 finding the things that I'm talking about in the
18 practice of the company in the tariff because it's
19 related to the provisioning practice or the
20 maintenance practice, so what we tend to find is
21 what's specific to the customer or the property owner.

22 Q. Well, I'm looking at the bottom of page 3
23 and the top of page 4, and U S WEST will provide
24 service in privately owned streets if the customers
25 individually owned property, and it will provide

00327

1 service if those private streets are turned over to
2 a municipality to all of their individual customers,
3 and it will provide service over a private
4 right-of-way which includes an easement over private
5 property, and I really am looking for the theoretical
6 distinction between all those instances where you
7 would provide the conduit and the trench and the
8 service so that the customers who are receiving poor
9 telephone service would get better service and the
10 customers in these parks who are receiving poor
11 service and apparently have not been able to get
12 better service. And what I'm really looking for is
13 the basis for the distinction and the reasoning behind
14 the distinction, and I am not finding it yet.

15 A. The only basis and reasoning that I can
16 give you behind the distinction is not from a tariff
17 language perspective but from the -- I'm trying to
18 think of a good way to describe it -- basically the
19 circumstances associated with placement of our
20 facilities under roadways that dictate very specific
21 standards that are met by either the governmental
22 agency or by the companies. And it relates to the
23 protection of our facilities by meeting those
24 standards from future damage so that if another party
25 comes into that same area, physical property, that our

00328

1 facilities are protected from damage because of the
2 placement of a cable TV system, placement of water
3 pipes, the placement of electric facilities.

4 There are very stringent codes that must be
5 adhered to, and what we find is when we have an
6 easement over private property or private roads are
7 deeded to a county or city then we have the protection
8 of those very strict ordinances and standards around
9 our facilities that we don't have when a private
10 property owner owns the road. There are very
11 different standards that are adhered to in each
12 circumstance.

13 Q. But yet your testimony states that you
14 would provide service over a private road, privately
15 owned streets, bottom of page 3 and top of page 4, if
16 service in a subdivision was to individual pieces of
17 property. Is that correct?

18 A. That's correct.

19 MS. DODGE: Your Honor, to the degree it
20 would be helpful I do have redirect on this topic and
21 I would be happy to go through that and it may clarify
22 some of these or you may have additional follow-up
23 after that, but just in the interests of --

24 JUDGE SCHAER: I think I'm ready to move on
25 to some other questions right now.

00329

1 Q. Ms. Jensen, looking at page 2 of your
2 rebuttal testimony at question beginning at lines 5
3 and 6. You indicate that this language was introduced
4 in docket No. UT-920474; is that correct?

5 A. Yes.

6 Q. And I believe at other points in your
7 testimony you stated that the language that holds --
8 that holds property owners responsible for this has
9 been in the tariffs since 1961; is that correct?

10 A. That's correct.

11 Q. So is this language new in '92 or is it
12 something that's been around since '61?

13 A. This specific language was new to that
14 section of the tariff in 1993, which was when it
15 actually went in place, July 1, 1993, but it was added
16 to the tariff because there had been confusion on this
17 issue and the same language as it related to the
18 customer's responsibility existed in the tariff
19 concerning the support structures and so forth, so
20 this was probably one of the first times that it was
21 made clear that we in some instances had a property
22 owner as opposed to a customer who was responsible for
23 the support structure. Prior to that it tended to be
24 written from a customer perspective prior to the 1993
25 addition of this language.

00330

1 Q. You again refer to private right-of-way
2 property on page 10 of your rebuttal, and I've again
3 written myself a note that says, where is this
4 defined, and I believe you've already answered me that
5 it's not defined in the tariff; is that correct?

6 A. To the best of my knowledge.

7 Q. And looking at page 12, at around lines 9
8 and 10 you use the statements in bold "facilities and
9 support structures," and I believe that you have
10 already responded to what the definition of facilities
11 is, but is support structures defined in the tariff?

12 A. I don't believe it is in the definitions
13 section, but -- no, it is not, but in section 2.5.2C
14 we did add a statement in August of '94. I believe I
15 can point to my testimony, in my rebuttal testimony at
16 page 6, lines 10 through 12. I think this is the only
17 place we have in the tariff where we attempt to
18 elaborate on the definition of support structure where
19 we state "such structure work may include the
20 placement of or use of trenching, conduit and/or
21 poles."

22 Of course, through that whole tariff
23 section under general regulations where we discuss
24 responsibilities of customer and under new
25 construction where we talk about aerial and buried

00331

1 construction, we talk about support structures, too,
2 but the only place I believe it's spelled out as it is
3 is in this section of the tariff 2.5.2C.

4 Q. In your reference on page 14, between lines
5 14 and 15, to specific language in the intra-premises
6 network wire and cable tariff, is that the same
7 reference that you just gave?

8 A. No, it is not. The intra-premise network
9 wire and cable tariff -- if I could check something
10 for a moment. That tariff is now located at section
11 2, sheet 68. This tariff now really tends to focus on
12 intra-premise cable and wire as opposed to buried wire
13 outside of a building. It tends to have a building
14 focus as opposed to a property focus, but there are
15 instances where a customer could tell us they want us
16 to stop our facilities at the property line and they
17 will manage everything from the property line on in.

18 Q. So when you state at line 15 and 16 on page
19 14 of your rebuttal, this tariff deals with
20 demarcation point and states that property owner is
21 responsible for providing support structure for
22 company facilities, you're talking about support
23 structure inside a building?

24 A. In most instances, yes, unless the property
25 owner asks us to terminate at the property line. On

00332

1 section 2, sheet 72 of this particular tariff where
2 the property owner has selected a point of
3 demarcation, there is language actually throughout
4 this tariff that says the property building owner
5 shall provide all necessary trenching, conduit or
6 structure as required from the property line to each
7 individual customer premise or unit.

8 In this particular application we're
9 talking about a multi-tenant property or building, and
10 in each option where it's applicable we have language
11 that says the property owner will provide the
12 necessary structure.

13 Q. Were you in the hearing room yesterday when
14 the witnesses for the complainants were testifying?

15 A. Yes.

16 Q. And were you present when there were
17 questions by your counsel on voir dire about what
18 records they had searched looking for evidence of who
19 had built the telecommunications systems at the park?

20 A. Yes.

21 Q. Did you hear her ask one of the witnesses
22 -- I believe that one of the witnesses testified that
23 he had looked at all of the blueprints and all of the
24 drawings for all of the structures installed at the
25 park at the time it was built, including water and

00333

1 sewer and landscape, roads, and had not found any
2 drawings for the telecommunications system. Do you
3 recall that testimony?

4 A. Yes, I do.

5 Q. And do you recall Ms. Dodge asking him
6 whether it was his understanding that U S WEST would
7 always be the one that would design the
8 telecommunications system and would have the drawings
9 and so that the absence of them from what he viewed
10 was not necessarily evidence that the park had helped
11 pay for trenching or conduit?

12 A. Yes, I recall his testimony.

13 Q. What I'm wondering about is the question,
14 would you agree with the question that was asked that
15 U S WEST would always be the one who would design the
16 facilities that were going in so that they would be
17 the ones that would have the drawings, if the records
18 went back that far?

19 A. In a monopoly environment, yes, I would
20 agree that the placement of U S WEST facilities would
21 generally not be found on the property owner's
22 blueprints. It would be nice if they were, but
23 generally that design is done by the operating local
24 exchange company not by the property owner. However,
25 if the property owner placed conduit that owner may or

00334

1 may not include that on their blueprint. I think
2 there's language about exclusive use of that conduit,
3 and for that reason the owner may choose not to
4 include it on their blueprint. In the days when they
5 didn't know we wouldn't have a monopoly and customers
6 believed we had a monopoly, they probably didn't have
7 any reason to keep those kind of records.

8 Q. So that in the usual course in the monopoly
9 days the system would have been designed by the
10 U S WEST engineers?

11 A. Yes.

12 Q. And the determination of whether or not
13 there would be conduit would be their suggestion?

14 A. The U S WEST engineers?

15 Q. Yes.

16 A. Yes.

17 Q. So that in all likelihood the systems that
18 these parks are looking at replacing were designed by
19 U S WEST engineers. Do you agree with that?

20 A. Yes.

21 Q. And if a reason that the systems are
22 deteriorated and need replacing now is that there was
23 lack of conduit, the lack of conduit would be due to
24 the design of those engineers?

25 A. It could be. That could be one scenario.

00335

1 It could be that the company asked for conduit and the
2 property owner did not want to provide conduit and the
3 company went ahead and put the facilities in at that
4 point in time.

5 Q. Let's take as a hypothetical that U S WEST
6 designed a telecommunications system for a mobile home
7 park and installed that system and did not put conduit
8 into the system and that the conduit deteriorated to
9 the point that the system needs to be replaced. What
10 in your tariff would allow U S WEST to now tell the
11 property owner that conduit was required? How would
12 you be allowed to change the original plan?

13 A. The requirements for the support structure
14 on the original plan?

15 Q. Yeah. If they had originally designed a
16 telecommunications system that did not require support
17 structures, how would they on needing to repair or
18 replace be allowed to impose additional requirements
19 on the property owner? Can you show me where the
20 tariff would deal with that?

21 A. Yes. Actually, Ms. Smith actually showed
22 me the specific tariff language -- I'm sorry, I'm
23 having trouble finding it -- where it says it was the
24 company's prerogative to define the support structure.
25 I believe it's probably in the new construction.

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1 MS. SMITH: I have the reference here if
2 that would be helpful. I have it at section 4.1.4,
3 and it's section 4 original sheet 1.

4 THE WITNESS: Thank you. That's correct.

5 JUDGE SCHAER: Did we have photocopies of
6 that section for a reference?

7 MS. SMITH: I have them here if you would
8 like me to distribute them.

9 JUDGE SCHAER: That would be useful to me.
10 I would like to see it, please.

11 Q. So that it would be your position that this
12 section would apply not only the first time that a
13 system is built but when a system is rebuilt?

14 A. Yes.

15 Q. So that they can come in and new things
16 need to be put in and require a property owner to pay
17 for that?

18 A. Actually, what we have found in looking at
19 the maps for these properties for both Belmor and
20 Camelot is that there is both trench and conduit there
21 today. The conduit tend to be under the roads, and
22 the trenching is on the individual lots within the
23 park, and I could relook at the maps, but I don't
24 believe that we're asking them to place additional
25 conduit. We may be asking them to replace conduit or

00337

1 if there's -- in some cases I know there's been some
2 additions, but generally the conduit would be placed
3 under the roads, and the maps do in fact indicate that
4 there are sections of conduit throughout the parks.

5 Q. So if the conduit is already there under
6 the road then U S WEST could leave a hole at each end
7 and run new facility through the conduit, correct?

8 A. Assuming the conduit was not damaged, yes.

9 Q. And how would you test whether it were
10 damaged?

11 A. I think we would know based on the existing
12 facilities; if there were diagnostics that indicated
13 that a cable within the conduit was damaged then we
14 would need to know why. I mean, it would be very
15 unusual for conduit within or cable within a conduit
16 to be damaged unless the conduit itself were damaged.
17 So that would be one indication.

18 Then we would, of course, dig down to the
19 conduit to get to it or if the conduit is full, a
20 typical scenario is if the conduit is full and the
21 facilities are inadequate in terms of performance
22 levels then in many instances if we're not able to
23 remove those facilities we would simply place new
24 conduit and new facilities. And, I'm sorry, I don't
25 know the specifics here as to what we're asking the

00338

1 property owner to do, but if we can reuse conduit we
2 will clearly reuse conduit.

3 Q. So from what you're saying, is it a fair
4 inference that problems in these parks are not so much
5 with portions of the system that are under the roads
6 but with the individual facilities going to individual
7 customers' homes?

8 A. I believe that's where the predominance of
9 the problems are, yes. But it's my understanding that
10 we were going to replace all of the facilities on the
11 property. That the engineering jobs that have been
12 done envision a complete replacement, and I believe
13 that's because of the years of damage that has
14 occurred to those facilities for a variety of reasons.

15 JUDGE SCHAER: Well, those are the
16 questions that I had. How much redirect do you have,
17 Ms. Dodge?

18 MS. DODGE: It's hard to say, maybe half an
19 hour. It may not go that long.

20 JUDGE SCHAER: Let's go off the record for
21 a moment to discuss scheduling.

22 (Discussion off the record.)

23 JUDGE SCHAER: Let's be off the record.
24 While we were off the record we had a brief discussion
25 of scheduling. We're going to take our lunch recess

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1 now and return at 1:30. We're off the record.

2 (Lunch recess taken at 12:15 p.m.)

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1 AFTERNOON SESSION

2 1:30 p.m.

3 JUDGE SCHAER: Let's be back on the record
4 after our lunch recess. Do you have redirect, Ms.
5 Dodge?

6 MS. DODGE: Yes, I do, Your Honor.

7 JUDGE SCHAER: Go ahead, please.

8

9 REDIRECT EXAMINATION

10 BY MS. DODGE:

11 Q. Ms. Jensen, I believe you testified earlier
12 that the tariff speaks to what the customer or
13 property owner's responsibilities are and doesn't
14 cover every aspect of the provisioning or maintenance
15 of the company's operations; is that correct?

16 A. Yes, I did.

17 Q. And in U S WEST's existing service areas,
18 is it generally understood that the company is
19 responsible for everything up to an owner's property
20 line including trenching?

21 A. Yes, it is, in most instances. Exception
22 might be a new development.

23 Q. Why is the property line significant?

24 A. The property line is significant because
25 there are codes and standards that are adhered to on

00341

1 public property or governmental-owned property that
2 don't exist on private property, and the company would
3 be liable for incidences that occur on private
4 property if it were to do something to that property
5 without the property owner's permission. A frequent
6 issue, particularly as it relates to repair, is if the
7 company has to dig up sod or plants, you know, do
8 something that causes, you know, a driveway to be
9 affected.

10 So there's a lot of issues on private
11 property that the property owner -- I mean, it's the
12 property owner's property. It's not the company's
13 property, and so the company can't just go on the
14 private property and do whatever it feels like doing
15 unless it has an easement.

16 Q. In terms of talking about a private
17 right-of-way, what does a private right-of-way in the
18 sense that you describe in your testimony -- do you
19 have an understanding of what that looks like?

20 THE WITNESS: Well, Your Honor, if I may,
21 I've drawn an exhibit that I think would help explain
22 the private right-of-way issue, a drawing. It doesn't
23 have to be an exhibit.

24 JUDGE SCHAEER: Would you like to distribute
25 that, Ms. Dodge.

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1 MS. DODGE: I would like to use it as an
2 illustrative exhibit.

3 JUDGE SCHAER: If you're going to do that I
4 would ask at some point to reduce it to 8 and a half
5 to 11 so we can have one in the record and the record
6 can be clear, but go ahead and use this now with the
7 redirect.

8 MS. DODGE: Perhaps Ms. Jensen can redraw
9 it on small paper and we can all agree that it's the
10 same.

11 THE WITNESS: Do you mind if I tape it up
12 here?

13 JUDGE SCHAER: Not at all. Hopefully you
14 can see it.

15 A. It's really rather simplistic. What we're
16 talking about is a public roadway, as the tariff would
17 define it, or a public street, much like the one
18 outside this building, that has a private property
19 unit that runs up to the roadway, which would be this
20 unit here, and a road or driveway in this instance
21 that went down the middle of this particular property.

22 This property owner may have originally
23 owned this whole piece of property here, has
24 subdivided the back of his property and two homes have
25 been built, and the company now needs to serve these

00343

1 homes and there's no other way to reach these homes,
2 consequently, other than down a private driveway that
3 this property owner has put in.

4 This owner has provided an easement to
5 these private property owners to get to their property
6 for his driveway. He's allowing them to use his
7 driveway to get to their pieces of property. What
8 typically will happen is the phone company will go to
9 this private property owner, because we have no right
10 to cross his property, and ask him for an easement to
11 go through his property to reach these two new pieces
12 of private property that have homes on them.

13 So in that scenario -- let's assume that
14 the road went this route and stopped here -- we would
15 go to this property owner, ask him for an easement to
16 go through his property with our facilities, and that
17 easement is generally just -- it's generally just a
18 straight line on his property, typically, unless
19 there's a hill or something in the middle, and it's
20 probably four or five feet wide. It's just a strip of
21 property that we ask him if we can utilize to reach
22 these two pieces of property. If he's got a driveway
23 down his property typically we try to do it through
24 the driveway.

25 Then, once we get through his property, we

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1 don't ask him to pay for our trenching for that
2 section of the property, and if this were a road that
3 he still owned it would include this section as well,
4 because these people don't own that road, this
5 property owner does. So we would do all of the
6 trenching and, if we felt conduit was necessary, place
7 the conduit up to that point. Then each of these
8 property owners would be responsible for providing the
9 support structure. Could be a pole that we placed
10 here or it could be underground, and they would
11 provide trenching or conduit and we would finish
12 providing the facilities to each home.

13 In this home, this home may already be
14 served and probably is served, if this person
15 subdivided their property, off the roadway, so it
16 wouldn't necessarily require the use of any trenching
17 or facilities, copper, whatever it be, to serve this
18 home necessarily, but if this home were new as well,
19 then we could serve it one of two ways. We could also
20 serve them off of this common facility or we could
21 serve them off of the road. And if they were -- if
22 this were a new facility we would also ask them only
23 to provide the trenching as it related to their
24 private property, not this particular easement piece.

25 JUDGE SCHAEER: So even though that private

00345

1 property owner owns the easement piece, you would do
2 the trenching down to where you left the easement to
3 go into the individual home?

4 THE WITNESS: That's correct, because we
5 need this easement to serve these two customers, and
6 so we are literally asking him to deed, as I
7 understand it, a piece of his property over to the
8 company, which means that he cannot -- he or she
9 cannot do anything with that piece of property. They
10 couldn't locate something on top of it; that we would
11 be, in essence, entitled to that section of property
12 for as long as we held that easement.

13 Now, that also is true when we have
14 easement within private property. We are also saying
15 if we go underground that the customer can't build a
16 building on top of that trench or the place where we
17 have the facility easement because then we couldn't
18 access our facility. So there's a need for an
19 easement within the property and there's sometimes a
20 need for an easement that passes through property to
21 reach other subscribers.

22 JUDGE SCHAEER: And I believe I asked you
23 some questions earlier this morning about situation,
24 let's assume -- why don't you put letters by each of
25 the homes that you've drawn. Let's assume that the

00346

1 person who originally owned the entire piece of
2 property and who subdivided the property and built
3 other homes lives in home C instead of home A and that
4 that person has need of replacement of the cable that
5 serves home C. I believe that what your testimony was
6 this morning was that since that person is the owner
7 that person would have to pay for the conduit
8 completely out to the public roadway whereas for the
9 person -- if the situation involved a person in home B
10 that person would only have to pay for the conduit or
11 trenching out to the easement. Is that a correct
12 understanding of your testimony this morning?

13 THE WITNESS: I'm struggling with the "pay
14 for." If we can change that to "provide the support
15 structure."

16 JUDGE SCHAER: Let's assume that there is
17 conduit needed and trenching needed back to the point
18 between homes B and C and that whomever is going to
19 have to have it provided has asked U S WEST to provide
20 it. Whom would you charge?

21 THE WITNESS: And this is one piece of
22 property?

23 JUDGE SCHAER: It originally was one piece
24 of property. It was developed by a person who lives
25 in home C. That person still owns the road coming in

00347

1 and owns the plot that home C is on, has holed off
2 plots that homes A and B are on and has given you an
3 easement down that road to serve homes A and B as well
4 as his own home.

5 THE WITNESS: Under that scenario, if I've
6 understood you correctly, these are still now three
7 legal units of property?

8 JUDGE SCHAER: Yes.

9 THE WITNESS: It would be the same. We
10 would still not charge for the trenching to reach B
11 and C, because they're still separate units of
12 property regardless of the fact that the owner is here
13 now.

14 JUDGE SCHAER: And he owns the road that
15 goes all the way out to the public road?

16 THE WITNESS: That's right. We still would
17 not charge to reach each unit of property. We would
18 only charge once we were on the unit of property.

19 JUDGE SCHAER: So that even though that
20 private owner owns clear out to the public roadway,
21 U S WEST would provide the trench and conduit down to
22 the point where service left the easement that's
23 shared with someone else and went just to that
24 person's home?

25 THE WITNESS: That's correct, because we --

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1 maybe a way to clarify this is that we provide the
2 service up to the private property line and in this
3 case, even though there's a need for an easement to
4 get to that private property line, we will still
5 provide it up to this property owner's property line.

6 JUDGE SCHAER: But I've asked you to assume
7 that the person who owns house C owns the road, the
8 private road, and owns it clear out to the public
9 roadway. So that person's private property starts at
10 the edge of the public roadway.

11 THE WITNESS: That's correct. They own
12 this -- see, this may or may not be a road.

13 JUDGE SCHAER: I'm asking you to assume
14 that it is a road and comes in and goes to -- provides
15 automobile access to both homes.

16 THE WITNESS: If this owner gave us an
17 easement to get through this property, and they own
18 the road then we would still do this at the company's
19 expense.

20 JUDGE SCHAER: How many -- now, let's say
21 that there's two more homes beyond B and C down to D
22 and E. Let's say that C has sold E to one but still
23 owns D and has leased to his mother-in-law. And let's
24 say that you had to again -- we have a situation where
25 cable and conduit is needed to get down to homes D and

00349

1 E. U S WEST has been asked to provide cable and
2 conduit for the entire repair/replacement. What would
3 you do? I'm trying to figure out where the line is.

4 THE WITNESS: The line is whether we're
5 passing through property, which we are doing in the
6 case of this piece of A property.

7 JUDGE SCHAER: I've asked you to assume
8 that C owns that road so you're not going through A's
9 property to get to C.

10 THE WITNESS: Okay. That there's a section
11 of this property that C owns. And these are
12 individual units of property.

13 JUDGE SCHAER: Yes.

14 THE WITNESS: I believe we would go,
15 if C is still the owner --

16 JUDGE SCHAER: Yes.

17 THE WITNESS: -- that we would go to C, ask
18 for an easement from C on the road to reach D and E,
19 to reach their property.

20 JUDGE SCHAER: Well, let's assume that C is
21 giving you an easement on his entire road. That he
22 owns parcel C and he owns parcel D and he owns the
23 road all the way from access to the garages from D and
24 E out to the public roadway.

25 THE WITNESS: I think we would call that

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1 private right-of-way, and we would still do the
2 trenching up to the property line of each piece of
3 property with the easement from the person that owns
4 the road.

5 JUDGE SCHAER: And you would do that even
6 with the parcels that were owned by the owner of the
7 road?

8 THE WITNESS: Yes, because they're separate
9 legal units of property, even though one owner might
10 own two of them.

11 Q. Ms. Jensen, there's been some discussion
12 about a practice within the company regarding whether
13 trenching is provided at a length of less than 300
14 feet. What is the significance of 300 feet versus,
15 say, 100 or 500 or any other measurement?

16 A. Well, the significance, as I mentioned, is
17 due to our accounting practices, and specifically I
18 talked earlier about it being a capital expense versus
19 something that is capitalized, which is depreciated
20 and which is made up as part of the ongoing rate base
21 calculation versus a unit of property that is
22 expensed, and there are very specific rules as it
23 relates to the retirement of units of property and the
24 designation of that is 300 feet. So from an
25 accounting perspective the 300 feet is important

00351

1 because it dictates how something is classified and it
2 also dictates how it's accounted for under a rate base
3 scenario.

4 Q. So can you clarify how that would play out
5 in the field if you have a spot repair versus repair
6 of any length of cable?

7 A. Yes.

8 Q. At what point does the measurement become
9 an issue?

10 A. Well, the measurement becomes an issue when
11 I'm needing to determine -- if I need to retire an
12 asset off the books of accounting if it's over 300
13 feet then I must make an accounting entry to retire
14 that asset, and if it's less than 300 feet then I'm
15 not required to do that.

16 Q. So is it fair to say that this practice
17 grew up in the wake of the fact that there are less,
18 call it, paperwork requirements or accounting
19 requirements when you're dealing with cable that
20 involves less than 300 feet?

21 A. I don't know.

22 Q. That's fine. There was some discussion
23 earlier about line extensions and going out to someone
24 on a mountain top. When you talked about placement
25 and who pays for placement of facilities, if a

00352

1 customer isn't paying for the support structure in
2 terms of paying the company and also not paying for
3 this facility itself, what did you mean by placement?
4 What kinds of charges might be ultimately passed to a
5 customer?

6 A. There are a number of charges depending on
7 the extent of the job. A customer could be charged
8 for the design work. They could be charged for
9 permits that the company is required to pay. They
10 could be charged for the labor in the sense of the
11 work that's required. Basically the primary component
12 is the labor both in the design of the new facility as
13 well as the placement of it.

14 Q. There was also discussion about existing
15 lines versus new lines and whether someone just has a
16 phone or has modems. What do you mean when you say
17 existing line versus new line?

18 A. Well, I was not talking about the telephone
19 number, the product. What I'm talking about when I
20 talk about a new line versus additional line is the
21 physical cable, the physical property that needs to be
22 placed, not the fact that somebody is subscribing to
23 an additional telephone number.

24 Q. So is it possible for an existing person
25 who has dial tone to require placement of a new line

00353

1 even if all they're doing is restoring dial tone?

2 A. Yes, it is. If the facility cannot be
3 repaired through splicing or through diagnostic
4 capabilities located in a switching device, then the
5 company may in fact need to replace that entire
6 facility for the customer, but generally that's kind
7 of the last option.

8 Q. And if you do have to employ that option
9 then you consider that to be a new line?

10 A. We do consider that to be new construction,
11 yes, of a new facility.

12 Q. When you spoke about facilities earlier you
13 mentioned copper wire as what you had in mind as a
14 facility. Did you intend that literally to mean only
15 copper wire?

16 A. No, I did not. There's many items of
17 equipment that make up a facility from our serving
18 central office to a customer's premise. There's
19 circuit switching equipment in the field. There's
20 fiber technology. There's copper technology. There's
21 metallic technology. So there's a variety of
22 different materials that are utilized in the process
23 and sometimes frequently more than one. Copper tends
24 to be the one that most people are familiar with.

25 Q. When you talked about the fact that most

00354

1 customers end up providing trenching themselves, what
2 did you mean that they provide it themselves?

3 A. They really will go out and dig a very thin
4 line, much like the photographs that we saw yesterday,
5 with a shovel or with an ax so that the company can
6 come in and lay the wire in the ground.

7 Q. And that's as opposed, for example, having
8 to go out and hire contractors and pay third parties
9 to do it for them?

10 A. Generally a single family dwelling
11 residence, you're talking about a very short distance
12 for the most part in the urban areas, and they just do
13 it themselves, and they prefer to do it themselves
14 because of their property, in terms of what they may
15 have on the property. In a case like a farm or a
16 business operation where there's either multiple
17 buildings or a trailer park where it involves many,
18 many feet, generally a business will go out and hire
19 someone to do it as opposed to the property manager
20 doing it themselves.

21 Q. From the company's perspective does the
22 company have any preference regarding whether a
23 customer or a property owner, however those are
24 defined, pays or provides trenching as long as the
25 trenching is provided?

00355

1 A. No, they do not, other than to insure that
2 the property owner is the entity giving the
3 authorization.

4 Q. Do you have an opinion whether it's --
5 about the fairness in a situation like a mobile home
6 park of requiring a property owner versus a customer
7 to provide support structures?

8 A. Well, I guess my feeling is that the tenant
9 that is leasing the space of the property owner
10 probably has an agreement with respect to what that
11 entitles that individual to, and we would also want to
12 be very careful that that tenant had the authority to
13 allow the company to dig on their property and so
14 forth if that were the case. I mean, the tenant
15 doesn't have the right to allow the company in that
16 scenario unless designated by the property owner to do
17 work on that property that the property owner is not
18 aware of.

19 A good example is if we went in today and
20 placed facilities without talking to the property
21 owner it may not be likely that the tenant knows where
22 the cable TV wire is, and so we could run into the
23 same situation that the mobile park owners did in that
24 we could damage their cable if we didn't talk to the
25 property owner before we went in and dug trenching and

00356

1 so forth. So there's a real concern that the tenant
2 may not necessarily know what's underground on each
3 piece of property if they don't own it.

4 Q. There was some discussion yesterday about
5 whether there was an ability -- and also today about
6 the ability to pull cable through conduit as opposed
7 to actually physically having to dig into the ground.
8 Do you recall that?

9 A. Yes, I do.

10 Q. In investigating this case, did you come
11 across some information regarding the ability to pull
12 cable through conduit as opposed to digging on any of
13 the subject properties?

14 A. Well, I've looked at all three maps for
15 each of the cable parts for the existing facilities
16 and where they're placed. These would be U S WEST
17 designs, and in Camelot and Skylark there is clearly
18 conduit available that the company could utilize.
19 It's clear that in some instances we've asked for
20 additional conduit, but there is conduit on the map
21 that's both been placed by the company and by the
22 customer on this property, particularly at Skylark
23 Village.

24 Q. I'm going to hand you or you may have a
25 copy of what's been marked as Exhibit C-33.

00357

1 A. Yes, I do.

2 Q. Would you identify what C-33 is.

3 A. Yes. It's the map of Skylark Village.

4 It's U S WEST's map of its distribution facilities at
5 Skylark Village.

6 Q. Is there anything on any of these maps
7 which informs your understanding of what would be
8 required or what has been required in the past to
9 provide facilities or repair facilities at Skylark
10 Village or Skylark Village 2?

11 A. Well, there are several notations on this
12 map. As we discussed yesterday, the circled area is
13 the specific property that belongs to Skylark.

14 Q. I'm sorry, which map are you looking at now
15 by the lower right-hand designation?

16 A. F12D. I think it's the top sheet hopefully
17 on each handout.

18 Q. Go ahead.

19 A. If you look at this map, I believe in the
20 middle of the page, 29th Street should be highlighted
21 29th Street Southeast, and if you drop just below that
22 you can see there's several designations, but
23 specifically right below 29th Street Southeast there's
24 designations of 30 feet of four-inch PVC, which is
25 conduit. Next to that there's another 80-foot section

00358

1 of four-inch PVC. I think that's an 80. And next to
2 it there's another 30 feet of four-inch PVC. And the
3 45 CNPM is the buried cable account, I believe. Check
4 for a moment.

5 Q. Would 29th Street Southeast be considered a
6 public right-of-way -- or public roadway?

7 A. Yes, it is, and that demonstrates that
8 there is conduit that was placed along this roadway.
9 Now, the NPM means "no plant measurement" which means
10 that the company did not place this conduit because
11 there was no accounting for it. In this case the city
12 or county most likely has placed the conduit and
13 allowed the company to pull its facilities through
14 there.

15 Q. Turning your attention to page F13. Would
16 you describe the designations, what the designations
17 mean within what's been marked as Skylark Village 2 by
18 hand drawn line?

19 A. Yes. The circled area, again, is the
20 property of Skylark Village. This is the second
21 addition, I believe, they refer to it as, on their
22 property, and if you look at M Street, which is on the
23 upper right-hand corner -- it's been highlighted --
24 and you come down to 32nd Street Southeast is
25 highlighted, and then you kind of start into this area

00359

1 that's circled, it's very difficult to read but right
2 at the entrance there's 25 feet of two-inch PVC --
3 sorry that isn't highlighted but it's right below the
4 M.

5 And if you follow that in you can kind of
6 see a circular drive area and highlighted on this
7 attachment is a designation of owner's two-inch PVC.
8 What that means is that the property owner provided
9 conduit for the telephone company to place their
10 facility through this section of Skylark Village any
11 place where it says owner's two-inch PVC. At the
12 entrance where there's 25 feet of two-inch PVC,
13 there's also another owner's PVC through there. It
14 appears that they also placed that, though the first
15 notation doesn't designate owner. If U S WEST placed
16 this cable it would show an account code of 4C.

17 Q. Is there anything on here that tells you
18 when that -- when any of the conduit or cable would
19 have been placed?

20 A. Yes. The way that we can tell is when our
21 facility was placed. Generally the owner would first
22 provide the conduit and then the company would provide
23 the facility, and off of each of these highlighted
24 areas you can see a line that circles where the
25 conduit is and drops down. So, for instance, in the

00360

1 middle of the page, or the middle of that area between
2 the bottom two highlighted areas, you see an account
3 which is 5C which means underground cable -- it's not
4 buried, it's in conduit -- and it's very difficult to
5 read, but that was placed, it appears, in 1987. And
6 it is a large section of cable.

7 Q. By 1987 where do you read that on the --

8 A. If you drop down again between those middle
9 two highlighted items at the bottom. There's a 5C,
10 says 87AFT W 25 pair -- PR -- and then again it looks
11 like 87A. Just to the left of that there was some
12 facilities that were placed in '74. Starts out
13 74A FT W 25 pair, again 87A. I'm sorry. I made a
14 mistake. The 74 and the 87 aren't the number of feet.
15 It's the 87A at the end of the line that indicates the
16 year it was placed, and that means '87 addition.

17 If you look at F12B outside of the Skylark
18 Village area that's circled you also see highlighted a
19 number of other areas along this street where the
20 owners have provided conduit. This is not specific to
21 Skylark, but I felt it was a good example of
22 situations where other property owners have also
23 provided conduit to the company.

24 MS. DODGE: Your Honor, I would offer this
25 into admission having been identified and described.

00361

1 JUDGE SCHAER: Any objection?

2 MS. SMITH: Actually, I do object to this.
3 I guess the problem I have with this is that this is
4 something that should have been included in Ms.
5 Jensen's direct testimony. This does not appear
6 something that is responsive to or appropriate for
7 redirect. This is something that should have been
8 placed in Ms. Jensen's direct testimony from the
9 beginning so that both parties would have an
10 opportunity to have their engineers look at this
11 document and perhaps rebut the significance of this
12 document, if there is any. And this is a document
13 that has been in the company's exclusive control since
14 this complaint was filed. And I don't see any reason
15 to have this document entered in on redirect.

16 JUDGE SCHAER: Ms. Dodge.

17 MS. DODGE: Your Honor, this is a document
18 that was discovered after the particular information
19 was requested by complainants's attorney, in
20 particular when they asked for information about the
21 1987 new addition at Skylark Village 2. Through a
22 series of follow-ups based on that specific inquiry
23 the Jane Nishita, in particular she was able to find
24 additional documents. As soon as it was found it was
25 produced to both Ms. Smith and to Mr. Olsen.

00362

1 JUDGE SCHAER: And was there some reason
2 this was not filed as a late-filed exhibit to Ms.
3 Jensen's rebuttal testimony?

4 MS. DODGE: Well, I would lay the blame at
5 my feet for that. If that was the appropriate
6 procedure I apologize to the parties.

7 JUDGE SCHAER: The reason that we have
8 prefiling requirements is to avoid having something
9 like this come in on redirect rather than being
10 something that is filed in advance so that the parties
11 are able to prepare for it, and I am concerned what
12 specifically in cross-examination do you intend this
13 to respond to.

14 MS. DODGE: Mr. Olsen asked whether there
15 was anything in certain evidence that indicated
16 whether -- I believe it was whether digging hadn't
17 been required. I'm sorry, because we're going back a
18 day I don't recall the exact language, but he referred
19 to very particular exhibits which everybody refers to
20 as dig slips, and I believe that he then opens up the
21 inference in the area of, well, even if those
22 particular exhibits that he very carefully isolated
23 and asked, well, do any of these indicate that there
24 was not digging that then opens up the question, well,
25 but we're talking about more than these particular dig

00363

1 slips.

2 We're talking about allegations that
3 there's generally been digging for all of these
4 incidents, and in the case where you have conduit
5 available, and they're claiming that the company came
6 in and trenched to install facilities in 1987,
7 however, there was conduit available to install
8 facilities, there wouldn't have been trenching or
9 digging involved with that particular installation.
10 And so this very specifically goes to that area of
11 examination.

12 MS. SMITH: I guess a comment to that is
13 the dig slip is something that's specific to a repair
14 and this looks more like a document relating to
15 installation of facilities, and the issue wasn't so
16 much whether or not the owners put in conduit in the
17 event that there was a new addition. The question is
18 whether the mobile home parks or any customer is
19 required to provide conduit or provide trenching in
20 order to repair existing facilities.

21 And I mean, this just goes to the reason
22 why this document shouldn't be admitted in this time
23 because there are a lot of questions that are raised
24 by this document that perhaps staff and the
25 complainants would have had an opportunity to

00364

1 understand and cross-examine this witness on this
2 document if we would have had it as an exhibit to the
3 direct testimony so the engineering staff could have
4 studied this and provided some information as to its
5 significance.

6 JUDGE SCHAER: Let me ask as a question on
7 voir dire. Ms. Jensen, is Skylark Village 2, this
8 1987 addition, one of the areas which your company has
9 asked Skylark Village to provide conduit and trench
10 for, for a replacement of the facilities?

11 THE WITNESS: I am not certain if the
12 replacement of the facilities is within Skylark 2 or
13 Skylark 1 or both.

14 JUDGE SCHAER: So you don't know.

15 MR. OLSEN: We can provide testimony to
16 that effect.

17 JUDGE SCHAER: Okay.

18 MR. OLSEN: If necessary.

19 MS. DODGE: I'm not understanding the
20 significance of what's being asked for now as opposed
21 to the use of the complainants' evidence, which is
22 that they are contesting that owners are ever required
23 to provide supporting structure on their private
24 property, and they've gone back to a specific incident
25 in 1987 and claimed that the company came in and dug

00365

1 on that occasion. And they've also asked questions of
2 this witness regarding, you know, where in the
3 evidence does it show that you didn't dig here? And
4 this goes to the question was there digging or not or
5 was there an ability to provide installation without
6 having to trench.

7 JUDGE SCHAER: So this is intended to be
8 rebuttal to that testimony by the complainants?

9 MS. DODGE: Yes, Your Honor.

10 MR. OLSEN: I would object to the extent
11 that the document we're reviewing does not indicate
12 one way or the other whether digging was provided or
13 not. There's two or three words, "OWN's two-inch
14 PVC." It says nothing about whether there was digging
15 going on or not. And to the extent that it requires
16 Ms. Jensen's interpretation of this document I'm not
17 sure that this document is what U S WEST purports it
18 to be, and that is direct evidence that the
19 complainant Skylark Village in this instance actually
20 provided the trenching necessary to install the
21 service line at these locations.

22 JUDGE SCHAER: Well, I'm going to sustain
23 the objection. I think it's inappropriate to bring in
24 something like engineering drawings on redirect at
25 this stage in the hearing when there has been

00366

1 opportunity to prefile testimony and to prefile
2 rebuttal and the rules provide for supplementing
3 those. Even if you had tried to present this as part
4 of the direct of this witness we could have had
5 cross-examination in the first round or had some time
6 for people to work with engineers overnight. There
7 would have been some opportunity to prepare, but I
8 don't think that it's fair to the parties to bring in
9 this kind of technical information at this stage of
10 the proceeding.

11 MS. DODGE: Your Honor, may I just note
12 that this exhibit was identified yesterday and I tried
13 to bring it in so the parties have had it overnight in
14 this particular case.

15 MS. SMITH: The parties had absolutely no
16 idea the significance that the company was trying to
17 use this document. That wasn't provided, and it also
18 -- there was no indication as to whether or not the
19 company would intend to bring this document in through
20 another witness, and the significance of the document
21 was unknown yesterday.

22 MS. DODGE: I believe I examined Mr.
23 Smalley on whether he understood that to be owner-
24 provided conduit on the drawing and was essentially
25 instructed to bring it in my through my own witness

00367

1 through Mr. Smalley.

2 JUDGE SCHAER: You put on your own
3 witness's direct yesterday and did not put it on. So
4 let's proceed.

5 MS. DODGE: That's all I have of this
6 witness, Your Honor.

7 JUDGE SCHAER: Is there any recross?

8 MR. OLSEN: Yes.

9

10 RE-CROSS-EXAMINATION

11 BY MR. OLSEN:

12 Q. Ms. Jensen, do you have section 4.1 of U S
13 WEST's tariff still in front of you? It was, I think,
14 provided by Ms. Smith on a single sheet of paper but
15 it's likely in the tariff also.

16 A. 4.1?

17 Q. Yes.

18 A. Yes, I do.

19 Q. Section 4 original sheet 1. This morning,
20 I think Judge Schaer and Ms. Smith asked you questions
21 about paragraph 4 to section 4.1, and I understood
22 your testimony to be that it was the company's
23 prerogative to designate the type of supporting
24 structure or conduit in cases where a customer was
25 asked by U S WEST to provide a supporting structure.

00368

1 Isn't that true?

2 A. It is the company's prerogative to
3 designate the type of supporting structure, yes.

4 Q. Now, as I read through this paragraph, it
5 appears that that prerogative is qualified to the
6 designated point on the customer property line or from
7 the designated point on the customer property line to
8 the premises to be served?

9 A. That's correct.

10 Q. Is that correct?

11 A. Yes, it is.

12 Q. And so this is a drop line prerogative.
13 It's a prerogative that U S WEST has for the drop line
14 but not necessarily U S WEST's side of the demarcation
15 point. Do you understand what I'm saying?

16 A. The premises to be served would be the
17 point of demarcation generally unless the customer
18 chose to designate it at some other point.

19 Q. I see. So the company's prerogative is
20 specific to the drop line portion?

21 A. The portion from where the private property
22 begins to where the facility must terminate.

23 Q. Is there another provision in U S WEST's
24 tariff that provides for its prerogative to designate
25 the type of supporting structure on U S WEST's side of

00369

1 the demarcation point?

2 A. I believe there would be. We have several
3 tariffs, and each tariff has general terms and
4 conditions as well as product-specific terms and
5 conditions. I don't have them all memorized but this
6 is an important issue for all of our services.

7 Q. Isn't WN U-31 the tariff that is at issue
8 in this case?

9 A. Yes, it is.

10 Q. And so wouldn't the company's prerogative
11 to designate supporting structure on the company's
12 side of the demarcation point be included in WN U-31?

13 A. I believe it is included. I believe that's
14 what we're looking at.

15 Q. Well, I'm -- maybe it's just my
16 understanding but I thought paragraph 4 was specific
17 to the customer's side of the demarcation point.

18 A. No. This is only dealing with company's
19 facilities. What the customer does on their side of
20 the demarcation point would not be addressed by U S
21 WEST's tariff. This applies only to U S WEST
22 facilities.

23 Q. And how do you know that?

24 A. Because our tariffs only apply to U S WEST.
25 They don't apply to other companies. They don't apply

00370

1 to services that the customer owns and anything on the
2 customer side of the demarcation point, the customer
3 owns, not the company.

4 Q. And so the testimony that you've given over
5 the last couple of days has been specific to the
6 company side of the demarcation point as opposed to
7 the customer's side of the demarcation point?

8 A. That's correct.

9 Q. And so all your testimony with regard to
10 the providing of trenching is always on the company's
11 side of the demarcation point?

12 A. Yes. That is the only piece that's
13 regulated.

14 Q. Now, as a new customer to the tariff I'm
15 trying to weave my way through the applicable
16 provisions of the tariff, but there has been a lot of
17 testimony about various provisions in the tariff, and
18 you're well versed with -- sounds like you're well
19 versed with the ins and outs of the tariff. It looks
20 like your interpretation of U S WEST tariff is that
21 mobile home park property owners are responsible to
22 provide trenching to repair and maintain U S WEST's
23 service line; is that correct?

24 A. Where underground cable is required, yes.
25 If it's property owned by the park then we would ask

00371

1 the park to provide trenching and/or conduit.

2 Q. It also sounds like your interpretation of
3 U S WEST tariff is that the tariff has required mobile
4 home park owners to provide this trenching since 1961;
5 isn't that correct?

6 A. Yes. All property owners.

7 Q. But it also sounds like given the
8 discussion with the diagram that's on the wall right
9 now with buildings A through E that if the individual
10 spaces within a mobile home park were legal units of
11 property, right, and U S WEST had a private
12 right-of-way much like you did in your example, and
13 then it sounds like you would interpret U S WEST's
14 tariff and provide trenching up to the legal unit of
15 property; isn't that correct?

16 A. Yes, because if you look at 2.2.C that
17 we've been focused on quite a bit, which I think
18 you've told me is Exhibit 44 a few times.

19 MS. DODGE: 45.

20 A. If you look at the language in that tariff
21 requirement it's very specific that the structure or
22 work required to support telephone service on the
23 customer's premise is provided at the expense of the
24 customer. And so what we have stated here that I wish
25 could be as clear as possible is that that facility

00372

1 that is not on the customer's property, private
2 property, is not on their premise and therefore not
3 subject to this tariff requirement, because in this
4 particular instance we're talking about the private
5 property piece where we will bring the facility up to
6 the property line, and that customer's property in the
7 drawing that I have up there on A is not their
8 property.

9 Q. So just for the sake of argument, if I was
10 able to persuade you that individual spaces within the
11 park were legal units of property then your testimony
12 over the last two days would not really apply and your
13 testimony today with regard to this diagram would
14 apply; is that correct?

15 A. If they were individual pieces of property
16 owned by the individuals on the property or leasing
17 the property -- in other words, if each of those lots
18 was owned by a separate entity or some may own more
19 than one, it's my understanding that those are
20 considered private property and it's the
21 responsibility of the private property owner. On that
22 portion they would still have to do the trenching from
23 the road to each home, but we would be in -- we would
24 most likely in that case then go to the owner of the
25 road, which would be yet another property owner, and

00373

1 we would probably talk to that owner about an easement
2 in that situation, a right-of-way easement.

3 Q. Sounds like ownership now has something to
4 do with legal unit of property.

5 A. Well, I'm not a lawyer so I think you might
6 want to make your legal arguments elsewhere, but my
7 understanding in the application of our tariff is that
8 we are looking at a unit of property as private
9 property and that we do not do work on private
10 property unless we ask for an easement on that
11 property to reach another piece of property, and in
12 that case the company is willing to do the work, but
13 on all cases of private property within the property
14 we do not do the work.

15 Q. That's your interpretation of the tariff,
16 correct?

17 A. That's correct.

18 Q. There's no provisions in the tariff that
19 specify what you just testified to --

20 A. I believe that's what the tariff says.

21 Q. The definition of premises in the tariff, I
22 think we were looking at this yesterday, defines
23 premises in a certain way, and would you take subject
24 to check, unless you can pull out sheet 14, that
25 ownership is not a word used in the definition of

00374

1 premises?

2 A. It's my understanding that the legal unit
3 of real property in this definition deals with the
4 issue of ownership.

5 JUDGE SCHAER: But to answer the question
6 asked of you, does the word ownership appear in that
7 section?

8 THE WITNESS: Specifically, no.

9 JUDGE SCHAER: Thank you.

10 Q. Now, setting that aside and going back to
11 your testimony over the last two days, you testified
12 that U S WEST interprets their tariff to require
13 mobile home park owners to provide trenching to repair
14 and maintain and that this has been U S WEST's
15 interpretation or at least there's been provisions in
16 the tariff since 1961 to that effect; isn't that
17 correct?

18 A. I don't believe so as you've stated it. We
19 require support structures when we need to place new
20 facilities.

21 Q. And there's been language in the tariff to
22 require that since 1961; is that correct?

23 A. Yes.

24 Q. But just so I know what you haven't
25 testified to, your testimony is not that U S WEST's

00375

1 practice has actually been to require Camelot Square,
2 Skylark Village or Belmor Park to provide trenching to
3 repair and maintain U S WEST's service line. That's
4 not your testimony; isn't that correct?

5 A. To repair and maintain a service line, an
6 existing line, and we're not changing that line, we're
7 not replacing it, no, it has not been our practice to
8 ask any of the parks to provide trenching or conduit.

9 Q. And it's not been your practice to ask any
10 of the parks to provide trenching or conduit when it's
11 involved the replacement of segments of service wire;
12 is that correct?

13 A. If the segments are less than 300 feet
14 there have been instances where we have not asked the
15 park to provide the conduit but there are instances
16 where we have. I think there's been both at the park
17 where in cases we've done the work. In other cases we
18 have asked the customer to provide trenching.

19 Q. You're referring to most recently in the
20 last year or so you've been asking each of the parks
21 to provide trenching; is that correct?

22 A. I think it started about 1994 in reviewing
23 the records.

24 Q. But before 1994 the company never requested
25 either of the parks to provide trenching or conduit?

00376

1 A. I believe our records indicate that it
2 isn't clear whether the company or the customer --
3 well, let me correct that. Our records indicate the
4 customer has in fact provided trenching and conduit.
5 What is not clear in our repair records is what has
6 subsequently occurred. There's no indication other
7 than the few examples that have been identified that
8 the customer or that the company has actually done
9 trenching of small sections, and we believe that in
10 many instances to be on exception basis where it's an
11 employee judgment issue.

12 Q. Well, the few exceptions that I've cited in
13 the direct testimony add up to 26. Is that the same
14 exceptions that you're referring to?

15 A. Yes. And the reason I called them few is
16 because we've had I think over 300 service calls out
17 to Camelot. To all three parks we've probably had
18 close to a thousand service calls and I think the few,
19 which I think are less than 10, apply to all three
20 service parks.

21 Q. But you provided no evidence that U S WEST
22 has required either of the parks to provide trenching
23 or conduit; isn't that correct?

24 A. No, that's not correct. We have provided
25 evidence.

00377

1 Q. Where is it?

2 A. Exhibit 66 we have advised the customer
3 that we need two-inch customer pipe and the customer
4 has given us permission to lay temporary wire on the
5 ground until they can provide the pipe.

6 Q. That's December 6, 1995. Is there any
7 evidence before December 6, 1995 that you've required
8 either of the three parks to provide trenching?

9 A. Yes. If I might point to exhibits in Ms.
10 Evans's testimony. Exhibit 15. This is actually '96
11 so was your question before '95?

12 Q. Yes. December of 1995.

13 A. Sorry, scratch that. I'm seeing a number
14 here in January of '96 but I haven't found one so far
15 that shows '95. Actually this is only for the year
16 '96 so I don't have '95 data. That would explain it.

17 Q. So I think you've testified, said this
18 yesterday, and maybe I'm mischaracterizing your
19 testimony, but I don't think U S WEST has provided any
20 evidence that it has required Skylark Village, Belmor
21 Park or Camelot Square to provide trenching other than
22 most recently which is serving as the subject matter
23 of this complaint.

24 A. I believe if our technicians adhere to the
25 tariff as they should be they have required the parks

00378

1 to provide trenching.

2 Q. Assuming that they did?

3 A. And I also believe that the maps that
4 U S WEST has found as a result of additional
5 information from the parks indicate that both
6 trenching and conduit have been provided by the parks.

7 Q. So are you aware of any evidence that's
8 been presented by U S WEST that U S WEST has required
9 Camelot Square, Skylark Village or Belmor Park to
10 provide trenching?

11 A. The tariff is the evidence we've presented
12 in this case.

13 Q. In fact the exhibits that you're referring
14 to in Ms. Evans's testimony actually demonstrate that
15 U S WEST has provided trenching at each of the parks;
16 isn't that correct?

17 A. No, I don't believe it's correct. I think
18 that there are some exhibits that indicate U S WEST
19 has done some trenching at I believe one of the parks,
20 and many exhibits that indicate U S WEST has not done
21 trenching at all.

22 Q. And you're referring to indications that
23 say "repair buried service wire" as a basis for that
24 answer?

25 A. Those do not require trenching, yes.

00379

1 Q. But they require digging, right?

2 A. Yes, which is different.

3 Q. According to your interpretation of the
4 word trenching, correct?

5 A. Well, I think if you look at the bills it's
6 very clear from these contractors when they have
7 charged us for digging and when they have charged us
8 for trenching, because they charge by trench foot.

9 Q. But if you're going to get to the buried
10 service wire you have to dig; isn't that correct? I
11 mean that's intuitive?

12 A. If it's buried, yes, as opposed to
13 underground.

14 Q. Now, let's see, Exhibit 66 you're referring
15 to a letter, Skylark Village, signed by Cindy Smalley.
16 Do you know the circumstances surrounding U S WEST's
17 acquisition of this letter?

18 A. My understanding is that this customer, I
19 believe, was looking for the installation of service,
20 and that needed the service so with the customer's
21 permission we laid temporary wire. That's not a
22 customary practice in the sense that it's very risky
23 for both the property owner and the company, but in
24 this instance the property owner gave us permission,
25 as we would need to acquire -- to lay temporary wire

00380

1 on the ground until the property owner could provide
2 conduit. The other option would have been not to
3 provide service at all.

4 Q. And this is in December of 1995, but
5 earlier you testified that your understanding is that
6 the problems with service began in 1994 at each of the
7 parks, roughly speaking 1994. 1995 is when U S WEST
8 started contacting the parks regarding this service
9 issue?

10 A. That's correct.

11 Q. So is it fair to say that in 1994/1995
12 U S WEST began interpreting the tariff that required
13 the property owners to provide trenching?

14 A. I believe since 1961 and prior to that
15 possibly. '61 was the furthest we could go back in
16 our records. U S WEST has always interpreted that
17 private property owners provide the support structure.

18 Q. But it's only in 1994 that you first
19 contacted the complainants and required them to
20 provide the supporting structure?

21 A. I don't agree with that, no.

22 Q. What evidence is there you have contacted
23 the complainant before 1994?

24 A. The contact in 1994 was very specific where
25 there had been a great deal of damage done to the

00381

1 telephone facilities and we believe that had a lot to
2 do with the placement of the cable facilities.

3 Q. But what contact did you have before 1994
4 with the parks?

5 A. There was no need to replace facilities at
6 the park prior to 1994, to my understanding. It was
7 about 1994 when the company decided after a number of
8 problems with the facilities caused by the other work
9 that we probably needed to start doing some major
10 cable section replacements. So we went to the park
11 managers and asked them to provide conduit or
12 trenching so that we could replace entire facilities
13 as opposed to repair given sections.

14 Prior to that effort any time there was
15 installation, as I believe the maps show that are not
16 admitted, the customer has provided conduit or
17 trenching.

18 Q. And that's your interpretation?

19 A. That is the facts.

20 Q. I guess you just testified that you
21 interpret the tariff a certain way and that this
22 language has been in the tariff since 1961 but that
23 U S WEST's practice hasn't been to require mobile
24 home parks to provide trenching?

25 A. I don't believe I ever said it's been

00382

1 U S WEST's practice to not require the parks to
2 provide trenching when the placement of a new facility
3 is required. I have testified that if U S WEST needs
4 to repair an existing facility and is not replacing
5 that facility that U S WEST will do the trenching
6 itself if it's less than 300 feet.

7 MR. OLSEN: I don't have any further
8 questions.

9 JUDGE SCHAEER: Any further questions by
10 Commission staff?

11 MS. SMITH: Yes. Commission staff does
12 have a couple of follow-up questions.

13

14 RE-CROSS-EXAMINATION

15 BY MS. SMITH:

16 Q. Ms. Jensen, it's been your testimony with
17 response to questions by Mr. Olsen that it has been
18 the company's position since 1961 that the customer
19 must provide and maintain the support structure
20 necessary for the company's service; is that correct?

21 A. That's correct.

22 MS. SMITH: I would like to have a couple
23 of exhibits marked. The first is original sheet
24 R23-5001 with an effective date of May 23, 1996 from
25 WN U-14.

00383

1 JUDGE SCHAER: Marked Exhibit 68 for
2 identification.

3 (Marked Exhibit 68.)

4 JUDGE SCHAER: The second is schedule 17,
5 original sheet 17-1, effective August 31, 1981, and
6 this is also from the tariff WN U-14. That will be
7 marked as Exhibit 69 for identification.

8 (Marked Exhibit 69.)

9 Q. With respect to Exhibit 68 that's been
10 marked 68, under paragraph B new construction of
11 outside plant facilities, would you agree that in
12 paragraph 2 this tariff reads, "In lieu of full or
13 partial payment of costs those requiring construction
14 may furnish the materials or perform work mutually
15 agreed upon between the company and others. Upon
16 acceptance by the company ownership of any materials
17 furnished shall vest in the company." Is that how
18 that reads?

19 A. Yes.

20 Q. And this is in respect to situations where
21 the company would normally provide an aerial support
22 but the company is requested to or required by law to
23 place its facilities underground. Is that correct?

24 A. Requested to or required by law, I think
25 that's what the tariff says.

00384

1 JUDGE SCHAEER: So, is that correct?

2 THE WITNESS: Yes. That's what the tariff
3 says.

4 Q. If ownership of these materials vests in
5 the company, why would the company require the
6 customer to maintain those facilities?

7 A. The customer -- I think there's confusion
8 once again on the language. There are two issues
9 here. One is the materials themselves, and there may
10 be a situation where a customer provides conduit for
11 use of the company's facilities -- for placement of
12 the company's facilities within that conduit and if
13 the company has facilities within that conduit that
14 during the period of time that those facilities are
15 utilized the company in fact has exclusive rights to
16 the use of that conduit.

17 Q. Well, doesn't it say here that the company
18 not only has exclusive right to that conduit but the
19 company would have ownership of that conduit?

20 A. What this says is ownership of any
21 materials furnished shall vest in the company.

22 Q. Wouldn't that include conduit?

23 A. It could include conduit. It doesn't
24 necessarily include conduit. I think you have to read
25 the whole paragraph in context.

00385

1 Q. Under the circumstances of this park, if
2 the customer -- strike that. Under the circumstances
3 of this paragraph, in order to install the service
4 conduit was necessary, wouldn't ownership of that
5 conduit vest in the company?

6 A. I am not certain that when this sentence
7 says ownership of any materials furnished would
8 absolutely include conduit. I believe it could, but I
9 don't know that it would absolutely include it even if
10 conduit were furnished. I know that it's a practice
11 of the company that its facilities generally need to
12 be protected within a conduit so the company could
13 include conduit in this statement, but I don't know
14 that that's a given in every instance.

15 JUDGE SCHAEER: Ms. Jensen, looking at the
16 next to the last sentence, I ask you to assume that
17 someone furnished conduit in order to perform work
18 mutually agreed upon between the company and the
19 others. Would you agree, then, that the final
20 sentence would mean that ownership of that conduit
21 would vest in the company?

22 THE WITNESS: If the company required the
23 full use of the conduit I believe it could, but I
24 would qualify it, yes.

25 JUDGE SCHAEER: Then what language in here

00386

1 would lead you to qualify it?

2 THE WITNESS: Well, there's an assumption
3 that the conduit was required as part of the materials
4 or the work requested and there is some conduit that
5 is shared by multiple utilities and there may be
6 conduit that is exclusively used by a single utility.
7 So if the company requested conduit for its exclusive
8 use and if that was included in this discussion of the
9 cost of furnishing the facilities then the company may
10 ask for ownership of that conduit.

11 Q. Doesn't this mean that the customer can
12 avoid the cost of furnishing those -- of furnishing
13 those materials? There would be no cost to the
14 customer if a customer furnished the materials? Isn't
15 that what this says?

16 A. Well, it talks about two aspects.
17 Furnishing the facilities -- materials or performing
18 work. And I believe it states in lieu of payment of
19 costs the entity can provide material or perform work
20 to avoid the costs associated with that.

21 Q. And once the customer does that ownership
22 of the materials vests in the company, correct?

23 A. Of the materials at issue, yes. That's the
24 way I would interpret this language. But I don't
25 think that materials in this scope could be the

00387

1 facility itself. May not necessarily be conduit or
2 include conduit.

3 Q. Doesn't the company always own the
4 facility?

5 A. I think that that depends on where the
6 point of demarcation is. As this relates I can think
7 of a line extension situation where the company would
8 quote a customer a fee for placing wire and the
9 customer might agree to place a portion of that aerial
10 wire themselves and what this language is suggesting
11 is in that scenario the customer -- the company would
12 not charge the customer for the material that they
13 place, so if they were on a 300-foot piece of
14 property, 300-foot piece of property, and they placed
15 300 feet of aerial cable and it met the company's
16 requirement, then the company clearly wouldn't charge
17 the customer for that. And there are a number of
18 customers that do that in rural situations, where
19 they're capable of providing their own facility to a
20 given point.

21 Q. Doesn't this apply to the portion of the
22 line or the wire or whatever you want to call it
23 that's before the demark?

24 A. Yes. In the description I just gave you I
25 talked about a customer in a line extension scenario

00388

1 where that customer may choose to avoid costs that the
2 company is proposing to charge him by placing a
3 portion of that line extension themselves.

4 Q. Look, then, to Exhibit 69 original sheet
5 17-1 with respect to line extension charges.

6 A. Yes.

7 Q. With the effective date of August 31, 1981?

8 A. Yes.

9 Q. Look at Roman III under conditions.
10 Doesn't that say that an applicant if he or she elects
11 may furnish and select the required poles or provide a
12 trench on their own property in accordance with the
13 construction standards of the company in lieu of the
14 applicable charges. "However, in all instances the
15 ownership of facilities shall be entirely vested in
16 the company"?

17 A. That's correct. And the ownership is
18 specific to facilities, not to the trench or the pole.

19 Q. In paragraph 1 under description on Exhibit
20 69 the last sentence reads, "All line extensions are
21 owned and maintained by the company." Isn't that what
22 that says?

23 A. Yes, it is, and we're specifically talking
24 about the facility, the wire.

25 Q. Well, on this tariff, doesn't paragraph 3A

00389

1 allow the applicant to avoid those line extension
2 charges by providing what the company would require?

3 A. I would have to look at the full tariff for
4 line extension charges to be able to draw that
5 conclusion, and specifically the pages that deal with
6 applicable charges.

7 JUDGE SCHAER: So what does the first
8 sentence in section A mean to you?

9 THE WITNESS: There's a statement that the
10 applicant can furnish and set poles or provide a
11 trench in accordance with company standards in lieu of
12 applicable charges. I would typically understand that
13 to mean in lieu of charges for the company setting a
14 pole or providing a trench in this scenario.

15 JUDGE SCHAER: Ms. Dodge, at some point
16 remind me that we're going to need to assign a number
17 to the illustrative exhibit.

18 Q. Ms. Jensen, I have other pages of schedule
19 17 line extension charges. You needed to know what
20 the charge would be. I'm sure it's included in there.
21 I think my question specifically is on Exhibit 69 in
22 paragraph 1, the company's former tariff required or
23 provided that line extension charges apply in
24 connection with all classes, types and grades of
25 service, et cetera, and then the last sentence is,

00390

1 "all line extensions are owned and maintained by the
2 company."

3 Now, in order to waive those line extension
4 charges, a customer or an applicant if he or she so
5 elects pursuant to Roman III, paragraph A, the
6 applicant may furnish and set the required poles or
7 provide a trench on their own property in accordance
8 with the construction standards of the company in lieu
9 of the applicable charges. However, in all instances
10 the ownership of the facility shall be vested -- be
11 entirely vested in the company. And therefore those
12 line extensions would then be owned and maintained by
13 the company as any others would, wouldn't they?

14 A. Yes, for the facility itself.

15 Q. But wouldn't that also be the poles?

16 A. What this language addresses is line
17 extensions, and it specifically says that the
18 extension is owned and maintained by the company. The
19 line extension I understand to be in the description
20 of the facility. Then the description goes on to
21 explain how it is established by the extension of our
22 facility consisting of a buried service wire, pole
23 construction, or power line carrier and excluding
24 extension by means of poles to be owned by the company
25 jointly with other or by means of contacts' and

00391

1 contacts space on poles of others.

2 If you look at the charge section of the
3 tariff, there are three separate components to the
4 charge. There's a component that deals with extension
5 on public roadways under a certain distance. There's
6 a charge for extension of plant facilities on public
7 roadways in excess of a given distance and then
8 there's a third component of extension to plant
9 facilities along private roads.

10 Q. But, Ms. Jensen, that doesn't answer the
11 question. The question is, if an applicant elects
12 pursuant to Roman III, paragraph A, to place the poles
13 or do the trenching to avoid the charge in paragraph
14 1, once the customer does that and meets the company
15 specs ownership of those poles or trenching and the
16 facilities, however you defined facilities, vests with
17 the company, doesn't it?

18 A. I think you're reading too much into this
19 language. I cannot --

20 Q. Isn't that what that language says?

21 A. No, I don't think it is at all. I think
22 the language says in lieu of the applicable charges,
23 and the charges are not defined in the description as
24 you have defined them. The charges are described on
25 sheet 17-3 under rates, and I believe you're making a

00392

1 broad leap in your interpretation of this section. I
2 think the tariff language speaks for itself.

3 MS. SMITH: I don't have any more
4 questions.

5 MS. DODGE: Nothing further.

6 JUDGE SCHAER: I have actually just one
7 point that I wanted to have clarified.

8

9

EXAMINATION

10 BY JUDGE SCHAER:

11 Q. Ms. Dodge asked you a question in terms of
12 a customer or a property owner, however those are
13 defined, and I would like to have you tell me how you
14 think those are defined, if you would, please.

15 A. Yes. Customer I think of as the subscriber
16 of the U S WEST service, and property owner I define
17 as the owner of private property upon which U S WEST
18 must cross or utilize to provide that service or to
19 provide service to a customer.

20 JUDGE SCHAER: Thank you. That's all I
21 had. Was there anything further?

22 MS. DODGE: Nothing else, Your Honor.

23 JUDGE SCHAER: Anything for this witness?

24 Thank you for your testimony. You may step down.

25 Let's take our afternoon recess at this time and be

00393

1 back in the hearing room at 20 minutes after 3.

2 (Recess.)

3 JUDGE SCHAER: Let's be back on the record
4 after our afternoon recess. Ms. Dodge, did that
5 conclude U S WEST's presentation?

6 MS. DODGE: Yes, it did, other than a final
7 exhibit which would be a copy of the illustrative
8 exhibit that Ms. Jensen discussed.

9 JUDGE SCHAER: All right. Let's assign
10 that Exhibit No. 70 for identification. Do we still
11 need to have copies made of that?

12 (Marked Exhibit 70.)

13 MS. DODGE: Yes.

14 JUDGE SCHAER: Why don't you show it to the
15 other counsel and we'll go ahead and admit it if there
16 are no objections and then we can get copies made and
17 distribute.

18 MS. SMITH: Am I correct that this is being
19 offered for illustrative purposes only or
20 demonstrative purposes only?

21 JUDGE SCHAER: Yes, that's my
22 understanding.

23 MS. SMITH: No objection.

24 JUDGE SCHAER: Any objection, Mr. Olsen?

25 MR. OLSEN: No objection.

00394

1 JUDGE SCHAER: Okay. I'm going to admit as
2 Exhibit 70 the document that was taped to the wall
3 that Ms. Jensen was addressing as she gave part of her
4 testimony this afternoon and the original will be
5 folded up and placed in the original file and then
6 copies of an 8-and-a-half-by-11 size will be made and
7 distributed to all parties sometimes this afternoon.

8 (Admitted Exhibit 70.)

9 MS. SMITH: Your Honor, if I hadn't done
10 so, I would like to now offer Exhibits 68 and 69.

11 JUDGE SCHAER: You had not done so and are
12 there any objections?

13 MS. DODGE: No objections.

14 MR. OLSEN: No objections.

15 JUDGE SCHAER: Those are admitted also.
16 Thank you for remembering that.

17 (Admitted Exhibits 68 and 69.)

18 JUDGE SCHAER: So I believe we're ready for
19 staff's presentation. Do you wish to call a witness?

20 MS. SMITH: Yes. Call Mary Taylor.

21 Whereupon,

22 MARY TAYLOR,
23 having been first duly sworn, was called as a witness
24 herein and was examined and testified as follows:

25

00395

1 DIRECT EXAMINATION

2 BY MS. SMITH:

3 Q. Ms. Taylor, could you please state your
4 name and spell your last name?

5 A. Mary M. Taylor, T A Y L O R.

6 Q. What is your business address?

7 A. 1300 South Evergreen Park Drive Southwest,
8 Olympia, 98504.

9 Q. Did you prepare prefiled direct testimony
10 with exhibits in this case?

11 A. Yes.

12 Q. Did you also prepare prefiled reply
13 testimony with exhibits in this case?

14 A. Yes.

15 Q. Do you have that testimony in front of you
16 with those exhibits?

17 A. Yes, I do.

18 Q. Do you have any corrections or changes to
19 your testimony?

20 A. Actually two in the direct testimony. On
21 page 2 at line 18 that should read "UT-92044 and
22 reviewed the filing made under docket UT-940990."
23 The second is in my rebuttal testimony on page 5,
24 fourth line. That line should read "repair on its
25 side of the demarcation point," period, and scratch

00396

1 "regardless of the installation date."

2 JUDGE SCHAER: So we're looking at page 5?

3 THE WITNESS: Yes, page 5, line 4. After
4 demarcation should be period.

5 Q. Taking those two changes and corrections
6 into consideration, if I were to ask you the same
7 questions today that are asked in your testimony would
8 your answers be the same?

9 A. Yes.

10 MS. SMITH: Offer this witness for
11 cross-examination.

12 JUDGE SCHAER: Why don't we identify her
13 exhibits first and they can be dealt with and then we
14 can proceed. Marking for identification as Exhibit
15 T-71 a prefiled testimony of Mary M. Taylor dated
16 April 7, 1997.

17 Like to mark for identification as Exhibit
18 72 Exhibit MMT-1. Hold on just a moment. Ms. Taylor,
19 you had gremlins in your exhibit in this case. This
20 filing I have is just the cover sheets and then I
21 think the exhibits are -- Exhibit 72 is MMT-1, which
22 appears to be in the tariff first revised sheet 56.

23 As Exhibit 73 is MMT-2 which is two tariff
24 sheets, original sheet R1-2 dated December 13, 1990
25 and original sheet -- section 2 original sheet 56

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1 effective August 11, 1994 crossed out.

2 Exhibit 74, MMT-3, a letter to Steve
3 McClellan from U S WEST Communications docket No.
4 UT-940990.

5 MMT-4, Exhibit 75, which appears to be a
6 data request No. T-0006 in this proceeding to U S WEST
7 with a response.

8 As Exhibit 76, MMT-5, which appears to be
9 an E-mail message.

10 As Exhibit 77, MMT-6, more tariff pages, WN
11 U-31 section 4.6.

12 Exhibit 78, MMT-7, another tariff page from
13 WN U-31, section 4, starting with 4.2.

14 Exhibit 79, MMT-8, another tariff page in
15 WN U-31, section 4, original sheet 9.

16 As Exhibit 80, MMT-9, tariff sheet from WN
17 U-31 section 4 original sheet 7.

18 We have as Exhibit 81, T-81, Exhibit MMT-T,
19 reply testimony of Mary Taylor.

20 As Exhibit 82 MMT-reply 1 which is a tariff
21 sheet from WN U-31 section 2 original sheet 5.

22 Exhibit 83, MMT-reply-2, series of tariff
23 sheets from WN U-31 beginning on section 4, original
24 sheet 7.

25 Was MMT-3 a confidential exhibit? Excuse

00398

1 me. That's this one.

2 MS. SMITH: The reply 3?

3 JUDGE SCHAER: Or is that the state of
4 Iowa?

5 MS. SMITH: That's state of Iowa. That's
6 not confidential.

7 JUDGE SCHAER: I just had it in a separate
8 place. As Exhibit 84 MMT-reply 3 which is a decision
9 of the state of Ohio Department of Commerce Utilities
10 Board and their docket No. FCU-96-2.

11 As Exhibit 85, MMT-reply 4, which appears
12 to be selected pages of the testimony of staff witness
13 Tom Wilson in docket No. UT-951240. Are those all of
14 the exhibits for this witness?

15 MS. SMITH: Yes.

16 (Marked Exhibits T-71, 72 - 80, T-81 and 82
17 - 85.)

18 JUDGE SCHAER: And you have offered those,
19 I believe.

20 MS. SMITH: Yes.

21 JUDGE SCHAER: Are there any objections?

22 MS. DODGE: No objections.

23 MR. OLSEN: No objections.

24 JUDGE SCHAER: Those documents are
25 admitted.

00399

1 (Admitted Exhibits T-71, 72 - 80, T-81 and
2 82 - 85.)

3 JUDGE SCHAER: And you indicated that Ms.
4 Taylor is available for cross-examination.

5 MS. SMITH: Yes.

6 JUDGE SCHAER: Did you have questions for
7 her, Mr. Olsen?

8 MR. OLSEN: No questions.

9 JUDGE SCHAER: Ms. Dodge.

10 MS. DODGE: Yes, Your Honor.

11

12 CROSS-EXAMINATION

13 BY MS. DODGE:

14 Q. Ms. Taylor, turning to page 4 of your reply
15 testimony. On page 4 and the top of page 5 you have a
16 description of the requirements of other states.

17 Would you please tell me the source of your
18 information about the state of U S WEST's tariffs in
19 other states?

20 A. You mean the individuals that I spoke to?

21 Q. The source of any information in your
22 testimony here regarding tariffs of other states.

23 A. Actually what I did is I am a member of
24 ROC, regional oversight committee, and I contacted
25 members from that committee for each state to discuss

00400

1 what U S WEST was doing. And I actually sent an
2 E-mail out to those folks and then followed up if I
3 had questions.

4 Q. And were the people you asked members of
5 other state commissions or were they a U S WEST
6 personnel of any kind?

7 A. They were actually state commissions, and
8 U S WEST's Jane Nishita approved the language we put
9 together that we sent out in the E-mail so the
10 responses came from the state but it was with U S WEST
11 involvement up here.

12 Q. So to make sure I understand, you worked
13 out an inquiry with Ms. Nishita. That inquiry was
14 sent to members of other state commissions?

15 A. Correct.

16 Q. And they then contacted you?

17 A. Back, yes.

18 Q. And those -- the opinions of those state
19 commissions as to the tariffs in those other states is
20 the source of this testimony on what the tariffs of
21 other states contain?

22 A. Correct, in individual situations as they
23 deal with repair and maintenance.

24 Q. Did Ms. Nishita provide you with copies of
25 the actual tariffs from other states?

00401

1 A. No.

2 Q. Did anyone else provide you with copies of
3 the actual tariffs of other states?

4 A. I had a mix of I think it was two
5 commissions actually provided copies.

6 Q. Do you recall which commissions those were?

7 A. I don't. Iowa was obviously one. They
8 followed up with one tariff and I clarified in my
9 reply testimony that that's where the state -- this
10 July 15 date comes in that's on page 5.

11 Q. When you reference this date in terms of
12 Iowa, does that refer to a tariff or are you referring
13 back to -- I think there's an Iowa case that has been
14 submitted as an exhibit to your testimony?

15 A. Actually there is a tariff, and what Iowa
16 explained is that the information here in my testimony
17 that I outlined that as of that date conditions
18 change, so she provided me a tariff and then the case
19 that's included as an exhibit.

20 Q. Is your understanding, then, that
21 conditions changed due to that case?

22 A. That was my understanding from my
23 conversation.

24 Q. So that between the tariff and the case and
25 your conversation that's your source of what the

00402

1 situation is in Iowa?

2 A. Yes.

3 JUDGE SCHAER: You handed me a multi-page
4 document. Heading on the first page is U S WEST
5 Exchange Network Services Catalog New Mexico and I
6 will mark this as Exhibit 86 for identification.

7 (Marked Exhibit 86.)

8 Q. Ms. Taylor, do you recognize what type of
9 document this is?

10 A. Yes.

11 Q. Are these what appear to be tariff filings
12 of U S WEST tariffs in various states?

13 A. They appear to be.

14 Q. Are these publicly available documents?

15 A. Yes.

16 MS. DODGE: Like to offer for admission
17 Exhibit 86.

18 JUDGE SCHAER: Ms. Smith.

19 MS. SMITH: May I voir dire the witness?

20 JUDGE SCHAER: Yes, you may.

21

22 VOIR DIRE EXAMINATION

23 BY MS. SMITH:

24 Q. Ms. Taylor, are you familiar with the
25 entire tariffs of each state in U S WEST territory?

00403

1 A. No.

2 Q. Have you reviewed the entire tariffs of
3 each state in U S WEST territory?

4 A. No.

5 Q. Looking at these tariff sheets, it appears
6 to be sheets taken out of tariffs from other states.
7 Do you think that you could interpret or provide
8 opinions on the language in these? Specifically the
9 language that appears to be arrowed on these tariff
10 sheets, do you feel that you can give an accurate
11 opinion as to the meaning of these paragraphs without
12 reviewing the entire sections in which these
13 paragraphs appear?

14 A. No, I would need more information. For
15 example, in New Mexico's case customer premises wire
16 could mean one thing under our tariffs and mean
17 something different under another.

18 MS. SMITH: To the extent that U S WEST may
19 be asking this witness to provide an opinion as to the
20 meaning of these tariffs I would object to this
21 document for that use. However, I have no objection
22 to admitting this document just for the purpose of
23 illustrating what these particular paragraphs say, but
24 I would object to its use to ask this witness to try
25 to explain or offer an opinion as to what these

00404

1 particular paragraphs mean in those states where
2 they're applicable.

3 JUDGE SCHAER: Ms. Dodge.

4 MS. DODGE: Your Honor, I don't intend to
5 ask the witness for her opinion as to these tariffs.
6 I've asked her to identify them and she has.

7 JUDGE SCHAER: And what is your purpose in
8 putting these in through this witness?

9 MS. DODGE: The witness has testified as to
10 the requirements of other states. We have explored
11 the foundation of her testimony. I believe that it's
12 appropriate to have tariff provisions from the various
13 states admitted, and the tariffs can speak for
14 themselves.

15 JUDGE SCHAER: And why were these not
16 offered through a U S WEST witness since they're
17 U S WEST tariffs?

18 MS. DODGE: Ms. Taylor has testified as to
19 the requirements of other states. That is not an
20 issue that U S WEST presented in this case, and so
21 it's an appropriate subject of cross-examination,
22 and it was submitted in her reply or her rebuttal, so
23 there was no indication that there was any need for
24 that in U S WEST's prefiled rebuttal.

25 MS. SMITH: I think another problem I have

00405

1 with just these selected pages is that what she had in
2 her testimony was rebuttal of Ms. Jensen's testimony
3 that U S WEST requires property owners to provide
4 support structures for its facilities in all of its
5 states. The way that Ms. Taylor's testimony was
6 structured, that she made inquiries of other state
7 utility commissions to find out whether those
8 commissions would consider the associated work to be
9 new construction or repair and maintenance.

10 I mean, I certainly see that she should be
11 cross-examined on those conversations that she had,
12 but she didn't testify that she had reviewed all of
13 their tariffs. She said that she got a couple of
14 tariffs from some other states. So I don't see how
15 this document could be used to cross-examine her on
16 that statement when we don't have all of the tariffs
17 that those state commissions may have used in
18 formulating their opinions that they relayed to her
19 that the associated work with those facilities would
20 be repair and maintenance versus new construction.

21 JUDGE SCHAER: So do you object to entry of
22 the document or not?

23 MS. SMITH: Yes.

24 JUDGE SCHAER: Well, I'm going to sustain
25 the objection. I don't think that there's any showing

00406

1 that this witness is familiar with these documents,
2 and is able to sponsor them or provide a foundation
3 for what they are. Again, this is something that had
4 you attempted to put it on when you were putting on
5 your direct of Ms. Jensen I probably would have
6 allowed because she is an employee of the company
7 whose tariffs these are and she could have perhaps
8 responded to questions about them, but I don't think
9 that there's enough connection between this witness
10 and this document to admit it through her.

11

12 CROSS-EXAMINATION

13 BY MS. DODGE:

14 Q. Ms. Taylor, do you handle complaints for
15 the Washington Utilities and Transportation
16 Commission?

17 A. Periodically I do now. Not as a normal
18 routine in my job requirement. I'm primarily doing
19 this kind of stuff.

20 Q. Have you in the past?

21 A. Yes.

22 Q. Would you agree that in a job such as that
23 when you're dealing with the public individual
24 employees are called upon to make some judgments about
25 how they handle customer relations or public

00407

1 relationships with the public?

2 A. I'm not -- there's judgment whenever you
3 deal with another individual. I'm not sure exactly
4 what you're asking with that question.

5 Q. In your experience in handling complaints,
6 have you found that if you're able to resolve a
7 situation and send someone away happy that you would
8 generally try to do that?

9 A. As long as it's within my authority and the
10 guidelines that I have to follow.

11 Q. Would you agree that as between yourself
12 and, say, anybody else who handles complaints for the
13 Commission within your sphere of judgment that you may
14 handle the same situation or same types of situations
15 somewhat differently?

16 A. We might come at it from a different angle
17 but you would still -- we work under Washington
18 administrative codes and we would have to make sure
19 that whatever decisions were made or outcome that they
20 complied with those rules.

21 Q. Do you have any sense of whether every
22 individual employee who has ever handled complaints
23 for the Utilities and Transportation Commission
24 follows to the letter any given WAC or guideline?

25 A. I can't speak for other people. I can't

00408

1 speak for myself. And that's always been my earmark
2 is to make sure that we're in compliance.

3 Q. Do you have any understanding within mobile
4 home parks whether people who lease space in a mobile
5 home park expect to have a phone hooked up when they
6 lease that space?

7 A. I would generally expect that they would.
8 I've never leased one, though, or talked to any
9 individual per se. Typically if there's a home there
10 that's already in existence, yeah, you would think
11 that there would have been a phone there at some
12 point.

13 MS. SMITH: Ms. Taylor, could you move the
14 microphone a little closer. I'm having trouble
15 hearing you.

16 Q. Are you aware through the course of this
17 case that there's been some bids on work for trenching
18 and conduit at Camelot Mobile Home Park in the
19 neighborhood of \$33,000 to provide that?

20 A. I've seen those. I believe that Mr. Olsen
21 provided that as responses to data requests. I'm not
22 sure how they were entered but I have seen them.

23 Q. As between the -- if the property owner in
24 this case, meaning the owners of the mobile home park,
25 are not required to provide that support structure and

00409

1 instead the individual customer subscribers are, do
2 you have any opinion on how you would go about
3 dividing up that \$33,000 between every resident of
4 that mobile home park?

5 A. I'm sorry, can you restate your question
6 again? I want to make sure I'm understanding.

7 Q. There's been testimony about whether
8 there's some distinction between customer
9 responsibility versus property owner responsibility,
10 and in this case we have customers who are residing on
11 someone else's property, so assuming that the tariff
12 were interpreted to say those individual customers
13 residing in those mobile homes must pay rather than
14 the property owner business who owns the mobile home
15 park, do you have any opinion on how you would propose
16 to divide up the \$33,000 cost to provide that support
17 structure between the individual mobile home park
18 residents?

19 A. We're talking about for repair of the
20 existing cable?

21 Q. For whatever is involved in that \$33,000
22 that's been bid that the complainants don't wish to
23 pay.

24 A. I believe the bid dealt with repair, and in
25 my opinion based on the existing tariffs it would be

00410

1 neither the property owner or the individual tenant
2 that would have to pay that. It's my belief that
3 U S WEST is required to repair those facilities up to
4 the demark.

5 Q. And I understand that that's your opinion
6 and position in this case. I'm just asking you to
7 assume that if you had to assign that responsibility
8 between the property owner and the individual mobile
9 home park resident and you then assumed that the
10 individual customer resident had to pay, whether you
11 would have any opinion on how to allocate that \$33,000
12 cost among each of those individual residents?

13 MS. SMITH: I would object to this
14 question. Ms. Taylor isn't an economist, and I don't
15 think she is an expert on costing and rate design, and
16 she has not been offered as an expert in that area.
17 She stated her opinion that she wouldn't hold either
18 of them responsible for that \$33,000.

19 JUDGE SCHAER: Is this a question that
20 should be referred to Mr. Spinks?

21 MS. SMITH: Probably.

22 JUDGE SCHAER: I will allow you to ask Mr.
23 Spinks this question.

24 MS. DODGE: Thank you, Your Honor.

25 Q. Slightly different question then. Would

00411

1 you agree generally, then, as more of a layperson that
2 that might be a little complicated to try to figure
3 out?

4 A. I'm sure there's different tacks that you
5 could take. It would depend on what the individual
6 property owner's motivation was, if you had long-term
7 leases that may vary. There's so many different
8 circumstances that could vary that. It could become
9 complicated or it could become very easy. If the
10 property owner chose to pay for something, pay for the
11 entire repair they may well believe that that's
12 complicated, and of course the individual tenants are
13 going to think that that is not complicated. You
14 reverse that and try to disperse it and the property
15 owner is going to think it's not complicated because
16 it's not coming out of their pocket.

17 So to answer that there's a number of
18 different ways it could be handled. It could be
19 complicated, or you might have folks that are willing
20 to pay for it because they're so happy where they're
21 at. I mean, you're talking about generalities. I
22 could respond to it.

23 Q. Ms. Taylor, would you agree that it's the
24 case that there is currently a transition going on
25 from monopoly provision of telecommunications service

00412

1 to a competitive market?

2 A. Yes.

3 Q. If a new mobile home park were built in an
4 area that's currently not within the designated
5 serving area of any incumbent local exchange company,
6 how would you determine who would provide
7 telecommunications service to that mobile home park
8 today?

9 A. If they're not within the service territory
10 I would presume, first of all, that there's a
11 difference when you're dealing with an unassigned
12 territory. Typically, and not only in mobile home
13 park cases, if you're in an unassigned territory the
14 companies that are looking to serve it and the
15 customer who is looking for service will enter into a
16 separate negotiation that's outside our representation
17 because it's not regulated until they actually come
18 under their tariff.

19 Q. At some point would someone who serves a
20 new mobile home park like that have to file tariffs?

21 A. Typically what has happened in the past,
22 and I can't speak to mobile home parks, I will speak
23 in cases that I've seen this Commission deal with in
24 the past, and what the Commission's concern has been
25 or staff's concern has been when a customer who is

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1 outside an assigned territory is requesting service is
2 that that individual or group of individuals pay the
3 actual costs for getting facilities to them so the
4 existing ratepayers don't subsidize them.

5 At that point, in conjunction with that,
6 then the company also files to bring that group under
7 its existing tariff.

8 Q. If such a company had a tariff like U S
9 WEST's and it were interpreted in accordance with
10 staff's apparent position in this case that -- first,
11 let me ask, would it be staff's position that if they
12 had a tariff like U S WEST's that the initial
13 installation at that new mobile home park development
14 the customer or property owner would provide support
15 structures for installation of facilities?

16 A. If a customer was in a regulated company's
17 service area, in a mobile home park, and requesting
18 new service be installed, initial service, whatever
19 term you want to apply to it -- and in the case of
20 U S WEST, there's no question that they have to, for
21 the initial extension or installation of facilities,
22 provide the trench and conduit. So in both cases,
23 both the U S WEST and another company's tariff, if
24 their tariff read the way U S WEST does, yes, the
25 customer would have to open a trench and provide

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1 whatever structure the company designates.

2 Q. Is it your position that from that point on
3 the telecommunications company, whoever that happens
4 to be, would be obligated into the end of time,
5 however they continue to provide phone service, would
6 be obligated from that point on to open any trenching
7 with regard to those facilities?

8 A. For repair?

9 Q. Why don't you explain. If there's a
10 distinction then please explain it.

11 A. If the tariff read the same way as you set
12 up the question, as U S WEST's tariff, in the case of
13 repair and maintenance the company in my opinion has
14 to open the trench and do all the associated work with
15 that. If the customer requests an additional line,
16 facility, whatever term we're going to tie to that,
17 say a second line, and there's no additional
18 cable-pairs that can be used, under the new
19 construction tariff that customer would have to open
20 that trench for a line that's never existed before.

21 Q. But it's your position that with regard to
22 the initial dial tone that for forever
23 telecommunications company must open a trench for
24 anything that relates to that initial line?

25 A. When you say anything, I'm assuming

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1 anything would mean repair or maintenance of that,
2 yes.

3 Q. Which you include, I understand, to mean
4 replacement in your definition?

5 A. Yes.

6 Q. And at the beginning you stated that if the
7 assumption was we're talking about an area that's not
8 designated under any service area now so that you
9 would have a property owner and a telecommunications
10 company getting together, agreeing that they would
11 have that service, do you have any opinion on whether
12 there are many competitive telecommunications
13 providers who would agree in perpetuity to provide
14 that kind of service to a new mobile home park
15 development?

16 MS. SMITH: I would object to that. That's
17 speculative. She doesn't know the intention or the
18 business or the business practice intentions of new
19 competitors, whether they had been identified and are
20 currently providing service in the state of Washington
21 or future companies that may decide to provide service
22 in the state of Washington.

23 JUDGE SCHAEER: I will allow the witness to
24 answer to the extent that she has any knowledge.

25 A. Will you restate the question.

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1 (Record read as requested.)

2 A. I am not aware of that. I haven't had
3 dealings with them on that particular issue. I have
4 not spoken to any competitive company that's currently
5 registered who has indicated a desire to serve mobile
6 home parks.

7 MS. DODGE: I have no further questions for
8 this witness.

9 JUDGE SCHAER: Ms. Smith, did you have any
10 redirect for this witness?

11 MS. SMITH: I think I have just one.

12 JUDGE SCHAER: Wait a minute. Excuse me,
13 I'm getting out of order here.

14

15 EXAMINATION

16 BY JUDGE SCHAER:

17 Q. Ms. Taylor, what section of the Commission
18 do you work in?

19 A. Consumer affairs is the title.

20 Q. And I believe there was testimony by some
21 of the complainant witnesses in this matter that they
22 had made informal complaints to the Commission
23 regarding the subject matter that's now the subject
24 matter of this formal complaint. Do you recall that
25 testimony?

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1 A. Yes.

2 Q. Were you involved in working on any of
3 those complaints?

4 A. Not when they were filed, no.

5 Q. Have you worked on other complaints about
6 requirement of original conduit or trenching in
7 similar situations?

8 A. Similar situations being mobile home
9 parks, just to clarify?

10 Q. Actually being customers who were
11 complaining that they were being asked to provide
12 those services for something other than initial new
13 construction.

14 A. Yes.

15 Q. And can you tell me about when that took
16 place?

17 A. Actually the ones that have come to my
18 attention that other examiners have brought to me and
19 those that I've actually gotten involved in just have
20 all pretty much just probably been within the last
21 couple of years. I don't have a date specific for
22 you. This problem has just rung up in recent history.

23 Q. So I don't believe that you've been with
24 the Commission since 1961, but how long have you been
25 with the Commission and working in the consumer

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1 complaint area?

2 A. Too long. 1985.

3 Q. So you've been there for 12 years?

4 A. Yes.

5 Q. And have you had about an even level of
6 complaints about this area over those 12 years or is
7 this something that has become emergent in the last
8 couple of years?

9 A. Up until the last couple of years I had
10 never had a complaint of this nature that I can
11 recall.

12 Q. Had you ever had occasion to discuss these
13 terms of the tariff with U S WEST and what their
14 meaning was and what it had been since 1961 to present
15 before the last couple of years, if you recall?

16 A. When you mean -- when you say the terms of
17 the tariff we've discussed -- I've been involved in
18 several filings dealing with the new construction
19 tariff. I was involved in the filing that dealt with
20 the language in the building and power supply tariff.
21 So, yes, I was involved in those discussions as the
22 language was developed. Is that responsive?

23 Q. I'm just trying to figure out, I heard
24 testimony that this tariff has had this language and
25 has been interpreted in the same way since 1961, and I

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1 am just trying to find out from your side whether the
2 Commission has had the same level of complaint about
3 this interpretation of this tariff since 1961 or
4 whether something has -- I don't want to be leading
5 you, but I believe your testimony was that this had
6 really just started in the last couple of years?

7 A. Yes, it is. And as I outlined in my
8 testimony, I think what spawned that is a difference
9 in interpretation than what previously we have been
10 dealing with. The staff's position has always been
11 that new construction, and I believe the tariff
12 language has always been clear, that the customer has
13 to provide the conduit or the trench or the pole for
14 initial installation. I still believe the tariff
15 language indicates that ownership vests in the company
16 as far as that's concerned and the change in what's
17 created the increased complaints in this area is -- I
18 had never previously dealt with U S WEST interpreting
19 the tariff to new construction tariff to apply to
20 repair and maintenance situations.

21 JUDGE SCHAEER: Thank you. That's all I
22 had.

23 MS. SMITH: I had have one redirect
24 question.

25

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1 REDIRECT EXAMINATION

2 BY MS. SMITH:

3 Q. Ms. Taylor, you testified in response to a
4 question by Ms. Dodge about service in an unassigned
5 territory, and in that situation the customer would
6 pay the cost, the actual cost of putting in that
7 telephone system. At what point does the customer's
8 responsibility to pay for that -- at what point is the
9 customer assessed a cost of that installation,
10 actual cost?

11 A. Actually I need to clarify the response
12 because I wasn't real clear. The piece that they pay
13 the actual cost for is the piece that's outside the
14 assigned territory. Once you hit the assigned
15 territory boundary the regulated company's tariff
16 kicks in, and I wasn't clear on that. So the piece,
17 if you're talking about what point, it's the actual
18 cost in the unassigned territory.

19 Q. And what charges would apply inside the
20 service area?

21 A. The company, the regulated company's
22 tariffed rates, whatever those may be.

23 MS. SMITH: Nothing further.

24 JUDGE SCHAEER: Is there anything else for
25 this witness?

00421

1 MS. DODGE: One follow-up question.

2

3 RE CROSS-EXAMINATION

4 BY MS. DODGE:

5 Q. You mentioned over the last several years
6 you've dealt with some complaints concerning this
7 issue or similar issues. Has the company involved
8 been U S WEST? Is that your testimony?

9 A. In all the cases that I've been involved
10 with, yes, or that have been brought to my attention.

11 Q. And is it your understanding that the
12 interpretation that's at issue that gave rise to these
13 complaints was regarding the replacement of
14 facilities, that it arose in those kinds of
15 situations?

16 A. Actually, no. I mean, it's broader than
17 that. I think this case deals with replacement, but
18 I guess now that I think about it I was going to give
19 you an example of the line extension, but the
20 contention there is that the line has failed. So,
21 yeah, that would be a replacement of the cable.

22 MS. DODGE: No further questions.

23 MS. SMITH: I had one follow-up on that
24 question, if I may.

25 JUDGE SCHAER: Go ahead.

00422

1 REDIRECT EXAMINATION

2 BY MS. SMITH:

3 Q. Have you ever had, you or any staff that
4 you know of, had a complaint from a customer where
5 U S WEST was requesting the customer to provide
6 trenching for repair situation that did not involve
7 the actual replacement of the line?

8 A. My understanding in the few cases that I
9 have observed is the company saying that the cable is
10 defective. A lot of times there wasn't enough detail
11 to say whether that was a 20-foot span of the cable
12 that needs to be pulled out or if it's the entire
13 length. I mean, the issue at odd is that they want
14 the entire span, whatever that may be, open. Now, I
15 don't know if that meant that they were going to cut a
16 chunk out of that and splice new in. We didn't get to
17 that level of detail.

18 MS. SMITH: Nothing further.

19 JUDGE SCHAEER: Is there anything else for
20 Ms. Taylor? Thank you for your testimony.

21 MS. SMITH: Commission staff calls Tom
22 Spinks.

23 Whereupon,

24 THOMAS SPINKS,

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

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1 herein and was examined and testified as follows:

2 JUDGE SCHAER: Would you like me to mark
3 your witness's exhibits, Ms. Smith?

4 MS. SMITH: Yes.

5 JUDGE SCHAER: Marked for identification as
6 Exhibit T-87 testimony of Thomas L. Spinks.

7 Marked as Exhibit 88 Exhibit TLS-1.

8 Appears to be a statement of education and experience
9 for Mr. Spinks.

10 Going to mark as Exhibit T-89 the reply
11 testimony of Mr. Spinks. Are those all of the
12 exhibits for this witness?

13 MS. SMITH: Yes.

14 (Marked Exhibits T-87, 88 and T-89.)

15

16 DIRECT EXAMINATION

17 BY MS. SMITH:

18 Q. Mr. Spinks, could you state your name and
19 spell your last name?

20 A. My name is Thomas L. Spinks, S P I N K S.

21 Q. What is your business address?

22 A. 1300 South Evergreen Park Drive Southwest,
23 Olympia, Washington.

24 Q. Did you prepare prefiled direct testimony
25 with one exhibit in this case?

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1 A. Yes, I did.

2 Q. Did you also prepare prefiled reply
3 testimony in this case?

4 A. Yes, I did.

5 Q. Do you have that testimony before you?

6 A. I do.

7 Q. Do you have any corrections or changes to
8 make to your testimony?

9 A. No, I don't.

10 Q. If I were to ask you the same questions
11 today that are in your testimony, would your answers
12 be the same?

13 A. Yes, they would.

14 MS. SMITH: I have no more questions. The
15 witness is available for cross-examination.

16 JUDGE SCHAER: Did you want to offer your
17 exhibits?

18 MS. SMITH: Yes. I want to offer the
19 exhibits.

20 JUDGE SCHAER: Is there any objection?

21 MS. DODGE: Yes, Your Honor. We object to
22 Mr. Spinks's testimony and exhibits in their entirety
23 as being beyond the scope of these proceedings.

24 JUDGE SCHAER: Do you wish to address your
25 objection any further?

1 MS. DODGE: Yes, Your Honor. The testimony
2 makes clear that Mr. Spinks at his direct, page 1,
3 lines 18 and 19, the purpose is to provide the
4 Commission with staff's recommendations regarding
5 general cost responsibility for repair and
6 maintenance.

7 Also at his direct page 3, line 9, he
8 testifies as to what the Commission should or should
9 not permit. And he ultimately is recommending at page
10 6 that U S WEST should be directed to revise its
11 tariff, and this proceeding is a complaint as to what
12 the existing tariff requires. It's not a complaint
13 against the tariff itself. It's a tariff
14 interpretation issue.

15 We don't have at issue whether the tariff
16 complies with any statute, rule or order of the
17 Commission. We don't have at issue whether the tariff
18 as it exists is just or unreasonable. This is simply
19 a tariff interpretation case. Therefore, Mr. Spinks's
20 testimony is beyond the scope of the proceedings.

21 JUDGE SCHAER: Ms. Smith.

22 MS. SMITH: Mr. Spinks's testimony is
23 directly relevant to the issues that have arisen in
24 this case. The question that essentially is being
25 asked here is whether or not U S WEST customers are

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1 responsible for costs associated with the trenching
2 and/or conduit that is necessary to repair customer
3 service. And it's the Commission's position that
4 repair of existing service would also include
5 replacement of that service if that service is no
6 longer operative. That Mr. Spinks, Mr. Spinks's
7 testimony indicates that it would not be logical to
8 interpret the tariff the way the company is
9 interpreting the tariff given the way the company
10 accounts for its costs and its expenses and anything
11 that is capitalized in the company's accounts.

12 And to the extent that Ms. Dodge believes
13 that his testimony is irrelevant, she could cross him
14 on those areas, but his testimony is probative to the
15 issue in this case, which is who is responsible for
16 the costs associated with trenching and/or conduit in
17 the repair and maintenance of the company's property.

18 JUDGE SCHAER: Looking at his direct
19 testimony, starting at page 5, line 18 and continuing
20 through page 6, is it your belief that the Commission
21 has jurisdiction in this matter to effectuate those
22 changes if it should choose to do so?

23 MS. SMITH: Absolutely. The Commission
24 needs to rectify the situation that is raised in the
25 complainants' complaint. This complaint deals with

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1 Camelot Square, but the scope of it -- Camelot Square,
2 Belmor and Skylark, but the scope goes way beyond
3 that. The Commission may issue an order that
4 essentially does not require these parks to provide
5 that trenching, but if the Commission does not require
6 the company to file a clarification to its tariff or
7 revise its tariff nothing is to stop the company from
8 turning around and inappropriately applying the same
9 tariff provisions against other customers that aren't
10 parties to this case, and rather than have dozens of
11 cases along this line where each complainant complains
12 about the company's interpretation of the tariff, it's
13 much easier and appropriate for the Commission to
14 direct the company to revise its tariff so that this
15 misunderstanding of the tariff application never
16 happens again.

17 JUDGE SCHAER: And how about item 2?

18 MS. SMITH: If the company had no right to
19 charge those customers for the repair and maintenance
20 then the company should refund those charges because
21 they were exacted from the customers without lawful
22 authority.

23 MR. OLSEN: I would just point out that the
24 petitioners filed a complaint in this matter that
25 asked for alternative remedies, which I would think

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1 would include the remedies that are sought for by the
2 Commission staff. I mean, we asked for a declaratory
3 order pursuant to WAC 480-09-230. We asked for an
4 interpretive and policy statement pursuant to WAC
5 480-09-200, and we also asked for such other and
6 further relief as the Commission deems just and
7 equitable, and so I think that Mr. Spinks's testimony
8 is required in order to evaluate the alternative
9 remedies that the petitioners seek.

10 JUDGE SCHAER: Ms. Dodge.

11 MS. DODGE: U S WEST answered complainants'
12 request for relief by stating that that is beyond the
13 Commission's authority on these proceedings, and those
14 kinds of remedies and the remedies that are
15 recommended by Mr. Spinks are only appropriate in a
16 proceeding that would investigate whether any tariff
17 revision or any other order regarding the tariff
18 itself is appropriate, and that would need to be by
19 reference to statutes, regulations, any orders of the
20 Commission.

21 We believe that the Commission doesn't have
22 authority in this case to make those kinds of orders
23 and it also -- and for good reason, because this is a
24 particular situation. It does not even begin to cover
25 the kind of record evidence one would need to sort out

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1 what is just and reasonable with regards to these
2 kinds of issues when you're talking about
3 telecommunications industry-wide or even company-wide
4 with regard to all customers what the tariff ought to
5 say. We're here because the question is what does it
6 say and how should it apply to this specific
7 situation, and that's all that's at issue in these
8 proceedings.

9 JUDGE SCHAEER: Well, I'm going to overrule
10 your objection. As I look through Mr. Spinks's
11 testimony I believe a great deal of it addresses just
12 the issue that you just outlined. That he is speaking
13 about how this tariff should be interpreted, and in
14 one of the arguments that staff is making about how it
15 should be interpreted is that it has been interpreted
16 a certain way historically then certain costs will be
17 in the charges already charged by the company and then
18 allowing a different interpretation might allow double
19 recovery of those costs. I'm going to allow staff to
20 argue that theory, and so I'm going to allow his
21 testimony to stand.

22 Looking at the two recommendations at the
23 end of his testimony, I think it's helpful for the
24 Commission to have staff's recommendation on what it
25 should do. I think those are more in the nature of a

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1 suggestion rather than a fact or opinion testimony,
2 and they're the same kind of information that could be
3 communicated through a brief. I don't see any harm to
4 leaving them in or taking them out because, as I say,
5 I don't see really see them as so much as substantive
6 testimony as kind of a preview of coming attractions
7 of your brief, and I think it's fair to you that they
8 do put that in here so that you will know in your
9 brief what one of their positions will be and you will
10 be able to respond to it. And I will expect to see
11 briefing on those issues from all parties.

12 So go ahead then. I'm going to admit
13 Exhibits T-87, 88 and 89, and I believe Mr. Spinks is
14 available for cross-examination. Is that correct, Ms.
15 Smith?

16 (Admitted Exhibits T-87, 88 and T-89.)

17 MS. SMITH: Yes, it is.

18 JUDGE SCHAER: Do you have any questions,
19 Ms. Dodge?

20 MS. DODGE: Is Mr. Olsen first?

21 JUDGE SCHAER: I'm sorry. Mr. Olsen, did
22 you have any questions?

23 MR. OLSEN: No questions.

24 MS. DODGE: Thank you, Your Honor.

25

1 CROSS-EXAMINATION

2 BY MS. DODGE:

3 Q. Mr. Spinks, looking at page 6 of your
4 direct testimony, lines 6 through 8 or specifically
5 lines 7, you appear to be recommending a refund
6 -- first of all, that the company should identify any
7 customers or property owners that have been charged
8 for such work. What does "such work" mean?

9 A. That would refer to a customer being
10 required to provide its own trenching in the case of
11 repair, repair and maintenance of the company's plant.

12 Q. And that's the only type of work that you
13 had in mind?

14 A. That is the -- as you know from testimony,
15 there's a number of cases where staff agrees that it
16 is appropriate for the company to charge the customer
17 for the structure, new construction being one case.
18 It appears, however, in the case of repair and
19 maintenance the company seems to have taken the
20 position that the customer is and always has been
21 responsible for that. It's our position the customer
22 has never and is not responsible for the trenching in
23 the case of repair and maintenance of the company's
24 plant. In whatever cases the company can identify
25 where the customer paid the company money for the

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1 trenching those customers should be refunded that
2 money.

3 Q. That then assumes that there has been a
4 charge by the company for trenching work?

5 A. Well, I understood Ms. Jensen's rebuttal
6 testimony to point out, correctly so, that they offer
7 the company -- the company offers the customer either
8 that the company would do it itself or that it may --
9 they may contract independently or otherwise have done
10 it independently. What I'm referring to cases here
11 are cases where the company was requested to do it and
12 did do it for a charge and the work was repair and
13 maintenance work.

14 Q. So you're not suggesting that there should
15 be any kind of payment or refund by the company to
16 anyone who went out and hired a third party to do this
17 kind of work?

18 A. That's correct.

19 Q. Mr. Spinks, what is the basis of your
20 testimony at your reply, page 1, line 15 that the
21 historic trenching costs were included in rate base
22 and those costs are included in rates?

23 A. There were two bases for that. I have been
24 responsible for staff's work with the company
25 regarding depreciation rates, and through that work I

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1 know through my own knowledge and experience that the
2 costs that are capitalized in the plant accounts, as
3 regards the material cost of, say, poles or a cable
4 account, the material only forms about 50 percent of
5 the investment that's capitalized in the plant
6 account. The remaining portion of that investment is
7 for nonmaterial items, and they include the
8 installation.

9 Also, the uniform system of accounts
10 requires that the trenching cost be capitalized in the
11 appropriate account where the trenching work is
12 associated with. So if you're plowing in cable, both
13 the trenching as well as costs of the cable, the
14 worker's time, overheads, there's a number of costs
15 that are all capitalized into the plant account.

16 Second, just several weeks ago I reviewed
17 U S WEST vendor invoice data in conjunction with
18 another case at the company's Olympia office and
19 reviewed a number of vendor invoices contracts that it
20 has with vendors for trenching and plowing, and
21 billings from those vendors to the company for putting
22 in drops, for instance. Now, that's in conjunction
23 with the case where the company is indicating that its
24 average cost of putting in a drop is -- that may be a
25 confidential number, but it is a certain amount.

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1 The invoices that I reviewed included the
2 cost of trenching, the plowing, that was billed to the
3 company for that work. So it's very clear that those
4 costs are included in the company's costs.

5 Q. Have you made any distinction in your
6 investigation with regard to whether the trenching at
7 issue is taking place on public right-of-ways or
8 private property?

9 A. There were two pages of data in these
10 vendors invoices which were addresses, and they appear
11 to be residential addresses in various cities and
12 towns in different U S WEST states for buried drops,
13 and they ranged anywhere from 100 feet to 2,000 feet
14 in length, and they were detailed invoices of the
15 billings, including the trenching cost or plowing-in
16 cost.

17 Q. So your opinion in that regard is based on
18 looking at addresses?

19 A. Yes. Well, it's based on, yes, the
20 addresses appear to be private addresses. Addresses
21 of private property. They may have been coming off of
22 a -- they were street addresses.

23 Q. And you don't know whether any of those
24 addresses might have been located somewhere along a
25 private right-of-way or private road, do you?

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1 A. No. Like I say, they appeared to be normal
2 street addresses, like 2336 Circle Drive. Just
3 ordinary street addresses.

4 Q. Is it your contention, then, that people
5 living off of private roads don't have what would be
6 considered or would look like to be an ordinary street
7 address?

8 A. Oh, I'm sure they would, too. There were
9 two pages of these. They were represented to be
10 representative data of the company, which I would take
11 to mean a random sample kind almost of the data, so I
12 would be surprised if they were all private addresses.

13 Q. Mr. Spinks, have you ever reviewed the
14 tariffs of other local exchange providers or
15 competitive providers to determine if they charge for
16 the costs of support structure for doing maintenance
17 and repair?

18 MS. SMITH: I would object to that. That's
19 beyond the scope of this witness's direct testimony.
20 There's been no reference to other states in his
21 testimony.

22 MS. DODGE: I wasn't referencing other
23 states. I said other local exchange companies or
24 competitive providers.

25 MS. SMITH: I'm sorry, I misunderstood your

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1 question. I withdraw the objection.

2 A. That wasn't covered in my testimony, and I
3 didn't in connection with this case do that sort of
4 review, no.

5 Q. I'm just wondering whether you've ever
6 reviewed tariffs of other local exchange companies --

7 A. Yes.

8 MS. SMITH: I would object to that
9 question. He just stated that he did not testify
10 about any review he did in this case with respect to
11 the practices of other telecommunications companies.
12 So I think it's gone beyond the scope of his direct
13 examination.

14 MS. DODGE: Your Honor, this witness is
15 testifying as to his recommendations for the
16 Commission's ordering a telecommunications company to
17 alter its practices, and I think I'm entitled to
18 explore some of the basis for this recommendation
19 which clearly would have an effect in the industry
20 that I would think would then need to extend to other
21 companies where we have privileges and immunities
22 question under the state constitution. I'm just
23 trying to get a sense of how wide a net Mr. Spinks is
24 casting when he's talking about what he thinks ought
25 to happen and the kinds of orders that ought to be

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1 issued with regard to the company.

2 MS. SMITH: The net that Mr. Spinks is
3 casting is with respect to the tariff that U S WEST
4 has on file and U S WEST's application of U S WEST
5 tariff. There has been no issue in this case as to
6 whether or not GTE is inappropriately administering or
7 interpreting its tariff. The question is whether
8 U S WEST is inappropriately administering its tariff.

9 And Ms. Taylor's testimony earlier has
10 indicated that the only complaints that staff has had
11 with respect to application of this tariff language
12 has been against U S WEST, not any other company.
13 Should those companies begin interpreting their
14 tariffs in a manner that is not correct then those
15 companies will face the same tariff revisions, if
16 necessary, but anything that the Commission orders in
17 this case will not be applicable to any other
18 telephone company.

19 JUDGE SCHAER: I'm going to overrule the
20 objection and allow Mr. Spinks to state what his
21 familiarity is with other tariffs of other companies
22 in the state. I am going to note that this was an
23 area covered by Ms. Taylor's testimony and apparently
24 you didn't wish to question her about it, but I am not
25 certain how far this needs to go, since this is not

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1 the staff witness that presented that portion of the
2 staff's case. But go ahead, Mr. Spinks, and answer
3 this question.

4 A. Thank you. I have never reviewed other
5 Washington local exchange carrier company tariffs to
6 examine what their practices, what their stated tariff
7 practices are with regard to opening trenches in the
8 course of repair and maintenance.

9 Q. So if I understand, then, that your
10 recommendations regarding what the Commission ought to
11 do in this case extends solely to what U S WEST ought
12 to be ordered to do versus any other
13 telecommunications company?

14 A. No. The recommendation I'm making is that
15 the company clarify its tariff so that this
16 misinterpretation that's occurring with regard to cost
17 responsibility for ordinary repair and maintenance is
18 put to rest. If other companies are making a similar
19 interpretation to their tariffs then it would apply to
20 them. However, I am not aware of any other companies
21 interpreting tariffs like that. I think Ms. Taylor's
22 testimony regarding complaints was that all the
23 complaints we've had on that issue regard U S WEST
24 solely.

25 MS. DODGE: No further questions, Your

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1 Honor.

2 JUDGE SCHAER: I didn't have any questions
3 for this witness. Did you have any redirect, Ms.
4 Smith?

5 MS. SMITH: I did have a redirect question.

6

7 REDIRECT EXAMINATION

8 BY MS. SMITH:

9 Q. Mr. Spinks, with respect to your testimony
10 that customers or property owners that have been
11 charged for repair and maintenance or the trenching
12 and conduit associated with repair and maintenance be
13 refunded the amount that was paid, I believe you
14 indicated that you did not believe that amounts paid
15 to third party contractors should be refunded. I want
16 to clarify what you meant by third party contractors.
17 Did you mean that contractors who were hired by
18 customers to do the trenching and place the conduit at
19 the customer's expense to repair and maintain those
20 lines, or did you mean the third party contractors
21 that U S WEST contracted with to do the trenching and
22 the conduit that was not charged to the customer?

23 A. I intended it to be for contractors that
24 were hired and paid for by the customer. The company
25 or its agents would be the ones who would be

00440

1 identified and subject to refund.

2 MS. SMITH: Nothing further.

3 JUDGE SCHAER: Is there anything further
4 for this witness?

5 MS. DODGE: No, Your Honor.

6 JUDGE SCHAER: Thank you for your
7 testimony.

8 THE WITNESS: You're welcome.

9 JUDGE SCHAER: I know we have at least one
10 more item we need to take up which is discussion of
11 post hearing brief. Are there other items as well?

12 MR. OLSEN: Your Honor, I have a request
13 actually. I'm asking to have the opportunity to
14 provide brief as I would call surrebuttal testimony,
15 which, as I reviewed the procedural rules, had the
16 procedure been followed technically our rebuttal
17 testimony would have been provided last. I would have
18 had the opportunity to hear cross and hear direct from
19 U S WEST, and there's been some testimony with regard
20 to the phrase "legal units of property" that if
21 allowed we would present testimony to, and so I don't
22 anticipate that it would take very long, probably just
23 five minutes of direct testimony.

24 JUDGE SCHAER: Does anyone object to this?

25 MS. SMITH: Staff doesn't object.

00441

1 MS. DODGE: I'm just wondering how that
2 would be anything other than legal testimony.

3 MR. OLSEN: It's not --

4 JUDGE SCHAEER: I would suggest that we
5 proceed for about five minutes, and if we hear what
6 you think are requests for legal conclusions that you
7 object at that time, but I know that I asked Ms.
8 Jensen some questions about U S WEST's assumptions
9 about the property status in the parks, and if there
10 is factual information about that it might be helpful
11 to me to hear it. So go ahead.

12 MR. OLSEN: Thank you, Your Honor. The
13 petitioners recall Mr. Robert Fricks.
14 Whereupon,

15 ROBERT FRICKS,
16 having been previously duly sworn, was called as a
17 witness herein and was examined and testified
18 further as follows:

19

20 DIRECT EXAMINATION

21 BY MR. OLSEN:

22 Q. Mr. Fricks, do you know whether Camelot
23 Square is divided into individual spaces?

24 A. Yes, it is divided into very specific units
25 of property or you might choose to call them lots.

00442

1 Q. How is it divided?

2 A. It is shown on a master park plan with each
3 unit of property outlined and dimensions given of the
4 individual units of property as well as showing the
5 greenbelt areas, the common areas, distances between
6 the unit of property lines and streets and so forth.
7 Those plans that show that are actually or were
8 actually used by the local government agency prior to
9 granting permits. Those plans are on file with the
10 city at this time and are used still in granting
11 building permits should a tenant choose to have a new
12 home put on their particular unit of property or build
13 accessory structures.

14 In addition to that there are provisions in
15 the Mobile Home Landlord Tenant Act that require the
16 park to provide new tenants -- very specifically
17 outline where the boundaries are to the unit that they
18 occupy there and that actually is just one of five
19 areas of commonality that I've identified between the
20 resident of a mobile home park and of a person
21 residing in a setting other than that.

22 Q. We'll get to those in a minute, but getting
23 back to the division at the mobile home park or at
24 Camelot Square, do you have a map or something with
25 this division back at the park?

00443

1 A. Yes, I do.

2 Q. And what would it look like or what does it
3 look like?

4 A. Actually, I have two maps in different
5 formats. One is broken into three sections, three
6 different sections of the park that shows streets,
7 common areas, and the outline of each individual unit
8 of property with the number and the actual
9 measurements written in. Physically, if you're asking
10 what looks like this on a sheet of paper probably two
11 and a half by three or so. I also have one that shows
12 the entire park much larger than that. It doesn't
13 have the actual measurements written in but it is to
14 scale.

15 Q. The measurements that you referred to, is
16 it the physical measurements of each space?

17 A. Yes.

18 Q. And so somewhere on the map it says space
19 50, if there is a space 50 is 50 feet by 20 feet or
20 something like that. Is that how it works or is it
21 something different?

22 A. That is how it works.

23 Q. Do you know -- why is it that you have this
24 map and the space is divided in that manner?

25 A. Well, as I've already mentioned, it's

00444

1 necessary to have that to allow for the segregation of
2 the different families dwelling there as allowing
3 offsets as required by fire codes and so forth, but I
4 think more importantly than that when a person moves
5 into a mobile home park they have a right to, what I'm
6 going to call, their own space, and that has to be
7 defined so as there's a way to say, this is your area,
8 you have rights that relate to this area the same as a
9 person would who lives in a setting other than multi-
10 dwelling. And this is your neighbor's area here.
11 They have rights that relate to that area that you
12 have to respect.

13 Q. Do you enter into a lease with these
14 people?

15 A. Yes, I do.

16 Q. Is there provisions in the lease with
17 regard to their specific space?

18 A. Yes. The lease requires that each resident
19 in the mobile home park maintains and provide for the
20 upkeep of their individual space.

21 Q. Is it also identified the specific space?

22 A. Yes, it is.

23 Q. And how is it identified?

24 A. Well, obviously it's identified by -- in
25 our case we use numbers, but it is also identified

00445

1 providing the tenant with a map showing the location
2 of their lot in relation to others and the dimensions.

3 Q. The physical size of the lot?

4 A. The physical size.

5 Q. What, if anything, does the lease say with
6 regard to the duties to maintain a specific lot, do
7 you know?

8 A. The lease states that the lot -- the
9 upkeep of the lot as pertaining to keep it, number
10 one, in a manner that appearance is commonly
11 acceptable, and also in keeping the lot in such a way
12 that there are not undue hazards presented to other
13 people is solely the responsible of the tenant.

14 Q. Are you familiar with the Mobile Home
15 Landlord Tenant Act?

16 A. Yes, I am.

17 Q. And do you know whether the Mobile Home
18 Landlord Tenant Act assigns duties with regards to the
19 maintenance of a tenant's lot?

20 A. Actually, I'm not familiar with that
21 particular section if it does exist in the act.

22 Q. But you represent the landlord with regard
23 to the management of a mobile home park; isn't that
24 correct?

25 A. That's correct.

00446

1 Q. What do you understand the landlord's
2 duties to be with regard to the maintenance of an
3 individual lot within the park? Does the landlord
4 have duties to maintain the specific lot?

5 A. The landlord has some duties, the way I
6 understand it, to maintain and provide services as
7 provided for specifically spelled out in the lease.
8 In the case of Camelot Square that would be water and
9 sewer.

10 Q. Now, ownership of a mobile home in a
11 manufactured housing community, it appears that that
12 ownership is somewhat unique. Do you know the
13 relationship a tenant has with the landlord with
14 regard to these individual spaces at the mobile home
15 park?

16 A. I'm not sure I understand what you're
17 asking me with that question.

18 Q. For instance, do the tenants own the mobile
19 homes that are located on each space?

20 A. The tenant, yes, they do own the mobile
21 home on each individual space, in fact, have in many
22 cases a sizable investment in the home.

23 Q. How much would that be, roughly speaking?

24 A. I have seen people purchase mobile homes
25 and set them up in a mobile home park where they're

00447

1 paying up to 60, 65,000. Obviously you can come in
2 and purchase an older home that is already set up for
3 less.

4 Q. So there is some ownership interest at
5 these individual spaces?

6 A. There's a tremendous amount of ownership
7 interest in the individual space, and part of the
8 relationship is where the landlord is responsible to
9 the tenant in providing services are assisting and
10 seeing that services are provided is that the tenant's
11 investment -- the value of their investment can vary
12 depending on how those other services are met and
13 provided.

14 It's much the same as, to use an example,
15 where someone lives in a situation other than multi-
16 dwelling the value of your home is dependent on what
17 -- actually, this doesn't apply. I'm going off on a
18 tangent and I'm going to stop myself before someone
19 else does.

20 Q. If I understand your testimony right, the
21 tenants at Camelot Square aren't the classical tenants
22 in a multi-unit building. They're different; isn't
23 that correct?

24 A. Yes, they're very different than what you
25 would expect in a multifamily building.

00448

1 Q. In fact they have ownership, significant
2 ownership interest, that you wouldn't necessarily find
3 with tenants of multi-unit building?

4 A. That's true. They do have ownership
5 interests. They also have certain expectations and
6 rights that you wouldn't find in a multifamily
7 building.

8 Q. And what would they be?

9 A. For one is they have an expectation of
10 privacy and freedom from intrusion in that area that
11 is outlined as being their specific unit or lot
12 provided by Mobile Home Landlord Tenant Act and
13 provided by -- based on what I have seen as
14 observation of law enforcement activity provided for
15 by local law.

16 Q. Given your knowledge of the relationship
17 between the tenant in a mobile home park and the
18 tenant in a multi-unit building, is it your opinion
19 that tenants in a mobile home park are closer to
20 owners or closer to tenants?

21 A. Closer to owners.

22 Q. And why is it that you say that?

23 A. Again, because of the requirement and the
24 interest they have in maintaining their area
25 themselves. I mean, not only are they required to but

00449

1 it's in their best interests to do so. Secondly,
2 because they have this area around them that according
3 to the provisions of the Landlord Tenant Act and local
4 law is their area they have a reasonable expectation
5 to enjoyment of that area, which is far more
6 substantial both from a standpoint of potential to
7 enjoy and size-wise than what you would find in a
8 multi-family building.

9 MS. DODGE: Your Honor, if I could just
10 object to the degree that the witness is now and has
11 testified about the law, I would object to the degree
12 he's purporting to state what the law is versus just
13 his understanding from his experience about what the
14 law might provide.

15 JUDGE SCHAER: Okay. I'm going to
16 interpret his answer about what the law is as being
17 what you have just stated, his understanding of the
18 law. The Landlord Tenant Act for mobile home parks is
19 something that we can look up and have citation to and
20 discussion of in the briefing.

21 A. I was also going to answer one more aspect
22 to your question when you asked the resident of a
23 mobile home park is it closer associated to a tenant
24 in a multifamily building or someone in a single
25 family type situation, I think another area that puts

00450

1 the resident of multi-home park closer to that of
2 someone who might live in a single family dwelling
3 type situation is the fact that the tenant in a mobile
4 home park is actually paying much more directly than
5 some people might realize the cost associated with
6 maintaining and upkeep in providing services in that
7 area.

8 Q. And how is that?

9 A. It's very simple in that any increase in
10 costs, and significant to the subject matter here in
11 that to use Camelot Square for example, if we were in
12 fact to be required to spend the 33, 34,000 to put
13 into place trenching and conduit to meet or to allow
14 our tenants to enjoy an acceptable level of quality of
15 their telephone service the testimony that's been
16 given is that the park owners would be billed for
17 that, but anything the park owners pay I think you can
18 very obviously see is coming directly from the tenant.

19 Any increase in costs of that nature,
20 whether it's that or increase in taxes or anything
21 else in some cases are allowed by provisions of the
22 Landlord Tenant Act to be passed on immediately to the
23 tenant with no prior notice. In other cases would be
24 passed on in the form of a rental increase, and I
25 think, again speaking for Camelot Square, it's a very

00451

1 definite thing. Anything that increases the cost of
2 operating it or maintaining the park the tenant pays.
3 They may not be writing the check to the company
4 providing the service but they very clearly pay it.

5 It's kind of interesting, or I think
6 unfortunate in this situation because you can see a
7 scenario where a person living in a home such as was
8 shown in the drawing we had on the wall here would be
9 provided with service up to a point at no additional
10 cost where the same person living at a mobile home in
11 a mobile home park with the divisions as they were
12 shown on the map would actually be charged or end up
13 paying for the cost of the work being done to access
14 their particular lot according to U S WEST's
15 interpretation through an increase in rental.

16 MS. SMITH: I have no further questions.

17 JUDGE SCHAER: Any cross? Any
18 cross-examination?

19 MS. DODGE: Yes, Your Honor.

20 (Recess.)

21 JUDGE SCHAER: We're back on the record.
22 While we were off the record the reporter changed
23 paper. Go ahead, Ms. Dodge.

24

25 CROSS-EXAMINATION

00452

1 BY MS. DODGE:

2 Q. Mr. Fricks, do you believe that you have
3 the power to evict someone who lives in your mobile
4 home park?

5 A. Under a very tightly controlled and narrow
6 set of circumstances, yes. Actually, no. I'm going
7 to correct myself. I don't have the power to evict.
8 I have the right to go through a legal process and ask
9 a judge for a piece of paper that says that person
10 will be evicted.

11 Q. And the question whether you have the power
12 to evict or not, is it correct that that depends on a
13 law such as the Mobile Home Landlord Tenant Act as
14 opposed to the question of who owns the property?

15 A. Would you repeat that for me, please.

16 Q. Well, you said that you have to go through
17 a process and that ultimately the judge would have to
18 be the one to kick somebody out, but is it your
19 understanding that you have to go through that process
20 because a law requires it?

21 A. That's my understanding.

22 Q. As opposed to because the tenant has some
23 ownership interest in that piece of property?

24 A. My understanding is that, number one, I
25 have to follow that procedure because that is the

00453

1 procedure spelled out in law under the Mobile Home
2 Landlord Tenant Act. It's further my understanding
3 that the reason that the law governing under what
4 situations the mobile home park can be granted the
5 right to have a tenant removed are very restrictive is
6 because of the ownership interest the tenant has.

7 Q. You're not suggesting, are you, that you
8 have deeded over these individual plots to any of the
9 mobile home park residents?

10 A. No, I am not.

11 Q. You're not suggesting that there are any
12 legally recorded documents that give tenants some kind
13 of easement or other recorded property interest in the
14 plot that they live on?

15 A. Recorded to the extent that the
16 documentation is given to them with a copy of their
17 lease, yes.

18 Q. So it's a lease that let's them live there?

19 A. That's correct.

20 Q. And not a certificate of title to property?

21 A. That's correct.

22 Q. What kind of turnover do you have at
23 Camelot?

24 A. Out of 400 families I would -- this is
25 going to be an approximation -- I would say we

00454

1 probably see over a period of a year's time maybe 20,
2 25 leaving and new families coming. Again, that's an
3 approximation.

4 Q. So if somebody wanted to, at any time they
5 could have their mobile home that they own moved to a
6 different park; is that correct?

7 A. Up to a point, yes. You're getting into
8 some areas where based on the type of construction of
9 the home, the age of the home, whether or not it
10 meets L and I standards they quite possibly could not
11 have it moved to another park, but they do have the
12 right with notices required giving -- in their
13 agreement with the park to move it out of the park,
14 yes.

15 Q. I take it they could sell their mobile home
16 park to someone else also?

17 A. Sell their mobile home?

18 Q. Sorry, sell their mobile home to somebody
19 else.

20 A. Again, with within a narrow set of
21 guidelines as provided under the Landlord Tenant Act
22 they can, yes.

23 Q. Does your lease permit them to sell to
24 somebody else?

25 A. Under the provisions of the mobile home and

00455

1 Landlord Tenant Act, yes.

2 Q. You don't have any say over who someone
3 sells the mobile home to?

4 A. In two respects I do. One, I have the
5 right of, or the park has the right of first refusal
6 on any sale. To a greater extent I have a say in that
7 I have the right, as well as the obligation, to screen
8 a person that wants to buy a mobile home within the
9 park, to live in the mobile home within the park, to
10 meet the standard as far as credit background and so
11 forth. And I do have the right if they don't meet the
12 standards that -- preestablished standards to turn
13 that person down, in effect not allowing a sale.

14 Q. And was it my -- would my understanding
15 then be correct that you have some say over what a
16 resident places on this plot that they have leased?

17 A. Yes, I do.

18 Q. Could someone install a swimming pool on
19 their plot?

20 A. In ground or above ground?

21 Q. In ground.

22 A. I don't think I would allow that, no. I
23 mean, that's not specifically addressed in park rules,
24 but I think that we probably would not be inclined to
25 accept that.

00456

1 Q. Could someone who lives there cultivate all
2 the land around their mobile home and have it all be
3 vegetable garden if they want to do that?

4 A. Yes. Actually they could as long as it was
5 appearances-wise acceptable to those living around
6 them.

7 Q. If someone took it upon themselves just
8 because they had nothing better to do and they wanted
9 to dig a tunnel underneath their mobile home and
10 tunnel out to the road and then have their entrance be
11 over there so they don't have to talk to their
12 neighbors, would that be performed?

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

14 Q. Are you familiar with just the concept of
15 condominiums in general?

16 A. Well, in a very informal way, yes.

17 Q. Would it be your understanding that there
18 are multi-unit buildings where instead of renting
19 people own individual units?

20 A. Yes.

21 Q. And those individual unit owners would then
22 have an ownership interest in their individual unit?

23 A. Yes.

24 Q. But they would still be in a multi-unit
25 building?

00457

1 A. Yes.

2 Q. And then those people, I guess, would be
3 closer to the mobile home park or the mobile home end
4 of things that you described before as opposed to a
5 single family or as opposed to a rental, multi-unit
6 rental unit?

7 A. Let me see if I understand what you're
8 asking me. We place the multifamily rent unit here,
9 and here's the person who lives in a house somewhere,
10 and you're asking me if the condominium owner is
11 closer this end or this end. I would put that closer
12 to the person living in a house here, but I would not
13 put it quite as closer to that as I would the resident
14 of a mobile home park. The reason being the resident
15 of a mobile home park has this piece of land that for
16 most practical intents and purposes is theirs to use.

17 Q. Did you hear the testimony earlier today
18 about private right-of-ways and easements?

19 A. Yes, I did.

20 Q. Assuming that it is legally correct that if
21 U S WEST has a private right-of-way easement U S WEST
22 has the ability to exclude anybody else and claim
23 exclusive right to access to a strip of property,
24 would Camelot be willing to give U S WEST an easement
25 on to its roads, an exclusive say over what happens on

00458

1 those roads to provide telecommunications service
2 within the park?

3 MR. OLSEN: Objection, calls for
4 speculation. I'm not quite sure what its relevance
5 is.

6 JUDGE SCHAEER: Overruled.

7 A. That is a definite or that is a
8 possibility. We're talking about a lot of issues here
9 that if you want a definite yes or no we would have to
10 set down and hammer out something far more specific
11 than just a general question. It would certainly be
12 something that I would consider.

13 Q. Would one of the things you would be
14 concerned about in those kinds of discussions be
15 whether you gave up some control over areas within the
16 park that you currently have control over?

17 A. That would be an issue, yes.

18 Q. Is it your current understanding that
19 regardless of any general easement that might be in
20 existence that the owners of Camelot currently control
21 their full property in terms of whatever the legal
22 description is? They have ownership and control over
23 that piece of property?

24 A. They have ownership. They actually have
25 not a great deal of control over what happens on that

00459

1 property because of the rights that are granted to the
2 residents that live on that property.

3 Q. And that would again come out of something
4 like the Mobile Home Landlord Tenant Act rather than
5 any easement or deed of any kind that someone might
6 enjoy?

7 A. That's correct.

8 MS. DODGE: That's all I have for this
9 witness.

10 JUDGE SCHAER: I have a few questions, Mr.
11 Fricks, from what I've heard.

12

13 EXAMINATION

14 BY JUDGE SCHAER:

15 Q. Do you know how mobile homes are taxed in
16 this state?

17 A. Yes, I do.

18 Q. Are they taxed as personal property or real
19 property?

20 A. Personal property. Let me qualify my
21 answer. I know that -- I own a mobile home. I don't
22 live in it, but I purchased a mobile home as an
23 investment. It's taxed as personal property.

24 Residents of the park that I have talked to and am
25 aware of the situation their homes are taxed as

00460

1 personal property.

2 Q. Now, under your understanding of the rights
3 that tenants have to their lots, would U S WEST need
4 permission of a customer to enter onto their lot and
5 work on their lot or need an easement on the lot that
6 would allow them to work from the street to the hook-
7 up at the home?

8 A. Within the boundaries of a particular lot
9 we're talking?

10 Q. Yes.

11 A. Need an easement based on my knowledge and
12 understanding, no. Need permission I would have to --
13 to my way of thinking if the resident on that lot
14 requests service or requests a repair to service
15 that's the permission that U S WEST would need to
16 enter that lot.

17 Q. Is your understanding and your position as
18 a landlord under the Landlord Tenant Act for mobile
19 home parks, if there's a service to a mobile home that
20 is not one of the services that's provided under the
21 lease that's not water or cable or sewer -- those are
22 the ones that I believe you stated -- would you need
23 permission from the resident to enter their property
24 to dig a trench or put in conduit or otherwise put in
25 some kind of underground structure for the telephone

00461

1 company?

2 A. I believe that I would. I answered that
3 way because the Mobile Home Landlord Tenant Act says
4 that a landlord has the right to enter a lot at a
5 reasonable time in a reasonable way to do two things.
6 One is to check compliance with park rules. Secondly,
7 to maintain and inspect services provided by the park,
8 which in this case telephone services are not provided
9 by the park, which to me would mean automatic
10 permission to provide that lot to provide the services
11 not granted.

12 Q. You mentioned that there's a turnover of
13 approximately 20 to 25 families per year?

14 A. Yeah. That was a figure I gave. Again, I
15 want to stress that's an approximation.

16 Q. When that happens, is that usually because
17 the family moves its mobile home out of the park to
18 some other location or is that usually because they
19 sell their mobile home in the park and they themselves
20 move but the home stays in the park?

21 A. In my experience it's very rare for someone
22 to actually move the mobile home out of the park.
23 They can be moved, but when they are installed, set
24 up, tied down, hooked up, so forth and so on they are
25 a fairly permanent type of situation. And I would say

00462

1 using a number of 25 people moving, maybe at most one
2 of those might move their house. It's very unusual.
3 Typically the house is put on the market, a new family
4 buys it, moves into it on the existing lot.

5 Q. So it would be much like any residential
6 neighborhood of 400 homes where a certain number of
7 families --

8 A. Very much so.

9 Q. -- would move each year or two and certain
10 number of other families would purchase homes and move
11 in?

12 A. Correct.

13 JUDGE SCHAER: I'm sorry, did I go ahead of
14 you?

15 MS. SMITH: I didn't have any questions,
16 Your Honor.

17 JUDGE SCHAER: We're getting to the point
18 of the day where I'm getting very tired.

19 MR. OLSEN: No further questions by me.

20 JUDGE SCHAER: No redirect?

21 MR. OLSEN: No.

22 JUDGE SCHAER: You may go ahead.

23

24 CROSS-EXAMINATION

25 BY MS. DODGE:

00463

1 Q. Do you permit residents to rent their
2 mobile homes out to others?

3 A. No, I do not.

4 Q. Do you permit residents to sublease their
5 plots to others?

6 A. No, I do not.

7 MS. DODGE: Nothing further.

8 JUDGE SCHAER: Is there anything -- any
9 further testimony and exhibits?

10 MR. OLSEN: Your Honor, can we go off the
11 record for a minute?

12 JUDGE SCHAER: Certainly. We're off the
13 record.

14 (Discussion off the record.)

15 JUDGE SCHAER: Let's be back on the record.

16 While we were off the record we had a discussion of a
17 possible stipulation among the parties and a
18 discussion of post hearing briefing schedule and of
19 what should be included with those briefs and a
20 discussion of possibilities of settlement and how
21 those could be pursued and presented to the
22 Commission. I believe, Mr. Olsen, that you had a
23 stipulation to present at this point.

24 MR. OLSEN: Yes, Your Honor.

25 JUDGE SCHAER: Go ahead, please.

00464

1 MR. OLSEN: I understand that the parties
2 have stipulated that the testimony of Mr. Robert
3 Fricks that was provided right before the break would
4 also apply on behalf of Skylark Village and Belmor
5 Park because if Russ Smalley and Nancy Evans were
6 called to testify as to the topics discussed by Mr.
7 Fricks they, too, would provide similar if not
8 identical answers, and so I understand that the
9 parties knowing this have stipulated that the
10 testimony of Mr. Fricks will apply equally to the
11 cases of not only Camelot Square Mobile Home Park but
12 also Skylark Village Mobile Home Park and Belmor
13 Mobile Home Park.

14 JUDGE SCHAER: Do you agree to that, Ms.
15 Dodge?

16 MS. DODGE: Yes, I do.

17 JUDGE SCHAER: Ms. Smith.

18 MS. SMITH: Yes.

19 JUDGE SCHAER: As a final matter we have
20 discussed briefs in this matter and have determined
21 that there will be simultaneous initial briefs filed
22 with the Commission on Friday, August 1, and with
23 those briefs the parties will present draft findings
24 of fact and conclusions of law, and I have asked that
25 they provide those both in hard copy and on computer

00465

1 disk preferably in Word Perfect 5.1 or higher. But we
2 then discussed having simultaneous responsive briefs
3 filed Friday August 22 with the Commission.

4 And the parties in those responsive briefs
5 will indicate, if it helps them in their arguments,
6 proposed findings and conclusions of other parties and
7 also will indicate which findings and conclusions they
8 agree with so we can see if any portions of this that
9 we can put in as agreed findings.

10 Is there anything further that we need to
11 state on the record in this matter?

12 MR. OLSEN: No, Your Honor.

13 JUDGE SCHAEER: Hearing nothing then this
14 hearing is adjourned and we're off the record.

15 (Hearing adjourned at 5:25 p.m.)

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