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2 at Law, whose address is 601 Sixth Avenue, Suite 4400,
3 Seattle, Washington 98101, on behalf of Complainants.

4 Edward T. Shaw, Molly Hastings, and Bruce
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6 Seventh Avenue, Suite 3204, Seattle, Washington 98191,
7 on behalf of U. S. West Communications, Inc.

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24 Donna M. Davis, CSR CM

25 Court Reporter

	I N D E X					
	WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS	EXAM
1						
2	DAVID W. COULSON					
3						
4				268	281	282
5	DR. NINA W. CORNELL					
6		285	316	445	451	417
7	(resumed)	314	388			438
8						443
9						453
10						456
11						
12	EXHIBIT	MARKED	ADMITTED			
13	T-1	285	314			
14	T-21	285	314			
15	C-22	285	314			
16						
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1 PROCEEDINGS

2

3 THE COURT: The hearing will come to order.
4 This is the sixth day of hearing in Docket UT-920174,
5 which is the Northwest Payphone Association versus U.
6 S. West complaint case.

7 This is a second day of direct and cross
8 examination of the complainant's testimony and the
9 hearing is taking place on February 2, 1993.
10 Appearances are the same this morning as they were
11 yesterday.

12 In the way of preliminary matters, it's my
13 understanding that the participants are still
14 discussing a revised discovery schedule. Please look
15 at the proposal that one of the parties has given to
16 you, and please be prepared to report back on it no
17 later than the end of the lunch break.

18 Is there anything else we need to discuss in
19 the way of procedures or preliminary matters?

20 MR. HARLOW: Not at this time.

21 THE COURT: All right. Let's continue then
22 with we were ready for the redirect of Mr. Coulson. Go
23 ahead, Mr. Harlow

24

25 DAVID W. COULSON,

1 witness herein, having been previously duly
2 sworn, was examined and testified
3 as follows:
4

5 R E D I R E C T E X A M I N A T I O N

6 BY MR. HARLOW:

7 Q. Good morning, Mr. Coulson.

8 A. Good morning.

9 Q. Yesterday Mr. Shaw questioned you at length
10 about whether you were withdrawing portions of your
11 testimony, your direct testimony. Were you clear about
12 what testimony Mr. Shaw was talking about?

13 A. No. There were several things there that
14 sounded like offers or such. But we have nothing that
15 we see at the present time that would cause us to
16 modify our complaint in any way.

17 Q. Just to be clear, with regard to your
18 prefiled testimony in this case, are you intending to
19 withdraw any of that testimony or not?

20 A. No, we are not.

21 Q. Yesterday you were asked whether any of the
22 Northwest Payphone Association members other than
23 Digital Access managed payphones that are actually
24 owned by the site owners where the phones are located.
25 And I wasn't clear on your answer. I thought you said

1 no. Was I misunderstanding you or not?

2 A. Perhaps I misunderstood the question.
3 Digital's operation is that way. Some of the other
4 providers do service for owners. NCS I know directly
5 services for the chain of Anthony's Home Port
6 restaurants. They own their own equipment, but NCS
7 does all the management for them.

8 Q. When Chairman Nelson asked you what you
9 thought the Commission ought to do if U. S. West were
10 to not obey a hypothetical order of the Commission
11 regarding the advertising that you complained against
12 in your testimony, you said something about having to
13 go to court.

14 Do you recall that question and answer?

15 A. Yes, I do.

16 Q. Are you familiar with the Commission's
17 powers to enforce its orders?

18 A. No.

19 MR. SHAW: Your Honor, I think I'll object
20 here. That's asking for a legal conclusion.

21 MR. HARLOW: I'm asking whether or not he
22 can form a legal conclusion.

23 THE COURT: I think the question was whether
24 he was familiar with the Commission's powers of
25 enforcement. And so far I think that that question is

1 appropriate.

2 Go ahead, sir. Are you?

3 THE WITNESS: No, I'm not, to that extent.

4 THE COURT: That should take care of the
5 answer then.

6 Mr. Harlow?

7 MR. HARLOW: Thank you.

8 BY MR. HARLOW:

9 Q. Would it be your position that, if there
10 should be some problem -- I understand you're not
11 familiar with it -- assuming there might be some
12 problem in enforcing an order on advertising, would
13 that mean that you and the Northwest Payphone
14 Association would not want the Commission to order U.
15 S. West to stop using the advertisements that you
16 identified in your prefiled testimony just because
17 there might be potential enforcement problems?

18 MR. SHAW: Objection, your Honor. He just
19 testified he has no idea what the Commission's
20 enforcement powers are. Now this question asks him
21 does he wish the Commission to order the Company to do
22 something.

23 THE COURT: Why don't you frame that as a
24 hypothetical, Mr. Harlow. "If the Commission has the
25 authority."

1 MR. HARLOW: I believe it was. But just for
2 clarity I will rephrase it.

3 THE COURT: Thank you.

4 BY MR. HARLOW:

5 Q. If the Commission has the authority to order
6 U. S. West to stop making the advertising claims that
7 you identify in your prefiled testimony, would you and
8 the Northwest Payphone Association want the Commission
9 to go ahead and do that even if they might have
10 hypothetical enforcement problems as reflected by
11 Chairman Nelson's question?

12 MR. SHAW: I'll object to the question
13 again, your Honor. That was my original problem. He
14 is assuming the Commission has the power, et cetera,
15 and then he ends the question with "assume the
16 Commission may not have the power." It's very
17 misleading and confusing at best.

18 And he seems to be wanting to elicit an
19 opinion from the witness that the Commission should
20 order the Commission to do something even if it doesn't
21 have the power to do it. I think that's totally
22 inappropriate.

23 THE COURT: I'm going to overrule the
24 objection and order the witness to answer.

25 Sir?

1 THE WITNESS: If it is within the power of
2 the Commission to cease this practice, then we would
3 like it settled at the lowest level possible, yes. If
4 at all possible, it would be best served here.

5 BY MR. HARLOW:

6 Q. Mr. Coulson, are you prepared today to
7 briefly summarize the relief that has been requested,
8 that is requested by the Northwest Payphone Association
9 as a result of this complaint?

10 A. Yes, we are.

11 Q. Would you please do so.

12 MR. SHAW: Your Honor, I'm going to object.
13 This is inappropriate redirect. I asked the witness
14 repeatedly what his recommendations were yesterday, and
15 he had none. And now suddenly he has some. I think
16 that that's an inappropriate way to handle direct. The
17 witness should have responded to the questions on
18 direct when they were asked.

19 THE COURT: Mr. Harlow?

20 MR. HARLOW: Mr. Shaw spent a great deal of
21 time, in our view, muddling the record, as to what it
22 is the Complainants were seeking. I continually
23 objected to those questions on the grounds that the
24 relief requested was set forth in the complaint, in the
25 testimony of both Mr. Coulson, but primarily Doctor

1 Cornell. And the bench, of course, requested that we
2 make this summary.

3 I don't think it's essential because, as I
4 stated yesterday, it's set forth quite clearly in our
5 complaint and the testimony. But, nevertheless, I feel
6 Mr. Shaw's objection is totally unfounded. Mr. Shaw
7 questioned a great length about the relief requested.
8 Certainly on redirect we're entitled to clarify the
9 record on what the relief is.

10 THE COURT: I'm going to overrule the
11 objection. I instructed the witness yesterday to let
12 the Commission know what it was the complaint was
13 requesting. I did overrule Mr. Harlow's objections to
14 those questions. And I think a summary of what the
15 Complainant is asking would be useful for the
16 Commission. We want to know as much as possible about
17 what it is Complainants want the Commission to do.

18 So, I'll allow the question. Sir?

19 THE WITNESS: I would like to, if I may,
20 briefly summarize some of the confusion that came about
21 yesterday and why I was unable to really address
22 directly.

23 THE COURT: Perhaps it would be better not
24 to summarize the confusion. I think the confusion is
25 on the record if it exists. What we would like is a

1 brief statement of what it is Complainants are
2 requesting, please.

3 THE WITNESS: We are really looking to be
4 treated as a competitive service. Some of the
5 misunderstandings come about as to who we are doing
6 business with and who are we competing with.

7 We do business with U. S. West on the
8 telecommunications side. They are the provider of our
9 services. We compete with U. S. West coin.

10 We both buy services from the same source.
11 They deliver them in one manner; we deliver them in
12 another, although similar.

13 We do not buy the same services totally.
14 So, we're not really re-selling those services.

15 We want to be certain that U. S. West coin
16 purchases the same services at a competitive price with
17 us, they deliver those services by their own skills and
18 expertise to the marketplace, and the marketplace will
19 decide which they choose to use.

20 If we are forced to run our business in such
21 a manner that we have to purchase at a different level,
22 our costs are higher, and we have to compete, deliver
23 in the marketplace at the same price, we're at a
24 disadvantage.

25 We ask that U. S. West coin pay the same

1 price for their services that we do so that we can
2 establish equality in the marketplace, deliver those
3 services, and let the market decide which they would
4 prefer to use.

5 BY MR. HARLOW:

6 Q. Excuse me, Mr. Coulson. Are you referring
7 to imputation?

8 A. I am referring to the imputation.

9 Q. I think if you would just please briefly at
10 this point list the points of relief that we're seeking
11 if you can, rather than explaining them at this point.

12 A. They come from so many directions. We would
13 like the services that are provided to U. S. West coin
14 unbundled, allow us to purchase them at the same price
15 that U. S. West coin purchases them.

16 We want to have U. S. West coin account for
17 their business the same way that we do.

18 We want to eliminate this price squeeze that
19 we're suffering under. And let me extend a little bit
20 to that: We compete for these sites partially on a
21 commission basis, a commission that we pay to the site
22 for providing the location and providing the change
23 making and such. That commission is a great deal of
24 the competitive power that we have. We pay our
25 commissions totally out of profits.

1 We would like separate accounting and
2 computation of costs to the coin side so that we can be
3 certain that they also pay those same commissions out
4 of profits. If they do, then we can compete fairly.
5 God bless them. I just have to work harder.

6 But if they are allowed to use other
7 revenues to subsidize that, they can raise those
8 commissions to a point where they will force me out of
9 the marketplace.

10 Q. Mr. Coulson, I think you're getting into the
11 why now rather than just listing.

12 A. It's hard for me to separate one from the
13 other in my own thinking. Could you help me?

14 Q. Perhaps if I direct the questions a little
15 more. Would you like the Commission to do anything
16 with regard to the level or the structure of PAL rates?
17 If so, what?

18 A. We would like the PAL rate to be the same or
19 imputed to U. S. West coin so that they pay the same
20 rates that we do.

21 Q. Anything else that you would like to be done
22 with the PAL rate?

23 A. The PAL rate itself because of the way it's
24 structured and the meter is kind of a backwards
25 structure where I have to pay more as my volume

1 increases. And it does put a serious burden on the
2 site locations that we can actually go out to market.

3 Q. What relief could the Commission order
4 there?

5 A. We would like to see the meter justify for
6 one reason as to what purpose it serves in their
7 costing structure. If it is a legitimate cost on that
8 transaction, then so be it. If both sides, U. S. West
9 coin and ourselves, pay that same price, then it is
10 something that we blend together and we still compete
11 on an even level.

12 Q. Would you think that there might be a
13 circumstance, and if so, would it be appropriate to
14 have a flat rate for the PAL?

15 A. We feel that a flat rate is a more equitable
16 situation all the way around, yes.

17 Q. Do you believe the Commission should do
18 anything with regard to the revenues earned by U. S.
19 West operator services?

20 MR. SHAW: Your Honor, I'm going to make an
21 objection that counsel is leading the witness on
22 direct. This witness obviously has demonstrated for
23 quite awhile yesterday and now again today he cannot
24 articulate what he wants without counsel putting words
25 in his mouth.

1 THE COURT: Mr. Harlow?

2 MR. HARLOW: The question that starts out
3 would you like the Commission to do something, I cannot
4 see how that can possibly be construed as a leading
5 question.

6 THE COURT: What we wanted was what your
7 client wants. Asking the general question what do you
8 want hasn't seemed to elicit that information, Mr.
9 Harlow.

10 MR. HARLOW: And the evidence rules do allow
11 leading when the witness is having trouble.

12 THE COURT: I don't like the forms of the
13 question particularly. But I do want to have very
14 clear in the record what it is your client is asking
15 for. So, I will allow the questions.

16 Go ahead, Mr. Harlow. I hope this is
17 wrapping it up, though.

18 MR. HARLOW: We're getting close, I think.

19 THE COURT: Go ahead, sir.

20 BY MR. HARLOW:

21 Q. Do you have the question in mind?

22 A. Yes. To try and be as brief and concise as
23 possible, we are really looking for the accounting
24 function on the U. S. West coin side to be the same as
25 we run our business.

1 We think that the U. S. West coin should be
2 a contributor to the corporate profit structure as we
3 have to be. We want the payphone providers, the
4 competitive payphone providers, to be -- have available
5 to them the same services that U. S. West provides to
6 their own coin division.

7 We want to compete in the marketplace
8 without any disadvantage of having to deal with our own
9 competitor --

10 Q. Mr. Coulson, I'm sorry to keep interrupting.
11 You have had kind of a long and frustrating drive down
12 here. But I want you to focus on specifically as best
13 you can and as best you understand it what relief the
14 association is seeking, again, rather than the reasons
15 and the support for that. I think we have covered that
16 already in your direct testimony.

17 A. We want U. S. West coin to impute the same
18 costs to their operation that we have to our operation.
19 We want them to impute the same revenue sources to
20 their operation and equally to our operation. We want
21 to share in all of that.

22 Q. Thank you. I think that answers the
23 question.

24 What about with regard to U. S. West's
25 installation and marketing practices that you

1 identified in your prefiled testimony? Are you seeking
2 any relief in that area?

3 A. Yes, we are. We feel that we should be
4 treated as any other subscriber when we request
5 services from them for installation and such. We
6 expect them to be provided in the same manner that they
7 would deliver those services to any other subscriber.

8 Q. Thank you. Are you seeking any relief with
9 regard to U. S. West's billing and collection charges?

10 A. We feel that the billing and collection
11 charges that they impute to themselves are not the same
12 that they impute to our industry, and we want that
13 adjusted, either down on our side or up on their side,
14 so they are equal across the board, yes.

15 Q. Do you have any position on a separate
16 subsidiary for U. S. West coin services?

17 A. We feel very strongly that the only way that
18 we can come to a position of par between us is that
19 they separate at least their accounting function to the
20 position that they can say, yes, in fact, we are
21 profitable or we are not profitable.

22 MR. HARLOW: Thank you, Mr. Coulson. I have
23 no further questions.

24 THE COURT: All right. Have you recross,
25 Mr. Shaw?

1 R E C R O S S - E X A M I N A T I O N

2 BY MR. SHAW:

3 Q. Mr. Coulson, I take it your testimony is
4 still that your industry is not a telecommunications
5 company regulated by this Commission; is that correct?

6 A. That is correct, yes, sir.

7 Q. So, you are not here in this proceeding
8 complaining as telecommunications companies about the
9 rates and practices of U. S. West, are you?

10 MR. HARLOW: I'm going to object to the
11 extent this calls for a legal conclusion about the
12 Commission's rules on who may complain.

13 THE COURT: Mr. Shaw?

14 MR. SHAW: I don't think it calls for a
15 legal conclusion. It's a straight request for him to
16 agree with a logical result of his previous answer.

17 MR. HARLOW: Furthermore, I think you're
18 mischaracterizing the testimony in your summary because
19 Mr. Coulson --

20 THE COURT: I will allow the question
21 because Mr. Coulson --

22 MR. HARLOW: If I could finish.

23 THE COURT: I would like you not to.

24 Go ahead.

25 THE WITNESS: If we are here as a regulated

1 telecommunications seeking relief, Mr. Shaw?

2 BY MR. SHAW:

3 Q. Yes.

4 A. We are not a registered telecommunications
5 company, sir.

6 MR. SHAW: I have nothing further.

7 THE COURT: Anything else, Ms. Brown?

8 MS. BROWN: No, your Honor.

9 THE COURT: Commissioners, anything else?

10 COMMISSIONER CASAD: I have nothing.

11

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

13 BY COMMISSIONER PARDINI:

14 Q. If the Commission were to direct U. S. West
15 to separate their coin operation as a separate
16 subsidiary and declare that provision of service,
17 namely, public telephones, as a competitive service,
18 would you then register with this Commission and would
19 your other telephone companies register with this
20 Commission?

21 A. I would speak for myself. I do believe with
22 the others the process of registration is not a subject
23 of contention with us. If that would be beneficial to
24 the Commission, we would be more than glad to comply.

25 Q. If that were to occur and the Commission

1 were to devise a plan for allocation of public service
2 locations, would your company and other companies in
3 your association accept the decision of the Commission
4 to maintain public service locations which might not be
5 profitable?

6 A. Very definitely, Commissioner. We worked on
7 devices where we could do this amongst ourselves and
8 the regulated company.

9 Q. Would you and other companies in your
10 association accept price restrictions?

11 A. We already -- really, the market has
12 established price, and we have accepted those price
13 restrictions as long as there is -- they are at a place
14 where we can continue to do business, yes, sir. It's
15 the public policy. We will adjust our business
16 accordingly.

17 COMMISSIONER PARDINI: Thank you.

18 THE COURT: Anything else?

19 COMMISSIONER PARDINI: No.

20 THE COURT: Anything else of the witness?

21 MR. HARLOW: Nothing further.

22 THE COURT: Thank you, sir. You may step
23 down. Let's go off the record to change witnesses,
24 please.

25 (Short break.)

1 THE COURT: Let's be back on the record.

2 During the time we were off the record, Mr.
3 Harlow called a new witness.

4 Would you raise your right hand, please.

5

6 DR. NINA W. CORNELL,
7 witness herein, being first duly
8 sworn, was examined and testified
9 as follows:

10

11 THE COURT: We had previously marked a
12 number of documents. T-1 was the original prefiled
13 testimony. Please note that Mr. Harlow h_s distributed
14 a packet of revised pages. As I understand it, those
15 pages should be inserted in substitution for the pages
16 that they replaced?

17 MR. HARLOW: That's correct.

18 THE COURT: There is also a totally revised
19 Exhibit 14. Will you be asking the witness or
20 describing what's different about revised Exhibit 14?

21 MR. HARLOW: Yes.

22 THE COURT: And there is also supplemental
23 prefiled testimony which I have marked as Exhibit T-21
24 and a confidential exhibit attached to that which I
25 have marked as Exhibit C-22

1 (Marked Exhibits T-1, T-21 and C-22)

2 THE COURT: Your witness has been sworn, Mr.
3 Harlow.

4

5 D I R E C T E X A M I N A T I O N

6 BY MR. HARLOW:

7 Q. Good morning, Doctor Cornell.

8 A. Good morning.

9 Q. Would you please spell your name and address
10 for the record?

11 A. Nina Cornell, 1920 Wood River Road,
12 Meeteetse, M-e-e-t-e-e-t-s-e, Wyoming, 82433.

13 Q. What is your occupation?

14 A. I'm an economist.

15 Q. Do you have before you Exhibit T-1 and the
16 exhibits 2 through 14 that are referred to in Exhibit
17 T-1?

18 A. I believe I do.

19 Q. Do you also have before you Exhibit T-22 and
20 C-22?

21 A. No. I'm sorry.

22 THE COURT: Let's go off the record so the
23 witness can be provided with all the documents, please.

24 (Discussion held off the record.)

25 THE COURT: Let's be back on the record.

1 During the time we were off the record, the witness was
2 provided with the documents in question.

3 Go ahead.

4 BY MR. HARLOW:

5 Q. Do you have before you a copy of Exhibit
6 T-21 and C-22?

7 A. Yes.

8 Q. Before we get started, do you have any
9 corrections to Exhibit T-1?

10 A. We passed out corrected pages. Do you want
11 me to read what the corrections were?

12 MR. HARLOW: Judge, we usually do. Since we
13 passed them out, perhaps --

14 THE WITNESS: I have no problem with saying
15 what got corrected.

16 THE COURT: If it's possible to say just in
17 a general way what might have caused the corrections,
18 would it be sufficient for your purposes, Mr. Shaw and
19 Ms. Brown, for you to compare the old pages to the new
20 pages if the witness describes generally what caused
21 the corrections?

22 MR. SHAW: Yes. If we can just have some
23 guidance on what was changed.

24 THE COURT: Ms. Brown?

25 MS. BROWN: That's fine. I believe it's

1 marked on the supplement.

2 THE COURT: Maybe you could just have her
3 describe generally what caused the changes.

4 BY MR. HARLOW:

5 Q. Will you please do that, Doctor Cornell?

6 A. Basically, in two pages, Pages 24 and 28, an
7 S was left off of a word. If I'm not mistaken, in both
8 pages it was approximately the Line 17, 18, 19 area.

9 On Page 31 to 32, two sentences were put in
10 in the reverse of the order they should have gone into
11 the testimony, which made the testimony unclear.

12 And on Page 34, about six words were left
13 out that left the sentence just not making any sense.
14 And it needed or three words, I'm sorry, were left out.
15 And it needed to have added U. S. West's refusal to
16 provide billing on magnetic tape to its dependent
17 payphone competitors. It obviously bills its payphone
18 competitors.

19 Q. Do you have any corrections to Exhibit 14?

20 A. In the case of Exhibit 14, which had been
21 several data response answers or a data response answer
22 on public service payphones, after the testimony was
23 filed, another response on that topic that was germane
24 to Exhibit 14 was filed. And we thought that the most
25 appropriate way to make that answer complete or that

1 exhibit complete was to attach that additional data
2 response answer.

3 Q. Why did you prepare Exhibit T-21, your
4 supplemental testimony?

5 A. After the original testimony was filed, we
6 got some additional data response answers that enabled
7 me to go back and look at the question of potential
8 price squeeze for operator handled traffic. And so
9 Exhibit T-21, if I have the number correctly, is simply
10 introducing Exhibit C-22? I apologize. And providing
11 as the vehicle to bring in that analysis that I had not
12 been able to do because I did not have the data prior
13 to the original filing date.

14 Q. Were Exhibits T-1 and T-21 prepared under
15 your direction and supervision?

16 A. They were prepared by me.

17 Q. If I were to ask you the questions contained
18 in Exhibit T-1 today, would your answers be the same
19 with the corrections that were noted and the addition
20 of the supplemental testimony?

21 A. Yes.

22 Q. If I were to ask you the questions contained
23 in Exhibit T-21 today, would your answers be the same?

24 A. Yes.

25 MR. HARLOW: At this time I offer Exhibits

1 T-1, Exhibits 2 through 14, Exhibit T-21, and Exhibit
2 C-22.

3 THE COURT: Any objections, Mr. Shaw?

4 MR. SHAW: Yes. Perhaps, your Honor, could
5 I have voir dire on several of the exhibits?

6 THE COURT: Yes.

7

8 V O I R D I R E E X A M I N A T I O N

9 BY MR. SHAW:

10 Q. Doctor Cornell, would you turn your
11 attention to Page 17 of T-1. I direct your attention
12 to Lines 20 and 21. Actually, 16 through 21.

13 And then I would like to direct your
14 attention to your NWC No. 3.

15 MR. SHAW: I'm sorry, your Honor. I don't
16 have a notation of the actual exhibit number. I guess
17 that's C-3?

18 THE COURT: NWC-3 is Exhibit C-4.

19 MR. SHAW: Excuse me.

20 BY MR. SHAW:

21 Q. Do you have those in front of you?

22 A. Yes.

23 Q. In T-1, Lines 16 through 21, you make a
24 statement to the effect that all revenue generated uses
25 of the payphone instrument would result in payment to

1 the payphone provider no matter what firm provided the
2 payphone. And then you cite to Exhibit 3 as support
3 for that statement; is that correct?

4 A. That's correct. Well, what I said is that
5 U. S. West appears to agree with that statement.

6 Q. C-4 is a 1992 public services public policy
7 plan; is that correct?

8 A. Yes.

9 Q. This was supplied to you pursuant to a data
10 request for copies of the Company's proprietary
11 marketing and business and strategic plans?

12 A. I do not remember precisely the data
13 requests under which this was supplied. It was one of
14 the Northwest Payphone Association's data requests.

15 Q. Please point out to me in C-4 where C-4
16 supports the statement in T-1 that you have reference
17 to.

18 A. (Reading.) I would start by directing your
19 attention to what I have marked as Page 3 of 17. I'm
20 not sure there are any other page numbers other than
21 the Bates stamp.

22 THE COURT: Because we're trying to question
23 about confidential information without referring to its
24 confidential nature. So, if you can refer to line
25 numbers or column numbers or column headings, if they

1 are not proprietary, that's how we have been conducting
2 it up to this point, please.

3 THE WITNESS: Okay.

4 THE COURT: Thank you.

5 THE WITNESS: I appreciate the reminder,
6 although I'm trying to do that. It's not always clear
7 to me why a document is considered proprietary if it
8 isn't a numbers document, although this one does have
9 numbers in it.

10 It starts -- this page is titled Goals. I
11 don't think that's a proprietary statement. And under
12 that page it seems to me consistent with my statement
13 that there is a problem with U. S. West relative to its
14 competitors that is perceived by U. S. West.

15 I hadn't finished. The document has to be
16 looked at collectively if I can put it that way.

17 BY MR. SHAW:

18 Q. I would ask you on Page 3 of 17 of C-4 to
19 point out specifically which paragraph supports the
20 statement that all revenue generating uses of the
21 payphone instrument would result in payment to the
22 payphone provider.

23 A. I did not say that. I said that when you go
24 through the document as a whole and take the piece
25 parts from, you know, you start with the perceptions

1 that are laid out on this page and you keep going, you
2 get to the end where there is a discussion on Page 9 of
3 17, for example, under the heading Pricing Concept.
4 And it would seem to me that that comes fairly close to
5 exactly what I have stated.

6 Again, I'm trying to be very mindful of not
7 putting in -- because it is your confidential document,
8 and you haven't told me which words in it are
9 confidential. I'm not quite sure how much of this to
10 read into the record, Mr. Shaw.

11 Q. I'm asking you to point out to me right now
12 in C-4 what specific parts of C-4 you rely on for the
13 statement in your direct testimony on Page 17.

14 A. I rely on the document as a whole. I'm
15 trying to lead you through as to why I think you
16 started out on Page 3 with statements that made it
17 clear that U. S. West believes there is a problem with
18 pricing relative to competition.

19 That's carried over on to Page 4. And then
20 you have solutions to the problem. And one of those is
21 done somewhat diagrammatically as well as factually on
22 Page 9.

23 Q. Is it your testimony that Page 3, 4, and 9
24 of C-4 supports the statement at Page 17 of T-1?

25 A. My statement is the document as a whole

1 supports the statement on Page 17. But the
2 implications of the document as a whole support the
3 statement. The inference from the document is that.

4 Q. Can you point out at all to the Commission
5 any language in this document that supports your
6 statement that U. S. West appears to agree that all
7 revenue generating uses of the payphone instrument
8 would result in payment to the payphone provider no
9 matter what firm provided the payphone?

10 A. The -- I cannot -- that is not a quote from
11 the document, and I never said it was a quote from the
12 document. On Page 9 of 17, the top half of the text to
13 the right. Yes, to the right of the diagram is a
14 direct illustration, if you will, of all revenue
15 generating uses of the payphone resulting in a direct
16 payment to the provider of the payphone.

17 I do not have a direct quote for the "no
18 matter what firm provided the payphone." For that I'm
19 relying on the discussion earlier about the perceived
20 competitive problems, and particularly perceived in
21 terms of the --

22 THE WITNESS: I'm somewhat in difficulty,
23 your Honor, about not wanting to read out loud, but the
24 very first heading on Page 3 under Goals --

25 THE COURT: The goals are numbered one

1 through six?

2 THE WITNESS: Goal one for one.

3 BY MR. SHAW:

4 Q. Is there any other place in C-4 other than
5 numbered paragraph one on Page 3 that you believe
6 supports this statement?

7 A. Again, by inference from Page 8 and its
8 discussion of four different approaches that relate to
9 a hypothetical that may take place --

10 THE COURT: You're doing very well.

11 THE WITNESS: I'm sorry. I'm feeling a
12 little bit frustrated because I really do not want to
13 violate your Honor's order. And yet I'm kind of
14 surprised by the question.

15 The entire document is about what happens if
16 payphones are treated as a more competitive service by
17 regulatory agencies, what changes will need to take
18 place.

19 BY MR. SHAW:

20 Q. Once again, I'll ask you the question,
21 Doctor Cornell: Where in here does it state or even
22 reasonably infer that U. S. West appears to agree with
23 your statement in your Exhibit T-1?

24 A. Mr. Shaw, I don't know how to answer this
25 any better than I have answered it to you. I have

1 stated it is not a direct quote. But I think it is
2 more than a reasonable inference even from the pages I
3 have done here. And I have tried not to hold up this
4 hearing by reading every page and noting every word on
5 every line on every page. This document recognizes
6 exactly what I said in my testimony.

7 Q. Direct your attention to Page 20 of T-1 and
8 NWC-4, which I believe must be C-5.

9 THE COURT: Yes.

10 BY MR. SHAW:

11 Q. Do you have those in front of you?

12 A. Yes.

13 Q. C-5 is identified as a February 18, 1991,
14 outline of a presentation to Glen Brown, Sue Pollock's
15 new boss on Wednesday, February 20, presumably 1991?

16 A. Yes.

17 Q. On Pages 20 of T-1 the question: "Does U.
18 S. West agree that no operator handled calling revenue
19 should be attributed to its payphone operations when
20 making competitive assessments of the payphone market?"

21 The answer, "Yes, at least in internal
22 documents, citing C-5.

23 I would ask you the same question: Where
24 specifically in C-5 do you believe the document
25 supports the question on Page 20?

1 A. I would refer you particularly -- once again
2 I would argue that the entire document read as a whole
3 supports it -- I would refer you to Page 3 of 6, and I
4 would start under 6, closed paren with no open paren,
5 and 7, closed paren, and particularly 7, closed paren,
6 which says -- I think it's not confidential to say this
7 starts by saying RBOC payphone economics, and the
8 second asterisk under there, which is a bullet, if I
9 read it allowed, would support the statement.

10 THE COURT: Did you find the place, Mr.
11 Shaw?

12 MR. SHAW: Yes.

13 THE COURT: I think that's probably a
14 sufficient description of the sentence.

15 BY MR. SHAW:

16 Q. Any other specific place in C-5 that
17 supports the statement that you attribute to it?

18 A. You have a similar statement on Page 4 of 6
19 in 9, closed paren, second -- I don't know -- it's the
20 first sub-asterisk under the second non-sub-asterisk.

21 MR. HARLOW: Perhaps she could be allowed to
22 read the first word for clarity.

23 THE COURT: First word is "there"?

24 MR. HARLOW: No.

25 THE WITNESS: The first word of the second

1 asterisk is "We've." And the first sub asterisk begins
2 with "exclude." And I would argue that the next major
3 heading that begins on that page and has discussions
4 that carry through support the statement as well, which
5 is about a possible resolution to the problem.

6 BY MR. SHAW:

7 Q. Does that complete your cites to C-5 that
8 you believe supports the statement you attribute to it?

9 A. Well, I said and I stand by the statement
10 that I think the document as a whole supports it, as
11 well. You asked for specific references. I think they
12 only emphasize the support the document provides.

13 Q. Directing your attention to Page 23 of T-1
14 and NWC-7 or C-8, C-8 is a 1992 location provider
15 market plan authored by John Hiderich; is that correct?

16 A. I'm sorry. Yes.

17 Q. T-1, Page 23, you cite C-8 for the
18 proposition that U. S. West payphones will be replaced
19 and not in the too distant future.

20 I would ask you the same question: Where
21 specifically in C-8 does the document support the
22 statement that you make in T-1?

23 A. I would start -- and, again, I would argue
24 that reading the document as a whole is support for it.

25 I would start by pointing you out to Page 14

1 of 38. I believe it can be clearly read that -- it's
2 Page 12 of the document as it was numbered by the
3 author -- and start by pointing out the very first
4 entry under the right-hand column, "Generalized Goal
5 for P.S.," which I believe to be public sector or
6 public service or whatever they are calling it.

7 And then you get into an elaboration of
8 that, I believe, although I have said in my deposition
9 and it remains true that I'm not quite sure how to
10 connect directly the related parts of this document, to
11 Goal MG-3. And in particular under goal mG-3, strategy
12 MS-6.

13 Q. Do you have a page cite for that?

14 A. Which if I'm -- it's Page 18 of 38, and I
15 believe that it's Page 16 of the internal document.
16 But I'm not willing to trust my partially cut off page
17 number.

18 THE COURT: Do you find that, Mr. Shaw?

19 MR. SHAW: Yes.

20 THE WITNESS: And I would contend based on
21 numerous discussions with both people in the private
22 payphone industry and testimony that I have heard
23 around the country, you cannot achieve strategy MS-6
24 without replacing your payphones.

25 BY MR. SHAW:

1 Q. Any other place in C-8 that you believe
2 supports the statement you attribute to it?

3 A. Quite honestly without asking for a recess
4 and sitting back down and reading it, I stand by my
5 statement that the document as a whole supports it.

6 I believe there to be some other references
7 to this document to the same kind of thing that is
8 found in strategy MS-6 in other locations in the
9 document, but I don't carry the page numbers with me,
10 and it would take a little while for me to find them.

11 Q. Please turn to Page 25 of your Exhibit T-1,
12 where you again cite C-8 for a proposition that C-8
13 makes clear that U. S. West expends significant effort
14 and attention on retaining location providers for U. S.
15 West's payphone services.

16 Do you see that?

17 A. Yes.

18 Q. Ask you the same question specifically:
19 Where in Document C-8 does U. S. West make clear, et
20 cetera?

21 A. I cited to Pages 1 and 2 and 22 to 23, which
22 are the internal page numbers to the document. They
23 would be Pages 3 and 4 of 38 and 24 to 25. And here I
24 really do need some direction from your Honor. I think
25 this really is confidential. And yet in response to

1 that question I almost think I have to read those pages
2 out loud.

3 THE COURT: I don't think you have to read
4 those pages. Looking at Pages 1 and 2, there are
5 headings. It's an overview. If your testimony is that
6 you feel the overview supports that, I think that would
7 be totally sufficient.

8 THE WITNESS: I believe that both Pages 1
9 and 2 and then Pages 22 and 23, internal pages of the
10 document, detail the kind of resource activity that U.
11 S. West expends.

12 THE COURT: I think that's a sufficient
13 description.

14 BY MR. SHAW:

15 Q. Any other citations to C-8 for that
16 statement on Page 25 of T-1?

17 A. Again, I have cited I think the document as
18 a whole supports it. The very fact that you have
19 devoted 38 pages, even if you wish to take off the
20 first two, 36 pages, to a market plan for this set of
21 activities, that market plan has a lot of detail,
22 indicates that you devote considerable resources to
23 this part of the business.

24 Q. Still on Pages 25 of T-1, you cite NWC-8 or
25 C-9 for a statement that "U. S. West does not cover the

1 combination of the tariff rates for bottleneck monopoly
2 services plus direct costs for the rest of the inputs
3 for coin telephones."

4 C-9, would you agree, is a July 30, 1987,
5 preliminary draft entitled Legal Regulatory Plan?

6 A. Yes.

7 Q. Where specifically in C-9 does it support
8 the position you attribute on Page 25?

9 A. Again, I would argue that the document as a
10 whole supports it. But let's start on Page 6 of 7, the
11 first full dot, bullet, above the word "contingencies."

12 Q. That starts out "payphone pricing"?

13 A. Yes. I would go on to the fourth bullet
14 under contingencies that says, "Accept that
15 deregulated."

16 THE COURT: That's accept, a-c-c-e-p-t.

17 THE WITNESS: I would point to the full dot
18 bullet on Page 7 of 7 that begins "Competitors'
19 success/PAL."

20 BY MR. SHAW:

21 Q. Anything further?

22 A. In a quick read-through those are the
23 specific references. I stated at the outset I think
24 the document as a whole supports the statement.

25 THE COURT: Is there any way to do this more

1 efficiently, Mr. Shaw, considering we are still just
2 taking questions about admissibility of the documents?

3 MR. SHAW: Yes. We're just about finished.

4 Unfortunately, I don't think there is.

5 BY MR. SHAW:

6 Q. Specifically in C-9, there is no reference
7 to the state of Washington, is there, Doctor Cornell?

8 A. In C-9, no. The Attachment 4 that is
9 referenced in it was not supplied as part of it, which
10 was the state-by-state references.

11 Q. Lastly, turning your attention to NWC-9 or
12 C-10 and Page 30 of T-1, do you have that in front of
13 you?

14 A. Yes.

15 Q. C-10 is a document entitled Competitive
16 Analysis; correct?

17 A. That is correct.

18 Q. Where specifically in C-10 does it support
19 your statement that U. S. West is aware of how the
20 lack of answer supervision in the coin line raised the
21 cost incurred by non-LEC payphone providers?

22 A. I would start on the first page in the
23 second paragraph. Again, I would argue that the entire
24 document supports this statement. (Reading.)

25 That's on -- there are two documents that

1 are contained in Exhibit C-10. So, Page -- the Page 1
2 paragraph is the explicit reference, with the entire
3 document supporting the statement.

4 The next document which begins on Page 7 of
5 15, at least the cover page starts at Page 7 of 15,
6 Confidential C-10, and it's entirely discussing the
7 question of providing some of these services.

8 Q. Specifically for the record, Page 7 through
9 15 of C-10 is a separate paper called Coin Trunk, white
10 paper, dated April 16, 1986?

11 A. Yes.

12 Q. And you rely on the totality of it?

13 A. I rely on the totality of it. I apologize
14 for taking the time to go through and finding you
15 specific cites. But they are in there as I recall.

16 Q. Where specifically?

17 THE COURT: Mr. Shaw, can we -- this is in
18 aid of an objection. And I would really like to get
19 going on the rest of it.

20 MR. SHAW: Yes. This is the last document,
21 and I am going to object to the admissibility of these
22 documents.

23 THE COURT: Why don't we get on to that
24 then. What is your document? Which documents
25 specifically?

1 MR. SHAW: Can I ask the witness the last
2 question?

3 THE COURT: I think the last question was
4 where specifically, and she indicated it would take a
5 long time to find specific cites. I think it would be
6 better to go on.

7 MR. SHAW: Very well.

8 Your Honor, I object to the admission into
9 the record in totality of Exhibit C-5, C-8, C-9, and
10 C-10.

11 As the record reflects and you have them in
12 front of you, these are highly proprietary, strategic
13 planning, marketing, business planning documents of U.
14 S. West.

15 The basis of my objection is there is
16 absolutely no foundation laid for their admissibility
17 into evidence considering their sensitive nature.

18 Your Honor will recall that these
19 Complainants were allowed to file this extensive, far
20 reaching complaint against U. S. West without any
21 prefiled testimony and were given almost a year of open
22 discovery against the Company prior to filing their
23 testimony in support of the complaint. The conduct of
24 that discovery, they asked for and received very
25 sensitive documents of the Company.

1 I believe that this is a transparent attempt
2 by the Complainants through Doctor Cornell to place
3 into the record the totality of the Company's planning
4 documents with very slim support or foundation for
5 their admission.

6 Although the witness attempts to argue that
7 the totality of the documents support the specific and
8 narrow statements that they are cited for, she is
9 unable to cite in any of the documents a specific
10 statement that supports what she attributes them to.

11 For C-5, she only cites a discussion of
12 competitive economic modeling, what the Company has
13 chosen to do for some competitive economic modeling.

14 C-8 is of a broader concern because it is
15 the market plan of the Company and discusses in great
16 detail the market segments of the Company's tactics and
17 goals for approaching those market segments. This
18 entire document is proposed to come in for the simple
19 proposition that the Company plans to place some new
20 payphones.

21 The Company will stipulate for the purposes
22 of this record that it has internal plans to place new
23 payphones. This is a very narrow issue in contention
24 here, whether the costs in the Company's cost studies
25 appropriately account for new sets as opposed to

1 refurbished sets. That is a slim read, indeed, to
2 admit the entirety into the record of its market plan.

3 C-9 is out of date, labeled a preliminary
4 draft, and is generally a discussion of the Company's
5 supposed legal and regulatory goals.

6 C-10 is a competitive analysis at one point
7 in time, which isn't even apparent from the document of
8 the competitive environment. And half of C-10 is a
9 very old white paper apparently written by some unknown
10 person in Mountain Bell referring to M-B PC, Mountain
11 Bell public coin marketing segment, public
12 communications marketing segment.

13 Without belaboring this, the Company feels
14 very strongly that these documents should not be
15 admitted on the very slim foundation presented. And at
16 best only the segments that the witness specifically
17 relies upon should be admitted for the very narrow
18 propositions that she cites in her testimony.

19 I think it's apparent what has happened
20 here. After being given the ability as unregulated
21 competitors of U. S. West to rummage through its
22 documents attempting to get those documents before the
23 Commission so that they can argue from them as a whole
24 points other than they are cited for.

25 The Company has no problem with the

1 Commission or with the Commissioners seeing these
2 documents. The issue is their admissibility into
3 evidence, which is a totally different issue. Because
4 of their sensitivity, their speculation, their
5 involvement with legal and regulatory planning, they
6 should not be admitted as exhibits in this case.

7 Thank you.

8 THE COURT: Specifically what harm do you
9 see coming to your client if these were admitted, Mr.
10 Shaw?

11 MR. SHAW: If they are admitted in their
12 totality, they are evidence in the case, and they can
13 be argued from by anybody as to anything in them. That
14 is unfair to the Company in the sense that there is no
15 foundation laid for the entry of the entirety of the
16 exhibits.

17 Secondly, it's inappropriate for the trial
18 staff and for anyone else, for that matter, to be able
19 to obtain documents and put into evidence without
20 foundation documents that are in the nature of
21 strategic planning documents.

22 Certainly, the Company would not be able to
23 do that with Staff planning documents, for example, or
24 for, I submit, for any other party's documents. I
25 think it's a misuse of the discovery process to have

1 these documents produced and then to offer them into
2 evidence without any foundation.

3 THE COURT: Does that complete your
4 objection, Mr. Shaw?

5 MR. SHAW: Yes.

6 THE COURT: Mr. Harlow, do you wish to
7 respond?

8 MR. HARLOW: Yes, briefly, your Honor. I
9 listened very carefully and Mr. Shaw said twice if not
10 three times that the basis for his objection is lack of
11 foundation.

12 I think that's very important because Mr.
13 Shaw spent a great deal of time in his argument not
14 talking about the lack of foundation, but, rather,
15 talking about the sensitivity of these documents.

16 Given the basis for his objection I must
17 indicate that that sensitivity is a non-issue with
18 regard to this objection. Sensitivity has been taken
19 care of by the protective order.

20 His concerns between his becoming evidence
21 and these becoming available seems to me to be a
22 distinction without a difference.

23 Turning then to the basis of the objection,
24 which is foundation, the foundation has clearly been
25 laid. An expert may testify on opinions, and those

1 opinions may be based upon, under the evidence rules,
2 may be based upon facts upon which experts in the field
3 typically rely. That's clearly the case.

4 Doctor Cornell has clearly relied on these
5 documents, not just specific passages, but the entire
6 documents themselves in framing her testimony and
7 drawing conclusions about what the motivations and the
8 strategy of U. S. West are, and what the internal
9 thoughts of U. S. West lead her to conclude is
10 ultimately in the public interest, which is the key
11 issue in this case to be decided with regard to a
12 number of practices.

13 Once the expert has relied on them as the
14 expert is entitled to do, then the factual basis itself
15 also becomes admissible under the evidence rule. These
16 documents have been relied on by Doctor Cornell and are
17 clearly admissible in their entirety.

18 To take them in bits and pieces and out of
19 context, it's clear from the voir dire Doctor Cornell
20 cannot do and would damage the testimony about which
21 there is no objection.

22 THE COURT: Commissioners, what I would like
23 to do, I think, is take all of the objections on these
24 exhibits for identification. I think the commissioners
25 would like to break and then go back and discuss them.

1 So, did you have any brief response or
2 anything else to add on your objection, Mr. Shaw,
3 before I take Ms. Brown's comments and commissioner
4 questions?

5 COMMISSIONER PARDINI: Before proceeding
6 would you identify again the exhibits to which you
7 object?

8 MR. SHAW: Yes, Commissioner. It's C-5,
9 which is NWC-4; C-8, which is NWC-7, 1992 market plan;
10 C-9, which is entitled Legal Regulatory Plan,
11 preliminary draft; and C-10, which is actually two
12 documents, undated competitive analysis and a 1986
13 white paper.

14 THE COURT: I'll bring those numbers.
15 Did you have any brief response, Mr. Shaw,
16 before we proceed with the objections?

17 MR. SHAW: Yes. Just briefly reiterate --

18 THE COURT: Don't repeat. Thank you.

19 MR. SHAW: Mr. Harlow asserts that the
20 witness substantiated the basis for offering these into
21 evidence. And I would submit that she could not. She
22 could not make any specific cites and merely said I
23 relied on the entire document.

24 You could put in the phone book and say I
25 relied on the entire document and not point out

1 anyplace in it that supports the proposition that it's
2 offered for.

3 It's incumbent upon the Complainants to lay
4 a foundation and a basis for these exhibits. No
5 exhibit is admissible without a foundation. These
6 exhibits in particular are confidential planning
7 documents of the Company and should not be cavalierly
8 entered into evidence just because the Complainants say
9 they relied on them but are unable to say in what
10 specific fashion they did for the points that they are
11 trying to make.

12 THE COURT: Ms. Brown, did you have
13 objection to entering any of the documents?

14 MS. BROWN: No, I don't object to the
15 admissibility nor the entry of the documents. I think
16 they would come in under ER 73, the basis of expert
17 opinion. As near as I can tell, an expert can base his
18 or her opinion on almost anything.

19 THE COURT: Commissioners, do you have
20 questions of any of the participants about their
21 objections or comments?

22 COMMISSIONER CASAD: I have none.

23 COMMISSIONER PARDINI: I have none.

24 THE COURT: Why don't we take our morning
25 recess at this time and be back at 25 minutes to, and

1 we'll meet and discuss this.

2 (Recess.)

3 THE COURT: Let's be back on the record
4 after a morning recess. It took a little longer than
5 we thought because the Commissioners were conferring
6 about the admissibility of documents, and then we
7 needed to have a morning break as well.

8 The Commissioners would like some additional
9 information about C-8 for identification, which is the
10 1992 location provider market plan. Specifically,
11 Doctor Cornell, they would like you during the lunch
12 hour to go through that document and indicate
13 specifically what you relied on in some more detail
14 than you were able to do quickly on the stand,
15 particularly with me asking all of you to hurry up.

16 I recognize that you and Mr. Shaw were
17 attempting to do that. But they would like some
18 additional information and would like you to report
19 back after the lunch hour if there are any pages or any
20 portions in addition to those that you specified in
21 response to Mr. Shaw's questions that you relied on in
22 putting your testimony together.

23 THE WITNESS: I would be happy to do that.

24 May I ask one clarifying question for my
25 benefit?

1 THE COURT: Yes.

2 THE WITNESS: I did not take notes as to
3 which pages I gave you before. If I came in and gave
4 you a complete list at the end of the lunch break,
5 would that answer the question?

6 THE COURT: That would be fine. The ones
7 you cited before according to my notes were just the
8 ones that were listed on your testimony at Page 25 and
9 then you said you had relied on the whole document, but
10 they would like some additional information to that.

11 Other than that, we'll enter into the record
12 T-1, 2 through 14 except for C-8, and T-21 and C-22. I
13 believe on the other documents that their probative
14 value is not outweighed by the sensitive nature of the
15 planning documents.

16 I would hope that the provisions of the
17 protective order will keep this information protected
18 as it is supposed to. And recognizing that,
19 demonstrating that -- that Complainants demonstrating
20 Respondent's goals and activities is an unusual
21 position to be in, the Commissioners agreed that they
22 felt those documents were admissible and should be
23 entered into the record.

24 I am reserving rule on C-8 until we have the
25 additional information.

1 Can we, therefore, question around C-8, Mr.
2 Shaw and Ms. Brown, until after the lunch hour?

3 MS. BROWN: Certainly.

4 (Received Exhibits T-1, T-21 and T-22)

5 THE COURT: Did you have any additional
6 questions for your witness? Or is she available for
7 cross-examination?

8 MR. HARLOW: That's a good question. It's
9 been a long time.

10

11 D I R E C T E X A M I N A T I O N

12 (Resumed)

13 BY MR. HARLOW:

14 Q. Doctor Cornell, would you please briefly
15 summarize the purpose of your prefiled testimony as set
16 forth in Exhibits T-1 and T-21.

17 A. Yes. I basically set out to look at the --
18 what I consider to be sort of the economic questions
19 involved in the complaint of the Payphone Association.
20 To do that I analyzed the payphone market.

21 My primary focus of examination was around
22 the issue of price squeeze and denial of equal
23 interconnections, both of which are actions if they
24 exist that make a market that might be competitive and
25 offer consumers benefits from competition less or

1 unable to fulfill that set of outcomes or to provide
2 that set of outcomes.

3 In doing so, I examined the costs as
4 reported by U. S. West, and the revenues that are
5 properly attributable in my opinion to payphone
6 service, to see whether U. S. West, to put it in the
7 vernacular, lived by the same rules that it as the
8 controller of bottleneck monopoly inputs to its
9 competitors, imposes on its competitors, and the answer
10 was it does not. And that analysis is found in I
11 believe it's C-3? Confidential Exhibit C-3, NWC-2, to
12 my testimony.

13 Basically it is very important and the gist
14 of my testimony goes through why and why it really does
15 -- it is very important that in this segment of
16 telecommunications the price squeeze get ended and that
17 all of the bottleneck monopoly functions that U. S.
18 West provides to itself get provided to its dependent
19 payphone competitors.

20 Without that, you will not see the kinds of
21 benefits from competition that really, in fact, are
22 beginning to occur, but should have occurred sooner and
23 could occur in a more widespread manner if you ended
24 the price squeeze and demanded equal interconnections
25 be provided; namely, price competition. And I believe

1 that there is in this record already the evidence of
2 the four minutes for a dollar to anywhere in the U.S.
3 when you have coin in the box.

4 There is other evidence of competitive
5 activity in other states that I have seen that
6 indicates when you start to really deal with this issue
7 you will get downward pressure on coin prices.

8 You still have the problem of solving the
9 non-sent-paid part of this industry.

10 That's essentially what my testimony deals
11 with.

12 MR. HARLOW: Thank you, Doctor Cornell.

13 The witness is available for cross at this
14 time, Judge.

15 THE COURT: All right, Mr. Shaw.

16 MR. SHAW: Thank you.

17 COMMISSIONER PARDINI: Mr. Shaw, before you
18 start, when you rearranged your papers, one of the
19 things you did was pushed the microphone back. I'm
20 going to ask you to pull it forward.

21 MR. SHAW: Certainly.

22

23 C R O S S - E X A M I N A T I O N

24 BY MR. SHAW:

25 Q. Doctor Cornell, it's correct, isn't it, that

1 the only regulatory agency that you have served as an
2 employee as opposed to a consultant is the FCC?

3 A. Yes, I think that's correct.

4 Q. And you left the FCC in approximately
5 February of 1981; is that correct?

6 A. That's correct. I would like to amend my
7 earlier answer because it depends on your definition of
8 regulatory agency. I also served on the council of
9 wage and price stability.

10 Q. That agency did not have any regulatory
11 jurisdiction over telecommunications or telephone
12 companies, did it, in the sense of an FCC or this
13 Commission?

14 A. I don't believe necessarily in the sense of
15 an FCC or this Commission. But I just don't want to
16 have the answer be inaccurate, depending on your
17 definition of regulatory agency.

18 Q. When you left the FCC in 1981, the
19 Commission had not yet taken up any consideration of
20 changes in the regulatory structure involving
21 payphones, had it?

22 A. Not to my knowledge.

23 Q. And you didn't work on any such issues at
24 the FCC?

25 A. No, not on payphone issues.

1 Q. Do you recall that in approximately 1984 the
2 FCC first addressed whether or not pay telephone
3 equipment should be considered CPE or terminal
4 equipment like other CPE?

5 A. I don't remember when the FCC addressed the
6 question of the LEC payphones. It was approximately
7 1984 if memory serves me right, but I have not gone
8 back to check, that they addressed customer owned or
9 customer provided payphones.

10 Q. In considering other than LEC provided
11 payphones, the FCC concluded, did it not, that LEC
12 payphones served by coin line out of the central office
13 were not to be considered customer premise equipment.
14 Isn't that correct?

15 A. I don't know if that is technically correct.
16 And I don't know whether that's the correct legal
17 designation. What I can tell you is that they refused
18 to register that equipment under the equipment
19 registration program.

20 Q. The Commission in effect excluded LEC dumb
21 telephones served by coin lines from the Part 68
22 requirements of registration and interconnection with
23 the network. Isn't that correct?

24 A. That's my understanding.

25 Q. And to date the FCC has declined or has not

1 classified LEC dumb payphones served by coin lines as
2 CPE, have they?

3 A. To the best of my knowledge. But I haven't
4 called to ask that question lately.

5 Q. It's your testimony that you simply do not
6 know what the FCC's position is on those kinds of
7 stations?

8 A. My testimony is that I have not followed
9 closely the latest twists and turns. I know that a
10 petition has been filed at some point I believe quite
11 awhile ago in front of the FCC asking them to
12 reconsider that decision.

13 I also know that the FCC at least semi
14 formally if not formally has stated there is nothing to
15 prevent a State commission from ordering a local
16 exchange company to make coin lines available as a
17 tariffed item to others.

18 Past that I don't know the precise ins and
19 outs of what the FCC has done.

20 Q. As you sit here, you're aware of no FCC
21 order purporting to classify LEC-provided payphones on
22 a coin line as CPE?

23 A. To the best of my knowledge, that's correct.

24 Q. Has any state commission, notwithstanding
25 the lack of FCC action in this regard, classified LEC

1 dumb payphones as CPE?

2 A. I don't know whether California ever
3 classified them as CPE. I'm not sure it's a legal
4 question whether they could or whether that's been
5 preempted and the preemption upheld by one of the many
6 NARUC cases that dealt with CPE. The California
7 Commission has approved the offering of a coin line to
8 non-LEC payphones.

9 Q. Speaking of the sets themselves as opposed
10 to the coin line, has California, to your knowledge,
11 classified the stations as CPE and deregulated them?

12 A. As I said, I do not know. I'm not even
13 certain legally they could.

14 Q. I take it from that last answer it's your
15 belief that only the FCC can classify what has
16 historically been telecommunications facilities as CPE?

17 A. I said I do not know. To me that's a legal
18 question -- as to whether one of the old NARUC, the FCC
19 cases, preempted successfully terminal equipment.

20 Q. The FCC when they classified CPE other than
21 coin telephones as competitive and prohibited the
22 states from regulating did not purport to say that the
23 states could not classify further equipment as CPE, did
24 they?

25 A. I simply don't know, Mr. Shaw. If you

1 change the classification of payphones, dumb sets, as
2 you quite correctly refer to them, you change a whole
3 bunch of things that affect the interstate
4 jurisdiction, such as separations and the basis of
5 access charge payments in the interstate arena.

6 I simply do not know whether for that reason
7 the FCC added that states could not alter what was
8 designated as customer premise equipment by the FCC or
9 not.

10 Q. One of the reasons that the FCC declined to
11 classify LEC payphones as CPE, was that they were
12 concerned that they did not want to preempt state
13 commission policies governing local service resale?

14 A. I do not know all the bases for it. I know
15 there were some technical concerns about the
16 interaction of dumb sets and central office switches.
17 I do not know all the bases for that decision.

18 Q. Was it one of the bases of the decision that
19 the FCC was concerned not to unnecessarily infringe on
20 the state commissions' jurisdictions and policies
21 concerning local service resell?

22 A. I do not know. I do not know that for a
23 fact.

24 Q. When you urged this Commission, assuming
25 that it has the jurisdiction for the purpose of the

1 question, to order U. S. West to provide payphone
2 service through a separate subsidiary, I take it you
3 have in mind the Commission ordering the Company to
4 divest itself of its pay stations and operate them out
5 of a separate subsidiary?

6 A. I'm not sure what you mean by divest
7 yourself. I would have thought that meant going to a
8 separate company not owned by U. S. West.

9 I have in mind that that element of U. S.
10 West's business would now be its own company, but owned
11 by U. S. West.

12 Q. And specifically this commission would order
13 the Company to remove its telephone sets from its
14 regulated rate base and place it in a separate
15 subsidiary?

16 A. That would be my recommendation.

17 Q. And not the coin lines. Just the telephone
18 sets themselves?

19 A. Just the telephone sets, the coin
20 collection, the accounting, you know, the counting of
21 the coins, the dealing with paying refunds, all of
22 those activities that go along with being a provider of
23 what in jargon I refer to as the box on the wall.

24 Q. In effect, you are asking this Commission to
25 rule that the payphone facilities currently owned by U.

1 S. West to be customer premise equipment, not allowed
2 in the rate base, and spin it off into a separate
3 subsidiary just like the FCC did with the CPE owned and
4 operated by the Bell system as telecommunications
5 facilities?

6 A. I have never said that it needs to be
7 classified as customer premise equipment. I have said
8 that this Commission has authorized alternative
9 payphone providers. This is a market that is capable
10 of being competitive if U. S. West is prevented from
11 abusing its bottleneck monopoly. And this is how to do
12 it.

13 Whether that legally designates it as CPE, I
14 am dubious, but I'm not a lawyer. I simply want fair
15 and equal competitive conditions to apply.

16 Q. Is that the practical effect, however, if
17 this Commission were to take your recommendation and
18 order the Company to place its telephone sets in a
19 separate subsidiary? It would be exactly the same as
20 declaring that telephone facility to be CPE and not
21 regulated; correct?

22 A. Excuse me. I did not mean to interrupt you,
23 Mr. Shaw.

24 I disagree about the first part of your
25 sentence. I am not certain that I would, if I could

1 structure what was done with pay telephone service
2 across the board, I don't know whether you would call
3 it deregulated or whether you would not call it
4 deregulated.

5 But I am not advocating that you suddenly
6 have to figure out how to establish a registration
7 program for dumb sets, register them, allow them to be
8 attached to the network, and the like.

9 I am saying that the operation should be
10 moved to a separate subsidiary if that is -- what I'm
11 saying actually is that that is the most effective way
12 to end the price squeeze and achieve what could be
13 achieved in this market; namely, real competition and
14 its benefits for consumers.

15 Q. Necessarily, if U. S. West were ordered to
16 take out of its rate base its dumb telephone sets and
17 put them in a separate subsidiary and connect them back
18 to the network on an arm's length basis, any other
19 provider would certainly have the right to connect such
20 dumb sets to the network, also, would it not?

21 A. No. That requires a change in the FCC's
22 registration policy. The FCC has declined to register
23 dumb sets and to put them under the equipment
24 registration program. And, therefore, it would not be
25 the case that anybody else could take a dumb set

1 without equipment registration. It would still have to
2 be a smart set that would be connected to a coin line
3 if somebody wished to do so.

4 Q. So, if the Commission accepts your
5 recommendation again, assuming that they have the
6 jurisdiction, only U. S. West's separate subsidiary
7 would be able to provide dumb-set public phone service
8 in the state of Washington; correct?

9 A. That would be my understanding of the
10 equipment registration program because the equipment
11 registration program is designed to get around concern
12 or designed to solve concern about attaching devices to
13 the network that may inadvertently harm the network.

14 And if I can use the analogy that was first
15 used when it was all described to me when I went to the
16 FCC: It's a regulatory equivalent of a fuse box; that
17 you can't plug in devices to the electric network
18 without having some kind of circuit breaker or fuse box
19 to provide overload.

20 Similarly, the equipment registration
21 program is designed to assure that the specifications
22 to which the equipment is built are such that it cannot
23 provide harm to the network.

24 There are no such specifications broadly
25 applicable to dumb sets.

1 Q. It's your testimony that the FCC outstanding
2 orders would prohibit anybody other than a subsidiary
3 owned by an RBOC from connecting dumb sets to the
4 network; is that correct?

5 A. No. GTE can connect dumb sets, United,
6 Contel. I guess Contel is now part of GTE.

7 The provisions of the equipment registration
8 program prevent anybody other than the local exchange
9 company itself from connecting devices to the network
10 without showing that they comply with the provisions in
11 the equipment registration program.

12 Q. Would this separate subsidiary holding these
13 dumb sets be an unregulated company, not subject to the
14 jurisdiction of this Commission, in your view?

15 A. I don't think it necessarily would. Again,
16 I don't want to get into a discussion of legally what
17 "unregulated" means. There are rules now that apply to
18 customer-owned or non-LEC provided payphones. They
19 must be able to reach E-911 or 911 without coin. They
20 have to have dial tone first. I think you can't charge
21 for directory assistance more than what the local
22 exchange carrier or AT&T charges for directory
23 assistance.

24 I have read the rules, but there are a
25 series of them that apply now.

1 Q. Those rules apply to non-LEC payphone
2 providers under the threat of disconnection from the
3 network, do they not?

4 A. That's correct.

5 Q. That is, that the Company's rules are aimed
6 at U. S. West and instruct U. S. West not to connect to
7 the network anybody who doesn't do those things that
8 you just mentioned; correct?

9 A. That's my understanding.

10 Q. They do not purport on their face to
11 regulate the terms and conditions of how the non-LEC
12 payphone providers provide service?

13 A. I find that, to borrow a phrase from Mr.
14 Harlow, a distinction without a difference, Mr. Shaw.
15 I'm not a lawyer. I'm talking to you about the
16 economic, that they are in effect regulated. Whether
17 that's legally they are regulated or not, I'm not a
18 lawyer.

19 Q. Let's take the core of the regulatory
20 authority of this Commission over a telecommunications
21 company, the power to set the regulated company's
22 rates.

23 Would this Commission have the power to set
24 the rates, in your view, of U. S. West's separate
25 subsidiary?

1 MR. HARLOW: I'm going to object to the
2 extent Mr. Shaw is calling for a legal conclusion here.

3 THE COURT: Mr. Shaw?

4 MR. SHAW: I'm not calling for a legal
5 conclusion. I'm asking for her recommendation.

6 THE COURT: I'll overrule the objection, Mr.
7 Harlow. The witness has identified herself as an
8 economist and said several times she is not an
9 attorney. But we are interested in what elements she
10 has considered in forming her recommendation, how she
11 views the way the system would run if her
12 recommendation were taken. So, I think that that's an
13 appropriate question.

14 MR. HARLOW: Perhaps I didn't understand the
15 question the way you did. The way you phrased it I
16 don't have any objection to it. That was my concern.

17 THE COURT: Ma'am?

18 THE WITNESS: Assuming the question is
19 indeed the way you phrased it, your Honor, because I
20 thought does the Commission have the power was a legal
21 question --

22 If the Commission has the power to say that
23 U. S. West, the regulated company, may not connect up a
24 payphone provider who does not comply with dial tone
25 first and charges for directory assistance no higher

1 than those charged by U. S. West or AT&T, it seems it
2 would presumably also, if it wanted to, have the power
3 to say and no local coin rate higher than X as part of
4 the conditions for signing up.

5 In fact, of course, it's very difficult to
6 enforce in a market setting -- not to enforce -- but to
7 succeed at a local coin rate higher than that of U. S.
8 West because that sets the market price.

9 But if the Commission were concerned that a
10 separate subsidiary would lead U. S. West to raise the
11 coin rate when the Commission does not want it raised,
12 it would seem to me it has the same power with that
13 rate as it did with the directory assistance rate.

14 BY MR. SHAW:

15 Q. U. S. West after this separate subsidiary is
16 no longer in the coin telephone business as U. S. West
17 Communications; correct? All of its sets have been
18 placed over into a separate subsidiary?

19 A. I'm afraid that now you really are taking me
20 legally in areas that I don't understand because I was
21 puzzled by your question.

22 To me, if you put them in a separate
23 subsidiary, if U. S. West, you being U. S. West in this
24 instance, puts them into a separate subsidiary, they
25 could come out of the rate base. That does not make

1 them assets not owned by U. S. West Communications.

2 If U. S. West Communications is the sole
3 owner of that subsidiary, they are still owned by U. S.
4 West Communications.

5 Q. So, what you're recommending to the
6 Commission is they force the Company to take its
7 payphones and put them in a separate subsidiary, and
8 then the Commission would be free to continue to
9 regulate the rates charged by that separate subsidiary
10 to the public for payphone service. Is that your
11 recommendation?

12 A. My statement is it could if it felt that was
13 an appropriate thing to do in the public interest
14 continue in exactly the way they now put ceilings on
15 certain rates charged from non-LEC payphones, put
16 ceilings on rates charged from U. S. West payphones.

17 Q. After this creation of a separate
18 subsidiary, U. S. West C, the local regulated exchange
19 intraLATA toll company as it sits here today is no
20 longer in the payphone business; correct?

21 A. That portion of U. S. West is no longer in
22 the payphone business. Its wholly owned separate
23 subsidiary is in the payphone business --

24 Q. So, you --

25 A. I had not finished, Mr. Shaw. I'm sure it

1 would report to its shareholders that it was still in
2 the payphone business through its separate subsidiary.

3 Q. U. S. West C has no more tariffs on file
4 with this Commission providing for a payphone call for
5 a quarter, does it?

6 A. That depends on whether the Commission
7 adopted my recommendation and decided it wanted, in
8 fact, to have a requirement that the monopoly part of
9 U. S. West C put a restriction on its payphone tariff
10 rates for network access. That subscribers can only be
11 subscribers if they limit their local calling rate to
12 no more than let's say a quarter or whatever rate this
13 Commission wishes to set.

14 Q. Do you agree with Mr. Coulson's testimony
15 that a company providing payphone service by marketing
16 to location owners, placing a phone, collecting the
17 box, re-selling toll service to the end users is not a
18 telecommunications company?

19 MR. HARLOW: I'm going to object to this
20 question. I believe Mr. Shaw is referring to testimony
21 that was given yesterday on cross. Doctor Cornell
22 wasn't present. And so she wouldn't be able to comment
23 on the characterization given by Mr. Shaw. And so I
24 don't see how she has a foundation to answer that.

25 Perhaps if Mr. Shaw wants to frame it in a

1 hypothetical or, you know, if the record would reflect
2 that Mr. Coulson testified in such and such a way,
3 would she agree with it? I think it's important to
4 protect the record and understand that the witness
5 wasn't here during that testimony.

6 THE COURT: Do you disagree that Mr. Shaw
7 has characterized the testimony properly?

8 MR. HARLOW: Without having the transcript
9 in front of me, there were a lot of questions. They
10 were asked a lot of different ways. Mr. Shaw is asking
11 for this witness's opinion in an area where I think you
12 get into a great deal of technicalities. And without
13 the witness having the opportunity to see that record
14 or having been present, I just don't think it's
15 appropriate for her to be asked to comment in that
16 area.

17 I think the question should either be asked
18 on an independent basis or on a hypothetical basis or
19 when she has the opportunity to have the record in
20 front of her.

21 THE COURT: I think your witness is quite
22 clear in testifying that he didn't feel he was a
23 telecommunications company. But just to be sure we
24 haven't made a mistake somewhere, would you phrase it,
25 please, as a hypothetical, Mr. Shaw.

1 BY MR. SHAW:

2 Q. Assuming that Mr. Coulson testified that
3 members of the Northwest Payphone Association who place
4 payphones on owners' premises, collect the box for
5 local and sent-paid toll calls, and resell toll service
6 to end user customers are not telecommunications
7 companies, do you agree with that?

8 A. I can't give you an answer. I'm not a
9 lawyer. And that to me is absolutely a legal question.

10 Q. Do you understand that this Commission does
11 not regulate the rates, that is, whether it be a
12 quarter or fifty cents, for a payphone provider other
13 than local exchange companies?

14 A. To the best of my knowledge at the present
15 time, other than the directory assistance rates first
16 and the provisions that deal with alternative operator
17 service rates second, there are not other constraints,
18 regulatory constraints, on rates of non-LEC payphone
19 providers.

20 Q. So, your recommendation, I take it, is that
21 those rules should be changed; that no payphone
22 provider, including a separate subsidiary of a LEC, can
23 connect its machines, its pay stations, to the network
24 unless they charge no more than a quarter or whatever
25 the rate is that the Commission thinks is appropriate;

1 is that correct?

2 A. No. You have mischaracterized my testimony.
3 I said that, if the Commission was concerned that this
4 was a market that needed a rate ceiling, it could
5 provide for one in exactly that fashion.

6 Q. Do you believe this market requires a rate
7 ceiling set by this Commission?

8 A. For prisons, definitely. For airports,
9 possibly. For places where the consumers, the end user
10 customers, come up to use the box are truly captive, I
11 think that's a possibility.

12 For locations that deal with what I'm going
13 to call walk-up traffic -- truck stops, 7-Elevens,
14 center cities where there are a number of payphones in
15 different locations, this bar, that corner, et cetera
16 -- no.

17 It is a factual question that I have not
18 examined whether the market is such that providers of
19 payphone service are so specialized that a simple rule
20 that says that simply any payphone provider must charge
21 the same local rate at all of its pay stations unless
22 some very special set of circumstances such as extra
23 costs perhaps at prisons or some things that have
24 imposed real costs, are shown, you might not need any
25 more rule than that.

1 Q. I take it from that answer, then, that you
2 believe it would be necessary for the Commission, in
3 addition to placing U. S. West payphones in a separate
4 subsidiary, to analyze the market and separate it into
5 some sort of a competitive/noncompetitive
6 classification or a public interest/non-public interest
7 category? Is that correct?

8 A. I would like to separately deal with public
9 interest/non-public interest.

10 I think -- and it is a factual question as
11 to whether constraints are needed at all at this point
12 in the payphone industry, but they might be. I have
13 not denied that that may be a necessity.

14 The issue of, if they are, what is the most
15 efficient way and the least intrusive way of applying
16 the necessary constraints is what I was addressing in
17 that last answer. And I said before that one technique
18 may be simply to say that any company providing
19 payphone service may not charge different local rates
20 at different locations.

21 Now, all of this presumes you have ended the
22 price squeeze because without that I would strongly
23 suggest that any other rules in the presence of the
24 price squeeze are merely a cover for trying to drive
25 other people out of business.

1 Q. Let's go back to the question. We now have
2 U. S. West payphones in a separate subsidiary and other
3 payphone providers in the market. Does your
4 recommendation necessarily require this Commission to
5 study the market and divide it in some way and decide
6 that this portion of the market nobody can charge more
7 than a quarter upon threat of disconnection from the
8 network? And this part of the market any provider can
9 charge anything that they can get in that market? Is
10 that your recommendation?

11 A. No. You find that no place in my testimony,
12 Mr. Shaw.

13 Q. I'm talking about your testimony here today,
14 Doctor Cornell. Did I mishear you when you said that
15 the Commission could cap payphone rates through
16 controlling access to the network, but shouldn't for
17 many telephones where there are no captive customers?

18 A. No. What I said -- and I would like to go
19 back and repeat it because it seems to keep being
20 mischaracterized -- is that, if the Commission really
21 believes that it must have a cap because of the problem
22 of captive customers, it could do so. And I offered
23 several alternatives.

24 I do not think and I would not recommend
25 that they engage enormous amount of resources in

1 studying location by location what is the market for
2 payphone services. I believe quite strongly that, if
3 you required each provider to charge the same price at
4 all of its locations and if you required -- you could
5 do it very simply, also, if you want additional
6 protection by saying that in no event may the local
7 rate be higher than either a quarter or the rate
8 charged by the Company with the largest number of pay
9 stations, you have the problem licked without engaging
10 the enormous regulatory resources that are implied in
11 the question you put to me.

12 Q. Is it then your testimony that you're
13 indifferent whether the Commission caps the rates in
14 the ways that you have suggested? Or is your testimony
15 that you recommend that the Commission not cap rates?

16 A. I think my recommendation and my relation
17 that I have made to this Commission is first they end
18 the price squeeze. If they are concerned that in a
19 fully -- let me back up.

20 In a market that has now been structured so
21 that it could be fully competitive, there is still the
22 problem of captive monopoly payphone users that is
23 relatively easily solved in the ways I have outlined.

24 I do not know whether this Commission is
25 deeply concerned about captive monopoly payphone

1 customers or not. I am sensitive that they might be.
2 I think it is legitimate if they are. I can see they
3 may think that's not an issue. And I think that could
4 be legitimate, also.

5 Q. Going back to your first recommendation that
6 this Commission assuming it has jurisdiction over the
7 Company to place its payphone stations in a separate
8 subsidiary, as part of your recommendation that the
9 Company do that, are you recommending that the
10 Commission cap rates of that subsidiary and all other
11 providers or not?

12 MR. HARLOW: I'll object. I think this
13 question has been asked and answered a number of times.
14 And Doctor Cornell has tried to make it very clear what
15 her recommendation is. I think we're getting extremely
16 redundant here.

17 MR. SHAW: I disagree, your Honor. I have
18 not yet gotten an answer to the question I put.

19 THE COURT: I thought I understood she was
20 not recommending one way or the other. Did I
21 misunderstand?

22 THE WITNESS: No. I said that several
23 times.

24 THE COURT: I think we have got an answer,
25 Mr. Shaw.

1 BY MR. SHAW:

2 Q. Is part of your recommendation that this
3 Commission also take steps to place the pay stations of
4 all other local exchange companies doing business in
5 the state of Washington in their respective separate
6 subsidiaries?

7 A. I'm sorry. I didn't understand the
8 question. Could you rephrase it?

9 Q. Is your recommendation to the Commission
10 also to require all other local exchange companies
11 doing business in the state of Washington to place
12 their coin sets in their respective separate
13 subsidiaries?

14 A. Other than not understanding what their
15 respective separate subsidiaries are, my recommendation
16 would be that it apply to U. S. West and any company
17 large enough and engaged heavily in the business of
18 promoting its pay telephone services in a fashion
19 similar to the manner that U. S. West is, then probably
20 yes, that they should also be asked to provide a
21 separate subsidiary.

22 I would point out, however, that it is
23 probably easier to monitor whether there is a price
24 squeeze with a small company that has only a few
25 stations than with a very large company like U. S.

1 West. And at some point one of the main reasons for
2 the recommendation, which is administrative ease of
3 really verifying and making sure that there is no price
4 squeeze, can be just as easily done through
5 administrative review of costs and revenues for a small
6 company, unlike for U. S. West.

7 Q. That answer is the key to whether the
8 Commission should order a separate subsidiary for any
9 given company other than size how that Company
10 currently promotes its coin telephone service?

11 A. I said that was a consideration. You have
12 to remember that the reason for arguing for a separate
13 subsidiary is it is the most effective way to achieve
14 what I believe should be a Commission policy goal,
15 which is to achieve the conditions for effective
16 competition in the coin telephone or the pay telephone
17 market. And that in the case of U. S. West where there
18 are a lot of elements that have to be regarded and
19 looked at, if you do not do it through a separate
20 subsidiary, all the way down to examining questions
21 like what's the proper cost of the set, does U. S. West
22 plan to buy new sets or not and a whole variety of
23 detail that at some point it is easier to say we'll
24 allow a separate subsidiary with rules about arm's
25 length dealing to do the equivalent of this

1 administrative review for us.

2 Q. Should General Telephone in the state of
3 Washington also be ordered to create such a subsidiary?

4 MR. HARLOW: Objection. We're getting very
5 far afield and there is nothing in Doctor Cornell's
6 testimony that lays a foundation that she has reviewed
7 General Telephone's operations and can form an opinion
8 to answer this question.

9 THE COURT: Mr. Shaw?

10 MR. SHAW: Your Honor, Doctor Cornell has
11 come in here and is testifying as an economist and
12 claimed expert on telecommunications. This Commission
13 should order this Company to take part of its local
14 service and place it in a separate subsidiary, alone of
15 any of the LECs.

16 I think it's an obvious question for the
17 Commission and for this company why would U. S. West
18 just do this? Should the second biggest company and
19 the third biggest company in the state do it?

20 I think it's totally within the scope of
21 what Doctor Cornell is purporting to recommend here.
22 If she picks up her counsel's cue and says she hasn't
23 studied it and has no recommendation, fine, we'll move
24 onto the next question.

25 THE COURT: I'm going to overrule the

1 objection and direct the witness to answer. I think
2 the Commission would like to know whether the
3 recommendation being made by this witness is part of an
4 industry-wide view of the world that she might have or
5 whether it would be specifically directed in economic
6 terms to U. S. West. How she is looking at the entire
7 industry I think is a part of that. I'll overrule the
8 objection.

9 MR. HARLOW: Contrary to Mr. Shaw's
10 statement, I am not Doctor Cornell's counsel.

11 THE COURT: Go ahead.

12 THE WITNESS: Sorry. I suddenly realized I
13 was counselless.

14 The answer is that it might, but I would
15 want to do some of the same kind of discovery that I
16 had asked the Northwest Payphone Association counsel to
17 do from U. S. West I guess is the proper word before I
18 reached that conclusion as to which companies it should
19 apply to because I really tried to say in the answer to
20 my previous question, in some sense it's a cost/benefit
21 question.

22 Is it very costly to ensure the absence of a
23 price squeeze from -- imposed by a given company on its
24 dependent competitors? If GTE's cost studies are easy
25 to follow, easy to read, done correctly, repeatedly,

1 and promptly provided and all the rest of it, that
2 makes it very easy for this Commission to monitor and
3 deal with any possible price squeeze. It may not be
4 worth doing that.

5 On the other hand, the evidence that was
6 presented to me through the discovery in this case
7 makes it clear that this is a difficult proposition for
8 U. S. West.

9 BY MR. SHAW:

10 Q. You understand that GTE charges the same
11 amount for its coin service as U. S. West to the end
12 user customer?

13 A. I have assumed that, but I don't know that
14 for a fact.

15 Q. Is it your testimony from the answer before
16 the last that U. S. West has refused in any way this
17 Commission's directives to produce cost justification
18 for its payphone rates?

19 A. I'm not sure how to answer that. Discovery
20 was served. U. S. West didn't comply. There were
21 battles over discovery. There were motions to compel
22 or at least one.

23 Then even as we sit here, there is an
24 unresolved issue about having to show and having to go
25 into more confidential documents to show that cost

1 information provided to us was, in fact, erroneous;
2 namely, that U. S. West does not buy new sets and only
3 refurbishes them. And that affects the cost numbers
4 that you provide or that U. S. West provides or
5 provided.

6 And all of that says to me this is a
7 difficult battle in terms of getting the proper
8 information to monitor whether or not there is a price
9 squeeze. And if this is the way U. S. West wishes to
10 deal with those kinds of questions, a separate
11 subsidiary is preferable.

12 Q. By that answer is it your position that
13 you're here acting on behalf of this Commission?

14 A. I am not employed by the Commission or hired
15 for this particular case by the Commission. But I view
16 myself as always trying to look at these issues from a
17 public policy point of view: What is best for the
18 public? What is the best for competitive markets?
19 Which I think is the best for the public.

20 Q. Recalling the question, is it your testimony
21 that this Company has refused to provide or refused to
22 cooperate with this Commission in terms of producing
23 any cost information about its coin service to this
24 Commission?

25 A. In a way I find this a question that's

1 impossible to answer, Mr. Shaw. There are rules on
2 discovery. Discovery requests were served on you. U.
3 S. West delayed and initially refused. It had to come
4 up in front of the Commission as a motion to compel.

5 I do not know what the Staff asked you and
6 what problems there were or were not between you and
7 the Staff. But the rules of the Commission apply
8 equally to parties other than the Staff, and it was not
9 always easy to get the information from U. S. West
10 needed to make this evaluation.

11 Q. On that basis you're recommending a separate
12 subsidiary?

13 A. I'm really having a hard time with that
14 question. "That basis" is fairly dismissive of what
15 was a fairly difficult problem. I do not see that it
16 is wise to command anybody's resources, Staff or
17 private parties, to go through this year after year
18 after year to monitor and verify whether or not there
19 is a price squeeze.

20 And on that basis, namely, that this has
21 been a costly and difficult exercise, one that has been
22 highly contentious and one that we can put an end to
23 quickly by requiring a separate subsidiary, yes, I
24 recommend it.

25 Q. Do you understand that for many, many years

1 U. S. West and its predecessor companies as well as all
2 other local exchange companies have provided public
3 payphone service as part of its local service
4 obligation?

5 A. I think I would not agree with that
6 statement. I agree that for a number of years local
7 exchange companies have provided payphone services.

8 Q. And you do not consider payphone services in
9 any way a fulfillment of a local exchange company's
10 local service obligation?

11 A. I'm not sure what you mean when you say
12 local exchange service obligation. I believe that
13 local exchange companies introduced pay telephone
14 technology when it became available as a means of
15 enlarging the quantity of network service that it
16 provided.

17 I also happen to believe that pay telephones
18 can in certain circumstances expand universal service.
19 But that does not fit with the way you described the
20 activity of local exchange companies in providing
21 payphone service.

22 I might add that payphones do not only
23 supply local exchange calling capabilities, but toll,
24 interstate, in some circumstances even international.

25 Q. When a customer walks up to a U. S. West pay

1 station and puts in a quarter and calls across town,
2 makes a local call, is U. S. West providing a local
3 call to that customer?

4 A. Could I have the question read back? Sorry.

5 (The record was read.)

6 THE WITNESS: Yes, just as it would if that
7 call were made from a non-LEC payphone.

8 BY MR. SHAW:

9 Q. Before divestiture of CPE from local
10 exchange companies, RBOCs at least, and the Company
11 leased a telephone set to a local subscriber and that
12 local subscriber paid a monthly rate to the Company for
13 local calls, was the company providing local service?

14 A. I'm not sure -- now I'm really stuck. I
15 don't think the first part of your question goes with
16 the second part.

17 Q. Let me restate it if you didn't understand.

18 Before CPE was deregulated and divested from
19 the regulated company in the case of an RBOC, and that
20 company, PNB in Washington, leased a telephone set to a
21 residential customer, installed that set in his home,
22 and in return that customer paid a monthly charge for
23 the privilege of making local calls with that set, was
24 the Company providing local service in that case?

25 A. I'm still -- and I would like to explain why

1 -- having trouble with the first part going with the
2 second part.

3 The Company provided terminal equipment.
4 That's clear. The terminal equipment was provided for
5 the purpose of allowing customers to make local, toll,
6 and even international calls.

7 I do not view the provision of the set as
8 being a local exchange service.

9 THE COURT: Would you put your microphone
10 down and speak right into it to be sure we can hear,
11 Mr. Shaw? Thank you.

12 BY MR. SHAW:

13 Q. Are today the company's pay telephone sets
14 which it places in its service territory considered
15 telecommunications facilities used to provide local as
16 well as toll service?

17 MR. HARLOW: Again, I have to object to the
18 extent Mr. Shaw is asking for a legal conclusion, what
19 the legal definition of telecommunications facility is.

20 THE COURT: Mr. Shaw?

21 MR. SHAW: Well, your Honor, I'm just simply
22 asking for her opinion as an expert of whether or not
23 the pay telephone facilities of the Company are
24 telecommunications facilities that it uses to provide
25 local and toll service.

1 MR. HARLOW: If he is asking as an
2 economist, I have no objection.

3 THE COURT: The witness has indicated she is
4 an economist. So, let's take it in that light and
5 allow the question, ma'am.

6 THE WITNESS: As an economic question, I'm
7 not sure what meaning it has, frankly.

8 A pay telephone is a device that enables a
9 consumer who does not have an established credit
10 relationship in that location with a company
11 telecommunications, be it local, toll, interstate,
12 international, to be able nonetheless to make a call.

13 And as such it is -- I have likened it in
14 the past to a vending machine.

15 Does that make it a telecommunications
16 facility? It's a vending machine of phone calls
17 basically. I don't know. The phrase has no meaning to
18 me other than as a legal question.

19 BY MR. SHAW:

20 Q. Is that facility currently in the rate base
21 of the Company in Washington?

22 A. My understanding is, yes, it is. That
23 equipment is part of the rate base.

24 Q. Turn to your other alternative for a moment.

25 Is it the intent of your recommendation for

1 an accounting separation to, in effect, treat pay
2 telephone service provided by a local exchange company
3 on a Part X type basis?

4 A. I'm sorry. Had you finished your question?

5 Q. Yes.

6 A. I suppose it's analogous to that. That is,
7 I'm asking that the price squeeze be ordered over and
8 that one enforcement technique for the Commission to
9 ensure that is that, if, in fact, you failed to end it
10 in any year, the difference goes below the line rather
11 than entering into the revenue requirement or sharing
12 calculations if you're under an alternative form of
13 regulation that has earnings sharing.

14 Q. The thrust of your recommendation is then
15 for the Commission to assign certain costs for payphone
16 operation to put any losses of revenues not covering
17 those costs below the line, but any profits above the
18 line, to the benefit of the residual ratepayer;
19 correct?

20 A. I would not necessarily -- personally I
21 would prefer not to have the whole issue come up like
22 that. I prefer the subsidiary solution.

23 But if U. S. West persists in wanting it as
24 part of its regulated rate base, it seems to me that,
25 nonetheless, you should ensure the conditions for

1 effective competition. And the only enforcement
2 mechanism is to do as you say.

3 Q. Let's turn to another service of the
4 Company, which came up during Mr. Coulson's testimony:
5 EAS, extended area service. Are you familiar with that
6 service?

7 A. I'm familiar with it in sort of a broad
8 generic notion of it. I am not familiar with EAS
9 tariffs in Washington.

10 Q. Would you agree that interexchange carriers
11 other than local exchange companies are required to pay
12 carrier access charges to the local exchange company to
13 provide interexchange calls that in some cases are
14 provided by the local exchange company on an EAS basis
15 for a flat local rate basis?

16 A. Mr. Shaw, I do not know what the boundaries
17 of local versus toll and toll competition are in
18 Washington with regard to the particulars of
19 Washington's EAS.

20 Q. Is it your understanding that EAS is a
21 monopoly service in the sense that no other carrier is
22 allowed to provide a call from X to Y that happens to
23 be an EAS route in Washington?

24 A. I repeat: I do not know what the boundaries
25 of local versus toll are in the state of Washington

1 with regard to EAS. In some states those are
2 considered monopoly local calls and nobody else may
3 provide them. And in other states they are not. And I
4 do not know the particulars in Washington.

5 Q. Do you know in Washington whether pay
6 telephone service is considered part of local service
7 which no other provider is entitled to provide except
8 the local exchange company in that territory?

9 A. I would assume from the fact that the
10 Commission has authorized non-LEC payphone providers to
11 provide local and intraLATA/intrastate calling that the
12 answer has to be no. But I'm not a lawyer, and I find
13 myself having to repeat that statement a lot today.

14 Q. Have you reviewed the rules promulgated by
15 this Commission in regard to pay telephone and
16 alternative operator services?

17 A. I have -- I read the rules on pay telephone
18 services and glanced at it but did not study -- I
19 probably didn't study -- the pay telephone ones that I
20 glanced at but skimmed rather than reading the
21 alternative operator service rules.

22 Q. Do you understand that those rules do not
23 require any local exchange company in the state of
24 Washington to provide access for intrastate alternative
25 payphone providers?

1 A. I think they are worded in -- that you may
2 file such a tariff and, if so, it must have the
3 following characteristics.

4 However, if it were truly a monopoly and the
5 Commission wished it to be a monopoly, you would not
6 even be allowed to file the tariffs.

7 Q. Do you have an opinion on whether or not it
8 is possible for a local exchange company in the state
9 of Washington to waive any monopoly it might have by
10 voluntarily allowing another carrier to provide service
11 in competition?

12 A. I am really sitting here thinking, Mr. Shaw,
13 that's a legal question. I have no idea. It wouldn't
14 have occurred to me to ask. It's a legal issue.

15 Q. That's why I asked if you had an opinion.

16 A. It's a legal issue.

17 Q. You have given this same sort of testimony
18 on behalf of the pay telephone associations in other
19 states, have you not?

20 A. That is correct.

21 Q. Those states are --

22 A. -- Florida, Illinois, Massachusetts,
23 Colorado, and to some extent Texas, although that
24 particular proceeding was structured in a different way
25 and with a different central focus.

1 Q. And in each of those states, your client was
2 a payphone association or individual payphone provider?

3 A. I believe that is correct with the possible
4 exception of Texas, where I think the client was
5 Intelacall. But I don't have that testimony easily
6 accessible to me and I have not looked at it in a long
7 time.

8 Q. Intelacall is a pay telephone manufacturer
9 and vendor?

10 A. I'm not sure whether it does more than
11 simply manufacture the sets or not.

12 Q. If it manufactures them it sells them to
13 somebody; correct?

14 A. That's true. But when I think of vendor I
15 think of somebody who installs them, collects coins,
16 maintains the boxes, and so on.

17 Q. Has any of those states adopted your
18 recommendation to remove pay telephone equipment of a
19 local exchange company from the rate base and place it
20 in a separate subsidiary?

21 A. To the best of my knowledge, none of them
22 have adopted that recommendation. In one case in
23 Illinois, the decision is not out.

24 In Colorado the issues were raised as part
25 of a rate case and were settled through a stipulation

1 that did not involve that.

2 Massachusetts, I do not know the outcome.

3 I did not recommend a separate subsidiary in
4 Texas where, as I said, the central focus of the case
5 was different than it is here.

6 And I do not know much of the outcome in
7 Massachusetts. I think then I did not recommend
8 separate subsidiaries. I have only filed, I believe,
9 -- it is certainly true that both Massachusetts and
10 Texas were filed during the period in which the FCC had
11 ruled that they had preempted the states on the issue
12 of separate subsidiaries.

13 Q. By that answer is it your testimony that you
14 believe the FCC has preempted the ability of this
15 Commission to create a separate subsidiary for pay
16 telephone?

17 A. No. Quite the contrary. I believe it was
18 overturned by one of the appeals courts. I'm
19 referring, of course, here to the so-called Computer 3
20 regulation, and I believe -- I apologize. I'm not good
21 at the circuits, but it's the one in San Francisco
22 overturned the preemption part of the Computer 3 order.
23 And that decision I have read awhile ago.

24 Subsequent to that decision, therefore, the
25 states do have the power to preempt -- excuse me -- to

1 order activities to be moved in separate subsidiaries
2 should they so desire.

3 THE COURT: Would you look for a good
4 stopping point within the next five minutes or so, Mr.
5 Shaw?

6 BY MR. SHAW:

7 Q. If state law so allows; correct?

8 A. I would assume commissions must always
9 operate according to state law.

10 Q. You in analyzing in your supplemental
11 testimony companies' operator services revenues versus
12 expenses, divide that service into local and toll;
13 correct?

14 A. That's correct. Local and intraLATA toll.

15 Q. And I take it by that division as an
16 economist, you feel that those are two separate
17 services: That there is a local operator service
18 service and there is a toll operator service service;
19 is that correct?

20 A. Partially yes, and partially no. You have
21 two separate prices for those activities. Consumers
22 are not able to arbitrage between the two of them.
23 Therefore, by the tariff in process, you have created
24 them as separate services.

25 I agree that the operator portion ideally

1 would be one service; that is, having an operator or a
2 mechanical device intervene. Neither the device nor
3 the operator -- neither the device's work load nor the
4 operator's work load is materially affected by whether
5 the call is local or toll. But you charge different
6 amounts for them.

7 Q. Is it your recommendation that this
8 Commission, assuming it has the jurisdiction, order the
9 company to provide its operator services out of a
10 separate subsidiary?

11 A. I have not made that recommendation. I
12 would like to think about it. It sounds good to me,
13 but I would like to think about what it would mean.

14 Q. The basis for your recommendation in the
15 case of the payphone equipment is that you believe it
16 would make it easy to monitor the compliance of the
17 operation purchasing monopoly inputs at tariffed rates.
18 Is that really the main reason you want a separate
19 subsidiary?

20 A. I'm not sure that I would -- in fact, I'm
21 certain I would not phrase it as you did. I would say
22 that the reason I believe that a separate subsidiary is
23 a good idea is that it saves on regulatory costs in
24 trying to ensure that the bottleneck monopoly deals
25 with its competitors on the same terms and conditions

1 that it deals with itself.

2 A set of requirements or a requirement that
3 has in this case several pieces because there is more
4 than one bottleneck monopoly service, it is absolutely
5 essential to establish the conditions for effective
6 competition which could take place in this market if
7 you ended the price squeeze.

8 Q. U. S. West has many competitors for its
9 operator services, does it not?

10 A. In certain situations, probably. And in
11 other situations, not many.

12 Q. And those competitors in your opinion
13 require monopoly inputs from U. S. West?

14 A. I believe that the operator service
15 competitors require some credit card validation and
16 billing and collection services from U. S. West, yes.

17 Q. So, your recommendation, I take it, would be
18 that the Commission, while it's at it, should create a
19 separate subsidiary for the Company's operator
20 services?

21 A. Mr. Shaw, you asked me that about three
22 minutes ago, and I said I would need to think about it.
23 There are factual issues. I have not worked on them or
24 asked for discovery on them.

25 It sounded good, but I would need to look

1 into it. And I stand by that answer.

2 Q. What specific factual issues do you need to
3 know?

4 A. I would set it up much earlier when we
5 started this discussion that the issue of a separate
6 sub, separate subsidiary, excuse me, is an issue of, in
7 essence, I'm applying a cost/benefit test.

8 What does it cost to achieve the regulatory
9 goals that are set for that particular service or
10 market? What is the least costly way to achieve those
11 regulatory goals?

12 I have not done the kind of discovery on
13 operator services that I have asked the Northwest
14 Payphone Association to do on payphone services. So, I
15 can't give you the kind of outcome of that factual
16 analysis without having done that kind of factual work.

17 Q. U. S. West has many competitors for
18 interexchange services in the state of Washington;
19 correct?

20 A. It has some. I don't know how many.

21 Q. If asked, would your recommendation be that
22 U. S. West be ordered to put its interexchange services
23 in a separate subsidiary, separate from its local
24 services?

25 A. I have on occasion discussed that. I think

1 there you have some real problems of how do you take
2 the network apart? But it's tempting. I certainly was
3 an advocate of asking Judge Green -- I believed in
4 asking him to think about divestiture at the classified
5 switch, which would have achieved the same outcome.

6 Judge Green chose not to do that, and I was
7 not asked that question in the trial. But it does seem
8 to me that you could have had divestiture at the
9 classified switch and achieved that outcome.

10 Q. Technically possible, your recommendation
11 would be that for any service provided by a local
12 exchange company that becomes competitive in the sense
13 that other parties want to provide the service in
14 competition with the local exchange company, the
15 Commission should always consider lopping that part of
16 the business off into a separate subsidiary? Is that a
17 correct understanding of your testimony?

18 A. I think if it can be shown that the costs of
19 doing so are less than the benefits from doing so, it
20 would certainly economize on regulatory resources.
21 There are some services that that just may not be
22 feasible to do. Payphone service is not one of those.

23 Q. Do you have any irreducible minimum that
24 would remain of U. S. West after the creation of
25 separate subsidiaries to isolate the competitive

1 services from the rest?

2 A. As I think local exchange switch services,
3 the network portion of them is still very much a
4 monopoly. I would suspect that at least fifty percent
5 of U. S. West would remain totally unchanged even if
6 you put everything else in a separate subsidiary.

7 THE COURT: We need to look for a break
8 here, Mr. Shaw.

9 MR. SHAW: Fine.

10 THE COURT: Let's break for lunch and be
11 back at 1:30. Please remember, Doctor Cornell, that
12 you need to review C-8 for identification and the
13 parties are going to discuss the discovery schedule and
14 report back.

15 (At 12:00 noon the above hearing was
16 recessed until 1:30 p.m. of the same day.)

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24 OLYMPIA, WASHINGTON; TUESDAY, FEBRUARY 2, 1993.

25 1:30 P.M.

1 --oo0oo--

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3 THE COURT: Let's be back on the record
4 after our morning recess.

5 The parties are apparently still work on the
6 discovery schedule, and I told them that I do need to
7 have that by the end of the first break, please.

8 As another procedural matter, we had asked
9 Doctor Cornell to specify those portions of C-8 on
10 which her testimony relied, specifically.

11 Could you list those portions, please.

12 THE WITNESS: Yes. If I may, I would just
13 like to give a very brief explanation of what's about
14 to follow.

15 There are two references to C-8 in my
16 testimony. One of them is to the effect that the
17 assumption in the cost study that only refurbished
18 payphones are the appropriate payphone costs for the
19 box itself. And the second -- and I claim that C-8
20 refutes that statement, that claim, and that underlying
21 assumption, which is a major part of the cost study.

22 THE COURT: On what page of your testimony
23 is that specified?

24 THE WITNESS: That was Page 23.

25 THE COURT: Okay.

1 THE WITNESS: To Page 25 of my testimony, I
2 refer to C-8 about the fact that, because this is a
3 secondary in the cost study, that I was very troubled
4 by -- I do not have data to correct in either case.
5 But that was the whole discussion of the cost of sort
6 of the sales force and public administration where I
7 think we show a smaller cost for public coin than for
8 public access lines.

9 That is much more extensively covered, that
10 second subject matter is much more extensively covered
11 in C-8, confidential Exhibit C-8, excuse me. And,
12 indeed, its references that show the assumption of only
13 refurbishing existing coin telephones are on the same
14 pages that I'm about to list as dealing with the
15 intensive and labor intensive activities that U. S.
16 West discussed using to gain and retain location
17 providers, which is the reference on Page 25.

18 So, with that in mind, the pages that deal
19 with this I had previously listed -- and I'm going to
20 give them all in terms of the number of pages -- Page
21 blank of 38 references in the upper right-hand corner
22 so that there is no ambiguity.

23 THE COURT: All right.

24 THE WITNESS: Pages 3 and 4 which are
25 referenced as 1 and 2 in my testimony which are there

1 so that the terms have meaning as you meet them later
2 on in the document. Without that it's not clear what
3 they are talking about.

4 Pages 7 through 9, which has an overview of
5 one of the segments of the payphone market and
6 discusses what they are doing now in terms of basically
7 sales and administration in that area.

8 Pages 16 through 26, two of which are pages
9 that are cited in my testimony, but this is a
10 discussion of what they intend to do referenced in a
11 way that also refers back to what they are doing.

12 And, again, that same set of pages, that is,
13 16 through 26, referring to the upper right-hand corner
14 numbers which are Page X of 38 numbers, the first part
15 of that, as I say, is the proposed actions, some of
16 which are actual actions, and then an overview -- it
17 also includes the overview of a different segment, an
18 important segment, that talks about what they are doing
19 now.

20 And, finally, Pages 32 to 38, which talk
21 about what they would like to do, again melded in with
22 what they are doing for that segment, that second
23 segment of the market.

24 I hope that was sufficiently clear yet
25 veiled so as not to violate the proprietary order.

1 THE COURT: Commissioners, have you
2 questions of Doctor Cornell regarding the citations she
3 has given?

4 COMMISSIONER CASAD: I have no questions.

5 COMMISSIONER PARDINI: Your references to it
6 in both your testimony in response to Mr. Shaw's
7 inquiries continue to speak to an overview rather than
8 specifics. I have not been able to run through Pages
9 19 through 26 obviou_ly for the same reasons you
10 couldn't respond earlier this morning as to whether you
11 get into specifics.

12 And I am concerned that we enter into the
13 record a total marketing plan on something that does
14 not give me a specific tie-in to some of the
15 suggestions made yesterday as to what the Payphone
16 Association alleges are the shortcomings of the present
17 relationship and what their recommendations are for
18 remedial action.

19 THE WITNESS: May I respond?

20 COMMISSIONER PARDINI: Please do. Narrow it
21 for me.

22 THE WITNESS: Okay. The reference on Page
23 25 of my testimony -- this goes -- let me take it
24 directly from Page 25 of my testimony to sort of one of
25 -- perhaps one of the major requests by the Payphone

1 Association is that U. S. West must deal with its
2 competitors on the same terms and conditions that it
3 deals with itself. That is, if it charges \$30 a month
4 for a PAL line or whatever the number is, it must be
5 pay that.

6 COMMISSIONER PARDINI: I understand that.

7 THE WITNESS: The only way you can test that
8 in the present situation is to take their revenues, to
9 subtract from it their costs for the things that their
10 competitors can supply -- the payphone instruments, the
11 administration of payphones, the coin collection and
12 accounting for the coins and all that part -- and then
13 see whether the remainder is sufficient to cover the
14 tariffed charges that they would charge a competitor
15 who had the same number of access lines and the same
16 number of minutes of use and the blocking and the
17 screening and the non-recurring charges and those
18 things that only U. S. West can provide.

19 COMMISSIONER PARDINI: I agree with that.

20 THE WITNESS: I want to be sure that you
21 understand where I'm going.

22 COMMISSIONER PARDINI: May I interrupt you?

23 THE WITNESS: Yes.

24 COMMISSIONER PARDINI: Don't you do that in
25 another exhibit?

1 THE WITNESS: Yes. But this is what I'm
2 talking about. I had to rely on and use cost numbers
3 supplied by U. S. West that this part of my testimony
4 is telling you have to be wrong. And my evidence for
5 their having to be wrong is derived in part -- in this
6 particular instance from this exhibit.

7 And I want support for that statement. You
8 aren't going to believe me if I say, well,
9 Commissioners, they got it wrong. They have made the
10 claim that the sales and public administration expenses
11 per public access line, which is what they sell to
12 their competitors, are higher than what they incur for
13 their own coin lines.

14 And yet in this document and in the pages
15 that I cited to you are specifics -- except I would
16 have to ask that the room be cleared for me to read
17 them into the record -- that say how they market --
18 that is, what is their sales effort and their sort of
19 public administrative effort for the majority of their
20 coin lines?

21 And it makes it clear if you read the pages
22 that I cited that these are, you know, there are goodly
23 number of resources being devoted. I can assure you
24 they are not out there sending the equivalent of
25 account executives or sales representatives or whatever

1 trying to drum up business for their public access
2 lines. Yet this document discusses that kind of
3 activity. And I want to go no further in public on it
4 -- with regard to their coin lines.

5 So that to come back and tell the Commission
6 in a cost study that it is more expensive -- that the
7 sales and public administration of a PAL line is more
8 costly than the sales and administration of a coin line
9 has got to be false.

10 COMMISSIONER PARDINI: Okay. Thank you.

11 THE COURT: Did the participants have any
12 additional comments or thoughts regarding the objection
13 before the Commissioners retire again?

14 MR. HARLOW: Who would you like to hear from
15 first?

16 THE COURT: I assume Mr. Shaw since he was
17 the one who made it. Do you have anything to add?
18 Don't repeat, though.

19 MR. SHAW: Yes, your Honor. After listening
20 to Doctor Cornell's statements this afternoon, I go
21 back to what she cited in her testimony as to what
22 these documents purport to support. And they don't
23 have anything to do with marketing expense.

24 She cites this major marketing planning
25 document for two specific propositions. On Page 23:

1 That -- excuse me. I have got my numbers mixed up
2 here. Yes, Page 23 -- that U. S. West payphones will
3 be replaced and in the not too distant future. And
4 cites C-8 for that.

5 Then on Page 25 she cites C-8 for the
6 proposition that C-8 states that U. S. West's payphone
7 operations do not cover the appropriate costs. And,
8 again, nowhere has she related that to the document.

9 Instead, it's now a changed argument that
10 reading U. S. West's business plan intuitively there
11 must be more costs than the Company has reported. And
12 that is not what her testimony deals with.

13 So, rather than go on and on on this, we
14 continue to feel that this is just a transparent effort
15 to get U. S. West's business plan into the record.

16 THE COURT: Mr. Harlow?

17 MR. HARLOW: First of all, we appreciate the
18 opportunity the Commission has afforded us to sit down
19 and review this document in detail so that we could
20 give the kind of detailed identification that Doctor
21 Cornell just gave.

22 I think it should by now be abundantly clear
23 that Doctor Cornell has relied extensively on the
24 document to the extent of 23 pages out of 38 she
25 specifically cites that she relies on.

1 If that's not abundantly clear, then I would
2 suggest we had better go into a confidential closed
3 session and let Doctor Cornell read those into the
4 record. I think it is from our non-confidential
5 narrative. But if it's not then we need to do that.

6 The mistake that Mr. Shaw is making from an
7 evidentiary standpoint is that he is trying to confuse
8 the issue as to whether or not the Commission accepts
9 Doctor Cornell's testimony and believes that the
10 document supports her testimony with the question of
11 whether or not Doctor Cornell has relied on it for
12 purposes of admissibility.

13 It's clear she has relied on it. If she has
14 misrelied on it, then it's up to Mr. Shaw to argue in
15 brief or through his own witnesses why the Commission
16 should not accept Doctor Cornell's analysis of that
17 document and the conclusions she has drawn from it.

18 The conclusions she has drawn are now in
19 evidence and were admitted without U. S. West's
20 objection. So, it's clear from an evidentiary
21 standpoint that the support for that should come in.
22 And Mr. Shaw's objection, if any, comes in regard to
23 what weight should be given to that testimony and the
24 supporting document.

25 Indeed, that argument cannot be effectively

1 made by U. S. West or responded to unless the document
2 itself is admitted. How can Mr. Shaw argue whether or
3 not Doctor Cornell can support that testimony unless
4 that document is admitted so that the parties can
5 address that?

6 It's clear that the evidentiary rule has
7 been met in this case. If not, then we should go into
8 confidential session and address it more specifically
9 still.

10 THE COURT: Miss Brown, any brief comments?

11 MS. BROWN: I have nothing to add.

12 THE COURT: Commissioners, have you
13 questions of any of the parties until Mr. Shaw has an
14 opportunity to respond if he wants to?

15 COMMISSIONER CASAD: I have no question.

16 COMMISSIONER PARDINI: No questions.

17 MR. SHAW: I have nothing else.

18 THE COURT: Let's take five minutes.

19 COMMISSIONER PARDINI: I think we can make a
20 decision at the bench. I was the one who wanted to
21 have more information granted. Doctor Cornell had not
22 convinced me that the evidence should be admitted. She
23 has now said she has relied on other pages besides the
24 overview for analysis of the cost of the thing. If
25 that is what she has relied upon, then I will accept

1 that.

2 THE COURT: Objection is overruled and C-8
3 will be admitted into the record in its entirety. The
4 Commission discussed that it feels the protective order
5 will be sufficient protection for the sensitive nature
6 of the document.

7 Are there any other procedural things that
8 we have left over before we continue with the
9 cross-examination anyone?

10 Go ahead, Mr. Shaw.

11

12 C R O S S - E X A M I N A T I O N

13 (Resumed)

14 BY MR. SHAW:

15 Q. Doctor Cornell, have you done a cost/benefit
16 analysis of the impact of placing all of U. S. West's
17 payphones in Washington into a separate subsidiary?

18 A. In a qualitative sense, yes. In a
19 quantitative sense, no.

20 Q. Have you analyzed the regulatory impact of
21 additional affiliated interest transactions and
22 regulatory review of such a step?

23 A. I'm not certain that I understand what you
24 mean entirely by that. I have looked at -- and so
25 maybe I had better tell you what I have looked at -- I

1 have looked at what would be required from a business
2 perspective to achieve this outcome. What would have
3 to be separated from what?

4 And as I'm not asking that the outside
5 plant, which today is a coin line and could conceivably
6 tomorrow be a business line or PAL line or something
7 else and, therefore, is substitutable among clearly
8 regulated and monopoly services and the coin line that
9 is used for a payphone which does not have to be a
10 monopoly service.

11 I have asked only that these portions of the
12 business that are fairly separate already, frankly, be
13 put into a separate subsidiary.

14 Now, if the Commission has rules about what
15 you have to report for affiliated interests, they would
16 have to be complied with presumably. But it still
17 seems to me unlikely that those are as complex for the
18 Commission to monitor as it has been to try to figure
19 out what's going on with the cost studies and what's
20 right and what's wrong with them.

21 Q. Is that the totality of your cost/benefit
22 analysis of the affiliated interest aspects of the
23 separate subsidiary?

24 A. As I started the answer, I wasn't sure what
25 you have in mind when you talk about the affiliated

1 interests part. I don't know that I can answer the
2 question in more detail than I gave you.

3 Q. Would the separate subsidiary that you're
4 urging be an affiliated interest of U. S. West
5 Communications if you know?

6 A. The way you have worded the question to me,
7 that's a legal question. As I have said so many times
8 today, I'm not a lawyer.

9 THE COURT: Did your analysis assume it was
10 to be treated as an affiliate?

11 THE WITNESS: I assumed it would be a
12 separate one. When I hear people talking about
13 affiliated interests, I assume there is rules from the
14 Commission that apply to an entity called affiliated
15 interests, and I don't know those rules.

16 THE COURT: Go ahead, Mr. Shaw, sir.

17 BY MR. SHAW:

18 Q. A portion of your testimony also recommends
19 that the Commission identify and allocate public
20 service telephones; is that correct?

21 A. That was one option that I proposed for
22 dealing with public service phones, yes, the allocation
23 part. Yes, I think the Commission should identify
24 them.

25 Q. I take it on that basis you agree that there

1 are some number of public phones out there that would
2 not be provided by a competitive market, but that
3 nonetheless the Commission may wish to be provided?

4 A. I do not know if there are some number of
5 them out there. But I can believe either that there
6 might be or that in the future the Commission might
7 desire certain phones to be placed that would not -- a
8 competitive market left to itself would not place.

9 Q. After U. S. West, the regulated telephone
10 company, is no longer in the business of pay
11 telephones, I presume that its separate subsidiary
12 would get allocated some number of these public service
13 phones, if any; is that correct?

14 A. If that's the approach the Commission wanted
15 to take, yes.

16 Q. If this separate subsidiary found that it
17 could not be profitable under the conditions that you
18 recommend be placed on it, would it be free to drop
19 public interest phones assigned to it?

20 A. I would say not. That would be one of those
21 things that I would have put into the tariff regulation
22 of U. S. West, the monopoly, that you may not be a
23 subscriber if you do not accept your fair share or
24 otherwise make provision at your expense for ensuring
25 the coverage, if I might put it that way, of your fair

1 share of the public interest phones.

2 Q. The separate subsidiary of U. S. West if it
3 found under those conditions could not be profitable,
4 would it be free to go out of business?

5 A. U. S. West would be free to go out of the
6 payphone business if it cannot compete on a fair basis
7 with dependent competitors, if it is not the most
8 efficient provider. The sooner everybody learns that
9 the better.

10 Q. Your recommendation to the Commission is
11 that no corporation providing pay telephone service
12 should be required to stay in business at a loss;
13 correct?

14 A. That's the implication of that, yes.

15 Q. If all pay telephone providers are being
16 treated on that same basis, there would be no provider
17 with any obligation to provide the service other than
18 its pro rata share of public interest phones so long as
19 it stayed in business; is that correct?

20 A. I'm sorry, Mr. Shaw. I really don't
21 understand the question. I'm sitting here trying to
22 deal with a mathematic, what is a pro rata share --
23 based on your proportion of payphones, which is zero,
24 what is your pro rata share of public interest phones?
25 I'm afraid you're going to have to rephrase the

1 question.

2 Q. Let me state it again:

3 Your recommendation, then, is that no
4 payphone provider in the state of Washington should
5 have the obligation to serve other than its pro rata
6 share, whatever share the Commission assigns to it, of
7 public interest payphones; is that correct?

8 A. No. My statement was that the Commission
9 could deal -- one of the options for dealing with
10 public interest payphones once they are identified --
11 and nobody wants them as competitive payphones. That
12 is, nobody makes a bid to the location provider to
13 provide them -- that the Commission could allocate them
14 based on the share that that provider had of the
15 competitive payphones and that that's what I meant by
16 pro rata share.

17 If a competitive payphone provider had no
18 payphones that were profitable, it would also have a
19 zero share of the public interest payphones.

20 Now, the Commission, if they are concerned
21 that this is the direction that the industry is heading
22 after establishing this system, would certainly be able
23 to find that out easily by having information supplied
24 by U. S. West as to the number of payphone lines, PAL
25 and coin, subscribed to under tariff; number of

1 locations that those lines served; and, if it looked as
2 if the trends were damaging to the public interest,
3 would have several techniques for dealing with that
4 relatively quickly.

5 In one instance, if they had imposed
6 conditions on the subscription to a payphone line that
7 capped rates, again, assuming the price squeeze has now
8 been ended, it could look at the wisdom of raising
9 those caps to reflect presumably significantly changed
10 economic conditions. It could look directly at the
11 rates being charged, the competitive payphone industry,
12 including U. S. West's subsidiary, to see whether those
13 had become, perhaps, unreasonable in the level of
14 charges.

15 If what was really going on is some other
16 technology had made payphone technology obsolete, but
17 there were a few locations that nonetheless needed
18 payphone technology, it could look at saying that is an
19 obligation of the monopoly part of the house.

20 None of those are the conditions that
21 prevail today.

22 Q. I understood that last statement. Your
23 recommendation to the Commi_sion then is that it
24 reserved the right to order U. S. West Communications
25 back into the payphone business if that becomes

1 necessary to provide service to the public?

2 A. I said in my testimony I gave two
3 alternatives for dealing with public interest
4 payphones. I was simply saying that by choosing the
5 allocation technique the Commission had not given up
6 its authority to order the other technique, which is
7 not to make them part of the separate subsidiary, but
8 to make them part of just plain monopoly services.

9 Q. Have you done any study of the numbers of
10 public interest payphones in the state of Washington?

11 A. No. We have asked you a lot of questions
12 about them and gotten no good answers, as is shown in
13 Exhibit -- I guess it would be Exhibit 14, NWC-13.

14 Q. Your criterion is objective, I take it, that
15 by definition of public interest payphone it needs to
16 be a stand-alone phone that pays no commissions to a
17 site provider and is not able to generate sufficient
18 revenues to be profitable; is that correct? Just the
19 straight objective criterion?

20 A. Yes. Any other payphone would be a payphone
21 if the price squeeze were ended that somebody would be
22 happy to volunteer to enter into a contract of some
23 kind with the location provider.

24 Now, whether I say a single payphone, I want
25 the location's profitability judged on the basis of

1 what would it be if there were a single payphone. I
2 can sit here and probably dream up some circumstances
3 in which I as a governmental official would want to see
4 perhaps more than one payphone at such a location to
5 deal with certain kinds of public health and safety
6 concerns.

7 But I would judge their profitability on the
8 basis of what would it be like if the payphone provider
9 were able to provide just one.

10 Q. By that answer I take it it's acceptable to
11 you if the Commission reserves some subjective
12 standards for any given payphone on whether it
13 classifies it as a public interest payphone or not? Is
14 that a correct understanding?

15 A. No, no. The statement was to make a
16 determination that a location needs a public interest
17 payphone or two or three. The location has to be a
18 location that, if there were only one, nobody would
19 want to provide it as a profitable venture. Nobody
20 would step forward and say that's a location I as a
21 competitive provider want to serve.

22 Q. Have you reviewed the testimony of Staff
23 member Tom Wilson filed in the Paytel and International
24 Pacific competitive classification cases that are
25 currently pending before this Commission?

1 A. I have reviewed the testimony of Mr. Wilson.
2 -- if it's Doctor, I apologize for not having used it
3 -- in I believe it's the IPI? I don't know about a
4 Paytel testimony. But I did read the testimony in the
5 IPI proceeding.

6 Q. Do you agree with his testimony to the
7 effect that individual payphone locations are a
8 monopoly if the provider is charging rates higher than
9 the average in the industry or the rates charged by U.
10 S. West?

11 MR. HARLOW: Mr. Shaw, could you cite Doctor
12 Cornell to the testimony. And if she doesn't have a
13 copy of it, give a copy?

14 THE WITNESS: I have a copy in my briefcase
15 but I don't have it up here with me. I would like to
16 have it in front of me because I thought Mr. Wilson's
17 testimony, while I thought very good, is not as
18 simplistic as you have made it out to be.

19 THE COURT: Can you provide a copy, Mr.
20 Shaw?

21 MR. SHAW: Let me try this before I dig out
22 a copy.

23 BY MR. SHAW:

24 Q. You have read Tom Wilson's testimony and
25 have it in mind?

1 A. I have read Mr. Wilson's testimony. I have
2 as much of it in mind as I can without having it in
3 front of me.

4 Q. Do you agree with that testimony that you
5 have read?

6 MR. HARLOW: Object. Way overbroad. What
7 is that? Forty, fifty pages of testimony?

8 THE COURT: I think we need to take some
9 time and get the testimony for her. Let's go off the
10 record.

11 (Discussion held off the record.)

12 (Short break.)

13 THE COURT: Let's be back on the record.
14 During the time we were off the record the witness and
15 counsel got copies of that testimony.

16 Go ahead, Mr. Shaw.

17 MR. SHAW: Thank you, your Honor.

18 BY MR. SHAW:

19 Q. For the record, Doctor Cornell, do you have
20 in front of you the testimony of Thomas L. Wilson, Jr.,
21 dated January 19, 1993, in docket UT-920546?

22 A. Yes, I do.

23 Q. Have you had a moment to refresh your memory
24 on what's in that testimony?

25 A. No. I have had a chance to pick up the

1 testimony, but that's it.

2 Q. In that proceeding, International Pacific, a
3 payphone provider and alternative operator services
4 company, is petitioning the Commission for competitive
5 classification in Washington; is that correct?

6 A. I do not know that IPI is a payphone
7 provider. I know that it is an alternative operator
8 service provider.

9 Q. Is Mr. Wilson's position that because --

10 THE COURT: Can you cite a page?

11 MR. SHAW: Strike that.

12 BY MR. SHAW:

13 Q. Is it Mr. Wilson's position that the
14 petition for competitive classification of IPI should
15 be denied?

16 A. I believe that to be correct.

17 Q. And isn't it correct, Doctor Cornell, that
18 the reason for that recommendation is the belief of Mr.
19 Wilson as a Staff economist that the individual
20 locations served by IPI are not effectively
21 competitive?

22 MR. HARLOW: Again, could you provide a page
23 cite, Mr. Shaw?

24 MR. SHAW: It's the entirety of the
25 testimony, your Honor. I think we're playing a cat and

1 mouse game here.

2 THE COURT: Well, if the witness hasn't had
3 the chance to review the testimony, Mr. Shaw, it would
4 be very helpful if you can point her to some part of
5 it, or she is going to have to read it all.

6 MR. SHAW: (Reading.)

7 BY MR. SHAW:

8 Q. Look at Page 17, Doctor Cornell, Line 16,
9 where Mr. Wilson quotes from a previous Commission
10 order.

11 Do you agree with that statement?

12 A. That the Commission said that?

13 Q. Line 17 through 22.

14 A. That the Commission said that? I'm certain
15 that he has quoted correctly.

16 Q. Do you believe the truth of that statement?

17 A. That there is an information problem? There
18 may well be. That's not the same as the question you
19 asked me earlier.

20 Q. Turning to Page 20, Lines 16 through 30, Mr.
21 Wilson again quotes from an outstanding Commission
22 order. Do you agree with that statement?

23 A. (Reading.) I agree in part. I agree upon
24 occasion with part. And I think there is also
25 throughout this one element that I think has been

1 omitted from an analysis of payphone operator service
2 issues from the perspective of payphone service.

3 Q. Do you make a distinction between payphone
4 service and services provided by an AOS company?

5 A. Yes. They are two different companies and
6 two different services being provided. A payphone is
7 providing, in essence, a device, as I said, I believe,
8 this morning, a device which allows a consumer who has
9 no credit relationship at that location with the
10 network service provider, nonetheless to be able to use
11 network services.

12 In some ways it is analogous to a vending
13 machine that the payphone provider is providing that
14 instrument and the ability to make network service --
15 take advantage of network services even though the
16 customer does not have at that location, at least, a
17 credit arrangement with the network service provider.

18 The AOS company is providing a different
19 service, although it's related, in that it is providing
20 operator handling and network services, and they are
21 different things.

22 Q. Does a payphone provider such as Digital,
23 one of the Complainants in this case, contract with an
24 AOS company such as International Pacific, for all of
25 the operator-handled service generated by that station?

1 A. A payphone company may contract with an AOS
2 for all. It may contract some with an interexchange
3 carrier who also has operator handling capabilities for
4 some. It may allow the calls to go through U. S. West,
5 although that's the least likely in the present system
6 because then the payphone company has to accept what I
7 have come to realize is a free rider problem that in
8 the past people who used operator services free road in
9 terms of the use of the payphone and provided nothing
10 towards recovering the cost of the payphone.

11 Much of the problem with AOS companies, that
12 is, the problem as perceived from the vantage point
13 that I would perceive it if I sat where the Commission
14 sat, is the failure to deal with the free rider problem
15 out of the past.

16 Q. And your recommendation for the so-called
17 free rider problem is to require a set charge, that is,
18 a charge for the use of the set, by the person placing
19 an operator assisted call?

20 A. I think there are two ways to deal with it,
21 and it has to do with what the Commission feels are
22 just and reasonable rates for the network services
23 provided.

24 One is to authorize a set charge. The other
25 is to require those operator service companies who

1 receive traffic to pay a commission on that traffic.

2 Q. And your recommendation, I take it, is one
3 or the other, not both?

4 A. I have never said they need to be exclusive.
5 Depending again on the question of just and reasonable
6 rates, one could use a combination if that seemed the
7 sensible way to go.

8 Q. Do you agree with the proposition that a
9 payphone provider selects the operator service company
10 to serve its stations based upon the level of the
11 commissions paid by the AOS to the payphone provider?

12 A. I'm sure that's one of the criteria. There
13 may be others. After all, a payphone provider who gets
14 known for dealing with an operator service company that
15 causes lots of complaints and problems is probably
16 going to sooner or later discover they should change
17 operator service companies just as would any
18 corporation or business dealing with a business
19 supplier change a supplier if they had one who was
20 causing problems.

21 Q. I take it then you believe that the market
22 will sort out the problem of AOS companies charging
23 above market rates?

24 A. Not necessarily. I said there is a free
25 rider problem that only the Commission can correct that

1 is not addressed in Mr. Wilson's testimony, and I'm not
2 sure it would have been a topic necessarily appropriate
3 in the context of that proceeding. I don't know what
4 the filing was by IPI. And so I do not know all the
5 dimensions that were raised.

6 There is also, I believe, -- there is an
7 informational problem in that market. That is related
8 to but not entirely the same as what I have just called
9 the free rider problem, which as I said before was past
10 practice of not having any contribution or payment is
11 the more proper term by non-sent-paid users of
12 payphones in the past towards the cost of providing the
13 set.

14 MR. SHAW: Thank you, your Honor. I have
15 nothing further.

16 THE COURT: All right. Any questions, Ms.
17 Brown?

18

19 C R O S S - E X A M I N A T I O N

20 BY MS. BROWN:

21 Q. Doctor Cornell, at Page 4 of your testimony,
22 Lines 15 through 16, you state that non-LEC providers
23 are denied access to all the same bottleneck monopoly
24 inputs that U. S. West can use.

25 Do you see that?

1 A. Yes.

2 Q. Could you please give us some examples?

3 A. Coin lines are the form in which right now
4 U. S. West gains access to the network from its
5 payphones. Non-LEC payphone providers are not offered
6 coin lines.

7 The most important deprivation, I believe,
8 that this causes is the lack of accurate answer
9 supervision. And for somebody whose early immersion in
10 this industry was the early days of MCI and Sprint and
11 the arguments over answer supervision and the
12 complaints about inaccurate billing that that gave rise
13 to, this is not a trivial concern.

14 Q. Would you include call screening in those
15 examples?

16 A. Yes. That is another thing that comes with
17 the coin line. That is, a coin line is so completely
18 and clearly identified all the way through the system
19 as being a coin line that certain types of fraud
20 activity just cannot take place with a coin line.

21 I'm not into the technical details of all of
22 the ways this is accomplished.

23 The same form of absolute identification is
24 simply not provided when it's a PAL line. And so --
25 and it's not passed on, if you will, to other network

1 service providers, intraLATA carriers and the like.

2 And so various kinds of fraudulent activities are more
3 possible on a PAL line than a coin line.

4 In honesty -- in all honesty, I don't really
5 want to put on the public record how.

6 THE COURT: Thank you.

7 BY MS. BROWN:

8 Q. Is it your opinion that there are no
9 technical constraints which prevent U. S. West from
10 making those functionalities available to its
11 competitors on equal terms? That is, so that U. S.
12 West competitors could use those functions in a
13 comparably efficient way?

14 A. It is my belief that there are none or that
15 there are none that could not be resolved in a
16 relatively short period of time.

17 Q. If U. S. West were to make answer
18 supervision and call screening available on comparably
19 efficient terms and conditions, would U. S. West have
20 to increase the price of PAL service or other existing
21 services which competitors currently purchase from U.
22 S. West?

23 A. Not from anything I have seen. Not based on
24 anything I have seen.

25 Q. Is it your understanding that U. S. West PAL

1 rates are currently priced above cost?

2 A. I believe the answer to that is yes. I'm
3 just reviewing in my mind what cost studies I looked
4 at. But I'm pretty sure the answer is yes.

5 Q. At Page 4, Lines 13 through 15, in your
6 testimony, you discuss artificial constraints on the
7 ability of new providers to compete.

8 Is it your recommendation that one way the
9 Commission could address the problem would be to order
10 U. S. West to reduce PAL rates?

11 A. I suppose it is a way to address the
12 problem. That was not, as you could see from the rest
13 of my testimony, what I recommended. I recommended
14 primarily requiring U. S. West to live by the very same
15 terms that it requires its competitors to live by.

16 THE COURT: Would you concentrate, Ms.
17 Brown, on speaking slowly, please, particularly when
18 you're reading something so that it gets very clearly
19 into the record? Some of this is kind of technical,
20 and I want to be sure all the words come across
21 clearly.

22 (Discussion held off the record.)

23 BY MS. BROWN:

24 Q. Some non-LEC payphone owners resell
25 intraLATA toll; is that correct?

1 A. I have a problem with the term "resell." It's
2 basically a situation in which network services are
3 made available through that box. In that sense you
4 could call it an input to an output. But their
5 activity is no different than what the soon to be
6 endangered species Sears catalog store does with
7 telephone service.

8 Q. Would you agree that the four minutes for a
9 dollar program offered by Digital Access is an example
10 of a resell arrangement?

11 A. Again, to me as an economist, the term
12 resell has no meaning. It's taking an input, taking a
13 service as an input, and converting it in a way that
14 makes it valuable to end users where the original
15 service was not available to them in one way or
16 another.

17 I'm not sure that's a re-selling, and I'm
18 nervous about it because that term has taken on legal
19 meanings that have no economic significance.

20 Q. Thank you. At Page 4, Line 22, you state
21 that U. S. West denies non-LEC payphone providers
22 access to some of the revenue sources available to U.
23 S. West by imposing a second price squeeze on
24 alternative operator services for intraLATA
25 non-sent-paid calls.

1 Do you see that?

2 A. Yes.

3 Q. Is it your recommendation that U. S. West
4 pay commissions to non-LEC payphone owners for
5 intraLATA toll?

6 A. It is my -- that is one of the possible ways
7 to end this problem, yes. And that goes back to what I
8 was saying earlier about the free rider problem that
9 has arisen.

10 If you go and visit a friend or a relative
11 and you want to make a toll call and you say, "Can I
12 use your phone, I'm going to put it on a credit card,"
13 you do not pay a penny differently than if you walked
14 to the corner payphone and put it on the same credit
15 card.

16 I'll say U. S. West payphone for the time
17 being.

18 And the fact is that in one case the set
19 from which you are making that call has been paid for
20 by the person you were visiting, and in the other case
21 the business of the payphone provider is putting up
22 that set and getting paid for use of that set in
23 exchange for making that capability available but if
24 you use it with a credit card, you free ride. You
25 don't, in fact, pay for that set. And that's a problem

1 that needs to be addressed.

2 That was what I was referring to earlier as
3 the free rider problem that has grown up in the way
4 payphone service has been provided in the past.

5 One way to solve that problem is to tell
6 operator service carriers, all of them, including U. S.
7 West, to pay a commission on that traffic.

8 Another way not mutually exclusive is to
9 have a set charge. That is, there is a charge for
10 every time somebody uses the box.

11 Now, there may be problems with a set
12 charge, and I just do not know if there is no other
13 ongoing relationship between the carrier and the box
14 provider. But that is not a problem for intraLATA toll
15 because, of course, the box provider has to subscribe
16 to service from U. S. West.

17 Q. Are you familiar with the term "over
18 phoning"?

19 A. I think so.

20 Q. Could you please define that term.

21 A. To me what over phoning means -- I like it
22 better being asked to give my own definition because I
23 don't know if it's somebody else's -- is putting more
24 payphones in a particular location than is economically
25 efficient to have at that location.

1 If you have a bank of payphones someplace
2 and you put a lot in and some of them are virtually
3 never used or very lightly used, you have over phoned
4 the location.

5 I think that was probably coining a horrible
6 word.

7 Q. Do you believe that U. S. West's ability to
8 over phone gives U. S. West a competitive advantage
9 over other payphone providers?

10 MR. SHAW: I'll object to the form of the
11 question. There is no evidence that U. S. West has
12 some sort of unique ability to over phone.

13 BY MS. BROWN:

14 Q. If U. S. West were to have a unique ability
15 to over phone, would you believe that that ability
16 would give U. S. West a competitive advantage over its
17 competitors?

18 A. In some instances, yes.

19 Q. And in what instances would it not?

20 A. It would not in places where the location
21 provider does not care, does not have a desire for one
22 reason or another or an opinion about the number of
23 payphones that should be provided at a location.

24 There are apparently, based on conversations
25 I have had with payphone providers, locations where the

1 location provider wants a minimum number of sets, and
2 that number may not be an efficient number. That
3 minimum may be too high. And that gives any company
4 that is not constrained to cover the costs of its
5 payphone operations, including the monopoly input
6 prices, from its payphone revenues a distinct advantage
7 in serving that location.

8 Q. Are you recommending that the Commission
9 waive the requirement of one PAL per payphone?

10 A. Yes.

11 Q. Could you tell why?

12 A. Because in a situation where a very large
13 number of payphones are demanded by a location provider
14 and that number is inefficient in terms of the number
15 of payphones, it could be met by a competitive payphone
16 provider, that is, that RFP if I can describe it in
17 those terms, could nonetheless potentially be met by a
18 non-LEC payphone provider who could put those
19 payphones, in essence, behind something like a PBX and
20 trunk them to the central office, thereby cutting the
21 cost of meeting that minimum payphone instrument number
22 significantly because you wouldn't need as many PAL
23 lines.

24 Q. Have you reviewed U. S. West's cost studies
25 for its public payphone services?

1 A. Yes.

2 Q. Do those studies include Financial
3 Accounting Standards Board 106, accounting for post
4 retirement benefits?

5 A. Not to my knowledge.

6 Q. Is it your opinion that U. S. West includes
7 all relevant marketing costs in its public payphone
8 cost studies?

9 A. No. And that was what I was referring to in
10 part when we had the discussion about what I relied on
11 in Exhibit C-8, I believe it is; that I believe they
12 have not included -- not properly accounted for -- and
13 I don't mean it in an accounting sense but in a cost
14 study sense -- its marketing and sales costs.

15 Q. U. S. West has special marketing units set
16 up for its airport services. Does U. S. West allocate
17 all of the costs of marketing public payphones to the
18 airport market in its cost studies?

19 A. It's not clear to me that they do, but I did
20 not get workpapers sufficiently detailed to be able to
21 give you a definitive answer.

22 Q. Are you aware of whether U. S. West leases
23 advertising space on its public payphones?

24 A. I do not know specifically as to U. S. West.
25 I think -- although I know that is a practice in some

1 states. I have seen it discussed directly. I just
2 don't remember whether I saw it discussed in the
3 documents here in Washington.

4 Q. Is it your position that U. S. West enjoys a
5 competitive advantage over non-LEC payphone providers
6 due to its advertising and marketing abilities?

7 A. The answer is yes. Part of it is the
8 advantage any incumbent in a market has over a new
9 entrant, period. I mean, the standard example is
10 somebody who decides to go into the marketing of coffee
11 in competition with Maxwell House has to deal with the
12 fact that Maxwell House has invested and gained name
13 brand recognition for its coffee.

14 The only question that I think might be of
15 concern and perhaps should be of concern is who paid
16 for that name brand recognition in coin service? If it
17 was paid for not by coin, there is a problem.

18 Q. Doctor Cornell, I know we discussed this
19 earlier today on the record. It was discussed
20 regarding the second way in which U. S. West imposes a
21 price squeeze on non-LEC providers in this market.

22 Is it your position that one remedy might be
23 to increase the price of a local call above the current
24 level of \$.25?

25 A. Would you tell me what you meant by the

1 second way they impose a price squeeze? I'm sorry. I
2 just wasn't sure.

3 Q. This was taken from your testimony at Page
4 18, Lines 10 through 13.

5 A. Thank you.

6 THE COURT: While she is looking at the
7 citation, I know that it's particularly helpful to me
8 if you're referring to a portion of the testimony to
9 include a citation like that so that I can find it and
10 review it at the same time when it's possible to do
11 that.

12 Ma'am?

13 THE WITNESS: The answer is that that is
14 potentially one of the ways that this could be
15 corrected. That is -- let me amend that statement.
16 That may be one of the things the Commission might have
17 to look at.

18 My view about this is, however, that, if the
19 Commission told U. S. West that if you live by the
20 soared you die by the soared; that is, these are the
21 rates you are charging for bottleneck monopoly inputs,
22 all other firms must either be profitable paying you
23 those rates or go out of business. Your payphone
24 service must live by the same rule.

25 What you would find is that the first thing

1 that would happen would be to put a brake on commission
2 payments to location providers because that is a huge
3 expense that is completely under the control of U. S.
4 West.

5 If it were the case that even with virtually
6 no commission payments, if you also solved the problem
7 of free riding on non-sent-paid so that in one fashion
8 or another, either through a commission or through a
9 payment for the use of the box, people to make
10 non-sent-paid calls from payphones help to pay for the
11 box, if you did all of that and still found that U. S.
12 West could not profitably provide payphone service, it
13 would seem to me, then, logical to say now I must look
14 at what are the amounts that we're asking people to pay
15 for use of the box?

16 Personally, I do not think that would be the
17 outcome. That is, I do not think it could not be
18 profitable for U. S. West to have to live by the rules
19 it set for its competitors.

20 But you might find or the Commission might
21 find that there were insufficient payphones out there
22 in the market under those rules. Then and only then
23 would I look at what is the coin rate in the box for
24 local calls.

25 Q. If a Commission decision in this case were

1 to result in forcing U. S. West to give up the price
2 squeeze on its competitors, either through perhaps
3 reducing PAL rates or requiring U. S. West to pay
4 commissions on intraLATA, and if U. S. West were also
5 required to make comparably efficient answer
6 supervision and fraud detection available to its
7 competitors, would it be your opinion that non-LEC
8 payphone service providers might then be expected to
9 reduce their rates or at least would it be your opinion
10 that should be a result?

11 A. It is my opinion that it is likely to be a
12 result. And I say that based on experience in Florida
13 where there are at least two and I think more than two
14 payphone providers, non-LEC payphone providers, who
15 have a \$.20 rather than a \$.25 local call rate despite
16 the fact that Southern Bell's call rate is \$.25.

17 One of those is the largest non-LEC payphone
18 provider I believe in the country, not just in Florida.

19 Q. So, you believe that may be a result or
20 would likely be a result in Washington based on what
21 has transpired in Florida?

22 A. I believe it could be a result. And if you
23 really had the conditions for effective competition,
24 you really should begin to see, just as Washington and
25 the West Coast has been an innovator from what I can

1 tell in collecting anecdotal evidence in things like
2 the four minutes per dollar program, it seems Florida
3 has been an innovator in bringing down the local call
4 rate.

5 Q. Is it your understanding that U. S. West
6 contributes to its own payphones various excise taxes
7 such as payments for the Washington Telephone
8 Assistance Plan, E-911 or TDD telephone devices for the
9 deaf?

10 A. I do not believe in the imputation analysis
11 that I have seen them do that those are included. But
12 I would have to -- I could certainly check that.

13 Q. To your knowledge, do non-LEC payphone
14 providers pay these taxes?

15 A. I would like to check my confidential
16 exhibit because I think I included on that everything
17 that appears on -- yes, everything that appeared on an
18 actual PAL line bill. All of the taxes that appeared I
19 included in it must be C-3. It's labled as NWC-2. I
20 believe that means it's confidential Exhibit 3. The
21 taxes that I included are the taxes that appear on a
22 PAL line bill.

23 Q. On Page 17 of your testimony at Lines 13
24 through 15, you reference the fact that U. S. West
25 payphone operations have access to considerable market

1 data on their non-LEC payphone competitors.

2 A. Yes, I see that.

3 Q. And you state there that such market data
4 would not be normally available to a payphone
5 competitor.

6 A. I said it would not be as freely available
7 as to U. S. West. That is, in a normal market, a
8 competitor, any competitor, would have to go and pay in
9 one way or another to acquire that data. They would
10 not get it handed to them by their competitors.

11 Q. Are you referring there to U. S. West's
12 Margold data base?

13 A. I'm not sure what the data base is. I can
14 tell you that I'm referring to such information as who
15 precisely is the provider of the payphone where? How
16 many lines at a given location that payphone provider,
17 in fact, subscribes to; -- that kind of information.

18 Q. Does that include the data on installations
19 and disconnects of payphones?

20 A. Yes.

21 Q. Through discovery in this case, there have
22 been numerous product-specific loop cost studies
23 provided by U. S. West. Have you reviewed those cost
24 studies?

25 A. I believe the answer is yes, I did review

1 them early on.

2 Q. For example, there is a loop cost study for
3 public telephone service. Can you describe what that
4 service is?

5 A. Public telephone service is U. S. West's
6 brand name, in effect, for its coin phones that they
7 provide not in a semi-public typesetting. That is,
8 they do not charge the location owner an access line
9 rate per month. They simply install the phone, collect
10 the coins, and may or may not pay a commission,
11 depending upon the quantity of revenues that payphone
12 generates in terms of service revenues.

13 Q. There is also a loop cost study for
14 semi-public telephone services. What are those
15 services?

16 A. Semi-public services are where the same
17 payphone is attached to a line, but the premise owner
18 is charged a monthly rate for that service, and it
19 becomes, in effect, the telephone service usually --
20 not necessarily the only telephone service -- provided
21 to that location.

22 Q. There is also a loop cost study for
23 universal telephone services. Could you describe
24 those?

25 A. Universal telephone sets are telephone sets

1 that permit you to put coins in the box, use various
2 credit cards for making non-sent-paid calls, and often
3 -- and it also, I'm sorry, has direct access buttons
4 that other carriers subscribe to so you can press a
5 button and get directly, say, to MCI or AT&T or
6 somebody else usually restricted to interLATA calling.

7 Q. Is the credit card reader telephone service
8 yet another service?

9 A. That's my understanding. My belief is,
10 although I'm getting hazier on that set because there
11 were not very many of them as I recall, that that is
12 not compatible with coins.

13 Q. There is also a loop cost study for
14 charge-a-call telephone service. What is that and how
15 does that differ from the ones you just described?

16 A. My belief is, although I would have to go
17 back and check. I once had all of these described --
18 that charge-a-call uses a magnetic strip telephone
19 company provided calling card. I think that's still
20 the correct term for it.

21 You swipe it through in order to make a call
22 or you presumably can dial and input your credit card
23 number if you don't have a magnetic striped one. But
24 it does not permit coins.

25 Q. Are the product specific costs different for

1 each of these different products?

2 A. I do not have the studies in front of me,
3 but I believe they were. They were certainly different
4 for coin and PAL.

5 Q. Doesn't the statement a loop is a loop is a
6 loop have any applicability in this context?

7 A. I would certainly argue that the same kind
8 of arguments that are being debated in the case that
9 involves Centrex apply here and that, indeed, the
10 generic argument that, given that today it may be a
11 universal phone and tomorrow it may be a PAL, that, if
12 you're going to study loop costs for any version of
13 coin service separately from the broader study of
14 loops, you certainly should study them all together and
15 have a uniform length loop cost other than the
16 additional costs that turn it into a coin line as the
17 basis for all of these cost studies; that having
18 product specific which are based on how those were
19 distributed in the past in terms of distance from the
20 central office, which is one of the major
21 characteristics causing loop costs to differ, is
22 frankly wrong.

23 I'm struggling not to use the word
24 ludicrous, but it is definitely wrong, and it sends
25 entirely the wrong information and signals to the

1 marketplace if you base fully decisions on those
2 different costs.

3 THE COURT: Can we take our afternoon recess
4 without interrupting your train of thought, Ms. Brown?

5 MS. BROWN: Certainly.

6 THE COURT: Let's take fifteen minutes. Be
7 back at five minutes after, please.

8 (Recess.)

9 THE COURT: All right, let's be back on the
10 record after our afternoon recess.

11 Go ahead, Ms. Brown.

12 Before I go ahead, how did you do on the
13 discovery schedule?

14 MR. HARLOW: Judge, we have agreed and we
15 have a similar -- well, in fact, it's the same document
16 off the same computer as we gave you before with the
17 new dates. I can hand that up -- we did have to make a
18 couple of handwritten changes -- or we can send it in
19 later when it's clean or read it into the record,
20 however you would like to handle it.

21 THE COURT: Let's make copies of it the way
22 it is and distribute it before everybody goes home
23 tonight, and then we'll all be set. That would be my
24 preference.

25 You have all agreed on it? Mr. Shaw?

1 MR. SHAW: Yes.

2 THE COURT: Ms. Brown.

3 MS. BROWN: Yes.

4 THE COURT: Go ahead, please, Ms. Brown.

5 BY MS. BROWN:

6 Q. How did U. S. West loop costs for these
7 services, the ones you just went over before we went
8 off the record, compare with U. S. West loop costs for
9 public access lines purchased by non-LEC competitors?

10 A. Without the cost studies in front of me, I
11 can't give you anything but general answers. The
12 lengths are different. The lengths used to measure
13 costs were different among the different access line
14 categories or the average length, I should say.

15 There were some elements that were cost
16 elements attributed to PAL lines that were not always
17 attributed to the cost of coin lines. They were
18 attributed in some cases and not others.

19 Those are the two categories that made the
20 results different that I can remember without having
21 the studies in front of me.

22 Q. Do you agree with the studies of those
23 differences?

24 A. No.

25 Q. Why not?

1 A. Well, some of the things that were included
2 as a cost element in the PAL lines, one of them that
3 comes to mind was the cost of having a directory
4 listing. And yet U. S. West could not provide any
5 information that showed PAL lines ever wanted or had a
6 directory listing. Therefore, that was not an element
7 that should not have been included as a cost for a PAL
8 line.

9 I have gone over before the break, I
10 believe, why I believe it is inappropriate to use a
11 different length for two services that are directly
12 competitive, one with another. You should be studying
13 those combined rather than differently because your
14 only rationale for that difference is the past
15 accident sort of when people did and did not subscribe
16 to one or the other. And that could change at any
17 moment. And so that's not an appropriate cost
18 causative difference between the two.

19 Those are two that I remember. As I say, I
20 could do better if I had the cost studies in front of
21 me, but I don't.

22 Q. This case seems to present the Commission
23 with some conflicting issues. On the one hand we have
24 a fairly competitive market, albeit handicapped by what
25 you allege is anti-competitive behavior by U. S. West,

1 and on the other hand it seems that there is a portion
2 of the market which is high cost and not subject to
3 very much competition.

4 Is it possible that in addressing the
5 anti-competitive issues there must also be a policy for
6 universal payphone service?

7 A. I mean, the answer in some sense is that's a
8 policy decision for this Commission. I have a great
9 deal of respect for the possibility that there are
10 locations that need payphones that are not profitable
11 to provide payphones there.

12 I have, however, a great deal of suspicion
13 when a local exchange company comes forward and says
14 all of our unprofitable payphones are public interest
15 payphones because a few occasions when I have really
16 had the data it turns out it's the eleventh phone in a
17 bank of eleven or even the eleventh and twelfth in a
18 bank of eleven and twelve that are the "unprofitable"
19 payphones.

20 That strikes me as not something the
21 Commission should be interested in fostering or
22 worrying about.

23 It is also the case from talking to private
24 payphone providers or non-LEC payphone providers around
25 the country that inner cities, for example, with a lot

1 of poor residents are not unprofitable locations for
2 payphones. Those are very lucrative payphones because
3 that is universal service for those residents in many
4 instances.

5 Indeed, homeless shelters at least in
6 Florida, again, where I have probably the most recent
7 and detailed knowledge of who competed for what kind of
8 locations, homeless shelters were eagerly sought after
9 by non-LEC payphone providers as places to put
10 payphones.

11 Not surprising if you think about it. Every
12 phone call those people must make is going to have to
13 be a payphone. And in a number of cases these were
14 served by the payphone provider who had the lower local
15 coin rate than Southern Bell.

16 So, it seemed to me that you need to be
17 careful when you're talking about public interest and
18 universal service vis-a-vis payphones. You really are
19 dealing with the kind of situation where the payphone
20 is needed from a public policy perspective and I
21 suspect the image that comes to my mind is along the
22 long stretch of lonely road where somebody might get
23 stranded a long way from help and a long way from being
24 able to summon help until cellular phones are
25 universal, a payphone is the substitute in that

1 situation, and the lower cost alternative.

2 But that might not be a profitable place to
3 put a payphone on a lonely stretch of little used road.

4 That kind of location clearly is a candidate
5 for public interest payphone. That is, you're not
6 going to put in a bank of them, and you're not going to
7 have potentially enough profits out of it to make it
8 profitable to serve, and yet there is clearly a public
9 health and safety reason why you might want such
10 service in such a location.

11 Q. Is it your recommendation that the
12 Commission address the universal service issue in this
13 proceeding?

14 A. It would be my recommendation that the
15 Commission decide, number one, that they want
16 information about whether there are such locations and
17 that they ask for that information.

18 I would not hold up correcting the price
19 squeeze until you have that information. And my
20 reasons for that are quite powerfully that the sooner
21 you correct the price squeeze the sooner those
22 locations that, in fact, could be competitive that
23 maybe are not now get taken out of the category that
24 anyone might claim is a public interest payphone
25 location.

1 If it were the case -- and I'm not saying it
2 is, but only the market properly constituted would
3 answer this -- U. S. West is the high-cost provider.
4 If you rely solely on its claims of locations that meet
5 these characteristics, do not correct the price
6 squeeze, you never get a chance to find out whether
7 some of those could be profitably served by the
8 low-cost provider.

9 Q. Would you recommend that the non-LEC
10 payphone provider be required to make payphones
11 available at high cost locations, also?

12 A. I had in my testimony one of two techniques
13 for dealing with these what I call public interest
14 phones, that is, high cost/no profit locations. One
15 is to say that's part of the monopoly franchise if
16 that's how you wish to handle it. The other was to say
17 find the locations, identify how many of them there
18 are, and in some technique analogous to insurance
19 pooling in states where there is mandatory insurance
20 and this process of covering the bad risks, if I can
21 put it that way, that you allocate them based on the
22 market share each payphone provider has of competitive
23 locations, competitive payphones.

24 Q. Is it your recommendation then that the
25 Commission regulate non-LEC payphone providers?

1 A. It would be my recommendation -- and, again,
2 I don't want to be caught in a legal discussion of what
3 it means to "regulate" that, given what I have read of
4 the restrictions on payphone access line tariffs, that
5 anything I'm recommending could be done through the
6 same mechanism.

7 That is, you may not be a valid subscriber
8 to an access line for attachment of a payphone unless,
9 and then those things that the Commission feels are
10 important are part of the condition of being a valid
11 subscriber.

12 Q. Yesterday Mr. Coulson of Digital Access
13 raised the issues of validation, billing, and
14 collection charges that are imposed against them by U.
15 S. West.

16 In your opinion, are those charges justified
17 by U. S. West cost studies?

18 A. They have very high contribution levels.
19 The question that I haven't been able to answer because
20 we have not gotten the data and that I really would
21 like to be able to answer and bring before you is data
22 in some sense is very similar to the way Mr. Wilson
23 analyzed IPI's claims. And he looked at sort of price
24 differences charged at IPI locations compared to other
25 locations.

1 Similarly, we know that there are very
2 different billing and collection charges or we believe
3 there are between what is charged to the non-LEC
4 payphone providers as compared to other subscribers or
5 other users, let me put it that way, of virtually
6 identical billing and collection services of U. S.
7 West.

8 I'm very concerned that, if the same kind of
9 disparity in rates shows up, it is going to say very
10 clearly that, exactly analogous to Mr. Wilson's market
11 power analysis for IPI, that U. S. West may have very
12 significant market power in this area and that it is
13 being used anti-competitively.

14 And I still have not been able to get the
15 data and would like to bring that in in the next round
16 of the hearing on the assumption that by then we have
17 gotten the data. I think there is a real problem
18 potentially there based on what I have been able to
19 see, but I haven't been able to see enough to be able
20 to give concrete numbers.

21 Q. I would like to direct your attention to
22 your testimony at Page 11. Beginning at Line 3 and
23 running through 7, you state that to the extent that
24 there are more captive users of payphones than there
25 are buyers of milk, moreover, rate caps set after the

1 other conditions for effective competition have been
2 met can insure that payphone users are not over charged
3 for use of payphones when they are captive.

4 How do you envision this Commission
5 designing and implementing such a rate cap?

6 A. In the way I tried to answer that in some of
7 the answers I gave to Mr. Shaw:

8 That is, the Commission could, if it felt
9 that this was a problem, -- and, again, I'm attempting
10 to say that I don't know for a fact it's a problem, but
11 I am not at all -- I used the term earlier
12 disrespectful of the fact that the Commission might
13 think it is -- that is, it seems to me that is not an
14 irrational concern -- that, once you have set the
15 conditions for effective competition, you can say --
16 and I have seen this in other states -- that you are
17 not a valid subscriber to a payphone line if you charge
18 more than let's say \$.25 or whatever you wish to set as
19 the local coin rate for a local call.

20 Q. In your review of U. S. West's cost studies,
21 are all of the relevant costs of the Margold data base
22 allocated to U. S. West public payphone services?

23 A. Boy, you have me there. I don't know. I
24 didn't see in the backup data enough to enable me to
25 answer the question.

1 MR. SHAW: I have nothing further.

2 THE COURT: Thank you. Commissioners, have
3 you questions?

4 COMMISSIONER CASAD: Yes.

5

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

7 BY COMMISSIONER CASAD:

8 Q. Good afternoon, Doctor Cornell.

9 A. Good afternoon.

10 Q. I would like to explore with you a bit what
11 I would term a never never land or maybe no man's land
12 or uncharted waters that I think you described as to
13 how to resolve the problems the payphone providers
14 have.

15 As I have understood your testimony, in a
16 number of instances and places, you have proposed that
17 U. S. West, one, either be required to do certain
18 things, i.e., impute revenues to create a more level
19 playing field for your payphone providers, and/or the
20 establishment of a separate subsidiary.

21 A. Right.

22 Q. Now, I assume that the rationale -- and I
23 think you indicated as much -- for establishing a
24 separate subsidiary is to free the operation from
25 potential cross subsidy from the regulated activity.

1 A. It's a form of cross subsidy, although to be
2 economically pure, I can't call it that. But if they
3 take services at a lower price than they charge their
4 competitors, they have deprived the rest of the
5 ratepayers of the contribution they could have had if
6 they had just let the competitor take the market.

7 And in that sense it's a cross subsidy.

8 Q. I have never found anything that's
9 economically pure.

10 A. But if you have a Ph.D., you're supposed to
11 try to be.

12 Q. I don't think you answered my question. If
13 you did answer my question, I don't understand your
14 answer.

15 A. Can I try it again because I really want to
16 make sure you do understand.

17 Q. Please.

18 A. The answer is that my argument is every time
19 U. S. West wins a location but does not charge itself
20 what it charges its competitors for the bottleneck
21 monopoly, the access line, the local exchange usage,
22 the validation of its credit cards, perhaps billing and
23 collection, it is receiving less for those monopoly
24 elements than it could have received if the competitor
25 got the location. And it is thereby in effect cheating

1 the rest of its ratepayers because the rest of the
2 ratepayers would have been better off if U. S. West had
3 not been the provider of the payphone.

4 Q. In my lexicon that's called cross subsidy.

5 A. I said it was equivalent to and that just I
6 was trying not to have some economist later take the
7 transcript and say, see, she doesn't know the proper
8 economic definition of cross subsidy. That's literally
9 all I was trying to do.

10 Q. I'm satisfied that you know the correct
11 economic definition. The important thing is that both
12 you and I understand what the definition is. And to me
13 cross subsidy is the utilization of the resources of
14 the regulated firm to subsidize or to support the
15 operations of the non-regulated firm which ultimately
16 works to the detriment of the regulated company's
17 ratepayers.

18 A. Given that definition, yes, it is, indeed, a
19 cross subsidy.

20 Q. So, that is the prime reason why you want to
21 establish a subsidiary, an unregulated subsidiary, to
22 conduct these operations so there will be no danger of
23 that occurring; is that correct?

24 A. That's partially correct. To me, having
25 looked at this issue -- and this goes all the way back

1 to when I was at the FCC -- it's a cheaper way of you
2 ensuring this outcome than having to have Staff that
3 pour every year over cost studies and pricing plans and
4 looking at all of that data and trying to take it apart
5 and put it back together and prove that, in fact, the
6 same terms and conditions are being met.

7 If instead -- and I did not necessarily say
8 it had to be a deregulated subsidiary, although I would
9 argue once you set it up that way anything that
10 legitimately concerned you could be handled in the way
11 I just described to Ms. Brown -- that is, the monopoly
12 clearly regulated firm could not provide a coin line to
13 anyone who did not obey certain restrictions -- but
14 nonetheless, what the real concern is, if you had it as
15 a separate subsidiary that had to take everything from
16 the parent under tariff, you would automatically end
17 the problem because everybody could subscribe to the
18 same tariffs. And that would be the only way U. S.
19 West Payphone, Inc., or whatever it was called could
20 get its services. You would know they were paying the
21 same price.

22 Q. So, your approach then is to establish a
23 subsidiary within the regulated company that is going
24 to be charged a tariff or has to pay a tariff rate as
25 established by its own company to ensure that there is

1 no cross subsidy to that operation. Is that correct?

2 A. That's almost the entirety of it. The rest
3 of it is that, if that subsidiary does not make a
4 profit, the losses cannot go against either the
5 monopoly company or in terms of being part of the
6 revenue requirement, or being taken into account in any
7 sharing proposal if you have an alternative form of
8 regulation in place with a sharing mechanism.

9 Q. How does that scenario comport with your
10 comments that you think the best environment in the
11 payphone industry is a truly competitive environment?
12 And that you want the regulated telephone company and
13 others under different conditions to provide the public
14 service payphones. You want the long arm of law or
15 regulation or somebody to tell everybody that they have
16 certain obligations that they have to fulfill.

17 Now, that's currently done because -- in the
18 regulated company's situation because they are
19 regulated.

20 I find a contradiction here that I find very
21 difficult to resolve.

22 A. First of all, I'm not having as much of a
23 problem as you are. So, I may not respond and if I
24 don't give answers that you think are responsive please
25 come back and ask me.

1 Q. It's obvious on its face.

2 A. Nobody in telecommunications is truly
3 completely unregulated. The form in which you regulate
4 them is different. I'm using regulation not as a legal
5 term because I'm not a lawyer, but nobody is truly
6 unregulated.

7 The regulation you have in place today say
8 that local exchange companies may provide, you know,
9 may provide access to non-LEC payphone providers on the
10 following terms and conditions. They must provide dial
11 tone and free access to 911. They cannot have charges
12 for directory assistance -- I believe this is correct
13 -- higher than those in effect charged by, excuse me,
14 U. S. West and AT&T.

15 There is a third provision that I have now
16 unfortunately forgotten that came out in the same way.
17 That is, anyone to be a subscriber to these lines must
18 live by these rules.

19 But you leave it up to U. S. West as
20 enforcing its tariff to enforce the rules.

21 I was saying that exact same mechanism can
22 be used by you to enforce the few things that, in fact,
23 may need to be enforced --

24 Q. May I stop you right there?

25 A. Yes.

1 Q. Because you say you don't want to address
2 the legal issues involved. I'm not a lawyer, either.
3 So, maybe we can both feel free to horse around here.
4 I don't think you can look at it in the absence of
5 legal issues, and let me explain why:

6 In the situation that we're dealing with,
7 Mr. Coulson yesterday was describing a company which is
8 not only not regulated, but is not even registered as a
9 telecommunications company in this state.

10 Now, how are you going to enforce whatever
11 provisions you're going to mandate that they subscribe
12 to as a result of accepting the U. S. West tariff
13 offering if they are not even registered as a
14 telecommunications company? Certainly the Commission
15 cannot do it.

16 A. Actually, the Commission can and let me try
17 to give you a hypothetical. Okay?

18 Supposing you did what I recommended. First
19 of all, one of the things that really does happen is
20 that somebody from U. S. West who is involved in any
21 way in this walks into, let's say, the West Water Inn
22 and they will go and look to see who has the payphones,
23 whose name is on the payphones. And then they will try
24 to make a local call from time to time and test out
25 what are the terms and conditions. And I'm just,

1 again, I'm giving you a hypothetical. And they go and
2 they try to make a local call, and the smart payphone
3 with its little read-out device at the top says, "Local
4 call \$.30," and you had the requirement that U. S. West
5 could only -- U. S. West Communications regulated
6 monopoly company could only provide PAL lines on the
7 condition that the subscriber agreed to the cap of
8 \$.25. That was one of the things that we talked about.

9 I can assure you that the first thing that
10 would happen is that U. S. West person would or some
11 other competitor's person would lodge a complaint with
12 U. S. West that they had a subscriber who was violating
13 the tariff. U. S. West has every incentive to go after
14 that person because its payphone subsidiary has to live
15 by those rules and can't compete if somebody is
16 cheating.

17 And so U. S. West's regulated monopoly
18 company would notify that company that its payphone
19 lines are going to be turned off in five days unless
20 they change that rate at that payphone.

21 And eventually it could turn them all off as
22 being invalid subscribers because the company had
23 violated it in one place, and it was a requirement for
24 every place. And it would be up to the payphone
25 company to come in front of you, complain about U. S.

1 West, and try to get its service restored.

2 Q. I'm not nearly as sanguine as you are.

3 A. I have watched people go and look at
4 alternative payphones. I can tell you this really does
5 take place.

6 Q. First I thought you were describing a
7 situation in which we were going to have the regulated
8 company establish a pay telephone police force in which
9 they would go around and make calls and see if things
10 are posted right and then someone would have to pay for
11 that function, and I assumed that was going to be the
12 regulated customers of that regulated company. I'm
13 glad you didn't go quite that far.

14 But by not going that far, I think you also
15 in my mind have made it absolutely impossible to have a
16 workable enforcement mechanism. It doesn't seem to me,
17 if there are a number of clients who are accepting that
18 tariff out there, I suspect that the old philosophy of
19 pull up the ladder, I'm up, would apply more often than
20 not. And I suspect that payphone companies as long as
21 they were -- nobody was raining on their parade they
22 probably wouldn't rain on anybody else's.

23 A. That's not the way I have seen these guys
24 work. I have watched a lot of people --

25 Q. Let's explore how broadly have you seen this

1 work? How many instances are you personally
2 knowledgeable of in that environment where that kind of
3 situation has happened?

4 A. In terms of payphones, I'm not knowledgeable
5 of any cases where it's been yanked precisely because
6 I'm aware of no cases where somebody has violated the
7 local exchange rate cap. That exists in Texas, by the
8 way. There is a local exchange coin rate cap on the
9 subscription.

10 I have watched resellers, classified
11 resellers, of WATS have their subscriptions turned off
12 for violations of the tariff conditions, a large number
13 of times around the country.

14 Q. But not payphone operators?

15 A. Not payphone operators. But, remember, the
16 history of what happened to resellers is there for the
17 payphone operators to be aware of. That is, that their
18 service is going to be yanked if they don't obey the
19 terms of the tariff. And that has happened. It has
20 happened frequently. And frequently enough that in a
21 survey in Texas that is now a number of years old,
22 Southwestern Bell doing -- creating a small mini
23 temporary payphone police, I might add, could not find
24 anyone who was not, you know, who was violating the
25 \$.25 rate cap.

1 And I can assure you the one thing a private
2 payphone vendor or non-LEC payphone vendor cannot do is
3 to guess when some guy hops out of his pickup truck
4 unmarked that this is going to be a U. S. West employee
5 and quickly reprogram the phone to live by the cap.
6 That is, they found the phones the way those phones
7 were being presented to the public, and they did not
8 find it.

9 Q. I kind of have the feeling, Doctor Cornell,
10 as I oftentimes do when I'm listening to economists
11 discourse on various subjects, that somebody is trying
12 to dazzle me with foot work because I don't think your
13 answers are very direct nor are they very responsive to
14 what I think I'm obviously trying to get at.

15 A. That is painful because I am not trying to
16 dodge, and I'm not trying to do fancy foot work and --

17 Q. You're doing what economists do?

18 A. I'm trying to give you the truth and nothing
19 but the truth as I know it, sir.

20 Q. Let's move on to a couple other elements of
21 your proposal.

22 You want to share the burden of providing
23 public service telephones, pay telephones. You want U.
24 S. West to provide some, and you want the competitive
25 providers to provide some.

1 And the way you're going to achieve that is
2 you're going to allocate a certain number of those pay
3 telephones premised on the I guess number of pay
4 telephones that that particular company has in
5 operation or some similar formula.

6 A. Mm-hmm.

7 Q. How are you going to enforce that?

8 A. The same way. That is, I would require --
9 if I sat in your shoes, I would first require that
10 these locations be identified. I would require that
11 they be allocated and that the company that takes them,
12 that gets them out of the pooling provision, has to
13 make that information known to the Commission and that
14 they may not remove it without notification to the
15 Commission and a chance for there to be a replacement
16 provided.

17 I don't think you're going to see very much
18 of this, frankly; that a company that is a successful
19 and profitable payphone company, not subject --
20 subjected to a price squeeze, is not going to find this
21 a burdensome obligation.

22 The one thing I have never had a problem
23 talking to payphone associations around the country is,
24 the first thing they say is, "We'll do that. That's
25 not a problem. We don't think there are many of them

1 out there that are going to meet the objective criteria
2 of not being profitable in a market where we're not
3 confronted with a price squeeze."

4 And if there are, it's just like you have
5 not had problems, I believe, in most cases with having
6 911 accessible without charge. It's so logical, it's
7 so obvious that this is in the public interest, people
8 do things.

9 Q. Are we going to then establish a separate
10 segment of the Commission to hear all these cases? Are
11 we going to bring on an extra ration of ALJs and extra
12 Staff and others to rule on these complaints that are
13 filed by these abused parties out there and the only
14 place they have to go for enforcement action is to the
15 Commission?

16 And so we have to have some mechanism or
17 establish some mechanism to handle those complaints.
18 Would that be the process that you would endorse?

19 A. I don't see it as being frankly as consuming
20 of your resources as going through the process we're
21 going through today is. I don't see it as being
22 anywhere near as difficult to deal with that issue, are
23 you obeying the tariff or aren't you, as it is to look
24 at, examine, and try to figure out -- I mean, you heard
25 the questions that the Staff asked me. Have they

1 properly allocated the Margold data base costs to
2 public phone service? And I have spent a long time
3 looking at those cost studies, and I don't know the
4 answer. That's an expensive process, and now there are
5 clearly two of us who have looked at that issue and
6 don't have an answer.

7 It's a lot easier to say did they live up to
8 the tariff or didn't they?

9 Q. As one who has spent an awful lot of time
10 sitting up here listening to cases -- this is one
11 proceeding here. Hopefully it will be a useful one.
12 But the requirements of our system of making
13 determinations is one that provides all kinds of rights
14 and opportunities and processes to all the parties.
15 And I have never seen one in which those parties didn't
16 usually try to exercise their right to have these
17 processes observed.

18 So, I can foresee -- you can't, but I can --
19 I can foresee a whole lot of hearings and a whole lot
20 of complaints and a whole lot of determinations that
21 would have to be made legally and within the framework
22 of the regulatory environment in which we exist, and
23 that would certainly include our treatment or our
24 fulfillment of the provisions of the Administrative
25 Procedures Act.

1 Again, I'm not nearly as sanguine as you that
2 it would be that simple.

3 A. Can I make one response?

4 Q. Please do.

5 A. I understand what you're saying. My
6 observation of the legal processes now fairly close up
7 since I went to work for the FCC and afterwards is that
8 the more the issue is a very narrow factual one and
9 it's clearly specified what your obligations are and
10 what your rights are and very objectively measurable,
11 the less you see dispute about it because it becomes
12 much more black and white.

13 Q. Either the quality of the lawyers practicing
14 before the FCC is entirely different -- not the
15 quality -- the capability perhaps of the lawyers
16 practicing before the FCC is entirely different than
17 here perhaps. I find these people can litigate about
18 anything. They will. And we're witnessing it right
19 now.

20 A. The last one with all due respect, sir, I
21 would disagree with. But I would point to you for
22 example to the equipment registration program where
23 there is not a lot of litigation.

24 The standards are clear, you either meet
25 them or you don't. There are objective tests for

1 whether you do or you don't. And you do not see a lot
2 of litigation that this piece of equipment should have
3 been registered when it wasn't or this piece of
4 equipment was registered when it shouldn't have been
5 precisely -- even though all the same rights that
6 you're talking about exist in that domain if I can put
7 it that way. But the standards are so clearly
8 objective and measurable that there is not a lot of
9 room. I mean, it's a waste of money to litigate it.

10 Q. I don't see many cases brought against
11 people spitting on the sidewalk either but I'm sure
12 there are absolutely clear legal rules that prevent you
13 from doing it. The stakes aren't high enough so that
14 somebody is going to engage in litigation.

15 Anyway, this is a non-productive
16 conversation. It's not useful for me to debate here
17 with you.

18 Again, returning to the statement that you
19 made that the competitive environment is the best
20 environment, and in order to reach that truly
21 competitive environment we have to totally restructure
22 where we are.

23 And if we're going to talk about a level
24 playing field, let us talk about one which is level in
25 all respects. And it's people indicating that they

1 would have no problem competing with the regulated
2 company if the regulated company was truly unregulated,
3 truly competitive.

4 But I sense that that is not quite going to
5 satisfy what you want. You want the regulated company
6 to continue to perform certain functions. All you want
7 is a fair, competitive advantage is what it seems to
8 me. Otherwise, free up the regulated company of its
9 obligations. Let them take their capital, of which
10 they have more probably than virtually anybody else.
11 Let them into the marketplace in an unfettered way and
12 see who ends up with the payphones.

13 And I suggest that the level of expertise,
14 the level of capital, the sheer size of that company
15 would make it almost certain that they would probably
16 end up with most of the payphones.

17 Now, you don't want that to happen. You say
18 that would be unfair, also.

19 A. I haven't said that, sir.

20 Q. Okay. Then --

21 A. I haven't said that. What I was not taking
22 a stand on is whether this separate subsidiary would be
23 "regulated" or not regulated under the terms of the law
24 because I don't know entirely what those terms in a
25 legal sense mean.

1 I was also not taking a stand on whether you
2 should or should not if you set up this separate
3 subsidiary and said the only thing it must do is live
4 by whatever tariff terms and conditions U. S. West
5 regulated puts on the coin line or the PAL line, I did
6 not say whether you should make one of those a cap on
7 local rates or not. I said that was up to you,
8 dependent on how you felt about whether that was a rate
9 that needed control or not.

10 I have not said, even though Mr. Shaw I
11 think tried to get you to think I was saying --

12 THE COURT: I don't think I said that you
13 said those things, either.

14 THE WITNESS: I did not say that that had to
15 be a regulated subsidiary with its profits going into
16 the regulated side of the house, but losses not to the
17 regulated side.

18 I presented a separate subsidiary as an
19 administrative convenience for you, for your Staff, who
20 otherwise would have to, if you want to have fair
21 competition, -- and I am not talking about unfair or
22 extra competitive advantage for the payphone folks that
23 are not U. S. West. I'm just talking about a fair
24 competitive situation that allows you to see effective
25 competition in Washington -- that you have got two

1 choices. One is separate subsidiary and the other is
2 endless monitoring of imputation studies year after
3 year.

4 And those are expensive and difficult, and
5 that a separate subsidiary saves you a lot of that
6 effort. And that is literally what I have tried to
7 present to you.

8 BY COMMISSIONER CASAD:

9 Q. I'm going to give this up pretty soon. I'm
10 going to have to. We're going to run out of time.

11 THE COURT: We have got redirect.

12 COMMISSIONER CASAD: Once more. I want to
13 just explore. I probably shouldn't. But I'm asking
14 for it because I suspect the kind of response I'm going
15 to get. But I'm going to do it anyway.

16 BY COMMISSIONER CASAD:

17 Q. As an analogy, let's try to compare this
18 situation to the issue of competition in the local
19 exchange where you have an established company with an
20 obligation to serve.

21 You have new entrants into the marketplace.
22 New entrants may not be controlled in any sense. If
23 they are competitive, I guess they wouldn't be
24 controlled.

25 They are able to sit down at the table and

1 partake of the food on an equal basis without having
2 any capital investment, without having any obligation.
3 But they take all the finer cuts of meat and leave
4 others with the lesser cuts of meat.

5 I'm only doing this to try to dramatize the
6 situation. And I'm curious about what is your view
7 about that?

8 A. I cannot give you a terribly short answer,
9 but I will do the very best I can, Commissioner. First
10 of all I do not think the payphone situation is
11 analogous to the whole situation with what's known as
12 CAPS or ALPS or whatever is the acronym of the day.
13 You have a situation in there in which you have
14 geographically averaged rates for a set of services
15 that seem fairly clearly to have different costs,
16 depending on the density of the population.

17 The information in the payphone industry to
18 the contrary is that the non-LEC payphone providers do
19 not seem to have any success of any major magnitude in
20 penetrating the very high profitability locations in
21 this industry; that they are concentrated in sort of
22 the middle to -- I mean, they are sort of the
23 equivalent of the competitors for the lower/upper
24 middle class if I can do it in terms of population of
25 payphone locations. They can compete for 7-Elevens.

1 They have an enormously difficult time competing for
2 airports.

3 Q. You said truck stops are less captive than
4 hospitals.

5 A. The fact is the most lucrative location is
6 an airport. But they can't compete for them. I'm not
7 sure why. It does tell me, however, that whether
8 somebody comes in and starts to raise an analogy to
9 what's often referred to as cream skimming, a term that
10 I believe belongs in a dairy, but never mind, that this
11 is a market in which that is not an appropriate -- this
12 is a truly a market which even if you think cream
13 skimming belongs elsewhere than a dairy does not apply;
14 that this is not what's going on.

15 Q. You missed the point. I poorly described
16 it. The analogy was poorly made because I knew it was
17 going to be poorly made when I said it. And I didn't
18 intend it to be an exact analogy and I think it's going
19 to be non-productive for you to further discourse on
20 it. I'll withdraw the question. Thank you.

21 A. I'm sorry because I had one more thing to
22 say.

23 THE COURT: Commissioner, anything?

24

25

E X A M I N A T I O N

1 BY COMMISSIONER PARDINI:

2 Q. I don't dare start with an analogy, but you
3 used an analogy of the Sears catalog store.

4 A. Yes.

5 Q. The Sears catalog store is selling
6 telephones was not analogous to a local telephone
7 operators providing telephone service.

8 Could you explain on that just a little bit,
9 please, Doctor?

10 A. Sure. What I was trying to say was -- and
11 that was in response to a question about re-selling.

12 Q. The question was from Miss Brown, yes.

13 A. I find that whole notion peculiar. You're
14 in the business of whatever you're in the business of.
15 And to provide that service or product, you buy a lot
16 of inputs, and you put them together and you produce a
17 product.

18 Q. Okay.

19 A. I have deliberately used the Sears catalog
20 store or mail order -- they are called mail order but
21 today they are mostly telephone order stores, in fact,
22 is how they all do their business.

23 And for them telephone service is a very
24 major input to their output. But nobody calls them
25 "resellers," even though they add the cost of telephone

1 service to the cost of merchandise as they acquire it
2 and to the cost of warehousing.

3 Similarly, a firm whose output is some kind
4 of telecommunications output from voice mail to
5 payphone service to interexchange service or whatever
6 needs other telecommunications inputs.

7 And yet by some criterion that I still don't
8 understand, frankly, sometimes they are labeled a
9 "reseller" and that's bad. And sometimes it's okay.
10 And they are not called that and that's good.

11 And from an economic perspective, it's all
12 the same.

13 I finally said to myself, am I re-selling
14 telephone service when I bill my clients directly the
15 charges that I incur for telephone service to talk to
16 them plus the value of my time or the price that I
17 charge for my time? And people seem willing to pay it
18 so far so I guess it's the value. Is that re-selling
19 telephone service?

20 It's no more re-selling it than I'm
21 re-selling the paper that I write my testimony on or
22 anything else. It's no less re-selling it than that.
23 It's kind of a meaningless distinction in economics,
24 and that was what I was trying to get at.

25 Q. In economics, is there a term "re-selling"

1 which would have as its basis selling a product at a
2 higher price without adding any value to it? Suppose
3 one takes a product as in the telecommunications
4 industry, makes it available through a device or
5 through a location, simply does not add any value, does
6 not improve the clarity of the call, the speed of the
7 call, the accuracy of the call, but charges a higher
8 price for it. Is there a term in economics for that?

9 A. Well, no. I would call it -- if you
10 literally added no value -- and I do not agree that
11 payphones do not --

12 Q. We can argue that later on. But let's
13 assume hypothetically.

14 A. Literally nothing else was done, then you
15 are taking advantage of ignorance.

16 Q. Taking advantage of what?

17 A. Ignorance.

18 Q. Okay.

19 A. I don't know any other term.

20 Q. Could you categorize it as selling a
21 convenience that you happened to be there?

22 A. It could be. But then you're adding value
23 because the implication is that, if you were not there,
24 the customer could not have had it.

25 Q. I'm in my hotel room in my shorts at 10:00

1 at night. That local call is a buck, and I don't want
2 to go down to the lobby for \$.25. Is that convenience,
3 adding value? How do we do that?

4 A. That's why I have concerns about and said
5 it's legitimate to have concerns about -- that I have
6 respect for having concerns about captive customers.

7 However, unfortunately, the telephone in the
8 hotel room is far more, you know, the surcharge is far
9 higher than the \$.25 coin rate at a payphone.

10 Q. Are you concerned from an economic
11 standpoint and could there be any impact on the
12 question of over phoning? Over phoning has been
13 described here this afternoon as basically the
14 establishment of a number of instruments beyond those
15 needed to provide economic efficiency. I think that's
16 paraphrasing some of the descriptions.

17 There has also been significant testimony by
18 you, Doctor, that U. S. West computes to itself charges
19 different than it computes to the Telephone
20 Association. And consequently overcharges or operates
21 at a loss. They get a subsidy from the regulated
22 ratepayer.

23 Is that logical under an incentive
24 regulation program that a company would continue to
25 take losses which would be paid out of its share of the

1 incentive that it might get?

2 A. In the present world, I would argue yes for
3 the following reason, which is: These actions are not
4 being taken for short run gain, but for long run gain.
5 And there is no guarantee that in the long run they
6 will still be under incentive regulation and not back
7 under rate of return.

8 And as long as that's the case, the kinds of
9 incentives of rate of return regulation to have perhaps
10 too much capital in the rate base and continue to earn
11 what you can earn on it continue to exist, particularly
12 whether this is carried forward from the past and they
13 are sitting there and I'm a little handicapped.

14 The evidence is in the record, but it is
15 confidential -- with plans for what they want to do for
16 the future where they would not want to give up
17 locations now because it would be harder to get them
18 back once they have been able to make all of the
19 changes in their operation they plan to make.

20 And so, yes, it is quite logical for them to
21 continue to do this now while waiting for this set of
22 events to unfold in the future.

23 COMMISSIONER PARDINI: Thank you. That's
24 all I had, your Honor.

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

1 BY THE COURT:

2 Q. Following up on Ms. Brown's question
3 referring to Page 11 of your testimony where you talked
4 about rate caps, how would the Commission determine the
5 level of a rate cap if it decided to do that?

6 A. I would start obviously with the rate that
7 is in effect today for a local coin call. I think if
8 you were presented with evidence from the industry at
9 large, including now the payphone subsidiary of U. S.
10 West, that cost conditions had changed and it was
11 therefore no longer a reasonable tariff restriction of
12 U. S. West, and they could prove that, you would be in
13 the same position that you would be when any customer
14 comes in and says a particular tariff is no longer just
15 and reasonable. And you would have to look at that
16 evidence and come to the conclusion, either yes or no,
17 we think this is a reasonable restriction on the local
18 rate.

19 Q. So, start with the level for the local coin
20 call that exists now and then potentially change it in
21 the future in some manner with cost information
22 provided?

23 A. That's right. Or if you ever were in a
24 world in which for whatever reason you knew there was
25 an inflationary pressure, you could allow an

1 inflationary increase, you know, in some fashion built
2 into that tariff restriction.

3 Q. Listening to Mr. Shaw's questions and the
4 prefaces to a couple of his questions, how did you take
5 into account in your recommendation to set up a
6 separate subsidiary, if you did indeed take into
7 account at all, your understanding of whether
8 Washington law would allow the Commission to require
9 that? Did you take that into account? And, if so,
10 how?

11 A. I took it into account in the following sort
12 of double negative, if I can use that word that way. I
13 talked it over with the lawyers for the Payphone
14 Association.

15 My experience has been in other states that,
16 when that is a recommendation, that is for whatever
17 reason clearly not permitted under the laws of the
18 state, the lawyers tell me that isn't permitted. This
19 is not a sensible recommendation to make.

20 I made it here in the alternative. I said I
21 think this is the easiest way administratively for the
22 Commission to achieve the much more important goal,
23 which is not per se the creation of a separate
24 subsidiary, but, rather, the goal of ending the price
25 squeeze.

1 Q. Okay.

2 THE COURT: I think that's all I have. Are
3 you going to have redirect, Mr. Harlow?

4 MR. HARLOW: Yes. But not a substantial
5 amount.

6 THE COURT: Can you estimate for me how
7 much?

8 MR. HARLOW: Five or ten minutes.

9 THE COURT: Shall we proceed directly into
10 that, Commissioners?

11 COMMISSIONER CASAD: Yes.

12

13 R E D I R E C T E X A M I N A T I O N

14 BY MR. HARLOW:

15 Q. Doctor Cornell, under questioning by Mr.
16 Shaw, I believe you agreed with him that, if a coin
17 line were made available, only U. S. West could attach
18 so-called dumb phones due to the lack of Part 68 FCC
19 registration. Do you recall that?

20 A. Yes, I do.

21 Q. Under those circumstances, could you please
22 explain for the Commission why you advocate that U. S.
23 West nevertheless be required to provide a coin line on
24 an unbundled basis?

25 A. It is my understanding from talking to

1 various people over the years that there are smart,
2 dumb, what is the in between, mediocre sets, that could
3 take advantage of the answer supervision that comes
4 with a coin line and some of the anti-fraud
5 capabilities that come with the coin line, but
6 nonetheless continue to do the kinds of things that a
7 smart set does in terms of rating calls and so on.

8 Q. Mr. Shaw also asked you whether it was your
9 understanding that the Commission's rules regarding
10 PALs did not require but authorized local exchange
11 companies to file PAL tariffs for intrastate
12 communications.

13 Do you recall that?

14 A. Yes.

15 Q. Do you believe that it's in the public
16 interest for local exchange companies to file PAL
17 tariffs for intrastate communications or connection to
18 the intrastate network?

19 A. Oh, yes. As I have said before, we're
20 beginning -- just beginning in this country to see some
21 of the benefits of that in terms of lower coin rates.
22 Here in Washington, the four for a dollar type program.
23 And as I said before, in Florida, the lower local coin
24 rate.

25 Q. Do you believe it would be in the public

1 interest for any local exchange company that has filed
2 a PAL tariff for intrastate connection to subsequently
3 withdraw that tariff or attempt to withdraw that
4 tariff?

5 A. Not if, in fact, there is entry of non-LEC
6 payphone providers into that territory, no. In fact, I
7 wouldn't even think it was in the public interest if
8 there had not been entry because that does not say that
9 there won't be entry in the future.

10 This is a part of the telecommunications
11 industry that, if you really solved the price squeeze,
12 free rider, and fraud problems, there is potentially
13 large benefits to the public from competition.

14 Q. I'm sure you recall Mr. Shaw cross-examining
15 you extensively on separate subsidiaries and in
16 particular he was asking you whether you had done a
17 cost/benefit analysis, and whether or not you would
18 consider affiliated interest requirements and so on and
19 so forth.

20 I was wondering in all of that if you were
21 aware of any instances where U. S. West does, in fact,
22 have and considered in preparing your testimony
23 examples where U. S. West does, in fact, have separate
24 subsidiaries to provide products or services that might
25 be considered competitive?

1 A. No. It has a separate subsidiary for Yellow
2 Pages, which as I understand it, it decided to set up
3 without being ordered to do so by the Commission. In
4 fact, if I remember correctly, some of the commissions
5 were quite upset that it set up that subsidiary. That
6 used to be obviously a regulated telecommunications
7 service just like coin phones.

8 Q. Do you have any opinion as to why U. S. West
9 would have set up that subsidiary but be unwilling to
10 set up a separate subsidiary for coin telephones?

11 A. Well, my assumption is that they think it's
12 more profitable to do coin phones this way than through
13 a separate subsidiary, and they did not make the same
14 assessment vis-a-vis Yellow Pages.

15 Q. In questioning by Ms. Brown, Ms. Brown posed
16 as partially a hypothetical that, assuming U. S. West
17 has the ability to over phone, does that give U. S.
18 West a competitive advantage? And you responded yes.
19 Do you recall that?

20 A. Yes.

21 Q. I would like to fill in the blank here, if
22 you will.

23 Do you believe or do you have an opinion on
24 whether or not U. S. West does, in fact, have the
25 ability to over phone?

1 A. They do as long as they are not obliged to
2 have their payphone operations as properly defined
3 cover the cost or, rather, their payphone revenues as
4 properly defined cover the cost of the -- it's late,
5 I'm sorry -- their payphone revenues as properly
6 defined cover the cost of their payphone operations.

7 Q. In response to another question by Ms. Brown
8 with regard to validation, billing, and collection, you
9 indicated there was some data that you had not been
10 able to get. Do you recall that answer?

11 A. Yes.

12 Q. Can you tell us specifically for the record
13 what data it is that you would like to see?

14 A. I would like to see what other users of U.
15 S. West billing and collection services pay relative to
16 their costs to see whether there is the same kind of
17 huge discrepancy in price not being competed away
18 that Mr. Wilson found in the IPI testimony applied to
19 AOS. Because, if so, exactly the same conclusion
20 holds: That is, that there is large market power and
21 that that should not properly, at least for payphones,
22 be considered a competitive offering of U. S. West.

23 Q. Do you have any recollection as to whether
24 or not the Complainants requested that data from U. S.
25 West?

1 A. Yes. We have requested that data and it has
2 not yet been provided. And there is some argument
3 about whether it can be provided. And those are the
4 legal battles I leave to the lawyers.

5 Q. Commissioner Casad phrased a question that
6 cut through some of the economic mumbo-jumbo and asked
7 what you thought about new entrants taking "the finer
8 cuts of meat." And I believe you responded that the
9 competitive payphone providers were having no success
10 at the very top end of the market.

11 I caution you here not to inadvertently
12 disclose any confidential data. But I was wondering,
13 have you seen any data in your review of the data
14 produced in this proceeding that backs up that
15 statement?

16 A. Yes. And it's in some of the confidential
17 exhibits that were admitted this morning and this
18 afternoon.

19 MR. HARLOW: Thank you, Doctor Cornell.
20 That's all I have.

21 THE COURT: Do you have recross, Mr. Shaw?

22 MR. SHAW: Just one.

23

24

25 R E C R O S S - E X A M I N A T I O N

1 BY MR. SHAW:

2 Q. Doctor Cornell, under redirect by Mr.
3 Harlow, you said something to the effect that it's
4 obvious that Yellow Pages was once a regulated
5 telephone service. Did you mean that in the state of
6 Washington, that statement applied to the State of
7 Washington?

8 A. I don't know specifically about the state of
9 Washington, although I believe it to be the case. I do
10 know that it was part of the regulated revenues -- the
11 revenues from Yellow Pages were part of the revenues
12 that went to the regulated side of the house, and the
13 costs were part of the costs that went to the regulated
14 side of the house.

15 Q. Is it your testimony that in the state of
16 Washington Yellow Pages used to be a regulated
17 telecommunications service, the rates and charges to
18 the public thereof set by this Commission?

19 A. I don't know that the rates were ever set,
20 but that the revenues and the costs were part of the
21 regulated calculation.

22 MR. SHAW: Thank you.

23 THE COURT: Ms. Brown, anything else?

24 MS. BROWN: I just have one.

25

1 REXCROSS-EXAMINATION.

2 BY MS. BROWN:

3 Q. This bears on any calculation of a rate cap.

4 In your view, Doctor Cornell, what costs
5 should be included in any calculation of a rate cap?

6 A. I'm not sure that I would include costs if
7 you're talking about it towards an unregulated or
8 separate subsidiary, presumably in some sense
9 unregulated.

10 If you're going to try to set the local coin
11 rate in a regulatory, tariffed type proceeding, then
12 you want to start with the prices that are being
13 charged to dependent competitors for the bottleneck
14 monopoly inputs.

15 You want to look at all of the revenues that
16 are available equally to U. S. West's operations and to
17 the competitors. And then you want to look at the
18 revenues that come, for example, from the surcharge on
19 sent-paid toll that exists and the costs of all of the
20 marketing, all of the advertising, all of the
21 commissions, the coin collecting, -- and I refer you to
22 my confidential Exhibit NWC 2, which I think is C-3 in
23 this proceeding that is an attempt to list what belongs
24 in a cost study in this setting.

25 Then you look and see whether the revenues

1 are sufficient to cover those costs, including the
2 imputed costs. And, if not, you then have to look at
3 whether, given those costs and you're not going to
4 create any incentives to become more efficient --
5 you're going to raise coin surcharges, maybe impose a
6 set charge, or other things.

7 But in the end, then, you have no choice
8 after all of those have been taken into account but to
9 raise the coin rate.

10 MS. BROWN: Thank you.

11 THE COURT: Anything else of the witness?

12 COMMISSIONER PARDINI: May I ask a question?

13

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

15 BY COMMISSIONER PARDINI:

16 Q. Doctor Cornell, yesterday we had extensive
17 testimony in which Mr. Coulson described the structure
18 of Digital Access Corporation in that it was a
19 subsidiary, I guess, or wholly owned by a general
20 partner. And that general partner also owned a company
21 called Pacific Marketing. And Pacific Marketing
22 actually set up these locations, contacted the person,
23 made the contract, signed on the bottom line, and
24 delivered that to Digital Access Communications.

25 Digital Access Communications then installed

1 the phone and serviced the phone. It had no dealings
2 with the client in setting up the location. It had no
3 relationships with each other.

4 Digital Access Communication was a service
5 organization with the marketing even though the
6 principal owner was the principal in each of these.

7 Does the fact that Digital Access
8 Communications Corporation, which provides the service
9 and the maintenance through the instrument has no
10 dealings with the client customer have any different
11 impact on what you're saying here? Who is being
12 squeezed? The marketing company or Digital Access?

13 A. In the end I would argue it does not make
14 any difference, that the real problem is that -- I'm
15 trying to say this as simply as I know how -- the
16 general partner, who owns the marketing company, in the
17 end has no --

18 Q. Excuse me. The general partner I don't
19 believe owns the marketing company. He just gets
20 capital together and loans it, I think, to the
21 marketing company for the purpose of establishing the
22 equipment.

23 A. However the organizational structure is, in
24 the end, if the combination of activities presumably --
25 what I don't know out of what you said is who pays the

1 commission to the location provider. And I would
2 assume that's the marketing company because that's who
3 made the transaction with the location.

4 Q. So, the contract is subsequently assigned to
5 Digital Access and they pay --

6 A. The agreement for the commission comes from
7 the marketing company.

8 Q. Yes, ma'am.

9 A. That if they cannot get the revenues out of
10 the payphone location and the coins in the box and all
11 the other things that they can -- revenue sources that
12 they have, the general partner or the marketing
13 organization is not able to keep on going and provide
14 locations for Digital Access to serve.

15 That is not the same for U. S. West. So
16 that in the end, to me it does not matter which part of
17 that triangle the way you have described it is
18 squeezed. It's the combination of the three parts that
19 are being squeezed by the price squeeze that's in
20 effect.

21 Q. Is the squeezing applicable whether Digital
22 Access Communications can get additional discounts and
23 compensations to them based on increased volumes of
24 calls that they direct to their carrier?

25 A. Yes. I have tried -- there are two issues

1 as I talk to payphone providers that I think are
2 important in this. I have left the interLATA side of
3 this out.

4 Now, the reason I have done that is that for
5 U. S. West's payphones, the premise owner can deal
6 directly with the interLATA carrier and get all of that
7 revenue directly.

8 Therefore, to compete, a private, non-LEC
9 payphone provider has to provide the equivalent or
10 allow the location provider also to deal directly with
11 the interexchange carrier.

12 So, the issue is the competition for
13 locations between U. S. West and the non-LEC payphone
14 providers based on local and intraLATA because the
15 interLATA is a wash.

16 COMMISSIONER PARDINI: Thank you.

17

18 F U R T H E R E X A M I N A T I O N

19 BY COMMISSIONER CASAD:

20 Q. I want to make sure that I understand.
21 Billing and collection has been discussed extensively.
22 Billing and collection by local exchange companies has
23 been determined to be competitive in a couple instances
24 by this Commission.

25 Do payphone operators have any alternative

1 to U. S. West for billing and collection? Could they
2 obtain that service through another party?

3 A. The answer is effectively no. And I would
4 like about five sentences to explain. I'm not going to
5 harangue you.

6 The problem is the billing and collection
7 for U. S. West issued credit cards and for collect
8 calls where it's got to be billed to the home telephone
9 number of the receiver.

10 The only person who owns that data initially
11 and collects that data initially is U. S. West and U.
12 S. West serving territory. And you can get it
13 technically speaking in -- can you go into three
14 different stores and buy it? Yes. But you have to go
15 to the same wholesaler. Those three stores go to the
16 same wholesaler. And the more you have to go through
17 additional steps before you can have the billing and
18 collection done for you, the more the cost goes up.
19 And so you go to U. S. West in one fashion or another.
20 They still hold the bottleneck monopoly on that
21 information.

22 COMMISSIONER CASAD: Thank you.

23 THE COURT: Anything else of the witness?

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

1 We have got a couple of loose ends. We have
2 got the discovery schedule, which you're going to file
3 with the Commission today. Everybody gets copies. I
4 will make some copies. I do not intend to issue a
5 letter with the dates in it. So, be sure you do get a
6 copy.

7 I want to compliment all of you on your
8 ability to question around the confidential data
9 without getting into the numbers. I think you did very
10 well.

11 The next dates that we have got will be the
12 pre-distribution for Respondent and the Commission
13 Staff March 15, and cross-examination of Respondent and
14 Commission Staff May 3 through 7.

15 And is there anything else we need to
16 discuss?

17 MR. SHAW: Yes, your Honor. Could I inquire
18 of Complainants whether they now rest their case?

19 THE COURT: Mr. Harlow?

20 MR. HARLOW: Yes, we do.

21 MR. SHAW: In that case, your Honor, I have
22 a motion to dismiss this complaint for failure to state
23 a claim for total lack of jurisdiction in this
24 Commission to decide these issues brought by these
25 Complainants. I'm prepared to bring that motion right

1 now. It's a very simple motion based upon one statute
2 and one Washington State Supreme Court case.

3 THE COURT: Did you write that out, Mr.
4 Shaw?

5 MR. SHAW: You wish the motion submitted in
6 writing?

7 THE COURT: I just asked if you had written
8 it out.

9 MR. SHAW: No, I have not.

10 THE COURT: Go ahead, sir.

11 MR. HARLOW: Excuse me, your Honor. I think
12 given that we're at the close of a hearing, it's late
13 in the day, the motion is, although characterized as
14 procedural, will have a significant substantive impact.

15 I think given that Mr. Shaw's testimony
16 isn't due for six weeks or so, he ought to follow
17 proper Commission procedure, file a written motion and
18 we'll have the usual twenty days to respond as provided
19 by the procedural rules.

20 THE COURT: Will that be satisfactory to the
21 parties to do this on a written record? Mr. Shaw?

22 MR. SHAW: I would request the opportunity
23 to make our argument. Mr. Harlow's suggestion that we
24 delay the arguing of the motion until almost the eve of
25 the time to file the Company's case, I don't think it's

1 productive. We should get the motion argued and
2 decided right away.

3 THE COURT: Having not given anyone notice
4 of the motion as the Commission rules generally
5 require, I am sympathetic to parties who would indicate
6 that they have not been prepared to address the motion
7 today.

8 MR. SHAW: The reason for that is, until
9 Complainants rest, we simply do not know whether the
10 grounds for the motion lie. There is no way to make an
11 anticipatory motion to dismiss because the complaint
12 fails to submit jurisdictional facts.

13 THE COURT: Off the record.

14 (Discussion held off the record.)

15 THE COURT: Let us be back on the record.

16 During the time we were off the record, we
17 had some lengthy discussion about the manner in which
18 the motion and responses to the motion could best be
19 presented.

20 I believe in summary that Mr. Shaw had
21 requested early argument on the motion; that Mr. Harlow
22 had indicated he wanted some time to prepare a
23 response.

24 And I believe what we finally came up with
25 was that we would hear Mr. Shaw's motion today; that he

1 would provide immediately to the parties the court case
2 that he referred to which he is going to base his
3 motion on; and then that the Commissioners, once they
4 have had a chance to check their schedules, would set
5 up a time for Mr. Harlow and Ms. Brown to make their
6 comments on the motion and I guess for a brief rebuttal
7 o Mr. Shaw at that time as well.

8 But as soon as we can hear it.

9 But my summary of what we finally decided
10 does not get your comments on to the record. Is there
11 anything that we said off the record that you want to
12 put on the record, Mr. Harlow?

13 MR. HARLOW: No. But I do want to add
14 something that I don't think will bear in any way on
15 the motion. But Mr. MacIver suggested perhaps I had
16 better state that, in resting, Doctor Cornell did
17 mention that we're still waiting for some data and she
18 wanted to do some further analysis and present some
19 further testimony on billing and collection when we
20 obtain that data from U. S. West. So, that would be I
21 guess an exception to our resting for clarification.

22 THE COURT: Was there anything you wanted to
23 indicate, Mr. Shaw?

24 MR. SHAW: That last statement concerns me.
25 There is no opportunity to keep supplementing your case

1 based upon more and more data. The specific issue is
2 billing and collection details of contracts with other
3 carriers, which those other carriers have deemed to be
4 proprietary to them and forbid us to disclose. That
5 fact has been made clear for some time.

6 And there could have been a motion to compel
7 and then those carriers would have come in, I suppose,
8 and made their case that this Commission shouldn't
9 require U. S. West to disclose their data to Mr.
10 Harlow's clients.

11 That issue didn't get resolved in the normal
12 course of discovery. So, I don't think there is any
13 right to continue to hold open the direct case in any
14 fashion in regard to that issue.

15 I think the parties anticipated that, if
16 this case survives the motion that we intend to make,
17 that issue can be taken up at the rebuttal stage. I'm
18 not objecting to that.

19 However, I do not think in any way that the
20 desire of the Complainants to perhaps supplement their
21 testimony down the road as to billing and collection
22 data should be allowed by this Commission to defeat
23 this motion.

24 THE COURT: Would that not mean, Mr. Shaw,
25 that you would not have the opportunity to respond to

1 any testimony the complaining party would give on
2 rebuttal about that issue?

3 MR. SHAW: We'll have to address that if
4 they do, in fact, file any further testimony on that
5 issue.

6 THE COURT: The problem with your inviting
7 them to do that at rebuttal is that you would not in
8 the course of things then have that opportunity.

9 MR. SHAW: I appreciate that. It's a small
10 issue and shouldn't drive the case.

11 THE COURT: Terrific. Was there anything
12 that you said while we were off the record that you
13 wanted to include on the record?

14 MR. SHAW: No.

15 THE COURT: Ms. Brown, anything?

16 MS. BROWN: No.

17 THE COURT: Why don't we take your motion
18 then, Mr. Shaw?

19 MR. SHAW: Yes. This motion to dismiss is
20 based upon the record in this case in that the
21 Complainants have failed to prove the necessary facts
22 as to their status and the motion is based on the
23 Commission's complaint statute 80-04-110 and the case
24 of Coal versus Washington Utilities and Transportation
25 Commission, 789 Washington 2d 302 decided by the State

1 Supreme Court 1971.

2 First, it's clear that this complaint was
3 not brought by 25 complaining ratepayers of U. S. West
4 as provided for in Section 1 of 80.04.110. It's clear
5 from that statute, as the Commission has often held,
6 that individual ratepayers cannot bring complaints
7 against the company's tariffs and practices without 24
8 ratepayers joining them.

9 Rather, the complaint alleges that the
10 individual Complainants as well as the association and
11 the members that make up that association are entities
12 who provide pay telephone service in competition with
13 U. S. West, a regulated company.

14 Therefore, they do not fall under the
15 proviso of RCW 80.04.110 that allows two or more public
16 service corporations to make complaint against each
17 other before this Commission about practices or rates
18 that are alleged to be unfair and oppressive of the
19 complaining public service corporation.

20 So, this complaint falls under neither of
21 those and is controlled by the Coal case. And the Coal
22 case is a very seminal case well known to all of us in
23 this jurisdiction.

24 You will recall that is a situation where an
25 oil heat vendor, vendor of oil, and presumably oil

1 appliances, oil furnaces, attempted to bring a
2 complaint against a regulated natural gas company,
3 Washington Natural Gas, and alleged that the regulated
4 company's practice of discounting dry-out service to
5 contractors and to providing aggressive leases of
6 natural gas furnaces to members of the public harmed
7 the oil heat member and the oil heat industry in
8 general, an industry not regulated by this Commission.

9 Additionally, the Oil Heat Institute,
10 parallel to the Northwest Payphone Association,
11 attempted to intervene in the case and was denied on
12 the basis that they brought no issue that was
13 jurisdictional to the Commission.

14 And the Commission ultimately issued its
15 order that pursuant to its statutes it simply cannot
16 entertain complaints alleging anti-competitive rates
17 and practices by an unregulated player in the economy
18 against a regulated company.

19 And that case went to the Supreme Court, and
20 the Supreme Court unanimously affirmed the Commission's
21 decision that the Commission absolutely had no
22 jurisdiction to entertain complaints by unregulated
23 entities against regulated entities alleging unfair
24 competitive practices; that that was solely an ability
25 that the Commission had on its own motion or regulated

1 companies to bring such complaints against other
2 regulated companies.

3 That is precisely the factual pattern here.
4 As we heard at great length, these Complainants do not
5 consider themselves to be regulated telecommunications
6 companies. They are not registered with this
7 Commission.

8 Most importantly in this record, there is
9 absolutely no evidence that they are telecommunications
10 companies registered with this Commission. If they are
11 telecommunications companies, they have to be
12 registered. They have to be regulated by the
13 Commission. The statute gives them no discretion in
14 that regard.

15 The state of this record is they are not
16 regulated companies, and, therefore, Coal says they
17 cannot bring this complaint. This complaint must be
18 dismissed because there is absolutely no jurisdiction
19 in the Commission to rule on it. It is absolutely
20 powerless to grant the relief sought by these
21 Complainants brought on their complaint.

22 That does not mean, of course, that the
23 issues are incapable of being addressed or being
24 resolved. Obviously this Commission has spoken through
25 its rules relating to this industry, and U. S. West has

1 complied with those rules.

2 If those rules now need to be changed to
3 require different practices by this Company in regard
4 to pay telephone service, obviously U. S. West will
5 join with the Commission in addressing those rules or
6 the Commission can bring its own complaint.

7 Or, if the Commission wants to initiate a
8 notice of inquiry type proceeding into the
9 environmental conditions of pay telephone service in
10 the state of Washington, we'll obviously participate in
11 that.

12 But there are no statutes administered by
13 this Commission that allows it to entertain a complaint
14 brought by unregulated companies. This motion was not
15 made earlier because, frankly, U. S. West had no
16 knowledge of whether or not these Complainants and
17 members of the association were regulated companies or
18 not.

19 Only upon the submission of their evidence
20 and the cross-examination of their witnesses it became
21 clear that they not only do not consider themselves
22 such but they are not registered and there is no
23 evidence that they are registered.

24 Therefore, it is a simple motion. Coal
25 gives the Commission no discretion whatsoever to

1 continue with this complaint. And it must be
2 dismissed.

3 THE COURT: Commissioners, have you
4 questions of Mr. Shaw?

5 COMMISSIONER CASAD: I don't have any
6 questions. It's going to be --

7 THE COURT: There is going to be a response
8 at a later date by Mr. Harlow and Ms. Brown. I believe
9 that's the extent of Mr. Shaw's motion if you have
10 questions.

11 COMMISSIONER CASAD: I guess I misunderstood
12 the process. I understood that Mr. --

13 THE COURT: If the process doesn't give you
14 the information you need, Commissioner, let's go off
15 the record and devise a new process.

16 (Discussion held off the record.)

17 THE COURT: Let's be back on the record. I
18 believe we established the following schedule: That
19 Mr. Shaw would reduce his motion to writing and provide
20 a copy of the case that he cited to be delivered to the
21 Commission and to the parties on Thursday of this week
22 and that Mr. Harlow and Ms. Brown would deliver their
23 written responses on Monday, and we have tentatively
24 set this oral argument on the motion for 1:30 on
25 Wednesday.

1 Now, I will bring that to the Commissioners.
2 If 1:30 on Wednesday -- although that is a time during
3 which you will all be here for the Centrex case, if for
4 some reason they feel that's not an appropriate time, I
5 will call you and let you know what their alternate
6 proposal will be, and if we need to we can take the
7 parties' dates of conflict.

8 Is there anything else we need to discuss?

9 We'll recess until then, I guess.

10 (At 4:50 p.m. the above hearing was
11 recessed.)

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C E R T I F I C A T E

I, DONNA M. DAVIS, Court Reporter for the
above-entitled proceeding, did fully and accurately
cause to be prepared under my direction and control
these proceedings to the best of my ability.

DATED this day of 1993.