

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
2 COMMISSION

3 WASHINGTON UTILITIES AND )  
TRANSPORTATION COMMISSION, ) Docket No. UT-960126  
4 Complainant, ) Volume 4  
vs. ) Pages 238 - 333  
5 U S WEST COMMUNICATIONS, INC., )  
Respondent. )  
6 ----- )

7 A hearing in the above matter was held on  
8 October 29, 1996 at 9:00 a.m. at 1300 South Evergreen  
9 Park Drive Southwest, Olympia, Washington, before  
10 Chairman SHARON L. NELSON, Commissioners RICHARD  
11 HEMSTAD and WILLIAM GILLIS and Administrative Law  
12 Judge C. ROBERT WALLIS.

13 The parties were present as follows:

14 U S WEST COMMUNICATIONS, INC. by Lisa  
15 Anderl and Ed Shaw, Attorneys at Law, 1600 7th Avenue,  
Room 3206, Seattle, Washington 98191.

16 SHARED COMMUNICATIONS SERVICES by Elizabeth  
17 Thomas, Attorney at Law, 701 Fifth Avenue, Suite 5000,  
Seattle, Washington 98104 and Beth Kaye, Attorney at  
18 Law, 111 SW Fifth Avenue, Portland, Oregon 97204.

19 AT&T COMMUNICATIONS OF THE PACIFIC  
NORTHWEST, INC. by Greg Harwood, Attorney at Law, 1501  
20 Fourth Avenue, Suite 2600, Seattle, Washington  
98101-1688.

21 MCI, MCI METRO, and METRONET by Brooks  
22 Harlow, Attorney at Law, 601 Union Street, Suite 4400,  
Seattle, Washington 98101-2352.

23 MFS INTELENET OF WASHINGTON, INC. by Morton  
24 Posner, Attorney at Law, 3000 K Street Northwest,  
Suite 300, Washington, D.C., 20007.

25 Cheryl Macdonald, Court Reporter

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APPEARANCES (Cont'd.)

THE COMMISSION STAFF by Shannon Smith,  
Assistant Attorney General, 1400 South Evergreen Park  
Drive Southwest, PO Box 40128, Olympia, Washington  
98504-0128.

FRONTIER TELEMAGEMENT, INC. by Sara  
Siegler Miller, Attorney at Law, 2000 Northeast 42nd,  
Suite 154, Portland, Oregon 97213 and Michael J.  
Shortley, III, 180 South Clinton Avenue, Rochester,  
New York 14646.

DEPARTMENT OF INFORMATION SERVICES, by  
ROSELYN MARCUS, Special Assistant Attorney General,  
811 Fairview Road, Carlisle, Pennsylvania 17013

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## I N D E X

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4 WITNESS: DIRECT CROSS REDIRECT RECROSS EXAM

5 ARTMAN 241 244

6 SPINKS 258 260 291 292 290

7 CHOW 293 294 313 313 311

8 BELL 314 317 330

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10 EXHIBIT MARKED ADMITTED

11 29 243 244

12 30 258 260

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

2 JUDGE WALLIS: Let us be on the record,  
3 please, for our October 29, 1996 session in the matter  
4 of docket No. UT-960126. MFS at this time is calling  
5 witness Eric Artman to the stand.

6 Mr. Artman, would you stand, please, and  
7 be sworn.

8 JUDGE WALLIS: Mr. Posner.

9

10 DIRECT EXAMINATION

11 BY MR. POSNER:

12 Q. Morning, Mr. Artman.

13 A. Good morning.

14 Q. Mr. Artman, by whom are you employed?

15 A. MFS Communications Company.

16 Q. And in what capacity?

17 A. I am director of regulatory affairs for the  
18 western region of MFS.

19 Q. Mr. Artman, did you cause to have filed in  
20 this case prefiled testimony dated September the 4th  
21 consisting of 20 pages and one Exhibit A?

22 A. I did, and I have a copy of that before me.

23 Q. Mr. Artman, if I were to ask you the  
24 questions in this testimony today, would your answers  
25 be substantially the same?

1           A.     Yes, they would with a typographical  
2 correction and some minor updating.

3           Q.     Would you please tell us if you have any  
4 additions or corrections to the testimony at this  
5 time?

6           A.     Yes.  On page 3, in line 13, there is a  
7 typographical error.  The pronoun "I" is repeated.  It  
8 should only appear once.

9                     On page 4, after line 10, in summarizing  
10 those cases where I have testified I would add  
11 references to additional testimony in the arbitration  
12 cases against U S WEST brought by MFS in Washington,  
13 Oregon and Arizona.

14                    On page 15 in lines 7 through 9 there is a  
15 reference to the first report and order in FCC docket  
16 No. 96-98.  I believe we're all aware that that order  
17 has been partially stayed by the Eighth Circuit Court  
18 of Appeals, and on page 15 there is also a question  
19 regarding decisions in other states on U S WEST's  
20 attempt to grandfather and withdraw the Centrex family  
21 of services.

22                    Since the submission of this testimony I've  
23 also become aware of a recommended decision in  
24 Colorado in dockets 96S-071T and 96A-051T, and a  
25 decision in the state of Wyoming which is a final

1 decision in docket No. 70000-T T-96-279. Both the  
2 Colorado recommended decision and the Wyoming decision  
3 are in line with the positions advocated by MFS  
4 Communications and they reject the effort of U S WEST  
5 to withdraw and grandfather Centrex service.

6 Other than that I believe my testimony  
7 would be the same today if you were to ask those same  
8 questions.

9 Q. And with those modifications do you adopt  
10 that testimony today?

11 A. I do.

12 MR. POSNER: Your Honor, can we have an  
13 exhibit number?

14 JUDGE WALLIS: I believe that the next  
15 exhibit number in order is 29 and I am marking the  
16 prefiled direct testimony of Mr. Artman as Exhibit 29  
17 and so that the record is clear that includes Exhibit  
18 A.

19 (Marked Exhibit 29.)

20 MR. POSNER: I would move the admission of  
21 that exhibit, Your Honor.

22 JUDGE WALLIS: Is there any objection?

23 MS. ANDERL: May I?

24 JUDGE WALLIS: Ms. Anderl.

25 MS. ANDERL: Voir dire.

1 JUDGE WALLIS: Please do.

2 MS. ANDERL: Mr. Artman, the Colorado  
3 decision that you referenced, has that already been  
4 submitted in this docket attached to the testimony of  
5 Dr. Tom Zepp? Is that the decision you're  
6 referencing?

7 THE WITNESS: I don't know, and I don't  
8 know if it's been attached to Mr. Zepp's testimony. I  
9 am referring to a decision which bears a mail date of  
10 September 3, 1996 from Colorado.

11 MS. ANDERL: Thank you. No objection.

12 JUDGE WALLIS: Exhibit 29 is received.

13 (Admitted Exhibit 29.)

14 MR. POSNER: Your Honor, the witness is  
15 available for cross-examination.

16 JUDGE WALLIS: Ms. Anderl.

17

18 CROSS-EXAMINATION

19 BY MS. ANDERL:

20 Q. Morning, Mr. Artman.

21 A. Good morning.

22 Q. Tell me which MFS entity you're employed  
23 by.

24 A. I am employed by MFS Communications Company  
25 which is the holding company for several MFS

1 subsidiaries including MFS Intelenet of Washington.

2 Q. Are there any other subsidiaries of MFS  
3 Communications Company which are doing business in  
4 Washington?

5 A. I believe there may be some under the  
6 former name of the company Metropolitan Fiber Systems.  
7 I'm not exactly sure. Our compliance department  
8 handles the specifics between the various corporate  
9 entities when they're relevant for tariffing or other  
10 purposes.

11 Q. And which MFS entity provides resold  
12 Centrex service in Washington?

13 A. MFS Intelenet of Washington.

14 Q. How long have they been doing that?

15 A. I believe for at least a year.

16 Q. Mr. Artman, which MFS entity is it that  
17 owns a switch in Kirkland, Washington?

18 A. In terms of actual ownership I am not  
19 exactly positive. It could be either MFS Intelenet of  
20 Washington, it could be MFS Intelenet, which is the  
21 parent company of most of the MFS -- of the MFS  
22 Intelenet companies or it could be MFS Communications.  
23 I imagine it would depend upon the specifics that were  
24 used to acquire and finance that particular piece of  
25 switching equipment.

1 Q. What kind of a switch is that?

2 A. It's, I believe, an Ericsson, E R I C S S O N,  
3 AXE-10, which it's a switch that is capable of a large  
4 number of telecommunications functions including tandem  
5 and end office functions, for example.

6 Q. So it can provide local dial tone?

7 A. Yes.

8 Q. And does it?

9 A. No, it doesn't. We've been unable to  
10 obtain an interim interconnection arrangement from your  
11 company on the same terms that your company has offered  
12 them to other carriers.

13 Q. I understand that's your position, Mr.  
14 Artman. Has that switch been loaded with software  
15 which would enable it to provide Centrex or Centrex  
16 like services?

17 A. I do not know at this time.

18 Q. Does MFS plan to do so?

19 A. I'm sure we do.

20 Q. Do you know what that will cost?

21 A. No, I do not.

22 Q. Mr. Artman, it's correct, is it not, that  
23 an arbitrator's decision in the matter of the  
24 arbitration between U S WEST and MFS is due on  
25 November 8, 1996?

1           A.     I believe that's correct, yes.

2           Q.     And is it your understanding that that  
3 arbitrator's decision will address the provision and  
4 pricing of unbundled network elements?

5           A.     To the extent they have been requested by  
6 MFS, yes, I believe it will.  Following that, there  
7 will be a period of time of review by the Commission  
8 and unless U S WEST is willing to waive appeal,  
9 probably appeals by U S WEST to the courts.

10          Q.     What unbundled network elements would MFS  
11 need to have requested from U S WEST in order to  
12 provide Centrex service?

13          A.     Well, the key element that's lacking in  
14 MFS's ability to provide Centrex service over the  
15 switch it has today in Kirkland is the ability to  
16 interconnect with U S WEST and exchange traffic.  If  
17 that were present today MFS could at least provide  
18 Centrex customers -- Centrex to customers that are  
19 located in buildings that have been connected to MFS's  
20 fiber loop.  MFS would, of course, also request  
21 unbundled loops to expand the ability to serve  
22 customers in other territories and would also request  
23 the ability to connect to customers in additional  
24 central offices, those types of things.  Those are  
25 outlined in our joint stipulation, partial stipulation

1 in the arbitration procedure.

2 Q. Mr. Artman, you are -- you've requested in  
3 your testimony or at least stated in your testimony on  
4 page 15 that it is your position that U S WEST must  
5 release its proprietary list of Washington customers  
6 who buy Centrex service so that other requesting  
7 carriers such as MFS may solicit those customers and  
8 offer resold services to them. Is that a correct  
9 statement of your testimony and is that MFS's position  
10 in this hearing today?

11 A. It's limited to the fairly narrow  
12 circumstance in which the Commission would approve  
13 grandfathering and then under the FCC regulation that  
14 covers grandfathering that we would be able to -- that  
15 we would be able to resell service only to that same  
16 group of customers. In that case we would need to  
17 know who that group of customers is so that we did not  
18 inadvertently violate the FCC regulation and resell to  
19 the wrong party. In the event that the Commission  
20 does not allow the grandfathering of Centrex, as we  
21 are asking them not to do, we would not then require a  
22 list of your Centrex customers. I'm sorry if that was  
23 not clear in the way the testimony originally read.

24 Q. Is it your position that the federal act  
25 requires U S WEST to divulge that proprietary customer

1 list in the event that the grandfathering is approved?

2 A. Yes. I am not aware of how else we would  
3 tell whether or not we were marketing resold Centrex  
4 to a customer that we were legally entitled to market  
5 it to.

6 Q. Couldn't you ask the customer if they took  
7 Centrex service from U S WEST?

8 A. I suppose that would be sufficient if you  
9 were willing to accept the customer's representation  
10 when we submitted the order for that customer.

11 Q. On page 1 of your testimony, Mr. Artman, is  
12 it your testimony that generally any grandfathering,  
13 to the extent that it creates two separate customer  
14 classes, violates the provisions of RCW 80.36.170 and  
15 .180?

16 A. No, I don't think so. I think that  
17 grandfathering is something that from time to time  
18 certainly has its uses. I believe there's a history  
19 of grandfathering various versions of Centrex as new  
20 versions have become available. The difference here  
21 is that there is a clear anticompetitive motivation on  
22 the part of U S WEST to limit the resale of Centrex,  
23 and it's stated as such in Ms. Baird's testimony.

24 Q. Mr. Artman, if instead of proposing to  
25 grandfather Centrex service, U S WEST simply proposed

1 to withdraw it, would that address your concerns about  
2 anticompetitive or discriminatory conduct?

3 A. If you were to raise the issue of  
4 withdrawing Centrex entirely I think that you would  
5 encounter the hue and cry from the marketplace that  
6 such an act deserves. Instead, you have chosen only  
7 to attempt to withdraw it from the resale arena and  
8 limit the hue and cry to those parties that are  
9 injured in that circumstance. I think that you  
10 probably have a very large number of Centrex customers  
11 that would be very, very unhappy if you sought to  
12 withdraw Centrex and force them on to straight  
13 business service.

14 Q. Well, it's not true, Mr. Artman, is it that  
15 straight business service would be their only  
16 alternative?

17 A. What other alternatives do you have in  
18 mind? Service from other companies?

19 Q. Mr. Artman, have you heard the testimony in  
20 the proceeding yesterday that one alternative which is  
21 deemed comparable to or a reasonable alternative to  
22 Centrex is a PBX system?

23 A. I was not here for much of the testimony  
24 yesterday. I only heard the last portion of the last  
25 witness.

1           Q.     Would you agree that if a customer  
2 converted from Centrex to a PBX system they would not  
3 be, quote, forced on to straight business service?

4           A.     A PBX has some similarities to Centrex, but  
5 there are a great number of different considerations  
6 regarding a PBX, particularly an end user customer in  
7 looking at the potential of acquiring  
8 telecommunications service through their own PBX  
9 versus through Centrex has an additional problem  
10 that's similar to what's called lumpiness in electric  
11 utilities today. That's the problem that you have to  
12 buy capacity in certain increments which may not in  
13 any way meet the demand level that you have.

14                     The beauty of Centrex and the reason that  
15 it is particularly attractive to many business  
16 customers is that it grows as you grow. On a given  
17 case basis it may be more expensive than a particular  
18 PBX at a static level, but Centrex gives a business  
19 customer the freedom to grow or, if market conditions  
20 dictate, the freedom to shrink and to incrementally  
21 increase or incrementally decrease their  
22 telecommunications expenditures accordingly, and for  
23 that reason, among other reasons, Centrex is a product  
24 that in many ways can be superior for individual  
25 customers. So I would not agree that PBXs are always

1 a viable alternative for Centrex. For some users in  
2 some cases they may be.

3 Q. Thank you, Mr. Artman. That wasn't my  
4 question. My question was if a customer left Centrex  
5 and went to a PBX isn't it true that they would not be  
6 going to what you referred to as straight business  
7 service?

8 A. If a customer made that decision they would  
9 be then presumably acquiring DID inbound service and  
10 probably DOD direct outward dial trunks.

11 Q. Mr. Artman, under what circumstances that  
12 you can think of should an incumbent LEC be permitted  
13 to withdraw service if that service is resold by  
14 others? Are there any circumstances?

15 A. If the decision made by the incumbent is to  
16 totally withdraw the product and that withdrawal  
17 decision is made consistent with other requirements  
18 that may be placed on the incumbent then it's much  
19 more difficult to view that as anticompetitive. When  
20 the withdrawal is only a partial withdrawal, that is,  
21 a withdrawal for new customers only in a grandfather  
22 --

23 Q. I'm going to get to that.

24 A. -- there's a difference.

25 Q. The first question was when should an

1 incumbent LEC be allowed to withdraw a resold service?

2 A. I mean, it depends. I can't give you a  
3 total answer. It's a case by case evaluation that a  
4 public utility commission has to make from time to  
5 time.

6 Q. But you could imagine there would be some  
7 set of circumstances where that would be allowed?

8 A. Oh, certainly. There are services that  
9 have become obsolete.

10 Q. What about a situation where the withdrawal  
11 is only as to new customers, in other words, the  
12 grandfathering that we've talked about? When should  
13 an incumbent LEC be permitted, if ever, to grandfather  
14 a resold service?

15 A. Well, they should be permitted to  
16 grandfather a resold service when there is a new or  
17 similar product that's available, when there is --  
18 when there are other valid reasons for grandfathering  
19 the service, just as if there were no reseller there.  
20 It is, however, inappropriate to consider resale as a  
21 valid reason to grandfather a service.

22 Q. In its provision of resold Centrex service,  
23 does MFS in Washington bypass U S WEST's intraLATA  
24 toll?

25 A. I don't know. Unfortunately, I'm somewhat

1 more familiar with the situation in California because  
2 we have recently renegotiated some of our contracts in  
3 California.

4 Q. That's all right. I'm just asking about  
5 Washington.

6 A. It's possible. It depends on  
7 circumstances. If the economics are there it's  
8 possible.

9 Q. How does MFS of Washington carry its  
10 customers' interLATA originating toll to an IXC?

11 A. I believe most of our customers prefer to  
12 receive all of their telecommunications charges on one  
13 bill and also use interexchange service, interLATA  
14 service, provided by MFS. However, if customers  
15 desire some other long distance provider they can  
16 request that.

17 Q. Mr. Artman, do you contend that Centrex  
18 Plus as offered by U S WEST in Washington today is an  
19 artificially inexpensive service offered to large  
20 powerful customers?

21 A. I contend that it is a service that gives  
22 large powerful customers the ability to reduce their  
23 telecommunications costs. Whether that is through the  
24 actual reduction in line rights or their ability to  
25 better route and handle some of their

1 telecommunications traffic may depend from customer to  
2 customer. It appears to be a service that U S WEST  
3 desires not to have more broadly available through the  
4 resale channel.

5 Q. On page 5 of your testimony you discuss the  
6 role of resale generally to insure that unjustifiably  
7 large differences in price, terms or conditions of  
8 service do not exist?

9 A. Yes.

10 Q. Could I understand that testimony to mean  
11 that like products or services to like customers  
12 should be priced alike?

13 A. I'm saying that the difference between  
14 customers who are not exactly the same should reflect  
15 -- should be reflective of some reasonable difference  
16 in costs to serve, and as my testimony goes on to say,  
17 there may be circumstances where U S WEST is the best  
18 bulk provider of a service and individual resellers  
19 are the best people to break it up and to sell it to  
20 smaller customers, and if that is the circumstance and  
21 the product is appropriately priced to both groups of  
22 customers then that's the way the marketplace should  
23 work and that's how it should work. If that's not the  
24 situation then something in the inherent price  
25 distinction is out of whack and my testimony outlines

1 those two circumstances.

2           The same analogy also carries over for  
3 conditions in terms of service. Centrex has desirable  
4 features that currently are economically available  
5 only to customers in a certain size range that are  
6 willing to take the step necessary to set up a  
7 Centrex. People who resell and repackage Centrex make  
8 those options available to smaller customers, and  
9 that's good.

10       Q.     I'm not sure that I got an answer to my  
11 question, Mr. Artman. Is it your testimony that like  
12 services should be priced alike?

13       A.     That's the way a market generally drives  
14 pricing of like services. I certainly see no reason  
15 they should be artificially required to be priced  
16 alike.

17       Q.     If the market drives services in that  
18 direction and they were required to be priced that  
19 way, how would that be artificial?

20       A.     If there was, I mean, a regulatory  
21 requirement to price like services alike that would be  
22 an artificial constraint on the pricing floor.  
23 Likewise, if there were a dominant provider of the  
24 service who dictated the terms that certain services  
25 could be offered that would also be an artificial

1 constraint on the marketplace.

2 Q. So you would recommend that a Commission  
3 not impose a regulatory requirement that like products  
4 or services be priced alike?

5 A. They don't necessarily have to be priced  
6 alike. They have to be priced in a manner where  
7 differences reflect appropriate differences in  
8 customer classes so that there isn't discrimination  
9 between individual customers. Similarly situated  
10 customers should be able to acquire the same product  
11 at the same price.

12 Q. Thank you, Mr. Artman.

13 MS. ANDERL: I don't have any other  
14 questions.

15 JUDGE WALLIS: Any other questions on  
16 cross?

17 MS. SMITH: No.

18 JUDGE WALLIS: Commissioners?

19 COMMISSIONER HEMSTAD: No.

20 COMMISSIONER GILLIS: No.

21 JUDGE WALLIS: Mr. Posner.

22 MR. POSNER: I have no redirect, Your  
23 Honor.

24 JUDGE WALLIS: Very well, Mr. Artman.  
25 You're excused from the stand at this time. Thank you

1 for being with us today. Let's be off the record  
2 momentarily for our witness to step forward.

3 (Recess.)

4 JUDGE WALLIS: Let's be back on the record,  
5 please. The Commission staff is calling Mr. Spinks at  
6 this time.

7 Whereupon,

8 THOMAS SPINKS,  
9 having been first duly sworn, was called as a witness  
10 herein and was examined and testified as follows:

11 JUDGE WALLIS: The prefiled testimony of  
12 this witness is marked as Exhibit 30 for  
13 identification and that includes the attached Exhibit  
14 TLS-1, qualifications of Mr. Spinks. Company has  
15 distributed a document that purports to be a staff  
16 memorandum for proceeding UT-960126 for the  
17 Commission's open public meeting agenda of February  
18 23, 1996. That single page document is marked as  
19 Exhibit 31 for identification.

20 (Marked Exhibits 30 and 31.)

21

22 DIRECT EXAMINATION

23 BY MS. SMITH:

24 Q. Mr. Spinks, could you state your full name  
25 and spell your last name for the record.

1 A. It's Thomas L. Spinks, S P I N K S.

2 Q. What's your business address?

3 A. 1300 South Evergreen Park Drive Southwest,  
4 P.O. Box 47250, Olympia, Washington, 98504.

5 Q. Where are you employed?

6 A. I'm employed by the Washington Utilities  
7 and Transportation Commission as a regulatory  
8 consultant.

9 Q. How long have you been employed by the  
10 WUTC?

11 A. Since 1984.

12 Q. Did you prefile written direct testimony in  
13 this case?

14 A. Yes, I did.

15 Q. Is that the testimony that's been marked as  
16 Exhibit 30 in this case?

17 A. Yes.

18 Q. Are there any revisions or additions or  
19 corrections to your testimony?

20 A. No, not that I am aware of.

21 Q. If I were to ask you the same questions  
22 that were asked in Exhibit 30 today, would your  
23 answers be the same?

24 A. Yes, they would.

25 MS. SMITH: I move for the admission of

1 Exhibit 30.

2 JUDGE WALLIS: Is there an objection?

3 MS. ANDERL: No.

4 JUDGE WALLIS: Let the record show that  
5 there is no objection and Exhibit 30 is received.

6 (Admitted Exhibit 30.)

7 MS. SMITH: Witness is available for  
8 cross-examination.

9 JUDGE WALLIS: Ms. Anderl.

10 MS. ANDERL: Thank you.

11

12 CROSS-EXAMINATION

13 BY MS. ANDERL:

14 Q. Good morning, Mr. Spinks.

15 A. Morning.

16 Q. Let me ask you a few questions about your  
17 testimony, and I am on page 2. You recommend that the  
18 proposal in this docket be approved under either of  
19 two circumstances. Do you see that reference at the  
20 top of the page?

21 A. Yes, I do.

22 Q. And your second recommendation or condition  
23 is if U S WEST were to provide the unbundled network  
24 elements necessary for others to provision Centrex  
25 service and that you ask that those be provided under

1 tariff. Is there some reason why you recommend that  
2 they be under tariff as opposed to in individual  
3 negotiated or arbitrated agreements?

4 A. Yes. We're looking at the issue or the  
5 question of providing it under tariff as providing  
6 prices that would be set on a uniform basis available  
7 to anyone within U S WEST's territories under rates,  
8 terms and conditions that the Commission would have  
9 oversight -- overview of.

10 Q. Is it your understanding that that's what's  
11 required by the Telecommunications Act?

12 A. No.

13 Q. Is it your understanding that pursuant to  
14 the Telecommunications Act unbundled network elements  
15 are to be provided to another carrier by the  
16 incumbent under either a negotiated or arbitrated  
17 agreement?

18 A. Yes. It talks about that. It also does  
19 not prohibit the tariffing of the unbundled elements.

20 Q. And if U S WEST were to provide the  
21 unbundled network elements necessary to provision  
22 Centrex service under a negotiated or arbitrated  
23 agreement, would that also satisfy your second  
24 condition here?

25 A. No, because you wouldn't have, necessarily

1 have, the statewide availability of the unbundled  
2 elements so you would have, certainly could have,  
3 areas of the state where alternative Centrex like  
4 services would not be available to current Centrex  
5 customers, so if you went forward with the  
6 grandfathering they wouldn't have another Centrex  
7 alternative that they could look to if they chose to  
8 provision their service that way.

9 Q. Well, if a carrier had a negotiated or an  
10 arbitrated agreement with U S WEST and that carrier  
11 were certificated to provide service statewide and in  
12 the arbitrated agreement had available to it all the  
13 network elements necessary to provision Centrex  
14 service, under those circumstances wouldn't any  
15 customer in the state have at least two choices for  
16 Centrex, that is, U S WEST in its service territory or  
17 the interconnecting carrier who has the arbitrated  
18 agreement with U S WEST?

19 A. I'm not sure if I understand your question.  
20 Are you assuming that the -- if in there is the  
21 assumption that the alternative carrier is able to  
22 provide service on a ubiquitous basis the same way U S  
23 WEST is then the answer would be would be yes.

24 Q. And to the extent that that carrier were to  
25 provide service using unbundled elements purchased

1 from U S WEST, they would be able to do so, wouldn't  
2 they?

3 A. Well, as I understand the current  
4 situation, of at least some of the ALECs is they  
5 operate perhaps in Seattle, Bellevue but maybe not in  
6 Spokane or Walla Walla or Yakima. I don't know that  
7 there's -- that they have ubiquity in the way the  
8 company does in -- in the way they intend to provide  
9 services.

10 Q. What's your understanding, Mr. Spinks, of  
11 the authority granted to the ALECs in the state of  
12 Washington in terms of geographic service territory?  
13 Are any of them limited in the geographic service  
14 territory that they're permitted to serve in?

15 A. Not that I am aware of, but that's a  
16 different question than what I was talking about.

17 Q. I guess I would like you to clarify for me,  
18 then, if they are legally authorized to provide  
19 service anywhere in the state of Washington and they  
20 can purchase from U S WEST unbundled network elements  
21 anywhere in the state of Washington that U S WEST  
22 serves, what limitations would those new entrant  
23 carriers have on being able to provide ubiquitous  
24 service?

25 A. Well, the limitation that they don't --

1 haven't either the facilities, offices, personnel, et  
2 cetera, to provide ubiquitous service.

3 Q. When you say facilities, do you mean  
4 telecommunications facilities?

5 A. I think I was thinking more in line of --  
6 along the lines of office space, a place in a town  
7 where they would set up shop to do business.

8 Q. So you're discussing limitations on their  
9 ability to serve that might have to do with their  
10 level of investment or capitalization or the size of  
11 the company in this state not with regard to the  
12 availability of network elements; is that right?

13 A. Yes.

14 Q. What's your understanding of what network  
15 elements would be necessary for others to provision  
16 Centrex service?

17 A. I think I agree largely with the testimony  
18 of MCI with regard to what they've identified as  
19 elements that they would need to be unbundled to  
20 provide the Centrex service.

21 Q. And those are?

22 A. I think in shorthand it's loop usage, loop  
23 dial tone and features and back office support. There  
24 may have been a couple of others.

25 Q. Mr. Spinks, so let me ask you again, if U S

1 WEST were not to tariff its unbundled network elements  
2 but rather to reach individual arbitrated or  
3 negotiated agreements with carriers who wanted to  
4 interconnect with U S WEST, would the reaching of one  
5 or more of those agreements or arbitrated decisions  
6 satisfy the requirements that you've set forth on  
7 pages 2 and 3 of your testimony?

8 MS. SMITH: Objection, that question has  
9 been asked and answered.

10 MS. ANDERL: I don't really think it has.

11 MS. SMITH: The witness gave his answer to  
12 that question.

13 JUDGE WALLIS: The witness may respond.

14 A. Could you repeat the question, please.

15 (Record read as requested.)

16 A. I'm not sure on what you're referring to by  
17 page 2 and 3, but the answer is that it could. It  
18 would depend on if the agreements that are reached  
19 tend to merge, if you will, to where the rates and for  
20 unbundled elements are identical or very similar to  
21 rates with each other so that you could -- so that  
22 what would happen is in effect through the agreements  
23 you could take and tariff those in effect, then I  
24 think the criteria would be satisfied.

25 Q. Why does staff insist that these need to be

1    tariffed?

2           A.     Well, I think I answered that earlier about  
3    the -- in saying that we would like to see the  
4    unbundled network elements offered ubiquitously  
5    throughout the state by the company, made available to  
6    anyone under similar rates, terms and conditions for  
7    customers similarly situated.

8           Q.     And if U S WEST were to do that through  
9    individual agreements that would not be enough?

10          A.     Well, no, I said it could be.  Insofar as  
11   the individual agreements would tend to merge towards  
12   a single price.

13          Q.     So if the arbitrated decisions that are  
14   issued on November 8 of 1996 in MFS and the TCG  
15   dockets contain prices for network elements that are  
16   similar to one another and those decisions require U S  
17   WEST to offer those network elements throughout the  
18   state, would staff withdraw its opposition to this  
19   filing?

20                 MS. SMITH:  I object to that question.  The  
21   company is continuing to ask the same question of this  
22   witness and he has answered and the individual  
23   contracts are not relevant to this proceeding.

24                 MS. ANDERL:  I am simply trying to explore  
25   with Mr. Spinks what his recommendation is in this

1 docket and to determine if in fact compliance with the  
2 Federal Telecommunications Act would, in his mind,  
3 address the concerns that he's raised or meet the  
4 conditions that he's set forth in his testimony. I  
5 think it's a legitimate line of inquiry.

6 MS. SMITH: This has been covered. He  
7 testified that in some circumstances that could be  
8 enough to satisfy staff's concerns in this issue and  
9 he's answered this question a couple of times.

10 JUDGE WALLIS: To my recollection this is  
11 exploring an area and the questions are similar in  
12 nature, but I believe that there are distinctions  
13 between them in an effort to identify parameters so I  
14 believe the question is permissible and the witness  
15 may respond.

16 A. You will probably need to refresh me on the  
17 question.

18 Q. Let's see if I can do it from memory. If  
19 the decisions that are issued in the MFS and TCG  
20 arbitrations on November 8 contain terms and  
21 conditions and prices for unbundled network elements  
22 that are close enough in staff's mind to each other  
23 that they could be considered similar or that they  
24 would come together, I believe as you described it,  
25 and if U S WEST were required under those arbitrated

1 agreements to offer those unbundled network elements  
2 statewide to each of those interconnecting carriers,  
3 would staff then withdraw its opposition to U S WEST's  
4 proposal in this docket?

5       A.     I think that there's much that needs to be  
6 looked at in the context of arriving at arbitrated  
7 decisions, but it's certainly possible that, yes, that  
8 could result in something that we would find  
9 satisfactory.  It's our preference, our desire, to see  
10 them tariffed, but I am not here taking a position  
11 that there is one way and there is only one way and  
12 that's it, so if that's what you're trying to  
13 determine, no, but it's the underlying principle  
14 behind that recommendation, and that is that we want  
15 to see the statewide offering availability of that  
16 service so that customers out in different areas of  
17 the state aren't left without a provider.

18       Q.     Mr. Spinks, doesn't that concern go to  
19 whether or not one or more alternative carriers is  
20 willing to serve in those other areas of the state?

21       A.     Yes.

22       Q.     And does U S WEST have any control over  
23 that once U S WEST's services are available for resale  
24 and the unbundled network elements are available for  
25 purchase?

1           A.     No, but that's exactly the point.  Once  
2 they're unbundled and available -- and it's a question  
3 of availability, I think.  I think you're saying is  
4 available to a single carrier through a single  
5 agreement sufficient and I would say probably not, but  
6 certainly under a tariff basis I don't think there  
7 would be any question about its availability because  
8 that would be stated in the terms and conditions of  
9 the carriers, and then there's probably this gray area  
10 in between about, well, what if we have all these many  
11 carriers or several carriers, a number of carriers  
12 that have it, and in that I'm saying I don't know.

13          Q.     Mr. Spinks, wouldn't tariffing the prices,  
14 terms and conditions for unbundled network elements  
15 essentially take that piece out of the negotiation  
16 process?

17          A.     No.  I think we're looking to the  
18 negotiation process to at least initially establish  
19 the rates, perhaps some terms and conditions for the  
20 offering of the unbundled network elements.

21          Q.     If those prices, terms and conditions were  
22 tariffed at some point, wouldn't that essentially  
23 create a ceiling for the prices, terms and conditions  
24 for the unbundled network elements and if negotiations  
25 did go forward they would always either result in the

1 tariffed provisions or something lower priced than  
2 that?

3 A. No, not necessarily. Tariffs can be  
4 revised the same way or as they are frequently.  
5 Contracts can be revised, too.

6 Q. What incentive would a new entrant carrier  
7 have to negotiate a rate higher than what it could  
8 choose out of the tariff?

9 A. If it desired the service to be offered  
10 under conditions that it wouldn't be offered or  
11 available under tariff.

12 Q. Well, that wouldn't be the service offered  
13 under the tariff, would it?

14 A. Yes, it would. It would just be provided  
15 on perhaps an individual case basis where some special  
16 construction were necessary to be done or perhaps in a  
17 central office where it wasn't currently provisioned  
18 to provide Centrex and they're willing to enter into  
19 agreement with the company to have it provided out of  
20 that office but they would understand they would have  
21 to pay certain additional costs to do that. Those  
22 types of --

23 Q. But absent circumstances such as that there  
24 wouldn't be any reason or basis for a carrier to agree  
25 to a rate for a standard service higher than the rate

1 they could buy out of tariff for, is there?

2 A. Probably not.

3 Q. Mr. Spinks, on page 4 you talk about  
4 concerns with arbitrage should be addressed by  
5 adjusting the relative rates for services not by  
6 withdrawing Centrex Plus service?

7 A. Yes, I see that.

8 Q. Would staff support a proposal by the  
9 company to propose quantity discounts for business  
10 loops on a revenue basis?

11 A. Are you assuming the rate case and other  
12 revenue requirement issues have been resolved now and  
13 we're in this going forward mode where your revenue  
14 requirement is exactly -- rates are set exactly at the  
15 revenue requirement?

16 Q. Yes.

17 A. Yes.

18 Q. You would support that on a revenue neutral  
19 basis?

20 A. I believe so. There would be other  
21 business services that would likely be the offset for  
22 the revenue, though. There wouldn't be a shifting of  
23 those revenue requirements to noncompetitive services  
24 in terms of conditions that you put around that type  
25 of a filing. My recollection is there was a

1 Commission order which had indicated something to the  
2 effect that the company would not be permitted to  
3 shift revenue requirements due to competitive changes  
4 to noncompetitive services.

5 Q. Is it your testimony that business services  
6 as provided by the company are competitive?

7 A. Well, some would be. Obviously some  
8 wouldn't, but you would, I think, under that sort of a  
9 proposal you would keep the shifting within the same  
10 class of customers that's receiving the discount rate.

11 Q. How does that address an arbitrage concern,  
12 then, if you just move the dollars around on the same  
13 class of customers who are susceptible to being lost  
14 because of arbitrage concerns?

15 A. I didn't understand that we were talking  
16 about addressing arbitrage concerns. I understood we  
17 were talking about a subsequent filing in a brave new  
18 world where all these revenue issues have been  
19 resolved and we're dealing with or at a point where  
20 the prices produce the revenue requirement of the  
21 company.

22 Q. The question that I had for you addressed  
23 your testimony on page 4 at lines 16 through 21 and  
24 there your sentence starts, "A concern with arbitrage  
25 should be addressed by adjusting the relative rates

1 for services," and that was the context in which I was  
2 asking you the questions. So perhaps in that context  
3 can you explain to me how arbitrage concerns can be  
4 addressed by simply shifting the dollars around within  
5 the class of customer that is susceptible to loss  
6 because of arbitrage?

7 A. Well, I don't know that I've ever agreed  
8 that there is in fact an arbitrage situation. The  
9 company has raised the issue that there is an  
10 arbitrage situation and wishes to withdraw the  
11 service, but to the extent -- I'm saying that to the  
12 extent the company believes its rates require  
13 adjustment if there is in fact an arbitrage situation,  
14 which I don't feel has been established, then, yes,  
15 some kind of a discount schedule for 1FBs is one thing  
16 to consider doing.

17 Q. On a revenue neutral business?

18 A. Under certain circumstances, sure. I don't  
19 know that that's something that I can categorically  
20 agree to or reject, that is, in terms of any  
21 specifics. On a conceptual basis that could work.

22 Q. Which of the company's services do you  
23 consider to be competitive whereby it would be  
24 appropriate to achieve revenue neutrality by shifting  
25 revenue recovery to those competitive services?

1           A.     If by competitive you mean effective  
2 competition I would note that only a handful of  
3 services have been found to have effective competition  
4 in this state.

5           Q.     I was using the word the way you used it  
6 earlier when you said that the revenue recovery  
7 couldn't be shifted to noncompetitive service, in  
8 other words, meaning --

9           A.     Okay. That is in the context of my tariff  
10 raising a Commission order, the order meant whatever  
11 it meant. I think what we were dealing with at that  
12 time was the company's contention that business  
13 services that weren't necessarily competitive today  
14 needed to have prices revised downward to prepare for  
15 competition, and then a revenue requirement or the  
16 revenue neutrality was achieved by raising rates for  
17 various other business services, and I think directory  
18 assistance, and so the issue came up I think  
19 conceptually for the first time in that term loops  
20 case.

21          Q.     Mr. Spinks, if the rate case order is  
22 implemented and U S WEST has a \$25 monthly rate for  
23 its business service 1FB --

24                   Do you have that in mind?

25          A.     Yes.

1 Q. -- is it your opinion that that rate would  
2 more than cover the company's cost to provide that  
3 service?

4 MS. SMITH: I would object to that  
5 question. It's been repeated throughout this  
6 proceeding that this case is not a cost case. Cost  
7 doesn't have any relevance in this case.

8 MS. ANDERL: I am laying the foundation to  
9 explore a couple of things with Mr. Spinks and he did  
10 mention both costs and the ability of the company to  
11 adjust its rates downward on page 4 of his testimony.  
12 I'm certainly not going to get into cost study issues.

13 JUDGE WALLIS: The only mention of costs  
14 that I see in his testimony is that he just states  
15 that the company is not asserting that Centrex service  
16 is priced below cost. Can you rephrase your question  
17 and still explore the area you want to explore?

18 MS. ANDERL: Perhaps.

19 Q. Mr. Spinks, would you agree that at a \$25  
20 monthly rate for business service the company also  
21 under the terms of the rate case order would have  
22 downward pricing flexibility on that price?

23 A. Yes.

24 Q. Do you think that the company could reduce  
25 its rate by \$5 and still have a rate that would be

1 approved by staff as appropriate and permissible  
2 business rate?

3 MS. SMITH: I have the same objection to  
4 that question. Once again, that's getting into cost  
5 issues.

6 JUDGE WALLIS: I'm not certain that it  
7 does. I think the question is permissible.

8 A. I think I would have to have more  
9 information. It's just a very general kind of a  
10 statement and I know, if anything, through my years of  
11 work here that it's the details that often -- that  
12 decisions often turn on, and so I think you're asking  
13 me to state what a decision would be and in the  
14 absence of those details I don't know that I could  
15 give you one.

16 Q. Mr. Spinks, is it your understanding that  
17 this Commission has a policy that like services should  
18 be priced the same?

19 A. Yes.

20 Q. And when the Centrex loop is unbundled,  
21 does it technically differ from a private line NAC or  
22 a basic exchange unbundled loop?

23 A. No.

24 Q. Isn't it correct that the way things are  
25 currently structured in the Centrex product Centrex

1 loops for the first two miles from a central office  
2 are available at prices between \$2.65 and \$5.32?

3 A. Yes. That same schedule exists in the  
4 private line NAC tariff.

5 Q. Does it exist in basic exchange unbundled  
6 loop or basic exchange service?

7 A. No. That's a different thing.

8 Q. Is it a different service?

9 A. Well, yeah, basic exchange service includes  
10 -- is a loop, dial tone, usage, whatever, that's  
11 engineered to work within certain technical  
12 specifications.

13 Q. What about a basic exchange loop? Would it  
14 be different?

15 A. I don't know that there's any such service  
16 by that name. I think that's what an unbundled loop  
17 is going to become.

18 Q. So your testimony is that a Centrex loop  
19 isn't going to be any technically different from an  
20 unbundled loop product?

21 A. It shouldn't be any different from an  
22 unbundled loop product. Well, a loop is a loop. I  
23 guess I'm a little confused about what you're asking.

24 Q. On page 6 of your testimony at lines 11  
25 through 16 you discuss the use of Centrex service for

1 the sole purpose of toll bypass?

2 A. Yes.

3 Q. Is staff aware of any customer or reseller  
4 who is currently using Centrex in that manner?

5 A. No.

6 Q. And the reason you addressed it in your  
7 testimony is --

8 A. I thought that the company had raised that  
9 issue and I was trying to be responsive to that.

10 Q. Mr. Spinks, do you have before you what's  
11 been marked for identification as Exhibit No. 31 which  
12 is the February 23, 1996 open meeting agenda  
13 memorandum in this docket?

14 A. Yes, I have that.

15 Q. Are you the author of that document?

16 A. I appear to be.

17 MS. ANDERL: Your Honor, I would offer that  
18 for admission.

19 JUDGE WALLIS: Is there objection?

20 MS. SMITH: No objection.

21 Q. Mr. Spinks, directing your attention to --

22 JUDGE WALLIS: The exhibit is received.

23 (Admitted Exhibit 31.)

24 MS. ANDERL: Thank you, I'm sorry.

25 Q. -- the third paragraph, the middle of that

1 paragraph. I believe you're discussing the company's  
2 contention that uneconomic arbitrage opportunities  
3 exist with the Centrex Plus. Do you see that?

4 A. Yes.

5 Q. And as I understand your discussion there,  
6 you dispute or have not seen evidence that uneconomic  
7 arbitrage is present; is that right?

8 A. Yes. Well, the context for the sentence  
9 here is that I think what we were pointing out is that  
10 Centrex has been offered for some time in Washington  
11 and the company had heretofore not ever raised any  
12 question, concern or issue with so-called uneconomic  
13 arbitrage.

14 Q. You indicate two factors which, as I read  
15 the memo, you are offering in support of your belief  
16 that there is no opportunity for uneconomic arbitrage,  
17 and you state that there are a number of restrictions  
18 on the use of the service such as 20 lines per  
19 location and no aggregation of locations for volume  
20 discount pricing, and you state that both of those  
21 factors suggest that the service is not a likely  
22 candidate for potential competitors to use in lieu of  
23 the unbundled loop. Is that a correct summary?

24 A. Yes, correct.

25 Q. Are there any other factors which you

1 believe suggest that the service is not a likely  
2 candidate for potential competitors to use in lieu of  
3 the unbundled loop?

4 A. Yes. One big one is that we have no idea  
5 what the pricing for the unbundled loops is going to  
6 look like and that pricing may be as attractive as of  
7 the revised Centrex NAC rates in which case there  
8 would be no incentive to use the Centrex NAC.

9 Q. If that were not the case, did you feel  
10 that the 20-line-per-location and no aggregation of  
11 locations were the primary or major factors in your  
12 recommendation that no arbitrage opportunities  
13 existed?

14 A. No. Well, yes and no. If you look up the  
15 date of the memo is February 23. We received the  
16 filing on February 5. It was prepared probably five  
17 or six days prior to the agenda date, so essentially  
18 we had the filing in our hands about a week and a  
19 half, two weeks before we sat down to write up what  
20 our view was on the filing at that time as best we  
21 could, and a recommendation for the disposition of it.  
22 I was aware at that time of issues such as the  
23 20-line-per-location that were restrictions in the  
24 tariff which the Commission had -- was dealing with in  
25 the rate case and because I had that knowledge and

1 information that that alone was enough to prevent  
2 resellers at that time in using it, I put that in the  
3 memo as part of the discussion.

4 Q. And if those restrictions were no longer  
5 present on the service, would that change your opinion  
6 as to whether there was a likelihood that competitors  
7 would use the Centrex loop in lieu of the unbundled  
8 loop?

9 A. Well, I think I said earlier that until you  
10 know what the unbundled loop prices are, I guess I  
11 don't see how the existence of what is a Centrex Plus  
12 loop -- there's no tariff terms or provisions that say  
13 resellers may use these loops in lieu of unbundled to  
14 access line loops to provide service with. There's  
15 issues about their use that aren't addressed that  
16 would need to be addressed probably before they could  
17 be used, and so --

18 Q. Mr. Spinks, assume that the unbundled loop  
19 was priced higher than the Centrex loop rates that  
20 we've talked about and the 20 lines per location and  
21 no aggregation of locations restrictions did not  
22 exist. Do you believe then that Centrex loop is a  
23 significant candidate to be used as an arbitrage to  
24 the unbundled loop?

25 A. Well, under your assumptions, yes.

1 Q. Do you know now whether the 20 lines per  
2 location and no aggregation of locations are still  
3 conditions in the tariff the way it exists today?

4 A. I believe that they're not.

5 Q. So the only condition that we're missing  
6 then is the price for an unbundled loop in order for  
7 you to be able to determine whether there are  
8 arbitrage opportunities?

9 A. Well, no. You would be assuming in your  
10 tariff then that Centrex loops are allowed to be used  
11 to provision other services with, and I don't know  
12 what you would base that assumption on.

13 Q. Are you suggesting that the company could  
14 restrict the availability of unbundled Centrex loops  
15 to the provision of Centrex service?

16 A. At this time, yes.

17 Q. And staff would support such a restriction?

18 A. I don't know. We are also concurrently  
19 dealing with resale tariff issues. It's possible that  
20 could happen but I think our preference is to achieve  
21 some recognition that like services should be priced  
22 alike, and that you shouldn't have restrictions that  
23 are unnecessary, so there's probably better ways of  
24 dealing with the issue than through tariff  
25 restrictions but that would be one vehicle.

1 Q. Are you aware that such a restriction  
2 exists in the tariff as it is effective today?

3 A. There you go. No, I wasn't but it doesn't  
4 surprise me.

5 Q. I'm not stating. I am asking you whether --

6 A. Oh, I'm sorry. No, I am not aware.

7 Q. And you can't say either way whether  
8 there's a restriction or not?

9 A. Well, I don't recall there being one. On  
10 the other hand, I have not sat down and reread that  
11 tariff closely.

12 Q. In the Commission orders which required  
13 unbundling of the loop do you recall there being any  
14 restriction on the availability of that loop either  
15 authorized or required by the Commission?

16 A. No.

17 Q. Mr. Spinks, are you aware of whether or not  
18 there is any limitation currently on the resale of  
19 Centrex service?

20 A. I know that the company has refiled the  
21 resale tariff per order of the Commission in the rate  
22 case I think three times now, and frankly I am just  
23 not certain as to what the current status of what that  
24 resale tariff now contains and doesn't contain, so I  
25 am afraid I can't answer that.

1 Q. Prior to the rate case order were you aware  
2 that there were any prohibitions or restrictions on  
3 reselling Centrex?

4 A. Yes. There's many of them, yes, in the old  
5 tariff, and if it's still there it would be current.  
6 There are numerous terms and conditions for resellers  
7 for the resale of Centrex.

8 Q. But it was permitted, wasn't it?

9 A. Yes, yes.

10 Q. Is it your understanding that AT&T and MCI  
11 are not currently reselling Centrex Plus services in  
12 the state of Washington?

13 A. I believe that in a discussion with MCI  
14 they indicated that they were not in this state  
15 reselling Centrex at this time, and I just don't know  
16 about MCI one way or the other.

17 Q. AT&T?

18 A. I'm sorry, AT&T, thank you.

19 MS. ANDERL: Thank you. That's all that I  
20 have for Mr. Spinks.

21 JUDGE WALLIS: Any further questions on  
22 cross?

23

24 CROSS-EXAMINATION

25 BY MR. HARLOW:

1 Q. Good morning, Mr. Spinks.

2 A. Morning.

3 Q. To your knowledge, is anyone at this time  
4 using unbundled Centrex NAC, which is the formal  
5 function of an unbundled loop?

6 A. Not to my knowledge.

7 Q. How long have the restrictions that you  
8 refer to in the staff memo regarding 20 lines per  
9 location and aggregation of locations for volume  
10 discount pricing been in effect?

11 A. It would have been since, I believe, May 6.

12 Q. You were asked by Ms. Anderl if the  
13 networks elements became available pursuant to the  
14 arbitrations would staff's position on withdrawal of  
15 Centrex Plus change, and I would like to know, how  
16 long would you expect -- related to that, how long  
17 would you expect it would take competitive LECs such  
18 as MFS or MCI Metro to ramp up to provide Centrex  
19 service after the necessary network elements became  
20 unbundled?

21 A. Gosh, I have no idea.

22 Q. Would you want to have the U S WEST Centrex  
23 service withdrawn the day after those unbundled  
24 elements became available?

25 A. No, and I hope that's not -- wasn't read

1 into my answer. Obviously, there would have to be a  
2 -- there should be a transition period during which  
3 the customers of the company can be given adequate  
4 notification, perhaps informed of the withdrawal like  
5 we did when we deregulated inside wire or in other  
6 areas where we've transitioned customers from one  
7 state to another we would want to see adequate  
8 notification and the like.

9 Q. Can you say at this time what an  
10 appropriate transition period might be?

11 A. No.

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

13 MS. KAYE: I have just a couple of  
14 questions.

15 JUDGE WALLIS: Ms. Kaye.

16

17 CROSS-EXAMINATION

18 BY MS. KAYE:

19 Q. Good morning, Mr. Spinks.

20 A. Good morning.

21 Q. I'm Beth Kaye, the attorney representing  
22 Shared Communications Services. Ms. Anderl asked you  
23 a series of questions this morning to establish that  
24 the availability of service elements to one or more  
25 carriers through the 252 arbitration negotiation

1 process would be sufficient to satisfy staff that the  
2 public interest and availability of Centrex statewide  
3 and also the requirements of the Telecommunications  
4 Act were met, and I have some questions to follow up  
5 on that.

6           You were aware, I'm sure -- please confirm  
7 that this is correct -- that the Telecommunications  
8 Act provides for both the availability of service  
9 elements through the 252 negotiation process and  
10 availability of all retail services at wholesale rates  
11 for resale; is that correct?

12       A.     Roughly, yes. That would be my  
13 understanding. There's both unbundled elements and  
14 the retail services offered on a resale basis.

15       Q.     And would an arbitration decision making  
16 certain service elements available under the  
17 arbitration process or negotiation available to  
18 carriers satisfy the wholesale rate requirement of the  
19 act?

20       A.     Yes.

21       Q.     Can you explain to me how that would be?

22       A.     Well, if by the wholesale rate requirement  
23 I assumed you meant the provision of the unbundled  
24 network elements to the carrier, to the ALEC.

25       Q.     Let me --

1           A.     I must have missed something.

2           Q.     Let me clear up my question.  The section  
3 252 process is the arbitration and negotiation.  The  
4 section 251(C)4 of the Telecommunications Act provides  
5 for availability of all retail services at wholesale  
6 rates for resale.  My question is, would that 251  
7 resale provision be satisfied, in your opinion, if U S  
8 WEST entered into an arbitration agreement or was  
9 subject to an order from this Commission through the  
10 arbitration process?

11          A.     Thank you for giving me that understanding.  
12 No.  The unbundled network elements wouldn't fulfill  
13 that portion of the act.

14          Q.     Elsewhere, also in response to this line of  
15 questioning by Ms. Anderl, you testified that you  
16 thought that an arbitration decision resulting in an  
17 agreement with one carrier would not be enough even to  
18 satisfy the 252 provision.  Can you explain why you  
19 felt that an agreement with one carrier wouldn't be  
20 enough to insure that the public interest in having  
21 these service elements available throughout the state  
22 would be met?

23          A.     That's not my recollection of what I was  
24 agreeing to.  What our discussion was about was  
25 whether or not it would satisfy the concern with

1   tariffing of the service at the state level and would  
2   therefore -- we would therefore support the company's  
3   withdrawal of the service. My response was no, simply  
4   having an agreement with one or two carriers wouldn't  
5   be sufficient.

6           Q.     And can you explain why that is?

7           A.     Because there wouldn't be any uniformity or  
8   ubiquity or uniformity of rates or even availability  
9   of rates on a statewide basis, and then -- therefore  
10  there would likely not be ubiquity in terms of the  
11  coverage, of the ability of others to come in and  
12  provide a current Centrex customer in some particular  
13  location in the state with an alternative.

14          Q.     Would staff also be concerned that that  
15  carrier might be insolvent or become inefficient --  
16  well, become insolvent, be inefficient or provide poor  
17  service?

18          A.     Well, I think that we have a registration  
19  process which, my recollection is, does look at the  
20  financial capabilities of entrants and the like, so  
21  I'm not sure that that would be an issue.

22                   MS. KAYE: Thank you.

23                   JUDGE WALLIS: Further questions on cross?  
24  Commissioners?

25                   CHAIRMAN NELSON: Just one.

1 EXAMINATION

2 BY CHAIRMAN NELSON:

3 Q. Mr. Spinks, at page 6 of your testimony,  
4 line 13 you reference certification by resellers and  
5 compare it to private line arrangements should misuse  
6 of the Centrex resellers occur. Can you just refresh  
7 my recollection on what -- are the certification  
8 requirements similar to the existing private line  
9 arrangements?

10 A. I hope so. In the -- I believe it's for  
11 certain private line arrangements there's a  
12 declaration that customers have to make as to their  
13 PIU, percent interstate usage, for determining whether  
14 the circuit is rated under interstate or intrastate  
15 tariffs and that's what I was referring to.

16 Q. Thank you.

17 CHAIRMAN NELSON: That's all.

18 COMMISSIONER HEMSTAD: I don't have any  
19 questions.

20 COMMISSIONER GILLIS: I have no questions.

21 JUDGE WALLIS: Redirect?

22 MS. SMITH: Yes, if I could just have a  
23 moment, please.

24 JUDGE WALLIS: Yes.

25 (Discussion off the record.)

1 JUDGE WALLIS: Why don't we take our  
2 morning break now. Be back in about 15 minutes,  
3 please.

4 (Recess.)

5 JUDGE WALLIS: Let's be back on the record,  
6 please. Ms. Smith, you have redirect?

7 MS. SMITH: Yes, I do.

8 JUDGE WALLIS: Please proceed.

9

10 REDIRECT EXAMINATION

11 BY MS. SMITH:

12 Q. Mr. Spinks, would an arbitrated agreement  
13 that does not have a most favored nation clause be an  
14 acceptable alternative to a tariff?

15 A. No, it wouldn't.

16 Q. And what type of agreement would?

17 A. An agreement -- we would like to see an  
18 agreement that had terms and conditions that would be  
19 generally available to others and that could serve in  
20 lieu of the tariff.

21 MS. SMITH: I don't have any more  
22 questions.

23 JUDGE WALLIS: Ms. Anderl.

24 MS. ANDERL: Just one follow-up to that.

25



1 document consisting of his prefiled testimony and  
2 attached exhibits. Those documents are collectively  
3 marked as Exhibit 32 for identification. Mr. Harlow.

4 (Marked Exhibit 32.)

5

6 DIRECT EXAMINATION

7 BY MR. HARLOW:

8 Q. Will you please state your name and  
9 business address for the record, please.

10 A. Yes. My name is Patrick Chow. My business  
11 address is 201 Spear Street, Ninth Floor, San  
12 Francisco, California, 94105.

13 Q. And by whom are you employed, Mr. Chow?

14 A. I'm employed by MCI Telecommunications.

15 Q. What's your current position?

16 A. I am a regulatory manager.

17 Q. Do you have in front of you a copy of your  
18 prefiled testimony in this docket which has just been  
19 numbered Exhibit T-32?

20 A. Yes, I do.

21 Q. Was that testimony and exhibit prepared or  
22 collected under your direction or supervision?

23 A. Yes, it was.

24 Q. If I were to ask you the questions  
25 contained in your prefiled direct, would your answers

1 be the same as contained in Exhibit T-32?

2 A. Yes, it would be.

3 MR. HARLOW: We offer Exhibit T-32.

4 JUDGE WALLIS: Is there an objection?

5 MS. ANDERL: No.

6 JUDGE WALLIS: Exhibit 32 is received in  
7 evidence.

8 (Admitted Exhibit 32.)

9 MR. HARLOW: Witness is available for  
10 cross.

11 JUDGE WALLIS: Ms. Anderl.

12

13 CROSS-EXAMINATION

14 BY MS. ANDERL:

15 Q. Good morning, Mr. Chow.

16 A. Good morning.

17 Q. At page 12 of your testimony, Mr. Chow, you  
18 list the unbundled network elements MCI would require  
19 to provision Centrex service. Do you see that at the  
20 top of the page?

21 A. On page 12 there is a list of what's called  
22 unbundled network elements if that's what you're  
23 referring to, yes.

24 Q. I thought that's what I said. If I  
25 misspoke --

1 A. Yes, I see that.

2 Q. Does MCI think that it needs any other  
3 network element in addition to those listed there in  
4 order to self-provision Centrex service?

5 A. The items listed here are an appropriate  
6 engineered subscriber load switching elements, Centrex  
7 switch port including all features and functions,  
8 telephone numbers and all back office system necessary  
9 to interact with U S WEST to provision service. These  
10 would have to be immediately available before MCI  
11 could provision a Centrex-like service.

12 Q. Does MCI have an arbitration pending with  
13 this Commission with U S WEST?

14 A. I believe it does.

15 Q. Has MCI requested all of those items  
16 described on page 12 in that arbitration?

17 A. I'm not personally involved in that  
18 arbitration but I believe that these elements are  
19 included.

20 Q. Are you familiar with U S WEST's Centrex  
21 Plus tariff either as it stands today or as it read  
22 prior to the entry of the rate case order in  
23 Washington?

24 A. I'm familiar with this service, yes.

25 Q. Does MCI currently purchase Centrex Plus

1 for resale?

2 A. I don't believe that we do.

3 MR. HARLOW: Excuse me, in Washington?

4 MS. ANDERL: In Washington, yes.

5 A. I don't believe that we do.

6 Q. Do you know if there are any legal  
7 restrictions on your ability to do so?

8 A. I don't know if there are.

9 Q. Are you aware that other resellers purchase  
10 Centrex Plus service for resale in Washington?

11 A. I believe that there are resellers out  
12 there in the state of Washington.

13 Q. Do you know of any reason why MCI could  
14 also not purchase Centrex Plus for resale?

15 A. No, I don't.

16 Q. Are you offering testimony today on behalf  
17 of Metronet or just MCI?

18 A. Just MCI.

19 Q. Does MCI provide switched local exchange  
20 service in the state of Washington?

21 A. MCI was granted authority by this  
22 Commission earlier this year and began provisioning  
23 service I believe in January in this year on a  
24 facility basis.

25 Q. And in order to do that do you need to

1 exchange traffic with U S WEST?

2 A. I believe that's correct, yes.

3 Q. And are you doing so under the terms of an  
4 interim interconnection agreement?

5 A. I believe that's correct, but I was not  
6 privy to those discussions, but I believe that's  
7 correct.

8 Q. What facilities -- and I am speaking  
9 specifically in terms of a switch -- does MCI have in  
10 Washington state? Does MCI have a switch in  
11 Washington state?

12 A. Yes, it does.

13 Q. Where is that?

14 A. I'm sorry. If you're talking about MCI  
15 Metro or MCI T?

16 Q. Well, on whose behalf are you offering  
17 testimony today?

18 MR. HARLOW: I believe both MCI  
19 Telecommunications and MCI Metro have intervened in  
20 this docket and so our position is that Mr. Chow's  
21 testimony is offered on behalf of both.

22 Q. Well, then my question, just to save time,  
23 when I refer to MCI I refer to either entity and if  
24 your answer applies only to one you could specify in  
25 your answer.

1 A. And the question was?

2 Q. Does MCI have a switch in the state of  
3 Washington? I think you said yes.

4 A. That's correct.

5 Q. And the question was where?

6 A. In the Seattle metropolitan area.

7 Q. What type of switch is that?

8 A. I'm not sure I know the exact technical  
9 description of that switch.

10 Q. Do you know if the switch is technically  
11 capable of providing Centrex or Centrex type services?

12 A. Most switches are technically capable of.  
13 Whether or not the switch that we currently have in  
14 Seattle has that capability, I don't know.

15 Q. It would need to be loaded with Centrex  
16 software in order to have that capability; is that  
17 right?

18 A. I'm not an engineer so as far as the exact  
19 configuration or whether it's software or hardware  
20 configurations, I don't know.

21 Q. And whose switch is it? MCI T or MCI  
22 Metro?

23 A. MCI T has -- MCI T and MCI Metro have  
24 switches in the state of Washington.

25 Q. And some are toll switches or are we

1 talking only of local service switches?

2 A. For MCI T it will be a toll type switch.

3 Q. And MCI Metro is the local type switch that  
4 you've referred to in the Seattle metropolitan area?

5 A. Correct.

6 Q. And it's just the one in Seattle?

7 A. I believe so, yes.

8 Q. How many customers do you have on a  
9 facilities basis for local exchange, switched local  
10 exchange service in Washington?

11 MR. HARLOW: I think that would probably be  
12 a confidential figure that we wouldn't want to put on  
13 the public record.

14 MS. ANDERL: Could it be provided under the  
15 terms of the protective order?

16 MR. HARLOW: What's the relevance?

17 MS. ANDERL: Maybe I need to ask a couple  
18 of more questions so it becomes obvious.

19 Q. What are MCI's plans, if any, to resell  
20 Centrex Plus service in the state of Washington if U S  
21 WEST's tariff filing is not approved?

22 MR. HARLOW: If that's not confidential, if  
23 it is we need to go in closed session, Mr. Chow.

24 Q. Does MCI or MCI Metro have any plans would  
25 perhaps elicit a nonconfidential answer?

1           MR. HARLOW: I'm not sure it would. I will  
2 let the witness decide what MCI considers proprietary  
3 and needs to be protected.

4           A. I am not a marketing personnel, and I am  
5 not privy to the exact marketing decisions and what  
6 decisions have been made regarding the resell of  
7 Centrex within this state.

8           Q. So as you sit here today opposing U S  
9 WEST's Centrex Plus withdrawal you cannot tell me one  
10 way or the other whether MCI or MCI Metro has any  
11 plans whatsoever in the state of Washington to resell  
12 the product?

13          A. Until we know whether or not this is a  
14 technically viable product that we want to offer and  
15 is also available to all resellers pursuant to the  
16 act, the federal act, that's why I'm sitting here  
17 opposing U S WEST's withdrawal of the service.

18          Q. What do you mean by technically viable?

19          A. There are some services that we have to  
20 decide from a marketing perspective and a financial  
21 perspective whether or not a service that is out there  
22 or a marketplace exists for those services that we may  
23 or may not want to resell.

24          Q. What do you need to do to determine that  
25 here in Washington regarding the resale of Centrex

1 Plus?

2 A. I think a number of factors need to be in  
3 place, such as the availability of that product.

4 Q. If that were a given what else would you  
5 need to determine?

6 A. Again, I'm not a marketing person and as  
7 far as all those details that go into those decisions  
8 I'm not privy to.

9 Q. Mr. Chow, is it possible that MCI has no  
10 plans to resell Centrex Plus service in Washington?

11 A. Again, I am not privy to the marketing  
12 decisions and don't know if --

13 Q. Is it possible?

14 A. Anything is possible.

15 Q. Mr. Chow, you have some testimony  
16 concerning MCI Metro's experience providing resold  
17 Centrex in Iowa. Do you have that reference at page  
18 5, line 8?

19 A. Yes, I do.

20 Q. How long have you provided resold Centrex  
21 as a local exchange service in Iowa?

22 A. I think for over -- maybe over a year. I'm  
23 not sure of the exact dates.

24 Q. Can you say how many customers you have on  
25 that service?

1 A. I don't have that number.

2 Q. Would you accept subject to your check that

3 --

4 MR. HARLOW: Are you about to disclose on  
5 the record proprietary customer information?

6 MS. ANDERL: My understanding is that the  
7 number I would be about to disclose was disclosed in a  
8 public session by an MCI witness in Iowa. However, I  
9 would be happy to discuss it with you before I do so.

10 MR. HARLOW: I would like you to at least  
11 be certain.

12 MS. ANDERL: May we have a moment then?

13 JUDGE WALLIS: Yes. Brief recess, please.

14 (Discussion off the record.)

15 MR. HARLOW: I think the way we can solve  
16 the problem is you can ask the witness whether the  
17 witness is familiar with the number allegedly given in  
18 Iowa. The witness is not so therefore I don't think  
19 you can establish it for this record anyway, since  
20 there's no knowledge.

21 MS. ANDERL: My intent is to ask him  
22 subject to check. It is an MCI witness. Certainly I  
23 can ask an MCI witness.

24 MR. HARLOW: We're not in a position to  
25 release that number to a public record. Apparently

1 none of the parties has a copy of the transcript to  
2 confirm that indeed was made public in Iowa.

3 MS. ANDERL: Well, we can make a phone call  
4 and attempt to obtain a copy of the transcript  
5 reference if that's what you would require. I believe  
6 that either the witness or counsel would know.

7 JUDGE WALLIS: I'm going to suggest an  
8 alternative here, and that is we have earlier in the  
9 record arranged for a late-filed exhibit. That could  
10 be a late-filed confidential exhibit, and we could ask  
11 the witness whether that -- the number on that --  
12 well, you know.

13 MR. HARLOW: We would not object to a  
14 late-filed exhibit and if indeed it is a public record  
15 we wouldn't object to that being a public exhibit.

16 JUDGE WALLIS: Does that meet your needs?

17 MS. ANDERL: I think it does and as a  
18 follow-on to that my request would be for the customer  
19 number for the state of Washington also because I  
20 would like to compare the customers for resold Centrex  
21 in Iowa that is being provided for, I believe  
22 according to this witness's testimony, over a year,  
23 and the number of customers that MCI has obtained as a  
24 facilities-based provider since January of 1996. I  
25 believe it's -- I believe that that data provided,

1 whether confidential or not, would address where I  
2 wanted to go.

3 MR. HARLOW: I'm not sure why this couldn't  
4 have been provided as a timely filed exhibit so I  
5 guess I would object.

6 MS. ANDERL: Well, Mr. Harlow --

7 MR. HARLOW: As to the Washington number.

8 MS. ANDERL: I don't think we need to go  
9 over on this record my attempts to obtain data from  
10 MCI. I think it's perfectly legitimate cross and that  
11 I was not necessarily required to have requested it in  
12 a data request.

13 JUDGE WALLIS: I believe that it is an  
14 appropriate question and that it would be appropriate  
15 to add it to a late-filed exhibit.

16 MS. ANDERL: Thank you. Would we give that  
17 a number at this time?

18 JUDGE WALLIS: Yes. Let's call that  
19 Exhibit 33.

20 (Marked and Admitted Exhibit 33.)

21 JUDGE WALLIS: Why don't we make each of  
22 them a separate exhibit and that way if the Iowa  
23 number is not confidential that can be a  
24 nonconfidential exhibit and then 34C would be the  
25 Washington number.

1           MR. HARLOW: I assume we'll just basically  
2 treat that as a record requisition of MCI to provide  
3 that number.

4           MS. ANDERL: Well, record requisitions are  
5 not generally provided as exhibits.

6           MR. HARLOW: Right, but then we allow to be  
7 admitted as an exhibit in addition.

8           JUDGE WALLIS: Yes.

9           MS. SIEGLER MILLER: Your Honor, would the  
10 intervenors receive copies of these exhibits as well?

11          JUDGE WALLIS: Yes. That would be Exhibit  
12 34C.

13                   (Marked and Admitted Exhibit 34C.)

14          MR. HARLOW: That's for the number of MCI  
15 Metro Washington customers.

16          MS. ANDERL: For local exchange switched  
17 service.

18          MR. HARLOW: Switched local customers.  
19 As I understand it the company will be providing  
20 Exhibit 33?

21          MS. ANDERL: Excuse me?

22          JUDGE WALLIS: In consultation with you,  
23 Mr. Harlow.

24          MR. HARLOW: Right. The company will be  
25 obtaining and providing Exhibit 33, the Iowa

1 transcript?

2 MS. ANDERL: I understood you to have  
3 offered to provide the Iowa number.

4 MR. HARLOW: No. I understood you to  
5 offer.

6 JUDGE WALLIS: Let's be off the record,  
7 please.

8 (Discussion off the record.)

9 JUDGE WALLIS: Let's be back on the record,  
10 please. Following some discussion regarding the  
11 format of the exhibit and the manner of its  
12 preparation and submission, I believe there's  
13 consensus. Ms. Anderl.

14 MS. ANDERL: Yes. We would request that  
15 MCI provide the number of customers it has currently  
16 in Iowa for resold Centrex Plus service as a record  
17 requisition. We believe that we can provide a  
18 transcript reference describing a nonconfidential  
19 customer number offered this summer. However, it will  
20 be a couple of months out of date and it would be my  
21 preference to have the current number.

22 JUDGE WALLIS: And does the company wish  
23 that to be confidential?

24 MR. HARLOW: I don't know. If it does  
25 we'll so mark it and if it doesn't we won't.

1 JUDGE WALLIS: Thank you.

2 Q. Mr. Chow, turning to page 6 of your  
3 testimony, could you please in the context of MCI's  
4 current status as a facilities-based provider in  
5 Washington and MCI's lack of current plans, to your  
6 knowledge at least, to resell Centrex Plus service  
7 describe how U S WEST's proposal creates a barrier to  
8 MCI's entry into the local market in Washington?

9 A. I'm assuming you're referring me to -- you  
10 said on page 6.

11 Q. Lines 7 and 8.

12 A. Okay, thank you. It's our understanding of  
13 the act that no state requirement can prohibit or have  
14 the effect of prohibiting the ability of any entity to  
15 provide interstate or intrastate telecommunications  
16 services. If in fact U S WEST is allowed to withdraw  
17 this service and grandfather it MCI and similarly  
18 situated companies, resellers, would be prevented from  
19 offering that service to existing customers of U S  
20 WEST.

21 Q. And isn't that true with all grandfathered  
22 services?

23 A. I believe that's correct.

24 Q. And does MCI or MCI Metro oppose  
25 grandfathering on a general basis for that reason?

1           A.     In this instance, yes, we do object to it.  
2     When U S WEST or other entities grandfather in as a  
3     replacement product that is, let's say, superior to  
4     the product that's being pulled off the market we  
5     wouldn't have a problem with it.

6           Q.     Doesn't the grandfathering still prohibit  
7     the reseller from providing the original service?

8           A.     I believe that it would, yes.

9           Q.     But under those circumstances you wouldn't  
10    oppose the grandfathering?

11          A.     If there were a replacement service that  
12    were equivalent or superior to the one that's being  
13    grandfathered I don't think that we would have a  
14    problem.

15          Q.     How would MCI determine whether it was  
16    equivalent or superior?  What factors would you  
17    consider?

18          A.     I think a number of factors would come into  
19    play such as the pricing of that product, the  
20    technical capabilities of that product and the market  
21    acceptance of that product.

22          Q.     How does one determine the market  
23    acceptance of a new product?

24          A.     Whether or not there are actual customers  
25    purchasing that service I think would be a test of

1 whether or not it's been accepted in the marketplace.

2 Q. So you wouldn't be able to determine  
3 whether it was an appropriate or acceptable  
4 replacement until after it was already in place and  
5 you could determine whether customers found it  
6 desirable?

7 A. Again, I said a number of factors come into  
8 play, and the ones I mentioned earlier were some of  
9 them that could come into play.

10 Q. And to my question?

11 A. Whether or not that could happen after the  
12 fact? Again, a number of factors have to be  
13 addressed, whether or not the replacement product is  
14 deemed to be an acceptable replacement product. I  
15 can't say per se for sure sitting here right now  
16 whether or not any particular replacement product  
17 would be acceptable to us not knowing what that  
18 product is.

19 Q. Does MCI or MCI Metro provide  
20 facilities-based local exchange service in states  
21 other than Washington?

22 A. I'm not sure. I'm sorry. We were recently  
23 approved in California. I don't believe that we're up  
24 and running yet. I believe we have a couple of test  
25 customers up and going so the answer would be yes.

1 Q. Do you know if you're providing Centrex  
2 service to those customers?

3 A. I don't believe that we are.

4 Q. Does MCI resell Centrex service in any  
5 state other than Iowa, U S WEST Centrex service?

6 A. I don't believe so.

7 MS. ANDERL: I don't have any other  
8 questions for Mr. Chow.

9 JUDGE WALLIS: Other questions on cross?

10 MR. POSNER: I have a question.

11 JUDGE WALLIS: Mr. Posner.

12

13 CROSS-EXAMINATION

14 BY MR. POSNER:

15 Q. Mr. Chow, I'm Martin Posner representing  
16 MFS Intelenet of Washington. Mr. Chow, do you have an  
17 opinion about whether or not Centrex Plus service is  
18 obsolete?

19 MS. ANDERL: Objection. Could we have a  
20 reference to his direct that this cross is on?

21 MR. POSNER: I'm simply responding to a  
22 question of Ms. Anderl.

23 JUDGE WALLIS: I believe that the witness  
24 did address that topic in cross-examination, and I  
25 will allow the question.

00311

1 A. I'm sorry, your question is?

2 Q. Do you have an opinion about whether or not  
3 Centrex Plus service is obsolete?

4 A. I don't think that it's currently obsolete,  
5 no.

6 MR. POSNER: I have no further questions.

7 JUDGE WALLIS: Commissioners.

8

9 EXAMINATION

10 BY CHAIRMAN NELSON:

11 Q. Mr. Chow, I'm a little puzzled by the  
12 answers just to the conclusion of Ms. Anderl's  
13 questioning. Did I hear you say that MCI is providing  
14 facilities-based local exchange competition only in  
15 Washington and California?

16 A. I only handle the western region, and I am  
17 drawing from my experience in the western region and  
18 as far as facilities-based I'm pretty sure in, let's  
19 say, the U S WEST territory that's correct.

20 CHAIRMAN NELSON: I wonder if I can just do  
21 a bench request. I would like an update. I thought  
22 MCI Metro entry plans were far more extensive than  
23 that. I am surprised. Could I do a bench request and  
24 ask you to get back to us on where MCI -- and let's  
25 put it this way -- has been certified to provide local

1 exchange competitive service and is actually  
2 operational? I would just be interested in that.

3 MR. HARLOW: You want that by cities or  
4 states?

5 CHAIRMAN NELSON: States.

6 MR. HARLOW: We can do that.

7 CHAIRMAN NELSON: Thank you.

8 JUDGE WALLIS: We'll reserve Exhibit 35C  
9 for that.

10 (Marked and Admitted Exhibit 35.)

11 MR. HARLOW: I don't think -- that's not  
12 likely to be confidential, is it?

13 JUDGE WALLIS: Well, 35 and then indicate  
14 whether it is.

15 CHAIRMAN NELSON: That's all. And I meant  
16 nationwide, too.

17 MR. HARLOW: That's what we understood.

18 JUDGE WALLIS: Mr. Chow, would it be MCI's  
19 intention to purchase Centrex elements and repackage  
20 them in other -- to provide nonCentrex service such as  
21 basic 1FB or 1FR service?

22 THE WITNESS: The existing Centrex offering  
23 and then repackage them as 1FBs? Again, I'm not privy  
24 to marketing -- any marketing plans. If that were a  
25 viable option I believe my marketing department would

1 consider it.

2 JUDGE WALLIS: Thank you. Mr. Harlow.

3 MR. HARLOW: Thank you.

4

5 REDIRECT EXAMINATION

6 BY MR. HARLOW:

7 Q. Mr. Chow, are you familiar with the  
8 comparative competitive conditions between Iowa and  
9 Washington for local exchange service?

10 A. A little bit.

11 Q. Are those conditions comparable, would you  
12 say?

13 A. I would say similar but I don't know if I  
14 would go as far as comparable.

15 Q. Are you familiar with customer needs and  
16 demands in Iowa as compared to Washington?

17 A. I would say they would be similar.

18 MR. HARLOW: No further questions.

19 JUDGE WALLIS: Anything further for the  
20 witness?

21 MS. ANDERL: Two follow-on.

22

23 RECROSS-EXAMINATION

24 BY MS. ANDERL:

25 Q. Actually, this is my fault for not asking

00314

1 it, and Mr. Chow, I don't know if you know this or  
2 not, but isn't it correct that MCI also has a local  
3 switch in Portland, Oregon?

4 A. I believe that's correct. I don't know if  
5 it's operational. It may be.

6 MS. ANDERL: Actually, that's the only one  
7 I have.

8 JUDGE WALLIS: Very well. Anything further  
9 of the witness? Let the record show that there is no  
10 response. Mr. Chow, thank you for appearing today.  
11 You're excused from the stand. Let's be off the  
12 record while Mr. Bell steps forward.

13 (Recess.)

14 JUDGE WALLIS: AT&T Communications of the  
15 Pacific Northwest Inc. has called its witness Howard  
16 Bell to the stand at this time. Raise your right  
17 hand, please.

18 Whereupon,

19 HOWARD BELL,  
20 having been first duly sworn, was called as a witness  
21 herein and was examined and testified as follows:

22

23 DIRECT EXAMINATION

24 BY MR. HARWOOD:

25 Q. Good afternoon, Mr. Bell.

1 A. Good afternoon.

2 Q. Would you please state your name and your  
3 address for the record, please.

4 A. Yes. My name is Howard Bell. My business  
5 address is 901 Market Avenue, Minneapolis, Minnesota.  
6 Zip code is 55402.

7 Q. By whom are you employed?

8 A. AT&T.

9 Q. What is your position with AT&T?

10 A. I'm a policy witness.

11 Q. What is your title with AT&T?

12 A. At the time testimony was filed state  
13 government affairs manager.

14 Q. Thank you. Do you have before you your  
15 testimony in this matter?

16 A. Yes, I do.

17 JUDGE WALLIS: Why don't we at this time  
18 assign Exhibit No. 36 for identification to the  
19 document consisting of Mr. Bell's prefiled testimony  
20 and the attached Exhibit A.

21 (Marked Exhibit 36.)

22 Q. Mr. Bell, you have then that exhibit you  
23 marked as Exhibit No. 36?

24 A. Yes, I do.

25 Q. Was that exhibit prepared by you under your

1 direction and control?

2 A. Yes.

3 Q. Do you have any corrections to make to that  
4 exhibit at this time?

5 A. Yes. There are corrections, minor  
6 corrections, on three different pages. The first  
7 correction would appear on page 7, on lines 14 and 15.  
8 There are four words that should be deleted. Maximum  
9 full of and U S WEST, U S WEST C on line 15, and after  
10 "benefits" at the end of line 14 put "that U S WEST's"  
11 so that would read, "ready access to the discounts and  
12 benefits that U S WEST's Centrex service offers."

13 MS. ANDERL: I'm sorry?

14 JUDGE WALLIS: Let's be off the record.

15 (Discussion off the record.)

16 THE WITNESS: On page 11, line 18, scratch  
17 the words "will" and "made" and substitute "should"  
18 and "kept."

19 And lastly on page 12 on line 3 between the  
20 words "raising" and at the end of that line insert  
21 "the specter of increasing."

22 Those are the changes to the testimony.

23 (Discussion off the record.)

24 JUDGE WALLIS: Let's be back on the record,  
25 please. The witness has indicated some minor

1 corrections to his testimony and Mr. Harwood has  
2 indicated that those could be made to the record in  
3 the way of an errata sheet for the exhibit.

4 MR. HARWOOD: Thank you.

5 Q. Mr. Bell, then, with those corrections in  
6 mind, if I asked you the same questions contained in  
7 this exhibit, would your answers be the same?

8 A. Yes.

9 MR. HARWOOD: I would then move for the  
10 admission of Exhibit No. 36.

11 JUDGE WALLIS: Is there objection?

12 MS. ANDERL: No.

13 MR. HARWOOD: The witness is available for  
14 cross.

15 JUDGE WALLIS: Let the record show that  
16 there is no objection and Exhibit 36 is received.

17 (Admitted Exhibit 36.)

18

19 CROSS-EXAMINATION

20 BY MS. ANDERL:

21 Q. Good morning, Dr. Bell.

22 A. Good morning.

23 Q. Does AT&T currently resell Centrex Plus in  
24 the state of Washington?

25 A. No, it does not.

1 Q. Does AT&T currently resell Centrex Plus in  
2 any state?

3 A. I do not believe that it does.

4 Q. Does AT&T provide any local exchange  
5 service in Washington state?

6 A. Not at this time. We are planning to in  
7 the future.

8 Q. And do those plans include the provision of  
9 local exchange service through Centrex Plus resale?

10 A. That would be one of the vehicles that AT&T  
11 would utilize in providing service. We intend to be a  
12 full range local service provider providing the  
13 complete array of services for both residential and  
14 business customers.

15 Q. And what are AT&T's plans to use Centrex  
16 Plus resold services? How would --

17 A. If Centrex Plus is available, we would  
18 utilize it both to sell as Centrex, to existing and  
19 new customers, and we would also anticipate that it  
20 would be utilized quite possibly in connection with  
21 single line business customers.

22 Q. Is it your understanding that AT&T and U S  
23 WEST will have an arbitrated interconnection agreement  
24 around December 1 of this year?

25 A. I'm not sure of exact date but I will take

1 your word for it. Yes, there is an arbitrated  
2 agreement that's in the works.

3 Q. And how soon after receiving that agreement  
4 does AT&T plan to enter the market in Washington for  
5 local exchange service?

6 A. I am not sure.

7 Q. Does AT&T have specific plans and you're  
8 just not aware of them or are there no specific plans?

9 A. Well, there are plans but there are a lot  
10 of things up in the air. The terms and conditions of  
11 the interconnection agreement would be one factor that  
12 would affect the rapidity of the outcome of the state  
13 -- of the federal order, FCC's order, maybe other  
14 variables that would have some impact, so there are a  
15 number of things that have to be determined. Somebody  
16 might decide to appeal the arbitration order, too, so  
17 there's a lot of things that could impact exactly when  
18 we'll get in the market. We would like to be in the  
19 market as soon as possible because we feel that we can  
20 provide a quality service to the citizens of  
21 Washington.

22 Q. To that point, Dr. Bell, do you know of any  
23 reason why AT&T could not be reselling Centrex Plus  
24 even today?

25 A. I believe that we have a certificate of

1 authority request for providing local service pending  
2 before the Commission. I am not sure that we have  
3 legal standing at this juncture to provide the  
4 service.

5 Q. If there were no issue on that regard, do  
6 you know of any reason why AT&T could not provide  
7 resold Centrex service?

8 A. Well, I think not being authorized is a  
9 pretty significant reason for not providing the  
10 service. If we had certification that would be  
11 theoretically possible. Our plans were to become a  
12 full service player and introduce a wide array of  
13 services at one time and roll them out as a unit  
14 rather than piece parts.

15 Q. So other than the legal certification  
16 issue, which you're not sure of, as I understand it,  
17 and it's AT&T specific business plans to enter the  
18 market all at once, can you give me any other reason  
19 why AT&T could not today be a Centrex reseller?

20 A. I think those are the reasons.

21 Q. And so if AT&T were legally authorized to  
22 provide local exchange service and had been so  
23 authorized for some time then the only reason that  
24 AT&T would not be selling Centrex Plus today would be  
25 because of the business decision to enter the market

1 all at once?

2 A. Well, if we're departing from reality -- we  
3 aren't certified. We have the interconnection  
4 agreement coming up and so we're just not in a  
5 position at this point in time to provide the service,  
6 but the reasons you cited as why we're not doing it  
7 are correct.

8 Q. Dr. Bell, do you know the nature of the  
9 certification petition that you have pending before  
10 the Commission?

11 A. I am not familiar with the details of it.  
12 I've just been advised that we do have a petition  
13 pending and it hasn't been acted on as yet, and the  
14 status of providing the service is uncertain until  
15 that is resolved.

16 Q. Would you accept subject to your check that  
17 that's a petition for competitive classification?

18 A. Yes, I will accept that subject to check.

19 Q. Dr. Bell, you've worked for AT&T for  
20 some time; isn't that right?

21 A. That is correct.

22 Q. And up until recently AT&T manufactured and  
23 sold switches; isn't that right?

24 A. That's correct.

25 Q. And that function is now done at Lucent

1 Technologies?

2 A. That is correct, Lucent Technologies is  
3 providing the switches these days.

4 Q. Prior to the creation and spin-off of  
5 Lucent, isn't it correct that AT&T manufactured and  
6 sold 5ESS switches to end user customers?

7 A. Yes.

8 Q. And are those switches technically capable  
9 of providing Centrex service?

10 A. They can be programmed to provide Centrex  
11 service as a general rule.

12 Q. Does AT&T have in the state of Washington  
13 any switches that are technically capable of providing  
14 Centrex service?

15 A. No.

16 Q. Does AT&T have any switches that could be  
17 upgraded to be so technically capable?

18 A. No, I don't believe that switches we have  
19 in the state of Washington could be upgraded for that  
20 purpose. At a future date we may well put a switch in  
21 depending on how we do in our entry into the  
22 marketplace, because over time we would hope to  
23 migrate from being largely a resell provider to  
24 increasingly utilizing our own facilities which would  
25 over time include switches, but at this point in time

1 we do not have switches that could be utilized for  
2 Centrex provision.

3 Q. Dr. Bell, on page 7 of your testimony, you  
4 talk about auxiliary services that Centrex resellers  
5 typically provide?

6 A. Yes.

7 Q. Starting on line 19. Does AT&T sell voice  
8 messaging as a service?

9 A. I believe we do subject to check.

10 Q. Does AT&T provide telecommunications  
11 consulting service to its customers?

12 A. We provide advice and counsel in many  
13 cases, yes.

14 Q. What about installation and maintenance  
15 services?

16 A. On some of the larger installations I  
17 believe that we have done that, yes.

18 Q. And AT&T clearly provides its customers  
19 with long distance service options, doesn't it?

20 A. Yes.

21 Q. What about billing services?

22 A. We do billing for customers in some  
23 circumstances.

24 Q. Does AT&T sell a product to customers that  
25 automatically routes toll traffic over the cheapest

1 toll service arrangement available?

2 A. Auto route selection?

3 Q. Yes.

4 A. I think Lucent Technologies does.

5 Q. And before Lucent then it would have been  
6 AT&T that sold that product?

7 A. Yes, but we don't have that today. It  
8 would have gone to Lucent Technologies and they are a  
9 separate and distinct entity.

10 Q. Dr. Bell, there's some discussion in your  
11 testimony about an obsolete service and whether or not  
12 Centrex Plus is obsolete?

13 A. Yes.

14 Q. Can you generally describe for me what you  
15 would consider to be an obsolete service?

16 A. An obsolete service is one which is  
17 technically out of date. It isn't doing an adequate  
18 job for customers. It generally has a declining  
19 customer base.

20 Q. Does it have to have a declining customer  
21 base in order to be obsolete?

22 A. No, but that's a common feature of it.

23 Q. At page 5 of your testimony, and you don't  
24 need to refer to it, but you introduce your Exhibit A  
25 which is an article from -- or your attachment A,

1 rather, and if you could turn to that attachment A, I  
2 have a couple of questions for you about that.

3 A. Fine.

4 Q. Dr. Bell, did you compare U S WEST's  
5 Centrex Plus service as it's offered today with this  
6 article prior to or subsequent to filing your  
7 testimony in this docket?

8 A. Yes.

9 Q. Let me refer you to the second page of that  
10 attachment A.

11 A. Yes.

12 Q. The first column under the inserted graph  
13 or pie chart.

14 A. Yes.

15 Q. That paragraph describes service providers'  
16 spruced up Centrex offerings?

17 A. Yes.

18 Q. Including such features as ISDN and  
19 wireless capabilities?

20 A. That's right.

21 Q. Does U S WEST's existing Centrex Plus  
22 product include ISDN and wireless capability?

23 A. Doesn't contain an ISDN as a standard  
24 feature. There are instances where ISDN has been  
25 added into the Centrex package.

1 Q. On an individual case basis?

2 A. Yes.

3 Q. And does U S WEST Centrex Plus product  
4 include automatic call distribution as a standard  
5 feature?

6 A. I don't believe that it does. There are  
7 some features here that are not in the current U S  
8 WEST plan. There are also a number of things in the  
9 article which do relate to the U S WEST plan.

10 Q. Dr. Bell, does U S WEST's current Centrex  
11 Plus product include voice mail?

12 A. I don't believe that that's a standard  
13 feature. I believe the resellers, though, add it  
14 quite commonly, as we discussed previously.

15 Q. What about call accounting and PC-based  
16 call routing systems? Is that included in U S WEST's  
17 current Centrex offering?

18 A. I'm not quite sure how they define call  
19 accounting. I believe there are features which allow  
20 toll to be accounted for by individual lines in the  
21 Centrex service, but I don't believe they have  
22 PC-based call routing.

23 Q. And in the paragraph or the column, rather,  
24 immediately to the right of the inserted chart there  
25 about in the middle where it says "adding to the

1 appeal"?

2 A. Yes.

3 Q. Second sentence states that "the majority"  
4 -- referring to carriers -- "have also streamlined  
5 their Centrex rates to eliminate mileage-sensitive  
6 charges." Do you know if U S WEST's tariff has been  
7 streamlined to eliminate mileage-sensitive charges?

8 A. I don't believe that it has. But if you go  
9 just below that you also find there's a lot of reasons  
10 people go to Centrex and there are a lot of other  
11 reasons for people utilizing Centrex and in your case  
12 you've had significant growth, so I think that the  
13 current Centrex package is providing a need. There  
14 may well be a need for another package. You may need  
15 a supplemental one. We've discussed that before.

16 Q. To the extent that a carrier needs to  
17 provide services on an ICB basis for supplement or to  
18 augment or customize its Centrex, would that tend to  
19 indicate to you that the service as tariffed is either  
20 technically out of date or not doing a good job for  
21 the customers?

22 A. Well, I wouldn't say that it's not doing a  
23 good job for customers, but you do have some instances  
24 where the customer has use for the ISDN capabilities  
25 and applies it on an individual case basis. You also

1 have a wide array of customers that are quite  
2 satisfied with the service. I just appeared not too  
3 long ago in South Dakota and the head of the state  
4 department of telecommunications there very definitely  
5 said service was not obsolete.

6 Q. And so that -- you would suggest that  
7 that's binding on this Commission?

8 A. No, but what I am suggesting is that the  
9 general approach is you have to pull a service which  
10 is feature rich, which is meeting the needs of many  
11 end users and resellers and is a vehicle for  
12 introducing competition at a time when you have a  
13 national policy that's dedicated to bringing  
14 competitive activity and options to all Americans that  
15 you don't have a reason for pulling this service. You  
16 may well have a need to introduce a supplemental  
17 service offering in order to meet customer needs in  
18 the long distance market. If you refer to the tariff  
19 offerings of AT&T and others you will find a plethora  
20 of service offerings designed to meet the individual  
21 needs of customers. We don't attempt to have a one-  
22 size-fit-all approach, and I think that's what you're  
23 going to have to do as we get into a competitive  
24 environment.

25 MS. ANDERL: Your Honor, I would move to

1 strike Dr. Bell's response. I asked him if he thought  
2 that the South Dakota pronouncement should be binding  
3 on this Commission and then he proceeded to give the  
4 speech that we all just heard. I don't think it was  
5 responsive at all.

6 JUDGE WALLIS: Mr. Harwood?

7 MR. HARWOOD: Well, I think Mr. Bell is  
8 just responding to a general question and so I don't  
9 see why it should be stricken.

10 JUDGE WALLIS: I'm going to grant the  
11 motion to strike because the witness's testimony was  
12 not related to any question. I am going to ask Mr.  
13 Bell to listen closely to the questions and respond to  
14 the question and then if you have an explanation of  
15 your answer you may proceed to do that. Otherwise,  
16 perhaps we can rely on your direct testimony and  
17 redirect that Mr. Harwood may have for you. And I am  
18 going to also ask you to make sure that you're right  
19 up close to the microphone. These microphones are  
20 designed so that they pick people up very well when  
21 you're very close to the microphone, almost  
22 uncomfortably close, and otherwise sometimes they have  
23 trouble, and I know there are people in the back of  
24 the room who want to hear your testimony as much as we  
25 do. Thank you.

1 THE WITNESS: Thank you.

2 MS. ANDERL: I have no further questions.

3 JUDGE WALLIS: Are there other questions on  
4 cross? Commissioner questions?

5 COMMISSIONER HEMSTAD: No.

6 COMMISSIONER GILLIS: No.

7 JUDGE WALLIS: Redirect?

8 MR. HARWOOD: I have a single question.

9

10 REDIRECT EXAMINATION

11 BY MR. HARWOOD:

12 Q. Mr. Bell, is it your understanding that  
13 AT&T does not manufacture, sell switches of any kind  
14 at this time?

15 A. That is correct.

16 MR. HARWOOD: Thank you.

17 JUDGE WALLIS: Is there anything further of  
18 the witness? Let the record show that there is no  
19 response. Mr. Bell, thank you for appearing. You may  
20 be excused from the stand.

21 THE WITNESS: Thank you. It was a  
22 pleasure.

23 JUDGE WALLIS: Let's be off the record for  
24 a procedural question.

25 (Discussion off the record.)

1                   JUDGE WALLIS: Let's be back on the record,  
2 please. During off record procedural discussions we  
3 referred to an earlier agreement and note that briefs  
4 will be due on November 22, 1996. Ms. Anderl has a  
5 follow-up for the company's commitment during Ms.  
6 Baird's examination to update information that's been  
7 provided. Ms. Anderl.

8                   MS. ANDERL: Yes, Your Honor. We've  
9 determined that the change to Exhibit 2C results in  
10 changes and substitute pages in four other exhibits,  
11 10C, 11C, 17C and 18C and we'll provide the corrected  
12 pages just as soon as we can get them.

13                   JUDGE WALLIS: Very well. Thank you very  
14 much. I might mention that you have engaged in  
15 discussions with Mr. Harlow relating to the  
16 information to be presented as Exhibit 33C, and that  
17 Mr. Harlow will provide that information within one  
18 week and will advise Ms. Anderl if that time frame is  
19 not possible. Is that correct, Mr. Harlow?

20                   MR. HARLOW: Yes.

21                   JUDGE WALLIS: Very well. And I will ask  
22 as a matter, Mr. Harlow has asked an opportunity to  
23 provide substitute Exhibits 8 and 9 identical with the  
24 documents already received but for pagination and the  
25 pages on the substitute documents will then be

1 numbered; is that correct?

2 MR. HARLOW: Yes.

3 JUDGE WALLIS: And that is acceptable to  
4 all the parties and will be accomplished. Very well.  
5 Is there anything further to come before the  
6 Commission? Ms. Anderl.

7 MS. ANDERL: I just have one other  
8 question. I was curious to the extent that  
9 presentations had been somewhat coordinated in this  
10 matter whether the parties intended to coordinate  
11 briefing or -- I guess if there's only one round it  
12 may not matter but --

13 JUDGE WALLIS: Ms. Siegler Miller.

14 MS. SIEGLER MILLER: If I may, Your Honor,  
15 we have not discussed that, but I know on behalf of  
16 Frontier we would be opposed to filing a combined  
17 brief. We believe each intervenor has their own  
18 slightly distinguishable interests. I think we could  
19 make a statement to the Commission, however, that we  
20 will try as we did in our original filings to avoid  
21 extensive duplicative text.

22 MS. KAYE: If I may. I also would oppose a  
23 combined briefing requirement and --

24 JUDGE WALLIS: I don't think that issue is  
25 really before us at this point. There's been no

1 request for combination. There's been only an  
2 inquiry, and I am not proposing that there be a  
3 requirement of combination.

4 MS. KAYE: The coordination that would be  
5 required would add an additional week or so to the  
6 time it would take us to file our briefs and with the  
7 transcript in two weeks and a deadline in a little bit  
8 more than three that would be exceedingly difficult to  
9 meet.

10 JUDGE WALLIS: Ms. Siegler Miller has  
11 indicated that the parties might coordinate to avoid  
12 extensive duplication. You might find that that in  
13 fact does save you some effort and that you can  
14 accomplish that, and on behalf of the Commission I  
15 certainly very strongly encourage the parties to do as  
16 much of that as you can and would just leave that at  
17 that.

18 Is there anything further to come before  
19 the Commission? Let the record show that there is no  
20 response and this matter is concluded. Thank you all  
21 very much.

22 (Hearing adjourned at 12:00 p.m.)

23

24

25