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BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
DONALD L. BERTELLE)
)
-vs-) No. 00-0473
)
AMERITECH)
)
Complaint as to improper installation)
of residential telephone line and)
repeated refusal to repair same in)
Chicago, Illinois)

Chicago, Illinois
July 18, 2001

Met pursuant to notice at 1:30 a.m.

BEFORE:

Mr. Sherwin H. Zaban, Administrative Law Judge.

APPEARANCES:

MR. DONALD L. BERTELLE
70 West Monroe Street, Suite 1110,
Chicago, Illinois 60603
appeared pro se;

MR. JAMES HUTTENHOWER
MR. MARK A. KERBER
225 West Randolph Street, Suite 25 -D
Chicago, Illinois 60606
appearing for Illinois Bell.

SULLIVAN REPORTING COMPANY, by
Thomas G. McEnery, CSR

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1 JUDGE ZABAN: By the power vested in me by the
2 Illinois Commerce Commission I call Docket No.
3 00-0473, Donald Bertelle versus Illinois Bell
4 Telephone Company doing business as Ameritech.

5 Will the parties please identify
6 themselves and enter their appearance for the
7 record.

8 MR. BERTELLE: Don Bertelle. I am the
9 complainant.

10 MR. HUTTENHOWER: James Huttenhower,
11 H-u-t-t-e-n-h-o-w-e-r, and Mark Kerber on behalf of
12 Illinois Bell Telephone Company, 225 West Randolph
13 Street, Suite 25-D, Chicago 60606.

14 MR. BERTELLE: For the record could I inquire of
15 the Court, when was the first -- when did we
16 commence this trial?

17 JUDGE ZABAN: I believe --

18 MR. HUTTENHOWER: April 24th according to my
19 notes.

20 MR. BERTELLE: Okay. I will stipulate to that.

21 JUDGE ZABAN: Okay.

22 MR. BERTELLE: Okay. I don't know the exact

1 order in which we are going to do things here, but
2 I have received a tender of their direct testimony;
3 okay.

4 JUDGE ZABAN: All right.

5 MR. BERTELLE: Now, I would like to point out
6 for the record that on December 13, 2000, I served
7 Rule 213 Interrogatories on the respondent. Okay.
8 Here is a duplicate original.

9 On June 4th of this year, 2001, I
10 received a revised response to those
11 interrogatories indicating -- here is a revised
12 response and a copy of the envelope it came in
13 which is metered May 31st.

14 So, initially, I am moving to bar the
15 respondents from calling the witnesses identified
16 in the revised response to my Rule 213
17 Interrogatories, and from -- I am moving to bar
18 them from testifying on the subjects identified in
19 the revised answers under the laws pertaining to
20 Rule 13(g) of the Illinois Supreme Court Rules
21 which apply to this proceeding so far as I know.

22 JUDGE ZABAN: Okay. Mr. Kerber?

1 MR. KERBER: The Supreme Court Rules don't apply
2 here directly. None of the rules of civil
3 procedure do except to the extent they're expressly
4 incorporated by Commission's rule of practice.

5 What we did in essence was to provide
6 some relatively minor updates to the interrogatory
7 responses that we had provided previously to
8 reflect -- to reflect some relatively modest
9 changes in the scope of the two witnesses'
10 testimony.

11 Mr. McGuire was identified in the
12 initial response which I also have here. I guess,
13 first of all, I am unclear on what the basis under
14 the Commission's Rules of Practice there would be
15 for Mr. Bertelle's motion; and I am also kind at a
16 loss as to how, if at all, he's been prejudiced in
17 any way. I mean, you know, he's had the
18 interrogatories, both the initial responses and the
19 supplemental responses. He's had the prefiled
20 written testimony.

21 He's certainly had adequate
22 opportunity to follow up in any manner that might

1 have been necessary to clarify the nature or the
2 reason for the supplemental responses, and we are
3 just trying to go out of our way to make sure that
4 he had adequate notice of everything that we
5 intended to put into the record to allow him to
6 prepare his case.

7 JUDGE ZABAN: Okay. Mr. Bertelle, do you wish
8 to respond?

9 MR. BERTELLE: This proceeding is subject to
10 review initially by the Illinois Appellate Court
11 and eventually by the Illinois Supreme Court and if
12 the Hearing Officer believes that the rules of the
13 Illinois Supreme Court are irrelevant and silly, I
14 would like to hear that said on the record here.

15 I think that they apply here, and I
16 think that the rules that I have that govern this
17 proceeding, State of Illinois, Illinois Commerce
18 Commission, 83 Illinois Administrative Code, Part
19 200 Rules practice would -- could only be
20 interpreted as requiring adherence to the rules of
21 the Supreme Court including Rule 213.

22 Rule 213 is intended to promote

1 discovery and eventually, you know, settlement,
2 because when everybody knows everything, it is the
3 theory that settlement is more likely.

4 I can tell you right now that had I
5 known that this was going to be done, that these
6 were the witnesses and that those were the
7 subjects, that I would have deposed both of these
8 gentlemen; and I was deprived of the opportunity of
9 doing so before I presented my own case .

10 And I just think that this is -- this
11 is, you know, cheating, is what this is and this is
12 what the respondent is good at in its service to
13 its customers as -- I don't know if this is true,
14 but the newspapers say that they have been found
15 guilty of a million violations of consumer service.

16 So they're good at cheating and
17 they're good at cheating in their service
18 requirements and they're good at cheating in the
19 administrative proceeding before your Honor.

20 The policy on discovery is evidenced
21 in 200.340. It says that it's designed to promote
22 full disclosure and that is certainly what 13(g),

1 is intended to do. I can't imagine that the
2 Illinois Supreme Court would say that it is not
3 intended -- that it did not intend -- when it
4 promulgated that rule and the subparagraphs of that
5 rule that it did not intend to promulgate full
6 disclosure.

7 So it seems to me that since this is a
8 well-known rule to all Illinois lawyers, all
9 lawyers who are members of the Illinois Bar, that
10 if you don't disclose under 13(g), you don't get to
11 present those witnesses or those witnesses on those
12 subjects.

13 So I am moving to bar the respondents
14 from calling those witnesses, from tendering their
15 written testimony and I'd also point out that as
16 the testimony also includes, I believe, at least
17 one tariff that I never saw before -- and correct
18 me if I am wrong, but I haven't seen all of these
19 tariffs.

20 They are producing documents as
21 exhibits to their witnesses' testimony that were
22 not previously disclosed in discovery, and I -- you

1 know, I just -- you know, your Honor, that I have
2 very little confidence in the integrity of this
3 proceeding because of the repeated instances in
4 which the proceeding has refused to abide by what I
5 consider to be basic principles of due process.

6 I consider Illinois Supreme Court
7 Rules to be basic principles of due process, but it
8 is absolutely appalling to me that they are allowed
9 to get away with this stuff.

10 JUDGE ZABAN: Let me ask you a question,
11 Mr. Bertelle.

12 When were you tendered this -- revised
13 response to complainant's interrogatories?

14 MR. BERTELLE: I wrote down on the -- in my --
15 is that in pencil?

16 MR. HUTTENHOWER: Yes.

17 MR. BERTELLE: I wrote it in pencil the day I
18 received it, June 4th.

19 And you can see the page attached to
20 it, it is the -- is actually not a copy. It's the
21 actual envelope, the face of the envelope that was
22 received, and there is a meter on it. It is not

1 postmarked; but it says meter, May 1st or May 31,
2 2000.

3 They posted it after I testified. So
4 I mean, the idea here --

5 JUDGE ZABAN: I understand. I understand what
6 your problem is.

7 MR. BERTELLE: It's cheating. If you can do
8 this in any other courtroom and even in a criminal
9 case you --

10 MR. HUTTENHOWER: May I speak?

11 JUDGE ZABAN: What have you done between June
12 4th and today?

13 Is there any written motions on file?

14 MR. BERTELLE: My understanding in 25 years of
15 civil litigation and criminal litigation, once
16 you're on trial you don't have to file written
17 motions. You just make motions because you have a
18 court reporter, and there is no misunderstanding of
19 what I am doing.

20 If it's your requirement that I make a
21 written motion on this, then I ask that we adjourn
22 and I will go back to my office and I will do a

1 written motion on it, but I don't see the point
2 unless it's a hoop that you would like to jump
3 through.

4 JUDGE ZABAN: Well, here is my concern.

5 Here is my concern. My concern is
6 that this is a very serious allegation. I am
7 considering what you are telling me here. I
8 believe that you are -- you are entitled to receive
9 the names of the witnesses and the scope of what
10 their testimony is going to be prior to the time
11 you present your evidence.

12 I agree with you. I consider that to
13 be a very basic requirement. At this point I don't
14 know when this was disclosed to you. I don't know
15 what -- what effect that this --

16 MR. BERTELLE: Do you think I am lying?

17 JUDGE ZABAN: No, that is not my point.

18 MR. BERTELLE: Why don't you ask him when they
19 mailed it? We can settle this.

20 JUDGE ZABAN: I am not -- I am not denying -- is
21 this the first time these two names were disclosed
22 to you?

1 MR. BERTELLE: The names were disclosed -- I met
2 the two gentlemen, in fact.

3 JUDGE ZABAN: Okay.

4 MR. BERTELLE: But I did not know that they were
5 going to be called as witnesses at trial, that this
6 was going to be their case.

7 MR. HUTTENHOWER: If I may comment briefly.

8 On December 13, 2000, we provided our
9 original response to Mr. Bertelle's 213
10 Interrogatories. At that time we identified Mr.
11 McGuire and provided, I believe, the identical
12 description of what his testimony would involve.
13 So that Mr. Bertelle has known that Mr. McGuire
14 would be a witness here since last December.

15 If he were that concerned about
16 possibly deposing Mr. McGuire or any -- pursuing
17 any other form of follow-up discovery, he has
18 certainly had a substantial period of time to do
19 that and to my knowledge he has not.

20 MR. BERTELLE: Where is the response?

21 MR. KERBER: In addition, your Honor, with
22 respect to Mr. Fiedler, the subject of the -- the

1 subjects of
2 Mr. Fiedler's testimony were both items that came
3 up in Mr. Bertelle's direct testimony. There were
4 allegations that had not appeared previously within
5 the four corners of the complaint regarding
6 subjects such as, you know, when there were service
7 calls to his home and whether or not he was -- you
8 know, the people were on time and stuff. None of
9 that appears within the four corners of the
10 complaint.

11 So Mr. Fiedler could only be added as
12 a witness in response to that since we didn't know
13 about it. We had no notice of those claims in the
14 complaint, and Mr. Fiedler also, by the way,
15 testifies regarding some subjects that your Honor
16 raised at the initial hearing during Mr. Bertelle's
17 direct and asked if we could provide someone who
18 could address those in terms of explaining the
19 repair records on the accounts.

20 So that was raised specifically by
21 your Honor in the hearing and you had requested
22 that we provide somebody who could testify on that

1 subject.

2 So Mr. McGuire was disclosed far in
3 advance, and Mr. Fiedler could only be disclosed
4 once we knew that those subjects would be included
5 which didn't happen until Mr. Bertelle's testimony
6 and your Honor's request.

7 JUDGE ZABAN: Mr. Bertelle, when did you receive
8 the -- their testimony?

9 MR. BERTELLE: The date I have written on there.

10 JUDGE ZABAN: Also June 4th.

11 MR. BERTELLE: Yes, June 4, 20 01.

12 And incidentally, I would like to
13 respond
14 to Mr. Kerber's remarks here on what they didn't
15 know about my allegations.

16 Mr. Kerber has shown a shocking lack
17 of respect for the truth in this proceeding as far
18 as I am concerned. I am looking at my complaint,
19 and I itemized various problems I had with service
20 calls. I don't think and I didn't testify to
21 anything different from what I said in my
22 complaint.

1 Moreover, I did give them tape
2 recordings way before I testified of voice mail
3 messages that were left. I also produced the
4 tickets, the service tickets, that were left
5 behind.

6 For him to state now that I testified
7 as to service calls that they didn't know about is
8 untruthful, and it is an attempt to intentionally
9 misrepresent to the Court and as such, is a
10 contempt on the Court in my opinion.

11 I mean, Mr. Kerber's -- of course,
12 nothing that Mr. Kerber says shocks me after the
13 initial stages of this litigation where he
14 demonstrated to me he has no respect for the truth
15 whatsoever, but, you know, for him to now say that
16 I testified as to matters that they previously
17 didn't know about is just wrong.

18 JUDGE ZABAN: Okay. As a general rule in these
19 proceedings we allow the parties to file pretrial
20 testimony prior to any testimony. One of the
21 reasons we do that is to expedite the hearing and
22 to afford the parties an opportunity to see what

1 testimony is going to be had before we commence
2 with the hearing.

3 Mr. Bertelle, you were offered that
4 opportunity to preoffer your testimony and at that
5 point after having preofferred your testimony, I
6 would have compelled Ameritech to preoffer their
7 testimony so that the parties would have known
8 going into the hearing what the nature of the
9 testimony was going to be.

10 You chose not to do so. However, my
11 understanding is that you are claiming some
12 prejudice as a result of this testimony and having
13 presented your case already; is that correct?

14 MR. BERTELLE: Yes, that is what I said.

15 JUDGE ZABAN: What I am going to do is I am
16 going to grant you additional time then and allow
17 you to reopen your case to present any additional
18 evidence in light of the testimony that is given to
19 you.

20 And approximately how much time would
21 you need for that?

22 MR. BERTELLE: I am going to also need time to

1 take their depositions.

2 JUDGE ZABAN: Well, you can apply to take their
3 depositions. I have indicated to you if there is
4 any specific -- if there is any specific questions
5 that you might have, the general procedure is to
6 ask them in the form of interrogatories.

7 However, after looking through their
8 testimony, if you make the determination that you
9 think you would like to take their deposition, I
10 will entertain a motion on your behalf to allow you
11 to take their deposition.

12 MR. BERTELLE: I am making a motion right now.
13 We are on trial.

14 JUDGE ZABAN: Okay. What specifically do you
15 want to question them about?

16 MR. BERTELLE: I want to know why it is that
17 they produced in response to interrogatories, my
18 general interrogatories earlier in the case, the
19 Exhibit A that is in evidence, right, or Attachment
20 A.

21 JUDGE ZABAN: You are talking about...

22 MR. BERTELLE: The tariff.

1 JUDGE ZABAN: The tariff. Okay.

2 MR. BERTELLE: Okay. Now they claim it's not
3 relevant.

4 Now, he says it's not relevant.

5 JUDGE ZABAN: Well, but that is his opinion;
6 isn't it?

7 MR. BERTELLE: Yes.

8 MR. KERBER: Production doesn't concede
9 relevance. We gave him what he asked for.

10 JUDGE ZABAN: The point is the fact that he says
11 it's not relevant, I am assuming that since I am
12 sitting in this chair, it's my determination as to
13 what is relevant and what is not relevant, not the
14 witness.

15 MR. BERTELLE: Well, perhaps. You know, there
16 is legal relevance and then there is real world
17 relevance, and he is saying that that tariff does
18 not govern the installation in my house, okay, that
19 that tariff doesn't apply.

20 I don't know whether you want to call
21 that relevance or however you want to describe it,
22 but that is what his testimony is. He says that

1 there is no NETPOP on my house, okay.

2 Now, they have produced that in
3 response to my interrogatories, and they
4 represented that it was
5 not -- indirectly representing that it did pertain
6 to the installation in my house because they were
7 producing what they considered to be a relevant
8 document.

9 Now, I don't know if you find that
10 interesting or not, but I do.

11 JUDGE ZABAN: Well, I tend to agree with you if
12 that was in response to your interrogatory or to
13 your request.

14 MR. BERTELLE: Right here. I can give it to
15 you.

16 JUDGE ZABAN: Well, okay. That may very well be
17 an admission against self-interest; however, what
18 other lines of inquiry do you have?

19 I am assuming we are talking about Mr.
20 Fiedler or Mr. McGuire?

21 MR. BERTELLE: Well, let's see here.

22 MR. HUTTENHOWER: I would say that any --

1 MR. BERTELLE: Mr. McGuire.

2 JUDGE ZABAN: Okay.

3 MR. BERTELLE: And, you know, there are other
4 things -- problems I have. He is saying now that,
5 you know, earlier I was produced documents
6 indicating that the use of four-conductor
7 installation wire outside the building, that they
8 had to check with Chicago to decide whether there
9 had ever been a problem, blah-blah-blah.

10 Now he testifies as that there is none
11 of this was the case. I mean -- I am -- I just
12 want to take his deposition. There are just a lot
13 inconsistencies between what was produced to me
14 before and now what he is saying now.

15 JUDGE ZABAN: Okay. Basically it sounds to me
16 like a lot of what you are asking is impeachment --
17 for the purposes of impeachment.

18 MR. BERTELLE: Of course. That is what I think
19 depositions are for and, you know, to search out ,
20 probe for credibility issues for potential
21 impeachment.

22 JUDGE ZABAN: I was kind of under the impression

1 that depositions are for the purpose of discovery;
2 okay. And it sounds to me like you already have
3 the information, however, you have some
4 inconsistencies.

5 Okay. What I am going to do is I will
6 grant you additional time to prepare. If you have
7 specific questions of the witnesses, I would ask
8 they been put in the form of writing and submitted
9 to Mr. Kerber.

10 MR. BERTELLE: I refuse to do that.

11 JUDGE ZABAN: Well, that is fine.

12 MR. BERTELLE: Let's get on with it then. If
13 you are going to -- if you are going to impose a
14 restriction like that, that I have to do
15 cross-examination in writing, then, you know, let's
16 get on with it. Let's get on with the railroad,
17 okay.

18 JUDGE ZABAN: Well, Mr. Bertelle, I am offering
19 you the additional time --

20 MR. BERTELLE: Let's get on with the railroad.
21 You have already heard my ruling on my -- do you
22 understand? That is my ruling.

1 MR. ZABAN: That is fine.

2 MR. BERTELLE: Let's get on with it.

3 JUDGE ZABAN: I am asking, you don't want the
4 additional time to prepare?

5 MR. BERTELLE: Not to prepare a written
6 cross-examination.

7 JUDGE ZABAN: I didn't say that. I said I'm
8 going to give you additional time to prepare based
9 on the testimony that was given to you, and if you
10 have specific questions of these witnesses that you
11 feel need to be answered, I will allow you to put
12 them in the form of written interrogatories to the
13 witnesses who may -- who I will compel to answer
14 them.

15 If that is not satisfactory to you,
16 then there is nothing more I can do for you.

17 MR. BERTELLE: I have already ruled.

18 JUDGE ZABAN: Okay. Are you prepared to go
19 ahead today?

20 MR. BERTELLE: I am as prepared as I will be as
21 with -- let's go.

22 Let's get on with the railroad.

1 JUDGE ZABAN: Okay. Your motion to bar the
2 witnesses will be denied.

3 MR. HUTTENHOWER: We would call Timothy McGuire
4 as our first witness.

5 JUDGE ZABAN: Mr. McGuire, will you please raise
6 your right hand?

7 MR. HUTTENHOWER: He can move over here.

8 MR. ZABAN: That's fine.

9 (Witness sworn.)

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

13 DIRECT EXAMINATION

14 BY

15 MR. HUTTENHOWER:

16 JUDGE ZABAN: Okay. Proceed.

17 MR. HUTTENHOWER: Okay, first --

18 MR. BERTELLE: I object to the dog and pony
19 show. If it's in writing, just -- we can just give
20 it. There is no point in having him read it out
21 loud if it's
22 already --

1 JUDGE ZABAN: He's not.

2 MR. BERTELLE: I assume you can read.

3 JUDGE ZABAN: He is not going to read it out
4 loud. There is a procedure that I assume Mr.
5 Huttenhower is going to follow. I am going to
6 allow him to follow that procedure.

7 MR. BERTELLE: He said you -- we are going to do
8 like a little play act here? He's going to read
9 the questions and then the witness is going to read
10 the answers?

11 JUDGE ZABAN: No, we don't need to do that.

12 MR. BERTELLE: What are we doing?

13 MR. HUTTENHOWER: I think what we are doing is I
14 am just getting my copies of his testimony ready to
15 hand to the court reporter, but perhaps you know
16 better.

17 MR. BERTELLE: All right. I don't know what you
18 are doing. I have no idea. I don't know what the
19 -- where the railroad is taking me here.

20 MR. HUTTENHOWER: All right. If the court
21 reporter could mark this as Respondent's Exhibit 1.

22 (Whereupon, Respondent's Exhibit

1 I do that if your attempt is to bait me so that I
2 am going to say something on the record that you
3 think is going to be grounds for appeal, you are
4 wasting your time.

5 You are -- you picked this forum. You
6 are subject to the rules of the forum, and we are
7 just going to proceed.

8 MR. HUTTENHOWER: Q. All right. Mr. McGuire,
9 you have in front of you what has been marked as
10 Respondent's Exhibit 1, a document entitled Direct
11 Testimony Of Timothy McGuire On Behalf Of Ameritech
12 Illinois.

13 Do you have that document in front of
14 you.

15 A. Yes.

16 Q. Was the testimony in this document prepared
17 by you or at your direction?

18 A. Yes.

19 Q. If I were to ask you the questions
20 contained in this document, would your answers to
21 those questions be the same as is presented in the
22 written testimony?

1 A. Yes.

2 Q. Do you have any clarifications or
3 corrections to your written testimony?

4 A. No.

5 Q. So the answers contained in the written
6 testimony are the answers you would supply here
7 under oath?

8 A. Yes.

9 MR. HUTTENHOWER: We would move then for
10 admission of Respondent's Exhibit 1.

11 JUDGE ZABAN: Which is the testimony?

12 MR. BERTELLE: The testimony, I guess, and the
13 attachments to the testimony which consist of
14 standards -- several pages standard for premises
15 wire, a one-page inspection report by Mr. McGuire
16 and then some pages from Ameritech Illinois Tariff.

17 JUDGE ZABAN: Okay. Objections, Mr. Bertelle?

18 MR. BERTELLE: Of course.

19 Am I allowed to make --

20 JUDGE ZABAN: Absolutely.

21 MR. BERTELLE: Do the rules allow me to make
22 objections, your Honor?

1 JUDGE ZABAN: Yes, they do.

2 MR. BERTELLE: Okay. Now, I am going to object
3 to the admission of the exhibits on the ground
4 there is no foundation -- evidentiary foundation.

5 Does the Commission -- do the rules of
6 the Commission require the following of common law
7 evidentiary requirements for foundation?

8 JUDGE ZABAN: Mr. Huttenhower, would you lay a
9 foundation as to the attachments?

10 MR. BERTELLE: Your Honor, it's my understanding
11 that this is just a written testimony and that they
12 don't get to present any more testimony. This -- I
13 am saying based upon the testimony in this exhibit,
14 there is no foundation for these attachments and I
15 am objecting to them.

16 Now, if we are going to alter the
17 procedure so that they get to offer written
18 testimony, and then they get to offer oral
19 testimony on foundation, then I would like to know
20 what rule is that you are referring to, your Honor,
21 that allows you to do that, and that you have to
22 follow, but you don't have to follow the Illinois

1 Supreme Court Rules.

2 JUDGE ZABAN: So what you are -- if I understand
3 your objection, what you are testifying here is
4 that the documents which this witness has attached
5 as exhibits, not identified in the direct
6 testimony; is that correct?

7 MR. BERTELLE: They're identified, but there is
8 no -- perhaps you didn't understand me the first
9 time I said this.

10 I am making an objection on the basis
11 that there is no common law evidentiary foundation
12 for the admission of these documents into evidence
13 in this proceeding or any other proceeding under
14 common law of the laws of England as they have been
15 handed down and interpreted in this country and
16 every other common law jurisdiction including
17 Samoa.

18 JUDGE ZABAN: Denied.

19 You can lay the foundation.

20 MR. HUTTENHOWER: Q. Well, first, maybe taking
21 these in reverse order.

22 Attachment C is provisions from

1 Ameritech Illinois Tariff, and it's my
2 understanding --

3 MR. BERTELLE: Objection. These documents speak
4 for themselves. There is no point in having
5 Counsel interpret them because, in essence, he is
6 now testifying as to what they are.

7 The documents either speak for
8 themselves and are admitted into evidence over my
9 objection, or they're not in evidence.

10 JUDGE ZABAN: Well, I am going to allow him to
11 lay a foundation.

12 MR. BERTELLE: Now you're going to allow.

13 So then do I get to make another
14 objection?

15 Are you withdrawing your ruling on my
16 previous objection?

17 JUDGE ZABAN: No, you can make another
18 objection.

19 MR. BERTELLE: Are you withdrawing your ruling?

20 JUDGE ZABAN: No, I am not.

21 MR. BERTELLE: So it's already denied, but you
22 are then going to allow them to support your

1 ruling.

2 Is that the idea?

3 JUDGE ZABAN: No, I am allowing him to lay a
4 foundation for the attachments.

5 MR. HUTTENHOWER: I would simply request with
6 the Attachment C, the tariff provision, that the
7 Examiner take administrative notice of this tariff
8 as a public record and as part of Ameritech's
9 required statutory filing.

10 It's my understanding that examiners
11 in other proceedings have similarly taken
12 administrative notice of our tariff provisions.

13 JUDGE ZABAN: Okay. Those tariffs having been
14 previously filed with the Commission are public
15 documents and are part of the Commission's
16 documents. I will take official notice of the
17 tariffs.

18 MR. BERTELLE: I don't get to object?

19 JUDGE ZABAN: Sure.

20 MR. BERTELLE: I object on the grounds that
21 these tariffs have not previously been produced to
22 me in discovery, whereas the tariffs that I offered

1 in evidence during my direct testimony in my case
2 in chief was the only tariff presented to me in
3 discovery.

4 MR. KERBER: The tariffs we produced are all of
5 the tariff pages that we believed to be relevant to
6 the discovery requests that were propounded.

7 The tariff pages that were not
8 produced were not produced because in our judgment
9 they were not responsive to the request that was
10 propounded.

11 However, entirely aside from that, we
12 did note very clearly when we produced our tariffs
13 in response to that one request that they are, in
14 fact, publicly available. We actually would have
15 no requirement to produce them anyway. They are
16 available on line. They're available at the
17 Commission's office.

18 And so, A, he didn't ask for them;
19 and, B, we didn't have a duty to give them to him
20 anyway. And he certainly could have gone and
21 looked them up at any point in time either prior to
22 the hearing or up to today.

1 MR. BERTELLE: In response to my request to 11,
2 I said, State each and every fact relied upon by
3 the respondent for its determination whether a
4 telephone line is inside or outside when repair
5 service charges are assessed.

6 The response was -- which the
7 information is publicly available and set forth in
8 Ameritech's tariffs governing the network point of
9 presence, NETPOP -- A copy of the relevant tariffs
10 is provided. See Attachment No. 2.

11 Now, the gist of Mr. McGuire's
12 testimony and at some point in here it says -- he
13 addresses this tariff that they produced in
14 response to Data Request No. 11 and said, There is
15 no NETPOP on my house.

16 It says the provision addresses the
17 situation where buildings, such as a larger
18 apartment building, requires more complex inside
19 wiring. In such a building, the NETPOP may be
20 properly installed inside of the building.

21 The tariff, referring to the one that
22 they actually produced in discovery, refers to that

1 situation in which network cable rather than
2 customer premises wire enters a building.

3 So what they're saying, basically, is
4 that the only tariff they presented to me in
5 discovery is -- you know what I mean, doesn't
6 count, and that these other tariffs that they
7 didn't present to me in discovery do govern the
8 decision that you're going to be required to make.

9 Now, you know, I --

10 MR. KERBER: You asked what facts we relied on.

11 MR. BERTELLE: I am talking. When I am done
12 talking, you can talk until you're blue in the
13 face.

14 MR. KERBER: I thought you were finished.

15 MR. BERTELLE: Now, I consider that to be
16 cheating.

17 JUDGE ZABAN: Okay.

18 MR. BERTELLE: Okay. And I think that that is
19 wrong for them to produce that tariff and their
20 handwriting is on the tariff that I gave to you,
21 you see. I think it is.

22 Is that the one that is admitted into

1 evidence?

2 JUDGE ZABAN: This is the one I believe.

3 Attachment C is the one they're going -- there was
4 another one.

5 MR. BERTELLE: Already in evidence.

6 JUDGE ZABAN: This is the one you are talking
7 about.

8 MR. BERTELLE: Yes, yes. See, it's at the -- at
9 some point this is the tariff that is -- I mean, is
10 this right?

11 It says, Please refer again to
12 paragraph -- of Exhibit 1.

13 Is that Exhibit 1 in my case, your
14 Honor?

15 JUDGE ZABAN: Yes.

16 MR. BERTELLE: Okay. The very first document I
17 introduced in evidence, and they have this whole
18 question and answer thing at Page 5 of his
19 testimony why that tariff doesn't have any
20 application to this case.

21 And they produce it in response to
22 this question that says, State each and every fact

1 relied upon by the respondent for its determination
2 whether their telephone line is inside or outside
3 when repair service charges are assessed.

4 Respond.

5 And they gave me this. You know --

6 MR. KERBER: May I respond now, your Honor?

7 JUDGE ZABAN: Go ahead.

8 MR. KERBER: He asked how we -- he asked, in
9 essence, how we determine whether something is
10 inside wire or on the network side, inside or
11 outside is the way he put it in his request.

12 We provided to him those portions of
13 our tariff that define the NETPOP which is the set
14 of criteria to determine whether it's inside wire
15 or not.

16 Then in his testimony, he started
17 talking about why he believed that the NETPOP was
18 what he believed it was and, in response, we relied
19 in part on the generalized definitions and
20 abbreviations section at the front end of the
21 tariff which defines some of these words; but the
22 definitions -- we had produced the definition of

1 NETPOP, network point of presence, but we hadn't
2 produced the entire front end section of the
3 tariff.

4 And then, you know, when it became
5 relevant as a result of Mr. Bertelle's
6 misunderstanding of what the NETPOP was, in
7 response to that, we produced some additional
8 definitions that talked about things like, for
9 example, what was customer premises wire which --
10 and how network is defined.

11 I mean, at the time we answered the
12 data request we gave him a complete answer based on
13 our understanding of the request.

14 When the definitions -- additional
15 definitions became an issue because of Mr.
16 Bertelle's misunderstanding -- or at least
17 certainly that is what it is in our view, then we
18 provided additional definitions from the tariff in
19 the responsive testimony, but -- and again, this
20 clearly, you know, this page that we produced in
21 response to the data request with network point of
22 presence starred is obviously -- you can see that

1 it is one page taken out of an alphabetical listing
2 of definitions because it start with N and ends
3 with O and they're in alpha order.

4 So it would have been, you know -- if
5 Mr. Bertelle believes there were any other
6 definitions that were relevant, he could have
7 either followed it up in discovery or simply have
8 gone to our web site or the Commission's web site
9 or the Clerk's Office and taken a look at whatever
10 other definitions were there.

11 MR. BERTELLE: I am not required to do that,
12 your Honor. That is not the purpose of discovery.

13 MR. KERBER: Wait a minute. This is, in fact --
14 this is law. A Tariff is a legal document.

15 JUDGE ZABAN: Stop. First of all, Mr. Bertelle,
16 tariffs for the purposes of this Commission are
17 considered the same as statutes. Okay. They're
18 public documents. There is a presumption that
19 parties are aware what the tariffs are.

20 If I were to even agree that you are
21 correct and say that I am not going to allow this
22 document into evidence, the bottom line is that in

1 making the determination of what a NETPOP is or is
2 not, I would have to look to what their definition
3 is anyway.

4 So this is kind of a tempest in a
5 teapot. I understand your position on this; but I
6 don't see being prejudiced by this because, in
7 fact, this is what is in the statute, one of their
8 tariffs.

9 MR. BERTELLE: May I have Exhibit No. 1?

10 You know, you just jumped like a fish
11 at bait here, the definition, because I am
12 objecting because this is a -- this is not a
13 one-page definition, Exhibit 1.

14 This is a tariff, and it's several
15 pages and among other things it says, The NETPOP
16 will normally be located within 25 feet of the
17 point at which the network cable enters the
18 building.

19 This is the whole basis of my case.
20 This is not a tempest in a teapot, and if that is
21 your ruling, then, you know what I mean, if you
22 want to get on with the railroad, then let's do it.

1 JUDGE ZABAN: Okay. I have heard about the
2 railroad many, many times, and although I
3 appreciate your reference to monopoly, I am still
4 obligated to look and see what a NETPOP is. All
5 right.

6 And if there is a conflict in terms of
7 how they define a NETPOP and what their tariff is,
8 that is something I have to resolve.

9 MR. BERTELLE: Does it matter to you that the
10 question I asked, State each and every fact relied
11 upon the respondent for its determination whether a
12 telephone line is inside or outside when repair
13 services charges are assessed, do you understand?

14 They produced that tariff in response
15 to this question, not some -- not their
16 understanding of what I was asking or not because I
17 got on the telephone and asked them; but this was a
18 written request that you're so fond of, something
19 in writing. Do you understand that?

20 So why don't you deal with what is in
21 writing than what is characterized?

22 JUDGE ZABAN: Maybe what your argument should

1 actually be, Mr. Bertelle, since you asked them to
2 rely on every document that they relied on, that
3 they should have given you the definition at that
4 time since they relied on the definition in terms
5 of making their -- is that what you are trying to
6 tell me?

7 MR. BERTELLE: It might.

8 JUDGE ZABAN: Well, not "might."

9 Is that what you are trying to tell
10 me?

11 MR. BERTELLE: No.

12 JUDGE ZABAN: Okay. All right. Go ahead.

13 MR. HUTTENHOWER: Q. I guess moving to
14 Attachment B to your testimony.

15 MR. BERTELLE: Wait a second. So I take it that
16 after all of that further argument, the ruling
17 remains the same?

18 JUDGE ZABAN: Remains the same. It's statute.
19 It's a tariff. I am allowing it in.

20 MR. BERTELLE: So that I understand, is that it
21 doesn't matter whether or not the discovery
22 procedures in this Commerce Commission do not

1 require them to disclose matters that are of public
2 record?

3 JUDGE ZABAN: That are readily available to you
4 in our statute.

5 There is a presumption and knowledge
6 imputed to you -- and especially you as an attorney
7 -- that this information should have been and could
8 have been ascertained by you.

9 MR. BERTELLE: That I could have determined on
10 my own each and every fact relied upon by the
11 respondent for their determination --

12 JUDGE ZABAN: No, all we are talking about here
13 --

14 MR. BERTELLE: -- inside or outside when repair
15 services charges are assessed? Is that what you
16 are saying?

17 JUDGE ZABAN: All we are talking about is the
18 definitions, and the tariff of the definitions,
19 that is something that could have been discovered
20 by you and could have been ascertained by you.
21 It's part of their record on their web site. It's
22 also part of the Commission's public record.

1 MR. BERTELLE: You're saying the fact that they
2 -- that they didn't respond by the production of
3 those documents to this interrogatory is of no
4 importance to you?

5 JUDGE ZABAN: I believe that they -- I believe
6 that the response that they gave was a direct
7 response to your interrogatories, that what we are
8 talking about here in terms of the definition is
9 merely an ancillary response and if there was a
10 question in your mind what the definition was, you
11 could have, as Mr. Kerber said, asked for -- is
12 there a section that was -- that the definitions or
13 in the alternative you could have ascertained what
14 the definitions yourself were through the tariffs
15 or through the -- or through the Commission.

16 MR. BERTELLE: I question whether you are
17 listening to me because I didn't ask them for the
18 definition of a NETPOP. I asked them in writing,
19 quote, State each and every fact relied up on by
20 the respondent for its determination whether a
21 telephone line is inside or outside when repair
22 services charges are assessed, period, end quote.

1 This is Ameritech's response. Quote,
2 The information is publicly available and set forth
3 in Ameritech's Illinois tariff governing network
4 point of presence, NETPOP. A copy of the relevant
5 tariff is provided. See Attachment No. 2." And
6 the entire document that they produced, Attachment
7 No. 2, is in evidence as Exhibit No. 1 in my case.

8 Now, exactly -- do you -- I assume
9 that you understand English. So I assume you
10 understand what I just said.

11 JUDGE ZABAN: I understand.

12 MR. BERTELLE: Now, what part did I ask for a
13 definition of NETPOP or was I required to go beyond
14 a copy of the relevant tariffs as provided?

15 JUDGE ZABAN: Well, you didn't ask for it, and
16 you just answered your own question. You didn't
17 ask for a definition of NETPOP. So they didn't
18 give you one.

19 Now, they're attempting to introduce a
20 definition of NETPOP because they feel it's
21 relevant.

22 Mr. Huttenhower, you can proceed.

1 MR. BERTELLE: That's not what these attachments
2 are in any event.

3 JUDGE ZABAN: That's fine.

4 MR. BERTELLE: What they're saying -- okay. I
5 will bring -- I will see -- fine. Go ahead.

6 MR. HUTTENHOWER: Q. All right. Turning to
7 Attachment B to your testimony, Mr. McGuire, could
8 you tell me what Attachment B is.

9 A. This is my inspection of wires that Mr. --
10 that I saw at Mr. Bertelle's office.

11 Q. And so you prepared this report after you
12 looked at the wire?

13 A. Yes.

14 Q. Did you prepare the report shortly after
15 you viewed the wire at Mr. Bertelle's office?

16 A. Yes, I did.

17 Q. And it was based on your observation of the
18 condition of the wire?

19 A. Yes.

20 Q. And in the course of your --

21 MR. BERTELLE: Wait a second. You know, I
22 object to this. This is your -- he's offering oral

1 testimony for foundation which was not in the
2 written. Okay. Okay.

3 Since you seem to think that I am
4 referring to a monopoly, my references to railroad
5 are more in the line of kangaroo court.

6 JUDGE ZABAN: I wish you would make it clear. I
7 just want you to make it clear exactly for the
8 record.

9 MR. BERTELLE: Okay. I am not referring to
10 monopoly. I am referring to kangaroo court. I am
11 not talking about Captain Kangaroo either.

12 Now, what is the point?

13 I am going to object to this because
14 this document is neither past recollection recorded
15 nor present recollection refreshed.

16 So what is -- there is absolutely no
17 evidentiary basis for the admission of Attachment B
18 in evidence, and I defy you to think of one.

19 JUDGE ZABAN: Okay. That's fine.

20 MR. BERTELLE: Your Honor --

21 JUDGE ZABAN: You can continue with the
22 foundation, Mr. Huttenhower.

1 MR. BERTELLE: I object to asking oral questions
2 when they chose to submit their case in writing.

3 MR. HUTTENHOWER: Q. So, Mr. McGuire --

4 MR. BERTELLE: Over my objection, I might add.
5 I wanted him to do it all orally, and they didn't
6 want to do it orally. They insisted on doing it in
7 writing, and now they want to do it in writing and
8 orally. So I object.

9 JUDGE ZABAN: Okay. Your objection is noted for
10 the record.

11 MR. BERTELLE: Is there a ruling?

12 JUDGE ZABAN: I asked him to continue with his
13 -- with his foundation. I will make a
14 determination after he completes his foundation
15 whether it's relevant.

16 MR. BERTELLE: Is there a ruling on my
17 objection?

18 JUDGE ZABAN: Which is...?

19 MR. BERTELLE: That they insisted on presenting
20 their case in written form and now they're
21 presenting it -- they're supplementing it orally.

22 JUDGE ZABAN: No, he's attempting to get in a

1 document which has -- which indicates the witness'
2 observations of the particular wire that he found
3 in your office.

4 MR. BERTELLE: Okay.

5 JUDGE ZABAN: Go ahead, Mr. Huttenhower.

6 MR. HUTTENHOWER: Q. All right. Mr. McGuire,
7 in the course of your work with Ameritech, do you
8 have occasion to prepare reports like this when you
9 have been asked to observe -- you know, to look at
10 wire that -- about which there is question.

11 A. I haven't prepared a report. I mean, I
12 have looked at other wires, but I've never really
13 --

14 MR. BERTELLE: Where is he going with this?

15 Prepared in contemplation of
16 litigation automatically is barred on that basis.
17 I mean, your Honor, you know --

18 JUDGE ZABAN: This is --

19 MR. BERTELLE: Cut it out, please.

20 JUDGE ZABAN: This is going to surprise you,
21 Mr. Bertelle.

22 MR. BERTELLE: Oh, of course.

1 JUDGE ZABAN: I agree with you. Okay. This is
2 not a proper document. Okay. It's something that
3 -- first of all, this isn't even the original
4 writing. It's not -- it's not in his own
5 handwriting, okay. It's not dated. It's not
6 signed. All right.

7 If these, in fact, were his
8 observations, then it's something he could have
9 testified to in his direct testimony.

10 MR. HUTTENHOWER: All right, your Honor.

11 MR. BERTELLE: Now, see -- now, you appear to
12 have ruled in my favor. So that, therefore, you're
13 not showing any particular bias. That is lovely.

14 JUDGE ZABAN: Okay. Mr. Bertelle, this is my
15 second day as a lawyer. Yesterday I would have
16 taken everything you told me to heart, and I would
17 be offended by what you said, but this is your
18 case. You're getting your opportunity. You can do
19 with it as you choose and you can attempt to make
20 any kind of record that you -- that you also
21 choose; but the only thing I ask of you is to
22 kindly refrain from the ad hominem comments and

1 stick to the law and what is at hand, okay.

2 MR. HUTTENHOWER: Q. All right. Mr. McGuire,
3 could you identify Attachment A to your testimony.

4 A. Standards for premises wire.

5 Q. Could you explain what this document is?

6 A. It's the -- the definition, and it's what
7 we

8 use -- what we follow when we put wire in and what
9 we go by as far as installation and repair.

10 Q. And who prepared this standards for
11 premises wire?

12 A. Our staff department prepares this, and the
13 rest of the company abides by it.

14 Q. So this is the document that Ameritech
15 repair personnel would view as authoritative for
16 installation of premises wire?

17 A. Yes.

18 Q. And Ameritech personnel would regularly
19 rely on the contents of this standard in doing
20 their work?

21 A. Yes.

22 MR. HUTTENHOWER: I hope I have laid a

1 sufficient foundation for this.

2 JUDGE ZABAN: Objection, Mr. Bertelle?

3 MR. BERTELLE: No, I don't object.

4 JUDGE ZABAN: Okay. Okay. So Attachments A and
5 C will be admitted.

6 Do you have anything further of Mr.
7 McGuire, Mr. Huttenhower?

8 MR. HUTTENHOWER: I do not.

9 JUDGE ZABAN: Mr. Bertelle?

10 CROSS -EXAMINATION

11 BY

12 MR. BERTELLE:

13 Q. Mr. McGuire, do you agree that this booklet
14 is a full booklet of which Attachment A is a copy
15 or part?

16 A. Full or part?

17 I don't understand your question.

18 Q. Well, Exhibit A doesn't -- or Attachment A
19 doesn't include Pages -- it includes Page 1. First
20 of all, it's the cover and back and then it's Page
21 1, Page 7, Page 19; is that right? Whereas the
22 booklet is a complete booklet.

1 A. Yes.

2 Q. All right. But Pages 1, 17 and -- 7 -- 6,
3 7 and 19 are accurately taken from that booklet;
4 isn't that right?

5 A. (No response.)

6 Q. You don't know?

7 A. I am looking.

8 Q. Do you think I -- like I counterfeited
9 that?

10 A. That's correct.

11 Q. Okay. Now, is that booklet that I gave
12 you, is that the booklet that you actually -- that
13 you used for that?

14 What did you say, that it governs
15 premises wires?

16 A. I said this is what we follow, the standard
17 practice.

18 Q. When you say "we," who do you mean by "we"?

19 A. Telephone installers, repairmen.

20 Q. Okay. Could you turn -- could I approach
21 the witness, your Honor?

22 JUDGE ZABAN: Yes, you may.

1 MR. BERTELLE: Q. Now, Mr. McGuire, did you
2 read this booklet before you -- before you -- you
3 know, did your testimony.

4 A. I read it prior to that. No, I don't know
5 when.

6 Q. You have read it?

7 A. Yes, I have.

8 Q. Now, do you see here on Page 18 there is a
9 thing, it says, premise wire?

10 A. Yes.

11 Q. Would you read that to the hearing officer?

12 A. Premises wire: This is wire provided and
13 owned by the customer. It is connected to the
14 telephone network by means of a modular jack and
15 plug at the network interface.

16 Q. Okay.

17 JUDGE ZABAN: Now, I will take that.

18 MR. BERTELLE: Could I identify this?

19 JUDGE ZABAN: Do you have another copy that we
20 can put in evidence?

21 MR. BERTELLE: No, this is the only one he gave
22 me.

1 JUDGE ZABAN: Do you have any more of those,
2 Mr. Kerber?

3 MR. BERTELLE: Could we mark this as something?
4 I don't care what the next number is.

5 JUDGE ZABAN: We will mark this as -- I believe
6 this would be Petitioner's 7.

7 (Whereupon, Petitioner's Exhibit
8 No. 7 was marked.)

9 MR. BERTELLE: Q. Now, Mr. McGuire, you came to
10 my office once and you saw this wire I am holding
11 in my hand; didn't you.

12 A. It looks like the wire I saw.

13 Q. Looks like the wire.

14 Do you think I am trying to trick you?

15 A. I saw it on November 21st of last year.

16 Q. Okay. Is this -- is this the premises
17 wire?

18 A. That could be premises wire; correct.

19 Q. What do you mean by "could be"?

20 A. That is what you presented me.

21 Q. Okay. This is what you base your opinions
22 on in your testimony; isn't that right?

1 A. Yes.

2 Q. Okay. You say this is the premises wire;
3 right?

4 A. Yes.

5 Q. Now, you're saying -- it is your testimony
6 that -- could I see this booklet?

7 This premises wire was provided and
8 owned by me?

9 A. That's what the booklet says. I don't -- I
10 don't understand what you are asking.

11 Q. If this is premises wire and the booklet
12 defines premises wire as "this is wire provided and
13 owned by the customer," is it your testimony that
14 this wire was owned and provided by Don Bertelle?

15 A. Can I see that book again?

16 Q. No.

17 A. Why? I cannot?

18 Q. No, you can't.

19 I am asking you, is it your testimony
20 that this wire that I hold in my hand and upon
21 which your testimony is based -- strike that.

22 Let me ask this question better. I

1 have been doing this long enough. I can ask it
2 better.

3 Is it your testimony dealing with, you
4 know, and expressing your opinions based upon your
5 examination of this wire that this premises wire
6 was provided and owned by me?

7 A. I can say that you provided that wire to me
8 to look at. I don't know what you are getting at
9 here.

10 Q. Did I provide this wire to the installation
11 on my house?

12 A. I don't know.

13 Q. Do you know who provided it?

14 A. No, I don't.

15 Q. So insofar as you know this may have been
16 provided by me?

17 A. I don't know.

18 How do you want me to answer that?

19 Q. I want you to answer it to the best of your
20 knowledge.

21 A. I don't know that you provided --

22 Q. Do you know where this wire came from?

1 A. I know I saw it in your office. You
2 brought it in your office. I never saw -- there
3 was no wire -- wasn't attached to your building
4 when I saw it or your house.

5 Q. Do we have the pictures that are in
6 evidence here?

7 You were on my roof, right?

8 A. I was not on your roof.

9 Q. Who was on my roof; do you know?

10 A. I do not know.

11 Q. Was it somebody -- you mean, somebody --

12 MR. HUTTENHOWER: Objection. This is beyond the
13 scope of any of Mr. McGuire's testimony.

14 MR. BERTELLE: So...?

15 MR. HUTTENHOWER: Well, if I recall,
16 cross-examination is supposed to deal with the
17 subject of direct testimony at least when I used to
18 practice in the state of Illinois. So...

19 MR. BERTELLE: We are going to now adhere to
20 petty foggy objections that are -- such as that?

21 I am looking into testing his
22 credibility.

1 Q. Now, you have expressed opinions in your
2 testimony about the condition of the wire and you
3 were never on the roof of my -- of my roof; were
4 you?

5 A. Never on your roof.

6 Q. Okay. And do you know who from Ameritech
7 on September 8, 2000, went out to my house?

8 A. I do not.

9 Q. Did you ever talk to that person?

10 A. I did not.

11 Q. Did you know that somebody from Ameritech
12 went out to my house and went up on top of my house
13 and took pictures?

14 MR. HUTTENHOWER: Objection. This has nothing
15 to do with Mr. McGuire's testimony.

16 JUDGE ZABAN: You can answer, Mr. McGuire.

17 THE WITNESS: What was the question again?

18 MR. BERTELLE: Q. Do you know -- did you know
19 that someone from Ameritech went out without any
20 knowledge of mine, without cooperation from me,
21 just went up on my roof and inspected the wiring.

22 A. I did not.

1 Q. Took pictures?

2 You didn't know that?

3 A. I did not know that.

4 Q. Did you know that Ameritech had such open

5 access to the -- to the wiring on my house?

6 A. I don't know what you mean by that.

7 MR. BERTELLE: Let me show him these pictures,

8 your Honor.

9 Q. Do you see these pictures, sir?

10 MR. HUTTENHOWER: Could you identify which ones

11 they are for the record?

12 MR. BERTELLE: I think they are Exhibit 5-A --

13 wait a second. There is 5-A, 4-G, 4-F, 4-D, 4-C,

14 4-E, 4-B, 4-A, 5-B. Previously they were produced

15 by Ameritech, and they're of the back of my house

16 and the top of my house and they show that wire.

17 Q. Do you recognize that wire?

18 A. This wire?

19 Q. Wait a second.

20 This is on -- excuse me.

21 In this 4-E, do you see what I am

22 pointing to right here?

1 A. The wire or what appears to be a guard?

2 Q. There is a guard.

3 You can see. Can you see that there
4 is a wire coming out of that guard?

5 A. There is -- it looks like a wire, appears
6 to be a wire.

7 Q. Okay. Can you --

8 A. It a lousy picture.

9 Q. Okay. I am sorry. I didn't take it.

10 Now, can you identify whether or not
11 the wire depicted in that picture that I just
12 identified is this wire? Can you tell?

13 MR. HUTTENHOWER: Do you mean the exact same
14 wire or the same type of wire?

15 MR. BERTELLE: I am not asking you the question.
16 I am asking him.

17 JUDGE ZABAN: Mr. Huttenhower, do you have an
18 objection?

19 MR. HUTTENHOWER: I object because I am -- I
20 don't think the question is clear in that I am
21 uncertain whether he's referring to the exact wires
22 he's holding in his hand or the exact type -- or

1 the same type of wire that he's holding in his
2 hand.

3 MR. BERTELLE: Okay.

4 Did I identify this wire as an
5 exhibit?

6 I think I did; didn't I?

7 JUDGE ZABAN: We didn't mark it.

8 MR. HUTTENHOWER: I think it's Exhibit 2.

9 MR. BERTELLE: Exhibit 2. All right.

10 We will call it Exhibit 2.

11 Q. Now, do you -- is it your testimony that
12 the wire depicted in 4-E and Exhibit 2 are the same
13 or not?

14 A. I can't say if that is the wire that is in
15 this picture because there is no wire there
16 anymore. The wire is gone.

17 Q. I understand, but you can see the wire in
18 this picture; can't you?

19 A. I can see wire in that picture.

20 Q. Okay. Now, is that wire that you see in
21 that picture, is that Exhibit 2? Yes or no in your
22 opinion?

1 A. I don't know. I don't know what you -- you
2 have a wire there, and there is wire here. What
3 are you trying -- where are we going? What are you
4 trying to say?

5 Q. You are not here -- this is not a test.
6 Just, do you know whether this...

7 A. I do not know whether that wire in your
8 hand is that wire on that -- that is in this
9 picture, no.

10 Q. Because you were never there; right?

11 A. I was in your alley.

12 Q. Okay. Good for you. But you were never on
13 my roof; were you?

14 A. I was never on your roof, no.

15 Q. So you don't know where this wire was on
16 the roof, and I am referring to Exhibit 2; do you?

17 A. I don't know where it was. I don't even
18 know if that was on your roof, no.

19 Q. Okay. Now, do you know whether there was
20 wire on my roof?

21 A. I do not know that.

22 Q. You don't even know whether there was any

1 wire on my roof; right?

2 A. No.

3 Q. So, your -- your opinions are based
4 basically upon my representation that this was wire
5 on my roof; isn't that right?

6 A. Well, you produced it. I presume that was
7 your wire. You gave that to me to look at.

8 Q. I told you it was my wire; didn't I? I
9 didn't ask you to presume. I told you. I said,
10 This is the wire that was on my roof; look at it.
11 Didn't I?

12 A. You said, Here is the wire, and you gave me
13 a bag and walked back in your office.

14 Q. Okay. Now, but you don't know where that
15 wire was on -- where it was; do you --

16 A. No.

17 Q. -- of your own knowledge; do you?

18 A. No, I don't.

19 Q. Now, you testified in your testimony here
20 that it wasn't -- it wasn't -- there was nothing
21 holding it to anything; didn't you, someplace?

22 MR. KERBER: Objection to the characterization

1 of the testimony. I don't think he testified that
2 it was. He testified that the photographs marked
3 as Petitioner's Exhibits 3-I and 3-J, that is to
4 say, Mr. Bertelle's exhibits, showed the wire lying
5 on top of the roof, no clips appeared to be holding
6 it to the building.

7 MR. BERTELLE: You know, that is nice and that
8 is coaching the witness. That is more cheating
9 because I am asking him a question. I am entitled
10 to test whether or not this is his actual
11 testimony, like he said it was.

12 I mean, I know that Mr. Kerber
13 actually wrote this testimony, your Honor, and I
14 know that Mr. Kerber knows what was said in here;
15 but we want to know whether Mr. McGuire knows what
16 he says -- that he testified to.

17 I mean --

18 MR. KERBER: Mr. Bertelle mischaracterizes the
19 testimony or any of the other evidence, I am --

20 JUDGE ZABAN: Mr. Kerber --

21 MR. KERBER: -- I have the right to make my
22 objection.

1 JUDGE ZABAN: In the future, I understand
2 Mr. Bertelle's point. In the future I would allow
3 Mr. Bertelle an opportunity to find the testimony
4 before you offer your objection.

5 MR. KERBER: All right.

6 MR. BERTELLE: Now, may I approach the witness?

7 JUDGE ZABAN: Yes, you may.

8 MR. BERTELLE: Q. I am going to show you what
9 was marked here -- what were these photographs?

10 This was what, 3?

11 MR. HUTTENHOWER: Exhibit 3-A through 3-L.

12 MR. BERTELLE: Q. Now, I am going to show you
13 3-B.

14 Do you see 3-B here.

15 A. Yes.

16 Q. Do you see this right here?

17 A. I was referring to this photo when I said
18 it wasn't attached.

19 Q. So...

20 A. You can see the wires laying on the ground
21 on top.

22 Q. Okay. All right. What photo is that?

1 MR. HUTTENHOWER: 3-I.

2 MR. BERTELLE: 3-I.

3 Q. Do you know whose roof that is in 3-I?

4 You should look at 3-I if I am asking
5 you a question about 3-I. Okay.

6 Would you turn the others over so that
7 we don't get confused here?

8 Now, Mr. McGuire, you're looking at
9 3-I; is that right?

10 A. Yes.

11 Q. And there is a wire in there; is that
12 right?

13 A. Yes.

14 Q. And does it look similar to the wire over
15 there that is Exhibit 2?

16 A. Yes.

17 Q. Okay. What kind of wire is that?

18 A. I don't know. I have to look at it. It
19 looks like I/W.

20 Q. What is I/W?

21 A. Installation wire, similar to that.

22 Q. Is it premises wire?

1 A. It is wire that can be -- when you say
2 "premises", you mean what could be used beyond the
3 --

4 Q. I am asking you, in the definition in this
5 booklet which was identified as Exhibit 7, is it
6 premises wire, yes or no?

7 A. Well, it could be both.

8 Q. Both what? Both premises wire and what
9 else?

10 A. It's premises wire.

11 Q. Okay. So you're saying that is premises
12 wire; right?

13 A. Yes.

14 Q. Now, whose roof is that on as you see it in
15 that picture?

16 A. I can't identify the roof. I presumed it
17 was yours.

18 Q. You presumed it was mine.

19 Do you know whether or not it is my
20 roof or the roof of the property adjacent to my
21 property?

22 A. I don't know that, no.

1 Q. You don't know?

2 A. No.

3 MR. BERTELLE: Now, could I see this here?

4 I am just taking this.

5 That tariff that you don't like, the
6 one that you think is irrelevant, your Honor, may I
7 have that one? This one here, I think -- no.

8 MR. ZABAN: You mean the one that is the legal
9 statutory document? I have got that one.

10 MR. BERTELLE: Yes. We all know about it
11 because it's common knowledge and, therefore, you
12 don't have to disclose in discovery.

13 Q. Okay. Now, are you familiar with this --
14 with this? What is this, Exhibit No. 1?

15 Exhibit No. 1.

16 Could you look at that?

17 Can you tell me whether you ever saw
18 that before in your life?

19 MR. BERTELLE: And, Mr. Huttenhower, I don't
20 want you to coach him by showing him what the part,
21 you know, his written testimony or anything like
22 that.

1 THE WITNESS: Have I seen this actual document?

2 Is that your question?

3 MR. BERTELLE: Q. Yes. Okay.

4 Have you seen that actual document

5 ever.

6 A. In its entirety?

7 No.

8 Q. Have you seen a likeness -- another copy of

9 it?

10 A. This whole thing you want me to read and

11 then answer?

12 Q. I want you to look at it. Familiarize

13 yourself. Take as long as you want to familiarize

14 yourself that you understand and that you know

15 whether or not you have ever seen it or a narration

16 of it before.

17 A. Looking at Page 1 here, I have seen stuff

18 like this written on various things that I get

19 through the company -- company practices and in

20 general.

21 Q. Have you ever read that document?

22 A. Not the entire document, no.

1 Q. Well, what parts of it have you read?

2 A. I can't be sure.

3 Q. When did you read it?

4 A. I can't be sure of that either.

5 Q. Okay.

6 A. In my years as a technician I presume I
7 read it.

8 Q. Okay. Now, it refers in there to a NETPOP;
9 is that correct?

10 A. Yes.

11 Q. And what do you think a NETPOP is?

12 A. It is where Ameritech's responsibility to a
13 customer ends and a customer's wire comes out and
14 goes to the rest of the customer's responsibility.

15 I don't have the definition for you.

16 Q. You don't know the definition?

17 A. I do not know the complete definition.

18 Q. You don't know the definition of a NETPOP.

19 Okay, tell me this --

20 A. You mean the legal definition.

21 MR. BERTELLE: Move to strike that last comment.

22 JUDGE ZABAN: So stricken.

1 MR. BERTELLE: You only get to answer questions.

2 You don't get to --

3 THE WITNESS: This is yours.

4 MR. BERTELLE: Pardon?

5 THE WITNESS: This is yours.

6 MR. BERTELLE: I am sorry.

7 THE WITNESS: This is mine.

8 MR. BERTELLE: Q. Okay. Now, it is true, is it
9 not, that the NETPOP is normally located within 25
10 feet of the point in which the network cable enters
11 the building? Isn't that correct.

12 A. Yes.

13 Q. Do you know who installed the -- I may have
14 asked you this already, but in your preparation in
15 this case -- incidentally, I want you to look at
16 this and tell us -- this is Exhibit No. 2 here I
17 have in my hand, what are these little plastic
18 things? What are these?

19 A. These here are the -- they hold the wire to
20 your aluminium siding.

21 Q. To aluminium siding?

22 A. To siding.

1 Q. Okay. In that picture there, do you see
2 anything -- do you see any aluminium siding
3 anywhere in there?

4 A. No, I do not.

5 Q. Okay. Now, could you explain to his Honor
6 the -- is this where you say that you saw -- right
7 here -- it's burnt.

8 Is that where you -- on Exhibit 2 I am
9 referring to.

10 A. It's hard to tell the burning from the
11 tarring. This is burnt here. This is melted. See
12 the melting and the scorching --

13 Q. Okay. Now --

14 A. -- on the wire itself, sheathing.

15 Q. Now, you -- now, this Exhibit 2 that you
16 have in your hands, you don't know -- or you don't
17 know anything about it except that I told you that
18 it was on my house; isn't that right?

19 A. Yes.

20 Q. Now, with respect to the pictures that you
21 have in front of you, 3 -- Group Exhibit 3, and
22 then the pictures that someone that works for you

1 that you don't know about took that showed the
2 wires. You don't -- you see there is wire similar
3 to Exhibit 2 in those pictures; right?

4 A. Yes.

5 Q. Do you know when that wire in those
6 pictures was put in?

7 A. No.

8 Q. You have no idea?

9 A. No idea.

10 Q. Your service records don't indicate any of
11 that; is that right?

12 A. No, they don't.

13 Q. They don't?

14 A. As far as I know.

15 Q. As far as you know.

16 A. I don't --

17 Q. All right. Now, do you see this picture
18 here? This is 3-J.

19 Can you recognize that is my shadow?

20 A. It's a shadow.

21 Q. You don't know whether or not it's mine,
22 huh?

1 A. I don't know.

2 Q. Are these all the pictures?

3 Oh, there is more here.

4 A. Those pictures there.

5 Q. No, not those. Those.

6 JUDGE ZABAN: 3.

7 MR. BERTELLE: Q. Okay. Now, do you see this

8 picture here.

9 A. Uh-huh.

10 Q. Now, what picture is that?

11 Could you turn it over?

12 6-C?

13 A. Uh-huh.

14 Q. Now, can you tell whether there is

15 Ameritech line?

16 Can you see Ameritech line in there?

17 A. Which one?

18 Q. Do you see any Ameritech line?

19 A. I see wires leaving here and coming onto

20 the building.

21 Q. Do you know whether those are Ameritech?

22 A. I don't know what they are. No, I don't.

1 They look like drops to me. Looks like telephone
2 drops.

3 Q. Telephone drops.

4 Now, could you tell the hearing
5 officer what a telephone drop is?

6 A. Telephone drop is the drop from the pole to
7 the NETPOP.

8 Q. Okay. And in this picture, 6, whatever it
9 is?

10 A. 6-C.

11 Q. Would that -- could you show the hearing
12 officer.

13 Could you come over so you could see?

14 JUDGE ZABAN: Take a pen and circle.

15 MR. BERTELLE: Q. Could you circle the NETPOP
16 in here?

17 JUDGE ZABAN: And initial it, please.

18 MR. BERTELLE: And initial it.

19 MR. HUTTENHOWER: He's asking you to take the
20 pen and do it.

21 THE WITNESS: I am not saying. I don't know. I
22 -- the picture is taken at a far distance. I don't

1 want to say something wrong here and say, yes, this
2 is it, and it turns out it is not it.

3 MR. BERTELLE: Q. Well, what else could it be.

4 A. Well, if this goes through the building, it
5 could be cable TV. I don't know. You have got
6 three wires there.

7 Q. Is there anything on there that appears --
8 well, can you tell where the NETPOP is on that
9 building?

10 A. It could be this here.

11 Q. All right. Could you actually make that so
12 that we can -- someone else can see it and then
13 initial it?

14 A. (Indicating.)

15 Q. Okay. Hand this to the hearing officer.

16 Okay. Now, what is the purpose? What
17 did you call this, a drop line?

18 A. It's the drop wire.

19 Q. Drop wire.

20 What is the purpose of the drop wire?

21 Why is it -- what is it?

22 JUDGE ZABAN: Do you have my pen?

1 We need --

2 THE WITNESS: It is the wire on our regulated
3 side, the dial tone comes through.

4 MR. BERTELLE: Q. And it goes from -- do you
5 know -- do you know what a telephone pole is.

6 A. Yes, I do.

7 Q. Okay. Now, there are wires that go from
8 telephone pole to telephone pole?

9 A. Yes, there are. Yes.

10 Q. What kind of -- what would you call that
11 type of a wire?

12 A. It could be -- it could be outside wire
13 that runs down the alley that all of the service
14 comes out of, 50 pair, 100 pair, outside wire,
15 regulated wire.

16 Q. Regulated wire. Okay.

17 And so that the drop wire is the wire
18 that comes from that?

19 A. Comes from the terminal box that is on the
20 pole --

21 Q. Okay.

22 A. -- into the -- comes off of that and goes

1 to the customer.

2 Q. Okay. Now, there is -- is there a drop
3 wire with respect to my house?

4 A. I don't -- there was no wire on your house.

5 Q. In these pictures?

6 A. In what pictures?

7 MR. HUTTENHOWER: You mean the pictures that are
8 Exhibit 3?

9 MR. BERTELLE: Yes.

10 MR. HUTTENHOWER: He has those over here. So...

11 MR. BERTELLE: Okay.

12 THE WITNESS: Drop wire.

13 MR. BERTELLE: Q. This one here.

14 A. Outside wire.

15 Q. Like on 3-A or -- this is 3-A?

16 Is this 3-A?

17 Do you see this?

18 A. Yes.

19 Q. Okay. Do you see a drop wire in there?

20 A. These could be drop wires here coming from
21 the box.

22 Q. Okay. Do you see a NETPOP in there?

1 A. A NETPOP?

2 Q. You don't get to look at your testimony.

3 Do you see a NETPOP in this picture,

4 3-A?

5 A. No, I do not.

6 Q. You don't see.

7 What is this thing that is encircled

8 here?

9 A. It's a connection. In my opinion that is a
10 connection, could be connecting wires. Terminating
11 block, we see there are several wires there where
12 they terminate them together, protect them from the
13 elements.

14 Q. Well, here is another photo here with the
15 NETPOP.

16 There is another one here.

17 Let's see if we can --

18 MR. HUTTENHOWER: The other shot will be 3-L
19 which I think is the last one in your series.

20 MR. BERTELLE: 3-L. Okay. This one?

21 MR. HUTTENHOWER: Yes.

22 MR. BERTELLE: Q. Do you see the one circled in

1 3-L, previously circled, on my hand.

2 Do you see that.

3 A. Yes.

4 Q. That is not the NETPOP according to you?

5 A. It's the network. That is where the drop
6 terminates right in there, and then the wiring
7 comes out.

8 Q. Okay. So just to clarify for the record.

9 It's your testimony that the drop wire
10 terminates at the device that is circled in Exhibit
11 3-L; is that correct?

12 A. A drop wire could. You are saying your
13 drop wire. I don't know what you are saying.

14 Q. Well, tell me. Let's start over then.

15 Referring to Exhibit 3-L, there -- do
16 you see that there is a ballpoint pen circling an
17 object?

18 A. Yes.

19 Q. And what is that object?

20 Do you know what that object is?

21 A. Yes.

22 Q. Does that belong to Ameritech?

1 A. Yes, it does.

2 Q. Okay. Did you put it on the --

3 A. No, I did not.

4 Q. Okay. Do you know who did?

5 A. No, I do not.

6 Q. Okay. What is it?

7 A. We call it a NID, network interface device.

8 Q. Okay. Do you see a NETPOP in this

9 photograph?

10 A. No, I do not.

11 Q. Okay. Now, what is the difference between

12 what you said, a NID and a NETPOP?

13 A. A NID --

14 Q. NID, N-I-D?

15 A. That is where our regulated wire connects

16 to customer premises wire.

17 Q. Okay.

18 A. And a NETPOP is where --

19 Q. But you don't know what a NETPOP is; right?

20 A. I am -- I am trying to put it in layman's

21 terms.

22 Q. I understand, but didn't you earlier

1 testify --

2 A. I know what it is. I just --

3 Q. You do know what it is?

4 A. There is different types of NETPOPS.

5 Q. But wait a second.

6 Didn't you earlier say you did not
7 know what a NETPOP is?

8 A. I am a little frustrated with your line of
9 questioning.

10 Q. Didn't you say that, sir?

11 A. Did I say that?

12 Q. I am asking you.

13 Do you remember?

14 A. I don't remember.

15 Q. You don't remember?

16 A. I don't recall.

17 Q. You don't recall.

18 Do you remember -- do you understand
19 you are under oath?

20 A. I understand that.

21 Q. Okay. Now, do you -- now, what is the
22 difference between a NID and a NETPOP?

1 A. A NID is a network interface device. A
2 NETPOP is a network point of presence.

3 Q. Is it a modular connection unit?

4 A. A NETPOP?

5 Q. Yes.

6 A. No.

7 Q. Is a NID a modular connection unit?

8 A. It could be.

9 Q. It could be.

10 All right. Now, with respect to --

11 THE WITNESS: Can I talk to him at all?

12 JUDGE ZABAN: No, you can't.

13 THE WITNESS: I didn't know that.

14 JUDGE ZABAN: Mr. Bertelle, and I will ask the
15 court reporter, what we had previously had marked
16 as Petitioner's Exhibit No. 7, which was the
17 pamphlet, that actually should be No. 8.

18 I found that there was -- in fact,
19 from the records, there was previously marked. So
20 make the reference to 7. This is testimony as 8.
21 Okay.

22 MR. BERTELLE: Q. I am going to show you,

1 again, Exhibit No. 1.

2 What is -- do you know what NETPOP
3 stands for?

4 A. I believe it stands for network point of
5 presence.

6 Q. What does that mean?

7 A. That is where Ameritech comes into the
8 building and where the cable terminates, you see.

9 Q. Okay. All right. Now, and what is a NID?
10 That is where Ameritech also stops, right,
11 terminates at the NID. Is that correct?

12 A. Network interface device.

13 Q. Is that right?

14 A. Correct.

15 Q. Now, isn't it true that a NID is, in fact,
16 a NETPOP?

17 That is true; isn't it.

18 A. I don't know.

19 Q. Okay.

20 A. See --

21 Q. If you don't know, we don't want
22 speculation, sir.

1 You just testified under oath that you
2 don't know.

3 Now, it's your testimony that the wire
4 was always good to the point where the Ameritech
5 lines stop; right?

6 A. The wire was always -- are you saying did
7 it test okay to the NID?

8 Is that what you are asking me?

9 Q. Yes.

10 A. Yes, according to the service --

11 Q. According to you; right?

12 A. According to the service records.

13 Q. According to the service record, but you
14 don't know whether or not that is actually true; do
15 you?

16 You are just relying on their service
17 records; right?

18 A. By testing the line and service records,
19 correct.

20 Q. Now, it would be your testimony that no
21 serviceman ever fudged on records like that for
22 Ameritech?

1 A. Correct.

2 Q. So -- okay.

3 So it's your testimony that every time
4 any serviceman says that a wire is good to the NID
5 or NETPOP, that that means it's good, period;
6 right?

7 A. In my experience when I did that, that is
8 correct.

9 Q. No, not when you did that.

10 What any --

11 A. Yes, I would agree.

12 JUDGE ZABAN: Mr. Bertelle, are you prepared to
13 produce testimony that, in fact, you have instances
14 where they have fudged on the records?

15 MR. BERTELLE: I don't have to show that, your
16 Honor, because what I am doing, I am presenting
17 what is here -- absurdity; okay.

18 It's absurd for anyone to contend that
19 in the millions and millions of inspections,
20 examinations and repairs that they are all done
21 perfectly, but --

22 JUDGE ZABAN: That is not what you are asking.

1 You are asking, does he know of any instances where
2 people have lied, and he already answered the
3 question.

4 MR. BERTELLE: Well, I didn't say -- did I say
5 "lie"?

6 JUDGE ZABAN: You said "fudged." Okay. And I
7 take fudged to mean in this case where they have --
8 where they have falsified the records for some
9 purpose.

10 MR. BERTELLE: You pointed out a very good
11 criticism of my question because I didn't mean it
12 that way.

13 Q. Do you know of any instances where people
14 were mistaken, when they just didn't do the
15 examination right or --

16 A. No.

17 Q. You don't even know that?

18 So are you happy now?

19 JUDGE ZABAN: That is fine.

20 MR. BERTELLE: Q. Okay. Now, so it's your
21 testimony, I take it, that you feel that the wire
22 that is sitting on the desk in front of you,

1 Exhibit 2, that was the wire that went into my
2 house; right?

3 MR. HUTTENHOWER: I believe that question was
4 asked and answered previously.

5 MR. BERTELLE: This is a preliminary question, I
6 mean. It's not like it's a -- according to me
7 anyway. All right.

8 THE WITNESS: This is the wire you presented to
9 me in your office that day.

10 MR. BERTELLE: Q. Now, based upon the pictures
11 you see of the installation of that wire, do you
12 feel that the wire was incorrectly installed such
13 that it was -- it was -- it was inevitably going to
14 be subjected to heat or from tarring.

15 A. I can't gauge whether that was the way it
16 was originally installed or not from these
17 pictures.

18 Q. But I am not asking you whether it was
19 originally.

20 I am saying the way it's installed
21 according to those pictures, do you feel that that
22 made it inevitably subject to problems from

1 maintenance of the roof?

2 A. The way it sits in these pictures might not
3 be the way it -- I don't believe it was installed
4 that way. It shouldn't be laying on the roof like
5 that if that is your question.

6 Q. So in other words, you are saying the way
7 it's depicted in those pictures is an incorrect
8 installation?

9 A. I am not saying that. I am saying I don't
10 know if that is the way it was installed or not. I
11 can't tell you that.

12 Q. I am asking. I don't care. Let's assume
13 for the sake of this question that I changed it
14 myself, okay.

15 You can assume that.

16 Is the way it is depicted in those
17 pictures a correct installation?

18 A. No.

19 Q. Why is it incorrect?

20 A. Well, it's laying out across the roof.

21 Q. Now, is it ordinary procedure for Ameritech
22 to install a premises wire on someone else's

1 property other than the customer's?

2 A. No, it's not.

3 Q. Do you know whether that wire depicted in
4 those pictures is all on Don Bertelle's property?

5 A. No, I do not.

6 Q. Is there anything in your service records
7 to indicate that -- that the wire on the other side
8 of the NID and the customer's side of the NID in
9 this case was installed by anyone other than
10 Ameritech?

11 A. I am not sure. I would have to see the
12 service records. I don't think that would be in
13 the service records though.

14 Q. I didn't ask you that. I said, is there
15 anything in the service records?

16 A. I am not sure. I would have to see the
17 service records.

18 Q. Do you have them?

19 A. Do I have them?

20 No.

21 Q. You don't have the service records?

22 A. We have the--

1 Q. Is this the service records which was
2 attached to your interrogatory answers.

3 Officer of the Court, do you want to
4 give me an honest answer on that?

5 Is this the service records?

6 I am not asking you. I am asking Mr.

7 --

8 JUDGE ZABAN: Mr. Kerber, Mr. Huttenhower?

9 MR. HUTTENHOWER: That is the trouble history
10 for
11 Mr. Bertelle's line.

12 JUDGE ZABAN: That you produced; is that
13 correct?

14 MR. HUTTENHOWER: Correct.

15 MR. BERTELLE: All right.

16 MR. HUTTENHOWER: I don't know whether that is
17 what Mr. McGuire means when he says "service
18 records."

19 MR. BERTELLE: We will ask him. We will make
20 this Exhibit No. 9.

21 Q. Okay. Now, would you look at that, Mr.
22 McGuire, and tell us what it is?

1 I don't know what it is. I sure as
2 hell don't know.

3 A. It appears to be your trouble history on
4 your line.

5 Q. Okay. Can you tell from that whether or
6 not the premises wire was installed by Ameritech or
7 by somebody else?

8 A. No, you can't tell.

9 Q. Is there any record that Ameritech would
10 have that would indicate who installed the wire on
11 the customer side of the NID?

12 A. Not to my knowledge.

13 Q. You wouldn't have it?

14 A. I mean, it's a pretty vague question you're
15 asking me. Who serviced and what year?

16 Do you want to know the year? What do
17 you want to know?

18 Q. I want to know whether or not Ameritech
19 keeps records as to whether or not they install
20 that wire on a customer side of the NID at my
21 property?

22 A. When they install service, the order shows

1 what they do on the order that particular service.

2 Q. So if they install it, you are saying that
3 there would be a record of it at some point, when
4 it was installed?

5 (Telephone ringing.)

6 MR. BERTELLE: You can think about it when he
7 gets done with his --

8 (Short pause.)

9 JUDGE ZABAN: Okay.

10 THE WITNESS: The orders, when they install
11 them, show the jacks going in and the lines going
12 in and a service charge. They show a wiring in one
13 wiring.

14 MR. BERTELLE: Q. Now --

15 A. They used to when I was in the field. I
16 have been out of the field for two years.

17 Q. In your testimony you indicate that you
18 know -- assuming that this is the wire depicted in
19 the pictures, referring to Exhibit No. 2, that you
20 know that it had to have been installed prior to
21 1994; isn't that -- no, you can't look at your
22 testimony.

1 I am asking you, do you remember
2 testifying to that?

3 A. Yes.

4 Q. Okay. And can you tell the Judge why it
5 was that you came to that conclusion?

6 A. Because -- I came to that conclusion
7 because the wire is not marked.

8 Q. Okay. Now, would that wire that you see
9 there in front of you in Exhibit 2, was that
10 available to the public in 1995 unmarked like that?

11 A. I do not know.

12 Q. You don't know.

13 A. I don't know.

14 MR. BERTELLE: He doesn't know the answer.

15 THE WITNESS: I don't know if it was available
16 to the public. I don't know.

17 MR. BERTELLE: He doesn't know the answer to
18 that.

19 Q. And let me see. You're a supervising
20 electrician; right?

21 A. Correct.

22 Q. For Ameritech.

1 What does that mean?

2 A. It's my job to make sure that Ameritech
3 adheres to the City of Chicago Electrical Code.

4 Q. Okay. And you don't like -- you don't
5 teach anyone to do incorrect installations; do you?

6 A. No, I don't.

7 Q. Okay. And your responsibilities include
8 supervising the work of installations; isn't that
9 right?

10 A. Yes. That's correct.

11 Q. Okay. So that is like your little
12 expertise there.

13 You know more about this than anybody
14 else around here; right?

15 A. Not necessarily.

16 Q. You know more than do I; don't you?

17 A. Okay.

18 Q. You know more than the hearing officer;
19 right?

20 A. Correct.

21 Q. Did you ever personally install these wires
22 on the customer side of the NID?

1 A. Yes, I have.

2 Q. Did you ever personally install the wiring
3 on the customer side of the NETPOP?

4 A. Yes, I have.

5 Q. Did you think that was a trick question?

6 MR. HUTTENHOWER: You can answer that if you
7 want.

8 THE WITNESS: (No response.)

9 MR. BERTELLE: Q. Now, do you know whether or
10 not I had linebacker service.

11 A. Yes, you did.

12 Q. So I did have linebacker service; okay.

13 Now --

14 A. Can I look at my --

15 MR. BERTELLE: Objection. He already answered
16 the question.

17 MR. HUTTENHOWER: You are objecting to your own
18 question.

19 JUDGE ZABAN: If you don't know the answer to
20 the question, simply feel free to say you don't
21 know. You have an attorney here. Your attorney
22 will protect your rights. Just merely listen to

1 Mr. Bertelle's questions and answer them as best
2 you can.

3 MR. BERTELLE: Q. Okay. Now, to show you my
4 great good will, do you know whether I had
5 linebacker or not.

6 A. Yes, you did.

7 Q. I did. Okay.

8 Now, doesn't that mean that if I had
9 linebacker that Ameritech is supposed to fix the
10 wire whether it's on this side of the NID, NETPOP
11 or that side?

12 A. Yes.

13 Q. Okay. And doesn't it also mean that if the
14 damn wire is incorrectly installed that you guys
15 and it was possibly the problem was the result of
16 incorrect installation, that Ameritech should have
17 fixed the damn wire; isn't that correct?

18 MR. KERBER: Object to that as it calls for a
19 legal conclusion.

20 JUDGE ZABAN: Mr. Bertelle -- irrespective of
21 that, Mr. Bertelle, you haven't established at this
22 point that Ameritech installed; but let me ask you

1 one question.

2 MR. BERTELLE: It doesn't matter who installed
3 it.

4 JUDGE ZABAN: Let me ask one question.

5 Mr. McGuire, you testified that based
6 on looking at the pictures, you could see that
7 irrespective of who installed the wires, that, in
8 fact, that the way the current configuration of the
9 wires was incorrect; is that correct?

10 THE WITNESS: It was, yes, yes.

11 JUDGE ZABAN: Would it be obvious to any other
12 technician who came out to observe those premises
13 that there was a problem with the wires as they --

14 THE WITNESS: -- as they appeared.

15 JUDGE ZABAN: -- as they appeared at that time?

16 THE WITNESS: Yes.

17 JUDGE ZABAN: Okay. If Mr. Bertelle says, in
18 fact, he did have linebacker service, does or
19 should it have been the normal practice of
20 Ameritech to correct the problem as it related to
21 the current status of the wires?

22 MR. KERBER: I am going -- even though it's the

1 Hearing Examiner's question -- just to preserve my
2 record, object to that question again just to be --

3 JUDGE ZABAN: I am just asking.

4 MR. KERBER: It calls for a legal conclusion.

5 JUDGE ZABAN: I am asking him his opinion as a
6 technician.

7 THE WITNESS: Yes.

8 JUDGE ZABAN: Okay. Go ahead, Mr. Bertelle.

9 MR. BERTELLE: Of course that was the question I
10 was going to ask.

11 JUDGE ZABAN: Yes, right. Okay. Okay.

12 MR. BERTELLE: I don't have any other questions.

13 JUDGE ZABAN: All right. Thank you. All right.

14 Do you have anything further, Mr.
15 Kerber?

16 Do you have any redirect?

17 MR. HUTTENHOWER: Can we confer for a minute?

18 JUDGE ZABAN: Go ahead. Why don't we take a
19 five-minute break?

20 (Short recess.)

21 JUDGE ZABAN: Okay. We are back on the record.

22 Mr. Kerber, Mr. Huttenhower, do you

1 have any further questions of Mr. McGuire?

2 MR. HUTTENHOWER: I think just one or two
3 questions.

4 REDIRECT EXAMINATION

5 BY

6 MR. HUTTENHOWER:

7 Q. Mr. Bertelle has been asking you about
8 linebacker service, and if a customer subscribes to
9 the linebacker service, does that mean that under
10 all circumstances Ameritech is obligated to make
11 repairs --

12 A. No.

13 Q. -- to his wire?

14 MR. BERTELLE: Objection, your Honor. That is
15 in his direct testimony, I believe, or somebody's
16 direct testimony, accumulative.

17 Correct me if I am wrong, but -- and I
18 agree to this. If the wire was harmed as a result
19 of my conduct, I can't expect linebacker to cover
20 that, and it's not my contention in any event.

21 MR. HUTTENHOWER: All right. Mr. Bertelle has
22 reminded us that, in fact, this topic is covered in

1 Mr. McGuire's testimony. So we have no need to
2 address it further here.

3 JUDGE ZABAN: Okay.

4 MR. BERTELLE: I did actually read it.

5 MR. HUTTENHOWER: So I guess that means we would
6 have no further questions for Mr. McGuire.

7 JUDGE ZABAN: I have a couple of questions of
8 Mr. McGuire.

9 EXAMINATION

10 BY

11 JUDGE ZABAN:

12 Q. Based on your observations of the wiring as
13 it appears going from the NID to Mr. Bertelle's
14 premises, what are the types or kind of problems
15 that you can foresee could happen with telephone
16 service?

17 A. On this wire or on regular wire?

18 Q. No, on that wire.

19 A. Damage by unknown parties.

20 Q. I am talking about how would it affect
21 telephone service?

22 A. Oh, it would -- it could either short the

1 dial tone altogether where you wouldn't have any
2 dial tone on the premises or it could melt in half
3 or break in half and you would have no dial tone
4 either. If the wire splits, then he has no dial
5 tone in his service.

6 Q. Just based on your observation of this
7 wire, it could affect the service where he would
8 have no dial tone or no service at all; is that
9 correct?

10 A. Correct.

11 JUDGE ZABAN: Okay. I have nothing further of
12 Mr. McGuire.

13 MR. BERTELLE: Nor I.

14 (Witness excused.)

15 JUDGE ZABAN: Mr. Kerber, Mr. Huttenhower, call
16 your next witness.

17 MR. HUTTENHOWER: All right.

18 JUDGE ZABAN: Thank you, Mr. McGuire. I know it
19 was tough at times, but thanks for sitting in
20 there.

21 MR. HUTTENHOWER: We call David Fiedler.

22 MR. BERTELLE: I don't have the energy to go

1 through all of this again --

2 JUDGE ZABAN: Okay.

3 MR. BERTELLE: -- with respect to objections on
4 this, but I saw -- I would just ask that your Honor
5 acknowledge that I would make such objections as I
6 made earlier, but without the ad hominem remarks.

7 JUDGE ZABAN: Most appreciated, Mr. Bertelle.

8 Mr. Fiedler, would you raise your
9 right hand.

10 (Witness sworn.)

11 DAVID FIEDLER,

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

14 DIRECT EXAMINATION

15 BY

16 MR. HUTTENHOWER:

17 JUDGE ZABAN: Okay. The record will reflect
18 that Mr. Bertelle for the record would make the
19 same objections regarding the same documents as he
20 made previously and the basis for those objections
21 as he made with Mr. McGuire.

22 Okay. Mr. Huttenhower.

1 MR. HUTTENHOWER: All right. The court reporter
2 has already marked as Respondent's Exhibit 2 a
3 document. I am tendering three copies of that
4 document to the court reporter and the Examiner and
5 I have also placed one copy of that document in
6 front of the witness.

7 JUDGE ZABAN: That is going to be Ameritech 2.

8 MR. HUTTENHOWER: Yes.

9 Q. Okay. Mr. Fiedler, you have in front of
10 you what has been identified -- a document entitled
11 Direct Testimony Of David Fiedler On Behalf Of
12 Ameritech Illinois; is that correct?

13 A. That's correct.

14 Q. Was this document prepared by you or at
15 your direction?

16 A. It was prepared by me.

17 Q. If I ask you the questions contained in the
18 document, would your answers be the same as those
19 that are captured here in writing?

20 A. Yes.

21 Q. Do you have any clarifications or
22 corrections to the written testimony here?

1 A. No, I don't.

2 Q. If you could unclip the document, and there
3 are two attachments to the document.

4 Turning to Attachment A, could you
5 tell us what Attachment A is?

6 A. What it is?

7 Q. Yes.

8 A. This is a trouble history documented
9 through the loop maintenance operating system that
10 the telephone company uses which is the
11 chronological order of sequence of events that the
12 report of the complainant to this telephone number
13 , the sequence that it goes through as we receive
14 it, test it, dispatch it and clear it and make
15 notations of occurrences on it.

16 Q. So it's a chronological recitation of what
17 happens to a repair call in essence?

18 A. That's correct.

19 Q. All right. And I would note for the record
20 that it's also what Mr. Bertelle had marked as his
21 Exhibit 9.

22 Now, if you could also look at

1 Attachment B to your testimony.

2 Could you identify what that document
3 is?

4 A. This is -- it appears to be a summarization
5 of the chronological order of the LMO report which
6 is Attachment A.

7 Q. So Attachment B is a summary of Attachment
8 A?

9 A. Yes. More in layman's understandable
10 terms.

11 Q. And that is because Attachment A is not
12 written in English, if you will?

13 A. Right, lot of symbols and lot of things
14 that are difficult to ascertain the responsibility
15 for.

16 Q. Did you prepare Attachment B?

17 A. No, I didn't.

18 Q. Were you involved in reviewing Attachment
19 B?

20 A. Sometime, yes, I did review it.

21 Q. So as far as you know the information in
22 Attachment B accurately -- accurately reflects the

1 repair information in Attachment A?

2 A. Yes.

3 MR. HUTTENHOWER: All right. Your Honor, at
4 this point we would move for the admission of
5 Respondent's Exhibit 2 and attachments.

6 JUDGE ZABAN: Okay. They will be admitted
7 subject
8 to -- not subject to, with the notation as to
9 Mr. Bertelle's objections on the record.

10 MR. HUTTENHOWER: As well, I don't remember if I
11 asked with regard to Mr. Fiedler for the exact sort
12 of summary question whether his testimony would be
13 admitted.

14 If I omitted to do that, may I correct
15 --

16 JUDGE ZABAN: We will treat Mr. Fiedler's
17 testimony as if his answers would be substantially
18 the same as if they were under oath.

19 MR. BERTELLE: I have one objection, though, to
20 the admission of the exhibits in evidence.

21 I will tell you what it is.

22 It's a foundation issue and it's --

1 you know, it's the cybernetic expression. I once
2 was taken to task by Judge Kowalski twenty years
3 ago for making this objection.

4 It's a cybernetic expression, garbage
5 in, garbage out. Twenty years ago Judge Kowalski
6 didn't understand that I was -- what I was
7 referring to when I was objecting to the admission
8 by opposing counsel of a computer record; but that
9 is what I am objecting to these documents on that
10 basis because without -- you know, I mean, I am
11 just, we don't know. This gentleman here, Mr.
12 Fiedler, didn't provide any of the information that
13 was entered into the computer. So, in essence,
14 what it is is -- it's computerized hearsay is what
15 it is.

16 And so I am going to make the
17 objection on that basis, and you're going to rule
18 that it's admitted anyway. So I will get to my
19 questions now.

20 JUDGE ZABAN: I am going to do more than that,
21 Mr. Bertelle.

22 The answer twenty years ago was

1 garbage in and garbage out. It is still the same,
2 but we have now learned to accept computer records
3 a little more reliably, number one and number two,
4 I believe the testimony of Mr. Fiedler is they were
5 prepared under his direction, were kept in the
6 ordinary course of business and while they are
7 computer records and there is some question about
8 their validity, it may have to do with the weight I
9 give it as opposed to the admissibility.

10 MR. BERTELLE: Okay.

11 CROSS-EXAMINATION

12 BY

13 MR. BERTELLE:

14 Q. Mr. Fiedler, I'm going to -- is that your
15 name, Fiedler?

16 A. Yes, it is.

17 Q. I'm going to refer you to Exhibit -- or
18 Attachment A., first page.

19 Now, you see here it says, NAR A B.

20 MR. BERTELLE: Let me -- first of all, let me
21 say this:

22 Could I approach the witness?

1 JUDGE ZABAN: Yes, you may.

2 MR. BERTELLE: Q. Everything on Exhibit A, all
3 of the information on Exhibit -- on Attachment A is
4 not on Attachment B; isn't that correct.

5 A. Yes.

6 Q. There is information left off of Exhibit B
7 that is on Exhibit A; isn't that right?

8 A. Yes, that would be right.

9 Q. Okay. And some of it is important
10 information; isn't it?

11 A. Yes.

12 Q. Okay. Now, you never spoke to any of the
13 people -- or let me rephrase it.

14 I want to refer you to Exhibit B or
15 Attachment B. I am sorry.

16 A. Attachment B.

17 Q. Do you see here it says, October 20, 1995?

18 A. Yes.

19 Q. Findings: October 20, 1995.

20 A. Yes.

21 Q. Okay. Now, I take it that you have no
22 record of anything -- any of my problems dating

1 earlier than
2 October 20, 1995; is that correct?

3 A. That is correct.

4 Q. Would it shock you to learn that I moved
5 into the place in approximately October of 1995?

6 A. No.

7 Q. Okay. Now, it says, A no dial tone
8 trouble report was created and corrected the same
9 day with a narrative of a wet terminal.

10 What is a wet terminal?

11 A. Okay. That would be in reference to in the
12 regulated side of Ameritech's facilities, a serving
13 terminal where the cable is actually open in the
14 air actually had gotten wet through nature, driving
15 rain into it.

16 Q. When you say, it was corrected the same day
17 with a narrative of wet terminal, whose narrative
18 is that?

19 Is that my narrative or the service
20 technician's narrative?

21 A. Service technician's.

22 Q. So, in other words, I reported a problem

1 and it was corrected and there was something wrong
2 with the wire; is that right?

3 A. That's correct.

4 Q. So that would mean that I probably wasn't
5 delusional; right?

6 A. It would mean that --

7 Q. At least with respect to that particular
8 complaint on that date?

9 A. It would say that you had a problem, sir.

10 Q. Okay. Now, and then there is no further
11 trouble history for three years; right?

12 A. Yes, I see the next, October 6, 1998.

13 Q. Now, your records would indicate, would
14 they not, who installed the wire on the customer
15 side of the NETPOP, wouldn't it?

16 A. We don't have any records of the actual
17 installation.

18 Q. You don't.

19 Why is that?

20 A. They're just not available to us.

21 Q. Okay. Now -- now, are you familiar with
22 linebacker?

1 A. Yes, I am.

2 Q. And I had linebacker in this; right?

3 A. Yes, sir.

4 Q. Now, in linebacker it doesn't matter who
5 installed the wire; isn't that right?

6 A. There is more to that, sir. It has to be
7 installed to standards.

8 Q. Okay. Now, to your knowledge did anybody
9 ever advise me that my wire on the customer side of
10 what you call the customer side of the NETPOP or
11 NID was not correctly installed?

12 A. No, I have no knowledge of that.

13 Q. No one ever informed you of that?

14 A. Not to my knowledge.

15 Q. Nowhere in this trouble history is there
16 any indication that customer was advised -- that
17 customer -- that wire on the customer side of the
18 NID is incorrectly installed?

19 A. I don't recall anything where it says that
20 you were notified of that.

21 Q. Look at it. Tell us. We don't have to do
22 -- you know.

1 A. Okay. Attachment B, I see no comments
2 referring to that you were informed that the wiring
3 was installed improperly.

4 Q. Okay. Now, I just want to ask you one or
5 two more questions here because you're aware of the
6 fact that Ameritech people have been on my roof
7 without my knowledge; is that right?

8 A. No.

9 Q. You're not aware?

10 A. I am not aware of that.

11 Q. Do you see pictures that were taken by
12 Ameritech people?

13 MR. HUTTENHOWER: If it will help, I will grab
14 them for you.

15 MR. BERTELLE: Yes.

16 MR. HUTTENHOWER: I think these were marked as
17 Mr. Bertelle's Exhibits 4 and 5.

18 MR. BERTELLE: Q. Did you ever see those
19 pictures before.

20 A. Yes, I have.

21 Q. Do you know who took them?

22 A. No, I can't say at this point I do.

1 Q. You don't know?

2 A. Who actually took them, no.

3 Q. Do you know that they are the property of
4 Ameritech that were provided to me by Ameritech?

5 A. Yes, I understand that.

6 Q. So -- but you don't know who took them?

7 A. No, at this point I could not tell you who
8 physically took these pictures.

9 Q. Would it surprise you to learn that they
10 were taken by Ameritech personnel without my
11 knowledge?

12 A. No.

13 Q. Okay. Do you concede that Ameritech
14 service technicians had open access to my roof?

15 A. There is nothing in these pictures that
16 show me that any Ameritech personnel were on your
17 roof.

18 Q. Well, who do you think took those pictures?

19 A. Any one of these pictures could easily have
20 been taken from our facilities -- our facilities at
21 the back of your place.

22 Q. What do you mean, from like the telephone

1 --

2 A. A ladder or a bucket truck.

3 Q. You could have gotten up there on a ladder;
4 right?

5 A. We could have gotten on to our facilities
6 or gone up in a bucket truck and taken these
7 pictures and never touched your facility.

8 Q. Okay. Now, on June 20, 2000 -- June 19th,
9 there was a splice put into the wire; isn't that
10 right?

11 A. You're referring to June 9, 2000?

12 Q. Well, June 19th.

13 You have -- on Page 2 of Attachment B,
14 you said, June 19, 2000, technician went to
15 premises, repaired trouble with I/W.

16 I/W refers to inside wire; doesn't it?

17 A. It refers to installation wire.

18 Q. What kind?

19 A. Installation wire.

20 Q. Okay. We haven't heard that term before.

21 What does that mean?

22 The inside wire or is that different

1 from inside wire?

2 A. No.

3 Q. Okay. So now -- okay. And so the record
4 is clear, that is the -- you're -- so in other
5 words, according to Attachment B, on June 19th, a
6 technician went to the premises and repaired the
7 wire on my roof; right?

8 A. Whether it's on your roof or not is not
9 defined in that statement right there. It could
10 have been that he repaired it right at the NETPOP
11 or the NID.

12 Q. Okay. Do you happen to know -- do you know
13 what wire he repaired that day?

14 A. No, sir. I was -- I was not there.

15 Q. Now, I wrote a letter to the -- and I
16 assume that you have a copy of it -- in which I
17 said -- attached to the complaint and incorporated
18 into the complaint, said that the repair job done
19 on June 20th, I thought it was, during the
20 unannounced visit on the night of June 19th
21 consisted of the replacement of approximately a
22 6-foot segment of this indoor line with an outdoor

1 line which was spliced in.

2 MR. HUTTENHOWER: I don't believe that the
3 witness has a copy. He certainly doesn't have a
4 copy of that letter in front of him. I actually
5 wouldn't know if he is familiar with that.

6 MR. BERTELLE: He could have said that himself.

7 JUDGE ZABAN: Excuse me.

8 (Telephone ringing.)

9 (Short pause.)

10 MR. BERTELLE: Q. My point is this: Are you
11 going to tell the hearing Examiner here that
12 Ameritech service technicians didn't have access to
13 that inside wire?

14 I mean, that they had to have my
15 cooperation to get at that inside wire.

16 A. Yes, our technicians would not have gone
17 onto your roof.

18 JUDGE ZABAN: Would not have gone on the roof?

19 THE WITNESS: Not physically have gone on the
20 roof.

21 JUDGE ZABAN: Okay.

22 MR. BERTELLE: Q. Okay. And if they did on

1 June 19th, then what?

2 MR. HUTTENHOWER: Objection. I don't
3 understand.

4 MR. BERTELLE: Q. What does that mean?

5 I mean, are you saying that would have
6 been incorrect.

7 A. They don't -- technicians normally without
8 access to a property and the customer owner would
9 not go on the customer's property, especially a
10 roof.

11 Q. Now, is it your position that Ameritech
12 acquits itself of its service responsibilities by
13 making unannounced visits to the premises?

14 A. I am sorry.

15 Could you ask that again?

16 Q. Is it your testimony that Ameritech acquits
17 itself of its service responsibilities by making
18 unannounced visits for the purpose of repairing the
19 premises?

20 A. We do not make unannounced visits. The
21 premises visit is usually documented with the
22 customer at the time of the customer's call that we

1 will be out.

2 Q. You said "usually". That is a
3 qualification.

4 I am asking you, is it your testimony
5 that unannounced visits acquit Ameritech of its
6 service responsibilities?

7 A. I am sorry. I don't understand the use of
8 "acquits."

9 Q. Do you consider that to be a fulfillment --
10 does Ameritech consider it to be a fulfillment of
11 its service obligation to make an unannounced
12 visit, you know, anybody home?

13 (Knocking.)

14 No, nobody is home. Well --

15 MR. KERBER: Object to the abuse of the witness.
16 I have been sitting through more than enough of
17 this, your Honor, and if he could please be
18 directed and to just treat our witnesses with a
19 minimum of respect I would really appreciate it.

20 JUDGE ZABAN: Okay. First of all, I don't find
21 there is a problem. I think what Mr. Bertelle is
22 asking you, does Ameritech consider an unannounced

1 visit satisfactory in terms of fulfilling its
2 obligation to answer customer complaints?

3 Is that correct?

4 MR. BERTELLE: Yes, that is. I am sorry.

5 THE WITNESS: No, we don't feel that acquits us.
6 We continue to try, and we leave that case open and
7 we try to attempt to recontact the customer.

8 MR. BERTELLE: Q. Now, you're aware of this
9 history.

10 Now, you said in -- I think at the end
11 of your testimony here, you say, Ameritech Illinois
12 take steps to determine whether technicians are
13 properly reporting lack of access for service call.
14 What is proper lack of -- proper reporting lack of
15 access?

16 What does that mean?

17 Does that mean --

18 A. May I reference what you just --

19 Q. Well, Page 3.

20 JUDGE ZABAN: All right. Excuse me for one
21 second.

22 (Short pause.)

1 THE WITNESS: Okay. Would you like me to
2 reanswer the question?

3 JUDGE ZABAN: Proceed. Go ahead.

4 MR. BERTELLE: Q. At Page 3 of your testimony,
5 you testified that the company measured how many
6 times a technician closes out a service call by
7 reporting lack of access.

8 What does lack of access mean.

9 A. Inability to get access to the customer's
10 premises to complete the job.

11 Q. Okay. Then you say that, If a technician
12 reports a high number of no access visits, we would
13 contact some of the customers to ascertain whether
14 the no access report was accurate.

15 What difference does it make whether
16 you do some of them?

17 Did you do it?

18 Did Ameritech contact me to determine

19 --

20 A. I have no knowledge whether they did or
21 not.

22 Q. Do you know whether or not Ameritech had

1 any means of contacting me?

2 A. No, I don't.

3 Q. Do you feel that may have been a reason why
4 I wasn't contacted?

5 A. In regards to whether that was a viable no
6 access?

7 Q. Right.

8 A. No, I wouldn't say that. You're asking me
9 if the inability to get ahold of you --

10 Q. Yes.

11 A. -- was the reason you weren't -- my
12 assumption is that by looking -- and this is an
13 assumption. At times you were in service. If we
14 had surveyed you, we would have contacted you
15 during the time you were in service and asked if
16 there was a problem getting ahold of you.

17 Q. But I am talking about when you -- when you
18 have a customer, reports a problem and then it's
19 not fixed and then, you know, you have a lack of
20 access report by the service technician, then I
21 read this to indicate that at that time you
22 sometimes will contact the customer to find out if

1 the service technician has really been out there.

2 Is that true?

3 A. Yes.

4 Q. Okay. And then I am asking, did you do
5 that with me? Did you find out -- did you contact
6 me?

7 A. I have no knowledge that any attempt was
8 made to contact you in these circumstances.

9 Q. Do you know whether or not that maybe
10 Ameritech was frustrated in contacting me because
11 they couldn't get ahold of me?

12 Was that the reason?

13 MR. HUTTENHOWER: Objection.

14 THE WITNESS: I have no knowledge of that.

15 MR. BERTELLE: Q. Okay. I want you to go to
16 Exhibit A or Attachment A, and I want you to see if
17 it says here -- I will point it out to you.

18 Can you read Attachment A?

19 Do you know what -- do you know what
20 -- are you familiar with interpreting it.

21 A. For the most part.

22 Q. Do you see this line here. It says, NAR

1 A, space and there is a B and then there is
2 telephone number there. It appears to be a
3 telephone number.

4 What is that telephone number?

5 A. (312) 201-8885.

6 Are you asking what it represents?

7 Q. Yes, what does that represent?

8 A. It could be a "can be reached" number.

9 Q. Okay. If I were to tell you that is my law
10 office number, would that enlighten you as to what
11 that is about?

12 A. Uh-huh.

13 Q. That is right there at the top of the
14 information; isn't it?

15 A. Yes.

16 Q. Okay. So, in other words, based upon this
17 trouble history here, it has information on it
18 indicating how I could be reached; isn't that
19 right?

20 A. That's correct.

21 Q. Now, in light of the fact that I am -- I am
22 a customer with a telephone number that can be

1 reached, can you think of any reason why service
2 technicians would make repeated unannounced calls
3 to my house when my phone wasn't working there
4 during times when I wouldn't -- you know, during
5 business hours after I informed Ameritech that I
6 lived there alone?

7 A. There are times where we can repair a
8 customer's problems without access to their home.
9 If we can do that, without interrupting a
10 customer's schedule and rather than having a
11 customer stay home, we will attempt to repair our
12 regulated facility first, and then if we do prove
13 that the problem is in the customer's home, then we
14 can get ahold of the customer or reattempt to get
15 in.

16 Q. Do you see --

17 A. Usually by leaving a card on the customer's
18 --

19 Q. Okay. Do you see this entry on Attachment
20 B, December 26, 1998.

21 What does that say?

22 A. December 26th, reported as out of service,

1 closed as future job. No one home.

2 Q. What does that mean?

3 Doesn't that mean there was no attempt
4 to fix or anything? Just went there unannounced,
5 didn't do anything to close the ticket; didn't
6 they?

7 A. I have to look at the specifics.

8 Q. Go ahead.

9 A. No, case was not closed out. The case was
10 actually left open and the technician said that he
11 was unable -- no one home, and that future in
12 reference to somebody should go back out, which, in
13 fact, that was on the 26th. This case was not
14 closed until the 28th, and which another tech went
15 out, was dispatched out at 8:00 o'clock on the
16 28th, and isolated the trouble to customer provided
17 equipment, in which case the case was closed.

18 Q. So, in other words, Attachment B doesn't
19 accurately reflect the information on Attachment A;
20 isn't that correct?

21 A. Attachment B is a summarization of events.

22 Q. That just gave me an instance where it

1 didn't accurately report what was on A?

2 A. Well, in essence it does. It does not say
3 that -- it says, "Closed as future job. No one
4 home.

5 In other words, future job, I would
6 say it's accurate where it was closed because in
7 essence the
8 next -- the next sentence here says, December 26,
9 1998, same day of trouble from December 26th, with
10 reference to it, says, Dispatch out, isolated
11 trouble.

12 So, in essence, it corrects itself
13 with that second statement.

14 Q. But the December 26th entry is inaccurate;
15 isn't it?

16 A. As far as -- it says, "closed future," not
17 "closed out." Okay. It was closed as future,
18 putting it into the future.

19 Q. And, in fact --

20 A. Does not state "close case."

21 Q. Well, it doesn't say "close case" on
22 December 28th either; does it?

1 A. It gives a final narrative.

2 Q. How about January 20th?

3 Is this the same problem?

4 A. January 20th, from what I can see,
5 summarizes a telephone report of no dial tone.

6 Q. Okay.

7 A. Just the initial report.

8 Q. All right. And January 21st?

9 A. Okay. It was no access on the 21st.

10 Q. Do you know whether or not there was a --

11 A. "Trouble towards apartment" is what the
12 narrative reads.

13 Q. Okay. "No access, trouble towards the..."
14 What does that mean?

15 A. Okay. It means from the NETPOP on the back
16 of the building. The technician opened up the
17 circuit, saw that the regulated side of Ameritech
18 service was fine, and that the trouble causing the
19 out of service was proving towards the customer's
20 residence.

21 Q. Okay. Now, October 23rd -- but on the 21st
22 there was -- do you know whether any of these calls

1 were -- these, you know, these attempts to provide
2 service were done after an attempt to contact me?

3 A. Some of them I can see where there is -- in
4 case on the 1-23-99, 10:40 a.m., that particular
5 DTR entry at the very beginning, it says 11 DTR,
6 that is an indicator that you called.

7 Q. Right. But so I am -- you know, you guys
8 are coming out, doing nothing, saying okay -- the
9 phone is okay as far as we are concerned, and I am
10 calling, you know, the 20th, 21st, 23rd and on the
11 23rd you closed it.

12 What does it mean, This case was
13 closed as removed defective I/W connected?

14 What does that mean?

15 A. There was a tech dispatched out on the 23rd
16 at 11:55 a.m. At 1:02 closed the case. Removed
17 defective I/W connected to sub's line. Test okay.

18 So he removed the particular I/W that
19 was causing the problem.

20 Q. Okay. Do you know where that -- do you
21 know whether I was there on the 23rd?

22 A. No, sir, I don't.

1 Q. Do you know whether that service technician
2 gained access to the inside wire on his own?

3 A. No, there is nothing in here that I can
4 answer that question for you.

5 Q. Okay. On June 9, 2000, do you know whether
6 or not -- Test shown open out, dispatched and
7 closed no access. What does that mean?

8 A. Okay. No dial tone speaks for itself.

9 Q. Yes.

10 A. Okay. "Test shown open out" meaning that
11 we see nothing but a clear line out to the
12 customer. We see no telephone sets and we see no
13 trouble.

14 Q. Okay.

15 A. Okay.

16 Q. And when -- okay.

17 A. When the technician goes to the network
18 interface on the side of your building, he would
19 verify that the dial tone is okay at that point.

20 JUDGE ZABAN: That is only from the drop to the
21 NID; is that correct?

22 THE WITNESS: I am sorry?

1 JUDGE ZABAN: That is only where the drop meets
2 the NID; is that correct?

3 THE WITNESS: Right.

4 JUDGE ZABAN: Okay. Doesn't really test what is
5 on the other side of the NID?

6 THE WITNESS: Right.

7 JUDGE ZABAN: Okay.

8 THE WITNESS: What is commonly referred to as
9 the customer.

10 MR. BERTELLE: Q. What is "tech called CBR"?

11 A. Tech called, "can be reached" number, and
12 shows dial tone good to network interface device.

13 Q. What does that mean?

14 A. Well, the tech is saying he called the "can
15 be reached" number.

16 Q. Okay. What does that mean?

17 Does that mean that he called me at my
18 office to 201-8885?

19 A. Yes.

20 Q. And told me that there was a dial tone.

21 Why would he -- I am trying to
22 understand what this means.

1 A. Yes, there is a limited area that they can
2 put narratives in here. So what they try to do is
3 abbreviate. Okay. And when it says call "can be
4 reached" number, he says I did call the number and
5 --

6 Q. Okay.

7 A. And the NA dial tone good to the NID,
8 either saying that there was no answer to the "can
9 be reached" number, and then he went in and put a
10 narrative of what he found, no access, good to the
11 network interface device.

12 Q. Okay. Now, he said he did that on June
13 9th?

14 A. I believe this is in reference to the 10th.

15 Q. Well, it says June 9th though; doesn't it?
16 On Attachment B it says June 9th?

17 A. Yes, it's the 10th.

18 Q. So then Attachment B is incorrect in that?

19 Is there anything about Attachment B
20 that is correct?

21 A. Yes.

22 Q. I mean, some correct, some not correct?

1 A. Well, I can see in what you just pointed
2 out to me as an inaccuracy.

3 Q. There is another inaccuracy.

4 That is the second one I pointed out;
5 isn't it?

6 A. I believe so.

7 Q. Okay. Now, you don't have anything down
8 here for June 18th on here; do you?

9 JUDGE ZABAN: What do you mean?

10 MR. BERTELLE: Trouble history for June 18th.

11 JUDGE ZABAN: For Attachment B?

12 MR. BERTELLE: Yes.

13 Q. Do you have anything for June 18th?

14 A. Not in Attachment B that I see, no.

15 Q. Did you know that in my complaint I wrote
16 that I had made a call -- on Friday, June 16th, I
17 called the Consumer Affairs Division of your
18 office, spoke to a woman who identified herself as
19 Jessa and she made an appointment for a guy to come
20 out on Sunday from 8:00 a.m. to 12:00 p.m., and
21 that the guy showed up like about two minutes to
22 noon on Sunday?

1 MR. HUTTENHOWER: Is this a question or is this
2 testimony from Mr. Bertelle?

3 MR. BERTELLE: Well, I am trying to ascertain
4 how accurate this repair history is and he is the
5 guy that did the repair history for Ameritech and I
6 am wondering since -- you know, why that is not on
7 here.

8 MR. HUTTENHOWER: Have you asked him whether
9 there is anything in Attachment A that reflects
10 repair activity on June 18th?

11 MR. BERTELLE: Well, my assumption is that since
12 this Attachment B was admitted into evidence as an
13 accurate summary of Attachment A, then Attachment B
14 would have it.

15 MR. KERBER: It does.

16 MR. HUTTENHOWER: Would you look at the entry
17 for June 13th, the third line?

18 MR. BERTELLE: Third line.

19 MR. HUTTENHOWER: Same case on June 18th.

20 JUDGE ZABAN: This says June 13th.

21 If you read further down. Okay. Mr.
22 Bertelle, we have got the point in terms of what

1 you are attempting to show here.

2 MR. BERTELLE: All right.

3 JUDGE ZABAN: We also understand that.

4 MR. BERTELLE: So you're bored. I quit.

5 JUDGE ZABAN: Okay. Do you have anything
6 further, Mr. Bertelle?

7 MR. BERTELLE: I am boring me, too. I quit.

8 JUDGE ZABAN: Okay. Do you have any redirect?

9 MR. HUTTENHOWER: Just a moment to confer.

10 I don't think we have anything further
11 for Mr. Fiedler.

12 JUDGE ZABAN: Okay. Does Ameritech have
13 anything further?

14 MR. HUTTENHOWER: I don't think we have any
15 further testimony.

16 JUDGE ZABAN: Mr. Bertelle, do you have any
17 rebuttal?

18 MR. BERTELLE: Yes, I would like to just testify
19 as there were many, many instances where people
20 came out there unannounced.

21 JUDGE ZABAN: Do you have dates?

22 MR. BERTELLE: I have the dates in my complaint.

1 There were other dates that, you know, I didn't
2 hold onto the tickets, but it happened, and then --
3 and the other thing is which I already testified to
4 during my direct that the building to the west of
5 me is not my building.

6 JUDGE ZABAN: Okay. Now, just so I understand,
7 what is it specifically you are asking for in your
8 relief, Mr. Bertelle?

9 MR. BERTELLE: I want the wire from the NETPOP
10 or whatever it wants to be called to the point
11 where it enters my house to be correctly installed.
12 I think Mr. McGuire agrees that maybe not for the
13 same reasons that I thought, but I am the
14 electrician for Ameritech, but he agrees with me
15 that it's incorrectly installed.

16 It's not supposed to be lying on the
17 neighbor's roof where it can be subjected to
18 problems. I want it correctly installed. That is
19 what I wanted from the beginning. Every time they
20 came out and repaired this thing and there were
21 instances where they repaired it, they all saw that
22 it was incorrectly installed according to Mr.

1 McGuire because he said they would have recognized
2 it.

3 JUDGE ZABAN: Okay.

4 MR. BERTELLE: They should have then said --
5 take it on their own to correctly install the whole
6 thing so that there wouldn't be a recurring
7 problem.

8 That is what I want. My phone is
9 okay. I used it. I have given that same phone
10 that I was using up until this happened last year
11 to my mother. She is using it with no problem
12 because it's no use to me.

13 And lastly, I want the bill abated
14 from the date that it stopped working last June.
15 That's all. That's what I want.

16 MR. KERBER: I offered at the first status
17 hearing in this matter to redo the inside wire for
18 free regardless of whether or not that would or
19 would not be covered under the terms of linebacker,
20 and if Mr. Bertelle would let us go on the premises
21 and do that --

22 JUDGE ZABAN: Well, I think we are mixing apples

1 and oranges. It may not be that the problem is
2 with the inside wire. Okay.

3 The problem here that Mr. Bertelle and
4 the testimony indicates that it's the location of
5 the NID on the outside of the building, and I
6 understood the testimony about how he feels it
7 needs to be grounded near a meter. It's the
8 location of the NID that causes the wire to run
9 from the NID to his building and compels that wire
10 to run across the roof.

11 Whereas if the NID was attached
12 directly to his building as it enters the house, as
13 it is in many locations, that would allow you to
14 run your drop wire so that the drop wire would be
15 over the roof and not lying on the roof, that you
16 wouldn't run into the problems of deterioration
17 from tar and heat and all of the other things that
18 are going on.

19 Is that a correct statement?

20 MR. BERTELLE: Yes, it is.

21 JUDGE ZABAN: Okay. Now, I am going to take
22 this matter under advisement. I will issue the

1 appropriate order.

2 However, I understand you're going
3 away for awhile.

4 MR. BERTELLE: Saturday I am leaving for Alaska,
5 and I won't be back until August 14th.

6 JUDGE ZABAN: Okay. The fact that you can
7 prepare briefs for me, okay, on your positions, the
8 fact that the hearing is now heard and taken -- and
9 I understand what the parties -- it doesn't
10 preclude the parties from continuing to negotiate
11 and try and resolve this matter prior to the
12 issuance of the order.

13 Okay. I think it's become abundantly
14 clear what Mr. Bertelle is looking for and
15 abundantly clear to me, Mr. Kerber, what you are
16 willing to do. I don't think that the parties are
17 that far apart. I think everybody has had an
18 opportunity to put it out on the table, what they
19 think is going on.

20 I will enter the appropriate order,
21 but I encourage the two parties to continue.

22 MR. BERTELLE: Let me just put it to you this

1 way:

2 I mean, ordinarily, I am always
3 willing to settle, and I settle for a living,
4 basically, because I am a litigation lawyer; but my
5 reference is and my commitment in this case is, I
6 want a finding that they didn't provide me with
7 good service because I want it on the record
8 because I think Ameritech is a bad public utility,
9 and that it should be a mark on their record
10 because they haven't just done to it me. They do
11 it to a lot of people that are not lawyers and
12 don't -- you know, don't have the will to come in
13 and fight them. And I am quite certain that they
14 would not be so nice to me if I was a poor person
15 or, you know, a dispossessed or someone in the
16 underclass.

17 So my objective is to go all the way
18 on this, and I will go as far as necessary. And
19 then when I am told I can't go any farther, then
20 that is when I will stop.

21 JUDGE ZABAN: Let the record reflect Mr.
22 Bertelle has accused Ameritech of being nice to

1 him. Okay. All right. That will conclude the
2 hearing.

3 MR. KERBER: Do you want to set a briefing
4 schedule?

5 MR. BERTELLE: I don't want to file a brief.

6 JUDGE ZABAN: You don't have to file a brief if
7 you don't choose to.

8 How long do you need, Mr. Kerber?

9 MR. KERBER: We were going to -- if Mr. Bertelle
10 doesn't see any need for a brief, I guess that is
11 fine.

12 We have a motion to dismiss to file
13 and I guess we would -- if Mr. Bertelle isn't going
14 to file a brief, then we just as well file it in
15 conjunction with the brief on the merits.

16 JUDGE ZABAN: Fine. Three weeks.

17 MR. KERBER: Can we look?

18 JUDGE ZABAN: It will take me a while to get the
19 transcript anyway, both transcripts.

20 MR. KERBER: Two weeks to get the transcript.

21 JUDGE ZABAN: 30 days or 28 days?

22 MR. BERTELLE: Incidentally, I would just point

1 out one thing. There is no testimony here that the
2 NID or NETPOP on my house was actually grounded to
3 any meter.

4 JUDGE ZABAN: Don't worry about that. I am not
5 concerned about that.

6 MR. KERBER: I have got a pretty much solid week
7 of hearings. If we can go out exactly four weeks.

8 JUDGE ZABAN: I will be out of town that week
9 anyway.

10 MR. KERBER: Week of the 20th. Friday the 24th.

11 JUDGE ZABAN: I will make it due by 4:30 on the
12 24th along with your motion.

13 Mr. Bertelle, you are invited to file
14 a brief in this matter if you so choose.

15 MR. BERTELLE: Thank you.

16 JUDGE ZABAN: Okay. Briefs and motions will be
17 due on the 24th.

18 MR. KERBER: If Mr. Bertelle does file a brief
19 or if he wishes to respond to our motion --

20 JUDGE ZABAN: Replies will be due on the 7th of
21 September.

22 MR. KERBER: Okay. Thank you.

1 JUDGE ZABAN: Anything further?

2 MR. BERTELLE: No.

3 JUDGE ZABAN: Okay. Thank you, Mr. McGuire.

4 Thank you, Mr. Fiedler, for coming in.

5

6 Okay. Have a good time in Alaska.

7

8 THIS MATTER HEARD AND TAKEN.....

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