

In the Matter Of:

Formal Complaint of Richard and Colleen Flinspach against SCUTA

HEARING DOCKET NO. 17-052-01

May 16, 2017

Job Number: 391612

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of
The Formal Complaint of Richard
and Colleen Flinspach against
South Central Utah Telephone
Association, Inc dba
South Central Communications

DOCKET NO. 17-052-01

HEARING

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SALT LAKE CITY, UTAH

Job Number: 391612

1 JENNIE T. JONSSON, ADMINISTRATIVE LAW JUDGE

2

3 APPEARANCES OF COUNSEL:

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9 ALSO PRESENT:

10 Colleen Flinspach (Via Telephone)

11 Richard Flinspach (Via Telephone)

12 Kerry Alvey

13 Weston Bishop

14 Duncan Reid

15 Michael East

16 Roy Adams

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1	I N D E X		Page 3
2	CHRONOLOGICAL INDEX OF WITNESSES		
3	WITNESSES		PAGE
4	Colleen Flinspach by Ms. Slawson		9
5	Richard Flinspach		
6	Kerry Alvey by Ms. Slawson		43
7	Weston Bishop by Ms. Slawson		61, 73
8	Weston Bishop by the Court		70
9	Duncan Reid by Ms. Slawson		75
10	Closing Statement by Ms. Slawson		84
11	Reporter's Certificate		99
12	EXHIBITS		
13	MARKED		PAGE
14	SCUTA 1	South Central Utah Telephone Assn., Inc.	44
15		Construction Charges	
16	SCUTA 2	Color photograph	49
17	* * * * *		
18			
19			
20			
21			
22			
23			
24			
25			

1 SALT LAKE CITY, UTAH, TUESDAY, MAY 16, 2017, 8:57 A.M.

2 * * * * *

3 THE COURT: For the record, today is Tuesday, May 16,
4 2017. It's almost 9:00 o'clock in the morning. We're
5 getting started just a little bit early because everybody's
6 here and ready to go.

7 This is the date and time set for the Hearing in
8 The Matter of The Formal Complaint of Colleen and Richard
9 Flinspach against South Central Utah Telephone Association,
10 Incorporated. The docket number is 17-052-01.

11 All right. Mr. and Mrs. Flinspach, do you have
12 anyone other than yourselves that will be providing
13 information and testimony today?

14 MS. FLINSPACH: No.

15 MR. FLINSPACH: No.

16 THE COURT: Okay. So I need each of you to be put
17 under oath, so, Mrs. Flinspach, do you swear that you will
18 tell the truth today?

19 MS. FLINSPACH: I do.

20 THE COURT: And, Mr. Flinspach, do you swear that you
21 will tell the truth today?

22 MR. FLINSPACH: Yes. Yes.

23 THE COURT: Thank you.

24 The primary purpose of this hearing is to take
25 evidence as to the ownership of a telecommunications line

1 that has been broken for some time. So, Mr. and
2 Mrs. Flinspach, I'm going to begin with you.

3 And, Ms. Slawson, you can put -- well, let's go
4 ahead and have you put your -- your -- your appearance on
5 the record. Sorry.

6 MS. SLAWSON: Thank you. This is Kira Slawson. I
7 represent South Central Utah Telephone Association. I'm
8 with Blackburn & Stoll, L.C. With me today I've got Kerry
9 Alvey. Next to Kerry is Weston Bishop. Next to Weston is
10 Duncan Reid and then behind me I've got Michael East and Roy
11 Adams.

12 THE COURT: Okay. Thank you. All right.

13 MS. SLAWSON: Can I ask a procedural question?

14 THE COURT: Sure.

15 MS. SLAWSON: I just wonder if both of the Flinspachs
16 are on the line at the same time or can they both hear us.

17 THE COURT: Can -- Mr. and Mrs. Flinspach, can you both
18 hear us at the same time?

19 MS. FLINSPACH: Yes.

20 THE COURT: Okay.

21 MS. FLINSPACH: But we -- I had difficulty hearing what
22 that lady was saying. I didn't know what she said.

23 THE COURT: Okay. So if she has some questions for
24 you, we will either get her to come up here and speak
25 directly into the telephone or we'll try and use the

1 microphone to make it easier. If -- if at any time you're
2 having trouble, you need to just come right in and let me
3 know; okay?

4 MS. FLINSPACH: Okay. Thank you.

5 THE COURT: All right. All right. So Mr. and
6 Mrs. Flinspach, this is your complaint, so we're going to
7 begin with you to put on the record whatever information you
8 would like the commission to know regarding your
9 understanding of who owns this broken telecom line that
10 needs to be repaired. Go ahead.

11 MS. FLINSPACH: Well, initially the telephone company,
12 they were going to scrap a line out of Beryl and they
13 offered the line to my husband and so he accepted, because
14 we really did want a telephone line. And this would have
15 been in 1977.

16 THE COURT: Okay. Did you pay for --

17 MS. FLINSPACH: And then your -- your --

18 THE COURT: Did you pay for the scrap line?

19 MS. FLINSPACH: No. There was no purchase involved.
20 It was just given to my husband.

21 THE COURT: Okay. And then what happened next?

22 MS. FLINSPACH: Apparently, and I don't know whether
23 the telephone company helped him take it down because there
24 was a cutoff wherever the old line was and what he could
25 remove, and so they took down the line, and then he

1 reconstructed it on the telephone -- or on the power poles
2 from Modena to our ranch.

3 THE COURT: Okay. So Mr. Flinspach put it up; is that
4 correct?

5 MS. FLINSPACH: That's correct. With some help from
6 his friends, yes.

7 THE COURT: Okay. And then what was the relationship
8 between you and the telephone company from -- from there on
9 out?

10 MS. FLINSPACH: Well, they gave us a membership in the
11 cooperative, they gave a copy of bylaws, and for about 20
12 years they assisted us in any problems that we had with the
13 line.

14 THE COURT: What types of problems; do you remember?

15 MS. FLINSPACH: I don't know if they were -- there was
16 breakages or -- I don't know. It's been so long, I'm not
17 certain, but they were very cooperative in helping us. And
18 even if the -- not too -- oh. In the past years they have
19 on occasion helped us too.

20 THE COURT: Uh-huh. Do you have an example?

21 MS. FLINSPACH: Well, I recall one, and I'm not sure
22 just exactly what year it was, but we had a breakage down,
23 oh, probably a half a mile out of Modena, and Duncan Reid
24 actually brought his truck and he and my husband wrapped a
25 pole and connected a line. So I do know that Duncan helped

1 us at that time.

2 THE COURT: Uh-huh. And that was maybe a couple of
3 years ago; is that your memory?

4 MS. FLINSPACH: No. It's probably been -- it might
5 have been four years ago. I don't know. You know, I should
6 have all this written down, but, you know, at the time they
7 helped, you didn't know you needed to record it.

8 THE COURT: It's fine.

9 MS. FLINSPACH: But I know it's been some time.

10 THE COURT: Okay. Have you ever been provided with
11 South Central's tariff before this complaint was filed?

12 MS. FLINSPACH: No. In fact, I -- I never even heard
13 of them before. So, no, I -- I don't know that.

14 THE COURT: Okay. Is there anything else that you'd
15 like to put on the record?

16 MS. FLINSPACH: Oh, let's see. I don't know. It seems
17 like there's just a lot of confusion over responsibility for
18 the line. You know, I guess we're just small-time and we
19 just felt we were just working with the telephone company to
20 have a telephone. So I don't know.

21 THE COURT: Okay.

22 Ms. Slawson, do you have questions?

23 MS. SLAWSON: I do.

24 THE COURT: Okay. So, Mr. and Mrs. Flinspach, Kira
25 Slawson, who's the attorney for the telephone company, is

1 going to be asking you some questions. If you can't hear,
2 you need to let me know.

3 MS. FLINSPACH: Okay.

4 EXAMINATION

5 BY MS. SLAWSON:

6 Q. Good morning, Mrs. Flinspach. Can you hear me?

7 A. I can.

8 Q. Thank you. So as Judge Jonsson indicated, we're
9 here to address your formal complaint against South Central
10 and I appreciate the testimony that you've offered here I
11 just have some followup questions for you.

12 As I reviewed your formal complaint and the
13 statements that you made here today, you indicated that
14 south -- in the '70s South Central scrapped their line from
15 Beryl to Modena and gave that line to your husband; is that
16 correct?

17 A. That's correct.

18 Q. And -- and do you know -- did you assist with the
19 scrapping of that line?

20 A. Um, did you or someone else, I'm asking my husband
21 a question. Did you have help taking down the line? He
22 said that he did.

23 Q. Oh. And did you help him?

24 A. And he thinks maybe even South Central had a hand
25 in it because they had to let him know which part of the

1 line he could have.

2 Q. Ms. Flinspach, did you help your husband take down
3 the line?

4 A. Excuse me?

5 THE COURT: She asked if you personally helped take
6 down the line.

7 MS. FLINSPACH: No, I did not.

8 THE COURT: Okay.

9 Q. (BY MS. SLAWSON) Did you help with the
10 construction of the line?

11 A. I did not. My husband and several of his friends
12 that knew how to climb poles and construct that kind of
13 thing helped him just as a friendship matter.

14 Q. Mrs. Flinspach, is your husband going to testify
15 in this hearing today?

16 A. He has a hard time hearing, but that's the reason
17 I'm kind of relaying things to him and asking. But he did
18 say that Carlos Terry, who formerly worked for the telephone
19 company, used to help us a bit with the line, so I can't
20 tell you what period of time. And he -- he died several
21 years ago, so I wasn't able to consult with him.

22 Q. So you've testified that for about 20 years South
23 Central assisted you with maintenance or repair on your
24 line; is that correct?

25 A. That's what my husband recalls.

1 Q. And do you have any personal recollection of that?

2 A. You know, I was working away, so I wasn't always
3 right where we have our home, and so there may have been
4 times that they were doing things that I was unaware of, and
5 probably he told me about them, but I couldn't -- I couldn't
6 say.

7 Q. And -- and do you have any document or documentary
8 evidence that indicates that South Central agreed to assist
9 with the maintenance on your line?

10 A. We don't have any document, but it was kind of
11 implied because, you know, we called -- well, even lately
12 when we talked with Duncan they said well, we'll come out
13 and help you. So we just assumed that they were in the mode
14 to help us.

15 Q. And do you believe they have a contractual
16 obligation to help you?

17 A. We don't have anything in writing.

18 Q. Did you have an agreement with them that they
19 would help you?

20 A. Verbally they -- they have said that they would
21 help us. That's all I know. We don't have anything in
22 writing, no.

23 Q. You indicated that about 20 years ago something
24 changed; is that correct?

25 A. Well, I don't know. We said that if -- it was --

1 I mean, approximately then. Maybe he just is saying that as
2 far as he can remember, he just started doing more of the
3 work, you know, because he was able to do it. So I don't
4 know if there was any cutoff date that said no, we're not
5 helping you anymore or I'm just gonna take care of it
6 myself. I -- I don't know if that happened. He's just
7 saying that he did remember for a lot of years there was a
8 system.

9 **Q. And do you have personal knowledge that your**
10 **husband has done maintenance and repair on your line?**

11 A. Certainly. In the last few years I have helped
12 him.

13 **Q. Ms. Flinspach, do you have personal knowledge --**
14 **have you made calls to the telephone company when you've had**
15 **a problem on your line?**

16 A. Yes. I called the office or sometimes I would
17 call Duncan Reid directly.

18 **Q. And when you called the office, did they tell you**
19 **that there would be a service charge associated with repairs**
20 **to your line?**

21 A. No. They never ever did say that. There was
22 one -- one time they did mention that there would be a cost
23 to repair, and when I talked with Duncan about it, he said
24 oh, I'll talk with the office because, no, that's -- I'll
25 let them know that that's not the way it is.

1 Q. Did you have conversations with your husband
2 about -- about any -- any conversations that he might have
3 had with the phone company about charging for repairs?

4 A. I don't think that he ever talked with them. I
5 remember the one conversation that I had Duncan had come off
6 from vacation and he said I see I had an email from Weston
7 that said you guys had had a problem. And -- and I said
8 well, they said it would be \$80 a man for them to come and
9 fix it. And I said, well, we've already repaired it, and he
10 said well, I'll leave a memo at the office and tell them
11 that that's not the case.

12 THE COURT: Mrs. Flinspach, Richard is right there, is
13 he not?

14 THE WITNESS: He is.

15 THE COURT: Okay. Would you help him understand, you
16 know, speak loudly or get up close, whatever you need to do,
17 and help him understand that we're trying to sort out
18 whether he remembers ever being charged by the telephone
19 company for repairs. Could you help him understand that
20 that's the question and then let him answer on the phone as
21 to his own memory.

22 THE WITNESS: Okay. They want to know if you ever
23 remember being charged by the telephone company for any
24 repairs (to Mr. Flinspach).

25 MR. FLINSPACH: I can't remember.

1 THE WITNESS: No. We -- well, I would pay for it. I
2 would have paid for it, so I know that there was never any
3 time that we had to pay for it, no.

4 THE COURT: Okay.

5 Q. (BY MS. SLAWSON) Does your husband remember being
6 told that he would have to pay for repairs if the problem
7 was on your side of the point of demarcation?

8 A. No. I know that's not the case. The only time
9 that that was ever mentioned was when -- I don't -- I think
10 it was the office -- the telephone office told me that it
11 would be \$80 a man. And when I mentioned it to Duncan he
12 said oh, no, I'll leave a memo at the office letting them
13 know that we're going to help you. So that is the only time
14 I ever remember that there was any talk about any charges
15 for repairs.

16 MS. SLAWSON: I have questions for Mr. Flinspach, so
17 would you like me to finish up with Mrs. Flinspach and then
18 ask my questions directly to Mr. Flinspach?

19 THE COURT: Let's try.

20 MS. SLAWSON: Okay.

21 THE WITNESS: All right.

22 MS. SLAWSON: I'm gonna finish --

23 THE WITNESS: And I hope that he can hear you. I don't
24 know.

25 Q. (BY MS. SLAWSON) I'm gonna finish up with you

1 first, Mrs. Flinspach. I've got a few more questions for
2 you.

3 A. Okay.

4 Q. Do you recall in January of 2017 meeting with
5 Mr. Reid near Beryl?

6 A. Yes. We were both in our truck and we just
7 stopped because we could see that they were there at the
8 office.

9 Q. Okay. And do you remember telling --

10 A. -- Chad or whatever it is.

11 Q. Do you remember telling Mr. Reid at that time that
12 the line, your line, was hanging low?

13 A. We told him the line was broken, yes.

14 Q. Okay. And did you tell Mr. Reid in January of
15 2017 that your husband had fixed the line, but you needed
16 help raising the line back up?

17 A. I don't know if there was any talk about raising
18 it up. We wanted it repaired.

19 Q. And so did you tell --

20 A. What we did is we actually went home and we raised
21 the line so that it wasn't hanging in the roadway, but I
22 don't think that we were talking to them about raising the
23 line up. We wanted it repaired.

24 Q. And so it sounds to me, from your testimony here
25 today, that you've -- you and your husband and his friends

1 have done quite a lot of maintenance on this line; is that
2 correct?

3 A. We have done when we were able. But with this
4 last one when there was the snow and everything, we tried to
5 repair it. it was just too difficult for us. We were trying
6 to use a front-end loader with a -- with a lift on it so
7 that we could try to get it high enough. And it was -- it
8 was just too hard. We just couldn't do it. We're too old I
9 guess.

10 Q. Mrs. Flinspach, from time to time over the years
11 have you periodically disconnected your service from South
12 Central when you were having problems on the line?

13 A. We've never disconnected.

14 Q. Temporarily disconnected so you wouldn't have to
15 pay the monthly service fee?

16 A. No. I'm presently paying for it.

17 Q. Right. But in the past have you temporarily
18 disconnected while your husband looked for the problem in
19 the service line?

20 A. No.

21 Q. Okay. So if we have records --

22 A. Not that I recall. I remember one time that
23 Duncan gave us, I think he gave a discount or something on
24 our bill because he said we didn't have service during this
25 time and I paid for it, so he gave us credit, like, for two

1 weeks or something.

2 Q. But your testimony is that you never requested
3 that the phone be disconnected while you looked for trouble
4 on the line?

5 A. No. We never have disconnected.

6 Q. And if the company's records show that you have
7 disconnected while you looked for trouble on the line, would
8 those records be inaccurate?

9 A. Well, if it's ever been disconnected, I don't
10 recall it. I -- if it was ever disconnected, it had to have
11 been a long time ago and I've maybe forgotten, but I don't
12 think so because I think I just, like I say right now, I'm
13 paying for the telephone bill and I don't have any service
14 because I don't want to pay a reconnect charge.

15 MS. SLAWSON: I've got questions for Mr. Flinspach at
16 this time, but maybe he's planning on making a statement.
17 I'm not sure.

18 THE COURT: Mr. Flinspach, are you --

19 THE WITNESS: I'm sorry.

20 Did you hear her (to Mr. Flinspach)?

21 THE COURT: Mr. Flinspach, are you planning to offer
22 any information on your own without having questions
23 presented to you first?

24 MR. FLINSPACH: I didn't understand it.

25 THE COURT: Mr. Flinspach, is there anything -- is

1 there anything that you would like to say before Ms. Slawson
2 starts asking you some questions?

3 MS. FLINSPACH: Is there anything you want to say
4 before they ask you questions? Anything you want to say?

5 MR. FLINSPACH: No.

6 MS. FLINSPACH: He said no.

7 THE COURT: Okay.

8 MS. SLAWSON: Okay.

9 Q. (BY MS. SLAWSON) Mr. Flinspach, you constructed
10 the line from your home to the town of Modena; is that
11 correct?

12 A. (No audible response.)

13 MS. FLINSPACH: Did you construct the line from Modena
14 to the ranch? "Yes."

15 MR. FLINSPACH: I remember it, but I think someone
16 there had help from the phone company.

17 Q. (BY MS. SLAWSON) You didn't say in your initial
18 complaint that somebody from the phone company helped you.
19 You indicated that it had been constructed by you and your
20 friends. Are you changing your mind on that testimony?

21 MS. FLINSPACH: They want to know if you're charging
22 your testimony and saying somebody from the telephone
23 company helped you (to Mr. Flinspach).

24 I think he -- he told me that he thought that
25 somebody helped him take it down, but they may have. I

1 don't know whether they reviewed what we were doing. I

2 don't know.

3 Was there anybody there when you guys were
4 constructing it up the canyon? From the telephone company,
5 there was somebody there (to Mr. Flinspach)?

6 MR. FLINSPACH: Maybe not every day, but they was
7 there.

8 MS. FLINSPACH: He said maybe not every day, but he
9 thinks that maybe they reviewed it when he was putting it
10 up.

11 Q. (BY MS. SLAWSON) Mr. Flinspach, did you take down
12 all the arms and hardware and construct the open wire line?

13 MS. FLINSPACH: Did you take down all the arms and the
14 wire (to Mr. Flinspach)?

15 MR. FLINSPACH: With help we did.

16 Q. (BY MS. SLAWSON) Who helped you?

17 MS. FLINSPACH: Who helped you (to Mr. Flinspach)?

18 MR. FLINSPACH: It was Terry, probably guys now and I
19 can't hardly remember the names. There were five or six
20 guys at different times because this just didn't happen
21 overnight at the time, a line up to the ranch. But the
22 phone company at the time had a man there. One of the men
23 was Douglas Terry.

24 Q. (BY MS. SLAWSON) Mr. Flinspach, did you attach the
25 line to the Dixie Escalante REA power poles?

1 MS. FLINSPACH: Would you repeat it for him, please.

2 Q. (BY MS. SLAWSON) Is the -- is your line connected
3 to the Dixie Escalante power poles?

4 MS. FLINSPACH: The line on the Dixie Escalante power
5 poles (to Mr. Flinspach).

6 Yeah, it is.

7 Q. (BY MS. SLAWSON) And as I understand it, the route
8 of your line doesn't follow the county road; is that
9 correct?

10 MS. FLINSPACH: It goes alongside the county road and
11 it crosses it in a couple of places.

12 Q. (BY MS. SLAWSON) Are there portions of the line
13 that are not accessible by a vehicle on the county road?

14 MS. FLINSPACH: Um, well, there's a line. You can
15 drive right up underneath the power poles with the -- with
16 the vehicle most of the way.

17 Q. (BY MS. SLAWSON) But as I understand it, the line
18 doesn't follow the road. It crosses the road in several
19 places. But it can be up to --

20 MS. FLINSPACH: But it --

21 MS. SLAWSON: And it can be up to a quarter mile away
22 from the --

23 MS. FLINSPACH: -- it's probably off the county road
24 how far, Mike (to Mr. Flinspach)?

25 MR. FLINSPACH: To get across the road?

1 MS. FLINSPACH: No. It doesn't -- it isn't right
2 against the county road. It's off the road how far? How
3 far (to Mr. Flinspach)?

4 MR. FLINSPACH: Well, we're still on the county
5 right-of-way.

6 THE COURT: Mrs. Flinspach, did you just speak to
7 someone named Mike?

8 MS. FLINSPACH: Yeah. That's his nickname.

9 THE COURT: That's Mr. Flinspach's nickname?

10 MS. FLINSPACH: That's correct.

11 THE COURT: Okay. Thank you.

12 Q. (BY MS. SLAWSON) Mr. Flinspach, your son, in his
13 statement that he provided to the Public Service Commission,
14 indicated that he -- that you and some family friends
15 installed the line; is that accurate?

16 MS. FLINSPACH: Repeat that, please.

17 Q. (BY MS. SLAWSON) Your son, in the statement that
18 he provided to the Public Service Commission, indicated that
19 Mr. Flinspach and some family friends installed the line.
20 Is that accurate?

21 MS. FLINSPACH: Well, there were some -- some of them
22 were coworkers from where he worked on the railroad, some of
23 them were personal friends, that's correct, that had worked
24 for a power company.

25 MS. SLAWSON: Okay. And --

1 MR. FLINSPACH: Because they could climb poles.

2 MS. FLINSPACH: Yeah. We didn't have any trucks to put
3 the lines up, so it entailed them climbing the poles to
4 attach all of this hardware and put up the line. And he had
5 a couple of friends I think from Nevada that worked for a
6 power company that just did it as a personal favor. He had
7 a couple friends from the railroad that had worked with him
8 previously that climbed poles, and so they just assisted
9 him.

10 So -- and at this point I can't even tell you all
11 the names. I know a couple of them, but I'm not sure of all
12 of them.

13 Q. (BY MS. SLAWSON) And where does the open wire
14 connect to South Central's network in Modena?

15 MS. FLINSPACH: Can you please repeat that.

16 Q. (BY MS. SLAWSON) Where does your open wire line
17 connect to South Central's network in Modena?

18 MS. FLINSPACH: It's right next to the -- the old
19 schoolhouse.

20 MS. SLAWSON: I have an exhibit that shows the point of
21 demarcation. I didn't know that the Flinspachs wouldn't be
22 hear today, so I -- I had no way of getting that to them.
23 I'll try and describe that picture for you and then I'll
24 have it introduced by one of my witnesses.

25 Q. (BY MS. SLAWSON) But, Ms. -- Mr. Flinspach, are

1 you familiar with the demarcation that appears next to the
2 old schoolhouse as a green above-ground box with the numbers
3 159 North --

4 MS. FLINSPACH: They're talking about an above-ground
5 box. Do you know what a green box is (to Mr. Flinspach)?

6 He says yes.

7 Q. (BY MS. SLAWSON) And is that where your line
8 connects to the South Central Utah Telephone's network?

9 MS. FLINSPACH: That was where you connected; right (to
10 Mr. Flinspach)?

11 That's correct.

12 Q. (BY MS. SLAWSON) And did you install that
13 demarcation box?

14 MS. FLINSPACH: You didn't put the box in, did you (to
15 Mr. Flinspach)?

16 No. The telephone company did that.

17 Q. (BY MS. SLAWSON) And did you -- did Mr. Flinspach
18 connect the open wire to the telephone company's network?

19 MS. FLINSPACH: Did you connect the wire to the box (to
20 Mr. Flinspach)?

21 He's saying yes.

22 MR. FLINSPACH: Well, I'm trying to remember.

23 MS. FLINSPACH: Well, there was a connection made. He
24 doesn't remember if he connected it or someone else did.

25 Q. (BY MS. SLAWSON) Okay. Mr. Flinspach, do you own

1 **the facilities from the D mark up the canyon?**

2 MS. FLINSPACH: Do you own the wire (to Mr. Flinspach)?

3 It was given to him. We did not purchase it.

4 But -- but it was given to us, yes.

5 **Q. (BY MS. SLAWSON) And it's yours?**

6 THE COURT: Please don't lead.

7 MS. FLINSPACH: Well, I guess. Nobody could just come
8 and take it down without permission, I guess.

9 **Q. (BY MS. SLAWSON) All right. Do you know . . .**

10 MS. FLINSPACH: There was no way for us to check if
11 there was ever any agreement with the telephone company. I
12 thought about contacting them saying do you have anything on
13 record, but I didn't know whether they would be forthcoming
14 at this time to show they had anything on record and I
15 didn't find anything in my files. All I had were the bylaws
16 and the membership certificate and the fact that the line
17 was given to us. That's all I knew.

18 THE COURT: Mrs. Flinspach -- or Flinspach, excuse me,
19 do you understand the concept of a legal ownership? Do you
20 understand what would need to happen in order for ownership
21 of equipment that a utility has acquired to actually change
22 ownership? Do you have any understanding of the legality?

23 MS. FLINSPACH: No. I don't know whether there would
24 have to be a contract or payment or anything else. No, I
25 don't know that.

1 THE COURT: Okay. Thank you.

2 Q. (BY MS. SLAWSON) Mr. Flinspach, do you consider
3 the line from Modena to your house to be yours?

4 A. I don't know how --

5 MS. FLINSPACH: Well, if --

6 MR. FLINSPACH: -- to answer that.

7 MS. FLINSPACH: Well, we had the use of it for --

8 MR. FLINSPACH: Other than that, I never had nothing
9 legal that paying it was mine or it wasn't.

10 Q. (BY MS. SLAWSON) Did you consider it to be yours?

11 A. (No audible response.)

12 MS. FLINSPACH: He wanted you to repeat that, please.

13 Q. (BY MS. SLAWSON) Did you consider the line to be
14 yours once you constructed it?

15 MS. FLINSPACH: Did you consider the line to be yours
16 (to Mr. Flinspach)?

17 MR. FLINSPACH: I don't know how to answer that.

18 MS. FLINSPACH: Well, we had the use of it for 40
19 years, so I don't know. I guess that would constitute our
20 ownership. I don't know. I don't think anybody else could
21 come and say we'd like to take this line down, so I don't
22 think that anybody else could do that unless it was the
23 telephone company.

24 Q. (BY MS. SLAWSON) And you indicated that the
25 telephone company gave you the scrap line; is that correct?

1 MS. FLINSPACH: Apparently he was visiting with them
2 and we were talking about -- he was talking with them about
3 getting a telephone line and they said that they were taking
4 this line down because they were putting a cable in and that
5 he could have it.

6 MS. SLAWSON: Okay.

7 MS. FLINSPACH: And that's as much as he can recall.

8 Q. (BY MS. SLAWSON) Okay. Did you -- did either of
9 you pay any sort of line extension fee to South Central?

10 MS. FLINSPACH: I don't know that we ever paid any
11 fees, no. And I usually pay the bills, so I don't -- I
12 don't think that happened.

13 Q. (BY MS. SLAWSON) Mr. --

14 MS. FLINSPACH: I read in your papers that said that,
15 you know, like 313 fee or something. No, I don't think any
16 of that ever happened.

17 Q. (BY MS. SLAWSON) Okay. Mr. Flinspach, in your, or
18 Mrs. Flinspach, in your formal complaint you indicated that
19 South Central didn't install any hardware on the line; is
20 that correct?

21 MS. FLINSPACH: Well, unless one of the guys that
22 helped him put up the line was involved in it. We don't
23 recall that, but no, I don't think that they helped us. You
24 know, it wasn't like they sent a bunch of men out there to
25 help construct the line up the canyon, no. That didn't

1 happen.

2 **Q. (BY MS. SLAWSON) Okay. And when the line breaks,**
3 **who provides the materials for repairing the line?**

4 MS. FLINSPACH: Well, we have on hand some connectors
5 and some wire, and if it needs wire usually we have some to
6 do it, don't we (to Mr. Flinspach)?

7 MR. FLINSPACH: It was left over.

8 MS. FLINSPACH: Oh. I guess -- I guess it was left
9 over from the construction and -- and I think any materials
10 that they had. I know when Carlos quit, he gave Mike all
11 the connectors that he had so that he would have them if he
12 needed them.

13 **Q. (BY MS. SLAWSON) So, Mr. Flinspach, you said for**
14 **about the first 20 years South Central maintained or did**
15 **maintenance or repair on your line; is that accurate?**

16 MS. FLINSPACH: She said for the first 20 years that
17 they helped you on the line (to Mr. Flinspach).

18 He said there was a guy that came out, and he
19 thought it was from Escalante, that used to come out when we
20 needed help that would help up on the line, and he doesn't
21 recall the guy's name. He had a truck and he would come out
22 and help him.

23 **Q. (BY MS. SLAWSON) And then about 20 years ago**
24 **something changed. Is that your testimony?**

25 MS. FLINSPACH: She said 20 years ago it changed (to

1 Mr. Flinspach).

2 MR. FLINSPACH: Approximately. I can't remember now
3 that much (inaudible).

4 Q. (BY MS. SLAWSON) I'm sorry. Can you repeat that,
5 please.

6 MS. FLINSPACH: She wanted you to repeat what you said
7 (to Mr. Flinspach).

8 MR. FLINSPACH: A man helped me from time to time, had
9 his own truck from South Central Telephone, but I can't
10 remember an exact date, the length of times, but I know at
11 least 20 years.

12 Q. (BY MS. SLAWSON) And then something changed and
13 they stopped wanting to repair your line; is that your
14 testimony?

15 MS. FLINSPACH: They stopped trying to help you (to
16 Mr. Flinspach).

17 MR. FLINSPACH: Well, he began to complain about having
18 to help me, and so we needed a telephone so much I
19 overlooked it and just put it up on my shelf to do it.

20 Q. (BY MS. SLAWSON) And do you know when they stopped
21 performing the maintenance on your line the same way they
22 had in the past?

23 MS. FLINSPACH: We don't have any dates on that. We
24 looked and we don't have any dates and we don't have -- you
25 know, for the last six months I've kind of kept track when

1 the line broke and when it was repaired. But before that we
2 just didn't do that, so I don't know.

3 Q. (BY MS. SLAWSON) And, Mr. Flinspach, did there
4 come a time when South Central told you that they -- if they
5 put you on a schedule, they need to charge you a service
6 charge?

7 MS. FLINSPACH: No. I can tell that you.

8 Q. (BY MS. SLAWSON) No. I'm asking Mr. Flinspach if
9 that happened to him, if he had a conversation about a
10 service charge and he -- did he have any conversations about
11 a service charge?

12 MS. FLINSPACH: Did you ever have a conversation with
13 them about a service charge for repairs, Mike. Tell them
14 no.

15 MR. FLINSPACH: No.

16 THE COURT: Mr. Flinspach, can you hear me?

17 MR. FLINSPACH: (No audible response.)

18 MS. FLINSPACH: Can you hear her (to Mr. Flinspach)?

19 MR. FLINSPACH: My hearing I can -- half of it is
20 garbled, so it's kind of hard. I have to talk to my wife --

21 THE COURT: I understand.

22 MR. FLINSPACH: -- before I answer.

23 THE COURT: I understand. So the question is whether
24 someone from the telephone company ever told you that you
25 would have to pay a service charge in order to get help with

1 a repair.

2 MS. FLINSPACH: Did anybody ever tell you there had to
3 be a service charge before you could get help (to
4 Mr. Flinspach).

5 MR. FLINSPACH: No.

6 Q. (BY MS. SLAWSON) So nobody told you -- never mind.

7 Did you have a conversation with a South Central
8 employee where you indicated you were mad because somebody
9 had quoted you a service charge?

10 A. (No audible response.)

11 MS. FLINSPACH: Did you ever say anything about that
12 you were mad because they wanted to charge you (to
13 Mr. Flinspach)?

14 MR. FLINSPACH: (Inaudible.)

15 THE COURT: Mr. Flinspach, I need you to speak right
16 into the telephone.

17 MR. FLINSPACH: Well, I think I remember someone saying
18 what they was gonna charge us if they had to work on the
19 line, and I knew the amount was ridiculous because it was a
20 certain amount for one individual and there were three
21 working on it, and that was ridiculous. I wouldn't have
22 paid that.

23 THE COURT: Okay.

24 MR. FLINSPACH: It wasn't even -- it wasn't right.

25 MS. FLINSPACH: I think he understood that they wanted

1 to charge \$80 a man an hour, so it would be like \$240 an
2 hour for them to come and look at the line. And he may have
3 said something about that. I don't know. But the only time
4 I had a conversation about that was with Duncan when he told
5 me that no. He said I'll leave a memo at the office and
6 we'll take care of it, so.

7 Q. (BY MS. SLAWSON) Do you recall that when you would
8 call in complaining of trouble on your line, that South
9 Central would check the line to the point of demarcation in
10 Modena?

11 A. Can you please repeat that.

12 Q. Do you recall that when you would call in about a
13 trouble on your line, that South Central would go out and
14 check your line at the point of demarcation in Modena?

15 A. Well, we never did know when they did that. We
16 didn't know whether they did it or when they were coming or,
17 you know, because ordinarily it wasn't to their line of
18 demarcation which they called it. It was usually a broken
19 line. And it didn't do any good for them to go to Modena
20 and check their little box because that wasn't usually the
21 problem.

22 THE COURT: So did they ever go past the box and take a
23 look at the actual line to find out what the problem was?

24 MS. FLINSPACH: I think there were times that we asked
25 them to come and look. I think one time I think Weston even

1 said maybe I'll bring my four-wheeler out and I'll drive up
2 the line and see if I can see something, so they did offer.
3 But I don't know, I couldn't tell you if they ever found a
4 problem or whether -- I think one time we thought maybe
5 there was an insulator that was off or something like that,
6 but usually my husband ended up fixing it.

7 THE COURT: Okay. Let me just pause for just a minute
8 Mrs. Slawson and ask you. Is it -- is it your intention
9 today to try to establish ownership just through course of
10 dealing? Do you have any other information, documentation,
11 or evidence?

12 THE WITNESS: We have the evidence that my witnesses
13 will provide about ownership, but I don't have documents
14 that show the ownership. That's part of the problem is
15 that --

16 THE COURT: Right.

17 MS. SLAWSON: -- we're four years later.

18 THE COURT: So -- so is the commission going to have to
19 make the decision solely on course of dealing. Is that the
20 that the question? I mean, that's my question.

21 THE WITNESS: Well, I don't know that it's going to be
22 solely on course of dealing because you're gonna hear from
23 my witnesses that there's certain indicia of ownership and
24 it's not -- not, you know, it's subject to -- or it's
25 involved in the course of dealing, but there are certain

1 things that they permit and don't permit on lines that they
2 own and certain things that they do and don't do on lines
3 that they own.

4 THE COURT: Only.

5 MS. SLAWSON: And we'll have testimony on that.

6 THE COURT: And will they be able to testify clear back
7 to what those policies were in 1977?

8 MS. SLAWSON: No. They'll be able to testify to what
9 those policies were back in 19, what, 1988.

10 THE COURT: '88. So eleven years later?

11 MS. SLAWSON: Yeah.

12 THE COURT: Okay. And do you have the date on which
13 the tariff that first discussed customer-provided equipment
14 was put into place?

15 MS. SLAWSON: No. I know that the tariff dated 1988
16 that was approved by the commission discussed
17 customer-provided equipment. We've -- the company has
18 searched its records for its old tariffs it didn't have, the
19 Public Service Commission doesn't have it and the Division
20 of Public Utilities doesn't have it.

21 THE COURT: Okay. But as of 1988, the tariff discussed
22 customer premising --

23 MS. SLAWSON: Customer provided.

24 THE COURT: -- customer-provided equipment?

25 MS. SLAWSON: Yes.

1 THE COURT: Okay. Let me get to another issue that I
2 know the commission is concerned about and you can certainly
3 continue to ask --

4 MS. SLAWSON: Okay.

5 THE COURT: -- your questions, but I'm just not sure
6 how much help this -- the -- the course of dealing is going
7 to be because it really -- it goes both ways, you know. So
8 I think we just might be at a 50/50 situation there.

9 But from what from what -- from what I understand,
10 the line at issue terminates at the ranch at a piece of
11 equipment that is at the house and that the utility has
12 stated to the Flinspachs that they own that. And I'd like
13 to deal with that.

14 MS. SLAWSON: Okay. And I think that's contrary to the
15 evidence that you're gonna hear today.

16 THE COURT: Okay.

17 MS. SLAWSON: I don't think they claim an ownership
18 interest.

19 THE COURT: So, Mrs. Flinspach, can you hear me?

20 MS. FLINSPACH: Yes, I can.

21 THE COURT: Okay. Is there a piece of equipment on
22 your home where the line terminates?

23 MS. FLINSPACH: Well, there's a power pole where the
24 telephone line comes off and comes to our home.

25 THE COURT: Okay. And what is on your home? Where

1 does the line go when it reaches your home? Does it go into
2 some sort of box or piece of equipment there at your home?

3 MS. FLINSPACH: No. It just -- it's a line that comes
4 in, the little box in the wall, and it connects to the
5 telephone.

6 THE COURT: Okay. So who -- where did that box in the
7 wall come from? Did Mr. Flinspach put that in the home?

8 MS. FLINSPACH: No. I think the telephone company
9 installed that box and the box that's out there on the pole.
10 I think the box on the pole and then the box that's on the
11 outside of the house where, you know, the little line runs
12 into the house, I think they maintain that.

13 THE COURT: Okay. And is it your understanding that
14 those boxes were given to you along with the line or is it
15 your understanding that the telephone -- that those belonged
16 to the telephone company?

17 MS. FLINSPACH: No. If there was any problem with
18 them, the telephone company -- in fact, they just, oh, about
19 two months ago came and worked on the box that sat on the
20 pole.

21 THE COURT: Okay.

22 MS. FLINSPACH: They said that they -- they couldn't
23 get a replacement, but they were updating it a bit.

24 THE COURT: Okay.

25 Do you want to pursue anything there with the

1 Flinspachs, Ms. Slawson?

2 MS. FLINSPACH: Do you want to say anything (to
3 Mr. Flinspach)?

4 MS. SLAWSON: No.

5 MR. FLINSPACH: No.

6 THE COURT: Okay. I'm sorry to have interrupted you.
7 Please go ahead and do whatever.

8 Q. (BY MS. SLAWSON) Okay. I just wanted to maybe
9 move on to the events that happened in January that led to
10 the culmination of this complaint I think.

11 THE COURT: Are those going to help with the question
12 of ownership? Because I don't want to talk about threats or
13 fears and things like that. If there's a problem there,
14 it's a police matter. It's not a commission matter.

15 MS. SLAWSON: Well, I think, I mean, are you -- are you
16 not gonna allow me to put on evidence of the conversation
17 that happened on January 25th?

18 THE COURT: I will if they go to ownership, but I'm
19 trying to figure out who owns the line.

20 MS. SLAWSON: Right. And I think I would argue that
21 these -- they go to ownership because they show the course
22 of dealings between the parties which also goes to
23 ownership.

24 THE COURT: I'll give you a few minutes, but I think
25 we've had quite a lot of discussion on course of ownership

1 and I'm not sure how helpful it is. So I'd ask you to make
2 it brief.

3 MS. SLAWSON: Well, I mean, with all due respect,
4 ownership is the issue in this case, so --

5 THE COURT: Correct. And I'm not sure that --

6 MS. SLAWSON: -- put on as much evidence as we have.

7 THE COURT: I'm not sure that course of dealing is
8 going to be particularly helpful in making that
9 determination. As I said, it cuts both ways --

10 MS. SLAWSON: Right.

11 THE COURT: -- in this case.

12 MS. SLAWSON: But if the preponderance of the evidence
13 shows that it's -- the course of dealing shows that it's
14 owned by the Flinspachs, then we need to be able to put on
15 that preponderance of evidence.

16 THE COURT: You may proceed, but I may cut you off.

17 MS. SLAWSON: Thank you.

18 THE COURT: Please go ahead.

19 **Q. (BY MS. SLAWSON) Mr. Flinspach, did you go to the**
20 **central office of South Central on January 25th of 2017?**

21 MS. FLINSPACH: It's not -- I don't know that he can
22 hear you, but it's not their office. It's a little place
23 out here at Beryl where they keep some equipment. I don't
24 know whether they call it an office or not, but it's a
25 little building.

1 Q. And Mr. Flinspach went there on January 25th?

2 A. I -- I'd have to look, but I think he did, yes.

3 Q. And can you ask him and maybe he could answer.

4 A. Did you go out there to the thing the 25th of
5 January? Is that when you talked to the guy out there (to
6 Mr. Flinspach)?

7 MR. FLINSPACH: Yeah, I guess.

8 Q. (BY MS. SLAWSON) Are you unsure of the date or are
9 you unsure of the fact that you went to the --

10 MS. FLINSPACH: Yeah. We'll just have to -- there's so
11 many that I'd have to look back. We did document when he
12 went out there, but I'd have to look here on my papers to
13 see that they -- because there were -- there were two or
14 three times that -- there were, I think, one that I was with
15 him and another time he was by himself.

16 Q. (BY MS. SLAWSON) In the formal complaint that you
17 filed in this matter you indicated that you -- that you --
18 "On January 25th I, Richard, went to Beryl to talk with
19 Weston and Roy to ask why they hadn't come on the 24th."

20 Do you remember that, Mr. Flinspach?

21 A. Yes.

22 MS. FLINSPACH: Yes.

23 Q. (BY MS. SLAWSON) And were you angry when you
24 visited the office that day?

25 MS. FLINSPACH: Were you angry (to Mr. Flinspach)?

1 MR. FLINSPACH: I was angry to make an appointment with
2 these guys and then I had to check with them two weeks
3 after. They said well, I forgot to tell him. And the
4 second time it was three weeks and I got -- and I was upset,
5 yes.

6 Q. (BY MS. SLAWSON) And you say you had made an
7 appointment, but isn't it true that Duncan had told you he'd
8 have the guys come out when they had spare time?

9 MS. FLINSPACH: I recall what we put in the statement
10 and he actually went out there that day and told the boys to
11 put Duncan on the line. And he said I'm headed out that way
12 and we'll -- I'll send the boys right out. Well, he came
13 back and we waited all day, because his understanding was
14 they were coming out to help him that day, yes.

15 Q. (BY MS. SLAWSON) And -- and I believe Duncan
16 called you, Ms. Flinspach, later and said no, you
17 misunderstood, we didn't have an appointment. Is that
18 correct?

19 A. No. No. I don't think he did.

20 Q. He didn't call --

21 A. He didn't say we didn't have an appointment, no.

22 Q. He didn't call and leave a message on your cell
23 phone?

24 THE COURT: I'm -- I'm trying to understand how this
25 goes to ownership, Ms. Slawson. I know that there was

1 conversation.

2 MS. FLINSPACH: Yeah.

3 THE COURT: I know that there was some agreement that
4 SCUTA would help. I'm not sure that the timing is relevant.
5 Can you help me?

6 MS. SLAWSON: Yeah. I'm struggling with the issue of
7 ownership too because both parties testify -- or South
8 Central will testify, but in their -- in their documents
9 have indicated that there doesn't seem to be a dispute on
10 ownership. The Flinspachs say they own the line and South
11 Central says they own the line. And so I start to --

12 THE COURT: I have to disagree with you there. The
13 Flinspachs have not stated here or in anything that they've
14 filed that they own the line. And they have actually
15 questioned when SCUTA put into place these provisions
16 that -- that assigned them ownership and, therefore, made
17 them ineligible for assistance. So I'm not going to accept
18 any proffer today that there's no dispute on ownership.
19 There is a dispute on ownership.

20 MS. SLAWSON: Okay. And I guess we'll have to look at
21 the record. I thought that the Flinspachs here today said
22 that they believe they own the line.

23 THE COURT: No. You said that and I said please don't
24 lead.

25 MS. SLAWSON: Right. And then I asked followup

1 questions and they said yeah. I thought they said that, but
2 we can --

3 THE COURT: They said that they had sole use of the
4 line and that they didn't suppose anybody else would have
5 had the right to come in and remove it except maybe the
6 telephone company.

7 MS. SLAWSON: Okay. Well, maybe give me just a minute.

8 THE COURT: Uh-huh.

9 MS. SLAWSON: Thanks.

10 (Pause in the proceedings.)

11 MS. FLINSPACH: Hello.

12 THE COURT: Yes. We're just pausing for a moment.

13 MS. FLINSPACH: Okay. We were just making sure that we
14 weren't -- didn't lose our line.

15 THE COURT: Yeah. We're still okay. Stay with us.

16 MS. SLAWSON: I don't have any other questions for the
17 Flinspachs.

18 THE COURT: Okay. Mrs. Flinspach.

19 MS. FLINSPACH: Yes.

20 THE COURT: The telephone company doesn't have any
21 other questions for you. Is there anything now at this
22 point that you would like to clarify or further explain
23 before we go to the telephone company's witnesses?

24 MS. FLINSPACH: No. Only to say that, you know, it
25 really hasn't been a bad relationship. We -- we worked with

1 them and until just lately when we got this contention over
2 the line, I can't say that our relationship has been bad
3 with them.

4 THE COURT: Okay.

5 MS. FLINSPACH: We've had a few things where they
6 didn't want to come out and do certain things, but we've
7 managed. But it isn't like we -- we have hate towards them
8 or anything, so.

9 THE COURT: Okay.

10 MS. FLINSPACH: Anyway.

11 THE COURT: Thank you.

12 MS. FLINSPACH: We enjoy having the telephone and we
13 would like to have it again. So that's about all I can say.

14 THE COURT: Okay. Thank you. And you've -- you've
15 continued to pay your monthly fees even though you don't --
16 haven't had service; is that correct?

17 MS. FLINSPACH: That's correct.

18 THE COURT: Okay.

19 MS. SLAWSON: South Central would like to call Kerry
20 Alvey to the stand or wherever you'd like him.

21 THE COURT: He can stay right there.

22 Mr. Alvey, do you swear to tell the truth today?

23 MR. ALVEY: Yes.

24 THE COURT: And will you spell your name for me please.

25 MR. ALVEY: It's Kerry, K-e-r-r-y; Alvey, A-l-v-e-y.

1 THE COURT: Thank you.

2 EXAMINATION

3 BY MS. SLAWSON:

4 Q. Mr. Alvey, are you employed by South Central Utah
5 Telephone?

6 A. Yes, I am.

7 Q. And what is your position with the company?

8 A. I'm the Vice-president of Operations.

9 Q. How long have you been with the company?

10 A. I've been -- in September this year will be 33
11 years.

12 Q. Okay. And is South Central a rate of return
13 regulated company?

14 A. It is.

15 Q. And is the company a carrier of last resort?

16 A. Yes.

17 Q. Is it your -- based on your experience, does that
18 mean that South Central is obligated to provided service to
19 every last person in a service territory?

20 A. It is not. We -- we will provide service to
21 everyone if they live outside of the area where we have
22 facilities built. If they're willing to -- to help pay and
23 aid construction, then we will build facilities to them and
24 provide service.

25 Q. Okay. In your position are you familiar with

1 South Central's tariff?

2 A. Yes.

3 Q. And have you reviewed South Central's records in
4 preparation for this hearing?

5 A. I have.

6 Q. Were you able to find South Central tariff from
7 1977?

8 A. I could not.

9 Q. What is the earliest tariff you were able to
10 locate?

11 A. It's the tariff from 1988.

12 Q. Okay. And -- and why -- do you have any reason
13 for why you weren't able to locate the earlier tariff?

14 A. I think just time frame and records have been lost
15 from that time.

16 MS. SLAWSON: Okay. I have some tariff pages that I'd
17 like Mr. Alvey to identify. May I approach?

18 THE COURT: Of course.

19 MS. SLAWSON: Would you prefer that we mark each
20 section separately or just mark it as one?

21 THE COURT: Let's mark it as one. I think that makes
22 sense. We'll mark this as Exhibit 1.

23 (Exhibit 1 marked.)

24 Q. (BY MS. SLAWSON) All right, Mr. Alvey. I've
25 handed you what's been marked as Exhibit 1. Can you

1 identify these pages?

2 A. Yes. These are pages from our tariff.

3 Q. Okay. And I'd like to start with the first page
4 of that exhibit which would be sheet No. 7.

5 THE COURT: Just a moment. Is this the 1988 tariff?

6 THE WITNESS: Yes.

7 THE COURT: Okay. Thank you.

8 Q. (BY MS. SLAWSON) Sheet No. 7. There's a
9 definition for customer-provided equipment. Do you see that
10 there?

11 A. Yes.

12 Q. And do you have any independent recollection or
13 knowledge of when this concept was introduced into the
14 tariff?

15 A. I do not other than this -- as long as I've been
16 employed with South Central, this has been the definition.

17 Q. Okay. And would you just read the definition for
18 the record.

19 A. "Customer provided equipment. Devices apparatus
20 and their associated wiring provided by a subscriber for use
21 with facilities furnished by the company."

22 THE COURT: And when were you employed by SCUTA?

23 THE WITNESS: I began in 1985.

24 THE COURT: Okay. Thank you.

25 Q. (BY MS. SLAWSON) Okay. And then turning to sheet

1 No. 44 which is the third page of the exhibit I gave you
2 right there, I believe you had testified a moment ago about
3 construction charges and you've explained to us that a --
4 when would a construction charge be appropriate?

5 A. Any time that we're extending facilities beyond
6 existing facilities --

7 Q. Okay.

8 A. -- to a customer.

9 Q. And to your knowledge, did the Flinspachs pay a
10 construction charge or line extension charge to South
11 Central?

12 A. I have no knowledge of that charge.

13 Q. Okay. And also looking on page 44, sheet 44 of
14 the -- of the exhibit there -- sorry. Just trying to find
15 the right.

16 Look on page -- original sheet 50.

17 A. (Witness complies.)

18 Q. The heading of this section is Connection With
19 Subscriber-Owned Equipment. Do you see the general
20 conditions?

21 A. Yes.

22 Q. The tariff indicates the company shall not be
23 responsible for the installation, operation, maintenance of
24 any CPE. Do you see that in the second paragraph there?

25 A. Yes.

1 **Q. Based on your experience with the company, has**
2 **that been the policy of the company during your employment?**

3 A. Yes, it has.

4 MS. SLAWSON: May I approach? I have another exhibit.

5 THE COURT: Yes. I just have a question then.

6 So do you dispute that the company provided
7 service on the line for 20 years from 1977 forward? It
8 appears that had it done so, it would have been contrary to
9 this tariff provision.

10 THE WITNESS: No. I don't know dispute that we helped
11 the Flinspachs, but it was -- started out with the local
12 employee, and Mr. Flinspach mentioned Carlos Terry. And he
13 was employed there when I -- when I started, and it was just
14 a local person helping them.

15 THE COURT: So did you waive this tariff provision "The
16 customer shall be responsible for the payment of all company
17 charges for visits by the company to the customer premises?"
18 You waived that?

19 THE WITNESS: Well, I'm not -- I'm not sure that it was
20 ever --

21 THE COURT: Because either you waived that or you own
22 the line.

23 THE WITNESS: Well, we -- we waived it because we never
24 charged them.

25 THE COURT: Or you own the line.

1 THE WITNESS: Right. And we --

2 THE COURT: One or the other.

3 THE WITNESS: -- we -- we waived it.

4 THE COURT: And what is your evidence for that? Simply
5 your own personal recollection?

6 THE WITNESS: My -- my --

7 THE COURT: Or are you saying we must have because --

8 THE WITNESS: No.

9 THE COURT: -- we absolutely don't own the line?

10 THE WITNESS: No. My personal recollection speaking
11 with Carlos Terry as a -- as a fellow employee in those days
12 and him discussing just as a good neighbor helping these
13 people out, that he went out and helped them and we didn't
14 charge them for it.

15 THE COURT: And is Carlos not available?

16 THE WITNESS: Carlos passed away --

17 THE COURT: Passed away.

18 THE WITNESS: -- five years ago.

19 THE COURT: Uh-huh. Have you ever waived that
20 provision for any other customer?

21 THE WITNESS: I -- I don't have any knowledge of that.
22 We may have, but I don't -- I can't say. I don't have any
23 first-hand knowledge of it.

24 THE COURT: Thank you.

25 MS. SLAWSON: Exhibit 2. Mark this as Exhibit 2.

1 (Exhibit 2 marked.)

2 Q. (BY MS. SLAWSON) I'm showing you what's been
3 marked as Exhibit 2. Are you familiar with this photograph?

4 A. Yes.

5 Q. And what is that a picture of?

6 A. That's our demarcation point in Modena and the
7 point where the -- Mrs. Flinspach's line connects to our
8 network.

9 Q. Okay. Mr. and Mrs. Flinspach testified here today
10 that they had repaired the line on numerous occasions over
11 the past 40 years. Did you hear that?

12 A. Yes.

13 Q. Does South Central allow its customers to repair
14 South Central network facilities?

15 A. We do not.

16 Q. Have you ever had a South Central customer
17 indicate to you they've repaired a break even though you
18 didn't authorize them to do that?

19 A. We have had customers who have notified us that
20 they've cut maybe their bury drop into their property and --
21 but that we shouldn't worry about it because they fixed it
22 and it's taken care of.

23 Q. And what is your standard procedure in those
24 instances?

25 A. We usually go out there and dig it up because

1 their method of repair will soon fail and so we repair it
2 correctly.

3 Q. And do you have any knowledge, when Mr. Flinspach
4 and his wife reported to South Central that they had
5 repaired a portion of the Flinspach line, did South Central
6 send its technician out to inspect or replace that repair?

7 A. We did not.

8 Q. And why not?

9 A. Because we've always assumed it's their line and
10 they have ownership of it and so they can do whatever they
11 want to do with that line.

12 Q. Are you familiar with the route of the Flinspachs'
13 line?

14 A. I am.

15 Q. And does it follow the county road up to the
16 Flinspachs' home?

17 A. There are sections where it follows the road, but
18 there are also sections where it's up to a quarter of a mile
19 away from the road.

20 Q. And how would you get to that part of the line?

21 A. We would walk.

22 Q. Does South Central have any rights-of-way on that
23 route?

24 A. We do not.

25 Q. And I believe the Flinspachs' line is aerial the

1 **entire 5.2 miles?**

2 A. It is. It's an aerial line built on the power
3 company's power poles.

4 Q. And do you have any pole attachment agreement with
5 the power company?

6 A. We do not.

7 Q. Did you contact the power company to attach this
8 line to their poles?

9 A. We did not.

10 Q. Do you have any permission from the power company
11 to go on their poles?

12 A. We do not.

13 THE COURT: So just on that point, let me just put on
14 the record that I have reviewed the power company's tariff.
15 It does not require a pole attachment agreement.

16 Q. (BY MS. SLAWSON) Do you have any experience with
17 Dixie Escalante and pole attachments?

18 A. We -- we do. It's been several years ago. I
19 don't recall the exact date, but we had severe flooding out
20 in that area and some of our pedestals were under water and
21 service was out to customers, and we contacted the power
22 company to see if we could attach aerial cables to their
23 power poles and we were told that they do not allow any
24 attachments to their power poles.

25 Q. Okay. As I understand, the open wire is -- is on

1 the same line as the power attachment; is that correct?

2 A. That's correct.

3 Q. And would it be above the power line or below the
4 power line?

5 A. Below the power line.

6 Q. And do you have experience in working on open
7 wires that are below -- located below a power line?

8 A. Yes.

9 Q. What can you tell us about that, those types of
10 attachments?

11 A. It can be dangerous to work on those lines because
12 of the power inducted on the open wire lines from the power
13 line. So if you're not -- if you're not familiar and know
14 the safety precautions to take, it can be dangerous to work
15 on.

16 Q. Okay. You might get electrocuted; right?

17 A. You might get electrocuted, yes.

18 Q. Have you prepared -- have you prepared an estimate
19 for replacing the obsolete open wire from Modena to the
20 Flinspachs' home?

21 A. Yeah.

22 Q. And what is the approximate cost to hang that
23 aerial plan?

24 A. Depending on whether it's buried or aerial, it is
25 between 102 and \$140,000.

1 Q. And if you hung it aerially, you would have to get
2 permission from Dixie Escalante Power; is that correct?

3 A. That's correct.

4 Q. And does the aerial estimation include make-ready
5 work for Dixie's poles?

6 A. No, it does not.

7 Q. And under either scenario I guess, whether you did
8 aerially or buried fiber, you would have to get
9 rights-of-way; is that correct?

10 A. That's correct. The majority of the route is over
11 BLM land and we would either aerial or bury. We'd have to
12 get a right-of-way from BLM.

13 Q. And are you -- are you familiar with the current
14 damages to the Flinspachs' line?

15 A. I am.

16 Q. And does South Central own or have access to
17 materials to repair that line?

18 A. We do not.

19 Q. Why is that?

20 A. We don't -- we don't have any of those facilities.
21 It's been stated that Mr. Flinspach --

22 THE COURT: Just a moment. Mr. and Mrs. Flinspach, we
23 can hear you chatting just a little bit in the background
24 and I need you to stop --

25 MS. FLINSPACH: Oh. I'm sorry.

1 THE COURT: -- please.

2 MS. FLINSPACH: Okay. I'm sorry.

3 THE COURT: Okay. Thank you.

4 MS. FLINSPACH: We can't hear everything that's going
5 on there with you very well, and so we thought maybe you
6 were clear away from our phone.

7 THE COURT: Okay. So whenever you can't hear, you need
8 to let me know; all right?

9 MS. FLINSPACH: Okay. We haven't heard testimony
10 from --

11 THE COURT: Okay. So let me just --

12 THE WITNESS: -- on the phone company. We can't --

13 THE COURT: -- summarize.

14 MS. FLINSPACH: That's the reason we were all getting
15 ready to leave. Because we thought we were through.

16 THE COURT: Okay. Let me summarize. Mr. Alvey is
17 testifying. I've taken into evidence portions of the
18 company's 1988 tariff that discusses customer-provided
19 equipment and the company's obligation or lack of obligation
20 to assist with maintenance.

21 Mr. Alvey has stated that the company has always
22 assumed that the line was yours. He's testified that the
23 company has no rights-of-way on the line, no pole attachment
24 agreements, and that in order to repair the line, the
25 company would need to put in place those legal rights.

1 MS. FLINSPACH: Legal meaning an agreement that we
2 would pay for repairs? Is that it?

3 THE COURT: No. An agreement with Dixie Escalante that
4 it can use the power lines and an agreement with the Bureau
5 of Land Management?

6 THE WITNESS: Yes.

7 THE COURT: That it can have use of that land to access
8 your property.

9 MS. FLINSPACH: Oh. To actually get on it for repairs.
10 Is that what you're saying?

11 THE COURT: And to place equipment there.

12 So, Mr. Alvey, I'm just confused because the
13 company has worked on this line apparently without
14 rights-of-way and without pole attachment agreements. You
15 seem to say that's a big, big problem and, yet, in the past
16 it apparently has not been a big, big problem. Can you help
17 me with that?

18 THE WITNESS: Well, since we didn't have ownership of
19 the line, we were acting as just good neighbors helping.
20 And -- and if we assume ownership or build a new line, we
21 can't do that without having the proper permits and
22 authority in place.

23 THE COURT: So if you -- if you acknowledge that you
24 own the line, then you would have been trespassing; is that
25 what you're saying? But if you disclaim ownership of the

1 line, then your past actions would not be trespassing? I
2 mean, what is it that you're saying?

3 THE WITNESS: Well, I'm saying if we -- if we own the
4 line, we'll be trespassing. We weren't -- we weren't aware
5 if Mr. Flinspach had those right-of-ways in place because
6 we -- we believe it was his line and for him to build that
7 line, we believe that he had to go through the same steps
8 for right-of-ways that we would have to.

9 THE COURT: And you didn't ensure that taking place
10 before working on the line?

11 THE WITNESS: No.

12 THE COURT: Why not?

13 THE WITNESS: I'm not aware of that. I mean, I don't
14 know. I was not out there working on the line, so it's just
15 we -- we -- we have helped them and --

16 THE COURT: Is it not possible that in 1977 when the
17 world was a much simpler place everybody simply said let's
18 get you connected and got it done and there was simply no
19 formal agreement as to any of these issues? That's really
20 what I'm hearing.

21 THE WITNESS: And I have no idea because I was not
22 involved in it in 1977, so.

23 THE COURT: Are you familiar with the breakup of AT&T
24 in the 1980s?

25 THE WITNESS: Yes.

1 THE COURT: Is it your understanding that prior to the
2 breakup of AT&T, telephone companies owned absolutely every
3 piece of a connection, including the telephone that was in a
4 customer's home?

5 THE WITNESS: Yes.

6 THE COURT: And that prior to the breakup of AT&T,
7 there was no such thing as customer-provided equipment?

8 THE WITNESS: I believe that's the case, yes.

9 THE COURT: And that would have been -- 1977 was prior
10 to the breakup of AT&T; is that correct?

11 THE WITNESS: Yes.

12 THE COURT: Thank you.

13 Q. (BY MS. SLAWSON) Mr. Alvey, is this a -- is the
14 Flinspach situation a usual situation?

15 A. It is not.

16 Q. Would you say, in your experience, it is an
17 unusual situation?

18 A. Yes.

19 Q. Do you have recollection of any other times when
20 you have scrapped -- well, first of all, do you know if the
21 line that was -- facilities that were constructed up the
22 canyon were made -- or were constructed from scrap line from
23 South Central?

24 A. I -- I don't have any direct knowledge of that.

25 Q. Okay. If it had been scrapped, as Mr. Flinspach

1 indicated from South Central, do you have knowledge of other
2 incidents where this has happened with South Central?

3 A. I have knowledge of other lines that were scrapped
4 and we -- we let either a contractor or an individual come
5 in and scrap the line for -- for the scrap and then they did
6 with it what they -- what they wanted.

7 Q. But they didn't, in that instance, use it to build
8 a 5.2 mile line?

9 A. No. No. They did not.

10 Q. Okay. And since you've been with the company in
11 1984 --

12 A. -5.

13 Q. -- '85, the point between the demarcation and the
14 Flinspachs' home, the line between the demarcation and the
15 Flinspachs' home was known by you --

16 A. Yes.

17 Q. -- to be the Flinspachs' property; correct?

18 A. Yes. Yes.

19 Q. And do you know when the demarcation point was
20 installed?

21 A. I -- I don't have any knowledge of that. It's
22 always been there.

23 Q. Okay.

24 A. As far as I know.

25 Q. Are any of the facilities that were used to

1 construct the 5.2 mile line in South Central's rate base?

2 A. No.

3 Q. And before they were scrapped -- or since the time
4 they were scrapped, were they in South Central's rate base?

5 A. No. Not since the time it was scrapped.

6 THE COURT: How do you know that if you weren't with
7 the company at the time?

8 THE WITNESS: I -- I don't have any direct knowledge.
9 I know it's our standard practice that as we -- when we
10 abandon facilities, they are taken out of the -- out of the
11 rate base.

12 THE COURT: Thank you.

13 Q. (BY MS. SLAWSON) And, Kerry, how long has South
14 Central been providing telephone service?

15 A. Since 1955 I believe.

16 Q. Okay. And at any point was this property AT&T
17 property?

18 A. I don't believe so.

19 Q. And -- and the Modena exchange, is that a facility
20 that South Central constructed?

21 A. Yes.

22 Q. Okay. And it was never owned by another telephone
23 company?

24 A. No.

25 Q. Okay.

1 **I don't have any other questions for Mr. Alvey.**

2 THE COURT: Nor do I.

3 Mrs. Flinspach, do you have any questions for
4 Mr. Alvey?

5 MS. FLINSPACH: You know what. We didn't hear
6 everything, but all I'd like to say is I appreciate your
7 help in trying to resolve this for us, because we don't have
8 knowledge of all of the tariffs and the history of the
9 telephone company. And we were interested to see when --
10 whether it changed so that we were not entitled to any help
11 from the company because I don't know. I think probably
12 when my husband initially talked to them, it was yeah, if
13 you guys need a telephone, we have this line available
14 and -- they were trying to do a customer service kind of a
15 thing.

16 THE COURT: Okay.

17 MS. FLINSPACH: And --

18 THE COURT: So let me -- let me stop you.

19 MS. FLINSPACH: I think it was just a --

20 THE COURT: I -- I need to stop you. I'm going to give
21 you a chance to sum up at the end, so right now if you don't
22 have any questions for Mr. Alvey, then we're gonna go ahead
23 to the next witness. I -- I'm --

24 MS. FLINSPACH: Oh. I'm sorry.

25 THE COURT: It's all right.

1 MS. FLINSPACH: I thought he was through.

2 THE COURT: It's -- I feel like it's important that you
3 hear what these witness have to say, but I'm going to leave
4 that to you. If you don't interrupt and say that you can't
5 hear, I'm just gonna keep going; okay?

6 MS. FLINSPACH: Okay.

7 THE COURT: Okay.

8 MS. FLINSPACH: All right. There were some of it I
9 could hear and I won't interrupt in the future.

10 THE COURT: Okay. Very good.

11 MS. SLAWSON: I'd like to next call Weston Bishop.

12 THE COURT: Mr. Bishop, do you swear to tell the truth
13 today?

14 MR. BISHOP: I do.

15 EXAMINATION

16 BY MS. SLAWSON:

17 Q. Mr. Bishop, are you employed by South Central
18 Telephone?

19 A. I am.

20 Q. What is your position with the company?

21 A. I am an I&R technician in the west area.

22 Q. And can you tell us what I&R technician means?

23 A. Install repair and splicing.

24 Q. Okay. And so that would also be a description of
25 what you do?

1 A. Correct. Yes.

2 Q. Okay. And who do you report to?

3 A. I report to Duncan Reid.

4 Q. Okay. And did I ask you how long you've been with
5 the company? Sorry.

6 A. Twenty-one years this September.

7 Q. Okay. Do you know Mr. and Mrs. Flinspach?

8 A. I do.

9 Q. And do you know where they live?

10 A. Yes, I do.

11 Q. Do they have telephone service with South Central?

12 A. They have service with us.

13 Q. Okay. And you heard Mrs. Flinspach -- do you --
14 do you know who constructed the 5.2 mile line from Modena to
15 the Flinspachs' house?

16 A. Just with speaking with Mr. Flinspach, it was my
17 understanding that he and his friends from the railroad
18 constructed the line.

19 Q. Okay. And looking at Exhibit 2, is this where the
20 Flinspachs' line connects to South Central's network?

21 A. That is.

22 Q. And where is -- and what do you call that?

23 A. That is -- that's the D mark or demarcation of
24 service where South Central ends and Flinspachs' would
25 begin.

1 Q. And where is that located?

2 A. That's in Modena about five miles away from their
3 ranch.

4 Q. During your employment with the company, has South
5 Central been obligated to provide maintenance and repair on
6 the line?

7 A. No. We -- we've helped him on the line for a
8 favor or just to be helpful to Mike and Colleen.

9 Q. But was it your understanding that you were not
10 obligated to do that?

11 A. No. No. We were asked to help.

12 Q. And how did you come to the understanding that you
13 were not obligated to do that?

14 A. This D mark. Early on in my career I -- I learned
15 about this D mark through Carlos Terry.

16 Q. And what did Carlos Terry tell you?

17 A. That from Modena up to the Flinspachs' ranch was
18 all open wire and it was customer owned, as I understood
19 from Carlos.

20 Q. And maybe it might be helpful right now just --
21 can you just describe for me generally what open wire is?

22 A. It's a pair of wires with no coating on the
23 outside or insulation. They're operated by a distance and
24 so they don't touch each other or short out, and it's --
25 it's just an older, antiquated way to service a telephone

1 line that we used to use in the industry.

2 Q. And does South Central install open wire
3 facilities today?

4 A. No, we don't.

5 Q. I believe you indicated that you have on occasion
6 done repair or maintenance on the Flinspachs' line; is that
7 correct?

8 A. I have done repair on their line, yes.

9 Q. Okay.

10 A. Back in the late '90s, early 2000s, when I first
11 started with a large snowstorm I have helped out with a
12 request from my supervisor, Carlos Terry, to go out and help
13 Richard and -- Mike and Colleen out.

14 Q. And did you have permission from the Dixie
15 Escalante Power Company to go on their poles?

16 A. No. Not that I know of. I just was out there
17 helping replace or put together the broken line due to the
18 snowstorm.

19 Q. And so it's possible that you would have been
20 trespassing?

21 A. Correct, yes. I did not check with them.

22 Q. And before South Central installs its own
23 facilities on a pole that is not owned by South Central, is
24 it -- what's the standard procedure, to your knowledge?

25 A. We will have some kind of a pole agreement and in

1 our job packet it will even have the company we're agreeing
2 with and some type of identification numbers on the job
3 packet that we're billing.

4 **Q. Okay. And before you install South Central**
5 **communication facilities, do you obtain rights-of-way from**
6 **the appropriate owners over whom you're crossing?**

7 A. Yes. I -- the engineers take care of that.

8 **Q. Okay.**

9 A. And it would be in our job packet and we would be
10 able to see that right-of-way whether it be state, BLM, is
11 in the job packet generally.

12 **Q. Before you?**

13 A. Before we start construction.

14 **Q. Okay. If it's your testimony that South Central**
15 **was not obligated to make repairs on the Flinspachs' line,**
16 **why did you do it?**

17 A. I was, first of all, asked by my supervisor to be
18 helpful or do what we could to be neighborly. We all live
19 in the same valley and we know each other.

20 **Q. Okay. In your position as the I&R technician for**
21 **South Central, do you from time to time perform routine**
22 **maintenance on South Central's facilities and network?**

23 A. Yeah. Of course.

24 MS. FLINSPACH: We can't hear you.

25 THE COURT: The question is whether Mr. Bishop provides

1 routine maintenance on SCUTA's facilities on its network
2 facilities.

3 THE WITNESS: Yes, we do. In aerial cases if we have
4 an area that we believe is subject to fall down with a storm
5 or wind, we will take care of those, but we oftentimes do
6 keep an eye on all of our lines and maintain them.

7 Q. (BY MS. SLAWSON) And in your 20 years of working
8 for South Central, did you ever perform any routine
9 maintenance on the Flinspachs' line?

10 A. No.

11 Q. So each time you've indicated that you've been out
12 to the line before, and so that would have been in response
13 to what?

14 A. Could you state that one more time.

15 Q. Yeah. Why -- you didn't do routine maintenance on
16 the Flinspachs' line; correct?

17 A. Correct.

18 Q. Okay. Why would you go out to their line then?

19 A. If they had called in or needed help with, you
20 know, I would say a very large snowstorm or a catastrophe
21 and they needed some help and -- South Central obviously
22 offered to help them out through my supervisor.

23 Q. During your employment with South Central, have
24 you ever worked on the Flinspachs' line without being
25 specifically asked to by Mr. Flinspach or --

1 A. No.

2 Q. -- your supervisor? Okay.

3 During your employment with South Central, did
4 Mr. Flinspach ever approach you individually and ask you
5 personally to perform work on his line?

6 A. He did. After one of the snowstorms he knew that
7 I could climb poles, and that was important due to the
8 distance off the road. He mentioned that he ought to get me
9 to come out there and do some maintenance, fix it up, after
10 hours.

11 Q. And did he offer to pay you for that work?

12 A. He did.

13 Q. Did you do that for Mr. Flinspach?

14 A. No. I did not. Conflict of interest and it is
15 dangerous to do it by yourself.

16 Q. It's dangerous to do the work by yourself?

17 A. Correct. Yes.

18 Q. Why is that?

19 A. It is a remote area and climbing poles is
20 inherently dangerous. But especially with open wire having
21 some power induction on it, then it can be dangerous.

22 Q. So you couldn't use a bucket truck for all these
23 poles; is that right?

24 A. You can't get a bucket truck to all the poles.

25 Q. Okay. During your -- your employment with South

1 Central, what is your experience with what happens when the
2 Flinspachs report a trouble or a problem with their line?

3 A. What is our response when they call in or when
4 they call us?

5 Q. Do they call you or do they call dispatch?

6 A. They would generally call dispatch, but lately
7 they've been just trying to contact us personally. But if
8 there is a trouble came through dispatch, I go to the
9 demarcation, I check the dial tone at that spot and either
10 let dispatch know to somehow contact. Or if the Flinspachs
11 call in, to let them know that it is good at the
12 demarcation.

13 I have at times drove up to the ranch house and
14 let them know it's somewhere in your line and we're good at
15 the D mark. Probably, I would say, 50-50 I'd either drive
16 up there or call in to dispatch.

17 Q. Okay. And have you personally had conversations
18 with Mr. or Mrs. Flinspach about charging them a service
19 charge for working on their line?

20 A. I have -- I have not had a conversation with them
21 about how much it would be. I did let them know that there
22 is gonna be a service charge if we're working on their line.

23 Q. And what was their response? Was that with Mr. or
24 Mrs. Flinspach or both?

25 A. That was with Mr. Flinspach.

1 **Q. And what was his response?**

2 A. Like he said earlier, he thought it was atrocious,
3 that he wasn't gonna pay it.

4 THE COURT: Now, you testified that he objected to the
5 amount, but you've just testified that you never told him
6 the amount.

7 THE WITNESS: I did not tell him the amount. He told
8 me that what we were charging was too much.

9 THE COURT: So where did he get the amount; do you
10 know?

11 THE WITNESS: I would guess when he called in to
12 dispatch.

13 THE COURT: Thank you.

14 **Q. (BY MS. SLAWSON) But do you know?**

15 A. Pardon me?

16 **Q. Do you know where he got the amount?**

17 A. I don't know. I would guess. That was an
18 assumption I guess.

19 THE COURT: Okay. Thank you.

20 **Q. (BY MS. SLAWSON) Did there come a time recently**
21 **where you stopped doing what you would call favors for**
22 **Mr. Flinspach?**

23 A. We've always been willing to help out, and until
24 an altercation we had. And I understand you don't want to
25 hear about that.

1 THE COURT: Correct.

2 THE WITNESS: So until an altercation, we've always
3 been willing to help out when we had time, if we were able
4 to do something small or if I was asked by my manager, I
5 would -- I would perform work when asked.

6 Q. (BY MS. SLAWSON) And as a result of the
7 altercation, you no longer were willing to perform that --
8 those favors; is that correct?

9 A. Yes. That is correct.

10 Q. Okay. And is that -- why? Why is that?

11 A. Due to the verbal abuse and even threatening.

12 Q. As a technician for South Central, do you ever
13 recall South Central allowing a customer to work on South
14 Central's facilities?

15 A. No.

16 MS. SLAWSON: I have no other questions for Mr. Bishop.

17 THE COURT: Okay. Mr. Bishop, tell me about the
18 equipment that's actually on the Flinspachs' ranch. Is
19 there a pole?

20 THE WITNESS: Yes, there's a pole.

21 THE COURT: And is there a box on the pole?

22 THE WITNESS: Yes, there is.

23 THE COURT: And does SCUTA own that box?

24 THE WITNESS: We do not.

25 THE COURT: And what is the basis for your disclaiming

1 ownership of that box? Did the Flinspachs purchase it?

2 THE WITNESS: To my knowledge, I don't -- I don't know.

3 THE COURT: Did the Flinspachs install that box?

4 THE WITNESS: That I also don't know. I have put a
5 cover on that box to be helpful, and so anything past the D
6 mark is my understanding they own.

7 THE COURT: Okay. But you have recently -- or when did
8 you put a cover on this box?

9 THE WITNESS: This was in the fall. The cows had broke
10 the cover off. We had an extra one in our garage scrapyard.
11 When asked by -- I believe it was my supervisor who talked
12 to Mike and needed a new cover for it and I ran it up there.

13 THE COURT: Did you charge them for this cover?

14 THE WITNESS: I did not.

15 THE COURT: Is there a box on their home?

16 THE WITNESS: I believe there is a protector box
17 covering that.

18 THE COURT: Have you done work on that box?

19 THE WITNESS: No.

20 THE COURT: Do you know who installed that box?

21 THE WITNESS: I do not.

22 THE COURT: Thank you.

23 Mrs. Flinspach, do you have any questions for
24 Mr. Bishop?

25 MS. FLINSPACH: I did have a question when he was

1 saying that my husband had asked him to work after hours. I
2 don't recall that, but it may have happened, but I don't
3 know how long ago that was or whatever.

4 And when they were asking where we got prices, it
5 was from their dispatch, from their office in Escalante when
6 they were talking about it with the \$80 a man. So that is
7 where that -- where that cost came from and where he was
8 using the information for -- for the excessive cost he
9 thought.

10 THE COURT: Okay. Thank you. And --

11 MS. FLINSPACH: The other thing the boxes that are --
12 that they were putting out on the pole, they put one on the
13 box on the pole in Modena also to upgrade their equipment
14 because it wasn't working right. And I don't know about the
15 box on the house. But when they come to check to see when
16 we have problems with the telephone, they always check that
17 box on the outside of the box too to make sure there was
18 service coming from the pole to the house.

19 So as far as who owns those boxes, I couldn't tell
20 you that. Well, I don't think that we had that kind of
21 equipment, so I think the telephone company did put that
22 there.

23 THE COURT: Well, okay. Let me give you a chance,
24 Mr. Bishop, to respond to this. This is new information.
25 Mrs. Flinspach says that when they've reported a problem,

1 the company has checked not only the D mark, but also the
2 boxes at their property. Do you have any information on
3 that?

4 THE WITNESS: No. Generally on a trouble we go to the
5 D mark and test at the D mark --

6 THE COURT: Okay.

7 THE WITNESS: -- and let them know.

8 THE COURT: Okay. Thank you.

9 FURTHER EXAMINATION

10 BY MS. SLAWSON:

11 Q. Weston, when -- when was that conversation that
12 you had with Mr. Flinspach about him hiring you to work on
13 his line?

14 A. It had to have been in the late '90s, early 2000s,
15 after one of the snowstorms that had torn it down and he
16 realized I could climb and perform work.

17 Q. Was anybody else present during that conversation?

18 A. No. Nobody here. Possibly another employee,
19 Kelly Smith, who's no longer with South Central.

20 Q. Okay.

21 I don't have any questions. Could we take just a
22 five-minute recess?

23 THE COURT: Sure. Mr. and Mrs. Flinspach, we're gonna
24 take a break for about five minutes or so; okay?

25 MS. FLINSPACH: Okay.

1 THE COURT: All right. Thanks.

2 (Seven-minute recess taken.)

3 THE COURT: All right. Mrs. Flinspach, we're going to
4 resume. Are you still with me?

5 MS. FLINSPACH: (No audible response.)

6 THE COURT: Go ahead.

7 MS. SLAWSON: Okay. I indicated I was done with
8 Mr. Bishop, but I do have one followup question.

9 Q. (BY MS. SLAWSON) Mr. Bishop, you indicated you had
10 never done work on the box in response to a question from
11 the judge, I believe; is that correct?

12 A. That is correct.

13 Q. Have you had occasion to check the dial tone in
14 that box?

15 A. And I have checked dial tone. I haven't performed
16 actual work or built that box, so.

17 Q. And what were the circumstances under which you
18 checked dial tone?

19 A. When checking at the D mark and having dial tone
20 and them saying they haven't seen anything in their line, as
21 a -- as a favor to Colleen, I checked the dial tone at the D
22 mark.

23 Q. At the --

24 A. Or pardon me. At the protector on the side of the
25 house, the box on the side of the house.

1 Q. And why were you up at the site of the house?
2 What was the purpose for you being there? Was it to check
3 the dial tone or was it to do something else?

4 A. Just check dial tone.

5 Q. Okay.

6 We'd next like to call Duncan Reid.

7 THE COURT: Mr. Reid, do you swear to tell the truth?

8 MR. REID: I do.

9 THE COURT: Go ahead.

10 EXAMINATION

11 BY MS. SLAWSON:

12 Q. Mr. Reid, are you employed by South Central Utah
13 Telephone Association?

14 A. I am.

15 Q. And what is your position with the company?

16 A. I am the outside plant manager.

17 Q. And how long have you been with the company?

18 A. Fifteen years.

19 Q. And how long have you been in your current
20 position?

21 A. Five years.

22 Q. As the outside plant manager, do you work in a
23 particular area or do you cover the whole territory?

24 A. I cover the entire plant.

25 Q. Okay. Can you explain briefly what your job

1 involves.

2 A. My job is to manage and supervise the 20
3 installation and repair technicians we have, as well as our
4 dispatch office and a few maintenance crew people.

5 Q. And do you know Mr. and Mrs. Flinspach?

6 A. I do.

7 Q. And do you know where they live?

8 A. I do.

9 Q. Are you familiar with the line that we've been
10 discussing here today?

11 A. I am.

12 Q. And can you describe the type of facilities?

13 A. It's an open wire line, runs about 5.2 miles up
14 Modena Canyon.

15 Q. And where does that open wire line connect with
16 South Central's facilities?

17 A. In Modena.

18 Q. And would that be the point of demarcation that's
19 identified here in Exhibit 2?

20 A. Yes, it is.

21 Q. Okay. Is it your understanding that the 5.2 miles
22 open wire line is owned by South Central or owned by the
23 Flinspachs?

24 A. My understanding is that it was owned by the
25 Flinspachs.

1 **Q. And how did you come to that understanding?**

2 A. When I first started, my supervisor was Carlos
3 Terry also, and he had indicated to me that that was the D
4 mark for the Flinspachs when we went out there on a trouble.
5 And, also, our -- one of our engineers back in those days,
6 Dennis Johnson, had also said that our D mark was in Modena.

7 **Q. And what do you mean when you say our D mark is in**
8 **Modena?**

9 A. Where our service ends and the customer service
10 begins.

11 **Q. Okay. And what is your standard procedure when**
12 **the Flinspachs report trouble in their line?**

13 A. To call in or create a trouble ticket for them.
14 Or if it's coming through dispatch, then dispatch will
15 automatically send one of the -- send the trouble ticket to
16 one of the installation repair technicians in the area.

17 **Q. And then what happens?**

18 A. They will go out to the D mark and they will check
19 it --

20 **Q. Okay.**

21 A. -- and see if the dial tone's there.

22 **Q. Have you ever requested that the I&R technicians**
23 **work on the Flinspachs' line?**

24 A. I have not requested them work on the open wire
25 line. I have asked them to check the line between the last

1 pole in the home and the box on the home. Mr. Flinspach had
2 called me and said that the box on the home, the cover was
3 off, and was concerned about there being damage to it. And
4 I had asked Weston or Roy when they had time to, if they
5 were in that area, if they could stop by and -- and look at
6 that.

7 Q. And did you charge the Flinspachs for that service
8 call?

9 A. No.

10 Q. Why not?

11 A. Because we were doing it when we had some spare
12 time. It wasn't something scheduled by our dispatch.

13 Q. And if your tariff required you to charge for that
14 service call, you would have been in violation of your
15 tariff?

16 A. I would have been.

17 Q. Okay. Have you personally had conversation with
18 Mr. Flinspach or Mrs. Flinspach about working on their line?

19 A. I have.

20 Q. And what do those conversations entail?

21 A. I spoke to Mr. Flinspach about -- he had called
22 into the office and was upset about being told about a
23 service charge. When I talked to him I explained to him
24 that the way our system is, and we work through a dispatch
25 system, and the guy's time compared to in the past when a

1 technician had plenty of time, because we only had phone
2 service at the time, that the guys now's time is scheduled
3 days in advance.

4 So I had told him that if he wanted me to schedule
5 time for us to come out there to help him, that it would
6 require a service charge. And he told me, his exact words
7 were, "You're trying to get rid of me." And I said, "No."
8 I said, "That's just we have to account for their time when
9 it comes to scheduling. So if it's done through dispatch
10 and dispatch schedules them to go out there, that's how
11 their time's accounted for."

12 **Q. And when you would ask -- or when you personally**
13 **would go out to the Flinspachs' line -- did you -- did you**
14 **go out to the Flinspachs' line?**

15 A. When I was an installation repair technician, I
16 did.

17 **Q. And -- and when you would do that, did you -- was**
18 **it on your schedule?**

19 A. No.

20 **Q. It was unscheduled time?**

21 A. Back when I was an I&R technician, we didn't have
22 a set schedule like we do now.

23 **Q. Uh-huh.**

24 A. So if I was out in that area and I had a trouble
25 that was assigned from them, I would check it at the D mark.

1 But I would also go to the other end to make sure that the
2 dial tone was working or not working, and I would speak to
3 Mr. Flinspach about that.

4 Q. And did you do that --

5 A. He was there.

6 Q. -- occasion -- every time or just occasionally?

7 A. Occasionally I'd do that for them just as a favor
8 so they wouldn't have to call back in to find out what the
9 outcome of the ticket was.

10 Q. Okay. Have you personally had conversation with
11 Mr. Flinspach that the facilities on his side of the D mark
12 are his responsibility?

13 A. I have said that to him when we talked about
14 scheduling.

15 Q. And when was that conversation?

16 A. It was the first week of January this year.

17 Q. And prior to that, had you ever spoken with him
18 about his service on his side of the D mark being his
19 responsibility?

20 A. I have.

21 Q. And when was that?

22 A. In -- I'm not exactly sure of the dates. I really
23 can't recollect. But I know early on in 2005 when I went
24 out to his facility, he was -- had got upset because I had
25 been a number of days past when he called in the trouble.

1 And I had explained to him then that I have to come here
2 when I have time, you know.

3 Q. Otherwise --

4 A. Otherwise, I would have to charge you.

5 Q. In your 15 years of experience with the company,
6 have you ever allowed customers to work on your facilities?

7 A. No. Not -- I haven't.

8 Q. Yet, Mr. Flinspach worked on these facilities;
9 correct?

10 A. Correct.

11 Q. And -- and did you care?

12 A. No.

13 Q. Why not?

14 A. My understanding is it's his line.

15 THE COURT: So does the tariff state that the service
16 charge for customer-provided equipment is nullified if the
17 customer agrees that it will -- the problem will be
18 addressed during unscheduled time?

19 THE WITNESS: I couldn't tell you exactly what the
20 tariff states.

21 THE COURT: I'm just wondering where this policy comes
22 from and why you consider that not charging him simply
23 because it's at your convenience rather than at his demand,
24 it nullifies the tariff.

25 THE WITNESS: I -- I don't know that it would

1 necessarily nullify the tariff. But as Weston had stated
2 and Colleen had stated, you know, we all live in a small
3 community and doing favors for people and helping each other
4 out is what we do. And if I had other scheduled work where
5 I was charging customers or where customers were on a
6 schedule that I'd contacted them and said I would be there,
7 that doing things in between to help people out was my call
8 as the local guy to -- if it wasn't gonna take me much of my
9 day or time to go out and do something that took 15 or 20
10 minutes, as the local guy I took that upon myself to say I'm
11 not gonna charge you.

12 And I've mentioned -- I've said that to them in
13 the past and did say to Colleen, if we can fit this stuff in
14 when we have time, as she said, I had -- when Mike was upset
15 about the charge, she had talked to me. I told her if it's
16 on the schedule, we -- we have to charge them because we're
17 gonna be out there for a number of hours. If it's
18 something -- in this case she had stated that the line was
19 broken was never stated to me. I was told they had a low
20 hanging line which we could do easily in a short amount of
21 time.

22 So I -- that's why I told her and Mike that when
23 we had some time, we would come out and do that, but --

24 THE COURT: Okay. Here's what I'm instructing with,
25 and maybe you want to address this in closing. I'm

1 struggling with -- with the conflict that I see in the
2 company's insistence that it adhered to certain policies
3 very strictly, but its willingness to ignore the tariff, be
4 casual, be friendly in other circumstances, and I'm having a
5 really hard time with that.

6 And I see the company saying, you know, our tariff
7 says we have to charge for that, but we don't always comply
8 with that because we're good neighbors. And I'm wondering,
9 well, then in 1977 did somebody say, yeah, we'll just attach
10 it to these poles, they called Dixie, they said it was okay,
11 we're just gonna go ahead and do it.

12 I mean, this is what I'm struggling with.

13 MS. SLAWSON: I don't have any other questions for
14 Mr. Reid.

15 THE COURT: Nor do I.

16 Mrs. Flinspach, are you with us?

17 MS. FLINSPACH: I am.

18 THE COURT: Do you have any questions for Mr. Reid?
19 And I need you to limit yourself to questions.

20 MS. FLINSPACH: Okay. I guess the one conversation
21 that I remember about anything about charges was when he
22 come back off vacation and we had a problem and the office
23 had said that it would be \$80 man and he said oh, no. I'll
24 leave a -- I'll leave a note with them that -- that, no,
25 we're to help you.

1 And that's -- that's what I recall. And I don't
2 know. That was the only thing that I ever --

3 THE COURT: Okay.

4 MS. FLINSPACH: -- with on what he said.

5 THE COURT: Okay. Thank you.

6 Any other witnesses?

7 MS. SLAWSON: No.

8 THE COURT: All right. Then I think we can go to
9 closing argument. Go ahead, Ms. Slawson.

10 MS. SLAWSON: Okay. As the commission is aware, and as
11 has been testified here today, South Central is a rate of
12 return regulated carrier of last resort in its area and it
13 has an obligation to provide service in its service
14 territory. As the commission is also aware, this does not
15 mean that South Central is required to provide service to
16 every resident who lives in the service territory. On the
17 contrary, South Central's obligation to provide service is
18 conditioned upon the company's ability to furnish that
19 service under reasonable conditions.

20 According to South Central's tariff, line
21 extension charges are applied to subscriber applicants who
22 have abnormally long extension requirements, and this
23 prevents the unreasonable burdening of the general body of
24 South Central's existing subscribers.

25 One of the requirements of South Central's tariff

1 is that the potential subscribers must pay in advance the
2 estimated cost of the construction if the construction
3 exceeds 300 feet. The evidence in this case demonstrates
4 that the Flinspachs did not request a line extension and did
5 not pay a line extension fee.

6 On the contrary, the Flinspachs constructed and
7 installed the 5.2 miles of private facilities and then
8 requested that South Central connect those private
9 facilities to South Central's network which South Central
10 did at the point of demarcation which is identified on
11 Exhibit 2 in Modena. I'm sorry. Yeah, Exhibit 2.

12 The complaint filed by the Flinspachs and the
13 letter written by Mr. Flinspach indicates that the open wire
14 facilities were constructed by him, and he has stated in his
15 complaint, which is part of the record, that he never
16 received a credit for the non-ownership of those -- for
17 South Central's non-ownership of those facilities.

18 There -- although South Central has performed some
19 repairs in this -- to this -- to these facilities, we
20 believe that the preponderance of the evidence shows that
21 these facilities, the 5.2 mile open wire line, is not owned
22 and was not constructed by South Central Utah Telephone.

23 In support of this ownership dispute, South
24 Central does not have a right-of-way to install facilities
25 there, South Central does not have a pole attachment

1 agreement, South Central does not have permission to attach
2 to the Dixie power poles, and South Central allowed or was
3 aware -- South Central was aware that Mr. and Mrs. Flinspach
4 performed a lot of maintenance and repair on that line. The
5 testimony here today is that that is not standard operating
6 procedure and is not permitted when the facilities are owned
7 by South Central. The issue --

8 THE COURT: Go ahead. Sorry.

9 MS. SLAWSON: The issue in this case is not who -- we
10 believe that the issue in this case is not who owns the
11 facilities because we believe that issue is really not
12 disputed by the Flinspachs. They -- they indicate that they
13 installed it and they constructed it and it was used --
14 using wires provided by them. We think the issue is whether
15 South Central has some legal obligation to maintain or
16 repair those customer-owned facilities. They do not.

17 A legal obligation, as the commission is aware,
18 can be read by law or by contract. There's no applicable
19 law that requires South Central to maintain the facilities
20 that are owned by another third party, constructed and
21 installed by a third party. So in order for South Central
22 to have such an obligation, we believe that the genesis must
23 be some sort of a contract.

24 Ms. Flinspach suggested that there was an
25 agreement. The pleadings suggested that there was some sort

1 of agreement with South Central that South Central abided by
2 that agreement for 20 years and provided maintenance and
3 repair on the facilities. That -- unfortunately, the
4 employees at South Central who may have provided that are
5 deceased.

6 The evidence shows that based on the language in
7 South Central's tariff, and I know this is a sticking point
8 for the commission and for the judge, for you, the language
9 in South Central's tariff from at least 1998 -- 1988 when
10 the tariff was approved by the commission, provides that
11 South Central does not have an obligation to provide
12 maintenance or repair on customer-provided equipment.

13 Customer-provided equipment is defined in the
14 tariff as devices, apparatus, and their associated wiring
15 provided by a subscriber for use with facilities furnished
16 by the company. Further, the company shall not be
17 responsible for the installation, operation, or maintenance
18 of any customer-provided equipment pursuant to tariff sheet
19 50. So any current alleged obligation to provide
20 maintenance and repair service on the Flinspachs' line is
21 not based on South Central's tariff.

22 Moreover, and I think this is -- this is the part
23 that the commission is struggling with, the Filed-Rate
24 Doctrine which is applicable and codified in Utah §5437 and
25 as set forth in federal law, provides that once a carrier's

1 tariff is approved by the FCC or an appropriate state
2 agency, the terms of the tariff are considered to be the
3 laws and, therefore, conclusively and exclusively enumerate
4 the rights and liabilities as between the carrier and
5 customer. Under the Filed-Rate Doctrine -- and that was
6 from Davel Communications, 460 F.3d 1084.

7 Under the Filed-Rate Doctrine, the rate of the
8 carrier dually filed is the only lawful charge, and
9 deviation from it is not permitted. That's Quest Corp vs.
10 AT&T, 479 F.3d 1206. That's a 10th Circuit case from 2007.
11 Dually filed rates by both the carrier and the customers
12 rule the force of law. That's another 10th Circuit case,
13 Atchison, Topeka and Santa Fe vs. Bosideng.

14 According to the Supreme Court of the United
15 States, the rights and liabilities defined by the tariff
16 cannot be varied or enlarged either by contract or by tort
17 of the carrier. And this is the American Telecommunications
18 and Telegraph vs. Central Office, 524 US 214. It's a 1998
19 Supreme Court case. In it the Supreme Court stated that the
20 Communication Act that renders the promises of -- renders
21 that -- sorry. It is the Communication Act that renders the
22 promise of preferences unenforceable.

23 In this instance the Flinspachs are asking the
24 commission to enforce an alleged promise to maintain
25 facilities that the company is not obligated to maintain

1 under its tariff. And I know the commission is struggling
2 with the fact that we are insisting on enforcement of the
3 tariff, strict enforcement of the tariff in certain
4 instances, and then stating that we disregarded the tariff
5 in other instances.

6 The Filed-Rate Doctrine is harsh and can be harsh
7 in its application. There have been cases where a carrier
8 has been intensionally misrepresented a rate to a customer.
9 The customer relies on that rate, but the courts have
10 determined that the carrier cannot be held to that promised
11 rate if it conflicts with the tariff.

12 The purpose of the Filed-Rate Doctrine is set
13 forth in the U.S. Supreme Court case of AT&T vs. Central
14 Office. The purpose of the Filed-Rate Doctrine is to
15 prevent customers from being subjected to discriminatory
16 rates and terms by the carrier even if those terms are in
17 favor of the customer. The Communication Act makes it
18 unlawful to extend any -- to any person any privileges or
19 facilities in such communication or imply or enforce any
20 classifications, regulations, or practices affecting such
21 charges except those set for in the tariff.

22 And as you read through the Filed-Rate Doctrine
23 cases, courts struggle with the Filed-Rate Doctrine because
24 in some instances they're used to the benefit of the
25 carrier, in some instances they're used to the benefit of

1 the customer, the Filed-Rate Doctrine.

2 However, the Filed-Rate Doctrine is clear that the
3 tariff terms govern, and any terms that are outside the
4 tariff terms are not to be enforced. And that's a problem.
5 That's the struggle that you're having it seems.

6 THE COURT: It is. Because as I listen to you, I think
7 all right then. The tariff says we charge for service on
8 customer-provided equipment. They did not charge for
9 service under the Filed-Rate Doctrine. That would mean this
10 is not customer-provided equipment. Is that not correct?

11 MS. SLAWSON: No. Under the Filed-Rate Doctrine that
12 would mean that they should have charged and they didn't.
13 If the tariff provides that they should have charged and the
14 testimony is that the line is owned by the Flinspachs, then
15 they should have charged and they have violated their tariff
16 when they did not charge.

17 THE COURT: So they would be subjected to a monetary
18 penalty for violating their tariff of \$2500 per day of
19 violation under our statute?

20 MS. SLAWSON: No, they would not be subject to a
21 monetary penalty of \$2500 per day.

22 THE COURT: Why not?

23 MS. SLAWSON: For one, we have other defenses. For
24 two, I don't think that they have -- there has been a proper
25 showing that the ownership of the facilities is in dispute.

1 The pleadings filed by the --

2 THE COURT: I understand your argument and the
3 commission has already ruled that it is in dispute. And we
4 can deal with that again in this order if you'd like us to,
5 but go ahead.

6 MS. SLAWSON: The -- the other reasons that the claims
7 of the Flinspachs cannot stand is because the Flinspachs
8 have not proven the elements necessarily to enforce a
9 contractual claim against South Central.

10 The Flinspachs claim that South Central agreed to
11 provide maintenance on the line. There is no documentary
12 evidence available to either the Flinspachs or the company
13 to prove that. There is no documentary evidence or
14 testimony that Mr. Flinspach has or his wife have given any
15 consideration to South Central for its alleged promise to
16 maintain the line.

17 As the commission is aware, consideration is an
18 essential term of any contract. Mr. Flinspach offered no --
19 Mr. and Mrs. Flinspach, in their pleadings and their
20 testimony here today, offered no evidence of any
21 consideration that was granted to South Central in exchange
22 for their alleged promise to maintain the facilities which
23 they claim they do not own.

24 The consideration of monthly payment that the
25 Flinspachs have paid cannot stand as consideration for this

1 obligation. Rather, the monthly payments are paid to South
2 Central for telephone service on South Central's network.
3 South Central has a legal obligation to maintain its
4 network, so maintenance of its network is included in the
5 monthly service charge. However, the extra burden of
6 maintaining facilities that South Central does not own
7 requires its own separate consideration.

8 A generally accepted definition of consideration
9 is that legal detriment has been bargained for and exchanged
10 for a promise and. This is from Utah case of Dementas vs.
11 the Estate of Tallas, 764 P.2d 628. It's a Utah Court of
12 Appeals case from 1988. The mere fact that one man promises
13 to another creates no legal duty and makes no legal remedy
14 available in the case of nonperformance citing -- it's the
15 same case citing Corbin on contracts.

16 In this case there's been no evidence offered of
17 the consideration that would be required to be given to
18 South Central in exchange for their agreement to undertake
19 maintenance of the Flinspach line. Further, under the --
20 under Utah law, events which occur prior to the making of
21 the promise and not with the purpose of inducing the promise
22 in exchange are viewed as past consideration and are the
23 legal equivalent of no consideration.

24 So any claim that South Central promised to
25 maintain the Flinspachs' line in consideration of the

1 Flinspachs' construction of the line, or some other
2 detriment, would not suffice because there is no evidence
3 that the construction of the line by the Flinspachs was
4 induced by South Central's alleged promise to maintain the
5 line. So as a matter of law, any contractual claim that
6 South Central promised to maintain the line is not supported
7 by the evidence and must fail for lack of consideration.

8 In the unlikely, we think, event that the
9 commission finds there was a contract whereby South Central
10 agreed to provide maintenance and repair on the Flinspachs'
11 line, the breach of that contract, alleged contract, would
12 have occurred in the late 1990s or the early 2000s,
13 according to the evidence that was presented here today and
14 presented in the pleadings because that is when the
15 Flinspachs allege that South Central stopped providing such
16 maintenance and repair service or -- and began demanding
17 payment of the service charge for such repair.

18 Mr. Flinspach -- the Flinspachs have claimed some
19 sort of oral agreement, and the statute of limitation for an
20 oral agreement would be four years from the date of the
21 initial breach. Mr. Duncan testified that at least in 2005
22 he had informed the Flinspachs that they would not be able
23 to come out to the house and put them on the -- they would
24 not be able to put them on the maintenance schedule without
25 a service fee at that time.

1 Finally, as all of the witnesses here have
2 testified, that one of the problems that we've suffered from
3 is the passage of time since the agreement was allegedly
4 reached with South Central between South Central and the
5 Flinspachs that occurred -- the Flinspachs began receiving
6 service in 1977 and they have not -- although they claim
7 there have been problems for the past 20 years, they're just
8 now bringing this complaint.

9 We believe that as a result of the passage of time
10 and the lack of diligence on the part of the Flinspachs,
11 this complaint should fail for -- under the Doctrine of
12 Latches. The Utah Supreme Court has held in Papanikolas
13 Brothers vs. Sugarhouse Shopping that latches is not mere
14 delay, but delay that works in disadvantage to one another.
15 To constitute latches two elements must be established. The
16 lack of a diligence -- lack of diligence on the part of the
17 plaintiff. In this case the Flinspachs did not bring this
18 claim back in -- when they first indicated that things had
19 gone south with South Central in 1997 when documents and
20 the -- and the employees would have been available. Or even
21 in the early 2000s.

22 And then the injury to the defendant showing owing
23 to such lack of diligence. As a result of the lack of
24 diligence, the employees who worked with -- worked on these
25 matters in the '70s are deceased or no longer with the

1 company and unavailable to testify or -- and the documents
2 have been lost, both by the company and by others that were
3 there, any they're unable to be found by any of the
4 regulatory agencies.

5 Based on the facts set forth in this testimony and
6 the applicable laws as applied to these facts, the
7 commission should find that the Flinspachs complaint against
8 South Central is without merit.

9 THE COURT: So let me just clarify a couple of things.
10 When you cited to the complaint, you said Mr. Flinspach's
11 statement is that he had never been given any credit from
12 SCUTA for the non-ownership of the line. Are you construing
13 that statement as an admission that the Flinspachs own the
14 line?

15 MS. SLAWSON: Yes.

16 THE COURT: All right. So I will be sure to deal with
17 that in the order.

18 Do you want the commission to address the case law
19 that you have raised here in the order?

20 MS. SLAWSON: If -- if the commission deems it to be
21 appropriate.

22 THE COURT: Okay. The only way I think that we're
23 going to be able to do that is if you file your -- your --
24 well, we'll have to get the transcript or you'll have to
25 file what you just read.

1 MS. SLAWSON: Okay. All right. Or I could --

2 THE COURT: Which do you prefer?

3 MS. SLAWSON: I could send you also the -- just the
4 cases that were cited.

5 THE COURT: Okay. That's fine. And then I just wanted
6 to make two observations. One is that you mentioned
7 preponderance of the evidence. Under UAPA the evidentiary
8 standard is substantial evidence, not preponderance.

9 And I also wanted to mention that you indicated
10 that things went south between the Flinspachs and South
11 Central somewhere in the 1990s. I don't recall that being
12 testified to.

13 MS. SLAWSON: I base that on the complaint that was
14 filed by the Flinspachs --

15 THE COURT: Okay.

16 MS. SLAWSON: -- who said that their line was installed
17 for 1977 and for 20 years South Central maintained and
18 repaired the line --

19 THE COURT: Right.

20 MS. SLAWSON: -- and then they stopped maintaining
21 their line.

22 THE COURT: Okay. So you interpret that there was some
23 sort of bad blood that occurred in the 1990s, otherwise,
24 SCUTA would have continued to maintain the line? Is that
25 what you're --

1 MS. SLAWSON: No. I'm --

2 THE COURT: -- inferring?

3 MS. SLAWSON: I'm not inferring that at all. I don't
4 think that -- I don't -- we -- we have not acknowledged or
5 admitted that South Central provided ongoing maintenance and
6 repair to this line. What my statement was simply that the
7 Flinspachs have alleged that it went -- everything was
8 working fine for 20 years and then Mr. Flinspach says that
9 there came a man -- there was a man at the telephone company
10 who didn't want to do work on the line anymore. So that's
11 what I was referring to.

12 THE COURT: Okay. Thank you.

13 All right. Mrs. Flinspach, is there anything that
14 you would like to say as we wrap up here?

15 MS. FLINSPACH: Well, just that, you know, we were
16 totally unaware of all of these tariffs and that was one of
17 the things that we wanted to clarify was when things
18 changed. And we're not -- we're not versed in all of these
19 legal things, so we both have to depend on you guys to do
20 the right thing because we don't know when things changed,
21 but it was our understanding early years that we would have
22 help.

23 But with -- with all the laws and with all the
24 legalese and with all the attorneys I have no idea, you
25 know, where we stand, so we'll just have to depend on you to

1 take a look at -- look at what we've written and what
2 they've testified to. So that's the best I can say.

3 THE COURT: Okay. Thank you.

4 So let me just again summarize to make sure that
5 I'm clear. The company's position is that there has never
6 been another example of where a customer has been allowed to
7 work on the company's equipment, correct, and there's never
8 been an example of -- has there ever been an example of when
9 a customer ran a line and connected to the company's network
10 other than the Flinspachs?

11 MR. ALVEY: We -- we do have other instances primarily
12 with hotel/motels where they -- they maybe run their own
13 lines in between buildings and we have a point of
14 demarcation at those as well.

15 THE COURT: And the company has never provided any
16 service on -- past the point of D mark to those other
17 customers; is that correct?

18 MR. ALVEY: That's correct.

19 THE COURT: Okay. All right. I believe I have what I
20 need. Thank you all very much, and we will close this
21 hearing.

22 MS. SLAWSON: Thank you.

23 (The proceedings ended at 11:11 a.m.)

24 * * * * *

25

1 State of Utah)
 : ss.
2 County of Salt Lake)

3

4

REPORTER'S CERTIFICATE

5

I, Amanda Richards, a certified shorthand reporter
6 for the State of Utah, certify;

7

That the proceedings of the foregoing matter were
8 reported stenographically by me, and were thereafter
9 transcribed into typewritten form by me, and that the
10 foregoing typewritten transcript, as typed by me, is a full,
11 true, and correct record of my stenographic notes so taken.

12

I hereby further certify that I am neither counsel
13 for nor related to any party to said action, nor in anywise
14 interested in the outcome thereof.

15

IN WITNESS WHEREOF, I have hereunto subscribed my
16 name on this 18th day of May 2017.

17

18

A handwritten signature in cursive script that reads "Amanda Richards". The signature is written in dark ink on a light blue background.

19

20

Amanda Richards, CSR

21

22

23

24

25

Exhibits	19 33:9	15:4,15 37:20	7	absolutely 48:9 57:2
EXHIBIT-00001 44:22,23,25	1955 59:15	214 88:18	7 45:4,8	abuse 70:11
EXHIBIT-00002 48:25 49:1,3 62:19 76:19 85:11	1977 6:15 33:7 44:7 47:7 56:16,22 57:9 83:9 94:6 96:17	24th 38:19	70s 9:14 94:25	accept 40:17
	1980s 56:24	25th 36:17 37:20 38:1,4, 18	764 92:11	accepted 6:13 92:8
	1984 58:11	3	8	access 53:16 55:7
\$	1985 45:23	300 85:3	85 58:13	accessible 20:13
\$140,000 52:25	1988 33:9,15, 21 44:11 45:5 54:18 87:9 92:12	313 26:15	88 33:10	according 84:20 88:14 93:13
\$240 31:1	1990s 93:12 96:11,23	33 43:10	8:57 4:1	account 79:8
\$2500 90:18,21	1997 94:19	4	9	accounted 79:11
\$80 13:8 14:11 31:1 72:6 83:23	1998 87:9 88:18	40 25:18 49:11	90s 64:10 73:14	accurate 21:15,20 27:15
-	2	44 46:1,13	9:00 4:4	acknowledge 55:23
-5 58:12	2 48:25 49:1,3 62:19 76:19 85:11	460 88:6	A	acknowledged 97:4
1	20 7:11 10:22 11:23 27:14, 16,23,25 28:11 47:7 66:7 76:2 82:9 87:2 94:7 96:17 97:8	479 88:10	A-l-v-e-y 42:25	acquired 24:21
1 44:22,23,25	2000s 64:10 73:14 93:12 94:21	5	a.m. 4:1 98:23	across 20:25
102 52:25	2005 80:23 93:21	5.2 51:1 58:8 59:1 62:14 76:13,21 85:7, 21	abandon 59:10	Act 88:20,21 89:17
1084 88:6	2007 88:10	50 46:16 87:19	abided 87:1	acting 55:19
10th 88:10,12	2017 4:1,4	50-50 68:15	ability 84:18	actions 56:1
11:11 98:23		50/50 34:8	able 10:21 12:3 16:3 33:6,8 37:14 44:6,9, 13 65:10 70:3 93:22,24 95:23	actual 31:23 74:16
1206 88:10		524 88:18	abnormally 84:22	actually 7:24 15:20 24:21 39:10 40:14 55:9 70:18
15 81:5 82:9		6	above 52:3	Adams 5:11
159 23:3		628 92:11	above-ground 23:2,4	address 9:9
16 4:1,3				
17-052-01 4:10				

82:25 95:18 addressed 81:18 adhered 83:2 admission 95:13 admitted 97:5 advance 79:3 85:1 aerial 50:25 51:2,22 52:23, 24 53:4,11 66:3 aerially 53:1,8 affecting 89:20 after 39:3 67:6, 9 72:1 73:15 again 42:13 91:4 98:4 against 4:9 9:9 21:2 91:9 95:7 agencies 95:4 agency 88:2 ago 8:3,5 10:21 11:23 17:11 27:23,25 35:19 46:2 48:18 51:18 72:3 agreed 11:8 91:10 93:10 agreeing 65:1 agreement 11:18 24:11 40:3 51:4,15 55:1,3,4 56:19 64:25 86:1,25 87:1,2 92:18 93:19,20 94:3	agreements 54:24 55:14 agrees 81:17 ahead 5:4 6:10 36:7 37:18 60:22 74:6 75:9 83:11 84:9 86:8 91:5 aid 43:23 all 4:11 5:12 6:5 8:6 11:21 14:21 19:12,13 22:4,10,11 24:9,15,17 27:10 37:3 39:13 42:13 44:24 47:16 54:8,14 57:20 60:6,8,25 61:8 63:18 65:17,18 66:6 67:22,24 74:1,3 82:2 84:8 90:7 94:1 95:16 96:1 97:3,13,16,18, 23,24 98:19,20 allege 93:15 alleged 87:19 88:24 91:15,22 93:4,11 97:7 allegedly 94:3 allow 36:16 49:13 51:23 allowed 81:6 86:2 98:6 allowing 70:13 almost 4:4 along 35:14 alongside 20:10	already 13:9 91:3 also 36:22 46:13 50:18 61:24 71:4 72:13 73:1 77:3,5,6 80:1 84:14 96:3,9 altercation 69:24 70:2,7 although 85:18 94:6 Alvey 5:9 42:20,22,23,25 43:4 44:17,24 54:16,21 55:12 57:13 60:1,4, 22 98:11,18 always 11:2 50:9 54:21 58:22 69:23 70:2 72:16 83:7 American 88:17 amount 30:19, 20 69:5,6,7,9, 16 82:20 angry 38:23,25 39:1 another 34:1 38:15 47:4 59:22 73:18 86:20 88:12 92:13 94:14 98:6 antiquated 63:25 anybody 19:3 25:20,22 30:2 41:4 73:17	anymore 12:5 97:10 anyone 4:12 anything 8:14 11:17,21 17:25 18:1,3,4 24:12, 14,15,24 30:11 35:25 36:2 40:13 41:21 42:8 71:5 74:20 83:21 97:13 Anyway 42:10 apparatus 45:19 87:14 apparently 6:22 26:1 55:13,16 Appeals 92:12 appearance 5:4 appears 23:1 47:8 applicable 86:18 87:24 95:6 applicants 84:21 application 89:7 applied 84:21 95:6 appointment 39:1,7,17,21 appreciate 9:10 60:6 approach 44:17 47:4 67:4	appropriate 46:4 65:6 88:1 95:21 approved 33:16 87:10 88:1 approximate 52:22 approximately 12:1 28:2 area 43:21 51:20 61:21 66:4 67:19 75:23 77:16 78:5 79:24 84:12 argue 36:20 argument 84:9 91:2 arms 19:12,13 assigned 40:16 79:25 assist 9:18 11:8 54:20 assistance 40:17 assisted 7:12 10:23 22:8 associated 12:19 45:20 87:14 Association 4:9 5:7 75:13 assume 55:20 assumed 11:13 50:9 54:22 assumption
---	--	--	---	--

69:18		39:15 40:22	body 84:23	broken 5:1 6:9
AT&T 56:23	B	46:2 50:25	Bosideng	15:13 31:18
57:2,6,10		56:6,7 57:8	88:13	64:17 82:19
59:16 88:10	back 15:16	59:15,18 64:5	both 5:15,16,	Brothers 94:13
89:13	33:6,9 38:11	66:4 71:11,16	17 15:6 34:7	brought 7:24
Atchison 88:13	39:13 64:10	74:11 85:20	37:9 40:7	bucket 67:22,
atrocious 69:2	77:5 79:21	86:10,11,22	68:24 88:11	24
attach 19:24	80:8 83:22	94:9 98:19	95:2 97:19	build 43:23
22:4 51:7,22	94:18	belonged	box 23:2,5,13,	55:20 56:6
83:9 86:1	background	35:15	14,19 31:20,22	58:7
attachment	53:23	below 52:3,5,7	35:2,4,6,9,10,	building 37:25
51:4,15 52:1	bad 41:25 42:2	benefit 89:24,	19 70:21,23	buildings
54:23 55:14	96:23	25	71:1,3,5,8,15,	98:13
85:25	bargained 92:9	Beryl 6:12 9:15	16,18,20	built 43:22
attachments	base 59:1,4,11	15:5 37:23	72:13,15,17	51:2 74:16
51:17,24 52:10	96:13	38:18	74:10,14,16,25	bunch 26:24
attorney 8:25	based 43:17	best 98:2	78:1,2	burden 92:5
attorneys	47:1 87:6,21	between 7:8	boxes 35:14	burdening
97:24	95:5	36:22 52:25	72:11,19 73:2	84:23
audible 18:12	basis 70:25	58:13,14 77:25	boys 39:10,12	Bureau 55:4
25:11 29:17	before 8:11,13	82:7 88:4 94:4	breach 93:11,	buried 52:24
30:10 74:5	18:1,4 29:1,22	96:10 98:13	21	53:8
authority 55:22	30:3 41:23	beyond 46:5	break 49:17	bury 49:20
authorize	56:10 59:3	big 55:15,16	73:24	53:11
49:18	64:22 65:4,12,	bill 16:24 17:13	breakage 7:22	bylaws 7:11
automatically	13 66:12	billing 65:3	breakages	24:15
77:15	began 28:17	bills 26:11	7:16	
available 48:15	45:23 93:16	Bishop 5:9	breaks 27:2	C
60:13 91:12	94:5	61:11,12,14,17	breakup 56:23	cable 26:4
92:14 94:20	begin 5:2 6:7	65:25 70:16,17	57:2,6,10	cables 51:22
aware 56:4,13	62:25	71:24 72:24	brief 37:2	call 12:17 31:8,
84:10,14 86:3,	begins 77:10	74:8,9	briefly 75:25	12 37:24
17 91:17	behind 5:10	bit 4:5 10:19	bring 32:1	39:20,22 42:19
away 11:2	being 13:18,23	35:23 53:23	94:17	61:11 62:22
20:21 48:16,17	14:5 66:24	Blackburn 5:8	bringing 94:8	68:3,4,5,6,11,
50:19 54:6	75:2 78:3,22	BLM 53:11,12	broke 29:1	16 69:21 75:6
63:2	80:18 89:15	65:10	71:9	
	96:11	blood 96:23		
	believe 11:15			

77:13 78:8,14 80:8 82:7 called 11:11 12:16,18 31:18 39:16 66:19 69:11 78:2,21 80:25 83:10 calls 12:14 came 27:18 35:19 39:12 68:8 72:7 97:9 can't 9:1 10:19 13:25 19:19 22:10 28:2,9 42:2 48:22 54:4,7,12 55:21 61:4 65:24 67:24 80:23 cannot 88:16 89:10 91:7,25 canyon 19:4 24:1 26:25 57:22 76:14 care 12:5 31:6 49:22 65:7 66:5 81:11 career 63:14 Carlos 10:18 27:10 47:12 48:11,15,16 63:15,16,19 64:12 77:2 carrier 43:15 84:12 88:4,8, 11,17 89:7,10, 16,25 carrier's 87:25 case 13:11 14:8 37:4,11	57:8 82:18 85:3 86:9,10 88:10,12,19 89:13 92:10, 12,14,15,16 94:17 95:18 cases 66:3 89:7,23 96:4 casual 83:4 catastrophe 66:20 cell 39:22 central 4:9 5:7 9:9,14,24 10:23 11:8 16:12 23:8 26:9,19 27:14 28:9 29:4 30:7 31:9,13 37:20 40:8,11 42:19 43:4,12,18 44:6 45:16 46:11 49:13, 14,16 50:4,5, 22 53:16 57:23 58:1,2 59:14, 20 61:17 62:11,24 63:5 64:2,22,23 65:4,14,21 66:8,21,23 67:3 68:1 70:12,13 73:19 75:12 76:22 84:11,15 85:8, 9,18,22,24,25 86:1,2,3,7,15, 19,21 87:1,4, 11 88:18 89:13 91:9,10,15,21 92:2,3,6,18,24 93:6,9,15 94:4, 19 95:8 96:11, 17 97:5	Central's 8:11 22:14,17 44:1, 3 59:1,4 62:20 65:22 70:14 76:16 84:17, 20,24,25 85:9, 17 87:7,9,21 92:2 93:4 certain 7:17 30:20 32:23,25 33:2 42:6 83:2 89:3 certainly 12:11 34:2 certificate 24:16 Chad 15:10 chance 60:21 72:23 change 24:21 changed 11:24 27:24,25 28:12 60:10 97:18,20 changing 18:20 charge 12:19 17:14 29:5,6, 10,11,13,25 30:3,9,12,18 31:1 46:4,10, 12 48:14 68:19,22 71:13 78:7,13,23 79:6 81:4,16 82:11,15,16 83:7 88:8 90:7, 8,16 92:5 93:17 charged 13:18, 23 47:24 90:12,13,15	charges 14:14 46:3 47:17 83:21 84:21 89:21 charging 13:3 18:21 68:18 69:8 81:22 82:5 chatting 53:23 check 24:10 31:9,14,20 39:2 64:21 68:9 72:15,16 74:13 75:2,4 77:18,25 79:25 checked 73:1 74:15,18,21 checking 74:19 Circuit 88:10, 12 circumstances 74:17 83:4 cited 95:10 96:4 citing 92:14,15 CITY 4:1 claim 34:17 91:9,10,23 92:24 93:5 94:6,18 claimed 93:18 claims 91:6 clarify 41:22 95:9 97:17 classifications 89:20 clear 33:6 54:6	90:2 98:5 climb 10:12 22:1 67:7 73:16 climbed 22:8 climbing 22:3 67:19 close 13:16 98:20 closing 82:25 84:9 coating 63:22 codified 87:24 Colleen 4:8 63:8 64:13 74:21 82:2,13 come 5:24 6:2 11:12 13:5,8 24:7 25:21 27:19,21 29:4 31:2,25 35:7 38:19 39:8 41:5 42:6 58:4 63:12 67:9 69:20 72:15 77:1 79:5 81:1 82:23 83:22 93:23 comes 34:24 35:3 79:9 81:21 coming 31:16 39:14 72:18 77:14 commission 6:8 21:13,18 32:18 33:16,19 34:2 36:14 84:10,14 86:17 87:8,10,23
--	--	---	---	--

88:24 89:1 91:3,17 93:9 95:7,18,20 communication 65:5 88:20,21 89:17,19 Communications 88:6 community 82:3 companies 57:2 company 6:11, 23 7:8 8:19,25 10:19 12:14 13:3,19,23 18:16,18,23 19:4,22 21:24 22:6 23:16 24:11 25:23,25 29:24 33:17 35:8,16,18 41:6,20 43:7,9, 13,15 45:21 46:22 47:1,2,6, 16,17 51:5,7, 10,22 54:12, 21,23,25 55:13 58:10 59:7,23 60:9,11 61:20 62:5 63:4 64:15 65:1 72:21 73:1 75:15,17 81:5 83:6 87:16 88:25 91:12 95:1,2 97:9 98:15 company's 17:6 23:18 41:23 51:3,14 54:18,19 83:2 84:18 98:5,7,9	compared 78:25 complain 28:17 complaining 31:8 complaint 4:8 6:6 8:11 9:9,12 18:18 26:18 36:10 38:16 85:12,15 94:8, 11 95:7,10 96:13 complies 46:17 comply 83:7 concept 24:19 45:13 concerned 34:2 78:3 conclusively 88:3 conditioned 84:18 conditions 46:20 84:19 conflict 67:14 83:1 conflicts 89:11 confused 55:12 confusion 8:17 connect 22:14, 17 23:18,19 76:15 85:8 connected 7:25 20:2 23:9, 24 56:18 98:9	connection 23:23 46:18 57:3 connectors 27:4,11 connects 23:8 35:4 49:7 62:20 consider 25:2, 10,13,15 81:22 consideration 91:15,17,21, 24,25 92:7,8, 17,22,23,25 93:7 considered 88:2 constitute 25:19 94:15 construct 10:12 18:13 19:12 26:25 59:1 constructed 18:9,19 25:14 57:21,22 59:20 62:14,18 85:6, 14,22 86:13,20 constructing 19:4 construction 10:10 27:9 43:23 46:3,4, 10 65:13 85:2 93:1,3 construing 95:12 consult 10:21 contact 51:7 68:7,10	contacted 51:21 82:6 contacting 24:12 contention 42:1 continue 34:3 continued 42:15 96:24 contract 24:24 86:18,23 88:16 91:18 93:9,11 contractor 58:4 contracts 92:15 contractual 11:15 91:9 93:5 contrary 34:14 47:8 84:17 85:6 convenience 81:23 conversation 13:5 29:9,12 30:7 31:4 36:16 40:1 68:20 73:11,17 78:17 80:10,15 83:20 conversations 13:1,2 29:10 68:17 78:20 cooperative 7:11,17 copy 7:11 Corbin 92:15	Corp 88:9 correct 7:4,5 9:16,17 10:24 11:24 16:2 18:11 20:9 21:10,23 23:11 25:25 26:20 37:5 39:18 42:16,17 52:1, 2 53:2,3,9,10 57:10 58:17 62:1 64:7,21 66:16,17 67:17 70:1,8,9 74:11, 12 81:9,10 90:10 98:7,17, 18 correctly 50:2 cost 12:22 52:22 72:7,8 85:2 county 20:8, 10,13,23 21:2, 4 50:15 couple 8:2 20:11 22:5,7, 11 95:9 course 32:9, 19,22,25 34:6 36:21,25 37:7, 13 44:18 65:23 Court 4:3,16, 20,23 5:12,14, 17,20,23 6:5, 16,18,21 7:3,7, 14,20 8:2,8,10, 14,21,24 10:5, 8 13:12,15 14:4,19 17:18, 21,25 18:7 21:6,9,11 24:6, 18 25:1 29:16, 21,23 30:15,23
---	--	---	--	--

31:22 32:7,16, 18 33:4,6,10, 12,21,24 34:1, 5,16,19,21,25 35:6,13,21,24 36:6,11,18,24 37:5,7,11,16, 18 39:24 40:3, 12,23 41:3,8, 12,15,18,20 42:4,9,11,14, 18,21,24 43:1 44:18,21 45:5, 7,22,24 47:5, 15,21,25 48:2, 4,7,9,15,17,19, 24 51:13 53:22 54:1,3,7,11,13, 16 55:3,7,11, 23 56:9,12,16, 23 57:1,6,9,12 59:6,12 60:2, 16,18,20,25 61:2,7,10,12 65:25 69:4,9, 13,19 70:1,17, 21,23,25 71:3, 7,13,15,18,20, 22 72:10,23 73:6,8,23 74:1, 3,6 75:7,9 81:15,21 82:24 83:15,18 84:3, 5,8 86:8 88:14, 19 89:13 90:6, 17,22 91:2 92:11 94:12 95:9,16,22 96:2,5,15,19, 22 97:2,12 98:3,15,19 courts 89:9,23 cover 71:5,8, 10,12,13 75:23,24 78:2	covering 71:17 coworkers 21:22 cows 71:9 CPE 46:24 create 77:13 creates 92:13 credit 16:25 85:16 95:11 crew 76:4 crosses 20:11, 18 crossing 65:6 culmination 36:10 current 53:13 75:19 87:19 customer 33:22,23 45:19 46:8 47:16,17 48:20 49:16 60:14 63:18 70:13 77:9 81:17 88:5 89:8,9,17 90:1 98:6,9 customer's 57:4 customer- owned 86:16 customer- provided 33:13,17,24 45:9 54:18 57:7 81:16 87:12,13,18 90:8,10 customers	49:13,19 51:21 81:6 82:5 88:11 89:15 98:17 cut 37:16 49:20 cutoff 6:24 12:4 cuts 37:9 <hr/> D <hr/> damage 78:3 damages 53:14 dangerous 52:11,14 67:15,16,20,21 date 4:7 12:4 28:10 33:12 38:8 51:19 93:20 dated 33:15 dates 28:23,24 80:22 Davel 88:6 day 19:6,8 38:24 39:10, 13,14 82:9 90:18,21 days 48:11 77:5 79:3 80:25 deal 34:13 91:4 95:16 dealing 32:10, 19,22,25 34:6 37:7,13 dealings 36:22	deceased 87:5 94:25 decision 32:19 deems 95:20 defendant 94:22 defenses 90:23 defined 87:13 88:15 definition 45:9, 16,17 92:8 delay 94:14 demand 81:23 demanding 93:16 demarcation 14:7 22:21 23:1,13 31:9, 14,18 49:6 58:13,14,19 62:23 68:9,12 76:18 85:10 98:14 Dementas 92:10 demonstrates 85:3 Dennis 77:6 depend 97:19, 25 Depending 52:24 describe 22:23 63:21 76:12 description 61:24	determination 37:9 determined 89:10 detriment 92:9 93:2 deviation 88:9 devices 45:19 87:14 dial 68:9 74:13, 15,18,19,21 75:3,4 77:21 80:2 died 10:20 different 19:20 difficult 16:5 difficulty 5:21 dig 49:25 diligence 94:10,16,23,24 direct 57:24 59:8 directly 5:25 12:17 14:18 disadvantage 94:14 disagree 40:12 disclaim 55:25 disclaiming 70:25 disconnected 16:11,13,14,18 17:3,5,7,9,10 discount 16:23 discriminatory 89:15
---	---	--	---	---

discussed 33:13,16,21	documentation 32:10	44:19 63:24 65:19 66:11 82:3	ends 62:24 77:9	especially 67:20
discusses 54:18	documents 32:13 40:8 94:19 95:1	earlier 44:13 69:2	enforce 88:24 89:19 91:8	essential 91:18
discussing 48:12 76:10	done 12:10 16:1,3 47:8 56:18 64:6,8 71:18 74:7,10 79:9	earliest 44:9	enforced 90:4	establish 32:9
discussion 36:25	down 6:23,25 7:22 8:6 9:21 10:2,6 18:25 19:11,13 24:8 25:21 26:4 66:4 73:15	early 4:5 63:14 64:10 73:14 80:23 93:12 94:21 97:21	enforcement 89:2,3	established 94:15
dispatch 68:5, 6,8,10,16 69:12 72:5 76:4 77:14 78:12,24 79:9, 10	Douglas 19:23	easier 6:1	engineers 65:7 77:5	Estate 92:11
dispute 40:9, 18,19 47:6,10 85:23 90:25 91:3	drive 20:15 32:1 68:15	easily 82:20	enjoy 42:12	estimate 52:18
disputed 86:12	drop 49:20	East 5:10	enlarged 88:16	estimated 85:2
disregarded 89:4	drove 68:13	either 5:24 26:8 47:21 53:7,11 58:4 68:9,15 88:16 91:12	ensure 56:9	estimation 53:4
distance 63:23 67:8	dually 88:8,11	electrocuted 52:16,17	entail 78:20	even 7:18 8:12 9:24 11:11 22:10 30:24 31:25 42:15 49:17 65:1 70:11 89:16 94:20
Division 33:19	due 37:3 64:17 67:7 70:11	elements 91:8 94:15	entailed 22:3	event 93:8
Dixie 19:25 20:3,4 51:17 53:2 55:3 64:14 83:10 86:2	Duncan 5:10 7:23,25 11:12 12:17,23 13:5 14:11 16:23 31:4 39:7,11, 15 62:3 75:6 93:21	eleven 33:10	entire 51:1 75:24	events 36:9 92:20
Dixie's 53:5	during 16:24 47:2 63:4 66:23 67:3,25 73:17 81:18	email 13:6	entitled 60:10	every 19:6,8 43:19 57:2 80:6 84:16
docket 4:10	duty 92:13	employed 43:4 45:16,22 47:13 61:17 75:12	enumerate 88:3	everybody 56:17
Doctrine 87:24 88:5,7 89:6,12, 14,22,23 90:1, 2,9,11 94:11	each 4:16	employee 30:8 47:12 48:11 73:18	equipment 24:21 33:13, 17,24 34:11,21 35:2 37:23 45:9,19 46:19 54:19 55:11 57:7 70:18 72:13,21 81:16 87:12,13,18 90:8,10 98:7	everybody's 4:5
document 11:7,10 38:11	E	employees 87:4 94:20,24	entire 51:1 75:24	everyone 43:21
documentary 11:7 91:11,13		employment 47:2 63:4 66:23 67:3,25	equivalent 92:23	everything 16:4 54:4 60:6 97:7
		end 60:21 80:1	Escalante 19:25 20:3,4 27:19 51:17 53:2 55:3 64:15 72:5	evidence 4:25 11:8 32:11,12 34:15 36:16 37:6,12,15 48:4 54:17
		ended 32:6 98:23		

85:3,20 87:6 91:12,13,20 92:16 93:2,7, 13 96:7,8 evidentiary 96:7 exact 28:10 51:19 79:6 exactly 7:22 80:22 81:19 EXAMINATION 9:4 43:2 61:15 73:9 75:10 example 7:20 98:6,8 exceeds 85:3 except 41:5 89:21 excessive 72:8 exchange 59:19 91:21 92:18,22 exchanged 92:9 exclusively 88:3 excuse 10:4 24:18 exhibit 22:20 44:22,23,25 45:4 46:1,14 47:4 48:25 49:1,3 62:19 76:19 85:11 existing 46:6 84:24 experience 43:17 47:1 51:16 52:6	57:16 68:1 81:5 explain 41:22 75:25 explained 46:3 78:23 81:1 extend 89:18 extending 46:5 extension 26:9 46:10 84:21,22 85:4,5 extra 71:10 92:5 eye 66:6 <hr/> F <hr/> F.3d 88:6,10 facilities 24:1 43:22,23 45:21 46:5,6 49:14 53:20 57:21 58:25 59:10 64:3,23 65:5, 22 66:1,2 70:14 76:12,16 80:11 81:6,8 85:7,9,14,17, 19,21,24 86:6, 11,16,19 87:3, 15 88:25 89:19 90:25 91:22 92:6 facility 59:19 80:24 fact 8:12 24:16 35:18 38:9 89:2 92:12 facts 95:5,6	fail 50:1 93:7 94:11 fall 66:4 71:9 familiar 23:1 43:25 49:3 50:12 52:13 53:13 56:23 76:9 family 21:14,19 far 12:2 20:24 21:2,3 58:24 72:19 favor 22:6 63:8 74:21 80:7 89:17 favours 69:21 70:8 82:3 FCC 88:1 Fe 88:13 fears 36:13 federal 87:25 fee 16:15 26:9, 15 85:5 93:25 feel 61:2 fees 26:11 42:15 feet 85:3 fellow 48:11 felt 8:19 few 12:11 15:1 36:24 42:5 76:4 fiber 53:8 Fifteen 75:18 figure 36:19	file 95:23,25 filed 8:11 38:17 40:14 85:12 88:8,11 91:1 96:14 Filed-rate 87:23 88:5,7 89:6,12,14,22, 23 90:1,2,9,11 files 24:15 Finally 94:1 find 24:15 31:23 44:6 46:14 80:8 95:7 finds 93:9 fine 8:8 96:5 97:8 finish 14:17, 22,25 first 15:1 17:23 27:14,16 33:13 45:3 57:20 64:10 65:17 77:2 80:16 94:18 first-hand 48:23 fit 82:13 five 19:19 48:18 63:2 73:24 75:21 five-minute 73:22 fix 13:9 67:9 fixed 15:15 49:21 fixing 32:6	Flinspach 4:9, 11,14,15,17, 19,20,22 5:2, 17,19,21 6:4,6, 11,17,19,22 7:3,5,10,15,21 8:4,9,12,16,24 9:3,6 10:2,7,14 12:13 13:12, 24,25 14:16, 17,18 15:1 16:10 17:15, 18,20,21,24,25 18:3,5,6,9,13, 15,21,23 19:5, 6,8,11,13,14, 15,17,18,24 20:1,4,5,10,14, 20,23,24,25 21:1,3,4,6,8, 10,12,16,19,21 22:1,2,15,18, 25 23:4,5,9,10, 14,15,17,19, 20,22,23,25 24:2,7,10,18, 23 25:2,5,6,7, 8,12,15,16,17, 18 26:1,7,10, 14,17,18,21 27:4,6,7,8,13, 16,17,25 28:1, 2,6,7,8,15,16, 17,23 29:3,7,8, 12,15,16,17, 18,19,22 30:2, 4,5,11,13,14, 15,17,24,25 31:24 34:19, 20,23 35:3,7,8, 17,22 36:2,3,5 37:19,21 38:1, 6,7,10,20,22, 25 39:1,9,16 40:2 41:11,13, 18,19,24 42:5, 10,12,17 47:12
--	---	--	---	---

49:9 50:3,5 53:21,22,25 54:2,4,9,14 55:1,9 56:5 57:14,25 60:3, 5,17,19,24 61:1,6,8 62:7, 13,16 65:24 66:25 67:4,13 68:18,24,25 69:22 71:23,25 72:11,25 73:12,23,25 74:3,5 76:5 78:1,18,21 80:3,11 81:8 83:16,17,20 84:4 85:13 86:3,24 91:14, 18,19 92:19 93:18 97:8,13, 15	62:15,20,24 63:17 64:6 65:15 66:9,16, 24 70:18 77:23 79:13,14 87:20 92:25 93:1,10 flooding 51:19 follow 20:8,18 50:15 follows 50:17 followup 9:11 40:25 74:8 force 88:12 forgot 39:3 forgotten 17:11 formal 4:8 9:9, 12 26:18 38:16 56:19 formerly 10:18 forthcoming 24:13 forward 47:7 found 32:3 95:3 four 8:5 32:17 93:20 four-wheeler 32:1 frame 44:14 friendly 83:4 friends 7:6 10:11 15:25 18:20 21:14, 19,23 22:5,7 62:17 friendship	10:13 front-end 16:6 furnish 84:18 furnished 45:21 87:15 further 41:22 73:9 87:16 92:19 future 61:9 <hr/> G <hr/> garage 71:10 garbled 29:20 gave 7:10,11 9:15 16:23,25 25:25 27:10 46:1 general 46:19 84:23 generally 63:21 65:11 68:6 73:4 92:8 genesis 86:22 getting 4:5 22:22 26:3 54:14 give 36:24 41:7 60:20 72:23 given 6:20 24:3,4,17 35:14 91:14 92:17 95:11 goes 20:10 34:7 36:22 39:25 gone 94:19	good 9:6 31:19 48:12 55:19 61:10 68:11,14 83:8 govern 90:3 granted 91:21 green 23:2,5 guess 8:18 16:9 24:7,8 25:19 27:8 38:7 40:20 53:7 69:11,17, 18 83:20 guy 27:18 38:5 82:8,10 guy's 27:21 78:25 guys 13:7 19:3, 18,20 26:21 39:2,8 60:13 79:2 97:19 <hr/> H <hr/> half 7:23 29:19 hand 9:24 27:4 handed 44:25 hang 52:22 hanging 15:12, 21 82:20 happen 19:20 24:20 27:1 happened 6:21 12:6 26:12,16 29:9 36:9,17 58:2 72:2 happens 68:1 77:17	hard 10:16 16:8 29:20 83:5 hardly 19:19 hardware 19:12 22:4 26:19 harsh 89:6 hate 42:7 having 6:2 16:12 17:22 28:17 42:12 55:21 67:20 74:19 83:4 90:5 headed 39:11 heading 46:18 hear 5:16,18 9:1,6 14:23 17:20 22:22 29:16,18 32:22 34:15,19 37:22 49:11 53:23 54:4,7 60:5 61:3,5,9 65:24 69:25 heard 8:12 54:9 62:13 hearing 4:7,24 5:21 10:15,16 29:19 44:4 56:20 98:21 held 89:10 94:12 help 7:5 9:21, 23 10:2,9,19 11:13,14,16, 19,21 13:15, 17,19 14:13 15:16 18:16
Flinspach's 21:9 49:7 95:10				
Flinspachs 5:15 22:21 34:12 36:1 37:14 40:10, 13,21 41:17 46:9 47:11 68:2,10 71:1,3 76:23,25 77:4, 12 78:7 85:4,6, 12 86:12 88:23 90:14 91:7,10, 12,25 93:3,15, 18,22 94:5,10, 17 95:7,13 96:10,14 97:7 98:10				
Flinspachs' 50:12,16,25 52:20 53:14 58:14,15,17				

19:15 26:25 27:20,22 28:15,18 29:25 30:3 34:6 36:11 39:14 40:4,5 43:22 55:16 60:7,10 63:11 64:12 66:19,21,22 69:23 70:3 79:5 82:7 83:25 97:22	history 60:8 home 11:3 15:20 18:10 34:22,24,25 35:1,2,7 50:16 52:20 57:4 58:14,15 71:15 78:1,2 hope 14:23 hotel/motels 98:12 hour 31:1,2 hours 67:10 72:1 82:17 house 25:3 34:11 35:11,12 62:15 68:13 72:15,18 74:25 75:1 93:23 However 90:2 92:5 hung 53:1 husband 6:13, 20 7:24 9:15, 20 10:2,11,14, 25 12:10 13:1 14:5 15:15,25 16:18 32:6 60:12 72:1	identified 76:19 85:10 identify 44:17 45:1 ignore 83:3 implied 11:11 imply 89:19 important 61:2 67:7 inaccurate 17:8 inaudible 28:3 30:14 incidents 58:2 include 53:4 included 92:4 including 57:3 Incorporated 4:10 independent 45:12 indicate 49:17 86:12 indicated 9:8, 13 11:23 18:19 21:14,18 25:24 26:18 30:8 38:17 40:9 58:1 64:5 66:11 74:7,9 77:3 94:18 96:9 indicates 11:8 46:22 85:13 indicia 32:23 individual 30:20 58:4	individually 67:4 induced 93:4 inducing 92:21 inducted 52:12 induction 67:21 industry 64:1 ineligible 40:17 inferring 97:2, 3 information 4:13 6:7 17:22 32:10 72:8,24 73:2 informed 93:22 inherently 67:20 initial 18:17 93:21 initially 6:11 60:12 injury 94:22 insistence 83:2 insisting 89:2 inspect 50:6 install 23:12 26:19 61:23 64:2 65:4 71:3 85:24 installation 46:23 76:3 77:16 79:15 87:17	installed 21:15,19 35:9 58:20 71:20 85:7 86:13,21 96:16 installs 64:22 instance 58:7 88:23 instances 49:24 89:4,5, 24,25 98:11 instructing 82:24 insulation 63:23 insulator 32:5 intensionally 89:8 intention 32:8 interest 34:18 67:14 interested 60:9 interpret 96:22 interrupt 61:4, 9 interrupted 36:6 into 5:25 30:16 33:14 35:1,12 40:15 45:13 49:20 54:17 78:22 introduced 22:24 45:13 involved 6:19 26:22 32:25 56:22
--	--	---	--	--

involves 76:1	12:9,13 45:13	laws 88:3 95:6	34:12 36:13	55:13,19,20,24
issue 34:1,10	46:9,12 48:21,	97:23	41:22 42:7,13,	56:1,4,6,7,10,
37:4 40:6 86:7,	23 50:3 57:24	lead 24:6 40:24	19,20 44:17	14 57:21,22
9,10,11,14	58:1,3,21 59:8	learned 63:14	45:3 60:6 61:2,	58:5,8,14 59:1
issues 56:19	60:8 64:24	least 28:11	11 69:2 75:6	60:13 62:14,
	71:2	87:9 93:21	79:22 91:4	18,20 63:6,7
J	known 58:15	leave 13:10	97:14	64:1,6,8,17
	L	14:12 31:5	limit 83:19	65:15 66:9,12,
January 15:4,	L.C. 5:8	39:22 54:15	limitation	16,18,24 67:5
14 36:9,17	lack 54:19 93:7	61:3 83:24	93:19	68:2,14,19,22
37:20 38:1,5,	94:10,16,23	led 36:9	line 4:25 5:16	73:13 74:20
18 80:16	lady 5:22	left 27:7,8	6:9,12,13,14,	76:9,13,15,22
job 65:1,2,9,11	LAKE 4:1	legal 24:19	18,24,25 7:13,	77:12,23,25
75:25 76:2	land 53:11	25:9 54:25	25 8:18 9:14,	78:18 79:13,14
Johnson 77:6	55:5,7	55:1 86:15,17	15,19,21 10:1,	81:14 82:18,20
Jonsson 9:8	language 87:6,	92:3,9,13,23	3,6,10,19,24	84:20 85:4,5,
judge 9:8	8	97:19	11:9 12:10,15,	21 86:4 87:20
74:11 87:8	large 64:11	legalese 97:24	20 15:12,13,	90:14 91:11,16
K	66:20	legality 24:22	15,16,21,23	92:19,25 93:1,
K-e-r-r-y 42:25	last 12:11 16:4	length 28:10	16:1,12,19	3,5,6,11 95:12,
keep 37:23	28:25 43:15,19	let 6:2 9:2,25	17:4,7 18:10,	14 96:16,18,
61:5 66:6	77:25 84:12	12:25 13:20	13 19:12,21,25	21,24 97:6,10
Kelly 73:19	latches 94:12,	32:7 34:1	20:2,4,8,12,14,	98:9
kept 28:25	13,15	51:13 54:8,11,	17 21:15,19	lines 22:3 33:1,
Kerry 5:8,9	late 64:10	16 58:4 60:18	22:4,16 23:7	2 52:11,12
42:19,25 59:13	73:14 93:12	68:10,11,14,21	24:16 25:3,13,	55:4 58:3 66:6
kind 10:12,17	lately 11:11	72:23 73:7	15,21,25 26:3,	98:13
11:10 28:25	42:1 68:6	95:9 98:4	4,9,19,22,25	listen 90:6
29:20 60:14	later 32:17	letter 85:13	27:2,3,15,17,	little 4:5 31:20
64:25 72:20	33:10 39:16	letting 14:12	20 28:13,21	35:4,11 37:22,
Kira 5:6 8:24	law 86:18,19	liabilities 88:4,	29:1 30:19	25 53:23
knew 10:12	87:25 88:12	15	31:2,8,9,13,14,	live 43:21 62:9
24:17 30:19	92:20 93:5	lift 16:6	17,19,23 32:2	65:18 76:7
67:6	95:18	like 6:8 8:15,17	34:10,22,24	82:2
knowledge	lawful 88:8	14:17 16:25	35:1,3,11,14	lives 84:16
		17:12 18:1	36:19 39:11	loader 16:6
		25:21 26:15,24	40:10,11,14,22	local 47:11,14
		31:1 32:5	41:4,14 42:2	82:8,10
			46:10 47:7,22,	locate 44:10,13
			25 48:9 49:7,	located 52:7
			10 50:5,9,11,	63:1
			13,20,25 51:2,	
			8 52:1,3,4,5,7,	
			13 53:14,17	
			54:22,23,24	

long 7:16 17:11 43:9 45:15 59:13 62:4 72:3 75:17,19 84:22	12:10 16:1 27:15 28:21 46:23 54:20 63:5 64:6 65:22 66:1,9, 15 67:9 76:4 86:4 87:2,12, 17,20 91:11 92:4,19 93:10, 16,24 97:5	6,7,18 79:25 80:11,18 98:16	mention 12:22 96:9	misunderstood 39:17
longer 70:7 73:19 94:25	majority 53:10	marked 44:23, 25 49:1,3	mentioned 14:9,11 47:12 67:8 82:12 96:6	mode 11:13
looked 16:18 17:3,7 28:24	make 6:1 32:19 37:1 39:1 65:15 72:17 80:1 96:6 98:4	materials 27:3, 9 53:17	mere 92:12 94:13	Modena 7:2,23 9:15 18:10,13 22:14,17 25:3 31:10,14,19 49:6 52:19 59:19 62:14 63:2,17 72:13 76:14,17 77:6, 8 85:11
looking 46:13 62:19	make-ready 53:4	matter 4:8 10:13 36:14 38:17 93:5	merit 95:8	moment 41:12 45:5 46:2 53:22
lose 41:14	makes 44:21 89:17 92:13	matters 94:25	message 39:22	monetary 90:17,21
lost 44:14 95:2	making 17:16 37:8 41:13 92:20	may 4:1,3 11:3 18:25 31:2 37:16 44:17 47:4 48:22 72:2 87:4	method 50:1	monthly 16:15 42:15 91:24 92:1,5
lot 8:17 12:7 16:1 36:25 86:4	man 13:8 14:11 19:22 28:8 31:1 72:6 83:23 92:12 97:9	maybe 8:2 9:24 12:1 17:11,16 19:6,8,9 32:1,4 36:8 38:3 41:5, 7 49:20 54:5 63:20 82:25 98:12	microphone 6:1	months 28:25 35:19
loudly 13:16	manage 76:2	mean 12:1 32:20 36:15 37:3 43:18 56:2,13 77:7 83:12 84:15 90:9,12	might 8:4 13:2 34:8 52:16,17 63:20	more 12:2 15:1 66:14
low 15:12 82:19	managed 42:7	meaning 55:1	mile 7:23 20:21 50:18 58:8 59:1 62:14 85:21	Moreover 87:22
M	Management 55:5	means 61:22	miles 51:1 63:2 76:13,21 85:7	morning 4:4 9:6
mad 30:8,12	manager 70:4 75:16,22	meeting 15:4	mind 18:20 30:6	most 20:16
made 9:13 12:14 23:23 39:6 40:16 57:22	many 38:11	membership 7:10 24:16	mine 25:9	move 36:9
maintain 35:12 66:6 86:15,19 88:24,25 91:16,22 92:3, 25 93:4,6 96:24	mark 24:1 44:19,20,21,22 48:25 62:23 63:14,15 68:15 71:6 73:1,5 74:19,22 77:4,	memo 13:10 14:12 31:5	minute 32:7 41:7	much 26:7 28:3,18 34:6 37:6 56:17 68:21 69:8 82:8 98:20
maintained 27:14 96:17		memory 8:3 13:21	minutes 36:24 73:24 82:10	must 48:7 85:1 86:22 93:7 94:15
maintaining 92:6 96:20		men 19:22 26:24	misrepresente d 89:8	
maintenance 10:23 11:9				

N		O		
	25:8 30:6		9:10 66:22	64:2 67:20
	31:15 47:23		91:18,20 92:16	76:13,15,22
	59:22 69:5		office 12:16,	77:24 85:13,21
name 27:21	74:10 82:19	oath 4:17	18,24 13:10	operated 63:23
42:24	85:15 95:11	objected 69:4	14:10,12 15:8	operating 86:5
named 21:7	98:5,7,15	obligated	31:5 37:20,22,	operation
names 19:19	new 55:20	43:18 63:5,10,	24 38:24 72:5	46:23 87:17
22:11	71:12 72:24	13 65:15 88:25	76:4 78:22	Operations
near 15:5	next 5:9 6:21	obligation	83:22 88:18	43:8
necessarily	22:18 23:1	11:16 54:19	89:14	oral 93:19,20
82:1 91:8	60:23 61:11	84:13,17	oftentimes	
need 4:16 6:2	75:6	86:15,17,22	66:5	order 24:20
9:2 13:16	nickname	87:11,19 92:1,	old 6:24 16:8	29:25 54:24
24:20 29:5	21:8,9	3	22:18 23:2	86:21 91:4
30:15 37:14	nobody 24:7	observations	33:18	95:17,19
53:24 54:7,25	30:6 73:18	96:6	older 63:25	ordinarily
60:13,20 83:19	non-ownership	obsolete 52:19	once 25:14	31:17
98:20	85:16,17 95:12	obtain 65:5	87:25	original 46:16
needed 8:7	nonperformanc	obviously	one 7:21 12:22	others 95:2
15:15 27:12,20	e 92:14	66:21	13:5 16:4,22	otherwise
28:18 66:19,21	North 23:3	occasion 7:19	19:22 22:24	81:3,4 96:23
71:12	note 83:24	64:5 74:13	26:21 30:20	outcome 80:9
needs 6:10	nothing 25:8	80:6	31:25 32:4	outside 35:11
27:5	notified 49:19	occasionally	38:14 44:20,21	43:21 63:23
neighbor 48:12	now's 79:2	80:6,7	48:2 66:14	72:17 75:16,22
neighborly	nullified 81:16	occasions	67:6 71:10	90:3
65:18	nullifies 81:24	49:10	72:12 73:15	over 8:17
neighbors	nullify 82:1	occur 92:20	74:8 77:5,15,	16:10 27:7,9
55:19 83:8	number 4:10	occurred 93:12	16 83:20 84:25	42:1 49:10
network 22:14,	80:25 82:17	94:5 96:23	90:23 92:12	53:10 65:6
17 23:8,18	numbers 23:2	off 13:5 20:23	94:2,14 96:6	overlooked
49:8,14 62:20	65:2	21:2 32:5	97:16	28:19
65:22 66:1	numerous	34:24 37:16	ongoing 97:5	overnight
85:9 92:2,4	49:10	67:8 71:10	only 14:8,13	19:21
98:9		78:3 83:22	31:3 33:4	owing 94:22
Nevada 22:5		offer 17:21	41:24 73:1	own 13:21
never 8:12		32:2 67:11	79:1 84:2 88:8	17:22 23:25
12:21 14:2		offered 6:13	95:22	24:2 28:9 33:2,
16:13 17:2,5			open 19:12	3 34:12 40:10,
			22:13,16 23:18	
			51:25 52:6,12,	
			19 63:18,21	

11,14,22 47:21,25 48:5, 9 53:16 55:24 56:3 64:22 70:23 71:6 91:23 92:6,7 95:13 98:12	papers 26:14 38:12 paragraph 46:24 pardon 69:15 74:24 part 9:25 32:14 50:20 85:15 87:22 94:10,16 particular 75:23 particularly 37:8 parties 36:22 40:7 party 86:20,21 passage 94:3,9 passed 48:16, 17 past 7:18 16:17 28:22 31:22 49:11 55:15 56:1 71:5 78:25 80:25 82:13 92:22 94:7 98:16 pause 32:7 41:10 pausing 41:12 pay 6:16,18 14:1,3,6 16:15 17:14 26:9,11 29:25 42:15 43:22 46:9 55:2 67:11 69:3 85:1,5 paying 16:16 17:13 25:9	payment 24:24 47:16 91:24 93:17 payments 92:1 pedestals 51:20 penalty 90:18, 21 people 48:13 76:4 82:3,7 perform 65:21 66:8 67:5 70:5, 7 73:16 performed 74:15 85:18 86:4 performing 28:21 period 10:20 periodically 16:11 permission 24:8 51:10 53:2 64:14 86:1 permit 33:1 permits 55:21 permitted 86:6 88:9 person 43:19 47:14 89:18 personal 11:1 12:9,13 21:23 22:6 48:5,10 personally 10:5 67:5 68:7, 17 78:17 79:12 80:10	phone 13:3,20 17:3 18:16,18 19:22 39:23 54:6,12 79:1 photograph 49:3 picture 22:23 49:5 piece 34:10,21 35:2 57:3 place 33:14 37:22 40:15 54:25 55:11,22 56:5,9,17 places 20:11, 19 plaintiff 94:17 plan 52:23 planning 17:16,21 plant 75:16,22, 24 pleadings 86:25 91:1,19 93:14 plenty 79:1 point 14:7 22:10,20 31:9, 14 41:22 49:6, 7 51:13 58:13, 19 59:16 76:18 85:10 87:7 98:13,16 pole 7:25 34:23 35:9,10,20 51:4,15,17 54:23 55:14 64:23,25 70:19,20,21 72:12,13,18	78:1 85:25 poles 7:1 10:12 19:25 20:3,5, 15 22:1,3,8 51:3,8,11,23, 24 53:5 64:15 67:7,19,23,24 83:10 86:2 police 36:14 policies 33:7,9 83:2 policy 47:2 81:21 portion 50:5 portions 20:12 54:17 position 43:7, 25 61:20 65:20 75:15,20 98:5 possible 56:16 64:19 Possibly 73:18 potential 85:1 power 7:1 19:25 20:3,4, 15 21:24 22:6 34:23 51:2,3,5, 7,10,14,21,23, 24 52:1,3,4,5, 7,12 53:2 55:4 64:15 67:21 86:2 practice 59:9 practices 89:20 precautions 52:14 prefer 44:19 96:2
owned 37:14 57:2 59:22 63:18 64:23 76:22,24 85:21 86:6,20 90:14 owners 65:6 ownership 4:25 24:19,20, 22 25:20 32:9, 13,14,23 34:17 36:12,18,21, 23,25 37:4 39:25 40:7,10, 16,18,19 50:10 55:18,20,25 71:1 85:23 90:25 owns 6:9 36:19 72:19 86:10	P			
P.2d 92:11 packet 65:1,3, 9,11 pages 44:16 45:1,2 paid 14:2 16:25 26:10 30:22 91:25 92:1 pair 63:22 Papanikolas 94:12				

preferences 88:22	32:4,14 35:17 36:13 55:15,16 68:2 72:25	provided 8:10 21:13,18 33:23 43:18 45:19,20 47:6 86:14 87:2,4,15 97:5 98:15	<hr/> Q <hr/>	34:10 63:3,17 68:13 70:18
premises 47:17	81:17 83:22 90:4	provides 27:3 65:25 87:10,25 90:13	quarter 20:21 50:18	rate 43:12 59:1,4,11 84:11 88:7 89:8,9,11
premising 33:22	problems 7:12, 14 16:12 72:16 94:2,7	provision 47:9, 15 48:20	Quest 88:9	rates 88:11 89:16
preparation 44:4	procedural 5:13	provisions 40:15	question 5:13 9:21 13:20 29:23 32:20 36:11 47:5 65:25 71:25 74:8,10	rather 81:23 92:1
prepared 52:18	procedure 49:23 64:24 77:11 86:6	Public 21:13, 18 33:19,20	questioned 40:15	REA 19:25
preponderance 37:12,15 85:20 96:7,8	proceed 37:16	purchase 6:19 24:3 71:1	questions 5:23 8:22 9:1,11 14:16,18 15:1 17:15,22 18:2, 4 34:5 41:1,16, 21 60:1,3,22 70:16 71:23 73:21 83:13, 18,19	reached 94:4 reaches 35:1
present 73:17	proceedings 41:10 98:23	purpose 4:24 75:2 89:12,14 92:21		read 26:14 45:17 86:18 89:22 95:25
presented 17:23 93:13,14	proffer 40:18	pursuant 87:18		ready 4:6 54:15
presently 16:16	promise 88:22, 24 91:15,22 92:10,21 93:4	pursue 35:25		realized 73:16
prevent 89:15	promised 89:10 92:24 93:6	put 4:16 5:3,4 6:7 7:3 8:15 22:2,4 23:14 26:22 28:19 29:5 33:14 35:7 36:16 37:6,14 39:9, 11 40:15 51:13 54:25 64:17 71:4,8 72:12, 21 93:23,24	quit 27:10	really 6:14 34:7 41:25 56:19 80:22 83:5 86:11
prevents 84:23	promises 88:20 92:12	putting 19:9 26:4 72:12	quite 16:1 36:25	reason 10:16 44:12 54:14
previously 22:8	proper 55:21 90:24		quoted 30:9	reasonable 84:19
prices 72:4	property 49:20 55:8 58:17 59:16,17 73:2		<hr/> R <hr/>	reasons 91:6
primarily 98:11	protector 71:16 74:24		railroad 21:22 22:7 62:17	recall 7:21 15:4 16:22 17:10 26:7,23 27:21 31:7,12 39:9 51:19 70:13 72:2 84:1 96:11
primary 4:24	prove 91:13		raised 15:20 95:19	recalls 10:25
prior 57:1,6,9 80:17 92:20	proven 91:8		raising 15:16, 17,22	received 85:16
private 85:7,8	provide 32:13 43:20,24 63:5 84:13,15,17 87:11,19 91:11 93:10		ran 71:12 98:9	
privileges 89:18			ranch 7:2 18:14 19:21	
probably 7:23 8:4 11:5 19:18 20:23 60:11 68:15				
problem 12:15 13:7 14:6 16:18 31:21,23				

receiving 94:5	relies 89:9	25:12 28:4,6 31:11	responsibility 8:17 80:12,19	66:1,8,15
recently 69:20 71:7	remedy 92:13	replace 50:6 64:17	responsible 46:23 47:16 87:17	Roy 5:10 38:19 78:4
recess 73:22 74:2	remember 7:14 12:2,7 13:5,23, 25 14:5,14 15:9,11 16:22 18:15 19:19 23:22,24 28:2, 10 30:17 38:20 83:21	replacement 35:23	result 70:6 94:9,23	rule 88:12
recollect 80:23	remembers 13:18	replacing 52:19	resume 74:4	ruled 91:3
recollection 11:1 45:12 48:5,10 57:19	remote 67:19	report 62:2,3 68:2 77:12	return 43:12 84:12	run 98:12
reconnect 17:14	remove 6:25 41:5	reported 50:4 72:25	reviewed 9:12 19:1,9 44:3 51:14	runs 35:11 76:13
reconstructed 7:1	renders 88:20, 21	represent 5:7	Richard 4:8 13:12 38:18 64:13	<hr/> S <hr/>
record 4:3 5:5 6:7 8:7,15 24:13,14 40:21 45:18 51:14 85:15	repair 10:23 12:10,23 16:5 27:15 28:13 30:1 49:13 50:1,6 53:17 54:24 61:23 63:5 64:6,8 76:3 77:16 79:15 86:4,16 87:3,12,20 93:10,16,17 97:6	request 64:12 85:4	rid 79:7	safety 52:14
records 16:21 17:6,8 33:18 44:3,14	repaired 6:10 13:9 15:18,23 29:1 49:10,17 50:5 96:18	requested 17:2 77:22,24 85:8	ridiculous 30:19,21	said 5:22 9:22 11:12,20,25 12:4,23 13:6,7, 8,9,10 14:12 16:24 18:6 19:8 26:3,14 27:13,16,18,25 28:6 31:3,5 32:1 35:22 37:9 39:3,11, 16 40:21,23 41:1,3 56:17 69:2 77:6 78:2 79:7,8 80:13 82:6,12,14 83:10,23 84:4 95:10 96:16
referring 97:11	repairs 12:19 13:3,19,24 14:6,15 29:13 55:2,9 65:15 85:19	require 51:15 79:6	right-of-way 21:5 53:12 65:10 85:24	SALT 4:1
regarding 6:8	repairing 27:3	required 78:13 84:15 92:17	right-of-ways 56:5,8	same 5:16,18 28:21 52:1 56:7 65:19 92:15
regulated 43:13 84:12	repeat 20:1 21:16 22:15	requirements 84:22,25	rights 54:25 88:4,15	Santa 88:13
regulations 89:20		requires 86:19 92:7	rights-of-way 50:22 53:9 54:23 55:14 65:5	sat 35:19
regulatory 95:4		resident 84:16	road 20:8,10, 13,18,23,25 21:2 50:15,17, 19 67:8	say 10:18 11:6 12:21 17:12 18:1,3,4,17 25:21 30:11
Reid 5:10 7:23 12:17 15:5,11, 14 62:3 75:6,7, 8,12 83:14,18		resolve 60:7	roadway 15:21	
relationship 7:7 41:25 42:2		resort 43:15 84:12	route 20:7 50:12,23 53:10	
relaying 10:17		respect 37:3	routine 65:21	
relevant 40:4		respond 72:24		
		response 18:12 25:11 29:17 30:10 66:12 68:3,23 69:1 74:5,10		

36:2 39:6,21 40:10 41:24 42:2,13 48:22 55:15 57:16 60:6 61:3,4 66:20 68:15 77:7 82:10,13 83:9 97:14 98:2 saying 5:22 12:1,7 18:22 23:21 24:12 30:17 48:7 55:10,25 56:2, 3 72:1 74:20 83:6 says 23:6 40:11 72:25 83:7 90:7 97:8 scenario 53:7 schedule 29:5 79:4,18,22 82:6,16 93:24 scheduled 78:12 79:2 82:4 schedules 79:10 scheduling 79:9 80:14 schoolhouse 22:19 23:2 scrap 6:12,18 25:25 57:22 58:5 scrapped 9:14 57:20,25 58:3 59:3,4,5 scrapping 9:19 scrapyard	71:10 SCUTA 40:4,15 45:22 70:23 95:12 96:24 SCUTA'S 66:1 searched 33:18 second 39:4 46:24 section 44:20 46:18 sections 50:17,18 seem 40:9 55:15 seems 8:16 90:5 seen 74:20 send 39:12 50:6 77:15 96:3 sense 44:22 sent 26:24 separate 92:7 separately 44:20 September 43:10 62:6 service 12:19 16:11,15,19,24 17:13 21:13,18 29:5,10,11,13, 25 30:3,9 33:19 42:16 43:18,19,20,24 47:7 51:21 59:14 60:14 62:11,12,24	63:25 68:18,22 72:18 77:9 78:7,14,23 79:2,6 80:18 81:15 84:13, 15,16,17,19 87:20 90:7,9 92:2,5 93:16, 17,25 94:6 98:16 set 4:7 79:22 87:25 89:12,21 95:5 seven-minute 74:2 several 10:11, 20 20:18 51:18 severe 51:19 sheet 45:4,8,25 46:13,16 87:18 shelf 28:19 Shopping 94:13 short 63:24 82:20 should 8:5 90:12,13,15 94:11 95:7 shouldn't 49:21 show 17:6 24:14 32:14 36:21 showing 49:2 90:25 94:22 shows 22:20 37:13 85:20 87:6 side 14:7	74:24,25 80:11,18 simpler 56:17 simply 48:4 56:17,18 81:22 97:6 since 55:18 58:10 59:3,5, 15 94:3 site 75:1 situation 34:8 57:14,17 six 19:19 28:25 Slawson 5:3,6, 13,15 8:22,23, 25 9:5 10:9 14:5,16,20,22, 25 17:15 18:1, 8,9,17 19:11, 16,24 20:2,7, 12,17,21 21:12,17,25 22:13,16,20,25 23:7,12,17,25 24:5,9 25:2,10, 13,24 26:6,8, 13,17 27:2,13, 23 28:4,12,20 29:3,8 30:6 31:7 32:8,17 33:5,8,11,15, 23,25 34:4,14, 17 36:1,4,8,15, 20 37:3,6,10, 12,17,19 38:8, 16,23 39:6,15, 25 40:6,20,25 41:7,9,16 42:19 43:3 44:16,19,24 45:8,25 47:4 48:25 49:2 51:16 57:13	59:13 61:11,16 66:7 69:14,20 70:6,16 73:10 74:7,9 75:11 83:13 84:7,9, 10 86:9 90:11, 20,23 91:6 95:15,20 96:1, 3,13,16,20 97:1,3 98:22 small 70:4 82:2 small-time 8:18 Smith 73:19 snow 16:4 snowstorm 64:11,18 66:20 snowstorms 67:6 73:15 sole 41:3 solely 32:19,22 somebody 18:18,22,25 19:5 30:8 83:9 somehow 68:10 someone 9:20 18:15 21:7 23:24 29:24 30:17 something 11:23 16:23 17:1 26:15 27:24 28:12 31:3 32:2,5 70:4 75:3 78:12 82:9,18 sometimes 12:16
--	--	---	--	---

somewhere 68:14 96:11	91:9,10,15,21 92:1,2,3,6,18, 24 93:4,6,9,15 94:4,19 95:8 96:10,17 97:5	88:19	subjected 89:15 90:17	75:7
son 21:12,17		statement 17:16 21:13,17 39:9 95:11,13 97:6	subscriber 45:20 84:21 87:15	system 12:8 78:24,25
soon 50:1				<hr/>
sorry 5:5 17:19 28:4 36:6 46:14 53:25 54:2 60:24 62:5 85:11 86:8 88:21	spare 39:8 78:11	statements 9:13	Subscriber-owned 46:19	<hr/>
	speak 5:24 13:16 21:6 30:15 80:2	states 81:20 88:15	subscribers 84:24 85:1	take 4:24 6:23 10:2,5 12:5 18:25 19:11,13 24:8 25:21 31:6,22 52:14 65:7 66:5 73:21,24 82:8 98:1
sort 13:17 26:9 35:2 86:23,25 93:19 96:23	speaking 48:10 62:16	stating 89:4	substantial 96:8	
sounds 15:24	specifically 66:25	statute 90:19 93:19	such 57:7 86:22 89:19,20 93:15,17 94:23	taken 49:22 54:17 59:10 74:2
south 4:9 5:7 8:11 9:9,14,24 10:22 11:8 16:11 22:14,17 23:8 26:9,19 27:14 28:9 29:4 30:7 31:8, 13 37:20 40:7, 10 42:19 43:4, 12,18 44:1,3,6 45:16 46:10 49:13,14,16 50:4,5,22 53:16 57:23 58:1,2 59:1,4, 13,20 61:17 62:11,20,24 63:4 64:2,22, 23 65:4,14,21, 22 66:8,21,23 67:3,25 70:12, 13 73:19 75:12 76:16,22 84:11,15,17, 20,24,25 85:8, 9,17,18,22,23, 25 86:1,2,3,7, 15,19,21 87:1, 4,7,9,11,21	spell 42:24	stay 41:15 42:21	suffered 94:2	taking 9:21 26:3 56:9
	splicing 61:23	steps 56:7	suffice 93:2	talk 12:24 14:14 15:17 29:20 36:12 38:18
	spoke 78:21	sticking 87:7	Sugarhouse 94:13	talked 11:12 12:23 13:4 38:5 60:12 71:11 78:23 80:13 82:15
	spoken 80:17	still 21:4 41:15 74:4	suggested 86:24,25	talking 15:22 23:4 26:2 72:6
	spot 68:9	Stoll 5:8	sum 60:21	Tallas 92:11
	stand 42:20 91:7,25 97:25	stop 53:24 60:18,20 78:5	summarize 54:13,16 98:4	tariff 8:11 33:13,15,21 44:1,6,9,11,13, 16 45:2,5,14 46:22 47:9,15 51:14 54:18 78:13,15 81:15,20,24 82:1 83:3,6 84:20,25 87:7,
	standard 49:23 59:9 64:24 77:11 86:5 96:8	stopped 15:7 28:13,15,20 69:21 93:15 96:20	supervise 76:2	
	start 40:11 45:3 65:13	storm 66:4	supervisor 64:12 65:17 66:22 67:2 71:11 77:2	
	started 4:5 12:2 47:11,13 64:11 77:2	strict 89:3	support 85:23	
	starts 18:2	strictly 83:3	supported 93:6	
	state 65:10 66:14 81:15 88:1	struggle 89:23 90:5	suppose 41:4	
	stated 34:12 40:13 53:21 54:21 82:1,2, 18,19 85:14	struggling 40:6 83:1,12 87:23 89:1	Supreme 88:14,19 89:13 94:12	
		stuff 82:13	swear 4:17,20 42:22 61:12	
		subject 32:24 66:4 90:20		

9,10,14,18,21 88:1,2,15 89:1, 3,4,11,21 90:3, 4,7,13,15,18 tariffs 33:18 60:8 97:16 technician 50:6 61:21,22 65:20 70:12 79:1,15,21 technicians 76:3 77:16,22 telecom 6:9 telecommunica tions 4:25 88:17 Telegraph 88:18 telephone 4:9 5:7,25 6:11,14, 23 7:1,8 8:19, 20,25 10:18 12:14 13:18,23 14:10 17:13 18:22 19:4 23:16,18 24:11 25:23,25 26:3 28:9,18 29:24 30:16 34:24 35:5,8,15,16, 18 41:6,20,23 42:12 43:5 57:2,3 59:14, 22 60:9,13 61:18 62:11 63:25 72:16,21 75:13 85:22 92:2 97:9 Telephone's 23:8 telling 15:9,11	temporarily 16:14,17 term 91:18 terminates 34:10,22 terms 88:2 89:16 90:3,4 territory 43:19 75:23 84:14,16 Terry 10:18 19:18,23 47:12 48:11 63:15,16 64:12 77:3 test 73:5 testified 10:22 46:2 49:9 54:22 69:4,5 84:11 93:21 94:2 96:12 98:2 testify 10:14 33:6,8 40:7,8 95:1 testifying 54:17 testimony 4:13 9:10 15:24 17:2 18:20,22 27:24 28:14 33:5 54:9 65:14 86:5 90:14 91:14,20 95:5 than 4:12 25:8 45:15 81:23 98:10 their 9:14 31:17,20 37:22 40:8 45:20 49:20 50:1,9	51:8,11,22,24 63:2 64:8,15 66:18 68:2,19, 22,23 71:15 72:5,13 73:2 74:20 77:12 78:18 79:8,11 87:14 90:15,18 91:19,22 92:18 96:16,21 98:12 therefore 40:16 88:3 thing 10:13 38:4 57:7 60:15 72:11 84:2 97:20 things 10:17 11:4 33:1,2 36:13 42:5,6 82:7 94:18 95:9 96:10 97:17,19,20 thinks 9:24 19:9 third 46:1 86:20,21 thought 18:24 24:12 27:19 32:4 40:21 41:1 54:5,15 61:1 69:2 72:9 threatening 70:11 threats 36:12 three 30:20 38:14 39:4 through 32:9 54:15 56:7 61:1 63:15 66:22 68:8 77:14 78:24	79:9 89:22 ticket 77:13,15 80:9 time 4:7 5:1,16, 18 6:1 8:1,6,9 10:16,20 12:22 14:3,8,13 15:11 16:10, 22,25 17:11,16 19:21,22 24:14 28:8 29:4 31:3, 25 32:4 38:15 39:4,8 44:14, 15 46:5 59:3,5, 7 65:21 66:11, 14 69:20 70:3 78:4,12,25 79:1,2,5,8,20 80:6 81:2,18 82:9,14,21,23 83:5 93:25 94:3,9 time's 79:11 times 11:4 19:20 28:10 31:24 38:14 57:19 68:13 timing 40:4 today 4:3,13, 18,21 5:8 9:13 10:15 15:25 22:22 32:9 34:15 40:18,21 42:22 49:9 61:13 64:3 76:10 84:11 86:5 91:20 93:13 together 64:17 told 11:5 14:6, 10 15:13 18:24 29:4,24 30:6	31:4 39:7,10 51:23 69:5,7 78:22 79:4,6 82:15,19,22 tone 68:9 74:13,15,18, 19,21 75:3,4 80:2 tone's 77:21 took 6:25 82:9, 10 Topeka 88:13 torn 73:15 tort 88:16 totally 97:16 touch 63:24 towards 42:7 town 18:10 track 28:25 transcript 95:24 trespassing 55:24 56:1,4 64:20 tried 16:4 trouble 6:2 17:3,7 31:8,13 68:2,8 73:4 77:4,12,13,15 79:24 80:25 truck 7:24 15:6 27:21 28:9 67:22,24 trucks 22:2 true 39:7 truth 4:18,21
--	--	--	--	--

42:22 61:12 75:7 try 5:25 14:19 16:7 22:23 32:9 trying 13:17 16:5 23:22 28:15 36:19 39:24 46:14 60:7,14 68:7 79:7 Tuesday 4:1,3 turning 45:25 Twenty-one 62:6 two 16:25 35:19 38:13 39:2 90:24 94:15 96:6 type 65:2 76:12 types 7:14 52:9	90:9,11,19 92:19,20 94:11 96:7 underneath 20:15 understand 13:15,17,19 17:24 20:7,17 24:19,20 29:21,23 34:9 39:24 51:25 69:24 91:2 understanding 6:9 24:22 35:13,15 39:13 57:1 62:17 63:9,12 71:6 76:21,24 77:1 81:14 97:21 understood 30:25 63:18 undertake 92:18 unenforceable 88:22 unfortunately 87:3 United 88:14 unlawful 89:18 unless 25:22 26:21 unlikely 93:8 unreasonable 84:23 unscheduled 79:20 81:18 unsure 38:8,9 until 42:1 69:23 70:2	unusual 57:17 updating 35:23 upgrade 72:13 upset 39:4 78:22 80:24 82:14 use 5:25 16:6 25:7,18 41:3 45:20 55:4,7 58:7 64:1 67:22 87:15 used 10:19 27:19 58:25 64:1 86:13 89:24,25 using 72:8 86:14 usual 57:14 usually 26:11 27:5 31:18,20 32:6 49:25 Utah 4:1,9 5:7 23:8 43:4 75:12 85:22 87:24 92:10, 11,20 94:12 Utilities 33:20 utility 24:21 34:11	verbal 70:11 Verbally 11:20 versed 97:18 Vice-president 43:8 viewed 92:22 violated 90:15 violating 90:18 violation 78:14 90:19 visited 38:24 visiting 26:1 visits 47:17 <hr/> W <hr/> waited 39:13 waive 47:15 waived 47:18, 21,23 48:3,19 walk 50:21 wall 35:4,7 want 6:14 13:22 17:14 18:3,4,21 35:25 36:2,12 42:6 50:11 69:24 82:25 95:18 97:10 wanted 15:18, 23 25:12 28:6 30:12,25 36:8 58:6 79:4 96:5, 9 97:17 wanting 28:13 water 51:20	way 12:25 20:16 22:22 24:10 28:21 39:11 63:25 78:24 95:22 ways 34:7 37:9 week 80:16 weeks 17:1 39:2,4 went 15:20 38:1,9,12,18 39:10 48:13 77:4 80:23 96:10 97:7 west 61:21 Weston 5:9 13:6 31:25 38:19 61:11 73:11 78:4 82:1 whatever 6:7 13:16 15:10 36:7 50:10 72:3 whenever 54:7 whereby 93:9 wherever 6:24 42:20 whether 6:22 13:18 19:1 24:13,23 29:23 31:16 32:4 37:24 52:24 53:7 60:10 65:10,25 86:14 while 16:18 17:3,7 whole 75:23 whom 65:6
---	--	--	---	--

<p>wife 29:20 50:4 91:14</p> <p>will 4:12,17,21 5:24 32:13 33:6 36:18 40:8 42:24 43:10,20,23 50:1 64:25 65:1 66:5 77:14,18 81:17 95:16 98:20</p> <p>willing 43:22 69:23 70:3,7</p> <p>willingness 83:3</p> <p>wind 66:5</p> <p>wire 19:12,14 22:13,16 23:18,19 24:2 27:5 51:25 52:12,19 63:18,21 64:2 67:20 76:13, 15,22 77:24 85:13,21</p> <p>wires 52:7 63:22 86:14</p> <p>wiring 45:20 87:14</p> <p>without 17:22 24:8 55:13,14, 21 66:24 93:24 95:8</p> <p>witness 13:14, 22 14:1,21,23 17:19 32:12,21 45:6,23 46:17 47:10,19,23 48:1,3,6,8,10, 16,18,21 54:12 55:6,18 56:3, 11,13,21,25</p>	<p>57:5,8,11 59:8 60:23 61:3 66:3 69:7,11 70:2,20,22,24 71:2,4,9,14,16, 19,21 73:4,7 81:19,25</p> <p>witnesses 22:24 32:12,23 41:23 84:6 94:1</p> <p>wonder 5:15</p> <p>wondering 81:21 83:8</p> <p>words 79:6</p> <p>work 12:3 30:18 52:11,14 53:5 67:5,11, 16 70:5,13 71:18 72:1 73:12,16 74:10,16 75:22 77:23,24 78:24 81:6 82:4 97:10 98:7</p> <p>worked 10:18 21:22,23 22:5, 7 35:19 41:25 55:13 66:24 81:8 94:24</p> <p>working 8:19 11:2 30:21 52:6 56:10,14 66:7 68:19,22 72:14 78:18 80:2 97:8</p> <p>works 94:14</p> <p>world 56:17</p> <p>worry 49:21</p> <p>wrap 97:14</p>	<p>wrapped 7:24</p> <p>writing 11:17, 22</p> <p>written 8:6 85:13 98:1</p> <hr/> <p>Y</p> <hr/> <p>year 7:22 43:10 80:16</p> <p>years 7:12,18 8:3,5 10:21,22 11:23 12:7,11 16:10 25:19 27:14,16,23,25 28:11 32:17 33:10 43:11 47:7 48:18 49:11 51:18 62:6 66:7 75:18,21 81:5 87:2 93:20 94:7 96:17 97:8,21</p> <p>yet 55:15 81:8</p> <p>yours 24:5 25:3,10,14,15 54:22</p> <p>yourself 67:15, 16 83:19</p> <p>yourselves 4:12</p> <hr/> <p>§</p> <hr/> <p>§5437 87:24</p>
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