

1 A. No, I don't think so.

2 Q. Did you have any participation in
3 transmitting the bid to anyone?

4 MR. ALTSHULER: Objection. Vague.

5 THE WITNESS: No.

6 MR. LYON: Q. Did you ever possess the
7 bid? Did you ever hold a copy of the bid in your
8 hands?

9 A. Yes.

10 Q. Did you ever take a copy of the bid
11 from Ms. Hamilton's house?

12 MR. GORDIN: I think by "the bid" do
13 you mean the copy that Ms. Hamilton says she took
14 out of the trash can? Is that what you're
15 referring to as "the bid"?

16 MR. LYON: Yes.

17 Q. Do you understand that's what I'm
18 referring to?

19 A. Yes.

20 Q. Did you ever assist Ms. Hamilton in
21 transmitting a declaration to the FCC?

22 MR. ALTSHULER: Objection. Vague.

23 MR. LYON: Q. Do you know what a
24 declaration is?

25 A. No. I'll say no.

1 Q. A declaration is a sworn statement
2 under penalty of perjury.

3 A. Okay.

4 Q. Let me try to wrap this up.

5 Did you ever assist Ms. Hamilton in
6 transmitting any documents to the FCC?

7 A. What I did was the evening that I was
8 over and we were talking, she said, "I need to make
9 copies of these."

10 So I took her, we got in my car, drove
11 to the office, made copies, and I drove her home.

12 Q. Did you retain a copy?

13 A. No. I didn't want anything to do with
14 it.

15 Q. Did you assist Ms. Hamilton in drafting
16 any documents?

17 A. No.

18 Q. If I can try to cut this short.

19 Other than helping her make copies of
20 documents that one night, did you have any other
21 participation in assisting her in turning
22 Mr. Easton in?

23 A. No.

24 MR. LYON: Can we take a five-minute
25 recess?

1 MR. ALTSHULER: Sure.

2 (Brief recess taken.)

3 MR. LYON: Q. Mr. Gross, other than
4 allegations that Cynthia Hamilton may have made
5 with respect to Mr. Easton, has anyone else made
6 allegations to you with respect to any misconduct
7 related to the bidding error on the part of
8 Mr. Easton?

9 A. No.

10 Q. And your note would include
11 Mr. Gavette?

12 A. Yes.

13 Q. Mr. Pezzaglia?

14 A. Yes.

15 Q. Ms. Collins?

16 A. Yes.

17 Q. Ms. Millstein?

18 A. Yes.

19 Q. Scott Merburger?

20 A. Yes.

21 Q. Graham White?

22 A. Yes. I'm saying yes to the fact that
23 they have not told me under oath.

24 Q. Understood.

25 You received a subpoena relating to

1 your attendance at deposition in this case?

2 A. Yes.

3 Q. In response to the -- can you tell us
4 when you received that subpoena?

5 A. I don't know. A week ago, a week and a
6 half ago.

7 Q. Following receipt of that subpoena, did
8 you look for any documents called for by that
9 subpoena?

10 A. Yes.

11 Q. And would you relate for us the efforts
12 you made to search for documents.

13 A. First of all the documents that it
14 indicates that it wants me to bring out don't
15 exist.

16 Q. So it's your representation you don't
17 have any documents responsive to the subpoena?

18 A. Absolutely not.

19 Q. Have you given any documents to
20 Ms. Hamilton relating to the allegations concerning
21 Mr. Easton?

22 A. No.

23 Q. Have you given documents concerning
24 allegations as to Mr. Easton to anyone?

25 A. No.

1 Q. And that would include ClearComm?

2 A. Yes.

3 Q. And that would include the FCC?

4 A. Yes.

5 Q. I may have asked this question, and if
6 I did I apologize for reasking it.

7 Prior to today have you spoken with
8 anyone from the FCC relating to this case?

9 A. No.

10 Q. Have you ever spoken to any of
11 ClearComm's attorneys? Do you know who ClearComm
12 is?

13 A. No, actually I don't.

14 Q. Mr. Gordin represents ClearComm.

15 A. Okay.

16 Q. ClearComm used to be called PCS 2000,
17 and is that a fair representation?

18 Mr. Gordin. (Counsel nods head.)

19 THE WITNESS: Yes, I've spoken to
20 Mr. Gordin.

21 MR. LYON: Q. When did you last speak
22 to Mr. Gordin?

23 A. The original day of my deposition.

24 Q. How long did you speak with him?

25 Approximately what amount of time did you speak

1 with him?

2 A. Two or three minutes.

3 Q. And you spoke with me also that day; is
4 that correct?

5 A. Yes, I did. I called you.

6 As a matter of fact, I got your phone
7 number from him.

8 Q. Okay. Prior to the day that you were
9 to originally appear for your deposition, had you
10 spoken to Mr. Gordin or any other person -- any
11 other attorney associated with ClearComm?

12 A. Yes, I had spoken with Mr. Gordin, I
13 believe, on one other occasion.

14 Q. What was that occasion?

15 A. He called and asked to meet with me.

16 Q. And did you meet with him?

17 A. No.

18 Q. How long was that telephone
19 conversation?

20 A. Once again, maybe five minutes.

21 Q. Can you relate to us what was said
22 during that telephone conversation?

23 A. I believe he asked me to meet with him.
24 We went over where he was, logistically. I was
25 going to meet him. Then I kind of thought better

1 of it and called him back and cancelled.

2 Q. Did he ask you any questions during
3 that telephone conversation?

4 A. No.

5 Q. Did he discuss the case with you other
6 than wanting to meet with you?

7 A. I don't think so, no.

8 Q. Prior to that telephone -- those two
9 telephone conversations, had you spoken with any
10 attorney associated with ClearComm?

11 A. No.

12 Q. When was the last time you spoke with
13 Mr. Lamoso?

14 A. I believe, last week.

15 Q. And would you relate your conversation
16 with Mr. Lamoso as best you can?

17 A. He was concerned as to whether or not I
18 had counsel for the deposition.

19 I let him know I did not, and we talked
20 back and forth. We didn't discuss the case.

21 Q. Did he make an offer to pay for counsel
22 for you?

23 A. Yes, he did.

24 Q. Did you accept that offer?

25 A. Yes, I did.

1 Q. And is it your understanding that
2 ClearComm is paying Mr. Awkshuse (phonetic) fees?

3 MR. ALTSHULER: Altshuler.

4 MR. LYON: Altshuler. I'm sorry.

5 THE WITNESS: Yes.

6 MR. LYON: Q. Prior to the
7 conversation with Mr. Lamoso that you related just
8 a few seconds ago, when was the last time that you
9 spoke with Mr. Lamoso?

10 A. I believe when he called me and asked
11 me about the backup, restoring the backup tape.

12 Q. And do you recall approximately when
13 that conversation occurred?

14 A. Last year, probably September, October.

15 Q. And prior to that do you recall when
16 you spoke with Mr. Lamoso?

17 A. When he was here.

18 Q. Have you ever spoken with Mr. Martinez?
19 I think it's Fred Martinez.

20 A. Fred Martinez? No.

21 Q. A Mr. Larry O'dell?

22 A. No.

23 Q. A Ms. Maryland Kurst (phonetic)?

24 A. No.

25 Q. A Mr. Brian Traymont?

1 A. No.

2 Q. Mr. Tyrone Brown?

3 A. I'll say no, just because I don't

4 remember him. No.

5 Q. Quinten Breen?

6 A. Of course I've talked to him before.

7 Q. When was the last time you talked to

8 Quinten Breen?

9 A. During the bidding process. I haven't

10 talked to him since.

11 Q. Dan Parks? Have you spoken with Dan

12 Parks?

13 A. Not since the bidding was over.

14 Q. Okay. When was the last time you spoke

15 with Cynthia Hamilton?

16 A. Two weeks ago.

17 Q. Was that by telephone?

18 A. Yes.

19 Q. Do you recall approximately how long

20 your conversation was with her?

21 A. It was brief.

22 Q. Would you recount the substance of your

23 conversation?

24 A. She told me she was moving, and I told

25 her I didn't want to know where. That was it.

1 Q. Did she tell you where?

2 A. No.

3 Q. Did she give you her phone number?

4 A. No.

5 Q. Do you know where she's living?

6 A. I know it's somewhere in the East Bay.

7 Q. Do you know where she's employed?

8 A. No. I just know it's a bank in

9 San Mateo.

10 Q. Do you know what she's doing for a bank
11 in the East Bay?

12 A. Help desk, computer support.

13 Q. Did you talk about the case in that
14 telephone conversation with her?

15 A. No.

16 Q. Did you talk about the fact that you
17 were being deposed?

18 A. At that point I had just received a
19 notice of deposition, so I told her, "Look, I've
20 got a notice of deposition. I've tried to steer
21 clear of this."

22 I said, "It's probably best that we
23 don't talk."

24 Q. Have you ever spoken with Jim Wheaton?

25 A. No.

1 Q. Have you ever spoken with anyone at the
2 First Amendment Project?

3 A. No -- yes, I have. I'm sorry. I have
4 spoken with Jim Wheaton. Mr. Lamoso was going
5 to -- that was the gentleman that was here this
6 morning?

7 Q. Uh-huh.

8 A. Ms. Lamoso was going to try to attempt
9 to retain them as counsel for me; found out that
10 that wouldn't work, but they recommended
11 Mr. Altshuler.

12 Q. Do you know if Mr. Lamoso has a
13 relationship with the First Amendment Project?

14 A. I don't know what you mean by a
15 relationship.

16 Q. Do you know if he knows Mr. Wheaton?

17 A. I don't know.

18 Q. Do you know if he knows Ms. Pretscur
19 (phonetic), Elizabeth Pretscur?

20 A. No.

21 Q. Have you ever spoken with Ms. Pretscur?

22 A. No.

23 Q. Did Ms. Lamoso relate a reason why the
24 First Amendment Project could not represent you?

25 A. No, but they did. They told me that

1 they represent Cynthia, and they said it just would
2 not be proper.

3 Q. Did they use the word "conflict of
4 interest"?

5 A. Yes.

6 Q. Have you -- other than your attorney,
7 have you spoken in the last week with anyone else
8 about this case other than people that we had
9 already talked about today?

10 A. No.

11 Q. How about in the last month?

12 A. No.

13 Q. Last year?

14 A. I've talked to my employer about it.

15 Q. I understand that.

16 A. That's about it.

17 MR. LYON: Can we go off the record for
18 a second?

19 MR. ALTSHULER: (Counsel nods head.)

20 (Brief discussion off the record.)

21 MR. LYON: Q. Would you describe
22 Ms. Hamilton as computer literate?

23 A. That last part again?

24 Q. Computer literate?

25 A. Yes.

1 Q. Do you know if she's ever worked as a
2 Web based programmer?

3 A. I don't know.

4 MR. LYON: No further questions.

5 MR. GORDIN: Okay.

6 THE WITNESS: Am I done?

7 MR. LYON: No.

8

9 EXAMINATION

10 BY MR. GORDIN:

11 Q. Mr. Gross, as you know, my name's
12 Richard Gordin, and I represent ClearComm, which
13 was formally known as PCS 2000.

14 A. Okay.

15 Q. I do have a few questions to ask you.

16 A. Okay.

17 Q. During your examination by Mr. Lyon,
18 you testified regarding overhearing a portion of a
19 phone call between Mr. -- overhearing a phone call
20 between Mr. Easton and what appeared to you to be
21 someone from the Federal Communications Commission
22 on January 23, 1996, during the bid error day?

23 A. That's correct.

24 Q. Can you describe for us the tone of the
25 beginning of the conversation by Mr. Easton?

1 MR. LYON: Objection. Vague.

2 THE WITNESS: I'm sorry. It appeared
3 angry just -- I don't know, just appeared angry.

4 MR. GORDIN: Q. What makes you
5 characterize it as angry? What about the demeanor
6 of the tone?

7 MR. LYON: Objection. Compound
8 question.

9 THE WITNESS: Mr. Easton in the past
10 had been very calm, you know, in my dealings with
11 him he had always been very calm, and he just
12 seemed not so calm anymore, so I characterized it
13 as being upset.

14 MR. GORDIN: Q. You mentioned going
15 with Ms. Hamilton that evening to have certain
16 documents copied that she had said she had obtained
17 from the trash can?

18 A. Right.

19 Q. Where did you drive Ms. Hamilton?

20 A. Actually, we went to my office and
21 copied there.

22 Q. When you say "my office," what building
23 are you referring to?

24 A. 678-B Ralston Avenue.

25 Q. Was that the San Mateo Group's offices?

1 A. No. That was Action Systems
2 Incorporated's office.

3 Q. Did you ever speak to anyone in your
4 office regarding the bidding error about which
5 you've been testifying?

6 A. Oh, yes.

7 Q. For the record by your office, I'm
8 sorry, In Action?

9 A. Action Systems, just Action.

10 Q. Action. Okay.

11 A. Actually, yes, I spoke to Don Gibson,
12 the owner. I told him there had been a bigger or
13 that day, and I didn't know how much longer bidding
14 was going on.

15 Q. Did you have any conversations with
16 him?

17 A. I told him about the deposition.

18 Q. Let me rephrase the question.

19 Did you have any conversations with him
20 that related to Ms. Hamilton's accusation against
21 Mr. Easton relating to the bidding error?

22 A. I think I did tell him that Cynthia
23 back then Cynthia said she thought Terry had made a
24 mistake.

25 Q. In what context did you say that to

1 him?

2 A. We were just talking.

3 MR. LYON: Motion to strike on the
4 basis of hearsay.

5 (Conference between Mr. Lyon and the
6 witness.)

7 MR. GORDIN: Q. Your primary -- tell
8 us what you understood your primary role would be
9 for the San Mateo Group in connection with the FCC
10 bidding auction?

11 A. To ensure that the computer systems
12 necessary for bidding were operational.

13 Q. Now, on the day of this error, did
14 anyone come to you and ask you to try to find out
15 what happened?

16 A. No.

17 Q. Did anyone ask you what you thought
18 happened?

19 A. No.

20 Q. Did Mr. Easton talk to you at any time
21 before you overheard his call with the FCC
22 regarding the cause or possible causes of the
23 bidding error?

24 A. No, I don't think so.

25 Q. Did Mr. Easton ask you any questions

1 about the bidding error for any possible computer
2 problems afterwards?

3 A. No.

4 Q. I believe you testified that the
5 network used NetWare 3.12 software?

6 A. Yes.

7 Q. To your knowledge, was that the
8 out-of-the-package version, or had it been
9 modified?

10 MR. LYON: Objection as to form.

11 MR. GORDIN: Let me rephrase the
12 question.

13 MR. LYON: Also leading.

14 MR. GORDIN: Q. Do you have any
15 knowledge as to how closely the software used in
16 that network followed the software out of the
17 package?

18 A. It was an out-of-box package. I mean,
19 I didn't notice any modifications to it.

20 Q. Are you aware of any problems that
21 during the time period that you were with the
22 San Mateo Group -- let me rephrase that.

23 During the period that you were with
24 the San Mateo Group, are you aware of any problems
25 that occurred with regard to the actual submission

1 of the bid to the FCC?

2 MR. LYON: Objection. Vague.

3 THE WITNESS: I'm not aware of any.

4 MR. GORDIN: Q. Now, you were asked
5 about one group of people that were in to
6 investigate the bidding error that was referred to
7 as the Wilson law firm, I believe?

8 A. Right.

9 Q. Do you remember those questions?

10 A. Yes.

11 Q. Was that the only group, to your
12 knowledge, that was in performing any type of audit
13 or investigation as a result of the bidding error
14 within a month thereafter?

15 A. No. There was another group in.

16 Q. And what group was that?

17 A. I don't know. I never spoke to them.

18 Q. Who was directing that group, if
19 anyone?

20 A. I believe Mr. Easton was.

21 Q. Why do you say that?

22 A. He was still there. He was in charge
23 of the office.

24 Q. And you said you didn't speak to anyone
25 from that group?

1 A. No.

2 Q. Did Mr. Easton ask you to speak to
3 anyone from that group?

4 A. No.

5 MR. GORDIN: Off the record for a
6 minute.

7 MR. LYON: Why don't we take a break.

8 (Brief recess taken.)

9 MR. GORDIN: Q. You indicated you have
10 a CMA notification or CNA certification from
11 Novell?

12 A. Yes.

13 Q. And what does CNA mean?

14 A. Certified network administrator, which
15 means I went to school to learn the ins and outs of
16 the network operating systems.

17 Q. How long were you at this school?

18 A. This one was just only a week.

19 Q. And where was it?

20 A. I believe it was in Fremont. I'd have
21 to look it up to remember. That was a while ago.

22 MR. LYON: Could you state a state,
23 please?

24 THE WITNESS: Fremont, California.

25 MR. GORDIN: Q. Are print spoolers the

1 common term used for Lotus -- or, excuse me, for
2 Novell NetWare, or is that a term used in
3 connection with UNIX?

4 A. It's more of a UNIX System.

5 Q. Is Quest the term that's used for --

6 A. Exactly, for Netware.

7 Q. Did you have different volumes on the
8 network for something called Syst volume?

9 A. Yes, there was Syst volume.

10 Q. And was there a separate data volume?

11 A. Yes, there was.

12 Q. Now, the print servers, were they -- do
13 you know which volume they were hooked up to?

14 A. Yes. Print servers are always going to
15 Syst file.

16 Q. And what about the fax machine?

17 A. The fax machine -- the fax server.

18 Q. Server. I'm sorry.

19 A. Printed to its own drive. Printed to
20 itself.

21 Q. So when you would speak about the
22 backup and the effect you were speaking with regard
23 to the printing jobs, were you speaking about the
24 effect on the Syst volume?

25 MR. LYON: Objection. Leading.

1 THE WITNESS: The backup was for the
2 entire server, regardless of volume.

3 MR. GORDIN: Q. Can you explain it?

4 A. It would backup everything, that was
5 the point of the backup system; regardless of how
6 many volumes you have, it backed up, everything.

7 Q. When the -- and that's the backup tape
8 you're speaking of?

9 A. Yes.

10 Q. And that tape was running how
11 frequently?

12 A. It was set to run automatically every
13 night.

14 Q. Did you have a weekly backup as well?

15 A. I don't remember. I think so.

16 MR. GORDIN: Off the record.

17 The phone's ringing.

18 (Brief recess taken.)

19 MR. GORDIN: Are we back on the record?

20 Q. You testified earlier about the
21 printing queues milling up and causing the network
22 system to somehow be effected by that?

23 A. Not that the print queues filled up.

24 Q. Okay.

25 A. But that the hard disk filled up.

1 Q. And by "hard disk," do you mean the
2 hard disk on the Syst volume or the data volume, or
3 another volume?

4 A. I believe it's both, but I know in
5 particular the assist volume because that's where
6 your printing gets spooled to, or queued to.

7 Q. Do you know when the backup was
8 performed with regard to the January 23rd bid?

9 A. It ran that night, and I checked it the
10 next morning, and it ran fine.

11 Q. Were you ever requested to look through
12 the data to see if you could find the bid files
13 associated with the January 23rd bid?

14 A. Yes.

15 Q. And do you remember when that occurred?

16 A. It was during the conversation I was
17 having with whatever law firm that was that came
18 out.

19 Q. When you say "It was during that
20 conversation," it was whoever was speaking to you?

21 A. Whoever was speaking to me asked me,
22 Show me the bid files for that day.

23 Q. And did you do that?

24 A. I pulled them up a directory listing of
25 all the bid files with the subsequent dates on

1 them.

2 Q. And were you able to find the bid file
3 for that day being January 23rd, 1996?

4 A. No.

5 Q. Did you find bid files for the day
6 immediately -- for the round immediately prior to
7 the 11th round?

8 A. Yes.

9 Q. Did you find the bid files for the
10 draft after that round?

11 A. Yes, and I found the bid file for Round
12 11 also.

13 Q. What do you mean by that?

14 A. It was there. It was just -- it was a
15 different date. It was not January 23st.

16 Q. What was it?

17 A. It was January 24th.

18 Q. Did you look in it?

19 A. No. I would have no reason to look in
20 it.

21 Q. I would like this to be marked as
22 Exhibit 3.

23 Do you want to consecutively mark it,
24 or how do you want to do it?

25 MR. LYON: Sure.

1 (Exhibit 3 was marked for
2 identification by the Certified Shorthand Reporter,
3 a copy of which is attached hereto.)

4 MR. GORDIN: Q. Can I ask you to look
5 at this Exhibit 3 and ask if you can identify it.

6 A. It's a directory print of that
7 directory export to FCC.

8 Q. And is your handwriting on Exhibit 3?

9 A. Yes -- no, I wrote over here, "This
10 reflects a director of files backup 01/27/96
11 beginning at 4:30 p.m."

12 Q. And direct your attention to the file
13 -- to the DBF files.

14 Is one of those files the file that you
15 were referring to that was for the 11th Round and
16 had a date for the next day?

17 A. Yes, the N0124011.DBF.

18 Q. And were you asked to look also for any
19 files that were named BTA underscore INT3.XLS?

20 A. I don't remember.

21 Q. Do you remember your being told that
22 someone had tried to save the file for that
23 particular day under another name?

24 A. I don't know.

25 Q. Were the attorneys with you when you
123

1 were looking at files?

2 A. Yes.

3 Q. Did the attorneys ask you to look for
4 any particular names, do you recall?

5 A. I don't remember.

6 Q. Do you remember how many attorneys were
7 with you when you were at the screen, looking at
8 the screen?

9 MR. LYON: Objection. Assumes facts
10 not in evidence.

11 THE WITNESS: They were in all in the
12 room with me when I was pulling up the directory
13 paths.

14 MR. GORDIN: Q. Do you know what the
15 full path name is to this directly that's reflected
16 in Exhibit 3?

17 A. No. Nothing. I'm sorry.

18 Q. Is there anything on this document --
19 strike that.

20 Do you recall when this document was
21 printed?

22 A. No.

23 Q. I notice that your handwriting on this
24 shows that it's a backup maybe. You could read
25 that word after the word backup" in your