

1 Q And how, if at all, does that change in
2 the space allocation factor as its' decreasing impact
3 the ultimate telecom rate?

4 A Because the formula takes the investment
5 times a carrying charge times the space factor.
6 Obviously, the lower the space factor, the lower the
7 ultimate rate. You're multiplying A times B times C.
8 So if C goes down, then -- you'll excuse me, it's a
9 multiplication property of algebra -- you know, the
10 ultimate number will go down.

11 Q Just to tie it up, is there any simple
12 one-sentence conclusion you can say that what happens
13 -- does the rate go up or down as the number of
14 attachers go up or down?

15 A The rate goes down as the number of
16 entities attaching goes up.

17 Q Thank you.

18 JUDGE SIPPEL: I'm trying to keep this
19 clear myself. Is it the rate -- let's say you have
20 five attachers and you have the --

21 THE WITNESS: Yes. Which is the FCC
22 presumptive number of attachers for an urban area is

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1 five.

2 JUDGE SIPPEL: Well, today's my lucky day.

3 THE WITNESS: Bingo!

4 JUDGE SIPPEL: That being the case,
5 however, as the fifth one attaches, then, does the
6 rate go down for all of the other four as well as the
7 fifth? As I heard you say it, that the more attachers
8 you had, the lower the rate became.

9 THE WITNESS: Yes. Well, one of the
10 advantages of the FCC formula is that its based on
11 presumptive assumptions. So that unless the
12 assumption of the FCC is challenged based on specific
13 evidence, the FCC formula is calculated in an urban
14 area based on five attachers.

15 In doing a calculation, which I've done,
16 if it's in an urban area, I'll use five in the
17 formula. It will apply uniformly. That does not
18 prohibit a utility from coming in and saying, "We have
19 evidence showing that the average number of attachers
20 in this area is not five; it's only four." So then
21 that utility would be able to challenge it. But going
22 into a calculation, I'll use five in an urban area and

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1 three in a rural area.

2 BY MR. SEIVER:

3 Q Ms. Kravtin, Mr. Langley had asked you
4 some questions about the cost of undergrounding. And
5 I'm not sure if he asked you this, but did you see any
6 analysis by Gulf Power that the cost of undergrounding
7 was a relevant item to be considered in determining
8 whether it met the Alabama Power test?

9 A No. I don't believe that Gulf presented
10 any evidence on that in this record that I've seen.

11 Q In your opinion that you rendered in this
12 case, did you believe that any evidence of the cost of
13 undergrounding was relevant in making a determination
14 whether Gulf Power had met the Alabama Power test?

15 MR. LANGLEY: Your Honor, I guess I do need
16 to object to questions about what evidence is
17 relevant.

18 JUDGE SIPPEL: From an economic standpoint?

19 MR. SEIVER: Yes. Just from her opinion
20 standpoint, her economist to render an opinion, would
21 it be relevant to her opinion if there were evidence
22 that she had seen in a cost of undergrounding.

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1 JUDGE SIPPEL: What is the objection?
2 You're saying that it's not relevant?

3 MR. LANGLEY: If it's limited to her
4 economic opinion, then I would withdraw the objection.

5 JUDGE SIPPEL: Is the question
6 understandable, ma'am?

7 THE WITNESS: I'm going to ask the question
8 to be repeated just so I'm responsive to that
9 question.

10 BY MR. SEIVER:

11 Q Well, maybe I can ask you better this way.
12 Would evidence concerning the cost of undergrounding
13 be a relevant item for you to consider in determining
14 whether Gulf Power had met the Alabama Power test as
15 you have set it out in our testimony?

16 MR. LANGLEY: Your Honor, objection.
17 Because that does call for a legal conclusion as to
18 the relevance of something under the controlling
19 precedent.

20 JUDGE SIPPEL: I'm still having difficulty
21 seeing that. The court standard is that you use all
22 relevant evidence. That's a legal determination down

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1 the road, but in terms of this witness testifying as
2 to what she would consider as an economist, I don't
3 find that to be a legal conclusion. So I'm going to
4 overrule the -- I'm carefully overruling the
5 objection. I want to listen to the answer.

6 Do we have to do it again?

7 THE WITNESS: No.

8 JUDGE SIPPEL: Every time three people ask
9 the same question, it's very difficult.

10 THE WITNESS: From the standpoint of the
11 Alabama test, which is demonstrating full capacity,
12 and then, if there is full capacity, demonstrating
13 lost opportunity, the cost of undergrounding would not
14 specifically relate to proof of those conditions.
15 Where the cost of undergrounding would be a factor --
16 and I discussed that in my testimony -- has to do with
17 the validity of the valuation or -- actually I don't
18 believe Gulf Power has offered a valuation, but it's
19 put forward a replacement cost that it's seeking to
20 charge.

21 And then, the issue as to whether that
22 replacement cost is a fair market value rate or not,

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1 that's when, from an economic standpoint, you'd want
2 to start looking, is there a free market for poles.
3 And then, you'd have to look at whatever alternatives
4 are out there.

5 It was in my opinion -- and I testified to
6 this yesterday -- that I had a general understanding
7 of the various alternatives. And that based on the
8 economic evidence I had reviewed, it did not appear
9 that any of those other alternatives were having an
10 effect on Gulf Power's ability to act in a way that
11 showed they had market power over pole space.

12 BY MR. SEIVER:

13 Q Ms. Kravtin, you had been asked by Mr.
14 Langley some questions about the lost opportunity part
15 of the test under Alabama Power and whether it's rare
16 or limited. And you gave some factors, I believe, and
17 you said you talked about it in your testimony. Is
18 the cost of undergrounding, in your opinion, relevant
19 to your analysis of the lost opportunity of full
20 capacity of the law?

21 A No. Because the cost of undergrounding is
22 a cost to the cable operator. It's not a cost or

1 foregone opportunity for the power company, which I
2 believe to be the Alabama Power test is asking what
3 has the utility lost, what money is the utility out
4 because of the cable attachment. They're trying to
5 say whether the power company is entitled to seek
6 additional compensation in excess of marginal costs.

7 It's the utility company that has to
8 demonstrate a loss and otherwise, it's receiving a
9 regulated rate. It is receiving compensation for the
10 use of its space. But can it demonstrate a lost
11 opportunity, foregone money or revenues or opportunity
12 or unreimbursed cost that it can then serve to be the
13 basis of a claim for additional compensation?

14 Q Ms. Kravtin, if you recall, Mr. Langley
15 had asked you about some payments that either one or
16 more of the complainants in this case paid for pole
17 attachment rental to a co-operative utility called
18 CHELCO. Do you remember those questions?

19 A I remember the questions. I didn't recall
20 that it was CHELCO, but I know we had a discussion
21 about co-ops.

22 Q And as I asked you before, did you

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1 consider any payments by cable operators to a co-
2 operative utility like CHELCO in reaching your opinion
3 as to whether Gulf Power met the Alabama Power test?

4 A And what I answered was that I certainly
5 took that into consideration in the sense that I was
6 aware of those situations, but I did not believe that
7 was pertinent to the issues of full capacity and lost
8 opportunity to Gulf pursuant to the Alabama Power
9 decision.

10 Q Why not?

11 A Because as I explained, those co-ops are
12 not subject to 224. So under prevailing standards,
13 they're not required to satisfy those cost causation
14 principles in terms of pricing of their pole space.
15 They're at liberty to charge whatever they can try to
16 get. And that's a decision. There are other
17 situations with regard to regulation of
18 telecommunications like rural exemptions that exist
19 that allow smaller companies not to be subject to what
20 I believe to be valid economic and public policy
21 rationale for preventing exploitation of essential
22 facilities.

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1 But there are exemptions. We have them
2 throughout our laws. And so I did not really consider
3 that to be exemplary of a fair market, because those
4 conditions don't exist for those companies either.
5 They're in a position of control over their pole
6 space.

7 Q Did you consider, Ms. Kravtin, any
8 payments that were made by cable operators to any of
9 the other pole owners that utilities covered under 224
10 such as the incumbent local exchange companies for the
11 ILECs, as we've called them?

12 A No, I did not. And I did not find that to
13 be pertinent to the issues of determining full
14 capacity on Gulf's poles or lost opportunity to Gulf.

15 Q Do you have a general understanding as to
16 whether any of the ILECs in the Gulf Power service
17 area, such as -- I don't know if it's BellSouth
18 anymore or it's AT&T.

19 MR. LANGLEY: It's still BellSouth.

20 MR. SEIVER: It's still BellSouth?

21 BY MR. SEIVER:

22 Q If BellSouth's rates for the poles that it

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1 owns that are within the Gulf Power service area --
2 are you aware of any of those rates?

3 A I am not. But I did not specifically look
4 at the exact rates. Certainly the ILECs are subject
5 to 224 and to the cable rate formula.

6 Q Do you have any opinion based on your
7 experience as to whether ILEC rates are higher or
8 lower than the rates that a electric utility generally
9 in the same area charges or is able to charge under
10 the formula?

11 A Well, the formula that's applied to ILECs,
12 the FCC cable rate formula, is very similar to that
13 charge by the ILECs. There is a difference in the way
14 the investment is calculated. But generally they're
15 certainly in the same range, because the formulas are
16 meant to be consistent with each other.

17 They're not precisely consistent in the
18 accounting between the FERC accounts and the ILEC
19 accounts are different. But I've not seen the exact
20 rates. But to the extent they're regulated rates, I
21 would expect them to be in the same range.

22 MR. SEIVER: That's all I have, Your Honor.

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1 JUDGE SIPPEL: Anything?

2 MR. LANGLEY: Your Honor, we would -- this
3 is a housekeeping matter -- move into evidence Gulf
4 Power Exhibit 73, 74, and 75.

5 JUDGE SIPPEL: Well, can we excuse the
6 witness or you have more questions?

7 MR. LANGLEY: I have no further questions
8 unless we need to have further questioning for the
9 purposes of the economic --

10 JUDGE SIPPEL: All right. Yes. Just stay
11 with us a little bit until he hands me these
12 documents.

13 MR. SEIVER: May I just look to see which
14 ones those are?

15 JUDGE SIPPEL: Sure.

16 MR. SEIVER: I'm sorry. Which three?

17 MR. LANGLEY: 73, 74, 75. I'm not moving
18 to admit 71 or 72.

19 MR. SEIVER: Yes. 73, we have no
20 objection, Your Honor.

21 JUDGE SIPPEL: 73 is the memo from Ms.
22 Kravtin to Mr. Seiver dated March 2, 2005. No

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1 objection?

2 MR. SEIVER: No objection, Your Honor.

3 JUDGE SIPPEL: That's been marked as Gulf
4 Power 73. It's received today as Gulf Power Exhibit
5 73.

6 (Whereupon, the above-mentioned
7 document was received as Gulf
8 Power Exhibit 73.)

9 JUDGE SIPPEL: And you have another one.

10 MR. LANGLEY: Yes. Gulf Power Exhibit 74.

11 JUDGE SIPPEL: Mr. Seiver, is there any
12 objection?

13 MR. SEIVER: No objection, Your Honor.

14 JUDGE SIPPEL: Then the document marked as
15 Exhibit 74 for identification is received today as
16 Gulf Power Exhibit 74, two page memo from Brian Joseph
17 to Mr. Seiver dated March 9, 2005.

18 (Whereupon, the above-mentioned
19 document was received as Gulf
20 Power Exhibit 74.)

21 JUDGE SIPPEL: Anything else?

22 MR. LANGLEY: Yes, Your Honor. Gulf Power

1 Exhibit 75.

2 MR. SEIVER: No objections, Your Honor.

3 JUDGE SIPPEL: Okay. And 75 is one-page
4 document from Mr. Seiver to Mickey Harrelson dated
5 March 9, 2005. And that's been marked for
6 identification as Gulf Power Exhibit 75, and today is
7 received as Gulf Power 75.

8 (Whereupon, the above-mentioned
9 document was received as Gulf
10 Power Exhibit 74.)

11 JUDGE SIPPEL: Anything else?

12 MR. LANGLEY: No, Your Honor.

13 JUDGE SIPPEL: And what are we doing with
14 71?

15 MR. LANGLEY: 71, I had marked for
16 identification purposes since I was handing it to the
17 witness. But I do not believe that it needs to be
18 moved into evidence.

19 JUDGE SIPPEL: All right. Then that will
20 stay as a marked exhibit. It will be in the record in
21 that fashion.

22 Is there anything else as far as --

1 MR. LANGLEY: Just for the sake of
2 completeness, I had marked Exhibit 72, which was a law
3 review article from the "Cornell Law Review", but I'm
4 not asking that that be moved into evidence at this
5 time.

6 JUDGE SIPPEL: All right. Do you want to
7 move it into evidence?

8 MR. SEIVER: No, Your Honor.

9 JUDGE SIPPEL: All right. Then it's not
10 going into evidence. This is the "Cornell Law Review"
11 dated May 2003. It's been identified as Gulf Power
12 Exhibit 72. And it only remains identified. It's not
13 in evidence.

14 MR. LANGLEY: To be clear, I'd love to have
15 it in evidence. I just don't think I can lay the
16 proper foundation to get it in.

17 MR. SEIVER: I would like to make Mr.
18 Langley happy, but not to that extent, Your Honor.

19 JUDGE SIPPEL: Well, that's one less thing
20 I have to do, so I'm very satisfied. Then, can we
21 excuse the witness?

22 MR. LANGLEY: Yes.

1 JUDGE SIPPEL: You have nothing further.

2 MR. LANGLEY: Thank you, Ms. Kravtin.

3 JUDGE SIPPEL: Ms. Kravtin, you're excused.

4 THE WITNESS: Thank you very much.

5 JUDGE SIPPEL: Go off the record.

6 (Whereupon, the foregoing matter went off
7 the record at 10:14 a.m. and went back on the record
8 at 10:18 a.m.)

9 JUDGE SIPPEL: As a preliminary matter
10 yesterday, Mr. Campbell presented and I ordered
11 identified for the record as Gulf Power Number 70 with
12 an A tabbed attachment testimony designations from
13 Michael Harrelson's deposition.

14 (Whereupon, the above-mentioned
15 document was marked as Gulf
16 Power Exhibit 70-A for
17 identification.)

18 Today I've been handed, which I'm going to
19 now identify marked for identification as Gulf Power
20 Exhibit 70-A --

21 MR. CAMPBELL: I believe that's 70-B, Your
22 Honor.

1 JUDGE SIPPEL: I'm corrected on that. 70-
2 B, that will be 70 tab B. The excerpts of Mr.
3 Harrelson's deposition -- same deposition -- that have
4 been designated by Mr. Seiver on behalf of the
5 complainants.

6 (Whereupon, the above-mentioned
7 document was marked as Gulf
8 Power Exhibit 70-B for
9 identification.)

10 So at this time, there being no objection,
11 I am receiving into evidence as a composite exhibit,
12 Gulf Power Exhibit 70 with Tab A and Tab B attached.
13 So ordered.

14 (Whereupon, the above-mentioned
15 document was received as Gulf
16 Power Exhibit 70-A and 70-B.)

17 Okay. Now, do we have a witness?

18 MR. SEIVER: No, Your Honor. We have one
19 more housekeeping item. I'm sorry.

20 JUDGE SIPPEL: All right. Let's go off the
21 record and find out what it is.

22 (Whereupon, the foregoing matter went off

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1 the record at 10:20 and went back on the record at
2 10:23.)

3 JUDGE SIPPEL: Let the record reflect that
4 in an off the record discussion, Mr. Seiver has
5 distributed corrections of Mr. Harrelson to some of
6 his testimony, which has been looked at by Mr.
7 Campbell and co-counsel. And there is no objection to
8 the corrections. That will go along with the Tab B
9 part of the Exhibit 70 exhibit.

10 Next point. Mr. Cook and will distribute
11 to the court reporter, myself, and to other counsel,
12 tabbed excerpts of depositions that were received into
13 evidence yesterday. These are the designations of the
14 deposition testimony that have been now made by
15 complainant, or I guess a cross-designation. Would
16 you please tell us the exhibit number and what this
17 new tab will be?

18 MR. COOK: Yes. There are cross-
19 designations for a deposition of Bruce Burgess marked
20 as Gulf Exhibit 66-C.

21 JUDGE SIPPEL: Yours is 66-C; is that
22 correct?

1 MR. COOK: It will be entitled Gulf Exhibit
2 66-C. Yes.

3 (Whereupon, the above-mentioned
4 document was marked as Gulf
5 Power Exhibit 66-C for
6 identification.)

7 JUDGE SIPPEL: Thank you. Okay. Next one?

8 MR. COOK: Next one, deposition of Mark
9 O'Ceallaigh, cross-designations marked as Gulf Exhibit
10 67-E.

11 (Whereupon, the above-mentioned
12 document was marked as Gulf
13 Power Exhibit 67-B for
14 identification.)

15 The next one, deposition of Shayne Routh,
16 cross-designation of deposition excerpts marked as
17 Gulf Exhibit 68-D.

18 (Whereupon, the above-mentioned
19 document was marked as Gulf
20 Power Exhibit 68-D for
21 identification.)

22 And last one, deposition of Jeff Smith,

1 cross-designation of deposition excerpts marked as
2 Gulf Exhibit 69-E.

3 (Whereupon, the above-mentioned
4 document was marked as Gulf
5 Power Exhibit 69-E for
6 identification.)

7 JUDGE SIPPEL: All right. Those exhibits
8 that you've numbered, that's the way they are in
9 evidence at this time.

10 MR. COOK: Well before they go into
11 evidence for the representation of counsel that
12 they're identical to the designations that were
13 previously tendered we absolutely no objection.

14 JUDGE SIPPEL: There you go. You've got a
15 warranty on that one.

16 All right. Let's go off the record while
17 we distribute these copies. Thank you.

18 (Whereupon, the foregoing matter went off
19 the record at 10:26 a.m. and went back on the record
20 at 10:26 a.m.)

21 JUDGE SIPPEL: There has been distribution
22 of the materials that we've indicated on the record.

1 And now, for purposes of preparing for Mr. Harrelson's
2 cross-examination, we're going to have a recess until
3 -- it's 10:30 now. We'll come back at quarter of
4 11:00. Thank you. We're in recess.

5 (Whereupon, the foregoing matter went off
6 the record at 10:27 a.m. and went back on the record
7 at 10:47 a.m.)

8 JUDGE SIPPEL: Let's go on the record. You
9 have here Mr. Harrelson to present at this time?

10 MR. SEIVER: I do, Your Honor.

11 JUDGE SIPPEL: Okay. Will Mr. Harrelson,
12 step forward, please?

13 Whereupon,

14 MICHAEL HARRELSON,
15 was called for examination by Counsel for the
16 Respondent, having been first duly sworn, assumed the
17 witness stand, was examined and testified as follows:

18 DIRECT EXAMINATION

19 MR. SEIVER: Good morning, Mr. Harrelson.
20 How are you doing today?

21 THE WITNESS: Good morning.

22 MR. SEIVER: Would you please state your

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1 full name for the record?

2 THE WITNESS: Michael Truet Harrelson.

3 BY MR. SEIVER:

4 Q And Mr. Harrelson, are you the same
5 Michael T. Harrelson or Michael T. Harrelson, P.E.
6 that caused to be submitted two volumes of pre-file
7 direct testimony on March 31, 2006 in this proceeding?

8 A Yes.

9 Q And Mr. Harrelson, if I were to ask you
10 the questions in this testimony that are listed as
11 questions, would your answers be the same today?

12 A Yes. I have two matters I'd like to
13 mention.

14 Q Please. For clarification or correction?

15 A I think for clarification.

16 Q Would you please give us those by page and
17 line numbers, sir?

18 A In my testimony on Page 31 at Line 6, I
19 have a sentence that says -- go to Line 3. "Of the 40
20 poles selected for the Osmose survey" -- I think the
21 initial plane was that all 40 poles were at full
22 capacity, but I don't see those words right there on

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1 that page now.

2 And there have been some changes. There
3 have been three of those poles that have been now
4 restated as being not at full capacity.

5 Q Very well. Any other clarifications or
6 corrections?

7 JUDGE SIPPEL: This only has to do with
8 density populated urban areas. It doesn't cover the
9 subject that he was just talking about.

10 MR. SEIVER: I'm sorry. Mr. Harrelson --

11 THE WITNESS: I'm sorry. I found it. It's
12 on Line 7 beginning with the last sentence of Page 31.
13 The sentence reads, "Every one of the examples was
14 claimed by Gulf to be at full capacity." I apologize.

15 So since then, Gulf has decided that three
16 of those poles were not at full capacity.

17 MR. CAMPBELL: First, where are you, Mr.
18 Harrelson, in your testimony? I got lost.

19 THE WITNESS: On Page 31.

20 MR. CAMPBELL: Page 31. So you're on the
21 same page.

22 THE WITNESS: On Page 31, Line 7, the

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1 sentence that begins with "every one of the examples
2 was claimed by Gulf to be at full capacity."

3 MR. CAMPBELL: And I'm going to object to
4 the characterization, Your Honor, that three of those
5 have been withdrawn. My recollection is that Mr. Ben
6 Bowen withdrew two of the poles. One was Pole Number
7 18 of Exhibit 42. The other one was Pole Number 35 on
8 Exhibit 42. There were only two.

9 Now, if they've got something that they
10 want to argue about concerning cross-examination of a
11 witness, a fact witness is not entitled to do that.

12 MR. SEIVER: Well, Your Honor, I think his
13 testimony is what his testimony is. Mr. Campbell can
14 challenge it --

15 JUDGE SIPPEL: Well, if Mr. Harrelson wants
16 to change -- he's given his explanation with respect
17 to Line 7 and 8 on Page 31. And we've heard Mr.
18 Campbell's position with respect to it. I think we
19 just can leave the record as it is.

20 I'm not going to make a correct, but
21 certainly there has been editorial comments on it,
22 that's for sure. Do you have another one? Any other

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1 changes, Mr. Harrelson?

2 THE WITNESS: Yes, sir. Line 17.

3 JUDGE SIPPEL: Same page?

4 THE WITNESS: Page 31. I'm sorry. Let's
5 go all the way to Line 15. "The Knology documentation
6 provided by Gulf contained no color photographs, no
7 measurements, only poor quality black and white photos
8 of five of the poles."

9 That was the case when I wrote this
10 testimony. But last week, Gulf did provide a number
11 of color photographs that I'm not sure if they're in
12 the record or not, but they were provided to me.

13 MR. SEIVER: And so it's clear, Your Honor,
14 Mr. Harrelson, do you have those photographs with you?

15 THE WITNESS: I do.

16 JUDGE SIPPEL: Well, have they been
17 received into evidence?

18 MR. SEIVER: I don't believe Gulf Power had
19 moved them into evidence. They came at kind of the
20 last minute.

21 MR. CAMPBELL: Your Honor, this was in
22 response to a discussion we had on the record during

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1 the document admission session. We agreed to provide
2 color photographs because they were complaining about
3 the quality of the photographs.

4 We sent someone out in the field to take
5 new pictures, new evidence that was not in discovery
6 to exchange by the parties. So, yes, we know what the
7 documents are. We have no objection to them being
8 moved into evidence, but that is the reason they were
9 produced when they were produced.

10 JUDGE SIPPEL: I recall that conversation.
11 So what do you want to do with it?

12 MR. SEIVER: All I wanted to have is them
13 available if Mr. Campbell was going to question Mr.
14 Harrelson about the Knology poles, that that would
15 assist him. And some additional notes that Mr.
16 Harrelson made after they came in, I was going to ask
17 if he could have those available in case he gets
18 asked. I'll give copies to everyone on what the
19 Knology pole, these photographs are, since they were
20 new, and I didn't know how this examination was going
21 to proceed.

22 MR. CAMPBELL: It is my recommendation,