

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
THE CIVIC ASSOCIATION OF THE DEAF OF :  
NEW YORK CITY, INC. (also known as :  
the New York City Civic Association :  
of the Deaf) and STEVEN G. YOUNGER II, :  
on behalf of themselves and all :  
others similarly situated, :

Plaintiffs, :

V. :

RUDOLPH GIULIANI, as Mayor of the :  
City of New York, HOWARD SAFIR, as :

Commissioner of the Fire Department :  
of the City of New York, CARLOS :  
CUEVAS, as City Clerk and Clerk of :  
The New York City Council, PETER :  
VALLONE, as Speaker and Majority :  
Leader of the New York City Council, :  
THOMAS OGNIBENE, as minority Leader :  
of the New York City Council, and :  
the CITY OF NEW YORK, :

Defendants. :  
-----X

95 Civ. 8591 (RWS)

**CORRECTED  
DECLARATION OF  
ROBERT B. STULBERG  
IN SUPPORT OF  
PLAINTIFFS'  
OPPOSITION TO  
DEFENDANTS' MOTION  
TO VACATE OR  
MODIFY INJUNCTION**

**EXHIBIT 20**

Stanley Shor

February 11, 2011

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SOUTHERN DISTRICT OF NEW YORK

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THE CIVIC ASSOCIATION OF THE DEAF  
OF NEW YORK CITY, INC. (also known  
as the New York City Civic Association  
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on behalf of themselves and all others  
similarly situated,

Plaintiffs,

-against-

95CIV8591  
(RWS)

RUDOLPH GIULIANI, as Mayor of the  
City of New York, HOWARD SAFIR, as  
Commissioner of the Fire Department  
of the City of New York, CARLOS CUEVAS,  
as City Clerk and Clerk of The New York  
City Council, PETER VALLONE, as Speaker  
and Majority Leader of the New York City  
Council, THOMAS OGNIBENE, as minority  
Leader of the New York City Council, and  
the CITY OF NEW YORK,

Defendants.

-----X  
February 11, 2011  
10:15 a.m.

Deposition of STANLEY SHOR, taken by  
Plaintiffs, at the offices of Broach &  
Stulberg, LLP, One Penn Plaza, Suite 2016, New  
York, New York 10119, before Anneliese R.  
Tursi, a Registered Professional Reporter and  
Notary Public within and for the State of New  
York.



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S. SHOR

Q. How does that work?

A. There is a director of enforcement and deputy director and three inspectors.

Q. You anticipated my next question. Before we pursue that, let me just ask you, for the record, could you please state your education since high school.

A. I have a Bachelor of Arts from New York University and a Master's of Urban Planning from New York University.

Q. When did you obtain those degrees?

A. 1980 and 1982 respectively.

Q. Is there any in-house counsel assigned to DoITT, a lawyer who is actually working within the agency?

A. We have a legal staff, a general counsel and several lawyers.

Q. The three inspectors, what is their background, do you know? I'm not asking for their names. What are there, essentially, qualifications for those jobs?

A. They have to be qualified through the civil service, a title called consumer affairs inspector.



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Q. So these are three civil service employees who passed the civil service exam for the title consumer affairs inspector?

A. Yes.

Q. And those three inspectors are responsible for what?

A. They inspect public pay telephones. They would be sent out to perform an inspection, answer questions on an inspection form and they test the phone, they take pictures of the phone. They also do measurements to see how far a phone is placed from a building, how far from the curb. They will be listening to see if the long distance provider is the one that we required under our contract. They will attempt to contact the operator to make sure that you can make an operator-assisted call.

Q. Do they check to see if there is a dial tone on the phone?

A. Yes.

Q. What is the geographic area for which those three inspectors are responsible?

A. The five boroughs of the City of



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provided with copies of those forms for any period of time?

A. I don't know.

MR. STULBERG: John, I know we have been provided with various statistical data.

MR. PINES: Yes.

^ MR. STULBERG: But I don't recall seeing an inspection form. If you could look into that, I would appreciate it.

MR. PINES: Okay. We can talk later about exactly what you want. Do you want a copy of the form for --

MR. STULBERG: Let's talk later. We want to do this in a way that makes most sense and I'm sure we can work that out later.

Q. What responsibilities does DoITT have with respect to public pay telephones in New York City?

A. DoITT is responsible for managing the franchises that are granted to private companies for the provision of public pay



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Q. Who owns the public pay telephones that are covered by the franchises that DoITT monitors?

A. There are 15 companies.

Q. Has that number changed over the years?

A. Yes.

Q. To your knowledge what was the largest number of public pay telephone -- strike that.

To your knowledge what was the largest number of companies that owned public pay telephones in New York City?

A. I believe that when the city was doing its franchising, that there were approximately 100 companies.

Q. When was that?

A. That was in 1999.

Q. Before 1999 there was no franchise system?

A. There was no franchise granted for public pay telephones until 1999.

Q. Were public pay telephones regulated by the City of New York in any



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2 respect before 1999?

3 A. Yes.

4 Q. When you say there were no  
5 franchises for public pay telephones before  
6 1999, what then was the legal framework under  
7 which public pay telephones were installed and  
8 operating in New York City in the absence of a  
9 franchise?

10 MR. PINES: I'll object to the  
11 question, but you can answer.

12 A. My understanding that in 1959 the  
13 New York City Council passed a local law which  
14 authorized, I think at that time was the  
15 borough presidents and later was transferred  
16 to the Department of Transportation, the  
17 authority to grant the phone company at that  
18 time, there being only one phone company, the  
19 authority to put pay phones on the city  
20 streets pursuant to licenses issued by the  
21 city.

22 That remained in effect until  
23 Local Law 68, 1995, at which point the  
24 requirement for a permit was enacted, the  
25 permit coming from DoITT and they also



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established a registry of the existing unpermitted, unlicensed phones which were then eligible to be later permitted after the franchises were granted.

Q. Is a permit the same thing as a franchise?

A. No.

Q. What's the difference?

A. Franchise is a contract that's granted by the city to a company authorizing them to provide a service using the city streets.

The permit in this franchise is the authorization that is required for the individual phone that's installed in the street.

Q. You mentioned that there are 15 companies that own public pay telephones in New York City currently. Are those all privately held companies?

A. I don't understand the question.

Q. Are those private entities?

A. Yes.

Q. Does the City of New York or any



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other governmental entity own any public pay telephones in New York City?

A. I'm not aware of any public pay telephones owned by the City of New York or another governmental entity.

Q. Apart from the exceptions you mentioned earlier, are all of public pay telephones in New York City owned by private companies, owned and operated pursuant to franchise agreements with DoITT?

A. From time to time we encounter installations that are not authorized, but most of the time the phones are, that we encounter, the ones that are authorized pursuant to the franchise agreement.

Q. Does the city or any other governmental agency have any staff that installs public pay telephones in New York City?

A. I am not aware of any staff that installs public pay telephones in the city. I know that on occasion I've seen installations made by the parks department of a special phone stanchion, a special design to go with a



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City, are actually working? Do you know -- do you have a way of knowing that as we sit here?

A. Aside from doing actual inspections, we would have the ability to request report from each company showing the operability of each of their phones.

Q. How often, if at all, are such requests made?

A. That specific request has not been made that I recall, but we can request reports, depending on what an issue is. So if we ask a company such as Verizon to provide a report showing for February 11, 2011 all of the phones in the state of operability -- and whether it is operable or not, they would have to provide that to us. It is not something that we request on a regular basis.

Q. Going back to ownership. Is there any limit on the number of public pay telephones that a particular company can own?

A. No.

Q. Is there any minimum number of public pay telephones that a company must own in order to obtain a franchise?



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A. The franchise requires a minimum of 25 phones.

Q. What process, if any, does the city engage in to determine which companies may own public pay telephones?

A. I don't understand the question.

MR. PINES: Objection to the form.

Q. Is there any vetting process that the city engages in before granting a franchise to own a public pay telephone system?

A. Yes.

Q. And what is that?

A. The city issued a request for proposals prior to the granting of the current franchises back in the late 1990s. As part of that process, the companies have to fill out forms that are generated by the VENDEX system which is administered through the mayor's office of contracts and they get reviewed by the Department of Investigation.

I believe they also at the time required financial statements of the companies. The requirements are not -- the



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Q. When was the last time the city did a physical count, actually went around and counted phone by phone how many were out there?

A. We count in segments as part of our inspection process, so the actual, an actual census of phones is not done.

Q. Ever?

I will withdraw that.

When those three inspectors physically visit the phones, they return and report the number they visited, is that right?

A. Correct.

Q. So in that sense they report what they saw during those visits, is that right?

A. Correct.

Q. Do you know of the 14,500 public pay telephones currently covered by franchise in New York City, how many are working today?

A. I wouldn't be able to tell you that number.

Q. Why not?

A. I just stated previously, the city doesn't have a daily accounting of the number



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of phones that are working.

Q. The number of public pay telephones in New York City has changed over the years, is that right?

A. Yes.

Q. Is it correct to say that it has declined?

A. Yes.

Q. To your knowledge what was the largest number of public pay telephones in New York City in the past?

A. At the time that I started at DoITT in 2001, the number of phones registered in the computer system as active was 33,000.

Q. That number was as of what date, sir?

A. 2001.

Q. The 33,000 number represents the number of public pay telephones covered by franchises in New York City as of 2001?

A. Correct.

Q. Has that number steadily declined down to the 14,500 that currently exists?

MR. PINES: Objection to form.



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pay telephones that are covered by franchises?

A. It actually includes one company that never was granted a franchise.

Q. Which one was that?

A. New York Tel A Star Communications.

Q. Does that company currently own public pay telephones in New York City?

A. No.

Q. So the total at the bottom of this page should be actually 50 public pay telephones less, is that right?

A. Well, it is actually -- it depends on, at the time of the list that was created, this was what was the entire inventory of public pay telephones that were regulated by the department. The company without the franchise was still covered under the regulation of the department until recently where we prevailed in court and were able to have all their phones removed.

Q. When were all of New York Tel A Star Communications phones removed?

A. It was within the last four



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that never got a franchise.

Q. So is it correct to say that the total PPT shown in the right-hand column of this document reflects total public pay telephones?

A. Correct.

Q. Is it correct to say that the number of total public pay telephones currently would be the total shown on this document less the total for each of the companies you just named?

A. No.

Q. Why is that not correct?

A. The companies that were not renewed had the ability to sell their phones to other companies.

Q. Do you know if they did that?

A. Yes. And a number of phones changed hands in the last few months.

Q. Is it correct to say that the numbers shown on this document as of some time in 2010, namely, 15,123, has been reduced to 14,500 presently?

A. Yes.



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A. Yes.

Q. Can DoITT require that a public pay telephone covered by one of its franchises be replaced?

A. Yes. If there is something wrong with it.

Q. Does DoITT currently know how many of the public pay telephones covered by its franchises need to be replaced?

MR. PINES: Objection to form.  
You can answer.

A. We have -- as a result of inspections, we will see that certain phones need to be replaced or modified and we will send directives to do that.

Q. Well, does DoITT know as of today how many of the 14,500 public pay telephones covered by its franchises need to be replaced?

A. We wouldn't be able to say how many out of that total, without inspecting each one of them.

Q. In any given year, how many of the total public pay telephones covered by franchises are physically inspected?



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been inspected.

Q. In Shor Exhibit LL which I believe you still have before you, it lists 6,284 public pay telephones under the name Verizon. Do you know what percentage of those have not been inspected for compliance?

A. I can tell you that that number that are currently owned by Verizon is less because Verizon sold phones to Titan Outdoor Communications so Verizon now has approximately 4200.

Q. Of the phones that Verizon sold to Titan, would that include phones that had not been inspected for compliance?

A. No.

Q. Do you know what percentage of the 4200 Verizon phones have not been inspected for compliance?

A. No, I don't. I know that at least 35 percent of them have been because they have gone through the permitting process. But we also have, some of the phones that haven't been fully permitted still have been inspected.



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Q. Are there other phones that have not gone through the permitting process that have not been inspected for compliance, besides the Verizon phones?

MR. PINES: Objection to form.

You can answer.

A. No.

Q. Can you determine from the data available to do it, how many public pay telephones currently installed in New York City have not ever been inspected for compliance?

A. We can determine from the database the public pay telephones where no record of an inspection has been entered.

Q. Are you able to estimate, approximate what that number would be?

A. No.

Q. As you sit here today?

A. No.

^ MR. STULBERG: Again, John, I would like to include in our list of discovery matters to discuss, how we can most efficiently, and in our mutual



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A. There is no map currently.

Q. Does DoITT know where each of the public pay telephones is installed currently in New York?

A. Yes.

MR. PINES: Objection to the form.

Q. Is there any requirement that public pay telephones be installed in any particular pattern or other form of distribution within the City of New York?

A. I'm not sure I understand the question.

Q. For instance, is there any requirement that public pay telephones be installed on every block or every other block or some other configuration of blocks in New York City?

A. No.

Q. Is there any requirement that public pay telephones be installed in particular numbers, relative to population density?

A. No.

Q. What, if anything, determines



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where a public pay telephone is installed in New York City?

A. The companies would choose the locations themselves. The city also has, under the contract, the authority to direct the installation of a public pay telephone based upon a public need, is a process, though that would allow the franchisee to deduct its costs for that pay phone from its commission to the city.

Q. In the past ten years, how many public pay telephones has the city mandated be installed at a particular location pursuant to the public need concept?

A. The city hasn't actually had to mandate. We have I believe four locations where the company -- four locations involving two companies where the city requested a phone be put in and a company was willing to put it in.

Q. Are there any other instances in which the city has requested or directed that a phone be put in at a particular location?

A. No, not to my knowledge.



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2 low penetration of the home telephones. That  
3 originally was based on the 2000 -- well, it  
4 was originally based I guess on the 1990  
5 census, and then after the 2000 census data  
6 was available, none of the city community  
7 districts met that threshold of low  
8 penetration of home telephones.

9 Q. Is it correct to say that there  
10 are some areas of the city that have a lower  
11 density of public pay telephones on the street  
12 than others?

13 A. Yes.

14 MR. STULBERG: I would like to  
15 have marked another document. This  
16 would be NYC 1758, a one-page document  
17 entitled Active Public Pay Telephones,  
18 PPTs and it is organized by borough.  
19 This would be --

20 MR. PINES: MM.

21 MR. STULBERG: -- MM.

22 (Shor Exhibit MM, document  
23 bearing Bates No. NYC 1758 entitled  
24 Active Public Pay Telephones, PPTs,  
25 organized by borough marked for

  
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identification. And then there is a proviso that follows.

Do you know how many public pay telephones in New York City today have been identified as inoperable?

A. No.

Q. And do you know whether those that have been identified as inoperable within the past 48 hours, have been repaired?

A. I do not.

Q. Do you know what percentage of public pay telephones identified as inoperable within the past 72 hours, have been repaired?

A. I don't.

Q. Does DoITT have any way of knowing that?

A. DoITT has enforcement process with the public pay telephone companies. The companies are required to maintain their phones pursuant to the contract as stated in the contract. If they do not maintain their phones and we inspect the phones and determine that it is not being maintained, they get a -- it's a \$2,000 fine for each phone that is



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determined to be inoperable.

Q. Is it correct to say that basically this is a self-enforcement scheme where the franchisees agree by contract to maintain their phones in good working order, including 911, and are penalized if the city later finds out that they haven't done that?

MR. PINES: Objection to the form.

You can answer.

A. Essentially, yes.

Q. That same section that I just read to you, 3.1.2 (a) (ii), refers to daily electronic testing. That's not done by DoITT, is it?

A. No, it's not.

Q. That's not done by any agency of the city, correct?

MR. PINES: Objection to the form.

You can answer.

A. To my knowledge it is not done by any agency of the city.

Q. Does the city have anyway of knowing whether a franchisee has conducted the daily electronic testing required by the



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franchise contract?

A. The city has the authority to audit the records of the company.

Q. But that wasn't my question.

MR. STULBERG: Could the question be read back, please.

(Record read.)

MR. PINES: I think that's an answer, but you can answer further if you can.

MR. STULBERG: Let me rephrase. I appreciate why you think that that answered the question and I'm not looking to give you a hard time. I'm really just trying to find out the information.

Q. On a day-to-day basis does the city have a way of determining whether the daily electronic testing is being done by a franchisee?

MR. PINES: Objection to the form. You can answer.

A. The city does not have the ability remotely to determine whether the companies



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are doing the electronic testing.

Q. And electronic testing is a process by which the franchisee would be able to determine if the phone is working, right?

A. Yes.

Q. Would electronic testing also determine whether there is a dial tone on the phone?

MR. PINES: Objection to the form. You can answer.

Q. If you know.

A. I believe that is the main thing that they test for.

Q. Further down in that same paragraph it says, quote:

"If service restoration is dependent on the actions of a third party, such as a supplier of dial tone or electricity (not an entity such as a contractor specifically hired by the company to perform maintenance or repair services, which for purposes of this clause shall be treated as an instrument of the company not a third party) the



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company shall notify DoITT of the circumstances within 12 hours following such identification, shall use its best efforts to have service restored as soon as possible, and shall notify DoITT in the same manner promptly following the service restoration."

My first question is, does this clause help you to recall that dial tone is supplied to some franchisees by a third-party supplier?

MR. PINES: Objection to form.

You can answer.

A. It would appear to state that that is the way it's done. I've heard the term dial-tone provider, so, yes.

Q. Is it your understanding that some of the franchisees obtain their dial tone through a dial-tone provider?

A. Yes.

Q. And some do not?

A. Yes.

Q. Now, how about electricity? This clause talks about suppliers of electricity.



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2 In what respect would a franchisee or a public  
3 pay telephone in New York City need a supplier  
4 of electricity?

5 A. Most public pay telephones operate  
6 on telephone lines that do not require  
7 electricity. In some situations many of the  
8 companies have electricity for eliminating the  
9 advertising on the public pay telephones. If  
10 they are not using the traditional copper  
11 lines that conduct its own electricity as part  
12 of the pay phone, then they would presumably  
13 have a phone unit that needs electrical  
14 service and therefore the provision of  
15 electricity would be important to keep the  
16 phone going.

17 Q. Is it correct to say that in order  
18 to be supplied with a dial tone, a franchisee  
19 who uses a third party to supply the dial tone  
20 has to pay its bills to the third party?

21 A. Yes.

22 Q. So dial tone could be lost to a  
23 public pay telephone in New York City because  
24 a franchisee falls behind in its financial  
25 obligations to the dial-tone provider,



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correct?

A. Yes.

Q. The same would be true for those circumstances in which a public pay telephone depends for operation on a supply of electricity from a third-party provider, correct?

A. Yes.

Q. Turn to section 3.1.2 (a) (ii) again on page 11 of this document, Exhibit NN, please.

A. Okay.

Q. I had read to you earlier a section that dealt with repair of inoperable phones. What kind of conditions can render a public pay phone inoperable?

A. The public pay telephone would be deemed inoperable if a customer had trouble making a call. So there is a variety of tests that would be done on the pay phone, including to see whether the coin return worked, whether you could make an operator assisted call, in addition to just checking for the dial tone, making a test call to a regular number.



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example, you may have three public pay telephones at an address, but each one of those public pay telephones has its own unique PPT ID number.

The next column is the borough which has, BK stands for Brooklyn.

The next column is the building number. And that's just what it is, the number of the building on the street.

The next column is the street name.

The column E is the community board designation that would be one of 59 community boards in the City of New York that are numbered per borough. So in this example it would be Community Board 7 Brooklyn.

And the last column is "no dial tone date reported" would be the date that the company self-reported that there was no dial tone for that public pay telephone.

Q. What do you mean by self-reported?

A. I mean that they sent either -- well, usually it would be a form that was faxed to the department showing the phones



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that day that had no dial tone, or in more recent times, we have a web form that would be submitted through the Internet.

Q. Now, does the date shown in column F reflect the date of the report, or the date on which no dial tone was detected?

A. It's the date of the report.

Q. Is there any information available to DoITT that would allow DoITT to know on which date or dates no dial tone was detected on that phone?

A. The company reports date of no dial tone, so it is, as I said, self-reported.

Q. So it could be, for instance, that there had been no dial tone for a week on a phone, but on the last day of that week the absence of dial tone was reported. Is that possible?

A. That's possible.

Q. In any event you can't tell from this chart for how long a dial tone had been missing, right?

A. Correct.

Q. Is there any documentation showing



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what, if anything, DoITT did when it received such a report?

A. The documentation for each public pay telephone as far as the actions taken by the department would be reflected in the database or the paper file for the specific pay phone.

Q. Is there any documentation showing when the dial tone was restored to a particular phone, where it was reported to be out?

A. The computer in more recent years, the field for a date dial tone restored was added to the database, so there will be a record of the dial tone restoration date for some of these records, but not for all of them.

Q. Has that data been provided to plaintiffs, the dial tone restored date?

A. I believe I saw a document that included the dial tone restored date.

^ MR. STULBERG: Well, I don't know the answer to it myself, but I will add that to the list of items that I



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will be consulting with Mr. Pines about.

MR. PINES: Fine.

Q. And the information about restoration, that also is self-reported by the companies?

A. Yes.

MR. STULBERG: I would like to mark as QQ, four pages. These consist of Bates Nos. NYC 2585, 2791, 2997 and 3203. They are the first pages respectively of columns A through E, F through K, L through Q and R through V of a document that's comprised of, in total, documents from NYC 2585 through 3408.

And, again, the original, the full compilation is available to you if you wish to look at in answering any of these questions.

(Shor Exhibit QQ, Bates Nos. NYC 2585, 2791, 2997 and 3203, being the first pages, respectively, of columns A through E, F through K, L through Q and R



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through V of a document that's  
comprised of NYC 2585 through 3408  
marked for identification, as of  
this date.)

MR. STULBERG: Off the record.

(Discussion off the record.)

(Recess: 12:53-12:57 p.m.)

BY MR. STULBERG:

Q. Is it correct to say that these  
four pages represent various categories  
provided in one report?

A. I'm not sure I understand your  
question.

Q. Well, on the first page of this  
document, 2585, it listed in column A the  
identification of public pay telephones and  
then in columns B, C, D, E and then continuing  
on the next page F, G, H, I, J, K, and  
continuing on the next page, L, M, N, O, P, Q,  
and continuing on the final page R, S, T, U,  
V, various types of information about that  
public pay telephone are provided in  
respective columns, is that correct, about  
that pay telephone?



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MR. PINES: Counsel, my objection is just to determine whether the witness has seen this document.

MR. STULBERG: That's fine.

Q. Are you familiar with this document?

A. Yes.

Q. Is this a document based upon data in the files of DoITT?

A. Yes.

Q. And was this document prepared by DoITT?

A. Yes.

MR. STULBERG: Thank you, John.

Q. Returning to the substance of this document, is it correct to say that this document on each successive page provides different types of information gleaned from inspections of particular public pay telephones?

A. The document provides a record for individual inspections that were done for public pay telephones that were found to have at least one aspect of inoperability and the



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columns are indications regarding the operability. The columns G through U show indications of inoperability.

Q. There are on each of these pages, 56 public pay telephones listed. Do you see that?

A. Actually there are 55 because the number starts above the first.

Q. All right. I stand corrected. So we have 55 particular public pay telephones studied in this document. Is that correct?

A. They are actually 55 inspections. There may be more -- the same public pay telephone may have been more than once.

Q. And why were these particular 55 inspections selected for this document?

MR. PINES: Objection to the form.

Q. If they were.

MR. PINES: Again, just recognizing this is a portion of a much larger formed document. Am I correct about that?

Just to be clear if you are saying why were these phones selected, if you



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are talking about why were they selected for this particular page -- do you understand what I'm saying?

MR. STULBERG: I do. Let me just withdraw the last question.

Q. Is it correct to say that on successive pages of the larger document, additional inspections are reported?

A. Yes.

Q. Please turn to the column on page 2997 entitled in line 1, no dial tone. Do you see that?

A. Yes.

Q. What does a Y indicate under that column?

A. A Y indicates yes.

Q. Meaning what?

A. Yes, there is no dial tone.

MR. STULBERG: I wanted to make sure I was reading the various positives and negatives correctly.

Q. And so an N would indicate that there was a dial tone?

A. Correct.



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Q. By the double negative no, there was no dial tone.

An N indicates that there was a dial tone detected, a Y indicates that there was no dial tone detected, is that correct?

A. Correct.

Q. So, for instance, on page 3 under column P or on page 2997 under column P, the data for the phones -- for the phone inspections reported on that page indicate that, of 56 inspections, 33 showed no dial tone?

MR. PINES: 55.

MR. STULBERG: I see No. 56 here.

A. Because the first number is on the --

Q. I see, because the first number is used for the headings. Let's start it again.

Is it correct to say under column P on page 2997, the data shows that of 55 public pay telephone inspections reported, 33 showed no dial tone?

A. That's correct.

Q. This data shown in this document



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and in the larger document from which it is taken, does not allow one to determine how long a particular phone was without a dial tone, correct?

A. That's correct.

Q. The document also does not allow one to determine when the dial tone was restored?

A. That's correct.

Q. Go to the page number 3203, column S. That column is headed with the word, quote, Unable to Reach Operator. What does that mean?

A. The inspector would dial 0 for the operator and would be unable to reach the operator, meaning that the operator may be, maybe they heard the operator, but the operator didn't hear the inspector or vice versa, or the call didn't get completed.

Q. There is no column here for 911. Do the inspectors check to see whether they could get through to 911 when they inspect a public pay telephone?

A. They don't actually dial 911



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because we don't want to interfere with the 911 system. They do check the key pad to see that the numbers work, and more recently we have had them calling 311 to see if they can get through to 311.

Q. You referred to a number of inoperability factors that are shown in this compilation of information. I would like to go through them and my question is the same for each: Which one, if present on a public pay telephone, would prevent the caller from reaching 911?

Let's start with G, column G on page 2791, no handset.

A. Yes, if there is no handset, you can't reach 911.

Q. Let's go to column I, telephone wires cut.

A. If the wires are cut, you would not be able to reach 911.

Q. Column J, interference, could that prevent one from reaching 911?

A. It depends on the level of interference. If there was a moderate amount



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of noise, you might still be able to make your call and be heard.

Q. In column L on page 2997, how about broken handset, would that prevent one from calling 911?

A. It depends on the level of break in the handset. If it is just that the handset is cracked but you could still hold it and make a call, then you could still call 911.

Q. But it could be sufficiently broken that you couldn't call 911?

A. Yes.

Q. Column M on the same page, 2997, is entitled damaged key pad. Could a damaged key pad prevent one from calling 911?

A. If the 9 and the 1 are damaged, it would prevent you from calling. But if the 9 and the 1 weren't damaged but other numbers, other keys on the pad were damaged, then you would still be able to call 911.

Q. On that same page, column N refers to unbroken dial tone. What does that refer to?



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A. I'm not familiar with that category.

Q. The next column, O, refers to no cradle.

A. The cradle is the --

Q. Let me ask a question.

What does that refer to?

A. It refers to the situation where the piece on the public pay telephone that holds the handset onto the pay phone is broken off.

Q. Could that prevent one from calling 911?

A. If that's the only thing that's wrong, probably not.

Q. Just to be clear, again, on the Ys and the Ns in this chart, in column G where it says no handset and the initial N appears, what does that indicate?

A. That means that there is a handset.

Q. And the initial Y under that column would indicate no handset was on the public pay telephone, is that correct?



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2 A. Correct.  
3 Q. In the telephone wires cut  
4 section, column I, where it has an N, what  
5 does that indicate?  
6 A. That the wires are not cut.  
7 Q. And a Y of course would indicate  
8 the opposite?  
9 A. Correct.  
10 Q. Where the chart addresses  
11 interference in column J and the letter N is  
12 present, that indicates no interference and Y  
13 indicates, yes, there was interference?  
14 A. That's correct.  
15 Q. In broken handset, Y would  
16 indicate yes, the handset was broken, N would  
17 indicate no, the handset was not broken?  
18 A. That's correct.  
19 Q. In damaged key pad N would  
20 indicate the key pad was not damaged, Y would  
21 indicate the key pad was damaged?  
22 A. That's correct.  
23 Q. Do you know what the Y and N  
24 indicate in the column entitled unbroken dial  
25 tone?



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A. I'm not really that familiar with unbroken dial tone, so I don't know for sure.

Q. What does telephone wires intact mean in column Q?

A. It would mean that the inspector found that the, viewed wires and that the wires were intact. It is not filled in for most of these, presumably it is just not something -- it was something that was in the original system that hasn't been used that often as far as a rating.

Q. What does volume problem refer to in column R.

A. I believe volume problem would be that the volume was either too loud or too low, but not too low -- not so low that you couldn't hear.

Q. In the column entitled unable to reach operator, column S, Y means that the individual could not reach the operator and N means the individual could reach the operator?

A. Yes.

Q. What does "could not reach ring tone" mean in column T?



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A. I believe when they were doing a test call, that the, in doing the test call, they couldn't hear a ring.

Q. They couldn't hear a ring at the other end of the phone?

A. At the other end. So say they called the office and there was a test number that they would call, and they would hang up after they heard it ring, but if they never heard it ring, that would be something that they would indicate.

Q. A Y in that column would indicate that they could not hear a ring and N would indicate that they could hear a ring?

A. Yes.

MR. PINES: Counsel, just because I want to make sure we understand. You asked whether the, you couldn't hear a ring at the other end of the call. I just want to make clear it is not that someone is listening at the other end of the call. It is just what the inspector is hearing in the receiver.

MR. STULBERG: Well, let's ask



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him.

MR. PINES: Yes, let's ask the witness.

Q. When you say couldn't reach ring tone, you are saying that the caller couldn't hear the ring, is that right?

A. Yes.

MR. STULBERG: Thank you, John.

Q. And "could not complete call" in column U, what does that refer to?

A. It would be on a test call that the call would not go through.

Q. And a Y would indicate, yes, the call did not go through, and N would indicate, no, the call did go through?

A. Yes.

Q. And then the last column, column V is the company ID. Is there a legend that links the numerals there with particular named companies?

A. There is a list of companies with their IDs. I don't know if it was provided as part of this report.

^ MR. STULBERG: We would ask



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that be provided.

MR. PINES: I'll take it under advisement.

MR. STULBERG: Thank you.

Q. What was the universe of inspections that was selected for this compilation of data that is referred to in Exhibit QQ?

MR. PINES: Objection to the form. You can answer.

A. The universe is all of the inspections that were recorded in the public pay telephone system.

Q. What time period is covered by that information?

A. It's, I'm not sure as to the date that this system was created but it was in place and operable the entire time that I've been in the job which is since June of 2001.

Q. The inspections shown in Exhibit QQ, do not reflect inspections of every public pay telephone in the system, correct?

A. That is correct.

Q. Do you know what percentage of



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public pay telephones in the system are reflected in Exhibit QQ?

And I recognize that that number is a moving target over time, but if you could explain what percentage, approximately, of the system was inspected during this time frame reflected in Exhibit QQ.

A. No, I don't have that information.

MR. STULBERG: I would like to show you another document. This would be NYC 110, a one-page document which is the first page of a compilation comprising documents 110 through 849.

(Shor Exhibit RR, Bates No. NYC 110, first page of a compilation comprising documents 110 through 849 marked for identification, as of this date.)

Q. Please look at that, and my question simply is, are you familiar with this document; and, if so, what is it?

A. I believe that this document is a record showing all of the public pay telephones that are active or inactive.



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Q. What does inactive mean?

A. Inactive means that it's been removed from the city street.

Q. What does yes or no mean under the column active indicator?

A. Yes means that there is a phone, there is currently a phone on the city streets.

No means that it is no longer on the city street.

Q. What does deactivation date refer to?

A. It's the date that it was determined that the phone was removed.

Q. The data in, that was used to prepare this document comes from DoITT's business records, is that right?

A. From the public pay telephone information.

Q. What time period is covered by this document and the rest of the document that has not been marked?

A. The time period covered is the entire period of regulation. So that would



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have been from, when we started receiving information from the companies in I believe 1996 through the present.

Q. The present being whenever this document was produced to plaintiffs?

A. Oh, yes.

MR. STULBERG: Let me start this again so it is clear for the record.

I'm going to show you and have marked Exhibit SS, NYC 850 and NYC 1295. 850 is the first page of documents 850 through 1739 comprising of the first page of columns A through E, 1259 is the first page of document 850 through 1739 which refer to columns F through H.

(Shor Exhibit SS, NYC 850 and NYC 1295; 850, comprising first page of documents 850 through 1739 referring to columns A through E, 1259 is the first page of document 850 through 1739 which refers to columns F through H marked for identification, as of this date.)

MR. STULBERG: We have the larger



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compilations here.

Q. For the record, the first document 850 is the first page of documents bearing columns A through E spanning pages 1 through 446 of this document, internally. And the second page, 1295, is the first page of pages bearing columns F through H, spanning internal pages 446 through 890.

Do you recognize these documents?

A. Yes.

Q. Is this a DoITT document based upon data maintained by DoITT in its information system?

A. Yes.

Q. In column G on the second page of this document, what is a curb side indicator?

A. The curb side indicator is an indication of whether the public pay telephone is positioned at the curb which means within two feet of the curb on the sidewalk, or whether it is positioned at the building line which is -- which means within 6 feet of the building.

Q. That distinction is necessary



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because advertising is permitted on the street side but not on the building side --

A. Well, the curb side.

Q. Excuse me, can you explain the distinction between those two indicators?

A. Yes. There are a couple of differences in how those phones are treated. One of them is that the phones that are positioned at the curb within commercial zones are allowed to have advertising. Another distinction is that the phones that are positioned at the building line pay a flat fee per day; whereas, the phones that are at the curb side pay 10 percent of the gross revenues for the phone calls.

Q. Does this document contain information about phones that have been removed from the system?

A. No. Let me clarify. As of the date of the document, all of the phones in the document were labeled active which meant that they were not removed.

Q. And when you say active, you are referring to the fact that the phones were



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installed, not that the phones were working.

Correct?

A. That's correct.

MR. STULBERG: You can put that  
aside. Thank you.

Q. Now I would like to show you a  
document bearing Bates No. NYC 7669 through  
7674.

MR. STULBERG: And I guess this  
takes us to TT.

(Shor Exhibit TT, document  
bearing Bates No. NYC 7669 through  
7674 marked for identification, as  
of this date.)

Q. Do you recognize this document?  
It is entitled Department of Information  
Technology and Telecommunications?

A. Yes.

Q. What is this?

A. This is a section of the Mayor's  
Management Report.

Q. For what time period?

A. I don't know.

Q. I see that the page numbers



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internally start at 95. Is this part of a larger document?

A. Yes.

Q. So this is the part of the Mayor's Management Report that deals with your agency, right?

A. That's correct.

Q. Is it correct to say that, based upon the data shown here and the various columns listed, that this is for fiscal year 2010?

MR. PINES: Can I have the question read back, please, I'm sorry. (Record read.)

MR. PINES: Just so there are no secrets, I just pointed on the first page, 95, I showed the witness under performance report it says "in fiscal 2010." I don't know if that will help or not.

MR. STULBERG: I appreciate that. I just want to move through it.

A. It certainly includes fiscal year 2010. I also see updated targets for fiscal



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year 2011.

Q. So would this be the Mayor's Management Report for 2011 reflecting data prior to that time?

A. I don't put these reports together, so I'm not that familiar with how to label this.

Q. All right. This is a DoITT document based upon DoITT data, is that correct?

A. DoITT supplies data for this document, but it is a document of the mayor's office.

Q. Let's look at the third page of this document bearing Bates No. 7671. There is a chart there that contains various data called Performance Statistics. Do you see that?

A. Yes.

Q. There is a category called "inspected phones deemed operable" with a percentage mark next to it. Do you see that?

A. Yes.

Q. Under fiscal year 2009 for that



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category, the number 75 percent is listed and under fiscal year 2010, under that category the number 81 percent is listed. Do you see that?

A. Yes.

Q. Is it correct to say that that data means that of the phones, that is, the public pay phones inspected in fiscal year 2009, 25 percent were found to be inoperable?

A. Yes.

Q. Is it correct to say that this data reflects that of the public pay phones inspected in fiscal year 2010, 19 percent were found to be inoperable?

A. Yes.

Q. There is also a category under those same performance statistics for "pay phone inspections conducted" and that number seems to decline steadily from fiscal year 2007 through fiscal year 2010. Do you see that?

A. Yes.

Q. Can you explain why the number of pay phone inspections conducted in each of



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those years, 2007 through 2010, declined in number?

A. Well, as I recall, in 2007 we had five inspectors. And over time we've diminished to three inspectors.

Q. How many inspectors were there in 2008?

A. I don't remember if there was five or four. I know that over time we went down in number.

Q. For how long has the agency had three inspectors?

A. I believe since FY '09.

Q. Would the number of inspections conducted by the department also decline because the number of public pay telephones has declined?

MR. PINES: Objection. You can answer.

A. No. There is enough pay telephone numbers to inspect.

Q. Is it also correct to say that the numbers of inspections conducted shown in the performance statistics are in each of the



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fiscal years, lower than the number of public pay telephones that existed in those fiscal years?

A. That is correct.

Q. Given the hour, I'm not going to take us through each of them here. I think we can intuit that from the other data.

Please look at the page labeled 7672. The Bates number is 7672. There is a chart at the bottom of that page entitled Service Requests. Do you see that?

A. Yes.

Q. And this refers to service requests to DoITT concerning public pay phone complaints, among other things, is that right?

A. Yes.

Q. There is a reference to "public pay phone complaints damaged telephone." Do you see that?

A. Yes.

Q. And then there is a column called "expected days to action," another column called "average days to action" and then a column called "percentages of SRs meeting time



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MR. PINES: Objection. The witness has already said he doesn't know.

A. I don't know.

Q. Do you know of any distinction in the city's plan between how hearing persons and non-hearing persons would report emergencies from the street upon removal of the alarm boxes?

MR. PINES: Objection. You can answer if you can.

A. I just heard something before about there being a tapping protocol to be used on the public pay telephones.

Q. To be used by whom?

A. By people who can't speak.

Q. Do you know if any studies have ever been done about whether the tapping protocol is an effective means of communication on public pay telephones?

A. I don't know.

Q. Has DoITT engaged in any studies or gathered any information about that?

A. No.



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Q. Do you know if any tests of tapping code on public pay telephones has ever been made?

A. I don't know.

Q. If such tests were made, would DoITT have been involved in them?

MR. PINES: Objection to the form.

But you can answer.

A. I don't know.

Q. You had testified earlier that when another city agency needed to remove a public pay telephone, they would run that past DoITT, correct?

A. That's correct.

Q. Has any public agency, including the police department or the fire department, told you that they would like to run tests on the public pay telephones in connection with their use to report emergencies from the street by deaf or hearing-impaired people?

A. No, I have not received any requests and I don't know of any requests being received by my staff.

Q. If any such tests were to be run,



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would the franchisees have to be notified?

MR. PINES: Objection to the form.

You can answer.

A. I'm not that familiar with what the tests involve; therefore, not necessarily.

Q. Are you familiar with any research that's been done concerning the accessibility to deaf and hearing-impaired people of public pay telephones in New York City?

A. I'm not familiar with any such studies.

Q. Have you communicated with anyone other than counsel for the city, as to whether public pay telephones are usable by deaf or hearing-impaired people to report emergencies from the street?

A. No.

Q. Are you aware of any studies that have been done as to whether a deaf or hearing-impaired person can identify a working public pay telephone?

A. No.

Q. Do you know how a deaf or hearing-impaired person would identify a



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working public pay telephone?

A. I don't know.

Q. Do you know of anyway a person who can't hear could figure out if there is a dial tone on a public pay telephone?

A. I don't know.

Q. Do you know if there is anyway a person who could not hear, could know whether a call had been successfully placed on a public pay telephone?

MR. PINES: Objection to the form.

You can answer.

A. I don't know.

Q. Do you know if the city has conducted any study of the condition or number or distribution of public pay telephones in connection with its effort to remove the alarm boxes?

MR. PINES: Objection. Direct not to answer. That's litigation strategy.

MR. STULBERG: No, it is a question of fact. It is not a question of --

MR. PINES: In connection with --



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MR. STULBERG: -- whether you plan to do it.

MR. PINES: I'm sorry, could I have the question read back.

(Record read.)

MR. PINES: I'm going to object to the form, but you can answer.

A. I don't know.

Q. When was the first time, if ever, that you communicated with anyone concerning how, if at all, public pay telephones could be used as a method of communication from the street in the absence of alarm boxes?

MR. PINES: Objection to the form. You can answer.

A. I haven't communicated in that regard.

Q. Does DoITT have any information on how many calls to 911 have been made from public pay telephones?

A. I'm not aware of that information, that DoITT has other areas that might have that information.

Q. Does DoITT maintain data on how



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enough business, they will remove it.

Q. So the number of public pay phones in New York City depends in part upon whether installing and maintaining a public pay phone is profitable for the private companies that own them, is that correct?

A. Yes.

Q. Is the location of public pay phones also dependent in part upon whether a private operator will deem that location to be a profitable location?

MR. PINES: Objection. You can answer.

A. Yes.

Q. When a public pay phone is out of service -- strike that. I would rather use the term that we have been using today and that's in the documents.

When a public pay phone is inoperable in New York City, is there any requirement that it be tagged as such?

A. Yes.

Q. And who is supposed to put the tag on the public pay phone that says it doesn't



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work?

A. The company.

Q. Is that a requirement that's honored in its breach?

MR. PINES: Objection to form. You can answer.

MR. STULBERG: I will rephrase it.

Q. Do you have statistics at DoITT as to whether public pay phone operators actually comply with that requirement?

A. Yes.

Q. Are there instances where public pay phone operators have been found to have violated that requirement?

A. Yes.

Q. So that would be circumstances in which a public pay phone is inoperable but there is no sign that so indicates, correct?

A. Correct.

Q. Does the city have the authority to put up that sign if the public operator doesn't?

MR. PINES: Objection to the form. You can answer.



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S. SHOR

A. I don't know the answer to that.

Q. Well, if one of your inspectors discovers that a public pay phone is inoperable but -- strike that.

If one of your inspectors finds that a public pay phone is inoperable but sees that there is no sign so indicating on the phone, can the inspector or somebody else at the city, tag the phone and say, this phone is out of service with a sign?

A. There is no procedure that I know of to do that.

Q. The city doesn't do that?

A. The city doesn't do that.

MR. STULBERG: I just want to check my documents --

A. I just want to clarify that sometimes operability is a defect that can be truly temporary; therefore, putting a sign up right after inspection saying the phone's not working could be interfering with the operation of the phone since the -- if it is particularly heavy rainstorm that caused water to get into the phone and it dries out, then



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MR. PINES: Objection to the form.

You can answer.

A. They clearly serve the purpose for the individual that has the cell phone.

Q. If a franchisee for public pay phones decided to simply get out of the business and disclaim the franchise, is there any legal requirement that the city find a replacement for that provider?

A. No.

Q. If, for instance, Verizon tomorrow decided that it didn't want to stay in the business of providing and maintaining those 4,000-some public pay phones in New York City that you testified about, is there anything the city could do to stop Verizon from going forward with that decision?

A. I'm not aware of anything that we could do.

Q. Is there any requirement that Verizon offer those locations to another provider?

MR. PINES: Object to the form of the question. You can answer.



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A. No, there is no requirement that they offer the phones to another provider.

Q. You mentioned that Verizon had sold pay phone locations to Titan. Is that right?

A. Yes.

Q. Did that entail actually selling the physical phones or transferring the franchise or something else?

A. They sell the physical phones with the permits. They were transferred to Titan.

MR. STULBERG: I just want to check the documents.

Mr. Shor, I have no further questions. I appreciate your cooperation.

MR. PINES: No questions, thank you.

(Continued on next page.)



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