

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 The Division has filed a motion seeking permission to present the testimony of witness
3 Terence M. Jones by telephone at the scheduled hearing in this matter. Respondent opposes that
4 motion, citing in support of his opposition a criminal case, *State v. Moore*, 203 Ariz. 515, 56 P.3d
5 1099 (App. 2002). In *Moore*, the Arizona Court of Appeals held that the prosecutor in a criminal
6 case could not present telephonic testimony for a number of reasons, particularly including
7 violations of the accused's constitutional rights. Those reasons do not apply in this case.

8 The court in *Moore* specifically stated, "Our opinion is limited to criminal trials. We do
9 not address either the standards or desirability of telephonic testimony in non-criminal
10 proceedings; . . ." *Moore*, 203 Ariz. at 518 n.5, 56 P.3d at 1102 n.5. Indeed, the Arizona Court
11 of Appeals has upheld the admission of telephonic testimony in an administrative proceeding.
12 *T.W.M. Custom Framing v. Industrial Comm'n of Ariz.*, 198 Ariz. 41, 48, 6 P.3d 745, 752 (App.
13 2000).

14 Although the *T.W.M.* court noted that counsel had not objected to submission of the
15 telephonic testimony, its decision that such testimony was proper was not grounded solely on that
16 failure to object. The court stated:

17 We view telephonic testimony as different from a mere transcription
18 of testimony because the telephonic medium preserves paralinguistic
19 features such as pitch, intonation, and pauses that may assist an ALJ
in making determinations of credibility.

20 ALJ's are not bound by the formal rules of evidence or
21 procedure and are charged with conducting the hearing in a manner
that achieves substantial justice. *See* A.R.S. § 23-941(F) (1995).
We conclude that substantial justice resulted here.

22 *T.W.M., id.*

23 In this administrative proceeding, as in the proceeding examined in *T.W.M.*, substantial
24 justice will not be denied by admitting the telephonic testimony of Terence Jones. The Hearing
25 Officer clearly has the authority to admit such testimony, and may properly permit the Division to
26 present telephonic testimony at the hearing in this matter.

1 For all of the foregoing reasons, the Division respectfully urges the Hearing Officer to rule
2 in its favor and permit the Division to introduce the testimony of Terence Jones by telephone at the
3 hearing in this matter.

4 RESPECTFULLY SUBMITTED this 14 day of January, 2004.

5 **ARIZONA CORPORATION COMMISSION**
6 **SECURITIES DIVISION**

7
8 By 
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13 ORIGINAL and 13 copies of
14 the foregoing filed this 14th
15 day of January, 2004, with:

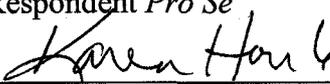
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20 COPY of the foregoing
21 mailed/delivered this 14th
22 day of January, 2004, to:

23 Hon. Tina Wolfe
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