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I N D E X

WITNESS: DIRECT CROSS REDIRECT RECROSS EXAM
ROBERT L. C. DAMRON

1000 1005

EXHIBIT MARKED ADMITTED

CT-69	995	1005
C-70	996	1005
71	996	1005
72	996	1005
C-73	997	1005
C-74	997	1005
C-75	997	1005
C-76	998	1005
C-77	998	1005
C-78	999	1005
C-79	999	1005
80	1000	1005
81	1000	1005

1 P R O C E E D I N G S

2

3 MR. OWENS: This is not in closed session,
4 but, if we run into a problem where there is
5 confidential material, we may go off the record to try
6 to sort out how to deal with it.

7 JUDGE FOSTER: Let's be on the record. The
8 hearing will please come to order. The Washington
9 Utilities and Transportation Commission has set for
10 hearing at this time and place Docket No. UT-911482,
11 which is captioned the Washington Utilities and
12 Transportation Commission, Complainant, versus
13 International Pacific, Inc.

14 Today's date is November 17, 1993. We're
15 again convened in the Commission's offices in Olympia,
16 Washington. The purpose of today's and tomorrow's
17 session will be to allow for direct and
18 cross-examination of two of the Staff witnesses, Damron
19 and Mr. Wilson.

20 In contrasting some of the previous sessions
21 in this matter, this will be considered an open and not
22 a confidential and closed hearing before the
23 Commission. We're going to begin with Mr. Damron's
24 testimony this morning.

25

The parties in this matter are the same as

(COLLOQUY)

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1 they have been the previous sessions. That is, Sally
2 Brown representing the Commission Staff and Doug Owens
3 for International Pacific.

4 Also present today is Merton Lott,
5 Commission accounting advisor. My name is Rosemary
6 Foster, and I'm the Administrative Law Judge.

7 Are there any preliminary matters before we
8 go ahead with Mr. Damron's testimony? Anything from
9 you, Mr. Owens?

10 MR. OWENS: No, your Honor.

11 JUDGE FOSTER: Ms. Brown?

12 MS. BROWN: No.

13 JUDGE FOSTER: Mr. Damron, I'll remind you
14 that you were previously placed under oath. If you
15 would like, I'll go ahead and give numbers to the
16 exhibits that have been prefiled.

17 The rebuttal testimony of the witnesses will
18 be identified as Exhibit CT-69.

19 (Marked Exhibit CT-69)

20 JUDGE FOSTER: That testimony has 74 pages.

21 Identified as Exhibit 70 is -- actually, I
22 guess I should go back and call this CT-69 since there
23 is some confidential testimony in Mr. Damron's
24 testimony.

25 Is that correct, Miss Brown?

(COLLOQUY)

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1 MS. BROWN: Yes, that's correct.

2 JUDGE FOSTER: Then Exhibit 70 should also
3 be designated Exhibit C-70. This is RLCD-3R and it's
4 a pro forma income statement for International Pacific
5 for the twelve months ended December 31, 1991. And
6 that exhibit has twelve pages.

7 (Marked Exhibit C-70)

8 JUDGE FOSTER: Exhibit 71 will be RLCD -- is
9 that 70?

10 MS. BROWN: Yes.

11 JUDGE FOSTER: Okay. It's a two-page
12 exhibit. It's on United States Telephone Association
13 letterhead. The date of the letter is September 30,
14 1993. It's addressed to Teresa Pitts with the
15 Washington Utilities and Transportation Commission and
16 is signed by Stephen Burnett, the director of
17 regulatory methods. That's identified as Exhibit 71.

18 (Marked Exhibit 71)

19 JUDGE FOSTER: Exhibit 72 is again
20 non-confidential. This is a multi-page document, and
21 it's designated as Chapter 6 concerning traffic
22 studies. And the first page of it shows that it's
23 material that was sent by Mr. Burnett to Teresa Pitts
24 in response to her inquiry. And that's RLCD-80.

25

(Marked Exhibit 72)

(COLLOQUY)

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1 JUDGE FOSTER: I had marked as Exhibit 73 is
2 RLCD-90.

3 Now, is that going to be confidential?

4 MR. OWENS: I believe so.

5 JUDGE FOSTER: All right. I will designate
6 that then as C-73. And this is a six-page exhibit.
7 The caption on the first page indicates that it's a
8 review of IPI's response to Staff Request No. 301 for
9 twelve months ended December 31, 1991. I should say
10 that's Request No. 301 revised/Exhibit No. C-67.

11 (Marked Exhibit C-73)

12 JUDGE FOSTER: Identified as Exhibit C-74 is
13 RLCD-10. And this is four-page exhibit. The caption
14 on the first page indicates that it refers to
15 International Pacific pro forma income statement,
16 Washington intra for the twelve months ended December
17 31, 1991.

18 (Marked Exhibit C-74)

19 JUDGE FOSTER: Identified as Exhibit C-75 is
20 RLCD-11. This is a twelve-page exhibit. The caption
21 indicates that it's a pro forma income statement for
22 Washington intra for the twelve months ended December
23 31, 1991.

24 (Marked Exhibit C-75)

25

JUDGE FOSTER: Identified as Exhibit 76 is

(COLLOQUY)

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1 material connected with the lead/lag.

2 MR. OWENS: Your Honor, I believe we have
3 requested that be a confidential exhibit because of the
4 subscriber commission information.

5 JUDGE FOSTER: All right. Let's identify
6 that then as Exhibit C-76. That's a two-page exhibit,
7 and it's also designated as RLCD-12. And it refers to
8 revenue lags and cash operating expenses.

9 (Marked Exhibit C-76)

10 JUDGE FOSTER: Identified as Exhibit C-77 is
11 the pro forma income statement for Washington intra for
12 the twelve months ended December 31, 1991. That's also
13 referred to as RLCD-13. And that's a two-page exhibit.
14 And that is also confidential.

15 (Marked Exhibit C-77)

16 JUDGE FOSTER: I assume, Mr. Owens, your
17 position will be the same on the next exhibit, that
18 that will be confidential because it's talking about
19 allocation of subscriber commissions?

20 MR. OWENS: You're correct, your Honor.

21 JUDGE FOSTER: Identified as Exhibit C-78 is
22 a one-page exhibit. The title indicates that it's
23 allocation of subscriber commissions for International
24 Pacific for the twelve months ended December 31, 1991.

25 That's also designated as RLCD-14. RLCD-15 is a

(COLLOQUY)

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1 multi-page document. The front page indicates that
2 it's an analysis of all subscriber commissions in IPI's
3 analysis of D-268.

4 (Marked Exhibit C-78)

5 JUDGE FOSTER: Following that is a series of
6 figures. Actually, it's a 58-page exhibit.

7 Mr. Owens, is it your position that this
8 would also be confidential?

9 MR. OWENS: Yes, your Honor. I believe the
10 information could be garnered by totaling the numbers
11 that would have competitive significance even though
12 the individual site identifications have been obscured
13 and serial numbers attached.

14 JUDGE FOSTER: All right. We'll refer to
15 this as Exhibit C-79.

16 (Marked Exhibit C-79)

17 JUDGE FOSTER: Next is Exhibit RLCD-16.
18 That will be identified as Exhibit 80. Just looking at
19 this briefly, Mr. Owens, I don't see anything in here
20 that looks confidential. Do you?

21 MR. OWENS: No, your Honor. There is
22 nothing there.

23 JUDGE FOSTER: Exhibit 80. One-page
24 interoffice memo from Sharon Siers, S-i-e-r-s, to Mr.

25 Mean dated September 30, 1993, and concerns WUTC Data

(COLLOQUY)

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1 Request No. 301, also designated RLCD-16, as Exhibit
2 80. Again, I don't believe that this is confidential.

3 MR. OWENS: No, your Honor.

4 (Marked Exhibit 80)

5 JUDGE FOSTER: Exhibit 81 is a one-page
6 exhibit. It's a list of computer disks, data files,
7 from the previous hearing, taken down in the previous
8 hearing in this matter, I believe by the witness. It's
9 Exhibit 81 for identification. It's also referred to
10 as RLCD-17.

11 That's all I have.

12 (Marked Exhibit 81)

13 JUDGE FOSTER: Mr. Damron, I'll remind you
14 that you were previously placed under oath in this
15 matter.

16

17 ROBERT L. C. DAMRON,

18 having been previously duly sworn, was called as a

19 witness herein and was examined and testified

20 as follows:

21

22 D I R E C T E X A M I N A T I O N

23 BY MS. BROWN:

24 Q. Good morning, Mr. Damron.

25 A. Good morning.

(DAMRON - Direct by Brown)

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1 Q. Could you please state your full name.

2 A. Robert L. C. Damron, D-a-m-r-o-n.

3 Q. What is your business address?

4 A. It's Chandler Plaza Building, 1300 South
5 Evergreen Park Drive Southwest, Olympia, Washington
6 98504.

7 Q. What is your position with the Washington
8 Utilities and Transportation Commission?

9 A. I'm a Revenue Requirements Specialist 5.

10 Q. Are you the same Mr. Damron that prefiled
11 written direct testimony and exhibits in this case?

12 A. I am.

13 Q. In preparation for your testimony here
14 today, did you pre-distribute what's been marked for
15 identification as Exhibit CT-69, Exhibit C-70, Exhibit
16 71, 72, Exhibit C-73, Exhibit C-74, Exhibit C-75,
17 Exhibit C-76, Exhibit C-77, Exhibit C-78, Exhibit C-79,
18 and Exhibits 80 and 81?

19 A. Yes.

20 Q. Are there any revisions, additions or
21 corrections to any of our exhibits in this case?

22 A. Only a couple. One revision to my testimony
23 at Page 24, the very last line, Line 22, I have a
24 citation, transcript reference citation at 548. I'm

25 not sure where that came from, but that should be

(DAMRON - Direct by Brown)

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1 stricken. The intended transcript reference was TR-532
2 through 536.

3 That's all the corrections to my testimony.

4 I had a problem with Exhibit C-70, which is
5 RLCD-3R. On Page 1, Page 2, and Page 12 in the heading
6 you will see the designation dollars and thousands, and
7 that should be stricken.

8 JUDGE FOSTER: What pages were those again?

9 THE WITNESS: Page 1, Page 2, and Page 12.

10 JUDGE FOSTER: Thank you.

11 THE WITNESS: I have a similar problem in
12 Exhibit C-74 which is RLCD-10. And there, all four
13 pages there is a reference to dollars and thousands
14 which should be stricken.

15 Those are all my revisions.

16 BY MS. BROWN:

17 Q. Are the exhibits that I just referred to
18 true and correct to the best of your knowledge?

19 A. Yes, they are.

20 Q. And were they prepared by you or under your
21 direction and supervision?

22 A. They were.

23 Q. Exhibit 72, which consists of 104 pages, has
24 handwritten and circled numbers at the top right-hand

25 corner of each of those pages.

(DAMRON - Direct by Brown)

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1 Did you make the circle there?

2 A. Yes, I did, just for ease of reference.

3 Q. Did you do the same or similar thing in

4 Exhibit C-79, which consists of 58 pages, the numbers
5 and circles were made by you?

6 A. Yes, they were.

7 Q. And Exhibit 81, also bears some handwriting.

8 Is that handwriting yours?

9 A. It is.

10 Q. If I were to ask you the questions set forth
11 in Exhibit CT-69 today, would your answers be the same?

12 A. Yes, they would.

13 MS. BROWN: Your Honor, I move the admission
14 of Exhibit CT-69, C-70, Exhibits 71, 72, Exhibit C-73,
15 74, 75, 76, 77, 78, and 79. Those are all confidential
16 exhibits. Exhibit 80 and Exhibit 81.

17 JUDGE FOSTER: Any objections, Mr. Owens?

18 MR. OWENS: Yes, your Honor. A brief
19 objection to the portion of Exhibit CT-69 that begins
20 on Page 6, Line 14, and continues over to Page 7
21 through Line 10. And there are two grounds for the
22 objection.

23 First, the material is not responsive to the
24 question that's asked. It clearly addresses periods

25 after the Staff commenced its investigation.

(DAMRON - Direct by Brown)

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1 The second ground is that it appears to be
2 an argument to change the law. And since the
3 Commission doesn't have the power to change the law, it
4 doesn't appear to be relevant to any issues that are
5 before the Commission in this case.

6 JUDGE FOSTER: Any comments, Miss Brown?

7 MS. BROWN: I think that this testimony here
8 is proper rebuttal. There was a fair amount of
9 cross-examination in dispute regarding the ease with
10 which this case was prosecuted by the Commission. And
11 I think that it's relevant.

12 I think the testimony should stand. Mr.
13 Damron's opinions regarding the effect of the
14 Commission's lack of show-cause authority also serve as
15 an additional basis for his opinion that this legal
16 battle waged by IPI has been formidable and that this
17 case has taken so long to reach conclusion.

18 JUDGE FOSTER: Mr. Owens, your objection to
19 admission of this portion of Mr. Damron's testimony
20 will be denied. I believe that this is attempting to
21 discuss his perspective, problems that have been
22 encountered by the Commission Staff in this case. I
23 think the comments go to the weight. We all know that
24 the Commission doesn't have show-cause authority. So,

25 presumably any efforts to change this situation will

(DAMRON - Direct by Brown)

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1 take place in a forum far from here.

2 With that, I'll go ahead and admit Exhibits
3 CT-69, C-70, Exhibit 71 and 72, Exhibits C-73 through
4 C-79, and non-confidential Exhibits 80 and 81.

5 (Admitted Exhibits CT-69, C-70, 71, 72,
6 C-73, C-74, C-75, C-76, C-77, C-78, C-79, 80 and 81)

7 MS. BROWN: The witness is available for
8 cross-examination.

9 JUDGE FOSTER: Go ahead, Mr. Owens.

10

11 C R O S S - E X A M I N A T I O N

12 BY MR. OWENS:

13 Q. Good morning, Mr. Damron.

14 A. Good morning.

15 Q. Mr. Damron, at Page 3 of CT-69, you refer to
16 a study done by the Federal Communications Commission
17 on subscriber commission fees.

18 Now, do you know anything more than Mr.
19 Wilson testified that he knew about how that study was
20 conducted?

21 A. No, I don't.

22 Q. So, you don't know whether the FCC had a
23 random sample or some other basis for its conclusion?

24 A. No. I relied on the testimony of Mr. Wilson

25 on that.

(DAMRON - Cross by Owens)

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1 Q. Have you read the portion of Exhibit 22,
2 Attachment N, Page 13, where the FCC discusses that
3 study?

4 A. No, I have not.

5 Q. Would you accept subject to check that in
6 that exhibit the FCC indicated that they believed that
7 their results were flawed in that the companies
8 reported their revenues and commissions differently?

9 A. If you can cite a page?

10 Q. Page 13, Attachment N, Exhibit 22.

11 A. I'll accept that.

12 Q. In fact, they indicated that some companies
13 treated uncollectibles as included in revenues and some
14 treated them as not being included in revenues. Would
15 you accept that subject to check?

16 A. If it's cited in that and I have the ability
17 to check it, yes.

18 Q. Now, you say a case could be made that a
19 percentage of 21 percent would be appropriate. Are you
20 testifying that a percentage of 21 percent is
21 appropriate?

22 A. No. I'm simply making the observation that
23 Mr. Wilson conducted his survey, the results of his
24 survey achieved a fairly close fit with the FCC's

25 results. I think that tends to offer some verification

(DAMRON - Cross by Owens)

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1 of Mr. Wilson's survey.

2 And regardless of potential defects that may
3 or may not have biased the FCC's results, they
4 certainly would have had a broader base to analyze
5 subscriber commissions and ratios of that to revenues.

6 Q. You're saying biases or defects in the FCC's
7 study should be ignored?

8 A. I don't think you need to ignore them. But
9 I don't know that there is any showing one way or the
10 other that the biases cause any significant damage to
11 the result.

12 Q. But you don't know that the result is valid
13 yourself, do you?

14 A. It was valid enough for the FCC to publish
15 the figure with those caveats.

16 Q. The FCC isn't taking action such as this
17 Commission is proposing to take against AOS companies,
18 is it?

19 A. It's taking virtually no action against AOS
20 companies.

21 Q. Is the answer to my question yes?

22 A. Yes.

23 Q. Now, beginning at Page 5 and continuing on
24 to Page 7 of Exhibit CT-69, you describe what you

25 consider to be the circumstances that you rely on for

(DAMRON - Cross by Owens)

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1 your decision to proceed with your investigation on a
2 total-company basis.

3 There isn't any provision in the Washington
4 Administrative Code that indicates that under such
5 circumstances a rate case would be tried on an
6 unseparated basis, is there, that you know of?

7 A. I believe the Code is silent on that. It
8 doesn't say yes or no.

9 Q. You do not know how long it would have taken
10 you to compute Part 32 inputs to a Part 36 separation
11 study from the information IPI provided; is that
12 correct?

13 A. Correct. You can never calculate how much
14 time it would take you to walk down a different avenue.

15 Q. Now, you indicate at Page 7 that Staff faced
16 obstacles in the discovery process which made an early
17 resolution of this case absolutely impossible.

18 Were any of International Pacific's
19 objections to Staff's discovery sustained?

20 A. They were.

21 Q. Is it true that the timing of the rules on
22 International Pacific's objections to Staff data
23 request was controlled by someone other than
24 International Pacific?

25 one of the data requests from the Company that the only

(DAMRON - Cross by Owens)

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1 two that I'm aware of was the U. S. West earnings
2 complaint case and this present case. There may have
3 been other complaint cases, but they were not revenue
4 requirements/earnings complaint cases to my knowledge.

5 BY MR. OWENS:

6 Q. And the U. S. West case was settled. And
7 the only hearing that was involved in that case was on
8 the terms of the settlement. Isn't that true?

9 A. It encompassed that and the basis of the
10 settlement.

11 Q. But there was not a situation where the
12 Staff actually introduced an affirmative case to prove
13 that U. S. West's rates were too high and there was
14 cross-examination on that and that was the basis of a
15 decision on the merits in that case; is that true?

16 A. It's partially true. Staff did introduce
17 pro forma income statement indicating that the
18 settlement was reasonable based on the Staff's revenue
19 requirement analysis. But it was not a contentious
20 case. Cross-examination was waived because of the
21 settlement.

22 Q. Now, in making the statement at Page 6 that
23 normally a rate case lasts eleven months or less, what
24 research did you do?

25 Q. Then I take it you weren't aware of the fact

(DAMRON - Cross by Owens)

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1 that the case involving Pacific Telephone and Telegraph
2 Company that went to the Supreme Court in 1940 took two
3 years at the Commission level?

4 A. I'm not aware of the circumstances of that
5 case. So, I couldn't comment one way or the other.

6 MR. OWENS: For the record, your Honor, I
7 would give you the citation of WUTC versus Pacific
8 Telephone and Telegraph, 19 Washington 2d 200 decided
9 in 1940. I don't have the page citation. But it
10 clearly indicates that the case started in June of 1938
11 and there was a Commission order in July of 1940.

12 BY MR. OWENS:

13 Q. Now, you indicate also on Page 6 the
14 Commission has expressed a desire to process rate cases
15 in a six-month period if possible.

16 I take it that's not a provision in the
17 Washington Administrative Code, is it?

18 A. No. It was simply a stated objective of the
19 Commission that in recognition of the need -- I believe
20 this was issued in the early '80s when we had double
21 digit inflation and prime rates, and the Commission was
22 attempting to respond to the needs of the industry by
23 processing cases in a more timely manner. They made
24 the statement that whenever possible they would like to

25 see these rate cases concluded in six months.

(DAMRON - Cross by Owens)

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1 Q. You don't any longer have a copy of the
2 document that you referred to in that answer; is that
3 right?

4 A. No, I don't. When my office was reduced to
5 a workstation that I can now reach across, I no longer
6 have ninety percent of the files that I used to have.

7 Q. I take it nobody from the Commission has
8 given you any instructions with regard to this case to
9 process it in six months or less?

10 A. Nobody has given me any instructions in
11 terms of timing. Of course, as I have indicated in my
12 testimony, I don't think the Staff is totally in
13 control of the timing of this case. We don't control
14 the flow of data. And that's essential to the
15 processing of this case.

16 Q. Now, you state at Page 6 that you believe
17 that with show-cause authority the Commission could
18 have taken action against IPI's rates in approximately
19 a six-month period. And you indicated in response --
20 strike that.

21 Is that based on your general experience
22 with companies that you believe are the same size as
23 International Pacific where they have the burden to
24 prove a rate increase?

25 A. In part, yes. In part I'm aware that, for

(DAMRON - Cross by Owens)

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1 instance, the IPI with show-cause by the FCC reduced
2 its rates without hearing.

3 Q. We discussed this in your cross-examination
4 of your direct case. And you don't know any more now
5 than you knew then about what specific rate
6 International Pacific reduced; is that correct?

7 A. Only what is on the record in this case and
8 in the Company's competitive classification case. I
9 think Mr. Soumas spoke to this.

10 Q. You're not saying that it's impossible that
11 with show-cause authority the case could take longer
12 than six months, are you?

13 A. Well, I think in a show-cause situation,
14 it's my experience from looking at the FCC, they have
15 issued show-cause authority and have basically said you
16 will either show cause why your rates should not be
17 reduced or you will reduce your rates on 1/1 whatever
18 of that particular year. So, they set a deadline. And
19 I have not -- I'm not familiar with what statutes or
20 what regulations permit them to do that or what the
21 duration is. But they have been able to say "You will
22 show cause why your rates should not be reduced or you
23 will reduce them by such and such a date."

24 And I think that sets a deadline in terms of

25 processing the case.

(DAMRON - Cross by Owens)

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1 Q. You don't know whether or not the FCC either
2 is required to or, in fact, gives a hearing in any such
3 show-cause proceedings, are you?

4 A. I'm not that familiar with -- I only know
5 what I read in the papers.

6 Q. If a hearing was required in Washington,
7 that could affect even the length of time that would be
8 needed to process the case under show-cause authority,
9 couldn't it?

10 A. Certainly.

11 Q. And so you're not saying that it's
12 impossible that a case might take longer than six
13 months under show-cause authority? Is that a fair
14 statement?

15 A. It could take longer. It certainly would
16 take a lot less Staff effort and resources to process,
17 and we have very limited resources.

18 Q. You say that the Commission went to the 1992
19 legislature. Isn't it true that the Commission went to
20 the 1993 legislature to ask for power to reverse the
21 burden of proof?

22 A. I would have to accept that subject to
23 check. You may be right.

24 Q. Now, did you ever yourself go to

25 International Pacific headquarters to exercise your

(DAMRON - Cross by Owens)

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1 statutory power to review its books and records either
2 during 1992 or 1993?

3 A. The Staff did. I did not personally.

4 Q. And was there anything that International
5 Pacific did that prevented you from inspecting its
6 books and records yourself, using your statutory power?

7 A. No. I think there is two avenues of -- to
8 obtain data. One is through data requests and one is
9 through onsite inspection of the books. Either way,
10 Staff has no independent source of data. And whether
11 they get it through discovery or get it through onsite
12 analysis, the same result is achieved.

13 I think as contentious as this case has
14 been, it was my choice to keep it formal, particularly
15 in light of some of the accusations that we have had
16 leveled at the Staff on the record. I have been very
17 careful to keep it formal and keep it in
18 correspondence.

19 I don't know that onsite audit is any better
20 or any worse than discovery.

21 Q. But since you didn't try it, you don't know
22 in this case; is that right?

23 A. No. I can only say I did the best I could
24 with the amount of time and resources I had available.

25 Q. Now, you have audited Pacific Northwest

(DAMRON - Cross by Owens)

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1 Bell, the predecessor of U. S. West, in rate cases
2 before, haven't you?

3 A. On a number of occasions, yes.

4 Q. On those occasions, did you do it by staying
5 in your office and submitting data requests
6 exclusively?

7 A. Usually.

8 Q. You never went to U. S. West or Pacific
9 Northwest Bell and examined their records?

10 A. I wouldn't say never. But when you're
11 dealing with a multi-billion dollar multi-state
12 company, that two-week excursion at Bell Plaza really
13 doesn't bear a whole lot of fruit. When you're working
14 a case where there is maybe thirty or forty boxes of
15 analysis that you ultimately generate in a rate case, I
16 work better at my desk than I do at the Bell Plaza.

17 With a company that size, it's a bit
18 optimistic to say that you audit the company with a one
19 or two-staff force when you have a company that covers
20 36 percent of the Continental United States. So, you
21 rely very heavily on interview and discovery and
22 analysis rather than the type of verification audit
23 that you would make.

24 It's not an Arthur Andersen type audit.

25 It's an audit for very specific purposes identifying

(DAMRON - Cross by Owens)

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1 revenue requirements.

2 Q. It's true, isn't it, that the lack of
3 show-cause authority didn't prevent you from going to
4 International Pacific and reviewing their records?

5 A. No. As I have stated, Staff did go to IPI
6 and examined their records and obtained the general
7 ledger for 1991 and 1992 and part of 1993.

8 Q. Is it true that, aside from one motion to
9 compel that was filed in March of 1992 and granted in
10 part and denied in part, the Staff didn't file any
11 motions to compel responses to data requests?

12 A. I don't recall. Subject to check, yes.

13 Q. Is it true that there weren't any motions to
14 compel that the Staff believed were necessary but did
15 not file?

16 A. I don't know.

17 Q. Is it true that the Staff did not renew any
18 of the data requests that the order on discovery said
19 could be renewed if the response of the Company was not
20 full and complete?

21 A. I don't know without going back and
22 checking. I don't know whether there is necessity to
23 renew data requests once you get a discovery order that
24 says you will comply.

25 Q. Now, with regard to the timeliness of

(DAMRON - Cross by Owens)

1020

1 responses to data requests, it's correct, isn't it,
2 that the Staff did not meet the deadline set in the
3 rule for all of its responses to IPI's discovery?

4 A. I do not know.

5 Q. It's true, isn't it, that they objected to
6 some of International Pacific's data requests?

7 A. Yes.

8 Q. Now, the Commission went to the legislature
9 in 1992 and requested show-cause authority, but it
10 requested that only for AOS companies that had filed
11 tariffs prior to I believe it was July of 1991; is that
12 right?

13 A. I'm not aware of the specific details. It's
14 my understanding that the show-cause authority was
15 confined to AOS companies. Beyond that, it's beyond my
16 knowledge. I did not read the proposed legislation.

17 Q. Was that because the Commission thought it
18 would be okay if other types of companies had rates
19 that continued to be high during the pendency of a
20 protracted case to reduce those rates?

21 A. I have no idea what was in the mind of the
22 Commission. I could speculate.

23 Q. I'm not asking for your speculation.

24 JUDGE FOSTER: Mr. Owens, was that 1992 or

25 1993?

(DAMRON - Cross by Owens)

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1 MR. OWENS: I believe it was the 1993
2 legislative session that began in January of 1993.

3 JUDGE FOSTER: Okay. I believe you in your
4 question said 1992. I just want to be clear.

5 MR. OWENS: You're absolutely right. I read
6 from the testimony, and I believe that's an erroneous
7 date. I had asked Mr. Damron about that previously.

8 JUDGE FOSTER: Yes.

9 MR. OWENS: Thank you for correcting me on
10 that.

11 BY MR. OWENS:

12 Q. It's true, isn't it, that International
13 Pacific's existing rates are presumed reasonable until
14 you prove otherwise after a hearing?

15 A. No. I wouldn't agree with that. They are
16 presumed to be the filed tariff. And I don't think
17 it's my understanding that the Commission is required
18 to accept any tariff that comes through the door. I
19 don't think we consider them reasonable until they
20 achieve a finding from the Commission that they are
21 fair, just, and reasonable, and I don't think that
22 finding has ever been made with IPI.

23 Q. It's true, isn't it, that the Commission
24 could have petitioned the joint board to establish

25 separations for AOS providers before filing its

(DAMRON - Cross by Owens)

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1 complaint against IPI?

2 A. They could have done a number of things and
3 may still do that.

4 Q. So, is the answer yes?

5 A. The answer is yes. This is an early
6 industry, and problems take time to work out.

7 Q. Is it true that the Commission could have
8 adopted a valid accounting rule to cover the 1991 test
9 year?

10 A. I think they felt they had a valid
11 accounting rule until they received a ruling from the
12 Court.

13 Q. Is the answer yes, they could have adopted a
14 valid accounting rule?

15 A. I don't know why they would go back and
16 adopt a valid accounting rule and initiate a proceeding
17 when they didn't feel that there was any need to do so.

18 Q. You're saying it's impossible for them to
19 have adopted a valid accounting rule?

20 A. I'm not saying it's impossible. It's rather
21 improbable to initiate a proceeding when you have no
22 inclination to do so until the defect of that was
23 challenged in the court.

24 Q. Isn't it true that the Commission could have

25 issued a directive or an order to International Pacific

(DAMRON - Cross by Owens)

1023

1 to provide a separated 1991 results and issued that
2 order at the beginning of 1991?

3 A. They could have. That's improbable that
4 they would ask for something until they had concluded
5 that an investigation was appropriate.

6 Q. The Commission was working on its AOS rule
7 for more than a year before that rule was adopted in
8 July of 1991, wasn't it?

9 A. I have no direct knowledge of the AOS rule
10 or the timing of that rule or who participated in that
11 rule. I was not a party to that.

12 Q. Is it true that sometimes, even when the
13 burden of proof is on the utility, that the utility
14 objects to Staff data requests?

15 A. Yes, they do.

16 Q. And you're not taking a position that such
17 objections should not be heard, are you?

18 A. Of course not. A company should exercise
19 its legal rights.

20 Q. Now, you testified at Page 8 that the only
21 jurisdictional procedures known to the Staff really did
22 not apply to International Pacific. But it's true,
23 isn't it, that you asked in a data request for
24 International Pacific to prepare separations using that

25 process?

(DAMRON - Cross by Owens)

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1 A. Yes. As I explained at the top of Page 9 of
2 my testimony.

3 Q. So, it's true, isn't it, that it would be
4 impossible for International Pacific to comply
5 literally with the terms of your request?

6 A. I don't know. Certainly I recognize the
7 dilemma. As I went into this case, as I stated in my
8 testimony, the only published jurisdictional separation
9 procedures that I'm aware of for telecommunications
10 companies is 47 CFR Part 36.

11 Q. Even if you had the Part 32 accounting
12 inputs for International Pacific, Part 36 would still
13 be inapplicable?

14 A. I don't know about totally inapplicable.
15 But I have listened to the testimony of Mr. Mean and to
16 the testimony of Mr. Olch, and they convinced me that
17 Part 36 really doesn't apply to the AOS companies.

18 Q. Part 36 hasn't always existed, has it?

19 A. No. It became effective in January 1, 1988,
20 Part 67.

21 Q. And Part 67 did not always exist prior to
22 January of 1988, did it?

23 A. I'm not aware of what the predecessor to
24 Part 67 was. But I certainly agree that the

25 separations procedures between state and interstate has

(DAMRON - Cross by Owens)

1025

1 been an evolutionary process and has changed

2 continuously over time.

3 Q. So, in making your decision to proceed on an
4 unseparated basis because there wasn't any applicable
5 jurisdictional separations procedure, did you do any
6 research as to what had occurred in the past under
7 similar circumstances?

8 MS. BROWN: I would object. The question is
9 vague.

10 THE WITNESS: No.

11 JUDGE FOSTER: Just wait a second and let me
12 rule on this.

13 Can you spell out what part is vague?

14 MS. BROWN: There are two aspects. What
15 occurred in the past under similar circumstances and
16 without fleshing out when, what are the circumstances.
17 And the question is vague and ambiguous.

18 Let's see if Mr. Damron can answer.

19 JUDGE FOSTER: Mr. Owens?

20 MR. OWENS: I don't believe it's vague at
21 all. He answered in a prior answer that he didn't
22 believe there were applicable jurisdictional
23 separations procedures. And I'm asking him if he
24 researched what had been done in the past when that

25 situation existed.

(DAMRON - Cross by Owens)

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1 JUDGE FOSTER: The objection is overruled.

2 I'll allow the question.

3 THE WITNESS: I need the question repeated.

4 JUDGE FOSTER: Mr. Owens, do you want the
5 reporter to reread it?

6 MR. OWENS: I'll restate it.

7 BY MR. OWENS:

8 Q. Did you do any research, Mr. Damron, in
9 deciding to proceed on an unseparated basis as to what
10 had happened in the past when the Commission was faced
11 with a similar situation of no adopted separations
12 procedures?

13 A. My -- the answer is yes. The research was
14 not extensive. I simply knew from my own knowledge of
15 being nearly a twenty-year veteran of this Commission
16 that that has been the practice.

17 Since we were in a formal, very contentious
18 case, I did check with the Attorney General's office to
19 get an opinion from them if it was permissible to
20 proceed on a total-company basis, and they said yes.

21 That's the way I proceeded. That's the four
22 corners of my research. As I stated in a number of
23 data requests, I certainly didn't go back and examine
24 each and every case that has come before this

25 Commission.

(DAMRON - Cross by Owens)

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1 Q. If the Washington Supreme Court in a written
2 opinion -- the citation is 66 Washington 2d 411,
3 Pacific Northwest Bell versus the Utilities and
4 Transportation Commission -- discussed the history of
5 this indicating that the first separations manual
6 originated as a 1942 report prepared by a committee
7 composed of Federal Communications Commission and State
8 Commission representatives working jointly with
9 representatives of the American Telephone and Telegraph
10 Company, would you have any reason to dispute that?

11 A. I wouldn't have any reason to dispute that.
12 That's 1940, fifty some years ago. That's certainly
13 beyond my memory.

14 Q. Now, the case of Smith versus Illinois Bell
15 was decided in 1930. Would you accept that subject to
16 check?

17 A. Subject to check, yes.

18 Q. So, would it be reasonable to conclude that
19 the concerned parties, the State, the Federal, and the
20 regulated entity, got together after that and
21 negotiated parameters for use in separations?

22 A. I'm aware that State and Federal
23 representatives have gotten together and negotiated.
24 But I have no idea as to when or what initiated those

25 negotiations.

(DAMRON - Cross by Owens)

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1 Q. But if the Supreme Court of Washington said
2 what I told you just now that it said, that they worked
3 jointly with representatives of AT&T, would you have
4 any reason to dispute that?

5 A. I'm not sure what I would be agreeing to or
6 disputing. I haven't examined that particular case.

7 MR. OWENS: May I approach the witness?

8 JUDGE FOSTER: Yes.

9 MS. BROWN: What have you provided him with?
10 A copy of the decision?

11 MR. OWENS: Yes.

12 MS. BROWN: We'll stipulate that what is
13 written in the opinion is written in the opinion.
14 You're asking him just to confirm that the opinion
15 states what it says; right?

16 MR. OWENS: I asked him if he had any reason
17 to dispute it. And he said he didn't know what he
18 would be agreeing to.

19 MS. BROWN: Your Honor, I guess I'm going to
20 object. I think not only is the question asked and
21 answered, I think it is unfair to ask Mr. Damron
22 whether or not it would be reasonable to draw certain
23 conclusions in light of the fact that Mr. Damron has
24 already indicated that fifty plus years ago was a long

25 time ago, that he is not familiar with what transpired

(DAMRON - Cross by Owens)

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1 at that time.

2 So, I would say not only asked and answered
3 but lack of foundation. If Mr. Owens wants to argue
4 these cases in brief and draw his own conclusions based
5 on what is written in those opinions, then that's fine.

6 JUDGE FOSTER: Mr. Owens?

7 MR. OWENS: Mr. Damron makes the statement
8 that there are only two alternatives available to the
9 Commission to proceed in a certain situation. And I'm
10 entitled to cross-examine him on the basis of that
11 statement that there is another alternative and what he
12 did to investigate the existence of that alternative
13 before making the statement.

14 JUDGE FOSTER: I'll allow the statement.

15 The objection is overruled.

16 BY MR. OWENS:

17 Q. So, would you have any reason to dispute
18 that representatives of the FCC and State Commissions
19 worked with AT&T, the regulated entity, to come up with
20 the first separations following the Smith versus
21 Illinois Bell?

22 A. It certainly sounds reasonable. At some
23 point they certainly did.

24 Q. Now, it's correct, isn't it, that you never

25 asked International Pacific in a data request until

(DAMRON - Cross by Owens)

1030

1 after International Pacific filed its direct testimony

2 who prepared Exhibit C-9?

3 A. That would be correct. It's my

4 understanding the discovery process cut-off date was

5 over, and we didn't have an opportunity to initiate

6 further discovery until after the Company's case was

7 filed.

8 Q. You're under the understanding there was a

9 cut-off date for discovery?

10 A. The initial discovery. I assume at some

11 point --

12 Q. What was that date?

13 A. I have no idea.

14 Q. Didn't you submit additional discovery

15 pretty much continuously over the period that this case

16 has been pending?

17 A. Well, yes. I mean, there wasn't a need to

18 ask a specific name of the preparer of Exhibit C-9

19 until the Company brought that exhibit into issue in

20 their direct case. It was sufficient for my purposes

21 that it was sponsored by the Company, and I directed my

22 discovery to the Company.

23 It only became pertinent when Mr. Mean took

24 the stand and said that this was prepared under our

25 direction. And the next question was: Well, if it was

(DAMRON - Cross by Owens)

1031

1 prepared under your direction, then who did prepare it.

2 Q. And you never asked to depose the person who
3 prepared it; is that right?

4 A. There wasn't a great deal of time to depose
5 anyone between the time the Company filed its direct
6 case and we went to cross-examination.

7 Q. After receiving the document in November of
8 1992, you never asked to depose the preparer; is that
9 correct?

10 A. No. We felt we could establish a sufficient
11 record through cross-examination.

12 Q. So, the answer to my question is: Yes, it's
13 correct that you never asked to depose the preparer?

14 A. Yes. It's also my recollection that you
15 made a representation to this Commission that the
16 individual wasn't available because they were no longer
17 employed by this Commission -- by the Company, rather.

18 Q. Are you saying that International Pacific
19 told the Commission that the Commission couldn't
20 subpoena someone for a deposition even if they weren't
21 an employee of International Pacific?

22 A. No.

23 Q. And so it's possible that you could have
24 obtained the information that you say you didn't have

25 in terms of the sources of calculations by taking a

(DAMRON - Cross by Owens)

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1 deposition; is that true?

2 A. Well, I mean, I had the opportunity -- if
3 given the opportunity to examine it -- and we did
4 pursue the source of some of the material items and we
5 did find problems with those sources, which is
6 expressed in my testimony, Exhibit C-40, for example.

7 Q. So, you're testifying now that you did have
8 all the information you needed to analyze Exhibit C-9?

9 A. No.

10 Q. So, if it's your testimony that you didn't
11 have all the information you needed, it's possible you
12 could have gotten that information by taking a
13 deposition; is that true?

14 A. It's certainly possible. Where the Company
15 is the moving party on Exhibit C-9, I don't know how
16 much of a burden the Staff needs to assume in order to
17 try to rehabilitate some deficient document.

18 Q. The answer is, yes, it's possible you could
19 have gotten the information that you didn't have to
20 analyze the source of calculations on Exhibit C-9 by
21 taking a deposition?

22 A. It's possible that I might have achieved
23 that information. It's also possible that I might not
24 have been able to obtain the information I needed.

25 Q. Now, if the information was contained in a

(DAMRON - Cross by Owens)

1033

1 database that is the source information, do you know
2 whether or not necessarily inquiring of a database
3 would produce a written workpaper?

4 A. It should produce something, either a
5 written workpaper or a mechanized response on disk.
6 It's my understanding that the Company maintains most
7 of its database in a so-called dBase III Plus format.
8 And that certainly could have been delivered to the
9 Staff. And I do -- am familiar with the dBase 3
10 language, and I could have analyzed it.

11 Q. You heard Mr. Mean's testimony that this
12 database consists of millions of call records, did you
13 not?

14 A. He indicated it was a fairly large database.
15 But I don't know how that -- dBase is a PC based
16 program. We have the capacity here to deal with that.

17 Q. You don't know whether the way International
18 Pacific uses dBase is to operate that database or as
19 perhaps simply a report generator, do you?

20 A. I have no idea how the Company developed
21 Exhibit C-9. And that's exactly my problem.

22 Q. So, is it possible that Exhibit C-9 could
23 have been developed without any workpapers in addition
24 to what had been provided being prepared?

25 A. It's possible that anything could be

(DAMRON - Cross by Owens)

1034

1 developed without workpapers. But I don't consider
2 that sufficient documentation, particularly when the
3 Company is the moving party. It seems it's incumbent
4 on them to provide some documentation to support their
5 calculation.

6 Q. It's possible that the document could have
7 been prepared without workpapers, as such, being
8 prepared, in addition to what were provided?

9 MS. BROWN: Asked and answered.

10 MR. OWENS: It was answered with a speech.
11 I'm entitled to a yes or no.

12 JUDGE FOSTER: I'll allow the question. The
13 objection is overruled.

14 THE WITNESS: Not only is it possible, it's
15 apparently likely because I was unable to find much of
16 anything behind the very thin document that was
17 provided as a jurisdictional separations study.

18 BY MR. OWENS:

19 Q. Now, it's true, isn't it, that the
20 workpapers that were produced were the subject of an
21 objection that was made on March 6, 1992, and was ruled
22 on on October 10, 1992; correct?

23 A. I'm not familiar with the specific dates.
24 But that sounds about right, yes.

25 Q. So, the time between those dates, if you

(DAMRON - Cross by Owens)

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1 would accept those dates for purposes of my question,
2 was consumed by the issue being before the tribunal for
3 decision whether to uphold the objection; correct?

4 A. Yes. And during that time the Company was
5 charging the rates that it's charging to the public.

6 Q. Is it your position that International
7 Pacific was not entitled to a hearing on its claim of
8 privilege?

9 A. No. But I'm distressed at the amount of
10 time it has taken to resolve this issue.

11 Q. You're not saying International Pacific was
12 responsible for that amount of time, are you?

13 A. I think from the testimony of Mr. Soumas in
14 the competitive classification case, he made it quite
15 clear that they intended to drag these proceedings out
16 just as long as they possibly could. That's my
17 recollection of his testimony.

18 Now, if it's not the Company's
19 responsibility for doing so, I don't know whose
20 responsibility it is. It certainly wasn't the Staff's
21 responsibility that this case has taken two years and
22 we're still not at a resolution.

23 Q. So, it's your testimony that International
24 Pacific controlled the time that the Administrative Law

25 Judge took to respond to its claim of privilege?

(DAMRON - Cross by Owens)

1036

1 A. Well, considering the voluminous nature of
2 most of your briefs, Mr. Owens, I don't know that
3 that's all the fault of the Law Judge in terms of
4 wading through those documents.

5 Q. So, your position is that International
6 Pacific was not entitled to a hearing on its claim of
7 privilege?

8 A. They are entitled to all of their legal
9 rights, and they have certainly exercised each and
10 every one of them.

11 Q. And then it's your claim that, because of
12 International Pacific's voluminous briefs,
13 International Pacific controlled the amount of time
14 that was taken to decide its claim of privilege; is
15 that right?

16 A. I don't think you can answer that one way or
17 the other. Certainly they are the ones who objected to
18 the data requests. They are the ones who have pursued
19 this case with a great deal of legal vigor, more so
20 than I have ever encountered in the twenty years of my
21 service with this Commission.

22 Now, if that's not having some control over
23 the timing of this thing, then I don't know what is.

24 Q. In the twenty years of your service with

25 this Commission, you have never tried a case seeking

(DAMRON - Cross by Owens)

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1 to exercise the kind of rate reductions against a
2 company that you're seeking here. Isn't that true?

3 A. What I spoke of before? Correct. My view
4 is I think that I am distressed at the amount of time
5 this case has taken, and I think it's -- and I have
6 expressed in my testimony why I feel it's taken this
7 amount of time.

8 JUDGE FOSTER: Mr. Owens, is this a good
9 time to take a break?

10 MR. OWENS: Certainly, your Honor.

11 JUDGE FOSTER: Let's be off the record, and
12 we'll reconvene at 11:15.

13 MS. BROWN: Thank you.

14 (Recess.)

15 JUDGE FOSTER: Let's be back on the record
16 after our morning break.

17 Mr. Owens, do you want to continue?

18 MR. OWENS: Thank you, your Honor.

19 BY MR. OWENS:

20 Q. You're not saying, Mr. Damron, that
21 International Pacific interfered with the
22 Administrative Law Judge in the decision making in
23 order to extend the time to consider the objection, are
24 you?

25 A. No.

(DAMRON - Cross by Owens)

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1 Q. At Page 10 of Exhibit CT-69, you state
2 comparing Exhibit C-9 to Exhibit 29 that that
3 demonstrates that IPI's jurisdictional cost study is
4 far less sophisticated than taught by jurisdictional
5 separations experts. You have indicated already that
6 you believe Part 36 isn't technically or really
7 applicable to AOS companies; is that right?

8 A. That's my conclusion, yes.

9 Q. And do you know of your own knowledge what
10 jurisdictional separations experts teach for separating
11 the results of an AOS company?

12 A. I'm not aware of any experts that teach
13 separations exclusively for AOS companies. I believe
14 they are nonexistent.

15 Q. Are you aware of any experts that teach
16 separations that include even as a subtopic AOS
17 companies?

18 A. They include as a subtopic telephone
19 operations, which are part of a LECs operation.

20 Q. You're not aware of any jurisdictional
21 separations experts that teach like a course module as
22 part of an overall course on AOS company separations,
23 are you?

24 A. No. I hope it made it fairly clear in my

25 testimony there was no AOS-specific jurisdictional

(DAMRON - Cross by Owens)

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1 separations procedures, experts, advice, or anything
2 else available for me to undertake a jurisdictional
3 separations of an AOS company. That's why I performed
4 my analysis on a total-company basis.

5 Q. Did you ever contact anyone at International
6 Pacific to ask about the source of calculations in
7 IPI's Exhibit C-9?

8 A. Only through discovery. Considering the
9 accusations we were getting from some of IPI's
10 personnel, I made absolutely no phone calls in an
11 informal manner to IPI. I kept all of my
12 communications in a formal manner through
13 correspondence or I think I had one conference call
14 with the Company with counsel present.

15 Q. When you have audited Pacific Northwest
16 Bell, has it ever happened that the source of a
17 calculation in a Company-supplied workpaper was not
18 immediately apparent to you?

19 A. That's true.

20 Q. Did you in those cases contact the Company?
21 Or did you proceed on an unseparated basis?

22 A. Well, U. S. West is a slightly different
23 situation. They come in on a jurisdictionally
24 separated basis per Part 36. So, my difficulties would

25 be with a particular calculation, not with the entirety

(DAMRON - Cross by Owens)

1040

1 of trying to clarify each and every number that went
2 into their jurisdictional separations calculation.

3 Q. It's true, isn't it, that for a local
4 exchange company, and particularly for U. S. West, the
5 jurisdictional separations calculation involves many
6 millions of documents?

7 A. It can, yes.

8 Q. You don't ask that all those millions of
9 documents be produced as workpapers in such a
10 situation, do you?

11 A. No. I usually try to persuade the Company
12 to produce workpapers where it's not just a few
13 handwritten numbers on a page with virtually no source
14 documentation on it as to what the numbers represent or
15 what the calculation is or anything else. There are
16 certainly layers of documentation. But the
17 documentation in Exhibit C-9 is extremely poor.

18 Q. It's true, isn't it, that knowing that there
19 were no jurisdictional separations applicable or really
20 applicable to International Pacific, you never sought
21 to negotiate separations with International Pacific?

22 A. As I indicated in a couple of data requests,
23 that opportunity did not materialize. The Company has
24 not offered to negotiate any piece of this case. We

25 did invite the Company to the negotiating table but

(DAMRON - Cross by Owens)

1041

1 reached an impasse.

2 Q. In terms of negotiating separations factors
3 in the face of your perception that there weren't any
4 that were applicable, you never sought to reach
5 agreement on that; is that right?

6 A. No. Again, as the Company is the moving
7 party, I think the Staff's burden was somewhat less in
8 terms of its analysis of the Company-sponsored
9 calculation.

10 Q. So, your position is that it was the
11 Company's burden to approach the Staff and ask for its
12 agreement to proceed on a separated basis when there
13 was no applicable separations procedures as you
14 understood it; is that right?

15 A. Sorry. I don't understand your question.

16 Q. Let's take it in steps.

17 You stated previously that you believed that
18 there were no applicable separations procedures for
19 International Pacific; is that right?

20 A. True.

21 Q. Notwithstanding that, you asked the Company
22 to prepare separated results. And it's your position
23 that it was the Company's burden to approach you and
24 ask for agreement on the separations factors; is that

25 right?

(DAMRON - Cross by Owens)

1042

1 A. The Company can advance -- the answer is no.
2 The Company can advance any theory it wishes. It can
3 make any calculation it wishes. It can sponsor those
4 calculations before this Commission.

5 All I'm saying is that it's not the Staff's
6 burden to make a silk purse out of a sow's ear.

7 Q. So, if I understand correctly, it's not your
8 position that International Pacific needed to approach
9 you to negotiate separations factors in the face of
10 Part 36 not being applicable; is that right?

11 A. In terms of overall negotiations, I don't
12 know that I can answer that yes or no. If you will
13 permit me to explain?

14 Early in this case we invited the Company to
15 a negotiation table to try to negotiate these issues.
16 We reached an impasse. We invited the Company to
17 consider what Staff's proposals were and to come back
18 if they so chose to continue with those negotiations.
19 They never did.

20 When you look at that and you look at the
21 attitude expressed by Mr. Soumas in the competitive
22 classification case where he essentially stated that
23 the Company was determined to litigate this case to the
24 full extent of the law as long as they could, frankly,

25 I didn't feel that negotiation was an option, not with

(DAMRON - Cross by Owens)

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1 a company with this type of an attitude.

2 In terms of the separations calculations,
3 the Company was the moving party. It is the Company
4 who advanced the theory that jurisdictional separations
5 were an absolute must. We requested workpapers. What
6 we got was deficient. What we got was very late. We
7 were almost a full year into the case before we had
8 anything that we could analyze. And what we did have
9 was very thin and very poor in documentation.

10 Personally, I didn't want to see this thing
11 drag on for three or four more years while we battled
12 over additional discovery and additional this and
13 additional that when it was the Company who was the
14 moving party regarding jurisdictional separations.

15 And I think in that situation where the
16 Staff initially did extend a hand and said, "Let's sit
17 down and talk about this," and the Company did not come
18 back, that, yes, the ball was in the Company's court to
19 come back if they so chose to say, "We would like to
20 negotiate this issue or that issue," et cetera.

21 I didn't really feel, considering the
22 attitude expressed by this Company, that continually
23 requesting further negotiations from the Company was
24 going to bear any fruit. They certainly knew that we

25 were ready to sit down and talk. We made that quite

(DAMRON - Cross by Owens)

1044

1 clear to the Company.

2 Q. So, when you say that the Company was the
3 moving party on jurisdictional separations, do I
4 understand that to mean that you believe you have no
5 burden at all to produce a separated case as part of
6 your burden of proof?

7 A. That as I have stated is the advice of
8 counsel. When we went into this case, jurisdictional
9 separations were nonexistent.

10 Q. The answer is yes?

11 A. The answer is yes.

12 Q. On Page 11 you claim that International
13 Pacific enjoys approximately fifty percent of the
14 Washington AOS market.

15 Isn't it true that, based on calendar 1991
16 Washington intrastate operating revenues, International
17 Pacific has approximately ten percent of the AOS
18 market, and that's shown by Mr. Wilson's Exhibit 30 in
19 docket UT-920546?

20 A. I can accept that subject to check. My
21 reference was to the fifty percent market share was to
22 the citation in Exhibit C-26, Pages 23 and 36, I
23 believe --

24 MS. BROWN: 33.

25

THE WITNESS: -- wherein it was claimed in

(DAMRON - Cross by Owens)

1045

1 that document that the Company enjoyed approximately
2 fifty percent market share.

3 BY MR. OWENS:

4 Q. But the universe of private payphones would
5 not include the LEC-owned payphones, would it?

6 A. I had no idea of what statistic was involved
7 in the claim made in Exhibit C-26.

8 Q. You don't know what your statistic really
9 means then. Is that a fair statement?

10 A. It depends on whether you define LECs and
11 AT&T as an AOS company. They are an AOS provider.
12 Whether they are an AOS company is another question.

13 Q. The LECs own payphones and AT&T owns
14 payphones, do they not?

15 A. They certainly do.

16 Q. Now, is it possible that the International
17 Pacific's operations in the interstate jurisdiction are
18 profitable?

19 A. It's not only probable, but it's very highly
20 likely.

21 Q. And is it possible that International
22 Pacific's operations in other state jurisdictions are
23 profitable?

24 A. I would expect that they are. Some

25 jurisdictions, they aren't even regulated. I talked to

(DAMRON - Cross by Owens)

1046

1 the Idaho Staff, and they said that you could charge
2 \$10 a call and they couldn't touch you because they do
3 not regulate AOS in Idaho. And I don't believe they
4 regulate AOS in Oregon.

5 Presumably the Company can just have at the
6 end user without any interference from regulation.

7 Q. Is it possible that carriers with intrastate
8 rates lower than International Pacific's are operating
9 at a loss in Washington intrastate operations?

10 A. I guess. You continually ask is it
11 possible. And I guess my response to this question or
12 any further questions you make is in most cases
13 anything is possible. But the reverse is also
14 possible. It's just simply conjecture.

15 The answer is I don't know.

16 Q. You don't know if it's possible?

17 A. Let's not get into that. Certainly it's
18 possible. It's also possible that it isn't possible.

19 Q. Well, one of those statements has to be
20 untrue, doesn't it, Mr. Damron?

21 A. Yes. The problem is discovering which one
22 is true, and I don't think this record is going to bear
23 any fruit in terms of discovering which one is.

24 Q. Your testimony is that International

25 Pacific's jurisdictional separations study defies logic

(DAMRON - Cross by Owens)

1047

1 and common sense. And so I'm asking you isn't it true
2 that it's possible for a carrier other than
3 International Pacific with rates lower than
4 International Pacific to be operating at a loss in
5 intrastate operations?

6 A. It's possible. But it's highly unlikely
7 that with IPI having virtually the highest rates in the
8 state, perhaps not the highest but one of the highest
9 rates in the state, that we have something like 56 or
10 more AOS companies registered out there, and we're not
11 hearing any of them coming to the Commission and
12 saying, "We're losing money here, and we need to raise
13 the rates." We're not hearing that. And it would seem
14 like with 56 companies or so out there, if their rates
15 were deficient, we would hear that from somebody.

16 But we don't hear that claim. So, I don't
17 think that's a possibility. I think it's very remote
18 that we have 56 companies operating in this state that
19 are all operating at a loss and are content to do so
20 without coming to this Commission and trying to say,
21 "We need higher rates and this is why."

22 Q. Maybe you misunderstood my question. I
23 didn't ask you whether it was possible that they were
24 all operating at a loss. I just asked if it was

25 possible that some might be operating at a loss.

(DAMRON - Cross by Owens)

1048

1 A. If they are not an efficiently run
2 operation, they certainly may be operating at a loss.
3 A well-run operation certainly should be able to do
4 well considering some of the claims in Exhibit C-26
5 about 22 percent returns.

6 Q. Is it possible that if International Pacific
7 were operating profitably in the interstate and
8 other-state jurisdictions, it could operate at a loss
9 in Washington and still have an overall profit?

10 A. It's possible. It's not very probable
11 considering the magnitude of the Washington operation
12 compared to the remaining operations of IPI.
13 Washington is an extremely dominant portion of the
14 Company's total operations. It would be very hard to
15 sustain the loss that they are claiming in this state
16 and still be reporting the overall achieved returns
17 that they are.

18 Q. Isn't it true that International Pacific's
19 most-used interstate rates are higher on a comparable
20 mileage and time of day basis than its Washington
21 intrastate rates?

22 A. Yes. It's also true that interstate costs
23 may be higher than intrastate costs.

24 Q. But you don't know?

25 A. But I don't know.

(DAMRON - Cross by Owens)

1049

1 Q. Is it possible for a company that is
2 operating at a loss to experience a growth in sales?

3 A. Certainly possible. I think with this
4 Company, where their costs tend to be volume driven,
5 with the economies of scale and the volume discounts
6 that they would achieve at the higher level, that it's
7 unlikely that they would be driven into a loss position
8 by increasing its business, particularly considering
9 some of the objectives and markups and what not that
10 are described in Exhibit C-26 about how they go about
11 their business in deriving their charges in their
12 contracts.

13 Q. Have you finished your answer?

14 A. Yes.

15 Q. Your testimony at Page 11 is that you're
16 told by IPI's own witnesses that IPI has experienced
17 phenomenal growth since the 1991 test period. And the
18 reference you give there is to growth in sales, isn't
19 it?

20 A. True.

21 Q. So, that's subsequent to the 1991 test
22 period; correct?

23 A. Yes. Exhibit C-26 also states that the
24 Company operated at a profit through 1992.

25 Q. Beginning with the first quarter in 1991;

(DAMRON - Cross by Owens)

1050

1 right?

2 A. Yes.

3 Q. But that's an overall profit for Impact,

4 isn't it?

5 A. Presumably, yes.

6 Q. Did Impact acquire a company in 1993?

7 A. Acquire a company?

8 Q. Yes.

9 A. I'm not certain of the dates. I know they

10 have affiliates, NTA. But I thought that occurred in

11 August of '92. I'm not too familiar with their

12 affiliate transactions. The Company hasn't filed any

13 application on the Commission on that associate.

14 Q. Is it your position that they need to file

15 an application if the owners of the holding company

16 purchase stock of an existing company?

17 A. No. I'm referring to RCW 80.16.020

18 regarding dealings with affiliate interests must be

19 approved. That's the reference I had in my testimony

20 regarding affiliate transactions.

21 Q. International Pacific hasn't sought to

22 include any dealings with NTA as a pro forma

23 adjustment, has it?

24 A. It hasn't sought to make any pro forma

25 adjustment.

(DAMRON - Cross by Owens)

1051

1 Q. So, is the answer, no, it hasn't?

2 A. Not for the test period. The acquisition of
3 NTA occurred after the test period.

4 Q. You state at the bottom of Page 11 that
5 you're advised by counsel that unapproved affiliate
6 transactions are subject to disallowance by the
7 Commission for ratemaking purposes.

8 Do you have a specific transaction that
9 you're proposing to disallow on that basis?

10 A. Yes. I believe I discussed in my direct
11 testimony regarding accounts receivable financing that
12 I proposed a disallowance of the entire amount. I
13 suggested that the lion's share of those amounts were
14 related to an Degerston. I would refer you to my
15 direct testimony, Page 48, and also Page 88 where I
16 discussed those transactions. D E.

17 Q. Page 12, Exhibit CT-69, you state that you
18 attempted to obtain the underlying documentation in
19 support of Exhibit C-9, and that was when IPI filed
20 its case in August 1993.

21 Now, Mr. Mean indicated that there weren't
22 any additional workpapers to Exhibit C-9, isn't that
23 true, in response to a data request?

24 A. He did. He also produced Exhibit C-40,

25 which was defective and was an underlying detail tied

(DAMRON - Cross by Owens)

1052

1 to Exhibit C-9.

2 Q. But you had never asked prior to your Staff
3 Request 301 for the information that was produced on
4 Exhibit C-40. Isn't that true?

5 A. I asked for all underlying workpapers.

6 Q. But if the information wasn't on a
7 workpaper, you didn't ask for it. Isn't that true?

8 A. If the Company was careless enough to
9 prepare all of their documentation without workpapers,
10 then certainly it was not on the workpaper. They don't
11 have any workpaper to produce. That follows.

12 Q. And you could have asked for that same
13 information at any time after you received Exhibit C-9
14 in November of 1992; correct?

15 A. Yes. Again, the Company is the moving party
16 regarding separations. We didn't feel compelled to ask
17 more than once for documentation.

18 Q. You asked for documentation, but you didn't
19 ask for that information even once until Exhibit 301;
20 correct?

21 A. That's when it was reintroduced into the
22 record and became an issue, yes.

23 Q. Now, you said something to the effect that
24 as response to Staff Request 301 -- and it's true,

25 isn't it, that Staff Request 301 was part of a group of
(DAMRON - Cross by Owens) 1053

1 189 data requests that you submitted to International
2 Pacific and to which International Pacific had three
3 weeks to respond?

4 A. True. Most of those data requests were in
5 the form of just requiring a simple one or two-sentence
6 answer, though. It wasn't asking for voluminous
7 documentation.

8 Q. Some of those requests had multiple
9 components, didn't they?

10 A. Some did; some did not.

11 Q. And No. 301 was the concluding data request
12 in that series, wasn't it? It was the last one IPI
13 received?

14 A. It was.

15 Q. And IPI's initial response was that a study
16 would be required. And then the following day they
17 submitted the response, didn't they?

18 A. That's true, which was rather curious. I
19 don't know why they would need to conduct a study to --
20 reconduct a study to derive a number that they had
21 previously transmitted to us six/eight months earlier.

22 Q. You listened to Mr. Mean's testimony about
23 the call records being contained on tape reels that had
24 to be accessed in order to get that information, did

25 you not?

(DAMRON - Cross by Owens)

1054

1 A. That's his testimony. But it's also my
2 experience when you prepare a study you usually attempt
3 to summarize that. You just don't put your hand over a
4 set of tapes and say this is the answer.

5 Q. Does everybody conduct a study in the same
6 way you do?

7 A. Apparently not.

8 Q. Now, beginning on Page 12 and continuing on
9 to Page 14, you discuss Exhibit C-40. And then at the
10 end of your testimony, beginning at Page 70, you
11 continue that discussion in reference to the response
12 to Record Requisitions 3 and 4; is that correct?

13 A. Yes.

14 Q. Now, do you have any knowledge as to whether
15 or not International Pacific stores its Lotus
16 spreadsheet files on a network?

17 A. No.

18 Q. Is it possible that if International Pacific
19 stored the files that it provided to you in response to
20 Record Requisition 3 on a network, that the date that
21 would be shown when the file was down loaded so that it
22 could be provided to you would be the date it was down
23 loaded as opposed to the date it was originally
24 created?

25 A. No, that's not my understanding of that

(DAMRON - Cross by Owens)

1055

1 function.

2 Q. Have you investigated it?

3 A. We have a network at the Commission. And
4 the file date does not change if you move a file on and
5 off the network.

6 Q. Do all networks operate the same way in that
7 regard?

8 A. I think they are following a DOS operating
9 system. And I believe DOS works in that fashion.

10 Q. You reviewed the interoffice memorandum of
11 Sharon Siers that International Pacific provided, which
12 was Exhibit 80. You draw some conclusions from the
13 formula that you found for the computation of
14 intrastate billable minutes and billable calls; is that
15 correct?

16 A. At the conclusion of my testimony, yes.

17 Q. It's correct, isn't it, that when you save
18 over a worksheet, the original data entries, if they
19 were changed, are not retrievable in the old worksheet?

20 A. Regrettably, yes, unless you have a backup.

21 Q. So, when Miss Siers in her memo said that
22 she made the appropriate corrections, is it possible
23 that she changed some formulas?

24 A. Quite possible she did a number of things of

25 which I'm not aware precisely what that was. That was

(DAMRON - Cross by Owens)

1056

1 the cause of the concern.

2 Q. So, if Miss Siers were to explain what she
3 did, it's possible that you could conclude that there
4 is nothing wrong with the document?

5 MS. BROWN: Object. It certainly calls for
6 speculation. Mr. Damron is not qualified to render an
7 opinion as to what went on in Ms. Sharon Sier's mind or
8 what she did.

9 MR. OWENS: I'm simply asking him if she
10 explained what she did, whether it's possible that he
11 could conclude there is nothing wrong with the
12 document.

13 JUDGE FOSTER: I'll allow the witness to
14 answer if he knows.

15 THE WITNESS: Again, anything is possible.
16 I believe the Company was given an opportunity to offer
17 an explanation, and my testimony is that it is
18 inadequate.

19 BY MR. OWENS:

20 Q. So, what you would consider adequate is a
21 recapitulation cell by cell of what was changed?

22 A. Well, there is no way of going back and
23 unringing the bell. If they overwrote the file, we'll
24 never know for certain. It's just my examination of

25 what occurred, how it occurred, what numbers were in

(DAMRON - Cross by Owens)

1057

1 error, how the formulas were worked, how the data would
2 have flowed into that exhibit, and how it would have
3 worked.

4 From what I can see, it appears the Company
5 started with the totals and worked back. That was the
6 best explanation I could come up with. The last number
7 they worked with back to was the Washington figure.
8 That would explain why the number at the top of the
9 sheet is wrong, but everything else is right.

10 You don't usually prepare a spreadsheet with
11 formula at the top. You usually start at the top of a
12 column and develop your formula, and then you copy that
13 formula down. And if you do so, then how would the
14 Line 1 formula be wrong but the rest of them be right?
15 It doesn't make sense.

16 Q. It's possible, isn't it, that that method
17 was part of the correction, putting that formula in
18 there?

19 A. Yes. I'm certain that it was because, when
20 I examined the files that were transmitted to me, the
21 formulas were inserted. That's my answer. I don't
22 know if I responded to your question or not.

23 Q. You read the memorandum where Miss Siers
24 said that she put this response together by taking

25 material from another spreadsheet in an effort to save

(DAMRON - Cross by Owens)

1058

1 time.

2 Do you recall that?

3 A. Yes.

4 Q. Is it possible that when you transpose
5 information from one source and begin to use it for a
6 different purpose, that that could be the source of an
7 error, especially when there is a time constraint?

8 A. It's possible. I'm just examining what
9 happened and how it happened.

10 The question that I pose at the end of my
11 testimony is: If intrastate is mathematically derived
12 by taking the total minus interstate -- and we see in
13 the exhibit where intrastate is correct, but interstate
14 is not, it's quite obvious to me what the Company did
15 was went to the top of the column and, instead of using
16 the formula, they simply input what they wanted as the
17 intrastate figure as a direct input rather than
18 deriving it by formula. And they probably did that
19 because they wanted to back into that number.

20 Q. Isn't it true that the Washington intrastate
21 amounts in Exhibit C-40 and C-67 agree with the
22 corresponding amounts that were provided to you in
23 Attachment 58, which was IPI's response to Staff
24 Request 51?

25 A. I don't know about the attachment numbers.

(DAMRON - Cross by Owens)

1059

1 But the data that was provided to me after the fact
2 with the postdated files certainly agreed with the
3 exhibit.

4 Q. Attachment 58 responds to Staff Request 51,
5 which was provided to you a long time ago, wasn't it?

6 A. I have no idea.

7 Q. Wasn't Attachment 58 provided to you on
8 November 10, 1992?

9 MR. OWENS: May I approach the witness?

10 JUDGE FOSTER: Yes.

11 THE WITNESS: (Reading.) This appears to be
12 a document that was provided at that approximate time.
13 I would have to check with my files on the desk over
14 there to determine precisely what this is. But I can
15 certainly accept that subject to check.

16 BY MR. OWENS:

17 Q. And can you also accept subject to check
18 that the Washington intrastate amounts on that document
19 for calls and billable minutes agree with the amounts
20 on Exhibit C-40 and Exhibit C-67?

21 A. Certainly. They also agree with Exhibit
22 C-9. But this is a summary. It's not the underlying
23 detail that the Company would have relied on to develop
24 it.

25

JUDGE FOSTER: Is this a good time to take a

(DAMRON - Cross by Owens)

1060

1 break?

2 MR. OWENS: Certainly, your Honor.

3 JUDGE FOSTER: Let's take our lunch break at

4 this time. Let's be off the record.

5 (At 12:00 noon the above hearing was

6 recessed until 1:30 p.m. of the same day.)

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1 OLYMPIA, WASHINGTON; WEDNESDAY, NOVEMBER 17, 1993

2 1:30 P.M.

3 --oo0oo--

4

5 JUDGE FOSTER: Let's be back on the record
6 after our lunch recess. Before we broke for lunch, Mr.
7 Owens was questioning the witness, and I see you have
8 more questions.

9 MR. OWENS: Yes, your Honor.

10 JUDGE FOSTER: Go ahead.

11

12 C R O S S - E X A M I N A T I O N

13 (continued)

14 BY MR. OWENS:

15 Q. Mr. Damron, I had asked you a question about
16 down loading a file from a network, and I guess maybe I
17 need to ask another question:

18 Is it correct that you could down load the
19 file from the network to a diskette by simply telling
20 the network to copy the file to the diskette? Is that
21 one way?

22 A. Yes.

23 Q. And in that situation, the date that the
24 file was last changed would remain unaltered by the

25 copying process; is that right?

(DAMRON - Cross by Owens)

1062

1 A. That's true.

2 Q. Alternatively, if you wanted to make sure
3 that you had the right file, if you opened the file and
4 then saved it to the diskette, would the date change?

5 A. If you brought it up into a piece of
6 software such as Lotus and then resaved it to the
7 diskette, that would change the current date of the
8 computer.

9 Q. Now, I had asked you about Attachment 58.
10 Is it correct that the total company amounts for billed
11 calls and billed minutes on Exhibit C-40 and Exhibit
12 C-67 agree with the corresponding amounts on Exhibit
13 C-9?

14 A. Yes.

15 Q. Is it correct that the adjustment that you
16 proposed in Exhibit C-41 would have increased the
17 allocation of costs to Washington intrastate, other
18 things being equal?

19 A. I wasn't actually proposing an adjustment.
20 I was just trying to find a way to reconcile why the
21 thing didn't put and cross put. The simplest way I
22 could do that would be to insert the numbers that I
23 did. But I wasn't proposing an adjustment.

24 Q. But mathematically, if that adjustment had

25 been carried through into a separations factor

(DAMRON - Cross by Owens)

1063

1 calculation, it would have had that effect?

2 A. It would have.

3 Q. Do you know whether or not the database that
4 International Pacific uses could be directly linked to
5 a Lotus spreadsheet?

6 A. Lotus can access dBase databases, yes. I
7 don't know if I can do it directly, but they could
8 certainly load it. You can convert. There is a
9 translation program in Lotus that allows you to
10 translate a dBase database into a Lotus file or the
11 reverse.

12 Q. But another way to make use of information
13 generated with a dBase report generator would be to
14 take the information and manually transfer it to a
15 Lotus spreadsheet?

16 A. One could do that. It's a little bit risky,
17 and -- in other words, once you have the number, your
18 best bet is to transfer that number without having to
19 rekey it in.

20 Q. Do you have experience in auditing a
21 database?

22 A. Certainly.

23 Q. How do you do that?

24 A. Well, I guess if you're dealing with an

25 example of the dBase database, you print it out. You

(DAMRON - Cross by Owens)

1064

1 can summarize the data. You can generate reports from
2 that data. Any number of ways you can audit the data.
3 It depends on what type of information you're trying to
4 derive from the database and what fields are there and
5 what information is there.

6 I don't know how more responsive I can be
7 with that kind of a general question.

8 Q. You didn't perform any such audit of the IPI
9 calls for billing records database in this case; is
10 that right?

11 A. I was never provided with that database, and
12 I think we asked for it. We certainly asked for it at
13 the last hearing.

14 Q. That's what I'm trying to get at. You heard
15 Mr. Mean testify that the database consisted of
16 voluminous tapes with millions of individual records,
17 and I'm trying to understand, if you were to perform an
18 audit of that, how would you go about it? What would
19 IPI have needed to do to provide the information you
20 needed?

21 A. Well, I'm not intimately familiar with IPI's
22 mechanized system. But I would imagine that certainly
23 you can generate a lot of records when you're talking
24 about billing records.

25 A tape is simply -- I would imagine that

(DAMRON - Cross by Owens)

1065

1 they would accumulate the data. It's probably in
2 dBase. dBase will hold I believe as much as a billion
3 records, which is certainly sufficient to handle the
4 data, monthly or annual, that might be generated by
5 IPI.

6 That data then presumably when transferred
7 to U. S. West or to ZPDI for billing purposes was
8 probably down loaded on a tape. But a tape is just
9 simply a storage vehicle. It's not the database.

10 The database is, from what I have seen of
11 the documentation of IPI, most of what I have seen in
12 terms of database format has been in a dBase format.

13 Q. At Page 15 of Exhibit CT-69, you criticized
14 Mr. Olch for not understanding the notion of such terms
15 as "accuracy" and "audit." And you give some transcript
16 references.

17 Isn't it true that Mr. Olch indicated that
18 he was not prepared to agree with the term "accuracy" in
19 connection with jurisdictional separations because he
20 understood that it presumed there was a single correct
21 way to allocate?

22 A. I believe that was his testimony.

23 Q. And you testified in cross of your case, in
24 chief, that jurisdictional allocations can be motivated

25 by political considerations, didn't you?

(DAMRON - Cross by Owens)

1066

1 A. Certainly, when we're talking methodology.
2 But that's not accuracy. When you're talking about
3 accuracy, I'm talking about the underlying
4 documentation that at least the allocators derived were
5 derived from data that is reliable, auditable, and
6 accurate and that they fairly represent the Company's
7 operations for a particular period or the activity for
8 that period.

9 Now, certainly we can argue about
10 methodology, and there is one method rather than
11 another that can be argued certainly. But in terms of
12 accuracy, I'm talking about the derivation of the
13 underlying data and what that data is used for and is
14 it reliable? Can it be verified? Can it be audited?
15 Is it indeed reflective of the Company's activities for
16 the test period?

17 That's my understanding of accuracy. And I
18 should surely think that Mr. Olch would be able to pick
19 up on that concept.

20 Q. At Page 15 you argue that Mr. Olch
21 demonstrated that he had never looked at the IPI study
22 before. And that's your conclusion, isn't it?

23 A. I think his words were he might have glanced
24 at it.

25 Q. Your counsel didn't ask him whether he had

(DAMRON - Cross by Owens)

1067

1 looked at the study before, did she?

2 A. I believe there is one question where she
3 asked him, "Isn't it true that you have never looked at
4 this before?"

5 And his comment was, "I might have glanced
6 at it."

7 Q. She asked him whether he was aware of a
8 particular number of point three of two as being the
9 revenue allocator. Wasn't that the question?

10 A. Yes, that was one of the four allocators
11 that was used in the case.

12 Q. And she asked him whether it wouldn't be
13 appropriate to allocate the costs, unbillable costs,
14 using the revenue allocator. And he testified that, in
15 fact, the revenue allocator was not used to allocate
16 unbillable call costs. Isn't that true?

17 A. That's my recollection of his testimony.

18 Q. You asked yourself the question on Page 16
19 of how Mr. Mean verified the accuracy of the underlying
20 documentation supporting the calculations in Exhibit
21 C-9. Mr. Mean wasn't asked that question on the stand,
22 was he?

23 A. He was asked whether he looked at the
24 underlying documentation of what was there in Exhibit

25 C-9. We asked him if he understood what dBase 3

(DAMRON - Cross by Owens)

1068

1 commands meant in that underlying documentation. He
2 said he did not understand dBase 3 language.

3 Q. He wasn't asked whether anyone working under
4 his supervision was instructed to prepare reports using
5 appropriate dBase commands, was he?

6 A. I don't recall that that question was put to
7 the witness, no.

8 Q. You indicate also on Page 16 that you
9 discovered that the billing statistics and revenue for
10 the hospitality business as well as subscriber
11 commissions had to be estimated since IPI had no
12 division of those amounts by jurisdiction. Mr. Mean
13 testified that estimate was based on a sample of one
14 month out of the year; is that right?

15 A. I believe he actually testified it was based
16 on a sample out of two months out of two separate
17 years. I'm not too clear that the sample taken was
18 presented in C-9.

19 Q. There isn't any regulation that forbids the
20 use of estimates that you're aware of in performing
21 separations, is there?

22 A. No, there isn't any regulation. But in
23 terms of an auditor and considering the
24 motel/hospitality business, it's a very small part of

25 this Company's operation. I felt that the one

(DAMRON - Cross by Owens)

1069

1 statistic was that hospitality was roughly seven
2 percent of the Company's operations. And I think if
3 you have 93 percent actual data that it's really not
4 necessary to try to estimate that remaining seven
5 percent. I think you would be better off using the 93
6 actual rather than 93 actual/7 percent estimate.

7 Q. Well, you're using the 93 percent as an
8 estimate for the missing seven percent, aren't you?

9 A. Yes. You're using a 93 percent sample
10 instead of a one-month sample.

11 Q. Now, you state that under IPI's separations
12 scheme, a non-Washington end user can and, in fact,
13 does on average use the phone for twice the duration of
14 time, but without having to pay twice the cost for this
15 usage. That's at Page 18.

16 A. Yes.

17 Q. Doesn't your Exhibit C-73 --

18 MR. OWENS: May I have a moment, your Honor?

19 I'm trying to find the reference. (Reading.)

20 BY MR. OWENS:

21 Q. Page 4 shows approximately twice the revenue
22 per billed call for interstate as for intrastate for
23 Washington?

24 A. You're looking at Exhibit C-73, Page 4?

25 Q. Right.

(DAMRON - Cross by Owens)

1070

1 A. Which line are you looking at?

2 Q. Line 1.

3 A. (Reading.) And you're comparing billable
4 calls or billable minutes.

5 Q. Revenue per billable call.

6 A. Revenue per billable call for interstate --

7 Q. We're trying to have this be a
8 non-confidential session. I asked you if it was
9 approximately twice. Can you agree with that?

10 A. Yes; which is reasonable. If you talk for a
11 longer time, you're probably billed longer, for more
12 minutes.

13 Q. It's correct, isn't it, that IPI's network
14 costs are allocated under its study according to
15 billable minutes?

16 A. Which category of expense?

17 Q. Network costs.

18 A. Yes. And I did the same in my adjustment.

19 Q. And IPI's subscriber commissions in its
20 study are not allocated based on the actual contracts.
21 They are based on the actual contracts and actual calls
22 and revenue produced during the year; is that right?

23 A. It's not totally accurate. It's essentially
24 accurate. As I indicated and we discussed a few

25 minutes ago, the commissions for the hospitality

(DAMRON - Cross by Owens)

1071

1 sections were estimated.

2 Q. For the payphone sector, though, you would
3 agree?

4 A. Yes.

5 Q. Is it correct that if IPI owned the pay
6 telephone, that would be considered
7 non-traffic-sensitive plant?

8 A. Payphone itself?

9 Q. Yes.

10 A. Yes, it probably would.

11 Q. And it's also true that the cost of the pay
12 telephone and the cost of the subscriber premises does
13 not vary according to the number of minutes of use that
14 are put on the pay telephone?

15 A. Certainly the bill that the aggregator
16 receives varies with minutes of use.

17 Q. Maybe you didn't understand my question.

18 The pay telephone costs approximately \$1500;
19 is that right?

20 A. I have no idea.

21 Q. All right. Would you agree that the cost of
22 the pay telephone as a piece of equipment does not vary
23 in accordance with the number of minutes of use that
24 are put over that pay telephone?

25 owners' premises doesn't vary with the number of

(DAMRON - Cross by Owens)

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1 minutes of use that are put over a pay telephone
2 located on that premises?

3 A. Well, it may not vary with the usage of the
4 telephone, but it certainly would vary with time. It's
5 -- the premise is that if they pay taxes on it,
6 insurance, and so forth, that's sort of a
7 time-sensitive type of expense.

8 Q. So, because they have a time-sensitive
9 expense, is that your justification why you believe
10 that minutes of use is an appropriate allocator for
11 subscriber commissions that cover those time-sensitive
12 costs?

13 A. No. I think I stated in my testimony that I
14 feel it's a reasonable allocator and equitable
15 allocator since it allocates the cost based on the
16 amount of time that the end user actually uses the
17 facilities provided by the site provider and the
18 aggregator.

19 Q. Is the answer to my question no?

20 A. I'll have to have the question repeated.

21 Q. The question was: Is it then your position
22 that because subscriber premises owners pay
23 time-sensitive costs such as taxes on their premises,
24 that is why it is appropriate that subscriber

25 commissions that cover those types of costs should be

(DAMRON - Cross by Owens)

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1 allocated on the basis of billable minutes?

2 A. I suppose I could add that to my reasoning.

3 But that wasn't my original reasoning. My reasoning

4 was as I just stated.

5 Q. So, in this situation you prefer an

6 allocation rather than direct assignment?

7 A. Of the subscriber commissions?

8 Q. Yes.

9 A. If by direct assignment you mean leaving it
10 as it was collected, I have a considerable amount of
11 testimony in here stating why that is not equitable for
12 the end user. So, yes, I would resist that in favor
13 of -- if we're going to insist on complying with
14 relative use legal requirements, I think minutes of use
15 is a fair allocator.

16 Q. Calls is also relative use, isn't it?

17 A. It is. It becomes a matter of judgment as
18 to which is the best allocator for each type of expense
19 and category, and I'll stand by my testimony regarding
20 that particular category.

21 Q. And the way that the subscriber commissions
22 were actually collected is also based on relative use,
23 isn't it?

24 A. I don't know in terms of a

25 dollar-per-dollar. Obviously if we charge higher

(DAMRON - Cross by Owens)

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1 commission in one place than you do in others, then
2 you're not going to get a one-for-one type of
3 allocation based on relative use. You may get a lot
4 more from one user and a lot less from another. So, I
5 don't know that that's an appropriate way to allocate.

6 Q. But the commissions are a function of the
7 percentage times the actual charges collected for the
8 call, aren't they?

9 A. They are a markup based on what the market
10 will bear at that particular site.

11 Q. So, is the answer yes?

12 A. I believe that's a yes.

13 Q. You stated on Page 18 that Mr. Olch agreed
14 that implicit in IPI's use of billable calls allocated
15 is the assumption that the cost of each call is
16 approximately the same.

17 Now, isn't it true that at that transcript
18 reference what Mr. Olch said was that the cost of each
19 call or the cost of each type of call was similar?

20 A. Yes. I considered that synonymous, similar
21 and approximately the same.

22 Q. That's your conclusion, isn't it?

23 A. Well, if my conclusion is wrong, then
24 perhaps he is agreeing with me.

25 Q. Mr. Olch stated on the next page of the

(DAMRON - Cross by Owens)

1076

1 transcript that Part 36 does not try to establish a
2 cost of a call, didn't he?

3 A. I would have to look at that transcript.
4 But subject to check.

5 Q. Is it true that by definition
6 non-traffic-sensitive plant does not have a
7 relationship between cost and relative usage?

8 A. That's the assumption, yes.

9 Q. You testify at Page 23 there is really no
10 way to determine whether the use in IPI's study of
11 unweightable billable calls as an allocator distorts
12 the allocation of operator systems in related expenses.
13 Is that your testimony?

14 A. Yes.

15 Q. You say there is no way to determine that
16 from the available information.

17 A. Yes.

18 Q. Now, isn't it true that you could have from
19 the available information created an allocator to the
20 State of Washington by comparing total calls to
21 Washington calls? Is that one step that you could have
22 taken?

23 A. I believe that's precisely what the Company
24 did. They took unweighted billable calls and compared

25 it.

(DAMRON - Cross by Owens)

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1 Q. Maybe you didn't understand my question. I
2 said total Washington calls to total Company calls.

3 A. I'm not sure what that would give you.

4 Q. That could give you an allocator for
5 Washington as a percent of total Company; correct?

6 A. To compare Washington statistic to total,
7 that's what you get.

8 Q. Then you could create a calculation of a
9 weighted standard work second allocator for Washington
10 intrastate, could you not?

11 A. Not with the available data, no. There are
12 no time and motion studies available. And as I
13 testified in my testimony, it's questionable whether
14 the available standard work second charts are relevant
15 either to this Company or to present data. So, I don't
16 know where you would get that statistic.

17 Q. The Company produced information that's in
18 the exhibits that were offered but not received for
19 standard work seconds for credit card ACP, credit card
20 operator handled, collect, and third-party calls, did
21 it not?

22 A. I recall those exhibits. I did not examine
23 them in detail.

24 Q. Doesn't your Exhibit 72 say that the

25 standard work seconds can be accumulated by software

(DAMRON - Cross by Owens)

1078

1 and modern equipment?

2 A. Yes. That's one way.

3 Q. So, you could, using standard work second
4 data, compute a weighted standard work second allocator
5 for Washington intrastate?

6 A. Certainly one could.

7 Q. And then, if you multiplied that times the
8 Washington State allocator, you could find out whether
9 the use of unweighted billable calls distorted the
10 allocation of operator systems and related expenses,
11 couldn't you?

12 A. You could perform a study, which to my
13 knowledge wasn't made.

14 Q. If you didn't examine Exhibits 32 and
15 Exhibit 33, you don't know that, do you?

16 A. I would know what was on the page. I
17 wouldn't know what was conducted and what was behind
18 those numbers and how the study was prepared or whether
19 it was conducted in an appropriate manner or whether
20 the statistics were reliable or any of the other
21 problems that might have cropped up related to that
22 eleventh hour exhibit.

23 Q. In making your statement, which was made
24 sometime after the eleventh hour exhibit in terms of

25 what information was available, you didn't consider the

(DAMRON - Cross by Owens)

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1 information in those exhibits. Is that right?

2 A. The exhibits were not entered into the
3 record. I did not consider them at issue. And we were
4 a little late in this proceeding for me to proceed with
5 -- IPI is not my only duty at this Commission.

6 Q. You used lots of information that wasn't in
7 the record in your case, haven't you, as an exhibit,
8 that is?

9 A. I don't know about lots. Most of my
10 testimony hopefully is relying on the record.

11 Q. You used some information that was not
12 introduced as an exhibit in order to create your
13 exhibit. Is that a fair statement?

14 A. There was nothing on the record until the
15 Commission Staff took the witness stand. We had the
16 burden of proof, and we entered certain data on the
17 record. And at that point we had data on the record.
18 I mean, that's the only way you get it from here to
19 there.

20 Q. But you didn't enter every single piece of
21 information that you relied on as a subexhibit, did
22 you?

23 A. I'm not clear on your question. I'm sorry.

24 Q. Is it your testimony that you entered as an

25 exhibit all documents that you relied on as source

(DAMRON - Cross by Owens)

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1 material for any part of your testimony and exhibits?

2 A. No, of course not. There is a number of
3 data requests and responses from the Company and other
4 public information documents, et cetera, the
5 transcripts from the competitive classification case
6 and a number of other pieces of what I considered
7 eleventh evidence that I relied on. Most of that
8 information was also in the hands of the Company.

9 Q. And that information was available to you
10 then?

11 A. The information I just described was, yes.

12 Q. It wasn't unavailable just because it wasn't
13 an exhibit; is that right?

14 A. It wasn't unavailable because it was not an
15 exhibit. But, again, we're back to the question of who
16 was the moving party and just what is the obligation of
17 Staff when IPI advances some theory.

18 Q. I'm just trying to understand the basis for
19 your statement that there is no way to determine what
20 you state on Page 23 from available information. And
21 I'm correct in understanding that there was some
22 available information you didn't consider in making
23 that statement. Isn't that true?

24 MS. BROWN: I'm going to object, your Honor.

25 I think we have gone over this and over this for the

(DAMRON - Cross by Owens)

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1 past five minutes.

2 The other thing is I think it's improper
3 cross-examination for Mr. Owens to somehow imply that
4 Mr. Damron should have analyzed or relied upon exhibits
5 which were excluded from the evidentiary record for
6 reasons by your Honor.

7 And for that reason, I would ask that this
8 line of questioning cease and that Mr. Damron not be
9 expected to stand cross on exhibits which are not part
10 of this record, were not admitted into this record,
11 after having been offered by the Company.

12 JUDGE FOSTER: Mr. Owens?

13 MR. OWENS: I didn't write Mr. Damron's
14 testimony. If he had written testimony and said there
15 is really no way to determine that based on existing
16 evidentiary record, then clearly these questions would
17 not be proper. But he said from the available
18 information. And he has admitted that there is
19 information that's not in the record as an exhibit that
20 he considered available and, in fact, used in other
21 parts of his testimony.

22 I think I'm entitled to cross-examine the
23 flat statement here that it's impossible to use of
24 unweighted billable calls distorts the allocation

25 without being subjected to this kind of an objection

(DAMRON - Cross by Owens)

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1 because clearly this is available information whether
2 it was received in evidence or not. All I'm trying to
3 do is establish that he didn't consider it in making
4 that statement.

5 JUDGE FOSTER: I'll allow the question. The
6 objection is overruled. But I think we have spent
7 quite a bit of time on this, counsel. So, I think you
8 can shorten it up.

9 BY MR. OWENS:

10 Q. Can you answer the question, sir?

11 A. I'll make an attempt.

12 In this testimony I said that, based on the
13 available information, I don't know. I explained that
14 there was no time and motion study available. I was
15 not comfortable with using what I considered
16 semantical statistics from some table. And so my
17 knowledge of those are the two sources I had available
18 or would have had available but actually did not have
19 available.

20 And whether there might have been some other
21 avenue that I might have pursued, I don't know. But
22 those are the ones that I considered to be ones that
23 would be used to derive a weighted standard work
24 second. And those two were not available to me and,

25 hence, I did not make the calculation.

(DAMRON - Cross by Owens)

1083

1 Q. Isn't it true that you had available to you
2 in an exhibit on the record the Company's data showing
3 the jurisdictional distribution of unbillable compared
4 to billable calls? That's Exhibit C-24.

5 A. I don't believe we had that information on a
6 jurisdictional basis. We had it on a total-company
7 basis.

8 Q. Doesn't Response to SR 206, which is a part
9 of Exhibit C-24, show the jurisdictional distribution
10 between Washington and non-Washington for billable and
11 non-billable calls?

12 A. I don't have that exhibit before me.

13 MR. OWENS: Your Honor, may I approach the
14 witness?

15 JUDGE FOSTER: Yes.

16 THE WITNESS: (Reading.) There are some
17 statistics here. It doesn't show a ten-state
18 statistic. It just shows Washington and
19 non-Washington.

20 BY MR. OWENS:

21 Q. Does it show that non-billable calls are
22 slightly more distributed to Washington than are
23 billable calls?

24 A. Yes. But that doesn't identify whether it's

25 Washington interstate or intrastate. It's extremely

(DAMRON - Cross by Owens)

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1 important considering the magnitude of the Washington

2 operation and the interstate Washington operation.

3 Q. At Page 24, did you state that if Part 36

4 does not apply to an AOS company, then it certainly

5 makes good sense for IPI to develop a procedures manual

6 which the Company's personnel can follow to accumulate

7 the necessary statistics to prepare a jurisdictional

8 cost study? Was there any requirement in the

9 Washington Administrative Code during 1991 for IPI to

10 do that?

11 A. No, I don't think RCWs or WACs tell the

12 Company how to conduct it's day-to-day operations of

13 its business, which is what we're talking about here.

14 Q. Had there ever been a letter sent by the

15 Commission to IPI saying that that's what they should

16 do?

17 A. No. There is nothing in here. In fact, the

18 first sentence on Line 17 says I'm not certain whether

19 there is such a requirement. That's beside the point.

20 It's just that it makes good sense to do so.

21 It's rather silly to say that we're going to

22 conduct jurisdictional separations, but we're not going

23 to make absolutely any prior preparation in doing so.

24 That's nonsense. And that we don't have to do it.

25 Q. What specific statistics are you referring

(DAMRON - Cross by Owens)

1085

1 to here at Page 24 where you were asking that the

2 Company's personnel accumulate on Page 24?

3 A. Whatever procedures they might find useful

4 in developing a definitive separations calculation.

5 Q. So, you don't have any specifics in mind?

6 A. Oh, specifics would be time and motion

7 studies, work activity -- it could be any number of

8 things, depending on what machinery the Company has and

9 how that's used.

10 Time studies, personnel and how much time

11 they spend working in various projects that may or may

12 not have anything to do with Washington jurisdiction.

13 Just simply tracking the Company's operations,

14 analyzing the Company's accounts and tracking what's

15 going on and making a best attempt at documenting what

16 occurred and what would be an appropriate way,

17 therefore, to allocate.

18 Q. Given that this effort took place in 1992,

19 do you have any evidence that IPI didn't use its best

20 effort to document what occurred in 1991?

21 A. Yes. Exhibit C-9 certainly does not show a

22 very definitive analysis. My whole point is the

23 Company could have made a much better effort at

24 examining its accounts and doing a more detailed,

25 definitive job of that if it had the inclination to do

(DAMRON - Cross by Owens)

1086

1 so.

2 Q. What specific activities do you have in mind
3 in referring to a time and motion study on Page 25?

4 A. In particular, that would be related to
5 operator work time.

6 Q. So, IPI should be directed to examine the
7 amount of time operators spend handling various types
8 of calls?

9 A. I think they need to develop some type of
10 statistic as to how much time their operators -- how
11 much it takes to process calls by jurisdiction, how
12 they derive that by time and motion study or whatever.

13 Q. So, there might be an alternative way to
14 develop that information besides a time and motion
15 study?

16 A. There may be. None comes to mind other than
17 using some standard chart which may or may not be
18 eleventh today and for IPI.

19 Q. Do you know whether it's eleventh?

20 A. No, I don't know whether it's eleventh. I
21 don't know -- that's the whole problem. I don't want
22 to rely on something if I don't know that it's
23 eleventh.

24 Q. Now, you say also at Page 25 that some

25 accounting for non-operator personnel is needed. And

(DAMRON - Cross by Owens)

1087

1 you go on to say: "Such tracking is certainly
2 essential to adequate revenue requirement
3 documentation."

4 Is there some regulation in the Washington
5 Administrative Code that says that?

6 A. I'm not aware of each and every WAC. I
7 really can't speak to that. I know that in a revenue
8 requirement analysis, the standard yardstick that's
9 been used year after year after year at this Commission
10 is that you impute a wage to a particular individual
11 based on the types of services that the individual is
12 rendering to the ratepayer and what the prevailing rate
13 for that service is.

14 And if all you get is look it up in the
15 Management 101 manual, that really doesn't give me any
16 definitive way to identify what these people did, if
17 anything, and what costs should be assigned to their
18 wages or whether the level of their wages is
19 appropriate or whether they spent one hour of the year
20 providing service in the state of Washington.

21 Q. So, the Company should provide a time sheet
22 for every hour that the employee spends; is that right?

23 A. Well, there is different ways of keeping it.
24 You can do it by most of your time spent in one

25 jurisdiction. And you don't have to keep track of

(DAMRON - Cross by Owens)

1088

1 every hour, but you keep track of those hours that
2 aren't spent in that jurisdiction. There are different
3 ways of keeping time.

4 But certainly when you're presented with
5 fifteen executive officers and the Company can't tell
6 you what one of these individuals had done to serve the
7 public, it's questionable whether any of those amounts
8 belong above the line.

9 Q. So, do I gather, then, that you're presuming
10 that those executives are not providing any service for
11 regulated operations?

12 A. I'm presuming that my Management 101 manual
13 doesn't tell me what those specific managers are or are
14 not doing. So, I don't know. That's my problem.

15 Q. So, would it be a fair statement, then, that
16 companies that are subject to Part 36 would not require
17 management time tracking, but IPI would?

18 A. May not require management time tracking in
19 terms of allocations of Part 36. They certainly
20 require time tracking in terms of their assignment of
21 costs to a particular jurisdiction and in terms of the
22 level of wages being paid, and is that level of wage
23 appropriate for ratemaking.

24 The rule of thumb is they get paid for

25 services rendered at the prevailing rate. If you don't

(DAMRON - Cross by Owens)

1089

1 know what the service is that is rendered, there is no
2 way of evaluating whether that particular individual
3 deserves the salary or that salary should be included
4 for revenue requirements at the level sponsored by the
5 Company.

6 It may simply be somebody's brother hanging
7 around the office and paid a salary for doing
8 absolutely nothing, or brother-in-law or son-in-law.

9 Q. So, for example, when Pacific Northwest Bell
10 or another utility has come before the Commission, they
11 have documented every executive's activities? Is that
12 what you're saying?

13 A. They provide us with a list of the
14 personnel, their title, and their pay scale. And if we
15 pursue that, they give us information as to what those
16 particular individuals did. They give us something
17 better than look it up in your Management 101 manual.

18 Q. Page 27, you're discussing an allocator of
19 operator systems plant and related expense. And you
20 observe that approximately fifty percent of present
21 billable calls are automated and have nothing to do
22 with actual human operator work time.

23 Is it correct that automated calls generate
24 processer time?

25 billable calls that allocate executive and planning

(DAMRON - Cross by Owens)

1091

1 expenses. It's correct, isn't it, that these are
2 essentially overhead items?

3 A. Yes, I believe I indicated that in one of my
4 responses to the data request.

5 Q. As such, they are not sensitive to billable
6 minutes, either, are they?

7 A. No. But considering the circumstances and,
8 as I testified in my testimony, I believe that the
9 billable minutes allocator is the more equitable and
10 more reasonable allocator for these expenses.

11 Q. It's correct, isn't it, that under Part 36
12 these will be allocated using what's called the B-3
13 allocator?

14 A. That was Mr. Olch's testimony at TR-642.

15 Q. Do you have any reason to dispute that?

16 A. Neither I nor the Company used that
17 particular allocator or do I know how he would develop
18 that from the information provided.

19 Q. Did Mr. Olch also testify that in IPI's
20 case, because it doesn't have cable and wire facilities
21 or central office facilities, that application of the
22 big three allocator would evolve to a weighted standard
23 work second allocator?

24 A. I don't recall that precisely, nor do I

25 think that, as I have stated, that Part 36 is

(DAMRON - Cross by Owens)

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1 necessarily ruling in this matter in terms of what is
2 or is not an appropriate allocator for this particular
3 Company and these particular expenses.

4 Q. I didn't ask you for your opinion as to its
5 appropriateness. I asked you as a question of fact
6 whether that was your recollection of his testimony.

7 A. I don't specifically recall that testimony.
8 If it's there, it's there.

9 Q. Do you recall that he did testify that in
10 IPI's case that he felt that billable calls was a
11 reasonable approximator of a weighted standard work
12 second allocator?

13 A. He did.

14 Q. So, Part 36 treated these overhead expenses
15 by the use of a composite allocator, which in IPI's
16 case, because of IPI's unique business, would evolve to
17 a single allocator.

18 Is that a fair statement?

19 A. If you follow Mr. Olch's reasoning, which I
20 don't subscribe to. I did make a test of allocating on
21 a more general allocator, which I included in my
22 workpapers, that would show that if I took all of the
23 expenses exclusive of depreciation and added them up
24 and came up with a composite allocator and then applied

25 it to the so-called non-traffic sensitive costs that

(DAMRON - Cross by Owens)

1093

1 you characterized, that I would probably have allocated
2 about \$25,000 less in expense to Washington intrastate.
3 That's in my workpapers. I can find it for you if you
4 wish.

5 Q. So, that's yet a third possible methodology?

6 A. Just following the reasoning that one
7 reasonable way of allocating non-traffic sensitive or
8 common costs was to identify what is the composite
9 allocator for all other expenses, and then come up with
10 that composite allocator and apply it to non-traffic
11 sensitive costs or common costs seems like a reasonable
12 way to do that.

13 In fact, I think that's the way it's
14 prescribed to be done in Part 64. And using that
15 reasoning, I made that test in my calculations and came
16 up with the result I just described.

17 You would find that workpaper I described
18 at Page 174 in my workpapers.

19 Q. So, if I were to look in Part 36, I wouldn't
20 find that particular methodology; is that right?

21 A. No. And you wouldn't find that methodology
22 for most of what the Company has done in Part 36.

23 Q. So, your testimony is that Mr. Olch was
24 wrong in his statement that International Pacific

25 generally followed the methodology in Part 36?

(DAMRON - Cross by Owens)

1094

1 A. It just depends on how general we want to be
2 here. I certainly made a fair attempt of justifying
3 that. But as I stated in my testimony, I don't think,
4 considering the operation of an AOS company and the
5 fact that they are providing -- they are being billed
6 for the use of the site, the use of the payphone, and
7 the call processing, I don't think it's equitable or
8 reasonable to put the entire emphasis of the
9 jurisdictional allocation on the call processing
10 function and using the billable minute calls allocator
11 as extensively as the Company has done.

12 Q. Would I be correct in saying that your
13 approach is not a recognized method of jurisdictional
14 separation?

15 A. Neither mine nor the Company is a recognized
16 jurisdictional allocation. I guess mine is recognized
17 in terms of it certainly follows the spirit of Part 64
18 in terms of allocating common costs.

19 Q. It's correct, isn't it, that under Part 36
20 it's not unusual for a particular overhead item to be
21 allocated on the basis of one or more other allocators?

22 A. No, it's not unusual at all. That's why I
23 made the test that I described in the workpaper that I
24 referenced.

25 Q. And it's also not unusual in any given

(DAMRON - Cross by Owens)

1095

1 situation for the secondary allocators not to
2 necessarily have all of the elements because a company
3 may not have plant necessary to generate those
4 secondary allocator elements. Isn't that true?

5 A. Certainly anything is true. What I'm
6 talking about is what is reasonable and equitable for
7 this specific Company in this specific industry.

8 Q. IPI's use of a surrogate for weighted
9 standard work seconds is consistent with the spirit of
10 Part 36, using the big three allocator for its
11 overhead, isn't it?

12 A. I don't know that I could agree with that.
13 It's my understanding whether the -- I really don't
14 know that it matters whether I agree or not. Part 36,
15 as I have testified, doesn't apply to this Company. I
16 recommend that the Commission apply some reason, logic,
17 common sense, and equity to the situation.

18 Q. To the extent IPI's allocation of its
19 overheads is consistent with the spirit of the use of
20 the big three under the circumstances, that would be
21 consistent with a recognized method of jurisdictional
22 separations. Isn't that true?

23 A. We're overreaching pretty far here. You're
24 saying if, if, if, then maybe. Yes, it's consistent

25 with a recognized allocation procedure that doesn't

(DAMRON - Cross by Owens)

1096

1 apply to this particular company or this particular
2 industry.

3 Q. So, that leaves us with your view of what's
4 fair and equitable. Is that where we are?

5 MS. BROWN: What kind of a question is that?
6 Objection. Vague.

7 BY MR. OWENS:

8 Q. Well, --

9 A. I have an opinion.

10 JUDGE FOSTER: Just a minute. Can you
11 rephrase the question, please?

12 BY MR. OWENS:

13 Q. Your testimony now is that Part 36 doesn't
14 apply, and, therefore, you feel that what ought to be
15 done is what you consider to be fair and equitable; is
16 that right?

17 A. Fair, equitable, and reasonable, yes.
18 That's my opinion based on my analysis of this
19 particular situation. That's what I get paid for is to
20 offer an opinion based on my analysis. That's what I
21 have done here.

22 Q. So, you're an expert on fairness?

23 A. We like to hope.

24 Q. How do you get to be an expert on fairness?

25 Q. Can you answer my question?

(DAMRON - Cross by Owens)

1098

1 A. I never audited an IXC. So, I don't know.

2 Q. Isn't it equally true for an IXC that
3 billable minutes represent the actual time the end user
4 uses such a carrier's service?

5 A. It sounds reasonable. I don't know about
6 billable minutes, but the total minutes of use. I
7 don't think they allocated on the basis of billable
8 minutes as I described in my testimony. They base
9 their allocation on the basis of total handled calls
10 and minutes.

11 Q. Well, then, would it be correct that an IXC
12 that was subject to Part 36 would not have its
13 executive and planning and general and administrative
14 and other marketing expense allocated on the basis of
15 billable minutes?

16 A. Nor would they have it allocated on the
17 basis of billable calls. They would have it allocated
18 on the basis of Part 36.

19 Q. On Page 29 you state that the Commission
20 might decide that local rates should be lower because
21 some individuals using a payphone may not be able to
22 afford any other form of telephone service and need to
23 have affordable access to essential and/or emergency
24 services.

25 You don't have any evidence as to what

(DAMRON - Cross by Owens)

1099

1 affordable access to essential and/or emergency
2 services means in terms of rates; is that true?

3 A. No. As I indicated in my responses to Data
4 ummy assumption that a lesser rate is more affordable
5 than a higher rate.

6 Q. For the ultimate free service is the most
7 affordable; is that right?

8 A. Certainly.

9 Q. Isn't it true that regardless of what
10 happens in this case, users of IPI served payphones
11 will be able to dial 911 for emergency services without
12 payment of a charge?

13 A. They may have if they get dial tone free.

14 Q. Isn't that a requirement of State law?

15 A. I don't know. I believe it is.

16 Q. And isn't it true that, regardless of what
17 happens in this case, consumers at those payphones will
18 be able to make a local call for \$.25 in coin?

19 A. If they have it in their pocket. If they
20 don't, they will pay ten times that amount.

21 Q. You're not saying at this reference in your
22 testimony that the Commission can simply allocate away
23 costs in order to produce the particular end-use rate
24 that it wants, are you?

25 described in that exhibit.

(DAMRON - Cross by Owens)

1101

1 Would it be a fair statement that the
2 converse of what you have quoted there is that between
3 30 and 35 percent of the OSPs that reported had
4 investment expense and revenues of greater than
5 \$500,000?

6 A. Yes, they may have all had \$501,000.

7 Q. Do you know that that's the truth?

8 A. I have no idea what it is.

9 Q. So, is it your testimony the Congress was
10 unaware of the fact that 30 to 35 percent of the OSPs
11 reporting had investment expense and revenues of
12 greater than \$500,000?

13 A. No. I'm saying if Congress was viewing an
14 industry where each and every one of them was grossing
15 \$24 or \$25 million annually, they may have assumed a
16 different posture regarding this industry.

17 Q. That's speculation on your part, isn't it?

18 A. It certainly is.

19 Q. As far as you know, Congress wasn't aware of
20 the financial statistics concerning the industry.

21 Isn't that true?

22 MS. BROWN: Objection. Calls for
23 speculation.

24 MR. OWENS: I asked him as far as he knows.

25 JUDGE FOSTER: I'll allow the question.

(DAMRON - Cross by Owens)

1102

1 Objection is overruled.

2 THE WITNESS: As far as I know, there isn't
3 one Congress-man in Washington that knows anything
4 about the regulatory intricacies of coming up with a
5 revenue requirement or the complexities that this
6 Commission faces. They are not a regulatory -- utility
7 regulatory body.

8 BY MR. OWENS:

9 Q. As far as you know, Congress was aware of
10 how much the various OSP providers in the country were
11 making at the time they adopted the TOCSIS regulation.
12 Isn't that true?

13 A. I don't know. As far as I know, there may
14 have been four or five Congressmen that showed up for
15 that meeting.

16 Q. So, it's your testimony under oath that
17 Congress could pass a bill with only four or five
18 Congressmen voting?

19 MS. BROWN: Objection. Argumentative.

20 MR. OWENS: It's not an argumentative
21 question. He just testified under oath that as far as
22 he knew four or five Congressmen could have passed that
23 piece of legislation. I'm entitled to examine the
24 basis of that statement.

25 JUDGE FOSTER: I'll allow the question. The
(DAMRON - Cross by Owens) 1103

1 objection is overruled.

2 THE WITNESS: It's my understanding the
3 majority rules. I don't believe that the majority
4 always reads each and every piece of paper that they
5 sign off on, though. If they did, they would have to
6 be an incredibly fast reader.

7 BY MR. OWENS:

8 Q. So, it's not your testimony, then, that only
9 four or five Congressmen needed to vote on TOCSIS?

10 A. There are probably four or five Congressmen
11 that came up with the bill in the committee and
12 sponsored it to the floor, and the floor probably went
13 along with their partisan vote.

14 Q. But you don't know that, do you?

15 A. No, I don't know that. You're asking me for
16 conjecture. That's what you're getting.

17 Q. You say at the top of Page 35 that IPI
18 probably operates in more than ten states by now.

19 You don't have any information to support
20 that speculation, do you?

21 A. No; other than I know that they are
22 expanding and have expressed an interest in expanding
23 their geographical territory. That's expressed in
24 Exhibit C-26, for instance.

25 Q. And that's a publication of a different

(DAMRON - Cross by Owens)

1104

1 company than International Pacific, isn't it?

2 A. Well, if you consider Impact a different
3 company. But different companies, sixty/seventy
4 percent of that different company's revenues come from
5 IPI.

6 Q. But it's not necessarily the case that IPI
7 would be experiencing all of the expansion that the
8 holding company might be experiencing, is it.

9 A. Possible but not probable, I guess.

10 Q. It's not probable that NTA might be doing
11 the expanding?

12 A. NTA may be doing the expanding in the
13 hospitality market. I think IPI would have more
14 interest in the payphone market, which apparently is
15 much more profitable.

16 Q. Have you conducted an analysis in terms of
17 determining whether or not welfare is maximized by
18 actions of the Commission described at the top of Page
19 36 with regard to protecting the end-use consumer in
20 areas where demand is inelastic?

21 A. No, I have not conducted any such study.

22 Q. And would it also be true that you have no
23 evidence that aggregators are earning above competitive
24 profits?

25 AOS rule. It's correct, isn't it, that end-use

(DAMRON - Cross by Owens)

1106

1 consumers can patronize other aggregators if they

2 believe they are subject to price abuse?

3 A. I suppose in theory they could. I don't
4 know that they are given a phone book that says such
5 and such aggregator will be found on Fourth and Pine.
6 So, I don't know practically that they have that
7 alternative.

8 Q. You don't know that they don't have that
9 alternative, do you?

10 A. I know that I don't know where I would find
11 that alternative if I wanted to go searching for a
12 different aggregator.

13 Q. So, if you see two restaurants, one across
14 the street from another, and you feel that you're being
15 price abused at another, you don't see that you would
16 be able to go across the street to the other?

17 A. I guess if I have an infinite amount of time
18 on my hands I could go all over town picking up
19 receivers and saying who is there? But that's not a
20 very practical alternative.

21 Q. So, is the answer to my question that if two
22 aggregators are across the street from each other it's
23 impossible to cross the street and patronize the other
24 aggregator if a consumer perceives price abuse?

25 A. Well, I think these issues have been

(DAMRON - Cross by Owens)

1107

1 discussed in the competitive classification case. And
2 I don't know that I'm your witness for this particular
3 line of cross.

4 I can say certainly a person can cross the
5 street and use another telephone. I don't know whether
6 that individual until he has been abused has a need to
7 walk across the street. He may not know that he is
8 going to be abused until he uses the phone and gets
9 home and waits about a month and gets his phone bill.

10 Q. In terms of whether you're the witness, you
11 wrote the testimony on Page 36, didn't you?

12 A. I did.

13 Q. You state at Page 37 that the issue of
14 whether IPI's services to the end user are subject to
15 effective competition was considered in the competitive
16 classification case.

17 Did the Commission consider in that case the
18 issue of the 800 operator services that are being
19 offered by AT&T and MCI?

20 A. I don't know if they did directly, no.

21 Q. In fact, those services became available
22 this summer, didn't they?

23 MS. BROWN: Your Honor, how is this
24 eleventh?

25

MR. OWENS: Your Honor, the witness

(DAMRON - Cross by Owens)

1108

1 testifies at Page 37 the issue of whether IPI's
2 services to the end-use customer are subject to
3 effective competition, I guess it should be was
4 considered in IPI's competitive classification case.
5 It's pertinent cross to determine whether there are
6 issues relating to that general issue that weren't
7 considered.

8 MS. BROWN: I don't think that the reference
9 to the Docket No. UT-920546 necessarily opens up an
10 entire competitive classification case as being a
11 subject of proper cross-examination in this revenue
12 requirement case.

13 MR. OWENS: I haven't attempted to open up
14 the entire docket. I have asked him a question
15 designed to cross-examine his flat statement as to what
16 was considered in that case.

17 JUDGE FOSTER: How much do you have on this,
18 Mr. Owens?

19 MR. OWENS: Not much, your Honor.

20 JUDGE FOSTER: All right. Go ahead.

21 BY MR. OWENS:

22 Q. Do you recall the question? The question
23 was those services were introduced this summer, weren't
24 they?

25 A. I don't know. I could only speculate.

(DAMRON - Cross by Owens)

1109

1 That's my understanding that they were recently
2 offered. But I have no idea of specific dates.

3 Q. And those services offer ability of
4 consumers at pay telephones to make collect calls by
5 dialing 800 and avoiding the pre-subscribed AOS
6 provider. Isn't that true?

7 MS. BROWN: Your Honor, I'm going to renew
8 my objection. I don't think that this particular
9 issue -- the 1-800 collect access wasn't even an issue
10 in the competitive classification case, 920546. While
11 it's true that IPI filed a motion to reopen the record,
12 that motion was denied by the Commission.

13 So, these references to dates and the
14 services provided and who is doing the providing were
15 not addressed or cross-examined at all in the 920546
16 case. I don't think it's appropriate that we should
17 have a line of cross based on Mr. Damron's flat
18 statement that, yes, there is a competitive
19 classification case and the issue of whether or not IPI
20 was subject to effective competition was addressed in
21 that docket.

22 JUDGE FOSTER: Mr. Owens?

23 MR. OWENS: First the objection is you can't
24 cross-examine him about what's in that docket, and now

25 it's you can't cross-examine him about what's not in

(DAMRON - Cross by Owens)

1110

1 that docket. I think it's still germane for me to be
2 able to cross-examine his flat statement to show that
3 there are factors bearing on whether IPI's service are
4 effective competition that weren't considered.

5 MS. BROWN: Your Honor, this is not the
6 forum.

7 MR. OWENS: I didn't write his testimony,
8 your Honor. If the testimony is not going to be
9 subject to cross-examination, then it ought to be
10 excluded.

11 MS. BROWN: The issue is not whether or not
12 this testimony can be subject to effective
13 cross-examination. The issue is whether or not this
14 witness can be crossed on something, as Mr. Owens
15 properly stated, that was not in the docket.

16 MR. OWENS: But he is making a statement of
17 fact as to what was considered. And I'm entitled to
18 cross-examine him on that statement.

19 JUDGE FOSTER: You indicated earlier you
20 didn't have very much on this. If it's not very much,
21 why don't you limit it to a few questions and then move
22 on.

23 MR. OWENS: Thank you.

24 BY MR. OWENS:

25 Q. Do you understand, Mr. Damron, that the

(DAMRON - Cross by Owens)

1111

1 nature of those services is as I described in my prior
2 question?

3 A. No, I don't. I have no intimate knowledge
4 of what AT&T is doing as an alternative. That's not my
5 area. I have read some things on the subject, but I
6 would be relying on a memory of something that I would
7 prefer not to testify to.

8 Q. So, you haven't seen any of the advertising
9 promoting this service?

10 A. I have seen some stuff come across my desk.
11 I did not sit there and memorize every detail of the
12 thing. I know that there are, in this present
13 environment, there are activities going on and
14 different packages being offered virtually on a daily
15 basis. And I just do not make mental note of each and
16 every change that's going on out there. There is too
17 much going on.

18 Q. You don't understand that this is a new way
19 for consumers to avoid the pre-subscribed carrier at a
20 payphone?

21 A. No. That's beyond my understanding. I have
22 no direct knowledge of what's going on.

23 Q. Now, you state at Page 38 that you believe
24 that the matters Mr. Mean described at Page 948 of the

25 transcript as having been changed since Exhibit C-26

(DAMRON - Cross by Owens)

1112

1 was published have already been considered in IPI's
2 competitive classification case.

3 Do you have some provision in the order of
4 that case that you're relying on for that?

5 A. Oh, I don't know. I think there were a
6 number of things that were asserted or reviewed in that
7 case, like the Company asserted 50 percent dial-around
8 and Exhibit 26 talks about 20 or 22 percent
9 dial-around, that sort of thing.

10 There is certainly a lot of information in
11 C-26, and we could go through that page by page if you
12 wish. But I'm just making a general statement there
13 that a lot of the issues about the operation of IPI,
14 how it operates, what it's experiencing, what kind of
15 environment it's operating in, those things were
16 reviewed in that case as it relates to the competitive
17 classification.

18 Q. So, it's your testimony that there was
19 considered in IPI's competitive classification case,
20 the Staff's proposal in this case to reduce IPI's
21 revenues by 43 percent?

22 A. No, that was not specifically considered. I
23 believe that it was acknowledged in that case that
24 there was a parallel case going on regarding the

25 earnings complaint and the complaint regarding USOA

(DAMRON - Cross by Owens)

1113

1 compliance.

2 Q. And is it your testimony that the Company's
3 estimate of the Impact on it of such a proposed revenue
4 reduction was considered in the competitive
5 classification case?

6 A. No. I mean, the revenue requirements were
7 not at issue in the competitive classification case.

8 Q. Aren't those two of the things that Mr. Mean
9 discusses at Page 948 of the transcript?

10 A. (Reading.) Well, the record speaks for
11 itself. He does reference the 43 percent recommended
12 rate reduction.

13 Q. Is it your testimony that there was
14 considered in IPI's competitive classification case the
15 issue of the reduction of public access line rates for
16 private payphone providers?

17 A. I don't know if it was or not.

18 Q. Isn't that the other thing that he discusses
19 at the reference of the transcript that you give at
20 Page 38?

21 A. He discusses line reduction.

22 Q. And other than the Staff's recommended rate
23 reduction, the expected impact on International Pacific
24 of that rate reduction in public access line rates, Mr.

25 Mean doesn't discuss anything on Page 948 of the

(DAMRON - Cross by Owens)

1114

1 transcript, does he?

2 A. No. The Company was certainly aware long
3 before Exhibit C-26 was authored that they may be
4 facing a substantial rate reduction. They were aware
5 that there was a complaint against the Company. There
6 was an entire page which I quote at the end of my
7 testimony where they make an assessment of their
8 anticipated -- the anticipated outcome of this
9 complaint case.

10 Q. You have no basis on which to claim that
11 International Pacific knew the extent of the proposed
12 reduction at the time that material in Exhibit C-26 was
13 written, do you?

14 A. The specific number of 43 percent, no. We
15 did have negotiations with the Company and certain
16 numbers were mentioned in those negotiations which
17 might have tipped them off as to where we were going.

18 Q. You don't know whether the material that you
19 quoted from was written before or after those
20 negotiations, do you?

21 A. I know the approximate dates. As I said,
22 the document is deficient. Certain schedules have been
23 eliminated, including the face of the document.

24 Q. Mr. Mean testified at Page 948 that certain

25 components of the document were drafted as early as the

(DAMRON - Cross by Owens)

1115

1 fall of 1992, didn't he?

2 A. Yes; which was about eleven months after the
3 Commission issued its complaint.

4 Q. In the fall of 1992, International Pacific
5 hadn't received the Staff's direct case, had it?

6 A. No. But considering the rate level, I don't
7 recall what the date of the negotiations were, but I
8 think we're going into speculation here. I don't know
9 what they did or didn't know.

10 Q. One final question before I leave this
11 topic:

12 It's correct, isn't it, that there was not
13 litigated in IPI's competitive litigation case the fact
14 that the Commission has for two years actively
15 prosecuted an earnings complaint only against
16 International Pacific among AOS companies?

17 A. Active? I don't know. There was one other
18 complaint case issued, and that company filed a Chapter
19 11. So, the activities in that case have been delayed,
20 but not withdrawn. And we continue to pursue this case
21 pending the outcome of their situation.

22 Q. But that wasn't a topic that was litigated
23 in the competitive classification case, was it?

24 A. No. The Commission's complaint case is

25 litigated in this case.

(DAMRON - Cross by Owens)

1116

1 Q. That's another subject that Mr. Mean
2 discussed actually at Page 949 of the transcript
3 continuing his answer to prior questioning. Isn't that
4 true?

5 A. True. The intent of my testimony there is
6 that it's a little inconceivable within my mind that
7 within the space of six or eight months that everything
8 has so dramatically changed that Exhibit C-26 is
9 totally unreliable and any information therein has all
10 changed. That's a little hard to swallow.

11 Q. So, now you're saying that Exhibit C-26 is
12 ultimately reliable? Is that it?

13 A. No. It's certainly very interesting.

14 Q. You quote at Page 40 from Professor Wenders,
15 and you understand the context in which you're taking
16 the quotation beginning at Line 9 that Professor
17 Wenders is speaking about a competitive market
18 situation; correct?

19 A. What he considers to be a competitive market
20 situation, yes.

21 Q. And so you understand that in that
22 situation, according to Professor Wenders, there can be
23 elastic submarkets and inelastic submarkets. Do you
24 understand that?

25 submarkets where demand is relatively inelastic;

(DAMRON - Cross by Owens)

1118

1 correct?

2 A. There can be. I don't know that that makes
3 it right. But there certainly could be pockets of
4 inelastic, inelasticity, certainly.

5 Q. Do you know that it makes it wrong?

6 A. I don't know that it makes it wrong or
7 right. I just know that in this case we're talking
8 about an AOS company that's under the regulation of
9 this Commission. And they need to consider these as to
10 what is and is not appropriate with our assignment to
11 protect the end-use ratepayer.

12 Q. In a competitive marketplace where there is
13 a submarket that has relatively inelastic demand, by
14 definition the price will be set by supply and demand
15 and will produce the optimum allocation of societal
16 resources; correct?

17 A. That's the theory, yes.

18 Q. So, in such a submarket, if, rather than the
19 competitively set price, there is an artificially
20 reduced price, whether by government regulation or some
21 other artificial restraint, would the quantity demanded
22 increase?

23 A. I need that question read back.

24 (The record was read.)

25 THE WITNESS: In an inelastic market?

(DAMRON - Cross by Owens)

1119

1 BY MR. OWENS:

2 Q. Yes.

3 A. In an inelastic market there probably
4 wouldn't be much change in demand.

5 Q. So, in fact, then, what would happen
6 relative to the situation of a competitively set price
7 would be simply the generation of a consumer surplus
8 each time a consumer used that service consisting of
9 the difference between the competitively set price and
10 the government-regulated price. Isn't that correct?

11 A. Based on standard economic theory, that is
12 what you get. I think you need to go from the theory
13 to the reality. And that is that appropriate
14 allocation of resources, et cetera, begs the question
15 what is an appropriate allocation of resources. And
16 occasionally regulators have intervened into that
17 laissezfaire type of economic condition and said that
18 there is an allocation of resources that we require
19 based on public policy that is better than what
20 laissezfaire will produce.

21 Q. Then it's correct that under that scenario,
22 you would not be emulating the result of the
23 competitive marketplace; is that correct?

24 A. Not in the totality. You might be in the

25 particular market in which you affected, you may be

(DAMRON - Cross by Owens)

1120

1 providing more competitive characteristics to that
2 specific market in terms of the effect on the customer.

3 Q. You have no evidence that aggregators
4 require lower commissions just because this agency
5 enters a rate order based on restricting International
6 Pacific's rates and, therefore, it's ability to pay
7 higher commission; is that right?

8 A. I don't know what aggregators may or may not
9 demand. That was my testimony: That the impact on
10 aggregators is not a known or measurable item.

11 Q. And, in fact, there are other AOS providers
12 who will be free to pay higher commissions than
13 International Pacific will if the Commission's order is
14 in accordance with your recommendation. Isn't that
15 true?

16 A. Well, I don't know. It depends on the
17 immediate future and how things turn out with the --
18 some generic discussions we're having with the
19 industry.

20 In the short run, that certainly could
21 happen, yes. The Staff will be pursuing these other
22 individual companies that are not within the AOS rule
23 and examining their results of operation in turn. And
24 they may enjoy a short-term windfall as IPI until we

25 can get around to processing those rate cases and

(DAMRON - Cross by Owens)

1121

1 complaints.

2 But in the long-term, they will either
3 justify their rates or they will be reduced.

4 Q. The short run is long enough for aggregators
5 to change their business affiliation to other providers
6 of AOS services, isn't it?

7 A. Like IPI, they have enjoyed fairly high
8 rates for about five or six years now. And now it may
9 be somebody else's turn until we can get around to
10 that. We don't like it, but that's the way it is.

11 The Commission has gone to the legislature
12 and asked for show-cause authority to remedy the
13 situation in a more efficient manner and was turned
14 down. So, we're doing the best we can.

15 Q. And in that short run, the marketplace will
16 operate, but IPI will be restrained from competing in
17 that marketplace. Isn't that true?

18 A. No.

19 Q. That's not true?

20 A. No, that's not true.

21 Q. If IPI has rates set according to your
22 proposal, IPI will not be able to pay commissions as
23 high as some of the other AOS companies that are
24 currently in that marketplace. Isn't that true?

25 A. Yes. But that doesn't necessarily mean

(DAMRON - Cross by Owens)

1122

1 their profitability is going to plummet. As I stated
2 before on this record, something less than 100 percent
3 of the market can be more profitable than a hundred
4 percent of the market. If IPI continues to zero in on
5 and target the premium market and balance that with
6 their hospitality market where they apparently are
7 paying much lower subscriber commissions, they could
8 still maintain a fairly good market share, I would
9 think.

10 Q. You just said earlier that the hospitality
11 was only about seven percent of IPI's business; is that
12 right?

13 A. That was per the response to the data
14 request for 1991. I have no idea what that share is
15 now with their entrance into NTA.

16 Q. But based on your knowledge, you're not
17 suggesting that IPI could continue and be profitable
18 with only seven percent of its 1991 operation?

19 A. It's my fervent hope that they won't be as
20 profitable as they are now because I believe their
21 rates are extremely excessive. I expect to see some
22 drop in their profitability to a reasonable level.

23 Q. You don't even have any knowledge that they
24 could continue in business based on only seven percent

25 of their 1991 clientele, do you?

(DAMRON - Cross by Owens)

1123

1 A. As I said, the future is not known and
2 measurable. I know that there are companies out there
3 that are operating in this state that are not coming in
4 asking for an increase in rate. And I can only assume
5 that they will operate on a more level playing field
6 with those other AOS companies that are out there
7 operating under the AOS rule or with lesser rates.

8 Q. Do you suppose that any of those companies
9 that are out there that aren't coming in for an
10 increased rate have in mind the cost of one of these
11 proceedings?

12 A. I guess the cost of one of these proceedings
13 depends on how they intend to pursue it. They may be
14 able to pursue it through negotiation.

15 Q. At Page 47, you discuss the lead/lag study,
16 and you state that for many years the Staff has favored
17 the balance sheet approach over the lead/lag approach.

18 Isn't it true that the Staff favored the
19 lead/lag approach in Puget Power's 1982 case, U-82-38?

20 A. Yes; with a qualification. It wasn't
21 favored by the in-house Staff. It was favored by
22 -- that particular case was contracted to Lurito --
23 Kosh, Lurito, Gallagher and Associates or they call
24 themselves Commonwealth now. They pursued the lead/lag

25 study much to the distress of the in-house Staff. The

(DAMRON - Cross by Owens)

1124

1 very next case the in-house Staff went back to a
2 balance sheet approach.

3 Q. Isn't it true that the Staff favored the
4 lead/lag approach in the 1974 Pacific Northwest Bell
5 case, U-74-14?

6 A. Yes. I can give you a little of the history
7 of the lead/lag versus balance sheet approach if you
8 wish.

9 Originally, it was used in rate cases in
10 bygone days, and I mean a long time ago. Then the
11 balance sheet approach came along, I think, with David
12 Kosh, and Staff was persuaded that that should be the
13 Staff-prescribed procedure for a certain amount of time
14 they would do both calculations, and they would use the
15 one calculation as a test of the other.

16 And as time evolved, Staff eventually simply
17 expressed a preference for the balance sheet approach.
18 I think, among other things, the last lead/lag analysis
19 that I analyzed in this state was with Washington
20 Natural Gas. It took about four people from Arthur
21 Andersen about two months to prepare the study. And it
22 takes a good deal of time to audit something like that.

23 The balance sheet approach, we have taken
24 the position that it yields a reasonable result without

25 that kind of time and expense to prepare. Both studies

(DAMRON - Cross by Owens)

1125

1 obviously are well recognized nationally and in the
2 state. It's simply the Staff's preference from about
3 mid '70s on to use the balance sheet approach.

4 And there is nothing that mandates that any
5 company use the balance sheet approach. They can come
6 in and advance any theory they wish. I'm just simply
7 stating this is the approach that the Staff has
8 preferred for a number of years and the approach that
9 the Commission has adopted.

10 Q. The Commission has adopted the lead/lag
11 approach in various cases. For example, the Pacific
12 Northwest Bell case in 1975, didn't they, U-75-40?

13 A. It's quite possible.

14 Q. Your testimony is that originally the Staff
15 favored the lead/lag approach until Kosh introduced the
16 balance sheet approach. And then the Lurito firm
17 reintroduced the lead/lag approach in the 1982 Puget
18 case; is that right?

19 A. I don't know whether they reintroduced it.
20 They brought it in for that specific case.

21 Q. And the Lurito firm is the successor to the
22 Kosh firm; is that right?

23 A. They are.

24 Q. What tests did you run on IPI's allocations

25 of the motel statistics that you base your opinion that

(DAMRON - Cross by Owens)

1126

1 they are not reliable on at Page 48?

2 A. The only test I made was what I described
3 much earlier in my testimony: That that represents a
4 very small portion of IPI's business for the test
5 period. And, therefore, I did not see the necessity of
6 introducing these estimates into the development of the
7 allocators when the lion's share of their data was
8 purported to be actual data, actual traffic data.

9 I don't know that the -- if you compare
10 their allocators to the ones I derived, you don't see a
11 massive change by eliminating the motel statistics that
12 were estimated. But I still feel that based on that
13 and also based on the documentation that was reviewed
14 on the record in Exhibit C-9, which is fairly thin in
15 my view.

16 Q. So, the answer is you didn't do any tests?

17 A. Other than the ones I just described.

18 Q. You didn't ask the Company to run another
19 sample and see whether the allocation varied from one
20 time period to another?

21 A. No. I didn't see that that was necessary.
22 Obviously, whether you use it or not didn't materially
23 change the result.

24 Q. It changed the result by allocating less

25 costs to Washington intrastate for both of your

(DAMRON - Cross by Owens)

1127

1 allocators; is that correct?

2 A. A very minor amount, yes.

3 Q. So, for all you know, those statistics are
4 reliable as measurement of the billable calls and
5 billable minutes for the motel segment of IPI's
6 business; is that right?

7 A. No. For all I know, none of the statistics
8 are reliable based on my skepticism of Exhibit C-40 and
9 C-67 that I have described in my testimony.

10 Q. You just stated you didn't ask the Company
11 to rerun the statistics to determine whether there was
12 a variance. Isn't it true that it's possible those
13 statistics could accurately represent the billable
14 calls and minutes for the motel side of IPI's business?

15 A. Again, it could. It may or it may not.
16 There is no way of telling what a calculation that has
17 not been made may or may not show. I did not feel it
18 was necessary. It is not Staff that is advancing the
19 theory of the lead/lag calculation in this case. It
20 came in at a very late hour with virtually no
21 documentation as to how any of the lag days were
22 derived. And there wasn't a great deal of information
23 for me to analyze in any respect regarding that
24 exhibit.

25 Q. Did you say the lag days in that answer?

(DAMRON - Cross by Owens)

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1 A. Yes.

2 Q. Maybe you misunderstood my question. I'm
3 talking about the statistics for the allocation of --

4 A. I'm sorry.

5 Q. -- of investment and expense related to the
6 billable calls and minutes for motels.

7 A. Okay. Sorry. I slipped a gear here. Would
8 somebody repeat the question?

9 JUDGE FOSTER: Counsel, do you want to
10 repeat it or do you want it read back?

11 MR. OWENS: Would you read it back, please.

12 JUDGE FOSTER: Would you read it back.

13 (The record was read.)

14 THE WITNESS: Again, I believe I have
15 already answered that anything is possible. I didn't
16 feel it was necessary. I didn't feel I had the time to
17 pursue a lot of detailed further discovery, considering
18 the hearings concluded on September 22 and we were
19 scheduled to have testimony signed, sealed, and
20 delivered by the 13th of October. There wasn't a great
21 deal of time spent on this particular item.

22 Again, I am not advancing a theory that
23 jurisdictional separations should be used.

24 BY MR. OWENS:

25 Q. Are you finished?

(DAMRON - Cross by Owens)

1129

1 A. Yes.

2 Q. At Page 52 you describe your reason for
3 changing the allocation of marketing expense, and you
4 state that you do not believe IPI would prospectively
5 incur such a disproportionate amount of marketing
6 expenses in the Washington intrastate jurisdiction.
7 And you state that the reason for that, that Exhibit
8 C-26, Tape 32, recites that during 1993 and beyond
9 Impact intends to continue expanding its sales force to
10 cover a wider geographical area as we have discussed
11 before.

12 Impact includes both IPI and NTA. Isn't
13 that true?

14 A. Yes. And the majority of the revenues come
15 from IPI.

16 Q. But you don't know whether or not Impact's
17 intent being described there describes its intent with
18 regard to NTA or IPI or some combination, do you?

19 A. I don't know that for sure. I think it
20 would be rather silly for them to send out a force of
21 sales people saying we'll accept any hospitality
22 contract you have got, but we're not at all interested
23 in going into the payphone business in any other
24 jurisdiction.

25 Q. But you don't know what Impact's intent

(DAMRON - Cross by Owens)

1130

1 truly is with regard to its deployment of sales forces,
2 do you?

3 A. No. I think we could make any obscure
4 interpretation of this statement we wanted to make. I
5 took it at face value and derived what I considered the
6 most logical conclusion that you could make from a
7 piece of paper. But, of course, there is probably
8 50,000 obscure interpretations we could make of that
9 sentence if we wanted to.

10 Q. So, it's possible that IPI as an entity may,
11 in fact, experience or be experiencing the same
12 relative level of marketing expense from Washington as
13 it did in 1991. Isn't that true?

14 MS. BROWN: I object. Calls for
15 speculation. It takes so much time to say anything is
16 possible. Is it possible that this is, is it possible
17 that that?

18 MR. OWENS: Your Honor, this witness has the
19 burden of proof. He has made an adjustment. I'm
20 entitled to inquire into the facts and the bases of
21 that adjustment and establish that it's possible that
22 the facts exist that are inconsistent with that
23 speculation or premise on which he has made an
24 adjustment. This is an adjustment against my client.

25 JUDGE FOSTER: Okay. Would you repeat the

(DAMRON - Cross by Owens)

1131

1 question because I didn't hear the question.

2 BY MR. OWENS:

3 Q. It's possible, isn't it, that IPI as a unit
4 can be experiencing the same relative proportion of
5 marketing expense for Washington intrastate that it
6 experienced in 1991?

7 JUDGE FOSTER: I'll allow the question.

8 Objection is overruled.

9 THE WITNESS: It's possible. It's not
10 probable for the reasons I have stated.

11 BY MR. OWENS:

12 Q. Well, have you conducted some probability
13 analysis that you can quantify?

14 A. No. I applied the reason that I stated just
15 a moment ago: That it's rather silly to send a sales
16 force out there looking only for hospitality business
17 when, in fact, it's quite obvious they would be looking
18 for both.

19 Q. You have no knowledge of what NTA may be
20 contemplating as its line of business in the future,
21 have you?

22 A. I don't know about NTA. But Impact, which
23 is made up of NTA and IPI, I don't see this company
24 turning down any business.

25 Q. What we're talking about is the allocation
(DAMRON - Cross by Owens) 1132

1 of International Pacific's marketing expense. And you
2 have stated that you believe it's improbable that
3 marketing activities in other jurisdictions would not
4 include International Pacific. But you don't know that
5 those marketing activities might not be exclusively for
6 NTA, do you?

7 A. No, I do not know.

8 I would like to add something to that
9 statement, and that is that the document which I relied
10 on was Exhibit C-26. It was apparently sent to Mr.
11 Olch and identified as a document sent to Mr. Olch to
12 indoctrinate Mr. Olch as to the operations of IPI.

13 Q. Well, Mr. Damron, it might be the case,
14 mightn't it, that the document was prepared for another
15 purpose and represented the only document available
16 that had any description of what an AOS company does?

17 A. Again, yes, to add more conjecture to the
18 record, yes.

19 Q. You state on Page 58 that you challenge the
20 Company's use in its lead/lag study of its seven day
21 lag time for subscriber commissions. You state this
22 would require that ratepayers pay a return on an
23 expense that is in serious dispute.

24 Now, you have made about four different

25 statements about subscriber commissions. First, you

(DAMRON - Cross by Owens)

1133

1 have indicated that they should be disallowed entirely.

2 Second, you have indicated they should be reduced to

3 22.32 percent. Third, you have indicated that they

4 should be reduced to 21 percent. And, fourth, you have

5 indicated they should be reduced to 12 percent.

6 So, my question is: Is there any part of

7 subscriber commissions that is not in serious dispute?

8 A. I think it remains in serious dispute as

9 long as the Commission has the appropriate attitude

10 that it isn't willing to allow unfettered bidding of

11 subscriber commissions in rates without some

12 justification as to whether that's an appropriate level

13 and is used and useful to the benefit of ratepayers.

14 We have offered an alternative to the

15 Commission. In fact, as you described, we have offered

16 a few alternatives. It would be the Commission's

17 judgment as to which is the most reasonable and

18 equitable way to approach this problem.

19 Q. So, you have no position on which one of

20 those four alternatives will produce rates that are

21 fair, just, and reasonable?

22 A. I think all of them.

23 Q. All right. Let's take the alternative --

24 A. In other words, if the Commission finds that

25 21 percent is the appropriate level, then it follows

(DAMRON - Cross by Owens)

1134

1 that, based on that finding, rates are fair, just, and
2 reasonable at that level, et cetera.

3 Q. All right. Let's take the alternative where
4 you have stated that rates that reflect a reduction of
5 subscriber commissions to 22.32 percent would be fair,
6 just, and reasonable.

7 Would it be fair, then, to say that the
8 subscriber commissions that are within that 22.32
9 percent are not in serious dispute?

10 A. Well, if adopted, they wouldn't be contested
11 by the Staff. But they certainly may be in serious
12 dispute depending on how the Commission views Staff's
13 recommendation. Staff's recommendation doesn't
14 necessarily equate to the Commission's decision. They
15 may not be able to buy what the Staff is advocating
16 here as an alternative.

17 Q. I'm asking you with regard to your
18 testimony, Mr. Damron. And I'm not asking you to
19 speculate on what the Commission may or may not do in
20 response to that.

21 You have testified that you believe that
22 rates that are based on 22.32 percent subscriber
23 commissions would be fair, just, and reasonable. And
24 so my question is: If that's the case, then it must

25 follow, mustn't it, that subscriber commissions within

(DAMRON - Cross by Owens)

1135

1 that limit are not in serious dispute as you used that
2 phrase?

3 A. Well, we have made the recommendation that
4 we have made, but we have certainly expressed our
5 distress about that particular category of expense.
6 It's certainly not in terms of the context of the
7 testimony we're discussing here. That's not the only
8 reason that I'm contesting the idea of using a
9 seven-day lag. I'm just making an observation here
10 that certainly the Commission has expressed a fairly
11 dim view about its concerns about this particular
12 category of expense. In that regard, I say it is in
13 serious dispute. Whether it's in serious dispute at 22
14 percent or 12 percent or whatever, it may or may not be
15 in terms of Staff.

16 Q. Well, then, help me out here: Are you
17 saying that we have to understand and speculate on what
18 the Commission will do in order to understand what you
19 mean by the phrase "serious dispute" in this connection?

20 A. Well, I think it's fairly clear when I say
21 it's in serious dispute. Obviously, it's one of the
22 most material issues in this case. I have quoted the
23 Commission's view regarding this particular category of
24 expense in my direct testimony. It certainly is in

25 serious dispute.

(DAMRON - Cross by Owens)

1136

1 As to when it not becomes in serious
2 dispute, I guess the Commission will decide that.

3 Q. All right. Now, let's change and make some
4 assumptions about what the Commission will do. Let's
5 assume that the Commission agrees with you that 22.32
6 percent is a reasonable level of subscriber
7 commissions. Then would you still maintain that the
8 commissions within or that are up to or equal to that
9 level are in serious dispute?

10 A. No.

11 Q. So, --

12 A. I would contend that they should be -- the
13 seven-day lag should still be disallowed for the
14 reasons I stated, Page 58, Lines 19 through 22, where I
15 state that the end user shouldn't have to pay the site
16 provider or the aggregators in any more timely manner
17 than they have to pay the AOS company.

18 Q. Now, if you can answer the question that I
19 asked: Under the assumption that I asked you to make,
20 then the reason viewed discretely about the subscriber
21 commissions being in serious dispute as a basis to
22 disallow the Company's lag time for subscriber
23 commissions would not be applicable; is that right?

24 A. That would be right. But I wouldn't

25 disallow the seven-day lag time simply on the basis

(DAMRON - Cross by Owens)

1137

1 that it's in serious dispute, and certainly I have not
2 in my testimony. Nor would I argue that the seven-day
3 lag time should be allowed solely on the basis that
4 this item is in serious dispute. I think we're
5 pounding on the lesser justification.

6 The primary justification is that I don't
7 believe this particular expense should have to be paid
8 in any more timely manner than the end user pays the
9 AOS company. That's the primary thrust of my argument.

10 Q. Is the subscriber commission any less of an
11 actual cost of doing business to International Pacific
12 than its network expense?

13 A. It's a cost of doing business. Apparently
14 it's a cost of doing business that's negotiated between
15 the aggregator and IPI and, as stated in Exhibit C-26,
16 apparently the aggregator could withstand a significant
17 reduction and still have a robust business.

18 Q. Certainly don't you think that IPI would be
19 delighted if it could obtain access to the same sites
20 and pay lower commissions to get that access?

21 A. Yes. And further comments at the end of my
22 testimony about, if rates are reduced, it shouldn't
23 have much effect on the cash flow. Apparently it was
24 their anticipation at the time they offered that that

25 the aggregators would accept the lesser amount.

(DAMRON - Cross by Owens)

1138

1 Q. That's your conclusion, isn't it, sir?

2 A. It's my conclusion and apparently the
3 conclusion of the author of Exhibit C-26.

4 Q. Let's talk about that again.

5 MS. BROWN: Your Honor, may I get the
6 notebook from Mr. Damron?

7 JUDGE FOSTER: Yes.

8 BY MR. OWENS:

9 Q. You're referring to Page 37 of Exhibit C-26?

10 A. Yes; which I quote at Page 68, Line 20 and
11 extending over through Page 69 of my rebuttal
12 testimony.

13 Q. The last sentence on that page says:
14 "Through pressure of the OSPs, the Commission hopes to
15 reduce the surcharge level of the payphone company
16 instead of having to deal with each individual payphone
17 provider." That's the next to the last sentence.

18 Isn't that correct?

19 A. That's what it states.

20 Q. So, wouldn't a fair reading of that indicate
21 that the author, whoever he or she was, anticipated a
22 rate reduction pattern on all providers, not just on
23 International Pacific?

24 A. I have no idea. I only know that this was

25 the forecast of the outcome of the Commission's

(DAMRON - Cross by Owens)

1139

1 complaint against the Company. There is no mention
2 here of other companies.

3 Q. There is no mention here of the anticipated
4 situation where International Pacific would be the only
5 company whose rates would be reduced and other
6 companies would be able to offer and pay higher
7 commissions, is there?

8 A. No. But I think your hypothesis is a bit
9 off because not all companies can offer more. There
10 are a number of them that are under the AOS rule.

11 Q. But there are a significant number that are
12 not under the AOS rule and can offer and pay higher
13 commissions than would be the case if the Commission
14 acts in accordance with your recommendation. Isn't
15 that true?

16 A. That's true. In the short run they may be
17 able to do that unless we can persuade them to
18 voluntarily reduce their rates.

19 Q. Now, doesn't Page 33 of Exhibit C-26 discuss
20 the reason why Impact's customers are loyal?

21 A. Which specific statement are you referring
22 to here?

23 Q. Impact's customers are loyal for several
24 reasons. First, Impact pays customers commissions

25 weekly and has never failed to pay on time?

(DAMRON - Cross by Owens)

1140

1 A. That's part of it. It goes on to talk about
2 paying management expertise, weak balance sheet,
3 erratic commission payments, et cetera. That's part of
4 it.

5 Q. So, the implication of that then is that if
6 Impact or International Pacific was not to pay
7 commissions weekly, it would suffer a reduction in
8 customer loyalty? Isn't that a fair reading of that?

9 A. It says here also that they are looking for
10 financially strong, well run companies that pay
11 reasonable commissions regularly. So, again, we're
12 talking about unknown or measurable. We do not know
13 what the aggregators may or may not do.

14 Q. You have no evidence that the marketplace
15 isn't demanding weekly commission payments as Mr. Mean
16 testified it was?

17 A. I'm aware that that's what IPI is offering.
18 Whether the marketplace is demanding it is something
19 else again. And whether the marketplace should get
20 what they demand in the context of a regulated company
21 or, rather, whether the end-use ratepayer should have
22 to finance that particular arrangement is another
23 question.

24 Q. So, is the answer to my question, no, you

25 don't have any evidence that the marketplace isn't

(DAMRON - Cross by Owens)

1141

1 demanding it?

2 A. The marketplace certainly would demand
3 whatever it can get. The question is: Is it
4 reasonable to make that offer?

5 Q. Are you incapable of answering yes or no to
6 that question?

7 A. No, I'm not incapable of answering yes or no
8 to that question.

9 Q. Then will you?

10 A. I don't know what the aggregators may or may
11 not do.

12 Q. You haven't investigated to find out what
13 the terms and conditions of similar agreements in the
14 marketplace are with other providers?

15 A. My understanding is that most agreements are
16 verbal. That was cited a number of times in the
17 competitive classification case. It's a little
18 difficult to examine a hand shake.

19 Q. You can talk to the parties that shook
20 hands, couldn't you?

21 A. I have talked to a few of them that shook
22 hands. They weren't particularly happy with IPI.

23 Q. Maybe I can rephrase my question so that you
24 understand it better. My question was: Did you

25 investigate the terms and conditions of similar

(DAMRON - Cross by Owens)

1142

1 agreements with providers other than IPI in terms of
2 how often commissions are to be paid?

3 A. No.

4 Q. You answered an earlier question where I
5 asked you if subscriber commissions were no less an
6 operating cost of International Pacific than its
7 network expenses by saying that it's apparently
8 something that's negotiated with the aggregator. And
9 those negotiations are based on the alternatives
10 available to the aggregators in the marketplace, aren't
11 they?

12 A. Yes. I don't question the fact that
13 subscriber commissions are a cost of doing business.
14 My testimony and the testimony of Mr. Wilson goes to
15 the weight of what is a prudently incurred amount of
16 that particular cost. What amount should or should not
17 be borne by ratepayers as an appropriate expense for
18 services rendered.

19 Q. I'm going to address now, sir, the lag
20 issue.

21 NAT has contractual arrangements with its
22 provider of network services that require it to pay
23 those expenses regularly; correct?

24 A. Apparently they have made that offer to its

25 aggregators.

(DAMRON - Cross by Owens)

1143

1 Q. No, sir. Maybe you didn't understand my
2 question. I'm asking you now about the providers of
3 network services to International Pacific. NAT incurs
4 those costs, and it has agreements that require it to
5 pay those costs regularly; correct?

6 A. Yes.

7 Q. And similarly, it has requirements to pay
8 other expenses regularly like payroll; is that right?

9 A. True.

10 Q. And some of those expenses like payroll may
11 have to be paid more often than the Company receives
12 revenues from its billing agents; is that correct?

13 A. I don't know about more often. I did not
14 challenge the lag days related to payroll in this
15 analysis.

16 Q. The Company's employees for which the
17 payroll expenses are incurred are the ones, among
18 others, who assist in the calls being completed that
19 the consumers are paying for; is that right?

20 A. Yes. Again, I think the test of an expense
21 is prudently incurred to the benefit of the end user.
22 And I'm not questioning the prudence of operator wages
23 and related expenses.

24 Q. Again, I'm simply talking about the lag

25 adjustment.

(DAMRON - Cross by Owens)

1144

1 So, it's the case that, for example, if the
2 Company has to pay its payroll expense every other
3 week, the lag on that would be fourteen days; is that
4 right?

5 A. That's what's claimed. I had no way to
6 verify any of these lag days.

7 Q. Did your counsel ask Mr. Mean what his
8 payroll lag was while he was on the stand?

9 A. She asked him and received some testimony,
10 yes, on some of these.

11 Q. He is the chief financial officer. You
12 don't think he is unaware of his payroll payment
13 obligations?

14 A. He may be aware of a number of things. The
15 intent of my comment was that ordinarily I don't
16 analyze lead/lag studies through cross-examination.
17 I usually put paper on my desk and look at that.

18 Q. It's possible, then, that an employee might
19 provide a service that generates a call and that the
20 revenue that the Company gets for completing that call
21 would come in considerably later than the Company would
22 have to pay that employee for providing that service;
23 correct?

24 A. It's possible. As Mr. Mean said, there is

25 always money coming in and going out. That was his

(DAMRON - Cross by Owens)

1145

1 testimony.

2 Q. Well, a lead/lag study attempts to quantify
3 those comings in and goings out, doesn't it?

4 A. That's what it attempts to do.

5 Q. And so under my hypothetical, you don't
6 challenge the reasonableness of asking consumers to pay
7 for the lag that extends beyond the date that the
8 operator has been paid for completing that call;
9 correct?

10 A. No. I think it's fairly customary to pay
11 your employees on a weekly or bi-weekly or monthly
12 basis. I'm not challenging that practice. I'm
13 challenging the practice of telling the end-use
14 ratepayer that he has to pay the site provider and the
15 aggregator once every seven days, but he only has to
16 pay the AOS company once every thirty days or whatever
17 the lag days are.

18 I think it's a business decision. It's a
19 business decision that they may use to attract
20 customers. I don't know that that's a business
21 decision that ought to be endorsed by this Commission.
22 That's my testimony.

23 Q. You don't know that it's not customary to
24 pay aggregators on a weekly basis in this industry, do

25 you?

(DAMRON - Cross by Owens)

1146

1 A. It may be customary to go out and shoot one
2 out of every six end users once a week. But I don't
3 know that that's a practice this Commission has to
4 endorse.

5 Q. Are you testifying under oath that you know
6 that that's a practice?

7 A. No. I'm just exaggerating the point.

8 MR. OWENS: Your Honor, I would ask that the
9 witness be directed not to exaggerate and to answer
10 responsively. I asked a question whether he knew
11 whether it was customary in this industry to pay
12 aggregators on a weekly basis or whether he knew that
13 it was not.

14 MS. BROWN: I'll object on the grounds
15 of relevancy.

16 MR. OWENS: Your Honor, he just stated in
17 answer to a prior question that he didn't feel that it
18 was inappropriate for lags in payment of employees to
19 be recognized because it was customary to pay employees
20 every other week.

21 JUDGE FOSTER: I'll allow the question.
22 Objection is overruled.

23 THE WITNESS: I have not audited any other
24 company other than IPI. So, I have no idea what the

25 specific practices are of any other AOS company in this

(DAMRON - Cross by Owens)

1147

1 state.

2 (Discussion held off the record.)

3 JUDGE FOSTER: Let's be back on the record.

4 While we were off the record, the reporter
5 changed her paper.

6 Go ahead, Mr. Owens.

7 MR. OWENS: Thank you, your Honor.

8 BY MR. OWENS:

9 Q. I want to digress for a moment and ask you a
10 question back on the weighted standard work seconds
11 calculation.

12 Your Exhibit 72 at Page 32, doesn't that say
13 that because the time and motion studies which you
14 described as being a requirement for IPI are time
15 consuming and expensive, it is impractical, especially
16 for smaller telephone companies, to conduct these time
17 and motion studies themselves?

18 A. Yes, I recall reading that. So, that leaves
19 us with the alternative of using some standardized
20 table. And as I have testified a couple of times today
21 and in my testimony, I'm not confident that those
22 tables are current based on the record, that they are
23 eleventh for today based on today's technology and for
24 this particular industry.

25 Q. But you don't know that they aren't, do you?

(DAMRON - Cross by Owens)

1148

1 A. No, I don't know one way or the other, which
2 is my problem.

3 Q. Now, on Page 59 of Exhibit CT-69, beginning
4 at Line 14, you describe things that you have removed.
5 And you're not suggesting by that that International
6 Pacific's lead/lag study be included those items, are
7 you?

8 A. No. In fact, I put a transcript reference
9 at the end of the sentence on Line 16 which I believe
10 confirms that that's precisely what the Company did.

11 Q. So, there is an area of agreement between
12 the Company and the Staff?

13 A. We have an area that's uncontested.

14 Q. Referring you to Page 44 of Exhibit CT-69,
15 do you have a copy of Part 32?

16 A. Yes.

17 Q. Is it correct that 47 CFR Part 32.13(a)
18 says, "As a general rule, all accounts kept by
19 reporting companies shall conform in numbers and titles
20 to those prescribed herein. However, reporting
21 companies may use different numbers for internal
22 purposes when separate accounts (or subaccounts)
23 maintained are consistent with the title and content of
24 accounts and subaccounts prescribed in this system"?

25 A. Give me a moment, please. (Reading.) Are

(DAMRON - Cross by Owens)

1149

1 you talking about 1332.16(a)?

2 Q. 32.13(a). I'm sorry.

3 A. (Reading.) That's what it says. And as I
4 have testified, I believe U. S. West, for instance,
5 keeps a financial reporting accounts and keeps a Part
6 32 accounts, although they are discontinuing their
7 financial reporting accounts or at least they are
8 discontinuing those reports.

9 Q. Now, Mr. Mean described the specific
10 accounts that he indicated that International Pacific
11 was not successful in finding a corresponding account
12 in Part 36 for, didn't he?

13 A. I believe he described some of them. I
14 don't know that he described all six of them that he
15 referred to.

16 Q. What account would International Pacific's
17 switching fees be included in under the Uniform System
18 of Accounts?

19 A. I don't have any opinion at this time. If
20 the Company wishes to present this Commission or the
21 Staff with a list of accounts and describe what their
22 problems are, I would have to sit down with management
23 and with the other accountants on the Staff and come to
24 some conclusion. I'm not going to stand here and

25 represent myself as the Staff and say this is the way

(DAMRON - Cross by Owens)

1150

1 these accounts should be handled. I am not the
2 management of this Commission.

3 Q. Would your answer be the same if I asked you
4 about billing validation expenses?

5 A. Yes. If the Company wishes to present the
6 Staff with a letter with a listing of those accounts
7 that it's having problems with and describe the
8 contents of the account and describe what their
9 problems are, we certainly will sit down, the Staff and
10 management, and have a round table discussion about it
11 and come to some rational conclusion as to how that
12 should be handled. But I'm not going to sit here and
13 make management decisions. That's beyond my authority.

14 In terms of ratemaking, as long as it's
15 operating -- clearly an operating expense, it doesn't
16 really matter whether it's in this account or that
17 account. In terms of total company presentation, it
18 doesn't change the revenue requirement calculation.

19 Q. You used the average rate base in your
20 recasting of International Pacific's separated results
21 in Exhibit C-75; is that correct?

22 A. I used an average rate base, yes.

23 Q. And is it correct that the end-of-period
24 rate base is closer in value to the rate base that will

25 exist during the rate effective period than the

(DAMRON - Cross by Owens)

1151

1 average?

2 A. Yes. That's a standard argument for
3 end-of-period rate base, which misses the whole point
4 of the historical test period approach which I have
5 described in my direct testimony. Not the dollar
6 amount we're trying to get close to. It's the
7 prospective percentage relationship of net income to
8 rate base that we're trying to achieve with the
9 historical test period approach.

10 Q. But you have adjusted International
11 Pacific's network expense for anticipated economies of
12 scale that were not, in fact, realized during the test
13 period. Isn't that true?

14 A. I have adjusted the unit cost, yes.

15 Q. And you have no evidence that International
16 Pacific could have obtained its network services at
17 lower unit costs than its then existing volumes; is
18 that correct?

19 A. Of course not. Again, you're missing the
20 point of what the historical test period approach does
21 on adjusting for volume. You're not adjusting for
22 volume. You're adjusting for changes in unit costs.

23 Q. But those unit costs are not achievable
24 without the increase in volume, are they, under this

25 situation?

(DAMRON - Cross by Owens)

1152

1 A. No, they are not. But as the revenues
2 increase, the expenses increase, and rate base
3 increases, you could achieve the very same relationship
4 of income to rate base in a prospective period with an
5 historical test period approach and an average rate
6 base.

7 The fact that they will achieve volume
8 discounts has nothing to do with causing some
9 distortion. We're using the test period to identify
10 prospective changes in the relationship of net income
11 to rate base.

12 Q. It's correct, isn't it, that your adjustment
13 of International Pacific's test year subscriber
14 commissions is based on the proposition that, in fact,
15 there would not be any reaction of the aggregators in
16 terms of reducing or eliminating the business that they
17 give to International Pacific in response to reduced
18 commission payments. Isn't that true?

19 A. No. It's based on the assumption that,
20 whatever that reaction is, it's not known and
21 measurable.

22 Q. In fact, mathematically you have measured it
23 at zero, haven't you, in your presentation?

24 A. Mathematically, I have made no adjustments

25 because it's not known and measurable.

(DAMRON - Cross by Owens)

1153

1 Q. Well, the mathematical effect of what you
2 have done is to portray that there will, in fact, be no
3 effect. Isn't that true?

4 A. Well, if you're saying I made an adjustment
5 by not making an adjustment, I guess I can follow that.
6 The truth of the matter is I made no adjustment because
7 it was not known and measurable.

8 Q. You have made an adjustment in the face of
9 knowing that there will be some offsetting reaction.
10 Isn't that true?

11 A. Yes. And for all I know, the offsetting
12 reaction may be favorable rather than unfavorable to
13 the Company. It's not known and measurable. And not
14 known and measurable means not known and measurable. I
15 don't know what that effect is. That's why I did not
16 adjust for it.

17 Q. You have no evidence that International
18 Pacific could have had its test year level of revenues
19 if it had paid the level of subscriber commission fees
20 that you have adjusted those dollars to. Isn't that
21 correct?

22 A. Again, that is not known and measurable.

23 Q. My question is: You have no evidence that
24 International Pacific could have earned the revenues

25 that it earned in the test period if it had paid

(DAMRON - Cross by Owens)

1154

1 commissions at the level you are adjusting them to?

2 A. Correct. I have no evidence as to what some
3 nonexistent condition might produce.

4 Q. You responded to Mr. Mean at Page 67 of
5 Exhibit C-69 by citing two cases, one involving Pacific
6 Northwest Bell and another I guess three dockets
7 involving Puget Power; is that correct?

8 A. Yes.

9 Q. Now, it's true, isn't it, that in all of
10 those cases the Company was the entity with the burden
11 of proof?

12 A. True.

13 Q. And it's true, isn't it, that the Commission
14 held in the Pacific Northwest Bell case and in the
15 Puget Power case that the entity with the burden of
16 proof had failed to establish the existence of a
17 prospective reduction in consumption based on a
18 prospective increase in price. Is that a fair
19 statement?

20 A. That's a fair statement.

21 Q. Now, the commodities involved in those cases
22 were in the case of Pacific Northwest Bell message toll
23 service and in the case of Puget Power electricity; is
24 that correct?

25 A. True. Different product, same concept.

(DAMRON - Cross by Owens)

1155

1 Q. In 1975 were there any alternative providers
2 of message toll service?

3 A. Well, there weren't any alternative
4 providers of message toll service. There was certainly
5 an elastic product based on you can write a letter now.
6 You can get in a car and go visit. There were -- it
7 was elastic in that sense.

8 But, no, I don't believe there was any toll
9 competition in 1975.

10 Q. So, there were few identical substitutes,
11 few or no identical substitutes for the commodity in
12 the Puget Power case; is that right? Excuse me. In
13 the Pacific Northwest Bell case.

14 A. There were no alternative toll providers.
15 But there were other alternatives to toll call.

16 Q. Similarly in the Puget Power case, if a
17 consumer lives within Puget Power's service area, can
18 that consumer buy retail electricity from some other
19 provider?

20 A. No. But it can certainly install a gas
21 range and a gas heater and a gas charcoal boiler or gas
22 hot water tank and a gas jacuzzi. So, it certainly has
23 some alternative. There are no gas telephones out
24 there. But other than -- there are quite a few

25 alternatives to electricity.

(DAMRON - Cross by Owens)

1156

1 Q. Is there a gas driven water pump for a
2 jacuzzi?

3 A. There is a gas driven water heater. I don't
4 know about pump.

5 Q. So, if a customer wanted to pump the heated
6 water through the jacuzzi, he probably would still have
7 to have electricity; is that right?

8 A. Certainly. But he could certainly minimize
9 his electric bill by putting in a gas heater.

10 Q. Now, with regard to International Pacific,
11 there are many alternative providers, at least as far
12 as aggregators are concerned, of the services that
13 International Pacific provides, aren't there?

14 A. There are many aggregators and many AOS
15 companies.

16 Q. And aggregators can change AOS companies
17 almost instantly with only the effort of making an
18 entry on a computer, can't they?

19 A. It's my understanding that they can change
20 aggregators or the aggregator can change AOS companies
21 fairly quickly, yes.

22 Q. So, the Commission was confronted with in
23 the Pacific Northwest Bell case or the Puget Power case
24 with a situation where there was ready and available to

25 the consumers suppliers of identical substitutes for

(DAMRON - Cross by Owens)

1157

1 which the price increase was being considered; is that
2 true?

3 A. The industries are admittedly different.
4 What the Commission was faced with was a revenue
5 requirement calculation and how much speculation they
6 intended to put into that calculation to determine the
7 revenue requirement as to whether that particular
8 company would or would not be given an opportunity to
9 achieve its authorized return. To that extent, the
10 issues were identical.

11 To the extent that they are different
12 industries, I'll certainly give you that. They are
13 different industries facing different circumstances in
14 the market.

15 THE COURT: Are you at a good point to break
16 for the evening?

17 MR. OWENS: Thank you, your Honor.

18 THE COURT: All right. Let's stand in
19 recess for this afternoon, and we'll plan on
20 reconvening at 9:30 a.m. tomorrow morning, same room.
21 We're off the record.

22 (At 5:00 p.m. the above hearing was recessed
23 until Thursday, November 18, 1993 at 9:30 a.m.)

24

