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I N D E X

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS	EXAM
R.L.C. DAMRON		1167	1177	1182	1171
EXHIBIT	MARKED	ADMITTED			
82	1178	1179			
T-83	1189	--			
C-84	1190	--			

25

(COLLOQUY)

1160

1 (Discussion held off the record.)

2

3

P R O C E E D I N G S

4

JUDGE FOSTER: Let's be back on the record.

5

Today's date is November 18, 1993, and we are again

6

convened in the Commission's hearing room in Olympia,

7

Washington. This is UT-911482, which is in the matter

8

of the complaint against International Pacific, Inc.

9

The parties are the same as they were

10 yesterday afternoon. And we left off the hearing with

11 Mr. Owens' completion of cross-examination of

12 Mr. Damron, the Commission's Staff witness.

13

I have a couple of things to take up and a

14 few questions, and we'll go back to redirect.

15

MR. OWENS: To cross-examination?

16

JUDGE FOSTER: Are you still conducting

17 cross-examination?

18

MR. OWENS: Yes.

19

JUDGE FOSTER: I'm sorry. I thought you had

20 completed.

21

MR. OWENS: No.

22

JUDGE FOSTER: Let me take care of my

23 preliminary matters here, some of the things we talked

24 about before we went on the record. And then we'll go

25 back to your cross-examination, and then I'll get to

(COLLOQUY)

1161

1 ask my questions.

2 Before we went on the record, I talked to
3 the parties about the possibility of a bench request
4 for an index of the transcript which may have been made
5 by Mr. Damron. And in the course of preparing the
6 testimony for this proceeding, my understanding is
7 there is such a document. And counsel will be
8 communicating with the witness about some way to put
9 this in a form so that the Commission can use it for
10 ease of reference to locate in the transcript and
11 exhibits where various subjects in this proceeding are
12 addressed.

13 Also, before we went on the record, I took
14 up the subject of judicial notice of the portions of
15 UT-920546, which is the competitive classification
16 proceeding involving International Pacific. I was
17 particularly concerned that our record in this
18 proceeding does not incorporate in as great a detail as
19 the classification proceeding the way IPI functions,
20 its relationships with payphone operators, and a
21 description of the billing process and the role of end
22 users in making calls on the system and paying for the
23 bills received as a result of those calls.

24 My understanding is, after talking to the

25 parties off the record, they will attempt to come up

(COLLOQUY)

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1 with something that will provide an operational
2 description of IPI and the AOS industry in general and
3 attempt to offer it by stipulation rather than taking
4 notice of the entirety of the record in the
5 classification proceeding.

6 Does that comport with our off-the-record
7 discussion, counsel?

8 MR. OWENS: Yes, your Honor.

9 MS. BROWN: Yes.

10 JUDGE FOSTER: Also, I'm going to be asking
11 the parties, those of you that are familiar in rate
12 cases in the past, if you will come together at some
13 point and prepare a statement of your final position
14 with respect to the various adjustments that have been
15 proposed in this case.

16 I understand there is going to be some
17 significant difference in the numbers because there is
18 a total-company approach versus interstate operations
19 approach, which will automatically result in difference
20 in figures. But I still would like to have for
21 reference what the parties' final position is in
22 various of these adjustments and how you get to the
23 dollars involved. In other words, the step by step
24 calculation. You take A and add it to B and divide it

25 by C and you get X, which is the client's position.

(COLLOQUY)

1163

1 Is that clear?

2 MR. OWENS: Not entirely. Do you want to go
3 off the record so I can just ask kind of a clarifying
4 question or two? Maybe it's because I haven't
5 participated in a full rate case here for the last few
6 years that I just perhaps need a little more detail. I
7 didn't know whether you wanted to burden the record
8 with that.

9 JUDGE FOSTER: Okay. Let's be off the
10 record.

11 (Discussion held off the record.)

12 JUDGE FOSTER: Let's be back on the record.

13 While we were off the record, we clarified
14 the format of what's being asked for by way of a
15 statement of each of the parties' final positions. And
16 it's acceptable that that be an attachment to the
17 brief.

18 Also, while we were off the record,
19 Mr. Owens brought up a point, and that is that he was
20 going to be requesting a waiver of the length of the
21 brief. I believe the Commission's rule sets forth a
22 page limit, and my understanding is that Mr. Owens is
23 going to request that that be waived.

24 MR. OWENS: Yes, your Honor. Even though we

25 haven't completed the record, I think I can say with a

(COLLOQUY)

1164

1 fair degree of certainty that the issues and the volume
2 of evidence in the case clearly support a waiver. We
3 have certainly very substantial issues of law. The
4 claim that the order in this case should be made
5 retroactive to the date of the filing of the complaint,
6 the issue of jurisdictional separations, which I
7 believe are going to require a significant volume of
8 briefing, which would not necessarily be found in an
9 ordinary rate case brief if you simply were devoted to
10 revenue requirements issues.

11 I would request a waiver for that reason.

12 JUDGE FOSTER: Miss Brown, any comments?

13 MS. BROWN: Yes. I don't think that a
14 waiver is necessary in this case. We need only look to
15 the page limitation set by the Commission in the
16 Washington Natural Gas rate case and the Puget Power
17 rate case this past summer. I believe in Washington
18 Natural Gas the page limit was set at eighty and at
19 Puget Power it was set at ninety. And there were many,
20 many more days of hearing and many, many more issues
21 that needed to be addressed in final briefs.

22 I think that the parties here ought to be
23 able to analyze the record and state their respective
24 positions within the sixty pages.

25

MR. OWENS: Your Honor, that argument

(COLLOQUY)

1165

1 doesn't address what I pointed out, which is we have
2 got very significant legal issues in this case aside
3 from the factual issues that go to revenue requirement.
4 And if my client is going to make its position on those
5 issues of law, I believe we need an opportunity to
6 explore the authorities thoroughly.

7 MS. BROWN: I would just like to add that
8 there were also legal issues that needed to be
9 addressed in both the Washington Natural Gas and Puget
10 Power cases.

11 JUDGE FOSTER: I'm going to grant the
12 waiver, and I'll allow ninety-page issues on the
13 briefs. I think there are significant issues in this
14 proceeding, and certainly related to the fact that this
15 is the first complaint that I'm aware of that has been
16 filed of this nature where there is a challenge to the
17 Company's compliance with the accounting rules and also
18 addressing the subject of what should be IPI's fair,
19 just, and reasonable rates.

20 Given the circumstances of this case, I
21 think it warrants a waiver of the Commission's rule,
22 but still a limit. And I will make that limit ninety
23 pages.

24 MS. BROWN: What would be the limit set for

25 the Commission Staff's reply brief in this case? Do

(COLLOQUY)

1166

1 you want to keep that at sixty?

2 JUDGE FOSTER: That would be fine.

3 MS. BROWN: All right.

4 JUDGE FOSTER: You're going to be filing a
5 reply, also, Mr. Owens?

6 MR. OWENS: Yes, I expect so.

7 JUDGE FOSTER: Let's allow a ninety-page
8 limit for the briefs in chief and then sixty pages on
9 rebuttal, and that should allow everybody plenty of
10 time to say everything.

11 Is that a problem?

12 MS. BROWN: Well, I'll have to go back and
13 look at my notes. Perhaps they have a letter that you
14 sent for reply brief. Staff does have the burden in
15 this case. And so it was my understanding that Staff
16 would be allowed to file a reply brief, but not
17 necessarily that IPI would have that same opportunity.

18 JUDGE FOSTER: Well, let's be off the
19 record.

20 (Discussion held off the record.)

21 JUDGE FOSTER: Let's be back on the record.

22 While we were off the record, I suggested to
23 Miss Brown that perhaps she could go back and we could
24 revisit this matter of the length of the reply brief at

25 a later date. But I will, in any event, grant the

(COLLOQUY)

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1 waiver of the Company for a ninety-page limit for its
2 brief.

3 MR. OWENS: Thank you, your Honor.

4 JUDGE FOSTER: Why don't you go ahead then.
5 Unless anybody else has anything else, go ahead with
6 the cross-examination of Mr. Damron.

7 MR. OWENS: Thank you, your Honor.

8

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

10 (continued)

11 BY MR. OWENS:

12 Q. Mr. Damron, addressing your calculation of
13 separated results for International Pacific and your
14 use of billable minutes as an allocator, you used
15 unweighted minutes; is that right?

16 A. True. Same as the company.

17 Q. The Company didn't use minutes to allocate
18 all of the things that you allocated with minutes; is
19 that right?

20 A. No. They used the billable calls allocated
21 much more extensively than I did.

22 Q. Is it correct that the Company's access
23 costs are higher than intrastate than interstate?

24 A. There is no way I can determine that. We

25 have limited access to other jurisdictional

(DAMRON - Cross by Owens)

1168

1 information.

2 Q. Turning to your testimony in Exhibit CT-69
3 at Page 71 where you describe the diskette with the
4 Lotus spreadsheet files, --

5 A. Which page is that, sir?

6 Q. 71.

7 A. I have that.

8 Q. Now, it's correct, isn't it, that in DOS the
9 name of a file is limited to eight characters plus a
10 three-character extension?

11 A. That's true.

12 Q. And so you can't put a long name on a file
13 in DOS as its currently configured; is that right?

14 A. Nothing longer than eight characters plus
15 the three-character extension, yes.

16 Q. So, if you wanted to signify that a
17 particular file was a response to a particular data
18 request from the Washington Utilities and
19 Transportation Commission you would have to abbreviate
20 that somehow; is that right?

21 A. Yes.

22 Q. And if that file were stored on a network,
23 would it be reasonable to expect that there might be
24 thousands of other files that resided on that network?

25 file after verifying that it was, indeed, what was

(DAMRON - Cross by Owens)

1170

1 asked for, to simply save it rather than closing it and
2 then copying?

3 A. It's certainly one alternative to whoever
4 was doing that. Whether it's reasonable or not, I
5 don't know. That's not the way I would proceed.

6 Q. Directing your attention now to your
7 adjustment to the Company's subscriber commission
8 payments, would it be correct that you have no
9 knowledge of any similar company that sustained a
10 similar proportion at reduction in its commission fees
11 without a substantial loss in its aggregator customers
12 in the past?

13 A. That's true. This is the first AOS rate
14 case in this jurisdiction.

15 Q. Well, you have no knowledge of any similar
16 occurrence in any other jurisdiction, do you?

17 A. I'm not that familiar with the activities of
18 other jurisdictions. So, the answer is, no, I don't.

19 MR. OWENS: That's all I have. Thank you.

20 MS. BROWN: Your Honor, may I take five
21 minutes, please? Are you going to do your questions
22 first?

23 JUDGE FOSTER: I have got just a couple
24 questions.

1 E X A M I N A T I O N

2 BY JUDGE FOSTER:

3 Q. Mr. Damron, you indicated yesterday that the
4 Commission was or the Commission Staff was engaging in
5 some kind of negotiations with the AOS industry as a
6 whole over rates. I wasn't aware of that.

7 Is that correct? Could you describe that a
8 little more?

9 A. Well, I'm not a direct party to those
10 negotiations since we are in litigation. And there are
11 problems that might result from that.

12 It's my understanding that there is an
13 extension of an invitation, particularly to those
14 individual companies that are not under the AOS rule to
15 the extent of the rate cap, to come to a round table
16 and discuss the problem and Staff's problems.

17 That has been undertaken. There is legal
18 discussion about that as to whether this is an
19 appropriate thing to do at this time. No meetings have
20 been held yet. But it's being discussed at this time,
21 yes.

22 Q. Is IPI one of the companies that that
23 invitation has been extended to?

24 A. Yes, I believe they are.

25

MR. OWENS: For the record, I will represent

(DAMRON - Examination by Court)

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1 to the bench that IPI fully intends to respond to the
2 invitation and fervently hopes that a resolution can be
3 reached which would result in an ability of
4 International Pacific to enter into a voluntary rate
5 reduction as long as it was not placed at a competitive
6 disadvantage, which would be the outcome under the
7 current situation without such a stipulation.

8 JUDGE FOSTER: I don't need to know any more
9 than that. It was just a reference that was made.
10 Thank you for your representation, counsel.

11 Yesterday, I believe, while we were off the
12 record, I had a couple of questions about parties in
13 this proceeding and the current status now. I believe
14 at one time Northwest Payphone Association was accorded
15 intervenor status.

16 Is it the understanding of counsel that they
17 are not participating in this matter any further?

18 MR. OWENS: I have had no communication with
19 them. I don't know.

20 JUDGE FOSTER: Miss Brown?

21 MS. BROWN: That's my understanding, your
22 Honor. I spoke with Mr. Brooks Harlow of Miller Nash,
23 Wiener, Hager and Carlsen, and he represents the
24 Northwest Payphone Association. And he indicated to me

25 that the Northwest Payphone Association was not taking

(DAMRON - Examination by Court)

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1 an active role in this case at all.

2 JUDGE FOSTER: All right. The other
3 question that I had was about an entity referred to
4 early in this proceeding as CSI. CSI, I believe, was
5 also allowed to intervene. And my understanding is
6 they were a member of the Payphone Association.

7 Is that correct, Mr. Owens?

8 MR. OWENS: At that time they were. I have
9 no knowledge of their current status.

10 JUDGE FOSTER: They are now on our master
11 service list, and we have sent things to them only to
12 have them returned. We have attempted to contact them
13 by phone and have been advised that the phone had been
14 disconnected.

15 Is there anybody here who can tell us any
16 more about this company? Is it still in operation?

17 MS. BROWN: I believe, your Honor, I believe
18 that Staff can get the new telephone number of CSI and
19 make an attempt to contact CSI.

20 JUDGE FOSTER: Okay. If they want to remain
21 a party, that's fine. We'll continue to send things to
22 them. It would be helpful if we had the correct
23 address.

24 But if they do not wish to participate, if

25 we could get a letter from them to the Commission

(DAMRON - Examination by Court)

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1 saying they don't want to proceed, we'll take them off
2 the list and take them out of this proceeding rather
3 than sending paper off and not ever having any feedback
4 as to what their role in this proceeding is going to
5 be.

6 BY JUDGE FOSTER:

7 Q. My last question has to do with the impact
8 of the Commission Staff's recommendation on the
9 payphone operators. Mr. Damron, you suggested that in
10 the course of your testimony that the commissions that
11 are being paid are rather high and should be reduced,
12 and if the Commission were to follow your
13 recommendation that there would be some adjustment in
14 the amount of commission fees.

15 It would seem that IPI would then turn
16 around and be able to pay less in the way of commission
17 fees to payphone operators.

18 My question is whether or not the Commission
19 needs to be concerned about what happens with these
20 payphone operators who are presently receiving these
21 high commissions or in your view high commissions?

22 A. Certainly the Commission needs to be
23 concerned. I think -- and has expressed its concern
24 regarding the fact that they did not want the situation

25 of unfettered bidding related to commission fees and

(DAMRON - Examination by Court)

1175

1 that without any cost justification that they had a
2 great deal of difficulty in including this particular
3 expense in rates.

4 Those orders were issued some time ago.
5 Certainly the industry has been put on notice that they
6 are to come forward to the Commission and say these are
7 our costs and we need this level of commission. They
8 have certainly had an opportunity to do so.

9 The Company claimed in the competitive
10 classification case that they had no knowledge of what
11 the earnings level was of the aggregators. However, we
12 looked at Exhibit C-26. There is claims in there that
13 a well run aggregator or OSP or whatever the acronym is
14 can earn a 22 percent return on their operating
15 investment and that they can withstand a substantial
16 reduction in commission fees and still have a robust
17 company.

18 Now, that would suggest to me that the
19 Commission doesn't need to be too concerned,
20 particularly in light of the fact that we have quite a
21 number of companies that are under the AOS rule. And
22 as I said earlier in my cross-examination yesterday, we
23 haven't heard anything from these people in terms of
24 complaint about their rate levels. They haven't come

25 to this Commission and petitioned for higher rates.

(DAMRON - Examination by Court)

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1 And in the last analysis, any company can
2 file for rate increases if they feel they can justify
3 that rate increase. This is not a final situation. It
4 simply means that, like every other company that has
5 come before this Commission, they would have to assume
6 the burden of proof of their own rates and justify
7 those.

8 JUDGE FOSTER: Okay. Just so the record is
9 clear, I'm fully aware of the fact that the Commission
10 doesn't regulate either the payphone operators or the
11 hospitality service providers. So, under the AOS,
12 that's the subject of this proceeding.

13 BY JUDGE FOSTER:

14 Q. Just a follow-up question to your testimony.
15 It is your position that the adjustment that you would
16 make to subscriber fees would be sufficient to allow
17 those payphone operators, et cetera, to cover their
18 costs?

19 A. There is no way of knowing that directly.
20 The only thing we can conclude is that, based on
21 Mr. Wilson's analysis, that is the average amount being
22 paid to aggregators. And that being the case, we can
23 conclude that that is what they are receiving on
24 average.

25

JUDGE FOSTER: I would also invite

(DAMRON - Examination by Court)

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1 Mr. Wilson to address those questions if he wants to
2 in his testimony. I don't have any other questions.

3 MS. BROWN: Your Honor, may we take our
4 morning break, please?

5 JUDGE FOSTER: Let's be off the record, and
6 we'll reconvene at 11:00.

7 MS. BROWN: Thank you.

8 (Recess.)

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

11 Miss Brown, do you want to go ahead?

12 MS. BROWN: Thank you, your Honor.

13

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

15 BY MS. BROWN:

16 Q. Mr. Damron, you were asked questions by
17 counsel about the result of copying files from a
18 network. Do you recall those questions?

19 A. Yes, I do.

20 Q. Did you have an opportunity to perform any
21 tests to further analyze that particular issue?

22 A. Yes. I prepared an exhibit this morning
23 that illustrates -- I can explain what I did.

24 JUDGE FOSTER: Identified as Exhibit 82 is a

25 two-page exhibit. The caption at the top is Database

(DAMRON - Redirect by Brown)

1178

1 Reports, and it includes some of the files or
2 apparently files and notations. It's the best I can do
3 to describe it.

4 MS. BROWN: Thank you.

5 (Marked Exhibit 82)

6 BY MS. BROWN:

7 Q. Mr. Damron, can you identify what has been
8 marked for identification as Exhibit --

9 JUDGE FOSTER: 82. It's also designated at
10 the top of the first page RLCD-18.

11 MS. BROWN: Thank you.

12 THE WITNESS: This was an exhibit I prepared
13 earlier this morning in response to my cross-examination
14 from Mr. Owens yesterday about copying files from a
15 network to the diskette simply to verify that my claims
16 were accurate. I keep certain files on a network, and
17 then occasionally down load those files on to my PC or
18 on to diskette.

19 The first page of this exhibit shows a
20 listing of seven files that were on the network. I
21 listed the files. And as you can note -- and I put it
22 in a rectangle -- that the date of the files was
23 November 2, 1993, showing a time of 5:33 or 5:34 a.m.

24 These were the creation dates of these

25 files.

(DAMRON - Redirect by Brown)

1179

1 I then took those files, and I copied them
2 to a diskette, and I listed those files on the
3 diskette, and that's shown on Page 2. As you can see,
4 the date of the file and also the time of the day of
5 the file or the creation date of the file does not
6 change by simply copying something from our network to
7 diskette.

8 MS. BROWN: Your Honor, I move the admission
9 of Exhibit 82.

10 MR. OWENS: No objection.

11 JUDGE FOSTER: Exhibit 82 will be admitted.

12 (Admitted Exhibit 82)

13 MS. BROWN: Thank you.

14 BY MS. BROWN:

15 Q. In your testimony at Page 18, you discussed
16 that the Washington end user will receive half the
17 benefit and pay the same costs as a non-Washington
18 user.

19 Mr. Owens during his cross-examination
20 yesterday referred you to your Exhibit C-73, showing
21 that revenues per billable call were roughly twice that
22 of a Washington intrastate call for non-Washington
23 calls.

24 Can you clarify what you mean by Washington

25 end users receiving half the benefit by paying the same

(DAMRON - Redirect by Brown)

1180

1 costs?

2 A. Yes. The assumption is based on the
3 assumption that if usage or minutes of use equate to
4 benefit, then if you use the telephone for half the
5 time, then you receive half the benefit.

6 My testimony is directed not at the
7 Company's present tariff or the manner in which the
8 Company collects its revenues, but, rather, their
9 scheme of allocations and how the costs should be
10 allocated between jurisdictions, and then those costs
11 would then, therefore, have to be included in revenue
12 requirement and collected from the end user.

13 The manner in which those revenues are
14 collected is a matter of tariff design. But the costs
15 would be allocated and, as I have stated, in the
16 Company's scheme, predominantly by billable calls
17 allocator.

18 So, it was the costs and the cost allocation
19 that was my concern, not tariff design.

20 Q. I just have one other question:

21 At Pages 67 and 68 of your testimony, you
22 cited other cases where the Commission rejected
23 elasticity adjustments. Mr. Owens during his
24 cross-examination yesterday pointed out that in those

25 cases cited by you the burden of proof was on the

(DAMRON - Redirect by Brown)

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1 Company.

2 Do you think that Staff's procedures should
3 change simply because the burden of proof rests with
4 the Staff?

5 MR. OWENS: I'm going to object. That's a
6 legal question.

7 MS. BROWN: Mr. Damron fielded
8 cross-examination questions on this issue yesterday.

9 MR. OWENS: It doesn't have anything to do
10 with my objection.

11 MS. BROWN: Well, no, your Honor. We'll
12 note Mr. Damron is not an attorney. To the extent the
13 question is calling for a legal conclusion, that's not
14 to the point I'm asking the question.

15 JUDGE FOSTER: I'll allow the question. The
16 objection is overruled. I think that Mr. Owens'
17 objections really go to the weight that this witness's
18 testimony should be given.

19 THE WITNESS: The answer is, no, I don't
20 think the procedures should change in the particular
21 case. My recollection was that we were discussing
22 repression or suppression adjustments or elasticity
23 adjustments and indicated that in those cases which I
24 cited, counsel indicated that the burden of proof was

25 on the Company.

(DAMRON - Redirect by Brown)

1182

1 I don't think that adjustments related to
2 elasticity of demand or suppression become any more
3 known and measurable if the burden of proof is on the
4 Staff. And I really don't see any reason why Staff's
5 procedures should change simply because the burden of
6 proof is shifted or that we should follow any different
7 procedures. In fact, I think that would be highly
8 questionable to do so, and the Staff has made every
9 attempt here to proceed in a standard, historical test
10 period approach following the standard known and
11 measurable principles, et cetera.

12 I see no reason why we should change that
13 simply because the burden of proof is on us.

14 MS. BROWN: Thank you. I have nothing
15 further.

16 JUDGE FOSTER: Mr. Owens?

17 MR. OWENS: Yes, your Honor. Thank you.

18

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

20 BY MR. OWENS:

21 Q. Mr. Damron, with regard to Exhibit 82, it's
22 correct, isn't it, that if you had opened one of these
23 files to make sure it was the file you wanted and then
24 saved it that it would show today's date even if you

25 didn't alter the file?

(DAMRON - Recross by Owens)

1183

1 A. If I opened it and saved it within some sort
2 of software, yes.

3 Q. I mean, when you sat down to your computer,
4 what command did you give it in order to produce these
5 pages?

6 A. I simply -- in order to produce these pages,
7 I simply listed the directory. And you can see at the
8 top of Page -- of the first page in the particular
9 directory and subdirectory, I issued the command DRI
10 asterisk, period, PRN. What that does is it lists --
11 gives you a listing of the files in that particular
12 directory that have the extension PRN, and it listed
13 those seven files.

14 I then issued the command, "copy space
15 asterisk period asterisk" to drive A in the DOS command
16 or, rather, "asterisk period PRN," and it copied any
17 file with a PRN extension in that directory to drive A.

18 I then issued a DIR or directory command
19 listing with files in drive A and then did a print
20 screen command to print out the listing of those files
21 that I had copied to diskette.

22 Q. So, when you qualified your answer to my
23 prior question that if you saved it in some software,
24 were you referring to some kind of an application

25 program?

(DAMRON - Recross by Owens)

1184

1 A. Yes. For instance, if I had loaded it into
2 a Lotus program and then turned around and saved it,
3 which I wouldn't have a need to save it unless I had
4 altered it, but, if I had saved it, it would have
5 updated the date to today's date, which is November 18.

6 Q. If the date was of no particular
7 significance to you and you had opened it to verify
8 what it was, but you knew that you needed a copy of it
9 on the diskette, would it have been just as easy for
10 you once you had opened it to save it to the diskette?

11 A. Well, it might have been if I was dealing
12 with one file. I was dealing with seven files here,
13 and I'm familiar enough with DOS commands that -- but
14 as I have admitted earlier in your cross-examination,
15 that's one alternative I could have made.

16 Q. Now, your testimony on redirect with regard
17 to your testimony at Page 18 on the benefit, the
18 consumer receives a benefit from using the services of
19 an AOS in addition to simply having a conversation
20 opened for a particular number of minutes. Isn't that
21 true?

22 A. Yes. Well, --

23 Q. They are able to make a call. If they don't
24 happen to have a pocket full of change, they can bill

25 that call to a credit card. Isn't that true?

(DAMRON - Recross by Owens)

1185

1 A. True. But it's been my position that
2 minutes of use is certainly not unfamiliar with -- in
3 the telecommunications industry. And I feel that usage
4 is certainly related to relative use and the fair way
5 of allocating.

6 Q. But the consumer does receive a benefit on a
7 per-call basis from being able to bill that call to a
8 credit card or to a third number or to make it a
9 collect call. Isn't that true?

10 A. There are other benefits one could consider.
11 But I think the predominant benefit is you make a call,
12 you use the telephone for a certain number of minutes,
13 and you hang up.

14 Q. There is no standard to determine which
15 benefit is predominant, is there? That's just your
16 opinion?

17 A. It's my opinion, and I believe it's a
18 rational one.

19 Q. Other people might have a different rational
20 opinion. Isn't that true?

21 A. Yes. But I think those other people might
22 be a little upset if they were billed the same amount
23 for half the usage.

24 Q. I thought you said the question of billing

25 was a matter of tariff design. Isn't that true?

(DAMRON - Recross by Owens)

1186

1 A. Billing, yes. But I'm talking about the
2 recovery of costs. And once it becomes part of the
3 revenue requirement equation, then those are the costs
4 that are charged. And the recovery process in terms of
5 the manner of billing is not really eleventh to the
6 overall revenue requirement. It just determines how
7 the amount is achieved. It doesn't determine what the
8 total revenue requirement is.

9 Q. The consumer receives a benefit that isn't
10 related to the amount of time the consumer spends on
11 the phone from simply having the phone available at a
12 location where he needs to make the call. Isn't that
13 true?

14 A. True.

15 Q. Now, finally, you were asked the question
16 about whether Staff's procedure should change just
17 because the Staff has the burden of proof.

18 If it turns out in this case that you have
19 the burden to prove a negative, that is, that there
20 would be no diminution in subscriber business to
21 International Pacific and revenue as a result of the
22 adjustment to its subscriber commissions, then you
23 haven't proved that. Isn't that true?

24 MS. BROWN: Object to the extent the

25 question calls for a legal conclusion.

(DAMRON - Recross by Owens)

1187

1 MR. OWENS: My objection was overruled. It
2 seems to me it's fair cross-examination.

3 JUDGE FOSTER: I'll allow the question. I
4 think your comments go to weight.

5 Do you have the question in mind?

6 THE WITNESS: Yes.

7 If the Court decides that in order for the
8 Staff to sustain its burden of proof that it must prove
9 the unprovable, then we have not done that. I have
10 reiterated a number of times that elasticity adjustment
11 and repression diminution, whatever name you want to
12 give it, is not known and measurable. There isn't any
13 way I can give effect to that.

14 BY MR. OWENS:

15 Q. The only basis on which you claim that it's
16 unprovable are those decisions that you mentioned; is
17 that right?

18 A. Which?

19 Q. The Pacific Northwest Bell and the Puget
20 Power cases. You haven't done an investigation and
21 attempted to prove it yourself, have you?

22 A. I wouldn't even know how to go about it.

23 Q. So, if it were the case that other
24 jurisdictions accepted price elasticity of demand

25 adjustments, you wouldn't know about that?

(DAMRON - Recross by Owens)

1188

1 A. Other jurisdictions may do a number of
2 things. But that doesn't make it any more known and
3 measurable.

4 Q. So, you didn't in preparing for your
5 testimony investigate whether any other jurisdictions
6 have found a way to make such adjustments known and
7 measurable. Is that a fair statement?

8 A. I'm quite aware of what goes on nationally,
9 and I'm not aware of anyone who has found a way to
10 predict the future. Some people claim their crystal
11 ball will do that for them, but I don't believe them.

12 Q. So, you're saying that there are no
13 jurisdictions nationally that have found that such
14 adjustments are known and measurable and accepted them
15 in ratemaking?

16 A. I have no idea what they have found. But I
17 would certainly quarrel with them as to whether it is
18 known and measurable.

19 Q. In any case, you haven't established the
20 negative, that is, that there would be, in fact, no
21 reduction in International Pacific's revenue in
22 response to the proposed reduction in subscriber
23 commission fees that the Staff is making in this case?

24 A. The question has been answered. But, again,

25 not known and measurable means not known and

(DAMRON - Recross by Owens)

1189

1 measurable.

2 MR. OWENS: Nothing further. Thank you.

3 JUDGE FOSTER: Anything else, Miss Brown?

4 MS. BROWN: No, your Honor.

5 JUDGE FOSTER: Then the witness may be
6 excused.

7 Thank you for your testimony.

8 JUDGE FOSTER: Let's be off the record while
9 the witnesses are changing places.

10 (Discussion held off the record.)

11 JUDGE FOSTER: Let's be back on the record.

12 While we were off the record the witnesses changed
13 places, and Mr. Wilson is now on the stand.

14 I'll remind you, Mr. Wilson, that you were
15 previously placed under oath in this matter.

16 There has also been some rebuttal testimony
17 prefiled.

18 Do you want me to go ahead and give those
19 numbers?

20 MS. BROWN: Please.

21 JUDGE FOSTER: Let's identify it as the
22 exhibit next in order, which would be Exhibit T-83, the
23 testimony, rebuttal testimony, of Mr. Wilson. And that
24 has 18 pages.

25

(Marked Exhibit T-83)

(DAMRON - Recross by Owens)

1190

1 JUDGE FOSTER: Also distributed this morning
2 are some pages of corrections. And I'll identify all
3 of this as Exhibit 84, the corrections to --

4 MR. OWENS: Your Honor, before you continue
5 with this, I thought maybe since I think at least the
6 majority if not a hundred percent of the
7 cross-examination in this part of the hearing is going
8 to be subject to three court orders mandating
9 confidential treatment that it would be appropriate at
10 this point to designate the record confidential and to
11 secure the area.

12 (Marked Exhibit C-84)

13 JUDGE FOSTER: Is it possible to conduct
14 your examination on this material without direct
15 reference to what's being protected by this Court
16 order?

17 MR. OWENS: Not at all, your Honor.

18 JUDGE FOSTER: Why do you say that?

19 MR. OWENS: Because I believe that it's
20 necessary for me to examine in detail the material
21 that's protected by the Court order in order to
22 represent my client's interests. And I need to make
23 reference to specific individual companies and specific
24 numbers that they divided in order to do that.

25 I'm just making my position known. I'm

(DAMRON - Recross by Owens)

1191

1 subject to the Court order. If you choose not to,
2 that's up to you.

3 JUDGE FOSTER: My understanding is that
4 these orders protect the what? What is it that they
5 are addressing themselves to?

6 MR. OWENS: Protect what's denominated in
7 those Court orders as confidential information, I
8 believe, which would be responses provided by the three
9 companies and presumably the numbers that were computed
10 by Mr. Wilson based on those responses to the extent
11 they can be identified and related back to those
12 companies.

13 JUDGE FOSTER: Miss Brown, do you have any
14 position on this?

15 MS. BROWN: That's my understanding, also.
16 I think that if there is no way that Mr. Owens can
17 effectively cross-examine Mr. Wilson without reference
18 to the confidential data contained in these various
19 companies' responses to the Staff's commission fee
20 survey, then we should, indeed, go into confidential
21 session.

22 MR. OWENS: I guess the alternative would be
23 to remain in open session and then whenever I'm about
24 to ask a question that identifies a particular number

25 to a particular company to inform you and do it

(DAMRON - Recross by Owens)

1192

1 piecemeal.

2 JUDGE FOSTER: Well, as you can understand,
3 we have had this discussion before about
4 confidentiality, and I like to keep as much of this
5 matter open as possible.

6 MR. OWENS: I agree, your Honor. I'm not --

7 JUDGE FOSTER: I'm wondering if you could
8 use an alternative method by, say, designating a number
9 that's the fifth one down on a particular exhibit and
10 making an oblique reference in that way.

11 MR. OWENS: Your Honor, with all due
12 respect, as the party that would be subject to a
13 contempt citation, I am unwilling to risk that.

14 JUDGE FOSTER: We're not asking you to
15 expose yourself to contempt, counsel. What I'm
16 suggesting is is there a way to keep this record open
17 and allow you and the witness to arrive at an
18 understanding of what's confidential by reference to a
19 particular location on a particular page.

20 MR. OWENS: Your Honor --

21 MS. BROWN: How much do you have for
22 Mr. Wilson?

23 MR. OWENS: A lot.

24 JUDGE FOSTER: Is this several hours?

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MR. OWENS: Yes.

(DAMRON - Recross by Owens)

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JUDGE FOSTER: Three? Four?

Okay. All right. Then I'm going to ask the court reporter to prepare a separate transcript for this portion of the proceeding, and it will be considered confidential and it will be kept in a separate volume of transcript.

(Remaining pages 1194 - 1337 designated confidential and bound separately.)

