

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 NORTHWEST PAYPHONE ASSOCIATION,)
 a Washington nonprofit)
 4 corporation, DIGITAL ACCESS)
 COMMUNICATIONS CORP., NCS) Hearing No. UT-920174
 5 TELEWORK COMMUNICATIONS CO.,) VOL. XV
 PAYTEL NORTHWEST, INC., and) PGS. 1154 - 1200
 6 PUBLIC COMMUNICATIONS OF)
 AMERICA,)
 7)
 Complainants,)
 8)
 vs.)
 9)
 U.S. WEST COMMUNICATIONS, INC.,)
 10)
 Respondent.)
 11 -----)

12 A hearing in the above matter was held on
 13 December 14, 1993, at 9:00 a.m., at 1300 South
 14 Evergreen Park Drive Southwest, Olympia, Washington,
 15 before Commissioners RICHARD HEMSTAD and
 16 Chairman SHARON NELSON and Administrative Law Judge
 17 ALICE L. HAENLE.

18 The parties were present as follows:

19 NORTHWEST PAYPHONE ASSOCIATION, DIGITAL,
 ACCESS COMMUNICATIONS CORP., NCS TELEWORK
 20 COMMUNICATIONS CO., PAYTEL NORTHWEST, INC., and PUBLIC
 COMMUNICATIONS OF AMERICA by BROOKS HARLOW, Attorney,
 21 of Miller, Nash, Wiener, Hager & Carlson, 601 Union,
 Suite 4400, Seattle, Washington 98101-2352.
 22

23 U.S. WEST COMMUNICATIONS, by EDWARD T. SHAW,
 Attorney, and MOLLY HASTINGS, Attorney, Post Office Box
 21225, Seattle, Washington 98111.
 24
 Donna M. Davis, CSR, CM
 25 Court Reporter

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A P P E A R A N C E S

THE COMMISSION by Sally Brown, Assistant
Attorney General, 1400 South Evergreen Park Drive
Southwest, Olympia, Washington 98504.

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I N D E X

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WITNESS: DIRECT CROSS REDIRECT RECROSS EXAM

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J.S. FLETCHER

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

2 JUDGE HAENLE: The hearing will come to
3 order. This is a fifteenth day of hearing in Docket
4 No. UT-920174. The hearing is taking place in Olympia
5 on December 14, 1993, before the Commission.

6 Today we will be continuing with direct and
7 cross of the complainant's rebuttal case.

8 Are there any things left over from
9 yesterday we need to discuss other than we discussed
10 off the record a bit about briefs, and we will take
11 that up as the last order of business.

12 Anything else?

13 MR. SHAW: No.

14 MR. HARLOW: No, your Honor.

15 JUDGE HAENLE: You were cross-examining Mr.
16 Fletcher, I believe, Mr. Shaw. Why don't you continue.

17

18 JOHN S. FLETCHER,
19 having been previously duly sworn, was called as a
20 witness herein and was examined and testified

21 as follows:

22

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

24 (Continued)

25 BY MR. SHAW:

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1 Q. Mr. Fletcher, we'll turn to a new subject
2 and direct your attention to Page 6, I believe it is,
3 of your testimony where you discuss EAS or extended
4 area service.

5 Do you have that?

6 A. Yes, I do.

7 Q. Do you understand, Mr. Fletcher, that all of
8 the various imputation analyses that have been
9 introduced in this proceeding use an imputed PAL rate
10 that includes the Seattle EAS additives, the \$28.20,
11 your Line 14 on Page 6?

12 A. According to what I understand, Mr. Shaw, it
13 didn't. Since I wasn't involved in that imputation
14 order or privy to it, it was my understanding it did
15 not take into consideration.

16 Q. If that is, in fact, true, that all of the
17 various imputation proposals in this case use a PAL
18 line with an EAS administrative, then you would no
19 longer have any concern about EAS; is that correct?

20 A. From my perspective as an independent
21 payphone operator, the impact of EAS on my operation is
22 that I am now extending calling services at a quarter,
23 where I normally would have gotten toll revenue from
24 it.

25 Q. So, your concern is not with U. S. West in
JOHN S. FLETCHER - Cross by Shaw - 12/14/93 1159

1 this situation, but with the fact that the Commission
2 as a matter of public policy has decided to convert a
3 lot of short-haul toll around the state to EAS?

4 A. My concern again, as I stated, is the fact
5 that my costs have gone up and my revenue has gone
6 down. And it's in the most simplistic terms stated.

7 Q. Conceptually now, your customers that use
8 your phones for their quarter get more service because
9 they can call farther for that quarter typically, is
10 that correct, with EAS?

11 A. Yes, that's true.

12 Q. So, that would justify charging more than a
13 quarter?

14 A. I can't speak to whether it justifies
15 charging more than a quarter or not. Again, Mr. Shaw,
16 I simply go back to the situation when I entered this
17 business. EAS was not a factor. Therefore, I
18 collected toll revenue where I don't get it now. And I
19 pay more on my PAL line charge for that privilege. And
20 that seems like I'm going in the wrong direction.

21 Q. You're not suggesting that somehow the lost
22 toll revenues that U. S. West has experienced by
23 converting toll to EAS under Commission direction be
24 imputed or charged to U. S. West payphone operations,

25 do you?

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1 A. I'm suggesting in --

2 JUDGE HAENLE: Would you begin your answer
3 with a yes or no, sir, before you go on to explain it?

4 THE WITNESS: I would very much like to,
5 your Honor, but it's very difficult for me to do it in
6 that fashion because I'm not quite sure I understand
7 exactly the question, nor where -- I can only relate
8 this in my terms. And I will do the very best I can in
9 responding with a yes or no. But it's difficult.

10 JUDGE HAENLE: Please. It's very helpful to
11 the Court if you can do that. I'm not suggesting that
12 you not be able to explain your answer. But we would
13 like to know what direction you're going as you make
14 your explanation.

15 Mr. Shaw?

16 BY MR. SHAW:

17 Q. Do you have the question in mind, Mr.
18 Fletcher?

19 A. No, I don't. Would you repeat the question,
20 please?

21 Q. You are not suggesting by your testimony on
22 Page 6 that U. S. West payphone operations be charged
23 for U. S. West's lost toll revenue because of the
24 conversion of short-haul toll on to EAS, are you?

25

(Recess.)

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

2

We just were off the record for a brief recess.

3

Go ahead, Mr. Shaw.

4

BY MR. SHAW:

5

Q. By your testimony on Page 6, Mr. Fletcher,

6

you're not suggesting that this Commission should

7

charge to U. S. West payphone operations some portion

8

of the lost toll revenue as a result of conversion to

9

EAS, are you?

10

A. Again, if I understand the question

11

correctly, Mr. Shaw, yes, I would think that U. S. West

12

should impute that extra cost to their payphone

13

operations.

14

Q. In addition to imputing the EAS

15

administrative on the PAL line?

16

A. I was speaking of the EAS administrative.

17

Q. Okay. Would you agree that your PAL line

18

service is more valuable to your local calling business

19

because it now includes more calling area because of

20

EAS?

21

A. Again, no, I don't. I haven't had a chance

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to really think through that. But in my perception,

23

again, as a payphone operator, I have had very little

24

input from my customer base concerning whether the

25 added EAS dialing areas are that beneficial.

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1 I have to take direction from the Commission
2 on these issues. If they believe that's a problem and
3 this solves it, perhaps there is benefit to it.

4 Q. You support Doctor Cornell's recommendation
5 that U. S. West payphone operations be put in a
6 separate subsidiary, I take it?

7 A. I have given that some thought, yes. And I
8 believe that's correct.

9 Q. Including its operator services?

10 A. Yes, I think so.

11 MR. HARLOW: Excuse me, Mr. Shaw. Were you
12 meaning to imply by that question that Doctor Cornell
13 testified to that? Were you still asking if he would
14 agree with that?

15 BY MR. SHAW:

16 Q. I asked you, Mr. Fletcher, whether you think
17 that U. S. West's operator services should be in a
18 separate subsidiary. And you answered yes?

19 A. That's true, yes. And, again, I would say I
20 haven't thought through that completely. But it seems
21 to make sense to me only on the basis that we have
22 other operator services companies located in the state
23 of Washington who are, in effect, stand-alone entities
24 competing in a supposedly deregulated market.

25 Q. Then under current Commission practice, U.

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1 S. West's payphone separate subsidiary that included
2 its operator services would continue to be a regulated
3 company?

4 A. No. I thought we just said that under your
5 scenario they should be deregulated.

6 Q. So, your recommendation is that the separate
7 subsidiary be undertaken and that separate subsidiary
8 not be considered a telecommunications company, not be
9 regulated by this Commission? Is that a correct
10 understanding?

11 MR. HARLOW: Your Honor, I object. We're
12 getting into operator services being a separate
13 subsidiary. We're getting beyond the scope of Mr.
14 Fletcher's direct here.

15 His direct testimony only talks about the
16 payphone business of U. S. West, and I think asking
17 these questions this far beyond the scope of the direct
18 is inappropriate.

19 MR. SHAW: Mr. Shaw?

20 MR. SHAW: Well, I couldn't disagree more.
21 As the record indicates, payphone providers like Mr.
22 Fletcher such as Paytel, one of the complainants in
23 this case, provide operator services right out of their
24 set.

25

Currently this Commission, for some reason,

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1 considers that to be a regulated service, but not a
2 payphone that doesn't provide operator services right
3 out of its set.

4 Now we're talking about removing U. S.
5 West's payphone operations from its regulated
6 operations and putting it in a separate subsidiary.
7 And I'm just trying to get Mr. Fletcher's understanding
8 of what the implications of that are.

9 He is the one that has testified that he
10 wants this Commission to force U. S. West to break
11 itself up into separate subsidiaries as a result of
12 this complaint. So, it's totally within the scope of
13 cross.

14 JUDGE HAENLE: I'm going to overrule the
15 question and direct the witness to answer, sir.

16 THE WITNESS: And I would agree, sir, yes,
17 it makes sense to me to place it in a separate
18 subsidiary.

19 BY MR. SHAW:

20 Q. Have you considered, Mr. Fletcher, pursuing
21 the route that clearly lies within the current law in
22 this state? And that is for you and your like
23 companies to register as telecommunications companies
24 and file petitions for competitive classification and

25 become regulated, U. S. West do the same for its

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1 payphone operation subject to a price floor for the
2 prices it charges the public, and then everybody go out
3 and compete in the marketplace?

4 A. No, Mr. Shaw. I haven't really given that a
5 lot of consideration.

6 Q. Are you familiar with this Commission's
7 current view that independent payphone operators that
8 provide operator services have geographic monopolies
9 and cannot obtain competitive classification?

10 A. Again, no, I'm not familiar with that. I
11 didn't believe that was particularly the case.

12 Q. On Page 7 you suggest that in your answer
13 starting at Line 16 that U. S. West could provide you
14 relief from what you perceive to be a price squeeze by
15 paying you commissions on toll.

16 Is it your view that providing commissions
17 or additional revenues to you is a correct way to
18 relieve an alleged price squeeze?

19 A. I think it's a step in the right direction,
20 yes. I think that, given the right formula, if you
21 will, Commission rate --

22 MR. HARLOW: Excuse me, Mr. Shaw. I don't
23 believe the witness has finished his answer.

24 (The record was read.)

25 BY MR. SHAW:

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1 Q. You currently receive significant
2 commissions and revenues from other toll and operator
3 service providers as you testified yesterday; correct?

4 A. I take exception with the word "excessive."
5 But --

6 Q. I'm sorry. I didn't use the word "excessive."

7 A. I heard "excessive." I'm sorry.

8 JUDGE HAENLE: Maybe you would turn the
9 microphone around to face you, Mr. Shaw. Would you
10 repeat the question?

11 BY MR. SHAW:

12 Q. You currently receive significant revenues
13 from toll and operator service providers as you
14 testified yesterday, do you not?

15 A. Yes.

16 Q. How does U. S. West providing you more toll
17 revenues have anything to do with a price squeeze
18 caused by U. S. West's retail coin rates and its
19 wholesale PAL charges?

20 A. I think that by U. S. West sharing
21 intrastate toll with people, providers, again, it
22 increases my overall revenue stream.

23 Q. Is it your belief that this Commission has
24 some obligation to assure unregulated providers such as

25 yourself profitability?

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1 A. No, absolutely not, Mr. Shaw.

2 Q. And it is correct that you are profitable?

3 A. In my own business, my profitability has
4 only occurred within the last year of a five-year
5 operation.

6 Q. Do you find that unacceptable for a startup
7 business?

8 A. No, I don't.

9 Q. At the bottom of Page 7 and over on Page 8,
10 you discuss other options that the Commission could
11 consider, including raising the local call rate. And
12 you go on to state at Line 4 of Page 8 that the only
13 other option to lowering the PAL rate is to raise local
14 call rates.

15 There are other options, are there not, Mr.
16 Fletcher?

17 A. To the best of my knowledge, Mr. Shaw, the
18 only or one of the options I could think of would be
19 the option of my company being allowed to subscribe to
20 other services that U. S. West would provide through a
21 competitor. And as Doctor Cornell testified yesterday,
22 those services aren't currently, as I understand it,
23 widely available in the marketplace.

24 So, it isn't feasible for me to subscribe to

25 any other carrier than U. S. West. If there were a

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1 competitor in the city or state that would provide that
2 service, that certainly would be an option to end your
3 price squeeze.

4 Q. Perhaps I didn't make the question clear.

5 You have said the only option to lowering
6 PAL rates is to raise the coin box rate.

7 In fact, there are other options. For
8 instance, a set use charge, permitting U. S. West to
9 charge a set use charge; correct?

10 A. I suppose that's an option, yes.

11 Q. That is an option that has attractiveness to
12 your industry, does it not? If U. S. West would charge
13 a set use charge for non-sent-paid toll, then you could
14 do the same under the umbrella of U. S. West's charges;
15 correct?

16 A. I'm not sure, Mr. Shaw. I'm not sure
17 exactly what all that entails.

18 Q. You currently have so-called location
19 charges where your selected AOS, International Pacific,
20 adds a surcharge onto the toll bill for a non-sent-paid
21 toll call?

22 A. I have locations where 0-plus traffic is
23 routed through International Pacific, and they attach
24 what you referred to as a surcharge on that traffic.

25 Q. And that is reasonably considered a set use
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1 fee, is it not?

2 A. I'm not sure what it's considered. I
3 consider it in my terms a surcharge.

4 Q. And if U. S. West made the same sort of
5 surcharge to pass any alleged price squeeze test, that
6 would be an alternative to lowering PAL charges or
7 raising coin drop rates, would it not?

8 A. I don't understand the question. I'm sorry.

9 Q. Let's move on.

10 Another thing that U. S. West could do to
11 pass any imputation test is to cut its costs and
12 withdraw from service. Isn't that correct?

13 A. Mr. Shaw, I was never involved in this
14 imputation process. I first heard this word three or
15 four years ago when Mr. Lanksbury had to go to the
16 dictionary and look it up. I don't know how it applies
17 to the regulated market.

18 But as an accountant, you know, I can only
19 testify to the fact that you certainly, if you charged
20 a surcharge, as I understand it in my terms, on your
21 own locations, the only thing you do there is increase
22 your revenue.

23 Q. You understand, Mr. Fletcher, that the
24 fundamental issue in this case and in an imputation

25 analysis is whether the rates of U. S. West cover its

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1 relevant costs for the service?

2 A. Generally that's what I understand your
3 imputation model to do.

4 Q. And any imputation model is to test whether
5 or not revenues cover relevant costs; correct?

6 A. Again, I'm not an economist. I'm not
7 schooled in what an imputation model should or
8 shouldn't do.

9 Q. Your complaint here as a payphone operator
10 is that U. S. West charges too little for its
11 payphone-related services compared to its costs and,
12 therefore, is subsidizing its payphone operation from
13 other revenues in the payphone marketplace.

14 Isn't that your basic complaint as an
15 operator?

16 A. And my understanding of that, yes, came from
17 the analysis I understand was done by Doctor Cornell.

18 Q. And so the obvious cure for that concern is
19 for U. S. West to either cut its costs or to raise its
20 revenues or a combination of both?

21 A. Simplistically, yes. That would seem to be
22 the only way to do it.

23 Q. The only option is not to provide more
24 revenues to your unregulated industry, is it?

25 A. Our complaint seeks fairness. Whatever you
 JOHN S. FLETCHER - Cross by Shaw - 12/14/93 1171

1 do with your operation, we would like done with ours.

2 Q. So, you would wish U. S. West to raise its
3 rates to the public so you could raise your rates to
4 the public and become more profitable?

5 A. I'm sorry. No, that's not true.

6 Q. You suggest at Page 8 in your answer
7 starting at Line 8 that the Commission should consider
8 subsidizing your unregulated operations in some
9 respect.

10 A. I'm sorry. You said on Page 8, Line what?

11 Q. Line 8. "The public would benefit if that
12 subsidy were made available to all payphone providers."

13 Do you see that?

14 A. Yes.

15 Q. What do you mean by that, that the
16 Commission should order U. S. West to pay your company
17 to provide payphones in unprofitable locations?

18 A. I have often stated, Mr. Shaw, that, since
19 in my opinion this truly isn't a deregulated market
20 that I have been engaged in, if I were forced to
21 register as a telecommunications company by the
22 Commission, then I would gladly accept a rate of return
23 based on my operation as the Commission would deem
24 appropriate. And if that includes subsidizing

25 payphones under that formula, then I would accept that.

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1 Q. So, you agree that a condition precedent to
2 this Commission subsidizing your operation is for you
3 to become a telecommunications company registered with
4 this Commission?

5 A. And regulated by such, yes.

6 Q. And that is a condition precedent to your
7 offer to share the burden of subsidizing public
8 interest payphones?

9 A. No. I would say not, no. We would be happy
10 to work with the Commission developing any kind of a
11 formula or a formula which would identify these
12 particular locations.

13 Speaking on behalf of Northwest Payphone
14 Association, we would be glad to work with the
15 Commission staff, U. S. West, and share that burden.

16 Q. Do I understand, then, your suggestion is
17 that the Commission identify public policy payphones
18 through some sort of proceeding and then allocate the
19 responsibility for providing those phones between
20 regulated providers like local exchange companies and
21 unregulated providers like yourself; is that correct?

22 A. I think, yes, basically that idea has merit.

23 Q. So, this Commission would, without having
24 any jurisdiction or regulatory authority over you, at

25 the same time would be able to make you a carrier of

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1 last resort for some portion of these public payphones?

2 MR. HARLOW: I'm going to object to the term
3 "carrier of last resort" unless you can explain what
4 you mean to the witness. I'm not sure he is schooled
5 in that kind of terminology.

6 JUDGE HAENLE: Mr. Shaw?

7 BY MR. SHAW:

8 Q. Do you understand what I mean when I use the
9 term "carrier of last resort," Mr. Fletcher?

10 A. Only in the term meaning that I'm the lesser
11 of all the evils. If you want to put it in that
12 context, I guess I could accept that.

13 Q. You understand that as a fundamental tenet
14 of public utility law is that a regulated company can
15 be directed to provide service by the regulatory agency
16 where it otherwise would not as a matter of business
17 judgment provide services?

18 A. I'm not schooled in regulatory law, Mr.
19 Shaw, but I would believe that would be one way of
20 doing it, yes.

21 Q. You understand that the provider of last
22 resort in the context of payphones would be whatever
23 entity has to provide that payphone even though it's
24 not profitable?

25 A. I'll accept that.

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1 Q. So, again, my question: Do you think it's
2 viable for this Commission to make your company a
3 provider of last resort when it doesn't even have
4 regulatory jurisdiction over you?

5 A. Whether it has regulatory jurisdiction in my
6 mind or not is not the issue. The issue is to address
7 the problem. And if the problem is deciding on who
8 should identify public policy phones and provide them
9 as required, I would be happy as a member of the
10 Northwest Payphone Association -- I'm sure I speak on
11 behalf of many of the members -- to work in resolving
12 that issue and identifying and providing those
13 services.

14 MR. SHAW: Thank you. That's all I have.

15 JUDGE HAENLE: Ms. Brown?

16 MS. BROWN: Thank you.

17

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

19 BY MS. BROWN:

20 Q. Mr. Fletcher, did you say that your company
21 earns more than a third of its revenues from
22 International Pacific, your operator services provider?

23 A. Yes, that's true.

24 Q. And did you also say yesterday that of those

25 revenues you received from IPI, you passed through 50

JOHN S. FLETCHER - Cross by Brown - 12/14/93 1175

1 to 75 percent to the location owner?

2 A. No, that wasn't true.

3 Q. Okay.

4 A. What I stated was that we have a contract
5 site location agreement wherein we transfer commission
6 rate of around 25 percent of gross revenues. And that
7 varies from in exceptional cases perhaps it might get
8 as high as 50 percent.

9 Q. What percentage of commission fee payments
10 do you now receive from IPI?

11 A. Again, I don't have the percentage of our --
12 a percentage of, as an example, 30 percent of our
13 traffic or something along that line. What I can
14 relate to is that, as I said, more than 30 percent of
15 our gross revenue comes from International Pacific in
16 the form of a commission payment.

17 Q. Now, you have been in business as PCA for
18 about five years?

19 A. Yes.

20 Q. And have you always had International
21 Pacific as your AOS provider?

22 A. No.

23 Q. How long have you been with IPI?

24 A. I think since 1991, 1991.

25 Q. And who did you have as your AOS provider

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1 prior to that time?

2 A. As an aside -- and I think this is
3 interesting and I hope to the Commission -- we tried
4 not to use an alternative service when we first started
5 in this business. We were going to run our business
6 with no surcharges and using AT&T and whatever.

7 In that particular case, we tried to use
8 MCI, and it was an absolute disaster. First of all,
9 our revenue return from MCI at the time was
10 nonexistent. We struggled and fought and they could
11 not provide the service to the payphone operators. We
12 were with them for well over a year and never received
13 a dollar in commission.

14 We then moved to Phone America in I think
15 January of 1990, and Phone America went out of business
16 in the state of Washington. So, we transferred to
17 International Pacific.

18 Q. International Pacific pays more commission
19 fee payments to your company than did Phone America;
20 is that true?

21 A. In relation to the overall percentage, I
22 don't believe that's true, no. In relation to the
23 overall dollar -- because we were, as a small company,
24 not paid entirely by Phone America because of their

25 financial position -- we lost significant revenue.

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1 Q. You would agree, would you not, that the
2 level of commissions paid to you by International
3 Pacific is an overriding factor in your decision to
4 have IPI as your AOS provider?

5 A. In relation to whether I could choose
6 another provider such as Teltrust or U.S. long distance
7 or one of those? No.

8 As I stated earlier, we have come to rely on
9 the level of service that International Pacific
10 provides to our customers, the relationship that we
11 have developed with their company, the upgrades that
12 they have done to their network and to their services
13 within the state of Washington. It's been a very good
14 relationship.

15 As an example, I have a sales representative
16 who calls on me -- and not that this is all that
17 important, but it's an interesting fact to me -- that I
18 have been with U. S. West for five years. I have never
19 had anybody call on me. I have never had anybody from
20 AT&T come to solicit my services or my business.

21 I think that the Northwest Payphone
22 Association possibly is one of the largest customers
23 that U. S. West has. But as far as having any sales
24 representation or anybody call on you to thank you for

25 their business, that just doesn't happen.

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1 Q. But you do think that the level of
2 commission fee payments, I mean, if you're receiving
3 more than a third of your revenues from IPI, I mean,
4 that fact has to make IPI more attractive to you.
5 Wouldn't you agree?

6 A. No, not really, because I think that there
7 are larger people providing this service, using U. S.
8 West long distance as an example, in the state of
9 Washington.

10 Why don't I switch to U.S. long distance?
11 If I was interested in maximizing my return, I don't
12 know that I would do that. But the relationship as I
13 said with International Pacific -- while certainly I'm
14 not denying that money is important, there are other
15 factors at this point that make me a loyal customer.

16 Q. And IPI is one of the few AOS providers that
17 is able to pay weekly commission fee payments. Isn't
18 that true?

19 A. To my knowledge, no. The reason I make that
20 statement is I just happened to pick up a journal of
21 the payphone business nationally. And I see now that
22 many of these alternative providers are offering weekly
23 commission checks.

24 Q. Yesterday Mr. Shaw asked you some questions

25 about the rates charged to the end-use consumer and

JOHN S. FLETCHER - Cross by Brown - 12/14/93 1179

1 whether or not you would agree that the rates charged
2 by your chosen AOS are excessive.

3 What is your opinion about that? Do you
4 think that the rates charged to the end-use consumer
5 are exorbitant?

6 A. I don't think they are exorbitant, no. But
7 they are certainly more than what I would desire if I
8 were operating in a free economy. They are certainly
9 not the kind of business that responsible payphone
10 operators want to be.

11 Quite frankly, we're forced into in a
12 environment in order to survive financially.

13 Q. Are you aware that the rates charged by IPI
14 are 44 percent higher than those charged by AT&T and U.
15 S. West for the same call?

16 A. That wouldn't surprise me, no.

17 Q. And you personally, if given a choice
18 between the rates charged by IPI or paying the rates
19 charged by AT&T or U. S. West, would choose AT&T or U.
20 S. West's rates. Isn't that fair to say?

21 A. Yes, it is.

22 Q. You were asked questions about dial-around
23 and what the possible reasons for dial-around would be.
24 Wouldn't you agree if we see an increase in dial-around

25 is that some end-use consumers are informed about the

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1 rates charged by AOS providers?

2 A. I think that's a very distinct possibility,
3 yes. I would say in our case, I haven't seen any
4 marked decrease in our overall AOS revenues as a result
5 of the increased advertising and exposure to
6 dial-around. However, I certainly would expect that to
7 be the case.

8 I can conclude from that, however, that we
9 still have a base of population that uses our services
10 through the 0-plus calling method and don't find it
11 objectionable.

12 Q. At Page 5 of your testimony, you state that
13 it's your belief that as a newcomer you have to offer
14 higher commissions than U. S. West to compete
15 effectively for locations; is that true?

16 A. That term as used, "newcomers," referring,
17 I think, to the general Northwest Payphone Association
18 mind set. I don't happen to totally agree with all
19 that.

20 But I think that we as a small supposedly
21 entrepreneurial company offer different incentives. If
22 you sign up with us, we'll send you to Hawaii. We
23 think that doesn't cost that much money, incidentally.
24 It's a very small premium. But you would be amazed at

25 the number of small grocery store operators that would

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1 love to go to Hawaii.

2 I think, again, those are the types of
3 things that we try to use to induce people to allow us
4 to use their location.

5 Q. What is the basis of your understanding that
6 the Commission does not have authority to reduce U. S.
7 West's commissions to site owners?

8 A. I don't know anything about that. I'm
9 sorry. I can't form any kind of a legal opinion.

10 Q. But it's in your testimony at Page 7, Line
11 23.

12 A. As I said, I understand they don't have
13 that.

14 Q. What is the basis for your understanding I
15 guess is what I'm asking.

16 A. Just as a layman understanding what little I
17 know about contract law, that it would seem to be very
18 difficult to go in and break existing contracts.

19 Q. At Page 12 of your testimony, you discuss
20 the profitability issue, and you state that Mr.
21 Wilson's 316 percent gross profit figure is inaccurate.

22 Have you made any analysis or performed any
23 study to demonstrate what your profit level is?

24 A. In my business, yes. I do that frequently.

25 In fact, each one of my payphone operations is what I

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1 refer to as a cost center, and I measure the
2 profitability of each one of those locations.

3 I also measure the profitability of my
4 business on a monthly basis. And I also measure it
5 based on, in my particular case, whether I'm a growing
6 concern or a static concern. And all those factors
7 play differently in my overall rate of return.

8 Q. What is your profitability level for
9 November of 1993?

10 A. I can't recall specifically. But year to
11 date I would guess it's less than one percent.

12 Q. Have you performed any analysis that would
13 show what a reasonable rate of return would be for your
14 company?

15 A. Again, that depends on whether I'm in a
16 growth mode and an ongoing concern or whether I choose
17 not to grow and become static and let the business, in
18 fact, languish.

19 If you're in a growth mode in this business,
20 you're constantly investing in equipment. You're
21 constantly installing locations. And your rate of
22 return is significantly reduced because of the
23 investment that you have to place in the business.

24 If you stop growing and you just let your

25 business, as I said, languish, your rate of return in

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1 this business can get, in my experience, what I would
2 consider attractive for a service organization.

3 Q. Would you characterize yourself or your
4 company as being growth mode now?

5 A. We go in spurts. We finance all of our
6 business operations from within, primarily due to the
7 uncertainties of this business. And that depends on
8 how much, in laymen's terms, cash we have left over at
9 the end of the month.

10 Q. Have you performed any studies that would
11 show how profitable you would need to be to attract
12 investors?

13 A. No, I haven't.

14 Q. Do you believe that you could receive less
15 by way of commission fee payments from IPI and still be
16 profitable?

17 A. If I were in a growth mode, no. If I
18 decided not to grow the business, yes.

19 Q. So, you wouldn't necessarily go out of
20 business as you state in your testimony? Page 4 you
21 say: "Without that revenue, PCA would not be
22 profitable and go out of business."

23 That's not necessarily true, is it?

24 A. The question I understood you asked me is if

25 I received less revenue not, in effect, any revenue

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1 from IP. If you're asking the question if I received
2 zero revenue from IP, I believe that regardless of the
3 mode I'm in, I would go out of business.

4 Q. But you could receive less by way of
5 commission fee payment?

6 A. And I qualify that again by saying, yes, if
7 I was not in a growth mode. If I was in a very static
8 mode, which, quite frankly, is not practical in my
9 opinion in almost any business.

10 Q. Yesterday you testified that your company
11 had only received two complaints. Do you recall that
12 testimony?

13 A. I recall saying that I directly have only
14 received two complaints.

15 Q. But it's true, isn't it, that with
16 International Pacific, any complaints the consumers
17 would want to lodge against the company or against the
18 higher rates charged by IPI would be filed with 0-plus
19 dialing, their billing and collection agent?

20 A. I don't know that to be the case, no. I
21 believe personally that the signage on my telephone and
22 the ability for my customer base to contact me directly
23 gives them a good deal of facility in their ability to
24 either write me a letter or call me directly.

25 Q. But the bill that a consumer receives 30 or
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1 45 days after having placed the call comes from 0-plus
2 dialing. Your name, PCA, doesn't appear on this bill,
3 does it?

4 A. To my knowledge it doesn't, no.

5 Q. Of the private payphone owners, what
6 percentage of total operating costs are associated with
7 PAL lines?

8 A. In my experience, it's around 45 percent.

9 Q. And what percentage of operator costs are
10 covered by coin in the box versus commissions received
11 from the AOS?

12 A. Again, let me put it this way: In my
13 business, 50 percent roughly -- I would say 60 to 70
14 percent of my revenue is coin. And whatever percentage
15 the PAL line costs would work out to that, which is
16 about 45 percent.

17 Q. Have you conducted any comparisons of the
18 costs of either AT&T and U. S. West and AOS companies
19 and private payphone owners?

20 A. I'm not sure what you mean by that.

21 Q. Well, AT&T and U. S. West incur certain
22 costs and have certain costs. And then AOS providers
23 and private payphone providers also have costs. And
24 just based on what you're seeking in your complaint

25 here, I was curious as to whether or not you performed

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1 any study or analysis comparing the costs.

2 A. I don't know how I could do that. I
3 couldn't, for an example, get U. S. West's costs. How
4 would that information be available to me?

5 Q. If the Commission decides to reduce the PAL
6 charge, how much would your total operating cost be
7 reduced?

8 A. I don't know because I really haven't looked
9 at -- I think the number was -- I'm guessing -- less
10 than fifty percent reduction recommended by Doctor
11 Cornell. I'm not quite sure of that.

12 Q. Are you aware that the FCC has recently
13 promulgated rules intended to mitigate some of the
14 problems that private payphone operators have
15 experienced with fraud?

16 A. Yes, I am.

17 Q. What's your opinion of those rules? Do you
18 think that the rules would be effective in combating
19 that problem?

20 A. My personal opinion is that I think that
21 AT&T realizes that they have a network flaw, if you
22 will. And they are addressing that. And I think that
23 they will hopefully resolve that issue. And I don't
24 really believe that the FCC's involvement is going to

25 make that much difference.

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1 I want to certainly qualify that again that
2 that is a personal opinion.

3 Q. Would you agree that with the advent of
4 sophisticated validation software and the creation of a
5 national database that the bad debt exposure will be
6 significantly reduced?

7 A. I believe that to be true, yes.

8 Q. How would your alternative proposal to raise
9 the local coin rate to \$.35 benefit the end-use
10 consumer?

11 MR. HARLOW: Excuse me. Are you
12 characterizing that as his proposal?

13 MS. BROWN: He discusses in his testimony,
14 while it may not be the first line of defense, he says
15 that that is something that the Commission could
16 consider. I believe it's on Page 7, raising the cost
17 of a local call from \$.25 to \$.35.

18 MR. HARLOW: With that clarification, I
19 would have no objection.

20 THE WITNESS: Let me try to pick up on that
21 again.

22 I don't quite frankly believe that raising
23 that rate to \$.35 is going to benefit the end user.
24 And more importantly, in my opinion of my business, I

25 believe that my market share addresses low-income

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1 environments. I believe that people who use our
2 equipment are not the cellular phone type obviously.
3 Our locations are placed in low-income areas. They are
4 in outdoor convenience store locations.

5 I am not recommending and I'm not trying to
6 be altruistic in this statement. I'm not recommending
7 that we increase it to \$.35.

8 However, I know of very few businesses --
9 and the \$.25 coin rate has been in the state of
10 Washington for I'm told some fifteen years. I'm aware
11 personally that it's gone up to \$.35 in Nebraska. It's
12 U. S. West's environment. I was informed yesterday
13 that it's gone up to \$.35 in Iowa. I understood that
14 it was proposed in Colorado.

15 Those seem to be logical extensions, I
16 guess, that perhaps \$.35 is at least something that
17 ought to be considered.

18 BY MS. BROWN:

19 Q. You said yesterday that the three or four
20 minutes for a dollar sent-paid call that is intraLATA
21 would go to AT&T. Did I hear that right?

22 A. No, I don't think so. What I said was that
23 in my operation sent-paid toll traffic would go to
24 whatever LEC my payphone was located in. And if it was

25 U. S. West and it was an intraLATA call, then U. S.

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1 West would handle that traffic.

2 If it were an interLATA call, in most cases
3 on my payphone, AT&T handles that traffic.

4 Q. For example, let's suppose AT&T is handling
5 that traffic. AT&T isn't selling you those three to
6 four minutes for a dollar, is it?

7 A. Yes, they are.

8 MS. BROWN: Thank you, Mr. Fletcher.

9 JUDGE HAENLE: Commissioners, any questions?

10 CHAIRMAN NELSON: Yes.

11

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

13 BY CHAIRMAN NELSON:

14 Q. Mr. Fletcher, a little while ago you said
15 this isn't truly a deregulated environment. I tend to
16 agree with that.

17 It seems paradoxically every time we have a
18 deregulatory move at the Federal level we find
19 ourselves in State regulatory arenas having more
20 burdens and more responsibilities for trying to manage
21 transitions from monopoly to competition.

22 In this case, we're also in a post
23 Initiative 601 environment. And what I'm trying to
24 think about, as the head of the agency, we prioritize

25 our resources. And the other day I heard U. S. West

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1 legislative representative say to our Senate committee
2 that he would like to see, perhaps three years hence, a
3 shotgun start, complete deregulation, complete open
4 entry, complete open exit, the complete abolition of
5 the Commission's responsibility in telecom.

6 Frankly, this is tempting to me. And what
7 prompted this little speech here is your request at
8 Page 10 of your testimony that the Commission issue an
9 order regulating advertising of U. S. West.

10 It seems to me we have in this country all
11 sorts of other mechanisms to regulate advertising,
12 starting with the Federal rate commission and working
13 down to our little FTC Act in Washington whereby as a
14 private attorney you go to the courts rather than this
15 Commission to get regulation of advertising.

16 It seems to me, especially in a semi
17 competitive market, that might be a more prudent use of
18 the society's resources.

19 I'm just wondering if you have an
20 alternative view. I know you developed your theory of
21 the case here that the Commission remains the regulator
22 of primary jurisdiction. But does having a total
23 deregulation of this market appeal to you at all?

24 A. Yes, it does. And it's interesting you

25 bring that up because I think I have speculated, if I

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1 were a Commissioner in the state of Washington, what
2 would I do? Exactly as you posed it.

3 In my opinion, because -- and I'm not sure
4 that -- I haven't formulated extremely cogent thoughts
5 on this at this point, and I can't prioritize the order
6 -- but the technology as you certainly recognize is
7 changing rapidly, far more rapidly than I can keep up
8 with it, and I have a background that I think is rather
9 extensive in computers, data processing, and the
10 technology associated with it. And I see so many
11 things happening in our business that it would seem to
12 me that the Commission, while I'm not saying -- please
13 don't misunderstand this, that you're in the way -- I
14 believe that the market, it seems to me, can -- if
15 given true competition, can easily regulate itself.
16 And I look at that very esoterically in our business
17 thinking that, quite frankly, if U. S. West were not in
18 this business, I believe that the private manufacturers
19 of payphones, as an example, that they would provide
20 far more services more efficiently with the technology
21 that, even is at this point is five years old, than
22 what we're faced with today.

23 You're not seeing in my perspective the
24 investment in this business because the manufacturers

25 who got into it initially realized at this point, as

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1 you pointed out, it's not a deregulated market.

2 So, we're not seeing the technology being
3 developed as fast as it could be in the payphone
4 business, as an example.

5 Q. And you would be willing to incur the costs
6 that, say, the MCIs of the world had to assume when
7 they were new in the business, that is, -- and
8 remember, actually, the then President Bill McGowan
9 saying he was in the antitrust plaintiff business
10 rather than the telecommunications business.

11 A. I have heard that statement made many times.
12 And I personally, yes, I believe that. Again, based on
13 my own background and as it's pointed out in my
14 testimony, I'm probably one of the few vendors in the
15 state that is interested in a coin line. And the
16 reason I'm interested in a coin line is because, in my
17 mind, I believe given that facility we can do a lot
18 more with the technology in the development of a coin
19 line than we can with our current environment. I think
20 I could be a much more efficient operator.

21 I would love to lower my costs to my
22 consumer, to my user. I detest having to sit here and
23 testify to you regarding these surcharges. But, quite
24 frankly, because of this semi deregulated market that

25 we're in, I don't have any other choice if I'm going to

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1 survive as a business person.

2 Q. Thank you. I did hear you say that Nebraska
3 and Iowa, Nebraska being one of the very first, to have
4 one of the most deregulatory state laws, has had the
5 perverse effect of raising the prices to consumers
6 there. And I guess Iowa does, too.

7 That's why I can't be completely in
8 agreement with Mr. Vincent at this point because we do
9 have these niches where we do see the end user not
10 reaping the benefits that the markets are supposed to
11 bring them.

12 A. I think that's a good analysis. And I think
13 you would agree, though, that it's taken MCI well over
14 fifteen years to get to the position that they are in.
15 As you point out, they started more as a litigious
16 organization than as a provider of services. And I see
17 that as we're five years into this business. Give us
18 another ten years.

19 I fully expect that, again, depending
20 obviously on the technology, but I could see
21 competition driving those costs down significantly.

22 CHAIRMAN NELSON: Thank you. That's all I
23 have.

24 JUDGE HAENLE: Commissioner?

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

2 BY COMMISSIONER HEMSTAD:

3 Q. Well, pursuing the Chairman's questions
4 about the deregulated environment, would you expect
5 prior to that that we would require the creation of,
6 for example, a series of separate subsidiaries for U.
7 S. West?

8 A. Again, speaking for the payphone operators,
9 I believe that that's certainly an alternative in our
10 business.

11 Q. A prerequisite?

12 A. Yes.

13 Q. So, before we could get there, we're back to
14 the options that Doctor Cornell gave in describing in
15 order to make it, perhaps in terms that she would use,
16 it a level playing field?

17 A. If that seems to be the solution. But in my
18 simplistic mind set, it seems U. S. West has every
19 ability to separate its payphone operation. Certainly
20 with Commission concurrence. They have done that in
21 other business entities quite well. What would
22 preclude them from doing that in this?

23 Q. In your response to questions from Mr. Shaw
24 with regard to the operator services, I wasn't entirely

25 clear. Was it your response that a second subsidiary

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1 would be required for operator services?

2 A. I don't know the answer to that. I don't
3 know how that could be best done. I have never looked
4 at it from the form for a separate subsidiary for
5 operator services.

6 I just know that there are operator service
7 companies in the state of Washington who operate in a
8 stand-alone environment. Why can't U. S. West do the
9 same and compete on an equal basis with those
10 companies?

11 Q. With regard to the questions and answers
12 concerning EAS, it apparently was your response that
13 some kind of imputation should be made for an EAS
14 administrative. Is that a fair statement?

15 A. I just know, Commissioner, that my costs
16 have gone up as a result of allowing that extended
17 dialing service. While I certainly don't disagree with
18 what the Commission has done in that regard, if U. S.
19 West is not imputing those costs to their own payphone
20 operation like I am, again, we're not dealing in the
21 proverbial level playing field.

22 Q. I'm wondering where that takes us. Would
23 you be separating out the latest round of EAS costs?
24 Or what about the whole premise of EAS as a cost? We

25 recently expanded those areas on a state-wide basis.

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1 Of course, there is an EAS or there was an
2 area -- call it the local exchange area -- where you
3 had flat rated service. In order to make it a level
4 playing field, would you go to a toll-only arrangement
5 for toll services?

6 A. No. If I understand what you're getting at,
7 it seems to me again, I don't disagree with the EAS
8 concept. I just believe as a payphone operator, if I
9 have to pay for that privilege, which I do, and I also
10 lose toll revenue as a result of that action, I'm in a
11 lose/lose situation. And if I'm being compared, as an
12 example, in my rates of return and my operation against
13 someone like U. S. West who does not also add that same
14 administrative to their own imputation model, that just
15 doesn't seem fair.

16 Q. Is the implication of that ultimately that
17 the price for a payphone call ought to be raised?

18 A. That's certainly one conclusion, yes.
19 Again, as I point out, I know very few industries where
20 the cost of their retail price of their basic product
21 hasn't risen in fifteen years or whatever that number
22 is.

23 COMMISSIONER HEMSTAD: That's all I have.

24 JUDGE HAENLE: Any redirect?

25 MR. HARLOW: Very briefly, your Honor.

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1

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

3 BY MR. HARLOW:

4 Q. Do you recall, Mr. Fletcher, I believe it
5 was Ms. Brown was cross-examining you about the need to
6 pay additional commissions to site providers that U. S.
7 West doesn't pay? Do you recall that?

8 A. Yes.

9 Q. Do you recall mentioning that one of the
10 things your company does is offer site owners a free
11 trip to Hawaii?

12 A. Yes.

13 Q. Do you consider that trip to Hawaii that you
14 provide to site owners who sign contracts with you to
15 be a form of commission payment to them that U. S. West
16 does not make available to its site owners?

17 A. In our accounting methodology, Mr. Harlow,
18 we consider that advertising. But I think it could be
19 considered a form of commission if you really wanted to
20 identify it as such.

21 MR. HARLOW: That's all I have on redirect,
22 your Honor.

23 JUDGE HAENLE: Anything more of the witness?

24 MR. SHAW: Just one question, your Honor.

25

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

2 BY MR. SHAW:

3 Q. Mr. Fletcher, you hurt our feelings when you
4 said we never market to you. Isn't it true that Mr.
5 Lanksbury and other representatives of the company make
6 presentations to your association and are quite active
7 in your association in telling you about our products
8 and services and put out a newsletter and so on?

9 A. Yes. I apologize for that remark. I was
10 referring to that in terms of I have never had anyone
11 come directly to my office from your company and make
12 a, quote unquote, sales call on me. And yet I have all
13 kinds of vendors who do that. And I just find it
14 interesting that I spend in my little business \$10,000
15 a month with your company, and I would think that would
16 warrant somebody asking me how I liked your service.

17 Now, maybe you know the answer to that and
18 don't want to come out. But in any event, I just find
19 that interesting.

20 MR. SHAW: Thanks.

21 JUDGE HAENLE: Anything more of the witness?

22 All right, thank you, sir. You may step
23 down.

24 Does that complete your witnesses, Mr.

25 Harlow?

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1 MR. HARLOW: Yes, your Honor, it does.

2 JUDGE HAENLE: I think all we have to
3 discuss now is briefs. Let's go off the record for a
4 few minutes.

5 (Discussion held off the record.)

6 JUDGE HAENLE: Let's be back on the record.

7 We discussed briefly the briefing schedule.
8 I granted a one month's delay. Somebody pointed out
9 that the 21st of February is a holiday. So, the briefs
10 will be due the 22nd of February.

11 Remember, that's a receipt date. It needs
12 to be in the Commission's offices before 5:00 on that
13 date and to the other parties as well, please.

14 My preference would be that you put any
15 confidential material in appendices attached to the
16 briefs rather than in the briefs themselves. And be
17 sure that you segregate that confidential material with
18 the original and nineteen copies.

19 MR. HARLOW: Wait a minute. Nineteen on the
20 confidential?

21 JUDGE HAENLE: No. On the confidential as
22 well. They want an original and nineteen, but they
23 want them all segregated. They will shred the ones
24 that they don't need. But it's either that or they

25 have to make copies of the single copies you send in.

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1 They decided that was not their preference some time
2 ago.

3 The limit has not been changed from sixty
4 pages. If you need more than that, keeping in mind the
5 appendices as well, talk among yourselves and call me,
6 please. We'll discuss it.

7 MR. HARLOW: Your Honor, when you say
8 confidential materials segregated, do you mean there
9 should be a separate envelope for each set? Or do you
10 mean segregated from the non-confidential?

11 JUDGE HAENLE: Segregated from the
12 non-confidential material. Not that each one has to be
13 in a separate envelope.

14 Is there anything else I missed?

15 The hearing will be adjourned, then, and a
16 Commission order will issue.

17 (At 10:23 the above hearing was concluded.)

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