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I N D E X

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS	JUDGE
WENDER	18	20	75	--	66

EXHIBIT	MARKED	ADMITTED
13	18	--
T-4	--	20
5	--	20
6	22	--
7	--	40
14	--	79

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

2 JUDGE FOSTER: Let's be on the record. The  
3 hearing will please come to order. The Washington  
4 Utilities and Transportation Commission has set for  
5 hearing at this time and place two docket numbers.  
6 The first is in the matter of the petition of  
7 International Pacific, Inc., docket No. UT-920546,  
8 and it's IPI's petition for classification as a  
9 competitive telecommunications company.

10 Also being heard today is a second petition  
11 for classification as a competitive telecommunications  
12 company and that's been filed by Paytel Northwest, Inc.  
13 That docket number is UT-920632.

14 Today's date is December 21, 1992. This  
15 hearing is being held in the Commission's offices in  
16 Olympia, Washington. The presiding officer for  
17 International Pacific, Inc. is Rosemary Foster. The  
18 presiding officer for Paytel Northwest, Inc. is  
19 Christine Clishe. We have four witnesses set for  
20 hearing in the IPI matter this morning. One of the  
21 reasons why we're having two judges sit on part of  
22 this, at least, is because the Paytel matter and the  
23 IPI matter have a common witness, that being Dr. John  
24 Wenders.

25 At this time I will ask the parties to make

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1 their appearances, beginning with the petitioner.

2 MR. OWENS: Thank you, your Honor. For  
3 both International Pacific and Paytel in their  
4 respective dockets, I'm Douglas N. Owens, attorney at  
5 law. Business address is 4705 - 16th Avenue  
6 Northeast, Seattle, Washington 98105 appearing on  
7 behalf of petitioners.

8 JUDGE FOSTER: Thank you. For Commission  
9 staff.

10 MS. BROWN: Sally G. Brown, assistant  
11 attorney general. My address is 1400 South Evergreen  
12 Park Drive Southwest, Olympia, Washington 98504.

13 JUDGE FOSTER: Are there appearances by  
14 anyone else, any intervenors or public counsel?

15 MR. OWENS: Your Honor, I received a call  
16 on Friday from Mr. Harlow, representing the Northwest  
17 Payphone Association. He indicated the Association  
18 would not be participating in this hearing. However,  
19 it still remained a party to the case, at least the  
20 International Pacific case.

21 JUDGE FOSTER: All right, thank you.  
22 Before we went on the record Mr. Owens advised us that  
23 in the IPI matter Mr. Schrader and Mr. Coulson would  
24 be the first two witnesses and they will be the  
25 witnesses only for the IPI docket. Next witness will

1 be Dr. Wenders and we will consider his testimony to  
2 be a part of both Paytel docket and the IPI docket.  
3 Also, before we went on the record, Mr. Owens had some  
4 comments concerning a proposed stipulation. Maybe you  
5 want to repeat those communications, if you would, for  
6 everyone's benefit.

7 MR. OWENS: Thank you, your Honor. This is  
8 related to the fact that by prior stipulation of  
9 counsel, as you just recited, the cross-examination  
10 testimony of Dr. Wenders will be incorporated into  
11 both records. The direct testimony of Dr. Wenders  
12 which is Exhibit T-4, in, I believe it is both  
13 dockets, is identical, except for the references to  
14 the respective companies on whose behalf he testifies  
15 in the two dockets, and there is one reference in his  
16 testimony in the International Pacific docket to a  
17 request based on the status of NCS Teleworks as an  
18 aggregator. He's asked does such a company have a  
19 market power. Since there are no separate aggregators  
20 from the petitioner in the Paytel case, that question  
21 and answer was slightly changed in the testimony in  
22 that docket, but with those exceptions the testimony  
23 is identical, and I believe that's the substance of  
24 the stipulation we had.

25 Also, with regard to the order of witnesses

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1 Dr. Wenders refers in his testimony to the testimony  
2 of other witnesses, not all of whom will have  
3 testified physically by the time he takes the stand,  
4 and by stipulation I believe we agreed that those  
5 questions and answers in his direct testimony may be  
6 treated as in the nature of hypothetical subject to  
7 being -- having the foundation established by the  
8 admission of the testimony of the underlying witnesses  
9 later.

10 JUDGE FOSTER: Ms. Brown, does that comport  
11 with your understanding of the agreement?

12 MS. BROWN: Yes, it's a fair summary.

13 (Marked Exhibit 13.)

14 Whereupon,

15 JOHN WENDERS,  
16 having been first duly sworn, was called as a witness  
17 herein and was examined and testified as follows:

18 MR. OWENS: My understanding is this part  
19 of the record will be incorporated in both dockets so  
20 I am going to ask the foundation questions in both  
21 dockets.

22

23 DIRECT EXAMINATION

24 BY MR. OWENS:

25 Q. Dr. Wenders, please state your name and

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1 address for the record.

2 A. My name is John T. Wenders, W E N D E R S.

3 Reside at 2266 Westview Drive in Moscow, Idaho.

4 Q. Are you the same John T. Wenders that has  
5 cause to be prefiled in these dockets specifically  
6 920546 and 920632 documents that have been identified  
7 in each one as Exhibit T-4 and Exhibit 5 consisting of  
8 prepared direct testimony and your curriculum vitae?

9 A. That is correct.

10 Q. And were these documents prepared by you or  
11 under your direction and supervision?

12 A. Yes, they were.

13 Q. Do you have any additions or corrections to  
14 these documents?

15 A. No. I only found a couple of typographical  
16 errors and they were obvious. I don't think it's  
17 worth wasting time on.

18 Q. If I were to ask you the questions set  
19 forth on Exhibit T-4 in both dockets, would your  
20 answers be as set forth therein?

21 A. Yes.

22 Q. And are the exhibits true and correct to  
23 the best of your knowledge and belief?

24 A. Yes, they are.

25 MR. OWENS: Your Honor, I have no further

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1 questions of Dr. Wenders. Pursuant to prior  
2 stipulation, the cross-examination of him will be  
3 incorporated in both records. I would offer Exhibits  
4 T-4 and 5 in both dockets and he is available for  
5 cross-examination.

6 MS. BROWN: No objection.

7 JUDGE FOSTER: All right then. Exhibits  
8 T-4 and Exhibit 5 will be admitted in both the IPI  
9 petition and the Paytel matter.

10 (Admitted Exhibits T-4 and 5.)

11 JUDGE FOSTER: Ms. Brown, do you want to go  
12 ahead with your questions?

13

14 CROSS-EXAMINATION

15 BY MS. BROWN:

16 Q. Dr. Wenders, at page 9 of your testimony at  
17 line 5 you state, "The initial high prices in the  
18 operator services market were better explained by the  
19 fact that this market was in short run  
20 disequilibrium." Do you see that?

21 A. Yes.

22 Q. Would you accept, subject to check, that  
23 International Pacific was authorized to operate as a  
24 telecommunications company in Washington on  
25 September 1, 1988?



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1 A. Subject to check.

2 Q. Would you also accept, subject to check,  
3 that since filing an initial tariff effective  
4 September 26, 1988 International Pacific has not  
5 reduced its rates under rate option C, the option  
6 chosen by NCS Teleworks and Digital Access, who are  
7 also -- the company is represented by Mr. Schrader,  
8 Mr. Coulson who were also witnesses in this case?

9 A. That's my understanding.

10 Q. At page 11 of your vitae it says that you  
11 presented testimony on behalf of, among others,  
12 Central Corporation; is that right?

13 A. That is correct.

14 Q. Would you accept, subject to check, that  
15 you presented that testimony on Tuesday, August 9,  
16 1988 before the Florida Public Service Commission?

17 A. You could be right.

18 Q. I will even give you the docket number.

19 A. I gave you the docket number.

20 Q. 871394-TP. Purpose of that proceeding was  
21 to review the requirements appropriate for alternative  
22 operator services and public telephone in the state of  
23 Florida; is that right?

24 A. I believe so.

25 MS. BROWN: Which exhibit are we at?

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1 JUDGE FOSTER: Next exhibit will be 14.

2 JUDGE CLISHE: In the Paytel matter it will  
3 be Exhibit 6.

4 JUDGE FOSTER: Identified as Exhibit 14 in  
5 the IPI case and Exhibit 6 in the Paytel matter is a  
6 multi-page document and it's docket No. 871394 In The  
7 Matter of Review of the Requirements Appropriate for  
8 Alternative Operator Services and Public Telephones.  
9 And this is before the Florida Public Service  
10 Commission.

11 (Marked Exhibit 6.)

12 Q. Dr. Wenders, I just handed you what's been  
13 previously marked for identification a copy of  
14 portions of the transcripts from the Florida  
15 proceeding. Would you please turn to page 264?

16 A. Mine only goes to -- 254 hand-lettered or  
17 typed? Mine only goes to 124.

18 Q. It would be hand-numbered.

19 A. Well, mine is chopped off on a lot of them.

20 Q. (Indicating.)

21 MS. BROWN: Have you found it?

22 JUDGE FOSTER: No.

23 MS. BROWN: Third page in, back side. Tom  
24 has written 4 at the top. Right there (indicating).

25 JUDGE FOSTER: The record should indicate

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1 that this is the third page in from the front of the  
2 document and it's designated with a 4 at the top.

3 Q. Could you please begin reading at line 8  
4 and read through to the word "disequilibrium" on line  
5 25, please.

6 MR. OWENS: Well, your Honor, if this is  
7 going to be made an exhibit, it seems duplicative to  
8 have the testimony appear three places, once in the  
9 exhibit and in two transcripts.

10 MS. BROWN: That's fine. I will just  
11 introduce it then.

12 MR. OWENS: I thought that was the purpose  
13 of it, if it's marked or at least it's got the legend  
14 for an exhibit. I am just trying to speed the process  
15 up.

16 MS. BROWN: That will be fine. I ask that  
17 these exhibits and these respective documents be  
18 admitted, please.

19 MR. OWENS: Has it been established that  
20 they actually accurately reflect the testimony?  
21 That's all that I'm concerned about.

22 Q. Dr. Wenders --

23 A. What?

24 Q. -- is this transcript of the proceeding  
25 before the Florida Public Service Commission, does it

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1 accurately reflect your testimony during -- during  
2 that proceeding?

3 A. I just don't know. I mean, I've testified  
4 100 times, and besides it says at the top of the page  
5 "redirect Freeman." Now, I can look that over and see  
6 if I agree with it and I did glance through it, and  
7 that's something I could have said, but I can't -- I  
8 don't know how good your memory is, you're a lot  
9 younger than I am, but I can't remember all of this  
10 stuff. It says "Freeman" at the top of it and Katie  
11 Nichols said Okay, proceed, John T. Wenders, that  
12 sounds right. And it sounds to me like somebody is  
13 summarizing testimony here and it sounds like  
14 something I would have gotten but what has got me  
15 confused without looking at the whole thing it says,  
16 "Redirect,  
17 Mr. Freeman" at the top and then, "Direct Wenders."

18 Q. Okay. What I propose, then, is to get a  
19 complete copy of the transcript so that you would be  
20 able to satisfy yourself that --

21 A. Well, let's proceed as if I said this.  
22 You're asking me to do something fast.

23 JUDGE FOSTER: Ask him to accept it subject  
24 to check.

25 MS. BROWN: For purposes of authentication

1 it's sort of difficult.

2 JUDGE FOSTER: You have the original  
3 document?

4 MS. BROWN: Do we have it?

5 MR. WILSON: This is what Florida sent me.

6 MS. BROWN: Yeah, this is portions.

7 Q. Dr. Wenders, how much time would you need  
8 to review this transcript to satisfy yourself that the  
9 testimony herein is yours?

10 A. Let me just look quickly over it. The  
11 pages 4 and 5 that you have before me, I agree with  
12 what's on page 4 and 5. Whether I said them or not I  
13 don't know but it sounds like something I might have  
14 said.

15 MR. OWENS: Is that sufficient?

16 MS. BROWN: No, I'm not satisfied with that  
17 response because there are other excerpts from this  
18 testimony before the Florida Commission that I would  
19 like to rely upon in this proceeding and to have him  
20 say that it looks like something I may have said but  
21 I'm not certain doesn't satisfy me.

22 A. I will adopt it. How does that sound? I  
23 will adopt that as my testimony in this proceeding.

24 Q. Fine.

25 MS. BROWN: Your Honor, I can proceed with

1 questioning and I can get a complete copy of it.

2 JUDGE FOSTER: All right. If that would be  
3 satisfactory to counsel, why don't you go ahead with  
4 your questions on it and work it out off the record as  
5 far as verifying that this testimony is accurately  
6 presented here in what's identified as Exhibit 14.

7 Q. Dr. Wenders, subject to check in your  
8 testimony before the Florida Commission, you stated  
9 that a short run disequilibrium explains the existence  
10 of high prices in the marketplace in 1988. Do you  
11 recall that testimony?

12 A. Yes.

13 Q. Would you agree that a proper definition of  
14 the term short run would be the time needed for the  
15 entry of capacity to occur?

16 A. That depends on whether you're talking  
17 about the supply or the demand side. In the short run  
18 here I'm sure I'm talking about both. There's a short  
19 and a long run in both the supply and demand sides of  
20 the market. I believe here in this context I'm  
21 talking about both but if you're going to talk about  
22 it on the supply side, then it's as you state it. In  
23 standard economic language, usually you say short run  
24 is a period of time during which capacity is fixed and  
25 you don't have entry or exit, but you also may have

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1 short run on the demand side during which consumers  
2 can display their ability to search for alternatives,  
3 too, and that's why when you start talking about  
4 relative markets you look at both the supply and the  
5 demand side of the market place.

6 JUDGE FOSTER: Ms. Brown, I hate to  
7 interrupt but it appears that Judge Clishe and I have  
8 have different copies of Exhibit 14 and it has  
9 something to do apparently with different order of  
10 pages. Let's be off the record for a minute while we  
11 try and sort this out.

12 (Discussion off the record.)

13 JUDGE FOSTER: Let's be back on the record.  
14 While we were off the record we had a discussion  
15 concerning the order of pages in Exhibit 14 and I  
16 believe both Judge Clishe and I now have pages in  
17 the same order. Ms. Brown, do you want to go ahead?

18 MS. BROWN: Thank you.

19 Q. As part of the questioning that took place  
20 in this Florida proceeding, you were asked how long  
21 the short run disequilibrium could be expected to  
22 last.

23 MR. OWENS: Is there a reference to a  
24 particular page?

25 A. Where are you?

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1                   MR. OWENS: Does the witness have a copy of  
2 the document?

3           Q.     Page 361 to 62.

4           A.     What is it in hand numbers? Mine is  
5 chopped off.

6           Q.     101, 102.

7           A.     I have 101, 102. Where are you?

8           Q.     At the bottom of the page on 25, one of the  
9 commissioners.

10          A.     Right.

11          Q.     How long is the short run disequilibrium  
12 going to last. And as I read your testimony in this  
13 proceeding you indicated that it would not last  
14 particularly long. I think you used the phrase  
15 "pretty fast" and agreed on page 364 that a year or  
16 less would not be outlandish, I believe was the word  
17 you chose?

18          A.     Well, I have to look and see what the  
19 context of this is here. I mean, if you're talking  
20 about a situation on one side of the market or the  
21 other, I would have to see how the Commissioner was  
22 phrasing the question. I mean, you're yanking  
23 something right out of the middle of testimony. I  
24 would be glad to answer the question in this  
25 proceeding. Why don't we do that instead of me trying



1 to answer the question in another proceeding.

2 Q. I've already indicated what the question  
3 was.

4 A. How long was the short run disequilibrium  
5 going to last. That's what Commissioner Herndon asked  
6 me.

7 Q. Just above that you were talking about the  
8 short run disequilibrium to explain the existence of  
9 high prices in the marketplace.

10 A. That's right. And I think that's correct.  
11 I think at that time and maybe even still at this time  
12 but certainly at that time the operator services  
13 companies were just getting going, in my view, at that  
14 time. But prices were still coming down at that time.  
15 Now, that's one side of the market.

16 Q. Are you aware that the Florida Commission  
17 ultimately adopted a rate cap approach for AOS in  
18 Florida?

19 A. No.

20 Q. Would you accept, subject to check, that  
21 the Florida rate cap is similar to the one adopted in  
22 Washington in July of 1991?

23 A. I will accept anything subject to check.

24 Q. You also testified in Florida that in your  
25 view the AOS industry is competitive.

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1 MR. OWENS: Do you have a reference?

2 MS. BROWN: No. We'll see if he'll adopt  
3 it.

4 MR. OWENS: Well, your Honor, I'm going to  
5 object to that.

6 JUDGE FOSTER: Let's hear the question  
7 first, the whole question and then see if it's still  
8 objectionable.

9 Q. In your view, is it true that the AOS  
10 industry is competitive from the viewpoint of both the  
11 location owner -- by that I mean the hotel, motel,  
12 hospital, pay phone -- but also that the industry is  
13 competitive from the viewpoint of the end user  
14 consumer?

15 A. Yes.

16 Q. Are you aware that more than 50 alternate  
17 operator service companies have applied for  
18 registration in Washington since September 1988?

19 A. No.

20 Q. Would you accept, subject to check, that  
21 approximately 25 alternate operator service companies  
22 have applied for registration since the Commission  
23 adopted its AOS rule in July of 1991, establishing  
24 what is tantamount to a rate cap similar to that  
25 imposed by the Florida Commission?

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1                   MR. OWENS: Your Honor, I am going to  
2 object to the form of the question. The rule speaks  
3 for itself. Whether it's a legal rate cap is a legal  
4 question. And this witness can't be asked to give a  
5 legal opinion as to what the legal effect of that rule  
6 is. If the question is simply reformulated to whether  
7 he would accept subject to check that a certain number  
8 of companies have applied for registration after the  
9 effective date of the WAC 480-120-141, I certainly  
10 wouldn't object to that.

11                   JUDGE FOSTER: I guess I didn't hear the  
12 word "legal" in there, Mr. Owens.

13                   MR. OWENS: Well, he was asked whether he  
14 would agree with the characterization of the rule as  
15 being tantamount to a rate cap. I think that implies  
16 that it's a lawful rate cap and that it would have the  
17 effectiveness of -- it would play some role in the  
18 company's decision to locate in Washington.

19                   MS. BROWN: I will just reword the  
20 question.

21                   Q.     Would you accept, subject to check, that  
22 approximately 25 AOS companies have applied for  
23 registration since the Commission adopted its AOS rule  
24 and as part of that rule those companies were not  
25 allowed to operate unless their rates were less than

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1 or equal to AT&T and US West in the relevant market?

2 A. Yes.

3 Q. At page 38, line 13 of your testimony, you  
4 use the term heavy-handed regulation. Do you see  
5 that?

6 A. That's right. I use that term.

7 Q. Is it your opinion that setting rates  
8 constitutes heavy-handed regulation?

9 A. In this context, yes.

10 Q. And why do you say that?

11 A. Because it's a competitive industry and I  
12 don't see any reason why the Commission has to try and  
13 find opportunity or second-guess competition. These  
14 people know a lot more about the marketplace than you  
15 do or I.

16 Q. Could you please turn to page 38 of your  
17 testimony?

18 A. Yes.

19 JUDGE CLISHE: Excuse me. Now are you  
20 speaking of the Florida transcript or are you on to --

21 MS. BROWN: Exhibit T-4.

22 MR. OWENS: Your Honor, before we proceed  
23 to that there was that matter the witness was asked to  
24 accept subject to check and we've checked and we can't  
25 accept the characterization of the Florida rule as

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1 being consistent with the Washington rule. Our  
2 understanding is the Florida rule is AT&T daytime  
3 rates plus one dollar.

4 MS. BROWN: That's for pay phones, isn't  
5 it?

6 MR. SOUMAS: That's correct. That's what  
7 95 percent of our business is.

8 MR. OWENS: That's what we understand.

9 MS. BROWN: Well, it's a rate cap -- I mean  
10 to the extent that these companies are not allowed to  
11 charge rates that exceed those of US West and AT&T in  
12 the relevant market, that is all I meant by rate cap.

13 Q. Could you please read --

14 MR. OWENS: Well, but the answer is, we're  
15 unable to accept the matter that the witness was asked  
16 to accept subject to check. That was the purpose of  
17 the interruption. I don't mean to interrupt further.

18 JUDGE FOSTER: So you've not accepted it  
19 and you've explained why and given additional  
20 information.

21 MR. OWENS: That's right.

22 JUDGE FOSTER: Go ahead, Ms. Brown.

23 Q. Dr. Wenders, are you on page 38 of your  
24 testimony?

25 A. Yes.

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1 Q. Please read the sentence beginning on line  
2 13.

3 A. "Heavy-handed regulation of the operator  
4 service carriers runs the risk of thwarting the  
5 development of these services."

6 Q. And despite the fact that there are at  
7 least 25 AOS companies operating in Washington where  
8 the UTC has imposed its rate levels, it remains your  
9 position that setting rates are thwarting competition?

10 A. Yes. And the reason is it's just not  
11 rates. That's one thing that you people don't seem to  
12 understand. Rates is not the most important thing in  
13 this market, it's service, and you don't control  
14 service. You control rates. And if you allow these  
15 people to adjust rates to service you will get a  
16 competitive result. If you set low rates you get low  
17 service. And maybe that's what the Commission wants  
18 to do, but I guess it seems to be what you're up to.

19 Q. Like to return to your earlier mention in  
20 your testimony wherein you stated that IPI's high  
21 rates are really evidence of short run disequilibrium.

22 A. Where did I say that? I thought I said  
23 that generally the higher rates in this industry may  
24 be evidence of short run disequilibrium.

25 Q. Page 9, line 5.

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1           A.     I don't see anything about IPI there, do  
2 you? You said IPI. I didn't say IPI.  
3 Mischaracterized what I said.

4           Q.     IPI is an AOS provider so I would again  
5 like to return to the earlier discussion where you  
6 said that these sorts of rates charged by the  
7 companies, the likes of IPI, are really evidence of  
8 short run disequilibrium and not evidence of market  
9 power.

10          A.     They may be evidence of short run  
11 disequilibrium. Then again they may be evidence of  
12 better quality service, too.

13          Q.     And you earlier defined the short run as  
14 being the time needed for the entry of capacity to  
15 occur. Does the entry by --

16          A.     On the supply side.

17          Q.     I accept that. Does entry by 50 new AOS  
18 companies in Washington since International Pacific  
19 registered in 1988 in your opinion constitute the time  
20 needed for the entry of capacity to occur?

21                 MR. OWENS: Objection, no foundation.  
22 There's no evidence that that's entry. The witness  
23 stated he wasn't aware of it when he was asked.

24                 JUDGE FOSTER: Ms. Brown.

25          Q.     Well, if you accept, subject to check, that

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1 there have been 50 new AOS companies registered in  
2 Washington post 1988 September 1 --

3 A. Subject to check.

4 Q. So in your opinion that should be the time  
5 needed for entry of capacity to occur?

6 A. That depends what quality of service they  
7 were offering. Just plain capacity isn't the real  
8 issue here. It's a whole bundle of things. Now it  
9 may very well be that that is -- you have people  
10 entering under the cap and restraints which you've put  
11 on people by your AOS rules, you have a certain  
12 segment of companies entering because they think that  
13 they can come in, offer a certain quality of service  
14 or unquality of service, and survive under that rate.  
15 You may have prevented a whole bunch of other  
16 companies from coming in who would offer other quality  
17 services, voice messaging, all kinds of other things  
18 that they may have come in and said, Hey, we can't go  
19 in the state of Washington because they've got this  
20 rate cap. We will go somewhere else.

21 Q. I am referring again to your testimony at  
22 page 18. Is it your opinion that as shoppers become  
23 more sophisticated and learn to make choices the  
24 market will discipline pricing behavior?

25 A. That is correct.



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1 Q. Would that also have been your testimony in  
2 1988?

3 A. Yes. I probably said it in 1988.

4 Q. Would you please turn to your testimony at  
5 page 11, line 22, continuing through page 12, line 2  
6 where you discuss new services offered by  
7 International Pacific that are not offered by  
8 traditional carriers.

9 A. I don't think I mentioned International  
10 Pacific but go ahead.

11 Q. What is your definition of a traditional  
12 carrier?

13 A. Well, there, as I say, the traditional  
14 carriers, Bell operating companies and AT&T.

15 Q. What sort of new services have been  
16 introduced by International Pacific that have not been  
17 introduced by the traditional carriers?

18 A. Well, you might ask that of Mr. Soumas.  
19 You had him up here.

20 Q. So you don't know the answer?

21 A. I don't know the answer offhand, no, but if  
22 I just sit here and listened to his testimony he would  
23 tell you about the refunds, automatic refunds and  
24 things like this which the other companies can't do.  
25 That's one I just heard when he was here.

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1 Q. Are you familiar with IPI's rates filed in  
2 Washington?

3 A. No.

4 Q. Are you aware of whether IPI's rates are  
5 higher than than those charged by the traditional  
6 carriers?

7 A. I believe they are higher in some  
8 instances.

9 Q. Have you read the testimony of Mr. Schrader  
10 and Mr. Coulson?

11 A. Yes.

12 Q. And so you're aware that these individuals  
13 represent two companies that are clients of IPI's and  
14 that those companies represent a major portion of  
15 IPI's Washington customer base?

16 A. That's my --

17 MR. OWENS: Your Honor, I was going to  
18 object. That's a compound question.

19 JUDGE FOSTER: Ms. Brown?

20 Q. Mr. Schrader and Mr. Coulson represent two  
21 companies; is that correct?

22 A. I presume that is correct, yes.

23 Q. And that the companies that they represent,  
24 Digital Access and NCS Teleworks, are clients of IPI's?

25 A. Yes.

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1 Q. And that together those companies comprise  
2 a major portion of IPI's Washington customer base?

3 A. I believe that's correct, yes.

4 Q. As you probably heard earlier today, IPI  
5 offers a wide variety of rate options and you probably  
6 also heard the testimony of both Mr. Schrader and  
7 Mr. Coulson that each of their companies have chosen  
8 IPI's rate option C for end use customers at their  
9 phones and that rate option C actually pays the  
10 highest commissions.

11 MR. OWENS: Your Honor, I'm not sure that  
12 that latter fact is in evidence. I believe  
13 Mr. Schrader indicated he was not aware of whether or  
14 not option C was the highest rate, and I don't believe  
15 that question was asked Mr. Coulson.

16 JUDGE FOSTER: Ms. Brown.

17 MS. BROWN: I believe I have that in a data  
18 request response. I will look that up.

19 JUDGE FOSTER: Let's identify as Exhibit 15  
20 in the IPI docket a two-page exhibit and this is a  
21 comparison of interLATA rates in the Washington AOS  
22 market, December 20, 1992 by Tom Wilson identified  
23 as Exhibit 15 for IPI.

24 JUDGE CLISHE: This will be identified as  
25 Exhibit 7 for Paytel.

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1 (Marked Exhibit 7.)

2 Q. Dr. Wenders, I just handed you a two-page  
3 exhibit. This is a comparative rate analysis  
4 performed by Mr. Wilson of the commission staff  
5 setting forth rate quotes for operator-handled collect  
6 calls for AOS companies, including IPI, AT&T and US  
7 West.

8 A. Okay. What about it?

9 Q. Do you see where AT&T appears on -- page  
10 2 at line 10?

11 A. Yes.

12 Q. And page 1 of 2 at line 7?

13 A. Yes.

14 Q. Do you see where AT&T would charge \$3.03  
15 for a six-minute interLATA call at a distance of 150  
16 miles billing the call collect?

17 MR. OWENS: I am going to object on the  
18 basis of no foundation. This witness didn't perform  
19 the study. I don't believe that the staff can get its  
20 case in through Dr. Wenders. If they want to ask him  
21 to accept, subject to check, that some numbers bear  
22 some relationship to one another, that's fine, but we  
23 have no idea how this study was done, even though we  
24 made a request for discovery long ago for any  
25 information that would indicate that IP's service was

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1 not subject to effective competition and we've  
2 received absolutely nothing in response to that. And  
3 this material would appear to have been responsive to  
4 that request. So, I am going to object.

5 JUDGE FOSTER: Ms. Brown.

6 MS. BROWN: Well, aside from the gratuitous  
7 remarks about discovery, all of these numbers are  
8 taken directly off of tariffs. Your Honor, you may  
9 take judicial notice of any tariff in this building,  
10 and for that reason alone I think that the staff is  
11 entitled to ask Dr. Wenders questions about numbers  
12 about which no discretion was exercised other than to  
13 pull out the figures that correspond with any given  
14 call so that it becomes clear what the rates are.

15 MR. OWENS: I beg to differ. There are a  
16 number of carriers that don't file tariffs, they file  
17 price lists, that are listed on that exhibit. And  
18 certainly we have had no indication as to the method  
19 by which these numbers were selected, and I reiterate,  
20 the staff cannot cross-examine Dr. Wenders about an  
21 exhibit the theory of which he has not been informed  
22 and as to the execution of which he has no knowledge.  
23 If the staff wants to bring the tariffs in and the  
24 price lists, I suppose we can compare the prices on  
25 those for what it's worth.

1 MS. BROWN: For what it's worth, we will  
2 attach it to the staff's case when we prefile in a  
3 couple of weeks.

4 JUDGE FOSTER: What do you want to do with  
5 Exhibit 15 for identification then? Just leave it and  
6 tie it to something later on?

7 MS. BROWN: I'm just not offering it. Yes.

8 Q. Would you accept, subject to check, that  
9 International Pacific's rates are approximately 62  
10 percent higher than AT&T and 48 percent higher than US  
11 West for a comparable service in the relative market?

12 A. I simply don't know whether that's right or  
13 -- and I have no idea how I would check it.

14 Q. Would you agree that generally speaking  
15 economic theory indicates that in a competitive market  
16 if a producer attempts to charge higher than the  
17 dominant market price for a comparable service it is  
18 likely that over time that producer will have to  
19 consider dropping prices to remain competitive?

20 A. Presuming that the product is the same, and  
21 that's again the piece of this case that has been --  
22 you're assuming that the product in this case is a  
23 telephone call. It is not. The product in this case  
24 is a whole package of services offered at a site  
25 location, each of which is unique and each of which is

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1 different and each of which may face a different  
2 customer base. And so what you're quoting is textbook  
3 economics that presumes location is the same, quality  
4 is the same, customer is the same, elasticity is the  
5 same, and that's fine in that textbook market but  
6 we're not in the textbook market here.

7 Q. As we've discussed, International Pacific  
8 hasn't dropped prices since its registration in  
9 Washington in 1988 and has, in fact, maintained rates  
10 that are higher than the dominant providers.

11 MR. OWENS: Is that a question?

12 Q. Is it your testimony that this is not  
13 evidence of any market power?

14 A. That's right. It's not evidence of market  
15 power. It's the evidence of the way in which they  
16 have segmented their market. They have found that  
17 customers and quality of service for which that is the  
18 proper price and quality of service. You constrain  
19 them to another price, they're going to have to adjust  
20 the other variables in the marketplace.

21 Q. If I understand your position, and correct  
22 me if I am wrong, a couple of explanations for this  
23 feature, as you call it, in your testimony, page 8,  
24 line 17, is that consumers haven't yet learned to shop  
25 around and they perceive that they would get more

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1 value for the service if they knowingly use IPI. Is  
2 that a fair summary?

3 A. That's possible. It may very well also be  
4 that there are different kinds of customers out there.  
5 Take a look at an industry that has just been  
6 deregulated called the airline industry. The airline  
7 industry, we had under regulation when we had a civil  
8 aeronautics board before it was taken over by an  
9 economist, I might add, and demolished itself, we had  
10 one rate quoted across the country. You wanted to fly  
11 from Seattle to New York you paid one rate. Now what  
12 has happened since you have deregulation of that  
13 industry is that you have competition has produced  
14 market segmentation. You know as well as I know that  
15 if you're flying on that plane from Seattle to New  
16 York, there may be people flying under a dozen  
17 different tariffs there. Why, because the airline  
18 industry has figured out there are people with  
19 different elasticities of demand, different market  
20 segments. That is how competition has sorted out the  
21 airline industry.

22 Exactly the same thing is going on in this  
23 industry. You had tariffed rates that were filed  
24 based on mileage that had nothing to do with anything  
25 and once that is lifted you have market segmentation



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1 going on here, and these companies are part of  
2 segmentation. They have found niches in the market  
3 where they can serve based on the location of the  
4 business and how that businessman perceives he is  
5 going to cover his business. And it may very well be  
6 that what you have going on in this industry is  
7 exactly the same thing that happened when the airline  
8 industry became competitive. Market segmentation is  
9 the name of the game in competition. We have an  
10 airline in Phoenix, Arizona that is in bankruptcy  
11 because it never figured out how to select its market,  
12 America West, by the way.

13 Q. Dr. Wenders, I believe that you testified  
14 that consumer ignorance has disappeared. Do you  
15 remember that?

16 A. It has disappeared or is disappearing. I  
17 think that's a reasonable characterization.

18 Q. So if, in fact, this disequilibrium due to  
19 user ignorance of alternatives has disappeared, as you  
20 testified at page 20, in concurrence with Mr. Schrader  
21 and Mr. Coulson, then IPI would have been forced to  
22 reduce its charges; is that right?

23 A. No. For reasons I just explained to you,  
24 IPI is offering different services to different  
25 customers at different sites and you're back in the

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1 textbook world of wheat. This is not wheat.

2 Q. How does a consumer shop for AOS services  
3 when that consumer is at a pay phone?

4 A. Well, the point is that the consumer shops  
5 when it goes into a restaurant for a whole package of  
6 services.

7 Q. I'm talking about a pay phone.

8 A. Yeah, but that is not the product that the  
9 consumer -- you do not typically go or not go to a  
10 restaurant because of the pay phone. You typically go  
11 there for a whole package of supplementary services.  
12 You go in and there are a lot of things that you look  
13 at. My wife, for example, won't go back if she  
14 doesn't like -- the johns are dirty. Now maybe the  
15 Commission should regulate johns, but I'm just saying  
16 it's a whole package of service. What you're doing is  
17 you're picking out one little piece of it and trying  
18 to compare it from a truck stop to a hotel to a pay  
19 phone at a Circle K. And it fits into the package of  
20 services offered by the proprietors at those locations  
21 in a completely different way. The Circle K may not  
22 care at all about the revenues he gets from the pay  
23 phone. In the hotel business, it's a large piece of  
24 their business. So he pays more attention to it. He  
25 has a different clientele. And when you're comparing

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1 one segment of the hotel business with the Circle K  
2 business, with the truck stop, with God knows what and  
3 saying that the prices are different you've missed the  
4 whole point.

5           The point is that there's a whole package  
6 of services, they're complementary and as the  
7 Commission has chosen to look at one little piece  
8 of it and try to say that this piece of this piece,  
9 and that piece of that business, and that piece of  
10 that business all should have the same rates and all  
11 should be regulated, let AT&T regulate the market,  
12 that's what you're saying. You're saying we are going  
13 to turn this market over to AT&T and we're not going  
14 to exercise our ability to regulate the market, we're  
15 going to let AT&T regulate it because we're going to  
16 force you all to do what AT&T does, I think you're  
17 abrogating your constitutional duty by turning it over  
18 to AT&T and that misses the whole point of what this  
19 market is.

20       Q.     So do consumers shop around?

21       A.     They shop around by going to Circle K's  
22 and doing certain things. They shop around by going  
23 to restaurants and doing certain things and if it  
24 occurs to them that they have to make a phone call  
25 from those places, they look at it and decide whether

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1 they're going to make the phone call and if the value  
2 of placing the call exceeds the price for making it,  
3 then they're made better off.

4 Q. Do you think that consumers are making  
5 educated, informed choices when they use a pay phone,  
6 for example, who has IPI as its AOS provider?

7 A. I think they're making a choice that the  
8 benefits exceed the costs and that they are made  
9 better off doing it. So if they make the choice  
10 they're made better off. Besides, I think that people  
11 have a better idea of what prices are and information  
12 are in the telephone industry than they do in the  
13 supermarket industry. When you go in Safeway, how  
14 many prices do you know?

15 Q. So is your opinion then that the customer  
16 or consumer or end user placing the call is making an  
17 informed choice among alternatives?

18 A. Yes. He is going to a restaurant. He's  
19 going to his choice among restaurants.

20 Q. So the prices charged to place the call are  
21 irrelevant?

22 A. It may be to him. He just takes a look and  
23 decides do I want to call the babysitter or don't I.  
24 Do I want to call somebody or don't I. He makes that  
25 choice. The same reason he says do I eat the steak

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1 that's on the menu. Do I use the john?

2 Q. Is it your understanding that IPI sells  
3 collect calls at pay phones as well?

4 A. You might better have asked him but I think  
5 it probably does.

6 Q. How would the recipient of a collect call  
7 handled by IPI shop around?

8 A. In the same way he does when he gets it  
9 from AT&T.

10 Q. Which is?

11 A. Accept it or not accept it.

12 Q. In several places in your testimony you  
13 suggest that there are plenty of alternatives and  
14 choices for end users. On page 32, line 8, you state  
15 that there are no captives anywhere. Why do you not  
16 view the recipient of a collect call a captive to a  
17 operator service provider?

18 A. Because he can say yes or no and besides  
19 it's probably not a big deal. You know, there are  
20 lots of things that we do that we don't think much  
21 about because it's not a big deal. I got a phone call  
22 last week, collect call from somebody in jail, who I  
23 never heard of, thought maybe it was one of my  
24 itinerant students, and I accepted a collect call from  
25 somebody in jail, not knowing him, just to find out

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1 what the heck it was. Maybe I was irrational and  
2 uninformed, but I did it.

3 Q. How do you think the consumer would react  
4 or how will you react when you get the bill and see  
5 that it's significantly higher than you had anticipated?

6 A. Well, I had no anticipation. I didn't know  
7 how I got this call from jail. I had no anticipation  
8 and it hasn't come yet and when it comes I'm going to  
9 look at it and say, well, maybe I should have said no.

10 Q. Do you know how long it takes to be billed  
11 by IPI?

12 A. You should have asked Mr. Soumas. I think  
13 you did.

14 Q. On page 11, lines 1 through 4 of your  
15 testimony, you indicate that complaints about the  
16 operator services industry and the higher prices they  
17 charge have both declined significantly since the  
18 early days of this industry indicating that market  
19 forces are doing their job. In response to the  
20 staff's data request No. 21 you responded by  
21 referencing the Commission's 1991 Consumer Affairs  
22 Annual Report stating "consumer complaints against all  
23 long distance companies, which includes in this  
24 report providers of operator services, including  
25 International Pacific, declined 21 percent compared to

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1 the previous year. Consumer complaints against  
2 International Pacific were down 13 percent compared to  
3 the previous year." Do you have any idea of the  
4 overall number of complaints in 1992 or more  
5 specifically, are you aware of the number of  
6 complaints against International Pacific for 1992?

7 A. No. And the first thing I would ask would  
8 be the number of complaints and the second thing I  
9 would ask would be the complaints relative to volume  
10 of calls. And number two, I would ask what were the  
11 character of complaints? I would do that in all  
12 instances.

13 Q. You've mentioned hotels and the position of  
14 services that you view that they offer. Is it your  
15 position that if a person were to stay at a hotel  
16 served by IPI and that if that person was dissatisfied  
17 by high rates at that hotel then he or she might not  
18 stay at that hotel again?

19 A. They might not or they might dial around or  
20 not make the call.

21 Q. And you believe that that dissatisfaction  
22 might constitute a market force which would discipline  
23 IPI's rates?

24 A. You bet.

25 Q. Is it also possible that a chain of hotels

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1 like Holiday Inn with many repeat customers all across  
2 the country may be more sensitive to this sort of  
3 consumer reaction than a motel that is possibly not  
4 part of the chain but is perhaps a little motel off  
5 some highway somewhere?

6 A. May or may not. That depends.

7 Q. Hospitals might be another client  
8 institution that IPI would serve; isn't that right?

9 A. I don't know.

10 Q. Do you suggest that likewise a person  
11 should shop around and make sure that when he or she  
12 selects a hospital that they select a hospital that  
13 doesn't have an AOS with high rates?

14 A. I suggest they do whatever they want.  
15 Maybe one of the problems is that government has  
16 created monopoly in hospitals.

17 Q. But we would still have a problem, wouldn't  
18 we, of what should the person do who is in a hospital  
19 bed and wants to make a call, call collect. How does  
20 that person shop around?

21 A. In the same way he does in every other  
22 market. What you're trying to do is pick out  
23 nitpicking little instances in a highly competitive  
24 market and apparently drawing the conclusion that the  
25 answer is to regulate the industry. What do I do when



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1 my car breaks down halfway to Moscow and Pullman and I  
2 have to go and pound on a farmhouse door or something.  
3 That guy has got a monopoly over me. Are we  
4 suggesting that the Commission should regulate that?  
5 I mean, the little nitpicking examples exist in every  
6 industry and in every competitive industry and the  
7 conclusion that I think that you're trying to draw  
8 from these is that the result is more government  
9 regulation. It's absurd.

10 Q. Do you yourself use IPI, given a choice?

11 A. I don't know whether I have or haven't.

12 Q. Well, would you?

13 A. Would I? Why not? I like to see different  
14 companies' rates on my bill.

15 Q. At page 19, lines 8 through 14 you discuss  
16 how an AOS company might be able to enter the market  
17 because the Bell operating companies' and AT&T's cost  
18 structure is too high and the AOS entrant can make a  
19 profit even without charging higher rates. Are you  
20 with me?

21 A. Yeah.

22 Q. In your response to the staff data request  
23 No. 31, you detail the basis of your A series that a  
24 company such as IPI has lower costs than US West or  
25 AT&T, which is that IPI pays operator wages and

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1 benefits in the range of \$6 to \$10 per hour on average  
2 while the Bell companies pay \$20 to \$40 per hour in  
3 operator wages and benefits.

4 A. Where is that? I want to see exactly what  
5 I said there.

6 MR. OWENS: May I approach the witness?

7 JUDGE FOSTER: Yes.

8 MR. OWENS: Which number was it, Ms. Brown?

9 MS. BROWN: 31.

10 A. Yes.

11 Q. You indicate in that response that the  
12 Communications Workers of America was thoroughly  
13 opposed to the appearance of AOS companies because of  
14 the competition they provide to their own highly paid  
15 operators in the Bell companies. Can you provide any  
16 instances of the Communications Workers of America  
17 opposing any of the 50-plus registration applications  
18 by any AOS company seeking authority to operate in  
19 Washington?

20 A. No, in Washington, but there are instances  
21 elsewhere.

22 Q. You are also testifying on behalf of Paytel  
23 today. Are you aware of whether Paytel pays its  
24 operators at wages lower than those paid by Bell?

25 A. I don't believe Paytel employs any

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1 operators. I believe I answered another question  
2 where I did give the wages of the operators that are  
3 employed by the supplier to Paytel, if I remember  
4 correctly, \$8.40 an hour.

5 Q. Is it your understanding that a hotel or  
6 pay phone company may elect to choose IPI as the  
7 provider of operator services on the basis of the  
8 commission fee payments it can expect to receive from  
9 IPI as opposed to the commission fee payments offered  
10 by other providers?

11 A. That's one of the things that they may use,  
12 yes, but certainly not the only thing.

13 Q. A hotel or a pay phone owner doesn't  
14 actually pay any money to IPI or buy any service from  
15 IPI, does it?

16 A. I think you're mincing words. I mean, they  
17 have an arrangement whereby IPI provides certain  
18 services to their customers and there is a revenue  
19 sharing arrangement. Whether they buy it and resell  
20 it or not, I think, is immaterial.

21 Q. So is that a no?

22 A. Well, I don't know. I think you indicated  
23 that the hotel or the pay phone people were buying  
24 something from IPI and I think they really are buying  
25 a service even though it's not a formal resale

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1 arrangement.

2 Q. If IPI has higher rates than other  
3 carriers, then it follows that IPI would have the  
4 ability to offer a higher commission fee. Would you  
5 agree with that?

6 A. No, not necessarily.

7 Q. Since many of the carriers are subject to a  
8 rate cap at rates that are 60 to 40 percent lower than  
9 IPI's rates, IPI's ability to pay higher commissions  
10 might be construed as an advantage by some hotels or  
11 pay phone companies?

12 MR. OWENS: Objection, no foundation as to  
13 the 60 to 40 percent.

14 MS. BROWN: Subject to check, 60 to 40  
15 percent lower.

16 A. May or may not. Depends upon the quality  
17 of service.

18 Q. What is your definition of the term "market  
19 power" as you have used it in your testimony at page  
20 2, line 10?

21 A. I gave you a response, I believe, in one of  
22 your data requests and I think a summation of market  
23 power to me means the ability to earn above normal  
24 rates of return for considerable period of time, and I  
25 think that it's hard to tell what a considerable

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1 period of time is, especially in an industry that's as  
2 dynamic and changing as this one.

3 Q. At page 10 of your testimony you warn  
4 against the Commission trying to regulate the  
5 telecommunications services aspect of aggregators,  
6 hotels, for example. You do understand that the  
7 Commission has made it quite clear in its earlier AOS  
8 rulemaking docket that it does not intend to regulate  
9 hotels or other aggregators?

10 A. That's right, as I found out last night.

11 Q. At page 11, line 1 -- page 11, on line 1  
12 you state that complaints about the operator services  
13 industry have declined since the early days of the  
14 industry and in response to a data request that we  
15 talked about just a little brief while ago, request  
16 No. 21, you cited the Commission Consumer Affairs  
17 Annual Complaint report. Would you accept subject to  
18 check that complaints against IPI in 1988 were zero,  
19 in 1989 there were 14?

20 A. That's an infinitesimal percent increase.

21 Q. In 1990 there were 15. In 1991 there were  
22 13 and in 1992 there have been 48?

23 A. I said I will accept anything subject to  
24 check. Could be one traveling person.

25 MR. OWENS: Your Honor, I have a little

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1 difficulty knowing how the witness is going to check  
2 it since we've asked for the information and haven't  
3 received it in discovery.

4 JUDGE FOSTER: Ms. Brown, can you tell us  
5 how the witness would check this?

6 MS. BROWN: I indicated to Mr. Owens last  
7 week that I would provide him with the information  
8 that we have that supports the complaint.

9 MR. OWENS: Well --

10 MS. BROWN: I indicated it will be provided  
11 to you in the context of this proceeding.

12 MR. OWENS: I understand that but you're  
13 asking him to accept a different number than the -- at  
14 least it hasn't been established that it's the same  
15 number. You're asking him to accept a number for the  
16 total year of 1992 of 48 and it's my understanding  
17 that the formal complaint was for the period May 21  
18 through September 30, at approximately 20 specific  
19 locations. There's never been any indication that  
20 we will get information on all the complaints filed  
21 during that 1992 even though I believe it will be  
22 responsive to our data requests.

23 MS. BROWN: Well, there's a distinction to  
24 be drawn between formal and informal complaint. I can  
25 just withdraw it -- I don't want to withdraw the

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1 question. I want it on the record and just ask  
2 Dr. Wenders if it's possible that his predictions  
3 regarding the level of complaints in this industry  
4 since 1988 have not borne out.

5 A. I think they have -- are you asking me if  
6 they have not borne out? I don't think that they have  
7 been borne out and the reason I say that is that  
8 volume has increased tremendously during this period  
9 of time. Secondly, we've had a mass advertising  
10 campaign by AT&T for people to dial 10 triple X 0.  
11 Now, people tend to foul up when they dial that thing.  
12 What they do is they dial 0 triple X 0 and they get it  
13 blocked and they call up and complain about it. Or  
14 they dial 10 triple X and forget the last zero and  
15 they call up and complain about it. So we would have  
16 to look at the character of the complaints. And  
17 secondly, my statement about decline significantly  
18 since the early days of this industry was a statement  
19 based on national, not just necessarily on the  
20 Washington situation.

21 Q. On page 11 of your testimony at lines 8,  
22 lines 7 and 8, you use the phrase "regulatory  
23 gamesmanship." Could you please define that term  
24 for us?

25 A. Regulatory gamesmanship to me is when one

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1 carrier or one interested person, a consumer advocate  
2 or somebody starts using a regulatory proceeding to  
3 further their own ends and not the ends of the  
4 consumer in the competitive market.

5 Q. Is it your opinion that the only  
6 competitive result produced by regulation is that  
7 there is a situation where no one has market power?

8 A. Would you please repeat that question.

9 Q. Is it your opinion that the only  
10 competitive result produced by regulation is that  
11 there is a situation where no one has market power?

12 A. The only competitive result produced by  
13 regulation is a situation where no one has market  
14 power -- no. Commission may have market power.

15 Q. I would like to direct your attention to  
16 your response to staff's data request No. 27.

17 A. Read it back to me.

18 Q. The question is, "is the situation in which  
19 no one has market power the only competitive result  
20 produced by regulation response?" "Yes. Presuming  
21 that regulation is perfect, something that may be  
22 impossible."

23 A. And you didn't add that to your question,  
24 did you.

25 Q. Add what to my question?



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1           A.     Your question is, is the only result  
2 produced by regulation, and I qualified it in my  
3 answer when I gave the yes answer.

4           Q.     Is it your understanding that the theory of  
5 regulation includes the concept that where there does  
6 not exist effective competition regulation has been  
7 used as a second best way to achieve an outcome of  
8 disciplining prices?

9           A.     Wow. Where effective competition does not  
10 exist, regulation has been used to produce a  
11 competitive result, is that the thrust of your  
12 question? I'm sure there are instances of that. I'm  
13 sure there are instances where it's not true, too.

14          Q.     Do you understand that it is a legislative  
15 policy of this state to promote rates that are  
16 affordable?

17          A.     I don't know what that means. I'm sure  
18 that's what the politicians say. That's what all  
19 politicians say. But I don't know what affordable  
20 means.

21          Q.     At page 14, lines 12 through 14, you  
22 explain that it is clear that operator services  
23 providers have appeared because they have found at  
24 least a short run profitable niche in the  
25 telecommunications market. And I believe you've also

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1 testified to that same thought here today?

2 A. Right.

3 Q. So the fact that the operator services  
4 provider including IPI have survived what we view as a  
5 competitive marketplace indicates that these  
6 companies, including IPI, are profitable; is that  
7 right?

8 A. Are prospectively profitable. In other  
9 words, you may enter a business saying I'm going to  
10 lose money for three years but I expect in years four  
11 and five I am going to make money. Any business  
12 starts out losing. I would expect that they expect to  
13 make profits.

14 Q. Have you done any studies that support your  
15 view that operator service providers, including IPI,  
16 are profitable which might support your testimony at  
17 page 14, lines 12 through 14?

18 A. My conclusion that they're profitable is  
19 that they're there expanding and want to expand.  
20 What the books say is immaterial. I look at what  
21 people do and people are not stupid.

22 Q. You testified here today and also in your  
23 prefiled direct testimony to the effect that hotel or  
24 aggregators select IPI or another AOS on the basis of  
25 more than just the size of the commission payments,

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1 that they might also select IPI because of perceptions  
2 they have of superior service; is that right?

3 A. Yes.

4 Q. Turning to page 19, line 4 you state that  
5 "New operator services competitors initially found  
6 themselves with little head to head competition."  
7 What is the basis for that statement?

8 A. Well, if you look back about 1986 when this  
9 industry got going, there were a few people that found  
10 out about what was going on, and what started the  
11 whole thing out was when AT&T stopped paying  
12 commissions to aggregators, thereby getting a  
13 multi-million rate increase from the Federal  
14 Communications Commission without ever filing a  
15 tariff. And when they stopped paying to the hotels  
16 primarily, these people said, Hey, hotels, you turn  
17 your business over to us and we'll pay commissions.  
18 That's what started the whole thing and they found the  
19 niche in the first ones in the industry, there was  
20 very little competition right then and there, head to  
21 head, and that's how the industry started. And they  
22 started out charging high prices and they gave the  
23 hotels commissions or whatever you want to call them,  
24 and that's how it started. It was all due to AT&T.  
25 They forced AT&T back into the business is what they

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1 did. To the consumer's benefit.

2 Q. At page 23 of your testimony you refer to  
3 cross elasticities in supply and demand. Have you  
4 done any studies in cross elasticities in supply and  
5 demand for IPI's services?

6 A. No. Besides, it will be impossible to do  
7 because it refers to cross elasticity of supply in the  
8 market, not just one producer.

9 Q. If a business person were in an airport in  
10 Denver and she needed to call her spouse in Olympia to  
11 let him know that her flight to SeaTac was delayed  
12 five hours, and she needed to reach him before he left  
13 Olympia with the kids knowing that if she couldn't  
14 reach him, he and the kids would wind up possibly  
15 sitting in the airport waiting an extra five hours  
16 paying extra parking and probably even having to eat  
17 an expensive dinner at the airport restaurant while  
18 they waited, would you say that that business person  
19 might have a pretty inelastic demand for that call?

20 A. You bet. And he would make the call and be  
21 happy as a clam that he was able to do it. It's  
22 called a high valued call.

23 Q. At page 31, lines 18 through 22, you state  
24 that, and I quote here --

25 A. What lines again?

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1 Q. 18 through 22?

2 A. Thank you.

3 Q. "If NCS takes too large a share of the  
4 revenues generated at a client's location or fails to  
5 provide quality service to the clients' clients then  
6 NTS's clients are free to shop elsewhere for a pay  
7 phone service provider."

8 A. That's right. And I believe it.

9 Q. What studies or analyses have you performed  
10 or what facts do you rely upon to support that  
11 testimony?

12 A. The testimonies that you heard here today  
13 where these people talked about them as providing  
14 alternatives in the marketplace to their site owners  
15 and if they don't provide the right alternatives  
16 they're out.

17 Q. At page 39, lines 4 through 5, you talk  
18 about the new options AT&T is pursuing in this  
19 industry. Could you please describe what those  
20 options are?

21 A. Well, number one, their option of massive  
22 advertising campaign.

23 Q. You mentioned that.

24 A. Right. And number two, they are providing  
25 services in a more efficient way. Number one, they're

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1 relying less on large operators and more on store and  
2 forward-type phones for openers. Those are the two  
3 major ones I was thinking of.

4 Q. At page 40, lines 13 through 17, you opine  
5 that detailed regulation of the operator services  
6 industry may serve to create a barrier to entry into  
7 this market. By "detailed regulation," are you  
8 referring to a price cap or any sort of rate cap?

9 A. Yes, one of the things.

10 MS. BROWN: Your Honor, we have nothing  
11 more.

12 JUDGE FOSTER: Just a few questions.  
13 Appreciate your bearing with us to this late hour.

14 THE WITNESS: That's okay. I've got  
15 nowhere to go but Pullman.

16 JUDGE FOSTER: This constitutes a better  
17 offer then?

18 THE WITNESS: Yeah.

19

20 EXAMINATION

21 BY JUDGE FOSTER:

22 Q. On page 3 of your testimony you refer to  
23 your specific field being the economic welfare theory.  
24 For those of us who are not economists, can you tell  
25 me what that is?

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1           A.     Well, briefly, there are sort of two kinds  
2 of economics one of which we call -- and I am not  
3 going to -- I hope I don't put you off by my buzz word  
4 -- positive economics, and positive economics is  
5 concerned with how markets work, you know. Let me  
6 give you an example. If phone rates go up, generally  
7 the economists can tell you what will happen. Now,  
8 the second question called the normative part is what  
9 should happen. That's what welfare economics is.  
10 What should happen in order to best serve the  
11 consumer. So, briefly, welfare economics is what we  
12 call normative. What should you do. What should this  
13 commission do.

14           Q.     All right. Taking a look, then, at page 29  
15 you talk about the Commission's previous decision in  
16 this docket No. U89-2603 in International Pacific's  
17 first petition for competitive classification?

18           A.     Was that page 29?

19           Q.     Page 29 and I believe you said, "This  
20 Commission found in its previous docket" --

21           A.     Go ahead.

22           Q.     -- "on this issue that alternative operator  
23 service providers, which implies a too narrow  
24 definition of the market, were effective competitive  
25 in this market."

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1                   MR. OWENS: I think that's one of the  
2 typos.

3                   JUDGE FOSTER: Should be "effectively"?

4                   MR. OWENS: Yes.

5           Q.     My question is, if you consider this too  
6 narrow a definition, how would you analyze this  
7 market?

8           A.     Well, I think that what I was responding to  
9 there, your Honor, was the idea that there was market  
10 power if there wasn't an alternative phone within  
11 walking distance or within the immediate proximity, I  
12 forget what the docket said, and I think that is a much  
13 too narrow definition of the market. Where I talked  
14 elsewhere in my testimony, your Honor, about the idea of  
15 what a relevant market is and that you must look at the  
16 alternatives that the buyer has of the product, and the  
17 alternatives on the supply side in order to look at a  
18 relevant market. So you have to look at alternatives on  
19 both sides of the market in order to make a judgment  
20 about what a real definition of the market is.

21           Q.     Then going to page 40, you talk about your  
22 final opinion on this matter, and I guess I will ask  
23 you to tell us what you think, what benefits  
24 competitive status would confer both on International  
25 Pacific and also on the aggregators and the consumers,



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1 this market we've been talking about.

2 A. Well, the first thing I think that you have  
3 to understand is that this is a constantly changing  
4 marketplace. Quality of service and price are various  
5 elements which must be balanced against one another.  
6 These people know more about how this market is  
7 changing and how it has changed than I do. But what  
8 we have to do is to understand that they are adapting  
9 to the marketplace and thereby adapting to the  
10 consumer. And whether the consumer is, say, a  
11 restaurant or the restaurant's clients, they are  
12 adapting to those changing conditions there.

13 When you have a tariff list, where you have  
14 to go through rigamarole in order to file or try a new  
15 rate, it becomes burdensome on the company to do  
16 things like that and therefore they can't move fast  
17 enough to provide these new services. And it's not a  
18 question of them saying, Well, we're going to provide  
19 this service and not being able to do it, they may  
20 have to experiment. They may have to try four or five  
21 different services, four or five different prices,  
22 four or five different degrees of taper to their  
23 tariff, for example, to see which one works, and you  
24 don't know which one beforehand is going to work.  
25 They've got to be free to do this in the marketplace.

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1                   And what I'm saying is that the people who  
2 -- let's use pay phones as an example. The people who  
3 use pay phones in their restaurants are making a  
4 judgment as to how to run their business to best serve  
5 their clients, and they are in a competitive business.  
6 They must be able to respond, and all you're doing by  
7 having these tariffs under one segment of their  
8 business is taking away from them the ability to use  
9 that in running their competitive business.

10                   So my view in summary is that this market  
11 is competitive. There are lots of alternatives for  
12 everyone, and that what you have to do is to relieve  
13 them of the burden so they can explore in this  
14 changing market.

15                   JUDGE FOSTER: I had one other question  
16 and I guess it's a comment for Commission staff.  
17 There was reference, Ms. Brown, to the number of  
18 complaints, and I believe it was involving  
19 International Pacific in one of the questions you  
20 proposed.

21                   MS. BROWN: That's correct.

22                   JUDGE FOSTER: And I believe Dr. Wenders  
23 also went on a little bit later to suggest that some  
24 of those might be due to consumers not dialing the  
25 number properly and as a result they are blocked, et

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1 cetera. Some of them might be due to rates. Some of  
2 them might be due to other things. When it comes to  
3 point of the Commission staff presenting its case, if  
4 there's going to be information in the record about  
5 allegations of the complaints I think it would be  
6 helpful to have it detailed as to the source of the  
7 complaint. In other words, is it inability to dial a  
8 number, is it blocking, is it not placarding right, is  
9 it the rate level? What is the problem that generated  
10 the complaint so that we don't have this enormous lump  
11 of complaints without knowing what they are and how  
12 serious they are. If people are just dialing the  
13 wrong numbers, I guess that's a whole different thing  
14 than people complaining about rate levels or blocking  
15 or other things. So if you would just be sure and add  
16 that to any complaint data you propose to offer, I  
17 think it would be helpful.

18 MS. BROWN: Well, we certainly would.

19 THE WITNESS: Your Honor, may I comment one  
20 other thing about this and I don't know how relevant  
21 it is to this case. You're talking about 48  
22 complaints. That's a relatively small number. I  
23 would like to know who was making them. Let me give  
24 you an example. As part of -- AT&T employs hundreds  
25 of thousands of employees and these people have been

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1 told that when they go to a hotel and can't get the  
2 AT&T to call up the Commission and complain about it.  
3 Why are they doing that? They're doing it because  
4 they want to goad you into handicapping somebody.

5           The second thing that I've encountered  
6 in this business is the Communication Workers of  
7 America. Not wanting competition for their jobs,  
8 being paid \$19, 20 an hour, not wanting these \$8.60  
9 people competing with them are also the kind of people  
10 who have been told by their unions to call up and  
11 complain. And I think --

12           MS. BROWN: Excuse me. I am going to  
13 object to this. How are you qualified to offer  
14 testimony as to what the union has advised the  
15 Communication Workers of America?

16           THE WITNESS: Because it has become -- in  
17 other instances in which I have testified I have heard  
18 this talked about and they have filed complaints  
19 before the FCC about this and it's something that I  
20 normally rely on as an expert, and I'm just -- not  
21 saying that it's 100 percent true or anything but I'm  
22 just saying that it's one of the things you got to  
23 look at. You got 48 complaints, I am not accusing you  
24 of doing it but you could be responsible for twelve of  
25 them easily.

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1                   JUDGE FOSTER: Well, my question or my  
2 comment was just to suggest that information about the  
3 type and source perhaps of the complaint might be  
4 helpful in analyzing.

5                   MS. BROWN: We intended to do that, your  
6 Honor, with great specificity.

7                   JUDGE FOSTER: Thank you. I don't have any  
8 other questions.

9                   (Recess.)

10                  JUDGE FOSTER: Let's be back on the record.  
11 While we were off the record, the reporter changed the  
12 paper. I believe I've completed my questions for  
13 International Pacific. Judge Clishe, do you have  
14 questions for the Paytel.

15                  JUDGE CLISHE: Regarding Paytel --

16                  MR. OWENS: Ms. Brown isn't here.

17                  JUDGE CLISHE: I guess we'll wait for a  
18 couple of minutes.

19                  (Recess.)

20                  JUDGE CLISHE: I had a couple of requests,  
21 Ms. Brown. Since the questions covered the  
22 classification proceeding regarding IPI, and the  
23 proceeding that I am presiding over as regarding Paytel,  
24 I want to, first of all, have through staff witnesses or  
25 whatever, however you could do this, to include in the

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1 record a copy of the tariff for Paytel, and also Judge  
2 Foster had talked about the complaints. In requesting  
3 specifics regarding the complaint, I would also like to  
4 have testimony or presented information specifics about  
5 any complaints involving Paytel. Is that possible?

6 MS. BROWN: Certainly.

7 JUDGE CLISHE: Would that be possible for  
8 the next hearing day which is scheduled for the 23rd  
9 or do you wish to do this when staff witnesses  
10 testify?

11 MR. OWENS: I thought that was the next  
12 hearing day.

13 MS. BROWN: We can put it through when  
14 staff testifies.

15 JUDGE CLISHE: All right, that's fine.

16 MR. OWENS: The 23rd is the date for  
17 prefiling; is that right?

18 MS. BROWN: 23rd is cross of --

19 JUDGE CLISHE: Is there some confusion  
20 about what we're doing next?

21 MR. OWENS: I'm sorry, I thought you meant  
22 -- you meant day after tomorrow?

23 JUDGE CLISHE: Right. Are we all on the  
24 right track? Other than that, I don't have any  
25 questions of Dr. Wenders.

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1 JUDGE FOSTER: Do you have redirect?

2 MR. OWENS: A few.

3

4 REDIRECT EXAMINATION

5 BY MR. OWENS:

6 Q. Dr. Wenders, you were asked by Ms. Brown in  
7 cross-examination to accept, subject to check, that 25  
8 AOS companies had applied for registration since the  
9 July 1991 adoption by the Commission of its AOS rule.  
10 Do you know whether any of those companies are  
11 actually providing service?

12 A. No, I do not.

13 Q. And you were asked whether the application  
14 for registration would make any difference in terms of  
15 your conclusion about whether any short run  
16 disequilibrium existed any longer. Would whether  
17 these companies were actually serving make a  
18 difference to that inquiry?

19 A. No.

20 Q. You were asked whether a hotel guest had  
21 any options. Could a hotel guest make an operator-  
22 assisted call using a pay phone in the lobby as  
23 opposed to a phone in the guest room?

24 A. Yes.

25 Q. Could the hotel guest make, if the pay

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1 phone were so arranged, that same call using one of  
2 the coin sent paid options that we've heard about  
3 today, the three minutes for a dollar?

4 A. Yes.

5 Q. And would that --

6 A. Just one other, point out, too, that many  
7 businesses you make that one phone call to your  
8 company's PBX and then you make additional calls from  
9 there. You can do that kind of thing. Dial out on  
10 an 800 number into your company's PBX and then make  
11 your calls by getting a dial tone out of the PBX, for  
12 example.

13 MR. OWENS: I have nothing further on  
14 redirect.

15 JUDGE FOSTER: Ms. Brown?

16 MS. BROWN: I have nothing further.

17 JUDGE FOSTER: I believe that Exhibits 14  
18 and 15 were identified but I don't believe that there  
19 was any request that they be admitted. I don't  
20 believe there was any requests.

21 MS. BROWN: Which were they? The data  
22 requests?

23 JUDGE FOSTER: It's the Florida proceeding  
24 testimony, which is Exhibit 14 in the IPI matter and  
25 Exhibit 6 in the Paytel matter and the other is



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1 Exhibit 15 for identification interLATA rates for  
2 Washington AOS market and that would be Exhibit 7 for  
3 identification in the Paytel case. Did you want to  
4 offer those for admission?

5 MS. BROWN: Well, the rate analysis we will  
6 submit and offer in the staff's direct case.

7 JUDGE FOSTER: Okay. Are you going to  
8 withdraw that now or what?

9 MS. BROWN: I can if you're going to hold  
10 onto it, that's fine.

11 JUDGE FOSTER: No, I will mark it as  
12 withdrawn or I can leave it as not yet admitted.

13 MS. BROWN: I would prefer the latter.

14 JUDGE FOSTER: Okay. Then what about 14,  
15 the --

16 MS. BROWN: The testimony from the Florida  
17 proceeding?

18 JUDGE FOSTER: Yes.

19 MS. BROWN: I would like to have that  
20 admitted into evidence. I believe that the witness  
21 said that he adopted the testimony.

22 MR. OWENS: Well, he adopted the specific  
23 pages that you referred him to. I guess the only  
24 concern I have is that this, and neither I nor the  
25 witness has had a chance to read it all, comprises the

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1 entirety of the record involving his testimony in that  
2 proceeding. If you want to represent that it is, then  
3 I don't have any objection. If there are any pieces  
4 that aren't here, I would request that they be also  
5 included.

6 MS. BROWN: That's understandable. Did you  
7 want to recontact the Commission to ascertain whether  
8 that's true?

9 MR. WILSON: I understand that this is it.

10 THE WITNESS: I might specifically just say  
11 I don't recall if I went back there and did rebuttal.  
12 I do not -- I simply don't recall. If I went back and  
13 did rebuttal and was recrossed on that I don't recall.

14 MS. BROWN: Is that what you're referring  
15 to is rebuttal testimony?

16 MR. OWENS: Yes.

17 MS. BROWN: I believe that the order of the  
18 Commission in this case indicates that he didn't  
19 return for rebuttal.

20 THE WITNESS: I don't recall.

21 MS. BROWN: That's fine. We can contact  
22 the --

23 MR. OWENS: I have no problem if counsel  
24 will check and based on whatever the outcome of the  
25 check is, if we can have an agreement that whatever

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1 part of the testimony isn't included in here would be  
2 included, I have no objection. If the check turns out  
3 that there is no omitted part, then I also have no  
4 objection.

5 JUDGE FOSTER: Well, I will go ahead and  
6 admit Exhibit 14. If it turns out subsequently  
7 there's any problem with it, I will leave it to  
8 counsel to bring it to my attention or our attention  
9 at a future proceeding.

10 MR. OWENS: Thank you.

11 (Admitted Exhibit 14.)

12 JUDGE FOSTER: Anything else for this  
13 witness?

14 Then the witness may be excused.

15 THE WITNESS: Thank you, your Honor.

16 JUDGE FOSTER: As far as I know then, this  
17 would conclude the proceeding as far as IPI's direct  
18 case in the classification matter that was scheduled  
19 for today's date. We'll have the staff's presentation  
20 in March of 1993 and then rebuttal in March also so I  
21 trust that IPI doesn't have anything more to present  
22 in its direct case today?

23 MR. OWENS: That's correct. The direct  
24 case of IPI we rest at this point.

25 JUDGE CLISHE: As far as the admission of

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1 Exhibit 6, I'm going to reserve ruling on that until  
2 we have some information or a representation from the  
3 staff counsel about what, in fact, occurred in that  
4 proceeding, if there's anything else that Dr. Wenders  
5 testified about or if there's not that that's the  
6 case. So I will reserve in addition. And the cross-  
7 examination of the company's witness will take place  
8 here on December 23, which is day after tomorrow. Is  
9 that everyone's understanding?

10 MR. OWENS: Is that in the hearing room  
11 here or is there a Commission meeting that day?

12 JUDGE CLISHE: Let me check and see where  
13 we put this. From the schedule that I have from the  
14 Commission, it indicates it's here in Room 250. If  
15 there's any change, it will be on the bulletin board  
16 down by the receptionist or the little announcement  
17 board. I think perhaps the commissioners -- there  
18 aren't enough commissioners here to have an open  
19 meeting but if there's a change from Room 250, it will  
20 be on the board downstairs as you come in.

21 MR. OWENS: Thank you, your Honor.

22 JUDGE FOSTER: Anything else today? Thank  
23 you all for your patience and we'll adjourn until  
24 Wednesday.

25 (Hearing adjourned at 5:30 p.m.)