

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In Re Petition of)
U S WEST Communications, Inc.) Docket No. UT-980948
For a Declaratory Order Ending Imputation)
Of Revenue Derived from Transferred)
Directory Publishing Business)

REJOINDER TESTIMONY

OF

CARL INOUYE

On behalf of

U S WEST COMMUNICATIONS, INC.

July 16, 1999

REJOINDER TESTIMONY OF CARL INOUE
U S WEST COMMUNICATIONS
DOCKET UT-980948

TABLE OF CONTENTS

1. Introduction	1
2. Ownership of the Directory Publishing Business	2
3. Whether Directory Was or Is a Regulatory Asset	7
4. The 1984 Transfer and Imputation	9
5. Full Reasonable Value and Whether Ratepayers Have Received It	15
6. The Requirement for Payment and Valuation Date	18
7. Whether Ratepayers Have Borne Economic Risk	22
8. The Business Valuation Study	26
9. Mischaracterizations of the Company's Positions and Testimonies	28
10. Other State Orders and Testimonies	34
11. How Any Residual Should Be Treated	36

1 **1: INTRODUCTION**

2

3 **Q. PLEASE STATE YOUR NAME AND ADDRESS.**

4 A. Carl Inouye, 1600 7th Avenue, Seattle, Washington, 98191.

5

6 **Q. ARE YOU THE SAME CARL INOUE THAT FILED DIRECT AND REBUTTAL**
7 **TESTIMONY IN THIS DOCKET?**

8 A. Yes, I am. My responsibilities at U S WEST Communications, (“U S WEST” or “Company”) and my
9 professional and educational qualifications were presented in my direct testimony.

10

11 **Q. PLEASE DESCRIBE THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

12 A. The purpose of my testimony is to respond to the surrebuttal testimony of Dr. Selwyn for the Staff and
13 Mr. Brosch for Public Counsel¹

14

15 **Q. BRIEFLY SUMMARIZE YOUR REJOINDER TESTIMONY.**

16 A. In earlier testimony, Staff and Public Counsel took the positions that the directory publishing business
17 was not transferred on January 1, 1984, that intangible assets constituted all or most of the business
18 value and were not transferred, and that imputation was rent for USWD’s use of the intangible assets.

19 In surrebuttal testimony, Staff appears to concede that the business was transferred, but contends that
20 the ownership of it was not. Staff further claims that imputation is rent on a regulatory asset that is part
21 of regulated operations and that imputation was imposed so as to pretend that the transfer had never
22 happened. Public Counsel contends the Commission determined that the transfer was unreasonable and

¹ For ease of reference, I refer to Public Counsel as the sponsor of Mr. Brosch’s testimony. In fact, Mr. Brosch also represents AARP and TRACER.

1 that imputation is meant to pretend that the transfer never happened.

2
3 Staff and Public Counsel have shifted positions. Their surrebuttal testimonies cannot be reconciled
4 with their earlier testimonies, making their advocacy in this docket suspect. It is impossible their two
5 versions can arise out of the same set of facts. In either case, their advocacy remains inconsistent with
6 the positions these parties took before the Commission and the Court.

7
8 My rejoinder testimony addresses the new contentions of the parties and illuminates the contradictions
9 with their earlier testimonies.

10
11 **2. OWNERSHIP OF THE DIRECTORY PUBLISHING BUSINESS**

12
13 **Q. WHAT IS THE PURPOSE OF THIS SECTION?**

14 A. Staff claims ownership of the directory publishing business was never transferred from U S WEST.
15 That simply is not true, as this section will demonstrate.

16
17 **Q. WHY DOES STAFF CLAIM U S WEST STILL OWNS THE DIRECTORY PUBLISHING**
18 **BUSINESS?**

19 A. Staff claims the increase in the value of the directory publishing business that occurred after January 1,
20 1984 is analogous to leasehold improvements and, therefore, inures to the benefit of ratepayers. Unless
21 Staff proves U S WEST owns the directory business, the leasehold analogy does not hold.

22
23 **Q. PLEASE REVIEW STAFF'S TESTIMONY?**

24 A. Staff's testimony is:

25
26 USWD has never owned PNB's yellow pages business.²

1 ² Selwyn Surrebuttal, p. 22, emphasis added.

1
2 ...the gain in value properly inures to the owner of the business, which is PNB/USWC in
3 this case.³
4

5 While Prof. Perlman may not like the leasehold improvement analogy, I believe it is
6 entirely appropriate in this situation...USWD entered into a limited-duration
7 Publishing Agreement with PNB, putting the directory publishing entity on notice
8 that its stewardship of the yellow pages could be terminated. Indeed, the 1984
9 Publishing Agreement makes explicit provisions for the return of PNB-provided
10 listings and other confidential data in the event of termination; to the extent that a
11 portion of the growth in value of directory is the result of the use by USWD of
12 PNB proprietary information, it is PNB – and distinctly not USWD – that
13 maintains the ownership interest in that gain.⁴
14

15 Prof. Perlman’s rejection of the leasehold improvement analogy stems from his
16 incorrect view that no lease of the yellow pages business by PNB to USWD
17 existed, i.e., that the transfer was a permanent sale, not a limited-duration lease.⁵
18

19 **Q. HAVE YOU PREVIOUSLY RESPONDED TO STAFF’S CLAIMS?**

20 A. Yes. Sections 3 and 4 of my rebuttal testimony demonstrated that the directory publishing business was
21 transferred from PNB on January 1, 1984. The transfer should be beyond dispute because of the
22 holdings of the Commission, the representations of the Commission and intervenors to the Court, and
23 the facts relied upon by the Court in upholding the Commission’s authority to impose imputation.
24 Given the opportunity of surrebuttal, neither Staff, nor Public Counsel, presented evidence to counter
25 my point that the Commission and Court have already held that the directory business, including the
26 ownership thereof, was transferred from PNB in 1984.

27
28 Section 9 presented evidence verifying that ownership of the directory business was transferred from
29 PNB on January 1, 1984. Stock is the undeniable proof of ownership. The transfer of stock ownership

1 ³ Id., p. 20, emphasis added.
2

1 ⁴ Id., p.19, emphasis added.
2

1 ⁵ Id., p. 19, original emphasis omitted.
2

1 that occurred was described in PNB's application in Docket No. FR-83-159. Neither Staff, nor Public
2 Counsel, presented evidence in surrebuttal that ownership was not transferred.⁶

3
4 Section 14 presented evidence that no state commission that regulates U S WEST has determined that
5 the directory business, or its ownership, was not transferred.

6
7 **Q. STAFF CLAIMS THE 1984 TRANSFER WAS NOT PERMANENT. IS THAT RELEVANT?**

8 A. No.⁷ Regardless of whether the 1984 transfer was intended to be permanent, the transfer of the
9 directory publishing business and its ownership occurred.⁸ Its removal from regulated operations sets
10 the valuation date and the "full reasonable value" the Court ruled ratepayers are entitled to receive
11 under the facts the Commission and intervenors presented.

12
13 It is irrelevant whether the transfer was intended to be permanent, or whether PNB could have re-
14 entered the business. The transfer occurred with Commission approval and in the subsequent 15 years,
15 it has never been transferred back to regulated operations. Staff's claim that all aspects of the transfer
16 had to have the appearance of being "permanent" is illogical, unsupported by fact, and misleading.

17
18 **Q. WHAT CONTEXT SHOULD STAFF'S SURREBUTTAL BE CONSIDERED IN?**

1 ⁶ Other indications of ownership by USWD are that USWD has the right to possess and direct the business. It could
2 conduct the business in its name. It could represent the business to customers in its own name. It could represent the
3 business to financial institution as its own. It was liable for damages. And, it could sell or spin-off the business.
4

1 ⁷ Staff mischaracterizes the Company's position as claiming the 1984 transfer was "permanent." Staff cites section 3 of
2 my rebuttal testimony. However, the word "permanent" does not appear anywhere in that section or any other section.
3 The only use of the word "permanent" appeared in Dr. Perlman's testimony. He stated that he did not know what the
4 parties subjectively intended in 1984, but based upon his reading of the documents, the transaction had the effect of
5 making a permanent transfer of ownership. It should be recalled that Mr. Perlman's testimony was in response to Staff
6 and Public Counsel testimony that intangible assets and an ongoing business were not transferred.
7

1 ⁸ I use transfer of the directory publishing business and transfer of ownership synonymously. I will refer only to the
2 transfer of the business.
3

1 A. Staff's surrebuttal should be kept in the context of its earlier testimony. Staff originally claimed neither
2 the business, nor its intangible assets were transferred in 1984. And, imputation was rent for use of
3 intangible assets.⁹ Staff now claims that because PNB could re-enter the business and maintained
4 ownership of three allegedly crucial elements, it maintained ownership of the business.

5

6 **Q. WHAT DOES THIS SHIFT IN TESTIMONY SIGNAL?**

7 A. The shift is an admission that the directory business was transferred in 1984. For Staff to assert the
8 transfer was not permanent, it must first concede that the business was transferred, permanently or not.
9 The veracity of Staff's testimony, responsive and surrebuttal, is suspect because of the shift. Staff
10 attempts to mold one set of facts into two separate versions of what happened.

11

12 **Q. WHAT DOES STAFF CLAIM ABOUT "CRUCIAL ELEMENTS"?**

13 A. Staff claims USWD was required to contract "via limited-duration Publishing Agreements, in order to
14 obtain access to the most crucial elements of the directory publishing business." Staff refers to (1) the
15 exclusive right to publish, (2) the right to use PNB's name and marks, and (3) access to subscriber lists.
16 Staff claims the elements are "crucial to a successful directory publishing operation."¹⁰

17

18 **Q. IS THE FACT THAT PNB RETAINED OWNERSHIP OF THESE THREE ELEMENTS**
19 **SIGNIFICANT?**

20 A. No. As I stated in my rebuttal testimony, whatever was transferred in 1984 defines what fair
21 consideration is owed for. Any claim that the transfer should have included the three elements or, any
22 claim that without the three elements the transfer was incomplete, is irrelevant to what compensation is
23 owed for.¹¹

1 ⁹ Inouye Rebuttal, p. 14-17; 28-30.
2

1 ¹⁰ Selwyn Surrebuttal, p. 4, 6.
2

1 ¹¹ Nevertheless, U S WEST's business valuation gives ratepayers credit as if long-term grants were made and is, therefore,
2 higher than it otherwise would be. This is the case because the financial projections and actual financial results reflect
3 either the assumption of such status or their actual effect.

1

2 **Q. WHAT EVIDENCE IS PRESENTED TO SUPPORT THE CLAIM THAT THE ELEMENTS**
3 **ARE CRUCIAL?**

4 A. None. Staff claims other publishers have entered, but failed to establish market positions. However,
5 Washington evidence is not presented, nor is any evidence that business failures are due to the
6 elements. Dr. Selwyn has already admitted he conducted no investigation or analysis of PNB's
7 Washington directory operations, or of Washington market conditions.¹²

8

9 **Q. DID OWNERSHIP OF THE THREE ELEMENTS ENABLE U S WEST TO MAINTAIN**
10 **OWNERSHIP OF THE DIRECTORY PUBLISHING BUSINESS?**

11 A. No, it does not. As I discussed above, ownership of the directory publishing business was clearly
12 transferred from PNB in 1984.

13

14 **Q. WHAT EVIDENCE IS PRESENTED TO SUPPORT THE CLAIM THAT PNB'S ABILITY TO**
15 **RE-ENTER THE DIRECTORY BUSINESS MADE THE TRANSFER TEMPORARY OR**
16 **ALLOWED PNB TO MAINTAIN OWNERSHIP OF THE DIRECTORY BUSINESS?**

17 A. Staff's asserts that if PNB had re-entered the market, USWD would not have been able to hold to
18 continue its business and PNB would have, in essence, re-acquired its business. As stated above, Staff
19 conducted no analysis or study of PNB's directory operations or the Washington market. Staff presents
20 no evidence of a similar situation where a local exchange carrier re-entered the business in competition
21 with its affiliate. Nor does Staff acknowledge that USWD would have still been able to acquire
22 customer lists. USWD would have still used its name. Its branding was already established.¹³ USWD
23 would not have been required to return "skilled employees," "proven methods of operations," and

1

1 ¹² See Inouye Rebuttal, p. 67, footnote 137; Deposition of Selwyn, Tr.24-25.

2

1 ¹³ Branding is not just the USWD name, but also the directory's distinctive cover.

2

1 “established customer relations,” all valuable intangible assets that in earlier testimonies Staff and
2 Public Counsel embraced as embodying significant business value.¹⁴

3
4 **3: WHETHER DIRECTORY WAS OR IS A REGULATORY ASSET**

5
6 **Q. WHAT IS THE PURPOSE OF THIS SECTION?**

7 A. Staff and Public Counsel claim the directory publishing business is currently a regulatory asset of
8 U S WEST. This section responds to those claims.

9
10 **Q. WHAT ARE STAFF’S AND PUBLIC COUNSEL’S TESTIMONIES?**

11 A. Staff testifies:

12
13 ...the 1984 directory reorganization did not effect a permanent transfer of the ownership of
14 the Washington directory publishing business, and that those operations, and the
15 revenues derived therefrom, have remained a regulatory asset of PNB/USWC until the
16 present day.¹⁵

17
18 Public Counsel testifies:

19
20 Imputation had the effect of crediting ratepayers with the excess income...because the
21 Commission found a true sale had not occurred and a regulatory asset still existed and
22 had not been transferred

23 ...

24 There has never been any WUTC approval of a transfer of the regulatory asset.¹⁶

25

1 ¹⁴ The value of the exclusive right to publish is questionable given the PNB, if it re-entered the market, would have had to
2 start from scratch. Mr. Johnson testifies that USWD had and would have retained what it needed to remain in the
3 business.

4
1 ¹⁵ Selwyn Surrebuttal, p. 2.

2
1 ¹⁶ Brosch Surrebuttal, p. 5.

1 **Q. DO STAFF AND PUBLIC COUNSEL EXPLAIN WHY THE COMMISSION REPRESENTED**
2 **TO THE COURT AND THE COURT HELD THAT THE DIRECTORY PUBLISHING**
3 **BUSINESS IS A “FORMER” REGULATORY ASSET?**

4 A. No. As I explained in my rebuttal testimony, the Commission represented to the Court and the Court
5 held that the directory publishing business is a “former regulatory asset.”¹⁷ Staff and Public Counsel
6 made no attempt in surrebuttal to explain their contradiction with the Commission and the Court.

7

8 **Q. WHAT SHOULD THE COMMISSION CONCLUDE?**

9 A. The fact that the directory business is a former regulatory asset is a settled fact. The Commission
10 should not depart from what the Court termed one of its “most relevant findings.”¹⁸

11

12 **Q. IS STAFF’S OWNERSHIP CLAIM CONSISTENT WITH WHAT THE COMMISSION**
13 **REPRESENTED TO THE COURT?**

14 A. No. As I demonstrated in the last section, Staff’s claim that U S WEST owns the directory publishing
15 business is contrary to fact. Therefore, so is its claim that directory is a current regulatory asset.
16 Furthermore, the linkage between ownership and regulatory asset does not logically follow. If
17 U S WEST owned the directory business, directory would be part of U S WEST’s consolidated
18 operations. Its earnings would be on U S WEST’s accounts and regulators would neither have to
19 pretend as if the transfer never occurred or impose imputation. That none of this exists disproves Staff
20 testimony.

21

22 **Q. DOES PUBLIC COUNSEL EXPLAIN HOW IMPUTATION CAUSES DIRECTORY TO BE A**
23 **REGULATORY ASSET?**

1 ¹⁷ Inouye Rebuttal, p. 18-20.

2

1 ¹⁸ U S WEST Communications, Inc. v. WUTC, 134 Wn.2d 74, 81-82 (1997).

2

1 A. No. Without evidence of the linkage between imputation and regulatory asset, Public Counsel fails to
2 support its testimony or reconcile to the representations it and the Commission made to the Court.

3

4 **Q. DOES PUBLIC COUNSEL CONFUSE REGULATORY ASSET AND “FULL REASONABLE**
5 **VALUE?”**

6 A. Yes, I believe so. Public Counsel attempts to claim the directory publishing business is currently a
7 “regulatory asset” when the Commission’s represented and the Court found that it was a “former”
8 regulatory asset. If there is currently a “regulatory asset,” it is the “full reasonable value” of the
9 directory publishing business at the time of the 1984 transfer.¹⁹ The business, which has been owned
10 and operated by USWD since 1984, cannot be a current “regulatory asset.” Although the “full
11 reasonable value” may not have been called a “regulatory asset,” it is an asset in the sense that the
12 Commission requires it be available for ratemaking, even though its value heretofore has been
13 undetermined. The fact that the Commission chooses to make the “full reasonable value” available for
14 ratemaking through an imputation calculation that relies upon the excess of the profits of the USWD
15 directory business, does not make the USWD business the regulatory asset.

16

17

4: THE 1984 TRANSFER AND IMPUTATION

18

19 **Q. WHAT IS THE PURPOSE OF THIS SECTION?**

20 A. This section responds to Staff’s and Public Counsel’s claims with respect to the 1984 transfer and the
21 Commission’s purpose in imposing imputation.

22

23 **Q. PLEASE REVIEW STAFF AND PUBLIC COUNSEL TESTIMONIES.**

24 A. Public Counsel claims the 1984 transfer was determined to be unreasonable and imputation has several

1 ¹⁹ Recall that the Commission has stated that the “full reasonable value” should “reflect true values and market realities, as
2 if the transfer had been an arms length transaction, with each party seeking to maximize return.” (Inouye Rebuttal, p. 26,
3 30-32.
4

1 purposes.

2
3 It is also true that this transfer...was determined by the Commission to be unreasonable.²⁰

4
5 Imputation was ordered to maintain the status quo for ratemaking purposes, as if the
6 directory business had not been transferred at all.²¹

7
8 The periodic imputation amounts were calculated in a manner that treated the transfer and
9 Publishing Agreements as if they were, in fact, voided.²²

10
11 Imputation had the effect of crediting ratepayers with the excess income...because the
12 Commission found a true sale had not occurred and a regulatory asset still existed and had
13 not been transferred.²³

14
15 Imputation amounts...represent the income stream or economic rent produced by this
16 regulatory asset. There has never been any WUTC approval of a transfer of the regulatory
17 asset.²⁴

18
19 Imputation has always represented the periodic, test period excess earnings and revenues of
20 the publishing affiliate as if the giving away of the regulatory asset had not occurred.²⁵

21
22 Staff describes the Commission purpose as follows:

23
24 ...the Commission established directory revenue imputations to restore, for regulatory
25 purposes, the ongoing income from directory operations that had been diverted...²⁶

26
27 ...the purpose and effect of the directory imputations is to protect ratepayers from the
28 deleterious effects of the 1984 reorganization by treating the directory revenues as if

1 20 Brosch Surrebuttal, p. 4, emphasis added.

2
1 21 Id., emphasis added.

2
1 22 Id., p. 32, emphasis added.

2
1 23 Id., p. 5, emphasis added.

2
1 24 Id, emphasis added.

2
1 25 Id., p. 7, emphasis added.

2
1 26 Selwyn Surrebuttal, p. 3, emphasis added.

1 they had never been diverted from regulated operations.²⁷

2

3 **Q. WHAT IS SIGNIFICANCE OF STAFF’S AND PUBLIC COUNSEL’S SURREBUTTAL?**

4 A. Neither Staff nor Public Counsel made these claims in earlier testimony and their testimonies are now
5 in conflict.

6

7 Staff claimed imputation was rent for intangible assets that were not transferred in 1984.²⁸ Now, the
8 purpose of imputation is to restate income as if the 1984 transfer never occurred. These positions are in
9 conflict. Imputation cannot be rent for intangible assets that were alleged to have never been
10 transferred and also be rent for the business that was allegedly “diverted,” but which the Commission is
11 pretending was not transferred.

12

13 Public Counsel claimed imputation was rent for intangible assets that were not transferred. In
14 deposition, Public Counsel admitted intangible assets were transferred.²⁹ Now, Public Counsel claims
15 imputation is rent for a regulatory asset created because the 1984 transfer was deemed unreasonable,
16 voided, and treated as if it never occurred. These positions are conflicting in the same manner as
17 Staff’s.

18

19 **Q. HAS THE COMMISSION DETERMINED THAT THE TRANSFER WAS UNREASONABLE?**

20 A. No. Public Counsel’s testimony conflicts with what the Commission stated in its orders and

1 ²⁷ Id., p. 28, original emphasis omitted, emphasis added.

2

1 ²⁸ See Inouye Rebuttal, p. 28-35, 53-56. Staff witness Strain described the effect of the imputation calculation, but Dr.
2 Selwyn testified as to the Commission’s purpose.

3

1 ²⁹ Id.

2

1 represented to the Court.³⁰ It also contradicts what Public Counsel represented as facts to the Court.³¹

2
3 The Commission determined that the 1984 transfer was not a concern and that it did not intend to
4 regulate the business or require PNB to remain in the business. What the Commission determined to be
5 unreasonable was the consideration given.³²

6
7 **Q. WHY DOES PUBLIC COUNSEL CLAIM THE TRANSFER WAS UNREASONABLE?**

8 A. The difference between the transfer being unreasonable and its consideration being unreasonable is
9 important. If the transfer was unreasonable it would fit with Public Counsel's claim that the
10 Commission pretends as if the transfer never occurred. If the transfer was reasonable, but the
11 consideration was unreasonable, it would be illogical that the purpose of imputation is intended to treat
12 the transfer as if it never occurred.

13
14 The facts are that the Commission has never determined that the 1984 transfer was unreasonable, or
15 voided it. Nowhere in what the Commission represented to the Court, and in what the Court relied
16 upon to uphold the Commission's authority, are facts to support Public Counsel. To the contrary, the
17 Commission represented and the Court upheld that the 1984 consideration was unreasonable and the
18 Commission exercised its authority to remedy the inadequate level of consideration with imputation.
19 The Commission said imputation was imposed so as to make the "full reasonable value" of the
20 directory business available for ratemaking and that "full reasonable value" was to "reflect true values
21 and market realities, as if the transfer had been an arms length transaction, with each party seeking to

1 ³⁰ At page 31 of Mr. Brosch's Surrebuttal, he also refers to the 1984 transfer as having been "ignored rather than
2 disallowed for subsequent ratemaking purposes." This comes in a response that starts with "I am not a lawyer and can
3 render no legal opinion."
4

1 ³¹ Inouye Rebuttal, p. 69-76.
2

1 ³² Id., p. 14-15, 30-32.
2

1 maximize return.”³³

2
3 It would not make sense for the Commission to pretend as if the transfer never took place when the
4 transfer itself was never a concern, only the level of consideration.

5
6 **Q. DO STAFF AND PUBLIC COUNSEL CONFUSE THE PURPOSE OF IMPUTATION WITH**
7 **THE METHOD OF ITS CALCULATION?**

8 A. Yes. The purpose of imputation is that which the Commission represented to the Court and which the
9 Court upheld. That is to remedy inadequate consideration given in the 1984 transfer. The method of
10 calculating the imputation is to add the excess revenues to U S WEST’s regulated revenues. What Staff
11 and Public Counsel attempt is to substitute the method of the calculation for the purpose imputation
12 serves. The fact that the method of calculation adds back net revenues does not mean the purpose of
13 imputation is to pretend the 1984 transfer never occurred. The purpose of imputation has been clearly
14 laid out in prior Commission orders, in representations to the Court, and by the Court.

15
16 **Q. DOES PUBLIC COUNSEL CONTEND WHAT WAS TRANSFERRED IN 1984 WAS LESS**
17 **THAN WHAT SHOULD HAVE BEEN?**

18 A. Yes. In earlier testimony Public Counsel claimed the directory publishing business had not been
19 transferred because intangible assets were not. Now, Public Counsel reverses course and claims the
20 transfer was incomplete because rights to use PNB’s name and mark and to be the exclusive directory
21 publisher should have been granted with longer terms.³⁴

22
23 **Q. IS PUBLIC COUNSEL’S CLAIM RELEVANT?**

1 ³³ Id., p. 26, 30-32.

2

1 ³⁴ Brosch Surrebuttal, p. 15.

2

1 A. No. Public Counsel's claim is off-point. As I testify in section 5 of my rebuttal testimony, ratepayers
2 are owed the "full reasonable value" of what was transferred in 1984. Regardless of whether Public
3 Counsel believes the transfer was "full" or "partial", "permanent" or "temporary," whatever was
4 transferred is what compensation to ratepayers is owed for.³⁵

5

6 **Q. IS PUBLIC COUNSEL'S TESTIMONY RELATED TO THE BUSINESS VALUE OF PNB'S**
7 **NAME AND DESIGNATION AS THE EXCLUSIVE PUBLISHER REASONABLE?**

8 A. No. In light of Mr. Brosch's deposition testimony that the values of intangible assets could not be
9 separately identified,³⁶ Mr. Brosch now gives surrebuttal that two specific intangible assets have
10 "considerable value." His deposition and surrebuttal are in conflict with each other.

11

12 **Q. DOES PUBLIC COUNSEL STILL CONTEND SKILLED EMPLOYEES, PROVEN**
13 **METHODS OF OPERATIONS, AND ESTABLISHED CUSTOMER RELATIONSHIPS**
14 **WERE NOT TRANSFERRED?**

15 A. No. Public Counsel originally claimed these intangible assets were not transferred and were rented. In
16 deposition, Mr. Brosch admitted that they were, in fact, transferred. In surrebuttal, Public Counsel
17 declines to address this conflict, but continues to claim they are rented, but in accordance with a new
18 theory.³⁷

19

20 In surrebuttal, Mr. Brosch testifies "I have consistently acknowledged." Nowhere does Mr. Brosch
21 address his inconsistency with respect to his deposition testimony. Rather, he claims a form of "rent"
22 for transferred "skilled employees." After testifying that imputation is rent for intangible assets that

1 ³⁵ Inouye Rebuttal, p. 41.
2

1 ³⁶ Deposition of Brosch, Tr.79-80.
2

1 ³⁷ Brosch Surrebuttal, p. 27-28.
2

1 were never transferred, it is a contradiction to claim that imputation is rent is for intangible assets that
2 were transferred.

3
4 **Q. DOES PUBLIC COUNSEL ALSO CLAIM THAT IMPUTATION IS RENT FOR USE OF**
5 **U S WEST ASSETS?**

6 A. Yes. In another contradiction, Public Counsel alleges imputation is rent for use of U S WEST assets
7 underlying services provided by U S WEST pursuant to the publishing agreements.³⁸ Public Counsel
8 ignores the fact that imputation did not occur until 1990. By that time, all services provided by
9 U S WEST were paid for by USWD in identifiable payments. Such payments by USWD would also
10 include payment for use of assets.³⁹

11
12 **5: FULL REASONABLE VALUE AND WHETHER RATEPAYERS HAVE**
13 **RECEIVED IT**

14
15 **Q. WHAT IS THE PURPOSE OF THIS SECTION?**

16 A. The section responds to surrebuttal testimony with respect to the “full reasonable value” and whether
17 ratepayers have received it

18
19 **Q. DOES PUBLIC COUNSEL DISPUTE THE “FULL REASONABLE VALUE?”**

20 A. Yes. In my rebuttal testimony, I demonstrated that the Commission disallowed the actual 1984
21 consideration and substituted the “full reasonable value.” I testified that it was logical that the “full
22 reasonable value” would match the timeframe and context of the 1984 consideration, i.e., 1984 and
23 consideration for the transfer of a business.⁴⁰ On surrebuttal, Public Counsel claims that this cannot be

1 ³⁸ Id., p. 32.
2

1 ³⁹ Koehler-Christensen Rebuttal, p. 10-11, 14.
2

1 ⁴⁰ Inouye Rebuttal, p. 57-58.
2

1 done because:

2

3 There is no “specific number” that Mr. Inouye can point to from the “1984 time frame”
4 that was disallowed in any Commission order. There was also no “reasonable number
5 limited to a 1984 time frame that was available to or used by the Commission in its
6 imputation orders. The fact is, Mr. Golden only created such a valuation number 15
7 years after the fact...”⁴¹

8

9 **Q. IS PUBLIC COUNSEL’S RESPONSE REASONABLE?**

10 A. Absolutely not. The disallowed “specific number” is the net book value that the Commission deemed
11 was inadequate consideration. The fact that it was not disallowed in 1984 is irrelevant.⁴²

12

13 The Commission stated that the “full reasonable value” should reflect the “true values and market
14 realities, as if the transfer had been an arms length transaction, with each party seeking to maximize
15 return” and that determination of compensation would be deferred to the next rate case. The fact that
16 the Commission has not until now determined the specific number that is the “full reasonable value”
17 did not prevent the Commission from imposing imputation to compensate ratepayers and does not now
18 prevent the Commission from determining whether imputation should end.

19

20 **Q. DOES PUBLIC COUNSEL CLAIM RATEPAYERS HAVE NOT BEEN RECEIVING THE**
21 **“FULL REASONABLE VALUE” THROUGH IMPUTATION?**

22 A. Yes. Public Counsel claims ratepayers have not received any of the “full reasonable value” because the
23 following conditions have not been met: determination of such value, payment to PNB by USWD,
24 credit of the payment to ratepayers, and Commission review of any such transaction.⁴³

1 ⁴¹ Brosch Surrebuttal, p. 31.

2

1 ⁴² Ratemaking decisions, such as disallowances, are normally reserved for rate cases and occur months or years after the
2 event. See Inouye Rebuttal, p. 65.

3

1 ⁴³ Brosch Surrebuttal, p. 13.

2

1

2 **Q. IS IT TRUE RATEPAYERS HAVE NOT RECEIVED THE “FULL REASONABLE VALUE”?**

3 A. No. Public Counsel represented to the Court that imputation compensates ratepayers for the
4 consideration that should have been given in 1984 and when imputation had been sufficient in light of
5 what fair compensation should have been, it should stop. This is an obvious admission that imputation
6 relates specifically to the 1984 fair market value of the transferred business, that imputation is
7 compensation, and that the process that ultimately ends when value received equals value transferred is
8 underway.⁴⁴ Public Counsel’s witness admits to having participated in Docket UT-950200, received
9 Court briefs, and may have assisted in the Court appeal.⁴⁵

10

11 Public Counsel’s surrebuttal is unreasonable. To represent to the Court that imputation is
12 compensation for inadequate consideration in 1984 and to invite what has become this docket, and then
13 to give testimony that no compensation has been given through imputation is wrong.

14

15 **Q. ARE REQUIRING PAYMENT FROM USWD AND PRIOR COMMISSION REVIEW OF A**
16 **SALE TRANSACTION UNREASONABLE CONDITIONS?**

17 A. Yes. As I have explained above, Public Counsel contradicts representations it made to the Court.
18 Sections 3, 4, and 5 of my surrebuttal testimony address why a “sale” is not relevant.

19

20 **Q. ARE PUBLIC COUNSEL’S TESTIMONIES IN CONFLICT?**

21 A. Yes, they are. Mr. Brosch surrebuttal is contradicted by his deposition. During deposition, Mr. Brosch
22 responded to the question, “Is it your testimony that ratepayers cannot be compensated until US West
23 Communications has first been compensated by US West Direct?”

1 ⁴⁴ Inouye Rebuttal, p. 69-76.

2

1 ⁴⁵ Deposition of Brosch, Tr.21-23.

2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

...In fact, ratepayers have been compensated without US West Communications receiving compensation through the imputation process on a periodic basis for a number of years.⁴⁶

Q. WHAT SHOULD THE COMMISSION CONCLUDE?

A. The Commission should conclude that imputation is the process under which the “full reasonable value” has been made available in ratemaking and that when the cumulative amount of directory revenue included in ratemaking equals the “full reasonable value,” imputation logically ends.

6: THE REQUIREMENT FOR PAYMENT AND VALUATION DATE

Q. WHAT IS THE PURPOSE OF THIS SECTION?

A. Public Counsel claims payment by USWD to U S WEST is required for imputation to end and that the valuation date is not 1984.⁴⁷ This section responds to that testimony.

Q. WHAT IS PUBLIC COUNSEL’S SURREBUTTAL.

A. Public Counsel testifies:

The only logical conclusion or remedy would be that imputation shall cease when USWC actually receives reasonable consideration from a true sale of the business and that consideration is credited to ratepayers.⁴⁸

To my knowledge, neither the Commission or (sic) the Supreme Court have specified any date for valuation of the directory publishing business.⁴⁹

⁴⁶ Deposition of Brosch, Tr.59.

⁴⁷ Related to that, Public Counsel claims it is unjustified that amounts owed ratepayers would be frozen at the 1984 business value. This is discussed in the next section.

⁴⁸ Brosch Surrebuttal, p. 2.

⁴⁹ Id., p. 21.

1 **Q. HAVE YOU PREVIOUSLY ADDRESSED WHETHER PAYMENT MUST BE MADE TO**
2 **U S WEST BEFORE IMPUTATION ENDS?**

3 A. Yes, in section 6 of my rebuttal testimony. I testified that payment was neither necessary nor
4 contemplated. What matters is that the “full reasonable value” was made available for ratemaking.
5 Since it has been without actual payment from USWD being made, it is illogical and would be double
6 counting to require payment and to credit that payment to ratepayers.

7

8 The facts are that the Commission sought to remedy a 1984 transaction in which property was
9 exchanged and consideration given was inadequate. The Commission remedied the situation by
10 imposing ratemaking adjustments. By definition, imputation does not require payment from USWD to
11 U S WEST. Public Counsel conceded that ratepayers have been compensated without payment being
12 made. The Company’s calculation methodology, which Public Counsel does not contest, compares
13 what has been included in ratemaking to the 1984 “full reasonable value.” Public Counsel’s continued
14 insistence that payment is a prerequisite for imputation to end is unreasonable.

15

16 **Q. DOES PUBLIC COUNSEL RESPOND TO YOUR TESTIMONY?**

17 A. No. As discussed in the previous section, Mr. Brosch does not explain the conflict between his
18 deposition testimony that ratepayers are being compensated by imputation and his surrebuttal testimony
19 that the “only” remedy is for payment to be made.

20

21 **Q. IS PUBLIC COUNSEL’S RELIANCE ON THE COURT’S ORDER REASONABLE?**

22 A. No. Public Counsel claims the Court did not prescribe a “retroactive valuation” to 1984, nor a
23 “reconciliation” of what has been included in ratemaking versus the 1984 “full reasonable value” as
24 described by Ms. Koehler-Christensen.⁵⁰ However, the question of how the “full reasonable value”

¹ ⁵⁰ Id., p. 22.

1 should be determined was not before the Court. Therefore, the fact that the Court did not prescribe the
2 details is not support for Public Counsel.

3
4 The Commission should note that Public Counsel does not address the rationale for the 1984 valuation
5 date, nor the evidence I presented to support it.⁵¹ The Commission and intervenors presented to the
6 Court the simple fact that a transaction occurred in 1984 for which inadequate consideration was given.
7 In order to protect ratepayers, the Commission disallowed the actual consideration and deemed that it
8 shall be replaced by the “full reasonable value.” In the Order in Docket No. U-86-156, the Commission
9 defined the “full reasonable value” to be that which “reflect true values and market realities, as if the
10 transfer had been an arms length transaction, with each party seeking to maximize return.”⁵² It is
11 logical that in a business transaction in which the consideration given is disputed, the reasonable
12 remedy is to substitute the fair market value at the time of the transaction. Thus, what is owed to
13 ratepayers is the 1984 fair market value of the directory publishing business.

14
15 The fact that “full reasonable value” was not determined at the time of the transaction or during the
16 intervening period as the Commission imposed imputation so as to extract compensation for ratepayers
17 does not change the fact that what is owed is the value of the directory business at the time of the
18 transfer.

19
20 **Q. DOES PUBLIC COUNSEL ATTEMPT TO DRAW THE COMPANY’S BEHAVIOR INTO**
21 **QUESTION?**

22 **A. Yes. Quite inappropriately, Public Counsel questions “why the Company has failed in recent rate cases**

1 ⁵¹ Staff never responded to the evidence I presented supporting the 1984 valuation date. Mr. Brosch claims to have no
2 knowledge of anything from the Commission. He ignores pages 26-27 of my rebuttal testimony.

1 ⁵² Inouye Rebuttal, p. 25-26.
2

1 to make the case for cessation of imputation under the theories now being advanced...⁵³ This attempt
2 to put the Company in a negative light is questionable, given that the facts upon which this case is
3 proceeding are those arguments that were advanced in part by Public Counsel and which were not
4 upheld by the Court until December 1997. U S WEST initiated this case in July, 1998. Until that time,
5 U S WEST had no knowledge Public Counsel would argue and the Court would uphold the set of facts
6 which U S WEST relies upon in this docket⁵⁴

7
8 **Q. DOES PUBLIC COUNSEL CONTEST THE FACT THAT THE DIRECTORY PUBLISHING**
9 **BUSINESS WAS REMOVED FROM REGULATED OPERATIONS IN 1984?**

10 A. No. In response to my rebuttal testimony that what matters is that directory was removed from
11 regulated operations on January 1, 1984, Public Counsel does not dispute its removal from regulated
12 operations.

13
14 **Q. IS PUBLIC COUNSEL'S CLAIM THAT IMPUTATION DOES NOT RELATE TO THE**
15 **TRANSFER ACCURATE?**

16 A. No, it is not. Public Counsel claims imputation resulted from "unreasonable Publishing Agreement
17 terms, rather than any findings and imposed payments related to the transfer of assets that occurred in
18 1984."⁵⁵ This testimony should be compared to representations Public Counsel made to the Court.
19 Public Counsel represented that "the WUTC included in rates the value of the payment or
20 compensation transferred to USWD through the imputation process."⁵⁶ Public Counsel has made the
21 same representation to the Commission:

1 ⁵³ Brosch Surrebuttal, p. 21.
2

1 ⁵⁴ See Inouye Rebuttal, p.69-76. As noted above, Public Counsel offers no surrebuttal to this testimony.
2

1 ⁵⁵ Brosch Surrebuttal, p. 23, 32.
2

1 ⁵⁶ Inouye Rebuttal, p. 72-73.
2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

...the utility has transferred away a valuable asset to an affiliated company without obtaining fair value. When the appropriate adjustment is made (i.e., when Yellow Pages revenues are imputed), there clearly is no confiscation.⁵⁷

As I stated in rebuttal testimony, imputation stems from the Commission finding that the consideration paid for the directory business was inadequate. The Commission made the “full reasonable value” available for ratemaking and stated that it was to reflect the market realities at the time of the transfer, as if the transfer had been an arms length transaction in which parties maximized their individual interests.

Public Counsel’s attempt to invoke annual publishing fees is meaningless. The controversy remains that the value given and the consideration received was out of balance. Any adjustment of publishing fees would still be justified only to the extent to remedy the imbalance between value given and consideration received.

7: WHETHER RATEPAYERS HAVE BORNE ECONOMIC RISK

Q. WHAT IS THE PURPOSE OF THIS SECTION?

A. This section responds to Staff’s and Public Counsel’s surrebuttal that ratepayers have borne the economic burden since 1984 and/or are entitled to the post-1984 growth in the value of the directory publishing business.

Q. PLEASE SUMMARIZE STAFF’S AND PUBLIC COUNSEL’S TESTIMONY.

A. Public Counsel’s surrebuttal is:

⁵⁷ Docket UT-950200, Public Counsel, TRACER Reply Brief, p. 3.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

There is no equity or justification behind arbitrarily freezing the estimated value of the business from a hypothetical sale transaction in 1984, and then pretending that periodic amounts of publishing fees and imputation since that date represent installment payments...⁵⁸

Ratepayers have remained at risk for the variability in directory revenues and income since divestiture through the imputation process and ratepayers should therefore participate in the appreciation in value of the business as compensation for assuming these risks.⁵⁹

By calculating imputation based upon actual financial results of USWD, all of the risks and expenses of directory publication were retained as jurisdictional in setting telephone rates.⁶⁰

Ratepayers have remained at risk for the changes in directory revenues and expenses and for all activities and costs incurred to improve and grow the directory business since 1984.⁶¹

Staff's testimony is:

Because no permanent transfer of ownership occurred and the directory publishing operations remained a regulatory asset of the telco after the 1984 reorganization, ratepayers are fully entitled to the increased value of the business after 1984.⁶²

...to the extent that a portion of the growth in value of the directory is the result of the use by USWD of PNB proprietary information, it is PNB – and distinctly not USWD – that maintains the ownership interest in that gain.⁶³

Staff also argues that USWD cannot claim the growth in value because it is linked to population and

1 ⁵⁸ Brosch Surrebuttal, p. 2.
2

1 ⁵⁹ Id., p. 10-11.
2

1 ⁶⁰ Id., p. 17.
2

1 ⁶¹ Id., p. 18.
2

1 ⁶² Selwyn Surrebuttal, p. 3.
2

1 ⁶³ Id., p. 3.
2

1 household growth, continued absence of competition, growth in the demand for telecommunications
2 services, and growth in EAS calling areas.⁶⁴ And, Staff claims Commission Orders left undecided the
3 extent to which USWD expenses would be attributed to regulated operations and, therefore, were not
4 removed from regulated operations.⁶⁵

5
6 **Q. HAVE YOU PREVIOUSLY ADDRESSED ECONOMIC BURDEN?**

7 A. Yes. In section 11 of my rebuttal testimony, I addressed Public Counsel’s claim as to the absence of a
8 sale and the fact that imputation relied upon the net profits of USWD. I pointed out that Public
9 Counsel’s position was inconsistent with the Commission representation to the Court that imputation
10 stemmed from the 1984 asset transfer whose consideration was disallowed and replaced by the
11 Commission with the “full reasonable value.” And, that “full reasonable value” reflected the market
12 conditions at the time of the transfer. Therefore, it makes no sense that ratepayers that continued to
13 bear the economic risk of what happened to the value of the directory business after that point in time.
14 Ratepayers have always been entitled to the 1984 “full reasonable value.” No matter how the value of
15 the directory business fluctuated after 1984, ratepayers have always been entitled to the 1984 value.
16
17 How the imputation is calculated never puts ratepayers at risk for receiving the 1984 value, it just
18 determined how quickly ratepayers received it.⁶⁶ While the calculation relies upon USWD expenses, it
19 does not follow that USWD’s expenses have been included in rates.

20
21 **Q. DOES PUBLIC COUNSEL RESPOND TO YOUR REBUTTAL TESTIMONY?**

22 A. No. Public Counsel’s surrebuttal merely repeats its original claim.

1 ⁶⁴ Id., p. 19-21.
2

1 ⁶⁵ Id., p. 21-22.
2

1 ⁶⁶ Ratepayers are not harmed by variability in the timing of how quickly they receive the “full reasonable value.” Ms.
2 Koehler-Christensen’s calculation credits ratepayers with interest at the authorized ROR.
3

1

2 **Q. WHAT IS YOUR RESPONSE TO STAFF'S SURREBUTTAL?**

3 A. Whether or not the 1984 transfer was intended to be permanent is irrelevant. Because ownership was
4 transferred in 1984 and the business was removed from regulation, ratepayers are not entitled to the
5 increase in business value. It should be recalled that when the Commission approved the transfer, it
6 stated that it was not regulating the directory publishing business nor requiring PNB to remain in that
7 business.

8

9 **Q. CAN THE COMMISSION ASSIGN ECONOMIC RISK TO RATEPAYERS?**

10 A. No. After the Commission approved the removal of the directory publishing business from regulation
11 in 1984, it could not have unilaterally re-assigned the burden of economic risk to ratepayers without
12 also requiring that the business be returned to regulated operations. No such order was ever made. The
13 mere pretending as if the 1984 transfer never happened did not re-assign economic risk to ratepayers.

14

15 **Q. WHAT IS YOUR RESPONSE TO OTHER STAFF ARGUMENTS?**

16 A. Staff claims that USWD does not deserve the increase business value because of factors beyond
17 USWD's control. The Commission should not be swayed by this plea for equity. Dr. Selwyn already
18 admitted in his deposition that he performed no analysis of the Washington directory operations or the
19 market for the period 1984 to present.⁶⁷ Dr. Selwyn has no basis to testify that any or all of the increase
20 in business value is due to the factors he cites.

21

22 **Q. DOES USE OF PNB PROPRIETARY INFORMATION ENTITLE RATEPAYERS TO THE**
23 **INCREASE IN BUSINESS VALUE?**

1 ⁶⁷ Deposition of Selwyn, Tr.24-25.

1 A. No. Staff's testimony ignores that USWD pays U S WEST for the use of proprietary information.⁶⁸

2

3 **Q. HAS THE COMMISSION RETAINED JURISDICTION OVER USWD EXPENSES?**

4 A. No. The ordering language cited by Staff⁶⁹ relates to the 1984 publishing agreement. Expenses
5 pursuant to the publishing agreement are the only expenses for which jurisdiction has been retained.
6 Staff gives the impression that they constitute the totality of USWD expenses. That is not the case and,
7 especially does not include the expenses USWD incurs to grow its business.

8

9

8: THE BUSINESS VALUATION STUDY

10

11 **Q. WHAT IS THE PURPOSE OF THIS SECTION?**

12 A. This section responds to Public Counsel surrebuttal criticizing the Company's assumption that a buyer
13 would not pay publishing fees beyond the initial three year period and the claim that it is impossible "to
14 define a meaningful value for the directory business."⁷⁰

15

16 **Q. DO YOU BELIEVE A BUYER WOULD PAY PUBLISHING FEES BEYOND THE THREE
17 YEAR TERM OF THE 1984 PUBLISHING AGREEMENT?**

18 A. No, I do not. I believe ongoing payments by a "buyer" would be limited to the services that U S WEST
19 presently provides to USWD. Those services are listed in Ms. Koehler-Christensen's testimony and do
20 include a publishing fee. As I stated in rebuttal testimony, the publishing fee was present in the
21 publishing agreement out of regulatory consideration that would not have been present in the

1 ⁶⁸ Koehler-Christensen Rebuttal, p. 10-11, 14.

2

1 ⁶⁹ Selwyn Surrebuttal, p. 23.

2

1 ⁷⁰ Brosch Surrebuttal, p. 24; see also p. 14.

2

1 alternative.⁷¹ It is appropriate to exclude them so as calculate the true value of the business.

2

3 **Q. DO YOU AGREE THAT A “MEANINGFUL VALUE” CANNOT BE ARRIVED AT**
4 **WITHOUT CORRECT ASSUMPTIONS REGARDING SIX DETERMINANTS?**

5 A. No. Other than listing six alleged “determinants” of value, Public Counsel does not state what
6 assumptions it claims should have been made or provide supporting evidence.

7

8 As I stated above, Mr. Golden’s business valuation assumed no publishing fees in order to better
9 estimate the value of the transferred business.⁷² Assuming that publishing fees would be paid for a
10 period of time or, even for the entire 15 years that have elapsed since the transfer, would be
11 unreasonable because the true value of the business would not be reflected.⁷³

12

13 Mr. Golden’s business valuation incorporates the full value of being the “official” directory publisher.⁷⁴

14 The Company’s assumption is the most favorable to ratepayers. Similarly, the financial value of the
15 right to use the PNB and U S WEST names, marks and business reputation, to receive billing and
16 collection services from U S WEST, and to receive business referrals are fully incorporated into Mr.
17 Golden’s business valuation. In each case, the Company’s assumptions are the most favorable to
18 ratepayers. Public Counsel’s claim that a meaningful value cannot be established “in the absence of
19 correct assumptions” simply ignores the fact that Mr. Golden’s valuation made the most favorable to
20 ratepayer assumptions.

1 ⁷¹ Inouye Rebuttal, p. 9, 88-89.

2

1 ⁷² Mr. Golden assumed a portion of the initial publishing fees was for services. Later publishing agreements called for
2 separate payment. In rebuttal testimony, Mr. Golden also presented an alternative case that assumed publishing fees. This
3 case also proves ratepayers have received the “full reasonable value” of the business.

4

1 ⁷³ As illustration of why it is appropriate to not assume publishing fees, if one were to assume high enough publishing fees
2 or, assume they continued long enough, the 1984 business valuation would diminish to zero.

3

1 ⁷⁴ Inouye Rebuttal, p. 87-88.

2

1

2 **Q. PUBLIC COUNSEL CLAIMS THE COMMISSION HAS DECIDED NOT TO TREAT THE**
3 **1984 TRANSFER AS A SALE. IS THAT CORRECT?**

4 A. No, it is not. U S WEST does not claim that the Commission chose to treat the 1984 transfer as the sale
5 of a capital asset, nor should Mr. Golden's business valuation be assumed to be premised upon such an
6 assumption.⁷⁵ As stated in my rebuttal testimony, the Commission decided to make the "full reasonable value"
7 available for ratemaking and defined that term to mean the "true values and market realities, as if the transfer had
8 been an arms length transaction."⁷⁶

9

10 **9: MISCHARACTERIZATIONS OF THE COMPANY'S POSITIONS AND**
11 **TESTIMONIES**

12

13 **Q. WHAT IS THE PURPOSE OF THIS SECTION.**

14 A. Staff and Public Counsel make numerous false claims about the Company's testimony. This section
15 points them out and responds to them.

16

17 **Q. DOES PUBLIC COUNSEL DISPARAGE YOUR TESTIMONY WITH RESPECT TO**
18 **TRANSFER AND SALE?**

19 A. Yes. Public Counsel claims I am

20

21 careful to characterize what happened in 1984 as a "transfer" rather than a sale so as to
22 avoid the problems associated with the conspicuous absence of any sales contract,
23 installment schedule documentation, Commission order specifying the value of the
24 business, perpetual license to use PNB/USWC intangible assets or other documentation
25 that would exist if the Company's proposals were credible.⁷⁷

1 ⁷⁵ Brosch Surrebuttal, p. 9.

2

1 ⁷⁶ Inouye Rebuttal, p. 26, 30-32.

2

1 ⁷⁷ Brosch Surrebuttal, p. 8-9.

2

1

2 **Q. IS THAT A REASONABLE CLAIM?**

3 A. No. Public Counsel's testimony is curious because it is the one claiming a "sale" has to occur. My
4 testimony is quite clear that a sale is irrelevant.⁷⁸ The transfer of the directory publishing business from
5 regulated operations is what matters. "Transfer" is what the Commission has used to describe what
6 happened in 1984.

7

8 **Q. DOES PUBLIC COUNSEL MISCHARACTERIZE THE COMPANY'S POSITION AS TO**
9 **THE SALE OF A CAPITAL ASSET?**

10 A. Yes. Referring to page 12 of the Commission's Second Supplemental Order in Docket No. U-86-156,
11 page 12, Public Counsel claims:

12

13 ...the Company is improperly attempting to recast history as if the Commission actually
14 ordered the third alternative, treating the transaction as the "sale of a capital asset."⁷⁹

15

16 Public Counsel misunderstands the Company's testimony, which is explained in sections 3, 4, and 5 of
17 my rebuttal testimony. I testified that it does not matter whether what happened in 1984 is described as
18 a transfer or a sale. What matters is what the Commission represented to the Court and which the Court
19 relied upon in upholding the Commission's authority to impute. In other words, the removal of the
20 directory business from regulated operations and the Commission's decision to make the "full
21 reasonable value," defined as "true values and market realities, as if the transfer had been an arms
22 length transaction, with each party seeking to maximize return," available for ratemaking via the
23 imputation.

24

1 ⁷⁸ See Inouye Rebuttal, p. 14-35.

2

1 ⁷⁹ Brosch Surrebuttal, p. 9.

2

1 **Q. DOES PUBLIC COUNSEL MISCHARACTERIZE YOUR TESTIMONY THAT THE END**
2 **RESULT OF EITHER A SALE OR IMPUTATION IS THE SAME?**

3 A. Yes. Public Counsel claims I suggest that the imputation has been based on fair market value or
4 installment sale and that there has been an “amortization of any implied gain on sale or any other
5 imputation of sale proceeds” and that the Commission asked to “pretend that imputation rents...now
6 represent liquidating installment for the regulatory asset...”⁸⁰ Later, Public Counsel mischaracterizes
7 my testimony as claiming that imputation took the place of amortizing the gain that would have
8 occurred in a sale.⁸¹

9
10 In no way do I suggest imputation are liquidating installment payments. “Liquidating installment” is
11 Public Counsel’s sale term. I would not use their term because I disagree with their sales testimony.
12 My rebuttal testimony is clear that the Company does not assume a sale. Imputation is the result of the
13 Commission making the “full reasonable value” of the directory publishing business available for
14 ratemaking. That is the Commission’s description.⁸²

15
16 The entire context of my rebuttal testimony on pages 33-34 is as a response to Staff and Public Counsel
17 testimony that ratepayers receive benefit when payment is made, a gain is calculated and is amortized
18 into rates. My point is that imputation achieves the same result as calculation of gain and its
19 amortization into rates. At no time have I testified that imputation has been based on fair market value,
20 as if a sale occurred, or that an amortization of an implied gain has occurred.

21
22 Public Counsel’s surrebuttal testimony that it is impossible to amortize a gain that has not yet been

1 ⁸⁰ Id., p. 6-7. See also Brosch Surrebuttal, p. 10 and 12 where it is claimed that the Company’s premise is that imputation
2 should be “recast as principal payments” and that imputation is an “installment payment.”
3

1 ⁸¹ Id., p. 19-21.
2

1 ⁸² See Inouye Rebuttal, section 4, p. 28-35.
2

1 determined, for which an amortization period has not already been set, and for which the Commission
2 would have already reflected in past rate orders misses the point. That is, imputation achieves the same
3 end result as calculation and amortization of the gain.

4
5 **Q. DOES PUBLIC COUNSEL CLAIM THAT YOU IMPLY THE 1984-1986 PUBLISHING FEES**
6 **ARE PRINCIPAL PAYMENTS ON THE “FULL REASONABLE VALUE?”**

7 A. Yes. Public Counsel is misinformed when it claims I imply that the first three years of publishing fees
8 should be principal applied against the “full reasonable value.”⁸³ My testimony at pages 28-29 is clear.
9 What should be counted against the “full reasonable value” is the directory revenues that have been
10 included in **ratemaking**. Because of the timing of rate cases and the reliance on specific test year data,
11 Ms. Koehler-Christensen’s calculation includes only the 1985 Publishing Fee, but not because it was a
12 publishing fee. It is included because the Commission included it in ratemaking.

13
14 **Q. PUBLIC COUNSEL ALLEGES THAT YOU TESTIFY THAT THE OFFICIAL PUBLISHER**
15 **STATUS WAS NOT IMPORTANT TO USWD. IS THAT ACCURATE?**

16 A. No. At page 46 of my rebuttal testimony I refer to Mr. Johnson’s testimony where he states it was put
17 in the publishing agreement for PNB’s benefit and was not important to USWD.

18
19 **Q. PUBLIC COUNSEL ALLEGES THAT YOU CLAIM THE ASSETS LISTED IN ARTICLE**
20 **XIII OF THE 1984 PUBLISHING AGREEMENT WERE TRANSFERRED? IS THAT**
21 **ACCURATE?**

22 A. No. Public Counsel claims it makes “no sense for PNB to be granting a right to use certain assets if
23 those assets had, as Mr. Inouye claims, already been transferred to USWD.”⁸⁴ Article XIII lists the

1 ⁸³ Brosch Surrebuttal, p. 13.

2

1 ⁸⁴ Id., p. 32.

2

1 right to use PNB's name and marks, I state at page 44 of my rebuttal testimony that PNB's name and
2 mark was licensed, not transferred.

3

4 **Q. DOES STAFF MISCHARACTERIZE YOUR TESTIMONY ON PUBLISHING FEES?**

5 A. Yes. Citing pages 57 and 58 of my rebuttal testimony, Staff claims:

6

7 Mr. Inouye infers that all of the publishing fees...since 1984 must be construed as
8 "consideration."⁸⁵

9

10 Staff then states it is "astonishing" that I would make such a claim because Mr. Golden:

11

12 ...expressly relied upon representation by USWC's management that part of the
13 publication fees paid by USWD to USWC during 1984-1988 were precisely the type of
14 rental payments that I have described.⁸⁶

15

16 Staff is confused. As I stated above, at no time have I claimed that all publishing fees count against the
17 "full reasonable value." At page 35 of my rebuttal testimony I stated that what counts against the "full
18 reasonable value" is what was included in ratemaking. Ms. Koehler-Christensen's calculation relies
19 only upon the 1985 publishing fee because it was included in ratemaking.

20

21 **Q. IS STAFF'S ATTEMPT TO CLAIM THAT U S WEST IS THE SOURCE FOR THE**
22 **CONTROVERSY OVER TANGIBLE AND INTANGIBLE ASSETS MISDIRECTED?**

23 A. Yes. Staff claims that the distinction between tangible and intangible assets was made by the Company
24 and cites Mr. Golden's valuation study. The Commission should keep in mind that the distinction Staff
25 and Public Counsel drew was that intangible assets were not transferred, constitute most, if not all, of
26 the value of the business, and were rented to USWD. The mere mention of tangible and intangible
27 assets in Mr. Golden's exhibit does not relieve Staff and Public Counsel from the burden of supporting

1 ⁸⁵ Selwyn Surrebuttal, p. 24-25.

2

1 ⁸⁶ Id, footnote deleted.

2

1 their claims about intangible assets.

2

3 **Q. STAFF CRITICIZES YOUR TESTIMONY BECAUSE YOU SUPPOSEDLY FAIL TO**
4 **RECOGNIZE THAT SOME PORTION OF PUBLISHING FEES AND IMPUTATION**
5 **SHOULD BE ATTRIBUTED AS RENT. IS THAT CRITICISM VALID?**

6 A. No, it is not. Ms. Koehler-Christensen reduced the 1985 Publishing Fee by an estimate of the portion
7 that relates to rent and payments for services. With respect to the years in which imputation was in
8 effect, services provided by U S WEST were paid for by USWD. No rent was attributable. Neither
9 Staff, nor Public Counsel, challenges this aspect of Ms. Koehler-Christensen's estimate or
10 methodology.

11

12 **Q. STAFF CLAIMS THE 1984 PUBLISHING AGREEMENT CONTRADICTS YOUR**
13 **TESTIMONY. IS THAT TRUE?**

14 A. No. Staff relies upon provisions in the 1984 publishing agreement that call for rent for the use of PNB
15 assets to produce customer lists, the right to publish, and use of PNB's name and marks and the
16 provision of certain other services. Staff claims "a portion of the annual imputation or payment must
17 necessarily be attributable to fees for such services."⁸⁷ As I stated above, during the time imputation
18 was imposed, services provided pursuant to the publishing agreement were paid for by USWD in
19 separate payments.⁸⁸ Therefore, no portion of imputation should be attributable to rent.

20

21 With respect to the exclusive right to publish, I address that in my rebuttal testimony at pages 87-88.

22 To claim that a portion of imputation should be rent for the exclusive right to publish ignores that

23 U S WEST included its value, to the extent it existed in 1984, in the business valuation. Staff's

1 ⁸⁷ Selwyn Surrebuttal, p. 26-27.

2

1 ⁸⁸ Ms. Koehler-Christensen Rebuttal, p. 4-14.

2

1 surrebuttal testimony would have the Commission double count whatever value it may have.

2
3 With respect to the use of PNB's name and marks, that use has stopped.

4
5 **Q. DOES PUBLIC COUNSEL OFFER TESTIMONY ON A MATTER IT HAS NO**
6 **RECOLLECTION OF?**

7 A. Yes. Mr. Brosch responds to two citations in section 13 of my rebuttal testimony. His response is
8 significant for the fact that he is mistaken in his belief that I refer to his UT-950200 testimony. Section
9 13 demonstrates that Public Counsel testimonies in UT-950200 and representations to the Court are at
10 odds with its testimonies in this docket.

11
12 In surrebuttal testimony, Mr. Brosch alleges no contradiction with respect to the terms "publishing
13 right" and the "right to be the official publisher" that he mistakenly attributes to his UT-950200
14 testimony. What Mr. Brosch is confused about is that those terms on pages 69-70 of my rebuttal
15 testimony are from Public Counsel's Reply Brief in UT-950200. In his deposition, Mr. Brosch was
16 asked whether he assisted his clients during the court appeal of the UT-950200 Order. His response
17 was "perhaps" he was involved in telephone conversations, but he could recall no significant amount of
18 work.⁸⁹ In Mr. Brosch's haste to resolve conflicts in his testimony reveals his willingness to give an
19 opinion for what he indicated in deposition he has little recollection of.⁹⁰

20
21 **10: OTHER STATE ORDERS AND TESTIMONIES**
22

1 ⁸⁹ In his deposition, Mr. Brosch testified that "perhaps" he was involved in telephone conversations, but could not recall
2 any significant amounts of work" in connection with his clients' appeal of UT-950200. (Deposition of Brosch, Tr.23)

3
1 ⁹⁰ Mr. Brosch also testified in deposition that he read Public Counsel's Reply Brief. However, in response to a request for
2 all documents regarding UT-950200 in his possession, Mr. Brosch indicated he did not have a copy. Deposition of
3 Brosch, Tr.23; Public Counsel Supplemental Response to U S WEST Data Request No. 1, attached as CTI-5.
4

1 **Q. WHAT EVIDENCE DID YOU PROVIDE IN YOUR REBUTTAL TESTIMONY WITH**
2 **RESPECT TO OTHER STATE COMMISSION PROCEEDINGS AND TESTIMONIES?**

3 A. In section 14 of my rebuttal testimony, pages 77-84, I presented evidence to support the point that other
4 state commission and courts have consistently concluded that the directory publishing business was
5 transferred on January 1, 1984. Not once has a state commission concluded that the business had not
6 been transferred because a “sale” did not occur or that intangible assets were never transferred and are
7 being rented. I also present evidence that Public Counsel’s witness has given conflicting testimony in
8 other states.

9

10 **Q. IN SURREBUTTAL TESTIMONY, DOES STAFF REBUT YOUR TESTIMONY?**

11 A. No.

12

13 **Q. IN SURREBUTTAL TESTIMONY, DOES PUBLIC COUNSEL REBUT YOUR TESTIMONY?**

14 A. Public Counsel offered rebuttal only to my description of the conflicting testimony by its witness in
15 Arizona and Utah.

16

17 **Q. WHAT IS MR. BROSCHE’S RESPONSE?**

18 A. With respect to his Arizona testimony, Mr. Brosch states:

19

20 The Company had raised none of the issues...that are presented in this case, so there was
21 no reason to distinguish between the particular assets that were transferred, given away,
22 retained...or licensed under the Publishing Agreement.⁹¹

23

24 **Q. DOES MR. BROSCHE ADDRESS THE CONTRADICTION?**

25 A. Absolutely not. It is nonsensical for Mr. Brosch to claim he testified in Arizona that all directory assets,

¹ ⁹¹ Brosch Surrebuttal, p. 33.

1 operations, revenues, and income were transferred from regulation because the Company had not raised
2 an issue that would have caused him to testify differently.

3
4 **Q. WHAT EXPLANATION DOES MR. BROSCHE GIVE FOR HIS UTAH TESTIMONY?**

5 A. Mr. Brosch states that he testified as he did because there was no “need to create an elaborate verbal
6 rationalization to support the conclusion that imputation was clearly equitable in the judgment of the
7 various state commissions.”⁹²

8
9 **Q. DOES MR. BROSCHE’S SURREBUTTAL EXPLAIN THE CONFLICT WITH HIS UTAH
10 TESTIMONY?**

11 A. Yes, although maybe not as Mr. Brosch intended. His response admits that if an “elaborate verbal
12 rationalization” had been necessary to support the Utah imputation, he would have testified to a
13 different set of facts. Thus, instead of testifying that a directory publishing business had been
14 transferred, he would have testified as he is doing in Washington to the opposite. Instead of testifying
15 that all directory operations, assets, and liabilities had been transferred, he would have testified as he is
16 doing in Washington to the opposite.

17
18 **11: HOW ANY RESIDUAL SHOULD BE TREATED**

19
20 **Q. WHAT IS THE PURPOSE OF THIS SECTION?**

21 A. In section 15, pages 85-86, of my rebuttal testimony, I proposed how any residual “full reasonable
22 value,” assuming one is determined, should be accounted for. Public Counsel took issue with the
23 proposal. This section is my response.

24

¹ ⁹² Id., p. 34.

1 **Q. IS PUBLIC COUNSEL'S OPPOSITION TO CREDITING THE RATE BASE REASONABLE?**

2 A. No. Crediting the rate base conforms to the Commission's accounting rules and would be fair, as Staff
3 observed in its testimony.⁹³

4

5 **Q. IS PUBLIC COUNSEL CORRECT THAT NO AMORTIZATION PERIOD IS PROPOSED?**

6 A. No. My proposal to spread the credit across the plant accounts has the effect of amortizing the credit
7 over the plant lives of the plant accounts.

8

9 **Q. IS PUBLIC COUNSEL CORRECT THAT RATEPAYERS RECEIVE ONLY 15 CENTS ON**
10 **THE DOLLAR?**

11 A. No. Public Counsel refers to the single year effect on revenue requirements and under-estimates it at
12 that. The fact is that my proposal would cause the credit to flow back to ratepayers over the life of plant
13 accounts. Thus, ratepayers would receive the entire credit, plus interest at the authorized ROR.

14

15 **Q. DOES THIS CONCLUDE YOUR REJOINDER TESTIMONY?**

16 A. Yes, it does.

17

1 ⁹³ Testimony of Strain, p. 9; Selwyn Deposition, Tr.71-72.

The attached pages for the depositions of Michael Brosch and Lee Selwyn are cited in Carl Inouye's rejoinder testimony.

Deposition of Michael Brosch
Deposition of Lee Selwyn

Page No.:

Page No.:

21

25

22

71

23

72

79

80