

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 In Re Petition of)
4 US WEST COMMUNICATIONS, INC.,)
5) DOCKET NO. UT-980948
6 for a Declaration Order Ending) VOLUME XI
7 Imputation of Revenues Derived) Pages 235 - 395
8 from Transferred Yellow Pages)
9 Publishing Business.)

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9
10 A hearing in the above matter was held on
11 July 26, 1999 at 9:30 a.m., at 1300 South Evergreen
12 Park Drive Southwest, Olympia, Washington, before
13 Administrative Law Judges ROBERT WALLIS and
14 LAWRENCE BERG, Commissioners RICHARD HEMSTAD,
15 WILLIAM R. GILLIS and MARILYN SHOWALTER.

16
17 The parties were present as follows:

18 US WEST COMMUNICATIONS, INC., by DOUGLAS N.
19 OWENS, Attorney at Law, 1325 Fourth Avenue, Suite 940,
Seattle, Washington 98101.

20 US WEST COMMUNICATIONS, INC., by LISA A.
21 ANDERL, Attorney at Law, 1600 Seventh Avenue, Suite
3206, Seattle, Washington 98191

22 THE WASHINGTON UTILITIES AND TRANSPORTATION
23 COMMISSION by GREGORY J. TRAUTMAN, Assistant Attorney
24 General, 1400 South Evergreen Park Drive Southwest,
Post Office Box 40128, Olympia, Washington 98504.

25 TRACER, by ARTHUR A. BUTLER, Attorney at Law,
Ater Wynne, LLP, 601 Union Street, Suite 5450, Seattle,
Washington 98101.

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1 AARP, by RONALD L. ROSEMAN, Attorney at Law,
2011 14th Avenue East, Seattle, Washington 98112.

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3 THE PUBLIC, by SIMON J. FFITCH, Assistant
Attorney General, 900 Fourth Avenue, Suite 2000,
Seattle, Washington 98164.

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24 Kathryn T. Wilson, CCR

25 Court Reporter

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

2 JUDGE WALLIS: The hearing will please come
3 to order. This is a hearing before the Washington
4 Utilities and Transportation Commission in Docket No.
5 UT-980948 involving a petition of U S West
6 Communications, Inc. for a declaratory order ending
7 imputation. This hearing is being held in Olympia,
8 Washington on July 26th, 1999, before the
9 Commissioners, the Chair of the Commission, and
10 Administrative Law Judges Lawrence Berg and Robert
11 Wallis. This hearing is for the purpose of dealing
12 with issues raised in the petition of U S West.

13 Let's begin with having counsel introduce
14 themselves, state their formal appearance for the
15 record and begin with the petitioner, U S West.

16 MS. ANDERL: Thank you, Your Honor. Lisa
17 Anderl representing U S West Communications, Inc. My
18 business address is 1600 Seventh Avenue, Room 3206,
19 Seattle, Washington, 98191.

20 MR. OWENS: Douglas N. Owens, attorney at
21 law, 1325 Fourth Avenue, Suite 940, Seattle,
22 Washington, 98101, also appearing on behalf of U S West
23 Communications, Inc.

24 JUDGE WALLIS: For the Commission staff?

25 MR. TRAUTMAN: Greg Trautman, assistant

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1 attorney general for Commission staff. My business
2 address is 1400 South Evergreen Park Drive Southwest,
3 Post Office Box 40128, Olympia, Washington, 98504.

4 MR. FFITCH: Simon ffitch, assistant attorney
5 general for Public Counsel, office of the Attorney
6 General of Washington, 900 Fourth Avenue, Suite 2000,
7 Seattle, Washington, 98164.

8 MR. BUTLER: Arthur A. Butler for TRACER.
9 Office address is 601 Union Street, Suite 5450,
10 Seattle, Washington, 98101-2327.

11 MR. ROSEMAN: Ronald Roseman representing
12 AARP. My address is 2011 14th Avenue East, Seattle,
13 Washington, 98112.

14 JUDGE WALLIS: The Company is calling as its
15 first witness Mr. Carl Inouye. I would like to state
16 the exhibits that have been presented for use and for
17 possible use in conjunction with Mr. Inouye's testimony
18 for the record.

19 Exhibit 101-T is his direct testimony and
20 witness qualifications. 102-T is his rebuttal
21 testimony. Exhibit 103 is his Exhibit CTI-1. Exhibit
22 104 is his Exhibit CTI-2. Exhibit 105 is CTI-3.
23 Exhibit 106 is CTI-4. Exhibit 107-T is his Rejoinder
24 Testimony. Exhibit CTI-5 is identified as Exhibit 108
25 for identification. Exhibit CTI-6 is marked as Exhibit

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1 109 for identification.

2 In addition, some documents have been
3 submitted for possible use on cross-examination.
4 Again, if these are not offered in conjunction with the
5 examination, the documents will disappear from our
6 lists in as much as they have not been offered and
7 cannot be considered by the Commission. I'm marking at
8 Exhibit 110 for identification a document consisting of
9 the Application of PNB in Docket FR-83-159 filed
10 December 22, 1983 and substitute pages filed December
11 23, 1983. Marking as Exhibit 111 for identification,
12 the document designated as the Application of PNB in
13 Docket No. FR-83-159 filed October 19, 1984. Exhibit
14 112 for identification is the Publishing Agreement
15 between PNB and U S West Direct dated November 24,
16 1986, to be effective January 1, 1987; and Exhibit 113
17 for identification is U S West's response to Data
18 Request WUTC 05-042.

19 At this point, I'm going to ask the witness
20 to rise and raise his right hand.

21 (Witness sworn.)

22 JUDGE WALLIS: With that, Ms. Anderl?

23 MS. ANDERL: Thank you.

24

25

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DIRECT EXAMINATION

1

2 BY MS. ANDERL:

3

Q. Good morning, Mr. Inouye. Will you please
4 state your name and business address for the record?

5

A. My name is Carl Inouye. I work for U S West
6 Communications. My business address is 1600 Seventh
7 Avenue, Room 3006.

8

Q. Have you prepared and filed direct, rebuttal
9 and rejoinder testimony in this docket?

10

A. Yes, I have.

11

Q. Do you have those documents before you that
12 have been marked as Exhibit 101-T through 109 inclusive
13 as previously identified by the administrative law
14 judge?

15

A. Yes.

16

Q. Do you have any changes or corrections to
17 make to any of your testimony?

18

A. Yes. I have several small changes, if I
19 could.

20

Q. Go ahead and do that, please.

21

A. First of all, on my rebuttal testimony, if
22 you would turn to Page 20 -- these are all very small
23 changes. In the footnote at the bottom of the page, it
24 is Footnote No. 32, second sentence starts, "recall
25 that in earlier." If you would strike the word "in,"

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1 the first time it appears in that sentence.

2 JUDGE WALLIS: I'm going to interrupt at this
3 point and ask if there are any other merely grammatical
4 changes that the witness defer those. If there are any
5 changes of substance, you can address those.

6 THE WITNESS: There is one that was
7 previously submitted as a revision to my testimony on
8 Page 24 of my rebuttal. I don't know if you would want
9 me to list that one.

10 JUDGE WALLIS: Let's be off the record.

11 (Discussion off the record.)

12 THE WITNESS: If you would please turn to
13 Page 24 of my rebuttal testimony, Line 24, up
14 two-thirds of the way through the line, the words "does
15 matter," should read "does not matter."

16 Q. Mr. Inouye, are there other substantive
17 changes or corrections that you need to make?

18 A. Yes. There is one other in my rejoinder
19 testimony. Without this change, it doesn't make any
20 sense. If you would turn to Page 6.

21 JUDGE WALLIS: That's Exhibit 106-T for
22 identification?

23 THE WITNESS: Yes. On Line 19 at the end of
24 that line, the words "to hold" should be stricken, and
25 that is all.

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1 JUDGE WALLIS: Very well.

2 Q. (By Ms. Anderl) Mr. Inouye, with those
3 changes and corrections, is your testimony true and
4 correct?

5 A. Yes.

6 Q. If I were to ask you the questions contained
7 in those testimonies today, would your answers be the
8 same?

9 A. Yes.

10 MS. ANDERL: Your Honor, I would move the
11 admission of Exhibits 101-T through 109 and tender the
12 witness for cross-examination.

13 JUDGE WALLIS: Is there objection to the
14 exhibits? Let the record show there is none. Those
15 exhibits are received and the witness is available for
16 examination. Mr. Trautman?

17

18 CROSS-EXAMINATION

19 BY MR. TRAUTMAN:

20 Q. Good morning, Mr. Inouye. I'd like to start
21 by just referring to the exhibits marked as 110, 111,
22 and 112. 110 is the Application of PNB to the
23 Commission in Docket FR-83-159. Do you have that?

24 A. Yes, I do.

25 Q. Is this a true and accurate Application that

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1 PNB filed with the Commission?

2 A. As far as I can tell, yes.

3 Q. Likewise, with the Exhibit 111, which is the
4 Application dated October 19, 1984, is that likewise a
5 true and accurate Application that PNB filed?

6 A. I believe so.

7 Q. And is the Publishing Agreement between PNB
8 and U S West Direct dated November 26th to be effective
9 January 1st, 1987, is this a true and accurate copy of
10 that Publishing Agreement?

11 A. I believe so.

12 MR. TRAUTMAN: I would move for the admission
13 of Exhibits 110, 111, 112.

14 MS. ANDERL: Subject to the previously stated
15 objection with regard to Exhibit 112, no other
16 objection.

17 JUDGE WALLIS: Those exhibits are received
18 and again, noting counsel's objection.

19 COMMISSIONER HEMSTAD: What is that
20 objection?

21 MS. ANDERL: Your Honor, we had raised an
22 objection in the form of the motion to strike that be
23 filed previously to really any testimony or evidence
24 regarding a valuation date other than January 1, 1984,
25 and we renewed that during the prehearing conference

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1 this morning. I asked the administrative law judges if
2 we could have a standing objection as opposed to having
3 to restate it each time an objectionable exhibit or
4 cross question came in.

5 JUDGE WALLIS: The Commission has deferred
6 its decision on the merits of that until post-hearing
7 process.

8 Q. (By Mr. Trautman) Could you go first to
9 Exhibit CT-1 which is 101-T, and it's your witness
10 qualifications.

11 A. Yes.

12 Q. I'm looking specifically now during the
13 period 1982 to 1987. What was your position and what
14 were your job responsibilities with the Company for
15 each of those years?

16 A. As best I can recall, in 1982, I came back to
17 the Company from AT&T and was the manager in charge of
18 long-term financing and financial studies. That would
19 pretty much encompass projects that were assigned to me
20 of varying subjects. I can't remember exactly how long
21 I was in that job, but eventually, I believe around
22 1984 or 1985, I was promoted to be a district manager.
23 Part of the duties involved separations, separations
24 testimony on separations policy. The bulk of that
25 responsibility was financial planning, issues around

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1 divestiture of a general finance projects and topics.
2 Beginning in 1980, I think that would have
3 gone for the entire term up until 1987.

4 Q. Were you personally involved in the events
5 leading to PNB's 1983 Application to the Commission in
6 Docket FR-83-159?

7 A. No, I was not.

8 Q. Were you personally involved in the events
9 leading to the 1984 Publishing Agreement?

10 A. No, I was not.

11 Q. Were you personally involved in the events
12 leading to the 1987 Publishing Agreement?

13 A. It depends on what you mean "personally
14 involved." I did supervise an individual who worked on
15 that, on the change from the 1987 what -- I believe it
16 was the 1987. It could have been the 1988. It's hard
17 for me to recall which one.

18 Q. Who was that person?

19 A. Mr. Jim Zaikoski.

20 Q. What was his position?

21 A. He reported to me, and at the time was
22 working on a project around the directory publishing
23 fee.

24 Q. Do you have any recollection of what you did
25 in reviewing the work with Mr. Zaikoski?

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1 A. My recollection is we had discussions. I may
2 have reviewed documents. I can't recall.

3 Q. Could you refer now to your rejoinder
4 testimony, which is Exhibit 107-T?

5 A. Yes.

6 Q. I'm looking now at Page 3, Line 17 to 18 and
7 also on Page 5, Line 6. The term does come up in
8 several other instances, and my question is you refer
9 several times in your testimony to the transfer of the
10 directory business or directory publishing business.
11 What do you mean by the use of the term "transfer"?

12 A. What I refer to is the transfer of the
13 business from regulated operations. Regulated
14 operations I'm referring to are that of Pacific
15 Northwest Bell.

16 Q. So what does it mean to transfer?

17 A. It left the company.

18 Q. You have no further amplification on what you
19 mean by that?

20 A. Well, what I've said in my testimony is a
21 business as you would define a business. The
22 employees, the operations, were moved from Pacific
23 Northwest Bell at that time to an unregulated affiliate
24 called U S West Direct.

25 Q. Staying on Page 3 at Lines 25 to 26, you

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1 state that ownership of the directory business was
2 transferred from PNB to U S West Direct, which was
3 Landmark Publishing, on January 1st of 1984.

4 A. Yes.

5 Q. Is payment for the business in question a
6 necessity prerequisite to ownership of it?

7 A. I think the issue here is over the amount of
8 payment. There is certainly payment made, and the
9 dispute is over whether the payment was adequate or
10 not. The payment in this case was the 21 percent stock
11 ownership of U S West Direct.

12 Q. What was the value of that stock?

13 A. I believe the value of that stock is what
14 we're debating over in this docket. What was the value
15 of the business that was transferred at the time.

16 Q. You do not know what the value of the stock
17 that was transferred?

18 A. No, do I not know what the value of the stock
19 was, other than the fact that we are now attempting to
20 make that determination in this docket.

21 Q. Could you refer to the part of the
22 Application that describes what that value would be in
23 the 1983 Application?

24 A. If you would turn to Exhibit 110 on Page 2,
25 at the bottom it says "Directory Application." Page 2,

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1 Paragraph 3 is the only explanation at the time of the
2 21 percent share of stock. Now, there is a figure in
3 there, actually there is two figures in there,
4 24,101,000 and also the figure 23,522,946. Those have
5 generally been referred to as the book value of the
6 assets that were transferred. I would not represent to
7 you that's the value of the stock, 21 percent share of
8 stock, but those are the numbers that were and the
9 facts that were stated in the Application.

10 Q. Why was that not the value of the stock?

11 A. I think that the Court has now held that it
12 was part of the Commission in its holding that the
13 value of the business that was transferred at that time
14 is greater than the net book value of the assets.

15 Q. Did the Company not believe that was the
16 value of the stock?

17 MS. ANDERL: Excuse me. I would object. The
18 question is vague. What was the value of the stock.
19 You said, did the Company not believe that --

20 MR. TRAUTMAN: That 23 million was the value
21 of the stock.

22 THE WITNESS: Well, I'm sorry sir. I'm not
23 quite sure how to answer you. I believe the Company in
24 past proceedings before this Commission has taken
25 positions that the Court has not upheld and has upheld

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1 the position of the parties including the Commission
2 that the business was worth more than its notebook, and
3 that is why we're here, to determine what the value was
4 at that time.

5 Q. But at the time of the transfer, the
6 23-million-dollar value is the only dollar value that
7 we see in the Application; is that correct?

8 A. That's correct.

9 Q. Turning to Page 4?

10 A. Which exhibit?

11 Q. This is Page 4 of Exhibit 107-T, your
12 rejoinder testimony. On Footnote 8, you state, "I use
13 transfer of the directory publishing business and
14 transfer of ownership synonymously." Do you believe
15 there is no difference in the meaning of those two
16 phrases?

17 A. My footnote refers to the fact that my usage
18 in the testimony is to refer to both at the same time
19 rather than to state in my testimony every time
20 thereafter that when I refer to the transfer I'm
21 referring to the ownership also.

22 Q. So is that a yes or a no to my question?

23 A. I'm not making a representation that those
24 two terms are the same. I was clarifying the meaning
25 of my footnote in my testimony.

00253

1 Q. So if they are not the same, why do you say
2 you are using them synonymously if they mean different
3 things?

4 A. I did not say they are the same, sir.

5 Q. I'm asking you, do you believe there is no
6 difference in the meaning of those two phrases?

7 A. I would believe that that is generally the
8 case. When you transfer a business, you transfer the
9 ownership, yes.

10 Q. So there is no such thing as a transfer. It
11 would be something other than a transfer of ownership?

12 A. It seemed to me it wouldn't. If you're
13 transferring a business to someone else, you're
14 transferring the ownership of that business too, or
15 else it's not a transfer.

16 Q. How does one become the owner of something
17 that they didn't own before?

18 A. You know, I'm not an attorney. I can't tell
19 you what constitutes ownership. I've been advised by
20 counsel that in this state, ownership is the use of
21 that -- actually, there is, I believe, a footnote in my
22 testimony that happens to be Footnote 6 right above
23 Footnote 8. I think in this particular situation of
24 what we're -- what is the subject of this docket, the
25 fact that there was a transfer and an exchange of

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1 stock, which is generally considered to be proof of
2 ownership.

3 Q. You said you're not an attorney, but you have
4 testified at length that the ownership of the business
5 was transferred; is that correct?

6 A. Yes.

7 Q. So you are qualified to testify on that
8 topic.

9 A. I am qualified to look at the facts that
10 there was stock given in exchange for this. Stock is
11 generally indication of ownership.

12 Q. If one was not the owner of something, and
13 they now were to become the owner, I could imagine that
14 one could sell something to another party, or one could
15 give it to another party. They might sell something
16 over time. Can you describe some other way to confirm
17 ownership?

18 A. What are the two that you just said?

19 Q. Sale with payments over time or gift.

20 A. Generally, what you've just described is
21 possession transfers from one person to another.

22 Q. Can you think of any other method of
23 confirming ownership other than sale or gift?

24 A. You can have proof of ownership, such as
25 stock. Stock is generally considered to be ownership

00255

1 in the business world.

2 Q. But the stock you would either have to buy it
3 or it would have to be given to you.

4 A. That's correct, or in exchange for.

5 Q. In exchange for what?

6 A. In exchange for possession of the business.

7 Q. Something of equal value?

8 MS. ANDERL: Your Honor, I'll object.

9 Counsel is not letting the witness finish his answer.

10 JUDGE WALLIS: Let's let the witness finish
11 the answer. Mr. Inouye have you finished your response
12 to the question?

13 THE WITNESS: I was interrupted. I'm not
14 sure.

15 JUDGE WALLIS: Could the reporter read back
16 the question, please?

17 (Question and Answer on Page 255, Lines 5
18 through 7, read by the reporter.)

19 Q. (By Mr. Trautman) I was simply asking
20 whether the exchange would be something of equal value?

21 A. I think in this case, the dispute here is
22 over the level of consideration that was given, whether
23 it was reasonable or unreasonable. Certainly, in 1984
24 there was an exchange, the business and exchange for
25 the 21 percent share of stock ownership. Whether or

00256

1 not it was reasonable or not is the subject of this
2 docket.

3 Q. Turning to Page 4 of Exhibit 107-T, on Lines
4 5 to 6 you state that it is not relevant whether the
5 1984 transfer was intended to be permanent or not; is
6 that correct?

7 A. Could I ask you for the page number again?

8 Q. Page 4 of 107-T, the rejoinder testimony, and
9 I'm looking at the question starting on Line 5, and the
10 answer on Line 6?

11 MS. ANDERL: Counsel, your pagination, I
12 think, is different from ours.

13 JUDGE WALLIS: Let's be off the record,
14 please.

15 (Discussion off the record.)

16 Q. Referring to that testimony, is it your
17 position that there was a permanent transfer of
18 ownership of the directory publishing business?

19 A. The answer is yes, on the basis that in 15
20 years, there has not been a transfer back.

21 Q. Turning to what is Page 5 on my version but
22 probably not on yours, of Exhibit 107-T, and I'm
23 referring to the section that speaks first of Staff's
24 claim about crucial elements, and then the following
25 question, and my question is, do you agree that PNB

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1 retained ownership of the exclusive right to publish,
2 the right to use PNB's names and marks and access to
3 subscriber lists?

4 A. In part, yes, and in part, I cannot agree
5 with it. Let me explain. I agree that PNB retained
6 ownership of its name and its mark. I agree that PNB
7 maintained ownership of the operations that generates
8 the customer listings, which are then sold to U S West
9 Direct, as well as all other Yellow Page providers.

10 Mr. Trautman asked me if I agreed that PNB
11 retained the ownership of the exclusive right to
12 publish. It seems to me that what we're talking about
13 here that's been labeled the exclusive right to publish
14 is really the right to be PNB's official directory
15 publisher, and yes, I agree that PNB retains the right
16 to make that designation. As I've said in, I believe,
17 my rebuttal testimony, the right to be the exclusive
18 publisher or directory publisher is somewhat a misnomer
19 because it implies that you have a right to exclude
20 others from the market. I don't think that anybody has
21 that right.

22 Q. I believe I have the correct pagination now.
23 Turning to Page 11 of Exhibit 107-T. At the top of the
24 page, you state that Staff had not stated in testimony
25 prior to surrebuttal that the purpose of imputation was

00258

1 to restate income as if the 1984 transfer had never
2 occurred; is that correct? I'm reading from the
3 quotation and then the following sentence.

4 A. I'm still not with you. The quotation at the
5 top of the page.

6 Q. The quotation at the top of the page, which
7 is a carryover from Page 10. It says, "Staff describes
8 Commission purpose as follows:the Commission
9 established directory revenue imputations to restore,
10 for regulatory purposes, the ongoing income from
11 directory operations that had been diverted....
12 the purpose and effect of the directory imputations is
13 to protect ratepayers from the deleterious effects of
14 the 1984 reorganization by treating the directory
15 revenues as if they had never been diverted from
16 regulated operations." Do you see that?

17 A. Yes.

18 Q. Then you state that neither Staff nor Public
19 Counsel made these claims in earlier testimony.

20 A. Yes.

21 Q. My question is, are you not stating that
22 Staff had not indicated in prior testimony that the
23 purpose of imputation was to restate income as if the
24 1984 transfer had never occurred?

25 A. Yes.

00259

1 Q. And could you turn to the responsive
2 testimony of Ms. Strain that is Exhibit 701-TC. This
3 portion is not confidential, and please turn to Page 4.

4 A. I'm there.

5 Q. Starting on Line 3, does the testimony not
6 state, "In the case of U S West-C, the imputation
7 adjustment in effect recombines the operating results
8 of U S West-C and U S West Dex and shows what
9 U S West-C's revenue requirement would look like if the
10 transfer of directory operations had not occurred.

11 A. Yes. That is a statement of a method of the
12 imputation. It's not a statement as to the purpose of
13 the imputation.

14 Q. So you see a difference.

15 A. Yes, I do. I explained in my testimony that
16 Staff and Public Counsel are confusing -- they are
17 trying to represent the method of the imputation, which
18 I agree is to, in effect, pretend as if the transfer
19 never occurred for the purpose of the imputation for
20 which the Commission represented to the Court was to
21 remedy inadequate consideration that was given in 1984.

22 Q. I now am going to make some references to the
23 Second Supplemental Order in Docket U-86-156. I have
24 not originally passed these out. There was
25 Attachment C to the Company's petition for a

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1 declaratory order ending imputation, but I do have
2 copies here because I do imagine not everyone would
3 have that in front of them.

4 MR. TRAUTMAN: May I approach the witness?

5 JUDGE WALLIS: Does the witness need a copy?

6 MS. ANDERL: I believe so.

7 Q. (By Mr. Trautman) And in referring to this
8 Order, and this is the Second Supplemental Order in
9 Docket U-86-156, and the service date is October 12th,
10 1988. Could you please direct me to the specific
11 portion of that Order that refers to imputation?

12 MS. ANDERL: Your Honor, I certainly can't
13 speak for whether the witness can do this maybe more
14 quickly than I can, but it does seem unfair to present
15 this witness with a Commission Order that he was not
16 aware he was going to be asked questions on. It's not
17 all that long, but certainly Mr. Trautman knows which
18 section deals with imputation and could direct the
19 witness to that section if, in fact, he wants to ask
20 questions about it.

21 JUDGE WALLIS: I'm content that the question
22 was permissible, the areas within one that the witness
23 is here to address, and if the witness has trouble and
24 would like assistance from counsel, the witness may ask
25 for it.

00261

1 Is the witness able to answer the question?
2 I notice you're no longer looking at the source
3 document.

4 THE WITNESS: I'm looking for the reference
5 where I made into this Order in my rebuttal testimony
6 and have not been able to find it, but I will say I
7 believe in my rebuttal testimony I can provide the
8 Commission with a correct citation in my rebuttal
9 testimony where I testify that in the Commission, in
10 its Order in Docket 950200 made reference to the fact
11 that the imputation was to make the full reasonable
12 value of the directory operations when it was
13 transferred in 1984 available for ratemaking, and then
14 in reference to this particular Order in U-86-156 for
15 the definition of what full reasonable value meant, and
16 if the Commission would turn to Page 12 of the Second
17 Supplemental Order in U-86-156, and the second full
18 paragraph on that page, which begins at the top of the
19 paragraph where it says, "The public interest requires
20 that the full reasonable value of the directory
21 publishing enterprise be deemed available to PNB for
22 ratemaking purposes. The remedy selected to achieve
23 this goal should, as far as possible, reflect true
24 values and market realities as if the transfer" --
25 referring to the 1984 transfer -- "had been an

00262

1 arms-length transaction with each party seeking to
2 maximize return."

3 That is the portion which I have referred to
4 in my testimony and noted at that portion in my
5 rebuttal testimony that that is the portion which the
6 Commission referenced in its 950200 Order when it said
7 that imputation reflected the full reasonable value.

8 Q. So this is the portion of the Order U-86-156,
9 the Second Supplemental Order, that refers to
10 imputation?

11 A. Yes. I'm not saying it's not the only one,
12 but this is the specific one I've relied upon in
13 reference to my testimony.

14 Q. Turning to your rebuttal testimony, 102-T, on
15 my pagination it's on Page 28. I'm looking at the
16 question that says, "What does the Company believe
17 happened in 1984?" Do you see that?

18 A. Yes, I do.

19 Q. And then you have an answer to that question.
20 Is that statement based upon your personal knowledge in
21 1984?

22 A. No. It's my testimony based on the reading
23 of the documents I'm referring to. I think I testified
24 earlier I was not directly involved in the 1984
25 dockets.

00263

1 Q. Is this statement a statement of what the
2 Company now believes happened in 1984, or is the
3 statement saying that the Company in 1984 believed that
4 this is what happened in 1984?

5 A. Well, if you would refer to my rebuttal
6 testimony in the same Exhibit, 102-T, on Page 2, where
7 I've stated that the Company's position in this docket
8 is based upon the representations that the parties and
9 the Commission made to the Court upon which the Court
10 ruled upon, we do not want to relitigate our positions
11 that the Court did not uphold in this docket.

12 So if you're asking me, is this now the
13 Company's position or did we have another position at
14 some other point in time, yes, I'm sure we had another
15 position at some other point in time. The Court ruled,
16 however, that the facts ruled upon a set of facts which
17 we are adopting in this docket. We do not want to
18 relitigate the facts as represented to the Court and
19 that this Court relied on.

20 Q. When did this statement become the Company's
21 assertion of what it believed happened in 1984. At
22 what time did this statement become the Company's
23 current position?

24 A. When we filed this, the petition in this
25 docket. As I said, we are accepting the facts as was

00264

1 recommended to the Court and which the Court upheld.

2 Q. And prior to this time, did the Company have
3 a different belief of what happened in 1984?

4 A. Specifically, are you referring to this
5 portion or just generally?

6 Q. I'm referring to this particular answer.

7 A. I believe that there are elements of what
8 I've stated in the response to this question which the
9 Company has not previously taken a position on because
10 it did not believe in the set of facts that was
11 represented to the Court. At other points, though, for
12 instance, as to the imputation -- let's see here.

13 This statement at the top of Page 29,
14 inclusion in rates of anything related to the transfer
15 directory publishing business from January 1st, 1984,
16 logically offsets against the full reasonable value, I
17 believe we've in prior proceedings, we've taken a
18 different position as to what imputation has
19 represented.

20 Q. Staying on Page 28 of Exhibit 102-T, you
21 state that the value for purposes of compensation
22 became fixed at the fair market value of the directory
23 publishing business in 1984; correct?

24 A. Yes.

25 Q. Where does the Order in Docket U-86-156 say

00265

1 this?

2 A. Well, as I explained in my testimonies, when
3 the Commission gave definition to the term "full
4 reasonable value," it said the remedy selected to
5 achieve this goal should, as far as possible, reflect
6 true values and market realities as if the transfer had
7 been arms length.

8 I believe I've testified and my testimony is
9 that when one reads this statement, which gives
10 definition to the term, "full reasonable value," it is,
11 in my opinion, there is no question it is referring to
12 the 1984 value. There are certain key things here.
13 For instance, it says, "as if the transfer had been."
14 It's not talking about a future transfer as Public
15 Counsel and Staff is insisting has to occur. It's
16 talking about the transfer that has already occurred,
17 which can only be the 1948 transfer. When it's talking
18 about market realities as if the transfer had occurred,
19 to me it can only be referring to the market realities
20 of 1984, not to some future transfer date.

21 Q. Do you agree that the Order does not contain
22 the statement that you had in your testimony? This is
23 your interpretation of the Order.

24 A. My testimony is what it is. The statement,
25 the past tense here, the fact that the Court has ruled

00266

1 that imputation is a remedy for a transaction in which
2 there was unreasonable consideration given that you
3 rectify or you remedy something, a transaction that
4 occurred in 1984, you logically remedy that by
5 considering the fair market value at the time of the
6 transaction.

7 It feels logical to me that you would remedy
8 consideration for a 1984 transaction trying to use a
9 1999 market value. When there is a dispute over the
10 value or consideration given, it's, as far as I know,
11 the market value at the time of the transaction, not
12 some future market value. That is what I'm referring
13 to.

14 Q. So again, this is your interpretation?

15 A. That is my interpretation, yes, of what is
16 here, but it seems pretty clear to me.

17 Q. On Page 29 of your rebuttal, you state that
18 imputation is the direct result of the full reasonable
19 value being available for ratemaking. It is logical
20 that its cumulative value offsets or reduces the full
21 reasonable value; is that correct?

22 A. Yes.

23 Q. If the sum of the imputations is already more
24 than the full reasonable value, does that mean that
25 U S West Communications owes U S West Direct for the

00267

1 difference?

2 A. Could you repeat that question?

3 Q. You've stated that it is logical that the
4 cumulative value of the imputation offsets or reduces
5 what you call the full reasonable value. My question
6 is, if the sum of the imputations is already more than
7 the full reasonable value, does that mean that U S West
8 Communications owes U S West Direct for the difference?

9 A. No.

10 Q. Why isn't that a logical implication?

11 A. On the one hand, you're talking about the
12 cumulative value of imputation, which is something that
13 the Commission has imposed upon U S West Communications
14 the regulated company. That is, in essence, a
15 rate-making benefit that had been given by the
16 Commission to the ratepayers. The fact that more
17 benefit has been given to the ratepayers than fair
18 consideration was, in 1984, doesn't to me -- I don't
19 see a connection between requirement for U S West
20 Communications to make a payment to U S West Direct.

21 Q. On Page 12 of the Second Supplemental Order
22 in Docket U-86-156, the Commission states -- and this
23 would be the last full paragraph. It says, "If, as the
24 evidence appears to show, PNB and U S West-D intended a
25 permanent transfer of the Yellow Pages, treatment as a

00268

1 sale may be most appropriate." Do you see that?

2 A. Yes.

3 Q. At what point in time would U S West's
4 failure to record the transaction as a sale translate
5 into an assumption that the parties did not intend a
6 permanent transfer?

7 A. Could you repeat that question?

8 Q. At what point in time does U S West's failure
9 to record the transaction as a sale translate into an
10 assumption that the two parties did not intend a
11 permanent transfer?

12 MS. ANDERL: Objection, calls for a legal
13 conclusion.

14 MR. TRAUTMAN: I would just say it would seem
15 to be well within the witness's stated area of
16 expertise. He's testified at length as to the meaning
17 of the Order.

18 JUDGE WALLIS: It appears to be the within
19 the scope of his testimony.

20 THE WITNESS: Quite frankly, I don't
21 understand the question that you're asking me. Could
22 you repeat it one more time?

23 Q. Well, your answer could be no. The question
24 is, at what point in time does U S West's failure to
25 record the transaction as a sale translate into an

00269

1 assumption that the two parties did not intend a
2 permanent transfer; never?

3 A. I'm sorry. The question to me does not seem
4 to make any sense. I've not testified as to the
5 Company not intending to a permanent transfer. I think
6 that what appears in documents clearly says that at
7 some point in time the Company had the option to
8 reenter the directory business. I don't think --

9 Q. I believe you said whether there was an
10 intention for a permanent transfer was irrelevant?

11 A. Yes, I did, on the basis that the transfer in
12 the past 15 years has -- regardless of what was
13 intended, the transfer occurred. The change in
14 ownership occurred, and consideration is held. That's
15 why I said, regardless of the intent of the parties is
16 irrelevant.

17 What is important for the Commission's
18 consideration is that a transfer of the business did,
19 in fact, occur in 1984, and consideration the Court has
20 held is held for that, reasonable consideration at the
21 time of the transfer or what would have been reasonable
22 consideration at the time.

23 Q. Is it the Company's position that U S West
24 could have come before this Commission 25 years from
25 now or 50 years from now, rather than today, and had an

00270

1 irrevocable right to have the directory publishing
2 business valued as of 1984?

3 A. If I understand your question, you're asking
4 me, could the Company at some future time come --

5 Q. They came in today. They came in last year,
6 1998, and you said that valuation date is 1984. My
7 question is what if the Company had come in year 2020,
8 for example, and said the valuation date is 1984, and
9 that's the only proper valuation date, would the
10 Company make that claim?

11 A. It might. It would seem to me to be
12 reasonable given what the Court has ordered. For
13 instance, if we came in in 1998 and filed this
14 petition, what if we would come in 1999 and filed the
15 petition, it seems to me that the facts underlying this
16 case are still the same.

17 Q. Now, at the time that the January 1st, 1984,
18 transfer of assets to Landmark Publishing, which was
19 U S West Direct's predecessor, at that time did the
20 Company present a valuation of the direct rate
21 publishing to the Commission?

22 A. In 1984, the answer is no.

23 Q. Is it the Company's position that at the time
24 of the application for authority for the 1984
25 transaction that PNB intended to the

00271

1 13.7-million-dollar payment from U S West Direct -- and
2 that's the portion referred to in Ms.
3 Koehler-Christensen's testimony as being the Washington
4 value of the book assets. Did PNB intend that that
5 13.7-million-dollar payment from U S West Direct would
6 be the full amount of compensation required for the
7 transfer of the directory business's assets?

8 A. I think the answer to that is no, based upon
9 the fact that there was publishing fees that were
10 called for in the initial Publishing Agreement.

11 Q. So were the publishing fees intended to be
12 compensation in the sense of payment for the assets
13 received?

14 A. Yeah. I can't tell you that Staff and Public
15 Counsel have alleged that the Company claims they are
16 payment. The Publishing Agreement at the time says
17 that they are subsidy.

18 Q. Are you saying you don't know what the
19 purpose of those publishing fee payments were?

20 A. The answer is no, I do not. I do not know.
21 I cannot tell you what they were intending to be. I
22 can tell you that in the Publishing Agreement, it calls
23 for additional payments. They were referred to as
24 subsidies, I believe. They may have been referred to
25 as other things.

00272

1 In this docket, we are not claiming that they
2 are payments. We have consistently stated in our
3 testimonies that for purposes in this docket, it is
4 what has been included in ratemaking. It just happens
5 to be that one of the years of the publishing fees in
6 1985 was relied upon for ratemaking, and so we have
7 included it.

8 Q. Let me ask you, I'm going back to 1984, and
9 again, the question was whether the 13.7-million-dollar
10 payment was intended to be the full amount of
11 compensation. Now, you indicated now that you don't
12 know whether publishing fees were or not. So assuming
13 that publishing fees were not intended by PNB in 1984
14 to be compensation, how else did U S West Direct intend
15 to compensate PNB for the acquisition of the business?

16 A. Well, I believe I stated that the publishing
17 fees were intended on being some form of something.
18 Subsidies was what it was referred to, but what I have
19 objected to is the claim that we're taking the position
20 that publishing fees was compensation for the value.

21 JUDGE WALLIS: I think the witness is
22 straying from the question that was asked. I'm going
23 to ask the witness to focus on the question that's
24 asked and respond to the question. And if it calls for
25 a yes or a no answer, an "I don't know," then that

00273

1 should be your response rather than going onto another
2 topic.

3 THE WITNESS: Okay.

4 (Recess.)

5 Q. (By Mr. Trautman) And I believe I had asked
6 the question of whether in 1984 the publishing fees
7 were intended by PNB to be compensation for the
8 transfer of the business, and your answer was....

9 A. I believe that that was the intent, yes,
10 although I do not know for a fact what the individuals
11 were who decided that those payments would be made,
12 what they themselves saw it as or would agree that it
13 was compensation.

14 Q. If the publishing fees in 1984 were intended
15 as compensation for the fair market value of the
16 business, how did the parties determine the magnitude
17 of those fees if they didn't know the total value that
18 needed to be paid off by U S West Direct?

19 A. I don't believe that those individuals
20 believe that it was compensation for the fair market
21 value. I believe generally that they believed it was
22 compensation in some form but did not have in mind the
23 fair market value.

24 Q. We know that there was approximately, I
25 believe, 23 million dollars in cash that was

00274

1 transferred, so what value are you referring to? So
2 the publishing fees were payment for some form of
3 compensation, and it wasn't the fair market value,
4 which you've equated with the full reasonable value, so
5 what was it?

6 A. I believe what the documents at the time
7 stated was that it was meant to preserve approximately
8 the same level of contribution that was being made by
9 the directory operations at that time. Let me clarify
10 that: Contribution to revenue requirements.

11 Q. So was it compensation for the assets that
12 were transferred?

13 A. Well, the document states -- and I've stated
14 in my rebuttal testimony -- publishing fees were
15 included in the Publishing Agreements at the time of
16 the regulatory considerations, and the particular
17 consideration was to leave in place what the Company
18 believed was a reasonable level of contribution, a
19 contribution in relation to revenue requirements.

20 Q. I'm still not clear whether it was intended
21 at all, this compensation for the transfer of the
22 assets, or for any portion.

23 A. A moment ago, I stated that I did not believe
24 that the Company had in mind the fair market value of
25 the business that was transferred in 1984. They were

00275

1 trying to preserve the level of contribution in rate
2 cases or revenue requirements.

3 Q. How would you explain then that if you turn
4 to Exhibit 110, which is the Application of PNB that
5 was filed in 1983 -- if you would turn to Exhibit D, I
6 believe this was also filed by Ms. Koehler-Christensen
7 on Page 5. There it describes the publishing fees --

8 COMMISSIONER HEMSTAD: Would you describe
9 where we are?

10 MR. TRAUTMAN: We are on Exhibit 110, which
11 is the Application, and then you have to flip back
12 about two thirds of the way through to Exhibit D, which
13 is a multipage exhibit, and then turn to Page 5.

14 Q. (By Mr. Trautman) On Page 5, it states that
15 the compensation for this arrangement is paid for the
16 right to use the listings, the exclusive right to
17 publish the exchange directories and the exclusive
18 right to produce directories bearing the name,
19 trademarks and trade names of PNB, so given this
20 statement of the purpose of the publishing fees, were
21 they compensation for the assets transfer?

22 A. First of all, you left out the phrase the
23 compensation for this arrangement preserves a
24 significant contribution from Yellow Page revenues to
25 PNB's earnings.

00276

1 Q. It does say that.

2 A. That's what I was referring to from the
3 standpoint of preserving contribution in rate cases
4 against the revenue requirements of the Company.

5 Q. Are you stating it was not paid for the
6 various rights that were listed?

7 A. No, I'm not making that statement. The
8 statement here is what it says. It says it was to
9 preserve and to be paid for the right to use the
10 listings, which, incidently, at that point in time was
11 not in the form of a separate payment but which after,
12 I believe, 1986, was a separate payment. Excuse me,
13 I've lost track of what your question was.

14 Q. My question was whether the publishing fees
15 were intended to pay for the value of the assets
16 transfer.

17 A. I've said that I don't believe that the
18 people who made the decision to pay publishing fees had
19 in mind compensation for the fair market value of the
20 business that was being transferred. They were
21 attempting to leave in place what amounts to as, I
22 think you've indicated, as compensation.

23 JUDGE WALLIS: Let me interject and ask the
24 witness what gives rise to your belief about the
25 intention of the participants in the documents?

00277

1 THE WITNESS: At the time in 1984, I was in
2 the finance department. As I have stated, I was
3 basically in a financial planning function. While I
4 was not party to the decisions that were made, I was
5 certainly party to the discussion that was held on an
6 after-the-fact basis, meaning in the December time
7 frame, December, January, and as to why publishing fees
8 were being made, why the transfer was being done, it's
9 like I would not represent to you that I was a decision
10 maker, but I was there privy to the discussions as to
11 what intent -- what was happening and what was it
12 intended to do, and my understanding is that the
13 publishing fees grew out of regulatory considerations
14 because the Company knew that regulatory commissions
15 would have a concern, and they attempted to leave in
16 place a level of contribution in rate cases.

17 JUDGE WALLIS: Thank you.

18 Q. (By Mr. Trautman) So I believe now you've
19 said that the publishing fees were not intended as
20 compensation for the assets transfer.

21 A. I've agreed that they were compensation.
22 What I've testified to is I don't believe at the time
23 the individuals who made this decision had in mind that
24 they would be compensation for the fair market value of
25 the business. They were clearly intending it to be

00278

1 some sort of compensation.

2 Q. So when you say "some sort of compensation,"
3 do you mean compensation for the particular rights that
4 were articulated on Page 5 of Exhibit D?

5 A. Yes.

6 Q. Did the Company view 13.7 million dollars as
7 fair compensation in 1984?

8 A. I don't believe so, given that publishing
9 fees were written into the contract.

10 Q. But those were compensation for the
11 particular items enumerated in the Publishing
12 Agreement; is that correct?

13 A. That's correct, but this also includes
14 keeping a level of contribution for rate case purposes.

15 Q. I'm talking about compensation for the
16 business that was transferred. Was that meant to be
17 compensation for any portion of that?

18 A. I believe so.

19 Q. So were those items that were articulated on
20 Page 5 of Exhibit D, are those items, those are parts
21 of the business, the ownership which was transferred?

22 A. I believe when you look at the language, the
23 last sentence of the whole paragraph, first whole
24 paragraph on Page 5 where it says, "Compensation for
25 this arrangement preserves a significant contribution

00279

1 for Yellow Page revenues to PNB's earnings and is paid
2 for the right to use." That is a statement that they
3 are saying, This is compensation for the business and
4 these rights.

5 Q. And my question was, were those three rights,
6 are those parts of the business of which you claim
7 ownership passed to U S West Direct in 1984?

8 A. I'm sorry. Just give me a second here. Paid
9 for the rights to use the listings. Your question is,
10 is that part of the directory business? The listings,
11 a portion of the business that creates the listings was
12 retained by PNB, so the answer, I believe, to your
13 question is no.

14 That portion of the business remained with
15 PNB. The exclusive right to publish is, as I've stated
16 in my testimony, is a right of PNB and was retained by
17 PNB. It was not transferred, and the third is
18 exclusive right to produce directories bearing the
19 name, trademark, and trade names. Again, that was a
20 right that was licensed by PNB, was not a right or the
21 ownership of was not transferred to U S West Direct.

22 Q. Is it correct that the Company now estimates
23 fair compensation for the business to be somewhat over
24 234 million, using Ann Koehler-Christensen's exhibits?

25 A. I'd have to check that number up. I don't

00280

1 have it committed to memory. You're referring to
2 Mr. Golden's estimates which Ms. Koehler-Christensen
3 had determined the Washington portion; is that correct?

4 Q. I'm asking whether that portion which is in
5 the range of 234 million to 260 some million,
6 approximately, is what the Company is now claiming as
7 fair compensation for the business?

8 A. Yes.

9 MR. TRAUTMAN: I'm now going to hand out some
10 excerpts from the U S West rate case, and the portions
11 I'm handing out have to do with the arguments on Yellow
12 Pages.

13 JUDGE WALLIS: Let's be off the record.

14 (Discussion off the record.)

15 Q. (By Mr. Trautman) I've handed you a copy of
16 excerpts from the Commission's Fifteenth Supplemental
17 Order in the U S West rate case, which was Docket
18 UT-950200, and I've copied those sections that pertain
19 to imputation, and as you analyze that, I believe you
20 can see that the Company there made 18 different
21 arguments of why imputation was invalid as a matter of
22 law. Do you see that? The arguments are numbered.

23 A. Yes, I do.

24 Q. I'm turning now to your rejoinder testimony
25 on Exhibit 107-T. I'm looking at Page 24, and the

00281

1 question said, "Have you previously addressed economic
2 burden?" And I'm skipping down to the last two lines of
3 the first paragraph, and there you state, "Ratepayers
4 have always been entitled to the 1984 full reasonable
5 value. No matter how the value of the directory
6 business fluctuated after 1984, ratepayers have always
7 been entitled to the 1984 value." Do you see that?

8 A. Yes.

9 Q. How can you reconcile the prior positions of
10 the Company regarding imputation? Namely, that if
11 imputation was always invalid, per se, for legal
12 reasons, any of these 18 that were cited, then how
13 would the Company have insured that the ratepayers
14 receive the value to which you agree they have always
15 been entitled?

16 MS. ANDERL: Your Honor, I have to object at
17 this point. It certainly seems to me that counsel is
18 attempting to engage in a legal analysis and discussion
19 with this witness. In addition to the question is
20 objectionable, I believe it's argumentative, but
21 certainly to the extent that it calls for the lay
22 witness to give a legal analysis or opinion reconciling
23 the Company's previous legal positions in a case in
24 which it did prevail with his testimony today, I
25 believe it's an objectionable question.

00282

1 MR. TRAUTMAN: I didn't intend it to be
2 argumentative, and certainly, the witness has testified
3 at length about the Supreme Court Order and the rate
4 case, and he's made numerous excerpts from them and
5 what he believes they mean and what the Company's
6 position on those are from a policy perspective, and
7 his credentials indicate, I believe, he's been a
8 financial advocate since 1987, and he has indicated a
9 familiarity with this area.

10 JUDGE WALLIS: I'm going to rule that this
11 witness's testimony does involve an analysis of legal
12 documents and how they affect the Company and the
13 Company's policies. The witness has testified at some
14 length about that, and we will understand that he is
15 not a lawyer and is not testifying as a legal expert in
16 making these statements. I don't believe the question
17 is argumentative and the witness may respond.

18 THE WITNESS: Could I ask you to just repeat
19 the last sentence of your question?

20 Q. (By Mr. Trautman) I don't recall exactly. I
21 was referring to your rejoinder testimony.

22 A. Yes.

23 Q. Which you said ratepayers have always been
24 entitled to the 1984 full reasonable value. Now, given
25 the Company's arguments on imputation -- and I'm not

00283

1 asking you to determine whether they legally are or are
2 not correct, but assuming as an advocate for the
3 Company that they were correct, and the Company was
4 putting forth those arguments, the question is, if
5 imputation was always invalid for legal reasons, how
6 would the Company have insured that the ratepayers
7 receive the value to which you agree they have always
8 been entitled?

9 A. Now, if I'm understanding your question
10 correctly, you're asking me to assume that the
11 Company's legal position was valid and upheld by the
12 Court; is that correct?

13 Q. What I'm asking you is that you stated that
14 the asset to the full reasonable value to which they
15 have always been entitled has been made by imputation;
16 is that correct?

17 A. Well, first of all, I believe that you've
18 misrepresented my testimony. My testimony is premised
19 missed upon the representations that the Commission
20 made to the Court and that the Court upheld, and that
21 is, in particular, that the fair market value or what
22 the Commission termed as a full reasonable value is
23 owed to the ratepayers. That is the underlying premise
24 of my testimony. You're asking me, it seems, to assume
25 a different set of facts; i.e., that the Company's

00284

1 legal arguments accidents were upheld or hold true.

2 Q. Well, let me ask you this: You state
3 ratepayers have always been entitled to the 1984 full
4 reasonable value; is that correct?

5 A. Yes.

6 Q. Is that a correct statement of the Company's
7 position?

8 A. That is a correct statement premised upon the
9 Court's holding that the Commission has the authority
10 to remedy the 1984 transfer.

11 Q. Did the Company previously have a position
12 that the ratepayers were not always entitled to the
13 1984 full reasonable value?

14 A. Yes.

15 Q. Yet even with that assumption, the
16 imputations have always been intended to be counted as
17 offsetting a full reasonable value to which the
18 ratepayers were not entitled.

19 A. I'm sorry, but I can't answer your question
20 because you're mixing and matching things here. My
21 testimony, again, is premised upon the Court's holding
22 that the ratepayer is owed the 1984 full reasonable
23 value. If you're asking me to assume a different set
24 of facts, then my testimony would not be the same.

25 Q. Did U S West briefs, in either the 1995 rate

00285

1 case, either to the Commission or the Courts ever
2 characterize imputation as payment or an offset for the
3 reasonable value of the transferred business?

4 A. I don't believe so.

5 Q. So your statement that ratepayers have always
6 been entitled to the 1984 full reasonable value was
7 strictly conditioned on what the State Supreme Court
8 ruled?

9 A. Yes.

10 Q. And I'd like you to turn to the State Supreme
11 Court decision in the U S West rate case, and I have
12 made copies of pages that deal with the Yellow Pages.

13 If you would turn first to Page 98. Looking
14 at the second paragraph, the last sentence, do you see
15 the Court says, "The record shows the Company has
16 always been free to sell the business for a fair
17 value."

18 A. Yes, I do.

19 Q. If it was free to do so at the time of the
20 ruling, isn't it true that the Company to date has not
21 sold the business for a fair value?

22 A. The answer is yes. I don't think that we're
23 disputing there has never been a sale at fair value.

24 Q. Could you turn to Page 89 of the same
25 opinion, and if you look at the first full paragraph

00286

1 starting, "The Commission did explain," and the Court
2 there is referring to the Commission's Order, the
3 Second Supplemental Order in Docket U-86-156, and that
4 has a quotation from that, and do you agree there that
5 the Court says in the first full paragraph, "The
6 Commission did explain in that Order that a fair
7 contract between the Company and its affiliate for the
8 sale" -- italicized by the Court -- "of the asset would
9 put an end to any imputation of revenues."

10 A. Yes, I see that.

11 Q. Could you now turn to what's been marked as
12 Exhibit 113. This is U S West's response to WUTC Data
13 Request 05-042.

14 A. Yes.

15 Q. Can you speak for U S West Communications
16 regarding this exhibit?

17 A. Yes.

18 Q. Is it correct that the Company has no
19 documentation other than the testimony of Mr. Johnson
20 and the 1983 Application filed in Cause FR-83-159
21 regarding the initiation of the transfer of directory
22 publishing from PNB to U S West Direct?

23 A. Yes.

24 MR. TRAUTMAN: I'll move for the admission of
25 Exhibit 113.

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MS. ANDERL: No objection.

JUDGE WALLIS: Exhibit 113 is received.

MR. TRAUTMAN: I have no further questions.

JUDGE WALLIS: Mr. ffitch?

MR. FFITCH: Your Honor, I'm prepared to go ahead, but if you'd like to consider the possibility of a lunch recess before beginning with additional cross.

JUDGE WALLIS: Let's be off the record for a moment.

(Discussion off the record.)

JUDGE WALLIS: In a brief procedural discussion, we've determined to take our noon break right now, and we will return to the record at 1:00 p.m.

(Lunch recess at 12:00 p.m.)

00288

1 AFTERNOON SESSION

2 1:05 p.m.

3 JUDGE WALLIS: Mr. ffitch, we're going to
4 take up cross-examination with you at the moment, and
5 I'm going to ask if you could pull the microphone
6 closer to you so that we will be assured we will hear
7 you.

8 MR. FFITCH: Thank you, Your Honor. Good
9 afternoon, Your Honor and Commissioners.

10

11 CROSS-EXAMINATION

12 BY MR. FFITCH:

13 Q. Good afternoon, Mr. Inouye. I'm Simon ffitch
14 with the Public Counsel section representing the public
15 and telephone company customers today, and as I
16 mentioned, I think my questioning will be perhaps a bit
17 shorter so as not to just cover things that were
18 covered again this morning, so maybe that will give you
19 some consolation. I apologize; my voice seems to be
20 fading on me, so I will stick close to the mike.

21 First I would like to draw your attention to
22 your rebuttal testimony on Page 3, and I'm going to ask
23 you to look at Lines 3 through 8.

24 JUDGE WALLIS: Exhibit 102-T, Mr. ffitch?

25 MR. FFITCH: May I have a moment, Your Honor,

00289

1 I'll pull out my exhibit list. That is Exhibit 102-T.

2 Q. Mr. Inouye, would you agree that the
3 statement that you make there in Lines 3 through 8 is
4 at the heart of U S West's position in this proceeding?

5 A. Yes.

6 JUDGE WALLIS: Let's go off the record for
7 just a minute.

8 (Discussion off the record.)

9 JUDGE WALLIS: The witness responded to the
10 question; is that correct?

11 MR. FFITCH: In fact, perhaps it would be a
12 little bit more inclusive, Mr. Inouye, if your
13 statement would include Lines 2 through 8. Would that
14 be fair to say.

15 A. Yes.

16 Q. And again, those statements are at the heart
17 of U S West's position in this proceeding?

18 A. I believe that's a fair representation.

19 Q. At Line 4, you refer to the Commission's
20 decision to disallow the actual 1984 consideration and
21 substitute for it the full reasonable value of the
22 business that was transferred in 1984; do you not?

23 A. Yes.

24 Q. Now, I'm going to ask you to take a look at
25 the first Order that I've referred to, the Commission

00290

1 Order in Docket FR-83-159, that's Appendix A to the
2 Application. That is the Order dated December 30th,
3 1983. Do you have that?

4 A. Yes, I do.

5 Q. I'm going to ask you to turn to Page 3 and
6 look at the ordering paragraphs and just review those.

7 A. (Witness complies.)

8 Q. If you look at the ordering paragraphs, isn't
9 it correct that what this Order does is to authorize
10 the transfer of assets at a book value of 23.5 million
11 dollars in exchange for .21 share of the sole Landmark
12 Publishing Company stock?

13 A. Yes.

14 Q. Is that actual consideration?

15 A. By "actual consideration," you're referring
16 to the 21 percent share of stock, or are you referring
17 to the net book value? Are you referring to this share
18 of stock, of the .21 share of stock or the net book
19 value of assets or are you referring to both?

20 Q. At Line 4 on Page 3 of your rebuttal
21 testimony, you use the phrase "actual 1984
22 consideration."

23 A. Yes.

24 Q. Is this consideration referred to in
25 Paragraph 1 of the Commission's '83 Order actual

00291

1 consideration the actual consideration referred to in
2 your rebuttal testimony?

3 A. Yes, it is.

4 Q. And again, that was authorized by the
5 Commission, was it not?

6 A. Yes.

7 Q. And there is nowhere in this paragraph where
8 the Commission states it disallows that consideration,
9 is there?

10 A. That's correct in this particular Order.

11 Q. It's your position that that consideration
12 was disallowed at some later point by the Commission?

13 A. Yes.

14 Q. Could you direct me to an order of this
15 Commission which disallows the consideration or
16 discussed in this ordering paragraph?

17 A. If you turn to my Exhibit 102-T, Page 30 --

18 Q. I'm sorry. I'm asking you for a reference in
19 a Commission Order, not a reference to your testimony.
20 I believe you testified in answer to a previous
21 question of mine that the Commission disallowed this
22 consideration referred to in Paragraph 1 of the 1983
23 Order. I've asked you to point me to a place in a
24 Commission decision where that disallowance is stated.

25 A. Your question to me, are you representing my

00292

1 testimony on Page 3 when I testify the Commission's
2 Order in December of 1984 disallowed the actual
3 consideration? If you are, that is not my testimony,
4 sir.

5 Q. I've asked you a question as a direct
6 follow-up to your statement moments ago that the
7 Commission disallowed this actual consideration with
8 respect to the Landmark stock, and you indicated that
9 it did do so at a later time, and I've asked you for
10 that citation, and you are now looking for it, and I
11 would still like an answer to my question.

12 A. I was attempting to answer your question,
13 sir.

14 JUDGE WALLIS: If the witness does not know
15 the answer, that's an appropriate response.

16 THE WITNESS: I wanted to direct the
17 Commission's attention to Page 30 of my testimony where
18 I've quoted the Commission's words to the Court.

19 MR. FFITCH: Your Honor, this is
20 non-responsive. If the witness's counsel would like to
21 get into this area, perhaps on redirect, I've asked a
22 very direct question in response to a fairly
23 categorical answer, and I'd like to have the witness
24 respond.

25 JUDGE WALLIS: If the witness would respond

00293

1 to the question, please.

2 THE WITNESS: I'm sorry. I seem to be
3 confused. You're asking me to direct you to a
4 Commission Order?

5 Q. (By Mr. ffitich) That's correct.

6 A. I don't believe I testified that a Commission
7 Order disallowed. My testimony is based upon the
8 representation the Commission made to the Court where
9 it said that it disallowed the actual consideration.

10 Q. Is that your answer?

11 A. Yes, it is.

12 Q. Then let's go back again and look at the 1983
13 Order. Was there any other consideration disallowed in
14 this Order?

15 A. No, I don't believe so.

16 Q. And one of the subjects of this Order was the
17 Publishing Agreement; isn't that true?

18 A. Yes.

19 Q. And that Publishing Agreement was not
20 approved in this Order, was it?

21 A. I don't believe so. I'm not -- just is
22 second.

23 Q. Would you agree --

24 A. I would agree that it was not approved.

25 Q. Sorry. I didn't mean to step on your answer.

00294

1 Wouldn't you agree that this 1983 Order actually
2 authorizes the transfer of assets as described in
3 Paragraph 1 at book in exchange for the Landmark stock,
4 and defers a decision on the publishing agreement?

5 A. Yes.

6 Q. Just to refresh your memory again on this
7 line of questioning going back to your statement in
8 your rebuttal on Page 3 at Lines 3 through 8 that there
9 was a Commission decision to disallow actual 1984
10 consideration and substitute for it the full reasonable
11 value of the business transferred in 1984. I'm just
12 reminding you that's the testimony there, is it not?

13 A. Yes.

14 Q. Can you show me a place in this 1983 Order
15 where you believe the Commission stated or made a
16 decision to substitute the full reasonable value of the
17 business transferred in 1984 for a disallowed
18 consideration?

19 A. There is no decision in this 1983 Order.

20 Q. Now I'd like to direct your attention to the
21 next order, which is Appendix B to your application.
22 It is the 1985 Order in this same docket, the Fourth
23 Supplemental Order, and I take it from your prior
24 testimony that you would not be able to identify in
25 this Order any disallowance of the actual consideration

00295

1 given in the 1984 transfer?

2 A. There is nothing in the ordering paragraph.

3 Q. Can you point to anything in the ordering
4 paragraphs where the Commission is saying that it's
5 going to substitute the full reasonable value of the
6 assets transferred for the actual consideration
7 disallowed?

8 A. Just for my clarification, you're referring
9 to the Order in Fr-83-159 with the January 16th, 1985,
10 service date?

11 Q. Yes, I am.

12 A. No. Those decisions were made by the
13 Commission later.

14 Q. Well, let's just clarify. You've been unable
15 to point to a decision to disallow the 1984 actual
16 consideration by the Commission at any point in time,
17 have you?

18 MS. ANDERL: Your Honor, I object to counsel
19 mischaracterizing this witness's testimony. He's
20 attempted to explain to counsel why his testimony is
21 what it is. We'll certainly go into that on redirect,
22 but I don't believe it's appropriate to have counsel
23 not allow the witness to answer and then attempt to
24 characterize his failure to answer.

25 JUDGE WALLIS: Let's deal with these kind of

00296

1 one at a time. I do not believe that counsel prevented
2 the witness from answering, but with the concurrence of
3 the Bench, it is a matter that appears to be better
4 left for redirect, and we will certainly not rely on
5 counsel's shorthand characterizations for the full
6 import of what a witness is testifying to.

7 Q. (By Mr. ffitich) I didn't mean to confuse
8 you, Mr. Inouye. I think we sort of had a two-part
9 question there. There is the portion here where we're
10 talking about whether the Commission actually
11 disallowed 1984 consideration, and there is the portion
12 of the phrase that you use where the Commission, you
13 indicate that there has been a Commission decision to
14 substitute for the '84 consideration the full
15 reasonable value, and I've asked you to identify in
16 these orders where those statements occur, and you
17 have, in response to prior questioning, as I understand
18 it, not been able to identify a place in any Commission
19 Order in which the Commission disallowed the 1984
20 consideration. Are you changing your answer, or is
21 that still your answer?

22 A. No. I'm sorry, but you asked me in
23 particular to two orders that are listed as Exhibits A
24 and B and asked me whether in those particular orders
25 whether there was anything that disallowed, and I

00297

1 responded no. I did say that that decision came later,
2 and I'm willing to explain to the Commission what my
3 testimony is based upon.

4 Q. I'm sorry, Mr. Inouye. That is not how I
5 recall my question or your answer, but perhaps we can
6 come back to that. I believe I asked you for any
7 Commission Order in which the 1984 actual consideration
8 was disallowed, and if I did not, I'm going to ask that
9 now just to make clear, going beyond these two Orders,
10 the '83 and '85 Order, Appendix A and Appendix B, can
11 you today direct our attention to any Commission Order
12 which disallows the asset transfer and consideration,
13 the actual consideration referred to in Paragraph 1 of
14 the 1983 Order with regard to the Landmark stock?

15 A. The answer is yes, I can. You're question to
16 me was referring to 1984 Orders, and I said that there
17 are no 1984 Orders.

18 Q. Well, would you please go ahead and direct us
19 to the specific page and the specific Commission Order
20 where this consideration was later disallowed?

21 A. Yes. If I could, I direct the Commission's
22 attention to Page 26 of Exhibit 102-T.

23 MR. FFITCH: Your Honor, this is not
24 responsive. I'm asking for citation to a Commission
25 Order rather than in reference to the witness's

00298

1 testimony.

2 JUDGE WALLIS: I am going to ask the witness
3 to first respond to counsel's question.

4 THE WITNESS: The citations are Docket
5 UT-950200, Fifteenth Supplemental Order, Page 32;
6 Docket No. U-86-156 Second Supplemental Order, Page 12,
7 and I also rely upon the brief of the Washington
8 Utilities and Transportation Commission to the Supreme
9 Court of the State of Washington in No. 64822-1, Pages
10 19 through 21.

11 JUDGE WALLIS: And Mr. Inouye, the counsel's
12 question was just for Commission orders, so if you
13 could please listen for the question and respond to the
14 question, we would appreciate it.

15 THE WITNESS: Okay.

16 Q. (By Mr. ffitich) That was going pretty
17 quickly. You referred us to the Commission's decision
18 in UT-950200, and, I guess, for the assistance of the
19 Bench, that is attached as Exhibit F to the Application
20 that we've been referring to as the Fifteenth
21 Supplemental Order dated April 11th, 1996, and Mr.
22 Inouye, you've made a reference to Page 32 of that
23 Order?

24 A. Yes.

25 Q. And you have made that reference in a

00299

1 response to my question about where we would find
2 disallowance of the actual consideration in the 1984
3 transaction, have you not?

4 A. Yes.

5 Q. Now, could you on Page 32 show us where the
6 Commission states that it actually disallows the 1984
7 actual consideration?

8 A. If you would look at the second full
9 paragraph on Page 32 where it says, in the Second
10 Supplemental Order, Cause Number U-86-156, "The
11 Commission treated the directory as a regulatory asset
12 and determined that the public interest requires the
13 full reasonable value of the directory publishing be
14 available to PNB for rate-making purposes."

15 Q. Could you continue reading the rest of the
16 paragraph, Mr. Inouye?

17 A. "It found that the then current publishing
18 fee was not determined in an arms-length transaction
19 with each party seeking to maximize return, but to
20 adjusting the value until a later time."

21 Q. Isn't the gist of that paragraph to note that
22 in the U-86-156 Order the Commission found or failed to
23 approve the publishing fee that was under review in
24 that Order?

25 A. Yes. That was one of the things that the

00300

1 Commission stated in that Order.

2 Q. And there is no reference there to the
3 transaction involving the Landmark stock, is there, in
4 that paragraph?

5 A. In the paragraph in the 950200 Order?

6 Q. Right.

7 A. That's correct.

8 Q. Do you have any other citations to Commission
9 Orders that would reflect disallowance of the actual
10 1984 consideration?

11 A. Yes, I do. I've also provided in my earlier
12 response the Second Supplemental Order in Docket
13 U-86-156 on Page 12 of that Order.

14 Q. I was going to actually get into some
15 questions about that Order, but why don't you go ahead
16 and give us that citation as well?

17 A. Do you want me to refer you to a portion on
18 Page 12 I'm referring to?

19 Q. Yes, if you would, please.

20 MR. FFITCH: Let's get keyed to the actual
21 appendix. This is Appendix C to the Application,
22 again, the Second Supplemental Order in U-86-156, dated
23 October 12th, 1988, and that was also passed out by
24 Staff in connection with their cross, and you're on
25 Page 12?

00301

1 THE WITNESS: The second full paragraph.
2 What I'm referring to is the very first two sentences
3 of that paragraph. I'll read it. "The public interest
4 requires that the full reasonable value of the
5 directory publishing enterprise be deemed available to
6 PNB for rate-making purposes. The remedies selected to
7 achieve this goal should, as far as possible, reflect
8 true values and market realities as if the transfer had
9 been an arms-length transaction with each party seeking
10 to maximize return."

11 Q. Would you just continue on and read the next
12 sentence as well, Mr. Inouye?

13 A. "As found in FR-83-159, these contracts do
14 not represent such an arms-length transaction. The
15 remedies to be considered include the approval of the
16 contracts with appropriate adjustment of publishing
17 fees, the return of publishing of the publishing
18 function to PNB or the treatment of the transaction as
19 a sale or a capital asset."

20 Q. So again, there is a reference to contracts,
21 is it not?

22 A. No, I don't believe so. I explained earlier
23 this morning that the sentence that gives definition to
24 the full reasonable value says that the remedy selected
25 to achieve this goal should, as far as possible,

00302

1 reflect true values and market realities as if the
2 transfer -- it's not referring to the contract. It's
3 referring to the transfer -- had been an arms-length
4 transaction. The reference to market realities refers
5 to 1984 market realities.

6 Q. There is no reference here, is there, to
7 disallowing the actual 1984 consideration is there,
8 Mr. Inouye?

9 A. I believe that there is. When the Commission
10 is substituting full reasonable value, it is
11 substituting it for the actual consideration that was
12 given.

13 Q. And that's your interpretation of this
14 section?

15 A. Yes, it is.

16 Q. You're reaching that interpretation
17 notwithstanding the reference to the contracts in this
18 paragraph?

19 A. I reached that interpretation because that is
20 what the Commission recommended to the Court and which
21 the Court ruled upon.

22 Q. And the reference to contracts in this
23 paragraph is a reference to the Publishing Agreements
24 that were before the Commission in this proceeding, is
25 it not?

00303

1 A. I believe so.

2 Q. And those contracts and the fees connected
3 with them were not approved in this Order, were they?

4 A. I believe that that is not completely an
5 accurate statement. I believe there was a number of
6 contracts, all of which were approved except for the
7 one having to do with the publishing fees.

8 Q. My question, perhaps, was not as precise as
9 it could have been. I was referring to the publishing
10 fee agreements. And those were not approved in this
11 Order, were they?

12 A. That is correct.

13 Q. In fact, in this Order, the Commission states
14 that one of the primary reasons for authorizing entry
15 into those contracts was to insure the continued
16 publication of the directories; isn't that true?

17 A. Where are you referring to?

18 Q. If you'll give me a moment, I'll cite you to
19 that. I'm looking at the last sentence of Paragraph 4
20 of the Conclusions of Law on Page 14. That sentence
21 states, "Temporary approval of the contracts at issue
22 in this proceeding to permit publication of telephone
23 directories is in the public interest;" does it not?

24 A. That's what it says, yes.

25 MR. FFITCH: Can I have a moment, Your Honor?

00304

1 JUDGE WALLIS: Yes.

2 (Pause in the proceedings.)

3 Q. Let's continue talking about Paragraph 12 in
4 this Order. It's a popular paragraph on all sides, I
5 think. Excuse me; it's Page 12, and it is the second
6 full paragraph, and again, we are in the U-86-156
7 Order, Appendix C to the Application, and I think we'd
8 probably agree that in the latter part of the
9 paragraph, the Commission identifies three possible
10 remedies for the public interest concerns addresses,
11 and those are first, approval of the publishing
12 agreements with adjustment of the publishing fees;
13 secondly, return of the publishing function to Pacific
14 Northwest Bell, and thirdly, treatment of the
15 transaction as a sale of a capital asset. Is that a
16 fair summary of what the Commission says?

17 A. Yes.

18 Q. And it actually refers to those in a
19 prospective sense in the last sentence of that
20 paragraph, "the remedies to be considered," isn't that
21 true?

22 A. Yes.

23 Q. And the Commission doesn't actually consider
24 them in this Order, does it?

25 A. It doesn't appear so.

00305

1 Q. And the Commission did not adopt Remedy 2,
2 which was that the Company simply return the publishing
3 function to itself, did it?

4 A. Subsequently, yes, that's true.

5 Q. That hasn't occurred. And what has occurred
6 is that the Commission has proceeded along the track of
7 Remedy No. 1 in terms of looking at the adjustment of
8 the publishing fee; isn't that correct, as a practical
9 matter?

10 A. No. I didn't agree with that. I believe
11 that's Public Counsel's position. The Company has not
12 taken that position.

13 Q. I'm not asking about the position that the
14 Company has taken but about what the Commission has
15 been doing, what has been occurring in the real world
16 up until this point in time.

17 A. I wouldn't agree with that.

18 MR. FFITCH: May I have another moment, Your
19 Honor?

20 JUDGE WALLIS: Yes.

21 (Pause in the proceedings.)

22 Q. Just to make sure I understand your last
23 answer, you're saying that the Company, at least,
24 doesn't believe that the approach that's been taken
25 subsequent to this 1998 Order is approval of Publishing

00306

1 Agreements with adjustment of publishing fees. The
2 Company doesn't believe that's been happening; is that
3 what you're saying?

4 A. Yes.

5 Q. The third remedy that's suggested here as a
6 possible remedy, and actually, these are not exclusive
7 remedies, are they not? The Commission says that the
8 remedies include these three alternatives, don't they?

9 A. Yes.

10 Q. They don't limit it to these three
11 alternatives.

12 A. That's correct.

13 Q. In any event, the third remedy is the
14 treatment of the transaction as a sale of a capital
15 asset, I think we've agreed, and I think you would
16 agree, probably, that this paragraph describes several
17 characteristics of how Remedy 3 would work, does it
18 not? Let me suggest that that's the case and I'll ask
19 you these questions and give you something more
20 specific to respond to.

21 A. Do you want me to assume that's the case
22 then?

23 Q. Yes. If you could assume this paragraph does
24 provide some characteristics of how the sale remedy
25 would work.

00307

1 A. Okay.

2 Q. Accept that as my characterization, I
3 suppose, and I'll give you some more specific
4 questions.

5 First there would be a quote, "determination
6 of consideration at the time of transfer that would
7 fairly compensate PNB;" is that correct?

8 A. I would only suggest at the tail end of that
9 that there would be a determination of what fair
10 compensation would have been for ratepayers.

11 Q. We're talking about what the Order says at
12 this point. We're not asking what you might add to it.
13 I'm just asking how the Commission describes this
14 remedy.

15 A. I guess when it says that a remedy could be
16 the treatment or the transaction as a sale, the
17 Commission could treat it as if it was a hypothetical
18 sale.

19 Q. Perhaps, Mr. Inouye, we could just stick with
20 my questions.

21 JUDGE WALLIS: Again, I'm going to ask the
22 witness to please listen to the questions and respond
23 to the questions.

24 THE WITNESS: Okay.

25 Q. (By Mr. ffitich) The Order states first that

00308

1 there would be a determination of consideration at the
2 time of transfer that would fairly compensate PNB; is
3 that correct? That's the second sentence in the
4 paragraph if you're having trouble finding it.

5 A. Yes, I found that. Yeah, I would agree with
6 that.

7 Q. Is this determination part of what the
8 Company is seeking in this docket?

9 A. The Company is seeking a determination that
10 would be the equivalent.

11 Q. It's true, is it not, that no determination
12 of the consideration at the time of the transfer has
13 yet been made by this Commission.

14 A. That's correct.

15 Q. Second point is that according to the Order,
16 PNB would assume none of the risk, and U S West Direct
17 would assume all of the risk attendant to the
18 publishing enterprise under Remedy 3 under sale; isn't
19 that correct? That's the third sentence.

20 A. You're referring to the next paragraph?

21 Q. I'm sorry. We are in the final paragraph of
22 the page at this point; that is correct.

23 A. I would agree with that statement.

24 Q. Under present regulation, isn't it correct
25 that any declines in directory revenues and profits

00309

1 translate directly into reduced amounts of Yellow Pages
2 imputation in a rate case test year?

3 A. Yes.

4 Q. Another characteristic of Remedy 3 is said to
5 be quote, "No further supervision by this Commission of
6 the publishing enterprise of an unregulated company";
7 isn't that correct? I assume you would agree that
8 we're here today at the hearing because that has not
9 yet occurred.

10 A. I agree that you read it correct. Because of
11 the Court's Order, that was the result of the appeal in
12 950200. That is why we are here.

13 Q. I don't mean to suggest that we're regulating
14 the publishing activities of the unregulated entity
15 here, but that indirectly there is a review of the
16 financial implications of the relationship, and that if
17 a sale occurred in an arms-length transaction to a
18 third party, we would be unlikely to be here, would we?

19 A. If the sale would have occurred, then yes, we
20 would unlikely be here.

21 Q. Another characteristic of Remedy 3 according
22 to the Commission is quote, "U S West Direct would be
23 free too manage its business without involvement in
24 future proceedings concerning the proper levels of
25 compensation to PNB." Do you have that in the

00310

1 paragraph? That's the last paragraph.

2 A. Yes, I have that.

3 Q. You would agree that every rate case since
4 1984 has thus far required consideration of the proper
5 levels of compensation to PNB for Yellow Pages; am I
6 right?

7 A. I would agree, yes, that in the calculation
8 that requires examination of direct earnings.

9 Q. And then finally, the Commission stated in
10 this 1988 Order that Pacific Northwest Bell would have
11 the reasonable value of its asset. Has Pacific
12 Northwest Bell or U S West Communications at any point
13 since 1983 actually received the reasonable value of
14 the direct publishing business from Landmark or
15 U S West, Inc. or any other party?

16 A. No.

17 Q. Let's go back now to your rebuttal testimony
18 on Page 4, and I'll direct you to Line 1. You state,
19 "After that date --" January 1st, 1984. That was my
20 insertion. That's the date you're referring to; is it
21 not?

22 A. Yes.

23 Q. " -- the directory business was never part of
24 regulated operations and ratepayers never bore any
25 economic burden. Therefore, the value owed toe

00311

1 ratepayers is limited to the directory's value as of
2 January 1st, 1984." Pardon me; I inserted a "the"
3 which is not there. That is your testimony, is it not?

4 A. Yes.

5 Q. With that in mind, please turn with me back
6 to the 1988 Commission Order. Again, this is Appendix
7 C, Page 10. Look at the bottom of the page at the last
8 paragraph. In there, the Commission refers to
9 substantial evidence that the publishing contract and
10 the proposed publishing fees constitute a subsidization
11 by Pacific Northwest Bell of U S West competitive
12 enterprises. Is that a fair characterization of the
13 Commission's language there?

14 A. Yes.

15 Q. Is it your statement that subsidization by
16 PNB of U S West competitive enterprises through an
17 inadequate publishing fee does not place an economic
18 burden on ratepayers?

19 A. Would you repeat that again?

20 Q. Again, I'm keying off of your rebuttal
21 testimony, Page 4, Line 1, during the absence of an
22 economic burden, and in light of this, and I'm asking
23 you to look at this statement on Page 10. I'm asking
24 you, is it therefore your position that subsidization
25 by PNB of U S West competitive enterprises does not

00312

1 amount to an economic burden of U S West ratepayers?

2 A. You're asking me -- I'm sorry. I'm asking
3 for clarification. You're asking me whether or not the
4 act of subsidizing ratepayers places a burden on
5 ratepayers?

6 Q. Well, perhaps you should look at the language
7 in the Commission's Order, and it does not refer to
8 subsidization by ratepayers of ratepayers, but it
9 refers to -- I'll just read it: "a subsidization by
10 Pacific Northwest Bell of U S West competitive
11 enterprises."

12 A. Uh-huh. It's referring to the publishing
13 fees being a subsidization.

14 Q. Correct. My question -- perhaps you've got
15 me confused now. Can we pause for one moment?

16 (Pause in the proceedings.)

17 Q. I believe I've asked the question at least
18 twice very clearly, and I don't think any further
19 purpose would be served by asking it again so I'll move
20 on to other topics.

21 I'm going to ask you now to turn to Page 64
22 of your rebuttal.

23 JUDGE WALLIS: This is Exhibit 102-T?

24 MR. FFITCH: Yes, Your Honor, Exhibit 102-T.

25 Q. (By Mr. ffitich) And looking at Line 3, there

00313

1 you say -- Page 64 of Line 3. I apologize for my
2 voice. It's suddenly failed me just at the beginning
3 of cross-examination here. There you state, "When the
4 Commission disallowed the actual consideration, it
5 disallowed a specific number.

6 A. I'm not at the same Line 3 as you.

7 Q. I'm sorry, I'm reading a different portion of
8 my outline here. There you say that, "Imputation is
9 merely the process chosen by the Commission to make the
10 1984 full reasonable value available for ratemaking."
11 Do you have a reference to any Commission Order where
12 the Commission states that it is ordering imputation in
13 any amount related to the 1984 full reasonable value of
14 the business?

15 A. That's the same citation I gave earlier at
16 the 950200.

17 Q. And was that the citation on Page 32 of the
18 950200 Order, which refers us back to the 1988 Order
19 and the paragraph on Page 12 with the reference to full
20 reasonable value. Is that your answer?

21 A. Yes, it is.

22 Q. And that's your only reference in support of
23 that testimony?

24 A. No, that's not my only reference.

25 Q. Could you give me another reference, please?

00314

1 A. I'm assuming you're allowing me to respond
2 with more than Commission Orders because I also rely
3 upon the Commission's representations to the Court.

4 Q. I'm asking you for references in Commission
5 Orders.

6 A. That is the only one, I believe, in this
7 particular area.

8 Q. Thank you. I'd like you to look at your
9 statement at Line 8 and then at Footnote 134. This is
10 again on Page 64 of the rebuttal testimony, same page
11 we've been looking off of?

12 A. Could you give me the line number again?

13 Q. It's the end of your answer there and there
14 is a reference to Footnote 34. There is a reference in
15 that footnote to an amortization mechanism, is there
16 not?

17 A. Yes.

18 Q. Is it your opinion that the Commission was
19 amortizing a directory gain for the last 15 years?

20 A. No. I believe my testimony is that if a
21 payment had been made and gain has been calculated, the
22 effect is the same as if the imputation of full
23 reasonable value had taken place. I'm drawing a
24 parallel there, and my point to the Commission is that
25 you end up with the same result.

00315

1 Q. Is there any WUTC Order that you can point us
2 to that has the Commission stating that it's amortizing
3 a directory gain?

4 A. No.

5 Q. Now I'll ask you to turn to Page 85 of your
6 rebuttal, Line 11; do you have that?

7 A. Yes, I do.

8 Q. You suggest a ratemaking treatment for any
9 full reasonable value that the Commission may find to
10 exist to be credited to ratepayers, don't you?

11 A. Yes.

12 Q. Has the Company asked for any ratemaking
13 treatment or changes in this docket?

14 A. No.

15 Q. It's possible, isn't it, that some parties
16 who would normally be involved in a U S West Washington
17 rate case are not parties to this docket and may have
18 an interest in any changes to ratemaking methodologies
19 that you would propose to make?

20 A. The answer is yes. There may be other
21 parties.

22 Q. Since U S West has proposed no rate changes
23 here -- it would have to file another rate case to
24 truly remove imputation from existing rates -- isn't it
25 feasible to consider the specific methodologies for

00316

1 implementation of this docket in that rate case?

2 A. The answer the no. I guess there is some
3 confusion. My understanding was that this was an
4 accounting docket, and I realize on Line 2 of my
5 testimony the heading for this section refers to
6 ratemaking. If I could direct the Commission's
7 attention to Lines 7 and 8 where I state, "This section
8 proposes what accounting the Commission should order
9 for the residual." My understanding of this docket was
10 that it was an accounting docket, and it's in that
11 context that I offer this testimony and recommendation.

12 Q. With the removal of imputation from existing
13 rates would have to take place in the context of the
14 rate case, would it not?

15 A. I'm not sure if I can answer that. I thought
16 the purpose of this docket was, or at least the Company
17 asked for a ruling ending imputation. That was the
18 Company's request in this docket.

19 Q. Well, imputation is a ratemaking mechanism,
20 isn't it, Mr. Inouye?

21 A. Yes, it is.

22 Q. But the Company's position is it could simply
23 be terminated in this docket without any consideration
24 of ratemaking?

25 A. That is the understanding of what I

00317

1 understand to be what the Company's request is in this
2 docket, yes.

3 Q. Now I'm going to have you take a look at Line
4 12 on that same page, Page 85 again of the rebuttal
5 testimony, and Line 13 where there is a reference to
6 rate base, and here's my question: Do you know a date
7 for the rate base in U S West Communications' next
8 Washington rate case?

9 A. No, I don't.

10 Q. It's impossible to find the net amount you
11 describe in Item 1 at Lines 12 and 13 of your testimony
12 until we know the rate base date, isn't it?

13 A. No, it's not.

14 Q. Why do you believe that it's not impossible?

15 A. The residual could be credited to the rate
16 base on the regulatory books as they stand right this
17 instant. I'm assuming it would be upon a Commission
18 order if that was the case, but rate base ends up
19 happening in the next rate case would then reflect that
20 accounting order. In other words, you don't have to
21 wait for a rate case to reflect it in your books of
22 accounts.

23 Q. But you can't calculate the net amount
24 because imputation is imbedded in present rates unless
25 you know the test year; isn't that correct?

00318

1 A. Is your question you cannot calculate the
2 residual amount?

3 Q. Yes.

4 A. The answer is, I believe, is at a point in
5 time -- let's take, for instance, right now -- yes, you
6 could calculate that, as Ms. Koehler-Christensen has
7 calculated. Certainly that could be credited to the
8 account now.

9 Q. But that amount would be different in one
10 month or one year and you wouldn't know that amount
11 until you got into a rate case; isn't that true?

12 A. If you're asking me would the amount change
13 month by month as the effect of imputation continues
14 on, the answer to that is yes. That would be the case.

15 Q. You said you would, under your proposal,
16 record the net amount on the books. There is no
17 account on the books labeled "rate base," is there?

18 A. No, but there is a Commission decision
19 defining what accounts do constitute the rate base.

20 Q. You also refer to a deferred tax accounting
21 issue on Page 85. Is the Company proposing any
22 particular deferred tax accounting for the depreciation
23 reserve credits that you propose there?

24 A. I'm sorry. Where on Page 85 do I refer to
25 deferred taxes?

00319

1 Q. Well, perhaps my reference to Page 85 is not
2 appropriate, but the question, I think, is still
3 pertinent. Is the Company proposing any particular
4 deferred tax accounting for the depreciation of reserve
5 credits that you propose here?

6 A. No.

7 Q. Do you recall the issue regarding A-4
8 alternative form of regulation depreciation reserve
9 credits in UT-950200?

10 A. Yes, I do.

11 Q. Is the Company willing to waive any issues
12 that may arise regarding deferred tax accounting in
13 relation to your proposed depreciation reserve credits?

14 MS. ANDERL: Objection, Your Honor. This is
15 clearly beyond the scope of this witness's testimony.
16 Mr. ffitch has not been able to identify a reference to
17 deferred taxes, and I believe this is outside the scope
18 of this witness's direct.

19 MR. FFITCH: Your Honor, if I may, I believe
20 I can locate the reference in the testimony to the
21 depreciation credit issue, if I may have a moment.
22 Referring to Lines 14 and 15, the second of your
23 proposals there, and it's listed on Page 85.

24 THE WITNESS: But there is nothing there that
25 refers to deferred taxes.

00320

1 Q. (By Mr. ffitch) But you recall the issue
2 from the A-4 proceeding?

3 A. I'm sorry. Is there a question pending to
4 me?

5 Q. Is this the same issue or similar issue that
6 was before the Commission in that proceeding?

7 MS. ANDERL: I'm sorry. Was that in the A-4
8 proceeding or 950200?

9 MR. FFITCH: It was in the 950200 proceeding.
10 I'm sorry. But there was a reference back to the A-4
11 depreciation reserve credits.

12 THE WITNESS: It has similar elements. I'm
13 not prepared at this point to say that it is the same
14 issue. It has similar elements.

15 Q. What was the issue as you recall it at that
16 time?

17 MS. ANDERL: I'll continue to object, Your
18 Honor, as outside the scope of this witness's
19 testimony.

20 JUDGE WALLIS: I'm going to deny the
21 objection, looking at the witness's rebuttal testimony,
22 Page 85, Lines 14 and 15, which counsel has cited to.
23 It talks about the credit to rate base, and I will
24 interpret that to mean the entire process of doing so,
25 including the tax consequences.

00321

1 THE WITNESS: Your request was for me to
2 describe the issue in 950200; is that correct?

3 Q. (By Mr. ffitich) Yes.

4 A. As I recall, the issue surrounds the deferred
5 tax related to the gain on the sale of some rural
6 exchanges the Company made at that time. The
7 contention was that in the settlement agreement that
8 was reached involving the Company, it was over the
9 interpretation of that settlement agreement and whether
10 or not the credit to the depreciation reserve needed to
11 be grossed up for deferred taxes.

12 There was disagreement among the parties. I
13 believe the Company that in writing the settlement
14 agreement, we had already grossed up for deferred
15 taxes. Other parties claim that that had not happened.
16 So like I said, there are characteristics that are
17 similar. There are other characteristics that aren't
18 present here.

19 Q. Thank you. Does the record in this case
20 support any particular amounts of depreciation reserve
21 deficiencies?

22 A. At this point, no. If I could explain, the
23 reason is the Company believes and has presented
24 evidence through Ms. Koehler-Christensen's testimony
25 that the sum of the imputations have exceeded the fair

00322

1 market value in 1984 so that there would be no residual
2 left.

3 Q. But with respect to the deficiencies that the
4 Company believes exist in relation to Part 2 of your
5 proposal on Page 85, Lines 14, 15, we would just have
6 to take the Company's word for it at this point?

7 A. What is your question to me?

8 Q. Would we simply take U S West's word for the
9 deficiencies it believes to exist in relation to Part 2
10 of your proposal?

11 A. Well, the Company doesn't believe any
12 deficiencies exist. However, if the Commission were to
13 find such, that is my recommendation.

14 Q. Do you think some parties may protest the
15 assumption that any depreciation reserve deficiencies
16 exist at all in your next rate case?

17 A. In reserve deficiency, yes, that's quite
18 possible.

19 Q. If the Commission concludes that full value
20 for the directory business should be based upon current
21 values as suggested by Staff and Public Counsel, TRACER
22 and AARP in this case, isn't it true that the Company's
23 filing contains no statement regarding what amount that
24 current fair value is?

25 A. That's correct.

00323

1 Q. Should another hearing be conducted to give
2 U S West a chance to be heard regarding the size of the
3 rate base offset in Washington that you propose if
4 current valuation dates are required?

5 A. No. I believe that what Public Counsel and
6 Staff have said is that the Company would have to agree
7 to reconstitute or retransfer the asset as a sale with
8 payment, and that would only be upon those conditions
9 that another hearing would be reconstituted.

10 Q. I think I just have one final question. I do
11 have a copy of the Washington Supreme Court decision.
12 I can give you a complete copy if you'd like one.

13 A. I do have a copy.

14 Q. I'm going to paraphrase your earlier
15 testimony here so correct me if I'm wrong. It's my
16 understanding that you have testified here this morning
17 that the Company is selecting the date of 1984 as a
18 valuation date based on the Washington Supreme Court
19 decision; is that correct?

20 A. Yes.

21 Q. And I'd like you to show me in the Washington
22 Supreme Court decision a place where the Washington
23 Supreme Court selects the date of 1984 as the valuation
24 date which must be adopted by the Commission in this
25 proceeding.

00324

1 A. I believe I testified in my rejoinder
2 testimony that there is no place in the Court's Order
3 specifying 1984 because that issue was not before the
4 Court.

5 MR. FFITCH: Thank, you. I don't have any
6 further questions, Your Honor.

7 JUDGE WALLIS: Let's take our afternoon
8 recess at this time. I would like to talk with counsel
9 in 15 minutes about witness scheduling, and we'll plan
10 on being back on the record for the continuation of
11 examination in about 20 minutes.

12 (Recess.)

13 JUDGE WALLIS: There is one question from the
14 Bench at this point. Perhaps we should ask questions
15 from the Bench prior to redirect to allow counsel to
16 respond to those.

17 I would like to pose a hypothetical involving
18 a couple of situations to the witness and then ask a
19 couple of questions as a follow-up. The first
20 situation is that an integrated regulated telephone
21 company, that is one providing a full range of
22 telecommunications services under its own label,
23 transfers a building to an affiliated unregulated
24 company without valuing the building and without
25 receiving defined compensation for it. Analogous to

00325

1 the situation in the transfer of the Yellow Pages
2 business but without going into details, what we would
3 be looking at in that situation is just the transfer of
4 a building that was used and useful in providing
5 telecommunications services. That's one situation.

6 The second situation involves the same
7 company, and hypothetically, it's parent forms a new
8 unregulated subsidiary, an affiliate of the regulated
9 company, and there is a transfer to this unregulated
10 company of every service that is not subject to full
11 regulation and all associated assets and personnel;
12 that is, every service not subject to full regulation
13 that earns more than the regulated company's authorized
14 rate of return. Again, the transfer is without valuing
15 the transferred operation and without receiving defined
16 compensation for it. Now, my first question is, are
17 these transactions identical from a business
18 standpoint, and if not, how are they different?

19 THE WITNESS: Are they identical?

20 JUDGE WALLIS: Apart from the subject of the
21 transfers.

22 THE WITNESS: I'm not quite sure what you
23 mean, are they identical from a business standpoint. I
24 can tell you from how you would reflect it on your
25 books of account. It seems to me that they are the

00326

1 same. They are the same in that you remove the assets
2 from your balance sheet presumably at their book cost
3 or their notebook cost and in the case of the building
4 undepreciated. If I could ask for clarification what
5 you mean by "from a business standpoint."

6 JUDGE WALLIS: From the standpoint of the
7 companies involved.

8 THE WITNESS: It would appear to me that from
9 the receiving company's standpoint, they are both
10 getting something, and basically the carrying cost of
11 the assets, so in that sense, it seems to me that they
12 are the same.

13 JUDGE WALLIS: My second question is whether
14 in the Company's view these transactions are also
15 identical from a regulatory standpoint; that is, should
16 the state regulatory agency with jurisdiction treat
17 them in an identical manner.

18 THE WITNESS: I think, given what we know
19 today with the Court's ruling, the answer would be yes.
20 And I say that from the standpoint of the regulatory
21 commission holding that in the first instance that the
22 building of the company should have gotten the fair
23 market value of the building at the time it was
24 transferred, whatever the building was worth; and the
25 in the second instance, I'm going to add the additional

00327

1 assumption that these unregulated services that the
2 Commission would additionally hold that ratepayers hold
3 an interest because the services were developed under
4 regulation, that supposed service had not, then I think
5 the regulatory treatment would not be given what the
6 Court held.

7 JUDGE WALLIS: Thank you. Are there other
8 questions?

9 CHAIRWOMAN SHOWALTER: I have a couple. I
10 just want to understand what your testimony has been
11 today. I understand you to say that had there been a
12 sale, there would have been gain and that would have
13 been amortized over some period of years and reflected
14 in ratepayers rates.

15 THE WITNESS: I believe so. You're referring
16 to had there been a sale in 1984?CHAIRWOMAN SHOWALTER:
17 : Right.

18 THE WITNESS: A payment had been made in the
19 normal way that would have been booked, and I'm
20 assuming that the sale was greater than the net book
21 value so the difference between the net book value
22 would commonly turn gain, and then it's up to the
23 Commission from a ratemaking perspective to determine
24 then how that gain should be treated for ratemaking,
25 and through one means or another, I'm anticipating the

00328

1 Commission would pass that gain back to ratepayers in
2 some sort of amortization or in some manner so the
3 ratepayer gets the benefits of lower rates.

4 CHAIRWOMAN SHOWALTER: But because the 1984
5 transaction was not structured that way, is it your
6 testimony that the imputation was to provide the
7 ratepayers with the equivalent benefit, but that
8 imputation is not the same as amortized depreciation?

9 THE WITNESS: That's correct. It has the
10 same effect, but my testimony should not be read that
11 it is an amortization of the gain.

12 CHAIRWOMAN SHOWALTER: And then another
13 question is, is it your testimony that there was a
14 transfer of the directory business in 1984?

15 THE WITNESS: Yes.

16 CHAIRWOMAN SHOWALTER: With the exception, I
17 presume, of the logo and a few other specified items?

18 THE WITNESS: Yes.

19 CHAIRWOMAN SHOWALTER: Is it also your
20 testimony that there was a transfer of the ownership of
21 the business in 1984?

22 THE WITNESS: Yes.

23 CHAIRWOMAN SHOWALTER: Then if you were asked
24 that question in 1985, would your answer be the same?

25 THE WITNESS: Yes.

00329

1 CHAIRWOMAN SHOWALTER: My last question is I
2 think your testimony is I take it that if you add up
3 the original exchange of stock and all the agreements
4 and the payments made under the agreements and
5 imputation, that if you take it all together, the
6 ratepayers have received full reasonable value?

7 THE WITNESS: Yes, it is but with one
8 difference and that is that what
9 Ms. Koehler-Christensen will explain, what we've added
10 up is not the payments under the Publishing Agreements.
11 What we've added up is what the Commission has included
12 in ratemaking; so in other words, what actually was
13 used to set customer rates, and the distinction is that
14 some of the publishing fees that were paid -- there
15 were publishing fees paid in '84 and every year
16 thereafter through 1988, so what is there, I believe
17 that would be five years of payments. Not every time,
18 not all five payments actually were used in ratemaking;
19 in fact, only one was in 1985, so when we presented to
20 the Commission the evidence of what ratepayers have
21 received, we concentrated on what was received through
22 ratemaking. So in other words, not every year a
23 publishing fee counts.

24 CHAIRWOMAN SHOWALTER: And this may or may
25 not be implied in your answer, but is a portion of the

00330

1 payments that were made for services actually rendered
2 as stated from what the ratepayers might have been
3 owed? For some of the contracts there were payments in
4 exchange for some kind of service, such as billing, and
5 I take it for those payments, there was a service
6 rendered and a payment made in exchange for the
7 service.

8 THE WITNESS: Yes.

9 CHAIRWOMAN SHOWALTER: Are those payments
10 included or excluded in your total calculus.

11 THE WITNESS: They are excluded. They are
12 not included as payments for what I've termed the "full
13 reasonable value" or what the Commission termed as the
14 "full reasonable value" of the business because to me,
15 it doesn't logically apply against the full reasonable
16 value. It applies against the services that were
17 rendered.

18 CHAIRWOMAN SHOWALTER: That's evident, I
19 suppose, in Ms. Koehler's testimony, not yours, but you
20 alluded to her testimony.

21 THE WITNESS: Yes. She can explain what was
22 counted and what wasn't counted.

23 CHAIRWOMAN SHOWALTER: Thank you.

24 COMMISSIONER HEMSTAD: Mr. Inouye, we're
25 spending a lot of time here, and understandably so,

00331

1 trying to understand what occurred in 1984. Is it the
2 Company's view that in 1984 the consideration of the
3 approximate 23 million dollars was sufficient to
4 accomplish the sale of the going business of the Yellow
5 Pages?

6 THE WITNESS: I think I believe the Company
7 at one time considered that it be sufficient and
8 asserted that in court and lost. The Court has said
9 that it was inadequate and what's due the ratepayers is
10 adequate consideration.

11 COMMISSIONER HEMSTAD: So the transaction at
12 that time and the transfer of the physical assets for
13 the net 23 million dollars, the Company, whether it
14 explicitly argued this or not, but the Company
15 understood it was sufficient to transfer the business?

16 THE WITNESS: I believe at that time, yes.
17 At the time they believed.

18 COMMISSIONER HEMSTAD: And with that, all of
19 the gain, I suppose, at least initially, would have
20 gone to PNB in the form of the 21 percent interest in
21 the Yellow Pages company.

22 THE WITNESS: The answer is yes, the value of
23 the stock, if one were to go back and value the stock
24 that was given in exchange, the value of that stock was
25 the going concern value of the business at that time.

00332

1 That stock, of course, was then dividended to the
2 parent company so ratepayers never got it.

3 COMMISSIONER HEMSTAD: So the consequence of
4 that transaction was that there was a transfer of the
5 gain to the parent company.

6 THE WITNESS: Yes, in essence.

7 COMMISSIONER HEMSTAD: Now, in 1983, let's
8 think about the legal and operational environment at
9 the time. Judge Green had just issued his order and
10 the supplemental orders constituting the break-up of
11 AT&T and the creation of the seven regional Bell
12 operating companies, and in one of the Orders, the
13 issue of Yellow Pages was addressed, and the point of
14 Judge Green's determination there was that Yellow Pages
15 should be retained in the regional Bell operating
16 companies in order to assure that there would be a
17 continuation of affordable rates for ratepayers. Is
18 that a fair summary of your understanding of what Judge
19 Green ordered?

20 THE WITNESS: There are those in the Company
21 who have a lot of different opinions as to what Judge
22 Green represented. I really don't want to debate
23 those. I'm willing to accept that that is the view
24 that many people hold, yes.

25 COMMISSIONER HEMSTAD: Would you consider the

00333

1 transaction that as understood, apparently, by the
2 Company in the representations to the Commission at the
3 time carried out the letter and spirit of Judge Green's
4 Order?

5 THE WITNESS: I think that they tried to
6 carry that out through the publishing fees that were
7 written into the original Agreement. Obviously, there
8 is disagreement as to the level of the publishing fees,
9 and ultimately, the Commission rejected or declined to
10 rely upon them, but I think that the Company did make
11 an attempt to provide for continuing payments.

12 COMMISSIONER HEMSTAD: You said the Company
13 made an attempt to provide for continuing payments.
14 They started in 1984. The first year they went up, and
15 for the next years it went down, and then the Company
16 just simply stopped paying agreements. Why did you do
17 that?

18 THE WITNESS: By that time, quite a number of
19 regulatory commissions, including this one, was not
20 accepting the logo of the publishing fees, and they
21 were not doing what the Company had hoped that they
22 would do, which was to alleviate or to satisfy
23 regulatory concerns about the transfer, and
24 Commission's were going -- it was believed in the
25 Company that the Commissions around the 14-state region

00334

1 were going to impute; in fact, many of them had already
2 imputed, so there was no sense in continuing the
3 publishing fees, and the decision was made to stop
4 them.

5 COMMISSIONER HEMSTAD: And that was done
6 without bringing issue to the Commission for it's
7 review.

8 THE WITNESS: If you mean approval, the
9 answer is yes. I know from personal experience that we
10 attempted to explain the situation to all the
11 Commissions at that time, but you would be correct in
12 saying that the Company did not ask the Commissions for
13 their approval to that decision.

14 COMMISSIONER HEMSTAD: Turning to Exhibit
15 110, the Application, Page 3, and first full paragraph,
16 would you read that, please?

17 THE WITNESS: Do you want me to read it out
18 loud?

19 COMMISSIONER HEMSTAD: Yes.

20 THE WITNESS: "This application concerns the
21 implementation of the new Publishing Agreement between
22 PNB and U S West DC for the publication of PNB's White
23 and Yellow Page directories. The Publishing Agreement
24 is a good deal for PNB and its ratepayers because the
25 Agreement effectively preserves a significant

00335

1 contribution from Yellow Page revenues to PNB's
2 earnings in the new more competitive marketplace after
3 January 1st, 1984. Further, this revenue stream is
4 guaranteed so that the risk and expense of this
5 deregulated and increasingly competitive area of
6 business not born in by PNB's ratepayers."

7 COMMISSIONER HEMSTAD: Of course, this was
8 written at the time, but we have some benefit of
9 hindsight at this point. Would you say that the
10 transaction was structured by U S West with all the
11 gain quickly moving to the parent company in the form
12 of the dividend of the 21 percent share interest? Was
13 it a good deal for PNB?

14 THE WITNESS: As it turned out, yes. I would
15 add one thing, and that is when you say "all the gain,"
16 really all the gain less the commitment to pay
17 publishing.

18 COMMISSIONER HEMSTAD: Then later the Company
19 unilaterally determined to stop paying the publishing?

20 THE WITNESS: Yes.

21 COMMISSIONER HEMSTAD: And that paragraph
22 further says that the agreement for the Publishing
23 Agreement effectively preserves a significant
24 contribution, and that the revenue stream would be
25 guaranteed. Did the Company's later actions

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1 demonstrate that?

2 THE WITNESS: I can't tell you if the word
3 "guarantee" extended beyond the life of the Agreement.

4 COMMISSIONER HEMSTAD: And the Agreement was
5 for three years.

6 THE WITNESS: Three years plus an option for
7 two more.

8 COMMISSIONER HEMSTAD: Is it your position
9 that the application in using the term " the revenue
10 stream is guaranteed," was only guaranteeing that
11 stream for a three-year period?

12 THE WITNESS: I can only offer my
13 interpretation.

14 COMMISSIONER HEMSTAD: That's what I'm asking
15 for, because I assume you immersed yourself in a
16 history of these transactions, and I assume that you
17 have a view.

18 THE WITNESS: Yes, I have. It's hard for me
19 to say what was in the minds of the people at the time.
20 Certainly, as I discussed earlier, is the events,
21 relationship with Commissions rode out identity from
22 there that there was a change in the course of the
23 Company's actions. I don't believe that the Company at
24 this point in time thought that things would work out
25 the way that they did.

00337

1 COMMISSIONER HEMSTAD: So the guarantee then
2 apparently shifted to the utilization of the
3 imputation.

4 THE WITNESS: That's what it appears to me.

5 COMMISSIONER HEMSTAD: And in the 1995 rate
6 case, the Company took the position that imputation was
7 illegal. Is that your understanding?

8 THE WITNESS: Yes.

9 COMMISSIONER HEMSTAD: So the view of the
10 Company was that imputation was illegal, should not
11 have ever been done, although it lost on that issue,
12 and it also terminated earlier making any payments
13 under a Publishing Agreement. Doesn't that seem rather
14 peculiar in terms of analyzing what the Company
15 understood in 1984 it was transferring?

16 THE WITNESS: It's a regrettable set of
17 events that transpired. I can't and don't believe
18 that's what the Company intended in 1984 when we
19 started down this track.

20 COMMISSIONER HEMSTAD: If the Publishing
21 Agreement had a limited duration, what was supposed to
22 happen at the end of that three-year period?

23 THE WITNESS: I don't know. I don't think
24 that the people knew at the time what was going to
25 happen.

00338

1 COMMISSIONER HEMSTAD: But how does that
2 square with the idea that there was a complete sale of
3 the ongoing business venture? In other words, put it
4 this way: Assume for the purpose of discussion that
5 PNB with a change of heart decided it didn't want to
6 continue the Publishing Agreement, what became U S West
7 Dex, what would be the consequence of that decision?
8 THE WITNESS: Of deciding not to continue?
9 COMMISSIONER HEMSTAD: Yes.
10 THE WITNESS: Reentering the directory
11 business would have been one option.
12 COMMISSIONER HEMSTAD: But not a transfer
13 back to the Company of the business venture that had
14 been earlier transferred.
15 THE WITNESS: That is another possibility.
16 COMMISSIONER HEMSTAD: Would that have been
17 just a straight, again, book transaction, or would that
18 then have been some transfer back at current market
19 value?
20 THE WITNESS: I'm assuming it were to come
21 back in the same way.
22 COMMISSIONER HEMSTAD: As simply the simple
23 book transaction.
24 THE WITNESS: Yes.
25 COMMISSIONER HEMSTAD: So a reversal would

00339

1 have occurred.

2 THE WITNESS: Yes.

3 COMMISSIONER HEMSTAD: So its not your
4 position that it would have come back at then current
5 value.

6 THE WITNESS: You're asking me what my
7 position is on something I haven't thought about or
8 testified to yet.

9 COMMISSIONER HEMSTAD: The fact that the
10 Agreement had a limited duration is at least troubling,
11 isn't it?

12 THE WITNESS: I believe that what they
13 anticipated that there would be future contracts.

14 COMMISSIONER HEMSTAD: I understand, but the
15 Agreement did not contain language such as it would
16 continue permanently or in perpetuity.

17 THE WITNESS: No, it did not.

18 COMMISSIONER HEMSTAD: The Application talks
19 about effectively preserving contribution and a revenue
20 stream being guaranteed. Let me give you a
21 hypothetical: What if sometime after the 1984
22 transaction, say promptly after, Landmark or to
23 whomever it had ended up being held, turned around and
24 promptly sold to it a third party. Sold it, the
25 Company's view of it as a business venture, what could

00340

1 happen to the representations in the Application that
2 there would be an effective preservation of
3 contributions and that the revenue stream would be
4 guaranteed?

5 THE WITNESS: I can't speculate what would
6 have happened. I don't know.

7 COMMISSIONER HEMSTAD: But that was a
8 representation that the Company made when the
9 Application was presented, that a revenue stream would
10 be guaranteed.

11 THE WITNESS: For the term of the contract.
12 The contract only had a specific term and specified
13 specific dollar payments for the three-year period. It
14 did not specify what the payments would be beyond that.

15 COMMISSIONER HEMSTAD: Do you think that if
16 the Commission fully understood how you were describing
17 the Company's understanding of the transaction that is
18 would consider it to be a good deal for PNB and its
19 ratepayers?

20 THE WITNESS: I think with the benefit of
21 hindsight, the Commission would have determined that it
22 wasn't a good deal.

23 COMMISSIONER HEMSTAD: If in 1984, the
24 Company had, instead of transferring to an affiliate,
25 it had decided to sell to it a third party, I'm sure

00341

1 you would agree that documents would be quite different
2 than those which were then presented to the Commission.
3 Wouldn't you agree to that?

4 THE WITNESS: If the Company had decided to
5 sell it in 19 --

6 COMMISSIONER HEMSTAD: If PNB decided to sell
7 its Yellow Page interest to an arms-length third party,
8 not to an affiliate, contract documents would have been
9 quite different; don't you agree?

10 THE WITNESS: I believe so. For instance,
11 there wouldn't be any publishing fees. You would have
12 seen it as a transfer application just as you're seeing
13 one now --

14 COMMISSIONER HEMSTAD: I'm thinking rather of
15 the arrangement that would be a bargain between the
16 buyer and seller. In a conceptual sense, it would have
17 been quite simple. Seller agrees to sell and buyer
18 agrees to buy and then a specific listing of what would
19 be sold and purchased.

20 THE WITNESS: Yes, I agree.

21 COMMISSIONER HEMSTAD: But that kind of
22 description of what was occurring, apparently, was
23 never presented by the Company to the Commission for
24 its consideration.

25 THE WITNESS: What was presented were the

00342

1 physical assets that at the time was the belief of the
2 Company, and the Commission required Commission
3 approval, and so I guess what I'm trying to say is
4 there was never a belief that there had to be a listing
5 that included, for instance, employees and other kinds
6 of things, such as records and business records and
7 things like that.

8 COMMISSIONER HEMSTAD: I guess if you start
9 with the assumption that the Company or PNB at the time
10 need only receive consideration for the net book value
11 of the transferred assets, there would be no need for a
12 market value valuation, but now that's exactly what
13 U S West, Inc. and Media One did in 1997; isn't that
14 true?

15 THE WITNESS: Yes. They did that because
16 there was an impending split of the Company, and the
17 concern was the shareholder suits, one group of
18 shareholders, the Media One group over the transfer
19 anything other than fair market value.

20 COMMISSIONER HEMSTAD: That's all I have.

21 JUDGE WALLIS: Ms. Anderl?

22

23 REDIRECT EXAMINATION

24 BY MS. ANDERL:

25 Q. Mr. Inouye, Mr. ffitch asked you some

00343

1 questions with regard to your rebuttal testimony, and
2 one of his first questions was referencing your
3 rebuttal testimony at Page 3, Lines 2 through 8 where
4 you discuss the Commission's disallowance of the
5 consideration to that 1984 transfer. Can you remember
6 those questions?

7 A. Yes.

8 Q. It's correct, isn't it, that Mr. ffitch asked
9 you to point to any Commission Orders where the
10 Commission stated that it had disallowed the
11 consideration; isn't that right?

12 A. That's correct.

13 Q. Are you aware of any other statements by the
14 Commission other than in Commission Orders where the
15 Commission stated that it had disallowed the 1984
16 actual consideration?

17 A. Yes, I am. I'm aware of the representation
18 that the Commission made to the Court as to the events
19 that occurred between 1984 and the time that this case
20 went to the Court, and I attempted to -- first of all,
21 I relied upon the Commission's representation of what
22 it had decided and provided that in my testimony, which
23 is Exhibit 102-T, on both Page 26 and on Pages 30
24 through 31.

25 In particular, I relied upon the Commission's

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1 brief to the Court at the bottom of Page 30 beginning
2 at Line 26 where the Commission itself said that the
3 WUTC did precisely what the statutes authorized. It
4 disallowed for ratemaking purposes the unreasonable
5 compensation.

6 Q. Go ahead and continue reading the rest of
7 that quote, please.

8 A. "...the unreasonable compensation U S West
9 provided to its affiliate, U S West D, when it
10 transferred the profitable Yellow Pages business to
11 U S West D for a grossly inadequate consideration."

12 Q. Where is that excerpt from?

13 A. If you look at Footnote 63, that is from the
14 Commission's brief to the Supreme Court on Pages 19
15 through 21.

16 Q. Was that brief filed in support of the
17 Commission's rate Order in Docket No. UT-950200?

18 A. Yes.

19 Q. Mr. ffitch asked you further questions about
20 Exhibit 102-T, and he references you to your testimony
21 at Page 64, and the discussion there with regard to the
22 process of imputation chosen by the Commission to make
23 the 1984 full reasonable value available for
24 ratemaking. Do you recall those questions by Mr.
25 ffitch?

00345

1 A. Yes.

2 Q. Did he again ask you to point him to any
3 Commission Orders that contained that statement by the
4 Commission?

5 A. Yes, he did, and I also relied upon the
6 Commission's briefing before the Court.

7 Q. Can you direct our attention to that
8 reference in the Commission's brief to the Court?

9 A. Yes, I can. If the Commission would refer to
10 Page 31.

11 Q. Page 31 of....

12 A. Exhibit 102-T, and actually, the quote really
13 begins at the bottom of Page 30 where the Commission
14 said, "The WUTC again emphasized that the transfer of
15 the Yellow Pages business was not in itself a concern.
16 The WUTC intended to neither regulate the Yellow Pages
17 business nor to require PNB to remain in that business.
18 The concern was that PNB not transfer the Yellow Pages
19 business to its own affiliate for an inadequate price.
20 The WUTC stated the public interest requires that the
21 full reasonable value of the directory publishing
22 enterprise be deemed available to PNB for ratemaking
23 purposes."

24 Q. You were asked some questions by Commissioner
25 Hemstad about the meaning of the word "guaranteed" in

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1 the Company's 1983 application for transfer. Do you
2 recall those questions?

3 A. Yes.

4 Q. Is it your understanding that the amount of
5 the publishing fees to be paid for each of the first
6 three years of the contract were set forth in the
7 original contract?

8 A. Yes.

9 Q. And is it also your understanding that those
10 publishing fees would not alter during the life of the
11 contract, regardless of how successful or unsuccessful
12 the directory business were during that time?

13 A. Yes.

14 Q. And within that context, what is your
15 understanding of meaning of the representation that the
16 publishing fees were guaranteed during the life of the
17 contract?

18 A. Just as you said, they were guaranteed at the
19 level specified regardless of what happened to the
20 profitability of the directory operations that had been
21 transferred.

22 Q. You were asked questions by Staff counsel,
23 Mr. Trautman, you were asked a series of question
24 regarding the publishing fees and the Company's intent.
25 Do you recall those?

00347

1 A. Yes.

2 Q. And you were referred by him to this Exhibit
3 110 and Page 5 of Exhibit D contained in that document.
4 Do you recall that discussion?

5 A. Yes.

6 Q. Is it your testimony that the purpose of the
7 publishing fee as stated in that document was to
8 preserve contribution from the Yellow Pages revenues to
9 PNB's earnings in addition to the three enumerated
10 items thereafter?

11 A. Yes.

12 Q. What did you mean when you stated that the
13 purpose is to "preserve contribution"?

14 A. What I meant was that it would continue to
15 fall to as a benefit to ratepayers in the form of
16 reduced rates.

17 Q. Do you know if it did so during the life of
18 that contract?

19 A. Yes, it did.

20 Q. You were asked if publishing fees were
21 compensation for the assets transferred. Could you
22 please clarify whether it is U S West's position in
23 this docket that all of the publishing fees are
24 compensation for purposes of determining whether
25 imputation should end?

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1 A. No, it's not. I think I mentioned this
2 earlier that the Company's calculation for purposes of
3 this docket to determine whether imputation should end
4 is based upon what was included by the Commission in
5 ratemaking, and not all of the publishing fees were
6 included in ratemaking, and therefore, we've not
7 counted all those publishing fees.

8 Q. With regard to the other three elements that
9 are listed in Exhibit D, Page 5, the listings, the
10 exclusive right to publish, and the exclusive right to
11 produce directories bearing the telephone company name,
12 I believe you've testified that none of those three
13 elements was transferred under the original
14 transaction, but can you explain for me why U S West
15 Direct was willing to pay something for the right to
16 have the exclusive right to publish the exchange
17 directories even for the limited duration of the
18 initial publishing agreement?

19 A. Yes. I believe that they would be willing to
20 pay in order to have time to establish themselves in
21 the business without having a potential for PNB to
22 compete against itself in the directory publishing
23 business.

24 Q. Is it your understanding that that is what
25 occurred during the initial three-year Publishing

00349

1 Agreement?

2 A. Yes.

3 Q. In the valuation assumptions that Mr. Golden
4 made in his business valuation analysis, did he assume
5 that U S West Direct had an exclusive right to publish
6 the directories?

7 A. Yes, he did. To the extent that there is
8 value to that, the value was captured in the financial
9 estimates that he relied upon in order to calculate the
10 business value. Therefore, whatever value there is,
11 it's included in the Company's business valuation for
12 the directory business.

13 Q. What were his assumptions with regard to the
14 right to use the listings and the right to produce
15 directories with the PNB name on them?

16 MR. FFITCH: I'm going to object, Your Honor.
17 I believe this is beyond the scope of
18 cross-examination.

19 JUDGE WALLIS: Ms. Anderl?

20 MS. ANDERL: It's not Mr. ffitch's
21 cross-examination that I was doing redirect on. It was
22 Mr. Trautman's. I believe Mr. Trautman asked extensive
23 questions with regard to both this Publishing Agreement
24 and the three elements that I'm talking about here, and
25 I think it's perfectly appropriate to go back on

00350

1 redirect and inquire.

2 MR. FFITCH: The basis of my objection is
3 that we're now asking this witness about the basis of
4 Mr. Golden's valuation, which I don't believe was
5 discussed in earlier testimony, and Mr. Golden will be
6 up tomorrow for his own examination.

7 JUDGE WALLIS: Is it necessary to get that
8 information from this witness?

9 MS. ANDERL: We can get it from Mr. Golden.

10 Q. (By Ms. Anderl) Mr. Trautman asked you --
11 and I'm going to change subjects here a little bit, and
12 I believe Mr. Trautman was asking you a question -- let
13 me make sure I have the correct reference to the
14 correct Order -- Page 12 of the Second Supplemental
15 Order in Docket U-86-156, the first sentence of the
16 last paragraph on Page 12 referencing that sentence,
17 Mr. Trautman asked you, "At what point does U S West's
18 failure to record this transaction as a sale mean that
19 the parties did not intend a permanent transfer." Do
20 you recall that question?

21 A. Yes.

22 Q. Did you understand this question to contain
23 an implication that U S West was required to record the
24 transactions of sale?

25 A. Yes, I did.

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1 Q. Are you aware of any such requirement?

2 A. No, I'm not aware of such a requirement.

3 Q. Did the Company, in fact, record the transfer
4 of assets?

5 A. Yes, the Company did, and I believe it
6 recorded it appropriately by removing the assets,
7 revenues and expenses from its regulated operations,
8 and also in recording the receipt of the 21 percent
9 share of stock and the dividend of that stock to the
10 parent company.

11 Q. You were asked whether or not it would have
12 been acceptable for a company to file this petition 20
13 or 25 years from now. Do you recall that question?

14 A. Yes.

15 Q. Can you explain why the Company chose to file
16 the petition when it did?

17 A. Well, we chose to file it upon an examination
18 of the Court's Order. We did not up to that point
19 know, first of all, that we would lose our Court appeal
20 and that our position would not be sustained or the
21 basis upon which the Commission's authority would be
22 sustained. So it is on that basis that we made the
23 filing now.

24 Q. You were asked whether or not U S West in any
25 of its briefs in prior dockets had ever characterized

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1 imputation as payment or offset to the full reasonable
2 value of the asset. Do you recall that question?

3 A. Yes.

4 Q. Can you answer whether or not the
5 Commission's briefs in prior dockets ever characterized
6 imputation as payment for offset to full reasonable
7 value of the asset?

8 A. Yes. It is primarily the substance of my
9 testimony in Exhibit 102-T in what I've relied upon
10 from my testimony in various sections. If I could
11 summarize that testimony, it is basically the
12 representation that consideration was unreasonable at
13 the time in 1984; that full reasonable value was owed
14 and definition was given to that term in the U-86-156
15 Order and in the 950200 where that Order was
16 referenced, and then in the representation that the
17 purpose of imputation was to remedy the inadequate
18 consideration.

19 Logically, then, once the inequity had been
20 remedied, or, in other words, the benefit that's been
21 passed back to the ratepayers through a ratemaking
22 equals the consideration that the Commission deems to
23 be reasonable at the time of the transfer, then
24 imputation should end.

25 Q. Finally, Mr. Inouye, you were referred to two

00353

1 sections in the Supreme Court's December 24th, 1997
2 decision and asked to read both of those sections into
3 the record. Both of those sections referenced a sale
4 of the business. Do you recall that question and
5 answer exchange?

6 A. Yes, I do.

7 Q. Have you reviewed the Supreme Court decision
8 in preparation for your testimony in this docket?

9 A. Yes, I have.

10 Q. Did counsel's references to those two
11 sections of the Supreme Court decision cause you to
12 believe that a sale was required in 1984 or is
13 currently required in order for U S West's position in
14 this docket to prevail?

15 A. No, I do not believe that to be the case. I
16 was referring to Page 89 of the Court's Order where it
17 says that the Commission did explain that in order that
18 a fair contract between Company and its affiliate for
19 the sale of an asset would put an end to any
20 imputation.

21 This is in the section of the Court's Order
22 that says history and facts. It's referring to, I
23 believe, the Commission's Order in U-86-156. I
24 believe that that reference is a clear reference to had
25 there been a sale in 1984 that that would have been

00354

1 sufficient and there would have been no imputation.
2 MS. ANDERL: Thank you. I have no further
3 redirect.

4 JUDGE WALLIS: Is there recross?

5 MR. TRAUTMAN: I have one clarifying
6 question.

7

8

RECROSS EXAMINATION

9 BY MR. TRAUTMAN:

10 Q. I believe in answer to a question by
11 Ms. Anderl, you were asked about the purposes of the
12 publishing fee payments, and you were referred to, it
13 was Exhibit D on Page 5, and I believe -- I just want
14 to make sure that I got your answer correct. Are you
15 stating that the publishing fees in the 1983 Agreement
16 were for the three items that were referenced; namely
17 the listings, the exclusive right to publish the
18 directory, and the exclusive right to produce the
19 directories bearing the names, trademarks and trade
20 names of PNB, as well as the fact that they could also
21 be characterized as contributions as long as the
22 ratemaking treatment was to use them to offset rates?

23 A. Yes.

24 MR. TRAUTMAN: Thank you.

25 MR. FFITCH: Public Counsel has no questions,

00355

1 Your Honor.

2 JUDGE WALLIS: Are there other questions of
3 the witness?

4

5 RE CROSS EXAMINATION

6 BY MR. BUTLER:

7 Q. Mr. Inouye, you testified about the so-called
8 guaranteed payments in the Publishing Agreements as
9 being specified in the contract as set amounts?

10 A. Yes.

11 Q. You would agree, would you not, that when
12 those Publishing Agreements were submitted to the
13 Commission for its review and approval that they were
14 subject to the Commission's reserved power to revise
15 and amend the contract between the two affiliates; in
16 other words, to change the amount of those payments?

17 A. Yes.

18 MR. BUTLER: Thank you.

19 JUDGE WALLIS: Is there anything further?

20 COMMISSIONER HEMSTAD: I neglected to pursue
21 one point when I was asking my questions earlier, and I
22 apologize. I don't know which exhibit number this is,
23 but I'm looking at the Second Supplemental Order in
24 Docket U-89-3524 AT, which deals with the merger of
25 Pacific Northwest Bell into the renamed U S West

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1 Communications, Inc.

2 THE WITNESS: I have that.

3 COMMISSIONER HEMSTAD: Would you turn to Page
4 8.

5 THE WITNESS: Page 8. I believe I have the
6 wrong document.

7 JUDGE WALLIS: Let's be off the record for a
8 moment.

9 (Discussion off the record.)

10 COMMISSIONER HEMSTAD: I would like you to
11 read the second paragraph there, which is a bit
12 lengthy, but could you read that into the record?

13 THE WITNESS: "The Commission takes note of
14 Commissioner Pardini's dissenting opinion in this
15 matter and in particular his discussion of the
16 divestiture court's intentions with regard to directory
17 publishing revenues. The majority is in agreement with
18 Commissioner Pardini that this merger should not be
19 allowed in the absence of a more permanent guarantee
20 that directory publishing revenues of the Company will
21 be used as they were originally intended to support
22 affordable local telephone service. That's the
23 settlement agreement will be modified to require that
24 U S West Communications, Inc.'s directory advertising
25 revenues associated with Washington will be imputed

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1 into perpetuity in accordance with Paragraph 18-H of
2 the Joint Motion for Approval of Settlement and for
3 continuance of the hearing set for September 28, 1989
4 in Docket U-2698-F."

5 COMMISSIONER HEMSTAD: In context, this was
6 at the time that the three operating companies were
7 merged into the new U S Communications company as a
8 single entity; isn't that right?

9 THE WITNESS: That's correct.

10 COMMISSIONER HEMSTAD: Would you agree that
11 the Commission here was indicating -- really all three
12 Commissioners. Commissioner Pardini dissenting on
13 approving a merger at all but agreeing that imputation
14 would be continued into perpetuity as a condition of
15 the merger.

16 THE WITNESS: That's what it says here.

17 COMMISSIONER HEMSTAD: That was subsequently
18 modified on petition of the Company. I fine it
19 Appendix E to the petition here, the Third Supplemental
20 Order granting petition for a reconsideration and
21 amendment. The Second Supplemental Order, do you have
22 that document?

23 THE WITNESS: Yes, I do.

24 COMMISSIONER HEMSTAD: And the burden of that
25 at the bottom of the first page in the Commission's

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1 memorandum is to the effect that perpetuity is a long
2 time, and Commission acknowledges the concern raised by
3 the Company relating to the indefinite term of
4 imputation of directory advertising revenues contained
5 in the Commission's Second Supplemental Order.
6 However, the Company recognizes the potential for
7 future problems relating to directory advertising
8 revenues, quote, "agrees with the WUTC that the issue
9 is best laid to rest now," end quote. That's what the
10 Order says.

11 THE WITNESS: Yes.

12 COMMISSIONER HEMSTAD: So to modify, to use
13 language, which in effect said in perpetuity,
14 thereafter -- I'm reading from the ordering Paragraph
15 Page 7 on Page 2 -- "thereafter, these revenues will be
16 continued to be imputed accordingly unless and until
17 altered by subsequent order of the Commission," end
18 quote. What is the Company's understanding of the
19 consequence of that modification of the settlement
20 agreement on merger with regard to imputation?

21 THE WITNESS: I'm sorry. Could you repeat
22 your question?

23 COMMISSIONER HEMSTAD: What was then the
24 Company's understanding, or even now, of the impact of
25 these two orders on the requirement for imputation to

00359

1 continue, first, it had said in perpetuity, but then
2 secondly, as modified until further order of the
3 Commission?

4 THE WITNESS: I don't believe I can answer
5 that question. I know that this subject to
6 interpretation and the meaning of these orders and the
7 merger docket was the subject of other Court appeal. I
8 did not pay much attention as I was reviewing the
9 documents as to what was said or represented by the
10 parties, including the Company, so I'm uncomfortable in
11 trying to represent what the Company's belief is, what
12 the effects of these orders are.

13 MS. ANDERL: If I might just interject,
14 procedurally, these Orders are attached to Public
15 Counsel's motion for summary determination, and per
16 earlier rulings, the Company has been permitted until
17 the time for filing its opening briefs in this matter
18 to file its response to that motion for summary
19 determination, and Mr. Inouye, as he's accurately
20 represented, is not prepared to discuss what the
21 Company's position on meaning of those Orders is.
22 Counsel willing be submitting legal argument on that
23 during its brief. We'd be happy to address it during
24 oral argument earlier if you would like to hear the
25 Company's view on that.

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1 COMMISSIONER HEMSTAD: Well, in view of those
2 representations, I will not pursue this further.

3 JUDGE WALLIS: Are there any other questions?
4 It appears that there are none. I'm going to thank the
5 witness for your appearance today. You're excused from
6 the stand. Let's be off the record, please.

7 (Discussion off the record.)

8 (Witness sworn.)

9 JUDGE BERG: Thank you very much.

10 Ms. Anderl? Before we proceed with qualification of
11 witness Johnson, I'll just indicate that a number of
12 exhibits have been identified as relevant to this
13 witness. Exhibit 301-T is the Rebuttal Testimony of
14 Max Johnson. Exhibit 302 is Exhibit MGJ-1. Exhibit
15 303-T is the Rejoinder Testimony of Max Johnson.

16 At this time, do any of the parties have any
17 objection to those exhibits being admitted into the
18 record? Hearing no objection, Exhibits 301 through 303
19 will be admitted. Additionally, there are
20 cross-examination exhibits which have been identified
21 and marked which I will read into the record at this
22 time. We will take up their admission at such a point
23 in time as they may be offered.

24 Exhibit 304 is U S West's Response to Data
25 Request WUTC 05-036. Exhibit 305 is U S West's

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1 Response to Data Request WUTC 05-038. Exhibit 306 is
2 U S West Response to Data Request WUTC 05-039. Exhibit
3 307 is U S West Response to Data Request WUTC 05-040.
4 Exhibit 308 is U S West Response to Data Request
5 WUTC 05-041. Exhibit 309 is the non-confidential
6 Rebuttal Testimony of Max Johnson in Docket No.
7 U-86-156, dated April 14, 1988, Pages 1 through 16.
8 Exhibit 310 is U S West Response to Data Request
9 PC 08-114. Exhibit 311 is U S West Response to Data
10 Request PC 08-106. Exhibit 312 is U S West response to
11 Data Request PC 08-108, and Exhibit 313 is U S West
12 Response to Data Request PC 08-107.

13 I'll just ask counsel at this time whether
14 there are any other exhibits which have been identified
15 for this witness that I have not made reference to?
16 Hearing nothing, then, I believe at this point, we are
17 prepared to go forward. Ms. Anderl?

18 MS. ANDERL: Thank you, Your Honor.
19 Mr. Owens will be tendering this witness.

20

21 DIRECT EXAMINATION

22 BY MR. OWENS:

23 Q. Good afternoon, Mr. Johnson. Will you please
24 state your name and address for the record?

25 A. My name is Max Johnson. My address is 1705

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1 Fourth Avenue South, Seattle, Washington. ZIP code is
2 98134.

3 Q. You're the same Max Johnson who is sponsoring
4 the exhibits that have already been received in the
5 record, as I understand it, Exhibits 301-T, 302 and
6 303-T consisting of your rebuttal testimony, associated
7 exhibits and rejoinder testimony respectively?

8 A. That's correct.

9 Q. Since they've already been received, I won't
10 ask foundation other than to ask you if you have any
11 additions, changes or corrections to any of the
12 exhibits?

13 A. No, I do not.

14 Q. Thank you. Since the exhibits have already
15 been received, Mr. Johnson is available for
16 cross-examination.

17 JUDGE BERG: Mr. Trautman?

18

19 CROSS-EXAMINATION

20 BY MR. TRAUTMAN:

21 Q. I'd like to turn first to Exhibit 113. This
22 was previously admitted through Mr. Inouye, and this is
23 the response to Staff Data Request 05-042?

24 MR. OWENS: Could we have a minute, Your
25 Honor? The witness does not have a copy of that and we

00363

1 need to get it for him.

2 JUDGE BERG: Off the record momentarily.

3 Q. (By Mr. Trautman) Reviewing this document,
4 do you agree that the Company has no documentation
5 regarding the initiation of the transferred directory
6 publishing from PNB to U S West Direct other than your
7 testimony and the 1983 application to this?

8 A. I have no knowledge to what they have at this
9 point in time.

10 Q. I'm now turning to Exhibit 307. Let me turn
11 first to 307 and 308, and I guess I should preface the
12 question. I note that these are references to Exhibit
13 AKC-8, and that exhibit was the Exhibit D to the 1983
14 Publishing Agreement that we've already referred to, so
15 I guess as a preface I should ask, are you able to tell
16 me whether the answers to these data requests are
17 accurate, or need I wait for Ms. Koehler-Christensen?

18 MR. TRAUTMAN: I have a question for
19 clarification. You said this was in reference to
20 Appendix D to the Publishing Agreement?

21 MR. TRAUTMAN: No. If I said the Publishing
22 Agreement, I meant Appendix D to the 1983 Application.

23 MR. OWENS: Maybe we can get a copy of that
24 for the witness if you're going to ask him questions
25 about it.

00364

1 MR. TRAUTMAN: Exhibit 307, which was U S
2 West response to Staff Data Request 05-040.

3 MR. OWENS: That's Exhibit D to the
4 Application.

5 Q. (By Mr. Trautman) And the data request asks
6 to provide copies of all documents including notes and
7 phone conversation records relating to the negotiations
8 that took place regarding Publishing Agreements, and
9 the response is, U S West has no documents, notes or
10 phone conversation records relating to the negotiations
11 that took place over 15 years ago. Can you verify
12 whether that's accurate?

13 A. I have no idea. I've been away from the
14 Company for about 10 years.

15 Q. So you would not be the witness. Would
16 Ms. Koehler-Christensen be the witness? I assume there
17 would be some witness for the Company that could verify
18 this.

19 MR. OWENS: Yes. Ms. Koehler-Christensen
20 will be able to answer questions o Exhibit 307 and
21 Exhibit 308.

22 Q. Let me turn then to Exhibit 304, and this is
23 in response to Staff Data Request 05-036, and this
24 asked for a copy of the chart of accounts used by U S
25 West Direct at the time it recorded the transfer of

00365

1 assets from PNB, and it asks for the journal entries
2 made on U S West Direct books to record the transfer of
3 assets from PNB. For each journal entry, provide
4 account numbers, account descriptions and dollar
5 amounts, and the response said, The retention period
6 has expired; therefore, this information has been not
7 been retained by U S West Direct. Is that an accurate
8 response?

9 A. I'm not sure what their retention time period
10 is now so I couldn't respond.

11 Q. You can't even respond regarding records
12 retained by U S West Direct?

13 A. U S West Direct, no. The name was changed, I
14 believe, to period Dex in '96, I believe, and I was
15 gone by that time.

16 Q. You can't respond to any records that have
17 been retained by U S West Dex?

18 A. I don't know what their retention period is.
19 If I knew that, I could probably surmise whether or not
20 it was accurate, but I don't know what they keep and
21 how long they keep it at this point.

22 Q. Who for the Company would be able to sponsor
23 this exhibit? Is Mr. Inouye the only one?

24 MR. OWENS: I'm not sure we're required to
25 sponsor an exhibit. I think Ms. Koehler-Christensen

00366

1 could probably answer questions about it if it's a
2 response to a data request.

3 MR. TRAUTMAN: It was, and it was responded
4 to do somebody at the Company. I assume there would be
5 someone at the Company through which the exhibit could
6 be entered.

7 MR. OWENS: And Ms. Koehler-Christensen is
8 probably the candidate for you.

9 Q. (By Mr. Trautman) Mr. Johnson, is it
10 accurate to say that the only information that we have
11 regarding the transactions that took place between PNB
12 and U S West Direct in 1983 and 1984 other than your
13 testimony and recollection of what happened, are the
14 1983 and the 1984 Applications and the 1984 Publishing
15 Agreement and other agreements that were the subject of
16 the applications?

17 A. I testified to the Publishing Agreement, but
18 as to the dockets that were filed with you, I'm not
19 familiar with those.

20 Q. So are you aware of any other --

21 A. I'm not aware of any others, personally, no.

22 MR. OWENS: Mr. Johnson, if you could wait
23 until Mr. Trautman finishes his question, it would help
24 with the record.

25 Q. Could you turn to your rebuttal testimony,

00367

1 Exhibit 301-T. I'm on Page 2 of that exhibit, and on
2 Lines 14 to 15, you speak of the decision to realign
3 the publishing operation. Do you see that?

4 A. Yes, I do.

5 Q. Who was involved in the decision to realign
6 directory operations?

7 A. I believe my recollection is that the
8 officers of U S West and the officers of the three
9 operating telephone companies were involved in that
10 decision.

11 Q. When you say "officers of U S West," are
12 these the officers of U S West, Inc.

13 A. U S West, Inc., yes.

14 Q. And U S West, Inc. was the parent company to
15 PNB?

16 A. Yes, they were the parent company to PNB.

17 Q. And the parent company to what eventually
18 became U S West Direct?

19 A. Yes.

20 Q. On Pages 2 to 3 of your rebuttal testimony,
21 you speak generally of your involvement with U S West
22 Direct in the negotiations that led to the 1984 and the
23 1987 Publishing Agreements for Pacific Northwest Bell.

24 A. Yes.

25 Q. Were these arms-length negotiations, in your

00368

1 opinion?

2 A. Well, I think they were arms-length as far as
3 two sister companies that could negotiate at
4 arms-length. They certainly were not totally friendly.
5 Let's put it that way.

6 Q. You worked as an employee of PNB in 1983 when
7 you negotiated the first Publishing Agreement as the
8 U S West Direct representative; is that correct?

9 A. I was paid by PNB at that time, but I was
10 reporting to Mr. Bill Gardner, who was the president
11 designate of U S West Direct, and actually, I was
12 reporting directly to him.

13 Q. If you could turn now to -- it's the 1983
14 Application, which would be Exhibit 110.

15 A. I do not have a copy of that.

16 Q. This is part of Exhibit D.

17 A. I'm sorry, I do have that. What page again?

18 Q. I'm on Exhibit D of the Application, Page 5.

19 A. I have it.

20 Q. At the top of the page on the third line, it
21 states, "The Publishing Agreement was vigorously
22 negotiated by the management teams of the independent
23 subsidiaries of U S West, each pursuing its own
24 financial interest."

25 A. I'm sorry. I'm in the wrong place. I have

00369

1 Exhibit D, I think you indicated.

2 MR. OWENS: Page 5.

3 THE WITNESS: Now I'm with you.

4 Q. (By Mr. Trautman) Do you see that reference?

5 A. Yes, I do.

6 Q. And is this a correct description of the
7 negotiations between the two companies, in your view?

8 A. I believe that it is a fair description. I
9 have to qualify this in that the amount of publishing
10 fee itself was negotiated at levels above my level, and
11 in the negotiations that we conducted, we were
12 negotiating the detailed implementation of the
13 Publishing Agreement between the two companies. And I
14 know that the discussions on the publishing fees were
15 vigorous and heated, and we had the same kinds of
16 discussions in some of the parts of this particular
17 contract.

18 Q. You state on Page 3 of your rebuttal
19 testimony, Exhibit 301, that you negotiated the
20 renewals to the Publishing Agreement in 1986 for the
21 years 1987 and 1988; is that correct?

22 A. That's correct.

23 Q. Turning to Exhibit 112, this is the 1987
24 Publishing Agreement.

25 THE WITNESS: I don't have a copy of that

00370

1 with me.

2 JUDGE BERG: Mr. Owens, anytime you need to
3 approach the witness to provide him with a document,
4 please feel free to do so without asking permission
5 from the Bench.

6 MR. OWENS: Thank you.

7 Q. (By Mr. Trautman) And if you turn to Page 14
8 of that Publishing Agreement, Article 10, an amount
9 denominated as a subsidy is to be paid by U S West to
10 Pacific Northwest Bell as set forth in Exhibit B; is
11 that correct?

12 A. That's correct.

13 Q. Is this not the same type of payment that was
14 denominated as a publishing fee under the same Article
15 10 in the 1984 Publishing Agreement?

16 A. I would have to refer to that clause, but my
17 recollection is that the publishing fee that was paid
18 included more than just the subsidy amount as defined
19 here. It included the payment for all of the services,
20 or the listings and the service orders that we bought
21 from PNB. It also included the billing and collections
22 piece of our contract, I believe. No, it was delivery
23 records. It included delivery records. The billing
24 collection is a separate contract, but there were
25 several things included in that in addition to the

00371

1 subsidy.

2 Q. Now, referring to the amount denominated as a
3 subsidy and turning now to Page 14 of your rejoinder,
4 and this is Exhibit 303.

5 JUDGE BERG: Mr. Trautman, again, if you'd
6 provide after suitable pause, provide a page number and
7 a line reference. Thank you.

8 Q. 303, Page 14. I'm actually referring to the
9 question that begins at the bottom of Page 13, and it's
10 a question relating to publishing fees, and you state
11 at the top of Page 14, "From my standpoint, publishing
12 fees were an overhead item that it was my job to
13 reduce." What did you mean by that?

14 A. Well, we were running a competitive business
15 in the directory advertising side of the house, and we
16 looked at all of our costs because we needed to make
17 sure we were doing the most efficient job for our
18 customers and share owners, and from my standpoint,
19 publishing fees were an overhead that were not payment
20 for goods or services received, and it was my job to
21 minimize those.

22 Q. Going back to the publishing fees that were
23 referenced in the 1983 Agreement -- this would be
24 Exhibit 110. No. This is the 1984 Publishing
25 Agreement. I think this is an Exhibit to Mr. Brosch's

00372

1 testimony. Are you familiar with the 1984 Publishing
2 Agreement?

3 A. Yes, I am.

4 Q. Is it not true that the publishing fees that
5 were listed in that Agreement were stated that they
6 were being provided in exchange for particular services
7 or items that were being provided?

8 MR. OWENS: Could I that the witness be
9 provided a copy of the document if he's going to be
10 cross-examined on the content of it?

11 JUDGE BERG: Certainly. Mr. Trautman, was
12 this also an attachment to the petition filed by U S
13 West?

14 MR. TRAUTMAN: No. This was an exhibit to
15 Mr. Brosch's testimony.

16 JUDGE BERG: I'll share with all counsel that
17 the Commissioners as well as the judge, even though it
18 may be a passing reference to a document such as you're
19 making now, want to follow along, and your question and
20 response will not be fully appreciated unless, in fact,
21 we are given an opportunity to get that document in
22 front of us. Otherwise, your only other option would
23 be to present the question in such a way that it
24 doesn't make specific reference to an exhibit such as
25 you're doing now. This appears to be 602.

00373

1 MR. TRAUTMAN: And I probably shouldn't have
2 made this assumption, but I guess my assumption was
3 that anything that was on the exhibit list would have
4 been available.

5 CHAIRWOMAN SHOWALTER: It is available. We
6 didn't know where to look.

7 THE WITNESS: I have a copy of it now.

8 Q. (By Mr. Trautman) I'm looking at Page 10,
9 and it's Article 10. Do you agree with the description
10 of what the publishing fee is paying for in this
11 paragraph?

12 A. I can read the paragraph, and I see what it
13 says, but the publishing fee was far greater than is
14 delineated here. The publishing fee was also designed
15 to provide for a flow of funds to provide a subsidy to
16 keep telephone rates low.

17 Q. So there was an additional publishing fee
18 beyond the amounts we see in the written contract?

19 A. No. These are the numbers of the amounts
20 that we paid, but the presentation of the information
21 here makes no reference to the subsidy, and if you took
22 each of these items, in my judgment, you would come far
23 short of the dollar amounts that we're showing that
24 were transferred here. The balance would be a subsidy.

25 Q. So does this contract, does it

00374

1 mischaracterize what these amounts are paying for?

2 A. Reading it now, I'd say it does, based on my
3 recollection of the discussions that we had.

4 Q. Could you identify for me how much of the
5 various publishing fee amounts can be attributed to
6 each of the items listed in Paragraph 10.01?

7 A. I can't give you specific numbers. That
8 would take a detailed cost study, and it would have to
9 have been at the time they were established, and I have
10 no way of doing that.

11 Q. So we don't know how much any of these
12 items -- for instance, in 1985, we have a number of
13 \$62,745,000. We don't know how much of that was to pay
14 for, for example, the right to use the listings.

15 A. I think that could be calculated.

16 Q. Or the right to publish the exchange
17 directories?

18 A. That one would be very difficult.

19 Q. Or the right to use the name and logo and
20 trademarks of the phone company?

21 A. That one again would be very difficult to
22 identify.

23 Q. Or the remaining rights and obligations or a
24 subsidy in addition to that to which you're referring?

25 A. It would be very difficult to attach specific

00375

1 dollars to each of those, yes.

2 Q. And I'm referring you to Exhibit 306, and I
3 realize this probably should come in through
4 Ms. Koehler-Christensen, but the question -- this is
5 the response to Staff Data Request 05-039.

6 THE WITNESS: I do not have a copy of that,
7 and I'm not sure why.

8 Q. This data request simply asks the Company to
9 provide separately the amounts of compensation paid for
10 each of the following: The right to use the listings,
11 the exclusive right to publish exchange directories,
12 and the exclusive right to produce directories bearing
13 the name, trademarks and trade names of PNB; and the
14 response is, "There is no information available to
15 identify these separate amounts," and although I think
16 you told me you can't speak for U S West as to this; is
17 that correct?

18 A. I can speak for U S West Direct, I think,
19 because there was no such study done at the time the
20 publishing fees were established to break it out by
21 item, and that was U S West Direct.

22 Q. There was no study done?

23 A. To break out specifically the value of each
24 of these items as you're requesting it. There were no
25 studies done to that effect at all.

00376

1 Q. So for example, someone simply chose the
2 number \$62,745,000, and that appeared to be the correct
3 number.

4 A. Is that a question?

5 Q. Yes.

6 A. It appears that that's the case, but I'm sure
7 the people that negotiated the publishing fee had some
8 sound basis for that. I was not involved in those
9 discussions.

10 Q. But they haven't written it down for any of
11 us to look at?

12 A. I don't know that to be a factor or not.

13 Q. I referred earlier to your statement that
14 from your standpoint, publishing fees were an overhead
15 item that it is my job to reduce. I'd like to refer
16 now to Exhibit 609, and this is attached to
17 Mr. Brosch's testimony. This is a letter that you
18 wrote to Mr. Okamoto in December of 1988. Do you see
19 this letter?

20 A. Yes, I do.

21 Q. Is it correct that this agreement eliminated
22 the publishing fee altogether?

23 A. Yes, that's correct.

24 Q. And this then would have been consistent with
25 your goal to reduce this item of overhead?

00377

1 A. I want to correct my last statement. This
2 would not have eliminated the publishing fee. It would
3 have eliminated the subsidy payment. We still paid for
4 all goods and services we received from PNB and the
5 other telephone companies, so it would be a partial
6 part of that would be true.

7 Q. And with that clarification in mind, where in
8 the letter does it state that U S West Communications
9 will receive anything in return for the elimination of
10 the subsidy?

11 A. It is not included in the letter.

12 Q. In your opinion, would this be an instance of
13 an aspect of the Publishing Agreement that was
14 vigorously negotiated by the management teams of
15 U S West Communications and U S West Direct?

16 A. I think it would be, yes.

17 Q. With each pursuing its own financial
18 interest?

19 A. I was certainly pursuing mine.

20 Q. Would you say that U S West Communications
21 was pursuing theirs?

22 A. I couldn't answer for them.

23 Q. Turning to Exhibit 301-T, which is your
24 rebuttal testimony, on Page 3, on Lines 7 and 8, you
25 are asked: "Is it your recollection that what was

00378

1 transferred to U S West Direct was a going business as
2 opposed to physical assets and employees?" Do you see
3 that?

4 A. Yes, I do.

5 Q. And your answer is: "Very definitely. A
6 going business was transferred from PNB to U S West
7 Direct. The entire directory operation of PNB, which I
8 was responsible for running, except for the maintenance
9 of the White Pages listing operation, was transferred
10 to U S West Direct." Is that correct?

11 A. That's correct.

12 Q. And continuing on this page, you are asked:
13 "Besides the physical assets, were business records,
14 practices and procedures, business know-how, and
15 everything else that it takes to run a successful
16 business transferred to U S West Direct in 1984," and
17 you respond: "Yes, absolutely." Do you see that?

18 A. I do.

19 Q. Would you turn to Exhibit 309, and this is
20 the non-confidential portion of your testimony in
21 Docket U-86-156 on April 14th of 1988, and I'm turning
22 to Page 2 of that testimony, and starting on Line 12,
23 the question states: "Are you familiar with Cause
24 FR-83-159?" The answer is: "Yes." Question: "Did
25 Pacific Northwest Bell transfer anything besides

00379

1 physical assets to U S West Direct as part of the
2 transaction approved by the Commission in FR-83-159."
3 The answer: "The prior testimony in this docket
4 intimates that a broad range of publishing assets were
5 transferred. Actually, the asset transfer largely
6 consisted of cash. The PNB portion of the transfer
7 totalled some 24.1 million dollars of which
8 approximately 22. 2 million was in cash. The cash
9 transferred from the three telephone companies provided
10 U S West Direct with its cash working capital upon its
11 formation." Question: "What was the nature of the
12 assets transferred?" Answer: "The publishing related
13 assets were transferred at their book value and
14 included leasehold improvements, equipment, office
15 furniture and computer software related to the Yellow
16 Pages. Assets relating to the listing business
17 resulting from the service order process of the
18 telephone company; i.e., name, address, telephone
19 number, et cetera, appropriately remained with the
20 telephone company." Do you see that?

21 A. Yes, I do.

22 Q. Was this an accurate statement of what was
23 transferred from Pacific Northwest Bell to U S West
24 Direct in 1984?

25 A. In looking at the Cause we're looking at

00380

1 here, it dealt with the transfer of assets at their
2 book value as carried on the books, so it is an
3 accurate reflection of that. My understanding was that
4 the Commission did not have to approve the transfer of
5 people and the other items that were included in the
6 transfer.

7 Q. So this was an accurate statement?

8 A. Yes, it is an accurate statement, as it
9 applies to this particular issue.

10 MR. TRAUTMAN: I would move for the admission
11 of Exhibit 309.

12 MR. OWENS: No objection.

13 JUDGE BERG: Exhibit 309 will be admitted.

14 Q. (By Mr. Trautman) Turning back to Exhibit
15 301-T, which is your rebuttal testimony, on Page 5,
16 Lines 1 to 2, you are asked whether the Publishing
17 Agreements reflect PNB as the owner of the directory
18 business; do you see that?

19 A. Yes, I do.

20 Q. And you respond, "No. It was never
21 contemplated that PNB was the owner of the directory
22 business. U S West Direct was the owner of the
23 directory business."

24 A. That's correct.

25 Q. Where do either the 1984 or 1987 Publishing

00381

1 Agreements state that the ownership of the directory
2 publishing business was being transferred to PNB?

3 A. The actual transfer of the business occurred
4 prior to the negotiation of the Publishing Agreements,
5 and therefore was not included in the Agreements at
6 all. It was a separate action.

7 Q. So what document prior to the 1984 Publishing
8 Agreement would have memorialized the transfer of
9 ownership of the directory publishing business?

10 A. I don't know the answer to that question.

11 Q. So as far as you know, there was no such
12 document?

13 A. I suspect there was someplace, but I don't
14 have a copy of it and wouldn't know where to look for
15 it.

16 Q. On the same page of your rebuttal, Page 5,
17 Lines 9 and 10, you state, "I cannot recall the
18 Publishing Agreement ever being set up as a rental or
19 lease agreement for the use of directory assets owned
20 by PNB." Do you see that?

21 A. Yes, I do.

22 Q. Is it your position that there was a sale of
23 the directory publishing business?

24 A. I wouldn't call it a sale, but there was
25 certainly a transfer of the directory publishing

00382

1 business from a regulated subsidiary of U S West to a
2 nonregulated subsidiary.

3 Q. Turning to Page 6 and 7 of your rebuttal
4 testimony, and this is still on Exhibit 301-T, in
5 referring to U S West's Yellow Pages on Lines 9 and 10,
6 you said that U S West Direct decided to introduce a
7 new cover design that emphasized U S West Direct's
8 name; is that correct?

9 A. That's correct.

10 Q. And on Lines 16 through 17, you state, "Our
11 plan was also to move towards having U S West Direct's
12 name placed more prominently on the covers than the PNB
13 name; is that correct?"

14 A. That was correct at the time, yes.

15 Q. On Page 9 of your rebuttal on Line 4, you
16 state that, "The use of the PNB name was not for the
17 benefit of U S West Direct. We would have preferred to
18 establish the book solely under our name to enhance our
19 brand. It was strictly for the benefit of PNB who
20 wanted to ensure its corporate identity was on the
21 directory to show that it was meeting its regulatory
22 obligation to publish a White Pages alphabetical
23 directory." Do you see that?

24 A. Yes, I do.

25 Q. Could you refer now to Exhibit 111. This is

00383

1 the 1984 Application to the Commission?

2 THE WITNESS: I don't think I have a copy of
3 that.

4 Q. Do you have that?

5 A. I have it, yes.

6 Q. And I'm reading from the top, the Paragraph 1
7 starts -- Page 8, Paragraph 1 referring to Publishing
8 Agreement and it states, "No costs are applicable to
9 the applicant PNB as U S West Direct is paying Pacific
10 Northwest Bell in all agreements by negotiation on the
11 basis of what PNB could sell directory listings for the
12 with the exclusive right to use and publish the logo.
13 Historically, PNB has sold listings at 10 cents each,
14 but under the negotiations with U S West Direct, PNB is
15 here obtaining a \$25 to \$35 cost per listing" -- that's
16 underlined -- " If U S West Direct chose to only
17 purchase the mere listings, PNB would have to sell them
18 for the same price paid by other publishers. We
19 continue to sell to other publishers at the 10-cent
20 price. The reason we have been successful in obtaining
21 various significant increase in price from U S West
22 Direct is because of the value of the exclusivity of
23 the logo."

24 Now, would that not indicate that U S West
25 Direct found the use of the PNB logo to be extremely

00384

1 valu able?

2 MR. OWENS: I'm going to object because it
3 assumes a fact not in evidence that U S West Direct
4 filed this Application.

5 JUDGE BERG: I would allow the question to go
6 forward. He's looking for this expert's ability to
7 reconcile statements in two different documents that
8 might be seen as conflicting.

9 MR. OWENS: Mr. Johnson is introduced as a
10 fact witness in this case because of his personal
11 experience in these events, and the implication of the
12 question was that Mr. Johnson could speak for the
13 representations made by Pacific Northwest Bell in this
14 Application.

15 JUDGE BERG: If he disagrees with the
16 representations, he's certainly capable of stating so.
17 I'd like the answer witness to answer, if you can.

18 THE WITNESS: Would you repeat the question?

19 Q. (By Mr. Trautman) Does this recitation in
20 this paragraph, not indicate, doesn't it indicate that
21 U S West Direct found the use of the PNB logo to be
22 extremely valuable?

23 A. No, it doesn't.

24 Q. You don't believe that it does?

25 A. No, I don't believe that it does. This may

00385

1 say that, but, in fact, we did not find it to be that
2 valuable, and these were not our words. We did not
3 write this, nor did I ever say it.

4 Q. So PNB was quite incorrect in suggesting that
5 the payment of the price 350 times the normal cost of a
6 listing was due to the value of the exclusivity of the
7 logo.

8 MR. OWENS: Asked and answered.

9 Q. Is that correct?

10 A. Yes.

11 JUDGE BERG: Mr. Johnson, if you hear an
12 objection from your counsel and I don't respond right
13 away, it's because my wheels are turning, and you might
14 want to just pause a minute before responding.

15 THE WITNESS: I didn't hear his objection,
16 sorry.

17 Q. (By Mr. Trautman) Could you turn to the
18 Exhibit 602, which again is the 1984 Publishing
19 Agreement. Looking on the first page of the preamble,
20 looking at the sixth "whereas," do you agree that it
21 states, "Whereas the parties recognize and agree that
22 there is unique value in the publication of directories
23 containing both the utilities service directory
24 information and advertising by reason of the breadth of
25 circulation and the right to use the name and logo of

00386

1 the telephone company in connection with the
2 publication of such directories."

3 A. I see that.

4 Q. Referring back to Page 9 of your rebuttal
5 testimony, Exhibit 301 -- well, I guess before I go to
6 that, referring back to that statement, the Publishing
7 Agreement, do you think that does not indicate an
8 agreement by U S West Direct that there was value in
9 using the telephone company logo, which would then have
10 been the PNB logo?

11 A. I think in any negotiation, contract
12 negotiation, you give and take on various points to get
13 a deal, and I think that this is one of those cases
14 where we that. We weren't real sure what the value of
15 that was, but as things materialized, we found it was
16 really not of much value to us.

17 Q. Is that a yes or a no?

18 A. I think the statement here indicates that at
19 the time we put the Agreement together, it appeared
20 that there was some value.

21 Q. And again, it's your belief that PNB was
22 entirely misled when it stated that the \$35 payment per
23 listing was due to the unique value?

24 A. I think that overstates the value by a
25 considerable amount, yes.

00387

1 Q. Do you have any knowledge of why U S West
2 Direct paid \$35 rather than 10 cents per listing?

3 A. We didn't pay \$35.

4 Q. \$25 to \$35.

5 A. We didn't pay \$25 to \$35.

6 Q. So the Application is incorrect?

7 A. No, I'm not sure that it is. I think the way
8 that that number was arrived at on the Application, if
9 I were to surmise, it was taking the entire amount of
10 the publishing fee and dividing by the listings, and
11 the publishing fee was designed to pay for a lot more
12 than just listings.

13 Q. But in any event, the representation of PNB
14 that they were able to obtain a significant increase in
15 price, and this was a representation that they were
16 making to the Commission, that you would say that
17 representation was simply misguided?

18 A. I'm not sure how they arrived at it so I
19 guess I can't make an evaluation of it, but it seems
20 high to me.

21 Q. On Page 9, Line 4 of your rebuttal, again,
22 you stated that the use of the PNB name was strictly
23 for to the benefit of PNB to show that it was meeting
24 its regulatory obligation to publish a White Page
25 telephone directory, and turning back to Page 8 of

00388

1 you're rebuttal testimony, on Lines 6 through 7, again
2 you state, "PNB wanted to be able to assure its state
3 regulators that PNB was meeting its regulatory
4 requirement by providing White Page directories to its
5 customers," and I guess my question is, do you believe
6 that the Commission would not have had ample other
7 means to determine whether PNB was meeting this
8 obligation?

9 MR. OWENS: I want to object to asking this
10 witness to speculate on what means the Commission would
11 have to determine whether or not PNB was meeting its
12 obligations.

13 JUDGE BERG: Mr. Trautman, quite frankly, I
14 was confused by your question.

15 MR. TRAUTMAN: The question relates to the
16 witness's assertion that the change to the covers and
17 that the use of the PNB name was to assure regulators
18 that PNB was meeting its regulatory obligation to
19 publish a White Pages alphabetical directory.

20 JUDGE BERG: That's in Mr. Johnson's
21 testimony.

22 MR. TRAUTMAN: To me, the clear implication
23 is this was necessary so that the Commission would be
24 made aware that PNB was meeting this obligation, and my
25 question was, in his view, does he believe the

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1 Commission not have had other means of determining
2 whether or not PNB was meeting this obligation other
3 than by placing PNB's name on the U S West directories.

4 JUDGE BERG: Mr. Owens, I see this as a
5 question not asking this witness to speculate on the
6 Commission's views but in his opinion what other
7 requirements or what other actions were being taken
8 that would communicate the same purpose of complying
9 with the Company's regulatory requirements, if he knows
10 of his personal knowledge of other efforts.

11 MR. OWENS: Thank you, Your Honor.

12 JUDGE BERG: Mr. Johnson, if you can respond.

13 THE WITNESS: I know of no other way that the
14 Commission could determine that the obligation was
15 being met, other than possibly getting a list of all
16 the subscribers in a particular exchange and going
17 through and comparing them item for item to make sure
18 they are complete, so the answer is no, I don't think
19 that there was another way.

20 Q. (By Mr. Trautman) You state that PNB wanted
21 the name on the cover to assure the regulators that it
22 was meeting its obligation to publish a White Page
23 directory. Do you recall whether PNB mentioned any
24 other means of achieving that goal?

25 A. I don't remember, no.

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1 Q. So U S West Direct has said they did not want
2 to have the PNB name on the covers; this is your
3 testimony.

4 A. We didn't see a great value on having it on
5 the cover. Yes, that's accurate.

6 Q. Did you pursue any other means of having PNB
7 achieve its goal of assuring regulators it was
8 publishing the White Pages?

9 A. No, we didn't.

10 Q. I'm referring back to your testimony on Page
11 7, rebuttal testimony, Page 7, Lines 16 to 17. This is
12 Exhibit 301. You state that your plan was also to move
13 toward having U S West Direct's name placed more
14 prominently on the covers than the PNB name; is that
15 correct?

16 A. Yes.

17 Q. And in your rejoinder testimony, which is
18 Exhibit 303 on Page 10, Lines 14 and 15, you state,
19 "During the course of the agreement, U S West Direct
20 progressively diminished the prominence of the PNB name
21 on the covers." Do you see that?

22 A. Yes, I do.

23 Q. Could you turn now to your Exhibit 302, which
24 is your MGJ-1 directory covers.

25 A. Right.

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1 Q. And these are the covers for South King
2 County, and comparing, first of all, the June 1984
3 cover with the June 1985 cover, isn't it true that in
4 the 1985 cover, the Pacific Northwest Bell name remains
5 prominently near the top while U S West Direct is in
6 small print in the lower left-hand corner?

7 A. In about the same size print, yes.

8 Q. Which of the two names is more prominent, in
9 your opinion?

10 A. I think the Pacific Northwest Bell probably
11 because of its location on the page.

12 Q. And turning to the June 1986 cover, isn't it
13 true that the Pacific Northwest Bell name is in even
14 larger type, while U S West Direct is still in small
15 type down in the lower left-hand corner?

16 A. That appears to be the case, yes.

17 Q. Which of the two names is more prominent?

18 A. I think Pacific Northwest Bell is.

19 Q. Isn't it true that the Pacific Northwest Bell
20 name remains prominently at the top of the May 1988 to
21 1989 cover?

22 A. It is true, yes. It's about the same size as
23 U S West Direct, and we moved U S West Direct over to a
24 more prominent position in the lower right-hand cover.
25 It's still in the upper area, yes.

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1 Q. And it's in the more prominent area, is it
2 not?

3 A. It's certainly higher on the page, yes.

4 Q. Isn't it true that the first cover which does
5 not have the Pacific Northwest Bell name is May of 1989
6 and 1990?

7 A. Yes, that's right.

8 Q. Isn't it also true that U S West commenced
9 its name change advertising campaign in June of 1988,
10 at which time it ran five weeks of ads to inform
11 customers of the changeover of PNB's name to U S West
12 Communications?

13 A. I don't remember the dates on those, so I
14 couldn't attest to the date that you've given me.

15 Q. And I believe for your check, you could look
16 to Dr. Selwyn's Exhibit LLS-5, which would be Exhibit
17 810, and that was U S West response to the Staff Data
18 Request 08-055, so would you accept, subject to check,
19 that that is when the name change advertising came
20 began?

21 A. I would accept that subject to check, yes.

22 Q. Isn't it also true that PNB filed an
23 application for approval of its merger with Mountain
24 Bell to be renamed U S West Communications, Inc., on
25 December 7th of 1989?

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1 A. I don't remember the dates there either. I
2 don't know. I don't have knowledge of that.

3 Q. Would you accept that subject to check?

4 A. I certainly would.

5 Q. It's in the Commission's Second Supplemental
6 Order in Docket U-89-3524-18?

7 JUDGE BERG: Mr. Trautman, before you go
8 further, just two quick checks. Let's be off the
9 record.

10 (Discussion off the record.)

11 Q. (By Mr. Trautman) On Page 10 of your
12 rejoinder testimony at Lines 12 and 13, you refer to
13 the fact that in 1989 -- and this was five years after
14 the January 1984 transaction between PNB and U S West
15 Direct -- that in 1989, quote, "The PNB name vanished
16 from all the directories;" is that correct?

17 A. That's correct.

18 Q. Wouldn't you agree that it wouldn't make very
19 much sense for the PNB name to remain on the
20 directories once the Company had merged into U S West
21 Communications and PNB no longer existed as an entity?

22 A. My recollection is that there were some
23 covers where PNB was still operating under the PNB name
24 and the name was dropped. We dropped the name as soon
25 as contractually we were able to do that.

00394

1 Q. Isn't it correct that in your South King
2 County covers, the first cover where the PNB name
3 vanished was May of 1989 to 1990?

4 MR. OWENS: Objection, asked and answered.

5 JUDGE BERG: I will agree, Mr. Trautman.

6 Q. Would you agree that U S West Direct's
7 directory advertising rates are much higher than those
8 of non ILEC affiliated directories?

9 MR. OWENS: I'm going to object to lack of
10 foundation. This witness hasn't been asked any
11 questions as to his knowledge of the advertising rates
12 of non ILEC publishers, and that's certainly outside
13 the scope of his prefiled testimony.

14 JUDGE BERG: Mr. Trautman?

15 Q. (By Mr. Trautman) Do you have any knowledge
16 of that?

17 A. I have no knowledge of the ILEC charges, no.

18 Q. I think when I asked you questions about the
19 negotiations, you said that you did not negotiate
20 regarding the publishing fees; is that correct?

21 A. That's correct, in the 1984 contract
22 negotiations.

23 Q. Is there any one in this current docket, to
24 your knowledge, who can speak to question?

25 A. I don't believe so. I think all the people

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1 who were involved in those discussions have long since
2 retired.

3 Q. And do you have any notes or data regarding
4 the negotiations?

5 A. No, I do not.

6 MR. TRAUTMAN: No further questions.

7 JUDGE BERG: Off the record for a moment
8 (Discussion off the record.)

9 JUDGE BERG: That concludes the
10 cross-examination by Mr. Trautman upon behalf of
11 Commission staff. We'll be adjourning for the day.
12 Mr. Johnson, we'll start tomorrow off with resumption
13 of your cross-examination by Public Counsel.

14 Just a note to the parties, the Commission
15 intends to take the Bench and begin tomorrow's
16 proceedings at 8:30 in the morning, so please plan to
17 be here a little early so we can get a prompt start.
18 Thank you, Mr. Johnson. We'll see you again tomorrow
19 morning. At this point, today's hearing is adjourned.

20 (Hearing adjourned at 5:00 p.m.)

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