

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 XII
7 Imputation of Revenues Derived) Pages 396 - 595
8 from Transferred Yellow Pages)
9 Publishing Business.)

10 A hearing in the above matter was held on
11 July 27, 1999 at 8:45 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
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22 THE WASHINGTON UTILITIES AND TRANSPORTATION
23 COMMISSION by GREGORY J. TRAUTMAN, Assistant Attorney
General, 1400 South Evergreen Park Drive Southwest,
Post Office Box 40128, Olympia, Washington 98504.

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

00397

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

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

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24 Kathryn T. Wilson, CCR

25 Court Reporter

00398

INDEX OF WITNESSES

		PAGE
1		
2		
3	WITNESS:	
4		
5	MAX JOHNSON (continued)	
6	Cross-Examination by Mr. ffitch	402
7	Cross-Examination by Mr. Butler	442
8	Cross-Examination by Mr. Roseman	444
9	Examination by Judge Wallis	444
10	Examination by Commissioner Hemstad	448
11	Examination by Chairwoman Showalter	456
12	Examination by Commissioner Hemstad	459
13	Examination by Judge Wallis	459
14	Examination by Chairwoman Showalter	461
15	Redirect Examination by Mr. Owens	463
16	Recross-Examination by Mr. Trautman	472
17	Recross-Examination by Mr. ffitch	478
18	Examination by Commissioner Hemstad	480
19	Examination by Chairwoman Showalter	482
20	Recross-Examination by Mr. Trautman	484
21	Redirect Examination by Mr. Owens	485
22	Examination by Chairwoman Showalter	486
23		
24		
25		

00399

INDEX OF WITNESSES

1		
2		
3	WITNESS:	PAGE
4		
5	CARL INOUYE	
6	Examination by Commissioner Hemstad	487
7	Examination by Chairwoman Showalter	493
8	Examination by Commissioner Hemstad	498
9	Recross-Examination by Mr. ffitch	500
10	Redirect Examination by Ms. Anderl	501
11		
12	TIMOTHY GOLDEN	
13	Direct Examination by Mr. Owens	506
14	Cross-Examination by Mr. Trautman	510
15	Cross-Examination by Mr. ffitch	532
16	Examination by Chairwoman Showalter	564
17	Examination by Commissioner Hemstad	568
18	Examination by Commissioner Gillis	573
19	Redirect Examination by Mr. Owens	576
20	Examination by Judge Wallis	587
21	Examination by Commissioner Hemstad	589
22	Recross-Examination by Mr. Trautman	593
23		
24		
25		

00400

		INDEX OF EXHIBITS MARKED	ADMITTED
1			
2	EXHIBIT:		
3			
4	310	361	509
5	311	361	509
6	312	361	509
7	313	361	509
8			
9	401-T	504	508
10	402-C	504	508
11	403-T	504	508
12	404	504	508
13	405	504	508
14	406	504	508
15	407	504	508
16	408	505	508
17	409-C	505	508
18	410-T	505	508
19	411	505	508
20	412	505	not offered
21	413	505	516
22	414	505	516
23	415-C	505	523
24	416	505	524
25	417	505	531

00401

	EXHIBIT:	MARKED	ADMITTED
1			
2			
3	418	505	532
4	419	505	542
5	420	506	564
6	421	506	559
7	422	506	561
8	423	506	564
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

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2
3
4
5
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P R O C E E D I N G S

JUDGE WALLIS: This is the July 27th, 1999 session in the matter of Commission Docket No. UT-980948. As the session concluded yesterday, Staff had completed its cross-examination of Max Johnson, and we're preparing to take up with the examination of Public Counsel. Mr. Ffitch?

MR. FFITCH: Thank you, Your Honor.

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CROSS-EXAMINATION

BY MR. FFITCH:

Q. Good morning, Mr. Johnson. We're inside again on another beautiful Northwest day so we can all commiserate. I'm an assistant attorney general with the Public Counsel section representing residential small business customers before the Commission.

I've placed up there on the table our cross-examination exhibits for you and numbered them 310 through 313, which I hope is consistent with the numbering they have been given, and if I've made a mistake, we'll fix that as we go along. I'd like to start by asking you to turn to your rebuttal testimony, which is Exhibit 301-T at Page 4, Line 4.

At that point in your testimony, you refer to a number of telephone company services that were

00403

1 provided to U S West Direct after publishing operations
2 were transferred. Does U S West Direct continue to
3 receive billing and collection services from Pacific
4 Northwest Bell, now known as U S West Communications?

5 A. To the best of my knowledge, they do,
6 although they do have their own billing system for
7 customers who are non U S West customers. I believe
8 that's accurate. It's been a few years since I've been
9 there, but I think it's still being done that way.

10 Q. Does the advertising customer, who is also a
11 U S West customer, receive a billing for Yellow Pages
12 advertising in the same envelope as his telephone bill
13 when billing collection services are purchased from
14 U S West Communications by Dex?

15 MR. OWENS: I don't want to interfere too
16 much with Public Counsel's examination, but Mr. Johnson
17 was presented as a fact witness about events that
18 occurred back in the mid '80's up until he left the
19 employment of U S West Dex in 1992. I appreciate his
20 willingness to give his views as to what's currently
21 going on, but when we get into issues about what is
22 currently going on in the billing and the details of
23 that, Ms. Koehler-Christensen is the witness that has
24 current knowledge of those practices, and she'd be
25 happy to answer these questions.

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1 MR. FFITCH: You Honor, I appreciate that
2 that may be appropriate to pursue this also with
3 another witness. I'd be happy to have this witness
4 tell us what he knows, and if he's not familiar with
5 current practice, he can limit his answer in that way,
6 and I'd pursue this with Ann Koehler-Christensen.

7 JUDGE WALLIS: The concern that I have is the
8 witness not be tempted to testify beyond his knowledge,
9 but if it is an area on which the witness does have
10 current knowledge of what the existing practices are,
11 firsthand knowledge, then the witness may testify. The
12 witness may also respond by saying, I don't know what
13 the folks are doing now.

14 Q. (By Mr. ffitich) Perhaps I could break it up.
15 If you can remember the question, let me ask you about
16 your knowledge as of the time you were at Direct?

17 A. At the time I was at Direct, yes, the answer
18 to your question is yes. The bills were in the same
19 envelope.

20 Q. That maintains a linkage, does it not,
21 between U S West Direct and the local telephone
22 company, Pacific Northwest Bell, U S West
23 Communications?

24 MR. OWENS: I'm going to object to the form
25 of the question. It's vague in terms of what type of

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1 linkage is involved.

2 MR. FFITCH: Your Honor, I don't believe the
3 question is vague. This witness has testified in
4 general about the linkage between brands, logos, things
5 of that nature between the two companies already.

6 JUDGE WALLIS: If the witness understands the
7 question, the witness may respond. If the witness does
8 not, then you can indicate you don't.

9 THE WITNESS: Would you mind repeating your
10 question so I make sure I understand it?

11 Q. (By Mr. ffitch) We're relating back to the
12 practice in which you acknowledged that the advertising
13 customer receives a billing -- at that point received
14 billing for Yellow Pages advertising in the same
15 envelope as his telephone bill, and I'm asking if that
16 does that not maintain a linkage between the Direct
17 company, the Yellow Pages operation, and the local
18 telephone service company, and if you'd like some more
19 guidance about what I mean by "linkage," I'm speaking
20 about in the perception of the advertising customer.

21 A. The linkage was there, I think, through a
22 contract that we had negotiated directly with Pacific
23 Northwest Bell to provide the billing services for us,
24 and that same billing service was available to any
25 other publisher, so I don't think that there was a real

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1 tight linkage there. Others would have had the same
2 advantage. Any other publisher could have purchased
3 the same services.

4 Q. Would not the advertising customer have
5 perceived a linkage between U S West Direct and
6 U S West Communications as a function of receiving the
7 billing for the advertising in his or her local
8 telephone bill?

9 MR. OWENS: Objection, lack of foundation.
10 No foundation that this witness has ever interviewed or
11 surveyed advertisers for their perception of that
12 linkage related to billing.

13 MR. FFITCH: Your Honor, I think this is in
14 the scope of the witness's testimony regarding the way
15 in which these services are advertised and marketed.

16 JUDGE WALLIS: The witness may respond.

17 THE WITNESS: I have no idea what customers
18 perceived.

19 Q. (By Mr. ffitich) As an executive of U S West
20 Direct, it's your testimony that the customers'
21 perceptions about such matters, you had no idea about
22 such things?

23 A. We had no specific knowledge of how the
24 customers reacted to that.

25 Q. Did you ever do any marketing studies on

00407

1 customer perceptions with regard to the U S West Direct
2 operations?

3 A. Yes, we did.

4 Q. Did any of those relate to billing and
5 collection services?

6 A. No, they did not.

7 Q. Why did you decide to buy billing and
8 collection services from U S West Communications?

9 A. The system was already established and up and
10 running, and it was very easy for us to continue that
11 process, and as I said, we negotiated a contract to pay
12 for those services on a fair and equitable basis and
13 felt it was a good decision for us.

14 Q. So the system was up and running. You
15 negotiated a contract, and you thought it was a good
16 decision. Those were the sole reasons why you selected
17 U S West Communications as your billing and collections
18 service?

19 A. Didn't say that. When we initially
20 negotiated the contract, we did not have the capability
21 of billing our customers ourselves. We were a
22 brand-new company, and it took us some time to
23 establish our own capability. We established that
24 capability for just the independent customers because
25 from an overall U S West standpoint, it was certainly

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1 cheaper to ride along with their bill.

2 Q. There are other companies that could offer
3 you billing and collection services, are there not?

4 A. Yes, there are.

5 Q. Did you look at any of those other companies
6 as alternatives?

7 A. No, we didn't.

8 Q. Did the fact that U S West Communications had
9 access to all the local telephone customers in its
10 service territory have anything to do with your choice
11 of them as a billing collection agent?

12 A. It made it very simple for us to get our
13 bills out to our customers, yes.

14 Q. The second part of my question then was to
15 ask you if you had any knowledge about the billing
16 practice after your time with Direct?

17 A. No.

18 Q. So you're not aware one way or the other
19 whether the current advertising customers received the
20 billing for Yellow Pages in their local telephone
21 bills?

22 A. I don't know for certain if it's still
23 included, no.

24 MR. FFITCH: And I guess my understanding is
25 we would need to pursue that with Ms.

00409

1 Koehler-Christensen; is that correct, Mr. Owens?

2 MR. OWENS: Yes, Mr. ffitch.

3 Q. (By Mr. ffitch) Does Direct sells accounts
4 receivable to U S West Communications in connection
5 with billing and collection?

6 A. No.

7 Q. I'm going to ask you to turn to your
8 rejoinder at Page 14, Exhibit 303-T, which I will also
9 have to pull out. I'm looking at Line 10, if you could
10 take a look at Line 10, Page 14. There you state,
11 "U S West did not have an exclusive right to receive
12 billing and collection services from PNB;" is that
13 correct?

14 A. That is correct.

15 Q. Are you aware of any competing directory
16 publishers who purchase billing and collection services
17 from PNB or U S West Communications?

18 A. I think that the response to that should
19 probably come from Ms. Koehler-Christensen. I do not
20 have any specific knowledge.

21 Q. Do you have any general knowledge?

22 A. I understand that they have sold that service
23 to others, yes, but I don't know who and when and how
24 much.

25 Q. Do you have any knowledge from the time when

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1 you were at Direct in response to that question?

2 A. No.

3 Q. So if I were to ask you if it was true that
4 no competing Yellow Pages publishers are provided
5 billing and collection by U S West Communications
6 today, you would not know the answer?

7 A. I would not know the answer to that question.

8 Q. Also, at Page 14 of the rejoinder, you state
9 at Line 11, "U S West Direct also did not have an
10 exclusive right to receive business referrals."

11 A. That's accurate.

12 Q. Do you mean that in 1984 there were no
13 business referrals?

14 A. No. There were business referrals to us, but
15 we did not have an exclusive right to have business
16 referrals.

17 Q. Were you aware of any competing Yellow Pages
18 publishers receiving business referrals from PNB --

19 A. No.

20 Q. In 1984? And your answer is no? I'm sorry.
21 I wasn't quite finished and I said "in 1984." Your
22 answer is still no?

23 A. The answer is still no.

24 Q. Were you aware of any competing publishers
25 receiving business referrals from U S West or PNB

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1 during your time at Direct?

2 A. I have no knowledge of it, no.

3 Q. I'm going to ask you to take Exhibit 310,
4 which is a response to Public Counsel Data Request
5 8-114. The question is, "Did or does U S West
6 Communications or PNB provide any business referrals to
7 U S West Direct in the normal conduct of its business.
8 If affirmative, please explain the nature of such
9 referrals, the approximate annual volumes of such
10 referrals, and any compensation arrangements applicable
11 to such referrals," and according to the response,
12 U S West Communications began making referrals to Dex
13 in May 1998 that occur when a U S West customer is
14 placing an order for new business service or for a
15 change from residence to business service, were you
16 aware of this new referral service?

17 A. No, I was not.

18 MR. FFITCH: And may I inquire of counsel
19 whether or not Ms. Koehler-Christensen would be the
20 U S West witness that we would ask about this matter?

21 MR. OWENS: She would.

22 Q. (By Mr. ffitich) Can I ask you now to turn to
23 your rebuttal testimony, which is 301-T, Page 4, Line
24 10. At Line 10, you refer to maintenance directories
25 in PNB pay phone booths, don't you? That's correct

00412

1 that's the nature of the testimony there?

2 A. That's correct.

3 Q. Is it correct that U S West Communications
4 places only U S West Direct Dex directories at its pay
5 phones under an exclusive arrangement with U S West
6 Direct?

7 A. I believe that's accurate.

8 Q. Would you turn to Page 6 of your rebuttal,
9 please, at Line 1. I'm sorry. I think we need to go
10 to Line 17, pardon me, on that same page. With regard
11 to using the U S West name used by the directory
12 affiliate, you state at Line 17 that operating under
13 the U S West name does not tie you to the local
14 exchange company; is that correct?

15 A. That's correct.

16 Q. There is only one local exchange telephone
17 company doing business in Washington with U S West as
18 part of its name, isn't there?

19 A. This response was made in reference to the
20 1984 contract at which time Pacific Northwest Bell was
21 doing business here in the state of Washington.

22 Q. Your testimony is in response to a question
23 which states you mentioned you operated under the
24 U S West name. I think I understand your answer now,
25 but let me follow-up and ask if that would be your

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1 testimony following the use of the transfer to the use
2 of the name U S West by the name of the local exchange
3 company?

4 A. I think facts bear out to the contrary that
5 U S West Direct and through their advertising program
6 and branding of the product actually became the most
7 recognized U S West subsidiary in the eyes of the
8 customer, and we've learned this through a study, and I
9 believe the study was in the late '80's, so U S West
10 Direct did a lot to establish the U S West name in the
11 marketplace with customers, and we asked customers,
12 "What do you associate U S West with?" They said, "We
13 associate it with the Yellow Pages," more times than
14 they did with any other part of the U S West family of
15 companies.

16 Q. Do you believe that has any relation to the
17 fact that both the phone company and the Yellow Pages
18 operation used the words "U S West"?

19 A. I think prior to 1988, they did not both use
20 U S West.

21 Q. We're talking about the time when they do
22 both use U S West. Beyond the time where you've made
23 that distinction, now we're talking about the time when
24 both use U S West.

25 A. I know of no studies that have been conducted

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1 since then so I couldn't answer that question.

2 Q. Do you have any personal opinion based upon
3 your understanding of marketing business or your
4 experience in the Yellow Pages business with U S West
5 Direct about whether customers would perceive a tie
6 between two companies using the term, both using the
7 words "U S West" in their name?

8 A. It's possible.

9 Q. Wouldn't really necessarily need a study to
10 determine that, would you?

11 A. Frankly, I can't answer the question. It's a
12 question that's hypothetical.

13 Q. At this point, I'd like you to take a look
14 with me at your directory covers exhibit, which is
15 attached to your rebuttal.

16 JUDGE WALLIS: 302.

17 MR. FFITCH: Exhibit 302. On the 1984
18 cover -- do you have the 1984 cover?

19 A. Yes, I do.

20 Q. -- the PNB and the Bell name logo are
21 displayed in proximity to the U S West Direct name;
22 isn't that correct?

23 A. Yes, it is.

24 Q. Is that an effort to link the two identities?

25 A. Not necessarily. It was an effort to show

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1 both names on the cover, and we dedicated the lower
2 part of the cover to the picture by contract with
3 U S West, and so we put the name up close to the
4 U S West name. It was the best place to fit it for
5 aesthetics reasons.

6 Q. So it's not an effort to link the identities.

7 A. I don't recall whether that was a conscious
8 decision or reason for that or not.

9 Q. Is the Bell logo on the cover for every year,
10 1982 through 1990?

11 A. Yes, it is.

12 Q. You didn't provide covers for 1991 through
13 1997. Do you know if the logo was on cover in any of
14 those years?

15 A. From memory, I can't tell you.

16 Q. Perhaps I can help. We have had an exhibit
17 marked, Exhibit 809. It's an exhibit to Dr. Selwyn's
18 testimony, which includes those covers, and I'll take a
19 moment to provide you with those?

20 JUDGE WALLIS: Let the record show that the
21 witness has a copy of the document referenced by
22 counsel.

23 Q. Just to refresh your memory on the question,
24 I'm asking about the covers for 1991 through '97, and I
25 asked if you know if the Bell logo was on the cover of

00416

1 any of those years?

2 A. Yes, they are. The Bell logo is on the
3 cover.

4 Q. By placing the U S West name on the same
5 cover with PNB in the early years and with the Bell
6 logo in the later years, was it easier for end-users
7 and advertisers to relate the U S West directories logo
8 with the local exchange company?

9 A. I really don't know the answer to that
10 question. It could possibly be, but as I say, I don't
11 know the answer to that question. The use of the Bell
12 logo was available to any of the subsidiaries of the
13 U S West Company, and we used that on equal terms with
14 any of the other companies that were involved with
15 U S West, so that's why the logo was available to us
16 when we used it.

17 Q. Or you just used it because it was available?

18 A. It was available and recognizable.

19 Q. Recognizable to whom?

20 A. To advertisers and users of the product.

21 Q. So was there a reason why you would use both
22 logos as opposed to just one logo?

23 A. I think obviously to make sure the customers
24 understood what they were looking at.

25 CHAIRWOMAN SHOWALTER: I don't know what both

00417

1 logos refers to. What's the other logo?

2 JUDGE WALLIS: Mr. ffitch, could you clarify
3 what you mean by both logos?

4 MR. FFITCH: I'm referring to the PNB name
5 and then later the U S West name and the Bell logo.

6 MR. OWENS: U S West Direct name?

7 MR. FFITCH: U S West.

8 THE WITNESS: We never did use the U S West
9 name with the Bell logo on our covers.

10 Q. (By Mr. ffitch) Let's take a look at the
11 1984 cover, for example, and that would actually be
12 your Exhibit 302.

13 A. Yes.

14 Q. That contains, does it not, the Pacific
15 Northwest Bell name, the Bell logo and the U S West
16 logo in front of the word "Direct."

17 A. That is the U S West Direct logo, and it was
18 copyrighted as it appears, and we were required to use
19 it that way. It is not the U S West logo.

20 Q. Do you know if the U S West stylized letters
21 are copyrighted?

22 A. I believe they are. Don't know for sure, but
23 I'm sure that they would be.

24 Q. I'm going to have you turn to the cover in
25 your own exhibit, 302, from May 1988 to 1989. If you

00418

1 look at the top portion of the page, we see there,
2 don't we, the Bell logo, the Pacific Northwest Bell
3 name, and the phrase "A U S West Company"?

4 A. Give me the date again? Which cover.

5 Q. May 1988/1989.

6 A. Yes.

7 Q. We also see at the bottom a stylized U S West
8 logo above the name "Direct," don't we?

9 A. That is the stylized and copyrighted stylized
10 showing of U S West Direct that was changed. I'm not
11 sure the exact year, but we modified that and the way
12 our name appeared. There were several different ways
13 that our name could be used, and this was one of them,
14 but this was a trademark U S West Direct name.

15 Q. Is there any difference between the stylized
16 U S West logo when used in connection with Direct and
17 stylized U S West Direct logo when used in connection
18 with the communications company or any other U S West
19 company?

20 MR. OWENS: I'm going to object unless there
21 is some indication that the witness can look at his
22 particular logo that is used in connection with another
23 company. I don't believe there is any foundation that
24 the witness knows of all possible uses of the U S West
25 logo with all other companies' identifications.

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1 JUDGE WALLIS: If the witness knows the
2 answer, the witness may respond.

3 THE WITNESS: I don't know the answer.

4 Q. (By Mr. ffitich) Could you explain why
5 U S West Direct placed on this cover of May 1988 and
6 1989 the phrase "A U S West Company"?

7 A. The use of the Pacific Northwest Bell name
8 was dictated by U S West or by PNB, actually, and the
9 contract clearly states that they determined how their
10 name would appear on the directory, and we had to
11 follow their stylized uses of their name, and although
12 I can't recall exactly how this came about, my guess is
13 that they requested that it appear this way on the
14 directory.

15 Q. I'm working my way back to the original
16 beginning of the line of questioning, which was to ask
17 you about the continuing use of these various logos and
18 names in concert with each other, and I'm going to take
19 you back to the original question, which was the
20 discussion of how the Company was using PNB in the
21 early years and coupled with the Bell logo in later
22 years in order to relate the U S West directories with
23 the local exchange phone company.

24 MR. OWENS: Excuse me, is that a question?

25 MR. FFITCH: Not yet. Thank for trying to

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1 answer.

2 Q. I guess what I'm asking you is, is it your
3 testimony that having reviewed these exhibits, these
4 Yellow Pages covers that we've just been looking at, is
5 it still your testimony that there is no effort to
6 relate the PNB name, the Bell logo and the U S West
7 logo, so as to create a linkage in the mind of the
8 customer?

9 MR. OWENS: No effort by whom? I'm going to
10 object to the form of the question as being vague.

11 Q. By U S West Direct.

12 A. No, there was no effort to do that on the
13 part of U S West Direct.

14 Q. Any effort on the part of U S West
15 Communications to do that?

16 A. I have no idea.

17 Q. Any effort on the part of U S West, Inc. to
18 do that?

19 A. I again have no idea.

20 Q. Any effort on the part of Pacific Northwest
21 Bell to do that?

22 A. Pacific Northwest Bell would have dictated
23 how the name would have appeared on the directory, but
24 I have no idea what their motivation would have been
25 for that, other than to make it clear that this

00421

1 directory contained the listings that they were
2 required to publish to meet their regulatory
3 requirement.

4 Q. If you need to review these covers to answer
5 the next question, please go ahead and do so. Do you
6 think a prominent display of, quote, "the White and
7 Yellow Pages," end quote, on the covers in recent years
8 implies to advertisers and users that this is "the"
9 official directory?

10 A. I don't believe that that connotes that at
11 all. We designed the cover to make sure that No. 1,
12 people could look at it and know what they are looking
13 at. This is definitely a directory; and No. 2 to make
14 the cover distinctive so they would be readily
15 recognized, so no matter where our customers went in
16 the 14 states -- prior to going to this cover, other
17 publishers were entering the market place, and their
18 covers looked very, very similar to ours, and we needed
19 something that would give us a distinct cover and a
20 brand that people could readily recognize and that we
21 could advertise within a 14-state territory.

22 Q. It doesn't say one of the White and Yellow
23 Pages, does it?

24 A. No, it doesn't.

25 Q. Wouldn't it be your hope as a senior official

00422

1 with U S West Direct that it would be perceived as the
2 official directory by telephone customers and
3 advertisers?

4 A. The official directory was never a part of
5 any of our advertising or promotion.

6 Q. That's not my question. I'd like you to
7 answer my question.

8 A. Would you repeat it?

9 Q. My question is, would not it be your hope
10 that it would be perceived as the official directory by
11 customers and advertisers?

12 A. It would be my hope as the marketing head of
13 U S West Direct that this product be viewed as the most
14 complete and accurate product in the market place, one
15 that advertisers would buy ads in and one that users
16 would use, and that's exactly what happened.

17 Q. So you don't care whether the customers or
18 the advertisers think of it as the official telephone
19 directory?

20 A. Being official, there was no meaning to the
21 word official. What would the word official mean? We
22 had no idea what that meant, so we never used it in any
23 of our advertising or promotion.

24 Q. Why would you include the word "the" in the
25 title rather than just calling it White and Yellow

00423

1 Pages?

2 A. When you're in the marking game, you want to
3 make sure your customers understand what they are
4 looking at, and if you put the word "the" there,
5 hopefully that will connote the fact that this is the
6 most complete and accurate product in the market.

7 Q. And if it is the most complete and accurate
8 product in the market, then those would be
9 characteristics of an official telephone directory,
10 would they not?

11 A. I don't know what an official telephone
12 directory is because there is no such thing, at least
13 in this area.

14 Q. Let's go back to the 1984 time frame when the
15 change was made, U S West Direct operation was
16 established. Was there widespread confusion among
17 Yellow Pages advertising customers as a result of the
18 transfer of the business?

19 A. No, there wasn't.

20 Q. Were any steps taken at that time to insure
21 the existing advertising relationships were maintained?

22 A. Absolutely.

23 Q. Can you tell me what those were?

24 A. We did an awful lot of things. No. 1, on all
25 of our sales contacts, we made sure the customers

00424

1 understood we were publishing the directory, that it
2 had been in the market place for years, and we had,
3 therefore, the advantage in letting them know that so
4 advertisers were taken care of through direct contact,
5 but then we proceeded to open new offices, hire
6 additional sales people. We were only located in the
7 city of Seattle in the state of Washington when the
8 Company moved over to U S West Direct, and we rapidly
9 opened additional offices, and I believe today there
10 are somewhere in the neighborhood of 11 sales offices
11 throughout out the state, and we put salespeople in
12 those communities, they were there all year long,
13 active in the community, and they are sold their
14 product. This gave us definitely a way of making sure
15 that all of our customers, not only the advertisers but
16 the users, knew who we were.

17 Q. I'd like you now to turn to your rebuttal,
18 Exhibit 301-T, Page 3, Line 1. At the top of Page 3
19 there, you state, "I personally negotiated the first
20 Publishing Agreement in 1983 with Pacific Northwest
21 Bell." That statement is not true with respect to all
22 the Agreement, is it?

23 A. It's not true with regard to the dollar
24 amounts, although we did massage those a bit in our
25 negotiations, but that's accurate, yes.

00425

1 Q. And I'll ask you to turn to Exhibit 311.
2 Exhibit 311 is cross-examination exhibit for Public
3 Counsel. It is the U S West response to our Data
4 Request 8-106, and the request refers to your statement
5 that you personally negotiated the first Publishing
6 Agreement, and asked, "Please identify each of the
7 other individuals involved in negotiation. Identify
8 their employer and who they were thought to represent
9 in the negotiations, and the answer in the response is,
10 "Mr. Johnson recalls that the other individuals were
11 Richard O'Keefe, representing Pacific Northwest Bell,
12 and Lynn Going," and it continues on. The last
13 sentence states, "As clarification, Mr. Johnson was not
14 involved in the establishment of the publishing piece
15 called for in the Agreement." Is that an accurate
16 statement?

17 A. Yes, it is.

18 Q. Is this an accurate and complete statement of
19 the individuals involved in the negotiating team?

20 A. It's been 15 years ago, and I cannot remember
21 all of the people who were at the table. There were
22 others. I do not remember their names.

23 Q. Do you remember how many others there were?

24 A. I do not.

25 Q. Do you remember who they worked for?

00426

1 A. There possibly was one other U S West Direct
2 employee, and then there were other Pacific Northwest
3 Bell people in the room.

4 Q. So were there any employees of U S West,
5 Incorporated present in the negotiation?

6 A. No.

7 Q. So we have Mr. Going representing U S West
8 Direct, one other individual for U S West Direct, and
9 all the other persons involved were with U S West
10 Communications.

11 A. That's my recollection, but as I say, it's
12 very, very fuzzy.

13 Q. I'm trying to put you in this picture now.
14 Were you or were you not present in this group that
15 we're talking about here?

16 A. Yes, I was present.

17 Q. Who were you working for at that time ?

18 A. I was working for U S West Direct but being
19 paid for by Pacific Northwest Bell. We had formed the
20 Company at the officer level, and we were working as a
21 company, but I was still being paid by Pacific
22 Northwest Bell until the divestiture took place.

23 Q. I'm going to ask you to turn now to the next
24 Cross-Exhibit 312. This is a response to Public
25 Counsel Data Request 8-108 to U S West. Again,

00427

1 inquiring about the same quotation regarding your
2 personal negotiation. You're asked to provide complete
3 copies of all valuation and work studies performed in
4 connection with negotiations to quantify the fair
5 market value, business enterprise value of the
6 directory business, and the response given is, "No
7 valuation studies with the directory publishing
8 business were performed in 1983 in connection with
9 negotiation of the Publishing Agreement." Is that an
10 accurate response?

11 A. To the best of my knowledge, yes, that's
12 accurate.

13 Q. I'll ask you to turn to Cross-Examination
14 Exhibit 313, U S West response to Public Counsel Data
15 Request 8-107. This data request and summary asked for
16 complete copies of all studies and other documents in
17 possession of Mr. Johnson or the Company associated in
18 any way with this negotiation, any correspondence,
19 memorandum, analysis, projections, and the answer is,
20 "Mr. Johnson does not possess the requested documents
21 nor have such documents been located in the Company."
22 Is that an accurate answer?

23 A. That's an accurate answer from the standpoint
24 I don't have any documents. I can't speak to what the
25 Company found.

00428

1 Q. You have no reason to believe that this is an
2 inaccurate response on the part of the Company?

3 A. No, I don't.

4 MR. FFITCH: Is there another Company witness
5 here who would be able to respond to the question to
6 the extent that Mr. Johnson has disclaimed knowledge?

7 MR. OWENS: Your Honor,
8 Ms. Koehler-Christensen would be able to answer
9 questions on the portion of your responses that relate
10 to the Company as opposed to Mr. Johnson personally.

11 MR. FFITCH: Thank you, Mr. Owens.

12 Q. (By Mr. ffitich) On the next page, Page 4,
13 still on your rebuttal testimony, I guess I'd like to
14 know a bit more about the administrative services you
15 mention on that page. Would you agree that U S West
16 Direct received legal services from lawyers employed by
17 affiliated companies rather than hiring or retaining
18 its own lawyers after the asset transfer occurred?

19 A. No, that's not correct. We hired our own
20 attorney. Actually, I believe we had an attorney on
21 board before the actual 1/1/84 time frame, but
22 immediately after that, we hired our own attorney.

23 Q. So the first attorney that was on board --
24 you're talking about two different lawyers?

25 A. No, same lawyer.

00429

1 Q. Where did the first attorney come from?

2 A. The first attorney, I believe, came from
3 Mountain Bell.

4 Q. Did U S West Direct continue to receive human
5 resource services from Pacific Northwest Bell or other
6 affiliates after the transfer?

7 A. Yes, for just a short period of time.

8 Q. How about data processing services?

9 A. Yes, we did.

10 Q. Bell Corps system support services?

11 A. Don't think we received anything from Bell
12 Corps after the divestiture.

13 Q. Did U S West Direct receive treasury and cash
14 management services?

15 A. I don't believe so. I believe we established
16 our own accounting department very quickly, and I
17 believe we took care of our own accounting services.
18 It might have been a short period of time, but I can't
19 recall.

20 Q. Did you receive treasury and cash management
21 services from U S West, Inc?

22 A. I was not in that side of the business, so I
23 really couldn't answer the question.

24 Q. Did you receive shared senior management
25 services from U S West, Inc?

00430

1 A. Could you explain what you mean by "shared
2 senior management services"?

3 Q. Chief financial officer services from the
4 chief financial officer?

5 A. The chief financial officer was a member of
6 our board, so if that would qualify, then I guess the
7 answer would be yes.

8 Q. How about the president of the Company?

9 A. Well, we were owned fully by them, so
10 obviously, he would have been involved in our business,
11 knowledgeable of it.

12 Q. How about accounting and tax services from
13 Pacific Northwest Bell or other affiliates?

14 A. I have no knowledge to whether we received
15 that or not.

16 Q. Any other services that U S West Direct
17 received from Pacific Northwest Bell or other
18 affiliates?

19 A. Under contract, we did contract for health
20 services from our medical department for a period of --
21 at least for a year. I'm not sure how long that
22 contract ran, but that was one other service we
23 received from them.

24 Q. Referring back to your earlier testimony, you
25 did not initially have a billing system and you had to

00431

1 contract for that with Pacific Northwest Bell; isn't
2 that correct?

3 A. That is correct.

4 Q. Do you recall any other services that you
5 received from PNB or other U S West affiliates?

6 A. Yes. I mentioned in my testimony the
7 replenishing of the directories in the coin booths were
8 included as part of the publishing fee in the contract.
9 We received listings and service orders from them.

10 Q. Anything else that you can think of?

11 A. Let me review my testimony. I don't recall
12 any others, but there may be others that I've missed.

13 Q. Let's turn to Page 4 of your rebuttal, but
14 let's go down to Line 15. There you state that Direct
15 has paid for all the goods and services it has received
16 or receives from PNB from the beginning of 1984; isn't
17 that your statement there?

18 A. Yes, that's accurate.

19 Q. I'd like you to look over at Page 4 of your
20 rejoinder, Lines 2 to 4, and that's Exhibit 303-T.

21 A. What line?

22 Q. Lines 2 to 4. There, on the other hand, you
23 list as the most crucial elements to the success of the
24 directory advertising business were effective systems,
25 knowledgeable people, favorable contracts for printing,

00432

1 paper and distribution and ongoing relationships with
2 advertisers.

3 Isn't it true that Direct never paid anything
4 to Pacific Northwest Bell when it transferred
5 knowledgeable employees out of the phone company in
6 1984?

7 A. I think that the only payment would have been
8 through the publishing fee in later years, but there
9 was no transaction at that date. It was a physical
10 transfer of the people and these other items that are
11 listed here.

12 Q. Are you aware that the California Commission
13 has recently imposed a 25 percent of salary payment
14 requirement for transfer of knowledgeable employees
15 between affiliates?

16 A. No.

17 MR. OWENS: I'm going to object to the
18 relevance of that, Your Honor. This witness is a fact
19 witness. His testimony is as to events that occurred
20 back in 1984 and years up to 1992.

21 JUDGE WALLIS: The witness has already
22 responded that he doesn't know the answer, Mr. Owens.

23 MR. OWENS: Thank you, Your Honor.

24 Q. (By Mr. ffitich) Is it true that U S West
25 Direct never paid Pacific Northwest Bell any

00433

1 compensation for the value of the ongoing relationships
2 with the advertisers?

3 A. I think again, through the publishing fees
4 would be the way that that would have been paid for.

5 Q. Everything just goes into the publishing fee?

6 A. That's correct.

7 Q. The assets that were transferred did not
8 include any valuation for the fair value of the
9 effective systems you characterize as crucial in your
10 rejoinder; am I right?

11 A. That's correct.

12 Q. And all of these things of value were simply
13 transferred with no consideration between two
14 affiliated companies, U S West Direct and PNB, as of
15 January 1st, 1984, pursuant to arrangements that you
16 helped to negotiate; isn't that correct?

17 A. That's correct.

18 Q. Yesterday, we had some discussion about --
19 moving onto a different topic here -- about the letter
20 that you wrote to Mr. Okamoto in 1988, I believe was
21 the year. Do you need a reference to that exhibit
22 again?

23 CHAIRWOMAN SHOWALTER: Yes.

24 MR. OWENS: I believe it's 606.

25 MR. FFITCH: 609.

00434

1 Q. I'm referring to Exhibit 609. Do you have
2 that?

3 A. Yes, I do.

4 Q. The letter states that, quote, "The Exhibit B
5 subsidy issue is controversial and is currently subject
6 to litigation in several states." Was your company,
7 U S West Direct, involved in any of the litigation or
8 controversy that you described in this letter?

9 A. We appeared as witnesses in some of the
10 hearings, yes.

11 Q. Was the Company involved as a party in any of
12 the litigation or controversy?

13 A. No, we weren't.

14 Q. Essentially, the controversy referred to here
15 is that regulators were not accepting the level of
16 publishing fees that U S West wanted to establish;
17 isn't that correct?

18 A. I think that's exactly right, yes.

19 Q. Didn't U S West potentially reduce the
20 controversy it faced with regulations to increase the
21 publishing fees rather than eliminating them in the
22 beginning of 1989?

23 A. I don't know the answer to that, but history
24 would show that we had very high publishing fees the
25 first three years of the contract, and those were not

00435

1 accepted by the regulatory bodies, and there were
2 imputations, as I understand it; so consequently, no
3 matter what our level of publishing fee appeared to be
4 established at, it was not going to be good enough.

5 Q. I'd ask you to turn to your rejoinder at
6 Exhibit 303-T, Page 16, Line 5. There, you attribute
7 certain statements to Mr. Brosch. You state that,
8 quote, "Mr. Brosch essentially assumes that the
9 expenses related to repositioning U S West Direct and
10 maintaining and creating new customer relationships
11 were completely ineffective for that purpose." What I
12 need is a page and line citations into Mr. Brosch's
13 surrebuttal to determine where you find evidence of
14 this assumption in his testimony.

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

16 JUDGE WALLIS: Does the witness have that
17 now?

18 THE WITNESS: Yes, I do.

19 Q. (By Mr. ffitch) I'll direct you to Pages 28
20 and 29 of the surrebuttal testimony, which is Exhibit
21 608-TC?

22 JUDGE BERG: Excuse me, Mr. ffitch. If you
23 have a specific page and line reference, would you also
24 repeat that?

25 MR. FFITCH: Actually, Your Honor, my

00436

1 question to the witness was to direct us to a page and
2 line reference upon which he bases his statement that
3 Mr. Brosch assumes that these expenses were
4 ineffective.

5 THE WITNESS: I refer to UT-980948, the
6 surrebuttal of Michael Brosch, and it starts on Line 21
7 of Page 28, goes through Line 3 of Page 29.

8 Q. It's your testimony that that passage
9 contains an assumption that expenses related to
10 repositioning Direct were completely ineffective for
11 that purpose?

12 A. Let me read from his testimony.

13 Q. Repositioning and maintaining and creating
14 new customer relationships. Yes, I'd like you to show
15 us where that is found in that passage.

16 A. He says that, "As I noted in my earlier
17 testimony, the imputation calculation fully reflects
18 all the costs incurred by U S West Direct in each year
19 it is performed. This would include expenses relating
20 to maintaining and creating new customer relationships
21 which costs all serve to reduce the amount of
22 imputation."

23 From that, I would interpret it to mean that
24 if Direct spent additional dollars in running their
25 business and that those costs would show as expenses

00437

1 and the imputation would be lower. There is no
2 acknowledgment that those costs generated additional
3 revenue and caused our end result to be higher.

4 Q. But this testimony is simply addressing who
5 paid these expenses and not whether it was effective
6 active or not.

7 A. He indicates it would have reduced
8 imputation. The only way it could have reduced
9 imputation, as I understand the process, is that costs
10 would be higher than the revenues; therefore,
11 imputation would be lower.

12 Q. Mr. Brosch did not say the expenditures were
13 ineffective here, did he?

14 A. He implied it through the statement that the
15 imputation would go down by these expenses.

16 Q. So that's your interpretation of the
17 testimony.

18 A. Yes, sir.

19 Q. But Mr. Brosch did not say they were
20 ineffective. Instead said they were recognized in
21 calculating imputation such that they were paid by
22 ratepayers through reduced imputations. Is that what
23 he said?

24 MR. OWENS: Asked and answered.

25 MR. FFITCH: I'll withdraw the question.

00438

1 Q. I'll ask you to turn to your rejoinder,
2 303-T, back to Page 4, and if you could go to Line 18.
3 There the question is, "Had PNB decided to reenter the
4 directory assistance business at the end of the
5 Agreement, as Dr. Selwyn suggests, what would your
6 reaction have been?" And you state that PNB decided to
7 reenter directory business, U S West Direct would not
8 have exited because you had all the systems, people and
9 so on to continue. Is that the thrust of your
10 testimony?

11 MR. OWENS: Did counsel say, the directory
12 assistance business?

13 MR. FFITCH: Did I say directory assistance?

14 JUDGE BERG: We will assume that the question
15 was intended to restate the text and not to change it.

16 MR. FFITCH: I apologize.

17 Q. (By Mr. ffitich) Is that the thrust of your
18 testimony taking out the word "assistance" from my
19 question?

20 A. Yes, it is.

21 Q. You stated at Line 20 that Pacific Northwest
22 Bell would have had to start up by hiring people,
23 creating systems establishing supply contracts and
24 marketing to advertisers. Why would the parent company
25 of both U S West Direct and Pacific Northwest Bell

00439

1 compel cooperation between the two affiliates as it
2 essentially did in 1983 and simply transfer back the
3 people, systems, contracts and customer relationships?

4 A. Well, I can't answer for what the officers of
5 U S West would have done. I responded this question
6 based on what I as an officer of U S West Direct would
7 have done and that our company would have done, and we
8 would not have exited the business if PNB had wanted to
9 get back in the business in the state of Washington.
10 We operated in 14 states, and we would not have exited
11 the business.

12 Q. It's your testimony that the parent
13 corporation would essentially have had no involvement
14 in that decision-making process?

15 MR. OWENS: Objection. That's not his
16 testimony. He says he doesn't know what they would
17 have done.

18 JUDGE WALLIS: I don't believe that question
19 was asked, and the witness may respond if the witness
20 knows the answer.

21 THE WITNESS: Repeat the question, please?
22 (Question on Page 439, Lines 12 through 14,
23 read by the reporter.)

24 THE WITNESS: I have no idea whether they
25 would have or not. I would have suspected they would

00440

1 have.

2 Q. (By Mr. ffitich) Could you please turn to Page
3 5 of your rejoinder at the next page, go to Line 13.
4 There you state, "If PNB had chosen not to renew the
5 Publishing Agreement, there is absolutely no doubt that
6 U S West Direct would have remained a competitor in the
7 marketplace."

8 Are you saying that a corporate decision by
9 Pacific Northwest Bell to reenter the directory
10 business and a decision by U S West Direct to remain a
11 competitor would not have been mediated by the common
12 parent of the two subsidiaries?

13 A. I didn't say that. This is a hypothetical
14 question.

15 Q. It's a hypothetical discussion that you've
16 placed in your testimony, and I'm asking you to think
17 it through with us and talk about what might happen.

18 A. Well, as I testified earlier, we would not
19 have exited the business. We had the strength in the
20 marketplace. We had advertised our product through 14
21 states and established our name, logo, relationships
22 with advertisers. There would have been no way we
23 would have exited the market, nor do I think there
24 would have been any way that our parent would have
25 allowed us to exit the market.

00441

1 Q. Do you think the parent would stand by and
2 watch the two affiliated companies essentially fight
3 over the same customers and both try to publish the
4 official U S West telephone directory for the service
5 territory?

6 A. There no official PNB telephone directory in
7 the state of Washington.

8 Q. What about any U S West telephone directory
9 for the state of Washington?

10 A. I'm sure the officers of the Company would
11 have had a role to play in that decision.

12 MR. FFITCH: I think I'm coming to the end,
13 Your Honor. May I just have a minute?

14 JUDGE WALLIS: Yes.

15 Q. I just wanted to remind you of your testimony
16 yesterday regarding Publishing Agreements of which you
17 were involved, and in that testimony, you alluded to
18 the fact that the publishing fee was Denominated in the
19 Agreement a subsidy; isn't that correct?

20 A. Not in the initial contract, not in the 1984
21 contract.

22 Q. All right.

23 A. In the 1987 contract, yes.

24 Q. And that was essentially the Company position
25 that the Yellow Pages revenues constitute a subsidy;

00442

1 does it not?

2 MR. OWENS: Which company?

3 MR. FFITCH: U S West Communications.

4 THE WITNESS: I don't know what U S West
5 Communications suspected at that point. I don't think
6 they existed at that point.

7 Q. Your testimony yesterday characterized it as
8 a subsidy, did it not?

9 A. A subsidy to Pacific Northwest Bell, yes.

10 MR. FFITCH: I don't have any further
11 questions.

12 JUDGE WALLIS: Mr. Butler?

13 MR. BUTLER: Just a few questions.

14

15 CROSS-EXAMINATION

16 BY MR. BUTLER:

17 Q. Mr. Johnson, you testified earlier that
18 U S West Direct made sure that customers and
19 advertisers knew that U S West Direct was publishing
20 the same directory that it had published for years;
21 that in fact you had a campaign to directly contact at
22 least the advertisers to make sure they knew who you
23 were. Do you recall that testimony?

24 A. Yes, I do.

25 Q. I take it from that that U S West Direct

00443

1 believed that it was important to convey the message to
2 advertisers and users that it was publishing the same
3 directory that had been published for years; is that
4 correct?

5 A. It's correct, but let me qualify. We make
6 contacts with every advertiser at least once every
7 year, so the process of contacting those advertisers
8 was not unique, but we did make sure they understood
9 who we were when we made our presentations.

10 Q. When you referred to publishing the same
11 directory that had been published for years, are you
12 referring to the directories that had been published by
13 Pacific Northwest Bell?

14 A. Yes, I am.

15 Q. Was the use of the word "the," in connection
16 with the White and Yellow Pages on the cover of the
17 directories part of the same effort to convey the
18 message to advertisers and users that this is the same
19 directory that had been published for years?

20 A. No. That wasn't the intent of that wording,
21 to make sure that they understood it was the same one,
22 but we wanted to communicate to them that this was the
23 White and Yellow Pages that they ought to use, and our
24 advertising was very strong in promoting that concept
25 and getting that concept across to all the people in

00444

1 the 14 states that we served.

2 MR. BUTLER: That's all I have. Thank you.

3 JUDGE WALLIS: Mr. Roseman?

4

5 CROSS-EXAMINATION

6 BY MR. ROSEMAN:

7 Q. Mr. Johnson, you are currently vice president
8 for PBC Corporation?

9 A. Senior vice president.

10 Q. And what business is that corporation
11 involved in?

12 A. We're in the warehousing and distribution
13 business, and our primary business is the distribution
14 of telephone directories across the country and Canada
15 and in the United Kingdom.

16 Q. After the directories are complete, then your
17 company distributes them throughout?

18 A. That's accurate.

19 MR. ROSEMAN: Thank you. I have nothing
20 further.

21 JUDGE WALLIS: Let's take a morning break now
22 and return at about quarter after 10:00

23 (Recess.)

24

25

EXAMINATION

00445

1 JUDGE WALLIS: Mr. Johnson, in your
2 rejoinder, you mention a study about name recognition,
3 and I believe you referred to that this morning. Do
4 you know if that study is in the record of this
5 proceeding?

6 THE WITNESS: I don't believe it is. In
7 fact, I don't have a copy of it, but I don't think it
8 is a part of this.

9 JUDGE WALLIS: Mr. Owens, if we make that a
10 Bench request, could the Company provide it to us?

11 MR. OWENS: Your Honor, we've already
12 attempted to locate it. We thought that it would be
13 helpful to the Commission to have it. So far, we
14 haven't been successful, but we will respond to the
15 Bench request and redouble our efforts to find a copy.
16 With the passage of time and the retention period
17 according to the Company regulations, there is no
18 particular reason to believe that it's still within the
19 Company records, but as I said, we've tried so far
20 unsuccessfully. We'll continue to try.

21 JUDGE WALLIS: Just for our record keeping
22 purposes, can we call that Bench Request No. 1, and we
23 understand the Company will provide it if the Company
24 is able to locate it. Thank you very much.

25 Mr. Johnson, the business of U S West Direct

00446

1 was as an advertising medium, is that correct?

2 THE WITNESS: That's correct, advertising and
3 publishing.

4 JUDGE WALLIS: And its business, of course,
5 is to make money for its owners.

6 THE WITNESS: That's correct.

7 JUDGE WALLIS: How did U S West Direct, in
8 talking with potential advertisers, justify the rates
9 that it charged? What were you giving customers for
10 the advertising dollars you collected?

11 THE WITNESS: We were bringing customers in
12 their front door to buy products and services. We had
13 a process that we trained all of our salespeople on
14 which was proving the value of the ad, and we would
15 relate the cost of the ad to the average sale that a
16 customer would make and then indicate how many
17 customers you would have to attract through this medium
18 to pay for the ad, and believe me, it's a very good
19 advertising buy.

20 JUDGE WALLIS: Did you study the
21 effectiveness of your publication as opposed to the
22 effectiveness of similar publications?

23 THE WITNESS: Yes, we did.

24 JUDGE WALLIS: How did your publication fair
25 in those studies.

00447

1 THE WITNESS: We compared ourselves with all
2 the other Bell companies and any other companies that
3 did usage studies and we made those comparisons. Our
4 usage was higher than any other part of the country.

5 JUDGE WALLIS: Did you also look at
6 competitors within your service territory?

7 THE WITNESS: Yes, we did.

8 JUDGE WALLIS: Was the same true.

9 THE WITNESS: Yes, it was.

10 JUDGE WALLIS: Is that the element that you
11 were looking at when you indicated an intention to
12 establish the directories as the most complete and
13 up-to-date available to consumers.

14 THE WITNESS: Yes, it is.

15 JUDGE WALLIS: How did your directory differ
16 from competitors in that regard?

17 THE WITNESS: Help me understand what you
18 mean.

19 JUDGE WALLIS: In being the most complete and
20 up-to-date.

21 THE WITNESS: We had the best developed
22 Yellow Pages advertising sections. We had far more
23 advertisers buying ads in our product than any other
24 competitors we face in the marketplace, and that
25 continued for at least the time period I was there, and

00448

1 that was primarily because the ads worked. They
2 generated business for the customers.

3 JUDGE WALLIS: So when you were talking about
4 the medium as the most complete and up-to-date, you
5 mean the advertising portion of the directory; is that
6 correct?

7 THE WITNESS: That's correct, because our
8 competitors could buy White Pages listings under the
9 same terms and conditions that we bought them, so it
10 was the Yellow Pages we were referring to there, yes.

11 JUDGE WALLIS: Did your studies indicate or
12 do you know why your directory was able to achieve
13 these benefits?

14 THE WITNESS: I think it really generated
15 from all of our processes, our marketing plans, the
16 people that we had, the systems that we had to produce
17 the books and get them in the marketplace. All of
18 those things obviously generated the best product in
19 the marketplace.

20 JUDGE WALLIS: Are there other questions for
21 the witness?

22

23

EXAMINATION

24

25

COMMISSIONER HEMSTAD: I don't know if this
information is in the record or not. When was that

00449

1 study done?

2 THE WITNESS: Which study are you referring
3 to?

4 COMMISSIONER HEMSTAD: The one that was
5 referenced earlier in the Bench request.

6 THE WITNESS: To my best of my recollection,
7 it was in the late '80's, but I can't recall the
8 specific date.

9 COMMISSIONER HEMSTAD: During your period as
10 an employee of U S West Direct, was that study or any
11 other study done on market share?

12 THE WITNESS: Meaning what?

13 COMMISSIONER HEMSTAD: The market share of
14 the Yellow Pages advertising business.

15 THE WITNESS: You can measure that a lot of
16 different ways. You can measure it by dollars in the
17 directory revenues. You can measure it by column
18 inches in the directory. A lot of different ways you
19 can measure it.

20 COMMISSIONER HEMSTAD: Was such a market
21 study ever done?

22 THE WITNESS: We did that on individual
23 directories as a regular part of our operation.

24 COMMISSIONER HEMSTAD: Do you recall what
25 those studies would show with respect to the market

00450

1 share, say, of the total revenues?

2 THE WITNESS: I believe when I left about 23
3 percent of the total revenues in the state of
4 Washington, I'm talking now, I think 23 percent, and I
5 think it's in my testimony in 1988, were independent
6 publishers.

7 COMMISSIONER HEMSTAD: In terms of revenues?

8 THE WITNESS: I believe that's right, in
9 terms of revenues.

10 COMMISSIONER HEMSTAD: I want to go back to
11 the events surrounding the transaction in 1983. From
12 your testimony, a relative handful of people at the
13 table: yourself and perhaps one other person
14 representing U S West Direct; is that right?

15 THE WITNESS: Myself and two others, I
16 believe.

17 COMMISSIONER HEMSTAD: And a couple of people
18 are representing PNB.

19 THE WITNESS: My recollection is there were
20 more than two, but I'm not sure how many and who they
21 were.

22 COMMISSIONER HEMSTAD: Were you the principle
23 negotiator for U S West Direct?

24 THE WITNESS: Yes, I was.

25 COMMISSIONER HEMSTAD: But no one was there

00451

1 representing U S West, Inc.?

2 THE WITNESS: No.

3 COMMISSIONER HEMSTAD: Had U S West Direct as
4 a corporate entity been created then?

5 THE WITNESS: It had not. I believe it
6 became a company on the first of January of '84.

7 COMMISSIONER HEMSTAD: So you were
8 representing an interest, legal entity, which then had
9 not actually been created?

10 THE WITNESS: I think that would be an
11 accurate statement. The officers had been appointed,
12 and we were functioning to bring the Company into being
13 and doing the things we needed to do to do that.

14 COMMISSIONER HEMSTAD: When it was created,
15 do you know who sat on the board of directors of
16 U S West Direct?

17 THE WITNESS: U S West Direct, the officers
18 of U S West Direct sat on that board. We were owned at
19 that time by Landmark Publishing.

20 COMMISSIONER HEMSTAD: That's right. So the
21 structure was U S West, Inc. at the top and then
22 Landmark Publishing, and the subsidiary of Landmark
23 Publishing was U S West Direct?

24 THE WITNESS: That's correct.

25 COMMISSIONER HEMSTAD: I take it the board of

00452

1 directors of Landmark Publishing and of U S West Direct
2 were probably officers of U S West, Inc.?

3 THE WITNESS: Of U S West Direct they were
4 not. There were no officers of U S West on the U S
5 West Direct board, but of Landmark Publishing there
6 were, but there were also people inside Landmark
7 Publishing who were on that board as was the president
8 of U S West Direct.

9 COMMISSIONER HEMSTAD: I believe it was your
10 testimony that the negotiations reflected hard
11 bargaining between the interests of U S West Direct and
12 of PNB.

13 THE WITNESS: I don't think I used the word
14 "hard." I think I indicated that sister companies
15 negotiating, they were as intense as I would like to
16 have them.

17 COMMISSIONER HEMSTAD: So that I have a
18 handle on this, could you then describe what your
19 understanding is of the consideration that went back
20 and forth went between the two parties.

21 THE WITNESS: When you mean "consideration"?
22 Help me there.

23 COMMISSIONER HEMSTAD: On the one hand, what
24 did PNB give to U S West Direct?

25 THE WITNESS: Are you talking at the

00453

1 formation of the Company?

2 COMMISSIONER HEMSTAD: Yes.

3 THE WITNESS: I was not involved in the asset
4 transfer piece of the action, so I'm not qualified, I
5 don't think, to say exactly what all went back and
6 forth. My understanding is that there was a stock
7 exchange and then a transfer of assets from PNB to
8 U S West Direct.

9 COMMISSIONER HEMSTAD: What was been
10 negotiated at the table?

11 THE WITNESS: At the table we were
12 negotiating the responsibilities and the obligations of
13 each of the parties as we went downstream in publishing
14 the directories and handling the publishing business.

15 COMMISSIONER HEMSTAD: Then let me describe
16 it this way: From the testimony and the
17 cross-examination here, it would appear PNB, at least
18 from the perspective of the Company, was transferring
19 the business venture of Yellow Pages; is that a
20 reasonable --

21 THE WITNESS: Transferred the total business,
22 yes.

23 COMMISSIONER HEMSTAD: And as part of that
24 transfer, that included the 22 million dollars,
25 approximately, in cash.

00454

1 THE WITNESS: That's correct.

2 COMMISSIONER HEMSTAD: And coming the other
3 way -- but for that business venture which included 22
4 million dollars in cash, U S West Direct paid PNB 23
5 million dollars net book value?

6 THE WITNESS: I believe there was stock
7 involved as well, but again, I'm not familiar with that
8 at all.

9 COMMISSIONER HEMSTAD: But it was at least a
10 transfer net book value of approximately 23 million
11 dollars.

12 THE WITNESS: I believe that's right.

13 COMMISSIONER HEMSTAD: And a 21 percent
14 interest in the one share of U S West Direct to be
15 created.

16 THE WITNESS: I believe it was in Landmark
17 Publishing, but again, I'm not positive of that.

18 COMMISSIONER HEMSTAD: Of Landmark
19 Publishing, which was immediately transferred to U S
20 West, Inc.

21 THE WITNESS: I wasn't involved in that so I
22 really couldn't --

23 COMMISSIONER HEMSTAD: And that was not part
24 of the negotiations.

25 THE WITNESS: No. The establishment of

00455

1 U S West Direct and Landmark Publishing was a separate
2 action that was taken prior to the negotiation of the
3 contract, the Publishing Agreement.

4 COMMISSIONER HEMSTAD: Is it a fair summary
5 to say that from the perspective of the two bargainers,
6 the business is transferred or net book value, and if
7 you look at the cash that's exchanged, there was about
8 a million dollars that shifted from onto the books of
9 PNB.

10 THE WITNESS: I have no idea of what that
11 was. I wasn't involved in that part of it.

12 COMMISSIONER HEMSTAD: Who was?

13 THE WITNESS: The president of Landmark
14 Publishing I'm sure was and probably our attorneys.

15 COMMISSIONER HEMSTAD: Who would they have
16 been bargaining with?

17 THE WITNESS: I'm not sure where that took
18 place. I was running the directory operation out here
19 in the West Coast and working to put together the
20 Company back in Denver, but the negotiations between
21 the Companies I was not involved with until we sat down
22 to negotiate the Publishing Agreement.

23 COMMISSIONER HEMSTAD: So is it fair to say
24 that you really did not have anything to do with the
25 actual crafting of the consideration to go back and

00456

1 forth between the two companies?

2 THE WITNESS: That's accurate.

3 MR. OWENS: Commissioner Hemstad, if I could
4 interject. Mr. Inouye is our witness on the asset
5 transfer as such, and we would be glad to recall him if
6 you had some questions about that issue that weren't
7 previously explored.

8 COMMISSIONER HEMSTAD: I thought this witness
9 was here as a person who was on the scene at the time
10 who had knowledge of the events.

11 MR. OWENS: That's true, but Mr. Inouye is
12 the one who has analyzed the records that shows the
13 assets transfers on the books, and it seemed to me that
14 that's where your questions were heading. If I
15 misinterpreted your questions --

16 COMMISSIONER HEMSTAD: That's really where
17 they were headed.

18 MR. OWENS: Mr. Johnson is really here to
19 talk about the negotiation of the Publishing Agreement
20 as opposed to the transfer of the assets.

21 COMMISSIONER HEMSTAD: I guess any further
22 questioning would not be of any value with this
23 witness.

24

25

EXAMINATION

00457

1 CHAIRWOMAN SHOWALTER: I'm interested in the
2 relationship of the affiliates to the parents and what
3 authority the parent has over the affiliate. I think
4 you testified that had U S West wanted to get back into
5 the publishing business, you, as U S West Direct, would
6 certainly have remained in the business; is this
7 correct?

8 THE WITNESS: No. What I said was if Pacific
9 Northwest Bell had opted to get back into the
10 publishing business in the state of Washington, we
11 would not have exited the business.

12 CHAIRWOMAN SHOWALTER: In other words, you're
13 distinguishing between Pacific Northwest Bell and
14 U S West Communications.

15 THE WITNESS: I think that I would extend
16 that to U S West Communications if they decided in the
17 state of Washington to get into it, but that's when I
18 was back with the Company about the time that U S West
19 Communications was formed.

20 CHAIRWOMAN SHOWALTER: In a situation like
21 that where one affiliate wants to get into something
22 that may compete with another affiliate, I take it that
23 the executive officers of each affiliate is going to
24 try to do what's in that affiliate's best interest; is
25 that correct?

00458

1 THE WITNESS: That would be correct, yes.

2 CHAIRWOMAN SHOWALTER: But when there is a
3 conflict, what authority does the parent company
4 through its officers or through officers on your board
5 have to reconcile that conflict if two affiliates are
6 going two different directions?

7 THE WITNESS: I think they would step in and
8 make a decision.

9 CHAIRWOMAN SHOWALTER: So does that mean that
10 in essence, the parent company can direct an affiliate
11 to go in a direction that's best for the overall
12 interests of the parent company?

13 THE WITNESS: I think that's right.

14 CHAIRWOMAN SHOWALTER: So does that also mean
15 that the parent company could direct a U S West
16 Communications to behave in a way -- with respect to
17 its relationship to U S West Direct -- in a way that's
18 best for the overall bottom line of the Company?

19 THE WITNESS: I think that would follow.

20 CHAIRWOMAN SHOWALTER: And could that mean in
21 some instances that the parent or the culture, either
22 way, would be such that U S West Communications might
23 not act as vigorously in its own individual interests
24 because the overall Company interests might benefit if
25 it didn't?

00459

1 THE WITNESS: I don't know whether that would
2 happen or not. I think the supposition that you're
3 making would probably be that the parent would step in
4 after the two companies demonstrated that they couldn't
5 come to a resolution. Generally, they would let the
6 companies duke it out.

7 CHAIRWOMAN SHOWALTER: Thank you.

8

9

EXAMINATION

10 COMMISSIONER HEMSTAD: I'd like to pursue
11 that. Isn't the reality that the issue would be
12 determined by whatever result would maximize the
13 overall interest of the unitary group of shareholders
14 of U S West, Inc?

15 THE WITNESS: I think ultimately the decision
16 would be made that way, yes.

17 COMMISSIONER HEMSTAD: Of course, there are
18 no independent shareholders of the affiliates.

19 THE WITNESS: I think that's right, yes.

20 COMMISSIONER HEMSTAD: That's all I have.

21

22

EXAMINATION

23 JUDGE WALLIS: A couple of brief follow-up
24 questions. Do you know if the Publishing Agreement was
25 totally independent of the transfer transaction, or

00460

1 were they related in some way?

2 THE WITNESS: I think they are totally
3 separate.

4 JUDGE WALLIS: You've indicated that in your
5 earlier testimony, if I recall correctly, getting back
6 to a point that I asked about earlier in Exhibit 302,
7 the covers showing South King County for
8 '88/'89, '89/'90, the term "The White and Yellow Pages"
9 was to indicate the most complete and up-to-date
10 directory, and in your answer to my questions you
11 indicated that your understanding was "most complete
12 and up-to-date" referenced only the Yellow Pages
13 portion. Is my recollection correct?

14 THE WITNESS: I think that's right, yes.

15 JUDGE WALLIS: Do you know why the term was
16 used in these directories to apply to both White and
17 Yellow Pages and also in the other exhibits we looked
18 at earlier on the Seattle directory, both of the
19 directories also carry the same terminology?

20 THE WITNESS: Yeah. It was to have a
21 standard look on the directories. This was the concept
22 that our advertising agency developed for us, and it
23 was a very easy way for us to demonstrate our books,
24 both the White and Yellow Pages or separate yellow and
25 white in a standard uniform manner.

00461

1 JUDGE WALLIS: Thank you very much.

2

3

EXAMINATION

4 CHAIRWOMAN SHOWALTER: In your dealings with
5 U S West Communications, is it your view that if you
6 had been negotiating with a non affiliate or if you had
7 made arrangements with a non affiliate for the same
8 type of services -- let's say your company was going to
9 produce a Yellow Pages in California -- that you would
10 have faired better or worse in terms of the payments
11 that you would have had to make to the California
12 company?

13 THE WITNESS: I think, first of all, we would
14 not have tried to negotiate an agreement with other
15 publishers or other telephone companies to be their
16 official publisher. We did, in fact, enter other
17 markets outside our territory in direct competition
18 with them, but we never did even consider attempting to
19 negotiate to become the official publisher or the
20 publisher of their directories, so I'm not real sure
21 how I can answer the question.

22 CHAIRWOMAN SHOWALTER: Why wouldn't you have
23 tried to compete in other areas to become the official
24 directory?

25 THE WITNESS: Because each of those companies

00462

1 had directory companies similar to U S West Direct
2 doing their work.

3 CHAIRWOMAN SHOWALTER: So you didn't think
4 you had much of a chance to compete again them?

5 THE WITNESS: We certainly wouldn't have been
6 able to displace them, in my opinion, but you did buy a
7 couple of small publishers, one in the San Diego area
8 that expanded across the country, and we did compete
9 directly with other telephone companies. That was
10 Transwestern Publishing.

11 CHAIRWOMAN SHOWALTER: If you're not the
12 witness who said this, you let me know, but I recall
13 either you or Mr. Inouye saying that if you had been
14 negotiating arm's-length that the publishing fees would
15 probably have been substantially lower.

16 THE WITNESS: That was not me.

17 CHAIRWOMAN SHOWALTER: Then I have no more
18 questions.

19 JUDGE WALLIS: Redirect?

20 MR. OWENS: Just a moment, Your Honor.

21

22 REDIRECT EXAMINATION

23 BY MR. OWENS:

24 Q. Just a few questions, Mr. Johnson. Following
25 up on your discussion with the Chairwoman, and if you

00463

1 could help me clarify the record, do you know whether
2 or not U S West Direct publishes any directories in GTE
3 territory in the state of Washington?

4 A. Yes, we do, or they do.

5 Q. So U S West Direct is not an affiliate of GTE
6 in those service territories; correct?

7 A. That's accurate.

8 Q. Does U S West Direct pay publishing fees to
9 GTE comparable to those that it paid during the '84 to
10 '88 period in the state of Washington to PNB?

11 A. No. They pay no publishing fees to General
12 Telephone.

13 Q. But they do acquire listings similar to the
14 way Direct acquired listings from PNB and U S West
15 Communications?

16 A. Yes.

17 Q. Just so the record is clear, to your
18 knowledge, does GTE or its affiliate also publish a
19 directory in those same areas that U S West Direct
20 publishes in GTE telephone service area in Washington?

21 A. Yes. In fact, they deliver those directories
22 in the U S West territory as well.

23 Q. Going back now to some questions that Staff
24 counsel asked you about Exhibit 602, Page 10, Article
25 10, Paragraph 10.01.

00464

1 A. I have it.

2 Q. This was the 1984 Publishing Agreement
3 between PNB and U S West Direct, and just so the record
4 is clear, and to the extent there was any implication
5 left on the record that the recitation of four items in
6 this paragraph as being that for which the publishing
7 fees in the dollar amount set forth therein were paid
8 and those exclusively, is there anything in the
9 language of that paragraph that you would like to
10 elaborate on as to whether that's a correct
11 interpretation?

12 A. Yes, there is. In fact, I'll just read the
13 first sentence which is the lead-in to the enumeration.
14 It says, "In consideration of the recitations, terms,
15 and conditions set forth herein," which includes the
16 entire Agreement -- and in exchange for the four items.

17 Q. Was there anything outside of Paragraph 10.01
18 in the Agreement that was valuable to U S West Direct
19 in terms of things that it received from PNB?

20 A. Yes, and it included such things as listings,
21 service order information, delivery records, several
22 things.

23 Q. You were also asked by Staff counsel in
24 connection with your letter to Mr. Okamoto, Exhibit
25 609, you were asked, Where in that exhibit does it

00465

1 state that U S West Communications received anything in
2 return, and you said there wasn't any place.

3 At about that time, did anything happen with
4 regard to U S West Direct's use of the PNB name and
5 logo that would bear on whether PNB received anything
6 or any obligation under the Agreement changed?

7 A. Yes. In fact, we dropped the use of the name
8 so it no longer appeared on the directories, and we did
9 not ever use the U S West Communications name on any of
10 our products.

11 Q. Also, one of the items that you've talked
12 about as being of at least initial value in the
13 Agreements was the effective noncompete agreement; is
14 that correct?

15 A. Repeat the question.

16 Q. The effective noncompete agreement; that is,
17 PNB would not compete with U S West Direct.

18 A. Yes.

19 Q. By the time of the 1988 letter, in your view,
20 did that Agreement have any value any longer?

21 A. No, it didn't. In fact, once we were able to
22 establish our identity in the market place through our
23 advertising program and our branding and, of course,
24 the development of our advertisers and users, that had
25 no value to us.

00466

1 Q. You were asked about the recitation in
2 Exhibit 602, which is that same Publishing Agreement, I
3 believe. On Page 1, there is a recitation that the
4 parties agree that there is unique value. Do you find
5 that reference?

6 A. Yes.

7 Q. The paragraph doesn't say value to whom; is
8 that correct?

9 A. That's correct.

10 Q. You were also asked by Staff counsel if you
11 could accept that in approximately June of 1988 there
12 was a five-week long advertising campaign to inform the
13 public of the impending name change from Pacific
14 Northwest Bell to U S West Communications, Inc. Do you
15 recall that?

16 A. Yes, I do.

17 Q. At the point of June of 1988, do you recall
18 about how long it had been that U S West Direct had
19 been advertising and promoting its name and image in
20 the marketplace?

21 A. It had been probably at that point
22 four-and-a-half years.

23 Q. How would you characterize that? Was it
24 aggressive? Was it moderate?

25 A. It was a very aggressive program. We

00467

1 increased our advertising budget at least threefold
2 over that period of time, and as I mentioned before,
3 studies that we conducted indicated that the awareness
4 of our product and our company were very, very strong.

5 Q. You were asked about your Exhibit 302, the
6 covers on the directory, and I have a few redirect
7 questions about that. I believe you were asked about
8 the fact that in the May 1988, '89 South King County
9 directory, the name Pacific Northwest Bell still
10 appeared on there, and I wanted to ask you, do you have
11 any knowledge as to how long it takes in terms of
12 preparation for printing in advance of the actual
13 distribution date as shown here as May of 1988?

14 A. Yes. It would be at least four to five
15 months ahead of that, and the covers were finalized
16 probably in about that time frame.

17 Q. You were asked by counsel for Public Counsel
18 about whether or not the fact that the advertiser
19 received the bill for advertising in the same envelope
20 as the telephone bill from PNB created some linkage in
21 the customers' mind, PNB or U S West Communication,
22 between those two companies. Are you a U S West
23 Communications subscriber?

24 A. Yes, I am.

25 Q. Do you receive a phone bill from U S West?

00468

1 A. Yes, I do.

2 Q. On that phone bill, do you receive also a
3 bill from one or more long-distance companies?

4 A. Yes, I do.

5 Q. Does that create some linkage in your mind
6 that the long-distance company is related to the local
7 telephone company?

8 A. Not in any way.

9 Q. You were asked also some questions by Public
10 Counsel about whether you were aware during your tenure
11 at U S West Direct of any competing publishers that
12 would purchase listings or referrals. Do you remember
13 those questions?

14 A. Yes, I think so.

15 Q. You said you weren't, and so my question is,
16 from your standpoint as an executive at U S West
17 Direct, would you think that that information in the
18 hands of U S West Communications, would have been
19 competitively sensitive information belonging to the
20 competing publisher?

21 A. Absolutely.

22 Q. So you would not have expected to obtain that
23 information from U S West Communications, or would you?

24 A. No, we would not have expected to obtain
25 that.

00469

1 Q. You were asked about referrals, and I just
2 wanted to know when you answered that question, what
3 kind of referrals, specifically, did you mean to
4 address?

5 A. Referrals to me would be when a customer
6 calls the telephone company to establish service or to
7 request additional services, a hot referral over to the
8 directory company to take care of their advertising
9 needs. That was the context in which I answered the
10 question.

11 Q. Is that the kind of referral that U S West
12 Direct received back in 1984 when you said you received
13 referrals?

14 A. I don't think I said we received referrals;
15 in fact, we did not receive referrals, and no, we did
16 not receive this kind of referral.

17 Q. So if it were the case that the record would
18 show that you used the word "referral" in saying that
19 you didn't receive that, what did you mean by that?

20 A. If I answered it that way, it would have been
21 relating to the several order information that we got
22 and that we purchased from U S West Communications or
23 from PNB.

24 Q. So that would be something in the nature of
25 an electronic or documentary transfer rather than a

00470

1 live transfer of a customer?

2 A. That's correct.

3 Q. You were asked also by Public Counsel whether
4 the official directory status was something that was of
5 marketing significance, and you answered you didn't
6 think so because you don't know what "official" meant.
7 If you had thought that being the official directory
8 publisher was important, could you have put the word
9 "official" after the word "the" on the covers of the
10 directories where it says, "The White and Yellow Pages?"

11 A. I think that certainly we could have, yes.

12 Q. You were also asked some questions about the
13 likelihood of some kind of dispute resolution or what
14 would have happened with regard to Direct's continued
15 participation in the market had PNB at the end of the
16 Publishing Agreement decided to reenter the business;
17 do you recall that?

18 A. Yes, I do.

19 Q. Did you also address this subject in your
20 testimony that's been introduced as Exhibit 309, your
21 testimony in U-86-156?

22 A. Yes, I did.

23 Q. On Page 10?

24 A. Yes.

25 Q. And in the context of this case, was this

00471

1 something that you brought up initially, or were you
2 responding to a suggestion by another witness?

3 A. In this particular case that we're talking
4 about?

5 Q. In today's case.

6 A. How did we come up with that? I think it was
7 part of my testimony.

8 Q. But was it a suggestion of yours initially,
9 or were you responding to a hypothetical from another
10 witness?

11 A. I was responding to a hypothetical.

12 Q. Mr. Butler for TRACER asked you as to whether
13 or not you believed it had been important to contact
14 customers and advertisers and make sure that they were
15 aware that Direct was publishing the same directory
16 that it had been publishing before, and I know you said
17 that was important. Did you have any perception of the
18 significance of that business as the first in the
19 marketplace that made that important to you?

20 A. Yeah. I think definitely we were first in
21 the marketplace, and we transferred a product that was
22 first in the marketplace.

23 Q. You also answered a question from Judge
24 Wallis about what the meaning of the word "the" is in
25 terms of "The White and Yellow Pages" and you indicated

00472

1 it was the most complete and most accurate. That was
2 what you thought it meant. Is that in any way
3 attributable to changes that Direct made after it
4 acquired this business in 1984, or was it essentially
5 the same before that time?

6 A. I think it was the dominant book in the
7 marketplace before, but I think that the activities
8 that we engaged in at U S West Direct enhanced that,
9 and we grew that position because users -- the usage
10 went up after Direct was formed with the changes that
11 we made to the product, and our advertising sales went
12 up.

13 MR. OWENS: I believe those are all my
14 redirect questions. Thank you.

15 JUDGE WALLIS: Mr. Trautman?

16 MR. TRAUTMAN: I did have a few other
17 questions.

18

19

RE CROSS EXAMINATION

20 BY MR. TRAUTMAN:

21 Q. I believe you responded in response to a
22 question by Commissioner Hemstad that you were the
23 principle negotiator of the Publishing Agreement; is
24 that correct?

25 A. For the Pacific Northwest Bell piece of it,

00473

1 yes.

2 Q. But yesterday you indicated that you did not
3 negotiate the publishing fee, and I guess my question
4 is, does that not seem somewhat peculiar that one would
5 be the principle negotiator for one side that they
6 didn't negotiate the fee the Company would pay?

7 A. As I explained this morning, the Publishing
8 Agreement itself was what we were negotiating at the
9 table where I was the lead negotiator.

10 Q. I understand, but part of the Publishing
11 Agreement in Article 10 is the payment of fees totaling
12 150 million dollars over three years, and you were the
13 principle negotiator, but yet you did not negotiate the
14 fees.

15 A. That's what I said and that's true.

16 Q. That does not seem peculiar to you?

17 A. Not at all.

18 Q. Was that delegated to someone else, the job
19 of negotiating the fee? Was that delegated to somebody
20 else?

21 A. No. I did not delegate it to someone else.

22 Q. You stated in response to a question from
23 Public Counsel, you were asked what the reason was that
24 U S West Direct put a U S West company and the PNB name
25 on the May 1988 and '89 directory, and I believe you

00474

1 said it was because you were legally required to do so.

2 A. If you look at the Publishing Agreement,
3 there is a clause in the Publishing Agreement that
4 covers the use of the telephone company name.

5 Q. Are you looking at the 1987 Agreement?

6 A. No. The 1984 Agreement.

7 Q. But this was the 1988 and '89 directory, so
8 what was there in the 1987 Publishing Agreement that
9 legally required?

10 MR. OWENS: If we can have a moment to get a
11 copy of that Agreement, Your Honor.

12 JUDGE WALLIS: That's Exhibit 112, Mr. Owens?

13 MR. OWENS: Yes, Your Honor, that is.

14 THE WITNESS: Now, the question? I found it.

15 Q. (By Mr. Trautman) Where is the reference?

16 A. On Page 8, Paragraph 5.3.

17 Q. I see that paragraph, but I also see
18 Paragraph 3.4 which first says that the design, scope,
19 format, and cover of each directory shall be the
20 exclusive responsibility of U S West Direct, and I see
21 in Paragraph 5.1 that it says that in consideration of
22 the various obligations, it says that U S West Direct
23 was given the exclusive right to use and place the
24 telephone company name on its directories, and in 5.2
25 it says that U S West Direct may publish or use other

00475

1 trademarks in accordance with the specifications of the
2 authorization, and then 5.3 says that the use shall be
3 in accordance with the standards of the phone company.
4 I don't see anything that states that they are required
5 to put the logo on.

6 MR. OWENS: Is that a question or an
7 argument?

8 MR. TRAUTMAN: It's a question. Where is it
9 located, and I guess your answer is Paragraph 5.3?

10 THE WITNESS: No. I don't see where it
11 requires us in this contract.

12 Q. (By Mr. Trautman) You indicated in response
13 to a question from Mr. Owens that the publishing fees
14 in the 1984 Agreement in addition to being for the
15 right to publish subscriber listings, the right to
16 publish the exchange service directories, and the
17 exclusive right to use the name, logo, and trademarks
18 of the phone company and remaining rights and
19 obligations. In addition to that was in consideration
20 of recitations, terms, and conditions; is that correct?

21 A. That's correct.

22 Q. My question is, could you please break down
23 for me, what each of the publishing fees in each of the
24 years '84, '85 and '86, could you break down how much
25 of those fees went for each of these recitations,

00476

1 terms, and conditions?

2 A. I believe I answered that question yesterday
3 that no studies were made so I cannot do that.

4 Q. You indicated in response to a question from
5 Mr. Owens -- this was regarding Exhibit 609, which was
6 the letter you had written to Mr. Okamoto stating the
7 subsidy would be discontinued, and you were asked
8 whether, at that time, there was additional
9 consideration in the -- you were asked whether at that
10 time PNB received something in the fact that U S West
11 Direct no longer used the PNB name.

12 MR. OWENS: That wasn't the way the question
13 was formed, but I guess I don't have an objection until
14 I hear the rest of the question.

15 Q. My question is, is it your testimony the fact
16 that U S West Direct stopped using the PNB name has
17 anything to do with the discontinuation of the subsidy
18 that's referred to in Exhibit 609?

19 A. No.

20 Q. I believe this is in response to some
21 questions that were asked by Chairwoman Showalter, and
22 she asked what role the parent company would have in
23 various disputes, and you said well, I believe you said
24 that they would let the companies duke it out, but then
25 the parent would step in at some point. I'm not

00477

1 quoting you, but I believe that's what you said.

2 A. If the two parties could not come to a
3 reasonable solution.

4 Q. With that in mind, I'm looking back at your
5 rejoinder testimony, which was Exhibit 303-T on Page 5
6 and at Line 13 to 14, and you simply say, "If PNB had
7 chosen not to renew the Publishing Agreement, there is
8 absolutely no doubt that U S West Direct would have
9 remained a competitor in the market place." I guess my
10 question is given what you said about the role the
11 parent would play in such a situation, isn't there some
12 doubt that U S West Direct --

13 A. Not based on the information that I had
14 available to me. We were a very profitable, very good
15 operation with outstanding products and services in the
16 marketplace with all the systems, the people,
17 everything that we needed to stay in business, and if
18 it had come down to a dispute, my guess is that
19 U S West would have said, "U S West Direct is in the
20 directory business.

21 Q. But your gets is not saying there is
22 absolutely no doubt.

23 A. There is no doubt in my mind.

24 Q. There is no doubt in your mind.

25 A. No.

00478

1 Q. It's 100 percent sure the parent would have.

2 A. That's the way I view it, yes.

3 MR. TRAUTMAN: I have no further questions.

4

5

RE CROSS EXAMINATION

6 BY MR. FFITCH:

7 Q. Mr. Johnson, you testified a little bit ago
8 about a company called Transwestern, and indicated that
9 company was engaged in the publishing of telephone
10 directories in other states; is that correct?

11 A. That's correct.

12 Q. Does U S West still own Transwestern?

13 A. No, they don't.

14 Q. Do you know why they exited, why U S West,
15 Inc. has exited the business?

16 A. I think they felt they could get a good price
17 for it because it was a growing concern and continued
18 to grow, and I think they felt their responsibility and
19 job was to produce the directories in the 14 states,
20 and that's why they stayed there. They had other
21 places to put their money. The electronic publishing
22 certainly looks like it's one of them.

23 Q. You also testified in response to some
24 questions from Mr. Owens about what's in your phone
25 bill, what comes in customers' envelope. It's true,

00479

1 isn't it, that the billings that come associated with
2 other providers and vendors, particularly other phone
3 companies, typically come on a separate page with the
4 name of that other company on the page.

5 A. I don't pay bills at our house so I'm not
6 sure, but I think that's accurate.

7 Q. That the U S West Direct Yellow Pages bill
8 would be included on the U S West portion of the bill;
9 isn't that the case?

10 A. I don't know that to be a fact.

11 Q. And that the other providers that you're
12 referring to who show up in your phone bill don't
13 include the name "U S West" in the title of their
14 company, do they, other than Yellow Pages advertising?

15 A. I don't know whether there are other U S West
16 affiliates that are billed along with the telephone
17 service. I don't know the answer to that question.

18 Q. You had some questions again from Mr. Owens
19 about GTE directories and publishing fees. Do you know
20 if GTE has a publishing subsidiary that contracts with
21 the GTE telephone companies to publish White and Yellow
22 Pages?

23 A. I believe they do. I don't know specifically
24 the arrangement.

25 Q. Do you know if the GTE directories company

00480

1 pays a share of its advertising revenues as a
2 publishing fee to the telephone affiliates within GTE?

3 A. No, I don't.

4 Q. You stated that U S West Communications' name
5 never appeared on the U S West directories, didn't you?

6 A. Yes.

7 Q. Is that because it was no longer necessary to
8 put the telco's name on the book to prove to regulators
9 that the obligation to publish White Pages was being
10 met?

11 A. No. I think that we didn't need to have that
12 on there because the people in the marketplace
13 recognized U S West Direct as the publisher of the
14 directories that are going to be used in the community,
15 and I think this Commission recognized that U S West
16 Direct was meeting that obligation, so the name on the
17 book was no longer needed.

18 MR. FFITCH: May I just have one moment,
19 please. I don't think I have anymore questions. Thank
20 you.

21 JUDGE WALLIS: From the Bench?

22

23

EXAMINATION

24

25

COMMISSIONER HEMSTAD: I have one follow-up
question that I should have asked before, and that's

00481

1 with regard to that market share study that you
2 referenced, and I think you said that it showed
3 U S West Direct had 77 percent of the market; was that
4 the figure?

5 THE WITNESS: I would have to refer back to
6 my testimony in '88, but yes.

7 COMMISSIONER HEMSTAD: But that would have
8 been what the entire Yellow Page market in the state of
9 Washington?

10 THE WITNESS: I'm not positive of that. I
11 believe that would be accurate.

12 COMMISSIONER HEMSTAD: So would that market
13 share study have shown the penetration of competitors
14 within the operating areas of U S West.

15 THE WITNESS: It would be broader than that,
16 and I say that because we included GTE, I'm sure, in
17 those studies.

18 COMMISSIONER HEMSTAD: So my question is more
19 narrow. Would it show the penetration within U S West
20 territory of operations?

21 THE WITNESS: It would be broader than that.

22 COMMISSIONER HEMSTAD: I'm sorry.

23 THE WITNESS: U S West Direct distributed and
24 sold advertising outside of the PNB operating territory
25 and included it in books that were distributed both in

00482

1 and outside the territory.

2 COMMISSIONER HEMSTAD: But my question is
3 would that analysis not focus on the amount of
4 competition within U S West's operating territory?

5 THE WITNESS: It would all be independent
6 competing publishers in the state.

7 COMMISSIONER HEMSTAD: I'm trying to get to
8 the point. Within U S West's operating territories, I
9 assume the market share would be substantially higher
10 than 77 percent.

11 THE WITNESS: It's possible. I think it
12 would be, yes.

13 COMMISSIONER HEMSTAD: But the study wouldn't
14 have analyzed that?

15 THE WITNESS: You have to recognize there are
16 other telephone company publishers in the state of
17 Washington, and this included their revenues in the
18 publishing company side of things, so I did misstate
19 when I said 77 percent was U S West. It would be other
20 telephone company ads in there.

21 COMMISSIONER HEMSTAD: Thank you.

22

23

EXAMINATION

24 CHAIRWOMAN SHOWALTER: I have one question.

25 Did U S West Direct ever contract with any other

00483

1 telephone company to publish a first in the marketplace
2 directory?

3 THE WITNESS: U S West Direct, no, but my
4 understanding is that over in the -- I believe in the
5 old Northwestern Telephone Company territory, U S West,
6 or I should say, Northwestern Bell, did publish the
7 official directories and distributed them for small
8 communities, small independent telephone providers, so
9 we would sell the advertising and print and distribute
10 the books, but there was no revenue sharing
11 arrangements with them that I know of.

12 CHAIRWOMAN SHOWALTER: I'm sorry, but I
13 didn't the answer. What was your role in and what was
14 any other company's role in producing the first in the
15 marketplace book?

16 THE WITNESS: They were our books that were
17 distributed in independent telephone company
18 territories to meet their official responsibility to
19 provide listing services, but we also sold advertising
20 in those communities, and to my knowledge, we did not
21 share those revenues. I don't know positively that
22 that's accurate.

23 CHAIRWOMAN SHOWALTER: In other words, you
24 did not pay an additional fee --

25 THE WITNESS: I don't think so.

00484

1 CHAIRWOMAN SHOWALTER: -- to.... I'm sorry,
2 what was the name?

3 THE WITNESS: Northwestern Bell. No,
4 Northwestern Bell was a sister company of Pacific
5 Northwest Bell that was then merged into U S West.

6 CHAIRWOMAN SHOWALTER: So that ultimately
7 would have been the same parent, and I think what I was
8 getting at is did you ever publish a first in the
9 marketplace book for someone not owned by your parent?

10 THE WITNESS: No.

11 CHAIRWOMAN SHOWALTER: Thank you.

12 JUDGE WALLIS: Is there anything further?

13 COMMISSIONER HEMSTAD: I would like to take
14 counsel's offer to recall Mr. Inouye to pursue the line
15 of questioning that this witness was not able to
16 answer.

17 JUDGE WALLIS: Very well.

18 MR. TRAUTMAN: I just had one follow-up.

19

20 RE CROSS EXAMINATION

21 BY MR. TRAUTMAN:

22 Q. Why couldn't U S West Direct have displaced
23 the official publisher in other areas served by other
24 LECs?

25 A. I think they had the first in the marketplace

00485

1 advantage. They had been there for years and published
2 the directories and moved their work over into
3 subsidiaries like we had done, but they were very
4 powerful in their markets.

5 MR. OWENS: I have one question, Your Honor.

6 JUDGE WALLIS: On redirect?

7 MR. OWENS: More on clarification of the last
8 answer to the Chairwoman's question.

9 JUDGE WALLIS: Mr. Owens.

10

11

REDIRECT EXAMINATION

12

13 MR. OWENS: It seems to me you may have
14 contradicted what you earlier said, Mr. Johnson, and I
15 just wanted to be clear. I think you testified that in
16 the Northwestern Bell territory, Northwestern Bell
17 published some directories that were for exchanges
18 operated by independent telephone companies; is that
19 right?

19

20

21

22

23

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25

THE WITNESS: They included in one of their
directories those counts.

MR. OWENS: Did those independent directory
companies publish their own directories simultaneously
for those exchanges?

THE WITNESS: No.

00486

1 EXAMINATION

2 CHAIRWOMAN SHOWALTER: I guess the question
3 is, you're not aware of what fees were paid by the
4 independent companies to Northwestern Bell, but I think
5 you testified you didn't get any addition fee from
6 Northwestern Bell to you.

7 THE WITNESS: To my knowledge, those
8 companies did not receive payment from us for the right
9 to publish in their area. It was in exchange for
10 meeting their regulatory obligation. We purchased the
11 directories and sold advertising and kept the revenues.

12 MR. OWENS: Thank you, Your Honor.

13 JUDGE WALLIS: Thank you, Mr. Johnson.
14 You're excused from the stand at this time. Let's be
15 off the record.

16 (Discussion off the record.)

17 JUDGE WALLIS: I do have one brief
18 administrative note. During the examination of
19 Mr. Johnson, reference was made to several exhibits
20 that have not yet been formally identified for the
21 record nor offered nor received, and those discussions,
22 of course, are subject to the Commission's ultimate
23 receipt of those documents.

24 Pursuant to agreement of the petitioner,
25 Witness Carl Inouye has been recalled to the stand.

00487

1 Mr. Inouye, I'm merely going to remind you that you
2 have been previously sworn in this proceeding and you
3 remain under oath and are available now for
4 questioning, and I understand there are questions from
5 the Bench.

6
7

EXAMINATION

8 COMMISSIONER HEMSTAD: Mr. Inouye, I assume
9 you heard the questions I asked of Mr. Johnson with
10 regard to who negotiated the what's called the
11 fundamental arrangements between PNB and U S West
12 Direct or Landmark, whoever was being represented
13 there. Do you know who, in fact, conducted those
14 negotiations?

15 THE WITNESS: As clarification, you're
16 referring to a publishing fee?

17 COMMISSIONER HEMSTAD: Well, the basic
18 consideration to the exchange between the two parties.

19 THE WITNESS: As far as I'm aware, it was
20 negotiated among the officers of PNB and U S West.

21 COMMISSIONER HEMSTAD: PNB and U S West, Inc?

22 THE WITNESS: PNB and U S West, Inc., and I'm
23 not sure of the role of the officers. I'm sure they
24 were either Landmark Publishing and or U S West, the
25 receiving company.

00488

1 COMMISSIONER HEMSTAD: Do you know 15 years
2 later who they were?

3 THE WITNESS: I can name the officers. I
4 can't testify as to their exact involvement, but the
5 president of PNB at the time was Andy Smith. The chief
6 financial officer certainly would have been
7 knowledgeable, was Larry Pinnt. At U S West, Inc., the
8 parent company, I believe it was Jack McAllister was
9 the chief executive officer; Howard Doer was the chief
10 financial officer at that time. I'm not familiar with
11 the officers of either Landmark or U S West Direct
12 other than as, I think, is contained in Mr. Johnson's
13 testimony.

14 COMMISSIONER HEMSTAD: Well, U S West Direct
15 at that point hadn't been created yet, so I suppose it
16 would have been between PNB and U S West, Inc.

17 THE WITNESS: I believe the legal entities
18 may not have been created, but certainly operationally
19 they were created, if you will. If I could express an
20 opinion, I believe at the time -- this would be 1983 --
21 that U S West, Inc. was a legal entity. It was a legal
22 entity as a subsidiary of AT&T and was created for
23 purposes of being spun off as of January 1st, 1984, so
24 the legal entity existed. It was already operational.
25 As you may recall, there was about a little over a year

00489

1 preparation time between the announcement of the
2 divestiture and the actual implementation, so by late
3 1983, these entities were already functioning.

4 COMMISSIONER HEMSTAD: So back to what the
5 exchange was and negotiated, from the perspective of
6 the companies, on the one hand it was the change of the
7 Yellow Page business venture.

8 THE WITNESS: Yes, the business.

9 COMMISSIONER HEMSTAD: And in exchange for
10 that, they received 21 percent of the share of stock
11 yet to be created.

12 THE WITNESS: Yes.

13 COMMISSIONER HEMSTAD: And somewhere in
14 there, I believe Mr. Johnson said that the Publishing
15 Agreement itself was not part of the basic transfer
16 negotiation.

17 THE WITNESS: That's correct.

18 COMMISSIONER HEMSTAD: So we have the
19 business venture on one hand and 21 percent share of
20 the stock on the other as the basic change that was
21 occurring.

22 THE WITNESS: Yes, that's true.

23 COMMISSIONER HEMSTAD: Normally where you
24 have a parent and an affiliate -- in this instance, U S
25 West, Inc. is the parent, and U S West Direct and

00490

1 Landmark as the affiliates -- when one share of stock
2 was created, that would be held by the parent, wouldn't
3 it?

4 THE WITNESS: No. I believe that the way it
5 would work is that the subsidiary in this case -- and I
6 she correct my earlier testimony. The share of stock
7 was in Landmark as opposed to U S West Direct. If you
8 can imagine that the subsidiary is created at the
9 instant of January 1st, 1984, it's the representation
10 of the ownership of that subsidiary as the single share
11 of stock.

12 COMMISSIONER HEMSTAD: Let me back up. I
13 assume there is probably one share of stock issued for
14 Landmark then.

15 THE WITNESS: Yes.

16 COMMISSIONER HEMSTAD: And that would have
17 been owned by the parent.

18 THE WITNESS: No. At the time of their
19 creation, it was actually owned by the companies that
20 in essence provided the capitalization for Landmark
21 Publishing, which was the three companies, Pacific
22 Northwest Bell being one, Mountain Bell and
23 Northwestern Bell. They, for what may have been an
24 instant of a time, owned Landmark Publishing and
25 provided the capitalization, the initial assets for

00491

1 Landmark Publishing.

2 COMMISSIONER HEMSTAD: And those initial
3 assets would have been the business venture transfer,
4 including the 22 million in cash.

5 THE WITNESS: Yes. It would have been the
6 directory publishing business. Shall I proceed? Then
7 at the point of providing the -- or the transfer takes
8 place, the exchange is the business on the one hand --
9 that's what PNB gave. What PNB received was the 21
10 percent share of the single stock of ownership. PNB
11 then declared a dividend to its owner, who was U S
12 West, Inc. and then passed that dividend, which was the
13 21 percent share of stock, to U S West, Inc., and
14 that's how U S West, Inc. became the owner of Landmark
15 Publishing.

16 COMMISSIONER HEMSTAD: Was the 21 percent
17 share -- how was that recorded on the books of PNB?

18 THE WITNESS: I believe it was recorded on
19 books as the value equal to the assets of their initial
20 capitalization as what we've referred to in this docket
21 as the net book.

22 COMMISSIONER HEMSTAD: The approximately 22
23 million.

24 THE WITNESS: Yes.

25 COMMISSIONER HEMSTAD: And then it instantly

00492

1 transferred to U S West, Inc.

2 THE WITNESS: Yes.

3 COMMISSIONER HEMSTAD: Why would the 21
4 percent share be instantly -- it was bang, bang; they
5 are gone. Why when it's represented a value that was
6 being conveyed, why would that be dividended up to the
7 parent rather than retained in PNB?

8 THE WITNESS: I can only answer that by
9 saying that was the intent of the transaction, what the
10 parties, what management had decided they were going to
11 do.

12 COMMISSIONER HEMSTAD: That would have been
13 the kernel that would have been the value going forward
14 from which PNB in any typical arm's-length transaction
15 would be able to anticipate future benefits; isn't that
16 right?

17 THE WITNESS: Had they retained ownership,
18 yes.

19 COMMISSIONER HEMSTAD: So if there was a
20 negotiation between U S West, Inc., the parent, and PNB
21 and U S West Direct, obviously, it was U S West, Inc.
22 that was directing -- presumably how Mr. McAllister was
23 directing how this three-way transaction would occur so
24 that U S West, Inc. would end up essentially with the
25 future benefit of the sale.

00493

1 THE WITNESS: I can't speak to whether it was
2 Mr. McAllister, whether the transaction reflected his
3 will and desire, or if it was a collective group of
4 people. I just can't say.

5 COMMISSIONER HEMSTAD: Let's depersonalize it
6 and say it was dictated by U S West, Inc. as to how the
7 transaction would proceed so that U S West, Inc. would
8 end up with the future benefit of the transaction.

9 THE WITNESS: I think that would be fair to
10 say, yes.

11 COMMISSIONER HEMSTAD: I think that answers
12 my inquiry.

13

14 EXAMINATION

15 CHAIRWOMAN SHOWALTER: Now that you're up
16 here -- I want to assume for the purpose of this
17 question your theory of the case, which I believe is
18 that the transaction occurred in '84, that
19 consideration is owed for that transaction and that
20 it's been paid through imputation.

21 THE WITNESS: Uh-huh.

22 CHAIRWOMAN SHOWALTER: So assume you've got a
23 fully paid for directory business, U S West Direct.

24 THE WITNESS: Yes.

25 CHAIRWOMAN SHOWALTER: And it's still

00494

1 publishing the Yellow and White Pages and the white
2 page in particular or the bundled Yellow and White
3 Pages for U S West Communications. It's still
4 performing that function.

5 THE WITNESS: Yes.

6 CHAIRWOMAN SHOWALTER: Beyond the exchange of
7 dollars for publishing or billing or sort of the
8 physical costs, is there still a value that U S West
9 Communications should be extracting a payment, should
10 be extracting from U S West Direct, or is that value --
11 what I'm getting is the value of the bundled document.
12 The synergy, if you want to call it that, between
13 U S West Direct and U S West Communications' purposes,
14 is that what was transacted in '84, and therefore has
15 been paid for assuming the payments equal that amount
16 of consideration, or is there an ongoing need for the
17 for U S West Communications to say to you, to U S West
18 Direct, "There is still a value here. You're still
19 publishing the first in the market Yellow and White
20 Pages, and for that, you continue to owe us something,
21 and if you're not paying it, the ratepayers need to
22 receive it."

23 THE WITNESS: I think that what you're
24 raising are two separate questions, if I could. I
25 think the first question, the question that really is

00495

1 the question that the Company posed by filing its
2 petition is really -- and this is a restatement of my
3 testimony that because the Court has now held that the
4 transfer of the business that occurred in 1984 was done
5 in a manner in which the consideration given was
6 inadequate or unreasonable and that a fair compensation
7 is owed, then that then poses the question of now, up
8 to this point in time, has what the Commission has
9 imposed on the Company in the form of imputations, does
10 the sum of that now compensate ratepayers for the value
11 of what was transferred, for the business that was
12 transferred in 1984. As the Company has attempted to
13 demonstrate, we believe that to be true.

14 The additional question you're posing to me
15 is are the services that U S West Direct today receives
16 from U S West Communications as a regulated operations,
17 are they being fairly priced is really the question.

18 CHAIRWOMAN SHOWALTER: Yes. If one of the
19 services is you're publishing our book bundled with our
20 product, and that's a value to you as well as to the
21 Company.

22 THE WITNESS: I can't answer that question.
23 I would caution the Commission though that there may be
24 a tendency to nail the two questions together or there
25 is a service that's being provided today that was

00496

1 actually transferred in 1984, and I know that doesn't
2 sound -- is being the exclusive publisher a service, or
3 was it, as appeared in testimonies in this docket, was
4 it a right. Was it what's been called the first mover
5 advantage. Is that a continuing service, or is that
6 something that was an economic advantage that was
7 transferred and paid for once and for all.

8 CHAIRWOMAN SHOWALTER: In other words, was
9 the right to be the first mover something that was
10 bought, so to speak, in 1984, or is it something that
11 keeps continuing on, and doesn't U S West
12 Communications today still have some control over that
13 or not; that is, is the fact that the Yellow Pages and
14 the White Pages is bundled, I suppose U S West Direct
15 can simply do that on its own.

16 THE WITNESS: I think U S West Direct can do
17 that on its own, and the question is the variant of the
18 controversy over whether there is something there now
19 appears in testimony in the form of if PNB or U S West
20 Communications reentered the market, could it take back
21 the first mover advantage. In other words, could it
22 push U S West Direct or Dex out of the business, and
23 the Company's position is that's not likely. That gets
24 into all of the market of name recognition, brand
25 loyalty, what the customer is going to choose, things

00497

1 like that.

2 CHAIRWOMAN SHOWALTER: I guess one more
3 question. The way I originally posed the question was
4 it was really on a going-forward basis. Is there still
5 some value that U S West Communications would be
6 provided to U S West Direct, and therefore, some kind
7 of recognition of that value should continue, but now
8 look backwards. Is it fair or not to say that any of
9 the imputation that has gone on all these years could
10 be not only for consideration of the business
11 transaction in '84 but some of this continuing value
12 that U S West was provided to U S West Direct, U S
13 West Communications was providing to U.S. West Direct,
14 because of this bundling of the White and Yellow Pages.

15 THE WITNESS: I'm not sure if we're talking
16 about the same thing when you say the bundling of the
17 White and Yellow Pages. In my mind, that's the market
18 position that U S West Direct got in 1984. Certainly,
19 that was the value of the business and why the fair
20 market value of the business is greater than just the
21 net book value of the assets.

22 What was transferred in 1984 was the business
23 with all of its advantages, financial advantages,
24 economic marketing advantages. The business would not
25 have been worth very much if U S West Direct did not

00498

1 get that advantage. They got the advantage. They took
2 advantage of it. They exploited it. They made it more
3 valuable by investing in it. In my view, what was
4 transferred was that business or business opportunity,
5 and the compensation is the value of that opportunity
6 in 1984.

7 CHAIRWOMAN SHOWALTER: Thank you.

8

9

EXAMINATION

10 COMMISSIONER HEMSTAD: Just one technical
11 question. Are the accounting records that reflect the
12 transactions in 1983 and '84 part of the record here?

13 THE WITNESS: If you're asking me if the
14 Company's ledgers, are they part of the record, no they
15 are not. I don't believe the Company's ledgers even
16 exist at this point. If the question is, is the
17 accounting that took place, is the description of that
18 accounting on the record, the answer to that would be
19 yes. It was described in the Application that was
20 filed with the Commission, I believe, in December of
21 1983.

22 COMMISSIONER HEMSTAD: I'm really quite
23 surprised. I was going to pursue and ask whether the
24 ledger recordings for U S West -- I'm sorry -- Pacific
25 Northwest Bell, U S West Direct, and U S West, Inc. so

00499

1 we could see how things were placed on the ledgers, but
2 they no longer exist?

3 THE WITNESS: No, not that I'm aware of.

4 COMMISSIONER HEMSTAD: Then I cannot ask.

5 JUDGE WALLIS: Could we ask the Company to
6 look and see if there are copies available?

7 MS. ANDERL: Well, Your Honor, as I recall,
8 we may have been asked for some more information in a
9 data request by one of the parties in this case, and I
10 believe those records are older than our records

11 retention policy would have us retain, but we'll look.

12 COMMISSIONER HEMSTAD: So it's formally on
13 the record, I would make that as a Bench request and
14 get the Company's response.

15 JUDGE WALLIS: We'll call that Bench request
16 No. 2.

17 COMMISSIONER HEMSTAD: And I would like it
18 for all three of the companies.

19 MS. ANDERL: Inc., Direct, and PNB?

20 MR. OWENS: Or Landmark.

21 COMMISSIONER HEMSTAD: Landmark. Whichever
22 is appropriate, I would like all three.

23 MS. ANDERL: We'll investigate that issue and
24 provide formal response to the Bench request.

25 JUDGE WALLIS: Ms. Anderl?

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1 MS. ANDERL: Thank you, Your Honor. I do
2 have a few follow-up questions. I didn't know if the
3 Commissioner's questions had prompted questions from
4 Staff or Public Counsel. It might streamline things if
5 they went ahead of me.

6 MR. FFITCH: I have one question, Your Honor.

7 JUDGE WALLIS: Mr. ffitich?

8

9

RE CROSS EXAMINATION

10 BY MR. FFITCH:

11 Q. Did the Commission, Mr. Inouye, ever approve
12 the dividend of the fractional share of the LPC stock
13 to U S West, Incorporated?

14 A. I'd have to look at the Application and the
15 Order. I believe that that may be the case since the
16 Petition described the transaction or the Application
17 contained the information and asked for the
18 Commission's approval of a transfer.

19 Q. So if there was a request for approval and an
20 eventual Commission action, it would be in that Docket
21 FR-83-159?

22 MR. FFITCH: Thank you. No further
23 questions.

24 JUDGE WALLIS: Ms. Anderl?

25 MS. ANDERL: Thank you, Your Honor. May I

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1 approach the witness?

2 JUDGE WALLIS: Yes.

3

4

REDIRECT EXAMINATION

5 BY MS. ANDERL:

6 Q. Mr. Inouye, I've handed you a copy of what's
7 been previously admitted as Exhibit 110, which is the
8 Company's application in FR 83-159. Do you have that?

9 A. Yes, I do.

10 Q. Have you previously reviewed that document in
11 preparation for the proceeding?

12 A. Yes, I have.

13 Q. With regard to the information about the
14 nature of the transaction that you and Commissioner
15 Hemstad just discussed, is it your understanding that
16 description of that transaction is contained in this
17 directory application, which was filed on December
18 22nd, 1983?

19 A. Yes.

20 Q. Does that include a description of the
21 transfer of assets from PNB to Landmark Publishing
22 Company?

23 A. Yes.

24 Q. Does it include a statement that the exchange
25 will be in return for a 21 percent share of the stock

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1 of Landmark Publishing Company?

2 A. Yes.

3 Q. Does it also indicate that the percent share
4 of Landmark Publishing Company that PNB will receive is
5 to be dividended to U S West, Inc., or do you know
6 whether that information was provided to the
7 Commission?

8 A. That is described in the Application.

9 Q. Can you point us to where that is?

10 A. Yes. It's Paragraph 3 that begins at the
11 bottom of Page 2 and continues to the top of Page 3. I
12 believe that it's also described in Exhibit D, and that
13 appears to be on Page 2 of Exhibit D.

14 Q. You answered questions yesterday with regard
15 to Commission Orders which had been entered in this
16 Docket FR 83-159; do you recall that?

17 A. Yes.

18 Q. On the basis of having reviewed those Orders
19 from the Commission, is it your understanding that the
20 Commission had an opportunity to and did, in fact,
21 investigate this transaction contemporaneously with the
22 time the Application was filed and the requests for
23 approval were submitted?

24 A. Yes.

25 Q. Based on what you understand today about the

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1 nature of the transaction, do you have an opinion as to
2 whether or not the Applications submitted in FR 83-159
3 fully disclosed to the Commission the nature of the
4 transaction that the Company proposed?

5 A. Yes.

6 Q. What is that opinion?

7 A. That it's fully described here in the pages I
8 just referenced.

9 Q. With regard to some questions that Chairwoman
10 Showalter had for you in connection with ongoing goods
11 and services that U S West Direct might receive from
12 U S West Communications and whether or not additional
13 compensation is due and owing for those, is it your
14 understandings that the dealings between those two
15 companies are currently subject to the affiliated
16 interest transactions rules of the Commission?

17 A. Yes.

18 Q. Do you have an understanding of whether or
19 not the contracts or arrangements between the companies
20 have been submitted to the Washington Commission for
21 approval?

22 A. Yes, they have been.

23 Q. Do you know if they have been approved?

24 A. To my knowledge, we are up to date in terms
25 of having Commission approval on contracts with

00504

1 U S West Direct.

2 Q. Is there any other witness in this docket who
3 would have more direct knowledge than you of that?

4 A. Yes. Ms. Koehler-Christensen.

5 MS. ANDERL: Thank you, Your Honor. No
6 further questions.

7 JUDGE WALLIS: Is there any follow-up? It
8 appears there is not. Thank you again, Mr. Inouye, for
9 appearing before us. You're excused from the stand.
10 Let's be off the record.

11 JUDGE WALLIS: Let's be back on the record,
12 please. U S West is calling to the stand at this time
13 its witness Timothy Golden. I'm going to ask
14 Mr. Golden to stand and raise your right hand, please.

15 (Witness sworn.)

16 JUDGE WALLIS: In conjunction with
17 Mr. Golden's appearance today, a number of exhibits
18 have been predistributed. On his behalf, the following
19 exhibits have been distributed and identified as
20 follows. Exhibit 401-T for identification is
21 designated as the Direct Testimony of Timothy Golden.
22 402-C is the confidential portion of Exhibit TPG-1
23 Valuation Study, which is related to Exhibit 411.
24 Exhibit 403-T for identification is the Rebuttal
25 Testimony of Timothy Golden. 404 is Exhibit TPG-2.

00505

1 405 is Exhibit TPG-3. 406 is Exhibit TPG-4. 407 is
2 Exhibit TPG-5. 408 is Exhibit TPG-6. 409-C is Exhibit
3 TPG-7. 410-T is the Rejoinder Testimony of Timothy
4 Golden, and Exhibit 411 for identification is the
5 non-confidential portion of TPG-1 Valuation Study.

6 In addition, some documents have been
7 predistributed for possible use on cross-examination of
8 this witness, and those are as follows: A document
9 designated Page 179, which is represented to be an
10 excerpt from a volume by Pratt, et al., "Valuing a
11 Business: The Analysis and Appraisal of Closely Held
12 Companies," is 412 for identification. 413 for
13 identification is designated Pages 766, 772, 777, and
14 779 purporting to be excerpts from "Value Line
15 Investment Survey" of October 26, 1984. Exhibit 414
16 for identification is U S West's Response to Data
17 Request WUTC 02-016. Exhibit 415-C for identification
18 is designated Balance Sheet, U S West Direct, for
19 12/31/84. Exhibit 416 for identification is identified
20 as Pages 168 and 169 and is represented to be another
21 excerpt from the volume Pratt, et al., "Valuing a
22 Business," previously described. Exhibit 417 for
23 identification is Page 764 of "Value Line Investment
24 Survey" of April 9, 1999. Exhibit 418 for
25 identification is U S West's Response to Data Request

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1 WUTC 02-014. 419 for identification is an excerpt from
2 the deposition of Timothy Golden taken January 25,
3 1999, Pages 57 and 58. 420 for identifying is
4 U S West's Response to Data Request PC 08-127. 421 for
5 identification is U S West's Response to Data Request
6 PC 08-121. 422 is the Response to Data Request PC
7 08-120, and Exhibit 423 for identification is Page 83,
8 an excerpt of the deposition of Mr. Golden taken
9 1/25/99.

10 I believe those are the exhibits that have
11 been presented for possible use with this witness, and
12 with that, we will turn the witness over to Mr. Owens.

13 MR. OWENS: Thank you, Your Honor.

14

15 DIRECT EXAMINATION

16 BY MR. OWENS:

17 Q. Good morning, Mr. Golden. Would you please
18 state your name and address for the record?

19 A. Yes. My name is Timothy P. Golden. My
20 address is PricewaterhouseCoopers, 2400 Eleven Penn
21 Center, Philadelphia, Pennsylvania, 19103.

22 Q. Are you the same Timothy Golden who has
23 sponsored exhibits consisting of Exhibit 401-T through
24 411 consisting of your direct testimony, your rebuttal
25 testimony and your rejoinder testimony with associated

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1 exhibits as identified by the Administrative Law Judge?

2 A. Yes, I am.

3 Q. And is your statement of professional
4 qualifications set forth in Exhibit 401-T?

5 A. Yes, with one minor modification which I
6 addressed in Exhibit 410-T. As of July 1 of this year,
7 I became a partner in the firm of
8 PricewaterhouseCoopers in the valuation practice.

9 Q. Very well. Do you have any additions,
10 changes, or corrections to make to the prefile
11 testimony of a substantive nature?

12 A. There are two changes to my rebuttal
13 testimony, which are of a minor nature, but I'd like to
14 get them on the record. My rebuttal testimony, Exhibit
15 403-T, at Page 8, Line 29. At Line 29 I say, "of U S
16 West, Inc. to be about 20 percent as of January 1999."
17 That 20 percent should be 80 percent. It should be the
18 inverse of that number, and that sentence follows on to
19 the subsequent page in Mr. Brosch's use of 52 percent
20 instead of 20 plus percent. That should be instead of
21 80 minus or about 80 percent illustrates an egregious
22 misunderstanding of financial theory.

23 In addition, on Page 63 of that same
24 document, Exhibit 403-T, Footnote 123 identifies the
25 exchange of a Q and A in the above page as being

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1 derived from Mr. Brosch's testimony. In fact, that
2 should state Mr. Brosch's deposition.

3 Q. Thank you. As corrected, if I were to ask
4 you the questions and the testimonial exhibits, would
5 your answers be as set forth herein?

6 A. Yes.

7 Q. Are the associated exhibits true and correct
8 to the best of your knowledge and belief?

9 A. Yes.

10 MR. OWENS: Thank you. Your Honor, U S West
11 offer Exhibits 401-T through 411, and Mr. Golden is
12 available for cross-examination.

13 JUDGE WALLIS: Is there objection? Let the
14 record show there is none and the exhibits are received
15 in evidence. Mr. Golden, we're going to take our noon
16 recess at this point, and you're excused from the stand
17 to return at one o'clock. Before we recess, going back
18 to the testimony of Mr. Johnson, Public Counsel wishes
19 to move the admission of Exhibits 310 through 313
20 inclusive; is that correct, Mr. ffitch?

21 MR. FFITCH: That's correct, Your Honor.

22 JUDGE WALLIS: Is there any objection?

23 MR. OWENS: Subject to the prior
24 qualification that we had to 310 and 313; that is that
25 some of the information pertains to a witness other

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1 than Mr. Johnson and that we can tie that up when
2 Ms. Koehler-Christensen takes the stand, we have no
3 objection.

4 JUDGE WALLIS: With that, the exhibits are
5 received. Is there anything else before we take our
6 recess? Let the record show there is no response, and
7 we will resume at one o'clock

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

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AFTERNOON SESSION

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1:00 p.m.

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CROSS-EXAMINATION

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BY MR. TRAUTMAN:

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Q. Good afternoon. I'm Greg Trautman, assistant attorney general for the Commission staff. I believe in your testimony you indicated that you have 14 years of experience with respect to performing valuations; is that correct?

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A. That's correct.

Q. And in general, have those valuations focused on determining the fair market value for the business enterprise value, the BEV of a business?

A. That is correct.

Q. And how do you define fair market value?

A. I'll read from the second paragraph of my testimony, Exhibit 411: I define fair market value as the price at which property would change hands in an

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1 arm's-length transaction between a willing buyer and a
2 willing seller, neither being under any compulsion to
3 buy or sell, each having reasonable knowledge of
4 relevant facts. Our analysis was performed on a
5 controlling interest basis; i.e., assuming 100 percent
6 of the equity of the Company would be sold to a single
7 third, party buyer who would also assume all
8 outstanding debt.

9 Q. So it would be fair to say that the fair
10 market value is the price at which a business would be
11 sold at a competitive market price.

12 A. Yes, fair market value on a controlling
13 basis; that is correct.

14 Q. So the typical role of valuation would be to
15 determine the fair market value of the sale of the
16 business; is that correct?

17 A. It depends on who your client is.

18 Q. Usually, would that be the case?

19 A. Usually that's the case.

20 Q. In your 14 years of experience in valuations,
21 have you ever conducted a valuation 15 years after the
22 valuation date?

23 A. No.

24 Q. Would you consider the performance of a
25 valuation 15 years after the valuation date to be

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1 unusual?

2 A. Yes.

3 Q. What about 10 years after, would that be
4 unusual?

5 A. It would be less unusual.

6 Q. But would it be unusual?

7 A. It would be unusual.

8 Q. What about five years after?

9 A. That's not that unusual.

10 Q. Most often, are these valuations done at the
11 time of sale?

12 A. Most often, they are done -- it's hard to
13 generalize. If I'm engaged to advise a buyer or seller
14 regarding a transaction price that's occurring before
15 the sale, if it's done for litigation support purposes
16 for a transaction that occurred three to five or eight
17 years in the past, I would be working under those
18 conditions.

19 Q. But usually, you would do it at the time of
20 the sale; is that correct?

21 A. If I was working in the context of a sale
22 transaction or advising a buyer or advising a seller,
23 yes.

24 Q. Usually for the valuation studies you've
25 done, haven't they been in about the time of the sale?

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1 A. I wouldn't say that because probably about
2 half of the valuation studies I have done have been for
3 reasons other than advising a seller in a
4 contemporaneous transaction. Many have been presale,
5 post-sale, or for tax purposes or litigation purposes
6 that have valuation dates that were not current.

7 Q. I believe you indicated the 10 or 15 years
8 would be unusual though.

9 A. That would be unusual.

10 Q. To your knowledge, did U S West-C or U S West
11 Direct ever conduct or have performed on their behalf a
12 valuation of the PNB Yellow Pages business any time
13 before you conducted your study?

14 A. I believe we inquired as to whether there
15 were any studies, written studies that could be made
16 available to assist us in our data collection effort,
17 and the reply was none could be found to provide to us.

18 Q. Was there a study done by Lazard Freres in, I
19 believe you dated it February 6th, 1998?

20 A. I don't know whether they conducted a
21 valuation study. I know they issued a fairness
22 opinion. I think the date was February 14th, 1998 -- I
23 can check -- that attested to the fairness of the
24 consideration rendered from a financial point of view.
25 I checked my rebuttal testimony. The date is February

00514

1 6th, 1998.

2 Q. So it is your understanding that the value of
3 the Pacific Northwest Bell Yellow Pages was not
4 determined on or about January 1st of 1984, the date on
5 which it was allegedly transferred to U S West Direct?

6 A. I was provided no documents to indicate that
7 a study was done.

8 Q. Is it true that you employ betas as a
9 component in the determination of the value of the
10 Yellow Page business?

11 A. Yes.

12 Q. Generally speaking, beta measures the
13 volatility of a particular stock compared to the
14 overall market; is that correct?

15 A. That's an oversimplification. Other
16 components go into it, but that's a good layman's
17 explanation.

18 Q. Are you familiar with Value Line?

19 A. I'm familiar with it, yes.

20 Q. Would you agree that it's a reputable
21 investment newsletter? I believe you state that in
22 your testimony.

23 A. I agree that it is, yes.

24 Q. And that it is a reputable source of
25 financial information?

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1 A. It is a source. Over the years, my firm has
2 refrained from using it directly. We had experienced
3 years ago, I recall, when we compared actual SEC
4 documents of a couple of financial statements that the
5 data reported on the Value Line tear sheets that you're
6 referring to has certain adjustments or modifications
7 that we deemed unacceptable for our purposes, so we've
8 tended not to rely on Value Line tear sheets as a direct
9 source if we can avoid it.

10 Q. Is Value Line widely used in the industry?

11 A. What industry are you referring to?

12 Q. The valuation industry.

13 A. I would say it's used. I don't know how
14 widely.

15 Q. Could you refer to what's been marked as
16 Exhibit 413, and this is the Value Line Investment
17 Survey. This contains pages for four of the RBOCs:
18 Bell South, Pacific Tel, Southwest Bell, and U S West.
19 Do you say see that?

20 A. I have that.

21 Q. And if you look in the upper right-hand
22 corner, you'll see it says October 26th, 1984, on the
23 first page, Bell South, Value Line, and then three
24 lines down it says beta, and what does the beta show
25 for these companies?

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1 A. They all have beta next to the label data
2 three letters, NMF.

3 Q. And do you know what that stands for?

4 A. I believe it means "not meaningful."

5 Q. No meaningful figure?

6 A. As they compute it.

7 MR. TRAUTMAN: I would move for the admission
8 of Exhibit 413 into the record.

9 MR. OWENS: No objection.

10 JUDGE WALLIS: Exhibit is received.

11 Q. (By Mr. Trautman) Could you refer now to
12 Exhibit 414, and this is U S West's response to Data
13 Request of the Staff 02-016, and do you have that?

14 A. Yes, I do.

15 Q. Was this prepared by you or under your
16 supervision?

17 A. Yes.

18 MR. TRAUTMAN: I would move for the admission
19 of Exhibit 414.

20 MR. OWENS: No objection.

21 JUDGE WALLIS: Exhibit 414 is received.

22 Q. (By Mr. Trautman) Are the newspaper
23 publishing business and the White and Yellow Page
24 directory publishing business identical?

25 A. They are not identical.

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1 Q. Are there attributes of Yellow Page
2 advertising that make it less risky than newspaper
3 publishing?

4 A. I can view that there were some that make it
5 less risky, some that might make it more risky.

6 Q. Would you agree, for example, that the fact
7 that newspapers have subscription costs whereas Yellow
8 Pages have free distribution might make Yellow Pages
9 less risky?

10 A. I can agree with that.

11 Q. Could you quantify the effect of this
12 attributes on risk?

13 A. Which attributes?

14 Q. The attribute of subscription costs versus
15 free distribution.

16 A. Could you define "subscription costs,"
17 please?

18 Q. The fact that you would have to pay for the
19 material whereas you would not for Yellow Pages.

20 A. To the extent that a newspaper in part
21 receives its revenues from subscription costs, it also
22 receives, I believe, a lot of its revenue from
23 advertisers, and a Yellow Page solely relies on
24 advertising revenues. It might tend to make a Yellow
25 Page business more risky than a newspaper business.

00518

1 Q. But the fact that you would have to obtain
2 subscribers and get circulation where you would not
3 have to do that with the Yellow Pages.

4 A. With the Yellow Pages, you would have to
5 obtain advertisers.

6 Q. So that, you believe, makes it more risky.
7 Is that your testimony?

8 A. There is many occasions in the world of
9 financial analysis when one attempts to quantify risk
10 by looking at -- let's use the phrase diversity. The
11 business that relies solely on one source of income is
12 less diverse than one that relies on multiple sources
13 of income --

14 Q. Is that a yes or a no?

15 A. I'm trying to explain that.

16 JUDGE WALLIS: I'm going to ask the witness
17 to start out first by listening very carefully to the
18 question; and second, if the question calls for a yes
19 or no answer, provide the answer that you believe is
20 appropriate, and if you believe it can not be answered
21 yes or no, then indicate that and we'll take it from
22 there.

23 THE WITNESS: Could you repeat the question,
24 please?

25 MR. TRAUTMAN: Could you read back the

00519

1 question?

2 (Questions and Answers on Page 517 read by
3 the reporter.)

4 JUDGE WALLIS: Is the witness prepared to
5 respond?

6 THE WITNESS: I think the question before me
7 was, am I able to quantify effect, and the answer is
8 no.

9 Q. (By Mr. Trautman) Could you refer now to
10 what has been marked as Exhibit 411, and this is the
11 non-confidential portion of your valuation study, and
12 I'm looking specifically to -- it's TPG-1 -- and I'm
13 looking back at Schedule 4. This would originally have
14 been in 402. It still may be marked as confidential in
15 the Commissioners. Schedule 4, and in the upper
16 left-hand corner it says, "U S West Direct weighted
17 average cost of capital."

18 A. I have that.

19 Q. And if you look on the exhibit, if you look
20 and compare the newspaper publishers, and there are
21 seven of them listed in the first seven rows, and then
22 you compare them to the regional Bell operating
23 companies that are in the next four rows, it shows that
24 the RBOCs --

25 CHAIRWOMAN SHOWALTER: Excuse me, but did you

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1 say Exhibit 4? Can you wait until we find it? We're
2 looking at Schedule 4.

3 Q. We're comparing the newspaper publishers that
4 are listed in the first seven rows with the regional
5 Bell operating companies which are in the four rows
6 below that, and looking first at the debt levels, which
7 you'll see the total interest bearing debt as a percent
8 of total capital, and if you compare the two sets of
9 companies, it shows that the RBOCs have higher debt
10 levels than the newspaper publishers; is that correct?

11 A. Yes, it is.

12 Q. And in fact, the RBOC debt levels are between
13 41 and 48 percent, approximately, and the newspaper
14 debt levels are between 1 and 20 percent. Then moving
15 over to the column entitled "betas," it shows that the
16 RBOCs have a lower beta than do the newspaper
17 publishers; do you see that?

18 A. I see that.

19 Q. So in general, what makes the RBOC betas so
20 much lower compared to the newspaper publishers despite
21 the fact that they have a higher level of debt?

22 A. A number of factors. Beta is a measure of
23 stock price volatility relative to an index of market
24 stock price volatility as a whole. The RBOCs have as a
25 significant component of their operating income the

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1 operating income from the regulated local
2 telecommunications businesses in which they are
3 involved. A much smaller portion relates to directory
4 publishing advertising. The companies on the top half
5 would be the newspaper publishers. They rely solely on
6 advertising revenues and subscription revenues. The
7 nature of the businesses, in general, are somewhat
8 different.

9 You had pointed out the concept of debt.
10 Debt is also very important in the magnitude of beta.
11 I can direct your attention to the column to the right
12 which does precisely quantify the effect of the impact
13 if you remove the disparity in the levels of debt
14 between the telecommunications companies and the
15 newspaper companies.

16 Q. I understand, but my question was even with
17 simply the beta under the column that simply is
18 entitled "beta," the RBOCs still have lower betas than
19 the newspaper publishers, even though they have higher
20 debt levels; is that correct?

21 A. Yes.

22 Q. Would one other reason for that be that RBOCs
23 provide essential services?

24 A. Yes.

25 Q. And perhaps also because RBOCs are plant

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1 intensive?

2 A. Yes.

3 Q. Could you turn now to what's been marked as
4 Exhibit 415-C, and this was provided to Public Counsel
5 in response to their Data Request 01-001, and attached
6 to it is a balance sheet, and it's a balance sheet for
7 U S West Direct for 12/31/1984. Looking at that
8 balance sheet, isn't it true that the Dex capital
9 structure from the balance sheet has a much lower
10 percentage of debt than the overall U S West, Inc.
11 capital structure?

12 A. Can you define "capital structure"?

13 Q. The debt equity ratio.

14 A. On what basis, book value or fair market
15 value?

16 Q. On the basis of the balance sheet.

17 A. Well, balance sheet is book basis. If you're
18 referring me back to the overall U S West capital
19 structure on Schedule 4, that was on a fair market
20 value basis, not on a book basis, so I can't draw a
21 comparison.

22 Q. So do you know whether the company's capital
23 structure has a much lower percentage of debt than the
24 overall U S West and capital structure?

25 MR. OWENS: Your Honor, on what basis?

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1 MR. TRAUTMAN: On whatever basis. Does he
2 know? I assume he's an expert in this area.

3 THE WITNESS: I'll assume you mean fair
4 market value basis, and if you allow me to assume as
5 the denominator my concluded value of total business
6 value for Dex as of 1984, then I can state that if one
7 looks at this balance sheet, there is a fairly small
8 amount of debt relative to my concluded business
9 enterprise values, and that level is, I would say, less
10 than the 48, 45 percent debt levels shown for the RBOCs
11 on Schedule 4.

12 Q. So is it true that the market ratio that you
13 just set forth for Dex would be more similar to those
14 of the newspaper and publishing companies than for the
15 RBOC?

16 A. The level of debt presented on the December
17 '84 balance sheet for Dex relative to, its my estimate,
18 of business value one year prior -- Mind you, we have
19 an apple and an orange here -- would seem to be closer
20 to a publisher than a telecom.

21 MR. TRAUTMAN: I would move for the admission
22 of 415-C.

23 MR. OWENS: No objection.

24 JUDGE WALLIS: Exhibit is received.

25 Q. (By Mr. Trautman) You stated that the

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1 comparison was an apple and orange comparison. Would
2 you expect the level of debt to change significantly in
3 a one-year time frame?

4 A. If Dex was operated as a totally independent
5 business, and perhaps the only reason to incur debt was
6 to make its own additional investments in the business,
7 then this should, I would not think it would be a
8 significant change.

9 Q. Could you turn to what's been marked as
10 Exhibit 416, and could you confirm or accept, subject
11 to check, that the Pages 168 and 169 are from the same
12 edition of the book entitled, "Valuing a Business: The
13 Analysis and Appraisal of Closely Held Companies," that
14 you refer to in your rebuttal Exhibit TPG-5?

15 A. It appears to be similar to as I remember the
16 pages when I last read them a few years ago.

17 MR. TRAUTMAN: I would move for the admission
18 of 416.

19 MR. OWENS: No objection.

20 JUDGE WALLIS: 416 is received.

21 Q. (By Mr. Trautman) Could you turn to your
22 rebuttal testimony, which is Exhibit 403-T, and turn to
23 Page 57. And on this page with the paragraph that then
24 concludes at 19 to 21, is it true you state that
25 Dr. Selwyn implies that the use of a higher

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1 depreciation rate would lead to an overall lower
2 business value?

3 A. I agree.

4 Q. Is this statement based on a quote from
5 Dr. Selwyn's study that's shown on Lines 22 through 28?

6 A. It's in part based on that quote, yes.

7 Q. Can you point out where in that quote Dr.
8 Selwyn states that a higher depreciation rate would
9 result in a lower business value?

10 A. It is implied by the phrase "to be
11 conservative," based on the data available.

12 Q. So your assumption is the word "conservative"
13 is a factor that would lower the business value.

14 A. Yes, in the context of my understanding of
15 what Dr. Selwyn was trying to prove.

16 Q. Could you now turn to what's been marked as,
17 I believe, Exhibit 804-C, and this is Dr. Selwyn's
18 Appendix 2, Page 5, and it was filed with his rebuttal
19 testimony?

20 JUDGE WALLIS: It's Exhibit 804-C?

21 MR. TRAUTMAN: I'm looking at the exhibit
22 list and I see Confidential Appendix 2. I believe it's
23 804-C, and I'm actually looking -- it's a narrative
24 portion. The top of the Appendix starts with the
25 phrase "Appendix 2, present day valuation of U S West

00526

1 directory business," and then I've turned to Page 5.

2 Do you have that?

3 THE WITNESS: Yes, I do.

4 Q. (By Mr. Trautman) And I assume that only the
5 numbers are proprietary, and the sentence I'm about to
6 read does not contain any numbers. I was going to
7 start reading with the sentence -- there is a paragraph
8 that starts with the word "projections," and I was
9 going to read the next sentence starting with "the most
10 conservative." I assume that's not proprietary?

11 MR. OWENS: That's a good assumption.

12 Q. These two sentences say, "Projections of the
13 other components of the cash flow analysis must be
14 estimated. The most conservative and reliable means of
15 doing this is by examining either historic trends in
16 their growth or seeking historical relationships that
17 might exist between them and variables for which
18 projections are available." Do you see that?

19 A. Yes, I do.

20 Q. Do you agree that the word "conservative" in
21 this context means something other than making
22 adjustments that result in a higher or lower value?

23 A. I agree the word "conservative" has a
24 different connotation here.

25 Q. Isn't it true that the word "conservative"

00527

1 could be used when referring to a factor that would
2 increase the valuation?

3 A. It's true that that's possible.

4 Q. For example, turning to Page 43 of your
5 rebuttal testimony, and this is Exhibit 403-T, and
6 Lines 1 through 3 state, "I chose the second option
7 because it was the more conservative of the two (i.e.,
8 because of the application of present value factors,
9 the "delay" in this cash outflow caused the total
10 Business value to go up.)" Do you see that?

11 A. I see it.

12 Q. So in this case, the more conservative
13 approach caused a higher valuation; is that correct?

14 A. That's correct.

15 Q. And staying in Exhibit 403-T, could you turn
16 to Page 58, and referring to Item 4, Line 16, you
17 discuss problems with Dr. Selwyn's discount rates, and
18 you state that the debt amount is incorrect. Is this
19 because it was not the most recent information
20 available?

21 MR. OWENS: Could I get page reference on
22 that, please?

23 THE WITNESS: I'm not exactly sure why it was
24 incorrect. When I compared it to the Company's SEC
25 form 10K as at the end of the year, it does not agree

00528

1 with that. I can speculate as to why it's not correct.
2 I think it's not correct because Dr. Selwyn relied
3 solely on the Value Line tear sheet that may have had
4 an earlier date. In addition, the Value Line
5 definition of "total debt" is different than that which
6 my firm and many other reputable analysts use in
7 defining total invested capital.

8 Q. Would you accept subject to check that the
9 debt amount Dr. Selwyn used was a balance as of
10 September 30th, 1998?

11 A. I could accept that.

12 Q. Turning to what's been marked as Exhibit 417,
13 this is the Value Line Investment Survey, for U S West,
14 Inc., dated April 9th, 1999 in the lower right-hand
15 corner, and does this document show U S West, Inc's.
16 Capital structure and debt amounts as of December 31st,
17 1998?

18 A. If it has numbers next to descriptors that
19 say that.

20 Q. It's over in the left-hand column.

21 A. I see it.

22 Q. I'm doing do this for the benefit of the
23 others who might be reading the document. Where it
24 says capital structure.

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

00529

1 second.

2 (Discussion off the record.)

3 Q. Could you confirm that the long-term debt
4 amount, which is approximately 8.6 million dollars, is
5 the same as the correct amount that you include on Page
6 58 of your rebuttal testimony?

7 A. I see it, yes. I confirm that.

8 Q. Now, if Dr. Selwyn's weighted average --

9 CHAIRWOMAN SHOWALTER: It's 8.6 billion,
10 isn't it?

11 MR. TRAUTMAN: Sorry.

12 Q. (By Mr. Trautman) If Dr. Selwyn's weighted
13 average cost of capital calculation is to be updated
14 for the appropriate level of debt, would it also be
15 appropriate to update it for the level of equity as of
16 the same date?

17 A. Yes. When at all possible, one should try to
18 use data.

19 Q. And you also testify that Dr. Selwyn should
20 update the equity risk premium percentage, which you
21 state has increase his by 500 basis points; is that
22 correct?

23 A. That's correct.

24 Q. Would you accept subject to check that
25 updating Dr. Selwyn's weighted average cost of capital

00530

1 to include total debt and market equity as of December
2 31st, 1998, and increasing the equity risk premium
3 results in a lower cost of capital, and therefore, a
4 higher valuation than what is shown in his Appendix 2
5 schedule. Can you accept that subject to check?

6 A. No, I can't accept that.

7 Q. You don't believe that's the case?

8 A. There is too many interrelated variables to
9 make a generalization such at that. I don't believe
10 that's the case.

11 Q. If you could turn to Exhibit 805, and this is
12 Appendix 2, Schedules A through E of Dr. Selwyn, and
13 I'm looking in particular to Appendix 2, Schedule B,
14 Page 2 of two. Do you have that page?

15 A. Let me confirm. Appendix 2, Schedule B, Page
16 2 of two of Dr. Selwyn's testimony.

17 Q. Yes.

18 A. I have that.

19 Q. Would you accept that if you were to increase
20 the risk premium, which is Line 2, by 500 basis points,
21 and if you were to update the long-term debt figure as
22 of December 31st, and update the market capital figure
23 as of December 31st of 1998, would those changes result
24 in a higher valuation?

25 A. The only simple response to that is we

00531

1 established that the market risk premium should be 500
2 basis points higher. That, in and of itself, would
3 increase the discount rate and lower the business
4 value. The other two changes you suggest, I just can't
5 simply -- it's too complex to make a generalization.
6 The level of debt influences the beta. That should be
7 used in a proper calculation of WACC, which I believe
8 Dr. Selwyn ignores on the Schedule.

9 Q. But if you did mathematically, if you made
10 those changes, would it result in a lower cost of
11 capital and a higher valuation?

12 MR. OWENS: Your Honor, that's been asked and
13 answered. The witness said he can't accept that you
14 can just do that mathematically.

15 THE WITNESS: Not on the stand.

16 Q. (By Mr. Trautman) Subject to check.

17 A. I can't make that generalization. In
18 general, if you have a lower discount rate, you'll have
19 a higher valuation. If you have a higher discount
20 rate, you'll have a lower valuation, but there are many
21 other factors other than discount rate go into
22 valuation conclusion.

23 MR. TRAUTMAN: I move for the admission of
24 Exhibit 417.

25 MR. OWENS: No objection.

00532

1 JUDGE WALLIS: 417 is received.

2 Q. (By Mr. Trautman) Could you turn to what's
3 been marked as Exhibit 418, and this is U S West's
4 response to the Staff Data Request 02-014. Was this
5 prepared by you or under your supervision?

6 A. Yes.

7 MR. TRAUTMAN: I'd move for the admission of
8 Exhibit 418.

9 MR. OWENS: No objection.

10 JUDGE WALLIS: Received.

11 MR. TRAUTMAN: No further questions.

12 JUDGE WALLIS: Mr. ffitch?

13 MR. FFITCH: Thank you, Your Honor.

14 JUDGE WALLIS: Let's go off the record for
15 just a moment.

16 (Discussion off the record.)

17

18 CROSS-EXAMINATION

19 BY MR. FFITCH:

20 Q. I'm Simon ffitch with the Public Counsel
21 section of the Attorney Generals Office. Do you have
22 the copies there of the cross-examination exhibits that
23 we've intended to use?

24 A. Those beginning with Exhibit 419?

25 Q. That's correct.

00533

1 A. I have that.

2 Q. I'd like to refer you first to your direct
3 testimony at Page 3, Line 9. That's Exhibit 401-T. Do
4 you have that?

5 A. Is that Page 4, Line 9?

6 Q. Page 3, Line 9, actually.

7 A. I have it.

8 Q. There you note that, "Most valuation
9 exercises are conducted in a time period coincident to
10 the valuation date. In the subject case, our analysis
11 was performed 15 years subsequent to the Valuation
12 Date." Would it be accurate to conclude that U S West
13 retained you to perform a valuation, and U S West
14 defined the date of the valuation work you were asked
15 to do?

16 A. That is correct.

17 Q. Were you made aware of the purpose of your
18 study and the role your recommendations would have in
19 the Company's evidence in this docket when you were
20 retained by U S West?

21 A. At the time I was retained, I was aware of a
22 need to value the business at a certain point in time.
23 I think I heard a quick explanation of the nature of
24 these proceedings, but frankly, I think it was a full
25 understanding of involved over the number of months my

00534

1 initial efforts were to understanding the dynamics and
2 the business of the industry, not understanding the
3 dynamics of the proceeding.

4 Q. Is you're client in this engagement U S West
5 Communications, U S West, Inc., U S West Dex or someone
6 else, if you know?

7 A. May I refer to my engagement letter? It's
8 provided as part of PC 001. That would be U S West
9 Communications.

10 Q. Your reference to most valuation exercises in
11 testimony would refer to situations where the value of
12 a business needs to be estimated for purposes of an
13 actual transaction or some other commercial purpose; is
14 that right?

15 A. That's correct.

16 Q. Is it correct that there is no actual
17 transaction at fair market value that occurred between
18 PNB and its affiliate in late 1983 because the assets
19 that were transferred between the affiliates were
20 valued at their net book value?

21 MR. OWENS: Excuse me. That sounds like a
22 compound question to me, Your Honor.

23 JUDGE WALLIS: I did not hear it as one, but
24 perhaps Mr. ffitch can clarify it.

25 MR. FFITCH: I'll try, Your Honor.

00535

1 Q. (By Mr. ffitch) I'll just ask it a different
2 way or a different question. Was there a valuation
3 study done in 1983 in connection with the transaction
4 that occurred at that time?

5 A. I believe I was asked that question before
6 and I recall inquiring of my client as to whether there
7 were any studies done, could I have copies of them, and
8 I received no copies of anything of that nature.

9 Q. If I could ask you to refer to your report,
10 which is Exhibit 411, and I'm going to ask you to look
11 at Page 2. In the middle of the page there you
12 describe three widely accepted valuation approaches.
13 The first approach, the income or discounted cash flow
14 approach is primarily what you relied on in your
15 report, is it not?

16 A. That's correct.

17 Q. And with respect to the second approach, the
18 market approach, that uses comparisons to publicly
19 traded firms in similar lines of business. Would you
20 agree that there are no publicly traded firms for which
21 Yellow Pages directory publishing is the primary line
22 of business?

23 A. You made two statements there, the first of
24 which I'd like to complete your description of the
25 market approach. One avenue under the market approach

00536

1 is to look at publicly traded firms. Another, as I
2 note in my testimony, is that comparable transactions
3 of the firms that may be public or private.

4 Q. Yes.

5 A. With respect to your question as to whether
6 publicly traded firms that had Yellow Page directory as
7 their primary line of business back in 1984, and the
8 answer was no, there were no.

9 Q. So turning to Page 7 of your exhibit, still
10 Exhibit 411, under the Public Company Approach, the
11 first sentence there with the paragraph beginning after
12 public company approach states the answer you just
13 gave, I believe, and so then what you did is that you
14 identified companies of similar size essentially in the
15 media field, with heavy emphasis on newspaper,
16 publishing businesses; isn't that correct, in order to
17 find a group of similar publicly traded firms?

18 A. That's correct.

19 Q. And those are listed in Schedule 5?

20 A. That's correct.

21 Q. None of the newspaper publishers you list on
22 Schedule 5 are in the directory publishing business
23 with any regional Bell company or GTE or Sprint or any
24 other large telephone company, are they?

25 A. My recollection of 1984 vintage reference is

00537

1 that is correct, they were not.

2 Q. And now I'm going to ask you to take a look
3 at Exhibit 419.

4 MR. FFITCH: Your Honor, I'll just note at
5 this point it appears that both these deposition pages
6 were marked together as Exhibit 419, and I think we can
7 work with that, but if the Bench wanted to change the
8 numbering. I just wanted to note that for the record.

9 JUDGE WALLIS: They also bear Page Numbers 57
10 and 58, so if you want to refer to them separately, you
11 can do that.

12 Q. First of all, Mr. Golden, your deposition was
13 conducted by the office of Public Counsel, was it not,
14 in this proceeding?

15 A. I believe he did most of the questioning, but
16 other parties had offered questions.

17 Q. It was a deposition that was set up at our
18 request. And this page is an excerpt from the
19 transcript of that deposition, is it not?

20 A. Yes, it is.

21 Q. Looking at Page 57 of Exhibit 419, and just
22 to help you, I can refer you or let you know what
23 you're being asked there because the question does not
24 appear on this page. The question is, "The first
25 question I had is you discussed placing secondary

00538

1 weight upon this approach" -- being the market
2 approach, if you'd like to look back. Do you have your
3 deposition transcript there?

4 A. I have it.

5 Q. Just reading from Line 11 on the preceding
6 page just so you have the lead-in to your answer on the
7 exhibit here. "The first question I had is you
8 discussed placing secondary weight upon this approach,"
9 referring to the market approach. "Could you help me
10 better understand how secondary it is, how much less
11 reliable this work is than income approach in your
12 opinion." And then there is a portion of a response,
13 and then I'm bringing you over to the next page here,
14 57, to Lines 1 through 10 on the exhibit. Are you
15 following me?

16 A. I'm with you.

17 Q. So at this point, you then say, "We had a
18 pool of companies in the public market that had, you
19 know, directory publishing as a primary or even
20 secondary business line. It would have felt more
21 comfortable using the results of this approach as a
22 primary value indicator. As we've explained in the
23 report, none of those companies existed so we were
24 hesitant to characterize the results of our market
25 approach as primary with no particularly good

00539

1 comparable guideline companies on which to base it."
2 Is that an accurate statement of your response in the
3 deposition?

4 A. It's accurate, but I think that to be fair, I
5 should be allowed to read the paragraph that preceded
6 that in my answer. You're taking one paragraph out of
7 a two paragraph answer.

8 Q. I don't have any objection to that all.

9 A. My answer began with, "Well, Michael, in
10 performing valuations, most analysts are very reluctant
11 to render an opinion solely relying on one method.
12 We'll try as best we can to seek other methods, other
13 value indications from other sources. It's always a
14 good idea to try to look at the markets, whether it be
15 transactions or public pricing to get a sense of value
16 and not rely solely on projections that incorporate
17 variables that may be difficult to confirm."

18 Q. And then you went on to give the rest of the
19 answer, and I didn't mean to edit that out for any
20 purpose other than just focusing on the excerpts we
21 were using, but I appreciate you adding the full
22 response there.

23 MR. FFITCH: Your Honor, I would move the
24 admission of Exhibit 419.

25 JUDGE WALLIS: Mr. ffitich, in conjunction

00540

1 with that, could you provide to the Commission a copy
2 of the prior page so that we have the entire question
3 and response before us?

4 MR. FFITCH: I'd be happy to do that, Your
5 Honor.

6 MR. OWENS: As augmented, we have no
7 objection, Your Honor.

8 JUDGE WALLIS: Does your request to move
9 admission incorporate both pages of 419?

10 MR. FFITCH: Perhaps I can make it a pending
11 request until I get to the next page, and there may be
12 an addition because the sentence is cut off on Page 58
13 so we might have to add Page 59.

14 JUDGE WALLIS: Let's proceed and we'll rule
15 after that discussion.

16 Q. (By Mr. ffitich) Also under the market
17 approach, you looked at comparable transactions; is
18 that right?

19 A. That's correct.

20 Q. And that's on Page 8 of your Exhibit 411 and
21 Schedule 6, as well, contains that analysis, does it
22 not?

23 A. Schedule 6 contains the raw data for that
24 analysis. It doesn't contain my conclusions or
25 analysis of the raw data.

00541

1 Q. Where are those?

2 A. There is additional analysis relating to this
3 approach on Schedule 7 to TPG-1 as well as in the text
4 of my report.

5 Q. So let's turn now to Page 58 of the
6 deposition. Again, this is the same deposition that
7 was taken by the office of Public Counsel that we've
8 been talking about, is it not?

9 A. Yes.

10 Q. You were asked at Line 5 on Page 58, "Then on
11 Schedule 6, you appeared to compile the listing with
12 the heading on the Schedule, Comparable Transactions.
13 What conclusions do you draw from Schedule 6? Is it
14 the BEV to revenue multiple that you're looking at,"
15 and your answer -- I'm just directing you to Lines 10
16 through 13 -- is, "No conclusions are really drawn for
17 Schedule 6, and as modified in the text of TPG-1, none
18 of these transactions will be deemed to be truly
19 comparable." Do you agree with that statement?

20 A. That's correct.

21 Q. So with respect to the market approach, is it
22 correct that you found no particularly good guideline
23 companies that are publicly traded, and you found no
24 market transactions to be deemed truly comparable to
25 the business of U S West Direct?

00542

1 A. That is correct if I were to have considered
2 the market approach as a primary approach. The degree
3 of comparability that I judged in both the public
4 companies and the transaction to have, was adequate in
5 my judgment to use as a secondary corroborative
6 approach, which I consider very important in a
7 valuation exercise.

8 MR. FFITCH: Now, Your Honor, I will
9 acknowledge prior to moving this exhibit that the
10 continuation of the answer was not read and that the
11 answer is cut off on this page. We'd be happy to
12 submit the additional portion if U S West would like to
13 do that. If the witness would like to read the rest of
14 the answer, that would be fine.

15 MR. OWENS: I don't see any reason for the
16 witness to read into the record what we will have
17 incorporated as the exhibit with the addition of Page
18 59, Your Honor.

19 JUDGE WALLIS: With the addition of Pages 56
20 and 59, Exhibit 419 is received, and I'm going to
21 request, Mr. ffitch, when you provide those for the
22 Commission, could you copy all four pages together and
23 then we can substitute that for these, and it will save
24 us a lot of paperwork in shuffling pages.

25 MR. FFITCH: I'll be happy to do that, Your

00543

1 Honor. All four together will be marked together as
2 Exhibit 419.

3 JUDGE WALLIS: Yes.

4 Q. (By Mr. ffitich) Now, we're still on 411
5 Mr. Golden. As to the third approach, the cost
6 approach, at the bottom of Page 2 and the top of Page 3
7 of your report, you state that, "Since the Company was
8 neither asset intensive nor poorly performing, we
9 determined that the incoming market approaches were the
10 most appropriate methodologies to use in this
11 valuation." I take it from this that you did no
12 analysis using the cost approach; is that correct?

13 A. That's not correct. The preliminary cost
14 approach methodology would entail looking at the
15 balance sheet of the company and thinking about what
16 kind of business this is. This is a service business,
17 and you look at the balance sheet and there is not a
18 lot of assets on there. Service businesses tend to
19 have value far and above their fixed asset base and
20 their working capital, so in that respect, we quickly
21 considered the cost approach and deemed it to be not
22 relevant.

23 Q. Well, perhaps you'd answered my question in a
24 roundabout way. I asked whether you had done an
25 analysis. It sounds like you considered the approach,

00544

1 rejected it, so therefore did not do the cost approach
2 analysis.

3 A. That's correct.

4 Q. So therefore, I would take it that none of
5 the schedules in the report reflect the results of a
6 cost analysis.

7 A. That's correct.

8 Q. I'm going to ask you to look at Page 48 of
9 your rebuttal testimony. That's Exhibit 403-T, at
10 we're at Page 48, Line 5. I don't know that we need a
11 specific line reference there. My observation is going
12 to be that there you commenced a rebuttal valuation
13 estimate and testimony of Dr. Selwyn and Mr. Brosch
14 that goes on for a number of pages, and the first few
15 pages here refer to the valuation work that are done by
16 the companies or U S West's own financial advisors in
17 1997 and 1998, weren't they?

18 A. It's mentioned in there, yes.

19 Q. And then I'd you like to turn to Page 50.
20 Beginning after Line 3, you present a summary in table
21 form that compares your results to those of Lazard
22 Freres, SBC Warburg Dillon Read advisors, as well as to
23 Dr. Selwyn and Mr. Brosch; am I correct?

24 A. That's correct.

25 Q. I just have a couple of questions about the

00545

1 table. First, the annual growth rate that you use, if
2 we look there in the right-hand column in the second
3 box is 8.1 percent to 7.2 percent, and this is over the
4 14 years for 1984 to February of 1998; is that correct?

5 A. That's correct.

6 Q. I'd like you to turn to Exhibit 406, which is
7 a chart attached to your testimony. It's TPG-4. That
8 chart is entitled "U S West Direct growth rates for
9 1984 to 1998." The top line of this graph is intended
10 to represent percentage revenue growth experienced by
11 U S West Direct during that time period; correct?

12 A. That's correct.

13 Q. And that's the solid line, and then what does
14 the dotted line represent?

15 A. The dotted line represents the year-to-year
16 change in the consumer price index for urban consumers.

17 Q. Would you agree that the historical revenue
18 growth in the U S West Direct business that's shown
19 here ranges between 5 and 10 percent in all but a few
20 years since 1988?

21 A. I agree if you're looking at one half of the
22 graph that shows that, yes.

23 Q. Then prior to 1987, the growth rate also
24 falls in that range, and then earlier than that, it's
25 above that range part of the time.

00546

1 A. Yes.

2 Q. So would you agree that the growth rates
3 showing beginning in 1988 are generally consistent with
4 Mr. Brosch's comment that you should have used a growth
5 rate of about seven percent in your work done as of
6 1984?

7 A. No, I wouldn't agree with that at all.

8 Q. What on this chart would cause you to
9 disagree with that?

10 A. Can you repeat what the statement of
11 Mr. Brosch's you want me to agree with?

12 Q. Mr. Brosch has commented that you should have
13 used a growth rate of about seven percent in your
14 valuation report.

15 A. Where are you referring to that.

16 Q. I can get that for you if I can have a
17 moment. Let me get the exhibit number. I'm referring
18 to the top of Page 38 of Mr. Brosch's direct testimony.
19 That is Exhibit 601-TC, again, Page 38, Line 7. There
20 he suggests the use of terminal growth rate is about 7
21 percent rather than the 5.5 percent growth rate used by
22 Mr. Golden?

23 A. What is your question?

24 Q. The question is, would you agree that the
25 historical revenue growth in the U S West Direct

00547

1 business shown here at a range between five and ten
2 percent in all but a few years is generally consistent
3 with his comment that you should have used a growth
4 rate of about seven percent in your work done as of the
5 1984, for purposes of the 1984 valuation?

6 A. And my answer is I don't agree. Your
7 qualifier in all but a few years is a very important
8 qualifier. I'm a firm believer in business cycles, and
9 for any analyst to only cherry pick a certain period of
10 years where only good things happened is extremely
11 naive.

12 This is an industry that was characterized in
13 the mid '80's by a lot of change. A lot of new
14 competitors were coming into the market. This was
15 known as a valuation date. That decrease you see in
16 1987 was not an aberration. That was predictable, so
17 to say that something like that couldn't happen again
18 because it hasn't happened in the '90's is inaccurate.

19 As I cited in my rebuttal testimony, for
20 example, the rapid growth we're seeing in Internet
21 businesses and its effect on the economy in general is
22 casting down on the growth of many traditional
23 paper-based advertising media, so no, I wholeheartedly
24 agree that looking at a 1990 historical trend only is
25 indicative of something I should have used on valuation

00548

1 based as of late 1983.

2 Q. Did you say looking at a 1990 historical
3 trend only?

4 A. I meant 1990. From 1989, I believe, you
5 directed my attention.

6 Q. That's a 10-year period, is it not? Would
7 you agree that in every year but one of the last 15
8 years shown on this graph, growth in the U S West
9 Direct revenue has exceeded the rate of inflation by
10 two percent or more?

11 A. From this graph, it's hard to say that
12 specifically. Certainly not in '87, and looking at the
13 graph, it's perhaps hard to say that for '88 as well.

14 Q. Other than those two years, would you agree
15 that the revenue growth has exceeded the rate of
16 inflation by two percent as best you can read this
17 graph?

18 A. It may be two percent or a little more, but
19 for other than a few years of it, I would note
20 significant exceptions and not aberrations, but a
21 generalization can be made.

22 Q. Am I correct in understanding that you had
23 predicted in your analysis as of 1984 a long-term
24 growth rate in the business of only between five and
25 six percent?

00549

1 A. Long-term growth, I would characterize that
2 as terminal year growth. The growth in the business
3 subsequent to the explicit forecast horizon, so growth
4 into perpetuity beyond 1988, yes.

5 Q. And you had limited that to five to six
6 percent.

7 A. That's correct.

8 Q. Would you agree that no analyst can be
9 certain with respect to the rate at which a business
10 may grow five or more years into the future?

11 A. I can agree, yes.

12 MR. FFITCH: May I have a moment, Your
13 Honor?

14 JUDGE WALLIS: Mr. ffitch, are you nearing
15 the end of your questions?

16 MR. FFITCH: If I could have a few more
17 minutes, Your Honor.

18 JUDGE WALLIS: This may be an appropriate
19 time for a brief recess in light of our early dismissal
20 today. Maybe we can come back and wrap up your
21 questions and we'll see if we can conclude with this
22 witness today.

23 (Recess.)

24 Q. (By Mr. ffitch) Mr. Golden, in your
25 valuation study, Exhibit 411, did you calculate a

00550

1 five-year management projection, DCF analysis that
2 appears as Schedule 2-B to Exhibit 411?

3 A. Yes, I did.

4 Q. And in that schedule, the lower right-hand
5 corner, is there a box that displays the sensitivity to
6 different perpetuity growth rates?

7 A. It refers to perpetuity growth rates in
8 conjunction with weighted average cost of capital or
9 WACC.

10 Q. And it shows in three different columns the
11 range of terminal year growth rates that you've
12 selected, does it not?

13 A. Yes, it does.

14 Q. And at your 15 percent weighted average cost
15 of capital discount rate, isn't the spread in your own
16 range of estimated growth rates of five to six percent
17 worth about 135 million dollars in business enterprise
18 value?

19 A. That's correct.

20 Q. In other words, a difference of one percent
21 is worth about 135 million dollars?

22 A. That's correct.

23 Q. And would you agree that growth rate
24 estimates are a very significant driver of BEV?

25 A. I would agree that terminal year growth rates

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1 are a significant driver, yes.

2 Q. Let's go back to Page 50 of your rebuttal
3 testimony, and that's Exhibit 403-T. Actually, I'm
4 sorry. That's a misdirection. I wanted you to go
5 to -- I'm still in your 411, in your report. I
6 apologize -- and ask you to look at Page 9 at the top,
7 and there at the beginning of the text under the
8 heading "trends and valuation multiples," you refer to
9 a mid 1997 disclosure of a price for the directory
10 operations of 4.75 billion dollars?

11 A. That's correct.

12 Q. Is that the same valuation that you refer to
13 on Page 50 of your rebuttal testimony in the table that
14 we've been referring to?

15 A. I would caution you on the use of
16 terminology. I recall that on Page 50, I identified as
17 a transaction price that was supported by the two
18 financial advisors. That transaction occurred on
19 February 2nd, 1998. That's all we know. We know that
20 some analysis was done by the financial advisors
21 sometime in 1997, but no report was issued or anything
22 disclosed to the public other than an intended price.

23 Q. This is the same transaction; right?

24 A. I believe so.

25 Q. And disclosures were made in mid 1997 that

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1 this was a fair price, were they not?

2 A. I don't know in '97 whether the identities of
3 the financial advisors and the nature of the fairness
4 opinion they were to eventually render was made public.
5 I know there was a disclosure in the documents I refer
6 to. I believe they just said, Management intends to do
7 it at this price, or maybe a range. I don't recall the
8 exact phrase in the documents.

9 Q. You mention a range. There was a range in
10 the later documents of 4.7 billion to 5.4 billion, was
11 there not?

12 A. What document are you referring to?

13 Q. Well, do you not know without referring to a
14 document? You don't know that from your own knowledge
15 from working on this case? I'd be happy to give you
16 one?

17 MR. OWENS: Your Honor, the witness has
18 indicated he needs a reference to a document.

19 JUDGE WALLIS: Counsel has indicated he's
20 happy to provide one.

21 MR. FFITCH: Just give me a moment.

22 Q. (By Mr. ffitich) I'm referring to material
23 from the proxy statement. This is referred to in
24 Mr. Selwyn's testimony, his responsive testimony on
25 Page 50. I'll look that up for you. The Selwyn

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1 testimony is Exhibit 801-TC. The page reference is
2 Page 50, Line 2, Footnote 45, referring back to
3 Footnote 44, which cites U S West Media One group proxy
4 statement for 1998 annual meeting of stockholders of
5 U S West, Inc., April 20th, 1998, provided in response
6 to Data Request Public Counsel 3-46, Attach A at 21.

7 A. I have it.

8 Q. Other than me giving you that information,
9 you had no personal knowledge of that range. You'd
10 never heard of that range before, I take it, without
11 being walked through that reference.

12 A. I heard of that range. That is one range
13 mentioned on that page. There is another range
14 mentioned on that page that is significant. There is a
15 range of 4.5 billion to 4.75 billion on that same page
16 in that document.

17 Q. We're talking about the analysis that's
18 referred to in the table on Page 50 in your rebuttal
19 testimony. These are DCF analyses and table on Page
20 50, are they not?

21 A. No, they are not DCF analyses. The 4.75 is a
22 transaction that was supported by both DCF analysis
23 conducted by the financial advisors and an additional
24 secondary approach that incorporated market multiples.

25 Q. The Selwyn and Brosch numbers shown in the

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1 table are DCF analyses, aren't they?

2 MR. OWENS: The question related to the 4.75
3 billion, and the witness was asked if he was aware of
4 later numbers and later documents. I don't believe the
5 witness was asked about the Selwyn and Brosch numbers,
6 and I think the implication is not fair that he was not
7 answering that.

8 MR. FFITCH: I think we may be going down on
9 an unnecessary line here. I think we've had the
10 information we need about the range of the 1997 and '98
11 numbers, and that's what I was looking for. We appear
12 to of finally gotten that out.

13 JUDGE WALLIS: Let me interject at this
14 point, and I have this request to make of all counsel.
15 Because we are trying to follow along, it would really
16 be helpful if you would start off with the exhibit
17 number and then the page number and then the line
18 number so that we can track things. It would be an
19 immense help, and if you'd be conscious of how we are
20 fumbling and trying to get the right page in front and
21 be patient with us, then you will help us immensely to
22 get there more quickly and help to retain the pace of
23 your examination.

24 MR. FFITCH: I apologize, Your Honor.

25 Q. (By Mr. ffitich) In terms of your assumed

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1 linkage between U S West Direct growth rates and
2 inflation, would you agree that no analyst can be
3 certain with respect to what levels of inflation may be
4 experienced five or more years into the future?

5 A. I would agree, yes.

6 Q. Now I'm going to ask you to turn to your
7 rejoinder testimony at Page 4?

8 JUDGE WALLIS: We're talking about Exhibit
9 410?

10 MR. FFITCH: Exhibit 410-T, Page 4, Line 20.
11 There you again comment on long-term growth rate issues
12 by saying, "I interpret the graph to show that there is
13 a reasonable relationship that has at least on one
14 occasion been overwhelmed by major shifts in industry
15 dynamics. Such industry forces may very well arise
16 again. Ignoring this likelihood may likely lead to an
17 overly optimistic forecast business growth into
18 perpetuity."

19 MR. OWENS: I don't think you read it
20 correctly. The actual word is "would," not "may."

21 MR. FFITCH: I stand corrected.

22 Q. Can you tell me if this is another way of
23 saying, I really don't know what or when bad things may
24 happen in the future?

25 A. That is correct.

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1 Q. Could you turn to Page 5 of your rejoinder,
2 Exhibit 410-T, Page 5, Line 9. There you state,
3 "Neither the testimony nor the work papers of
4 Mr. Brosch indicate that he conducted much, if any,
5 research --"

6 THE WITNESS: I'm sorry. Can you restate the
7 page?

8 MR. FFITCH: I'm sorry, Page 5.

9 JUDGE WALLIS: You're starting to read at
10 Line 4; is that correct?

11 THE WITNESS: Okay.

12 Q. (By Mr. ffitich) Line 4 where you state
13 "Neither the testimony nor the work papers of
14 Mr. Brosch indicate that he conducted much, if any,
15 research into current or projected long-term industry
16 trends." Do you have that?

17 A. Yes, I do.

18 Q. Based on your research, what is your current
19 estimate of long-term industry trends and growth rates?

20 A. I don't have a current estimate.

21 Q. That's because of your direction from
22 U S West in this case?

23 A. I wasn't asked to develop one currently.

24 Q. Your growth rate as of 1984 was by definition
25 a perpetuity growth rate into the indefinite future,

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1 was it not?

2 A. By definition, terminal year growth rate is
3 the rate of anticipated growth beginning with the end
4 of the forecast horizon, which in my instance was 1988
5 for the principle discounted cash flow model into
6 perpetuity.

7 Q. And that encompasses the same years that
8 Mr. Brosch is projecting for into the indefinite future
9 using the midpoint of the very same growth rate that
10 you advocate; isn't that correct?

11 A. No, it's not correct. Mr. Brosch, I believe
12 if you're referring to his 1999 vintage analysis would
13 have used a terminal year growth rate that commenced in
14 the year 2003, 2004 based on 1999 vintage facts and
15 circumstances. My task was to come up with a terminal
16 year growth rate that would have been applicable as of
17 1988 based on 1983 facts and circumstances. It's a
18 very different set of parameters that I was working
19 under than Mr. Brosch, and for him to use my number and
20 try to bring it forward is incorrect.

21 Q. Your range is five percent to six percent; is
22 that correct?

23 A. That's correct.

24 Q. And Mr. Brosch uses 5.5 percent; is that
25 correct?

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1 A. That's correct.

2 Q. Beyond your criticism of the discount rates
3 used by Dr. Selwyn and Mr. Brosch, have you any
4 recommendation for the Commission with respect to the
5 most appropriate current discount rate which should be
6 employed?

7 A. No, I don't.

8 Q. And I have the same question with regard to
9 terminal growth rates. Beyond your criticism of
10 Dr. Selwyn's and Mr. Brosch's terminal growth rates,
11 have you any recommendation for the Commission with
12 respect to the most appropriate current terminal growth
13 rate that should be employed?

14 A. No, I don't, other than to point out the
15 terminal growth rate cited by the financial advisors to
16 the Company in February of 1998 of 2.5 to 3 percent.

17 Q. I'm going to ask you to take a look at
18 cross-exam Exhibit 421, and this is U S West's response
19 to Public Counsel Data Request 08-121, and that data
20 request asks and references your testimony stating you
21 considered a 3 percent average level of inflation
22 observed from 1926 to 1983 to be a reasonable long-term
23 forecast of inflation, and to this estimate, I added an
24 additional two to three percent to reflect the real
25 growth the business would likely enjoy and sustain.

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1 Please explain whether the same approach and conclusion
2 regarding sustainable real growth would be applicable
3 in a 1999 valuation study and provide calculations, and
4 please provide supportive documents."

5 There is an objection stated, but the
6 response goes on to say, Mr. Golden offers no opinion
7 regarding 1999 -- the word "regarding" is omitted. I'm
8 assuming that's the intent -- no opinion regarding 1999
9 vintage real growth forecasts, but notes, as stated in
10 his rebuttal testimony, that those employed by
11 Mr. Brosch and Dr. Selwyn exceed those employed by
12 U S West Incorporated's financial advisors. Are you
13 endorsing the growth rates employed by the companies
14 other financial advisors or still abstaining from
15 taking any position?

16 A. I'm not endorsing those growth rates. I
17 would perhaps like to have read the prior sentence
18 which is important to this data response as well that
19 the greater availability of the data sources would
20 likely make possible and advisable the application of
21 other approaches.

22 Q. That's fine. I would agree with that?

23 MR. FFITCH: Your Honor, I would offer
24 Exhibit 421 for admission.

25 MR. OWENS: No objection.

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1 JUDGE WALLIS: 421 is received.

2 Q. I'll ask you to look at Exhibit 422, U S West
3 response to Public Counsel Data Request 8-120. The
4 request, in summary, refers to your TPG-4, which
5 compares U S West Direct growth rates. This is in
6 reference to that chart that we were looking at, is it
7 not, with the revenue growth and the CPI growth?

8 A. Yes, it is.

9 Q. And you suggest the reasonably direct
10 relationship between CPI and amount of business growth.
11 With this relationship in mind, what is Mr. Golden's
12 opinion regarding the best long-term estimates of
13 terminal year CPI inflation and business growth for the
14 directory business and the corresponding estimates
15 beyond 2002. Please provide documents, and the Company
16 responds you were not requested to prepare an analysis
17 of the directory publishing business as of 1999. Why
18 were you not required to prepare such an analysis?

19 MR. OWENS: I'm going to object. That calls
20 for information that this witness has not testified and
21 he's aware of. There is no foundation, and besides
22 that, it calls for disclosure of the Company's
23 litigation strategy.

24 MR. FFITCH: Your Honor, the witness may not
25 have testified about it because he may not have been

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1 asked about it before on cross, but he's testified on a
2 number of occasions that he was contracted with to
3 perform a valuation in 1984, and I think it's
4 reasonably related to that testimony to ask him if he
5 knows why he was not asked to do a current valuation.

6 I guess I understand there may be a
7 confidentiality question there, but it's not entirely
8 clear to me why the witness would have been involved in
9 the Company's litigation strategy necessarily in
10 connection with the mere production of the valuation
11 study, and if he were given information or told why he
12 was only being asked to do the 1984 valuation, it would
13 be helpful information for this proceeding.

14 JUDGE WALLIS: I'm not sure that the answer
15 would get us anywhere.

16 MR. FFITCH: I'll move on then. Thank you,
17 Your Honor.

18 MR. FFITCH: I move the admission of Exhibit
19 422.

20 MR. OWENS: No objection, Your Honor.

21 JUDGE WALLIS: 422 is received.

22 Q. (By Mr. ffitich) Just one last question, Mr.
23 Golden. Looking at your rejoinder, 410-T, Page 6, Line
24 3. I'm apparently having a computer moment here where
25 I have mismatched line numbers. I'm going to refer you

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1 back to Page 5, of 410-T, the bottom, Lines 23 through
2 25, and you note that neither staff nor Public
3 Counsel's question to financial advisors credentials
4 for the propriety of a 4.75 billion February 1998
5 transfer price.

6 At Page 50 of your rebuttal testimony, that's
7 Exhibit 403-T. We're open to that page already with
8 the table on it. If you look at Line 7, you state,
9 "The financial advisors are both highly respected in
10 investment banking firms that are well qualified and
11 experienced in the field of business valuation." After
12 review of the financial advisors' work, have you any
13 reservations about the credentials of the financial
14 advisors?

15 A. I never reviewed their work. All I read was
16 what the public could read in the filed documents. I
17 had one brief conversation with one of the analysts
18 that gave me some comfort that they were following the
19 same general procedures that professional business
20 valuers would use.

21 Q. Do you have any reservations based on that
22 analysis or review, such as it was?

23 A. I have no reservations on their credentials.
24 I still offer no opinion on the propriety of a
25 4.75-billion-dollar number.

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1 MR. FFITCH: I don't have any further
2 questions. Thank you.

3 JUDGE WALLIS: Questions from the Bench ?

4 MR. FFITCH: I'm sorry, Your Honor, I did
5 have one other matter here for brief questioning, and
6 that's related to the final cross-exhibit, which is a
7 deposition excerpt. If I could briefly just ask you to
8 look at Exhibit 423, and do you have that there?

9 THE WITNESS: Yes, I do.

10 Q. (By Mr. ffitch) And that also is an excerpt
11 of a transcript from the same deposition that we've
12 referred to earlier?

13 A. Yes, it is.

14 Q. And at Line 10, you're asked, "Is it assumed
15 that the risk characteristics of media newspaper
16 publishers is indicative of the risk and cost of equity
17 of a purchaser for purposes of your study," and then
18 you answered as set out below there, and I draw your
19 attention particularly to your testimony at Lines 19
20 through 25 where you state, "For the lower end of your
21 range that that assumption is modified to incorporate
22 to some degree, you know, a recognition that will say a
23 captive publisher for a regional Bell operating company
24 would have a less and more stable cash flow and
25 probably a less volatile stock price if its stock price

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1 could have been observed in the market back in it's
2 time." Is that an accurate statement of your answer in
3 the deposition?

4 A. Yes.

5 MR. FFITCH: Your Honor, could I move the
6 admission of Exhibit 423?

7 MR. OWENS: No objection.

8 JUDGE WALLIS: 423 is received, and just to
9 confirm my notes, you did not offer either 412 or 420
10 for identification.

11 MR. FFITCH: 412 was Staff's, and it was
12 checked. I did not offer 420. I had intended to offer
13 all of the five exhibits, Your Honor, so I'll do that
14 now, if I may.

15 MR. OWENS: No objection to 420, Your Honor.

16 JUDGE WALLIS: 420 is received. Now,
17 questions from the Bench.

18

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EXAMINATION

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21 CHAIRWOMAN SHOWALTER: My question is did
22 your methodology take into account whether or not the
23 business in 1984 had a right to publish the Yellow and
24 White Pages together? Did it get to that fine a
25 distinction?

25

THE WITNESS: Yes, it did.

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1 CHAIRWOMAN SHOWALTER: If you had been
2 valuating three different companies, and one had a
3 three-year right to publish by contract, and one had a
4 five-year right to publish by contract, and one had a
5 perpetual right, maybe, by contract, for hypotheticals,
6 would your methodology have produced different results?

7 THE WITNESS: Yes, it would have.

8 CHAIRWOMAN SHOWALTER: Then of the
9 methodology that you used, what's the assumption that
10 you made of those three or another one if it's more
11 accurate?

12 THE WITNESS: I actually presented two of
13 those three scenarios. My direct testimony presumed
14 that the business had the perpetual right to publish as
15 you suggest, and that led to a value conclusion of 1.5
16 billion to 1.8 billion. In my rebuttal testimony, I
17 also offered an alternative scenario whereby the
18 management forecasts at the core of my primary approach
19 reflected the full payment of the publication fees for
20 a three-year period such that the cash flows that the
21 business are throwing off are being impaired by the
22 need to pay for whatever payments were embodied in
23 those publication fees, and the concluded value was
24 about 200 million dollars less on all scenarios. So
25 really a base case of 1.5 billion to 1.8 billion was

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1 sort of the best case. That assumed that in that
2 price, in that price it can't get any better; that you
3 have the right to use the intangible assets, and
4 anything you would have to pay to borrow them or rent
5 them would only detract from the value so the business
6 could not have been worth any more than that.

7 CHAIRWOMAN SHOWALTER: Is there any
8 distinction or would there be any distinction in terms
9 of valuating companies whether a company had that right
10 versus whether it had a first in the market
11 characteristic. In other words, not the right of the
12 company to publish something beyond three years, but
13 just this company has this right -- not a right, but
14 has this ability at this time and that that ability may
15 continue regardless of the rights.

16 THE WITNESS: In my view, that's something
17 that should be paid for, but why should it be paid for
18 more than once. If the baseline value reflects the
19 profit margins and the cash flow growth and the
20 attributes of the company under this best-case
21 scenario, which my 1.5 to 1.8 billion reflects, there
22 is no adjustment -- that is the best case; that it's
23 assumed that you had bought the right to be the
24 exclusive publisher, and that you have this first
25 supplier privilege, which frankly is a privilege that

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1 is very valuable. If you're one, you're two, maybe it
2 starts becoming less available as the years go on.

3 CHAIRWOMAN SHOWALTER: One other issue. You
4 are testifying on Exhibit 403-T, and it was Page 57,
5 and it was the use of this word "conservative." I
6 guess I take it at least in the way I read the word
7 "conservative" when people are doing estimates is that
8 they are using whatever factors will cause the least or
9 the lesser movement in a particular direction, whether
10 it's up or down or big or small.

11 Is that how you're using "conservative" in
12 this instance; that is -- I'm sorry. You were looking
13 at how whether Selwyn uses the word "conservative."
14 But is that your understanding of the word
15 "conservative" in general when making estimates?

16 THE WITNESS: When you read this section of
17 Dr. Selwyn's testimony in its entirety, I think he uses
18 this phrase "to be conservative" a couple of times, and
19 it became apparent to me that what he meant by this was
20 the adjustment he was suggesting would have caused in
21 his instance the business value to be less; that is,
22 the point he was trying to prove was a high business
23 value that he uses the phrase, Well, I'm being
24 conservative to use this variable which makes the value
25 less. That's my interpretation of how he used the

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1 words.

2 CHAIRWOMAN SHOWALTER: Then given that
3 interpretation, your point in your testimony was, I
4 take it, to show that if he had used an index or
5 percent based on a broader range of years, it would
6 have caused the ultimate value to be even less; in
7 other words, that he didn't use what you would say
8 would be the most conservative element when making the
9 estimate.

10 THE WITNESS: That's correct.

11 CHAIRWOMAN SHOWALTER: Thanks.

12

13

EXAMINATION

14 COMMISSIONER HEMSTAD: Mr. Golden, I found
15 your testimony to be useful. Your charge, of course,
16 was to look at the valuation in 1983, '84, on the
17 assumption there was a complete sale of the business;
18 is that a fair statement.

19 THE WITNESS: A complete transfer, yes, sir.

20 COMMISSIONER HEMSTAD: I'm impressed with
21 your credentials listed at the bottom of Page 1 and 2,
22 so you're clearly an expert on the valuation of
23 businesses, I assume, in sales, mergers, acquisitions
24 and the like?

25 THE WITNESS: Yes.

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1 COMMISSIONER HEMSTAD: Are you generally
2 familiar with the transaction that in fact occurred in
3 1983 and '84, not necessarily the specifics, but at
4 least listening to the cross-examination here and your
5 understanding of this case?

6 THE WITNESS: I would have to say not
7 familiar. I viewed my assignment as a hypothetical.
8 It was, "Tim, value this business enterprise as if it
9 had been fully transferred on this particular date."

10 COMMISSIONER HEMSTAD: Have you read Ms.
11 Koehler-Christensen's testimony?

12 THE WITNESS: Frankly, I have only skipped
13 through it looking for those areas where she referred
14 to me. I wanted to do make sure her references were
15 correct, and frankly, I don't think I've even read her
16 rejoinder or rebuttal.

17 COMMISSIONER HEMSTAD: As I understand her
18 testimony, she, using based on yours, evaluates
19 Washington's portion of the business enterprise value
20 in January 1984 at 15.63 percent of the total for a
21 range of 234.4 to 281.3 million dollars. I believe
22 that that's her testimony, but the value of the
23 transfer in 1984 was 13.7 million dollars.

24 Taking those assumptions, if this has been an
25 arm's-length transaction in 1983 when the negotiations

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1 went on, I assume you would agree that a buyer and a
2 seller exercising due diligence would probably hire
3 someone like you to evaluate or to through a process of
4 the valuation of the value of the going business where
5 there is not a publicly traded market for the company
6 in the stock market. Wouldn't that occur normally?

7 THE WITNESS: Yes.

8 COMMISSIONER HEMSTAD: I assume that's your
9 experience in dealing with sales, and I assume that's
10 what you do; isn't it.

11 THE WITNESS: I deal with sales when one
12 independent company buys another. I also deal with
13 sales when one company may transfer a business division
14 from one legal entity to another. That happens once in
15 awhile.

16 COMMISSIONER HEMSTAD: In your experience,
17 have you ever seen a transaction where there is a
18 transfer of the business enterprise essentially at net
19 book value where the business enterprise value is much
20 much larger?

21 THE WITNESS: I can't say that I have. I've
22 seen various transaction structures, and very often
23 they don't entail the transfer of cash or other current
24 assets. Sometimes installment payment plans or --

25 COMMISSIONER HEMSTAD: But one way or

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1 another, they would end up with surely typically with
2 some version of enterprise value or a market value as
3 the basis for the transaction. Isn't that surely the
4 typical way a sale would occur or even a transfer, say,
5 within a complex business organization from one unit to
6 another?

7 THE WITNESS: I'd have to say yes.

8 COMMISSIONER HEMSTAD: And in a circumstance
9 where there is an extreme difference between business
10 venture value or appraised value and book value, and
11 the transfer is a book value, doesn't the consequence
12 of that actually mask the nature of the transaction
13 occurring?

14 THE WITNESS: I don't understand what you
15 mean by the term "mask the consequence."

16 COMMISSIONER HEMSTAD: Confuse, camouflage?

17 THE WITNESS: Frankly, I get involved on the
18 front end of saying, What is the fair market value of
19 the enterprise as at a point in time. The back end,
20 let's say, particularly in an internal transfer, how
21 consideration is rendered and what form it takes and
22 the structure of the deal, I don't get very involved
23 with. That's not my area of expertise.

24 COMMISSIONER HEMSTAD: If you had been
25 retained by a seller and such a transaction had

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1 occurred here, in a hypothetical sense, and they ask
2 your advice, would you advise them that they should
3 transfer at book value?

4 THE WITNESS: If book value was less than my
5 deemed price, I would say not.

6 COMMISSIONER HEMSTAD: In the circumstance
7 here where market value or business venture value is
8 far, far superior to book value. I'm sure you would
9 advise them that -- would that be a prudent transaction
10 to complete that kind of a transfer or sale in those
11 circumstances?

12 THE WITNESS: It wouldn't be if book value
13 was the sole matter of consideration, but particularly
14 with internal transfers, there is some other means in
15 future years of shifting consideration, shifting
16 values, transfer pricing may be -- of other goods and
17 services.

18 COMMISSIONER HEMSTAD: In a circumstance like
19 this where share interest in the stock was part of the
20 consideration, and it didn't stay with the operational
21 company, was instantly dividended, wouldn't that leave
22 the seller in a far less advantageous position than it
23 was prior to the sale.

24 THE WITNESS: It would seem so, yes.

25 COMMISSIONER HEMSTAD: That's all I have.

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EXAMINATION

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COMMISSIONER GILLIS: If there were an opportunity for an open market bid to operate the Yellow Pages in 1984 for all comers, and the deal was essentially to be able to have access to all the intangibles and for perpetuity, is kind of the essence of your valuation is that the 1.6 to 1.8 billion dollars is what you would have advised a client with the appropriate bid at that time?

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THE WITNESS: That's correct. If that buyer was the financial buyer. If my buyer was -- I could conceive of hypothetically there is always a strategic buyer out there with some really neat costs savings idea that if I could marry up my business with his prior business, he would be willing to pay 15 to 20 percent more than what I'll characterize as fair market value. That's always possible.

COMMISSIONER GILLIS: The question that Chairwoman Showalter had asked you is did you quantify in your analysis anywhere the value of those intangibles in coming up with the 1.6 to 1.8 billion? Is there quantification of what those intangibles really mean in that value?

THE WITNESS: Not specifically, but I would

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1 say they are included in that number. That number
2 presumes that those intangibles, whatever they are and
3 whatever they are worth, they are part of that 1.5 to
4 1.8 billion.

5 COMMISSIONER GILLIS: Is that something
6 that's at least possible with valuation to specifically
7 quantify individual intangibles and what they mean?

8 THE WITNESS: It's possible for select
9 intangibles. Frequently in my line of work, I get
10 asked to value a patent portfolio or computer software
11 or unpatented technology or even trademarks or trade
12 names, customer list s.

13 COMMISSIONER GILLIS: I guess for the current
14 example, it would be possible to attach at least an
15 estimate of what it's worth to have the direct access
16 to all the customers that are currently U S West
17 Communications' local customers and have the book in
18 all their doors.

19 THE WITNESS: Frankly, I don't think it would
20 be possible. As one who does these exercises quit a
21 bit, they are very data intense to look at the value of
22 customer list. An analyst really should look at three,
23 five or ten years of historical customer behavior.
24 What's the turnover ratio? What kind of year-to-year
25 growth do you get from a particular customer, and I

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1 doubt that very much this data is retained in the
2 archives.

3 COMMISSIONER GILLIS: In a hypothetical
4 scenario where a Bell company would open up the
5 opportunity to sell Yellow Pages as their official
6 providers that we've been referring to in these
7 proceedings and open that up to all comers on a
8 competitive bid, somebody like you would advise the
9 various players on what the right value of that would
10 be.

11 THE WITNESS: That's possible, yes.

12 COMMISSIONER GILLIS: And the methodology you
13 use in your testimony is approximately the kind of
14 methodology you would use in advising them to do that?

15 THE WITNESS: Yes, it would.

16 COMMISSIONER GILLIS: Is there anything that
17 you provided us in your testimony -- as I understand
18 it, the valuation is based on kind of that hypothetical
19 in 1984, and does your testimony also tell us what the
20 valuation would be if that same process were to take
21 place in 1999? Would it be a different value.

22 THE WITNESS: There certainly would be a
23 different value in 1999 then there would be in 1984.

24 COMMISSIONER GILLIS: There is nothing in
25 your testimony that tells us what that would be though?

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1 THE WITNESS: No. Other than I do make
2 reference in my direct testimony to the 4.75 billion
3 dollar value, the transaction prices of early 1988, and
4 propose a few reasons why the value did grow from 1.5
5 or 1.8 to the 4.75, and I break that into three
6 components, but the conclusion there was doing that, my
7 working backwards from the 4.75, my conclusions seemed
8 very reasonable.

9 COMMISSIONER GILLIS: Thank you.

10 JUDGE WALLIS: Anything further? Let's be
11 off the record.

12 (Discussion off the record.)

13

14 REDIRECT-EXAMINATION

15 BY MR. OWENS:

16 Q. Mr. Golden, you had some questions from
17 Commissioner Hemstad, and I wanted to make sure I
18 understood your answers. I believe Commissioner
19 Hemstad asked you as to whether or not if there were a
20 transfer of a business within a business organization
21 from one unit to another whether a transfer at fair
22 market value would be required or appropriate, and I
23 thought you answered somewhat in the affirmative. Did
24 you understand that that would be within a single
25 corporation owned by the same shareholders in that

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1 question?

2 A. Yes, I did.

3 Q. And have you done that kind of valuation
4 before, valuing a transfer within a single business
5 corporation owned by the same shareholders to ascertain
6 a fair market value of the business that's being
7 transferred?

8 A. Yes, I have.

9 Q. And was that pursuant to some requirements of
10 accounting that that transfer be at fair market value
11 rather than at some other measurement?

12 A. I've done that for both accounting purposes
13 and for, I believe, federal tax purposes on occasion.

14 Q. Aside from accounting or federal tax
15 purposes, were there any other requirements for that
16 that you were made aware of in connection with those
17 transactions?

18 A. Occasionally, there is a requirement that if
19 the -- let's say the amount of stock being transferred
20 is something less than a full controlling share, then
21 another basis of fair market value might be used on an
22 interest basis.

23 Q. Did you mean to suggest in answering yes to
24 Commissioner Hemstad's question that you were of the
25 belief that there is anything inherently improper or

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1 misleading about a transfer within a single corporate
2 entity or group of commonly owned corporate entities
3 where the business is transferred at something other
4 than fair market value?

5 A. No. There is nothing improper or unusual
6 about that. I know of occasions where I valued the
7 business, but that in years thereafter, if I'm invited
8 back in, the consideration transfer, if you will, still
9 hasn't taken place, it's not unusual at all within a
10 common company holding structure.

11 Q. Commissioner Hemstad asked you whether in the
12 context of this particular transaction where the share
13 of stock that was received or the fractional share of
14 the stock that was received by Pacific Northwest Bell
15 was immediately dividended to the parent whether the
16 seller was left in a worse position, and I think you
17 answered yes. Was it your understanding that Pacific
18 Northwest Bell was wholly owned by the company that it
19 dividended the share to?

20 A. I understand that to be the case, but I
21 wasn't thinking of it in that context when he asked me
22 that question.

23 Q. Is there any difference in the financial
24 interests between the shareholders of the wholly-owned
25 company and the wholly-owned company as to the property

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1 that passed between the wholly-owned company and the
2 parent?

3 A. It would seem to be none. They would be
4 indifferent.

5 Q. Directing your attention to your
6 cross-examination by counsel for Commission staff, you
7 indicated that you thought you considered it unusual to
8 do a business valuation as long as 15 years after the
9 event that would cause the need for that. Is there
10 anything wrong from the standpoint of a professional
11 business valuation expert in doing a valuation as long
12 as 15 years after the transfer event?

13 A. No, there is nothing wrong with it.

14 Q. Counsel for the Staff asked you about Exhibit
15 413, which is the excerpts from Value Line from October
16 26th 1994, and he asked you what the term "beta NMF" in
17 the upper right-hand corner meant, and you said
18 something that you believed it was "no meaningful
19 figure" or the data was not available. Do you know why
20 the data is not available for these companies on this
21 Value Line report?

22 A. I can speculate. Value Line uses a fairly
23 rigid formulated approach to computing beta which, if I
24 recall, looks at a five-year trend in stock price
25 movements. As we all know, these companies, as of

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1 October of 1986 had traded independently for five
2 years. Other financial consulting firms will use other
3 calculations, make assumptions, to derive a reasonable
4 beta calculation lacking that data, but Value Line
5 choose to, If we can't run our formula, then we're not
6 going to provide the information.

7 Q. So how did you get the beta information that
8 you used for your valuation roughly comparable to this
9 time period for these companies?

10 A. Our firm, PricewaterhouseCoopers, many years
11 ago after analyzing the various sources of published
12 data, Value Line being one of them, noticed differences
13 in the way they were computed, and we put some of the
14 best and brightest folks in our firm together to decide
15 which was the preferred provider of betas, and we
16 decided to universally use those betas when we can get
17 them, and the provider we chose was Barra
18 International. Barra uses a more flexible approach to
19 computation. Computations for beta, particularly when
20 there is an occasion where five full years of trailing
21 history is not available, in this instance, they were
22 able to make some reasonable assumptions that computed
23 provided betas for us to the public in general, if they
24 were willing to pay for them, as of the 1983.

25 Q. There was also introduced through you a

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1 response to a data request that's been admitted as
2 Exhibit 414, and it asks what information or asks to
3 provide information showing advertising rates for the
4 newspaper publishing companies or the companies that
5 largely publish newspapers that you used as part of
6 your comparable analysis, and you indicate in this
7 response that you don't have rates for these companies,
8 and so my question to you is why, without having these
9 rates, did you feel that it was still appropriate to
10 use these companies as part of your comparable
11 approach?

12 A. Well, first of all, having advertising rates,
13 it's a fairly minute variable in a business's overall
14 structure. It's something that won't appear in a
15 public document. It's something that won't appear in a
16 financial statement. The combination of advertising
17 rates and many, many other things work their way up to
18 revenue. It's almost so small as to not be important,
19 so in that instance where we had already decided that
20 the newspaper publishers were as a group only going to
21 be used at a secondary market approach, not having
22 advertising rates, even if they were available, was a
23 relevant factor.

24 Q. Counsel for the Staff also asked you whether
25 or not the newspaper publishing business and the Yellow

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1 Page publish business were identical, and you said they
2 weren't. Why, even though they are not identical, did
3 you feel that it's appropriate to use these newspaper
4 publishing companies as in your comparable approach?

5 A. To clarify my almost comparable from my
6 secondary market approach, the newspaper publishers are
7 different than Yellow Page companies. We're not
8 disputing that, but they had enough similarities so as
9 to, in our view, make them useful for the purpose that
10 we use them, that being that predominant portion of
11 their revenues were derived from local advertising;
12 that news print was a significant cost of sales
13 influencing profit.

14 A particular note was that the seven
15 publishers we cited all had some very strong flagship
16 papers in major cities that had compelling monopolistic
17 pricing advantages, at least according to some of the
18 research we noted, so given that these companies had
19 done well in the early '80's, had resisted, to some
20 extent, the onslaught of competition, we thought there
21 was enough similarity from an operational and financial
22 standpoint to use them as a secondary corroborative
23 market based approach.

24 Q. I guess what I was trying to find out is as a
25 secondary corroborative approach, is it a business

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1 valuation professional's role to look only for
2 identical companies, or is your role lesser grades of
3 similarities suffice?

4 A. Particularly for a secondary approach, lesser
5 grades of comparability are certainly adequate. I
6 think in my rejoinder testimony I made note of a famous
7 case in the business valuation literature whereby the
8 tax court said -- it sort of made light and threw out
9 the testimony of an expert who relied solely on one
10 company. This was a greeting card company, American
11 Greetings being used as a comparable to value Hallmark
12 cards, a polite company, and two other experts, two
13 very reputable Wall Street firms had used as comparable
14 companies a wide range of consumer products
15 companies -- Lennox, Coca-Cola, Avon -- and the tax
16 court found this compelling, at least as secondary
17 corroborative approach as opposed to the one expert who
18 said that in the greeting card business, we aren't
19 going to use them.

20 Q. Counsel for the Staff also asked you with
21 regard to the difference in the revenue sources between
22 newspapers and Yellow Page publishers in the sense that
23 newspapers rely both on subscription revenue as well as
24 advertising revenue. In light of your testimony, that
25 could tend to make Yellow Page publishers as a group

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1 more risky than newspaper publishers, whether you could
2 quantify the difference in risk, and you said you
3 couldn't. Could you explain why you can't quantify
4 that difference in risk?

5 A. Risk is a very broad term that, at best, in
6 financial analysis we measure it by beta as a component
7 of the cost of equity and weighted average cost of
8 capital calculations, risk can have many other
9 meanings. I had said I couldn't quantify it only in
10 that many factors go into the determining a beta, i.e.,
11 measuring the riskiness of a company could perhaps be
12 one of which is the level of debt. A level of debt is
13 perhaps the easiest thing to remove from beta. It's
14 the easiest of the contributing factors to isolate, and
15 that was an adjustment that I did and I discussed
16 fairly extensively in my testimony and rebuttal
17 testimony.

18 Q. Counsel for the Commission staff also
19 introduced through you a response to Data Request No.
20 214 that's been identified and received as Exhibit 418
21 but asked you no questions about it, so I'd like to ask
22 you to explain for the Commission what significance
23 this had in terms of what is asked for here; that is,
24 what paper source, data, and documentation supporting
25 the terminal year growth assumptions that you made for

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1 your projected case and actual case analyses in terms
2 of the specific numbers that are shown in the
3 documents?

4 A. Appended to this data request response were
5 certain excerpts from two publications, one of which
6 was of a 1985 vintage, which commented on projected
7 revenue growth rates for the Yellow Page business in
8 the years 1985 to 1988. A another 1990 document from
9 the same publisher that commented on what it projected
10 growth rates to be from 1989 to 1990 only, so neither
11 of these documents addressed the issue of what terminal
12 year growth should be, i.e., very long into perpetuity
13 beyond the forecast horizon. These were very
14 short-term growth forecasts.

15 I provided them to answer this part of the
16 data response in the interest of being complete and
17 correct. In fact, the utility of the '85 through '88
18 document was more along the lines to me of
19 corroborating the reasonableness of management's
20 projections. The source documents they had originally
21 given wasn't reasonable for them to be forecasting, at
22 least in the mid '80's growth in the ten, nine, eight
23 percent range, and these third-party publications bore
24 that out that management was reading from the same
25 page, if you will, but neither of these documents

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1 really help address the toast into perpetuity issue and
2 long-term growth. How I got there I discussed at
3 length in this data request and in much greater length
4 in my rebuttal testimony.

5 Q. Public Counsel asked you several questions to
6 the effect that would you agree that no analyst could
7 be certain on growth rates beyond five years and on
8 future inflation, and you agreed with that; correct?

9 A. That is correct.

10 Q. In your opinion as a valuation professional,
11 is that fact; that is, that no one can be certain about
12 growth rates beyond five years and inflation out into
13 the future, any reason not to make reasonable and
14 informed judgment about those items in a business
15 valuation?

16 A. No, it's not. It's no reason not to, but
17 it's certainly a reason to look at other methods to
18 corroborate the results of an approach that relies
19 heavily on parameters that you have mentioned, such as
20 a market comparable approach.

21 Q. Did you use those methods in your approach?

22 A. Yes, I did.

23 Q. Public Counsel asked you about the
24 sensitivity to the use of different discount rates and
25 growth rates, and he asked you if it wasn't true that

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1 at the 15-percent discount rate, your range of
2 anticipated growth rates would produce a
3 135-million-dollar spread, and you agreed that it
4 would. Is there anything that can be gleaned from that
5 in terms of the need to use judgment in picking your
6 discount rates and terminal growth rates?

7 A. Certainly. That's a fairly wide range. If
8 in the instance of a discounted cash flow approach,
9 which is structured such that terminal value is a very
10 large component, one should be particularly cautious if
11 one goes to the corner of a sensitivity table and
12 selects the lowest possible discount rate and the
13 highest possible growth rate. Just because one can
14 pick those doesn't mean the result you get is
15 reasonable, and again, it just begs for the need to
16 look to other methods to try to confirm that that could
17 happen.

18 MR. OWENS: Thanks. That's all the redirect
19 we have.

20

21

EXAMINATION

22

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24

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JUDGE WALLIS: The Bench may have some
additional questions and would like to consult with one
of the technical advisory staff, so we had like to take
about a five-minute recess at this point.

00588

1 (Recess.)

2 JUDGE WALLIS: Let's be back on the record,
3 please. I'm going to ask the witness if the discount
4 rate that's shown in Schedule 4 of Exhibit 411, does
5 that reflect your best estimate of U S West Direct's
6 weighted cost of capital?

7 THE WITNESS: No, it doesn't. It reflects my
8 best estimate of what a hypothetical buyer would use as
9 a discount rate in analyzing an investment in a company
10 such as U S West, and that hypothetical buyer was
11 someone like U S West, Inc. that had capital structure
12 and a tax posture similar to that of U S West, Inc.,
13 and on Schedule 4 indicated that there was other RBOCs
14 that had similar attributes in that regard.

15 JUDGE WALLIS: So it's implicit that in your
16 response, is it not, that the buyer would anticipate
17 earning a return in that range?

18 THE WITNESS: No. What's implicit is that to
19 entice a buyer to make an investment of this magnitude
20 that has a certain return, and we don't know what that
21 return is, when you marry that with the risk, you
22 perceive an investment like this, this should be the
23 right discount rate, so the concept of return on assets
24 as you're comfortable in seeing it in a ratemaking
25 scenario doesn't really apply here.

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1 JUDGE WALLIS: And just to clarify, the
2 discount rate that somehow for U S West Direct is not
3 the same as the rate for U S West Communications or
4 Pacific Northwest Bell; is that correct?

5 THE WITNESS: I wouldn't expect that it would
6 be. If I were asked to do a weighted average cost of
7 capital based on this market analysis, I'm sure it
8 would be different again from the regulated ROR.

9 JUDGE WALLIS: Commissioner Hemstad?

10

11

EXAMINATION

12

13 COMMISSIONER HEMSTAD: I had a couple of
14 questions to Mr. Owens' questions to you, and it
15 relates to his queries to you concerning the transfers
16 internal to a multi-affiliate organization, and I
17 believe your response was in that kind of a
18 circumstance you can have transfers that might be other
19 than a fair market value, if I understood you
20 correctly, but then you cited such things as having to
21 deal with transactions where the IRS might be affected
22 or where there would be minority interests, and those
23 kinds of circumstances, fair market value appraisal
24 would be the appropriate measure; is that right? Is
25 that a fair statement of what you said?

25

THE WITNESS: That's fair. My firm gets

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1 hired to value internal transfers when the standard is
2 fair market value and there is, someone such as the
3 IRS, very interested in seeing that it happens. At
4 full consideration arm's-length rate, I'm sure there
5 are many, many corporate transactions that happen under
6 the fair market value that corporations choose not to
7 pay the fees that my firm would command to determine
8 fair market value if there is no reason to.

9 COMMISSIONER HEMSTAD: I assume that you
10 would agree that a public utility, however, is a
11 different kind of corporation than, say, a private,
12 unregulated private nonprofit such as General Motors or
13 Boeing or such. They are different kinds of duties;
14 isn't that true?

15 THE WITNESS: I presume. I guess you meant
16 publicly owned.

17 COMMISSIONER HEMSTAD: A for profit
18 corporation.

19 THE WITNESS: Sure.

20 COMMISSIONER HEMSTAD: What's different about
21 a utility is that the regulated utility has a duty, I
22 suppose it would be at least analogous to your
23 reference to a minority interest, but a duty to call it
24 at a minimum of dealing fairly in order to protect the
25 interest of ratepayers rather than just shareholders;

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1 isn't that true?

2 MR. OWENS: We'd be glad to address that in a
3 brief, Commissioner. I don't think Mr. Golden has the
4 knowledge to testify about utility legal requirements.

5 COMMISSIONER HEMSTAD: The burden of
6 Mr. Owen's question was that a for profit publicly
7 traded corporation can make transfers among its
8 affiliates at other than fair market value, and it can
9 happen fairly commonly, but I think you would agree
10 that where there is a ratepayer interest, in the
11 pricing of assets, that translates into what will be
12 the rates to be charged. That's a different kind of
13 interest than a purely shareholder interest of an
14 unregulated for profit company.

15 THE WITNESS: Yes.

16 COMMISSIONER HEMSTAD: That's all I have.
17 Then to pursue that, that would also apply to his
18 question with regard to in the instance of the transfer
19 to the parent from a regulated utility of valuable
20 stock as an asset; isn't that true? In other words,
21 the ratepayers have an interest in those kinds of
22 transfers.

23 MR. OWENS: With all respect, Commissioner,
24 it seems to me that it is asking this witness to render
25 a legal conclusion.

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1 COMMISSIONER HEMSTAD: The ALJ can rule on my
2 question, but I lost my train of thought at this point.

3 JUDGE WALLIS: Our convention is that if the
4 area is relevant, the witness can be permitted to
5 respond understanding that he is not a lawyer to the
6 extent of his knowledge, and if he had no knowledge or
7 belief, he's perfectly welcome to say that.

8 COMMISSIONER HEMSTAD: The point I was
9 driving at, you have a background in dealing with
10 telecommunications clients. Are none of them regulated
11 companies?

12 THE WITNESS: No, some of them are regulated.

13 COMMISSIONER HEMSTAD: So I assume you have
14 some appreciation of the relationship between
15 shareholders and ratepayers in the interest of the
16 public utility, which is in use of the public interest.

17 THE WITNESS: Some, but very limited. Most
18 of my work has been on more nonregulated components of
19 telecommunications companies, wireless or foreign
20 directory investments.

21 COMMISSIONER HEMSTAD: And if a valuable
22 asset in the form of the share of stock is dividended
23 away from the regulated utility to a parent that
24 ratepayers have an interest in that kind of a
25 transaction. They have not a direct ability to control

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1 it, but it impacts ratepayers.

2 THE WITNESS: I'm not a lawyer. I'm not an
3 expert on regulated utilities. What you say seems
4 sensible, but my opinion really shouldn't matter much
5 in that regard.

6 COMMISSIONER HEMSTAD: That's all I have.

7 MR. OWENS: Nothing further, Your Honor.

8 JUDGE WALLIS: Mr. Trautman?

9 MR. TRAUTMAN: I think we have three follow-
10 ups based on redirect

11

12 RE-CROSS-EXAMINATION

13 BY MR. TRAUTMAN:

14 Q. I believe you said in response to a question
15 by Mr. Owens that you said it wasn't wrong to do a
16 valuation 15 years after the fact, but isn't it true
17 that if you do a valuation at the time of a sale or
18 transfer, if you will, that he would generally have
19 greater access to company management, and you'd have
20 greater access to contemporaneous documents relating to
21 the time of the transfer?

22 A. That's true, although I was impressed by the
23 amount of documents of an early 1980 vintage we were
24 able to accumulate in this matter.

25 Q. I also stated in talking about comparable

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1 companies that the newspaper publishers were
2 appropriate for use as a secondary approach, but isn't
3 it true that you use the same company's betas, that is,
4 the newspaper publishers, in your primary approach?

5 A. It was used to help define one end of a range
6 in my primary approach.

7 Q. You also stated that adjusting the beta for
8 the level of debt was easy to perform. If you had two
9 factors that both affected beta, and one was easy to
10 adjust for -- let's, in a hypothetical, assume that
11 would make the beta go up -- and the other was
12 difficult to adjust for, but it made the beta go down
13 in an equal amount, would you, therefore, only adjust
14 the beta for the factor that was easy to adjust for?

15 A. I'm not sure I understand the hypothetical
16 you're suggesting.

17 Q. I'll be happy to restate it. You have two
18 factors that affect beta. One is easy to adjust for,
19 the other difficult. One, the easy factor, would make
20 the beta go up. The other, the difficult factor, would
21 make it go down. Would you, therefore, only adjust the
22 beta for the factor that you deemed was easy to adjust
23 for?

24 A. No. You would make that adjustment that you
25 can make that's easy and then perhaps by another

00595

1 avenue, that being using a range of eventual discount
2 rates, sort of adjust for the other one and in a direct
3 way, which is what I did.

4 MR. TRAUTMAN: That's all I have.

5 MR. FFITCH: No questions for Public
6 Counsel.

7 MR. OWENS: No additional questions, Your
8 Honor. Thank you.

9 JUDGE WALLIS: All right, Mr. Golden, we
10 appreciate your sharing your day with us, and you are
11 excused from the stand at this time. Let's be off the
12 record.

13 (Hearing adjourned at 4:30 p.m.)

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