

00762

1

BEFORE THE WASHINGTON

2

UTILITIES AND TRANSPORTATION COMMISSION

3

4 In Re Petition of ) DOCKET NO. UT-980948  
5 US WEST COMMUNICATIONS, INC., ) VOLUME XIV  
6 for a Declaration Order ) Pages 762-1094  
7 Ending Imputation of Revenues )  
8 Derived from Transferred )  
9 Yellow Pages Publishing )  
10 Business. )  
11 \_\_\_\_\_ )

10

11 A hearing in the above matter was  
12 held on July 29, 1999, at 8:47 a.m., at 1300  
13 Evergreen Park Drive Southwest, Olympia, Washington,  
14 before Administrative Law Judges ROBERT WALLIS and  
15 LAWRENCE BERG, and CHAIRWOMAN MARILYN SHOWALTER and  
16 COMMISSIONERS RICHARD HEMSTAD and WILLIAM R. GILLIS.

17

18 The parties were present as  
19 follows:

20 US WEST COMMUNICATIONS, INC., by  
21 Lisa A. Anderl, Attorney at Law, 1600 Seventh Avenue,  
22 Room 3206, Seattle, Washington 98191, and Douglas N.  
Owens, Attorney at Law, 1325 Fourth Avenue, Suite  
940, Seattle, Washington 98101.

23 THE COMMISSION, by Gregory  
24 Trautman, Assistant Attorney General, 1400 South  
Evergreen Park Drive, S.W., Olympia, Washington  
98504.

25

00763

1 PUBLIC COUNSEL, by Simon ffitch,  
Assistant Attorney General, 900 Fourth Avenue, #2000,  
2 Seattle, Washington 98164.

3 TRACER, by Arthur Butler, Attorney  
at Law, Ater Wynne, 601 Union Street, Suite 5450,  
4 Seattle, Washington 98101.

5 AARP, by Ronald Roseman, Attorney  
at Law, 2011 14th Avenue East, Seattle, Washington  
6 98112.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24 Barbara L. Spurbeck, CSR

25 Court Reporter

1

2

## INDEX OF WITNESSES

3

4	WITNESS:	PAGE:
5	DR. LEE L. SELWYN	
6	Direct Examination by Mr. Trautman	769
7	Cross-Examination by Mr. Owens	773
8	Examination by Chairwoman Showalter	935
9	Examination by Commissioner Gillis	947
10	Examination by Chairwoman Showalter	952
11	Examination by Commissioner Hemstad	955
12	Redirect Examination by Mr. Trautman	957
13	Recross-Examination by Mr. Owens	970
14	Examination by Chairwoman Showalter	978
15	ANN KOEHLER-CHRISTENSEN	
16	Direct Examination by Ms. Anderl	984
17	Cross-Examination by Mr. Trautman	986
18	Cross-Examination by Mr. ffitch	1043
19	Examination by Judge Wallis	1069
20	Examination by Commissioner Hemstad	1073
21	Redirect Examination by Ms. Anderl	1084
22	Examination by Commissioner Hemstad	1090
23		
24		
25		

00765

1

2

---

INDEX OF EXHIBITS

---

3

4	EXHIBIT:	MARKED:	OFFERED:	ADMITTED:
5	Number 304	--	1010	1010
6	Number 306	--	1011	1011
7	Numbers 307-308	--	1012	1012
8	Number 501-T	983	985	985
9	Number 501-EC	984	985	985
10	Numbers 503-508	983	985	985
11	Number 509-T	983	985	985
12	Numbers 510-512	983	985	985
13	Number 513-T	983	985	985
14	Number 514	983	1041	1041
15	Number 515	983	not offered	
16	Number 516	983	1040	1040
17	Number 517	983	not offered	
18	Number 518	983	1093	1093
19	Number 519	984	1093	1093
20	Number 520	984	1056	1056
21	Number 521	984	1061	1061
22	Number 522	984	1062	1062
23	Number 523	984	not offered	
24	Number 524	984	986	986
25	Number 625	864	865	865

00766

1	Number 801-TC	768	770	770
2	Number 801-E	772	773	773
3	Numbers 803-C-804-C	768	770	770
4	Number 805	768	770	770
5	Number 806-TC	768	770	770
6	Number 807		admitted as Exhibit 602	
7	Numbers 808-811	768	770	771
8	Number 812	768	775	775
9	Number 813	768	779	779
10	Number 814	768	784	784
11	Number 815	768	818	818
12	Numbers 816-817	768	--	--
13	Numbers 818-819	769	--	--
14	Number 820	769	875	--
15	Number 821	769	877	877
16	Number 822	769	877	877
17	Number 823	769	904	905
18	Number 824	769	--	--
19	Number 825	769	910	911
20	Number 826	769	913	913
21	Number 827	769	922	922
22	Numbers 828-831	769	--	--
23				
24				
25				

00767

1 JUDGE WALLIS: Let's be on the record,  
2 please, for our July 29, 1999 session in the matter  
3 of Commission Docket UT-980948. This morning, in  
4 order to accommodate Dr. Selwyn's flight plans, we  
5 are beginning with the cross-examination of his  
6 testimony. He is appearing as a witness on behalf of  
7 the Commission Staff.

8 Dr. Selwyn, I'm going to ask you to raise  
9 your right hand, if you would.  
10 Whereupon,

11 DR. LEE L. SELWYN,  
12 having been first duly sworn, was called as a witness  
13 herein and was examined and testified as follows:

14 JUDGE WALLIS: In conjunction with the  
15 appearance of this witness, he has presented a number  
16 of exhibits that have been prefiled by him and on  
17 behalf, consisting of Exhibits 801-TC through 811,  
18 and other parties, US West, in particular, have  
19 submitted a number of documents to be used on his  
20 cross-examination.

21 In order to expedite the proceeding and to  
22 save time, I am going to read the identification of  
23 those exhibits to the reporter later today on a break  
24 and ask that they be inserted in the record at this  
25 point, and that will save us the need to take time

00768

1 for that right now.

2 JUDGE BERG: The following exhibits have  
3 been identified for use during the hearing. Exhibit  
4 Number 801-TC is the responsive testimony of Lee  
5 Selwyn. Exhibit 802 is Exhibit LLS-1. Exhibit 803-C  
6 is Confidential Appendix One to Dr. Selwyn's  
7 testimony. Exhibit 804-C is Confidential Appendix  
8 Two to Dr. Selwyn's testimony. Exhibit 805 is  
9 Appendix Two, Schedules A through E to Dr. Selwyn's  
10 testimony.

11 Exhibit 806-TC is surrebuttal testimony of  
12 Lee Selwyn. Exhibit 807 is Exhibit LLS-2. Exhibit  
13 808 is Exhibit LLS-3. Exhibit 809 is Exhibit LLS-4.  
14 Exhibit 810 is Exhibit LLS-5. Exhibit 811 consists  
15 of excerpts from the deposition of Dr. Selwyn taken  
16 March 30, 1999, including page 163, which was not  
17 originally attached to the proposed exhibit.

18 Exhibit 812 is WUTC Staff response to US  
19 West Data Request 2-33. Exhibit 813 is Staff  
20 response to US West Data Request 20. Exhibit 814 is  
21 Staff's response to US West Data Request 31. Exhibit  
22 815 is Staff's response to US West Data Request 40.  
23 Exhibit 816 is Staff's response to US West Data  
24 Request 44.

25 Exhibit 817 is Staff's response to US West

00769

1 Data request 45. Exhibit 818 is Staff's response to  
2 US West Data Request 46. Exhibit 819 is Staff's  
3 response to US West Data Request 47. Exhibit 820 is  
4 Staff's response to US West Data Request 19. Exhibit  
5 821 is Staff's response to US West Data Request 23.  
6 Exhibit 822 is Staff's response to US West Data  
7 Request 26. Exhibit 823 is Staff's response to US  
8 West Data Request 57. Exhibit 824 is Staff's  
9 response to US West Data Request 42. Exhibit 825 is  
10 Staff's response to US West Data Request 52.

11 Exhibit 826 is Staff's response to US West  
12 Data Request 41. Exhibit 827 is Staff's response to  
13 US West Data Request 54. Exhibit 828 is Staff's  
14 response to US West Data Request 55. Exhibit 829 is  
15 Staff's response to US West Data Request 56. Exhibit  
16 830 is Staff's response to US West Data Request 58,  
17 and Exhibit 831 is Staff's response to US West Data  
18 Request 63.

19 JUDGE WALLIS: With that, I'm going to tell  
20 Mr. Trautman that he may begin.

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

22 BY MR. TRAUTMAN:

23 Q. Good morning, Dr. Selwyn.

24 A. Good morning.

25 Q. Could you please state your full name and



00770

1 your business address for the record?

2 A. My name is Lee L. Selwyn. My business  
3 address is One Washington Mall, Boston,  
4 Massachusetts, 02108.

5 Q. And in conjunction with your testimony,  
6 have you filed what's been marked as Exhibits 801-TC  
7 through 806-TC? There are additional exhibits, but  
8 --

9 A. The copies, I don't have them marked, so --  
10 yes.

11 Q. And were these prepared by you or under  
12 your supervision?

13 A. They were.

14 MR. TRAUTMAN: I would move for the  
15 admission of 801-TC through 806-TC.

16 MR. OWENS: No objection.

17 JUDGE WALLIS: Those exhibits are received.

18 MR. TRAUTMAN: I believe Exhibit 807, which  
19 is the publishing agreement, has previously been  
20 admitted as Exhibit 602 to the testimony of Mr.  
21 Brosch, so for the sake of not having duplication, I  
22 won't move for that.

23 JUDGE WALLIS: Thank you.

24 MR. TRAUTMAN: Regarding Exhibits 808  
25 through 811, I believe we have -- I've spoken with

00771

1 Counsel, and we have agreement from US West to  
2 include those as supplemental exhibits.

3 MR. OWENS: The only qualification to that,  
4 other than complete agreement, is that Exhibit 811,  
5 at the end of the list of excerpts, includes pages  
6 158 through 162, and 162, at the end, cuts off an  
7 answer. So I think, consistent with what the prior  
8 practice has been, we would not object, as long as  
9 page 163 is also included.

10 MR. TRAUTMAN: That's fine.

11 JUDGE WALLIS: Very well. With that  
12 understanding, Exhibits 808 through 811 are received.

13 MR. TRAUTMAN: And Dr. Selwyn's available  
14 for cross-examination.

15 JUDGE WALLIS: Were there corrections to  
16 his testimony?

17 MR. TRAUTMAN: Oh, yes.

18 Q. Do you have corrections to the testimony  
19 you prefiled?

20 A. Yes, I have a few word changes that are of  
21 the nature of clarification. At page four of Exhibit  
22 801, line ten, after the word "operations," insert  
23 "and/or ratepayers." At page five, line 11,  
24 beginning with the word "transfer" and through the  
25 word "of" on that line, strike that and replace with

00772

1 "conveyance of the permanent rights to use."

2 MR. OWENS: Can I have that again? What is  
3 stricken?

4 THE WITNESS: Striking beginning with the  
5 word "transfer," through the word "of." I'm sorry,  
6 the second word "of." "Transfer of the ownership of"  
7 is stricken, and insert "conveyance of the permanent  
8 rights to use."

9 There is a change at line 11, on page six,  
10 of a proprietary number, and the -- how are we  
11 handling that, Your Honor?

12 JUDGE WALLIS: We have before us an errata  
13 sheet to Dr. Selwyn's testimony, 801-TC. I'm going  
14 to mark that document as 801-E, and in addition to  
15 the errata that are listed there, it's my  
16 understanding that the number referenced on the line  
17 beginning page six should vary from the one that's  
18 shown by subtracting .2 --

19 THE WITNESS: That's correct.

20 JUDGE WALLIS: -- from that number?

21 THE WITNESS: That's correct.

22 JUDGE WALLIS: And with that change, that  
23 would reflect the errata that you previously  
24 presented; is that correct, Dr. Selwyn?

25 THE WITNESS: Yes.

00773

1 JUDGE WALLIS: Is there objection to  
2 receiving 801-E?

3 MR. OWENS: No, Your Honor.

4 JUDGE WALLIS: That is received.

5 THE WITNESS: I have one other change.  
6 Page 44, line 20, beginning with the word "business,"  
7 through the end of that sentence, strike those words  
8 and replace them with "revenue stream." I'm sorry,  
9 "revenue streams," plural. So the sentence ends  
10 "Yellow Pages revenue streams," period. Those are  
11 the only changes that I'm aware of.

12 Q. And with those changes and the changes  
13 noted on the errata sheet, if I were to ask you the  
14 questions in your Exhibits 801-T and 806-TC, would  
15 your answers be the same?

16 A. They would.

17 MR. TRAUTMAN: Now Dr. Selwyn is available  
18 to cross.

19 JUDGE WALLIS: Mr. Owens.

20 MR. OWENS: Thank you, Your Honor.

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

22 BY MR. OWENS:

23 Q. Good morning, Dr. Selwyn.

24 A. Good morning.

25 Q. I'm Doug Owens, representing US West.

00774

1 JUDGE WALLIS: Excuse me. Let's be off the  
2 record for just a second.

3 (Discussion off the record.)

4 JUDGE WALLIS: Let's be back on the record,  
5 please.

6 Q. Dr. Selwyn, isn't it true that your Ph.D.  
7 is in management, with concentrations in applied  
8 economics and management information systems?

9 A. That's correct.

10 Q. You're being paid for your testimony here  
11 today?

12 A. I am.

13 Q. And how much?

14 A. I'm -- are you asking if I'm being paid for  
15 my actual appearance today or --

16 Q. For your work in this case?

17 A. For the work in this case? The contract  
18 has been amended and I don't recall the precise  
19 number, but I believe it is in the range of about  
20 \$90,000, subject to check.

21 Q. And you testify regularly for compensation;  
22 is that correct?

23 A. That's correct.

24 Q. And you testify regularly for compensation  
25 before a number of state commissions; would that also

00775

1 be correct?

2 A. Yes.

3 Q. And when you do this testifying and the  
4 case involves ILECs, your testimony is generally  
5 opposed to the positions of the ILECs; is that  
6 correct?

7 A. Generally. Not always, but generally.

8 Q. You responded to a Data Request Number 33,  
9 which has been marked as Exhibit 812, concerning your  
10 testimony in Exhibit 801 at page eight, lines 13 and  
11 14, about instances in which the post-reorganization  
12 relationship continues to be a source of considerable  
13 dispute, in which you were asked to describe the  
14 reorganization relationship in dispute, state the  
15 nature of the dispute and describe the positions of  
16 the parties in the disputes and to provide all  
17 documents relating to or describing such disputes.  
18 Do you recall that?

19 A. Yes.

20 Q. And is what's been marked as Exhibit 812  
21 your response?

22 A. Yes.

23 MR. OWENS: I'd offer 812.

24 MR. TRAUTMAN: No objection.

25 JUDGE WALLIS: 812 is received.

00776

1 Q. Now, on the first paragraph of that  
2 response, the last line says, "And the issue is being  
3 relitigated in the instant proceeding." When you say  
4 the issue, are you referring there to the same issue  
5 that was litigated in Docket UT-950200?

6 A. Well, the basis for it is different, but  
7 the effort to eliminate the imputation is the issue,  
8 is the issue to which I'm referring.

9 Q. So you understand that US West is not here  
10 today challenging this Commission's legal authority  
11 to impute directory revenues to its telephone  
12 operations; correct?

13 A. Well, I'm not sure I'd agree with that.

14 Q. So you believe that US West's petition  
15 contains some statement challenging the Commission's  
16 authority, at least in the context of the portion of  
17 the petition that we're litigating here today, the  
18 demonstration that fair value has been received; is  
19 that correct?

20 A. If I understand your question -- let me see  
21 if I can put it in my own words. I believe that the  
22 Company is challenging the Commission's authority to  
23 continue to impute Yellow Pages revenues on the basis  
24 that, according to the Company, the cumulative effect  
25 of prior imputations and publishing fees has provided

00777

1 fair value to ratepayers.

2 Q. And that issue was not litigated in Docket  
3 UT-950200, was it?

4 A. That's my understanding.

5 Q. The response also states that you submitted  
6 testimony in an Idaho PUC proceeding that opposed US  
7 West's proposal to discontinue imputation of Yellow  
8 Pages; correct?

9 A. Correct.

10 Q. And there was, at that time, a statute in  
11 the state of Idaho that forbade the use of revenues  
12 from other than telecommunications activities to  
13 support regulated telecommunications rates; is that  
14 correct?

15 A. That is my recollection, subject to check.

16 Q. But you opposed US West's proposal  
17 nonetheless; is that correct?

18 A. Yes.

19 Q. And did the Idaho Commission ultimately  
20 determine to end imputation in that state?

21 A. I believe it did, although, again, at the  
22 moment, I don't remember precisely what happened in  
23 that case.

24 Q. It's true, isn't it, that you do not belong  
25 to any organizations that are specifically related to



00778

1 the valuation of businesses?

2 A. That's correct.

3 Q. And it's true, also, that none of the  
4 publications in Exhibit 802, which is your statement  
5 of qualifications, are on the subject of business  
6 valuation?

7 A. That's correct.

8 Q. Isn't it true that you have never valued a  
9 business for any purpose other than testifying in  
10 litigation?

11 A. That's correct.

12 Q. And so it would be a fair statement that no  
13 one has ever taken a business valuation that you were  
14 responsible for and conducted a business transaction  
15 purchase or sale on the strength of it; would that be  
16 correct?

17 A. That's correct. That would be correct,  
18 yes.

19 Q. On page 160 of the Exhibit 811, which is  
20 your deposition, you state that you are qualified,  
21 within the context of the work you have done for this  
22 case, to perform a valuation study; correct?

23 A. Yes.

24 Q. And how many valuation studies have you  
25 performed in your 30 years of experience?

00779

1 A. I don't recall. Not very many.

2 Q. Well, let's see if we can complete the  
3 record. You responded to US West's Data Request  
4 Number 20, which has been marked as Exhibit 813,  
5 asking you to list each instance in which you were  
6 involved in the valuation of an ongoing business; is  
7 that correct?

8 A. Yes.

9 Q. And is 813 your response?

10 A. Yes.

11 MR. OWENS: I'd offer 813.

12 MR. TRAUTMAN: No objection.

13 JUDGE WALLIS: 813 is received.

14 Q. And that exhibit lists three occasions in  
15 which you performed valuations; is that correct?

16 A. Yes.

17 Q. And all three of those occasions were for  
18 the purpose of litigating against one or other of the  
19 regional bell operating companies; correct?

20 A. That's correct.

21 Q. And one of those cases was the Idaho case  
22 that we've discussed previously, wasn't it?

23 A. Yes.

24 Q. And your valuation study in that case used  
25 the discounted cash flow method, but did not involve

00780

1 the use of a terminal year growth estimate; is that  
2 correct?

3 A. That's correct. In that respect, it was  
4 conservative.

5 Q. And you used growth rates during the  
6 forecasted period of between zero and five percent;  
7 is that correct?

8 A. I'll accept that, subject to check. I  
9 don't remember precisely.

10 Q. Is that representative of your valuation  
11 work in the past?

12 A. It is an example of it. I'm not sure it's  
13 necessarily representative in terms of the overall  
14 approach that I've used. Subsequent to completing  
15 this data request, I filed testimony in several  
16 merger -- current ongoing merger proceedings that, in  
17 various respects, may have involved some valuation  
18 evidence.

19 Q. Did you supplement your response to Data  
20 Request 20?

21 A. Did I?

22 Q. Yes.

23 A. I did not.

24 Q. Why not?

25 A. I don't know. Oversight. I can, if you'd

00781

1 like.

2 Q. Would you agree that your approach in the  
3 Idaho case is less sophisticated than the approach  
4 Mr. Golden took in the current case?

5 A. Well, I would agree that Mr. Golden --

6 MR. OWENS: Your Honor, that called for a  
7 yes or no.

8 JUDGE WALLIS: I'm going to ask the  
9 witness, if you can answer yes or no, to begin by  
10 stating that answer.

11 THE WITNESS: I'd agree it's less complex.  
12 Whether it's less sophisticated, I believe is a  
13 qualitative statement. There were errors that Mr.  
14 Golden made in his methodology that I identified that  
15 I believe detract from its sophistication.

16 Q. Well, you yourself used a variation of Mr.  
17 Golden's method, which included the use of a terminal  
18 year growth estimate in your 1999 valuation in this  
19 case; correct?

20 A. That's correct.

21 Q. It's true that you're not a lawyer; isn't  
22 it?

23 A. That's true.

24 Q. And you're not a judge?

25 A. Nope.

00782

1 Q. And you're not a commissioner of a Public  
2 Service Commission?

3 A. No.

4 Q. And you've never been any of those things?

5 A. Never been any of those things.

6 Q. You haven't had any formal legal training,  
7 have you?

8 A. No.

9 Q. You haven't taken any courses on the law of  
10 property?

11 A. I have taken business law courses as an  
12 undergraduate.

13 Q. Would that include the study of the  
14 property law?

15 A. At whatever level a business law course at  
16 an undergraduate level would include the study of  
17 property law, I --

18 Q. Do you remember?

19 A. I'm going back a lot of years. I don't  
20 remember precisely what was in there.

21 Q. Have you taken any courses on corporate  
22 law?

23 A. No.

24 Q. Would it be correct that none of the  
25 publications in Exhibit 802, which is your statement

00783

1 of qualifications, are on the subject of the  
2 ownership of property?

3 A. That would be correct.

4 Q. And you haven't written any publications or  
5 testified as an expert witness on the subject of the  
6 ownership of property, have you?

7 A. That would be correct, as well.

8 Q. Or any other area of the law?

9 A. Well, I've certainly presented testimony  
10 addressing regulatory issues, which I think would  
11 relate to legal principles of regulation, of economic  
12 regulation. I don't hold myself out as an attorney  
13 and I'm not an attorney and I don't offer legal  
14 opinions, but certainly I have general familiarity  
15 with legal principles as they would apply in  
16 regulatory proceedings and certainly reflect that  
17 knowledge in the work that I do in regulatory  
18 proceedings.

19 Q. You answered US West's Data Request 31,  
20 which asked you for citations to all textbooks,  
21 treatises, articles, reference materials, and so  
22 forth referenced, relied upon, or which supported  
23 your testimony, which is Exhibit 801, and asked you  
24 whether you -- to identify which of those you  
25 considered authoritative; is that right?

00784

1 A. Yes.

2 Q. And is Exhibit 814 your response?

3 A. Yes.

4 MR. OWENS: I'd offer 814.

5 MR. TRAUTMAN: No objection.

6 JUDGE WALLIS: Received.

7 Q. Now, are any of these textbooks  
8 authoritative on the determination of the ownership  
9 of property?

10 A. No.

11 Q. Wouldn't you agree that the ownership of  
12 property is a legal issue?

13 A. In the context of this proceeding, it is  
14 both a legal and a policy issue.

15 Q. I'm going to ask you to answer my question.  
16 Isn't it true that the ownership of property is a  
17 legal issue?

18 A. Under certain circumstances, it is a legal  
19 issue, but in the context of this proceeding, it is a  
20 policy issue.

21 Q. So it's your testimony that you can decide  
22 who owns a piece of property based on someone's idea  
23 of what policy is; is that correct?

24 A. In -- let me see if I can respond to your  
25 question.

00785

1 Q. That calls for yes or no.

2 A. In the context of this proceeding, the  
3 answer is yes.

4 Q. And what authority do you have to support  
5 that statement?

6 A. The general principle that I rely on in  
7 supporting that statement is the context -- in the  
8 context of public utility regulation, is that a  
9 regulatory commission has the authority -- and I  
10 believe this Commission has exercised such authority  
11 -- to pierce the corporate veil, and with respect to  
12 the treatment of assets, revenues, expenses and other  
13 matters among members of the same control group,  
14 affiliates of the regulated company, the Commission  
15 need not confine itself to the technicalities of the  
16 corporate structure if it believes that its policies  
17 require that it impute alternative forms of that  
18 structure for purposes of regulation.

19 Q. Do you have a case law citation or a  
20 statute that you rely on for that statement?

21 A. Well, I think the Supreme Court decision  
22 that spawned this proceeding is an example of  
23 Democratic Central Committee v. Washington  
24 Metropolitan Transit Commission, a D.C. Circuit case  
25 that establishes the principle of reward follows risk



00786

1 and benefits follow burdens with respect to affiliate  
2 transactions, and the disposition of property by  
3 utilities at a gain support that conclusion, yes.

4 Q. So it's your testimony that this Commission  
5 could look at the decision of the Washington Supreme  
6 Court in the US West versus WUTC case and find a  
7 reference to the fact that the power the Commission  
8 was exercising was the power to pierce the corporate  
9 veil?

10 A. Yes.

11 Q. Okay.

12 A. I think, fairly, that's what the --

13 Q. And it's your testimony -- excuse me.

14 A. Excuse me. I'm finishing my answer. I  
15 think, fairly read, I think that's what this decision  
16 is saying.

17 Q. I'm handing you a copy of that decision,  
18 sir, and I'd like you to point to a specific  
19 reference to the phrase "piercing the corporate  
20 veil."

21 A. I didn't say that that phrase is in here.  
22 I said, fairly read, I believe that that's the import  
23 of this decision. It supports the imputation of  
24 revenues generated by an entity other than --  
25 generated in an entity, an affiliate of US West

00787

1 Communications, but not within US West  
2 Communications. I think that is substantively what  
3 this decision is authorizing.

4 Q. So the Commission can't find that phrase if  
5 it looks in the opinion of the Court; is that  
6 correct?

7 A. I'll take that subject to check. I don't  
8 believe it's there, but --

9 Q. So are you an expert in interpreting  
10 Supreme Court opinions, Dr. Selwyn?

11 A. I believe I am qualified in the context of  
12 policy matters relating to public utility regulation  
13 to offer that interpretation, yes.

14 Q. Is your expertise in interpreting Supreme  
15 Court opinions higher than that of the Commission?

16 JUDGE WALLIS: Mr. Owens, we don't want to  
17 get argumentative.

18 MR. OWENS: Well, Your Honor, one of the  
19 rules of evidence on expert testimony is that the  
20 expert opinion be of a kind that is likely to benefit  
21 the trier of fact. I'm testing this witness's  
22 testimony as to whether his opinion evidence has that  
23 qualification.

24 JUDGE WALLIS: And you're certainly  
25 entitled to do that, but I'm going to ask you to

00788

1 watch the form of the questions in which you do that  
2 and refrain from questions that are argumentative.

3 MR. OWENS: Your Honor, I'm not sure how I  
4 can address this issue if you find that question  
5 argumentative. I guess I'll just make an offer of  
6 proof that, if permitted to continue, the witness  
7 would say that he didn't have expertise in  
8 interpreting Supreme Court opinions that is greater  
9 than that of the Commission. I'm reading your  
10 statement to mean an objection that you're sustaining  
11 yourself to that question. Am I correct in that?  
12 I'm not trying to be argumentative or difficult, Your  
13 Honor, either with you or with the witness.

14 JUDGE WALLIS: Yes, and my concern is, in  
15 light of the schedule we have for today, that we  
16 proceed in an expeditious and a fair manner, and I  
17 would like to see that Counsel maintain the approach  
18 that will assist us in getting there in the best way  
19 possible to produce an adequate record for the  
20 Commission and for the parties to use.

21 MR. OWENS: Maybe I can ask it a slightly  
22 different way and see if you find this argumentative,  
23 Your Honor, meaning no disrespect at all.

24 Q. Do you have any evidence, Dr. Selwyn, that  
25 you have greater expertise in interpreting Supreme

00789

1 Court decisions than that of the Commission?

2 A. I am here in the rule of --

3 Q. Would you answer that yes or no, sir, and  
4 then respond with an explanation, if you have one?

5 A. I guess I don't understand the question,  
6 because I don't understand the comparison you're  
7 attempting to draw. The Commission, in this  
8 proceeding, is --

9 Q. Well, if you don't understand the question,  
10 let me rephrase it.

11 A. Excuse me, excuse me, excuse me. The  
12 Commission, in this proceeding --

13 JUDGE WALLIS: Dr. Selwyn, I'm going to --  
14 and Counsel, I'm going to ask that we have only one  
15 person talking at a time. And if, as the witness  
16 indicated, he does not understand the question, I  
17 would then ask Counsel to allow the witness to  
18 explain how or what there is about the question that  
19 the witness does not understand. That would allow  
20 Counsel to rephrase the question.

21 Dr. Selwyn?

22 THE WITNESS: Thank you. It is my  
23 understanding that one of the issues in this  
24 proceeding is whether or not the Supreme Court's  
25 decision -- and is referenced in particular to the

00790

1 matter of the treatment of compensation under the  
2 theory that a sale took place, how that is to be  
3 interpreted by this Commission. And I am here as an  
4 -- offering my expert recommendations to the  
5 Commission in the context of my knowledge and  
6 experience in regulatory policy as to how I believe  
7 the Court's interpretation is to be interpreted.

8           And I don't believe the Commission has  
9 spoken on that subject; therefore, I do not believe  
10 that I am offering an opinion that in some way is  
11 higher than or contradicts a prior position of this  
12 Commission. And in that context, I think that the  
13 premise of the question that was propounded to me  
14 appears to assume a role that is inconsistent with my  
15 understanding of my role in this proceeding.

16           Q. Let me say that you apparently  
17 misunderstood my question. Let me advise you that  
18 the rules of evidence require that an expert be  
19 allowed to testify as to matters of opinion on  
20 matters in which the opinion would be deemed to  
21 assist the trier of fact.

22           And with that in mind, is it your testimony  
23 that your interpretations of Supreme Court opinions  
24 provide some insight that the Commission would not  
25 have itself?

00791

1 A. Yes.

2 Q. And what's the basis of that?

3 A. The basis is the 30 years of experience in  
4 public utility regulation and, in particular, my  
5 understanding, as a general matter of the issues, the  
6 policy issues that are raised by the Supreme Court  
7 upon which this Commission is now being asked to  
8 rule.

9 Q. And that's a complete answer to my  
10 question?

11 A. I'll stand on that answer.

12 Q. Now, would you direct your attention to the  
13 Supreme Court opinion and find the place in that  
14 opinion where the Supreme Court specifically said  
15 that the transaction involved a sale?

16 A. I don't believe that was my testimony. Can  
17 I have the previous answer read back, please?

18 JUDGE WALLIS: Would the reporter please.

19 (Record read back.)

20 THE WITNESS: It may have been the previous  
21 answer. I believe, Mr. Owens, that what I was  
22 referring to there was the theory advanced by the  
23 Court, I believe for the first time, that the Company  
24 could arguably treat the transfer as a sale of the  
25 business in some manner. If you want me to try to

00792

1 find it, I will, but it may take some time.

2 Q. Let me just ask you to accept, subject to  
3 fact, that the Court did not use the term "sale" in  
4 referring to that transaction?

5 A. I thought that it did, but I'll --

6 MR. TRAUTMAN: Your Honor, I would object.  
7 The opinion speaks for itself.

8 MR. OWENS: Well, Your Honor --

9 JUDGE WALLIS: I'm going to overrule the  
10 objection, because of the nature of the questions and  
11 what they're seeking.

12 Q. Let me short-cut this. Whatever the  
13 opinion says, your understanding of it in making your  
14 recommendations to this Commission was that the Court  
15 did use the term "sale" in connection with this  
16 transaction; is that correct?

17 A. Sale or transfer with -- the reference --  
18 well, I don't remember. I mean, now that you're  
19 raising the issue, I thought the term sale was there,  
20 but perhaps it's not.

21 Q. But your recommendations were based on your  
22 understanding that it was there; correct?

23 A. My recommendation -- no, my recommendation  
24 is premised on the question of whether or not the  
25 transfer of the business, the Yellow Pages business,

00793

1 occurred versus a transfer of the physical assets  
2 associated with the conduct by USWC of Yellow Page  
3 operations prior to 19 -- prior to and including  
4 1983.

5 Q. So when you answered me a minute ago that  
6 you were competent to advise this Commission because  
7 of your understanding that the Supreme Court had  
8 indicated that the transaction could be treated on  
9 the theory that a sale took place in 1984, you no  
10 longer say that; is that correct?

11 MR. TRAUTMAN: Objection. I don't believe  
12 that's what the witness said.

13 MR. OWENS: Then I guess we are going to  
14 have to go back and ask that that answer be re-read.  
15 (Record read back.)

16 MR. OWENS: There was an objection pending,  
17 Your Honor. Are you going to rule on it?

18 JUDGE WALLIS: What's the objection?

19 MR. OWENS: I believe the objection was --

20 JUDGE WALLIS: I believe I did rule.

21 MR. OWENS: Oh, you did? I'm sorry. The  
22 objection was that I had mischaracterized the  
23 witness's testimony in my question. Does that  
24 objection stand after listening to the tape?

25 MR. TRAUTMAN: I'd like a ruling on the



00794

1 objection.

2 JUDGE WALLIS: I'm going to overrule the

3 objection.

4 THE WITNESS: Now I don't recall the

5 question.

6 Q. My question was, as to the answer that the  
7 court reporter just read you, where it said that your  
8 role was to inform this Commission on the basis that  
9 what the Commission or what the Court had provided  
10 was for treatment under the theory that a sale took  
11 place in 1984, and that you were competent to do  
12 that, are you no longer saying that that's your  
13 testimony?

14 A. Well, let me -- no, I'm not -- I am not no  
15 longer saying that that's my testimony. Let me refer  
16 you, if I may, to page 102 of the Supreme Court  
17 decision, a little below halfway down the page,  
18 sentence beginning, "We note that." I'll read it.  
19 "We note that, under the Commission's order, the  
20 imputation is not necessarily permanent and the  
21 Commission's prior orders show that when the Company  
22 has shown it has received fair compensation from its  
23 affiliate for the value of the asset it transferred,  
24 imputation may cease."

25 That's the particular sentence that I am

00795

1 focusing on, and my testimony goes to the question  
2 specifically of whether or not the -- whether or not  
3 the Company has shown it has received fair  
4 compensation from its affiliate for the value of the  
5 assets it transferred.

6 Q. Thank you. It's true, isn't it, that  
7 courts resolve disputes about who owns property?

8 A. Courts have been known to do that, yes.

9 Q. And courts use standards in making those  
10 decisions, don't they?

11 A. I would assume so.

12 Q. Did you use those standards in deciding who  
13 owns the various items of property that you testify  
14 on?

15 A. I am not offering testimony --

16 Q. Sir, can you answer yes or no?

17 MR. TRAUTMAN: I believe the witness is  
18 attempting to provide an answer.

19 JUDGE WALLIS: Let's ask the witness, in  
20 response to a yes or no question, if he could start  
21 off, if he is able to respond yes or no, with that  
22 response. If he's not able to respond yes or no,  
23 then that also is an acceptable response.

24 THE WITNESS: I'm not able to respond yes  
25 or no, and I think the question perhaps misconstrues

00796

1 the testimony that I'm offering. The property at  
2 issue is, in all cases, owned by US West Corporation  
3 and its various affiliates.

4 For the purposes of regulatory policy, and  
5 that's the issue that I am testifying on and the  
6 subject matter upon which I hold myself out as an  
7 expert, the relevant question is not so much legal  
8 title within the context of the transactions that are  
9 among affiliates and not at arm's length and for  
10 which no bill of sale may necessarily exist or other  
11 written evidence recording such transfers, but rather  
12 how this Commission, acting in its capacity as a  
13 policy-making body and as an interpreter of relevant  
14 statutes, is to construe this transaction for  
15 purposes of regulation.

16 And I am not holding myself out as an  
17 expert on whether or not -- which affiliate may or  
18 may not have legal title. I'm holding myself out as  
19 an expert on the appropriate regulatory treatment of  
20 this transaction and payments, imputations, and other  
21 matters pertaining to this transaction.

22 Q. So, for example, when, at page 22 of your  
23 surrebuttal testimony, at line 16, you state, "USWD  
24 has never owned PNB's Yellow Pages business," do I  
25 understand correctly, from the answer you just gave,

00797

1 that you did not use, in rendering that opinion, any  
2 standards that the courts in the state of Washington  
3 would use to determine who owned that business?

4 A. The question -- the statement is made in  
5 the context of --

6 MR. OWENS: Well, Your Honor --

7 THE WITNESS: -- regulatory policy, as I  
8 have stated.

9 MR. OWENS: Your Honor, can I ask for a yes  
10 or no answer?

11 JUDGE WALLIS: Dr. Selwyn?

12 THE WITNESS: The answer's no, the  
13 statement is made in the context of my previous  
14 answer, in terms of how this is to be treated for  
15 purposes of regulatory policy. It is not a statement  
16 offering a legal opinion on title.

17 Q. So regulatory policy, as you would have  
18 this Commission interpret it, is, as it relates to  
19 the ownership of the directory business, independent  
20 of any legal statements relating to that ownership;  
21 isn't that correct?

22 A. It may be informed by such standards, but  
23 it's not constrained by them.

24 Q. But whatever role those standards have, you  
25 haven't considered them; would that be fair?

00798

1 A. My discussion of --

2 MR. OWENS: Can that be answered yes or no,  
3 Your Honor, and then explained?

4 JUDGE WALLIS: Dr. Selwyn?

5 THE WITNESS: I have considered those --  
6 such standards as I understand them to exist in the  
7 context of regulatory policy, as it pertains to this  
8 issue. I've already stated that I have not focused  
9 my testimony and do not offer a legal opinion on  
10 matters of title.

11 Q. What standards relating to ownership did  
12 you consider, as you discussed in that previous  
13 answer?

14 A. Okay. The standards I'm focusing on are  
15 those that relate specifically to the principle set  
16 forth in Democratic Central Committee v. Washington  
17 Metropolitan Transit Commission and other associated  
18 principles of regulation in which the party at risk  
19 and the party who puts up the -- who ultimately bears  
20 the responsibility for the costs of operating the  
21 public utility has the entitlement to a gain in value  
22 on assets acquired or otherwise supported by that  
23 party. In this instance, the party is the ratepayer.  
24 Prior to 19 --

25 MR. OWENS: Your Honor, I don't believe

00799

1 this is responsive at all.

2 MR. TRAUTMAN: Your Honor, it is very  
3 responsive. He asked what Dr. Selwyn referred to.  
4 He's giving an answer.

5 MR. OWENS: No, I asked him what standards  
6 of ownership.

7 MR. TRAUTMAN: He is answering the  
8 question.

9 JUDGE WALLIS: I believe he's answering the  
10 question.

11 THE WITNESS: Thank you. Prior to 1983,  
12 the Pacific Northwest Bell was subject to rate of  
13 return -- a former regulation known as rate of return  
14 regulation, in which it had an entitlement to set  
15 rates sufficient to recover its investment to earn a  
16 reasonable return thereon and to be reimbursed for  
17 out-of-pocket expenses. Prior to 1983, revenues from  
18 the Yellow Pages activity formed part of the revenue  
19 requirement and were treated, for purposes of  
20 regulation, as an integral part of the Company's  
21 operations and were used to offset a portion of its  
22 revenue requirement that otherwise might have come  
23 from other services furnished by the Company. The --

24 JUDGE WALLIS: Dr. Selwyn --

25 THE WITNESS: Yes.

00800

1                   JUDGE WALLIS: Without raising my own  
2 objection to your testimony, I do believe that what  
3 you're going into now is beyond the scope of Mr.  
4 Owens' question, and I think that the objection he  
5 raised earlier is pertinent, and I'm going ask that  
6 you either focus on the question that was asked, that  
7 is, the standards of ownership, or we'll go back for  
8 another question.

9                   THE WITNESS: Well, I'm trying to do  
10 exactly that, Your Honor. What I mean by standards  
11 of ownership are the standards that are associated  
12 with the manner in which gain, entitlement to the  
13 gain on the value of assets, the utility of  
14 regulatory assets, is treated.

15                   And again, for purposes of -- I mean, here  
16 you have precisely the point that I think we're all  
17 sort of trying to talk around here. There's no  
18 question but that ownership of the property of a  
19 regulated utility is in the utility, is vested in the  
20 utility. Nevertheless, for purposes of regulatory  
21 policy, the regulator has treated ownership -- and I  
22 believe the Supreme Court decision to which we were  
23 just referring supports this view -- has treated the  
24 ratepayer as having an economic interest in that  
25 property that is, in many respects, analogous to

00801

1 ownership in that the ratepayer is the entity to  
2 which gains in the value of that property inure.

3           And I'm attempting here to explain -- and  
4 we can go around this for another hour. I'm not -- I  
5 never suggested that ratepayers have title to this  
6 property. I am suggesting that regulatory policy,  
7 the standard I am using is the standard that has long  
8 been practiced in public utility regulation with  
9 respect to the economic interest of ratepayers in  
10 assets of the utility to which ratepayers were the  
11 primary -- provided the primary financial support and  
12 bore the primary risk.

13           JUDGE WALLIS: Does that conclude your  
14 answer?

15           THE WITNESS: Yes.

16           MR. OWENS: Your Honor, I don't believe  
17 that answer was responsive, and so I'm going to ask  
18 the same question and ask the witness to consider it  
19 carefully.

20           Q. With regard to the statement that you make  
21 on page 22 of your surrebuttal testimony at line 16,  
22 "USWD has never owned PNB's Yellow Pages business,"  
23 what standards did you consider that were other than  
24 as applicable through legal decisions in the state of  
25 Washington?



00802

1 CHAIRWOMAN SHOWALTER: Counsel, what  
2 exhibit are you referring to?

3 MR. OWENS: I'm sorry, Chairwoman, it would  
4 be 806-TC.

5 CHAIRWOMAN SHOWALTER: Page 22?

6 MR. OWENS: Twenty-two, yes.

7 THE WITNESS: I think I would -- I still  
8 would stand generally on my previous answer. I will  
9 supplement my previous answer by also pointing out  
10 that the specific accounting adjustments that were  
11 made with respect to the transfer of the physical  
12 assets to USWD by Pacific Northwest Bell reflected  
13 only the book value of those assets and did not  
14 reflect the going business value of the Yellow Pages  
15 operations that Pacific Northwest Bell had -- had  
16 owned, in what I believe would be the legal sense,  
17 certainly prior to that event.

18 So if one further tracks the trail, the  
19 accounting trailing of this transaction, that would  
20 also support this statement. USWD did not exist  
21 prior to the formation of US West on January 1st,  
22 1984, and all that was transferred to USWD, as  
23 recorded on the books of Pacific Northwest Bell, were  
24 physical assets.

25 Q. So that's a complete answer to my question?

00803

1 A. I'm trying. We can keep at it, if you  
2 want.

3 Q. You swore to tell the whole truth, Dr.  
4 Selwyn. I'm just asking if this is complete, that I  
5 don't need to ask another question?

6 A. Well, the subject is also discussed more  
7 generally in my testimony, and I would -- both my  
8 responsive testimony and my surrebuttal testimony.  
9 There are other reasons set forth. I mean, we  
10 probably could go through them, but I believe that  
11 summarizes my position, yes.

12 Q. Other than Democratic Central Committee,  
13 what authorities do you rely on for the statement  
14 that USWD has never owned PNB's Yellow Pages  
15 business?

16 A. The basis for that statement is discussed  
17 at considerable length in my testimony.

18 Q. So you're not able to cite me to a  
19 particular authority?

20 A. Beyond that which is discussed in my  
21 testimony, no.

22 Q. It's true, isn't it, that Democratic  
23 Central Committee did not involve a transfer from a  
24 regulated company to an affiliate?

25 A. No, it involved the sale of an asset of a

00804

1 regulated company.

2 Q. You testified a minute ago that you  
3 believed that, prior to 1983, PNB had an entitlement  
4 to set rates to recover its investment, to earn a  
5 reasonable return, and to recover its operating  
6 expenses. Is that really your testimony?

7 A. Can I have the question read back, please?  
8 I don't know that that is the exact words that I  
9 used, and you just asked me to confirm that it's the  
10 exact words that I used, and the record will speak  
11 for itself. I'm not sure where you're going. I'm  
12 not going to swear to you that the precise words you  
13 just used now exactly match, word-for-word, the words  
14 I used a few minutes ago.

15 Q. Maybe we can ask the court reporter to read  
16 that answer.

17 JUDGE WALLIS: The question?

18 MR. OWENS: No, the answer that I attempted  
19 to quote from. It was a couple back.

20 THE WITNESS: It was part of a very lengthy  
21 answer.

22 (Record read back.)

23 Q. That's the part I wanted to ask the witness  
24 about. That is your testimony?

25 A. Yes.

00805

1 Q. After 30 years in regulation?

2 A. That's my testimony, sir.

3 Q. And you're sure about that?

4 A. Oh, I am absolutely sure about that.

5 Q. Isn't it true that, under rate of return  
6 regulation, Dr. Selwyn, that the regulated company  
7 has its rates that give it a reasonable opportunity  
8 to do the things that you said?

9 A. That's what I said. I said it was entitled  
10 to set rates sufficient to.

11 Q. Is it possible that rates --

12 A. I would not disagree with the phrase  
13 "reasonable opportunity," but that's what I meant  
14 when I -- I didn't say, and I was very careful not to  
15 say that it was entitled to the money precisely. I  
16 said it had an entitlement to set rates sufficient  
17 to.

18 Q. It's true that you're not an expert on  
19 copyright or trademark law; is that correct?

20 A. That's true.

21 Q. And you've never been employed in a Yellow  
22 Pages publishing operation?

23 A. That's true.

24 Q. And you've never been employed in any  
25 publishing operation?

00806

1 A. Well, our firm, in fact, was engaged in the  
2 publishing business for a time at a --

3 Q. What did you publish?

4 A. We published tariff analyses and rate and  
5 tariff manuals and summaries.

6 Q. Were these original --

7 A. We also published newsletters.

8 Q. Were these original works?

9 A. Yes, they were.

10 Q. Did you copyright them?

11 A. Yes, we did.

12 Q. Did you believe you had the ownership in  
13 the property right represented by that copyright?

14 A. As to the organization and any original  
15 text we did. Obviously, to the extent that we were  
16 including public record information, we did not,  
17 except as to the organization.

18 Q. You've never testified before on trademark  
19 licensing; is that correct?

20 A. No.

21 Q. It's not correct?

22 A. It's correct I've never testified before on  
23 trademark licensing.

24 Q. Do you know what treatises on trademark law  
25 are accepted by authoritative experts in the field?

00807

1 A. No.

2 Q. Would you agree that the going business  
3 value of a business is property?

4 A. Would I agree that the going business value  
5 is property? I'm not sure I follow the question.  
6 You mean, would I agree that a business valued at its  
7 going business value is property?

8 Q. Let me rephrase the question. You could  
9 estimate a number of dollars that would equate to the  
10 going business value of the business; is that  
11 correct?

12 A. Yes.

13 Q. And would that number of dollars translate  
14 or be equivalent to the property interest of the  
15 owners of that business?

16 A. It would be a reflection of the property  
17 interest. Wouldn't necessarily translate into it.

18 Q. In the connection with the Yellow Pages  
19 business in the state of Washington, it's your  
20 contention that that amount of dollars, whatever it  
21 was in 1984, minus the value of the tangible assets  
22 and cash that were transferred in the transaction  
23 approved in FR-83-159 remained with PNB; is that  
24 correct?

25 A. It's my contention that the business

00808

1 remained with PNB and the property right in the going  
2 business remained with PNB because -- and precisely  
3 because there was no compensation paid to PNB by the  
4 affiliate reflective of that going business value;  
5 that all that was reflected on the books of PNB was  
6 an adjustment for certain tangible assets.

7 Q. So was that a yes to my question?

8 A. I don't recall the precise form of the  
9 question.

10 Q. I asked you whether you contended that the  
11 dollar value represented by the going business value  
12 of the directory business in 1984, minus the value of  
13 the tangible assets and cash that transferred to US  
14 West Direct remained with PNB?

15 A. The business remained. I can't answer that  
16 yes or no. The answer I gave is a clarification of  
17 my understanding. The business remained with PNB, as  
18 reflected -- which can be reflected in the dollar  
19 value, yes. In that sense, the dollar value remains  
20 with PNB.

21 JUDGE WALLIS: I wonder if we could ask for  
22 a clarification of that, Dr. Selwyn? Does that mean  
23 that in a legal sense or regulatory sense or how,  
24 when you use the term "remains?"

25 THE WITNESS: Well, I'll be very careful

00809

1 not to offer a legal opinion. In a regulatory sense,  
2 prior to that transaction, the value of the Yellow  
3 Page business reflected in the first to the market  
4 advantage, the accumulated brand identification, the  
5 relationship with customers, all of the trappings  
6 associated with that business, which value can be  
7 determined and is determinable through a process  
8 analogous to, as a general matter, the type of  
9 process that Mr. Golden went through, that never left  
10 PNB.

11 And the reason it didn't leave PNB is  
12 because PNB was never compensated for that value.  
13 And corroborating that is that the physical  
14 accounting transaction reflects only tangible assets.

15 Q. Dr. Selwyn, did those items that you  
16 mentioned -- first in the market advantage, brand  
17 identification, relationships with customers -- were  
18 those reflected on the books of PNB in any way?

19 A. No.

20 Q. Under regulatory accounting, should they  
21 have been?

22 A. No.

23 Q. So you're not saying that PNB did anything  
24 wrong or failed to disclose anything about the  
25 transaction by not having done something to



00810

1 effectuate what you considered would have been  
2 necessary to transfer those items; is that correct?

3 A. No, I could not agree with that.

4 Q. What did you think PNB did wrong?

5 A. Well, PNB should have and could have made  
6 -- engaged Mr. Golden or his counterpart to conduct a  
7 business valuation study, and could have and should  
8 have, at the time of the transaction, informed this  
9 Commission that, based upon that valuation, this  
10 business activity of PNB had a present value, had a  
11 going business value of whatever it was, and  
12 reflected that transfer of value, if in fact that is  
13 what was to have happened, through an appropriate  
14 accounting adjustment, just as if this were an arm's  
15 length sale to a third party who would have paid, in  
16 cash, an amount that presumably would have reflected  
17 that going business value.

18 Q. So you say that PNB violated some  
19 affirmative requirement by not doing what you say it  
20 should have done; is that correct?

21 A. Well, I won't say that it violated a  
22 requirement in the context of what it actually did,  
23 but if its intent was to have transferred the  
24 business, then that is what it should have done. And  
25 its failure to have done that would represent, in my

00811

1 view, a misrepresentation to the Commission. In  
2 point of fact, and as the Supreme Court, I believe,  
3 determined, that what was transferred were the  
4 physical assets and the treatment through publishing  
5 fees and subsequent imputation was simply to operate  
6 as if that's all that took place and that the  
7 business activity continued to exist within PNB.

8           So it was PNB's choice not to effect on its  
9 books the equivalent of an arm's length transaction  
10 based on a going business value. But having made  
11 that choice, the Company has to live with it.

12       Q.    Maybe I didn't make my question clear. Is  
13 it your testimony, yes or no, that there was some  
14 regulation that required PNB to do what you said it  
15 should have done by way of conducting a business  
16 valuation study and make accounting entries as if  
17 there had been a cash sale for the amount of the  
18 value created or estimated by that study?

19           MR. TRAUTMAN:  Objection.  Asked and  
20 answered.

21           MR. OWENS:  It is not asked and answered,  
22 Your Honor.

23           JUDGE WALLIS:  The witness may respond.

24           THE WITNESS:  It is my view that if --

25           JUDGE WALLIS:  I'm going to ask the witness

00812

1 -- the question does call for a yes or no answer. If  
2 you wish, you can refer back to the response and  
3 clarification that you previously made, but I believe  
4 Mr. Owens is entitled to a yes or no answer to his  
5 question.

6 THE WITNESS: Your Honor, the difficulty  
7 I'm having is that the question presupposes a  
8 particular scenario, but doesn't articulate that  
9 scenario. And I can't answer the question without  
10 articulating the scenario. There are two alternate  
11 scenarios before us. Scenario one is where the  
12 business is transferred in its entirety and the  
13 Company makes only a book value adjustment. Scenario  
14 two is that only the physical tangible assets are  
15 transferred.

16 Under scenario two, the Company had no  
17 obligation to perform a business valuation study and  
18 make an accounting entry. Under scenario one, in my  
19 opinion, it did. And what is missing from Mr. Owens'  
20 question is to which of these scenarios he's  
21 referring, and that's the difficulty I'm having in  
22 giving him a yes/no response.

23 MR. OWENS: Your Honor, I thought my  
24 question was very clear. It referred specifically to  
25 Dr. Selwyn's testimony that PNB should have engaged

00813

1 someone like Mr. Golden to do a business valuation  
2 study, should have informed the Commission, based on  
3 the valuation, of the present value and reflected the  
4 transfer of accounting entries as if there was an  
5 arm's length sale.

6 I'm asking him to tell me if, yes or no, if  
7 he claims there is some regulation, statute, or  
8 applicable legal decision that required PNB to do  
9 that.

10 JUDGE WALLIS: Dr. Selwyn, can you respond  
11 to that question?

12 THE WITNESS: Again, I will -- with all  
13 respect, Mr. Owens has mischaracterized my prior  
14 testimony, because my prior testimony is also couched  
15 in the same issue of which of these scenarios the  
16 Company -- his is asking me to accept, and he doesn't  
17 specify that in his question. So I'm going to stand  
18 on my previous answer. I can't add anything more,  
19 unless he clarifies his question.

20 Q. Well, I guess we would need to ask to  
21 re-read the answer. I'll ask a different question.  
22 Is it your testimony that there was a regulation  
23 that, in the event it were the second alternative;  
24 that is, that PNB intended to transfer the business,  
25 as opposed to merely the physical assets and cash,

00814

1 that PNB violated an affirmative, specific regulation  
2 by not doing the things you said by way of engaging  
3 someone like Mr. Golden to do a business valuation  
4 study, inform the Commission of the outcome of that,  
5 and made accounting entries based on the assumption  
6 that there had then been an arm's length sale at that  
7 valuation?

8 A. Yes, that's my testimony.

9 Q. And what specific regulation is it?

10 A. It is the same principle that we were  
11 discussing.

12 Q. No, sir, no, sir. I'm asking you for a  
13 regulation of this Commission, in the Washington  
14 Administrative Code, or a statute in the Revised Code  
15 of Washington?

16 A. I'll have to defer to Counsel to respond to  
17 that. I'm not able to.

18 Q. So the answer is you don't know.

19 A. Is that a question?

20 Q. Yes.

21 A. I said I'll have to defer to Counsel to  
22 respond to that.

23 Q. I'm asking you, the answer is you don't  
24 know?

25 A. I can't cite a specific regulation. I have

00815

1 explained the basis for my testimony and for my  
2 opinion as best I can.

3 Q. Isn't it true that the divestiture court,  
4 in response to claims specifically by the states,  
5 said that as to transfers between commonly-owned  
6 corporate entities, it was a matter of  
7 well-understood corporate law that no compensation  
8 for such transfers was required?

9 A. You're talking about Judge Green?

10 Q. Yes.

11 A. I believe there was some language to that  
12 effect. That's, of course, not relevant to the  
13 subject before this Commission. I don't believe  
14 Judge Green was speaking to the regulatory --

15 Q. Excuse me. All I asked you was whether --  
16 was it true that Judge Green said that? Would you  
17 agree that he did say that?

18 A. I believe he did, or words to that effect,  
19 yes.

20 Q. And he specifically refused to require such  
21 intercorporate compensation payments in connection  
22 with the reorganization that accompanied the  
23 divestiture of the bell operating companies and the  
24 creation of AT&T as an exclusively long distance  
25 company; isn't that true?

00816

1           A.     That is my recollection.  And the basic  
2 theory was that both would continue to be regulated  
3 in the same manner that they were prior to the  
4 divestiture, and I believe there is language to that  
5 effect.

6           MR. OWENS:  Excuse me, Your Honor.  This is  
7 going way beyond my question.

8           MR. TRAUTMAN:  I believe that the witness  
9 is allowed to explain his answer so that he can give  
10 a complete answer to the question.

11           JUDGE WALLIS:  What I'm going to suggest is  
12 that the witness listen to the question and respond  
13 to the question.  And if the witness is not able, by  
14 saying yes or no, to give a response, then a limited  
15 explanation will be allowed.  But I think it is  
16 proper to defer to redirect those areas in which a  
17 lengthy explanation or a -- well, I would like to see  
18 us defer to redirect some of the explanatory material  
19 that the witness is engaging in now, and I'd like to  
20 limit the responses on cross to the questions that  
21 are asked.

22           Let's take a morning recess at this time  
23 and be back in about 15 minutes.

24           (Recess taken.)

25           JUDGE WALLIS:  All right.  Let's be back on

00817

1 the record, please, following our morning recess.  
2 Mr. Owens.

3 MR. OWENS: Thank you, Your Honor.

4 Q. Just to finish up with what we had before  
5 the break, Dr. Selwyn, you said you'd defer to  
6 counsel for citation of any regulations or statutes,  
7 but it's clear, I guess, from that, that you aren't  
8 claiming that PNB violated a specific statute or  
9 regulation in connection with the reorganization that  
10 resulted in US West Direct publishing directories in  
11 PNB's exchanges in Washington; is that correct?

12 A. I'm not offering a legal opinion.

13 Q. Well, can you answer yes or no? Are you  
14 claiming that US West or PNB violated a regulation?

15 JUDGE WALLIS: Mr. Owens, haven't we been  
16 down this trail before?

17 MR. OWENS: Well, the other trail, I was  
18 asking him if there was a regulation. I'm just  
19 asking him if he's making any contention to that  
20 effect. I would just like the record to be clear.  
21 I'll move on, Your Honor.

22 THE WITNESS: I can --

23 Q. It's correct, isn't it, Dr. Selwyn, that  
24 you don't have any personal knowledge of the events  
25 of 1983 and 1984 surrounding the reorganization of



00818

1 the companies that resulted in directories being  
2 published by US West Direct for PNB's exchanges in  
3 Washington?

4 A. If, by personal knowledge, you mean was I  
5 physically present when any of this was happening and  
6 participated in the transaction, no.

7 Q. You responded to US West Data Request 40,  
8 that's been marked as Exhibit 815, that asked for the  
9 investigation that you conducted into the intent of  
10 the parties, as you discussed that at page 28 of  
11 Exhibit 801; is that correct?

12 A. Yes.

13 Q. I'd offer -- excuse me. And is Exhibit 815  
14 your response?

15 A. Yes.

16 MR. OWENS: I'd offer 815.

17 MR. TRAUTMAN: No objection.

18 JUDGE WALLIS: 815 is received.

19 Q. Now, do I understand that, by the way you  
20 answered this response, you did not interview any of  
21 the participants?

22 A. Well, I did not interview any of the  
23 participants.

24 Q. And you did not review any of the WUTC's  
25 briefs to the Superior Court or the Supreme Court in

00819

1 the appeal of US West's UT-950200 rate case decision;  
2 is that correct?

3 A. I believe that's correct.

4 MR. OWENS: May I approach the witness?

5 JUDGE WALLIS: In order to?

6 MR. OWENS: To show him an exhibit in the  
7 case, Your Honor.

8 JUDGE WALLIS: Yes.

9 MR. OWENS: Thank you. In this case.

10 JUDGE WALLIS: Can you identify what it is?

11 MR. OWENS: I'm going to as soon as I get  
12 back to the mic. Yes, this is a portion of Exhibit  
13 103, which was the attachment to Mr. Inouye's direct  
14 testimony that contained the excerpts from various  
15 briefs that the parties had filed. This is  
16 specifically pages 20 and 21 of this Commission's  
17 brief to the Supreme Court that I've handed to Dr.  
18 Selwyn. And it states there, beginning at line --

19 JUDGE WALLIS: Wait till we find it. Mr.  
20 Owens, could you hang on for just a sec, till we're  
21 all on the same page with you?

22 MR. OWENS: Certainly, Your Honor. Thank  
23 you.

24 CHAIRWOMAN SHOWALTER: The problem is this  
25 particular exhibit doesn't have its own pagination,

00820

1 so you have to --

2 MR. OWENS: I know.

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

5 (Discussion off the record.)

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

7 Q. It's correct, isn't it, that there at pages  
8 20 and 21, beginning at line 13, the Commission told  
9 the Superior Court that, By this measure, US --

10 A. I'm sorry, pages 20 --

11 Q. Well, the sentence begins at the bottom of  
12 the text on page 20, or is it 21? I'm sorry.

13 A. I had it open to 21.

14 Q. Twenty-one, I'm sorry, 21 and 22?

15 A. By this measure, okay.

16 Q. It says, "By this measure, USWC has clearly  
17 provided unreasonable compensation to USWD. The  
18 contractual transaction between the two entities is  
19 in no way a transfer of equivalent value. One entity  
20 receives an entire enterprise, the other a grossly  
21 inadequate publishing fee and, in the test year,  
22 virtually nothing." Is that a fair quotation?

23 A. Yes.

24 Q. And you understand that the entity that the  
25 Commission, in its brief, was referring to as

00821

1 receiving the entire enterprise was US West Direct;  
2 is that true?

3 A. I'm actually a little confused by the  
4 sentence, because what it actually says at the  
5 beginning of line ten is, "USWC has clearly provided  
6 unreasonable compensation to USWD," and I would have  
7 thought the flow of compensation that was  
8 unreasonable was in the other direction. The  
9 compensation should have been going from USWD back to  
10 USWC. So I guess I'm having difficulty understanding  
11 the context of this.

12 Q. So you don't understand that that was part  
13 of the theory that this Commission used to support  
14 its determination about imputation of revenues?

15 A. I understand the balance of it. It's that  
16 first sentence that I'm having difficulty with.

17 Q. All right. Passing the first sentence,  
18 then, do you agree that I've correctly quoted what  
19 the Commission said?

20 A. I agree that this is the Commission's --  
21 this is the Commission's brief?

22 Q. Yes.

23 A. Okay. I agree you've read it accurately,  
24 at least appears to be accurately.

25 Q. And you understand that the entity that the

00822

1 Commission referred to in that quotation as receiving  
2 the entire enterprise was US West Direct? Did you  
3 understand that?

4 A. It would appear that that's the case, yes.

5 Q. And you understand the word "enterprise,"  
6 as the Commission used it, to mean the same thing as  
7 business?

8 A. I would assume so.

9 Q. And you would agree that the enterprise the  
10 Commission was talking about was the directory  
11 publishing business; correct?

12 A. Again, I mean, you show me one paragraph  
13 out of context. I will take that subject to check.  
14 It would make sense that that's what they're talking  
15 about, but I would have to read this in context.

16 Q. Now, your response that's been -- I'll take  
17 that back now, I guess. Get it out of your way.  
18 Exhibit 815 says that you found no evidence that a  
19 sale of USWC's directory publishing operations  
20 occurred in 1984. And I think you earlier said that  
21 imputation is necessary because there was not  
22 compensation for the intangibles. Is that -- are  
23 those two elements related?

24 A. They're related.

25 Q. So if there had been, in 1984, fair

00823

1 compensation received for the value of what you  
2 considered to be the intangibles, as well as the  
3 tangible assets, would your testimony be that a sale  
4 did occur?

5 A. If, by intangibles -- I meant by  
6 intangibles the entire enterprise, other -- in excess  
7 of its tangible assets, just to make that clear. And  
8 if there were compensation that was established prior  
9 to the transfer that reflected the business  
10 enterprise value of the Yellow Pages operation that  
11 was being transferred, then I would agree that, in  
12 that circumstance, it could be construed that a sale  
13 took place for purposes of regulatory policy.

14 JUDGE WALLIS: Excuse me just a moment.  
15 Let's be off the record.

16 (Discussion off the record.)

17 JUDGE WALLIS: Mr. Owens.

18 MR. OWENS: Thank you, Your Honor.

19 Q. So in that answer that you just gave, you  
20 said if compensation were established prior to the  
21 sale, and it was --

22 A. I believe I said prior to the transfer.

23 Q. Thank you for the correction. If  
24 compensation were established, in amount, prior to  
25 the transfer, and it was adequate an amount to

00824

1 constitute fair compensation for the entire business  
2 enterprise, you would conclude that a sale occurred;  
3 correct?

4 A. Yeah.

5 Q. Now, does that require that any of those  
6 events be memorialized in some kind of writing?

7 A. Yes.

8 Q. What principle of regulatory policy do you  
9 rely on to say that those things had to be  
10 memorialized in a writing in order that they be a  
11 sale?

12 A. Well, the obvious principle of regulatory  
13 policy is that the compensation would have had to  
14 have been reported -- recorded on the books of the  
15 regulated entity, Pacific Northwest Bell. And even  
16 if there were no other writing memorializing the  
17 transaction among the two entities, the nature and  
18 amount of the other compensation that purported to be  
19 equivalent to business enterprise value would have  
20 had to have been recorded in accordance with the  
21 treatment of such -- of affiliate transactions, and  
22 no such recording took place.

23 Q. What principle of regulation do you rely on  
24 to assert that the recording would have to take place  
25 before the transfer?

00825

1           A.    I rely on several.  First, the basic  
2 principle that the gain in the value is to flow to  
3 the ratepayer requires that that gain be recorded on  
4 the books of the regulated entity and concurrently  
5 with the transfer of the asset.  And the asset I'm  
6 speaking of here is the business, as distinct from  
7 the tangible assets.

8           Secondly, with respect to the issue of  
9 risk, in order for that transaction to have validity  
10 with respect to the concurrent shifting of the  
11 business risk of the transferred enterprise from the  
12 regulated entity to the nonregulated affiliate, the  
13 amount of that transaction would have had to have  
14 been concurrently determined and recorded.  Failing  
15 to do that would continue to impose upon the  
16 regulated entity and its ratepayers the risks  
17 associated with the uncertainty of knowing how or  
18 when or if that value would ever be established.

19           So in my view, the principles that I've  
20 just explained would require simultaneity in both the  
21 recording of the transfer and the determination of  
22 its value.

23           Q.    I'll take those one at a time.  Are you  
24 saying it's impossible that an after-the-fact  
25 accounting entry couldn't properly account for the



00826

1 gain to the ratepayers?

2 A. Well, obviously it's going to depend upon  
3 the span of time involved. If we're talking about a  
4 difference of a few days, that's one thing. If we're  
5 talking about a difference of 15 years, that's  
6 different.

7 Q. Well --

8 A. I think that the time span is entirely  
9 relevant.

10 Q. Well, excuse me. I need to ask for a yes  
11 or no answer. Are you saying it's impossible that an  
12 after-the-fact recording could account properly for  
13 the gain to the ratepayers?

14 A. I can't answer that question based on the  
15 facts included in the question, because I don't know  
16 what the time frame, after-the-fact, you mean to  
17 imply.

18 Q. If it's one day after the fact, could the  
19 after-the-fact recording properly account for the  
20 ratepayer -- or account to the ratepayers for the  
21 gain?

22 A. Provided that the amount had been agreed to  
23 and established prior to the actual event, then the  
24 after-the-fact recording, after one day, would be  
25 adequate. It would be effectively simultaneous.

00827

1 Q. So that's a new element, that the amount  
2 agreed to had to be before the transfer. Are you  
3 saying it's impossible that an after-the-fact  
4 determination of value couldn't properly quantify the  
5 gain for the ratepayers' benefit?

6 A. That's what I'm saying.

7 Q. And what regulatory principle do you rely  
8 on for that?

9 A. I'm relying on an economic principle. The  
10 economic principle is that the sale transaction  
11 requires an exchange of value between the seller and  
12 the buyer, and you don't enter into a sale  
13 transaction where one party agrees to convey property  
14 to the other without knowledge of what that first  
15 party is getting in return. I don't think that  
16 constitutes a bona fide sale, because there's no  
17 consideration flowing in the opposite direction.

18 Q. Oh, so is consideration an economic term  
19 now, Dr. Selwyn, or is it a legal term?

20 A. It's both an economic and a legal term.

21 Q. Isn't it true that consideration to support  
22 an obligation can be of any value, even as small as  
23 that of a peppercorn?

24 A. Typically, that's correct, provided it is  
25 established in advance.

00828

1 Q. Mr. Golden testified that it's commonly the  
2 case that the terms of a sale, including the price,  
3 can be adjusted following the closing date. Are you  
4 disputing that testimony?

5 A. If the purchase and sale agreement provides  
6 for such adjustment, that certainly can happen. But  
7 typically, the basis for such an adjustment would be  
8 established in the purchase and sale documentation,  
9 which would be executed prior to the closing.

10 Q. Okay. Now, the other element that you  
11 identified that had to be -- or that was the reason  
12 why the transaction had to be recorded before the  
13 transfer was, as I wrote it down, related to the  
14 shifting of risk between the seller and the buyer.

15 Is it your testimony that it's impossible  
16 for a proper accounting relating to an after-the-fact  
17 recording to account for and compensate whichever  
18 party needs compensating for the shifting of risk  
19 that may be delayed by a delayed recording?

20 A. There are degrees of impossibility, and  
21 they relate, in this instance, to the time frame  
22 involved. So if your question is of a general  
23 nature, without defining exactly what after the fact  
24 means, I would have to testify that, without that  
25 definition, I can't answer the question.

00829

1 Q. Okay. If it's one day after the fact,  
2 could a proper accounting compensate whoever needed  
3 to be compensated for the delay in ascertaining and  
4 compensating for shifting of risk?

5 A. Provided that the parties, prior to the  
6 transaction, have agreed upon the basis upon which  
7 that valuation and accounting will be carried out.  
8 If no such agreement exists, then it would be  
9 impossible.

10 Q. Is it possible that the parties could agree  
11 upon that topic after the fact?

12 A. No.

13 Q. It's not possible?

14 A. Not to satisfy the -- that would not occur  
15 in an arm's length transaction. And the economic  
16 standard that I'm using here is the standard that  
17 would apply in an arm's length transaction.

18 Q. So how many arm's length transactions have  
19 you consulted on to draw that conclusion?

20 A. Well, I engage in arm's length transactions  
21 quite frequently, probably multiple times a day, and  
22 I'm basing my answer, I think, on a general  
23 understanding that in an arm's length transaction  
24 between a willing buyer and a willing seller, both  
25 with reasonable knowledge and neither with compulsion

00830

1 to buy or sell, under any compulsion to buy or sell,  
2 would, at the same time that requirement of  
3 reasonable knowledge, would presuppose that the buyer  
4 knows what he is buying and the seller knows what he  
5 is receiving in return.

6 Q. So you engage in multiple times a day in  
7 buying and selling multi-billion-dollar businesses?

8 A. No, the transaction might involve, you  
9 know, buying a Coke out of a Coke machine, but it's  
10 still an economic transaction between a buyer and a  
11 seller, with knowledge of the transaction, or the  
12 principle is no different. I do not believe that  
13 prudent arm's length -- prudently-structured arm's  
14 length transactions, whether they are for a dollar or  
15 for multiple billions of dollars, allow the terms of  
16 the transaction to be established on an ad hoc,  
17 after-the-fact basis.

18 Q. For any of the terms, is that your  
19 testimony?

20 A. Well, the economic terms particularly.

21 Q. And so you dispute Mr. Golden's testimony  
22 that that happens frequently; is that correct?

23 A. I don't know -- I don't understand the  
24 context in which he makes that statement. Certainly,  
25 in multi-billion-dollar transactions involving public

00831

1 corporations, the parties are required to offer  
2 fairness opinions to the shareholders, and that would  
3 require that the entities offering the fairness  
4 opinions have complete information on the nature of  
5 the transaction. I cannot see how it could possibly  
6 be a situation where a transaction would occur where  
7 the conveyance of a business occurs at one point in  
8 time and, 15 years later, the parties try to figure  
9 out what the appropriate compensation should have  
10 been 15 years previously. And that's specifically  
11 what's going on here.

12 I don't think that Mr. Golden could  
13 possibly point to any transaction, any arm's length  
14 transaction of any consequence that had a 15-year gap  
15 between the transfer of the asset and the  
16 compensation for that asset. More specifically, the  
17 determination of the amount of compensation for that  
18 asset.

19 Q. It's true, isn't it, that there are a  
20 number of kinds of economic transactions that take  
21 place all the time where some aspect of the economic  
22 terms and conditions are decided after the operative  
23 fact, such as the valuation of an estate?

24 A. Well, what's the operative fact there, the  
25 death of the --

00832

1 Q. Yes.

2 A. Well, what's the transaction? The  
3 transaction in that instance would be the valuation  
4 of the estate for purposes of filing estate tax  
5 returns. It's not an arm's length transaction in the  
6 sense that there is a buyer or, you know, a seller.  
7 The Internal Revenue Service, in that situation,  
8 requires valuation as of the date of death and  
9 establishes certain guidelines for that, but that's  
10 not a transaction involving an arm's length sale of  
11 property from one party to another.

12 Q. Is it your contention that US West claims  
13 that this transaction back in 1984 was, in fact, an  
14 arm's length sale?

15 A. No, I don't think the Company claims that  
16 at all.

17 Q. Is it your contention that the only way  
18 that the ownership of what you call the intangible --  
19 that's other than the tangible assets of the  
20 directory publishing business -- could have changed  
21 hands from PNB to US West Direct is through an arm's  
22 length sale?

23 A. No.

24 Q. There would be, for example, the  
25 possibility of a gift. Wouldn't that be a way that

00833

1 ownership could change hands between two corporate  
2 entities?

3 A. Now, are we speaking here on specifically  
4 this transaction or are we speaking at a general  
5 level?

6 Q. This transaction?

7 A. Well, I believe that a gift of that nature  
8 would probably be inconsistent with the affiliate  
9 transaction requirements of this Commission, as I  
10 understand them to exist.

11 Q. Aren't you giving a legal conclusion?

12 A. Yes. No.

13 Q. Which is it, Doctor?

14 A. I'm giving policy conclusion, based on my  
15 understanding of the regulatory principles involving  
16 affiliate transactions to which I believe this  
17 Commission adheres.

18 Q. Isn't it true that the Supreme Court, in  
19 its opinion, twice referred to this transaction as a  
20 gift?

21 A. Can you refer me to the text?

22 Q. Yes. At page 94, the second paragraph.  
23 "It does not matter under these statutes whether the  
24 utility paid the affiliate too much money for too  
25 little service or property or whether (as here), the



00834

1 utility gave the affiliate something of far greater  
2 value than the affiliate paid for in return." Do you  
3 see that?

4 A. I don't see the word gift here.

5 Q. Well --

6 A. I see the word gave. Is that -- that's  
7 close.

8 Q. Is the item that is given commonly referred  
9 to as a gift?

10 A. Well, I can sell you something and then,  
11 you know, as part of the transaction, hand it over,  
12 give it to you, in terms of the grammar of the  
13 English language. I mean, a gift is something that  
14 is given, but other things are given.

15 Q. I'm just asking you if it wasn't true that  
16 the Supreme Court --

17 A. No, you asked me if the word "gift"  
18 appeared, and in the first place that you cited me, I  
19 don't see it.

20 Q. Did the Supreme Court refer to the  
21 transaction as one in which the utility gave the  
22 affiliate something of far greater value than the  
23 affiliate paid for in return?

24 A. That's the words that appear here.

25 Q. And on page 96, the paragraph that comes at

00835

1 the top of the page, the Supreme Court said, did it  
2 not, "The imputing of revenue is the result of the  
3 fact that the Company gave away a lucrative  
4 ratepayer-funded asset to an unregulated affiliate in  
5 return for little or nothing?"

6 A. I'm sorry. I haven't found where you are.  
7 Page 96?

8 Q. Page 96, the upper part of the page is the  
9 paragraph that comes over on the top, the last  
10 sentence of the paragraph.

11 A. "Imputing a revenue is the result of the  
12 fact that the Company gave away a lucrative  
13 ratepayer-funded asset to an unregulated affiliate in  
14 return for little or nothing."

15 Q. Right.

16 A. End quote.

17 Q. Right.

18 A. That's what it says.

19 Q. That's what it says?

20 A. Again, I don't see the word gift.

21 Q. Is the direct object of the verb to give  
22 something that is termed a gift?

23 A. You asked me that question before. One  
24 gives a gift, but one gives other things, as well.

25 Q. Is giving something a way in which

00836

1 ownership can change hands?

2 A. It is a way, yes.

3 Q. Did you analyze this transaction to find  
4 out whether ownership changed hands as the result of  
5 US West or PNB giving the intangibles to US West  
6 Direct?

7 A. No, I did not, because I was not focusing  
8 on the legal standard of ownership.

9 Q. It's true, isn't it, Dr. Selwyn, that in  
10 the Supreme Court's analysis, at page 98, the first  
11 paragraph, the last sentence, the Supreme Court said,  
12 "The power the Commission exercised here was not to  
13 void the contract between the contracting parties,  
14 but to, quote, 'revise and amend the terms and  
15 conditions,' unquote, of the contract as necessary to  
16 protect the ratepayers." Is that what they said?

17 A. That's what they said.

18 Q. So if the contract terms were revised and  
19 amended by the Commission through its orders,  
20 wouldn't you have to look beyond the four corners of  
21 the contracts themselves to find out what the terms  
22 and conditions were after they'd been revised?

23 A. Yes, I'd have to look to what the  
24 Commission did in making such revisions to the extent  
25 that its actions constituted the totality of all of

00837

1 the revisions. But what is at issue in this case is  
2 further revisions, so we don't know what all the  
3 revisions are that the Commission may make relative  
4 to this contract. And in fact, that's, in part, the  
5 purpose of my testimony, is to give recommendations  
6 to the Commission, as to how those terms and  
7 conditions should be amended.

8 Q. Did you analyze this in terms of -- this  
9 whole issue in terms of whether or not there might be  
10 an implied contract or quasi-contract, other than the  
11 terms that appear in the published agreements?

12 A. If you're asking with respect to the legal  
13 nature of such an agreement, no.

14 Q. It's true, isn't it, that the Internal  
15 Revenue Service has regulations that cover bargain  
16 sales between related parties?

17 A. Yes.

18 Q. Isn't the purport of those regulations to  
19 impute a fair market value to the asset that is sold  
20 between the related parties?

21 A. It may be that imputation may be made for  
22 tax purposes, although I'm not certain what its  
23 relevance is for regulatory purposes.

24 Q. That kind of imputation doesn't have the  
25 effect of making the sale ineffective at the time

00838

1 that the transfer otherwise occurred, does it?

2 A. I can't answer that categorically. There  
3 certainly may be actions that could be taken by the  
4 Internal Revenue Service that would have the effect  
5 of voiding the transaction.

6 I assume what you are referring to, for  
7 example, would be a transaction where an offshore  
8 affiliate would transfer product to, for example, a  
9 United States distributor at a price that might be  
10 above fair market value, thereby effectively eroding  
11 the profitability of the U.S. entity and increasing  
12 the profitability of the foreign entity, thereby  
13 denying the Internal Revenue Service the opportunity  
14 to collect taxes on a fair rendition of the profit.  
15 And that would be the kind of imputation that might  
16 occur in that situation, that is, where the IRS might  
17 determine that, for example, a Japanese automobile  
18 manufacturer should have charged its U.S.  
19 distributor or affiliate distributor a lower price,  
20 thereby increasing the profit of the U.S. entity. I  
21 assume that's what you're referring to. Am I correct  
22 in that?

23 Q. Well, it could work either way, couldn't  
24 it?

25 A. Could work either way, yes. But the IRS's

00839

1 interests, for the most part, would be to -- the IRS  
2 would probably have less interest in making  
3 imputations among affiliates that file consolidated  
4 -- that are both domestic affiliates and then file a  
5 consolidated return, because the effect of the  
6 transfer in that instance would be largely  
7 immaterial.

8 Q. But in either case, where the IRS would  
9 apply these rules, the effect of them would not be to  
10 say that because the compensation that actually  
11 flowed was inadequate under the bargain sale rules,  
12 the transaction, in terms of transferring the  
13 interest from one entity to the other, hasn't  
14 actually occurred yet; is that true?

15 A. I don't know.

16 Q. Do you have some authority that you rely on  
17 to assert that the transaction that occurred in  
18 connection with the reorganization of the directory  
19 operations, including both the asset transfer and the  
20 publishing agreements, was not a sale of the  
21 intangibles? And I'm talking specifically about a  
22 definition of the word sale.

23 A. Well, I'm using an economist definition of  
24 the concept of a sale as a transaction, an arm's  
25 length transaction, or something simulating that

00840

1 between a willing buyer and a willing seller, neither  
2 under a compulsion to buy or sell, reasonably  
3 informed as to the relevant information with respect  
4 to the transaction, and I construe that to require  
5 that the terms of the transaction or the basis upon  
6 which other terms not firmly established prior to the  
7 transaction, but that basis for such establishment be  
8 known and communicated and agreed to prior to the  
9 closing.

10 Q. Would this Commission be able to look in  
11 some economist textbook and find that definition just  
12 as you've stated it, or substantially as you've  
13 stated it?

14 A. I believe it would.

15 Q. Which textbook?

16 A. I can't give you a specific citation, but I  
17 believe that that is a fairly basic principle of  
18 economics -- what constitutes an economic  
19 transaction.

20 Q. Would you agree that Webster's Revised  
21 Unabridged Dictionary defines a sale as, "The act of  
22 selling; the transfer of property or a contract to  
23 transfer the ownership of property from one person to  
24 another for a valuable consideration or for a price  
25 in money." Can you accept that, subject to check?

00841

1           A.    Well, I'll accept it subject to check. I  
2 don't know that that necessarily embraces all of the  
3 elements of a sale that an economist would consider  
4 to be relevant.

5           Q.    Is there some regulatory principle that you  
6 rely on to assert that your economist definition is  
7 the only appropriate definition of sale for this  
8 purpose?

9           A.    Well, the regulatory principle is that fair  
10 value has to be conveyed in exchange for the transfer  
11 of property from a regulated entity to a nonregulated  
12 affiliate. And the nature of that valuation would  
13 have to be established concurrently and recorded on  
14 the books of the regulated entity.

15          Q.    And we've --

16          A.    As I've already testified.

17          Q.    And is there some decision or statute that  
18 you rely on for the principle that the recording has  
19 to be concurrent with the transfer, other than what  
20 you've already stated?

21          A.    Well, the principle that I rely on relates  
22 to the issue of risk that I mentioned to you earlier.  
23 The only way that I know of to assure that the  
24 acceptance, the responsibility for risk shifts  
25 concurrently with the transfer of the property is for



00842

1 the complete terms of the transaction to be  
2 established and recorded concurrently, because if you  
3 don't do that, that's really like -- you know, it's  
4 like me coming up to you and saying, Gee, you know, I  
5 meant to buy US West stock on January 1st, 1984. I  
6 was busy that day, I didn't get around to it, but  
7 here's a million dollars, sell me the stock at that  
8 price, because I meant to do it.

9 MR. OWENS: Your Honor, Your Honor, I don't  
10 believe this is responsive. I asked for a regulation  
11 or a decision.

12 THE WITNESS: I thought you asked for a  
13 principle.

14 MR. TRAUTMAN: He asked for a regulatory  
15 principle, I believe.

16 MR. OWENS: I asked for a regulation or a  
17 decision, other than what he previously had testified  
18 to, on which he relied for the principle.

19 JUDGE WALLIS: We'll allow the answer to  
20 stand.

21 Q. Dr. Selwyn, can you cite me a regulation in  
22 the Washington Administrative Code or a statute in  
23 the state of Washington or a court decision or a  
24 Commission decision in this state that requires  
25 concurrent recording, as you've discussed?

00843

1 A. Well, I'm going to defer to Counsel for any  
2 requests for legal citations.

3 Q. Would it be true that none of the treatises  
4 that you've cited in Exhibit 814 would define a sale  
5 inconsistent with the Webster's definition that I  
6 asked you to accept?

7 A. I don't know offhand.

8 Q. In your testimony, Exhibit 801, at page 28,  
9 you state that there would have to be four items that  
10 would have to exist simultaneously in 1984 in order  
11 for the Commission to accept US West's contention  
12 that US West had transferred its Yellow Pages  
13 business to US West Direct effective January 1 of  
14 1984, and that it subsequently has received numerous  
15 compensatory payments in the form of publishing fees,  
16 annual imputations and other revenues applied to its  
17 regulated telephone operations in Washington that, in  
18 total, exceed the fair market value of the Yellow  
19 Pages business at the time of transfer.

20 And my question to you is is there some  
21 decision, statute, or regulation that includes these  
22 four items?

23 A. I still haven't found where you were  
24 reading from.

25 Q. I was reading from your testimony, sir, at

00844

1 page 28. The question that starts at line nine and  
2 goes on down on to page 29, finishing at line 14.

3 MR. TRAUTMAN: Twenty-eight or 29?

4 MR. OWENS: It follows over on to page 29,  
5 line 14.

6 THE WITNESS: I'm not making -- I'm not  
7 making any specific reliance on anything here, other  
8 than the principles that I'm setting forth in this  
9 answer.

10 Q. My question was a little different. I'm  
11 not asking what you're relying on; I'm asking is  
12 there a decision, statute or regulation that requires  
13 these things?

14 A. I don't know.

15 Q. And would that then mean that you don't  
16 claim that these requirements could be found anywhere  
17 in the Supreme Court decision involving the  
18 Commission's decision on US West's 1995 rate case?

19 A. Do I say that -- do I make such a claim?

20 Q. Yes.

21 A. Where do I make that claim?

22 Q. I'm asking you, would you claim that?

23 A. I don't make such a claim.

24 Q. Okay.

25 A. And I didn't make such a claim in my

00845

1 testimony.

2 Q. And your conclusion that none of these  
3 things existed is based on your review of the  
4 documents that you identified in Exhibit 815;  
5 correct?

6 A. Which was 815?

7 Q. That was your response to Data Request 40.  
8 Is it easier if I refer to the data request number,  
9 rather than the exhibit?

10 A. Yeah, I don't have the exhibit numbers on  
11 here, but if you could refer to both, it would be  
12 helpful.

13 JUDGE WALLIS: For our benefit, Mr. Owens,  
14 it would be helpful if you'd use exhibit numbers.

15 MR. OWENS: I'll use both, Your Honor.  
16 Thank you.

17 JUDGE WALLIS: Thank you.

18 THE WITNESS: That's correct.

19 Q. Directing your attention back to the  
20 Supreme Court's decision itself, page 98, the first  
21 paragraph on the page, about the middle of the  
22 paragraph, the Supreme Court there says it, meaning  
23 the Commission, conditionally approved the transfer  
24 retaining jurisdiction, as allowed by statute, to set  
25 a fair compensation in the next rate case; correct?

00846

1 A. Yes.

2 Q. The Supreme Court didn't say that the  
3 determination of compensation had to be made  
4 contemporaneously with the transfer, did it?

5 A. Well, I read this paragraph as a recitation  
6 of facts, rather than as a ruling describing what  
7 happened.

8 Q. All right. Was there any place in this  
9 Supreme Court opinion that you can point to where you  
10 believe the Supreme Court says that the amount of the  
11 value of the under-valued asset that US West would  
12 have to show it has received cannot be determined as  
13 of the date of 1984?

14 A. Well, I'm just looking at the remainder of  
15 that same paragraph, following the text that we just  
16 cited. Quote, "The power that the Commission  
17 exercised here was not to void the contract between  
18 the contracting parties, but to, quote, 'revise and  
19 amend the terms and conditions,' end quote, of the  
20 contract, as necessary to protect the ratepayers,"  
21 end quote.

22 And I certainly take that to give the  
23 authority of the Commission in exercising its  
24 responsibility to protect the ratepayers to consider  
25 -- I certainly don't think it obligates this

00847

1 Commission to take a 1984 value.

2           In fact, I think just to the contrary. I  
3 think it obligates this Commission to protect the  
4 ratepayers and, in this particular instance, since  
5 the risk of the ultimate determination of value  
6 stayed with the ratepayers until this very day, I  
7 think that, in protecting the ratepayers, the  
8 Commission has an obligation, and I would think the  
9 Court would agree, based on this language, that the  
10 Commission would have an obligation to, in fact, use  
11 current value.

12           Q.    There's nothing in here that specifically  
13 says that the Commission can't use a 1984 value, is  
14 there?

15           A.    There's nothing that says that they have  
16 to.

17           MR. OWENS: Your Honor, may I have a yes or  
18 no?

19           MR. TRAUTMAN: Your Honor, I want a  
20 clarification. Are you asking there's nothing -- are  
21 you asking him in the entire opinion?

22           MR. OWENS: Yes, that was my original  
23 question, and he narrowed it to this paragraph. But  
24 my question is as to the entire opinion.

25           JUDGE WALLIS: I will ask the witness to

00848

1 respond if you know the answer.

2 THE WITNESS: The question -- can you  
3 repeat the question?

4 JUDGE WALLIS: Mr. Owens.

5 MR. OWENS: Thank you, Your Honor.

6 Q. Is there anything in this court opinion  
7 that precludes the Commission from adopting a 1984  
8 valuation in setting the amount of fair compensation  
9 for the transfer of the directory business, the  
10 compensation for which US West is required to show as  
11 a condition of ending directory imputation?

12 A. Yes.

13 Q. What is that?

14 A. I refer back to the language I just read.  
15 I think that the Commission could not set fair  
16 compensation to ratepayers based on a 15-year-old  
17 valuation. And since the court is specifically  
18 authorizing the Commission to set fair compensation  
19 to protect the interest of ratepayers, I believe that  
20 a correct interpretation of that is to require the  
21 Commission to set compensation based on current  
22 value.

23 Q. What specific words do you say constitute  
24 the prohibition against using a 1984 valuation?

25 A. It is my opinion that using a 1984

00849

1 valuation would not, quote --

2 Q. Excuse me. I asked for the specific words,  
3 not for your opinion.

4 A. I'm giving you specific words. Well, then,  
5 I'm just going to rely on my previous answer.

6 MR. OWENS: Your Honor.

7 MR. TRAUTMAN: Your Honor, perhaps we could  
8 speed this up. If Mr. Owens wants to make a specific  
9 phrase and ask whether it is in the opinion, we can  
10 accept it, subject to check, that it is or isn't in  
11 the opinion.

12 MR. OWENS: Well, I appreciate Counsel's  
13 attempt to do my cross for me, but I think I'm  
14 entitled to have the witness identify the specific  
15 words that he contends contain the prohibition  
16 against the use of a 1984 valuation.

17 JUDGE WALLIS: You've asked that question  
18 and the witness has responded to it.

19 MR. OWENS: Well, Your Honor, with all due  
20 respect, I don't believe he has, but I'll move on.

21 Q. It's true, isn't it, referring back to the  
22 same paragraph on page 98, that, in the sentence it  
23 conditionally approved the transfer retaining  
24 jurisdiction as allowed by statute to set a fair  
25 compensation in the next rate case, that viewed from



00850

1 the standpoint of the date of the approval of the  
2 publishing agreements, the next rate case was  
3 UT-950200?

4 A. I believe that's right.

5 Q. Now, isn't it true that, after the transfer  
6 of the assets and the entry of the publishing  
7 agreements, Pacific Northwest Bell was not liable for  
8 any judgments for directory advertising errors, that  
9 another corporation assumed responsibility for that?

10 A. I don't think I would agree with that.

11 Q. So it's your testimony that a judgment  
12 could have been rendered against Pacific Northwest  
13 Bell for directory advertising errors committed by US  
14 West Direct?

15 A. No, that's not my testimony. It is my  
16 testimony that had a judgment been entered against US  
17 West Direct, which would have resulted in a reduction  
18 in the earnings of US West Direct as a result of  
19 having made the error, the imputation amount might  
20 well have been adjusted to reflect the reduced level  
21 of earnings, thereby shifting that responsibility  
22 back to the ratepayers of Pacific Northwest Bell.

23 Q. Well, isn't it true, Dr. Selwyn, that  
24 imputation didn't start until 1990?

25 A. Something like that, yeah.

00851

1 Q. And isn't it also true that the publishing  
2 agreements provided for fixed annual payments during  
3 the terms of those agreements, regardless of the  
4 actual earnings of the directory business?

5 A. That's true.

6 Q. So at least for that portion of the  
7 historic period we're talking about, isn't it true  
8 that there would not be any risk of any business  
9 adversity that US West Direct would suffer being  
10 reflected in any rates charged to Washington  
11 ratepayers?

12 A. I don't know. I mean, you're asking for a  
13 legal conclusion. Whether or not an aggrieved party  
14 would have been able to seek damages against US West  
15 Communications is a matter I can't speak to.

16 Q. You contend that the business of publishing  
17 directories was not transferred by PNB to US West  
18 Direct; is that true?

19 A. Yes.

20 Q. Isn't it true that the Supreme Court refers  
21 no fewer than 12 times to the fact that PNB  
22 transferred or gave or divested its directory  
23 publishing business to US West Direct?

24 A. I haven't counted the number of times.

25 Q. Can you accept it subject to check?

00852

1 A. Yes, and subject to interpretation.

2 Q. So if you're right, is the Supreme Court  
3 wrong?

4 A. Well, with that additional qualification, I  
5 said subject to interpretation, again, in the context  
6 of the regulatory policy issues here, which we have a  
7 specific reference at page 98 to a conditional  
8 approval, so -- the finality of which has never, in  
9 fact, occurred, so there has been no final approval.  
10 Therefore, you know, I'm not sure that how the words  
11 in the Supreme Court ruling are to be read in the  
12 context of the fact that the Supreme Court has also  
13 recognized that this transaction is not -- that all  
14 of the approval and valuation associated with the  
15 transaction have not been completed.

16 Q. What the Supreme Court said was, in the  
17 same sentence, it conditionally approved the transfer  
18 retaining jurisdiction as allowed by statute to set a  
19 fair compensation in the next rate case; isn't that  
20 true?

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

22 Q. On the same page, in the third paragraph,  
23 doesn't the Supreme Court say, "The Commission  
24 agrees, but finds that the publishing business, which  
25 gained its value during monopoly years and on which a

00853

1 rate of return was earned has been transferred for  
2 much less than its value and imputation may be used  
3 to rectify that transfer." Isn't that what they say?

4 A. That is what it says.

5 Q. So if the Commission -- excuse me, so if  
6 you're right, is the Supreme Court wrong that the  
7 business has been transferred?

8 A. Well, there's no question of responsibility  
9 for the business. The conduct of the business was  
10 transferred. I don't know whether this is to be  
11 interpreted as more than that.

12 Q. And on page 102, the conclusion of  
13 imputation issue, the Court says, "We note that under  
14 the Commission's order, the imputation is not  
15 necessarily permanent and the Commission's prior  
16 order shows that when the Company has shown it has  
17 received fair compensation from its affiliate for the  
18 value of the asset it transferred, imputation may  
19 cease." So is the Supreme Court wrong that the  
20 directory publishing asset was transferred?

21 A. I understand this is USWC's position. I  
22 also understand it's a matter of legal argument.

23 Q. Can I have a yes or no? Is the Supreme  
24 Court wrong?

25 JUDGE WALLIS: It really would help us, Dr.

00854

1 Selwyn, if the question you believe is capable of a  
2 yes or no answer, if you start off by providing that  
3 answer. Or if you believe it's not capable, then you  
4 can state that and tell us why.

5 THE WITNESS: Your Honor, the difficulty  
6 I'm having in answering this line of questions is  
7 that I am not -- do not purport to be offering a  
8 legal opinion as to the transfer of title. And if  
9 the references here in the Supreme Court decision go  
10 to the matter of legal title, as distinct from the  
11 regulatory issue of fair value, I am not in a  
12 position to agree or disagree, because I'm not  
13 offering a legal opinion on that issue, if this is  
14 the conclusion of the Supreme Court. I think, fairly  
15 read, this -- well, I'll stand on that.

16 JUDGE WALLIS: Is that your response to Mr.  
17 Owens' latest question?

18 THE WITNESS: That's my response.

19 JUDGE WALLIS: Mr. Owens.

20 Q. Do you understand that the Supreme Court  
21 was referring to, when it used the term "an  
22 undervalued asset," the same thing that you're  
23 referring to when you talk about the intangibles?

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

25 Q. And when the Supreme Court used the term

00855

1 "asset" in the same paragraph, in the context of the  
2 transfer of an undervalued asset constitutes payment  
3 or compensation prohibited by the affiliate interest  
4 statute, do you understand it's using that in the  
5 same sense, in the same paragraph, when it says, "We  
6 note that under the Commission's order, the  
7 imputation is not necessarily permanent and the  
8 Commission's prior orders show that when the Company  
9 has shown it has received fair compensation from its  
10 affiliate for the value of the asset it transferred,  
11 imputation may cease?"

12 A. And the question is?

13 Q. Do you understand the Supreme Court's using  
14 those two terms in the same sense?

15 A. That it's referring to asset in the context  
16 of the going business?

17 Q. Yes.

18 A. Yes, I do.

19 Q. And the Supreme Court used the past tense,  
20 didn't it, in the terms of the word "transferred?"

21 A. Yes.

22 Q. And that would refer to an event that had  
23 occurred already, by December 1997, when the Supreme  
24 Court issued this opinion; correct?

25 A. Yes.

00856

1 Q. So is the Supreme Court wrong that the  
2 intangible was transferred at some time before  
3 December 1997?

4 A. That's its position. That's its finding.

5 Q. Is it wrong, Dr. Selwyn?

6 A. It is wrong as a basis for influencing the  
7 manner in which fair value is determined. If that is  
8 -- if it is to be used for that purpose, then the  
9 Court is wrong. If it is referring simply to the  
10 matter of legal title, then, you know, I'm not in a  
11 position to offer an opinion on whether it's right or  
12 wrong.

13 MR. OWENS: May I approach to show the  
14 witness another exhibit?

15 JUDGE WALLIS: Yes.

16 MR. OWENS: Actually, it's the same exhibit  
17 at a different page.

18 JUDGE WALLIS: Yes.

19 Q. Directing your attention to page 19 of this  
20 Commission's brief to the Supreme Court in Exhibit  
21 103, which is the same group of excerpts that you had  
22 referred to before --

23 MR. TRAUTMAN: Where are we referring to,  
24 Counsel?

25 MR. OWENS: Page 19. It's the Commission's

00857

1 brief to the Supreme Court, and it's the paragraph  
2 that begins in the lower part of the page.

3 CHAIRWOMAN SHOWALTER: Is the top line  
4 "Approved by the UTC?"

5 MR. OWENS: I can tell you in just a  
6 second, as soon as I get a copy. Yes, Approved by  
7 the WUTC, yes, Madam Chairwoman.

8 Q. Didn't the Commission tell the Supreme  
9 Court, in defense of its order, quote, "The  
10 Commission did precisely what the statutes  
11 authorized. It disallowed, for ratemaking purposes,  
12 the unreasonable compensation USWC provided to its  
13 affiliate, USWD, when it transferred the profitable  
14 Yellow Pages business to USWD for grossly inadequate  
15 compensation." Isn't that what it says?

16 A. Yes.

17 Q. And the Commission also used the past  
18 tense, didn't it, in saying transferred?

19 A. Well, see, now we're getting back to this  
20 issue of --

21 Q. Well, sir --

22 A. Yes, it used the past tense, but hang on a  
23 second. I mean, there's a reference here to  
24 disallowed the compensation US West provided to an  
25 affiliate, USWD. Now, compensation there would have



00858

1 been the transferred asset, because that was --  
2 that's what flowed in that direction. The statement  
3 here says it was disallowed. So it disallowed the  
4 very transfer that I believe you're contending it had  
5 authorized. That's how I read this sentence.

6 Q. That's your interpretation?

7 A. Well, you know, there was flow in both  
8 directions. There was something transferred from  
9 USWC, or then PNB --

10 Q. Excuse me. There's no question pending.

11 A. I thought there was.

12 Q. I was starting to ask a question, and you  
13 interrupted me.

14 MR. TRAUTMAN: I believe he was completing  
15 his answer to the previous --

16 JUDGE WALLIS: The witness is completing  
17 the response he is making to the prior question.

18 THE WITNESS: Thank you. There is flow in  
19 both directions. There is an asset that was moving  
20 from PNB to USWD, and there was compensation going  
21 from USWD to PNB. And the reference here says, The  
22 Commission disallowed the compensation, US West,  
23 which I take it, in this case, is referring to PNB,  
24 provided to its affiliate, USWD. That compensation,  
25 I would assume that is being referred to there, is

00859

1 the asset that is flowing in that direction. And  
2 therefore, I read this as suggesting that the  
3 Commission is indicating that it disallowed it.

4 Q. You said in that answer that you made an  
5 assumption. You don't know; is that correct?

6 A. That's how I'm reading it.

7 Q. Is it true that the compensation is the  
8 same thing as the asset?

9 A. There's an exchange of assets, so  
10 compensation can be viewed in that case as flow of  
11 value in both directions. The flow of value from US  
12 West Directory, USWD, to US West Communications is  
13 one -- is compensation, the flow of value from US  
14 West Communications to USWD is compensation. And the  
15 specific reference here is to the disallowance of the  
16 compensation going from US West Communications to US  
17 West Direct, which is the transfer of the asset of  
18 the Yellow Page business. There was no other  
19 monetary compensation that flowed in that direction.

20 Q. The Commission didn't say that it  
21 disallowed the transfer, did it?

22 A. It says it disallowed for rate-making  
23 purposes.

24 Q. It didn't say that it disallowed the  
25 transfer, did it?

00860

1           A.    It says it disallowed it for rate-making  
2 purposes.

3           Q.    Are you listening to my question, Dr.  
4 Selwyn?  I'm talking about the transfer.  Did the  
5 Commission say that it disallowed the transfer?

6           A.    It says what it says.

7           Q.    So is that a no?

8           A.    No, I'm relying on what it says.  It will  
9 have to speak for itself.

10          Q.    Well, you interpreted a minute ago --

11          A.    I'm interpreting it as saying --

12          Q.    I'm cross-examining you on your  
13 interpretation.

14          A.    Within the scope of the Commission's  
15 jurisdiction, which is a disallowance for rate-making  
16 purposes, it disallowed it.

17          Q.    It disallowed the transfer?

18          A.    Yes.

19          Q.    And where do you find that here?

20                JUDGE WALLIS:  Hasn't the witness just  
21 recited the language on which he relies?

22                MR. OWENS:  Well, Your Honor, he seems to  
23 be equating compensation with the transfer, and  
24 that's the point that I'm inquiring about, and I  
25 don't believe I've gotten an answer.

00861

1 JUDGE WALLIS: To my recollection, he has  
2 responded about three times to your question very  
3 consistently.

4 MR. OWENS: Thank you.  
5 (Discussion off the record.)

6 JUDGE WALLIS: Let's take our break at this  
7 time and be back on the record at 1:00 promptly.

8 (Lunch recess taken.)

9 JUDGE WALLIS: Let's be back on the record,  
10 please, following our noon recess. Let the record  
11 show that, during the recess, Public Counsel has  
12 distributed copies of Revised Exhibit 419, consisting  
13 of a portion of the deposition of Timothy Golden, to  
14 include pages 56 through 59. Is there anything else  
15 of a preliminary nature?

16 MR. FFITCH: I have nothing, Your Honor.

17 MR. TRAUTMAN: No.

18 JUDGE WALLIS: All right. Let's return to  
19 the examination of Dr. Selwyn. Dr. Selwyn, I would  
20 like briefly to follow-up on an exchange that Mr.  
21 Owens and I had early this morning, in which I  
22 expressed some concern about a question I thought  
23 bordered on argumentative.

24 And I want to make it clear that I do  
25 consider it my responsibility and my authority, under

00862

1 the APA, to regulate the course of the proceeding,  
2 particularly insofar as the behavior of Counsel does  
3 not generate consequences that are detrimental to the  
4 hearing. Now, I do not believe that that question  
5 was overbearing or incendiary, by any means, but I've  
6 also found that starting down that path sometimes  
7 does make it easier to get to that point.

8           And I don't cast any aspersions at all  
9 against Mr. Owens, for whom I have profound respect,  
10 but I am concerned that we have a good record and  
11 that we focus on the issues, rather than ad hominem  
12 issues or matters that aren't related to the  
13 substance. And in that regard, I am going to request  
14 that if Counsel are making an objection or stating a  
15 concern, that it be stated to the issue, and not to  
16 the person.

17           And with that, let's take up with the  
18 examination.

19           MR. OWENS: Thank you, Your Honor. Just to  
20 respond briefly, my sole concern was the issue of  
21 Rule 702. And if my question was interpreted as any  
22 kind of a personal attack, I did not intend that in  
23 any way.

24           JUDGE WALLIS: No, and I understand that  
25 that's the case, but I hope you also understand the

00863

1 concerns that I have, and that you will respect  
2 those.

3 MR. OWENS: Of course I will, Your Honor.

4 JUDGE WALLIS: Thank you.

5 Q. It's true, isn't it, Dr. Selwyn, that you  
6 responded to US West Data Request 38, which asked for  
7 each corporate reorganization of which you're aware  
8 anywhere in the country that involved the transfer of  
9 assets among commonly-owned corporate entities, and  
10 that also involved a contract sale for such assets,  
11 and that's been marked as Exhibit 624. That was an  
12 exhibit that was marked yesterday, possibly to be  
13 introduced through Mr. Brosch.

14 A. I don't believe I have it.

15 JUDGE BERG: Let me interject here. I've  
16 had some responsibility for managing documents in  
17 this case and producing daily exhibit lists to update  
18 the cross-examination exhibits that have been  
19 distributed. While I did distribute complete and  
20 accurate document packets to the Commissioners,  
21 numbered sequentially, as presented by US West, when  
22 I prepared and distributed the exhibit list, there  
23 was one reference to an exhibit that was left off and  
24 which was not corrected yesterday.

25 So that we're all working on the same page,

00864

1 Exhibit 623 will refer to WUTC Staff response to US  
2 West Data Request Two. The exhibit that was on the  
3 exhibit list marked as 623 will be 624. That is the  
4 Staff response to US West Data Request 3-36. And on  
5 the exhibit list, the exhibit formerly marked as 624  
6 will now be 625, which will be the Staff response to  
7 US West Data Request 38.

8 MR. OWENS: Thank you, Your Honor. With  
9 that correction to my exhibit reference to Exhibit  
10 625, it may be that the witness has that in his  
11 packet.

12 THE WITNESS: It was not included in the  
13 packet that you supplied to me yesterday afternoon,  
14 at least doesn't appear to be.

15 MS. ANDERL: US West Data Request 38?

16 THE WITNESS: This is exhibit what, 625?

17 Q. Six-two-five. Okay. And is Exhibit 625  
18 your response to that request?

19 A. Yes.

20 MR. OWENS: I'd offer 625.

21 MR. TRAUTMAN: No objection.

22 JUDGE WALLIS: 625 is received.

23 MR. OWENS: Thank you.

24 Q. On page five of Exhibit 801, your  
25 responsive testimony, beginning at line eight, you

00865

1 discuss the conditions under which US West would have  
2 the means of terminating ongoing imputation of Yellow  
3 Pages revenues, and that would consist of effecting a  
4 sale, US West Dex, of the Washington directory  
5 business, including conveyance of the permanent  
6 rights to use the telco trade names, trademarks,  
7 symbols, and logos used in conjunction with  
8 publication of the official USWC directories, based  
9 upon a fair market value of that business in 1999,  
10 not in 1984. So my question is, what name?

11 A. Excuse me. I think you misread it. I  
12 think you read, if I heard you correctly, based upon  
13 a fair market value.

14 Q. The fair market value?

15 A. The fair market value.

16 Q. Thanks for correcting me on that. So my  
17 question is, what telco trade name, trademark, symbol  
18 and logo did you mean there?

19 A. I meant -- I would refer you to -- I'm not  
20 sure what the number is. I had the exhibit list this  
21 morning.

22 JUDGE BERG: I can hand you another exhibit  
23 list, sir.

24 THE WITNESS: Yeah, thank you.

25 JUDGE BERG: Here it is.



00866

1 THE WITNESS: Thank you.

2 JUDGE BERG: You're welcome.

3 THE WITNESS: It would be Exhibit 611-C, I  
4 believe that's correct, which contains copies of the  
5 cover pages of various Pacific Northwest Bell and US  
6 West telephone directories.

7 Q. Now, on that exhibit, sir, could you tell  
8 me what specific telco trade name you believe was  
9 used in conjunction with publication of the official  
10 USWC directory?

11 A. The bell symbol, in conjunction with  
12 Pacific Northwest Bell.

13 Q. Let me ask you to stop right there for a  
14 minute.

15 A. All right.

16 Q. You said, based upon the fair market value  
17 of that business in 1999. Is it your contention that  
18 in 1999, the official USWC directory uses the Pacific  
19 Northwest Bell name?

20 A. No, that's not my contention.

21 JUDGE WALLIS: Mr. Owens, for our benefit,  
22 could you repeat the citation from which -- the  
23 document from which you're reading?

24 MR. OWENS: Yes, Your Honor, certainly.  
25 It's Exhibit 801, page five, beginning at line ten.

00867

1 CHAIRWOMAN SHOWALTER: The witness  
2 testified as to an exhibit number.

3 MR. OWENS: He's testifying to Exhibit  
4 611-C, I believe.

5 CHAIRWOMAN SHOWALTER: I don't think it is.  
6 I'm looking at the covers, and that's not it.

7 MR. TRAUTMAN: 611-C? Specifically what is  
8 that?

9 MR. OWENS: The witness, I believe,  
10 identified it as --

11 JUDGE WALLIS: Let's be off the record.  
12 (Discussion off the record.)

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

15 THE WITNESS: The question?

16 Q. The question is, in 1999, what telco trade  
17 name do you testify that is used in conjunction with  
18 publication of the official USWC directories?

19 A. The bell symbol and US West. Now, I  
20 imagine that you will -- well, go ahead. I'll stop.

21 Q. Let me ask you this. Was that a complete  
22 answer? It apparently went beyond my question,  
23 because it includes a symbol, which is not a trade  
24 name. But included in the group of those items that  
25 you mentioned there, telco trade names, trademarks,

00868

1 symbols and logos, those are the ones that you  
2 intended to convey needed to have conveyance of  
3 permanent rights to use in order for there to be a  
4 sale of the business today?

5 A. Yes, from -- I'm looking at the most recent  
6 directory cover that is included in this exhibit.  
7 I'm having difficulty finding the date. July 1997,  
8 on the assumption that the 1999 cover is similar,  
9 those are the symbols that I see on here that would  
10 convey an official relationship with US West  
11 Communications.

12 Q. Could you look a couple of pages after that  
13 page, please, Dr. Selwyn?

14 A. Yes.

15 Q. It appears that my copy is a little  
16 different. My copy seems to have a later page that  
17 says US West Dex, and doesn't have the bell symbol.

18 MR. BUTLER: I think he's looking at the  
19 last page of the exhibit, and you're looking farther  
20 ahead.

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

22 (Discussion off the record.)

23 Q. I believe, during the small hiatus, Dr.  
24 Selwyn, you've located the page that I was referring  
25 to, which was a copy of the cover page of the Seattle

00869

1 Metro directory, that says "Use through April 1999."

2 Do you see that?

3 A. Yes.

4 Q. And could you tell me, does that have the  
5 bell symbol on it?

6 A. Does not.

7 Q. But it does have the name US West Dex on  
8 it; is that correct?

9 A. Yes.

10 Q. So at least with regard to that directory,  
11 would you still maintain that the bell symbol needs  
12 to be sold?

13 A. No.

14 Q. And do you have some understanding as to  
15 which corporation owns the US West name?

16 A. I believe US West Corporation does.

17 Q. So is that a name that US West  
18 Communications could sell to anyone else, or  
19 permanent rights to use it?

20 A. I don't know what the terms of license  
21 agreement are with respect to the US West mark, as  
22 between US West Corporation and US West  
23 Communications. So I can't categorically answer that  
24 question. In theory, the license could permit it  
25 under certain circumstances.

00870

1 Q. But you don't know?

2 A. No, I don't.

3 Q. So you would say that a sale of something  
4 that US West Communications was powerless to convey  
5 would be required in order for there to be a sale of  
6 the directory business; would that be fair?

7 A. I guess I would have to agree with that.

8 Q. Mr. Johnson testified, I believe before you  
9 entered the hearing room, but if you could accept  
10 that he testified that the US West Dex trademark is  
11 trademarked in its entirety, that is, as a phrase, US  
12 West Dex, if you could accept that, would you say  
13 that that is something that US West Communications  
14 would have the power to sell?

15 A. Not in its entirety, no.

16 Q. Now, let me ask you a few questions about  
17 1984, and your testimony that intangibles remained  
18 with Pacific Northwest Bell. Did those intangibles  
19 include knowledgeable employees?

20 A. No, they would have been shifted to USWD.

21 Q. And to the extent that those knowledgeable  
22 employees had personal relationships with advertisers  
23 that they relied on to generate advertising sales  
24 orders, would those personal relationships have  
25 transferred, as well?

00871

1           A.     Well, I'm focusing on the term "transfer."  
2     The employee would have transferred.  The beneficial  
3     interest in the value of those relationships, I  
4     think, is separable from the transfer of the  
5     employees and has to be viewed in the context of the  
6     purpose of the transfer of the employees, so I'm not  
7     sure I would agree with you to the same extent that  
8     there was certainly a transfer of the employee, of  
9     the employees to the USWD organization.

10           That does not necessarily mean that the  
11     going business was transferred and that, certainly,  
12     the kinds of relationships you just described would  
13     constitute part of the going business.

14           Q.     You used the term "beneficial interest."  
15     What specifically do you mean by that?

16           A.     I mean the interest for rate-making  
17     purposes of the going business -- the going business  
18     value of directory operations, as it existed at that  
19     time.

20           Q.     And is there some decision, regulation or  
21     statute that you rely on for that definition?

22           A.     I think it's basically the same answer as  
23     I've been giving you this morning, with respect to  
24     the affiliate -- the principles related to affiliate  
25     transactions and affiliate relationships, as to the

00872

1 maintenance for rate-making purposes of the interest  
2 in that value in the regulated entity.

3 Q. So US West Direct received the employees,  
4 along with the obligation to pay for their salaries  
5 and health care benefits and everything else that  
6 goes along with employing people, but your testimony  
7 is that the value that they brought to US West Direct  
8 remained with Pacific Northwest Bell; is that right?

9 A. Certainly collectively, I think, that would  
10 clearly be the case. I mean, obviously, individual  
11 employees have -- are subject to the terms of their  
12 employment agreement with a former employer with  
13 respect to what intellectual property of the former  
14 employer they can bring to a new job. For example,  
15 they might be subject to some sort of noncompete  
16 agreement, which would prevent an employee from using  
17 business relationships acquired in the course of one  
18 job for the benefit of a subsequent employer.

19 In the situation we're talking about, we  
20 had the totality of the Yellow Page operation's  
21 employees transferred with the responsibility to  
22 continue to do exactly what they had been doing  
23 before, which is part and parcel of the going  
24 business activity, as opposed to simply the  
25 reassignment on an individual basis of individual

00873

1 employees.

2           And so my answer is that, viewed in the  
3 aggregate in the context of exactly what happened in  
4 1984, that the ability of those employees to maintain  
5 and exploit those customer relationships is part of  
6 the business enterprise value of the Yellow Page  
7 operations as it existed at that point in time.

8           Q.    Are you aware of what is required under the  
9 law to create a beneficial interest?

10          A.    I was not using the term in a legal sense,  
11 so I'm not aware of the requirements as they would  
12 exist in the state of Washington.

13          Q.    And so when I asked you in my prior  
14 question for any decision and you didn't give me one,  
15 would I be correct in assuming that you don't know of  
16 a decision that uses this term?

17          A.    As I said to you, I'm using the term in  
18 context for rate-making purposes.

19          Q.    I'm talking about a rate-making decision.

20          A.    Well, I would refer you back to decisions  
21 such as Democratic Central Committee, which hold that  
22 the appreciation in value of an asset that is  
23 acquired with ratepayer funds inures to ratepayers.  
24 And if the acquisition of knowledge and customer  
25 relationships and first in the market advantage and



00874

1 experience and all of the other components of the  
2 Yellow Page operations was acquired with ratepayer --  
3 at ratepayer expense, then I believe that that  
4 principle requires and supports my conclusion that  
5 that interest remains for rate-making purposes with  
6 the regulated entity.

7 MR. OWENS: May I have a minute, Your  
8 Honor?

9 JUDGE BERG: Excuse me, Dr. Selwyn. Do you  
10 cite the case, the Democratic --

11 THE WITNESS: Central Committee.

12 JUDGE BERG: -- Central Committee case  
13 anywhere in your testimony with a legal cite that  
14 would assist me in obtaining that, a copy of it?

15 THE WITNESS: I'm not certain, but we could  
16 certainly provide it.

17 JUDGE WALLIS: Let's be off the record,  
18 please.

19 (Discussion off the record.)

20 Q. I found the reference. This would be in  
21 reference to Exhibit 103, very near the -- I guess  
22 it's sort of toward the middle, now that I look at  
23 it. It was the rate case Staff brief to the  
24 Commission, page three.

25 And around the middle of the page -- there

00875

1 aren't any line numbers -- isn't it true, Dr. Selwyn,  
2 that the Staff told the Commission in that brief that  
3 "The Yellow Pages publishing function is a valuable  
4 regulatory asset that the Company simply walked away  
5 from and now proposes not to compensate its  
6 ratepayers in any way for abandoning that asset?"

7 A. That's what it says.

8 Q. Directing your attention to what's been  
9 marked as Exhibit 820, is it correct that --

10 A. Which data request is it?

11 Q. That's Data Request 19. Is it correct that  
12 the Staff responded to a request that asked for  
13 copies of all documents related to the Commission's  
14 analysis and consideration of the June 1998 split of  
15 US West Communications from Media One, including the  
16 transfer of US West Dex to US West Communications?

17 A. Yes.

18 Q. And is Exhibit 820 the response that you  
19 made to that request?

20 A. It's a response that was made by the Staff.  
21 I believe, mechanically, we probably prepared the  
22 answer, but this was the documentation that we were  
23 provided by the Staff.

24 MR. OWENS: Thank you. I offer 820.

25 MR. TRAUTMAN: I would object. I believe

00876

1 Ms. Strain would be the appropriate witness through  
2 which to offer this. I believe he indicated he did  
3 not prepare the response.

4 Q. All right. Subject to its being offered,  
5 then I'll ask you a question about page four.

6 A. Page four of the attachment or page four --

7 Q. Of the attachment, yes. At the bottom of  
8 that page, under the heading Affiliated Interest  
9 Adjustments, doesn't the Staff advise the Commission,  
10 "Because USWC transferred its directory publishing  
11 business to its sister company, US West Direct (now  
12 Dex) for inadequate compensation, the Commission  
13 imputes (for accounting purposes) the revenues (above  
14 a set return to Dex) to USWC?"

15 A. Yes, that's what it says.

16 Q. It's true, isn't it, Dr. Selwyn, that in  
17 the Idaho proceeding that we discussed a little bit  
18 this morning, you actually provided testimony under  
19 oath?

20 A. Yes.

21 Q. And if you'd refer to what's been marked as  
22 Exhibit 821, response to Data Request 23.

23 A. Okay.

24 Q. Does this consist of a portion of the  
25 response which asked for a copy of the valuation

00877

1 report, working papers and testimony which relates to  
2 the valuation?

3 A. It appears to, yes.

4 MR. OWENS: I'd offer 821.

5 MR. TRAUTMAN: No objection.

6 JUDGE WALLIS: Received.

7 Q. On page 47 of that document, that is, the  
8 page that's numbered 47, don't you state to the Idaho  
9 Commission, beginning at line ten, that the Company's  
10 proposal simply to transfer this asset out of rate  
11 base through a book value accounting entry does not  
12 alter Title 61 ratepayers' entitlement to exactly the  
13 same gain as would arise under an arm's length cash  
14 sale?

15 A. Yes.

16 Q. And on the next page, beginning at line  
17 three, you discuss your answer, which you interpret  
18 the Democratic Central Committee as requiring the  
19 transfer to ratepayers of the entire difference  
20 between the net book value of US West's Idaho Yellow  
21 Page assets and the market value of the Yellow Pages  
22 business that would be produced through an arm's  
23 length cash sale, and you say, "Would this treatment  
24 of US West Yellow Pages business be similar to other  
25 transfers of regulatory assets that have been

00878

1 undertaken by the Company," and you answer yes; is  
2 that correct?

3 A. Yes.

4 Q. And you cite an example of US West selling  
5 11 of its Idaho exchanges at prices that were  
6 substantially in excess of the then existing book  
7 value of those assets; correct?

8 A. Yes.

9 Q. So in Idaho, you told the Commission that  
10 imputing an arm's length market value to Yellow Page  
11 business when it was transferred out from under  
12 regulation would be similar to a transaction that was  
13 a sale of an asset at a value above book value;  
14 correct?

15 A. Yeah, the operative phrase there is when it  
16 was transferred out of regulation for rate-making  
17 purposes, and that has still not happened here.

18 Q. US West has introduced evidence of a value  
19 contemporaneous with the transfer out from under  
20 regulation in the state of Washington in this case.

21 A. No, sir, it has not. That was an untrue  
22 statement and I don't agree with it. Because the  
23 continuing imputation --

24 Q. You didn't --

25 A. I'm explaining my answer.

00879

1 Q. You didn't let me finish my question.

2 A. Sorry.

3 Q. US West has introduced evidence of the  
4 value of the directory publishing operation at the  
5 time it was transferred out from under regulation.  
6 Should the Commission find that that is -- that  
7 evidence is accurate as a measure of the value,  
8 wouldn't imputing that value to the transaction have  
9 the same characteristic of similarity to an actual  
10 sale that you testified to in Idaho?

11 A. Well, I don't agree with the premise of  
12 your question, because US West has, in fact, not  
13 introduced a value for the Yellow Pages business at  
14 the time it was removed from regulation, because it  
15 still has not been removed from regulation for  
16 rate-making purposes. The Commission continues to  
17 apply imputation, and that means that this activity,  
18 for purposes of rate-making, continues to be subject  
19 to regulation. When, as, and if US West introduces a  
20 value that would apply contemporaneously with the  
21 removal of the Yellow Pages business from regulation,  
22 then we would have the basis for imputing an arm's  
23 length sale, but that hasn't happened, and the  
24 Company has not provided the evidence that you  
25 asserted that it has. If I can answer the remainder

00880

1 of the question.

2 Q. Let's ask a different question, then. If  
3 the Commission should find that the transfer of the  
4 directory publishing business, as it occurred in  
5 1984, had the effect of removing the business from  
6 regulation for purposes of the Supreme Court's  
7 decision and if the Commission should find that US  
8 West's evidence of the value of the directory  
9 publishing business at that time was a reasonable  
10 value at the time, would imputing that value to the  
11 transaction have the same similarity to a sale that  
12 you indicated was acceptable in Idaho?

13 A. Can I have the first part of the question  
14 re-read, please?

15 (Record read back.)

16 THE WITNESS: I don't believe that the  
17 Supreme Court made such a finding, that there was a  
18 removal from regulation in 1984. So again, I can't  
19 accept the premise of the question.

20 Q. Let me ask you this.

21 JUDGE WALLIS: Excuse me, Dr. Selwyn, could  
22 you move that microphone a little bit closer? We are  
23 all having trouble hearing you.

24 THE WITNESS: I'm sorry. Try that.

25 JUDGE WALLIS: Much better.

00881

1 Q. If the Commission should find, Dr. Selwyn,  
2 that the transfer of the directory publishing  
3 business, as it's been established on this record,  
4 was the event that constituted the requirement for  
5 the receipt of compensation for the transfer of the  
6 undervalued asset, as the Supreme Court used that  
7 term, and if the Commission should find that the  
8 value that US West has introduced in its evidence was  
9 a reasonable value of the directory business at that  
10 time, then would imputing that value to the  
11 transaction approximate the results of the sale, as  
12 you indicated was appropriate in Idaho?

13 A. I apologize, Your Honor. I'm going to have  
14 to ask for the first part of that question to be  
15 re-read. I want to make sure. These are very subtle  
16 differences among these questions, and I want to make  
17 sure I'm answering them accurately.

18 JUDGE WALLIS: Mr. Owens, are you reading  
19 that or --

20 MR. OWENS: No, but I'll attempt to restate  
21 it, Your Honor.

22 Q. If the Commission should find that the  
23 transfer of the directory publishing business in  
24 1984, as it's been established in this record, was  
25 the event that constituted the requirement for



00882

1 compensation to be received for the transfer of the  
2 undervalued asset, as the Supreme Court used that  
3 phrase, and if the Commission were also to find that  
4 the value that US West has introduced in its evidence  
5 in this case of the directory business at that time  
6 was a reasonable value, would imputing that value to  
7 the transaction approximate or be similar to the  
8 results of the sale, as you stated would be  
9 appropriate in Idaho?

10 A. No, because in Idaho, and my testimony so  
11 states in Idaho, the reference specifically was to  
12 transfer out of regulation. And that is not what  
13 happened here in 1984, and it still hasn't happened.

14 Q. Isn't it true that the Commission said,  
15 according to the Supreme Court, at page 95 of the  
16 Supreme Court's opinion, that at the time of the  
17 transfer of the Yellow Pages business, it intended  
18 neither to regulate the Yellow Pages business nor to  
19 require PNB to remain in that business. Isn't that  
20 what the Supreme Court said the Commission told it?

21 A. Page 95 where?

22 Q. Page 95, beginning at the bottom.

23 A. I'm sorry, the bottom paragraph reads, "The  
24 Commission argues that US West's decision to  
25 transfer."

00883

1 Q. It's the third sentence, Dr. Selwyn.

2 A. Okay. Not the one about it being an  
3 unreasonable practice?

4 Q. No.

5 A. Okay.

6 Q. It's the third sentence. "The Commission  
7 explains that at the time of the transfer of the  
8 Yellow Pages business, it intended neither to  
9 regulate the Yellow Pages business in order to  
10 require PNB to remain in that business." Isn't that  
11 what the Court said that the Commission told it?

12 A. I think, if you --

13 MR. OWENS: Excuse me. That calls for a  
14 yes or no, Your Honor.

15 THE WITNESS: The Court said it in that  
16 sentence, but that sentence is out of context of the  
17 entire paragraph.

18 Q. Is it correct that the directory publishing  
19 business is a separate business from the business of  
20 providing listings?

21 A. Yes.

22 Q. And also that the licensing of the  
23 corporate name is a separate activity from the  
24 business of providing listings?

25 A. Yes.

00884

1 Q. And you agreed, I believe in your  
2 deposition, that the White Pages could be published  
3 by one publisher and the Yellow Pages by another  
4 publisher; correct?

5 A. In theory, yes.

6 Q. And isn't it true that no publisher needs  
7 either PNB's or US West's permission to publish its  
8 White Pages listings in an advertising directory?

9 A. No publisher needs PNB's permission to copy  
10 the printed listings in a PNB or US West White Pages  
11 directory and then re-publish those in some other  
12 form.

13 Q. And that copying could be done  
14 electronically, as well as through facsimile or  
15 photostatic copying; correct?

16 A. It could, but I emphasize the specific  
17 relationship to copying the printed directory,  
18 because by the time the directory is printed, the  
19 listings are themselves out of date. And the only  
20 source of accurate listings that would be available  
21 to a competing White Pages publisher would be US  
22 West, not the US West directory.

23 Q. The White Pages are out of date for any  
24 publisher as soon as they hit the street, aren't  
25 they?

00885

1 A. Absolutely, but --

2 Q. They're only updated -- I'm sorry. Go  
3 ahead and finish your answer.

4 A. They're out of date as soon as they hit the  
5 street, but there's going to then be a lag that would  
6 be involved for a competing publisher to acquire a  
7 copy of the printed White Pages from the telephone  
8 company and scan, T-board, or by some other means  
9 capture the information, the printed information in  
10 the White Pages and re-process it and re-print it,  
11 which would then make that publisher's directory even  
12 more out of date than the US West directory, and we  
13 might be looking at a lag time of several months or  
14 perhaps even longer than that.

15 So it's not equivalent -- the mere fact  
16 that the White Pages can be copied once printed --

17 MR. OWENS: Your Honor, this is going well  
18 beyond my question. I simply asked whether or not  
19 any publisher required US West's permission to copy  
20 and use the White Pages listings.

21 MR. TRAUTMAN: I believe he was providing  
22 further explanation for his answer.

23 THE WITNESS: I'm sorry, you said listings,  
24 as opposed to the White Pages directory? There is a  
25 difference. The White Pages listings would have to

00886

1 be obtained directly from US West, as opposed to the  
2 White Pages directory, which, obviously, you could  
3 pick up off of somebody's front stoop.

4 JUDGE WALLIS: I'm going to allow the  
5 answer.

6 Q. The listings are compiled once a year into  
7 the White Pages directory; is that right?

8 A. Typically, yes.

9 Q. Are you aware of whether or not some  
10 competing directory publishers in the state of  
11 Washington market their product by intentionally  
12 hitting the streets several months after the US West  
13 book?

14 A. I certainly don't know what their  
15 intentions are, no. It doesn't surprise me that it  
16 would come out after the US West book, particularly  
17 if their source is the US West book, but whether  
18 that's an intentional marketing strategy, I can't  
19 say.

20 Q. It's true, isn't it, that neither you, nor  
21 any other Staff witness testified in the US West rate  
22 case, UT-950200, that the Yellow Page directory  
23 business had not been transferred, but was only being  
24 leased?

25 A. I know I didn't testify to that effect. I

00887

1 don't know about any other Staff witness. I believe  
2 that's correct, but I can't be sure.

3 Q. Directing your attention to your responsive  
4 testimony, Exhibit 801 at page ten, and your  
5 statement that the Yellow Page directory business is  
6 a de facto monopoly, isn't it true that you've made  
7 no investigation of the competition that exists in  
8 the directory publishing business in the state of  
9 Washington?

10 A. No formal investigation, no.

11 Q. Didn't you testify, at page 25 of your  
12 deposition, that you didn't perform any specific  
13 analysis for the presence or absence of competition  
14 with respect to US West's Yellow Pages operations in  
15 Washington state for that entire period or any  
16 portion thereof, and that entire period related to  
17 1984 to 1999?

18 A. I did.

19 Q. Directing your attention to your Exhibit  
20 801, and the testimony between pages 15 and 20, would  
21 it be fair to understand that testimony as policy  
22 arguments as to why directory imputation should  
23 continue?

24 MR. TRAUTMAN: Which page are we on?

25 MR. OWENS: Fifteen through 20, in their

00888

1 entirety.

2 THE WITNESS: It's both an economic and a  
3 policy argument, yes.

4 Q. And so, by delivering this testimony, are  
5 you asking this Commission to make a finding that  
6 even if it determines that all the conditions in the  
7 Supreme Court's opinion for ending imputation,  
8 whatever they are interpreted to be, had been  
9 fulfilled, that nonetheless, the Commission should  
10 continue to require imputation in Washington?

11 A. No, not necessarily. I think that I'm  
12 simply suggesting that the presence of the ubiquitous  
13 customer base confers value on the directories, and  
14 whether, on an ongoing basis through imputation or  
15 through a single sale transaction where the gain is  
16 recorded on the Company's books in the form of an  
17 adjustment to rate base, the notion that there is an  
18 interaction between the development of a ubiquitous  
19 customer database and the value of the directory  
20 business itself, there is a clear linkage there that  
21 is supported by economic theory, and consequently,  
22 that it is reasonable for the Yellow Pages business  
23 to contribute in some manner, again, whether on a  
24 one-time basis or on an ongoing basis, to the overall  
25 cost of providing telephone service.

00889

1 Q. Then I need to ask you, under the same  
2 assumption in my prior question, that is, that the  
3 Commission would find that all of the conditions  
4 necessary under the Supreme Court's opinion for  
5 imputation to end, namely the fair compensation has  
6 been received by whoever's entitled to it for the  
7 transfer of the undervalued asset, under what  
8 specific conditions, when you say not necessarily,  
9 should the Commission nonetheless continue  
10 imputation?

11 A. If fair compensation, based upon current  
12 value at the time that the Yellow Pages activity is  
13 transferred out of regulation --

14 Q. No.

15 A. -- for rate-making purposes --

16 Q. Listen to my question. My question was,  
17 I'm asking you to assume that the Commission has made  
18 findings that all the conditions have been fulfilled.  
19 I'm not asking you to editorialize on what those  
20 findings --

21 MR. TRAUTMAN: I'll object to the question,  
22 then, as being vague.

23 THE WITNESS: I thought you asked me under  
24 what circumstances, and that's what I was responding  
25 to. Maybe I misheard the question.



00890

1 JUDGE WALLIS: Let's take this bit by bit.  
2 I do not believe that the question is vague, and find  
3 that it is clear and understandable. And I believe  
4 Mr. Owens is in the course of making it clear to the  
5 witness the nature of the question.

6 MR. OWENS: That's correct, Your Honor.

7 JUDGE WALLIS: And I believe that he had  
8 concluded that; is that correct?

9 MR. OWENS: Just about. I just wanted to  
10 make sure that the witness understood that I did not  
11 want him to specify what he thought those findings of  
12 compliance had to be, but that he would address any  
13 other conditions that he would believe would require  
14 or allow continuation of imputation after those  
15 findings had been made.

16 THE WITNESS: Can I hear the original  
17 question, please?

18 (Record read back.)

19 THE WITNESS: The Commission should  
20 continue imputation if it determines that the current  
21 business enterprise value at the time that imputation  
22 is ended is not adequately compensated by a one-time  
23 accounting adjustment to reflect that current  
24 business enterprise value. If it finds that there is  
25 still inadequate compensation, it should continue

00891

1 imputation.

2 Q. Well, I don't believe you understood my  
3 question. Let me try it again. If the Commission  
4 makes a finding that all requirements of the Supreme  
5 Court decision have been fulfilled, including that  
6 fair compensation has been received by whomever is  
7 entitled to it for the transfer of the undervalued  
8 asset, what additional conditions would, in your  
9 view, justify continuing imputation?

10 A. Under those conditions, the only situation  
11 in which I would believe that some imputation would  
12 be -- continued imputation would be appropriate,  
13 petition of revenues above a fair return would be  
14 appropriate, is if the Commission were to conclude  
15 that there is -- that there remains a unique  
16 relationship between the ongoing provision of the  
17 Yellow Pages by the affiliate and the telephone  
18 company's regulated operations; that but for that  
19 relationship, it would diminish the value of the  
20 Yellow Pages business to the affiliate.

21 Q. And there's no reference to any such  
22 provision in the Supreme Court opinion, would you  
23 agree?

24 A. I don't think it's precluded. I think the  
25 Supreme Court -- you asked me how imputation would

00892

1 continue beyond this. I've given you a condition  
2 that has not addressed it one way or the other in the  
3 Supreme Court decision.

4 Q. It's correct, isn't it, that in responding  
5 to US West Data Request Number 26, what's been marked  
6 as Exhibit 822, you responded to a request to  
7 disclose all communications between the Commission  
8 and consultants identifying all persons engaged in,  
9 present, or aware of the communications and provide  
10 the dates and substance of the communications.

11 A. That's correct.

12 Q. And is Exhibit 822 that response?

13 A. It is.

14 MR. OWENS: I'd offer 822.

15 MR. TRAUTMAN: Again, I object. I don't  
16 think that there's a foundation that Dr. Selwyn is  
17 the author of the attached exhibits. I think it  
18 would be more appropriate to enter this exhibit  
19 through Ms. Strain.

20 MR. OWENS: Let me ask a foundation  
21 question.

22 Q. Directing your attention to --  
23 unfortunately, these pages are not numbered -- about  
24 two-thirds of the way through the document, there is  
25 what appears to be an e-mail message that has the

00893

1 header PMS, that's Papa Mike Sierra, 4199, 1:46:18  
2 p.m., with a logo that looks like a globe with an  
3 envelope ring around it. Opposite that, it says  
4 Scott Lundquist, with an e-mail address. Do you see  
5 that?

6 A. Yes.

7 Q. Is Scott Lundquist an associate of yours?

8 A. He is an employee of mine, yes.

9 Q. And is this an e-mail originated from Mr.  
10 Lundquist to Ms. Strain of the WUTC?

11 MR. TRAUTMAN: Counsel, which e-mail are  
12 you referring to? They all have that number at the  
13 top, so what's the date of the e-mail?

14 MR. OWENS: With 12/8 of '98, 3:49:18 p.m.

15 THE WITNESS: 12/8 of '98?

16 MR. OWENS: Yes.

17 THE WITNESS: I haven't found it yet, Mr.

18 Owens. Oh, I have it, okay. 12/8, 3:49; is that the  
19 one?

20 Q. That's correct.

21 A. Okay.

22 Q. So is this a document that was originated  
23 by your company?

24 A. It would appear so, yes.

25 Q. And directing your attention to the second

00894

1 page of that e-mail, it's true, isn't it, that Mr.  
2 Lundquist, in this memo, states, in about the second  
3 sentence on that page, "In any case, expressing the  
4 compensation stream on a PV" -- that's Papa Victor --  
5 "basis in 1984 dollars, amounts to about 2.2 billion,  
6 which is already less than the valuation amount  
7 assuming the 0.44 beta, so that I'm confident that  
8 making full corrections to their calculations (let  
9 alone doing an alternative valuation starting in  
10 1999) will show that the compensation has been less  
11 than the total value, which is a good backstop to our  
12 policy arguments."

13 JUDGE BERG: Excuse me, just before you  
14 answer, Dr. Selwyn. Mr. Owens, I'm sure you're as  
15 concerned about this as I am, but I would just  
16 indicate that even though this hasn't been marked as  
17 a confidential exhibit, it appears that there may be  
18 confidential information, proprietary information in  
19 this particular e-mail. On that basis, I would just  
20 want to be sure that, to the extent you engage this  
21 witness in conversation, that we all be careful not  
22 to disclose confidential information into the record.

23 MR. OWENS: Thank you, Your Honor.

24 JUDGE WALLIS: Does the witness have the  
25 question in mind?

00895

1 THE WITNESS: I don't recall the question.

2 Q. The question is, does what I just recited  
3 appear in this memo?

4 A. Yes.

5 Q. Now, did you make full corrections to the  
6 US West calculation?

7 A. I do not believe that the analysis that was  
8 described here was, in fact, performed.

9 MR. OWENS: Your Honor, this is actually  
10 the only part of this exhibit that I care to have  
11 introduced. I didn't know a convenient way of  
12 separating it earlier, but to meet Counsel's  
13 objection that it should come in through another  
14 witness, I would be content to just have the exhibit  
15 be designated as these two pages, and I would offer  
16 it in that fashion.

17 JUDGE WALLIS: Mr. Trautman, is there  
18 objection?

19 MR. TRAUTMAN: No objection.

20 JUDGE WALLIS: The document, as restricted  
21 per the request of Counsel, is received as Exhibit  
22 822.

23 MR. OWENS: Thank you, Your Honor.

24 JUDGE BERG: Ms. Anderl, before we proceed,  
25 can you confirm whether or not this two-page document

00896

1 contains confidential information?

2 MS. ANDERL: Should I do that now or let  
3 you know on the break?

4 JUDGE BERG: Let's do that on the break.

5 MS. ANDERL: All right.

6 JUDGE BERG: Thank you.

7 Q. In my immediately preceding series of  
8 questions, Dr. Selwyn, I believe you said that, under  
9 the assumption, that the Commission would find all  
10 conditions in the Supreme Court's decision had been  
11 met, that a condition that would, in your mind,  
12 justify continuing imputation is -- and correct me if  
13 I paraphrase you incorrectly -- that there would be  
14 some continuing benefit to the ongoing publication of  
15 the directory by its association with the local  
16 telephone service; is that correct?

17 A. Yes.

18 Q. It's true, isn't it, that your testimony is  
19 that there is such a benefit?

20 A. Yes.

21 Q. So do I correctly understand the import of  
22 those two facts, that there would never be a  
23 situation in which directory imputation would end so  
24 long as the publishing of the directories was done by  
25 any affiliate of US West Communications?

00897

1           A.    Let me make it clear that I'm not speaking  
2 necessarily the same degree of imputation.  Your  
3 questions went to imputation as a general principle.  
4 And the kind of relationship that I am -- to which  
5 I'm referring is a relationship that is separate and  
6 apart from the historic relationship.

7           Q.    Sir, my question, if I may stop you there.  
8 I wasn't asking about degree.  I was asking if it  
9 would end ever?

10          A.    The answer is it could end, provided that  
11 the specific condition that I described on a  
12 forward-looking basis, and not considering the  
13 perpetuation of the historic relationship, which  
14 would have been the basis for the business enterprise  
15 value that would have been paid in compensation, in  
16 compliance with the -- or in accordance with the  
17 Supreme Court suggestion.  I'm speaking here of a  
18 much more limited situation that would only apply  
19 prospectively.

20                If you're asking me can I envision such a  
21 situation, the answer is I can.  I could also  
22 envision a lack of it.

23          Q.    I confess that you've confused me.  Under  
24 what circumstances can you envision, given the  
25 ongoing relationship that I understood you to posit



00898

1 in your exception justifying continued imputation,  
2 and under what circumstance would it not justify  
3 continued imputation?

4 A. Okay. Let me try to respond by example.  
5 The various conditions that have worked historically  
6 to create unique business enterprise value in the  
7 Yellow Pages, the first in the market advantage, the  
8 historic association with the telephone company, the  
9 availability of online access to subscriber  
10 information, listing information, changes and the  
11 like, all of that collectively goes to produce the  
12 business enterprise value at a given point in time.  
13 If compensation is paid for that, on that basis, then  
14 that no longer provides a basis for imputation of any  
15 sort.

16 On the other hand, if, for example -- and  
17 this is purely hypothetical. If, for example, US  
18 West Communications, by virtue of its affiliation  
19 with Dex, agrees to perform certain functions for Dex  
20 that it will not perform for competitors and which,  
21 if they were not performed for Dex, would diminish  
22 the value of the directory on an ongoing basis, then  
23 there may be a basis to impute some value to that, to  
24 those services, in excess of their cost.

25 For example, if US West Communications

00899

1 continues to bill and collect for directory services  
2 in a manner that is not offered to competitors,  
3 competing directory publishers -- and I'm not  
4 suggesting that it does, but I'm using that as an  
5 example -- that the value of that to Dex may exceed  
6 the costs incurred by US West Communications in  
7 providing that service, which would provide a basis  
8 for some ongoing imputation of the increased value.

9 But that is the only extent to which I  
10 would see ongoing value. But I would not see  
11 imputation relating to the business enterprise value  
12 that is effected -- that is recognized in the  
13 one-time compensation payment.

14 Q. Thank you for clarifying that. And just so  
15 that I'm sure the clarification is clear, when you  
16 say online access to subscriber information, you're  
17 not saying that you believe that that exists today,  
18 are you?

19 A. I don't know. It was referred to in the  
20 1984 publishing agreement, which came out during Mr.  
21 Brosch's testimony yesterday afternoon. The extent  
22 to which it may or may not exist today, I don't know.

23 Q. And I believe you more or less clarified  
24 this, but I just want to make sure. You're not  
25 suggesting that US West Communications offers billing

00900

1 and collection services to Dex that it would not make  
2 available if someone else asked for them to another  
3 publisher?

4 A. I'm not suggesting that, although I believe  
5 Mr. Brosch testified that it was his understanding  
6 that if billing and collection services were provided  
7 to another publisher, that that publisher would be  
8 required to pay certain up-front costs. Now, if the  
9 avoidance of those up-front costs to Dex is captured  
10 in the business enterprise value, then there would be  
11 a true -- that is the basis for the compensation,  
12 then there would be true equivalency.

13 If, on the other hand, that avoidance is  
14 not captured in Dex's -- in the Washington  
15 directory's business enterprise value, then there  
16 might then be an ongoing basis for imputation,  
17 because of the discriminatory method in which billing  
18 and collection services are provided. So it would  
19 depend on the facts.

20 Q. Direct your attention now to your  
21 responsive testimony, Exhibit 801, at page 28. You  
22 state, beginning on the paragraph at the top of the  
23 page, line two, you say, "In essence, the transfer  
24 amounted to an outsourcing of the directory  
25 publishing operation." How many outsourcings have

00901

1 you investigated?

2 A. Oh, I'm familiar with the concept. Some of  
3 our clients are engaged in the business of providing  
4 telecommunications services to other companies on an  
5 outsourcing basis. So I'm familiar, in general, with  
6 what that concept involves.

7 Q. Well, how many have you investigated?

8 A. Well, I don't know what you mean by  
9 investigated.

10 Q. Have you done any audits of any providers  
11 of outsourcing services?

12 A. No, not to my knowledge.

13 Q. Isn't it true that, generally, the receiver  
14 of the outsourcing services exercises a significant  
15 amount of control over the person or entity providing  
16 the outsourcing services, as to the type, manner and  
17 quality of those services?

18 A. Not necessarily. I mean, the contract may  
19 specify the nature of the service, just as the  
20 publishing agreement, for example, makes certain  
21 specifications with respect to the nature of the  
22 publications that Dex, or USWD, would be providing.  
23 Whether -- if the suggestion is that the client of  
24 the outsourcing firm could, for example, become  
25 involved in the selection of personnel and so on,

00902

1 that may or may not be the case. Depends on the  
2 nature of the relationship.

3 Q. Isn't it true that a typical outsourcing  
4 arrangement would not give the provider of the  
5 outsourcing service title to the product that was  
6 produced?

7 A. I don't think you could say that  
8 categorically, because that would depend, in part,  
9 upon, again, the nature of the business activity and  
10 the extent to which it is provided to multiple  
11 clients versus being performed on a more customized  
12 basis for a single client. So I don't think there is  
13 a so-called typical outsourcing arrangement.

14 JUDGE WALLIS: Mr. Owens, why don't you let  
15 us know when you come to a natural breaking point,  
16 and we'll take a recess.

17 MR. OWENS: Thank you, Your Honor. This is  
18 as good a point as any.

19 JUDGE WALLIS: Very well. Let's take 15  
20 minutes, please.

21 (Recess taken.)

22 JUDGE WALLIS: Let's be back on the record  
23 following an afternoon break. During the break, it  
24 has been agreed that the parties will conclude with  
25 the examination of Dr. Selwyn today and then bring

00903

1 Ms. Koehler-Christensen to the stand, and we  
2 anticipate that the parties will be able to conclude  
3 the examination of her prior to concluding today's  
4 session.

5 That would leave tomorrow free of hearing  
6 obligations for the parties, with the understanding  
7 that Ms. Strain would be brought to the stand and  
8 would be cross-examined upon her submissions in the  
9 session that's previously been set to begin on August  
10 26th, 1999.

11 All right. With that, let's begin --  
12 resume the examination of Dr. Selwyn.

13 MR. OWENS: Thank you, Your Honor.

14 Q. Dr. Selwyn, page 35 of Exhibit 801, line  
15 19, there you criticize Ms. Koehler-Christensen's  
16 interest rate calculation, based on your testimony  
17 that the principal value that she calculates  
18 represents her estimate as to ratepayers' continued  
19 share of ownership of the Yellow Pages business, and  
20 that's based on your earlier testimony that the  
21 intangible asset was not transferred in 1984; is that  
22 correct?

23 A. For rate-making purposes, correct.

24 Q. So if it were determined, contrary to your  
25 testimony, that that asset was transferred, then you

00904

1 would agree with me that the basis for your  
2 contention that ratepayers still owned the directory  
3 business would no longer exist?

4 A. If I understand your question, and I'm not  
5 sure I do, if the fundamental premise upon which I'm  
6 basing my analysis is not accepted, obviously the  
7 conclusions of my analysis aren't accepted.

8 Q. Okay. At page 29 of your Exhibit 801,  
9 again, your four elements for what you characterize  
10 as a sale having to have been present were referred  
11 to in US West Data Request 57, and your response to  
12 that was marked Exhibit 823; correct? That is, US  
13 West asked you each reason why a sale of the  
14 directory business could not be imputed to have  
15 occurred in 1984 for rate-making purposes, and asked  
16 you to explain exactly why such an imputed sale is  
17 conceptually different from imputing directory  
18 advertising revenue to US West Communications, Inc.

19 A. Just hang on a second, please.

20 MR. TRAUTMAN: Where are we at, Counsel?

21 MR. OWENS: Exhibit 823, response to Data  
22 Request 57.

23 THE WITNESS: That's my answer, yes.

24 MR. OWENS: I would offer 823.

25 MR. TRAUTMAN: No objection.

00905

1 Q. Now, in this answer --

2 JUDGE WALLIS: Excuse me, 823 is received.

3 MR. OWENS: I beg your pardon, Your Honor.

4 Q. In this answer, Dr. Selwyn, you state an  
5 opinion about the purpose for which imputations were  
6 made, and would it be a correct understanding that  
7 the only evidence you have as to what that purpose  
8 was is based on your review of the Commission orders  
9 and the Supreme Court order?

10 A. The difficulty I'm having with your  
11 question is that you're asking a fairly general  
12 question, but yet you're making reference  
13 specifically to Exhibit 823, which is focusing  
14 specifically on the issue of whether or not the  
15 imputations were installment payments.

16 So I wonder if you could perhaps help me by  
17 rephrasing the question so I understand whether you  
18 mean it to be general or you mean it to be confined  
19 to this particular response.

20 Q. I'd be glad to rephrase it. I'm asking  
21 you, when you state that the installment -- or excuse  
22 me -- that the imputations were not made for that  
23 purpose, namely installment payments against the sale  
24 price, do you have any evidence other than the  
25 Commission orders and the Supreme Court's opinion?



00906

1           A.    It's my -- yes, I do.  It's my  
2 understanding that the notion that such payments were  
3 installment payments was first brought before this  
4 Commission in this case, in the testimony of Ms.  
5 Koehler-Christensen, that it was not argued, either  
6 in the 1995 rate case or in the -- it was not argued  
7 by US West Communications either in the 1995 rate  
8 case or in the Supreme Court case, that the notion  
9 was first advanced specifically in this proceeding.

10           Therefore, I think that I would agree with  
11 you that -- in addition, however, to the documents  
12 you mentioned, the fact that it wasn't even raised as  
13 a possible use of imputation prior to this case, I  
14 think also supports this conclusion.

15           Q.    No other evidence than what you just said?

16           A.    Not that I can think of at the moment.

17           Q.    Thank you.  At page 30 of your reply  
18 testimony, Exhibit 801, beginning --

19           A.    I'm sorry, which exhibit?  801?

20           Q.    Exhibit 801.

21           A.    Yeah.

22           Q.    I guess it actually begins on page 29, line  
23 21.  You provide an analogy of a tenant living in a  
24 house.

25           A.    Yes.

00907

1 Q. Let me give you a minute.

2 A. I have it.

3 Q. Okay. It's true, isn't it, that in your  
4 analogy, the tenant voluntarily entered into the  
5 lease agreement with the landlord?

6 A. Yes.

7 Q. And it's also true that, in this situation,  
8 this Commission determined that ratepayers were  
9 entitled to compensation for the value of the  
10 directory business over US West's objection; is that  
11 a fair statement?

12 A. If you mean with respect to the conditional  
13 approval of the 1984 transaction?

14 Q. The totality of the circumstances of this  
15 case?

16 A. The Commission conditionally approved the  
17 1984 transaction on the basis that there would be a  
18 ratepayer entitlement to the fair market value, and  
19 that fact was made known to US West at the time. And  
20 presumably, if US West objected to that, it could  
21 have reversed the transaction. So therefore, I would  
22 argue that, given that the application was approved  
23 conditionally and because of that conditional  
24 approval, it could have been withdrawn, that the  
25 acceptance of it was voluntary.

00908

1 Q. The Commission didn't use the term "fair  
2 market value" in any of its orders in FR-83-159, did  
3 it?

4 A. I think it used the word economic term,  
5 economic value, or something to that effect. I'm  
6 focusing more on the Supreme Court's characterization  
7 of the conditional approval that we were talking  
8 about earlier today.

9 MR. TRAUTMAN: Do you have a copy of the  
10 order that you'd like to show the witness?

11 MR. OWENS: I'm asking him if he knows --

12 MR. TRAUTMAN: You're asking him questions  
13 with regard to an order and you're not providing him  
14 a copy of that order?

15 MR. OWENS: He purported to recite from the  
16 text of the order himself. I'm asking him whether or  
17 not he knows whether the Commission used that term?

18 THE WITNESS: Let me respond by referring  
19 you to page 98 of the Supreme Court decision. In the  
20 second full paragraph on that page, beginning with  
21 the second sentence, it reads, quote, "The Company  
22 has not been ordered to stay in the directory  
23 publishing business. The record shows the Company  
24 has always been free to sell the business for a fair  
25 value," end quote.

00909

1 Q. So that's the statement you rely on?

2 A. Well, that's an example of it.

3 Q. Anything else that you can recall  
4 specifically?

5 A. I'm trying to find the sentence that we  
6 were discussing before related to conditional  
7 approval, but I can't spot it at the moment.

8 Q. It's on the same page, the paragraph at the  
9 top of the page.

10 A. Oh, there it is. The statement says,  
11 quote, "Conditionally approved the transfer,  
12 retaining jurisdiction as allowed by statute to set a  
13 fair compensation in the next rate case," end quote.  
14 So it's the fair compensation that I'm interpreting  
15 as fair value.

16 Q. And that's an answer to my question about  
17 your lease analogy; is that correct?

18 A. No, I thought it was in answer to your  
19 question about what I'm relying on as a basis for  
20 fair value. We were talking the Court's purposes. I  
21 thought the lease analogy was about two or three  
22 questions back.

23 Q. All right. You responded to exhibit --  
24 excuse me, to Data Request 52 in what has been marked  
25 as Exhibit 825; is that correct? And you were asked

00910

1 there to provide all evidence in your possession that  
2 supports the proposition and status of the official  
3 directory publisher that was intended by the parties  
4 to the publishing agreement to benefit US West  
5 Direct, or Dex, rather than to enable US West  
6 Communications, Inc. or its predecessor, PNB, to  
7 discharge its legal duty to publish the White Page  
8 directory;" is that right?

9 A. Yes.

10 Q. And Exhibit 825 is your response?

11 A. Yes.

12 MR. OWENS: I'd offer 825.

13 MR. TRAUTMAN: No objection, except I do --  
14 well, to the extent that -- I think the record should  
15 reflect that the Company, in addition to the data  
16 request that they have entered into the record, gave  
17 Staff a blanket data request for all documents that  
18 they had relied upon in this docket, and we have  
19 continually updated by that data request.

20 So I don't think it -- I think the record  
21 should reflect that the documents we have relied on  
22 for various statements are -- some of them are  
23 included in that blanket data request. I believe it  
24 was Data Request 26.

25 JUDGE WALLIS: With that understanding, the

00911

1 exhibit will be received.

2 MR. OWENS: Well, I guess I need to ask the  
3 witness.

4 Q. Are there any documents that have been  
5 supplied in response to Exhibit 26 that also respond  
6 to this request?

7 A. I can't answer you at this point. That's  
8 something I can check and respond later.

9 MR. OWENS: Your Honor, I guess I can't end  
10 my cross-examination without knowing if there's  
11 additional information not otherwise identified  
12 that's responsive to this, so I guess I'll just have  
13 to take that and possibly bring it before the  
14 Commission based on a result of the supplementation.

15 JUDGE WALLIS: Very well.

16 MR. TRAUTMAN: Well, for example, we've  
17 referred at length and Mr. Owens has referred at  
18 length to the application, and that was also  
19 requested as part of the blanket data request, and we  
20 indicated that we relied on that, the 1983 and the  
21 1984 applications. That's just one that comes to  
22 mind.

23 THE WITNESS: I would add to that, I mean,  
24 along -- certainly I've relied, in reaching my  
25 conclusions, on testimony offered by the Company in

00912

1 this case, some of which might have been received  
2 subsequent to this document. For example, some of  
3 the discussion in Mr. Perlman's testimony relating to  
4 the -- in which he appears to agree with my  
5 assessment of the inherently monopoly character of  
6 the Yellow Pages business in the context of the first  
7 to the market advantage that applies to the  
8 incumbent's directory.

9           So I mean, there are a lot of documents in  
10 this case, and I'm just not sure I can give you an  
11 exhaustive list within this time frame.

12       Q.    You didn't rely on Mr. Johnson's testimony,  
13 I take it?

14       A.    I didn't say I didn't.

15       Q.    Well, you didn't mention it in your answer.  
16 So do I now understand that you did rely on Mr.  
17 Johnson's testimony in supporting this proposition?

18       A.    I certainly read Mr. Johnson's testimony.  
19 I don't recall specifically how it bears on this  
20 response.

21       Q.    Is it correct, Dr. Selwyn, that you  
22 responded to US West Data Request Number 41, that's  
23 been marked as Exhibit 826, that referred to your  
24 testimony at Exhibit 801, page 41, describing the  
25 fair market value of subscriber listings and business

00913

1 listings and asked you for all documentation  
2 supporting your statement that that value is higher  
3 than what US West Communications charges directory  
4 publishers?

5 A. Yes.

6 Q. And is Exhibit 826 your response?

7 A. Yes.

8 MR. OWENS: I'd offer 826.

9 MR. TRAUTMAN: No objection.

10 JUDGE WALLIS: Received.

11 Q. Now, in this response, Dr. Selwyn, you rely  
12 on what you characterize as extremely high profit  
13 levels of US West Direct as evidence that US West  
14 Communications listings data has far greater value  
15 for directory publishing purposes than US West  
16 Communications charges to US West Direct for that  
17 information.

18 Now, isn't it true that you provided no  
19 evidence on the profit levels of any competing  
20 directory publisher that also purchases those  
21 listings?

22 A. That's true. But I am relying, in part, on  
23 this opinion on the first --

24 MR. OWENS: Your Honor.

25 MR. TRAUTMAN: I believe the witness is



00914

1 entitled to explain his answer, after he has given a  
2 yes or no, which he did.

3 MR. OWENS: All right. I withdraw my  
4 objection.

5 THE WITNESS: Continuing, I'm relying in  
6 part on, again, the area of my testimony and of Mr.  
7 Perlman's testimony, in which we appear to be in  
8 agreement that there is a substantial first to the  
9 market advantage. And I think, based on that, it is  
10 entirely reasonable to assume that US West Direct's  
11 profit level is significantly greater than that of  
12 any of its alleged competitors in this -- in the  
13 Yellow Pages directory business.

14 Q. The relative profit levels is something  
15 that could be proved with evidence, isn't it?

16 A. Perhaps. If, in fact, the profit levels  
17 associated with directories that compete directly  
18 with US West Direct's Washington Yellow Pages were  
19 independently available from other sources, and I  
20 don't know that they are.

21 Q. What effort did you make to obtain them?

22 A. Well, I looked at the web sites of some of  
23 the companies that were identified in Ms.  
24 Koehler-Christensen's rejoinder testimony, for  
25 example, to try to get some information about the

00915

1 companies that she was alleging -- I believe it was  
2 her testimony. I may be incorrect on that, but I  
3 believe it was hers -- that she was alleging produced  
4 directories competitive with US West Direct's -- USW  
5 Dex's Washington directories.

6           And based on that, I determined that the  
7 competing directories seemed to, to the extent they  
8 cover points of Washington state at all, many of  
9 those companies publish directories in multiple  
10 states, did not constitute the kind of geographic  
11 coverage that Dex was offering.

12           They seem to be fringe or niche market  
13 players. And I found nothing to indicate that these  
14 companies would have market values remotely close to  
15 \$4.75 billion, perhaps adjusted upward for additional  
16 value, since that valuation was taken in 1998.

17           Q. Is market value the same thing to you as  
18 profit level?

19           A. It's an indication of the present value of  
20 future profits, so yes, there's a direct linkage  
21 between profit level and market value.

22           Q. But you didn't obtain any profit level or  
23 market value information for any of these companies;  
24 is that correct?

25           A. Well, the sole purpose of my examination

00916

1 was to determine whether any --

2 MR. OWENS: Your Honor, that one called for  
3 yes or no.

4 THE WITNESS: No, it did not. The sole  
5 purpose of my examination was to determine whether  
6 there's any reason to believe that any of these  
7 companies was remotely close in market value to Dex.  
8 And upon examining the information I was able to  
9 obtain on them, I concluded that further analysis was  
10 unnecessary, because they did not remotely satisfy  
11 that criteria.

12 Q. So what is the fair market value of US West  
13 Communications' listings?

14 A. I don't have a specific estimate of that on  
15 a stand-alone basis.

16 Q. So are you advocating that US West  
17 Communications should increase the price of its  
18 listings?

19 A. No, not necessarily. Again, this goes to a  
20 response that I gave you before the break with  
21 respect to the question of whether or not imputation  
22 should be discontinued if a fair value compensation  
23 were paid. And again, it goes to the question of  
24 whether or not the ongoing provision of listings on a  
25 nondiscriminatory basis at a nondiscriminatory price

00917

1 to all directory publishers does not convey any  
2 unique advantage on Dex, in which event no imputation  
3 or price above cost would be required.

4 As long as the historic advantage that  
5 inures to the directory -- the US West Washington  
6 state directory business as a result of its historic  
7 relationship is captured in the fair market value,  
8 business enterprise value compensation, then there  
9 would be no reason to charge above-cost price for  
10 listings, provided it's done on a nondiscriminatory  
11 basis.

12 Q. Is it your contention, Dr. Selwyn, that in  
13 order for there to have been a transfer of the  
14 directory business in 1984, PNB would have had to  
15 divest itself of its listings line of business to the  
16 publishing company?

17 A. No, not necessarily. However, PNB would  
18 have had to have offered its listings at that point  
19 in time on a totally nondiscriminatory basis to any  
20 directory publisher, which means, for example, that  
21 it would have either had to have immediately  
22 discontinued the access by the Yellow Page operations  
23 to its online information systems and databases, or  
24 alternatively made identical access available to  
25 competing publishers.

00918

1           To the extent it did not do that and  
2 continued to favor its directory publishing  
3 affiliate, then that's the source of the additional  
4 value. So I don't see divesting -- divestiture, per  
5 se, as something that would have been required.

6           Q.    How long did that electronic access last?

7           A.    I don't know.

8           Q.    Isn't it true that the electronic access  
9 that was provided for in the 1984 agreement was part  
10 of the group of services for which the publishing fee  
11 in that agreement was paid?

12          A.    Perhaps. Perhaps it was, but those  
13 services by, for example, Ms. Koehler-Christensen's  
14 own testimony, were not made available. No listings  
15 services were offered to other publishers until 1987.  
16 So certainly between 1984 and 1987, the only way that  
17 USWD could remain in the directory business was to  
18 have those listings, because they were not being  
19 offered to anybody else, and therefore the question  
20 of whether or not the publishing fee would provide  
21 adequate compensation remains to be seen, but clearly  
22 that was apparently part of its purpose.

23          Q.    Where in Ms. Koehler-Christensen's  
24 testimony do you find support for that?

25          A.    I don't have it here. It was in her

00919

1 rejoinder testimony. I don't recall the page number.  
2 Perhaps Counsel could help me find it.

3 JUDGE WALLIS: Exhibit 513-T, I believe.

4 MR. TRAUTMAN: May I approach?

5 THE WITNESS: I have it, Mr. Owens.

6 Q. All right. What's the reference?

7 A. It's at page seven of Ms.

8 Koehler-Christensen's July 16th, 1999 rejoinder  
9 testimony, which is exhibit -- what did we say, 516?

10 JUDGE BERG: 513-T, sir.

11 THE WITNESS: 513-T. The question at line  
12 six propounded to Ms. Koehler-Christensen reads,  
13 quote, "Staff and Public Counsel have made reference  
14 to the business updates that USWD obtained from PNB.  
15 Were these available to all publishers?" Answer, on  
16 line nine, quote, "Yes, PNB began selling daily  
17 updates to all publishers, including USWD, in 1987."

18 Q. And that refers to the daily updates. But  
19 the listings were available as of 1984; correct?

20 A. Well, the listings were available in some  
21 form as of 1984. However, it's not apparent that the  
22 form was equivalent inasmuch as, according to the  
23 1984 agreement, USWD had online access to various  
24 databases, which would have included, among other  
25 things, the daily updates to listings, as well as to

00920

1 the business updates that are referred to in this --  
2 in the question and answer I just cited.

3 Q. What evidence do you have that the online  
4 access gave access to daily updates and business  
5 updates?

6 A. Well, I'm generally familiar with some of  
7 the systems that -- and the capabilities of some of  
8 the systems that were referenced in the publishing  
9 agreement, such as the customer records information  
10 systems, CRIS, and the others, and this is the kind  
11 of information that would have been supplied by such  
12 systems.

13 Q. Well, do you mean that if a listing was  
14 entered into CRIS, and someone happened to use the  
15 online system to gain access to that by looking for  
16 the correct person or telephone number, that they  
17 would see it, or do you mean, alternatively, that you  
18 could enter CRIS and go to some screen or area and  
19 see a group of listings that were grouped because  
20 they were updates as of that day?

21 A. I believe the latter, yes.

22 Q. And what's the evidence for that?

23 A. Again, in the course of my work over the  
24 years, I've had occasion to review the capabilities  
25 of those systems, and it is my understanding that

00921

1 though the database access provided by the systems  
2 that are mentioned would include the kind of  
3 capability you just described.

4 Q. Have you used it yourself, the system?

5 A. No, I have not. No, I have not.

6 Q. In your reply testimony, at page 45 --

7 JUDGE WALLIS: Mr. Owens, can you, for our  
8 convenience --

9 MR. OWENS: I'm sorry. Responsive  
10 testimony. Exhibit 801, Your Honor, sorry.

11 Q. In that note 42, you state that,  
12 "Imputation's reflected less than one hundred percent  
13 of the Yellow Pages operation's actual profits in  
14 each of those years." And you're talking about 1990  
15 to '93. Isn't it true that the imputation is after  
16 the allowed utility rate of return?

17 A. Yes. That's what's referred to in that  
18 answer.

19 Q. Isn't it true that US West asked you, in  
20 Data Request 54, which is the response to which has  
21 been marked Exhibit 827, to provide a calculation  
22 showing the amount of gain on sale that PNB would  
23 have had to record on its books in 1983 or '84, under  
24 the second scenario, on page 45 of Exhibit 801?

25 A. Yes, that's my response.



00922

1 MR. OWENS: Thank you. I'd offer 827.

2 MR. TRAUTMAN: No objection.

3 JUDGE WALLIS: Received.

4 Q. On page 46 of Exhibit 801 --

5 MR. BUTLER: Sorry, what page?

6 Q. Actually, I think it's page 47. You  
7 discuss the 1997 reorganization of US West, Inc. into  
8 US West and Media One. This is beginning at line  
9 nine.

10 A. Yes.

11 Q. And you say that, beginning at line 17,  
12 that the Commission can reasonably rely on these  
13 valuation studies, referring to the ones that were  
14 done in connection with that reorganization as a  
15 close approximation to the fair market value of the  
16 Yellow Pages business as of 1997; correct?

17 A. Yes.

18 Q. Now, the context of that transaction was  
19 that US West Communications paid out, in the form of  
20 cash and stock, to receive the directory publishing  
21 enterprise from Media Group; is that correct?

22 A. Yes.

23 Q. And that's the same business that you  
24 testified was never transferred from US West  
25 Communications; is that correct?

00923

1 A. For rate-making purposes.

2 Q. Appendix Two of Exhibit 801, page four, you  
3 criticized Mr. Golden's valuation at the top, the  
4 first full paragraph, by stating that in the case of  
5 US West Direct, the Yellow Pages would be operative  
6 by an affiliate with special and unique access to a  
7 broad range of ILEC resources. And of those, isn't  
8 it true that the customer services transactions data  
9 and customer billing and collection systems are not  
10 uniquely available to the directory -- US West  
11 Direct?

12 A. Well, at the time of the 1984 transaction,  
13 I don't believe -- I believe that it was a unique --  
14 availability was unique.

15 Q. But today, is it?

16 A. Now, I can't answer with respect to billing  
17 and collection systems, based upon Mr. Brosch's  
18 observation yesterday as to whether or not it's  
19 unique. With respect to listings, if, in fact -- I  
20 don't know this for a fact, but if, in fact, listing  
21 information is being offered in exactly the same form  
22 and exactly the same degree of timeliness to  
23 nonaffiliated publishers as was being offered to  
24 USWD, then I would agree that at least that aspect of  
25 it is no longer unique, assuming that my -- that the

00924

1 premise of that statement is correct.

2 Q. At Appendix One of Exhibit 801, pages nine  
3 and ten, you criticize Mr. Golden's selection of a  
4 beta by stating that the firms he used for his beta  
5 estimate are not comparable to directory publishers;  
6 is that right?

7 A. Certainly not comparable to a directory  
8 publisher with first in the market advantage and the  
9 history of USW's directory operations.

10 JUDGE WALLIS: For administrative purposes,  
11 let's note at this point that Appendix One to Exhibit  
12 801 has independently been marked and received as  
13 Exhibit 803-C.

14 MR. OWENS: Thank you, Your Honor.

15 THE WITNESS: I believe Appendix Two was  
16 Exhibit 804.

17 JUDGE WALLIS: Yes.

18 Q. Have you presented any evidence of whether  
19 -- any empirical evidence of whether newspaper  
20 earnings would be more or less volatile than those of  
21 incumbent directory publishers?

22 A. No, and I don't think such -- I think it's  
23 fairly self-evident, just by the nature of the  
24 industries involved. Newspaper industry is  
25 contracting, whereas the directory business has been

00925

1 expanding. Newspaper industry does not have the kind  
2 of assurance of coverage; it's much more -- of  
3 revenue. It's much more sensitive to business  
4 cycles. For example, advertising lineage is  
5 typically used as an indicator of economic activity  
6 itself and these kinds of indications are not present  
7 to anywhere near the same degree, if at all, in  
8 Yellow Page directories. I don't need to study  
9 things that are self-evident, Mr. Owens, but this one  
10 certainly is self-evident.

11 Q. The answer is no?

12 A. The answer is no, and I said that.

13 Q. In Exhibit 804, page three, the second  
14 paragraph, you state that -- you discuss the special  
15 relationship of the ILEC Yellow Pages to the monopoly  
16 local telephone utility. Do you see that?

17 A. Yes.

18 Q. And it's true, isn't it, that US West has  
19 never had a monopoly in the state of Washington?

20 A. It's a de facto monopoly that still exists  
21 today.

22 Q. It's never had a legal monopoly, has it?

23 A. Irrelevant.

24 MR. OWENS: Your Honor, is the witness  
25 objecting to the question?

00926

1 THE WITNESS: I'm saying -- I'm not  
2 objecting to the question; I'm saying that the answer  
3 is irrelevant to the point that's being made in this  
4 exhibit.

5 MR. OWENS: Your Honor, the practice of the  
6 witness sustaining his own objections, I've never  
7 seen.

8 JUDGE WALLIS: We have seen that in the  
9 past.

10 MR. OWENS: I guess, in the absence of an  
11 objection argued from Counsel, I'd ask the witness be  
12 directed to answer the question.

13 MR. TRAUTMAN: I believe he could answer  
14 yes or no, and then explain the relevance, if any.

15 JUDGE WALLIS: He may answer yes or no and  
16 refer to his prior answer.

17 THE WITNESS: I do not know, as a legal  
18 matter, whether or not US West or its predecessor,  
19 Pacific Northwest Bell, or its predecessor, Pacific  
20 Bell, or Pacific Tel & Tel, I should say, had ever  
21 had a legal monopoly in the state of Washington.

22 Q. Have you presented a market analysis on the  
23 indicia of a monopoly for basic telephone service in  
24 this case?

25 A. I have not.

00927

1 Q. In your surrebuttal testimony, this would  
2 be Exhibit 806, at page eight, that the  
3 organizational shift of responsibility for the  
4 publishing activity -- this is at line one -- from  
5 the PNB entity to the USWD entity was largely  
6 transparent both to advertisers and to end users.

7 Now, you previously testified that you have  
8 no personal firsthand knowledge of these events.  
9 Have you interviewed any advertisers or users of  
10 directories to provide information to support your  
11 opinion?

12 A. No.

13 Q. Do you have any evidence that advertisers  
14 were dissatisfied with the US West Direct product by  
15 the end of the first publishing agreement?

16 A. I don't believe I make such an assertion  
17 and I don't know any evidence to that effect.

18 Q. Do you have any reason to dispute Mr.  
19 Johnson's testimony that US West Direct was  
20 aggressively promoting its brand identity from the  
21 inception of its business through the present day?

22 A. No.

23 Q. Do you have any evidence that PNB, in 1987,  
24 would have had the skilled personnel with advertiser  
25 relationships, contracts for printing paper and

00928

1 distribution, and relationships with advertisers that  
2 would be necessary to have re-entered the business at  
3 that time?

4 A. I would not have expected PNB to have  
5 re-entered the business at that time.

6 Q. Do you know whether they had any of those  
7 things at that time?

8 A. I would expect not.

9 Q. At page 13 of the same exhibit, beginning  
10 at line seven, you state that, "Had PNB elected to  
11 discontinue the publishing agreement with USWD as of  
12 January 1, 1987, and resumed responsibility for  
13 publishing these directories, it, and not USWD, would  
14 then have continued the use of the PNB name." What's  
15 the basis of that statement?

16 A. The right of USWD to use the PNB name was  
17 conveyed in the publishing agreement, which would  
18 have terminated as of the end of 1986.

19 Q. Are you testifying that you know that PNB  
20 would have continued to use the PNB name?

21 A. I don't know that, but USWD would not have  
22 been able to use it because its right to use it was  
23 limited to the three-year term of the publishing  
24 agreement.

25 Q. Page 17 of the same exhibit, you discuss

00929

1 Professor Perlman's testimony on the effect of the  
2 copyright that the publishing agreement granted to US  
3 West Direct. And you refer to -- I believe it's  
4 Exhibit 809. I'm sorry, 808, the sample publishing  
5 -- advertising agreement whereby an advertiser  
6 purchases advertising services from US West Dex in  
7 that connection; is that correct?

8 A. Yes.

9 Q. And you say, at that page 17 of Exhibit  
10 806, that because this agreement gave the publisher  
11 and its affiliates, including USWC, the right and  
12 license to use the ad content in any form or media,  
13 that PNB could easily have re-entered the directory  
14 business without forcing advertisers to redo their  
15 copy. I'm paraphrasing your testimony, but have I  
16 fairly paraphrased it?

17 A. Yes.

18 MR. TRAUTMAN: Where are you paraphrasing  
19 from?

20 MR. OWENS: Beginning at line 11 on page 17  
21 of Exhibit 806.

22 JUDGE WALLIS: I believe the witness  
23 answered in the affirmative.

24 THE WITNESS: Yes, I'd agree with that.

25 Q. And it's true, isn't it, that the



00930

1 agreement, Exhibit 808, provides that the license is  
2 for something called Advertisers' Content, and that's  
3 in initial caps; correct? That's on page two of the  
4 agreement, under copyrights and trademarks?

5 A. Yes.

6 Q. And advertisers' content is defined in that  
7 same paragraph as for advertisers' trademarks or  
8 other specific content submitted by advertiser, which  
9 includes advertisers' copyright or trademark notice  
10 affixed to such content; correct?

11 A. Yes.

12 Q. Now, you've testified that it would be easy  
13 for PNB to have easily re-entered the directory  
14 business without forcing advertisers to redo their  
15 copy. Is that because you know that virtually none  
16 of the ads in the directories consisted of other than  
17 advertisers' content?

18 A. I don't know that.

19 Q. In fact, if I were to show you a directory,  
20 you'd have to look and see whether you could find the  
21 circle c or the trademark in each ad to determine  
22 whether it was subject to the license; correct?

23 A. I'm not sure this is to be interpreted as  
24 requiring that that actually appear in the ad, as  
25 opposed to being provided to the directory publisher

00931

1 at the time that the copy is furnished to the  
2 directory publisher.

3 Q. Then --

4 A. So it's possible that an advertiser might  
5 argue that he noticed the publisher that this is his  
6 property, whether or not the trademark actually  
7 appears.

8 Q. Then without knowing how many or what  
9 proportion of the ads were subject to the license,  
10 you don't know whether it would be easy or hard for  
11 PNB to have entered the market without forcing  
12 advertisers to redo their copy; isn't that true?

13 A. I don't know that, and I also don't know  
14 how many advertisers would have executed this  
15 contract subsequent to the transfer of operating  
16 responsibility to USWD, rather than relying on a  
17 contract pre-dating that transfer, in which the  
18 license is granted by the advertiser to US West -- to  
19 PNB.

20 Q. Do you know that there were any such  
21 contracts?

22 A. I don't.

23 Q. On page 14 of the same exhibit, 806, you  
24 discuss the issue of -- this begins at line 11 and  
25 continues over on to page 15, down to line ten. You

00932

1 discuss the issue of whether US West Direct was  
2 prohibited from developing its own trademark or  
3 alternatively required to use PNB's trademark;  
4 correct?

5 A. Yes.

6 Q. And you give your opinion that -- and this  
7 is on page 15 -- that paragraph 13.02 of the  
8 publishing agreement expressly requires that US West  
9 Direct use telco trade names and trademarks in such  
10 ways as to, quote, "To protect telephone company's  
11 right to the use of such marks, and thus enhance  
12 their future value;" correct?

13 A. I'm also relying on the quotation from Mr.  
14 Johnson's testimony that appears at lines 13 through  
15 16 at page 14.

16 Q. The former quotation requires some action  
17 on the part of the telephone company to implement it,  
18 doesn't it?

19 A. Yes.

20 Q. Now, on the provision of paragraph 13.02,  
21 isn't it true that the sentence you quote includes  
22 the phrase "and thus" after the clause "to protect  
23 the telephone company's right to the use of such  
24 marks" before the phrase "enhance their future  
25 value?"

00933

1 A. Sorry. You're asking me if the words  
2 appear, the words "right to the use of such marks"  
3 appears ahead of the words "and thus enhance?"

4 Q. "And thus," yes.

5 A. Yes, that's correct.

6 Q. Okay. Are you an expert in interpreting  
7 contracts?

8 A. No, although I --

9 Q. Are you aware of there being any lawsuit in  
10 which US West Communications or PNB's attempt to use  
11 its own trademark has been prevented based on the  
12 use, by US West Direct, of the US West Direct mark on  
13 the directory?

14 A. I'm not aware, one way or the other.

15 Q. At page 25 of the same exhibit, you discuss  
16 the things for which the publication fees paid by US  
17 West Direct to US West Communications were paid.  
18 This is beginning at -- my page doesn't have line  
19 numbers. I guess about line 11. Excuse me, line  
20 eight.

21 A. I'm sorry, this is page 25?

22 Q. Twenty-five.

23 A. My page does have line numbers. I'm  
24 concerned we're looking at the same thing.

25 Q. And one of those things was the Yellow Page

00934

1 headings?

2 MR. TRAUTMAN: What page are you referring  
3 to?

4 MR. OWENS: Page 25.

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

7 (Discussion off the record.)

8 JUDGE WALLIS: Let's be back on the record.

9 Q. Isn't it true that Mr. Johnson testified  
10 that very early in the first publishing agreement, US  
11 West Direct ceased using the Yellow Page headings  
12 determined by US West Communications? Are you aware  
13 of that?

14 A. I'm sorry. Where are you?

15 Q. I'm reading from the italicized quoted  
16 material --

17 A. I don't have any italicized quoted  
18 material.

19 JUDGE WALLIS: Let's be off the record,  
20 please.

21 (Discussion off the record.)

22 JUDGE WALLIS: Let's be back on the record.

23 Q. Exhibit 811, I believe, is the deposition.  
24 And the answer that begins at page 162, line 20, and  
25 continues on to page 163, you were asked whether you

00935

1 had done a comparable evaluation for a business, and  
2 you indicated that you couldn't recall doing  
3 something like that in the context of a business. Is  
4 that correct?

5 A. Yes.

6 MR. OWENS: That's all I have, Your Honor.  
7 Thank you.

8 JUDGE WALLIS: Is there other cross?  
9 Questions from the bench?

10 CHAIRWOMAN SHOWALTER: Well, I have a  
11 couple.

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

13 BY CHAIRWOMAN SHOWALTER:

14 Q. Mr. Selwyn, I'm a lawyer, and my husband is  
15 an economist, and some of your conversations with Mr.  
16 Owens remind me of our conversations.

17 A. I can't tell you how much that frightens  
18 me.

19 Q. But what I want to get at really is  
20 language. Throughout your testimony, and I could  
21 probably point to parts, but you use terms like  
22 ownership, rent, assets, transfer. And generally  
23 speaking, do I take you to mean, when you use those  
24 terms, that you're not using them in a legal title  
25 sense, as a lawyer might, or even as a lay person

00936

1 might, but that you're using them in an economist  
2 sense? That is, for regulatory purposes, there was  
3 no change in ownership or in a regulatory sense, it's  
4 an asset of US West, not Dex. Is that generally  
5 correct?

6 A. Yes.

7 Q. So is it fair to say that, implicit in your  
8 testimony, but not explicit in your testimony, is  
9 that qualification on those terms when you use them,  
10 generally speaking?

11 A. Yes.

12 Q. Okay. And then --

13 A. And I should add, in particular, the term  
14 "rent" that I'm using here, and there are several  
15 economic definitions to rent, and I'm using rent here  
16 for the purpose of referring to an ongoing payment  
17 for the use of an asset, as distinct from the concept  
18 of economic rent, which we usually refer to and we're  
19 usually using referring to supernormal profits or  
20 supercompetitive profits.

21 Q. In your first sense, doesn't it require the  
22 additional economic assumption that there is someone  
23 entitled to -- that someone who has, let's say,  
24 economic ownership of the asset, as distinct from  
25 perhaps the legal ownership of the asset?

00937

1           A.    Yes, precisely.  I'm just saying I don't  
2 want it to -- I don't mean for the term to convey any  
3 information as to the magnitude of the amounts  
4 involved and their relationship to the underlying  
5 cost of the activity.

6           Q.    Okay.

7           A.    Or of operating the activity.

8           Q.    And I want to pursue this issue of implicit  
9 versus explicit in another context.  I think you said  
10 that, for your satisfaction, in order for there to be  
11 a sale or a full arm's length transfer, that before  
12 the transfer, there be some sort of explicit  
13 understanding between the buyer and the seller about  
14 the consideration being exchanged?

15          A.    Yes.

16          Q.    And that --

17          A.    And that that be concurrent with the  
18 transaction.

19          Q.    Uh-huh.  And I'll give you another personal  
20 example.  You set me to thinking when you said daily  
21 we all engage in various sales transactions.  At the  
22 noon hour, I went out and picked up some clothes from  
23 the tailor.  I realized that I dropped them off a  
24 week ago, we'd gone through what needed to be  
25 shortened, never discussed the price.  I just left



00938

1 them there, said I would come back in a week. We  
2 haven't -- I know this tailor, I know that generally  
3 she charges reasonable things, but we didn't say a  
4 word about what the price was going to be. I just  
5 silently dropped them off, and I think implicitly it  
6 was understood I was going to pay her rates.

7 In a situation like that, has there been a  
8 fair value transaction at the time I dropped them  
9 off?

10 A. Well, I think yes, yes, based on some of  
11 the specific assumptions that you just stated:  
12 you've dealt with this individual before, you had  
13 some degree of expectation or confidence as to what  
14 the level of price was. You understood that when you  
15 picked up the garments having been altered, that you  
16 would, in fact, be obligated to pay a service fee.

17 Q. Yes, yes.

18 A. I mean, in other words, that -- and while  
19 the precise amount may not have been specified, you  
20 had reasonable expectation as to how the amount would  
21 be computed and what the magnitude of that amount  
22 would be. And in fact, when you picked up the  
23 clothing today, you did pay for it, I presume.

24 Q. Yes, but in that situation, back last week,  
25 I believe that both buyer and seller had an equal --

00939

1 a comparable understanding of the transaction, but  
2 there was not a meeting of the minds in the sense  
3 that our minds explicitly met. Now, they probably  
4 implicitly were on the same wavelength.

5 And I raise this example only to ask if  
6 some times, can't there be implicit assumptions or  
7 understandings or intentions by parties, and the fact  
8 that they're implicit doesn't necessarily invalidate  
9 a transaction?

10 A. I believe that's absolutely right. There  
11 may be surprises in transactions that might result  
12 from the, let's say, failure of one or the other  
13 party --

14 Q. Right.

15 A. -- to restore fully exactly what the  
16 consequences of the transaction are.

17 Q. For example, I was surprised at the bill I  
18 had to pay today, but that was my own fault. I  
19 didn't ask in advance.

20 A. Had you asked and been told one price and  
21 then came in and were now confronted with a different  
22 price, with no particular explanation as to why the  
23 rules of the game had changed, then there certainly  
24 would be a question.

25 Q. Right.

00940

1           A.    And I think this would be a legal question  
2 of when the contract actually was created.  And I  
3 think one might argue the contract was created last  
4 week, when you were, in fact, quoted a specific  
5 price.

6           Q.    Well, but even if I wasn't quoted a  
7 specific price, if everything was implicit, I think  
8 if the price had gone up yesterday, I should not have  
9 had to pay that price.  It would be the price as of  
10 the date that the actual transaction or binding  
11 obligation took place.

12          A.    Unless you were advised that that might not  
13 be the case.  For example, if you make an airline  
14 reservation, you're specifically told that the price  
15 would be locked in when you pay for the ticket.  If  
16 you pay for the ticket a week later and the fare goes  
17 up or down, you'll pay the price then in effect.  But  
18 again, that's information that's available to you and  
19 which you are informed at the time you make the  
20 reservation.

21          Q.    Well, in the case at hand, certain events  
22 transpired, we know, in 1984, and aren't there really  
23 three parties to the transaction -- US West  
24 Communications, US West Direct, and the Commission?  
25 That is, these transactions can't take place without

00941

1 the participation of all three parties?

2 A. Without offering legal opinion, but as a  
3 policy matter, I think that's correct.

4 Q. And my question is, is it possible for  
5 there to have been unstated, implicit either  
6 intentions or understandings on someone's part, one  
7 of the three or more than one of the three, and the  
8 mere fact that they may have been implicit doesn't  
9 necessarily mean that they weren't there. There may  
10 have been also a difference of understanding, but the  
11 only point I'm trying to get at is does there have to  
12 be explicit prior understandings of all the terms of  
13 the transaction in order for it to be valid to have  
14 occurred? Or in some situations, can there be  
15 aspects or details or even large details left  
16 unstated, which don't invalidate the transaction, but  
17 maybe have to be worked out later?

18 A. Well, I think that, you know, that  
19 certainly is the case, and that's one of the reasons  
20 there are so many contract disputes that perhaps end  
21 up in court, is because the parties thought they had  
22 an understanding, then, after the fact, discover that  
23 the same words mean different things to different  
24 people. So obviously, that type of thing happens all  
25 the time, and in some cases, the relief that might be

00942

1 sought in such a lawsuit is to actually invalidate or  
2 void the transaction if one party can show, for  
3 example, that there was some misrepresentation --  
4 material misrepresentation by the other. And  
5 certainly, that has been known to happen.

6 I think what you have to look to here are  
7 what representations were made by the Company to the  
8 Commission at the time, what reservations the  
9 Commission may have had, and upon what basis the  
10 Commission acted. I believe that there is  
11 substantial basis to expect, for various reasons that  
12 I have cited in my testimony and that I think can be  
13 found in other testimony in this case, that the  
14 Commission had an expectation at the time that the  
15 transaction that was being proposed was simply a  
16 corporate restructuring that would have no regulatory  
17 impact, and that, as a result, it went forward with  
18 the transaction on the understanding that ratepayers  
19 would continue to receive fair value.

20 The Commission subsequently found that that  
21 was accomplished on an ongoing basis through  
22 imputation, and the imputation process continued  
23 until this case, when the Company is now trying to  
24 redefine and revise the concept of imputation to  
25 suggest that it was an installment payment, but that

00943

1 concept was never even addressed.

2 Q. I think that you described, at one point in  
3 your testimony early, two scenarios, and scenario one  
4 was a full transfer of the business and scenario two  
5 was kind of a furniture type transfer --

6 A. Right.

7 Q. -- as I recall. And I think you said that,  
8 in scenario one, PNB should have completed, you know,  
9 I'll call it a pseudo arm's length transaction, but  
10 by that, I mean something that is analogous to an  
11 arm's length transaction, if it wanted to demonstrate  
12 a sale, in effect, at that point.

13 A. Yes.

14 Q. And that they didn't execute that arm's  
15 length transaction.

16 A. Right.

17 Q. So, and then, therefore, is the therefore  
18 the Commission is precluded from looking at that as a  
19 sale that occurred in 1984, or are you in the area of  
20 the oughts -- therefore, we ought not to? In other  
21 words, in our discretion to protect the ratepayers,  
22 is there some realm of discretion or are you arguing  
23 that we really don't have that discretion?

24 A. Let me try to answer it this way. I think  
25 that the Commission can and that it should infer, by

00944

1 virtue of the lack of the Company attempting to  
2 establish a business enterprise value for the Yellow  
3 Pages business at the time, which Mr. Golden has  
4 testified it could have done, suggests to me that  
5 there was no intention on the part of the Company to  
6 effect a transfer of the going business. Therefore,  
7 I think the Commission should conclude that scenario  
8 one simply didn't happen.

9           And in that sense, the issue now is if the  
10 Company now is arguing that it wants to stop  
11 imputations in the future, that the Commission should  
12 simply view the transactions happening in the current  
13 time frame.

14           Now, if, on the other hand, the Commission  
15 were to not accept the rationale that I'm offering as  
16 a basis -- as one of the bases, and it's not, by any  
17 means, the only one, but as one of the bases for  
18 concluding that no sale actually occurred, then I  
19 would still argue that it is within the Commission's  
20 discretion, as an economic matter, it is the only  
21 correct policy approach in order to protect ratepayer  
22 interests to apply current market value, because  
23 there is no basis to set a price 15 years after the  
24 fact. A lot of things have transpired.

25           This Company, the Yellow Page business

00945

1 could have become highly competitive, the Internet  
2 could have taken off ten years earlier, perhaps, if,  
3 in fact, it has an impact on the Yellow Page  
4 business. There could have been some dramatic change  
5 in that market that would have affected the value.  
6 Suppose, just for the sake of argument, that the  
7 value of the Yellow Page directory had just basically  
8 evaporated, for whatever reason. You know, perhaps  
9 -- I can't think of specific reasons why that might  
10 have occurred, but let's suppose it had. In that  
11 event, there would be -- the Company would not be  
12 even willing to accept a -- would probably strongly  
13 oppose a 1984 valuation, because the subsequent value  
14 has declined.

15 MR. OWENS: Your Honor.

16 Q. Well, just to take that example, I realize  
17 that answer went quite a range, but --

18 MR. OWENS: The only thing I object is Dr.  
19 Selwyn purporting to speak for my client, Your Honor.

20 JUDGE WALLIS: I think we understand he's  
21 not speaking for your client.

22 Q. In that example, though, if you grant for  
23 the moment the purposes of the question, that the  
24 Company's theory of the case in '84 is correct, but  
25 in the meantime, Internet business came along and



00946

1 wiped out the business, wouldn't the Commission be  
2 entitled to stand by the '84 value, which, in this  
3 example, would be higher. That is, to charge US West  
4 Company, the US West Communications Company for that  
5 amount?

6 A. No, because the Commission has been  
7 imputing, on an ongoing basis, annual rent for the  
8 operation of the Yellow Pages that basically  
9 compensates ratepayers for the ongoing year over year  
10 revenues --

11 Q. I think you're changing an element of my  
12 question, because my question was assuming for the  
13 moment that the Company's theory of the case is  
14 correct. That is, that there was a transfer in '84,  
15 and all the payments since that time have been to  
16 compensate the ratepayers for that transfer. If it  
17 were the case, if that were the case, and the '84  
18 value were higher than today's value, I take it the  
19 Commission could keep with the '84 value?

20 A. I would still argue for using a current  
21 value, because after the fact -- entering into a  
22 transaction after the fact, when you already know the  
23 outcome, whether it's good news or bad news and  
24 whether we want to value it up, value it down, alters  
25 the risk conditions of the transaction. You can't

00947

1 simply obscure what has actually taken place in the  
2 intervening period by pretending it never happened.

3           The very fact this case is happening at  
4 this time is itself a result of what actually has  
5 happened over the past 15 years. You can't get away  
6 from that. So I would argue absolutely for symmetric  
7 treatment, whether it's up or down. We value the  
8 Company at this point in time. I just don't see any  
9 scenario in which the imputations would constitute  
10 installment payments.

11           CHAIRWOMAN SHOWALTER: Thank you.

12           COMMISSIONER HEMSTAD: I don't have any  
13 questions.

14           COMMISSIONER GILLIS: I had a quick one. I  
15 think it's somewhat redundant, but I just want to  
16 make sure I understand your position.

17           E X A M I N A T I O N

18 BY COMMISSIONER GILLIS:

19           Q. I think I understand that you're saying  
20 that if it would have been entirely possible in 1984  
21 for the Company to provide a figure that would  
22 provide a fair market value, that would be  
23 represented by an arm's length transaction?

24           A. Yes.

25           Q. And as I understand, your testimony is that

00948

1 the Commission, as we sit here in 1999, can't  
2 determine a fair market value using a 1984 valuation;  
3 is that right?

4 A. That's correct.

5 Q. And is that because it is technically not  
6 possible today to determine what that valuation would  
7 have been in 1984, given the way the transaction was  
8 structured, or is it that it's not appropriate to do  
9 so or is it both?

10 A. Well, it's a little of both. The very fact  
11 that the issue arises as to what basis to use is a  
12 direct consequence of the fact that the value has  
13 gone up. And that is a fact that the Commission has  
14 knowledge of and that it can't ignore, it can't  
15 simply dismiss in reaching its decision. The value  
16 has gone up, and therefore the risk associated with  
17 using -- with the arm's length transaction in 1984 is  
18 no longer risk, because we know what happened. We  
19 know what happened since 1984, we know that there was  
20 an arm's length valuation of this company, of the  
21 directory business just a year ago, and that simply  
22 -- that fact influences the judgment of both of the  
23 applicants here, as well as of the Commission.

24 And you can't -- you can't restore the  
25 condition of risk as it pertained to the transaction

00949

1 in 1984, simply by erasing 15 years of history when  
2 you have knowledge of that history. I can't -- you  
3 know, if I know which horse won the race, there's  
4 nothing that's going to get me to retroactively bet  
5 on the losers and there's nothing that's going to  
6 make somebody willing to sell me the \$2 ticket on the  
7 winner for \$2.

8           You know, these -- the relationship between  
9 risk and time are inherent in this kind of a  
10 transaction, and valuation necessarily considers  
11 risk. But now we have 15 years of what would have  
12 been the future is now the past, and that fact can't  
13 be changed.

14           Q. Then does your recommendation of using  
15 current valuation, if we were to choose between the  
16 two, versus 1984 valuation, is that hinged primarily  
17 on the assumption that, under the way the transaction  
18 was structured, the ratepayers have borne the  
19 dominant share of the risk and consequently are  
20 entitled to the incremental benefits or, if it would  
21 have gone the other way, it would have consequently  
22 been responsible for bearing the downside. Have I  
23 got you right?

24           A. Basically right. The Commission's  
25 treatment through imputation of the Yellow Pages

00950

1 business in the intervening period has been to simply  
2 operate as if the transaction never took place. In  
3 other words, from the standpoint of the revenue  
4 requirement of the Company, the result is -- the  
5 financial result, for regulatory purposes, is  
6 essentially identical to a condition that would have  
7 prevailed had no -- had US West Communications  
8 continued to operate the Yellow Page business in the  
9 intervening period.

10 Perhaps with the advice and assistance of  
11 management that attempted to do this on a  
12 corporatewide basis and apply some of the same  
13 management and marketing techniques that Dex has  
14 applied, but without necessarily ceding any legal or  
15 other ownership per se to Dex. That is what the  
16 Commission has been doing. And therefore, the  
17 ratepayer has, throughout this period, been the party  
18 at risk. If earnings went down, imputation went  
19 down, if earnings went up, imputation went up.  
20 Therefore, the condition today is exactly the same as  
21 it was in 1984. This is a regulatory asset for  
22 rate-making purposes. If it is to be transferred to  
23 an affiliate with no further ratepayer interest in  
24 profits from that activity, then the current market  
25 value, fair market value of that business enterprise

00951

1 is the basis for the transfer.

2 Q. Now, Mr. Owens had asked you about as  
3 imputation began, approximately in 1990, and then  
4 there was a period, between '84 and '90, that  
5 imputation was not the procedure used. And I don't  
6 think I understood your answer to that. What about  
7 this period between 1984 and 1990? Did ratepayers  
8 bear the risk during that period, as well?

9 A. Well, there were publishing fees that were  
10 calculated in some manner other than linked to  
11 earnings. And one might question whether or not they  
12 were sufficient under the imputation theory. When  
13 the Commission determined to apply imputation, there  
14 are obviously limitations in retroactive ratemaking,  
15 so it was unable to go back and retroactively apply  
16 imputation in lieu of the publishing fees, but I  
17 suppose one could argue that, during that intervening  
18 period, when the compensation or ongoing rent was  
19 accomplished in the form of a fixed amount, that the  
20 -- that the nature of the risk was slightly  
21 different, but inasmuch as the Commission ultimately  
22 was in a position to revisit that and ultimately  
23 determined to use an imputation approach, I think  
24 that, to look at that in totality, the risk is still  
25 borne by the ratepayer.

00952

1 COMMISSIONER GILLIS: Thank you.

2 CHAIRWOMAN SHOWALTER: I have one  
3 follow-up.

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

5 BY CHAIRWOMAN SHOWALTER:

6 Q. In your horse racing example, even after  
7 the race is over, isn't the risk for the race the  
8 odds posted right before the race? That is, they're  
9 known. You know the outcome, but you also know what  
10 the odds were before the race?

11 A. That's true. But I haven't agreed before  
12 the race that after the race I'm going to enter into  
13 a transaction based on the before-the-race value. In  
14 other words, the bias comes into this because you're  
15 first talking about this after the race is over.

16 Q. Well, but let's say wholly outside of this  
17 case, if you were assigned to go and evaluate a  
18 business as of 1984, and let's say you don't know  
19 anything about the business. You're hired as an  
20 independent person and you're not allowed to see any  
21 newspaper beyond January 1st, 1984, but you can look  
22 at the Wall Street Journal in the prior year, et  
23 cetera, et cetera, et cetera.

24 A. Okay.

25 Q. Just as a theoretical matter or as an

00953

1 anthropological matter, historical matter, isn't it  
2 possible to apply a methodology to information at  
3 that time? If you --

4 A. Oh, absolutely. I mean, I could come up --  
5 and Mr. Golden has come up. We may dispute the  
6 particular calculation. I don't dispute the fact  
7 that it is possible to come up with some sort of  
8 value of what something might have been at that time.  
9 The issue is whether or not that number can be  
10 applied today, because the very proceeding in which  
11 that proposal to apply it is being advanced itself  
12 has the benefit of 15 years of history that that  
13 number didn't have.

14 So in other words, to stay with my horse  
15 race example, if we agreed in advance that you would  
16 buy -- that if I bought a ticket and the horse won --  
17 that's probably not a good example, because here we  
18 knew the horse was going to win. If this was a  
19 one-horse race -- I don't know how far I can take  
20 this tortured example. The point is we knew that the  
21 horse was going to win; we just didn't know by how  
22 much. If we had agreed in advance that, back in  
23 1983, that in 1999 we would do exactly what the  
24 Company is proposing, that is, we would take the  
25 ongoing payments, compare it to 1984 value, see how



00954

1 it works out, and if the payments have exceeded the  
2 1984 value, we would stop the payments. If they  
3 haven't, we'd continue it for a while until they do.

4 If we had agreed to do all of this in 19 --  
5 irrevocably and irreversibly in 1984, at the time the  
6 transaction actually took place, then that would be  
7 reasonable. The point, though, is that we didn't  
8 agree. Nobody agreed to do that. The Company didn't  
9 offer to do that, the Commission didn't require it,  
10 so the very fact that we are here talking about this  
11 today is the result of the fact that the conditions  
12 that we now know about were unknowable in 1984;  
13 therefore, the 1984 value, the use of the 1984 value  
14 is influenced by the subsequent events, and that's  
15 why it's not useful. And that's all.

16 I don't dispute the possibility that Mr.  
17 Golden could perform a study, not necessarily this  
18 particular study and without necessarily agreeing  
19 with his result, but I don't dispute the idea that  
20 some type of study could not be performed. I do  
21 dispute its relevance, given the fact that 15 years  
22 of history have taken place.

23 CHAIRWOMAN SHOWALTER: Thanks.

24 COMMISSIONER HEMSTAD: Well, I guess I do  
25 have a couple questions, then.

00955

1 EXAMINATION

2 BY COMMISSIONER HEMSTAD:

3 Q. Well, during that so-called period of  
4 hiatus, after the publishing agreement payments -- of  
5 course, during that period, there was no rate case,  
6 was there? In other words, there was no test year  
7 that had been addressed?

8 A. That's right.

9 Q. So in that sense, the issue wasn't  
10 necessarily in limbo; it was simply pushed forward to  
11 the next rate case?

12 A. Well, one might argue that without the  
13 imputation, the Company might have come in for a rate  
14 case, a rate increase, without the publishing fees,  
15 the Company might have then concluded that its  
16 earnings were insufficient and might have then come  
17 in and asked for a rate increase, for example.

18 Q. And --

19 A. So you can't -- in other words, there is  
20 some linkage between what the ratepayer paid and  
21 those fees.

22 Q. But the next opportunity for that was when  
23 the Commission itself commenced a complaint  
24 proceeding against the Company. Are you familiar  
25 with that history, which then translated into the A-4

00956

1 arrangement in 1989?

2 A. Yes.

3 Q. And that was -- that occurred almost  
4 simultaneously, then, with the proposal from the  
5 Company to merge PNB into US West Communications.  
6 Are you generally familiar with that set of events?

7 A. Yes.

8 Q. And in Docket U-893524 AT, which was the  
9 merger proceeding, I believe, the Commission then  
10 said that, in order to address the question that --  
11 again, quoting from page eight, thus the settlement  
12 agreement, the settlement agreement references to the  
13 A-4, we modified to require that US West  
14 Communications directory advertising revenues  
15 associated with Washington will be imputed into  
16 perpetuity.

17 Does that have any impact on your view of  
18 what either was originally intended or what the  
19 Company ultimately agreed to?

20 A. Well, I think the very fact that the  
21 Commission is there referring to these revenues as US  
22 West Communications' revenues supports -- precisely  
23 supports my contention that, for rate-making  
24 purposes, the Commission continued to treat the  
25 Yellow Pages business as if it were continuing to be

00957

1 provided directly by USWC.

2 Q. And implicit in that, I assume, would be  
3 that the imputation would fluctuate, either up or  
4 down, depending upon the earnings of US West Direct?

5 A. In excess of the authorized return on  
6 investment, that's right. Just as would have been  
7 the case had it simply been provided from within the  
8 telephone company entity.

9 COMMISSIONER HEMSTAD: That's all I have.

10 JUDGE WALLIS: Mr. Trautman.

11 MR. TRAUTMAN: Thank you.

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

13 BY MR. TRAUTMAN:

14 Q. Do you have a copy of the decision by Judge  
15 Green, Dr. Selwyn?

16 A. I don't have it here. This is the portion  
17 of the decision issued by Judge Green relative to the  
18 reorganization of the former bell system, the breakup  
19 of the former bell system, to which Mr. Owens  
20 referred me earlier today.

21 Q. And I believe that he asked you a question,  
22 and he said -- he asked whether Judge Green had  
23 stated that transfers between affiliates did not  
24 require compensation. And my question is what was  
25 your understanding of the basis for Judge Green's

00958

1 decision?

2 A. Judge Green, in his decision, was  
3 describing the general case where the transaction  
4 among the affiliates did not affect the regulatory  
5 status, either the firm -- because the firm was  
6 unregulated altogether, or where the transaction did  
7 not affect the regulatory status of any of the  
8 activities that were being transferred.

9 He specifically qualified the general case  
10 by a discussion of the situation in which a transfer  
11 of an activity out of regulation that is from a  
12 regulated portion of the corporation to a  
13 nonregulated portion of the corporation takes place.

14 Counsel, this print is small, and I'm going  
15 to, with the Commission's indulgence, I'm going to  
16 ask you if you would read it. Is this the only copy?

17 Q. And the portion referred to where Judge  
18 Green says, "Opponents in the proposed decree  
19 conclude from that holding that AT&T must compensate  
20 the operating companies and thus indirectly local  
21 ratepayers, but there is a crucial difference between  
22 the disposition of assets --

23 JUDGE WALLIS: Counsel.

24 Q. -- that was involved in that case and the  
25 transfer of assets proposed here. In Democratic

00959

1 Central Committee, the assets were taken out of  
2 operation and out of the rate base. Obviously, when  
3 this occurred, a gain was realized and it then became  
4 necessary to determine to whom the benefit of that  
5 gain should inure, but no assets are here being  
6 removed from public service. The same assets will  
7 continue to be used to provide the same services to  
8 the same ratepayers and the assets will remain  
9 subject to the same rate-making jurisdictions of the  
10 same regulators."

11 A. Yes, that's the language that I was  
12 referring to.

13 Q. Mr. Owens asked you a question about  
14 Exhibit 813, which was the Staff Response to US West  
15 Data Request Number 20, and this described the  
16 instances in which you were involved in the valuation  
17 of an ongoing business. And my question is did you  
18 perform a formal valuation study in each of the  
19 occasions referred to in that response?

20 A. No, the purpose of my testimony there was  
21 simply to demonstrate that there was substantial  
22 value relative to the book value of the activity  
23 involved, and I was not specifically performing the  
24 kind of study or purporting to perform the kind of  
25 study, for example, that Mr. Golden undertook here.

00960

1 Q. You were also asked a question concerning  
2 Exhibit 814. And this identifies three texts  
3 consulted in the course of the development of your  
4 testimony. And my question is did you rely upon  
5 these texts during the preparation of any portions of  
6 your testimony, other than the valuation analyses  
7 presented in Appendices One and Two to your direct  
8 testimony?

9 A. No, I did not. And I would also note that,  
10 even with respect to the valuation methodology that I  
11 employed, I don't believe that I specifically relied  
12 on these text as authority. I was utilizing  
13 valuation discounted cash flow techniques that I've  
14 been familiar with for many, many years, and did not  
15 feel it necessary to find a textbook to support what  
16 I did. This response was provided simply to the  
17 Company to indicate text that would support, as a  
18 general matter, the approach that we used.

19 Q. You were asked several questions about  
20 whether the publishing business was transferred to US  
21 West Direct and the word transferred was used  
22 frequently. And then Mr. Owens stated that there  
23 were 12 instances where the Supreme Court used that  
24 term. My question is what is your understanding of  
25 the word transferred?

00961

1           A.    Well, I was construing it to mean any of  
2 several possible things.  The transfer can occur in  
3 the context of a sale, it can occur in the context of  
4 a lease, a loan, a gift.  There's no question but  
5 that the direct responsibility for the publishing  
6 activity was assumed, was transferred to USWD from  
7 Pacific Northwest Bell.  There's no dispute about  
8 that.  What I do not believe, and I certainly was not  
9 using the word transfer to suggest there was any  
10 synonymous relationship between transfer and sale for  
11 fair value of the business enterprise.

12           Q.    So when you said that the business was not  
13 transferred, was it that latter sense?

14           A.    I mean it was not sold for fair value;  
15 that's correct.

16           Q.    You were referred several times to the US  
17 -- or the State Supreme Court opinion in the US West  
18 rate case, and in particular, you were referred to  
19 page 102, and you were referred to the concluding  
20 paragraph, where the Court states its conclusion on  
21 the imputation issue.  However, you were not referred  
22 to the last sentence of that conclusion, which states  
23 that "US West may petition the Commission for an end  
24 to imputation if and when it can show it has received  
25 fair value for the transfer of the asset," with the



00962

1 it referring to US West. Do you see that?

2 A. Yes, I do.

3 Q. And what does that connote to you?

4 A. Well, it would connote to me that the Court  
5 is ruling that there would have actually have been a  
6 payment of some sort to US West as an entity, as  
7 distinct, for example, from imputation, which did not  
8 represent a receipt by US West Communications of  
9 monies from anybody, but rather was simply a  
10 rate-making adjustment, the benefits of which inured  
11 to ratepayers.

12 So whereas one might view the publishing  
13 fees to the extent that they were affected through an  
14 actual transfer of cash as satisfying some sort of  
15 showing in this regard, and I don't agree with the  
16 premises -- I've already stated that the basis would  
17 be the 1984 valuation, but even if one were to accept  
18 that, the imputation payments, in my view, as I read  
19 this sentence, would not qualify, because they don't  
20 represent a payment to or receipt by US West  
21 Communications.

22 Q. You also indicated that you believe that  
23 the ratepayers had a beneficial interest in the  
24 directory publishing business. You were then asked  
25 where in the Supreme Court opinion there was support

00963

1 for that view. And turning to page 100, the State  
2 Supreme Court, the Washington Supreme Court in  
3 quoting from the Colorado Supreme Court decision  
4 involving Mountain Bell and the transfer of their  
5 Yellow Pages, the Court says, "It is an exaggeration  
6 to say that Mountain Bell's shareholders took any  
7 significant risk in developing the directory  
8 publishing business, and we find the public interest  
9 in those assets to be beyond dispute." Is that the  
10 type of beneficial interest to which you're  
11 referring?

12 A. Yes.

13 Q. You were asked questions regarding  
14 employees that were transferred to US West Direct in  
15 1994. Was the cost of developing the expertise of  
16 those employees incurred by PNB?

17 A. Yes, the cost of recruitment, training --

18 MR. OWENS: I'm going to object to  
19 foundation. There's no evidence that this witness  
20 has examined any of the accounting records of PNB for  
21 that period of time.

22 Q. Do you feel qualified to answer the  
23 question?

24 MR. OWENS: Your Honor, it has to be a  
25 foundation question that the witness has examined the

00964

1 records.

2 JUDGE WALLIS: Mr. Trautman.

3 Q. Would you feel that you would -- I can ask,  
4 would you feel that you would have had to have  
5 examined all those records to answer the question?

6 JUDGE WALLIS: No, let's approach it on the  
7 basis of what information the witness has to  
8 establish his qualification to respond.

9 THE WITNESS: May I respond?

10 MR. OWENS: No.

11 Q. What is your understanding of the -- what  
12 is your understanding of information regarding  
13 employees transferred to US West?

14 JUDGE WALLIS: Can we ask what information  
15 he has about that first?

16 Q. What information do you have about that,  
17 Dr. Selwyn?

18 JUDGE WALLIS: On which to base a response?

19 THE WITNESS: It is my understanding that  
20 prior to 1984, the employees that were engaged in the  
21 Yellow Pages operations for Pacific Northwest Bell  
22 were on the payroll of Pacific Northwest Bell and  
23 were employees of Pacific Northwest Bell. Their  
24 costs would have been recorded on Pacific Northwest  
25 Bell's books.

00965

1 MR. OWENS: Objection. He's got no  
2 foundation to say that.

3 Q. All right. The employees were transferred  
4 in 1984. Prior to 1984, there was no US West Direct;  
5 is that correct?

6 A. That's correct.

7 Q. Those employees, therefore, if they were  
8 transferred from PNB, they would have been former  
9 employees of PNB; is that correct?

10 A. That would be my understanding. And I  
11 believe that the indication is that they were  
12 transferred from PNB to US West Direct.

13 Q. Then would it not follow that the cost  
14 developed prior to 1984 would be --

15 MR. OWENS: Objection. No foundation.  
16 He's got no -- he hasn't asked this witness whether  
17 he's examined any cost records from 1984 and prior.

18 JUDGE WALLIS: I'm going to overrule the  
19 objection and allow the -- allow counsel to complete  
20 the question.

21 MR. TRAUTMAN: Pardon?

22 MR. OWENS: I'm sorry, I didn't mean to  
23 interrupt.

24 JUDGE WALLIS: Finish your question,  
25 please.

00966

1 Q. The question was would the cost -- given  
2 the fact that the employees that were transferred to  
3 US West Direct would have been transferred prior --  
4 or would have been transferred in 1984, prior to  
5 which there was no US West Direct, would the cost and  
6 the expertise of those employees be incurred by, in  
7 your view, by Pacific Northwest Bell?

8 MR. OWENS: Objection. Lack of foundation.

9 JUDGE WALLIS: I do not believe that there  
10 is a lack of foundation in the question inasmuch as I  
11 believe the question states the basis for the  
12 question. The witness may respond.

13 THE WITNESS: Thank you. On the  
14 understanding that the employees that were  
15 transferred had previously been employees of Pacific  
16 Northwest Bell and, accordingly, would have been paid  
17 by Pacific Northwest Bell, their payroll costs,  
18 salaries, payroll taxes, and other benefits recorded  
19 on the books of Pacific Northwest Bell, including  
20 costs associated with recruitment and training, and  
21 my answer to your question is that those employee  
22 costs would have been charged against Pacific  
23 Northwest Bell's revenue requirement, and therefore,  
24 effectively paid by ratepayers.

25 Q. You were referred to Exhibit 822, which was

00967

1 a portion of the Staff response to US West Data  
2 Request 26. And this response was a memo written  
3 from Mr. Lundquist to Ms. Strain.

4 A. Yes.

5 Q. Was Mr. Lundquist, in this memo, expressing  
6 the position of Commission Staff in this docket?

7 A. I don't believe so.

8 Q. And was this a preliminary analysis, based  
9 solely on US West Direct testimony that was submitted  
10 in October of 1998?

11 A. Given the dates of this and the content of  
12 this e-mail, which occurred approximately one week  
13 after our firm was engaged by the Staff for this  
14 case, I take it that this was part of a discussion  
15 between Mr. Lundquist and Ms. Strain with respect to  
16 the approach to the case. It was part of an evolving  
17 understanding and analysis of the issues in the case  
18 and should be accorded no weight other than simply  
19 part of a very preliminary reaction by Mr. Lundquist,  
20 specifically to his initial review of certain of the  
21 testimony in the case.

22 I did not review this e-mail before it was  
23 sent, and therefore, I don't consider it to be my  
24 view necessarily, or certainly not the view of the  
25 Staff. I don't even know if it's Mr. Lundquist's

00968

1 view at this point.

2 Q. And would the use of the term  
3 "compensation" in this memo indicate that either you  
4 or Commission Staff endorsed US West's claimed  
5 meaning of the term?

6 A. No, I think it was simply put forth as a  
7 hypothetical, sort of accepting the premise of Ms.  
8 Koehler-Christensen's analysis, how could that then  
9 be approached. But there was certainly no -- it was  
10 accepting, for the sake of argument, for the sake of  
11 analysis and certainly wasn't, in any sense, and  
12 should not be construed as more than that.

13 Q. You were asked questions regarding the  
14 advertising contract used by US West. Is it your  
15 understanding that Staff asked US West for a copy of  
16 the contract that US West Direct typically used in  
17 1984 for agreements with advertisers, and that US  
18 West responded that it had no such copies of these  
19 contracts in its possession?

20 A. That is my recollection.

21 Q. When you referred to US West Direct's  
22 ability to obtain access to business updates by  
23 electronic means, does Paragraph 4.07 of the 1984  
24 publishing agreement, which was attached to your  
25 testimony, indicate to you that US West Direct could

00969

1 perform database inquiries to obtain business  
2 updates, rather than being limited to reviewing  
3 individually-selected customer records?

4 A. 4.07?

5 Q. Yes.

6 A. Well, there is a reference here to limited  
7 updating capabilities. I'm not sure which direction  
8 the updating was intended to refer to, but as I've  
9 testified earlier, it is my understanding, as a  
10 general matter, that these systems would have  
11 afforded US West Direct with the ability to obtain  
12 online access to updates, to business updates.

13 Q. And finally, you were asked several  
14 questions about the timing of the valuation and the  
15 proper date with reference to several excerpts from  
16 the state Supreme Court opinion. Is it your  
17 understanding that that issue, namely the timing of  
18 the valuation, was not litigated or presented to the  
19 Court in the '95 rate case?

20 A. Yes, that is my understanding, though the  
21 Court was not asked to rule on the timing and did not  
22 do so.

23 MR. TRAUTMAN: That's all I have.

24 MR. OWENS: A few questions, Your Honor.

25 Thank you.



00970

1 JUDGE WALLIS: Mr. Owens.

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

3 BY MR. OWENS:

4 Q. Dr. Selwyn, you answered Counsel for the  
5 Staff a moment or two ago with regard to the  
6 concluding sentence of the Court's opinion when you  
7 said that you interpreted the word "it", on page 102,  
8 in the last paragraph, "When it can show it has  
9 received fair value for the transfer of the asset" as  
10 meaning US West Communications has to show some kind  
11 of payment. Isn't it true, sir, that you testified  
12 in your deposition, in a part that has not been  
13 admitted in this record, page 26 --

14 MR. TRAUTMAN: Objection. It's not proper.

15 MR. OWENS: This is impeachment, Counsel.  
16 I'm entitled to impeach with a prior inconsistent  
17 statement under oath. Isn't it true, sir -- excuse  
18 me, Your Honor, I should have directed that to you.  
19 I apologize.

20 JUDGE WALLIS: Thank you.

21 Q. Isn't it true you testified, "Well, I  
22 relied on the Supreme Court decision as documenting  
23 the asset transfer requirements pertinent to this  
24 case, and in particular, the determination that  
25 ratepayers needed to be compensated for the fair

00971

1 market value of the assets transferred." Did you say  
2 that?

3 A. Yes.

4 Q. And further in the same deposition, on page  
5 43, did you answer the question, "And in your  
6 testimony, was that its regulated telephone  
7 operations have received full value?"

8 And my question is, "Is there a difference  
9 in your mind between intending that regulated  
10 telephone operations have received full value versus  
11 Washington ratepayers having received full value?"  
12 And your answer was, "I didn't intend for there to be  
13 a difference, but I think that perhaps her," meaning  
14 Ms. Koehler-Christensen's, "terminology is more  
15 precise than mine." Is that what you said, except  
16 for my insertion of the phrase "meaning Ms.  
17 Koehler-Christensen?"

18 A. Can I have the very beginning of -- the  
19 last quote sounded like you were quoting from  
20 something in the middle of an answer.

21 Q. Well, the transcript reads Q. -- this is at  
22 line two of page 43. "And in your testimony was that  
23 its regulated telephone operations have received full  
24 value. And my question is, "Is there a difference in  
25 your mind between intending that regulated telephone

00972

1 operations have received full value versus Washington  
2 ratepayers having received full value?" Answer: "I  
3 didn't intend for there to be a difference, but I  
4 think that perhaps her terminology is more precise  
5 than mine." Did you say that?

6 A. I did.

7 Q. You said, in answer to Counsel for Staff's  
8 questions, that your understanding was that, based on  
9 the fact that the directory employees had been  
10 employed by Pacific Northwest Bell, that their costs  
11 would have been on Pacific Northwest Bell's books,  
12 including recruitment and so forth. Isn't it true  
13 that before divestiture, there was a widespread  
14 practice of employees rotating not only back and  
15 forth from the former bell operating companies, but  
16 also to AT&T, but also between bell operating  
17 companies?

18 A. Yes.

19 Q. And so can you say that you know that the  
20 employees that went to US West Direct from PNB had  
21 their recruitment training and other costs recorded  
22 on PNB's books of accounts?

23 A. Yes, I think I can, because in the scenario  
24 you describe, if an employee was, for example, on the  
25 books and carried on the payroll of another bell

00973

1 system entity, the practice would have been for some  
2 compensatory intercompany payment to be made if that  
3 employee was being provided by the entity carrying  
4 his or her payroll to a different entity. In other  
5 words, there was -- while it might have been the  
6 practice of employees to remain on the payroll of one  
7 company while being temporarily assigned to the  
8 other, there would have been accounting adjustments  
9 to reflect that, therefore, the costs would have, in  
10 fact, been recorded, even though the actual payroll  
11 might have -- the payroll charges themselves might  
12 have been on a different company's books, but it  
13 would have been accomplished through an intercompany  
14 accounting transfer.

15 Q. And what's the evidence for that?

16 A. The companies were, at the time, as  
17 regulated companies, obligated to present reports to  
18 their -- report their operating costs to their  
19 respective regulatory authorities fairly. And if,  
20 for example, PNB was carrying an employee on its  
21 books and reported the cost of that employee to the  
22 Washington Commission when that employee, in fact,  
23 was not working for PNB in Washington, then it would  
24 have been misrepresenting its cost to the Commission.  
25 I'm simply operating on the belief that the

00974

1 Companies, through the accounting processes that I  
2 described, were attempting to fairly represent the  
3 costs that they were actually incurring, and it was a  
4 routine matter at that time to make attributions --  
5 jurisdictional attributions and allocations of costs,  
6 particularly where employees were either shared by  
7 multiple jurisdictions, which could have been the  
8 case in the case of Pacific Northwest Bell, since it  
9 operated in the three jurisdictions, or were actually  
10 being loaned by or on temporary assignment by a  
11 different bell system entity.

12 Q. So that's a belief, rather than examination  
13 of PNB records?

14 A. I have not examined PNB records. I think  
15 my statement is certainly valid based on my  
16 recollection of the bell system operations at that  
17 time.

18 Q. In response to a question from the  
19 Chairwoman, you said that, since 1990, the Commission  
20 has been imputing rent. Now, it's true, isn't it,  
21 that there isn't any decision of this Commission that  
22 characterizes imputation as rent?

23 A. Nor has there been a decision  
24 characterizing --

25 MR. OWENS: Your Honor, that called for a

00975

1 yes or no, not an argument.

2 MR. TRAUTMAN: The witness could answer yes  
3 or no, and then explain.

4 JUDGE WALLIS: The witness may answer yes  
5 or no and then explain.

6 THE WITNESS: Yes, nor has there been any  
7 decision characterizing the imputation payments as  
8 representing installment payments against some  
9 previously -- some previous valuation established  
10 after the fact.

11 Q. And you also testified that ratepayers had  
12 been at risk. It's true, isn't it, that after the  
13 1984 reorganization, there weren't any dollars of  
14 rates collected where those dollars went to cover  
15 expenses incurred for the production of directories  
16 or distribution or marketing of those directories?

17 A. May I have that question re-read?

18 (Record read back.)

19 THE WITNESS: I can't agree with that.

20 Q. Was there any dollar of rates collected  
21 after that time that was paid by US West  
22 Communications or PNB to US West Direct for the  
23 purpose of covering that Company's expenses in  
24 marketing, producing, or distributing its Yellow Page  
25 directories?

00976

1 A. Implicitly there was, because --

2 Q. No, sir, not implicitly. Actually.

3 A. That wasn't your question. My answer is,  
4 implicitly, there was.

5 Q. Actually, was there?

6 A. For rate-making purposes, yes, the answer's  
7 yes.

8 Q. Not for rate-making purposes, sir. In the  
9 real world, was there?

10 A. Well, in the real world, the answer is  
11 there was, because the Commission was basing its  
12 imputations on earnings, and if costs were being  
13 incurred, that meant -- in US West Direct or Dex,  
14 that meant that the imputation payment, all else  
15 being equal, would have been less than it would  
16 otherwise have been.

17 Had the White Pages directory, for example,  
18 continued to be produced by US West Communications,  
19 then costs would have been incurred in US West  
20 Communications for that purpose, but the imputation  
21 amounts coming from US West Direct would have been  
22 higher because there would have been fewer costs in  
23 US West Direct. So therefore, I think it is  
24 reasonable to conclude that the effect of this  
25 process operated to impose costs, any costs incurred

00977

1 in US West Direct on ratepayers.

2 Q. Isn't it true that this Commission told the  
3 Court, and the Court agreed, that there were no  
4 amounts that came from US West Direct to PNB, and  
5 that all this was was a reduction of PNB's revenue  
6 requirement?

7 A. Yes, that's what imputation is.

8 Q. When there were publishing fees, as opposed  
9 to imputations, isn't it true that there weren't any  
10 dollars flowing from US West Communications to cover  
11 the expenses of producing, distributing or marketing  
12 Yellow Page directories?

13 A. I can't answer that, because I don't know  
14 precisely how the publishing fees were calculated and  
15 whether the calculation of the publishing fees did or  
16 did not explicitly or implicitly reflect such costs.

17 Q. Finally, if you bought the ticket to the  
18 horse race and won, but didn't cash it for five  
19 years, and then you cashed it, would you still get  
20 your wager?

21 A. I don't know. In Massachusetts, I know  
22 that if I buy a lottery ticket, I have a year to cash  
23 it. So I don't know what the answer is as far as  
24 horse race tickets are concerned.

25 MR. OWENS: Thank you. That's all.



00978

1 JUDGE WALLIS: We have one more question  
2 from the bench.

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

4 BY CHAIRWOMAN SHOWALTER:

5 Q. I just wanted to follow up on the  
6 discussion of the Court opinion at page 102, and that  
7 was the reference to "it," and "it" referring to the  
8 Commission.

9 A. Yes.

10 Q. Excuse me, to the Company.

11 A. To the Company.

12 Q. Do we have any regulatory interest in  
13 whether the Company receives fair market value that  
14 is beyond the ratepayers themselves receiving fair  
15 market value?

16 A. Possibly with respect to the overall  
17 financial viability of the Company. The ratepayers'  
18 receipt of fair market value may be a transitory  
19 condition that -- for example, if the imputations  
20 were to cease, as the Company's proposing, could  
21 cause the rate structure of the Company to be  
22 affected in a way that could not only affect  
23 ratepayer interest, but also potentially affect the  
24 financial condition of the Company, depending on how  
25 it happened. So I think the interest is less, but

00979

1 I'm not prepared to say that it's zero.

2 Q. If the regulated company got zero in the  
3 transaction or one dollar, wouldn't that just mean  
4 that the amount of gain that was imputed would be  
5 greater -- I'm not sure I'm right here, by the way.  
6 I'm just thinking this through. That is, to the  
7 extent that the regulated company receives less,  
8 doesn't that make the gain greater, and that very  
9 amount is imputed back to the ratepayers, or am I  
10 wrong?

11 A. Well, I guess, and I'm sort of thinking  
12 aloud, also. There may be a difference financially  
13 as to, for example, if you impute a rate base  
14 adjustment equal to the fair market value, for  
15 rate-making purposes, that is not captured in a  
16 financial transaction. It is an actual receipt of  
17 payment by the regulated entity. Then the financial  
18 books of the regulated entity are basically  
19 unaffected while its revenues are affected because of  
20 the imputation.

21 In other words, you're assuming now,  
22 henceforth that rate base is going to be lower, and  
23 therefore, its revenue requirement would be lower,  
24 all else being equal.

25 For financial reporting purposes, that may

00980

1 have a deleterious effect on the company's ability to  
2 raise capital, whereas if the transaction is effected  
3 through a payment from the affiliate for the fair  
4 market value, then the Company's financial books and  
5 its regulatory books would be in sync on this issue,  
6 and the Company's financial condition would not be  
7 adversely affected by virtue of the reduced revenue  
8 requirement, because its financial books would  
9 similarly reflect a lower asset base.

10 So I believe there is a difference, and  
11 that imputation -- particularly -- it's one thing to  
12 impute revenues on an ongoing basis, but I think that  
13 there may well be a distinction.

14 And again, this is a very preliminary  
15 response, and I'd really need to think about it some  
16 more, but my reaction is that there may well be a  
17 distinction as between the case of a payment that is  
18 recorded as an actual reduction in the -- or increase  
19 in the cash balance of the Company.

20 Q. Wouldn't it also be the case that, to the  
21 extent that the regulated company didn't receive  
22 something, the nonregulated company, Dex in this  
23 case, kept it or has that value, but they're both  
24 owned by the same overall company, so that, as  
25 reflected in the financial well-being of the overall

00981

1 company, there would be a wash. Again, I'm thinking  
2 out loud, so --

3 A. That is true, except that it is typical for  
4 the operating companies, US West Communications in  
5 this case, to issue its own bonds, to issue its own  
6 debt, separate and apart from the debt of the parent.  
7 It's also common for other nonregulated entities to  
8 issue their own debt. So it is the matter of debt  
9 and whether debt is incurred and what the recourse is  
10 relative to that debt that may be affected by the  
11 particular manner in which this is handled. Again,  
12 I'm thinking out loud, as well.

13 CHAIRWOMAN SHOWALTER: Okay, thanks.

14 JUDGE WALLIS: Mr. Owens, do you want to  
15 think out loud?

16 MR. OWENS: No, but I just had one question  
17 to perhaps complete a thought that was raised by the  
18 Chairwoman's question.

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

20 BY MR. OWENS:

21 Q. Dr. Selwyn, isn't it true that US West,  
22 Inc. conducts its equity infusion policy to maintain  
23 what it believes to be a desired debt capital  
24 structure for its operating company, US West  
25 Communications?

00982

1           A.    I would assume so, although I don't know  
2 precisely what the process is by which that happens.

3           MR. OWENS:  Thank you.

4           JUDGE WALLIS:  Is there anything else?  Let  
5 the record show that there is not.  Dr. Selwyn, thank  
6 you for appearing today.  It's delightful to be able  
7 to let you step down from the stand and resume your  
8 travel plans.

9           THE WITNESS:  I'm not sure how to interpret  
10 that, but --

11          JUDGE WALLIS:  Let's be off the record  
12 please.

13          (Discussion off the record.)

14          JUDGE WALLIS:  Let's be back on the record,  
15 please.  The Company is calling to the stand at this  
16 time its witness, Ann Koehler-Christensen.  Would you  
17 please rise and raise your right hand?  
18 Whereupon,

19                   ANN KOEHLER-CHRISTENSEN,  
20 having been first duly sworn, was called as a witness  
21 herein and was examined and testified as follows:

22          JUDGE WALLIS:  Please be seated.  In  
23 conjunction with this witness' appearance, she has  
24 presented a number of documents and other parties  
25 have presented a number of documents in conjunction

00983

1 with her testimony and for possible use in  
2 cross-examination. I am going to ask the court  
3 reporter to include the identification of those  
4 documents as they appear on our exhibit list in the  
5 record at this point for the purposes of identifying  
6 them for the record.

7 Exhibit 501-T, the direct testimony of Ann  
8 Koehler-Christensen, with 1/18/99 errata. 502 is  
9 Exhibit AKC-1. Exhibit 503 is Exhibit AKC-2.  
10 Exhibit 504 is Exhibit AKC-3. Exhibit 505 is Exhibit  
11 AKC-4. Exhibit 506 is Exhibit AKC-5. Exhibit 507 is  
12 Exhibit AKC-6. Exhibit 508 is Exhibit AKC-7.

13 Exhibit 509-T is the rebuttal testimony of  
14 Ann Koehler-Christensen, with 4/30/99 errata.  
15 Exhibit 510 is Exhibit AKC-8. Exhibit 511 is AKC-9.  
16 Exhibit 512 is Exhibit AKC-10.

17 513-T is the rejoinder testimony of Ann  
18 Koehler-Christensen. Exhibit 514, US West's response  
19 to WUTC Data Request 02-019. Exhibit 515 is US  
20 West's response to WUTC Data Request 02-023. Exhibit  
21 516, US West's response to WUTC Data Request 02-025.  
22 Exhibit 517 is US West's response to WUTC Data  
23 Request 05-045.

24 Exhibit 518 is the rebuttal testimony of  
25 Ann Koehler-Christensen in Docket UT-950200, dated

00984

1 October 3, 1995. Exhibit 519 is excerpts of the  
2 deposition of Ann Koehler-Christensen in Case Number  
3 C96-6025 FDB, United States District Court, April 30,  
4 '97.

5 Exhibit 520 is US West's response to Public  
6 Counsel Data Request 08-093. Exhibit 521 is US  
7 West's response to Public Counsel Data Request  
8 08-091. Exhibit 522 is US West's Response to Public  
9 Counsel Data Request 08-097, and Exhibit 523 is page  
10 nine of the testimony of Ann Koehler-Christensen at  
11 the Arizona Corporation Commission, dated January 8,  
12 1999.

13 In addition, the witness has caused to be  
14 distributed a one-page document entitled Errata to  
15 the July 29, 1999 testimony. I'm sorry, submitted  
16 July 29, 1999, to the testimony of the witness, and  
17 this is marked as Exhibit 501-E for identification.

18 MS. ANDERL: May I proceed, Your Honor?

19 JUDGE WALLIS: Please proceed, Ms. Anderl.

20 MS. ANDERL: Thank you.

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

22 BY MS. ANDERL:

23 Q. Good afternoon, Ms. Koehler-Christensen.

24 A. Good afternoon.

25 Q. Do you have before you the direct,

00985

1 rebuttal, and rejoinder testimony that you submitted  
2 in this docket, as well as the attached exhibits and  
3 errata to those documents?

4 A. Yes, I do.

5 Q. And with the errata corrections to the  
6 testimony, is your testimony true and correct, to the  
7 best of your knowledge?

8 A. Yes, it is.

9 Q. And if I were to ask you the questions  
10 contained in that testimony today, would your answers  
11 then be the same?

12 A. Yes.

13 MS. ANDERL: Your Honor, we would move the  
14 admission of Exhibit 501-T through 513-T, inclusive.

15 JUDGE WALLIS: Is there objection? Let the  
16 record show that there's no objection, and the  
17 Documents 501-T and 501-E through 513-T are received  
18 in evidence.

19 MS. ANDERL: Thank you, Your Honor. Shall  
20 I address Exhibit 524 at this time, as well?

21 JUDGE WALLIS: Yes, you may.

22 Q. Ms. Koehler-Christensen, do you have before  
23 you the document that has been marked for  
24 identification as Exhibit 524, which is -- the cover  
25 page of which is a letter to Paul Curl, Acting



00986

1 Secretary, dated December 20th, 1988?

2 A. Yes.

3 Q. And can you identify that document for me  
4 and tell me how it is that you know what it is?

5 A. Yes, it's a letter dated December 20th. It  
6 was prepared in order to inform the Commission that  
7 the then-current publishing agreement had been  
8 extended and that the subsidy payments would cease.  
9 I know of its existence because I prepared the letter  
10 at the time.

11 Q. And are you also the A. M. Koehler who was  
12 copied on the second page?

13 A. Yes, I am.

14 Q. Okay. To the best of your recollection,  
15 does that document appear here today as an exhibit in  
16 the form in which it was filed with the Commission?

17 A. Yes.

18 MS. ANDERL: Your Honor, we'd move the  
19 admission of Exhibit 524.

20 MR. TRAUTMAN: No objection.

21 JUDGE WALLIS: The exhibit is received.

22 MS. ANDERL: Thank you. Your Honor, with  
23 that, the witness is available for cross-examination.

24 JUDGE WALLIS: Mr. Trautman.

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

00987

1 BY MR. TRAUTMAN:

2 Q. Good afternoon.

3 A. Good afternoon.

4 Q. Could you turn first to what's been marked  
5 as Exhibit 518, and this would be your rebuttal  
6 testimony in the US West rate case, Docket UT-950200.

7 A. Yes.

8 Q. Do you have that?

9 A. Yes, I do.

10 Q. You were the only witness US West had on  
11 the issue of Yellow Pages, were you not?

12 A. I was the only rebuttal witness that  
13 discussed Yellow Pages, yes.

14 Q. There was no other witness that discussed  
15 Yellow Pages in that docket, I believe.

16 A. Well, I believe that Mr. Okamoto testified  
17 in direct testimony in general terms about it, but  
18 then I was the one that filed rebuttal testimony and  
19 discussed it specifically.

20 Q. And turning to page three of that  
21 testimony, you state that, "The purpose of my  
22 testimony is to clarify why USWC did not include a  
23 Yellow Pages imputation in its filing of Washington  
24 intrastate revenue requirements;" is that correct?

25 A. Yes.

00988

1 Q. And further in that testimony, on page  
2 four, you state that "the current Yellow Pages  
3 imputation embedded in rates is \$39.9 million, as  
4 agreed to in the settlement agreement effective from  
5 January 16th, 1990, to December 31st, 1994. This  
6 amounts to a monthly subsidy of approximately \$2.29  
7 for each USWC residential customer." Do you see  
8 that?

9 A. Yes, I do.

10 Q. And the settlement agreement you're  
11 referring to was the settlement that was entered into  
12 as a result of US West's A-4, or alternative form of  
13 regulation; is that correct?

14 A. Yes.

15 Q. And the imputation was then continued as a  
16 result of the order and the merger, and the merger  
17 order that came out, I believe, 1990? Is that  
18 correct, to your knowledge?

19 A. I don't know specifically that the merger  
20 order continued the imputation.

21 Q. But you know the imputation did continue  
22 past the time of the A-4?

23 A. Yes, I do.

24 Q. And into the time of the rate case?

25 A. Yes, I do.

00989

1 Q. Now, in your testimony, you refer to  
2 imputation as a subsidy, and I believe, as I reviewed  
3 your testimony, you used the word subsidy or  
4 subsidize or a form of that word I believe 60 times  
5 in that testimony.

6 A. If you say so.

7 Q. And so would you agree that that was the  
8 Company's characterization of what imputation was?

9 A. Yes.

10 Q. At no time in that testimony did you  
11 describe imputation as compensation for assets  
12 transferred; is that correct?

13 A. That is correct. I think it's important to  
14 recognize that this testimony was written prior to  
15 the Supreme Court ruling, and that the Company has  
16 accepted the ruling of the State Supreme Court, and  
17 that is the purpose for this case today.

18 Q. But you did not, in that testimony,  
19 describe imputation as compensation, did you?

20 A. No, I did not.

21 Q. And you did not describe imputation as an  
22 offset to full, reasonable value for assets  
23 transferred; is that correct?

24 A. That is correct.

25 Q. And it's also correct that imputation had

00990

1 been incurred throughout the period of the A-4  
2 without any reference to that imputation as being  
3 compensation for assets transferred; is that correct?

4 A. That is correct. And the reason for that  
5 is the Company had a firm belief that what the  
6 ratepayers were due were -- that what the ratepayers  
7 were due was the net book value, and that the share  
8 owners were the owners of the remaining business, and  
9 that was what was discussed, for example, with Dr.  
10 Selwyn, where Judge Green said that it was really --  
11 when you have the same share owners, no compensation  
12 was due. So the Company's position was net book  
13 value. Obviously, the --

14 Q. And what --

15 A. Excuse me. I was just going to say,  
16 obviously the Supreme Court viewed it differently,  
17 and the Company has accepted the Supreme Court's  
18 decision.

19 Q. Again, we're talking about a period of time  
20 before the Supreme Court decision that's been  
21 referred to frequently. And would you agree that the  
22 settlement agreement that the Commission approved in  
23 1989 for the period of 1990 to 1994, would you agree  
24 that that settlement agreement did not contain any  
25 reference to imputation as being compensation for

00991

1 assets transferred or as an offset for the full,  
2 reasonable value of assets transferred?

3 A. Yes, I will agree to that.

4 Q. And would you agree that, during that  
5 period, no party ever treated imputation in that  
6 fashion?

7 A. I don't know that I can agree to that. I  
8 don't know.

9 Q. US West certainly didn't treat it in that  
10 fashion, did it?

11 A. What do you mean by treat?

12 Q. Did not treat imputation as compensation  
13 for assets transferred?

14 A. We did not claim that imputation was  
15 compensation for assets transferred, no.

16 Q. Now, if you would refer to your Exhibit  
17 501-T -- or actually, it's 503, which is your Exhibit  
18 AKC-2. It's attached to your direct testimony. And  
19 I'm looking particularly to page one of two, revised  
20 12/28/98.

21 A. Yes, I have it.

22 Q. And as I read this exhibit, as I understand  
23 it, it indicates that the directory publishing  
24 business, if one were to add together the  
25 imputations, that that business, according to the

00992

1 Company now, was paid off in mid-1993?

2 A. Yes.

3 Q. Is that correct?

4 A. Yes, that's correct.

5 Q. Now, the Company never came to the  
6 Commission and claimed that imputation should be  
7 ended because the compensation for assets transferred  
8 have been paid off, did it?

9 A. We are coming in this docket to the  
10 Commission and making that claim.

11 Q. The Company never did that in the rate  
12 case, did it?

13 A. No, it was prior to the Supreme Court  
14 decision, and we did not.

15 Q. Now, the Company advanced several reasons  
16 why imputation was illegal in the rate case; is that  
17 correct?

18 A. I believe so. I wasn't a party to the  
19 claims of legality or illegality.

20 Q. Would you agree that the Company never  
21 argued to the Commission or to the Supreme Court that  
22 imputation was a method of compensation for assets  
23 transferred; is that correct?

24 A. Yes, that is correct, as I've explained  
25 why.

00993

1 Q. And so that issue was never litigated  
2 before either the Commission or the Supreme Court; is  
3 that correct?

4 A. To my knowledge, that is correct.

5 Q. So during this period from 1989 to 1998,  
6 what did the Company think that imputation was?

7 MS. ANDERL: I'm sorry, Counsel, during  
8 what period?

9 Q. 1989 until 1998, until we received the  
10 testimony in this case.

11 A. I believe that my opinion of the imputation  
12 between that period of time was a subsidy to the  
13 ratepayers. I believe that, according to the  
14 Company's position, the ratepayers had been  
15 compensated for the net book value, which was the  
16 amount that was reflected in the rate base, and the  
17 Company, during this period of time, was fully  
18 compensated by US West Direct or US West Dex for the  
19 services that the Company provided to them, and those  
20 services include such things as the billing and  
21 collection services, for which the US West Direct or  
22 Dex paid separately, the listings for which they paid  
23 separately, the public pay station and any other  
24 services that were provided to the Company.

25 Obviously, the imputation was something



00994

1 that was ordered by the Commission. It was not  
2 something that the Company chose voluntarily to  
3 impute, and I believe the reason that the --  
4 certainly the reason that I characterized it in this  
5 testimony, that you're referring to as a subsidy,  
6 refers back to Judge Green's comments, where he  
7 called it a subsidy.

8 Q. Did not the Company agree to imputation in  
9 the settlement in the A-4 agreement?

10 A. I think agreeing to something in a  
11 settlement is different than voluntarily imputing.

12 Q. The Company was not required --

13 A. I mean no legal distinction here.

14 Q. The Company wasn't required to enter a  
15 settlement, was it?

16 MS. ANDERL: Your Honor, objection at this  
17 point. I don't know that there's really any  
18 foundation to be asking this witness about the  
19 settlement agreement. In addition, a document's not  
20 been identified as a cross-examination exhibit for  
21 this witness and I'm not sure that it's fair to be  
22 asking her to respond to the details of the  
23 settlement agreement without giving her an  
24 opportunity to review the document.

25 MR. TRAUTMAN: Well, the question is simply

00995

1 because, in the rate case, Ms. Koehler-Christensen  
2 referred to imputation and she specifically referred  
3 to the settlement agreement and she stated that she  
4 was the witness who was to clarify why there should  
5 not be imputation. And so I'm simply asking about  
6 that agreement so that I can understand what the  
7 Company's position was at that time.

8 JUDGE WALLIS: Her testimony has been  
9 identified as an exhibit, and I think that it's  
10 proper for Counsel to engage in this inquiry.

11 Q. And so it's fair to say, is it not, that in  
12 what it filed before the Commission, we have your  
13 testimony in the rate case and we have the Company's  
14 briefs in the rate case, and that stated what the  
15 Company's position was regarding imputation; is that  
16 fair?

17 A. I believe yes, that that is fair. Am I to  
18 answer your first question?

19 Q. I believe you already did.

20 A. I didn't think that I did, but --

21 JUDGE WALLIS: Had you completed your  
22 answer?

23 Q. Oh, the question about whether the  
24 settlement was voluntary? That question?

25 A. Yes.

00996

1 JUDGE WALLIS: And again, Ms.

2 Koehler-Christensen, are you a lawyer?

3 THE WITNESS: No, I am not a lawyer.

4 JUDGE WALLIS: We will understand that her  
5 response is not given in the form of a legal opinion.

6 THE WITNESS: Okay.

7 MR. TRAUTMAN: And I would not have asked  
8 the question, except she claimed that imputation was  
9 forced upon the Company.

10 THE WITNESS: I don't believe I used the  
11 word forced. However, my testimony, in the last --  
12 in 950200 was addressing that case, and it was not  
13 addressing the settlement agreement or the A-4. I  
14 was not a party to the settlement agreement. I can  
15 only say, regarding whether or not the Company  
16 entered into it, that certainly had it been our  
17 choice, we would not have had that imputation.

18 Certainly we made a settlement agreement,  
19 I'm not denying that we made a settlement agreement,  
20 but on a stand-alone basis, would the Company, at  
21 that point in history, have wanted a subsidy or an  
22 imputation, no.

23 Q. In any event, you did not present any  
24 amortization table in your rebuttal testimony; is  
25 that correct?

00997

1 A. That's correct.

2 Q. Would you turn to what's been marked as  
3 Exhibit 519? And this was your rebuttal -- this was  
4 your deposition in the U.S. District Court -- Federal  
5 Court case. This was the case that involved US  
6 West's first amendment claim pertaining to imputation  
7 in the federal courts, and it's Docket C96-6025 FDB,  
8 and your testimony is dated -- or your deposition is  
9 dated April 30, 1997.

10 A. Yes, I have it.

11 Q. And if you turn to Exhibit 1 that was  
12 included with this deposition, you see that it  
13 indicates that a request was made of US West for a  
14 number of people, and one of the persons that was  
15 asked for, number five, it says, "Pursuant to Federal  
16 Rule of Civil Procedure 30(b)(6), the person who can  
17 speak for the Plaintiffs concerning the transaction  
18 between or among US West Dex, USWC, USWI, and US West  
19 Media Group," do you see that?

20 A. Yes, I do.

21 Q. Now, turning to your deposition, at page  
22 15, on lines 16 through 22, would you agree that you  
23 were designated to testify on this topic?

24 A. Yes, I was designated to testify on topic  
25 number five.

00998

1 Q. Turning now, if you would, to page 105 of  
2 that deposition, you were asked whether you were  
3 familiar with the history involving the Yellow Pages  
4 or the directory operations of US West Dex or its  
5 predecessors when those operations were transferred  
6 from Pacific Northwest Bell to US West Direct; is  
7 that correct?

8 A. Yes, it is.

9 Q. And you stated that you were -- you said  
10 you had secondhand knowledge?

11 A. That's correct.

12 Q. Who was it that provided you with that  
13 knowledge?

14 A. I can't name a specific person. If I can  
15 just briefly describe my responsibilities in April of  
16 1988, I assumed responsibility for the contractual  
17 relationships between US West Communications and US  
18 West Direct. And this deposition took place in 1997,  
19 so at that point in time, I had had that  
20 responsibility for approximately nine years. During  
21 that time, particularly in the early years, I had  
22 opportunity to have numerous discussions, both with  
23 employees in US West Communications' listings  
24 business, employees who were involved at that time in  
25 the business prior to the transfer of the directory

00999

1 operations. I also had numerous conversations,  
2 discussions with employees who worked at US West  
3 Direct, a number of whom had worked in the directory  
4 operations at the time of the transfer. I had  
5 already testified on Yellow Page issues previously.

6 I just had a nine-year history at this  
7 point of understanding the issue to the best of my  
8 knowledge. I was not there at the time.

9 Q. But you spoke with several individuals  
10 concerning this?

11 A. Yes, I did, over a nine-year period at this  
12 point in time.

13 Q. Would one of them have been Mr. Inouye?

14 A. Frankly, at this -- I'm sure I had  
15 discussions. I do not believe it had anything to do  
16 with history with Mr. Inouye at that point in time.

17 Q. What about Mr. Johnson?

18 A. Yes, I have had discussions with Mr.  
19 Johnson.

20 Q. So you obtained some of your information  
21 from him?

22 A. Yes, certainly. Whether it was  
23 specifically about the transfer, I don't know.

24 Q. Now, you were designated as the individual  
25 to speak about the transfers. If you turn to page

01000

1 106, you were asked, "Do you have an understanding as  
2 to why the operations were transferred," and you'll  
3 see, in the middle of the page, there's an objection.  
4 The objection says -- the objection was to the  
5 question of intent, but your Counsel then said, "She  
6 is here to talk about --"

7 COMMISSIONER HEMSTAD: I'm sorry, Counsel,  
8 could you refer me to the line?

9 MR. TRAUTMAN: Oh, I'm sorry, page 106.  
10 The question was at lines three to six, whether she  
11 had an understanding of why the operations were  
12 transferred. And then, on line 12, there's an  
13 objection raised, as far as questions and intent, but  
14 her Counsel said, "She is here to talk about what was  
15 transferred;" is that correct?

16 THE WITNESS: That's what it says. I wish  
17 I had a clearer recollection of what I anticipated at  
18 the time I walked into this deposition. I know that  
19 I believed it was about the contractual  
20 relationships, so I'm not sure I had anticipated it  
21 would be about the transfer.

22 Q. Turning to page 107 in the dep.

23 A. Yes.

24 Q. And at the top, on lines two to three, the  
25 question is, "Why don't you tell me, describe the

01001

1 transaction." And you state first that "The assets  
2 and operations per se of the directory operations of  
3 Pacific Northwest Bell, Mountain Bell and  
4 Northwestern Bell were transferred, in effect, to US  
5 West, Inc., and then US West, Inc. created a  
6 subsidiary named Landmark Publishing;" is that  
7 correct?

8 A. That's what I said. I know now that that  
9 is not precisely accurate. At the time, I think I  
10 acknowledged that PNB no longer -- or US West  
11 Communications no longer had copies of the documents,  
12 I had not been able to review any of the documents.  
13 That was my general understanding.

14 Q. And turning to page 108, the question was  
15 specifically asked, "Can you tell me the assets? I  
16 assume you mean tangible and intangible assets?" And  
17 your answer is, "Tangible assets." And it says,  
18 "Were transferred to Inc., and the quid pro quo was a  
19 share of stock or a portion of a share of stock."  
20 And your answer is, "That's my understanding." And  
21 the question, "Was there anything else?" And the  
22 answer is, "Not to my knowledge." That's correct?

23 A. That's what I stated. Again, I have to put  
24 it in the context that the Company's view at that  
25 time was that what was required to be transferred was



01002

1 the net book value and that was what was recorded on  
2 the books. We certainly viewed, as I stated on the  
3 previous page, that we transferred the assets and the  
4 operations. I can --

5 Q. Well, you were asked, though, whether --

6 MS. ANDERL: Your Honor, I object. I don't  
7 believe the witness had completed her answer.

8 MR. TRAUTMAN: All right.

9 THE WITNESS: You know, I wish, in going  
10 back, when I read this two years later, that I had  
11 asked that the question be further clarified. When I  
12 read it, I think it wasn't even a complete question,  
13 in my opinion today, but I obviously had some  
14 understanding of it, and I can't tell you precisely  
15 what my understanding of it was at that moment. I  
16 can tell you that I do know what my understanding of  
17 the Company's view or my opinion of the Company's  
18 view at that time, and that was, as I stated, that  
19 what was recorded was the net book value of the  
20 tangible assets, and I believe I was discussing that  
21 at this point in time.

22 JUDGE WALLIS: I know that both the witness  
23 and Counsel are anxious to get through this and build  
24 a complete record as expeditiously as possible, but I  
25 am going to really ask both of you to let the other

01003

1 complete the question or the response and then start  
2 up with your answer. It will make it a lot easier  
3 for our court reporter and for the rest of us to  
4 understand.

5 Q. But you were asked specifically about  
6 whether intangible assets were transferred. And  
7 judging by your answer, I assume that you had not  
8 spoken to anyone from the Company who had informed  
9 you that intangible assets were transferred?

10 A. I knew that my understanding, from all of  
11 my conversations, discussions, interactions, was that  
12 the entire business was transferred to US West  
13 Direct. I can only say that it was my understanding  
14 that what the Company booked in the transfer was the  
15 physical tangible assets, the net book value, that  
16 nothing else was reflected on the books of the  
17 Company. That's what I believe I was thinking about  
18 and referring to when I answered this question.

19 Q. But you did not use the term "entire  
20 business;" you stated assets and operations. And  
21 then, when you were specifically asked about the  
22 assets, you stated that that included tangible  
23 assets; is that correct?

24 A. Yes, and I believe I've explained. I term  
25 the operations as the business. We can quibble about

01004

1 definitions, but I've explained why I answered as  
2 that's the transfer as I did.

3 Q. Well, would you agree the Company has made  
4 quite a quibble about the difference between tangible  
5 and intangible assets in this proceeding?

6 A. I believe it was Staff and Public Counsel  
7 that originated that differentiation.

8 Q. And it's your opinion that that  
9 differentiation is of no concern to the Company?

10 A. No, I did not state that.

11 Q. Turning to page 109, the questions are  
12 asked about whether the same transaction took place  
13 between US West, Inc. and the other bell operating  
14 companies, and following that, on line 22, the  
15 question is, "And does that fully describe that  
16 transaction?" And your answer is, "As far as I  
17 know." Is that correct?

18 A. Yes, that's what it says.

19 Q. Turning to page 110, when you were asked  
20 about documents within US West, Inc., US West C, or  
21 US West Direct's possession which would describe the  
22 transaction, you stated that you were aware that at  
23 the time US West Communications filed an application  
24 with the state of Washington asking for approval of  
25 this transfer; is that correct?

01005

1 A. Yes.

2 Q. And I believe you then said PNB. And  
3 that's the only application to which you referred; is  
4 that correct?

5 A. Yes, that's the only document to which I  
6 referred. It's not necessarily the only document I  
7 thought existed.

8 Q. You were asked whether you were aware of  
9 any documents, and then, when asked are you aware of  
10 none, the only documents you offered was the  
11 application; is that correct?

12 MS. ANDERL: Objection, Your Honor.  
13 Mischaracterizes the question. The question was any  
14 documents within the possession of US West, Inc., C,  
15 or Dex on line three.

16 MR. TRAUTMAN: Well, actually, she said no  
17 to that question. Then, when asked, "You're aware of  
18 none," she then stated that she was aware that US  
19 West filed an application.

20 Q. Let me ask you this. If there were other  
21 documents of which you were aware, after having been  
22 asked these questions, you did not respond concerning  
23 any such documents, did you?

24 A. No, I did not.

25 Q. Turning now to what's -- first, what's been

01006

1 marked as Exhibit 524, and this was a supplemental  
2 exhibit. And it's the letter of December 20th that  
3 the Company filed to Paul Curl regarding a  
4 supplemental agreement for affiliated interest in  
5 Docket FR 86-156.

6 A. Yes.

7 Q. Do you see this?

8 A. Yes.

9 Q. And attached to that is a letter from Max  
10 Johnson. I believe we just have the first page of  
11 that letter to a Mr. Okamoto, but it's been  
12 previously admitted as a document in this case. And  
13 this is the document in which the Company stated that  
14 the subsidy between -- as they refer to it, that US  
15 West Direct was paying to PNB would be terminated; is  
16 that correct?

17 A. Yes, that's correct.

18 Q. And are you aware that fewer than two  
19 months after this letter was sent to the Commission,  
20 the Commission entered its Third Supplemental Order  
21 in Docket U 86-156?

22 A. Yes, I am.

23 Q. And is it correct that the Commission did  
24 not accept the rejection of the subsidy -- did not  
25 reject -- did not accept the Company's elimination of

01007

1 the subsidy, as they called it, and stated that the  
2 level of the publishing fee would be reviewed in a  
3 full rate proceeding?

4 A. Yes, I'm aware that that's --

5 Q. And in the decision, did not the Commission  
6 state, I'm quoting now from the first page at the  
7 bottom, "The Commission can only recognize the latest  
8 attempt by US West to modify the directory  
9 arrangement as an inauspicious sign of impending  
10 conflicts with ratepayer interest."

11 JUDGE WALLIS: Slow down, please.

12 Q. "The Commission rejects the extension  
13 letter's conclusion that, quote, this publishing fee,  
14 in brackets, has been the subject of controversy in  
15 numerous state regulatory proceedings over the past  
16 several years and has received inconsistent and  
17 differing results, end of quote, as transparently  
18 self-serving. The only controversy in a historically  
19 innocuous directory publishing arrangement has been  
20 interjected by US West in its undisguised policy to  
21 reduce and finally eliminate the publishing fee, an  
22 action that apparently has the full concurrence of  
23 PNB. The regulatory response has been overwhelmingly  
24 negative to every attempt by US West to reduce or  
25 eliminate the publishing fee in order to enhance US

01008

1 West's results at the expense of telephone  
2 subscribers. In short, far from being inconsistent,  
3 the regulator's reaction has been constant and  
4 disapproving in every case."

5 Would you agree that this was the  
6 Commission's response to your Exhibit 524?

7 CHAIRWOMAN SHOWALTER: Counsel, can you  
8 tell me what you were reading from?

9 MR. TRAUTMAN: This was the Third  
10 Supplemental Order.

11 CHAIRWOMAN SHOWALTER: Is it named as an  
12 exhibit?

13 JUDGE WALLIS: No, it's not. Just to  
14 complete one other circle, I believe that the  
15 December 12, 1988, to Mr. Okamoto is in the record as  
16 Exhibit 609.

17 MS. ANDERL: Correct.

18 Q. Do you agree that this was the Commission's  
19 response to your Exhibit 524?

20 A. Absolutely, I agree. I don't think there's  
21 any question that the Commission has disagreed with  
22 the Company's position. I think the Commission  
23 represented their position to the State Supreme  
24 Court, and the Company has accepted the Supreme  
25 Court's decision.

01009

1 Q. I was going to turn now to Exhibits 304,  
2 306, 307, 308. I hope you have them. These were  
3 exhibits previously identified with Mr. Johnson and  
4 --

5 A. I have them.

6 Q. -- he deferred them to you. These are all  
7 responses to Staff data requests. Exhibit 304 asked  
8 for "A copy of the chart of accounts used by US West  
9 Direct at the time it recorded the transfer of assets  
10 from PNB. Please provide the journal entries made on  
11 US West Direct's books to record the transfer of  
12 assets from PNB. For each journal entry, provide  
13 account numbers, account descriptions and dollar  
14 amounts." And the answer was that this information  
15 had not been retained by US West Dex per US West's  
16 retention guidelines?

17 A. That's correct.

18 Q. And is this a true and accurate response  
19 from the Company?

20 A. Yes, it is. When we received this request,  
21 I made contacts with US West Dex. They checked their  
22 records. They found that they did not have this  
23 information. I then went to US West's retention  
24 guidelines and found that it was legitimate that US  
25 West Dex would not have retained these, so I believe



01010

1 that we did both check the retention guidelines and  
2 checked their records nonetheless, and they did not  
3 have the document.

4 MR. TRAUTMAN: I would move for admission  
5 of Exhibit 304.

6 MS. ANDERL: No objection.

7 JUDGE WALLIS: Received.

8 Q. Exhibit 306, in reference to your Exhibit  
9 AKC-8, which, again, was Exhibit D, I believe, to the  
10 1983 application that the Company filed with the  
11 Commission, this asked the Company to separately  
12 provide amounts paid for the right to use listings,  
13 the exclusive right to publish directories, and the  
14 exclusive right to produce directories bearing the  
15 name, trademarks, and trade names of PNB. And the  
16 response was there was no information to identify  
17 these separate amounts.

18 A. That's right. That was all covered under  
19 the initial publishing agreement.

20 Q. Well, the amounts -- there were amounts  
21 stated in the publishing agreement for each year, and  
22 the data request asked whether the amounts for each  
23 year could be separately identified for each of the  
24 items listed in the data request; is that correct?

25 A. Yes, it is. The point that I was going to

01011

1 make is that in the publishing agreement, there was  
2 one publishing fee amount identified for each year.  
3 It was not at the time identified individually, by  
4 the various items that you've listed here, what the  
5 amounts were. I don't believe that at the time they  
6 were separately quantified.

7 Q. Were you personally involved in that, in  
8 the process leading to the publishing agreements?

9 A. No, I was not personally involved, but I  
10 have had discussions with people and have been told  
11 that they were not separately identified, and there  
12 are certainly no records in our offices that indicate  
13 that they were.

14 MR. TRAUTMAN: I would move for the  
15 admission of Exhibit 306.

16 MS. ANDERL: No objection.

17 JUDGE WALLIS: Is that 306?

18 MS. ANDERL: Yes.

19 Q. Exhibit 307 asked for copies of documents,  
20 including notes and phone conversation records,  
21 related to the negotiations that took place regarding  
22 the publishing agreements. And the response was that  
23 US West had no such documents, notes, or phone  
24 conversation records related to the negotiations.

25 A. That's correct.

01012

1 MR. TRAUTMAN: Move for the admission of  
2 Exhibit 307.

3 MS. ANDERL: No objection.

4 JUDGE WALLIS: Received.

5 Q. Finally, in Exhibit 308, this, again,  
6 referring to the same document, which is your AKC-8,  
7 which was Exhibit D of the 1983 application, there's  
8 a quotation that says, "With this point in mind, the  
9 negotiation took into account the market value of the  
10 listing asset and the associated right to use PNB's  
11 name with the directories." And the question was,  
12 "Please provide the amount of and documentation  
13 supporting the development of that market value."  
14 And your response refers back to Exhibit 307, which  
15 states that there are no such records; is that  
16 correct?

17 A. Yes, it is.

18 MR. TRAUTMAN: I would move for the  
19 admission of Exhibit 308.

20 MS. ANDERL: No objection.

21 JUDGE WALLIS: Received.

22 Q. Are you aware of what the Company  
23 considered the market value to be?

24 A. The market value?

25 Q. Of the listing asset and the associated

01013

1 right to use PNB's name with the directories?

2 A. I'm not aware of any specific number. I do  
3 know that obviously a publishing fee was agreed to.  
4 I don't know that it encompassed only the market  
5 value and this, but it certainly reflected that, plus  
6 additional goods and services that PNB provided to US  
7 West Direct. I do know -- oh, excuse me.

8 Q. Go ahead.

9 A. I do know that in the original application,  
10 there was an amount per listing identified. I  
11 believe that that was used for illustrative purposes  
12 and not to identify the specific market value of  
13 that.

14 Q. Now, at the time you prepared your rebuttal  
15 testimony that you filed in this case, had you  
16 personally reviewed the responsive testimonies of Dr.  
17 Selwyn and Mr. Brosch in their entirety?

18 A. Yes, I had. Well, I'll take that back.  
19 I'm sorry. I had reviewed them with respect to  
20 certainly their response to my direct testimony. I  
21 think I read much of their testimonies, but I can't  
22 say that I read every word, particularly the sections  
23 that got into the details of Mr. Golden's business  
24 evaluation. I did not review all of that, for  
25 example. Dr. Selwyn's exhibit, attachment, appendix,

01014

1 whatever that was, I know that I did not read that in  
2 its entirety.

3 Q. With regard to Dr. Selwyn's responsive  
4 testimony, which was Exhibit 801, are you aware that  
5 on pages 31 to 44 of that testimony, that he responds  
6 in detail to your compensation calculations in a  
7 section that is entitled, "The compensation analysis  
8 presented by Ms. Koehler-Christensen is conceptually  
9 invalid because there was never any agreement for a  
10 sale, let alone the type of installment payment  
11 scheme that Ms. Koehler-Christensen invents, and it  
12 is flawed in execution, because it indiscriminately  
13 combines various revenue streams, none of which would  
14 qualify as installment payments in this case." Do  
15 you see that?

16 MS. ANDERL: Counsel, in any case?

17 Q. In any case?

18 A. I'm aware of Dr. Selwyn's testimony. I  
19 believe I addressed it in my rebuttal testimony. I  
20 certainly believe that Dr. Selwyn mischaracterized my  
21 direct testimony, and in fact, when he was on the  
22 stand, I believe today, I believe he mischaracterized  
23 my testimony, in that I don't believe that I ever  
24 characterized it as a sale. And I don't believe that  
25 I ever characterized that the imputations were

01015

1 designed for installment -- as installment payments.

2 Q. Now, in your rebuttal testimony, which is  
3 Exhibit 509-T, on page 20, lines 14 to 15, you state,  
4 "Neither Staff nor Public Counsel claims that the  
5 compensation I present is inaccurate or incorrect."  
6 Is that your testimony at this time?

7 MS. ANDERL: Counsel, could I get a page  
8 reference again?

9 MR. TRAUTMAN: I'm sorry. Page 20, lines  
10 14 to 15.

11 THE WITNESS: Yes, I believe I would still  
12 state that. And the reason I state that is that they  
13 did not claim that my calculations were incorrect.  
14 They did not present alternative methods of measuring  
15 ratepayer compensation. They simply rejected that  
16 compensation should be calculated on the basis that a  
17 sale hadn't occurred, even though the Company had  
18 never claimed that a sale -- an actual sale occurred,  
19 unless one defines sale to include the transfer of  
20 the business that occurred, and we did not make the  
21 distinction.

22 What can I say? There's been a lot of  
23 argument about definitions between sale and transfer,  
24 and I don't want to get -- that's why I did not  
25 characterize it as a sale.

01016

1 Q. Turning to page 21 of your rebuttal, lines  
2 eight to ten, you state, "Assuming a 1984 transfer  
3 date, the ratepayer compensation calculations that I  
4 have presented give the ratepayers every benefit and  
5 have been unchallenged by Staff and Public Counsel."  
6 Is that your testimony at this time?

7 A. Yes, I believe the compensation  
8 calculations have gone unchallenged. I think they're  
9 the only numbers that are on the record.

10 Q. So it would be your testimony that none of  
11 the criticisms on pages 31 to 44 of Dr. Selwyn's  
12 testimony address the items that you claim have been  
13 unchallenged?

14 A. Did you say pages 31 to 44?

15 Q. Of Dr. Selwyn's testimony?

16 A. I'll need a moment to review those pages.

17 Q. On pages 35 to 36, are there not --

18 MS. ANDERL: Your Honor, the witness, I  
19 believe, is still taking the moment she asked for to  
20 respond to the original question, which was pending.

21 THE WITNESS: I believe, in Dr. Selwyn's  
22 responsive testimony, he rejected in -- he rejected  
23 the Company's theory, on which I based my  
24 compensation calculations. He did say, on page 33,  
25 line 20 -- or let's start on line 17, "Does it make

01017

1 sense for Ms. Koehler-Christensen to derive  
2 compensation paid using a basic amortization  
3 schedule?" And the response on line 20, that begins  
4 on line 20 says, "Only in a very limited sense that  
5 the use of a basic amortization schedule is  
6 consistent with the fiction that an actual sale took  
7 place." I read this to mean that it made sense if  
8 you accepted the premise of the Company as Dr. Selwyn  
9 characterized it.

10 He does continue to discuss a number of  
11 factors, the interest rate that I use for ROR. For  
12 example, on the following pages, I addressed all of  
13 those comments in my rebuttal testimony and I saw no  
14 surrebuttal to my comments that I filed in my  
15 rebuttal testimony on those issues.

16 Q. Do you believe that it's necessary to  
17 present alternative calculations in order for your  
18 numbers to be challenged?

19 A. I don't believe it's necessary, no, to  
20 present alternative calculations, complete  
21 calculations. On the other hand, to simply reject  
22 the premise or to state that the premise is wrong;  
23 therefore, I reject the calculations, does not, in my  
24 opinion, impugn the accuracy of my calculations. It  
25 only says that the Company's basic premise in this



01018

1 case is rejected.

2 Q. Can you describe for me what a business  
3 update is?

4 A. Yes. A business update, as it's referred  
5 to here, is a subscriber listing for a business  
6 subscriber. And basically, an update simply takes  
7 any addition, change, or deletion of a subscriber  
8 name, address, or telephone number and it identifies,  
9 as I said, the additions, the changes, and the  
10 deletions for business subscribers. And that's what  
11 a business update is.

12 Q. Could you turn to your rejoinder testimony?

13 JUDGE BERG: Mr. Trautman, will you  
14 continue to refer to exhibits by their exhibit  
15 number?

16 MR. TRAUTMAN: I'm seeking it out. 513-T.

17 JUDGE BERG: Thank you.

18 Q. In what form were business updates provided  
19 to US West Direct immediately after 1984?

20 A. I can't state precisely. As far as I know,  
21 business updates were a listing option that were  
22 created in 1987. So I am not altogether sure that US  
23 West Direct obtained exactly what I would describe as  
24 business updates in the period 1984 through 1986.

25 I don't agree with Dr. Selwyn's

01019

1 interpretation that the access that US West Direct  
2 had to the listings databases at that time would be  
3 the equivalent to the business updates.

4 Q. Prior to 1984, how were business updates  
5 provided to directory operations?

6 A. Prior to 1984?

7 Q. Uh-huh.

8 A. I don't know.

9 Q. Okay. Were business updates provided to  
10 directory operations prior to 1984?

11 A. I don't know.

12 Q. Now, on page seven of your rejoinder  
13 testimony, 513-T, you state that first, on line nine,  
14 "PNB began selling daily updates to all publishers,  
15 including US West Direct in 1987." And then, on  
16 lines 13 to 14, after the question, "Was similar  
17 information available from any other sources," you  
18 state "Yes, a variety of businesses, such as banks  
19 and state and city licensing departments sell new  
20 business information, including telephone numbers."  
21 Do you see that?

22 A. Yes, I do.

23 Q. So are you saying that this type of  
24 information also can be used to identify new  
25 businesses to which US West Direct could solicit

01020

1 Yellow Page directory advertising?

2 A. Am I stating that US West Direct could  
3 obtain information from businesses such as banks and  
4 state and city licensing departments with which they  
5 would -- is that --

6 Q. Should I -- are you saying that this type  
7 of information also can be used to identify new  
8 businesses to which US West Direct could solicit  
9 Yellow Page directory advertising?

10 A. Yes, I am saying that.

11 Q. Would the business updates provided by US  
12 West or by PNB to US West D include an increase in  
13 the number of telephone lines that a customer had in  
14 service?

15 A. No.

16 Q. When did non-PNB alternative sources of new  
17 business information begin to be sold in Washington,  
18 if you know?

19 A. I don't know that information, but I can  
20 say that there were directory publishers that  
21 published Yellow Page directories in PNB's territory  
22 prior to 1984, and certainly between 1984 and 1986.  
23 They did not obtain that information from any  
24 business update information from PNB during that  
25 period of time, and even after PNB began offering

01021

1 daily business updates as a listing option, the -- a  
2 number of the directory publishers that purchase  
3 subscriber listings chose and continued to choose not  
4 to purchase these listings. I know that they use  
5 other sources to make their contacts. I don't know  
6 all of their sources.

7 Q. To your knowledge, has US West Direct ever  
8 ceased purchasing business updates from PNB or US  
9 West at any time since 1984?

10 A. As I stated, business updates began to be  
11 offered in 1987, so I do know that US West Direct  
12 began purchasing them in 1987. Somewhere in the  
13 neighborhood of 1989 or 1990 or the early '90s, let's  
14 say, US West Communications began offering additional  
15 publisher listing products. Some of these were  
16 called expanded use subscriber lists, and there were  
17 daily -- or there were expanded use updates that  
18 could be purchased. For a number of years, US West  
19 Direct continued to purchase both the business, daily  
20 business updates, and the subscriber listing updates.  
21 In the last number of years, actually, US West  
22 Communications no longer even offers the daily  
23 business updates, because there was not a single  
24 publisher, including US West Dex, that was purchasing  
25 them. And after several years, US West

01022

1 Communications ceased to offer them.

2 Q. What did the expanded listing updates  
3 contain that the business updates do not contain?

4 A. The expanded use -- the basic subscriber  
5 listing and the updates both simply provide the basic  
6 information, the subscriber name, the subscriber  
7 address, the subscriber telephone number, but it's  
8 provided in a database format. Beyond that, I can't  
9 describe how that format technically is different  
10 than the subscriber list that you purchase, that you  
11 can get on paper or a disk. But it is in a database  
12 format.

13 The expanded use updates are simply  
14 continuous updates of those subscriber lists, but  
15 they are not specifically business updates. They are  
16 residence and business updates, although I believe  
17 that US West Communications does now also have a  
18 product that is just business listings in the  
19 expanded use updates that is specifically for Yellow  
20 Page solicitations. US West Dex does not purchase  
21 that.

22 I looked, I know, somewhere in the course  
23 of this docket at 1997. I haven't looked at 1998 or  
24 1999, and no publishers in the state of Washington  
25 purchase those Yellow Page solicitation updates.

01023

1 However, I believe publishers in other states do  
2 purchase them.

3 Q. Have you completed your answer?

4 A. Yes.

5 Q. To your knowledge, has US West Direct ever  
6 purchased new business information from a bank at any  
7 time since 1987?

8 A. I don't specifically know about a bank. It  
9 is my understanding that US West Direct has purchased  
10 information from other sources from time to time. I  
11 can't be more specific than that.

12 Q. And to your knowledge, has US West Direct  
13 ever purchased new business information from a city  
14 or state licensing department?

15 A. I believe I answered that in my previous --  
16 I don't know the sources. I just understand from  
17 discussions that they have obtained information from  
18 other sources than from US West Communications.

19 Q. I want you to turn to page 15 of your  
20 rejoinder testimony, and this is Exhibit 513.

21 A. Which page, again, is it?

22 Q. Page 15. And there's a large block quote.  
23 It goes from lines 15 through 27.

24 A. I see it.

25 Q. And starting with the sentence before the

01024

1 underlined sentence, you state -- and this is PNB to  
2 the Commission. It says, "It is always possible that  
3 at some point in the future, one of the other  
4 publishing companies will make a more competitive  
5 offer, which must be considered. If PNB is offered a  
6 better financial opportunity by a different  
7 publisher, it will certainly give such an offer  
8 serious consideration."

9           And my question is, in light of the prior  
10 testimony by other Company witnesses that PNB no  
11 longer owned the directory publishing business, what  
12 is the meaning of this sentence?

13           A. I believe that testimony that I have read  
14 and heard this week certainly misinterpret my belief  
15 of what the publishing agreement encompasses. My  
16 belief is that the publishing business was  
17 transferred from PNB to US West Direct. US West  
18 Direct had all of the employees, the systems, the  
19 abilities, to publish directories. The publishing  
20 agreement itself is a contract between US West  
21 Communications today or PNB then and US West Direct  
22 to meet PNB's or our White Pages publishing  
23 obligation.

24           We have attempted to make it clear that the  
25 obligation to publish White Pages was not permanently

01025

1 transferred. That wasn't part of the publishing  
2 business. That made us a customer of US West Direct  
3 for the purposes of meeting our White Pages  
4 obligation.

5 And I know, from my last 11 years with  
6 working in this area, that the feeling was at the  
7 time, among at least a number of the PNB employees  
8 that I had discussions with, that if another  
9 publisher came to PNB and said, "We will publish your  
10 White Pages listings and pay you more money than US  
11 West Direct is paying you in publishing fees," that  
12 PNB, at that time, believed that they would give the  
13 offer serious consideration.

14 Now, to be perfectly honest, today, or even  
15 at that time, I'm not sure whether US West, Inc.  
16 would have allowed that to occur.

17 Q. Well --

18 A. But I do know that no publisher ever came  
19 to PNB and made an offer.

20 Q. Well, I'm not sure if you answered my  
21 question. And that is, assuming that PNB no longer  
22 owns the publishing business, no longer owns the  
23 directory publishing business, the Yellow Pages, how  
24 can PNB be in a position to make the representation  
25 it is making, that it will give offers by other



01026

1 publishers serious consideration if they no longer  
2 own the business?

3 A. That's precisely the reason PNB can make  
4 that statement. PNB is not in the publishing  
5 business. PNB needs to meet its obligation to  
6 publish the White Pages. That is exactly why US West  
7 Direct has similar contracts with other independent  
8 local exchange companies and with competitive local  
9 exchange companies, because these local exchange  
10 companies that are not in the publishing business  
11 need to have their White Pages obligations met. And  
12 therefore, a publishing agreement is the vehicle by  
13 which we assure that that occurs.

14 Q. Where does this paragraph refer to White  
15 Pages?

16 A. The publish -- this particular paragraph  
17 does not refer to the White Pages.

18 Q. Is it your belief that this paragraph does  
19 not refer to the Yellow Pages?

20 A. Yes, it is, but it is my brief belief that  
21 the primary purpose of a publishing agreement is for  
22 the telephone company to meet and assure that its  
23 White Pages obligations are met.

24 Q. And what's the basis for your belief that  
25 this does not refer to Yellow Pages?

01027

1 A. I believe my basis is my understanding of  
2 the publishing agreement.

3 Q. So your understanding of the publishing  
4 agreement is that it does not have anything to do  
5 with the Yellow Pages; is that correct?

6 A. I didn't state that it had nothing to do  
7 with it; I did state that the primary purpose of the  
8 publishing agreement, in my belief, based on the last  
9 11 years of working with US West Direct, US West Dex,  
10 with our internal White Pages listing people, that  
11 that is the primary purpose, from our perspective, of  
12 the publishing agreement.

13 Q. Could you cite to anything that's  
14 documented that would indicate that this paragraph  
15 from the application has nothing to do with the  
16 Yellow Pages?

17 MS. ANDERL: Your Honor, I guess I'll  
18 interpose an objection. I'm not sure if Mr. Trautman  
19 means to suggest that that was the witness' prior  
20 testimony, because I do not believe that it was.  
21 However, if it's a new question, not meaning to  
22 characterize her prior testimony, I won't object.

23 JUDGE WALLIS: Mr. Trautman.

24 Q. Well, let me then ask, is it your testimony  
25 that this paragraph, in its application, is limited

01028

1 only to the White Pages?

2 A. I don't know that I can state that  
3 absolutely, without any qualifications, but I can  
4 state that PNB's belief at the time was that the  
5 Yellow Pages business, the directory publishing  
6 business, was transferred to US West Direct, and that  
7 the purpose of the publishing agreement was to meet  
8 our White Pages obligation. If I could point you to  
9 the application that was filed in October of 1984 --

10 MS. ANDERL: I'd just interject the exhibit  
11 number for the record. I believe that you're  
12 referencing Exhibit 111, Ms. Koehler-Christensen?

13 THE WITNESS: 111? That could be. My  
14 pen's ink is a little smeared, and I'm not sure I can  
15 read that, so that's fine.

16 On page nine of this application, about a  
17 quarter of the way down the page, there's a number  
18 one in parens, publishing agreement, and there is a  
19 comment here that says, "PNB is no longer in the  
20 business of providing directory services." Now, I  
21 will acknowledge that it does not state White Pages  
22 versus Yellow Pages; it simply says it's no longer in  
23 the business.

24 Q. Could you turn to page two of the  
25 application?

01029

1 A. Yes.

2 Q. And reading the sentence below the  
3 paragraph numbered four, does it not say, "This  
4 application concerns the implementation of the new  
5 publishing agreement between PNB and US West DC for  
6 the publication of PNB's White and Yellow Page  
7 Directories?"

8 A. Yes, I will acknowledge that that's what it  
9 says. I can only represent what my dealings with  
10 both the directory publishing company and PNB's  
11 listings' employees. My experience with dealing with  
12 those is that the attitude at the time and the  
13 continuing attitude is --

14 MR. TRAUTMAN: Your Honor, I would object.  
15 I don't believe this is an answer to my question.

16 THE WITNESS: It was, but --

17 MS. ANDERL: Your Honor, I believe that I  
18 cannot respond to that objection, because I don't  
19 recall what the question was, in all honesty.

20 MR. TRAUTMAN: The question was simply  
21 whether the statement in the publishing agreement  
22 said what the witness just read.

23 MS. ANDERL: And certainly those types of  
24 questions have been asked a number of times  
25 throughout this hearing, and typically the witness is

01030

1 usually allowed, after responding yes, that's what it  
2 says, to explain what that witness understands that  
3 to mean. I believe that's what she was doing.

4 JUDGE WALLIS: That has been our  
5 conviction.

6 THE WITNESS: The reason I was continuing  
7 to explain was I did not believe that I had finished  
8 answering the previous question, when you asked me to  
9 turn from page nine to page two. And so I was  
10 returning to the previous question, where you asked  
11 me on what basis I believed that the primary purpose  
12 of the publishing agreement was to meet our White  
13 Pages obligation.

14 Q. I think I -- no, I think I asked where did  
15 it state in the agreement that it did not refer to  
16 Yellow Pages?

17 A. My recollection of the question was  
18 different. That's all I can say.

19 Q. Is it reasonable to conclude from the  
20 paragraph that PNB was representing to the Commission  
21 that another publisher might be willing to pay higher  
22 publishing fees to PNB than US West Direct did in  
23 1984 for the White and Yellow Pages?

24 A. I believe what PNB was representing to the  
25 Commission was that if that occurred, PNB would

01031

1 seriously consider the offer.

2 Q. And so in order to seriously consider the  
3 offer, again, the question was is it reasonable to  
4 conclude that another publisher might be willing to  
5 pay higher publishing fees than US West Direct was  
6 paying?

7 A. I think we need to read the original  
8 application and probably -- both the 1983 and the  
9 1984 application to fully understand what PNB was  
10 representing to the Commission. I believe PNB  
11 clearly and fully represented its intentions  
12 regarding the transfer of the business, and I believe  
13 that PNB discussed in quite a bit of detail its  
14 concern about the new competitive environment that  
15 publishing directories represented, that there was a  
16 potential risk, and it went --

17 Q. Objection. Is there a yes or no? Is that  
18 a yes or a no, and then you can explain. I'm still  
19 not sure whether you gave me a yes or a no.

20 A. I guess I'll have to ask to go back and  
21 restate the question, and I'll be glad to give a yes  
22 or no, if I did not.

23 Q. The question was simply was it reasonable,  
24 from this paragraph, to conclude that another  
25 publisher might be willing to pay higher publishing

01032

1 fees to PNB than US West Direct was paying?

2       A. I would not characterize that it was  
3 reasonable or unreasonable, certainly in 1984. I  
4 believe what I was trying to characterize was that  
5 PNB's belief was that there was a lot of uncertainty,  
6 that there was a lot of risk, that the business was  
7 changing, that we didn't know how to anticipate what  
8 would occur, and that PNB's concern and attempt with  
9 the filing of these applications was to disclose this  
10 information to the Commission. It was to  
11 demonstrate, because PNB was concerned, as it's been  
12 described to me, about the regulatory issues, that  
13 PNB believed that the publishing agreement and its  
14 position that it would consider other publishers'  
15 offers was a means of protecting the ratepayer, that  
16 the risks -- there were a number of risks identified,  
17 and those risks were transferred to US West Direct,  
18 so that PNB ratepayers would not be responsible for  
19 those risks.

20               And I believe the purpose of that statement  
21 was to say the future was uncertain, we don't know  
22 the risks, and we're willing -- this is what we've  
23 done and this is what we believe we will do,  
24 depending on what occurs.

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

01033

1 just a second.

2 (Discussion off the record.)

3 Q. I'll try one more time, then I'll move on.

4 Is it reasonable to conclude that another publisher  
5 might be willing to pay higher publishing fees to PNB  
6 than US West Direct was paying, in light of the  
7 statement of PNB referring to a better financial  
8 opportunity by a different publisher?

9 MS. ANDERL: Objection, Your Honor. That  
10 question's been asked and answered.

11 MR. TRAUTMAN: It has not been answered.

12 JUDGE WALLIS: I believe it has been asked,  
13 but I don't recall hearing the witness answer.

14 MS. ANDERL: I apologize, Your Honor. I  
15 recall the witness, in her first sentence of her  
16 answer, describing that she could not answer yes or  
17 no to it. I don't believe she said it in those  
18 words, but I believe she said -- she wasn't here to  
19 say it was reasonable or unreasonable to conclude  
20 that, which is the basis for my objection.

21 JUDGE WALLIS: Very well. Let's let the  
22 witness respond, and if that is her response, then  
23 that would conclude things.

24 THE WITNESS: I believe I need a time frame  
25 surrounding that question in order to give an answer.



01034

1 I can't give a blanket answer that says it was  
2 reasonable, in 1984, to conclude that. I believe the  
3 that PNB thought it was reasonable to conclude that  
4 possibility would exist in 1987.

5 Q. You're saying it was reasonable to conclude  
6 that it would exist in 1987?

7 A. That it was possible to exist, yes.

8 Q. If the offer were made, to whom would the  
9 offer be made to, PNB or US West Direct, the offer by  
10 another publisher?

11 A. To PNB. PNB wasn't in the publishing  
12 business. PNB needed its White Pages published.

13 Q. You testified concerning the status of the  
14 Yellow Page directory business in several states; is  
15 that correct?

16 A. Yes.

17 Q. And is it your understanding that US West  
18 Direct's Yellow Page directory businesses throughout  
19 the 14-state region faces competition?

20 A. I haven't looked at every single state of  
21 the 14 states. In every state that I have looked at,  
22 yes, I believe US West Dex faces competition.

23 Q. Are there any conditions unique to  
24 Washington that make the industry significantly more  
25 or less competitive in this state than others in

01035

1 which US West Direct operates?

2 A. Yes, I believe that there -- the  
3 configuration of US West Communications' service  
4 areas with General Telephone's service areas, where  
5 they are contiguous in many places, creates a  
6 significantly greater degree of competition between  
7 those two directories, because, in fact, those two  
8 directories publish virtually identically-scoped  
9 directories that are delivered to both US West  
10 Communications customers and to General Telephone's  
11 customers and, as a result, there is a higher degree  
12 of competition among those.

13 In fact, they have both extended into each  
14 other's territories and published directories that do  
15 not include their own listings, but include only the  
16 listings of the other.

17 Q. Are GTE directories delivered to PNB  
18 customers as a routine matter?

19 A. Yes.

20 Q. On page 30 of your rebuttal, and this is  
21 Exhibit 509-T, do you not state that "I believe the  
22 Dex is a dominant publisher in virtually all of the  
23 markets in which it publishes directories?"

24 A. Yes, I do state that. I did not define  
25 dominant. I believe, in a later -- I can't recall

01036

1 whether it was a data -- response to a data request.  
2 I defined that I referred to dominant as a major  
3 player, not necessarily as the only or the most  
4 powerful, for example.

5 Q. Now, you gave -- you said that you had not  
6 defined dominant. You refer to other publishers and  
7 you state that US West is the -- Dex is the dominant  
8 publisher.

9 A. A dominant publisher.

10 Q. What was the market share of the other  
11 directories to which you refer?

12 A. How would you define market share?

13 Q. Revenues.

14 A. Revenues. I don't have any information on  
15 the revenues of other publishers.

16 Q. Have you ever made an attempt to get that  
17 information?

18 A. Yes, I have, and I was unable to get the  
19 information.

20 Q. Was that information generally available?

21 A. No, it's not.

22 Q. Could you turn to Exhibit 516, which is the  
23 Company's response to Staff Data Request 02-025?

24 A. I have it.

25 Q. And this has some comparisons between the

01037

1 US West directories and other directories; is that  
2 correct?

3 A. It has a number of things, including a list  
4 of lots of directories published in the state of  
5 Washington and whether or not they compete with US  
6 West Dex directories.

7 Q. Could you turn to the page, it would be  
8 W-i-e-s-e, Wiese Research Associates, Incorporated,  
9 and US West Dex 1997 directory usage study for  
10 Shelton. And do you have that?

11 A. Yes, I do.

12 Q. And does this table indicate that the US  
13 West Dex directory is currently possessed by 96  
14 percent, I believe, of households or individuals,  
15 whereas Pacific Coast Publishing is possessed by 61  
16 percent?

17 A. Yes, this represents that 96 percent of the  
18 200 people contacted possessed a US West Dex Shelton  
19 directory, and it represents that 61 percent of those  
20 same 200 people possessed a Pacific Coast Publishing  
21 directory.

22 Q. And it also indicates, I believe underneath  
23 the table, that that difference is statistically  
24 significant?

25 A. Yes, it does.

01038

1 Q. Does it also indicates, of those who have  
2 used the Yellow Pages during the last week for US  
3 West Dex, 69 percent; for Pacific Coast Publishing,  
4 28 percent?

5 A. Yes.

6 Q. And those who have used the White Pages the  
7 past week, 51 percent versus 12 percent?

8 A. Yes.

9 Q. And that the directory preference is 45  
10 percent for US West versus 17 percent for Pacific  
11 Coast?

12 A. Yes. If I could just comment that I don't  
13 know what the rest of the --

14 Q. There isn't any other pending question.

15 A. -- customers prefer.

16 Q. If you could turn now to the exhibit, it's  
17 near the end of the document. It's called  
18 Advertising Turnover. And there are two -- it's a  
19 two-paged exhibit. And do you see first we have  
20 dentists?

21 A. Yes, I see it.

22 Q. And for US West Dex, the net retention rate  
23 is 91 percent, whereas for RTD, it's 64 percent?

24 A. Yes.

25 Q. And in comparing those who have renewed or

01039

1 increased their directories, for US West Dex, it's 81  
2 percent, versus 41 percent?

3 A. Yes.

4 Q. Likewise, the florists, we have net  
5 retention rate of 70 percent versus 45 percent?

6 A. Yes.

7 Q. And the renewal rate is 52 percent versus  
8 20 percent?

9 A. Yes.

10 Q. Do you know what the advertising rates  
11 would be for an ad of a given size in each of those  
12 directories, what the relationship would be?

13 A. No, I don't. I believe I may have provided  
14 the rates from the Yellow Pages Publishers  
15 Association from that period of time, but I certainly  
16 don't know off the top of my head. There are  
17 probably 25 to a hundred different options that an  
18 advertiser can choose, and they are not always  
19 identical by each directory publisher.

20 Q. Is it fair to say that US West Direct's  
21 advertising rates are substantially higher than those  
22 charged by any of the alternative publishers?

23 A. No, I don't think it's fair to represent it  
24 that way.

25 Q. Do you know, do you know?

01040

1           A.    I know that I have looked from time to time  
2 at various publishers, and for some types of ads, and  
3 for many types of ads, it depends on the publisher,  
4 US West Dex's rates are higher, but for certain other  
5 types of ads, another publisher's rates are higher.  
6 Certainly, I believe that GTE, for example, charges  
7 higher rates than US West Dex for many of their ads  
8 in certain directories. I can't specifically address  
9 these directory publishers at this point in time.

10          Q.    You don't have any specific information  
11 available; is that correct?

12          A.    We can get out the data request that I  
13 already provided and examine it, if you'd like.

14          Q.    If we referred only to the non-ILEC  
15 directories, would you agree that US West Dex's  
16 advertising rates are higher, or do you know?

17          A.    The only thing I know is that, in the state  
18 of Arizona --

19          Q.    I'm asking in the state of Washington?

20          A.    All right, okay. If you define it by the  
21 state of Washington, I do not know.

22                MR. TRAUTMAN: I would move for the  
23 admission of Exhibit 516.

24                MS. ANDERL: No objection.

25                JUDGE WALLIS: 516 is received.

01041

1 Q. And turning to Exhibit 514, this is the  
2 response to Staff Data Request 02-019. Was this data  
3 request -- the response provided by you or under your  
4 supervision?

5 A. Yes.

6 MR. TRAUTMAN: I would move for the  
7 admission of Exhibit 514.

8 MS. ANDERL: 514?

9 MR. TRAUTMAN: Yes.

10 MS. ANDERL: Yes, no objection.

11 JUDGE WALLIS: Received.

12 Q. That's all the questions I -- oh, wait a  
13 minute. For employees that were transferred to US  
14 West Direct in 1984 --

15 A. Yes.

16 Q. -- prior to that time, were their costs  
17 recorded on PNB's books?

18 A. I don't have any information on that.

19 Q. Where else might they have been recorded,  
20 if they weren't on PNB's books?

21 MS. ANDERL: Your Honor, I object. He's  
22 asking the witness to speculate. She's already  
23 testified she didn't --

24 Q. You have no information with which you  
25 could answer the question?



01042

1           A.    I can speculate, but I haven't had anything  
2 to do with --

3                    JUDGE WALLIS:  We're not asking you to  
4 speculate, so --

5                    THE WITNESS:  -- with pre-1984.

6                    JUDGE WALLIS:  -- I'll sustain the  
7 objection.

8           Q.    Were employees of PNB transferred to US  
9 West Direct?

10          A.    Yes.

11          Q.    And who would have paid those employees?

12                    MS. ANDERL:  Objection, again, Your Honor.

13 These questions should have been directed to Mr.  
14 Johnson, if anyone.  We've already established that  
15 these are not appropriate questions for this witness.

16                    MR. TRAUTMAN:  Mr. Johnson alleged --

17                    JUDGE WALLIS:  Let's let Counsel finish the  
18 objection.

19                    MS. ANDERL:  Not appropriate for this  
20 witness.

21                    MR. TRAUTMAN:  Mr. Johnson stated that he  
22 was an employee of US West Dex, and he did not have  
23 information available about the records of US West or  
24 PNB.  He deferred these questions to Ms.  
25 Koehler-Christensen.

01043

1 JUDGE WALLIS: Let's see if the witness can  
2 respond.

3 THE WITNESS: Would you repeat the  
4 question?

5 Q. Who paid the employees of PNB prior to  
6 their transfer to US West Direct?

7 A. Subject to the reservations that have  
8 already been expressed, if they were employees of  
9 PNB, I believe PNB would have paid those employees.

10 MR. TRAUTMAN: No further questions.

11 JUDGE WALLIS: Mr. Trautman, before we  
12 leave tonight, I want to walk through with you and  
13 Ms. Anderl the exhibits that you wish to offer, and  
14 make sure that all of them are in the record that you  
15 wish to be in the record or at least offered and  
16 subject to objection, but I don't want to take time  
17 for that now. I'd like to move on to Mr. ffitch.

18 MR. FFITCH: Thank you, Your Honor.

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

20 BY MR. FFITCH:

21 Q. Good evening, Ms. Koehler-Christensen.

22 A. Good evening.

23 Q. I'll give you time to take a breath.

24 Hopefully, this won't be exceedingly long. I'm going  
25 to start with the -- I'm going to take you to the Max

01044

1 Johnson zone. These are a series of questions that I  
2 was unable to ask Mr. Johnson, and was deferred to  
3 you. So I'll just touch on those quickly.

4 First of all, does US West Direct continue  
5 to receive billing and collection services from US  
6 West Communications?

7 A. Yes, they do.

8 Q. And does the advertising customer, the  
9 Yellow Pages advertising customer, receiving a  
10 billing for that advertising in the same envelope as  
11 his or her telephone bill when billing and collection  
12 services are purchased from US West Communications?

13 A. Some advertisers receive the bill in the  
14 same envelope, some advertisers receive a bill in a  
15 separate envelope. US West Dex, it's my  
16 understanding, pays separate and different rates,  
17 depending on whether they are sent in the same  
18 envelope or a different envelope.

19 Q. Can you just briefly explain about how  
20 those two classes of customers, or what the  
21 difference is between those two and how many  
22 customers get it in the separate envelope versus how  
23 many get it in the same envelope, if you know?

24 A. I don't know how many, so I can say that  
25 right off the bat. Basically, it's my understanding

01045

1 that US West Dex advertisers are billed in, I would  
2 say, basically four different ways.

3         One is US West Dex bills directly to the  
4 advertiser. The purpose for that is -- there's a  
5 number of purposes, as I understand, for that.  
6 Either it is a customer that has a poor payment  
7 record and US West Communications doesn't want to  
8 deal with them anymore, and therefore, US West Dex  
9 collects and bills, or the customer prefers to be  
10 billed by Dex for some reason. Sometimes they don't  
11 want to be billed monthly; they want to be billed  
12 quarterly or annually, and US West Dex accommodates  
13 them in that way.

14         The second way that Dex advertisers are  
15 billed is through national -- I think they're called  
16 Certified Marketing -- I can't remember the term  
17 precisely -- Representatives. These are basically  
18 firms that sale Yellow Page advertising to large  
19 advertisers, who advertise in multiple states, in  
20 directories published by multiple publishers within  
21 the state. And these firms sell the advertising and  
22 they do the billing, and Dex receives only their  
23 portion of the advertising rate.

24         The third way is that US West  
25 Communications bills our customers for Dex

01046

1 advertising on a monthly basis. And to clarify, it's  
2 my understanding that while a number of these are  
3 billed in the same envelope as you describe, it's my  
4 understanding that none of them are billed on the  
5 same page.

6 And the fourth way is that US West  
7 Communications bills Dex customers in a separate  
8 envelope. I know one reason is that US West  
9 Communications now bills some of Dex advertisers that  
10 are not US West Communications customers, so they  
11 certainly could not include them in the same bill.

12 Q. My question related to the US West  
13 Communication customers, I believe.

14 A. Oh, I'm sorry, all right.

15 Q. Thank you.

16 A. I believe they may -- it's my understanding  
17 Dex is also experimenting with paying for a separate  
18 bill for also US West Communications customers.

19 Q. And you don't have any idea what the  
20 breakdown is between these -- would it be fair to say  
21 that the people who were getting billed separately  
22 for poor payment are probably a small percentage?  
23 Wouldn't that be your interpretation?

24 A. Yes, but I believe there is a data request  
25 response that I responded to that demonstrates -- I

01047

1 was asked a question, actually. It's been designated  
2 as Exhibit 517, and it's WUTC 05-045. And it was  
3 asked the proportion of US West Dex revenues derived  
4 from traditional Yellow Page advertising, but if I  
5 can use this as a demonstration --

6 Q. These are confidential numbers?

7 A. Yes, they are. I won't talk about the  
8 numbers themselves.

9 Q. Well, if I may interrupt you.

10 A. All right.

11 Q. I'm not sure you're continuing to be  
12 responsive. I'm asking you about essentially how  
13 many or what proportion of customers are receiving  
14 billing in these different ways?

15 A. That's exactly what I was going to  
16 demonstrate by referring to this.

17 Q. Well, I'm looking at this exhibit and I  
18 don't see information here about different types of  
19 envelopes and billing that are being used?

20 A. Well --

21 Q. And I'm reluctant to open up this to a long  
22 narrative discussion of this exhibit. I just -- let  
23 me ask you this. Out of the five -- four or five  
24 methods that you described that customers can  
25 potentially be billed in terms of what kinds of

01048

1 envelopes and by whom, isn't it fair to say that the  
2 majority of the customers who are being billed in  
3 those different -- through those different methods  
4 are being billed by US West Communications, either in  
5 their own billing envelopes or, excuse me, with their  
6 regular monthly bill, the one method that you  
7 described where the second bill where US West  
8 Communications also sends them the bill, but in a  
9 separate envelope?

10 A. Yes.

11 Q. Is that a fair --

12 A. That is fair.

13 Q. -- estimate?

14 A. I would like to just note that the  
15 percentage of revenues, not the percentage of the  
16 number of customers that are billed, as reflected in  
17 the years 1996, '97, and 1998 on this, and  
18 specifically, for example, 1998, 63.35 percent of the  
19 revenues are billed to US West Communications  
20 customers in US West's Communications bills. 12.42  
21 percent are billed by the certified marketing  
22 representatives that I discussed.

23 Q. Okay.

24 A. The remaining are billed by US West Dex or  
25 by US West Communications in the separate bill that

01049

1 is branded US West Dex.

2 Q. Thank you. Are you aware of any competing  
3 directory publishers who purchase billing and  
4 collection services from US West Communications?

5 A. Not today. No, I am not. I could point  
6 out, no one has asked us.

7 Q. Now I'm going to ask you to take a look at  
8 an exhibit that was presented for the cross of Mr.  
9 Johnson. And you should have a copy. I set one up  
10 there. It's Exhibit 310.

11 A. I have it.

12 Q. And Exhibit 310, again, is Company response  
13 to Public Counsel Data Request 8-91. Sorry, I've got  
14 the wrong one in front of me here. Strike that.  
15 It's US West's response to Public Counsel 8-114,  
16 which asks, "Does US West or PNB provide any business  
17 referrals to US West Direct in the normal conduct of  
18 its business," et cetera. And the response is, "Yes,  
19 US West began making referrals to Dex in May of  
20 1998."

21 If you need to take a minute to review  
22 that, that's fine, but my first question is is this  
23 an accurate response?

24 A. To the best of my knowledge, it is, yes.

25 Q. And does US West make business referrals to



01050

1 competing publishers, as well, if you know?

2 A. Not to my knowledge.

3 MR. FFITCH: I think we may have completed  
4 the Max Johnson phase. And Exhibit 310, I believe,  
5 has already been admitted to the record, according to  
6 my notes.

7 JUDGE WALLIS: Yes.

8 Q. Okay. I'll ask you to turn now to your  
9 rebuttal testimony, if I may. At page five -- excuse  
10 me, that is Exhibit 509-T. That would be page four  
11 of your testimony; at line one?

12 A. Yes.

13 Q. And there you begin a discussion of various  
14 agreements that were made effective at the formation  
15 of US West Direct, I believe. And would you agree  
16 that these agreements included provisions for the  
17 payment of publishing fees, as well as other fees for  
18 services to be provided by US West, or PNB at that  
19 time?

20 A. I'm not sure I understand the question,  
21 because I think you asked me about the contracts -- I  
22 believe this response that you're referring to  
23 discusses contracts in addition to the publishing  
24 agreement where specified payments were made. It  
25 does not include the publishing agreement, but I will

01051

1 certainly agree that, in the publishing agreement,  
2 which was a separate contract, there were publishing  
3 fees identified and paid.

4 Q. All right. With that clarification. And  
5 would you please look at Exhibit 520 that's been  
6 provided to you. That's a cross-examination exhibit.  
7 That is Public Counsel's Data Request 8-93 to US  
8 West.

9 A. I have it.

10 Q. And that essentially asks for -- asks the  
11 Company to provide information regarding what the  
12 Company contends is the total consideration paid for  
13 the sale of the publishing business in Washington,  
14 does it not?

15 A. No, I don't believe that's what the request  
16 asks.

17 Q. Well, let me rephrase that, then, and just  
18 sort of get to the point of my question. I think  
19 that may be just a clearer way to go, and then, if  
20 you have some problems with that, you can let me  
21 know.

22 In the Company's response to this data  
23 request, there is a statement as to what the Company  
24 contends was the total consideration as of the date  
25 of the transfer of the directory business; isn't that

01052

1 correct?

2 A. I believe what I stated, that the Company  
3 is not contending that these amounts are a result of  
4 a sale, but they simply are compensation amounts for  
5 -- that were known at the time that the applications  
6 were filed with the Commission. They were identified  
7 in known amounts. I don't specify the purpose of the  
8 compensation, for example.

9 Q. Well, yeah, I don't think we need to get  
10 into a debate about the data request. It speaks for  
11 itself, and the Company's answer is here, and I can  
12 ask my questions without us having total agreement on  
13 that point. I think the data request and the  
14 response speak for themselves, but let me ask the  
15 question that I want to get to, or the questions I  
16 want to get to.

17 One of the payments to PNB that was known  
18 in 1983 was the 13.7 million asset transfer  
19 compensation; isn't that right?

20 A. Yes.

21 Q. And that's shown on here. And if we look  
22 on this list of amounts of consideration, at the  
23 bottom of the answer, there also are shown publishing  
24 fees and transition fees, two entries for transition  
25 fees and three for publishing fees; isn't that

01053

1 correct?

2 A. Yes.

3 Q. What was the purpose and origin of the  
4 amounts shown as transition fees that were payable to  
5 PNB, if you know?

6 A. The \$10.2 million in transition fees  
7 identified, is that the one you're asking the  
8 question about?

9 Q. Well, actually, there are two entries.  
10 They total 20.5 million.

11 A. Okay. I'd like to address them separately.

12 Q. All right.

13 A. The transition fees, the 10.2 million,  
14 there was a separate contract that was filed. And to  
15 just basically describe those transition fees, it was  
16 -- they were to reimburse PNB for any expenses that  
17 PNB had incurred prior to the transfer of the  
18 publishing business to US West Direct for directories  
19 that Dex would -- US West Direct would publish in  
20 1984 or beyond. So in the directory publishing  
21 business, expenses are incurred a significant period  
22 of time prior to the directory being actually printed  
23 and distributed to the users. And because of that,  
24 the expenses are incurred ahead of time, and US West  
25 Direct reimbursed PNB for those expenses that PNB had

01054

1 incurred.

2           The \$10.3 million in net revenues from  
3 transition directories that I identified were  
4 revenues that PNB collected from Yellow Page  
5 advertisers for advertising for directories that were  
6 still on the street in 1984, that had been published  
7 in 1983. And according to the agreement made between  
8 US West Communications or PNB and US West Direct, PNB  
9 would retain those revenues, rather than those  
10 revenues going to US West Direct, as the revenues  
11 that were collected in 1984 for the books published  
12 by US West Direct.

13       Q.    Okay. And those amounts were known to US  
14 West Direct and PNB at the time of transfer; correct?

15       A.    The \$10.2 million was known and filed in  
16 the 1984 -- October '84 application. The \$10.3  
17 million were estimated, of course. Until all of the  
18 revenues are collected from the customers, you can't  
19 know precisely how much you're going to get, because  
20 you don't know whether they'll pay or not. You have  
21 a good idea of what's due.

22       Q.    All right. But the response to data  
23 request does state that both the 10.2 million and  
24 10.3 million were known?

25       A.    Well, certainly it was known that PNB would

01055

1 receive and keep those revenues.

2 Q. Well --

3 A. If the precise number wasn't known, a good  
4 estimate was known.

5 Q. Well, the data response tells us that both  
6 the number and the category of revenues was known at  
7 that time, does it not? Just read the text and it  
8 says these amounts were known, does it not?

9 A. Yes, and I guess what I am doing is  
10 explaining what was meant by that statement.

11 Q. What was known with respect to the total  
12 amount of publishing fees to be paid under the  
13 initial publishing agreement -- and these are also  
14 shown on this list. Did US West Direct know it would  
15 pay 14.9 plus 38.6 plus 40.5 million over the  
16 three-year term of the agreement, for a total of  
17 about 94 million?

18 A. Yes, but if you'd like me to be more  
19 precise, US West Direct knew the amounts they would  
20 pay PNB. These amounts are the Washington share of  
21 those amounts. So the 1984 publishing agreement  
22 specified the amounts that US West Direct would pay  
23 PNB, and what I've reflected here is the portion that  
24 was attributed and booked in the state of Washington.

25 Q. All right. Well, you anticipated my next

01056

1 question, which was were there comparable fixed  
2 amounts payable to Mountain Bell and Northwestern  
3 Bell under three-year publishing agreements?

4 A. Yes.

5 MR. FFITCH: I'd like to offer Exhibit 520.

6 MS. ANDERL: No objection.

7 JUDGE WALLIS: Received.

8 Q. I'd like you to turn to Exhibit 521,  
9 please, it's our next cross-examination exhibit. And  
10 that is a response to Public Counsel Data Request  
11 8-91. And in summary, that asks what knowledge did  
12 US West possess in 1983 with regard to the amount of  
13 publishing fees that would be payable at the end of  
14 the three-year initial term. And the response is,  
15 "US West Direct had no knowledge in 1983 as to the  
16 level of publishing fees payable in 1987 and beyond."  
17 That's correct, is it not?

18 A. Yes, it is.

19 Q. Do you know if, in fact, there were  
20 publishing fees negotiated later in subsequent  
21 publishing agreements affecting PNB, Mountain Bell,  
22 and Northwestern Bell?

23 A. Could you say what you mean by later?

24 Later than what?

25 Q. Well, I'm referring to -- I'm not trying to

01057

1 be mysterious. There were 1987, 1988 publishing  
2 agreements after this initial agreement, were there  
3 not?

4 A. Yes. Would you like me to explain that?

5 Q. No, that's fine. In 1983, when you claimed  
6 the directory publishing business was fully  
7 transferred to US West Direct, the new publishing  
8 affiliate had no idea if it would become obligated to  
9 pay any publishing fees to the affiliate telco  
10 entities after 1986, did it?

11 A. That's correct.

12 Q. Isn't it true that the publishing fees that  
13 were paid by US West Direct to the affiliates,  
14 including Pacific Northwest Bell, represent operating  
15 expenses on the books of the publishing entity that  
16 directly impact profitability and cash flow?

17 A. They represent operating expenses on whose  
18 books?

19 Q. Of the publishing entity, so --

20 A. Yes. On US West Direct's books?

21 Q. Yes.

22 A. Yes, they do, or they did.

23 Q. From an accounting point of view, that  
24 would represent a liability on the books of US West  
25 Direct during the term of the agreement as they



01058

1 became due?

2 A. Yes, that's right. So therefore, had Mr.  
3 Golden included those in his business valuation --

4 MR. FFITCH: Your Honor, I didn't ask her  
5 to discuss --

6 THE WITNESS: -- it would have lowered --

7 MR. FFITCH: -- Mr. Golden's study at this  
8 point. I'm just asking about the effect of this  
9 agreement on the publishing entity.

10 Q. If an independent third party buyer were to  
11 acquire or purchase the directory publishing  
12 business, would you agree that any obligation or  
13 liability to pay publishing fees to the seller or an  
14 affiliate of the seller would be an important  
15 determinant of the value of business?

16 A. Yes, I agree.

17 Q. I'm going to give you a hypothetical here,  
18 and hopefully -- it's got four elements to it, so  
19 hopefully it won't be too cumbersome. First of all,  
20 you are this independent third party. You're  
21 negotiating to buy PNB publishing business in 1983,  
22 or it could be Mountain Bell or Northwestern Bell,  
23 coincident with the divestiture of AT&T local  
24 exchange businesses.

25 The second point is that you'll be held

01059

1 responsible for the reasonableness of the price you  
2 pay for the business. Are you with me so far?

3 A. I believe so.

4 Q. Okay. And next assume that the seller of  
5 the business states, I want you to sign the  
6 three-year initial publishing agreement that contains  
7 the known publishing fees for '84, '85 and '86, the  
8 agreement we just discussed.

9 And then, point four is assume, also, that  
10 you're asked by the seller to commit to pay  
11 unspecified additional publishing fees in the later  
12 years, after 1986. And here's my question, if you  
13 have those four points. Would you agree with me that  
14 a reasonable purchase price you would offer for this  
15 business -- you're the purchaser, the independent  
16 purchaser -- would be directly dependent upon the  
17 future publishing fee expenses faced by the business,  
18 including those that are not known that would apply  
19 to 1987 and beyond?

20 A. I would like to state right off the bat  
21 that I've never bought or sold a business.

22 MS. ANDERL: Your Honor, and on that note,  
23 I would interpose an objection. I don't know that --  
24 I would ask Mr. ffitch to direct me or the witness to  
25 the section of her testimony that he's asking her

01060

1 about. To the extent that it is appropriate cross, I  
2 believe this should be directed to a portion of her  
3 testimony. And otherwise, I would object that it's  
4 beyond the scope.

5 MR. FFITCH: Well, I actually am not  
6 referring to a specific portion of the testimony.  
7 This is a hypothetical, which I believe the witness  
8 should be able to answer. She has been presented as  
9 a representative of the Company with significant  
10 experience in the transactions between the publishing  
11 affiliate and the operating affiliate, and I think  
12 that it's sort of generally implicit in the analysis  
13 that she presents in her testimony that she should be  
14 able to answer this type of question and -- we could  
15 go back and look at her qualifications and her  
16 business training, but to suddenly say the witness  
17 can't deal with a relatively simple hypothetical like  
18 this strikes me as a fairly poorly-taken objection,  
19 Your Honor.

20 MS. ANDERL: I'll stand on my objection,  
21 Your Honor.

22 JUDGE WALLIS: I do believe --

23 MS. ANDERL: Whether the witness is  
24 qualified to answer it or not, it's outside the scope  
25 of her direct testimony.

01061

1 JUDGE WALLIS: I do believe that this is  
2 beyond what is appropriate to ask the witness.

3 MR. FFITCH: Thank you, Your Honor. I'll  
4 move on. I would like to offer Exhibit 521 at this  
5 time. I believe there's an adequate foundation been  
6 laid for that.

7 MS. ANDERL: PC 8-091?

8 MR. FFITCH: Right.

9 MS. ANDERL: No objection.

10 JUDGE WALLIS: Received.

11 Q. This is just a small point, which I think  
12 you teed up for us in one of your data responses. If  
13 you could turn to your rebuttal testimony, page 22,  
14 line eight.

15 CHAIRWOMAN SHOWALTER: What exhibit number?

16 Q. And the rebuttal is Exhibit 509-T. So it's  
17 509-T, page 22, and you're at line eight. And there  
18 you state that both Staff and Public Counsel stated  
19 that one appropriate method of accounting for the  
20 gain would have been a rate base adjustment. Do you  
21 see that testimony?

22 A. I believe if you refer to my errata that  
23 was filed today, I made a change to that.

24 Q. Okay.

25 A. And it now reads, "Staff stated that one

01062

1 appropriate method of accounting."

2 Q. And if you look at Public Counsel Cross  
3 Exhibit 522, in fact, that's to the same effect, that  
4 you had corrected your testimony there to exclude  
5 Public Counsel from the reference; isn't that true?

6 A. Yes, I would have made that correction on  
7 the stand, except that, in the interest of time, we  
8 chose to file an errata.

9 MR. FFITCH: Thank you for drawing that to  
10 my attention. I confess I didn't read through the  
11 errata when it was given to me. I'll offer 522, Your  
12 Honor.

13 MS. ANDERL: No objection.

14 JUDGE WALLIS: Received.

15 Q. I just have a couple more areas, and I  
16 think we'll be done here. Ms. Koehler-Christensen,  
17 you testified earlier, in response to questions from  
18 Mr. Trautman, that the Company did not voluntarily  
19 agree to imputation. And he then asked you some  
20 questions about the Company's A-4 settlement, where  
21 the Company had entered into a settlement with regard  
22 to stipulation. The Company agreed to imputation the  
23 second time, did it not, following that A-4  
24 agreement?

25 A. Are you referring to the imputation in

01063

1 950200, into that docket?

2 Q. I'm referring to the merger settlement.

3 A. I can't address the merger settlement.

4 Q. Would it help you if I provided you with a  
5 copy of the merger settlement order containing that  
6 agreement? I'd be happy to do that.

7 MS. ANDERL: Your Honor, I believe the  
8 witness' last answer was that she couldn't address  
9 that.

10 JUDGE WALLIS: Is this the foundation for a  
11 question that's within an area she can address?

12 MR. FFITCH: Well, Your Honor, it's a  
13 matter of public record. It's an order of the  
14 Commission that we can refer to without official  
15 notice.

16 JUDGE WALLIS: Then do we need her  
17 testimony on it?

18 MR. FFITCH: Well, because she has  
19 testified that the Commission -- excuse me, the  
20 Company did not voluntarily agree to imputation and  
21 has not, I'd like to have her acknowledge, by looking  
22 this over, that there is an agreement with  
23 imputation.

24 JUDGE WALLIS: Is that something the  
25 witness could say -- could take, subject to check?

01064

1 MS. ANDERL: I don't think so, Your Honor,  
2 because we would certainly probably want to do some  
3 redirect on that and bring out additional points that  
4 may or may not be in the agreement. If Mr. ffitch  
5 just wants to refer to it as we're permitted to do to  
6 Commission orders, we could certainly make our  
7 arguments on brief. However, if he crosses on it,  
8 we'll have to do some redirect.

9 MR. FFITCH: I don't have any objection to  
10 redirect. This should be very brief. But I'll  
11 proceed as you prefer.

12 JUDGE WALLIS: I'm reluctant to enter that  
13 area inasmuch as the subject is one relating to a  
14 public document and the witness has testified  
15 regarding her understanding or lack of understanding.

16 MR. FFITCH: Your Honor, I'd like to offer  
17 the copies of the agreement, at least, for the bench  
18 and the --

19 JUDGE WALLIS: Yes -- or excuse me, the  
20 merger order with the agreement attached.

21 MR. FFITCH: I understand, Counsel, you  
22 don't want your witness to have a copy of this?

23 MS. ANDERL: Depending on whether you're  
24 going to cross her on it or not.

25 MR. FFITCH: Well, I'll let you -- you can

01065

1 share your copy with her, if you want to.

2 Q. As I understand it, you have no knowledge  
3 or information about the existence of the merger  
4 agreement or the Commission's merger orders in 1990;  
5 is that correct?

6 A. I wasn't involved in the merger agreement.  
7 If I ever read it, it was long enough ago that I have  
8 no specific recollection of it.

9 Q. And you're the Company's imputation witness  
10 in this case?

11 A. Yes, I am.

12 Q. And you were involved in imputation in  
13 1995, and you filed imputation testimony in the '95  
14 rate case?

15 A. Yes, I did.

16 Q. And how long had you been involved in  
17 imputation issues at that time?

18 A. I'd been involved in imputation -- I don't  
19 know that I could go all the way back to 1988 for  
20 imputation issues. I was certainly involved in the  
21 contractual relationships between US West Direct and  
22 PNB or US West Communications since 1988. I don't  
23 recall a specific time I was involved in imputation.

24 Q. Okay. So again, you're unaware in your  
25 professional capacity, as the US West imputation



01066

1 expert, that the Company agreed to imputation in the  
2 merger settlement agreement in 1990? Is that your  
3 testimony?

4 A. Yes, it is. In what I have dealt with, I  
5 dealt with imputation orders that changed the rates  
6 the ratepayers paid. And I am certainly not aware of  
7 a merger order that affected that.

8 Q. Okay. But would you accept, subject to  
9 check, that imputation was addressed in the merger in  
10 the second supplemental order, which I just  
11 distributed.

12 MS. ANDERL: Well, Your Honor, I thought  
13 the agreement was the witness would not be crossed on  
14 this.

15 MR. FFITCH: Well, if I'm going beyond the  
16 --

17 JUDGE WALLIS: I think you are, Mr. ffitich.

18 MR. FFITCH: I apologize. I'll move on.

19 Q. Now, Ms. Koehler-Christensen, you described  
20 imputation as a subsidy over 60 times in your  
21 testimony in the 1995 rate case, I believe, as  
22 brought out by Mr. Trautman; isn't that correct?

23 A. That's what I'm told.

24 Q. And the date of that testimony is October  
25 1995?

01067

1 A. Yes.

2 Q. Are you familiar with the -- I'm sorry?

3 A. I was just going to say, I haven't checked  
4 it, but I'll believe you.

5 Q. Subject to check. I have to look it up  
6 myself. I believe that's reflected on the exhibit  
7 list even, so --

8 A. All right.

9 Q. Are you familiar with the Commission's  
10 Second Supplemental Order in the Docket U 86-156  
11 that's been referred to many times all week? It's  
12 Attachment C to the Commission's -- or excuse me, the  
13 Company's application in this case?

14 A. I've certainly read it, yes.

15 Q. And would you accept, subject to check,  
16 that that order expressly rejects the Company's  
17 argument that the payment of publishing fees is a  
18 subsidy? I have a copy of the order I can show you  
19 if you'd like to see the pertinent provision. It's  
20 finding of fact number four on page 13 of that order.

21 A. I can accept that subject to check. I  
22 don't have a copy of the order with me.

23 Q. And your testimony, again, was in 1995?

24 A. Yes.

25 Q. So can you explain why, seven years after

01068

1 the Commission rejected the US West subsidy argument  
2 and five years after -- well, strike that. Seven  
3 years after the subsidy argument was rejected in the  
4 86-156 order, that you're still taking the position  
5 -- not you, but the Company is still taking the  
6 position that this payment is a subsidy?

7 A. Yes, I took that position because I  
8 believed that the environment had changed, the  
9 telecommunications environment, and the fact that the  
10 imputation had the effect of lowering rates that  
11 ratepayers paid, that it was a subsidy that would  
12 inhibit the entrance of competition in the local  
13 exchange business. And I believed that the  
14 environment and the circumstances had changed, and  
15 that was the reason that I portrayed it that way and  
16 addressed it in that manner.

17 Q. And that position was rejected by the  
18 Commission in the 950200 order, was it not?

19 A. Yes, it was.

20 Q. And the Company chose not to appeal the  
21 rejection of the subsidy issue to the Supreme Court,  
22 did it not?

23 MS. ANDERL: Objection, Your Honor. I  
24 don't know that there's a foundation for this witness  
25 to respond to that. However, we'll stipulate that

01069

1 the Company's brief to the Supreme Court says what it  
2 says and we appealed the issues we did.

3 MR. FFITCH: I don't have any further  
4 questions. Thank you, Ms. Koehler-Christensen.

5 JUDGE WALLIS: Mr. Butler.

6 MR. BUTLER: I wouldn't dare.

7 JUDGE WALLIS: Well, I will.

8 COMMISSIONER GILLIS: How about Mr.  
9 Roseman?

10 MR. ROSEMAN: No thanks.

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

12 BY JUDGE WALLIS:

13 Q. Does US West Communications enter into  
14 contracts or agreements with Dex to have its  
15 directories published now, on a current basis?

16 A. Yes.

17 Q. As Bench Request Number Three, I believe it  
18 is, could you provide copies of the directory  
19 publishing agreements or affiliated interest  
20 agreements or whatever contracts or agreements exist  
21 on this topic between US West Communications and Dex,  
22 other than those that are now in the record?

23 A. Yes. Of course, there's a publishing  
24 agreement, but there are other agreements. Are you  
25 interested in the listings agreement, the billing and

01070

1 collections, those kind of agreements?

2 Q. No, only the publishing agreements.

3 A. Okay.

4 Q. You used a Washington allocator in your  
5 testimony?

6 A. Yes, I did.

7 Q. As of the end of 1983; is that correct?

8 A. Yes.

9 Q. That's at page three, lines eight and nine,  
10 but we're not referring to it, because I want to go  
11 immediately to Bench Request Number Four, and ask you  
12 if you could provide the allocators prepared on a  
13 similar basis of directory revenues for the years  
14 from 1984 to '98, inclusive?

15 A. Okay.

16 JUDGE WALLIS: My recollection is that, in  
17 Mr. Owens' examination of a prior witness, he  
18 referred to equity infusions from Inc. to the  
19 Commission. Is that something on which this witness  
20 would be able to provide information as to the  
21 amounts and the timing?

22 MR. OWENS: Not to the Commission, Your  
23 Honor. I think you meant the Company.

24 JUDGE WALLIS: The Company, yes. My  
25 abbreviation for communication looks an awful lot

01071

1 like my abbreviation for Commission.

2 MR. OWENS: I understand.

3 JUDGE WALLIS: Is that something this  
4 witness could respond to, or that the Company  
5 otherwise could provide?

6 MR. OWENS: We'd be happy to -- what is it  
7 you are asking for, Your Honor?

8 JUDGE WALLIS: Details on the equity  
9 infusions from Inc. to Communications that you  
10 referenced in your questioning of an earlier witness.

11 MR. OWENS: Do you have a particular time  
12 period in mind, Your Honor?

13 JUDGE WALLIS: From 1984 to the present.

14 MR. OWENS: Very well.

15 Q. Is -- and this is back to the witness. Is  
16 Exhibit 111 the entirety of the publishing agreement,  
17 or are there any other documents that are needed to  
18 look to to have a complete picture?

19 A. You're asking if the publishing agreement  
20 that's in that exhibit is the entire publishing  
21 agreement; is that right?

22 Q. Yes.

23 A. The only thing that is not included, from  
24 what I see, is a listing of all of the exchanges that  
25 PNB served in Washington at that time. There was a

01072

1 list that -- so that US West Direct would be  
2 obligated to make sure they published directories for  
3 that.

4 MS. ANDERL: Actually, Your Honor, if I may  
5 seek a clarification, I believe that Exhibit 111 is  
6 the application for order approving agreements for  
7 services, and as far as my copy --

8 JUDGE WALLIS: I'm sorry, is that the  
9 entirety of the application?

10 MS. ANDERL: Okay. I was afraid you were  
11 asking about the publishing agreement, which is a  
12 different exhibit number, so --

13 JUDGE WALLIS: Looks like I'm bearing up  
14 more poorly under the hour than the witness and  
15 counsel.

16 MS. ANDERL: So I'm sorry, the question is  
17 is that the whole application?

18 JUDGE WALLIS: Yes, it is. That's my  
19 question.

20 THE WITNESS: I don't know whether all of  
21 the attachments to the application have been admitted  
22 to the exhibit or not. I believe all of the  
23 contracts would have been attached to the  
24 application.

25 JUDGE WALLIS: If there are other

01073

1 documents, could the Company specify what those are  
2 in a Bench Request Number Six? I'm not asking you to  
3 submit them, but identify them.

4 MS. ANDERL: Yes, we'll do that, Your  
5 Honor.

6 MR. TRAUTMAN: Your Honor.

7 MS. ANDERL: Recognizing that I don't  
8 believe we have these documents in our records, but  
9 Commission Staff is indicating that the Commission  
10 has them on file. So we will specify what they are,  
11 and then if the Bench wants to pursue obtaining them  
12 --

13 MR. TRAUTMAN: I think if you look at the  
14 -- in between pages five and six, there's a statement  
15 that says "Verification for Exhibit A Documents," and  
16 there's a number of agreements that are listed, and I  
17 think -- you don't have that? Okay. Eighty-four  
18 application.

19 JUDGE WALLIS: I don't want to take a lot  
20 of time on that. If that is what we're looking for,  
21 then that would be sufficient. Are there questions  
22 from the Bench?

23 COMMISSIONER HEMSTAD: I have a couple.

24 JUDGE WALLIS: Commissioner Hemstad.

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



01074

1 BY COMMISSIONER HEMSTAD:

2 Q. Well, I had planned to pursue a line of  
3 inquiry that Mr. ffitch attempted to do with regard  
4 to the A-4 settlement and merger settlement and this  
5 witness' understanding of that. I'm frankly  
6 surprised when you say that you have no knowledge of  
7 that.

8 Let me preface this a bit. You've  
9 indicated that there's considerable controversy and  
10 uncertainty with regard to what were the obligations  
11 of the Company, at least during the period that  
12 you've been involved with the Yellow Page issue. Is  
13 that a fair statement of your response to Mr.  
14 Trautman's questions?

15 A. I didn't mean to imply that there was  
16 uncertainty regarding the obligations of the Company.  
17 I didn't mean to imply that. What I meant, when I  
18 was talking -- answering questions from Mr. Trautman,  
19 I believe, was that there was uncertainty surrounding  
20 what the future would bring to the publishing  
21 business after 1984.

22 Q. I see. Then what did you mean by  
23 controversy?

24 A. I don't recall using controversy.

25 Q. I wrote it down.

01075

1           A.    I believe you.  I just don't recall the  
2 context in which I used it.  I believe that there was  
3 controversy regarding the publishing fees that were  
4 paid by this Commission and by other commissions, and  
5 that's the reason we're here today, because the  
6 Commission had one belief of the imputations and the  
7 Company had another belief and the Supreme Court  
8 ruled on it and that's why we're here now.

9           Q.    Well, okay.  I believe your testimony is to  
10 the effect that you assumed responsibility, or some  
11 aspects of the Yellow Pages in, what, 1988, was it?

12          A.    Yes.

13          Q.    And the Commission's orders in the A-4  
14 settlement and the merger settlement were in 1989 and  
15 1990.  Were you unaware of those events occurring?

16          A.    I was certainly aware that the -- the A-4  
17 agreement, for example.  I wasn't involved in  
18 negotiating the agreement, but I was certainly aware  
19 of the agreement and the effects that the agreement  
20 had on our rates and on imputation.

21                   And I would certainly not state that I was  
22 never aware of the merger agreement, because I know  
23 that I was.  But in my area of responsibility, I  
24 didn't see where it changed the amount of the  
25 imputation or the effect on the ratepayers, and

01076

1 because of that, I don't have any specific  
2 recollection of it, nor did I believe I needed to  
3 consider it when I calculated the compensation that  
4 ratepayers had received to date.

5 Q. Okay. Were you party to any discussions,  
6 say, with respect to the consequence of the A-4  
7 settlement and the fact that imputation would  
8 continue through that period? Was there any question  
9 about the obligation of the Company to provide or to  
10 respond to the imputation requirements?

11 A. Not to my knowledge. I certainly believe I  
12 got myself in hot water by saying it wasn't  
13 voluntary, and I believe I probably misrepresented  
14 the Company's position. And I didn't mean to do  
15 that.

16 COMMISSIONER HEMSTAD: Okay, thank you.  
17 Your Honor, I had sought to pursue this with Mr.  
18 Inouye, and when I did, the concern was raised that  
19 this was a matter that was part of the issue for a  
20 summary determination. And it strikes me that  
21 there's been just almost exhaustive inquiry into the  
22 understanding of the parties with respect to various  
23 of the either Commission orders or the interpretation  
24 of the rate case order or the interpretation of the  
25 Supreme Court decision.

01077

1           This witness and Mr. Inouye are the only  
2 two witnesses for the Company, who are employees of  
3 the Company, who would have knowledge of the -- that  
4 had been offered as witnesses, who would have any  
5 knowledge of the understanding of the Company with  
6 regard to the meaning, interpretation, and  
7 application of the merger agreement and the A-4  
8 agreement, the merger and A-4 settlements.

9           THE WITNESS: I can certainly address the  
10 --

11           COMMISSIONER HEMSTAD: So I guess I want to  
12 pose a question if, in the August proceeding, if Mr.  
13 Inouye would be available now, with other kinds of  
14 inquiries that have been made, and he'd be available  
15 to respond to questions with regard to that issue.

16           MS. ANDERL: May I address that?

17           JUDGE WALLIS: Let me state my  
18 understanding of the status, and that is that the  
19 Company will be responding to the legal arguments in  
20 the motion following the proceeding, but that, I  
21 don't believe, would restrict the Commission's  
22 ability to inquire into facts that are related to the  
23 issue.

24           MS. ANDERL: Thank you. Your Honor and  
25 Commissioner Hemstad, the merger agreement and -- or

01078

1 the merger settlement and the A-4 settlements were, I  
2 believe, both issues that were discussed at length in  
3 the rate case, the 950200. And in fact, I know, from  
4 reading documents in that case, that the parties  
5 raised issues regarding whether or not US West was  
6 estopped from asserting an entity imputation based on  
7 its settlement agreement.

8 COMMISSIONER HEMSTAD: I've frankly  
9 forgotten some of those details.

10 MS. ANDERL: And oddly enough, nobody in  
11 this docket raised those issues, even after we filed  
12 our direct testimony and they had an opportunity to  
13 file rebuttal and -- or their direct, and we filed  
14 rebuttal, and then, of course, there was surrebuttal,  
15 and never once, to my recollection, in any of those  
16 testimonies were these issues raised until we  
17 received a motion for summary determination on June  
18 30th, which was only two weeks prior to the time that  
19 we were to file our last round of testimony.

20 Now, that motion for summary determination,  
21 it had already been decided, was to be responded to  
22 by the Company on the briefing schedule. There was  
23 no testimony or affidavit submitted with that motion  
24 for summary determination, and we did not understand  
25 that the July 16th rejoinder filing, which we were

01079

1 permitted in testimony, was to respond to anything  
2 other than the surrebuttal, which had been filed on  
3 June 28th by Mr. Brosch and Dr. Selwyn. We therefore  
4 did not add a witness to address those issues and did  
5 not, in fact, file testimony on it.

6           We are prepared to address it on the  
7 briefing schedule. We are also prepared to provide,  
8 as best we can, a witness in August who could address  
9 those issues or respond to questions, if possible.  
10 It would not be Mr. Inouye, though, because he does  
11 not have any knowledge about that. Typically,  
12 settlement agreements are negotiated through the law  
13 department and the public policy department, not  
14 throughout the regulatory finance department, so we  
15 would probably have to find someone who was there at  
16 the time who could speak to you from firsthand  
17 knowledge.

18           COMMISSIONER HEMSTAD: Well, I guess the  
19 burden of the kind of inquiry that I had wanted to  
20 pursue was the understanding of the -- and the  
21 application of the Company's employees or officers of  
22 those settlements and how the Company acted upon  
23 them.

24           And I'm not sure -- I don't want to get  
25 into, and it's probably inappropriate to get into

01080

1 discussions of Counsel and the like with regard to  
2 the nature of settlements and the risk of intruding  
3 upon privilege, and that's not what I had intended to  
4 pursue.

5 MS. ANDERL: Okay. I guess I'm not sure  
6 what subject matter you did wish to have a witness  
7 address?

8 COMMISSIONER HEMSTAD: Well, for example,  
9 this witness had said there's considerable  
10 discussion, controversy, and apparently of a  
11 continuing nature, about the issue of imputation, and  
12 I assume she would have some knowledge about the  
13 context and content of that with respect to the two  
14 settlement references that both I made and also Mr.  
15 ffitich had inquired into, but apparently she was not.

16 MS. ANDERL: I had understood the reference  
17 to continuing controversy to be a reference to the  
18 quote in the Max Johnson letter that we've referred  
19 to, as well as to the Third Supplemental Order that  
20 Mr. Trautman just provided in Docket U 86-156. And  
21 you're certainly -- you're free to inquire of the  
22 witness whether there was more to it than that.

23 If what you're suggesting is the fact that  
24 US West did enter into settlement agreements and  
25 imputation went on essentially unchallenged for a

01081

1 number of years, we -- but that's obvious. That's  
2 evident from the record and from the Company's  
3 actions.

4 COMMISSIONER HEMSTAD: And your point is  
5 what? That's a pure matter of law at this point?

6 MS. ANDERL: What the settlement agreements  
7 meant or --

8 COMMISSIONER HEMSTAD: Yes.

9 MS. ANDERL: I think what the effect of  
10 them is, yes, is a matter law. What they meant may  
11 be, in fact, a question of fact, and to the extent  
12 those issues are raised in the motion for summary  
13 determination, we may well have to respond to that  
14 motion in our answer with affidavits, and that is how  
15 we would handle it, because of the way it's been  
16 structured in this docket procedurally.

17 COMMISSIONER HEMSTAD: Okay.

18 JUDGE WALLIS: Anything further?

19 CHAIRWOMAN SHOWALTER: I don't have a  
20 question of this witness; I simply have a question  
21 about your exhibit. On Exhibit 524, if we look three  
22 pages in, this is a letter to Dennis Okamoto.

23 JUDGE WALLIS: Yes.

24 CHAIRWOMAN SHOWALTER: Catch me up to date  
25 if I've missed something, but there's not a second



01082

1 page.

2 JUDGE WALLIS: The entire letter is in the  
3 record as Exhibit 609.

4 CHAIRWOMAN SHOWALTER: Thank you.

5 MS. ANDERL: Redirect?

6 JUDGE WALLIS: Redirect.

7 MR. FFITCH: Excuse me, Your Honor. I  
8 wanted, as a point of clarification, to understand  
9 where we are after the discussion between  
10 Commissioner Hemstad and Ms. Anderl about further  
11 testimony. I just wasn't sure where things were  
12 left, Your Honor, and --

13 JUDGE WALLIS: Let me see if I have a read  
14 of where we are. That is that the Commission is not  
15 requesting a witness; is that correct, Commissioner?

16 MR. FFITCH: Perhaps, Your Honor, if I may  
17 interrupt, and Commissioner Hemstad, I had thought I  
18 might make an observation after Ms. Anderl's  
19 comments, and perhaps should have been quicker on the  
20 uptake, but with regard to the other motion that US  
21 West made initially that has now been denied, but may  
22 be renewed, and that is the motion to strike, I think  
23 part of the understanding on the procedural status of  
24 that motion was that the testimony that was taken at  
25 this hearing would then be available to assist both

01083

1 the parties and the Commission in looking at that  
2 motion on a more comprehensive record, and then  
3 addressing the motion again if it is remade in the  
4 briefs with reference to the record that's been made  
5 at the hearing.

6           And I believe that probably is the  
7 intention of the Company. I can't speak for them,  
8 but that's my assumption, if they are willing to  
9 raise the motion again, certainly judging by the type  
10 of questioning we've heard of the witnesses today and  
11 during yesterday. And so I just wanted to make that  
12 observation in terms of parallels and perhaps between  
13 the two motions and the kind of information that  
14 would be available to the parties and the Commission  
15 in briefing the question and considering it later.

16           JUDGE WALLIS: Thank you, Mr. ffitch.

17           MR. FFITCH: Thank you, Your Honor.

18           MS. ANDERL: The only observation I had is  
19 that our offer is open to attempt to obtain a witness  
20 to appear in August. I believe I know who we would  
21 need to get. The individual is no longer with the  
22 Company, but I believe would be willing to come and  
23 testify.

24           JUDGE WALLIS: Very well. Let's say that  
25 if the Commission desires to have an additional

01084

1 witness, it will make that request by letter to the  
2 Company, with a copy to all parties.

3 MS. ANDERL: Thank you very much. And if  
4 the Commission decides to do that, if I could request  
5 some sort of a bullet point list of items that this  
6 person should be prepared to address.

7 JUDGE WALLIS: To the extent that we are  
8 able to prepare one --

9 MS. ANDERL: It would streamline things.

10 JUDGE WALLIS: If the request is made, we  
11 will do so.

12 MS. ANDERL: Thank you very much.

13 JUDGE WALLIS: Now redirect.

14 MS. ANDERL: Thank you.

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

16 BY MS. ANDERL:

17 Q. Ms. Koehler-Christensen, with regard to the  
18 deposition that you were asked about that you gave in  
19 April of 1997, do you recall those questions?

20 A. Generally, yes.

21 Q. Was that -- to the best of your  
22 recollection, was that deposition taken before or  
23 after the issuance of the Supreme Court decision in  
24 the rate case docket?

25 A. It was taken before.

01085

1 Q. You attempted to explain the context in  
2 which you gave the answer in that deposition  
3 distinguishing between tangible and intangible  
4 assets. Did you have an opportunity to fully explain  
5 why you made that distinction?

6 A. I guess I made the distinction because the  
7 Company believed that the ratepayers had an interest  
8 or an ownership in the net book value of the tangible  
9 assets, because they were included in the rate base.  
10 The Company's position on the intangible assets was  
11 that they were owned by the same share owners if they  
12 were in PNB or if they were at US West Direct,  
13 because ultimately they were the same share owners.  
14 And as Judge Green determined that no compensation  
15 was necessary in the divestiture with the transfer to  
16 AT&T, that was PNB's view on that.

17 And PNB, I believe -- and I believe that  
18 that was clearly identified in the original transfer  
19 application, that at least the transfer was going to  
20 -- that we were going to meet our obligations and our  
21 requirements in filing for approval. It was stated  
22 in the application that PNB believed that we could  
23 have made a dividend directly to US West, Inc.  
24 without filing for permission with the Commission,  
25 but chose not to do that. Instead, chose to

01086

1 structure the transfer and make the application to  
2 make it clear what the intent was.

3 But that was our position at the time. And  
4 therefore, when I was asked about this, I was viewing  
5 it as what was booked, and what was at issue here was  
6 the net book value of the physical assets. As I  
7 said, the Supreme Court has obviously ruled otherwise  
8 and has ruled that the ratepayers do have an interest  
9 in the intangible assets, and that's why I have  
10 calculated the compensation that I have based on what  
11 the ratepayers have received throughout these years  
12 as a result of lower rates.

13 Q. Ms. Koehler-Christensen, with regard to the  
14 distinction between tangible and intangible assets,  
15 is it your understanding that the application in  
16 Docket U 83-159 only required a specific enumeration  
17 of the tangible assets?

18 A. Yes.

19 Q. You were asked some questions about the  
20 Third Supplemental Order in U 86-156. Do you recall  
21 those?

22 A. Yes.

23 Q. And you've read that order; is that right?

24 A. Yes, I have.

25 Q. Do you believe that that order demonstrates

01087

1 that the Commission either misunderstood or failed to  
2 understand any aspects of the transactions between  
3 PNB and US West Direct as to that date, up until that  
4 point in time?

5 A. You know, I don't have it in front of me,  
6 and --

7 JUDGE WALLIS: Do you have it now?

8 THE WITNESS: I have it now. Oh, I did  
9 have this one. I apologize.

10 Q. The question being is does that order  
11 evidence any lack of understanding on the part of the  
12 Commission or misunderstanding on the part of the  
13 Commission as to the relationship between the  
14 companies or the activities of the Company, as from  
15 1983 to the date of that order?

16 A. I certainly believe that the Commission had  
17 a different perception of the relationship than the  
18 Company had.

19 Q. Yes, but was there anything, though, that  
20 indicated that the Company had not disclosed to the  
21 Commission the nature of the transactions that the  
22 Company had filed with the Commission?

23 A. Yes, it does state that -- I believe that  
24 we have tried to not make our intent clear, and I  
25 disagree with that, but I believe if you read the

01088

1 initial transfer application, there are a number of  
2 places where it discusses that the purpose was to  
3 create a subsidiary that would be the publishing  
4 subsidiary. It was to rearrange the assets.

5 It was stated that PNB would receive the  
6 dividend and, in a very short period of time, on  
7 January 3rd, dividend that fractional share to the  
8 parent company, and it stated that, in a later  
9 application, for example, that PNB was no longer in  
10 the publishing business.

11 It stated that PNB had structured the  
12 publishing agreement in such a way to separate the  
13 regulated monopoly business from the unregulated  
14 competitive business, and it identified those  
15 separate lines of business as the listing business  
16 and the publishing business, so I believe that PNB  
17 certainly intended at the time to make it clear what  
18 our intent was, and I certainly can't address what  
19 the Commission anticipated out of what was included  
20 in the application, but, again, when the publishing  
21 agreement was addressed, it was -- and the guarantee  
22 of the fees, it was addressed, in my opinion, within  
23 the parameters of a three-year publishing agreement,  
24 and in fact addressed that it was not possible to  
25 totally, accurately predict what would occur after

01089

1 that three-year period.

2 Q. Does US West Communications perform billing  
3 and collection services for customers other than  
4 itself or Dex for any purpose?

5 A. Yes, US West Communications performs  
6 billing and collection services for -- certainly for  
7 long distance carriers and possibly for others, in  
8 addition to US West Dex.

9 Q. Was it your testimony that, to the best of  
10 your recollection, no competing publishers had ever  
11 asked US West Communications to perform billing and  
12 collection services for them?

13 A. Certainly no competing publishers in the  
14 state of Washington have. Actually, I believe it was  
15 Northwestern Bell --

16 MR. FFITCH: I'm going to object, Your  
17 Honor. It's beyond the scope.

18 THE WITNESS: No Washington publishers have  
19 --

20 MR. FFITCH: Your Honor, I have an  
21 objection pending.

22 THE WITNESS: Sorry.

23 JUDGE WALLIS: Ms. Anderl.

24 MS. ANDERL: No, that's fine. I didn't  
25 intend to ask a question to go beyond the scope of



01090

1 his cross. That's all that I have.

2 JUDGE WALLIS: Very well.

3 COMMISSIONER HEMSTAD: I have one more  
4 question.

5 JUDGE WALLIS: Commissioner Hemstad.

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

7 BY COMMISSIONER HEMSTAD:

8 Q. Not so much a comment as a question, I  
9 guess. You seem to be quite well-versed in the Third  
10 Supplemental Order she just inquired about, which is  
11 in February of 1989 --

12 CHAIRWOMAN SHOWALTER: Service date, you're  
13 right.

14 Q. -- in U 86-156, which goes on at  
15 considerable length addressing the Commission's  
16 concerns with regard to how this set of arrangements  
17 had been handled and how it would be handled, but you  
18 express no knowledge of U 89-352418, which was the  
19 settlement agreement that I was referencing before.  
20 First, the Second Supplemental Order, and then the  
21 Third Supplemental Order that dealt with how  
22 imputation would ultimately be -- or ultimately would  
23 then be exposed pursuant to a settlement. I find  
24 that surprising.

25 A. I can only explain that I believe I'm

01091

1 familiar with the order and the application of the  
2 imputation that came out as far as the A-4 and the  
3 settlement agreement in the A-4.

4           What I tried to explain was that when it  
5 came to the merger, I wasn't involved -- well, I  
6 didn't state this, but I wasn't involved in any of  
7 the merger activities themselves. I was certainly  
8 aware that directory imputation was addressed in  
9 that. I'm sure that, at the time, I read the order,  
10 but in my opinion, it didn't affect anything that I  
11 have done since that time, because what I've been  
12 involved in is dealing with the imputation effect on  
13 ratepayers and the rates that they've paid, I've been  
14 involved in the contractual arrangements between Dex  
15 and US West Communications, and that wasn't affected  
16 by that agreement. I've been involved in preparing  
17 testimony about the imputation, but in my opinion in  
18 950200, when I addressed that, the relevant issue was  
19 the imputation that had been in effect throughout the  
20 A-4, which included the initial imputation and the  
21 calculation of the imputations throughout the sharing  
22 calculations.

23           So any -- you know, anything more specific  
24 than the fact that there was an imputation discussion  
25 and some sort of agreement included as a result of

01092

1 the merger, that's all I'm aware of, because I didn't  
2 see where it affected me and I didn't -- I didn't  
3 review that at all in the context of this docket,  
4 where I did when I was preparing all of my  
5 calculations for the compensation.

6 COMMISSIONER HEMSTAD: Thank you. No  
7 further questions.

8 JUDGE WALLIS: Is there anything further of  
9 the witness? It appears that there's not. Ms.  
10 Koehler-Christensen, thank you for appearing. You're  
11 excused from the stand at this time. Let's be off  
12 the record for some administrative discussions.

13 (Discussion off the record.)

14 JUDGE WALLIS: Let's be back on the record,  
15 please. During a brief administrative discussion, we  
16 have determined that ten days is an appropriate time  
17 to establish, ten business days for parties to file  
18 responses to bench requests, and if parties are  
19 unable to comply with that deadline, I'm going to ask  
20 that you will let us know as soon as you are aware.

21 MR. FFITCH: Your Honor, may I request  
22 information on what Bench Request Five and Bench  
23 Request Six are?

24 JUDGE WALLIS: Can we do that off the  
25 record, Mr. ffitich?

01093

1 MR. FFITCH: Yeah, that would be fine.

2 JUDGE WALLIS: It's been called to our  
3 attention that there is a confidential number in  
4 Exhibit 801-E, and consequently, the designation  
5 should be 801-EC. And we want to go back to Ms.  
6 Koehler-Christensen's exhibits on cross-examination  
7 and verify that Commission Staff has moved and the  
8 Commission has admitted all of the documents  
9 pertinent to her cross-examination that are  
10 necessary. Mr. Trautman.

11 MR. TRAUTMAN: At this time, Staff would  
12 like to move for the admission of Exhibits 518 and  
13 519.

14 MS. ANDERL: No objection.

15 MR. FFITCH: No objection, Your Honor.

16 JUDGE WALLIS: And so let me state for the  
17 record that we have received 514 and 516. 518 and  
18 519 have been offered. There being no objection,  
19 they are received. And you are not offering 515 or  
20 517; is that correct?

21 MR. TRAUTMAN: That's correct.

22 JUDGE WALLIS: And Public Counsel did not  
23 offer 523; is that correct?

24 MR. FFITCH: That is correct, Your Honor.

25 JUDGE WALLIS: Is there anything further to

01094

1 come before the Commission at this time? All right.  
2 This session is concluded, and we are in recess until  
3 August 26th, 1999, or such other time as the  
4 Commission shall designate by letter.

5 (Proceedings adjourned at 8:58 p.m.)

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