

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
2 COMMISSION

3 In Re Petition of )  
4 U S WEST COMMUNICATIONS, INC., )  
5 for a Declaration Order Ending ) DOCKET NO. UT-980948  
6 Imputation of Revenues Derived ) VOLUME XV  
7 from Transferred Yellow Pages ) Pages 1095 - 1235  
Publishing Business. )  
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10 A hearing in the above matter was held on  
11 August 26, 1999 at 9:30 a.m., at 1300 South Evergreen  
12 Park Drive Southwest, Olympia, Washington, before  
13 Administrative Law Judges ROBERT WALLIS and  
14 LAWRENCE BERG, Commissioners RICHARD HEMSTAD,  
15 WILLIAM R. GILLIS and Chairwoman MARILYN SHOWALTER.

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The parties were present as follows:

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

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

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

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TRACER, by STEPHEN J. KENNEDY, Attorney at Law, Ater Wynne, LLP, 601 Union Street, Suite 5450, Seattle, Washington 98101.

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1                   AARP, by RONALD L. ROSEMAN, Attorney at Law,  
2                   2011 14th Avenue East, Seattle, Washington 98112.

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Kathryn T. Wilson, CCR

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Court Reporter

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

2 JUDGE WALLIS: This is the continuation of  
3 the evidentiary hearing in Docket No. UT-980948. We  
4 want to begin this morning with some very brief  
5 procedural discussions. I understand that the Company  
6 is asking to recall Ms. Koehler-Christensen to correct  
7 an error in her prior testimony; is that correct?

8 MS. ANDERL: That's correct, Your Honor.

9 JUDGE WALLIS: Will there be any objection  
10 from other parties to that?

11 MR. TRAUTMAN: We object, Your Honor. Number  
12 one, I have no idea what Ms. Koehler-Christensen  
13 intends to say on the stand. I don't view this as a  
14 normal procedure. We asked in advance what correction  
15 Ms. Koehler-Christensen intended to make. If it were  
16 something that could be done in writing or we could see  
17 in advance, I might not have an objection, but I think  
18 to recall a witness -- I was told that there would be  
19 10 to 15 minutes of what is, in effect, redirect or  
20 surrebuttal, and this is what I was told yesterday by  
21 counsel. I don't believe that that's proper.

22 JUDGE WALLIS: What I'm going to suggest is  
23 that Parties talk with each other on the break, and we  
24 will defer the question of her return to the stand  
25 until the Parties have had the opportunity to engage in

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1 discussions, and then if objection continues, we'll  
2 hear that and we'll proceed.

3           As to the order of witnesses, the Company has  
4 indicated preference to take Mr. Perlman first. Have  
5 the Parties discussed that? I'm sorry; Ms. Strain  
6 first. Have the Parties discussed that?

7           MR. TRAUTMAN: No, we have not.

8           JUDGE WALLIS: The earlier indication that I  
9 had was that Ms. Strain was not prepared to proceed  
10 first.

11           MR. TRAUTMAN: That was our understanding.

12           JUDGE WALLIS: In that event, I would ask  
13 that the Company bring Mr. Perlman.

14           MS. ANDERL: Yes, Your Honor. Are you ready  
15 for me to call our witness at this time, or do we have  
16 other procedural matters to address?

17           JUDGE WALLIS: Let me ask. Those are all  
18 that were on my list except an administrative detail  
19 and that's as to exhibits that were identified in the  
20 900 series. Commission staff, I don't recall that  
21 those have been received in evidence, and I want the  
22 Parties to think about whether there will be  
23 objections, and if there are none, then we'll go ahead  
24 and receive those, and if there are, we'll also hear  
25 those objections at a later time.

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1 MR. TRAUTMAN: That too, when these were  
2 originally placed on the exhibit list some time ago,  
3 and my understanding is if there were any objections,  
4 they would have to have been made and none have been  
5 made at the time, and in fact, most of these exhibits,  
6 these were included in connection with the argument on  
7 the First Amendment issue.

8 JUDGE WALLIS: For the Company?

9 MS. ANDERL: We did want to discuss that  
10 briefly, hadn't had a chance to do that with  
11 Mr. Trautman. I don't know that we have an objection  
12 to it, but I also don't know that it's a usual practice  
13 or necessary to include affidavits as exhibits when, in  
14 fact, the affidavit is to support a motion that is  
15 supposed to be decided upon without a hearing, and so  
16 it's a little confusing to me, and especially to have  
17 an affidavit of counsel placed on the record and given  
18 a formal exhibit number.

19 We intend to file an answer to Staff's motion  
20 for summary judgement at the time of our briefs. That  
21 answer may or may not contain affidavits, including  
22 affidavits of counsel, and I don't know if doing this  
23 now would mean that we need to make provisions for  
24 those to also be made exhibits.

25 JUDGE WALLIS: The purpose of my inquiry was

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1 to ask whether it's noncontroversial, and we may do it  
2 as a matter of course right now without delaying the  
3 proceeding. The answer to that is no, and we'll take  
4 that up at a later time as well.

5 MR. TRAUTMAN: I have two other items. One  
6 was that Commission staff had reviewed the U S West  
7 response to Bench Request No. 5, and we provided a  
8 letter to Ms. Washburn with copies to both of the ALJ's  
9 and the Parties, and we had additional information  
10 regarding that response, which are simply materials  
11 contained in the ARMIS reports that we would like to  
12 have included in the record, and we were going to  
13 propose that that be admitted and marked as an exhibit.

14 JUDGE WALLIS: Can we take it up in  
15 conjunction with Ms. Strain's appearance?

16 MR. TRAUTMAN: All right.

17 JUDGE WALLIS: Anything else?

18 MR. ROSEMAN: Yes, Your Honor. I don't know  
19 if we are highlighting these issues for later  
20 consideration or not. I know that one issue that the  
21 Company has already objected to which is Public  
22 Counsel's designation of certain briefs and their  
23 designation for the record are including them in the  
24 record. That certainly is an issue of some dispute,  
25 and I just wanted to highlight that one for later-on



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1 consideration.

2 JUDGE WALLIS: Thank you, Mr. Roseman. Is  
3 there anything other of a procedural nature? It  
4 appears that there is not. Let's proceed.

5 MS. ANDERL: Thank you, Your Honor. U S West  
6 calls Professor Harvey Perlman to the stand.

7 (Witness sworn.)

8 JUDGE WALLIS: In conjunction with  
9 Mr. Perlman's appearance, some documents have  
10 previously been distributed, and I'm going to identify  
11 them for the record at this time. These include  
12 Exhibit 201-T, the Rebuttal Testimony of Harvey Perlman  
13 with Appendices A and B; Exhibit 202-T, the Rejoinder  
14 Testimony of Harvey Perlman; Exhibit 203, also  
15 designated Exhibit HSP-1, Excerpt from a sample Yellow  
16 Pages advertising contract; Exhibit 204, selected pages  
17 from the 1999 Olympia-Lacey-Tumwater White and Yellow  
18 Pages, which has been presented as a document by  
19 Commission staff for possible use on cross-examination;  
20 Exhibit 205, which is US West's Response to Data  
21 Request PC 08-104 presented by Public Counsel for  
22 possible use on cross; Exhibit 206 for identification,  
23 U S West Response to Data Request DPU 14-021.14 in the  
24 Utah Public Service Commission Docket No. 97-049-08.  
25 This is also a Public Counsel cross-examination

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1 potential exhibit, and finally, as Exhibit 207 for  
2 identification, U S West Response to Bench Request  
3 No. 3, a potential Public Counsel cross-examination  
4 exhibit.

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6

DIRECT EXAMINATION

7 BY MS. ANDERL:

8 Q. Professor Perlman, would you please state  
9 your name and business address for the record?

10 A. Harvey Perlman. I'm a professor of law at  
11 the University of Nebraska College of Law, Post Office  
12 Box 830902, Lincoln, Nebraska, 68583.

13 Q. Professor Perlman, did you file both rebuttal  
14 testimony and rejoinder testimony in this docket, which  
15 has been designated as Exhibits 201-T, 202-T, and 203?

16 A. Yes, I did.

17 Q. Do you have those documents before you?

18 A. I do.

19 Q. And do you have a correction to make to Page  
20 18 of your rebuttal testimony?

21 A. Yes. The way the question was framed on the  
22 bottom of Page 18, it says, "The testimony by witnesses  
23 for the Staff and Public Counsel states that the 1984  
24 transaction was merely an outsourcing agreement through  
25 which PNB outsources publication activities. Do

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1 you agree with the characterization?" I believe that  
2 the witness that made that characterization only was  
3 from Staff and not Public Counsel.

4 Q. So would you like to delete the words "and  
5 Public Counsel" on Line 19?

6 A. Yes. That would make it accurate.

7 Q. Do you have any other changes or corrections  
8 to make to your prefiled testimony?

9 A. I do not.

10 Q. If I were to ask you the questions contained  
11 in that testimony today, would your answers then be the  
12 same as set forth in those prefile documents?

13 A. Yes, they would.

14 MS. ANDERL: Your Honor, we would offer  
15 Exhibits 201-T, 202-T, and 203 and tender the witness  
16 for cross-examination.

17 JUDGE WALLIS: Is there objection?

18 MR. TRAUTMAN: No.

19 JUDGE WALLIS: There is none, and those  
20 documents are received in evidence. Let me note for  
21 the record that we have a new face at counsel table,  
22 and I'm going to ask Public Counsel to identify  
23 yourself for the record, please.

24 MR. KENNEDY: Actually, I'm Steve Kennedy for  
25 TRACER with the Ater Wynne Law Firm. Do you need the

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1 address?

2 JUDGE WALLIS: Is it the same as

3 Mr. Butler's?

4 MR. KENNEDY: Yes, it is.

5 JUDGE WALLIS: Then we have that. Thank you

6 very much.

7

8 (PERLMAN - CROSS BY TRAUTMAN)

9

CROSS-EXAMINATION

10 BY MR. TRAUTMAN:

11 Q. Good morning, Professor Perlman. Have you

12 ever been employed by a Yellow Pages Directory

13 publishing company?

14 A. No.

15 Q. Have you ever conducted independent research

16 into consumer preferences and decision making

17 concerning Yellow Pages Directory?

18 A. Not specifically, no.

19 Q. And have you ever conducted independent

20 research into Yellow Page publishers' sales strategies?

21 A. No.

22 Q. Or their marketing strategies?

23 A. No.

24 Q. Have you ever conducted independent research

25 into how Yellow Page publishers obtain new sales leads?

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1 A. No.

2 Q. Have you ever done independent research into  
3 the criteria which Yellow Page advertisers use to  
4 choose among directories?

5 A. Not specifically, no. My research has been  
6 in the general area of trademarks and intellectual  
7 property, and that involves the questions of how  
8 consumers interact with supplies in the marketplace.

9 Q. Have you ever done independent research into  
10 the rates at which directory advertisers, update or  
11 otherwise, alter their directory ads for Yellow Pages?

12 A. No, I have not.

13 Q. Have you ever surveyed directory advertisers  
14 concerning the frequency with which they made decisions  
15 concerning their choice of directories?

16 A. No.

17 Q. Have you ever reviewed studies addressing the  
18 frequency with which directory advertisers make  
19 decisions concerning their choice of directories?

20 A. No.

21 Q. Have you ever surveyed directory users  
22 concerning the frequency with which they made decisions  
23 concerning their choice of directories?

24 A. I've conducted no surveys.

25 Q. Have you ever reviewed studies addressing the

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1 frequency with which directory users make decisions  
2 concerning their choice of directories?

3 A. No.

4 Q. Have you ever reviewed publishing agreements  
5 between other telephone companies other than U S West  
6 and their directory publishers?

7 A. My understanding is that the 1997 Agreement  
8 between U S West Communications and U S West Dex is a  
9 standard form agreement that is also used with other  
10 local exchange carriers, so to that extent, yes.

11 Q. So you have reviewed agreements by other  
12 companies. Prior to this case, you're saying that you  
13 have?

14 A. You didn't say prior to the case. Prior to  
15 the case, no, I have not.

16 Q. What's your basis for the understanding that  
17 this is a standard form agreement?

18 A. I inquired of counsel for the Company whether  
19 that was true, and they informed me that it was.

20 Q. Turning to Page 23 of your Exhibit 201, which  
21 is your rebuttal testimony.

22 A. I'm sorry, which page?

23 Q. 23. Would it be correct to say that you're  
24 stating that you are not an expert on imputation?

25 A. That's correct.

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1 Q. You're not an expert on the ratemaking  
2 process?

3 A. That's correct.

4 Q. What is your understanding of how a given  
5 imputation amount would translate into a particular  
6 benefit to ratepayers?

7 A. My understanding is that if you imputed  
8 revenues from an external source to a regulated carrier  
9 that ratepayers would pay less.

10 Q. How would that occur, if you know?

11 A. My understanding is that imputation would be  
12 regarded as a return on the company's investment, and  
13 therefore, you'd need less from ratepayers to  
14 effectuate the proper rate of return that the  
15 Commission decided was appropriate.

16 Q. What was the basis for your understanding?

17 A. From reading the documents in this case.

18 Q. Have you reviewed any of the calculations  
19 that support the imputations that have been ordered by  
20 the Commission?

21 A. No.

22 Q. Turning to Page 22 of the same document,  
23 Exhibit 201, your rebuttal testimony, you refer here at  
24 the bottom of the page to the publishing fees that were  
25 paid. Do you see that? I believe you refer to them as

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1 annual payments.

2 A. I see that, yes.

3 CHAIRWOMAN SHOWALTER: Could we have page and  
4 line numbers, please?

5 MR. TRAUTMAN: It's Page 22, and it would be  
6 the question starting at Line 10 referring to the  
7 annual payments made by PNB.

8 Q. (By Mr. Trautman) In what years did U S West  
9 Direct pay publishing fees to U S West Communications?

10 A. I'm not sure I've got the dates exactly  
11 right. My understanding is that it was the three years  
12 after the Publishing Agreement so that would be either  
13 '84, '85, '86, '87, somewhere in there.

14 Q. You don't know the exact years?

15 A. I don't recall them offhand, no.

16 Q. Do you recall the amounts that were made?

17 A. I don't have specific numbers, no.

18 Q. Is it correct that your understanding -- and  
19 I'm reading now on Lines 19 and 20 of Page 22 -- that  
20 the publishing fees -- however the Parties  
21 characterized the payments, you state that what seems  
22 clear to you is that the payments had the effect of  
23 further compensating PNB for whatever value the  
24 directory business had by book value of the physical  
25 assets; is that correct?



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1 A. That's what I said, yes.

2 Q. Are you aware that PNB supplied a variety of  
3 discreet services to U S West Direct during the term of  
4 the 1984 Publishing Agreement?

5 A. Yes, and it's my understanding that those  
6 discreet services were subject to separate agreements  
7 and separate charges.

8 Q. So is it your understanding that the  
9 publishing fees in the 1984 Publishing Agreement did  
10 not pay for these services, these discreet services?

11 A. I have no specific recollection of whether  
12 that was true or not.

13 Q. But it would be true that PNB would have  
14 required compensation for those services?

15 A. Presumably.

16 Q. You've testified about documents relating to  
17 the 1984 transactions between the Parties. Did you  
18 personally participate in any of that aspect of that  
19 transfer?

20 A. No, I did not.

21 Q. If you could now refer to Exhibit 204, and  
22 this is a seven-page exhibit of Commission staff.

23 A. Yes, I have it.

24 Q. And would you accept subject to check that  
25 these are selected pages from the September 1999 White

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1 and Yellow Pages for Olympia, Lacey, and Tumwater?

2 A. Yes.

3 Q. And I have the entire book if you would need  
4 to refer to any of it.

5 A. I've looked at the book because I couldn't  
6 read the Xerox copy.

7 Q. If a copyright states "U S West," what would  
8 that copyright mean? Who would hold that copyright?

9 A. Well, the designation of -- I assume you're  
10 referring to some of the tag lines that appear on these  
11 documents that say "Copyright U S West." That would not  
12 affect the copyright ownership. Whoever owns the  
13 copyright owns the copyright. The notice is not  
14 necessary to acquire a copyright. It's designed to  
15 provide notice to others that copyright is being  
16 claimed, and under the Copyright Act, it has some  
17 relevance to what remedies can be acquired, so I don't  
18 understand the context of your question.

19 Q. Would it be correct as we look at the various  
20 pages, looking to Page 1, for example -- this is Page 1  
21 of the exhibit, and I numbered the pages one through  
22 seven in the lower right-hand corner. At the bottom of  
23 page on the cover it has "copyright," a C, and it says,  
24 "U S West Dex, Inc., 1997"; is that correct?

25 A. That's correct.

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1 Q. And looking at Page 2, it states at the  
2 bottom of the page, and these are the emergency pages,  
3 it says "copyright" or C, "U S West 1998," and it says,  
4 "Published by U S West Dex, Inc.;" do you see that?

5 A. Yes.

6 Q. On Pages 3 and 4 at the top it says, "U S  
7 West 1998"; is that correct?

8 A. That's correct.

9 Q. On Page 5, which is a White Pages, that does  
10 not have a copyright; is that correct?

11 A. That's correct.

12 Q. And on Page 6, which is a copy of the Yellow  
13 Pages, at the top it says, "U S West, 1998," I believe,  
14 or '96; is that correct?

15 A. Yes, it does.

16 Q. And does it also state on this page, if you  
17 look at the lower right-hand corner, it refers in a  
18 paragraph to the U S West Yellow Pages; is that  
19 correct?

20 A. Yes, it does.

21 Q. And then on Page 7 at the bottom of the page,  
22 the copyright reads "U S West Dex, Inc.", 1998; is that  
23 correct?

24 A. Yes, that's correct.

25 Q. And so whatever reason the Company may have

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1 had, it's clear that the copyrights that are stated on  
2 the pages are different on different pages. Some state  
3 "U S West" and some say "U S West Dex, Inc."; is that  
4 correct?

5 A. That's correct, but I hesitate to add that I  
6 see no copyright significance to that.

7 Q. But it is clear that the Company elected to  
8 put different markings on the pages.

9 A. It is clear they did for reasons I can't tell  
10 you, but I can tell you that as I read the contractual  
11 agreements among the Parties that U S West Dex has the  
12 right to copyright, and the designation on the cover  
13 indicates that to be true. Now, why they changed  
14 designations throughout the book, I can't tell you, but  
15 I don't think it has any effect on the copyright.

16 MR. TRAUTMAN: I would move for the admission  
17 of Exhibit 204.

18 MS. ANDERL: No objection.

19 JUDGE WALLIS: Exhibit received.

20 Q. (By Mr. Trautman) Turning to Exhibit 202,  
21 which is your rejoinder testimony, on Page 23, Lines 13  
22 to 15, you say that you have formulated your opinion by  
23 accepting the assumption of Mr. Brosch and Dr. Selwyn  
24 that it is the Publishing Agreement alone that  
25 characterizes the 1984 transfer. Where did Dr. Selwyn

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1 say this?

2 A. I'm not sure that he specifically said that.  
3 My impression from their testimony was that by looking  
4 at that agreement, the 1984 Agreement, that you can  
5 determine whether, in fact, the transaction was a  
6 permanent transfer of the directory business to U S  
7 West Direct, and I'm basically trying to say here that  
8 I've looked at that agreement, and I don't agree with  
9 that conclusion.

10 Q. So is it your understanding that Dr. Selwyn  
11 looked at nothing beyond that one individual publishing  
12 agreement in determining the nature of the 1984  
13 transactions?

14 A. Well, I don't know what Dr. Selwyn looked at.  
15 My reading of his testimony to which this was a  
16 response was that he was assessing and analyzing that  
17 '84 Agreement to determine whether, in fact, a  
18 permanent transfer had taken place, and all I was  
19 suggesting here was that I think you can take that  
20 agreement within its borders, and there are terms in  
21 there that would be inconsistent with a temporary  
22 transfer of that business, and the terms are, in fact,  
23 consistent with a permanent transfer.

24 Q. But you have no specific reference to where  
25 Dr. Selwyn says this. This is just your understanding.

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1 A. Not off the top of my head, no, and I don't  
2 recall one.

3 Q. Are you aware that this case involves  
4 transactions between two affiliated companies having a  
5 common parent?

6 A. Yes, I am.

7 Q. Are you aware that those types of  
8 transactions might raise particular concerns to  
9 regulators, such as the subsidy of competitive ventures  
10 from regulated, not competitive ventures?

11 A. It's my clear understanding that they do  
12 raise issues and that the Commission is obligated to  
13 look at those transactions.

14 Q. Were you familiar with the testimony of  
15 Mr. Johnson on cross-examination that the common parent  
16 would likely make decisions regarding transactions that  
17 would be in the interest of the overall corporate  
18 structure as a whole or of the parent company?

19 A. It's my assumption that they would,  
20 absolutely.

21 MR. TRAUTMAN: I have no further questions.

22 JUDGE WALLIS: Mr. Roseman?

23 MR. ROSEMAN: Thank you, Your Honor.

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CROSS-EXAMINATION

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BY MR. ROSEMAN:

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Q. Professor Perlman, I am looking at your rebuttal testimony, Page 5.

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A. This is 201-T?

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JUDGE WALLIS: The rebuttal testimony is designated as 201-T.

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Q. Lines 5, 6, and 7; and basically what you say is when examined in the context of the telephone directory business strongly indicates that the business was transferred in 1984.

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13

A. That's correct.

14

Q. Do you agree then that what happened in 1984 was a transfer and not a true sale of the entire business?

15

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17

A. I don't know what you mean by a "true sale." What I said was that I thought the '84 transaction was a transfer permanently of the directory business from PNB to U S West Direct.

18

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21

Q. Is that the same as a sale?

22

A. Well, it may or may not be, depending on how you want to define "sale." It's obvious that this transaction takes place in the context of affiliated companies, and I take it that it's largely irrelevant

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1 whether it's a sale or not. If the full directory went  
2 over, I take it what this hearing is about, this  
3 Commission will characterize it and determine what the  
4 value would have been had it been sold on the open  
5 market between arm's-length parties.

6 Q. Do you know if the publisher of the dominant  
7 or primary Yellow Pages in a given market is able to  
8 charge higher prices than competing publishers whose  
9 books are not dominant?

10 A. I don't know what you mean by "dominant."  
11 Price would largely follow value, and I would assume  
12 that if a directory had more comprehensive listings,  
13 particularly thinking about it now in the Yellow Pages  
14 context, and they had more comprehensive listings and  
15 they had a broader distribution, then that would be a  
16 higher value than smaller directories that are less  
17 comprehensive, and presumably one would charge for that  
18 value, but I don't have specific financial information  
19 to be able to answer your question.

20 Q. Regarding your testimony, 201-T, again, the  
21 rebuttal testimony that I've been referring to in my  
22 prior question, at Page 4, Line 1, you seem to agree  
23 that not all property associated with the Yellow Pages  
24 business was transferred but some intangible property  
25 was, in fact, retained by PNB.



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1 A. That's correct.

2 Q. What is the document in which you believe  
3 these rights were licensed to U S West Direct for its  
4 use in the directory business?

5 A. Well, with respect to the trademarks, the  
6 1984 Publishing Agreement is clearly a trademark  
7 license through which PNB licenses U S West Direct to  
8 use the PNB marks subject to controls by PNB which are  
9 characteristic of a trademark license.

10 Q. Do you know if the Publishing Agreement you  
11 reviewed obligated the directory affiliate to publish  
12 the White Pages directory for PNB at no charge to PNB?

13 A. That's my understanding.

14 Q. With regards to the benefits of cooperation  
15 that you describe at Pages 5 and 6 of your rebuttal  
16 testimony, 201-T, would you agree that such benefits  
17 would have impacted the value of the business that was  
18 transferred to the publishing affiliate; in other  
19 words, the business was worth more in cooperation with  
20 PNB than without such cooperation?

21 A. I think you need to break that down a little  
22 bit when you talk about cooperation. As my direct  
23 testimony suggests, there is clearly, at least in my  
24 view, a first mover advantage here, and so U S West  
25 Direct does get and seem to me was the purpose of the

01120

1 Publishing Agreement to transition that being first in  
2 the market from PNB to U S West Direct.

3 Certainly there are other areas of  
4 cooperation between directory publishers and local  
5 exchange carriers that seem relevant. You have to get  
6 the subscriber's list, but I understand that that  
7 really is largely a function that the local exchange  
8 carriers give to anyone, so yes, as I testified in  
9 1984, there was certainly some advantages to U S West  
10 Direct dealing with PNB in such a way as to transition  
11 that first mover advantage to U S West Direct.

12 Q. Referring again to 201-T, Page 13, Line 2 of  
13 your rebuttal testimony, you seem to imply that it was  
14 the employees that were transferred to U S West Direct  
15 rather than the exclusive publishing rights that  
16 created value. Let me ask you this: If all these  
17 employees had been moved to U S West Direct but could  
18 not sell advertising in the established PNB Yellow  
19 Pages, do you think the customers that the employees  
20 may have had contacts with would be anxious to purchase  
21 ads from Acme Yellow Pages?

22 A. Let me see if I understand your question  
23 before I respond. You envision a hypothetical in which  
24 PNB continues to publish a directory but transfers all  
25 of their employees to a third party?

01121

1 Q. PNB transfers all of their employees to a  
2 third party, but these employees are to sell their  
3 advertising, either in a service area or someplace  
4 outside of where they used to have their contacts.

5 A. And under that scenario, what's the question?

6 Q. The question is, do you think that the  
7 employees would be as successful in that context as  
8 they previously had been?

9 A. Well, the talents and the experience and  
10 skills that these employees have are both general and  
11 specific. They are general in the sense that they know  
12 the telephone directory business. They know how to  
13 sell, presumably. They've had experience doing that.  
14 That element of their experience, of their human  
15 capital would certainly transfer to any directory  
16 business in any local area.

17 They also have relatively specific human  
18 capital; that is, they have established relationships  
19 with advertisers that they'd sold to in the past. They  
20 know what their needs are; they know what their  
21 interests are; they know when to contact and when not  
22 to contact, who to contact in a particular business,  
23 who not to contact in a particular business.

24 Obviously if you're moving off into another  
25 area, not dealing with your same customers, you waste

01122

1 that specific human capital, but the general human  
2 capital and experience in the business is still  
3 available. Is that responsive?

4 Q. Yes, it is. That's fine. Thank you. Again,  
5 on the points of benefits of cooperation and  
6 affiliation with the phone company, at Page 22 of your  
7 rebuttal, 201-T, you seem to imply that competing  
8 directory publishers have their advertising charges  
9 billed in U S West Communications' telephone bills.

10 A. Where do I do that? Is there a line?

11 Q. Let me see if I can find it exactly.

12 A. I see on 6 and 7. What I'm suggesting is  
13 that it is not somehow unique to the fact that these  
14 two companies are affiliated, that one company might  
15 bill for the other company's services. All I was  
16 suggesting that from my own personal knowledge, my own  
17 local phone company does bill for telephone related  
18 services that are not provided by that telephone  
19 company, so the fact that it was done doesn't imply  
20 anything about this arrangement that would lead me to  
21 believe that this wasn't a transfer of the directory  
22 business. That's what I'm trying to say there.

23 Q. You say they bill for telephone related  
24 services. Do you know if those include other directory  
25 services, Yellow Pages advertisement?

01123

1 A. It does not. We happen to have, I think, no  
2 competing directories in Lincoln, Nebraska.

3 Q. Would you know what the case would be for U S  
4 West here in Washington? Do you know if U S West  
5 Communications bills for any other company other than  
6 U S West Direct?

7 A. I don't know that, no.

8 MR. ROSEMAN: Thank you, Dr. Perlman.

9 JUDGE WALLIS: Mr. Kennedy?

10

11

CROSS-EXAMINATION

12

BY MR. KENNEDY:

13

14 Q. Thank you. Good morning, Dr. Perlman.  
15 Turning to your rebuttal testimony, Exhibit 201-T, at  
16 Page 5, Lines 2 to 4, you state that in reaching your  
17 opinion in this case, you examined the Publishing  
18 Agreement signed by the Parties on June 18th, 1984, and  
19 you also refer to, quote, "the various opinions about  
20 that agreement and the transaction as a whole rendered  
21 by experts for all parties"; do you see that?

21

A. I do.

22

23 Q. Why did you consider it necessary to examine  
24 the opinions about the transaction that were rendered  
25 by other experts?

25

A. Because this testimony was rebuttal to their

01124

1 testimony so I thought I ought to read their testimony.

2 Q. Do you typically do that in cases such as  
3 this where you're asked to express an opinion?

4 A. It depends on if I'm expressing a rebuttal  
5 opinion or an initial opinion.

6 Q. In the context of where you're asked to  
7 express an initial opinion, would you want to review  
8 other experts who have opined on the very same issue  
9 that you are asked to opine about?

10 A. No. Normally I don't do that.

11 Q. Let me take a specific area of your  
12 testimony, the value of the intangible assets that were  
13 retained by PNB, have you reviewed any other  
14 statements -- let me ask it this way: What did you  
15 review that was provided to you by U S West in  
16 connection with that particular aspect of your  
17 testimony?

18 A. Well, the documents that I reviewed, I think,  
19 were attached here somewhere so you can see what that  
20 was. My testimony with respect to the value of the  
21 trademark is based on, I guess, my experience of  
22 thinking about trademarks and how they function in the  
23 marketplace for the last 30 some years.

24 Some trademarks have a lot of value in some  
25 industries and not as much as others, and I think if

01125

1 you understand the nature of a trademark and what it's  
2 designed to do, you can make an assessment of sort of  
3 its relative value.

4 Q. Your general position though in this case is  
5 the value of the intangibles, whether they were  
6 retained or licensed or whatever, was not particularly  
7 significant in this transaction, at least in the long  
8 run; is that correct?

9 A. It certainly wasn't significant in the long  
10 run and certainly wasn't significant to characterize  
11 this transaction as whether it was a permanent transfer  
12 or temporary transfer.

13 Q. Could you take a look at Exhibit 206, if you  
14 have that before you?

15 A. Is this Professor Wender's testimony?

16 Q. Yes. Have you had an opportunity to review  
17 that before this moment?

18 A. Yes.

19 Q. When did you first review it?

20 A. Yesterday before I got on an airplane.

21 Q. Could you turn to Dr. Wender's testimony.  
22 Page 12 of the testimony is Page 4 of this particular  
23 exhibit because these are excerpts. Do you see  
24 Page 12?

25 A. Yes, I do.

01126

1 Q. If you look at Line 6, the Q and A starting  
2 at Line 6, the question reads: "But doesn't the fact  
3 that Dex earns large revenues above accounting costs  
4 mean that these returns are quote, "excess," closed  
5 quote."

6 The answer reads: "No. There is a large  
7 unaccounted for lump of capital, intangible assets in  
8 Dex's Yellow Pages in which USW has invested in the  
9 past that are now earning revenues. These assets,  
10 whether called good will, going-concern value or  
11 whatever, do not appear on Dex's balance sheet. Even  
12 Mr. Brosch recognizes that Dex's Yellow Pages have a  
13 large going-concern value that nowhere appears as an  
14 asset on its books. Thus, Dex's assets are  
15 understated. Under accounting conventions, these net  
16 revenues appear to be excess profits when they are  
17 really a return on past investment, which does not  
18 appear on Dex's balance sheet."

19 You were not aware of this testimony at the  
20 time you reached your opinion in this case?

21 A. No, I wasn't.

22 Q. Regardless of whether you agree or disagree  
23 with Dr. Wender's statements, is this the type of  
24 information that you would find helpful to review prior  
25 to forming an opinion with regard specifically to the



01127

1 value of intangible assets transferred?

2 A. I'm largely indifferent, being this is  
3 consistent with at least what I was trying to say.  
4 Maybe I should clarify if you misunderstood. My  
5 understanding of Dr. Selwyn and Mr. Brosch's testimony  
6 is that they characterize this transaction as temporary  
7 because certain intangible assets were not transferred.  
8 Those intangible assets were things like the trademark,  
9 which was licensed, the subscriber lists, which were  
10 retained. I don't deny that -- and I believe somewhere  
11 in my testimony I talk about the nature of trademarks  
12 and nature of good will and the ongoing concerns of the  
13 business. That's the kind of intangibles that I think  
14 Dr. Wender is talking about, the going-concern values  
15 of the business.

16 That intangible was, in fact, transferred to  
17 U S West Direct. They took that business with its  
18 assets, with its contracts, with its employees, with  
19 its contacts, and they transferred it to U S West  
20 Direct. That's the intangible asset that clearly went  
21 over, and I take it, given the context of this hearing,  
22 that that's the value that the Commission needs to  
23 place a value on as to what it would have been in the  
24 marketplace, but when I say the intangible values were  
25 not terribly significant, what I was talking about were

01128

1 those that were characterized by Dr. Selwyn and  
2 Mr. Brosch as not being transferred. That isn't  
3 significant with respect to whether this was a  
4 permanent transfer of the directory business.

5 Trademarks, PNB would never transfer its  
6 trademark completely and unequivocally to U S West  
7 Direct for the directory business if it intended to  
8 continue as a local exchange carrier. It doesn't make  
9 any sense. The subscriber lists, well, of course the  
10 phone company is going to maintain a subscriber list.  
11 They aren't going to transfer it lock, stock, and  
12 barrel over to the directory company, and that's what I  
13 was trying to communicate.

14 Q. Thank you for that clarification. With that  
15 clarification, you would have no basis to disagree with  
16 Dr. Wender's testimony that I recited, would you?

17 A. I don't see anything here that I would  
18 disagree with.

19 MR. KENNEDY: I would move the admission of  
20 Exhibit 206.

21 MS. ANDERL: No objection.

22 JUDGE WALLIS: Received.

23 Q. (By Mr. Kennedy) Could you take a look,  
24 Professor, at Exhibit 207, please?

25 A. This is the '97 Agreement?

01129

1 Q. Yes. The response to Bench Request 01-003 in  
2 which U S West states that the currently effective  
3 Publishing Agreement is attached as Exhibit A; do you  
4 see that? Just one section and it's at Page 9 of the  
5 Agreement, Section 5.2(a); do you see that?

6 A. Yes, I have that.

7 JUDGE WALLIS: Off the record.

8 (Discussion off the record.)

9 Q. Section 5.2(a), are we there?

10 A. Yes, I am.

11 Q. Which states, "For as long as this Agreement  
12 is in effect, LEC shall not designate any other  
13 directory publisher as an official directory publisher  
14 for the LEC service areas covered by this Agreement.  
15 Where appropriate, LEC will identify U S West Dex as  
16 LEC's official directory publisher in public  
17 announcements, promotional and advertising materials  
18 and LEC sales channel contacts. LEC further agrees  
19 that any referrals it makes in response to inquiries  
20 concerning Yellow Pages advertising will be made to U S  
21 West Dex, including inquiries from new LEC customers  
22 and existing LEC subscribers whose service areas are  
23 covered by this agreement."

24 Would you agree that U S West Dex derives  
25 value from the LEC's obligations as set forth in this

01130

1 Section 5.2(a)?

2 A. I'm willing to assume that, but I think you  
3 have to put that into context. First of all, I looked  
4 at the current directory for Olympia -- I think it's  
5 the one sitting over there -- and I can nowhere in it  
6 find that they promote the directory as official, so in  
7 that sense, they presumably don't think that that  
8 designation is relatively valuable.

9 It may be a reference to the fact that Dex is  
10 fulfilling the phone company's obligation to distribute  
11 the White Pages. What seems to me clear, if my  
12 understanding is correct, is that this is a standard  
13 form agreement that's used with nonaffiliated phone  
14 companies as well as affiliated phone companies, is  
15 that the value, whatever it is, doesn't exceed the  
16 value that U S West Dex is providing the local exchange  
17 carriers by distributing copies of the directory free  
18 to all of its subscribers. You have a market test of  
19 this contract, if my understanding is correct, that's  
20 used with nonaffiliated phone companies. That's a  
21 market test, and if the same terms are here, then  
22 presumably these values offset each other.

23 MR. KENNEDY: That's fine. I'm all through.

24 I have no further questions. Thank you.

25 JUDGE WALLIS: Are there question from the

01131

1 Bench?

2 E X A M I N A T I O N

3 BY CHAIRWOMAN SHOWALTER:

4 Q. I have just a quick follow-up question to  
5 your last answer. You said presumably the values  
6 offset each other. I'm unclear as to which values are  
7 offsetting each other.

8 A. As I understand, this agreement, which is not  
9 dissimilar from the '87 Agreement, this agreement has  
10 benefits flowing back and forth between both parties,  
11 and as far as I know, there is no kind of transfer  
12 payment in addition to whatever benefits are provided  
13 to each other, so presumably, if you have this going on  
14 with a nonaffiliated phone company in the market, it's  
15 apparently decided that, Look, what I give you is  
16 access to the official designation, for whatever that's  
17 worth. I will tell new subscribers to go to you. In  
18 return, you fulfill my obligation to distribute a White  
19 Pages, and it looks like those trade-offs must be a  
20 trade-off.

21 Q. So you're saying if this agreement is similar  
22 to other agreements with nonaffiliated companies, then  
23 it suggests that the full benefits are contained within  
24 the four corners of the documents?

25 A. Exactly, yes.

01132

1

2

E X A M I N A T I O N

3

BY COMMISSIONER HEMSTAD:

4

Q. From your testimony, it's apparently your  
5 view that the 1984 Publishing Agreement constituted the  
6 document that transferred the business. There is  
7 nothing else beyond that?

8

A. Commissioner, I understand that there has  
9 been some testimony that there may have been other  
10 documents that can't be located. I don't claim that  
11 there aren't any other documents. What I'm claiming is  
12 that certainly the 1984 Publishing Agreement reflects  
13 the transaction. It basically is built on that  
14 transaction, whatever the other documents were.

10

11

12

13

14

15

Q. So any third party could look to the  
16 Publishing Agreement as the document that would  
17 establish the rights and duties?

18

A. It seems to me that's true, and by the way it  
19 establishes the rights and duties of the way it  
20 reflects the transfer of assets both tangible and  
21 intangible, I think one can understand that the  
22 directory business was basically transferred to Direct.

23

Q. The term "transfer" is a curious term. I  
24 take it you're using it as identical with the term  
25 "sale."

24

25

01133

1       A.       Well, I think yes in a sense. The problem  
2 is, again, transactions between affiliated companies  
3 don't always take on the kind of formal roles that  
4 transactions with nonaffiliated companies take on, so  
5 was it a sale; was it a transfer; was it for full  
6 consideration? I take it this Commission has decided  
7 it was not, and that's what this hearing is about. But  
8 whether at the end of the day on June 19th, 1984, June  
9 19, if you ask yourself, Where is the directory  
10 business, I think you have to conclude it was with  
11 U S West Direct.

12       Q.       Let's change the circumstances a bit. Let's  
13 get out from under the environment of a related entity,  
14 conceding that's a rather significant factor here, and  
15 let's assume that you're in the position of an attorney  
16 representing the buyer, and what's occurring is a sale  
17 of a business. Would you, in representing your client,  
18 draft a set of documents for the purchase of the  
19 business and describe it as a publishing agreement?

20       A.       I've seen strange contracts entitled in  
21 strange different ways so I'm not prepared --

22       Q.       I'm asking a hypothetical with you as the  
23 attorney.

24       A.       I would not, no.

25       Q.       Wouldn't you describe it as a contract with

01134

1 purchase and sale?

2 A. I might, unless we had already conducted a  
3 transaction. That's plausible in this case since the  
4 Publishing Agreement was signed several months after  
5 it's effective. Warren Buffet bought Nebraska  
6 Furniture Mart, the largest single furniture store in  
7 the country, on a handshake, so you don't need  
8 documents. If companies do that and then you come back  
9 and say, Okay, now that we've transferred it, how are  
10 we going to deal with the publishing, I'd do it as a  
11 publishing agreement.

12 Q. We're not talking about Warren Buffet here.  
13 I'm talking about a very sophisticated company that has  
14 sophisticated assets internal to the company and surely  
15 the opportunity to obtain whatever sophisticated  
16 expertise outside of the company that it needs, like  
17 people like you, to advise them as they go about  
18 entering into transactions of some significance, and I  
19 assume you would agree this was a transaction that's  
20 some considerable significance.

21 A. Yes, sir, and if it were in a marketplace and  
22 if I were the counsel, it would probably be labeled a  
23 purchase and sale, and it would be a sophisticated  
24 agreement.

25 Q. In that environment, not to do so would



01135

1 almost surely, in view of subsequent disagreements as  
2 to what, in fact, had occurred, even subject that  
3 attorney to claims of malpractice, wouldn't it?

4 A. Well, it might, Commissioner, but I will say  
5 that the way that I approached the '84 Publishing  
6 Agreement was to assume that this was a transaction  
7 between arm's-length parties, to ask myself the  
8 question, If this were an arm's-length transaction,  
9 what would those terms look like?

10 I understand that the money terms would have  
11 been different, probably specified. It may have been  
12 entitled "purchase and sale." It probably would have  
13 been a longer document, but in the terms that they  
14 dealt with, the issues that they dealt with, I assess  
15 that in relationship to would that make sense in an  
16 arm's-length transaction for the transfer of the  
17 business, and that's essentially how I looked at the  
18 Agreement.

19 Q. I assume that you're generally familiar or  
20 aware of the environment in 1984 in the context of the  
21 breakup of AT&T.

22 A. Generally, yes.

23 Q. I assume you're aware that the Federal  
24 District Court, Judge Green, after considerable  
25 reflection, made clear that the Yellow Page assets

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1 would be assigned to the regional bell operating  
2 companies and not to AT&T for the purpose of providing  
3 ongoing support for local service. Are you aware of  
4 that?

5 A. Yes, I am aware of that.

6 Q. And this transaction then occurred quite  
7 promptly following that, didn't it?

8 A. It did, yes.

9 Q. I gave you the hypothetical where there would  
10 be an unregulated environment and what an attorney  
11 would do. But, of course, what we had was a regulated  
12 environment, and because of the nature of this  
13 transaction dealing with assets and PNB, it had to be  
14 brought to this Commission for review in some kind of  
15 action. I assume you'd agree that the Commission would  
16 be aware of the context of Judge Green's order and the  
17 ongoing environment within which Yellow Pages were  
18 expected to be continued to provide support for basic  
19 local service. Would you agree with that?

20 A. Yes, I do agree with that.

21 Q. So instead of a two-party transaction, this  
22 is in a certain sense a three-party transaction, maybe  
23 a four-party transaction. U S West Dex now, or its  
24 predecessor, Pacific Northwest Bell, the parent  
25 company, and the Commission, I suppose, are the acting

01137

1 and behind-the-scenes participants in this transaction;  
2 would you agree with that?

3 A. I do, yes.

4 Q. Do you think in that context it would be  
5 important for the Petitioner, then Pacific Northwest  
6 Bell, to make it quite clear to the Commission what was  
7 occurring?

8 A. I think that's true, and I think at least  
9 from my understanding that this was, in fact, presented  
10 to the Commission, at least if my recollection serves  
11 me correctly, that the Publishing Agreement and those  
12 documents were available.

13 Q. Have you examined the subsequent conduct of  
14 the Company on one hand and the Commission in its  
15 fallen orders over the years dealing with this issue?

16 A. Not to any precise degree. I understand that  
17 the Company and the Commission have taken different  
18 views about the nature of the transaction and the role  
19 that it played with respect to the regulatory  
20 environment. I take it that's why we're here is to  
21 assess whether and to what extent the value of that  
22 business was undervalued as of 1984. At least that's  
23 my view of what this issue is.

24 Q. Have you looked at any of the fallen orders  
25 of the Commission dealing with this issue?

01138

1       A.       I may have glanced at them.  You may refresh  
2 my recollection.

3       Q.       I'm looking at the Second Supplemental Order  
4 in Docket U-89-3524-AT, which was decided in 1990, and  
5 at that time was the issue of the merging of the three  
6 separate operating companies of what was U S West; in  
7 other words, Pacific Northwest Bell, Mountain Bell, and  
8 Northwestern Bell into the new subsidiary, U S West  
9 Communications, and that issue came up again after  
10 coming up numerous times was the issue of consideration  
11 and the petition and the like, and there, the  
12 Commission said, and I'm reading from Page 8 of that  
13 order, "Thus the Settlement Agreement will be modified  
14 to require that U S West Communications, Inc.'s  
15 directory advertising revenues associated with  
16 Washington will be imputed into perpetuity in  
17 accordance with Paragraph 18-H of the joint motion for  
18 approval and settlement."  Perpetuity is a fairly long  
19 time, isn't it?

20       A.       Yes, indeed.  Commissioner, I understand that  
21 there have been regulatory events throughout this  
22 process, and I've admitted, if that's the right word in  
23 my testimony, I'm not an expert on telecommunications  
24 regulation.  What I was asked to do and what I believe  
25 I did and formed an opinion that I believe in, is that

01139

1 in 1984 if that publishing agreement represents the  
2 transaction, the directory business ended up with U S  
3 West Direct. Now, it's up to this Commission to decide  
4 what the consequences of that are, and I don't have  
5 anything to offer you on this issue.

6 Q. Speaking generally as an attorney with some  
7 expertise, if there is an ambiguity in the Agreement  
8 between the Parties, I assume you would agree that the  
9 subsequent conduct of the Parties would be evidentiary  
10 and how they acted under the Agreement would be  
11 evidence as to how the Agreement should be interpreted?

12 A. Yes, I would.

13 Q. And this issue that I just described in the  
14 order of the Commission, which was then subsequently  
15 modified at the request of the Company to say not in  
16 perpetuity but until further order of the Commission,  
17 and that wasn't appealed, do you have any opinion as to  
18 whether that would then be considered conduct of the  
19 Company as to how the contract should be interpreted?

20 A. It's an interesting legal matter whether  
21 regulatory positions help you infer an agreement. You  
22 may look at that, but I would look at some other things  
23 too, and that is how the Parties reacted in the  
24 marketplace, and I think it's pretty clear if you think  
25 there is any ambiguity about whether a permanent

01140

1 transfer took place in 1984, the events in the  
2 marketplace since then have made relatively clear that  
3 a permanent transfer had taken place.

4 Q. I don't understand. Would you elaborate on  
5 that?

6 A. If you look at the subsequent sets of  
7 Agreements, the 1984 Agreement, as we know because  
8 we've been focusing on it, had a potential requirement  
9 that the PNB trademark be used on the directory. It  
10 was an exclusive licensing arrangement. I characterize  
11 that as an agreement between the Parties that PNB would  
12 not come in and compete with U S West Direct. That's  
13 confirmed in the subsequent Agreements.

14 In 1987, the trademark license becomes  
15 nonexclusive. The fact that the copyright has gone  
16 over to U S West Direct and that they continue to  
17 copyright, it shows me that they regard and have acted  
18 as though the directory were theirs, and they have done  
19 that since 1984.

20 Q. Backing up a bit, at the time that the  
21 Publishing Agreement transfer occurred, the Company  
22 represented at that time to the Commission that  
23 revenues then for the regulated entity would be  
24 guaranteed. Are you familiar with that language that  
25 was used?

01141

1 A. Yes, I'm familiar with that language.

2 Q. What would be your opinion as an attorney as  
3 to what "guarantee" meant in that context?

4 A. It's not fair for me to respond spontaneously  
5 because I'm aware of what the arguments have been made,  
6 and there is an ambiguity. Is it guarantee for  
7 perpetuity? My instinct would be no company would make  
8 such a guarantee. Was it guarantee for the terms of  
9 the Agreement? I don't know. But I would guess that a  
10 profit-oriented company would not make guarantees that  
11 go on forever. That would be my instinct.

12 Q. Despite the Yellow Page ruling of Judge  
13 Green?

14 A. As I look at it, it's a complicated endeavor.  
15 I assume that there are many assets that ended up in  
16 control of the local exchange carriers under Judge  
17 Green's opinion, and I don't think that either  
18 economics or law suggest that they can never be  
19 transferred or sold. If you get a fair market price  
20 for an asset, you are no better or worse off than you  
21 were before, at least in an economic sense.

22 In a regulatory sense, I don't know that, and  
23 I take it that's what this hearing is about. If you  
24 determine that, in fact, the local exchange carrier has  
25 been fully paid for the value of the business as it was

01142

1 transferred in 1984, then you are at least comforted in  
2 the fact that the ratepayers have not been taken  
3 advantage of, and I take it that's what this issue is  
4 about.

5                   COMMISSIONER HEMSTAD: Thank you. That's all  
6 I have.

7

8

FURTHER EXAMINATION

9

BY CHAIRWOMAN SHOWALTER:

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Q. Just a follow-up that may be going over the  
same ground, but I just have a few questions of my own  
in that last dialogue. You said that the Publishing  
Agreement reflects the transfer of the business but may  
be built on other documents. Would you include in that  
set of documents the Application of the Company to  
transfer? In other words, I believe that the  
Publishing Agreement document is a different document  
than the original requested transfer of assets before  
the Commission. Would you agree that, at least taken  
together, perhaps, with other documents, all of those  
be appropriate to look at as to whether there was a  
transfer, a permanent transfer?

A. I would think contemporaneous representations  
of the party would be relevant, yes.

Q. And Commissioner Hemstad had some



01143

1 hypotheticals in which he removed the element of there  
2 being affiliated transactions, and there was some  
3 dialogue about what nonaffiliated arm's-length  
4 transactions would look like. But if you now inject  
5 back into the equation affiliated interests, but let's  
6 say remove the element of it being regulated, so we're  
7 talking here about affiliated nonregulated entities, in  
8 that instance, wouldn't there be various kinds of  
9 transfers that most people wouldn't characterize as a  
10 sale? Wouldn't the parent company or the affiliated  
11 interests themselves arrange various sorts of transfers  
12 and take care of it through accounting or not  
13 accounting, but no particular need to do a sale  
14 document?

15 A. I think that's true, but that doesn't  
16 eliminate the need, either on the books of the company  
17 for tax purposes or whatever purposes to understand  
18 whether, in fact, I'm just leasing you this for a short  
19 period of time or whether we are, in fact, transferring  
20 this business to a subsidiary or to some other  
21 affiliated company. That's what I looked at, not  
22 whether you characterize it as a sale because it's  
23 between affiliated companies but whether they  
24 effectuated a permanent transfer over to -- permanent  
25 in the sense that it's a complete transfer over to

01144

1 Direct.

2 Q. Isn't there a greater potential, I would  
3 guess, for ambiguity or lack of clarity as to whether a  
4 transfer is or isn't intended to be permanent or is  
5 permanent in transactions between affiliated interests  
6 versus arm's-length transactions?

7 A. Yes, but I think that's absolutely right  
8 because you don't dot all the i's and cross all the  
9 t's. The interesting thing about this agreement is  
10 that you've got external rights that the Parties had to  
11 deal with, and for me, they are stronger signals than  
12 you would get in a normal setting.

13 Q. What are you referring to when you say  
14 "external rights"?

15 A. I'm talking about the copyrights and the  
16 trademarks and the behavior of U S West Direct with  
17 respect to the trademarks. The copyright is an  
18 external event. Somebody has got to hold it, and it's  
19 clear here that they transferred that to U S West  
20 Direct. That's a strong signal that I think helps with  
21 the ambiguity.

22 The trademark and the way in which the  
23 Company is operated, if you look at the series of  
24 covers, while the PNB mark is there for a long period  
25 of time, it's not the prominent mark on the directory.

01145

1 The prominent mark is the stylized White and Yellow  
2 Pages, and they are transitioning that to something U S  
3 West Direct controls, and those are significant. Are  
4 they controlling in all circumstances; no. But they  
5 tell me something about this agreement. That just kind  
6 of standard, Yeah, you can have the truck kind of  
7 agreement between affiliates doesn't tell me.

8 Q. Continuing on this hypothetical affiliated  
9 interests that are not regulated, would there be a  
10 natural tendency of the affiliated interests or the  
11 parent company to arrange the conduct of the affiliates  
12 to mutually benefit one another? In other words, does  
13 it necessarily indicate anything if one affiliate is  
14 permitted to do something with a trademark or otherwise  
15 that a nonaffiliate wouldn't be allowed to do, but  
16 because there is a mutual benefit -- affiliates may  
17 engage in some kind of conduct that way, but what does  
18 it indicate, if anything, about permanent transfers or  
19 not, I guess is my question?

20 A. Well, of course there is nothing permanent in  
21 the world, so the question is whether it's a complete  
22 transfer. With a trademark, you're under some  
23 constraints about fiddling around with it.

24 I have participated in advising at least one  
25 major Fortune 500 company about transferring a

01146

1 trademark to a subsidiary, and you have to be very  
2 careful there. You can't be informal because you have  
3 the opportunity of losing the trademark because it  
4 signifies a source from which goods and services come,  
5 and if you use it willy-nilly and don't make it clear,  
6 the possibility is abandonment, so to that extent,  
7 there is some need for formality even between  
8 affiliated companies.

9 Q. Take maybe the reverse. Supposing I own the  
10 trademark and I know I own the trademark, and you go  
11 off and use the trademark in some particular way that I  
12 don't mind -- in other words, either it's not harming  
13 or maybe I even think it's even benefitting me -- is  
14 there any requirement either in a legal or accounting  
15 sense that I take some kind of action or you take some  
16 kind of action?

17 A. Yes, actually, yes.

18 Q. What is that?

19 A. If you have a trademark, it represents goods  
20 and services coming from you, and consumers rely on  
21 that to identify goods and services coming from you.  
22 If you let someone else go use it without control of  
23 both the quality and nature of the use of the mark,  
24 quality and nature of the goods and services sold  
25 thereunder, even though you think they are making

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1 wonderful goods and even though you think it may  
2 benefit your good will somehow, you're going to lose  
3 the trademark because you're, in effect, confusing the  
4 consumers. They go to the market and they see that  
5 mark and they think you're doing it and, in fact,  
6 you're not.

7 Q. So now supposing you and I are owned by the  
8 same parent. Does that affect either the trademark or  
9 the kinds of cautions that affiliates would take with  
10 respect to one another?

11 A. The issue is still there. It's finessed,  
12 particularly in a setting like this now where you have  
13 all of them under the U S West mark; but even there,  
14 it's possible to at least undermine the legal validity  
15 of the trademark by not maintaining control over who  
16 uses it and thereby deceiving consumers into thinking  
17 they are getting goods from one source when they are  
18 getting it from another.

19 There are a number of instances in which the  
20 courts have looked at licensing agreements between  
21 parents and subsidiaries in which you would think, if  
22 they want to do it, they can do it, but the courts have  
23 said, even in those circumstances, you have to have the  
24 evidence of control over the nature and quality of the  
25 goods and control over the nature and quality of the

01148

1 use of the mark.

2 Q. I think in my last question I injected back  
3 in the element of being a regulated company, so let's  
4 assume now we're back in the regulated arena. As  
5 Commissioner Hemstad pointed out, there is no transfer  
6 of an asset of an affiliated interest without approval  
7 of the Commission, so the Commission is part of that  
8 equation as to whether there is or isn't a transfer.

9 Do I take your testimony to be oriented  
10 toward the other parties in the transaction; that is, U  
11 S West, U S West Dex and perhaps the parent company as  
12 to whether there was among those parties the intention  
13 or the actions required to effect a transfer, but that  
14 your testimony doesn't reach, does it, whether the  
15 transfer in the end was approved if that requires  
16 analysis and assurance that the Commission in fact  
17 approved it?

18 A. Certainly my testimony was, again, not  
19 regulatory. It was designed to look at that agreement  
20 as between PNB and USWD and ask myself the question,  
21 Does that transaction reflect a transfer of the  
22 business over? I understand enough of the history of  
23 this event to know that the Commission approved it at  
24 least as a document and ultimately didn't approve it as  
25 a full transfer for rate setting purposes, but the fact

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1 is that the directory business is over still in U S  
2 West Direct.

3 As I said, I have nothing to offer you about  
4 how the regulatory environment works with respect to  
5 these transactions other than to say that it's clear to  
6 me that that agreement effectuated a transfer of the  
7 directory business to U S West Direct as a legal  
8 matter.

9 Q. If you haven't quite joined up the action of  
10 the Commission into that equation, aren't there two  
11 possibilities? Number one possibility, the business  
12 was transferred in 1984, and what we're here to do is  
13 determine whether full value was given for that  
14 transfer in '84, and the other scenario is the business  
15 was never fully transferred because the Commission  
16 never did its part, and we are now examining what to do  
17 in 1999 about it, which there might be various  
18 alternatives to us. Isn't your testimony consistent  
19 with either of those scenarios because your testimony  
20 doesn't get to the Commission action?

21 A. I'm not sure. If the issue is, was there a  
22 transfer and when there was a transfer, the only time I  
23 see it when there could have been a transfer was 1984.  
24 Nothing has happened subsequent to that. My reading of  
25 the Washington Supreme Court decision tells me that

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1 they regarded the transfer having been made. I  
2 understand the regulatory history. I understand the  
3 ambiguities and debates back and forth, but looking at  
4 this record, it just looks to me like your  
5 Alternative 1 is where you are in terms of a legal  
6 reason, but you're quite right. If there is some  
7 regulatory device that can forestall that from being a  
8 transfer, even though in law and practice it was, then  
9 so be it.

10 Q. I guess another nuance would be yes, there  
11 was a legal transfer in 1984, but for regulatory  
12 purposes in a parallel regulatory universe, there was  
13 not a transfer, or that we are deciding in the parallel  
14 universe in '84 was there a regulatory transfer versus  
15 was there not, and are we here in '99 without having  
16 fully effectuated the regulatory transfer, but I take  
17 it again your testimony goes more to the legal  
18 ownership side of the universe --

19 A. Yes, that's correct.

20 Q. -- and not to the regulatory one, let alone  
21 the third universe we've had in this case which is the  
22 economist's universe, which is not always necessarily  
23 looking at either the regulatory or the legal elements,  
24 such as the term "rent."

25 A. I guess I would say that I think there are



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1 really only two universes, not three. As I understand  
2 the economist's testimony, the question is a  
3 transaction in 1984 between affiliated companies has to  
4 be -- it is not a transfer for regulatory purposes  
5 because the full price wasn't paid under any of the  
6 alternatives. That's where we are.

7           So you're now trying to determine, or at  
8 least under Alternative 1, trying to determine what the  
9 arm's-length value of that transaction would have been  
10 in 1984. I think that collapses all of this lease and  
11 rent and beneficial owner, all that kind of stuff. All  
12 you're trying to do is value it. Whatever right the  
13 ratepayers had continued in the directory business is  
14 what you're trying to put a value on as of 1984, in my  
15 view. In this other world of a regulatory environment  
16 in which legal transactions aren't legal transactions,  
17 then you've got another universe to deal with.

18           CHAIRWOMAN SHOWALTER: Perhaps we need some  
19 religious instruction. Thank you.

20

21                                   FURTHER EXAMINATION

22 BY COMMISSIONER HEMSTAD:

23           Q. I have one follow-up on this excellent  
24 discussion. I take it it would be your view that if  
25 shortly after the Publishing Agreement was executed and

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1 filed here, the parent company, U S West, Inc., could  
2 have turned around and sold U S West Dex to a complete  
3 entirely third party without any further operation or  
4 review by this Commission?

5 A. Yes, I think that's true.

6 COMMISSIONER HEMSTAD: Thank you.

7 MS. ANDERL: May I ask if we could have our  
8 morning recess prior to redirect?

9 JUDGE WALLIS: In advance of that recess,  
10 will you be able to estimate the time on redirect?

11 MS. ANDERL: Shorter if we get the recess.  
12 Probably not more than 10 minutes, in any event.

13 JUDGE WALLIS: What I would like to do is  
14 take a little bit more extended recess. We've  
15 indicated earlier that we want the Parties to discuss  
16 some of the hanging issues, and if we take maybe a  
17 25-minute recess now, all other things being equal, we  
18 may be able to make some progress on those issues,  
19 would likely be able to finish Professor Perlman by  
20 noon and then be able to take up Ms. Strain immediately  
21 after lunch. Would that work for everyone? It appears  
22 so, so let's do that. We'll check back with you about  
23 20 minutes after and then do request that the Parties  
24 consult on the pending issues and attempt to achieve  
25 closure.

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1 (Recess.)

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

3 CHAIRWOMAN SHOWALTER: Thank you. It's not  
4 an additional question, but my attention was diverted  
5 during one of your answers to Commissioner Hemstad in  
6 which I think you said there is a market test out  
7 there. Do you know what that referred to? I remember  
8 thinking I wasn't following what you were saying.

9 THE WITNESS: I honestly don't remember.

10 CHAIRWOMAN SHOWALTER: I can probably read  
11 the testimony then. Thanks.

12 JUDGE WALLIS: Redirect?  
13

14 REDIRECT EXAMINATION

15 BY MS. ANDERL:

16 Q. Good morning, Professor Perlman. You were  
17 asked some questions by counsel for Commission staff as  
18 to whether or not you had conducted independent  
19 research into consumer preferences regarding directory  
20 usage or advertiser's preferences regarding directory  
21 usage. Do you recall those questions?

22 A. Yes.

23 Q. And you were also asked questions by  
24 Mr. Trautman as to whether you had ever surveyed  
25 directory advertisers or directory users regarding the

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1 frequency with which they make decisions concerning  
2 directory usage. Do you remember those questions?

3 A. Yes, I do.

4 Q. Do you feel that it was necessary for you to  
5 have conducted that type of research or made those  
6 types of surveys in order to present the testimony that  
7 you are giving here today?

8 A. No, I don't. As I said, I've spent 30 some  
9 years studying trademarks and consumer behavior, and I  
10 think I understand how markets work, and I do know how  
11 legal transactions relating to some of these  
12 intellectual property rights are written, so I felt  
13 comfortable describing this document and understanding  
14 the nature of the transaction that it reflects.

15 Q. You had a discussion with Chairwoman  
16 Showalter about the legal universe and the regulatory  
17 universe. From your review of the documents, do you  
18 have any indication in this case which would tell you  
19 which universe you believe that we're in?

20 A. As I may have suggested, it seems to me that  
21 the Supreme Court of Washington's decision puts us  
22 squarely in the first universe, which was the question  
23 of trying to value the transaction if it would have  
24 taken place at an arm's-length basis.

25 Q. As of what date?

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1 A. 1984.

2 MS. ANDERL: That's all the redirect that I  
3 have.

4 JUDGE WALLIS: Are there any follow-up  
5 questions?

6 MR. ROSEMAN: I have one.

7

8 FURTHER CROSS-EXAMINATION

9 BY MR. ROSEMAN:

10 Q. Can you tell me in the Supreme Court decision  
11 where the 1984 date is mentioned, where the Court  
12 instructed you that the transfer was as of 1984?

13 A. I looked at that because I knew that was a  
14 question. I don't see any specific reference to 1984,  
15 but the Court talks about a transaction that took place  
16 prior to its opinion, and there is no other time when  
17 it could have taken place.

18 MR. ROSEMAN: Thank you.

19 JUDGE WALLIS: Anything further? It appears  
20 not. Professor Perlman, you're excused from the stand.  
21 Thank you for joining us, and if you had anything to do  
22 with bringing this good weather, we certainly  
23 appreciate it. Let's be off the record for just a  
24 moment.

25 (Discussion off the record.)

01156

1 JUDGE WALLIS: We will be in recess until  
2 1:10 for counsel and then 1:30 for the examination of  
3 witness. Thank you very much.

4

5 (Lunch recess at 11:30 a.m.)

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AFTERNOON SESSION

3

1:30 p.m.

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5

JUDGE WALLIS: Commission staff at this time  
is calling its witness Paula Strain to the stand.

6

(Witness sworn.)

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DIRECT EXAMINATION

BY MR. TRAUTMAN:

Q. Good afternoon, Ms. Strain. Could you please  
give your name and business address for the record?

A. My name is Paula M. Strain. My business  
address is 1300 South Evergreen Park Drive Southwest,  
Olympia, Washington, 98504.

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1 Q. Do you have with you what's been marked as  
2 Exhibit 701-T and 701-TC?

3 A. Yes.

4 Q. And do you also have with you what was  
5 previously marked as Exhibit 906 but it is your  
6 affidavit of Paula M. Strain of February 18th, 1999?

7 A. Yes, I have that.

8 Q. And this is the affidavit that is referred to  
9 on Page 3 of Exhibit 701-T, your testimony?

10 A. Yes, it is.

11 Q. Was this prepared by you or under your  
12 supervision?

13 A. Yes, it was.

14 Q. Are the exhibits referred to true and  
15 accurate?

16 A. Yes.

17 Q. If I were to ask you the questions in Exhibit  
18 701-T, would your answers be as stated in your  
19 testimony?

20 A. Yes.

21 MR. TRAUTMAN: I'd move for the admission of  
22 701-T and TC, and my understanding is that the  
23 affidavit, which has already been submitted in  
24 conjunction with Staff's First Amendment argument, will  
25 not be marked as a separate exhibit; is that correct?



01159

1 JUDGE WALLIS: That's correct.

2 MS. ANDERL: U S West has no objections to  
3 the admission of those exhibits or the consideration of  
4 the affidavit.

5 JUDGE WALLIS: The exhibits are received.

6 MR. TRAUTMAN: Ms. Strain is available for  
7 cross.

8

9

CROSS-EXAMINATION

10 BY MS. ANDERL:

11 Q. Good afternoon, Ms. Strain.

12 A. Good afternoon.

13 Q. By whom were you employed in 1983 and 1984?

14 A. 1983 and '84?

15 Q. Yes. Was that the Alaska --

16 A. The Alaska Public Utilities Commission.

17 Q. So you were not working for the Washington  
18 Commission during 1983 or 1984?

19 A. No.

20 Q. Were you involved in Cause No. U-83-159 as a  
21 witness or consultant?

22 A. No.

23 Q. In any other way?

24 A. No.

25 Q. What about Cause No. U-86-156, were you

01160

1 involved in that docket in any way?

2 A. Not at the time it was being litigated, no.

3 Q. Ms. Strain, would you agree with me that if  
4 Pacific Northwest Bell had sold the directory  
5 publishing business in 1984 to a nonaffiliated third  
6 party, it could have done so under an installment sales  
7 contract?

8 A. Probably.

9 Q. You're not aware of any reasons why it could  
10 not have done that; is that correct?

11 A. No.

12 Q. If that, in fact, had happened, could you  
13 describe how the installment sale payments from the  
14 third party buyer to PNB would be reflected on PNB's  
15 books?

16 A. I can't right off the top of my head. I  
17 would have to go back to Part 31, which I think was the  
18 accounting system in use at that time, and look at how  
19 they said installment sales should be recorded.

20 Q. So there would have been a standard  
21 accounting requirement as to how installment sale  
22 payments would be recorded?

23 A. On the books, yes.

24 Q. How would the installment sale payments from  
25 the third party buyer to PNB have been reflected in

01161

1 PNB's rates?

2 A. Without having been involved in a sale such  
3 as that, what I would surmise is that the gain on sale  
4 would be recognized in the rates in some fashion,  
5 whether it was amortized over a period of time or as a  
6 rate base reduction. It would be up to the Commission  
7 to decide. The timing of the installment payments  
8 might or might not determine when the sale was  
9 recognized for ratemaking.

10 Q. In either event, if there was a gain on sale  
11 and it was recognized for ratemaking, would the effect  
12 have been lower rates than otherwise ratepayers would  
13 have seen?

14 A. If they were flowed-through rates, yes, it  
15 would.

16 Q. On Page 4 of your Exhibit 701 --

17 A. And just a clarification -- excuse me, Ms.  
18 Anderl -- but also if it were done in terms of a rate  
19 case, then it would flow through rates. If there were  
20 no rate case, then it would not.

21 Q. Right. The assumption which I think you  
22 shared with me was that there would have been some  
23 activity that would have enabled it to be reflected in  
24 rates.

25 A. Yes. I just wanted to clarify that for the

01162

1 record.

2 Q. Page 4 of your Exhibit 701-T on Lines 7 and 8  
3 there, is it your testimony in that part of your answer  
4 to suggest that the Commission in imputing revenue to  
5 PNB or U S West Communications actually regulates the  
6 profits of U S West, Inc?

7 A. No, that's not my testimony.

8 Q. Does your testimony there say that the  
9 imputation adjustment prevents U S West, Inc. from  
10 recovering profits at a level in excess of the rate of  
11 return authorized for regulated operations?

12 A. On Dex operations, yes. That's what's meant  
13 by that sentence. It only pertains to Dex operations.

14 Q. So then your testimony is that the Commission  
15 is regulating Dex as profits?

16 A. No, that's not my testimony. My testimony is  
17 that the Commission is making an adjustment to restate.  
18 It's basically what I'm saying in this answer from  
19 Lines 1 to 9.

20 Q. I'm just interested in exploring with you  
21 what you meant in that last sentence of the answer, and  
22 what that sentence says to me is that the Commission's,  
23 actions in imputation actually prevent U S West, Inc.,  
24 the parent company, from recovery of profits at a level  
25 in excess of the rate of return authorized for

01163

1 regulated operations.

2 A. And that applies on profits of U S West C and  
3 U S West Dex, because the Commission for ratemaking is  
4 recognizing U S West Dex profits in a ratemaking  
5 adjustment, which is what the imputation does. The  
6 result of that adjustment is that profits at the  
7 authorized rate of return for U S West C were  
8 recognized, and the excess profits were basically  
9 adjusted into the revenue requirement of U S West C for  
10 ratemaking.

11 Q. So for ratemaking purposes, the profits of  
12 Dex are regulated?

13 A. The excess profits from Dex operations for  
14 ratemaking purposes were imputed into the revenue  
15 requirement of U S West C. The Commission has said it  
16 does not regulate Dex profits. It does not regulate  
17 what it makes.

18 Q. So any suggestion in this sentence that  
19 imputation somehow functions to regulate or affect the  
20 profits of Inc. or Dex would not be what you'd intended  
21 to say there?

22 A. No, that's not what I intended to say.

23 Q. Why did you reference U S West, Inc. there?

24 A. It's the parent company of U S West C and U S  
25 West Dex.

01164

1 Q. What relevancy does that have to your answer  
2 with regard to the imputation of profits from Dex to C?

3 A. I'm not sure I know where you're going with  
4 that. All I was trying to say there was that what it  
5 basically does is that when you look at the overall  
6 picture, U S West C and U S West Dex, you're not  
7 looking at income from U S West C and income from  
8 U S West Dex that's basically in the amount of the  
9 excess what's considered the excess profits from the  
10 directory operations.

11 Q. I'm sorry, I didn't understand that answer.  
12 Could you repeat that?

13 A. It's just saying that if you look at the  
14 entity of the combined, you're recognizing those  
15 profits once, not twice.

16 Q. What do you mean by "not twice"?

17 A. Not through the rates that U S West C might  
18 end up charging ratepayers if the imputation adjustment  
19 is not made.

20 Q. All other things being equal, if the  
21 imputation adjustment were not made and U S West  
22 Communications were allowed to separate, to recover  
23 revenue requirement without imputation, would Inc.'s  
24 profits be greater?

25 A. I'm sorry. So you're saying if an imputation

01165

1 adjustment were not made of the consolidated profits  
2 would be higher, all other things being equal?

3 Q. You state that imputation adjustments can be  
4 viewed as an alternative to payment, and that's on Line  
5 12 of this same page of your testimony.

6 A. Yes.

7 Q. An alternative to payment for what?

8 A. Well, payment means -- I was using that  
9 word -- it goes along with the previous sentence, which  
10 says, Imputation does not involve the payment of cash  
11 funds, other assets or liabilities.

12 Q. My question is, when you say imputation can  
13 be viewed as an alternative to payment, my question is,  
14 payment for what?

15 A. Payment of any cash for whatever you're  
16 imputing, so whatever the excess profits would be,  
17 there is no payment made. An imputation adjustment is  
18 made for ratemaking only.

19 Q. So payment that Dex would have otherwise made  
20 to PNB or Communications?

21 A. And I think the following sentence also,  
22 because it says, The imputation of excess directory  
23 revenues is necessary because full payment for the  
24 directory operations has never been made.

25 Q. And I'm going to ask you about that sentence

01166

1 in just a minute, so my question is, payment for what,  
2 for the directory operations?

3 A. No. It was alternative to payment of cash.

4 Q. For what?

5 A. For whatever you're imputing for, whatever  
6 that might be.

7 Q. I'm asking you.

8 A. In this case, the imputation was made to  
9 restate operations as if the directory operations were  
10 still being performed in the regulated entity, and my  
11 answer is that if it was done through an imputation  
12 adjustment, there was no payment of any money from Dex  
13 to U S West C or vice versa for that.

14 Q. When you say "alternative to payment," then  
15 let me continue to explore that with you. Payment by  
16 whom?

17 A. Payment by the two parties that are affected  
18 by whatever you're imputing; in this case, U S West Dex  
19 and U S West C.

20 Q. But by whom?

21 A. In this case, it would be U S West Dex to U S  
22 West C.

23 Q. So when you say an alternative to payment by  
24 Dex to PNB or C, do you mean then an alternative to  
25 payment that would then appear on PNB's books and



01167

1 accounts so that it could be used in subsequent years  
2 to set rates?

3 A. You're saying a theoretical payment would be  
4 included on the books?

5 Q. I'm asking you. You said an alternative to  
6 payment, and I'm saying do you mean to payment that  
7 would appear on PNB's books and accounts so that it  
8 could be used in subsequent years to set rates?

9 A. It could be imputation is also used in cases  
10 where there isn't an asset transfer or payment.

11 Q. Going on to the next sentence in your  
12 testimony that you referenced a moment ago, you state  
13 that imputation of excess directory revenues is  
14 necessary because full payment for the directory  
15 operations has never been made. Is it your testimony  
16 that full payment was not made in 1984 at the time of  
17 the asset transfer?

18 A. It's my testimony that full payment has never  
19 been made. The compensation, the publishing fees,  
20 anything that has been paid has not been adequate, and  
21 imputation is necessary because there have not been  
22 adequate compensation, either of a fixed asset value or  
23 of yearly operations and the cost of those.

24 Q. When you state that "full payment has never  
25 been made," does that mean that no payment at all has

01168

1 been made?

2 A. No, that's not my testimony.

3 Q. So you would agree that partial payment has  
4 been made?

5 A. I think some of the publishing fees probably  
6 paid for some of the ongoing operations during years  
7 that they were paid.

8 Q. Have you done any sort of more detailed  
9 analysis to enable you to quantify that?

10 A. No, and I don't think any parties provided  
11 evidence that they were able to do it either. There  
12 has been no evidence of being able to take any of those  
13 publishing fees and split out what they were for.

14 Q. Is it your contention in this docket or your  
15 testimony in this docket that the physical assets were  
16 not fully paid for, the physical assets that were  
17 transferred, which were the subject of the 1983  
18 Application?

19 A. I'm familiar with the journal entries which  
20 transferred the physical assets, transferred cash, and  
21 then there was another journal entry which created the  
22 dividend that went to U S West, Inc. from Landmark.

23 Q. So with your familiarity with those journal  
24 entries, can you answer the question?

25 A. What was appeared to be paid for was the book

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1 value, and I don't know if that included full value or  
2 not because I don't think those assets were appraised  
3 when they were transferred.

4 Q. Do you contend that it was not full value for  
5 the physical assets?

6 A. I'm not contending anything. I'm contending  
7 that if there were, if it wasn't full value, there is  
8 no way to really know. I'm assuming the book value,  
9 they were transferred at the book value, whether that  
10 was the full value.

11 Q. Is there a difference between book value and  
12 the full value of cash?

13 A. No. I'm talking about the fixed assets.  
14 They could be at a different value. I'm assuming they  
15 weren't though.

16 Q. So for purposes of your testimony in this  
17 docket, the assumption is that the physical assets were  
18 transferred at full value?

19 A. I'm assuming that just because I don't know  
20 whether they were or not. If you're distinguishing  
21 between the tangibles and the intangibles, all I can  
22 say is that in other transfers where assets have been  
23 transferred several times, the excess of a purchase  
24 price of the transferred assets is allocated to all the  
25 assets that are transferred, and that wasn't done here,

01170

1 but that would certainly be something that could have  
2 been done.

3 Q. You state that imputation is necessary  
4 because full payment has never been made. Is it your  
5 testimony then that imputation is causally related to  
6 the fact that full payment has not been made?

7 A. Imputation typically is used in situations  
8 where payments are inadequate.

9 Q. Would imputation have been necessary for any  
10 other reason than the fact that full payment had not  
11 been made?

12 A. I think my previous answer speaks for itself.  
13 If you're saying full payment is different than  
14 inadequate payment, adequate payment you could  
15 characterize it as being full payment, I guess.

16 Q. So let me see if I understand your testimony.  
17 If payment had been either full or adequate, using  
18 those terms synonymously, then imputation would not  
19 have been necessary?

20 A. Yes, that's my testimony.

21 Q. So to paraphrase again, maybe, to just make  
22 sure I understand your testimony, would you agree that  
23 imputation was imposed by the Commission to remedy the  
24 absence of a full payment?

25 A. Not being a lawyer, I can't speak for them,

01171

1 but my understanding is that imputation was a remedy  
2 for inadequate payment under affiliate contract.

3 Q. So it would remedy the absence of adequate  
4 payment?

5 A. Yes.

6 Q. On Page 5 of your testimony, Exhibit 701-T,  
7 Line 1 there, you reference a sale of assets. You  
8 stated that the Court and the Commission have not  
9 equated imputation payment for the sale of assets. Do  
10 you see that testimony?

11 A. Yes.

12 Q. And then later in your testimony on Page 8,  
13 the question at Lines 16 through 18, you also reference  
14 a sale transaction; is that correct?

15 A. I reference sale of payment agreements.

16 Q. You state that U S West has not filed any  
17 sale or payment agreements in which the transfer of the  
18 directory business is treated as a sale.

19 A. Right.

20 Q. Is it your testimony that a sale was required  
21 to effect the transfer of the Yellow Pages publishing  
22 business from PNB to U S West Direct?

23 A. My testimony is that -- and this is using my  
24 interpretation of "sale," which to me is a transfer for  
25 value -- that there should have been a transfer for

01172

1 value.

2 Q. For full value?

3 A. For the value of whatever was being  
4 transferred.

5 Q. Is it your testimony though that a sale was  
6 required to effect the transfer of the Yellow Pages  
7 publishing business from PNB to U S West Direct?

8 A. You'd need to tell me what you mean by  
9 "sale."

10 Q. However you're using the word "sale" on  
11 Page 5 and Page 8 of your testimony.

12 A. Using "sale" as a synonym for transfer for  
13 value, I would say that there should have been a  
14 transfer for value.

15 Q. What was transferred --

16 A. Good question.

17 Q. -- without value?

18 A. That's an issue that I'm really not able to  
19 pin down with specificity, nor has any other witness  
20 here, that I know of.

21 Q. Is it your testimony that U S West  
22 transferred anything without obtaining necessary  
23 regulatory approvals for the transfer?

24 A. I'm not testifying as to that issue. I don't  
25 see anyplace in my testimony where I say anything about

01173

1 what they were required to do.

2 Q. So it's not your position that U S West  
3 failed to obtain any necessary regulatory approvals for  
4 the transfer that took place in 1984?

5 A. I can't even really testify on what was  
6 transferred in 1984, and I can't testify on whether  
7 they got necessary approvals or not. I know what the  
8 Application was, and I know what the assets were that  
9 were in the journal entry and that there was  
10 conditional approval on transfer of those assets but  
11 not the price, and I don't know if they transferred  
12 other assets.

13 We've had testimony all over the board here  
14 about what was transferred and what wasn't transferred,  
15 and I can't speak to whether the appropriate approvals  
16 were required when I'm really unsure about what U S  
17 West actually did transfer.

18 Q. Assuming U S West transferred the entire  
19 directory publishing business, are there any regulatory  
20 approvals that you contend would have been necessary to  
21 obtain at that time that U S West failed to get or PNB  
22 failed to get?

23 A. I can't really answer that definitively, and  
24 the reason I'm saying that is because I would have to  
25 go back to what our rules were then and review those

01174

1 rules and get advice from my attorney on whether what  
2 was being transferred was subject to the proper  
3 approvals and that proper approval has been applied for  
4 the assets.

5 Q. Do you understand that it has always been U S  
6 West's position in this docket that it transferred the  
7 entire directory publishing business as of 1/1/84?

8 A. No. Because some of the witnesses have said  
9 that agreements, that things happened at different  
10 times and that the transfer, some people say it  
11 happened in 1984, and then another U S West witness  
12 said he wasn't sure when it had happened but there was  
13 no documents pertaining to it. I'm not sure what the  
14 Company's position actually is at this point.

15 Q. Can you point to any place in U S West's  
16 testimony where a witness has taken a position on  
17 behalf of U S West that the transfer occurred at any  
18 time other than in 1984?

19 A. In the transcript, Mr. Johnson's line of  
20 testimony in which he said the transfer happened  
21 sometime sooner than the Publishing Agreement.

22 Q. And the Publishing Agreement was dated when?

23 A. After January of 1984.

24 Q. So my question to you is, can you point to  
25 anyplace in any testimony by any U S West witness or



01175

1 witness took a position that the transfer occurred at  
2 any other time than 1984?

3 A. No, I can't, subject to check.

4 Q. Did you understand when U S West filed its  
5 petition in this matter that it was U S West's position  
6 in that petition that the transfer of the publishing  
7 business took place on 1/1/84?

8 A. I just want to look at the Petition real  
9 quickly here. Yes, that's my understanding from  
10 reading the Petition.

11 Q. So after having that understanding, based on  
12 the Petition that was filed in July last year and upon  
13 which testimony was filed in October, did you undertake  
14 any investigation in order to make a determination as  
15 to whether or not U S West had failed to obtain any  
16 necessary approvals for the 1/1/84 transfer of the  
17 directory publishing business?

18 A. No, I didn't. It wasn't within the scope of  
19 my testimony, unless you can point me to somewhere in  
20 my testimony where I talk about that.

21 Q. Was that something that Dr. Selwyn would have  
22 testified about?

23 A. I think Dr. Selwyn testified what he  
24 testified, both on the stand and in his written  
25 testimony.

01176

1 Q. Ms. Strain, was it your prior testimony that  
2 there are regulatory requirements that a true sale take  
3 place to effect the transfer of the Yellow Pages  
4 publishing business from PNB to U S West Direct?

5 A. Could you refer me to someplace in testimony?

6 Q. In your earlier answers to my questions five  
7 or 10 minutes ago.

8 A. So the answers I was giving you?

9 Q. Yes.

10 A. What is it you're asking me? If you could  
11 just repeat it.

12 MS. ANDERL: Could you read it back?

13 (Question on Page 1175, Line 25, and Page  
14 1176, Lines 1 through 3 read by the reporter.)

15 THE WITNESS: I don't think I said anything  
16 about a true sale. I think what I said was, in using  
17 the definition of sale I used that probably there  
18 should have been more disclosed or more in the sale  
19 than there was.

20 Q. And so my question to you, is there a  
21 specific regulatory requirement that you have in mind  
22 that would have required a sale transaction?

23 MR. TRAUTMAN: Objection, asked and answered.

24 MS. ANDERL: I don't believe that it has  
25 been.

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1 MR. TRAUTMAN: It was asked about five  
2 minutes ago, I believe.

3 JUDGE WALLIS: The witness may respond.

4 THE WITNESS: No.

5 Q. (By Ms. Anderl) No, it's not your testimony  
6 that there were any regulatory requirements?

7 A. That's correct.

8 Q. What exactly is it that you think U S West  
9 should have provided in terms of additional information  
10 in its application?

11 A. Additional information in what?

12 Q. Its application. Didn't your response a  
13 moment ago indicate that you felt additional  
14 information should have been provided?

15 A. As a regulator with a few years of  
16 experience, if I were looking at an application where  
17 an entire business were being transferred or sold, I  
18 would expect to see evaluation and I would expect to  
19 see the entire transaction, not just the pieces of it  
20 that addressed tangible assets and cash.

21 Q. What would be the basis for your expectation?  
22 Were there any Commission rules or laws that would have  
23 required that?

24 A. I am not sure what Commission rules or laws  
25 would be applicable. I'm speaking as an analyst that

01178

1 looks at transactions like this routinely.

2 Q. Would you have asked for more detail if you  
3 felt you did not have enough information presented to  
4 you?

5 A. If I were looking at this, yes, I would. I  
6 think what the Commission -- I can't speak for the  
7 Commission, but my reading of the documents is that  
8 they approved the actual transfer of operations of  
9 Directory, but withheld approval of any monetary  
10 considerations at the time.

11 Q. Is it Staff's position in this case that PNB  
12 either failed to fully disclose or misrepresented any  
13 material aspects of the asset transfer and Publishing  
14 Agreement?

15 A. I think it's Staff's position that we don't  
16 exactly know what was transferred and that there is  
17 disagreement between us and U S West on what was  
18 transferred and whether it was permanently transferred,  
19 and our position is that if everything that U S West  
20 says was transferred was, in fact, transferred that  
21 there would have been more documentation and a discreet  
22 sale price that would have been in excess of what the  
23 journal entry was that was reported.

24 Q. I'm sorry. Are you saying that a discreet  
25 sale price was required?

01179

1 A. I'm not saying that it was required. I'm  
2 just saying that it's likely if the transaction had  
3 been as U S West characterizes it that there would have  
4 been a lot more documentation of what the value of the  
5 assets was at the time.

6 Q. Why?

7 A. Because normally when you're transferring  
8 something you find out what it's worth.

9 Q. Between affiliates, always?

10 A. Sometimes between affiliates.

11 Q. Always?

12 A. Not always, but usually when the affiliates  
13 are regulated.

14 Q. And I ask you again, was there any legal or  
15 regulatory requirement of which you were aware to have  
16 established --

17 MR. TRAUTMAN: Objection, asked and answered.

18 Q. -- a sales price at the time of the transfer  
19 and reported that to the Commission?

20 MS. ANDERL: That precise question had not  
21 been asked and answered. Mr. Trautman did not allow me  
22 to finish.

23 MR. TRAUTMAN: Same objection.

24 JUDGE WALLIS: The witness may respond.

25 THE WITNESS: Not that I know of.

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1 CHAIRWOMAN SHOWALTER: I didn't hear what the  
2 question was because of the double speaking.

3 MS. ANDERL: If I may ask the reporter to  
4 read it back. I was paraphrasing off of something I  
5 had written.

6 (Question on Page 1179, Lines 13 through 15,  
7 17 and 18 read by the reporter.)

8 JUDGE WALLIS: Let me ask both counsel and  
9 the witness that we only have one person talking at a  
10 single time. It's a great help to the reporter.

11 Q. (By Ms. Anderl) I asked you a question a  
12 moment ago and you gave me an explanation, but it was a  
13 yes or no question, and if I could maybe try to get you  
14 closer to a yes or no, I'd appreciate it very much, and  
15 the question was, is it Staff's position in this case  
16 that PNB either failed to fully disclose or  
17 misrepresented any material aspects of the asset  
18 transfer and Publishing Agreement?

19 A. It's not a question I can answer yes or no.  
20 If you make an assumption that the entire business was  
21 transferred, then the answer is yes, and if you make an  
22 assumption that only the tangible assets were  
23 transferred, then the answer is no.

24 Q. If your answer is yes, is it Staff's position  
25 that PNB failed to fully disclose material aspects of

01181

1 the transfer or that it misrepresented material aspects  
2 of the transfer?

3 A. That would require me to attribute meaning to  
4 two actions that the Company would have taken, and I  
5 don't know whether it would have been one or the other.

6 Q. You have stated that under U S West's theory  
7 of the case, which is that the entire business was  
8 transferred on 1/1/84, it is your belief that your  
9 answer to my question would have to be yes, so I'm  
10 trying to explore with you, yes what? Yes, did U S  
11 West or PNB fail to fully disclose, or do you believe  
12 they misrepresented, and then if you can pin that down,  
13 obviously, I'm going to have to explore each of those a  
14 little bit more with you. I will need details from you  
15 if you want to answer this question yes.

16 MR. TRAUTMAN: I will object to the extent it  
17 calls for a legal conclusion. It appears that's the  
18 direction we're heading.

19 JUDGE WALLIS: I also seem to recall the  
20 witness saying that she was not here to offer an  
21 opinion on the regulatory requirements. Do I recall  
22 that correctly?

23 THE WITNESS: Yes, in terms of -- maybe we  
24 need to define "regulatory requirements." I have  
25 things that if I were the analyst looking at this

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1 transaction that I would ask the Company to provide.  
2 Now, whether that's considered a regulatory requirement  
3 or whether we're only talking about statutes, WAC's,  
4 letter orders, Commission orders.

5 JUDGE WALLIS: You indicated that regulations  
6 in place at the time of transfer were not something  
7 that you've looked into. Do I recall that correctly?

8 THE WITNESS: Yes.

9 JUDGE WALLIS: So I'm wondering if your line  
10 of questioning is getting a little bit beyond the  
11 witness's testimony and her statement of what she's  
12 able to respond to.

13 MS. ANDERL: Your Honor, I'm very concerned  
14 with the witness's testimony. At this point, I  
15 understand her to be stating that U S West made a  
16 misrepresentation to the Commission about a material  
17 aspect of the asset transfer and Publishing Agreement,  
18 and if that's her testimony, I absolutely need to  
19 explore that with her.

20 JUDGE WALLIS: I'm not sure I heard the  
21 witness saying that.

22 MS. ANDERL: She said that under U S West's  
23 theory of the case, that is, that the entire publishing  
24 business was transferred as of 1/1/84, she would have  
25 to answer that question yes. I was very careful to



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1 read the question to her exactly as I wanted it  
2 answered. If she needs to hear it again, I'd be happy  
3 to do that. This is a question that I did ask Public  
4 Counsel's witness and believe that it is a very  
5 important question and that I'd be permitted to explore  
6 whether this is Staff's position or not. I don't know  
7 what else to do.

8 (Discussion off the record.)

9 JUDGE WALLIS: I think at this point it would  
10 be proper to allow the witness to explain the prior  
11 answer, given her earlier statements of her area of  
12 expertise. I am concerned about questions that call  
13 for responses that get into the areas that she says  
14 she's not properly able to respond to, but let's go  
15 ahead and you may inquire as to clarification of her  
16 prior answer.

17 Q. (By Ms. Anderl) In order to try and get some  
18 clarification from you, let me see if I can break this  
19 down into the parts of the testimony or question.  
20 Assuming that U S West, PNB intended to transfer the  
21 entire directory publishing operation to U S West  
22 Direct as of 1/1/84, is it Staff's position in this  
23 case that PNB failed to disclose any aspects of that  
24 transfer that it was required to disclose to the  
25 Commission at that time?

01184

1 A. Now we're getting into what they were  
2 required to disclose?

3 Q. Yes.

4 A. Staff's position is that I think there were  
5 material aspects of the sale that were not. If that is  
6 what was intended, then there were material aspects  
7 that were not disclosed. Whether they were required to  
8 be disclosed, I've already testified that I would have  
9 to go back and review the statutes and the WAC's and  
10 see how they were interpreted and used at that time,  
11 but my position is that there were material aspects  
12 that were not disclosed and that indeed was the  
13 intention of the Company to transfer the whole  
14 business.

15 Q. But you can't say whether they were required  
16 to be disclosed?

17 A. I've already stated that I cannot say that.

18 Q. Is there a reason why you didn't check into  
19 whether or not those aspects would have been required  
20 to be disclosed at the time of the transfer?

21 A. No.

22 Q. No reason? What aspects do you believe  
23 should have been disclosed which were not?

24 A. I would say the value, if that was indeed the  
25 intention of the Company. It's not Staff's position

01185

1 that everything was transferred, so just to be sure  
2 we're on a hypothetical plane here, but it would be my  
3 contention that having a description of what all was  
4 being transferred and having a value assigned to that,  
5 to everything that was being transferred.

6 Q. And then in that instance, would the  
7 transaction have amounted to a sale, as you have  
8 defined a sale?

9 A. There would only be a sale of consideration  
10 if there was some kind of payment in exchange for what  
11 was transferred.

12 Q. The value?

13 A. For the value of what was being actually  
14 transferred.

15 Q. And you're not testifying that it was  
16 required to have assigned a value to what was  
17 transferred?

18 A. I've already testified that I'm not talking  
19 about what was required.

20 Q. Just what you would have liked to have seen  
21 looking at it as of today?

22 A. That's what I would have expected to see if  
23 someone walked in the door and was doing what the  
24 Company purports it was doing.

25 Q. Anything else that you believe should have

01186

1 been disclosed which was not?

2 A. Not that I can think of right off the top.

3 Q. Is there anything that you believe was  
4 misrepresented about the transaction?

5 A. I can't speak to -- "misrepresented" is a  
6 word that implies intent, and I can't speak to the  
7 Company's intent.

8 Q. Do you believe that anything incorrect was  
9 stated in the Application or the Publishing Agreement?

10 A. Under what scenario?

11 Q. Do you think that assuming U S West's theory  
12 of the case, that the publishing business was  
13 transferred as of 1/1/84, is there anything in the  
14 Application or the Publishing Agreement that is  
15 incorrect under that theory, i.e., misrepresented the  
16 actual situation?

17 A. Our testimony is we don't think -- I guess  
18 I'm confused by what I would have to assume the Company  
19 meant and then assume how I would write the  
20 Application, and I haven't done that.

21 Q. Have you conducted any investigation as to  
22 whether the Commission or Commission staff at the time  
23 during the 1983-'84 time frame did, in fact, determine  
24 and understand that the entire directory publishing  
25 business was being transferred?

01187

1 A. Are you asking did I conduct an investigation  
2 that led me to conclude that?

3 Q. Did you conclude any investigation to  
4 determine one way or the other?

5 A. I reviewed the documents that we had in the  
6 archives on the docket, mostly just the Agreements and  
7 the Application and the Orders.

8 Q. Did you find anything in those documents  
9 which stated that the directory publishing business had  
10 not been transferred?

11 A. Not that I can recall.

12 MS. ANDERL: I'm missing a document, if I  
13 may.

14 JUDGE WALLIS: Certainly.

15 (Pause in the proceedings.)

16 Q. Have you recently reviewed the 1984  
17 Publishing Agreement?

18 A. I've been reading through it and looking at  
19 it through the course of the case.

20 Q. On Page 7 of your testimony, Exhibit 701-T,  
21 you list a series of items that the 1984 Agreement  
22 states that the annual publishing fees provided for in  
23 the contracts were paid in consideration for, and then  
24 you list a number of items. Is it your testimony that  
25 that is a complete list of what is enumerated in the

01188

1 Publishing Agreement or just an illustrative list?

2 A. It's illustrative. I think there is a clause  
3 in the Agreement that also says in consideration of all  
4 the -- I forget what the exact wording is, but there is  
5 some other language in there. These items were listed  
6 and were specified, and I think the actual language in  
7 the Agreement says, In consideration of the foregoing,  
8 and it goes into some of the other language of the  
9 contract.

10 Q. On Page 9 of your testimony, you have a  
11 question there that says, If the Commission grants a  
12 portion of U S West's petition to treat the transfer of  
13 the directory publishing business as a sale... and  
14 then you go on to say what accounting treatment should  
15 be used for the transaction. What portion of U S  
16 West's Petition asks the Commission to treat the  
17 transfer of the directory publishing business as a  
18 sale?

19 A. I'm going to look through the Petition. Just  
20 a second. It may not have used the word "sale"  
21 specifically. I think what I was paraphrasing there  
22 was the language in the Petition regarding fair value  
23 being received for the transfer of the Yellow Pages  
24 business.

25 Q. Is it your testimony that the Commission

01189

1 could treat this transaction as a 1999 sale?

2 A. I don't think I testified on that issue  
3 specifically. Our position is that the sale -- the  
4 Staff position, I think, is more appropriately outlined  
5 in Dr. Selwyn's testimony that we used 1999 as the date  
6 just because it's a present day. If the case were to  
7 be decided in the year 2000, our position is the  
8 Commission could use a year 2000 date. The Commission  
9 could pick what date it feels is appropriate, but we  
10 were saying "present day," and that's why we used 1999.

11 Q. Could the Commission pick 1984?

12 A. If it chose, it could. That wouldn't be our  
13 position. That would be appropriate.

14 Q. You state that the Commission's continuing  
15 jurisdiction over affiliated transactions means that  
16 even if all of the Parties were to agree that the  
17 entire publishing business were resident in a separate  
18 subsidiary of U S West, Inc., the Commission would  
19 continue to review the transactions between U S West  
20 Communications and Dex to insure adequate payment is  
21 received by U S West for services it provides to Dex.

22 A. Are you quoting from a page?

23 Q. I was paraphrasing from Page 10 to see if you  
24 would agree with my characterization of your testimony.

25 A. Would you mind repeating the question? I was

01190

1 trying to find the reference.

2 Q. Is the substance of your testimony there that  
3 even if all of the Parties were to agree that the  
4 businesses were entirely separate and that the  
5 publishing business were wholly transferred to Dex that  
6 that would not end the Commission scrutiny over the  
7 transactions between U S West Communications and  
8 U S West Dex?

9 A. My understanding is that items such as  
10 subscriber listings and some other trademarks and so on  
11 are still in the possession of U S West C and would not  
12 be transferred. Subject to that, that's my  
13 understanding from your witness's testimony, and it's  
14 my testimony that whatever transactions are conducted  
15 between affiliates are subject to the scrutiny of this  
16 Commission.

17 Q. Do you know whether or not Dex pays for  
18 subscriber lists from U S West Communications?

19 A. My reading of the Agreement that is in effect  
20 now is that they do not pay dollars, money for it. My  
21 characterization of the Agreement, I think, is included  
22 on Page 8 of my testimony.

23 Q. What's the basis for your testimony that Dex  
24 doesn't pay anything for subscriber listings?

25 A. The basis is no fees were mentioned or agreed



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1 to in this contract. If it's quid pro quo, that's  
2 another story, but I didn't see anywhere in that  
3 agreement where it said, We will pay so much for each  
4 listing.

5 Q. Would it need to be in that agreement for Dex  
6 to be paying for it?

7 A. I would assume that it would be something  
8 that would have been filed with the Commission since it  
9 was an agreement between affiliates for services where  
10 one of the affiliates is regulated. I would expect to  
11 see it in the Agreement or an appendix to the Agreement  
12 that was also filed with the Commission. If there is  
13 such a document, could you point me to it?

14 Q. You're not aware whether there is or not?

15 A. My assumption is that the copy of the  
16 contract that I got out of our files here was a true  
17 and correct contract, and I didn't see a mention of it  
18 in that contract.

19 Q. Do you know whether or not U S West  
20 Communications makes subscriber listings generally  
21 available to other publishers?

22 A. My understanding is that they do.

23 Q. Do you know how they do that?

24 A. I don't know offhand how they do that.

25 Q. If the arrangement between U S West Dex and

01192

1 U S West Communications for subscriber listings were  
2 filed in a separate contract with the Commission, would  
3 you necessarily be aware of that?

4 A. I looked for all contracts on file between  
5 U S West Dex and U S West C through our database  
6 system, and the ones that I looked at were the ones I  
7 came up with through that system. I would expect that  
8 I would have had access to that and I could have found  
9 it. However, I just said if there is such a document,  
10 I'd be glad to look at it.

11 Q. Ms. Strain, did you review the U S West  
12 responses to the Bench requests, including the response  
13 which included the 1997 Publishing Agreement that was  
14 identified as Exhibit 207?

15 A. Yes, I did.

16 Q. Do you have a copy of that?

17 JUDGE BERG: I'm presuming that has not been  
18 marked as an exhibit?

19 MS. ANDERL: 207. I don't know if it was  
20 offered. I think we are maybe going to identify all  
21 the Bench requests with separate exhibit numbers.

22 JUDGE WALLIS: Yes. We've agreed in a  
23 procedural discussion that we will identify the Bench  
24 requests separately. We'll note for purposes of  
25 coherence in the record that this was identified as a

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1 potential exhibit for the prior witness and was not  
2 offered at that time.

3 Q. (By Ms. Anderl) Do you have that document  
4 now?

5 A. Yes, I do.

6 Q. Can you turn to Page 8 of the Agreement  
7 itself, more than halfway through the document?

8 A. Is this the page where the first number  
9 heading is 4.11?

10 Q. Yes, it is, Page 8. Do you see Paragraph  
11 5.1(a)?

12 A. Yes.

13 Q. Can you read the last sentence of that  
14 paragraph aloud?

15 A. "The subscriber list information will be  
16 provided pursuant to the list license agreements  
17 between the parties."

18 Q. Did you conduct any sort of an inquiry as to  
19 whether or not such a list license agreement between  
20 U S West Communications and U S West Dex had been filed  
21 with the Commission?

22 A. No, I did not look for that specific  
23 document. I looked in our database system for any  
24 documents filed between U S West Dex and U S West C,  
25 and this Agreement was the only one that I saw.

01194

1 Q. How did you conduct that database search?

2 A. Our database here includes all filings before  
3 the Commission that are docketed, and it's a system  
4 called RMS, Record Management System. That's what I  
5 used.

6 Q. Did you search by company name?

7 A. You can search by company name. You can use  
8 a word search in the title of the docket.

9 Q. How did you search for whether or not there  
10 was any sort of a separate subscriber list agreement  
11 between U S West Communications and U S West Direct?

12 A. Like I said, I didn't look for a separate  
13 subscriber list agreement. What I did look at was  
14 agreements between affiliates. Those have a code  
15 assigned to them, and I looked for agreements that U S  
16 West -- actually, I think I looked for agreements that  
17 U S West C had filed with any of its affiliates, but I  
18 also did a word search for any that had to do with U S  
19 West Direct or U S West Dex.

20 MS. ANDERL: Your Honor, we would like to be  
21 able to offer a late-filed exhibit, a copy of the  
22 subscriber listing agreement between the Companies. To  
23 the extent that Ms. Strain was not able to locate it, I  
24 was quite frankly surprised at her answers because we  
25 do believe one to be on file. I would like to be

01195

1 permitted to offer that as a late-filed exhibit when we  
2 locate it.

3 JUDGE WALLIS: Is there objection?

4 MR. TRAUTMAN: Only that I don't know why  
5 this wasn't offered earlier.

6 MS. ANDERL: As I said, it was supposed to be  
7 nonremarkable cross. Based on my understanding,  
8 assumed that the witness would agree that she was aware  
9 of such an agreement, and so therefore did not feel  
10 that it was going to be necessary to prepare it and  
11 pull it as a cross exhibit. I didn't really think it  
12 was something we were going to have to discuss for  
13 quite this long, honestly.

14 MR. TRAUTMAN: I guess I just object. It  
15 doesn't seem to be a timely submission.

16 JUDGE WALLIS: Bench Request No. 3, if I  
17 recall correctly, does ask the Company to produce all  
18 publishing contracts or agreements between U S West Dex  
19 and U S West Communications other than those currently  
20 in the record. Does this fall within that?

21 MS. ANDERL: I would believe that we thought  
22 not since it was something separate from the Publishing  
23 Agreement, Publishing Agreement being kind of a  
24 stand-alone document, and the subscriber list  
25 information not being necessarily part of a publishing

01196

1 agreement. Anybody can buy subscriber listing  
2 information and not use it in connection even with  
3 publishing, I think.

4 JUDGE WALLIS: The Company may provide that  
5 information.

6 MS. ANDERL: Thank you, Your Honor. Should  
7 we give it an exhibit number?

8 COMMISSIONER HEMSTAD: Let me ask for  
9 clarification as between U S West Dex and U S West  
10 Communications other than was currently in your record.  
11 This apparently was not in the record so it should have  
12 been included in the Bench Request, and I guess the  
13 question is, are there any other agreements not in the  
14 record not included in response to Bench Request No. 3?

15 MS. ANDERL: Your Honor, I believe that our  
16 interpretation of the question was perhaps more narrow,  
17 and we looked only for something specifically  
18 designated as a publishing agreement, not an agreement  
19 under which subscriber listings would be provided, but  
20 those are separate agreements and not, as I said, a  
21 publishing agreement.

22 JUDGE WALLIS: With this clarification, I  
23 wonder if the Company could provide that document and  
24 any others. The term "subscriber" is defined in the  
25 Agreement that is provided in response to the Bench

01197

1 Request and other aspects of subscriber information, so  
2 we will ask the Company to review what it has in the  
3 record, what it has already provided, to supplement  
4 that to the extent there are any other agreements.

5 COMMISSIONER HEMSTAD: The Bench request,  
6 reading it again, is probably ambiguous. It says  
7 "Publishing Contracts or Agreements," and it could be  
8 read either way. I'm not suggesting the Company wasn't  
9 being responsive.

10 MR. OWENS: We'd be happy to supplement it as  
11 we now understand it.

12 MS. ANDERL: And frankly, there was an '84  
13 Publishing Agreement. There was an '87. It looks like  
14 there is a '97 one. Let's get them the '97  
15 Publishing Agreement and that's what our response was.  
16 But we will do a broader search for any other relevant  
17 agreements or contracts and provide those as a  
18 supplemental response to Bench Request No. 3.

19 JUDGE WALLIS: Thank you.

20 Q. (By Ms. Anderl) Ms. Strain, just a couple  
21 more questions and these concern your affidavit. On  
22 Pages 7 and 8, I'm looking at the bold headings, E and  
23 F.

24 A. Okay.

25 Q. In Heading E, you use the word "property."

01198

1 A. Yes.

2 Q. And in Heading F, you use the word "assets."

3 A. Right.

4 Q. Do those terms mean the same thing as you're  
5 using them in that testimony?

6 A. Yes, they do.

7 Q. In Heading F, you refer to transferring  
8 assets without compensation.

9 A. Without adequate compensation.

10 Q. Are you referring there to more than just the  
11 physical assets?

12 A. Yes, and it also refers to more than  
13 compensation for a bulk sale of assets.

14 Q. What do you mean by that?

15 A. Well, the imputation is used to rectify  
16 inadequate compensation of ongoing operations as well  
17 as for the inadequacy of some sort of transfer price of  
18 assets.

19 Q. Inadequacy of the transfer price of the  
20 intangible assets?

21 A. In all assets.

22 Q. Does that include the going-concern value of  
23 the business?

24 A. I'm not sure what going-concern value -- if  
25 we mean it in terms of the valuation amount that you



01199

1 would determine by looking at cash flows of a going  
2 concern. Is that what you mean by "going-concern  
3 value"?

4 Q. The value above the value of the physical  
5 assets.

6 A. Well, that could be a fixed lump sum value,  
7 or it could be just based on the ongoing operations of  
8 the business, so it could be the ongoing transactions  
9 between the affiliates might trigger imputation whether  
10 or not there were assets that had been transferred or  
11 not, and imputation is used in those situations as well  
12 as in situations like this.

13 Q. Can you tell me which portion of the  
14 imputation is attributable to the ongoing transactions  
15 and which is not?

16 A. No, I can't.

17 Q. What was transferred without adequate  
18 compensation?

19 A. My answer would be -- you're talking about  
20 the 1984 transfer?

21 Q. I'm talking about your Heading F here where  
22 you say, transferring assets without adequate  
23 compensation. What was transferred without adequate  
24 compensation?

25 A. I would say anything that was transferred

01200

1 above and beyond the tangible assets that were included  
2 in the journal entry 1984.

3 Q. And you can't be more specific to identify  
4 what those were?

5 A. No.

6 Q. How do you know that there was inadequate  
7 compensation?

8 A. I think because the Supreme Court tells us  
9 that there was.

10 Q. Referring to Paragraph 15 of your affidavit,  
11 and it's on Page 10, would you agree that the  
12 120-million-dollar sale price for Leland Mast Directory  
13 Company included the value of the going Leland Mast  
14 publishing business?

15 A. Subject to my understanding of what was sold,  
16 yes.

17 Q. Would you agree that the 120-million-dollar  
18 price represented the value of the going business at  
19 the time of the transfer from ConTel to Southwestern  
20 Bell?

21 A. I would assume that it did since it was an  
22 arm's-length transaction.

23 Q. Would you agree then that the  
24 120-million-dollar price was determined to be adequate  
25 compensation?

01201

1 A. I would assume that the Parties determined  
2 that it was.

3 Q. What about the Commission?

4 A. I think based on the record in that case as  
5 I've been able to review it, they agreed with the  
6 treatment of this in the revenue requirement that was  
7 under consideration, so my assumption would be that  
8 they did too.

9 Q. And the Commission has not relied for  
10 ratemaking purposes on any other value other than the  
11 1985 established value of 120 million dollars, have  
12 they?

13 A. Not for this transaction.

14 Q. Would you agree that reducing ConTel's  
15 revenue requirement by the amortization of the gain  
16 passed through to the ConTel ratepayers their share of  
17 the 120 million dollars?

18 A. It passed on the gain, and the gain was less  
19 than the 120 million dollars.

20 Q. The gain was 105.6; is that right?

21 A. Right.

22 Q. So to the extent that the reduction of  
23 revenue requirement by the amortization of the gain was  
24 performed by the Commission, then the ConTel ratepayers  
25 received their share of that gain?

01202

1 A. They received, I think, all of the gain.

2 Q. And do you consider that to be adequate  
3 compensation to the ratepayers?

4 A. I wasn't involved in that transaction or that  
5 docket so my consideration is that the Parties at the  
6 time considered that it was adequate compensation and  
7 that the Commission at the time considered it adequate,  
8 but I want to point out that this was the result of a  
9 settlement agreement. The Commission had conducted  
10 some hearings on that and had testimony from some  
11 witnesses on the aspects of the settlement, but my  
12 assumption is in approving the settlement, they  
13 approved all aspects of the settlement, whether they  
14 actually went through item by item and said, We approve  
15 this, that, and the other thing, I don't know.

16 Q. Is it correct that the Commission has imputed  
17 revenues to U S West Communications in lieu of adequate  
18 compensation for the transfer of assets?

19 A. Well, I'd say it's for the transfer of assets  
20 as well as for inadequate compensation on an ongoing  
21 basis. I think what was really happening here is that  
22 on an ongoing basis, year-by-year, there was an  
23 adequate compensation under the Publishing Agreements,  
24 and imputation was performed as a mechanism to remedy  
25 that inadequate compensation.

01203

1 Q. So it's for both, in your view?

2 A. I disagree with that. I think that -- it's  
3 kind of confusing, but that imputation was to my mind  
4 to remedy inadequate compensation on a year-by-year  
5 basis of the Publishing Agreements that the two  
6 companies had with one another, and that imputation was  
7 performed in lieu of either a sale in which no value  
8 was received for the assets or in lieu of publishing  
9 fees being paid that were adequate and reflected the  
10 services that were being provided.

11 Q. Do you recall that the Commission argued to  
12 the Supreme Court that U S West transferred its  
13 lucrative Yellow Pages business to its unregulated  
14 affiliate in return for grossly inadequate  
15 consideration, and that the Commission acted within its  
16 broad statutory authority in imputing the excess  
17 profits of the Yellow Pages business to U S West?

18 A. Yes, I recall those statements.

19 Q. Do you believe those statements to be  
20 correct?

21 A. Yes, I believe both the statements are  
22 correct.

23 Q. Do you believe it is correct that U S West  
24 transferred its Yellow Pages business or PNB  
25 transferred its Yellow Pages business to U S West

01204

1 Direct for inadequate consideration?

2 A. I believe they transferred the operations of  
3 the business. Our testimony -- I think the Staff  
4 position is that not all the assets were transferred,  
5 and there were some ownership rights that weren't  
6 transferred. That's contained in Dr. Selwyn's  
7 testimony.

8 Q. What services are inadequately compensated,  
9 or would you contend that imputation is a continuing  
10 necessity?

11 A. I haven't done a study of what particular  
12 services are provided and what the price should be on  
13 each one of the services and which ones are  
14 inadequately compensated. Apparently, we don't even  
15 have agreements here which list some of the  
16 compensation that evidently is going on.

17 Q. How do you know that the compensation is  
18 inadequate?

19 A. My indication is that the directory business  
20 has very high profits, and I think that there has been  
21 testimony on previous cases and in other cases which  
22 talks about the fact that the profits being what they  
23 are indicates that there is value that has not been  
24 compensated for.

25 Q. Was that your testimony?

01205

1 A. That's my understanding.

2 Q. It wasn't your testimony in those other  
3 dockets, was it?

4 A. It's not prefiled testimony, no. I believe  
5 that's how we answered our response to one of your data  
6 requests in this case.

7 Q. But you're unable to identify any particular  
8 service for which U S West Communications is not  
9 receiving adequate compensation?

10 A. I would say from my understanding of this  
11 case that probably I would say the official publishing  
12 right is something that's not been being compensated  
13 for, among others.

14 Q. What study have you done to establish what  
15 the value of that right is?

16 A. I have not done such a study.

17 Q. Then how can you say the compensation is  
18 inadequate?

19 A. That's my understanding from the fact that  
20 the directory publishing business garners very high  
21 profits and that there are no publishing fees being  
22 paid.

23 Q. How do you attribute the high profits? Do  
24 you link the high profits to the official publisher  
25 designation?

01206

1 A. I think there is a connection.

2 Q. On what basis do you think that?

3 A. My reading of all the documents in this case.

4 Q. Is that it?

5 A. That's it.

6 Q. I think I asked you whether there were any  
7 services that U S West Communications is providing for  
8 which you believe it is receiving inadequate  
9 compensation. The official publisher designation I  
10 would not consider to be a service. Can you think of  
11 any services that you contend U S West is providing for  
12 which it's not receiving adequate compensation and for  
13 which imputation is necessary?

14 A. I haven't done a study to say which services.  
15 Our general belief is that imputation is necessary  
16 because there is inadequate compensation under the  
17 Publishing Agreements.

18 Q. Would you agree that the Commission often  
19 approves affiliated transactions but withholds  
20 ratemaking decisions until the regulated utility's next  
21 rate case?

22 A. Yes.

23 Q. Would you agree that in doing so, the  
24 Commission often makes regulatory policy decisions as  
25 to how to treat the financial effect of an affiliate



01207

1 transaction after the transaction has already taken  
2 place?

3 A. No. I'd say that the Commission makes  
4 after-the-fact decisions on how to treat them for  
5 regulatory purposes, not for financial purposes.

6 Q. Regulatory finance purposes?

7 A. I'm not sure what you mean by that statement.  
8 If we're talking about the accounting treatment,  
9 typically that's done at the time of the transaction,  
10 but ratemaking treatment is done at the time of the  
11 next rate case.

12 Q. Do they have a financial effect on the  
13 company, the ratemaking decisions?

14 A. Ratemaking decisions typically do.

15 Q. So those decisions are typically made or at  
16 least sometimes made after the fact in an affiliated  
17 transaction?

18 A. Ratemaking decisions are, yes.

19 Q. In doing these ratemaking decisions after the  
20 fact, which have financial effect on the company, would  
21 you agree that the Commission is not constrained to  
22 follow the actual accounting the utility may have done  
23 for that transaction?

24 A. That is correct.

25 Q. Would you agree then as a general principle

01208

1 that the reasonableness of an affiliated transaction  
2 does not have to be determined prior to determining the  
3 accounting treatment of that transaction because the  
4 Commission defers to a rate case to determine the  
5 proper regulatory treatment?

6 A. No, I wouldn't agree with that. The  
7 accounting treatment and the regulatory treatment can  
8 be two different things, and I would have to go through  
9 the cases and see where the Commission's decision about  
10 adequacy or inadequacy, how that affected accounting  
11 treatment. I know that it affects ratemaking  
12 treatment.

13 Q. I understand your answer. I guess I don't  
14 understand why you disagreed with my question. Is it  
15 correct that the Commission does not need to determine  
16 the reasonableness of an affiliated transaction for  
17 regulatory purposes at the time the transaction occurs?

18 A. Yes, that's true.

19 Q. At the time the transaction occurs, the  
20 utility may follow accounting practices with regard to  
21 that transaction which do not necessarily later sync up  
22 with the regulatory treatment; is that right?

23 A. That's right.

24 Q. Thank you. Ms. Strain, we previously  
25 identified three exhibits, Staff Data Responses to U S

01209

1 West's Data Requests 1, 2 and 3 as Exhibit 623, 624,  
2 and 625 --

3 A. I would just point out on my copy that 624 is  
4 Data Request 3-36, so I think it's Data Request No.  
5 3-36. You said 1, 2 and 3.

6 Q. 1, 2 and 3-36. Thank you. Do you have those  
7 before you?

8 A. Yes.

9 Q. Do you recognize those as true and correct  
10 copies of Staff's Data Responses except that the entire  
11 list of dockets attached to No. 1 is not included here?

12 A. Yes.

13 MS. ANDERL: Your Honor, we would offer those  
14 exhibits.

15 MR. TRAUTMAN: No objection.

16 JUDGE WALLIS: Exhibits are received.

17 MS. ANDERL: Your Honor, that concludes my  
18 cross of this witness. Thank you.

19 JUDGE WALLIS: Is there other cross of the  
20 witness?

21 MR. ROSEMAN: I have just a very few  
22 questions.

23 JUDGE WALLIS: Mr. Roseman?  
24  
25

01210

1

2

CROSS-EXAMINATION

3

BY MR. ROSEMAN:

4

Q. Ms. Strain, is it your testimony if U S West fails to prevail in this matter that imputation should continue?

7

A. Yes.

8

Q. On the other hand, if for some reason the imputation should end, the Commission order said that it should end, you proposed a rate base reduction for the value of businesses, the value of the business that ratepayers have not received. Is that what you testified to? It's in your rebuttal on....

14

A. I think it's Page 9.

15

Q. Yes, I believe that's correct.

16

A. I testified that the effect of the accounting treatment, that the accounting treatment that the Commission requires is to record the gain on sale as a reduction to the related depreciation to reserve accounts.

21

Q. And Mr. Brosch proposed a liquidated payment; do you recall that?

23

A. Yes. I'm not sure if he was talking accounting treatment or if he even got to where he was talking about the accounting treatment, but I remember

25

01211

1 him saying liquidated payment.

2 Q. I guess my question is, if the Commission was  
3 to implement either one of those, wouldn't they have to  
4 make a finding of the current fair market value of the  
5 business in order to either impose a rate base  
6 reduction or to order liquidating credits to customers?

7 A. That would be the Staff's position, yes.

8 Q. And has U S West sponsored any evidence  
9 stating what the Company believes the current 1999  
10 value of the directory publishing business is?

11 MR. OWENS: Your Honor, this sounds an awful  
12 lot like friendly cross-examination to me, and I'd  
13 object on that basis.

14 MR. ROSEMAN: That's my last question,  
15 Mr. Owens.

16 JUDGE WALLIS: Very well. Are you  
17 withdrawing the question?

18 MR. ROSEMAN: No. I was hoping to get an  
19 answer.

20 JUDGE WALLIS: It really does sound a lot  
21 like friendly cross, so let's move on. Are there  
22 questions from the Bench?

23 CHAIRWOMAN SHOWALTER: I have a couple.

24  
25

01212

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2

E X A M I N A T I O N

3

BY CHAIRWOMAN SHOWALTER:

4

Q. On the subject of imputation, we have two scenarios going. Actually, let me take it out of this case and give you a hypothetical. There could be a sale or there could be a lease or a contract, and if you had a sale where inadequate compensation was paid for the sale or a permanent transfer, then in a regulatory sense, wouldn't imputation be appropriate to compensate for the inadequate compensation that had been paid for that transfer?

10

11

12

13

A. It would be one approach to remedying inadequate compensation. Another might be to --

14

15

Q. I'm just interested in whether that would be appropriate.

16

17

A. Yes.

18

Q. And likewise, if there were a contract for services where there were inadequate compensation paid for the services, wouldn't imputation be an appropriate mechanism in a regulatory sense to remedy the inadequate compensation?

19

20

21

22

23

A. Yes.

24

Q. So from imputation alone, we can't tell. We can't infer from imputation whether it's for a sale or

25

01213

1 for a contract. Don't we have to look elsewhere to  
2 find out what the imputation is for?

3 A. Yes.

4 Q. In that respect, looking back to our actual  
5 case here, looking at indicators of whether there was  
6 an intention to have a transfer and whether there was  
7 approval of a transfer and what the transfer was of and  
8 what was approved of, I think you said there were  
9 material aspects that you feel were not disclosed that  
10 would have been material had there been a transfer.  
11 You've stayed away from the question of whether it  
12 would have been required to be disclosed. Would you  
13 say that the failure to disclose the value of a full  
14 business and the aspects of the business, other than  
15 what was reflected in the documents, is either an  
16 indication that there wasn't a transfer or that there  
17 was an intended transfer but a failure to disclose?  
18 Again, the failure, couldn't it be taken either way;  
19 that is, there was a transfer with a failure to  
20 disclose or there was no transfer?

21 A. I think I could agree with that.

22 Q. So again, isn't that still consistent with  
23 both scenarios?

24 A. Yes.

25 Q. You said that if there were a true sale,

01214

1 there should have been a reduction in the rate base.  
2 Did I hear you say that, that the gain over book would  
3 be applied so as to reduce the rate base?

4 A. That's the treatment that's typically  
5 required under Part 32 of our accounting, the  
6 accounting rules that we have adopted that are in use  
7 by the FCC.

8 Q. What actually happened in this case in 1984?  
9 Has there ever been a reduction to the rate base?

10 A. The only reduction to rate base would have  
11 been the journal entries that were made on PNB's books  
12 to transfer the tangible assets off the books, and I  
13 think that's answered in response to one of your Bench  
14 Requests, Bench Request No. 2.

15 Q. So those were the physical assets that were  
16 approved to be transferred?

17 A. Physical assets and cash, and there were some  
18 liabilities pertaining to employee sick leave accruals  
19 and things like that, various liabilities pertaining to  
20 the employees that were transferred.

21 Q. Assuming there were more to the business than  
22 that, and without identifying what it is, is the  
23 failure to reduce the rate base accordingly an  
24 indication that there wasn't a permanent transfer?

25 A. Not in this case necessarily, because if



01215

1 there were intangible assets that were transferred,  
2 they might not have been recorded in the books, so you  
3 wouldn't see them coming off the books. If there had  
4 been intangibles that were reported, you should have  
5 seen them coming off the books as well.

6 Q. So because they weren't there in the books to  
7 begin with, they weren't there to take off the books.

8 A. That's right.

9 Q. So in a situation like that if you had an  
10 arm's-length sale of a business with some intangibles  
11 and because of that, there were a significant amount  
12 above book, and that significant amount, that gain is  
13 applied to the ratepayers, what happens there to rate  
14 base?

15 A. Well, what happens is that the gain is used  
16 to reduce rate base, so whether it was reported there  
17 in the first place or not, the gain ends up reducing  
18 the rate base.

19 Q. But in this situation, aside from the amount  
20 that was removed from the rate base due to the physical  
21 transfer of assets, there wasn't any other amount that  
22 caused the rate base to be reduced, or am I right or  
23 wrong on that one?

24 A. There could have been, and the transfer of  
25 the cash -- I'm just trying to think this through

01216

1 quickly, but there could have been a working capital  
2 adjustment in the rate base calculation because of the  
3 other assets and liabilities that were being  
4 transferred at the same time as the net book value of  
5 the physical assets.

6 Q. And of those things, are you referring to the  
7 things that we have identified?

8 A. I'm referring to the cash and the employee  
9 compensation liability balances and things of that  
10 nature that are in these journal entries.

11 Q. Then another question I had, you  
12 distinguished between accounting and ratemaking.

13 A. Right.

14 Q. And I think I understood you to say that if  
15 there is an event or transaction of some kind, there  
16 may be an accounting treatment of it at the time but a  
17 ratemaking treatment of it at a later time.

18 A. That's correct.

19 Q. And in response to Ms. Anderl's question, the  
20 two aren't always lined up and in perfect synchrony. I  
21 don't mean in time but in substance.

22 A. That's absolutely correct. In fact, that's  
23 embodied in our WAC's that accounting treatment does  
24 not dictate ratemaking treatment.

25 Q. You may have already answered the question,

01217

1 but in this case, what happened on the accounting side  
2 of events in 1984?

3 A. All that I know of that happened on the  
4 accounting events is embodied in the answer to Bench  
5 Request No. 2, and it's the journal entries in which  
6 assets and liabilities were transferred off of PNB's  
7 books.

8 Q. And then on the ratemaking side, basically,  
9 there was imputation as a response to this transaction.

10 A. That's correct.

11 CHAIRWOMAN SHOWALTER: Thanks.

12

13 E X A M I N A T I O N

14 BY COMMISSIONER HEMSTAD:

15 Q. First a matter I want to clarify. I take it  
16 you're testifying here today as an accounting witness,  
17 not as an expert in contract law.

18 A. That's correct.

19 Q. You were asked rather extensive questions by  
20 Ms. Anderl about your answer on Page 4 and to the  
21 question are imputation adjustments the same as  
22 payments, and then back and forth about payment and the  
23 second sentence and full payment in the third sentence.

24 There is a fourth sentence in that question  
25 and answer, and the fourth sentence is further

01218

1 discussed in the responsive testimony of Lee Selwyn on  
2 behalf of Staff, Communications revenues cannot be  
3 viewed as compensation for the value of the assets  
4 transferred. It's not entirely clear, but I take it  
5 that you're in that position of Dr. Selwyn?

6 A. Yes.

7 Q. And your previous sentences should be taken  
8 in that context?

9 A. Yes, they should.

10 Q. I want to pursue Chairwoman Showalter's  
11 questions with regard to the accounting. I think we  
12 understand what was transferred on the books of the  
13 Company in 1984; however, the three licensing  
14 payments -- was it '85, '86, and '87, how were they  
15 accounted for?

16 A. I don't know exactly. I don't have the  
17 journal entries. My assumption is it would be an  
18 intercompany account receivable, account payable, but I  
19 don't know if cash actually traded hands or not. I  
20 would just be speculating.

21 Q. Then how were the subsequent imputation  
22 payments as ordered, how were they accounted for?

23 A. When you say you want to know how the  
24 publishing fees were accounted for, do you mean in  
25 terms of if we got their annual report at the end of

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1 the year what would it show? I'm assuming it would  
2 show those as revenues in the annual reports. The  
3 imputation payments don't show up as revenues because  
4 they are not payments. They are ratemaking adjustments  
5 that are only done in the context of the rate case.

6 Q. So the licensing fees would be revenues in  
7 the sense of operating income?

8 A. At that time that would be correct, yes. In  
9 fact, now they would be too.

10 Q. And imputation payments would be an  
11 adjustment made by the Commission and not by the  
12 Company, so none of the imputation amounts would show  
13 up on the books of the Company.

14 A. That's correct.

15 Q. It's the Company's theory that these were  
16 installment payments on the purchase price. Should the  
17 Company have been accounting for that in some way, an  
18 installment and then some kind of differentiation  
19 between base and gain?

20 A. If that is what was happening, I would expect  
21 it to be accounted for in the books.

22 Q. But I suppose it would be difficult because  
23 there was never -- you couldn't establish gain because  
24 there was never a fixed purchase price ever  
25 established.

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1 A. That's correct.

2 Q. In other words, to determine gain, you have  
3 to know what the prices for the company or the  
4 enterprise being transferred?

5 A. That's correct.

6 Q. So they wouldn't have been able to establish  
7 gain over base at all.

8 A. Not without doing evaluation and establishing  
9 some kind of purchase price, sale price, no.

10 Q. Back to 1984, the Company never did an  
11 appraisal of any kind at that time or any reasonably  
12 forward-looking time that related to 1984, did they?

13 A. My understanding is that one wasn't done  
14 until this case. I just want to correct my answer that  
15 there was apparently an evaluation done in 1997 in  
16 connection with the separation of the stock. I don't  
17 want to make a misstatement here.

18 COMMISSIONER HEMSTAD: Thank you for that  
19 addition. That's all I have.

20 CHAIRWOMAN SHOWALTER: I have just one  
21 follow-up on that last question.

22

23 FURTHER EXAMINATION

24 BY CHAIRWOMAN SHOWALTER:

25 Q. Let's suppose that there really was a

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1 transfer in 1984 and what we are trying to do here is  
2 see if the ratepayers have been adequately compensated  
3 for that transfer. That's the hypothetical. One  
4 question would be, has imputation adequately covered  
5 the installation payments for the business. That's one  
6 question.

7           Wouldn't another question be, what should  
8 have happened to the rate base in '84, and if it should  
9 have dropped or decreased, what would that have done to  
10 the revenues required and therefore the rates? I'm not  
11 asking you to quantify that at this moment, but am I  
12 theoretically correct anyway that there would be, in  
13 effect, some offsetting things that if the business  
14 were transferred, payments from Dex to West would be  
15 owed and that would -- we would look to see if the  
16 imputation had covered that amount, but at the same  
17 time, the rate base would have dropped and so that  
18 would have aided ratepayers as well, wouldn't it have?

19           A.     If you're in a theoretical situation, if  
20 there had been a transfer for, say, fair market value  
21 of assets at that time, and I'd have to just  
22 double-check to make sure the accounting system in  
23 effect is the same as what it is now for transactions  
24 such as that, but I think the accounting would have  
25 been to record a gain on the sale at the time. Whether

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1 the payments were in a lump sum or an installment  
2 scenario wouldn't affect how the gain was recognized in  
3 the accounting books, I don't think.

4 Usually in the accounting books, the gain is  
5 recognized all at one time when it actually takes  
6 place, whether it's installment or not. Ratemaking  
7 treatment might -- a lot of times what the Commission  
8 will do -- in fact, what it does for other utilities  
9 currently -- is amortize gains on sales over a period  
10 of years, but for the financial books of the utility,  
11 the gain is recognized at the time. Does that help  
12 answer your question?

13 Q. So since the gain is recognized at the time,  
14 the rate base dropped at that time?

15 A. If it were applied against the rate base, and  
16 that's where I'm not totally sure that the accounting  
17 we use now in Part 32 is the same that was used in  
18 1984. In Part 31 -- and I would want to check that,  
19 but it would either have been recognized as a gain in  
20 the income, which may or may not have been amortized,  
21 or it would have been a rate base reduction, but again,  
22 I just need to check that's the actual accounting that  
23 the Company would use, but again, all of this did not  
24 transpire, but if we were to assume that's what was  
25 intended, we would have to be looking then to whether



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1 imputation covered all of that. By "that," I mean both  
2 the gain and the effect of the rate and the drop, of  
3 the drop in the rate base.

4 Our position is that imputation does not  
5 cover any of that, and the imputation is a mechanism  
6 that the Commission has to use because there is not a  
7 transaction for adequate value either on an ongoing  
8 basis or a one-time sale of an asset basis, so we are  
9 not looking at imputation as being the installments  
10 you're equating to the installment, any installment  
11 payments that would have been required.

12 CHAIRWOMAN SHOWALTER: And I understand what  
13 the Staff's position is. I gave a hypothetical which  
14 assumed a different premise, so thanks.

15 MR. TRAUTMAN: No redirect.

16 JUDGE WALLIS: Is there anything further? In  
17 light of the hour, let's take a recess now for 15  
18 minutes.

19 (Recess.)

20 JUDGE WALLIS: The Company had asked the  
21 opportunity to ask a few questions. Ms. Anderl?

22 MS. ANDERL: On reconsideration, I do not  
23 have any questions on recross.

24 JUDGE WALLIS: Is there anything further of  
25 this witness? It appears that there is not.

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1 Ms. Strain, thank you for appearing today. You're  
2 excused from the stand at this time, and we have some  
3 administrative matters to discuss but nothing involving  
4 the testimony of witnesses; is that correct?

5 MS. ANDERL: Except Ms. Koehler-Christensen  
6 does involve kind of testimony.

7 JUDGE WALLIS: There has been an agreement  
8 between the Parties as to the supplementation of the  
9 record by stipulation, and Ms. Anderl was to read that  
10 stipulation into the record and may do so at this time.

11 MS. ANDERL: If I may by way of explanation,  
12 after the close of the record in July,  
13 Ms. Koehler-Christensen read the portion of the  
14 transcript where she was testifying and indicated to me  
15 that one of the answers she gave was incorrect. Upon  
16 rereading the question, she realized that she had not  
17 answered the question asked and that the answer given  
18 was incorrect in the context and asked to correct it.  
19 We talked about putting her on the stand, but we've  
20 been able to stipulate as to how the question and  
21 answer should read corrected, and if you go to Page  
22 1087 of the transcript, there is an answer that starts  
23 on Line 23.

24 CHAIRWOMAN SHOWALTER: Is this an exhibit  
25 that we could track?

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1 MS. ANDERL: The transcript from the July  
2 29th hearing, Volume 14. If Ms. Koehler-Christensen  
3 were recalled to the stand, she would correct that  
4 answer so that it would read as follows, and I guess  
5 I'll just try to go through it and strike what should  
6 be stricken and add what should be added.

7 Strike, "Yes, it does state that," on Line  
8 23, and insert in its place, "No, there was not." And  
9 then it reads, "I believe that we have tried to--" and  
10 then strike the word "not" --"make our intent clear."  
11 Insert a period, and then strike, "and I disagree with  
12 that but..."

13 That's the entirety of the correction, so if  
14 I may, the answer now reads: "No, there was not. I  
15 believe that we have tried to make our intent clear. I  
16 believe if you read..." And then the answer just  
17 continues as written.

18 JUDGE WALLIS: For our convenience, would it  
19 be possible to put the question and the answer showing  
20 the correction in legislative style on a single page  
21 and submit that to us?

22 MS. ANDERL: Absolutely.

23 JUDGE WALLIS: Is there any objection to that  
24 process?

25 MS. ANDERL: Just as an attachment to a

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1 letter or with an exhibit number designation?

2 JUDGE WALLIS: Why don't we take the next  
3 exhibit number in order for this witness, which would  
4 be 525.

5 JUDGE BERG: And maybe we could just refer to  
6 this as Errata to Transcript Volume 14.

7 JUDGE WALLIS: 525 it will be.

8 MS. ANDERL: Thank you. We'll provide that  
9 within the next day or so.

10 JUDGE BERG: Along with that, it will be  
11 considered admitted as of this date.

12 MS. ANDERL: Thank you. That eliminates our  
13 need to recall Ms. Koehler-Christensen to the stand.

14 JUDGE WALLIS: All right. Thank you very  
15 much. Why don't we go off the record and we will tick  
16 off the various items that we have, and then we'll go  
17 back on the record and state the results, and any  
18 matter that needs further discussion will be discussed,  
19 so we'll be off the record.

20 (Discussion off the record.)

21 JUDGE WALLIS: Following an administrative  
22 discussion, the Commission staff will be submitting a  
23 supplemented version of Exhibit 622 consisting of its  
24 response to Data Request No. 1 to include an additional  
25 page of material cited in as much as that was omitted

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1 from the copy that has been received in evidence. That  
2 that will be designated Revised Exhibit 622, and that  
3 will be substituted for the present Exhibit 622; is  
4 that correct?

5 MR. TRAUTMAN: I believe the exhibit will  
6 have several pages.

7 JUDGE WALLIS: The documents that have been  
8 previously identified in the 900 series on the exhibit  
9 lists will disappear from that list. Those were  
10 attachments to motion pleadings and they will not be  
11 considered exhibits, although the Parties agree that  
12 they may be considered in conjunction with rulings on  
13 motions, and responses may similarly be supplemented  
14 with like documentation which may also be considered in  
15 conjunction with the motion.

16 The briefing format has been agreed in that  
17 the Parties may brief each of these procedural lines  
18 separately; that is, each of the motions may be  
19 separately briefed. Although, the Parties will respond  
20 on the dates which have previously been established for  
21 briefing as to all matters. There will be a brief for  
22 the Case in Chief and answers and responses as  
23 appropriate for other motions that have been filed.  
24 These should be submitted at the same time under the  
25 same cover but may be submitted as separate documents

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1 and should be submitted as separate documents.

2 The testimony of Mr. Brosch in a prior  
3 proceeding was on a list of matter to be submitted to  
4 the Commission. We believe that it's inappropriate for  
5 that matter to be received in this manner and rule that  
6 it is not permissible. Mr. Roseman, did you wish to  
7 state any argument for the record on that?

8 MR. ROSEMAN: Yes, I will, Your Honor. It is  
9 AARP's position that a small portion of Mr. Brosch's  
10 testimony was quoted by a U S West witness, Karl  
11 Inouye, and we felt in order for the Commission and the  
12 Court to have the benefit of reading that excerpted  
13 section in context that the entire testimony should be  
14 allowed, and that was our reason for requesting that.

15 JUDGE WALLIS: And the response to that is...

16 MS. ANDERL: Thank you, Your Honor. We  
17 believe that that is simply untimely filed. Mr. Inouye  
18 first excerpted Mr. Brosch's testimony in his April  
19 30th filing, and Public Counsel could have provided  
20 this testimony either in surrebuttal or on cross, and  
21 we believe at this point in time it's too late to do  
22 so.

23 JUDGE WALLIS: And our ruling on that is  
24 consistent with the Company's argument that it is  
25 untimely to offer that to the Commission. The

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1 opportunity was present in earlier phases of the  
2 proceeding. We will let it stand on that.

3 Another matter that we have is the question  
4 of the submission of briefs previously filed in other  
5 matters. Mr. Trautman is presenting a list of such  
6 documents for citation in the briefs in this matter.  
7 Mr. Trautman, why don't you explain for the record what  
8 it is you're proposing to do and your support for doing  
9 so.

10 MR. TRAUTMAN: The Bench requested earlier  
11 that Parties submit a list of briefs that they intend  
12 for possible inclusion in the current briefs to be  
13 written in this case and that they make that list known  
14 to other parties and provide copies if necessary.  
15 Commission staff and Public Counsel have done so and  
16 have put together a brief list that we have provided to  
17 the Commission. There is one additional brief to be  
18 added to that list, which is a petition for writ of  
19 review by U S West. It was for review of Docket  
20 U-86-156. We will provide that to the Commission.

21 Our understanding is that it was U S West's  
22 position that these briefs needed to be admitted as  
23 exhibits to be properly citable, and it is our position  
24 that that is not the case. These are documents of  
25 public record. It is not necessary to include them as

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1 attachments to the testimony of lay witnesses who would  
2 not be qualified to give a legal opinion on them in any  
3 event and that the proper procedure for the Commission,  
4 therefore, is to include these briefs in the  
5 administrative record. They need not be marked as  
6 exhibits, but copies should be provided to the  
7 Commission for inclusion in the administrative record,  
8 and if the case goes on further review, these briefs  
9 would therefore be available.

10 JUDGE WALLIS: And the Company's response is,  
11 Ms. Anderl?

12 MS. ANDERL: U S West objects to the  
13 designation of briefs from other proceedings in the  
14 manner suggested by Staff and Public Counsel. These  
15 documents are ones that are clearly not ones that may  
16 be officially noticed by the Commission either under  
17 the Commission's own rules or the APA. I don't  
18 believe that they are appropriately included as a part  
19 of the administrative record in this matter unless they  
20 were properly filed or submitted with the Commission,  
21 either as matter of a pleading in this docket or as  
22 part of the evidence of record formally admitted and  
23 considered at the hearing. They are neither of those  
24 things, and they were not sponsored by a witness. They  
25 were not identified as evidence prior to the first day



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1 of hearing in this matter.

2 We think that there is simply no proper  
3 procedural avenue under which they can be considered as  
4 suggested by the Parties or cited in their briefs or  
5 considered by the Commission in this case. That is not  
6 to say they could not have been, but the method chosen  
7 here and now makes it very improper.

8 JUDGE WALLIS: It is our view that it is not  
9 improper to receive the material in the manner  
10 identified by Mr. Trautman. We believe that briefs are  
11 not only matters of public record but matters of public  
12 record which are appropriate for citation in other  
13 briefs. The request that they be identified in advance  
14 of citation in briefs is for the Parties' and the  
15 Commission's convenience, and the request that they be  
16 provided via a copy is also for the Commission's and  
17 the Parties' convenience. So it is our view that these  
18 do not constitute factual evidence in the same manner  
19 as material that must be either cited as the subject of  
20 official notice or presented as evidence. The  
21 submission is proper and will be accepted.

22 The final matter, I believe, is that the  
23 Parties have agreed in essence as to the outline for  
24 briefs. There is a disagreement as to preference for  
25 title of one of the elements. We've indicated that we

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1 can live with that difference. The Parties can call  
2 that point on their outline whatever they wish, and as  
3 long as it's addressed to the same topic and the  
4 Commission can follow it, I don't think we'll have any  
5 problem.

6 To reiterate the schedule that was earlier  
7 agreed, the Company's brief will be submitted on or  
8 before the 20th of September. Other Parties' briefs  
9 are on or before the 18th of October, and the Company's  
10 responding brief or reply brief on or before November  
11 1st. Is there any other matter that is to come before  
12 the Commission at this time?

13 MR. TRAUTMAN: I believe there is one more,  
14 and this was in connection to the response to Bench  
15 Request No. 5. Staff had additional material that they  
16 wished to submit, and U S West in return had additional  
17 material that they wished to submit, and Staff does not  
18 object to the addition of the U S West materials.

19 JUDGE WALLIS: Very well. Thank you very  
20 much, Mr. Trautman. It is indeed true that the Staff  
21 has offered to supplement U S West's response to Bench  
22 Request No. 5, and the Company in turn has provided to  
23 the Commission copies of an additional supplement.  
24 Parties agree that that is proper, and Bench Request  
25 No. 5 will be treated in its entirety with all of the

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1 supplements.

2           Our recollection is that on the record  
3 earlier today, there was discussion about the  
4 supplementation of Bench Request No. 3, and I merely  
5 wanted at this point to reiterate that. The Bench  
6 Request was to provide copies of documents relating to  
7 the Publishing Agreement. The Publishing Agreement  
8 itself defines what publishing is quite broadly,  
9 including the provision of subscriber lists and  
10 agreements related to that or any other topic relating  
11 to the interrelationship between the two companies will  
12 be provided; is that correct, Ms. Anderl?

13           MS. ANDERL: Yes, Your Honor, to the best of  
14 our ability to discern what Agreements fall within the  
15 scope of that request. If I could just for a moment --  
16 and we can do this off the record if the Parties would  
17 like, but I would like to point out something from the  
18 Second Supplemental Order in 86-156 that I think  
19 pertains to this, and on Page 3 of that order, which  
20 has already been referenced many times in this  
21 proceeding and provided to the Bench, the Commission  
22 lists the 10 Agreements that had been filed with the  
23 Commission for approval, and included in that is a  
24 series of Unbundled Directory Services Agreements  
25 including subscriber listing information, daily

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1 business listing updates, et cetera. Those are  
2 separate from the Publishing Agreement. They do date  
3 back to the 1987 time frame. We will endeavor to get  
4 copies of all of those listed in the Second  
5 Supplemental Order as well as any other that are for  
6 ancillary services related to the publishing and  
7 provide all of those.

8 JUDGE WALLIS: Very well. I seem to recall  
9 in our discussions in earlier phases of the proceeding  
10 that there was a concern that all documents relating to  
11 Agreements between the Companies could be somewhat  
12 voluminous and could include material that all would  
13 agree is not relevant. If there is any question about  
14 whether a document may or may not be within the terms  
15 of the Commission's request, I would just ask counsel  
16 to inquire of the Commission whether it wants to see  
17 that particular document. Would that work for folks?

18 MS. ANDERL: Sure. I might propose that as a  
19 supplemental response to the Bench request what we do  
20 is provide a list of the Agreements that we could  
21 provide. Provide the subscriber list agreements  
22 specifically, provide a list of the other Agreements  
23 that are out there and available and allow the Bench to  
24 designate which additional Agreements might be of  
25 interest? Or do you want a broader response initially?

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

3 (Discussion off the record.)

4 JUDGE WALLIS: In some administrative  
5 discussion, it's been determined that the Company will  
6 proceed to provide copies of Agreements that are  
7 referenced in -- what is the document, Ms. Anderl?

8 MS. ANDERL: The Second Supplemental Order in  
9 U-86-156 on Page 3.

10 JUDGE WALLIS: And we'll review documents  
11 which are described in the Publishing Agreement as  
12 either defined as part of the publishing process  
13 referenced, and we'll provide a list of Agreements  
14 between the Companies in addition to those documents,  
15 and the Commission will have the opportunity to review  
16 that list and determine whether other documents may be  
17 relevant.

18 That does exhaust, now, I believe my list of  
19 items to cover, unless there are further suggestions.  
20 It appears that there are not. This concludes the  
21 evidentiary record. I want to thank everybody for your  
22 participation in this process, and the hearings are  
23 adjourned.

24 (Hearing adjourned at 4:40 p.m.)

25