

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION)
4 Complainant,) Hearing No. UT-911482
vs.) Volume II
5 INTERNATIONAL PACIFIC, INC.,) Pages 368-400
Respondent.)
6 -----)

7 A hearing in the above matter was held on
8 July 16, 1993 at 9:45 a.m., at 1300 South Evergreen
9 Park Drive Southwest, Olympia, Washington, before
10 Administrative Law Judge ROSEMARY FOSTER.

11 The parties were present as follows:

12 INTERNATIONAL PACIFIC, INC. by Douglas N.
13 Owens, Attorney, 520 Denny Way, Seattle, Washington
98122.

14 THE COMMISSION by Sally G. Brown, Assistant
15 Attorney General, 1400 South Evergreen Park Drive
16 Southwest, P.O. Box 40128, Olympia, Washington
98504-0128.

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24 Lisa K. Nishikawa, CSR, RPR
25 Court Reporter

	I N D E X					
	WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS	EXAM
3	Wilson	372	374			393

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6

	EXHIBIT	MARKED	ADMITTED
8	T-17	371	374
9	18	371	374
10	19	371	374
11	C-20	371	374
12	21	371	374
13	22	385	399

14

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16

	RECORD REQUISITION NO.	PAGE
18	1	378

19

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(COLLOQUY)

370

1 (Open session started at 7:03 p.m.)

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

3 JUDGE FOSTER: Let's be on the record in
4 Docket Number UT-911482. This is captioned the
5 Washington Utilities and Transportation Commission,
6 complainant, versus International Pacific, Inc.,
7 respondent. This is the second day of hearing in this
8 matter. It's being held on July 16, 1993, and we're
9 convened in the Commission's offices in Olympia,
10 Washington.

11 The first day of hearing and part of
12 today's day of hearing were confidential sessions
13 during which time the testimony and cross-examination
14 of staff witness Damron was taken. The second staff
15 witness is Mr. Wilson.

16 The parties are the same as they were in
17 the confidential portion of the hearing. Sally Brown
18 is representing the Commission staff and Doug Owens is
19 representing International Pacific, Inc. My name is
20 Rosemary Foster, and I'm the administrative law judge
21 presiding.

22 Prefiled in this matter was the testimony
23 of Mr. Wilson, and I'll go ahead and give that a
24 number at this time. Identified as Exhibit T-17 is

25 the testimony of Mr. Wilson, and it consists of 15
(COLLOQUY)

371

1 pages. Identified as Exhibit 18 is a copy of a survey
2 of operator service providers. It's actually a letter
3 that was sent to them dated September 18, 1992.

4 Identified as Exhibit 19 is a list of companies who
5 responded to the survey, and it's basically divided
6 into local exchange companies and alternative operator
7 service companies.

8 Identified as Exhibit C-20 is a copy of the
9 percentage of company gross operating revenues paid as
10 commission fees, and identified as Exhibit 21 is
11 TLW-4. This is a graph showing commission fees and
12 their relationship to total company revenues and to
13 intrastate revenue size. That's all the exhibits that
14 I have.

15 (Marked Exhibits Nos. T-17, 18, 19, C-20,
16 and 21.)

17 MS. BROWN: Yes.

18 Whereupon,

19 THOMAS L. WILSON, JR.

20 having been first duly sworn, was called as a witness
21 herein and was examined and testified as follows:

22 JUDGE FOSTER: Ms. Brown.

23 MS. BROWN: Thank you.

24

25

(WILSON - DIRECT BY BROWN)

372

1 DIRECT EXAMINATION

2 BY MS. BROWN:

3 Q. Please state your full name for the record
4 and spell the last.

5 A. My name is Thomas L. Wilson, Junior. That
6 is W I L S O N.

7 Q. What is your business address?

8 A. It is 1300 South Evergreen Park Drive
9 Southwest, Olympia, Washington, 98504.

10 Q. You are employed by the Washington
11 Utilities and Transportation Commission?

12 A. Yes, I am.

13 Q. What is your position?

14 A. I'm a utility rate research specialist.

15 Q. In preparation for your testimony here
16 today, did you predistribute what's been marked for
17 identification as Exhibit T-17 --

18 A. Yes.

19 Q. -- 18, 19, C-20, and 21?

20 A. Yes.

21 Q. Are there any revisions, additions, or
22 corrections to either your testimony or exhibits?

23 A. I do have a revision that flows through my
24 testimony.

25 Q. What is that?

(WILSON - DIRECT BY BROWN)

373

1 A. As Mr. Damron stated earlier, I did make a
2 mathematical error in calculating the weighted average
3 commission fee payment by AOS companies. If we turn
4 to page 11 of my testimony, I believe that's the first
5 point in my testimony where the number is used and it
6 occurs several more times. I'll go ahead and point
7 those out.

8 At line 13, the number 21.58 percent should
9 be changed to 22.32 percent. And then at line 20 on
10 the same page, 11, again we would need to change that
11 percentage from 21.58 to 22.32. Turning to page 12,
12 on line 1 the error occurs again and I would make the
13 same correction. On page 13 -- excuse me -- page 14
14 at line 12 I would make that correction. And I
15 believe that would conclude any changes.

16 Q. Are Exhibits T-17 through 19 and C-20 and
17 Exhibit 21 true and correct to the best of your
18 knowledge?

19 A. Yes.

20 Q. Were they prepared by you or under your
21 direction and supervision?

22 A. Yes. I prepared them.

23 Q. If I were to ask you the questions set
24 forth in Exhibit T-17 would your answers be as set

25 forth therein excepting the correction which you've

(WILSON - DIRECT BY BROWN)

374

1 just made on the record?

2 A. Yes.

3 MS. BROWN: Your Honor, I move the
4 admission of Exhibit T-17, Exhibit 18, Exhibit 19,
5 Exhibit C-20, and Exhibit 21.

6 MR. OWENS: No objection.

7 JUDGE FOSTER: All right. Exhibits T-17,
8 Exhibits 18, 19, C-20, and Exhibit 21 will be
9 admitted.

10 (Admitted Exhibits Nos. T-17, 18, 19, C-20,
11 and 21.)

12 MS. BROWN: Thank you. The witness is
13 available for cross-examination.

14 JUDGE FOSTER: Go ahead, Mr. Owens.

15 MR. OWENS: Thank you.

16 CROSS-EXAMINATION

17 BY MR. OWENS:

18 Q. Good evening, Mr. Wilson.

19 A. Good evening.

20 Q. Mr. Wilson, referring you to Exhibit 18,
21 can you indicate which of those companies were defunct
22 at the time they were supposed to respond to your
23 questionnaire?

24 A. I may have mismarked my exhibits. I

25 thought that would be 19. TLW-2?

(WILSON - CROSS BY OWENS)

375

1 JUDGE FOSTER: It's 19.

2 MS. BROWN: Yes, it's 19.

3 MR. OWENS: I'm sorry.

4 A. Which of those are defunct?

5 MR. OWENS: Wait a minute. Let's see. Can
6 we go off the record. I apparently didn't follow the
7 numbering.

8 JUDGE FOSTER: Yes. Let's be off the
9 record.

10 (Discussion off the record.)

11 JUDGE FOSTER: Let's be back on the record.

12 While we were off the record, we established the
13 proper order of the exhibits.

14 MR. OWENS: Thank you.

15 Q. On TLW-19 -- thanks for the correction --
16 could you indicate which of the companies were
17 defunct?

18 A. I can try. At line 12, Community Telephone
19 and Electronics; at line 46, US Link.

20 JUDGE FOSTER: I'm sorry. What is the
21 status of US Link? It's no longer operating?

22 THE WITNESS: It's defunct. That's
23 correct. They have simply folded, I believe.

24 A. To the best of my knowledge, those would be

25 the only ones who have stopped operating as

(WILSON - CROSS BY OWENS)

376

1 telecommunications companies in Washington since the
2 time I prepared this exhibit, but those were the
3 companies that at the time I sent out the survey in
4 September last year I was aware of operating as
5 alternate operator service companies.

6 Q. I'm not sure I understood your answer.
7 Just maybe it's late in the day. All I'm interested
8 in is in your testimony you indicated that you went
9 through -- that you sent the questionnaire to these 53
10 companies on page 1 of Exhibit 19, and you listed some
11 reasons why not all companies' data was used, and one
12 was that the companies -- some companies were defunct.
13 And when you just answered me a minute ago, you
14 indicated they were defunct at the time you prepared
15 the exhibit.

16 So did I understand correctly those two
17 companies are the only ones that you excluded because
18 they were defunct from mathematically calculating the
19 results of the survey?

20 A. May I explain?

21 Q. Sure.

22 A. I sent the survey in Exhibit 18 to 53
23 companies and 26 -- 53 AOS companies and 26 local
24 exchange companies. Exhibit 19 is a list of those 53

25 AOS companies and the local exchange companies on page
(WILSON - CROSS BY OWENS) 377

1 2. You asked me which of the companies in Exhibit 19
2 are defunct now, and that would have been I guess --
3 you're right. They were defunct at the time I
4 prepared this exhibit and my testimony, and that's who
5 I was referring to on page 7.

6 Q. Great. Can you now identify those
7 companies whose data was excluded because they had
8 little or no operations in Washington in 1991?

9 A. No, I can't. Oh, wait. I could. I do
10 have my work paper which I used in calculating the
11 22.32 percent, and that lists the 28 companies on
12 whose responses I relied upon. I could crosscheck
13 that against this list of 79 companies. I hate to
14 burden folks with that at this late hour of the
15 evening.

16 Q. I don't want to burden anybody either.
17 Well, let's take it a different way. Let's eliminate
18 the LECs. I believe you indicated in your testimony
19 that only U S WEST and GTE provide operator AOS-like
20 services in Washington, is that right?

21 A. I believe that United does also.

22 Q. All right. United does also. Then really
23 the only ones I'm concerned with are those AOS
24 providers out of the page 1 list that were excluded

25 either because they had little or no operations in
(WILSON - CROSS BY OWENS)

378

1 Washington or their responses were incomplete.

2 A. I would have difficulty performing that
3 task on the stand. I would be more than happy to
4 suggest that I go back after this hearing, that I
5 could prepare that list for you easily.

6 Q. That'll be fine.

7 A. My other concern would be --

8 Q. That's fine. That's adequate. Late -- a
9 discovery request, then? Record requisition?

10 A. Whatever works for the court. A record
11 requisition would be fine.

12 Q. Okay.

13 A. I'll make a note of that.

14 JUDGE FOSTER: Let's designate that as
15 Record Requisition No. 1.

16 (Record Requisition No. 1.)

17 Q. At page 11 of your Exhibit T-17, you stated
18 that you assumed that the total company percent figure
19 does not vary significantly from the intrastate
20 jurisdictional percentage figure, and you further
21 state you made that assumption because based on your
22 experience it is common for telecommunications
23 companies operating in multiple jurisdictions to offer
24 a single rate to customers in order to avoid customer

25 confusion. Is it also common for companies to offer

(WILSON - CROSS BY OWENS)

379

1 different rates in different jurisdictions?

2 A. Well, for example, it's my understanding of
3 the way the market operates that it would be
4 impossible for -- or very confusing for an AOS company
5 to market their services to an aggregator where they
6 explain to the aggregator that, Look, we're going to
7 pay you one commission fee on calls made within
8 Washington state and a different commission fee
9 payment level for calls made in the interstate arena.

10 I think that it's my understanding that
11 AOSs would find it difficult to sell their services to
12 aggregators facing competition for aggregators when
13 they had to go through that much explanation to the
14 aggregator.

15 Q. In fact, you know that International
16 Pacific does that, do you not?

17 A. I can't imagine how they do that. If they
18 can't jurisdictionally separate the results for us in
19 this proceeding to be able to identify by aggregator
20 which calls were intrastate and which were interstate,
21 to go through the calculations and pay different
22 commission fee levels on those calls would surprise
23 me.

24 Q. Did you review any of the documents

25 supporting Mr. Damron's testimony?

(WILSON - CROSS BY OWENS)

380

1 A. With limited understanding, I must admit.

2 I'm not an accountant.

3 Q. You didn't review any of the confidential

4 exhibits such as Attachment 38 to International

5 Pacific's responses to the staff's data request?

6 A. I don't know. There must be several

7 thousand pages. I couldn't tell you.

8 Q. Could you accept subject to check that that

9 confidential document does indicate that International

10 Pacific for at least one aggregator has a different

11 commission fee schedule for interstate and for

12 Washington intrastate?

13 A. I'll accept that subject to check. I would

14 like to point out that in the competitive

15 classification Mr. Coulson talked about receiving

16 \$1.75 a call, and I don't remember him specifying that

17 that varied by state. The RFP that Paytel sent out

18 did not do that. I think that overall my assumption

19 is fairly robust.

20 Q. Well, you didn't include a question like

21 that in your questionnaire, did you?

22 A. No. I based that statement in my testimony

23 upon my several years' steady involvement in

24 regulating this industry group.

25 Q. Does that experience include asking the
(WILSON - CROSS BY OWENS)

381

1 individual AOS companies whether they have different
2 commission fee schedules for interstate than
3 intrastate?

4 A. I probably have covered that in
5 conversations with AOS companies.

6 Q. Do you know how many?

7 A. No, I don't. I've talked to all 53 of them
8 before. It could be any or all.

9 Q. You testified that -- this is on page 12 --
10 that the local exchange companies do not pay higher
11 than average commission fees. Isn't it true that
12 according to response by U S WEST that U S WEST
13 doesn't even agree that its payments are in the nature
14 of commission fees? Don't they characterize their
15 payments as site rentals?

16 A. I have also heard them call them commission
17 fees. Their response may say that.

18 Q. Does U S WEST pay the owners of privately
19 owned pay telephones anything?

20 A. No, they don't.

21 Q. Is it correct that of the 28 companies you
22 studied, 15 have rates higher than the average that
23 you calculated?

24 A. May I accept that subject to check?

25 Q. Please do. Let's expedite this. Could you
(WILSON - CROSS BY OWENS) 382

1 also accept subject to check that there is at least
2 one of the respondent companies whose Commission
3 percentage is higher than International Pacific's?

4 A. Yes.

5 Q. Now, you didn't conduct -- or present any
6 evidence of any statistical evaluation of how
7 representative the sample mean that you calculated is
8 of the population mean, is that right?

9 A. That's correct.

10 Q. You stated in your testimony that you
11 received responses from 32 of the AOS companies. Did
12 that include the defunct and nonoperating in
13 Washington for a significant period of time companies?

14 A. No. I don't believe so.

15 Q. Did you --

16 A. Excuse me. A few of those may have been in
17 Washington only a short while, but they did provide me
18 responses.

19 Q. So at least some of the 53 in addition to
20 the two that you've identified as defunct didn't
21 respond, is that right?

22 A. Yes.

23 Q. Did you make any follow-up effort to
24 require these companies to provide the information?

25 A. Yes, I did. However, my time was limited.

(WILSON - CROSS BY OWENS)

383

1 That's a time-intensive effort. I did the best I
2 could in calling those people back.

3 Q. Would you agree that the sample that you
4 have of the 28 companies does not constitute a random
5 sample of the population?

6 A. No, I wouldn't.

7 Q. In a random sample, don't you select the
8 companies whose data is to be used in the analysis
9 yourself?

10 A. The way I look at it is that in a random
11 sample you select the companies that -- you do not
12 select the companies that you're going to survey.
13 They select themselves or it just happens. They come
14 to you and you have no control or there's no selection
15 bias by me in which ones I use.

16 Q. Maybe we're having a semantic problem. You
17 could develop an algorithm or some formula by which a
18 selection would be done that you would as a
19 statistician create with the objective of satisfying
20 the parameters of a random sample selection, is that
21 right?

22 A. That's right. For example, I could have
23 numbered the 79 companies that I sent the survey to 1
24 through 79 and put bingo balls in a machine like they

25 do in a lottery and selected a statistically valid
(WILSON - CROSS BY OWENS)

384

1 number of them to survey. I did not do that.
2 However, the way that I look at it is I sent out 79
3 survey requests for one reason or another.

4 For example, many of the local exchange
5 companies that are listed in Exhibit 19 don't even
6 participate in this market, so they were not part of
7 the sample population really, but by the time we get
8 down to the 32 who did respond out of the true
9 population, I had no control over which 32 those were.
10 The 32 in effect selected themselves by responding,
11 and that's why I consider it to be a fair sample,
12 because I did not control that.

13 Q. But when the respondents select themselves,
14 isn't that a possible source of bias in the
15 statistical calculation?

16 A. It could be. I would point out that also I
17 believe that the results of the survey follow a fairly
18 normal bell-shaped distribution around the mean.
19 There is a fairly even distribution of those companies
20 around the mean.

21 Q. But if it were the case that the
22 nonresponding companies were, for example, more highly
23 representative of the higher commission payment
24 stratum, then that would have an impact on the

25 validity of that conclusion, wouldn't it?

(WILSON - CROSS BY OWENS)

385

1 A. That's correct. I was very pleased to
2 note, however, that the results of my survey analysis
3 do seem to comport quite closely with those performed
4 by the FCC, and I recited that statistic in my
5 testimony that where I calculate it on the basis of
6 the most fair survey I could think of to do, the
7 figure 22.32 percent, the FCC found a number very
8 similar to that, 21 percent, and I felt that gave me a
9 lot of confidence in my analysis.

10 Q. When you say the FCC, were you referring to
11 the final report of the Federal Communications
12 Commission pursuant to the Telephone Operator Consumer
13 Services Improvement Act of 1990 dated November 13,
14 1992?

15 A. Yes. I've restated that citation at page
16 14, Footnote 2 of my testimony.

17 MR. OWENS: Request that a --

18 JUDGE FOSTER: Identified as Exhibit 22 is
19 the copy of the final report of the FCC dated November
20 13, 1992. It's a multi-page document.

21 (Marked Exhibit No. 22.)

22 Q. Handing you what's been marked as Exhibit
23 22, is that the document you just referred to?

24 A. Yes.

25 Q. Now, the study that the FCC did was really
(WILSON - CROSS BY OWENS) 386

1 in two levels, wasn't it? First they asked one group,
2 then issued an order directing what they characterized
3 as all carriers to provide data, and then they asked a
4 group of nine carriers to supply additional data, is
5 that true?

6 A. I'll accept that subject to check.

7 Q. And three of the nine carriers were AT&T,
8 MCI, and Sprint. Would you agree with that?

9 A. All right. Subject to check.

10 Q. And would it also be true that they derived
11 the statistic that you believe confirms your analysis
12 solely from the other six carriers which they
13 characterized as carrying 40 percent of the traffic?

14 A. I'll accept that subject to check. Thank
15 you.

16 Q. And then they indicated that they simply
17 estimated that that same statistic applied to the
18 other carriers, isn't that true?

19 A. I'll accept that subject to check.

20 Q. Now, was their study a random sample
21 technique?

22 A. I couldn't tell you off the top of my head.

23 Q. Did the FCC's report say that different
24 carriers' data were hard to compare because of

25 different accounting methods that they used?

(WILSON - CROSS BY OWENS)

387

1 A. They may have. I'll accept that subject to
2 check.

3 Q. Would you agree that it would make a
4 difference to the percentage that commission fees
5 beared a gross revenue whether or not billed amounts
6 for uncollectible calls are included as revenue?

7 A. Uncollectible?

8 Q. Billed amounts for uncollectible calls,
9 yes.

10 A. Yes.

11 Q. And did the report say that some carriers
12 do not include those amounts in revenue?

13 A. I'll accept that subject to check, and I
14 would like to explain that for all I know, the same
15 phenomenon would apply to the analysis which I
16 performed.

17 Q. Thanks. Saved me that question. Did the
18 report say that the reasons AT&T, MCI, and Sprint have
19 lower percentages of commissions is that they have
20 some aggregators that receive no and low commissions
21 and they have substantial at-home and dial-around
22 traffic which pays no commission?

23 A. If the FCC failed to calculate the figures
24 for AT&T by only considering commissionable revenues,

25 then they made a serious mistake in their analysis

(WILSON - CROSS BY OWENS)

388

1 which I did not make. Because -- I say that because
2 you referenced their statement regarding not paying
3 commission fees to residential subscribers, I think I
4 heard you say, and I did not include any consideration
5 of revenues from residential subscribers in my
6 analysis. I only looked at commissionable revenues.

7 I think that they said that the three
8 largest carriers had commission fees around 3 point
9 something percent, and I would think that for the
10 three largest non-LEC carriers in my analysis that it
11 would be somewhat higher than that. How that forces
12 -- how that affects a comparison of my survey to
13 theirs, I couldn't tell you, though.

14 Q. Is it possible that the mean commission fee
15 payment of the entire population is higher than the
16 22.32 percent you've computed?

17 A. I don't think so. I've looked at the
18 results that I've got. I've described the survey in
19 my analysis, in my testimony, and as you can see, I
20 have, I think, a good representation of the different
21 kinds of companies that compete in the AOS market.

22 For example, I've got pure AOSs such as
23 International Pacific. I've got hybrids such as AT&T,
24 MCI. I've got local exchange companies. I've got

25 small payphone operators. I've got prison phone

(WILSON - CROSS BY OWENS)

389

1 companies. I've got companies from back and forth
2 across the United States, companies of a wide variety
3 of sizes.

4 I've got in my analysis 28 companies out of
5 by my estimate roughly 55, which is nearly half the
6 total population, and I'm very satisfied with the
7 results.

8 Q. You're saying it's impossible that the true
9 mean of the population could be higher than 22 percent
10 you computed?

11 A. I think it's very unlikely that anybody is
12 going to persuade me of that.

13 Q. So you're saying it is impossible?

14 A. Very unlikely.

15 Q. But not impossible?

16 A. No, not impossible, but I draw a
17 distinction between impossible and very unlikely.

18 Q. In a sample such as you have, isn't it true
19 that there is an unmeasurable amount of bias involved
20 in that calculation because of the self-selection?

21 A. Theoretically that's possible. It's also
22 possible that there's no bias.

23 Q. But is it possible that there is some
24 unmeasurable bias?

25 A. Yes, and I haven't measured that.

(WILSON - CROSS BY OWENS)

390

1 Q. Isn't it true that at -- not all of the
2 commissions described in the responses you received
3 are on the basis of percentages?

4 A. The data that I received was based on
5 responses to the questions found in the survey and,
6 yes, we asked for information about commission fee
7 payments in the industry several different ways to
8 improve our understanding, and as explained at page
9 10, line 10 of my testimony, I calculated my figures
10 for my analysis three different ways.

11 Q. All on the basis of percentages, though,
12 right?

13 A. Well, I mean, most of the data that I have
14 distilled to a percentage figure was based upon
15 commissionable revenue figures for the respondents and
16 the commission fee payments they had made on those
17 revenues, so it was based on accounting-type data
18 which they provided, not percentage statements. I
19 created those myself from the data they gave me.

20 Q. Is there any reason to believe that any of
21 the 28 respondents that supplied information to you
22 was paying a higher commission level than they thought
23 was necessary to do the business that they were
24 involved in?

25 A. No. I would assume they are all paying as
 (WILSON - CROSS BY OWENS)

391

1 little as they can and attempting to improve their own
2 profit levels.

3 Q. And so each of them is in the competitive
4 marketplace negotiating with aggregators and reaching
5 those agreements on the various levels that they
6 responded to you were what they were paying, is that
7 right?

8 A. Yes. They -- I would like to caveat that
9 yes by clarifying my analysis of the competitive
10 marketplace which is on the record in the
11 classification case for your client.

12 Q. Let me withdraw that.

13 A. You characterize it as competitive
14 marketplace, and with regard to aggregators I would
15 agree. Could I continue with just a little more
16 explanation on that answer? They did not always tell
17 me the percentages for every aggregator. What I
18 attempted to gain was the revenue -- the
19 commissionable revenue and the expenses that they had
20 on their books for commission fee payments, and I
21 wanted to crosscheck the figures I developed from that
22 data with their statements as to the percentages that
23 they feel they pay.

24 Q. Didn't the FCC indicate that even the

25 largest carriers like AT&T, MCI, and Sprint sometimes
(WILSON - CROSS BY OWENS)

392

1 pay commissions as high as the smaller AOS companies?

2 A. I'll accept that subject to check, and that
3 would comport with my understanding of the industry's
4 behavior also.

5 Q. So it is the case, regardless of how you
6 did your methodology, that there's a range of
7 commission payment plans that are being used by these
8 28 companies, is that right?

9 A. That's right. When you say that on average
10 you're comfortable, you may be sitting with one foot
11 in a bucket of boiling water and one foot in a bucket
12 of freezing water and on average you're comfortable.
13 On average these companies pay 22.32 percent, I found,
14 but some of them are certainly going to be paying some
15 aggregators more and other aggregators less.

16 And the same thing would apply when you
17 look at the commission fee payments that I've -- or
18 the commission fee percentage that we have looked at
19 with International Pacific found in Exhibit C-21.
20 Some aggregators get more and some get less than that
21 figure.

22 Q. The range of data points that you used to
23 compute your average was at the low end 9.54 percent
24 and at the high end 41.56 percent, correct?

25 A. Could you refer me to my testimony, please?

(WILSON - CROSS BY OWENS)

393

1 Q. It's not in your testimony. I don't
2 believe that's confidential information because it
3 doesn't identify any particular carrier. You
4 indicated in your own testimony what the LECs pay.

5 A. Well, I think you're -- as an analyst, I
6 would say that I think you're verging on disclosing
7 confidential data, and I'm not going to answer your
8 question, not on the public record.

9 Well, I guess that I did answer questions
10 in my own testimony with some averages, so to be fair,
11 I'll go ahead and say you're right. I'm sorry.

12 MR. OWENS: Thank you. Nothing further.

13 JUDGE FOSTER: Just a few questions.

14

15 EXAMINATION

16 BY JUDGE FOSTER:

17 Q. Looking at page 11, you talk about the
18 difference between IPI's figure and the industry
19 figure for average percentage commission fee payments,
20 and I wondered if you could just explain what that
21 difference means to you.

22 A. What I found was that the average
23 commission fee payment is 22.32 percent and the figure
24 in Exhibit C-21 is the percentage of commissionable

25 revenues paid by International Pacific, and it appears

(WILSON - EXAMINATION BY JUDGE)

394

1 to me as if the difference between those two figures
2 is explained by International Pacific's rate level,
3 among other things.

4 Q. Is it a problem to you or a problem to the
5 Commission that some of these aggregators are getting
6 to charge higher commission fees than others?

7 A. Well, that depends on the company's rate
8 levels. In my opinion, there are -- I'm just going to
9 go ahead and take a risk here and say something, your
10 Honor, that I was asked about 41.56 percent being the
11 high end of the range, and I agreed to that, and I
12 would point out that that entity has rates that are
13 normal, so high commission fee payments by themselves
14 are something that is a business decision by those
15 entities, and it's the harm to the consumer generated
16 by unreasonable prices that I think should concern the
17 Commission and does concern the staff.

18 Q. To put it another way, you don't care about
19 the variations particularly between what aggregators
20 may get, but if that's coupled with a high end user
21 rate, then you are concerned about the whole package
22 and that's because the AOS or -- and the aggregator
23 are -- what was the word that was used earlier today
24 -- have very compatible economic interests -- let's

25 put it that way -- and could result in an exploitation

(WILSON - EXAMINATION BY JUDGE)

395

1 of an end use consumer?

2 A. Yes. It's the effect on the consumer that
3 bothers me.

4 Q. On page 12 you talked about LECs paying
5 higher than average commission fees and you said
6 their average was 14.2. Why are they lower than AOSs
7 generally?

8 A. I would have to speculate about that, and
9 it's based on some understanding of the industry
10 through my analysis, that local exchange companies
11 often tend to be the entity that's the carrier of last
12 resort. They serve locations where they have lower
13 revenues through a location, and by the way, that's
14 what I think determines the level of a commission fee,
15 is the amount of revenue that comes through the phone.

16 The aggregator is worth more to the AOS if
17 they have a lot of traffic like a truck stop or an
18 airport, but the local exchange companies probably
19 tend to have more of the locations where the revenue
20 is just barely enough to merit paying commission fee
21 payments. Could be one explanation for it.

22 Q. On page 13 in the middle of the page you
23 ask a question about assuming that the results do not
24 vary between state and total company, and I did not

25 understand your answer there. Could you explain

(WILSON - EXAMINATION BY JUDGE)

396

1 again?

2 A. Frankly, I don't blame you. I think I did
3 the wrong comparison there.

4 Q. Tell me what the right one is, then.

5 A. What I testified to here is that the 11
6 companies for which I used total company figures
7 averaged 27 percent. When I had data that was
8 intrastate, I got a different number, 17 percent.
9 What I should have done was for the companies that I
10 had both total company and intrastate I should have
11 compared the results for each company, which I didn't
12 do.

13 So I was trying to support my earlier
14 assumption, which I believed was robust, and this
15 information doesn't seem to support it. I wish I had
16 done that differently. It doesn't support it because
17 I did it wrong.

18 Q. Would there be any purpose in trying to
19 correct that or not?

20 A. I think it would be one way of testing my
21 assumption, and I would like to do that. I can bring
22 that back to you on rebuttal or something when I'm
23 back here again or --

24 JUDGE FOSTER: Mr. Owens, would you have a

25 problem with that?

(WILSON - EXAMINATION BY JUDGE)

397

1 MR. OWENS: No.

2 JUDGE FOSTER: I mean, it's technically, I
3 guess, new information, but it's along the same lines
4 as this study and I feel like it really would be a
5 contribution, and if you wanted to do that and then
6 Mr. Owens can ask whatever questions he has about it
7 then.

8 THE WITNESS: And I would be using numbers
9 that -- Mr. Owens has all of my work papers and data
10 already.

11 Q. And then maybe I'll understand that answer.

12 A. Great.

13 Q. The last question I had was about -- that's
14 on page 14 and it's question and answer between lines
15 5 and 10, the relationship between the size of the
16 company's revenue and the level of commission fee
17 payments, and you had some graphs here on that in
18 Exhibit 21. I'm having trouble there with what your
19 conclusion is from that.

20 A. In my conversations with industry
21 representatives that it's been hypothesized that
22 larger companies might be able to pay larger
23 commission fee payments because they're big.

24 Q. Because they have more money.

25 A. And they have more money. On the other

(WILSON - EXAMINATION BY JUDGE)

398

1 hand, there's a hypothesis that if you're AT&T you
2 don't have to pay as much because some aggregators
3 are going to pick you just because you are AT&T, you
4 have that brand name recognition.

5 Therefore, there's the hypothesis that the
6 commission fee payments are lower for large companies,
7 or we could say the question, well, are smaller
8 companies forced to pay more or less because of their
9 size? So I wanted to see if size was a determinant in
10 the size of the commission fee payment. In looking at
11 my graphs in Exhibit 20, you see where I have --

12 Q. Excuse me. I think that's 21.

13 A. Excuse me. I think you know which graphs
14 I'm talking about.

15 Q. Yes, the ones that talk about commission
16 fees relationship to the total company revenues.

17 A. Right. And just looking at page 1 of 2
18 where I compared commission fees on the Y axis of my
19 graph, the vertical axis, that's in percents, and then
20 I just charted the data I had across the horizontal
21 axis for total company revenues, and as you can see,
22 there next to the vertical axis on the left we have a
23 whole bunch of companies and they're all over the
24 place.

25 There doesn't seem to be where, you know --

(WILSON - EXAMINATION BY JUDGE)

399

1 if you had hypothesized that the bigger the company
2 the higher the fee, you would expect to do an upward
3 sloping line, and there doesn't appear to be one from
4 this graphical analysis, so that's the kind of thing I
5 was trying to show. I hope that helps.

6 Q. So the conclusion would be that based on
7 the survey that you did there is not any relationship
8 between commission fees and total company revenues and
9 commission fees and intrastate revenue size?

10 A. Right, and I'm just trying to show that my
11 analysis is not biased.

12 JUDGE FOSTER: Okay. All right. That's
13 all I have. Ms. Brown, examination?

14 MS. BROWN: I have nothing, your Honor.

15 JUDGE FOSTER: Mr. Owens?

16 MR. OWENS: Nothing.

17 JUDGE FOSTER: Anything else? All right.
18 I believe that we've admitted all of these exhibits.
19 Did we admit Exhibit 22? Did you offer 22?

20 MR. OWENS: I'm sorry. If I didn't, I
21 meant to.

22 JUDGE FOSTER: Okay. Exhibit 22 will be
23 admitted. And the witness may be excused. Thank you
24 for your testimony.

25 (Admitted Exhibit No. 22.)

(WILSON - EXAMINATION BY JUDGE)

400

1 THE WITNESS: Thank you.

2 JUDGE FOSTER: Does that complete the
3 examination of the staff witnesses today?

4 MR. OWENS: Does the staff rest?

5 MS. BROWN: Yes. Excepting, of course,
6 rebuttal.

7 JUDGE FOSTER: Is there anything else
8 before we adjourn this evening? There being nothing
9 further to come before us today, we'll stand
10 adjourned. We're off the record.

11 (Adjourned at 7:55 p.m.)

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