

1 Q. DID ANYONE AT TMC EVER TELL YOU TO MAKE FALSE  
2 ENTRIES ON THIS EXHIBIT?

3 A. I DECLINE TO ANSWER ON ADVICE OF COUNSEL.

4 Q. WOULD YOU REFUSE TO ANSWER ON THE SAME BASIS ANY  
5 OTHER QUESTIONS CONCERNING EXHIBIT J?

6 A. THAT'S CORRECT.

7 Q. EXHIBIT K?

8 A. I'M AT EXHIBIT K.

9 Q. DID YOU PREPARE THIS EXHIBIT?

10 A. I DECLINE TO ANSWER ON ADVICE OF COUNSEL.

11 Q. DID ANYONE AT TMC EVER TELL YOU TO MAKE FALSE  
12 ENTRIES ON EXHIBIT K?

13 A. I DECLINE TO ANSWER ON ADVICE OF COUNSEL.

14 Q. WOULD YOU REFUSE TO ANSWER ON THE SAME BASIS ANY  
15 OTHER QUESTIONS CONCERNING EXHIBIT K?

16 A. THAT'S CORRECT.

17 MS. WOOLF: THANK YOU, MISS MILLER. I HAVE NOTHING  
18 MORE.

19 MS. DRISCOLL: DO YOU HAVE ANY QUESTIONS, MR.  
20 HELEIN?

21 MR. HELEIN: IF YOU WAIT JUST A MINUTE, I'LL BE  
22 RIGHT BACK.

23 CAN YOU HEAR ME?

24 MS. DRISCOLL: YES.

25 MR. HELEIN: I WILL AT THIS STAGE OF THE GAME

1 RESERVE THE RIGHT TO PROPOUND ANY QUESTIONS TO THIS WITNESS AT A  
2 LATER TIME. BUT I WILL MAKE THIS STATEMENT: IT IS THE  
3 PLAINTIFF'S POSITION THAT THERE'S NO FACTUAL BASIS FOR MISS  
4 MILLER'S INVOCATION OF THE FIFTH AMENDMENT, AND WE WILL ADDRESS  
5 THAT ISSUE LATER IN THESE PROCEEDINGS.

6 I HAVE NO FURTHER QUESTIONS.

7 MS. DRISCOLL: VERY WELL. I GUESS THEN THAT  
8 CONCLUDES THE DEPOSITION OF MISS MILLER.

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CATHY LYNN MILLER

STATE OF CALIFORNIA )  
                          )  
COUNTY OF SAN DIEGO )

SS.

I, LINDA BABONAS, CERTIFIED SHORTHAND  
REPORTER, STATE OF CALIFORNIA, DO HEREBY CERTIFY:

THAT THE DEPONENT IN THE FOREGOING DEPOSITION WAS BY ME  
DULY SWORN; THAT THE DEPOSITION WAS THEN TAKEN BEFORE ME AT  
THE TIME AND PLACE HEREIN SET FORTH; THAT THE TESTIMONY AND  
PROCEEDINGS WERE REPORTED STENOGRAPHICALLY BY ME AND LATER  
TRANSCRIBED INTO TYPEWRITING UNDER MY DIRECTION; THAT THE  
FOREGOING IS A TRUE RECORD OF THE TESTIMONY AND PROCEEDINGS  
TAKEN AT THAT TIME.

THAT READING AND SIGNING WERE WAIVED.

THAT THE DEPONENT WAS NOTIFIED IN WRITING THAT THE  
ORIGINAL DEPOSITION WAS AVAILABLE FOR READING AND SIGNING  
PURSUANT TO RULE 30 OF THE FEDERAL RULES OF CIVIL PROCEDURE AT

COPY

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

CLARK-BADER, INC., D/B/A/  
TMC LONG DISTANCE,

COMPLAINANT,

VS.

NO. E-89-85

PACIFIC BELL TELEPHONE COMPANY  
A PACIFIC TELESIS COMPANY,

DEFENDANT.

TELEPHONIC DEPOSITION OF MITCHELL C. LIPKIN  
SAN DIEGO, CALIFORNIA  
OCTOBER 1, 1990

REPORTED BY LINDA BABONAS, CSR NO. 3076

**Fivecoat and With**

Certified Shorthand Reporters, Inc.

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**I N D E X**

**WITNESS: MITCHELL C. LIPKIN  
BY MS. WOOLF**

**EXAMINATION  
3**

**I N D E X  
O F  
E X H I B I T S**

**FOR THE DEFENDANT:  
A-K EXHIBITS A-K TO THE COMPLAINT**

**PAGE  
4**

**APPEARANCES:**

**FOR THE COMPLAINANT:**

**DOW, LOHNES & ALBERTSON  
BY CHARLES H. HELEIN, ESQ.  
FIFTH FLOOR  
1255 TWENTY-THIRD STREET  
WASHINGTON, D.C. 20037**

**FOR THE DEFENDANT:**

**NANCY WOOLF, ESQ.  
ROOM 1523  
140 NEW MONTGOMERY STREET  
SAN FRANCISCO, CALIFORNIA 94105**

**FOR THE DEPONENT:**

**GRAY, CARY, AMES & FRYE  
BY JAN S. DRISCOLL, ESQ.  
1700 FIRST INTERSTATE PLAZA  
401 B STREET  
SAN DIEGO, CALIFORNIA 92101**

**ALSO PRESENT: CATHY L. MILLER**

**TELEPHONIC DEPOSITION OF MITCHELL C. LIPKIN  
TAKEN BY THE DEFENDANT AT SUITE 1600, 401 B STREET, SAN  
DIEGO, CALIFORNIA, ON MONDAY, THE 1ST DAY OF OCTOBER, 1990  
AT 11:42 A.M., BEFORE LINDA BABONAS, CSR NO. 3076, PURSUANT  
TO STIPULATION.**

1 MITCHELL C. LIPKIN  
2 HAVING BEEN PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

3  
4 MS. DRISCOLL: MR. LIPKIN IS HERE AND HAS  
5 PREVIOUSLY BEEN SWORN BY THE COURT REPORTER.

6 COUNSEL, BEFORE WE START, I'D LIKE TO CLARIFY.  
7 IT'S MY UNDERSTANDING THAT BY STIPULATION OF COUNSEL WE HAVE  
8 AGREED TO LIMIT THE SCOPE OF THE QUESTIONS TODAY TO ESTABLISHING  
9 THE IDENTITY OF THE WITNESS AND ASKING QUESTIONS ABOUT EXHIBITS  
10 TO TMC'S COMPLAINT.

11 I ANTICIPATE THAT BASED UPON ADVICE OF COUNSEL, THE  
12 WITNESS WILL DECLINE TO ANSWER CERTAIN QUESTIONS BASED UPON THE  
13 PRIVILEGE OF THE FIFTH AMENDMENT TO DECLINE TO GIVE TESTIMONY  
14 THAT MAY TEND TO INCRIMINATE THE WITNESS.

15 IS THAT ACCURATE?

16 MR. HELEIN: THIS IS CHUCK HELEIN. MY  
17 UNDERSTANDING IS PARTIALLY IN ACCORD WITH WHAT YOU SAID, JAN,  
18 AND THAT IS THAT THE WITNESSES WILL INVOKE THE FIFTH AMENDMENT  
19 AND THAT IS PRIMARILY THE ONLY PURPOSE OF THESE DEPOSITIONS.  
20 BECAUSE BASED UPON THAT UNDERSTANDING, CERTAIN QUESTIONS I  
21 OTHERWISE MIGHT WISH TO HAVE PROPOUNDED EVEN AT THIS STAGE TO  
22 THE WITNESSES, I HAVE NOT PREPARED TO DO.

23 MS. DRISCOLL: CORRECT. WE ARE SEEKING IMMUNITY.

1 TIME.

2 WE'RE NOT WAIVING OUR RIGHT AT THAT TIME TO RAISE  
3 ANY APPROPRIATE OBJECTIONS OR PRIVILEGES, BUT THE WITNESSES WILL  
4 BE AVAILABLE FOR FULL QUESTIONING. IS THAT YOUR --

5 MR. HELEIN: WITH THAT UNDERSTANDING, FINE.

6 MS. WOOLF: THAT'S --

7 THE REPORTER: COULD YOU IDENTIFY YOURSELF, PLEASE?

8 MS. DRISCOLL: JUST TO CLARIFY FOR THE REPORTER,  
9 THE ONLY FEMALE VOICE THAT WILL COME OVER THE TELEPHONE, I  
10 BELIEVE, WILL BE NANCY WOOLF WHO REPRESENTS PACIFIC BELL; IS  
11 THAT CORRECT?

12 MS. WOOLF: THAT'S MY UNDERSTANDING.

13 MR. HELEIN: YES.

14 MS. DRISCOLL: IN ORDER TO SAVE TIME, WILL COUNSEL  
15 AGREE THAT THE WITNESS CAN RESPOND TO APPROPRIATE QUESTIONS,  
16 QUOTE, "I DECLINE TO ANSWER UPON ADVICE OF COUNSEL," END QUOTE,  
17 AND THAT SUCH RESPONSE IS DEEMED TO INCORPORATE THAT THE BASIS  
18 IS THE PRIVILEGE UNDER THE FIFTH AMENDMENT AGAINST  
19 SELF-INCRIMINATION?

20 MR. HELEIN: IF THE WITNESSES WOULD AT LEAST  
21 THEMSELVES AT LEAST ONCE INDICATE THAT THEY ARE DECLINING ON

1 IS THAT ACCEPTABLE, MISS WOOLF?

2 MS. WOOLF: THAT'S FINE WITH ME.

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EXAMINATION

5 BY MS. WOOLF:

6 Q. GOOD MORNING, MR. LIPKIN.

7 COULD YOU PLEASE STATE YOUR FULL NAME AND CURRENT  
8 ADDRESS?

9 A. IT'S MITCHELL CHARLES LIPKIN.  
10 MY ADDRESS IS 11717 STONEY PEAK DRIVE, NO. 3, SAN  
11 DIEGO, 92128.

12 Q. BY WHOM ARE YOU CURRENTLY EMPLOYED?

13 A. EXPRESS TEL.

14 Q. I'M SORRY. DID YOU SAY EXPRESS TEL?

15 A. EXPRESS TEL, THAT'S CORRECT.

16 Q. WERE YOU EVER EMPLOYED BY TMC?

17 A. YES, I WAS.

18 Q. DURING WHAT TIME PERIOD?

19 A. FROM JUNE OF 1987 THROUGH JUNE OF 1989.

20 Q. AND IN WHAT CAPACITY WERE YOU EMPLOYED BY THEM?

21 A. CUSTOMER SERVICE REPRESENTATIVE.

22 Q. ARE YOU FAMILIAR WITH TMC'S CLAIMS AGAINST PACIFIC  
23 BELL FOR ALLEGED POOR SERVICE RESULTING FROM PACIFIC'S TANDEM  
24 SWITCH?

25 A. YES, I AM.

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(COPIES OF EXHIBITS A-K TO THE COMPLAINT)

1 CUSTOMER SERVICE RECORDS?

2 A. I DECLINE TO ANSWER UPON THE ADVICE OF MY COUNSEL.

3 Q. DID ANYONE AT TMC TELL YOU TO MAKE FALSE ENTRIES IN  
4 THE CUSTOMER SERVICE RECORDS?

5 A. I DECLINE TO ANSWER UPON THE ADVICE OF MY COUNSEL.

6 Q. WOULD YOU REFUSE TO ANSWER ON THE SAME BASIS ANY  
7 OTHER QUESTIONS CONCERNING THE CUSTOMER SERVICE RECORDS OF TMC?

8 A. YES.

9 Q. MR. LIPKIN, I'M SORRY. DID YOU ANSWER THAT  
10 QUESTION? I DIDN'T HEAR AN ANSWER.

11 A. YES.

12 Q. WOULD YOU REFUSE TO ANSWER ON THE SAME BASIS ANY  
13 OTHER QUESTIONS I HAVE CONCERNING EXHIBIT B TO THE COMPLAINT?

14 A. YES.

15 MS. WOOLF: I HAVE NOTHING FURTHER. THANK YOU.

16 THE WITNESS: THANK YOU.

17 MS. DRISCOLL: OKAY.

18 MR. HELEIN: THIS IS MR. HELEIN. I WILL MAKE THE  
19 SAME ASSERTION HERE AND RESERVE RIGHTS TO DEPOSE MR. LIPKIN AT A  
20 LATER STAGE, BUT IT IS THE COMPLAINANT'S POSITION THAT THERE IS  
21 NO FACTUAL BASIS FOR MR. LIPKIN'S INVOCATION OF THE FIFTH  
22 AMENDMENT. AND THAT WILL BE PURSUED AT A LATER TIME ALSO.

23 MS. DRISCOLL: VERY WELL.

24 WILL COUNSEL STIPULATE THAT WE SHOULD HAVE TWO  
25 SEPARATE TRANSCRIPTS PREPARED AND THAT THE STATEMENTS I MADE AND

1 TO WHICH YOU AGREED AT THE BEGINNING OF THE PROCEEDINGS SHOULD  
2 BE INSERTED IN BOTH OF THEM?

3 MS. WOOLF: THAT'S ACCEPTABLE TO ME.

4 MR. HELEIN: THAT'S FINE.

5 MS. DRISCOLL: ALL RIGHT. IS THERE ANYTHING  
6 FURTHER?

7 MS. WOOLF: I WOULD SUGGEST, TO GET THE PROCESS  
8 MOVING, THAT WE ASK THE REPORTER TO EXPEDITE THE TRANSCRIPT.

9 MS. DRISCOLL: VERY WELL.

10 ANYTHING FURTHER, MR. HELEIN?

11 MR. HELEIN: NOT AT THIS TIME, NO.

12 MS. DRISCOLL: THANK YOU VERY MUCH.

13 MS. WOOLF: THANK YOU BOTH.

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MITCHELL C. LIPKIN

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STATE OF CALIFORNIA )  
                          ) SS.  
COUNTY OF SAN DIEGO )

I, LINDA BABONAS, CERTIFIED SHORTHAND REPORTER, STATE OF CALIFORNIA, DO HEREBY CERTIFY:

THAT THE DEPONENT IN THE FOREGOING DEPOSITION WAS BY ME DULY SWORN; THAT THE DEPOSITION WAS THEN TAKEN BEFORE ME AT THE TIME AND PLACE HEREIN SET FORTH; THAT THE TESTIMONY AND PROCEEDINGS WERE REPORTED STENOGRAPHICALLY BY ME AND LATER TRANSCRIBED INTO TYPEWRITING UNDER MY DIRECTION; THAT THE FOREGOING IS A TRUE RECORD OF THE TESTIMONY AND PROCEEDINGS TAKEN AT THAT TIME.

THAT READING AND SIGNING WERE WAIVED.

THAT THE DEPONENT WAS NOTIFIED IN WRITING THAT THE ORIGINAL DEPOSITION WAS AVAILABLE FOR READING AND SIGNING PURSUANT TO RULE 30 OF THE FEDERAL RULES OF CIVIL PROCEDURE AND THAT THE DEPONENT DID NOT EXERCISE THAT RIGHT OR CONTACT THE DEPOSITION OFFICER.

THAT THE DEPONENT MADE CHANGES TO THE DEPOSITION AS INDICATED BY:

CHANGES MADE UPON THE ORIGINAL DEPOSITION.

CHANGES MADE BY ATTACHED CORRESPONDENCE.

IN WITNESS WHEREOF, I HAVE SUBSCRIBED MY NAME THIS

1st DAY OF October, 1990.

Linda Babonas  
CERTIFIED SHORTHAND REPORTER

CSR NO. 3076