

1 potential witnesses that we're talking about now work for a  
2 rival long-distance seller. What implications that has or  
3 what it -- but, but it is a fact and it, and it cannot be  
4 ignored.

5 All right. Paragraph eight of the Prehearing Order  
6 says that all counsel should be prepared to discuss any other  
7 questions about clarification of the existing issues. I've  
8 granted a clarification motion for you, Mr. Helein, that you  
9 filed on July 27, 1993. That's FCC 93M-520, released August  
10 11, 1993. But do you have any other questions about the  
11 clarification of existing issues?

12 MR. HELEIN: No, Your Honor.

13 JUDGE MILLER: Ms. Woolf?

14 MS. WOOLF: Yes, I do.

15 JUDGE MILLER: All right.

16 MS. WOOLF: I have two issues that I -- and I'm not  
17 sure if we should -- I just want to raise them today, and  
18 maybe it's more appropriate to talk about them next week at  
19 the evidentiary session, but they both deal with what I would  
20 call nonprocedural issues. One is the statute of limitations,  
21 and I realize that's an affirmative defense. But to the  
22 extent that TMC is, is wanting to extend this case back to  
23 1985 when their Complaint deals with '87 and '88 only, I was  
24 just wondering if we should be addressing that in some sort of  
25 motion in limine or something to --

1           JUDGE MILLER: Well, let, let, let's, let's, let's  
2 stop and do it. I'm, I'm not so sure -- in the first place,  
3 this is -- I don't have to study documents that thoroughly  
4 anymore. Once I got to the bench, I didn't need to study them  
5 anymore. But let me give you just the impression of what I've  
6 read. I'm not so sure that Mr., Mr. Helein's gone back to  
7 1985. That's the first thing. Secondly, I think it's 1985  
8 because the, the, the Designation Order, which is my marching  
9 orders, tells me to go back to 1985. Now, if, if you -- you  
10 may have a quarrel with the Designation Order, and if you do  
11 I'll, I'll have to say to you, Ms. Woolf, what I said to Mr.  
12 Helein if, if he had his quarrel with the Designation Order.  
13 That was -- the day is long gone for, for filing any motions  
14 on that rega-- on, on -- with the Commission on that point.

15           MS. WOOLF: Except the Designation Order, the, the  
16 five issues that are noted in there specifically say during  
17 the period covered by the Complaint.

18           JUDGE MILLER: And, and, and in the -- in, in the --  
19 and in the Designation Order it also says 1985 to 1988, does  
20 it not?

21           MS. WOOLF: I think it does in the body of the  
22 order.

23           JUDGE MILLER: Yeah.

24           MS. WOOLF: I'm just a little --

25           JUDGE MILLER: And that's the reason I'm, that's the

1 reason I'm -- those are my marching orders. If I don't like  
2 them, I -- there's nothing much I can do about them.

3 MS. WOOLF: All right.

4 MR. WYATT: If -- Your Honor, I, I feel compelled to  
5 say something, have -- having been responsible for, for, for  
6 writing the, the hearing Designation Order. Certainly, the,  
7 the allegations that were made in, in the Complaint concerned  
8 conduct that occurred o-- starting in, in 1985.

9 JUDGE MILLER: Well, if, if, if that's -- that's up  
10 to Mr., that's up to Mr. Helein and that's up to, to Pacific  
11 Bell to take it -- if, if they believe that it started in '85,  
12 I want to hear testimony.

13 MR. WYATT: Yeah, but -- the point I'd like to make,  
14 Your Honor, is now the issues of damages, and I believe that's  
15 where Ms. Woolf's concerns lie, that, that under 415 of the  
16 Act. TMC would be precluded from, from, from seeking damages  
17 for any period that pre-- any proceeding beyond two years from  
18 the filing of, of the -- of, of the Complaint. Now, the  
19 Designation Order is, is -- it is solid on that point. When  
20 we -- we list the '85 to '88 period as a relevant period. We  
21 don't specifically address the, the, the damages question, the  
22 damages question within that time-frame.

23 JUDGE MILLER: Well, that's a legal question.

24 MR. WYATT: Yes. I'm -- I suppose you --

25 JUDGE MILLER: That's a legal question. If facts

1 are developed -- if facts develop that there was a problem,  
2 without trying to decide it legally, that there was a problem  
3 that would result in monetary damages back in 1985, if that's  
4 the way the facts develop then you're going to have to address  
5 it in your, in your findings and say, hey -- your position  
6 will be: you can't get any money for that, the statute is  
7 run. And his position will be: look, if you trace it back,  
8 if you get back to points still within the statute of limita-  
9 tions and that act is -- could be causally connected to previ-  
10 ous acts, I'm, I'm entitled to money from, from before.  
11 That's the way -- that's, that's the way arguments are made,  
12 and that's the reason you have findings of fact and conclu-  
13 sions of law. You, you've raised your affirmative defense and  
14 you're, you're free to develop the facts to support it, and  
15 he's free to develop the facts. But my, my, my role is to  
16 cover '85 to '88. That's my role. And I want facts from '85  
17 to '88 because that's what they told me to, to, to, to get.  
18 Is it -- am, am I --

19 MS. WOOLF: Well, I think that's overstating it a  
20 bit, simply because if you look at the ordering part of the  
21 Designation Order it simply says during the period covered by  
22 TMC's Complaint. Admittedly, TMC's Complaint is quite broad,  
23 however, the Complaint is limited in seeking recovery only for  
24 periods in '87 and '88.

25 JUDGE MILLER: Well, there --

1 MS. WOOLF: But --

2 JUDGE MILLER: -- is a, there is a point -- there is  
3 a place where I think TMC says that they're not, that they're  
4 not trying to specify damages prior to, prior to --

5 MS. WOOLF: '8--

6 JUDGE MILLER: -- '87. But as far as I'm concerned,  
7 that's up to them. If, if they don't -- you know, if -- but,  
8 but -- and I'm, I'm going to have to find -- I guess I'm going  
9 to have to stop and find the, the place where, where the  
10 Bureau gave me my marching orders. Okay. Here, here it says  
11 in paragraph five: "Both TMC and Pacific have pending Motions  
12 for Extraordinary Discovery in which they seek to depose a  
13 number of witnesses which they claim have firsthand knowledge  
14 of the facts and circumstances surrounding the access services  
15 provided by TMC and the cause and effect of the purported  
16 difficulties experienced by TMC during the 1985 to 1988  
17 period."

18 Now, when I read that, Ms. Woolf, they said that's  
19 it. That's, that's -- I, I'm not -- I'm, I'm going to deny  
20 anybody who starts back in '84 and I'm not interested in '89.  
21 But, man, am I interested in '85 to '88, because that's what  
22 they told me to be interested in. Make sense? I, I mean, it  
23 might not be -- it might not make you happy, but does it make  
24 sense?

25 MS. WOOLF: I, I understand what you're saying, and

1 I, I think that what we'll do is we'll just wait and see what  
2 sort of -- what the damages develop as and we'll deal with it  
3 at that time.

4 JUDGE MILLER: That's right. I mean, you -- the,  
5 the -- if, if he develops facts that you don't believe there,  
6 there's liability for because of it, you can -- you could  
7 attack the facts. You could -- you can write around them.  
8 You can say that they don't apply, but the fa-- the f-- the  
9 hard cold, cold facts are that we're going to develop them.  
10 He's free to develop them and you're free to, to, to rebut  
11 them. Okay?

12 All right. Next, next problem. Do you have any  
13 more? You said you had two.

14 MS. WOOLF: I did say I had two. I do have another,  
15 and it -- this is another evidentiary issue, and maybe we'll  
16 just deal with it in the same fashion.

17 JUDGE MILLER: Okay.

18 MS. WOOLF: And this, this is a jurisdictional issue  
19 with the Commission and that is whether or not TMC will be  
20 entitled to develop any damages relating to intrastate serv--  
21 charges. The FCC, of course, only has jurisdiction over  
22 interstate service. And to the extent that, from what --

23 JUDGE MILLER: How about the old Shreveport case?  
24 Once you start -- once, once you -- even, even if stuff is  
25 intra-- intrastate, if it takes on the character of something

1 that can cross state lines it's, it's -- it gets interstate  
2 treatment.

3 MS. WOOLF: I'm not sure this qualifies for that.  
4 But, I mean, perhaps it'll just be something that we'll, we'll  
5 argue at, at the conclusion of the evidence rather than now.

6 JUDGE MILLER: Okay. That's a ni-- that's a tactful  
7 way of handling the problem. But that, that -- but it's a  
8 good way, because it -- let me say that -- this. I've said  
9 several times, but -- the, the most important document in this  
10 case from both of your standpoints is going to be that set of  
11 Proposed Findings of Fact and Conclusions of Law. I mean,  
12 once you get -- yes, you've got a jo-- a job to get the, the  
13 record developed, but then you've got to reduce that record to  
14 a set of convincing Proposed Findings of Fact and Conclusion  
15 of Law, and that's where you -- that's, that's your ch--  
16 that's your chance to shine.

17 MR. HELEIN: May I make one comment, Your Honor?

18 JUDGE MILLER: Yes, sir.

19 MR. HELEIN: Just as a clarifying point as we go on,  
20 Mr. Wyatt has indicated the Bureau does not intend to partici-  
21 pate, yet he just did with respect to the position with res-  
22 pect to the limitation on recovery of damages under 415 of the  
23 Act. I have no objection to that. I just want to note for  
24 the record that there's some seeming inconsistency, and I'm  
25 not sure, and as this develops we'll watch it as to what the

1 degree of participation of the Bureau will be.

2 JUDGE MILLER: Well, I think his participation was  
3 more to, to kind of inform me, to, to interpret what Ms. Woolf  
4 was saying to me and what he knows, as a Common Carrier ex-  
5 pert, he knows to be the law. I don't think -- he, he still  
6 hasn't changed his mind and said he's going to submit a Pro-  
7 posed -- set of Proposed Findings of Fact and Conclusions of  
8 Law on the question of, of the, the time period of damages.  
9 He has not said that. I -- when he does, you -- your, your  
10 comments w-- are, are, are part of the record.

11 MR. HELEIN: Thank you, Your Honor.

12 (Off the record.)

13 (On the record.)

14 JUDGE MILLER: So, I'm ready to move on --

15 MR. WYATT: Your, Your Honor, can, can I make on--  
16 just one, one point, point again?

17 JUDGE MILLER: Certainly.

18 MR. WYATT: I, I'm a little troubled by, by Mi-- by  
19 Mr. Helein's suggestion that, that the Bureau is, is anything  
20 other than impartial in this, in this proceeding at this  
21 stage. And, again, I, I want to really emphasize on the  
22 record that we, we do not anticipate any active participation.  
23 To the extent that, that issues evolve that we feel warrant  
24 some Bureau participation, we'll make that known to, to both  
25 Parties. We'll make it known to Your Honor. And we, we have

1 | absolutely --

2 |           JUDGE MILLER: Mr. Wyatt?

3 |           MR. WYATT: Yes, sir.

4 |           JUDGE MILLER: You have the full faith -- the, the,  
5 | the Judge has full faith that the Bureau is, is going to live  
6 | up to their, to their agreement as you have outlined it. I  
7 | don't think the fact that you bring up the observation that  
8 | there is a, that there is a statute of limitations and the  
9 | statute of limitations runs only so far makes you biased in  
10 | favor of anybody. Okay?

11 |           MR. WYATT: Thank you, Your Honor.

12 |           JUDGE MILLER: All right.

13 |           MR. HELEIN: Your Honor, can I just clarify very  
14 | quickly? My comments were not meant to be -- to imply bias.  
15 | My comments were meant to, to underscore our desire that the  
16 | Bureau participate more. For example, it is certainly true  
17 | that if they see a 415 or other con-- statutory issue that  
18 | they believe needs to be addressed they should address it. I  
19 | am simply suggesting that equal access is equally, although  
20 | not statutory, certainly is a FCC policy and that they would  
21 | hopefully speak up in defense of the equal access policy as  
22 | well as Section 415 or any other portion of the Act or other  
23 | FCC policies. That was my only point.

24 |           JUDGE MILLER: Well, I think, I think -- I, I think  
25 | it's, it's fair and I think it ought to be placed -- at least

1 the Judge's position will be placed on the record here at this  
2 time. We, we haven't been getting 208 complaints, the judges  
3 haven't, and I, I would suspect that this may be a trial  
4 balloon. That if -- and this -- and we're dealing now with  
5 budgets and, and resources available to -- for the Commission  
6 to do its job, and if the Commission finds that it can be done  
7 by adjudication before judges, maybe -- my -- people who come  
8 after me will have plenty of work to keep them busy and mem-  
9 bers of the bar will have plenty to keep them busy. That's  
10 the way I happen to look at this, and I think that -- I think  
11 they, they want to be sure that, that they -- that the adjudi-  
12 catory resources are capable of handling the problem, and  
13 that's -- I think that's one of the reasons they're monitoring  
14 this case. And that's one of the reasons I wrote the Prehear-  
15 ing Order I -- in the way I did, giving the Bureau as much  
16 leeway as they want, or as little leeway as they decide to  
17 take.

18           You haven't any -- don't have any problems with  
19 that, do you, Mr. Helein?

20           MR. HELEIN: No, Your Honor.

21           JUDGE MILLER: Okay. Ms. Woolf?

22           MS. WOOLF: No.

23           JUDGE MILLER: All right. Paragraph nine through  
24 eleven cover discovery. Discovery is to be -- have been  
25 completed by on or before September 17, 1993, last Friday.

1 Have you completed your discovery, Mr. Helein?

2 MR. HELEIN: To the, to the extent that we had some  
3 from a voluntary --

4 JUDGE MILLER: Since, since, since I --

5 MR. HELEIN: -- basis --

6 JUDGE MILLER: -- gave you permission to have  
7 from --

8 MR. HELEIN: Yes, you did.

9 JUDGE MILLER: All right. You have completed it?

10 MR. HELEIN: Your Honor, I am reminded that we had  
11 requested certain documents that we I don't believe have, so  
12 if we could still get them it might move the case along.

13 JUDGE MILLER: If they exist.

14 MR. HELEIN: And, again, we're --

15 JUDGE MILLER: If they exist.

16 MR. HELEIN: If they exist and also, I believe --  
17 well, certainly if they exist. And I don't know -- since it  
18 was voluntary, we have no means by which to determine if  
19 Pacific Bell will be providing us anything further.

20 JUDGE MILLER: Well --

21 MR. HELEIN: But with, with that footnote, every-  
22 thing we've asked for or attempted to obtain, we have put into  
23 place and, and we have completed our ability to move discovery  
24 along on that basis.

25 JUDGE MILLER: All right. Ms. Woolf?

1 MS. WOOLF: There are still some additional docu-  
2 ments. This is irrespective of, of this data that may not  
3 exist or that does not exist. There have been some other  
4 informal discovery requests and I still do owe Mr. Helein some  
5 of that, particularly some financial data that I explained and  
6 we've agreed that I need to have a whole database loaded up  
7 from prior years. And as soon as I can have that done and  
8 downloaded, then he knows he will get a copy of that volun-  
9 tarily from me.

10 JUDGE MILLER: All right.

11 MS. WOOLF: So, that's --

12 JUDGE MILLER: Now --

13 MS. WOOLF: -- that's --

14 JUDGE MILLER: -- let, let, let's, let's do this,  
15 then. Once that's -- once that material is made available,  
16 Mr. Helein, you then will have an obligation -- and if you  
17 want to try to fit that into a special dispensation, which is  
18 what I, in effect, gave you --

19 MR. HELEIN: Yes.

20 JUDGE MILLER: -- on, on this other material --

21 MR. HELEIN: Yes.

22 JUDGE MILLER: -- then you -- it'll be up to you and  
23 say yes, I've received some material and I think there ought,  
24 there ought to be exhibits made and we'll have a s-- we'll  
25 have a session and, and handle it.

1 MR. HELEIN: That's acceptable. That's fine, Your  
2 Honor. Thank you.

3 JUDGE MILLER: Okay. I think that -- paragraphs 12  
4 through 14 deal with settlement. I have read the settlement  
5 memo, 9/16 and 9/17, filed on the 17th of September, and it  
6 appears to me from reading it and from reading about the  
7 background of this case that you people have given settlement  
8 the old college try but without success. And, as far as I'm  
9 concerned, you've just driven by the Last Chance Saloon and  
10 we're going to hearing. You've tried and that's the most I  
11 think the Commission can ask of you. That's -- I, I have a  
12 little different approach to settlement than a lot of, a lot  
13 of other judges and a lot of people. The Commission has a  
14 policy of encouraging settlements and it's my job to make sure  
15 that you avail yourselves of that, and I did. I said you'll  
16 meet and you'll face each other and you'll, you'll give me a  
17 memo, and that's -- so, I, I've, I've done my job as far as  
18 the Commission is concerned. Once cases set up, designated  
19 for a hearing, as far as I'm concerned you either settle or go  
20 to trial. And both of you have signified you want to go to  
21 trial, so a trial there will be.

22 Paragraphs -- any, any problems with what I just  
23 said? Mr. Helein?

24 MR. HELEIN: Just for clarification, Your Honor.  
25 While I seriously doubt that this will occur, but should the

1 Parties between now and trial reach an agreeable settlement  
2 and sign it and, and file a Joint Motion to Dismiss, would it,  
3 would it still be your intention to, to go to trial?

4 JUDGE MILLER: No.

5 MR. HELEIN: All right. I'm not saying --

6 JUDGE MILLER: It, it --

7 MR. HELEIN: -- it's going to happen. I --

8 JUDGE MILLER: No, no. But, but, look, look, I --  
9 over 20 years on the bench and also having tried, I am fully  
10 aware of courthouse-step settlements and I'm probably aware  
11 that probably 70 percent -- 65 percent of the settlements are  
12 in fact courthouse-step settlements that are beneficial,  
13 beneficial. I've had, I've had -- in the Broadcast side of  
14 the fence, I've had it where the Broadcast Bureau lawyers  
15 spent all the weekend preparing the cross-examination, then  
16 they come in on the morning of the hearing and say they've  
17 settled, and the Bureau gets upset because they worked the  
18 whole weekend. But I've always said, yes, such settlements  
19 are, are in -- are contemplated by the Commission and I always  
20 give you a chance to settle. Now, I do -- I'm a little dif-  
21 ferent from most judges. I don't -- I just don't take some-  
22 body's word for it. There's got to be something in writing.

23 MR. HELEIN: Absolutely, Your Honor.

24 JUDGE MILLER: And if you can present to me and say,  
25 hey, this is not the, the, the little nuts and bolts of the

1 | thing, but this is the settlement and we've agreed. In the  
2 | same -- on the same point, I, I'll -- I guess I -- I'm not  
3 | trying to hide anything from anybody. I've found over the  
4 | years that when, when trials are six months away, everybody's  
5 | going to fight: boy, am I going to show them; are they going  
6 | to do this; ah, ha, ha. And then as time comes down and down  
7 | and down, and the more -- the closer you get to hearing,  
8 | suddenly a lot of people realize they're going to have to take  
9 | the stand, they're going to be under oath, and they start to  
10 | -- then they're not quite so enthusiastic. And that leads to  
11 | courthouse-step settlements. Now, that's -- might be -- that  
12 | might sound a little callous, but that's the way life is.

13 |           All right. Paragraph 15 to 18 -- through 18 deal  
14 | with preparing, marshalling, and exchanging exhibits. Now,  
15 | except for any adverse witnesses which we'll take up as a  
16 | separate matter, we are proceeding with the written case  
17 | method.

18 |           Now, are you prepared to exchange all your direct  
19 | case exhibits today? Mr. Helein?

20 |           MR. HELEIN: Yes, except with the footnote that we  
21 | discussed before about additional documentation being coming  
22 | in.

23 |           JUDGE MILLER: And you have a memorandum, opinion,  
24 | and order --

25 |           MR. HELEIN: Yes.

1 JUDGE MILLER: -- that -- and I've added a  
2 potential--

3 MR. HELEIN: Yes.

4 JUDGE MILLER: -- on this finance -- financial  
5 material that Ms. Woolf -- but other than that, you've comp--  
6 you, you --

7 MR. HELEIN: We have --

8 JUDGE MILLER: -- have it.

9 MR. HELEIN: -- we have them here, Your Honor.

10 JUDGE MILLER: Now, do -- does that material comply  
11 with paragraphs 15 through 18 of the Prehearing Order?

12 MR. HELEIN: Yes, Your Honor. We spent many long  
13 hours complying with it.

14 JUDGE MILLER: Does each exhibit contain the  
15 affida-- other than those that you're going to ask official  
16 notice to be taken, does each exhibit contain the affidavit of  
17 the sponsoring witness?

18 MR. HELEIN: Yes, Your Honor.

19 JUDGE MILLER: All right. Now, saving two copies to  
20 give to the reporter at the upcoming September 30, 1993,  
21 Evidentiary Admissions Session, proceed with your exchange.

22 MR. HELEIN: Okay.

23 (Pause, while copies are distributed.)

24 JUDGE MILLER: Now, I think for the benefit of the,  
25 of the Review Board and the -- ultimately the Commission, you,

1 | you have just exchanged four volumes of materials, have you  
2 | not?

3 |           MR. HELEIN: That is correct, Your Honor.

4 |           JUDGE MILLER: All right. Now, have you -- does  
5 | that complete your written exhibit change?

6 |           MR. HELEIN: Yes, Your Honor.

7 |           JUDGE MILLER: Now, let's move to part B. Do you  
8 | have any adverse witnesses you intend to call?

9 |           MR. HELEIN: Yes, Your Honor.

10 |           JUDGE MILLER: Are you in a position to name them  
11 | for the record?

12 |           MR. HELEIN: Your Honor, we can do it two ways. We  
13 | can name them. We will also offer for purposes of the record  
14 | statements for these adverse witnesses to give an idea of the  
15 | type of testimony we intend to elicit from them, but I --

16 |           JUDGE MILLER: It's in one of these four volumes  
17 | that --

18 |           MR. HELEIN: That's --

19 |           JUDGE MILLER: -- you've exchanged?

20 |           MR. HELEIN: They, they are Exhibits 59 through 72.

21 |           JUDGE MILLER: Tell me there's 14 people.

22 |           MR. HELEIN: Yeah. There are 14 such witnesses,  
23 | Your Honor.

24 |           JUDGE MILLER: All right. All right. So, the --  
25 | so, the -- Ms. Woolf, you're, you're notified as to the people

1 that he intends to call as adverse witnesses. You -- it's  
2 part of the exchange. If -- you're, you're with us, aren't  
3 you?

4 MS. WOOLF: Yes. I have some procedural questions  
5 about that.

6 JUDGE MILLER: Oh, hey, you're going to get --  
7 there's going to be an Evidentiary Admissions Session, you  
8 know, in which these exhibits are going to be formally identi-  
9 fied and proffered. You'll have your say then. You may have  
10 numerous conversations with Mr. Helein as to who should and  
11 who, who -- who should or shouldn't be among the 14 or whether  
12 there should be 14, that -- those are up to you. But, but if  
13 you bring me, if you bring me a, a Complaint, I'll rule on it.  
14 But I'll tell you now, and I, I -- I have looked over the  
15 background of 14 people and I believe they have firsthand  
16 knowledge of the events that occurred in 1985 to 1988 insofar  
17 as it -- as making equal access service available to TMC by  
18 Pac Bell is concerned. I'll tell you that. I've looked, I've  
19 looked over their, their general background. You, you look  
20 perplexed.

21 MS. WOOLF: No.

22 JUDGE MILLER: Everything's okay then?

23 MS. WOOLF: I have no problem with him wanting to  
24 ca-- talk to Pac Bell people and put them on the stand. My  
25 question was more procedural in terms of, you know, how are

1 | those people going to appear here. Who -- do I have to pay  
2 | for them to appear? Does he, does he need to subpoena them  
3 | and give them their witness fees, which would include travel?  
4 | Because, obviously, 14 people coming to Washington is a lot.

5 |           JUDGE MILLER: Well, I think, you ought to talk  
6 | about it. The -- there's two, two elements that you ought to  
7 | consider. One is that you are a carrier under the jurisdic-  
8 | tion of the Commission and the, the second thing is that --  
9 | how do you think I learned about 14 people?

10 |           MS. WOOLF: I assume you signed some subpoenas  
11 | recently.

12 |           (Laughter.)

13 |           JUDGE MILLER: But, but all I can say is that, that  
14 | let's not have anybody fall through the cracks on us. That,  
15 | that, that, that's my job, that these 14 don't fall through  
16 | the cracks on us, and not one of them, if, if it can be avoid-  
17 | ed. In other words, they -- the -- I don't want somebody  
18 | coming to me and saying you know, I'm -- I thought Ms. Woolf  
19 | was going to bring Mr. XYZ and therefore I didn't follow  
20 | through on Mr. XYZ. That would be Mr. Helein saying that. Or  
21 | -- and, conversely, I wouldn't want you to say well, you know,  
22 | I, I have an executive vice president in charge of marketing  
23 | that, that I just don't feel has the detailed knowledge.  
24 | He's, he's a policy man and he shouldn't -- when I, I, I would  
25 | be responsible for bringing him, but I'm not bringing him. I

1 don't want that. Get together and settle it out and make sure  
2 that, that everybody that's supposed to be here is here.  
3 I'll, I'll come to that in a few minutes. I, I have a stan-  
4 dard lecture I give on that topic.

5 MS. WOOLF: I mean, I -- all I can say is that  
6 we'll, you know, we'll examine any subpoenas that are served  
7 or what these are and we have the opportunity to file motions  
8 if we think it's appropriate.

9 JUDGE MILLER: That's right.

10 MS. WOOLF: So --

11 JUDGE MILLER: That's, that's -- one of the reasons  
12 that I said all that stuff that's over there at the Bureau can  
13 stay over there. We're starting with a fresh slate and that's  
14 -- and you've got that, that, that right.

15 MS. WOOLF: That's fine.

16 JUDGE MILLER: Now, with -- have -- you have com-  
17 pleted your written exchange? You've indicated that there are  
18 14 witnesses and that those 14 witnesses are listed in that  
19 part of your direct case. And does that complete your, your  
20 direct with an exhibit change, does it not?

21 MR. HELEIN: Yes, Your Honor. And for the Court's  
22 convenience, I'll just point out that in volume one we do have  
23 an index of exhibits so that they are identified and just make  
24 it easier to understand what we have submitted.

25 JUDGE MILLER: All right. Very good. Now, are you

1 prepared to exchange all your direct case exhibits today, Ms.  
2 Woolf?

3 MS. WOOLF: I am prepared to exchange my direct case  
4 exhibits, although I, I do want to reserve the right to re-  
5 spond to whatever evidence is in here that I may not be aware  
6 of.

7 JUDGE MILLER: Well --

8 MS. WOOLF: But that --

9 JUDGE MILLER: In -- I will tell you what I just  
10 told -- or what I tell all parties. I am not -- what I'm  
11 asking you to commit yourself to is your written direct case.  
12 I'm not asking you to commit yourself to cross-examination  
13 exhibits that you may find helpful. You, you had no reason to  
14 put them in your direct case, but once you start to cross-  
15 examine a witness you find that there are certain exhibits  
16 that, that was in the thousands and thousands of pages that  
17 you didn't put in your direct but you want to -- well, you  
18 just identify it as a cross-exam-- for your cross-examination  
19 and I'll hear argument on it as we go along. You understand  
20 what I'm saying?

21 MS. WOOLF: That's fine. Yes.

22 JUDGE MILLER: All right. Everybody -- is everybody  
23 happy?

24 MR. HELEIN: Sure.

25 JUDGE MILLER: All right. So, you're prepared to

1 exchange your direct case. Do they comply with paragraph 15  
2 through 18 of the Prehearing Order, Ms. Woolf?

3 MS. WOOLF: Yes.

4 JUDGE MILLER: Does each exhibit that needs an  
5 affidavit contain the affidavit of the sponsoring witness?

6 MS. WOOLF: Yes.

7 JUDGE MILLER: Saving two copies to give to the  
8 court reporter at the upcoming September 30, 1993, Evidentiary  
9 Admissions Session, proceed with your exchange.

10 MS. WOOLF: There are some original records in the  
11 back of yours. I just would note that it, it -- so they don't  
12 go flying out.

13 JUDGE MILLER: All right.

14 MS. WOOLF: So --

15 JUDGE MILLER: You trust me with them?

16 MS. WOOLF: I've got plenty of copies.

17 JUDGE MILLER: All right. Well, when you said  
18 original, you see, of course in the old days -- now, now with  
19 all those fancy xeroxes and everything, it's hard to tell an  
20 original from a copy anymore. I think the old -- what was  
21 that -- what was that rule of evidence? You know, the origi-  
22 nal is the best evidence?

23 MS. WOOLF: The best evidence rule.

24 JUDGE MILLER: The best evidence rule. See, I --

25 UNIDENTIFIED SPEAKER: (Indiscernible) for me.

1 JUDGE MILLER: I -- you see -- but -- all right.  
2 You've exchanged your exhibits. Do you have any adverse  
3 witnesses you intend to call?

4 MS. WOOLF: No.

5 JUDGE MILLER: All right. So, then you've completed  
6 your exhibit exchange and we can proceed, correct?

7 MS. WOOLF: Yes.

8 JUDGE MILLER: All right. Now, let's be clear for  
9 the record so that the Review Board and ultimately the  
10 Commission will understand, you have not exchanged the tariffs  
11 that we were -- we have talked about earlier, have you?

12 MS. WOOLF: I -- what I have done is I have ca--  
13 because of the voluminous nature of them, I have, I have  
14 called both Parties and asked them if they would like copies.  
15 I would be happy to make them copies. They've indicated they  
16 didn't want to bulk up their files. And, so --

17 JUDGE MILLER: But there is a copy in -- available  
18 for all Parties to this proceeding in, in the hearing room?

19 MS. WOOLF: I will have this set, unless you want to  
20 take them today, or I will just return with them at the --

21 JUDGE MILLER: Okay.

22 MS. WOOLF: -- first day of hearing. Whichever you  
23 would like.

24 JUDGE MILLER: Well, why don't you -- well, you, you  
25 make it sound like you're going to have to cart them across

1 country. You -- really, you're not going to. You're, you're  
2 going to leave them --

3 MS. WOOLF: I'm going to put them in Celia's office.

4 MS. NOGALES: I'll guard them.

5 JUDGE MILLER: All right. All right. Yeah, I --  
6 why don't we -- but just so the record under-- understands  
7 that you've made references to those tariffs in yours and --

8 MS. WOOLF: Yes.

9 JUDGE MILLER: -- but they're, they're, they're --

10 MS. WOOLF: And, actually, I have it in my exhibits  
11 that are in this binder I have just exchanged contain actual  
12 tariff pages of those sections that I feel are relevant --

13 JUDGE MILLER: Right.

14 MS. WOOLF: -- so that we do have copies of those  
15 pages in the testimony.

16 JUDGE MILLER: Right. Now, Mr. Helein has indicated  
17 that in his massive material there is a copy of his Complaint  
18 and his Reply. I assume that in this material there's a copy  
19 of your Answer?

20 MS. WOOLF: Yes.

21 JUDGE MILLER: All right. Paragraph 19 -- is there  
22 anything that anybody wants to say about paragraphs 15 through  
23 18 of the Prehearing Order, the exhibit change we've just gone  
24 through? Mr. Helein?

25 MR. HELEIN: No, Your Honor. I may clarify. We did

1 put a copy of the Complaint in. You said the Reply, and I put  
2 a footnote to say that we may not have put the Reply in.  
3 Replies are normally not required in Complaints except for  
4 affirmative defenses, and so I would have to say that I am not  
5 sure that we put the Reply into those, just to clarify.

6 JUDGE MILLER: Okay. Let me say this, that I --  
7 this is the one -- this is the -- right?

8 MR. HELEIN: I'm sorry. Excuse me. I didn't think  
9 you had completed your question.

10 JUDGE MILLER: This is the, the, the Complaint and  
11 the Answer. I, I understand and, and I have no problems. I  
12 have -- but these are the three documents I will tell you that  
13 I ordered from the Bureau, and said get them over here. This  
14 I've got to read. I mean, the rest of this I don't have to  
15 read, but these I've got to read. This is, this is the case.  
16 So, that I have read the Complaint. I have read the Answer  
17 and I have read the Reply. I -- if you don't have the Reply  
18 in, let me say that I'm not that excited about it. But I  
19 think the record ought to reflect whether you do or you don't  
20 have it in there.

21 MR. HELEIN: Thank you, Your Honor.

22 JUDGE MILLER: Okay. All right. Do you have any-  
23 thing that you want to add on paragraphs 15 through 18, Ms.  
24 Woolf?

25 MS. WOOLF: No.