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NOV 3 - 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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IN THE MATTER OF:

CC DOCKET NO. 93-161

CLARK-BADER, INC., d/b/a)
TMC LONG DISTANCE,)
Complainant,)
v.)
PACIFIC BELL,)
Defendant)

DATE OF HEARING: October 1, 1993

VOLUME: 3

PLACE OF HEARING: Washington, D.C.

PAGES: 337-363

FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

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In the matter of:
CLARK-BADER, INC., d/b/a
TMC LONG DISTANCE,
Complainant
v.
PACIFIC BELL,
Defendant

CC DOCKET NO. 93-161

The above-entitled matter come on for hearing pursuant to Notice before Judge Walter Miller, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., on Friday, October 1, 1993 at 8:30 a.m.

APPEARANCES:

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P R O C E E D I N G S

1
2 JUDGE MILLER: -- morning session, day 3, of the
3 TMC-Pac Bell 208 proceeding. Any preliminary matters?

4 MR. HELEIN: Yes, Your Honor. Do you wish to waive
5 for Mr. Wyatt, or shall we proceed?

6 JUDGE MILLER: Not without Wyatt. Technically I, I
7 think, I think you're absolutely right to bring it up. We'll
8 wait for about a minute or two.

9 MR. HELEIN: Thank you, Your Honor.

10 JUDGE MILLER: We'll go off the record.

11 (Off the record. Back on the record.)

12 JUDGE MILLER: -- and I won't demand an explanation
13 for the one minute.

14 MR. WYATT: Okay. Thank you.

15 JUDGE MILLER: While you were gone, before you
16 arrived this morning, we went on the record. I didn't realize
17 you weren't here. Mr. Helein said maybe we better wait for
18 you. And we -- but we'd only arrived at the stage where I was
19 asking if there were any preliminary matters. And Mr. Helein
20 said he had one.

21 MR. HELEIN: Yes, Your Honor. I'd like to announce
22 that the Pac Bell and the plaintiff have reached a settlement
23 and which we will reduce to writing. We would like to have
24 the -- based upon the settlement the complaint dismissed with
25 prejudice that the settlement and that the record remain

1 confidential and that we would also like to keep the terms of
2 the settlement out of the record and just between the parties.
3 And I don't know if Ms. Woolf has anything to add. But that's
4 where we are.

5 JUDGE MILLER: Ms. Woolf, you have anything to add?

6 MS. WOOLF: No. That sounds good.

7 JUDGE MILLER: Mr. Wyatt, you have any comments you
8 want to make?

9 MR. WYATT: Well, Your Honor we -- the Bureau has
10 for some time viewed settlement as a appropriate way to
11 resolve this proceeding. We're actually pleased to hear that
12 the parties have, have reached some mutually acceptable
13 arrangement. And the Bureau would have no objection to
14 dismissing the case with prejudice as, as indicated by Mr.
15 Helein.

16 JUDGE MILLER: Well, let, let -- I, I don't have any
17 problem with that aspect of it assuming that the, the terms of
18 the terms are not adverse in any way to the public interest.
19 The problem I'm going to have is, is making this record
20 confidential.

21 Because you've got to realize now that you've held,
22 held a public hearing for a couple of days. We've got
23 documents that are, have been exchanged. Maybe it doesn't
24 sound very complicated, but for instance my legal tech. has,
25 has looked over these documents. Various people around the

1 Commission probably have had the opportunity, now maybe they
2 didn't take advantage of it. But how, how in, how in heaven's
3 name can I make this record confidential?

4 MR. WAYSORF: Your Honor, I don't think we need it
5 confidential.

6 MR. HELEIN: If, if there's a legal impediment, Your
7 Honor, there's, there's no need in terms of the record in this
8 hearing.

9 JUDGE MILLER: Now let me say this to you. You've
10 presented a settlement to me. I'm going to put out a public
11 order approving the settlement. Now I will try to, I will try
12 to -- I won't go into detail if that's what you people, if
13 that's the way you people want it.

14 MR. HELEIN: The, the normal settlement orders that
15 I've seen that the Bureau issues is simply that there's,
16 they've reached, the parties have reached settlement, there's
17 no disclosure of terms and that there was no finding that
18 public interest would be adversely affected by the settlement.
19 And that would be perfectly acceptable.

20 JUDGE MILLER: Is --

21 MR. WYATT: Well, Your Honor, that's certainly a
22 approach the Bureau uses. I suppose I should point out that
23 the Bureau has -- in a different context though we, the Bureau
24 has entered into settlement agreements with, with the
25 parties --

1 JUDGE MILLER: Yeah.

2 MR. WYATT: -- at the previous hearing.

3 JUDGE MILLER: Yeah. And I, and I don't -- I'm not,
4 I'm not sitting up here to rock the boat you see. But you
5 know, the way I handle settlements are, are different from the
6 way you people handle settlements. And I'm not going to
7 comment on which is the superior method or anything like that.
8 All I'm saying to you is that I look -- at least he's, Mr.
9 Helein has said that if I can look this over and if I can say
10 that the public interest will not be adversely affected by
11 this, that's a big step in the right direction as far as I'm
12 concerned.

13 But I, but I have always laid out not, don't go into
14 nuts and bolts. But for example, I interpret what I heard to
15 say that look, there's no sense in, in -- we don't want the
16 dollar amount specified. And in broadcast settlements I
17 generally lay that out and say here, this is what it is. And
18 that's not in excess of, of 311. Do you have any advice on
19 how to handle that?

20 MR. WYATT: Well, Your Honor, I would, I would
21 submit that the, the settlements that arise in the, in the
22 broadcast or licensing context are, do have public overtones
23 that, that I don't believe are necessarily present here.

24 JUDGE MILLER: I've heard this argument many, many
25 times. Do you know -- and let me tell you something that's

1 strange about it, Mr. Wyatt. That's not -- I mean and I don't
2 mean this critically. They always tell me well, common
3 carrier is different. It seems to me that the common
4 carrier's movements apportuary have more impact than probably
5 than any broadcaster that ever walked down the pike.

6 Now maybe that's just something that is strange to
7 me. Because I have certainly heard other people say just
8 exactly what you said.

9 MR. WYATT: Your Honor, I --

10 JUDGE MILLER: And I heard it in no, no -- and I'm
11 not needling you now. I heard it in Telstar. I've, I've
12 heard it right along the line. I --

13 MR. WYATT: Your Honor, if I, if I may.

14 JUDGE MILLER: Well, I, I will say this. Let me say
15 this. If I, if I can make the finding that, that if, if there
16 is an explanation in the settlement agreement as to what is
17 covered by the amounts exchanged, I will, I will say then that
18 that will be part of my finding. All I'll say is that I've
19 looked it over, and as far as I'm concerned there is nothing
20 adverse to the public interest including all terms of the
21 settlement. That will, that will satisfy me.

22 MR. WYATT: Your Honor, if I may, if I may just to
23 make a couple of other observations --

24 JUDGE MILLER: Sure.

25 MR. WYATT: -- in terms of the complaint process.

1 At one time, the, the rules under which the, the Bureau
2 processes formal complaints required parties to submit their
3 settlement agreements to the, to the Bureau for prior
4 approval. We, we discontinued that practice. So we, we no
5 longer require the parties to submit the, the financial terms
6 of their settlement to us.

7 JUDGE MILLER: Well, when you handed this to me you
8 knew, you knew it wasn't going to be all pluses for the
9 Bureau. There's going to be a few minuses on the other end.

10 MR. WYATT: Exactly, Your Honor. Exactly.

11 JUDGE MILLER: And that's why you never handed these
12 things to me before.

13 MR. WYATT: Exactly, Your Honor, and --

14 MR. WAYSORF: Your Honor -- sorry.

15 MR. WYATT: The other point I want to make is 208 is
16 I guess consistent with the Bureau's approach to, to receiving
17 and, and approving dismissal requests with prejudice. 208
18 essentially creates a private remedy in, in a person, for any
19 person who's been damaged or, by, by the acts of a common
20 carrier. And I suppose it's consistent with, with the, that
21 provision of the Act in our view of the nature of, of the form
22 completing process we do them essentially as private disputes
23 between the parties that are, that are susceptible to the sort
24 of resolution that Mr. Helein and Ms. Woolf have, have
25 apparently reached in this -- well, I can't call it -- but,

1 | but if this does go to hearing --

2 | JUDGE MILLER: Well, no, no, I'm not calling it
3 | anything. All I'm calling it is a settlement. But, but what
4 | I want to know is I want to process this in a manner that is
5 | satisfactory to the parties and satisfactory to the public.

6 | MR. WYATT: Your Honor, I have one suggestion. I
7 | suppose apart from the financial terms I suppose that the
8 | parties might, might be willing to, and I'm sure I'll hear
9 | from them fairly quickly, to stipulate as to some, some
10 | essential facts that could be set out in the, in the, in any
11 | order --

12 | MR. WAYSORF: I don't think --

13 | JUDGE MILLER: The -- I don't --

14 | MR. WAYSORF: -- I don't think that's --

15 | JUDGE MILLER: -- the -- my, my position, Mr. Wyatt,
16 | and I, I think, I think the parties will probably agree with
17 | me. My position was to keep this record in such a posture
18 | that they could settle up to a point where once I have
19 | received something, when the facts hit the fire, then I, I was
20 | primed to tell the parties you're going to have a tough time
21 | getting any settlement out of me after that point.

22 | And that's the reason I reserved ruling yesterday.
23 | And that's the reason that Mr. Helein and Mr. Waysdorf went
24 | out in the hall and talked. They wanted to say hey, you know,
25 | the steam is running out as far as Miller is concerned. Maybe

1 they can, maybe they --

2 MR. WAYSORF: Your Honor, may I make a suggestion?

3 JUDGE MILLER: Yes.

4 MR. WAYSORF: I think that if your concern is that
5 the, your ability to make a judgment that the settlement is in
6 a public, in the public interest by not being excessive --

7 JUDGE MILLER: I'm not even going to go that far.

8 I'm not going to say it's in the public --

9 MR. WAYSORF: Doesn't --

10 JUDGE MILLER: -- all I'm going to say is that it's
11 not adverse to the public interest.

12 MR. WAYSORF: Adverse. Based on the financial
13 terms, perhaps --

14 JUDGE MILLER: That's --

15 MR. WAYSORF: -- perhaps -- and I'm -- if, if it's
16 the case if the parties could certify that the amount paid
17 does not exceed legal expenses.

18 JUDGE MILLER: I don't, I don't --

19 MR. WAYSORF: You don't want to know that?

20 JUDGE MILLER: -- I don't think you need to certify
21 it. If you'll put it in, if you'll put it in the document,
22 say this does not exceed legal expenses --

23 MR. WAYSORF: Yeah.

24 JUDGE MILLER: -- I'll accept your representation
25 without --

1 MR. WAYS DORF: But that's what you're looking for,
2 Your Honor, I assume.

3 JUDGE MILLER: Yes.

4 MR. WAYS DORF: Yeah.

5 JUDGE MILLER: I'm, I'm willing --

6 MR. WAYS DORF: That's -- I -- right --

7 JUDGE MILLER: Now --

8 MR. WAYS DORF: This is beyond really where Mr. Wyatt
9 usually operates so -- and it's the arena that we have often
10 operated in.

11 JUDGE MILLER: Well --

12 MR. WAYS DORF: So I think that's what you're looking
13 for. Is that correct?

14 JUDGE MILLER: I'm looking for a settlement that
15 when I read it I can say this is not adverse to the public
16 interest. And I'd, and I'd like -- and I'd like to have in
17 that settlement the, the critical terms, the critical portions
18 explained.

19 MR. WAYS DORF: Right --

20 JUDGE MILLER: And I'm, I'm not here to --

21 MR. WAYS DORF: Yeah.

22 JUDGE MILLER: -- to buck anybody. But I --

23 MR. WAYS DORF: I, I understand, but I --

24 JUDGE MILLER: -- I have an obligation to the
25 public.

1 MR. WAYS DORF: Um-hum. What I was trying to get at,
2 Your Honor, was this. I think the parties would prefer that
3 the dollar amount not be disclosed.

4 JUDGE MILLER: Okay.

5 MR. WAYS DORF: If they could in the alternative then
6 certify that it does not exceed the amount expended for legal
7 expenses, would that be adequate?

8 JUDGE MILLER: All right. Now, now --

9 MR. WAYS DORF: If we blocked out the dollar
10 amount -- submit the agreement, block out the dollar amount --

11 JUDGE MILLER: Yes.

12 MR. WAYS DORF: -- but certify that it does not
13 exceed their legal expenses.

14 JUDGE MILLER: Yes. That would --

15 MR. WAYS DORF: Would that be sufficient for Your
16 Honor?

17 JUDGE MILLER: -- yes. That would be, that would
18 satisfactory to me.

19 MR. WAYS DORF: Okay, good.

20 JUDGE MILLER: Now let's, let's get to the second
21 point. The, the document you present to me for approval, is
22 it going to be confidential?

23 MR. WAYS DORF: I don't -- is there any need?

24 MS. WOOLF: No. As long as we're not submitting the
25 actual settlement agreement but just a what I would assume

1 | like a joint motion --

2 | MR. WAYS DORF: No, but I think you are asking for
3 | the settlement agreement --

4 | JUDGE MILLER: Well, no.

5 | MR. WAYS DORF: -- Your Honor.

6 | JUDGE MILLER: The point is I want to look at what
7 | you've agreed on. Now if you want to keep it separate from
8 | the joint motion that you file with me and just hand that to
9 | me in camera, that is a satisfactory approach as far as I'm
10 | concerned.

11 | MR. HELEIN: We, we can do it then.

12 | JUDGE MILLER: And, and again, Mr. Waysdorf is
13 | absolutely correct. I'm not interested in, in knowing whether
14 | for example the warranty has run out on a tandem switch. I
15 | mean I don't want the, the nitty gritty. All I want is I want
16 | some assurance that there is, that there's no exorbitant
17 | money. And if there is, if there is big money passing hands,
18 | I'd like to know why. And I think the -- because I think I
19 | owe that to the public.

20 | Now I'm willing to go on with a, with a whited-out
21 | dollar amount along, along with a certification that it
22 | doesn't exceed legal expenses. That to me is fine. And, and
23 | I'm, I'm well aware that legal expenses have been run -- the
24 | meter has been running for a long time. So I'm, I'm not, so
25 | I'm not concerned about the dollar amount.

1 MR. WAYS DORF: Okay.

2 JUDGE MILLER: Huh?

3 MR. WYATT: I, I feel compelled to, just to express
4 some -- I don't know if it really rises to the level of
5 concern. But the -- as far as this issue has been presented
6 to the Bureau and the Commission in the context of another
7 complaint that we've been wrestling with in, in the, in the
8 last 3 years and related attorney complaints has been, that
9 has been an issue. Some parties have, have asked us to
10 require the parties to the settlement to, to identify some
11 terms, some amounts. One arm had been that, that the
12 settlement amounts should somehow be passed through to, to
13 customers in some form or another.

14 So, so the issue, the issue often arises in, in
15 terms of, in terms of how the Commission views a settlement
16 arrangement and, and how those, how the proceeds should be,
17 should be treated. Thus far, we've taken position that, that
18 the, the precise financial terms are, are not relevant for
19 purposes of, of determining whether, whether, you know, the
20 settlement is in the, is in the public interest. And there's
21 certainly -- I'm sorry if I'm going, going too far astray
22 here.

23 But my, my essential, my, my real concern is that,
24 is establishing any precedent that would, that would suggest
25 to anyone out there that, that the, the financial terms of, of

1 settlement between parties to a 208 proceeding are subject to,
2 to that, to a level of scrutiny that I don't believe the
3 Commission has, has required.

4 JUDGE MILLER: Well, let me, let me say two things.
5 I am aware that there are vast differences and I'm aware, and
6 I don't mean this in a bad sense, that the Bureau blinks at
7 settlements, Mr. Wyatt. And the only thing I can hope is,
8 because I like you, that you'll be gone the day the explosion
9 comes. Because you know, you can, you can say what you want.
10 You're still operating in the public, with a public interest
11 background.

12 Now I'm, I'm not anxious, I'm not anxious to delve
13 into any of this. But I want to be able to make a finding
14 that the settlement is not adverse to the public interest. I
15 think it -- in fact, I think these people want that. Having
16 come to a public hearing, I think they don't want to go
17 through life explaining what happened October the 3rd it just,
18 it seemed that this tape dropped off the, off the cliff. And
19 it's never to be seen again.

20 MR. WYATT: I understand.

21 JUDGE MILLER: And I'll -- so I, I don't want to
22 place the Commission in that position frankly or myself.

23 MR. WYATT: I understand, Your Honor.

24 JUDGE MILLER: And while I'm not a great believer in
25 sealed records, you know, I -- my blood boils when I, when

1 people start talking about sealed records. I'm, I'm willing
2 to do it so that we don't make waves and we don't make any,
3 any headlines. That's, that's -- and I'm still willing to buy
4 Mr. Waysdorf's approach.

5 Now you -- if you don't like, if you don't like what
6 Mr. Waysdorf filed, and you want to put, put some sort of a
7 position on the record --

8 MR. WYATT: Well --

9 JUDGE MILLER: And I think it is. I think this is
10 important, an important talk. If you people are thinking
11 about giving 208s to the judges, I think we're talking about
12 something that goes beyond just the purview of this case, Mr.
13 Wyatt. Judges -- I have to be able to make some sort of a --
14 as Sipple, Judge Sipple did in the Cumra (phonetic sp.) case.

15 MR. WYATT: Yes. We agreed on some stipulated facts
16 that provided the, the basis for his, his public interest
17 determination in that particular case.

18 JUDGE MILLER: I'm not interested -- I'm not even
19 interested in stipulating facts. We've got a record here.
20 The record speaks for itself. I've reserved on two, on what I
21 consider to be two important exhibits. But at this stage of
22 the game, there are no concrete allegations of fact to stand
23 in the way of a settlement between these two parties. Now
24 that's, that's -- so I don't need any stipulation of facts.
25 All I need is, all I need is the assurance that, that Mr.

1 Waysdorf is perfectly willing to give me.

2 MR. WYATT: Your Honor, if I may, I don't have a
3 problem with, with the parties, the terms of the parties'
4 apparent settlement. The amount doesn't exceed the litigation
5 costs I believe?

6 JUDGE MILLER: Yeah. Yeah.

7 MR. WYATT: But I, I don't have a problem with, with
8 settlement on those terms. I, I would -- the Bureau would
9 have a problem to the extent that someone could, could view
10 that as, as precedent for, for settling these types of cases.

11 JUDGE MILLER: Well, keep in mind something. And I
12 think you take this back to your, to your leaders. There is a
13 policy statement out. That policy statement says that an
14 initial decision or final product of a, of a judge is not
15 precedent binding on the Commission. I don't like to
16 downgrade my, my importance, but that's the hard, cold facts
17 of life.

18 And I've often wondered why people just, some people
19 just didn't -- when they, when they finish with an ID and they
20 see they're losers why they just didn't bail out, leave that
21 ID set there. Because it's not precedent binding on you
22 people.

23 MR. WYATT: Your Honor, if I, I can, can respond
24 briefly to that. It's certainly I agree that the Commission
25 is the, the final arbiter in terms of, of --

1 JUDGE MILLER: Yes, sir. But this case, this case
2 was -- this case would have gone to the review board, wouldn't
3 it?

4 MR. WYATT: But --

5 JUDGE MILLER: And, and so you would have had plenty
6 of, plenty of time to -- that's another thing while -- you
7 would have had at least two shots at remedying any wrong that
8 the final judge committed. You'd have it before the review
9 board, and you'd have it again before the Commission. You
10 know, so it's not like you're giving work to somebody that you
11 don't have a modicum of control over.

12 MR. WYATT: Your Honor, I've better broach to,
13 to --. Yes, I'm looking at this from a, from a resource
14 standpoint as well. Although, although the matters could
15 proceed alone and run, it's conceivable to me that someone
16 would raise it. And, and the Bureau would be in a position
17 of, of addressing it. And I guess my, my interest would be to
18 the extent that we can avoid having that, having the issue
19 raised by, by someone who, who feels that the settlement terms
20 and the, the conditions of which the settlement whereas
21 approved in this particular case establishes some precedent.
22 I mean I think it --

23 JUDGE MILLER: Well, I think you -- it's not going
24 to establish precedent when I -- my final, my final document
25 will not be precedent if you people don't want it to be.

1 That's point one. Point two is that if the product that I put
2 out simply says that I have reviewed the terms of the
3 settlement including the compensation that has, that is
4 being -- and I find that none of those terms are adverse to
5 the public interest, now I can't get much more vague --

6 MR. WYATT: Your Honor, with, with --

7 JUDGE MILLER: -- than that. But I, but I will have
8 made a finding that will protect these people against future
9 criticisms, you against future criticisms and myself.

10 MR. WYATT: Your Honor, with that last clarification
11 I, I have absolutely no, no, would have no problem --

12 JUDGE MILLER: All right. Now let's, let's see
13 if -- now that you and I are in agreement, let's see if the
14 rest of the people are, the people that are going to settle.
15 Does this -- do you have any problems with what I've outlined?

16 MR. HELEIN: No, Your Honor.

17 JUDGE MILLER: Do you?

18 MS. WOOLF: I'd just like a clarification. I don't
19 have any objection to submitting to you in camera a settlement
20 that, that's the actual settlement agreement we're signing.
21 I'm a little confused about --

22 JUDGE MILLER: I don't think you, you need to even
23 go that far if you don't want. If you'll, if you'll just
24 outline the major terms and submit a little memo to me along
25 with a joint motion that I approve settlement agreement, I

1 will put out an order on that joint request. This can remain,
2 this can remain confidential. And in -- and I'm again I'm,
3 I'm saying that even in this memo you don't need to tell me
4 it's X dollars.

5 MS. WOOLF: But you wanted --

6 JUDGE MILLER: All you need to tell me is it doesn't
7 exceed the, their legal expenses.

8 MS. WOOLF: That was what I was going to ask you is
9 I am not familiar with this certification that it doesn't
10 exceed legal expenses. And what does that really mean, that,
11 that settlement doesn't exceed the TMC --

12 JUDGE MILLER: Well --

13 MS. WOOLF: -- expenses?

14 JUDGE MILLER: You can get really, you can get
15 really sticky. In the old days, they used to get sticky. It
16 got down to, you know, if the, if the guy claimed --

17 UNIDENTIFIED SPEAKER: Lunch.

18 JUDGE MILLER: -- a 2-year subscription to
19 Broadcasting, whatever it was, they had to be tied, the
20 expenses had to be tied directly to the litigation or rule
21 making leading to the litigation. I mean it -- and people
22 looked it over. And I -- and it used to disturb me when I was
23 Bureau counsel, because I ended up looking like a dope
24 challenging \$43.86. But that's the way life was.

25 Now they -- now we get down to -- what, what really

1 | bothered a lot of people was, what bothers us, bothers us and
2 | will bother us until time to memoriam what was the lawyer
3 | paid? That will always bother busybodies of the world. I --
4 | it doesn't bother me.

5 | You've got to realize though that if, if the total
6 | amount of work that a law firm did was to pick up this eraser
7 | and put it over here, Hogan and Hartson charged more than
8 | Smithwick and Bellanuke (phonetic sp.) for the same amount of
9 | energy. And that disturbs a lot of people.

10 | In fact, in the case of Wells, Smart and Morgan,
11 | they once submitted a sizable legal bill for a case that never
12 | got off the processing line. And it caused tongues to wag.
13 | So we -- so what we, what we've always required is that they
14 | present us with something that, that we can approve.

15 | MR. HELEIN: May I make a point, Your Honor?

16 | JUDGE MILLER: Yeah.

17 | MR. HELEIN: I think that so we don't get
18 | sidetracked here this settlement and that is not in settlement
19 | of, of litigation costs per se. I think the financial
20 | settlement is really going to be cast in terms of recognition
21 | that future expenses to try this case, okay, make it
22 | unnecessary to go forward. And that these are not -- the
23 | dollars are not necessarily earmarked for legal expenses or
24 | anything else. It's a matter of the purpose being to avoid
25 | further litigation and --

1 JUDGE MILLER: All right. I, I don't have any
2 problems with that.

3 MR. HELEIN: Yeah. No, I didn't think so. And I
4 wanted to clarify for Ms. Woolf.

5 JUDGE MILLER: Because otherwise I wouldn't have put
6 it on prehearing order that I, I was giving you people another
7 chance to settle. I wouldn't have done that if I'd have
8 thought that, that you weren't going to sit down and say hey,
9 the meter is running and, you know, 32 witnesses don't come
10 cheap.

11 MR. HELEIN: Yeah.

12 JUDGE MILLER: Bringing them to Washington.

13 MR. HELEIN: Right.

14 JUDGE MILLER: I have no, I have no problems with
15 that. But, but I do, I do have an obligation to say that that
16 amount, and that doesn't -- I don't even know if you're
17 willing to certify that it doesn't exceed legal expenses. I
18 have no reason to, to want to look at it. All I'm -- I could
19 then say hey, I've looked over what these people have
20 presented to me. I've accepted their representations. And as
21 far as I'm concerned, there's nothing in this settlement
22 that's adverse to the public interest. And once I can say
23 those magic words and I'm given a proper assurance then I'm
24 going to be willing to take representation to counsel.

25 MR. HELEIN: Thank you, Your Honor.

1 JUDGE MILLER: Once I can make that determination,
2 I'm, I'm, I'll move on to the next case. I'll get rid of this
3 one and that's, that's the end of that tune.

4 Now if you want to submit a little memo to me, you
5 don't need to submit the whole -- I don't want to go over that
6 settlement and look at the fine print and, and all of the
7 little clauses that people have to iron out. But if you, if
8 you just tell me now here's, here's basically what it is. And
9 yes, there is some money changing hands, but they've certified
10 that it doesn't exceed their legal expenses, fine.

11 Does this -- am I giving it clear to you what I
12 think is the, the best kind of a compromise between common
13 carrier settlements and the settlements that I've always had
14 to --

15 MS. WOOLF: Yeah, I think that's an acceptable way
16 for us to proceed. I wanted to be sure that I didn't have to
17 certify to what their legal expenses were.

18 JUDGE MILLER: No, no.

19 MS. WOOLF: Because I honestly don't know.

20 JUDGE MILLER: No, no. You don't, you don't need
21 to. As far as you're concerned, all you need to -- you don't
22 really have to tell me much. All you need to do is say as a
23 business judgment this, this is a, this is a preferable way
24 for Pacific Bell to proceed. And there -- that's, that's okay
25 with me. Okay? Now when can I have it?

1 MR. HELEIN: I would think the first of next week.

2 MR. WAYSORF: No, takes time -- That's too
3 ambitious. Perhaps the end of next week? Would that be
4 acceptable?

5 JUDGE MILLER: How about Thursday?

6 MS. WOOLF: That would be fine.

7 MR. WAYSORF: Yeah, I think that's reasonable.
8 Yes, sir.

9 JUDGE MILLER: Okay. Now what you're going to give
10 me is a joint request, both parties. And it's going to call
11 for dismissal with prejudice, whatever that means, of, of the
12 complaint. And as far as I'm concerned, this record still is
13 in a position that I don't need to worry about what's been
14 said here. What you people have to worry about though is all
15 of this is public. You know, and I was waiting, I was waiting
16 for the shoe to fall when, when I was looking through all this
17 stuff and saw the big confidential stamps on it. I was -- I
18 was waiting for the shoe to fall. But you know, it's a public
19 hearing. And as far as -- I think your salvation is the world
20 don't care.

21 MR. HELEIN: I'm sure of that.

22 JUDGE MILLER: But whether it's going to be public
23 -- I, I mean you get very few people coming around pawing
24 through old engineering data. In fact, the one time I worked
25 when I first came to Washington, Ms. Woolf, I worked for the