

1 company saw that TMC was being damaged and how these, these
2 complaints were dealt with in order to minimize the cancella-
3 tion of service through the supplying of dialers. So, the
4 actions he took --

5 JUDGE MILLER: Have you completed your --

6 MR. WAYS DORF: Yes, Your Honor.

7 JUDGE MILLER: -- argument? Your objection is
8 sustained.

9 MS. WOOLF: Next paragraph, page 46, beginning line
10 6, and this actually goes all the way through the end of the
11 testimony on page 47. These paragraphs deal with events that
12 occurred relating to trying to settle this matter after the
13 time when the actual events occurred and prior to the time
14 this formal Complaint was filed at the FCC, so it deals with
15 negotiations, et cetera, that are inadmissible.

16 JUDGE MILLER: But I think it, it does, it does
17 exactly what you said, but it does something more too. I
18 think it, it's, it's -- it gives him an argument to say, look,
19 they admit that there was a problem. They even sat down and
20 tried to help me calculate out my damages, and I think that's
21 -- I think it's, it's relevant for that reason. I didn't for
22 dollar amounts. Do you want to change your --

23 COURT REPORTER: Yes, please.

24 (Off the record.)

25 (On the record.)

1 JUDGE MILLER: The objection is overruled. Now, I,
2 I'm -- you'll notice that we don't have any, we don't have any
3 figures given here by Mr. Bader, but -- and I, I'm not partic-
4 ularly asking for any. But the actions of Duer and Wheatley
5 may well fall within the concept of the principals responsible
6 for the acts of its agent performed within the scope of the
7 employment. And if these people made admissions that -- and
8 said yes, you're entitled to so much damages, admittedly,
9 account representatives don't have the last word, but at least
10 is somebody in the organization that is making an admission,
11 maybe against its -- and I -- admissible.

12 MS. WOOLF: Okay. That, that's fine. We'll, we'll
13 be -- we'll free to cross-examine about that.

14 JUDGE MILLER: Yes. Yes.

15 MS. WOOLF: The last paragraph on page 47, beginning
16 at line 6, I don't think rises to that level and I think is
17 objectionable.

18 MR. WAYSORF: Your Honor?

19 JUDGE MILLER: Well -- Mr. Waysdorf?

20 MR. WAYSORF: I was going to say it's his percep-
21 tion of what he did and why he took further action.

22 MS. WOOLF: I don't know why what happened in 1989
23 is relevant to this case.

24 MR. WAYSORF: It's previous to the time when he
25 filed the Complaint.

1 JUDGE MILLER: I will overrule the objection. I
2 will tell you this, though, that I, I have no basis for making
3 a finding that what PB was willing to offer TMC was a woefully
4 unrepresentative level of damages. I'm not making -- and I
5 would not make such a finding. The only finding that I could
6 make on this is -- or that I might make on this will be that
7 the January 16, 1989, meeting was, was not a success in, in
8 settling the dispute because Mr. Bader didn't believe he was
9 getting the proper compensation for any, for any damages that
10 may -- that's about the, the sum and substance of that sen-
11 tence. And, with that, have you anything more on Exhibit 1?

12 MS. WOOLF: No.

13 JUDGE MILLER: All right. Exhibit 1 is received
14 subject to the rulings that I've made, and we'll go take a
15 recess.

16 (Whereupon, the document marked
17 for identification as TMC
18 Exhibit No. 1 was received into
19 evidence subject to the Judge's
20 rulings made hereto.)

21 (Whereupon, a short recess ensued.)

22 JUDGE MILLER: During the break, I talked to my
23 legal tech and it appears I'm -- I have a prior commitment on
24 October 4th and 5th, next Monday and Tuesday. So, if, if we
25 have not completed the Evidentiary Admissions Session by the

1 close of business tomorrow, we will -- I'm -- I intend to get
2 a courtroom for the 6th, 7th, and 8th of October. Yes, Mr.
3 Helein?

4 MR. HELEIN: Your Honor, I have a arbitration in New
5 York on the 5th and 6th which was prior set on another matter.
6 I would not be available on the 6th.

7 JUDGE MILLER: Well, send Mr. Waysdorf and, and send
8 some other of your capable staff in here and we'll, we'll
9 proceed.

10 MR. HELEIN: We will certainly take that under
11 advisement. My only comment would be is, is that the only
12 attorney who has lived with this case since its inception is
13 myself. If -- it has some bearing with respect to the
14 efficiency with which we might consider these issues.

15 JUDGE MILLER: Well, I, I couldn't help, Mr. Helein,
16 but note that Mr. Manley holds himself out as a communications
17 expert.

18 MR. HELEIN: Yes.

19 JUDGE MILLER: I can -- I distinctly recall that --
20 and I, I think if you give him a little briefing before you
21 leave I think he'll -- can probably carry out admirably.

22 MR. HELEIN: It's with respect to the factual back-
23 ground, I think, and more so to the technology, Your Honor. I
24 just make the point.

25 JUDGE MILLER: Yeah. Well, let me tell you this.

1 And I'm not -- and this I mean in, in a, in a very serious
2 manner. I've never had any problems with Mrs. Waysdorf under-
3 standing the factual background. Any time I've talked to her
4 she seemed quite knowledgeable. And I don't mean that, I
5 don't mean that in the sense of, of -- as we're doing here. I
6 mean that as -- sincerely, that, that she's -- she seems to
7 know what's going on pretty good.

8 MR. HELEIN: All right, Your Honor. I just wanted
9 to make the point.

10 JUDGE MILLER: Okay. Mr. Waysdorf, are you ready to
11 proceed with your next exhibit?

12 MR. WAYSDORF: Yes, Your Honor. The next exhibit is
13 TMC Exhibit No. 2. It's a 19-page statement of Robert P.
14 Carrabis, engineering network manager of Clark-Bader, Inc.,
15 d/b/a TMC Long Distance.

16 JUDGE MILLER: And the, the 19 pages includes the
17 declaration?

18 MR. WAYSDORF: Correct, Your Honor.

19 JUDGE MILLER: The document you've just described
20 will be marked for identification as TMC Exhibit No. 2.

21 (Whereupon, the document re
22 ferred to as TMC Exhibit No. 2
23 was marked for identification.)

24 JUDGE MILLER: Do you offer it in evidence?

25 MR. WAYSDORF: Yes, sir. We do.

1 JUDGE MILLER: Ms. Woolf?

2 MS. WOOLF: I object.

3 JUDGE MILLER: All right. You can start with any --
4 you preceded correctly -- you started with a general, and then
5 we get down to the specifics. Go ahead.

6 MS. WOOLF: I will make the same general objection
7 on ba-- on the basis of the statute of limitations to the
8 extent that there is material contained in here which relates
9 to events that occurred prior to February 1987. And if you'll
10 let me have kind of a standing objection to that, I --

11 JUDGE MILLER: I --

12 MS. WOOLF: -- won't have to go through each --

13 JUDGE MILLER: That's correct. You will have that
14 standing objection. Be going -- you won't need to repeat it
15 every time. And my ruling will be the same, namely that my
16 interpretation of, of the plain reading of the Designation
17 Order spells that the relevant evidence in this case runs from
18 1985 to 1988. And I'm not saying when I'm going to, when I'm
19 going to do -- where I'm going to cut damages off, but all I'm
20 saying is that the evidence is relevant. Go ahead.

21 MS. WOOLF: Page 2.

22 JUDGE MILLER: Page 2.

23 MS. WOOLF: Beginning line 18.

24 JUDGE MILLER: Yes.

25 MS. WOOLF: "I know firsthand...TMC's customers

1 complained on virtually a daily basis..." I don't believe
2 there's any foundation for that -- for the statements about
3 the complaints, and what, what they were telling him was all
4 hearsay.

5 MR. WAYSORF: Well --

6 JUDGE MILLER: Mr. --

7 MR. WAYSORF: -- Your Honor --

8 JUDGE MILLER: Go ahead, Mr. --

9 MR. WAYSORF: Your Honor, Mr. Carrabis, the custo-
10 dian of the trouble logs, TMC Exhibit 10, they were kept at
11 his direction. He was responsible for dealing with the trou-
12 ble logs and analyzing the complaints recorded in the trouble
13 logs, and this is what he is relying on for this statement.

14 JUDGE MILLER: Well --

15 MR. WAYSORF: These are business records kept in
16 the ordinary course of business.

17 JUDGE MILLER: I, I would have no problem using the
18 trouble logs as a background, Mr. Waysdorf. If, if it read,
19 for example, this way: From this experience I know firsthand
20 during the year 19-- from 1985 to 1988 some of TMC's customers
21 complained on virtually a daily basis -- because I have --
22 I've no -- he would have to know more than just the people
23 that a-- that appeared in those logs. He'd have to say hey,
24 there's 800, 900 other customers that didn't complain, you
25 see.

1 MR. WAYSORF: I can only suggest that that was
2 likely his intent in this situation. And if that's an accept-
3 able qualification, that's certainly what I believe he's
4 talking about --

5 JUDGE MILLER: Well, y-- well, some -- I'm, I'm
6 going to, I'm going to insert the words "some of TMC's custom-
7 ers complained" and that -- and with the re-- with the real-
8 ization that with, with those trouble logs we, we ought to be
9 able to identify specific people, individuals, who complained.
10 Do you follow me?

11 MR. WAYSORF: Yes, Your Honor.

12 JUDGE MILLER: All right. With the -- with that
13 background, using the trouble, the trouble logs, I will over-
14 rule your objection. And I hope that the logs will tell us
15 when, when all circuits were busy and when -- for which com-
16 plainers, and when they were high and dry, et cetera.
17 Proceed.

18 MS. WOOLF: Just a minute. Page 4, lines 12 through
19 15.

20 JUDGE MILLER: Just a second. My, my question is,
21 Mr. Waysdorf, and I'm not quarrelling with the way you're
22 trying this case, but shouldn't the sponsor of the trouble log
23 be Jane Vogle and not Robert Carrabis? In other words, when
24 the customer called in to complain, who was it that they
25 talked to?

1 MR. WAYSORF: Often Carrabis. Some of the -- many
2 of the entries are Carrabis's own entries.

3 JUDGE MILLER: Well, the --

4 MR. WAYSORF: Let's just say that they were kept on
5 her desk.

6 JUDGE MILLER: --

7 MR. WAYSORF: And there --

8 JUDGE MILLER: --

9 MR. WAYSORF: -- there were other people who, who
10 were able to make entries.

11 JUDGE MILLER: "My assistant would record the custo-
12 mer's name, date, time of the customer's call, the number the
13 customer was calling from." Once she completed an entry on
14 the trouble log, he would then begin to investigate, but it
15 sounds like she's the -- she's where the buck stops if you --
16 maybe I'm wrong. In other words, what's on that log is what
17 she put there and that's what he used as a basis for going out
18 there and trying to, to alleviate the problem.

19 MR. WAYSORF: He as her supervisor set up the
20 trouble log, set up the system, and supervised the, the pro-
21 cess of this and, and was the supervisor of the maintenance of
22 these records, of these business records. The fact whether
23 various people made entries in it makes this no less a busi-
24 ness record for this purpose. It's still a TMC business
25 record for which he had custodial supervisory responsibility.

1 And then he --

2 JUDGE MILLER: I know -- I'm, I'm willing -- I, I
3 understand this is a business record, but does -- it, it --
4 when we want to look for the truth and the accuracy of the
5 entries, who's in, who's in -- best in -- who had the best
6 chance to observe firsthand? That's my question.

7 MR. WAYS DORF: He would be the one who investigated
8 each and every complaint on the trouble log and determined
9 what the problem was.

10 JUDGE MILLER: All right. Go ahead, Ms. Woolf.

11 MR. WAYS DORF: Who is the person in charge of this
12 entire process.

13 JUDGE MILLER: All right. Proceed.

14 MS. WOOLF: I think I was on page 4.

15 JUDGE MILLER: Page 4.

16 MS. WOOLF: Lines 12 through 15.

17 JUDGE MILLER: "Words frequently when I -- "

18 MS. WOOLF: Yes.

19 JUDGE MILLER: " -- asked them..."

20 MS. WOOLF: Them referring to, evidently, Pacific
21 Bell technicians, unnamed. There's hearsay as to what they
22 evidently responded.

23 JUDGE MILLER: Mr. --

24 MR. WAYS DORF: Your Honor, I cannot identify to whom
25 he was speaking, but I can only say that this is an admission

1 against interest of Pacific Bell technicians.

2 JUDGE MILLER: How can you say it was a -- I -- the
3 only person I know that's -- said that -- is Carrabis. I
4 don't know any -- what Pacific Bell technicians said.

5 MR. WAYSORF: Well, he's stating what they admitted
6 to him.

7 JUDGE MILLER: Objection is sustained.

8 MS. WOOLF: Similar -- the -- really the same objec-
9 tion, the sentence beginning at line 16 and ending line 21
10 about what the Pacific Bell technicians told him.

11 JUDGE MILLER: Same po-- same position, Mr.
12 Waysdorf?

13 MR. WAYSORF: Again, it's an admission against
14 interest. It's an admission that their, their equipment was
15 not functioning properly and that the, the trunks were
16 adequate.

17 JUDGE MILLER: Vague and insufficient to -- the
18 objection is, the objection is sustained.

19 MS. WOOLF: I would then also object to the sentence
20 beginning line 21 and continuing through the end of line 24
21 since that all relates to what we've just struck.

22 JUDGE MILLER: Yes, that's included the -- in my
23 ruling.

24 MS. WOOLF: Page 5, line 4 through 8, I'll object to
25 "the consistent and sustained pattern of call processing

1 problems indicates that Pac Bell's access tandem was blocking
2 calls" as being without any foundation.

3 MR. WAYS DORF: Well, Your Honor, this is based on
4 his evaluation of the problems and he can testify as to how he
5 made this determination.

6 JUDGE MILLER: Well, he is testifying, or maybe he
7 says he eliminated any causes due to TMC's facilities. I, I
8 don't know exactly what that means.

9 MR. WAYS DORF: Well, he, he made clear that through
10 his own evaluation, his own technical evaluation, that there
11 was -- that these causes -- these problems were not caused by
12 TMC's own facilities.

13 MS. WOOLF: Except that if you go back the -- what
14 -- the things that we've just struck deals with why he thought
15 that, because of what --

16 JUDGE MILLER: No.

17 MS. WOOLF: -- Pacific Bell people told him.

18 JUDGE MILLER: Well, it may be pretty vague, but
19 he's -- back on page 4 he says, "After I performed a variety
20 of diagnostic tests I ever found that the problems of which
21 the customer complained were or could have been caused by
22 TMC's equipment." Now, that's -- when he, when he says now
23 once I determined by running my diagnostic tests that the
24 fault wasn't TMC's, the only thing left -- now, I don't know
25 that this follows.

1 MR. WAYSORF: Well, now, it's -- the complete --

2 JUDGE MILLER: The only thing left is the, the, the,
3 the, the -- it was Pacific Bell's access tandem was blocking
4 the -- was causing blocked calls. Now, I don't know that
5 that's -- I don't know if that's accurate and I don't know if
6 there isn't -- if there is other ways that calls could be
7 blocked, for example, in a stipulation that you're going to
8 offer. But I'm going to say that it's relevant but I'm not
9 guaranteeing its accuracy.

10 MS. WOOLF: Well, I'm, I'm certainly not making
11 objections based on accuracy. Otherwise, we'd be here --

12 JUDGE MILLER: I know.

13 MS. WOOLF: -- a lot longer.

14 JUDGE MILLER: I know. But do you understand what
15 I'm saying? I'm --

16 MS. WOOLF: Yes.

17 JUDGE MILLER: -- saying that this is -- he, he --
18 I, I interpret that error-- earlier part, and I'm willing to
19 accept his statement under oath, that he performed diagnostic
20 tests. Now, whether he lied or -- once he performed those
21 diagnostic tests, whether he, he arrived at the conclusion
22 that the only thing left was the, the access tandem switch, I,
23 I don't know whether he can make that jump. I'm not techni-
24 cally able to, to do -- analyze it, but it -- but I'll, I'll
25 allow it in. All right.

1 MS. WOOLF: Next, page 5, lines 11 through 14.

2 JUDGE MILLER: Yes.

3 MS. WOOLF: Stating evidently the results of some
4 tests that he did. There's no foundation for that. There's
5 no evidence that we can --

6 JUDGE MILLER: Is there any place --

7 MS. WOOLF: -- examine --

8 JUDGE MILLER: -- in this record I can go to find
9 out whether he -- when -- or remem-- memorialized any of these
10 tests, Mr. Waysdorf?

11 MR. WAYSDORF: No. No, Your Honor. This is his
12 recollection of tests that he performed. We have no -- we
13 have not submitted any written evidence of any of this. They
14 are tests that he conducted. He explains that -- how he did
15 this by comparing call completions during the busy hours and
16 nonbusy hours, and this is the result of what, what this did.

17 JUDGE MILLER: The objection is sustained.

18 MS. WOOLF: Skipping some pages, bottom of page 8,
19 line 23 continuing on to page 9.

20 JUDGE MILLER: You're starting with the words "for
21 that," you mean?

22 MS. WOOLF: Yes. That's speculation. He's trying
23 to testify about what Pacific Bell would have done and -- in
24 that circumstance. I don't think there's any foundation for
25 that.

1 MR. WAYS DORF: Well, that's, that's based on, Your
2 Honor, on Mr. Carrabis's experience and training with respect
3 to this switch and Pacific Bell's procedures in dealing with
4 the switch. This comes out of the technology involved in
5 TMC's and Pac Bell's switch --

6 JUDGE MILLER: I'll overrule the objection. I, I
7 will have to say that I'm not so sure that the Pac Bell per-
8 sonnel were at all times fully cognizant of the network facil-
9 ity that TMC was using, but, but I'll leave, I'll leave this
10 document in.

11 MS. WOOLF: Page 11, line 4, "when customers again
12 frequently complained about long connect times..." and all the
13 way through the next sentence, actually down to line 7. There
14 is no foundation for "those complaints were about delays as
15 long as 45 seconds."

16 JUDGE MILLER: Well, I, I have to -- I'm going to,
17 I'm going to take a look at that log and we're going to exam-
18 ine that lo-- trouble log, and I'm going to have to -- I'm
19 going to go along with the assumption that that log will
20 sustain that sentence, Ms. Woolf.

21 MS. WOOLF: Okay. Page 12, line 13.

22 JUDGE MILLER: Page 12, line what?

23 MS. WOOLF: 13.

24 JUDGE MILLER: 13.

25 MS. WOOLF: Again, the results of some testing that

1 was done. It goes from line 13 down to line 19.

2 JUDGE MILLER: Oh, it starts up here -- it does
3 start up on 7, "using this testing method."

4 MS. WOOLF: Yeah. It's, it's actually starts on the
5 previous page on line 22 talking about how he would place
6 calls.

7 JUDGE MILLER: Do we have anything, do we have
8 anything to, to, to back up this paragraph starting with line
9 22 down through --

10 MR. WAYS DORF: Your Honor, we have his direct state-
11 ment saying this is exactly what he did.

12 JUDGE MILLER: I know, I know, I know we have his
13 direct statement. I can read it. But, no, what I'm asking
14 is --

15 MR. WAYS DORF: We have no notes.

16 JUDGE MILLER: Do we have notes and mem--

17 MR. WAYS DORF: We have no notes.

18 JUDGE MILLER: -- memorandum, anything in writing
19 that, that would len-- lend some concreteness to this testi-
20 mony? That's what I'm asking.

21 MR. WAYS DORF: Your Honor, we have no additional
22 evidence other than what he's stating here.

23 JUDGE MILLER: The objection is sustained.

24 MR. WAYS DORF: What is being stricken then? From
25 22? I mean, he's explaining his methodology if you're --

1 she's objecting to the results of --

2 JUDGE MILLER: 22 through 19 on two-- page 12.

3 MS. WOOLF: The following paragraph, beginning on
4 line 20 of page 12 and continuing on page 13 to line 17, is
5 about another test, evidently, by Mr. Carrabis in which he
6 makes statements as to the results, that I believe is -- simi-
7 larly has no foundation.

8 MR. WAYS DORF: Your Honor, I continue to believe
9 and, and argue that he is personally testifying, he will be
10 here to testify, as to how he conducted these tests. Lack of
11 additional evidence may go to the weight as to any, any expla-
12 nation he can give about these tests, but that does not reduce
13 the fact that he is testifying that he personally with his --
14 him-- by himself conducted these tests.

15 JUDGE MILLER: Objection sustained.

16 MS. WOOLF: Page 13, line --

17 JUDGE MILLER: Why in heaven's name, you know, if,
18 if -- and I don't know -- see, I don't know when these tests
19 were conducted, Mr. Waysdorf, but if, if this had, this had
20 reached the stage where, where Mr. Bader was becoming frus-
21 trated and, and upset, why in heaven's name weren't these
22 tests reduced to writing?

23 MR. WAYS DORF: Your Honor, I believe --

24 JUDGE MILLER: That's --

25 MR. WAYS DORF: I'm sorry.

1 JUDGE MILLER: -- a problem.

2 MR. WAYS DORF: I'm sorry.

3 JUDGE MILLER: Oh, that's okay.

4 MR. WAYS DORF: I believe at this point in time TMC
5 was not anticipating litigation. They were --

6 JUDGE MILLER: Well, I'm not --

7 MR. WAYS DORF: -- trying to --

8 JUDGE MILLER: -- even talking about litigation.

9 I'm ju-- I'm just talking about in and around the time he went
10 -- met with Stolz in New Orleans when he was having these
11 problems that he discerned. I mean, why didn't he say hey,
12 you know, get it in writing, Carrabis, you know. You're
13 running good tests there and we'd like to -- and, and I'd like
14 to take copies of these tests to, to Wheatley and Duer, if
15 nobody else, and show them what, what's happened. That's --

16 MR. WAYS DORF: Your Honor, I can't second guess --

17 JUDGE MILLER: I, I, I can't either --

18 MR. WAYS DORF: But --

19 JUDGE MILLER: -- but the, the objection is re--
20 objection is sustained.

21 MS. WOOLF: Next, page 13, line 18. It's the fol-
22 lowing paragraph. It rolls over onto page 14.

23 JUDGE MILLER: Same --

24 MS. WOOLF: Same thing.

25 JUDGE MILLER: -- same objection. Same, same

1 position, Mr. --

2 MR. WAYS DORF: Yes.

3 JUDGE MILLER: -- Waysdorf?

4 MR. WAYS DORF: I think that he has personal knowl-
5 edge of these facts and he's available to testify and present
6 te-- evidence about them, and I think that requiring a second-
7 ary source is -- doesn't justify striking this testimony.

8 JUDGE MILLER: All right. My ruling is the same and
9 I, I, I just differ with you about the word secondary. I'm
10 talking about a primary source.

11 MR. WAYS DORF: Your Honor, I would like at this
12 point, now that we've gotten to the end of these tests, I
13 would like to make an offer of proof starting at page, at page
14 11, line 22, going through page 14, line 7, regarding the
15 tests described in these pages personally conducted by Mr.
16 Carrabis and which he is prepared to testify as to his method-
17 ology and results, showing significant delays and blockage.

18 JUDGE MILLER: Your, your offer of proof is noted
19 and rejected. Proceed.

20 MS. WOOLF: Page 14, the following paragraph.
21 Again, this -- some of this is relying on the, the information
22 that we've just stricken. Also in that sentence on line 12,
23 he talks about the fact that AT&T, MCI, and Sprint all had
24 some amount of direct trunking. Well, let, let me just object
25 that it -- to the extent that it flows from the paragraphs

1 | above in terms of diagnostic tests it's similarly objection-
2 | able.

3 | MR. WAYSORF: Well, the fact, Your Honor, of that
4 | AT&T, MCI, and Sprint had some amount of direct trunking does
5 | not flow from those tests. That is -- in fact, it's estab-
6 | lished elsewhere in P-- Pacific Bell's own exhibits. These
7 | are conclusions that he drew from his --

8 | JUDGE MILLER: Well --

9 | MR. WAYSORF: -- experience in investigating these
10 | complaints.

11 | MS. WOOLF: Maybe I should just object specifically
12 | to what's on line 11 and 12 relating to the diagnostic tests.

13 | JUDGE MILLER: I would -- I think that's a wise
14 | thing to do. I'll sustain that. And -- but I -- starting on
15 | line 2, "I based this conclusion on the types of customer com-
16 | plaints TMC received..." -- well, I'm willing to accept his --
17 | that, that that's true. I mean, I don't have any idea what
18 | we're talking about. That's, that's part of my problem. In
19 | other words, if I'm trying to give the man some credit, I
20 | don't know what, I don't know what he's -- I don't know what
21 | specifically he's telling me. I'm willing to accept his, his
22 | statement that "AT&T, MCI...Sprint all have some amount of
23 | direct trunking." I think there's an exhibit to show that.
24 | But I can't go any further than that. That's my basic prob-
25 | lem. But I'll allow -- I'm -- I'll -- I will entertain an

1 objection to the rest of that paragraph. Proceed.

2 MS. WOOLF: Page 14, line 17. "After installing
3 direct trunks in 1988, TMC's traffic volume increased dramati-
4 cally." I have not seen anything in the record, any founda-
5 tion for that statement. And then the rest of that sentence,
6 talking about how their complaints diminished significantly,
7 even if you accept Exhibit 10, I think Mr. Carrabis says in
8 this testimony that that trouble log was not kept past 1988.

9 JUDGE MILLER: That's true. He said, he said it was
10 discontinued in 1988 and they evidently developed some sort of
11 a new method of, of, of recording their troubles. That, that
12 I, I remember.

13 MR. WAYS DORF: Your Honor, this -- these statements
14 are still based on his personal knowledge as the person
15 responsible for operation of this switch, of TMC's equipment
16 and --

17 JUDGE MILLER: Well, would -- when he says, "after
18 installing direct trunks in 1988, TMC's traffic log increased
19 dramatically." Now, do we have any figures in this record on
20 that? And I'm not even going to limit you to Carrabis. I
21 mean -- now, there's -- there was -- back in, in the fir-- in
22 Exhibit 1, there was a statement -- let's see if I can find
23 it. On page 2, this is the, this is the most I can find in --
24 of Exhibit 1. On page 2, I see currently TMC has 3,300 cus-
25 tomers in 1985. We had 2,200 customers in 1990. You have

1 possible 2,800 customer. That is about the only factual data
2 that I can locate regarding -- and that's just customers.
3 That doesn't talk about traffic volume in any sense of the
4 word. So, I, I'll sustain an objection to the first sentence.
5 And sense the second sentence follows from the first one, I'll
6 sustain the objection to that paragraph. Go ahead, Ms. --

7 MS. WOOLF: Yes. Page 15, lines 11 and 12 refer to
8 "Pacific Bell employees." I don't know if that specifically
9 refers to Dennis Wheatley and Lee Duer, as had been the case
10 with -- in Mr. Bader's testimony.

11 MR. WAYS DORF: And Helga Post. He says it in, in --
12 two sentences down. "I met at various times with Pacific
13 Bell's employees, Dennis Wheatley, Lee Duer, and Helga Post."

14 JUDGE MILLER: Is he in, in -- is he in any
15 position, Mr. Waysdorf, where he said, "I attended dozens of
16 meetings with Pacific Bell employees in -- from 1986 to 1988."
17 Is he in any position to tell me when these meetings took
18 place? You know, can he, can he give me any data that I could
19 use to gratify me?

20 MR. WAYS DORF: I don't, I don't know whether he has
21 any calendar or other records that show the specific dates.
22 My feeling is that --

23 JUDGE MILLER: Well, I'm not --

24 MR. WAYS DORF: -- if he had we would have, we would
25 have supplied it.

1 JUDGE MILLER: I, I'm going to overrule any objec-
2 tion you may have had, Ms. Woolf. But if, if we can't get
3 some specifics about these meetings and -- so that we can
4 verify it through either Bader or Wheatley or Duer or Post,
5 then you'd better make a Motion to Strike. But, otherwise,
6 I'll, I'll allow this in.

7 MS. WOOLF: Okay. Also, Your Honor, page 15, line
8 18 and 19, it talks about "discussions with these.." assuming-
9 ly -- assuming the -- these three employees, "and other
10 Pacific Bell representatives." I don't know who they are.

11 JUDGE MILLER: All right. Who, who do we have
12 besides Wheatley and Duer and Helga Post, Mr. Waysdorf?

13 MR. WAYSDORF: Your Honor, my understanding is that
14 he could not remember who the others were, and therefore they
15 could not be identified by us.

16 JUDGE MILLER: The -- is there, is there any record
17 of the minutes of the meetings that would tell us who it was?
18 I mean, when, when you returned from a meeting, did you -- did
19 somebody sit down and draw up a, a memo saying: we held a
20 meeting on X date and the following people attended the meet-
21 ing and the following topics were discussed? Do, do we have
22 any of that sort of material?

23 MR. WAYSDORF: Apparently, neither Mr. Carrabis nor
24 Mr. Bader prepared any such memos. Whether anyone at Pacific
25 Bell did, there were a couple notes of meetings, but I don't,

1 I don't believe that we've gotten anything that I can put my
2 finger on.

3 JUDGE MILLER: Well, do we have anything in
4 Wheatley's notes that'll -- says, hey, I went to a meeting and
5 talked to Bader and Carrabis? I mean, can we approach it from
6 the back in and come in?

7 MR. WAYSORF: There are some references to Bader
8 and, I think, Carrabis, but it's difficult to tell from these
9 notes whether it was a meeting or a phone call in many in-
10 stances. There is a -- you know, that's -- that, that's,
11 that's all I can say.

12 JUDGE MILLER: Well --

13 MR. WAYSORF: These are -- you know, these are --
14 there are notes that clearly reflect many discussions with
15 these people, but --

16 JUDGE MILLER: Well, let me say this, that I'm -- I,
17 I am interested in when Carrabis talked with various Bell
18 representatives, between Wheatley and Duer and Helga Post,
19 about direct trunking. I'm anxious to know exactly what
20 happened. Did he ever, did he ever in writing say hey, I
21 want, I want trunking and I realize that I, that I can't get
22 it, that, that I'm not on a full-stand basis, but I think I'm
23 entitled to it anyhow. I'll overrule the objection, Ms.
24 Woolf, with the understanding that I'm, I'm troubled with the
25 lack of specificity in this exhibit -- I mean, not this -- in

1 | this particular paragraph. And, so the -- because there isn't
2 | much I can do with it without some specificity. Proceed.

3 | MS. WOOLF: Page 16. I object to lines 3 through 5
4 | in that they -- it's simply a characterization. It's not
5 | anything --

6 | JUDGE MILLER: Wait a minute. What, what, what --

7 | MS. WOOLF: Lines 3 -- "under the circumstances in
8 | which Pacific Bell's access tandem was wreaking havoc on TMC's
9 | traffic..." I don't have objection to the remainder of that
10 | sentence as to what he believes workable options are. I just
11 | object to the characterization of that first part of the
12 | sentence.

13 | JUDGE MILLER: Mr. Waysdorf?

14 | MR. WAYSDORF: We can, we can get rid of the, the
15 | work -- the "wreaking havoc" characterization, to just change
16 | "wreaking havoc" to "was affected." Excuse me. "under the
17 | circumstances in which Pacific Bell's access tandem affect-
18 | ed..." A F F E C T E D "...TMC's traffic." Strike the "was
19 | wreaking havoc on".

20 | JUDGE MILLER: All right. I'll do that and I'll --
21 | be to sure to tell him, though, we've changed his testimony.

22 | MR. WAYSDORF: Yes. We will ask him to reaffirm it
23 | when he --

24 | JUDGE MILLER: Yes.

25 | MR. WAYSDORF: -- goes on the stand.