

1 MR. CHURCHILL: For example, Your Honor, at page
2 22 --
3 JUDGE MILLER: Okay. Hold it just a second. 22.
4 MR. CHURCHILL: Line 18 to 19.
5 JUDGE MILLER: Line eight-- start on 17?
6 MR. CHURCHILL: 18.
7 JUDGE MILLER: Oh, in so -- "in doing so..."
8 Starting with --
9 MR. CHURCHILL: Yes.
10 JUDGE MILLER: -- "in doing so..."
11 MR. CHURCHILL: "In, in doing so -- they assumed
12 extraordinary and unnecessary risk." He's giving an opinion
13 as to Pacific Bell's decision to employ the access tandem.
14 JUDGE MILLER: Okay. I'll mark that -- I'll mark it
15 -- well --
16 MR. WAYS DORF: You're not looking for a response?
17 JUDGE MILLER: No, I'm not looking for a response
18 because what I'm trying to do is -- if we're going to get a
19 challenge to this man's expertise, I want to know just exactly
20 what it is that, that, that Pacific Bell finds offensive --
21 MR. WAYS DORF: Okay.
22 JUDGE MILLER: -- in, in --
23 MR. WAYS DORF: Fine. I mean, I could respond, but I
24 won't. I basic --
25 JUDGE MILLER: Oh, in fact, you ought to not.

1 You're liable to lose and you --

2 MR. WAYS DORF: Okay.

3 JUDGE MILLER: -- you are -- with it right now, the
4 only way you could -- the only thing that could happen to you
5 is you'd lose and you'd -- possible.

6 MR. WAYS DORF: That's fine. I'll keep my mouth --

7 JUDGE MILLER: All right. Okay. That's, that's the
8 conclusion. All right. If you have got some more general
9 objections, go ahead.

10 MR. CHURCHILL: The other general objection, Your
11 Honor, is, is to the extent that you have indicated that the
12 relevant time period here is 1985 to 1988 and much of what Mr.
13 Ritchey talks about are -- involve Pacific Bell's decision to
14 employ the access tandem, which decision was made before 1985,
15 and our position on, on that testimony is that it's not rele-
16 vant for purposes of this proceeding.

17 JUDGE MILLER: Mr. Waysdorf?

18 MR. WAYS DORF: Yes, Your Honor. And this -- we
19 believe that it's very relevant, and there's certainly a lag
20 time. If they could have just walked into a store and bought
21 an access tandem, perhaps that might be true. But there was
22 considerable planning and, and policy decisions made in 1984
23 in deciding which tandem -- or how to go about providing equal
24 access that didn't take effect -- the, the damaging activity
25 didn't take effect until they actually put it into place in

1 1985. This is background material. This goes to why -- and
2 purpose for choosing to employ what Mr. Ritchey will qual--
3 will testify to as a defective and risky piece of equipment,
4 relying on it for dealing with these, these carriers. It
5 certainly didn't -- they, they made these decisions, some of
6 these decisions, in 1984. The damage was done once they put
7 it into place in 1985.

8 JUDGE MILLER: All right. I will, I will overrule
9 your objection, Mr. Churchill, on the grounds that I believe
10 this to be appropriate background material on the tandem
11 switch. And maybe one of the questions that I'll ask the
12 witness is why they didn't -- why you, you people didn't join
13 Northern Telecomm in their suit.

14 MR. CHURCHILL: May I respond?

15 JUDGE MILLER: The allegations are that Northern
16 Telecomm did them in. They gave them the bad -- they gave
17 them the, the switch that wouldn't perform up to, to, to
18 capacity. I have expected somebody to say well, you know, Pac
19 Bell is liable to say if we're guilty of anything it's, it's
20 buying a switch from the wrong manufacturer. And it, it --
21 perhaps you want to say well, maybe we -- in case we can't
22 nail Pac Bell, maybe we can nail Northern Telecomm. I -- the
23 -- well, that's beside the point. Proceed, Mr. Churchill.

24 MR. CHURCHILL: Thank you, Your Honor. At page 1,
25 Your Honor.

1 JUDGE MILLER: Hold it. Hold it.

2 (Off the record.)

3 (On the record.)

4 JUDGE MILLER: Proceed.

5 MR. CHURCHILL: Page 1, beginning at line 16. It
6 says, "In attempts to discover additional documents relevant
7 to this litigation that one would have suspected to be forth-
8 coming from earlier interrogatories propounded by TMC in this
9 Complaint proceeding..." That's, that's argumentative, Your
10 Honor, and --

11 MR. WAYS DORF: Your Honor, I would, I would be
12 willing to strike starting with "that".

13 JUDGE MILLER: Well, let's --

14 MR. WAYS DORF: And I, I, I understand --

15 JUDGE MILLER: "In doing so, I have met personally
16 with PB representatives during 1990 as arranged by PB and TMC
17 counsel." Do you -- now, that's -- if you put a period after
18 the word "counsel," that's where the objection starts. But
19 you say that, that you want to go on?

20 MR. WAYS DORF: Well, I would suggest that the
21 purpose of those meetings up to the word "that" explains why
22 they set up these meetings.

23 JUDGE MILLER: "In attempts to --

24 MR. WAYS DORF: I --

25 JUDGE MILLER: -- discover additional documents

1 relevant to this litigation...?"

2 MR. WAYS DORF: Correct. But beyond that, if he
3 finds it argumentative --

4 JUDGE MILLER: All right.

5 MR. WAYS DORF: -- I can --

6 JUDGE MILLER: I'll put a period -- we'll put a
7 period right there and we'll -- and starting with the fir--
8 the clause, "that one would have expected to be forthcoming
9 from earlier interrogatories propounded by...in this Complaint
10 proceeding" is stricken.

11 MR. CHURCHILL: Next, we turn to page 4, beginning
12 at line 13, those two sentences. "Under that plan ownership
13 of the networks class 5 local switches, the switches to which
14 subscriber lines were connected, were assigned to a box.
15 Ownership of existing class 4 toll switches are -- were assign-
16 ned to AT&T." We object to that, Your Honor, as, as being no
17 foundation, and the plan itself is the best evidence of what,
18 what it contains.

19 JUDGE MILLER: Well, this is his interpretation of,
20 of the MFJ, isn't is?

21 MR. CHURCHILL: It's as good a foundation as what --

22 JUDGE MILLER: MFJ filed reorganization. Your
23 objection is overruled.

24 MR. CHURCHILL: Page 6, Your Honor.

25 JUDGE MILLER: Page 6.

1 MR. CHURCHILL: Beginning at line 14.
2 JUDGE MILLER: "At the time of divestiture...?"
3 MR. CHURCHILL: Yes. Down to line 18.
4 JUDGE MILLER: Ending with "in LATA-6."?
5 MR. CHURCHILL: Yes.
6 JUDGE MILLER: All right.
7 MR. CHURCHILL: Object to that statement as there's
8 no foundation that he has personal knowledge of that
9 information.
10 MR. WAYS DORF: Your Honor, he's an expert. He's
11 allowed to rely on everything he gleans from documents,
12 treatises --
13 JUDGE MILLER: What, what documents did he glean it
14 from? Are those -- are there documents in this record that he
15 gleaned it from? That's -- I, I, I don't, I don't dispute --
16 MR. WAYS DORF: Your Honor, I think that's his basic
17 understanding of the network structure based on his, his, his
18 long experience in this area. I think that Pac Bell is enti-
19 tled to cross-examine him on the basis, as they would cross-
20 examine any, any expert, of his knowledge, but this is the
21 type of network structure technology that he is familiar with.
22 JUDGE MILLER: Well, I want to know -- I, I want to
23 know when he says all PB San Diego LATA -- intra-LATA toll
24 calls and AT&T intra-LATA toll calls were routed over direct
25 trunk from PB class 5 local switches to AT&T's class 4 toll

1 switches. I want to know how he knows that. That's a -- I
2 mean, that's -- I'm not questioning his expertise, but I want
3 to know how he knows it.

4 MR. WAYS DORF: Your Honor, Your Honor, I believe --
5 my recollection of his testimony, I'd have to find it, is he
6 was in fact a consultant to AT&T on how this plan was imple-
7 mented. This is one of his many things that he has done over
8 his career. Again, this is why we obtained the assistance of
9 an expert, to assist --

10 JUDGE MILLER: It's, it's -- I'm not --

11 MR. WAYS DORF: -- the trier of fact and --

12 JUDGE MILLER: -- I'm not, I'm not worried about his
13 exper--

14 MR. WAYS DORF: No. I'm, I'm saying that this --
15 these are the --

16 JUDGE MILLER: Mr. Waysdorf, what I'm worried about
17 is even experts -- well, up until the last 10 or 15 years,
18 even experts had to have facts, and I'm old-fashioned enough
19 to believe that they still have to have facts upon which they
20 base their opinion. Now, the -- what he is, what he is stat-
21 ing here is not a conclusion. It's not a, an expert opinion.
22 He is stating a plain fact, and I want to know where he got
23 it.

24 MR. WAYS DORF: Your Honor, I, I can't answer that.
25 He can answer that. I can't answer that because I don't know

1 as much as he does.

2 JUDGE MILLER: Well, in -- the -- is there any
3 attachments to his exhibits where he says: this is where I
4 got it from?

5 MR. WAYSDORF: It's -- Your Honor, my understanding
6 is that his view this is standard technology based on his
7 knowledge and experience. It's outlined on the figure on the
8 preceding page. And, then, perhaps what's -- seems as, you
9 know, basic and fundamental to someone of his experience is
10 not as basic and fundamental to ourselves. But, again, it
11 seems to me this is appropriate for cross-examination. It
12 doesn't make what he's saying here inadmissible.

13 JUDGE MILLER: All right. I'll overrule the objec-
14 tion, but he'd better be able -- when he gets on the stand,
15 he'd better be able to tell me where he got that information.

16 MR. WAYSDORF: I'm, I'm --

17 JUDGE MILLER: It's, it's --

18 MR. WAYSDORF: -- sure he will.

19 JUDGE MILLER: -- factual and, and, and I don't mind
20 him reciting it if, you know, I -- but he'd better tell me
21 where he got it so that I'll know.

22 MR. WAYSDORF: And certainly at that time it would
23 be subject to striking if he doesn't know, obviously, as with
24 any testimony he does.

25 JUDGE MILLER: All right. Next, Mr. Churchill.

1 Overrule -- your objection is overruled.

2 MR. CHURCHILL: Page 6, Your Honor, lines 20 to 21.
3 That sentence that begins with "This TSPS..."

4 JUDGE MILLER: Okay.

5 MR. CHURCHILL: The same objection, Your Honor.
6 There's, there's no foundation that this witness has personal
7 knowledge of, of what billing information was captured in this
8 LATA.

9 MR. WAYSORF: Your Honor, this is how the network
10 works. This is what he is here to testify about and explain
11 to those of us who don't have his background and experience.
12 As I said, he, he was active in the, in the setting up of this
13 entire plan. If he can't tell us where he got this, that is
14 proper cross-examination --

15 JUDGE MILLER: Well, tell him to -- you know, tell
16 him if, if this plan that you make reference to is in writing,
17 tell him to bring a copy with him, because I'm going to want
18 to see where, where he got -- if he was instrumental in set-
19 ting up a plan and that plan's in writing, I want to see it.
20 I'm not, I'm not doubting him. I'm just saying that I have to
21 verify on this record.

22 MR. WAYSORF: Okay, Your Honor. I think that's
23 appropriate for cross-examination.

24 JUDGE MILLER: All right. And you can tell him that
25 if Pac Bell doesn't ask him I'm going to ask him. Okay.

1 Next, Mr. Churchill.

2 MR. CHURCHILL: Same page, Your Honor, lines 23,
3 beginning with "thus..." through line 26, where it ends at
4 "facilities." Same objection.

5 JUDGE MILLER: Same ruling.

6 MR. CHURCHILL: Page 7, line 3. The sentence reads,
7 "AT&T decided to keep these physical assets because the bulk
8 of toll revenues in this had historically derived from inter-
9 LATA calls, not intra-LATA calls." There's no foundation that
10 he has personal knowledge of that and it calls for speculation
11 as to AT&T's reasoning.

12 MR. WAYS DORF: Your Honor, it doesn't call for
13 speculation. It calls for his opinion and his knowledge. All
14 of his opinions and knowledge are subject to questioning --

15 JUDGE MILLER: I'll, I'll overrule the objection. I
16 will state this, that, that I think the man is making an
17 assumption, maybe accurate, and "because the bulk of the toll
18 revenues had historically derived from inter-LATA calls and
19 not intra-LATA calls" may be accurate, but I, I really have
20 difficulty understanding how he knows that that's what AT&T
21 decided it on.

22 You know, I'll tell you this, people can tell me why
23 AT&T Macaw (phonetic sp.). I think Macaw took them, but
24 that's why -- that's reason of my personal opinion. But I --
25 but, but I can't say that's why AT&T -- I don't know why AT&T

1 bought Macaw. All I can tell you is what I read in the news-
2 papers. Next?

3 MR. CHURCHILL: Starting with page 7, line 20, it
4 begins that "PB's leasing costs..."

5 JUDGE MILLER: What, what, what page are we on?

6 MR. CHURCHILL: Page 7.

7 JUDGE MILLER: Okay.

8 MR. CHURCHILL: Line 20.

9 JUDGE MILLER: Okay.

10 MR. CHURCHILL: Where it starts off with "PB's
11 leasing costs..."

12 JUDGE MILLER: All right.

13 MR. CHURCHILL: Over to page 8, line 2.

14 JUDGE MILLER: And your objection?

15 MR. CHURCHILL: My objection is there's, there's no
16 foundation for that statement. It's speculative and argumen-
17 tative.

18 MR. WAYS DORF: Your Honor, this is discussed -- the
19 first sentence is discus-- if I can find it in this here, but
20 it's discussed later in the testimony. It's also going to be
21 proved through testimony of certain of the policy witnesses,
22 as I'm referring to them, the Pac Bell former or present
23 executives who were involved in making these -- the decision
24 to take this course of action. It's, it's also reflected in,
25 in some of the documents that we have on the policies and the

1 underlying reasoning behind adopting the policies for taking
2 this approach.

3 JUDGE MILLER: Well, what -- all of this material --
4 let, let me ask you these -- this -- a couple of questions on
5 it. All of this material, these facts, were gathered as a
6 result of his participation in the, in the MFJ plan?

7 MR. WAYS DORF: No. No. Also from his review of --
8 we, we have received a number of documents over the years,
9 starting in, in 1989 and '90, from Pac Bell, including many
10 documents from this earlier era where they discussed their,
11 their various plans and policies relating to the implementa-
12 tion of the access tandem.

13 JUDGE MILLER: Well, does this man have those docu-
14 ments?

15 MR. WAYS DORF: Yes.

16 JUDGE MILLER: Did he have access to those
17 documents?

18 MR. WAYS DORF: Yes.

19 JUDGE MILLER: And will he have them with him when
20 he comes here to testify?

21 MR. WAYS DORF: Yes. Yes, he will.

22 JUDGE MILLER: So, we're --

23 MR. WAYS DORF: They are in our exhibits, as well as
24 this Fundamental Plan 6, which we've referred to as --

25 JUDGE MILLER: Okay. FPC 6?

1 MR. WAYSDORF: Yes.

2 JUDGE MILLER: Yeah. Well -- there's some --

3 MR. WAYSDORF: Yes.

4 JUDGE MILLER: In fact, the whole plan's in, isn't
5 it? FPC 6, 30, Exhibit 30?

6 MR. WAYSDORF: I believe it is, yes.

7 MR. HELEIN: Yes, Your Honor.

8 JUDGE MILLER: Okay. I'll overrule --

9 MR. WAYSDORF: That -- start --

10 JUDGE MILLER: -- I'll overrule the objection.
11 Proceed, Mr. Churchill.

12 MR. CHURCHILL: Okay, Your Honor. Starting at page
13 8, line 19. It begins, "Because classified local in-office
14 and class 4 toll switches support automatic number identifica-
15 tion and other inter-office signalling it on feature group C
16 direct trunks..." There's, there's no foundation that he has
17 personal knowledge of that, Your Honor.

18 MR. WAYSDORF: That's -- it's part of this, this
19 plan, that it -- this is what he does have personal knowledge
20 of. He has been operating in this area of network structure
21 for his entire career. He was involved in the development of
22 this plan. And this is what --

23 JUDGE MILLER: All right. I'll, I'll tell you
24 something. Maybe we're going to need a copy of that plan put
25 in evidence so that we can, so that we can -- without, without

1 | having to go through each of these lines and saying okay,
2 | where did he get it and have him dig it -- why don't we just
3 | get this plan here, and so that he can pick it up and say
4 | right there, paragraph 14 on page 3 of the plan? Now, is
5 | there any problem with that?

6 | MR. HELEIN: No, Your Honor. I would just like to
7 | point out I think that basically we, we can get you that. I
8 | think it's in documents that Pac Bell has available to them as
9 | be -- this is fundamental local exchange network structure.
10 | It just exists. And we will definitely get you --

11 | JUDGE MILLER: I know.

12 | MR. HELEIN: -- something in writing.

13 | JUDGE MILLER: I, I understand that, and I under-
14 | stand what, what he's doing is, is -- you're contention that
15 | he, he's just telling you, Judge, basic facts. But I've got
16 | an objection here that, that these facts -- that there's no
17 | foundation for these facts. And if, if, if this man worked on
18 | the plan and the plan exists and the plan can support this or
19 | any other documents that you may have gotten from Pac Bell in
20 | the earlier investigation that support -- that were made
21 | available to him for analysis, let, let's have them.

22 | MR. HELEIN: We, we will -- we did not believe that
23 | there would be challenges to fundamental network structure
24 | that has been in existence for years and which Mr. Ritchey has
25 | dealt with for 43 years in his expertise.

1 JUDGE MILLER: I understand that.

2 MR. HELEIN: But we will definitely --

3 JUDGE MILLER: I understand that.

4 MR. HELEIN: -- get that for you.

5 JUDGE MILLER: I understand that. All I'm, I'm --
6 all I'm saying is that there has been a challenge and what we
7 need is -- what we're going to need to -- is the basic docu-
8 ments upon which he relied. And -- but I'm, I'm -- in each
9 instance, I have overruled the objection, if you notice.

10 MR. HELEIN: I, I will -- just for the, the comfort
11 of the Court, there is a book entitled "Engineering and Opera-
12 tions of the Bell System." It's about two, two-and-a-half
13 inches thick. And that book is, is published by AT&T, sort of
14 a technological bible to the telephone network and, and struc-
15 ture. It would be just one example of the kind of literature
16 that exists to document this type of structure.

17 JUDGE MILLER: Okay. No problem. Proceed, Mr.
18 Churchill.

19 MR. CHURCHILL: Page 9.

20 JUDGE MILLER: All right.

21 MR. CHURCHILL: Starting at line 1, "notwithstand-
22 ing..." through line 7. Object to that on the basis that
23 there's no foundation, it's hearsay, and on the basis of
24 relevance.

25 JUDGE MILLER: And, again, again, are we, are we now

1 out of the realm of standard practices and -- with telephone
2 industry? Are -- and are we in this case --

3 MR. WAYS DORF: No, we're still --

4 JUDGE MILLER: -- we're talking about customer --
5 are we talking about the customers of TMC?

6 MR. WAYS DORF: No, Your Honor. This is the pre--
7 prior to -- this is prior to that. This is talking about why
8 the whole concept of dial-one service equal access was
9 developed.

10 JUDGE MILLER: All right.

11 MR. WAYS DORF: This is, this is background MFJ --

12 JUDGE MILLER: Okay. This is -- these -- you're
13 still -- we're still talking about general theory, right?

14 MR. WAYS DORF: Yes, Your Honor.

15 JUDGE MILLER: All right. I'll overrule the
16 objection. You know, we're going to have a -- you're going to
17 have a problem in connecting, aren't you? Connecting this
18 theory to the, to the basic facts of life, what happened at
19 TMC?

20 MR. WAYS DORF: Well, I think it's --

21 JUDGE MILLER: All right. Well --

22 MR. WAYS DORF: -- in there, before we get to --

23 JUDGE MILLER: Okay.

24 MR. WAYS DORF: -- page 76.

25 JUDGE MILLER: All right.

1 MR. WAYSDORF: We're only on page 9.

2 JUDGE MILLER: All right. Proceed, Mr. Churchill.

3 MR. CHURCHILL: Page 11, line 13 through 16. Same
4 objection, Your Honor.

5 JUDGE MILLER: Lines 13 through 16. Well, same
6 ruling.

7 MR. WAYSDORF: Your Honor, I just -- I'll keep my
8 mouth shut, but I was going to say this is a direct reference
9 to the Commission order cited in the line above it.

10 JUDGE MILLER: The man, the man's making a factual,
11 factual statement. As long as he can back it up when he's,
12 when he's on the stand, I have no problems with what he said.

13 MR. CHURCHILL: Page 12.

14 JUDGE MILLER: Page 12.

15 MR. CHURCHILL: Starting at line 3. "An accurate
16 and fair comparison of, of PDD must take into account these
17 parameters for AT&T's FGC access service. Object to that on
18 the basis of there's no foundation.

19 JUDGE MILLER: Go ahead, Mr. --

20 MR. WAYSDORF: Well, Your Honor, this is, this is
21 one of the fundamental parts of the argument -- or not the
22 argument, but the establishment of his opinion on, on the
23 equality of equal access -- of the access that was provided.
24 And what he's doing here is explaining why the system used for
25 AT&T under FGC could not possibly meet the -- that the others

1 | could not possibly measure up to the access that was offered
2 | to AT&T under the FGC service for which the others were not
3 | eligible. It's, it's just --

4 | JUDGE MILLER: Overruled.

5 | MR. WAYSDORF: -- setting the whole, the whole
6 | context.

7 | JUDGE MILLER: The, the, the objection is overruled.

8 | MR. CHURCHILL: Starting at line 5, Your Honor,
9 | "Using, as equal access requires, these benchmarks, it is
10 | clear that TMC's calls suffered from excessive PDD over a
11 | continued period of time." There's no foundation. There's no
12 | facts that support that opinion. It's an improper opinion.

13 | JUDGE MILLER: Mr. Waysdorf?

14 | MR. WAYSDORF: Your Honor, that's -- that is merely
15 | based on the difference between the two-second PDD for AT&T's
16 | access under FGC and the problems that are identified in TMC
17 | Exhibit 10, which we believe demonstrate significantly longer
18 | postdial delay.

19 | JUDGE MILLER: The objection is sustained.

20 | MR. CHURCHILL: The same page, 12, beginning at line
21 | 11 where it starts off with "In my opinion..." through line
22 | 22.

23 | MR. WAYSDORF: Your Honor, that's -- that is not
24 | part of -- that is not based on trouble logs in Exhibit 10 in
25 | the slightest. That's just based on his expert analysis of

1 the CPU. It's, it's based on the fact that it's a different
2 piece of equipment that, that's involved, and this, this falls
3 into his expert opinion that it's just not physically possible
4 to match the two-second delay. This has nothing to do specif-
5 ically with, with increased postdial delay that TMC is claim-
6 ing elsewhere.

7 This is even -- this is -- he's saying even when the
8 system was working perfectly, it would have resulted in, in a,
9 in a -- in being impossible for TMC's callers to reach TMC's
10 point of presence in, in less than five or six seconds as
11 compared to AT&T's two-second time after FGC. This is an
12 evaluation of the technical structure capabilities of these
13 two different systems that were used for each.

14 JUDGE MILLER: I'll overrule the objection.

15 MR. CHURCHILL: Page 12, starting at line 23.

16 "Documents produced for TMC by PB demonstrate PB's intimate
17 knowledge of the adverse consequences on customer perception
18 of the quality of service caused by PDD. PB knows that call-
19 ers would choose a non-AT&T IEC would quickly revert to AT&T
20 if that non-AT&T IEC suffered excessive postdial delay. It's,
21 it's -- calls for speculation, Your Honor.

22 JUDGE MILLER: Go ahead, Mr. Waysdorf.

23 MR. WAYSDORF: Yes. I was going to say this is --
24 these are their own documents. I don't have which one that is
25 in front of me, but these are their own -- these just -- we're

1 relating what is found in their own studies --

2 JUDGE MILLER: I'll, I'll -- I --

3 MR. WAYSORF: -- postdial delay studies.

4 JUDGE MILLER: -- I happen to agree with Mr.
5 Churchill. It's speculative.

6 MR. CHURCHILL: Page 13, beginning at line 19.

7 JUDGE MILLER: All right.

8 MR. CHURCHILL: Through line 24. There's no foun-
9 dation for that statement.

10 MR. WAYSORF: Your Honor, I believe we've got about
11 eight pages of foundation preceding this in addition to exten-
12 sive testimony following this. The, the next paragraph goes
13 on to start to explain again where this conclusion and opinion
14 is drawn from. If this were not an expert witness, I might
15 have agreed with --

16 JUDGE MILLER: I'll -- I will allow -- this is an
17 expert opinion. I'm going to overrule the objection.

18 MR. CHURCHILL: Your Honor, for the record, this is
19 a -- another example of, of an opinion that Pacific Bell feels
20 that this witness is not qualified to give as to --

21 JUDGE MILLER: All right.

22 MR. CHURCHILL: -- competitive advantage.

23 JUDGE MILLER: All right. Let me ask you this
24 question. Assuming -- I want you to assume with me, Mr.
25 Waysdorf, that what this man says is true, is accurate.

1 Wouldn't it apply to every IEC, I'll start off with, in the
2 country?

3 MR. WAYS DORF: Only those that were relegated exclu-
4 sively to an access line that didn't work.

5 JUDGE MILLER: It would then apply to any IEC in the
6 San Diego area that was using the -- that, that same tandem?

7 MR. WAYS DORF: Exclusively. There were several
8 other --

9 JUDGE MILLER: What do you mean exclusively?

10 MR. WAYS DORF: Well, there were several others that
11 were allowed direct trunking at a much earlier date. Sprint,
12 MCI were allowed direct trunking --

13 JUDGE MILLER: Well --

14 MR. WAYS DORF: -- large percentage of --

15 JUDGE MILLER: Wait, wait a minute. You -- in fact,
16 let's, let's, let's say, let's say 80/20. Let's say that,
17 that a particular carrier had 80 percent access and 20 percent
18 direct trunking. Now, is to the extent that they're using 80
19 percent access on that tandem switch, are they affected? Are
20 they impacted?

21 MR. WAYS DORF: But to a lesser degree, because,
22 first of all, starting out with the fact that -- well, it's 20
23 percent -- if, if you're talking about 20 percent of their
24 actual calls go through that, then they're affected to a
25 lesser degree. But to the extent that a smaller --

1 JUDGE MILLER: And if 80 percent of their calls go
2 through the tandem, then they're affected 80 percent?

3 MR. WAYSDORF: I thought -- I, I think that that's
4 mostly correct, except that when a carrier is relegated exclu-
5 sively to the access -- to the, to the tandem, all of its
6 calls are potentially subject to these technological problems.
7 Whereas if it's por-- a portion is elsewhere, those ca-- those
8 are going through fine no matter what. So, I think it, it's,
9 it's not strictly an 80/20 split, but I think it is accurate
10 that there are -- there may have been other small carriers.

11 And, again, you know, what is the Commission's role
12 here? Is it to say equal access is okay as long as all the
13 big carriers are given equal access or does it cover all long-
14 distance carriers, including the small ones? Small ones did
15 not have the capacity -- the, the call demand to be allowed
16 direct trunking.

17 JUDGE MILLER: Well, my -- wait a minute. Wait a
18 minute. I -- where is it, where is it that I can arrive at
19 that determination? Is it in the tariff that if you don't
20 have a certain capacity that you cannot demand direct
21 trunking?

22 MR. WAYSDORF: Your Honor, I would -- would it be
23 possible for me to defer Mr. Helein, who is more familiar --

24 JUDGE MILLER: Yes. Of course.

25 MR. HELEIN: Yeah. Thank you, Your Honor. The

1 tariff did not contain the limitations of a certain number of
2 circuits, I think it was eight to eighteen. It was found in a
3 1985 routing policy effect. In that routing policy, which is
4 an Exhibit to our, our direct case, it clearly stated that you
5 were not to get direct trunking unless you had eight to eight-
6 een circuits unless you specifically asked for it. However,
7 TMC at no time was aware of this routing policy or that it had
8 a right to ask for direct trunking. So --

9 JUDGE MILLER: Well, but forgetting, forgetting the
10 policy and assuming that, while, while I, while I, I might
11 have phrased it poorly that they didn't have a tariff expert
12 on board, if somebody went to that tariff, and there is no
13 limitation, there is no policy limitation, no wording
14 limitation of any kind, is there, that they -- that he can't
15 get -- if he says I want direct trunking. I put it in writ-
16 ing. I want it. The tariff says I can have it and I want it.

17 MR. HELEIN: Our contention, Your Honor, is he did
18 ask for direct trunking. He was led to believe that direct
19 trunking he didn't qualify because he was too small coming out
20 of the --

21 JUDGE MILLER: I, I understand. I understand.

22 MR. HELEIN: Okay.

23 JUDGE MILLER: We're going to get to Wheatley and
24 we're going to get to Duer and we're going to --

25 MR. HELEIN: All right.

1 JUDGE MILLER: -- get to these people. I'm, I'm,
2 I'm, I'm following you, you see. But, but what I'm saying
3 here is that, that while I, while I might -- while you might
4 end up proving, as far as an expert is concerned, it really
5 doesn't, it really doesn't amount to a hill of beans in terms
6 of what they were entitled to under the tariff.

7 MR. HELEIN: Your Honor, what you're entitled to
8 under the tariff and what they were led to believe by the
9 expert body, which is the phone company in this instance, who
10 knows and is expert on its exchange network -- all right, no
11 customer goes to a telephone company and is required to know
12 as much or more than the phone company about its own network,
13 even if it's in the tariff, if you don't understand those
14 tariffs, and they're not that easy to read. It is -- there is
15 a -- we -- our contention is there is a duty under 208 of the
16 Act that once you say: I want equal access, I'm having trou-
17 ble with my equal access, I am not getting equal access --
18 it's our contention in this case it was Pac Bell's duty to
19 proactively cure the problem. That cure, we claim, was direct
20 trunking to alleviate the traffic, all of this traffic going
21 through a defective access tandem that couldn't handle the
22 capacity. And that's why the tariff and the rest of these
23 things are relevant only to a point, at which time there was a
24 public duty on top of a common carrier to solve this custo-
25 mer's problems, which they would have solved if it had been

1 AT&T or which they would have solved if it had been a large
2 commercial customer.

3 JUDGE MILLER: All right. Well, I understand your
4 argument. Now, let me back up just a minute and take you back
5 to the, to the '60s, late '60s and early '70s. Every busi-
6 ness, big business, worth its salt had one or more people
7 aboard that knew how to read tariffs, and I'll admit they're
8 complicated, as I pointed out right on the very first day of
9 this hearing. But they knew how to order. DOD had them.
10 They knew how to go to those tariffs and they knew what, what
11 they could, what they could tell the, the company AT&T they
12 wanted. Now, complicated or not, that's what they had, and
13 they made demands: I want this service.

14 MR. HELEIN: Your Honor --

15 JUDGE MILLER: Well, why, why don't we go -- we're
16 just, we're just talking. Proceed, proceed with your objec-
17 tions, Mr. -- I've marked just from, just from the last minute
18 the conclusion of, of -- that joins in with the -- where we
19 had the expert opinion be given.

20 MR. CHURCHILL: Page 14, beginning at line 8. It
21 says, "PB had to repeatedly take extraordinary emergency
22 actions..." through line 15. That's -- I object on the basis
23 there's no foundation; it calls for speculation; hearsay; and
24 it calls for a legal conclusion.

25 JUDGE MILLER: Go ahead, Mr. --