1 MR. WAYSDORF: Your Honor, this, this is based on
2 Mr. Ritchey's analysis of the CO trouble logs, TMC Exhibit 37,
3 which are PB's own records, Pac Bell's own records of problems
4 they encountered in dealing with the access tandem and the
5 measures that they had to take to remedy the various situa-
6 tions that occurred on a day-to-day basis. And that's,
7 that's, that's what this is from. It's his interpretation as
8 an expert reviewing those Pac Bell records for what this, what
9 this -- what they encountered.
10 The -- you'll, you'll, you'll notice that there's
11 also a reference in the next paragraph to a specific study
12 performed by P-- Pac Bell employees, Dr. Frederick Cheng and
13 Dr. William Edwards, entitled, "The Effects of Changing
14 Postdial Delay, on Customer Abandonments, and Perception of
15 Service," which is also submitted as TMC Exhibit 21, and this
16 goes into and discusses at, at length the specific problems
17 and the measures -- everything that's testified to in the
18 lines cited by Mr. Churchill.
19 MR. CHURCHILL: Your Honor --
20 JUDGE MILLER: I'll, I'll overrule the objection,
21 Mr. Churchill.
22 MR. CHURCHILL: Perhaps I should break this section
23 down, Your Honor, just to make sure that we're -- he's re-
24 sponding to the entire thing here. It, it also talks about
25 "callers objected to the irregular changing of the PDD

1 attributes, which ranged widely, widely from eight or more
2 seconds under the best of circumstances to call affairs when
3 PB's feature group D access was willfully programmed to reject
4 or indefinitely delay calls." There's no foundation for that
5 statement, Your Honor.
6 JUDGE MILLER: What, what, what is he relying on
7 there, Mr. Waysdorf?
8 MR. WAYSDORF: Again, it's actually the, the, the --
9 JUDGE MILLER: TMC Exhibit 37?
10 MR. WAYSDORF: 37 and 21, where they --
11 JUDGE MILLER: In other words, if -- from -- I, I
12 can glean from 37 and 21 or 37 or 21 --
13 MR. WAYSDORF: Well, I -- Mr. Ritchey can glean from
14 37 and 21 that the-- that these, these facts are, are gleaned
15 from there by his analysis.
16 JUDGE MILLER: All right. I'll overrule the
17 objection.
18 MR. CHURCHILL: One further comment, Your Honor.
19 The exhibit that he's talking about doesn't identify TMC's
20 callers.
21 MR. WAYSDORF: Well, they identif-- they -- the
22 exhibit identifies --
23 JUDGE MILLER: Well --
24 MR. WAYSDORF: -- callers on the tandem switch, on
25 which TMC's customers were --

1 JUDGE MILLER: Well, I'm going to -- I'll overrule
2 the objection, but I'll tell you this. I, I have been premis-
3 ing all my rulings on, on the, on the fact that there is
4 exhibits in this record which give a reasonable interpretation
5 to what he's, what he's testifying to. If he -- if, if, if,
6 if they're not there, Mr. Waysdorf, we're wasting a lot of
7 time right now. Proceed, Mr. Churchill.
8 MR. CHURCHILL: Page 15, line 13, where it begins,
9 "In other words, PB possessed institutional knowledge..." down
10 through page 16, line 2. The objection is that it calls for
11 speculation and it's argumentative. There's no foundation as
12 to -- this witness knows what P-- Pacific Bell's state of mind
13 was.
14 MR. WAYSDORF: But, Your Honor, what he's referring
15 to is the fact that P-- Pacific Bell had, had its employees do
16 this study. There was also an earlier, referred to in the
17 preceding paragraph, earlier collaborations with, with Dr.
18 Mercer, who is cited in this, in this study in TMC Exhibit 21,
19 and these are, these are the Pac Bell people who did, who did
20 this work.
21 JUDGE MILLER: The objection is sustained. Mr. --
22 I'm not saying necessarily that the -- that, that the -- this
23 man's business judgment is inferior to Pac Bell's. I'm just
24 saying that there's probably, oh, maybe eight or nine ways of
25 -- excessive PDD could have been handled, and I'm not about to

1 say -- if, if there's eight or nine valid ways or one -- that
2 Ritchey's way is better than the, the one that Pac Bell used.
3 MR. CHURCHILL: Page 17, starting at line 14, where
4 it says, "For example, even if PB delayed calls only four
5 seconds by applying these controls on TMC traffic, TMC equal
6 access customers would have abandoned approximately 40 percent
7 of their calling attempts." This -- there's no foundation for
8 that, Your Honor. It's, it's speculation.
9 MR. WAYSDORF: Your Honor, that's, that's a --
10 actually, a simple mathematical computation based on the Pac
11 Bell study on PDD, which is TMC Exhibit 21. He merely took
12 P-- Pacific Bell's own literature and applied it to a
13 hypothetical, as a expert is allowed to do, to show how their
14 own study of postdial delay and its affect on customers'
15 perceptions would have interpreted a four-second -- a hypo-
16 thetical four-second delay.
17 JUDGE MILLER: I'll overrule the objection.
18 MR. CHURCHILL: Same page, page 17, beginning on
19 line 18, through page 18, ending at line 8. Object to that
20 as, as speculation as to what TMC's callers would be aware of
21 and unaware of.
22 MR. WAYSDORF: This is, this is a hypothetical, Your
23 Honor, which is to show how a caller faced with excessive
24 postdial delay would -- what they would essentially hear on
25 the other, on the other end. The -- he is basically saying

1 that they would not be able to tell the difference between
2 this or any, or any other causes for the postdial delay. And,
3 again as an expert, he is entitled to give his opinion as to
4 what would hypothetically happen if this problem were
5 encountered.
6 JUDGE MILLER: I'm going to, I'm going to sustain
7 the objection as to being of only tangential relevance to this
8 proceeding.
9 I have problems when I have what is essentially, and
10 I'm not knocking the study, but essentially a generic study
11 which, which is used, and in the case of the one I just fin-
12 ished analyzing, for reports given to CPUC. But unless there
13 is some sort of tangible connection to TMC's customers between
14 1985 and 1988, I, I see no -- little relevance and value to
15 the, to the study.
16 MR. WAYSDORF: Well, Your Honor, again, the defec-
17 tive nature of this access tandem, while it affected others
18 who were on the access tandem, certainly it affected TMC,
19 which was relegated 100 percent to the access tandem. And in
20 that respect --
21 JUDGE MILLER: Have you completed your statement,
22 Mr. --
23 MR. WAYSDORF: Yes, Your Honor.
24 JUDGE MILLER: -- Waysdorf? Proceed, Mr. Churchill.
25 MR. CHURCHILL: Page 19, Your Honor, beginning at

1 line 1 through line 7, ending at "...PDD increase." Same
2 objection. No foundation, that it calls for speculation, and,
3 based upon your prior comments, relevance, Your Honor.
4 JUDGE MILLER: Where are you going, 1, 1 through 6?
5 MR. CHURCHILL: 1 through 7.
6 JUDGE MILLER: 1 through 7?
7 MR. WAYSDORF: Your Honor, I thought it was in the
8 document. If it's not, I would understand the objection.
9 MR. HELEIN: If I may, while he's taking a quick
10 look, this is a statement based upon a reading simply of their
11 study indicating Pac Bell's awareness of the consequences of
12 postdial delay of this amount of increase from two to six
13 seconds. Their study was obviously a study concerning other
14 services that they were going to be providing.
15 What Mr. Ritchey is attempting to testify in his
16 expert opinion is is that all this study did was demonstrate
17 that Pacific Bell had institutional knowledge of the harm of
18 postdial delay. Consequently, if, if a customer were com-
19 plaining, such as TMC, of postdial delay, they were fully well
20 aware institutionally for a long time that postdial delay,
21 should it exist, would have an impact adversely on a customer
22 based upon the time-frames that are submitted in this study.
23 That's really the purpose of the study and his testimony.
24 MR. WAYSDORF: I'm sorry. If I could quote from the
25 introduction, "The motivation for the study is that with the

1 onset of new services in which call progress through the
2 network is temporarily suspended while a database is queried,
3 customers with these services may experience an increase in
4 PDD. The results of such a change in delay may be an increase
5 in the rate of customer abandonments and/or cause customer
6 annoyance over perceived degradation of service quality."
7 This is what he's reciting here. So, it's taken directly from
8 the Pac Bell study.
9 JUDGE MILLER: Objection's overruled. Again, I'm
10 not so sure where, where -- although I'm, I'm allowing this
11 expert leeway into an analysis of post-- postdial delay, I'm
12 not so sure how close that gets us to this case. Proceed.
13 MR. CHURCHILL: Page 19, line 23. "It was also
14 revealing that when PB applied controls to its access tandem
15 during 1986 through 1988, it had to know full well that such
16 action increased PDD to such an extent that callers would
17 abandon their call attempts before receiving any other network
18 response." It's speculative as to what PB knew.
19 MR. WAYSDORF: Your Honor, this is -- excuse me.
20 This is Mr. Ritchey's opinion as to what the result of apply-
21 ing such controls would be.
22 JUDGE MILLER: I'll -- this is Mr. Ritchey's, this
23 is Mr. Ritchey placing on Pac Bell an action. As you know
24 full well, Pac Bell is who you're talking about. Speculative.
25 Sustained.

1 MR. CHURCHILL: Page 20, beginning on line 3. It
2 says, "It is clear to me that PB fully understood the effects
3 on customer behavior." Down through line 14, Your Honor.
4 Those, those statements also, that they call for speculation
5 and there's no foundation as to what PB understood.
6 JUDGE MILLER: Well, I differ with you on that. He
7 -- this is his, this is his, his opinion and I'm going to
8 allow it in.
9 MR. CHURCHILL: Does that include the statement that
10 begins at line 11, Your Honor, "Why did PB choose to keep TMC
11 on the tandem despite its continuing complaints of customer
12 dissatisfaction due to the existence of so many different
13 manifestations of PDD." There's, there's no foundation that
14 PB chose to keep TMC on, on the tandem.
15 MR. WAYSDORF: Your Honor, that's the subject of the
16 forthcoming several pages. He's just opposing it as, as the
17 question to be addressed.
18 JUDGE MILLER: All right. I'll overrule. Yes. I
19 included that as part of his opinion.
20 MR. CHURCHILL: Your Honor, at this time, I, I want
21 to propose another general objection here, Your Honor. We're
22 -- beginning at page 21, to the testimony as to decisions that
23 were made back in February of 1983 and as now we're, we're
24 trying to second guess those decisions in this proceeding.
25 And I, I just object to those on a general basis of, of

1 relevance.

2 MR. WAYSDORF: I don't know what I can respond.

3 The, the objection's already been ruled on that this is back-

4 ground explaining how we got to the point where TMC was dam-

5 aged by these decisions.

6 JUDGE MILLER: All right. I'll, I'll overrule the

7 general objection.

8 MR. CHURCHILL: So, may I make another comment on

9 that, Your Honor?

10 JUDGE MILLER: Proceed.

11 MR. CHURCHILL: It's not, it's not relevant to the

12 extent that Mr. Ritchey in this statement is, is saying that

13 these decisions that were made in 1983 were, were made with,

14 made with some sort of willful intent.

15 JUDGE MILLER: I, I don't think he's intend-- I

16 don't think he can make that contention. I think what, what,

17 what he's going back to is studies that were made, and he's

18 saying that on the basis of these studies PB should have known

19 certain things. I, I made the statement a little while ago,

20 I'm not so sure that once you even finish and accept every-

21 thing he said that you'd have a biased conclusion, that there

22 may be perfectly legitimate judgments without any malice or,

23 or, or harm intended that, that just simply differ from the

24 way Mr. Ritchey would have ran the company. But this is, this

25 is relevant background and I'm, I'm going to accept it.

1 MR. CHURCHILL: Page 20 --

2 JUDGE MILLER: Incidentally, on this point, in the,
3 in the Complaint, is this problem being handled in another
4 form?

5 MR. HELEIN: No, Your Honor. In this Complaint?
6 No, no, Your Honor.

7 MR. WAYSDORF: No. There's no --

8 JUDGE MILLER: The, the -- what, what, what's your
9 Complaint exhibit number?

10 MR. WAYSDORF: It's 50.

11 JUDGE MILLER: 50?

12 MR. WAYSDORF: I believe it's in Volume 3 or 4.

13 JUDGE MILLER: Why don't you just see -- let me see
14 if I can -- and you could tell me what this means. I --

15 MR. WAYSDORF: It's in Volume 3.

16 JUDGE MILLER: Right. I know. I've got it. Oh,
17 it, it hasn't been filed. It's, it's a footnote under --
18 footnote 1 of the formal Complaint, which evidently is nothing
19 more than reserving a right to do so.

20 MR. WAYSDORF: Correct.

21 JUDGE MILLER: All right. Proceed.

22 MR. CHURCHILL: Page 22, beginning at line 8, "PB's
23 failure..."

24 JUDGE MILLER: Wait a minute. Where are we?

25 MR. CHURCHILL: We're on page 22.

1 JUDGE MILLER: Of Exhibit 6?

2 MR. CHURCHILL: Exhibit 6, where it begins at line

3 8, "PB's failure was due to its attempt -- "

4 JUDGE MILLER: Okay.

5 MR. CHURCHILL: " -- to combine it's own corporate

6 goals with it's legal obligation to provide equal access..."

7 down to through the last sentence that ends at, at paragraph

8 19, "In doing so, however, it also assumed extraordinary and

9 unnecessary risk." Object to that on the basis there's no

10 foun--

11 JUDGE MILLER: Well, first of all, haven't I ruled

12 on the last sentence? "In doing so, however, it also assumed

13 extraordinary and unnecessary risk." Didn't -- wasn't this a

14 subject of a previous objection?

15 MR. CHURCHILL: This --

16 MS. WOOLF: I think we just pointed to that, Your

17 Honor, as an example of the --

18 JUDGE MILLER: Oh, then it's not --

19 MS. WOOLF: -- type of opinion --

20 JUDGE MILLER: Well, I --

21 MS. WOOLF: -- that we don't think he's qualified to

22 make.

23 JUDGE MILLER: Okay. Okay. Very good. I'm -- very

24 good. I thank you. Okay. Your -- lines 8 through 19.

25 MR. CHURCHILL: 19.

1 JUDGE MILLER: And the reasoning is?

2 MR. CHURCHILL: There's no foundation. It calls for
3 speculation and improper opinion.

4 MR. WAYSDORF: Well, Your Honor, the -- this is one
5 of the, you know, central opinions as to -- our expert has to
6 why this thing didn't work. And the, the policies are re-
7 flected in the TMC exhibits. The, the things he's relying on
8 are set forth here and in the, the subsequent pages. It's
9 all, it's all set forth in great detail, that this, this deci-
10 sion to try to do more than just provide equal access, but in
11 addition to provide additional revenue-generating services for
12 its own purposes, was one of the reasons why they went with
13 what was an unproven and defective piece of merchandise.

14 JUDGE MILLER: I'll sustain the objection.

15 MR. CHURCHILL: Page 23, beginning at line 5 where
16 it says, "For example..." through line 11, ending at "FGD."
17 The objection is there is no foundation, it calls for specula-
18 tion, and this witness is not qualified to render that
19 opinion.

20 MR. WAYSDORF: Well, Your Honor, this, this is --
21 this goes to what he's clearly capable of doing, which is
22 evaluating the -- what the capabilities of the network and
23 the, the system that could have been implemented that would
24 have successfully met their obligations under equal access.
25 This is talking strictly about the, the, the routing scheme

1 that they chose to use and that they should have chosen to
2 use. And this is this expert's opinion. Again, it's based
3 strictly on the -- straight out of Pacific Bell's own funda-
4 mental plans for LATA 6, which is TMC Exhibit 29.
5 JUDGE MILLER: All right. I'll overrule the objec-
6 tion, with the full understanding of what I said at least upon
7 three occasions, that I'm not so sure that, that it's a --
8 that it's discrimination or that it's unjust or unreasonable
9 because Pac Bell didn't follow Mr. Ritchey's judgment in
10 hindsight, that they pursued a perfectly legitimate path based
11 on the data that was available to them. So, I don't know that
12 this gets us to first base, but I will allow Mr. Ritchey's
13 opinion in here. Mr. --
14 MR. CHURCHILL: Your Honor, page 23, beginning at
15 line 12, where it says that, "Of course TMC, and presumably
16 other competitive IEC's, were not informed and knew nothing
17 about..." through page 24, line 12. Object to that section as
18 being no foundation. It's objected to characterization. It's
19 being argumentative and also speculates as to what other
20 competitive IEC's knew.
21 JUDGE MILLER: Mr. Waysdorf?
22 MR. WAYSDORF: Your Honor, I can understand the
23 objection on lines 12 through 18 as far as Mr. Ritchey's
24 personal knowledge of what the competitive IEC's knew or did
25 not know. However, he is entitled, starting at line -- the

1 middle of the end of line 18, to provide his opinion of what
2 the, the affect of using this unproven piece of equipment was
3 and, and how it affected them.
4 Additionally, the portion on lines 1 through 12 are
5 true, that, that this was a, a document that was, was not
6 disclosed to anyone outside of Pac Bell, and it's -- the
7 exhibit itself is marked "confidential" and it prejudiced TMC
8 for this to be kept secret in the manner described at the top
9 of page 24.
10 JUDGE MILLER: The objection from lines 12 through
11 25 on page 23, the objection is sustained. On the first 12
12 lines of page 24, the objection is overruled.
13 MR. CHURCHILL: Page 25, beginning at line 5 through
14 line 20, where it says, "being provided..." Object to this as
15 there's no foundation and calls for a legal conclusion, and
16 that legal conclusion is that TMC's equal access was seriously
17 disadvantaged and that the traffic volume requirement would
18 preclude direct trunking from being provided.
19 JUDGE MILLER: Okay.
20 MR. WAYSDORF: Your Honor, this is straight out of
21 the document.
22 MR. CHURCHILL: It's also --
23 JUDGE MILLER: What, what do you mean straight out
24 of the document?
25 MR. WAYSDORF: Well, this -- it's straight out of

1 this policy statement to -- is interpreting the traffic vol-
2 umes of less than equivalent of, of --
3 JUDGE MILLER: No, no. No. Is, is, is there, is
4 there a document that says: TMC's equal access was seriously
5 disadvantaged by this routing policy?
6 MR. WAYSDORF: No. That's his opinion as an expert.
7 That's his opinion interpreting this policy, where he is
8 qualified to say that the, the quality and the nature of their
9 access was, was hampered dramatically by this routing policy.
10 JUDGE MILLER: The objection is sustained.
11 MR. CHURCHILL: Page 25, starting at line 25, where
12 it says, "No opportunity existed for TMC to ask that it be
13 exempted from the traffic level criteria..." through page 26,
14 that last sentence at line 3. The same objection, Your Honor,
15 that there's no foundation and it calls for a legal conclu-
16 sion.
17 MR. HELEIN: Your Honor?
18 JUDGE MILLER: Yes?
19 MR. HELEIN: It states clearly in there that based
20 upon Mr. Ritchey's examination of records, events, and inter-
21 views, okay, it was clear that TMC was not made aware of this
22 routing policy until it was discovered after this litigation
23 ensued. What Mr. Ritchey is testifying to in the quoted
24 language, and is not calling for any legal conclusion what-
25 soever, he said, knowing TMC's traffic patterns, the plain

1 statement in the routing policy of less than the equivalent of
2 eight one-way trunks or 18 two-way direct high-usage trunks,
3 okay, anything less than that --
4 JUDGE MILLER: Wait a minute. Where, where are you,
5 Mr. --
6 MR. HELEIN: I'm on page 25.
7 JUDGE MILLER: All right.
8 MR. HELEIN: Page 25, and I'm looking at the quoted
9 language in the middle of lines 13 through 17. I'm also
10 looking at lines 23 where it says, "Because my examination of
11 records, events, and interviews determined that TMC was never
12 made aware of this routing policy, let alone the specific
13 terms..." He is saying, which I think is evident from, from
14 those facts and the fact that we never knew this policy exist-
15 ed until after discovery, that TMC was unaware that there was
16 a standard, a specific standard of eight one-way trunks or 18
17 two-way trunks, okay, that if you didn't have that capacity
18 you had to be routed through the access tandem. TMC was not
19 aware of that. He's also concluding from his examination of
20 the record that TMC was also not aware that unless it specifi-
21 cally requested direct trunks was an exception to that traffic
22 volume limitation under our trunking. And, so, all he's doing
23 is reading from Pac Bell's own document, which was never
24 disclosed to TMC until after litigation ensued, that the
25 conclusion has to be that had we know about the volume limits

1 and the fact that there was a policy extant in Pac Bell that
2 all we really had to do was request direct trunking, we would
3 have done so.
4 JUDGE MILLER: The objection -- the, the objection
5 is overruled.
6 MR. CHURCHILL: Your Honor, just for clarification,
7 the, the objection was to the statement that, "no opportunity
8 existed for T -- "
9 JUDGE MILLER: I understand that it was -- you
10 picked it up in the middle of the sentence there, but what he
11 did was he went back and he showed what, what, what Ritchey
12 relies on before he says that, that no opportunity existed for
13 TMC, he's saying: Hey, that's true. We didn't know anything
14 about that. You never made it clear to us.
15 Now, whether, whether that's going to carry the day
16 or not, I don't know, but that's certainly, certainly follows
17 that he's en-- he's entitled to saying no opportunity existed
18 for TMC to ask to be exempted from the traffic level criteria.
19 I did-- I don't necessarily agree with that, but that's,
20 that's his, his -- that's his interpretation.
21 I, I am concerned, and I would be less than honest
22 with, with you people if I didn't tell you, that, that I'm
23 beginning to discern that there may be policies in existence,
24 or were in existence at the time, that ren-- belied the word-
25 ing of the tariff.

1 You know, it's one thing to say in the tariff, you
2 know, all you need to do is ask for indirect trunking and
3 another thing to then turn around and say you're not entitled
4 to, to indirect trunking unless you have more than eight one-
5 way trunks or 18 two-way direct usage trunks; otherwise, you
6 can't have direct trunking. I, I, I have a problem with that,
7 because then, if I have to, if I have to start interpreting,
8 I'm going to say, hey, this policy in itself was contrary to
9 the terms of the, contrary to the terms of the tariff, and I'm
10 going to, I'm going to, I'm going to hear the arguments on
11 that. And it fits in with what, what's been bothering me too
12 about Wheatley and Duer, assuming that this is what develops
13 in the record. Now, I don't know that it's going to, but
14 Wheatley and Duer are saying hey, we, we can't give you, we
15 can't give you direct trunking. Now, if they said that and
16 the tariff says something else, that he's entitled to direct
17 trunking on demand and it didn't cost any more money, I, I get
18 a little, I get a little concerned. Now, I don't know what,
19 even, even assuming that the concerns are that, yes, there was
20 -- it was wrong to tell them that they weren't entitled to do
21 -- direct -- that they weren't entitled to direct trunking, I
22 don't know how much injury that caused, to be frank with you,
23 and we'll -- but I assume we will know when the record's
24 complete.
25 Is that -- am I clear? I might not be what the --

1 didn't say whether you wanted to hear, Mr. -- but I hope I'm
2 clear.
3 MR. CHURCHILL: Yes, Your Honor.
4 JUDGE MILLER: Proceed.
5 MR. CHURCHILL: Page 26, line 8, which says, "The
6 facts clearly show that PB was offering a single source of
7 access to TMC while continuing to provide AT&T and other IEC's
8 with alternative means by which to obtain equal access."
9 There's no foundation for that.
10 MR. HELEIN: Your Honor, as explained immediately
11 following, AT&T had at least three direct options of access:
12 feature group C; they had feature group D, direct trunking,
13 after conversion of N offices; and they had first-routed
14 traffic through the access tandem; in addition to which, they
15 had overflow from direct trunks through the access tandem
16 which replaced first-routed traffic. So, it had four means of
17 getting to its pod. Other IEC's in the San Diego LATA had at
18 least three of those four and no feature group C, clearly,
19 because that was only AT&T. But they had feature group D,
20 direct trunking, first-routed access on overflow from direct
21 trunks. TMC had one means of access, the access tandem.
22 That is a summary of the next couple pages as to why
23 the statement that's been objected to has a foundation.
24 JUDGE MILLER: The objection is sustained. I can't
25 find what, I can't find what you said about those other IEC's

1 under, under -- in these pro-- in the, in the other pages.
2 You know, we've got to -- you've got to consider
3 that you have also a couple of long-distance resellers in that
4 San Diego area too. I don't, I don't -- I've seen nothing
5 either way as to whether these people were also being subject
6 to the direct access tandem and the direct access tandem only,
7 but we'll, we'll cross that bridge when we come to it, because
8 I just don't have the facts. And --
9 MR. HELEIN: It is in document, though, Your Honor,
10 that we've submitted.
11 JUDGE MILLER: Well --
12 MR. HELEIN: Including Sprint being taken off the
13 access tandem because they were having difficulties with it --
14 JUDGE MILLER: Wait a minute. Wait a minute. What,
15 what, what, what document is that?
16 MR. HELEIN: That's in one of the late -- the re-
17 leased documents in the last month. They were minutes --
18 JUDGE MILLER: No, no. What, what, what --
19 MR. HELEIN: I'm -- well, I --
20 JUDGE MILLER: What, what, what exhibit is, is it to
21 -- if you'll tell me?
22 MR. HELEIN: If you bear with me for a moment, it's
23 somewhere around Exhibit -- TMC Exhibits 44 through 46. Let
24 me just see which one of those it might be. In Exhibit -- TMC
25 Exhibit 45, for example --

1 JUDGE MILLER: 40-- oh, be-- those are the minutes
2 of the 9/15/86 meeting --
3 MR. HELEIN: Yes, Your Honor.
4 JUDGE MILLER: -- of the DOD --
5 MR. HELEIN: Yes, Your Honor.
6 JUDGE MILLER: -- task force?
7 MR. HELEIN: Um-hum. For example, there it talks
8 about the conference call scheduled for 1 p.m. to discuss with
9 U. S. Sprint direct trunking. Following pages, there's a
10 listing of MCI routing. I might say that in some of this we
11 anticipate eliciting from the author and the participants who
12 we called on these minutes to further document that, but,
13 anyway, U. S. Sprint is mentioned in TMC Exhibit 46, page 2,
14 in a reference to: TNO8. U. S. Sprint still a problem?
15 Cathy, arrange for a special study. TNO8 is a trouble report.
16 JUDGE MILLER: Well, let's, let's do it this way,
17 Mr. Helein. If, if, if the facts indicate when we're all --
18 when all the evidence is in that PB was offering a single
19 source of access to TMC while continuing to provide AT&T --
20 you know, you've got to make that argument to me and
21 findings --
22 MR. HELEIN: Yes, Your Honor.
23 JUDGE MILLER: -- and conclusions anyhow. So, that
24 I'm striking, I'm striking the conclusion at this juncture.
25 But if the facts spell it out, you, you certainly would be

1 remiss if you didn't make that argument.
2 MR. HELEIN: Yes, Your Honor. As long as I can make
3 the argument, preserve that right, and the, the facts --
4 JUDGE MILLER: Yes.
5 MR. HELEIN: -- will be developed that --
6 JUDGE MILLER: I, I am -- I'm -- because I do not
7 see in front of me right now the kind of factual data I need
8 to sustain that conclusion. Now, I'm not saying it doesn't
9 exist in the record. If it does, you come on and you show me
10 and, and I'm certainly going to listen to your argument.
11 MR. HELEIN: Thank you, Your Honor.
12 JUDGE MILLER: All right. Proceed, Mr. -- Proceed.
13 MR. CHURCHILL: We're at page 27, Your Honor, at
14 line -- beginning at line 18, where it says, "Moreover, as I
15 will explain a little later in my testimony, when AT&T's and
16 the other IEC's direct trunk traffic overflowed to the 90T
17 tandem, such rerouted traffic displaced TMC's and other first-
18 routed traffic through the 90T. In other words, the 90T would
19 process the direct-routed overflow traffic of AT&T and the
20 other direct-routed IEC's before TMC's and other first-routed
21 traffic." There's, there's no foundation for that statement.
22 JUDGE MILLER: Well, where is -- where, where a
23 little later in his testimony does he, does he lay those facts
24 out? And that's what you're obligated to do here. Tell it
25 backwards. You say that there's nothing back here.

1 MR. CHURCHILL: No, there isn't.

2 JUDGE MILLER: Uh-huh. You say there isn't.

3 MR. HELEIN: Your Honor, I'm looking for it. It, it
4 was actually a traffic routing study that the FCC itself cited
5 in a 1986 decision of TDX called the TDX rulemaking and it was
6 relied in terms of preparing the testimony. Perhaps I should
7 have had Mr. Ritchey cite it here. But it's an actual FCC
8 reported decision and the traffic engineering patterns demon-
9 strate that the first traffic in an access tandem to be affec-
10 ted by overflow from direct trunks is first-routed traffic.
11 Since TMC only had first-routed traffic, it is logical for the
12 expert to conclude that when those -- when AT&T's and all the
13 other IEC's in the San Diego LATA which had direct traffic --
14 direct trunk traffic would overflow, that they would force
15 down and exclude and, and affect adversely the first-routed
16 traffic of any other carrier. But since we were 100 percent
17 on that, we're, we're saying that, that it affect TMC as well
18 and very definitely.

19 The decision -- and just -- yes. On TMC Exhibit 6,
20 which is Mr. Ritchey's testimony, at page 54 in line 7 through
21 18 is a citation to which I was referring. It's the
22 Commission's decision in May 23, 1986, in the investigation in
23 the quality of equal access, at which time they cite a techni-
24 cal traffic engineering report by a P. J. Burk. And we, we,
25 we chose to use that. I think it's standard traffic

1 engineering policy, but that is the fact on which Mr. Ritchey
2 was testifying here.
3 (Off the record.)
4 (On the record.)
5 JUDGE MILLER: All right. We're on the record,
6 Mr. --
7 MR. CHURCHILL: Your Honor, the Commission did not
8 do a study of LATA 6 to determine whether or not AT&T's traf-
9 fic overflowed, displaced TMC, and that's what the -- that's
10 the fact that's being alluded to here. There is noth-- there
11 is no foundation for that fact here as to the effect on if
12 AT&T's overflow on TMC's traffic, which is the issue in this
13 case.
14 MR. HELEIN: It's, it's a standard result of traffic
15 engineering and the impact of overflow traffic, Your Honor. I
16 mean, it -- there are no records that I'm aware of, of pre-
17 cisely because of -- we think we were denied access to them,
18 but leaving that aside, the, the fact is that first-routed
19 traffic is displaced by overflow. And you not only had the
20 largest carrier having direct trunks with overflow AT&T, but
21 you had Sprint, MCI, and in -- for that matter, ExpressTel
22 (phonetic sp.). So, you had many carriers in the LATA with
23 the ability of direct trunking and therefore with the ability
24 to overflow. The only carrier who would be affected by that
25 traffic 100 percent would be TMC, and that he is stating here

1 his opinion that under those traffic engineering principles,
2 which are standard principles recognized by the Commission,
3 the impact would have fallen most heavily on TMC.
4 JUDGE MILLER: Objection sustained. Again, I, I,
5 I've looked back at 54, and may be, may be one of those cita-
6 tions that would give me the necessary facts, but the facts
7 don't exist on the face of page 54 for sure.
8 MR. HELEIN: It's a direct -- just for His Honor,
9 we'll, we'll, we'll certainly be able to address this, but
10 it's a direct quote out of the FCC's decision which is --
11 JUDGE MILLER: All right.
12 MR. HELEIN: -- cited there.
13 JUDGE MILLER: You certainly can do so. Proceed,
14 Mr. --
15 MR. CHURCHILL: Page 28, line 19. "The one reason
16 for PB's attempted abandonment of direct trunking, which the
17 records I have reviewed do identify, is PB's skewed corporate
18 objective to end its use and reliance on AT&T's 87T for han-
19 dling it's intra-LATA toll traffic and the billing there-
20 fore..." It calls for speculation as to what Pacific Bell's
21 reasons are.
22 MR. HELEIN: He goes on to describe why he identi-
23 fied the corporate objective as skewed. Okay. He cites, for
24 example, that in his expert opinion no evidence exists as to
25 any technical reason, either standard he's aware of or any