1 cation.

2 JUDGE MILLER: The document you just described will

3 be marked for identification as TMC Exhibit 20.

4 (Whereupon, the document

5 referred to as TMC Exhibit

6 No. 20 was marked for

7 identification.)

8 JUDGE MILLER: Offer it in evidence?

9 MR. WAYSDORF: Yes, sir.

10 JUDGE MILLER: Ms. Woolf?

11 MR. CHURCHILL: Your Honor, I'm going to object this

12 document on behalf of Pacific Bell. The grounds for my

13 objection, Your Honor, are that this document represents

14 double hearsay and there's no foundation that, that the num-

15 bers in here are accurate. And the basis of, of my statement,

16 Your Honor, if, if you look at page 3 of TMC Exhibit 20 and

17 you look at the paragraph that Mr. Cheng puts in here, the,

18 the first paragraph, the last sentence, he indicates that all

19 information included in these financial statements is a repre-

20 sentation of the management of Clark-Bader, Inc., which is --

21 which representations are hearsay, Your Honor. So, s-- we'd

22 have a double hearsay problem with this exhibit.

23 JUDGE MILLER: Well --

24 MR. CHURCHILL: And it's, and it's not an audited

25 statement.

1 MR. WAYSDORF: Your Honor, this --
2 JUDGE MILLER: Go ahead.
3 MR. WAYSDORF: I'm sorry.
4 JUDGE MILLER: Go ahead.
5 MR. WAYSDORF: This is a, this is a financial state-
6 ment that's prepared in the ordinary course of business. It
7 was not prepared for this proceeding or anything like it.
8 This is the, the financial statements and I, I believe it is
9 unaudited, but this level of review is, is, is standard. It's
10 in accordance -- this is an expert. He's a CPA. It's in
11 accordance with the standards established by -- it says there
12 American Institute of Certified Public Accountants. It is --
13 my understanding, generally understood that -- or generally
14 accepted that such financial statements come within the busi-
15 ness record exception to the hearsay rule. And it differs not
16 one iota from any other financial statement, which always
17 relies on representations of management as to the specific
18 dollar amounts.
19 MR. CHURCHILL: Your Honor, if you -- looking at
20 Federal Rules of Evidence 8036, which contains the, the hear-
21 say exception for records of a regularly conducted activity,
22 one of the requirements is that the, the record be made at or
23 near the time of the event in question. And, here, this
24 document was prepared by Mr. Cheng in April 6th of 1988, for
25 example, for the first exhibit, which purports to be financial

1 statements for 1986 to 1987. So, this document clearly does
2 not fall under the, the exception for records of a regularly
3 conducted activity.
4 MR. WAYSDORF: That's not true. Because it's --
5 JUDGE MILLER: Hold it. Mr. Waysdorf?
6 MR. WAYSDORF: Yes, Your Honor. That I just was
7 saying. That's, that's not true. These are two-year finan-
8 cial statements --
9 JUDGE MILLER: Now, you're saying it to me.
10 MR. WAYSDORF: Yes. Well, I was saying it to my
11 paper before Your, Your Honor. That is, I was looking at the,
12 the dates. These are two-year financial statements, which is
13 a, which is a standing business practices that many businesses
14 engage in. It's as of the end of the second year, which is
15 December 31, 1987. It is dated three months after that, April
16 6, 1988. And as far as year-end financial statements, that is
17 as contemporaneous as they get.
18 JUDGE MILLER: Well, let me ask you this question,
19 Mr. Waysdorf. Back on TMC Exhibit 4 at page 3, I struck the
20 bottom set of entries at Mr. Churchill's request on the
21 grounds that it, it had been taken from Exhibit 3, which had
22 been stricken, and therefore that bottom set of entries was
23 not relevant to the case. However, I allowed in the top set
24 of entries.
25 MR. WAYSDORF: That's correct, which is taken

1 directly from this.

2 JUDGE MILLER: Which is from -- are you saying that

3 you used TMC Exhibit 4 -- Exhibit 20, page 4, to verify the

4 top appendix of page-- TMC Exhibit 4, page 3, Appendix A, top

5 -- the top set of entries?

6 MR. WAYSDORF: Your Honor, Exhibit 20 is what is

7 used to verify the top half of pa-- page 3 of Exhibit 4.

8 JUDGE MILLER: Your, your objection is overruled.

9 The objection is overruled. Anything further on, on TMC

10 Exhibit 20?

11 MR. CHURCHILL: No, Your Honor.

12 JUDGE MILLER: TMC Exhibit No. 20 is received sub-

13 ject to the rulings I have made and the caveats I have set

14 out.

15 (Whereupon, the document marked

16 for identification as TMC

17 Exhibit No. 20 was received into

18 evidence subject to the Judge's

19 rulings made hereto.)

20 JUDGE MILLER: And we stand adjourned until 8:30

21 tomorrow morning.

22 MR. WAYSDORF: Thank you, Your Honor.

23 MR. CHURCHILL: Thank you, Your Honor.

24 (Whereupon, at 5:30 p.m., September 30, 1993, the

25 hearing was adjourned until Friday, October 1, 1993, at

1 8:30 a.m.)

CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

IN THE MATTER OF TMC v. PACIFIC BELL
Name

CC DOCKET NO. 93-161
Docket No.

WASHINGTON, D.C.
Place

SEPTEMBER 30, 1993
Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 58 through 336, inclusive, are the true, accurate and complete transcript prepared from the reporting by ALICE WEHNER in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

October 12, 1993
Date

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October 13, 1993
Date

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October 13,1993
Date

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