

1 | that Trinity lease space on the TV 40 tower?

2 | A Yeah. That's what it appears to be.

3 | Q In other words, under this proposal, Raystay would
4 | continue to own that tower, but would lease space on the tower
5 | to Trinity. Is that correct?

6 | A Yes. That's how it appears.

7 | Q Now, I'm not familiar with that tower, but was that
8 | tower, at the time, used for purposes other than just TV 40?

9 | MR. SCHAUBLE: Objection, Your Honor. I think we're
10 | going beyond the bounds of relevance here as to -- as to what
11 | discussions Trinity and Raystay might have had, those may have
12 | some relevance. But getting --

13 | MR. EMMONS: Well, this is -- I'm going now to the
14 | understanding between the parties as to what --

15 | JUDGE CHACHKIN: I'll overrule the objection.

16 | MR. GARDNER: Could you --

17 | BY MR. EMMONS:

18 | Q Yes. My question was under this proposal, I take
19 | it, Raystay would continue to own that TV 40 tower, but would
20 | lease space on it to other -- to Trinity and you've answered
21 | that that was the proposal. My next question and the pending
22 | question is did Raystay have other uses for that tower besides
23 | just TV 40?

24 | A First of all, Raystay doesn't own the tower or the
25 | site.

1 Q All right. Who owns it?

2 A Penn Products.

3 Q Now, is that -- Penn Products. And that's a third
4 party with which Raystay does not have ownership?

5 A Waymaker Company leases the site from Penn Products
6 and then subsequently, Waymaker re-leases to additional
7 parties who need space on top of the mountain.

8 Q I see. Okay, well, I think you answered my question
9 then which is I guess that the reason Raystay wasn't offering
10 to sell that site to Trinity is that Raystay or Waymaker
11 didn't own it. Is that correct?

12 A Correct.

13 Q Now, did the proposal as contained in this letter
14 also propose that Raystay would lease to Trinity space in the
15 TV 40 transmitter building?

16 A Again, that building is owned by Waymaker Company.

17 Q Was the building, under this proposal, going to be
18 sold to Trinity or not?

19 A No.

20 Q But under this proposal, space in the building was
21 going to be leased to Trinity, correct?

22 A Correct.

23 Q Now, there's a reference in the middle of the second
24 paragraph to a microwave site at 1312 Holly Pike and my
25 question to you is what -- who owned that site, that facility?

1 A At the time?

2 Q At the time.

3 A I don't know.

4 Q Under this proposal, was the proposal here that that
5 microwave site would be leased to Trinity?

6 A Yes.

7 Q And that was for microwave facilities? Is that what
8 that was used for?

9 A Yes, among other things. It's the TV cable Carlisle
10 had in.

11 Q And again, continuing with the second paragraph of
12 the letter, the proposal included leasing space if required
13 for an earth station to Trinity?

14 A Yes. That's Stan Kirtner's (phonetic) station, yes.
15 Yes.

16 Q And finally, still on the second paragraph, the
17 proposal included leasing space on the tower at Red Lion.

18 A Yes.

19 Q Who owned the Red Lion tower?

20 A Waymaker Company.

21 Q Now, down to the fourth paragraph of the letter
22 which reads, "The package price for the six facilities,
23 including equipment for the LPTV presently on the air, is
24 \$400,000." Am I correct that the \$400,000 price quoted there
25 was for the sale of license and assets of TV 40 plus the five

1 construction permits, other than the assets specified in the
2 second paragraph? In other words, the \$400 -- what I'm
3 driving at, is the \$400,000 figure separate and apart from the
4 lease fees that are discussed in the second paragraph of the
5 letter?

6 A Yes.

7 Q And the six facilities referred to in the fourth
8 paragraph of the letter, those are TV 40 plus the five low-
9 power construction permits?

10 A Yes.

11 Q And am I correct that the fifth paragraph of the
12 letter indicates that Raystay is willing to sell all or part
13 of that package depending on what Trinity was interested in?

14 MR. SCHAUBLE: Objection, Your Honor. I think the
15 paragraph speaks for itself and it's unlike the earlier
16 portions of the letter where there was some possible --

17 JUDGE CHACHKIN: Sustained. That's what it says.

18 BY MR. EMMONS:

19 Q Would you turn now to Exhibit 231 -- TBF Exhibit
20 231, Mr. Gardner? This is a handwritten note, one page, which
21 bears the date at the upper left of October 30, 1991. My
22 question to you first, Mr. Gardner, is, is that your
23 handwriting on this note?

24 A It appears to be my handwriting, yes.

25 Q And do you see the words TBN up at the top? Does

1 that refer to Trinity Broadcasting Network?

2 A Yes.

3 Q Now, what were the circumstances under which you
4 wrote this note?

5 A My recollection is that this was a -- my notes to
6 myself made during a phone conversation with somebody from
7 TBN.

8 Q And what was the substance of that conversation?

9 A I don't recall the substance or the specifics of the
10 conversation. However, this appear to be their offer on the
11 -- on TV 40 and not -- well, what they would offer to buy
12 W40AF and the five construction permits.

13 Q And is it your recollection, as indicated by the
14 note here, that they were offering \$150,000 for TV 40?

15 A Yes.

16 Q And that in addition, they were offering \$5,000 for
17 each of the five construction permits?

18 A Yes.

19 Q And is that -- is that how you got to the total
20 figure of \$175,000 cash as shown at the top of the note?

21 A That's how it would appear, yes.

22 Q And do you see the words "donation certificate"
23 underneath the reference to \$175,000?

24 A Yes.

25 Q Do you -- what did that refer to, to your

1 recollection?

2 A As I recall, Trinity made some suggestion and I
3 don't know how it was exactly to be applied. But they
4 suggested that they would give Raystay a certificate stating
5 they had made a donation in certain dollar amounts as part of
6 or in lieu of cash for the sale of W40 and the construction
7 permits.

8 Q I see. In other words, was it your understanding
9 that that would've been -- would've had a tax benefit for
10 Raystay?

11 A That was their -- that's the usual use of a donation
12 certificate, yes.

13 Q And then you see the phrase, "Leases okay."

14 A Yes.

15 Q What did that refer to?

16 A I'm not sure now. It's possible that it could have
17 referred to the lease payments being okay.

18 Q And by lease payments, are you referring to the
19 leasing proposal that you made in your letter to Mr. Sebastian
20 dated October 30, 1991 which is TBF Exhibit 230?

21 A Yes.

22 Q Was the Trinity -- I'll call it counter-offer that's
23 reflected TBF Exhibit 231, was that made in response to your
24 letter FAX'd to Mr. Sebastian on October 30, 1991?

25 A I don't recall the succession of the documents.

1 Q You see that they both bear the same date.

2 A Yes.

3 Q With further reference to TBF Exhibit 231, in the
4 lower portion of your note, do you see the reference to
5 "George moving to ..." and then two telephone numbers are
6 listed?

7 A Yes.

8 Q Who is the George referred to there?

9 A I believe it referred to George Sebastian.

10 Q It did not refer to George Gardner.

11 A No.

12 Q Now, when you received this information from Trinity
13 -- well, let me ask you, who was the person to whom you spoke
14 on the telephone in the conversation that resulted in your
15 drafting of this note?

16 A I don't recall.

17 Q When you received the Trinity offer that is
18 reflected in TBF Exhibit 231, did you then, anytime
19 thereafter, discuss that offer with anyone at Raystay?

20 A I would expect I would have discussed it with Lee
21 Sandifer.

22 Q Do you have a recollection of discussing it with Mr.
23 Sandifer?

24 A I don't have a recollection of doing it, no.

25 Q Do you recall discussing it with anyone other than

1 Mr. Sandifer?

2 A No.

3 Q Turn next to TBF Exhibit 232, if you would.

4 A Yes.

5 Q Now, this is a letter dated November 7, 1991
6 addressed to David Gardner signed by Morton Berfield at Cohen
7 and Berfield and as you will see, the letter -- the substance
8 of the letter is expenses incurred by Raystay in -- with
9 respect to the low-power authorizations and my question to you
10 is did you -- this letter is written to you. Did you ask Mr.
11 Berfield or someone else at Cohen and Berfield to convey or
12 transmit to you the information that is contained in this
13 letter?

14 A Yes.

15 Q When did you make such a request?

16 A I don't recall, but I would expect it would've been
17 between 10/30/91 and November 7, 1991.

18 Q And why do you place it in that time frame?

19 A Because I recall asking Mort to determine what
20 Raystay was legally entitled to recover upon the transfer of a
21 construction permit or a group of construction permits.

22 Q Did -- it's Mr. Berfield that you spoke to?

23 A I don't recall who I spoke to, but it would seem to
24 me that it would've been Mort.

25 Q And why do you say that it would've been Mort?

1 A Because Mort responded to the request.

2 Q Did you tell Mr. Berfield why you were -- why you
3 were interested in having that information at that time?

4 A I am sure that I did.

5 Q Did you tell him that Raystay was negotiating with
6 Trinity or others -- other parties possibly about the possible
7 sale of the low-power facilities?

8 A I believe that -- my recollection is that I told
9 Mort that Raystay was con-- was negotiating with a party or
10 parties about the sale of a LPTV construction permit.

11 Q And at the time you had that conversation with Mr.
12 Berfield, was it your anticipation that Raystay would or might
13 be selling its low-power construction permits to some party?

14 A I knew there were ongoing negotiations. It was
15 always a possibility.

16 Q And it is your recollection that you made the
17 request to Mr. Berfield for the information at some point
18 after the exchange of communications between you and Mr.
19 Sebastian on October 30, 1991?

20 A Yes.

21 Q Now, turn to the second page of Mr. Berfield's
22 letter, if you would and focusing on the second sentence of
23 that paragraph, the first paragraph on that page which says,
24 "We would also point out that since the unbuilt permits expire
25 shortly, it would be very important to promptly file any

1 assignment agreements," and my question to you is did you
2 anticipate that Raystay would be filing assignment
3 applications for the low-power construction permits in the
4 near future as of the time of this letter?

5 JUDGE CHACHKIN: How could he answer that question?

6 MR. EMMONS: I'll withdraw the question.

7 JUDGE CHACHKIN: If there weren't any existing
8 agreement, how could he answer that question?

9 MR. EMMONS: I'll withdraw the question, Your Honor.

10 BY MR. EMMONS:

11 Q Mr. Gardner, would you turn next to TBF Exhibit 233?
12 Now, this is a letter dated November 11, 1991 to David Gardner
13 from Jane Duff, assistant to the president of Trinity
14 Broadcasting Network. Do you have that before you, Mr.
15 Gardner?

16 A 233?

17 Q Yes.

18 A Okay.

19 Q Do you have that?

20 A Yes, yes. I'm sorry. I thought I said yes.

21 Q Now, did you receive this letter at or about the
22 time, November 11, 1991?

23 A Yes.

24 Q Now, the first sentence of the letter, the first
25 line says, "Enclosed please find the asset purchase

1 | agreements," et cetera and my question to you is were there
2 | draft contracts or draft asset purchase agreements enclosed
3 | with this letter?

4 | A I don't know if there were agreements enclosed with
5 | this letter, but I did receive agreements and I would expect
6 | they would have been enclosed with this letter.

7 | Q Now, did you have any communication with Trinity
8 | about the low-power authorizations between October 30, 1991
9 | and the time of your receipt of this letter, November 11,
10 | 1991?

11 | A I talked to Trinity a number of times in the fall of
12 | 1991 and I don't recall if I talked to them during that time
13 | period or not, that short period.

14 | Q Now, the letter indicates in the first paragraph
15 | that the agreements being enclosed covered the five low-power
16 | construction permits, but does not say anything about any
17 | agreement for TV 40 and my question to you is that -- do you
18 | know why this letter did not include any agreement or draft
19 | agreement for TV 40?

20 | MR. SCHAUBLE: Objection, Your Honor.

21 | JUDGE CHACHKIN: Sustained.

22 | BY MR. EMMONS:

23 | Q Mr. Gardner, did Trinity ever transmit to Raystay,
24 | to your knowledge, a draft agreement for TV 40?

25 | A I don't recall seeing an agreement for TV 40 from

1 Trinity.

2 Q Did Raystay ever communicate to Trinity a rejection
3 of Trinity's proposal to pay \$150,000 for TV 40? In other
4 words, was there a communication that that price was not
5 acceptable for TV 40?

6 A I believe there was.

7 Q And did you make such a communication?

8 A I don't recall specifically doing that, but I think
9 it's possible that I might have.

10 Q And do you recall when such a communication was
11 made?

12 A No, I don't recall.

13 Q Now, would you turn to TBF Exhibit 234? And let me
14 state for you that this exhibit consists of four draft asset
15 purchase agreements relating to the two Lebanon permits and
16 the two Lancaster permits and they're separated by blue
17 dividers and let me ask you if --

18 MR. GARDNER: Your Honor, could I ask for a one-
19 minute recess to talk to my counsel?

20 JUDGE CHACHKIN: Yes. We'll go off the record for a
21 moment.

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

23 JUDGE CHACHKIN: We're back on the record. Mr.
24 Emmons?

25 BY MR. EMMONS:

1 Q Mr. Gardner, we're focusing on TBF Exhibit 234 and I
2 stated that these consist of four asset purchase agreements
3 covering the two Lebanon and the two Lancaster low-power
4 permits and my question to you is whether these asset purchase
5 agreements are the drafted agreements that you received for
6 those particular authorizations from Trinity, presumably with
7 the letter of November 11, 1991?

8 A This is just 234?

9 Q Yes, 234. Although it's only one exhibit, it
10 contains four agreements and they're separated by blue divider
11 pages.

12 A What was your question now?

13 Q Are those four agreements the draft agreements you
14 received from Trinity that cover the Lebanon and Lancaster
15 authorizations?

16 A Yes.

17 Q Now, the letter of November 11, 1991, which is TBF
18 Exhibit 233 refers to an agreement also for the Red Lion
19 facility and my question to you is did you also receive from
20 Trinity a similar asset purchase agreement in draft that
21 covered the Red Lion construction permit?

22 A No, not that I'm aware of.

23 Q Why do you say that? Do you have a specific
24 recollection that you did not receive one?

25 A I believe I did not receive one.

1 Q Did you communicate to Trinity that you had not
2 received one for Red Lion?

3 A I believe that I only asked for the ones for
4 Lancaster and Lebanon.

5 Q Go back to TBF Exhibit 233 which is the letter of
6 November 11, 1991 and do you see in the first paragraph of
7 that letter that it refers to W56CJ, Red Lion, Pennsylvania?

8 A Yes, I see that.

9 Q Now, that would indicate that an agreement for that
10 facility was also included in the enclosure and my question to
11 you is do you remember noticing that there was no such
12 agreement in the enclosures?

13 A My recollection is that there was a Red Lion
14 agreement, but since it was not going to be used, I discarded
15 it.

16 Q So you received it, but you then discarded it.

17 A Now that we have discussed it just here, that's my
18 recollection.

19 Q Now, on Exhibit -- TBF Exhibit 234, turn to Pages
20 Two and Three -- or really starting at the bottom of Page Two
21 of the exhibit and carrying over to Page Three, do you see
22 that there is, starting on the third to the last line of Page
23 Two carrying over to about 10 or 12 lines on Page Three, there
24 is a paragraph of text that is X'd out with a typewritten --
25 typewritten X's?

1 A Yes.

2 Q Now, was this the form in which these drafts arrived
3 to you on your desk or in your mail? In other words, were
4 those X's already on the draft when you received the draft or
5 were they placed on the draft after you received this?

6 MR. SCHAUBLE: Objection, Your Honor. Relevance.

7 JUDGE CHACHKIN: What difference does it make?

8 MR. EMMONS: Well, it's going to make a difference,
9 Your Honor, because the paragraph in question in the draft
10 agreement relates to the availability and suitability of the
11 transmitter site and the X'ing out is relevant to know whether
12 or not Raystay was assuming responsibility for the
13 availability and suitability of the transmitter site which in
14 turn is relevant to the statements made by Raystay in its
15 applications to the FCC to extend the permits.

16 MR. SCHAUBLE: Your Honor, I don't think -- I don't
17 think that follows. First of all, I don't even -- you know,
18 the copies that I have here, I am not even sure I could read
19 the entirety of what was X'd out here and I --

20 MR. EMMONS: Well, Your Honor, on that --

21 JUDGE CHACHKIN: The question is, right now, whether
22 or not he X'd it out or someone at Raystay X'd it out or was
23 it X'd out when he got it. Let's see where we go from there.
24 I'll overrule that objection, if the witness recalls.

25 MR. GARDNER: These appear to be working copies

1 | since they're not signed and as such, they did not have final
2 | approval from Raystay of this X'ing out and as to your
3 | question, I believe that this was going to be in the form of
4 | my recommendation, that if the agreements were to be signed,
5 | that they be signed without this paragraph in them.

6 | BY MR. EMMONS:

7 | Q So is it your recollection then that it was you who
8 | X'd out this paragraph or caused this paragraph to be X'd out?

9 | A I seem to recall that I had this paragraph X'd out
10 | in my preparations.

11 | Q And why would it -- why was -- why were you
12 | recommending or going to recommend that this paragraph be
13 | deleted from the contract?

14 | A Without being able to read the part that's X'd out
15 | to see what I would object to, I don't recall.

16 | MR. EMMONS: Your Honor, there is in the record
17 | already as TBF Exhibit 122, in connection with the earlier
18 | portion of the case, a copy of the standard Trinity asset
19 | purchase agreement for asset -- purchase of a low-power
20 | television facility that has this contract -- this verbatim
21 | paragraph in it and not X'd out. It's perfectly legible from
22 | TBF Exhibit 122. I would like to read that to the witness --

23 | JUDGE CHACKIN: Let's not read all of -- let's not
24 | read all this to the witness. Just show it to him, ask him if
25 | it refreshes his recollection as to why he X'd it out. We

1 already have it in the record. You can refer to it.

2 MR. EMMONS: Let the record reflect I'm putting
3 before the witness a copy of Pages 10 and 11 of TBF Exhibit
4 122, Paragraph -- which contains Paragraph C called
5 transmitter site and ask the witness to read that to himself
6 and then I'll have a question.

7 MR. GARDNER: Okay.

8 BY MR. EMMONS:

9 Q Mr. Gardner, having read that material, does that
10 refresh your recollection as to why you X'd out Paragraph C on
11 Page -- starting on Page Two of the draft asset purchase
12 agreement?

13 A It does.

14 Q And would you tell us why you X'd it out?

15 A Because I felt it was inappropriate in this
16 document.

17 Q And why did you feel it was inappropriate?

18 A Because when I sell something, I sell it in as-is
19 condition and this paragraph seemed to me to put a lot of
20 restrictions on the sale that would not be characterized in
21 as-is condition and the only way I really feel comfortable in
22 selling something in -- is in as-is condition.

23 Q So would it be fair to say then that it would be
24 your -- it was going to be your recommendation to Raystay that
25 Raystay not assume responsibility for the availability or the

1 | suitability of the transmitter sites in question?

2 | A I would characterize it more as not recommending
3 | that Raystay not take any financial burden to show that. In
4 | other words, what Trinity was trying to do was to change the
5 | terms of the deal if they didn't like something that they
6 | received after the deal went through and I wanted Trinity to
7 | look at the deal, say yes to the deal, and say, "Here's the
8 | check," and there'd be no further discussion about it or
9 | reject the deal without signing it.

10 | Q The paragraph in question that you X'd out -- and
11 | correct me if I'm wrong from what you've just read and I'll
12 | give it back to you if you need to look at it again. But what
13 | it provided, I take it, and tell me if this was your
14 | understanding of what it provided, was that if the seller,
15 | that was Raystay, was unable to provide -- strike that -- that
16 | if the antenna site/transmitter site was unavailable or
17 | unsuitable or unusable for any reason, then the buyer, meaning
18 | Trinity, would have the option either to pay only one-third of
19 | the agreed purchase price in the contract or cancel the
20 | agreement all together. Is that your understanding of what
21 | Trinity was asking for?

22 | A No. Trinity was asking for the right to cancel the
23 | deal entirely if they decided that they didn't like it after
24 | they signed off on it.

25 | Q Right. And that's --

1 A For any reason. If for any reason Trinity decided
2 they didn't like the deal, then they could come back and say,
3 "We don't like the transmitter site. We want to cancel the
4 deal." I don't do business that way.

5 Q Thank you. Now, Mr. Gardner, turn, if you would, to
6 TBF Exhibit 235. Do you have that?

7 A Yes.

8 Q This is a handwritten note dated November 13, 1991
9 and let me ask you is that your signature that appears at the
10 bottom?

11 A Yes.

12 Q And was this a note that you wrote to Lee Sandifer?

13 A It appears to be, yes.

14 Q Now, in the second sentence -- excuse me, third
15 sentence of the note, do you see it says, "Channel 23 and 56
16 may not be available. What should Raystay tell T.B.N.?" What
17 is meant by that sentence?

18 A I knew that Lee Sandifer was negotiating with Dennis
19 Grolman about transferring the Red Lion permit to Dennis
20 Grolman and that was Channel 56 and I knew that Dennis Grolman
21 either had changed or wanted to change the frequency on the
22 Red Lion permit to Channel 23. So in order to be cautious, I
23 wanted to caution Lee that if Raystay was considering
24 transferring the permits to Trinity, that 56 and possibly 23
25 might not be available because they might be precluded after

1 Raystay had transferred the Red Lion permit to Dennis Grolman.

2 Q And you've asked Mr. Sandifer in this note to -- you
3 inquired of him what Raystay should tell TBN on that point and
4 my question is did Mr. Sandifer give you instructions about
5 what to tell TBN?

6 A I don't know that Lee had an answer at that time. I
7 -- 56 was in Red Lion and we subsequently did transfer that
8 permit to Dennis Grolman and the Commission canceled the
9 authorization for 56 to Raystay and 23 seemed to remain
10 available in Lancaster. So 56 was gone and 23 stayed.

11 Q But my question is did you recall anything that Mr.
12 Sandifer instructed you as to what to tell Raystay -- excuse
13 me, what to tell TBN?

14 A What I'm trying to say is I don't think Lee
15 understood which was going and which was staying and my
16 recollection is that he just told me to stand pat and tell
17 them that we felt we had four construction permits, two in
18 Lancaster and two in Lebanon.

19 Q And did you tell them that? Did you tell that to
20 TBN?

21 A I don't -- I don't recall if I got that far or not.
22 But we did receive at least five purchase agreements from TBN.
23 So since I worked on four of them, it appears I was continuing
24 to expect that I could continue to work on four of them.

25 Q Speaking of receiving five agreements, if you go to

1 the first line of this note, "Purchase agreements for five
2 LPTV's," does that indicate to you that, by this time at
3 least, that is by November 13 of 1991, you had received from
4 Trinity draft agreements for all five of the low-power
5 permits?

6 A That's what it appears to be.

7 Q And I take it that the next sentence, reference to
8 "lease for Red Lion," is -- what you're talking about there is
9 leasing space on the Red Lion tower?

10 A Yes.

11 Q Now, the last sentence of this note says, "Return
12 documents to me with instructions on which ones will be
13 executed so I can put them in form for signature," and my
14 question to you is what instructions, if any, did Mr. Sandifer
15 give to you in response to your request?

16 A I don't recall, but it appears I continued to work
17 on two Lancaster and two Lebanon transfer or purchase
18 documents.

19 Q Turn then, if you would, to TBF Exhibit 236 and
20 this, again, is -- although it's one exhibit, it contains
21 portions of the markups to four draft asset purchase
22 agreements, those being the ones that related to Lebanon and
23 Lancaster. Do you understand that?

24 A Yes.

25 Q Now, you said a moment ago that it appears that you

1 continued to work on marking up the agreements and my question
2 to you is are these documents that are in TBF Exhibit 236
3 markups to which you had referenced a moment ago?

4 A It would appear that they are.

5 Q Now, in looking at the -- do you see that -- well,
6 let's focus on -- just on the first one, Pages One through
7 Five of the exhibit.

8 A Is that the one for Channel 23?

9 Q Channel 23, Lancaster. Correct. You see some
10 handwritten markings, even starting on the first line of the
11 first page. Do you see that, in the second line? Do you see
12 those handwritten markings?

13 A Yes.

14 Q Is that your -- are those your markings?

15 A Knowing the origin of the documents, I would say
16 they appear to be.

17 Q Well, look at the word December on the top of Page
18 One. Do you recognize that as your handwriting?

19 A As I said, knowing the origin of the documents and
20 the fact that they came from files that I had access to and
21 that I worked on these documents, I would say that appears to
22 be my handwriting.

23 Q Do you not recognize that as your handwriting
24 independently of the circumstances?

25 A No, I don't.

1 Q Well, turn to Page Five of the exhibit, if you
2 would. Do you see the word -- the handwritten word
3 "president" written under the line for the seller on the left-
4 hand side?

5 A Yes.

6 Q Do you recognize that handwriting?

7 A It appears to be my handwriting.

8 Q Are you in any doubt that it's your handwriting?

9 A Yes. There's always a small doubt that it is.

10 Q A small doubt?

11 A A small doubt.

12 Q Do you know of anyone else who marked up draft asset
13 purchase agreements for these facilities?

14 A I do not know of anyone else who marked up these
15 agreements.

16 Q Now, did you mark up all four of the draft
17 agreements?

18 A I believe that I marked up all four of the
19 agreements.

20 Q Now, referring, again, to Page One of the exhibit --

21 A Is that, again, Channel 23?

22 Q Yes. By the way, the pages are marked in the center
23 of the bottom of each page with a Bate's stamp number. Do you
24 see that? When I'm referring to page numbers, that's what I'm
25 referring to.

1 A This one?

2 JUDGE CHACHKIN: The Bate's stamp.

3 MR. EMMONS: No, the very center. The bottom
4 center.

5 MR. GARDNER: The Number One?

6 MR. EMMONS: The Number One.

7 MR. GARDNER: Yes, I see that.

8 MR. EMMONS: We call them Bate's stamp numbers which
9 means we put them on after the document's been received in the
10 proceeding. They were not part of the original document. I
11 need you to understand that so that if there's any confusion
12 on your part as we're talking about page numbers, you'll know
13 what I'm talking about.

14 MR. SCHAUBLE: Your Honor, I think perhaps part of
15 the confusion -- potential confusion is that --

16 JUDGE CHACHKIN: It's clear now. Let's proceed.

17 BY MR. EMMONS:

18 Q With reference to Page One of the exhibit, Mr.
19 Gardner, and with reference to the first line where you have
20 crossed out the typewritten word November and written in the
21 word December -- do you see that?

22 A Yes.

23 Q Is it fair to say from that that at the time you
24 made these markups, you anticipated that these agreements
25 would be signed in December 1991?

1 A My thought was that if they were signed, that they
2 would be signed in December of 1991.

3 Q Now, turn to Page Two of the exhibit and the bottom
4 Subparagraph G, do you see that, entitled Lease Rights?

5 A Yes.

6 Q And do you see that a line has been drawn through
7 each -- a handwritten line has been drawn through each
8 typewritten line of Paragraph G?

9 A Yes.

10 Q Did you -- it was you, I take it, who made that
11 handwritten lineout.

12 A Yes. I believe I made that -- put that line in.

13 Q And I take it by putting that line in, you were
14 recommending that that paragraph be deleted from the agreement
15 if Raystay were to sign the agreement.

16 A That's what it would appear to represent, yes.

17 Q And do you recall why it was your recommendation to
18 delete that paragraph?

19 MR. SCHAUBLE: Objection, Your Honor. Relevance.

20 JUDGE CHACKIN: Overruled.

21 MR. GARDNER: I don't recall why I put that line in.

22 BY MR. EMMONS:

23 Q Would you turn to Page Five of the exhibit? And
24 this is the page where the handwritten word "president" has
25 been written under the signature line. Do you see that?