

1 and four tomorrow, and we put ten more on today and maybe lose
2 three ore tomorrow. It was a constant type of churn because
3 of the length of time to maintain a, or to, for them to
4 receive a page and then due to the, that they may not even
5 receive it at all.

6 MR. HARDMAN: Your Honor, did, on, on that point, I
7 believe the basis for that is that in the, the Section 308B
8 inquiry, which the Bureau put in evidence, at the time, one of
9 the questions it asked was, you know, who are your customers
10 now, and in response to that, this was like the third list
11 within that inquiry, there was a list of like 22. But as far
12 as I know, the, well, at no other time was Capitol asked, you
13 know, how many do you have at this point, or how many have you
14 ever had on it. And based on the, the way the records were
15 kept, you know, I'm not sure that we could have, but for
16 compiling a list as best as we could at the point in time
17 that, of the inquiry, there's no way of really knowing because
18 of the way the records were kept or not kept.

19 JUDGE CHACHKIN: All right. Can you account for the
20 fact that you only had two customers apparently in August of
21 1991 when the inspectors were there?

22 MR. RAYMOND: Yes, sir. I, I had two customers at
23 the time that the, the Government asked us to submit our, our
24 customers, at whatever date that, that may be, Your Honor.
25 And --

1 JUDGE CHACHKIN: August the 16th, 1991.

2 MR. RAYMOND: Okay. And when I compiled that, we
3 had two customers at that point. And I believe the record
4 showed that immediately, and I can refer back to the license
5 to show that we were having a link problem, once again, so the
6 dependability was not good, and after the inspectors left, I
7 believe we got another link frequency, I believe the record
8 will, will show that, trying to get a dependable link and have
9 a dependable signal. We still had the problems of the
10 interference and, and being walked over, if, if you will
11 accept that term, even after the clean link.

12 JUDGE CHACHKIN: Well, let me ask you this, I mean
13 it, it's obviously, if you only had two customers, the
14 question is why were you doing so much testing in August,
15 1991?

16 MR. RAYMOND: Okay, sir. We, we were --

17 JUDGE CHACHKIN: August, 1991, I assume that's going
18 to come up. I think we might as well get an answer to that.

19 MR. RAYMOND: Okay, sir, I'll be glad to answer
20 that.

21 JUDGE CHACHKIN: All right.

22 MR. RAYMOND: We were doing the amount of testing
23 hopefully, once again, to determine the pie that I spoke of,
24 these are the dependability, the range. Capitol Paging, our
25 main business, our main source of income is from our RCC

1 department. No time have I, did I ever speculate or, or make
2 any rationalizations to NABER, through the coordination, or to
3 any comment an inspector or anyone who has asked us if a
4 private carrier was our main business. Now maybe it's RAM's
5 and they have this tunnel vision that this was our main
6 business. No, sir, by, by no extreme was it our main
7 business. Also, during that time, we do, as I say, operate
8 one of the largest, if not largest answering services in the
9 state that we put in the Earthnet (Phonetic) system, which was
10 a very, very large things, which, as a matter of fact, the,
11 the local newspaper even did a, a story about how hard it was
12 to, to do that. We, we continued to grow, putting new offices
13 in, in our RCC We started looking and finally found a
14 computer system that is compatible to the paging industry, due
15 to the fact that there is not software available. In
16 California, there is a company called S.C.I. that does this
17 just for paging and answering services. I do not contend that
18 private carrier was our main source of business.

19 JUDGE CHACHKIN: Well, that's, that's what I wanted
20 to get straight. You're talking about you were doing all this
21 testing, how much of this testing was in connection with your
22 private carrier service?

23 MR. RAYMOND: All the testing on 152.48 was in
24 connection with our private carrier service.

25 JUDGE CHACHKIN: And the question is why was it

1 necessary to, to do all this testing, in light of the porosity
2 (Phonetic) of customers you had at that point?

3 MR. RAYMOND: Simply because we could not get
4 customers on due to the fact of the, the problems with the
5 link and the problems of interference or being walked over.
6 So until we could test it and be as certain as possible that
7 we could give the degree of dependability that a, that a
8 private carrier can give, we were not very successful in
9 acquiring customers and maintaining them. Very successful in
10 acquiring customers, very unsuccessful in keeping them on our
11 service.

12 JUDGE CHACHKIN: So you're saying there was a demand
13 for the service?

14 MR. RAYMOND: Yes, sir, there was a demand for
15 service.

16 JUDGE CHACHKIN: But because of the quality of your
17 service, you were unable to fulfill the demand, is that what
18 you're saying?

19 MR. RAYMOND: I don't like to use the quality of our
20 services. I, I would think the dependability of the link,
21 coordination through NABER, the community repeaters on NABER,
22 and the constant being walked over, and air being taken away
23 from other people on that same spectrum, it was the problem,
24 yes, sir. The demand is still there to this day, there is a
25 demand there. There is a need there for this service today.

1 But we could not supply it due to the problems that we, we
2 encountered.

3 JUDGE CHACHKIN: Now I just want to understand a
4 little. What is, what is, what is Capitol's position, that
5 all the testing was necessary, or that some testing was not
6 necessary, or just what is Capitol's position?

7 MR. RAYMOND: I will stand behind the testing that
8 Capitol put on, all testing that we did I feel was absolutely
9 necessary, with the exception, sir, of what Mr. Harrison
10 testified, that, that it, it was inadvertently, anyway, no
11 matter how it was done, it was left on for one night for a 24-
12 hour period. The rest of the resting, and I will stand behind
13 it as, as Mr. Peters did, it was definitely necessary and
14 required to find out to get all the pieces of the pie in, in
15 to a hole.

16 JUDGE CHACHKIN: Now this 24-hour period that Mr.
17 Harrison talked about, that the, was left on --

18 MR. RAYMOND: Yes, sir.

19 JUDGE CHACHKIN: -- I assume the inhibit, what, what
20 was left on?

21 MR. RAYMOND: The testing mode of the terminal had
22 been left on, and as the inspectors testified that they heard
23 these tests, now I don't think they were talking about the
24 same time Mr. Harrison was talking about, but the inhibitor
25 was always in place and, and as the field engineer said, the

1 | inhibitor would hold the pages back, except for a ten, ten,
2 | ten percent of the time.

3 | JUDGE CHACHKIN: I believe there was testimony from
4 | the inspectors to the effect that when they were there,
5 | testing was going on at midnight or late at night?

6 | MR. RAYMOND: I do believe they said late at night,
7 | sir, yes, sir.

8 | JUDGE CHACHKIN: Could you tell me what was, that
9 | was all about?

10 | MR. RAYMOND: No, sir, I, I do not know if they said
11 | midnight or whatever. However, if it was being done at 8:00,
12 | I can very easily see testing being done at 8:00, 9:00, and,
13 | and maybe even as late as 10:00 in the evening hours. As I
14 | say, the people would then go out after their work and do
15 | testing. They may be doing replacements, repairs, running to
16 | other areas. And in a, to do two things at one time, as, as I
17 | say, you know, I, it seems like I, I'm doing, I may in a, I
18 | was that sales person, I may be going out to give a
19 | replacement pager to an area and have the testing unit turned
20 | on so while I'm doing that, I'm testing rather than listening
21 | to, to the local radio station.

22 | JUDGE CHACHKIN: Now when did you start the adding
23 | of your customers in substantial numbers for the PCP?

24 | MR. RAYMOND: We started acquiring customers in
25 | March.

1 JUDGE CHACHKIN: Of what year?

2 MR. RAYMOND: '91.

3 JUDGE CHACHKIN: I understand that, but then you, in
4 August, apparently you were, you only had two customers.

5 MR. RAYMOND: Yes, sir.

6 JUDGE CHACHKIN: Now you have said you've had
7 hundreds of customers on and off.

8 MR. RAYMOND: On and off, yes, sir.

9 JUDGE CHACHKIN: Was there a period of time in which
10 you, you added a greater amount of customers than, during
11 other periods?

12 MR. RAYMOND: Yes, sir. After we, we got the last
13 link frequency in and then we, which we applied to NABER for,
14 after we got, changed the, and, and moved a, I'm, I'm going to
15 call it a hop (Phonetic), putting a hop in from Nease Drive,
16 we, we got authorization through NABER to, to put our, another
17 transmitter at Coal Mountain for the link frequency, it became
18 much more stable and we were starting to add more customers on
19 at, when the, when we got the notice and it said to turn the,
20 turn the paging system off, which we did, I would say at that
21 point we possibly had as many, and, and I'm not saying it's a
22 great number to, to some people on a private carrier, but we
23 probably had 50 customers on at that time, possibly. But once
24 again, that may not sound big numbers when you're a private
25 carrier and you say I've got 5,000 or 10,000. But private

1 carrier was not the thrust of our business. It was to offer
2 budget paging and affordable rates for people that were not
3 and could not afford the RCC, which is our first, and still
4 is, and always will be our first priority.

5 JUDGE CHACHKIN: Now when was this link installed,
6 that you mentioned?

7 MR. RAYMOND: It's, it's in the exhibits, if I can
8 --

9 JUDGE CHACHKIN: Oh, is it?

10 MR. RAYMOND: Yes, sir. I'll, I'll have to find it.
11 It's under tab 15, I believe. And that was 7/23 of '92, sir.

12 JUDGE CHACHKIN: 7/23 of '92?

13 MR. RAYMOND: It's the very last one on page six,
14 was when we changed the transmitter location from Nease Drive
15 to the Coal Mountain, which is putting it approximately, and,
16 and this may be as ten air miles closer to the Kevnoa site,
17 excuse me. We also changed the location of the transmitter.
18 We tried variations, as, as you can see, during there trying
19 to make it work properly. The Kevnoa site was abandoned and
20 we applied for a new site on page five at Rotary Park, which
21 would be closer to Charleston, as well, which would give it
22 some degree of, of stability. We kept the same link, I think
23 the last link we got was 7/19/91, which was at Nease Drive,
24 which is on page four. That was not acceptable even after
25 changing the transmitter site because of the, the distance

1 that it must travel. So by moving it down to the Coal
2 Mountain site on page six, it became much more dependable.
3 Now even though the link was dependable at that time, we were
4 still getting where we could not get pages out, due to the
5 fact that other people on 152.48, I believe the Government has
6 already put into evidence at, even at this time, there was a
7 two-minute blackout device on RAM page and, RAM Technologies
8 paging system, and the Government's welcome to correct me
9 because I'm doing this from memory of, of the dates, which
10 would only allow us two pages, two-minutes, and if we had four
11 minutes of paging, that really didn't matter. So it was,
12 would intrude on our share of time, and what customer wants to
13 stay on. And maybe the Government can tell me where that
14 letter, part of the letter is or Mr. Hardman.

15 JUDGE CHACHKIN: Now --

16 MR. RAYMOND: Where you --

17 JUDGE CHACHKIN: Go ahead, I'm sorry.

18 MR. RAYMOND: It's where, I think, Mr. Shiben sent
19 them a letter, telling them to, they had, did not have
20 authorization for a two-minute blackout device, as the
21 inspectors found was on their transmitter.

22 JUDGE CHACHKIN: Now I just, one more point I want
23 to get into. What took place when the inspectors came in
24 August of '91? You were present when they, when they arrived?

25 MR. RAYMOND: No, sir. I was not present when they

1 arrived. I am also, the Kevnoa Valley has a Kevnoa Valley
2 Emergency -- Council due to the amount of chemical companies
3 within the area. Capitol paging was selected as the paging
4 company for that, that group, which it involves -- and
5 Carbine, Montana (Phonetic), Dupont, the area police, fire
6 departments, and all. We were getting ready to perform an
7 emergency drill of an MIC leak at the -- plant that coming
8 weekend. And at the time that they arrived, which is
9 approximately five miles from the office, I was there and we
10 were going over the parts of the drills that, that would be
11 going on. I, I received the page and I immediately came, and
12 I think they, they even noted that it didn't take me long to
13 be there, sir. So I was not there when they walked in
14 originally. From that time on, I believe I was with them
15 every minute until they completed their inspection and in, we
16 completed it in the Huntington area. And where they went from
17 there, I don't know whether they headed back to Charleston or
18 stayed in Huntington.

19 JUDGE CHACHKIN: Can, can you leave, can you add
20 anything to the, the allegation that the testing program was
21 deleted?

22 MR. RAYMOND: No, sir. I cannot, and I, I have done
23 some checking on that. And I don't quite know how you can
24 delete it. And I'm not saying that they're wrong, by any
25 means.

1 JUDGE CHACHKIN: It's all right to say they're
2 wrong, there's no law against --

3 MR. RAYMOND: Well, I, I don't, well, when I don't
4 know, I don't know. As far as deleting in what term they
5 mean, deleting that it was completely blank or in, in the
6 Huntington office, I found out there, there is a, you go to, I
7 think it's program four on the CRT, and it, it asks you, and
8 that's the statistic part, and you enter some commands and you
9 get into the, to the automatic test page, where it asks you
10 several questions, what number, and you enter a four-digit
11 number, how often you want it to repeat, as I testified
12 earlier, you can pick 1 minute to 99 minutes, and to turn it
13 on, you say yes, to turn it on you can punch an N for no. In
14 the Huntington, and I, I was not able to find out about
15 Charleston, to disable, to turn it off, you enter in zero,
16 zero, zero, zero, then you put no. I was under the
17 impression, in Charleston at least, that you could just push
18 no. But we found out in, in checking last evening, as a
19 matter of fact, because it was performed, I had them perform
20 it when we get home, that if you just tell it no, it will
21 continue to page that number. You must enter in four zeros,
22 which I guess the computer recognizes there is no number as
23 four zeros, I don't know, but that's how they disable there.
24 I don't know what they say when they say delete, sir. I
25 didn't see it. I don't know. They could explain it to me.

1 JUDGE CHACHKIN: Well, when they reconstruct, when
2 the program was reconstructed, wasn't it still in the
3 software? I mean I understand that the testing program was
4 reconstructed on, on the benefit of the, the inspectors.

5 MR. RAYMOND: Yes, sir.

6 JUDGE CHACHKIN: What did you do to reconstruct it?

7 MR. RAYMOND: I did not, it was Mr. Harrison that,
8 that reconstructed it. I, I had not arrived at that time. It
9 took me 20 minutes maybe to get there after their arrival and
10 I, I'm just guessing on that time frame.

11 MR. HARDMAN: Your Honor?

12 JUDGE CHACHKIN: Yes?

13 MR. HARDMAN: I didn't interpret the, the witnesses'
14 testimony that there was any program deleted. There was
15 something about the, the test or test function that, that,
16 according to their testimony, was deleted and, and this
17 witness is not sure that's the correct word. But I did not
18 understand any claim that, that any part of the program had
19 been deleted.

20 JUDGE CHACHKIN: Well, is there any testimony what
21 the test function that was deleted?

22 MR. HARDMAN: Well, again --

23 JUDGE CHACHKIN: Is that what they claim --

24 MR. HARDMAN: -- I think some of the confusion is in
25 the use of the term deleted and the, the witnesses from

1 Capitol, at least, are not aware, my understanding of their
2 testimony is they're not aware that anything was deleted and
3 whenever, you know --

4 JUDGE CHACHKIN: Isn't that used in the designation
5 all the time, word delete?

6 MR. HARDMAN: The, in the hearing designation order?

7 JUDGE CHACHKIN: Yes.

8 MR. HARDMAN: I don't remember.

9 JUDGE CHACHKIN: Well, maybe it wasn't. If not
10 there, it was, it was somewhere.

11 MR. HARDMAN: It, it was in the inspectors' report
12 --

13 JUDGE CHACHKIN: Inspectors' report, yes.

14 MR. HARDMAN: -- which is PRB-3, and that's what
15 we're not, we're not certain at this point what their use of
16 the term deleted means, based on the testimony. We're, we're
17 somewhat puzzled ourselves.

18 MS. FOELAK: Your Honor, when Mr. Walker testifies
19 in rebuttal, we'll clarify just what it was that was deleted.

20 JUDGE CHACHKIN: Well, it should have been on
21 direct, so there could have been any response, but --

22 MS. FOELAK: Well, I think it was.

23 JUDGE CHACHKIN: -- that, that -- full, it's all
24 right, at least we'll get it at this stage, and I assume if
25 they want to submit a response at that time, it's their

1 rebuttal, they can put on a response at that time. But I, I
2 have been puzzled by the claim of program deletion. I don't
3 know what was being talked about. I thought there was
4 something that the software was somehow erased or that the
5 program in the software was erased, or something.

6 MR. RAYMOND: Sir, I can say that you can't erase
7 that program.

8 JUDGE CHACHKIN: Well, that's what I didn't
9 understand what was meant by deleting the program --

10 MR. RAYMOND: What I'm talking now, the, the, the,
11 you might be able to take a number out or turn it on and off,
12 but it, it's a fixed format, I think maybe is what you call
13 it, that asks a certain, you know, questions -- whatever.

14 JUDGE CHACHKIN: Now insofar as Bureau Exhibit 5 is
15 concerned, and that's the customer list, your testimony is
16 that you were personally not asked about for a list?

17 MR. RAYMOND: Not to my knowledge, no, sir.

18 JUDGE CHACHKIN: Did anyone at Capitol discuss with
19 you or request via the inspectors for a list, at the time
20 that, of this inspection?

21 MR. RAYMOND: No, sir, not that I'm aware of, sir.
22 And if they did, and, and if it was prepared by one of our
23 people, I was not made aware that it was being prepared. But
24 you have to realize, I was with the inspectors the whole time.

25 JUDGE CHACHKIN: Well, I, I'm talking about after

1 the inspectors, apparently they made a request for this list
2 and they came back the next day or the day after to pick up
3 the list, and my question is during, in the intervening
4 period, did you have any discussions with any Capitol employee
5 concerning a request by the inspectors for a list?

6 MR. RAYMOND: Absolutely not.

7 JUDGE CHACHKIN: Did you know that a list was being
8 furnished to the inspectors?

9 MR. RAYMOND: Absolutely not. I didn't even see
10 them when they came back that day. I don't even think I'd got
11 in at that point.

12 JUDGE CHACHKIN: I don't have any further questions.
13 The witness can be excused. Thank you very much.

14 MR. RAYMOND: Thank you, Your Honor.

15 JUDGE CHACHKIN: The Bureau has some rebuttal?

16 MS. FOELAK: Yes, Your Honor.

17 MR. HARDMAN: Your Honor?

18 JUDGE CHACHKIN: Yes?

19 MR. HARDMAN: Before we proceed, I have two just
20 housekeeping matters.

21 JUDGE CHACHKIN: All right.

22 MR. HARDMAN: I believe that, that I never moved the
23 admission of Exhibit CAP-19, which is behind tab 20. This is
24 the one-page memorandum which was authenticated by stipulation
25 by the Bureau. And I would move its admission at this time.

1 JUDGE CHACHKIN: This again is not for the truth,
2 but just to show what was filed?

3 MR. HARDMAN: That the --

4 JUDGE CHACHKIN: What was submitted, I guess?

5 MR. HARDMAN: The information, it's, it's for the
6 fact that these claims were made in these terms, not to the --

7 JUDGE CHACHKIN: All right.

8 MR. HARDMAN: -- the truth of it.

9 MS. FOELAK: Your Honor, I'm not sure there is
10 anything in there but double hearsay. I'm not really sure
11 what it is he means by saying claims were made.

12 MR. HARDMAN: Well, I'll tell you exactly. Look at
13 the second, second sentence and the last sentence of the first
14 paragraph. I mean this, this, this is the memorandum which
15 kicked off the inspection on August, the, the subsequent
16 inspection in August of 1991. It is based on the, the
17 complaint communicated to the FCC that Capital had a, some
18 sort of device patched into its paging base station imitating
19 the sound of a tone page transmission, that it, the device is,
20 is some kind of testing equipment capable of being removed in
21 less than a minute. This was a, this was a claim made to the
22 Government --

23 MS. FOELAK: What is the purpose --

24 MR. HARDMAN: -- to the Government as, as to, you
25 know, misconduct by Capitol, which in turn, kicked off the

1 inspection, looking for reasons to revoke Capitol's license,
2 and it, it serves a couple of purposes. One is that if you
3 recall the testimony, that, that there is no such device or
4 any evidence of any such device having been in existence,
5 whether owned by Capitol or, or not. So this is, again, this
6 is, this is, this is a claim that is made without apparent
7 factual foundation, designed to get the Government on
8 Capitol's back.

9 MS. FOELAK: Your Honor, there's no claim of this
10 phone patch or this patching thing in the designation order,
11 and RAM very well may have stated that, but this is double
12 hearsay, it's, it's not proof. It's not even proof that RAM
13 made a complaint, I mean made this particular complaint in
14 these words.

15 MR. HARDMAN: Your Honor, this is information that
16 the Government acted on in initiating an investigation. I
17 mean it, I don't, I don't claim that it's the only thing, but
18 it certainly was the straw that broke the camel's back.

19 JUDGE CHACHKIN: I don't recall RAM saying that they
20 didn't provide this information. Certainly --

21 MS. FOELAK: Yes, well, this, this information
22 certainly, it was never an issue, this, this exhibit has never
23 been moved before. Mr. Hardman asked one of his --

24 JUDGE CHACHKIN: Well, the point, the point of the
25 matter, the Bureau was relying on RAM's allegations on many of

1 | its issues in this case. If this goes to the question of
2 | credibility on RAM's allegation, if, in fact, they made
3 | allegations here which had no basis and if the evidence shows
4 | that, then the question exists whether the other allegations
5 | of which the Bureau is relying and which they're relying
6 | whole-heartedly and wholly on RAM has a basis.

7 | MS. FOELAK: But, Your Honor, whether they made
8 | those allegations is hearsay and --

9 | JUDGE CHACHKIN: It maybe hearsay. It's not being
10 | offered for the truth that the allegations of fact are true,
11 | but the fact that RAM made such allegation.

12 | MS. FOELAK: Well, it's actually double hearsay
13 | because --

14 | JUDGE CHACHKIN: Well, RAM, as far as I know, has
15 | not denied making such allegations to Mr. Shiben, making such
16 | complaints to Mr. Shiben. I haven't heard anything, any
17 | objection on the grounds that what Mr. Shiben reports there is
18 | not true. If RAM wants to take the position that they didn't,
19 | in fact, make such a complaint, that's one thing.

20 | MR. JOYCE: Huh-uh.

21 | JUDGE CHACHKIN: But I haven't heard that. In fact,
22 | Mr. Joyce is shaking his head that it did, in fact, make such
23 | a complaint.

24 | MR. JOYCE: Sure.

25 | MR. HARDMAN: Moreover, Your Honor, these, these

1 statements are both from parties, and, again, under the
2 Federal rules of evidence, statements of parties are not
3 hearsay, although when I went to law school they were.

4 JUDGE CHACHKIN: Well --

5 MR. HARDMAN: But there was an exception, there was
6 an exception to the hearsay rule.

7 MR. JOYCE: -- is not a party, Mr. Hardman.

8 JUDGE CHACHKIN: -- I am, I am not receiving for the
9 truth. I am receiving it for these were charges among other
10 charges, complaints made by RAM. And, as I say, I think it
11 goes to the credibility of RAM's charges, particularly in view
12 of the fact that, for the most part, most of the issues here
13 are predicated solely on allegations by RAM and RAM personnel.

14 MR. JOYCE: And, and since the document does refer
15 to this repeated four separate tone sequence that the FCC
16 investigators heard, and they're obviously, this obviously has
17 been connected up with testimony that we've heard, so --

18 JUDGE CHACHKIN: The extent of which something has
19 been connected up, the record will reflect. As to the extent
20 of which it isn't, the record will also reflect. I will
21 receive, CAP Exhibit 19, will be received.

22 (Whereupon, the document marked as
23 CAP Exhibit 19 was received into
24 evidence.)

25 MR. HARDMAN: And then the second thing, Your Honor,

1 the last housekeeping matter is Exhibit CAP-20, which
2 Mr. Walker authenticated.

3 JUDGE CHACHKIN: That has already been pursued.

4 MR. HARDMAN: Well, I'm sorry, my, my notes reflect
5 that I forgot to move it at the time because he was, we were
6 still in the Government's case, but if I'm, my notes are
7 wrong, I apologize.

8 JUDGE CHACHKIN: No, my, my notes reflect that CAP
9 Exhibit 20 was pursued.

10 MR. HARDMAN: All right. I apologize, Your Honor.

11 JUDGE CHACHKIN: That's the information concerning
12 the various licenses, the --

13 MR. HARDMAN: Right, did he --

14 JUDGE CHACHKIN: Yes, that was received without
15 objection, I believe. The only other thing I have here, it
16 was a telephone answering slip, service slip, which I have as
17 identified and not offered. What is the position of that?

18 MR. HARDMAN: Well, we're not going to offer that,
19 Your Honor, because that relates to Mr. Stone's rebuttal
20 testimony, which we've elected to forego.

21 JUDGE CHACHKIN: All right. The, the telephone
22 answering, I should say Capitol Exhibit 24, which has been
23 identified, is not being offered. Mr. Joyce, I believe there
24 are a couple of exhibits of yours which have been identified
25 and not offered.

1 MR. JOYCE: The last one was simply FCC rule section

2 --

3 JUDGE CHACHKIN: No, I'm not talking about that, I'm
4 talking about RAM Exhibit 3, and I guess it's just, was it RAM
5 Exhibit 3, was there a 4 also, I'm not sure, was it, there is
6 a RAM Exhibit 4. Oh, oh, RAM Exhibit 4 was the pleadings, a
7 motion to strike, well, I, I had oral, made an oral ruling, so
8 as far as the motion to strike, it hasn't been offered for any
9 purpose. What do you want to do with it?

10 MR. JOYCE: Oh, well, you've already ruled, Your
11 Honor, so --

12 JUDGE CHACHKIN: All right. So just discard it, all
13 right.

14 MR. JOYCE: Okay. Thank you.

15 JUDGE CHACHKIN: But as far as three is concerned,
16 what do you want to do with that?

17 MR. JOYCE: I, I'm sorry, Your Honor, I can't recall
18 what Exhibit 3 is?

19 JUDGE CHACHKIN: Three is a letter to Senator Byrd.
20 I assume you don't want to offer that. It was identified.
21 Deals with ex-party men, the acclaim of ex-party men.

22 MR. JOYCE: It, it's, I believe the FCC thinks its
23 irrelevant, so I, I don't offer that as an exhibit, Your
24 Honor.

25 JUDGE CHACHKIN: All right. I just want to have my

1 records straight. RAM Exhibit 3 was identified, is not being
2 entered. The Bureau has one exhibit also, which is 18, which
3 was identified. That was the filing with the PSC of West
4 Virginia. What do you want, what does the Bureau want to do
5 with that?

6 MS. LADEN: Yes, I don't think we're going to offer
7 it, Your Honor.

8 JUDGE CHACHKIN: All right. Bureau Exhibit 18 was
9 identified, and is not being offered. I believe we are now
10 ready for rebuttal.

11 MS. FOELAK: Okay. Mr. Walker will be the Bureau's
12 --

13 JUDGE CHACHKIN: All right.

14 MS. FOELAK: -- rebuttal witness.

15 JUDGE CHACHKIN: Mr. Walker has been previously
16 sworn and is under oath.

17 RE CROSS EXAMINATION

18 BY MS. FOELAK:

19 Q Mr. Walker, drawing your attention to monitoring
20 152.480 during the week of August 12th, did you listen to the
21 frequency at various times?

22 A Yes, ma'am. Various times of the day.

23 JUDGE CHACHKIN: Pardon me? Of the day?

24 MR. WALKER: Various times of the day, right.

25 BY MS. FOELAK:

1 Q Of all of the days you were there?

2 A Of several of the days that we were there, yes.

3 JUDGE CHACHKIN: What do you mean several of the
4 days? Does that mean all of the days or some of the days or
5 what?

6 MR. WALKER: We arrived in town on Sunday evening.
7 I do not recall monitoring on that Sunday evening. Thursday
8 after the inspection, we monitored some. I don't recall how
9 late.

10 MS. FOELAK: With reference --

11 JUDGE CHACHKIN: Well, what other days did you --

12 MR. WALKER: Probably, I'm sorry, Friday. We were
13 in town Friday morning, we did monitor some, a very limited
14 amount Friday morning.

15 BY MS. FOELAK:

16 Q And Monday, Tuesday, and Wednesday?

17 A Monday, Tuesday, and Wednesday, at various times of
18 the day.

19 JUDGE CHACHKIN: What was the latest that you
20 monitored --

21 MR. WALKER: It was one night, I believe it was as
22 late as midnight or perhaps a little later. Right now, I do
23 not recall which night it may have been.

24 JUDGE CHACHKIN: Was that the only night that you
25 monitored the --

1 MR. WALKER: No, sir. Each evening, we did monitor.
2 Perhaps 8:00, 9:00, 10 o'clock.

3 JUDGE CHACHKIN: Did you keep any records of the
4 times you monitored?

5 MR. WALKER: Not at that time, Your Honor.

6 JUDGE CHACHKIN: You kept no contemporaneous records
7 of the, of the times of the day that you monitored?

8 MR. WALKER: No, sir.

9 JUDGE CHACHKIN: So this is strictly from your
10 memory, the times?

11 MR. WALKER: Yes, sir.

12 MR. HARDMAN: Your Honor, if I could help clarify.
13 The, the, I believe the witness is referring to what, what I
14 would call the off-hour monitoring. He did keep very
15 scrupulous notes and, and Mr. Bogert kept very scrupulous
16 notes, which were furnished to us in discovery, as to their
17 observations like on Monday and Tuesday, I believe were the
18 dates, and the times, and that sort of thing. And those were
19 also notes that Mr. Peters referred to in, in drawing his
20 conclusion. So just for the sake of the record, I, I believe
21 the, the witness was answering a different question than you
22 had in mind.

23 JUDGE CHACHKIN: Well, do we have that in the
24 record, the times of the monitoring?

25 MR. HARDMAN: I believe I went over that with the

1 witness, Your Honor, when I cross-examined him.

2 JUDGE CHACHKIN: All right.

3 BY MS. FOELAK:

4 Q And during all these different times of day and
5 night that you monitored, what transmissions occurred?

6 A Okay. We began monitoring sometime on Monday
7 morning and identified a series or sequence of tones that that
8 sequence was repeated approximately every minute when the
9 channel was available. It soon became very evident that it
10 was the same sequence of tones. We monitored, we heard that,
11 made some notes accordingly. We monitored also to see which
12 station was transmitting while the other was on. Was it RAM,
13 was it Capitol, was it both. Made notes accordingly. The
14 additional monitoring that was done where no notes were kept,
15 basically was for the purpose of establishing in our own minds
16 that this same type of thing was continuing.

17 Q And the same sequence of tones?

18 A Same sequence of tones, as well as the same
19 interference of one signal to the other, if you will.

20 Q And so you heard these tones, Monday, Tuesday,
21 Wednesday, Thursday?

22 A Thursday morning, the tones were still there. When
23 we pulled into the parking lot behind Capitol's office
24 building, we were still hearing the tones on the receiver
25 installed in our vehicle.