

1 Q Take the June 1 entry, please.

2 Does that reflect that you spoke to him for 15  
3 minutes?

4 A It certainly doesn't reflect that I -- that I  
5 talked to him. I don't know. I did speak -- I have a  
6 recollection of speaking to him sometime in that period.  
7 Whether it was the 1st or the 2nd, I don't know.

8 Q When you called Mr. Gordon would he normally  
9 return your phone calls?

10 A Yes, he normally would.

11 Q And you have already testified previously that you  
12 recall, I believe, the June 17 conversation; is that  
13 correct?

14 A Yes, I do.

15 Q So you did talk to him on that day?

16 A Yes.

17 Q And you also testified that you recalled the June  
18 24 conversation; is that correct?

19 A That is correct.

20 Q During the June 24 conversation, as I recall your  
21 testimony, you said that Mr. Gordon read you Ms. Kreisman's  
22 letter; is that correct, to you?

23 A That is correct.

24 Q Did he read it to you in its entirety?

25 A As far as I know.

1 Q When you received the hard copy of the letter,  
2 there were no surprises in it were there?

3 A It was all a surprise, Mr. Cole.

4 I can't really answer that. If you are asking me  
5 did I recognize everything in the letter from when he read  
6 it to me, I can't say that I recall verbatim his reading,  
7 and his reasoning when it was given to me orally. The  
8 outcome was the thing of most importance to me.

9 Q And again, not to belabor the issue, but it is  
10 somewhat an important point in my view, in none of the  
11 conversation that you had with Paul Gordon prior to the July  
12 1, 1993 meeting in Mr. Stewart's office did Mr. Gordon say  
13 anything to you about ex parte, the ex parte restrictions as  
14 they applied to the Rainbow applications?

15 MR. EISEN: I am going to object to that question,  
16 Your Honor. And the reason I am going to object to it is  
17 this. We are under some very narrow constraints with regard  
18 to our direct case on the ex parte, the alleged ex parte  
19 violation. I am looking at the issues that are --

20 JUDGE CHACHKIN: Mr. Eisen, before you get into an  
21 extended discussion did specifically ask this witness --

22 MR. EISEN: I asked the witness --

23 JUDGE CHACHKIN: -- if she had any discussions  
24 with the Commission staff prior to that date in June in  
25 which she was told anything about restrictions to ex

1 parte --

2 MR. EISEN: Yes, as background to the July 1, 1993  
3 meeting.

4 JUDGE CHACHKIN: Well, you asked that question.  
5 Now, they can certainly explore whether there were such  
6 discussion on that.

7 Your objection is overruled. You opened the door  
8 for that.

9 MR. EISEN: That is --

10 JUDGE CHACHKIN: In any event, clearly by asking  
11 that question you opened the door in cross-examination.

12 MR. EISEN: Not to the context, Your Honor, of  
13 what Mr. Gordon may have discussed with Ms. Polivy beyond  
14 the fact that a decision was reached and Ms. Polivy neither  
15 requested --

16 JUDGE CHACHKIN: The question was being asked was  
17 whether or not there was any discussion concerning the ex  
18 parte rules.

19 MR. EISEN: Yes, and I --

20 JUDGE CHACHKIN: The ex parte rule, and that's  
21 what is being explored now.

22 MR. EISEN: I realize that.

23 JUDGE CHACHKIN: And Ms. Polivy's answer.

24 MR. EISEN: And I think that's improper. I think  
25 the question is improper.

1 JUDGE CHACHKIN: I can't possibly see how it's a  
2 problem. You laid the ground rules by asking the question  
3 and she said she had no such discussion with the Commission  
4 staff. Now it's being explored whether in fact she did have  
5 that conversation with Commission staff.

6 MR. EISEN: Well, if Mr. Cole's inquiry is  
7 directed to steps that were taken prior to July 1, 1993  
8 meeting, I have no problem with that. But if the question  
9 is being asked to find out what Mr. Gordon and Ms. Polivy  
10 discussed regarding the ex parte rules, I don't think it's  
11 excused under an of the issues that she just testified to.

12 JUDGE CHACHKIN: Well, I disagree. I think it  
13 certainly has a bearing on intent, and I think it's certain  
14 proper to explore in light of your question and the  
15 witness's answer. So I overrule your objection.

16 Go ahead, Mr. Cole.

17 BY MR. COLE:

18 Q Ms. Polivy, at some point subsequent to July 1993  
19 you became aware, did you not, that Mr. Gordon's position  
20 was that he had told you that the Rainbow Broadcast  
21 applications were a restricted proceeding; is that correct?

22 A I'm sorry, I --

23 Q At some point subsequent to July of 1993 did you  
24 not learn that Mr. Gordon had advised others that he had  
25 told you that the Rainbow Broadcast proceedings were

1 restricted under the ex parte rules?

2 A Sometime after -- I am now aware of that from his  
3 deposition and from the testimony that he gave to the  
4 Inspector General, but I was not aware of it prior to that.

5 Q And you were aware of that in March of 1994, were  
6 you not?

7 And let's -- this is not out of the game, let me  
8 show you this.

9 MR. COLE: Your Honor, I should ask Ms. Farhat if  
10 she would do this, to hand these to the reporter and the  
11 parties. And, Your Honor, Ms. Farhat is distributing a copy  
12 of a document is 30 pages in length, not including the  
13 unnumbered and unpaginated cover page, and on the cover page  
14 it is entitled "Press Broadcasting Hearing Exhibit, Comments  
15 of Rainbow Broadcasting, Limited, on Inspector General's  
16 Report" filed with the Commission March 22, 1994.

17 I am only going to examine Ms. Polivy with respect  
18 to pages 22 and 23, but I did not want to be accused of  
19 trial by trick, so I am providing her with the entire  
20 pleading so she may have it in front of her.

21 (The document referred to was  
22 marked for identification as  
23 Press Exhibit No. 3.)

24 BY MR. COLE:

25 Q Ms. Polivy, please review that and note on page 29

1 what appears to be your signature.

2 Is that your signature?

3 A Yes.

4 Q Do you recall preparing and filing this with the  
5 FCC?

6 A I recall preparing and filing the document, yes.

7 Q Now, on page 22 of this document, please refer to  
8 numbered paragraph number two, and which reads, "Mr.  
9 Gordon," referring to Paul Gordon, "claims to have  
10 previously told counsel for Rainbow that the proceeding was  
11 restricted."

12 Is the counsel for Rainbow that's referred to in  
13 that sentence you?

14 A I assume it is, yes.

15 Q I will continue to quote from page 22, paragraph  
16 two, "This statement is not correct. No such statement or  
17 suggestion was ever made to me by Mr. Gordon."

18 Does that continue to be your view of the  
19 situation?

20 A Yes.

21 Q Refer over to page 23, please, the final paragraph  
22 which runs over onto page 24, which reads, "The likeliest  
23 explanation for Mr. Gordon's recollection by animus is that  
24 he made a bad decision in denying Rainbow's application, and  
25 was embarrassed when it came to the attention of his

1 superiors."

2 Is it your understanding that Mr. Gordon  
3 fantasized his conversations with you?

4 A That's your characterization of Mr. Gordon. I  
5 believe he is in error in his statement.

6 Q Well, let me refer you to two sentences later,  
7 "That is not, however, a justification for a fantastical  
8 post hoc recollections and accusations designed to justify  
9 the error."

10 Do you believe that Mr. Gordon was engaged in  
11 fantastical post hoc recollections when he stated that he  
12 had discussed the ex parte restrictions relative to  
13 Rainbow's application with you prior to the July 1 meeting?

14 A I believe Mr. Gordon's recollection of the facts  
15 concerning the circumstances surrounding Rainbow and our  
16 exchanges and the meeting are notable for their exclusivity.  
17 They comport with no one else's recollections.

18 Q Is it your testimony that Mr. Gordon did not  
19 discuss the ex parte restrictions relative to the RBC  
20 applications with anyone else prior to the July meeting?

21 A I can only testify as to my understanding of what  
22 he discussed with me and my knowledge of the circumstances  
23 and the pleading in its entirety stands for itself -- we can  
24 put it in the record -- makes that clear.

25 Q Do you continue to believe today that Mr. Gordon

1 is engaged in recollection by animus?

2 A I still believe Mr. Gordon is in error for  
3 whatever reason.

4 Q Well, but you posited a reason in your pleading to  
5 the Commission in March of '94, and I want to test whether  
6 you continue to believe that.

7 I am correct, am I not, that you accused Mr.  
8 Gordon of recollection by animus?

9 A What is on the page says what it says.

10 Q And my --

11 A I believe Mr. Gordon was in error and continues to  
12 be in error for whatever reason.

13 Q But you do not withdraw from the language which  
14 you used in March of '94, that he was engaged in  
15 recollection by animus?

16 MR. EISEN: I object, Your Honor. I think the  
17 witness has answered and has given a complete response to  
18 the question that's been raised. That he was in error for  
19 whatever reason.

20 MR. COLE: But, Your Honor, I am trying --

21 MR. EISEN: What more does the record need?

22 JUDGE CHACHKIN: She gave here reason -- go ahead.  
23 I will permit the question.

24 MR. COLE: Thank you, Your Honor.

25 BY MR. COLE:

1 Q Is it your testimony today that Mr. Gordon was  
2 engaged, in your opinion, recollection by animus?

3 A My testimony today is that Mr. Gordon was in  
4 error, whether he was in error by virtue of animus, by  
5 virtue of incapacity, by virtue of poor recollection, by  
6 virtue -- any reason in the world, it doesn't really matter.  
7 He was in error.

8 MR. COLE: Your Honor, could you instruct the  
9 witness to answer my question?

10 JUDGE CHACKIN: I instruct the witness to answer  
11 the question.

12 Do you -- you gave a reason of animus. Now, do  
13 you still believe that that was the reason he was in error?

14 THE WITNESS: I gave one reason. There may have  
15 been other reasons. I do not know.

16 BY MR. COLE:

17 Q Do you continue to give the one reason that you  
18 gave?

19 A That would be one of the reasons that I would  
20 give.

21 Q And would you continue to believe -- do you  
22 continue to believe today that Mr. Gordon was engaged in  
23 fantastical post hoc recollections and accusations?

24 MR. EISEN: I am going to object to this question,  
25 Your Honor. It doesn't matter what she believes today.

1 What is important is what she believed at the time the  
2 pleading was written, at the time the facts and  
3 circumstances happened that underlie the issue, which  
4 incidently has nothing to do with Mr. Gordon.

5 JUDGE CHACHKIN: Overruled.

6 MR. COLE: Thank you, Your Honor.

7 THE WITNESS: I cannot say, Mr. Cole, whether that  
8 was the reason or any other reason. He was in error. He  
9 continues to be in error in that his view of matters, they  
10 do not comport with my recollection, and I think that that  
11 really is the only answer that I can give you today.  
12 Whether I would use those words today, I don't know.

13 MR. COLE: Your Honor, I move to strike that as  
14 nonresponsive, and also as conclusory, particularly with  
15 respect to Mr. Gordon being in error. I believe the record  
16 of the case will reflect that Mr. Gordon was not in error.  
17 The Commission's opinion in May of '94 concluded that it was  
18 a restricted proceeding and therefore confirmed Mr. Gordon's  
19 determination.

20 MR. EISEN: Your Honor.

21 MR. COLE: The Court of Appeals has also affirmed  
22 that --

23 JUDGE CHACHKIN: We don't need --

24 MR. COLE: I understand that, Your Honor.

25 JUDGE CHACHKIN: -- whether he was in error in his

1 recollection of the conversation, that's all we are talking  
2 at.

3 MR. COLE: Thank you, Your Honor.

4 JUDGE CHACKIN: Not the ultimate conclusion.

5 MR. COLE: Okay.

6 MR. EISEN: I do object.

7 JUDGE CHACKIN: I won't strike the material.

8 MR. COLE: Thank you, Your Honor.

9 BY MR. COLE:

10 Q All right, let's proceed chronologically, Ms.  
11 Polivy.

12 On June 24, 1993, you spoke with Mr. Gordon and  
13 Mr. Gordon, as I understand your testimony, read to you the  
14 Kreisman letter dated June 18; is that correct?

15 A Yes, he did.

16 Q And sometime thereafter you received in the mails  
17 a hard copy of the Kreisman letter; is that correct?

18 A That is correct.

19 Q Do you recall about how long after your  
20 conversation with Mr. Gordon you received the Kreisman  
21 letter?

22 A I believe it was not until the following week. I  
23 think it was probably -- I think that I spoke to Paul  
24 Gordon, it may have been on a Thursday, and I think I did  
25 not receive a hard copy until the following Monday.

1           MR. COLE: Your Honor, I think the parties will  
2 stipulate that -- and we looked at this in the deposition --  
3 June 24, 1993, was in fact a Thursday, which would mean  
4 Friday was the 25th, Saturday and Sunday were the 26th and  
5 27th.

6           BY MR. COLE:

7           Q     So, June 28th, to your best recollection at this  
8 point, the date you received the Kreisman letter?

9           A     Yes.

10          Q     And when you received the Kreisman letter --  
11 strike that.

12                 You testified that you contacted your client  
13 concerning the action the Commission had taken.

14                 Did you contact them, and am I correct that you  
15 contacted Mr. Rey?

16          A     Yes, I did.

17          Q     Did you contact Mr. Rey after you had spoken to  
18 Mr. Gordon or after receipt of the hard copy of the letter  
19 or both?

20          A     I am sure both.

21          Q     Now, refer if you would please, Ms. Polivy, to the  
22 exhibit which has been identified as Press No. 2, which is  
23 the Renouf and Polivy billing ledger. And continue with me  
24 starting at June 28, 1993.

25                 That line, as I read it, and correct me if I am

1 wrong, reflects an entry "Toni," T-O-N-I, and "a quarter,  
2 plus a quarter, plus a quarter."

3 Is that correct?

4 A That's correct.

5 Q Who is Toni?

6 A Antionette Cook Bush.

7 Q So does this mean that you spoke with Ms. Cook  
8 Bush three times in three separate 15-minute conversation on  
9 June 28th?

10 A Not necessarily. It could just mean that I tried  
11 to contact her and talked to her answering machine.

12 Q It could also mean that you spoke with her three  
13 times for a quarter of an hour each; is that correct?

14 A No.

15 Q It couldn't mean that?

16 A It could, yeah.

17 Q It could mean that.

18 And the following day, June 29, 1993, the one  
19 entry which we have here is "Toni, one quarter plus a  
20 quarter," is that correct?

21 A That's correct.

22 Q So that could also mean that you spoke with Ms.  
23 Cook Bush two times for 15 minutes each on that day?

24 A It could, or it could mean that I didn't.

25 Q It's possible that you would not have spoken with

1 her at all and still recorded a half-hour of time?

2 A I did -- on that date could be, but I did speak to  
3 her in that period of time.

4 Q Why would you enter separate one-quarter hour  
5 increments if you didn't speak with her at all?

6 A Well, usually that's the way I enter them on my  
7 calendar. There isn't enough room on the line. They don't  
8 get aggregated into the billing ledger.

9 Q I'm sorry.

10 Could you say that again?

11 A If they are -- I would normally enter each phone  
12 call on my calendar as quarter, plus quarter, plus quarter.  
13 When it comes to the billing ledger, they get aggregated to  
14 save space on the line.

15 It may have been that there wasn't enough space on  
16 the line and they just got entered a quarter plus a quarter.

17 Q Now, do you bill in increments of a quarter of an  
18 hour?

19 A Yes.

20 Q And when you say you enter on your calendar, the  
21 calendar is something different from the billing ledger; is  
22 that correct?

23 A Yes, it is.

24 Q Do you enter every time you pick up the phone and  
25 dial a number, do you enter that on your calendar?

1 A Every time I leave a message some place, yes.

2 Q The billing ledger is what you use to prepare your  
3 bills; is that correct?

4 A I don't prepare those.

5 Q This ledger is used in your law firm to prepare  
6 bills?

7 A Yes, they are.

8 Q So by including entries on the billing ledger are  
9 you then instruction whoever it is that prepares your bills  
10 to bill for that time?

11 A No, that's not the purpose.

12 Q What's the purpose then?

13 A The purpose is to keep track of the time.

14 As I told you before, that does not necessarily  
15 mean it was billed.

16 Q Do you exercise that ultimate control prior to the  
17 bills going out?

18 Q I personally?

19 Q Yes.

20 A No.

21 Q How would anybody looking at this, other than you,  
22 know whether it was one-quarter, one-quarter, one-quarter  
23 entries reflect answering machine messages or actual  
24 conversations?

25 A I'm usually asked.

1 Q I'm sorry.

2 It's usually asked?

3 A I said I am usually asked. It's an informal  
4 process.

5 Q As of June 28, 1993, Ms. Cook was up in New York;  
6 is that correct?

7 A Yes, she was.

8 Q She was on maternity leave; is that correct?

9 A Yes, she was.

10 JUDGE CHACHKIN: Mr. Cole, would this be a  
11 convenient time for a lunch recess?

12 MR. COLE: Sure, this would be fine, Your Honor.

13 No problem at all.

14 JUDGE CHACHKIN: We will recess until one p.m.

15 MR. COLE: Thank you, Your Honor.

16 (Whereupon, at 11:59 a.m., the hearing was  
17 recessed, to resume at 1:00 p.m., this same day, Tuesday,  
18 June 25, 1996.)

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## A F T E R N O O N   S E S S I O N

(1:00 p.m.)

JUDGE CHACHKIN: Back on the record.

Let's continue with Ms. Polivy.

Whereupon,

MARGOT POLIVY

having been previously duly sworn, was recalled as a witness herein, and was examined and testified further as follows:

MR. COLE: Your Honor, before we recommence, during the break I mentioned to Mr. Eisen, or I asked him where the schedule was for when Mr. Conant was going to arrive. And I gather he's going to be here for tomorrow afternoon; is that correct?

MR. EISEN: If it meets with your schedule, Your Honor, Wednesday afternoon. He is coming late tomorrow morning. And I think after the luncheon break.

MR. COLE: And I gave some thought to that over the break, and I think we are going to finish Ms. Polivy and probably Ms. Bush this afternoon as well, which would mean we would start with Mr. Rey normally tomorrow morning first thing.

My preference would be, if it's not unacceptable to everybody else, not to interrupt, start a witness, interrupt a witness, do another witness, and come back and finish up with Mr. Rey. We do have a number of exhibits

1 from Rainbow's side which I think will require a certain  
2 amount of going over on a line-by-line basis that the  
3 attorneys can take care of without a witness on the stand.  
4 And I would propose that we dedicate a session tomorrow  
5 morning to that exercise, break when that's finished, start  
6 in when Mr. Conant arrived, and then go straight from Mr.  
7 Conant to Mr. Rey.

8 JUDGE CHACHKIN: Well, if Ms. Bush is finished  
9 today, we will follow that procedure.

10 MR. COLE: Thank you, Your Honor.

11 CROSS-EXAMINATION (Resumed)

12 BY MR. COLE:

13 Q All, right, Ms. Polivy, when we broke for lunch  
14 according to my notes we were at June 28 and June 29 with  
15 respect to the billing ledger, which has been identified as  
16 Press Exhibit No. 2. And my recollection is that you  
17 specifically -- and correct me if I am wrong on this, I just  
18 want to recap where we were -- that you specifically recall  
19 speaking with Ms. Bush during the time period June 28, June  
20 29, but you are not sure that it was a total of five one-  
21 quarter hour phone calls, and you suspect that it was not  
22 five one-quarter hour phone calls?

23 A I'm sure it was not.

24 Q Is it your testimony that the three one-quarter  
25 hour phone calls or the three one-quarter hour entries

1 indicated on the June 28 line were calls out to Ms. Bush's  
2 answering machine?

3 A No. I said that they could be, they could be  
4 calls, actual calls, or they could have been made calls. In  
5 other words, I may have made a call, she may have returned a  
6 call, I may have left a message. That would show up a  
7 three-quarter hours.

8 There were three different events is all I can  
9 tell you.

10 Q So what you are saying, if I heard you then, is  
11 that if she called you and you did not take the call, which  
12 you found a call-back message in your in-box, that would be  
13 a one-quarter hour entry?

14 A No, that's not what I said.

15 I said that I may have left a message for her, she  
16 may have called me back and I spoke to her, or I may have  
17 made two calls to her and left two messages and she may have  
18 called me back and I spoke to her. I cannot tell you from  
19 that.

20 MR. COLE: Your Honor, I would like to approach  
21 the witness and provide her with a document which I would  
22 like to have marked for identification as Press Exhibit No.  
23 4, which is a one-page document and an unpaginated cover  
24 page bearing the legend "Press Broadcasting Company Hearing  
25 Exhibit, 'Detail of Long Distant Charges' for the Firm of

1 Renouf & Polivy." This is a document that was provided to  
2 us during the course of discovery.

3 JUDGE CHACKIN: The document as described is  
4 marked as Press Exhibit No. 4.

5 MR. COLE: Thank you, Your Honor.

6 (The document referred to was  
7 marked for identification as  
8 Press Exhibit No. 4.)

9 BY MR. COLE:

10 Q Ms. Polivy, would you take a look at that, please?

11 A Um-hmm.

12 Q Do you recognize this?

13 A Yes, I do.

14 Q And is this a copy of the long distance telephone  
15 charges or excerpts of long distant telephone charges for  
16 the law firm of Renouf & Polivy for the period of time June  
17 24 through July 1 of 1993?

18 A Yes, it is.

19 Q And am I correct that all of the calls which are  
20 reflected on this bill are to the same number, which is area  
21 code (212) 283-7834.

22 Do you see that?

23 A Yes, that was Ms. Cook's number in New York.

24 Q That was Ms. Cook's.

25 And when you refer to Ms. Cook, and I am sure we

1 will all do that at some point, that also refers to Ms.  
2 Bush?

3 A Yes. I'm sorry.

4 Q Now, let me call your attention to the fact, Ms.  
5 Polivy, that for June 28 on this bill there is only one call  
6 reflected to Ms. Bush's number.

7 Do you see that?

8 A Yes.

9 Q And am I correct that that reflects a 48-second  
10 call?

11 A Yes.

12 Q So if there is only one call out from Renouf &  
13 Polivy to Ms. Bush's telephone number, would you then  
14 conclude that the other two one-quarter hour entries at a  
15 minimum on June 28th were subsequent telephone calls from  
16 Ms. Bush?

17 A I would not draw such a conclusion. You will  
18 notice that on June 29 there are one, two, three, four, and  
19 there are only two that show up in the legend.

20 Q Well, I understand.

21 A I may have put it -- I may have put a quarter on  
22 the 28th that should have been on 29, after the fact. I  
23 can't tell you that.

24 I can tell you that there are five calls on the  
25 28th and 29th, all of which are seconds, which would lead me

1 to conclude that they were answering machine calls.

2 Q Is it your testimony then that the five calls that  
3 are reflected on Press Exhibit No. 4, that is, the telephone  
4 bill, are the five calls which are reflected in your billing  
5 ledger?

6 A It is not my testimony. My testimony is that  
7 sometimes on the 28th and the 29th I did speak to Ms. Cook.  
8 I cannot correlate for you from these two pieces of paper  
9 when exactly that was, or I cannot say that on the 28th I  
10 definitely spoke to her twice. I did speak to Ms. Cook on  
11 the 28th and the 29th. I did speak to her more than once.  
12 That I can say from my own recollection.

13 Q Could you have spoken to her more than twice?

14 A I could have.

15 Q When you first called Ms. Cook on let us say June  
16 28th, but I understand your testimony, it could have been  
17 28th or it could have been the 29th.

18 When you first called Ms. Cook what did you say to  
19 her?

20 A My recollection was that I told her that the FCC  
21 had come out with an opinion in the Rainbow extensions, and  
22 that they had denied it, and probably a thumbnail as to  
23 their reasons for delaying it. I don't have a specific  
24 recollection of what I said, but I am sure that was the  
25 substance of it.

1 Q Did you provide her with a copy of the Kreisman  
2 letter?

3 A I did not.

4 Q Did you read the Kreisman letter to her?

5 A I did not.

6 Q Now, you testified this morning that you asked her  
7 to call the FCC and find out what the heck was going on over  
8 there; is that correct?

9 A That's correct.

10 Q What did you expect her to do when you asked her  
11 to do that?

12 A I expected her to call the FCC and find out what  
13 the heck was going on over there.

14 Q Was there anything in the Kreisman letter which  
15 was not on its face self-explanatory to you?

16 A Well, since the reasons that were given were, in  
17 my opinion, contrary to the Commission's previous policy,  
18 stated policy, obviously it must have been that they weren't  
19 aware of it.

20 JUDGE CHACHKIN: What policy are you talking  
21 about?

22 THE WITNESS: Basically what they were doing in my  
23 mind was holding against Rainbow the fact that they had held  
24 onto the extension applications from 1991 to 1993, and then  
25 said that we didn't -- we had 34 months to construct and we

1 hadn't constructed.

2 The Commission's policy, as I understood it, had  
3 been that you were not expected to construct when your CP  
4 was in limbo. They wouldn't give you credit for what you  
5 did after your CP had expired, and they wouldn't hold  
6 against you what you didn't do after your CP had expired.  
7 So that basically Rainbow had only had from the completion  
8 of the initial review, which was August 30, 1990, until June  
9 25th -- it would have been July with their fifth extension,  
10 of 1991, which would have been approximately 10 or 11 months  
11 to construct. And then to deny our extension because we  
12 hadn't done enough seemed patently absurd.

13 BY MR. COLE:

14 Q Ms. Polivy, do you have a copy of the Kreisman  
15 letter that has been received into evidence as Joint Exhibit  
16 No. 8? Do you have that in front of you?

17 A No, I don't.

18 MR. COLE: Counsel, could you provide her with  
19 that?

20 MR. EISEN: Yes.

21 THE WITNESS: I have it.

22 BY MR. COLE:

23 Q Do you have it in front of you now, Ms. Polivy?

24 A Yes.

25 Q Let me refer you to page 3 and the second full

1 paragraph which begins, "In addressing the merits."

2 Do you see that paragraph?

3 A Yes, I do.

4 Q Does that paragraph refer to Rainbow's lack of  
5 efforts during any period of time other than the last  
6 extension period which began in February of 1991?

7 A No, it does not.

8 Q Thank you.

9 So on June 28 or June 29 you asked Ms. Cook to  
10 call the FCC and find out what the heck is going on over  
11 there.

12 MR. EISEN: Objection. It's been asked and  
13 answered.

14 JUDGE CHACKIN: What is the question?

15 MR. COLE: I am shifting gears now, Mr. Eisen, and  
16 I am just setting back up where we were before.

17 MR. EISEN: Good.

18 BY MR. COLE:

19 Q And you did not tell her -- strike that.

20 You did not ask her to call any particular person  
21 at the FCC; is that correct?

22 A I already said that.

23 Q Did Ms. Bush recontract you on June 28 or June 29  
24 to advise you that she had spoken with Mr. Stewart?

25 A I believe she did, and she said he didn't know